

No. 20-843

In The
Supreme Court of the United States

—◆—
NEW YORK STATE RIFLE &
PISTOL ASSOCIATION, INC., et al.,

Petitioners,

v.

KEVIN P. BRUEN, in His Official Capacity as
Superintendent of New York State Police, et al.,

Respondents.

—◆—
**On Writ Of Certiorari To The
United States Court Of Appeals
For The Second Circuit**

—◆—
**AMICI CURIAE BRIEF OF
ITALO-AMERICAN JURISTS AND ATTORNEYS
IN SUPPORT OF PETITIONERS**

—◆—
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INTEREST OF THE AMICI CURIAE¹

Amici Curiae, listed in the Appendix, are a group of mostly Italo-American jurists and attorneys in the New York City area who believe in the fundamental right of the people to keep and bear arms. Amici have spent decades working in the New York State court systems and have seen firsthand how New York's law has relegated this foundational right to a privilege available to only some in the state.

The case now before the Court challenges a law founded on a biased suspicion of Italian immigrants new to this country. To this day, it remains an insurmountable burden for many law-abiding citizens in New York State who wish to exercise their right to bear arms. Amici submit this brief in hope that it helps restore the right of self-defense to all New Yorkers that was lost 110 years ago.

**SUMMARY OF ARGUMENT**

Amici wish to provide the Court some of the historical context behind the passage of New York's

¹ Counsel of Record is an Assistant General Counsel at the National Rifle Association (the "NRA") and wrote this brief in full. The New York State Rifle & Pistol Association, Inc. is a state affiliate of the NRA. No person or organization other than the amici or their counsel made a monetary contribution for the preparation or submission of the brief. Both parties were timely notified and consented to the filing of this brief.

Sullivan Law in 1911.² Much of this history has been lost or discussed only briefly as more than a century has passed. Nonetheless, the original justifications for the law remain important as this Court weighs the constitutionality of New York's law that restricts lawful firearms carry to only a select group. As Justice Holmes once stated, "a page of history is worth a volume of logic." *New York Trust Co. v. Eisner*, 256 U.S. 345, 349 (1921).

The Sullivan Law was passed, in good part, as an effort to disarm Italian immigrants, whom many believed were predominately responsible for violent crime in New York City in the early 20th century.³ There are always several reasons for legislation, but the historical record shows that much of the impetus for the law came from a reaction to crime many associated with first- and second-generation Italian immigrants. The unlawful possession and carrying of firearms, in addition to extortion, blackmail, kidnapping, and bomb

² The Sullivan Law is what is largely in place today and that requires those who wish to carry a concealed firearm to show "proper cause" when applying for a license.

³ Other resources mentioning the connection between the Sullivan Law and the fear of Southern European immigrants include Robert Cottrol & Raymond Diamond, *Never Intended to be Applied to the White Population: Firearms Regulation and Racial Disparity – The Redeemed South's Legacy to a National Jurisprudence?*, 70 CHI.-KENT L. REV. 1307, 1134 (1995) ("Of statewide dimension, the Sullivan Law was aimed at New York City, where the large foreign born population was deemed peculiarly susceptible and perhaps inclined to vice and crime."); and Lee Kennett & James LaVerne Anderson, *The Gun in America: The Origins of a National Dilemma* 167 (1975).

throwing, were crimes the public in New York State then linked most closely with those immigrating from Italy.

Italian immigration and the fear of Italian crime had the potential to disrupt the vast political machine that controlled New York City at the time. It was the Tammany Hall political machine in New York that ensured passage of the law and enforced it through its control of all levels of state and New York City government. Among those areas of control was the N.Y.P.D., then a bailiwick of Tammany Hall, and the New York State Legislature through the influence of the machine's spokesman, Senator and "King of the Bowery" Big Tim Sullivan.

This history is important not because the conditions that existed over a century ago are still present, but because it illustrates the ineluctable danger when the exercise of a fundamental right rests upon the discretion of a few. Disfavored groups and individuals who are told they cannot meet New York's "proper cause" requirement are divested of a right others take for granted.

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ARGUMENT

A. Tammany Hall and Its Governance of New York

The Society of St. Tammany or Columbian Order was founded in New York City in 1788 as a fraternal

organization. Over the next half century, it became the dominant faction of the Democratic Party in the City. The arrival of hundreds of thousands of Irish immigrants in the 1840s and 1850s transformed Tammany into the City's political powerhouse through the early 20th century.

Tammany leadership recognized both the potential electoral power and the hardships the new immigrants faced. Unskilled Irish immigrants often found office work in Tammany-patronage positions and day laborer jobs on construction projects awarded and administered by Tammany officials. Tyler Anbinder, *City of Dreams: The 400-Year Epic History of Immigrant New York* 158 (2017). Most importantly to the ongoing needs of Tammany, young Irishmen who had proven their loyalty by working to elect Tammany candidates were often granted positions on the police force. *Id.* at 193. Some years, 85%-90% of all appointments, transfers, and promotions in the police force were recommendations by Tammany district leaders. M.R. Werner, *Tammany Hall* 356-57 (1928).

The Lexow Committee, which met, ironically, at the Tweed Courthouse, described the breadth of the police department's alliance with Tammany Hall. The Committee's 1895 report included testimony that almost all members of the force had joined Tammany clubs and paid into Tammany coffers. The funds for this patronage came largely from the protection money paid to the police department from lawbreakers and honest tradesmen alike. Edward Kohn, *Heir to the Empire City: New York and the Making of Theodore*

Roosevelt 150-51 (2014). Payoffs to police, portions of which were forwarded to Tammany, were simply the cost of doing business in the City. Although graft had existed for decades under Tammany, the system reached its pinnacle under the leadership of Richard “Boss” Croker and “Big Tim” Sullivan.

