

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 25-1160

ANDREA BECKWITH; EAST COAST SCHOOL OF SAFETY;
NANCY COSHOW; JAMES WHITE; J. WHITE GUNSMITHING;
ADAM HENDSBEE; THOMAS COLE; TLC GUNSMITHING AND ARMORY;
A&G SHOOTING,

Plaintiffs-Appellees

v.

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

Defendant-Appellant

On Appeal from Order of the United States District Court, District of Maine
Case No. #: 1:24-cv-00384-LEW

**CONSENTED-TO 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-APPELLANT**

Of Counsel:

Douglas N. Letter
Shira Lauren Feldman
Tess M. Fardon
BRADY CENTER TO PREVENT
GUN VIOLENCE
840 First Street, NE Suite 400

Julia B. MacDonald, Bar No. 1215565
Pierce Atwood LLP
Merrill's Wharf
254 Commercial Street
Portland, Maine 04101
(207) 791-1100
Attorney for Amici Curiae
(Additional Counsel on Next Page)

Washington, DC 20002
(202) 370-8100
dletter@bradyunited.org
sfeldman@bradyunited.org
tfardon@bradyunited.org

Esther Sanchez-Gomez
William T. Clark
GIFFORDS LAW CENTER TO
PREVENT GUN VIOLENCE
268 Bush Street #555
San Francisco, CA 94104
(202) 808-8654
esanchezgomez@giffords.org
wclark@giffords.org

CORPORATE DISCLOSURE STATEMENT

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”) are non-profit corporations, have no parent corporations, do not issue stock, and have no publicly held affiliates.

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IDENTITY AND INTERESTS OF *AMICI CURIAE*¹

Amicus curiae MGSC is a Maine-based nonprofit organization made up of concerned Mainers focused on gun safety and personal responsibility. Founded after 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 Maine Bill LD 2238 (SP 598), now codified as 25 M.R.S. § 2016 (the “Act”) 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; educates the public about abuse; and advocates for policies that will hold abusive people accountable and keep survivors safe. MCEDV testified in support of the Act 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

¹ Pursuant to Fed. R. App. P. 29(a)(2), *Amici* state that all parties have consented to the filing of this brief. Further, pursuant to Fed. R. App. P. 29(a)(4)(E), *Amici* state that no party’s counsel authored the brief in whole or in part; no party or party’s counsel contributed money intended to fund preparing or submitting the brief; and no person, other than amicus or its counsel, contributed money that was intended to fund preparing or submitting the brief.

Psychiatric Association and is Maine's only professional organization of psychiatry and psychiatrists. 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 Act based on its professional knowledge of the relationship between gun violence and suicide and believes the Act 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 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. 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 in communities across the country.

ARGUMENT

Every District Court that has examined a waiting period law following the Supreme Court’s landmark decision in *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022) has concluded that such laws are constitutional.² Until now. The District Court’s Order here, granting Plaintiffs’ Motion for Preliminary Injunction (Addendum 1 to Appellant’s Brief (“Add.”)) is an anomaly that deviates both from the Supreme Court’s Second Amendment jurisprudence and from basic principles governing injunctive relief.

The Maine Legislature enacted Maine Bill LD 2238 (SP 598), now codified as 25 M.R.S. § 2016 (the “Act”), to save lives. Defendant Aaron M. Frey (the “State”) presented un rebutted evidence to the District Court that the Act would achieve this goal by reducing both suicides and homicides. The District Court explicitly refused to consider “the evidence offered by the parties concerning . . . anticipated outcomes.” Add. 3; *see also id.* (“This decision ultimately does not pass

² *See* *Vt. Fed’n of Sportsmen’s Clubs v. Birmingham*, 741 F. Supp. 3d 172, 215 (D. Vt. 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*, 741 F. Supp. 3d 1027, 1097 (D.N.M. 2024), *appeal filed*, No. 24-2121 (10th Cir. 2024).

judgment on . . . the efficacy of the Act.”). But the *Bruen* test does not require that such evidence must be ignored.

As the Supreme Court clarified in *United States v. Rahimi*, the Second Amendment does not create “a law trapped in amber.” 602 U.S. 680, 691-92 (2024). Rather, legislatures have the power to respond to “unprecedented societal concerns” like the modern crisis of impulsive gun violence. *Bruen*, 597 U.S. at 27; *see also Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38, 52 (1st Cir. 2024) (recognizing Rhode Island’s power to ban large-capacity magazines because they implicate a “societal concern . . . [that] is unprecedented and growing, and could not have been confronted – let alone resolved – by our founders.”). To read *Bruen* to preclude any consideration of a law’s life-saving benefits would raise “serious problems,” as it would “force[] 21st-century regulations to follow late-18th century policy choices.” *Rahimi*, 602 U.S. at 739 (Barrett, J., concurring).

