

No. 22-915

IN THE
Supreme Court of the United States

UNITED STATES,

Petitioner,

v.

ZACKEY RAHIMI,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

**BRIEF OF THE TARRANT COUNTY
CRIMINAL DISTRICT ATTORNEY, ET AL.
AS AMICI CURIAE IN SUPPORT
OF PETITIONER**

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INTEREST OF AMICI CURIAE¹

The numbers regarding intimate partner violence and guns are bone chilling. The National Coalition Against Domestic Violence estimates that 13.6% of American women have been threatened by intimate partners with a firearm; 43% of those women have been physically injured. https://assets.speakcdn.com/assets/2497/guns_and_dv_2022.pdf. Women in the United States are 11 times more likely to be murdered with a gun than in other high-income nations. *Id.* In a survey of contacts by the National Domestic Violence Hotline, 67% of respondents believed their abusers—who had access to firearms—could kill them. *Id.* And those people might be right—an abuser’s access to a firearm increases the risk of murder by 1000%. *Id.*

According to *The American Journal of Public Health*, an abusive partner who has access to a gun is five times more likely to kill his female victim. [Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study | AJPH | Vol. 93 Issue 7 \(aphapublications.org\)](#). And homicide is the number one cause of death of pregnant and post-partum women, making it higher than any pregnancy-related complication. [Homicide](#)

¹ All parties received notice of the filing of this brief via e-mail on April 8, 2023.

No counsel for a party has authored this brief in whole or in part, and no counsel or party has made a monetary contribution to fund the preparation or submission of this brief. No one other than the amici curiae and its counsel made any monetary contribution to its preparation and submission.

leading cause of death for pregnant women in U.S. | News | Harvard T.H. Chan School of Public Health.

But it is not just the abuser's partner who is victimized or murdered. According to the Texas Council on Family Violence, 100% of law enforcement and bystanders killed in 2021 domestic violence homicide incidents in Texas were killed by an abuser with a gun. https://tcfv.org/wp-content/uploads/tcfv_htv_summary_facts_2021.pdf.

In stark contrast to these numbers stand the numbers where protective orders prohibit gun possession. States that prohibit a domestic partner or a dating partner subject to a protective order from possessing guns have a 13% lower rate of intimate partner homicide than those without. https://assets.speakcdn.com/assets/2497/guns_and_dv_2022.pdf. States with both temporary and final protective orders also have a 13% lower rate of intimate partner homicide. *Id.* And where the abusers are required to relinquish their firearms, there is a 12% decrease in intimate partner homicide. *Id.* So, Judge Ho's statement that "merely enacting laws that tell them to disarm is a woefully inadequate solution,"² is simply wrong. Imperfect, yes; "woefully inadequate," no.

Nearly every state in the country has a law or laws prohibiting the possession of firearms by anyone subject to a protective order, whether temporary or

² *United States v. Rahimi*, 61 F.4th 443, 467 (5th Cir. 2023) (Concurring op.).

final. *See* Appendix. But with the Fifth Circuit’s opinion *Rahimi*, a cloud of uncertainty hangs over every one of those laws.

“[A] legal system crafted to protect life and liberty should readily encompass the value of protecting people from being terrorized by gun-possessors with a propensity to physically harm others.” Gun laws after Bruen: Clarence Thomas can’t read the Framers’ minds. (slate.com) (Feb. 15, 2023). Judge Ho’s solution to detain, prosecute, and incarcerate³ is no solution. It certainly does not take into consideration—in any way—the difficult and complex nature of intimate partner violence cases.⁴ Amici Curiae have a responsibility to use every tool available to ensure the safety of the victims while any criminal case winds its way through the system. This is what protective orders prohibiting gun possession are for; this is their value. *See* 5th Circuit ruling is detrimental for domestic violence survivors (dallasnews.com) (Feb. 15, 2023) (“Securing a protective order through our legal system remains a vital tool in a survivor’s box. As always, [SafeHaven] will continue to work with survivors to ensure they are fully able to experience freedom from domestic violence with access to all the interventions available to them.”); “Terrifying” court ruling lets alleged

³ *Rahimi*, 61 F.4th at 467.

⁴ “Domestic violence advocates have long argued that victims are the most susceptible to violence, via firearm or otherwise, when trying to leave an abuser, separate, or get a divorce. This can take anywhere from days to years, often with a restraining order as the only barrier until the relationship is finally over.” 5th Circuit ruling on guns, restraining orders goes too far | Fort Worth Star-Telegram (Feb. 9, 2023).

domestic abusers keep their guns | The Texas Tribune (Feb. 14, 2023) (“They are one of the only mechanisms that survivors have that’s a direct intervention to stop the abuse. . . For most people, protective orders are working, and they work better when the full provisions are in force and a firearm is taken out of the equation.”).

