UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

ANDREA BECKWITH, EAST COAST SCHOOL OF SAFETY, NANCY COSHOW, JAMES WHITE, J WHITE GUNSMITHING, ADAM HENDSBEE, A&G SHOOTING, THOMAS COLE, and TLC GUNSMITHING AND ARMORY, *Plaintiffs*, v. AARON FREY, in his personal capacity and in his official capacity as Attorney General of Maine, *Defendant*.	Civil Action No. 1:24-cv-384-LEW

PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO STAY

Maine went more than two centuries without subjecting the acquisition of firearms to any kind of waiting period whatsoever. Now, it claims that its newly enacted "cooling-off" period law is so essential that it cannot be put on hold even for the brief period of time it will take to litigate the state's appeal of this Court's preliminary-injunction order. The state has not come close to demonstrating that it is entitled to the extraordinary relief of a stay pending appeal. To be sure, states have an interest in enforcing duly enacted laws. But they do not have an interest in enforcing unconstitutional ones. And the state identifies no basis to second-guess this Court's conclusion that 25 M.R.S. §2016 ("Section 2016") likely falls into the latter camp. Its motion instead just largely rehashes arguments this Court has already rejected. Those arguments do not fare any better the second time around. And the state's seeming view that it is entitled to a stay *any* time it appeals an order preliminarily enjoining a state law as unconstitutional is antithetical to the very notion of a preliminary injunction. As the very cases the state cites illustrate, stays are typically reserved for situations where letting an order stand could force a court to choose "between justice on the fly or" foreswearing any "role in the … process" at all, *Nken v. Holder*, 556 U.S. 418, 427 (2009), or where it would be almost impossible to remedy an injury that the movant will immediately suffer should the movant ultimately prevail on appeal. This case presents no such urgency or special considerations, as the state tacitly concedes by not requesting an expedited decision on this motion (or on its pending appeal to the First Circuit). Conversely, the harms that Plaintiffs—and Mainers generally—would suffer if the state were allowed to resume enforcing Section 2016 are real: The preliminary-injunction record starkly illustrates how the law puts people facing threats of violence in untenable situations. *See, e.g.*, Dkt.1-4 ¶9.

At bottom, the state's belief that its law serves important policy goals cannot justify giving it a first-round bye in litigation brought by citizens seeking to vindicate their fundamental rights.

The Court's order preliminarily enjoining Section 2016 was thoughtful, thorough, and, above all, correct. It should remain in effect while the state prosecutes its appeal.

ARGUMENT

"A stay is an 'intrusion into the ordinary processes of administration and judicial review,'" so it is never awarded as "a matter of right." *Nken*, 556 U.S. at 427. Instead, a movant "bears the burden of showing" four factors, each of which must be present to justify a stay: (i) the movant "has made a strong showing that he is likely to succeed on the merits"; (ii) the movant "will be irreparably injured absent a stay"; (iii) "issuance of the stay will [not] substantially injure the other parties interested in the proceeding"; and (iv) "the public interest" weighs in favor of a stay. *Id.* at 433-34. The state cannot show any of these factors—let alone all of them—here.[1]

I. The State Fails To Establish A Sufficient Likelihood Of Success On The Merits.

1. The state offers no reason to second-guess this Court's considered judgment that Section 2016 likely violates the Second Amendment. For starters, the Court correctly held the state to its burden under *Bruen* of proving that Section 2016 is consistent with historical tradition. *See* Dkt.30 at 10. The commonsense conclusion that "th[e] right of keeping arms" "necessarily involves the

[1] The state contends that "a strong showing of one factor may compensate for a weak showing of other factors." Dkt.32 at 3 (quoting *Maine v. U.S. Dep't of Interior*, 2001 WL 98373, at *2 (D. Me. Feb. 5, 2001)). That has never been the law in the First Circuit. *See In re Power Recovery Sys., Inc.*, 950 F.2d 798, 804 n.31 (1st Cir. 1991) ("Failure to meet even one of the [stay-pending-appeal] criteria justifies denial."). The state cites *Public Service Co. of New Hampshire v. Patch*, 167 F.3d 15 (1st Cir. 1998), to argue that the First Circuit later joined a handful of other circuits in blessing a "sliding-scale approach … under which a very strong likelihood of success could make up for a failure to show a likelihood of irreparable harm, or vice versa." *Davis v. Pension Benefit Guar. Grp.*, 571 F.3d 1288, 1295-96 (D.C. Cir. 2009) (Kavanaugh, J., concurring) (collecting cases). That is both incorrect and irrelevant. The *Patch* plaintiff (who was seeking a preliminary injunction, not a stay pending appeal) actually *did* establish likelihood of success on the merits, and the defendant "d[id] not seriously" contest the point. 167 F.3d at 25-27. More important, *Nken* and *Winter v. NRDC*, 555 U.S. 7 (2008), make crystal clear that the "sliding-scale approach … is 'no longer controlling, or even viable.'" *Davis*, 571 F.3d at 1295-96 (Kavanaugh, J., concurring).

right to purchase and use them" has been a feature of judicial opinions since at least 1871. *Andrews v. State*, 50 Tenn. 165, 178 (1871).[2] And nothing in *Bruen* insulates the right to purchase and use firearms from the rule that the government must justify restrictions on arms-bearing conduct. Just as the Supreme Court looked to "the conduct curtailed by" the concealed-carry licensing scheme at issue in *Bruen* to determine that New York had to justify that scheme against historical tradition, this Court properly looked to "the conduct curtailed" here—"tak[ing] possession of a firearm"—to conclude that Maine must justify Section 2016 against historical tradition. Dkt.30 at 4, 6-7. