

No. _____

In the
Supreme Court of the United States

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

Petitioners,

v.

AARON M. FREY, Attorney General of Maine,

Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the First Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In 2024, Maine enacted a law that requires nearly everyone in the state to wait 72 hours after purchasing a firearm before they may keep and bear it. Even if the purchaser passes a background check instantly establishing that she is a law-abiding citizen, she still must wait three days before she can exercise her right to keep and bear arms. Maine's law does not require, or even contemplate, any sort of investigation during that 72-hour period. The wait is instead a so-called "cooling-off" period, justified on the view that simply wanting to acquire a firearm suffices to allow the state to treat nearly every purchaser as a walking danger to themselves or others. Maine was not alone in enacting such a law in the wake of *Bruen*; New Mexico adopted a cooling-off law of its own within weeks of Maine. The two laws are materially identical, except that the delay imposed by New Mexico's law lasts seven days rather than three. Both laws were swiftly challenged. The Tenth Circuit held New Mexico's law unconstitutional (and in the process implicitly invalidated Colorado's similar law), but the First Circuit upheld Maine's. The court did so, moreover, without even subjecting Maine's law to historical scrutiny, on the theory that laws restricting the acquisition of firearms do not implicate the Second Amendment *at all* unless they are so "abusive" as to effectively nullify the right altogether.

The question presented is:

Whether forcing law-abiding citizens who have already passed a background check to wait out a multi-day cooling-off period before taking possession of a firearm violates the Second Amendment.

PARTIES TO THE PROCEEDING

Petitioners (plaintiffs and appellees below) are Andrea Beckwith, East Coast School of Safety, Nancy Coshaw, James White, J. White Gunsmithing, Adam Hendsbee, A&G Shooting, and TLC Gunsmithing and Armory. East Coast School of Safety, J. White Gunsmithing, A&G Shooting, and TLC Gunsmithing and Armory are not publicly traded and do not have stock ticker symbols.

Thomas Cole (plaintiff and appellee below) qualifies as a party under Supreme Court Rule 12.6. Mr. Cole died during the pendency of appellate proceedings, and the First Circuit dismissed him from the appeal on the parties' joint motion. *See* Order, *Beckwith v. Frey*, No. 25-1160 (1st Cir. Dec. 10, 2025).

Respondent (defendant and appellant below) is Aaron M. Frey, the Attorney General of Maine.

CORPORATE DISCLOSURE STATEMENT

East Coast School of Safety does not have any parent corporation, and no publicly held company owns 10% or more of its stock.

J. White Gunsmithing does not have any parent corporation, and no publicly held company owns 10% or more of its stock.

A&G Shooting does not have any parent corporation, and no publicly held company owns 10% or more of its stock.

TLC Gunsmithing and Armory does not have any parent corporation, and no publicly held company owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

United States Court of Appeals (1st Cir.):

Beckwith v. Frey, No. 25-1160 (judgment entered April 3, 2026).

United States District Court (D. Me.):

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PETITION FOR WRIT OF CERTIORARI

In most of the country, once someone passes a background check and confirms that she may lawfully possess a firearm, she can take possession and begin exercising her constitutional right to keep and bear arms without delay. That is no small matter. When it comes to defending oneself and one's loved ones, time is often of the essence. Take, for instance, the victims of domestic violence served by petitioner Andrea Beckwith, a survivor herself who has dedicated her life to empowering women in crisis and helping them obtain the tools and training they need to feel comfortable defending themselves. Or the couple who sought to purchase a firearm from petitioner A&G Shooting after they suffered a home invasion. Or the young woman harassed by a stalker who came into the store after local police advised her to buy a firearm since police are an hour's drive away from her home. Yet owing to a recent Maine law, individuals facing such dire straits are left defenseless for at least three days. Section 2016 of Title 25 of the Maine Revised Statutes mandates a so-called "cooling-off" period of 72 hours on nearly all firearm sales. It makes no difference why a Mainer seeks to buy a firearm or if she has a concealed-carry permit or hunting license. It does not even matter if she faces an imminent threat and needs a firearm to defend herself and her children now. Everyone must wait at least three days—even after passing a background check—before they can take possession of a new firearm, on the theory that even people who have demonstrated their law-abiding *bona fides* cannot be trusted with their constitutional rights.

Nothing in our Nation’s historical tradition supports that kind of paternalistic prophylaxis-on-prophylaxis, which is at odds with the very premise of the Second Amendment: that people *can* be trusted to keep and bear arms unless and until there is a reason to think otherwise. To be sure, “our Nation’s tradition of firearm regulation” recognizes that the government may keep firearms out of the hands of “citizens who have been found to pose a credible threat to the physical safety of others.” *United States v. Rahimi*, 602 U.S. 680, 700 (2024). That is why laws “designed to ensure only that those bearing arms in the jurisdiction are, in fact, ‘law-abiding, responsible citizens’” typically will pass muster. *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 38 n.9 (2022). But our Nation’s tradition has never endorsed efforts to “broadly restrict arms use by the public generally,” *Rahimi*, 602 U.S. at 698—let alone to do so on the reasoning that the bare desire to exercise that right makes someone suspicious. And Maine’s law falls decidedly in that camp. Indeed, a law that requires nearly everyone to “cool off” for days before they can keep or bear a firearm—and does nothing else—is the very model of an unconstitutional effort to “deny ordinary citizens” the fundamental right the Second Amendment secures. *Bruen*, 597 U.S. at 38 n.9.

The Tenth Circuit recognized as much when it confronted New Mexico’s materially analogous law. *See Ortega v. Grisham*, 148 F.4th 1134, *pet’n for rhg. en banc denied*, 162 F.4th 1056 (10th Cir. 2025). As that court explained, a state law that does nothing other than make people “cool off” before they can exercise their right to keep and bear arms plainly “burden[s] the right to keep and bear arms,” *id.* at

1145, and such an effort is irreconcilable with this Nation’s historical tradition of firearm regulation, *id.* at 1149-55. But the First Circuit upheld Maine’s law without even subjecting it to historical-tradition scrutiny—on the remarkable theory (rejected by the Tenth Circuit) that “laws regulating the purchase or acquisition of firearms do not target conduct covered by the Second Amendment’s ‘plain text’” and thus need not be historically justified at all. App.14.

That square circuit split on the constitutionality of cooling-off laws is reason enough to grant certiorari. But the disagreement among the circuits does not end there. Nearly every circuit has rejected the First Circuit’s view that laws regulating the acquisition of firearms are presumptively constitutional (at least unless they completely ban people from acquiring a firearm). And the Ninth Circuit—hardly a bastion of Second Amendment rights—has done that consensus one better, holding that a law “temporally metering” the ability of law-abiding citizens to obtain new firearms not only is “presumptively unconstitutional,” but lacks even a distant “historical cousin.” *Nguyen v. Bonta*, 140 F.4th 1237, 1243-49 (9th Cir. 2025) (striking down California law prohibiting people from buying more than one firearm in a 30-day period).

Notably, neither New Mexico in *Ortega* nor California in *Nguyen* sought this Court’s review, instead choosing to allow their laws to be enjoined. Perhaps that is because they saw the writing on the wall when it comes to such blatant incursions on the right to keep and bear arms. Indeed, at least one state responded to a challenge to a law similar to Maine’s by conceding its unconstitutionality. While those are

certainly welcome developments, they underscore the need for this Court to grant certiorari here and ensure that Mainers do not have to live under an anomalous law that restricts their rights to keep and bear arms for reasons at war with the core purpose of the Second Amendment.

OPINIONS AND ORDERS BELOW

The First Circuit’s opinion, 171 F.4th 560, is reproduced at App.1-20. The district court’s opinion granting petitioners’ preliminary-injunction motion, 766 F.Supp.3d 123, is reproduced at App.21-41.

JURISDICTION

The First Circuit entered its judgment on April 3, 2026. App.1. Justice Jackson extended the deadline to file a petition to August 31, 2026. *See* No. 25A1424. The Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant constitutional and statutory provisions are reproduced at App.42.

STATEMENT OF THE CASE

A. Historical Background

As this Court has routinely observed, “the Second Amendment was designed to codify a ‘pre-existing’ individual right and guard against its later erosion by majoritarian legislation or judicial fiat.” *United States v. Hemani*, 146 S.Ct. 1677, 1685 (2026). Of course, “this right, as understood at the time, was not an ‘unlimited’ right,” *Wolford v. Lopez*, 146 S.Ct. 2032, 2042 (2026), and states could and did “regulate[] the possession and use of firearms to some degree” in early

days to keep firearms out of the hands of those found particularly at risk of misusing them, *Hemani*, 146 S.Ct. at 1685. Many sought to accomplish that goal through surety laws compelling citizens “found to pose a credible threat to the physical safety of others” to post bonds to ensure their good behavior. *Rahimi*, 602 U.S. at 700; see *Hemani*, 146 S.Ct. at 1686. Some states passed common-sense laws that prevented people from acquiring or carrying arms while intoxicated. *Nguyen*, 140 F.4th at 1247. And, over time, some jurisdictions employed licensing regimes that, much like modern “shall-issue” regimes, “required a person to submit some kind of information” tending to demonstrate his law-abiding *bona fides*. *Ortega*, 148 F.4th at 1152-53.

But one thing no state did in “the early days of the Republic,” *Bruen*, 597 U.S. at 36, was require a prospective firearm purchaser to simply wait out some predetermined period before he could take possession. Quite the opposite. While states experimented to find the best ways to keep firearms out of the hands of those deemed likely to misuse them, no state imposed any kind of “waiting period” to acquire a firearm until “the 1920s.” *Silvester v. Harris*, 843 F.3d 816, 831 (9th Cir. 2016) (Thomas, C.J., concurring), *abrogated on other grounds by Bruen*, 597 U.S. 1, as recognized in *Baird v. Bonta*, 81 F.4th 1036, 1043 (9th Cir. 2023). And those early-twentieth-century waiting-period laws emerged hand-in-glove with early background-check regimes, as a way to facilitate those checks in the telegraph era.

Take California’s 1923 law. That law imposed a one-day wait for pistols, revolvers, and concealable

firearms during which dealers were required to provide information identifying the purchaser to the local police or county clerk to facilitate an investigation into the purchaser. *See* Law of June 13, 1923, ch.339 §§2, 10, 1923 Cal. Laws 695, 696. New Jersey, another early adopter in 1927, imposed a seven-day waiting period that likewise required the dealer to forward the purchaser's information to the licensing authority for a background investigation during that period. *See* Law of Mar. 20, 1927, ch. 321, §6(4)(b), 1927 N.J. Laws 742, 746. The District of Columbia followed in 1932 with a 48-hour waiting period requiring the dealer to forward the purchaser's information to the D.C. police within six hours. *See* Act of July 8, 1932, ch. 465, §8, 47 Stat. 650, 652. Three years after that, South Dakota passed its own 48-hour waiting period with a six-hour notification requirement. *See* Law of Mar. 14, 1935, ch. 208, §9, 1935 S.D. Laws 355, 357.

When the federal government decided to mandate background checks for most firearm sales in the Brady Handgun Violence Prevention Act of 1993, there was still no technologically feasible method of conducting instantaneous background checks. So Congress embraced a five-day waiting period to facilitate local law enforcement efforts to conduct background checks while a new comprehensive background-check system was created—but set that waiting-period provision to sunset after five years, which was the deadline for the FBI to bring that new system online. *Printz v. United States*, 521 U.S. 898, 902-04 (1997); Donald A. Manson et al., Dep't of Just., *Presale Handgun Checks, the Brady Interim Period, 1994-98* (revised June 2000), <https://perma.cc/63DR-JSXH>. Once the National

Instant Criminal Background Check System (“NICS”) came online, Congress abandoned the five-day waiting period and replaced it with an affirmative *protection* to ensure that any processing delays would not impede the lawful exercise of Second Amendment rights. Today, federal law allows firearm dealers to proceed with a sale three business days after requesting a background check if the check has not yet been completed. 18 U.S.C. §922(t)(1)(B)(ii).

Following the advent of NICS, fixed waiting-period laws no longer serve an investigatory purpose, as over 90% of background checks are now resolved “within seconds to minutes.” Dep’t of Just., *NICS 2025 Operational Report* 6, <https://perma.cc/TE2V-7Q7T>. At least 14 states that used to have waiting periods have thus abandoned them since NICS came online. *E.g.*, Brendan O’Brien, *Wisconsin Governor Signs Bill Repealing Handgun Waiting Period*, Reuters (June 24, 2015), <https://perma.cc/99DY-K83B> (observing that “[NICS] makes the waiting period law obsolete”); Tenn. Bureau Invest., *Guidelines for Federal Firearms Licensees* 1-2, <https://perma.cc/HA2X-VMM5> (Tennessee’s “waiting period between purchase and delivery of a handgun was eliminated effective November 1, 1998,” the same day the state’s “Instant Check Law became effective”).

While many states reacted to the instant-background-check regime by repealing their waiting-period laws, a few states doubled down, seeking to burnish obsolete waiting-period laws with *post hoc* cooling-off justifications. As is often the case when it comes to restrictions on Second Amendment rights, California led that novel charge. After adopting a one-

day waiting period for retail sales of certain firearms in 1923, California extended the period to three days in 1955, then five days in 1965, and then 15 days in 1975, each time “to allow more time for more extensive background checks.” *Silvester*, 843 F.3d at 824 (collecting sources). It was not until 1979 that the state hinted (as a litigating position) that the law might serve a cooling-off function too. *People v. Bickston*, 154 Cal.Rptr. 409, 410 (Cal. App. Dep’t Super. Ct. 1979). And the California legislature did not expressly endorse a cooling-off rationale until 1995. *Silvester*, 843 F.3d at 824 (citing Cal. S. Comm. on Crim. Pro., 17 S.B. 671, 1995-96 Reg. Sess. 2099-0051 (Cal. 1995)).

