No. 24-795

IN THE

Supreme Court of the United States

IVAN ANTONYUK, *et al.*,

Petitioners,

v.

STEVEN G. JAMES, IN HIS OFFICIAL CAPACITY AS ACTING SUPERINTENDENT OF THE NEW YORK STATE POLICE, *et al*,

Respondents.

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

BRIEF OF *AMICI CURIAE* PEACE OFFICERS RESEARCH ASSOCIATION OF CALIFORNIA, THE CALIFORNIA STATE SHERIFFS' ASSOCIATION, THE CALIFORNIA ASSOCIATION OF HIGHWAY PATROLMEN, AND THE CRIME PREVENTION RESEARCH CENTER IN SUPPORT OF PETITIONER

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AMICI CURIAE STATEMENT OF INTEREST

Peace Officers Research Association of California ("PORAC") was incorporated in 1953 as a professional federation of local, state, and federal law enforcement agencies, and represents over 83,000 law enforcement and public safety professionals in California.[1] As the largest California law enforcement organization, PORAC's mission is to maintain a leadership role in organizing, empowering, and representing the interests of rank-and-file peace officers. PORAC seeks to identify the needs of law enforcement and conducts research, education, and training to enhance professional standards. PORAC protects the rights and benefits of officers while creating an environment in which law enforcement and the communities they serve work toward achieving common goals and objectives.

PORAC lobbies to advance or amend laws and regulations. PORAC provides history, context, and perspective unique to law enforcement professionals on key public policy issues. PORAC also files *amicus curiae* briefs in litigation impacting public safety.

The California State Sheriffs' Association ("CSSA") was formed in 1894 to provide California sheriffs a single effective voice.[2] CSSA, a nonprofit professional organization, represents all 58 California sheriffs. It shares information and resources to allow for the general improvement of law enforcement throughout

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[1] No counsel for a party authored this brief in whole or in part, nor did such counsel or any party make a monetary contribution to fund this brief. No person other than the amicus parties, its members or counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

[2] On January 28, 2024, *Amici Curiae* noticed all counsel of record of its intention to file this brief.

California. California sheriffs work together through CSSA to improve the profession and elevate law enforcement through cooperation with other agencies. As constitutionally elected officials, the California Legislature regulates sheriffs' duties and responsibilities.

Founded in 1920, the California Association of Highway Patrolmen ("CAHP") advocates on behalf of California Highway Patrol ("CHP") officers. Philosophically rooted in collaborative-based initiatives, CAHP often partners with the CHP to ensure high levels of public trust. CAHP aspires to be an example for all law enforcement officers and to provide the public the highest level of service.

The Crime Prevention Research Center ("CPRC") is a research and education organization dedicated to conducting and publishing academic quality research on the relationship between laws regulating firearms, crime, and public safety. CPRC strives to advance the scientific understanding of policing to promote enhanced public safety through improved awareness and knowledge.

As a 501(c)(3) nonprofit organization, CPRC does not accept donations from organizations associated with guns, ammunition, or the gun control debate.

Academic advisors for CPRC are affiliated with Wharton, University of Chicago, Harvard, University of Michigan, Emory, and other universities. Dr. John R. Lott, Jr., an economist and a world-recognized expert on guns and crime, founded CPRC. Lott has served as the Senior Advisor for Research and Statistics in the Office of Justice Programs and the Office of Legal Policy in the U.S. Department of Justice. He has held research or teaching positions at academic institutions, including the University of Chicago, Yale University, the Wharton School of the University of Pennsylvania, Stanford University, UCLA, and Rice University, and was the chief economist at the United States

Sentencing Commission from 1988-1989. He holds a Ph.D. in economics from UCLA, and has published over 100 articles in peer-reviewed academic journals and written ten books, including "More Guns, Less Crime," "The Bias Against Guns (2003)," and "Freedomnomics (2007)."

Amici Curiae promote policies and laws that enhance public safety while respecting individual self-defense rights. Firearm legislation should be tailored to increase the consequences and risks armed criminals face when committing crimes, not impairing law-abiding citizens' self-defense rights. *Amici Curiae* support granting the petition for a writ of certiorari, as both New York and California have enacted overly restrictive "sensitive places" laws that violate the Second Amendment. California peace officers possess an interest in avoiding enforcement of unconstitutional concealed carry restrictions.

SUMMARY OF ARGUMENT

Amici Curiae urge this court to grant review of the Second Circuit's opinion upholding most of New York's "Concealed Carry Improvement Act" in an opinion issued after remand, which is nearly identical to the opinion vacated in light of *United States v. Rahimi*, 602 U.S. 680 (2024). Amici previously filed an *Amici Curiae* brief in the United States Court of Appeals for the Ninth Circuit regarding a California law similarly defective to New York's law. California enacted Senate Bill ("SB") 2, which renders permits to carry concealed handguns ("CCW permits") effectively impossible to exercise by defining nearly every location as a prohibited "sensitive place." (Cal. Pen. Code § 26230.) Both California's SB 2 and New York's Concealed Carry Improvement Act ("CCIA") fail to adhere to the directive of this Court in *N.Y. State Rifle & Pistol Ass'n*

v. Bruen, 142 S. Ct. 2111, 2118-19 (2022), and instead seek to obviate its efficacy.