INTRODUCTION AND SUMMARY OF THE ARGUMENT

In *Rahimi*, the Fifth Circuit held that 18 U.S.C. § 922(g)(8), the federal statute prohibiting the possession of firearms by someone subject to a protective order, was unconstitutional. 61 F.4th 443. As the Government alluded to in its petition for certiorari review, the Fifth Circuit’s opinion calls into question the validity of Texas laws prohibiting the possession of firearms by someone subject to a protective order.

Prior to this decision, no one would have questioned that the enactment of these laws was a proper use of a state’s police power. Indeed, the police power of the 50 states is well-established, having been the basis of Supreme Court opinions for well over a century. The only caveat for its use is that it cannot intrude on the rights enshrined in the Constitution. Under the Fifth Circuit’s opinion, however, these laws do exactly that—they intrude on the Second Amendment’s right of the people to keep and bear arms. *Rahimi* thus obliterates the State’s police power to enact laws disarming those who have committed acts of domestic violence, laws that have

been enacted precisely for the health and safety of its citizens. The Fifth Circuit was wrong.

This Court has made it clear that the right to keep and bear arms is the right of “*ordinary, law-abiding citizens*” to keep and bear arms for *self-defense*. Allowing anyone subject to a protective order to retain possession of their firearms is the antithesis of this.

ARGUMENT

I. Since the Birth of the Union, It Is the Individual States that Have Held the Power to Legislate for the Good and Welfare of Their Citizens. Unless the Constitution Is Offended, Laws Enacted for Such Purposes Will Be Upheld.

“In our federal system, the National Government possesses only limited powers; the States and the people retain the remainder.” *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 533 (2012). This “remainder” is the States’ police power, “the broad authority to enact legislation for the public good[.]” *Bond v. United States*, 572 U.S. 844, 854 (2014) (citing *United States v. Lopez*, 514 U.S. 549, 567 (1995)); see also *Jacobson v. Massachusetts*, 197 U.S. 11, 24–25 (1905). Put another way, every state may enact laws to protect the peace, health, happiness, and general welfare of its citizens:

The states’ police power “is, and must be from its very nature, incapable of any very exact definition or limitation. Upon it depends the security of order, the life

and health of the citizen, the comfort of an existence in a thickly populated community, the enjoyment of private and social life, and the beneficial use of property. 'It extends, . . . to the protection of the lives, limbs, comfort, and quiet of all persons, and the protection of all property within the State; . . . and persons and property are subject to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the State. Of the perfect right of the legislature to do this no question ever was, or, upon acknowledged general principles, can ever be made, so far as natural persons are concerned.'"

Slaughterhouse Cases, 83 U.S. 36, 62 (1872) (citations omitted).

The state is free to enact laws pursuant to its police power, provided that those laws do not intrude on those rights protected by the Bill of Rights. *E.g.*, *Lovell v. City of Griffin, Ga.*, 303 U.S. 444, 451 (1938); *see also* U.S. Const. Amend. X. In holding that § 922(g)(8) violates the Second Amendment, the Fifth Circuit called into doubt state law properly enacted pursuant to the state's police power.

Domestic violence, sexual assault, and other like crimes have a significant impact on the whole of society. Protective orders are only one remedy available, but they are an important one. As the Colorado Legislature expressly found "the issuance

and enforcement of protection orders are of paramount importance. . . because protection orders promote safety, reduce violence and other types of abuse, and prevent serious harm and death.” The Legislature further declared that protective orders were important for the health and safety not only for victims of domestic violence, but also for victims of sexual assault and stalking. Colo. Rev. Stat. § 13-14-100.2 (West 2023). The New Jersey Legislature said

it is the responsibility of the courts to protect victims of violence that occurs in a family or family-like setting by providing access to both emergent and long-term civil and criminal remedies and sanctions, and by ordering those remedies and sanctions that are available to assure the safety of the victims and the public.

N.J. Rev. Stat. Ann. § 2C:25-18 (West 2023). In 2004, the Nebraska Legislature found that the crimes of both sexual assault and domestic violence were matters “of statewide concern, and the prevention of violence is for the protection of the health, safety, and welfare of the public.” Neb. Rev. Stat. Ann. § 29-4301 (West 2023). And nearly three decades ago, the California Legislature recognized the destruction caused by domestic violence: “The Legislature hereby finds that spousal abusers present a clear and present danger to the mental and physical well-being of the citizens of the State of California.” Cal. Penal Code § 273.8 (West 2023).