With the Act enjoined, Mainers face irreparable harm of the gravest order—the loss of additional lives to the modern epidemics of suicide- and homicide-by-firearm. This grave irreparable harm outweighs any harm Plaintiffs claim to face, and the balance of the equities and public interest also plainly favor the Act’s continued enforcement.

The State is also highly likely to succeed on the merits, because: (1) the Act does not implicate the plain text of the Second Amendment; and (2) even if the Act

could be read to implicate the plain text, the Act is consistent with historical tradition when appropriately evaluated using the “more nuanced approach” recognized by *Bruen* and reaffirmed by *Rahimi*. The Second Amendment does not bar states from addressing the unprecedented modern public health crises of suicide-by-firearm and impulsive firearm homicides by passing laws that research shows save lives.

Because all four preliminary injunction factors strongly weigh in the State’s favor, this Court should reverse the District Court’s Order enjoining the Act’s enforcement.

I. Mainers face grave irreparable harm in the absence of the Act, and the balance of the equities and public interest also favor the Act’s continued enforcement.

The District Court enjoined a public health measure enacted by the Maine legislature to advance a crucial state goal and constitutional duty: protecting the health and safety of the community by reducing firearm-related suicides and homicides.³ See Me. Const. art. 1, § 1 (recognizing right to “safety and happiness”). With the Act barred from enforcement, the State is prevented from

³ 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 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>.

achieving that fundamental goal and is thus irreparably harmed. *See Dist. 4 Lodge of the Int’l Ass’n of Machinists & Aero. Workers Local Lodge 207 v. Raimondo*, 18 F.4th 38, 47 (1st Cir. 2021) (“[A]ny time a [government] is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.”) (quoting *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)).⁴

The State faces permanent loss of Maine lives with the Act enjoined; the Plaintiffs face mere monetary losses and three days of inconvenience. 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 concrete harm beyond alleged brief time lost and purported lost sales—would be minimal. *See Birmingham*, 741 F. Supp. 3d at 215 (“compliance with legitimate regulatory standards . . . is part of responsible gun ownership” and does not qualify as irreparable harm); *Polis*, 701

⁴ *See also Del. State Sportsmen’s Ass’n v. Del. Dep’t of Safety & Homeland Sec.*, 108 F.4th 194, 205 (3d Cir. 2024) (“Courts rightly hesitate to interfere with exercises of executive or legislative authority. There is always a public interest in prompt execution of the laws. That is doubly true when federal courts are asked to block states from enforcing their laws.”) (citations omitted).

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, Adam Hendsbee, and Thomas Cole (App. 39-67).

As the District Court itself recognized below, there is substantial evidence that waiting periods “can prevent rash homicidal or suicidal behavior with firearms.” Add. 11 n.9. Driven by this public health research, the Maine Legislature enacted a modest, commonsense measure to combat an epidemic of impulsive acts of gun violence. A court crafting equitable relief must consider the irreparable harm and threat to the public interest that comes from enjoining such basic tools in the daily fight against gun violence.⁵

A. Waiting periods reduce firearm suicides.

There is an indisputable public interest in preventing suicide deaths in Maine, and enjoining the Act—a demonstrably effective means of reducing suicide deaths—poses a serious risk of irreparable 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,

⁵ *See Birmingham*, 741 F. Supp. 3d at 216 (“The State will be harmed by [the] injunction It has a legitimate interest in . . . reducing impulse-based violence both to the self and to others.”); *Polis*, 701 F. Supp. 3d at 1148 (recognizing “the concrete public interest at stake: citizens’ lives”).

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.⁶

Waiting periods address transitory and impulsive suicidal urges by interposing a “cooling off” period, during which a suicidal crisis often passes. Because suicidal crises often escalate quickly and suddenly, “limiting access to means of suicide can play a significant role in prevention.” *Gun Violence:*

⁶ *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), *available at*: <https://www.vox.com/2015/7/30/9068255/suicide-impulsive-gun-control> (“[T]he majority of suicide attempts are within three hours of people deciding to kill themselves.”).