Bruen held "only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Id*. at 2126. This Court identified "settled" sensitive places, such as "legislative assemblies, polling places, and courthouses," where the carrying of firearms may be prohibited and directed lower courts to "use analogies to those historical regulations" to determine if new sensitive places restrictions are constitutionally permissible. *Id*. at 2133. By upholding the majority of the CCIA, the Second Circuit disregarded this Court's warning against "expanding the category of 'sensitive places' simply to all places of public congregation that are not isolated from law enforcement" and "effectively declar[ing] the island of Manhattan a 'sensitive place.'" *Id*. at 2134. Defying these Constitutional commands, New York and California expanded longstanding sensitive place definitions to encompass nearly their entire states, other than some streets and sidewalks.

Not only do these laws violate individuals' Second Amendment rights, they also do not address lawmakers' purported public safety concerns. CCW permit holders are some of the most highly vetted, trained, responsible and law-abiding citizens, who do not jeopardize public safety. *May v. Bonta,* 709 F. Supp. 3d 940, 969-970 (C.D. Cal. 2023), *aff'd in part, rev'd in part sub nom. Wolford v. Lopez*, 116 F.4th 959 (9th Cir. 2024). PORAC President Brian Marvel explained, "[v]iolent criminals don't bother with CCW permits and simply carry illegally." *Id.* at 948. Thus, it is no surprise that crime data demonstrates that permissive right to carry laws actually reduce violent crime, especially murder and rape.

Armed citizens do for themselves what law enforcement cannot always be there to do. Even when police are present, attackers can wait for the police to leave the area before attacking, move to another target, or shoot the officer first since they know the officer is the only person armed. Permissive concealed carry laws enhance public safety because criminals will not know who is able to stop them and officer safety because attackers cannot eliminate their risk of being stopped by just engaging the officer.

Regrettably, gun-free zones without comprehensive police protection, attract mass shooting incidents by advertising that only the mass murderers will have guns. *May*, 709 F. Supp. 3d at 970. Law-abiding citizens will obey the law, while criminals intent on murder will not be deterred by these sensitive places designations. "Someone intent on committing a mass murder will likely choose to do so in a 'sensitive' place, where he or she is less likely to encounter armed victims." *Ibid.*

Laws such as CCIA and SB 2 encourage gun violence by constricting self-defense options and reducing the risks to criminals. Rather than encumber the nation's already overburdened peace officers with enforcing feel-good legislation designating most public places as sensitive areas, scarce law enforcement resources should focus on suppressing and prosecuting violent firearm related crimes to the fullest extent of the law.

This Court's intervention is necessary to correct the Second Circuit's error in overly broadly defining the categories of acceptable analogues, thereby eviscerating any meaningful right to bear arms. *See Antonyuk v. James,* 120 F.4th 941, 1012 (2d Cir. 2024) (citing the potential presence of "vulnerable populations"). Although purportedly intended to protect vulnerable people,

these laws actually subject them to greater risks of gun violence.

Granting the petition promotes judicial economy and will ensure a uniform interpretation of the Second Amendment and uphold the principle of equal treatment under the law. The Ninth Circuit issued a consolidated opinion in *Wolford v. Lopez*, 116 F.4th 959, 970 (9th Cir. 2024) upholding even more of the restrictive California and Hawaii laws modeled after the CCIA. This opinion created a split from the Second Circuit and every other district court by upholding the reversal of the consent presumption that permit-holders may carry on private property. Review is necessary to resolve this circuit split.

The issues presented in this appeal are of national concern. Clearly establishing the extent of the constitutional right to bear arms will avoid subjecting peace officers to section 1983 liability when enforcing unconstitutional laws.

ARGUMENT

A. Review is Necessary to Protect this Court's Ruling in *Bruen* and Provide Guidance to States.

The Court recently reaffirmed the appropriate standard for Second Amendment analysis in *Bruen*, as follows:

> We reiterate that the standard for applying the Second Amendment is as follows: When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with

> the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command." 142 S. Ct. at 2129-30.

The Court further explained that the government has the burden of proving that the challenged regulation is consistent with the "Nation's historical tradition of firearm regulation" by analogy to historic regulations which imposed a "comparable burden on the right of armed self-defense and [ ] that [the] burden is comparably justified." *Id*. at 2133. In reaffirming the standard set forth in *District of Columbia v. Heller*, the Court rejected "interest-balancing inquiries" as inappropriate for Second Amendment analysis. 554 U.S. 570, 634-635 (2008).

As to whether there are special locations where the right to bear arms might be restricted without infringing Second Amendment rights, the Court explained that "the historical record yields relatively few 18th- and 19th-century 'sensitive places' where weapons were altogether prohibited." *Id.* at 2133. Thus, sensitive places are intended to be the exception to the general rule that firearms must be permitted virtually everywhere.