This Court acknowledged that the Second Amendment right is “not unlimited.” *District of*

Columbia v. Heller, 554 U.S. 570, 626 (2008) (citation omitted). With that in mind, the legislatures of nearly every state have determined that one way to protect the victims of domestic violence, sexual assault, and other like crimes is the protective order that disarms the perpetrator. And three states—Georgia, Kentucky, and Missouri—have filed bills during the current legislative sessions to add such laws. *See* Appendix. This is exactly what the States’ police power is for. But the patchwork quilt of state law is in danger of being unraveled should the Fifth Circuit’s opinion be allowed to stand. The result being that “survivors of domestic violence [will be] less safe—and less likely to pursue protective orders that may already seem risky for those in danger.” “Terrifying” court ruling lets alleged domestic abusers keep their guns | The Texas Tribune; *see also* 5th Circuit gun ruling increases danger to women, families | Fort Worth Star-Telegram (Feb. 3, 2023) (“Agencies that protect families from domestic violence now have one less tool to prevent family shootings, partner-killings, and murder-suicide.”).

II. The Heart of the Second Amendment Is the Right to Keep and Bear Arms for Self-defense. Disarming Those Subject to a Protective Order, Those Who Are *Not* “Ordinary, Law-abiding Citizens,” Does Not Diminish this Right.

Heller and *Bruen*⁵ make two points clear. First, the right to keep and bear arms belongs to “ordinary,

⁵ *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

law-abiding citizens.” Second, it belongs to them for self-defense.

A. Those who choose to victimize others are not among “the people” who have the right to keep and bear arms.

In deciding *Bruen*, this Court explained that the first question to ask when considering whether a gun regulation is unconstitutional is whether the Second Amendment’s plain text covers an individual’s conduct. 142 S. Ct. at 2126. The gravamen of this question is who are “the people”? For purposes of the Second Amendment, “the people” are “ordinary, law-abiding citizens.” *Id.* at 2126; *see also Heller*, 554 U.S. at 635.

The Fifth Circuit held that because Rahimi, “hardly a model citizen,” was not a *convicted* felon, he was “among ‘the people’ entitled to Second Amendment guarantees, all other things equal.” 61 F.4th at 453; *see id.* at 452–53. But Rahimi was not, by any measure, an “ordinary, law-abiding citizen.” *Id.* at 448 (“Between December 2020 and January 2021, Rahimi was involved in five shootings in and around Arlington, Texas.”). Thus, his conduct is not covered by the plain text of the Second Amendment.

If the Fifth Circuit’s opinion is allowed to stand, the States’ police power in the area of intimate partner violence will be of little use. Yes, there are plenty of criminal laws on the books. Abusers can be arrested, charged, and (possibly) convicted. Rapists and stalkers can also be arrested, charged, and

(possibly) convicted. But the ability to issue a protective order, the ability to disarm these criminals, gives the victims some measure of peace. More importantly, it increases the chances of survival.

B. Guns in the hands of abusers are not used for self-defense.

An 1829 decision of the Supreme Court of Michigan said: “The constitution of the United States also grants to the citizen the right to keep and bear arms. *But the grant of this privilege cannot be construed into the right in him who keeps a gun to destroy his neighbor. No rights are intended to be granted by the constitution for an unlawful or unjustifiable purpose.*”

Heller, 554 U.S. at 612 (citation omitted and emphasis added); *see also id.* at 616 (“It was plainly the understanding in the post-Civil War Congress that the Second Amendment protected an individual right to use arms for *self-defense*.”) (emphasis added); 628 (“inherent right of *self-defense* has been central to the Second Amendment right”) (emphasis added); 629 (“Whatever the reasons, handguns are the most popular weapon chosen by Americans for *self-defense* in the home[.]”) (emphasis added); 630 (“core lawful purpose of *self-defense*”) (emphasis added). Ultimately, this Court has recognized that the right is “not unlimited. . . the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Id.* at 626 (citations omitted). Telling the 50 States they cannot

disarm abusers, sexual predators, and the like via an order that serves to protect both the victims and society at large grants *this privilege* to those who are *not* “ordinary, law-abiding citizens.”

For those who are subject to a protective order, the overwhelming evidence establishes that their firearms are *not* for self-defense. They are not being kept for a lawful purpose. They are weapons of intimidation, fear, and control. More importantly, these people are not law-abiding citizens. This is exactly who this Court has said the Second Amendment does not protect. *Id.* at 625 (The “Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes[.]”).

CONCLUSION

The Second Amendment no doubt protects the right of “ordinary law-abiding citizens” to keep and bear arms for self-defense. But “[f]irearms and domestic strife are a potentially deadly combination nationwide.” *Hayes*, 555 U.S. at 427 (citations omitted). Abusers are *not* “ordinary, law-abiding citizens,” and they keep and bear arms for torture and control. Thus, the prohibition at issue here does *not* “impair the core conduct upon which the right was premised.” *Parker v. District of Columbia*, 478 F.3d 370, 399 (D.C. Cir. 2007). The States’ enactment of laws that use protective orders to disarm the abusers is, therefore, a valid use of their police power.

