Appendix

N.D.N.Y.
22-cv-986
Suddaby, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 7th day of December, two thousand twenty-two.

Present:

Robert D. Sack,
Richard C. Wesley,
Joseph F. Bianco,
Circuit Judges.

Ivan Antonyuk, et al.,

Plaintiffs-Appellees,

v.

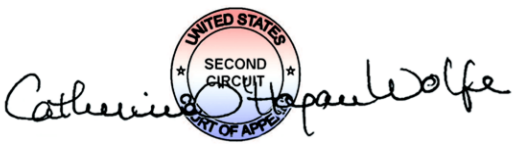
22-2908(L),
22-2972(Con)

Kathleen Hochul, in her Official Capacity as Governor of the State of New York, et al.,

Defendants-Appellants.

Appellants request a stay pending appeal of the district court's order dated November 7, 2022 (N.D.N.Y. 22-cv-986, doc. 78), enjoining Appellants from enforcing certain aspects of New York's Concealed Carry Improvement Act ("CCIA"). Having weighed the applicable factors, *see In re World Trade Ctr. Disaster Site Litig.*, 503 F.3d 167, 170 (2d Cir. 2007), we conclude that a stay pending appeal is warranted. Accordingly, upon due consideration, it is hereby ORDERED that the motion for a stay pending appeal is GRANTED and the district court's November 7 order is STAYED pending the resolution of this appeal. To the extent that the district court's order bars enforcement of the CCIA's provisions related to persons who have been tasked with the duty to keep the peace at places of worship, airports, and private buses, such categories are EXCEPTED from this order. Appellees' motion to expedite the resolution of the matter is GRANTED.

FOR THE COURT:
Catherine O'Hagan Wolfe,
Clerk of Court



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

IVAN ANTONYUK; COREY JOHNSON; ALFRED TERRILLE; JOSEPH MANN; LESLIE LEMAN; and LAWRENCE SLOANE,

1:22-CV-0986 (GTS/CFH)

Plaintiffs,

v.

KATHLEEN HOCHUL, in her Official Capacity as Governor of the State of New York; STEVEN A. NIGRELLI, in his Official Capacity as Acting Superintendent of the New York State Police; JUDGE MATTHEW J. DORAN, in His Official Capacity as Licensing-Official of Onondaga County; WILLIAM FITZPATRICK, in His Official Capacity as the Onondaga County District Attorney; EUGENE CONWAY, in his Official Capacity as the Sheriff of Onondaga County; JOSEPH CECILE, in his Official Capacity as the Chief of Police of Syracuse; P. DAVID SOARES, in his Official Capacity as the District Attorney of Albany County; GREGORY OAKES, in his Official Capacity as the District Attorney of Oswego County; DON HILTON, in his Official Capacity as the Sheriff of Oswego County; and JOSEPH STANZIONE, in his Official Capacity as the District Attorney of Greene County,

Defendants.

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GLENN T. SUDDABY, United States District Judge

DECISION and PRELIMINARY INJUNCTION

Currently before the Court, in this civil rights action by the six above-captioned individuals ("Plaintiffs") against the ten above-captioned employees of the State of New York or

one of its counties or cities ("Defendants"), is Plaintiffs' motion for a Preliminary Injunction. (Dkt. No. 6.) For the reasons set forth below, Plaintiffs' motion is granted in part and denied in part.

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I. RELEVANT BACKGROUND

On June 23, 2022, the Supreme Court held that N.Y. Penal Law § 400.00(2)(f), which conditioned the issuance of an unrestricted license to carry a handgun in public on the existence of "proper cause," violated the Second and Fourteenth Amendments by impermissibly granting a licensing officer the discretion to deny a license to a law-abiding, responsible New York State citizen based on a perceived lack of a special need for self-protection distinguishable from that of the general community. *N.Y. State Rifle & Pistol Assoc., Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022) ("*NYSRPA*").

On July 1, 2022, New York State passed the Concealed Carry Improvement Act ("CCIA"), which generally replaced the "proper cause" standard with (1) a definition of the "good moral character" that is required to complete the license application or renewal process, (2) the requirement that the applicant provide a list of current and past social-media accounts, the names and contact information of family members, cohabitants, and at least four character references, and "such other information required by the licensing officer," (3) a requirement that the applicant attend an in-person interview, (4) the requirement of 18 hours of in-person and "live-fire" firearm training in order to complete the license application or renewal process, and (5) a list of "sensitive locations" and "restricted locations" where carrying arms is prohibited. 2022 N.Y. Sess. Laws ch. 371.

The current action is the second attempt by Plaintiff Antonyuk to challenge certain provisions of the CCIA. The first attempt, made by him alone against then-Superintendent Kevin Bruen alone, resulted in a dismissal without prejudice for lack of standing. *See Antonyuk v. Bruen*, 22-CV-0734, 2022 WL 3999791, at *15-16 (N.D.N.Y. Aug. 31, 2022) (hereinafter

referred to as "*Antonyuk I*"). In his second attempt, Plaintiff Antonyuk stands with five similarly situated individuals, and asserts essentially the same claims as in *Antonyuk I* but against nine additional Defendants. (Dkt. No. 1.) *Cf. Antonyuk I*, 22-CV-0732, Complaint (N.D.N.Y. filed July 11, 2022).

Generally, in their Complaint, Plaintiffs assert three claims against Defendants: (1) a claim for violating the Second Amendment (as applied to the states through the Fourteenth Amendment), pursuant to 42 U.S.C. § 1983; (2) a claim for violating the First Amendment pursuant to 42 U.S.C. § 1983; and (3) a claim for violating the Fifth Amendment pursuant to 42 U.S.C. § 1983. (*Id.*) Each of these claims challenge one or more of the following nine aspects in the revised law: (a) its definition of "good moral character"; (b) its requirement that the applicant disclose a list of his or her "former and current social media accounts . . . from the past three years to confirm the information regarding applicant's character and conduct as required [above]"; (c) its requirement that the applicant list the names and contact information of family members and cohabitants; (d) its requirement that the applicant list at least four "character references" who can attest to the applicant's "good moral character"; (e) its requirement that the applicant provide "such other information required by the licensing officer"; (f) its requirement that the applicant attend an in-person interview by the licensing officer; (g) its requirement that the applicant receive a minimum of 16-hours of in-person firearm training and two-hours of "live-fire" firearm training, at his or her own expense (which they estimate to be "around $400"); (h) its definition of "sensitive locations"; and (i) its definition of "restricted locations." (*Id.*)[1]

[1] Because of the similarity between *Antonyuk* I and this case, the Court accepted the assignment of this case as being "related" to *Antonyuk I* under General Order 12 of this District. The Court rejects the State Defendants' argument that it erred by accepting the assignment of

On September 22, 2022, Plaintiffs filed the current motion for a Preliminary Injunction. (Dkt. No. 6.) On October 11, 2022, Defendants Fitzpatrick and Conway filed a notice advising the Court that they do not intend to oppose Plaintiffs' motion. (Dkt. No. 36.) On October 13, 2022, Defendants Hilton and Oakes also filed a notice advising the Court that they do not intend to oppose Plaintiffs' motion. (Dkt. No. 45.) On October 13, 2022, the remaining Defendants (i.e., Defendant Cecile and State Defendants) filed their oppositions to Plaintiffs' motion (except for Defendants Soares and Stanzione, who filed no such oppositions). (Dkt. Nos. 47-50.) On October 22, 2022, Plaintiffs filed their replies to Defendants' oppositions. (Dkt. Nos. 68-69.) On October 25, 2022, the Court conducted a hearing on Plaintiffs' motion. At the end of that hearing, the Court reserved decision and stated that a decision would follow. This is that decision.

II. GENERAL LEGAL STANDARDS

A. Procedural Standard Governing Plaintiffs' Motion

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this case. (Dkt. No. 18, at 10.) In support of their argument, the State Defendants cite only the portion of the governing standard. (Dkt. No. 18, at 10, citing N.D.N.Y. Gen. Ord. 12(G)(3) for the language, "A civil case shall not be deemed related to another civil case merely because the civil case: (a) involves similar legal issues, or (b) involves the same parties."].) The omitted portion of the governing standard states as follows: "A civil case is 'related' to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transaction or events, a substantial saving of judicial resources is likely to result from assigning the case to the same Judge and Magistrate Judge." N.D.N.Y. Gen. Ord. 12(G)(3). Here, the two cases at issue involve more than "similar legal issues" or "the same parties." They involve almost entirely the *same* legal issues (the second case asserting the same claims as the first case under the First, Second, and Fourteenth Amendments, along with a recharacterized claim under the Fifth Amendment). They also involve two of the same parties and many of the same factual issues, arising from largely the same transaction or events (the most important of which is the passage of the CCIA). All of these facts have resulted in a substantial saving of judicial resources to the Court during the two-week period since Plaintiffs' motion was filed.

Rule 65 of the Federal Rules of Civil Procedure governs preliminary injunctions. Fed. Rule Civ. P. 65(a), (b). Generally, in the Second Circuit, a party seeking a preliminary injunction must establish the following three elements: (1) that there is either (a) a likelihood of success on the merits and a balance of equities tipping in the party's favor or (b) a sufficiently serious question as to the merits of the case to make it a fair ground for litigation and a balance of hardships tipping decidedly in the party's favor; (2) that the party will likely experience irreparable harm if the preliminary injunction is not issued; and (3) that the public interest would not be disserved by the relief. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (reciting standard limited to first part of second above-stated element and using word "equities" without the word "decidedly"); *accord, Glossip v. Gross*, 135 S. Ct. 2726, 2736-37 (2015); *see also Am. Civil Liberties Union v. Clapper*, 785 F.3d 787, 825 (2d Cir. 2015) (reciting standard including second part of second above-stated element and using words "hardships" and "decidedly"); *Citigroup Global Markets, Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 38 (2d Cir. 2010) (holding that "our venerable standard for assessing a movant's probability of success on the merits remains valid [after the Supreme Court's decision in *Winter*]").

With regard to the first part of the first element, a "likelihood of success" requires a demonstration of a "better than fifty percent" chance of success. *Abdul Wali v. Coughlin*, 754 F.2d 1015, 1025 (2d Cir. 1985), *disapproved on other grounds, O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349, n.2 (1987). "A balance of equities tipping in favor of the party requesting a preliminary injunction" means a balance of the hardships against the benefits. *See, e.g., Ligon v. City of New York,* 925 F. Supp.2d 478, 539 (S.D.N.Y. 2013); *Jones v. Nat'l Conf. of Bar*

Examiners, 801 F. Supp. 2d 270, 291 (D. Vt. 2011); *Smithkline Beecham Consumer Healthcare, L.P. v. Watson Pharm., Inc.,* 99-CV-9214, 1999 WL 34981557, at *4-5 (S.D.N.Y. Sept. 13, 1999); *Arthur v. Assoc. Musicians of Greater New York*, 278 F. Supp. 400, 404 (S.D.N.Y. 1968); *Rosenstiel v. Rosenstiel*, 278 F. Supp. 794, 801-02 (S.D.N.Y. 1967).

With regard to the second part of the first element, "[a] sufficiently serious question as to the merits of the case to make it a fair ground for litigation" means a question that is so "substantial, difficult and doubtful" as to require "a more deliberate investigation." *Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738, 740 (2d Cir. 1953); *accord, Semmes Motors, Inc. v. Ford Motor Co.,* 429 F.2d 1197, 1205-06 (2d Cir. 1970). "A balance of hardships tipping decidedly toward the party requesting a preliminary injunction" means that, as compared to the hardship suffered by the other party if the preliminary injunction is granted, the hardship suffered by the moving party if the preliminary injunction is denied will be so much greater that it may be characterized as a "real hardship," such as being "driven out of business . . . before a trial could be held." *Buffalo Courier-Express, Inc. v. Buffalo Evening News, I7nc.*, 601 F.2d 48, 58 (2d Cir. 1979); *Int'l Bus. Mach. v. Johnson*, 629 F. Supp.2d 321, 333-34 (S.D.N.Y. 2009); *see also Semmes Motors, Inc.,* 429 F.2d at 1205 (concluding that the balance of hardships tipped decidedly in favor of the movant where it had demonstrated that, without an injunctive order, it would have been forced out of business as a Ford distributor).[2]

[2] The Court notes that, under the Second Circuit's formulation of this standard, the requirement of a balance of *hardships* tipping *decidedly* in the movant's favor is apparently added only to the second part of the first element (i.e., the existence of a sufficiently serious question as to the merits of the case to make it a fair ground for litigation), and not also to the first part of the first element (i.e., the existence of a likelihood of success on the merits), which (again) requires merely a balance of *equities* (i.e., hardships and benefits) tipping in the movant's favor. *See Citigroup Global Markets, Inc.*, 598 F.3d at 36 ("Because the moving party must not

With regard to the second element, "irreparable harm" is "certain and imminent harm for which a monetary award does not adequately compensate." *Wisdom Import Sales Co. v. Labatt Brewing Co.*, 339 F.3d 101, 113 (2d Cir. 2003). Irreparable harm exists "where, but for the grant of equitable relief, there is a substantial chance that upon final resolution of the action the parties cannot be returned to the positions they previously occupied." *Brenntag Int'l Chem., Inc. v. Bank of India*, 175 F.3d 245, 249 (2d Cir. 1999).

With regard to the third element, the "public interest" is defined as "[t]he general welfare of the public that warrants recognition and protection," and/or "[s]omething in which the public as a whole has a stake[,] esp[ecially], an interest that justifies governmental regulation." *Black's Law Dictionary* at 1350 (9th ed. 2009).

The Second Circuit recognizes three limited exceptions to the above-stated general standard. *Citigroup Global Markets, Inc.*, 598 F.3d at 35, n.4.

First, where the moving party seeks to stay government action taken in the public interest pursuant to a statutory or regulatory scheme, the district court should not apply the less-rigorous "serious questions" standard but should grant the injunction only if the moving party establishes, along with irreparable injury, a likelihood that he will succeed on the merits of his claim. *Id.* (citing *Able v. United States*, 44 F.3d 128, 131 [2d Cir. 1995]); *see also Otoe-Missouria Tribe of Indians v. New York State Dep't of Fin. Servs.*, 769 F.3d 105, 110 (2d Cir. 2014) ("A plaintiff

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only show that there are 'serious questions' going to the merits, but must additionally establish that 'the balance of hardships tips decidedly' in its favor . . . , its overall burden is no lighter than the one it bears under the 'likelihood of success' standard.") (internal citation omitted); *cf. Golden Krust Patties, Inc. v. Bullock*, 957 F. Supp.2d 186, 192 (E.D.N.Y. 2013) ("[T]he *Winter* standard . . . requires the balance of equities to tip in the movant's favor, though not necessarily 'decidedly' so, even where the movant is found likely to succeed on the merits.").

cannot rely on the 'fair-ground-for-litigation' alternative to challenge governmental action taken in the public interest pursuant to a statutory or regulatory scheme.") (internal quotation marks omitted). This is because "governmental policies implemented through legislation or regulations developed through presumptively reasoned democratic processes are entitled to a higher degree of deference and should not be enjoined lightly." *Able,* 44 F.3d at 131.

Second, a heightened standard–requiring both a "clear or substantial" likelihood of success and a "strong" showing of irreparable harm"–is required when the requested injunction (1) would provide the movant with all the relief that is sought and (2) could not be undone by a judgment favorable to the non-movant on the merits at trial. *Citigroup Global Markets, Inc.*, 598 F.3d at 35, n.4 (citing *Mastrovincenzo v. City of New York*, 435 F.3d 78, 90 [2d Cir. 2006]); *New York v. Actavis PLC*, 787 F.3d 638, 650 (2d Cir. 2015) ("When either condition is met, the movant must show [both] a 'clear' or 'substantial' likelihood of success on the merits . . . *and* make a 'strong showing" of irreparable harm' . . . .") (emphasis added).

Third, the above-described heightened standard may also be required when the preliminary injunction is "mandatory" in that it would "alter the status quo by commanding some positive act," as opposed to being "prohibitory" by seeking only to maintain the *status quo*. *Citigroup Global Markets, Inc.*, 598 F.3d at 35, n.4 (citing *Tom Doherty Assocs. v. Saban Entm't*, 60 F.3d 27, 34 [2d Cir. 1995]).[3] As for the point in time that serves as the *status quo*, the Second Circuit has defined this point in time as "the last actual, peaceable uncontested status

[3] Alternatively, in such a circumstance, the "clear or substantial likelihood of success" requirement may be dispensed with if the movant shows that "extreme or very serious damage will result from a denial of preliminary relief." *Citigroup Global Markets, Inc.*, 598 F.3d at 35, n.4 (citing *Tom Doherty Assocs. v. Saban Entm't*, 60 F.3d 27, 34 [2d Cir. 1995]).

which preceded the pending controversy." *LaRouche v. Kezer*, 20 F.3d 68, 74, n.7 (2d Cir. 1994); *accord, Mastrio v. Sebelius*, 768 F.3d 116, 120 (2d Cir. 2014); *Actavis PLC*, 787 F.3d at 650.

B. Legal Standard Governing Plaintiffs' Second Amendment Claims

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

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

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

Regarding what and how many historical analogues constitute part of this Nation's historical tradition of firearm regulation, such an inquiry must begin by observing the principle that, "where a governmental practice has been open, widespread, and unchallenged since the early days of the Republic, the practice should guide our interpretation of an ambiguous constitutional provision." *Id*. at 2137; *NLRB v. Noel Canning*, 573 U.S. 513, 572 (2014) (Scalia, J., concurring). Where it has not, however, the inquiry must acknowledge that, although all historical statutes may have some value in interpreting the words "keep and bear arms" in 1791 and 1868, "when it comes to interpreting the Constitution, not all history is created equal. Constitutional rights are enshrined with the scope they were understood to have when the people adopted them." *NYSRPA*, 142 S. Ct. at 2136 (internal quotation marks omitted).

In accordance with *NYSRPA*, generally, more weight is given to historical laws whose origins immediately "predate[] or postdate[] either [1791 or 1868]," because they shed less light on "the scope of the right" to "keep and bear arms." *See NYSRPA*, 142 S. Ct. at 2136 ("Historical evidence that long predates or postdates either [1791 or 1868] may not illuminate the scope of the right.").[4] This is especially the case with regard to such laws that are not

[4] The Court understands this focus on the years immediately before and after 1791 and 1868 to result from, in part, the fact that the decades immediately before and after 1791 and 1868 are the approximate periods in which there lived the state and federal legislators who ratified the Second and Fourteenth Amendments by a three-fourths majority as well as the people who chose those legislators, and thus the laws from those time periods tend to shed more light on the public understanding of the plain meaning of the words "keep and bear arms" in 1791 and 1868. *See* Clayne Pope, "Adult Mortality in America Before 1900: A View from Family Histories," *Strategic Factors in Nineteenth Century American Economic History: A Volume to Honor Robert W. Fogel* at 267, 280 (Claudia Goldin & Hugh Rockoff 1992) (showing that, for birth periods 1760 through 1799, the average life expectancy at age twenty was 43.5 years for men, and that, for the time period from 1800 through 1819, the average life expectancy was 43.4 years for men).

"transitory" but are "enduring." *See NYSRPA*, 142 S. Ct. at 2155 ("[T]hese territorial restrictions deserve little weight because they were—consistent with the transitory nature of territorial government—short lived. . . . [T]hey appear more as passing regulatory efforts by not-yet-mature jurisdictions on the way to statehood, rather than part of an enduring American tradition of state regulation.").

More weight is also generally given to historical laws that are from a greater number of States and/or Colonies. *See* NYSRPA, 142 S. Ct. at 2142 ("[W]e doubt that three colonial regulations could suffice to show a tradition of public-carry regulation."). As the Supreme Court has explained, "We . . . will not stake our interpretation of the Second Amendment upon a law in effect in single State . . . that contradicts the overwhelming weight of other evidence regarding the right to keep and bear arms" in public for self-defense." *Id*. at 2154 (internal quotation marks omitted).[5]

More weight is also generally given to historical laws governing a larger percentage of the Nation's population at the time, according to the nearest decennial census.[6] For example,

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[5] In this regard, the Court refines its general "three or more . . . analogues" interpretation of *NYSRPA* that was expressed in its Decision and Temporary Restraining Order of October 6, 2022. *See Antonyuk II*, 2022 WL 5239895, at *9. In so doing, the Court construes the number of States and/or Colonies having such laws (or how "widespread" the laws were) as being relevant to *NYSRPA*'s requirement that a historical analogue be "well-established," which appears different that it being "representative" (presumably of the Nation's population). *See NYSRPA*, 142 S. Ct. at 2133 ("[A]nalogical reasoning requires only that the government identify a *well-established* and *representative* historical analogue, not a historical twin.") (emphasis added). The Court finds this construction of a distinction between the *number* of States and the *population* of States (a sort of Connecticut Compromise) to be consistent not just with *NYSRPA* but with the State Defendants' request that the Court not "do[] a disservice to federalism." (Dkt. No. 72, at 50 [Prelim. Inj. Hrg. Tr.].)

[6] *See NYSRPA*, 142 S. Ct. at 2154-56 (relying on the 1890 census to measure the population percentages of Western Territories and cities).

less weight is generally given to laws from Western Territories because of, in part,[7] the smaller "territorial populations who would have lived under them." *NYSRPA*, 142 S. Ct. at 2154-56 ("The exceptional nature of these western restrictions is all the more apparent when one considers the miniscule territorial populations who would have lived under them. . . . [W]e will not stake our interpretation on a handful of temporary territorial laws that were enacted nearly a century after the Second Amendment's adoption, governed less than 1% of the American population, and also contradict the overwhelming weight of other, more contemporaneous historical evidence.") (internal quotation marks omitted). Similarly, less weight is generally given to "bare . . . localized restrictions" (or city laws unaccompanied by similar laws from states), because they "cannot overcome the overwhelming evidence of an otherwise enduring American tradition permitting public carry." *NYSRPA*, 142 S. Ct. at 2154 ("We . . . will not stake our interpretation of the Second Amendment upon a law in effect in . . . a single *city*[] that contradicts the overwhelming weight of other evidence regarding the right to keep and bear arms" in public for self-defense."). (emphasis added and internal quotation marks omitted).

To "enabl[e] [courts] to assess which similarities are important and which are not" during this analogical inquiry, they must use at least "two metrics," which are "central" considerations to that inquiry: "how and why the regulations burden a law-abiding citizen's right to armed self-defense." *NYSRPA*, 142 S. Ct. at 2132-33. More specifically, courts must consider the following: (1) "whether modern and historical regulations impose a comparable burden on the

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[7] Other reasons to generally give less weight to the laws of Western Territories include the fact that those law were "temporary" (due to the "transitional . . . character of the American [territorial] system") and the fact that they were "rarely subject to judicial scrutiny" (causing us to "not know the basis of their perceived legality"). *NYSRPA*, 142 S. Ct. at 2155-56.

right of armed self-defense"; and (2) "whether that [regulatory] burden is comparably justified." *Id.* at 2133.

Granted, in some cases, this inquiry "will be fairly straightforward." *NYSRPA*, 142 S. Ct. at 2131. For example, "when a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment." *Id.* "Likewise, if earlier generations addressed the societal problem, but did so through materially different means, that also could be evidence that a modern regulation is unconstitutional." *Id.* "And if some jurisdictions actually attempted to enact analogous regulations during this timeframe, but those proposals were rejected on constitutional grounds, that rejection surely would provide some probative evidence of unconstitutionality." *Id.*

However, "other cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach." *NYSRPA*, 142 S. Ct. at 2132. This is because "[t]he regulatory challenges posed by firearms today are not always the same as those that preoccupied the Founders in 1791 or the Reconstruction generation in 1868." *Id.* Nonetheless, "the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Id.*

III. ANALYSIS

A. Extent to Which Plaintiffs Have Standing and Defendants Are Proper

As indicated above, before even pursuing the analytical inquiry set forth in *NYRPA*, the Court needs to address two threshold issues: (1) the extent to which Plaintiffs have standing; and

(2) the extent to which the Defendants are proper parties. Although the Court set forth these legal standards in more detail in its Decision and Order *in Antonyuk I*, it will repeat the most-salient points of law here, usually without supporting legal citations (for the purpose of brevity). *Antonyuk I*, 2022 WL 3999791, at *10-11, 15-16.

A plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought. However, only one plaintiff must have standing to seek each form of relief requested in the complaint. To establish Article III standing, a plaintiff must show (1) an injury in fact, (2) a sufficient causal connection between the injury and the conduct complained of, and (3) a likelihood that the injury will be redressed by a favorable decision. The injury-in-fact requirement helps to ensure that the plaintiff has a personal stake in the outcome of the controversy. Accordingly, an injury sufficient to satisfy Article III must be concrete and particularized, and actual or imminent, not conjectural or hypothetical.

Where, as here, plaintiffs challenge a law not yet been applied to them, they need not show that they are subject to an actual arrest, prosecution, or other enforcement action as a prerequisite to challenging the law. *See, e.g., Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158-59 (2014) ("When an individual is subject to such a threat [of enforcement], an actual arrest, prosecution, or other enforcement action is not a prerequisite to challenging the law."); *Steffel v. Thompson*, 415 U.S. 452, 459 (1974) ("In these circumstances, it is not necessary that petitioner first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights."). Rather, a plaintiff satisfies the injury-in-fact requirement where he alleges an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of

prosecution or *enforcement* thereunder. *See Susan B. Anthony List*, 573 U.S. at 158-59 ("Instead, we have permitted pre-enforcement review under circumstances that render the *threatened enforcement* sufficiently imminent.") [emphasis added]. Granted, the plaintiffs are not required to confess that they will in fact violate the law. However, "someday" intentions—without any description of concrete plans, or indeed even any specification of when the "someday" will be—do not support a finding of the 'actual or imminent' injury that our cases require.

With regard proper-defendant status, the "case or controversy" limitation of Art. III of the Constitution still requires that a federal court act only to redress injury that fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the court. A general enforcement duty is insufficient; there must be some "particular duty" to enforce the law.

1. Standing to Challenge License-Application Requirements

In pertinent part, the challenged paragraphs of the Section 1 of the CCIA provide as follows:

> No license shall be issued or renewed except for an applicant . . . of good moral character, which, for the purposes of this article, shall mean having the essential character, temperament and judgement necessary to be entrusted with a weapon and to use it only in a manner that does not endanger oneself or others . . . .
>
> [T]the applicant shall meet in person with the licensing officer for an interview and shall, in addition to any other information or forms required by the license application submit to the licensing officer the following information: (i) names and contact information for the applicant's current spouse, or domestic partner, any other adults residing in the applicant's home, including any adult children of the applicant, and whether or not there are minors residing, full time or part time, in the applicant's home; (ii) names and contact information of no less than four character references who can attest to the applicant's good moral character and that such applicant has not engaged in any acts, or made any statements that

> suggest they are likely to engage in conduct that would result in harm to themselves or others; (iii) certification of completion of the training required in subdivision nineteen of this section; (iv) a list of former and current social media accounts of the applicant from the past three years to confirm the information regarding the applicants [sic]character and conduct as required in subparagraph (ii) of this paragraph; and (v) such other information required by the licensing officer that is reasonably necessary and related to the review of the licensing application. . . .

On September 19, 2022, Plaintiff Sloane swore as follows: (1) he lives in Onondaga County and is "a law-abiding person who does not currently possess a New York carry license"; (2) he has "always wanted to obtain a carry permit" but he never applied for one before the Supreme Court's decision in *NYSRPA*, because he did not believe he would be found to have a special need for self-protection distinguishable from that of the general community; (3) after *NSRPA* was issued, he "intended to apply for [his] carry license, and began looking into the process"; (4) he refuses to provide a list of four character references, a list of his cohabitants, a list of his social-media accounts for the past three years (which he does have), and other information required by the licensing officer (such as "information about [his] associates"); (5) he also refuses to complete 18 hours of firearm training (which would require "a minimum of two days, . . . cost [him] hundreds of dollars" and subject him to suicide-prevention training, to which he objects) or participate in an in-person meeting with the licensing officer; (6) as a result, he cannot complete the application; (7) because the CCIA states "No license shall be issued" without first providing the licensing official with all of the required information, and because the Onondaga Sheriff's website instructs that "[i]ncomplete applications will not be processed at the time of your appointment. Your entire application will be returned to you and you will be instructed to reschedule your appointment," he sincerely believes his incomplete application would be denied; (8) if the provisions he challenges were not in effect, he would "immediately

submit [his] application for a concealed carry license"; (9) in any event, even setting aside this fact that he has not yet applied for a license, and the fact that it would be denied if it was incomplete, if he were to apply, he is (as of September 19, 2022) unable to "even secure an appointment with the Onondaga Sheriff's Office [to simply submit his application to the Sheriff's Office so it will be processed] until October 24, 2023, or 58 weeks from now"; and (10) "'walk-in service' is not available [Sheriff's Office], so [he] must make an appointment to even submit [his] application." (Dkt. No. 1, Attach. 4, at ¶¶ 3-5, 7, 8, 10, 15-17, 20-21, 23-24, 29-30 [Sloane Decl.].) Because the State Defendants waved their right to cross-examine Plaintiff Sloane at the Preliminary Injunction Hearing on October 25, 2022, the Court takes Plaintiff Sloane at his word. (Dkt. No. 58 [Stipulation].)

Defendant Conway admits he is both (1) the Sheriff of Onondaga County with jurisdiction to "enforce the laws of the state including CCIA," and (2) "the official to whom residents of Onondaga County submit applications for firearms licenses." (Dkt. No. 1, at ¶ 13 [Plfs.' Compl.]; Dkt. No. 35, at ¶ 13 [Conway Answer].) He admits his Office's Pistol License Unit "is responsible for maintaining pistol license files, issuing new pistol licenses, . . . [and] conducting criminal investigation of pistol licensees when warranted . . . ." (*Id.*) He admits he "requires an applicant for a license to schedule an appointment to turn in the required paperwork." (*Id.*) Moreover, he admits his Office's website states that "in order to proceed all four character reference forms must be completed and signed, and applicants must have attended and received a certificate from an approved handgun safety course certified instructor, an applicant is not to schedule an appointment until the application prerequisites have been met, and

incomplete applications will not be processed at the time of any appointment." (*Id.*)[8] As a result, the Court finds that Defendant Conway has been charged with the specific duty to enforce the CCIA while processing applications for a firearms license.

Defendant Doran admits he is a "'licensing officer' for Onondaga County described in N.Y. Penal Law § 265.00(10) and, as such, is responsible for the receipt and investigation of carry license applications, along with the issuance or denial of carry licenses." (Dkt. No. 1, at ¶ 11 [Plfs.' Compl.]; Dkt. No. 35, at ¶ 11 [Doran Answer].) More importantly, Defendant Doran admits he is "the proper party with respect to Plaintiffs' challenge to the CCIA's requirement and definition of 'good moral character,' along with its associated requirements of an in-person interview, disclosure of a list of friends and family, provision of four 'character references,' and provision of three years of social media history." (*Id.*)[9] The State Defendants concede that "redressability might be present with respect to [Defendant] Doran." (Dkt. No. 48, at 32-33.) They also agree that, if an incomplete application were submitted to him, he would act "in accordance with the law . . . ." (Dkt. No. 23, at 48 [Temp. Restrain. Order Hrg. Tr.].) As a result, the Court finds that Defendant Doran has been charged with the specific duty to enforce Section 1 of the CCIA and, specifically, to "issu[e] or den[y] . . . carry licenses" in accordance

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[8] The Court notes that Plaintiffs argue that Defendant Conway's delay in accepting license applications violates N.Y. Penal Law § 400(4-b), which requires that "[a]pplications for licenses shall be accepted for processing by the licensing officer at the time of presentment …." (Dkt. No. 6, Attach. 1, at 10, n.5.)

[9] The Court also finds Defendant Doran to be the proper Defendant as to Plaintiff Sloane's challenge to the CCIA's requirement of "such other information required by the licensing officer that is reasonably necessary and related to the review of the licensing application."

with it. *Cf. NYSRPA*, 142 S. Ct. at 2125 (treating a licensing officer as a proper defendant in the context of an as-applied challenge).

Furthermore, Plaintiffs allege that the Superintendent of the State Police (who is now Defendant Nigrelli) "exercises, delegates, or supervises all the powers and duties of the New York Division of State Police, which is responsible for executing and enforcing New York's laws and regulations governing the carrying of firearms in public, including prescribing the form for Handgun Carry License applications." (Dkt. No. 1, at ¶ 10 [Plfs.' Compl.].)[10] In *Antonyuk I*, the Court had occasion to examine the "fairly traceable" involvement of the Superintendent of the State Police (then Kevin Bruen) in the challenge to Section 1 asserted here by Plaintiff Sloane (and asserted then by Plaintiff Antonyuk). *Antonyuk I*, 2022 WL 3999791, at *12-13. In pertinent part, the Court found the Superintendent's "fairly traceable" involvement resulted from two specific duties: (1) his duty to "promulgate policies and procedures with regard to standardization of the newly required 18 hours of firearms safety training (including the approval of course materials and promulgation of proficiency standards for live fire training) and create an appeals board for the purpose of hearing appeals"; and (2) his duty to "approve the curriculum for the 18-hour firearm training course that must be completed by an applicant prior to the issuance or renewal of a license application and promulgate rules and regulations determining

[10] The Court has previously examined the statutory source of Plaintiffs' "prescribing the form" allegation (N.Y. Penal Law § 400.00[3]), and found the approval obligation conferred by that source of little if any relevance, because that the plaintiff in that case (Antonyuk) did "not appear to challenge the way [the] Superintendent [of the State Police] 'prescrib[es] the form for Handgun Carry License applications.'" *Antonyuk I*, 2022 WL 3999791, at *12-13. A comparison of the Complaint in *Antonyuk* I and the Complaint in *Antonyuk II* does not lead the Court to reconsider that finding.

the proficiency level for the live-fire range training." *Id.* Here, as previously stated, Plaintiff Sloane objects to the 18-hour requirement and in particular the requirement of suicide-prevention training. As a result, the Court finds that Defendant Nigrelli has been charged with the specific duty to enforce the 18-hour requirement to which Plaintiff Sloane objects.

Moreover, the Court finds that the fact that Defendants Conway and Doran would not even *process* an application from Plaintiff Sloane until October 24, 2023, due to a lack of available appointments renders his application futile for the purpose of standing to sue, because such a delay would effectively deny him his Second Amendment right for more than a year. *See NYSRPA*, 142 S. Ct. at 2138, n.9 ("That said, because any permitting scheme can be put toward abusive ends, we do not rule out constitutional challenges to shall-issue regimes where, for example, lengthy wait times in processing license applications . . . deny ordinary citizens their right to public carry.").[11]

In light of this evidence, the Court finds that Plaintiff Sloane has shown (1) an injury in fact (i.e., the denial of his right to armed self-defense in public under the Second Amendment caused through the futility of an application for a concealed-carry license), (2) a sufficient causal connection between the injury and the conduct complained of (i.e., the continued enforcement of Section 1 of the CCIA by Defendants Conway, Doran and Nigrelli despite the futility of an

[11] The Court notes that Plaintiffs persuasively argue that any delay by Defendant Conway's Office in accepting and/or processing presented license applications appears to violate N.Y. Penal Law § 400(4-b) itself, because it requires that (1) "[a]pplications for licenses shall be accepted for processing by the licensing officer at the time of presentment," and (2) "[e]xcept upon written notice to the applicant specifically stating the reasons for any delay, in each case the licensing officer shall act upon any application for a license pursuant to this section within six months of the date of presentment…." (Dkt. No. 6, Attach. 1, at 10, n.5.)

application for a concealed-carry license), and (3) a likelihood that a favorable decision from this Court will cause the injury to be redressed by Defendants Conway, Doran and Nigrelli (who, again, each has the specific duty to enforce Section 1).

For these reasons, the Court finds that Plaintiff Sloane has standing to challenge this regulation, and that Defendants Conway, Doran and Nigrelli are proper Defendants to this challenge.

2. Standing to Challenge Prohibition in "Sensitive Locations"

a. "[A]ny place … under the control of federal, state or local government, for the purpose of government administration …"

In its entirety, this paragraph of Section 4 of the CCIA prohibits the licensed concealed carry of a handgun in the following locations: "[A]ny place owned or under the control of federal, state or local government, for the purpose of government administration, including courts."

None of the six Plaintiffs has alleged or sworn a sufficiently concrete intention to carry concealed in any of the locations listed in this regulation in the immediate future. (*See generally* Dkt. No. 1 [Plfs.' Compl.]; Dkt. No. 1, Attach. 3 [Johnson Decl.]; Dkt. No. 1, Attach. 4 [Sloane Decl.]; Dkt. No. 1, Attach. 5 [Leman Decl.]; Dkt. No. 1, Attach. 8 [Antonyuk Decl.]; Dkt. No. 1, Attach. 9 [Mann Decl.]; Dkt. No. 1, Attach. 10 [Terrille Decl.].)

The only Plaintiff who comes close to alleging or asserting a concrete intention to carry concealed on government property or in a government building in the immediate future is Plaintiff Leman. More specifically, on September 19, 2022, Plaintiff Leman swore that, as a volunteer firefighter, he has "responded to calls at . . . government property and buildings." (Dkt. No. 1, Attach. 5, at ¶ 6 [Leman Decl.].) However, Plaintiff Leman does not swear that he

intends to carry concealed on government property or in government buildings in the *immediate* future (or even that, based on his prior experience, there is a reasonable chance that he will likely do so in the next 90 days as part of his job as a volunteer firefighter). (*Id*.) As a result, the Court cannot find that Plaintiff Leman has standing to challenge this regulation.

As a result, the Court denies Plaintiffs' motion for a preliminary injunction with regard to this regulation for lack of standing.[12]

b. "[A]ny location providing health, behavioral health, or chemical dependance care or services"

The only Plaintiffs who come close to alleging or asserting a concrete intention to carry concealed in one of the locations listed in this regulation in the immediate future are Plaintiffs Leman and Mann. More specifically, on September 19, 2022, Plaintiff Leman swore that, as a volunteer firefighter, he has "responded to calls at . . . medical facilities and offices." (Dkt. No. 1, Attach. 5, at ¶ 6 [Leman Decl.].) However, Plaintiff Leman does not swear that he *intends* to carry concealed in a particular medical facility or office in the *immediate* future (or even that, based on his prior experience, there is a reasonable chance that he will likely do so in the next 90 days as part of his job as a volunteer firefighter). (*Id*.) As a result, the Court cannot find that Plaintiff Leman has standing to challenge this regulation. The Court reaches a different conclusion with regard to Plaintiff Mann.

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[12] To the extent this finding of lack of standing is in error, the Court would have concluded that the Supreme Court has already recognized the permissibility of this regulation. *See NYSRPA*, 142 S. Ct. 2133 ("[T]he historical record yields relatively few 18th- and 19th-century 'sensitive places' where weapons were altogether prohibited . . . [other than, for example, legislative assemblies, … and courthouses]."); *Heller*, 554 U.S. at 626 ("[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on . . . laws forbidding the carrying of firearms in sensitive places such as . . . government buildings . . . .").

On September 19, 2022, Plaintiff Mann swore as follows: (1) he is "the pastor at Fellowship Baptist Church," which is "a small ministry located in the rural upstate town of Parish, New York" (in Oswego County); (2) he is also "a law-abiding person" who "currently possesses and, since 2014, ha[s] maintained an New York carry permit"; (3) the church has "morning and evening services every Sunday, together with an evening service every Wednesday," and it "regularly ha[s] other gatherings and events at the church, not only for church attendees but also the general public"; (4) "since [Fellowship Baptist Church is] a small church, [it is] unable to afford to pay for private security who might be exempt from the CCIA"; (5) as a result, he is "unable to comply with . . . the CCIA", and thus [he] intend[s] to continue to [carry his handgun concealed in the church]"; (6) "[i]In addition to the church ministry, Fellowship Baptist Church provides and has provided counseling and assistance . . . to the homeless, youth, in the domestic violence and abuse setting"; (7) the church's "RU Recovery" program also currently provides "counsel[ing]" to "persons addicted to drugs"; (8) in the past, he has carried his licensed concealed handgun when counseling such persons in the program both at the church and at the homes of those persons (to which he has traveled "frequently"); and (9) he "intend[s] to continue" to do so. (Dkt. No. 1, Attach. 9, at ¶¶ 1, 3, 8, 10, 26, 28-29 [Mann Decl.].)[13] Because the State Defendants waved their right to cross-examine Plaintiff Mann at the

[13] Under the circumstances asserted, the Court finds that, for purposes of Paragraph "(b)" of Section 4 of the CCIA, the church's "RU Recovery program" is, at the same time, (1) a location "providing . . . chemical dependance care or services," and (2) a location "providing . . . behavioral health . . . care or services." This is because, based on the nature of the asserted counseling, "behavioral health . . . care or services" appears to be as much a part of his counseling of persons "addicted to drugs" as does "chemical dependance care or services." However, the Court finds that for purposes of Paragraph "(b)" of Section 4 of the CCIA, the church's "RU Recovery program" has not been shown to be a location "providing health . . . care or services." Granted, the Court finds a certain appeal to the argument of Plaintiffs' counsel that

Preliminary Injunction Hearing on October 25, 2022, the Court takes Plaintiff Mann (a pastor) at his word. (Dkt. No. 58 [Stipulation].)

Based on the fact that Plaintiff Mann has alleged he has frequently carried concealed while working in Fellowship Baptist Church's RU Recovery program and will do so again, the Court finds he has asserted a sufficiently concrete and imminent intent to violate this provision of the CCIA. *See, e.g., Houston v. Marod Supermarkets, Inc*., 733 F.3d 1323, 1332-37 (11th Cir. 2013) (finding that "the alleged violations of [the plaintiff's] statutory rights under Title III may constitute an injury-in-fact, even though he is a mere tester of ADA compliance," and that the plaintiff had alleged particularized facts demonstrating that he "frequent[ly]" visited the area near defendant's property and would "likely" do so again).

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the general term "health care or services" subsumes the more-specific terms "behavioral health care or services" and "chemical dependance care or services." (Dkt. No. 72, at 25 [Prelim. Inj. Hrg. Tr.].) However, Plaintiffs have not provided, and the Court has not found, any New York State or federal authority supporting a conclusion that the RU Recovery program provides "health . . . care or services." Furthermore, Plaintiff Mann acknowledges that he counsels drug addicts to "*seek* help and voluntarily *enter* treatment" (i.e., he does not actually provide that treatment). (Dkt. No. 1, Attach. 9, at ¶ 28 [Mann Decl.] [emphasis added].)

Moreover, based on the brazen nature of Plaintiff Mann's intended defiance,[14] the fact that at least one of his congregants is a member of local law enforcement,[15] and the fact of the recent publicization of the CCIA (including its sensitive-location provision) in New York State,[16] the Court finds that a sign of Plaintiff Mann's "concealed" handgun (whether it be a glimmer of steel or a bulge of a coat) is likely to both (1) occur and (2) result in a complaint from a concerned citizen.[17]

With regard to which Defendants to this challenge are proper, granted, on July 20, 2022, Defendant Hilton, the Sheriff of Oswego County, stated in a Facebook post as follows: "I'll be clear, as long as I'm the Sheriff in this county . . . we're going to be very conservative in

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[14] (*See, e.g.,* Dkt. No. 1, Attach. 9, at ¶¶ 4, 11, 20, 25, 29-33 [Mann Decl., swearing, "I intend to continue various activities in violation of the CCIA … I intend to continue to possess and carry my firearm while on church property, in violation of the CCIA.… I have no choice but to violate this immoral, unbiblical, and unconstitutional law, and intend to continue to possess my firearm in my church and in my home.… I intend this act of civil disobedience …. I intend to continue to operate as I always have with respect to possessing my firearms at the church…. I intend to continue to possess firearms on church property to protect our entire congregation, including our children…. I cannot comply with that restriction, and intend to continue to operate as I always have with respect to possessing firearms at the church …. I do not intend to comply… I do not intend to comply."].)

[15] (*See, e.g.,* Dkt. No. 1, Attach. 9, at ¶ 23 [Mann Decl., swearing that "at least one of the congregants in my church is in local law enforcement and, as part of the church, is aware of my inability to avoid violating the CCIA by keeping a firearm in my home on church property"].)

[16] *See, e.g.,* "Governor Hochul Delivers a Press Conference on Gun Violence Prevention," YouTube (Aug. 31, 2022), https://www.youtube.com/watch?v=gC1L2rrztQs (last visited Nov. 1, 2022).

[17] *See Antonyuk I,* 2022 WL 3999791, at *17 n.16 ("This discovery might be as obvious as a passerby catching sight of a glimmer of steel as a permit holder is transferring his or her handgun to his trunk in a parking lot of a gas station … , or it might be as subtle as noticing a bulge under the coat of a permit holder, whether it be under the permit holder's arm, on his or her hip, or at the small of his or her back.").

enforcement of this law." (Dkt. No. 1, Attach. 9, at ¶ 24 [Mann Decl.].) However, on July 20, 2022, Defendant Hilton stated in a Facebook post as follows: "Under the new law, taking a legally licensed firearm into any sensitive area – such as a . . . church . . . is a felony punishable by up to 1 1/3 to 4 years in prison." (*Id.*) Similarly, on August 31, 2022, Defendant Hilton stated in a Facebook post as follows: "If you own a firearm please be aware of these new laws as they will effect [sic] all gun owners whether we agree with them or not." (*Id.*) As a result, the Court finds that Defendant Hilton has been charged with, and/or has assumed, the specific duty to enforce the CCIA. *Cf. NYSRPA v. Cuomo*, 804 F.3d 242 (2d Cir. 2015) (reviewing disposition of claims under the Secure Ammunition and Firearms Enforcement Act against, inter alia, the Chief of Police for the Town of Lancaster, New York, without discussing the impropriety of him being a defendant).

Moreover, Defendant Oakes serves as the District Attorney of Oswego County where the Fellowship Baptist Church is located. (Dkt. No. 1, at ¶ 16 [Plfs.' Compl.]; Dkt. No. 1, Attach. 9, at ¶ 24 [Mann Decl.].) Because of this capacity, and because of both the stated policy of Defendant Hilton and the stated policy of the New York State Police,[18] the Court finds that Defendant Oakes has been charged with the specific duty to enforce the CCIA. *See, e.g.,*

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[18] On or August 31, 2022, Defendant Nigrelli stated as follows in a YouTube video:

> We ensured that the lawful, responsible gun owners have the tools now to remain compliant with the law. For those who choose to violate this law … Governor, it's an easy message. I don't have to spell it out more than this. We'll have zero tolerance. If you violate this law, you will be arrested. Simple as that. Because the New York State Troopers are standing ready to do our job to ensure ... all laws are enforced.

(Dkt. No. 1, Attach. 9, at ¶ 22, n.5 [Mann Decl.].)

Maloney v. Cuomo, 470 F. Supp.2d 205, 211 (E.D.N.Y. 2007) (finding district attorney to be proper defendant to statute prohibiting the in-home possession of nunchaku) (citing *Baez v. Hennessy*, 853 F.2d 73, 76 [2d Cir. 1988] for the point of law that "[i]t is well established in New York that the district attorney, and the district attorney alone, should decide when and in what manner to prosecute a suspected offender"), *vacated on other grounds, Maloney v. Cuomo,* 390 F. App'x 29 (2d Cir. 2010).

Furthermore, Defendant Nigrelli now serves as the Acting Superintendent of the New York State Police. Plaintiffs allege that the Superintendent of the State Police "exercises, delegates, or supervises all the powers and duties of the New York Division of State Police, which is responsible for executing and enforcing New York's laws and regulations governing the carrying of firearms in public . . . ." (Dkt. No. 1, at ¶ 10 [Plfs.' Compl.].) In *Antonyuk I*, the Court found that the "fairly traceable" involvement of the Superintendent of the State Police (then Kevin Bruen) resulted from his duty to supervise (and direct) the "enforcement of the CCIA . . . performed by state police officers," particularly "the investigation, arrest, and charging of Plaintiffs (and their members) by state police officers." *Antonyuk I*, 2022 WL 3999791, at *13 (citing N.Y. Exec. Law § 223[1]). In so doing, the Court distinguished the four cases offered by the State Defendants in support of their argument to the contrary. *Id*. at 13 & n.9 (citing the four cases). The Court explained,

> [B]ecause the fact-specific rulings in those cases were rendered before the enactment of the CCIA (and often resulted from vague allegations by the plaintiffs), none of the cases involved (as this case involves) a pointed challenge to the enforcement of the state licensing laws' list of 'sensitive locations' and definition of 'restricted locations,' which can fairly be described as sweeping in scope.

Id.

In any event, unlike Superintendent Kevin Bruen in *Antonyuk I*, here Defendant Nigrelli has been shown to have threatened a "zero tolerance" enforcement of the CCIA. On or August 31, 2022, Defendant Nigrelli stated as follows in a YouTube video:

> We ensured that the lawful, responsible gun owners have the tools now to remain compliant with the law. For those who choose to violate this law … Governor, it's an easy message. I don't have to spell it out more than this. We'll have zero tolerance. If you violate this law, you will be arrested. Simple as that. Because the New York State Troopers are standing ready to do our job to ensure ... all laws are enforced.

(Dkt. No. 1, Attach. 9, at ¶ 22, n.5 [Mann Decl.].) Of course, here, Defendant Nigrelli did not *limit* his YouTube message to Plaintiffs, as the defendants did in *Cayuga Nation v. Tanner,* 824 F.3d 321, 331 (2d Cir. 2016).[19] However, five of the six Plaintiffs were members of the *specific* group of citizens (concealed-carry license holders) in New York State that was orally and visibly threatened by Defendant Nigrelli on August 31, 2022.[20] The fact that the oral and visible threat

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[19] *See Cayuga Nation v. Tanner,* 824 F.3d 321, 331 (2d Cir. 2016) (finding that the plaintiffs had adequately alleged that they faced a credible threat of prosecution by alleging they had received a written notice from a Village stating that "Mr. Halftown's group is in violation of [a local anti-gambling ordinance]" and that Tanner "has served violation notices on Mr. Halftown's group and will be proceeding in court to compel compliance").

[20] Although the parties have not adduced evidence of the number of concealed-carry license holders currently existing in New York State, the Court assumes it to be less than about 100,000. Because five of the six Plaintiffs are members of this group (against whom the regulation "directly operate[s]"), the Court finds that they have "assert[ed] a sufficiently direct thereat of personal detriment." *Doe v. Bolten*, 410 U.S. 179, 188 (1973) ("We conclude . . . that the physician-appellants, who are Georgia-licensed doctors consulted by pregnant women, also present a justiciable controversy and do have standing despite the fact that the record does not disclose that any one of them has been prosecuted, or threatened with prosecution, for violation of the State's abortion statutes. The physician is the one against whom these criminal statutes directly operate in the event he procures an abortion that does not meet the statutory exceptions and conditions. The physician-appellants, therefore, assert a sufficiently direct threat of personal detriment. They should not be required to await and undergo a criminal prosecution as the sole means of seeking relief."), *abrogated on other grounds, Dobbs v. Jackson Women's Health O*rganization, 142 S. Ct. 2228 (2022).

occurred by video rather than in person fails to serve as a material distinction here, in the Court's view. For example, the fact that Nigrelli did not personally know yet of Defendant Mann's existence (as he does now) appears of little consequence, given that Defendant Nigrelli's 3,500 State Troopers[21] were "standing ready" to investigate and discover the violators. Indeed, the fact that the threat occurred by video actually increases the potency of it, due to its ability to be replayed. And Plaintiff Mann *heard* the message. It is difficult to see how one could fairly say that Defendant Nigrelli did not expressly direct his threat, in part, at Plaintiff Mann. (Dkt. No. 1, Attach. 9, at ¶ 22, n.5 [Mann Decl.].)[22] In this way, Defendant Nigrelli's statement on August 31, 2022, was more than (as the State Defendants argue) a "generalized statement[] made . . . in the press." (Dkt. No. 48, at 34.) Rather, his statement specifically referenced arrest and was made in a YouTube video aimed specifically at license holders such as Plaintiff Mann who were considering violating Sections 4 or 5 of the CCIA.[23] As a result, the Court finds that Defendant Nigrelli has been charged with, and/or has assumed, the specific duty to enforce the CCIA.

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[21] *See* "Overview," New York State Police Website, https://troopers.ny.gov/troopers (last visited Nov. 1, 2022) ("The Uniform Force of the New York State Police is made up of more than 3,500 men and women.").

[22] Moreover, the plaintiffs in *Cayuga Nation* had already violated the law. *Cayuga Nation*, 824 F.3d at 325. Here, of course, Plaintiff Mann need not violate the law, or even *confess* to future such violation, to acquire standing. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 163 (2104) ("Nothing in this Court's decisions requires a plaintiff who wishes to challenge the constitutionality of a law to confess that he will in fact violate that law.").

[23] For this reason, the Court finds the four cases cited by the State Defendants to be distinguishable. *See, e.g., Nat'l Rifle Ass'n of Am. v. Vullo*, 49 F.4th 700, 706, 709 (2d Cir. 2022) (considering mere "'guidance letters' and a press statement issued by the New York State Governor's Office"); *Maryland Shall Issue, Inc. v. Hogan*, 971 F.3d 199, 218 (4th Cir. 2020) (considering a mere "FAQ"); *Seegars v. Gonzalez*, 396 F.3d 1248, 1255 (D.C. Cir. 2005) (considering merely "the District's position in prior litigation"); *Frey v. Bruen*, 21-CV-05334,

Finally, the Court finds that these threats of arrest and prosecution, or even mere citation and/or seizure of his handgun, are enough to show that Plaintiff Mann faces a credible threat of enforcement of Section 4 of the CCIA, which is fairly traceable to Defendants Hilton, Oakes and Nigrelli. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158-59 (2014) ("[W]e have permitted pre-enforcement review under circumstances that render the threatened enforcement sufficiently imminent.") [emphasis added].

In light of all of this evidence, the Court finds that Plaintiff Mann has shown (1) an injury in fact (i.e., the denial of his right to armed self-defense in public under the Second Amendment caused through a credible threat of enforcement of this regulation), (2) a sufficient causal connection between the injury and the conduct complained of (i.e., the fact that Defendants Hilton, Oakes and Nigrelli have sufficiently threatened to enforce Section 4 of the CCIA against Plaintiff Mann in accordance with their duty to do so), and (3) a likelihood that a favorable decision from this Court will cause the injury to be redressed by Defendants Hilton, Oakes and Nigrelli (who, again, each has the specific duty to enforce Section 4).

For all of these reasons, the Court finds that Plaintiff Mann has standing to challenge this regulation as it regards "behavioral health . . . care or services" and "chemical dependance care or services," and that Defendants Hilton, Oakes and Nigrelli are proper Defendants to that challenge.

c. "[A]ny place of worship or religious observation"

2022 WL 522478, at *5 (S.D.N.Y. Feb. 22, 2022) ("Plaintiffs aver that a credible threat of prosecution exists as the Superintendent has not stated the criminal statutes will not be enforced against Plaintiffs.") (emphasis added).

As the Court stated above in Part III.A.2.b. of this Decision, in his declaration, Plaintiff Mann repeatedly swore that (1) in the past he has carried his licensed concealed handgun in the Fellowship Baptist Church, and (2) he intends to continue to do so. (Dkt. No. 1, Attach. 9, at ¶¶ 1, 3, 4, 10-11, 20, 25, 28-29, 39-33 [Mann Decl.].) He has also sworn that he has possessed his licensed handgun concealed in his home or "parsonage" (which is attached to the church) while he has held "Bible studies, meetings of elders, and other church gatherings" there. (*Id*. at ¶¶ 12-14.) As a result, and for the reasons stated above in Part III.A.2.b. of this Decision, the Court finds that Plaintiff Mann has standing to challenge this regulation, and that Defendants Hilton and Oakes are proper Defendants to this challenge

d. "[L]ibraries, public playgrounds, public parks, and zoos"

To the extent that this regulation applies to "[l]ibraries," the Court finds, upon closer examination of the Complaint and declarations (and in the absence of Preliminary Injunction Hearing testimony), that none of the six Plaintiffs has alleged or sworn a sufficiently concrete intention to, in the immediate future, carry concealed there. (*See generally* Dkt. No. 1 [Plfs.' Compl.]; Dkt. No. 1, Attach. 3 [Johnson Decl.]; Dkt. No. 1, Attach. 4 [Sloane Decl.]; Dkt. No. 1, Attach. 5 [Leman Decl.]; Dkt. No. 1, Attach. 8 [Antonyuk Decl.]; Dkt. No. 1, Attach. 9 [Mann Decl.]; Dkt. No. 1, Attach. 10 [Terrille Decl.].) The Court notes that, although Plaintiff Leman has sworn that, as a volunteer firefighter, he has "responded to calls at . . . libraries" (Dkt. No. 1, Attach. 5, at ¶ 6 [Leman Decl.]), he has not sworn that he *intends* to carry concealed in a library in the *immediate* future, or even that, based on his prior experience, there is a reasonable chance that he will likely do so in the next 90 days as part of his job as a volunteer firefighter (*id*). As a result, the Court cannot find that Plaintiff Leman has standing to challenge this regulation.

As a result, the Court reconsiders this portion of its Decision and Temporary Restraining Order of October 6, 2022, and denies Plaintiffs' motion for a preliminary injunction with regard to "libraries" for lack of standing.[24] However, the Court reaches a different conclusion with regard to this regulation as it regards "public playgrounds," "public parks," and "zoos."

With regard to "public playgrounds" and "public parks," on September 19, 2022, Plaintiff Terrille swore as follows: (1) he lives in Albany County, possesses a New York State concealed-carry license, and "routinely carr[ies] [his] handgun concealed when [he] leave[s] home" except in "courthouses, schools, government buildings, or the other obvious 'sensitive places'"; (2) his handgun "generally does not leave my side" except in "courthouses, schools, government buildings, or the other obvious 'sensitive places'"; (3) "in addition to being a father, [he is] now grandfather to 5 grandchildren," and "[i]n that role, it is [his] duty to protect [his] family"; (4)

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[24] To the extent this finding is in error, the Court states that it would have found that, based on a comparison of the burdensomeness of this regulation to the burdensomeness of its historical analogues, this regulation appears to be disproportionately burdensome. Granted, by 1883 (fifteen years after the ratification of the Fourteenth Amendment), two states had passed laws prohibiting firearms in places where persons are assembled for "educational" or "literary" purposes. However, the remaining 36 states had not. Furthermore, lending libraries and public libraries indeed existed in America the 19th century and the late-18th century (thanks in no small part to Benjamin Franklin and Andrew Carnegie). *See, e.g.,* Dept. of Interior, Compendium of Seventh Census: 1850, Table XLVI (1850) (counting 1,217 public libraries). However, the State Defendants do not cite (and the Court has been unable to locate) any laws from those time periods prohibiting firearms in "libraries." Moreover, the Court acknowledges the frequent presence and activities of children in libraries (and the general analogousness of this regulation to historical laws prohibiting firearms in schools). However, the regulation does not limit the ban to "school libraries" or the "children's sections of libraries;" and public libraries are also commonly patronized by adults. Finally, the burden on law-abiding responsible citizens who have obtained a license to carry concealed (after providing four character references, completing numerous hours of firearms training, and satisfied the demands of a licensing officer) appears even more unjustified when one considers that public libraries (which are often quite responsive to the needs of their patrons) are more than capable of instituting policies prohibiting concealed carry themselves.

"[a]s part of [his] activities with [his] grandchildren . . . [he] . . . routinely take[s] [his] grandkids to Thatcher State Park, in Albany County, where [they] utilize the … playground for children"; and (5) "[he] intend[s] to carry [his] firearm when [his] family visits the Park in the future, something that occurs and will continue to occur on at least a monthly basis." (Dkt. No. 1, Attach. 10, at ¶¶ 1, 4, 7-8 [Terrille Decl.].) Because the State Defendants waved their right to cross-examine Plaintiff Terrille at the Preliminary Injunction Hearing on October 25, 2022, the Court takes Plaintiff Terrille at his word. (Dkt. No. 58 [Stipulation].)

Based on the fact that Plaintiff Terrille has alleged he has frequently carried concealed in public playgrounds and public parks and will do so again, the Court finds he has asserted a sufficiently concrete and imminent intent to violate this provision of the CCIA. *See, e.g., Houston*, 733 F.3d at 1332-37 (finding that "the alleged violations of [the plaintiff's] statutory rights under Title III may constitute an injury-in-fact, even though he is a mere tester of ADA compliance," and that the plaintiff had alleged particularized facts demonstrating that he "frequent[ly]" visited the area near defendant's property and would "likely" do so again). Moreover, based on the brazen nature of Plaintiff Terrille's intended defiance, and the fact of the recent publicization of the CCIA (including its sensitive-location provision) in New York State,[25] the Court finds that a sign of Plaintiff Terrille's "concealed" handgun is likely to both (1) occur and (2) result in a complaint from a concerned citizen.[26]

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[25] *See, supra,* note 16 of this Decision.

[26] *See, supra,* note 17 of this Decision.

With regard to the proper Defendants to this challenge, the Court finds that Defendant Soares is a proper Defendant to Plaintiff Terrille's challenge with regard to "public playgrounds" and "public parks" because Soares is the District Attorney of Albany County. (Dkt. No. 1, at ¶ 1 [Compl.].) Because of this capacity, and because of the stated policy of both the Governor and the New York State Police,[27] the Court finds that Defendant Soares has been charged with the specific duty to enforce the CCIA. *See, e.g., Maloney v. Cuomo*, 470 F. Supp.2d 205, 211 (E.D.N.Y. 2007) (finding district attorney to be proper defendant to statute prohibiting the in-home possession of nunchaku) (citing *Baez v. Hennessy*, 853 F.2d 73, 76 [2d Cir. 1988] for the point of law that "[i]t is well established in New York that the district attorney, and the district attorney alone, should decide when and in what manner to prosecute a suspected offender"), *vacated on other grounds, Maloney v. Cuomo,* 390 F. App'x 29 (2d Cir. 2010).

The Court also finds that Defendant Nigrelli is a proper Defendant to Plaintiff Terrille's challenge with regard to "public playgrounds" and "public parks" (particularly Thatcher State Park) for the same reasons as stated above in Part III.A.2.b. of this Decision.

Also with regard to "public playgrounds," on September 19, 2022, Plaintiff Leman swore that, as a volunteer firefighter, he has "responded to calls at . . . libraries." (Dkt. No. 1, Attach. 5, at ¶ 6 [Leman Decl.].) However, he has not sworn that he *intends* to carry concealed in a library in the *immediate* future (or even that, based on his prior experience, there is a reasonable chance that he will likely do so in the next 90 days as part of his job as a volunteer firefighter). (*Id.*) As a result, the Court cannot find that Plaintiff Leman has standing to challenge this regulation as it regards "public playgrounds."

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[27] *See, supra,* note 18 of this Decision.

However, with regard to "public parks," Plaintiff Johnson swore as follows: (1) he lives in Onondaga County, possesses a New York State concealed-carry license, and "routinely carr[ies] [his] handgun concealed when [he] leave[s] home" except in "courthouses, schools, government buildings, or the other obvious 'sensitive places'"; (2) "[he] consider[s] [him]self to be an outdoorsman[] [and] an avid fisherman, and routinely go[es] on hiking and camping trips throughout the state, including in numerous parks covered by the CCIA . . . "; (3) "[f]or example, many times recently [he has] gone fishing in Mercer Park on the Seneca River in Baldwinsville, New York" (in Onondaga County); (5) "[he] intend[s] to continue to carry [his] firearm when [he] go[es] fishing in Mercer Park"; (6) "[a]lthough [he] cannot provide a definitive day and time that this will next occur, it is safe to say that [he] will go fishing within the next month, before the water gets too cold and the bass stop biting"; (7) "[i]n addition, [he] currently ha[s] plans with [his] wife to take a trip in October of 2022, to include a tour of several state parks within New York, where [they] will engage in various recreational activities such as fishing and sightseeing…"; (8) "[f]or example, as part of [their] trip, [they] plan to visit Bowman Lake State Park" (in Chenango County); (9) he "intend[s] to" carry his licensed concealed handgun "on this upcoming trip"; and (10) "[d]uring New York winters, [he and his wife] often take extended snowmobile trips throughout public parks . . . , often participating in . . . competitions where snowmobilers are required to follow a prescribed course and check in various locations along the way . . . ." (Dkt. No. 1, Attach. 3, at ¶¶ 1, 4, 6-9, 12 [Johnson Decl.].) Because the State Defendants waved their right to cross-examine Plaintiff Johnson at the Preliminary Injunction Hearing on October 25, 2022, the Court takes Plaintiff Johnson at his word. (Dkt. No. 58 [Stipulation].)

Based on the fact that Plaintiff Johnson has alleged he has frequently carried concealed in public parks and will do so again soon, the Court finds he has asserted a sufficiently concrete and imminent intent to violate this provision of the CCIA. *See, e.g., Houston*, 733 F.3d at 1332-37. Moreover, based on the brazen nature of Plaintiff Johnson's intended defiance, and the fact of the recent publicization of the CCIA (including its sensitive-location provision) in New York State,[28] the Court finds that a sign of Plaintiff Johnson's "concealed" handgun is likely to both (1) occur and (2) result in a complaint from a concerned citizen.[29]

With regard to the proper Defendants to this challenge, the Court finds that Defendants Conway (the Sheriff of Onondaga County) has the "county-wide" duty "enforce the laws of the State of New York, including the CCIA." (Dkt. No. 1, at ¶ 13 [Compl.]; Dkt. No. 35, at ¶ 13 [Cnty. Defs.' Answer].) Similarly, the Court finds that Defendant Fitzpatrick (the District Attorney of Onondaga County) has "a duty to conduct prosecutions for crimes and offenses cognizable by the courts of Onondaga County." (Dkt. No. 1, at ¶ 12 [Compl.]; Dkt. No. 35, at ¶ 12 [Cnty. Defs.' Answer].)

The Court finds that Defendants Conway and Fitzpatrick are proper Defendants to Johnson's challenge with regard to "public parks" (and in particular Mercer Park in Baldwinsville) despite these Defendants' stated policy that violators of the CCIA will (1) "have their weapons confiscated while prosecutors investigate any other criminal activity," and (2) be "referred to the judge who granted them concealed-carry licenses in the first place, possibly leading to the revocation of their carry privileges." (*Id.*) This is because the Court finds it likely

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[28] *See, supra,* note 16 of this Decision.

[29] *See, supra,* note 17 of this Decision.

that Plaintiff Johnson would be handed a legal document in exchange for his handgun by a member of Defendant Conway's Department (whether that document come in the form of a summons, a desk appearance ticket or a mere contraband receipt form). And the authority for the exchange, according to the courteous Deputy Sherriff, would be paragraph "d" of Section 4 of the CCIA. Standing may not be evaded by even the most reluctant of defendants in a CCIA case by saying that he or she is "only" going to enforce the CCIA to the limited extent of seizing the license holder's valuable personal property (purchased for self-defense), because such a seizure is pursuant to a criminal proceeding initiated under the CCIA, and the right in question is one enumerated in the Constitution. Finally, the Court also finds that Defendant Nigrelli is a proper Defendant to Plaintiff Johnson's challenge with regard to "public parks" (particularly with regard to Bowman Lake State Park) for the same reasons as stated above in Part III.A.2.b. of this Decision.

Also with regard to "public parks," on September 19, 2022, Plaintiff Leman swore as follows: (1) he lives in the Town of Windham (in Greene County), where he has "routinely carried [his] handgun concealed when [he] leave[s] home"; (2) he is also "a volunteer firefighter in the Windham Fire District," where he is "on call 24 hours a day, 7 days a week" (without "any opportunity to go home, to change clothes or . . . disarm and stow [his] firearm," causing there to have been "times that [he has] responded to an emergency call while armed" both within the Fire District and outside of it (including at locations that are now deemed "sensitive"); (3) "the Catskills Park surrounds the town of Windham, New York," which "means that [he] cannot leave [his] small town with a firearm, without entering the park, and thus violating the CCIA"; and (4) "[l]eft with no reasonable choice, [he] intend[s] to bring [his] firearm when [he] leave[s] home to

travel outside of Windham, New York, which will take [him] through state parkland, in violation of the CCIA." (Dkt. No. 1, Attach. 5, at ¶¶ 1, 4-7, 32 [Leman Decl.].) Again, because the State Defendants waved their right to cross-examine Plaintiff Leman at the Preliminary Injunction Hearing on October 25, 2022, the Court takes Plaintiff Leman at his word. (Dkt. No. 58 [Stipulation].)

Based on the fact that Plaintiff Leman has sworn that he has frequently carried concealed in public parks and will do so again soon, the Court finds he has asserted a sufficiently concrete and imminent intent to violate this provision of the CCIA. *See, e.g., Houston*, 733 F.3d at 1332-37. Moreover, based on the brazen nature of Plaintiff Leman's intended defiance, and the fact of the recent publicization of the CCIA (including its sensitive-location provision) in New York State,[30] the Court finds that a sign of Plaintiff Leman's "concealed" handgun is likely to both (1) occur and (2) result in a complaint from a concerned citizen.[31]

With regard to the proper Defendants to this challenge, Defendant Stanzione serves the District Attorney of Greene County. (Dkt. No. 1, at ¶ 18 [Plfs.' Compl.]; Dkt. No. 1, Attach. 44, at ¶ 18 [Mann Decl.].) Because of this capacity, and because of the stated policy of both the Governor and the New York State Police,[32] the Court finds that Defendant Stanzione has been charged with the specific duty to enforce the CCIA. *See, e.g., Maloney v. Cuomo*, 470 F. Supp.2d 205, 211 (E.D.N.Y. 2007) (finding district attorney to be proper defendant to statute prohibiting the in-home possession of nunchaku) (citing *Baez v. Hennessy*, 853 F.2d 73, 76 [2d

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30 *See, supra,* note 16 of this Decision.

31 *See, supra,* note 17 of this Decision.

32 *See, supra,* note 18 of this Decision.

Cir. 1988] for the point of law that "[i]t is well established in New York that the district attorney, and the district attorney alone, should decide when and in what manner to prosecute a suspected offender"), *vacated on other grounds, Maloney v. Cuomo,* 390 F. App'x 29 (2d Cir. 2010). The Court also finds that Defendant Nigrelli is a proper Defendant to Plaintiff Leman's challenge with regard to "public parks" (particularly the Catskills State Park) for the same reasons as stated above in Part III.A.2.b. of this Decision.