The Court cautioned that:

> [E]xpanding the category of "sensitive places" simply to all places of public congregation that are not isolated from law enforcement defines the category of "sensitive places" far too broadly. . . . [It] would in effect exempt cities from the Second Amendment and would eviscerate the general right to publicly carry arms for self-defense. *Id.* at 2134.

For example, "there is no historical basis for New York to effectively declare the island of Manhattan a

'sensitive place' simply because it is crowded and protected generally by the New York City Police Department." *Id.* at 2118-19.

Following *Bruen,* states began issuing laws in an obvious attempt to evade the ruling. New York was the first, and New Jersey, Hawaii, Maryland, and California followed with similar restrictions on where individuals may carry a concealed firearm. *Amici* are most familiar with California's SB 2, having filed an *Amici Curaie* brief urging the Ninth Circuit to uphold the district court's preliminary injunction. Like the CCIA, California's SB 2 bans carry on all public transportation, in businesses that serve alcohol, in banks, libraries, playgrounds, urban, rural, and state parks, medical facilities, on all private property by default, the parking lots of these sensitive places, and more.

"[A] court must be careful not to read a principle at such a high level of generality that it waters down the right." *Rahimi*, 602 U.S. at 740(Barrett, J., concurring). The Second and Ninth Circuits analogize at too high of a level of generalization when drawing historical analogs, thereby obviating the requisite careful review of the "how and why" of the regulations. They also breach their duty to "proceed with care in making comparisons to historic firearms regulations, or else they risk gaming away an individual right the people expressly preserved for themselves in the Constitution's text." *Id.* at 711 (Gorsuch, J., concurring).

Efforts like these to dramatically over-designate "sensitive places" are blatantly unconstitutional, yet the Ninth Circuit's ratification of most of the California and Hawaii restrictions exceeds even the Second Circuit. Shortly after this Court issued the *Rahimi* opinion, the Ninth Circuit issued a consolidated opinion in *Wolford* upholding the prohibition on

permitted persons from carrying a firearm in most public places. In so doing, the Ninth Circuit "acknowledge[d] that our primary holding—that a national tradition likely exists of prohibiting the carrying of firearms on private property without the owner's oral or written consent—differs from the decisions by the Second Circuit and some district courts." *Id*.at 996.

In dissenting from the denial of the petition for panel rehearing and petition for rehearing en banc, Circuit Judge Vandyke noted "[b]y upholding Hawaii's default private property rule, the panel departed from the holding of every other court to have considered similar private property default rules. *Carralero v. Bonta*, 125 F.4th 1246, 1261 (9th Cir. 2025). Because *Wolford* provides a framework for flipping the private property consent presumption, review will prevent the circuit split from expanding.

B. "Sensitive Place" Laws Do Not Increase Public Safety.

Laws like CCIA and SB 2 make little sense from a law enforcement perspective. CCW permit holders are remarkably law-abiding. *May,* 709 F. Supp. 3d at 947. Obtaining a CCW permit requires significant effort and expense. Applicants subject themselves to a months-long process that usually includes considerable fees, a mandatory training course, a thorough background check, and sometimes even a psychological exam in certain jurisdictions. *See, e.g.,* Cal. Penal Code §§ 26202(a)-(b), 26165(a), 26190(e)(2). People who are willing to go through this process before they exercise their right to carry are simply not likely to break the law; quite the opposite – they demonstrate a tremendous law-abiding predisposition. In the 26 states with comprehensive data, the average permit revocation

rate for any reason (even including in some states moving and other non-criminal activity) is less than 2/10ths of 1%. John R. Lott, Jr., Carl Moody, and Rujun Wang, *Concealed Carry Permit Holders Across the United States: 2024*, SSRN (Nov. 29, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5040077. Permit holders are convicted of firearms-related violations at 1/12 the rate of police officers, and about 1/240th the rate of the general population. *Id.*

Conversely, criminals intent on committing gun violence are not going to obtain CCW permits or refrain from committing gun crimes in an area simply because it is labeled a "sensitive place." The recent mass murder at the Covenant School in Nashville, Tennessee in March, 2023 illustrates this point. Individuals who violate Tennessee's gun-free school zone laws can receive up to six years in prison. Tenn. Code § 39-17-1309. While a severe penalty for law-abiding citizens, an additional six years is irrelevant to a mass murderer facing multiple life sentences or the death penalty. Adding six years to a life sentence offers no additional deterrence.

Mass murderers exploit gun-free zones to ensure they alone will be armed. While the Nashville shooter's manifesto has not been publicly released, Nashville Police Chief John Drake has seen it, and noted, "there was another location that was mentioned, but because of a threat assessment by the suspect of too much security, they decided not to." Lydia Fielder and Tony Garcia, *Nashville school shooter purchased 7 guns, planned attack on multiple locations, police say*, WSMV (Mar. 27, 2023), https://www.wsmv.com/2023/03/28/nashville-school-shooter-purchased-7-guns-planned-attack-multiple-locations-police-say/. Similarly, the Tops Friendly Markets shooter in Buffalo, New

York wrote in his manifesto, "Areas where CCW permits are outlawed or prohibited may be good areas of attack." CPRC, *New York Mass Public Shooter Explicitly targeted: "areas where CCW are outlawed or prohibited may be good areas of attack" "areas with strict gun laws are also great places of attack," Another Socialist/Environmentalist* (May 14, 2022), https://crimeresearch.org/2022/05/new-york-mass-public-shooter-explicitly-targeted-areas-where-ccw-are-outlawed-or-prohibited-may-be-good-areas-of-attack-areas-with-strict-gun-laws-are-also-great-places-of-attack/.