Respectfully submitted,

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APPENDIX B

ALABAMA

While Alabama state law does not specifically dispossess the person of their guns, Ala. Code § 30-5-7(b)(9) (West 2023), it is a crime for any person subject to a protective order to own a gun. *Id.* at § 13A-11-72(a).

ALASKA

In Alaska, protective orders *may* “prohibit respondent from using or possessing a deadly weapon *if* the court finds the respondent was in the actual possession of or used a weapon during the commission of domestic violence”; as well, they *may* “direct the respondent to surrender any firearm owned or possessed by the respondent if the court finds that the respondent was in the actual possession of or used a firearm during the commission of domestic violence.” Alaska Stat. § 18.66.100(c)(6)–(7) (West 2023). However, these provisions do not apply to emergency or ex parte orders. *Id.* at § 18.66.110(b).

ARIZONA

Arizona law requires that where the court finds the defendant to be a “a credible threat to the physical safety of the plaintiff or other designated persons,” the order can prohibit the defendant from possessing a gun, and the gun must be transferred to law enforcement immediately or within 24 hours of service of the order. Ariz. Rev. Stat. § 13-3602(G)(4) (West 2023). An emergency order may also prohibit gun possession “[i]f the court finds that the defendant

may inflict bodily injury or death on the plaintiff.” *Id.* at § 13-3624(D)(4)

ARKANSAS

Arkansas does not specifically dispossess the person of their guns, Ark. Code Ann. §§ 9-15-205(a)(8)(A), 9-15-206(b)(F)(i) (West 2023); nor does it criminalize gun possession for those subject to protective orders. But it does provide that the person can be denied a gun license if the protective order meets the federal requirements. *Id.* at § 5-73-309(6).

CALIFORNIA

California state law prohibits anyone subject to a protective order from owning, possessing, purchasing, or receiving a firearm or ammunition for the duration of the order. Cal. Fam. Code § 6389(a). To do so is a crime. Cal. Penal Code § 29825.

COLORADO

In Colorado, for orders related to domestic violence, if “the court determines on the record after reviewing the petition . . . that the protection order includes an act of domestic violence, . . ., and the act of domestic violence involved the threat of use, use of, or attempted use of physical force,” the court must prohibit the possession and purchase of any firearm for the duration of the order, and require that a respondent relinquish any firearm or ammunition in his possession for the duration of the order. *Id.* at § 13-14-105.5(1)(a)–(b).

CONNECTICUT

Connecticut does not expressly prohibit gun possession, but the court “may make such orders as it deems appropriate for the protection of the applicant and such dependent children or other persons as the court sees fit.” Conn. Gen. Stat. § 46b-15(b) (West 2023). It further provides that anyone subject to a protective order is ineligible for a license to carry a firearm. *Id.* at §§ 29-36f(b)(6), 29-36i(a). Finally, once the person is given notice of the protective order, Connecticut criminalizes gun possession. *Id.* at § 53a-217(a)(4).

DELAWARE

Delaware prohibits those subject to a “protection from abuse order” or a “lethal violence protection order” from “purchasing, owning, possessing, controlling a deadly weapon or ammunition for a firearm within the State.” Del. Code Ann. tit. 11, § 1448(a)(6), (11) (West 2023). In a final protective order, the court may order the temporary relinquishment of firearms and prohibit the purchase or receipt of additional firearms for the duration of the order. Del. Code Ann. tit. 10, § 1045(a)(8).

FLORIDA

In Florida, the defendant “may not have in his or her care, custody, possession, or control any firearm or ammunition if the person has been issued a final injunction that is currently in force and effect, restraining that person from committing acts of domestic violence,” stalking, or cyberstalking. Fla. Stat. Ann. § 790.233(1) (West 2023). The injunction

must provide notice of this on its face. *Id.* at § 741.30(6)(g).

GEORGIA

State law in Georgia does not currently prohibit gun possession for a person subject to a protective order. Ga. Code Ann. § 19-3-14 (West 2023). However, a bill has been introduced that would amend the law to prohibit gun possession after notice and an opportunity to be heard. *See* Ga. SB 119, 157th Gen. Assembly, R.S. (2023).

HAWAII

Hawaiian state law mandates that any protection order “shall specifically include a statement that possession, control, or transfer of a firearm or ammunition by the person named in the order is prohibited.” Haw. Rev. Stat. § 134-7(f).

IDAHO

Idaho state law provides that the court may order “other relief as the court deems necessary for the protection of a family or household member, including orders or directives to a peace officer[.]” Idaho Code Ann. § 39-6308(1)(d) (West 2023). However, if a person is subject to a protective order that restrains them from “harassing, stalking[,] or threatening an intimate partner of the person or child of the intimate partner or person[] or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or

child,” they cannot be issued a concealed-carry license. *Id.* at § 18-3302(11)(m).