By then, California had switched to an electronic background check system that allowed most checks to be processed far more expeditiously than previously. Although the legislature apparently recognized that it no longer had a good justification to force Californians to wait 15 days to acquire a firearm, it still was not willing to trust law-abiding citizens who have passed a background check with a firearm. (Indeed, at the time, California was not willing to admit that the Second Amendment protects an individual right at all.) So California reduced its waiting period, but only to ten days, contending that law-abiding citizens should have to wait out a cooling-off period before they can acquire a handgun even if they have already passed the requisite background check. *Id.*

The Ninth Circuit upheld California’s cooling-off law under the means-end balancing test that it used to apply in Second Amendment cases. *See Silvester*, 843 F.3d at 828. But *Bruen* subsequently rejected any

role for means-end balancing in the Second Amendment context, abrogating the Ninth Circuit’s decision (along with many others applying similar tests). 597 U.S. at 22-23. And, to put it mildly, cooling-off periods do not sit comfortably with *Bruen* (or *Rahimi*, *Hemani*, and *Wolford*), which explicitly cautioned against efforts to impose obstacles for the sole purpose of delaying a law-abiding citizen’s ability to carry a firearm. *Id.* at 38 n.9.

Nevertheless, after *Bruen* invalidated outlier state licensing regimes that “broadly prohibit[ed] law-abiding citizens from carrying commonly used firearms in public for self-defense,” a few states went back to the drawing board looking for “new method[s] of restricting law-abiding citizens from carrying firearms for self-defense.” *Wolford*, 146 S.Ct. at 2044-45. Some latched onto cooling-off requirements that require citizens to wait an arbitrary period of time before they can take possession of a new firearm even if they pass a background check instantly. To date, four states—Colorado, Vermont, Maine, and New Mexico—newly enacted such laws in the wake of *Bruen* (though two of those laws are now invalid under the Tenth Circuit’s decision in *Ortega*). C.A.Response.Br.9. *But see Vt. Fed’n of Sportsmen’s Clubs v. Birmingham*, 741 F.Supp.3d 172, 207-14 (D. Vt. 2024) (upholding Vermont’s law), *appeal filed*, No. 24-2026 (2d Cir.) (argued April 28, 2026).

More broadly, a total of 13 states as well as the District of Columbia currently have laws on the books that impose some sort of waiting period to acquire a handgun—though several of those laws predate instant background checks and have not been

amended or repealed to account for that critical change in circumstances.¹ Recognizing the constitutional import of that development, the Attorney General of Florida and all 20 Florida State Attorneys recently filed an Offer of Judgment in federal court conceding that Florida’s three-day waiting-period law, which was enacted back in 1991, is now “unconstitutional under the Second Amendment.” Offer of Judgment 3, *Dunn v. Glass*, No. 8:25-cv-2264 (M.D. Fla. June 5, 2026), Dkt.45-1.

B. Factual and Procedural Background

1. Maine joined the late-breaking party of states newly enacting cooling-off laws in 2024, requiring nearly everyone in the state to wait 72 hours after purchasing a firearm before they may keep or bear it. *See* 25 Me. Rev. Stat. §2016(2). Section 2016 does not purport to facilitate any inquiry into whether someone is a law-abiding citizen; even if the purchaser passes a background check instantly (as most people do), she still must wait three days. Nor does it require, or even call for, any additional investigation or reporting during that 72-hour period. The wait is instead an unadorned cooling-off period, justified on the theory

¹ Cal. Penal Code §26815(a) (1995; 10 days); Colo. Rev. Stat. §18-12-115(1)(a) (2023; 3 days); D.C. Code §22-4508 (2009; 10 days); Fla. Stat. §790.0655(1) (1991; 3 days); Haw. Rev. Stat. Ann. §134-2(e) (1992; 14 days); 720 Ill. Comp. Stat. §5/24-3(A)(g) (1967; 3 days); 25 Me. Rev. Stat. §2016 (2024; 3 days); Md. Code Ann., Pub. Safety §§5-101(r), 5-123(a), 5-124(a)(1) (1966; 7 days); Minn. Stat. §624.7132, subd.4 (2023; 30 days); N.J. Stat. §2C:58-2(a)(5)(a) (1927; 7 days); N.M. Stat. §30-7-7.3 (2024; 7 days); R.I. Gen. Laws §§11-47-35(a)(1), 11-47-35.2 (1990; 7 days); Vt. Stat. Ann. tit. 13, §4019a(a) (2023; 3 days); Wash. Rev. Code §9.41.092 (2014; 10 business days).

that it may curb impulsive violence or self-harm. That is evident from the title of the underlying bill: “An Act To Reduce Suicides and Violent Crimes by Requiring a 72-hour Waiting Period after the Sale of a Firearm.” L.D. 1099 (SP 331), 129th Gen. Assemb., Reg. Sess. (Me. 2019).

Section 2016’s broad restriction applies to any firearm sale in the state unless (A) the buyer is a law-enforcement officer, corrections officer, or certain type of security guard; (B) the buyer holds a federal firearms-dealer license; or (C) the seller and buyer are family members; the gun is a curio, relic, or antique; or federal or state law exempts the transaction from background-check requirements. 25 Me. Rev. Stat. §2016(4); *see also id.* §2016(1)(D). Section 2016 carries a fine of between \$200-\$500 for a first violation and \$500-\$1,000 for each subsequent violation. *Id.* §2016(3); *see also* 17-A Me. Rev. Stat. §4-B(1).

Even among the handful of states with cooling-off laws, Section 2016 is an outlier. Some states allow law enforcement to waive the cooling-off period upon finding that the buyer is facing threats. *See, e.g.*, Minn. Stat. §624.7132, subd.4. Others make exceptions for buyers who have a concealed handgun license, *see, e.g.*, Fla. Stat. §790.0655(2)(a); N.M. Stat. §30-7-7.3(H)(2), or are certified in hunting safety and buying a rifle or shotgun, *see, e.g.*, Fla. Stat. §790.0655(2)(c). Maine, however, brooks none of these exceptions.

2. Petitioners are individuals and businesses in Maine that have experienced the real-world effects of Maine’s misguided law. For instance, petitioner Adam Hendsbee owns and operates petitioner A&G

Shooting, a gun store in Fairfield, Maine. Mere days after Section 2016 took effect, a single woman from a nearby town came into A&G because a stalker was harassing her on her property and local police suggested that she purchase a firearm for home defense. Hendsbee spent over an hour helping her pick out what firearm she was most comfortable with and signing her up for training. She then passed her background check instantly and paid for the firearm. But because of Section 2016, Hendsbee had to send her home unarmed—and because the store was closed Sunday and Monday, she had to wait until the following Tuesday to pick up the gun. C.A.App.62-63; *cf.* C.A.App.55. A week later, a married couple terrorized by a midnight burglary came into the store seeking to acquire a home-defense firearm in case the burglars returned. They too had to endure several sleepless nights before they were allowed to pick up the firearm they had purchased to defend hearth and home. C.A.App.63; *cf.* C.A.App.55-56.

Others have been forced to spend hours trekking back and forth between their home and a gun store just to secure the means to exercise their Second Amendment rights—even when they have already lawfully owned firearms for years without incident (as was the case with petitioner Nancy Coshaw, who needed to acquire a smaller firearm in light of a physical restriction). C.A.App.28-30, 49-51; *see also*, *e.g.*, C.A.App.56 (describing various problems for hunters).

The problems were especially stark for petitioner Andrea Beckwith, a domestic-violence survivor who founded a 501(c)(3) dedicated to helping fellow victims

and survivors “take back their lives with confidence.” C.A.App.40-44. Acutely aware that domestic-violence victims are at greatest risk immediately after leaving their abuser, whenever Beckwith is connected with a woman trying to escape an abusive partner, she offers to arrange to meet at the closest gun range at the earliest opportunity. Once the woman arrives, Beckwith helps her choose the model of handgun with which she is most comfortable and provides several hours of basic firearm instruction so she can competently defend herself (and, if necessary, her children). Then she connects the woman with a local licensed firearm dealer, and before Section 2016 took effect, the woman could obtain exactly what she needed to go home feeling safer that same night. C.A.App.43-45. But now, thanks to Maine’s cooling-off law, Beckwith is forced to send victims home at their most vulnerable hours without the means to effectively defend themselves and their families—a fact that their abusers unfortunately will likely know all too well. C.A.App.45-47.

3. Once Section 2016’s deleterious effects became too grave to ignore, petitioners filed suit challenging the law under the Second Amendment and seeking a preliminary injunction against its enforcement. The district court granted the motion.

The court started by stating the obvious: “[A]n enactment that temporarily bans keeping, bearing, and carrying activity” “impairs conduct presumptively covered by the Second Amendment.” App.27, 29. “Any interpretation to the contrary requires the type of interpretative jui jitsu that would make Kafka blush.” App.29. The court then explained that, unlike

“background checks, age restrictions, shop security measures, and the like,” cooling-off laws like Section 2016 are “standardless, temporary disarmament measure[s],” which makes them different in kind from regulatory measures that this Court has described as presumptively lawful. App.30 (citing *District of Columbia v. Heller*, 554 U.S. 570, 627 & n.6 (2008)).

The court then turned to whether Maine could carry its burden to show that cooling-off laws are “consistent with the principles that underpin our regulatory tradition.” App.34 (quoting *Rahimi*, 602 U.S. at 692). The answer was a resounding no. “[T]here is no readily comparable precedent” for cooling-off laws “before the Twentieth Century”—and “[t]he late Twentieth Century at that.” App.34-35 & n.10. The state’s attempts to analogize to historical intoxication and licensing laws likewise failed: Whereas those laws and regimes “entail individual inquiries and consequences,” cooling-off laws like Section 2016 “entail generalized assumptions and global consequences.” App.36. With cooling-off laws, “objectiv[e inquiry] is entirely beside the point”; their *raison d’être* is “doubt—doubt about what someone could conceivably do, but far more likely will not do, upon carrying a firearm away from a seller.” App.38. “That kind of doubt is timeless, and certainly it was familiar to our forebears in the Colonial and Reconstruction Eras.” App.38. “Yet we still have a Second Amendment that reads: ‘[T]he right of the people to keep and bear Arms, shall not be infringed.’” App.38-39 (quoting U.S. Const. amend. II).

4. The First Circuit reversed, reasoning that a law that does nothing other than prevent people from

taking possession of a firearm for at least 72 hours does not implicate the Second Amendment at all. *See* App.3.

The court first forthrightly acknowledged that its conclusion that cooling-off laws are “likely constitutional,” App.3, conflicts with the Tenth Circuit’s decision in *Ortega* “holding that” New Mexico’s seven-day cooling-off law “is unconstitutional,” 148 F.4th at 1156. *See* App.12 n.4. But rather than engage with the Tenth Circuit’s analysis, or attempt to situate laws like these within “this Nation’s historical tradition of firearm regulation,” *Bruen*, 597 U.S. at 17, the First Circuit deemed history beside the point. In its view, if a law does not “*directly* restrict the textual rights protected by the Second Amendment”—*i.e.*, the immediate act of “hav[ing] and carry[ing] guns”—then the law is “presumptively lawful” and history is beside the point, regardless of whether the law has “a downstream restrictive effect ... on the Second Amendment right.” App.14, 16 (emphasis added). “So conceived,” a law can “burden[] the right to keep and bear arms” without triggering historical scrutiny as long as it “regulates conduct that occurs *before* a person keeps or carries a gun” and does not effect a complete “deprivation of the right to acquire firearms.” App.10 n.2, 14, 16, 18 (emphasis altered). The court thus posited that a law that expressly and exclusively impedes the acquisition of a firearm does not warrant any historical-tradition scrutiny unless “the regulated party shows that the law[is] being ‘put toward abusive ends.’” App.7.

Because the First Circuit “agree[d] with” Maine that the Second “Amendment literally ‘says nothing

about any right to purchase or otherwise acquire arms,” it concluded that the district court “should have stopped at step one of *Bruen*” unless Section 2016 is “abusive toward those seeking to exercise their Second Amendment rights.” App.8-9, 19. And after canvassing “legislative history” to deduce Maine’s “intention” in passing Section 2016, App.4, the court concluded that Maine’s “imposition of a brief waiting period [w]as a non-abusive effort ... to address a documented problem arising from the immediate acquisition of firearms,” App.19-20. Based on that, as well as a nonbinding guidance document advising that Section 2016 “does not apply to a temporary loan or rental of a firearm,” App.4, the First Circuit vacated the injunction and remanded.

5. Since the First Circuit rejected petitioners’ claims as a matter of law, the parties jointly moved to stay further district-court proceedings pending this Court’s resolution of this petition, D.Ct.Dkt.52, which the district court agreed to do, D.Ct.Dkt.53.

REASONS FOR GRANTING THE PETITION

In the wake (and in defiance) of this Court’s decision in *Bruen*, Maine and New Mexico passed materially identical “cooling-off” laws within a month of each other. The Tenth Circuit struck down New Mexico’s seven-day cooling-off law as inconsistent with this Nation’s historical tradition of firearm regulation. The First Circuit upheld Maine’s three-day cooling-off law without even addressing historical tradition. That square circuit split merits this Court’s review. But the divide cuts even deeper. One of the only other states to pass a cooling-off law after *Bruen* is Colorado, whose law is now invalid under the Tenth

Circuit's decision in *Ortega*. And one of the few states to retain a pre-*Bruen* cooling-off law is Florida, which recently conceded that its law is no longer constitutional. That makes Maine's law even more of an outlier now than it was when it was enacted, further heightening the need for this Court's review.