Many other attacks in 2023 occurred in places where firearms were banned such as an Old National Bank in Louisville, Kentucky, an outlet mall in Allen, Texas, and a hospital in Atlanta, Georgia. CPRC, *Old National Bank Shooting in Louisville was in yet ANOTHER Gun-free Zone, the murderer was another left-winger* (Apr. 11, 2023), https://crimeresearch.org/2023/04/old-national-bank-shooting-in-louisville-was-in-yet-another-gun-free-zone/; CPRC, *UPDATE: Texas Mall Shooting in yet ANOTHER Gun-free Zone, though not all parts of the mall might have been properly posted* (May 6, 2023), https://crimeresearch.org/2023/05/texas-mall-shooting-in-yet-another-gun-free-zone/; CPRC, *Active shooter attack in Atlanta Hospital occurred in yet another Gun-free Zone* (May 3, 2023), https://crimeresearch.org/2023/05/active-shooter-attack-in-atlanta-hospital-occurred-in-yet-another-gun-free-zone/. In fact, 94% of mass public shootings occur in places where civilians are banned from having guns. CPRC, *UPDATED: Mass Public Shootings keep occurring in Gun-Free Zones: 94% of attacks since 1950* (Jun. 15, 2018), https://crimeresearch.org/2018/06/more-misleading-information-from-bloombergs-everytown-for-gun-safety-on-guns-analysis-of-recent-mass-shootings/; CPRC, *Updated information on Mass Public Shootings* (Mar.

28, 2023), https://crimeresearch.org/2023/03/updated-information-on-mass-public-shootings/.

By designating almost entire states as sensitive places, laws like CCIA and SB 2 do nothing to reduce crime. They merely ensure that those intent on killing can do so without fear of encountering armed civilians.

C. The Studies Supporting Sensitive Places Laws are Fatally Flawed.

The majority of studies on the effects of right-to-carry ("RTC") laws[3], fall into three categories: cross-section, synthetic control, and panel data two-way fixed-effects models. The first two categories have serious flaws, and the third can be misused, creating biases in all the cited studies.

An obvious bias plagues cross-section studies. Suppose a study finds that State X has no RTC law and low crime while State Y has a RTC law and high crime. The conclusion is that RTC laws are bad. However, many reasons exist why States X and Y may differ in their laws and the amount of crime. For example, Texas and Alaska have RTC laws, while New York and Hawaii do not. Cross-section studies attempt to control these states' differences by including variables like income, poverty rate, unemployment, police, incarceration, etc. However, there are many other factors that vary across states for which cross-section studies cannot control, including certain characteristics of states that are constant over the sample period, such as climate, history, tradition, attitudes toward crime, other laws, etc. Because these

[3] Within the literature, RTC laws are defined as laws which have objective requirements to obtain a permit (passing a criminal background check, age, and sometimes requiring training).

constant characteristics are unobservable, they are omitted by cross-section studies. Statistical Literature refers to this problem as "unobserved heterogeneity."

Synthetic control models were developed as a second-best approach when data is extremely limited because there is only one experiment to observe. These limitations do not exist with RTC laws, where 42 states enacted such laws. Because only one experiment is being observed, synthetic control methodology cannot control for other factors such as changes in laws, police activity, prison population, income, unemployment, poverty, etc., in the post-law period. This weakness invalidates studies that employ the synthetic control method.

These concerns have led to the widespread adoption of panel data models with repeated observations on states for several years using the so-called "fixed effects" model. Different crime rates cannot be attributed to a particular law by simply comparing states such as California and Idaho. If California adopts a gun control law, it is necessary to compare crime rates in the two states both before and after adoption of the law. Fixed-geographic effects allow estimates to measure the pre-existing differences in state crime rates.

Similarly, crime rates often fluctuate nationally, which requires recognition of the timing that particular states adopted a law in relation to national crime rate changes. The correct question is whether the crime rates changed in states that adopted the law relative to those states that did not adopt a similar law. Fixed-year effects account for the average drop from one year to another so that the state-level changes can be meaningfully compared to the national change.

The gold standard for panel data policy analyses is the two-way fixed-effects ("TWFE") model. The TWFE model includes fixed effects for states to solve the unobserved heterogeneity problem and fixed effects for years to control for federal laws and other factors that could affect all states in a given year.