ILLINOIS

Illinois specifically prohibits gun possession for the respondent in a protective order and requires the surrender of any guns the respondent does own. Ill. Comp. Stat. act 5, § 5/112A(b)(14.5). (West 2023).

INDIANA

Under a final protective order, Indiana law prohibits the respondent “from using or possessing a firearm, ammunition, or a deadly weapon specified by the court” and requires surrender of these things to a specified law enforcement agency. Ind. Code Ann. § 34-26-5-9(d)(4) (West 2023).

IOWA

For a permanent protective order only, Iowa law provides that “the defendant not knowingly possess, ship, transport, or receive firearms, offensive weapons, and ammunition[.]” Iowa Code Ann. § 236.5(1)(b)(2) (West 2023). Temporary protective orders must provide notice that the defendant may be required to give up his weapons if a permanent order is issued. *Id.* at § 236.4(2).

KANSAS

A protective order under Kansas law is not required to contain a provision prohibiting gun possession. Kan. Stat. Ann. § 60-3107(a)(10) (West

2023). However, it is illegal to possess a firearm if the order (1) was issued after a hearing for which the defendant had notice and an opportunity to be heard, (2) “restrains [the defendant] from harassing, stalking[,] or threatening an intimate person . . . or a child . . . , or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or the child,” and (3) “includes a finding that [the defendant] represents a credible threat to the physical safety of such intimate partner or child” or “by its terms expressly prohibits the use, attempted use[,] or threatened use of physical force . . . that would reasonably be expected to cause bodily injury[.]” *Id.* at § 21-6301(a)(17).

KENTUCKY

Kentucky currently does not prohibit gun possession for anyone subject to a protection order. Ky. Rev. Stat. Ann. § 403.740 (West 2023). However, an amendment has been proposed, adding subsection (1)(a)(6) which would prohibit the use or possession of a firearm. *See* Ky. SB 265, R.S. (2023).

LOUISIANA

Louisiana allows a judge to grant a temporary order of protection, but that order does not include a restriction on the abuser’s access to have or buy a gun. La. Rev. Stat. Ann. § 46:2135 (West 2023). However, a permanent protective order can include such a restriction if (1) the order includes a finding that the person “represents a credible threat to the physical safety of a family member, household member, or

dating partner”; and (2) the order provides notice to the person. *Id.* at § 46:2136.3(A).

MAINE

Pursuant to Maine state law, a temporary order of protection may direct that the defendant not possess firearms and other weapons if the complaint demonstrates (1) that the abuse involved a weapon, and (2) there is a heightened risk of immediate abuse to the plaintiff or a minor child. Any such weapons in the defendant’s possession must be relinquished immediately. Me. Rev. Stat. tit. 19-A, § 4108(3) (West 2023). If an order is issued after notice and a hearing, and that order includes a finding that the defendant is a credible threat to the plaintiff’s physical safety and expressly forbids the use of physical force that would be reasonably expected to cause bodily injury, the defendant’s possession of a firearm becomes a crime. Me. Rev. Stat. tit. 15, § 393(1)(D) (West 2023).

MARYLAND

Under a temporary protection order, Maryland requires that the defendant not be allowed to possess any firearms if the abuse consisted of the use of a firearm, a threat to use a firearm, serious bodily harm, or a threat to cause to cause serious bodily harm. Md. Code Ann., Fam. Law § 4-505(2)(viii) (West 2023). If a final protection order is issued, the defendant must surrender any firearms in his possession and refrain from future possession. *Id.* at § 4-506(f) (West 2023).

MASSACHUSETTS

Massachusetts requires that where the plaintiff “demonstrates a substantial likelihood of immediate danger or abuse,” the respondent’s license to carry will be immediately suspended and firearms will be surrendered to law enforcement. Mass. Gen. Laws Ann. ch. 209A, § 3B (West 2023). The defendant will also be prohibited from obtaining a license to carry firearms for the duration of the protective order. *Id.* at Ch. 140, § 131(d)(vi).

MICHIGAN

Michigan law provides that a “personal protection order” can “restrain or enjoin” the defendant from “purchasing or possessing a firearm.” Mich. Comp. Law § 600.2950(1)(e) (West 2023). Further, the respondent is ineligible for a concealed-carry license. *Id.* at § 28.425b(7)(d)(iii).