Finally, with regard to "zoos," on September 19, 2022, Plaintiff Johnson (whose other relevant declaration testimony was previously summarized in this part of the Court's Decision) swore as follows: (1) "[his] wife and [he] frequently visit the Rosamond Gifford Zoo in Syracuse, at least once or twice every fall, so that [his] wife can see the otters and wolves, which are her favorites"; (2) "[they] will visit the zoo this fall as well, at least once, within the next 90 days"; and (3) he "intend[s] to carry [his] firearm when [his] wife and [he] visit the Rosamond Gifford Zoo." (Dkt. No. 1, Attach. 3, at ¶ 17 [Johnson Decl.].) Again, because the State Defendants waved their right to cross-examine Plaintiff Johnson at the Preliminary Injunction Hearing on October 25, 2022, the Court takes Plaintiff Johnson at his word. (Dkt. No. 58 [Stipulation].)

Based on the fact that Plaintiff Johnson has sworn that he has frequently carried concealed in zoos, and will do so again soon, the Court finds he has asserted a sufficiently concrete and imminent intent to violate this provision of the CCIA. *See, e.g., Houston*, 733 F.3d at 1332-37. Moreover, based on the brazen nature of Plaintiff Johnson's intended defiance, and the fact of the recent publicization of the CCIA (including its sensitive-location provision) in

New York State,[33] the Court finds that a sign of Plaintiff Johnson's "concealed" handgun is likely to both (1) occur and (2) result in a complaint from a concerned citizen.[34]

With regard to the proper Defendants to Plaintiff Johnson's challenge, the Court finds that Defendants Conway, Fitzpatrick and Nigrelli are proper Defendants to Johnson's challenge with regard to zoos for the reasons stated above in this part of the Court's Decision. Similarly, the Court finds that Defendant Cecile is a proper Defendant to this challenge, because the Rosamond Gifford Zoo (although owned by Onondaga County and not the City of Syracuse) is located within the City, within a city park in fact (Burnet Park).

Granted, if Plaintiff Johnson were discovered by a protective mother to be carrying concealed in the zoo (and the Court finds that discovery likely, given Johnson's brazen intent to violate the law), some uncertainty appears to exist regarding whether her 911 call would result in the dispatching of a Syracuse Police Officer or a County Deputy Sherriff. (Dkt. No. 47, Attach. 8, at ¶ 8 [Decl. of Syracuse Parks Commissioner, swearing only that "I *understand* that the Zoo is owned, controlled, and operated by the County of Onondaga"] [emphasis added].) However, the Court has little doubt that, if there were a gun incident reported at the zoo, the Syracuse Police Department would promptly respond (in addition to any County Park Ranger available). (Dkt. No. 47, Attach. 9, at 9, n.8 [Def. Cecile's Memo. of Law, conceding, "With the Zoo being located within the City of Syracuse, Chief Cecile does not doubt that SPD has jurisdiction to make arrests, and would indeed respond to high priority calls or crimes in progress . . ."].)

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[33] *See, supra,* note 16 of this Decision.

[34] *See, supra*, note 17 of this Decision.

The Court retains this confidence, regardless of whether Plaintiff Johnson were discovered to be in violation of this regulation while inside the zoo, in the zoo's parking lot, or walking to the zoo (through Burnet Park). Regardless of the precise location, the Court finds it likely that Plaintiff Johnson would be handed a summons, a desk appearance ticket or a contraband receipt form in exchange for his handgun by a member of the Syracuse Police Department, of which Defendant Cecile is the Chief. And the authority for the exchange, according to the courteous police officer, would be paragraph "d" of Section 4 of the CCIA. As the Court stated earlier, sanding may not be evaded by even the most reluctant of defendants in a CCIA case by saying that he or she is "only" going to enforce the CCIA to the limited extent of seizing the license holder's valuable personal property (purchased for self-defense), because such a seizure is pursuant to a criminal proceeding initiated under the CCIA, and the right in question is one enumerated in the Constitution.

In light of all of this evidence, the Court finds that each of these Plaintiffs (i.e., Terrille, Johnson and Leman) has shown (1) an injury in fact (i.e., the denial of his right to armed self-defense in public under the Second Amendment caused through a credible threat of enforcement of this regulation), (2) a sufficient causal connection between the injury and the conduct complained of (i.e., the fact that Defendants Soares, Nigrelli, Conway, Fitzpatrick, Stanzione, and Cecile have sufficiently threatened to enforce Section 4 of the CCIA against one or more of three Plaintiffs in accordance with their duty to do so), and (3) a likelihood that a favorable decision from this Court will cause the injury to be redressed by these six Defendants (who, again, each has the specific duty to enforce Section 4).

For all of these reasons, the Court finds that Plaintiff Terrille has standing to challenge this regulation as it regards "public playgrounds" and "public parks," and that Defendants Soares and Nigrelli are proper Defendants to that challenge. Similarly, the Court finds that Plaintiff Johnson has standing to challenge this regulation as it regards "public parks," and that Defendants Conway, Fitzpatrick and Nigrelli are proper Defendants to that challenge. The Court also finds that Plaintiff Leman has standing to challenge this regulation as it regards "public parks," and that Defendants Stanzione and Nigrelli are proper Defendants to that challenge. Finally, the Court finds that Plaintiff Johnson has standing to challenge this regulation as it regards "zoos," and that Defendants Conway, Fitzpatrick, Nigrelli and Cecile are proper Defendants to that challenge.

e. "[T]he location of any program … that provides services to children, youth, … any legally exempt childcare provider …"

In its entirety, this paragraph of Section 4 of the CCIA prohibits the licensed concealed carry of a handgun in the following locations:

> [T]he 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 …

The only Plaintiffs who come close to alleging or asserting a concrete intention to carry concealed in one of the locations listed in this regulation in the immediate future are Plaintiffs Leman and Mann. More specifically, on September 19, 2022, Plaintiff Leman swore that, as a volunteer firefighter, he has "responded to calls at . . . nurseries [and] daycares." (Dkt. No. 1, Attach. 5, at ¶ 6 [Leman Decl.].) However, Plaintiff Leman does not swear that he *intends* to

carry concealed in a particular nursery or daycare in the *immediate* future (or even that, based on his prior experience, there is a reasonable chance that he will likely do so in the next 90 days as part of his job as a volunteer firefighter). (*Id*.) As a result, the Court cannot find that Plaintiff Leman has standing to challenge this regulation. The Court reaches a similar conclusion with regard to Plaintiff Mann.

Granted, on September 19, 2022, Plaintiff Mann swore in his declaration that, in the immediate future, he intends to continue to carry his licensed handgun concealed in his church's "nursery" and "Sunday School," which "cater[s] to the younger members of our congregation," as well at the church's "local homeschool coop" where his "church at times operates as a school for the education of children." (Dkt. No. 1, Attach. 9, at ¶¶ 30-31 [Mann Decl.].) However, Plaintiff Mann does not expressly assert that his church's "nursery," "Sunday School" or "homeschool coop" are (1) "licensed, regulated, certified, funded, or approved by the office of children and family services," (2) a "legally exempt childcare provider," or (3) the recipient of "a permit to operate … by the department of health and mental hygiene pursuant to the health code of the city of New York." (*Id*.) This omission appears to have been intentional, given the specificity of this regulation and the otherwise detailed-nature of this portion Plaintiff Mann's Declaration. (*See id.* [expressing referencing "subsection f" and "subsection m" of Section 4 of the CCIA].)

Based on a careful consideration of the State Defendants' continued challenge to the sufficiency of the Complaint and declaration testimony with regard to this paragraph (and in the absence of elaborative testimony at the Preliminary Injunction Hearing), the Court finds that the State Defendants are correct: this testimony fails to meet the standard articulated and applied in

the Court's Decision and Order in *Antonyuk I*. *Antontuk I*, 2022 WL 3999791, at *10-23. As a result, the Court reconsiders this portion of its Decision and Temporary Restraining Order of October 6, 2022, and denies Plaintiffs' motion for a preliminary injunction with regard to this regulation for lack of standing.

f. "[N]ursery schools, preschools, and summer camps"

The Court begins its analysis of this regulation by observing that, with regard to the extent to which the regulation applies to "summer camps," Plaintiffs have alleged as follows in their Complaint:

> Likewise, the church has a nursey, Sunday School, and a Junior Church. The CCIA appears to separately prohibit the Pastor, church staff, and the church security from providing security to their children, as it bans firearms at "nursery schools, preschools, and summer camps" (subsection f). Pastor Mann intends to not comply with this restriction. Id. at ¶ 30.

(Dkt. No. 1, at ¶ 192 [Compl.].) However, Plaintiff Mann's declaration never swears that his church operates a "summer camp" or that its "Junior Church" attends a "summer camp." (Dkt. No. 1, at ¶ 30 [Mann Decl.].) Based on a careful consideration of the State Defendants' continued challenge to the sufficiency of the Complaint testimony with regard to "summer camps" (and in the absence of elaborative testimony at the Preliminary Injunction Hearing), the Court finds the State Defendants are correct: this testimony fails to meet the standard articulated and applied in the Court's Decision and Order in *Antonyuk I*. *Antontuk I*, 2022 WL 3999791, at *10-23. As a result, the Court reconsiders this portion of its Decision and Temporary Restraining Order of October 6, 2022, and denies Plaintiffs' motion for a preliminary injunction

with regard to "summer camps" for lack of standing.[35] However, the Court reaches a different conclusion with regard to this regulation as it regards "[n]ursery schools" and "preschools."

On September 19, 2022, Plaintiff Mann (whose other relevant declaration testimony is summarized above in Part III.A.2.b. of the Court's Decision) swore as follows: (1) "Fellowship Baptist Church has a nursery, a Sunday School, and a Junior Church, both of which cater to the younger members of our congregation"; (2) it also has a "local homeschool coop" where his "church at times operates as a school for the education of children"; and (3) Plaintiff Mann "cannot comply with th[e] [CCIA's] restriction [with regard to 'nursery schools' and 'preschools'], and [he] intend[s] to continue to possess firearms on church property to protect [his] entire congregation, including [his] children." (Dkt. No. 1, Attach. 9, at ¶¶ 30-31 [Mann Decl.].) Again, because the State Defendants waved their right to cross-examine Plaintiff Mann at the Preliminary Injunction Hearing on October 25, 2022, the Court takes Plaintiff Mann at his word. (Dkt. No. 58 [Stipulation].)

Although the Court acknowledges the inference that must be drawn that at least some children in the "nursery" will receive schooling, and/or that at least some children under age five patronize the "local homeschool coop," the Court finds those inferences to be reasonable based

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[35] The Court would add only that, even if this finding of lack of standing were incorrect, the Court would, after more carefully considering the standard set forth in *NYSRPA*, and the apparent justification for the numerous historical analogues prohibiting guns in schools, deny Plaintiffs' motion to the extent it regards children's "summer camps": the burdensomeness of this regulation (i.e., its burden versus its justification) appears proportionate to the burdensomeness of its historical analogues. The Court cannot reach the same conclusion, however, with regard to *adult* "summer camps," which this vague paragraph of Section 4 of the CCIA apparently covers for some reason. To the extent that reason is because children are *sometimes* present in such adult summer camps, the Court finds that reason to constitute an inadequate justification for this prohibition, as compared to the relevant historical analogues currently before the Court.

on the nature of homeschooling and the circumstances asserted (including the small size and active nature of the congregation).

Based on the fact that Plaintiff Mann has sworn that he has frequently carried concealed in the "[n]ursery schools" and "preschool" set forth in this regulation, and will do so again soon, the Court finds he has asserted a sufficiently concrete and imminent intent to violate this provision of the CCIA. *See, e.g., Houston*, 733 F.3d at 1332-37. Moreover, based on the brazen nature of Plaintiff Mann's intended defiance,[36] the fact that at least one of his congregants is a member of local law enforcement,[37] and the fact of the recent publicization of the CCIA (including its sensitive-location provision) in New York State,[38] the Court finds that a sign of Plaintiff Mann's "concealed" handgun is likely to both (1) occur and (2) result in a complaint from a concerned citizen.[39] With regard to the proper Defendants to Plaintiff Mann's challenge to this regulation, the Court finds that Defendants Hilton, Oakes and Nigrelli are proper Defendants to Mann's challenge for the reasons stated above in Part III.A.2.b. of this Decision.

In light of all of this evidence, the Court finds that Plaintiff Mann has shown (1) an injury in fact (i.e., the denial of his right to armed self-defense in public under the Second Amendment caused through a credible threat of enforcement of this regulation), (2) a sufficient causal connection between the injury and the conduct complained of (i.e., the fact that Defendants Hilton, Oakes and Nigrelli have sufficiently threatened to enforce Section 4 of the CCIA against

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[36] *See, supra,* note 15 of this Decision.

[37] *See, supra,* note 16 of this Decision.

[38] *See, supra,* note 16 of this Decision.

[39] *See, supra,* note 17 of this Decision.

Plaintiff Mann in accordance with their duty to do so), and (3) a likelihood that a favorable decision from this Court will cause the injury to be redressed by these three Defendants (who, again, each has the specific duty to enforce Section 4).

For all of these reasons, the Court finds that Plaintiff Mann has standing to challenge this regulation as it regards ""[n]ursery schools" and "preschools," and that Defendants Hilton, Oakes and Nigrelli are proper Defendants to that challenge.

g. "[T]he location of any program … regulated, … operated, or funded by the office for people with developmental disabilities"

In its entirety, this paragraph of Section 4 of the CCIA prohibits the licensed concealed carry of a handgun in the following locations: "[T]he location of any program licensed, regulated, certified, operated, or funded by the office for people with developmental disabilities."

Based on a careful consideration of the State Defendants' continued challenge to the sufficiency of the Complaint and testimony with regard to this paragraph (and in the absence of elaborative testimony at a Preliminary Injunction Hearing), the Court finds they are correct: none of the six Plaintiffs has alleged or sworn a sufficiently concrete intention to carry concealed in any of the locations listed in this regulation in the immediate future. (*See generally* Dkt. No. 1 [Plfs.' Compl.]; Dkt. No. 1, Attach. 3 [Johnson Decl.]; Dkt. No. 1, Attach. 4 [Sloane Decl.]; Dkt. No. 1, Attach. 5 [Leman Decl.]; Dkt. No. 1, Attach. 8 [Antonyuk Decl.]; Dkt. No. 1, Attach. 9 [Mann Decl.]; Dkt. No. 1, Attach. 10 [Terrille Decl.].) As a result, the Court reconsiders this portion of its Decision and Temporary Restraining Order of October 6, 2022, and denies Plaintiffs' motion for a preliminary injunction with regard to this regulation for lack of standing.

h. "[T]he location of any program … regulated, … operated, or funded by [the] office of addiction services and supports"

In its entirety, this paragraph of Section 4 of the CCIA prohibits the licensed concealed carry of a handgun in the following locations: "[T]he location of any program licensed, regulated, certified, operated, or funded by office of addiction services and supports."

The only Plaintiff who comes close to alleging or asserting a concrete intention to carry concealed in one of the locations listed in this regulation in the immediate future is Plaintiff Mann, who swears in his declaration that, in the immediate future, he intends to continue to carry his licensed handgun concealed in his church's "RU Recovery program," including on church property, because drug users are often "high on drugs" and "unpredictable." (Dkt. No. 1, Attach. 9, at ¶¶ 28-29 [Mann Decl.].) However, Plaintiff Mann does not expressly assert that his church's "RU Recovery program" is "licensed, regulated, certified, operated, or funded by office of addiction services and supports." (*Id*.) This omission appears to have been intentional, given the specificity of this regulation and the otherwise detailed-nature of this portion of Plaintiff Mann's Declaration. (*See id.* at ¶ 29 [expressing referencing "subsection b" of Section 4 of the CCIA].)

Based on a careful consideration of State Defendants' continued challenge to the sufficiency of the Complaint and testimony with regard to this paragraph (and in the absence of elaborative testimony at a Preliminary Injunction Hearing), the Court reaches the same conclusion regarding this regulation as it reached with regard to the regulation "2(g)" for the reasons stated above in Part III.B.2.g. of this Decision. It therefore reconsiders that portion of its Decision and Temporary Restraining Order of October 6, 2022, and denies Plaintiffs' motion for a preliminary injunction with regard to this regulation for lack of standing.

i. "[T]he location of any program … regulated, … operated, or funded by the office of mental health"

In its entirety, this paragraph of Section 4 of the CCIA prohibits the licensed concealed carry of a handgun in the following locations: "[T]he location of any program licensed, regulated, certified, operated, or funded by the office of mental health." Again, based on a careful consideration of the State Defendants' continued challenge to the sufficiency of the Complaint and testimony with regard to this paragraph (and in the absence of elaborative testimony at a Preliminary Injunction Hearing), the Court reaches the same conclusion regarding this regulation as it reached with regard to the regulation "2(g)" for the reasons stated above in Part III.B.2.g. of this Decision. It therefore reconsiders that portion of its Decision and Temporary Restraining Order of October 6, 2022, and denies Plaintiffs' motion for a preliminary injunction with regard to this regulation for lack of standing.

j. "[T]he location of any program … regulated, … operated, or funded by the office of temporary and disability assistance"

In its entirety, this paragraph of Section 4 of the CCIA prohibits the licensed concealed carry of a handgun in the following locations: "[T]he location of any program licensed, regulated, certified, operated, or funded by the office of temporary and disability assistance." Again, based on a careful consideration of the States Defendants' continued challenge to the sufficiency of the Complaint and testimony with regard to this paragraph (and in the absence of elaborative testimony at a Preliminary Injunction Hearing), the Court reaches the same conclusion regarding this regulation as it reached with regard to the regulation "2(g)" for the reasons stated above in Part III.B.2.g. of this Decision. It therefore reconsiders that portion of its Decision and Temporary Restraining Order of October 6, 2022, and denies Plaintiffs' motion for a preliminary injunction with regard to this regulation for lack of standing.

k. "[H]omeless shelters, … family shelters, … domestic violence shelters, and emergency shelters"

In its entirety, this paragraph of Section 4 of the CCIA prohibits the licensed concealed carry of a handgun in the following locations: "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."

The only Plaintiffs who come close to alleging or asserting a concrete intention to carry concealed in one of the locations listed in this regulation in the immediate future are Plaintiffs Leman and Mann. More specifically, on September 19, 2022, Plaintiff Leman swore that, as a volunteer firefighter, he has "responded to calls at . . . shelters." (Dkt. No. 1, Attach. 5, at ¶ 6 [Leman Decl.].) However, Plaintiff Leman does not swear that he *intends* to carry concealed in a particular shelter in the *immediate* future (or even that, based on his prior experience, there is a reasonable chance that he will likely do so in the next 90 days as part of his job as a volunteer firefighter). (*Id.*) As a result, the Court cannot find that Plaintiff Leman has standing to challenge this regulation as it regards "shelters." The Court reaches a similar conclusion with regard to Plaintiff Mann.

On September 19, 2022, Plaintiff Mann swore in his declaration as follows: (1) "[i]n addition to the church ministry, Fellowship Baptist Church provides and has provided counseling and assistance . . . to the homeless, youth, in the domestic violence and abuse setting, and others; (2) carrying a licensed concealed handgun in such locations is necessary for the "ability [of the church ministry] to provide security for those under [its] care"; and (3) "[i]ndeed, there has been more than one situation over my years as a pastor where the security of [Plaintiff Mann], [his] family, and the members of [his] church has been far from a guarantee," and "[i]n situations, [he

has] felt [it] necessary to be armed with my handgun, not in any way wishing to use it, but being prepared to defend [him]self and others if the need arose." (Dkt. No. 1, Attach. 9, at ¶¶ 26-27 [Mann Decl.].) However, Plaintiff Mann has not sufficiently sworn that he intends to visit such a shelter in the immediate future or that he would even carry his licensed concealed handgun there in violation of the CCIA. (*See generally* Dkt. No. 1, Attach. 9 [Mann Decl.].)

Again, based on a careful consideration of the State Defendants' continued challenge to the sufficiency of the Complaint and testimony with regard to this paragraph (and in the upon closer examination of the Complaint and declarations (and in the absence of elaborative testimony at the Preliminary Injunction Hearing), the Court finds they are correct: this testimony fails to meet the standard articulated and applied in the Court's Decision and Order in *Antonyuk I*. *Antontuk I*, 2022 WL 3999791, at *10-23. As a result, the Court reconsiders this portion of its Decision and Temporary Restraining Order of October 6, 2022, and denies Plaintiffs' motion for a preliminary injunction with regard to this regulation for lack of standing.[40]

[40] To the extent this finding is in error, the Court would have found that, based on a comparison of the burdensomeness of this regulation to the burdensomeness of its historical analogues, this regulation appears to be disproportionately burdensome. For the sake of brevity, the Court will not linger on the dearth of historical analogues prohibiting the carrying of arms in historical locations such "alms houses," because the State Defendants would likely (and incorrectly) object that such analogues would be "historical twin[s]" or "dead ringers" (which are not required under *NYSRPA*). More important is the fact that, even if the Court were to rely on the laws referenced in this Decision prohibiting firearms in churches and schools, the Court would find that the reasons for those laws (i.e., bringing peace to religious congregations especially during services, and protecting locations densely populated by children) are not sufficiently similar to the State Defendants' purported reason for this provision (to protect "vulnerable populations"). (Dkt. No. 48, at 83.) The Court notes, while it has little doubt that the types of shelters visited by Plaintiff Mann often contain children, the State Defendants adduce no evidence that those shelters are as densely populated by children as are schools. Moreover, the presence of adults in those locations would appear to increase the need of visiting volunteers for safety, as the pistol-packing-pastor Plaintiff Mann swears in his declaration. Finally, it bears remembering that the firearms in question would be carried (concealed) by

l. "[R]esidential settings licensed, certified, regulated, funded, or operated by the department of health"

Again, based on a careful consideration of the State Defendants' continued challenge to the sufficiency of the Complaint and testimony with regard to this paragraph (and in the absence of elaborative testimony at a Preliminary Injunction Hearing), the Court reaches the same conclusion regarding this regulation as it reached with regard to the regulation "2(g)" for the reasons stated above in Part III.B.2.g. of this Decision. It therefore reconsiders that portion of its Decision and Temporary Restraining Order of October 6, 2022, and denies Plaintiffs' motion for a preliminary injunction with regard to this regulation for lack of standing.

m. "[A]ny building or grounds … of any educational institutions, colleges … , school districts … , private schools …"

In its entirety, this paragraph of Section 4 of the CCIA prohibits the licensed concealed carry of a handgun in the following locations:

> [I]n 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…

To the extent that this regulation regards specified locations other than "school districts," the Court finds that the only Plaintiffs have come close to alleging or swearing a sufficiently concrete intention to carry concealed in these places in the immediate future are Plaintiff Leman

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individuals who have provided four character references, completed numerous hours of firearms training, and satisfied the demands of a licensing officer, and that (under the prior law) shelters were free to post a sign excluding license holders from carrying concealed there.

(with regard to "schools") and Plaintiff Man (with regard to "school districts."). (*See generally* Dkt. No. 1 [Plfs.' Compl.]; Dkt. No. 1, Attach. 3 [Johnson Decl.]; Dkt. No. 1, Attach. 4 [Sloane Decl.]; Dkt. No. 1, Attach. 5 [Leman Decl.]; Dkt. No. 1, Attach. 8 [Antonyuk Decl.]; Dkt. No. 1, Attach. 9 [Mann Decl.]; Dkt. No. 1, Attach. 10 [Terrille Decl.].)

More specifically, on September 19, 2022, Plaintiff Leman swore that, as a volunteer firefighter, he has "responded to calls at . . . schools." (Dkt. No. 1, Attach. 5, at ¶ 6 [Leman Decl.].) However, Plaintiff Leman does not swear that he *intends* to carry concealed in a particular school in the *immediate* future (or even that, based on his prior experience, there is a reasonable chance that he will likely do so in the next 90 days as part of his job as a volunteer firefighter). (*Id*.) As a result, the Court cannot find that Plaintiff Leman has standing to challenge this regulation as it regards "schools." The Court reaches a similar conclusion with regard to Plaintiff Mann.

On September 19, 2022. Plaintiff Mann swore that (1) "Fellowship Baptist Church has a "local homeschool coop" where his "church at times operates as a school for the education of children," and (2) he "intend[s] to continue to possess firearms on church property to protect [his] entire congregation, including [his] children." (Dkt. No. 1, Attach. 9, at ¶¶ 30-31 [Mann Decl.].) Again, because the State Defendants waved their right to cross-examine Plaintiff Mann at the Preliminary Injunction Hearing on October 25, 2022, the Court takes Plaintiff Mann at his word. (Dkt. No. 58 [Stipulation].)

Plaintiff Mann does not indicate whether his church's "local homeschool coop" (or his previously referenced "nursery" school) constitutes a "private school[] licensed under article one hundred one of the education law" under this regulation. Furthermore, the Court cannot find

that his school district is sufficiently involved in his challenge based merely on its role of overseeing and approving homeschool curricula. *See* N.Y. Educ. Law § 101(c)(5) (setting forth the "[p]rocedures for development and review of an individualized home instruction plan (IHIP)"); *Bradstreet v. Sobol*, 650 N.Y.S.2d 402, 403 (N.Y. App. Div., 3d Dep't 1996) ("That the superintendent of the local school district oversees and approves the home-school instruction provided by plaintiff (*see* 8 NYCRR 100.10[c][5]) does not make plaintiff's daughter a 'regularly enrolled' student of the district."). In any event, Plaintiff Mann's school district does not appear to "own[] or lease[]" the "building or grounds" used by the church's local homeschool coop, for purposes of this regulation.

As a result, upon closer examination, the Court finds finding that Plaintiff Mann has not established standing to challenge this regulation. It therefore reconsiders that portion of its Decision and Temporary Restraining Order of October 6, 2022, and denies Plaintiffs' motion for a preliminary injunction with regard to this regulation for lack of standing.

n. "[A]ny place, conveyance, or vehicle used for public transportation or public transit …"

In its entirety, this paragraph of Section 4 of the CCIA prohibits the licensed concealed carry of a handgun in the following locations:

> [A]ny 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 …

Based on a careful consideration of the State Defendants' continued challenge to the sufficiency of the Complaint and declaration testimony with regard to this paragraph (and in the absence of elaborative testimony at the Preliminary Injunction Hearing), the Court finds that the

only Plaintiffs who arguably allege or assert a concrete intention to carry concealed in one of the locations listed in this regulation in the immediate future are Plaintiff Leman regarding "vehicles used for public transit," Plaintiff Mann regarding "buses" (and vans), and Plaintiff Terrille regarding "aviation transportation" and "airports."

With regard to "vehicles used for public transit," on September 19, 2022, Plaintiff Leman swore that, as a volunteer firefighter, he has "responded to calls at . . . vehicles used for public transit." (Dkt. No. 1, Attach. 5, at ¶ 6 [Leman Decl.].) However, Plaintiff Leman does not swear that he *intends* to carry concealed in a particular vehicle used for public transit in the *immediate* future (or even that, based on his prior experience, there is a reasonable chance that he will likely do so in the next 90 days as part of his job as a volunteer firefighter). (*Id*.) As a result, the Court cannot find that Plaintiff Leman has standing to challenge this regulation as it regards "vehicles used for public transit."

With regard to "buses" (and vans), on September 19, 2022, Plaintiff Mann (whose other relevant declaration testimony is summarized above in Part III.A.2.b. of the Court's Decision) swore as follows: (1) "[his] church . . . maintains both a church bus and a church van which [it] use[s] for church business to travel to various locations"; (2) "[they] routinely take [their] own church members, [their] youth, and members of the public with [them] when [they] travel"; and (3) "[t]o the extent that the CCIA applies to our church bus or van, I do not intend to comply." (Dkt. No. 1, Attach. 9, at ¶ 33 [Mann Decl.].) Because the State Defendants waved their right to cross-examine Plaintiff Mann at the Preliminary Injunction Hearing on October 25, 2022, the Court takes Plaintiff Mann (a pastor) at his word. (Dkt. No. 58 [Stipulation].)

Granted, Plaintiff Mann does not *expressly* allege that he has routinely carried his licensed handgun concealed *while* riding on his church's bus in public. (Dkt. No. 1, Attach. 9, at ¶ 33 [Mann Decl.].) However, the Court finds that inference to be reasonable based on his other sworn assertions (including his assertion that he considers it his duty to "protect [his] congregation, including [its] children," and his assertion that he has "frequently have traveled to the homes of persons addicted to drugs" as part of his addiction-recovery ministry and has "carried [his] firearm" when doing so). (*Id*. at ¶¶ 28, 30, 33.)

Based on the fact that Plaintiff Mann has alleged he has routinely carried his licensed handgun concealed while riding on his church's bus and van in public, and that he will do so again, the Court finds he has asserted a sufficiently concrete and imminent intent to violate this provision of the CCIA. *See, e.g., Houston*, 733 F.3d at 1332-37. Moreover, based on the brazen nature of Plaintiff Mann's intended defiance,[41] the fact that at least one of his congregants is a member of local law enforcement,[42] and the fact of the recent publicization of the CCIA (including its sensitive-location provision) in New York State,[43] the Court finds that a sign of Plaintiff Mann's "concealed" handgun is likely to both (1) occur and (2) result in a complaint from a concerned citizen.[44]

The State Defendants argue that Plaintiff Mann's church bus and van do not fall in the scope of this regulation because "the two vehicles clearly are not *public* transportation." (Dkt.

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41 *See, supra,* note 15 of this Decision.

42 *See, supra,* note 16 of this Decision.

43 *See, supra,* note 16 of this Decision.

44 *See, supra,* note 17 of this Decision.

No. 48, at 84 [emphasis in original].) Of course, the regulation does not expressly require the vehicles to *be* "public transportation." Rather, the regulation expressly requires them to be only "any . . . vehicle *used for* public transportation or public transit . . . ." Moreover, the distinction between a vehicle's being used for "public transportation" and a vehicle's being used for transportation *in* public grows blurry when one considers that New York State's regulation of offenses against public order extends to all "public" locations. *See New York v. Jackson*, 944 N.Y.S.2d 715, 719 (N.Y. 2012) (explaining that a "privately owned vehicle" can be a "public place," for purposes of New York's criminal law proscribing offenses against public order, if it "is in a location that qualifies under the statute as a public place").

In any event, the regulation lacks the words "such as" between the words "any . . . vehicle used for public transportation or public transit," and the words "subway cars, train cars, buses . . . ." As a result, this regulation may be reasonably read as if to mean "any . . . vehicle used for public transportation" *or* "[any] . . . buses [regardless of whether it is used for public transportation]." Ordinarily, the Court would be reluctant to render such an unlikely interpretation of a statute (especially a hastily cobbled-together one such as this, which contains several typographical errors). However, this particular statute also contains numerous provisions that rather broadly regulate concealed carry on *private property* (i.e., the provisions contained in Sections 4 and 5 of the CCIA). Moreover, the fact that *most* of the items in the list appear to exist only as public vehicles or conveyances gives the Court only momentary pause: some do *not* exist only as public vehicles or conveyances. For example, there certainly exist private "buses," private "railroad" cars, and private modes of "marine or aviation transportation," including yachts and private planes.

Finally, Plaintiffs persuasively argue that the State treats Plaintiff Mann's church bus and van as vehicles used for public transportation by requiring them to register as a "school" bus and a "day care" van respectively. *See* N.Y. Veh. & Traf. Law § 509-a ("[B]us shall mean every motor vehicle, owned, leased, rented or otherwise controlled by a motor carrier, which . . . has a seating capacity of more than ten adult passengers in addition to the driver and which is used for the transportation of persons under the age of twenty-one or persons of any age who are mentally or physically disabled to a place of vocational, academic or *religious instruction* or religious service including nursery *schools*, *day care* centers and camps . . . ."); "Article 19-A Guide for Motor Carriers," New York State Dept. of Motor Vehicles, at 4 (March 2021) https://dmv.ny.gov/forms/cdl15.pdf (last visited Nov. 4, 2022) ("Churches are required to enroll in 19-A if the vehicle has seating capacity to transport 11 or more adult passengers in addition to the driver, and it is used to transport persons under the age of 21 or persons of any age who are mentally or physically disabled to a place of religious instruction or service.").

For all of these reasons, the Court cannot accept the State Defendants' argument that this regulation does not apply to Plaintiff Mann's church bus and van. (Dkt. No. 48, at 84-89.) With regard to the proper Defendants to Plaintiff Mann's challenge to this regulation, the Court finds that Defendants Hilton, Oakes and Nigrelli are proper Defendants to Mann's challenge for the reasons stated above in Part III.A.2.b. of this Decision.

With regard to "aviation transportation" and "airports," on September 19, 2022, Plaintiff Terrille (whose other relevant declaration testimony is summarized above in Part III.A.2.d. of the Court's Decision) swore as follows:

> I have been planning and, within the next 60 days, I will take a trip to visit the state of Tennessee. Since Tennessee is a constitutional carry state that

> respects the Second Amendment rights of all Americans to bear arms, I will bring my firearm with me. I have not yet booked a flight, but I plan to travel by airplane, departing via the Albany International Airport. . . . I will continue watching prices, and will purchase a ticket in the coming weeks, for travel within the next two months. . . . Since I intend to check my firearm with my luggage in accordance with TSA regulations, which requires declaring the firearm, I would be essentially telling authorities that I am in illegal possession of a firearm, opening myself to prosecution under the CCIA.

(Dkt. No. 1, Attach. 10, at ¶ 9 [Terrille Decl.].) Because the State Defendants waved their right to cross-examine Plaintiff Terrille at the Preliminary Injunction Hearing on October 25, 2022, the Court takes Plaintiff Terrille at his word. (Dkt. No. 58 [Stipulation].)

Based on the fact that Plaintiff Terrille has sworn that he has frequently carried concealed in airports (while complying with federal regulations) and will do so again soon, the Court finds he has asserted a sufficiently concrete and imminent intent to violate this provision of the CCIA. *See, e.g., Houston*, 733 F.3d at 1332-37. Moreover, based on the brazen nature of Plaintiff Terrille's intended defiance, and the fact of the recent publicization of the CCIA (including its sensitive-location provision) in New York State,[45] the Court finds that a sign of Plaintiff Terrille's "concealed" handgun is likely to both (1) occur and (2) result in a complaint from a concerned citizen.[46] With regard to the proper Defendants to Plaintiff Terrille's challenge to this regulation, the Court finds that Defendants Soares and Nigrelli are proper Defendants to Terrille's challenge for the reasons stated above in Part III.A.2.b. of this Decision.

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[45] *See, supra,* note 16 of this Decision.

[46] *See, supra,* note 17 of this Decision.

In light of all of this evidence, the Court finds that each of these two Plaintiffs (Mann and Terrille) has shown (1) an injury in fact (i.e., the denial of his right to armed self-defense in public under the Second Amendment caused through a credible threat of enforcement of this regulation), (2) a sufficient causal connection between the injury and the conduct complained of (i.e., the fact that Defendants Hilton, Oakes, Nigrelli and Soares have sufficiently threatened to enforce Section 4 of the CCIA against one or both of these two Plaintiffs in accordance with their duty to do so), and (3) a likelihood that a favorable decision from this Court will cause the injury to be redressed by these four Defendants (who, again, each has the specific duty to enforce Section 4).

As a result, the Court finds that, to the extent this regulation applies to "buses" (or vans), Plaintiff Mann has standing to challenge it, and that Defendants Hilton, Oakes and Nigrelli are proper Defendants to that challenge. Moreover, to the extent this regulation applies to "aviation transportation" and "airports," Plaintiff Terrille has standing to challenge it, and Defendants Soares and Nigrelli are proper Defendants to that challenge. Otherwise, the Court reconsiders this portion of its Decision and Temporary Restraining Order of October 6, 2022, and denies Plaintiffs' motion for a preliminary injunction with regard to the remainder of the locations set forth in this regulation for lack of standing.

o. "[A]ny establishment issued a license …where alcohol is consumed …"

In its entirety, this paragraph of Section 4 of the CCIA prohibits the licensed concealed carry of a handgun in the following locations:

> [A]ny 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 . . .

Based on a careful consideration of the State Defendants' continued challenge to the sufficiency of the Complaint and declaration testimony with regard to this paragraph (and in the absence of elaborative testimony at the Preliminary Injunction Hearing), the Court finds that the State Defendants are correct: the only Plaintiffs who arguably allege or assert a concrete intention to carry concealed in any of the locations listed in this regulation in the immediate future are Plaintiffs Leman, Johnson and Terrille with regard to restaurants that serve alcohol. As a result, the Court reconsiders this portion of its Decision and Temporary Restraining Order of October 6, 2022, and denies Plaintiffs' motion for a preliminary injunction with regard to "any establishment licensed under article four of the cannabis law for on-premise consumption" for lack of standing.

However, with regard to restaurants that serve alcohol, on September 19, 2022, Plaintiff Leman swore that, as a volunteer firefighter, he has "responded to calls at . . . restaurants that serve alcohol." (Dkt. No. 1, Attach. 5, at ¶ 6 [Leman Decl.].) However, Plaintiff Leman does not swear that he *intends* to carry concealed in a particular restaurant that serves alcohol in the *immediate* future (or even that, based on his prior experience, there is a reasonable chance that he will likely do so in the next 90 days as part of his job as a volunteer firefighter). (*Id*.) Nor does he assert that his bed and breakfast has obtained a New York State wine and beer license. (*Id*. at ¶ 30.) As a result, the Court cannot find that Plaintiff Leman has standing to challenge this regulation as it regards restaurants that serve alcohol. The Court reaches a different conclusion with regard to Plaintiff Johnson.

On September 19, 2022, Plaintiff Johnson (whose other relevant declaration testimony is summarized above in Part III.A.2.d. of the Court's Decision) swore as follows: (1) "[he] . . . routinely go[es] out to eat with [his] family, including at restaurants such as Longhorn Steakhouse" without "sitting at the bar or consuming any alcoholic beverage"; (2) "[he] intend[s] to continue to carry [his] firearm when [he] go[es] out to eat with [his] family, an event that will occur within the next month or so"; and (3) "[d]uring New York winters, [he and his wife] often take extended snowmobile trips throughout public parks … , often participating in . . . competitions where snowmobilers are required to follow a prescribed course and check in various locations along the way, with some of those locations being restaurants that serve alcohol." (Dkt. No. 1, Attach. 3, at ¶¶ 11-12 [Johnson Decl.].) Because the State Defendants waved their right to cross-examine Plaintiff Johnson at the Preliminary Injunction Hearing on October 25, 2022, the Court takes Plaintiff Johnson at his word. (Dkt. No. 58 [Stipulation].)

Based on the fact that Plaintiff Johnson has sworn that he has frequently carried concealed in restaurants that serve alcohol and will do so again soon, the Court finds he has asserted a sufficiently concrete and imminent intent to violate this provision of the CCIA. *See, e.g., Houston*, 733 F.3d at 1332-37. Moreover, based on the brazen nature of Plaintiff Johnson's intended defiance, and the fact of the recent publicization of the CCIA (including its sensitive-location provision) in New York State,[47] the Court finds that a sign of Plaintiff Johnson's "concealed" handgun is likely to both (1) occur and (2) result in a complaint from a concerned citizen.[48] With regard to the proper Defendants to Plaintiff Johnson's challenge to this

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[47] *See, supra,* note 16 of this Decision.

[48] *See, supra,* note 17 of this Decision.

regulation, the Court finds that Defendants Conway, Fitzpatrick and Nigrelli are proper Defendants to Johnson's challenge with regard to restaurants that serve alcohol for the reasons stated above in Part III.A.2.d. of the Court's Decision.[49]

Similarly, on September 19, 2022, Plaintiff Terrille (whose other relevant declaration testimony is summarized above in Part III.A.2.d. of the Court's Decision) swore as follows: (1) "[he] . . . routinely go[es] out to eat with my grandkids, including at restaurants such as Applebee's and Mo's Southwest Grill" without "sitting at the bar or consuming any alcoholic beverage"; and (2) "[he] intend[s] to continue to carry [his] firearm when [he] go[es] out to eat with [his] grandkids, an event that will occur within the next 30 days." (Dkt. No. 1, Attach. 10, at ¶ 19 [Terrille Decl.].) Because the State Defendants waved their right to cross-examine Plaintiff Johnson at the Preliminary Injunction Hearing on October 25, 2022, the Court takes Plaintiff Johnson at his word. (Dkt. No. 58 [Stipulation].)

Based on the fact that Plaintiff Terrille has sworn that he has frequently carried concealed in restaurants that serve alcohol and will do so again soon, the Court finds he has asserted a sufficiently concrete and imminent intent to violate this provision of the CCIA. *See, e.g., Houston*, 733 F.3d at 1332-37. Moreover, based on the brazen nature of Plaintiff Terrille's intended defiance, and the fact of the recent publicization of the CCIA (including its sensitive-

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[49] The Court notes that Defendant Cecile has persuaded the Court that (although Plaintiff Johnson lives in the City, of which Defendant Cecile is the Chief of Police) no Longhorn Steakhouses exist in the City. (Dkt. No. 47, Attach. 9, at 14.) The Court notes that Plaintiff Johnson does not specify any restaurant other than Longhorn Steakhouse. (*See generally* Dkt. No. 1, Attach. 3 [Johnson Decl.].)

location provision) in New York State,[50] the Court finds that a sign of Plaintiff Terrille's "concealed" handgun is likely to both (1) occur and (2) result in a complaint from a concerned citizen.[51] With regard to the proper Defendants to Plaintiff Terrille's challenge to this regulation, the Court finds that Defendants Soares and Nigrelli are proper Defendants to Terrille's challenge as it regards restaurants that serve alcohol for the reasons stated above in Part III.A.2.b. of this Decision.

In light of all of this evidence, the Court finds that each of these two Plaintiffs (Johnson and Terrille) has shown (1) an injury in fact (i.e., the denial of his right to armed self-defense in public under the Second Amendment caused through a credible threat of enforcement of this regulation), (2) a sufficient causal connection between the injury and the conduct complained of (i.e., the fact that Defendants Conway, Fitzpatrick, Nigrelli, and Soares have sufficiently threatened to enforce Section 4 of the CCIA against one or both of these two Plaintiffs in accordance with their duty to do so), and (3) a likelihood that a favorable decision from this Court will cause the injury to be redressed by these four Defendants (who, again, each has the specific duty to enforce Section 4).

For all of these reasons, the Court finds that Plaintiff Johnson has standing to challenge this regulation as it regards "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 that Defendants Conway, Fitzpatrick and Nigrelli are proper Defendants to that challenge. Similarly, the Court finds that Plaintiff Terrille has standing to challenge the

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50 *See, supra,* note 16 of this Decision.

51 *See, supra,* note 17 of this Decision.

same portion of this regulation, and that Defendants Soares and Nigrelli are proper Defendants to that challenge.

p. "[A]ny place used for the performance, art entertainment, gaming, or sporting events …"

In its entirety, this paragraph of Section 4 of the CCIA prohibits the licensed concealed carry of a handgun in the following locations:

> [A]ny 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 . . . .

The only Plaintiffs who arguably allege or assert a concrete intention to carry concealed in any of the locations listed in this regulation in the immediate future are Plaintiffs Leman (with regard to "movie theaters" and "sporting events"), Plaintiff Terrille (with regard to movie "theaters," "conference centers," and "banquet halls"), Plaintiff Mann (with Regard to "banquet halls," "performance venues" and "concerts"), and Plaintiff Johnson (with regard to places used for "performance, art entertainment, gaming, or sporting events").

More specifically, with regard to "movie theaters" and "sporting events," on September 19, 2022, Plaintiff Leman swore that, as a volunteer firefighter, he has "responded to calls at . . . theaters [and] sporting events." (Dkt. No. 1, Attach. 5, at ¶ 6 [Leman Decl.].) However, Plaintiff Johnson does not swear that he *intends* to carry concealed in a particular theater or sporting events in the *immediate* future (or even that, based on his prior experience, there is a reasonable chance that he will likely do so in the next 90 days as part of his job as a volunteer firefighter). (*Id*.) As a result, the Court cannot find that Plaintiff Leman has standing to challenge this regulation as it regards "movie theaters" and "sporting events."

Also with regard to movie "theaters," on September 19, 2022, Plaintiff Terrille (whose other relevant declaration testimony is summarized above in Part III.A.2.d. of the Court's Decision) swore as follows: (1) "[a]s part of [his] activities with [his] grandchildren, [they] routinely see movies, both at movie theaters and at drive-in locations within Albany County"; (2) "[t]his activity occurs repeatedly throughout the year, and [they] will see a movie again at some point within the next 60 days"; (3) "[i]n the past, [he has] carried [his] concealed firearm during such outings . . ."; and (4) "[he] intend[s] to continue to carry [his] firearm when [he] go[es] to movie theaters with [his] grandchildren, in violation of the CCIA." (Dkt. No. 1, Attach. 10, at ¶ 7 [Terrille Decl.].)

Similarly, with regard to "conference centers," and "banquet halls," Plaintiff Terrille also swore (again, on September 19, 2022) as follows: (1) "[he] plan[s] to attend the upcoming NEACA Polish Community Center Gun Show, to occur on October 8-9, 2022, in Albany"; (2)"[t]he gun show is hosted by The Polish Community Center, which describes itself as 'a conference center, banquet hall & wedding venue in Albany, NY'"; and (3) "[he] intends to carry [his] firearm with [him] when [he attends the gun show], in violation of the CCIA . . . ." (*Id*. at ¶ 16.)[52] Because the State Defendants waved their right to cross-examine Plaintiff Terrille at the Preliminary Injunction Hearing on October 25, 2022, the Court takes Plaintiff Terrille at his word. (Dkt. No. 58 [Stipulation].)

[52] Because Plaintiff Terrille was not called and cross-examined as a witness at the Preliminary Injunction Hearing on October 25, 2022, no evidence has been adduced regarding whether Plaintiff Terrille did in fact attend the Gun Show at the Polish Community Center in Albany on October 8 and 9, 2022, or even whether it even occurred.

Based on the fact that Plaintiff Terrille has sworn that he has frequently carried concealed in theaters, conference centers and banquet halls, and will do so again, the Court finds he has asserted a sufficiently concrete and imminent intent to violate this provision of the CCIA. *See, e.g., Houston*, 733 F.3d at 1332-37. Moreover, based on the brazen nature of Plaintiff Terrille's intended defiance, and the fact of the recent publicization of the CCIA (including its sensitive-location provision) in New York State,[53] the Court finds that a sign of Plaintiff Terrille's "concealed" handgun is likely to both (1) occur and (2) result in a complaint from a concerned citizen.[54] With regard to the proper Defendants to Plaintiff Terrille's challenge to this regulation, the Court finds that Defendants Soares and Nigrelli are proper Defendants to this challenge for the reasons stated above in Part III.A.2.b. of this Decision.

As for "banquet halls," "performance venues" and "concerts," on September 19, 2022, Plaintiff Mann (whose other relevant declaration testimony is summarized above in Part III.A.2.b. of the Court's Decision) swore as follows: (1) his church has a "banquet hall," where its parishioners "often break bread together"; (2) "[his] church plays music before, during, and after worship services, and the CCIA bans firearms at a 'performance venue' or 'concert'"; (3) "since [Fellowship Baptist Church is] a small church, [it is] unable to afford to pay for private security who might be exempt from the CCIA"; and (4) as a result, he is "unable to comply with . . . the CCIA", and thus [he] intend[s] to continue to [carry his handgun concealed in the church]." (Dkt. No. 1, Attach. 9, at ¶¶ 10-11, 34 [Mann Decl.].) Because the State Defendants

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53 *See, supra,* note 16 of this Decision.

54 *See, supra,* note 17 of this Decision.

waved their right to cross-examine Plaintiff Mann at the Preliminary Injunction Hearing on October 25, 2022, the Court takes Plaintiff Mann at his word. (Dkt. No. 58 [Stipulation].)

While the Court has little doubt that the music there is both inspiring and entertaining, the Court has trouble finding that pews of Plaintiff Mann's Fellowship Baptist Church in Parish, New York, constitute a "performance venue" or "concert" venue under paragraph 2(p) of Section 4 of the CCIA when the Church is "play[ing] music before, during, and after worship services," because, in addition to appearing to be relatively brief, the performances appear to be *part of* the worship services (although the Court does agree that these undefined terms in the regulation are too vague). As a result, as currently described by Plaintiff Mann, his church does not appear to constitute a "performance venue" or "concert" venue.

However, with regard to his church's "banquet hall," based on the fact that Plaintiff Mann has sufficiently sworn that he has carried concealed there and will do so again, the Court finds he has asserted a sufficiently concrete and imminent intent to violate this provision of the CCIA. *See, e.g., Houston*, 733 F.3d at 1332-37. Moreover, based on the brazen nature of Plaintiff Mann's intended defiance,[55] the fact that at least one of his congregants is a member of

[55] (*See, e.g.,* Dkt. No. 1, Attach. 9, at ¶¶ 4, 11, 20, 25, 29-33 [Mann Decl., swearing, "I intend to continue various activities in violation of the CCIA … I intend to continue to possess and carry my firearm while on church property, in violation of the CCIA.… I have no choice but to violate this immoral, unbiblical, and unconstitutional law, and intend to continue to possess my firearm in my church and in my home.… I intend this act of civil disobedience …. I intend to continue to operate as I always have with respect to possessing my firearms at the church…. I intend to continue to possess firearms on church property to protect our entire congregation, including our children…. I cannot comply with that restriction, and intend to continue to operate as I always have with respect to possessing firearms at the church …. I do not intend to comply… I do not intend to comply."].)

local law enforcement,[56] and the fact of the recent publicization of the CCIA (including its sensitive-location provision) in New York State,[57] the Court finds that a sign of Plaintiff Mann's "concealed" handgun is likely to both (1) occur and (2) result in a complaint from a concerned citizen.[58] With regard to the proper Defendants to Plaintiff Mann's challenge to this regulation, the Court finds that Defendants Hilton, Oakes and Nigrelli are proper Defendants to this challenge for the reasons stated above in Part III.A.2.b. of this Decision.

Finally, "with regard to performance, art entertainment, gaming, or sporting event," on September 19, 2022, Plaintiff Johnson (whose other relevant declaration testimony is summarized above in Part III.A.2.d. of the Court's Decision) swore as follows: (1) "[he] routinely visit[s] various locations that are considered 'performance, art entertainment, gaming, or sporting events' such as 'at the New York State Fairgrounds'; and (2) "[f]or example, late last month [he] had fully intended to attend the state fair at the New York State Fairgrounds (a locations at which carry is also prohibited . . . , until [he] learned that the Fairgrounds had expressed its intent to adopt and enforce the provision of the CCIA." (Dkt. No. 1, Attach. 3, at ¶ 13 [Johnson Decl.]). Because the State Defendants waved their right to cross-examine Plaintiff Johnson at the Preliminary Injunction Hearing on October 25, 2022, the Court takes Plaintiff Johnson at his word. (Dkt. No. 58 [Stipulation].)

The problem is that Plaintiff Johnson does not swear that he *intends* to carry concealed New York State Fairgrounds in the *immediate* future. (*See generally* Dkt. No. 1, Attach. 3

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56 *See, supra,* note 16 of this Decision.

57 *See, supra,* note 16 of this Decision.

58 *See, supra,* note 17 of this Decision.

[Johnson Decl.].) In fact, a bit like Plaintiff Antonyuk in *Antonyuk I*, Plaintiff Johnson appears to acknowledge that he does *not* intend to violate the CCIA by carry concealed inside the State Fairgrounds. (Dkt. No. 1, Attach. 3, at ¶ 13 [Johnson Decl., swearing, "For example, late last month I had fully intended to attend the state fair at the New York State Fairgrounds (a locations at which carry is also prohibited under subsection (d)), until I learned that the Fairgrounds had expressed its intent to adopt and enforce the provision of the CCIA. . . . I did not attend the fair, believing there to be a significant risk that my concealed carry firearm would be discovered and I would be charged with a crime"].) *See Antonyuk I*, 2022 WL 3999791, at *18 ("Simply stated, the Court does not find that Plaintiff Antonyuk intends to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by the CCIA.") (internal quotation marks omitted).

In light of all of this evidence, the Court finds that each of these two Plaintiffs (Terrille and Mann) has shown (1) an injury in fact (i.e., the denial of his right to armed self-defense in public under the Second Amendment caused through a credible threat of enforcement of this regulation), (2) a sufficient causal connection between the injury and the conduct complained of (i.e., the fact that Defendants Soares, Nigrelli, Hilton, and Oakes have sufficiently threatened to enforce Section 4 of the CCIA against one or both of these two Plaintiffs in accordance with their duty to do so), and (3) a likelihood that a favorable decision from this Court will cause the injury to be redressed by these four Defendants (who, again, each has the specific duty to enforce Section 4).

For all of these reasons, the Court finds that Plaintiffs have not alleged or sworn a sufficiently concrete intention to carry concealed in that location in the immediate future:

> [A]ny place used for the performance, art entertainment, gaming, or sporting events such as . . . stadiums, racetracks, museums, amusement parks, performance venues, concerts, exhibits, . . . and gaming facilities and video lottery terminal facilities as licensed by the gaming commission . . . .

As a result, the Court reconsiders its Decision and Temporary Restraining Order of October 6, 2022, and denies Plaintiffs' motion for a preliminary injunction with regard to those locations for lack of standing.

However, to the extent this regulation regards "theaters," "conference centers" and "banquet halls," the Court finds that Plaintiff Terrille has standing to challenge it, and that Defendants Soares and Nigrelli are proper Defendants to that challenge. Similarly, to the extent this regulation regards "banquet halls," the Court finds that Plaintiff Mann also has standing to challenge it, and that Defendants Hilton, Oakes and Nigrelli are proper Defendants to that challenge.

q. "[A]ny location being used as a polling place"

The Court reaches the same conclusion regarding this regulation as it reached with regard it in its Decision and Temporary Restraining Order (i.e., that this regulation finds support in this Nation's historical tradition of firearm regulation). *See Antonyuk II*, 2022 WL 5239895, at *15.

r. "[A]ny … public area restricted from general public access for a limited time … by a governmental entity"

In its entirety, this paragraph of Section 4 of the CCIA prohibits the licensed concealed carry of a handgun in the following locations:

> 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 . . . .

Again, the Court reaches the same conclusion regarding this regulation as it reached with regard it in its Decision and Temporary Restraining Order (i.e., that this regulation finds support in this Nation's historical tradition of firearm regulation). *Antonyuk II*, 2022 WL 5239895, at *15.

s. "[A]ny gathering of individuals to collectively express their constitutional rights to protest or assemble"

The only Plaintiffs who arguably allege or assert a concrete intention to carry concealed in any of the locations listed in this regulation in the immediate future are Plaintiff Terrille (with regard to gun shows and political rallies), Plaintiff Johnson (also with regard to political rallies), and Plaintiff Mann (with regard to expressive religious assemblies).

More specifically, with regard to gun shows, on September 19, 2022, Plaintiff Terrille (whose other relevant declaration testimony is summarized above in Part III.A.2.d. of the Court's Decision) swore as follows: (1) "[he] plan[s] to attend the upcoming NEACA Polish Community Center Gun Show, to occur on October 8-9, 2022, in Albany"; (2)"[t]he gun show is hosted by The Polish Community Center, which describes itself as 'a conference center, banquet hall & wedding venue in Albany, NY'"; (3) "one of [his] main reasons for attending, and a huge part of any gun show, is the conversations with fellow gun owners, which invariably includes discussion of New York State's tyrannical gun laws"; and (4) "[he] intends to carry [his] firearm with [him] when [he attends the gun show], in violation of the CCIA . . . ." (Dkt. No. 1, Attach. 10, at ¶ 16 [Terrille Decl.].)

With regard to political rallies, Plaintiff Terrille swore as follows: (1) "[i]n the past, [he has] attended pro-gun rallies, and done so while armed"; (2) "[f]or example, in 2013 and 2014, [he] attended more than one rally in Albany, before and after the New York SAFE Act was passed, which occurred on public sidewalks and streets"; and (3) "[he] do[es] not presently know of any upcoming pro-gun or pro-freedom rally currently scheduled in New York but, if there were one, [he] would jump at the opportunity to attend it to express [his] political views, and [he] would do so while carrying my firearm, in clear violation of the CCIA. (*Id*. at ¶ 18.) Because the State Defendants waved their right to cross-examine Plaintiff Terrille at the Preliminary Injunction Hearing on October 25, 2022, the Court takes Plaintiff Terrille at his word. (Dkt. No. 58 [Stipulation].)

Granted, because Plaintiff Terrille does not assert a concrete intention to attend a "pro-gun" rally armed in the immediate future, his standing to challenge this regulation cannot find a basis in that violation of the CCIA. However, such standing does find a basis in Plaintiff Terrille's concrete intention to attend a gun show in the immediate future.

As stated above in note 54 of this Decision, it is not clear to the Court whether Plaintiff Terrille attended a Gun Show at the Polish Community Center in Albany on October 8 and 9, 2022. Granted, the current standing inquiry focuses on the imminence of the concrete injury claimed by Plaintiff Terrille (here, arrest and/or seizure of his handgun) both at the time of filing his Complaint and at the time of filing his motion for preliminary injunction.[59] And, at the time

[59] *See Deshawn E. by Charlotte E. v. Safir*, 156 F.3d 340, 344 (2d Cir. 1998) (finding that a plaintiff seeking injunctive relief "cannot rely [only] on past injury to satisfy the injury requirement [to establish standing] but must [also] show a likelihood that he ... will be injured in the future"); *Access 4 All, Inc. v. Trump Int'l Hotel & Tower Condo*., 458 F. Supp.2d 160, 167

of the preparation of this Decision, the gun show has either happened or not. But the reason the Court does not know if it happened is the State Defendants' *failure t*o cross-examine Plaintiff Terrille at the Preliminary Injunction Hearing (a choice the State Defendants made apparently in exchange for not having Defendants Hochul, Nigrelli and Doran subpoenaed as witnesses at the Hearing).[60] Plaintiff Terrille had no duty under Fed. R. Civ. P. 65 to move for leave to supplement his motion papers after October 9, 2022, and file a supplemental declaration swearing that the gun show had in fact occurred and he had in fact attended it while armed. He filed his motion on September 22, 2022, and it is hardly his fault that the Court has taken so long to prepare this Decision (the length of which has been necessitated less by the breadth the Complaint's claims as the unprecedented constitutional violations presented by the CCIA). Furthermore, imposing such a duty on Plaintiff Terrille would require him to essentially confess to a crime, something he is not required to do in order to establish standing.[61]

Because the limitations period has not yet expired on a criminal charge against Plaintiff Terrille for violating this provision of the CCIA on October 8 and 9, 2022, the Court finds that Defendants Soares and Nigrelli are proper Defendants to Terrille's challenge to this regulation as it regards gun shows for the reasons stated above in Part III.A.2.d. of this Decision.

(S.D.N.Y. 2006) ("To establish standing for an injunction, a plaintiff must not merely allege past injury, but also a risk of future harm.").

[60] (*Compare* Dkt. Nos. 53-55 [Notices to Serve Subpoenas] *with* Dkt. No. 58 [Stipulation].)

[61] *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 163 (2104) ("Nothing in this Court's decisions requires a plaintiff who wishes to challenge the constitutionality of a law to confess that he will in fact violate that law.").

Also with regard to political rallies, on September 19, 2022, Plaintiff Johnson (whose other relevant declaration testimony is summarized above in Part III.A.2.d. of the Court's Decision) swore as follows: (1) "[i]n the past, [he has] attended pro-gun rallies, and done so while armed"; (2) "[f]or example, in August of 2020, [he] attended the 'Back the Blue' rally in Albany"; (3) "[he has] attended similar rallies in other states, such as the January 2020 VCDL Lobby Day that takes place annually in January in Richmond, Virginia"; (4) "[he] take[s] any realistic opportunity to exercise and advocate for [his] Second Amendment and other rights, preferably doing both at the same time"; and (5) "[he] do[es] not presently know of any upcoming pro-gun or pro-freedom rally currently scheduled but, when one is scheduled, [he] intend[s] to attend it, and to do so while carrying [his] firearm, in violation of the CCIA." (Dkt. No. 1, Attach. 3, at ¶¶ 14, 16 [Johnson Decl.].) Because the State Defendants waved their right to cross-examine Plaintiff Johnson at the Preliminary Injunction Hearing on October 25, 2022, the Court takes Plaintiff Johnson at his word. (Dkt. No. 58 [Stipulation].)

However, even doing so, the Court must find that Plaintiff Johnson has not established a concrete intention to attend a politically rally (whether "pro-gun" or "Back the Blue") while armed in the imminent future. (*See generally* Dkt. No. 1, Attach. 3 [Johnson Decl.].)

Finally, with regard to expressive religious assemblies (which Plaintiff Mann asserts fall under this vague paragraph of Section 4 of the CCIA), on September 19, 2022, Plaintiff Mann (whose other relevant declaration testimony is summarized above in Part III.A.2.b. of the Court's Decision) swore as follows: (1) Fellowship Baptist Church has "morning and evening services every Sunday, together with an evening service every Wednesday," and it "regularly ha[s] other gatherings and events at the church, not only for church attendees but also the general public";

(2) "since [Fellowship Baptist Church is] a small church, [it is] unable to afford to pay for private security who might be exempt from the CCIA"; (3) as a result, he is "unable to comply with . . . the CCIA", and thus [he] intend[s] to continue to [carry his handgun concealed in the church]"; (4) by "plac[ing] off limits 'any gathering of individuals to collectively express their constitutional rights to . . . assemble," the CCIA "would seem to seem to cover a church service"; and (5) "[t]o the extent that this section covers [his] church activities, [he] do[es] not intend to comply." (Dkt. No. 1, Attach. 9, at ¶¶ 8-11, 32 [Mann Decl.].) Because the State Defendants waved their right to cross-examine Plaintiff Mann at the Preliminary Injunction Hearing on October 25, 2022, the Court takes Plaintiff Mann (a pastor) at his word. (Dkt. No. 58 [Stipulation].)

Based on the fact that Plaintiff Mann has sworn that he has frequently carried concealed during expressive religious assemblies and will do so again, the Court finds he has asserted a sufficiently concrete and imminent intent to violate this provision of the CCIA. *See, e.g., Houston*, 733 F.3d at 1332-37. Moreover, based on the brazen nature of Plaintiff Mann's intended defiance,[62] the fact that at least one of his congregants is a member of local law enforcement,[63] and the fact of the recent publicization of the CCIA (including its sensitive-location provision) in New York State,[64] the Court finds that a sign of Plaintiff Mann's "concealed" handgun is likely to both (1) occur and (2) result in a complaint from a concerned

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62 *See, supra,* note 15 of this Decision.

63 *See, supra,* note 16 of this Decision.

64 *See, supra,* note 16 of this Decision.

citizen.[65] With regard to the proper Defendants to Plaintiff Mann's challenge to this regulation, the Court finds that Defendants Hilton, Oakes and Nigrelli are proper Defendants to Mann's challenge for the reasons stated above in Part III.A.2.b. of this Decision.

In light of all of this evidence, the Court finds that each of these two Plaintiffs (Terrille and Mann) has shown (1) an injury in fact (i.e., the denial of his right to armed self-defense in public under the Second Amendment caused through a credible threat of enforcement of this regulation), (2) a sufficient causal connection between the injury and the conduct complained of (i.e., the fact that Defendants Soares, Nigrelli, Hilton, and Oakes have sufficiently threatened to enforce Section 4 of the CCIA against one or both of these two Plaintiffs in accordance with their duty to do so), and (3) a likelihood that a favorable decision from this Court will cause the injury to be redressed by these four Defendants (who, again, each has the specific duty to enforce Section 4).

For all of these reasons, the Court finds that Plaintiff Terrille has standing to challenge this regulation, and that Defendants Soares and Nigrelli are proper Defendants to that challenge. Similarly, the Court finds that Plaintiff Mann also has standing to challenge this regulation, and that Defendants Hilton, Oakes and Nigrelli are proper Defendants to that challenge.

t. "[T]he area commonly known as Times Square"

Based on a careful consideration of the State Defendants' continued challenge to the sufficiency of the Complaint and testimony with regard to this paragraph (and in the absence of elaborative testimony at the Preliminary Injunction Hearing), the Court finds that State

[65] *See, supra,* note 17 of this Decision.

Defendants are correct: Plaintiffs have not sufficiently alleged or expressed a concrete intention to carry concealed, in the immediate future, in the area commonly known as Times Square. The Court therefore reconsiders this portion of its Decision and Temporary Restraining Order of October 6, 2022,[66] and denies Plaintiffs' motion for a preliminary injunction with regard to this regulation for lack of standing.

3. Standing to Challenge Restricted Locations

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[66] To this analysis, the Court would add only that, if Plaintiffs had shown standing regarding this area, the Court would have likely found an American historical tradition of banning firearms in this unique regularly congested commercial area filled with expressive conduct. In doing so, the Court would not have relied on two of the (purportedly) three "more instances of laws involving fairs and markets" provided by the State Defendants (Dkt. No. 48, at 91), because they are from 1328 and 1534, and thus too remote from the relevant time period to shed light on the public understanding of the Second Amendment in 1791 and/or of the Fourteenth Amendment in 1868. However, the Court would have relied on the third such law provided by the State Defendants (a Tennessee law from 1869-70). Together, there exist three historical state laws barring firearm possession in "fairs" or "markets" (although the first law was admittedly aimed at the brandishing of firearms, while the carrying of weapons is concealed today in New York). *See* 1786 Va. Laws 33, ch. 21, An Act Forbidding and Punishing Affrays ("[N]o man, great nor small, [shall] go nor ride armed by night nor by day, in fair or markets … in terror of the Country …."); Francois Xavier Martin, A Collection of Statutes of the Parliament of England in Force in the State of North Carolina, 60-61 (Newbern 1792) ("[N]o man great nor small ... except the King's servants in his presence ... be so hardy to ... ride armed by night nor by day, in fairs [or] markets …."); 1869-70 Tenn. Pub. Acts 23-24 (providing that no person may carry a "deadly or dangerous weapon" when attending "any fair, race course, or other public assembly of the people."). In 1790, Virginia contained about 20.9 percent of the total American population (747,610 out of 3,569,100), and North Carolina contained about 11.0 percent (393,751 out of 3,569,100). *See Return of the Whole Number of Persons Within the Several Districts of the United States: 1790* (Philadelphia 1793). The fact that 31.9 percent of Americans in 1791 were governed by such laws regulating the carrying of firearms in "fairs" or "markets" (albeit one of which was limited to terroristic behavior) would appear to shed some light on the public meaning of the words "keep and bear arms" in Second Amendment when it was adopted. The Court notes that, in 1870, Tennessee contained about 3.3 percent of the total American population (1,258,520 out of 38,558,371). *See* Dept. of Interior, Compendium of Ninth Census: 1870 (1870). Assuming the Virginia and North Carolina laws were still in effect then, the three states would have contained about 9.2 percent of the American population, with Virginia contributing about 3.2 percent (1,225,163 out of 38,558,371) and North Carolina contributing about 2.8 percent (1,071,361 out of 38,558,371).

Section 5 of the CCIA bans the carry of firearms in what it calls "a restricted location," which is any

> private property where such [license holder] knows or reasonably should know that the owner or lessee of such property has not permitted such possession by clear and conspicuous signage indicating that the carrying of [firearms] on their property is permitted or has otherwise given express consent.

Each Plaintiff has standing to challenge this regulation because each one alleges and/or swears he has in New York State a home, where Section 5 requires him to engage in compelled conspicuous speech on his property with those persons passing by his property. (*See, e.g.,* Dkt. No. 1, at ¶¶ 2-8, 140-47, 149, 162, 174, 178, 184, 198, 217 [Compl.]; Dkt. No. 1, Attach. 3, at ¶ 1 [Johnson Decl.]; Dkt. No. 1, Attach. 4, at ¶ 1 [Sloane Decl.]; Dkt. No. 1, Attach. 5, at ¶¶ 1, 25-29 [Leman Decl.]; Dkt. No. 1, Attach. 8, at ¶¶ 13-15, 17-19, 21 [Antonyuk Decl.]; Dkt. No. 1, Attach. 9, at ¶¶ 1, 12-13 [Mann Decl.]; Dkt. No. 1, Attach. 10, at ¶¶ 1, 17 [Terrille Decl.].)

This is particularly so for three of the six Plaintiffs: (1) Plaintiff Terrille, who currently lives as a tenant in an apartment complex that does not permit tenants to post signage outside their units; (2) Plaintiff Leman, who runs a small hotel/bed and breakfast for guests and faces a loss of patronage by the business of gun owners who wish to travel lawfully with their firearms if he does not post a sign (which he thus must do because, for him, "it is entirely impractical to provide person-by-person 'express consent' to each individual who stops by"); and (3) Plaintiff Antonyuk, who (due to the notoriety he has achieved in *Antonyuk I*) fears that if he posts the equivalent of a conspicuous "Guns Welcome" sign (there also being no way he can otherwise provide the required "express consent" to all license-holding visitors 24 hours a day 365 days a year under the CCIA) he will subject himself and his family to harassment, vandalism and

physical confrontation by "those who disagree" with his political views, as well as theft by burglars (due to the monetary value of firearms), and home invasion by violent criminals. (Dkt. No. 1, Attach. 10, at ¶ 17 [Terrille Decl.]; Dkt. No. 1, Attach. 5, at ¶¶ 25-29 [Leman Decl.]; Dkt. No. 1, Attach. 8, at ¶¶ 13-18 [Antonyuk Decl.].) *See, e.g, All for Open Soc'y Int'l, Inc. v. United States Agency for Int'l Dev.*, 570 F. Supp. 2d 533, 540 (S.D.N.Y. 2008) ("[T]he fact that the [plaintiffs] are required to speak the Government's message in exchange for the Leadership Act subsidy is a sufficient injury-in-fact.").

