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 THE SUPERINTENDENT OF THE NEW YORK STATE POLICE, *et al.*,

Respondents.

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

BRIEF OF *AMICI CURIAE* IVAN ANTONYUK, ET AL. IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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INTERESTS OF *AMICUS CURIAE*

Amici curiae[1], the Minority Leader of the New York State Senate, Robert G. Ortt and Senator Andrew J. Lanza, et al., joined by several New York State Senators and the Minority Leader of the New York State Assembly, William A. Barclay and Assembly Members Robert Smullen and Christopher Tague, et al., joined by several Members of the New York State Assembly, ("*Amici*")[2], pursuant to Supreme Court Rules 33.1, 34 and 37, file this *amicus curiae* brief in support of *Plaintiffs-Appellees-Petitioners* Ivan Antonyuk, et al. ("Appellees") and urge that this Supreme Court of the United States grant a Writ of Certiorari, and upon a full appeal, either restore Decision and Order issued by the United States District Court for the Northern District of New York (Suddaby, J.), which blocked enforcement of multiple provisions of the Concealed Carry Improvement Act (hereinafter the "CCIA"), L. 2022, Ch. 371, or void the challenged state statute in its entirety and that the Court reverse the Decision issued by the United States Court of Appeals for the Second Circuit.

---

1. Pursuant to Supreme Court Rule 37.6, *Amici*, Minority Leaders Robert G. Ortt and William A. Barclay, et al., certify that: (1) no party's counsel authored this brief in whole or in part; (2) no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and (3) no person other than the *Amici*, Minority Leaders Robert G. Ortt and William A. Barclay, et al., contributed money that was intended to fund preparing or submitting the brief.

2. Given the large number of Amici joining the brief, a full listing of the amici is attached hereto as a Appendix I to the brief.

Your proposed *Amici* jointly comprise 30 Republican Members of the bicameral New York State Legislature, entrusted by the State Constitution to exercise legislative power. As Members of the Legislature, *Amici* were elected by the voters of New York State to, *inter alia*, consider and vote on legislation before their respective houses. *Amici's* function as duly-elected representatives of the people of New York State underscores the necessary role of their involvement in matters of significant public interest such as the case at bar. It is respectfully submitted that the challenged statute's effect of squelching the Second Amendment rights of these elected officials' constituents over their objection justifies their status as *Amici*, and the offering of this brief in support of their right to keep and bear arms in the State of New York.

Your proposed amici offer the unique benefit of their first hand view of the New York Governor and Legislature's deliberate and willful efforts to subvert, nullify, defy, and evade the ruling of this Court in *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022).

For the reasons set forth herein, it is demonstrated that the New York State Legislature and the Governor, over the opposition of the proposed *Amici*, rushed to judgement in enacting the statute challenged in this case mere days after the Supreme Court of the United States issued its opinion in *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022). Further, the New York State Legislature and the Governor acted improperly in attempting to override the decision of the United States Supreme Court in *New York State Rifle & Pistol Association v. Bruen*, *supra*, and to improperly restrict the *Plaintiffs'-Appellees'* rights under the First and Second Amendment to the United States Constitution.

In light of this Court's holding in *United States v Rahimi*, 602 US 680 (2024), it properly vacated the Second Circuit Court of Appeals' ruling in *Antonyuk v Chiumento*, 89 F.4th 271 (2d Cir. 2023). *See Antonyuk v. James*, 144 S. Ct. 2709, 219 L. Ed. 2d 1315, 2024 U.S. LEXIS 2929, 2024 WL 3259671 (U.S., July 2, 2024). This effectively restored the Decision and Order issued by the United States District Court for the Northern District of New York in Antonyuk v. Hochul, 639 F. Supp. 3d 232, 2022 U.S. Dist. LEXIS 201944 (N.D.N.Y., Nov. 7, 2022) that the CCIA is unconstitutional.

Upon remand from this Supreme Court, the Second Circuit Court of Appeals erred once again. In *Antonyuk v James*, 120 F.4th 941 (2d Cir 2024) the Appellate Court declared the CCIA to be constitutional, and in so doing violated rights guaranteed under the U.S. Constitution, Amendments I and II, particularly with respect to allowing overly broad and vague "sensitive area" restrictions. For these reasons, your proposed *Amici* support the *Plaintiffs-Appellees* herein, and as duly-elected representatives of the people of New York State, urge this Court to grant the Petition for Certiorari and upon a full appeal, to declare the CCIA to be unconstitutional.

