

No. 26-258

IN THE
Supreme Court of the United States

ANDREA BECKWITH, ET AL.,
Petitioners,

v.

AARON M. FREY, INDIVIDUALLY AND AS
ATTORNEY GENERAL OF MAINE,
Respondent.

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

**BRIEF OF MONTANA AND 24 STATES AS
AMICI CURIAE IN SUPPORT OF PETITIONERS**

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INTERESTS OF THE *AMICI* STATES¹

The States of Montana, Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, North Dakota, Ohio, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, Wyoming, and the Arizona Legislature (“Amici States”) submit this brief to safeguard their citizens’ fundamental rights. Just a few years ago, this Court reiterated that 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.’” *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 70 (2022) (citation omitted). Under the First Amendment, “[a]ny system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity,” *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963), and “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury,” *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

This case presents an analogous issue for “the right of law-abiding, responsible citizens” to keep and bear arms. *D.C. v. Heller*, 554 U.S. 570, 635 (2008). In 2023, Maine enacted a statute titled “Waiting period after sale of firearm,” which prohibits a seller from delivering a firearm to a buyer for 72 hours. Me. Rev. Stat. Ann. tit. 25, § 2016(2) (“Section 2016”);

¹ *Amici Curiae* provided timely notice of the filing of this brief to all parties.

App.42-43. The First Circuit held that Section 2016 is presumptively constitutional, even though it prevents a person from taking possession of a firearm beyond the time required to perform a background check. App. 3, 14-15, 19. The First Circuit’s misinterpretation of the Second Amendment—effectively creating “a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees,” *Bruen*, 597 U.S. at 70—threatens the liberty of citizens in every State. And while Maine’s law is particularly condemnable because it was adopted in response to *Bruen*, thirteen states and the district of Columbia now impose some form of waiting period, showing the nationwide importance of this issue. Pet. 9-10 & n.1.

Amici States also have a unique perspective that will aid the Court in considering the proper scope and application of the Second Amendment. The States are charged with advancing their substantial interests in public safety, preventing crime, and reducing the harmful effects of firearm violence, while ensuring that they do not infringe on their citizens’ constitutional right to bear arms. The Amici States offer this brief to show that the Second Amendment can be given its full effect without interfering with those public safety interests.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court should grant certiorari to provide guidance on two important aspects of Second Amendment doctrine. First, the plain text of the right to “keep” and “bear” arms covers the right to take possession of such arms in the first place. Forcing a person to delay taking possession of a firearm is clearly “a[] restriction[]” on possession. And persuasive cases in the Second Amendment context and property law more generally recognize that taking possession is a critical part of a right to possess.

This Court should also use this case as a vehicle to apply the second step of *Bruen* to a mandatory “cooling-off” law. Maine forces law-abiding citizens who have already passed a background check to wait out a multi-day cooling-off period to address a problem—human impulsivity—that has existed since the Founding. Yet Maine, despite submitting expert declarations on the history of American firearms regulation, App.6, failed to produce any “distinctly similar” Founding-era or Reconstruction-era laws. See *Bruen*, 597 U.S. at 26-27. As the district court found, there is “no readily comparable precedent before ... [t]he late Twentieth Century.” App.34 & n.10. And even if Maine’s law addressed an “unprecedented societal concern” involving “dramatic technological changes,” *Bruen*, 597 U.S. at 27, Maine’s proposed analogues, intoxication laws and licensing regimes, are not “relevantly similar.” See *United States v.*

Rahimi, 602 U.S. 680, 692 (2024); *see* App.35-37. The First Circuit did not reach step two, App.8-9, but the question was fully litigated below and is ripe for this Court’s resolution.

ARGUMENT

I. This Court Should Clarify That Cooling-Off Laws Are Covered by the Second Amendment’s Plain Text And Thus Meet *Bruen* Step One.

This case presents an important question about whether the “plain text” of the Second Amendment covers Maine’s Section 2016, which imposes a “cooling-off” period before a person can take possession of a firearm. This threshold question determines whether the full force of the Second Amendment applies, or whether the law is instead lawful unless, for example, it is “abusive toward Second Amendment rights.” App.15; *see, e.g.*, App.16-17 (relying on *Bruen*, 597 U.S. at 38 n.9). Placing a cooling-off law—which is akin to a prior restraint—outside the full protection of the Second Amendment will fundamentally weaken “the right of law-abiding, responsible citizens” to keep and bear arms. *Heller*, 554 U.S. at 635.