On top of that, the First Circuit's holding that laws restricting the acquisition of firearms do not even implicate the Second Amendment (unless they ban acquisition entirely) makes its decision an outlier in the extreme, as nearly every court of appeals to confront that extraordinary argument has rejected it. Indeed, even the Ninth Circuit has explicitly rejected that view—and rightly so, as it effectively transforms the right protected by the Second Amendment into a mere privilege that states may freely frustrate so long as they do not prevent its exercise indefinitely. The First Circuit's contrary conclusion is indefensible. Under this Court's precedent, states always bear the burden to justify historically laws that burden the exercise of Second Amendment rights, regardless of the mechanism by which a law does so. And not even the First Circuit was willing to deny that Maine's law "burdens those wishing to exercise their Second Amendment right." *Wolford*, 146 S.Ct. at 2047. Maine thus should have had to justify its law against historical tradition—something it plainly could not do. As the Tenth Circuit explained in *Ortega*, cooling-off laws like Section 2016 flout the central premise of the Second Amendment: that the people *can* be trusted with arms, especially when they have already proven their law-abiding *bona fides*.

This case provides an excellent vehicle to resolve a square split and give much-needed guidance to lower courts confronting Second Amendment challenges to laws that restrict the acquisition of arms. It also provides an excellent opportunity to vindicate the fundamental right the Second Amendment protects. The record below amply demonstrates the real-world impact that laws like Maine’s have on law-abiding citizens facing concrete threats to their safety. And the decision below amply demonstrates the cavalier disregard for the rights of those real-world people that laws like Maine’s reflect, as the First Circuit blithely accepted the state’s remarkable claim that it knows better than its citizens whether owning a firearm is in their best interest. The Court should grant certiorari, reverse, and remind the states and the courts alike that it is for the people, not the government, to decide how best to protect themselves and their loved ones.

I. The Decision Below Creates A Circuit Split On Cooling-Off Laws (And More).

A. The decision below squarely and openly conflicts with the Tenth Circuit’s decision in *Ortega*. See App.12 n.4. In 2024, New Mexico enacted House Bill 129, which requires “[a] waiting period of seven calendar days ... for the sale of a firearm and the transfer of the firearm to the buyer.” N.M. Stat. §30-7-7.3(A). The Tenth Circuit issued a published and precedential opinion “holding that [House Bill 129] is unconstitutional.” *Ortega*, 148 F.4th at 1156. The court was unequivocal: New Mexico’s “Waiting Period Act[]” is “obviously unconstitutional” “both facial[ly] and as applied,” “except as to its effect on those whose background checks are not cleared within three days.”

Id. at 1155 & n.16. The court accordingly “reverse[d] and remand[ed] to the district court, with instructions to enter injunctive relief consistent with [its] opinion.” *Id.* at 1156.²

Every aspect of the Tenth Circuit’s decision conflicts with the First Circuit’s decision here. Whereas the First Circuit held “that laws regulating the purchase or acquisition of firearms ... do not directly restrict the textual rights protected by the Second Amendment,” App.14, the Tenth Circuit held that a law that “prevents a citizen from possessing a firearm for a flat period” “is an infringement on the right to bear arms” and “must be scrutinized as one,” *Ortega*, 148 F.4th at 1144-45. Whereas the First Circuit held that Maine’s cooling-off law “imposes conditions and qualifications on the commercial sale of firearms” and is thus presumptively constitutional, App.14, the Tenth Circuit held that New Mexico’s cooling-off law “falls far short of a presumptively constitutional law” because “it does not fit with other known conditions and qualifications in this category,” *Ortega*, 148 F.4th at 1146; *see also id.* at 1147 (“A seven-day waiting period is not a ‘condition’ on a sale any more than the price of a firearm is.... Nor is it a qualification.”). And whereas the First Circuit held that making people who have passed a background check “cool off” before they can take possession of a firearm is “a non-abusive effort ... to address a documented problem arising from the immediate acquisition of firearms,” App.19, the Tenth Circuit held that making people who have passed a

² New Mexico sought rehearing en banc; the Tenth Circuit denied the state’s petition by a 10-2 vote. 162 F.4th 1056 (2025).

background check “cool off” before they can take possession of a new firearm can be “justified only by assuming that citizens cannot be trusted with their own rights,” and therefore “is put toward an abusive end,” *Ortega*, 148 F.4th at 1149 n.7.

B. That is reason enough for this Court to intervene. But *Ortega* is not the only court of appeals decision with which the decision below conflicts. Nearly every other circuit to confront the issue has held that laws that regulate “selling or transferring a firearm” restrict conduct covered by “the Second Amendment’s text” and thus are presumptively unconstitutional. *United States v. Knipp*, 138 F.4th 429, 435 (6th Cir. 2025); *see, e.g., Reese v. ATF*, 127 F.4th 583, 590 (5th Cir. 2025) (“[T]he Second Amendment ‘covers’ the conduct [of] []commercial purchases[].”); *Frein v. Penn. State Police*, 47 F.4th 247, 254 (3d Cir. 2022) (Second Amendment’s plain text protects “a person’s ability to hold on to his guns”).

That includes even the Ninth Circuit, which has (correctly) “conclude[d] that” laws that burden citizens’ “ability to acquire” “arms” restrict conduct that “the Second Amendment’s plain text” “protects.” *Nguyen*, 140 F.4th at 1243. *Nguyen* involved a challenge to a California law that “prohibits most people from buying more than one firearm in a 30-day period.” *Id.* at 1239. Much like Maine here, California argued that its law required no historical scrutiny because the Second Amendment “does not protect the right to ‘purchase’ arms.” *Id.* at 1242-43. The Ninth Circuit rejected that argument. As it explained, “temporally meter[ing] the exercise of constitutional rights” obviously burdens them. *Id.* at 1243. And

because the right to keep and bear arms “is not a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees,” *id.* (quoting *Bruen*, 597 U.S. at 70), the Ninth Circuit held that California’s law is “presumptively unconstitutional,” *id.* For good measure, the court went on to invalidate the “one-gun-a-month law” because the “historical record makes clear that [it] is not relevantly similar to our tradition in how it regulates firearms.” *Id.* at 1244-49 (emphasis omitted).

C. Finally, the decision below also conflicts with the judgment recently made by the Attorney General of Florida and all 20 of that state’s State Attorneys.

Unlike Maine and New Mexico, which enacted their cooling-off restrictions after this Court decided *Bruen*, Florida is one of the handful of states that adopted waiting-period laws in the pre-Internet era, and one of the even smaller handful that has kept its laws on the books long after it outlived any conceivable investigatory purpose in the instant-background-check era.³ A group of plaintiffs recently sued Florida’s Attorney General, its Commissioner of Law Enforcement, and all 20 of its State Attorneys (the Sunshine State’s equivalent of district attorneys) over the law’s constitutionality. *See* 1st Am. Compl., *Dunn v. Glass*, No. 8:25-cv-2264 (M.D. Fla. Mar. 20, 2026), Dkt.21.

³ To Florida’s minimal credit, its law at least excepts buyers who already have a concealed handgun license, people certified in hunting safety seeking to buy a shotgun, and private gun sales. *See* Fla. Stat. §790.0655(1)(a), (2)(a) & (c).

The defendants made an offer of judgment under Federal Rule of Civil Procedure 68, recognizing that waiting-period laws “burden the right to keep and bear arms” and that Florida “cannot meet its burden to establish a historical tradition of regulation that justifies an arbitrary waiting period unconnected to the time required to complete a background check.” *Dunn* Offer of Judgment, *supra*, at 3. Florida thus had no choice but to concede that its law is “unconstitutional under the Second Amendment” and should be “permanently enjoined.” *Id.* at 3-4. Florida ultimately even agreed to pay the plaintiffs \$10,000 in attorney fees. *Id.* at 4. Plaintiffs accepted that offer the same day, *see* Notice, *Dunn v. Glass*, No. 8:25-cv-2264 (M.D. Fla. June 5, 2026), Dkt.45, so all that is left is for the district court to enter final judgment—a judgment that will deepen the divide among lower courts when it comes to cooling-off laws.

* * *

The decision below openly splits with *Ortega* and conflicts with the judgments of multiple sister circuits and the State of Florida. That suffices to warrant plenary review.

II. The Decision Below Is Plainly Inconsistent With This Court’s Precedent.

Section 2016 and the First Circuit’s decision upholding it flout this Court’s cases and the Framers’ decision to enshrine in the Constitution the right of the people to keep and bear arms.

A. Laws That Bar People From Taking Possession of a Firearm Restrict Conduct Covered by the Second Amendment’s Plain Text.

“[I]n a Second Amendment case,” the first “step[]” in the analytical inquiry requires “a court [to] determine whether the law before it clashes with the ‘plain text’ of the Amendment’s language.” *Wolford*, 146 S.Ct. at 2043. “If so, the Constitution ‘presumptively’ protects” the conduct that the law restricts. *Hemani*, 146 S.Ct. at 1685 (quoting *Bruen*, 597 U.S. at 24). That is a “straightforward” inquiry implicating an “ordinary threshold review into the relevance of a written law.” *Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Att’y Gen. N.J.*, 183 F.4th 211, 254 (3d Cir. 2026) (Matey, J., concurring). Consistent with that narrow remit, answering it “entails” addressing only what the words of the Amendment themselves address: Does the challenged law “apply to ‘the people,’” *i.e.*, “‘all members of the political community?’” *Wolford*, 146 S.Ct. at 2043 (quoting *Heller*, 554 U.S. at 580). Does it “concern any form of ‘Arms,’ *i.e.*, any weapon customarily used for offensive or defensive purposes?” *Id.* And does it “place any restrictions on either the ‘keep[ing]’ (*i.e.*, possession) or the ‘bear[ing]’ (*i.e.*, carrying) of arms?” *Id.* (alterations in original).

The first and second of those questions are uncontested and incontestable here. Petitioners or the customers they serve are members of the political community, and Maine’s law applies to all operable firearms, *see* 25 Me. Rev. Stat. §2016(4)(C) (excepting only a “curio,” “relic,” or “antique”). The sole question

at “*Bruen*’s first step,” then, is whether Section 2016 “place[s] any restrictions on either the ‘keep[ing]’ (*i.e.*, possession) or the ‘bear[ing]’ (*i.e.*, carrying) of arms.” *Wolford*, 146 S.Ct. at 2043, 2049. The answer is easy: Yes, of course it does.

As *Heller* explained, “the most natural reading of ‘keep Arms’ ... is to ‘have weapons,’” and “the natural meaning of ‘bear arms’ ... implies ... the carrying of [a] weapon ... for the purpose of ‘offensive or defensive action.” 554 U.S. at 582-84. Petitioners or their customers would like to take possession of firearms (“Arms”) to have (“keep”) and carry (“bear”), and Section 2016 bars them from doing so for three days. That suffices to satisfy the plain-text inquiry. A law that “restricts [the] ability to bear or keep [a] firearm ... unquestionably implicates ... Second Amendment rights”—especially when, as here, it does nothing else. *United States v. Perez-Garcia*, 96 F.4th 1166, 1181 (9th Cir. 2024).

The First Circuit’s contrary conclusion is wrong at every turn. The court first held that because the Second Amendment does not explicitly say “purchase” or “acquire” alongside “keep” and “bear,” Section 2016 does not “regulate conduct covered by the Second Amendment’s plain text” at all. App.16. That makes no sense. Section 2016 prevents people who want to keep and bear a firearm from doing so. Indeed, that is the whole point: The state has barred people from acquiring a firearm because it does not want people to be able to keep or bear one until 72 hours has passed. That Section 2016 prevents people from engaging in that conduct by prohibiting the transfer of a firearm makes no difference. When the whole and sole point

of a law is to prevent people from keeping or bearing firearms, the law obviously implicates the right to keep and bear firearms.

Any lingering doubt about that was laid to rest by *Wolford*, where this Court made clear once and for all what should have been obvious from *Bruen*: A law that “burdens those wishing to exercise their Second Amendment right” “fall[s] within the plain text of the Second Amendment” no matter how the law imposes that burden. 146 S.Ct. at 2047-49. Hawaii argued in *Wolford* that its restriction escaped historical scrutiny because the Second Amendment does not explicitly address “the right to armed entry onto private property without the owner’s consent.” *Id.* at 2049. This Court rejected that argument out of hand. It made no difference that Hawaii’s law operated by requiring property owners to provide consent. By making it illegal for people to carry (“bear”) a firearm as they go about their daily lives unless they secure advance consent from all private property owners, the law plainly “impose[d] a new burden on permit holders” to bear arms. *Id.* at 2047-48.

Here, too, it makes no difference that the Second Amendment does not explicitly mention the acquisition of firearms or speak to how long states may make people wait to exercise the right to keep and bear arms. Nor does it matter whether one (mis)conceptualizes Section 2016 as imposing a “condition” on the acquisition of arms. *Cf. Ortega*, 148 F.4th at 1146-49 (rejecting “condition” argument). While this Court may have described “conditions and qualifications on the commercial sale” of firearms as “presumptively lawful,” *Heller*, 554 U.S. at 626-27 &

n.26, it has never embraced the proposition that laws regulating firearms transactions need not be consistent with our Nation’s historical tradition of firearms regulation. Nor would that make any sense when restricting whether and when people may acquire firearms provides an obvious way of restricting the exercise of the right—as Section 2016 powerfully illustrates. What matters is whether a law “burdens those wishing to exercise their Second Amendment right.” *Wolford*, 146 S.Ct. at 2047. And Section 2016 unquestionably does—as even the First Circuit ultimately acknowledged, *see* App.17. The First Circuit’s conclusion “that limitations on firearm sales or transfers do not implicate the Second Amendment’s plain text is wrong.” *Ortega*, 148 F.4th at 1144.