Pursuant to Federal Rule of Appellate Procedure 29(a)(2), your *Amici* certify that all parties to this proceeding have been contacted in connection with the application for *Amicus* Status. *See* Fed. R. App. P. 29(a)(2).

SUMMARY OF ARGUMENT

It is contended herein that the District Court properly ruled that a plethora of the restrictions imposed by

Chapter 371 of the New York Laws of 2022, the Concealed Carry Improvement Act (hereinafter the "CCIA"), were unconstitutional restrictions upon the rights guarant under the U.S. Constitution, Amendments I and II. This United States Supreme Court is urged to reverse the Decision and Order below, and further, lift any stay of the Appellate Court's injunction.

Generally, New York State Law makes it a crime to possess a firearm without a license, whether inside or outside the home. Until the holding in *New York State Rifle & Pistol Association v. Bruen*, *supra*, an individual who wanted to carry a firearm outside their home was required to obtain an unrestricted license to "have and carry" a concealed "pistol or revolver" for which they needed to prove that "proper cause" existed for doing so. An applicant could only satisfy the "proper cause" requirement if they could demonstrate a special need for self-protection distinguishable from that of the general community.

On June 23, 2022, in a 6-3 decision, the United States Supreme Court held that New York's proper cause requirement violated the Fourteenth Amendment by preventing law abiding citizens with ordinary self-defense needs from exercising their Second Amendment right to keep and bear arms in public for self-defense. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2134 (2022). According to the ruling, New York's existing law was deemed unconstitutional because it gives too much discretion to the State and its licensing officers in determining proper cause. The proper cause requirement to conceal carry is no longer valid.

Days later, on July 1, 2022, the CCIA, Senate Bill S.51001/Assembly Bill A. 41001 was introduced, voted out of committee, sent to the floor of each house of the Legislature, and then signed into law by the Governor. The new Law removed the "good cause" standard for obtaining a license to carry a firearm and instead imposed numerous requirements for an individual to meet in order to obtain a license to carry a firearm, including a "good moral character" requirement and, additionally, restricted license holders from carrying a firearm in "sensitive areas." The CCIA also criminalizes possession of a firearm on private property where the property owner has not expressly granted permission to carry the firearm on that property or conspicuously posted signage allowing firearms on the premises. In short, the practical effect of these restrictions is to ban the exercise of First and Second Amendment rights throughout the State of New York. The overly expansive nature of sensitive places that the ban placed upon carrying a firearm on private property in the CCIA (by licensed carriers) infringes upon Constitutional protections to be afforded to our citizens. Indeed, the CCIA's pervasive restrictions placed upon the Second Amendment right to bear arms are little more than an attempt to nullify the Supreme Court's decision in *New York State Rifle & Pistol Association v. Bruen*, *supra*, and the Second Amendment of the United States Constitution itself.

Amici contend here that the requirements placed upon citizens applying for licenses are onerous and, in many instances, overbroad and vague. These requirements bring into question, and unduly curtail, the *Plaintiffs'-Appellees'* Constitutional rights.

Further, the CCIA establishes "sensitive area" restrictions that are so broad and expansive as to effectively preclude firearm possession by those obtaining a license. *Amici* assert here, and join with *Plaintiffs'-Appellees'-Petitioners'* arguments, that the restrictions upon First and Second Amendment rights are unconstitutional. The Second Amendment covers the plain text of carrying a firearm, making the CCIA's sensitive area restrictions inconsistent with the Nation's historical tradition of firearm regulation. The State has failed to meet its burden in this respect.

The decision of the District Court in declaring the CCIA to be unconstitutional, and enjoining the enforcement of this law, was correct and should be affirmed. The decision of the Court of Appeals to rule the CCIA constitutional violates the plain text of the Constitution and must be reversed.