The initial Second Amendment “inquiry entails three subsidiary questions,” *Wolford v. Lopez*, 146 S. Ct. 2032, 2043 (2026), and Maine’s Section 2016 indisputably meets two of them. First, the law “appl[ies] to ‘the people’,” that is “all members of the political community.” *Id.* (quoting *Heller*, 554 U.S. at

580). By its plain language, Section 2016 covers any person purchasing a firearm in the state with a few limited exceptions. *See* Me. Rev. Stat. Ann. tit. 25, § 2016(1)(B) (defining “buyer” as “a person, not including a firearm dealer, who receives possession or ownership of a firearm through an agreement”); *id.* § 2016(4) (listing exceptions for law-enforcement purchasers, intra-family sales, sales of curios/relics/antiques, situations where a federal background check is not required, and the return of a firearm or frame or receiver). Second, the law “concern[s] any form of ‘Arms,’ *i.e.*, any weapon customarily used for offensive or defensive purposes.” *Wolford*, 146 S. Ct. at 2043 (citing *Heller*, 554 U.S. at 584). Section 2016 expressly covers all “firearms,” which are defined to include a “pistol,” “rifle,” or other “gun.” *See* Me. Rev. Stat. Ann. tit. 25, § 2016(1)(C) (defining firearm by reference to Me. Rev. Stat. Ann. tit. 17-A, § 2).

The critical question presented in this case relates to the third subsidiary question: whether cooling-off laws “place any restrictions on either the ‘keep[ing]’ (*i.e.*, possession) or the ‘bear[ing]’ (*i.e.*, carrying) of arms.” *Wolford*, 146 S. Ct. at 2043-44 (citing *Bruen*, 597 U.S. at 32-33). Such laws meet this requirement because forced delay on taking possession is “a[] restriction[]” on possession, and the predicate-act canon and property cases provide additional support for this common-sense conclusion.

A. Cooling-Off Laws Meet the Requirement of “Plac[ing] Any Restrictions on ... the ‘Keep[ing]’ (i.e., Possession) ... of Arms.”

A cooling-off law qualifies as a restriction on the keeping (*i.e.*, possession) of arms; it is therefore covered by the Second Amendment’s plain text. The First Circuit’s contrary holding “that laws regulating the purchase or acquisition of firearms ... do not *directly* restrict the textual rights protected by the Second Amendment,” App.14 (emphasis added), draws a distinction that is contrary to *Wolford*, *Bruen*, and other circuits.

A “restriction” is simply a “limitation or qualification” *See Restriction*, Black’s Law Dictionary (12th ed. 2024); *see also Restrict*, Meriam-Webster (“to confine within bounds: restrain”), <https://www.merriam-webster.com/dictionary/restrict>. If a person agreed to purchase a firearm on Monday, and also passed the required background check that day, she would be able to “keep” (*i.e.*, possess) the firearm the day of the purchase. But because of Section 2016, a person in Maine is unable to “keep” the firearm, on Monday, Tuesday, or Wednesday. Based on this simple hypothetical, it is clear that Section 2016 is a restriction. And even assuming there is a relevant distinction between direct and indirect restrictions on keeping arms, Section 2016’s restriction is direct. It is the but-for cause of persons being completely unable to exercise the right to keep arms for multiple days.

In the First Amendment context, a prior restraint (a law or regulation that prevents a person from speaking until a government official approves such speech) is a serious infringement of the First Amendment, “bearing a heavy presumption against its constitutional validity.” *Bantam Books, Inc.*, 372 U.S. at 70; *see also Houston Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 474 (2022) (“[T]he government usually may not impose prior restraints on speech.”). And “cooling-off” periods in the First Amendment context would be heavily scrutinized by courts. For example, laws that punished a person for taking possession of a printing press until “cooling off” for 72 hours after purchasing it, or logging into a social media account until “cooling off” for 72 hours after registering it, would likely operate as prior restraints. Such requirements for citizens to cool off would not just chill but “freeze[]” their speech entirely. *See Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976) (“A prior restraint ... by definition, has an immediate and irreversible sanction. If it can be said that a threat of criminal or civil sanctions after publication ‘chills’ speech, prior restraint ‘freezes’ it at least for the time.”); *see also Near v. State of Minnesota ex rel. Olson*, 283 U.S. 697, 713 (1931) (“[I]t has been generally, if not universally, considered that it is the chief purpose of the guaranty to prevent previous restraints upon publication.”).