B. Making People “Cool Off” Before They Can Exercise Their Second Amendment Rights Defies Historical Tradition.

There is a reason the First Circuit worked so hard to avoid addressing historical tradition: The historical record is so lopsided that petitioners would prevail even if *they* bore the burden of proving that such laws are *not* consistent with historical tradition.

A modern regulation fits within historical tradition only if it “impos[es] similar restrictions” on the right to keep and bear arms “for similar reasons” as historical analogues. *Rahimi*, 602 U.S. at 692. The question at *Bruen*’s second step, then, is “whether the new law is ‘relevantly similar’ to laws that our tradition is understood to permit.” *Id.* “The more closely a contemporary law mirrors a well-established historical analogue in purpose and operation, the more

likely it is to be upheld.” *Hemani*, 146 S.Ct. at 1686. “Conversely, the more a modern law diverges from traditional laws in purpose and operation, the less likely it is to survive review.” *Id.*

Cooling-off laws like Section 2016 have no historical analogue whatsoever. Many measures have been enacted over the centuries to address the unfortunate reality that some people want firearms for illicit purposes—from penalty-backed prohibitions on using firearms for improper purposes, to bans on keeping or carrying by individuals who are likely to misuse them, to background checks to identify such individuals, to permits and licenses to carry firearms outside the home. *See* pp.4-5, *supra*. But no state for 200 years forced law-abiding citizens to wait out an unadorned, paternalistic cooling-off period before they could acquire a firearm.

In “the early days of the Republic,” there was no “open, widespread, and unchallenged” practice, *Bruen*, 597 U.S. at 36 (quoting *NLRB v. Noel Canning*, 573 U.S. 513, 572 (2014) (Scalia, J., concurring in judgment)), of imposing a waiting period before someone could take possession of a firearm. *See, e.g., Silvester v. Harris*, 41 F.Supp.3d 927, 962 (E.D. Cal. 2014) (“[T]here is no evidence to suggest that waiting periods imposed by the government would have been accepted and understood to be permissible under the Second Amendment.”). To the contrary, courts recognized that “the right of the people to keep and bear arms” “necessarily involves the right to purchase and use them in such a way as is usual” whenever the need to do so arises. *Andrews v. State*, 50 Tenn. 165, 177-78 (1871); *see also Heller*, 554 U.S. at 583 n.7.

Waiting-period provisions first came onto the scene in the twentieth century, around the same time that some states started adopting various types of background checks. See *Silvester*, 843 F.3d at 831 (Thomas, C.J., concurring); *Rocky Mt. Gun Owners v. Polis*, 701 F.Supp.3d 1121, 1137 (D. Colo. 2023) (“[N]o law requiring a waiting period was enacted in the United States until 1923.”). But those early waiting periods were different in kind from cooling-off laws. They were designed to facilitate burgeoning background-check processes, which were a much more time-consuming endeavor back then. See pp.5-7, *supra*. It was not until well after the Berlin Wall had fallen that the first state saw fit to make people wait to take possession of a firearm *even after they have passed a background check* demonstrating that they are indeed “law-abiding, responsible citizens.” *Heller*, 554 U.S. at 635; see pp.7-9, *supra*.

Cooling-off laws like Section 2016 are thus a thoroughly modern innovation even as compared to administrative waiting-period laws. That is not because the problem that Maine claims Section 2016 is intended to solve—preventing impulsive suicides and homicides committed with legally purchased firearms—arose only in recent years. There have always been people who want to get their hands on a weapon to cause immediate harm to others or themselves. Yet there was no tradition—not at the Founding, not in the Reconstruction era, and not for the better part of the twentieth century—of making people “cool off” for a set number of days before they could take possession of a firearm, let alone of imposing a cooling-off period on people who already passed a background check.

Maine has never contested that the (few) waiting-period laws of the early-twentieth century were designed to give licensing authorities time to conduct background checks, not just to make people wait to “cool off.” Nor has it denied that the first law imposing an unadorned cooling-off period came in the 1990s. Instead, Maine argued below that Section 2016 is analogous to historical laws restricting people’s ability to use or acquire firearms “when intoxicated” and to twentieth-century “[l]icensing and permitting laws.” C.A.Opening.Br.27. But as the Tenth Circuit explained in rejecting those same strained analogies in *Ortega*, “[t]he scope and underlying justifications for” such laws were “vastly different” from a cooling-off law like Section 2016. 148 F.4th at 1152.

Intoxication laws “targeted different kinds of people, did so for different purposes, and operated in different ways.” *Hemani*, 146 S.Ct. at 1687. Whereas intoxication laws applied only to “those presently intoxicated,” *id.* at 1693, Section 2016 applies to nearly everyone, *see* p.11, *supra*. Whereas intoxication laws deprived people of their arms-bearing rights only so long as they remained intoxicated, Section 2016 deprives everyone of their rights for an arbitrary time period. And whereas intoxication laws were justified by the long arc of human experience showing that intoxicated people are more likely to misuse a firearm, cooling-off laws like Section 2016 are based on rank suspicion that people who want a firearm must be up to no good. *But see United States v. Daniels*, 101 F.4th 770, 778 (10th Cir. 2024) (states “cannot look with suspicion on citizens presumably exercising their Second Amendment rights in a lawful way”). Simply put, whereas

intoxication laws are a classic example of the enduring tradition allowing “the Second Amendment right” to “be burdened once a defendant has been found to pose a credible threat to the physical safety of others,” *Rahimi*, 602 U.S. at 700, laws like Section 2016 “broadly restrict arms use by the public generally” without regard to individualized concerns, *id.* at 698.

As for early licensing schemes, whatever facial similarity in the “how” they may have to cooling-off laws, any analogy runs aground on the “why.” It took time when news traveled by horse-and-buggy (or even Model Ts) to assess whether someone was law-abiding. *That* is what the wait was for; people had to wait before they could take possession of a firearm while “the officials of old” checked “each individual’s specific characteristics.” *United States v. Williams*, 113 F.4th 637, 657 (6th Cir. 2024). But cooling-off laws do not test a purchaser’s law-abiding nature; they test a purchaser’s patience. The wait that laws like Section 2016 impose continues even after the purchaser has passed a background check, and it is not used to facilitate any additional investigation. It is simply premised on the notion that making everyone “cool off” before exercising their arms-bearing right is in the public good, and on the paternalistic belief that the state knows better than its citizens whether firearm ownership is in their best interest. No historical tradition whatsoever supports intentionally delaying the exercise of Second Amendment rights on the theory that “the entire population” is “presumptively dangerous to themselves or others only because they want to acquire firearms.” *Ortega*, 148 F.4th at 1151.

III. This Case Presents An Excellent Vehicle To Resolve An Issue Of Surpassing Importance.

The decision below openly and squarely conflicts with the Tenth Circuit’s decision striking down a materially identical law and with the judgment of the State of Florida that its own cooling-off law is unconstitutional. It conflicts with the law of most circuits, which correctly recognize that states bear the burden to justify laws that restrict people’s ability to acquire arms, even though such laws target conduct antecedent of keeping or bearing. And it flies in the face of this Court’s Second Amendment cases. That alone suffices to warrant this Court’s review. But the real-world importance of the issue necessitates it.

The record in this case vividly illustrates the harms that Section 2016 and laws like it occasion. Petitioners submitted multiple declarations describing the “acute vulnerabilities” felt by domestic-violence victims in the days after leaving their abusers, C.A.App.41-47, the palpable fear of a young woman told that she is on her own to fend off a stalker in a county where the “local” police are an hour’s drive away, C.A.App.62-63; *see also* C.A.App.55, and the desperation of a doctor rushing home after an opioid addict threatened his wife and daughter, C.A.App.55-56. The district court enjoined Section 2016 to protect law-abiding Mainers like these who want a firearm to fend off concrete, imminent threats of violence. The First Circuit, by contrast, credited the state’s view that “victims who believe firearms are necessary for their immediate safety” do not know what is really best for them. App.5.

Indeed, Maine has been remarkably forthright about its judgment. In its view, *everyone* is better off without “a firearm as part of their safety plans,” so it is really doing people a favor by disarming them in their times of greatest need. App.5. That paternalistic judgment stands in marked contrast to the Framers’ decision to “elevate[] above all other interests the right of law-abiding, responsible citizens to use arms for self-defense.” *Ortega*, 148 F.4th at 1144 (quoting *Bruen*, 597 U.S. at 26). “[O]ur ancestors would never have accepted” a law so openly premised on distrust of those seeking to exercise that right. *Bruen*, 597 U.S. at 30. This Court should grant certiorari and reverse—and provide a much-needed reminder that it is for “law-abiding, responsible citizens” to decide how best to defend “hearth and home,” not for states to decide whether a firearm “is *really worth* insisting upon.” *Heller*, 554 U.S. at 634-35.

CONCLUSION

The Court should grant certiorari.

Respectfully submitted,

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August 25, 2026

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Appendix A

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

No. 25-1160

ANDREA BECKWITH; EAST COST 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.

Filed: Apr. 3, 2026

Before Montecalvo, Thompson, and Aframe,
Circuit Judges.

OPINION

Aframe, *Circuit Judge.*

This is an appeal of a preliminary injunction enjoining Maine's Attorney General from enforcing a law that, in many circumstances, imposes a seventy-two-hour waiting period before a seller may deliver a firearm to its purchaser. The statute, Me. Stat. tit. 25,

§ 2016 (2024) (“the Act”), was enacted approximately six months after an October 2023 mass shooting in the city of Lewiston, Maine, during which eighteen people were killed and thirteen others were injured. The impetus for enacting this statutory “cooling off” period was to decrease suicides and homicides carried out after impulsive firearm purchases. The Act, which took effect on August 9, 2024, was one of several firearms regulations that Maine adopted after the Lewiston shooting.

Several individuals and businesses sued the Maine Attorney General under 42 U.S.C. § 1983, alleging that the Act violates the Second Amendment rights of firearms purchasers, both facially and as applied.¹ Plaintiffs sought a preliminary injunction on

¹ Plaintiffs are Andrea Beckwith, who owns the plaintiff East Coast School of Safety (“ECSS”), an organization that specializes in providing firearms classes and self-defense training to victims of domestic violence; Nancy Coshov, who sought to acquire a handgun for self-defense purposes and passed an immediate background check but was unable to complete the acquisition for seventy two hours because of the Act; James White, who owns the plaintiff J. White Gunsmithing, a federally licensed firearms dealer; Adam Hendsbee, who owns the plaintiff A&G Shooting, a federally licensed firearms dealer; and Thomas Cole, who owns the plaintiff TLC Gunsmithing & Armory, a federally licensed firearms dealer specializing in selling firearms at weekend gun shows. Plaintiffs attached declarations to their complaint alleging that the Act has harmed them, their businesses, and their customers in various ways, including by interfering with the ECSS’s practice of helping women facing credible, imminent threats of violence to immediately arm themselves for self-defense; by making Nancy Coshov twice, within a three-day span, drive eighty miles to purchase and subsequently take delivery of a handgun despite her already being a well-trained and responsible gun owner who immediately passed a

their facial claim. *See* Fed. R. Civ. P. 65(a). The district court granted the request after it concluded that plaintiffs are likely to prevail on the merits of their claim and that the other preliminary injunction factors also favor awarding temporary relief. The Attorney General appeals. *See* 28 U.S.C. § 1292(a)(1). For the following reasons, we think that the Act is likely constitutional. Accordingly, we vacate the preliminary injunction and remand for further proceedings. *See New Comm Wireless Servs. v. Sprintcom, Inc.*, 287 F.3d 1, 13-14 (1st Cir. 2002) (vacating a preliminary injunction because the movant did not establish a likelihood of success on the merits and noting that, in such a case, the remaining preliminary injunction factors become irrelevant).

I.

We start with an overview of the challenged statute. The Act's central provision states: "Waiting Period. A seller may not knowingly deliver a firearm to a buyer pursuant to an agreement sooner than 72 hours after the agreement. The 72-hour waiting period must be concurrent with any waiting period imposed by any background check process required by federal or state law." Me. Stat. tit. 25, § 2016(2) (bolded font omitted). Thus, the Act directly regulates sellers of firearms, not purchasers. It makes a violation of the Act a civil infraction for which a fine of not less than \$200 and not more than \$500 may be imposed. *Id.*

background check; by denying immediate deliveries to otherwise eligible customers who claimed an immediate need for a firearm; and by causing the dealership plaintiffs to experience significant business loss.

§ 2016(3)(A). Subsequent violations are also civil infractions for which fines of not less than \$500 and not more than \$1,000 may be imposed. *Id.* § 2016(3)(B).

The Act does not apply to the sale of a firearm if the seller knows that the purchaser is a law enforcement officer; a corrections officer; a person employed by a contract security company or proprietary security organization; a licensed private security guard; or a firearms dealer. *Id.* § 2016(4)(A), (B). Nor does it apply if the buyer and seller are family members; the transaction is between collectors for a firearm that is a curio or relic; the firearm is an antique; or the sale is one for which a background check is not required under federal or state law. *Id.* § 2016(4)(C). Furthermore, per an advisory jointly issued by the Maine Department of Public Safety and the Maine Office of the Attorney General before the Act took effect, the Act does not apply to a temporary loan or rental of a firearm. *See Me. Dep't of Pub. Safety & Me. Off. Of the Att'y Gen., Advisory on 72 Hour Waiting Period 3* (2024).