MINNESOTA

Minnesota’s Domestic Abuse Act provides that gun possession is prohibited for the length of the order if it “(1) restrains the [respondent] from harassing, stalking, or threatening the petitioner, or restrains the [respondent] from engaging in other conduct that would place the petitioner in reasonable fear of bodily injury, and (2) [finds] that the [respondent] represents a credible threat to the physical safety of the petitioner or prohibits the abusing party from using, attempting to use, or threatening to use physical force against the petitioner.” Minn. Stat. Ann. § 518B.01(6)(g) (West 2023). Any firearms must be

transferred “to a federally licensed firearms dealer, a law enforcement agency, or a third party who may lawfully receive them and [who does not reside with the abusing party].” *Id.* Finally, if the court determines by a preponderance of the evidence that “the abusing party poses an imminent risk of causing another person substantial bodily harm,” “the court shall order that the local law enforcement agency take immediate possession of all firearms in the abusing party’s possession.” *Id.* at (6)(i).

MISSISSIPPI

Mississippi state law does not specifically provide that a court may prohibit a defendant from possessing a firearm, but the relief allowed is not limited to just that set out in the statute. Miss. Code Ann. § 93-21-15(1)(a) (temporary order), (2)(a) (final order) (West 2023).

MISSOURI

While Missouri law does not currently prohibit gun possession for the subject of a protection order, Mo. Rev. Stat. § 455.045 (West 2023), several bills filed in the current legislative session propose adding that language to the statute. *See* HB 1380, 102nd Gen. Assembly, 1st R.S. (2023); HB 1135, 102nd Gen. Assembly, 1st R.S. (2023); SB 59, 102nd Gen. Assembly, 1st R.S. (2023); SB 305 102nd Gen. Assembly, 1st R.S. (2023); SB 431, 102nd Gen. Assembly, 1st R.S. (2023).

MONTANA

Montana state law provides that the trial court may prohibit the respondent “from possessing or using the firearm *used in the assault*” in both temporary and permanent protective orders. Mont. Code Ann. §§ 40-15-201(2)(f), 40-15-204(3) (West 2023) (emphasis added). The order can also provide “other relief considered necessary to provide for the safety and welfare of the petitioner or other designated family member.” *Id.* at § 40-15-201(2)(j).

NEBRASKA

Under Nebraska state law, the respondent in any protective order (ex parte or final) can be “enjoin[ed] from possessing or purchasing a firearm[.]” Neb. Rev. Stat. Ann. §§ 42-924(1)(a)(vii), 42-925 (West 2023).

NEVADA

It is a crime in Nevada for the subject of an extended protective order to own a firearm. Nev. Rev. Stat. Ann. § 202.360(1)(d) (West 2023). However, the order must specifically prohibit the respondent from possessing a gun while the order is in effect. *Id.* at § 33.0305(1). The order may also require the respondent to “surrender, sell, or transfer any firearm in [his] possession or under [his] control.” *Id.* at § 33.031(1); *see id.* at § 33.033.

NEW HAMPSHIRE

New Hampshire state law allows a judge to order the respondent of a temporary protective order to surrender any guns or deadly weapons in their possession while the order is in place. N.H. Rev. Stat. Ann. § 173-B:4(I)(a)(9) (West 2023). The judge may also prohibit the purchase of any guns while the order is in place and can, if there is reason to believe the respondent has not surrendered his guns, issue a search warrant. *Id.* at § 173-B:4(II). Further, if the court finds that the defendant “represents a credible threat to the safety of the plaintiff” and on “a showing of abuse . . . by a preponderance of the evidence,” the court can “direct the defendant to relinquish to the peace officer any and all firearms and ammunition in the control, ownership, or possession of the defendant, or any other person on behalf of the defendant for the duration of the protective order.” *Id.* at § 173-B:5(I).

NEW JERSEY

Under New Jersey state law, the trial court may prohibit the abuser from possessing a firearm, and it may also issue a search warrant for the seizure of “any firearm or other weapon at any location where the judge has reasonable cause to believe the weapon is located”; the abuser’s identification card or permit to purchase can also be seized. N.J. Rev. Stat. Ann. § 2C:25-28(j). A final restraining order may, after a hearing, prohibit possessing firearms and acquiring or keeping a purchaser identification card, or permit to purchase, and require the surrender of any firearms or other weapons. *Id.* at § 2C:25-29(b).

NEW MEXICO

New Mexico state law makes it illegal for anyone subject to a final protective order to own a gun. N.M. Stat. Ann. § 30-7-16(A)(2) (West 2023). Additionally, if the court believes the defendant is a “credible threat,” he can be required to surrender his firearms to law enforcement or someone with a federal firearms license. *Id.* at § 40-13-5(A)(2).