In fact, the Tenth Circuit recognized this common-sense analogy between the First and Second Amendments when analyzing what qualifies as a restriction of the right to keep and bear arms, and it

held New Mexico’s materially similar cooling-off law likely unconstitutional. *Ortega v. Grisham*, 148 F.4th 1134, 1143-44 (10th Cir. 2025); *see* App.12 n.4 (acknowledging the conflict).

B. The Predicate-Act Canon and Property Cases Show the Second Amendment’s Plain Text Covers Taking Possession.

In addition to *Wolford*’s broad, “any restrictions” framing, 146 S. Ct. at 2043-44, the predicate-act canon and cases interpreting fundamental rights to property provide additional confirmation that Section 2016 restricts the right to keep arms. It is a well-established interpretive canon that “[a]uthorization of an act also authorizes a necessary predicate act.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 192 (2012). This further shows that the First Circuit’s conclusion (at App.14) that laws restricting the acquisition of a firearm are outside the scope of the right to keep and bear arms is erroneous, because acquiring a firearm is a necessary predicate for keeping or bearing one.

Justice Thomas recognized a similar issue in *Luis v. United States*, “[t]he right to keep and bear arms ... implies a corresponding right to obtain the bullets necessary to use them, ... and to acquire and maintain proficiency in their use.” 578 U.S. 5, 26 (2016) (Thomas, J., concurring in the judgment) (citations omitted). Here, Section 2016 restricts the necessary predicate of possessing the arm itself—it would

literally be impossible to keep or bear arms if a person could not acquire one in the first place.

Several circuit courts have similarly recognized that the Second Amendment covers ordinary actions related to property (such as acquisition and disposition). The Fifth Circuit recognized in *Reese v. ATF* that the Second Amendment “covers’ the conduct (commercial purchases) to begin with.” 127 F.4th 583, 590 (5th Cir. 2025). It did so because “constitutional rights impliedly protect corollary acts necessary to their exercise” and “[t]he 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.” *Id.* The Ninth Circuit similarly concluded that “the Second Amendment’s plain text ... protects the ability to acquire ... arms.” *Nguyen v. Bonta*, 140 F.4th 1237, 1243 (9th Cir. 2025). In *United States v. Knipp*, the Sixth Circuit concluded that “the Second Amendment’s text presumptively protects the act of selling or transferring a firearm.” 138 F.4th 429, 435 (6th Cir. 2025). This conclusion is noteworthy because selling is not a necessary prerequisite for possessing, but the court still held that the law must be analyzed under *Bruen* step two. *Id.*

Other persuasive authorities have recognized that the right to acquire is a necessary prerequisite covered by the right to keep arms. *Andrews v. State*, 50 Tenn. 165, 178 (1871) (“The right to keep arms, necessarily involves the right to purchase them, to

keep them in a state of efficiency for use, and to purchase and provide ammunition suitable for such arms, and to keep them in repair.”); John G. Sprankling, *The Right to Acquire Property*, 75 Am. U. L. Rev. 209, 245 n.269 (2025) (citing Joseph G.S. Greenlee, *The American Tradition of Self-Made Arms*, 54 St. Mary’s L.J. 35, 41 (2023) (“Because one cannot ‘keep’ or ‘bear’ something without acquiring it, the act of acquiring arms must be included in the Second Amendment’s ‘right to keep and bear arms.’”); Josh Blackman, *The 1st Amendment, 2nd Amendment, and 3D Printed Guns*, 81 Tenn. L. Rev. 479, 490 (2014) (The Second Amendment “embodies two complimentary guarantees: the right to acquire arms, and the right to make arms”)).

More generally, courts have also recognized that the right to possess property necessarily includes the right to acquire such property. In *Corfield v. Coryell*, Justice Washington wrote that fundamental rights included the “the enjoyment of life and liberty, with *the right to acquire and possess property of every kind*, and to pursue and obtain happiness and safety.” 6 F. Cas. 546, 551-52 (C.C.E.D. Pa. 1823) (No. 3,230) (Washington, Circuit Justice) (emphasis added). In setting forth these fundamental rights, Justice Washington expressly grouped acquisition with possession of property. This makes sense because a right to property that only covered property already possessed would be a much narrower and less valuable right than a right to property more generally.