Yet these particular TWFE models have a potential problem because researchers calculated the effect of RTC laws by finding the difference in the crime rate for states recently adopting RTC laws compared to states that already had RTC laws. The correct comparison is between recently adopting states and states that have not adopted the policy. Overlooking this issue causes seriously biased estimates of the effect of the policy. *See* Clément de Chaisemartin and Xavier D'Haultfoueille, *Two-Way Fixed Effects Estimators with Heterogeneous Treatment Effects*, 110 Am. Econ. Rev. 9 (2020).

D. Studies that Compare Early Adopting States to Late Adopting States Do Not Account for Differences in Permitting Requirements.

Regression analysis studies found RTC laws reduce violent crime. Since the publication of John R. Lott, Jr. and David B. Mustard's *Crime, Deterrence, and Right-to-Carry Concealed Handguns*, 26 Journal of Legal Studies 1 (1997), 52 academic studies on the empirical effect of RTC laws on violent crime have been conducted. Forty (40) out of fifty-two 52 studies found that RTC laws did not increase violent crime, and twenty-five (25) studies found these laws reduce violent crime. Considering only peer reviewed studies, 22 found RTC laws reduce crime, while 9 found the contrary. Moreover, the studies that found RTC laws increase violent crime were all published after 2010.

This discrepancy is attributable to bias resulting from comparing early adopting states to later adopting states.

The date a state adopted RTC laws is closely related to permissiveness of the permitting requirements and the number of permits issued. When forced to recognize a disfavored right, the government often conjures restrictions to limit that right. Unsurprisingly, the early adopting states generally imposed the fewest restrictions on obtaining a permit. States that more recently adopted RTC laws often did so reluctantly and imposed more barriers.

Regulations governing the issuance of CCW permits during 2005, the mid-period examined, provides a useful comparison. As shown in Tables 1 and 2, the late-adopting states imposed much more restrictive regulations—higher fees, longer training requirements, more location restrictions, and slightly higher age restrictions. Within a single state, permitting rules generally became more permissive over time. Thus, early-adopting states continue to make it easier for people to get a permit, resulting in further increases to the number of permits issued.

As shown in Tables 1 and 2, the longer it took states to adopt RTC laws, the more restrictive their permitting rules. In Table 1, the pre-1977 RTC states have permit fees that are just one-fourth the average yearly fee for states that adopted after 2000, and their training requirements are just 7% as long. While fees and training requirements have declined considerably between 2005 and 2021, the pattern remains the same in 2021, with later-adopting states enacting higher fees and longer training requirements (Table 2).

The more costly obtaining a permit is, the less likely people are to obtain one and the number of permits

will grow less over time. Hence, relatively few people obtain permits in the later-adopting states, which have relatively smaller drops in violent crime rates. John R. Lott, Jr., *More Guns, Less Crime: Understanding Crime and Gun Control Laws* 177-178, 255-277, Ch. 10 (3rd ed. 2010).

For example, consider two neighboring states: Illinois and Indiana. Given that the total cost of obtaining a permit is over $400 in Illinois and is free in Indiana, it is not surprising that in 2023, Illinois had 4.9% of the population holding permits while Indiana had 23%. John R. Lott, Jr., *Concealed Carry Permit Holders Across the United States*: 2023, SSRN (Nov. 30, 2023). Correspondingly, Indiana had a lower violent crime rate than Illinois (373.5 vs 414.4 per 100,000) and a lower murder rate (6.2 vs 7.1 per 100,000). Federal Bureau of Investigation, *2019 Crime in the United States*, https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/table-4 (last visited February 21, 2024).

Accordingly, studies examining this later period are comparing these late-adopting states to the states that already had very liberal RTC laws. These studies fail to account for the number of permits issued in each state; only Lott's 2010 study accounted for that fact.

Table 1: Criteria for permits based on the Right-to-Carry laws during 2005

Year law adopted	Average permit fee per year	Average training hours	Average qualifying age
Before 1977	$5.81	0.63	19.13
1980s	$11.21	2.83	20.00
1990s	$15.13	6.12	20.59
2000s	$22.09	9.50	20.88

See Lott (2010), *supra*, at 256-57.

Table 2: Criteria for permits based on the Right-to-Carry laws during 2021

Year law adopted	Average permit fee per year	Average training hours	Average qualifying age
Before 1977	$3.89	0.00	18.43
1980s	$9.82	1.50	20.40
1990s	$5.31	2.56	20.44
2000s	$13.61	6.00	20.38

See John R. Lott, Jr. and Rujun Wang, *Concealed Carry Permit Holders Across the United States: 2020*, SSRN (Sept. 21, 2020), appendix.

The growth rate of permits, which is slower in late-adopting states, reflects their difficulty to acquire.

Table 3: The change in the percent of the adult population with Right-to-Carry permits

	Percentage point change in permits from 1999 to 2015	Percentage point change in permits from 2007 to 2015	Percentage point change in permits from 1999 to 2017	Percentage point change in permits from 2007 to 2017	Percentage point change in permits from 1999 to 2019	Percentage point change in permits from 2007 to 2019
States that adopted right-to-carry laws after 1999	3.1% (8)	3.1% (11)	3.9% (8)	4.3% (11)	4.3% (8)	4.8% (11)
All other states	4.2% (19)	3.7% (35)	5.3% (19)	5.0% (35)	6.0% (19)	5.8% (35)

See CPRC, *annual report on number of concealed handgun permits*, https://crimeresearch.org/tag/annual-report-on-number-of-concealed-handgun-permits (last visited February 21, 2024).