NEW YORK

For a temporary order, New York law requires the suspension of any license to carry and the surrender of any firearms if the court has good cause to believe the respondent (1) has a prior conviction for a violent felony, (2) has willfully violated a previous protective order and that violation involved the infliction of physical injury, the use or threatened use of a deadly weapon, or behavior constituting a violent felony, or (3) has a previous conviction for stalking. N.Y. Fam. Ct. Act § 842-a(1)(a), (b) (McKinney 2023). For a final order, the respondent’s firearms must be surrendered if the judge finds a “substantial risk” that the respondent may use or threaten to use a gun against the plaintiff or someone else covered by the order or the judge believes the acts (which served as a basis for the order) caused the plaintiff serious physical injury, consisted of the use or threatened use of a deadly weapon, or would be considered a violent felony. *Id.* at § 842-a(2)(a), (b).

NORTH CAROLINA

North Carolina requires the surrender of all firearms and any permit to carry a concealed weapon

if the court finds certain factors. N.C. Gen. Stat. Ann. § 50B-3.1 (West 2023).

NORTH DAKOTA

In North Dakota, if the judge believes that the abuser is likely to use, display, or threaten to use a firearm in future acts of violence, the order can require the surrender of any firearms. N.D. Cent. Code Ann. §§ 14-07.1-02(4)(g), 14-07.1-03(2)(d) (West 2023).

OHIO

While Ohio does not expressly mandate that a protective order may require the defendant not possess firearms, it does allow the court to “[g]rant other relief [it] considers equitable and fair[.]” Ohio Rev. Code Ann. § 3113.31(E)(1)(h) (West 2023). However, the forms for protective orders after either an ex parte hearing or a full hearing have a provision that orders the defendant (1) not to possess any deadly weapons and (2) to surrender any deadly weapons. https://supremecourt.ohio.gov/docs/JCS/domesticViolence/protection_forms/DVForms/10.01H.pdf (ex parte hearing); https://supremecourt.ohio.gov/docs/JCS/domesticViolence/protection_forms/DVForms/10.01I.pdf (full hearing).

OKLAHOMA

Oklahoma state law does not contain a specific provision requiring that a person subject to a protective order surrender his firearms. Okla. Stat. Ann. tit. 22, §§ 60.2, 60.3 (West 2023). However, the

forms for both an emergency order of protection and a final order of protection include such. https://www.oscn.net/static/forms/aoc_forms/protectiveorders.asp. Also, if law enforcement believes that a weapon was used to commit an act of domestic violence, that weapon shall be seized. Okla. Stat. Ann. tit. 22, § 60.8.

OREGON

Under Oregon state law, if the restraining order (1) was issued after notice and an opportunity to be heard, (2) “[r]estrains the person from stalking, intimidating, molesting, or menacing a family or household member of the person, a child of the family or household member of the person or a child of the person,” and (3) includes a finding that the person is a “credible threat,” it is illegal for the defendant to possess a firearm. Or. Rev. Stat. Ann. § 166.255(1)(a) (West 2023). Further, a concealed handgun license will not be issued to, or can be revoked for, someone has been served with a citation to appear in civil court for a civil stalking protective order, is the subject of a civil stalking order, or is the subject of restraining order to prevent abuse. *Id.* at §§ 166.291(1)(m), 166.293(3).

PENNSYLVANIA

Under Pennsylvania law, a protective order may include a prohibition against possessing or acquiring any firearms for its duration; it may also order the defendant to relinquish any firearms in his possession to law enforcement. 23 Pa. Cons. Stat. Ann. § 6108(a)(7) (West 2023); *see also id.* at § 6107(b)(3) (temporary order may require the

relinquishment of any firearms if the petition states certain facts).

RHODE ISLAND

In Rhode Island, if the court issues a final protective order, that order may require the defendant to surrender any firearms in his possession and prohibit him from acquiring any more firearms. R.I. Gen. Laws Ann. §§ 8-8.1-3(a)(4), 15-15-3(a)(4) (West 2023); *see also id.* at § 11-47-5(b). Temporary orders do not have the same requirements; the court only has to enter orders “it deems necessary to protect the plaintiff from abuse.” *Id.* at § 8-8.1-4(a)(1).

SOUTH CAROLINA

While nothing in South Carolina law says someone subject to a protective order cannot have a firearm, S.C. Code Ann. § 20-4-6 (West 2023), it is illegal to buy a firearm or ammunition if there is a valid order of protection in place. *Id.* at § 16-25-30(A) (requiring a hearing and specific findings).

SOUTH DAKOTA

South Dakota does not specifically have a provision prohibiting anyone subject to a protective order from possessing a firearm, but the law does allow court to “[o]rder other relief as [it] deems necessary for the protection of the person to whom relief is being granted[.]” S.C. Codified Laws § 25-10-5(6) (West 2023). And the defendant can be denied a permit to carry a concealed weapon if they have a

history of violence or are prohibited by federal law from possessing a firearm. *Id.* at § 23-7-7.1(4), (10).