Later cases from this Court recognize the same principle. *Buchanan v. Warley*, 245 U.S. 60, 74 (1917) (“Property is more than the mere thing which a person owns. It is elementary that it includes the right to acquire, use, and dispose of it. The Constitution protects these essential attributes of property.”); *Holden v. Hardy*, 169 U.S. 366, 391 (1898) (“As the possession of property, of which a person cannot be deprived, doubtless implies that such property may be acquired, it is safe to say that a state law which undertakes to deprive any class of persons of the general power to acquire property would also be obnoxious to the same provision.”); *see also* Sprankling, *The Right to Acquire Property* at 238.

In sum, the First Circuit made a major analytical error when it held that the right to take possession of a firearm is not covered by the plain text of the right to “keep” (i.e., possess) a firearm, and this Court should grant certiorari to provide guidance on this critical aspect of the constitutional right.

II. At *Bruen* Step Two, Maine Cannot Justify Its Cooling-Off Law Based on the Nation’s Historical Tradition of Firearm Regulation.

Because Section 2016’s cooling-off period is covered by the plain text of the Second Amendment, Maine must “justify its regulation” by demonstrating that it is consistent with “the Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 24. To carry that burden, Maine must point to historical

laws that were “widespread, well-known, and widely accepted.” *Wolford*, 146 S. Ct. at 2053. This Court should not simply remand to the First Circuit for application of *Bruen* step two but should decide that question itself. Although the First Circuit declined to reach step two, App.8-9, the question was fully litigated: Maine submitted three expert declarations summarizing among other things “the history of American firearms regulation,” App.6, and the district court resolved step two on that record, App.33-39. The Tenth Circuit has likewise applied step two to a materially identical law. *Ortega*, 148 F.4th at 1150-53. Applying both steps of *Bruen* to Section 2016 would provide clear guidance to lower courts and send a signal that this Court will not tolerate States circumventing constitutional rights. Simply put: if a law falls within the text of the Second Amendment (step one, *supra*), then it must be justified by the Nation’s historical tradition.

Bruen “identified three important inquiries that courts should undertake in evaluating proffered analogues”: “the number of jurisdictions in which they were adopted,” “the extent to which they were well-accepted,” and whether they are “‘relevantly similar’ to the modern law.” *Wolford*, 146 S. Ct. at 2044 (citing *Bruen*, 597 U.S. at 29). And “[t]he more a modern law diverges from traditional laws in purpose and operation, the less likely it is to survive review.” *United States v. Hemani*, 146 S. Ct. 1677, 1686 (2026). Maine’s showing fails at every turn.

No Founding-era analogue. Maine identified no waiting-period law from the Founding era. *See* Br. of Def.-Appellant, *Beckwith v. Frey*, No. 25-1160 (1st Cir. filed Apr. 29, 2025) (“C.A.Opening.Br.”), at 28 (conceding that “there are no early examples of waiting period laws”); App.34-35 & n.10. That silence is telling. Maine submitted expert declarations summarizing the history of American firearms regulation, App.6, yet could not identify a single Founding-era law that made a purchaser wait to take possession of a firearm. Because Maine bears the burden to justify Section 2016, its failure to produce any similar Founding-era law strongly suggests that no such tradition existed. *See Bruen*, 597 U.S. at 60 (courts are not obliged “to sift the historical materials for evidence to sustain” a challenged regulation; “[t]hat is respondents’ burden”).

No Reconstruction-era analogue. Even if Reconstruction-era historical evidence were as probative of the scope of the Second Amendment right as Founding-era evidence,² Maine still failed to show a historical tradition of relevantly similar waiting-period laws. *Bruen* directs courts to canvass the period

² This is a shaky proposition at best. *Bruen*, 597 U.S. at 36 (explaining that “because post-Civil War discussions of the right to keep and bear arms ‘took place 75 years after the ratification of the Second Amendment, they do not provide as much insight into its original meaning as earlier sources’” (quoting *Heller*, 554 U.S. at 614)); *see also Atkinson v. Garland*, 70 F.4th 1018, 1020 (7th Cir. 2023) (“[T]he pertinent question ... is what the Founders understood the Second Amendment to mean” and noting that *Bruen* “cautioned against giving too much weight to laws passed before or after the Founding.”).

from the Founding through Reconstruction for similar regulations, always with an eye to “what the Founders understood the Second Amendment to mean.” *Atkinson v. Garland*, 70 F.4th 1018, 1020 (7th Cir. 2023). Maine produced no evidence of any waiting-period law between 1791 and 1868. *See* App.34-35 & n.10.