Four years later, the Mazet Investigation probing the City’s governance found little had changed despite the best efforts of police reformers. The investigation detailed Big Tim Sullivan’s graft-filled relationship with Police Chief William Devery, a former gambling house partner of Senator Sullivan’s whom Sullivan had elevated to Chief after Devery’s predecessor began investigating Sullivan’s gambling hall syndicate. Werner, at 416. Although he later wrote proudly of his reform initiatives as Police Commissioner from 1895 to 1897, at the end of his term Theodore Roosevelt was more realistic about what he had accomplished in the face of Tammany obstructionism: “I do not object to any amount of work and worry where I have a fair chance to win or lose on my merits; but here at the last, I was playing against stacked cards.”⁴ Letter from Theodore Roosevelt to Henry White (Apr. 16, 1897), in

⁴ Roosevelt recognized early what he was up against. In the 1895 elections, Tammany’s candidates won every seat on the Court of General Sessions and the State Supreme Court, thirty of thirty-five seats in the State Assembly, and ten of twelve seats in the State Senate. Richard Zacks, *Island of Vice: Theodore Roosevelt’s Doomed Quest to Clean Up Sin-Loving New York* 179 (2012).

The Letters of Theodore Roosevelt, vol. I, 593 (Elting Morison & John Blum eds., 1951).

Italian immigrants in New York City, mostly from Northern Italy, numbered only about 12,000 in 1880. By 1900, over a quarter of a million lived within the City's boundaries, overtaking some neighborhoods previously dominated by the Irish. By 1910, that number had more than doubled again. Anbinder, *City*, at 390. Up to 90% of Italian immigrants after 1875 came from the abjectly poor and overwhelmingly illiterate regions of Southern Italy and Sicily. Richard Gambino, *Blood of My Blood: The Dilemma of the Italian-Americans* 3 (2d ed. 2000). And as with most immigrant groups, more difficult years were to come. In 1910, immigrant men from Southern Italy performing unskilled labor worked for lower wages than did black men at the lowest levels of the economy in the City.⁵ *Id.* at 77-78.

Tammany never had the same success integrating Italian immigrants into its power structure as it had with the Irish. For the Italians, "years of oppression and gross neglect had left the peasantry with an almost pathological distrust of government, or more

⁵ See also Luciano Iorizzo & Salvatore Mondello, *Origins of Italian-American Criminality: From New Orleans Through Prohibition*, ITALIAN AMERICANA, Spring 1975, Vol. 1, No. 2, at 230 ("Before masses of Negroes began leaving the South in the twentieth century, the Italian was the black man of the North, to be tolerated because needed, to be shunned socially, to be kept at the bottom of the economic ladder.")

accurately, of all power above them,”⁶ that led one observer to believe that Italians had “a certain temperamental indifference to the diversions of politics.”⁷ And unlike the Irish, Italian immigrants were slow to naturalize and become voters. By 1910, less than 50% of Italian immigrants had naturalized. Terry Golway, *Machine Made: Tammany Hall and the Creation of Modern American Politics* 161 (2014). One reason was that federal law had made it more difficult to naturalize. But as of 1911, immigrants from Southern Italy were still half as likely to naturalize as German immigrants and 25% as likely as Irish immigrants. Anbinder, *City*, at 447-48.

Even worse for Tammany, when Italian newcomers did vote, they tended to defy Tammany leaders in their districts and voted Republican. Tyler Anbinder, *Five Points: The 19th-Century New York City Neighborhood That Invented Tap Dance, Stole Elections, and Became the World’s Most Notorious Slum* 438 (2010). At least one historian has attributed this tendency for Italians to vote Republican as Italian refusal to be dominated by the Irish in the Tammany hierarchy as they were in the City’s Catholic hierarchy. *Id.*

Italians’ reluctance to vote for Tammany candidates, or even to vote in large numbers, made them less useful to city leaders. And while at the turn of the

⁶ George E. Pozzetta, *The Italians of New York City, 1890-1914*, at 27 (1971).

⁷ Viola Roseboro, *The Italians of New York*, THE COSMOPOLITAN 4 (Jan. 1888), at 402.

century Tammany began to support candidates who were not of Irish extraction, none were Italian candidates from heavily Italian districts.⁸ Despite the vast numbers of Italian immigrants in New York City at the time, “[i]n Tammany’s cosmos, the Italians were residents of a distant planet.” Stephen Talty, *The Black Hand: The Epic War Between a Brilliant Detective and the Deadliest Secret Society in American History* 39 (2017).

B. Rising Fears of Italian Criminality and Types of “Italian Crime”

One area that did bring Italian immigrants to the attention of Tammany Hall was violent crime. By the early 20th century, one national magazine based in New York City estimated that as many as 40,000 Italian criminals had immigrated to the U.S. and had “piled up a record of crime here during the last ten years that is unparalleled in the history of a civilized country in time of peace.” *Fostering Foreign Criminals*, HARPER’S WEEKLY, May 8, 1909, at 7. Such an estimate was exaggerated even though some criminals had in fact emigrated from Italy. Nonetheless, the narrative that Italians were predisposed to violent crime only grew despite studies showing that the vast majority

⁸ Big Tim Sullivan’s 1909 resolution to make Columbus Day a state holiday was a relatively low-effort exercise to win Italian voters.

of Italian immigrants were law-abiding and no more prone to crime than the native-born.⁹

Fear of Italian immigrants carrying weapons spread the most quickly. As early as 1888, a Police Captain in Buffalo “sent consternation into the Italian colony last night in the persons of forty-two stalwart bluecoats who were ordered to bring in all the male Dagos that looked as if they carried knives.” Even though 325 “swarthy-looking, jabbering foreigners” were arrested that night, only two lawful knives were confiscated. *A Search For Knives*, BUFFALO DAILY COURIER, Mar. 5, 1888, at 4. That meager harvest was enough to make headlines, though, for as one New York City officer had noted a few years earlier, “[w]hen an Italian does anything it is printed in big type.” *Italians Flocking Home*, N.Y. SUN, Aug. 25, 1884, at 1.

