

**IN THE
SUPREME COURT OF MARYLAND**

September Term, 2024
No. 5 Misc.

DONALD S. WILLEY AND THE SECOND AMENDMENT FOUNDATION,
Plaintiffs-Appellants,

v.

ANTHONY G. BROWN, ET AL.,
Defendants-Appellees.

Certified Questions of Law from the
United States District Court for the District of Maryland
No. 23-cv-2299-BAH
Honorable Brendan A. Hurson, United State District Judge

**BRIEF OF *AMICI CURIAE* BRADY CENTER TO PREVENT GUN VIOLENCE,
GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE, MARYLANDERS
TO PREVENT GUN VIOLENCE, KELLY ROSKAM, AND TIM CAREY IN
SUPPORT OF DEFENDANTS-APPELLEES**

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I. INTEREST OF *AMICI CURIAE*¹

Amici curiae are three non-profit organizations and two legal practitioners with critical expertise in gun safety legislation. Brady Center to Prevent Gun Violence is the Nation’s oldest non-partisan, non-profit organization dedicated to reducing gun violence through education, research, legal advocacy, and political action. Giffords Law Center to Prevent Gun Violence is a non-profit policy organization serving lawmakers, advocates, legal professionals, gun violence survivors, and others seeking to reduce gun violence and improve the safety of their communities. Marylanders to Prevent Gun Violence is a state-level nonprofit dedicated to reducing all types of gun violence in Maryland through evidence-based programmatic and policy work. Kelly Roskam, Director of Law and Policy at the Johns Hopkins University Bloomberg School of Public Health Center for Gun Violence Solutions (“Johns Hopkins Center for Gun Violence Solutions”), is an attorney who has been working on gun violence prevention for over a decade. Tim Carey, Law and Policy Advisor at the Johns Hopkins Center for Gun Violence Solutions, is an attorney who uses their expertise in public health and constitutional law to reduce gun violence through the law. As part of their work, *Amici* support common-sense gun safety regulations, such as Md. Pub. Safety §§ 5-601 et seq. (the “Maryland ERPO Law”).

Amici have a strong interest in this Court reaching the correct interpretation of Md. Pub. Safety §§ 5-603 and 5-604, which help prevent suicides and other gun violence by

¹ In accordance with Maryland Court Rule 8-511(a)(1), all parties have consented to this filing. No party’s counsel authored any part of this brief, and no one other than *Amici* contributed to its preparation or submission.

providing a judicial process through which individuals who are a danger to themselves and others may be required to temporarily surrender firearms in their possession.

II. INTRODUCTION

Extreme Risk Protection Orders (“ERPO”) such as those established under the Maryland ERPO Law provide a way to help prevent mass shootings and other gun-related tragedies by requiring a person to surrender their firearms temporarily after an evidentiary showing and a judicial determination that the person has demonstrated clear warning signs of committing violence. *Amici* respectfully submit this brief to explain how the Maryland ERPO Law protects gun owners and all Marylanders, and to make four points bearing on the certified questions.

First, Amici recount the history and purpose of ERPO laws, which have been enacted by 21 states (including Maryland) and the District of Columbia. Modern-day ERPOs were first conceived after mass shootings in Connecticut and California, with the goal of preventing similar tragedies in the future. Since states began enacting ERPO laws nearly 30 years ago, research has shown that ERPO laws can prevent mass shootings, suicides, and other gun violence. The Maryland ERPO Law—bipartisan legislation enacted to reduce gun violence and prevent harm to Marylanders, including gun owners—fits squarely within this tradition.

Second, Amici explain how the Maryland ERPO Law works in practice. As enacted, the Law sets forth a three-step process for entering an interim or temporary ERPO. First, a petitioner may seek an ERPO only if the petitioner sets forth specific facts, and explains their basis for knowledge of those facts, that a “respondent presents an immediate and

present danger of causing personal injury to the respondent or others.” Md. Pub. Safety § 5-602(a)(1)(iii), (iv). Second, the petitioner must file a petition—under penalty of perjury—setting forth the respondent’s specific behavior and statements, as well as any other information leading the petitioner to believe that the respondent poses a danger to himself or others. Third, a judicial officer—either a district court commissioner or a judge, depending on when the petition is filed—must consider the evidence presented and the amount of time that has passed since the events described in the petition. The commissioner or judge may then enter an interim or temporary ERPO if there are “reasonable grounds to believe that the respondent poses an immediate and present danger of causing personal injury to the respondent, the petitioner, or another by possessing a firearm.” *Id.* §§ 5-603(a)(1), 5-604(a)(1).

Third, Amici explain the practical impact of ERPOs on suicide rates and gun violence in Maryland and around the country. The salutary effect of ERPOs has been widely recognized, including by the U.S. Department of Justice (“DOJ”), which launched the National ERPO Resource Center to provide training and technical assistance to local officials seeking and enforcing ERPOs around the country. And research demonstrates a direct link between ERPOs and gun violence prevention: for every ten to twenty ERPOs issued, one suicide is averted, and a substantial number of ERPOs are issued in response to mass shooting threats, preventing the respondent from accessing firearms before they have a chance to carry out a potential massacre.