Purchase Waiting Periods, Nat'l All. on Mental Illness (last visited Jan. 10, 2025).⁷ Even if a waiting period does not deter an individual from attempting suicide, 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 fact that waiting periods are effective in reducing suicide deaths. In enacting the Act, 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).⁸ 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,

⁷ Available at: <https://www.nami.org/Advocacy/Policy-Priorities/Stopping-Harmful-Practices/Gun-Violence-Purchase-Waiting-Periods>.

⁸ Available at: <https://everytownresearch.org/rankings/law/waiting-periods/>.

this would be the equivalent of roughly twelve Maine lives saved per year—a fact that the State presented to the District Court and that Plaintiffs did not rebut. *See* Defendants’ Opposition to Motion for Preliminary Injunction (ECF No. 13) at 19. Another recent study concluded that state-level background checks and mandatory waiting periods were correlated with lower firearm-related suicide rates. *See* Bradley Kawano, et al., *Restrictive Firearm Laws and Firearm-Related Suicide*, 236 J. Am. College of Surgeons 37 (2023).

Conversely, states that have rescinded 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% 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).⁹ Wisconsin saw a similar effect when it repealed its waiting period, with firearm suicides in the state increasing by 6.5% after the repeal. *See* Stephen N. Oliphant, *Effect of Wisconsin’s Handgun Waiting Period Repeal on Suicide Rates*, 28 Inj. Prev. 580 (Dec. 2022).¹⁰

⁹ Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4566524/>.

¹⁰ Available at: <https://pmc.ncbi.nlm.nih.gov/articles/PMC9726970/>.

Real life experiences help to illustrate the kinds of tragedies the Act 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 alleging childhood sexual abuse. 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 nearby car. *Id.*

B. Waiting periods reduce firearm homicides.

Waiting period laws also have “a large and robust effect” on reducing gun-related homicides. *See* Michael 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 Act, the lives of more than 900 people would be saved in just one year—not nameless and faceless people, but people with spouses, children, parents, siblings, cousins, friends, neighbors, coworkers, or housemates. *Id.*

Post-*Bruen*, courts examining whether to allow the enforcement of waiting period laws in the face of requests for emergency relief 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*, 741 F. Supp. 3d at 1096; *see also Polis*, 701 F.3d at 1149; *Birmingham*, 741 F. Supp. 3d at 216. This Court should do the same.

C. Waiting periods reduce domestic violence homicides.

In their Complaint and Motion for Preliminary Injunction, Plaintiffs placed great emphasis on their claim that the Act will make domestic violence victims less safe by preventing them from obtaining immediate access to firearms, and the District Court subsequently found that individuals “seeking to carry for self-defense in case of confrontation” were likely to be harmed by the Act. Add. 16. In truth, this rationale is tragically flawed, and actually puts these victims in much greater jeopardy. As MCEDV testified to the Legislature in support of the Act, 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 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 Francine Garland Stark, MCEDV (“Stark Testimony”).¹¹ 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, *13th Biennial Report – A 20 Year Lookback* (2021) (“20 Year Lookback”) at 46.¹² Chillingly, 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).¹³ The Supreme Court summarized this problem succinctly in *United States v. Castleman*: “[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).

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*

¹¹ *Available at:*

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

¹² *Available at:* <https://www.maine.gov/ag/docs/DAHRP-Report-for-Posting-ACCESSIBLE.pdf>

¹³ *Available at:* <http://www.vpc.org/studies/myth.htm>.

Stark Testimony; *see also* 20 Year Lookback at 20 (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).¹⁴

Fortunately, Maine’s legislators were convinced by the facts, rather than by misleading fear mongering. Put simply, the presence of a firearm in an abusive home is likely to decrease the victim’s safety. Moreover, women in Maine who, despite these risks, determine they want to have a firearm as part of their safety

¹⁴ Available at: <https://www.domesticshelters.org/articles/in-the-news/women-serve-longer-prison-sentences-after-killing-abusers>.

plan are not impeded by the Act, because Maine’s domestic violence resource centers can provide temporary lodging to those women during the three-day waiting period. *See Stark Testimony; see also 20 Year Lookback at 20.*

It is notable that among the eight Plaintiffs in this case, none is a woman who alleges she has been harmed (or imminently will be harmed) by an abuser as a result of the Act. In the affidavits accompanying their Complaint, Plaintiffs alluded to the hearsay statements of unidentified domestic violence victims, but the reality is that Maine’s experts on domestic violence—and the evidence-backed research on which they rely—support the Act. Where one in seven women has experienced abuse with a gun by an intimate partner, domestic abuse victims will be best served by enforcement of the Act. *See Hearing Testimony, Testimony of Lily Bohen James, Maine Women’s Lobby.*¹⁵

* * *

Because the State faces grave irreparable harm in the absence of the Act, which far outweighs any harm suffered by the Plaintiffs—and because the balance of the equities and the public interest plainly weigh in the State’s favor—this Court should reverse the District Court’s Order enjoining the Act.