To summarize, recent studies are flawed because they confine themselves to more recent data. These later empirical analyses of the impact of RTC laws all assume that these laws are the same across states and over time. However, the effects of these laws are not the same because states differ widely as to the number of permits issued. Therefore, the findings of recent panel data studies showing that RTC laws increase crime should be discounted more than earlier studies, which overwhelmingly find the opposite.

Even the California Legislature noted that the "existing data and methods" were likely insufficient to resolve the question and that "new analytical approaches and data" were needed "if further headway is to be made." National Research Council, *Firearms and Violence, A Critical Review* 272, 275 (2005).

The following section applies such new analytical approaches and data to determine the effect of RTC laws on violent crime.

E. Evidence Shows that Right-to-Carry Laws Do Not Increase Violent Crime.

Two new procedures exist for avoiding the problems of unobserved heterogeneity and omitted variables in the post-law period. The first is by de Chaisemartin and D'Hautfoueille ((2020), *supra*, and *Two-Way Fixed Effects and Differences-in-Differences Estimators with Several Treatments*, National Bureau of Economic Research Working Paper 30564 (Revised July 2023) ("CH Model")) and the second is by Kirill Borusyak, Xavier Jaravel, and Jann Spiess, *Revisiting Event Study Designs: Robust and Efficient Estimation*, arXiv: 2107.13737 (2023) ("BJS Model").

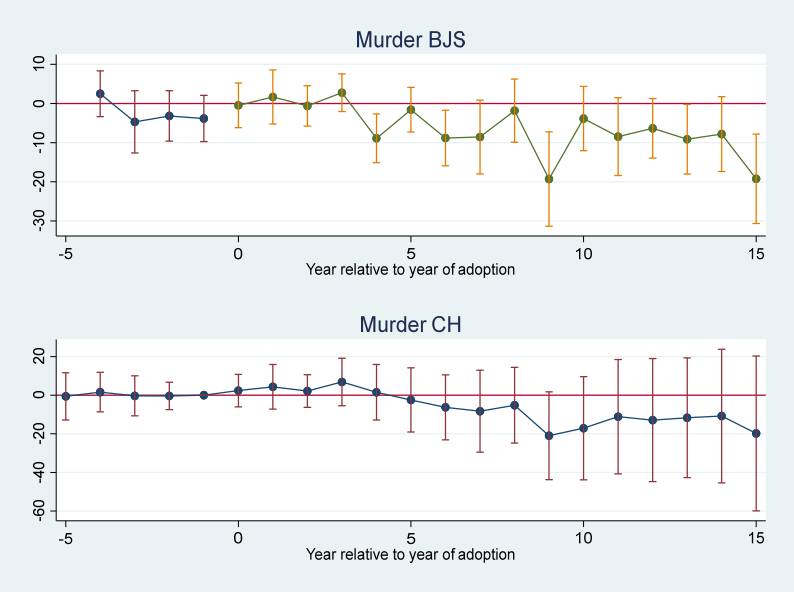
The below analysis by CPRC applies these methods to the FBI violent index crimes: murder, rape, robbery, and assault. These crimes were studied separately and the results were combined into an overall measure of the effect of RTC laws by weighting the effect of each law by the corresponding victim costs (including hospital costs, lost wages, pain and suffering, and value of lost life) to get an overall benefit-cost ratio. The effect of the RTC law can be shown graphically with the average change year-by-year before and after the year of adoption, over a 15-year period since implementation.[4]

[4] The FBI changed the definition of rape in 2013 and published data using the legacy definition until 2016. Therefore, the study reduced the event study for rape to 10 years in the post-law period for both models.

The event study graphs include four years before the implementation of the RTC law as a reality test for the analysis, because the laws were not in effect before the implementation date. The effect of the pre-implementation "placebo" law should be insignificantly different from zero, even though the actual estimate could be randomly positive or negative.

All the event studies have insignificant placebo law estimates. The vertical lines are 95% confidence intervals. If they include a point on the zero line, the corresponding effect estimate is not significantly different from zero using the standard 5% significance level. National Research Council, Reference Manual on Scientific Evidence, 251 (3rd ed., 2011).