Finally, Amici explain how Appellants are wrong to argue that a difference between the number of interim and temporary ERPOs and the number of final ERPOs suggests a

flaw in the statutory scheme. To the contrary, interim and temporary ERPOs provide time for respondents to get the help they need, or for law enforcement to investigate and avert a threat, or to determine that none exists.

III. ARGUMENT

A. The Success of ERPO Laws Nationwide Prompted Maryland to Enact Its Own Statute to Save Lives.

First enacted in the late-1990s to prevent mass shootings, ERPO laws were proven to reduce all kinds of gun violence, especially suicide, and have since gained popularity in state legislatures as an important tool to combat gun violence throughout the country. Following a 1998 mass shooting where a Connecticut Lottery employee killed four of his bosses before taking his own life,² Connecticut passed a first-of-its-kind law known as a “risk-based gun removal law.”³ Under the law, a Connecticut district attorney or two law enforcement officers could seek a warrant to temporarily disarm an individual who possessed one or more firearms and posed “a risk of imminent personal injury to himself or herself or to other individuals[.]” 1999 Conn. Legis. Serv. P.A. 99-212 (S.S.B. 1166) § 18, codified at Conn. Gen. Stat. Ann. § 29-38c. Though Connecticut’s law helped prevent suicides,⁴ its applicability and effect were limited. Connecticut’s law applied only

² Lori Mack, *Connecticut Remembers Lottery Shooting That Prompted First-Of-Its Kind Gun Legislation*, Conn. Radio (Mar. 6, 2018), <https://tinyurl.com/y35uayj7>.

³ See Giffords Law Center to Prevent Gun Violence, *Extreme Risk Protection Orders: Firearm Removal Laws*, <https://tinyurl.com/4cpft7zb> (last visited Nov. 6, 2024). Indiana and Illinois also enacted such ERPO-style laws. *See id.*

⁴ See Jeffrey W. Swanson et al., *Implementation and effectiveness of Connecticut’s risk-based gun removal law: Does it prevent suicides?*, 80 L. & Contemp. Probs. 179, 199–

to individuals who already possessed a firearm, and it did not bar these individuals from purchasing more guns after law enforcement removed the guns they already owned pursuant to a warrant. In other words, there was no mechanism to prevent individuals displaying clear warning signs of violence or self-harm from acquiring firearms.⁵

In 2014, after a mass shooting near the UC Santa Barbara campus that left six students dead and more than a dozen others injured,⁶ California enacted a statute that set the standard for modern ERPO laws across the country, including Maryland’s ERPO Law. The California statute required the surrender of firearms when an individual was determined by a judicial officer to “pose[] a significant danger, in the near future, of causing” harm via firearm. 2014 Cal. Legis. Serv. Ch. 872 (A.B. 1014) Ch. 3, codified at Cal. Penal Code §§ 18150 et seq.⁷ The California statute also closed the loophole in the original Connecticut statute, which applied only to existing gun owners and allowed ERPO-subject individuals to purchase additional firearms, by barring an individual subject

206 (2017) (finding that from 1993 to 2013, for every 10-20 warrants issued, one suicide was prevented); Reena Kapoor et al., *Extreme Risk Protection Orders in Connecticut, 2013-2020*, 52 J. Am. Acad. Psych. & L. 1, 8–11 (2024) (finding that Connecticut warrants were most often issued for suicide prevention rather than interpersonal violence).

⁵ See David M. Studdert et al., *Handgun Ownership and Suicide in California*, 382 New Engl. J. Med. 2220, 2226–28 (2020) (finding that risk of suicide peaked immediately after first handgun ownership).

⁶ Similar to the Connecticut incident, see Mack, *supra* note 2, police visited the shooter in the lead up to the attack but did not have sufficient grounds to intervene, see Kate Mather et al., *Deputies didn’t view Eliot Rodger’s videos in welfare check*, L.A. Times (Mar. 29, 2014), <https://tinyurl.com/bdh6dh2m>.

