

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE

ANDREA BECKWITH, et al.,

Plaintiffs,

v.

AARON M. FREY, in his personal capacity  
and in his official capacity as Attorney  
General of Maine,

Defendant.

CIVIL ACTION

Case No: 1:24-cv-00384-LEW

**CONSENTED-TO MOTION OF MAINE GUN SAFETY COALITION, MAINE  
COALITION TO END DOMESTIC VIOLENCE, MAINE ASSOCIATION OF  
PSYCHIATRIC PHYSICIANS, BRADY CENTER TO PREVENT GUN VIOLENCE,  
AND GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE FOR LEAVE TO  
FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF DEFENDANT’S OPPOSITION TO  
PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION**

The Maine Gun Safety Coalition (“MGSC”), Maine Coalition to End Domestic Violence (“MCEDV”), Maine Association of Psychiatric Physicians (“MAPP”), Brady Center to Prevent Gun Violence (“Brady”), and Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) (collectively, *Amici*), respectfully move, through undersigned counsel, for leave to file a brief as *amici curiae* in support of Defendant Aaron M. Frey’s opposition to Plaintiffs’ motion for preliminary injunction. The proposed brief is attached as **Exhibit A**. Both Plaintiffs and Defendant consent to this motion and to the filing of the attached *amicus* brief.

*Amicus curiae* MGSC is a Maine-based nonprofit organization made up of gun owners, healthcare professionals, parents, grandparents, and other concerned Mainers focused on gun safety and personal responsibility. Founded in 2000 following the 1999 mass shooting at Columbine High School, MGSC focuses on responsible gun ownership, not gun control, by providing community education on gun safety and by advocating for evidence-based, common

sense gun legislation at the Maine and federal levels. MGSC was a key advocate of the Waiting Period Statute and has a substantial interest in ensuring it is upheld.

*Amicus curiae* MCEDV is a Maine-based group founded in 1977 to end domestic abuse. MCEDV serves a network of ten domestic violence resource centers located throughout Maine with training and administrative support; provides support for state-level partners as they respond to abuse; creates frameworks to inform the public's understanding about abuse; and advocates in both Maine and Washington, D.C. for policies that will hold abusive people accountable and keep survivors safe. MCEDV testified in support of the Waiting Period Statute and believes victims of abuse will be best served if the statute is upheld.

*Amicus curiae* MAPP is the Maine District Branch of the American Psychiatric Association and is the only professional organization of psychiatry and psychiatrists dedicated to the state of Maine. MAPP works to improve the treatment, rehabilitation, and care of persons with mental disorders, and to promote the best interests of patients and those actually or potentially making use of mental health services. MAPP testified in support of the Waiting Period Statute based on its professional knowledge of the relationship between gun violence and suicide and believes the Waiting Period Statute is vital to preventing suicides in Maine.

*Amicus curiae* Brady is the nation's most longstanding non-partisan, non-profit organization dedicated to reducing gun violence through education, research, legal advocacy and political action. Brady works to free America from gun violence by passing and defending gun violence prevention laws, reforming the gun industry, and educating the public about responsible gun ownership. Brady has filed numerous *amicus* briefs in cases involving the constitutionality of firearms regulations, and multiple decisions have cited Brady's research and expertise on these issues. Brady has a substantial interest in ensuring that the Constitution is construed to protect

Americans' fundamental right to live and in protecting the authority of democratically elected officials to address the Nation's gun violence epidemic.

*Amicus curiae* Giffords Law Center is a non-profit policy organization serving lawmakers, advocates, legal professionals, gun violence survivors, and others who seek to reduce gun violence. Founded in 1993 after a gun massacre at a San Francisco law firm, the organization joined forces with the gun-safety organization led by former Congresswoman Gabrielle Giffords in October 2017. Today, through partnerships with gun violence researchers, public health experts, and community organizations, Giffords Law Center researches, drafts, and defends the laws, policies, and programs proven to effectively reduce gun violence. Giffords Law Center has a substantial interest in defending the constitutionality of laws that reduce gun violence.

This Court “retains ‘the inherent authority to appoint amicus curiae to assist it in a proceeding.’” *Portland Pipe Line Corp. v. City of S. Portland*, No. 2:15-CV-00054-JAW, 2017 WL 79948, at \*4 (D. Me. Jan. 9, 2017) (quoting *Animal Prot. Inst. v. Martin*, 06-cv-128-B-W, 2007 WL 647567, at \*1 (D. Me. Feb. 23, 2007)). This Court has recognized the utility of amicus briefs where “there is an issue of general public interest, the amicus provides supplemental assistance to existing counsel, or the amicus insures a complete and plenary presentation of difficult issues so that the court may reach a proper decision.” *Animal Prot. Inst.*, 2007 WL 647567, at \*2 (quoting *Alliance of Automobile Mfrs. v. Gwadowsky*, 297 F. Supp. 2d 305, 307 (D. Me. 2003)). Moreover, amicus briefs may be accepted by a district court where “the amicus has a special interest that justifies [its] having a say.” *Alliance of Automobile Mfrs.*, 297 F. Supp. 2d at 307 (quoting *Strasser v. Doorley*, 432 F. 2d 567, 569 (1st Cir. 1970)).

*Amici* have special interests in the issues involved in this matter. As Maine-based organizations, MGSC, MCEDV, and MAPP are acutely interested in upholding commonsense gun

regulations that will save the lives of Mainers, including individuals contemplating suicide and victims of domestic violence. And as national gun violence prevention organizations, both Brady and Giffords Law Center have a distinct interest in ensuring that firearms are regulated in ways that will reduce the staggering incidence of gun violence in this country. *Amici* share a common interest in ensuring that litigation related to the constitutionality of firearms regulations is fully informed by empirical research and factual information of the sort addressed in the proposed *amicus* brief.