Moreover, with regard to privately owned property that is open for business to the public (which also appears to be covered by Section 5), two of the six Plaintiffs have sufficiently sworn that (1) they routinely visit "non-sensitive" privately owned properties that are open for business to the public (which would also be covered by Section 5 of the CCIA), and (2) they will continue to do so carrying their licensed handguns concealed, regardless of whether those properties lacks a conspicuous sign saying that Plaintiffs can do so (although they will not enter those premises carrying concealed if there is a sign saying they cannot do so). (*See, e.g.,* Dkt. No. 1, Attach. 3, at ¶ 18 [Johnson Decl., discussing visits to "gas stations, grocery stores, home improvement stores, [and] big box stores"]; Dkt. No. 1, Attach. 10, at ¶¶ 10, 12-13 [Terrille Decl., discussing frequency of visits to "First National Bank of Scotia" as well as "gas stations, grocery stores (such as Hannaford Supermarket and Price Shopper), home improvement stores, [and] big box stores" such as "Walmart, Walgreens and Target"]; *cf.* Dkt. No. 1, Attach. 8, at ¶¶ 6, 12 [Antonyuk Decl., discussing visits to a "gas station"].) Again, because the State Defendants waved their right to cross-examine Plaintiffs at the Preliminary Injunction Hearing on October 25, 2022, the Court takes Plaintiffs at their word. (Dkt. No. 58 [Stipulation].)

Based on the fact that Plaintiffs Johnson and Leman have sworn that they have frequently carried concealed in privately owned, open-to-the-public locations and will do so again soon (regardless of the absence of CCIA signage), the Court finds they have asserted a sufficiently concrete and imminent intent to violate this provision of the CCIA. *See, e.g., Houston*, 733 F.3d at 1332-37. Moreover, based on the brazen nature of the intended defiance of that Plaintiffs Johnson and Leman and the fact of the recent publicization of the CCIA (including its sensitive-location provision) in New York State,[67] the Court finds that a sign of these Plaintiffs' "concealed" handguns is likely to both (1) occur and (2) result in a complaint from a concerned citizen.[68] With regard to the proper Defendants to this challenge, the Court finds that Defendants Nigrelli, Doran, Conway, Fitzpatrick, Cecile,[69] Soares, Oakes, Hilton, and Stanzione are proper Defendants because they are tasked with enforcing the CCIA (include Section 5) in the locations in which Plaintiffs live (and some of them in the privately owned, open-to-the-public locations in which Plaintiffs Johnson and Leman intend to carry concealed, regardless of the absence of CCIA signage), for the reasons stated above in this Decision.

In light of all of this evidence, the Court finds that each of the six Plaintiffs has shown (1) an injury in fact (i.e., the denial of his right to armed self-defense in public under the Second Amendment caused and/or the denial of his right to be free from compelled speech under the First Amendment, through a credible threat of enforcement of this regulation), (2) a sufficient

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67 *See, supra,* note 16 of this Decision.

68 *See, supra,* note 17 of this Decision.

69 The Court notes that, in his declaration, Plaintiff Johnson referred to Defendant Cecile as one of "the top law enforcement officials where I live" (i.e., the City of Syracuse). (Dkt. No. 1, Attach. 3, at ¶ 23 [Mann Decl.].)

causal connection between the injury and the conduct complained of (i.e., the fact that Defendants Nigrelli, Doran, Conway, Fitzpatrick, Cecile, Soares, Oakes, Hilton, and Stanzione have sufficiently threatened to enforce Section 5 of the CCIA against one or more of these six Plaintiffs in accordance with their duty to do so), and (3) a likelihood that a favorable decision from this Court will cause the injury to be redressed by these four Defendants (who, again, each has the specific duty to enforce Section 5).

For all of these reasons, the Court finds that all six Plaintiffs have standing to challenge this regulation, and that Defendants Nigrelli, Doran, Conway, Fitzpatrick, Cecile, Soares, Oakes, Hilton, and Stanzione are proper Defendants to that challenge.

4. Propriety of Defendant Hochul as a Party

None of the proper parties found above in Parts III.A.1. through III.A.3. of this Decision was Defendant Hochul. In *Antonyuk I,* the Court expressly acknowledged that "[a]uthority exists for the point of law that the Governor and Attorney General might not be proper defendants (regardless of whether they were named solely in his or her official capacity)." *Antonyuk I,* 2022 WL 3999791, at *14. Granted, the Court

> question[ed] the applicability of th[ose] cases to proper-defendant determinations under the CCIA, given that . . . the CCIA has introduced a 'sensitive-location restriction and "restricted-location" restriction across the state . . . , and the Governor could simply replace a Superintendent who refuses to enforce the CCIA.

Id. And, as a result, the Court stated that "it appears the list of proper defendants could conceivably include not simply the licensing officer, but the Governor . . . ." *Id*. at *15.

However, the Complaint in this action alleges only as follows, in pertinent part:

> Governor Hochul (1) has openly criticized and expressed contempt for the Supreme Court's decision in *Bruen*, (2) took action to circumvent the

> Supreme Court's ruling by merely changing] the nature of the open-ended discretion" from proper cause to good moral character . . . , (3) pushed enactment of the CCIA through the legislature and (4) signed the bill into law, and (5) subsequently has acted as the interpreter-in-chief with respect to the CCIA's provisions. The Governor has opined on the statute's proper interpretation, and provided guidance and instructions to officials throughout the state of New York as to its implementation according to her desires. For example, Governor Hochul (1) has instructed that the CCIA's new licensing process applies even to those whose carry license applications are already submitted and pending prior to September 1, 2022; (2) has claimed that the 'good moral character' activity will involve door-to-door interviews of a person's neighbors; (3) has claimed that the CCIA's plain text should not apply to certain parts of the Adirondack Park in contradiction to the wishes of the bill's sponsors; and (4) has opined that the CCIA's 'restricted locations' provision creates a 'presumption … that they don't want concealed carry unless they put out a sign saying Concealed Carry Weapons Welcome Here. . . . Moreover, and again, the Superintendent, who is tasked with implementing and enforcing various provisions of the CCIA, is the Governor's underling . . . .

(Dkt. No. 1, at ¶ 9 [Compl.] [internal quotation marks, citations, and footnotes omitted].)

True as all this might be, it does not appear enough to render her a proper party to this action under the case law cited in *Antonyuk I*. Plaintiffs have not alleged or shown how Defendant Hochul could be properly found to have the specific legal duty to enforce the CCIA. Granted, in New York State, a Governor has the ability to remove any elected sheriff or district attorney. *See* N.Y. Const. Art. 13, § 13(a),(b) (" The governor may remove any elective sheriff . . . [or] district attorney . . . within the term for which he or she shall have been elected; but before so doing the governor shall give to such officer a copy of the charges against him or her and an opportunity of being heard in his or her defense . . . . Any district attorney who shall fail faithfully to prosecute a person charged with the violation in his or her county of any provision of this article which may come to his or her knowledge, shall be removed from office by the governor, after due notice and an opportunity of being heard in his or her defense."). Moreover,

here, it appears that, 49 days before being elevated to Acting Superintendent, Defendant Nigrelli (in the middle of threatening to arrest the specific group of license holders intending to violate the CCIA) paused to assure his boss of the concrete and particularized nature of his message:

> For those [license holders] who choose to violate this law … Governor, it's an easy message. I don't have to spell it out more than this. We'll have zero tolerance. If you violate this law, you will be arrested. Simple as that. Because the New York State Troopers are standing ready to do our job to ensure ... all laws are enforced.

(Dkt. No. 1, Attach. 9, at ¶ 22, n.5 [Mann Decl.].) However, no suggestion has been made, or evidence adduced, that Defendant Hochul's elevation of Defendant Nigrelli was connected to this message (or any failure or refusal of Defendant Bruen to enforce the CCIA).

As a result, it is not clear to the Court how, to the extent that Plaintiffs were to ultimately prevail on their claims, Defendant Hochul would be the individual who may provide them the (legal) relief they seek. *See Antonyuk I,* 2022 WL 3999791, at *11 ("[T]he question the Court must ask itself is whether (and, if so, the extent to which), if ordered to do so by the Court, [the relevant defendant] could provide Plaintiffs with the relief they seek."). As Plaintiffs concede in their Complaint, "[t]o be sure, Governor Hochul is not the official to whom the Legislature delegated responsibility to implement the provisions of the challenged statutes." (Dkt. No. 1, at ¶ 9 [Compl.] [internal quotation marks omitted].)

For all of these reasons, the Court dismisses Defendant Hochul as a party to this action.[70]

B. Substantial Likelihood of Success on the Merits

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[70] However, should evidence surface during the course of this litigation showing Defendant Hochul's personal involvement in the enforcement of the CCIA through the exercise of her authority under N.Y. Const. Art. 13, § 13, the Court would revisit this issue and entertain a motion to amend the Complaint.

The Court begins its analysis of the merits of Plaintiffs' claims by explaining that it interprets the one-step, burden-shifting approach set forth in *NYSRPA* (described in more detail above in Part II of this Decision) as essentially requiring the Court, at least in the context of this action, to engage in the following analytical inquiry.[71]

The Court must first ask whether the conduct in question is covered by the plaint text of the Constitution. If so, the burden shifts to the Government to demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. In deciding whether the Government has met this burden, the Court must ask (a) *why* and *how* the modern regulation being challenged burdens a law-abiding citizen's right to armed self-defense, (b) *why* and *how* the historical analogues relied on (to the extent they are part of the Nation's historical tradition of firearm regulation) burden a law-abiding citizen's right to armed self-defense, and (c) whether the modern regulation is *comparable* (or proportionate) to its historical analogues in that it imposes a comparable burden for a comparable reason or justification (understanding that, if it is not, then that fact could be evidence that the modern regulation is unconstitutional).

If there are *no* clear historical analogues, the Court must ask whether the modern regulation addresses a *general* societal problem that has persisted since the 18th century (understanding that, if it does, then the lack of a historical analogue is relevant evidence that the challenged regulation is inconsistent with the Second Amendment especially if a proposed historical analogue was rejected on constitutional grounds). Moreover, if there are no clear historical analogues *and* the modern regulation does *not* address a general societal problem that

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[71] Of course, before starting this inquiry, the Court will need to address the extent to which Plaintiffs have standing, which is a threshold issue. *Antonyuk I*, 2022 WL 3999791, at *10-25.

has persisted since the 18th century, then the Court must essentially go back and repeat the above-described analytical inquiry (because the Constitution *must* apply) using a "more nuanced" approach (essentially meaning broaden its conception of what constitutes an "analogue" and focus its attention on the justification for, and burden imposed by, it), with the understanding that generally the Court should not uphold a modern law that only remotely resembles its historical analogues.

As for the nature of the laws that the Court will consider, although it is not the Court's duty to find analogues for Defendants or "sift" through those analogues, the Court has (given the importance of the issues presented) tried to find analogous laws to the extent the State-Defendants may have not provided them.[72] Finally, to the extent that the Court has (on some occasions) departed from its reasoning and conclusions in its Decision and Temporary

[72] More specifically, in doing so, the Court has mostly relied on the results of (non-Boolean) word searches in the sole public database of such historical gun laws that it has found (on the Duke Center for Firearms Law's Repository of Historical Gun Laws, at https://firearmslaw.duke.edu/), and then obtained PDF copies of those laws with the grateful help of the Second Circuit librarian (because the Duke database does not contain such PDF copies). The Court notes also that future district courts deciding similar challenges (and counsel litigating them) would probably find it helpful to be able to access an online database (say, on Westlaw, Lexis, Bloomberg Law or the Duke Repository of Historical Gun Laws) that contains both (1) PDF copies of the historical laws so that they may be verified, and (2) text translations so that can be searched using Boolean logic. As for how to interpret these laws, in this Court's experience, what would be most helpful in properly applying the *NYSRPA* standard is not a court-appointed expert historian under Fed. R. Evid. 706 (who the losing party might argue was more like a court-*anointed* expert historian). The State Defendants are fully capable of meeting their burden of producing analogues (especially when prodded to do so), and judges appear uniquely qualified at interpreting the meaning of statutes. What would be more helpful to this Court is the testimony of opposing historians with expertise in the time periods and regions that produced the laws. Ours is an adversarial system, after all, and the Court imagines that reasonable minds may disagree about such issues as (1) the nature and extent of the then-existing societal problem that justified a historical law, and (2) the nature and extent of the burden imposed by the law at that time and place.

Restraining Order of October 6, 2022, the Court has generally done so based on its receipt of better briefing by the State Defendants and its further consideration of the historical laws obtained in light of the standard set forth in *NYRPA*.

1. Application Requirements

The Court begins this analysis by finding that the Second Amendment's plain text covers the conduct in question: carrying (or applying for a license to carry) a concealed handgun in public for self-defense. More specifically, the Court finds that (1) Plaintiff Sloane is part of "the People" protected by the amendment, (2) the weapons in question are in fact "arms" protected by the amendment, and (3) the regulated conduct (i.e., bearing a handgun in public for self-defense) falls under the phrase "keep and bear." *NYSRPA*, 142 S. Ct. at 2134-35; *see also D.C. v. Heller*, 554 U.S. 570, at 583-92 (2008) (analyzing meaning of "bear arms" at time of both 1791 and 1868).

The State Defendants argue that the Second Amendment's plain text does not cover the CCIA's "good moral character" requirement (and the other challenged aspects of the application process) because (1) the Second Amendment protects only *law-abiding, responsible* citizens' right to keep and bear arms, (2) Plaintiff Sloane cannot show himself to be a law-abiding, responsible citizen until he is of "good moral character" (and has satisfied the other aspects of the application process), and (3) thus, the "good moral character" requirement (and related aspects of the application process) are outside the scope of the Second Amendment. (Dkt. No. 48, at 36-38.) In so doing, the State Defendants attempt to avoid the impact of the burden-shifting rule set forth in *NYSRPA*. They fail.

As stated in *NYSRPA*, the Supreme Court's one-step, burden-shifting approach consists of first determining whether the Second Amendment's plain text covers Plaintiffs' conduct, and then determining whether Defendants have met their burden of demonstrating that the regulation is consistent with this Nation's historical tradition of firearm regulation. This is why "[o]nly 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." *NYSRPA*, 142 S. Ct. at 2126 (emphasis added). Thus, New York State's determination of whether Plaintiff Sloane is of "good moral character" does not *precede* the application of the Second Amendment, but *follows* it, because Sloane is seeking to obtain a license to carry a handgun concealed in public for self-defense (which the Supreme Court has already expressly found to be conduct covered by the Second Amendment). *See NYSRPA*, 142 S. Ct. at 2126 ("We therefore turn to whether the plain text of the Second Amendment protects Koch's and Nash's proposed course of conduct—carrying handguns publicly for self-defense. We have little difficulty concluding that it does. Respondents do not dispute this. See Brief for Respondents. Nor could they. Nothing in the Second Amendment's text draws a home/public distinction with respect to the right to keep and bear arms."). Indeed, the Supreme Court in *NYSRPA* specifically found that New York State's license application process is governed by the Second Amendment when it ruled that Brandon Koch and Robert Nash did not have to show a special need for self-protection distinguishable from that of the general community as part of that application process. *NYSRPA*, 142 S. Ct. at 2156.

As a result, the Court finds that Defendants must rebut the presumption of protection against New York State's firearm regulation by demonstrating that the below-discussed aspects

of the CCIA's application requirements are consistent with this Nation's historical tradition of firearm regulation.

a. "Good Moral Character"

The Court begins its analysis by observing that in their opposition papers the State Defendants do not clearly state *why* this regulation (or any of the challenged regulations, for that matter) burdens a law-abiding citizen's right to armed self-defense. (Dkt. No. 48, at 38-41.) However, because this statute is of great importance to New York State, the Court has liberally construed the State Defendants' opposition papers and attempted to state what it understands to be the strongest possible reason or justification for this regulation (and each of the challenged regulations).

The apparent reason for this regulation is to reduce non-self-defensive handgun violence (whether intentional or accidental, and whether in the home or outside the home) that is caused in some way by the possession or use of a handgun by someone who also possesses a concealed-carry license. *Governor Hochul Signs Landmark Legislation to Strengthen Gun Laws and Bolster Restrictions on Concealed Carry Weapons in Response to Reckless Supreme Court Decision* https://www.governor.ny.gov/news (July 1, 2022) ("Research has shown that violent crime involving firearms increases by 29 percent when people are given the right to carry handguns, caused in part by a 35 percent increase in gun theft and a 13 percent decrease in the rate that police solved cases. Today's legislative package furthers the State's compelling interest in preventing death and injury by firearms . . . .").[73]

[73] Another possible reason for this regulation, and the CCIA in general, is to simply make it so much more difficult to obtain a concealed-carry license in New York State that the number of concealed-carry licenses issued each year remains the same as it was before the Supreme Court

The way the regulation burdens law-abiding citizens' right to armed self-defense is by prohibiting a person from carrying a concealed handgun in public for self-defense unless he or she can persuade a licensing officer that he or she is of "good moral character," meaning that he or she would *never* use the weapon in a manner that would endanger oneself or others, pursuant to a standard that (1) involves *undefined* assessments of "temperament," "judgment" and "[]trust[]," and (2) lacks an express exception for actions taken in *self-defense*.

The State Defendants argue that this regulation's historical analogues consist of the following laws, of which they have provided copies: (1) Massachusetts, Pennsylvania and Virginia laws from 1648 and 1763 forbidding the sale and trading of arms to Indigenous people; (2) a Virginia law from 1756 prohibiting weapons possession by Catholics who refused to take an oath of loyalty to the government; (3) a Massachusetts law from 1637 disarming a list of named followers of a dissident preacher named John Wheelwright; (4) an English law from 1662 allowing royal officials to "search for and seize all arms in the custody or possession of any person or persons whom the said Lieutenant or two or more of their deputies shall judge

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issued its decision in *NYSRPA* when New York State licensing officers could require concealed-carry license applicants to show a special need for self-protection distinguishable from that of the general community. *See, e.g., Proclamation for Extraordinary Session* (June 24, 2022) ("I hereby convene the Senate and the Assembly … for the purpose of … [c]onsidering legislation I will submit with respect to addressing necessary statutory changes regarding firearm safety, in a way that ensures protection of public safety and health, after the United States Supreme Court decision in *NYS Rifle and Pistol Association, Inc. v. Bruen*."); *Governor Hochul Signs Landmark Legislation to Strengthen Gun Laws and Bolster Restrictions on Concealed Carry Weapons in Response to Reckless Supreme Court Decision* (July 1, 2022) https://www.governor.ny.gov/news (last visited Nov. 1, 2022) ("As a result of this decision, the State has taken steps to address the consequences of the Supreme Court decision and the resulting increase in licenses and in the number of individuals who will likely purchase and carry weapons in New York State."). However, because that reason would appear aimed at merely frustrating the exercise of law-abiding, responsible citizens' right of armed self-defense in public in disregard of the Second Amendment, the Court will use the more generous reason stated above.

dangerous to the peace of the Kingdom"; (5) Massachusetts, Pennsylvania, Maryland, North Carolina and Virginia laws from 1776 and 1777 disarming persons based on their reputation for being disloyal or hostile to the new Nation until they took an oath of loyalty; (6) New York, New Jersey and Pennsylvania militia statutes from between 1776 and 1822 disarming and punishing those who showed up to muster and demonstrated their unfitness to bear arms; and (7) the ordinances of nine cities (the District of Columbia, New York City, Brooklyn, Buffalo, Elmira, Syracuse, Troy, Lockport, and Albany) from between 1878 and 1913 requiring a permit to carry firearms in cities across the United States subject to the discretionary determination of an official often regarding whether the individual was potentially dangerous. (Dkt. No. 48, at 41-47.)

Of course, to the extent these laws were from the 17th or 20th centuries, the Court has trouble finding them to be "historical analogues" that are able to shed light on the public understanding of the Second Amendment in 1791 and/or of the Fourteenth Amendment in 1868 (when a three-fourths supermajority of both the state and federal governments ratified those amendments). *See NYSRPA*, 142 S. Ct. at 2136 ("Historical evidence that long predates or postdates either [1791 or 1868] may not illuminate the scope of the right."). That is, after all, the focus of the Court's inquiry.

Similarly, to the extent these laws come from a handful of cities, the Court has trouble finding that they constitute part of this Nation's tradition of firearm regulation, because (setting aside their geographical limitation to New York State and the District of Columbia), they do not appear accompanied by similar laws from states. *See NYSRPA*, 142 S. Ct. at 2154 ("[T]he bare existence of these localized restrictions cannot overcome the overwhelming evidence of an

otherwise enduring American tradition permitting public carry.").[74] The Court notes that in 1870 the population of the United States was about 38,558,371, while the populations of District of Columbia (109,199), New York City (942,292), Brooklyn (396,099), Buffalo (117,714), and Syracuse (43,051) amounted to only about 1,608,355, or only about 4.17 percent of the population of the United States. *See* Dept. of Interior, Compendium of Ninth Census: 1870, Tables I and VIII (1870).[75]

Granted, the State Defendants appear to also rely on a citation in the footnote of a book to what they call "ordinances from more than two dozen [other] cities, passed between the mid-19th century and early 20th century, requiring a permit to carry firearms in cities across the United States subject to the discretionary determination of an official." (Dkt. No. 48, at 46.) However, they do not adduce copies of those ordinances, as is their burden. *See NYSRPA*, 142 S. Ct. at 2150 ("Of course, we are not obliged to sift the historical materials for evidence to sustain New York's statute. That is respondents' burden."). In any event, the Court has obtained copies of all of those pre-20th century ordinances with the help of the Second Circuit Librarian. They consist of licensing ordinances from nine cities from between 1888 and 1899 (Salt Lake City, UT,

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[74] By "similar laws from states," the Court means laws imposing the safety-motivated gun-possession prohibitions on members of the *general population* (except members of law enforcement or the military) unless they have received a discretionary license.

[75] The Court notes that, by the time it passed its law in 1893, the District of Columbia's proportion of the national population had risen only slightly, from about 0.28 percent (109,199 out of 38,558,371) to about 0.37 percent (230,392 out of 62,622,250). *See* Dept. of Interior, Compendium of Eleventh Census: 1890, Table VI (1890). The Court notes also that Georgetown (which was added to the District of Columbia in 1891) had a population of only 12,578 in 1780. *See* Dept. of Interior, Census Bulletin No. 132 (Oct. 3, 1891).

Concordia, KS, Kansas City, MO, Oakland, CA, Stockton, CA, Wheeling, WV, St. Louis, MO, Spokane, WA, and Ritzville, WA).[76]

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[76] *See* The Revised Ordinances of Salt Lake City, Utah (Salt Lake City: Tribune Jon Print, 1893), p.283, Sec. 14 (1888 ordinance providing that no "person who shall carry … any concealed deadly weapon, without the permission of the mayor first had and obtained"); "Offenses and Punishments: Ordinance No. 401," Concordia Blade (KS), December 20, 1889, p. 7, § 41 (Dec. 26, 1899) ("[I]t shall be unlawful for any person within the city of Concordia to carry upon his or her person any concealed pistol … or any deadly weapon unless he has a permit to do so from the Mayor of the city of Concordia."); An Ordinance in the Revision of the Ordinances Governing the City of Kansas (Kansas City, MO; Isaac P. Moore's Book and Job, 1880), p. 264 (prohibiting concealed carriage unless the individual is a government official or has obtained "special permission from the Mayor"); Fred L. Button, ed., *General Municipal Ordinances of the City of Oakland, California* (Oakland, CA; Enquirer, 1895), p. 218, Sec. 1 (1890 ordinance providing, "A written permit may be granted by the Mayor for a period of not to exceed one year to any peaceable person whose profession or occupation may require him to be out at late hours of the night to carry a concealed deadly weapon upon his person"); Charter and Ordinances of the City of Stockton (Stockton, CA: Stockton Mail Printers and Bookbinders, 1908), p. 240 (1891 ordinance making it unlawful for a person, with certain exceptions, "to wear or carry concealed about his person any pistol …, except he first have a written permit to do so from the Mayor of the City of Stockton"); Laws and Ordinances for the Government of the City of Wheeling, West Virginia (Wheeling, WV: W. Va. Printing 1891), p.206 (1891 ordinance requiring "a permit in writing from the mayor" to carry "any pistol, dirk, bowie knife or weapon of the like kind," as well as prohibiting certain concealed weapons); The Municipal Code of St. Louis (St. Louis: Woodward 1901), p.738, Sec. 1471 (1892 revised ordinance providing, "Hereafter it shall not be lawful for any person to wear under his clothes, or concealed about his person, any pistol or revolver … within the City of St. Louis, without written permission from the major …"); Rose M. Denny, ed., *The Municipal Code of the City of Spokane, Washington* (Spokane, WA; W.D. Knight, 1896), p. 309-10, Sec. 1 (1895 ordinance providing, "If any person within the City of Spokane shall carry about his person any concealed weapon, consisting of either a revolver, pistol or other fire-arms, … [he] shall be deemed guilty of a misdemeanor …; provided, that this section shall not apply to … persons having a special written permit from the Superior Court to carry weapons"); Charles H. Hamilton, ed., *The General Ordinances of the City of Milwaukee to January 1, 1896: With Amendments Thereto and an Appendix* (Milwaukee, WI: E. Keough, 1896), pp.692-93, Sec. 25 ("It shall be unlawful for any person … to carry or wear concealed about his person, any pistol … within the limits of the city of Milwaukee; provided, however, that the chief of police of said city may upon written application to him made, issue and give a written permit to any person … to carry within the said city … when it is made to appear to said chief of police that it is necessary for the personal safety of such person or for the safety of his property or of the property with which he may be entrusted, to carry such weapon …."); "Ordinance No. 79," Adams County News (Ritzville, WA), June 14, 1899, p.2, Sec. 1 ("The following persons are hereby declared to be disorderly persons: … All persons …

For the sake of brevity, the Court will not linger on the diminished weight that is to be given to such late-19th century laws from cities (especially a city in a territory, like Salt Lake City was at the time). *See NYSRPA*, 142 S. Ct. at 2136, 2137, 2154 ("Historical evidence that long predates or postdates either [1791 or 1868] may not illuminate the scope of the right. . . . As we suggested in *Heller* . . . , late-19th-century evidence cannot provide much insight into the meaning of the Second Amendment when it contradicts earlier evidence . . . [T]he bare existence of these localized restrictions cannot overcome the overwhelming evidence of an otherwise enduring American tradition permitting public carry."). Even if the Court were to assume that such laws were sufficiently *established* (based on their number and geographical origins across the Nation), the Court could not find them *representative* of the Nation). This is because, according to the Census of 1890, the populations of those nine cities—even when combined with the populations of the five cities discussed earlier—totaled 3,646,906, which amount to only about 5.8 percent of the total United States population of about 62,622,250. *See* Dept. of Interior, Compendium of Eleventh Census: 1890, Table VI (1890).[77]

Although the Court does not suggest that the Supreme Court in *NYSRPA* did not envision the existence of competing strains of the American tradition of firearm regulation, the Court is

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who shall carry about their persons any concealed weapon consisting of a revolver, pistol or other firearms (except by written permit from the Town Marshal ….").

[77] According to Tables VI and VIII of the Eleventh Census (1890), the populations were as follows: New York City (1,515,301), Brooklyn (806,343), St. Louis (451,770), Buffalo (255,664), District of Columbia (230,392), Kansas City (132,716), Syracuse (88,143), Oakland (48,682), Salt Lake City (44,843), Wheeling (34,522), Spokane (19,922), Stockton (14,424), and Concordia (3,184). *See* Dept. of Interior, Compendium of Eleventh Census: 1890 (1890), The data on Ritzville was not collected until 1900, when its population was 761. *See* Dept. of Interior, Compendium of Twelfth Census: 1900 (1900).

mindful of the fact that such open-ended discretionary licensing schemes did not burden 94 percent of Americans, which the Supreme Court would probably agree is "the overwhelming weight" of the American population. *See NYSRPA*, 142 S. Ct. at 2155 (using the term to refer to 99% of the population). More plainly stated, although the Court in no way suggests that America lacks a historical tradition of firearm-licensing schemes, it finds (based on the current briefing of the parties) that America lacks a historical tradition of firearm-licensing schemes conferring open-ended discretion on licensing officers. *See NYSRPA*, 142 S. Ct. at 2123 ("But the vast majority of States—43 by our count—are 'shall issue' jurisdictions, where authorities must issue concealed-carry licenses whenever applicants satisfy certain threshold requirements, without granting licensing officials ***discretion*** to deny licenses based on a ***perceived*** lack of need or suitability.") (emphasis added). Indeed, in his concurring opinion in *NYSRPA*, Associate Justice Kavanaugh (joined by Chief Justice Roberts) stated as follows:

> As the Court explains, New York's outlier may-issue regime is constitutionally problematic because it grants ***open-ended discretion*** to licensing officials and authorizes licenses only for those applicants who can show some special need apart from self-defense. Those features of New York's regime—the ***unchanneled discretion*** for licensing officials and the special-need requirement—in effect deny the right to carry handguns for self-defense to many "ordinary, law-abiding citizens.' . . . Going forward, therefore, . . . the 6 States including New York potentially affected by today's decision may continue to require licenses for carrying handguns for self-defense so long as those States employ ***objective*** licensing requirements like those used by the 43 shall-issue States.

NYSRPA, 142 S. Ct. at 2162 (Kavanaugh, J., concurring) (emphasis added).

With regard to the remainder of the laws relied on by the State Defendants (i.e., the laws of Virginia, Massachusetts, Pennsylvania, Maryland, North Carolina, New York and New Jersey from between 1756 to 1822), generally, they appear to have been aimed at denying the

possession of guns to discrete groups of persons who were perceived to pose a danger to the public. The way they burdened law-abiding citizens' right to armed self-defense was by either (1) altogether prohibiting possession based on rather obvious characteristics (their race, religion or demonstrated unfitness to bear arms during militia muster), or (2) conditioning possession based on the taking of an oath.

For the sake of argument, the Court will assume that this remainder of the laws constitute a tradition that was sufficiently established (based on their number and geographical origins across the Nation) and representative of the Nation at the time (based on the proportion of the national population to which they applied). More important is that, even so, most of the laws relied on by the State Defendants (which were racially, religiously or politically motivated) were imposed on only *readily apparent* groups of people and often could be avoided by the *objective* act of taking an oath. The CCIA's "good moral character" requirement is not so objective in nature (e.g., by requiring a finding of a *likelihood* of harm to self or others based the prior *conduct* of the applicant, and permitting one to avoid the restriction by taking an oath),[78] and does not even expressly recognize an exception for actions taken in self-defense.

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[78] *See, e.g.,* William Lair Hill, *Ballinger's Annotated Codes and Statutes of Washington* (Vol. 2, 1897), 1881 Flourishing Deadly Weapon ("Every person who shall in a manner *likely* to cause terror to the people passing, exhibit or flourish, in the streets of an incorporated city or unincorporated town, any dangerous weapon, shall be deemed guilty of a misdemeanor ….") (emphasis added); Bruce L. Keenan, *Book of Ordinances of the City of Wichita* Carrying Unconcealed Deadly Weapons, § 2 (1899) ("Any person who shall in the city of Wichita carry unconcealed, any fire-arms, slungshot, sheath or dirk knife, or any other weapon, which when used is *likely* to produce death or great bodily harm, shall upon conviction, be fined not less than one dollar nor more than twenty-five dollars.") (emphasis added); *cf.* 1855 Ill. Criminal Code 365, Offenses Against the Persons of Individuals, Div. V, § 43 (proscribing instances in which a person "shall willfully and maliciously, or by agreement, fight a duel or single combat with any engine, instrument or weapon, the *probable* consequence of which might be the death of either party …").

As a result, based on a careful comparison of the burdensomeness of the CCIA's "good moral character" requirement (i.e., the burden imposed in light of its justification) to the burdensomeness of the relevant historical analogues (again, burden in light of justification), the Court finds the burdensomeness of the CCIA's "good moral character" requirement (which is imposed on *everyone* and can be avoided only through *open-ended discretionary* findings of "temperament," "judgment" and "[]trust[]" by licensing officials) is unreasonably disproportionate to the burdensomeness of the relevant historical analogues (which were imposed on only readily apparent groups of people and could often be avoided by the objective act of taking an oath).

This conclusion appears consistent with the majority of modern American firearm-licensing schemes, which require either likelihood of harm and/or a focus on the applicant's past conduct. *See Antonyuk II*, 2022 WL 5239895, at *9, nn.17-18 (collecting some of the modern state gun laws). This construction also appears consistent with *NYSRPA*: shouldering an applicant with the burden of persuading a license officer that he or she is of "good moral character" based on the officer's undefined assessments of "temperament," "judgment" and "[]trust[]" (in the face of a de facto presumption that he or she is *not*)[79] is akin to shouldering an applicant with the burden of persuading a license officer that he or she has a special need for

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[79] The need for an affirmative finding of "good moral character" (in the absence of which "[n]o license shall be issued") presumes a lack of it. This requirement also seems to depart from the historical statutes, which presumed a right to carry. *See, e.g., NYSRPA*, 142 S. Ct. at 2148 ("[T]he [mid-19th century] surety statutes *presumed* that individuals had a right to public carry that could be burdened only if another could make out a specific showing of 'reasonable cause to fear an injury, or breach of the peace.'") (emphasis added).

self-protection distinguishable from that of the general community (an equally mushy and subjective finding). The "good moral character" requirement is just a dressed-up version of the State's improper "special need for self-protection" requirement.

As one of their main defenses, the State Defendants repeatedly rely on the "no set of circumstances exists under which the regulation would be valid" standard governing facial challenges that was articulated in *Jacoby & Meyers, LLP v. Presiding Justices*, 852 F.3d 178, 184 (2d Cir. 2017). If there are such circumstances, they argue, the regulation must be left alone. Usually, the "circumstances" relied on by the State Defendants are circumstances in which the regulation is simply not enforced. (Dkt. No. 72, at 40-41 [Prelim. Inj. Hrg. Tr., in which counsel for the State Defendants argued that Defendant Doran "is fully capable of findings laws unconstitutional"].) It is difficult to see how Defendant Doran's finding the CCIA unconstitutional could constitute a "set of circumstances under which [the CCIA] would be valid."

In any event, even if the "no set of circumstances rule" applied, the Court would find that this regulation "lacks a plainly legitimate sweep." *See United States v. Decastro*, 682 F.3d 160, 168 (2d Cir. 2012) ("In order to succeed in his facial challenge . . . , Decastro would need to show that no set of circumstances exists under which the statute would be valid, i.e., that the law is unconstitutional in all of its applications, or at least that it lacks a plainly legitimate sweep") (internal quotation marks omitted). Moreover, even before *NYSRPA*, the Supreme Court appears to have created an exception to this general "no set of circumstances" rule.[80] To the extent that

[80] More specifically, in 1992, a plurality of the Supreme Court in *Planned Parenthood of Southeastern Pa. v. Casey* allowed a facial challenge to a statute when the statute would unconstitutionally impact a fundamental right in "a large fraction" of the cases to which the

the Supreme Court did so, the Court finds that the "good moral character" requirement (as it is currently defined) would unconstitutionally impact a fundamental right in "a large fraction" of the cases to which it applies, due to (1) its bestowal of open-ended discretion on licensing officers to deny licenses to applicants based on undefined assessments of "temperament," "judgment" and "[]trust[]," (2) its failure to confine those licensing officers' consideration to whether, based on the applicant's *prior conduct* (which can, of course, include certain types and forms of speech), the applicant is *likely* to use the weapon in a manner that would injure the applicant or others, and (3) its failure to expressly remind the licensing officer to make an exception for actions taken in *self-defense*.

In any event, the Court need not rely on a pre-*NYSRPA* exception, because *NYSRPA* itself appears to create one. Under the standard set forth in *NYSRPA*, if Second Amendment covers the plaintiff's conduct, and the government cannot "demonstrate that the regulation is consistent with the Nation's historical tradition of firearm regulation," then the regulation is invalid. Period. It would appear to defy this standard for this Court to find that such a law is inconsistent with

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statute applies. *See Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 895 (1992) ("The unfortunate yet persisting conditions we document above will mean that in a large fraction of the cases in which § 3209 is relevant, it will operate as a substantial obstacle to a woman's choice to undergo an abortion. It is an undue burden, and therefore invalid."), *abrogated on other grounds*, *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). In 2010, the Supreme Court observed that "the distinction between facial and as-applied challenges is not so well defined that it has some automatic effect or that it must always control the pleadings and disposition in every case involving a constitutional challenge." *Citizens United v. FEC*, 558 U.S. 310, 331 (2010). And, in 2016, the Supreme Court expressly adopted the *Casey* plurality's "large fraction" framework. *See Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2320 (2016), *abrogated on other grounds, Dobbs v. Jackson Women's Health Organization,* 142 S. Ct. 2228 (2022).

history and tradition, just to watch it be saved by the *one* possible application that makes it constitutional. As the Supreme Court explained in *Heller*,

> [T]he very enumeration of the [Second Amendment] right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is *really worth* insisting upon. . . . A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all. Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad.

Heller, 554 U.S. at 634-35) (emphasis in original).

In sum, this Court has certainly found historical support for a modern law providing that a license shall be issued or renewed except for applicants who have been found, based on their past conduct, to be likely to use the weapon in a manner that would injure themselves or others (other than in self-defense). This standard is objective, easily applied, and finds support in numerous analogues that deny the right to carry to citizens based on their past conduct (including crimes, demonstrations of mental illnesses, and dangerous behavior). Unfortunately, this is not the law that the New York State Legislature passed.

For all of these reasons, the Court reconsiders its prior ruling on the issue in its Decision and Temporary Restraining Order of October 6, 2022, and grants Plaintiffs' motion for a preliminary injunction with regard to this regulation.

b. List of Four Character References

As stated above in Part III.B.1.a. of this Decision, the apparent reason for this regulation is to reduce non-self-defensive handgun violence (whether intentional or accidental, and whether in the home or outside the home) that is caused in some way by the possession or use of a handgun by someone who also possesses a concealed-carry license. The way the regulation

burdens law-abiding citizens' right to armed self-defense is by prohibiting a person from carrying a concealed handgun in public for self-defense unless he or she provides a licensing officer with "four character references who can attest to the applicant's good moral character and that such applicant has not engaged in any acts, or made any statements that suggest they are likely to engage in conduct that would result in harm to themselves or others."

The State Defendants argue that this regulation's historical analogues consist of the following laws, of which they have provided copies: (1) a Virginia law from 1756 that disarmed persons where "any two or more justice of the peace, . . . shall know, or suspect any person to be a Papist, or shall be informed that any person is . . ."; (2) a Massachusetts law from 1637 that disarmed named religious dissidents based on "just cause of suspition [sic]"; (3) English, Massachusetts, Pennsylvania, Maryland, North Carolina, Virginia and New York laws from 1662 to 1777 that disarmed individuals based on a reputation-based perception of the individuals' belonging to certain dangerous groups; and (4) a City of Omaha ordinance from 1881 that similarly limiting the concealed carrying of weapons to "well known and worthy citizens" and "persons of good repute." (Dkt. No. 48, at 52-53.)

Again, to the extent these laws were from the 17th century, the Court has trouble finding them able to shed much light on the public understanding of the Second Amendment in 1791 and/or of the Fourteenth Amendment in 1868. *See, supra,* Part III.B.1.a. of this Decision and Order. Similarly, to the extent these laws come from cities, the Court has trouble finding that they constitute part of this Nation's tradition of firearm regulation. *Id*.

With regard to the remainder of the laws, generally, they appear to have been aimed at denying the possession of guns to persons reputed, or publicly known, to be a danger to the

public or Nation. Furthermore, generally, the way they burdened law-abiding citizens' right to armed self-defense was by disarming persons if they were "notoriously disaffected to the cause of the America," they "refuse[d] to associate to defend by Arms the United American Colonies," they refused to take an "oath or affirmation" of allegiance to the Nation, or they were known or suspected by two or more justices of the peace to be "Papists."

Granted, it seems overreactive (and a bit offensive) to literally analogize the need to regulate concealed-carry applicants to the need to regulate "groups deemed dangerous." But, sentiment aside, the fact remains that, at the time of our Nation's founding, at least five of the thirteen colonies had gun laws based on a reputation-based perception of an individual (Pennsylvania, Maryland, North Carolina, Virginia and New York). Furthermore, the Court has found three historical statutes (one from a state and two from cities) requiring an applicant to provide character references to be permitted to carry a gun.[81] The Court finds that, together,

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[81] *See* 1832 Del. Laws 208, § 1 ("[I]f upon application of any such free negro or free mulatto to one of the justices of the peace of the county in which such free negro or free mulatto resides, it shall satisfactorily appear upon the *written certificate of five or more respectable and judicious citizens of the neighborhood*, that such free negro or free mulatto is a person of *fair character*, and that the circumstances of his case justify his keep and using a gun, then and in every such case it shall and may be lawful for such justice to issue a license or permit under his hand and authorizing such free negro or free mulatto to have use and keep in his posession [sic] a gun or fowling piece") (emphasis added); Ordinances of Jersey City, Passed By The Board Of Aldermen March 31, 1871, § 3 ("[I]n in all cases the court shall require *a written endorsement of the propriety of granting a permit from at least three reputable freeholder*s ….") (emphasis added); 1881 Ordinances of the Mayor, Aldermen and Commonality of the City of New York art. XXVII, § 265 ("[T]he officer in command at the station-house … shall give said person *a recommendation* to the superintendent of police, or the inspector in command at the central office in the absence of the superintendent ….") (emphasis added). The Court notes that it reads *NYSRPA* as permitting consideration of city laws when they are not "bare," that is, when they are accompanied similar state laws, as here. *Cf. NYSRPA*, 142 S. Ct. at 2154 ("[T]he *bare* existence of these localized restrictions cannot overcome the overwhelming evidence of an otherwise enduring American tradition permitting public carry.") (emphasis added).

these eight laws (five of which came from states in 1777, including Virginia) were sufficiently established and representative to constitute a historical tradition of firearm regulation based on reputation (for example, by a reasonable number of character references). *Cf. NYSRPA*, 142 S. Ct. at 2142 ("[W]e doubt that three colonial regulations could suffice to show a tradition of public-carry regulation.").[82]

Based on a comparison of the burdensomeness of the CCIA's "four character references" requirement (i.e., burden versus justification) to the burdensomeness of the relevant historical analogues (again, burden versus justification), the Court finds the burdensomeness of the "four character references" requirement is reasonably proportionate to the burdensomeness of the relevant historical analogues.

As a result, Plaintiffs' motion for a preliminary injunction is denied with regard to this regulation.

c. List of Family and Cohabitants

As stated above in Part III.B.1.a. of this Decision, the apparent reason for this regulation is to reduce non-self-defensive handgun violence (whether intentional or accidental, and whether in the home or outside the home) that is caused in some way by the possession or use of a handgun by someone who also possesses a concealed-carry license. More specifically, the apparent reason for this regulation is to obtain the names of the applicant's cohabitants so that the licensing officer may (1) ask them if the applicant might pose a danger to themselves or

[82] The Court notes that, according to the First Census (1790), the populations of the five states listed above exceeded 57 percent of the total American population. *See Return of the Whole Number of Persons Within the Several Districts of the United States: 1790* (Philadelphia 1793).

others, and/or (2) determine if they themselves pose such a danger by having "ready access to any firearm." (Dkt. No. 48, at 54-55.) The way the regulation burdens law-abiding citizens' right to armed self-defense is by prohibiting a person from carrying a concealed handgun in public for self-defense unless he or she provides a licensing officer with the "names and contact information for the applicant's current spouse, or domestic partner, any other adults residing in the applicant's home, including any adult children of the applicant, and whether or not there are minors residing, full time or part time, in the applicant's home."

The State Defendants argue that historical analogues consist of those laws discussed above in Part III.B.1.b. of this Decision and Order. (Dkt. No. 48, at 54.) For the sake of argument, the Court will assume that these laws were sufficiently established and representative to constitute a historical tradition. The problem is that, while many of these laws were aimed at denying the possession of guns to persons who were *already* known *publicly* to be a danger, none of them required persons (who were otherwise unknown publicly to be a danger) to disclose the names of *non-character-references* who *may* know *privately* of such a danger or who may *themselves* constitute such a danger. As a result, it is difficult for the Court to conclude that the laws referenced by the State Defendants resemble this modern regulation more than "remotely." *See NYSRPA*, 142 S. Ct. at 2133 ("[C]ourts should not uphold every modern law that remotely resembles a historical analogue, because doing so risks endorsing outliers that our ancestors would never have accepted.").

Even if the Court were to stretch this analogy to its limit, it would find that the burdensomeness of this modern regulation (i.e., burden versus justification) is unreasonably disproportionate to the burdensomeness of the purported "historical analogues." Setting aside

the fact that the licensing officer is already being provided with four character references, the fact remains that, as the State Defendants concede, this detailed "cohabitant" information is already "available" to the "public[]"—including to the licensing officer—due to its existence on such things as marriage licenses, children's birth certificates, guardianship forms, school forms, adoption paperwork, applications for driver's license or passport, and U.S. census forms. (Dkt. No. 48, at 54.) If so, why doesn't the State simply retrieve it? Is this burden on a constitutional right being imposed solely for the licensing officer's *convenience*? Such convenience may justify a burden on a mere privilege, such as the privilege of driving, but not on a right covered by the plain text of the Constitution in the absence of sufficient analogous historical support. Furthermore, the penalty for non-compliance (even if inadvertent) is harsh. As the State Defendants appeared to acknowledge during oral argument on Plaintiffs' motion for a Temporary Restraining Order, if the applicant were to be found to have omitted one of the details, a licensing officer would essentially be required to deny the application. (*See, e.g.,* Dkt. No. 23, at 28, 37 [Temp. Restrain. Order Oral Argument Tr.].)

The Court can find no such comparable burdensomeness in the purported "historical analogues." Simply stated, the Court finds that this is an example of what the Supreme Court warned against as an "exorbitant" requirement. *See NYSRPA*, 142 S. Ct. at 2138, n.9 ("That said, because any permitting scheme can be put toward abusive ends, we do not rule out constitutional challenges to shall-issue regimes where, for example, lengthy wait times in processing license applications or exorbitant fees deny ordinary citizens their right to public carry.") (emphasis added).

For all of these reasons, Defendants are preliminarily enjoined from enforcing this regulation during the pendency of this litigation.

d. List Social Media Accounts for Past Three Years

As stated above in Part III.B.1.a. of this Decision, the apparent reason for this regulation is to reduce non-self-defensive handgun violence (whether intentional or accidental, and whether in the home or outside the home) that is caused in some way by the possession or use of a handgun by someone who also possesses a concealed-carry license. More specifically, the apparent reason for this regulation is to enable the licensing officer to determine if the applicant has recently posted any statements online showing them to be a danger to themselves or others. (Dkt. No. 48, at 58-60.) *See, e.g., Antonyuk I*, 22-CV-0734, Amicus Brief of Dr. Jaclyn Schildkraut, Ph.D. (N.D.N.Y. filed Aug. 17, 2022) ("Research regarding the social media leakage by mass shooters is directly relevant to this issue because, among other reasons, mass shooters have applied for gun licenses, including concealed carry permits, before committing their violent offenses."). The way the regulation burdens law-abiding citizens' right to armed self-defense is by prohibiting a person from carrying a concealed handgun in public for self-defense unless he or she provides a licensing officer with "a list of former and current social media accounts of the applicant from the past three years to confirm the information regarding the applicants' character and conduct."

The State Defendants appear to argue that historical analogues consist of (1) those laws "disqualifying categories of people from the right to bear arms . . . when they judged that doing so was necessary to protect the public safety," and (2) the laws discussed above in Part III.B.1.b. of this Decision and Order. (Dkt. No. 48, at 54.) Again, for the sake of argument, the Court will

assume that these laws were sufficiently established and representative to constitute a historical tradition. However, with regard to the first set of laws, the Defendants have not specified them and provided copies of them, and it is their burden to do so. With regard to the second set of laws, while generally those laws denied the possession of guns to persons based on reputation (i.e., already existing *public* knowledge of their "disaffect[ion]" for America or "refus[al]" to defend the emerging Republic or swear an oath to it), none of them required persons (who were otherwise unknown publicly to be a danger) to disclose private information about themselves *other than* character references. Thus, it is difficult for the Court to conclude that they are *analogues*.

For more-analogous laws, the Court has searched for any laws requiring persons to disclose, as a condition to carrying arms, information such as (1) any nicknames and/or aliases used among friends or professionally (so that those nicknames or aliases could be investigated further), or (2) any pseudonyms used in any published writings (so that those writings may be reviewed for signs of danger). Not surprisingly, the Court has found none.

The State Defendants object that the latter such laws cannot be considered evidence of Section 1's inconsistency with the Second Amendment, because they would be "historical twin[s]" or "dead ringer[s]," which are not required by *NYSRPA*. *See NYSRPA*, 142 S. Ct. at 2133 ("[A]nalogical reasoning requires only that the government identify a well-established and representative historical analogue, not a historical twin. So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster."). The Court disagrees. A twin or dead ringer would be a historical law barring firearms in libraries offered to support Section 4's restriction of firearms in libraries. Or a historical law

barring firearms in theaters offered to support the restriction in theaters. Or a historical law barring firearms in taverns offered in support of the regulation of restaurants. (The State Defendants have offered no such laws by the way.) The use of pseudonyms by authors of virulent political pamphlets by men who often carried firearms and sometimes dueled does not appear to be identical to the use of anonymous handles by authors of potentially violent social-media postings. In other words, it seems worthy of at least some analysis in a thorough decision.

Certainly, during the years before and after 1791, persons published under pseudonyms controversial writings that, if identified as having been authored by them, could have indicated their likelihood do harm to themselves or others (other than in self-defense). For example, in 1787 and 1788, the ratification of the U.S. Constitution was hotly debated by Federalists and Anti-Federalist in essays published under pseudonyms such as Brutus, Cato, Centinel, Cincinnatus, The Federal Farmer, A Landowner, and Publius. Also during those time periods, dueling was practiced in many parts of the Nation. For example, between 1778 and his death in during a duel with Aaron Burr in 1804, Alexander Hamilton was reportedly involved in approximately ten duels (seven of which as the primary and three of which as the second). *See* Freeman, Joanne B., *Affairs of Honor: National Politics in the New Republic* (Yale University Press, 2002); Chernow, Ron, *Alexander Hamilton* (Penguin Press, 2004).[83]

[83] The Court notes at least one of these duel appears to have been fought in 1790 against fellow founder Aedanus Burke, who (incidentally) seven years before had authored two pseudonymous pamphlets sharply criticizing the then-newly conceived Society of the Cincinnati. *See* Cassius, *An Address to the Freemen of South-Carolina* (Charlestown, Jan. 14, 1783); Cassius, *Considerations on the Society or Order of Cincinnati* (Charleston, Oct. 10, 1783).

These practices of anonymously publishing writings that indicated a possible danger to others and using firearms to resolve inter-personal disputes[84] may each reasonably be characterized (unfortunately) as "general societal problem[s] that ha[ve] persisted since the 18th century," *NYSRPA*, 142 S. Ct. at 2131,[85] although the problems of anonymously posted threats of physical violence to others and horrific mass shootings have certainly increased since the turn of the twenty-first century. However, based on the current record, the Court can find no sufficient relationship between these two societal problems for the Court to treat the absence of a historical legislative solution to the former problem (of anonymous threats of danger) as some evidence that a modern such legislative solution would be inconsistent with the Second Amendment. *See NYSRPA*, 142 S. Ct. at 2131 ("[W]hen a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment.").

This regulation faces another problem, however. A comparison of this regulation's burdensomeness to that of any historical analogues depends, to some degree, on the extent that the burden imposed by the regulation is justified by the reason for the regulation. The Court has

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[84] *See, e.g.,* Saul Cornell, "The Lessons of a School Shooting—in 1853: How a now-forgotten classroom murder inflamed the national gun argument," politico.com (March 24, 2018) https://www.politico.com/magazine/story/2018/03/24/first-us-school-shooting-gun-debate-217704/ (last visited Nov. 1, 2022).

[85] Nor have any historical laws been found disarming reputed duelists who have authored virulent political pamphlets. *See generally* C.A. Harwell Wells, "The End of the Affair? Anti-Dueling Laws and Social Norms in Antebellum America," 54:4 *Vanderbilt Law Review* 1805 (May 2001).

no doubt that there exist instances of shootings with handguns by persons who had indicated on social media a likelihood of danger to themselves or others. But the Court has not been presented with sufficient evidence of the extent of this problem to warrant this regulation. For example, to the extent that mass shootings have not involved a handgun that had been possessed by someone pursuant to a concealed-carry license, this regulation would not appear to be justified. It is worth emphasizing that, even setting aside the act of collecting the information, the penalty for failing to comply with this regulation (even if that failure is inadvertent) is harsh. (*See, e.g.,* Dkt. No. 23, at 28, 37 [Temp. Restrain. Order Oral Argument Tr.].)

Finally, the State Defendants have not supported their argument that providing one's social-media accounts is a modern-day requirement for a background check. They cite no examples. (*See generally* Dkt. No. 48, at 58-60.) And the Court has not yet been able to find another license-application process that requires the applicant to turn over his or her social-media accounts.[86] In any event, as stated above in Part III.B.1.c. of this Decision, such a burden may be imposed on a mere privilege, but not on a right covered by the plain text of the Constitution in the absence of sufficient analogous historical support. A right ceases to be a right when impeded by such a burden.

For each of these reasons, the Court finds the burdensomeness of this modern regulation to be unreasonably disproportionate to the burdensomeness of any historical analogues, for purposes of the Second Amendment.

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[86] Rather, the Court has mostly found only instances in which this demand was (properly) made of *convicted sex offenders* while registering for a Sex Offender Registry. Suffice it to say, the need to regulate convicted sex offenders has not been shown to be analogous to the need to regulate applicants for a concealed-carry license.

Even setting aside Second Amendment, the requirement that license applicants reveal their anonymous social-media handles (such as "@iluvgunz!" or "@bulletz&kittenz") may present First Amendment concerns resulting from an unfortunate combination of compelled speech and an exercise of the extraordinary discretion conferred upon a licensing officer (who would appear free to conclude that, "Based upon mature consideration of the application, and my resulting investigation, I find that the applicant simply does not possess the temperament and judgment necessary to be entrusted with a firearm"). The subjective and vague standard of "good moral character" could allow licensing officers to deny an application if they were to see reflected in a compulsively disclosed social-media handle any hobby, activity, political ideology, sexual preference, or social behavior that they personally deem to show bad "temperament" or "judgment." This requirement may also present Fifth Amendment concerns (e.g., "@iKilledHoffa" or a pseudonymous posting evidencing one's participation in a recent crime). Generally, such thorny constitutional concerns are to be avoided, especially where (as here) the anonymous social-media handles may be discovered through less-burdensome means such as (1) speaking with the applicant's four character references, (2) relying on New York State's recently expanded "Red Flag Law" (*see* 2022 NY Senate Bill S9113A), and (3) criminalizing the making of a threat of mass harm (including on social media) with the intent to intimidate a group of people or create public alarm (*see, e.g.,* 2022 NY Senate Bill S89B).[87]

For all of these reasons, Defendants are preliminarily enjoined from enforcing this regulation during the pendency of this litigation.

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[87] Of course, some searches for a user's social-media accounts can be successfully conducted through reliance on the user's legal name, and do not require an anonymous handle or username.

e. "Such Other Information Required by the Licensing Officer that is Reasonably Necessary and Related to the Review of the Licensing Application"

As stated above in Part III.B.1.a. of this Decision, the apparent reason for this regulation is to reduce non-self-defensive handgun violence (whether intentional or accidental, and whether in the home or outside the home) that is caused in some way by the possession or use of a handgun by someone who also possesses a concealed-carry license. More specifically, the apparent reason for this regulation is the occasional lack of information on a completed license application necessary for a licensing officer to determine whether the applicant is a danger to themselves or others. The way the regulation burdens law-abiding citizens' right to armed self-defense is by prohibiting a person from carrying a concealed handgun in public for self-defense unless the person provides a licensing officer with "such other information required by the licensing officer that is reasonably necessary and related to the review of the licensing application."

Although the State Defendants do not expressly cite any purported historical analogues, they appear to implicitly rely on those laws discussed above in Part III.B.1.b. of this Decision and Order (regarding character references). (Dkt. No. 48, at 60-61.) Generally, those laws either (1) disarmed individuals based on a public knowledge about those individuals, or (2) required an individual to apply for a license (which necessarily involved, at the very least, identifying himself or herself).

In its Decision and Temporary Restraining Order of October 6, 2022, the Court found that it could imagine a set of circumstances in which this regulation were constitutionally valid: if the licensing officer were to require only minor follow-up information from an applicant (such

as identifying information). *Antonyuk II*. 2022 WL 5239895, at *12. Since then, the Court has been persuaded (for the reasons stated above in Part III.B.1.a. & n.90 of this Decision) that the Second Amendment demands that the Court reconsider that finding.

Upon closer examination, the Court finds that this regulation's burdensomeness on law-abiding responsible citizens (their subjection to the unbridled discretion of licensing officers to determine what information is "reasonably necessary and related to the review of the licensing application" without any limitation regarding whether that information is to be communicated orally as opposed to in writing) does not appear to be reasonably proportionate to the burdensomeness of the relevant historical analogues (which required merely a few character references), especially given the dearth of evidence adduced by the State Defendants for this unbridled discretion.

Moreover, this regulation's application would unconstitutionally impact a fundamental right in "a large fraction" of the cases to which it applies. Consider the unbridled discretion a licensing officer would have, under this regulation, to demand that an applicant, for example, (1) state the information set forth in the cohabitant provision and social-media provision that have been enjoined by this Decision, (2) provide documentation supporting the applicant's orally communicated list of cohabitants, (3) hand over the applicant's cell phone and show the licensing officer his or her anonymous social-media accounts, or (4) provide a urine sample based on something as subjective as an opinion about the applicant's appearance. Simply stated, an injunction of this open-ended provision goes hand in hand with an injunction of the others.

For all these reasons, the Court reconsiders its prior ruling on the issue in its Decision and Temporary Restraining Order of October 6, 2022, and grants Plaintiffs' motion for a preliminary injunction with regard to this regulation.

f. Eighteen Hours of Firearm Training (and Associated Costs)

As stated above in Part III.B.1.a. of this Decision, the apparent reason for this regulation is to reduce non-self-defensive handgun violence (whether intentional or accidental, and whether in the home or outside the home) that is caused in some way by the possession or use of a handgun by someone who also possesses a concealed-carry license. More specifically, the apparent reason for this regulation is the danger that handguns pose to license applicants or others due to those applicants' general lack of sufficient familiarity with handguns. The way the regulation burdens law-abiding citizens' right to armed self-defense is by prohibiting a person from carrying a concealed handgun in public for self-defense unless, on the person's license application, he or she certifies the completion of the following:

> [A] minimum of sixteen hours of in-person live curriculum approved by the division of criminal justice services and the superintendent of state police, conducted by a duly authorized instructor approved by the division of criminal justice services, and shall include but not be limited to the following topics: (i) general firearm safety; (ii) safe storage requirements and general secure storage best practices; (iii) state and federal gun laws; (iv) situational awareness; (v) conflict de-escalation; (vi) best practices when encountering law enforcement; (vii) the statutorily defined sensitive places … and the restrictions on possession on restricted places … ; (viii) conflict management; (ix) use of deadly force; (x) suicide prevention; and (xi) the basic principles of marksmanship; and (b) a minimum of two hours of a live-fire range training course. The applicant shall be required to demonstrate proficiency by scoring a minimum of eighty percent correct answers on a written test for the curriculum under paragraph (a) of this subdivision and the proficiency level determined by the rules and regulations promulgated by the division of criminal justice services and the superintendent of state police for the live-fire range training under paragraph (b) of this subdivision.

The State Defendants argue that this regulation's historical analogues consist of the following laws, of which they have provided copies: (1) New York militia laws from 1780 and 1782 requiring training in the use of arms as part of a citizen's mandatory duty to serve in the local militia; (2) a federal militia act from 1792 requiring "[t]hat each and every free able-bodied white male citizen of the respective states" between the ages of 18 and 45 must "be enrolled in the militia," and that "it shall be the duty of the commanding officer at every muster . . . to cause the militia to be exercised and trained agreeably to the [] rules of discipline," and requiring every citizen to purchase all the materials required for service at his own expense; (3) a New Jersey law from 1806 requiring militia drill could last for a period "not exceeding six hours" each day; and (4) a New York law from 1792 requiring "every citizen" to purchase all the materials required for service "at his own expence [sic]." (Dkt. No. 48, at 55-58.) The State Defendants also rely on a Virginia militia statute from 1785 requiring that "there shall be a private muster of every company once in two months" (which they did not provide a copy of but which is quoted in *United States v. Miller*, 307 U.S. 174, 181 [1939]). (Dkt. No. 48, at 56.)

Generally, the aim of these laws appears to be to deny the possession of a firearm to all militia members who, due to their unfamiliarity with a firearm, pose a danger to themselves or others. The way they burden law-abiding citizens' right to armed self-defense is by prohibiting militia members from bearing firearms unless they complete required training. Again, for the sake of argument, the Court will assume that these laws were sufficiently established and representative to constitute a historical tradition.

Of course, to the extent that the State Defendants' treat the right to keep and bear arms as coextensive with the training requirements of a militia (*see, e.g.,* Dkt. No. 48, at 55), the Court

must reject that argument for the reasons stated in *District of Columbia v. Heller*, 554 U.S. 570, 578 (2008) ("The [prefatory clause of the Second Amendment] does not limit the [operative clause of the Second Amendment] grammatically, but rather announces a purpose. . . . The term ['keep and bear arms'] was applied, then as now, to weapons that were not specifically designed for military use and were not employed in a military capacity."). However, the Court does recognize the analogousness of a historical requirement that those persons without familiarity of firearms must become familiar with them if those persons are to exercise their right use firearms to defend themselves in public. In addition, as the Court stated in its Decision and Temporary Restraining Order of October 6, 2022, it has been persuaded by Defendants that historically Americans' familiarity with firearms was far more common than it is today.

More troubling to the Court is the financial cost of this training to the applicant. Plaintiff Sloane has adduced evidence that the training would cost him "hundreds of dollars." (Dkt. No. 1, Attach. 4, at ¶ 27 [Sloane Decl.].) "Some facilities are charging upwards of $700 for the class," he swore in his Declaration of September 19, 2022. (*Id.*) With the cost of "the ammunition used at such a class, and also the other associated licensing fees charged," he continued, "[t]he cost for me to obtain a permit could easily exceed $1,000 . . . ." Plaintiff Sloane's "[s]ome facilities" language and "other associated licensing fees" language are too vague for the Court to find that he would have to pay between $700 and $1,000 to comply with this regulation.[88] Moreover, while the cost ultimately established in this litigation may well

[88] Should Plaintiff Sloane provide evidence of such a number during the course of this case, the State Defendants are advised that the Court rejects their argument that such a cost cannot be attributable to the State because "licensing classes can[] be given pro bono." (Dkt. No. 72, at 70 [Prelim. Inj. Hrg. Tr.].)

prove be "exorbitant" under footnote 9 of *NSRPA*,[89] at this point the Court remains mindful of the cost borne by militia members (and probably by non-militia members) in terms of training and practice (even though, again, those militia members apparently forewent certain constitutional protections when they swore their oaths).

Based on a comparison of the burdensomeness of the CCIA's firearms-training requirement (i.e., burden versus justification) to the burdensomeness of the relevant historical analogues, the Court finds the former is reasonably proportionate to the latter. As a result, Plaintiffs' motion for a preliminary injunction is denied with regard to this regulation.

g. In-Person Meeting

As stated above in Part III.B.1.a. of this Decision, the apparent reason for this regulation is to reduce non-self-defensive handgun violence (whether intentional or accidental, and whether in the home or outside the home) that is caused in some way by the possession or use of a handgun by someone who also possesses a concealed-carry license. More specifically, the apparent reason for this regulation is the need of licensing officers to meet with an applicant in person to determine whether the person is likely to be a danger to themselves or others. The way the regulation burdens law-abiding citizens' right to armed self-defense is by prohibiting a person from carrying a concealed handgun in public for self-defense unless the person "meet[s] in person with the licensing officer for an interview."

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[89] *See NYSRPA*, 142 S. Ct. at 2138, n.9 ("That said, because any permitting scheme can be put toward abusive ends, we do not rule out constitutional challenges to shall-issue regimes where, for example, lengthy wait times in processing license applications or ***exorbitant*** fees deny ordinary citizens their right to public carry.") (emphasis added).

The State Defendants argue that this regulation's historical analogues consist of the following laws, of which they have provided copies: (1) a Massachusetts law from 1637 and a Virginia law from 1756 that disarmed what the State Defendants call "groups deemed dangerous" (followers of dissident preacher John Wheelwright and "Papists") while allowing individuals to prevent disarmament by appearing in person to proclaim their loyalty; (2) the laws of six Colonies (Massachusetts, Pennsylvania, Maryland, North Carolina, Virginia and New York) from 1776 and 1777 requiring individuals suspected of loyalty to the English monarchy to appear in person to take a loyalty oath or face disarmament; (3) the mustering laws of the federal government, the Colony of Massachusetts, and three states (New York, New Jersey and Pennsylvania), from between 1775 and 1822, which the State Defendants characterize as "requiring individuals to be assessed, in person, by military officials as part of being armed, and stripped of their firearms if they proved to be untrustworthy with a weapon"; and (4) the laws of eight cities (New York, Brooklyn, Buffalo, Albany, Troy, Syracuse, Lockport and Elmira), from between 1880 and 1913, which the State Defendants say "requir[e] an individual to appear *in person* in connection with firearms." (Dkt. No. 48, at 50-52) (emphasis added).[90]

For the reasons stated above in Part III.B.1.a. of this Decision, to the extent these laws were from the 17th or 20th centuries, the Court discounts their weight. Similarly, to the extent these laws come from a handful of cities in the last decade of the nineteenth century and do not

[90] The Court also considers a Jersey City law from 1871. *See* Ordinances of Jersey City, Passed By The Board Of Aldermen March 31, 1871, § 3 ("All applications for permits shall be made in open court, by the applicant in person, and in all cases the court shall require a written endorsement of the propriety of granting a permit from at least three reputable freeholders ....") (emphasis added).

expressly say "in person" or "in open court,"[91] the Court must discount their weight (based on the current record, which lacks evidence that those laws required "in person" or "open court" appearances). With regard to the remainder of the laws, generally, they appear to have been aimed at either (1) denying the possession of guns to persons reputed, or publicly known, to be a danger to the public or Nation or (2) denying the possession of guns to incompetent milia members. Moreover, generally, they appear sufficiently established and representative to constitute a historical tradition.

Granted, again, it seems a stretch to analogize the modern need to regulate concealed-carry applicants to the historical need regulate "groups deemed dangerous." And the need to personally see that the members of one's military are competent to handle firearms during a time of war seems greater than the need to look all concealed carry applicants in the eye (and maybe exchanged a few words with them) after they have provided four character references and completed 18 hours of firearms training.

However, Plaintiff Sloane has not yet adduced evidence of the inconvenience he would incur as a result of such an in-person meeting. (*See generally* Dkt. No. 1, Attach. 4 [Sloane Decl.].) Conceivable examples of such evidence might include (1) the need to take time away from work or family to appear before a licensing officer, or (2) any delay experienced in having an appointment scheduled due to the CCIA's imposition of this requirement on *every* applicant.[92]

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[91] *Cf.* Ordinances of Jersey City, Passed By The Board Of Aldermen March 31, 1871, § 3. ("All applications for permits shall be made *in open court*, by the applicant in person, and in all cases the court shall require a written endorsement of the propriety of granting a permit from at least three reputable freeholders ….") (emphasis added).

[92] To the extent that such evidence is adduced during the course of this litigation, the Court would be willing to revisit this finding.

Instead, Plaintiff Sloane has relied only on a possible infringement of his Fifth Amendment right to remain silent. (*Id*. at ¶ ¶ 5, 17-19.) The problem with this sole reliance is that, even setting aside the argument that an applicant is not "in custody" during such an in-person meeting, Plaintiff Sloane's Fifth Amendment injury stemming from an "interrogation" appears too speculative at this point in the litigation. Simply stated, without more evidence, the Court must find that the burdensomeness of this modern regulation appears proportionate to the burdensomeness of its historical analogues.

In this regard, based on better briefing by the State Defendants (and in the absence of testimony at the Preliminary Injunction Hearing), the Court reconsiders its prior ruling on this issue (in its Decision and Temporary Restraining Order of October 6, 2022), and denies Plaintiffs' motion for a preliminary injunction with regard to this regulation.

2. Prohibition in "Sensitive Locations"

In its below analysis of those paragraphs of Section 4 that Plaintiffs have established standing to challenge, the Court will separately analyze each paragraph in light of the historical laws submitted in support of it (while keeping an open mind regarding any other relevant historical laws that have been submitted in support of other paragraphs of Section 4).

a. "[A]ny location providing . . . behavioral health, or chemical dependance care or services"

The Court finds that the Second Amendment's plain text covers the conduct in question (i.e., carrying a concealed handgun for self-defense in public) except to the extent that the places at issue in this regulation (i.e., "any location providing health, behavioral health, or chemical dependance care or services") constitute places to which the public or a substantial group of

persons have not been granted access such as rooms designed for residence, and portions of a hospital wherein the usual functions of a hospital are carried out.

In rendering this finding, the Court relies on New York State licensing officers' understanding of the word "public,"[93] as well as New York State's definition of "public" places for purposes of its criminal law and civil rights law, which the Court finds to be instructive. *See* N.Y. Penal Law § 240.20 ("A person is guilty of disorderly conduct when, with intent to cause *public* inconvenience, annoyance or alarm, or recklessly creating a risk thereof: . . . 3. In a *public place*, he uses abusive or obscene language, or makes an obscene gesture; . . . or 6. He congregates with other persons in a *public place* and refuses to comply with a lawful order of the police to disperse . . . .") (emphasis added); N.Y. Penal Law § 240.00(1) ("'Public place' means a place to which the public or a substantial group of persons has access, and includes, but is not limited to, . . . community centers, and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence."); N.Y. Civil Rights Law § 47 ("1. No person shall be denied admittance to and/or the equal use of and enjoyment of any *public facility* solely because said person is a person with a disability and is accompanied by a guide dog, hearing dog or service dog. 2. For the purposes of this section the term '*public facility*' shall include, but shall not be limited to, . . . buildings to which the public is invited or permitted, . . . and all other places of public . . . business to which the general public or any classification of persons therefrom is normally or customarily invited or permitted."); *see, e.g., Albert v. Solimon*, 684 N.Y.S. 375, 378 (N.Y. App. Div., 4th Dep't, 1998) ("While the

[93] *See, e.g., NYSRPA*, 142 S. Ct. at 2125 ("[T]he [licensing] officer emphasized that the restrictions were 'intended to prohibit [Nash] from carrying concealed in ANY LOCATION typically open to and frequented by the general public.") (emphasis removed).

waiting room in a physician's office may be regarded as a public place in which the general public is normally invited or permitted to enter, the same may not be said of those areas of a physician's office where physical examinations are conducted. An examination room is restricted to the patient, the physician and the physician's staff."); *Perino v. St. Vincent's Med. Ctr. of Staten Island,* 502 N.Y.S.2d 921, 922 (N.Y. Sup. Ct., Richmond Cnty. 1986) ("While a hall in a hospital may be considered a public place . . . , as well as the hospital cafeteria or snack bar serving travelers . . . , the same cannot be said for other portions of the hospital wherein the usual functions of a hospital are carried out."); *New York v. Ennis*, 45 N.Y.S2d 446, 448 (Utica City Court, 1943) ("Nor can there be any question but that a hall in a hospital is a public place within the meaning of the statute [prohibiting disorderly conduct].").