⁷ In California, the law is known as a gun violence restraining order or “GVRO.”

to an ERPO from “purchas[ing], possess[ing], or receiv[ing], or attempt[ing] to purchase or receive any firearm, ammunition, or magazine while” the ERPO was in effect. *Id.* § 18155.⁸ California also broadened the class of people who could petition for an ERPO to include immediate family members of a respondent. *Id.*⁹

ERPOs have been proven to reduce gun violence, *infra* at III.C,¹⁰ and the broader statutory protections introduced by California have increased the efficacy of ERPO laws. A 2021 study of ERPO petitions in Oregon found that closing the purchase loophole saved lives: Petitioners filed the ERPO petitions “specifically to prevent a non-gun owning respondent from acquiring a gun due to concerns about the increased risk of harm that would pose.”¹¹ The same study also concluded that the “high percentage of petitioners in [the] sample that were family or household members and the finding that over half of those petitions were granted, suggests that this is an important petitioner group to include in the

⁸ Connecticut has since enacted updated legislation to align with California’s statute. *See* Conn. Gen. Stat. Ann. § 29-38c; *see also* Jillian Gilcrest, *Red Flag Law* (May 13, 2021), <https://tinyurl.com/5annuww8> (describing update to law to close loopholes).

⁹ In 2020 and 2023, California further expanded the list of eligible petitioners to include immediate family members, employers, coworkers, teachers, law enforcement officers, roommates, or individuals who have a dating relationship or child in common with the respondent. Cal. Penal Code § 18155 (effective Jan. 1, 2023).

¹⁰ *See also* Swanson et al., *Implementation and effectiveness of Connecticut’s law*, *supra* note 4, at 204–06 (explaining that ERPOs prevent suicide).

¹¹ April M. Zeoli et al., *Use of extreme risk protection orders to reduce gun violence in Oregon*, 20 *Criminology & Pub. Pol’y* 243, 256 (2021). The study found that nearly half of “respondents had recently acquired or attempted to acquire a deadly weapon,” and, in five instances, the respondent did not yet possess a gun but was planning to purchase one. *Id.* at 251.

law.”¹² Today, 21 states and the District of Columbia have enacted some variation of ERPO or “red flag” laws.¹³

In the wake of increasing evidence of the efficacy of ERPO laws,¹⁴ the General Assembly began working to enact an ERPO law for Maryland. After a gunman murdered 17 children and staff at Marjory Stoneman Douglas High School in Parkland, Florida in 2018, the General Assembly held hearings on a package of gun-safety bills that included Maryland’s ERPO Law.¹⁵ The purpose of these proposed gun violence protection measures was to help prevent mass shootings, suicide,¹⁶ and the gun violence present “in our communities every day”¹⁷ by “clos[ing] the impulse gap for those who are having a

¹² *Id.* at 257–58; see also Ovetta Wiggins, *Red-flag law in Maryland led to gun seizures from 148 people in first three months*, Wash. Post (Jan. 15, 2019), <https://tinyurl.com/k2rvf5hv> (60% of petitions in first three months of the implementation of the Maryland ERPO Law “came from a family or household member with ‘specific knowledge’ about the person who had access to a gun.”).

¹³ Univ. of Mich. Inst. for Firearm Prevention, *ERPO Laws by State*, <https://tinyurl.com/4yrrkfv7> (last visited Nov. 6, 2024).

¹⁴ See generally Swanson et al., *Implementation and effectiveness of Connecticut’s law*, *supra* note 4 (explaining that ERPOs prevent suicide); Aaron J. Kivisto & Peter Lee Phalen, *Effects of Risk-Based Firearm Seizure Laws in Connecticut and Indiana on Suicide Rates, 1981-2015*, 69 Psych. Servs. 855 (2018) (same).

¹⁵ See *Hearing on H.B. 1302 Before H. Judiciary Comm.*, 2018 Leg., 438th Sess. (Md. 2018), <https://tinyurl.com/3juvsc47> (“March 1 Hearing”) at 02:17:00 (statement of Del. Kathleen Dumais).

¹⁶ *Second Reading of H.B. 1302 Before H. Dels.*, 2018 Leg., 438th Sess. (Md. 2018), <https://tinyurl.com/27942247> (“March 11 Hearing”) at 02:20:30 (statement of Del. Kathleen Dumais) (red flag laws prevent suicides, which account for “two-thirds of all gun deaths” in the United States).

¹⁷ March 1 Hearing, *supra* note 15, at 02:27:03 (statement of Christian Heyne, Legislative Director for the Coalition to Stop Gun Violence, telling story of the murder of his parents and describing how ERPOs are viewed as a straightforward method for preventing the “day to day violence we just [sic] see in our communities every day.”).

bad moment[.]”¹⁸ The bill set forth a “process . . . for Maryland” and enabled “those who have evidence [to] be able to go to the court” to help prevent avoidable gun violence.¹⁹ The Maryland ERPO Law passed on April 24, 2018 with bipartisan support²⁰ and went into effect on October 1, 2018.

B. Maryland’s ERPO Law Requires a Judicial Finding that the Respondent Poses an Immediate and Present Danger of Causing Injury.

A judicial officer may issue an interim or temporary ERPO in Maryland only after hearing sufficient evidence—given under penalty of perjury—and making a “reasonable grounds” determination that the respondent poses an immediate and present danger of causing injury. This multi-step process ensures ERPOs are entered only when necessary to avert violence.