Moreover, *Amici* are well-equipped to assist the Court in reaching a proper decision in this matter by offering their distinct expertise on this issue of great public interest. Members of MGSC, MCEDV, and MAPP testified in favor of the Waiting Period Statute, and all three organizations offer unique perspectives on the effects of gun violence on everyday Mainers. Brady and Giffords Law Center routinely defend the constitutionality of laws like the Waiting Period Statute, and have extensive experience in research, programs, legislative advocacy, and litigation concerning gun violence prevention policies.

In the attached *amicus* brief, *Amici* undertake to provide supplemental authority and argument beyond those advanced by the parties. This is intended to provide “complete and plenary presentation of difficult issues so that the court may reach a proper decision,” *Animal Prot. Inst.*, 2007 WL 647567, at \*2, and is appropriate given the “special interest” of *Amici* in this matter, *Alliance of Automobile Mfrs.*, 297 F. Supp. 2d at 307.

Accordingly, *Amici* respectfully request leave of this Court to file the attached brief as *amici curiae*.

Dated: January 10, 2025

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**CERTIFICATE OF SERVICE**

I hereby certify that on the date indicated below I caused a copy of the foregoing pleading to be filed with the Court's ECF filing system, which will cause an electronic notice to be sent to counsel of record.

Dated: January 10, 2025

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## **EXHIBIT A**

UNITED STATES DISTRICT COURT  
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Case No: 1:24-cv-00384-LEW

**BRIEF OF AMICI CURIAE MAINE GUN SAFETY COALITION, MAINE  
COALITION TO END DOMESTIC VIOLENCE, MAINE ASSOCIATION OF  
PSYCHIATRIC PHYSICIANS, BRADY CENTER TO PREVENT  
GUN VIOLENCE, AND GIFFORDS LAW CENTER TO PREVENT GUN  
VIOLENCE IN SUPPORT OF DEFENDANT’S OPPOSITION TO PLAINTIFFS’  
MOTION FOR PRELIMINARY INJUNCTION**

The Maine Gun Safety Coalition, Maine Coalition to End Domestic Violence, Maine Association of Psychiatric Physicians, Brady Center to Prevent Gun Violence, and Giffords Law Center to Prevent Gun Violence (collectively, *amici curiae*),<sup>1</sup> respectfully submit this brief in support of Defendant Aaron M. Frey’s (the “State”) Opposition to Plaintiffs’ Motion for Preliminary Injunction (ECF No. 13).

**INTRODUCTION**

Maine faces an epidemic of gun violence. While the State has, until recently,<sup>2</sup> largely been spared the horror of mass shootings, it has experienced an outsized crisis of a more insidious type of gun violence: suicide-by-firearm. Maine has a suicide rate well above the national average, and

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<sup>1</sup> Plaintiffs and Defendant have both consented to *amici* filing this brief. *Amici* submit this brief in support of Defendant. No counsel for a party authored this brief in whole or in part. No person other than *amici* or their counsel contributed money to fund this brief’s preparation or submission.

<sup>2</sup> See *Complete Coverage: Lewiston Mass Shooting*, Portland Press Herald, <https://www.pressherald.com/complete-coverage-lewiston-mass-shootings/>.



over half of those suicides involve the use of a gun. This crisis particularly affects Maine’s young people, for whom suicide is the second-leading cause of death.

Recognizing the urgency of this public health crisis, the 131st Maine Legislature passed Maine Bill LD 2238 (SP 598), now codified as 25 M.R.S. § 2016 (the “Waiting Period Statute”), which imposes a brief waiting period on most firearm sellers before they may deliver a firearm to a purchaser. The Waiting Period Statute addresses a modern crisis that would have been inconceivable to the Founders of this country by imposing a modest restriction that is entirely consistent with the Second Amendment. In passing the Waiting Period Statute, Maine follows a number of other states that have passed similar laws that have been held constitutional in challenges nearly identical to the one at hand.<sup>3</sup> Enjoining the Waiting Period Statute’s enforcement would prevent the State from achieving its critical goal of reducing firearm-related suicides and homicides—including homicides of domestic violence victims, who face dramatically higher risks of being killed when their abusive partners have access to guns.

For these reasons and the reasons that follow, the Court should deny Plaintiffs’ Motion for Preliminary Injunction.

## ARGUMENT

The Waiting Period Statute is constitutional, and Plaintiffs’ Motion for Preliminary Injunction should be denied. First, the Waiting Period Statute is presumptively lawful as a regulation on the commercial sale of firearms and does not implicate the plain text of the Second Amendment. Second, the Waiting Period Statute addresses unprecedented modern public health

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<sup>3</sup> See *Vermont Fed’n of Sportsmen’s Clubs v. Birmingham*, No. 2:23-CV-710, 2024 WL 3466482, at \*22 (D. Vt. July 18, 2024), appeal filed, No. 24-2026 (2d Cir. 2024); *Rocky Mountain Gun Owners v. Polis*, 701 F. Supp. 3d 1121, 1132 (D. Colo. 2023), appeal dismissed, No. 23-1380, 2024 WL 5010820 (10th Cir. Aug. 23, 2024); *Ortega v. Lujan Grisham*, No. CIV 24-0471 JB/SCY, 2024 WL 3495314, at \*26 (D.N.M. July 22, 2024), appeal filed, No. 24-2121 (10th Cir. 2024).

crises, namely suicide-by-firearm and impulsive firearm homicides, and thus this Court should employ a “more nuanced approach” when applying the prevailing test for determining whether a firearm regulation that implicates conduct covered by the Second Amendment is nevertheless constitutional as set out in *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022). Third, ample precedent for the Waiting Period Statute exists in the form of historical analogous regulations temporarily impeding access to firearms. Finally, the balance of equities and the public interest favor against enjoining the Waiting Period Statute’s enforcement.