Three years later, the New York Sun featured an article entitled “Weapons Italians Carry” illustrated with pictures of revolvers, blackjacks, and knives. According to a police source in the article, “ninety-nine out of every one hundred Italians arrested are armed with some sort of deadly weapon.” Furthermore, the officer added: “The Italians that we get wouldn’t give a cuss for an average-size revolver. They must have something big and imposing.” An official at the Barge Office that received new immigrants reported that

⁹ A 1903 study of official arrest records from cities with large numbers of Italian-Americans indicated that the rate of crime among Italian immigrants crime was similar to the rates for other foreign-born groups and the native-born. Eliot Lord *et al.*, *The Italian in America* 209-10 (1905).

two-thirds of all male immigrants from Italy arrived with deadly weapons. The article then spread the alarm further, declaring that Italians were committing a daily average of at least two shootings or stabbings in the New York area that year. N.Y. SUN, June 28, 1891, at 27. The Sun failed to consider that many of the “deadly weapons” Italians carried were ordinary tools of their trades or were borne only in self-defense.

Italian immigrants and law enforcement alike believed that authorities failed to take crime against Italians immigrants seriously. Francis Corrao, an Assistant District Attorney in the City, had vowed to take on the Black Hand, convinced that many Italian immigrants were leaving Brooklyn because the law was indifferent to protecting them from violence. A few years after taking office, Carrao flared: “Murder, assault, and robbery of Italians are looked upon by the District Attorney’s office with the most cynical indifference. . . . Every avenue and every door was shut to me that I might not, even in the smallest degree, aid in putting down an Italian criminality that has outraged the people of my race.”¹⁰ With scanty police protection, immigrant Italians had no choice but to defend themselves and to restore the good name of Italian immigrants, forming crime-fighting organizations like the White Hand and the Catholic Protective Society in cities across the country. Talty, at 146-48.

¹⁰ Francis L. Corrao, *Shall Brooklyn Have Four Years More of Injustice, and Unchecked Crime? Part of the Record of the District Attorney’s Office of Kings County* n.p. (Brooklyn: 1911), as quoted in Moses, at 138 and Talty, at 162.

Association with organized criminal organizations came early as well, especially with *la Mano Nera*, the “Black Hand” from Sicily. The New York Times mentioned the Black Hand in more than 600 articles from 1907 to 1909. Anbinder, *City*, at 448. It soon became commonplace for the press to label every crime committed by an Italian an act of the Black Hand. Furthermore, amateurs and non-Italian criminals were known to use Black Hand symbols on written extortion attempts so that recipients would take the threats more seriously. While some newspapers denied the presence of any formal criminal organization, other newspapers warned of the “ignorant, dirty, low-browed aliens” who terrified the City as a group. *Lives of 10,000 in Peril by the Black Hand*, N.Y. EVENING WORLD, May 26, 1908, at 16. But regardless of whether any large-scale organization existed, fear of the Black Hand persisted, even among Italian immigrants who were the most frequent victims of crimes attributed to the Black Hand.

It was the Black Hand or those claiming affiliation with the group that to the public linked the crimes of extortion, blackmail, kidnapping, and bombing with Italian immigrants. One researcher made the same observations as did others across the country: “Assaults, burglary, robbery, blackmail, extortion, carrying dangerous weapons, and other such offenses were common grounds for convictions of Italians . . . How does it happen that the Italian nationality has become so conspicuously identified in America with blackmail, kidnapping, murder and bomb outrages?” Tommaso

Sassone, *Italy's Criminals in the United States*, CURRENT HISTORY, vol. 15, no. 1, at 25 (Oct. 1921).

The same litany of crimes associated with Italian immigrants was noted by the United States Immigration Commission (the Dillingham Commission), a joint Congressional committee formed in 1907 to address concerns over immigration. Much of the Commission's report was devoted to the study of criminality among immigrant communities. Published in 1911, the highly influential report examined data from courts in New York and singled out Italian immigrants and the crimes to which they appeared most prone:

Certain specific crimes of personal violence also belong distinctively to Italian criminality. Abduction and kidnapping in the figures from the New York City magistrates' courts and the county and supreme courts of New York State form a larger percentage of the crimes of Italians than of those of any other groups of offenders.

Of blackmail and extortion the Italians also have the highest percentage in the four sets of data having a sufficient number of cases to make comparison possible . . . In all five sets of data the Italians have the highest percentage of homicide.¹¹

¹¹ The Dillingham Commission report concluded that immigration from Southern and Eastern Europe was an unmitigated threat to the American way of life and should be curtailed. That curtailment started in 1917 with a federal law requiring that immigrants pass a literacy test. The Emergency Quota Act of 1921

Reports of the Immigr. Comm'n, vol. 36, *Immigr. and Crime* (61st Congress, 3rd sess., document no. 750), at 19.