First, a petitioner may seek an ERPO only when they believe “that the respondent poses an immediate and present danger of causing personal injury to the respondent, the petitioner, or another by possessing a firearm.” Md. Pub. Safety § 5-602(a)(ii). Only law enforcement officers, medical professionals, relatives, legal guardians, cohabitants, or intimate partners may petition for an ERPO. *Id.* § 5-601(e)(2).

¹⁸ *Id.* at 03:14:20 (statement of Jess Honke, Policy and Advocacy Director for National Alliance on Mental Illness Maryland).

¹⁹ *Third Reading of H.B. 1302 Before H. Dels.*, 2018 Leg., 438th Sess. (Md. 2018), <https://tinyurl.com/79wu8npx> (“April 3 Hearing”) at 01:45:40 (statement of Del. Kris Valderrama).

²⁰ *See* Ballotpedia, *Extreme risk protection orders in state legislatures*, <https://tinyurl.com/y723c4cw> (last visited Nov. 6, 2024).

Second, a petitioner must file a petition—under penalty of perjury—detailing the respondent’s behavior, statements, and any other information leading the petitioner to believe that the respondent poses a danger to himself or others. The petition must include any information and supporting documents regarding: (i) incidents when the respondent dealt with a firearm in an unlawful, reckless, or negligent manner; (ii) acts or threats of violence by the respondent against himself or others; (iii) previous violations of a peace order or protective order; and (iv) abuse of alcohol or controlled dangerous substances, including related criminal convictions. *Id.* § 5-602(a)(1)(vi). Evidence-based public health research has found that these elements are risk factors for future violence.²¹ The petitioner may include health records and may specify the number, types, and locations of firearms possessed by the respondent, if known. *Id.* § 5-602(a)(i)-(v).

Police departments across Maryland have implemented policies to guide the filing and enforcement of ERPOs when the petitioner is a police officer. These protocols direct officers to consider the following factors, which overlap heavily with the statute, when determining whether to file a petition for an ERPO: (1) specific facts indicating that a respondent poses an immediate or present danger of causing injury to themselves or others; (2) knowledge of supporting facts, including the respondent’s behavior and statements; (3) documents showing threats of violence made involving a firearm, abuse of drugs or

²¹ See Consortium for Risk-Based Firearm Pol’y, *Guns, Public Health, and Mental Illness: An Evidence-Based Approach for State Policy*, at 6 (Dec. 11, 2013), <https://tinyurl.com/k76cs4m9>; Johns Hopkins Center for Gun Violence Solutions, *Alcohol Misuse and Gun Violence: An Evidence Based Approach for State Policy*, at 9 (May 2023), <https://tinyurl.com/yc3vyfcu>.

alcohol, or violation of a peace order or protective order; and (4) health records of information.²²

Third, a judicial officer—either a judge or a district court commissioner, if the petition is filed after the clerk’s office has closed—must consider the evidence presented and the amount of time that has passed since the events described in the petition. Md. Pub. Safety §§ 5-603(a)(2), 5-604(a)(2). The commissioner or judge may enter an ERPO if there are “reasonable grounds to believe that the respondent poses an immediate and present danger of causing personal injury to the respondent, the petitioner, or another by possessing a firearm.” *Id.* § 5-603(a)(1).

If the court is closed when a petition is filed, a District Court commissioner can issue an interim ERPO. When doing so, the commissioner must explain in the ERPO the facts considered and the findings made.²³ An interim ERPO is effective only until the earlier of a temporary ERPO hearing or the end of the second business day after it is issued. Md. Pub. Safety § 5-603(e). If the court is open when a petition is filed, a judge may issue a temporary ERPO, based either on a petition made within business hours or after a commissioner has issued an interim ERPO. *Id.* § 5-604(a); *see also id.*

²² *See, e.g.*, Balt. Police Dep’t, *Policy 1122: Extreme Risk Protective Orders - Firearms*, at 3 (Nov. 20, 2022), <https://tinyurl.com/2pzjj6bb>; Centreville Police Dep’t, *Directive 16.14: Extreme Risk Protective Orders*, at 2 (Oct. 10, 2018), <https://tinyurl.com/2w8ywnc6>; Harford Cnty. Sheriff’s Off., *Operations Policy 1709: Extreme Risk Protective Order*, at 3 (Jan. 13, 2022), <https://tinyurl.com/4kxpwfnz>.

²³ *See, e.g.*, Interim ERPO, at 2, *United States v. Somerlock*, 602 F. Supp. 3d (D. Md. 2022) (No. 19-cr-00369), ECF No. 23-1.

§§ 5-602(b)(1), 5-603(b)(1)(ii), 5-603(c)(2). A judge issuing a temporary ERPO must also explain in the order the facts they considered and the findings they made.

As the foregoing makes clear, the process for obtaining an interim or temporary ERPO ensures that they are entered only when a judicial officer makes a finding that the respondent poses an immediate and present danger after considering evidence-based risk factors.