**I. The Waiting Period Statute is presumptively lawful and does not implicate the plain text of the Second Amendment.**

“Like most rights, the right secured by the Second Amendment is not unlimited.” *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). Courts must therefore begin a Second Amendment analysis by determining whether a challenged regulation affects a right covered by the Amendment’s “plain text.” *Bruen*, 597 U.S. at 24; *see also United States v. Rahimi*, 602 U.S. 680, 715 (2024) (“The first and most important rule in constitutional interpretation is to heed the text—that is, the actual words of the Constitution—and to interpret that text according to its ordinary meaning as originally understood.”). If the regulated conduct falls outside the original scope of the Second Amendment’s plain text, it is “categorically unprotected,” and the constitutional challenge fails. *Bruen*, 597 U.S. at 18; *see also Birmingham*, 2024 WL 3466482, at \*22; *Polis*, 701 F. Supp. 3d at 1132; *Ortega*, 2024 WL 3495314, at \*26.

As a regulation governing the *sale* of firearms, rather than the manner in which they may be kept, carried, or used, the Waiting Period Statute falls squarely within the category of commercial regulations the Supreme Court has deemed “presumptively lawful.” *See Heller*, 554 U.S. at 626-27 & n.26 (describing “conditions and qualifications on the commercial sale of arms” as “presumptively lawful”); *see also McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010);

*Bruen*, 597 U.S. at 80-81 (Kavanaugh, J., concurring); *Polis*, 701 F. Supp. 3d at 1136.<sup>4</sup>

Plaintiffs cannot rebut this presumption of lawfulness, because the plain text of the Second Amendment includes no right to obtain a firearm instantaneously. The Supreme Court has never said or suggested otherwise. Instead, the Court has merely held that the Second Amendment protects an individual’s right to “keep” or “bear” arms for lawful self-defense. *Bruen*, 597 U.S. at 17; *Heller*, 554 U.S. at 581 (the “substance of the right” protected by the Second Amendment is “to keep and bear Arms”). These terms must be given their “normal and ordinary” meaning. *Heller*, 554 U.S. at 576-77. The Supreme Court has construed “keep Arms” to mean “have weapons,” *id.* at 582, and “bear” to mean “carry.” *Id.* at 584.

The Waiting Period Statute does not impair an individual’s right to “have weapons” or to “carry” them. It prohibits no one from possessing or using firearms, and bars no one from purchasing them. The Waiting Period Statute instead imposes a short delay on firearm sellers before they can convey a firearm. *See* 25 M.R.S. § 2016(2). As federal courts in Vermont, Colorado, and New Mexico have correctly concluded in upholding similar waiting period laws, “acquiring a firearm through a commercial transaction on-demand ... is not covered by the plain text of the Second Amendment.” *Birmingham*, No. 2024 WL 3466482, at \*23; *see also Polis*, 701 F. Supp. 3d at 1136 (“the plain text of the Second Amendment” does not “cover[] the immediate receipt of a purchased firearm”); *Ortega*, 2024 WL 3495314, at \*29 (“[T]he Second Amendment’s plain text does not cover the conduct that the Waiting Period Act implicates.”).

Nor would the Founders have understood the Second Amendment to guarantee a right to

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<sup>4</sup> Contrary to Plaintiffs’ statement that the Waiting Period Statute “applies to all firearm sales,” *see* Motion for Preliminary Injunction (ECF No. 4) at 9, the Waiting Period Statute applies only to *commercial* sales. The Waiting Period Act neither prohibits nor otherwise applies to an unadvertised sale between private individuals, nor does it prohibit or apply to the temporary loan or rental of a firearm. *See Advisory on 72 Hour Waiting Period*, Maine Department of Public Safety and Maine Office of the Attorney General, available at: [https://www.maine.gov/dps/sites/maine.gov.dps/files/inline-files/Advisory%20on%20Waiting%20Period%20Law\\_1.pdf](https://www.maine.gov/dps/sites/maine.gov.dps/files/inline-files/Advisory%20on%20Waiting%20Period%20Law_1.pdf).

obtain a firearm *instantaneously*. See *Birmingham*, No. 2024 WL 3466482, at \*23 (“Plaintiffs may keep and bear arms without immediately acquiring them.”). In the Eighteenth Century and through most of the Nineteenth Century, delay in delivery of purchased goods was a practical reality of commerce—particularly in a place as rural as Maine. It is easy to forget that, even as late as Abraham Lincoln’s birth in 1809, an American could move only as fast as a horse, wind sail, oar, or river flow would allow. Much of the country had little to no currency to speak of, and the economy in much of the country was still primarily agricultural. Allen C. Guelzo, *Our Ancient Faith: Lincoln, Democracy and the American Experiment*, at 50-51 (Knopf 2024). At the time of the founding, the idea that someone like Plaintiff Coshow, living in a heavily wooded area of rural Maine, could obtain a firearm after only five total hours of driving comfortably in a vehicle would not have been considered a burden on the right to keep and bear arms as she so complains. See Declaration of Nancy Coshow, ECF No. 1-2, ¶¶ 2, 6-7. Far from it.

Because the Waiting Period Statute is presumptively lawful and does not implicate the Second Amendment’s plain text, the Court should deny Plaintiffs’ Motion for Preliminary Injunction.

## **II. The Waiting Period Statute addresses Maine’s unprecedented modern crisis of firearm suicides, as well as the modern problem of impulsive firearm homicides.**

Even if the Waiting Period Statute could be read to implicate conduct covered by the Second Amendment, it is constitutional because it addresses Maine’s unprecedented modern crisis of suicide-by-firearm and the equally modern problem of impulsive firearm homicides.

Under the *Bruen* test, the government “must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” 597 U.S. at 17. At the same time, the *Bruen* Court made clear that modern laws do not need to be identical to historical laws to withstand a Second Amendment challenge. In addition, the Court emphasized that laws “implicating

unprecedented societal concerns or dramatic technological changes” should be subject to a “more nuanced approach” in determining whether they are consistent with historical tradition. *Id.* at 27. 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.* The Second Amendment is not “a law trapped in amber,” and it “permits more than just those regulations identical to ones that could be found in 1791.” *Rahimi*, 602 U.S. at 691-92. Indeed, Justice Barrett warns that “imposing a test that demands overly specific analogues has serious problems [because]... it forces 21st-century regulations to follow late-18th-century policy choices.” *Id.* at 739 (citation omitted) (Barrett, J., concurring).