Bombings in particular surged in 1908, many of which were attributed to Black Hand extortion attempts whether they were committed by Italian immigrants or not.¹² Explosions were an almost daily occurrence in Manhattan. The Italian quarter was rocked so hard that the NYPD's Italian Squad named it "the Bomb Zone." Talty, at 152. Officers inside NYPD headquarters at 300 Mulberry Street regularly felt the blasts as building after building around headquarters were demolished. *Id.* Lloyds of London began insuring businesses and individuals against Black Hand attacks in July of 1908. *Id.* at 159.

To counter the threat, Detective Joseph Petrosino of the Italian Squad established the NYPD Bomb Squad later that year. By the early 20th century, Italians comprised over three-quarters of all laborers on construction sites around the City where dynamite was used for excavation (Anbinder, *City*, at 396), and it was alleged that laborers stole sticks of dynamite (dubbed "Italian sausages") and sold them to blackmail gangs. Even after strict laws were passed regulating the use and sale of dynamite, the police commissioner

and the National Origins Act of 1924 decreased immigration from Italy and Eastern Europe by over 95% while leaving immigration from northern Europe nearly unchanged. Anbinder, *City*, at 446, 465, 467.

¹² The rash of bombings attributed to anarchists would start a few years later. Pitkin, at 196.

reported that workmen at one construction site stole two or three sticks of dynamite daily. Thomas Monroe Pitkin & Francesco Cordasco, *The Black Hand: A Chapter in Ethnic Crime* 33 (1977). Members of the Bomb Squad were taught to detect explosives hidden inside olive oil cans. Talty, at 153.

Law enforcement's inability to stop the terror added to the pressure for additional penalties for possessing a bomb. A group of two hundred women from Northern Italy sent a petition to the Manhattan Coroner denouncing all Sicilians as blackmailers and dynamiters and urged immigration restrictions. *Italians Put Blame on the Sicilians*, N.Y. TIMES, Apr. 18, 1907 at 8. The Brooklyn Eagle called for a life sentence for anyone convicted of possessing an explosive device of any kind and the electric chair if that device exploded. *How to Stop "Black Hand,"* BROOKLYN EAGLE, July 27, 1908, at 2.

While the state declined to take up the Eagle's call, in 1909 New York began looking at all the types of crimes it considered to be those committed most frequently by Italians. The Legislature passed laws increasing the penalties for kidnapping, extortion, and blackmail.¹³ Additional laws governing those crimes would come two years later at the same time the Legislature took up the Sullivan Law requiring a license to possess and carry weapons capable of being concealed.

¹³ 1909 N.Y. Laws ch. 246, at 435; 1909 N.Y. Laws ch. 368, at 753-54.

For now, though, fear of Italian crime continued to spread throughout the United States, particularly in the Pennsylvania mining towns where thousands of Italian immigrants had arrived as contract laborers. In 1905, overwhelmed local officials called on state police forces to arrest 140 alleged Black Hand members believed responsible for twenty-one murders within the past year. Pitkin, at 76. The following year, police conducted operations in half a dozen counties. *Id.* at 77. A May 1907 study conducted by state officials found alleged agents of the Black Hand in almost every mining settlement. Talty, at 94.

Pennsylvania also mobilized against what it deemed threats to wildlife created by Italian immigrants who, in the eyes of some, brought their lax hunting discipline with them from Italy. Promoted as a model for other states, Pennsylvania's Immigrant Firearms Act of 1909 made it illegal for unnaturalized foreign-born residents to hunt any wildlife and, "to that end," made it unlawful for any alien to own or possess a shotgun or rifle. The U.S. Supreme Court upheld the Act against a Fourteenth Amendment discrimination challenge brought by an unnaturalized Italian. *Patterson v. Commonwealth*, 232 U.S. 138 (1913). Here, the Court wrote that generally, "a State may classify with reference to the evil to be prevented." *Id.* at 144. Nor was the law a violation of an 1871 treaty with Italy that guaranteed Italian citizens in the U.S. the same rights and privileges as natives. In this case, Pennsylvania had every power to preserve wild game for its own citizens. *Id.* at 146.

C. Action Against Armed Italians, the 1911 Sullivan Law, and the Law's Early Enforcement

As of April 1902, according to a New York Tribune expose, the vast majority of gun permits in New York City were held by Manhattanites, and “of these the great majority were Italians.” The number of permits issued by the captain of the Mulberry Street station with its large Italian immigrant population exceeded the number of permits issued in all of Brooklyn. The article quoted one police officer as saying “[t]here is not one unarmed Italian in fifty.” *Twenty Thousand New Yorkers Go Armed*, N.Y. TRIBUNE, June 21, 1903, at 16.

That would change the following year. In May 1903 alone, the Twenty-Ninth precinct that encompassed Little Italy cancelled half the gun permits it had issued. *Id.* Permits issued by the Mulberry Street station dropped from 175 to 35. Permits were cancelled throughout Manhattan, though at lower rates than were those in what were considered Italian colonies. Moreover, fewer new permits were issued under a revised system that required a written explanation of why the applicant wanted a permit and interviews with both the borough's police inspector and the Police Commissioner who could deny applications as they wished. *Id.* at 15. The New York Times endorsed further gun laws that “would prove corrective and salutary in a city filled with immigrants and evil communications, floating from the shores of Italy and Austria-Hungary.” *Concealed Pistols*, N.Y. TIMES, Jan. 27, 1905, at 6.