Maine tried to sidestep this deficiency by arguing that courts should apply *Bruen*’s “more nuanced approach” because its waiting-period law seeks to address “unprecedented societal concerns” (“increased use of firearms in homicides and suicides”) involving “dramatic technological changes” (“ability to quickly acquire firearms and easily use them”). *See* C.A.Opening.Br.28; App.34 (describing Maine’s position in the district court).

Maine’s argument misses the mark. To qualify as an unprecedented societal concern, the problem must be “unheard of and likely unimaginable at the Founding,” *Bianchi v. Brown*, 111 F.4th 438, 463 (4th Cir. 2024) (en banc), “a relatively recent phenomenon,” *Hanson v. District of Columbia*, 120 F.4th 223, 241 (D.C. Cir. 2024), or have “no direct precedent,” *Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38, 44 (1st Cir. 2024). And to qualify as a dramatic technological change, the technology must “differ[] in form and in kind,” *Hanson*, 120 F.4th at 241-42, “differ completely,” *Duncan v. Bonta*, 133 F.4th 852, 873 (9th Cir. 2025) (en banc), or involve “[r]apid advancements in gun technology,” *Bianchi*, 111 F.4th at 463-64. Even then, the “how” and “why”

of the historical analogue and the modern regulation “must be close enough” to permit the inference that the modern law is consistent with the codified right. *Wolford*, 146 S. Ct. at 2044. While *Bruen* anticipated the need “to be careful and thoughtful in scrutinizing the government’s claim of historical analogues” in these cases, it did not authorize the “creation of alternate *Bruen* tests” that discard history altogether. *Duncan*, 133 F.4th at 910-11 (Bumatay, J., dissenting). Embracing such an ahistorical approach departs from *Bruen* and simply resurrects the pre-*Bruen* “interest-balancing regime.” *Id.* at 911.

Maine argues that its waiting-period law addresses a problem that did not exist at the Founding—“the impulsive use of firearms to commit homicides and suicides.” C.A.Opening.Br.24. But human impulsivity is not a new problem, nor would it have been “unheard of” or “unimaginable at the Founding,” *Bianchi*, 111 F.4th at 463, for a person to acquire a firearm in a moment of rage or despair. As the district court put it, the “doubt” animating Section 2016, “doubt about what someone could conceivably do, but far more likely will not do, upon carrying a firearm away from a seller,” “is timeless, and certainly it was familiar to our forebears in the Colonial and Reconstruction Eras.” App.38. When “a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment.” *Bruen*, 597 U.S. at 26.

Maine’s argument that dramatic technological changes warrant a more flexible approach fares no better. Maine points to no “[r]apid advancements in gun technology.” *See Bianchi*, 111 F.4th at 463-64. Section 2016 does not target any new type of firearm; it applies to handguns, rifles, and shotguns alike. Me. Rev. Stat. Ann. tit. 25, § 2016(1)(C), (2). And Maine fails to point to any law before the late twentieth century addressing the “impulsive” use of firearms through a waiting period. App.34-35 & n.10. So this Court should reject Maine’s request to apply *Bruen*’s “more nuanced approach.” 597 U.S. at 27.

But even if Maine were right that its waiting-period law addresses “unprecedented societal concerns” involving “dramatic technological changes,” *see* C.A.Opening.Br.28, its proposed analogues flunk *Bruen*’s inquiry. Failing to produce any waiting-period laws, Maine instead offers two categories of historical analogues: (1) laws “designed to keep firearms out of the hands of intoxicated individuals,” and (2) licensing and permitting laws. *See* C.A.Opening.Br.27; App.8, 35. Maine argues that these laws are relevantly similar in part because the “how” is similar—that is, its waiting-period law and the intoxication and licensing laws all “impose[] only a minor burden.” *See* C.A.Opening.Br.31. But that is a major oversimplification and a return to the interest-balancing framework. To be sure, there is a superficial similarity between Maine’s waiting-period law and its proposed analogues: all of them involve some temporary inability to acquire or use a firearm. *See Ortega*, 148 F.4th at 1151-52. But on closer inspection,

those ostensible similarities disappear as to both intoxication and licensing laws. As the district court found, the historical laws “entail individual inquiries and consequences,” while Section 2016 “entail[s] generalized assumptions and global consequences.” App.36. The Tenth Circuit rejected the same analogues for the same reason: “[t]he scope and underlying justifications for the burdens are vastly different.” *Ortega*, 148 F.4th at 1152.