The Waiting Period Statute is intended to address the unprecedented societal scourge of gun suicides and impulsive violence—calamities not prevalent during the Founding and Reconstruction Eras.

**A. The use of firearms for suicide and impulsive killing is a modern phenomenon with an outsized effect on Maine.**

The Waiting Period Statute confronts the relatively recent phenomenon of individuals being able to acquire a new firearm instantaneously to engage in acts of self-harm or impulsive violence against others. *See An Act to Address Gun Violence in Maine by Requiring a Waiting Period for Certain Firearm Purchases: Hearing on L.D. 2238 Before the Joint Standing Committee on Judiciary*, 131st Legis. 2 (2024) (“Hearing Testimony”), Testimony of Peggy Rotundo, Senator, District 21 (“The purpose of requiring a waiting period is to provide the purchaser with a ‘cooling-off’ period. It is to help protect the purchaser from acting on a short-lived impulse—suicide or homicide—that may have inspired the purchase in the first place.”).<sup>5</sup>

Maine has a suicide rate of 17.7 deaths per 100,000 people—the second-highest suicide

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<sup>5</sup> Available at: <https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=182718>.

rate in New England, and well above the national average. *See Suicide Mortality by State*, Centers for Disease Control (Feb. 15, 2023).<sup>6</sup> Despite having roughly 5.6 million fewer residents than its neighbor, Massachusetts, Maine had only 358 fewer suicides in 2022. *Id.* Nearly 60% of Maine’s suicides that year—156 in total—were with firearms. *See Annual Reporting of Firearm Fatalities and Hospitalizations* (“Annual Report”), Joint Standing Committee on Health and Human Services (Sept. 3, 2024).<sup>7</sup> Suicide is the eleventh leading cause of death in Maine, and the second leading cause of death among Maine’s young people. *Id.* Suicides represent nearly 90% of all deaths by firearm in Maine. *Id.*

Concerned Maine physicians and mental health professionals testified in favor of the Waiting Period Statute because they recognized the outsized role that firearms play in Maine’s suicide crisis. These experts explained to the legislature how “[i]mpulsiveness plays a part in many suicide attempts,” and that, due to the extreme lethality of firearms as compared to other suicide methods, “when you use a gun, there is no chance for a second thought.” Hearing Testimony, Testimony of David Moltz, MD, Chair, Clinical Practice Committee, Maine Association of Psychiatric Physicians<sup>8</sup>; *see also id.*, Testimony of Greg Marley, NAMI Maine (noting that “[f]or most people, a suicide crisis is transient and treatable,” but where “a firearm is chosen as the means for a suicide attempt, the lethality rate approaches 90%; once the trigger is pulled, there is no turning back.”)<sup>9</sup>; *id.*, Testimony of Angela Leclerc, Maine Association of Physician Assistants (“Those struggling [with mental health] should have more ... safety nets to prevent them from rash decisions with life altering or life-ending results.”).<sup>10</sup>

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<sup>6</sup> Available at: <https://www.cdc.gov/nchs/pressroom/sosmap/suicide-mortality/suicide.htm>.

<sup>7</sup> Available at: <https://legislature.maine.gov/doc/11090>.

<sup>8</sup> Available at: <https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=182715>.

<sup>9</sup> Available at: <https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=182710>.

<sup>10</sup> Available at: <https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=10030581>.

This contemporary problem is not one the Founders could have envisioned—indeed, suicide rates have skyrocketed by nearly 40% in the past 22 years alone. *See Suicide Data and Statistics*, Centers for Disease Control (Oct. 29, 2024).<sup>11</sup> Nationwide, 49,000 people died by suicide in 2022, and firearms were used in over half of those suicides. *Id.* Suicides represent an unprecedented modern concern for which a modern approach is required.

In addition, the Waiting Period Statute seeks to address the impulsive use of guns in homicides. Maine experienced 22 firearm homicides in 2022. While data is not yet available, 2023 will likely see double this amount given the mass shooting that occurred in Lewiston in October of that year. *See Annual Report*; *see also supra* n.1. Studies indicate that some of the factors that incite violence against others, such as anger and rage, can be short lived, suggesting that a person with homicidal intent whose access to a gun is delayed may no longer experience homicidal thoughts by the time he gains gun access. *See* G. Lowenstein & J.S. Lerner, “The Role of Affect in Decision Making,” *Handbook of Affective Sciences* (2003): 619–642; *see also, e.g.*, David Card & Gordon B. Dahl, “Family Violence and Football: The Effect of Unexpected Emotional Cues on Violent Behavior,” *The Quarterly Journal of Economics* 126, no. 1 (2011): 103–14.

**B. The Founders and ensuing generations did not confront this crisis.**

The present, dire crisis of firearm suicides was not one confronting the Framers or Reconstruction-era legislators. “Gun homicide, mass shootings, and suicide, the three forms of gun violence that dominate the modern gun debate, were simply not problems for those who enacted the Second Amendment.” Saul Cornell, *Constitutional Mischiefs and Constitutional Remedies: Making Sense of Limits on the Right to Keep and Bear Arms in the Founding Era*, 51 *Fordham Urb. L. J.* 25, 38 (2023); *see also Polis*, 701 F. Supp. 3d at 1141 (“[T]he evidence shows that

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<sup>11</sup> Available at: [https://www.cdc.gov/suicide/facts/data.html?CDC\\_AAref\\_Val=https://www.cdc.gov/suicide/suicide-data-statistics.html#cdc\\_data\\_surveillance\\_section\\_3-suicide-deaths-plans-and-attempts-in-the-united-states](https://www.cdc.gov/suicide/facts/data.html?CDC_AAref_Val=https://www.cdc.gov/suicide/suicide-data-statistics.html#cdc_data_surveillance_section_3-suicide-deaths-plans-and-attempts-in-the-united-states).

firearms were not as readily available for purchase and that impulsive gun homicides were much less prevalent at the time of the founding and in the century that followed.”).