The first of several round-ups of weapons-carrying Italians in the City took place in 1907 after two plain-clothes officers were killed by a recent immigrant from Palermo. The raids were so thorough that the City Magistrates and police “believed that the habit now so prevalent among the Italians of New York of carrying revolvers, dirks, knives, and stiletos will soon be wiped out.” *Second Police Raid on Armed Italians*, N.Y. TIMES, Apr. 17, 1907, at 1.

One notorious incident amplified New Yorkers’ concerns about the criminality and undesirability of Italian immigrants. In March 1909, Detective Joseph Petrosino, one of the City’s first Italian-American detectives and the famed leader of Manhattan’s Italian Squad, was shot to death on a street in Palermo while researching the criminal backgrounds of Sicilian convicts who had recently emigrated to the United States. According to two historians, “[t]he killing, more than any other single happening, convinced the American people that organized crime in America was a major import from Italy.” Iorizzo & Mondello, *supra* note 5, at 219-20.

Three days after Petrosino’s assassination, the Brooklyn Eagle declared that “the fight against the Black Hand in the city will now be undertaken in earnest.” *Arrests Here Follow Petrosino Tragedy*, Brooklyn Eagle, Mar. 15, 1909, at 2. Mass police raids of Italian populations in many of the nation’s largest cities followed. Inspector McCafferty of the New York Police Department sent telegrams to the leaders of law enforcement agencies across the country urging a general

roundup of Black Hand suspects. Officers in New York City were ordered to arrest as many Sicilian suspects in the City as possible. *Petrosini [sic] Martyr to the Black Hand*, BROOKLYN DAILY EAGLE, Mar. 13, 1909, at 1.

Only five days after Petrosino's death, the City's Board of Aldermen led by "Little Tim" Sullivan, the Tammany representative from the Bowery and a cousin of "Big Tim" Sullivan, passed a resolution expressing its hope that Petrosino's killers would soon face justice. *Petrosino Prisoner Known*, N.Y. SUN, Mar. 17, 1909, at 5. That same day, the Board further reacted with a new ordinance requiring all weapons sellers to record the names, addresses, and physical descriptions of those who purchased firearms or knives. Talty, at 204-05.

The NYPD's Italian Squad raided businesses throughout Italian neighborhoods, arresting Italian immigrants night after night in pool halls, dance halls, and barbershops, and charging them generically with disorderly conduct. *Id.* at 205. According to one newspaper, "[t]he raids were said to be a part of the plan to discourage the meeting of large numbers of Italians." *Many Italian Arrests*, N.Y. SUN, Apr. 4, 1909, at 6. Dozens of Italian immigrants were arrested in the days immediately after the assassination, though all charges were later dropped. Raids in Brooklyn netted only a handful of suspected Black Handers for unlawfully carrying weapons. Pitkin, at 121. Almost 200 Italian-Americans were arrested in Chicago during a raid in Little Italy looking to corner anyone who looked

suspicious. As in New York City, all were soon released. Gambino, at 286.

The mass raids and arrests further deepened hostility between Italian immigrants and law enforcement. In May 1909, two months after Petrosino's murder and the ongoing arrests, two Irish-American policemen were called to an accident scene in an Italian section of Hoboken. They were met by Italian men firing from the windows of tenements and a mob of Italian immigrants frustrated with the months of raids and arrests. Talty, at 206, *Bullets Fly Thick in a Hoboken Riot*, N.Y. TIMES, May 6, 1909, at 18. The distrust Italians had for Irish cops that City Magistrates and Detective Petrosino had noted earlier continued to worsen. Paul Moses, *An Unlikely Union: The Love-Hate Story of New York's Irish and Italians* 121-22 (2015). More raids for concealed firearms and knives in Italian sections of the City followed in early 1911. *City-Wide Raid on Concealed Weapons*, N.Y. TIMES, Feb. 14, 1911, at 6.

The turning point came late in 1911 when State Senator Big Tim Sullivan, known as "the political ruler of down-town New York" made the decision to support firearms restrictions. Sullivan had grown up just south of Five Points and risen to power under the old rules of Tammany Hall and its connection between vice and City Hall. As Boss Tweed had done decades before, Sullivan dispensed jobs, bribes, and charity to ensure a reliable voting base. One historian concluded that Sullivan "made politics and crime more comprehensively synonymous than even such a master such as

Tweed had been able to do.” Alvin F. Harlow, *Old Bowery Days* 492 (1931). Sullivan’s corruption was so notorious that when Sullivan ran for Congress in 1902, the New York Times editorialized that Sullivan was “simply not fit to be at large in a civilized community” and that “anywhere outside a Tammany barroom it would be supposed that Sullivan could be elected to Congress only in a district inhabited by the very scum of the earth.” *New York City in Congress*, N.Y. TIMES, Oct. 4, 1902, at 8.

Big Tim Sullivan announced his intention to limit gun carrying in a November 1910 campaign speech. In the first part of his speech, Sullivan touted a law he had passed the previous legislative session regulating small, private banks, many of which were “operated by men who were foreign born,” and singling out those from Italy. “*Big Tim*” Sullivan Gives His Record, N.Y. TIMES, Nov. 7, 1910, at 4. Sullivan then introduced his plan on carrying concealed weapons in the second part of his speech.