For all of these reasons, the Court finds that Defendants must rebut the presumption of one's protection against this regulation by demonstrating that it is consistent with this Nation's historical tradition of firearm regulation.

As stated above in Part III.B.1.a. of this Decision, the apparent reason for this regulation is to reduce non-self-defensive handgun violence (whether intentional or accidental, and whether in the home or outside the home) that is caused in some way by the possession or use of a handgun by someone who also possesses a concealed-carry license. More specifically, the apparent reason for this regulation is to "protect vulnerable people" from potential gun violence at the three places in question (especially "persons with mental health issues" and "persons struggling with addiction"), because they are not "able to protect them[selves]" from having guns used against them, intentionally or inadvertently." (Dkt. No. 48, at 75-76, 81-84.) The way the regulation burdens law-abiding citizens' right to armed self-defense is by prohibiting a licensed

person from carrying a concealed handgun in public for self-defense in "any location providing health, behavioral health, or chemical dependance care or services."

The State Defendants argue that this regulation's historical analogues consist of the following laws, of which they have provided copies: (1) a Massachusetts militia law from 1837, a Maine milia law from 1837, and a Rhode Island milia law from 1843 that excluded persons with intellectual disabilities, mental illness, and alcohol addiction (e.g., "idiots," "lunatics," and "drunkards") from "the people" eligible to serve in the militia; and (2) unspecified historical laws protecting children, because, at the three places specified in this regulation, "significant numbers of children" receive health care and behavioral health services. (Dkt. No. 48, at 81-84, 97-98.)

Again, for the sake of brevity, the Court will assume that the laws were sufficiently *established* to constitute a historical tradition (even though the specified laws came from only three states in the northeast). More important is that the three specified laws do not appear to have been *representative* of the Nation. This is because, even assuming that they were still in effect in 1870, according to the 1870 census, the populations of Massachusetts, Maine and Rhode Island composed about 6.0 percent of the total American population at that time, with Massachusetts contributing about 3.8% (or 1,457,351 out of 38,558,371), Maine contributing about 1.6% (or 626,915 out of 38,558,371), and Rhode Island contributing about 0.6% (or 217,353 out of 38,557,371). *See* Dept. of Interior, Compendium of Ninth Census: 1870 (1870). For the reasons stated above in this Decision and Order, this number does not seem large enough to constitute a *representative* tradition. In any event, for the sake of thoroughness, the Court will assume it does and continue with its analytical inquiry.

Generally, the purpose of the first group of laws appears to have been to protect unstable persons from harming both themselves and others. Generally, the way the first group of laws burdened law-abiding citizens' right to armed self-defense was by denying the right to serve in the militia (which involved keeping and bearing arms) to groups of people who had intellectual disabilities, mental health issues and/or alcoholism. Both the purpose of the second group of laws, and the way they burdened law-abiding citizens' right to armed self-defense, are unclear due to a lack of a showing by the State Defendants. (Presumably, this second group of laws is intended to refer to laws prohibiting firearms in schools, which are collected in note 112 of this Decision.)

In any event, based on a comparison of the burdensomeness of this regulation (i.e., burden versus justification) to the burdensomeness of the relevant historical analogues (again, burden versus justification), the Court finds the burdensomeness of this regulation is not reasonably proportionate to the burdensomeness of its purported "historical analogues" for each of two reasons. First, there appears to have been more of a justification for (and less of a burden from)[94] taking firearms out of the hands of intellectually disabled, mentally ill and/or alcoholic male soldiers between ages 18 and 45 in the Northeast between 1837 and 1843 during the Aroostook War bordering Maine (and less than a decade before the looming Mexican-American War) than there appears now to do so to *all* license holders (who have provided four character

[94] The Court notes that, historically, members of the military in this country (unlike civilians) have voluntarily suspended or curtained many of their constitutional rights when swearing their oaths. *See Raderman v. Kaine*, 411 F.2d 1102, 1104 (2d Cir. 1969) ("If [Plaintiff] asks: Does being in the Army curtail or suspend certain Constitutional rights?, the answer is unqualifiedly 'yes'. On necessity, he is forced to surrender many important rights.").

references, completed numerous hours of firearms training, and satisfied the demands of a licensing officer) whenever they find the need to visit the *public* portion of a modern health facility (which has not separately posted a policy of there being no firearms allowed on the premises). Again, the State Defendants have not established a sufficient need.

Second, in any event, certainly the medical profession existed in 18th and 19th century America; and certainly gun violence existed in 18th and 19th century America. However, the State Defendants do not cite (and the Court has been unable to yet locate) any laws from those time periods prohibiting firearms in places such as "almshouses," hospitals, or physician's offices.[95] As the Court stated above in Part III.B.1.d. of this Decision, the Court has difficulty treating this omission as anything other than some evidence of this regulation's inconsistency with the Second Amendment. *See NYSRPA*, 142 S. Ct. at 2131 ("[W]hen a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment.").

For each of these reasons, Defendants are preliminarily enjoined from enforcing this regulation during the pendency of this litigation to the extent that the regulation regards "any location providing . . . behavioral health, or chemical dependance care or services" (except to places to which the public or a substantial group of persons have not been granted access).

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[95] Also absent from the State Defendants' papers is any showing that locations providing "health, behavioral health, or chemical dependance care or services" today contain a larger percentage of children than did "almshouses," hospitals, or doctor's offices in 18th and 19th century America. For this reason, the Court is unable to place much reliance on the State Defendants' unspecified historical laws protecting children (which, again, the Court assumes to be collected in note 112 of this Decision).

b. "[A]ny place of worship or religious observation"

The Court begins its analysis of this regulation by acknowledging that, recently, this regulation was preliminarily enjoined during the course of a litigation in the United States District Court for the Western District of New York. *See Hardaway v. Nigrelli*, 22-CV-0771, 2022 WL 16646220, at *13-17 (W.D.N.Y. Nov. 3, 2022) (Sinatra, J.). The Court has no reason to disagree with any portion of the Western District's cogent analysis of this regulation. *Hardaway*, 2022 WL 16646220, at *13-17. The Court therefore includes the below analysis only as an alternative ground on which to base its support of its decision to preliminarily enjoin this regulation during the pendency of this litigation.

The Court finds that the Second Amendment's plain text covers the conduct in question (i.e., carrying a concealed handgun for self-defense in public in "any place of worship or religious observation") for the reasons stated above in Part III.B.2.a. of this Decision. Again, in rendering this finding, the Court relies on New York State licensing officers' understanding of the word "public,"[96] as well as New York State's definition of "public" places for purposes of its criminal law and civil rights law, which the Court finds to be instructive. *See* N.Y. Penal Law § 240.00(1) ("'Public place' means a place to which the public or a substantial group of persons has access, and includes, but is not limited to, . . . community centers . . . ."); N.Y. Civil Rights Law § 47 ("2. For the purposes of this section the term '*public facility*' shall include, but shall not be limited to, . . . buildings to which the public is invited or permitted . . . ."); *see also Young v. Hawaii*, 992 F.3d 765, 813 (9th Cir. 2021) (finding that "public places" for purposes of the

[96] *See, supra,* note 93 of this Decision.

Second Amendment include "churches"), *vacated on other grounds by NYSRPA v. Bruen*, 142 S. Ct. 2111 (2022).

As a result, the Court finds that Defendants must rebut the presumption of protection against this regulation by demonstrating that it is consistent with this Nation's historical tradition of firearm regulation.

As stated above in Part III.B.1.a. of this Decision, the apparent reason for this regulation is to reduce non-self-defensive handgun violence (whether intentional or accidental, and whether in the home or outside the home) that is caused in some way by the possession or use of a handgun by someone who also possesses a concealed-carry license. The State Defendants do not provide a more specific reason than that for this regulation. (*See generally* Dkt. Nos. 18, 38.) Presumably, the specific reason is to prevent a repeat of any of the mass shootings that have occurred in places of worship or religious observation in the United States since the turn of the 21st century (to the extent that mass shooters used a handgun that had been possessed by someone pursuant to a concealed-carry license). The way this regulation burdens law-abiding citizens' right to armed self-defense is by prohibiting a licensed person from carrying a concealed handgun in "any place of worship or religious observation."

The State Defendants argue that this regulation's historical analogues consist of the following laws, of which they have provided copies: (1) a Georgia statute from 1870 prohibiting deadly weapons in "any place of public worship"; (2) a Texas statute from 1870 prohibiting the carrying of guns into "any church or religious assembly"; (3) a Virginia statute from 1877 prohibiting "carrying any gun, pistol, bowie-knife, dagger, or other dangerous weapon, to any place of worship while a meeting for religious purposes is being held at such place"; (4) a

Missouri statute from 1883 prohibiting the carrying of "any deadly or dangerous weapon" in "churches"; (5) an Arizona statute from 1889 banning guns in "any church or religious assembly"; and (6) an Oklahoma statute from 1890 prohibiting carrying weapons into "any church or religious assembly, . . . or other place where persons are assembled for public worship." (Dkt. No. 48, at 63-64, 69-70.)

Again, to the extent the laws come from territories near the last decade of the 19th century (i.e., the 1889 Arizona law and 1890 Oklahoma law), the Court discounts their weight, because of their diminished ability to shed light on the public understanding of the Second Amendment in 1791 and/or of the Fourteenth Amendment in 1868.

With regard to the remaining four laws (i.e., the laws of Georgia, Texas, Virginia and Missouri from between 1870 and 1883), again for the sake of brevity, the Court will assume that these laws constituted a tradition that was sufficiently *established* under *NYSRPA* (coming from four states across the south). Even if the Court did so, it would have difficulty finding these four laws to be *representative* of the Nation's laws, given that they came from states that contained only about 12.9 percent of the national population. According to the Census of 1870, Georgia contained about 3.1 percent of the national population (1,184,109 out of 38,558,371), Texas about 2.1 percent (818,579 out of 38,558,371), Virginia about 3.2 percent (1,225,163 out of 38,558,371), and Missouri about 4.5 percent (1,721,295 out of 38,558,371). *See* Dept. of Interior, Compendium of Ninth Census: 1870 (1870).[97]

[97] The Court notes that Missouri's percentage had dropped to about 4.3 (2,168,880 out of 50,155,783) by the time it passed its law in 1883. *See* Dept. of Interior, Compendium of Tenth Census: 1880 (1880).

Moreover, even if the Court were to find 12.9 percent sufficient to establish a representative tradition, the Court would find that tradition inconsistent with this modern regulation. Generally, the purpose of these laws appears to have been to protect religious assemblies from disturbance. Generally, the way they burdened law-abiding citizens' right to armed self-defense was by prohibiting the carrying of firearms in such religious assemblies with certain exceptions: (1) for those bound by "duty" to bear arms at the place of worship;[98] (2) for those serving as "peace officers" at the place of worship;[99] and (3) for those for whom the place of worship is "his own premises."[100] The Court has also found a similar historical law containing an exception for those possessing "good and sufficient cause" to carry a gun on a Sunday "at any place other than his own premises."[101]

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98 *See* 1870 Tex. Laws 63 ("[T]his act shall *not apply to any person or persons whose duty it is to bear arms* on such occasions in discharge of duties imposed by law.").

99 *See* The Statutes of Oklahoma, 1890, § 7 ("It shall be unlawful for any person, *except a peace officer*, to carry into any church or religious assembly ... any of the weapons designated in sections one and two of this article.") (emphasis added); *cf.* The Revised Ordinances of the City of Huntsville, Missouri, of 1894, § 2 ("The … preceding section [prohibiting concealed carry any church or place where people have assembled for religious worship] shall not apply to … persons whose duty it is to … *suppress breaches of the peace* ….") (emphasis added).

100 *See* 1877 Va. Acts 305, Offenses Against The Peace, § 21 ("If any person carrying any gun, pistol, … or other dangerous weapon, to any place of worship while a meeting for religious purposes is being held at such place, or without good and sufficient cause therefor, shall carry any such weapon on Sunday at any place *other than his own premises*, shall be fined not less than twenty dollars.").

101 *See* 1877 Va. Acts 305, Offenses Against The Peace, § 21 ("If any person carrying any gun, pistol, … or other dangerous weapon, to any place of worship while a meeting for religious purposes is being held at such place*, or without good and sufficient cause therefor*, shall carry any such weapon on Sunday at *any place other than his own premises*, shall be fined not less than twenty dollars.") (emphasis added); *cf.* The Revised Ordinances of the City of Huntsville, Missouri, of 1894, § 2 ("[I]it shall be good defense to the charge of carrying such weapon [in any church or place where people have assembled for religious worship], if the defendant shall show

Based on a careful comparison of the burdensomeness of this regulation (again, burden versus justification) to the burdensomeness of its historical analogues, the Court finds the burdensomeness of this regulation to be disproportionately burdensome compared to its historical analogues for three reasons. First, this regulation does not contain an exception for persons who have been tasked with the duty to keep the peace at the place of worship (particularly when the place of worship can fairly be characterized as those persons' "own premises").[102] The State Defendants do not present evidence justifying this omission. (*See generally* Dkt. No. 48.) Nor is any such evidence presented in the five amicus briefs that the Court has accepted in *Antonyuk I* and *Antonyuk II*, including the briefs of the Giffords Law Center to Prevent Gun Violence and Dr. Jaclyn Schildkraut, Ph.D. *See generally Antonyuk I*, 22-CV-0734, Amicus Brief of the Giffords Law Center to Prevent Gun Violence (N.D.N.Y. filed

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that he has been threatened with great bodily harm, or had *good reason* to carry the same in the necessary *defense* of his home, *person or property*.").

[102] The Court is not persuaded by the State Defendants' argument that, in Paragraph d(3)" of Section 4, the CCIA already creates this exception by making an exception for "security guards." (Dkt. No. 72, at 78-79 [Prelim. Inj. Hrg. Tr.].) It does not appear that Plaintiff Mann's "church security team" would qualify as "security guards" under New York State law. *See* N.Y. Gen. Bus. Law § 89-f(6) ("'Security guard' shall mean a person, other than a police officer, ***employed by a security guard company*** to principally perform one or more of the following functions within the state: a. protection of individuals and/or property from harm, theft or other unlawful activity; b. deterrence, observation, detection and/or reporting of incidents in order to prevent any unlawful or unauthorized activity including but not limited to unlawful or unauthorized intrusion or entry, larceny, vandalism, abuse, arson or trespass on property; c. street patrol service; d. response to but not installation or service of a security system alarm installed and/or used to prevent or detect unauthorized intrusion, robbery, burglary, theft, pilferage and other losses and/or to maintain security of a protected premises."). Certainly, that is not how Plaintiff Mann interprets this undefined term in the CCIA. (Dkt. No. 1, Attach. 1, at ¶ 10 [Mann Decl., swearing that, "since [Fellowship Baptist Church is] a small church, [it is] unable to afford to pay for private security who might be exempt from the CCIA"].)

Aug. 17, 2022); *Antonyuk I*, 22-CV-0734, Amicus Brief of Dr. Jaclyn Schildkraut, Ph.D. (N.D.N.Y. filed Aug. 17, 2022).[103]

Second, this regulation appears to expressly apply to Plaintiff Mann when he is overseeing "Bible studies, meetings of elders, and other church gatherings" in his parsonage (which is part of the same structure that encloses his church). (Dkt. No. 1, Attach. 9, at ¶¶ 12-13 [Mann Decl.].) Again, the State Defendants (and amicus curiae) do not present evidence justifying this intrusion into the home.

Third, this regulation treads too close to infringing on one's First Amendment right to participate in congregate religious services. *See Young v. Coughlin*, 866 F.2d 567, 570 (2d Cir. 1989) (holding that included in a prisoner's First Amendment protection is the right to participate in congregate religious services), *cert. denied*, 492 U.S. 909 (1989); *cf. Hardaway v. Nigrelli*, 22-CV-0771, 2022 WL 11669872, at *12-16 (W.D.N.Y. Oct. 20, 2022) (temporarily restraining this regulation because of inconsistency with the Nation's historical tradition of analogous firearm regulation under the Second Amendment).

Although in its Decision and Temporary Restraining Order of October 6, 2022, the Court was willing to rely on a mere order to construe this regulation as if it contained an exception for

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[103] Unless the Court is mistaken, there have been at least three instances of handguns being effectively used in self-defense in churches in the United States since the turn of the 21st century: (1) at the Colorado Springs New Life Church on December 9, 2007; (2) at the Antioch (Tennessee) Burnette Chapel Church of Christ on September 24, 2017; and (3) at the West Freeway Church of Christ in Texas on December 29, 2019. *See* Kirk Johnson, "Colorado: Gunman Killed Himself," *The New York Times* (Dec. 12, 2007); Natalie O'Neill, "Usher hailed for preventing massacre: Deadly church gunfire," *The New York Post* (Sept. 25, 2017); "Man who shot church gunman gets highest Texas civilian honor," *Athens Daily Review* (Jan. 16, 2020).

persons who have been tasked with the duty to keep the peace at the place of worship, the Court has been persuaded for the foregoing reasons (as well as for the reasons stated above in Part III.B.1.a. and note 80 of this Decision) that the Second Amendment demands that this entire regulation be preliminarily enjoined. In this way, the Court reconsiders its prior ruling on the issue in its Decision and Temporary Restraining Order of October 6, 2022, and grants Plaintiffs' motion for a preliminary injunction with regard to this regulation.

c. "[P]ublic playgrounds, public parks, and zoos"

The Court finds that the Second Amendment's plain text covers the conduct in question (i.e., carrying a concealed handgun for self-defense in "public playgrounds, public parks, and [the public portions of] zoos") for the reasons stated above in Part III.B.2.a. of this Decision. Again, in rendering this finding, the Court relies on New York State licensing officers' understanding of the word "public,"[104] as well as New York State's definition of "public" places for purposes of its criminal law and civil rights law, which the Court finds to be instructive. *See* N.Y. Penal Law § 240.00(1) ("'Public place' means a place to which the public or a substantial group of persons has access, and includes, but is not limited to, . . . parks . . . [and] playgrounds . . . ."); N.Y. Civil Rights Law § 47 ("2. For the purposes of this section the term '*public facility*' shall include, but shall not be limited to, . . . all . . . places of public accommodations, . . . resort, [or] entertainment . . . to which the general public or any classification of persons therefrom is normally or customarily invited or permitted.").

[104] *See, supra,* note 93 of this Decision.

As a result, the Court finds that Defendants must rebut the presumption of protection against this regulation by demonstrating that it is consistent with this Nation's historical tradition of firearm regulation.

As stated above in Part III.B.1.a. of this Decision, the apparent reason for this regulation is to reduce non-self-defensive handgun violence (whether intentional or accidental, and whether in the home or outside the home) that is caused in some way by the possession or use of a handgun by someone who also possesses a concealed-carry license. More specifically, the apparent reason for this regulation is the common presence and activities in these locations of "children and vulnerable people" and "confined and distracted crowds," and the need to preserve the places given that they "provid[e] important public services." (Dkt. No. 38, at 79.) The way this regulation burdens law-abiding citizens' right to armed self-defense is by prohibiting a licensed person from carrying a concealed handgun in "public playgrounds, public parks, and zoos."

The State Defendants argue that this regulation's historical analogues consist of the following laws, of which they have provided copies: (1) a Texas law from 1870 prohibiting firearms in "place[s] where persons are assembled for educational, literary or scientific purposes"; (2) a Missouri law from 1883 prohibiting the carrying of firearms in places where people are assembled for "educational, literary or social purposes" and "any other public assemblage of persons met for any lawful purpose"; (3) an Arizona law from 1889 prohibiting the carrying of firearms in any "place where persons are assembled for amusement or for educational or scientific purposes"; (4) an Oklahoma law from 1890 prohibiting firearms in any place "where persons are assembled . . . for amusement, or for educational or scientific

purposes"; (5) ordinances of four cities (New York City, Philadelphia, St. Paul, and Detroit), from between 1861 and 1895, prohibiting firearms in public parks; and (6) ordinances of four additional cities (Chicago, Salt Lake City, St. Louis, and Pittsburgh), from between 1881 and 1897, prohibiting firearms in public parks. (Dkt. No. 48, at 79-80.) In addition, the State Defendants rely on all historical laws prohibiting firearms in schools. (Dkt. No. 48, at 79-80.)

Of course, to the extent the laws come from territories (i.e., Salt Lake City in 1888, Arizona in 1889, and Oklahoma in 1890), the Court affords them little weight. *See NYSRPA*, 142 S. Ct. at 2154-55 (finding the statutes of territories deserving of "little weight" because they were "localized," "rarely subject to judicial scrutiny" and "short lived").

Similarly, to the extent the laws come from the last decade of the 19th century (i.e., the 1893 Pittsburgh law and 1895 Detroit law), the Court discounts their weight, because of their diminished ability to shed light on the public understanding of the Second Amendment in 1791 and/or of the Fourteenth Amendment in 1868. *See NYSRPA*, 142 S. Ct. at 2136 ("Historical evidence that long predates or postdates either [1791 or 1868] may not illuminate the scope of the right.").

Moreover, the Court discounts the weight of the city laws to the extent they are not accompanied by laws from states that are sufficiently *similar* in nature (i.e., laws regarding "public parks" regardless of population density instead of the more-amorphous "public assemblage[s]" for "amusement," "educational," and "scientific" purposes). *See NYSRPA*, 142 S. Ct. at 2154 ("[T]he bare existence of these localized restrictions cannot overcome the overwhelming evidence of an otherwise enduring American tradition permitting public carry.").

With regard to the remainder of the laws (i.e., the 1870 Texas law, the 1883 Missouri law, and to a lesser extent the 1861 New York City law, 1868 Philadelphia law, 1881 Chicago law, 1883 St. Louis law, and 1888 St. Paul law), the Court will discuss in more detail the extent they are established and representative below. But for now the Court observes that the general purpose of these laws appears to have been to protect people from the danger and disturbance that may accompany firearms. The general way they burdened law-abiding citizens' right to armed self-defense was by prohibiting the carrying of firearms (1) where people are assembled for educational or literary purposes, or (2) to a lesser extent, when people frequent an outdoor location for purpose of recreation or amusement (or travel through such a location), especially when there are children present.

i. "Public Playgrounds"

This ban (which also finds at least some support by the 1883 Missouri law prohibiting the carrying of firearms in places where people are assembled for "social purposes") finds support in the laws of five cities from around the time of adoption of the Fourteenth Amendment banning guns in "public parks" (i.e., the 1861 New York City law, 1868 Philadelphia law, 1881 Chicago law, 1883 St. Louis law, and 1888 St. Paul law). According to the 1890 census, these five cities comprised about 6.8 percent of the American population, with New York City contributing about 2.4 percent (or 1,515,301 out of 62,622,250), Philadelphia contribution about 1.7 percent (or 1,046,964 out of 62,622,250), Chicago contributing about 1.8 percent (or 1,099,850 out of 62,622,250), St. Louis contributing about 0.7 percent (or 451,770 of 62,622,250), and St. Paul contributing about 0.2 percent (or 133,156 out of 62,622,250). *See* Dept. of Interior, Compendium of Eleventh Census: 1890 (1890). As a result, although the number and

geographic origins of these laws may be enough to make them to *established*, these laws do not appear to be *representative* of the Nation.

However, this ban also finds support in those historical analogues prohibiting firearms in schools given that, by their very nature, both places often contain children. *See, infra,* note 112 of this Decision and Order (collecting citations to laws banning firearms in schools). The Court finds those laws to be particularly analogous here given that, generally, adults (at least when they are not supervising children) do not frequent playgrounds as much as children do.

Based on a comparison of the burdensomeness of this regulation on "public playgrounds" (again, burden versus justification) to the burdensomeness of its historical analogues, the Court finds this regulation to be reasonably proportionate to its historical analogues.

ii. "Public Parks"

The State's regulation in "public parks" does not fare as well. The Court will begin with the state laws (from Texas in 1870 and Missouri in 1883). Even setting aside the fact that these two lonely states from the South do not represent a national tradition that was sufficiently *established*, the laws (by themselves) were not *representative* of the Nation. This is because, in 1870, Texas and Missouri combined contained only about 6.6 percent of the American population, with Texas contributing about 2.1 percent (818,579 out of 38,558,371), and Missouri contributing 4.5 percent (or 1,721,295 out of 38,558,371). *See* Dept. of Interior, Compendium of Ninth Census: 1870 (1870).

Moreover, the extent these two laws both prohibit firearms in places where persons are assembled for "educational" purposes, they would not appear to apply to those modern parkgoers

who are there to *take a break from* education, not further pursue it.[105] Granted, this appears to be less the case to extent that the 1870 Texas law regards "scientific purposes." However, neither law used the term "public parks." Presumably, Texas and Missouri contained at least *some* public parks in 1870 and 1883 respectively (although the State Defendants have not adduced evidence of that fact).[106] If so, and if a general societal problem existed resulting from the carrying or usage of firearms there (e.g., because of hunting game), the omission of a reference to "public parks" in the statutes could constitute some evidence of this regulation's inconsistency with the Second Amendment. Also omitted from the historical record thus far presented to the Court by the State Defendants (or discovered by the Court) are historical statutes (from the relevant period) banning the *carrying* of guns from older-named places such as "commons" or "greens."[107]

Similarly, at most, the city laws support a historical tradition of banning firearms in public parks *in* a city (where the population density is generally higher), not public parks *outside*

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[105] *See, e.g.,* New York State Office of Parks, Recreation and Historic Preservation, "State Parks" https://parks.ny.gov/parks/ (last visited Nov. 1, 2022) ("From the shores of Long Island to the mighty Niagara Falls, New York's 180 state parks offer countless opportunities to explore your natural environment, *escape from the grind of the everyday* and experience exciting new adventures. Beaches, boat launches, hiking trails, campsites, and golf courses all await you!") (emphasis added).

[106] Certainly, public parks existed in New York City in 1861, in Philadelphia in 1868, in Chicago in 1881, and in St. Louis in 1883.

[107] *Cf.* 1812 Del. Laws 329, An Act to Prevent the Discharging of Fire-Arms Within the Towns and Villages, and Other Public Places Within this State, and for Other Purposes, §1 (prohibiting the "*fir[ing] or discharge[ing]* [of] any gun ordnance, musket, fowling piece, fusee or pistol within or on any of the greens, streets, alleys or lanes of any of the towns and villages within this State …") (emphasis added).

of a city (where people are generally free to roam over vast expanses of mountains, lakes, streams, flora and fauna).[108] This distinction (between the permissibility of possessing a gun for self-defense in a city and the permissibility of possessing a gun for self-defense outside a city) also finds some support in the historical analogues permitting the possession of firearms while "on a journey."[109]

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[108] The Court takes judicial notice of the fact that, according to the Adirondack Park Agency, the Adirondack Park "encompasses approximately 6 million acres, nearly half of which belongs to the people of New York State." *See* Adirondack Park Agency, "The Adirondack Park" https://apa.ny.gov/about_park/index.html (last visited Nov. 1, 2022).

[109] *See, e.g.,* 1813 Ky. Acts 100, An Act to Prevent Persons in this Commonwealth from Wearing Concealed Arms, Except in Certain Cases, ch. 89, § 1 ("[A]ny person in this Commonwealth, who shall hereafter wear a pocket pistol, dirk, large knife, or sword in a cane, concealed as a weapon, unless when travelling on a journey, shall be fined …."); Robert Looney Caruthers, A Compilation of the Statutes of Tennessee (1836), An Act of 1821, § 1 ("Every person so degrading himself by carrying … belt or pocket pistols, either public or private, shall pay a fine of five dollars for every such offence …: Provided, that nothing herein contained shall affect any person that may be on a journey to any place out of his county or state."); Josiah Gould, A Digest of the Statutes of Arkansas, All Laws of a General and Permanent Character in Force the Close of the Session of the General Assembly 381-82 (1837) ("Every person who shall wear any pistol … concealed as a weapon, unless upon a journey, shall be adjudged guilty of a misdemeanor."); 1841 Ala. Acts 148–49, Of Miscellaneous Offences, ch. 7, § 4 ("Everyone who shall hereafter carry concealed about his person, a … pistol or any species of firearms, or air gun, unless such person shall … be travelling, or setting out on a journey, shall on conviction, be fined not less than fifty nor more than three hundred dollars …."); 1844 Mo. Laws 577, An Act To Restrain Intercourse With Indians, ch. 80, § 4 ("[N]o person shall … give … to any Indian … any … gun … unless such Indian shall be traveling through the state …."); 1871 Tex. Laws 25, An Act to Regulate the Keeping and Bearing of Deadly Weapons ("[T]his section shall not be so construed as to … prohibit persons traveling in the State from keeping or carrying arms with their baggage …."); 1878 Miss. Laws 175, An Act To Prevent The Carrying Of Concealed Weapons And For Other Purposes, ch. 46, § 1 ("[A]ny person not … traveling (not being a tramp) or setting out on a long journey … , who carries concealed, in whole or in part, any … pistol, … shall be deemed guilty of a misdemeanor …."); Charters and Ordinances of the City of Memphis, from 1826 to 1867 ("Any person who … gives to any minor a pistol …, except a … weapon for defense in traveling, is guilty of a misdemeanor."); 1899 Annotated Statutes of the Indian Territory (Oklahoma), Carrying Weapons, § 1250 ("[N]othing in this act be so construed as to prohibit any person from carrying any weapon when upon a journey …."); General Municipal Ordinances of the City of Oakland, California (Oakland, CA; Enquirer, 1895), p. 218,

In any event, even if the number and geographical origins of these city laws (when combined with the two state laws previously mentioned) were sufficient to constitute a tradition that was *established*, they do not constitute a tradition that was *representative* of the Nation. As explained earlier in this Decision, as of 1890, the five cities in question (New York City law, Philadelphia law, Chicago law, St. Louis law, and St. Paul law) comprised about 6.8 percent of the American population. *See* Dept. of Interior, Compendium of Eleventh Census: 1890 (1890). As of 1870, the two states in question (Texas and Missouri) contained only about 6.6 percent of the American population. *See* Dept. of Interior, Compendium of Ninth Census: 1870 (1870). The Court need not go back and recalculate the numbers so that they both come from the same census: it is confident that, under reasoning conduct in *NYSRPA*, the resulting percentage of less than 15 would not suffice to be representative of the Nation.

As a result, for the reasons stated in the foregoing four paragraphs, based on a comparison of the burdensomeness of this regulation in "public parks" (again, burden versus justification) to the burdensomeness of its historical analogues, the Court finds the burdensomeness of this regulation to be unreasonably disproportionate to that of its historical analogues.[110]

iii. "Zoos"

Sec. 1 (1890 ordinance providing, "It shall be unlawful for any person in the City of Oakland, not being a public officers or a traveler actually engaged in making a journey, to wear or carry concealed about his person without a permit … any pistol ….").

[110] *See, e.g.,* "The Oldest Zoos in the United States," *World Atlas* https://www.worldatlas.com/articles/the-oldest-zoos-in-the-united-states.html (last visited Nov. 1, 2022).

Somewhere between the child-covered jungle gyms of a public playground and the open expanse of a public park lies the zoo. No historical statutes have been cited by the State Defendants (or located by the Court) expressly prohibiting firearms in "zoos" from the late-19th century, despite the fact that, between 1864 and 1883, zoos appeared to have opened in cities such as New York City, Chicago, Providence, Philadelphia, Cincinnati, Buffalo, Baltimore, and Detroit.[111]

The State Defendants argue that three of these zoos (in New York City, Chicago and Philadelphia) were located *inside* public parks that were protected from firearms by city laws, and that such a fact supports this regulation. (Dkt. No. 72, at 82 [Prelim. Inj. Hrg. Tr.].) The Court begins by observing that such an argument works against the State Defendants as much as it does for them: just as much as it shows the (hardly surprising) fact that zoos enjoyed their surrounding parks' protections, it shows that zoos were in need of no more protection than the parks in which they were located (for example, in need of a prohibition of firearms in the zoo when the surrounding park did not have such a prohibition, or in need of a prohibition on knives in the zoo above and beyond the prohibition of firearms in the surrounding park). Indeed, the Court can imagine some of the more trepid zoogoers of the time *demanding* to be armed in the presence of the more dangerous creatures. In any event, the fact that only some of these zoos were protected by the parks in which they were located tells the Court that all the other ones that existed were not. Finally, the Court has already deemed to be untraditional the State Defendants'

[111] Indeed, when Chicago passed its law banning guns in public parks in 1881, its Lincoln Park Zoo appeared to have been open for about 13 years. Lincoln Park Zoo, "Our History" https://www.lpzoo.org/about-the-zoo/history/ (last visited Nov. 1, 2022). Yet the 1881 Chicago law did not expressly refer to a "zoo" in its statute.

laws prohibiting firearms in "public parks" (as explained in Part III.B.2.d. of this Decision); so the fact that some zoos were located in them in insufficient to establish a tradition of firearm regulation in zoos.

The State Defendants also liken zoos to playgrounds. The Court finds the regulation in zoos more burdensome than the regulation in playgrounds, because adults more commonly frequent zoos without children than they frequent playgrounds without children. Furthermore, the burden on law-abiding responsible citizens who have already obtained a license to carry concealed appears even more unjustified when one considers that zoos are more than capable of instituting policies prohibiting concealed carry themselves. Simply stated, the Court finds that, based on the analogues provided by the State Defendants (and located by the Court thus far), this state-imposed ban in "zoos" is disproportionately burdensome as compared to its relevant historical analogues.

For all of these reasons, Defendants are preliminarily enjoined from enforcing this regulation with regard to "public parks" and "zoos" during the pendency of this litigation. However, Plaintiffs' motion for a preliminary injunction is denied to the extent that it regards "libraries" and "public playgrounds."

d. "[N]ursery schools [and] preschools"

The Court finds that the Second Amendment's plain text covers the conduct in question (i.e., carrying a concealed handgun for self-defense in public in "nursery schools [and] preschools") for the reasons stated above in Part III.B.2.b. of this Decision.

As a result, the Court finds that, to the extent this regulation applies to "[n]ursery schools" and "preschools," Government must rebut the presumption of protection against it by demonstrating that it is consistent with this Nation's historical tradition of firearm regulation.

It appears that the Supreme Court has already recognized the permissibility of this restriction as it applies to "schools." *See Heller*, 554 U.S. at 626 ("[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on . . . laws forbidding the carrying of firearms in sensitive places such as . . . schools . . . ."). If so, the Court can see why this is so, based on the historical analogues that have been either presented to it by the State Defendants are discovered by the Court.[112] Moreover, the Court finds, from these historical analogues that the

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[112] *See, e.g.,* 1870 Tex. Laws 63 ("That if any person shall go into ... any school room or other place where persons are assembled for educational, literary or scientific purposes, ... and shall have about his person ... fire-arms, whether known as a six shooter, gun or pistol of any kind, such person so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not less than fifty or more than five hundred dollars...."); 1883 Mo. Laws 76 ("If any person shall ... go ... into any school-room or place where people are assembled for educational, literary or social purposes, ... having upon or about his person any kind of firearms, ... he shall, upon conviction, be punished by a fine of not less than twenty-five nor more than two hundred dollars, or by imprisonment in the county jail not less than five days or more six months, or by both such fine and imprisonment."); 1889 Ariz. Sess. Laws 16-17 ("If any person shall go into … any school room, or other place where persons are assembled for amusement or for educational or scientific purposes … and shall have or carry about his person a pistol or other firearm… he shall be punished by a fine not less than fifty nor more than five hundred dollars, and shall forfeit to the County the weapon or weapons so found on his person."); The Statutes of Oklahoma, 1890, § 7 ("It shall be unlawful for any person, except a peace officer, to carry into any ... any school room or other place where persons are assembled for ... for educational ... purposes ... any of the weapons designated in sections one and two of this article."); *cf.* 1878 Miss. Laws 175, § 4 ("[A]ny *student* of any university, college or school who shall carry concealed, in whole or in part, any weapon of the kind or description in the first section of this Act described, or any teacher, instructor, or professor who shall, knowingly, suffer or permit any such weapon to be carried by any *student or pupil*, shall be deemed guilty of a misdemeanor …") (emphasis added); *The Minutes of the Senatus Academicus 1799-1842*, at 86 (Aug. 9, 1810) ("And be it further ordained that no *student* shall be allowed to keep any gun, pistol, Dagger, Dirk sword cane or any other offensive weapon in College or elsewhere, neither shall they or either of them be allowed to be possessed of the same out of the college in any case

apparent justification for this historical tradition regarding "schools" applies to schooling done in modern "[n]ursery schools" and "preschools." Finally, the Court finds that the burdensomeness of this regulation (i.e., its burden versus its justification) appears proportionate to the burdensomeness of its historical analogues.

As a result, Plaintiffs' motion for a preliminary injunction is denied with regard to the places set forth in this regulation.

e. "[A]viation transportation," "airports" and "buses"

The Court finds that the Second Amendment's plain text covers the conduct in question (i.e., carrying a concealed handgun for self-defense in public in places used for "aviation transportation," "airports," "buses" and vans) for the reasons stated above in Part III.B.2.b. of this Decision. Therefore, the Court finds that, to the extent this regulation applies to "aviation transportation," "airports," "buses" and vans (which the State Defendants have not shown to be sufficiently distinct from "buses," and which in any event may be reasonably considered to be "vehicle[s] used for public transportation"), Defendants must rebut the presumption of protection against this regulation by demonstrating that it is consistent with this Nation's historical tradition of firearm regulation.

As stated above in Part III.B.1.a. of this Decision, the apparent reason for this regulation is to reduce non-self-defensive handgun violence (whether intentional or accidental, and whether in the home or outside the home) that is caused in some way by the possession or use of a

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whatsoever.") (transcription available at University of Georgia Libraries); Univ. of Va. Bd. of Visitors Minutes (Oct. 4-5, 1824) ("No *student* shall, within the precincts of the university ... keep or use weapons or arms of any kind, or gunpowder.") (emphasis added).

handgun by someone who also possesses a concealed-carry license. More specifically, the apparent reason for this regulation is to reduce the threat of gun violence that results "where the public congregates in large numbers while distracted or in confined spaces," especially when children are present. (Dkt. No. 38, at 86-88.) The way the regulation burdens law-abiding citizens' right to armed self-defense is by prohibiting, without exception, a license holder from carrying a concealed handgun in any of the numerous places specified in the regulation.

The State Defendants argue that this regulation's historical analogues consist of the following laws, of which they have provided copies: (1) a Virginia law from 1786 banning firearms in a "fair[] or market[]"; (2) a Tennessee law from 1869-70 banning firearms in a "fair, race course, or other public assembly of the people"; (3) an 1870 Texas law banning firearms in a "ball room, social party or other social gathering composed of ladies and gentlemen"; (4) an 1889 Arizona law banning firearms in a "place where persons are assembled for amusement . . . or into any circus, show or public exhibition of any kind, or into a ball room, social party or social gathering"; and (5) an 1890 Oklahoma law banning firearms in a "circus, show or public exhibition of any kind, or into any ball room, or to any social party or social gathering." (Dkt. No. 48, at 85, 87-88.) The State Defendants also rely on the historical laws permitting regulation on government property (because, they argue, "airports, subways, and buses are all government property"), and the historical laws banning firearms in schools to protect children (because, "[a]s any New York commuter knows, every MTA bus is a school bus in the mornings"). (*Id*.)

Generally, to the extent the laws come from territories in late in the 19th century (i.e., the 1889 Arizona law and 1890 Oklahoma law), the Court affords them little weight, because of their diminished ability to reflect a judicially tested rule that governed more than a relatively

small portion of the population, and thus shed light on the public understanding of the Second Amendment in 1791 and/or of the Fourteenth Amendment in 1868. *See NYSRPA,* 142 S. Ct. at 2136, 2154 ("Historical evidence that long predates or postdates either [1791 or 1868] may not illuminate the scope of the right. . . . [T]he bare existence of these localized restrictions cannot overcome the overwhelming evidence of an otherwise enduring American tradition permitting public carry.").

With regard to the remainder of the laws, generally, they appear to have been aimed at protecting people from the danger and disturbance that may accompany firearms. Generally, the way they burdened law-abiding citizens' right to armed self-defense was by (1) banning firearms on government property, or (2) banning firearms in locations containing dense populations of children (and dense populations of persons present for social purposes).

The Court begins its weighing of these laws by finding that it is least persuaded by the three historical laws banning firearms in locations containing dense populations of persons present for "social" purposes. The Court renders this finding for two reasons: (1) the fact that there was only one such law from a state during the relevant time period (i.e., the 1870 Texas law); and (2) the fact that this sole law (even if it were somehow deemed to be both *established* and *representative* in light of the 1889 Arizona law and 1890 Oklahoma law) cannot justify this modern regulation to the extent that "aviation transportation," "airports," "buses" and vans are not densely populated by persons present for "social" purposes.

Next least persuasive to the Court are the historical laws banning firearms in locations containing dense populations of children: they cannot justify this modern regulation to the extent

that "aviation transportation," "airports," "buses" and vans are not densely populated by children.

Only slightly more persuasive to the Court are laws permitting regulation on government property: historically, it appears those laws were aimed at essentially protecting the operation of the three branches of government, not the regulation of a public service (such as transportation in public). Of course, public roads existed in the 19th and 18th century, and many laws that banned firearms made explicit exceptions for travel (especially the further away from home the person traveled). *See, supra,* note 109 of this Decision (collecting 10 such historical laws).

Moreover, examining these 10 historical laws more closely, the Court perceives the following two patterns in five of them: (1) the longer the journey, the greater the right to carry a firearm in self-defense (note the laws using the words "a *long* journey," "a journey to any place *out of his county or state*," "traveling *through* the state," "*engaged in making* a journey," and "traveling, or *setting out on* a journey") (emphasis added);[113] and (2) *generally*, the less dense the population, the greater the right to carry a firearm in self-defense (given that then, as now, people resided with their families if not in communities, which by definition have a greater population density than non-communities).

Applying these traditions to the facts presented, the Court finds that the burdensomeness of the modern law is unreasonably disproportionate to the burdensomeness of the relevant historical analogues when it comes to persons setting out on a *long* journey (particularly out of

[113] The Court notes that the five laws referenced in the above parenthetical come from Tennessee in 1836, Alabama in 1841, Missouri in 1844, Mississippi in 1878, and Oakland in 1890. *See, supra,* note 109 of this Decision.

state). The modern law contains no exception for such persons. Moreover, the historical laws appear in no way conditioned on either (1) how densely populated the mode of transportation was (whether it be a "coach and four" or later a train), or even (2) whether the traveler used a facility owned and maintained by the government (such as a public road).[114] Indeed, even some of the city laws relied on by the State Defendants in other contexts contain a reasonable exception for travel (e.g., for travel to and from work or to and from a repair shop).[115]

Finally, the State Defendants have adduced no evidence persuading the Court that there is even a comparable need for this restriction (e.g., evidence regarding the number of times concealed-carry possession in a public airport has resulted in a non-self-defensive shooting, particularly when the gun is unloaded, locked, stored inside a piece of luggage and declared in compliance with Federal Aviation Administration regulations). (*See generally* Dkt. No. 48.)[116]

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[114] The Court notes that, although Metropolitan Transportation Authority buses are not an issue in this action, it is persuaded by the State Defendants' argument regarding them during the period before school. (Dkt. No. 48, at 87.)

[115] *See, e.g.,* Champion S. Chase, ed., *Compiled Ordinances of the City of Omaha* (Omaha: Gibson, Miller and Richardson, 1881), p. 70 ("The foregoing provisions shall not apply to … worthy citizens, or persons of good repute, who may carry arms for their own protection in going to and from their place of business, if such business be lawful."); 1892 Federal Act to Prevent Deadly Weapons in the District of Columbia, Chap. 159 ("[N]othing contained in . . . this act shall be so construed as to prevent any person from keeping or carrying about his place of business, dwelling house, or premises any such dangerous or deadly weapons, or from carrying the same from place of purchase to his dwelling house or place of business or from his dwelling house or place of business to any place where repairing is done, to have the same repaired, and back again ….").

[116] Indeed, during the Preliminary Injunction Hearing, counsel for the State Defendants acknowledged that, "[h]ere in New York, we are lucky to live in a state with the fifth lowest rate of death by firearm according to the CDC." (Dkt. No. 72, at 95.) To the extent that such a ranking was achieved before this provision of the CCIA went into effect, the achievement appears to suggest a lack of need for the provision.

And the Court has not found any such evidence indicated in any of the five amicus briefs that it has accepted in *Antonyuk I* and *Antonyuk II*, including the briefs of the Giffords Law Center to Prevent Gun Violence and Dr. Jaclyn Schildkraut, Ph.D. *See generally Antonyuk I*, 22-CV-0734, Amicus Brief of the Giffords Law Center to Prevent Gun Violence (N.D.N.Y. filed Aug. 17, 2022); *Antonyuk I*, 22-CV-0734, Amicus Brief of Dr. Jaclyn Schildkraut, Ph.D. (N.D.N.Y. filed Aug. 17, 2022). Simply stated, even setting aside the burden on Plaintiff Mann (who wants to protect his congregation when traveling), the burden law-abiding license holders like Plaintiff Terrille (who merely want to bring their unloaded, locked, stored and declared firearm into the airport in a soon-to-be *checked* luggage bag in compliance with Federal Aviation Administration regulations) is comparably more burdensome than any historical analogue provided.

As a result, Defendants are preliminarily enjoined from enforcing this regulation during the pendency of this litigation with regard to (1) "aviation transportation" and "airports" to the extent the license holder is complying with all federal regulations there, and (2) "buses" and vans. Otherwise, Plaintiffs' motion for a preliminary injunction is denied with regard to this regulation.

f. "[A]ny 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"

The Court finds that the Second Amendment's plain text covers the conduct in question (i.e., carrying a concealed handgun for self-defense in public in "any establishment issued a license for on-premise consumption pursuant to . . . the alcoholic beverage control law where alcohol is consumed") for the reasons stated above in Part III.B.2.b. of this Decision. As a result, the Court finds that the Government must rebut the presumption of protection against this

regulation by demonstrating that it is consistent with this Nation's historical tradition of firearm regulation.

According to the State Defendants, the reason for this regulation is to reduce the threat of gun violence that results from intoxicated persons gathered in large groups in confined spaces. (Dkt. No. 38, at 89-90.) The way the regulation burdens law-abiding citizens' right to armed self-defense is by prohibiting a licensed person from carrying a concealed handgun in establishments licensed to alcohol (and establishments licensed for on-premise consumption of cannabis).

The State Defendants argue that this regulation's historical analogues consist of the following laws, of which they have provided copies: (1) a Kansas law from 1867 prohibiting the carrying of firearms by "any person under the influence of intoxicating drink"; (2) a Missouri law from 1881 prohibiting the carrying of firearms by any person "when intoxicated or under the influence of intoxicating drinks"; (3) a Wisconsin law from 1889 providing that "[i]t shall be unlawful for any person in a state of intoxication to go armed with any pistol or revolver"; (4) a Mississippi law from 1878 prohibiting any person to sell "any weapon . . . or any pistol cartridge" to "any . . . person intoxicated, knowing him to be . . . in a state of intoxication"); (5) an Oklahoma law from 1890 prohibiting "any public officer be found carrying such arms while under the influence of intoxicating drinks"; (6) a Texas law from 1870 barring firearms in "a ball room, social party or other social gathering composed of ladies and gentlemen"; (7) an Arizona law from 1889 barring firearms in any "place where persons are assembled for amusement . . . or into a ball room, social party or social gathering"; and (8) an Oklahoma law from 1890 (the same

one as stated above) barring firearms in "any ball room, or to any social party or social gathering." (Dkt. No. 48, at 88-89.)

Again, to the extent these laws come from territories (i.e., the Arizona and Oklahoma laws), and/or come from near the last decade of the 19th century (i.e., the Wisconsin law), the Court affords them little weight. *See NYSRPA*, 142 S. Ct. at 2136, 2154-55 (explaining that "[h]istorical evidence that long predates or postdates either [1791 or 1868] may not illuminate the scope of the right," and finding the statutes of territories also deserving of "little weight" because they were "localized," "rarely subject to judicial scrutiny" and "short lived").

With regard to the remainder of the laws, generally, they appear to have been aimed at denying the possession of guns to persons who were likely to pose a danger or disturbance to the public. The way they burdened law-abiding citizens' right to armed self-defense was by denying the possession of firearms to persons who were either (1) intoxicated or (2) likely to disturb those attending a social party or social gathering.

Again, for the sake of argument (and brevity), the Court will assume that these laws (i.e., the laws of Kansas, Missouri, Wisconsin, Mississippi and Texas from between 1867 and 1889) were both sufficiently established and sufficiently representative. The problem is that the modern regulation is not limited to persons who have been served and/or who are consuming alcohol in such establishments. Nor is it even limited to persons who are intoxicated in such establishments. Rather, it broadly prohibits concealed carry by license holders such as Plaintiffs Johnson and Terrille, who will be merely eating at the establishments with their families. Moreover, the State Defendants adduce no evidence of the approximate number of disturbances to "social gathering[s]" at restaurants that are caused each year by those licensed individuals who

carry concealed there. (*See generally* Dkt. No. 48.) Nor is such evidence indicated in any of the five amicus briefs that the Court has accepted, in *Antonyuk I* and *Antonyuk II*, including the briefs of the Giffords Law Center to Prevent Gun Violence and Dr. Jaclyn Schildkraut, Ph.D. *See generally Antonyuk I*, 22-CV-0734, Amicus Brief of the Giffords Law Center to Prevent Gun Violence (N.D.N.Y. filed Aug. 17, 2022); *Antonyuk I*, 22-CV-0734, Amicus Brief of Dr. Jaclyn Schildkraut, Ph.D. (N.D.N.Y. filed Aug. 17, 2022).

With regard to the extent to which this regulation governs license holders who may visit the bar (or restaurant containing a bar) *and* consume alcohol there, while the Court certainly acknowledges the historical support for a law prohibiting becoming intoxicated while carrying a firearm (and the Court certainly acknowledges the sensibility of a modern law criminalizing such conduct), Paragraph "o" of Section 4 of the CCIA did not criminalize becoming intoxicated while carrying a firearm. It criminalized a license holder's *mere presence* at an establishment licensed for the on-premise consumption of alcohol while carrying concealed—regardless of whether he or she is consuming alcohol there. In other words, it governs places instead of behavior. This overbreadth in the regulation would be particularly burdensome on (1) those license holders who, for whatever reason (such as a severe allergy to alcohol), never consume alcohol at restaurants, or (2) those license holders who are simply not drinking because they have charge of their grandkids at the time such as Plaintiff Terrille. (Dkt. No. 1, Attach. 10, at ¶ 19 [Terrille Decl.].)

The State Defendants have not provided sufficient historical analogues to establish an American tradition of prohibiting the carrying of a firearm in such a location. Nor have the State Defendants (or amicus curiae) provided sufficient evidence of a justification for this restriction.

Simply stated, the burdensomeness of this regulation is unreasonably disproportionate to the burdensomeness of its relevant historical analogues. As a result, Defendants are preliminarily enjoined from enforcing this regulation during the pendency of this litigation with regard "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."

g. "[T]heaters," "conference centers," and "banquet halls"

The Court finds that the Second Amendment's plain text covers the conduct in question (i.e., carrying a concealed handgun for self-defense in public in "theaters," "conference centers," and "banquet halls") for the reasons stated above in Part III.B.2.b. of this Decision. As a result, the Court finds that the" Government must rebut the presumption of protection against this regulation by demonstrating that it is consistent with this Nation's historical tradition of firearm regulation.

According to the State Defendants, the reason for this regulation is similar to the reason for the regulation addressed above in Part III.B.2.o. of this Decision: to reduce the threat of gun violence that results from persons gathered in large groups in confined spaces. (Dkt. No. 38, at 89-90.) The way the regulation burdens law-abiding citizens' right to armed self-defense is by prohibiting a licensed person from carrying a concealed handgun in any of these locations, without exception.

The State Defendants argue that this regulation's historical analogues consist of the following laws, of which they have provided copies: (1) a Virginia law from 1786 barring persons from "go[ing] []or rid[ing] armed by night nor by day, in fairs or markets, or in other places, in terror of the county"; (2) a Tennessee law from 1869-70 barring the carrying of

firearms in "any fair, race course, or other public assembly of the people"; (3) a Texas law from 1870 barring the carrying of firearms in "a ball room, social party or other social gathering composed of ladies and gentlemen"; (4) an Arizona law from 1889 barring the carrying of firearms in any "place where persons are assembled for amusement . . , or into any circus, show or public exhibition of any kind, or into a ball room, social party or social gathering"; and (5) an Oklahoma law from 1890 barring the carrying of firearms in any "any circus, show or public exhibition of any kind, or into any ball room, or to any social party or social gathering." (Dkt. No. 48, at 90-91.)

Again, to the extent these laws come from territories near the last decade of the 19th century (i.e., the Arizona and Oklahoma laws), the Court affords them little weight. *See NYSRPA*, 142 S. Ct. at 2136, 2154-55 (explaining that "[h]istorical evidence that long predates or postdates either [1791 or 1868] may not illuminate the scope of the right," and finding the statutes of territories also deserving of "little weight" because they were "localized," "rarely subject to judicial scrutiny" and "short lived").

With regard to the remainder of the laws, generally, they appear to have been aimed at denying the possession of guns to persons who were likely to pose a danger or disturbance to the public. The way they burdened law-abiding citizens' right to armed self-defense was by denying the possession of firearms to persons who were either (1) riding "in terror of the county," or (2) likely to disturb those attending a gathering of people (usually but not always outdoors) containing a dense population (e.g., a fair, market, racecourse, ball room, social party, or other public assembly).

The Court begins by observing that the State Defendants are analogizing the modern need to regulate law-abiding New York State citizens wishing to exercise their license to carry concealed in "theaters," "conference centers," and "banquet halls" (earned after supplying four character references, completing numerous hours of firearms training, and satisfying the demands of a licensing officer) to the historical need to regulate horseback-riding "terror[ists]" through fairs or markets. Setting aside the fact that the armed horseback riders referenced in the Virginia law were, by definition, *brandishing* arms and not carrying them *concealed*, the modern regulation is not limited to instances in which the concealed carry licensees are "terrorizing" others (or doing so while traveling through necessarily congested areas). As a result, the Court must reject that analogy, and discount the weight of the 1789 Virginia law.[117]

With regard to the remaining two laws (of Tennessee from 1869-70 and of Texas from 1870), the Court finds they are simply not enough to render those laws either *established* or *representative*. With regard to the laws' representativeness, in 1870 the population of Tennessee constituted only about 3.3 percent of the American population (1,258,520 out of 38,558,371), and the population of Texas constituted only about 2.1 percent (818,579 out of 38,558,371). *See* Department of Interior, Compendium of Ninth Census: 1870 (1870). The resulting percentage of 5.4 is simply not enough to constitute part of the American tradition of firearm regulation. *See, supra,* Part III.B.1.a. of this Decision.

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[117] For similar reasons (i.e., the lack of a reasonable analogy to terroristic behavior such as riding on horseback through a fair or market while armed), the Court reaches the same conclusion regarding a fourth law located by the Court (and uncited by the State Defendants), from North Carolina in 1792. *See* Francois Xavier Martin, *A Collection of Statutes of the Parliament of England in Force in the State of North Carolina*, 60-61 (Newbern 1792) ("[N]o man great nor small ... except the King's servants in his presence ... be so hardy to ... ride armed by night nor by day, in fairs [or] markets ….").

In any event, even if these two laws were considered together with the two earlier (discounted) laws of Virginia and North Carolina and the two later (also discounted) laws of Arizona and Oklahoma, the Court would reach the same conclusion about this regulation's inconsistency with the Second Amendment.

This is not because it seems somewhat of a stretch to liken the need to regulate jet-lagged conference attendees waiting sleepily in a buffet line for a tray of salmon in some banquet hall to the need to regulate throngs of people jostling each other while trying to reach the best cut of meat in an 18th century market, or to liken mesmerized moviegoers separated by arm rests in a modern theater to dozens of pairs of ladies and gentlemen twirling across a 19th century ball room floor. Nor is it because the Court somewhat doubts that 18th and 19th century fairs, markets or dances had weekly showings at 3:00, 5:00 and 9:00 (with matinees at 12:00 and 2:00 on Saturdays) with the equivalent of a mall security guard milling about in the lobby. (The Court is more than willing to stretch an analogy to shed light on what people understood the words "keep and bear arms" meant in 1791 and 1868.) Nor is it because of the complete dearth of historical laws that have been produced regulating firearms in either theaters or amphitheaters (which existed in America in both 1791 and 1868) or places like taverns, inns, public houses, "tippling houses," "victualing houses," or "ordinaries" (which also existed and might be considered analogous to modern banquet halls). If there was a history of gun violence in such places, this dearth of law would suggest this regulation's inconsistency with the Second Amendment.

The reason the Court would reach the same conclusion is the lack of a sufficient showing by the State Defendants that the modern need for this regulation is comparable to the need for its purported historical analogues. It bears repeating that license holders restricted by this regulation

have provided four character references, completed numerous hours of firearms training, and satisfied the demands of a licensing officer.

Simply stated, the burdensomeness of this regulation is unreasonably disproportionate to the burdensomeness of the relevant historical analogues with regard to licensed persons carrying concealed in "theaters," "conference centers," and "banquet halls." As a result, Defendants are preliminarily enjoined from enforcing this regulation during the pendency of this litigation with regard to licensed persons carrying concealed there.

h. "[A]ny gathering of individuals to collectively express their constitutional rights to protest or assemble"

The Court finds that the Second Amendment's plain text covers the conduct in question (i.e., carrying a concealed handgun for self-defense in public) for the reasons stated above in Part III.B.2.b. of this Decision. As a result, the Court finds that the" Government must rebut the presumption of protection against this regulation by demonstrating that it is consistent with this Nation's historical tradition of firearm regulation.

According to the State Defendants, the reason for this regulation is to prevent the presence of firearms in places where they "would destroy the exercise of other constitutionally-protected rights." (Dkt. No. 38, at 71-72.) The way the regulation burdens law-abiding citizens' right to armed self-defense is by prohibiting a license holder from carrying a concealed handgun in any gathering of individuals whose purposes is "to collectively express their constitutional rights to protest or assemble."

The State Defendants argue that this regulation's historical analogues consist of the following laws, of which they have provided copies: (1) a Tennessee law from 1869-70 providing that "it shall not be lawful . . . for any person attending any . . . ***public assembly*** of the

people, to carry about his person, concealed or otherwise, any pistol . . .”; (2) a Georgia law from 1870 providing that “no person in said State of Georgia be permitted or allowed to carry about his or her person any ... pistol, or revolver . . . to . . . any . . . ***public gathering*** in this State, except militia muster-grounds”; (3) a Texas law from 1870 providing that “if any person shall go into . . . any . . . ***public assembly***, and shall have about his person . . . fire-arms, whether known as a six shooter, gun or pistol of any kind, such person so offending shall be deemed guilty of a misdemeanor . . . ”); (4) a Missouri law from 1883 prohibiting anyone from “having upon or about his person any kind of firearms” in areas including “any other ***public assemblage*** of persons met for any lawful purpose other than for militia drill . . .”; (5) an Arizona law from 1889 prohibiting “any person shall go into . . . any . . . ***public assembly*** . . . and shall have or carry about his person a pistol or other firearm,”; and (6) an Oklahoma law from 1890 prohibiting “any person, except a peace officer, to carry into any . . . any political convention, or to any other ***public assembly***, . . . any of the weapons designated in sections one and two of this article.” (Dkt. No. 38, at 71-72.)

Again, to the extent the laws come from territories near the last decade of the 19th century (i.e., the 1889 Arizona law and 1890 Oklahoma law), the Court discounts their weight, because of their diminished ability to shed light on the public understanding of the Second Amendment in 1791 and/or of the Fourteenth Amendment in 1868.[118]

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[118] *See NYSRPA*, 142 S. Ct. at 2136, 2154-55 (“Historical evidence that long predates or postdates either [1791 or 1868] may not illuminate the scope of the right. . . . [Moreover,] [t]he very transitional and temporary character of the American territorial system often permitted legislative improvisations which might not have been tolerated in a permanent setup. . . . [B]ecause these territorial laws were rarely subject to judicial scrutiny, we do not know the basis of their perceived legality.”) (internal quotation marks omitted).

With regard to the remaining four laws (from Tennessee in 1869-70, Georgia in 1870, Texas in 1870, and Missouri in 1883), they appear to have been sufficiently established, being four in number and coming from across the South. However, their proportional populations at the time were as follows, according to the Census of 1870: (1) Tennessee about 3.3 percent (1,258,520 out of 38,558,371); (2) Georgia about 3.1 percent (1,184,109 out of 38,558,371); (3) Texas about 2.1 (818,579 out of 38,558,371); and (4) Missouri about 4.5 percent (1,721,295 out of 38,558,371). *See* Dept. of Interior, Compendium of Ninth Census: 1870 (1870).[119] Based on this total of about 13.0 percent, the Court finds that these four laws do not appear to be representative of the Nation's firearm regulations in or around 1868.

Even if the Court were to find an established and representative tradition here, it would find one less burdensome than this modern law. Generally, the purpose of these laws appears to have been to protect (from distraction, intimidation or interference) public gatherings of individuals whose purpose was to collectively deliberate over or exercise their constitutional rights, or perform a public duty pursuant to those rights.

In support of this latter finding, the Court relies on the fact that five of the six laws cited by the State Defendants all expressly regard "public assembl[ies]" or "public assemblage[s]." Today, "public assembly" is often a legal term with various meanings, ranging from "parade[s]" and "picket[s]" to "a hundred or more persons" in a "moving picture house[s] *See Antonyuk II*, 2022 WL 5239895, at *19 & n.41. The Court has not yet been able to find a definition of the

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[119] The Court notes that the proportional population of Missouri ten years later was about 4.3 percent (2,168,880 out of 50,155,783), according to the Census of 1880. *See* Dept. of Interior, Compendium of Tenth Census: 1880 (1880).

term in 18th and 19th century dictionaries. *Id.* at *19 & n.39. In its Decision and Temporary Restraining Order, the Court indicated that it construes the term as appearing to "involve a focus on one's constitutional rights." *Id*. at *19. What the Court meant by that statement was that, in four of the six historical laws cited, a "public assembly" (or "public gathering") appears to be likened to assemblies involving the deliberation or exercise of one's constitutional rights, or the performance of a public duty pursuant to those rights (such as "vot[ing]," "muster[ing]," or "perform[ing] any other public duty").[120] Granted, in the remaining two laws, the term "public assembly" is also likened to "race course[s]," "circus[es]," "ball room[s]," and "place[s] where intoxicating liquors are sold."[121] However, those four restrictions (in "race courses," "circuses,"

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[120] *See* 1870 Texas Gen, Laws 63, § 1 (prohibiting carry at "any ***church*** or religious assembly, any ***school*** room or other place where persons are assembled for educational, literary or scientific purposes, or into a ***ball room***, social party or other social gathering composed of ladies and gentlemen, or to any ***election precinct*** on the day or days of any election, where any portion of the people of this State are collected to ***vote at any election***, or to any other place where people may be assembled to ***muster*** or to ***perform*** any other public duty, or any ***other*** public assembly . . ."); 1883 Mo. Laws 76 (prohibiting carry at "any ***church*** or place where people have assembled for religious worship, or into any ***school room*** or place where people are assembled for educational, literary or social purposes, or to any ***election precinct*** on any election day, or into any ***court room*** during the sitting of court, or into any ***other*** public assemblage of persons met for any lawful purpose other than for militia drill or meetings called under the militia law of this state"); 1889 Ariz. Sess. Laws 16-17 (prohibiting carry at "any ***church*** or religious assembly, any ***school room***, or other place where persons are assembled for amusement or for educational or scientific purposes, or into any ***circus***, show or public exhibition of any kind, or into a ***ball room***, social party or social gathering, or to any ***election precinct*** on the day or days of any election, where any portion of the people of this Territory are collected to vote at any election, or to any other place where people may be assembled to minister or to ***perform any other public duty***, or to any ***other*** public assembly"); ***cf.*** 1870 Ga. Laws 421 (prohibiting carry at "any ***court of justice***, or any ***election ground or precinct***, or any ***place of public worship***, or any ***other*** public ***gathering*** in this State, except militia muster-grounds").

[121] *See* 1869-70 Tenn. Pub. Acts 23-24 (prohibiting carry at "any ***fair***, ***race course***, or ***other*** public assembly of the people); 1890 Okla Stat. 496, Ch. 25, § 7 (prohibiting carry at "any ***church*** or religious assembly, any ***school*** room or other place where persons are assembled for public worship, for amusement, or for educational or scientific purposes, or into any ***circus***,

"ball rooms" and saloons) appear to be what the Supreme Court would find to be "outliers." *NYSRPA*, 142 S. Ct. at 2133. They were neither established nor representative.

In any event, this paragraph of Section 4 does not use the term "public assembly." As stated earlier, it uses the words "any gathering of individuals to collectively express their constitutional rights to protest or assemble." This certainly could include assemblies involving the deliberation or exercise of one's constitutional rights, or the performance of a public duty pursuant to those rights. However, it could also include more.

For example, the term could also apply to Plaintiff Terrille's gun shows and Plaintiff Mann's expressive religious assemblies. After all, "one of [Plaintiff Terrille's] main reasons for attending [the gun show at the Polish Community Center] is [his] conversations with fellow gun owners, which invariably includes discussion of New York State's tyrannical gun laws." (Dkt. No. 1, Attach. 10, at ¶ 16 [Terrille Decl.].) Moreover, various of the individuals in Plaintiff Mann's small congregation collectively assemble for morning and evening services every Sunday (with evening services every Wednesday) to express, and indeed to *exercise*, their First Amendment right to practice their religious. (Dkt. No. 1, Attach. 9, at ¶ 8 [Mann Decl.].)

Beginning with the latter first, the Court agrees with Plaintiff Mann that, as a literal matter, the regulation does in fact apply to his expressive religious assemblies. The Court also agrees that such a regulation is not historically justified based on the analogues in question (which were previously considered by the Court before deciding to enjoin the prohibition in "any place of worship or religious observation" as contained above in Part III.B.2.b. of this Decision).

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show or public exhibition of any kind, or into any ***ball room***, or to any social party or social gathering, or to any ***election***, or to any ***place where intoxicating liquors are sold***, or to any ***political convention***, or to any ***other*** public assembly").

The Court finds that this fact alone serves as an adequate ground on which to preliminarily enjoin this regulation, which does not distinguish between *religious* "gathering[s] of individuals to collectively express their constitutional rights to protest or assemble" and *non-religious* such gatherings. But the Court will proceed with its analysis for the sake of thoroughness.

As for Plaintiff Terrille's gun show, upon closer examination, the Court finds itself in a paradox created by a regulation that prevents a license holder from possessing a handgun while gathering with individuals to collectively express their right to protest the regulation by possessing handguns. Levity aside, the Court does not understand how barring Plaintiff Terrille from carrying concealed at a gun show at a Polish Community Center would further this regulation's purpose of avoiding the "destr[uction] [of] the exercise of [someone else's] constitutionally-protected rights." The Court could be wrong but it will hazard a guess that the Center probably does not lease space to opposing expressive groups at the same time.

In other words, the burdensomeness of this regulation appears unreasonably disproportionate to the burdensomeness of its historical analogues.

The Court would reach this conclusion even if it were to consider a differently analogous 1786 law from Virginia (a state that contained over 20 percent of the national population at the time, presenting a credible case for representativeness).[122] The law barred persons "from "go[ing] []or rid[ing] armed by night nor by day, in fairs or markets, or in other places, in terror of the county." This law is not expressly relied on by the State Defendants to support this

[122] In 1790, Virginia contained about 20.9 percent of the total American population (747,610 out of 3,569,100). *See* Return of the Whole Number of Persons Within the Several Districts of the United States: 1790 (Philadelphia 1793).

regulation, but the Court has considered it anyway given the particular importance of this issue to our civil society. The Court finds this historical law to be analogous to the extent that modern onlookers feel intimidated in the presence of a group of protesters known (albeit not seen) to be armed. However, after more carefully examining this issue, the Court finds this historical law (which sought to prevent ***open carry*** by what we would now call terrorists) to be relevantly *dissimilar* to unmasked adults carrying ***concealed*** handguns while they stroll down Main Street brandishing only photocopies of their city Permit to Assemble (at least before the CCIA).

The Court notes it would reach this conclusion also even if it were to consider the interesting law review article cited by the State Defendants,[123] which discusses the history of the right of the people to peaceably assemble and speak in "the *public square*" (emphasis added). A public square was (and remains) a *fixed* location that the Court finds to be relevantly *dissimilar* to the unpredictably moving and sometimes masked phenomenon that is the modern "protest." Under this vague regulation, a law-abiding responsible license holder such as Plaintiff Terrille might suddenly find himself with his grandkids in the middle of a protest that has come to his location, and from which he would have to instantly flee lest the protesters render him a felon, which would appear to be a novel rule in America.

Simply stated, while the Court certainly acknowledges the historical tradition of (and current justification for) a law barring gun-wielding individuals from voluntarily traveling to and opposing another protest (their right being, after all, one of self-*defense*), this regulation was not so narrowly drawn. It must be enjoined, and it is so for the pendency of this litigation. In this

[123] (Dkt. No. 48, at 71-72 [citing Darrell A.H. Miller, "Constitutional Conflict and Sensitive Places," 28 Wm. & Mary Bill of Rights L.J. 459, 475-78 (Dec. 2019)].)

regard, the Court reconsiders its contrary ruling on this issue in its Decision and Temporary Restraining Order of October 6, 2022. *See Antonyuk II*, 2022 WL 5239895, at *19 & n.39.