Firearm-related suicides appear to have been a distinct rarity in the Founding and Reconstruction eras. While statistics are sparse, the data available suggests that firearms became a common tool for self-inflicted killing only within the last century or so. Even as late as 1860, after firearm technology began to evolve beyond the cumbersome muzzle-loaded weapons of the 1790s, census data reveals that firearms remained an uncommon method of suicide. *See* Lisa A. B. Shields, et al., *Trends of Suicide in the United States During the 20th Century*, Tsokos, NJ. (eds) Forensic Pathology Reviews, vol. 3. Humana Press, 2 (2005). Only in 1900 did firearms become the second-most common method of suicide, before becoming the most common method in 1910—well over a century after the Second Amendment was ratified. *Id.* Since then, firearms have remained the predominant method of suicide in the United States. *See id.*

Similarly, impulsive homicides were not the significant societal concern in the Founding Era that they are today. “Interpersonal violence, including gun violence, simply was not a problem in the Founding era that warranted much attention and therefore produced no legislation.” Saul Cornell, *The Right to Carry Firearms Outside of the Home: Separating Historical Myths from Historical Realities*, 39 *Fordham Urb. L. J.* 1695, 1713 (2012). The “economic and technological constraints associated with the fabrication and distribution of firearms during the eighteenth-century” suggest why founding times did not feature widespread impulsive firearm killings. Kevin Sweeney, *An Eighteenth-Century Gun Culture Shaped by Constraints*, Duke Center for Firearms Law (Sept. 6, 2023).<sup>12</sup> Eighteenth-century America had limited means of producing new firearms—building a musket from scratch could take a week or more. *Id.* Most new firearms had

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<sup>12</sup> Available at: <https://firearmslaw.duke.edu/2023/09/an-eighteenth-century-gun-culture-shaped-by-constraints>.



to be imported from England, while American gunsmiths typically focused on repairing firearms. For example, the account book of a Massachusetts gunsmith “indicates that he made only three new guns over a period of 20 years from 1768 to 1788, while performing 452 repairs on existing firearms.” *Id.* Import statistics suggest that “the number of newly made firearms available for sale during the later eighteenth century would have been modest in comparison to the size of the growing population.” *Id.*

Beyond the impracticability of obtaining a firearm, homicides committed with guns were rare in the Colonial period, likely because the types of weapons then available were poor options for impulsive killings. *See* Saul Cornell, *Constitutional Mischiefs and Constitutional Remedies*, 51 *Fordham Urb. L. J.* at 38 (“Black powder, muzzle-loading weapons, were too unreliable and took too long to load to make them effective tools of homicide and most crimes of passion.”). “Given this fact it is easy to understand why modern discussions of guns and individual self-defense were so rare in Founding-era public debate.” *Id.* Studies have shown that Colonial homicides “were committed almost exclusively with hands and feet or weapons that were close to hand: whips, sticks, hoes, shovels, axes, or knives”—not firearms. Randolph Roth, “Why Guns Are and Aren’t the Problem: The Relationship between Guns and Homicide in American History,” in Jennifer Tucker, Barton C. Hacker, and Margaret Vining, eds., *Firearms and the Common Law: History and Memory*, Washington, D.C.: Smithsonian Institution Scholarly Press, 117 (2019). Guns simply “were not the weapons of choice in homicides that grew out of the tensions of daily life.” *Id.*

**III. Analogous regulations temporarily impeding access to firearms provide ample historical precedent for the Waiting Period Statute.**

Using the “more nuanced approach” set forth in *Bruen*, the Waiting Period Statute’s modest and temporary restrictions on gun sales are “consistent with the Second Amendment’s text and

historical understanding.” 597 U.S. at 26.<sup>13</sup>

At least three categories of longstanding gun regulations confirm that the Waiting Period Statute aligns with the Nation’s historical tradition of firearm regulation. Licensing and storage regimes, surety laws, and intoxication regulations each reflect a centuries-old tradition of temporarily impeding immediate access to firearms for the purpose of protecting public safety. *See Polis*, 701 F. Supp. 3d at 1142-46 (determining laws relating to intoxication and licensing laws were analogous to waiting period law); *Birmingham*, 2024 WL 3466482, at \*25-26 (same).

**A. Gun Licensing.**

Shall-issue licensing regulations, which *Bruen* specifically recognized as constitutionally permissible, are analogous to the Waiting Period Statute. *See Bruen*, 597 U.S. at 38 n.9 (“nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States’ ‘shall-issue’ licensing regimes”). Shall-issue licensing requirements “do not require applicants to show an atypical need for armed self-defense” and “do not necessarily prevent ‘law-abiding, responsible citizens’ from exercising their Second Amendment right to public carry.” *Id.* (citation omitted). Constitutional shall-issue requirements merely mandate “applicants to undergo a background check or pass a firearms safety course” before owning a firearm. *Id.*

The Waiting Period Statute is an apt analogue. Like a background check or safety course, the law does not prevent or even implicate gun ownership or gun purchase eligibility. It merely delays for a set and short time when a firearms seller may deliver a firearm to a purchaser contingent upon a background check. The seller cannot deliver the firearm “sooner than 72 hours” after an “agreement [is] reached by a buyer and seller for the purchase and sale of a firearm,” and

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<sup>13</sup> Even if the Court does not conclude that suicide- and homicide-by-firearm are modern societal issues, the Waiting Period Statute is nevertheless “consistent with the principles that underpin our regulatory tradition” of temporarily impeding immediate access to firearms to protect public safety, as evidenced by the categories of regulations described above. *See Rahimi*, 602 U.S. at 692.

this 72-hour period “must be concurrent with any waiting period imposed by any background check process required by federal or state law.” 25 M.R.S. § 2016(1)-(2).