Sullivan promised to introduce a bill in the next legislature to “clip the claws of the gun toter and tough.” *How “Big Tim” Sullivan Will Put Down Lawlessness*, N.Y. TIMES, Dec. 4, 1910, at 3. According to Sullivan, the current paltry fines imposed for carrying concealed weapons were no deterrent for those below the “Dead Line” of Fourteenth Street. The Times agreed, editorializing that not even “the most hardened gang man, with half a dozen prison terms to his record, would be willing to take a chance of going back to prison simply for carrying a concealed weapon.” *Id.*

Others involved in the law's passage had their own motives. According to his autobiography, George LeBrun, New York's Medical Examiner, wrote the Sullivan bill and shepherded it through the Legislature. For LeBrun, it was the murder of David Graham Philips, a well-born novelist and muckraking journalist in January 1911 that inspired LeBrun to become "the father of the Sullivan law." George P. LeBrun, *It's Time To Tell* 102 (1962). LeBrun was appalled that Philips' killer, an accomplished musician with clear mental illness, was able to purchase the revolver from a pawnshop only a few hours before the shooting. *Id.* at 104.

LeBrun recognized that "Sullivan's personal reasons for wanting the law did not exactly coincide with mine." *Id.* at 106. In fact, there is no record that Sullivan ever made much mention of the Philips' murder, the attempted assassination of Mayor Gaynor in the summer of 1910, or even the assassination of President McKinley by an anarchist a decade earlier.¹⁴ Rather, while Sullivan did on occasion mention the fate of innocent victims of gun crime, he nearly always focused on the "thugs" in his district. And at times, his motivations were blatantly self-interested, as when he complained to LeBrun that he was often approached for bail money or burial expenses when gangsters killed each other. *Id.* at 107.

¹⁴ Sullivan rarely gave lengthy speeches and left no diaries or other private papers. Welch, at 77, 93.

Sullivan continued to make his case in the Tammany-controlled New York Legislature that his proposal would save lives. Limiting gun carrying would, in Sullivan's estimation, "save more souls than all the preachers in the city talking for the next ten years." Sullivan's stated goal was to "make it so that the young thugs in my district will get three years for carrying dangerous weapons instead of getting a sentence in the electric chair a year from now." *Bar Hidden Weapons On Sullivan's Plea*, N.Y. TIMES, May 11, 1911, at 3.

Despite Sullivan's words of beneficence, some contemporaries familiar with the workings of Tammany Hall and Sullivan's opportunism ascribed him far less charitable motives. As Big Tim noted, a conviction for carrying a weapon under the new law would result in a long stint in state prison. One prominent journalist and long-time student of how Tammany operated acknowledged that same potential consequence:

Whenever a gangster who led repeaters, or an influential brothel keeper, grew obstreperous enough to prove inconvenient to the plans that were made in Tammany Hall, he could usually be found with a gun, or a gun could be planted upon his person, and he could be sent to the State prison under the Sullivan law for a long enough time to keep him from being annoying.

Werner, at 506. Criminals recognized that danger soon after the Sullivan Law was passed. Some gangsters who had fallen out of favor with Tammany sewed their pockets closed so guns could not be planted on them.

Associates would carry whatever guns might be needed. *Id.* at 506-07.

Other contemporaries saw a similar motivation for Sullivan’s sponsorship of the law. To Daniel De Leon, co-founder of the Industrial Workers of the World and the leading figure of the Labor Party of America, the law as “engineered through the Tammany-ite Sullivan”:

[I]s a dark lantern move to place the citizens and residents at the mercy of Sullivanic rioters, who filled to the muzzle with physical whiskey, or with the worse inebriant of politician-and-prelate preachments, may, with the consciousness of safety to their own hides, be used, at a desirable juncture, to mob any “undesirable” citizen or gathering of citizens, or institution.

Disarming the People – Licensing Sullivan’s Plug-Uglies, DAILY PEOPLE, Oct. 3, 1911.

Though the Plug Uglies were long gone by 1911, Sullivan had risen to power through his connection with the Whyos gang and still had groups of young men who could be summoned to provide muscle at election time. Leaders of disfavored groups like De Leon’s quickly recognized the potential of having a Tammany-led police force in charge of enforcing the new weapons law.

There is further reason to doubt Sullivan’s magnanimity in pushing his bill. Two years earlier, Sullivan had proposed disarming police in the City of their

nightsticks, an idea that the Times implied was an effort to make police less able to defend themselves against the criminals Sullivan himself employed. According to the Times, “Senator Sullivan was asked whether it was not already a felony to carry concealed weapons. ‘Yes,’ said the Senator, but not for officers. It is those fellows I am after.” *To Deprive Police of Clubs*, N.Y. TIMES, Jan. 14, 1909, at 1.

Regardless of Sullivan’s motivations, the Sullivan Law easily passed the Senate and Assembly with opposition from only a handful of upstate Republicans. It helped that LeBrun had assembled a list of noteworthy citizens in the New York City area who supported the Law. LeBrun, at 107. Most prominent was John D. Rockefeller, whom Sullivan introduced to the Senate as a “social acquaintance” and who in 1908 was cheered for dismissing all the Italians working at his Westchester County estate and hiring non-Italian locals. *Praise for Mr. Rockefeller*, N.Y. TIMES, Jan. 26, 1908. That the law “would strike hardest at the foreign-born element” was appealing across the state. Kennett & Anderson, at 177.

It may not have been coincidental that an Italian was the first man convicted of violating the Sullivan Act. Sentenced only three weeks after the Sullivan Law went into effect, Marino Rossi was arrested for carrying a .38 revolver while in New York City on his way to New Haven for work. At sentencing before the Court of General Sessions, Rossi explained that he was carrying the gun in fear of the Black Hand and that his friends had advised him to carry the gun in New York

City. Rossi pled that “[h]e had no intention of using it wrongfully, and he was an honest working man and desired to know why it was that Black Handers were not arrested for carrying guns as well as law-abiding people.” *First Conviction under Weapon Law*, N.Y. TIMES, Sep. 28, 1911, at 5.