3. Prohibition in "Restricted Locations"

The Court begins its analysis of Section 5 of the CCIA by observing that it covers the following two locations: (1) not only people's homes but ***all*** privately owned property that is ***not*** open for business to the public (and that is not a "sensitive location" under Section 4 of the CCIA); ***and*** (2) all privately owned property that ***is*** open for business to the public (and that is not a "sensitive location" under Section 4 of the CCIA). This is because, in its entirety, Section 5 of the CCIA provides as follows:

> A person is guilty of criminal possession of a weapon in a restricted location when such person possesses a firearm, rifle, or shotgun and enters into or remains on or in ***private property*** where such person knows or reasonably should know that the owner or lessee of such property has not permitted such possession by clear and conspicuous signage indicating that the carrying of firearms, rifles, or shotguns on their property is permitted or has otherwise given express consent.

Section 5 does not (explicitly or implicitly) limit the "private property" in question to homes or residences. By extending to *all* "private property," it extends (in part) to privately owned property that is open to the public for business.[124] In New York State (as in the rest of the United States), privately owned commercial establishments that are open to the public (e.g.,

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[124] *See, e.g., Black's Law Dictionary* at 1254 (8th ed. West 2004) (defining "***private property***" as property that is "protected from public appropriation – over which the owner has exclusive and absolute rights," while defining "***public property***" as "State or community-owned property not restricted to any one individual's use or possession") (emphasis added); N.Y. Penal Law § 49.19 ("The term 'public place' as used in this Chapter [regarding Disorderly Conduct] shall mean . . . any place of business or assembly open to or frequented by the public, . . . including . . . ***private property*** which is ***open to the public*** view, or to which the ***public has access***.").

stores) often own or lease the private property on which they are located. As a result, by covering "private property," Section 5 criminalizes a license holders' entrance into, or remaining on, those retail commercial establishments in New York State that (1) have not been deemed "sensitive locations" by Section 4, (2) operate on privately owned property, and (3) are unable for whatever reason (such as time constraints) to give express consent to *each* license holder on their doorstep other than by posting a sign containing a controversial message that must (by definition) be visible to all persons passing by (including potential "anti-gun" customers). The Court finds this to present some troubling issues under the Second Amendment and (as the Court will discuss momentarily) the First Amendment.

a. Second Amendment Analysis

Section 5's imposition of a state-wide restriction on concealed carry on all private property that is ***open for business to the public*** finds little historical precedent. In support of it, the State Defendants rely on eight laws from seven states, which they argue are "analogous": (1) a Maryland law from 1715; (2) a Pennsylvania law from 1721; (3) a New Jersey law from 1722; (4) a New York law from 1763; (5) a New Jersey law from 1771; (6) a Louisiana law from 1865; (7) a Texas law from 1866; and (8) an Oregon law from 1893. (Dkt. No. 48, at 95-97.)

Even setting aside the remoteness of the 1893 law, six of these eight laws appear to be what are called "anti-poaching laws," aimed at preventing hunters (sometimes only hunters who are convicted criminals) from taking game off of other people's lands (usually enclosed) without the owner's permission, which was a pernicious problem at the time: (1) the Maryland law from 1715 (barring those persons "convicted of [certain crimes], or other crimes, or . . . of evil fame, or any vagrant, or dissolute liver," from "shoot[ing], kill[ing], or ***hunt[ing]***, or . . . carry[ing] a

gun, upon any person's ***land***, whereon there shall be a seated ***plantation***, without the owner's leave") (emphasis added); (2) the Pennsylvania law from 1721 (barring persons from "carry[ing] any gun or ***hunt[ing]*** on the improved or ***inclosed lands*** of any ***plantation*** other than his own, unless he have license or permission from the owner of such lands or ***plantation***") (emphasis added); (3) the New Jersey law from 1722 (barring persons from "carry[ing] any Gun, or ***hunt[ing]*** on the improved or the improved or ***inclosed Lands*** in any ***Plantation***, other than his own, unless he have License or Permission from the Owner of such ***Lands*** or ***Plantation***") (emphasis added); (4) the New York law from 1763 (barring persons from "carry[ing], shoot[ing] or discharge[ing] any Musket, ***Fowling-Piece***, or other Fire-arm whatsoever, into, upon, or through any ***Orchard***, ***Garden***, ***Corn-Field***, or other ***inclosed Land*** whatever, within the City of New-York, or the Liberties thereof, without License in Writing first had and obtained for that Purpose from such Owner, Proprietor, or Possessor") (emphasis added); (5) the Texas law from 1866 (barring persons from "carry[ing] firearms on the ***inclosed*** premises or ***plantation*** of any citizen, without the consent of the owner or proprietor, other than in the lawful discharge of civil or military duty"); and (6) the Oregon law from 1893 (barring persons, "other than an officer on lawful business, [from] being armed with a gun, pistol, or other firearm, [and going] or trespass[ing] upon any ***enclosed*** premises or ***lands*** without the consent of the owner or possessor thereof." (Dkt. No. 48, at 95-97.)[125]

[125] Based on the texts of these six historical laws, and in the absence of contrary case law, the Court must find that the *main* reason or justification for these six historical laws was poaching, not the exclusion of armed persons from buildings that are open for business to the public. *See Antonyuk I,* 2022 WL 3999791, at *35 & nn.46, 48 (citing state cases from between 1818 and 1911 indicating what was meant by "inclosed" lands); *cf. Miller v. Chicago & N.W.R. Co.*, 113 N.W. 384, 387 (Wis. 1907) ("It cannot be fairly denied that the term 'inclosure'

For the sake of brevity, the Court will not expound on why it finds that barring *some* people from *openly* carrying rifles on other people's farms and lands in 19th century America is hardly analogous to barring *all* license holders from carrying *concealed* handguns in virtually *every commercial building* now. Even if the *way* the historical and modern regulations burdened one's Second Amendment right were the same, the State Defendants' attempt to analogize these six laws to Section 5 of the CCIA would stumble over the second of the Supreme Court's two "central" metrics: "*why* the regulations burden a law-abiding citizen's right to armed self-defense." *NYSRPA*, 142 S. Ct. at 2132-33 (stating that the first such metric was "how . . . the regulations burden" that right) (emphasis added).

Rest assured, none of the six Plaintiffs in this action has alleged that he has been injured by not being able to hunt turkey and deer (with his handgun) inside commercial establishments on privately owned property that is open for business to the public. Rather, the State Defendants' proffered reason or justification for Section 5 is "to ensure that property owners and lessees can make an informed decision." (Dkt. No. 48, at 92-93.) The analogy struggles. Poaching was a specific and pernicious problem in each of these states when they passed these laws. Lacking an ability to make "an informed decision" has not been shown to be a specific and pernicious problem in New York State now. *See, infra,* note 137 of this Decision. This is especially so for commercial establishments such as Plaintiff Leman's small hotel/bed and breakfast, which operates on privately owned property and seeks to draw the business of *all* concealed-carry license holders (relieving them of the fear that they will be criminals if they

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commonly means a particular space surrounded by a *barrier* of some sort . . . . [A]ll lexical definitions of such term are in harmony to that effect.") (emphasis added).

enter without "express consent"), but are unable to give "express consent" to all of them other than through a conspicuous sign bearing a controversial message that turns away the business of "anti-gun" customers. (Dkt. No. 1, Attach. 5, at ¶¶ 25-29 [Leman Decl.].) Simply stated, the need to restrict fowling-piece-wielding poachers on fenced-in farms in 18th and 19th century America appears of little comparable analogousness to the need to restrict law-abiding responsible license holders in establishments that are open for business to the public today.

To illustrate what a departure Section 5 is from our Nation's historical tradition of firearm regulation, the Court draws the reader's attention to the fact that, of the five modern laws that the State Defendants rely on to support this provision (Alaska, Connecticut, Louisiana, South Carolina, and the District of Columbia), four are expressly limited to "residen[ces]" or "dwelling[s]";[126] only one conceivably extends to commercial establishments on privately owned property (and it is limited to "assault weapons" and does not extend to licensed concealed handguns as does Section 5).[127] And two do not even require "express" authorization or

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[126] *See* Alaska Stat. § 11.61.220(a)(1)(B) (providing that a person may not carry a concealed weapon "within the ***residence*** of another person unless the person has first obtained the express permission of an adult residing there to bring a concealed deadly weapon within the residence") (emphasis added); D.C. Code § 7-2509.07(b)(1) (providing that the carrying of a concealed pistol "on private ***residential*** property shall be presumed to be prohibited unless otherwise authorized by the property owner or person in control of the premises and communicated personally to the licensee in advance of entry onto the ***residential*** property") (emphasis added); La. Rev. Stat. Ann. § 1379.3(O) ("No individual to whom a concealed handgun permit is issued may carry such concealed handgun into the private ***residence*** of another without first receiving the ***consent*** of that person.") (emphasis added); S.C. Code Ann. § 23-31-225 ("No person . . . may carry a concealable weapon into the ***residence or dwelling*** place of another person without the express permission of the owner or person in legal control or possession, as appropriate.") (emphasis added).

[127] *See* Conn. Gen. Stat. § 53-202d(f)(1) (providing that ***assault weapons*** may only be carried "on ***property*** owned by another person with the owner's express permission") (emphasis added).

consent.[128] Simply stated, Section 5's burdensomeness (burden versus justification) is unreasonably disproportionate to that of six of the eight historical laws that the State Defendants rely on.

Returning to an analysis of the State Defendants' eight historical laws, only two of them may fairly be characterized as being anything more than mere anti-poaching laws: (1) the New Jersey law from 1771 (broadening its statute from 1722 so as to bar persons from "carry[ing] any Gun on any Lands not his own, and for which the Owner pays Taxes, or is in his lawful Possession, unless he hath License or Permission in writing from the Owner or Owners or legal Possessor"); and (2) the Louisiana law from 1865 (barring persons from "carrying fire-arms on the premises or plantations of any citizen, without the consent of the owner or proprietor, other than in lawful discharge of a civil or military order"). (Dkt. No. 48, at 95-97.)

Even if these two lonely state laws could somehow be reasonably viewed as evidencing an *established* tradition (which the Court doubts they could), they cannot be reasonably viewed as evidencing a *representative* one. According to the First Census, in 1790, New Jersey contained a population of 184,139, which was only about 5.2 percent of the national population of 3,569,100. *See Return of the Whole Number of Persons Within the Several Districts of the United States: 1790* (Philadelphia 1793). Moreover, in 1870, Louisiana contained a population

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[128] *See* D.C. Code § 7-2509.07(b)(1) (providing that the carrying of a concealed pistol "on private residential property shall be presumed to be prohibited unless otherwise ***authorized*** by the property owner or person in control of the premises and ***communicated personally*** to the licensee in advance of entry onto the residential property") (emphasis added); La. Rev. Stat. Ann. § 1379.3(O) ("No individual to whom a concealed handgun permit is issued may carry such concealed handgun into the private residence of another without first receiving the ***consent*** of that person.") (emphasis added).

of 726,915, which was only about 1.9 percent of the national population of 38,558,371. *See* Dept. of Interior, Compendium of Ninth Census: 1870, Tables I and VIII (1870). Even if one were to assume the New Jersey law were still in effect in 1870 (when New Jersey would have contained a population of 906,096 or 2.3 percent of the Nation), the two states would have represented only about 4.2 percent of the national population, not a fair representation of the Nation.

Indeed, this restriction appears to be a thinly disguised version of the sort of impermissible "sensitive location" regulation that the Supreme Court considered and rejected in *NYSRPA*:

> In [Respondents'] view, 'sensitive places' where the government may lawfully disarm law-abiding citizens include all 'places where people typically congregate and where law-enforcement and other public-safety professionals are presumptively available.' ... It is true that people sometimes congregate in 'sensitive places,' and it is likewise true that law enforcement professionals are usually presumptively available in those locations. But 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.

NYSRPA, 142 S. Ct. at 2133-34.[129]

[129] The Court notes that it suspects that the sum total of commercial property open to the public for business from which concealed-carry license holders are restricted by Section 5 in the rest of New York State (absent "express permission" or a conspicuous and contentious message from the property owner or lessee) exceeds in size the approximate 34-square-area that constitutes Manhattan. *See NYSRPA*, 142 S. Ct. at 2134 ("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.").

Finally, with regard to the extent to which this regulation restricts concealed carry on privately owned property that is *not open to the public* (including other persons' homes), the Court has been persuaded by the State Defendants that the Second Amendment is not the best place to look for protection from that restriction, because thus far the Second Amendment has been found to protect the right to keep and bear arms for self-defense only in one's *own* home or in *public*. Rather, what appears to protect against this restriction—and the restriction that applies to privately owned property that *is* open to the public (including privately owned commercial establishments)—is the First Amendment.

b. First Amendment Analysis

The First Amendment provides, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The Fourteenth Amendment applies the First Amendment to the states.

"'At the heart of the First Amendment' is the principle 'that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence.'" *New Hope Fam. Servs., Inc. v. Poole*, 966 F.3d 145, 170 (2d Cir. 2020) (quoting *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 213 [2013]). "[T]he right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to *refrain from speaking at all*." *Wooley v. Maynard*, 430 U.S. 705, 714 (1977) (emphasis added). As observed by Associate Justice Robert H. Jackson in 1943,

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.

West Virginia State Board of Education v. Barnette, 319 U.S. 624, 642 (1943).

Since *Barnette*, the Supreme Court has consistently "prohibit[ed] the government from telling people what they must say." *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc*., 547 U.S. 47, 61 (2006). This prohibition is not limited to ideological messages; it extends equally to compelled statements of fact. *See Riley v. Nat'l Fed'n of the Blind of N.C., Inc*., 487 U.S. 781, 797-98 (1988) ("These cases cannot be distinguished simply because they involved compelled statements of opinion while here we deal with compelled statements of 'fact': either form of compulsion burdens protected speech.").

In compelled-speech cases, courts may apply strict or intermediate scrutiny depending on whether the statute is "content based." Strict scrutiny "looks to whether a law is narrowly drawn to serve a compelling governmental interest." *Evergreen Ass'n, Inc. v. City of New York*, 740 F.3d 233, 245 (2d Cir. 2014). Intermediate scrutiny "looks to whether a law is no more extensive than necessary to serve a substantial governmental interest." *Evergreen Ass'n, Inc.,* 740 F.3d at 245.

"Mandating speech that a speaker would not otherwise make necessarily alters the content of the speech." *Riley v. Nat'l Fed. of the Blind of N.C., Inc.*, 487 U.S. 781, 795 (1988). "[The Supreme Court] therefore consider[s] [laws mandating speech]" to be "content-based regulations" subject to strict or exacting scrutiny. *Riley*, 487 U.S. at 795; *see also Turner Broad. Sys. v. FCC*, 512 U.S. 622, 642 (1994) ("Laws that compel speakers to utter or distribute speech bearing a particular message are subject to the same rigorous scrutiny" as laws that "suppress, disadvantage, or impose differential burdens upon speech because of its content."). Content-based regulations on speech "'are presumptively unconstitutional and may be justified only if the

government proves that they are narrowly tailored to serve compelling state interests.'" *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 138 S. Ct. 2361, 2371 (2018).

Generally, to prevail on a compelled-speech claim under the First Amendment, a plaintiff must prove three elements: (1) speech, (2) to which the speaker objects or disagrees, (3) which is compelled by governmental action that is regulatory, proscriptive, or compulsory in nature. *Wooley v. Maynard*, 430 U.S. 705, 714-15 (1977); *Laird v. Tatum*, 408 U.S. 1, 11 (1972); *Barnette*, 319 U.S. at 642. The Court believes that Section 5 presents compelled-speech issues with regard to both (1) privately owned property that ***is not*** open to the public (including other persons' homes), and (2) privately owned property that ***is*** open to the public (including privately owned commercial establishments). However, the Court will focus its analysis (in this last section of its already lengthy Decision) on the second issue because it presents a clearer problem.

The first two elements of a compelled-speech claim appear present here, regardless of whether the speech were deemed factual and not ideological in nature, and regardless of whether the speaker agreed with the truth of the message and just disagreed with having to speak it.[130]

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[130] The equivalent of a "Guns Welcome" sign may in some parts of America be purely a factual statement, but in New York State it appears to be at least partly an ideological statement (and, Plaintiffs would probably argue, a political statement). Among other things, these words call to mind a moral message about crime and the proper way to defend oneself against it. *Cf. Doe 1 v. Marshall*, 367 F. Supp.3d 1310, 1324 (M.D. Ala. 2019) ("Yet the words here ['CRIMINAL SEX OFFENDER'] call to mind philosophical and moral messages about crime, victims, retribution, deterrence, and rehabilitation. And even if they did not–even if the words here were purely factual with no ideological implications–the compelled speech doctrine would still apply."). As the Fourth Circuit has explained, "While it is true that the words the state puts into the [speaker's] mouth are factual, that does not divorce the speech from its moral or ideological implications. Context matters." *Stuart v. Camnitz*, 774 F.3d 238, 246 (4th Cir. 2014) (considering statute that required physicians to perform ultrasound, display sonogram, and describe fetus to women seeking abortions).

As for how the government is *compelling* the speech, the Court acknowledges that Plaintiffs may again face another issue of standing if they start complaining about having to help make "criminals" out of license-holders who (inconsiderately) come upon their property without first having acquired either actual or constructive knowledge of Plaintiffs' express consent to carry concealed there. Generally, such an injury is not to Plaintiffs but the other license holders, under the law.

But the Section 5 appears to compel Plaintiffs' speech another way: by ***coercing*** them, as busy store owners, to conspicuously speak the state's controversial message (visible to neighbors and passersby on the sidewalk or street) if (1) they want to welcome onto their property all license-holding visitors who the State has spooked with a felony charge,[131] but (2) they are otherwise unable to give express consent to those visitors for some reason (say, because as small-business owners they do not enjoy the luxury, or possess the superhuman endurance, of being able to sit at the front entrance to their property twenty-four hours a day, seven days a week, twelve months a year). (Dkt. No. 23, at 33.)

The Court does not use the word "coerce" lightly. It acknowledges the State Defendants' response that Section 5 gives such property owners another choice: giving "other[] . . . express consent." The problem is those property owners (specifically the owners of small business that are open to the public) ***cannot possibly*** avail themselves of that "other[] . . . express consent" (and thus must avail themselves of the state-authorized message). This is because, again, they do

[131] These license-holding visitors could include customers, door-to-door solicitors, unannounced overnight guests who want to travel with their firearm, or the discourteous "repairman" imagined by counsel for the State Defendants during oral argument in *Antonyuk I*.

not have the time to do so as small business owners (as evidenced by Plaintiff Leman, who swears he is too busy to stand at the front door of his small hotel/bed and breakfast 24 hours a day 365 days a year). (Dkt. No. 1, Attach. 5, at ¶¶ 25-29 [Leman Decl.].)[132]

But the old rule required speech too, the State Defendants argue: the new rule law just flips the "default" from speech that *excludes* concealed carry to speech that *permits* concealed carry. (Dkt. No. 23, at 33.) Of course, the old rule (which finds its roots in centuries of English property law that America inherited at the time of its Founding) regarded "inclosed" land (e.g., neighbors' fenced-in farms), not privately owned property that *is open for business to the public*.[133]

For this reason, four out of the five modern "informed consent" laws on which the State Defendants rely (Alaska, Louisiana, South Carolina, and the District of Columbia) expressly limit the restriction to "residence[s]" or "dwelling[s]," and are thus not (as the State Defendants'

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[132] The Court suspects that the need of these small-business owners to communicate a green light to potential license-holding customers (and thus the coercion inflicted on them by the State to conspicuously speak its controversial message) has only been intensified by any shortage of license-holding shoppers that Section 5 has created. It is not difficult to imagine license holders not shopping as much due to the fact that many stores have, for whatever reason (whether it be lack of time or an aversion to posting controversial messages), not bothered to post "Guns Welcome" signs since September 1, 2022, when the CCIA took effect. (*See, e.g.,* Dkt. No. 1, Attach. 1, at ¶ 7 [Antonyuk Decl., swearing that "I have changed where I eat and get takeout meals. I have stopped shopping at certain stores that have not posted signs welcoming firearms."].)

[133] *See, e.g., Entick v. Carrington*, 2 Wils. K.B. 275, 95 Eng. Rep. 807, 817 (K.B. 1765) ("[O]ur law holds the property of every man so sacred, that no man can set his foot upon his neighbour's close without his leave."); *Florida v. Jardines*, 569 U.S. 1, 8 (2013) (explaining that *Entick v. Carrington* was a case that was "undoubtedly familiar" to "every American statesman" at the time of our Founding); *Black's Law Dictionary* at 271 (8th ed. 2004) (defining "close" as "[a]n enclosed portion of land").

argue) the "same" as Section 5. *See, supra,* note 126 of this Decision (citing four laws). Indeed, two of those four laws do not even require "express" authorization or consent: they require a license-holder to have only (1) personally communicated "authoriz[ation]" of the property owner or person in control of the premises,[134] or (2) "consent" of the resident.[135] Moreover, the sole law that is not expressly limited to "residence[s]" or "dwelling[s]" applies only to "assault weapons" (not licensed concealed handguns possessed by individuals who have supplied four references, completed numerous hours of firearm training, and satisfied a licensing officer). *See, supra,* note 127 of this Decision (citing Connecticut law).

Finally, all five laws (properly) leave open the channel of required communication, whether that be (1) conspicuous signage, (2) inconspicuous signage (e.g., not visible from the street or sidewalk),[136] (3) a phone call, (4) a text message, or (5) a prior word at the front door. None of these five laws spells out the substance and "clear and conspicuous" mode of a controversial message that property owners are *coerced* to speak to all persons passing by their door (a statement "indicating that the carrying of firearms, rifles, or shotguns on their property is

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134 *See* D.C. Code § 7-2509.07(b)(1) (providing that the carrying of a concealed pistol "on private residential property shall be presumed to be prohibited unless otherwise ***authorized*** by the property owner or person in control of the premises and ***communicated personally*** to the licensee in advance of entry onto the residential property") (emphasis added).

135 *See* La. Rev. Stat. Ann. § 1379.3(O) ("No individual to whom a concealed handgun permit is issued may carry such concealed handgun into the private residence of another without first receiving the ***consent*** of that person.") (emphasis added).

136 The Court notes that, although the Boolean circle that surrounds all things in the world that are "express" may certainly overlap the Boolean circle that surrounds all things in the world that are "conspicuous," they do not do so perfectly: a distinction exists between the definition of the word "express" and the definition of the word "conspicuous" (a fact recognized by every purchaser who argues that the limited warranty was certainly express enough but it was just not conspicuous enough to be seen).

permitted") if those property owners want to welcome all concealed-carry license holders onto their property but are unable to otherwise give express consent to them for some reason.

In this sense, all five modern laws on which the State Defendants rely appear less restrictive, and more narrowly tailored, than Section 5 of the CCIA (even if Section 5 were pursuing a compelling or even a mere substantial state interest, which it does not appear to be doing, based on the dearth of relevant evidence before the Court).[137]

The Court acknowledges that this First Amendment issue presents a closer call than do the others. But, on the record before it (which includes Plaintiff Leman's declaration and which lacks evidence of an adequate justification from the State Defendants), the Court must find that Plaintiffs have established a strong likelihood of success on their First Amendment challenge to Section 5. The Court hastens to add that, even if its First Amendment analysis were flawed, the

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[137] With regard to private property that is *not* open to the public (e.g., homes), the Court notes that the State Defendants adduce no evidence of the approximate number of acts of violence that occur each year in New York State caused by license holders who have (inconsiderately) entered that property carrying concealed without having the prior express permission of the owner. (*See generally* Dkt. No. 48.) Nor is such evidence indicated in any of the five amicus briefs that the Court has accepted, in *Antonyuk I* and *Antonyuk II*. The Court can only assume that this is because the number is so small. (The licensed handgun is, after all, concealed, and the license holders did supply four character references and go through a background check before receiving their license.) Simply stated, based on the current record, the Court finds that the State of New York does not appear to be plagued by this sort of silent epidemic. The Court's finding is not changed by a 2020 nation-wide survey of 2,000 individuals cited by the State Defendants, which shows at most that, *if there were such a silent epidemic*, 54.6 percent of those in the Northeast would favor a "no carry" default rule. *See* Ian Ayres & Spurthi Jonnalagadda, "Guests with Guns: Public Support for No Carry Defaults on Private Land," 48 *J.L. Med. & Ethics* 183, 186 (Winter 2020) (reporting that 45.4 percent of respondents disagreed with the statement that "[c]ustomers should be allowed to bring gun in business without permission"). Of course, setting aside the fact that the survey in no way shows that there *is* such a silent epidemic, the survey's use of the words "allowed . . . without permission" suggests that the ancient common law rule that owners may exclude others from their property has been or will be repealed (which it has not been and will not be).

Court's prior Fourth Amendment analysis would and does serve as an independent ground on which to preliminary enjoin *all* of Section 5, which does not distinguish between privately owned property that is open to the public and privately owned property that is closed to the public. (The Court heeds the State's request to not rewrite its hurried statute.)

For all of these reasons, the Court preliminarily enjoins all of Section 5 of the CCIA for the pendency of this litigation.[138]

C. Strong Showing of Irreparable Harm

Plaintiffs have made a strong showing that they will likely experience irreparable harm if the Preliminary Injunction is not issued for the reasons stated in their motion papers and declarations, and the reasons stated in the Court's Decision and Order in *Antonyuk I*, 2022 WL 3999791, at *36.

D. Balance of Equities and Service of Public Interest

Plaintiffs have also made a strong showing that balance of equities tips in their favor and that the public interest would not be disserved by the Court's granting of their motion for a Preliminary Injunction for the reasons stated in their motion papers and declarations, and in the Court's Decision and Order in *Antonyuk I,* 2022 WL 3999791, at *36.

E. Security

[138] In this sense, the Court reconsiders its ruling on this issue in its Decision and Temporary Restraining Order of October 6, 2022 (which permitted this regulation to stand to the extent it regarded fenced-in farmland owned by another or fenced-in hunting ground owned by another).

Plaintiffs should be, and are, excused from giving security because there has been no proof of any "costs and damages" that would have been sustained by any Defendant "found to have been wrongfully enjoined or restrained" under Fed. R. Civ. P. 65(c).[139]

F. Scope and Stay

As they did with regard to a Temporary Restraining Order, the State Defendants have requested that any Preliminary Injunction that is issued by the Court be (1) either limited in scope to Plaintiffs or the Northern District of New York, and (2) stayed for three business days pending appeal. (Dkt. No. 48, at 115-16.)

After carefully considering the matter, the Court denies this request for the reasons stated by Plaintiffs in their reply papers and during oral argument, and for the reasons stated recently by U.S. District Judge John L. Sinatra in *Hardaway v. Nigrelli*. (Dkt. No. 69, at 54 [Plfs.' Reply Memo. of Law]; Dkt. No. 71, at 107-08 [Prelim. Inj. Tr.].) *See also Hardaway v. Nigerelli*, 22-CV-0771, 2022 WL 16646220, at *18-19 (W.D.N.Y. Nov. 3, 2022). To those reasons, the Court adds the fact that five of the nine Defendants in this action have not even opposed Plaintiffs'

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139 *See Doctor's Assocs., Inc. v. Distajo*, 107 F.3d 126, 136 (2d Cir.1997) (affirming district court decision to not require a franchisor-plaintiff to post a bond for either of its injunctions because the franchisee-defendants "would not suffer damage or loss from being forced to arbitrate in lieu of prosecuting their state-court cases"); *Doctor's Assocs., Inc. v. Stuart*, 85 F.3d 975, 985 (2d Cir. 1996) ("Defendants have not shown that they will likely suffer harm absent the posting of a bond by [Plaintiff]."); *Clarkson Co. v. Shaheen,* 544 F.2d 624, 632 (2d Cir.1976) ("[B]ecause, under Fed. R. Civ. P. 65[c], the amount of any bond to be given upon the issuance of a preliminary injunction rests within the sound discretion of the trial court, the district court may dispense with the filing of a bond."); *Ferguson v. Tabah*, 288 F.2d 665, 675 (2d Cir.1961) ("[The phrase 'in such sum as the court deems proper'] indicates that the District Court is vested with wide discretion in the matter of security and it has been held proper for the court to require no bond where there has been no proof of likelihood of harm, or where the injunctive order was issued "to aid and preserve the court's jurisdiction over the subject matter involved.").

motion to preliminarily enjoin the below-enjoined provisions of this patently unconstitutional law. *See, supra,* Part I of this Decision. Although the Court has not considered that *de facto* consent in evaluating the merits of Plaintiffs' claims,[140] the Court does find it relevant in evaluating any possible injury to the public that would be caused by this Preliminary Injunction if, on appeal, this Court's Decision were to be held to be in error.

For all of these reasons, the Court denies the State Defendants' request for a limitation and stay.

ACCORDINGLY, it is

ORDERED that Defendant Hochul is **DISMISSED** from this action as a party; and it is further

ORDERED that Plaintiffs' motion for a Preliminary Injunction (Dkt. No. 6) is **GRANTED in part** and **DENIED in part** in accordance with this Decision; and it is further

ORDERED that Defendants, as well as their officers, agents, servants, employees, and attorneys (and any other persons who are in active concert or participation with them) are **PRELIMINARILY ENJOINED** from enforcing the following provisions of the Concealed Carry Improvement Act, 2022 N.Y. Sess. Laws ch. 371 ("CCIA"):

(1) the following provisions contained in Section 1 of the CCIA:

(a) the provision requiring "good moral character";

(b) the provision requiring the "names and contact information for the applicant's current spouse, or domestic partner, any other adults

[140] Ordinarily, in this District, when a properly filed motion is unopposed, the movant's burden on that motion is lightened to having to show only that their motion possesses facial merit. N.D.N.Y. L.R. 7.1(a)(3).

residing in the applicant's home, including any adult children of the applicant, and whether or not there are minors residing, full time or part time, in the applicant's home";

(c) the provision requiring "a list of former and current social media accounts of the applicant from the past three years"; and

(d) the provision contained in Section 1 of the CCIA requiring "such other information required by review of the licensing application that is reasonably necessary and related to the review of the licensing application";

(2) the following "sensitive locations" provision contained in Section 4 of the CCIA:

(a) "any location providing . . . behavioral health, or chemical dependance care or services" (except to places to which the public or a substantial group of persons have not been granted access) as contained in Paragraph "2(b)";

(b) "any place of worship or religious observation" as contained in Paragraph "2(c)";

(c) "public parks, and zoos" as contained in Paragraph "2(d)";

(d) "airports" to the extent the license holder is complying with federal regulations, and "buses" as contained in Paragraph "2(n)";

(e) "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" as contained in Paragraph "2(o)";

(f) "theaters," "conference centers," and "banquet halls" as contained in Paragraph "2(p)"; and

(g) "any gathering of individuals to collectively express their constitutional rights to protest or assemble" as contained in Paragraph "2(s)"; and

(3) the "restricted locations" provision contained in Section 5 of the CCIA; and it is further

ORDERED that Plaintiffs are **EXCUSED** from giving security; and it is further

ORDERED that the State Defendants' request for a limitation in the scope of this Preliminary Injunction and for a stay of it pending appeal (Dkt. No. 48, at 115-16) is **DENIED**.

Dated: November 7, 2022
Syracuse, New York

Glenn T. Suddaby
U.S. District Judge

USCS Const. Amend. 1, Part 1 of 8

Current through the ratification of the 27th Amendment on May 7, 1992.

United States Code Service > Amendments > Amendment 1 Religious and political freedom.

Amendment 1 Religious and political freedom.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

End of Document

USCS Const. Amend. 2

Current through the ratification of the 27th Amendment on May 7, 1992.

United States Code Service > Amendments > Amendment 2 Right to bear arms.

Amendment 2 Right to bear arms.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

End of Document

USCS Const. Amend. 5, Part 1 of 13

Current through the ratification of the 27th Amendment on May 7, 1992.

United States Code Service > Amendments > Amendment 5 Criminal actions—Provisions concerning—Due process of law and just compensation clauses.

Amendment 5 Criminal actions—Provisions concerning—Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

End of Document

USCS Const. Amend. 14, Part 1 of 15

Current through the ratification of the 27th Amendment on May 7, 1992.

United States Code Service > Amendments > Amendment 14

Amendment 14

Sec. 1. [Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. [Representatives—Power to reduce apportionment.] Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 3. [Disqualification to hold office.] No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Sec. 4. [Public debt not to be questioned—Debts of the Confederacy and claims not to be paid.] The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Sec. 5. [Power to enforce amendment.] The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

End of Document

EXTRAORDINARY SESSION #1

Legislative Bill Drafting Commission
12053-04-2

S. --------
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed, and when printed to be committed to the Committee on

-------- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the Committee on

PENALA
(Relates to licensing and other provisions relating to firearms)

Pen L. licensing of firearms

AN ACT

to amend the penal law, the general business law, the executive law, the civil practice law and rules and the state finance law, in relation to licensing and other provisions relating to firearms

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

IN SENATE_____

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship of this proposal:

s15 Addabbo	s17 Felder	s07 Kaplan	s58 O'Mara	s10 Sanders
s52 Akshar	s59 Gallivan	s26 Kavanagh	s62 Ortt	s23 Savino
s36 Bailey	s05 Gaughran	s63 Kennedy	s01 Palumbo	s32 Sepulveda
s34 Biaggi	s12 Gianaris	s28 Krueger	s21 Parker	s41 Serino
s57 Borrello	s22 Gounardes	s24 Lanza	s19 Persaud	s29 Serrano
s04 Boyle	s47 Griffo	s11 Liu	s13 Ramos	s39 Skoufis
s44 Breslin	s40 Harckham	s50 Mannion	s61 Rath	s16 Stavisky
s25 Brisport	s54 Helming	s42 Martucci	s38 Reichlin-Melnick	s45 Stec
s08 Brooks	s46 Hinchey	s02 Mattera		s35 Stewart-Cousins
s55 Brouk	s27 Hoylman	s53 May	s48 Ritchie	
s30 Cleare	s31 Jackson	s37 Mayer	s33 Rivera	s49 Tedisco
s14 Comrie	s43 Jordan	s20 Myrie	s60 Ryan	s06 Thomas
s56 Cooney	s09 Kaminsky	s51 Oberacker	s18 Salazar	s03 Weik

IN ASSEMBLY_____

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the multi-sponsorship of this proposal:

a049 Abbate	a032 Cook	a066 Glick	a014 McDonough	a121 Salka
a092 Abinanti	a039 Cruz	a034 Gonzalez-Rojas	a146 McMahon	a111 Santabarbara
a031 Anderson	a043 Cunningham		a137 Meeks	a090 Sayegh
a122 Angelino	a063 Cusick	a150 Goodell	a017 Mikulin	a099 Schmitt
a107 Ashby	a045 Cymbrowitz	a075 Gottfried	a101 Miller, B.	a076 Seawright
a035 Aubry	a018 Darling	a021 Griffin	a051 Mitaynes	a084 Septimo
a120 Barclay	a053 Davila	a100 Gunther	a015 Montesano	a016 Sillitti
a030 Barnwell	a072 De Los Santos	a139 Hawley	a145 Morinello	a052 Simon
a106 Barrett	a003 DeStefano	a083 Heastie	a065 Niou	a114 Simpson
a082 Benedetto	a070 Dickens	a028 Hevesi	a037 Nolan	a005 Smith
a042 Bichotte Hermelyn	a054 Dilan	a128 Hunter	a144 Norris	a118 Smullen
	a081 Dinowitz	a029 Hyndman	a069 O'Donnell	a022 Solages
a117 Blankenbush	a147 DiPietro	a079 Jackson	a091 Otis	a110 Steck
a098 Brabenec	a009 Durso	a104 Jacobson	a132 Palmesano	a010 Stern
a026 Braunstein	a048 Eichenstein	a011 Jean-Pierre	a088 Paulin	a127 Stirpe
a138 Bronson	a004 Englebright	a134 Jensen	a141 Peoples-Stokes	a102 Tague
a020 Brown, E.	a074 Epstein	a115 Jones		a064 Tannousis
a012 Brown, K.	a109 Fahy	a077 Joyner	a023 Pheffer Amato	a086 Tapia
a093 Burdick	a061 Fall	a125 Kelles		a071 Taylor
a085 Burgos	a080 Fernandez	a040 Kim	a089 Pretlow	a001 Thiele
a142 Burke	a008 Fitzpatrick	a105 Lalor	a073 Quart	a033 Vanel
a119 Buttenschon	a057 Forrest	a013 Lavine	a019 Ra	a116 Walczyk
a094 Byrne	a124 Friend	a097 Lawler	a038 Rajkumar	a055 Walker
a133 Byrnes	a046 Frontus	a126 Lemondes	a006 Ramos	a143 Wallace
a103 Cahill	a095 Galef	a060 Lucas	a062 Reilly	a112 Walsh
a044 Carroll	a050 Gallagher	a135 Lunsford	a087 Reyes	a041 Weinstein
a058 Chandler-Waterman	a131 Gallahan	a123 Lupardo	a078 Rivera, J.	a024 Weprin
	a007 Gandolfo	a129 Magnarelli	a149 Rivera, J.D.	a059 Williams
a136 Clark	a068 Gibbs	a036 Mamdani	a027 Rosenthal, D.	a113 Woerner
a047 Colton	a002 Giglio, J.A.	a130 Manktelow	a067 Rosenthal, L.	a096 Zebrowski
a140 Conrad	a148 Giglio, J.M.	a108 McDonald	a025 Rozic	a056 Zinerman

1) Single House Bill (introduced and printed separately in either or both houses). Uni-Bill (introduced simultaneously in both houses and printed as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed copies of bill and: in Assembly 2 copies of memorandum in support, in Senate 4 copies of memorandum in support (single house); or 4 signed copies of bill and 6 copies of memorandum in support (uni-bill).

LBDC 05/31/22

Section 1. The section heading and subdivisions 1, 1-a, 2, 4, 4-a, 4-b, 10 and 11 of section 400.00 of the penal law, subdivisions 1 and 10 as amended by chapter 1 of the laws of 2013, paragraph (c) of subdivision 1 as amended by chapter 60 of the laws of 2018, paragraph (j) of subdivision 1 as amended by chapter 208 of the laws of 2022, subdivision 1-a as added by section 2 of part N of chapter 55 of the laws of 2020, subdivision 2 as amended by chapter 212 of the laws of 2022, subdivision 4 as amended by chapter 242 of the laws of 2019, subdivision 4-a as added by chapter 233 of the laws of 1980, subdivision 4-b as added by chapter 446 of the laws of 1997, paragraph (c) of subdivision 10 as added by chapter 212 of the laws of 2022, subdivision 11 as amended by chapter 207 of the laws of 2022, are amended and a new subdivision 4-c is added to read as follows:

[Licenses to carry, possess, repair and dispose of] Licensing and other provisions relating to firearms.

1. Eligibility. No license shall be issued or renewed pursuant to this section except by the licensing officer, and then only after investigation and finding that all statements in a proper application for a license are true. No license shall be issued or renewed except for an applicant (a) twenty-one years of age or older, provided, however, that where such applicant has been honorably discharged from the United States army, navy, marine corps, air force or coast guard, or the national guard of the state of New York, no such age restriction shall apply; (b) of good moral character, which, for the purposes of this article, shall mean having the essential character, temperament and judgement necessary to be entrusted with a weapon and to use it only in a manner that does not endanger oneself or others; (c) who has not been convicted anywhere of a felony or a serious offense or who is not the

subject of an outstanding warrant of arrest issued upon the alleged commission of a felony or serious offense; (d) who is not a fugitive from justice; (e) who is not an unlawful user of or addicted to any controlled substance as defined in section 21 U.S.C. 802; (f) who being an alien (i) is not illegally or unlawfully in the United States or (ii) has not been admitted to the United States under a nonimmigrant visa subject to the exception in 18 U.S.C. 922(y)(2); (g) who has not been discharged from the Armed Forces under dishonorable conditions; (h) who, having been a citizen of the United States, has not renounced his or her citizenship; (i) who has stated whether he or she has ever suffered any mental illness; (j) who has not been involuntarily committed to a facility under the jurisdiction of an office of the department of mental hygiene pursuant to article nine or fifteen of the mental hygiene law, article seven hundred thirty or section 330.20 of the criminal procedure law or substantially similar laws of any other state, section four hundred two or five hundred eight of the correction law, section 322.2 or 353.4 of the family court act, has not been civilly confined in a secure treatment facility pursuant to article ten of the mental hygiene law, or has not been the subject of a report made pursuant to section 9.46 of the mental hygiene law; (k) who has not had a license revoked or who is not under a suspension or ineligibility order issued pursuant to the provisions of section 530.14 of the criminal procedure law or section eight hundred forty-two-a of the family court act; (l) in the county of Westchester, who has successfully completed a firearms safety course and test as evidenced by a certificate of completion issued in his or her name and endorsed and affirmed under the penalties of perjury by a duly authorized instructor, except that: (i) persons who are honorably discharged from the United States army, navy, marine corps or coast

guard, or of the national guard of the state of New York, and produce evidence of official qualification in firearms during the term of service are not required to have completed those hours of a firearms safety course pertaining to the safe use, carrying, possession, maintenance and storage of a firearm; [and] (ii) persons who were licensed to possess a pistol or revolver prior to the effective date of this paragraph are not required to have completed a firearms safety course and test, provided, however, persons with a license issued under paragraph (f) of subdivision two of this section prior to the effective date of the laws of two thousand twenty-two which amended this paragraph shall be required to complete the training required by subdivision nineteen of this section prior to the recertification of such license; and (iii) persons applying for a license under paragraph (f) of subdivision two of this section on or after the effective date of the chapter of the laws of two thousand twenty-two which amended this paragraph who shall be required to complete the training required under subdivision nineteen of this section for such license; (m) who has not had a guardian appointed for him or her pursuant to any provision of state law, based on a determination that as a result of marked subnormal intelligence, mental illness, incompetency, incapacity, condition or disease, he or she lacks the mental capacity to contract or manage his or her own affairs; [and (n) concerning whom no good cause exists for the denial of the license.] (n) for a license issued under paragraph (f) of subdivision two of this section, that the applicant has not been convicted within five years of the date of the application of any of the following: (i) assault in the third degree, as defined in section 120.00 of this chapter; (ii) misdemeanor driving while intoxicated, as defined in section eleven hundred ninety-two of the vehicle and traffic law; or (iii) menacing, as

defined in section 120.15 of this chapter; and (o) for a license issued under paragraph (f) of subdivision two of this section, the applicant shall meet in person with the licensing officer for an interview and shall, in addition to any other information or forms required by the license application submit to the licensing officer the following information: (i) names and contact information for the applicant's current spouse, or domestic partner, any other adults residing in the applicant's home, including any adult children of the applicant, and whether or not there are minors residing, full time or part time, in the applicant's home; (ii) names and contact information of no less than four character references who can attest to the applicant's good moral character and that such applicant has not engaged in any acts, or made any statements that suggest they are likely to engage in conduct that would result in harm to themselves or others; (iii) certification of completion of the training required in subdivision nineteen of this section; (iv) a list of former and current social media accounts of the applicant from the past three years to confirm the information regarding the applicants character and conduct as required in subparagraph (ii) of this paragraph; and (v) such other information required by the licensing officer that is reasonably necessary and related to the review of the licensing application.

1-a. No person shall engage in the business of gunsmith or dealer in firearms unless licensed pursuant to this section. An applicant to engage in such business shall also be a citizen of the United States, more than twenty-one years of age and shall be required to maintain a place of business in the city or county where the license is issued. For such business, if the applicant is a firm or partnership, each member thereof shall comply with all of the requirements set forth in this

subdivision and if the applicant is a corporation, each officer thereof shall so comply.

[1-a.] 1-b. For purposes of subdivision one of this section, serious offense shall include an offense in any jurisdiction or the former penal law that includes all of the essential elements of a serious offense as defined by subdivision seventeen of section 265.00 of this chapter. Nothing in this subdivision shall preclude the denial of a license based on the commission of, arrest for or conviction of an offense in any other jurisdiction which does not include all of the essential elements of a serious offense.

2. Types of licenses. A license for gunsmith or dealer in firearms shall be issued to engage in such business. A license for a semiautomatic rifle, other than an assault weapon or disguised gun, shall be issued to purchase or take possession of such a [firearm] semiautomatic rifle when such transfer of ownership occurs on or after the effective date of [the] chapter two hundred twelve of the laws of two thousand twenty-two that amended this subdivision. A license for a pistol or revolver, other than an assault weapon or a disguised gun, shall be issued to (a) have and possess in his dwelling by a householder; (b) have and possess in his place of business by a merchant or storekeeper; (c) have and carry concealed while so employed by a messenger employed by a banking institution or express company; (d) have and carry concealed by a justice of the supreme court in the first or second judicial departments, or by a judge of the New York city civil court or the New York city criminal court; (e) have and carry concealed while so employed by a regular employee of an institution of the state, or of any county, city, town or village, under control of a commissioner of correction of the city or any warden, superintendent or head keeper of any state prison, peniten-

tiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases, provided that application is made therefor by such commissioner, warden, superintendent or head keeper; (f) have and carry concealed, without regard to employment or place of possession subject to the restrictions of state and federal law, by any person [when proper cause exists for the issuance thereof]; and (g) have, possess, collect and carry antique pistols which are defined as follows: (i) any single shot, muzzle loading pistol with a matchlock, flintlock, percussion cap, or similar type of ignition system manufactured in or before [1898] 1898, which is not designed for using rimfire or conventional centerfire fixed ammunition; and (ii) any replica of any pistol described in clause (i) hereof if such replica[--]:

(1) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(2) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

4. Investigation. Before a license is issued or renewed, there shall be an investigation of all statements required in the application by the duly constituted police authorities of the locality where such application is made, including but not limited to such records as may be accessible to the division of state police or division of criminal justice services pursuant to section 400.02 of this article. For that purpose, the records of the appropriate office of the department of mental hygiene concerning previous or present mental illness of the applicant shall be available for inspection by the investigating officer of the police authority. Where the applicant is domiciled in a foreign state,

the investigation shall include inquiry of the foreign state for records concerning the previous or present mental illness of the applicant, and, to the extent necessary for inspection by the investigating officer, the applicant shall execute a waiver of confidentiality of such record in such form as may be required by the foreign state. In order to ascertain any previous criminal record, the investigating officer shall take the fingerprints and physical descriptive data in quadruplicate of each individual by whom the application is signed and verified. Two copies of such fingerprints shall be taken on standard fingerprint cards eight inches square, and one copy may be taken on a card supplied for that purpose by the federal bureau of investigation; provided, however, that in the case of a corporate applicant that has already been issued a dealer in firearms license and seeks to operate a firearm dealership at a second or subsequent location, the original fingerprints on file may be used to ascertain any criminal record in the second or subsequent application unless any of the corporate officers have changed since the prior application, in which case the new corporate officer shall comply with procedures governing an initial application for such license. When completed, one standard card shall be forwarded to and retained by the division of criminal justice services in the executive department, at Albany. A search of the files of such division and written notification of the results of the search shall be forwarded to the investigating officer and shall be made without unnecessary delay. Thereafter, such division shall notify the licensing officer and the executive department, division of state police, Albany, of any criminal record of the applicant filed therein subsequent to the search of its files. A second standard card, or the one supplied by the federal bureau of investigation, as the case may be, shall be forwarded to that bureau at Wash-

ington with a request that the files of the bureau be searched and notification of the results of the search be made to the investigating police authority. Of the remaining two fingerprint cards, one shall be filed with the executive department, division of state police, Albany, within ten days after issuance of the license, and the other shall remain on file with the investigating police authority. No such fingerprints may be inspected by any person other than a peace officer, who is acting pursuant to his or her special duties, or a police officer, except on order of a judge or justice of a court of record either upon notice to the licensee or without notice, as the judge or justice may deem appropriate. Upon completion of the investigation, the police authority shall report the results to the licensing officer without unnecessary delay.

4-a. Appeals from denial of an application, renewal, recertification or license revocation. If an application for a license is denied, not renewed, not recertified, or revoked, the licensing officer shall issue a written notice to the applicant setting forth the reasons for such denial. An applicant may, within ninety days of receipt of such notice, request a hearing to appeal the denial to the appeals board created by the division of criminal justice services and the superintendent of state police. An individual may be represented by counsel at any appearance before the appeals board and shall be afforded an opportunity to present additional evidence in support of their application. The commissioner of criminal justice services and the superintendent of state police shall promulgate rules and regulations governing such appeals process.

4-b. Processing of license applications. Applications for licenses shall be accepted for processing by the licensing officer at the time of

presentment. Except upon written notice to the applicant specifically stating the reasons for any delay, in each case the licensing officer shall act upon any application for a license pursuant to this section within six months of the date of presentment of such an application to the appropriate authority. Such delay may only be for good cause and with respect to the applicant. In acting upon an application, the licensing officer shall either deny the application for reasons specifically and concisely stated in writing or grant the application and issue the license applied for.

[4-b.] 4-c. Westchester county firearms safety course certificate. In the county of Westchester, at the time of application, the licensing officer to which the license application is made shall provide a copy of the safety course booklet to each license applicant. Before such license is issued, such licensing officer shall require that the applicant submit a certificate of successful completion of a firearms safety course and test issued in his or her name and endorsed and affirmed under the penalties of perjury by a duly authorized instructor.

10. License: expiration, certification and renewal. (a) Any license for gunsmith or dealer in firearms and, in the city of New York, any license to carry or possess a pistol or revolver, issued at any time pursuant to this section or prior to the first day of July, nineteen hundred sixty-three and not limited to expire on an earlier date fixed in the license, shall, except as otherwise provided in paragraph (d) of this subdivision, expire not more than three years after the date of issuance. In the counties of Nassau, Suffolk and Westchester, any license to carry or possess a pistol or revolver, issued at any time pursuant to this section or prior to the first day of July, nineteen hundred sixty-three and not limited to expire on an earlier date fixed

in the license, shall expire not more than five years after the date of issuance; however, in the county of Westchester, any such license shall be certified prior to the first day of April, two thousand, in accordance with a schedule to be contained in regulations promulgated by the commissioner of the division of criminal justice services, and every such license shall, except as otherwise provided in paragraph (d) of this subdivision, be recertified every five years thereafter. For purposes of this section certification shall mean that the licensee shall provide to the licensing officer the following information only: current name, date of birth, current address, and the make, model, caliber and serial number of all firearms currently possessed. Such certification information shall be filed by the licensing officer in the same manner as an amendment. Elsewhere than in the city of New York and the counties of Nassau, Suffolk and Westchester, any license to carry or possess a pistol or revolver, issued at any time pursuant to this section or prior to the first day of July, nineteen hundred sixty-three and not previously revoked or cancelled, shall be in force and effect until revoked as herein provided. Any license not previously cancelled or revoked shall remain in full force and effect for thirty days beyond the stated expiration date on such license. Any application to renew a license that has not previously expired, been revoked or cancelled shall thereby extend the term of the license until disposition of the application by the licensing officer. In the case of a license for gunsmith or dealer in firearms, in counties having a population of less than two hundred thousand inhabitants, photographs and fingerprints shall be submitted on original applications and upon renewal thereafter [only] at [six] three year intervals. Upon satisfactory proof that a currently valid original license has been despoiled, lost or otherwise removed

from the possession of the licensee and upon application containing an additional photograph of the licensee, the licensing officer shall issue a duplicate license.

(b) All licensees shall be recertified to the division of state police every five years thereafter, except as otherwise provided in paragraph (d) of this subdivision. Any license issued before the effective date of the chapter of the laws of two thousand thirteen which added this paragraph shall be recertified by the licensee on or before January thirty-first, two thousand eighteen, and not less than one year prior to such date, the state police shall send a notice to all license holders who have not recertified by such time. Such recertification shall be in a form as approved by the superintendent of state police, which shall request the license holder's name, date of birth, gender, race, residential address, social security number, firearms possessed by such license holder, email address at the option of the license holder and an affirmation that such license holder is not prohibited from possessing firearms. The form may be in an electronic form if so designated by the superintendent of state police. Failure to recertify shall act as a revocation of such license. If the New York state police discover as a result of the recertification process that a licensee failed to provide a change of address, the New York state police shall not require the licensing officer to revoke such license.

(c) A license to purchase or take possession of a semiautomatic rifle as defined in subdivision two of this section shall be recertified to the applicable licensing officer every five years following the issuance of such license. Failure to renew such a license shall be a violation punishable by a fine not to exceed two hundred fifty dollars, and such failure to renew shall be considered by the licensing officer when

reviewing future license applications by the license holder pursuant to this chapter.

(d) Licenses issued under paragraph (f) of subdivision two of this section shall be recertified or renewed in the same form and manner as otherwise required by this subdivision, provided however, that such licenses shall be recertified or renewed every three years following the issuance of such license. For licenses issued prior to the effective date of this paragraph that were issued more than three years prior to such date, or will expire in less than one year from such date shall be recertified or renewed within one year of such date.

11. License: revocation and suspension. (a) The conviction of a licensee anywhere of a felony or serious offense or a licensee at any time becoming ineligible to obtain a license [under this section shall operate as], including engaging in conduct that would have resulted in the denial of a license, under this section shall operate as or be grounds for, a revocation of the license. A license may be revoked or suspended as provided for in section 530.14 of the criminal procedure law or section eight hundred forty-two-a of the family court act. Except for a license issued pursuant to section 400.01 of this article, a license may be revoked and cancelled at any time in the city of New York, and in the counties of Nassau and Suffolk, by the licensing officer, and elsewhere than in the city of New York by any judge or justice of a court of record; a license issued pursuant to section 400.01 of this article may be revoked and cancelled at any time by the licensing officer or any judge or justice of a court of record. A license to engage in the business of dealer may be revoked or suspended for any violation of the provisions of article thirty-nine-BB of the general business law. The official revoking a license shall give written notice thereof without

unnecessary delay to the executive department, division of state police, Albany, and shall also notify immediately the duly constituted police authorities of the locality. The licensing officer shall revoke any license issued in which an applicant knowingly made a material false statement on the application. Notice of a revocation under this subdivision shall be issued in writing and shall include the basis for the determination, which shall be supported by a preponderance of the evidence. Such notice shall also include information regarding the ability to appeal such decision in accordance with subdivision four-a of this section.

(b) Whenever the director of community services or his or her designee makes a report pursuant to section 9.46 of the mental hygiene law, the division of criminal justice services shall convey such information, whenever it determines that the person named in the report possesses a license issued pursuant to this section, to the appropriate licensing official, who shall issue an order suspending or revoking such license.

(c) In any instance in which a person's license is suspended or revoked under paragraph (a) or (b) of this subdivision, such person shall surrender such license to the appropriate licensing official and any and all firearms, rifles, or shotguns owned or possessed by such person shall be surrendered to an appropriate law enforcement agency as provided in subparagraph (f) of paragraph one of subdivision a of section 265.20 of this chapter. In the event such license, firearm, shotgun, or rifle is not surrendered, such items shall be removed and declared a nuisance and any police officer or peace officer acting pursuant to his or her special duties is authorized to remove any and all such weapons.

§ 2. Section 837 of the executive law is amended by adding a new subdivision 23 to read as follows:

23. (a) In conjunction with the superintendent of the state police, promulgate policies and procedures with regard to standardization of firearms safety training required under subdivision nineteen of section 400.00 of the penal law, which shall include the approval of course materials and promulgation of proficiency standards for live fire training; and

(b) In conjunction with the superintendent of state police, create an appeals board for the purpose of hearing appeals as provided in subdivision four-a of section 400.00 of the penal law and promulgate rules and regulations governing such appeals.

§ 3. The executive law is amended by adding a new section 235 to read as follows:

§ 235. Firearms safety training, and licensing appeals. 1. The superintendent shall, in conjunction with the commissioner of the division of criminal justice services, promulgate policies and procedures with regard to standardization of firearms safety training required under subdivision nineteen of section 400.00 of the penal law, which shall include the approval of course materials and the promulgation of proficiency standards for live fire training.

2. The superintendent, in conjunction with the commissioner of the division of criminal justice services, shall create an appeals board for the purpose of hearing appeals as provided in subdivision four-a of section 400.00 of the penal law and promulgate rules and regulations governing such appeals.

§ 4. The penal law is amended by adding a new section 265.01-e to read as follows:

§ 265.01-e Criminal possession of a firearm, rifle or shotgun in a sensitive location.

1. A person is guilty of criminal possession of a firearm, rifle or shotgun in a sensitive location when such person possesses a firearm, rifle or shotgun in or upon a sensitive location, and such person knows or reasonably should know such location is a sensitive location.

2. For the purposes of this section, a sensitive location shall mean:

(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; provided such area shall be clearly and conspicuously identified with signage.

3. This section shall not apply to:

(a) consistent with federal law, law enforcement who qualify to carry under the federal law enforcement officers safety act, 18 U.S.C. 926C;

(b) persons who are police officers as defined in subdivision thirty-four of section 1.20 of the criminal procedure law;

(c) persons who are designated peace officers by section 2.10 of the criminal procedure law;

(d) persons who were employed as police officers as defined in subdivision thirty-four of section 1.20 of the criminal procedure law but are retired;

(e) security guards as defined by and registered under article seven-A of the general business law, who have been granted a special armed registration card, while at the location of their employment and during their work hours as such a security guard;

(f) active-duty military personnel;

(g) persons licensed under paragraph (c), (d) or (e) of subdivision two of section 400.00 of this chapter while in the course of his or her official duties;

(h) a government employee under the express written consent of such employee's supervising government entity for the purposes of natural resource protection and management;

(i) persons lawfully engaged in hunting activity, including hunter education training; or

(j) persons operating a program in a sensitive location out of their residence, as defined by this section, which is licensed, certified, authorized, or funded by the state or a municipality, so long as such possession is in compliance with any rules or regulations applicable to the operation of such program and use or storage of firearms.

Criminal possession of a firearm, rifle or shotgun in a sensitive location is a class E felony.

§ 5. The penal law is amended by adding a new section 265.01-d to read as follows:

§ 265.01-d Criminal possession of a weapon in a restricted location.

1. A person is guilty of criminal possession of a weapon in a restricted location when such person possesses a firearm, rifle, or shotgun and enters into or remains on or in private property where such person knows or reasonably should know that the owner or lessee of such property has not permitted such possession by clear and conspicuous signage indicating that the carrying of firearms, rifles, or shotguns on their property is permitted or has otherwise given express consent.

2. This section shall not apply to:

(a) police officers as defined in section 1.20 of the criminal procedure law;

(b) persons who are designated peace officers as defined in section 2.10 of the criminal procedure law;

(c) persons who were employed as police officers as defined in section 1.20 of the criminal procedure law, but are retired;

(d) security guards as defined by and registered under article seven-A of the general business law who has been granted a special armed registration card, while at the location of their employment and during their work hours as such a security guard;

(e) active-duty military personnel;

(f) persons licensed under paragraph (c), (d) or (e) of subdivision two of section 400.00 of this chapter while in the course of his or her official duties; or

(g) persons lawfully engaged in hunting activity.

Criminal possession of a weapon in a restricted location is a class E felony.

§ 6. Subdivision a of section 265.20 of the penal law is amended by adding a new paragraph 3-a to read as follows:

3-a. Possession of a pistol or revolver by a person undergoing live-fire range training pursuant to section 400.00 of this chapter while such person is undergoing such training and is supervised by a duly authorized instructor.

§ 7. Section 400.02 of the penal law, as amended by chapter 244 of the laws of 2019, is amended to read as follows:

§ 400.02 Statewide license and record database.

1. There shall be a statewide license and record database which shall be created and maintained by the division of state police the cost of

which shall not be borne by any municipality. Records assembled or collected for purposes of inclusion in such database shall not be subject to disclosure pursuant to article six of the public officers law. [Records] All records containing granted license applications from all licensing authorities shall be [periodically] monthly checked by the division of criminal justice services in conjunction with the division of state police against criminal conviction, criminal indictment, mental health, extreme risk protection orders, orders of protection, and all other records as are necessary to determine their continued accuracy as well as whether an individual is no longer a valid license holder. The division of criminal justice services shall also check pending applications made pursuant to this article against such records to determine whether a license may be granted. All state and local agencies shall cooperate with the division of criminal justice services, as otherwise authorized by law, in making their records available for such checks. The division of criminal justice services, upon determining that an individual is ineligible to possess a license, or is no longer a valid license holder, shall notify the applicable licensing official of such determination and such licensing official shall not issue a license or shall revoke such license and any weapons owned or possessed by such individual shall be removed consistent with the provisions of subdivision eleven of section 400.00 of this article. Local and state law enforcement shall have access to such database in the performance of their duties. Records assembled or collected for purposes of inclusion in the database established by this section shall be released pursuant to a court order.

2. There shall be a statewide license and record database specific for ammunition sales which shall be created and maintained by the division

of state police the cost of which shall not be borne by any municipality no later than thirty days upon designating the division of state police as the point of contact to perform both firearm and ammunition background checks under federal and state law. Records assembled or collected for purposes of inclusion in such database shall not be subject to disclosure pursuant to article six of the public officers law. All records containing granted license applications from all licensing authorities shall be monthly checked by the division of criminal justice services in conjunction with the division of state police against criminal conviction, criminal indictments, mental health, extreme risk protection orders, orders of protection, and all other records as are necessary to determine their continued accuracy as well as whether an individual is no longer a valid license holder. The division of criminal justice services shall also check pending applications made pursuant to this article against such records to determine whether a license may be granted. All state and local agencies shall cooperate with the division of criminal justice services, as otherwise authorized by law, in making their records available for such checks. No later than thirty days after the superintendent of the state police certifies that the statewide license and record database established pursuant to this section and the statewide license and record database established for ammunition sales are operational for the purposes of this section, a dealer in firearms licensed pursuant to section 400.00 of this article, a seller of ammunition as defined in subdivision twenty-four of section 265.00 of this chapter shall not transfer any ammunition to any other person who is not a dealer in firearms as defined in subdivision nine of such section 265.00 or a seller of ammunition as defined in subdivision twenty-four of section 265.00 of this chapter, unless:

(a) before the completion of the transfer, the licensee or seller contacts the statewide license and record database and provides the database with information sufficient to identify such dealer or seller transferee based on information on the transferee's identification document as defined in paragraph (c) of this subdivision, as well as the amount, caliber, manufacturer's name and serial number, if any, of such ammunition;

(b) the licensee or seller is provided with a unique identification number; and

(c) the transferor has verified the identity of the transferee by examining a valid state identification document of the transferee issued by the department of motor vehicles or if the transferee is not a resident of the state of New York, a valid identification document issued by the transferee's state or country of residence containing a photograph of the transferee.

§ 8. Subdivisions 2 and 6 of section 400.03 of the penal law, as added by chapter 1 of the laws of 2013, are amended to read as follows:

2. Any seller of ammunition or dealer in firearms shall keep [a record book] either an electronic record, or dataset, or an organized collection of structured information, or data, typically stored electronically in a computer system approved as to form by the superintendent of state police. In the record [book] shall be entered at the time of every transaction involving ammunition the date, name, age, occupation and residence of any person from whom ammunition is received or to whom ammunition is delivered, and the amount, calibre, manufacturer's name and serial number, or if none, any other distinguishing number or identification mark on such ammunition. [The record book shall be maintained on the premises mentioned and described in the license and shall

be open at all reasonable hours for inspection by any peace officer, acting pursuant to his or her special duties, or police officer. Any record produced pursuant to this section and any transmission thereof to any government agency shall not be considered a public record for purposes of article six of the public officers law.]

6. If the superintendent of state police certifies that background checks of ammunition purchasers may be conducted through the national instant criminal background check system or through the division of state police once the division has been designated point of contact, use of that system by a dealer or seller shall be sufficient to satisfy subdivisions four and five of this section and such checks shall be conducted through such system, provided that a record of such transaction shall be forwarded to the state police in a form determined by the superintendent.

§ 9. Section 265.45 of the penal law, as amended by chapter 133 of the laws of 2019, is amended to read as follows:

§ 265.45 Failure to safely store rifles, shotguns, and firearms in the first degree.

1. No person who owns or is custodian of a rifle, shotgun or firearm who resides with an individual who: (i) is under [sixteen] eighteen years of age; (ii) such person knows or has reason to know is prohibited from possessing a rifle, shotgun or firearm pursuant to a temporary or final extreme risk protection order issued under article sixty-three-A of the civil practice law and rules or 18 U.S.C. § 922(g) (1), (4), (8) or (9); or (iii) such person knows or has reason to know is prohibited from possessing a rifle, shotgun or firearm based on a conviction for a felony or a serious offense, shall store or otherwise leave such rifle, shotgun or firearm out of his or her immediate possession or control

without having first securely locked such rifle, shotgun or firearm in an appropriate safe storage depository or rendered it incapable of being fired by use of a gun locking device appropriate to that weapon.

2. No person shall store or otherwise leave a rifle, shotgun, or firearm out of his or her immediate possession or control inside a vehicle without first removing the ammunition from and securely locking such rifle, shotgun, or firearm in an appropriate safe storage depository out of sight from outside of the vehicle.

3. For purposes of this section "safe storage depository" shall mean a safe or other secure container which, when locked, is incapable of being opened without the key, keypad, combination or other unlocking mechanism and is capable of preventing an unauthorized person from obtaining access to and possession of the weapon contained therein and shall be fire, impact, and tamper resistant. Nothing in this section shall be deemed to affect, impair or supersede any special or local act relating to the safe storage of rifles, shotguns or firearms which impose additional requirements on the owner or custodian of such weapons. For the purposes of subdivision two of this section, a glove compartment or glove box shall not be considered an appropriate safe storage depository.

4. It shall not be a violation of this section to allow a person less than [sixteen] eighteen years of age access to: (i) a firearm, rifle or shotgun for lawful use as authorized under paragraph seven or seven-e of subdivision a of section 265.20 of this article, or (ii) a rifle or shotgun for lawful use as authorized by article eleven of the environmental conservation law when such person less than [sixteen] eighteen years of age is the holder of a hunting license or permit and such rifle or shotgun is used in accordance with such law.

Failure to safely store rifles, shotguns, and firearms in the first degree is a class A misdemeanor.

§ 10. The penal law is amended by adding a new section 400.30 to read as follows:

§ 400.30 Application.

Nothing in this article shall be construed to impair or in any way prevent the enactment or application of any local law, code, ordinance, rule or regulation that is more restrictive than any requirement set forth in or established by this article.

§ 11. Section 270.20 of the penal law, as added by chapter 56 of the laws of 1984, and subdivision 1 as amended by chapter 317 of the laws of 2001, is amended to read as follows:

§ 270.20 Unlawful wearing of [a] body [vest] armor.

1. A person is guilty of the unlawful wearing of [a] body [vest] armor when acting either alone or with one or more other persons he commits any violent felony offense defined in section 70.02 while possessing a firearm, rifle or shotgun and in the course of and in furtherance of such crime he or she wears [a] body [vest] armor.

2. For the purposes of this section [a] "body [vest] armor" means [a bullet-resistant soft body armor providing, as a minimum standard, the level of protection known as threat level I which shall mean at least seven layers of bullet-resistant material providing protection from three shots of one hundred fifty-eight grain lead ammunition fired from a .38 calibre handgun at a velocity of eight hundred fifty feet per second] any product that is a personal protective body covering intended to protect against gunfire, regardless of whether such product is to be worn alone or is sold as a complement to another product or garment.

The unlawful wearing of [a] body [vest] armor is a class E felony.

§ 12. Section 270.21 of the penal law, as added by chapter 210 of the laws of 2022, is amended to read as follows:

§ 270.21 Unlawful purchase of [a] body [vest] armor.

A person is guilty of the unlawful purchase of [a] body [vest] armor when, not being engaged or employed in an eligible profession, they knowingly purchase or take possession of [a] body [vest] armor, as such term is defined in subdivision two of section 270.20 of this article. This section shall not apply to individuals or entities engaged or employed in eligible professions, which shall include police officers as defined in section 1.20 of the criminal procedure law, peace officers as defined in section 2.10 of the criminal procedure law, persons in military service in the state of New York or military or other service for the United States, and such other professions designated by the department of state in accordance with section one hundred forty-four-a of the executive law.

Unlawful purchase of [a] body [vest] armor is a class A misdemeanor for a first offense and a class E felony for any subsequent offense.

§ 13. Section 270.22 of the penal law, as added by chapter 210 of the laws of 2022, is amended to read as follows:

§ 270.22 Unlawful sale of [a] body [vest] armor.

A person is guilty of the unlawful sale of [a] body [vest] armor when they sell, exchange, give or dispose of [a] body [vest] armor, as such term is defined in subdivision two of section 270.20 of this article, to an individual whom they know or reasonably should have known is not engaged or employed in an eligible profession, as such term is defined in section 270.21 of this article.

Unlawful sale of [a] body [vest] armor is a class A misdemeanor for the first offense and a class E felony for any subsequent offense.

§ 14. Section 396-eee of the general business law, as added by chapter 210 of the laws of 2022, is amended to read as follows:

§ 396-eee. Unlawful sale or delivery of body [vests] armor. 1. No person, firm or corporation shall sell or deliver body [vests] armor to any individual or entity not engaged or employed in an eligible profession, and except as provided in subdivision [three] two of this section, no such sale or delivery shall be permitted unless the transferee meets in person with the transferor to accomplish such sale or delivery.

2. The provisions of subdivision one of this section regarding in person sale or delivery shall not apply to purchases made by federal, state, or local government agencies for the purpose of furnishing such body [vests] armor to employees in eligible professions.

3. For the purposes of this section, "body [vest] armor" shall have the same meaning as defined in subdivision two of section 270.20 of the penal law.

4. Any person, firm or corporation that violate the provisions of this section shall be guilty of a violation punishable by a fine in an amount not to exceed five thousand dollars for the first offense and in an amount not to exceed ten thousand dollars for any subsequent offense.