Figure 1: Murder



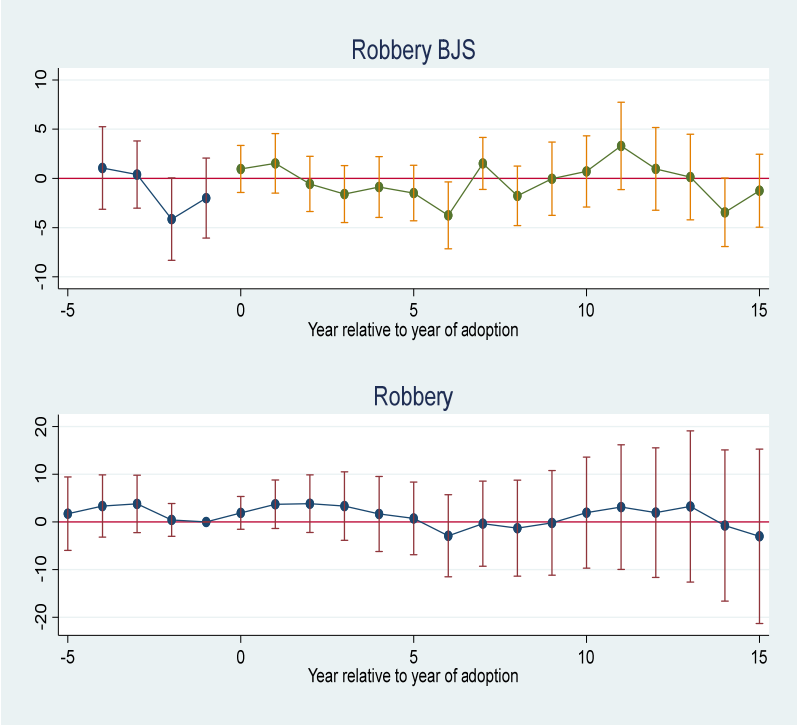
The average effect of the RTC law on the murder rate in the post-law period is significantly negative in the BJS Model. The average effect on murder in the post-law period for the CH Model is not significantly

different from zero, but it is negative in 11 out of the 15 years.

Figure 2: Rape

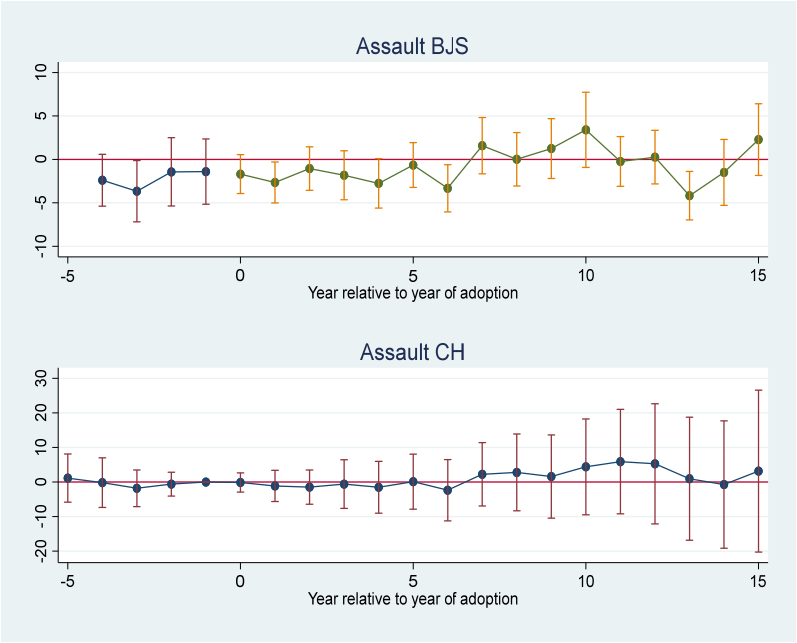
The average effect of the RTC law on the rape rate is negative in the BJS Model, but not significantly different from zero. The average effect of the RTC law on the rape rate in the CH Model is uniformly negative and highly significantly different from zero ($p<.01$).

Figure 3: Robbery



The average effect of the RTC law on the robbery rate is slightly negative and not significantly different from zero in the BJS Model and slightly positive and not significantly different from zero in the CH Model.

Figure 4: Assault



The effect of the RTC law on the assault rate is slightly negative but insignificantly different from zero in the BJS Model. In the CH Model, where the effect is slightly positive, it is insignificantly different from zero.

The overall effect of the RTC law on violent crime depends on the model used to evaluate the policy and the different effects on the four components: murder, rape, robbery, and assault. The effect is summarized in Table 5. Per-incident victim costs are taken from U.S. Department of Justice reports published in 1993 and 1996, and are updated to 2022 costs using the Consumer Price Index.

Table 5: Victim costs for the RTC law (Using the BJS Model and the CH Model).

Violent	Average Effect		Victim		Weighted Average Victim Costs	
Crime	BJS	CH	Costs	Weight	BJS	CH
Murder	**-5.88**	-6.47	$5,556,600	0.962	-5.66	-6.23
Rape	-1.13	**-9.92**	$163,485	0.028	-0.03	-0.28
Robbery	-4.41	1.88	$35,910	0.006	-0.03	0.01
Assault	-0.89	1.09	$17,672	0.003	0.00	0.00
Sum	-12.31	-13.42	$5,773,667	1.000	-5.72	-6.49

Note: Average effects and average victim costs are percentages; bold indicates significant at the five percent level.