The Act's legislative history demonstrates its intention to reduce suicides and homicides following impulsive firearm purchases. Several legislators supporting the Act pointed to an American Academy of Pediatrics ("AAP") report stating that waiting-period laws governing firearm purchases reduce suicide and homicide rates. The report notes that states with such laws have had fifty-one percent fewer firearm suicides than other states, and that states adopting such laws have seen a seventeen percent decrease in firearm homicides. The report posits that,

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nationally, over nine hundred firearm homicides could be prevented each year by every state implementing a waiting period. Several legislators also cited a second study which concluded that states adopting waiting periods saw a seventeen percent decrease in firearm homicides and a seven-to-eleven percent decrease in firearm suicides.

A representative of the AAP submitted testimony that around ninety percent of Maine firearm deaths are suicides and that, in 2021, fifty-six percent of all suicides involved the use of a firearm. A representative of the Maine Medical Association and Maine Osteopathic Association submitted testimony that, in 2020, firearms became the leading cause of death among Maine residents aged one to nineteen. A representative of the Maine Coalition to End Domestic Violence (“the Coalition”) also submitted a statement that domestic violence advocates advise victims not to obtain a firearm as part of their safety plans because, statistically, victims are more likely to have the firearm used against them than to make helpful use of it during a confrontation. The Coalition’s representative also opined that victims who believe firearms are necessary for their immediate safety would not be harmed by the Act because the Coalition offers services designed to keep victims safe during the seventy-two-hour waiting period.

The Maine Association of Psychiatric Physicians also submitted testimony in support of the Act. It cited a study finding that seventy percent of people who survive serious suicide attempts report that less than one hour elapsed between when they thought of suicide and when they attempted it. In addition, the

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Act's legislative record contains a February 2023 report from the Maine Center for Disease Control and Prevention observing that, in 2021, Maine experienced 178 deaths by firearms, of which 158 were suicides.

II.

On November 12, 2024, plaintiffs filed this lawsuit and simultaneously moved for a preliminary injunction. The Attorney General opposed the motion and submitted declarations from three expert witnesses containing, inter alia, summaries of the history of American firearms regulation and descriptions of empirical evidence that waiting-period laws reduce suicides and homicides. Plaintiffs did not contest this evidence. In February 2025, following briefing and oral argument, the district court issued an order enjoining enforcement of the Act.

The district court applied the de facto two-step test that the Supreme Court prescribed in *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 24 (2022), to evaluate the constitutionality of laws alleged to infringe the Second Amendment. That test requires, first, that a court determine whether the Second Amendment's "plain text covers an individual's conduct." *Id.* at 17. If so, the burden shifts to the government to "demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.* If not, "the regulated conduct is categorically unprotected." *Id.* at 18 (quoting *United States v. Greeno*, 679 F.3d 510, 518 (6th Cir. 2012)). The *Bruen* Court indicated, however, that "categorically unprotected" does not mean immune entirely from Second Amendment scrutiny. Laws that

regulate conduct that is outside the Second Amendment's plain text but nevertheless burden a person's right to keep and bear arms are only presumptively constitutional; such laws may still violate the Second Amendment if the regulated party shows that the laws are being "put toward abusive ends." *Id.* at 38 n.9 (indicating that, while "shall-issue" licensing regimes under which "a general desire for self-defense is sufficient to obtain a [concealed carry] permit" are presumptively constitutional, their constitutionality would be doubtful if accompanied by, for example, "lengthy wait times in processing license applications or exorbitant fees [that] deny ordinary citizens their right to public carry" (citation modified)).

Applying *Bruen*, the district court first concluded that, at step one, the Second Amendment's "plain text" covers the conduct regulated by the Act which it characterized as "the act of purchasing or acquiring a firearm." This conclusion led the court to proceed to step two, for, as *Bruen* states, "[o]nly if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Id.* at 17 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.10 (1961)); see also *Capen v. Campbell*, 134 F.4th 660, 665 (1st Cir. 2025) (recognizing the applicability of *Bruen*'s two-step test to firearms regulations). The Second Amendment's unqualified command is, of course, that "the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II.

At step two, the district court determined that the Attorney General had not shown that the Act is “‘relevantly similar’ to laws that our tradition is understood to permit” *United States v. Rahimi*, 602 U.S. 680, 692 (2024) (quoting *Bruen*, 597 U.S. at 29). The Attorney General had argued, inter alia, that the Act resembled (1) laws requiring background checks or licenses, which often engender delivery delays; and (2) laws restricting firearm use by intoxicated individuals, which seek to temporarily disarm persons who may be experiencing short-term lapses in judgment. The court rejected these comparators, principally because, unlike the Act, they involve individualized consideration by regulators of objective criteria. The court thus concluded that plaintiffs were likely to succeed on the merits of their facial Second Amendment challenge. The court also concluded that plaintiffs were suffering irreparable injury and that the balance of equities and public interest favored issuing a preliminary injunction.

III.

On appeal, the Attorney General contends that the district court erred both in reaching step two of the *Bruen* test and in the way that it applied step two’s historical analogue analysis. These arguments raise questions of law that we review de novo. *See, e.g., Bos. Duck Tours, LP v. Super Duck Tours, LLC*, 531 F.3d 1, 11 (1st Cir. 2008) (stating that, under the abuse-of-discretion standard applicable to the review of a preliminary injunction, questions of law are reviewed de novo). As we explain below, we agree with the Attorney General that the Act’s constitutionality can be addressed at step one of *Bruen* and that the Act is

likely constitutional. We therefore do not consider whether the court erroneously conducted the historical analogue analysis.

As a reminder, step one of *Bruen* asks us to decide whether the Act curtails conduct covered by the Second Amendment’s “plain text,” *Bruen*, 597 U.S. at 17, which states that “the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II. Therefore, we must decide whether, by imposing a seventy-two-hour waiting period for the delivery of a purchased firearm, the Act “infringe[s]” the textual “right of the people to keep and bear Arms” U.S. Const. amend. II.

To support the threshold contention that the district court should have stopped at step one of *Bruen*, the Attorney General argues that the Act does not curtail conduct covered by the Second Amendment’s plain text and therefore presumptively does not violate the Amendment. He contends the Amendment literally “says nothing about any right to purchase or otherwise acquire arms, much less to do so immediately.” Thus, he says the Act does not infringe the right to “keep” and “bear” arms because purchasing and acquiring firearms are materially distinct from, and necessarily antecedent to, possessing and carrying them. This conclusion follows, he says, from the fact that the Act does no more than impose a condition on the commercial sale of firearms—a category of regulation that the Supreme Court has called “presumptively lawful.” *District of Columbia v. Heller*, 554 U.S. 570, 626-27, 627 n.26 (2008) (stating that nothing in the Court’s opinion should “cast doubt” on laws imposing such conditions).

Repeating their successful argument below, plaintiffs respond that the Act curtails conduct covered by the textual right because it interferes with “the act of purchasing or acquiring a firearm,” which is a necessary precursor to keeping or bearing firearms. Plaintiffs point to *Heller*’s statements that “the most natural reading of ‘keep Arms’ . . . is to ‘have weapons,’” and that “the natural meaning of ‘bear arms’ . . . implies [] the carrying of [a] weapon [] for the purpose of ‘offensive or defensive action.’” 554 U.S. at 582-84.² From these statements, plaintiffs contend that any law restricting a person’s ability to keep and bear firearms for any length of time satisfies *Bruen*’s step one requirement and therefore is lawful only if justified by reference to an historical analogue at step two. In this regard, plaintiffs contend that

[among them are] people who would like to take possession of firearms (“Arms”) to have (“keep”) and carry (“bear”), and [the Act] precludes them from doing so for three days. It also precludes Plaintiffs who would sell firearms to those who want to keep and bear

² Plaintiffs also argue that, historically, the verb “to keep” embraced “*taking* possession as well as maintaining it.” To support this proposition, they quote a sentence from an unnamed Founding-era treatise stating that one is “deprived by the law of keeping arms for his own defence if the law forbids the purchase of [them].” They also point to a statement in *Andrews v. State*, 50 Tenn. 165 (1871), opining that “the right of keeping arms necessarily involves the right to purchase and use them.” *Id.* at 178 (citation modified). It strikes us, however, that both quoted statements assert nothing more than the common-sense proposition that the *deprivation* of the right to acquire firearms would interfere with the right to keep them.

them from doing so for three days. That suffices to satisfy the threshold inquiry. A law that restricts the ability to bear or keep a firearm unquestionably implicates Second Amendment rights, especially when, as here, it does nothing else. (citation modified).

The four modern Supreme Court cases interpreting the Second Amendment do not provide clear guidance for resolving this dispute because none of them deal with the sort of regulatory regime we consider here. Rather, the cases all involve direct prohibitions on the keeping or bearing of arms that squarely implicate the Second Amendment's plain text. *See Rahimi*, 602 U.S. at 684-86 (involving the constitutionality of 18 U.S.C. § 922(g)(8), which in many circumstances prohibits an individual subject to a domestic violence restraining order from possessing ("keeping") a firearm); *Bruen*, 597 U.S. at 10-15 (involving the constitutionality of a New York regulatory regime that prohibited carrying ("bearing") a firearm outside the home for purposes of self-defense unless one convinced state licensing authorities that there was "special need" to permit public carry); *McDonald v. City of Chicago*, 561 U.S. 742, 749-52 (2010) (involving the constitutionality of municipal laws that prohibited the possession ("keeping") of most handguns in the home for self-defense); *Heller*, 554 U.S. at 573 (involving the constitutionality of a District of Columbia law that prohibited the possession ("keeping") of usable handguns in the home).³ Given the paucity of on-point Supreme Court

³ Plaintiffs disagree that the regulatory regime challenged in *Bruen* directly prohibited the bearing of arms. They describe

authority, it is unsurprising that lower court judges have divided on how to approach Second Amendment challenges to waiting-period laws and similar restrictions.⁴ This Court has yet to consider such a

Bruen as involving a challenge to a law that “barred them from obtaining concealed carry permits, not from carrying handguns altogether.” This framing artificially narrows the scope of the claim in *Bruen*. Realistically construed, the *Bruen* plaintiffs alleged that the entirety of New York’s discretionary licensing regime, which criminalized the concealed carry of a firearm outside the home for self-defense absent a discretionary license, violated the core right of law-abiding citizens to bear arms for self-defense. *See Bruen*, 597 U.S. at 9-12 (noting that, under New York law, “possessing a loaded firearm outside one’s home or place of business without a license is a felony punishable by up to 15 years in prison” (citations omitted)). After all, many people were unable to show the special need that the New York law required. Thus, the regime challenged in *Bruen* indefinitely deprived many law-abiding citizens of their right to bear arms.

⁴ With respect to waiting periods, compare *Ortega v. Grisham*, 148 F.4th 1134, 1142-56 (10th Cir. 2025) (applying both steps of the *Bruen* analysis to hold likely unconstitutional a New Mexico law imposing a seven-day “cooling-off” period on most firearms deliveries following a purchase), *with id.* at 1156-61 (Matheson, J., dissenting) (arguing that New Mexico’s law imposes a condition or qualification on the commercial sale of firearms that, under Tenth Circuit precedent, need not be justified by an historical analogue), and *Silvester v. Harris*, 843 F.3d 816, 829-32 (9th Cir. 2016) (Thomas, C.J., concurring) (arguing that “the challenge to California’s ten-day waiting period can be resolved at step one of our Second Amendment jurisprudence” because it is “presumptively lawful” under *Heller*), *abrogated on other grounds by Baird v. Bonta*, 84 F.4th 1036, 1043 (9th Cir. 2023)).

More generally, compare, e.g., *Rhode v. Bonta*, 145 F.4th 1090, 1106-1121 (9th Cir. 2025) (applying both steps of the *Bruen* analysis to hold unconstitutional a California law requiring firearms owners to complete a background check before each ammunition purchase), *vacated and reh’g en banc granted*, 159

F.4th 1170 (9th Cir. Dec. 1, 2025), and *Yukutake v. Lopez*, 130 F.4th 1077, 1080-1108 (9th Cir. 2025) (applying both steps of the *Bruen* analysis to hold unconstitutional Hawaii laws imposing permitting and inspection requirements on purchasers of firearms), *vacated and reh’g en banc granted*, 144 F.4th 1119 (9th Cir. July 28, 2025), and *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 128-43 (10th Cir. 2024) (McHugh, J., concurring) (applying both steps of the *Bruen* analysis to conclude that a Colorado law raising the age to purchase a firearm from eighteen to twenty-one is likely a presumptively lawful regulatory measure), with *N.Y. State Firearms Ass’n v. James*, 157 F.4th 232, 243-49 (2d Cir. 2025) (holding that New York laws requiring ammunition sellers to conduct background checks on prospective buyers, to pay a fee for each background check, and to register with the state police likely did not curtail conduct covered by the plain text of the Second Amendment because they regulated only ancillary conduct and did not meaningfully constrain the textual right to keep and bear arms), and *id.* at 249-51 (explicitly disagreeing with the Ninth Circuit’s majority decision in *Rhode*, 145 F.4th at 1090), and *United States v. Peterson*, 161 F.4th 331, 337-42 (5th Cir. 2025) (holding that the federal law requiring registration of firearm suppressors did not curtail conduct covered by the plain text of the Second Amendment because the law creates a “shall-issue” licensing regime of the sort approved in *Bruen* that was not shown to have been put toward abusive ends), and *Rocky Mountain Gun Owners*, 121 F.4th at 117-28 (holding at *Bruen* step one that a Colorado law raising the age to purchase a firearm from eighteen to twenty one is likely lawful because it merely imposes conditions and qualifications on the commercial sale of firearms), and *Rhode*, 145 F.4th at 1121-30 (Bybee, J., dissenting) (arguing that the California law requiring a background check before every firearm purchase was constitutional because it burdened only the ancillary right to acquire ammunition, did not meaningfully constrain the textual Second Amendment right, and created a “shall-issue” licensing regime whose presumptive lawfulness was unrebutted), and *Yukutake*, 130 F.4th at 1108-25 (Bea, J., dissenting) (arguing that the Hawaii laws imposing permitting and inspection requirements on purchasers of firearms were constitutional because, as facially neutral ancillary regulations that impose

challenge to a waiting-period law or similar regulation.

We agree with the Attorney General's view that laws regulating the purchase or acquisition of firearms do not target conduct covered by the Second Amendment's "plain text." The Amendment's plain text guarantees an individual's ability to keep and bear arms, which means to have and carry guns. *Heller*, 554 U.S. at 582-84. The Act does not address this conduct. Rather, the Act imposes a limitation in some circumstances on when a person can acquire a firearm after the person purchased it. The Act thus regulates conduct that occurs before a person keeps or carries a gun. Accordingly, applying *Bruen*'s plain text analysis, the Act imposes conditions and qualifications on the commercial sale of firearms that do not directly restrict the textual rights protected by the Second Amendment. This may well explain why the Supreme Court has categorized laws such as the Act, which place conditions on the commercial sale of firearms, as "presumptively lawful." *Id.* at 626-27, 627 n.26.⁵ Based on this understanding of the Second

conditions on the acquisition of firearms, they did not regulate conduct covered by the plain text of the Second Amendment).

⁵ Plaintiffs say that a law imposing conditions and qualifications on the commercial sales of firearms must be "longstanding" to fall within *Heller*'s safe harbor, and that the Act's cooling-off period does not qualify because such laws are of relatively recent vintage. Plaintiffs also argue that satisfying the Act's waiting-period requirement cannot be regarded as a "condition" (or "qualification") of sale because it is not something that one can take action to satisfy. Neither argument is persuasive.

Amendment's scope and the Act's requirements, we conclude that the Act likely regulates conduct outside the Second Amendment's plain text, which under step one of *Bruen* means that the Act is constitutional unless plaintiffs demonstrate that the Act is abusive toward Second Amendment rights.

As explained earlier, plaintiffs dispute this analysis by arguing that the Act must trigger step two scrutiny under *Bruen*. Plaintiffs say we should not characterize the proposed course of conduct here as purchasing or otherwise acquiring arms immediately. Instead, they say we should recognize that the plain text of the Second Amendment encompasses their conduct and put the Attorney General to the burden of identifying an historical analogue for the Act.

Accepting plaintiffs' position would be inconsistent with the de facto two-step framework that *Bruen* adopted. The approach prescribed in *Bruen*

The first argument is based on a misreading of *Heller*, which states in its entirety that nothing in the opinion "should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at 626-27. In this sentence, "longstanding" modifies "prohibitions on the possession of firearms by felons and the mentally ill," not "conditions and qualifications on the commercial sale of arms."

The second argument is based on an overly narrow understanding of that which can be described as a "condition." Accepting for the sake of argument plaintiffs' premise that a condition is something one must be able to take action to satisfy, we do not see why the act of successfully waiting for seventy-two hours before taking delivery of a purchased firearm does not qualify.

implicitly recognizes that there is a category of laws that (1) does not directly regulate conduct covered by the Second Amendment's plain text but nevertheless burdens Second Amendment rights, and (2) is presumptively lawful without reference to an historical analogue.⁶ If plaintiffs were correct that any law with a downstream restrictive effect of any magnitude on the Second Amendment right must be justified by an historical analogue, we think that *Bruen* would have prescribed a single-step analysis requiring that such laws be deemed unconstitutional unless so justified. After all, step one of *Bruen* would be superfluous if all laws burdening the right to keep and bear arms to any degree are presumed unconstitutional absent such an analogue.

Plaintiffs' argument also runs contrary to *Bruen*'s footnote nine, where the Court explained why its holding striking down a discretionary law that could preclude a person from bearing arms indefinitely should not be understood "to suggest the unconstitutionality" of non-discretionary "shall-issue" public-carry licensing regimes. *See Bruen*, 597 U.S. at 38 n.9 (contrasting New York's unconstitutional "may-issue" regulatory regime with these "shall-issue" regimes because they "do not require applicants to show an atypical need for armed self-defense;" "do not necessarily prevent law-abiding, responsible citizens from exercising their Second Amendment right to public carry;" and "contain only narrow, objective, and

⁶ If a law neither burdens nor infringes Second Amendment rights, the law would not be subject to a Second Amendment challenge in the first place. Step one of *Bruen* must have a purpose beyond ferreting out incoherent claims.

definite standards” to guide licensing officials (citation modified)). The *Bruen* Court conducted the full, two-step analysis for New York’s “may-issue” law because it *indefinitely* denied concealed-carry licenses to law-abiding, responsible citizens who wished to exercise their right to public carry for self-defense but could not show a special need. *See id.* But the *Bruen* Court also indicated that the full two-step analysis did not apply to “shall-issue” laws because these laws delay, but do not deny, licenses while states ensure that guns are being carried by law-abiding and responsible citizens. *See id.* Instead, the Court said that these shall-issue laws were presumptively constitutional unless a challenger could show that they were abusive toward Second Amendment rights. *See id.*

The Act resembles the “shall-issue” licensing laws and is unlike the discretionary “may-issue” law at issue in *Bruen* in this vital respect. The Act briefly delays acquisitions of firearms from commercial dealers. But it does not prevent a law-abiding and responsible citizen from obtaining and then keeping or bearing a firearm after fulfilling the waiting period requirement. In our view, this likely renders the Act a burden on, but not an infringement of, the Second Amendment right to keep and bear arms. It also means that our analysis should not proceed past step one of *Bruen*.

Finally, we think that plaintiffs’ argument does not square with how the Supreme Court treats direct and incidental burdens on fundamental rights in other contexts. *See Bruen*, 597 U.S. at 24 (aligning the Second Amendment inquiry “with how we protect other constitutional rights”). In these other contexts,

the Court strictly scrutinizes laws that directly restrict the exercise of fundamental rights but often reviews more deferentially laws that only impose incidental burdens on the exercise of those rights. *See* Michael C. Dorf, *Incidental Burdens on Fundamental Rights*, 109 Harv. L. Rev. 1175, 1177-78, 1199-1233 (1996) (providing, inter alia, a descriptive account of the Court's approach to incidental burdens on fundamental rights and concluding that such burdens tend to receive heightened scrutiny only if they "substantially" burden the right in question); *see also* *United States v. O'Brien*, 391 U.S. 367, 376-77 (1968) (upholding a law because there was a sufficient government interest that justified "incidental limitations on First Amendment freedoms").

Indeed, we understand step one of *Bruen* to be a translation of the traditional approach to direct and incidental burdens into the *Bruen* analysis, which eschews the interest-balancing and means-ends scrutiny used in other contexts in favor of examining text and history. *See Bruen*, 597 U.S. at 18-24. So conceived, step one of *Bruen* directs courts to treat as presumptively constitutional laws that are outside of the Second Amendment's text and only incidentally burden Second Amendment rights in much the same way that traditional analysis treats as presumptively constitutional laws with only incidental effects on fundamental rights. *See Luis v. United States*, 578 U.S. 5, 33 (2016) (Thomas, J., concurring in the judgment) ("For the most part, the Court's precedents hold that a generally applicable law placing only an incidental burden on a constitutional right does not violate that right.").

For the reasons discussed, we conclude that the Act does not regulate conduct protected by the plain text of the Second Amendment. The Act is, therefore, constitutional unless plaintiffs can show that it is abusive toward those seeking to exercise their Second Amendment rights. Plaintiffs make one argument that it is. They contrast the Act with the “shall-issue laws” discussed in *Bruen*’s footnote nine and emphasize that, unlike “shall-issue” regimes, the Act operates across the board and does not involve an individualized assessment under objective criteria of whether a firearm purchaser is law-abiding and responsible. Plaintiffs say that this broad inclusivity renders the Act abusive. We disagree.

The Act shares the same goal as “shall-issue” regimes: to diminish the likelihood that firearms will be kept and borne by irresponsible citizens who may harm themselves or others. “Shall-issue” regimes require everyone to fulfill a condition before exercising the Second Amendment right to bear arms, regardless of whether the condition is necessary in the individual case. The Act operates similarly, although it also contains a series of exceptions designed to reduce burdens on Second Amendment interests where the risks favoring a cooling-off period are diminished. Moreover, the Act authorizes only a modest delay in the acquisition of a firearm that is no longer than federal law already permits for the completion of a background check before someone may obtain a gun. 18 U.S.C. § 922(t)(1). We therefore view the Act’s imposition of a brief waiting period as a non-abusive effort by Maine to address a documented problem arising from the immediate acquisition of firearms

while remaining sensitive to minimizing the Second Amendment burdens imposed by the Act.

IV.

For the reasons stated, plaintiffs are unlikely to prevail on their claim that the Act is facially unconstitutional. Accordingly, we **vacate** the preliminary injunction enjoining the Act's enforcement and **remand** for further proceedings.

So ordered.

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Appendix B

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

No. 24-cv-00384

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

v.

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

Filed: Feb. 13, 2025

**ORDER ON PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

The Plaintiffs in this action challenge the constitutionality of 25 M.R.S. § 2016 (“Waiting period after sale of firearm”). The matter is before the Court on Plaintiffs’ Motion for Preliminary Injunctive Relief (ECF No. 4), which I now grant.

BACKGROUND

Effective August 9, 2024, Maine law outlaws the delivery of firearms from sellers to buyers before 72

hours have passed from the date of the underlying firearm sales transaction. 2024 Me. Legis. Serv. Ch. 678 (S.P. 958) (L.D. 2238) (“An Act to Address Gun Violence in Maine by Requiring a Waiting Period for Certain Firearm Purchases”) (“the Act”).¹

As worded by the Maine Legislature: “A seller may not knowingly deliver a firearm to a buyer pursuant to an agreement sooner than 72 hours after the agreement.” 25 M.R.S. § 2016(2). The Act is enforced exclusively against sellers. Sellers who violate its provisions are subject to a fine of between \$200 and \$500 for a first violation and \$500 and \$1000 for each successive violation. *Id.* § 2016(3).

Plaintiffs are Maine citizens and businesses and include federally-licensed firearm dealers. Plaintiffs allege that the Act violates the Second Amendment rights of persons who seek to exercise the right to keep and bear arms.² They name as Defendant Aaron Frey,

¹ The Act exempts certain sales transactions from its coverage, including sales to law enforcement and corrections officers, sales between dealers, and sales between family members. 25 M.R.S. § 2016(4).

² Among the Plaintiffs there is also an individual purchaser of a firearm, who complains of the waiting period she was subjected to, and a business proprietor who offers firearm training and consulting services to victims of domestic violence who fear for their lives. Although most of the Plaintiffs are sellers, they are entitled to pursue derivative claims based on the Second Amendment rights of their customers. *Gazzola v. Hochul*, 88 F.4th 186, 194-95 (2d Cir. 2023), *cert. denied*, 144 S. Ct. 2659 (2024) (collecting cases). *See also, e.g., Whole Woman’s Health v. Hellerstedt*, 579 U.S. 582 (2016); *id.* at 630-32 (Thomas, J., dissenting) (collecting cases). Furthermore, the 72-hour waiting period is short enough that it would be difficult and impractical for a would-be buyer of a firearm to file a lawsuit and obtain an

Attorney General of the State of Maine, who is tasked with the enforcement of the Act's penalty provision. *See* 17-A M.R.S. § 4-B.

The Maine Legislature's passage of the Act occurred in the wake of the October 25, 2023, devastating mass shooting in Lewiston and the Legislature has expressed as cause for the Act concern for persons who may purchase a firearm with the immediate purpose of doing harm to themselves or others. The Defendant contends that empirical data and statistics suggest that waiting periods (colloquially coined "cooling-off periods") reduce homicide and suicide rates (by firearm) in the states that enact them. This decision ultimately does not pass judgment on the legislative intent or the efficacy of the Act and, consequently, I do not relate here the evidence offered by the parties concerning legislative intent or anticipated outcomes.

DISCUSSION

Through this action, the Plaintiffs seek to vindicate the Second Amendment right to keep and bear arms. Through their pending Motion, they seek

injunction before the expiration of the waiting period. In this scenario, it is, unsurprisingly, chiefly sellers rather than buyers who seek to invalidate the Act. *Miller v. Albright*, 523 U.S. 420, 449 (1998) (O'Connor, J., concurring) ("Where insurmountable procedural obstacles preclude a rightholder's own suit, the Court has also accorded third-party standing.") In any event, the non-firearm-dealer plaintiffs in this case (all of the individuals) are in part vindicating their own, ongoing, individual right to purchase a firearm without having the purchase subjected to the waiting period. And not to be overlooked, the seller Plaintiffs also have standing based on the negative impact the Act has on their trade and the threat of civil enforcement proceedings.

an order that enjoins enforcement of the Act on a preliminary emergency basis, ahead of the final review of their claim on the merits. As cause, they cite the unconstitutionality of the Act and the general presumption that the deprivation of a constitutional liberty imposes an immediate and irreparable harm that cannot be cured by an after-the-fact remedy such as an award of money damages.³

In order to obtain preliminary injunctive relief, Plaintiffs must demonstrate: (1) that they are likely to succeed on the merits of their Second Amendment claim; (2) that they are likely to suffer irreparable harm absent interim relief; (3) that the balance of equities tips in their favor; and (4) that injunctive relief would serve the public interest. *Arborjet, Inc. v. Rainbow Treecare Sci. Advancements, Inc.*, 794 F.3d 168, 171 (1st Cir. 2015); *Nat'l Org. for Marriage v. Daluz*, 654 F.3d 115, 117, 119-20 (1st Cir. 2011). Preliminary injunctive relief is understood to be an “extraordinary and drastic” form of equitable relief reserved for extraordinary and drastic situations. *US Ghost Adventures, LLC v. Miss Lizzie's Coffee LLC*, 121 F.4th 339, 347 (1st Cir. 2024).