C. ERPOs Are a Critical Tool for Helping to Prevent Suicide and Mass Shootings in Maryland and Nationwide.

ERPO laws are a central component of bipartisan federal and state efforts to reduce gun violence.²⁴ In February 2023, DOJ announced \$231 million worth of awards across 49 states to fund state crisis intervention court proceedings, including ERPO programs.²⁵ As part of this effort, DOJ also launched the National ERPO Resource Center to provide training and technical assistance to law enforcement officials, prosecutors, attorneys, judges, clinicians, victim service and social service providers, community organizations, and behavioral health professionals responsible for implementing ERPO laws. Legislators

²⁴ Jeffrey W. Swanson, *Preventing Firearm Tragedies by the Numbers—Remembering Why It Matters*, JAMA Network Open, at 1 (June 12, 2024), <https://tinyurl.com/4rhmvucy>.

²⁵ U.S. Dep't of Justice, Off. of Pub. Aff., *Justice Department Announces Over \$200 Million in Investments in State Crisis Intervention* (Feb. 14, 2023), <https://tinyurl.com/mr3myxnr>.

and law enforcement are focused on ERPOs because they work: there is mounting evidence that ERPOs dramatically reduce deaths caused by suicides and mass shootings.

i. Suicide Prevention

Firearms are the most common method of suicide in the United States,²⁶ and the risk of death by suicide is three times higher for people living in a household with firearms.²⁷ Research shows that, among adolescents with a suicide plan, those with a firearm in the home were over seven times more likely to have a plan involving firearms than those without a firearm in the home.²⁸ Deaths from firearm suicide in the United States reached an all-time high in 2023, with 27,300 recorded.²⁹ This eclipsed the previous all-time high that was set the previous year.³⁰ With demand for firearms in Maryland “skyrocket[ing],” the Maryland Governor’s Commission on Suicide Prevention stated that “[e]ven one

²⁶ Suicide Prevention Res. Center, *Means of Suicide*, <https://tinyurl.com/ykx65kxh> (last visited Nov. 6, 2024).

²⁷ Matthew Miller et al., *Updated Estimate of the Number of Extreme Risk Protection Orders Needed to Prevent 1 Suicide*, JAMA Network Open, at 7 (June 12, 2024), <https://tinyurl.com/5e66b63z>.

²⁸ Andrew Anglemyer et al., *The Accessibility of Firearms and Risk for Suicide and Homicide Victimization Among Household Members: A Systematic Review and Meta-analysis*, 160 *Annals Internal Med.* 101, 101 (Jan. 21, 2014).

²⁹ Johns Hopkins Center for Gun Violence Solutions, *Continuing Trends: Five Key Takeaways from 2023 CDC Provisional Gun Violence Data* (Sept. 12, 2024), <https://tinyurl.com/mtbpndps>.

³⁰ See Johns Hopkins Center for Gun Violence Solutions, *Gun Violence in the United States 2022*, at 2 (Sept. 2024), <https://tinyurl.com/39dnnbhc>.

unsecured firearm elevates suicide risk, not only for the firearm purchaser or owner, but also for all members of the household.”³¹

Empirical studies have established that for every ten to twenty ERPOs issued, one suicide is averted.³² Duke University School of Medicine Professor Jeffrey Swanson led the research group that published these groundbreaking empirical evaluations.³³ But his interest in the matter is not solely academic. Years ago, Dr. Swanson’s cousin purchased a shotgun and used it to die by suicide.³⁴ “With the clarity of excruciating hindsight,” Dr. Swanson said that his late cousin’s “ability to acquire a firearm was a decisive factor” in her suicide.³⁵ Dr. Swanson explained that his cousin “had not kept secret her feelings of hopelessness” and had an appointment with a psychiatrist scheduled on the day she died.³⁶ He concluded that if there had been an ERPO law in effect, she could have been denied a firearm at the point of sale.³⁷ Dr. Swanson opined that if his cousin had attempted suicide by different means instead of by using a firearm, “she would very likely have survived.”³⁸

³¹ Governor’s Comm’n on Suicide Prevention, *Maryland’s State Suicide Prevention Plan 2020*, at 15, <https://tinyurl.com/4kt4hvzs> (last visited Nov. 6, 2024).

³² Swanson, *Preventing Firearm Tragedies by the Numbers*, *supra* note 24, at 1 (citing Swanson et al., *Implementation and effectiveness of Connecticut’s law*, *supra* note 4); see Jeffrey W. Swanson et al., *Criminal justice and suicide outcomes with Indiana’s risk-based gun seizure law*, 47 *J. Am. Acad. Psych. L.* 188, 193, 196 (2019).

³³ Duke Univ. Sch. of Psych. & Behav. Sci., *Faculty Profile: Jeffrey W. Swanson*, <https://tinyurl.com/4tktw5uh> (last visited Nov. 6, 2024).