During sentencing, Judge Warren Foster, one of the most noteworthy proponents of the Sullivan Law¹⁵ and President of the Wyandot Club 24th District Tammany Headquarters, lectured Rossi on the nature and proclivities of his countrymen.¹⁶ The New York Times chose to quote Judge Foster’s remarks extensively:

You say you have had this gun for two years, and that it was the custom of yourself as well as your countrymen to carry guns. You say you did not realize that you were breaking the law in so doing.

It is unfortunate that this is the custom with you and your kind, and that fact, combined

¹⁵ Judge Foster was one of the prominent citizens Sullivan had touted as supporting the bill when it was introduced. *Bar Hidden Weapons On Sullivan’s Plea*, N.Y. TIMES, May 11, 1911, at 3.

¹⁶ Judge Foster was not the first judge to lecture Italian immigrants on their purported propensity for crime. In 1898, a State Supreme Court Justice who also served as the Grand Sachem of Tammany Hall told Angelo Carbone that his conviction for murder “should be a warning to many of [Carbone’s] countrymen who were too prone to commit crimes of that sort.” Carbone spent months on Sing Sing’s death row even after he was proven innocent. *Angelo Carbone Insane*, N.Y. TIMES, Nov. 18, 1898, at 5.

with your irascible nature, furnishes much of the criminal business in this country. . . .

I and my colleagues on the bench intend to stamp out this habit, and with this end in view it is our object to let the community know that the violators of the Sullivan law are going to be severely punished.

Id. Judge Foster sentenced Rossi to a year in Sing Sing despite Rossi's good record. The New York Times applauded the sentence and admonition to the "hot-headed" Italians, noting that "[t]he Judge's warning to the Italian community was timely and exemplary." *The Rossi Pistol Case*, N.Y. TIMES, Sept. 29, 1911, at 8.

Not all defendants needed a warning. Also up for sentencing that same day by Judge Foster for carrying a gun without a permit was night watchman Gustav Kessler. Kessler explained that he, like Rossi, carried a revolver "for protection against gangsters" because he worked late in a dangerous part of the City, but "did not get a permit because he did not feel that he could spare \$10 of his small wages to carry a \$5 revolver." *Id.* While noting that Kessler should receive severe punishment, Judge Foster gave no lecture about Kessler's countrymen and any bad habits of those of his nationality. And a few days later, Judge Foster gave Kessler a suspended sentence because of Kessler's "good record."¹⁷ *Five Years for Gang Leader*, N.Y. TIMES, Oct. 7, 1911, at 22

¹⁷ Judge Foster was investigated the following year by the Commissioner of Accounts and the Grievance Committee of the

Another key provision of the new Sullivan Law made it a felony for any alien to have a firearm or other dangerous or deadly weapon in public.¹⁸ Gino Speranza, legal counsel to the Italian Consulate General in New York and an attorney for the Protection of Italian Immigrants, quickly flagged that provision as discriminatory against Italians and a violation of the Italo-American Treaty of Commerce's non-discrimination provision. Nonetheless, Speranza advised that objecting would hurt relations with American authorities: "Public opinion has been shocked by the number of shootings by Italians in this City and State and by the number of deadly weapons unlawfully carried by Italians." Therefore, "any judicial proceedings that might be brought to nullify the law" would reflect that sentiment. Gino C. Speranza to Royal Consul General of Italy, New York (Aug. 29, 1911), Speranza Papers.

Four days after the Sullivan Law went into effect, a "shrewd, narrow-eyed Italian" named Guiseppe Costabile was arrested for carrying a bomb under his

Bar Association for giving an unreasonably light sentence to a bank executive convicted of forgery. Key evidence was a letter written by Sullivan asking that Judge Foster give the banker leniency because Sullivan was "deeply interested" in him. *Judge Foster's Acts Now Under Review*, N.Y. TIMES, May 18, 1912, at 24. Although Sullivan had no known connection with Rossi, Kessler, or other defendants in Sullivan Law cases, Sullivan knew who he could contact and had exchanged views with Judge Foster on the goals of the Sullivan Law.

¹⁸ 1911 N.Y. Laws ch. 195, § 2, at 443. A 1905 law had criminalized the same conduct but was silent on its punishment. 1905 N.Y. Laws ch. 92, § 410, at 129.

coat. *Seized With A Bomb As Black Hand Chief; Costabile Made Blackmail and Explosions as Paying Business, the Police Believe; Held Under New Gun Law*, N.Y. TIMES, Sept. 6, 1911, at 3. Rather than arguing the discrimination angle of the alien provision, Costabile's counsel disputed that the bomb met the law's definition of a "dangerous or deadly weapon." Pitkin, at 170. It did, of course, and Costabile was convicted and sentenced to a maximum of seven years. New York State's law would be amended in 1913 to clarify that it was a felony to possess a bomb. *Pistol Law Amended*, N.Y. TIMES, May 23, 1913, at 9.

Word of the new Sullivan Law got out quickly to Italians arriving to the United States. Soon after the law was passed, influential lecturer and promoter of the Americanization of immigrants John Foster Carr published a pamphlet for distribution to those arriving at Ellis Island. The pamphlet contained information useful to immigrants from all countries, including tips on travelling, using the mail, and finding work. John Foster Carr, *Guide to the United States for the Immigrant Italian* (1911).