Focusing on the significant results and assuming the insignificant effects are zero, then the RTC law is associated with a 5.88 percent decline in the murder rate and/or a 9.92 percent decline in rape, depending on which model is used. The BJS results consistently indicate that RTC laws reduce all types of violent crimes. The CH Model estimates are mixed, with the average effect on rape and murder showing benefits while the effects on robbery and assault are essentially zero. The net result for the CH Model is a reduction in victim costs of 6.49 percent.

The BJS Model finds a significant decline in murder and an insignificant decline in rape while the CH Model finds a significant decline in rape and an insignificant decline in murder. No matter which model is used, the RTC laws are associated with declines in victim costs. Overall, the data show that

RTC laws reduce violent crime, especially murder and rape. There is no statistically significant evidence of an increase in any type of violent crime.

This data illustrates the Second Circuit's flawed "how" and "why" analysis, which this Court should correct. By defining the relevantly similar features of the purported historical analogues as "firearm prohibition (how) in places frequented by and for the protection of vulnerable populations (why)," *Antonyuk* ignores the empirical evidence that vulnerable individuals are subjected to great risks of gun violence by expansive firearm prohibitions in public places. *Antonyuk,* 120 F.4th at 1012. Unless corrected, *Antonyuk*'s expansion of concerns over vulnerable populations would render almost any public place sufficiently similar to a historical analogue, thereby establishing a roadmap for states antagonistic to *Bruen* to eviscerate any meaningful right to bear arms. For example, in *May*, California defends its firearms prohibition on public transportation because "public transit systems serve vulnerable populations, particularly children." *May*, 709 F. Supp. 3d at 956.

F. Less Restrictive and More Effective Means of Reducing Gun Violence Exist.

States possess a myriad of options to reduce gun violence without insisting on symbolic carry restrictions foreclosed by *Bruen*. *Amici Curiae* support public safety, victims' rights, and a fair criminal justice system. The provisions at issue do not advance these interests.

States sincerely desiring to reduce gun violence and promote public safety could enact laws and fund enforcement to keep guns out of the hands of prohibited persons and to impose meaningful consequences

when guns are used in violent crime. Imposing consequences for gun violence is effective deterrence.

While promoting legislation to fight gun violence, California has counterintuitively weakened sentencing enhancements for actually using a gun in the commission of a crime. In 2017, California enacted SB 620 which amended California Penal Code sections 12022.5 and 12022.53(h) to eliminate the prohibition on striking allegations or findings relating to gun enhancements and expand the grounds to strike or dismiss gun enhancements at the time of sentencing. In 2021, SB 81 amended Penal Code section 1385 to further expand the grounds to dismiss firearm enhancements.

Governor Gavin Newson incorrectly credited California's 1990 assault weapon ban with reducing firearm mortality by 55% from 1993 to 2017. Office of Governor Gavin Newsom, FACT SHEET: California's Gun Safety Policies Save Lives, Provide Model for a Nation Seeking Solutions, (Jun. 2, 2022) https://www.gov.ca.gov/2022/06/02/factsheet-californias-gun-safety-policies-savelives-provide-model-for-a-nation-seekingsolutions/.California's murder rate actually rose immediately after the 1990 ban and peaked in 1993 at 13.1 per 100,000 people, compared to 10.9 in 1989. The Disaster Center, California Crime Rates 1960 – 2019, https://www.disastercenter.com/crime/cacrime.htm (last visited February 21, 2024). The murder rate fell by 10% in 1994 after the enactment of California's tough three-strikes law, and continued to fall by 53% through 2000. San Diego County Public Defender Office, Three Strikes Law, https://www.sandiegocounty.gov/public_defender/strikes.html (last visited February 21, 2024).

> There is a wide array of civil and criminal laws that permit the commitment and prosecution of those who use or may use firearms to commit crimes. Law enforcement and prosecutors should take their obligations to enforce these laws seriously. Families and the public at large should report concerning behavior. Judges should exercise their prudent judgment in committing individuals that pose a threat to the public and imposing sentences that punish, not just lightly inconvenience, those guilty of firearm-related crimes. *Barnett v. Raoul*, No. 3:23-CV-00141-SPM, 2023 WL 3160285 (S.D. Ill. Apr. 28, 2023).

It is critical that we keep guns out of the hands of prohibited persons and disincentivize the unlawful use of firearms through both enforcement and criminal enhancements. The challenged "sensitive places" restrictions do not further these common-sense goals.

CONCLUSION

This petition presents an opportunity to affirm the supremacy of the U.S. Constitution and this Court's application of citizens' constitutional rights over legislative disobedience of *Bruen*. Unless corrected, *Antonyuk* will invite other Circuits to misapply considerations of vulnerable populations to nullify the efficacy of *Bruen*. In reality, these CCIA restrictions will increase violent crime, as criminals will continue to violate carry laws knowing they create defenseless targets.

National guidance on the extent of permissible designations of "sensitive places" is urgently needed to avoid patchwork application of *Bruen* in the Circuits and to clearly establish the extent of the right to bear arms, which our nation's peace officers have a duty

to uphold. *Amici* respectfully request this Court grant the petition for a writ of certiorari and immediately address these important issues and address the circuit split.

Respectfully submitted,

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