³⁴ Swanson, *Preventing Firearm Tragedies by the Numbers*, *supra* note 24.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 1–2.

³⁸ *Id.*

Research published by the Harvard School of Public Health shows that people who attempt suicide using non-firearm methods “have some time to reconsider mid-attempt and summon help or be rescued [and] [t]he method itself often fails, even in the absence of a rescue.”³⁹ But “[w]ith a firearm, once the trigger is pulled, there’s no turning back.”⁴⁰

The enabling factor of access to a firearm often is the difference between suicidal ideation and death.⁴¹ Approximately 90% of suicide attempts using firearms are fatal,⁴² and the few people who do survive are often left severely disabled.⁴³ By contrast, suicide attempts using methods other than firearms, taken together, have only a four percent fatality rate,⁴⁴ and the vast majority of survivors of a suicide attempt do not go on to die by suicide.⁴⁵ It is the certain, immediate, and catastrophic outcome of using a firearm for self-harm that makes ERPOs integral to suicide prevention. Because suicide attempts using firearms are far more likely to result in death than attempts with other methods, “a legal

³⁹ Harvard Univ. Sch. of Pub. Health, *Firearm Access is a Risk Factor for Suicide*, <https://tinyurl.com/dpbfpkc8> (last visited Nov. 6, 2024).

⁴⁰ *Id.*

⁴¹ Jeffrey W. Swanson et al., *Suicide Prevention Effects of Extreme Risk Protection Order Laws in Four States*, 52 J. Am. Acad. Psych. & L. 327, 328; *see also* Studdert et al., *supra* note 5 at 2227–28.

⁴² Andrew Conner et al., *Suicide Case-Fatality Rates in the United States, 2007 to 2014: A Nationwide Population-Based Study*, 171 *Annals Internal Med.* 885, 891–95 (2019).

⁴³ Swanson et al., *Suicide Prevention Effects in Four States*, *supra* note 41, at 328 (citing Bizhan Aarabi et al., *Predictors of outcome in civilian gunshot wounds to the head*, 120 *J. Neurosurgery* 1138, 1138–46 (May 2014)).

⁴⁴ Everytown for Gun Safety, *Extreme Risk Laws Save Lives* (April 17, 2020), <https://tinyurl.com/2ttse3j7> (citing Conner et al., *supra* note 42, 885–95).

⁴⁵ *Id.* (citing David Owens et al., *Fatal and Non-Fatal Repetition of Self-Harm: Systematic Review*, 181 *British J. Psych.* 193, 193–99 (2002)).

intervention that removes firearms from persons at risk of suicide will have a greater benefit in proportion to how likely it is that a gun would have been used in suicide attempts, absent the intervention.”⁴⁶

Studies of Connecticut’s and Indiana’s ERPO laws cited suicidal ideation as the basis for issuing an ERPO in 61% to 70% of cases.⁴⁷ The states’ respective laws were found to be associated with a 7.5% to 13.7% reduction in firearm suicide over a ten-year period.⁴⁸ These statistics “highlight a remarkable public health opportunity” to reduce suicide fatalities through ERPO laws that are designed to remove the most lethal method of injury for people in crisis.⁴⁹

These statistics are all the more meaningful when considering the people they save—people such as a woman in Washington, D.C., who had told a friend that she was suicidal and told police officers that she was hearing voices and needed help.⁵⁰ Police filed a petition for and received an ERPO, allowing them to secure two firearms, ammunition,

⁴⁶ Swanson, *Preventing Firearm Tragedies by the Numbers*, *supra* note 24, at 3.

⁴⁷ Educ. Fund to Stop Gun Violence, *Extreme Risk Laws*, <https://tinyurl.com/5hxnjzfz> (citing Swanson et al., *Implementation and effectiveness of Connecticut’s law*, *supra* note 4; Swanson et al., *Criminal justice and suicide outcomes with Indiana’s law*, *supra* note 32) (last visited Nov. 6, 2024); *see also* Johns Hopkins Center for Gun Violence Solutions, *Research on Extreme Risk Protection Orders*, <https://tinyurl.com/2s4fnz2c> (last visited Nov. 6, 2024).

⁴⁸ Swanson et al., *Suicide Prevention Effects in Four States*, *supra* note 41, at 331 (citing Kivisto & Phalen, *supra* note 14).

⁴⁹ *Id.* at 328.