Perhaps most importantly for some newcomers from Italy, Carr's pamphlet included a summary of the Sullivan Law's weapons provisions and the laws prohibiting blackmail and threatening letters. *Id.* at 34-35. Carr urged the newcomers: "Italians are too ready to have recourse to violence in quarrels. If this habit could be given up, Italian immigrants would at once find themselves more welcome in America; for this is the one thing that that makes them distrusted." *Id.* at

71. And to make sure they didn't miss it, Carr advised Italian immigrants in bold, large font: "Throw away all weapons you may have." *Id.*

Carr was referring to not only the Sullivan Law's weapons restrictions, but to the new laws governing extortion and kidnapping that the Legislature had passed during the same session and that went into effect on the same day as the weapons law. New York broadened its extortion law to include both oral and written threats and further increased the crime's punishment.¹⁹ One month later, the Legislature expanded the definition of kidnapping and increased its penalty.²⁰ The New York Times linked all three new statutes – the Sullivan Law and the extortion and kidnapping statutes – as part of a single legislative effort against the crimes the Times had spent years associating with Italian immigrants. *New Laws In Effect Curb Black Handers; Penalties Raised for Kidnapping and Extortion, and Carrying a Weapon is a Crime*, N.Y. TIMES, Sept. 1, 1911, at 5.

D. Issuance of Permits Rested Solely Within the Discretion of the NYPD

The first question that arose under the new law was what procedure would be used to assess gun permit applications. The statute itself was silent on the application procedure and the criteria for receiving a

¹⁹ 1911 N.Y. Laws ch. 121, at 183; 1911 N.Y. Laws ch. 602, at 1368-69.

²⁰ 1911 N.Y. Laws ch. 625, at 1420-21.

license. Weeks after the Sullivan Law went into effect, the Board of Magistrates decided that applicants for carry permits would be required to furnish three character references and an affidavit giving their reasons for wanting to carry a gun. The Magistrates agreed not to issue permits until the references were investigated and the magistrates were convinced that a carry permit was “necessary to the applicant’s wellbeing.” *Rules For Gun Carriers*, N.Y. TIMES, Sept. 30, 1911, at 7.

Regardless of the procedure used, however, the even more important question of who had permitting authority quickly arose. In late October 1911, Mayor Gaynor filed a former inquiry with the City’s Corporation Counsel asking for clarification on whether the City’s Charter and a local ordinance reserved to the Police Commissioner sole discretion on whether to issue permits. Mayor Gaynor, the two Chief Magistrates in the City, and the Police Commissioner had raised concerns that the twenty-five city magistrates “may have various degrees of discretion or indiscretion,” and “may be of wrongdoing in the issuing of such permits.” *Mayor Asks About Gun Law; Can’t Understand Why Magistrates Issue So Many Permits*, N.Y. TIMES, Nov. 2, 1911, at 7.

The decision of Corporation Counsel was clear that in New York City, only the Police Commissioner had the power to issue permits. *Beats the Gun Law in His Test Case*, N.Y. TIMES, Nov. 4, 1911, at 8. Under the Counsel’s view, Police Magistrates in the City who had granted most of the permits until then had no jurisdiction to do so. Going forward, it would be the Police

Commissioner who had a monopoly on issuing permits. In a time when “Sullivan’s word is law at Police Headquarters,” *Croker in Danger*, N.Y. TRIBUNE, Sept. 19, 1901, at 1, those not in favor with Tammany would have no recourse if denied permits.

This plenary discretion given the Police Commissioner likely dissuaded many Italian immigrants from even applying for carry permits.²¹ Not only had the NYPD cancelled the permits of law-abiding Italian residents and conducted mass raids of Italian neighborhoods in the recent past, but many Italian immigrants saw the entire system – police, judges, and juries – as biased, indifferent to the crimes committed against them, and instituted to favor those with Tammany connections. Such thoughts were not unreasonable given that as late as 1909, there were only about 50 officers of Italian heritage out of a police force numbering 10,000. Arthur Warner, *Amputating the Black Hand*, THE SURVEY, vol. XXII, at 166 (May 1909).

Fear that that law would be selectively enforced were soon realized when Jack Zelig, head of the Eastman Gang that dominated illegal activity in the Jewish quarter of the Lower East Side, was charged with

²¹ That is not to say that some didn’t try. In 1913, after a series of loud explosions outside a tenement house on Elizabeth Street, a rush of Italians came into the police station asking for carry permits because of fears of the Black Hand. Police determined that the explosions were caused by fireworks thrown by gang members trying to create sufficient reason to be granted permits. *Plant Fake Bombs to Get Revolvers; Gangsters Use Giant Firecrackers in an Effort to Obtain Permits to Carry Arms*, N.Y. TIMES, June 23, 1913, at 4.

robbery and carrying a concealed weapon in late 1911. The robbery charge collapsed, “and the gangster’s political connections quickly procured the dismissal of the charge of carrying concealed weapons.” Asbury, at 308. Italians of the Lower East Side must have questioned whether they would be as fortunate if similarly charged. It was well known at the time that, like police positions, judgeships in the City were reserved for those with Tammany connections and those who had made sizeable contributions to Tammany’s coffers. Welch, at 105-06.

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CONCLUSION

Amici are thankful that times have changed, and we are deeply grateful that our grandparents and great-grandparents came to a nation whose Founding Fathers guaranteed the right to keep and bear arms in our national Constitution. We ask that the Court find New York’s discretionary permitting law in violation of the Second Amendment so that all law-abiding Americans, whatever their last names and circumstances, may exercise this fundamental right.

Respectfully submitted,
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