§ 15. Section 144-a of the executive law, as added by chapter 210 of the laws of 2022, is amended to read as follows:

§ 144-a. Eligible professions for the purchase, sale, and use of body [vests] armor. The secretary of state in consultation with the division of criminal justice services, the division of homeland security and emergency services, the department of corrections and community supervision, the division of the state police, and the office of general services shall promulgate rules and regulations to establish criteria for eligible professions requiring the use of [a] body [vest] armor, as

such term is defined in subdivision two of section 270.20 of the penal law. Such professions shall include those in which the duties may expose the individual to serious physical injury that may be prevented or mitigated by the wearing of [a] body [vest] armor. Such rules and regulations shall also include a process by which an individual or entity may request that the profession in which they engage be added to the list of eligible professions, a process by which the department shall approve such professions, and a process by which individuals and entities may present proof of engagement in eligible professions when purchasing [a] body [vest] armor.

§ 16. The executive law is amended by adding a new section 228 to read as follows:

§ 228. National instant criminal background checks. 1. (a) The division is hereby authorized and directed to serve as a state point of contact for implementation of 18 U.S.C. sec. 922 (t), all federal regulations and applicable guidelines adopted pursuant thereto, and the national instant criminal background check system for the purchase of firearms and ammunition.

(b) Upon receiving a request from a licensed dealer pursuant to section eight hundred ninety-six or eight hundred ninety-eight of the general business law, the division shall initiate a background check by (i) contacting the National Instant Criminal Background Check System (NICS) or its successor to initiate a national instant criminal background check, and (ii) consulting the statewide firearms license and records database established pursuant to subdivision three of this section, in order to determine if the purchaser is a person described in sections 400.00 and 400.03 of the penal law, or is prohibited by state

or federal law from possessing, receiving, owning, or purchasing a firearm or ammunition.

2. (a) The division shall report the name, date of birth and physical description of any person prohibited from possessing a firearm pursuant to 18 U.S.C. sec. 922(g) or (n) to the national instant criminal background check system index, denied persons files.

(b) Information provided pursuant to this section shall remain privileged and confidential, and shall not be disclosed, except for the purpose of enforcing federal or state law regarding the purchase of firearms or ammunition.

(c) Any background check conducted by the division, or delegated authority, of any applicant for a permit, firearms identification card license, ammunition sale, or registration, in accordance with the requirements of section 400.00 of the penal law, shall not be considered a public record and shall not be disclosed to any person not authorized by law or this chapter to have access to such background check, including the applicant. Any application for a permit, firearms identification card, ammunition sale, or license, and any document reflecting the issuance or denial of such permit, firearms identification card, or license, and any permit, firearms identification card, license, certification, certificate, form of register, or registration statement, maintained by any state or municipal governmental agency, shall not be considered a public record and shall not be disclosed to any person not authorized by law to have access to such documentation, including the applicant, except on the request of persons acting in their governmental capacities for purposes of the administration of justice.

3. The division shall create and maintain a statewide firearms license and records database which shall contain records held by the division

and any records that it is authorized to request from the division of criminal justice services, office of court administration, New York state department of health, New York state office of mental health, and other local entities. Such database shall be used for the certification and recertification of firearm permits under section 400.02 of the penal law, assault weapon registration under subdivision sixteen-a of section 400.00 of the penal law, and ammunition sales under section 400.03 of the penal law. Such database shall also be used to initiate a national instant criminal background check pursuant to subdivision one of this section upon request from a licensed dealer. The division may create and maintain additional databases as needed to complete background checks pursuant to the requirements of this section.

4. The superintendent shall promulgate a plan to coordinate background checks for firearm and ammunition purchases pursuant to this section and to require any person, firm or corporation that sells, delivers or otherwise transfers any firearm or ammunition to submit a request to the division in order to complete the background checks in compliance with federal and state law, including the National Instant Criminal Background Check System (NICS), in New York state. Such plan shall include, but shall not be limited to, the following features:

(a) The creation of a centralized bureau within the division to receive and process all background check requests, which shall include a contact center unit and an appeals unit. Staff may include but is not limited to: bureau chief, supervisors, managers, different levels of administrative analysts, appeals specialists and administrative personnel. The division shall employ and train such personnel to administer the provisions of this section.

(b) Procedures for carrying out the duties under this section, including hours of operation.

(c) An automated phone system and web-based application system, including a toll-free telephone number and/or web-based application option for any licensed dealer requesting a background check in order to sell, deliver or otherwise transfer a firearm which shall be operational every day that the bureau is open for business for the purpose of responding to requests in accordance with this section.

5. (a) Each licensed dealer that submits a request for a national instant criminal background check pursuant to this section shall pay a fee imposed by the bureau for performing such background check. Such fee shall be allocated to the background check fund established pursuant to section ninety-nine-pp of the state finance law. The amount of the fee shall not exceed the total amount of direct and indirect costs incurred by the bureau in performing such background check.

(b) The bureau shall transmit all moneys collected pursuant to this paragraph to the state comptroller, who shall credit the same to the background check fund.

6. On January fifteenth of each calendar year, the bureau shall submit a report to the governor, the temporary president of the senate, and the speaker of the assembly concerning:

a. the number of employees used by the bureau in the preceding year for the purpose of performing background checks pursuant to this section;

b. the number of background check requests received and processed during the preceding calendar year, including the number of "proceed" responses and the number and reasons for denials;

c. the calculations used to determine the amount of the fee imposed pursuant to this paragraph.

7. Within sixty days of the effective date of this section, the superintendent shall notify each licensed dealer holding a permit to sell firearms of the requirement to submit a request to the division to initiate a background check pursuant to this section as well as the following means to be used to apply for background checks:

i. any person, firm or corporation that sells, delivers or otherwise transfers firearms shall obtain a completed ATF 4473 form from the potential buyer or transferee including name, date of birth, gender, race, social security number, or other identification numbers of such potential buyer or transferee and shall have inspected proper identification including an identification containing a photograph of the potential buyer or transferee.

ii. it shall be unlawful for any person, in connection with the sale, acquisition or attempted acquisition of a firearm from any transferor, to willfully make any false, fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification that is intended or likely to deceive such transferor with respect to any fact material to the lawfulness of the sale or other disposition of such firearm under federal or state law. Any person who violates the provisions of this subparagraph shall be guilty of a class A misdemeanor.

8. Any potential buyer or transferee shall have thirty days to appeal the denial of a background check, using a form established by the superintendent. Upon receipt of an appeal, the division shall provide such applicant a reason for a denial within thirty days. Upon receipt of the reason for denial, the appellant may appeal to the attorney general.

§ 17. Subdivision 2 of section 898 of the general business law, as added by chapter 129 of the laws of 2019, is amended to read as follows:

2. Before any sale, exchange or disposal pursuant to this article, a national instant criminal background check must be completed by a dealer who [consents] shall submit a request to the division of state police pursuant to section two hundred twenty-eight of the executive law to conduct such check[, and upon completion of such background check, shall complete a document, the form of which shall be approved by the superintendent of state police, that identifies and confirms that such check was performed]. Before a dealer who [consents] has submitted a request to the division of state police to conduct a national instant criminal background check delivers a firearm, rifle or shotgun to any person, either (a) NICS shall have issued a "proceed" response [to the dealer], or (b) thirty calendar days shall have elapsed since the date the dealer [contacted] submitted a request to the division of state police to contact the NICS to initiate a national instant criminal background check and NICS has not notified the [dealer] division of state police that the transfer of the firearm, rifle or shotgun to such person should be denied.

§ 18. Paragraph (c) of subdivision 1 of section 896 of the general business law, as added by chapter 189 of the laws of 2000, is amended to read as follows:

(c) coordinate with the division of state police to provide access at the gun show to [a firearm dealer licensed under federal law who is authorized to] perform a national instant criminal background check [where the seller or transferor of a firearm, rifle or shotgun is not authorized to conduct such a check by (i) requiring firearm exhibitors who are firearm dealers licensed under federal law and who are author-

ized to conduct a national instant criminal background check to provide such a check at cost or (ii) designating a specific location at the gun show where a firearm dealer licensed under federal law who is authorized to conduct a national instant criminal background check will be present to perform such a check at cost] prior to any firearm sale or transfer. Any firearm dealer licensed under federal law who [performs] submits a request to the division of state police to perform a national instant criminal background check pursuant to this paragraph shall provide the seller or transferor of the firearm, rifle or shotgun with a copy of the United States Department of Treasury, Bureau of Alcohol, Tobacco and Firearms Form ATF F 4473 and such dealer shall maintain such form and make such form available for inspection by law enforcement agencies for a period of ten years thereafter.

§ 19. Subdivision 6 of section 400.03 of the penal law, as added by chapter 1 of the laws of 2013, is amended to read as follows:

6. If the superintendent of state police certifies that background checks of ammunition purchasers may be conducted through the national instant criminal background check system, [use of that system by] a dealer or seller shall contact the division of state police to conduct such check which shall be sufficient to satisfy subdivisions four and five of this section [and such checks shall be conducted through such system, provided that a record of such transaction shall be forwarded to the state police in a form determined by the superintendent].

§ 20. The penal law is amended by adding a new section 400.06 to read as follows:

§ 400.06 National instant criminal background checks.

1. Any dealer in firearms that sells, delivers or otherwise transfers any firearm shall contact the division of state police to conduct a

national instant criminal background check pursuant to section two hundred twenty-eight of the executive law.

2. Failure to comply with the requirements of this section is a class A misdemeanor.

§ 21. The state finance law is amended by adding a new section 99-pp to read as follows:

§ 99-pp. Background check fund. 1. There is hereby established in the joint custody of the state comptroller and commissioner of taxation and finance a special fund to be known as the "background check fund".

2. Such fund shall consist of all revenues received by the comptroller, pursuant to the provisions of section two hundred twenty-eight of the executive law and all other moneys appropriated thereto from any other fund or source pursuant to law. Nothing contained in this section shall prevent the state from receiving grants, gifts or bequests for the purposes of the fund as defined in this section and depositing them into the fund according to law.

3. The moneys of the background check fund, following appropriation by the legislature, shall be allocated for the direct costs associated with performing background checks pursuant to section two hundred twenty-eight of the executive law.

4. The state comptroller may invest any moneys in the background check fund not expended for the purpose of this section as provided by law. The state comptroller shall credit any interest and income derived from the deposit and investment of moneys in the background check fund to the background check fund.

5. (a) Any unexpended and unencumbered moneys remaining in the background check fund at the end of a fiscal year shall remain in the background check fund and shall not be credited to any other fund.

(b) To the extent practicable, any such remaining funds shall be used to reduce the amount of the fee described in subdivision two of section two hundred twenty-eight of the executive law.

§ 22. Subdivision 19 of section 265.00 of the penal law, as amended by chapter 150 of the laws of 2020, is amended to read as follows:

19. "Duly authorized instructor" means (a) a duly commissioned officer of the United States army, navy, marine corps or coast guard, or of the national guard of the state of New York; or (b) a duly qualified adult citizen of the United States who has been granted a certificate as an instructor in small arms practice issued by the United States army, navy or marine corps, or by the adjutant general of this state, or by the division of criminal justice services, or by the national rifle association of America, a not-for-profit corporation duly organized under the laws of this state; (c) by a person duly qualified and designated by the department of environmental conservation [under paragraph c of subdivision three of section 11-0713 of the environmental conservation law] as its agent in the giving of instruction and the making of certifications of qualification in responsible hunting practices; or (d) a New York state 4-H certified shooting sports instructor.

§ 23. Subdivision 18 of section 400.00 of the penal law, as added by chapter 135 of the laws of 2019, is amended and a new subdivision 19 is added to read as follows:

18. Notice. Upon the issuance of a license, the licensing officer shall issue therewith, and such licensee shall attest to the receipt of, the following [notice] information and notifications: (a) the grounds for which the license issued may be revoked, which shall include but not be limited to the areas and locations for which the licenses issued under paragraph (f) of subdivision two of this section prohibits the

possession of firearms, rifles, and shotguns, and that a conviction under sections 265.01-d and 265.01-e of this chapter are felonies for which licensure will be revoked;

(b) a notification regarding the requirements for safe storage which shall be in conspicuous and legible twenty-four point type on eight and one-half inches by eleven inches paper stating in bold print the following:

WARNING: RESPONSIBLE FIREARM STORAGE IS THE LAW IN NEW YORK STATE. WHEN STORED IN A HOME FIREARMS, RIFLES, OR SHOTGUNS MUST EITHER BE STORED WITH A GUN LOCKING DEVICE OR IN A SAFE STORAGE DEPOSITORY OR NOT BE LEFT OUTSIDE THE IMMEDIATE POSSESSION AND CONTROL OF THE OWNER OR OTHER LAWFUL POSSESSOR IF A CHILD UNDER THE AGE OF EIGHTEEN RESIDES IN THE HOME OR IS PRESENT, OR IF THE OWNER OR POSSESSOR RESIDES WITH A PERSON PROHIBITED FROM POSSESSING A FIREARM UNDER STATE OR FEDERAL LAW. FIREARMS SHOULD BE STORED [UNLOADED AND LOCKED] BY REMOVING THE AMMUNITION FROM AND SECURELY LOCKING SUCH FIREARM IN A LOCATION SEPARATE FROM AMMUNITION. LEAVING FIREARMS ACCESSIBLE TO A CHILD OR OTHER PROHIBITED PERSON MAY SUBJECT YOU TO IMPRISONMENT, FINE, OR BOTH. WHEN STORED IN A VEHICLE OUTSIDE THE OWNER'S IMMEDIATE POSSESSION OR CONTROL, FIREARMS, RIFLES, AND SHOTGUNS MUST BE STORED IN AN APPROPRIATE SAFE STORAGE DEPOSITORY AND OUT OF SIGHT FROM OUTSIDE OF THE VEHICLE.

(c) any other information necessary to ensure such licensee is aware of their responsibilities as a license holder.

Nothing in this subdivision shall be deemed to affect, impair or supersede any special or local law relating to providing notice regarding the safe storage of rifles, shotguns or firearms.

19. Prior to the issuance or renewal of a license under paragraph (f) of subdivision two of this section, issued or renewed on or after the

effective date of this subdivision, an applicant shall complete an in-person live firearms safety course conducted by a duly authorized instructor with curriculum approved by the division of criminal justice services and the superintendent of state police, and meeting the following requirements: (a) a minimum of sixteen hours of in-person live curriculum approved by the division of criminal justice services and the superintendent of state police, conducted by a duly authorized instructor approved by the division of criminal justice services, and shall include but not be limited to the following topics: (i) general firearm safety; (ii) safe storage requirements and general secure storage best practices; (iii) state and federal gun laws; (iv) situational awareness; (v) conflict de-escalation; (vi) best practices when encountering law enforcement; (vii) the statutorily defined sensitive places in subdivision two of section 265.01-e of this chapter and the restrictions on possession on restricted places under section 265.01-d of this chapter; (viii) conflict management; (ix) use of deadly force; (x) suicide prevention; and (xi) the basic principles of marksmanship; and (b) a minimum of two hours of a live-fire range training course. The applicant shall be required to demonstrate proficiency by scoring a minimum of eighty percent correct answers on a written test for the curriculum under paragraph (a) of this subdivision and the proficiency level determined by the rules and regulations promulgated by the division of criminal justice services and the superintendent of state police for the live-fire range training under paragraph (b) of this subdivision. Upon demonstration of such proficiency, a certificate of completion shall be issued to such applicant in the applicant's name and endorsed and affirmed under the penalties of perjury by such duly authorized instructor. An applicant required to complete the training required herein

prior to renewal of a license issued prior to the effective date of this subdivision shall only be required to complete such training for the first renewal of such license after such effective date.

§ 24. Subdivisions 11 and 12 of section 265.00 of the penal law are amended to read as follows:

11. "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive [in a fixed metallic cartridge] to fire only a single projectile through a rifled bore for each single pull of the trigger using either: (a) fixed metallic cartridge; or (b) each projectile and explosive charge are loaded individually for each shot discharged. In addition to common, modern usage, rifles include those using obsolete ammunition not commonly available in commercial trade, or that load through the muzzle and fire a single projectile with each discharge, or loading, including muzzle loading rifles, flintlock rifles, and black powder rifles.

12. "Shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive [in a fixed shotgun shell] to fire through a smooth or rifled bore either a number of ball shot or a single projectile for each single pull of the trigger using either: (a) a fixed shotgun shell; or (b) a projectile or number of ball shot and explosive charge are loaded individually for each shot discharged. In addition to common, modern usage, shotguns include those using obsolete ammunition not commonly available in commercial trade, or that load through the muzzle and fires ball shot with each discharge, or loading, including muzzle loading shotguns, flintlock shotguns, and black powder shotguns.

§ 25. Severability. If any clause, sentence, paragraph or section of this act shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or section thereof directly involved in the controversy in which the judgment shall have been rendered.

§ 26. This act shall take effect on the first of September next succeeding the date on which it shall have become a law; provided, however:

(a) the amendments to subdivision 1 and subdivision 4-b of section 400.00 of the penal law made by section one of this act shall apply only to licenses for which an application is made on or after the effective date of this act;

(b) if chapter 208 of the laws of 2022 shall not have taken effect on or before such date then the amendments made to paragraph (j) of subdivision one of section 400.00 of the penal law made by section one of this act shall take effect on the same date and in the same manner as such chapter of the laws of 2022, takes effect;

(c) the amendments to sections 270.20, 270.21 and 270.22 of the penal law made by sections eleven, twelve and thirteen of this act, the amendments to section 396-eee of the general business law as amended by section fourteen of this act, and the amendments to section 144-a of the executive law as amended by section fifteen of this act, shall take effect on the same date and in the same manner as chapter 210 of the laws of 2022, takes effect;

(d) if chapter 207 of the laws of 2022 shall not have taken effect on or before such date then the amendments to subdivision 11 of section 400.00 of the penal law made by section one of this act shall take

effect on the same date and in the same manner as such chapter of the laws of 2022, takes effect;

(e) if chapter 212 of the laws of 2022 shall not have taken effect on or before such date then the amendments to subdivision 2 of section 400.00 of the penal law made by section one of this act shall take effect on the same date and in the same manner as such chapter of the laws of 2022, takes effect;

(f) sections sixteen, seventeen, eighteen, nineteen, twenty, twenty-one and twenty-two shall take effect July 15, 2023; and

(g) subdivision 4-a of section 400.00 of the penal law, as amended by section one of this act, shall take effect April 1, 2023.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

IVAN ANTONYUK, COREY JOHNSON, ALFRED TERRILLE, JOSEPH MANN, LESLIE LEMAN, and LAWRENCE SLOANE, Plaintiffs, v. KATHLEEN HOCHUL, in her Official Capacity as Governor of the State of New York, KEVIN P. BRUEN, in his Official Capacity as Superintendent of the New York State Police, Judge MATTHEW J. DORAN, in his Official Capacity as the Licensing-official of Onondaga County, WILLIAM FITZPATRICK, in his Official Capacity as the Onondaga County District Attorney, EUGENE CONWAY, in his Official Capacity as the Sheriff of Onondaga County, JOSEPH CECILE, in his Official Capacity as the Chief of Police of Syracuse, P. DAVID SOARES in his Official Capacity as the District Attorney of Albany County, GREGORY OAKES, In his Official Capacity as the District Attorney of Oswego County, DON HILTON, in his Official Capacity as the Sheriff of Oswego County, and JOSEPH STANZIONE, in his Official Capacity as the District Attorney of Greene County, Defendants.	)	Civil Action No. 1:22-cv-986 (GTS/CFH)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COME NOW Plaintiffs, Ivan Antonyuk, Corey Johnson, Alfred Terrille, Joseph Mann, Leslie Leman, and Lawrence Sloane ("Plaintiffs"), by and through undersigned counsel, and allege as follows:

1. This case involves a challenge to various provisions of New York's newly minted but ineptly named "Concealed Carry Improvement Act" ("CCIA"), passed hastily in response to the Supreme Court's decision in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. ___ (2022) ("*Bruen*"). The CCIA took effect on September 1, 2022. Nevertheless, as this Court has explained, the CCIA is an "unconstitutional statute" which "reads less like [] a measured response" to the *Bruen* decision, "than a wish list of exercise-inhibiting restrictions glued together by a severability clause." *Antonyuk v. Bruen*, No. 1:22-CV-0734 (GTS/CFH), 2022 U.S. Dist. LEXIS 157874 (N.D.N.Y. Aug. 31, 2022), *72. Plaintiffs thus seek emergency injunctive relief, in the form of a temporary restraining order and/or preliminary injunction, halting enforcement and further implementation of this patently unconstitutional statute, until a decision on the merits can be reached.

I. PARTIES

2. Plaintiff Ivan Antonyuk is a natural person, a citizen of the United States and of the State of New York, and resides in Schenectady County, New York. He is a law-abiding person, who currently possesses and has maintained an unrestricted New York carry license since 2009, and who is eligible to possess and carry firearms in the State of New York.

3. Plaintiff Corey Johnson is a natural person, a citizen of the United States and of the State of New York, and resides in Onondaga County, New York. He is a law-abiding person, who currently possesses and has maintained an unrestricted New York carry license since 2019, and who is eligible to possess and carry firearms in the State of New York.

4. Plaintiff Alfred Terrille is a natural person, a citizen of the United States and of the State of New York, and resides in Albany County, New York. He is a law-abiding person, who currently possesses and has maintained an unrestricted New York carry license since 1994, and who is eligible to possess and carry firearms in the State of New York.

5. Plaintiff Joseph Mann is a natural person, a citizen of the United States and of the State of New York, and resides in Oswego County, New York. He is a law-abiding person, who currently possesses and has maintained a New York employment related carry license since 2014, and who is eligible to possess and carry firearms in the State of New York.

6. Plaintiff Leslie Leman is a natural person, a citizen of the United States and of the State of New York, and resides in Greene County, New York. He is a law-abiding person, who currently possesses and has maintained an unrestricted New York carry license since 2012, and who is eligible to possess and carry firearms in the State of New York.

7. Plaintiff Lawrence Sloane is a natural person, a citizen of the United States and of the State of New York, and resides in Onondaga County, New York. He is a law-abiding person, who desires to apply for and obtain an unrestricted New York carry license, and thereafter to concealed carry a handgun in public for self-defense, and is (aside from not having a license) eligible to possess and carry firearms in the State of New York.

8. Plaintiffs Antonyuk, Johnson, Terrille, Mann, Leman, and Sloane are the kind of persons discussed by the United States Supreme Court in its recent opinion in *Bruen* – that is, they are typical, law-abiding citizens with ordinary self-defense needs, who cannot be dispossessed of their right to bear arms in public for self-defense.

9. Defendant Kathleen Hochul is sued in her official capacity as the Governor of the State of New York, elevated to that office in August of 2021 after the resignation of former

Governor Andrew Cuomo. While other courts have found that the Governor is not a proper party in certain matters, (*see N.Y. Cty. Lawyers' Ass'n v. Pataki*, 727 N.Y.S.2d 851, 854 (NY Sup. Ct. 2001); *Antonyuk* at *41 (listing federal district court cases)), those decisions are non-binding on this Court, plus are either erroneous or distinguishable from here. In this case, as this Court has noted, the CCIA's restrictions on sensitive locations and restricted locations apply "across the state," and the Superintendent of State Police (whose officers "are standing ready" to make CCIA arrests across the state[1]) works for the Governor. *Antonyuk* at *41. Moreover, Governor Hochul (1) has openly criticized and expressed contempt for[2] the Supreme Court's decision in *Bruen*, (2) took action to circumvent the Supreme Court's ruling by "merely chang[ing] the *nature* of th[e] open-ended discretion" from "proper cause" to "good moral character" (*Antonyuk* at *79-*80), (3) pushed enactment of the CCIA through the legislature and (4) signed the bill into law, and (5) subsequently has acted as the interpreter-in-chief with respect to the CCIA's provisions. The Governor has opined on the statute's proper interpretation, and provided guidance and instructions to officials throughout the state of New York as to its implementation according to her desires. For example, Governor Hochul (1) has instructed that the CCIA's new licensing process applies even to those whose carry license applications are already submitted and pending prior to

[1] *See* statement by First Deputy Superintendent of the State Police Steven Nigrelli, "Governor Hochul Delivers a Press Conference on Gun Violence Prevention," https://www.youtube.com/watch?v=gC1L2rrztQs at 37:40 ("We ensured that the lawful, responsible gun owners have the tools now to remain compliant with the law. For those who choose to violate this law … Governor, it's an easy message. I don't have to spell it out more than this. We'll have zero tolerance. *If you violate this law, you will be arrested. Simple as that.* Because the New York state troopers are standing ready to do our job to ensure .. all laws are enforced.") (emphasis added).

[2] https://www.foxnews.com/politics/ny-gov-hochul-defiant-supreme-court-handgun-ruling-were-just-getting-started

September 1, 2022;[3] (2) has claimed that the "good moral character" activity will involve door-to-door interviews of a person's neighbors;[4] (3) has claimed that the CCIA's plain text should not apply to certain parts of the Adirondack Park in contradiction to the wishes of the bill's sponsors;[5] and (4) has opined that the CCIA's "restricted locations" provision creates a "presumption … that they don't want concealed carry unless they put out a sign saying 'Concealed Carry Weapons Welcome Here.'" [6] To be sure, Governor Hochul "is not the official to whom the Legislature delegated responsibility to implement the provisions of the challenged statutes" (*Pataki* at 854) but, by her actions, she certainly appears to believe that she is. Moreover, and again, the Superintendent, who is tasked with implementing and enforcing various provisions of the CCIA, is the Governor's underling, making the Governor (whose hand is clearly at work in the Superintendent's actions) a proper Defendant. Defendant Hochul may be served at the New York State Capitol Building, Albany, NY 12224.

10. Defendant Kevin P. Bruen is sued in his official capacity as the Superintendent of the New York State Police. As Superintendent, he exercises, delegates, or supervises all the powers and duties of the New York Division of State Police, which is responsible for executing and enforcing New York's laws and regulations governing the carrying of firearms in public, including prescribing the form for Handgun Carry License applications. As this Court has explained, Defendant Bruen is the proper party with respect to Plaintiffs' challenge to the CCIA's

[3] https://buffalonews.com/news/local/crime-and-courts/hochul-last-minute-pistol-permit-seekers-may-have-waited-too-long-to-avoid-nys-new/article_ad5100a0-2943-11ed-af06-cbe41e631955.html

[4] https://nypost.com/2022/09/01/mayor-eric-adams-vows-door-to-door-checks-on-gun-permits/amp/?fr=operanews

[5] https://www.reuters.com/legal/new-york-gun-bans-alarm-residents-upstate-bear-country-2022-08-12/

[6] https://gothamist.com/news/supreme-court-new-york-guns-hochul-

training requirements (for new or renewed licenses), along with the CICA's sensitive locations and restricted locations prohibitions (with respect to state police enforcement). *Antonyuk* at *44. Defendant Bruen may be served at the New York State Police, Building 22, 1220 Washington Avenue, Albany, NY, 12226.

11. Onondaga County Judge Matthew J. Doran is a County Court judge of Onondaga County, New York. Defendant Doran is a "licensing officer" for Onondaga County described in N.Y. Penal Law § 265.00(10) and, as such, is responsible for the receipt and investigation of carry license applications, along with the issuance or denial of carry licenses. N.Y. Penal Law § 400.00. Defendant Doran is the proper party with respect to Plaintiffs' challenge to the CCIA's requirement and definition of "good moral character," along with its associated requirements of an in-person interview, disclosure of a list of friends and family, provision of four "character references," and provision of three years of social media history. Defendant Doran may be served at The Honorable James C. Tormey III Criminal Courthouse, 505 S. State Street, Syracuse, New York, 13202. Judge Doran's fax number is 315-671-1190.

12. Defendant William J. Fitzpatrick is the Onondaga County District Attorney and has a duty "to conduct all prosecutions for crimes and offenses cognizable by the courts" of Onondaga County, including all crimes under N.Y. Penal Law § 265.00 *et seq*. *See* County Law § 700(1). Defendant Fitzpatrick stated at a press conference that violators of the CCIA will have their weapons confiscated while prosecutors investigate any other criminal activity.[7] Additionally, he stated that violators' cases would be "referred to the judge who granted them concealed-carry licenses in the first place, possibly leading to the revocation of their carry privileges." *Id*. While

[7] https://www.syracuse.com/crime/2022/09/syracuse-da-police-chief-we-wont-target-gun-owners-under-new-law-but-will-take-gun.html.

Defendant Fitzpatrick commendably "slammed the new legislation," he has not completely disavowed enforcement of the CCIA, instead threatening to confiscate lawfully owned firearms, while referring the matter to the courts for revocation of a constitutional right to public carry of a firearm. *Id.* *See* Exhibit "2," at ¶ 23 (Declaration of Corey Johnson). Defendant Fitzpatrick's jurisdiction includes places where Plaintiffs intend to be in violation of the CCIA. Defendant Fitzpatrick is sued in his official capacity, and may be served with process at the Criminal Courthouse, 4th Floor, 505 South State Street, Syracuse, NY 13202.

13. Defendant Eugene Conway is the Sheriff of Onondaga County, New York, with county-wide jurisdiction to enforce the laws of the State of New York, including the CCIA. Defendant Conway's jurisdiction includes places where Plaintiffs intend to be in violation of the CCIA. Additionally, Sherriff Conway is the official to whom residents of Onondaga County submit their applications for firearms licenses. The "Pistol License Unit" within the Sheriff's office "is responsible for maintaining pistol license files, issuing new NYS pistol licenses, processing license holder's amendments, process[ing] pistol license suspensions & revocations, conduct[ing] criminal investigation of pistol licensees when warranted and conduct[ing] deceased pistol licensee investigations."[8] Sheriff Conway requires, as a preliminary threshold step, an applicant for a license to schedule an "appointment" in order to turn in the required paperwork. With respect to scheduling an appointment, the Sheriff's website states that "[i]n order to proceed … [a]ll four (4) Character Reference Forms [must be] completed and signed" and "[y]ou have attended and received a certificate from one of the APPROVED Handgun Safety Course Certified Instructors."[9] A person is instructed not to even schedule an appointment until the application

[8] https://sheriff.ongov.net/pistol-license-unit/
[9] https://sheriff.ongov.net/pistol-license-unit/appointment-requirements/

prerequisites have been met, and that "[i]ncomplete applications will not be processed at the time of your appointment. Your entire application will be returned to you and you will be instructed to reschedule your appointment." *Id.* To the extent that the Sheriff's custom, practice, or policy independently requires that an applicant provide four character references, that custom, policy, or practice is unconstitutional for the same reasons that New York State's four character references are unconstitutional. The Sheriff may be served with process at 407 S State St, Syracuse, NY 13202.

14. Defendant Joe Cecile, the Chief of Police of the Syracuse Police Department is the "final authority in all matters of Department policy, operations and discipline."[10] Chief Cecile has not disavowed enforcement of the CCIA, claiming instead only that his office will "not be proactively enforcing the new law by trying to catch legal gun-owners in prohibited locations."[11] However, Chief Cecile has expressly stated that he *would* enforce the CCIA on a "complaint driven" basis. Defendant Cecile's jurisdiction includes places where Plaintiffs intend to be in violation of the CCIA. He may be served with process at 511 S. State Street, Syracuse, New York, 13202.

15. Defendant P. David Soares is the Albany County District Attorney and has a duty "to conduct all prosecutions for crimes and offenses cognizable by the courts" of Albany County, including all crimes under N.Y. Penal Law § 265.00 *et seq*. *See* County Law § 700(1). Defendant Soares is sued in his official capacity, and may be served with process at the Albany County Judicial Center, 6 Lodge Street, Albany, New York, 12207.

[10] https://www.syracusepolice.org/listing.asp?orgId=83.
[11] https://www.syracuse.com/crime/2022/09/syracuse-da-police-chief-we-wont-target-gun-owners-under-new-law-but-will-take-gun.html.

16. Defendant Gregory Oakes is the Oswego County District Attorney, and has a duty "to conduct all prosecutions for crimes and offenses cognizable by the courts" of Oswego County, including all crimes under N.Y. Penal Law § 265.00 *et seq*. *See* County Law § 700(1). Defendant Oakes is sued in his official capacity, and may be served with process at the Public Safety Building, 39 Churchill Road, Oswego, NY, 13126.

17. Defendant Don Hilton is the Sheriff of Oswego County, New York, the department head of the Oswego County Sheriff's Office, the law-enforcement entity which provides "county-wide coverage … includ[ing] road patrol, civil, court security, marine and snowmobile patrol, and criminal investigation division" within Oswego County. Defendant Hilton has been a vocal critic of the CCIA, expressed his opinion that it is unconstitutional, yet (1) has stated that the CCIA is the law in New York whether he agrees with it or not, (2) stated that his office would engage in "enforcement" (albeit "very conservative enforcement") of the CCIA, and (3) has specifically explained how carrying a firearm in churches is a felony carrying significant potential penalties. *See* Exhibit "8," at ¶ 24, Declaration of Joseph Mann. Defendant Hilton's jurisdiction includes places where Plaintiffs intend to be in violation of the CCIA. Defendant Hilton is sued in his official capacity, and may be served with process at 39 Churchill Rd, Oswego, NY 13126.

18. Defendant Joseph Stanzione is the Greene County District Attorney and has a duty "to conduct all prosecutions for crimes and offenses cognizable by the courts" of Greene County, including all crimes under N.Y. Penal Law § 265.00 *et seq*. *See* County Law § 700(1). Defendant Stanzione is sued in his official capacity, and may be served with process at 411 Main Street, Catskill, New York 12414.

II. JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, 1651, 2201, 2202 and 42 U.S.C. §§ 1983 and 1988.

20. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

21. Previously, Plaintiff Antonyuk brought a challenge to the CCIA in *Antonyuk v. Bruen*, No. 1:22-CV-0734 (GTS/CFH), within this district, together with Gun Owners of America, Inc., Gun Owners Foundation, and Gun Owners of America New York, who were representing the interests of their members and supporters, including individual Plaintiffs named herein.

22. This Court concluded that, based on Second Circuit precedent, that no representational standing can be had for Section 1983 claims. *Antonyuk* at 53-54. Although Plaintiffs separately brought causes of action directly under the Constitution, the Court concluded, again based on Second Circuit precedent, that a plaintiff cannot bring such an action when Section 1983 provides a remedy. *Id*. at 54-55. Boxed in on both sides, there is no way for organizations to vindicate the constitutional rights of their members and supporters within this Circuit. *Id*. at 55.

23. As the individual Plaintiffs named above (who are all members of Gun Owners of America, Inc.) were not able to proceed in a representational capacity, they now bring this action as individuals asserting their own interests – making the same challenges, raising the same causes of action, and seeking the same relief as previously.

24. Unexpectedly, Governor Hochul called this Court's *Antonyuk* "decision … just and right," apparently not cognizant that, although dismissing on standing grounds, this Court's "judicial dictum" explained in detail how the large majority of the CCIA's provisions are patently unconstitutional.[12]

[12] https://www.governor.ny.gov/news/statement-governor-kathy-hochul-dismissal-preliminary-injunction-antonyuk-v-bruen.

III. STATEMENT OF FACTS

a. The Second Amendment.

25. The Second Amendment to the United States Constitution provides: "A well regulated Militia being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed."

26. In its landmark 2008 decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court rejected the nearly-uniform opinions reached by the courts of appeals, which for years had claimed that the Second Amendment protects only a communal right of a state to maintain an organized militia. *Heller*, 554 U.S. at 581. Setting the record straight, the *Heller* Court explained that the Second Amendment recognizes, enumerates, and guarantees to *individuals* the preexisting right to keep and carry arms for self-defense and defense of others in the event of a violent confrontation. *Id.* at 592.

27. Then, in *McDonald v. Chicago*, 561 U.S. 742 (2010), the Court explained that the Second Amendment is fully applicable to the states through operation of the Fourteenth Amendment. *Id*. at 791.

28. In *Caetano v. Massachusetts*, 577 U.S. 411 (2016), the Court reaffirmed its conclusion in *Heller* that "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding …" and that this "Second Amendment right is fully applicable to the States[.]" *Id.* at 411, 416.

29. As the Supreme Court has now explained in *Bruen*, the Second and Fourteenth Amendments together guarantee individual Americans not only the right to "keep" firearms in their homes, but also the right to "bear arms," meaning "to carry a handgun for self-defense outside

the home," free from infringement by either federal or state governments. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. ___ (2022), Slip Op. at 1.

30. Importantly, in addition to clearly recognizing the right of "'law-abiding, responsible citizens' … to public carry" (Slip Op. at 29, fn 9), *Bruen* also rejected outright the methodology used within this Circuit and other circuits to judge Second Amendment challenges.

31. Prior to *Bruen*, the Second Circuit had adopted a two-part test for analyzing Second Amendment cases: "First, we 'determine whether the challenged legislation impinges upon conduct protected by the Second Amendment,' and second, if we 'conclude[] that the statute[] impinge[s] upon Second Amendment rights, we must next determine and apply the appropriate level of scrutiny.'" *N.Y. State Rifle & Pistol Ass'n v. City of N.Y.*, 883 F.3d 45, 55 (2d Cir. 2018). *See also Bruen*, Slip Op. at 10 fn. 4 (collecting cases using two-part test). Other circuit courts also had adopted and used a substantially similar formula, which invariably utilized the very same "judge-empowering 'interest-balancing inquiry'" that *Heller* had rejected. *See Heller* at 634; *see also Duncan v. Becerra*, 265 F. Supp. 3d 1106, 1117 (S.D. Cal. 2017), *aff'd* 742 Fed. Appx. 218 (9th Cir. 2018) ("the Ninth Circuit uses what might be called a tripartite binary test with a sliding scale and a reasonable fit.").

32. Rejecting this widespread atextual, "judge empowering" (*Bruen*, Slip Op. at 13) interest-balancing approach, *Bruen* directed (again) the federal courts to first principles, to assess the text of the Second Amendment, informed by the historical tradition. *Bruen*, Slip Op. at 10.

33. First, the Supreme Court "decline[d] to adopt that two-part approach" used in this and other circuits, and reiterated that, "[i]n keeping with *Heller*, we hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Bruen*, Slip Op. at 8.

34. Second, the Supreme Court held that, "[t]o justify [a] regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. 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.'" *Bruen*, Slip Op. at 8. (citation omitted).

35. Third, in reviewing the historical evidence, the *Bruen* Court cabined review of relevant history to a narrow time period, because "not all history is created equal," focusing on the period around the ratification of the Second Amendment, and *perhaps* the Fourteenth Amendment (but noted that "post-ratification" interpretations "cannot overcome or alter that text," and "we have generally assumed that the scope of the protection applicable to the Federal Government and States is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791."). *See Bruen*, Slip Op. at 30-51 (discussing the lack of relevant historical prohibitions on concealed carry in public).

36. In other words, according to the Second Amendment's text, and as elucidated by the Court in *Bruen*, if a member of "the people" wishes to "keep" or "bear" a protected "arm," then the ability to do so "shall not be infringed." Period. There are no "ifs, ands or buts," and it does not matter (even a little bit) how important, significant, compelling, or overriding the government's justification for or interest in infringing the right. It does not matter whether a government restriction "minimally" versus "severely" burdens (infringes) the Second Amendment. There are no relevant statistical studies to be consulted. There are no sociological arguments to be considered. The ubiquitous problems of crime or the density of population do not affect the equation. The only appropriate inquiry then, according to *Bruen*, is what the "public

understanding of the right to keep and bear arms" was during the ratification of the Second Amendment in 1791, and perhaps during ratification of the Fourteenth Amendment in 1868. *Bruen*, Slip Op. at 29.

37. Lest there be any doubt, the Supreme Court has also instructed as to the scope of the protected persons, arms, and activities covered by the Second Amendment.

38. First, *Heller* explained that "in all six other provisions of the Constitution that mention 'the people,' the term unambiguously refers to all members of the political community, not an unspecified subset." *Heller*, at 580. *Heller* cited to *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990), which held that "'[T]he people' … refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community." *Id.*

39. Second, *Heller* turned to the "substance of the right: 'to keep and bear Arms.'" *Id.* at 581. The Court explained that "'[k]eep arms'" was simply a common way of referring to possessing arms, for militiamen *and everyone else*." *Id.* at 583. Next, the Court instructed that the "natural meaning" of "bear arms" was "wear, bear, or carry ... upon the person or in the clothing or in a pocket, for the purpose ... of being armed and ready for offensive or defensive action in a case of conflict with another person." *Id.* at 584. And "[a]t the time of the founding, as now, to 'bear' meant to 'carry.'" *Id.* *Bruen*, in fact, was more explicit, explaining that the "definition of 'bear' naturally encompasses public carry." *Bruen*, Slip Op. at 23.

40. Third, with respect to the term "arms," the Court explained that "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *Heller* at 582. Indeed, the "arms" protected by the Second Amendment include "weapons of offence, or armour of defence… Arms are any thing

that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another." *Heller,* at 581 (punctuation omitted).

41. Finally, it is worth nothing that, in addition to clearly establishing the framework by which lower courts are to analyze Second Amendment challenges, *Bruen* also provided several additional guideposts which are relevant to New York's CCIA challenged here.

42. First, the Court rejected the statutory schemes of "may issue" states such as New York, whereby "authorities have discretion to deny concealed-carry licenses even when the applicant satisfies the statutory criteria," such as when "the applicant has not demonstrated … suitability for the relevant license." *Bruen,* Slip Op. at 5. Rather, the Court pointed to "'shall issue' jurisdictions" wherein licenses are issued "whenever applicants satisfy certain threshold requirements, without granting licensing officials discretion to deny licenses based on a perceived lack of need or suitability." *Bruen,* Slip Op. at 4.

43. Second, the Court explained that states have extremely narrow latitude to limit the places where firearms may be carried in public, mentioning only "sensitive places such as schools and government buildings," along with "legislative assemblies, polling places, and courthouses." *Bruen,* Slip Op. at 21, 37. Although the Court acknowledged that other "new and analogous sensitive places" may exist, such potential locations would be highly limited, and certainly cannot be defined so broadly as to "include all 'places where people typically congregate'" or for New York to "effectively declare the island of Manhattan a 'sensitive place'" by claiming nearly every category of place to be a sensitive one.[13] *Bruen,* Slip Op. at 22.

[13] Plaintiffs note that neither *Heller* nor *Bruen* definitively determined any particular type of place to be a sensitive place, but only noted that certain narrow types of locations historically have been restricted to the bearing of arms. Indeed, the question of any particular sensitive place was not before the Court in those cases. *Heller*, for example, stated only that the Court's opinion should not "cast doubt upon" certain "longstanding prohibitions." *Id*. at 626. Moreover, *Bruen* seemed

44. Third, the *Bruen* court acknowledged the inherent risk in *all* permitting schemes, "because any permitting scheme can be put toward abusive ends, we do not rule out constitutional challenges to shall-issue regimes where, for example, lengthy wait times in processing license applications or exorbitant fees deny ordinary citizens their right to public carry." *Bruen*, Slip Op. at 30 n.9.

45. But in spite of the Supreme Court's clear pronouncements in *Bruen*, New York apparently did not 'get the memo.' On the contrary, rather than representing a good-faith attempt to bring New York law into compliance with the Second Amendment and the *Bruen* decision, the CCIA instead doubles down, flouting the people's right to keep and bear arms and, in fact, creating a far more onerous and restrictive concealed carry scheme even than that which existed prior to the *Bruen* decision (if such thing is possible).

46. This Court's intervention is therefore necessary, to again make it clear to New York that it is not free to thumb its nose at the text of the Second Amendment, and the opinions of the Supreme Court, and that the Second Amendment is neither a "constitutional orphan" or a "second-class right." *See Silvester v. Becerra*, 138 S. Ct. 945 (2018) (Thomas, J., dissenting from denial of certiorari); *McDonald*, at 780; *Bruen*, Slip Op. at 62.

a. New York's Gun Control Regime.

47. New York represents an extreme outlier among the states, imposing all manner of severe infringements on the constitutional right to keep and bear arms.

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to anticipate that a challenge even to such "longstanding prohibitions" might occur, explaining only that "courts can use analogies … to determine whether modern regulations are constitutionally permissible," including in "schools and government buildings." *Id.* at 2119. Thus, Plaintiffs do not concede the constitutionality of any such restriction.

48. For example, New York requires a permit simply to purchase and possess any handgun. Every handgun is thus registered with the state, and the serial number is affixed to the permit. *See* N.Y. Penal Law § 400.00(3).

49. This requirement creates a de facto waiting period, due to the significant delay in issuance of such a permit, which New York estimates applicants "should expect [] to take a minimum of four months from the time of application until a license is either granted or denied."[14]

50. Next, the 2013 New York "Safe Act" banned newly acquired so-called "assault weapons," while requiring registration of existing firearms for those individuals who had them.[15]

51. So-called 'large capacity' magazines (which are really standard capacity magazines commonly sold in almost every other state) are generally banned in New York, subject to some exemptions. *See* NY Pen. Law § 265.00(23); NY Pen. Law § 265.02(8).

52. New York Requires background check for every firearm transfer,[16,17] including private sales, and requires a non-licensee to first notify the state that they are disposing (*i.e.*, selling) a firearm (N.Y. Penal Law § 265.10(7)).

53. In order to simply possess a handgun, a person first must obtain permission from the state which includes, at minimum, a premise permit which permits one only to possess a handgun within the home or place of business, but does not permit the person to take the handgun outside of the home, subject to few exceptions, such as traveling to a shooting range, shooting competition, or another dwelling where the licensee is authorized to take the firearm. *See* N.Y. Penal Law § 400.00(6).

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[14] *See* https://www.ny.gov/services/how-obtain-firearms-license
[15] *See* https://safeact.ny.gov/resources-gun-owners.
[16] Transfers between immediate family members are exempt. *See* https://safeact.ny.gov/resources-gun-dealers.
[17] *See* https://safeact.ny.gov/resources-gun-dealers.

54. In order to carry a firearm outside the home, a person must obtain a carry permit, which could be "restricted" to allow carry only in certain places specifically identified on the license itself. *Id*. Indeed, a New York state carry license does not apply in New York City, which has its own permitting scheme. *See* N.Y. Penal Law § 400.00(6) (discussing New York City's application process).[18]

55. Moreover, refusing to participate in the "reciprocity" agreements that are common between states across the country, New York does not honor the concealed permits of any other state.

56. The difference between "restricted" and "unrestricted" permits was created not by the legislature, but rather by the judiciary, with judges adding various restrictions to licenses to carry. *See O'Brien v Keegan*, 87 N.Y.2d 436 (N.Y. 1996) ("It was not unreasonable for licensing officer to restrict petitioner's unrestricted carry concealed license to hunting and target shooting in view of petitioner's inability to show need for unrestricted license, which would permit him to carry several concealed firearms.").

57. "Open carry," meaning the unconcealed carry of a firearm, although legal in most states even without a permit, is entirely illegal in New York, as a carry license (authorizing only concealed carry) is the only way to carry a firearm outside the home.

58. Finally, prior to *Bruen*, New York law required that a person demonstrate a "proper cause" as a condition necessary to obtain a license to carry a firearm in public. Proper cause had been interpreted to mean "a special need for self-protection distinguishable from that of the general

[18] *See also* https://www1.nyc.gov/site/nypd/services/law-enforcement/permits-licenses-firearms.page, and https://licensing.nypdonline.org/new-app-instruction/.

community or of persons engaged in the same profession." *Kaplan v. Bratton*, 249 A.D.2d 199, 201, 673 N.Y.S.2d 66, 68 (App. Div. 1st Dept. 1998).

59. In practice, ordinary persons with typical self-defense needs were found not to have "proper cause," and few New York residents were able to obtain a permit. *See Kaplan, supra*; *see also Klenosky v. N.Y.C. Police Dep't*, 53 N.Y.2d 685 (1981); *see also Matter of Agro v. Shea*, 2022 NY Slip Op 30816(U) (Sup. Ct.). The end result was a statutory scheme that wholly deprived ordinary citizens of the ability to armed self-defense outside the home.

60. Yet although this nation's highest court recently rejected the New York statutory scheme, the recently enacted CCIA largely ignores the Court's decision, acting as if it is business as usual in the state.

c. New York's Most Recent Unconstitutional Gun Control – the CCIA.

61. After the Supreme Court's complete rejection of New York's restrictive "may issue" carry scheme, the state legislature immediately went to work to craft new and improved ways to infringe on New Yorker's Second Amendment rights, seemingly to impose retribution on New York gun owners for successfully challenging its prior statute.

62. Unhappy with the Supreme Court's opinion, and searching for ways to continue to restrict the ordinary New Yorker's ability to armed self-defense outside the home, the new Governor of New York, Kathleen Hochul, who took the place of former Governor Andrew Cuomo, called an extraordinary session of the New York State Legislature for the purpose of enacting a new statutory scheme (the CCIA), designed to give the appearance of compliance with *Bruen*, but in reality thwarting and bypassing the Supreme Court's decision.

63. The Governor herself issued several statements critical and disrespectful of the Supreme Court's ruling: "[t]he Supreme Court's reckless and reprehensible decision to strike down

New York's century-old concealed carry law puts lives at risk here in New York,"[19] and "[a] week ago, the Supreme Court issued a reckless decision removing century-old limitations on who is allowed to carry concealed weapons in our state — senselessly sending us backward and putting the safety of our residents in jeopardy[.]"[20] In other words, the Governor appears to have no desire to comply with the Supreme Court's *Bruen* decision, and every intention to thwart and undermine it through signing the CCIA into law, as a sort of guerrilla warfare against the Supreme Court, the rule of law, and the Second Amendment.

64. This new bill, rushed through the extraordinary session and passed without the required public posting, comment and debate, has now introduced a slew of new, unprecedented, and blatantly unconstitutional impediments to New Yorkers in their attempt to exercise their constitutional right to armed self-defense outside the home.

65. The bill, ironically called the Concealed Carry *Improvement* Act, is New York's attempt to flout the Supreme Court's holding in *Bruen*. Instead of complying with that decision, the Assembly and Senate, with the Governor's glowing approval, have promulgated several blatantly unconstitutional new infringements of the enumerated right to keep and bear arms.

66. A true and correct copy of the Bill is attached as Exhibit "1" to the Complaint.

i. Good Moral Character.

67. To be sure, the CCIA removes the now-unconstitutional "proper cause" requirement from the prior statute. In its place, the CCIA defines the malleable term "good moral character" to now mean "having the essential character, temperament and judgement necessary to

[19] https://www.governor.ny.gov/news/governor-hochul-announces-extraordinary-session-new-york-state-legislature-begin-june-30.
[20] https://www.governor.ny.gov/news/governor-hochul-signs-landmark-legislation-strengthen-gun-laws-and-bolster-restrictions.

be entrusted with a weapon and to use it only in a manner that does not endanger oneself or others…." Exhibit "1" at 2; *Antonyuk* at *70.

68. However, the Second Amendment does not leave it up to the state of New York to decide whether to "entrust[]" its citizens with arms. Rather, the right of all "the people" (not just the government's chosen favorites) "shall not be infringed."

69. The concept of "good moral character" is a standardless notion, inevitably open to subjective interpretations by licensing individuals across the state who, based on history, may wish to continue to deny the law-abiding citizens of New York the ability to defend themselves in public. An "I'll know it when I see it" standard for bestowing the privilege of licensure is a concept entirely foreign to the Second Amendment. *Antonyuk* at *80 ("New York State's new definition of 'good moral character' does not in fact remove the open-ended discretion previously conferred….").

70. As recently interpreted by a New York federal court, "[g]ood moral character is more than having an unblemished criminal record. A person of good moral character behaves in an ethical manner and provides the Court, and ultimately society, reassurance that he can be trusted to make good decisions." *Sibley v. Watches*, 501 F. Supp. 3d 210, 219 (W.D.N.Y. 2020)

71. Yet, as noted above, the *Bruen* Court expressly rejected such a statutory scheme, which "grant[s] licensing officials discretion to deny licenses based on a perceived lack of need *or suitability*." *Bruen*, Slip Op. at 4-5 (emphasis added). If a decision whether a person has "good moral character" is not a judgment about "suitability" to carry firearms, it is hard to see what would be. Indeed, as this Court has explained, the CCIA "merely changes the *nature* of that open-ended discretion." *Antonyuk*, at *79-80 and n.38.

72. Likewise, writing in concurrence in *Bruen*, Justice Kavanaugh rejected a "feature[] of New York's regime — the unchanneled discretion for licensing officials … in effect deny the right to carry handguns for self-defense to many 'ordinary, law-abiding citizens.'" (Kavanaugh, J., concurring, Slip Op. at 2).

73. Yet that is precisely what the CCIA permits, allowing licensing officials unbridled discretion to decide whether to "entrust[]" a person with constitutional rights, and to "require … such other information … that is reasonably necessary" to making that determination, another open-ended grant of authority, thus opening the door to a host of abuses, unequal enforcement, arbitrary and capricious, actions and the further erosion of the Second Amendment through the exercise of unbridled power and "unchanneled discretion." As this Court has noted, "licensing officials may not arbitrarily abridge … the Second Amendment right … of self-defense … based on vague, subjective criteria." *Antonyuk* at *80.

74. Plaintiffs challenge the idea that, in addition to indisputably being part of "the people" protected by the Second Amendment, that they must prove they have "good moral character" to the satisfaction of a New York State licensing official. Plaintiff Sloane must make this showing in order to qualify for a license, while the other plaintiffs who already have licenses must maintain this status or else their licenses will be revoked.

i. List of Household Members and Family, In Person Meetings, Social Media, and "Character References."

75. In addition to requiring an applicant to demonstrate (and maintain) "good moral character," as defined, the CCIA imposes a litany of demands on those seeking a New York carry permit, including a requirement that the applicant "shall meet in person with the licensing officer for an interview and shall, in addition to any other information or forms required by the license application submit to the licensing officer the following information:

i. names and contact information for the applicant's current spouse, or domestic partner, any other adults residing in the applicant's home, including any adult children of the applicant, and whether or not there are minors residing, full time or part time, in the applicant's home;

ii. names and contact information of no less than four character references who can attest to the applicant's good moral character and that such applicant has not engaged in any acts, or made any statements that suggest they are likely to engage in conduct that would result in harm to themselves or others;

iii. certification of completion of the training required in subdivision nineteen of this section;

iv. a list of former and current social media accounts of the applicant from the past three years to confirm the information regarding the applicants [sic] character and conduct as required in subparagraph (ii) of this paragraph; and

v. such other information required by the licensing officer that is reasonably necessary and related to the review of the licensing application."

See Exhibit "1" at 4-5.

76. Each of these requirements is part of the "good moral character" requirement is ripe for abuse and discrimination, in that each is designed to allow a licensing official to determine if a person has the good moral character necessary to be "entrusted" with a license, by assessing one's demeanor during an interview, discussing one's temperament and behavior with friends,

family, and character references, and reviewing a person's history of speech and discourse on social media.

77. In addition to constituting the State's blatant infringements of the Second Amendment right to keep and bear arms, several of the CCIA's demands (conditions of qualifying for a carry license) also represent gross infringements of applicants' First and Fifth Amendment rights.

78. For example, demanding the names and contact information (presumably for interrogation by licensing authorities) of relatives and co-habitants violates the First Amendment right of association, along with anonymity rights of those who do not want to be contacted by government officials, or have their information entered into a government database. The idea that constitutional rights can be conditioned on the government first interrogating *one's children* (even if adults) is particularly noxious, and no doubt is designed to serve as a deterrent to seeking licensure, due to the natural parental instinct to protect. In fact, New York City Mayor Eric Adams has claimed that "police officers" would be "knocking our [sic] neighbors' doors, speaking to people, finding out who this individual is that we are about to allow to carry a firearm in our city."[21]

79. Demanding a list of and potentially access to some vague class of "social media accounts of the applicant" in order to issue a permit to carry a concealed weapon requires disclosure of protected First Amendment speech and press as a condition of exercising another protected constitutional right, and violates the Fifth Amendment right against self-incrimination.

80. Next, applicants must provide four character references to the government as a condition of exercising Second Amendment rights. Unsurprisingly, other constitutional rights are not predicated upon what others think about you, or conditioned on having friends who will agree

[21] https://nypost.com/2022/09/01/mayor-eric-adams-vows-door-to-door-checks-on-gun-permits/

to stand up to government interrogation and scrutiny (or retaliation) in order to help another obtain a carry license. Notwithstanding that, those who do not have four "character references" (such as new arrivals to the state) presumably will be unable to exercise their Second Amendment rights. Exhibit "1" at 5.

81. Making matters worse, the CCIA demands that "character references" attest that the applicant "has not engaged in any acts, or made any statements that suggest they are likely to engage in conduct that would result in harm to themselves or others." *Id*. at 5. Of course, requiring someone to be in the omniscient position to attest that another person has not engaged in "*any act*" or made "*any statements*" of a certain nature seems a tall order indeed. *See Antonyuk* at *81.

82. Next, the requirement that nothing "suggest [an applicant is] likely to engage in conduct that would result in harm [justified or not] to themselves or others" is an open-ended and vague standard, as one hundred percent of those applying for a permit to carry a handgun in public, by definition, could be said to be "likely" to "harm" a carjacker through the morally legitimate and entirely lawful act of self-defense. *See Antonyuk* at *70-79.

83. It is axiomatic that the exercise of one constitutional right cannot be conditioned on the forfeiture or violation of another. *See, e.g., Simmons v. United States*, 390 U.S. 377 (1968) (rejecting a situation where a defendant was forced to forfeit his Fifth Amendment right to keep silent in order to assert his Fourth Amendment right, calling that a "condition of a kind to which this Court has always been peculiarly sensitive," and concluding it to be "intolerable that one constitutional right should have to be surrendered in order to assert another.") *Id*. at 393-94. *See also Perry v. Sindermann*, 408 U.S. 593 (1972) (the government may not deny a person a benefit "on a basis that infringes his constitutionally protected interests ... For if the government could deny a benefit to a person because of his constitutionally protected [rights], his exercise of those

freedoms would in effect be penalized and inhibited. This would allow the government to 'produce a result which [it] could not command directly ... Such interference with constitutional rights is impermissible.") *Id*. at 597. (punctuation omitted). *See also Antonyuk* at *84-85.

iii. Sensitive Locations.

84. The CCIA next creates a new Section 265.01-e entitled "Criminal Possession of a firearm, rifle or shotgun in a sensitive location." Exhibit "1" at 16.

85. The list of "sensitive locations" contained in this section is extensive, and serves to bar the carry of firearms in most public places.

86. "Sensitive location" is defined as:

(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; provided such area shall be clearly and conspicuously identified with signage.

See Exhibit "1" at pp. 16-18.

87. In any of these dozens of types of places (which, in some instances, include persons' homes), firearms of any kind are completely banned, regardless of whether they are being used, carried, or merely stored.

88. The CCIA has certain exemptions, including for the police, certain government employees engaged in the course of their duties, persons engaged in hunting, and persons operating a "program" in a "sensitive location out of their residence." Exhibit "1" at 19.

89. Unlawful possession of a firearm in any of these 20 categories of "sensitive locations" is a Class E Felony, conviction of which leads not only to a lengthy sentence but also to the permanent loss of Second Amendment rights.

90. First, going far beyond the Supreme Court's sanction of "government *buildings*" as "sensitive places" (*Bruen*, Slip. Op. at 5), the CCIA declares "any *place* owned or under the control of federal, state or local government, for the purpose of government administration" to be a sensitive location. Subsection (a). This could be read to cover, for example, even public protests in Albany, attended by Plaintiffs Terrille[22] and Johnson[23] which have occurred in the public square and public streets in Empire State Plaza – hardly a sensitive place.

91. Next, the CCIA widely bans firearms in any place offering healthcare or other medical related services (subsection b) and any "place of worship or religious observation" (subsection c). Each of these restrictions applies not only to customers/visitors to a business and members of a church congregation, but also the proprietor (a doctor, dentist, massage therapist, acupuncturist, chiropractor, etc.) or pastor of a church. *See* Exhibit "8," Declaration of Mann, ¶¶ 4, 12-15. Even for the *owners* of private property whose property has been declared a "sensitive

[22] *See* Exhibit "9," Declaration of Alfred Terrille, ¶ 18.
[23] *See* Exhibit "2," Declaration of Corey Johnson, ¶ 15.

location," carry is entirely off limits, and there is no ability for such persons to "opt out" of being a "sensitive location." For example, Plaintiff Mann, a pastor, cannot possess a firearm in his own church and, indeed, in his own home which is connected to the church. *Id*. at ¶ 12.

92. Indeed, the City of New York recently issued a letter to holders of "an active premise business, limited carry, special carry, or carry business license," threatening that the CCIA's new prohibition on firearms in a "sensitive location" "is a Class E Felony" and threatening that the licensee's "continued possession of a firearm at this location is unlawful." *See* Exhibit "5." (emphasis original). The NYC publication continues "***IF*** **YOUR BUSINESS IS IN A SENSITIVE LOCATION … YOU ARE NO LONGER ABLE TO LAWFULLY POSSESS A FIREARM AT THAT LOCATION.**" *Id*. (emphasis original).

93. In fact, for Plaintiff Mann, or for a person "providing health, behavior health, or chemical dependence care or services" (such as Pastor Mann's counseling of congregants) *out of the home*, the CCIA completely eliminates such persons' Second Amendment rights, in that possession of any firearm in that "location" (the home) is flatly prohibited. Exhibit "1" at 16. See also Declaration of Mann, Exhibit "8," ¶¶ 26, 28, 29. Indeed, the only exception the CCIA provides is for "persons operating *a program* in a sensitive location out of their residence [sic], as defined by this section, which is licensed, certified, authorized, or funded by the state or a municipality…." Exhibit "1" at 19 (emphasis added). Whereas certain places in the list of "sensitive locations" use the word "program" (subsections e, g, h, i, j, and k), neither the "place of worship" subsection (b) nor the healthcare subsection (c) uses that word. Likewise, "any gathering of individuals to collectively express their constitutional rights to protest or assemble" that occurs *even within the home* (such as a Bible study held at Plaintiff Mann's home) would be a gun-free zone (subsection s). Exhibit "1" at 18. *See also* Declaration of Mann, Exhibit "8," ¶¶ 13, 32.

94. In other words, parts of the CCIA make it a felony to keep an operable firearm in the home for self-defense. *But see Heller* at 635 ("we hold that the District's ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense."). For that reason, these provisions of the CCIA are void on their face, without further analysis.

95. The CCIA next prohibits firearms in various places (subsections d and f), including "libraries, public playgrounds, public parks, [] zoos … nursery schools, preschools, and summer camps," presumably due to nothing more than these being places where children are often present. Of course, there is no historical analogue for banning firearms in locations simply based on the presence of children and, quite to the contrary, children are a class of persons in much need of protection by armed and vigilant parents, grandparents, teachers, pastors, guardians, etc., including Plaintiff Terrille's grandchildren, and Pastor Mann's students and youth congregation. *See* Declaration of Alfred Terrille, Exhibit "9," ¶¶ 7, 8, 19. *See* Declaration of Mann, Exhibit "8," ¶¶ 30, 31.The CCIA declares that these and other children cannot be protected, creating gun-free zones that are known to be targets of criminals who, by definition, do not obey the law – even if clearly posted by conspicuous signage.

96. Next, the CCIA bans (subsection k) firearms in locations that provide services for the homeless, runaways, youth, families, and victims of domestic violence. But again, these vulnerable populations are either often in greater than ordinary need of protection, such as a battered wife counseled by Plaintiff Mann, or themselves may present a risk to others, such as the drug addicts helped by the Pastor's church. *See* Declaration of Mann, Exhibit "8," ¶¶ 26, 27.

97. The CCIA next, far too broadly (subsection m), sweeps into its ambit any type of "building or grounds" owned by any school or university – of any sort. Presumably, this would

eliminate the numerous skeet, shooting, and ROTC ranges located on the grounds of several colleges and universities within the State of New York.[24] Moreover, it would seem to apply not only to public grade schools (of the type discussed in *Heller*), but also would deprive *private* schools, *church* schools, and even *home* schools (such as the one that holds classes at Pastor Mann's church) from self-determination as to how best to provide protection for their students – including usurping and undermining parents' decisions how best to protect their own children under their own care and *within their own home*. *See* Declaration of Mann, Exhibit "8," ¶ 31.

98. Next, the CCIA broadly and without nuance prohibits firearms within all sorts of public transportation (subsection n), which would conflict with federal law (18 U.S.C. Section 926a) and regulation,[25] and prohibit Plaintiff Terrille even from, consistent with TSA regulations, checking his firearm into his luggage at the airport on his upcoming trip (Declaration of Alfred Terrille, Exhibit "9," ¶¶ 9, 11), or Pastor Mann's church from using the church van and bus for a skeet shooting trip by men in the congregation (*See* Declaration of Mann, Exhibit "8," ¶ 33.).

99. Next, the CCIA prohibits (subsection o) firearms in places where alcohol is served, regardless of whether a person (like Plaintiffs Johnson[26] and Terrille[27]) is actually consuming alcohol, and even when eating with their families in nowhere near the general vicinity as the bar in a family restaurant – even if it is not in operation (such as during Sunday morning brunch).

100. Next, the CCIA broadly bans (subsection p) firearms at "any place used for the performance, art entertainment, gaming, or sporting events," even though there is nothing "sensitive" about these places other than being places where people gather. This would keep

[24] *See* https://competitions.nra.org/competitions/nra-national-matches/collegiate-championships/collegiate-shooting-sports-directory/
[25] https://www.tsa.gov/travel/transporting-firearms-and-ammunition
[26] *See* Declaration of Johnson, Exhibit "2," ¶¶ 11, 12.
[27] *See* Declaration of Terrille, Exhibit "9," ¶ 19.

Plaintiff Terrille from being armed when taking his grandchildren to the movies (Declaration of Terrille, Exhibit "9," ¶ 7), would entirely prohibit the gun shows attended by Plaintiff Terrille because they occur at various locations in the CCIA's long list (Declaration of Terrille, Exhibit "9," ¶ 16, and restrict even Pastor Mann's church from having both the church choir and a loaded firearm present at the same time (Declaration of Mann, Exhibit "8," ¶ 34) (that is, if the church were not already off limits under other subsections).

101. Not done yet, the CCIA bans firearms even on sidewalks and streets (subsection r), if those locations are vaguely declared to be a "special event" and issued a "permit," such as the rallies and protests attended by Plaintiffs Johnson and Terrille (Exhibit "9," Declaration of Terrille, ¶ 18; Exhibit "2," Declaration of Johnson, ¶ 15). But again, *Bruen* makes clear that a place is not a "sensitive place" merely because people congregate there, with or without a permit.

102. Finally, and perhaps most outlandishly, the CCIA bans (subsection s) firearms at any gathering of people "to collectively express their constitutional rights to protest or assemble," such as Plaintiffs Terrille and Johnson when they attend rallies and gun shows (Declaration of Terrille, Exhibit "9," ¶¶ 16, 18; Declaration of Johnson, Exhibit "2," ¶¶ 14, 15), or Pastor Mann when he gives a sermon from the pulpit (Declaration of Mann, Exhibit "8," ¶ 32). It is not difficult to see the blatant unconstitutionality of a law that conditions the exercise of one constitutional right on the forfeiture of others. *See Antonyuk* at *84-85.

103. Indeed, at least one New York gun show has already been canceled after conversations with "the St. Lawrence County Sheriff's Office, District Attorney's Office and New

York State Police," based on subsections (a) (government locations), (p) (entertainment and theater), and (s) (gatherings to exercise constitutional rights).[28]

104. Although some of the CCIA's "sensitive locations" must be marked conspicuously with signage, many are not required to be so marked, leaving carry license holders in peril of unintentionally violating the statute (and becoming a *felon*) in a place they innocently and legitimately have no idea constitutes a "sensitive location" in the massive list above (such as a delivery driver dropping off a package at a residential garage that just so happens to double as a the homeowner's chiropractic clinic).

105. Rather than concocting this extensive list of so-called "sensitive locations," it probably would have been easier for the legislature to list the places that New York, in its grace, *does allow* ordinary law-abiding citizens to exercise their rights. Indeed, when a reporter questioned whether she was "shutting off all the public places," and asked "what would be left?" Governor Hochul quipped "probably some streets."[29] Of course, not if the streets are a government location (subsection a) or holding a special event (subsection r).

106. Indeed, the CCIA's cornucopia of "sensitive locations" will produce absurd results (in addition to those detailed above). For example, there are 12 New York state counties "fully or partially in the" Adirondack Park,[30] "the largest park in the contiguous United States" comprised of 6 million acres, including numerous parcels of private land, and home to a "year-round population [of] 132,000."[31] Although county officials in the area had reached out to Governor

[28] https://www.nny360.com/news/stlawrencecounty/state-s-new-gun-law-prompts-cancellation-of-west-potsdam-fire-department-gun-show/article_371ff533-4265-51ba-8d78-d2ed4a9c01a9.html
[29] https://www.cbsnews.com/newyork/news/fresh-off-primary-win-gov-kathy-hochul-dives-right-into-guns-who-can-get-them-and-where-they-can-take-them/
[30] https://en.wikipedia.org/wiki/Adirondack_Park.
[31] *See* https://apa.ny.gov/about_park/

Hochul's office for guidance, they were provided with nothing "more than verbal assurances" that the CCIA does not apply to Adirondack Park (in other words, that the CCIA does not mean what it clearly says).[32]

107. In addition to these numerous "sensitive locations," the CCIA also bans the carry of firearms in what it calls a "restricted location," defined in "§ 265.01-d Criminal possession of a weapon in a restricted location":

> A person is guilty of criminal possession of a weapon in a restricted location when such person possesses a firearm, rifle, or shotgun and enters into or remains on or in private property where such person knows or reasonably should know that the owner or lessee of such property *has not permitted such possession by clear and conspicuous signage* indicating that the carrying of firearms, rifles, or shotguns on their property is permitted *or has otherwise given express consent*. [Exhibit "1", p19 (emphasis added).]

108. Violation of this prohibition, like the prohibition on "sensitive locations," is a "class E felony" conviction of which leads to the loss of Second Amendment rights for life. Exhibit "1" at 20.

109. In other words, the CCIA makes *all private property* in New York state a "restricted location" by default, adopting an anti-Second Amendment policy position on behalf of all property owners within the State, with a property owner (such as a storekeeper like Plaintiff Leman, Declaration of Leman, Exhibit "4", ¶ 25, 26) required to "conspicuously" post signage indicating that concealed carry is allowed. *See Antonyuk* at *94-95 ("the Court agrees with Plaintiffs that the CCIA's definition of 'restricted locations' impermissibly encompasses all private property in the state unless the property owner expressly permits the carrying of firearms…."). Likewise, Plaintiff Antonyuk is forced to either give express consent to each person who comes onto his property or,

[32] https://www.wamc.org/news/2022-08-30/north-country-officials-say-clarification-on-impact-of-new-concealed-carry-law-on-adirondack-park-is-needed

because he cannot stand on his front lawn 24 hours a day, post "conspicuous signage" in order to permit New Yorkers to carry onto his property. *See* Declaration of Ivan Antonyuk, Exhibit "7," ¶ 14, 18.