For the following reasons I find that Plaintiffs have carried their burden.

³ Because their civil action against AG Frey is the functional equivalent of an action against the State of Maine, sovereign immunity would prevent Plaintiffs from recovering money damages based on their personal harms, such as harms to their business operations and revenue.

A. Likelihood of Success on the Merits

“Likelihood of success is the main bearing wall of the four-factor framework.” *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 16 (1st Cir. 1996). On this issue “the district court is required only to make an estimation of likelihood of success and ‘need not predict the eventual outcome on the merits with absolute assurance.’” *Corp. Techs., Inc. v. Harnett*, 731 F.3d 6, 10 (1st Cir. 2013) (quoting *Ross-Simons*, 102 F.3d at 16)).

The Second Amendment provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II. The Second Amendment confers an individual right on all members of the political community to keep and bear arms, in case of confrontation, of the kind “typically possessed by law-abiding citizens for lawful purposes.” *District of Columbia v. Heller*, 554 U.S. 570, 592 (confrontation), 625 (kind of arms), *passim* (individual right) (2008).

When considering a Second Amendment challenge to a legislative enactment, the first consideration is whether “the Second Amendment’s plain text covers” the conduct curtailed by the enactment. *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 17 (2022). If it does, then “the Constitution presumptively protects that conduct.” *Id.* In such cases, it is the Government’s burden not merely to justify its enactment based on its ability to “promote[] an important interest,” but to demonstrate that its curtailment of the right to keep and bear arms “is consistent with this Nation’s historical tradition of

firearm regulation.” *Id.* If the Government cannot demonstrate that the proscribed conduct falls within the parameters of a historical restriction on firearms access, then the enactment will succumb to the “unqualified command of the Second Amendment [that] ‘the right of the people to keep and bear Arms shall not be infringed.’” *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 49 n.10 (1961). *See Bruen*, 597 U.S. at 17.

1. The acquisition of firearms is covered by the Second Amendment’s plain text.

Attorney General Frey argues that the act of purchasing or acquiring a firearm was not comprehended by the Founders when they enshrined the right to “keep and bear” arms in the Bill of Rights. Def.’s Opp’n (ECF No. 13) at 5-11. In his view, the Second Amendment only protects one’s ability to keep and bear arms already possessed and does not provide “an unfettered right to immediately acquire them free of any regulation.” *Id.* at 6. *See also id.* at 7 (collecting cases to that effect). Though Frey concedes that the Constitution makes inviolate a right to keep and bear arms, he asserts that it does not protect the corollary right to acquire arms, which is a curious construction indeed. It is an interpretation that is not only unsupported by the text of the Constitution but one that makes the core right to keep and bear arms illusory if it is relegated to those arms in circulation at the time of the founding or through sales not subject to a background check. In support, Frey cites, among other authorities, the *Heller* Court’s construction of “keep and bear” as encompassing having and possessing, which to Frey implies the exclusion of

acquiring. *Id.* at 5 (citing *Heller*, 554 U.S. at 583-84). For their part, Plaintiffs assert that “laws that prevent people from acquiring arms self-evidently restrict the right to ‘keep and bear Arms.’” Pls.’ Reply (ECF No. 24) at 2.

Though it is certainly correct that to keep and bear encompasses the right to have or possess arms (and to carry arms), the *Heller* Court considered a handgun ban that prohibited possession altogether, subject only to a narrow and discretionary licensing exception. *Heller*, 554 U.S. at 628. The *Heller* Court did not consider a law that temporarily bans taking possession of a firearm through an otherwise lawful sale by dictating when the seller may permit the buyer to carry the firearm away. Here, however, we consider an enactment that temporarily bans keeping, bearing, and carrying activity that would otherwise occur but for its proscription.

If a citizen cannot take possession of a firearm then his or her right to possess a firearm or to carry it away is indeed curtailed, even if, as Frey claims, the curtailment is modest. However, the threshold inquiry is whether the Second Amendment covers the conduct curtailed by the Act, not a qualitative assessment of how modest the imposition on the right happens to be. Citizens wishing to purchase a firearm are dispossessed of one for 72 hours exclusively by operation of the Act’s requirement that everyone be subjected to a “cooling off” period, even those who have passed an instant background check at the FFL dealer’s counter. That is indiscriminate dispossession, plain and simple. Attorney General Frey impliedly concedes the point by suggesting that the Act merely

prohibits “immediate” possession through a “commercial transaction,” emphasizing that the infringement is only temporary and presumptively subject to regulation. Def.’s Opp’n at 7 (“[T]he Second Amendment’s plain text does not apply to the purchase of firearms, *or at least not the immediate purchase of firearms.*” (emphasis added)).⁴ To the

⁴ See also Def.’s Opp’n at 9 (“Theoretically, regulations on firearm sales could be so burdensome that they effectively prohibit the acquisition of firearms and interfere with the right to keep and bear arms . . .”). Attorney General Frey quotes liberally from out-of-circuit opinions and decisions, which apparently represent a surprise revival of the textualist judicial tradition from some rather unexpected quarters. They are unpersuasive insofar as they express the very same tell of overly qualified reasoning in service of something other than giving ordinary effect to the plain words of the Second Amendment, including *B&L Products, Inc., v. Newsom*, 104 F.4th 108, 117 (9th Cir. 2024) (holding that the right to keep and bear “says nothing about commerce”); *McRorey v. Garland*, 99 F.4th 831, 838 (5th Cir. 2024) (“‘keep and bear’ does not include purchase—let alone without a background check”); *Vermont Federation of Sportsmen’s Clubs v. Birmingham*, -- F. Supp. 3d --, 2024 WL 3466482, at *22 (D. Vt. July 18, 2024) (“[T]he ‘right of the people to keep and bear Arms,’ . . . does not facially include a right to immediately obtain a firearm through a commercial sale.”); *Ortega v. Lujan Grisham*, -- F. Supp. 3d --, 2024 WL 3495314, at *26 (D.N.M. July 22, 2024) (“Having considered the normal and ordinary meaning of the Second Amendment’s language, the Court agrees . . . that the Second Amendment’s plain text does not cover purchasing firearms.” (internal quotation marks omitted)); and *Rocky Mountain Gun Owners v. Polis*, 701 F. Supp. 3d 1121, 1132 (D. Colo. 2023) (“[T]he receipt of a paid-for firearm without delay is not covered.” (cleaned up)).

For example, in *Bruen*, the Supreme Court instructed courts to ask whether the conduct proscribed by a law falls within the plain text of the Second Amendment, but it did not then draw the obviously silly conclusion that the petitioners must lose because

extent those arguments made in mitigation are relevant, they may bear on the second prong of the analysis but do not call into question whether as an initial matter the Act impairs conduct presumptively covered by the Second Amendment. Acquiring a firearm is a necessary step in the exercise of keeping and bearing a firearm. Any interpretation to the contrary requires the type of interpretative jui jitsu that would make Kafka blush.

As for the regulatory overlay that attends the commercial sale of firearms, precious few individuals make their own firearms. Firearms have always been articles of commerce. There is nothing novel or nefarious about that basic reality that would warrant torturing the concepts of keeping, bearing, or carrying to exclude from their meaning the acquisition or purchase of a firearm.⁵ In *Heller*, the Supreme Court

the Second Amendment does not expressly specify home use versus public use or open carry versus concealed carry. Instead, the Court looked to history to inform the meaning of the language of the Second Amendment, while also considering what the language must naturally mean in order for the Second Amendment to protect the right the keep and bear arms. *Bruen*, 597 U.S. at 32 (“Nothing in the Second Amendment’s text draws a home/public distinction with respect to the right to keep and bear arms [The] definition of ‘bear’ naturally encompasses public carry To confine the right to ‘bear’ arms to the home would nullify half of the Second Amendment’s operative protections.”).

⁵ The right to keep and bear arms is one we “inherited from our English ancestors.” *Heller*, 554 U.S. at 599 (quoting *Robertson v. Baldwin*, 165 U.S. 275, 281 (1897)). Without being presumptuous about the founding generation’s access to English language etymologies, in fact the word “keep” was used by our English-speaking forebears to mean taking or acquiring, though the grammar and diction of those forebears would be

observed that nothing in its holding “should be taken to cast doubt on . . . laws imposing conditions and qualifications on the commercial sale of arms,” 554 U.S. at 626-27, but it gave no examples of what kind of regulations fall within this particular regulatory safe harbor. *Id.* n.26. This might well entail background checks, age restrictions, shop security measures, and the like. It does not automatically extend to a standardless, temporary disarmament measure. The question is, simply, whether the purchase of a firearm is a basic component of the right to keep and bear arms. The *Heller* Court did not answer the question and all indications in the wake of *Heller*, *Bruen* and *Rahimi* suggest the Supreme Court would view with great skepticism the argument Attorney General Frey advances here.

Attorney General Frey otherwise argues that the Act is presumptively lawful because it is no more burdensome than any other “shall-issue” legislative scheme that subjects firearm buyers to a background check, and that like those schemes the Act simply imposes a brief waiting period based on “narrow, objective, and definite standards,” citing *Bruen*’s much-discussed ninth footnote.⁶ Def.’s Opp’n at 6

incomprehensible to a modern English speaker. *Keep*, Oxford English Dictionary, oed.com/dictionary (entry I.1.: “To seize, lay hold of; to snatch, take. Obsolete.”).

⁶ *Bruen*’s ninth footnote:

To be clear, nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States’ “shall-issue” licensing regimes, under which “a general desire for self-defense is sufficient to obtain a [permit].” *Drake v. Filko*, 724 F.3d 426, 442 (CA3 2013) (Hardiman, J., dissenting). Because these licensing regimes do not require applicants to show an

(quoting *Bruen*, 597 U.S. at 38 n.9, and citing *Heller*, 554 U.S. at 627 n.26, and *McDonald*, 561 U.S. at 786, concerning “conditions and qualifications on the commercial sale of arms”); *see also* Def.’s Opp’n at 9-10 (speaking of the “presumption” of the Act’s “lawfulness”). However, as discussed in the following section, the Act applies no standard at all, unless what is meant by the word standard is a prescriptive standard of what the Maine Legislature sees as the ideal behavior of firearm sellers, rather than an evaluative standard to determine whether individual buyers should have their rights suspended.⁷

atypical need for armed self-defense, they do not necessarily prevent “law-abiding, responsible citizens” from exercising their Second Amendment right to public carry. *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008). Rather, it appears that these shall issue regimes, which often require applicants to undergo a background check or pass a firearms safety course, are designed to ensure only that those bearing arms in the jurisdiction are, in fact, “law-abiding, responsible citizens.” *Ibid.* And they likewise appear to contain only “narrow, objective, and definite standards” guiding licensing officials, *Shuttlesworth v. Birmingham*, 394 U.S. 147, 151 (1969), rather than requiring the “appraisal of facts, the exercise of judgment, and the formation of an opinion,” *Cantwell v. Connecticut*, 310 U.S. 296, 305 (1940)—features that typify proper-cause standards like New York’s. That said, because any permitting scheme can be put toward abusive ends, we do not rule out constitutional challenges to shall-issue regimes where, for example, lengthy wait times in processing license applications or exorbitant fees deny ordinary citizens their right to public carry.

Bruen, 597 U.S. at 38 n.9 (parallel S.Ct. and L.Ed. citations omitted).

⁷ Backgrounds checks once disarmed individuals for comparable lengths of time, or longer, but they at least were

Because the act of acquiring a firearm, including by purchase, falls within the ambit of what it means to keep and bear arms, it is presumptively protected by the Second Amendment. *See Reese v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, -- F.4th --, 2025 WL 340799, at *5 (5th Cir. Jan. 30, 2025).⁸ Consequently, it is Attorney General Frey’s burden to establish not only that the Act “promotes an important interest,” but to demonstrate that the Act’s curtailment of the right to keep and bear arms “is consistent with this Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 17.⁹

designed to implement a standard against which to measure an individual’s background. Today, background checks impose only momentary delays. Insisting that a more prolonged waiting period occur because it is no greater in length than early background checks overlooks the fact that background checks impose a standard and waiting periods do not.

⁸ In *Reese*, the Fifth Circuit observed:

Because constitutional rights impliedly protect corollary acts necessary to their exercise, we hold that [the Second Amendment covers the commercial purchase of firearms]. To suggest otherwise proposes a world where citizens’ constitutional right to “keep and bear arms” excludes the most prevalent, accessible, and safe market used to exercise the right. The baleful implications of limiting the right at the outset by means of narrowing regulations not implied in the text are obvious; step by step, other limitations on sales could easily displace the right altogether.

-- F.4th --, 2025 WL 340799, at *5.