Intoxication Laws. Maine identified three categories of intoxication laws as historical analogues: (1) laws criminalizing possession or use of firearms while intoxicated; (2) laws banning gun sales to intoxicated individuals; and (3) laws regulating the commercial sale or distribution of alcohol when guns were present. C.A.Opening.Br.27. None is relevantly similar in “how” it burdened the right. Intoxication laws burdened a person only while he was intoxicated: “[o]nce the drunk sobered up, he could carry or use a gun once again.” *Ortega*, 148 F.4th at 1151. Unlike Maine’s waiting-period law, these laws include conditions or qualifications that a person can satisfy, “not an absolute prohibition uninformed by any individualized consideration.” App.35-36. Individuals can avoid an intoxication law’s burden (by not drinking and carrying), but Maine’s waiting-period law applies no matter what a person does. Rather than burdening the right to address an identified risk (like present intoxication or dangerousness), Maine’s law simply assumes that because some small subset of its citizens may impulsively buy a gun to hurt themselves or others, everyone must wait to take

possession of a firearm. That is the kind of “attempt to declare the entire population ... presumptively dangerous to themselves or others only because they want to acquire firearms” that the Tenth Circuit rightly rejected. *Ortega*, 148 F.4th at 1151; *see Rahimi*, 602 U.S. at 698. None of Maine’s proposed analogues indiscriminately burdens citizens’ Second Amendment rights like its waiting-period law.³

Licensing Laws. Maine also pointed to licensing laws as a historical analogue because they “imposed a delay until licensing authorities could be certain that the relevant criteria were met.” C.A.Opening.Br.31. This analogue fails for multiple reasons. First, the “why” is different. Historical licensing regimes, like modern shall-issue regimes, were “designed to ensure only that those bearing arms in the jurisdiction are, in fact, ‘law-abiding, responsible citizens.’” *Bruen*, 597 U.S. at 38 n.9; *see Ortega*, 148 F.4th at 1152. Any delay was incidental to that individualized inquiry. Section 2016’s 72-hour period, by contrast, runs even after a buyer passes a background check, and nothing

³ Maine argues that some intoxication laws—such as a law restricting the distribution of alcohol where firearms were present—“assumed risk without regard to an individual’s characteristics.” C.A.Opening.Br.33. But that is beside the point. Such a law still involves a condition that can be satisfied to avoid the law’s burden: removing oneself from a location where alcohol is distributed. And it rests on a more defensible assumption: that people with simultaneous access to alcohol and firearms could more easily harm themselves or others. *See* C.A.Opening.Br.33. But Maine’s law assumes that because some small subset of individuals could act irresponsibly if they have immediate access to a firearm, all individuals must wait to acquire one.

is investigated during it. *See* Me. Rev. Stat. Ann. tit. 25, § 2016(2); App.31-32 n.7. It “is a ‘when’ restriction, not a ‘who’ restriction.” *Ortega*, 148 F.4th at 1153. Second, like the intoxication laws, licensing laws include conditions a person can satisfy to avoid the law’s burden. But with Maine’s waiting-period law, the condition is the burden—people trying to buy a gun must wait 72 hours before taking possession no matter what. App.37-38. And any superficial similarity between licensing laws and Maine’s waiting-period law holds up, at most, only for initial purchases. Once a licensing condition is met, “it will not stand in the way of future firearm purchases,” but Section 2016 “demands compliance repeatedly, with every single purchase, and there is no condition that can be met to avoid its future application.” App.37 n.11. So Maine’s waiting-period law does not impose a “comparable burden” on the right to acquire firearms, nor is that burden “comparably justified.” *Bruen*, 597 U.S. at 29; *Rahimi*, 602 U.S. at 692.⁴

⁴ Maine’s argument that its waiting-period law, like “early licensing and intoxication laws,” merely imposes conditions a person could satisfy falls flat. C.A.Opening.Br.34. Licensing and intoxication laws have conditions that could be satisfied—i.e., completing a licensing application, not drinking irresponsibly—to avoid the law’s burden. But with Maine’s law, the condition and the burden are the same. Nothing can be done to avoid the waiting period, and it applies every time a person buys a gun no matter how responsible or law-abiding the buyer is. App.37 n.11, 38. Maine’s law thus infringes a fundamental right with a “condition” that is anything but “narrow, objective, and definite.” *Bruen*, 597 U.S. at 38 n.9 (citation omitted); *see* App.37-39 (Section 2016 “employs no standard at all to justify disarming individuals, let

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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alone a standard that can be described as narrow, objective, or definite”).

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