110. Indeed, New York City recently issued a publication about the CCIA stating that "[a]ll private property (residential and commercial) that is not on the sensitive location list is considered 'restricted.'" Exhibit "6" at 2.

111. *Bruen* has expressly foreclosed the ability of New York to paint with such broad strokes, labeling vast swaths of the state to be "sensitive places" (or "sensitive locations" or "restricted locations"), explaining 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…. 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. [*Bruen*, Slip Op. at 22.]

112. Disregarding the Supreme Court's warning not to turn the entire state into a "sensitive place," New York has essentially told the Court "challenge accepted," with the CCIA effecting virtually that result.

113. Moreover, as this Court has noted, although possibly a drafting error, a literal reading of the plain text of the CCIA indicates that *there is no way to opt out*, as carry would be prohibited either both where "the owner or lessee of such property *has not* permitted such possession by clear and conspicuous signage … or *has* otherwise given express consent." Emphasis added; *see Antonyuk* at 96. Of course, courts do not interpret statutes contrary to their words unless in "one of those rare cases where the application of the statute as written will produce a result 'demonstrably at odds with the intentions of its drafters.'" *Demarest v. Manspeaker*, 498

U.S. 184, 190 (1991); *see also United States v. X-Citement Video*, 513 U.S. 64, 82 (1994) (Scalia, J., dissenting) ("the *sine qua non* of any 'scrivener's error' doctrine … is that the meaning genuinely intended but inadequately expressed must be absolutely clear; otherwise we might be rewriting the statute rather than correcting a technical mistake."); *see also Lamie v. U.S. Tr.*, 540 U.S. 526, 542 (2004) ("If Congress enacted into law something different from what it intended, then it should amend the statute to conform it to its intent.").

114. With "sensitive locations" covering most public locations and locations that have some tie to or involvement with state government, and "restricted location" covering all private property by default, it is hard to imagine how a carry license holder could so much as leave home without running afoul of the CCIA. That is precisely the result that *Bruen* warned against.

115. Not content with banning licensed carriers from carrying in most of New York, the CCIA now mandates that individuals who are otherwise licensed to carry, but who are entering a "no carry" zone, must remove the ammunition from their firearm and secure the firearm in an "appropriate safe storage depository out of sight from outside of the vehicle." Exhibit "1" at 25. Mandating the removal of magazines and unloading firearms will unnecessarily introduce the possibility for accidental discharges. *See* Declaration of Antonyuk, Exhibit "7," ¶ 8. Mandating that individuals unload their lawfully carried firearms each time they leave their vehicle to enter a no carry zone will do nothing to ensure the safety of the firearm, will provide opportunities for the vehicle to be vandalized and the firearm stolen (by definition, by someone who is not law-abiding and, most likely by someone who is not a carry license holder), and can potentially cause injuries or, at a minimum, "man with a gun" calls to police when passersby witness a gun owner unloading, storing, or reloading his firearm. *See Antonyuk* at *49 n.16. Indeed, New York affirmatively

stated that a glove box or glove compartment "shall not be considered an appropriate safe storage depository," meaning something less discrete will be required. *Id*. at 25.

116. New York's new "sensitive locations" and "restricted locations" provisions are unconstitutional on their face, serve only to "eviscerate the general right to publicly carry arms for self-defense," and create a situation that is even more onerous and restrictive than that which existed prior to the *Bruen* decision.

117. Indeed, for many people like Pastor Mann, the CCIA entirely eliminates Second Amendment rights entirely, prohibiting them even from keeping a firearm in their own home (if their home is also a "sensitive location") and prohibiting them from bearing a firearm virtually everywhere else in the state.

118. Additionally, by listing as a "sensitive location" any location where individuals exercise their First Amendment rights to association and protest (subsection s), the CCIA takes away Second Amendment rights for those who exercise other constitutional rights.

119. Finally, both the CCIA's "restricted locations" and "sensitive locations" are facially unreasonable, in that they fail to provide any reasonable exceptions to their blanket bans such as, for example, a gun carrier who unwittingly drives across private property while traversing a logging road in the Adirondack Park or, vice-versa, an armed motorist whose route home from work cuts through a town park. Shockingly, the CCIA would demand that a person like Plaintiff Leman, a volunteer firefighter who responds to emergency calls for help no matter where they occur, to engage in the practical impossibility of disarming himself before rendering aid in a life-or-death situation. *See* Declaration of Leman, Exhibit "4," ¶¶ 5, 9, 19. Presumably, the only recourse of a person charged with a crime in such a situation would be the common law defense of necessity – hardly an assurance of any relief.

120. Interestingly enough when, in 2020, the Supreme Court dismissed *N.Y. State Rifle & Pistol Ass'n v. City of New York*, 140 S. Ct. 1525 (2020) ("*NYSRPA I*") on mootness grounds, Justice Alito, joined by Justices Thomas and Gorsuch, dissented from the dismissal, explaining how the challenged New York City ordinance "prohibited law-abiding New Yorkers with a license to keep a handgun in the home … from taking that weapon to a firing range outside the City." *Id.* at 1527 (Alito, J., dissenting from denial of cert.). Justice Alito continued to recount that "once we granted certiorari, both the City and the State of New York sprang into action to prevent us from deciding this case.... [O]ur grant of review apparently led to an epiphany of sorts, and the City quickly changed its ordinance. And for good measure the State enacted a law making the old New York City ordinance illegal." *Id.* at 1527-1528. The Court, however, dismissed and remanded on mootness grounds.

121. Having successfully avoided the Court's review in *NYSRPA I*, the New York legislature has now in effect reenacted – *statewide* – the same state of the law that existed in New York City, wherein residents of New York may not leave their homes or towns with their firearms, whether carried or even merely possessed.

122. Indeed, Plaintiff Leman, for example, lives in a small town that is surrounded on all sides by the Catskill Park, a purported "sensitive location." Declaration of Leman, Exhibit "4," ¶ 32. To leave his town and travel to a shooting range or to a friend's home in another town, he would be in violation of the CCIA merely to bring his firearm with him, as he would traverse state parkland. Mr. Leman could not even purchase a new gun in another town, and bring it home. The CCIA thus violates the federal safe harbor provision found in 18 U.S.C. Section 926A because, by banning *all possession* of firearms (not merely concealed carrying), Plaintiff Leman may not even unload, lock, and secure his firearm in the trunk of his car during such a trip. The CCIA also

violates *Heller*, by prohibiting people in the situation of Mr. Leman from obtaining a handgun to keep in their homes for self-defense. In fact, to the extent that a resident of a town or piece of property surrounded by state parkland does not already possess a firearm in his or her home, such person would be entirely unable to obtain one.

123. In its steadfast refusal to recognize the Second Amendment rights of its residents, New York state has now, quite unironically, come full circle, replacing on a statewide level the same restrictions that it sought to avoid having the Supreme Court review in *NYSRPA I*. Of course, it seems abundantly clear how the Court would have held had it decided the merits of that case.

iv. New York's Second Amendment Tax.

124. The CCIA's licensing scheme adds a slew of new requirements to the demands placed on a carry license applicant, some of which will disproportionately affect individuals who cannot devote the new "minimum of sixteen hours of in-person live curriculum" that New York demands all permittees acquire. *Id*. at 39. This course also requires two hours of live-fire training, resulting in a total training demand of 18 hours. *Id*.

125. Prior to this new law, only a four-hour course was required, with many trainers offering the course for approximately $75.00[33,34] and some offering it for $50.00.[35]

126. The new 16-hour course, with an additional two hours live-fire, is estimated to run in approximately the $400 dollar range, plus the cost of ammunition for "live fire" (perhaps $50 or more), not to mention the significant time investment required for individuals to take off potentially as many as three days of work to complete a training requirement that is now four and half times what was previously required.

[33] https://ftwny.com/coursedetails/.
[34] https://theindoorgunrange.com/basic-pistol-safety-1.
[35] https://www.donssecurityservices.com/product/nys-pistol-permit-safety-course/.

127. Defendant Bruen previously objected that Plaintiffs' estimate of the costs of training being around $400 was "entirely speculative." *Antonyuk* Opp Br. at 60. Interestingly enough, Plaintiffs' estimate seems to have been spot on, as one news story[36] reported a New York firearms instructor's opinion that "it's [training] going to be probably somewhere around $400 because we have to pay staff, we have to pay for the classroom we also have to pay for range use and we've got to pay for materials, there's a lot of material that's going to be involved in this." Indeed, such training is now being offered for $375[37] by at least one instructor, and $795[38] by another. Within those bookends, other locations offer prices of $575,[39] $397,[40] $500,[41] $550,[42] and "up to about $600."[43] Many New York instructors have not yet created and do not yet offer classes compliant with the CCIA. For those New Yorkers who are in more rural areas that are distant from qualified trainers, it will be difficult to obtain the CCIA's required training without long-distance travel, exorbitant cost, and scheduling a class many months in the future.

128. Adding further draconian layers to the application process, Governor Hochul (apparently the preeminent authority on all things CCIA) has opined that, even if an applicant has previously applied for a license prior to the CCIA taking effect, but a license has not been issued, such application will be considered null and void, meaning the person would need to reapply under

[36] https://www.whec.com/top-news/nys-issues-minimum-standards-for-firearm-safety-training/
[37] https://site.corsizio.com/c/6310d4f261d3a9b12d2734cd
[38] https://www.dark-storm.com/range/training/dsi-concealed-carry-permit-course-pre-registration/
[39] https://ftwny.com/ny-state-pistol-permit-class-concelaed-carry-class/
[40] https://gstny.com/events/nys-conceal-carry-training-sept-17-18-2022-2/
[41] https://www.shootershaven.com/events/new-york-state-basic-pistol-safety-course-141/
[42] https://www.learntoshootny.com/courses (https://www.learntoshootny.com/book-online
[43] https://www.news10.com/news/ny-news/confusion-remains-after-new-gun-laws-take-effect/amp/?fr=operanews. ("As an instructor in firearms, I'm not really qualified to give suicide prevention courses.").

the provisions of the CCIA: prior application "won't make a difference, because it's who has a permit on [September 1, 2022] — not that you've applied."[44]

129. The CCIA makes New York an extreme outlier among the states with respect to its training requirement, with only the state of California imposing a more onerous requirement. As Defendant's briefing in *Antonyuk* showed, only five states have training requirements approaching anywhere near as expansive as New York's, and only California exceeds the CCIA's requirements.

130. The CCIA's new training requirement and associated costs, which is obviously designed with the intent to increase the cost associated with exercising an enumerated right, especially for those with lesser means, ignores *Bruen*'s footnote 9 which stated that "we do not rule out constitutional challenges to shall-issue regimes where, for example, lengthy wait times in processing license applications or exorbitant fees deny ordinary citizens their right to public carry." Slip Op. at 30.

131. Prior to losing *Bruen*, New York did not require such an extensive and expensive training requirement. Rather, for many years, New York has deemed four hours sufficient to train individuals to carry firearms in public. The mere fact that *Bruen* now requires New York to recognize the rights of its citizens does not justify a 4.5-fold increase in training, especially absent any explanation why such an increase is necessary.

d. Plaintiff Ivan Antonyuk

132. Plaintiff Ivan Antonyuk is an adult male citizen of the State of New York, residing in Schenectady County within this district, a citizen of the United States, and a member of Gun Owners of America, Inc. He is a law-abiding person, and has no disqualification under state or

[44] https://www.politico.com/news/2022/09/01/ny-officials-disagree-on-how-to-handle-conceal-carry-requests-ahead-of-new-gun-control-law-00054411

federal law which would prohibit him from possessing a firearm. *See* Declaration of Ivan Antonyuk, Exhibit "7," ¶¶ 1, 4.

133. Plaintiff Antonyuk is originally from Ukraine. *Id.* at ¶ 3. In early 1990's, Ukraine, crime was rampant. The country was run by mafia and criminals, while ordinary citizens were not allowed to own firearms to protect themselves. Indeed, only the government and its chosen protectors had access to arms. *Id*. at ¶ 3. This left the Ukrainian people with no means to defend themselves from crime, whether committed by petty criminals or the government itself. The police were often hours away when called, if they came at all, and the Ukrainian people had no right to free speech and no right to protest. *Id*. at ¶ 3. During his childhood, Plaintiff Antonyuk witnessed attacks on the citizens of Ukraine by the government for the simple act of protesting. Indeed, he was a victim of government violence during a protest in which he was not involved, but nevertheless was beaten by the police for simply being in the general vicinity of the protest. *Id*. at ¶ 3. In 1994, Mr. Antonyuk fled Ukraine in favor of the United States and its promise of freedom, moving to New York, where he became a citizen of the United States in 1999. He has lived in New York ever since. *Id*. at ¶ 3. In coming to the United States, and New York in particular, Mr. Antonyuk was not seeking to exchange one totalitarian regime for another.

134. Prior to the implementation of the CCIA, Mr. Antonyuk carried his firearm in public, where permitted and where lawful. *Id*. at ¶ 5. But now, under the CCIA, almost all places where he previously carried are now off limits. He is unable to go into a restaurant or gas station that is not specifically posted with a sign allowing firearms. *Id*. at ¶ 6.

135. Mr. Antonyuk states that the "CCIA's implementation has greatly affected [his] daily life" and that he has taken "significant steps ... to comply with its provisions." *Id*. at ¶ 7. He

has changed where he eats and gets his takeout meals and he no longer shops at stores that do not post signs welcoming firearms. *Id*.

136. As previously alleged in the first *Antonyuk* case, Mr. Antonyuk is now forced to disarm himself and separate the magazine and ammunition from his firearm and store them in a "safe storage box, but not in [his] glovebox." *Id*. at ¶ 8. Mr. Antonyuk states, again, that in unloading his firearm, he has "to do this in [his] vehicle as it does not make sense to exit the vehicle with a holstered, concealed firearm, draw the firearm, unload and make safe, and then store the firearm in" his trunk or a locked safe. *Id*. at ¶ 8. And, of course, when he returns to his vehicle, he has to do the same but in reverse, removing the firearm from the locked container, loading it, and then reholstering it. Mr. Antonyuk states that this is "wholly unnecessary and dangerous, and completely changed the process of carrying a firearm in New York" prior to September 1, 2022. *Id*. at ¶ 8.

137. Mr. Antonyuk repeats the Court's finding that he is a "law-abiding and respectful" person. *Id*. at ¶ 10. Precisely because he is so law-abiding, he has "refrained from violating any of the provisions of the Act and will not violate them." *Id*. at ¶ 10.

138. Mr. Antonyuk then states that he is harmed because he can no longer enjoy the Second Amendment freedoms he once had before the CCIA was implemented and can no longer carry in a number of places he used to carry in. Notably, he is "unable to go peaceably about [his] daily life without fear of carrying in the wrong location and being prosecuted for doing so." *Id*. at ¶ 11.

139. Mr. Antonyuk "would carry in those places again" IF "the Court enjoined this law, and made it lawful for [him] to carry without fear of arrest, prosecution, damaging [his] reputation

losing [his] Second Amendment rights for life, or losing the required 'good moral character[.]'" *Id*. at ¶ 12.

140. Mr. Antonyuk is also a property owner and, as a property owner, he enjoys the right to determine who and under what circumstances, people visit his property. The CCIA infringes on this right, as it declares his home a restricted location. *Id*. at ¶ 13. The CCIA requires that he post "clear and conspicuous signage indicating that the carrying of firearms ... is permitted" or otherwise provide his "express consent" to someone wanting to carry a firearm in his home or on his property. *Id*.

141. Mr. Antonyuk states that it is impossible to provide express consent to each and every visitor that stops by unless he is present on his front lawn 24 hours a day, as a delivery driver, or some other visitor may come to his home while he is unavailable. *Id*. at ¶ 14.

142. Mr. Antonyuk has no problem with people lawfully and peaceably carrying in his home or on his property without his "express consent" because many people may not know he supports gun rights and they will be hesitant to talk about gun rights, a "taboo topic in New York State;" however, failing to post "express consent" means that "such persons would leave their gun at home, contrary to my wishes." *Id*. at ¶ 15.

143. Mr. Antonyuk states that the CCIA could even prevent one of his neighbors from coming to his aid at his home unless he previously gave them "express consent" to carry a firearm on his property and that perhaps, that person "would be forced to mill around in the dark, searching for 'conspicuous signage' authorizing him to help." *Id*. at ¶ 17.

144. Mr. Antonyuk is left with, then, the option of posting "conspicuous signage." But he "cannot safely comply with" that requirement because many "New Yorkers are vehemently anti-gun" and posting a "sign in favor of gun rights" can open him and his family to "criticism,

harassment and even possible hostile action (such as vandalism or a physical confrontation) by those who disagree" with his political views. *Id*. at ¶ 18.

145. Mr. Antonyuk will not post a sign that labels his home as being the "likely location of a gun owner" which would raise "the risk that [his] home would be targeted by burglars, thieves, home invaders, or other violent criminals[.]" *Id*.

146. Mr. Antonyuk believes the CCIA "politicizes [his] home against [his] wishes, and demands that [he] take affirmative steps and engage in compelled speech ... merely to fulfill [his] wishes that others be able to peaceably exercise their constitutional rights while on [his] property." *Id*. at ¶ 19.

147. Mr. Antonyuk further states that the CCIA has "taken" his rights as a property owner "to decide the terms on which to invite or exclude visitors" to his property and his home, and that it requires him to "publicly take a position one way or the other on an issue that is highly contentious and divisive in this state, whereas before [he] could simply stay silent." *Id*. at ¶ 21.

148. It is axiomatic that the government may not condition the exercise of one right on the forfeiture of another.[45]

d. Plaintiff Corey Johnson.

[45] *See State v. Irving*, 114 N.J. 427, 456-57, 555 A.2d 575, 590-91 (1989) (Handler, J., dissenting) "The right to an alibi defense and the right to remain silent are two separate constitutional rights. Exercise of one should not be conditioned on waiver of the other. Just as in *Simmons v. United States, supra*, 390 *U.S.* at 377, 88 *S.Ct.* at 967, 19 *L.Ed.*2d at 1247, where exercise of the fourth amendment cannot be conditioned on waiver of the fifth; *Lefkowitz v. Cunningham, supra*, 431 *U.S.* at 801, 97 *S.Ct.* at 2132, 53 *L.Ed.*2d at 1, where the first amendment right to hold political office cannot be conditioned on waiver of the fifth; and *Brooks v. Tennessee, supra*, 406 *U.S.* at 605, 92 *S.Ct.* at 1891, 32 *L.Ed.*2d at 358, where waiver of the privilege cannot be conditioned on giving up the right to have the prosecutor bear the burden of proof first, we should not allow such a choice between constitutional rights."

149. Plaintiff Corey Johnson is a U.S. citizen, resident of New York, and resides in Onondaga County. Plaintiff Johnson is a member of Gun Owners of America, Inc., and therefore, one of the individuals whose interests were represented by the organizational plaintiffs in *Antonyuk v. Bruen*. *See* Declaration of Corey Johnson, Exhibit "2", ¶ 1.

150. Plaintiff Johnson has maintained an unrestricted New York carry permit since 2019 and is eligible to possess and carry firearms in the State of New York. Because he has a permit, he has met all the qualifications for licensure, including having good moral character. *Id*. at ¶ 2.

151. Plaintiff Johnson routinely carries his handgun concealed when he leaves his home. Plaintiff Johnson does not carry his handgun in schools, courthouses, government buildings, or other obvious "sensitive places" which have been described by the Supreme Court. *Id*. at ¶ 3. However, Plaintiff Johnson is responsible for his own security and for the security of his family, and thus, his firearm "generally does not leave [his] side when [he] leaves the house..." *Id*. at ¶ 4.

152. Plaintiff Johnson is an outdoorsman, an avid fisherman, and routinely goes on hiking and camping trips throughout the state of New York, including in parks which are now off-limits by the CCIA. *Id*. at ¶ 6. Given that parks do not appear in the Supreme Court's list of traditional sensitive locations and that there is nothing "sensitive" about a park, Plaintiff Johnson "intend[s] to continue to carry his firearm when [he goes] fishing in Mercer Park ... within the next month." *Id*. at ¶ 8.

153. Additionally, in October of 2022, Plaintiff Johnson will tour "several state parks within New York, where [he] will engage in various recreational activities..." He will visit Bowman Lake State Park, where hunting with rifles is allowed, but carry of a concealed firearm is not allowed. *Id*. at ¶ 9. Plaintiff Johnson intends to carry his firearm "on this upcoming trip." *Id*. at ¶ 10.

154. Likewise, Plaintiff Johnson eats at restaurants with his family, which are off-limits under the CCIA, not because they are a traditional sensitive place, but because they serve alcohol. He intends to carry his firearm within the restaurant in the coming days. *Id*. at ¶ 11.

155. Plaintiff Johnson participates on what is called a "dice run" during New York winters. This is a competition where snowmobilers are required to follow a prescribed course, often through public parks and roads, and check in at various locations along the way with some of the locations being restaurants that serve alcohol. In any event, as in years past, he "intend[s] to go on a snowmobiling trip this winter, and [he] will carry [his] firearm with [him]" when he does, "including in those places where" he is required to "'check in' as part of the 'dice run.'" Id. at ¶ 12.

156. Plaintiff Johnson routinely visits "various locations that are considered 'performance, art entertainment, gaming or sporting events' under the CCIA." Recently he had intended to attend the New York State Fairgrounds, until he learned it was adopting and enforcing the prohibition on concealed carrying. Because entrances to the fairgrounds may utilize "Bag Check Areas" for those entering, he did not attend the fair due to a significant risk that he would be discovered carrying an otherwise lawful firearm. *Id*. at ¶ 13.

157. Plaintiff Johnson has also attended pro-gun and other rallies while armed. *Id*. at ¶ 14. Now, rallies are off-limits because people assemble to exercise constitutional rights, even though none of the rallies or locations are traditional sensitive places. *Id*. at ¶ 15. The next time such a rally is scheduled, Plaintiff Johnson intends to attend and do so while carrying his firearm, in violation of the CCIA. *Id*. at ¶ 16.

158. Plaintiff Johnson frequently visits the Rosamond Gifford Zoo in Syracuse at least once or twice every fall. He will visit this Zoo within the next 90 days, and understands that, while

the Zoo has no policy against the carry of lawful firearms, the CCIA separately criminalizes such carry. However, he intends to carry when he visits the Zoo. *Id*. at ¶ 17.

159. Plaintiff Johnson routinely carries his firearm when in public, as is his Second Amendment right. This includes shopping at various locations in Onondaga County, "such as gas stations, grocery stores, big box stores" and others. But the CCIA declares these locations "restricted locations" and bans carry of firearms unless he receives express consent of the owner. It is impractical for Plaintiff Johnson to ask permission at each location he visits. Moreover, as Plaintiff Johnson explains, "even if [he] receives permission at one point in time, such policy could change at any time and without notice, thus putting [him] at constant risk of committing crimes unawares." *Id*. at ¶ 18. Plaintiff Johnson intends to continue to carry in "various businesses and establishments in Onondaga County in violation of the CCIA's restriction on 'prohibited locations' that are not conspicuously posted with signage or otherwise provide [him] with their express consent." *Id*. at ¶ 19.

160. Plaintiff Johnson is now exposed to criminal offenses for "simply going peaceably" about his daily life. *Id*. at ¶ 20. Plaintiff Johnson faces a credible threat of prosecution because his specific intentions are now public through this filing, and the State Police have made it clear that they intend to enforce the CCIA's provisions on a "zero tolerance" basis, stating "If you violate this law, you will be arrested." *Id*. at ¶ 22. Likewise, the District Attorney of Onondaga County has publicly stated his intent to confiscate firearms of "violators" and refer the "violators" back to their licensing judge who "granted them concealed-carry licenses in the first place, possibly leading to the revocation of their carry privileges."[46] *Id*. at ¶ 23.

[46] Notwithstanding public carry is not a "privilege," but an enumerated constitutional right, this further demonstrates New York's continued disdain for and mistreatment of gun owners who are

161. Moreover, Plaintiff Johnson is at an enhanced risk for having contact with law enforcement, as he routinely engages in fishing activities and is required to have his fishing license on his person. This is "subject to verification and review at any time by a New York Environmental Conservation Officer (who works for the State, not the County)." Plaintiff Johnson states that, in recent years, he has been stopped by those officers to check his license "at least a couple of times per year." In 2022, so far, he has had at least four such interactions. *Id*. at ¶ 24.

e. Plaintiff Alfred Terrille.

162. Plaintiff Alfred "Al" Terrille is a U.S. citizen, resident of New York, and lives in Albany County. He is a member of Gun Owners of America, Inc., and one of the individuals whose interests were represented by the organizational plaintiffs in *Antonyuk v. Bruen*. *See* Declaration of Alfred Terrille, Exhibit "9", at ¶ 1.

163. Plaintiff Terrille is a law-abiding person and currently possesses and has maintained an unrestricted New York carry permit since 1994. He is eligible to possess and carry firearms in the State of New York, and has met all the qualifications for licensure, including having good moral character. *Id*. at ¶ 3.

164. He routinely carries his concealed handgun whenever he leaves home, but does "not carry in courthouses, schools, government buildings or other obvious "sensitive places" the Supreme Court has described, where the government often provides security in the form of armed guards and metal detectors." *Id*. at ¶ 4.

165. Due to the CCIA, he is "now in jeopardy of arrest and prosecution as a felon, not to mention having [his] firearm seized and [his] permit revoked, and [his] constitutional rights

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just one "violation" of an unconstitutional law away from forever losing their constitutional right to bear arms.

forfeited, merely for carrying in the completely ordinary and entirely non-sensitive locations in which [he] previously carried [his] firearm." *Id*. at ¶ 5.

166. Plaintiff Terrille is a grandfather to 5 grandchildren and it is his duty to protect his family, regardless of New York's attempts to disarm him, subjugate him, and infringe on his Second Amendment rights. *Id*. at ¶ 6. Plaintiff Terrille routinely goes to the movies, both at movie theaters and drive-in locations within Albany County. He does this repeatedly through the year, and will visit a theater at some point within the next 60 days. He has previously carried concealed during such outings in "entirely ordinary and non-sensitive locations." Because movie theaters nor anything like them appear in the Supreme Court's traditional sensitive location list, he intends to continue to carry his firearm when he goes to movie theaters with his grandchildren, in violation of the CCIA. *Id*. at ¶ 7.

167. Plaintiff Terrille also takes his grandchildren to Thatcher State Park in Albany County, where he hikes, uses the picnic areas, and the playground with his grandchildren. He intends to carry his firearm when he visits this park in the future, something that occurs on a monthly basis. *Id*. at ¶ 8.

168. In the next 60 days, Plaintiff Terrille will visit the State of Tennessee. He will take his firearm with him to Tennessee, as Tennessee respects the Second Amendment and allows him to carry there. He intends to fly to Tennessee, departing from Albany International Airport, and intends to purchase a ticket in the "coming weeks, for travel within the next two months." *Id*. at ¶ 9. The CCIA, however, criminalizes his taking of a firearm with him to the airport, even unloaded, locked, and properly declared in his checked baggage in compliance with federal regulations. He cannot even store his firearm in his vehicle if he were not to take it with him in his checked luggage. Since he intends to check his firearm in his luggage in accordance with TSA regulations, which

requires declaring the firearm, he would be confessing to being in illegal possession of a firearm, opening himself to prosecution under the CCIA. *Id*. at ¶ 9.

169. However, even if he were traveling to Tennessee by car, it would take him approximately 2.5 to 3 hours to drive directly out of New York. And during his trip, he would be prohibited from stopping to use the bathroom (even onto the parking lot of a gas station, rest stop, fast food restaurant) unless he has prior knowledge that the business posted a sign welcoming him to carry in the establishment. *Id*. at ¶ 10. Plaintiff Terrille's freedom of travel is thus greatly impaired due to the CCIA. *Id*. at ¶ 11.

170. Plaintiff Terrille, within the next 60 days, will travel to Tennessee via airplane, and intends to bring his firearm in his checked luggage, in full compliance with 18 U.S.C. Section 926A and TSA regulations. *Id*.

171. Plaintiff Terrille also intends to carry in his local bank, and is unaware of any anti-gun bank policy, nor has the bank posted a sign stating firearms are not allowed. However, there is no sign expressly stating he can carry. He states this leaves him in an impossible situation where he must go into the bank, declare that he has a firearm, and ask if he has permission to carry. *Id*. at ¶ 12. Plaintiff Terrille intends to continue to carry his firearm unless the bank asks him to leave the firearm in his vehicle. *Id*.

172. Also, Plaintiff Terrille routinely carries his firearm in public, including at gas stations, grocery stores, home improvement stores, and others. Many of these stores have corporate policies which permit firearm carry, including "Walmart, Walgreens and Target." He estimates he visits one or more of these retailers at least once a week. The CCIA makes these businesses "restricted locations," and bans him from carrying unless he has express consent of the owner or there is a sign allowing carry. But few, if any, of these businesses post signs allowing

carry, and asking for permission is impractical. To his knowledge, none of the retailers listed above has taken the affirmative step to opt out of the CCIA. *Id*. at ¶ 13. He states that it is impractical to disarm, approach the business, ask permission from a low-level employee who will need to ask a manager (or contact corporate), then wait for a response, and then re-arm himself, simply to pick up a few things at the store. Additionally, even if he receives "permission" at one point in time, such policy could change at any time without notice, thus placing him at constant risk of committing a crime unawares. *Id*. at ¶ 14. Plaintiff Terrille intends to continue to carry his firearm in various businesses and establishments in Albany County, in violation of the CCIA's restriction on "prohibited locations" that are not conspicuously posted with signage. Plaintiff Terrille states that "[u]nless this Court strikes down that provision of the CCIA, simply going peaceably about [his] daily life will be a crime, pursuant to a statute which this Court has declared clearly unconstitutional." *Id*. at ¶ 15.

173. Additionally, Plaintiff Terrille is planning to attend the upcoming NEACA Polish Community Center Gun Show on October 8-9, 2022 in Albany. The Polish Community Center describes itself as a "conference center, banquet hall & wedding venue in Albany, NY." *Id*. at ¶ 16. However, the CCIA bans firearms at "conference centers" and "banquet halls," and the Community Center may not opt out of this ban and expressly allow firearms. *Id*. One of his main reasons for attending is to converse with fellow gun owners, which includes discussion about New York State's tyrannical gun laws. Plaintiff Terrille states that "a gun show is, almost by definition, a 'gathering of individuals to collectively express their constitutional rights to protest or assemble' ... and, thus, the CCIA appears to entirely ban gun shows." *Id*. But he will attend the gun show anyway, and he intends to carry his firearm with him when he does, in violation of the CCIA,

based on his understanding of this Court's recent opinion and the Supreme Court's opinion in *Bruen*. *Id*.

174. Plaintiff Terrille currently lives in an apartment complex in Albany County. As such, he is a tenant and he has a landlord. He understands that his apartment complex does not allow him to post "signage" outside his unit. And it is not feasible for him to provide express consent to each person who visits his home, including deliverymen, repairmen, friends, or family. *Id*. at ¶ 17. So while the CCIA requires that he posts signage at his home declaring his home "pro-gun," he cannot post this sign per the terms of his lease. He is also not allowed to post signs outside his unit permitting visitors to park in common parking lots and walk on the common sidewalks when visiting his home, so he is unable to fully "opt-out" of the CCIA's "taking [his] property and declaring it to be an anti-gun location, essentially converting [his] home from a 'restricted location' to a 'sensitive location.'" *Id*.

175. Plaintiff Terrille also has attended pro-gun rallies in the past and, although he does not know of any planned rallies to occur in the future, if one were to be scheduled, he would attend it and carry his firearm, in violation of the CCIA. *Id*. at ¶ 18.

176. Plaintiff Terrille routinely goes out to eat with his grandkids at restaurants which are considered "sensitive locations" because they serve alcohol, even if he were not sitting in the bar area and not consuming alcohol. Because neither restaurants nor anything like them appears in the Supreme Court's list of traditional sensitive places, he intends to continue to carry his firearm when he goes out to eat with his grandkids, "an event that will occur within the next 30 days." *Id*. at ¶ 19.

177. Plaintiff Terrille states that he intends to engage in various acts which are constitutionally protected, but are now unlawful under the CCIA, and faces a credible threat of

prosecution because he his specific intentions to break the law are now public through this filing. *Id*. at ¶ 20. He is aware that First Deputy Superintendent Steven Nigrelli of the New York State Police, has threatened people like him who violate the CCIA with a "zero tolerance" policy of arrest. *Id*. at ¶ 21. And because he intends to take a trip to Tennessee by airplane, he is almost guaranteed to "have a run-in with law enforcement when" he arrives at the "airport and declare to authorities that [he has] a firearm to check" with his luggage. He anticipates that there is a "strong likelihood that [he] could be arrested and charged with a felony under the state's announced 'zero tolerance' policy" when he brings his firearm to the airport to check for his upcoming flight." Id. at ¶ 22.

f. Plaintiff Pastor Joseph Mann.

178. Plaintiff Pastor Joseph Mann is a U.S. citizen and a resident of New York, resides in Oswego County, and is a member of Gun Owners of America, Inc. *See* Declaration of Pastor Joseph Mann, Exhibit "8," at ¶ 1. Pastor Mann is the pastor of Fellowship Baptist Church in Parish, New York. *Id*.

179. Pastor Mann has possessed a New York "employment" carry permit since 2014, and is eligible to possess firearms in the State of New York and has met all qualifications for licensure, including good moral character. *Id*. at ¶ 3.

180. The CCIA has, in effect, rescinded Pastor Mann's permit, making most places off-limits to him, including his own home. *Id*. at ¶ 4.

181. For instance, the CCIA defines "sensitive location" to include "any place of worship or religious observation" (subsection c) which makes it a felony to even possess a firearm in that location. *Id*. at ¶ 5. Pastor Mann's church is a "place of worship" under the CCIA. *Id*. at ¶¶ 6-8.

182. Prior to the CCIA, the church maintained a "church security team, consisting of trusted church members who are licensed carry permit holders, and are designated to carry their firearms to provide security and protection to the congregation during worship services." Both Pastor Mann and his "team have received specialized firearms training from a firearms instructor who specializes in church security." *Id*. at ¶ 9. Under the CCIA though, neither Pastor Mann nor his "security team may possess firearms on church property" and further, since they are a "small church, [they] are unable to afford to pay for private security who might be exempt from the CCIA." *Id*. at ¶ 10.

183. Pastor Mann intends to continue to "possess and carry [his] firearm while on church property, in violation of the CCIA[]" because of this Court's "recent conclusion that the CCIA's list of sensitive locations is not deeply rooted in this Nation's historical tradition of firearm regulation and because neither churches nor anything like them appears in the Supreme Court's list of traditional sensitive locations." *Id*. at ¶ 11 (punctuation omitted).

184. Pastor Mann also lives in a parsonage that is physically part of the same building as the Church. This parsonage is not only used as his family's residence, but is also used for church business where they have Bible studies, meetings of elders, and other church gatherings. *Id*. at ¶¶ 12, 13. Under the CCIA, Pastor Mann's home is now a "sensitive location" where he is prohibited from possessing a firearm, "including a handgun for self-defense. *See District of Columbia v. Heller*, 554 U.S. 570 (2008)." *Id*. at ¶ 14. Pastor Mann has for years, and still currently possesses firearms, in his home. *Id*. at ¶ 16.

185. In order to fully comply with the CCIA, Pastor Mann would have to turn all his firearms over to the government, and he refuses to do so. Pastor Mann states that New York City has already sent letters to persons with registered firearms at certain locations, notifying them that

their premises have been deemed a "sensitive location" and threatening that those business owners to surrender their firearms. *Id*. at ¶¶ 17-18.

186. Pastor Mann states that the CCIA deprives the Church from its ability to make its own rules governing the carry of firearms on Church property. *Id*. at ¶ 19.

187. Additionally, Pastor Mann refers to First Deputy Superintendent of State Police Steven Nigrelli who threatened people like the Pastor, who violate the CCIA, with a policy of "zero tolerance" and arrest for committing an unconstitutional felony. *Id*. at ¶ 22. Pastor Mann alleges that at least one of his congregants is part of local law enforcement and is aware of the Pastor's inability to avoid violating the CCIA, because the Pastor keeps a firearm in his home on church property. *Id*. at ¶ 23. Likewise, Sheriff Don Hilton of Oswego County, whose personal belief is that the CCIA is unconstitutional and that much of it will be struck down, nevertheless has made posts on Facebook that "taking a legally licensed firearm into any sensitive area – such as a … church … is a felony punishable by up to 1 1/3 to 4 years in prison." In other words, the Sheriff has specifically articulated that the Pastor's conduct is illegal and that, even if the Sheriff disagrees with the law, "they will effect [sic] all gun owners[.]" *Id*. at ¶ 24. This is not a disavowal of enforcement of the law, but rather an intent to enforce it.

188. Pastor Mann intends "this act of civil disobedience because the CCIA violates not only my Second Amendment rights and those of my congregation, but also my free exercise of religion protected by the First Amendment." *Id*. at ¶ 25.

189. Additionally, Pastor Mann provides "counseling and assistance in the context of many of the 'sensitive location' settings in the CCIA, including to the homeless, youth, in the domestic violence and abuse setting, and others. To the extent that [the] church operates in that

capacity, the CCIA (subsection k) appears to prohibit [their] possession of firearms as well, and thus inhibits [their] ability to provide security for those under [their] care." *Id*. at ¶ 26.

190. Pastor Mann's Church has an addiction recovery ministry, and he frequently travels to homes of people addicted to drugs, counseling them to seek help and voluntarily enter treatment facilities. While doing this, he at times has carried his firearm. But now, the CCIA makes it impossible for the Pastor to legally carry while ministering, as it declares all private property a "restricted location" and requires him to get express consent, sometimes of an addict, before entering his or her home while carrying a firearm for his own protection. *Id*. at ¶ 28. But for the CCIA, he would continue carrying his firearm while providing this ministry as he has in the past. *Id*.

191. As part of his addiction recovery ministry, the Pastor has brought people in the program to church property for counseling and care. To the extent the CCIA applies to the church because it separately bans firearms in "any location providing health, behavioral health, or chemical dependence care or services" (subsection b)," Pastor Mann cannot comply with this prohibition and intends to continue to carry. *Id*. at ¶ 29.

192. Likewise, the church has a nursey, Sunday School, and a Junior Church. The CCIA appears to separately prohibit the Pastor, church staff, and the church security from providing security to their children, as it bans firearms at "nursery schools, preschools, and summer camps" (subsection f). Pastor Mann intends to not comply with this restriction. *Id*. at ¶ 30.

193. The Church provides its facilities to a local homeschool coop, and the Pastor and his wife teaches classes, including foreign languages. As the Church operates at times as a school, firearms are likewise double banned. Pastor Mann will not abide by this restriction and intends to continue to possess a firearm in his home and church. *Id*. at ¶ 31.

194. Pastor Mann believes that the CCIA places off limits "any gathering of individuals to collectively express their constitutional rights to ... assemble[.]" Subsection s. This would seem to cover a church service. To the extent that this section covers [] church activities, [the Pastor does] not intend to comply." *Id*. at ¶ 32.

195. The Church maintains a church bus and a church van, used to take church members, youth, and members of the public with them when they travel. The CCIA appears to ban firearm possession in their "bus[]" (subsection n), and Pastor Mann does not intend to comply with this restriction to the extent it applies to the church. *Id*. at ¶ 33.

196. And because the Pastor's church plays music before, during, and after worship services, the CCIA separately bans firearms at a "performance venue" or "concert[]" (subsection p) and additionally a "banquet hall," as they often break bread together. The CCIA does not appear to include an exemption even for the Lord's Supper (the Sacrament). *Id*. at ¶ 34.

197. Pastor Mann believes that, "for Bible-believing Christians, it is clear that there may be times in which the civil authorities direct us to do what we cannot do while fulfilling our duty to God. In such circumstances, we are to obey God, and not men. This is one of those times." *Id*. at ¶ 43.

g. Plaintiff Leslie Leman.

198. Plaintiff Leslie Leman is a U.S. citizen and resident of New York, residing in Greene County and is a member of Gun Owners of America, Inc. *See* Declaration of Leslie Leman, Exhibit "4," at ¶ 1. Plaintiff Leman is a law-abiding person and currently possesses an unrestricted New York carry permit since 2012. He is eligible to possess and carry firearms in the State of New York, and has met all qualifications for licensure, including having good moral character. *Id*. at ¶ 2.

199. Plaintiff Leman is a volunteer firefighter, meaning he is on call 24 hours a day, 7 days a week. This usually means that he is going about his normal daily routines when he could receive a call. If he were to receive a call to respond, he has no "opportunity to go home, to change clothes, or as relevant here, to disarm and stow [his] firearm. This means that there are times that [he has] responded to an emergency call while armed." *Id*. at ¶ 5.

200. Plaintiff Leman has responded to calls at multiple locations that the CCIA now declares to be "sensitive locations." Additionally, Plaintiff Leman responds to private property now deemed a "restricted location." *Id*. at ¶ 6.

201. The Catskills Park surrounds Plaintiff Leman's town, and he has often responded to calls for assistance in that park. There is no exception for him to carry there or even drive with a firearm there during an emergency call, and he would be liable for a felony if he, as a first responder, responded to an emergency situation while armed. *Id*. at ¶¶ 7-9.

202. Plaintiff Leman would have to waste precious time in disarming himself according to the CCIA while responding to a call. *Id*. at ¶ 10. Plaintiff Leman cannot at all times comply with the CCIA while responding to emergency calls. *Id*. at ¶ 12.

203. Plaintiff Leman also responds to house and structure fires, and renders aid. Plaintiff Leman states it would be "absurd" to have to "ask a family, standing in their pajamas in knee-deep snow, to provide [him] with their 'express consent' to carry [his] firearm prior to entering their home to put out a fire or to provide lifesaving medical care. Indeed, that is the absolute last thing [he is] thinking of in this sort of situation." *Id*. at ¶ 14.

204. Because the Catskills Park surrounds Plaintiff Leman's town, he is often not able to respond to a call without traversing part of the park, and thus being in violation of the CCIA while armed. His only option would be to return home and leave his firearm at home. *Id*. at ¶ 15.

205. Plaintiff Leman does not accept the State of New York's command to disarm before rendering life-saving aid. *Id*. at ¶ 16. Thus, he intends to continue carrying his firearm and going about his daily life, including as a firefighter, which will put him in violation of the CCIA as he responds to calls. *Id*. at ¶ 20.

206. Because he intends to engage in "constitutionally-protected acts which are now made unlawful under the CCIA" he also faces "a credible threat of prosecution, as my specific intentions are now made public through this filing." *Id*. at ¶ 21.

207. First Deputy Superintendent Steven Nigrelli of the New York State Police has already threatened individuals like Plaintiff Leman with a "zero tolerance" policy of arrest for violation of the CCIA. *Id*. at ¶ 22. Additionally, Plaintiff Leman has an increased risk because of his routine interaction with the police, because it is typical that he responds to emergencies along with police officers, including members of his team, local law enforcement, and New York State Police. *Id*. at ¶ 23.

208. Plaintiff Leman also runs a small hotel/bed and breakfast in this district. His business caters to guests from all over New York, the United States, and around the world. *Id*. at ¶ 25.

209. Plaintiff Leman states that his now "restricted location" hotel would have to post signage to allow guests to carry, because "person-by-person 'express consent'" is impractical to give to each visitor. *Id*. at ¶ 26.

210. He further states that the CCIA requires him to engage in compelled speech to continue to provide services to those who bring their firearms to his hotel, and that if he refuses to be compelled to speak, he will lose the business of gun owners who lawfully travel with their firearms. *Id*. at ¶ 27.

211. Most of his customers, though, come from the southern part of the State, including New York City, Long Island, and northern New Jersey. He states that the majority of these customers hold views unaccepting of firearm ownership and bearing arms in public. Therefore, he states, if he posts a sign allowing concealed carry, he will lose business from customers that do not share that view. *Id*. at ¶ 28.

212. "In other words," he states, "the CCIA politicizes our business against our wishes, forcing us to a Hobson's choice between groups of customers and, no matter which option we choose, we will lose business." *Id*. at ¶ 29.

213. Plaintiff Leman had further intended to apply for a New York State wine and beer license but, under the CCIA, that would automatically trigger his business to be a "sensitive location" where he would not even be able to possess firearms on his own property. *Id*. at ¶ 30. The CCIA thus forces him to the choice to either keep a firearm in his home or operate his business.

214. Plaintiff Leman is trapped in his small town, as he cannot leave without entering the park surrounding his town, with a firearm, even if the firearm is unloaded, locked and stored in a trunk because there is no exception for travel in the CCIA. *Id*. at ¶ 32.

215. Plaintiff Leman is aggrieved by the CCIA, which reverts to the previous New York policies which led to N.*Y. State Rifle & Pistol Ass'n v. City of New York*, 140 S. Ct. 1525 (2020), where the plaintiff was unable even to take his firearm from his home to the shooting range. In response to the Supreme Court agreeing to hear that case, New York state changed the law, in order to moot the matter and avoid a loss, but New York has revived this policy on a statewide level. *Id*.

216. In any event, and "left with no reasonable choice," Plaintiff Leman intends to "bring [his] firearm when [he] leave[s] home to travel outside of Windham, New York, which will take [him] through state parkland, in violation of the CCIA." *Id*.

h. Plaintiff Lawrence Sloane.

217. Plaintiff Lawrence Sloane is a U.S. citizen, a resident of New York, lives in Onondaga County, and is a member of Gun Owners of America and thus, is one of the individuals whose interests were represented by the organizational plaintiffs in *Antonyuk v. Bruen*. *See* Declaration of Lawrence Sloane, Exhibit "3," ¶ 1.

218. Plaintiff Sloane is a law-abiding citizen who does not currently possess a New York carry license because, prior to *Bruen*, he did not believe he would be found to have "proper cause." *Id*. at ¶ 3. Since *Bruen* held "proper cause" unconstitutional, he has intended to apply for his carry license. *Id*. at ¶ 4. Before he could apply for a permit, however, New York changed the rules, implementing the CCIA and imposing a slew of new restrictions and requirements. *Id*.

219. Plaintiff Sloane challenges the following portions of the CCIA: "1) social media history requirement, 2) providing information about my family, 3) providing character references, 4) exorbitant training costs and the time required to complete it, 5) an in-person interview with a government agent, and 6) proving that I am of "good moral character" in addition to being a law-abiding, responsible person." *Id*. at ¶ 5.

220. Plaintiff Sloane has accounts on some "social media" platforms, of which his Facebook profile is set to "friends only." *Id*. at ¶ 7. This means that he would have to add a sheriff or investigator or perhaps even his licensing official as a "friend" so that they could view his Facebook posts. He refuses to comply with this requirement, or to divulge any social media accounts to the state. *Id*.

221. Plaintiff Sloane states that, if here were "forced to produce all [his] speech," he would "self-censor for fear of retribution, unwilling to express [his] true feelings, especially on contentious issues involving political speech[.]" *Id*. at ¶ 9.

222. Plaintiff Sloane is unwilling to provide the government with "information about [his] family, on the carry license application." *Id*. at ¶ 10.

223. Plaintiff Sloane is unwilling to provide the required four character references so that the government can interrogate his "friends and family." *Id*. at ¶¶ 15, 16.

224. Additionally, Plaintiff Sloane objects to the in person interview requirement, because it would violate his "Fifth Amendment rights to remain silent and against self-incrimination." *Id*. at ¶ 17.

225. Plaintiff Sloane cannot even apply for a license without first providing the licensing official with all of the required information on the application, as it will be rejected, both based on the statutory language, and also his local sheriff's statements to that effect. Therefore, it is futile to even attempt to apply because he is unwilling to "submit to the unconstitutional requirements that [he] is unwilling to provide to the government." *Id*. at ¶ 21.

226. Moreover, Plaintiff Sloane's sheriff, Defendant Conway, does not have an appointment available for Plaintiff Sloane to even submit his application until October of 2023, more than 13 months from today, in violation of *Bruen*'s footnote 9 which anticipates challenges to permitting regimes which require "lengthy wait times" to obtain a permit.[47] *Id*. at ¶ 23; *Bruen* at 2138 n.9. Thus, not only is it futile for Plaintiff Sloane to submit his application to the sheriff

[47] This is akin to using one Second Amendment violation to get around another Second Amendment violation. At the end of the day, it is still a Second Amendment violation.

(knowing that it will denied), it is actually impossible for him to do so (because it will not even be *accepted* – much less *processed* – until October of next year).

227. Moreover, the Sheriff's refusal to accept Plaintiff Sloane's application represents a constructive denial of that application. Indeed, the Sheriff's current 13 month delay greatly exceeds even the time he has to process an application under the statute.[48]

228. The Sheriff's delay in accepting license applications also violates New York Penal Law 400(4-b), which requires that [a]pplications for licenses shall be accepted for processing by the licensing officer at the time of presentment," and that "[e]xcept upon written notice to the applicant specifically stating the reasons for any delay, in each case the licensing officer shall act upon any application for a license pursuant to this section within six months of the date of presentment…."

229. By refusing to permit Plaintiff Sloane to "present" his application, the Sheriff not only has violated the statute, but has constructively denied Plaintiff Sloane's application, making Plaintiff Sloane's challenge ripe.

230. An Illinois Northern District Court found that plaintiffs stated a "plausible Second Amendment claim[]" alleging that "residents commonly wait[ ] as long as 60 to 90 days to receive a FOID card . . . The amended complaint recites the experience of a number of individuals who had been waiting between five (5) to nine (9) months for their FOID applications to be processed at the time the amended complaint was filed in November of 2020[]" when the statute requires the Illinois State Police to "adjudicate applications within thirty days." *Marszalek v. Kelly*, No. 20-cv-4270, 2022 U.S. Dist. LEXIS 14047, at *18, *23 (N.D. Ill. Jan. 26, 2022).

[48] *See* https://portal.ct.gov/BFPE/General/General/How-do-I-Appeal (permitting an appeal based on a "constructive denial" when a licensing officer takes longer than the statutory period to issue or deny an application).

231. As to the training requirement, Plaintiff Sloane will not complete "sixteen hours of classroom instruction, plus two hours of live-fire training, [as it] is unnecessary and expensive." *Id*. at ¶ 24. Plaintiff Sloane objects to the requirement that he has to pay to learn about "suicide prevention," as he is not suicidal and such subject matter has no bearing on his being a responsible gun owner. *Id*. at ¶ 28. Plaintiff Sloane would still object on principle to a four hour "basic handgun safety course," but alleges that the prior existing training standard "would be doable" and that he would obtain such training in order to receive a license, despite his objections. *Id*. at ¶ 29.

232. Plaintiff Sloane states if all the "unconstitutional requirements were removed from the application, and the Sheriff would accept [his] application, [he] would immediately submit [his] application for a concealed carry license, something [he] greatly desire to obtain and, but for the CCIA's unconstitutional demands, [he] would seek to obtain." *Id*. at ¶ 30. Plaintiff Sloane further states that he "otherwise meet[s] all of the requirements to be 'granted' a permit to carry [his] firearm in public and, in fact, [has] completed the remaining parts of [his] application (save for the portions [he] will not provide), and [he has] attempted to secure an appointment for submitting [his] application, but there is not one available until late next year, a completely unreasonable time frame" which makes application both futile and impossible. *Id*.

COUNT I

U.S. CONST., AMEND. II, 42 U.S.C. § 1983 AGAINST DEFENDANTS

233. The foregoing allegations are repeated and realleged as if fully set forth herein.

234. The CCIA infringes Plaintiffs' Second Amendment rights that "shall not be infringed."

235. Plaintiffs are members of "the people" who desire to "bear" a quintessential protected "arm" (a handgun) in public.

236. Under *Bruen*, "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must "demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Bruen*, Slip Op. at 8.

237. Thus, the burden is on the government to justify the CCIA based on the historical tradition of the activity that it is now attempting to regulate and ban.

238. However, there is no historical analogue for any of the new and onerous requirements in the CCIA. The exorbitant fees, slew of non-sensitive "sensitive locations" and "restricted locations" which include very public places (like parks and sidewalks), and incredulous "good moral character" and associated demands for carry license applicants, all are entirely without historical example, and thus violate the Second Amendment. Indeed, the Defendant must historically justify *each* of its "sensitive locations" defined in the CCIA. *See* Exhibit "1", pp. 16-18.

239. Thus, the CCIA violates the Second Amendment, and conflicts with *Bruen*'s clear teachings.

240. First, *Bruen* disapproved of discretion during the permitting process, instead making clear that governments may rely only rigid statutory criteria. *Bruen*, Slip Op. at 4-5. The CCIA, however, includes a malleable "good moral character," which is inherently a judgment call and invites discretion and the abuses that stem from unbridled discretion.

241. Second, New York has abused the narrow exception for "sensitive places" to include innumerable places that clearly do not fall under that doctrine, doing precisely what the

Supreme Court found unavailing in *Bruen*: "effectively declare the island of Manhattan a 'sensitive place'…." *Bruen*, Slip Op. at 22.

242. Not to mention failing the *Bruen* framework, the CCIA expressly violates the Supreme Court's explicit instructions (and binding holdings) in *Bruen*. In addition, certain provisions of the CCIA completely eliminate Second Amendment rights for some, making them unable to keep firearms in their home, and unable to bear firearms in public.

243. Indeed, the CCIA has wandered far afield, coopting and declaring all private property to be a "restricted location," and requiring that property owners affirmatively allow firearms on the premises, and all visitors to seek permission before entering the property.

244. As such, Defendant's laws, customs, practices, and policies, reducing the Second Amendment's protection of the right to "bear arms" in public to an inkblot, damages Plaintiffs in violation of 42 U.S.C. § 1983. Plaintiffs are therefore entitled to preliminary and permanent injunctive relief against such laws, customs, policies, and practices.

245. By infringing the Second Amendment right to bear arms in public in these ways, the New York laws and regulations discussed in the foregoing allegations violate the Second Amendment, which applies to Defendant by operation of the Fourteenth Amendment, both facially and as applied to Plaintiffs, and they are therefore invalid.

COUNT II

U.S. CONST., AMEND. I, 42 U.S.C. § 1983 AGAINST DEFENDANTS

246. The foregoing allegations are repeated and realleged as if fully set forth herein.

247. The CCIA unlawfully requires Plaintiffs to provide "social media" accounts to the government, along with a list of names and contact information of their family and friends. This blatantly unconstitutional demand to exercise a constitutionally protected right cannot stand.

248. The CCIA will chill protected speech, as Plaintiffs will not know what they can and cannot say in their private lives and in their social media, and whether their exercise of protected speech and press rights may one day give a licensing officer pause in issuing a license to exercise an entirely different constitutionally protected right.

249. As such, persons such as Plaintiff Sloane will self-censor, knowing that government agents will have access to and be required to scrutinize their social media in the future.

250. Entirely legitimate First Amendment speech can theoretically form the basis for denial of good moral character, such as (for example) from sovereign citizens who do not recognize and reject government authority, those who engage in antigovernment rhetoric, or those who exaggerate and use hyperbole in their social media posts.

251. Justice Thomas, in a dissent to denial of certiorari in a previous Second Amendment challenge, listed various cases where the First Amendment has been held to protect speech that would likely run afoul of New York's social media censors, leading to a denial on the basis that the applicant is not of "good moral character:" *see Silvester v. Becerra*, 138 S. Ct. 945, 951 (2018) (Thomas, J., dissenting from denial of certiorari) "*Forsyth County v. Nationalist Movement*, 505 U. S. 123 (1992) (holding that the First Amendment forbids a county from charging even a small permitting fee to offset the costs of providing security for a white-nationalist rally); *Virginia v. Black*, 538 U. S. 343 (2003) (holding that the First Amendment protects the burning of a 25-foot cross at a Ku Klux Klan rally); *Brandenburg v. Ohio*, 395 U. S. 444, 446, n. 1 (1969) (per curiam) (holding that the First Amendment protects a film featuring Klan members wielding firearms, burning a cross, and chanting "'Bury the n*****s'")."

252. If the above is protected speech under the First Amendment, then New York may not use similar protected First Amendment activity to deny the exercise of another right simply

based upon content or opinions of which the State of New York does not approve (such as a picture of a "dead frog"). *See Antonyuk* Opp. Br., ECF #19 at 41.

253. Additionally, the CCIA's required interview with a government official as a condition of licensure, and required posting of sign to permit firearm possession on private property, is compelled speech.

254. The New York laws and regulations discussed in the foregoing allegations violate the First Amendment, which applies to Defendants by operation of the Fourteenth Amendment, both facially and as applied to Plaintiffs, and they are therefore invalid.

255. Because Defendants' laws, customs, practices, and policies, violating the First Amendment's guarantee of freedom of speech to New York approved speech, it damages Plaintiffs in violation of 42 U.S.C. § 1983. Plaintiffs are therefore entitled to preliminary and permanent injunctive relief against such laws, customs, policies, and practices.

COUNT III

U.S. CONST., AMEND. V, 42 U.S.C. § 1983 AGAINST DEFENDANTS

256. The Fifth Amendment protects the "right to remain silent," in that "[n]o person … shall be compelled in any criminal case to be a witness against himself…."

257. Yet the CCIA's requirements of an open-ended in-person interview, apparently to discuss whatever the licensing officer wishes to discuss, for however long or to whatever satisfaction the official sees fit, conditioning the exercise of Second Amendment rights on the forfeiture of Fifth Amendment rights not to incriminate one's self to government officials.

258. Indeed, the only universally applicable piece of legal advice from any lawyer to any client is "don't talk to the police," and yet the CCIA requires precisely that as a condition of exercising Second Amendment rights.

259. For example, a licensing official might ask whether an applicant has ever used drugs and, if so, when, what, and how much. Certainly, such a question could be seen as relevant not only to basic eligibility under N.Y. Penal Law Section 400.00(1), but also to "good moral character" (depending on an official's arbitrary understanding of the standard). If an applicant, for example, confessed that he had smoked (but did not inhale) a joint 18 months ago, presumably he might still be eligible for a carry license, since the FBI considers[49] only drug possession or use "within the past year" to be a federal prohibitor. However, even though perhaps eligible for a carry license, the applicant might have admitted to having violated of N.Y. Pen. Law § 220.03, "criminal possession of a controlled substance in the seventh degree," a Class A misdemeanor carrying a penalty of up to one year in jail and with a statute of limitations of two years.

260. The CCIA thus creates a forced interview with a government law enforcement official, yet provides no right to remain silent, no right to decline to answer questions, and no right to consult or have an attorney present during questioning.

261. Moreover, because the licensing process is likely to be considered civil or quasi-civil in nature, an adverse inference (such as that an applicant does not possess "good moral character") might be drawn if a person refuses to answer a question posed by the licensing officer. *See Baxter v. Palmigiano*, 425 U.S. 308, 319 (1976).

262. Likewise, the CCIA violates the Fifth Amendment by forcing a person "to disclose self-incriminating statements on a social-media posting in order to exercise his or her Second Amendment right in New York State." *Antonyuk* at 85. Indeed, it is axiomatic that the Amendment "protects against any disclosures that the witness reasonably believes could be used in a criminal

[49] https://www.scribd.com/document/512294320/Guidance-for-Requesting-a-Submission-of-the-NICS-Indices-Unlawful-User-Addicted-of-a-Controlled-Substance-Files#download&from_embed

prosecution or could lead to other evidence that might be so used." *Kastigar v. United States*, 406 U.S. 441, 445 (1972).

263. The Fifth Amendment's safeguards are all the more necessary in this case, as the forced disclosure mandated by the CCIA likely is made to the *very same official* whose job it is to arrest and initiate criminal prosecution through the bringing of charges.

264. The New York laws and regulations discussed in the foregoing allegations violate the Fifth Amendment, which applies to Defendants by operation of the Fourteenth Amendment, both facially and as applied to Plaintiffs, and they are therefore invalid.

265. Because Defendants' laws, customs, practices, and policies violate the First Amendment's guarantee of the right to remain silent, it damages Plaintiffs in violation of 42 U.S.C. § 1983. Plaintiffs are therefore entitled to preliminary and permanent injunctive relief against such laws, customs, policies, and practices.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against Defendant as follows:

1. An order temporarily restraining, and/or preliminarily and permanently enjoining Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing the challenged sections of the CCIA;

2. An order declaring that the challenged sections of the CCIA are unenforceable, unconstitutional and violate the First, Second, Fifth, and Fourteenth Amendments to the United States Constitution;

3. Costs of suit, including attorney fees and costs pursuant to 42 U.S.C. §1988; and

4. Such other further relief as is necessary to effectuate the Court's judgment or that the Court otherwise deems just and appropriate.

Dated: September 20, 2022.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

IVAN ANTONYUK, COREY JOHNSON, ALFRED TERRILLE, JOSEPH MANN, LESLIE LEMAN, and LAWRENCE SLOANE, Plaintiffs, v. KATHLEEN HOCHUL, in her Official Capacity as Governor of the State of New York, KEVIN P. BRUEN, in his Official Capacity as Superintendent of the New York State Police, Judge MATTHEW J. DORAN, in his Official Capacity as the Licensing-official of Onondaga County, WILLIAM FITZPATRICK, in his Official Capacity as the Onondaga County District Attorney, EUGENE CONWAY, in his Official Capacity as the Sheriff of Onondaga County, JOSEPH CECILE, in his Official Capacity as the Chief of Police of Syracuse, P. DAVID SOARES in his Official Capacity as the District Attorney of Albany County, GREGORY OAKES, In his Official Capacity as the District Attorney of Oswego County, DON HILTON, in his Official Capacity as the Sheriff of Oswego County, and JOSEPH STANZIONE, in his Official Capacity as the District Attorney of Greene County, Defendants.	)	Civil Action No. _____

DECLARATION OF COREY JOHNSON

Exhibit "2"

1. My name is Corey Johnson. I am a U.S. citizen and resident of New York, and I live in Onondaga County. I am a member of Gun Owners of America, Inc., and thus am one of the individuals whose interests were represented by the organizational plaintiffs in *Antonyuk v. Bruen.*

2. I make this declaration in support of Plaintiffs' Complaint for Declaratory and Injunctive Relief. Unless otherwise stated, I make this declaration based on personal knowledge. If called as a witness, I can testify to the truth of the statements contained therein.

3. I am a law-abiding person who currently possesses and has maintained an unrestricted New York carry permit since 2019. I am eligible to possess and carry firearms in the State of New York, and have met all the qualifications for licensure, including having good moral character.

4. Not only do I possess a New York carry license, but also I routinely carry my handgun concealed when I leave home. To be sure, I do not carry in courthouses, schools, government buildings, or the other obvious "sensitive places" the Supreme Court has described, locations where the government often provides security in the form of armed guards and metal detectors. Otherwise, being responsible for my own security and that of my family, my gun generally does not leave my side when I leave the house, and goes where I go for lawful purposes.

5. However, due to the recent implementation of the Concealed Carry Improvement Act, I am now in jeopardy of arrest and prosecution as a felon, not to mention having my firearm seized and my permit revoked, merely for carrying in the completely ordinary and entirely non-sensitive locations in which I previously carried my firearm.

6. For example, I consider myself to be an outdoorsman, am an avid fisherman, and routinely go on hiking and camping trips throughout the state, including in numerous parks covered by the CCIA (subsection d).

7. For example, many times recently I have gone fishing in Mercer Park on the Seneca River in Baldwinsville, New York, a place previously open to carry. There is nothing in any way "sensitive" about this location, yet the CCIA makes the park off limits to me if I wish to exercise my Second Amendment right to carry a firearm while fishing.

8. Based on this Court's recent conclusion that "the CCIA's list of 'sensitive locations' is not deeply rooted in this Nation's historical tradition of firearm regulation," and because neither parks nor anything like them appears in the Supreme Court's list of traditional sensitive locations, I intend to continue to carry my firearm when I go fishing in Mercer Park. Although I cannot provide a definitive day and time that this will next occur, it is safe to say that I will go fishing within the next month, before the water gets too cold and the bass stop biting.

9. In addition, I currently have plans with my wife to take a trip in October of 2022, to include a tour of several state parks within New York, where we will engage in various recreational activities such as fishing and sightseeing. For example, as part of our trip, we plan to visit Bowman Lake State Park, which the state describes as "a 966.94 acre remote sylvan retreat known as 'a camper's paradise'" and which has a "lake … regularly stocked with trout" and offers "rustic cabins."[1] In other words, this is hardly a "sensitive location." In fact, hunting with firearms is permitted at the park.[2] I fail to see how high-powered rifles for hunting bear can be allowed at a purported "sensitive location," while low-powered handguns for self-defense (including from bear) are prohibited. Nevertheless, the CCIA makes Bowman Lake State Park off limits to me if I wish to carry my firearm to protect myself and my wife during our visit to this and other various parks during our trip.

[1] https://parks.ny.gov/parks/76/
[2] https://parks.ny.gov/documents/parks/BowmanLakeBowmanLakeSelfIssueHuntingPermit.pdf

10. There is no realistic way for me to repeatedly disarm and re-arm, in order to comply with the CCIA's prohibition on possession of my firearm in the various parks my wife and I will visit on our trip, as there is no place for me to leave my firearm while on the road. Even leaving my firearm in my vehicle while at such a park would seem to violate the CCIA, and make me a felon. Thus, due to the CCIA's unconstitutionality, and being left with no reasonable alternative, I am left with no choice but to carry my firearm for self-defense, which I intend to do on this upcoming trip.

11. I also routinely go out to eat with my family, including at restaurants such as Longhorn Steakhouse, which is considered a "sensitive location" by the CCIA (subsection o) because it serves alcohol, even if I am not sitting at the bar or consuming any alcoholic beverage. Longhorn Steakhouse, owned by Darden Restaurants, reports that "[o]ur approach has always been that we abide by all local and state laws,"[3] meaning that I would be permitted to carry my firearm when I go to eat, if not for the CCIA. Based on this Court's recent opinion, and because neither restaurants nor anything like them appears in the Supreme Court's list of traditional sensitive locations, I intend to continue to carry my firearm when I go out to eat with my family, an event that will occur within the next month or so.

12. During New York winters, I often take extended snowmobile trips throughout public parks and roads, often participating in "dice runs" – competitions where snowmobilers are required to follow a prescribed course and check in various locations along the way, with some of those locations being restaurants that serve alcohol. Under the CCIA, I would become a felon merely for getting off my snowmobile while carrying my firearm, and quickly checking in at such a location. Nevertheless, in reliance on the conclusions in this Court's prior opinion, and the

[3] https://www.cnbc.com/2014/05/21/restaurants-were-not-pulling-a-chipotle.html

Supreme Court's *Bruen* decision, the CCIA's restriction is clearly unconstitutional, and thus void. Therefore, as in years past, I intend to go on a snowmobiling trip this winter, and I will carry my firearm with me when I do, including in those places where I "check in" as part of the "dice run."

13. I routinely visit various locations that are considered "performance, art entertainment, gaming, or sporting events" under the CCIA (subsection p). For example, late last month I had fully intended to attend the state fair at the New York State Fairgrounds (a locations at which carry is also prohibited under subsection (d)), until I learned that the Fairgrounds had expressed its intent to adopt and enforce the provision of the CCIA. The news reported that "NYS Fair flexes policy prohibiting firearms in wake of conceal carry ruling."[4] Moreover, because "[a]ll entrances may utilize 'Bag Check Areas' for guests, and some or all guests and/or vendors may be subject to manual scanning with the use of a metal detector wand or other similar device," I did not attend the fair, believing there to be a significant risk that my concealed carry firearm would be discovered and I would be charged with a crime. To the extent that the fair previously may have had a weapons policy, it is my understanding that was merely a policy, for violation of which I could be asked to leave – not charged with a felony crime.

14. In the past, I have attended pro-gun rallies, and done so while armed. For example, in August of 2020, I attended the "Back the Blue" rally in Albany. I have attended similar rallies in other states, such as the January 2020 VCDL Lobby Day that takes place annually in January in Richmond, Virginia. Suffice it to say, I take any realistic opportunity to exercise and advocate for my Second Amendment and other rights, preferably doing both at the same time. The CCIA,

[4] https://www.timesunion.com/state/article/Maintaining-policy-NYS-fair-to-allow-only-law-17362602.php

however, makes me choose between the two rights, banning firearms at First Amendment protected activities, potentially under multiple subsections (subsections a, d, p, r, and s).

15. Whereas *Bruen* discussed restrictions in subsection (a) in "government buildings," the CCIA broadly bans guns in "any place owned or under the control of federal, state or local government, for the purpose of government administration...." If firearms were not already prohibited permanently at such a location, then a rally likely would constitute a "special event" where a permit is required under subsection (r), meaning firearms would be prohibited anyway. These CCIA provisions would restrict firearms at protests such as the 2014 pro-gun rally at the Empire State Plaza, which occurred in the wake of enactment of the New York SAFE Act in 2013.[5] None of these rallies or locations is a "sensitive place" under *Bruen*, merely because lots of people gather together to exercise constitutional rights.

16. I do not presently know of any upcoming pro-gun or pro-freedom rally currently scheduled but, when one is scheduled, I intend to attend it, and to do so while carrying my firearm, in violation of the CCIA.

17. The CCIA makes it a crime to possess a firearm at a zoo (subsection d), about as far from a "sensitive place" as I can imagine. My wife and I frequently visit the Rosamond Gifford Zoo in Syracuse, at least once or twice every fall, so that my wife can see the otters and wolves, which are her favorites. We will visit the zoo this fall as well, at least once, within the next 90 days. It is my understanding that the zoo has no policy prohibiting firearms on the premises.[6] Thus, but for the CCIA, it would seem to be perfectly permissible for me to carry my firearm at the zoo.

[5] https://www.poughkeepsiejournal.com/story/news/local/new-york/2014/04/02/gun-rally-in-albany-draws-donald-trump/7180313/
[6] https://rosamondgiffordzoo.org/visit/plan-your-visit/guest-etiquette/

Since the CCIA's blanket ban on firearms at zoos is unconstitutional, I intend to carry my firearm when my wife and I visit the Rosamond Gifford Zoo.