⁵⁰ Meagan Flynn, *D.C.’s red-flag gun seizures are low. Officials hope to change that.*, *Wash. Post* (Aug. 22, 2023), <https://tinyurl.com/yvsj6z4v>.

and shell casings found in the woman’s bedroom.⁵¹ In Indiana, a woman contacted authorities about her husband’s repeated threats to harm himself or use a firearm to provoke others to harm him.⁵² When officers arrived at their home, they noticed several firearms inside the residence, and were able to obtain an ERPO to secure 20 firearms.⁵³

In 2021, an ERPO prevented then-professional football player Richard Sherman’s escalating mental health crisis from ending in tragedy.⁵⁴ Alarmed by his repeated threats of suicide, Sherman’s wife obtained an ERPO to secure his weapons.⁵⁵ When Sherman tried to acquire another gun, the gun dealer was alerted about the ERPO and stated that he “would not be providing the weapon to [Sherman] under any circumstances.”⁵⁶ A spokesperson for the Sheriff’s office that handled Sherman’s ERPO explained that “[t]ime is one of our most effective tools. When we can slow things down, delay delivery of a firearm, we can harness the resources we have to get someone in crisis the services they need.”⁵⁷ These are just some of the many examples illustrating that “ERPOs . . . provide a

⁵¹ *Id.*

⁵² CBS 4 Indianapolis, *20 guns confiscated from Bartholomew County man under Indiana’s red flag law* (July 13, 2020), <https://tinyurl.com/5n8zyemz>.

⁵³ *Id.*

⁵⁴ Patrick Malone, *How Richard Sherman’s family, police, and a gun dealer intervened to prevent potential tragedy*, Seattle Times (Aug. 5, 2021), <https://tinyurl.com/7tm5zfdv>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

second chance at life” as well as “a window of time and opportunity for respondents in crisis to access therapeutic or other interventions[.]”⁵⁸

ii. Mass Shooting Prevention

According to a recent study, threats to commit a mass shooting lead to ten percent of ERPO cases.⁵⁹ The study also found that schools were the most common targets for mass shooting threats.⁶⁰ Eighty percent of perpetrators make explicit threats or behave in a manner indicative of their intent to carry out a mass shooting before it occurs, and family members, acquaintances, law enforcement agencies, and health or social services professionals often knew the perpetrators were at a high risk for committing violence.⁶¹ Because of this, ERPOs are an effective and crucial tool to intervene and remove access to firearms when a mass shooting threat is identified and before any carnage ensues. A study of 21 California ERPOs issued for respondents who showed clear signs that they intended to commit mass shootings revealed that, after the orders were issued, no mass shootings, suicides, or homicides by these respondents occurred.⁶²

When states do not have ERPO laws, the results can be devastating. In Parkland, Florida, dozens of people reported to law enforcement Nikolas Cruz’s troubling behavior

⁵⁸ Swanson et al., *Suicide Prevention Effects in Four States*, *supra* note 41, at 331.

⁵⁹ April M. Zeoli et al., *Extreme risk protection orders in response to threats of multiple victim/mass shooting in six U.S. states: A descriptive study*, 165A J. Preventive Med. at 2, 10 (Dec. 2022) (available at <https://tinyurl.com/34ys7swx>).

⁶⁰ *Id.* at 3.

⁶¹ Garen J. Wintemute et al., *Extreme Risk Protection Orders Intended to Prevent Mass Shootings*, 171 *Annals Internal Med.* 655, 655–57 (2019).

⁶² *Id.* at 658–59.

and their fears that he was capable of violence.⁶³ One woman told police in January 2018 that Cruz was “going to explode,” and she worried about him going “into a school and just shooting the place up.”⁶⁴ But Florida did not have an ERPO law at the time, so police could not require Cruz to surrender his guns. On February 14, 2018, Cruz massacred 17 students and staff at his former high school.⁶⁵ Recognizing that an ERPO would likely have prevented this tragedy, the Florida Legislature passed the state’s inaugural ERPO law, the Marjory Stoneman Douglas High School Public Safety Act, later that year.⁶⁶

The Maryland Legislature followed suit, and the Maryland ERPO Law went into effect in October 2018. According to leaders of the Maryland Sheriffs’ Association, ERPOs allowed law enforcement to secure firearms from multiple individuals who posed “significant threats” to schools within the first three months that the Maryland ERPO Law was in effect, confirming that “these orders . . . are saving lives.”⁶⁷ In the first 21 months that the Maryland ERPO Law was in effect, 140 ERPO petitions were filed in response to individuals’ threats to carry out mass shootings.⁶⁸

⁶³ Richard A. Oppel Jr. et al., *Tipster’s Warning to F.B.I. on Florida Shooting Suspect: ‘I Know He’s Going to Explode’*, N.Y. Times (Feb. 23, 2018), <https://tinyurl.com/bdfur7mr>.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Wiggins, *supra* note 12.

⁶⁸ Zeoli et al., *Extreme risk protection orders in response to threats of multiple victim/mass shooting*, *supra* note 59, at 10.

D. Any Discrepancy Between Interim/Temporary ERPOs Entered and Final ERPOs Entered is Not Evidence of a “Constitutional Problem.”