**B. Surety Laws.**

By the time of the Founding, surety laws were already “[w]ell entrenched in the common law.” *Rahimi*, 602 U.S. at 695. States enacted their own laws in this country in or around the 1830s. *See, e.g.*, Of Proceedings to Prevent the Commission of Crimes, ch. 134, § 16, in THE REVISED STATUTES OF THE COMMONWEALTH OF MASSACHUSETTS, 748, 750 (Boston, Dutton & Wentworth 1836). These laws required individuals who were “likely to ‘breach the peace’” to “post bond before carrying weapons in public.” *Bruen*, 597 U.S. at 55-56. The posted bond “would be forfeited if [the individual] breached the peace.” *Id.* at 56-57. Thus, while surety laws created a restriction intended to discourage dangerous use of guns, they “did not *prohibit* public carry.” *Id.* at 56. Accordingly, the Supreme Court has held that surety laws did not impose “a substantial burden on public carry.” *Id.* at 50. In *Rahimi*, the Court invoked historical surety laws to support the constitutionality of a modern federal law prohibiting the possession of firearms by those subject to domestic violence restraining orders. *Rahimi*, 602 U.S. at 698. Both *Bruen* and *Rahimi* recognized surety laws to be a constitutional means of protecting public safety. *See Rahimi*, 602 U.S. at 698; *Bruen*, 597 U.S. at 57.

The Waiting Period Statute is “relevantly similar.” *Id.* at 29. Like surety laws, the Statute’s brief waiting period is intended to protect public safety, and it does so in a tailored way that avoids imposing any “substantial burden” on protected Second Amendment rights. *Id.* at 50. Like the need to post bond, the Waiting Period Statute does not prohibit anyone from owning or carrying guns or permanently prevent anyone from acquiring guns. If anything, the Statute is less restrictive of Second Amendment rights than historical surety laws, given that the latter imposed financial obstacles to gun ownership that may have been prohibitive for some individuals.

**C. Restrictions on the intoxicated.**

Our Nation has long barred the use of firearms while drinking alcohol. *See, e.g.*, 1655 Va. Acts 401, Act of March 10, 1655, Act XII (prohibiting “shoot[ing] any guns at drinking”); 1825 Tenn. Priv. Acts 306, ch. 292 § 3 (enabling rules to punish “shooting and carrying guns” while drinking); Supplement to the Revised Statutes of the State of Wisconsin, 848, CH. 181, § 4397B(3) (A.L. Sanborn & J.R. Berryman EDS., 1883) (“It shall be unlawful for any person in a state of intoxication to go armed with any pistol or revolver.”); *see also Polis*, 701 F. Supp 3d at 1142-44 (collecting intoxication laws).

Like the Waiting Period Statute, intoxication-based regulations “work to prevent individuals in a temporary impulsive state from irresponsibly using a firearm.” *Polis*, 701 F. Supp. 3d at 1144. The temporary dispossession imposed by these historical restrictions were also brief and designed to reduce the risk of impulsive harm. Such historical restrictions reflect a well-established understanding at the time of the Founding that the government may regulate firearm access or use to prevent harm when the risk is most acute. These historic laws are of a piece with the Waiting Period Statute.

**IV. Suicide and impulsive acts of firearm violence—including domestic violence—present a grave public concern for Mainers, which the Waiting Period Statute effectively addresses.**

Plaintiffs seek to enjoin a public health measure enacted by the Maine legislature to advance a crucial state goal: protecting the health and safety of the community by reducing firearm-related suicides and other deaths.<sup>14</sup> Barring enforcement of the Waiting Period Statute, even temporarily, will prevent the State from achieving that fundamental goal and cause

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<sup>14</sup> *See* Hearing Testimony, Testimony of Morgan Rielly, Representative, District 127 (“Waiting periods are designed to prevent individuals who pose an immediate threat to themselves or others from the impulsive purchase and use of a firearm.”). Available at: <https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=10030624>.

irreparable harm to Mainers.

After conducting the *Bruen* inquiry, a court must consider the potential harms to the State and the public interest when determining whether the equities favor enjoining a duly enacted state law. *See Ortega*, 2024 WL 3495314, at \*41-42; *Ocean State Tactical, LLC v. Rhode Island*, 646 F. Supp. 3d 368, 401 (D.R.I. 2022), *aff'd* 95 F.4th 38 (1st Cir. 2024), *petition for cert. filed* (U.S. Aug. 6, 2024) (No. 23-1072); *see also Del. State Sportsmen's Ass'n v. Del. Dep't of Safety & Homeland Sec.*, 108 F.4th 194, 205 (3d Cir. 2024) (“The challengers seek to enjoin enforcement of two democratically enacted state laws. Courts rightly hesitate to interfere with exercises of executive or legislative authority.”). As the party seeking preliminary injunctive relief, Plaintiffs bear the heavy burden of showing they are “likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [their] favor, and that an injunction is in the public interest.” *Voice of the Arab World, Inc. v. MDTV Med. News Now, Inc.*, 645 F.3d 26, 32 (1st Cir. 2011) (quoting *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).

Here, “[t]he costs of being mistaken, on the issue of whether the injunction would have a detrimental effect on handgun crime, violence, and suicide, would be grave.” *Tracy Rifle & Pistol LLC v. Harris*, 118 F. Supp. 3d 1182, 1193 (E.D. Cal. 2015), *aff'd*, 637 F. App'x 401 (9th Cir. 2016). By contrast, the cost of enforcement to Plaintiffs—none of whom has experienced any harm beyond lost time and purported lost sales—would be minimal, while the harm to the people of Maine would be grave. *See Polis*, 701 F. Supp. 3d at 1149 (“[S]aving approximately one hundred people in Colorado this year outweighs the aggregate harm of minimal expenditures of time and sacrificed business opportunities.”); *see also* Declarations of Andrea Beckwith, Nancy Coshow, James White, and Adam Hendsbee (ECF Nos. 1-1 through 1-5).

**A. Waiting periods reduce firearm suicides.**

There is an indisputable public interest in preventing suicide deaths in Maine, and blocking

enforcement of the Waiting Period Statute—a demonstrably effective means of reducing suicide deaths—poses a serious risk of harm.