¹⁵ *Available at:*
<https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=10030520>.

II. The State is highly likely to succeed on the merits.

The District Court’s determination that Plaintiffs are likely to succeed on the merits of their claim is an anomaly in waiting periods challenges that invites this Court to create a circuit split. Until the instant case, every post-*Bruen* court to examine a waiting period law has upheld the law as constitutional. This factor thus weighs in favor of the State.

A. The Act 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 Rahimi*, 602 U.S. at 715. 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.

As a regulation governing the *sale* of firearms, rather than the manner in which they may be kept, carried, or used, the Act 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 1136.¹⁶

Plaintiffs cannot rebut this presumption of lawfulness, because the plain text of the Second Amendment includes no right to obtain, let alone purchase, 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 Act 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 Act instead imposes a short delay on firearm

¹⁶ Contrary to Plaintiffs’ allegation that the Act “applies to all firearm sales,” *see* Motion for Preliminary Injunction (ECF No. 4) at 9, the Act 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.

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*, 741 F. Supp. 3d at 209; *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*, 741 F. Supp. 3d at 1076 (“[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 obtain a firearm *instantaneously*. *See Birmingham*, 741 F. Supp. 3d at 209 (“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 their own legs or 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. *See NRA v. Bondi*, No. 21-12314, -- F.4th ----, 2025 WL 815734, at *21 (11th Cir. Mar. 14, 2025) (Rosenbaum, J., concurring) (concluding the “practical” impediments to gun acquisition at the founding were relevant to historical analysis).

Because the Act is presumptively lawful and does not implicate the Second Amendment’s plain text, the Court should reverse the District Court’s Order.

B. The Act addresses Maine’s unprecedented modern crisis of firearm suicides, as well as the modern problem of impulsive firearm homicides.

Even if the Act 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.* 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.” *Rahimi*, 602 U.S. at 739 (citation omitted) (Barrett, J., concurring). This Court has recognized the need to apply a “more nuanced” approach to cases “implicating unprecedented societal concerns” as recently as April 2025. *See Capen v. Campbell*, No. 24-1061, -- F. 4th ----, 2025 WL 1135269, at *3 (1st Cir. 2025) (considering “contemporary and growing societal concern” of mass shootings in upholding assault weapon ban”).

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

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

The Act 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* 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.”).¹⁷

Maine has a suicide rate of 17.7 deaths per 100,000 people—the second-highest suicide rate in New England, and well above the national average. *See Suicide Mortality by State*, Centers for Disease Control (Feb. 15, 2023).¹⁸ 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).¹⁹ 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.*

¹⁷ Available at: <https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=182718>.

¹⁸ Available at: <https://www.cdc.gov/nchs/pressroom/sosmap/suicide-mortality/suicide.htm>.

¹⁹ Available at: <https://legislature.maine.gov/doc/11090>.

Concerned Maine physicians and mental health professionals testified in favor of the Act 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 Physicians²⁰; *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.”)²¹; *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.”).²²

²⁰ *Available at:*

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

²¹ *Available at:*

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

²² *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).²³ 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 Act seeks to address the impulsive use of guns in homicides. Maine experienced 22 firearm homicides in 2022.²⁴ 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.,*

²³ *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.

²⁴ While firearm-specific homicide data is not yet available for later years, 2023 saw Maine’s overall homicides skyrocket to 53 victims. *See 2023 Annual Homicide List*, Maine Department of Public Safety, *available at* <https://www.maine.gov/dps/msp/media-center/homicide-lists/2023-homicides>. Twenty-two of these killings were the results of two well-publicized mass shootings in Bowdoin and Lewiston, Maine. *Id.*

David Card & Gordon B. Dahl, *Family Violence and Football: The Effect of Unexpected Emotional Cues on Violent Behavior*, 126 Quarterly J. of Econ. 103 (2011).