ARGUMENT

POINT I

THE CCIA IS NOTHING MORE THAN AN ATTEMPT TO "REVERSE" THE U.S. SUPREME COURT'S RECENT DECISION IN *NEW YORK STATE RIFLE & PISTOL ASSOCIATION V. BRUEN*, AND TO ABRIDGE CONSTITUTIONALLY GUARANTEED RIGHTS

Within minutes of the issuance of the United States Supreme Court's decision in *New York State Rifle & Pistol Association v. Bruen*, *supra*, there was an acrimonious cry from Governor Kathy Hochul, Assembly Speaker

Carl E. Heastie, and Senate Majority Leader Andrea Stewart-Cousins. Governor Hochul referred to the Supreme Court's decision as: " . . . this decision isn't just reckless. It's reprehensible," also calling the ruling "frightful in its scope." *See 'Frightful in its scope': New York lawmakers scramble to counteract SCOTUS gun ruling*, Politico (June 23, 2022), https://www.politico.com/news/2022/06/23/new-york-hochul-supreme-court-gun-00041715. Majority Leader Stewart Cousins said that the Supreme Court "decided guns are more important than lives in this country." *See NY State Senate Majority reacts to the Supreme Court's ruling on gun laws*, NPR (June 23, 2022), https://www.npr.org/2022/06/23/1107151035/ny-state-senate-majority-reacts-to-the-supreme-courts-ruling-on-gun-laws. Speaker Heastie said, " . . . the right to keep and bear arms is not absolute . . . this Supreme Court appears to believe otherwise." *See Speaker Heastie Statement on the Supreme Court Decision to Severely Limit States Rights to Prohibit Carrying Guns in Public*, New York State Assembly (June 23, 2022), https://assembly.state.ny.us/Press/?sec=story&story=102469.

Governor Hochul's public statements went on to demonstrate her intention to preclude licensed gun owners from being able to carry their firearms *anywhere*. When queried as to what was a sensitive place by CBS reporters, she responded, "We are going to define 'sensitive place' . . . it's hard to find a place that's *not* sensitive in my judgment." *See* Analisa Novak, *Gov. Kathy Hochul: Supreme Court gun law ruling is "reprehensible" given nationwide gun violence crisis*, CBS News (June 24, 2022), https://www.cbsnews.com/news/new-york-governor-kathy-hochul-supreme-court-gun-law-ruling/ (video at minute marker 3:05) (emphasis added).

The Court must consider the language of the CCIA against this backdrop and in light of the rapid sequence of events—a veritable knee-jerk reaction to a decision of the highest Court in the land which enforced the Constitutional rights placed by the framers in the Bill of Rights.

The Opinion of the Court in *New York State Rifle & Pistol Association v. Bruen*, *supra*,, clearly stated that:

> " . . . expanding 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. Respondents' argument would in effect exempt cities from the Second Amendment and would eviscerate the general right to publicly carry arms for self-defense that we discuss in detail below. *See* Part III–B, *infra*. Put simply, 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." *See N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2134 (2022).

Faced with the reality of the application of the Second Amendment, the Governor and Legislature crafted a bill which achieved the same goal of precluding any concealed carry of a firearm within a geographic area. This was achieved two ways. First the legislation created a list of "sensitive locations" that was so large and robust as to, when all are overlayed on a geographic map, preclude

the exercise of Second Amendment rights. The list of "sensitive locations" includes:

> "(a) any place owned or under the control of federal, state or local government, for the purpose of government administration, including courts;
>
> (b) any location providing health, behavioral health, or chemical dependance care or services;
>
> (c) any place of worship or religious observation;
>
> (d) libraries, public playgrounds, public parks, and zoos;
>
> (e) the location of any program licensed, regulated, certified, funded, or approved by the office of children and family services that provides services to children, youth, or young adults, any legally exempt childcare provider; a childcare program for which a permit to operate such program has been issued by the department of health and mental hygiene pursuant to the health code of the city of New York;
>
> (f) nursery schools, preschools, and summer camps;
>
> (g) the location of any program licensed, regulated, certified, operated, or funded by the office for people with developmental disabilities;
>
> (h) the location of any program licensed, regulated, certified, operated, or funded by office of addiction services and supports;

(i) the location of any program licensed, regulated, certified, operated, or funded by the office of mental health;

(j) the location of any program licensed, regulated, certified, operated, or funded by the office of temporary and disability assistance;

(k) homeless shelters, runaway homeless youth shelters, family shelters, shelters for adults, domestic violence shelters, and emergency shelters, and residential programs for victims of domestic violence;

(l) residential settings licensed, certified, regulated, funded, or operated by the department of health;

(m) in or upon any building or grounds, owned or leased, of any educational institutions, colleges and universities, licensed private career schools, school districts, public schools, private schools licensed under article one hundred one of the education law, charter schools, non-public schools, board of cooperative educational services, special act schools, preschool special education programs, private residential or non-residential schools for the education of students with disabilities, and any state-operated or state-supported schools;