Interim and temporary ERPOs typically expire within a week, but if necessary, a petitioner can seek a final ERPO lasting up to one year, which a judge can issue following a hearing. *See* Md. Pub. Safety §§ 5-603, 5-604, 5-605. Plaintiffs point to the discrepancy between the number of interim orders entered and final orders issued to argue that there is a “constitutional problem posed by the ‘reasonable grounds’ standard.”⁶⁹ To the contrary, this discrepancy shows that Maryland’s ERPO Law is working as intended to reduce gun violence with limited intervention and deprivation. Further, the statistics Plaintiffs cite show that the evidentiary standards underpinning Maryland’s ERPO Law are robust.

More interim and temporary ERPOs are entered than final ERPOs because the Maryland ERPO Law effectively addresses emergencies and crises that are often temporary in nature. ERPOs are intended to address fast-moving situations where specific evidence shows that an individual likely poses a danger to themselves or others. *See supra* at III.B. A temporary or interim ERPO gives the respondent time to get the help they need before they harm themselves or others, and it gives law enforcement time to investigate credible risks.

If an interim or temporary ERPO mitigates the danger, no final ERPO is necessary, and the respondent’s firearms will be returned. And the temporary surrender of guns pursuant to an interim or temporary ERPO is often enough to deescalate a violent situation. For example, in Washington state, a woman filed a petition seeking an ERPO for her

⁶⁹ Plaintiffs’ Brief (“Pls.’ Br.”) at 16.

boyfriend because he had recently attempted suicide.⁷⁰ At the final ERPO hearing, the couple arrived together, holding hands, and the respondent expressed gratitude “that someone cared enough to make sure that he did not have access to a gun while he was in crisis.”⁷¹

The discrepancy is not evidence of a “constitutional problem,” contrary to Plaintiffs’ claim. And troublingly, Plaintiffs present misleading data to the Court to support their argument. To argue that most petitions filed do not result in final ERPOs, for example, Plaintiffs do not use the most recent data available, or an average of data from the several years in which it has been collected. Plaintiffs instead limit their analysis to a single month, May 2022, presumably because it had the third-lowest conversion rate of any month between 2021 and 2024.⁷² Plaintiffs rely on this single month to assert that “[f]inal ERPOs were granted . . . in only 35 percent of cases in which an ERPO petition was filed.”⁷³

⁷⁰ *Testimony of Kimberly Wyatt at Hearing on Red Flag Laws: Examining Guidelines for State Action Before the S. Comm. on the Judiciary*, 2 (March 26, 2019), <https://tinyurl.com/2wvs654z>.

⁷¹ *Id.*

⁷² *See* Pls.’ Br. at 17; *see also Maryland ERPO Activity Report*, Dist. Ct. of Md. (2021), <https://tinyurl.com/MdERPO2021> (last visited Nov. 6, 2024); *Maryland ERPO Activity Report*, Dist. Ct. of Md. (2022), <https://tinyurl.com/MdERPO2022> (last visited Nov. 6, 2024); *Maryland ERPO Activity Report*, Dist. Ct. of Md. (2023), <https://tinyurl.com/MdERPO2023> (last visited Nov. 6, 2024); *Maryland ERPO Activity Report*, Dist. Ct. of Md. (Jan.–June 2024) <https://tinyurl.com/MdERPO2024> (last visited Nov. 6, 2024).

⁷³ Pls.’ Br. at 17.

Plaintiffs ignore that on average, from January 2021 to June 2024, over 50% of petitions resulted in final orders.⁷⁴

The statistics cited in plaintiffs' brief⁷⁵ demonstrate that there is a robust process for entering ERPOs pursuant to the Maryland ERPO Law. Courts regularly deny ERPO petitions that do not meet Maryland's rigorous requirements. And respondents rarely appeal ERPOs, which suggests that Maryland courts evaluating ERPO petitions are making evidence-based and appropriate decisions. Of the 754 ERPO petitions filed in 2021,⁷⁶ respondents appealed only eight ERPO orders. In 2022, 741 ERPO petitions were filed, and respondents appealed only 11 decisions.⁷⁷ And in 2023, 697 ERPO petitions were filed, and respondents appealed only five.⁷⁸

IV. CONCLUSION

For the foregoing reasons, *Amici* submit that ERPOs supply highly valuable protection for all Maryland citizens. *Amici* therefore provided the foregoing analysis to assist the Court in its interpretation of Maryland's ERPO statute.

⁷⁴ *Maryland ERPO Activity Reports for 2021, 2022, 2023, and 2024, supra note 72.*

⁷⁵ *Pls.' Br. at 16–17.*

⁷⁶ *Maryland ERPO Activity Report for 2021, supra note 72.*

⁷⁷ *Maryland ERPO Activity Report for 2022, supra note 72.*

⁷⁸ *Maryland ERPO Activity Report for 2023, supra note 72.*

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of November 2024, the foregoing Brief of *Amici Curiae* was e-filed with the Court via the MDEC System, and two printed copies of the Brief were sent by first-class mail to the following counsel of record:

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