Firearms are by far the most lethal method of suicide. A 2019 national study found that while only 8.5% of all suicidal acts between 2007 and 2014 were fatal, 89.6% of suicidal acts with a firearm resulted in death. Andrew Conner, et al., *Suicide Case-Fatality Rates in the United States, 2007 to 2014: A Nationwide Population-Based Study*, 171 *Ann. Intern. Med.*, 885 at 887 (2019). Studies have also found that places where firearms are more readily accessible have higher suicide rates than places where firearms are less prevalent. *See, e.g.*, Matthew Miller et al., *Household Firearm Ownership and Rates of Suicide Across U.S. States*, 62 *J. of Trauma* 1029 (2007). And research shows that suicide is typically the result of a temporary crisis, rather than an act planned far in advance, with 71% of suicidal individuals deliberating for less than one hour before their attempt, and 25% deliberating for less than five minutes. *See* Marcie-Jo Kresnow et al., *An Unmatched Case-Control Study of Nearly Lethal Suicide Attempts in Houston, Texas: Research Methods and Measurements*, 32 *Suicide & Life Threatening Behavior* 1 Suppl. (2001); *see also* David M. Studdert et al., *Handgun Ownership and Suicide in California*, 382 *New Eng. J. Med.* 2220 (2020); German Lopez, *What Many People Get Wrong About Suicide*, *Vox* (Sept. 17, 2015) (“[T]he majority of suicide attempts are within three hours of people deciding to kill themselves.”).<sup>15</sup>

Waiting periods seek to address transitory and impulsive suicidal urges by interposing a “cooling off” period, during which a suicidal crisis may pass. Because suicidal crises often escalate quickly and suddenly, “limiting access to means of suicide can play a significant role in prevention.” *Gun Violence: Purchase Waiting Periods*, *Nat’l All. on Mental Illness* (last visited

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<sup>15</sup> Available at: <https://www.vox.com/2015/7/30/9068255/suicide-impulsive-gun-control>.

Jan. 10, 2025).<sup>16</sup> Even if a waiting period does not deter an individual from attempting suicide entirely, redirecting the individual to a different method can still prevent a loss of life. The next-most lethal methods of suicide, drowning and hanging, are significantly less deadly, ending in death 56.4% and 52.7% of the time, respectively, compared with the nearly 90% fatality rate for guns. *See* Andrew Conner, et al., *supra*, at 887. Other methods are even less lethal—for instance, drug poisoning accounted for 59.4% of suicidal acts but only 13.5% of deaths. *Id.* at 885.

Numerous studies substantiate the view that waiting periods are effective in reducing suicide deaths. In enacting the Waiting Period Statute, Maine joins twelve other states that impose a waiting period for firearm purchases. *See Which States Require a Waiting Period Before Gun Purchases?*, Everytown for Gun Safety Support Fund, (Jan. 4, 2024).<sup>17</sup> One study of states that have already implemented waiting periods for gun purchases found that waiting periods led to a 7.4% reduction in gun suicides. Michael Luca et al., *Handgun Waiting Periods Reduce Gun Deaths*, 114 Proc. Natl. Acad. Sci. 12162 (2017). Using Maine’s most recent data on gun suicides, this would be the equivalent of roughly 12 Maine lives saved per year. Another recent study concluded that background checks and mandatory waiting periods were correlated with lower firearm-related suicide rates in states that implemented such laws as compared with states that did not. *See* Bradley Kawano, et al., *Restrictive Firearm Laws and Firearm-Related Suicide*, 236 J. Am. College of Surgeons 37 (2023).

Conversely, states that have removed mandatory waiting periods have seen increased numbers of suicide deaths. In the year following South Dakota’s repeal of its waiting period requirement, the state’s overall suicide rate increased by 7.6% compared to the much smaller 3.3%

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<sup>16</sup> Available at: <https://www.nami.org/Advocacy/Policy-Priorities/Stopping-Harmful-Practices/Gun-Violence-Purchase-Waiting-Periods>.

<sup>17</sup> Available at: <https://everytownresearch.org/rankings/law/waiting-periods/>.

increase seen across the United States as a whole. *See* Michael Anestis & Joye Anestis, *Suicide Rates and State Laws Regulating Access and Exposure to Handguns*, Am. J. Pub. Health (Oct. 2015).<sup>18</sup> Wisconsin saw a similar effect when it repealed its waiting period, with firearm suicides increasing by 6.5% after the repeal. *See* Stephen N. Oliphant, *Effect of Wisconsin’s handgun waiting period repeal on suicide rates*, Inj. Prev. (Dec. 2022).<sup>19</sup>

Real life experiences help to illustrate the kinds of tragedies the Waiting Period Statute is intended to help prevent. In November 2008, a 21-year-old man named Ryan Frazier died by suicide with a handgun soon after filing a lawsuit against a priest who had molested him as a teenager. Madeline Drexler, Harvard Public Health, *Guns & Suicide: The Hidden Toll* (Spring 2013). The day he died, Ryan went to a gas station five minutes from his home, bought a semiautomatic handgun, and was found dead in his car at an abandoned railroad station. *Id.* According to his wife, Emily Frazier, Ryan had never before used a gun. *Id.*<sup>20</sup>

**B. Waiting periods reduce firearm homicides.**

Waiting period laws also have “a large and robust effect” on reducing gun-related homicides. *See* Luca et al., *supra*. Based on an analysis of 45 years’ worth of data, researchers found that waiting periods of only a few days “reduce gun homicides by roughly 17%.” *Id.* The 17% reduction in firearm homicides equates to approximately 36 “fewer gun homicides per year for a state with an average number of gun deaths.” *Id.* Even in Maine, with a comparatively low homicide rate, this would equate to four lives saved each year. If every state without waiting period requirements enacted legislation like the Waiting Period Statute, the United States could prevent

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<sup>18</sup> Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4566524/>.

<sup>19</sup> Available at: <https://pmc.ncbi.nlm.nih.gov/articles/PMC9726970/>.