(n) any place, conveyance, or vehicle used for public transportation or public transit, subway cars, train cars, buses, ferries, railroad, omnibus, marine or aviation transportation; or any facility used for or in connection with

service in the transportation of passengers, airports, train stations, subway and rail stations, and bus terminals;

(o) any establishment issued a license for on-premise consumption pursuant to article four, four-A, five, or six of the alcoholic beverage control law where alcohol is consumed and any establishment licensed under article four of the cannabis law for on-premise consumption;

(p) any place used for the performance, art entertainment, gaming, or sporting events such as theaters, stadiums, racetracks, museums, amusement parks, performance venues, concerts, exhibits, conference centers, banquet halls, and gaming facilities and video lottery terminal facilities as licensed by the gaming commission;

(q) any location being used as a polling place;

(r) any public sidewalk or other public area restricted from general public access for a limited time or special event that has been issued a permit for such time or event by a governmental entity, or subject to specific, heightened law enforcement protection, or has otherwise had such access restricted by a governmental entity, provided such location is identified as such by clear and conspicuous signage;

(s) any gathering of individuals to collectively express their constitutional rights to protest or assemble;

> (t) the area commonly known as Times Square, as such area is determined and identified by the city of New York." *See* L. 2022, Ch. 371.

In an urbanized area the combination of "sensitive locations" is likely to obliterate any zone where a licensed gun owner might exercise his right to carry his firearm for personal self defense. The possibility of self-incrimination by carrying a licensed firearm into a precluded zone under this statutory framework increases exponentially if the state or localities establish buffer zones, as the New York City Mayor, and City Council Speaker have promised. *See Council urges state to "blanket" New York City as a gun-free zone*, New York City Council Member Shaun Abreu (Aug. 4, 2022), https://council.nyc.gov/shaun-abreu/2022/08/04/council-urges-state-to-blanket-new-york-city-as-a-gun-free-zone/. *Amici* note here that some of the "sensitive locations" will move, and change by the day as polling places, "special events" such as street fairs, parades and even protest marches come and go from the municipal setting.

The CCIA is an assault on self protection while traversing public lands. In the event that one were to tell the licensed firearm owner to head north from New York's urban area to the less populated Catskills or Adirondacks to exercise their Second Amendment rights, they would find a different aspect of Chapter 371's trap.

The CCIA prohibits carrying a licensed firearm in any public park. To the North of New York City lie dozens of state and local parks, including the 236,000 acre Catskill Park. *See* N.Y. Const. art XIV. Further to the north is the Adirondack Park. This is an expanse of 6 million acres. The

Adirondack Park "is the largest publicly protected area in the contiguous United States. It is the largest National Historic Landmark in the United States, covering an area larger than Yellowstone, Yosemite, Grand Canyon, Glacier, and the Great Smokies National Parks combined." *See Adirondack Park National Historic Landmark—Official Regional Website*, https://visitadirondacks.com/about/adirondack-park. The plain language of the statute eliminates the right to bear arms from these two huge parks as well as the 350,000 acres which comprise the 250 more traditional state parks spread across the state, not to mention all of the federal, county, town, village and city parks. But unlike the Yellowstone, Yosemite, Grand Canyon, Glacier, and the Great Smokies National Parks, the Adirondacks and Catskills contains towns and villages where thousands of citizens live. These aren't sensistive locations, they are hundreds of small communities that the *Amici's* constituents call home. Again, the inescapable conclusion is that the purpose of the CCIA was to effectively preclude the exercise of First and Second Amendment rights.

This real and exhaustive prohibition placed upon the exercise of constitutional rights was not enough for the architects of this pernicious legislation. The CCIA creates a presumption that *all* private property is a prohibited zone for the licensed gun owner to carry a firearm, unless express permission of the owner is given or signage is posted allowing for the exercise of Second Amendment rights. Inapposite the Constitution, now one cannot exercise their basic rights without permission by the state government or an ordinary non-governmental actor. Under the CCIA, people must be expressly authorized to have their constitutional rights in order to freely exercise them.

Bluntly stated, the terms of Chapter 371, New York Laws of 2022 establish two preclusion zones—public buildings and gathering places, and private properties. *Amici* respectfully submit that the Governor and Legislative Majorities who oppose the Second Amendment for political reasons have quite effectively thrown a blanket prohibition of Second Amendment and the related First Amendment rights over the entire state of New York. These expansive and inclusive limits evidence an intent by the Governor and Legislature of New York to defy this Court's ruling in NYSRPA v Bruen, supra, and to preclude the citizens from exercising their Second Amendment rights. This New York State Statute is unconstitutional.