TENNESSEE

If a protective order is issued after a hearing that complies with 18 U.S.C. § 922(g)(8), Tennessee state law prohibits the possession of a firearm and requires the defendant to surrender their firearms. Tenn. Code Ann. § 36-3-625 (West 2023). A violation of the protective order is a crime. *Id.* at §§ 39-13-113(a), 39-17-1307(f)(5).

TEXAS

Texas law allows protective orders in cases of sexual assault or abuse, indecent assault, stalking or trafficking, and family violence. For the former, the court may prohibit the defendant from possessing a firearm; as well, the defendant's license to carry may be suspended. Tex. Code Crim. Proc. art. 7B.005(a)(2)(D), (c) (West 2023). For the latter, gun possession may be prohibited, but the license to carry *shall* be suspended. Tex. Fam. Code § 85.022(b)(6), (d) (West 2023). Finally, if an emergency order of protection is issued, the defendant may be prohibited from possessing a firearm. Tex. Code Crim. Proc. art. 17.292(c)(4).

UTAH

In Utah, only if (1) the respondent has had notice and an opportunity to be heard and (2) the petition (a) established by a preponderance of the evidence that respondent has committed abuse or

dating violence against the petitioner and (b) established by clear and convincing evidence that the respondent's possession of a firearm "poses a serious threat of harm" to the petitioner can a protective order prohibit the respondent from possessing firearm. Utah Code Ann. §§ 78B-7-404(5) (dating violence), 78B-7-504(5) (sexual violence), 78B-7-603(f) (cohabitant abuse) (West 2023); *see also id.* at § 76-10-503(1)(b)(x).

VERMONT

Under Vermont state law, a protective order may—if there is a finding that there is “an immediate danger of further abuse”—prohibit the defendant from possessing a firearm and require him to surrender any firearms in his possession for the duration of the order. Vt. Stat. Ann. tit. 15, § 1104(a)(1)(E) (West 2023) (temporary order); *but see id.* at § 1103(c)(1) (no such requirement even after a hearing; only whatever is “necessary to protect the plaintiff or the children or both” if the court makes certain findings).

VIRGINIA

Virginia law only allows the court to grant “[a]ny other relief necessary to prevent (i) acts of violence, force, or threat, (ii) criminal offenses that may result in injury to person or property, or (iii) communication or other contact of any kind by the respondent.” Va. Code Ann. § 19.2-152.10(A)(3) (West 2023). However, if there is an emergency or protective order in place due to family violence or an act of violence, force, or threat, it is illegal for the

respondent to buy a firearm. *Id.* at § 18.2-308.1:4(A). And the person is also ineligible for a concealed-carry permit and must surrender such if they already have one. *Id.* at 18.2-308.09(5).

WASHINGTON

In Washington, if the judge finds that “irreparable injury could result,” the protective order can prohibit the respondent “from accessing, having in his or her custody or control, possessing, purchasing, attempting to purchase or receive, or receiving, all firearms, dangerous weapons, and any concealed pistol license[.]” Wash. Rev. Code Ann. §§ 7.105.310(1)(m), 9.41.800(4) (West 2023). If an “extreme risk protection order” is issued, no such finding is required. *Id.* at § 7.105.340(1)(a). Washington also criminalizes possession of firearm if there is a protective order in place, issued after notice and an opportunity to be heard and certain findings have been made. *Id.* at § 9.41.040(2)(a)(iv)

WEST VIRGINIA

West Virginia mandates that any protective order prohibit the respondent from possessing any firearms or ammunition. W. Va. Code Ann. § 48-27-502(b) (West 2023). If the order (1) was issued after a hearing for which there was notice and opportunity to be heard (2) specifically “[r]estrains [the respondent] from harassing, stalking, or threatening an intimate partner. . . , and (3) includes a “credible threat” finding or “explicitly prohibits. . . physical force that would reasonably be expected to cause bodily injury,” the possession of a firearm is a crime. *Id.* at §61-7-7(a)(7).

WISCONSIN

A trial court granting a final domestic abuse injunction in Wisconsin must order the respondent to surrender any firearms to law enforcement and forbid the purchase of any firearms. Wis. Stat. Ann. § 813.12(4m)(a)(2); *see also id.* at § 941.29(1m)(f), (g) (criminalizing possession if a protective order is in place).

WYOMING

Wyoming state law does not specifically prohibit the possession of a firearm for someone subject to a protective order, but it does allow for “other injunctive relief as the court deems necessary for the protection of the petitioner.” Wyo. Stat. Ann. § 35-21-105(a)(vi) (West 2023). However, the forms for both an ex parte order and a final order allow the court to order the respondent not to use or possess firearms. <https://www.courts.state.wy.us/wp-content/uploads/2019/07/DV-Ex-Parte-Order-of-Protection-2019.pdf>; <https://www.courts.state.wy.us/wp-content/uploads/2019/07/DV-Order-of-Protection-2019.pdf>.