D. 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 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—119 years 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 witness widespread impulsive firearm killings. Kevin Sweeney, *An Eighteenth-Century Gun Culture Shaped by Constraints*, Duke Center for Firearms Law (Sept. 6, 2023).²⁵ Eighteenth-century America had limited means of producing new firearms—building a musket from scratch could take a week or more. *Id.* Most new

²⁵ Available at: <https://firearmslaw.duke.edu/2023/09/an-eighteenth-century-gun-culture-shaped-by-constraints>.

firearms had 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.*

E. Analogous regulations temporarily impeding access to firearms provide ample historical precedent for the Act.

Using the “more nuanced approach” set forth in *Bruen* and *Rahimi*, the Act’s modest and temporary restrictions on gun sales are “consistent with the Second Amendment’s text and historical understanding.” *Bruen*, 597 U.S. at 26.²⁶

At least three categories of longstanding gun regulations confirm that the Act aligns with the Nation’s historical tradition of firearm regulation. Licensing 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; *Birmingham*, 741 F. Supp. 3d at 211-12.

The District Court differentiated the Waiting Period Statute from the shall-issue licensing regimes discussed in *Bruen*, concluding that the Waiting Period Statute does not apply a “narrow, objective, and definite standard[,]” and instead

²⁶ 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.

applies “no standard at all.” *See* Add. 10 & n.6 (quoting *Bruen*, 597 U.S. at 38 n.9). But *Bruen* found problematic laws that used subjective standards, laws “requiring the ‘appraisal of facts, the exercise of judgment, and the formation of an opinion’”—not laws like the Waiting Period Statute that apply a uniform, objective condition to all firearm sales. *Id.* The uniform requirement that three days’ time must pass before a firearm purchase may be completed is precisely the type of narrow, objective, and definite standard the Supreme Court blessed in *Bruen*. *See Ortega*, 741 F. Supp. 3d at 1085 (“[T]he Waiting Period Act applies equally to all individuals seeking to purchase a firearm and does not require firearms sellers to appraise a buyer’s need, and thus contains ‘only “narrow, objective, and definite standards guiding licensing officials’” (quoting *Bruen*, 597 U.S. at 38 n.9)).

* * *

Because the Act is presumptively lawful and does not implicate the plain text of the Second Amendment—and because, in any event, the Act addresses an unprecedented modern phenomenon via methods that are consistent with historical Second Amendment regulations—the State is highly likely to succeed on the merits.

CONCLUSION

For the foregoing reasons and the reasons articulated by the State, this Court should reverse the District Court’s Order enjoining the Act’s enforcement.

DATED: May 1, 2025

/s/ Julia B. MacDonald

Julia B. MacDonald
First Circuit Bar No. 1215565

PIERCE ATWOOD LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
207-791-1100
jmacdonald@pierceatwood.com

Attorney for Amici Curiae

Of Counsel:

Douglas N. Letter
Shira Lauren Feldman
Tess M. Fardon
BRADY CENTER TO PREVENT GUN
VIOLENCE
840 First Street, NE Suite 400
Washington, DC 20002
(202) 370-8100
dletter@bradyunited.org
sfeldman@bradyunited.org
tfardon@bradyunited.org

Esther Sanchez-Gomez
William T. Clark
GIFFORDS LAW CENTER TO PREVENT
GUN VIOLENCE
268 Bush Street #555
San Francisco, CA 94104
(202) 808-8654
esanchezgomez@giffords.org
wclark@giffords.org

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Dated: May 1, 2025

/s/ Julia B. MacDonald

Julia B. MacDonald

First Circuit Bar No. 1215565

PIERCE ATWOOD LLP

Merrill's Wharf

254 Commercial Street

Portland, ME 04101

207-791-1100

jmacdonald@pierceatwood.com

Attorney for Amicus Curiae

CERTIFICATE OF SERVICE

I certify that the within brief has been electronically filed with the Clerk of the Court on May 1, 2025. All attorneys listed below are ECF filers and will receive service by electronic means pursuant to Rule 4 of this Court's Rules Governing Electronic Filing:

Paul D Clement
Thomas A. Knowlton
Erin E. Murphy
Matthew D. Rowen
Paul Sutter
Joshua A. Tardy
Christopher C. Taub
Kevin Joseph Wynosky

Dated: May 1, 2025

/s/ Julia B. MacDonald
Julia B. MacDonald
First Circuit Bar No. 1215565

PIERCE ATWOOD LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
207-791-1100
jmacdonald@pierceatwood.com

Attorney for Amicus Curiae