Justice Thomas in the *New York State Rifle & Pistol Association v. Bruen*, *supra.*, opinion which invalidated the "proper cause" requirement in New York Law clearly stated:

> "The constitutional right to bear arms in public for self-defense is not "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." McDonald, 561 U.S. at 780, 130 S.Ct. 3020 (plurality opinion). We know of no other constitutional right that an individual may exercise only after demonstrating to government officers some special need. That is not how the First Amendment works when it comes to unpopular speech or the free exercise of religion. It is not how the Sixth Amendment works when it comes to a defendant's right to confront the witnesses against him. And it is not how the Second Amendment works when it

> comes to public carry for self-defense." *See N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2156 (2022).

In contrast to the Supreme Court's careful historical analysis to arrive at the decision in *New York State Rifle & Pistol Association v. Bruen*, *supra.*, the reaction of the Governor and the Legislature in enacting Chapter 371, New York Laws of 2022 smacks of a fast and dirty patchwork designed to push back the high Court's decision in *New York State Rifle & Pistol Association v. Bruen*, *supra.*, and effectively repeal the First and Second Amendment rights of thousands of New Yorkers. Clearly, in the few days between the Supreme Court's decision and the adoption of the CCIA no member of the Legislature voting in the affirmative exercised the due diligence of one empowered to legislate under the Constitution, failing to conduct a careful historical analysis to justify the plethora of restrictions New York State was placing on a right guaranteed by the Constitution.

The lengthy decision of the District Court carefully reviewed each of the strictures erected by the partisan New York Legislature and Governor. This detailed analysis must be affirmed.

Amici agree with the *Plaintiffs'-Appellees'-Petitioners'* argument that the *Defendant-Appellants-Respondents* have adopted a "revisionist" view that reads " . . . a broad anti-gun tradition into American History", Document 202, p. 32. Moreover, the historical analysis defies the strained and contorted recitation of the Appellants. As observed by fellow *Amici*, New York State Firearms Association, see Document 202, p. 32, our founders typically went,

while bearing arms to " . . . (i) public squares, commons, and greens, (ii) public assemblies, (iii) taverns and while consuming alcohol, (iv) during travel, (v) on private property, (vi) in churches, and (vii) *especially* while exercising other constitutional rights, NYSFA Amicus Brief, Document 202, p. 32, emphasis in the original. The historical application of the Second Amendment's absolute granting of a right to bear arms demonstrates that each of the places that the founders knew to be open to carrying arms would now be proscribed areas and, indeed, areas where carrying a licensed firearm would be subjected to criminal prosecution. The Framers of the Constitution would cringe and look with horror at New York's CCIA.

Without any question, it must be decided that the historical analysis called for in the *NYSRPA v. Bruen*, supra, decision points decidedly toward the invalidation of the CCIA, the challenged statute herein.

It is respectfully submitted that the Respondents' contorted re-write of the historical analysis done in NYSRPA v. Bruen, supra, combines with their rush to legislate after that decision was handed down, proves the intent behind the challenged statute was to overrule this Court's decisional law and to preclude the exercise of Second Amendment Rights. This cannot be tolerated and calls for this Supreme Court's intervention.

Accordingly, your *Amici* respectfully request that this Court grant the Petition for a Writ of Certiorari, and that upon the appeal of this matter, that the entirety of the challenged statute, Chapter 371, New York Laws of 2022, be voided as unconstitutional.

CONCLUSION

For all of the reasons advanced herein, as well as the arguments put forward by the *Plaintiffs-Appellees* herein, this Court should grant the instant Petition for a Writ of Certiorari.

Respectfully submitted,

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APPENDIX I: LIST OF PROPOSED *AMICI* CURIAE

Proposed *Amici curiae*, comprised of duly elected and sitting Members of both houses of the New York State Legislature, include:

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Hon. Eric "Ari" G. Brown
Assembly Member
New York State Assembly
District 20

Hon. Keith P. Brown
Assembly Member
New York State Assembly
District 12

Hon. Joseph P. DeStefano
Assembly Member
New York State Assembly
District 3

Hon. Robert G. Ortt
Minority Leader
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Senate District 62

Hon. George M. Borrello
Senator
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Hon. Joseph A. Griffo
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Hon. Andrew J. Lanza
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Hon. Christopher S. Friend
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