18. Finally, I routinely carry my firearm when out and about in public, including when I go shopping at various locations in Onondaga County, such as gas stations, grocery stores, home improvement stores, big box stores, etc. It is my understanding that none of these places has expressed any objection to the lawfully carrying of my firearm. However, the CCIA now declares such locations to be "restricted locations," and bans my carrying of a firearm on the premises unless I have the affirmative consent of the owner. However, obtaining such consent is entirely impractical. Indeed, since the CCIA's implementation, few if any locations have posted signs welcoming concealed carry license holders, even if the business otherwise supports or allows concealed carry. Nor is it practical for me to disarm, approach such a business, ask permission from a low-level employee who will no doubt be unfamiliar with store policy and need to ask the manager (if not contact corporate), wait for a response, then re-arm myself – all merely to pick up a few things at the store. Indeed, even if I receive permission at one point in time, such policy could change at any time and without notice, thus putting me at constant risk of committing a crime unawares.

19. Since it is between me and a business owner – not New York state – whether I carry my firearm in a certain business, I intend to continue carrying my firearm in various businesses and establishments in Onondaga County, something that occurs regularly, in violation of the CCIA's restriction on "prohibited locations" that are not conspicuously posted with signage or otherwise provide me their express consent.

20. Unless this Court strikes down that provision of the CCIA, my simply going peaceably about my daily life will be a crime, pursuant to a statute which this Court has already declared

clearly unconstitutional. As such, as "an act of the legislature, repugnant to the constitution," the CCIA "is void." *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

21. Not only do I intend to engage in various constitutionally-protected acts which are now made unlawful under the CCIA, but also I face a credible threat of prosecution, particularly since my specific intentions are now being made public through this filing.

22. For example, First Deputy Superintendent Steven Nigrelli of the New York State Police, has threatened persons such as me who violate the CCIA that "[w]e ensured that the lawful, responsible gun owners have the tools now to remain compliant with the law. For those who choose to violate this law … Governor, it's an easy message. I don't have to spell it out more than this. We'll have zero tolerance. If you violate this law, you will be arrested. Simple as that. Because the New York state troopers are standing ready to do our job to ensure ... all laws are enforced."[7] If that is not a credible threat of enforcement, it is hard to see what would be.

23. Likewise, Onondaga County District Attorney William Fitzpatrick, although generally critical of the draconian provisions of the CCIA, recently stated that "[v]iolators will have their weapons confiscated while prosecutors investigate any other criminal activity," and "[t]heir cases will be referred to the judge who granted them concealed-carry licenses in the first place, possibly leading to the revocation of their carry privileges."[8] DA Fitzpatrick was joined at the press conference by Syracuse Police Chief Joe Cecile. In other words, the top law enforcement officials where I live have expressed a specific intent to enforce the provisions of the CCIA against violators, which might include having a firearm seized by police and a carry license revoked.

[7] https://youtu.be/gC1L2rrztQs?t=2281 (at 38:00 minutes).
[8] https://www.syracuse.com/crime/2022/09/syracuse-da-police-chief-we-wont-target-gun-owners-under-new-law-but-will-take-gun.html

24. What is more, I am far more likely than the average person to have a run-in with law enforcement, particularly during some of the times I intend to be in violation of the CCIA. For example, when fishing, I am required to be in possession of a valid New York State Fishing License, which is subject to verification and review at any time by a New York Environmental Conservation Officer (who works for the State, not the County). In recent years, I have had such officers stop and check my license at least a couple of times per year. In 2022 alone, I recall two such interactions along the Erie Canal in Camillus, one in Fair Haven State Park, and one at Oneida Shores State Park. If, for example, an officer saw a bulge from my concealed firearm while I was retrieving my fishing license and driver's license from my wallet, I could be arrested charged with a felony under the state's clearly-announced "zero tolerance" policy.

I declare under penalty of perjury that the foregoing is true and correct.

Corey Johnson

September 14, 2022
Date

Corey Johnson

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

IVAN ANTONYUK, COREY JOHNSON, ALFRED TERRILLE, JOSEPH MANN, LESLIE LEMAN, and LAWRENCE SLOANE, Plaintiffs, v. KATHLEEN HOCHUL, in her Official Capacity as Governor of the State of New York, KEVIN P. BRUEN, in his Official Capacity as Superintendent of the New York State Police, Judge MATTHEW J. DORAN, in his Official Capacity as the Licensing-official of Onondaga County, WILLIAM FITZPATRICK, in his Official Capacity as the Onondaga County District Attorney, EUGENE CONWAY, in his Official Capacity as the Sheriff of Onondaga County, JOSEPH CECILE, in his Official Capacity as the Chief of Police of Syracuse, P. DAVID SOARES in his Official Capacity as the District Attorney of Albany County, GREGORY OAKES, In his Official Capacity as the District Attorney of Oswego County, DON HILTON, in his Official Capacity as the Sheriff of Oswego County, and JOSEPH STANZIONE, in his Official Capacity as the District Attorney of Greene County, Defendants.	)	Civil Action No. _____

DECLARATION OF LAWRENCE SLOANE

Exhibit "3"

1. My name is Lawrence Sloane. I am a U.S. citizen and resident of New York, and I live in Onondaga County. I am a member of Gun Owners of America, Inc., and thus am one of the individuals whose interests were represented by the organizational plaintiffs in *Antonyuk v. Bruen*.

2. I make this declaration in support of Plaintiffs' Complaint for Declaratory and Injunctive Relief. Unless otherwise stated, I make this declaration based on personal knowledge. If called as a witness, I can testify to the truth of the statements contained therein.

3. I am a law-abiding person who does not currently possesses a New York carry license. However, I have always wanted to obtain a carry permit to exercise my Second Amendment rights to acquire and carry a handgun for self-defense, but did not believe I would be found to have a special "proper cause" which was required before the Supreme Court's opinion in *Bruen*.

4. After *Bruen,* which held the "proper cause" test to be unconstitutional, I intended to apply for my carry license, and began looking into the process. I am part of "the people" that the Second Amendment applies to and protects. However, before I could apply for a license, the State of New York passed the Concealed Carry Improvement Act (CCIA), which imposes a slew of new and improved infringements on my constitutional right to obtain a license to keep and bear arms.

5. I want to make clear that I object to the following requirements of the CCIA: 1) social media history requirement, 2) providing information about my family, 3) providing character references, 4) exorbitant training costs and the time required to complete it, 5) an in-person interview with a government agent, and 6) proving that I am of "good moral character" in addition to being a law-abiding, responsible person. I will address each in turn.

6. After the CCIA was enacted, the application for carry license was updated[1] by the state, and now mandates that I must turn over my "social media" history to the government for review. The legislature has not seen fit to define what "social media" is, but my understanding of "social media" would include various forums where people congregate to speak, many times anonymously. I also believe this to include Facebook, Twitter, Instagram and other more well-known "social media" platforms.

7. To be sure, I have accounts on several of these and other platforms but, specifically, my Facebook profile is set to "friends" only, which means that only my friends can view my profile and my postings on that platform. I refuse to add a state licensing official as a "friend" so that he or she can review my Facebook postings.

8. The First Amendment protects my speech, and neither requires nor permits the government to review what I say, and certainly not as a condition of exercising my constitutional right to bear arms. Moreover, the Fifth Amendment protects my right to remain silent and against self-incrimination. In short, I will not turn over my "social media," however and whatever that means, to the government, as a condition of applying for a license.

9. To the extent that I were forced to produce all my speech, even in an electronic format, to the government for review, from now on I would self-censor for fear of retribution, unwilling to express my true feelings, especially on contentious issues involving political speech, knowing that the state's prying anti-gun eye is looking over my shoulder. It would also be likely that I would edit or delete some or all my social media and other online postings, so as not to allow the government to review what I have said, not because I regret anything that I have posted, but

[1] The "revised" State of New York Pistol/Revolver License Application can be found at https://troopers.ny.gov/system/files/documents/2022/09/ppb-3-08-22-_0.pdf.

because it is none of the government's business what I believe, how I vote, what my hobbies are, with whom I associate, where I travel, which constitutional rights I exercise, etc.

10. Likewise, the government of New York has no business contacting my family members to interrogate them about my life, my speech, my actions, or anything else about me, so that New York feels comfortable to "permit" me to exercise my constitutional rights. I will not provide the government of New York with information about my family, on the carry license application.

11. The license application further requires four character references. Supposedly, this is required so that the government can interrogate my associates to determine if I have the "essential character, temperament and judgment necessary to be entrusted with a weapon and to use it only in a manner that does not endanger oneself or others[.]" N.Y. Penal Law § 400.00(1).

12. Of course, as this Court acknowledged in *Antonyuk v. Bruen*, this definition does not include "other than in self-defense" which means that, apparently, merely being willing to use a handgun in self-defense in New York would automatically disqualify me from having "good moral character," because using a handgun, even in legitimate self-defense, would be to "endanger" whoever is attacking me. Worse, this may mean that even applying for a carry license is impossible, because the whole purpose of carrying a concealed firearm is to be able to use it for self-defense or defense of others which, taken to its logical conclusion, would result in "endanger[ing]" a criminal attacker.

13. Indeed, "good moral character" is a completely subjective standard that gives the licensing officer or interrogator wide discretion to ask whatever questions of me they wish.

14. While I believe I have "good moral character" insofar as I am a law-abiding citizen, it is none of the state's business when it comes to the exercise of my constitutional rights.

15. Likewise, I do not wish to ask those who I know to stand up to the government on my behalf, and testify to my good moral character, so that I may keep and bear arms. If the State of New York wished to check my criminal history to see if I have ever committed a crime, it can do so immediately by utilizing the innumerable databases that exist currently, and does not need to interrogate my friends and family. I know of no other constitutional right that is predicated on what friends think about you, and my right to keep and bear arms should not be any different.

16. I will not provide the State with information about my associates, so some licensing official can interrogate them about my life, including my exercise of my constitutional rights. It is none of the government's business what my friends and I discuss, either in person or online, and merely attempting to exercise an enumerated right does not give New York the right to invade my privacy and my other constitutional rights, and I should not be required to surrender my First Amendment right to exercise my Second Amendment rights, as this Court also acknowledged in the *Antonyuk* case.

17. Further, requiring me to sit down with a government agent for an in person interview, so that he or she can interrogate me, violates my Fifth Amendment rights to remain silent and against self-incrimination, because there do not appear to be any limits on the questions I am asked. Rather, I would be compelled to answer any and all questions posed to me as a condition of obtaining a license. I believe that is generally not a good idea for a person to answer questions posed by government officers during interrogations, such as if stopped for speeding or questioned by police, *regardless* of whether that person is innocent or not. Yet the CCIA requires me to submit to an "interview" of the sort that I believe most lawyers would advise against.

18. In order to obtain a carry license, I would be unable to skip answering the questions or invoke my Fifth Amendment rights to consult with counsel or to remain silent, should the need

arise. Indeed, I am not a lawyer, but my understanding is that an invocation of Fifth Amendment rights is not an admission of guilt or wrongdoing, as people are often "incriminated" or even found guilty of crimes that they did not commit. But common sense tells me that, if I were to invoke the Fifth Amendment to a government agent's question during this type of interview, it would probably be looked at with skepticism about why I am invoking my constitutional right.

19. Moreover, with the proliferation of thousands upon thousands of "crimes" that do not require any intent to violate, within the laws of federal, state, and local governments, it is my understanding that the average person unwittingly commits numerous crimes over the course of their lifetime, without ever having knowledge or intent to do so. I am a law-abiding person and always try to follow the law, but the CCIA's demand that I be interrogated by the police as a condition of exercising my right to keep and bear arms violates my First, Second, and Fifth Amendment rights.

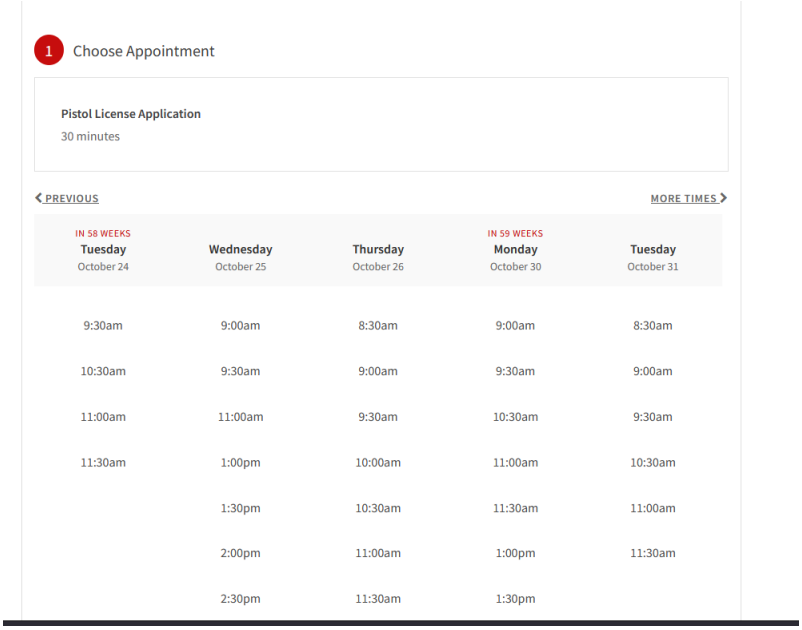
20. Without me surrendering my First and Fifth Amendment rights, I am unable to fully complete the application for a carry license.

21. Since the CCIA states that "No license shall be issued" without first providing the licensing official with all of the required information, there is no way for me even to apply for the permit and be rejected, as my application will not even be accepted. As such, is futile for me even to attempt to apply and be denied a license, refusing to submit to the unconstitutional requirements that I am unwilling to provide to the government. It is my understanding that other applicants in the past have had their applications rejected or denied for failure to provide all of the required information, which I will not provide.[2]

[2] In fact, the Onondaga Sheriff's website instructs that "[i]ncomplete applications will not be processed at the time of your appointment. Your entire application will be returned to you and

22. Indeed, the only way for me to apply and be granted or denied a license would be for me first to forfeit my constitutional rights, something I will not do. Therefore, I am left in the untenable position of surrendering and waiving some of my constitutional rights in order to exercise my Second Amendment rights.

23. Notwithstanding the futility of providing an application without all of the information required by the application, I am unable to even secure an appointment with the Onondaga Sheriff's Office until **October 24, 2023**, or 58 weeks from now. This is simply to *submit* my application to the Sheriff's Office so it will be processed.[3]



24. Likewise, the CCIA's mandate of sixteen hours of classroom instruction, plus two hours of live-fire training, is unnecessary and expensive, and would occupy a minimum of two full days for me to complete.

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you will be instructed to reschedule your appointment." https://sheriff.ongov.net/pistol-license-unit/appointment-requirements/.

And "walk-in service" is not available, so I must make an appointment to even submit my application. https://sheriff.ongov.net/pistol-license-unit/.

[3] https://sheriff.ongov.net/pistol-license-unit/appointment/ (current as of September 19, 2022).

25. This is far in excess from what other states require, and I do not know of any other state that requires a total of 18 hours of training before you are granted permission to exercise a constitutional right.

26. Prior to the CCIA, my county only required only a basic handgun safety course which, while I believe is still objectionable because it conditions my right to bear arms on clearing government-imposed hurdles and paying government-imposed fees, was not nearly as bad as the new 18 hour requirement.[4,5]

27. I understand that, previously, a basic handgun safety course could be completed for around $50.00 and four hours of time. But to comply with the CCIA's training requirement would require a minimum of two days, and cost me hundreds of dollars. Some facilities are charging upwards of $700 for the class. This will represent a significant cost to me, plus it will be necessary for me to pay for the ammunition used at such a class, and also the other associated licensing fees charged by my county. The cost for me to obtain a permit could easily exceed $1,000, a significant investment, and an exorbitant cost for me to be licensed to exercise my constitutional rights.

28. Certainly, I believe that responsible gun owners have a moral responsibility to obtain training in the safe and effective use of firearms. However, I do not want to expend my hard earned dollars to further the State's anti-gun agenda. For instance, New York Penal Law 400(19) demands that I pay to learn about "suicide prevention," as if this has something to do with my being a responsible gun owner. I am not suicidal. Moreover, in a free society, all constitutional

[4] https://sheriff.ongov.net/wp-content/uploads/2021/04/NYS-Pistol-License-Application-4-30-21.pdf.

[5] Prior to *Bruen* being released, Onondaga stated that it took "approximately 6 months" for a pistol license to be processed. See the previous footnote. Now, I cannot even schedule an appointment to simply *apply* for a license for over 1 year.

rights can be misused, but that does not mean the government can require a person to obtain a lecture on the dangers of free speech as a condition of receiving a license to post on Twitter.

29. If all that were required were a basic handgun safety course of four hours, at a cost of $50.00, that would be doable and, even though I would still object on principle, I would "bite the bullet," so to speak, in order to get my license. However, spending two or more full days in a class, at a cost of several hundreds of dollars, plus expensive ammunition, is unreasonable and unconstitutional.

30. If these unconstitutional requirements were removed from the application, and the Sheriff would accept my application, I would immediately submit my application for a concealed carry license, something I greatly desire to obtain and, but for the CCIA's unconstitutional demands, I would seek to obtain. I otherwise meet all of the requirements to be "granted" a permit to carry my firearm in public and, in fact, I have completed the remaining parts of my application (save for the portions I will not provide), and I have attempted to secure an appointment for submitting my application, but there is not one available until late next year, a completely unreasonable time frame.

I declare under penalty of perjury that the foregoing is true and correct.

September 19, 2022
Date

Lawrence Sloane

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

IVAN ANTONYUK, COREY JOHNSON, ALFRED TERRILLE, JOSEPH MANN, LESLIE LEMAN, and LAWRENCE SLOANE, Plaintiffs, v. KATHLEEN HOCHUL, in her Official Capacity as Governor of the State of New York, KEVIN P. BRUEN, in his Official Capacity as Superintendent of the New York State Police, Judge MATTHEW J. DORAN, in his Official Capacity as the Licensing-official of Onondaga County, WILLIAM FITZPATRICK, in his Official Capacity as the Onondaga County District Attorney, EUGENE CONWAY, in his Official Capacity as the Sheriff of Onondaga County, JOSEPH CECILE, in his Official Capacity as the Chief of Police of Syracuse, P. DAVID SOARES in his Official Capacity as the District Attorney of Albany County, GREGORY OAKES, In his Official Capacity as the District Attorney of Oswego County, DON HILTON, in his Official Capacity as the Sheriff of Oswego County, and JOSEPH STANZIONE, in his Official Capacity as the District Attorney of Greene County, Defendants.	)	Civil Action No. _____

DECLARATION OF LESLIE LEMAN

Exhibit "4"

1. My name is Leslie Leman. I am a U.S. citizen and resident of New York, and I live in Greene County. I am a member of Gun Owners of America, Inc., and thus am one of the individuals whose interests were represented by the organizational plaintiffs in *Antonyuk v. Bruen*.

2. I make this declaration in support of Plaintiffs' Complaint for Declaratory and Injunctive Relief. Unless otherwise stated, I make this declaration based on personal knowledge. If called as a witness, I can testify to the truth of the statements contained therein.

3. I am a law-abiding person who currently possesses and has maintained an unrestricted New York carry permit since 2012. I am eligible to possess and carry firearms in the State of New York, and have met all the qualifications for licensure, including having good moral character.

4. Not only do I possess a New York carry license, but also I have routinely carried my handgun concealed when I leave home, during the time I have had my permit.

5. I am a volunteer firefighter in the Windham Fire District. Previously, I was the elected fire commissioner in the same department, for seven years. I have held these responsibilities in one position or another for approximately 12 years. The nature of my work as a volunteer, without "on duty" shifts, means that I am on call 24 hours a day, 7 days a week, which means that I am generally at home, working, in my vehicle, or otherwise going about my daily life, when I receive a call from our dispatch, via radio and text message, that there is an emergency situation requiring an immediate response. I and the other members of my team are then expected to respond to the call immediately, without any opportunity to go home, to change clothes or, as relevant here, to disarm and stow my firearm. This means that there are times that I have responded to an emergency call while armed.

6. Our unit provides emergency services to all persons within the fire district or, when requested, under mutual aid agreements across the county, without regard to the nature of the

location to which we are called. Over many years, we have responded to calls at all sorts of locations that the Concealed Carry Improvement Act ("CCIA") now declares to be "sensitive locations," including government property and buildings, churches, schools, nurseries, daycares, libraries, playgrounds, parks, medical facilities and offices, shelters, vehicles used for public transit, restaurants that serve alcohol, theaters, sporting events, and others. If not a "sensitive location," our calls invariably involve private property now deemed a "restricted location."

7. For example, having the Catskills Park surrounding our town, we often have responded to calls in the park, such as injured hikers, forest fires, etc.

8. The CCIA, however, does not contain any emergency exemption or other sort of exception to its blanket prohibition of firearm possession in "sensitive locations" and "restricted locations."

9. This means that I would be guilty of a felony crime, should I, as a first responder, respond to an emergency situation while armed. The only way to avoid culpability would be for me to disarm, in compliance with the CCIA, by returning home or to my vehicle, prior to responding to an emergency call which would delay responding to what may be a life threatening emergency.

10. Moreover, under the CCIA, it would not be enough for me to simply place my handgun in the back seat, or under a newspaper, while on my way to a call. Rather, I would have spend significant time to unload the firearm by "removing the ammunition from" the firearm, and then "securely locking" the firearm "in an appropriate safe storage depository out of sight from outside the vehicle," realistically meaning a safe or lockbox attached to the structure of the vehicle. Failure to take these steps is a "class A misdemeanor."

11. Moreover, in various instances in the past, I have been called on to respond while traveling in a vehicle other than my own (such as that of my wife, a friend, etc.) where "safe storage" has

not been available to me, and where it is not otherwise safe or appropriate to simply leave my firearm in a vehicle.

12. It is safe to say there will be times that I cannot comply with the CCIA when responding to an emergency call. Nor have I ever met anyone in my line of work who would be able to comply.

13. As part of my job, I respond to house and structure fires, vehicle accidents, and medical emergencies including in state parks, fires on private and state land, etc. Many of these calls present life-and-death situations, where immediate action, including the provision of medical attention, is required in order to preserve life and property.

14. It would be simply absurd to ask a family, standing in their pajamas in knee-deep snow, to provide me with their "express consent" to carry my firearm prior to entering their home to put out a fire or to provide lifesaving medical care. Indeed, that is the absolute last thing I am thinking of in this sort of situation.

15. In fact, the town of Windham, New York is completely surrounded on all sides by the Catskills Park. This means that I often cannot respond to a call without traversing part of the Park, and thus being in violation of the CCIA. The only option for me would be to return home and leave my firearm there, prior to responding to a call – an untenable option.

16. The CCIA thus has put me to an unreasonable choice where either I can resign from being a firefighter, or I can forfeit my constitutional right to bear arms in public. I do not accept these terms.

17. Although the history of organized firefighting dates to ancient Rome, there is no historical analogue for a state law requiring first responders who are not on duty to disarm before responding to an emergency call, with the threat of felony prosecution hanging over their heads.

18. Moreover, in recent years, first responders including firefighters have been specifically targeted and killed by intended mass shooters, including in New York.[1] My need for self-defense does not end simply because I am called to respond at a "sensitive location" or "restricted location." On the contrary, historically many (if not most) mass shootings occur at locations that are declared by state governments to be gun-free zones. New York State's decision to disarm law-abiding persons, including first responders who respond to such situations, is illogical and untethered to any rational thought, to say the least.

19. It is my opinion, based on my professional training and experience that, in an emergency situation, seconds count, and the CCIA, by mandating disarmament by first responders, might literally result in the loss of life, to the extent that first any first responders abide by its requirements.

20. For these reasons, I intend to continue carrying my firearm and going about my daily life, including as a firefighter. This undoubtedly will put me in violation of the CCIA as I respond to calls.

21. Not only do I intend to engage in various constitutionally-protected acts which are now made unlawful under the CCIA, but also I face a credible threat of prosecution, as my specific intentions are now being made public through this filing.

22. For example, First Deputy Superintendent Steven Nigrelli of the New York State Police, has threatened persons such as me who will violate the CCIA that "[w]e ensured that the lawful, responsible gun owners have the tools now to remain compliant with the law. For those who choose to violate this law … Governor, it's an easy message. I don't have to spell it out more than this. We'll have zero tolerance. If you violate this law, you will be arrested. Simple as that.

[1] https://www.cnn.com/2012/12/24/us/new-york-firefighters-shooting

Because the New York state troopers are standing ready to do our job to ensure ... all laws are enforced."[2] If that is not a credible threat of enforcement, it is hard to see what would be.

23. What is more, I am far more likely than the average person to interact with the police who are called on the enforce the CCIA. Indeed, it is typical that we would respond to an emergency call alongside police officers, including both local law enforcement, and also the New York State Police. Indeed, many of my fellow firefighters are also in local law enforcement.

24. Moreover, it is not infrequently the case that firefighters can become overwhelmed by smoke, burned by fire, injured by falling objects, or otherwise seriously hurt when responding to a situation such as a structure fire. In the past, I and/or my colleagues have found ourselves in such situations, and have needed medical attention. My department also has policies that, at times, *requires* us to be evaluated by EMS personnel. In other words, it is common for firefighters such as myself to interact with law enforcement, EMS, arson investigators, etc. If, in the process of interacting with these persons or being treated for an injury (which can involve having clothes removed), the police or others discover my firearm, I could be arrested.

25. In addition to my job as a firefighter, my wife and I run a small hotel and breakfast restaurant in Windham, New York. In this business, we offer lodging to guests as well as a restaurant that serves breakfast and offers baked goods to guests and customers. In a given year, we cater to several thousand visitors from across New York, the United States, and around the world.

26. As the owners of this private property, which is now declared a "restricted location," the CCIA mandates that, in order to permit gun owners to continue staying in our rooms and eating at our restaurant, we must post "clear and conspicuous signage indicating that the carrying of firearms

[2] https://youtu.be/gC1L2rrztQs?t=2281 (at 38:00 minutes).

… is permitted." In our situation, signage is required because it is entirely impractical to provide person-by-person "express consent" to each individual who stops by.

27. The CCIA requires us to engage in this compelled speech in order to continue providing services to those who bring their firearms to our location. If we do not engage in this compelled speech, we will lose the business of gun owners who wish to travel lawfully with their firearms, as the CCIA prevents them from visiting our location.

28. On the other hand, many (if not most) of our customers are visiting from the southern part of the state, including New York City, Long Island, and northern New Jersey. Many (if not the majority) of these customers hold political views that are generally unaccepting of firearm ownership, and the idea of others bearing arms in public. Thus, if we were to post a sign stating that firearms and concealed carry are welcome on our premises, it is certain that we would lose some amount of business from customers who do not share that view.

29. In other words, the CCIA politicizes our business against our wishes, forcing us to a Hobson's choice between groups of customers and, no matter which option we choose, we will lose business.

30. Additionally, as part of our operations, we have been intending to apply and obtain a New York State wine and beer license, but now, under the CCIA, to do so would turn our business into a "sensitive location" and would put us in a position where we could not even possess firearms ourselves, on our own property, and potentially even in our own home which is appurtenant to our business.

31. Through the CCIA, the state has taken my rights as a property owner to decide the terms on which to invite or exclude visitors to my property (and my home). Moreover, the CCIA forces me to engage in compelled speech as a precondition to obtaining the business of a certain clientele.

The CCIA requires me to publicly take a position one way or the other on an issue that is highly contentious and divisive in this state, whereas before we could simply stay silent and follow state law with respect to firearms.

32. Finally, as I previously explained, the Catskills Park surrounds the town of Windham, New York, where I live. This means that I cannot leave my small town with a firearm, without entering the park, and thus violating the CCIA. The CCIA, which has no exception for travel, even when a firearm is unloaded, locked, and stored in a trunk, turns my town into an island where no firearms can come in, and none can go out. In essence, the CCIA reverts the state of the law to the situation which led to N.*Y. State Rifle & Pistol Ass'n v. City of New York*, 140 S. Ct. 1525 (2020), where the plaintiff was unable even to take his firearm from his home to the shooting range. In response to the Supreme Court agreeing to hear that case, New York state changed the law, in order to moot the matter and avoid a loss. Now, however, the CCIA reenacts the very same situation on a statewide level. Left with no reasonable choice, I intend to bring my firearm when I leave home to travel outside of Windham, New York, which will take me through state parkland, in violation of the CCIA.

I declare under penalty of perjury that the foregoing is true and correct.

September 19, 2022
Date

Leslie Leman
Leslie Leman

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

IVAN ANTONYUK, COREY JOHNSON, ALFRED TERRILLE, JOSEPH MANN, LESLIE LEMAN, and LAWRENCE SLOANE, Plaintiffs, v. KATHLEEN HOCHUL, in her Official Capacity as Governor of the State of New York, KEVIN P. BRUEN, in his Official Capacity as Superintendent of the New York State Police, Judge MATTHEW J. DORAN, in his Official Capacity as the Licensing-official of Onondaga County, WILLIAM FITZPATRICK, in his Official Capacity as the Onondaga County District Attorney, EUGENE CONWAY, in his Official Capacity as the Sheriff of Onondaga County, JOSEPH CECILE, in his Official Capacity as the Chief of Police of Syracuse, P. DAVID SOARES in his Official Capacity as the District Attorney of Albany County, GREGORY OAKES, In his Official Capacity as the District Attorney of Oswego County, DON HILTON, in his Official Capacity as the Sheriff of Oswego County, and JOSEPH STANZIONE, in his Official Capacity as the District Attorney of Greene County, Defendants.	)	Civil Action No. _____

DECLARATION OF IVAN ANTONYUK

Exhibit "7"

1. My name is Ivan Antonyuk. I am a U.S. citizen and resident of New York, and I live in Schenectady County. I am a member of Gun Owners of America, Inc., and thus am one of the individuals whose interests were represented by the organizational plaintiffs in *Antonyuk v. Bruen*. I was also a plaintiff in that prior case.

2. I make this declaration in support of Plaintiffs' Complaint for Declaratory and Injunctive Relief. Unless otherwise stated, I make this declaration based on personal knowledge. If called as a witness, I can testify to the truth of the statements contained therein.

3. As stated in my previous declaration filed in the prior case in this Court, I am originally from Ukraine. In the 1990s, when I lived in Ukraine, crime was rampant and out of control, with the country being run by mafia and criminals. Ordinary citizens were not allowed to own firearms to protect themselves. Instead, only the government and their guards had guns. This gun control regime left the Ukrainian people with no means to defend themselves from crime, whether committed by criminals or the government. In Ukraine in the 1990s, if you needed police, they were hours away when you called, if they even showed up at all. The Ukrainians also had no right to free speech and we had no right to protest. I personally witnessed many attacks on Ukrainian citizens simply for protesting. Once I was passing by a protest, and the police beat me because they thought I was a part of the protest, but I was not involved. I no longer felt safe in Ukraine, and it was a known fact that you should not leave your house at night due to crime. In 1994, I left Ukraine for the United States and its promise of freedom. I settled in New York, where I became a United States citizen in 1999. I have lived in New York ever since. I firmly believe in the Second Amendment and the right to keep and bear arms. I have seen what happens in countries when citizens are not allowed arms.

4. I am a law-abiding person who currently possesses and has maintained an unrestricted New York carry permit since 2009. I am eligible to possess and carry firearms in the State of New York, and have met all the qualifications for licensure, including having good moral character.

5. Prior to the recent implementation of the New York Concealed Carry Improvement Act, I routinely carried my firearm in public, where permitted and lawful.

6. Now, the CCIA makes almost all places off limits to me while I am carrying a firearm in public. For instance, if I go to a store, restaurant, or gas station that is not specifically posted with a sign allowing me to carry there, I am unable to go in with my firearm, without violating the law.

7. The CCIA's implementation has greatly affected my daily life. This Court previously opined that "it would seem plausible that a plaintiff such as Mr. Antonyuk [is] going to violate both the CCIA's sensitive-location provision or restricted-location provision … while resuming his daily life in the coming weeks…." *Antonyuk* at ___. On the contrary, I have taken significant steps since the CCIA's implementation to comply with each of its provisions, in order to avoid violating the law. I have changed where I eat and get takeout meals. I have stopped shopping at certain stores that have not posted signs welcoming firearms. As the Governor opined, New Yorkers can carry now only in "some public streets," and that generally has been my reality since the CCIA took effect.

8. When I have gone to a place that the CCIA has made off limits, I have been forced to disarm myself. This includes separating the magazine and ammunition from my firearm, and storing them in a safe storage box, but not in my glovebox. Of course, it is well known that when people load and unload firearms, it introduces opportunities to have accidental discharges. As I stated previously, since I must unload my firearm, I have to do this in my vehicle as it does not make sense to exit the vehicle with a holstered, concealed firearm, draw the firearm, unload and

make safe, and then store the firearm in my trunk or locked safe. And then when I return to my vehicle, I have to remove the firearm from the trunk, reload it, and then reholster it. Often my family is present in my vehicle during this unnecessary performance. The second of the four ubiquitous rules of gun safety is to keep the muzzle of an unholstered firearm from pointing in any unsafe direction yet, while in my vehicle with my family in a public place, there are few if any such directions. This CCIA-mandated theater is wholly unnecessary and dangerous, and has completely changed the process of carrying a firearm in New York as it used to be prior to September 1, 2022.

9. Additionally, if someone sees me with an unconcealed handgun in my hand while I am unloading and storing it to comply with this new Act, I fear that I will be reported to the police and perhaps charged with a crime for having a firearm that is not concealed. *See Antonyuk* at 49 n.16 ("[t]his discovery might be as obvious as a passeryby catching sight of a glimmer of steel as a permit holder is transferring his or her handgun to his trunk in the parking lot of a gas station").

10. As the Court found, I am "law-abiding and respectful." *Antonyuk* at *49. And now, because I am a "law-abiding and respectful" citizen, I have refrained from violating any of the provisions of the Act, and will not violate them. However, the vast number of locations at which lawful carry is now banned, and despite my best efforts, this law creates the real danger that I will inadvertently violate this new law unintentionally --- but that would be no defense, as I understand it.

11. Additionally, I am harmed because I can no longer enjoy the Second Amendment freedoms I once had before the new law was implemented. I no longer can carry in a number of places that I used to carry. I am unable to go peaceably about my daily life without fear of inadvertently carrying in a prohibited location, and being prosecuted for doing so.

12. If the Court enjoined this law, and made it lawful for me to carry without fear of arrest, prosecution, damaging my reputation, losing my Second Amendment rights for life, or losing the required "good moral character," I would immediately carry in those places again, but for the CCIA's unconstitutional restrictions. For instance, if I were able to carry at a gas station while pumping my gas, I would do so, but currently I refrain from doing so because I fear prosecution and because I obey the law. But for the CCIA making carrying of a firearm at a gas station that has not posted a sign permitting carry a felony, I would carry my firearm on my person while at a gas station that is otherwise not posted with "conspicuous signage."

13. I am also a property owner, of a single-family home within Schenectady County, New York. It is my right, as the property owner, to determine who, and under what circumstances, persons may visit my property, and what activities they may engage in while at my home. The CCIA, however, infringes my rights, declaring my home to be a "restricted location," and mandating that, in order to permit gun owners to visit my home while armed, I must post "clear and conspicuous signage indicating that the carrying of firearms … is permitted" or otherwise provide my "express consent," presumably either verbally or in writing.

14. Of course, without standing on my front lawn 24 hours a day, it is impossible for me to provide "express consent" to each and every visitor who stops by, especially in advance of their arrival. For example, a delivery driver, meter reader, Jehovah's Witness, or other visitor to my home might deliver a package, read my electric meter, or knock on my door when I am not at home or otherwise indisposed, and unable to greet them. Although I would have no problem with such persons peaceably and lawfully carrying their firearms on my property, the CCIA would prohibit that from occurring, in violation of my wishes, unless I posted "conspicuous signage."

15. Likewise, many law-abiding license holders, including my friends and associates, no doubt will be hesitant or afraid to ask my permission to exercise their Second Amendment rights (often a taboo topic in New York State), for example because they are unaware that I support gun rights. Thus, such persons would leave their gun at home, contrary to my wishes. If I held a barbeque party for friends and associates, I may not know everyone who attends (such as if my wife invites one of her friends, who brings her husband who we have never met). Such persons would not even be able to ask my permission to carry their firearms on my property before they visit, and thus would have no choice but to leave them at home. Yet armed concealed carry license holders have successfully stopped intended mass shooters at family barbeques, neighborhood cookouts, and other similar events across the country.[1]

16. Since I am a firm believer in the adage "more guns, less crime," the CCIA reduces the safety of myself and my family, by prohibiting, against my wishes, firearms being peacefully carried by law-abiding permit holders on my property.

17. The CCIA could even prevent one of my neighbors from coming to my home to render aid and/or defend my family during a break in by violent criminals, unless he and I had previously had a conversation and exchanged "express consent" to bring firearms onto each other's property. Or perhaps he would be forced to mill around in the dark, searching for "conspicuous signage" authorizing him to help. Either way, the CCIA thus reduces the safety and security of myself and my family, prohibiting firearms on my property that I would otherwise welcome.

18. Unable to provide "express consent" in many circumstances, the only other option the CCIA provides is for me to engage in compelled speech by posting a sign on my property, in order

[1] https://www.foxnews.com/us/texas-man-shoots-robbery-suspect-second-amendment; https://www.foxnews.com/us/florida-armed-bystander-stops-gunman-at-crowded-back-to-school-event-at-park-police-say

to permit law-abiding gun owners to peaceably bring their firearms onto my property. However, I cannot safely comply with this requirement. As I mentioned, many New Yorkers are vehemently anti-gun, some militantly so. By posting a "clear and conspicuous" sign in favor of gun rights, I open myself and my family to criticism, harassment, and even possible hostile action (such as vandalism or a physical confrontation) by those who disagree with our political views. Likewise, by posting a gun-friendly sign, the CCIA requires me to identify my home as being the likely location of a gun owner (valuable property), raising the risk that my home would be targeted by burglars, thieves, home invaders, or other violent criminals, putting my family's safety at great risk. I will not post a sign, and self-identify my property as a gun friendly location and thereby reduce my family's security, as required by the CCIA.

19. The CCIA also politicizes my home against my wishes, and demands that I take affirmative steps and engage in compelled speech (either by making a government-required statement or posting a government-required sign) merely to fulfill my wishes that others be able to peaceably exercise their constitutional rights while on my property. On the contrary, there is no historical analogue for forcing me to "opt in" to constitutional rights.

20. I believe that the CCIA violates the constitution's guarantees, requiring armed visitors to private property to obtain what is essentially a license or permit (by receiving consent or permission) from each and every property owner, before they may visit the property while armed. Like in the First Amendment context, the CCIA violates not only the Second Amendment rights of visitors to my home, but also my right to receive them on my terms.

21. Through the CCIA, the state has taken my rights as a property owner to decide the terms on which to invite or exclude visitors to my property (and my home). The CCIA requires me to

publicly take a position one way or the other on an issue that is highly contentious and divisive in this state, whereas before we could simply stay silent.

I declare under penalty of perjury that the foregoing is true and correct.

September 19, 2022
Date

Ivan Antonyuk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

IVAN ANTONYUK, COREY JOHNSON, ALFRED TERRILLE, JOSEPH MANN, LESLIE LEMAN, and LAWRENCE SLOANE, Plaintiffs, v. KATHLEEN HOCHUL, in her Official Capacity as Governor of the State of New York, KEVIN P. BRUEN, in his Official Capacity as Superintendent of the New York State Police, Judge MATTHEW J. DORAN, in his Official Capacity as the Licensing-official of Onondaga County, WILLIAM FITZPATRICK, in his Official Capacity as the Onondaga County District Attorney, EUGENE CONWAY, in his Official Capacity as the Sheriff of Onondaga County, JOSEPH CECILE, in his Official Capacity as the Chief of Police of Syracuse, P. DAVID SOARES in his Official Capacity as the District Attorney of Albany County, GREGORY OAKES, In his Official Capacity as the District Attorney of Oswego County, DON HILTON, in his Official Capacity as the Sheriff of Oswego County, and JOSEPH STANZIONE, in his Official Capacity as the District Attorney of Greene County, Defendants.	)	Civil Action No. _____

DECLARATION OF PASTOR JOSEPH MANN

Exhibit "8"

1. My name is Pastor Joseph Mann. I am a U.S. citizen and resident of New York, and I live in Oswego County. I am the pastor of Fellowship Baptist Church in Parish, New York. I am a member of Gun Owners of America, Inc., and thus am one of the individuals whose interests were represented by the organizational plaintiffs in *Antonyuk v. Bruen, and in this case as well.*

2. I make this declaration in support of Plaintiffs' Complaint for Declaratory and Injunctive Relief. Unless otherwise stated, I make this declaration based on personal knowledge. If called as a witness, I can testify to the truth of the statements contained therein.

3. I am a law-abiding person, currently possesses and, since 2014, have maintained an New York carry permit authorizing me to possess and carry a handgun during the course of my employment. I am eligible to possess firearms in the State of New York, and have met all the qualifications for licensure, including having good moral character.

4. The recently enacted Concealed Carry Improvement Act ("CCIA"), however, in effect rescinds that permit. It makes off limits all the places I ordinarily possess my firearm, renders my church unable to provide for its own security, forces me to choose between my First and Second Amendment rights in pursuing my ministry and, indeed, utterly destroys my ability to possess firearms, even within my own home. I will be unable to comply with many of the CCIA's restrictions on our ministry, and thus I intend to continue various activities in violation of the CCIA, as explained in detail below.

5. The CCIA defines a "sensitive location" to include "any place of worship or religious observation" (subsection c). In such a location, "a person is guilty of criminal possession of a firearm … when such person possesses a firearm…."

6. Painting with such broad and absurd strokes, one is left to wonder whether New York actually has banned *all religious observation* where firearms are present, as the Bible teaches that

"where two or three are gathered together in my name, there am I in the midst of them." Matthew 18:20. In other words, a Christian family reading the Bible together, a Muslim family fasting during Ramadan, or a Jewish family lighting a menorah in the home, would seem to constitute a "place of worship or religious observation," and thus none of these families could possess firearms within their own homes. Indeed, in early Christianity, churches were typically little more than small gatherings that occurred within the home. Acts 2:46 ("And they, continuing daily with one accord in the temple, and breaking bread from house to house, did eat their meat with gladness and singleness of heart."); Acts 20:20. Even today, many smaller churches that do not have access to a designated "church" building continue to meet in the homes of their members. Each of these locations would seem to constitute a "place of worship or religious observation" where firearms are banned under the CCIA.

7. But even when applied to locations like Fellowship Baptist Church, that are explicitly designated as a "place of worship," the CCIA is still patently immoral and unconstitutional.

8. Fellowship Baptist Church is a small ministry located in the rural upstate town of Parish, New York. We have morning and evening services every Sunday, together with an evening service every Wednesday. In addition, we regularly have other gatherings and events at the church, not only for church attendees but also the general public.

9. Prior to the CCIA's designation of our church as a defenseless, gun-free zone, we have maintained a church security team, consisting of trusted church members who are licensed carry permit holders, and are designated to carry their firearms to provide security and protection to the congregation during worship services. Both myself and this team have received specialized firearms training from a firearms instructor who specializes in church security.

10. Under the CCIA, however, neither myself nor our security team may possess firearms on church property. And, since we are a small church, we are unable to afford to pay for private security who might be exempt from the CCIA. Nor do the taxpayers provide us with armed security or a constant police presence, unlike the Governor and legislators in Albany who have seen fit to disarm us.

11. Based on this Court's recent conclusion that "the CCIA's list of 'sensitive locations' is not deeply rooted in this Nation's historical tradition of firearm regulation," and because neither churches nor anything like them appears in the Supreme Court's list of traditional sensitive locations, I intend to continue to possess and carry my firearm while on church property, in violation of the CCIA.

12. As Pastor of Fellowship Baptist Church, I live in a parsonage on the property. Indeed, my residence is part of the same building as the sanctuary building. In other words, not only is my home on Church property but, in fact, it is part of the church.

13. Moreover, my home is used not only as my family's residence, but also by the church for church business. For example, we have had Bible studies, meetings of elders, and other church gatherings in my home.

14. In other words, under the CCIA, my home is now a "sensitive location." This means that I may not even "possess a firearm" within my own home, including a handgun for self-defense as expressly authorized under *District of Columbia v. Heller*.

15. As the CCIA makes it nearly impossible for ordinary persons such as myself to carry firearms in public, and makes it a felony for me to keep firearms in my own home, ***the CCIA has completely eliminated my rights under the Second Amendment***.

16. Indeed, since I have for many years and still currently possess firearms within my home, it appears as though now I am already in violation of the CCIA by merely possessing an operable firearm in my home for self-defense, even though this conduct is protected under *Heller*.

17. The only way I could come into compliance with the CCIA would be to turn all of my firearms over to the government. In fact, New York City already has sent letters to persons with registered firearms at certain locations, notifying them that their premises have been deemed a "sensitive location," and threatening that they now must turn their firearms over to the police.[1]

18. Under the CCIA, then, I am left with the choice to either hand over my firearms to the state, or to refuse to comply. In other words, as has happened throughout history, my prior ***registration*** of my firearms with the state now has ***led to the point of confiscation*** by the state. I refuse to surrender my firearms to New York State, even though my mere possession of firearms in my home appears to be directly criminalized by the CCIA.

19. In addition to destroying my Second Amendment rights, the CCIA deprives our church of the ability to make its own rules governing the carrying of firearms on church property. Unlike the CCIA's restricted locations, there is no ability to opt out of the prohibitions on firearms in "sensitive locations." Thus, I am unable to permit parishioners, even law-abiding ones with carry licenses and substantial training, to carry during services. We may not even have our church security team, of the type that have successfully stopped mass shootings in other states, such as Jack Wilson who stopped an intended mass shooter at the West Freeway Church of Christ in Texas,[2] or Charl Van Wyk, a churchgoer in South Africa who deterred "[a] group of attackers" who "stepped through the doorway and lobbed grenades affixed with nails at the congregation,"

[1] https://i.redd.it/m4uk6vzrr3l91.png
[2] https://en.wikipedia.org/wiki/West_Freeway_Church_of_Christ_shooting

"[t]hen [] opened fire with their assault rifles."[3] In fact, under the CCIA, Stephen Willeford presumably would today be a felon for stopping the Sutherland Springs church shooter with his AR-15.[4]

20. Unwilling to allow the CCIA to turn my church family into unarmed, defenseless sitting ducks, I have no choice but to violate this immoral, unbiblical, and unconstitutional law, and intend to continue to possess my firearm in my church and in my home.

21. As Martin Luther explained five centuries and five years ago: "Here I stand, I can do no other, so help me God. Amen."

22. I am aware that First Deputy Superintendent Steven Nigrelli of the New York State Police, has threatened persons such as me who violate the CCIA with a policy of "zero tolerance," and intends to arrest me for committing a felony for exercising an enumerated right.[5]

23. Likewise, at least one of the congregants in my church is in local law enforcement and, as part of the church, is aware of my inability to avoid violating the CCIA by keeping a firearm in my home on church property.

24. Additionally, Sheriff Don Hilton of Oswego County, although pro-gun, highly critical of CCIA, expressing support of Second Amendment rights, and who states his belief the CCIA to be unconstitutional and that much will be struck down, nevertheless has also made statements about

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[3] https://www.wnd.com/2016/07/dodge-my-bullets-st-james-massacre-hero-pushes-self-defense/#MwgdpWoZ232ZP1bY.01/

[4] https://en.wikipedia.org/wiki/Sutherland_Springs_church_shooting

[5] For example, First Deputy Superintendent Steven Nigrelli of the New York State Police stated that "[w]e ensured that the lawful, responsible gun owners have the tools now to remain compliant with the law. For those who choose to violate this law … Governor, it's an easy message. I don't have to spell it out more than this. We'll have zero tolerance. If you violate this law, you will be arrested. Simple as that. Because the New York state troopers are standing ready to do our job to ensure ... all laws are enforced." https://youtu.be/gC1L2rrztQs?t=2281 (at 38:00 minutes). If that is not a credible threat of enforcement, it is hard to see what would be.

enforcement of the CCIA. For example, in a July 13, 2022 Facebook post, Sheriff Hilton stated that "I'll be clear, as long as I'm the Sheriff in this county … we're going to be very conservative in enforcement of this law."[6] However, even conservative enforcement is still enforcement. Likewise, in a July 20, 2022 Facebook post, the Sheriff explained how, "Under the new law, taking a legally licensed firearm into any sensitive area – such as a … church … is a felony punishable by up to 1 1/3 to 4 years in prison." In other words, the Sheriff specifically articulated how my intended conduct is a felony. Finally, in an August 31, 2022 Facebook post, the Sheriff warned that "If you own a firearm please be aware of these new laws as they will effect [sic] all gun owners *whether we agree with them or not*." Emphasis added.

25. I intend this act of civil disobedience because the CCIA violates not only my Second Amendment rights and those of my congregation, but also my free exercise of religion protected by the First Amendment. As an elder and the pastor of my church, I understand my role to be that of an under-Shepherd, under the authority of the chief Shepherd, Jesus Christ. I am instructed to "Feed the flock of God which is among you...." I Peter 5:1-4. Likewise, Acts 20:28 instructs "Take heed therefore unto yourselves, and to all the flock, over the which the Holy Ghost hath made you overseers, to feed the church of God, which he hath purchased with his own blood." In other words, part of my duty is to provide protection for persons in my congregation, as shepherds do their flock. While that protection is primarily spiritual, I view providing physical protection to the best of my ability to be part of my duty as well.

26. In addition to the church ministry, Fellowship Baptist Church provides and has provided counseling and assistance in the context of many of the "sensitive location" settings in the CCIA, including to the homeless, youth, in the domestic violence and abuse setting, and others. To the

[6] **Error! Main Document Only.**https://www.facebook.com/SheriffDonHilton

extent that our church operates in that capacity, the CCIA (subsection k) appears to prohibit our possession of firearms as well, and thus inhibits our ability to provide security for those under our care.

27. Indeed, there has been more than one situation over my years as a pastor where the security of myself, my family, and the members of our church has been far from a guarantee. In such situations, I have felt necessary to be armed with my handgun, not in any way wishing to use it, but being prepared to defend myself and others if the need arose.

28. In addition to being a place of "religious observation," Fellowship Baptist Church also provides an addiction recovery ministry through "RU Recovery." In that capacity, I frequently have traveled to the homes of persons addicted to drugs, in order to counsel them to seek help and voluntarily enter treatment. In this role, I have carried my firearm for my own defense and the defense of others. Drug users are often unpredictable, do not think and reason clearly, and potentially can present a risk to themselves or others. The CCIA, however, makes it impossible for me to both perform this ministry and also carry my firearm, as it declares all private property to be a "restricted location," and requires me to obtain the "express consent" of a drug user (often high on drugs) before entering his or her home to provide help. That is an absurd choice (either stop helping people, or forfeit my constitutional rights), and I cannot comply. Rather, but for the CCIA, I would intend to continue to carry my firearm while providing this ministry, as I have in the past.

29. Moreover, as part of the RU Recovery program, we have brought persons in the program to church property for counseling and care. To that extent, the CCIA appears to separately ban firearms, as in "any location providing health, behavioral health, or chemical dependence care or

services" (subsection b). I cannot comply with that prohibition, and intend to continue to operate as I always have with respect to possessing my firearms at the church.

30. Next, during our Sunday services, Fellowship Baptist Church has a nursery, a Sunday School, and a Junior Church, both of which cater to the younger members of our congregation. It would appear that the CCIA separately would prohibit me, our staff, and our church security from providing security to our children, as it bans firearms at "nursery schools, preschools, and summer camps" (subsection f). I cannot comply with that restriction, and I intend to continue to possess firearms on church property to protect our entire congregation, including our children.

31. Additionally, Fellowship Baptist Church offers its facilities to a local homeschool coop, wherein we provide students not only with a place to meet and interact, but also my wife and I teach various classes to the students, including foreign language classes, including in my home. In other words, our church at times operates as a school for the education of children, and thus firearms are once again banned on church property (subsection m) by the CCIA. I cannot comply with that restriction, and intend to continue to operate as I always have with respect to possessing firearms at the church, in order to protect our entire congregation, including our students when they are under our care.

32. Likewise, the CCIA places off limits "any gathering of individuals to collectively express their constitutional rights to ... assemble[.]" Subsection s. This would seem to seem to cover a church service. To the extent that this section covers our church activities, I do not intend to comply.

33. Next, our church also maintains both a church bus and a church van which we use for church business to travel to various locations. We routinely take our own church members, our youth, and members of the public with us when we travel. Widely banning firearms in "public

transportation" vehicles, the CCIA appears as if it might ban possession of a firearm in our "bus[]" (subsection n), even if, hypothetically, a group of men from the church met with their firearms to go on a hunting trip, or to the shooting range. To the extent that the CCIA applies to our church bus or van, I do not intend to comply.

34. Finally, notwithstanding that our church is specifically listed in the CCIA as off-limits, it separately appears to be covered by another section of the CCIA, in that our church plays music before, during, and after worship services, and the CCIA bans firearms at a "performance venue" or "concert[]" (subsection p) and additionally a "banquet hall" as we often break bread together. The CCIA does not appear to include an exemption even for the Lord's Supper (the Sacrament).

35. The principle of self-defense and defense of others is well established in Scripture. Many who oppose gun ownership are quick to refer to Isaiah 2:4: "[T]hey shall beat their swords into plowshares, and their spears into pruninghooks: nation shall not lift up sword against nation, neither shall they learn war any more." However, that verse applies only to the Millenial Kingdom when Christ rules. The verse that applies to this time is Joel 3:10 which teaches the exact opposite: "Beat your plowshares into swords and your pruninghooks into spears: let the weak say, I am strong."

36. When Jesus was instructing his followers at the Last Supper to go out into the world after he would leave his earthly ministry, he made it clear that they would need to be armed: "Then said he unto them ... and he that hath no sword, let him sell his garment, and buy one." Luke 22:36. I view a firearm as today's equivalent to a sword in those days.

37. In addition to its Biblical roots, the principle of self-defense and defense of others is built into the common law, which had Christianity as its core. St. George Tucker's version of Blackstone's Commentaries states: "This may be considered as the true palladium of liberty.... The

right of self defence is the first law of nature: in most governments it has been the study of rulers to confine this right within the narrowest limits possible. Wherever standing armies are kept up, and the right of the people to keep and bear arms is, under any colour or pretext whatsoever, prohibited, liberty, if not already annihilated, is on the brink of destruction."[7]

38. St. George Tucker was expressing a Biblically-based truth with which I agree. Governments which restrict the Biblical, inherent, right of self-defense and defense of others are moving the state to the annihilation of liberty and the bringing the nation to the brink of destruction.

39. Particularly as a pastor of my church, I view any act by a governmental entity to disarm me as a violation of my right of self-defense and to defend others. Such a law would be unrighteous, rendering me incapable of carrying out my duty to defend of myself, my family, and my congregation. "No man can enter into a strong man's house, and spoil his goods, except he will first bind the strong man; and then he will spoil his house." Mark 3:27. With enactment of the CCIA, the government seeks to bind me by disarming me, rendering me unable to protect those entrusted to me.

40. I believe that God has ordained and created all authority consisting of three basic institutions: 1) the home; 2) the church; and 3) the state. Every person is subject to these authorities, but all (including the authorities themselves) are answerable to God and governed by His Word. God has given each institution specific Biblical responsibilities and balanced those responsibilities with the understanding that *no institution has the right to infringe upon the other*. The home, the church, and the state are equal and sovereign in their respective Biblically assigned spheres of responsibility under God (Romans 13:1-7; Ephesians 5:22-24; Hebrews 13:17; 1 Peter 2:13-14).

[7] https://press-pubs.uchicago.edu/founders/documents/amendIIs7.html

41. The CCIA, however, alters and usurps that balance, intruding into matters of the church. Moreover, as this Court has explained, the CCIA upsets the constitutional balance and violates enumerated rights. As "[a] Law repugnant to the Constitution is void" (*Marbury vs. Madison*, 5 US (2 Cranch) 137, 174, 176, (1803)), I cannot comply with its unconstitutional restrictions.

42. Whenever possible, I obey the law of the civil government. However, in the book of Acts, we learn that Peter and the other Apostles were ordered not to teach in the name of Jesus. Obedience to that order would constitute disobedience to God. How was this to be resolved? In Acts 5:29, we are told: "Then Peter and the other apostles answered and said, We ought to obey God rather than men."

43. Therefore, for Bible-believing Christians, it is clear that there may be times in which the civil authorities direct us to do what we cannot do while fulfilling our duty to God. In such circumstances, we are to obey God, and not men. This is one of those times.

I declare under penalty of perjury that the foregoing is true and correct.

September 19 2022
Date

Joseph Mann

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

IVAN ANTONYUK, COREY JOHNSON, ALFRED TERRILLE, JOSEPH MANN, LESLIE LEMAN, and LAWRENCE SLOANE, Plaintiffs, v. KATHLEEN HOCHUL, in her Official Capacity as Governor of the State of New York, KEVIN P. BRUEN, in his Official Capacity as Superintendent of the New York State Police, Judge MATTHEW J. DORAN, in his Official Capacity as the Licensing-official of Onondaga County, WILLIAM FITZPATRICK, in his Official Capacity as the Onondaga County District Attorney, EUGENE CONWAY, in his Official Capacity as the Sheriff of Onondaga County, JOSEPH CECILE, in his Official Capacity as the Chief of Police of Syracuse, P. DAVID SOARES in his Official Capacity as the District Attorney of Albany County, GREGORY OAKES, In his Official Capacity as the District Attorney of Oswego County, DON HILTON, in his Official Capacity as the Sheriff of Oswego County, and JOSEPH STANZIONE, in his Official Capacity as the District Attorney of Greene County, Defendants.	)	Civil Action No. _____

DECLARATION OF ALFRED TERRILLE

Exhibit "9"

1. My name is Alfred ("Al") Terrille. I am a U.S. citizen and resident of New York, and I live in Albany County. I am a member of Gun Owners of America, Inc., and thus am one of the individuals whose interests were represented by the organizational plaintiffs in *Antonyuk v. Bruen*, and in this case.

2. I make this declaration in support of Plaintiffs' Complaint for Declaratory and Injunctive Relief. Unless otherwise stated, I make this declaration based on personal knowledge. If called as a witness, I can testify to the truth of the statements contained therein.

3. I am a law-abiding person who currently possesses and has maintained an unrestricted New York carry permit since 1994. I am eligible to possess and carry firearms in the State of New York, and have met all the qualifications for licensure, including having good moral character.

4. Not only do I possess a New York carry license, but also I routinely carry my handgun concealed when I leave home. To be sure, I do not carry in courthouses, schools, government buildings, or the other obvious "sensitive places" the Supreme Court has described, where the government often provides security in the form of armed guards and metal detectors. Otherwise, being responsible for my own security and that of my family, my gun generally does not leave my side when I leave the house, and goes where I go.

5. However, due to the recent implementation of the Concealed Carry Improvement Act ("CCIA"), I am now in jeopardy of arrest and prosecution as a felon, not to mention having my firearm seized and my permit revoked, and my constitutional rights forfeited, merely for carrying in the completely ordinary and entirely non-sensitive locations in which I previously carried my firearm.

6. For example, in addition to being a father, I am now grandfather to 5 grandchildren. In that role, it is my duty to protect my family, regardless of the State of New York's attempts to

disarm me, subjugate me, and infringe my Second Amendment rights through passage of the CCIA. Put simply, my duty to my family trumps any duty to disarm in acquiescence to a clearly unconstitutional statute.

7. As part of my activities with my grandchildren, we routinely see movies, both at movie theaters and at drive-in locations within Albany County. This activity occurs repeatedly throughout the year, and we will see a movie again at some point within the next 60 days. In the past, I have carried my concealed firearm during such outings, yet the CCIA will now make me a felon for doing this entirely ordinary family activity in entirely ordinary and non-sensitive locations (subsection p). Indeed, this sort of public location is the type of place where I absolutely need to be able to protect my family. Based on this Court's recent conclusion that "the CCIA's list of 'sensitive locations' is not deeply rooted in this Nation's historical tradition of firearm regulation," and because neither movie theaters nor anything like them appears in the Supreme Court's list of traditional sensitive locations, I intend to continue to carry my firearm when I go to movie theaters with my grandchildren, in violation of the CCIA.

8. I also routinely take my grandkids to Thatcher State Park, in Albany County, where we utilize the hiking trails, picnic areas, and playground for children. I intend to carry my firearm when my family visits the Park in the future, something that occurs and will continue to occur on at least a monthly basis (CCIA subsection d).

9. I have been planning and, within the next 60 days, I will take a trip to visit the state of Tennessee. Since Tennessee is a constitutional carry state that respects the Second Amendment rights of all Americans to bear arms, I will bring my firearm with me. I have not yet booked a flight, but I plan to travel by airplane, departing via the Albany International Airport. I have done some research into flights, and it looks like a ticket with one stop in Charlotte, NC will be under

$500 to Chattanooga, TN, or under $350 to Nashville, TN. Thus, I will continue watching prices, and will purchase a ticket in the coming weeks, for travel within the next two months. However, the unconstitutional CCIA makes it a crime for me to take this trip, criminalizing my taking my firearm with me to the airport, even unloaded, locked, and properly declared in my checked luggage in compliance with federal regulations. In fact, the CCIA bans possession of firearms in "any place … or vehicle used for public transportation," which expressly includes "airports" and by inference would include an airplane as well (since it is a vehicle) (subsection n). Nor would I be able to store my firearm in my vehicle in an airport parking lot, before taking a trip. In other words, the CCIA will subject me to arrest and criminal prosecution should I bring my firearm to the airport for my upcoming trip. Since I intend to check my firearm with my luggage in accordance with TSA regulations, which requires declaring the firearm, I would be essentially telling authorities that I am in illegal possession of a firearm, opening myself to prosecution under the CCIA.

10. Although I intend to travel to Tennessee by airplane, even if I were to travel by car, it would take me approximately 2.5 to 3 hours to drive directly out of New York State. Along the way, I would be effectively prohibited from making any stops, such as to use the bathroom, or even onto the parking lot of a gas station, rest stop, or fast-food restaurant, unless I have foreknowledge that a sign has been posted welcoming carrying (an impossibility in places where I do not routinely travel and/or have never been). In fact, I *cannot even stop in a parking lot to find out* if I may carry at a specific location, without violating the CCIA.

11. In other words, the CCIA greatly impairs my freedom of travel. I find this highly ironic, given that Governor Hochul has publicly asked all Republicans to leave New York State,[1] but also

[1] https://nypost.com/2022/08/25/kathy-hochuls-call-for-5-4m-republicans-to-leave-new-york-is-dangerous/

has signed into law a bill making it difficult (if not impossible) for me to do so with my firearm. In the next 60 days, I will travel to Tennessee via airplane, and I intend to bring my firearm with me in my checked luggage, in full compliance with 18 U.S.C. Section 926A, and/or TSA regulations.

12. The CCIA also makes it a felony for me to peaceably carry my firearm to entirely ordinary and non-sensitive locations that I routinely visit. For example, my bank, the First National Bank of Scotia, is a local bank with only a few branches in upstate New York. I have never been made aware of any anti-gun policy of the bank, nor does the bank have any posted signage stating that firearms are not allowed. On the other hand, nor does the bank have any sign stating that I *may* carry. This leaves me in an impossible situation where I essentially need to go into a bank, declare that I have a gun, and ask if it is permissible for me to carry. That is ridiculous, and I will not do that. Rather, I intend to continue carrying my firearm to my local bank in violation of the CCIA, because I will be doing so without the presence of "conspicuous signage" or having received "express consent," unless the bank asks me to leave my firearm in my vehicle.

13. In addition to my local bank, I routinely carry my firearm when out and about in public, including when I go shopping at various locations in Albany County, such as gas stations, grocery stores (such as Hannaford Supermarket and Price Shopper), home improvement stores, big box stores, etc. Many of the stores have corporate policies which permit the carry of firearms, including Walmart, Walgreens and Target.[2] I would estimate that, at least once a week, I visit one or more of these retailers. However, the CCIA now declares such locations to be "restricted locations," and bans my carrying of a firearm on the premises unless I have the affirmative consent of the owner, or there is specific signage posted. However, obtaining such consent is entirely

[2] https://thehill.com/policy/finance/460336-here-are-the-gun-policies-for-americas-largest-retailers/#:~:text=Since%20July%202014%2C%20Target%20has,a%20statement%20at%20the%20time.

impractical. Moreover, since the CCIA's implementation, few if any locations have posted signs welcoming concealed carry license holders, even if the business otherwise supports or allows concealed carry. In fact, to my knowledge, *none* of these retailers listed above has taken the affirmative steps to post signage to opt out of the CCIA.

14. Nor is it practical for me to disarm, approach such a business, ask permission from a low-level employee who will no doubt be unfamiliar with store policy and need to ask the manager (if not contact corporate), wait for a response, then re-arm myself – all merely to pick up a few things at the store. Indeed, even if I receive permission at one point in time, such policy could change at any time and without notice, thus putting me at constant risk of committing a crime unawares.

15. Since it is between me and a business – not New York state – whether I carry my firearm there, I intend to continue carrying my firearm in various businesses and establishments in Albany County, in violation of the CCIA's restriction on "prohibited locations" that are not conspicuously posted with signage. Unless this Court strikes down that provision of the CCIA, simply going peaceably about my daily life will be a crime, pursuant to a statute which this Court has already declared clearly unconstitutional. As such, as "an act of the legislature, repugnant to the constitution," the CCIA "is void." *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

16. I plan to attend the upcoming NEACA Polish Community Center Gun Show, to occur on October 8-9, 2022, in Albany.[3] The gun show is hosted by The Polish Community Center, which describes itself as "a conference center, banquet hall & wedding venue in Albany, NY."[4] Under the CCIA, however, guns are entirely banned at "conference centers" and "banquet halls" (subsection p), and there is no provision for the community center to opt out and expressly allow firearms. Moreover, one of my main reasons for attending, and a huge part of any gun show, is

[3] https://gunshowtrader.com/gun-shows/albany-ny-gun-show/
[4] https://www.albanypcc.com/

the conversations with fellow gun owners, which invariably includes discussion of New York State's tyrannical gun laws. In other words, a gun show is, almost by definition, a "gathering of individuals to collectively express their constitutional rights to protest or assemble" (subsection s) and, thus, the CCIA appears to entirely ban gun shows. I currently plan to attend the upcoming Albany gun show, and I intend to carry my firearm with me when I do, in violation of the CCIA, but based on my understanding of this Court's recent opinion and the Supreme Court's decision in *Bruen* that "'sensitive places' may not include all 'places where people typically congregate and where law-enforcement and other public-safety professionals are presumptively available.'" *Antonyuk* at *87.

17. I currently live in an apartment complex in Albany County. In other words, I am a tenant, and I have a landlord. Although I have certain property rights as a leaseholder, it is my understanding that my apartment complex does not permit residents to post signage outside their units. Although I have given myself express consent to be armed in my own home, it is not feasible for me to expressly consent to the carry of firearms by each individual person who visits my home, including deliverymen, repairmen, friends, family, etc. Thus, the CCIA requires that I post "clear and conspicuous signage" stating that my home is pro-gun. However, I am unable to post such signage as per the terms of my lease. Certainly, I am not permitted to post signage outside my own unit, to permit visitors to my home to park in the common parking lots, and walk on the common sidewalks, when visiting my home. I am thus unable to fully "opt out" of the CCIA's taking my property and declaring it to be an anti-gun location, essentially converting my home from a "restricted location" to a "sensitive location."

18. In the past, I have attended pro-gun rallies, and done so while armed. For example, in 2013 and 2014, I attended more than one rally in Albany, before and after the New York SAFE Act was

passed, which occurred on public sidewalks and streets. The CCIA, however, makes me choose between two constitutional rights, banning Second Amendment rights at First Amendment protected activities, potentially under multiple subsections (subsections a, d, p, r, and s). If firearms were not already prohibited at a rally under subsection (s), then alternatively a rally likely might constitute a "special event" where a permit is required under subsection (r). The CCIA's restrictions are clearly unconstitutional, because the rallies I have attended, where guns are now banned, are in no way "sensitive locations," as they occur on public streets, sidewalks, parks, and squares. I do not presently know of any upcoming pro-gun or pro-freedom rally currently scheduled in New York but, if there were one, I would jump at the opportunity to attend it to express my political views, and I would do so while carrying my firearm, in clear violation of the CCIA.

19. I also routinely go out to eat with my grandkids, including at restaurants such as Applebee's and Mo's Southwest Grill, which are considered "sensitive locations" by the CCIA (subsection o) because they serve alcohol, even if I am not sitting at the bar or consuming any alcoholic beverage. Neither restaurant has any signs prohibiting the carrying of firearms, nor appears to publicly state any anti-gun policy. In other words, I would be permitted to carry when I go to eat, if not for the CCIA. Based on this Court's recent opinion, and because neither restaurants nor anything like them appears in the Supreme Court's list of traditional sensitive locations, I intend to continue to carry my firearm when I go out to eat with my grandkids, an event that will occur within the next 30 days.

20. Not only do I intend to engage in various constitutionally-protected acts which are now made unlawful under the CCIA, but also I face a credible threat of prosecution, as my specific intentions to break the law are now made public through this filing.

21. For example, First Deputy Superintendent Steven Nigrelli of the New York State Police, has threatened persons such as me who violate the CCIA that "[w]e ensured that the lawful, responsible gun owners have the tools now to remain compliant with the law. For those who choose to violate this law … Governor, it's an easy message. I don't have to spell it out more than this. We'll have zero tolerance. If you violate this law, you will be arrested. Simple as that. Because the New York state troopers are standing ready to do our job to ensure ... all laws are enforced."[5] If that is not a credible threat of enforcement, it is hard to see what would be.

22. What is more, I am far more likely (if not guaranteed) to have a run-in with law enforcement when I arrive at the airport and declare to authorities that I have a firearm to check with my baggage. Under the CCIA's plain text, I believe there to be a strong likelihood that I could be arrested charged with a felony under the state's announced "zero tolerance" policy, when I bring my firearm to the airport to check for my upcoming flight.

I declare under penalty of perjury that the foregoing is true and correct.

September 19, 2022
Date

Alfred Terrille
Alfred Terrille

[5] https://youtu.be/gC1L2rrztQs?t=2281 (at 38:00 minutes).