<sup>20</sup> *See also* Marie Weidmayer, *Maine Military Supply in Holden Closed After Death by Suicide in Store*, Bangor Daily News (Sept. 26, 2023), <https://www.bangordailynews.com/2023/09/26/bangor/maine-military-supply-emergency-closure/>.



approximately “910 gun homicides per year.” *Id.*

Post-*Bruen* courts examining whether to enforce waiting period laws have determined that the loss of lives “significantly outweighs ... a temporary delay in the process of purchasing” firearms, and that “the public’s interest in the preservation of dozens of ... lives cannot be understated.” *Ortega*, 2024 WL 3495314, at \*42; *see also Polis*, 701 F.3d at 1149; *Birmingham*, 2024 WL 3466482, at \* 29-30. This Court should do the same.

**C. Waiting periods reduce domestic violence homicides.**

Plaintiffs place great emphasis on their claim that the Waiting Period Statute will make domestic violence victims less safe by preventing them from immediately obtaining access to firearms. But, as the Maine Coalition to End Domestic Violence testified in support of the Waiting Period Statute, the opposite is true: an abusive partner’s access to firearms makes it five times more likely that a victim of domestic abuse will be killed, and domestic violence assaults involving firearms are twelve times more likely to result in death than assaults that do not involve guns. *See* Hearing Testimony, Testimony of Francine Garland Stark, MCEDV (“Stark Testimony”).<sup>21</sup> This is true *regardless* of who actually owns the firearm. *Id.*

In Maine, 62% of all intimate partner homicides between 2000 and 2019 involved the use of a gun. *Id.*; *see also* Maine Domestic Abuse Homicide Review Panel, *13<sup>th</sup> Biennial Report – A 20 Year Lookback* (2021) (“20 Year Lookback”) at 46.<sup>22</sup> All told, for every one woman who uses a handgun to kill an intimate partner in self-defense, 83 women are murdered by an intimate partner with a handgun. Violence Policy Center, *A Deadly Myth: Women, Handguns, and Self-Defense* (2001).<sup>23</sup> The Supreme Court summarized this problem succinctly in *United States v. Castleman*:

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<sup>21</sup> Available at: <https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=182699>.

<sup>22</sup> Available at: <https://www.maine.gov/ag/docs/DAHRP-Report-for-Posting-ACCESSIBLE.pdf>

<sup>23</sup> Available at: <http://www.vpc.org/studies/myth.htm>.

“[A]ll too often ... the only difference between a battered woman and a dead woman is the presence of a gun.” 572 U.S. 157, 160 (2014) (citation omitted); *see also id.* (noting “the presence of a firearm increases the likelihood that [domestic violence] will escalate to homicide”).

Because a domestic violence victim is statistically more likely to have a gun used against her than to defend herself with that gun, Maine’s domestic violence experts do not advise victims to obtain firearms as part of their safety plan. *See Stark Testimony*; *see also 20 Year Lookback at 20* (noting “victims of domestic violence may acquire firearms to assist in their personal protection” but recognizing that “the presence of firearms may lead to increased danger for victims”). These experts also recognize that expecting a victim who likely shares deep ties of history, family, and even love with their abuser to shoot and disable or kill that abuser is unrealistic—both because these ties make the victim less likely to timely pull the trigger, and because even trained police officers discharging their firearms in high-stress situations hit their targets only occasionally. *See Vini Simas et al., Factors Influencing Marksmanship in Police Officers: A Narrative Review*, 19 *Int. J. Environ. Res. Public Health* 14236 (2022). Moreover, those women who do kill their abusers are very often not protected by the legal system—at least 90% of women in prison for killing a man report having been abused by those men, and those women have historically faced sentences longer than men who kill their intimate partners. *See Amanda Kippert, Women Serve Longer Prison Sentences After Killing Abusers* (June 22, 2020).<sup>24</sup>

Put simply, the presence of a firearm in an abusive home is likely to decrease the victim’s safety, and even where a domestic violence victim does successfully use a firearm to fend off an abuser, that victim is likely to face a long period of incarceration. Moreover, women in Maine who, despite these risks, determine they want to have a firearm as part of their safety plan are not

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<sup>24</sup> Available at: <https://www.domesticshelters.org/articles/in-the-news/women-serve-longer-prison-sentences-after-killing-abusers>.

impeded by the Waiting Period Statute, because Maine’s domestic violence resource centers can provide shelter to those women during the three-day waiting period, or can arrange for temporary lodging in hotels during the waiting period. *See Stark Testimony; see also 20 Year Lookback at 20* (encouraging “bystanders to assist victims in contacting community-based advocacy organizations to explore high risk safety planning in situations when victims are so afraid that they have acquired firearms for their protection”).

It is notable that among the eight Plaintiffs in this case, none is a woman who alleges she has been harmed by an abuser as a result of the Waiting Period Statute. While Plaintiffs allude to the hearsay statements of unidentified domestic violence victims, the reality is that Maine’s experts on domestic violence—and the evidence-backed research they rely upon—support the Waiting Period Statute. Where one in seven women have experienced abuse with a gun by an intimate partner, domestic abuse victims will be better served if the Waiting Period Statute is upheld. *See Hearing Testimony, Testimony of Lily Bohem James, Maine Women’s Lobby.*<sup>25</sup>

### CONCLUSION

The Waiting Period Statute is constitutional and will definitely save numerous Maine lives, many of whom will be men or women struggling with temporary depression or other emotional or mental difficulties. And many of them will be women who are trapped in difficult and complicated relationships so common to the human condition and whom the state has rightly sought to protect against deadly domestic encounters. The Court should therefore deny Plaintiffs’ Motion for Preliminary Injunction.

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<sup>25</sup> Available at: <https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=10030520>.

Dated: January 10, 2025

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**CERTIFICATE OF SERVICE**

I hereby certify that on the date indicated below I caused a copy of the foregoing pleading to be filed with the Court's ECF filing system, which will cause an electronic notice to be sent to counsel of record.

Dated: January 10, 2025

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