⁹ In the following section, I discuss only the history and tradition inquiry, not whether the Act promotes an important interest. Attorney General Frey and multiple amici have presented evidence that a cooling off period can prevent rash homicidal or suicidal behavior with firearms. *See* Def.’s Opp’n *passim*; Brief of Amici Curiae Maine Gun Safety Coalition, Maine

2. The Act's cooling-off period is inconsistent with the Nation's historical tradition of firearm regulation.

“Like most rights, the right secured by the Second Amendment is not unlimited.” *Heller*, 554 U.S. at 626. “From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Id.* Still, the challenge of demonstrating that the curtailment of Second Amendment rights is consistent with our Nation’s history and tradition does not boil down to means-ends, costs-benefits, or any other interests-balancing analysis. *Bruen*, 597 U.S. at 22-25; *Heller*, 554 U.S. at 634; *McDonald v. City of Chicago*, 561 U.S. 742, 790-91 (2010). Instead, Attorney General Frey must identify one or more historical analogues that suggest that the Act has a precedent and that it cuts against the right to keep and bear arms no more stridently than laws that existed in the Colonial or Reconstruction Periods. *Bruen*, 597 U.S. at 27. But to

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 Def.’s Opp’n to Pls.’ Mot. to Prelim. Inj. (ECF No. 20) *passim*. Suffice it to say that the objectives of the Act are not arbitrary and capricious such that they would offend the Fourteenth Amendment but for the overlay of Second Amendment jurisprudence that steers my review. Beyond that observation, however, it is emphatically not my assigned role to engage in an analysis that involves a comparative weighing of respective interests. *See Bruen*, 597 U.S. at 22-25; *Heller*, 554 U.S. at 634; *McDonald v. City of Chicago*, 561 U.S. 742, 790-91 (2010).

the extent the societal concern addressed by the Act is unprecedented or involves dramatic changes in technology, such that a historical analogue is not readily available for purposes of comparison, Frey may still be able to justify the Act through a “more nuanced approach” to the history and tradition inquiry. *Id.*; see also *Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38 (1st Cir. 2024). After all, “the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated.” *Bruen*, 597 U.S. at 28.

With this nuanced approach, the question is whether the Act is “consistent with the principles that underpin our regulatory tradition” and/or is “‘relevantly similar’ to laws that our tradition is understood to permit.” *United States v. Rahimi*, 602 U.S. 680, 692 (2024) (quoting *Bruen*, 597 U.S. at 29). “Why and how [the Act] burdens the [Second Amendment] right are central to this inquiry.” *Id.* Important criteria are whether the Act employs “narrow, objective, and definite standards” to justify the curtailment of the right to keep and bear arms. *Bruen*, 597 U.S. at 38 n.9.

Frey concedes that waiting period laws implicate unprecedented societal concerns or dramatic changes and therefore call for the “more nuanced” approach. Def.’s Opp’n at 11-15. In fact, there is no readily comparable precedent before the Twentieth Century.¹⁰

¹⁰ The late Twentieth Century at that. Statutory schemes that impose a waiting period on persons who have already passed a background check, separate and apart from waiting periods associated with processing a license application, started to appear in the 1990s. Waiting period laws are distinct from laws

For most persons, the immediate, impulsive purchase of a firearm was not an option given the lack of access to a seller or even the funds to make a purchase. Most persons bent on mayhem or self-harm in earlier times would have to rely on whatever weapons were at hand or obtain a firearm by means other than a purchase at a local gun shop. In such societal conditions, a law imposing a waiting period would lack efficacy and would likely be unadministrable in any event. Consequently, the question is not whether Frey can point to a closely analogous, historical precursor, he cannot, but whether the “how and why” of the Act measure up to “the principles that underpin our regulatory tradition,” *Rahimi*, 602 U.S. at 692, and importantly whether the Act employs “narrow, objective, and definite standards.” *Bruen*, 597 U.S. at 29, 38 n.9.

Frey argues that the how and why of the Act under review is aligned with delays associated with background checks and licensing in general, or perhaps with statutes that have long prohibited persons from publicly carrying firearms while intoxicated. Def.’s Opp’n at 15-16. To this, Plaintiffs reply that at least those kinds of restrictions involve a “condition or qualification . . . a person can satisfy,” not an absolute prohibition uninformed by any

that produce delay occasioned by bureaucratic procedures in firearm licensing or permitting states, which procedures typically include firearm safety instruction and mental health records checks in addition to background checks, all of which amount to individualized standards for license eligibility. *See* Def.’s Opp’n at 17 (“Licensing laws impose[] a delay until licensing authorities [can] be certain that the relevant criteria [are] met.”).

individualized consideration. Pls.' Reply at 3; *see also id.* at 6. Plaintiffs have the better of this argument.

The hows and whys of background checks and drunken-carry laws do not align with the how and why of the Act presently under review. Background checks are designed to generate cause for denying a sale to a given buyer and include a series of objectively verifiable criteria by which to do so. Background checks represent a suite of narrow and definite conditions that can be met. The national instant background check form inquires about the purchaser's prohibited person status in the form of mental health history, criminal history, and drug use or addiction, among other things. Both the how and the why entail individual inquiries and consequences.

Prohibitions against drunken carry are similar, the how of enforcement is based on an individualized assessment, though the why arises from our common understanding that mixing guns and excessive alcohol is fraught with peril. A near globally-applied waiting period detached from narrow and definite standards departs from these approaches. With a waiting period the how and the why entail generalized assumptions and global consequences. Worse, those assumptions are based on the statistical likelihood of aberrant behavior by a small subset of individuals rather than our understanding of the expected, law-abiding behavior of the many. And the consequences are absolute and universal, not conditional and individual. No one carries away a firearm before the passage of 72 hours from its purchase, regardless of individual circumstance. Such an indiscriminate waiting period law is not characteristic of our Nation's

regulatory tradition as that tradition is reflected in background checks and prohibitions against drunken carry.¹¹

Beyond the lack of a suitable regulatory analogue in our Nation's history and tradition, waiting period laws like the one contained in the Act do not employ narrow, objective, or definite standards to justify disarming individuals. This Act does not actually employ any standard at all, objective, narrow, definite

¹¹ Attorney General Frey also references abjectly prejudicial laws that once banned certain minorities from owning firearms out of a fear of what they might do. Def.'s Opp'n at 17 & n.14. Not unlike the fear that informs the Act, those laws were motivated by a fear that certain persons should not acquire firearms. Assuming that laws offensive to the Equal Protection Clause are appropriate analogues to consider, they are still distinct from a waiting period because a waiting period applies to most everyone without exception, whereas prejudicial carry laws prohibited keeping and bearing firearms based on an individual's membership in a disfavored group that lawmakers presumed had a predilection or interest in armed insurrection. There was, once again, a standard at work, albeit a bigoted one. Today, in Maine, there is no viable presumption that everyone in the body politic or even the average person who seeks to purchase a firearm is inclined toward self-harm or other mayhem. The Act imposes a Constitutional injury to the entire body politic based on a fear as to the behavior of a few. That does not align with our Nation's history and tradition of firearm regulation, even when one considers former laws disarming disfavored minorities. The Act's burdens are also more onerous than requirements imposed in licensing jurisdictions, such as completion of a firearm safety course. Completion of a firearm safety course as a condition to licensure can be met, and once met it will not stand in the way of future firearm purchases or license renewal. A waiting period demands compliance repeatedly, with every single purchase, and there is no condition that can be met to avoid its future application.

or otherwise. Whereas one might pass a background check or avoid prosecution for drunken carry by demonstrating a clean record or sobriety, respectively, law-abiding citizens cannot overcome Maine's 72-hour ban by measuring themselves against and affirmatively satisfying a standard. But assuming for the sake of argument that the requirements of the Act actually involve the application of a standard, how can that standard be characterized as "narrow" or "objective" or "definite"?

The waiting period is not narrow since it applies to very near everyone seeking to purchase a firearm and their entire right to keep and bear any firearm at all through purchase is temporarily banned. Nor is the waiting period objective since it does not permit the evaluation of facts as they pertain to the individual seeking to carry away the firearm. Sellers are not tasked with inquiring whether buyers are intent on harming themselves or others and all buyers are effectively deemed suspect. Attorney General Frey argues that the waiting period requirement is the most objective standard that could be imposed because there is no individualized inquiry. But indiscriminate application of a requirement is different from an objective application of a condition. With indiscriminate application objectivity is entirely beside the point. For essentially the same reason, the Act does not employ a definite standard. In fact, the Act is filled with and motivated by doubt—doubt about what someone could conceivably do, but far more likely will not do, upon carrying a firearm away from a seller. That kind of doubt is timeless, and certainly it was familiar to our forebears in the Colonial and Reconstruction Eras. Yet we still have a Second

Amendment that reads: “[T]he right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II.

Viewed dispassionately, the Act employs no standard at all to justify disarming individuals, let alone a standard that can be described as narrow, objective, or definite. Consequently, I find that Plaintiffs have demonstrated that they are likely to succeed on the merits of their Second Amendment claim.

B. Irreparable Harm

The deprivation of a constitutional right does not automatically result in an irreparable injury. *Vaqueria Tres Monjitas, Inc. v. Irizarry*, 587 F.3d 464, 484 (1st Cir. 2009). That treatment has most commonly been reserved for deprivations of rights protected under the First Amendment. *Id.* In that context, courts imbue the rights in question with “such qualitative importance as to be irremediable by any subsequent relief.” *Id.* (quoting *Pub. Serv. Co. of New Hampshire v. West Newbury*, 835 F.2d 380, 382 (1st Cir. 1987)). Though there is not a strong legal tradition of treating the right protected by the Second Amendment the same way in the context of preliminary injunction motions, the Supreme Court has analogized the right protected by the Second Amendment with the rights protected by the First Amendment. *See Bruen*, 597 U.S. at 24 (“This Second Amendment standard accords with how we protect other constitutional rights. Take, for instance, the freedom of speech in the First Amendment, to which *Heller* repeatedly compared the right to keep and bear arms.” (citing *Heller*, 554 U.S. at 582)).

Undoubtedly, deprivation of the right to keep and bear arms, particularly for purposes of self-defense, is of such qualitative importance to be considered irreparable through subsequent relief. Persons most harmed by the waiting period are likely to be seeking to carry for self-defense in case of confrontation. Such an interest is well represented here, by Plaintiff Andrea Beckwith. Furthermore, regardless of whatever degrees of injury one might imagine, statutory disarmament in the absence of individual cause is inimical to our Nation's history and traditions. It is to the Second Amendment what a prior restraint is to the First. I have little trouble finding irreparable injury in this context. As with cases involving the First Amendment, even a temporary deprivation results in irreparable injury. *Cf. Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.").

C. Remaining Considerations

The remaining elements of the preliminary injunction standard concern the balance of equities and the public interest. Given that Plaintiffs have established a likelihood of success and the existence of irreparable injury, I find that the balance of equities favors them as well. Similarly, although members of the public undoubtedly feel that they have a genuine interest in laws curtailing the right to keep and bear arms, their interest is not exclusive and not one that can win out in terms of an interest-balancing exercise by a court that is sworn to uphold the Constitution.

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CONCLUSION

Plaintiffs' Motion for Preliminary Injunctive Relief (ECF No. 4) is GRANTED.

So Ordered.

Dated this 13th day of February, 2025.

/s/Lance E. Walker

Chief U.S. District Judge

Appendix C

**RELEVANT CONSTITUTIONAL AND
STATUTORY PROVISIONS**

U.S. Const. amend. II

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

**Me. Stat. tit. 25, §2016. Waiting period after
sale of firearm**

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. “Agreement” means an agreement reached between a buyer and a seller for the purchase and the sale of a firearm.

B. “Buyer” means a person, not including a firearm dealer, who receives possession or ownership of a firearm through an agreement.

C. “Firearm” has the same meaning as in Title 17-A, section 2, subsection 12-A.

D. “Firearm dealer” means a person that is licensed as a dealer under 18 United States Code, Section 923(a)(3) or that is required to be licensed as a dealer under that section.

E. “Seller” means a person or firearm dealer that owns a firearm and that is transferring ownership of the firearm to a buyer pursuant to an agreement.

2. Waiting period. A seller may not knowingly deliver a firearm to a buyer pursuant to an agreement sooner than 72 hours after the agreement. The 72-

hour waiting period must be concurrent with any waiting period imposed by any background check process required by federal or state law.

3. Penalty. This subsection applies to violations of subsection 2.

A. A seller who violates subsection 2 commits a civil violation for which a fine of not less than \$200 and not more than \$500 may be adjudged.

B. A seller who violates subsection 2 after having previously been adjudicated as violating subsection 2 commits a civil violation for which a fine of not less than \$500 and not more than \$1,000 may be adjudged.

4. Application. This section does not apply to:

A. The sale of a firearm if the seller knows that the person to whom the seller is selling the firearm is:

(1) A law enforcement officer as defined by Title 17-A, section 2, subsection 17;

(2) A corrections officer as defined by section 2801-A, subsection 2; or

(3) A person who is employed by a contract security company or proprietary security organization as defined by Title 32, section 9403 or a person who is licensed as a private security guard under Title 32, chapter 93;

B. The sale of a firearm to a firearm dealer; or

C. The sale of a firearm if:

(1) The buyer and seller are family members. For purposes of this subparagraph, "family member" means a spouse, domestic

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partner, parent, stepparent, foster parent, child, stepchild, foster child or person related by consanguinity within the 2nd degree;

- (2) The transaction is for a firearm that is:
 - (a) A curio or relic, as defined in 27 Code of Federal Regulations, Section 478.11, and the sale, transfer or exchange is between collectors, as defined in 18 United States Code, Section 921(a)(13), who each have in their possession a valid collector of curios and relics license issued by the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives; or
 - (b) An antique firearm, as defined in 18 United States Code, Section 921(a)(16); or
- (3) A background check is not required under federal or state law.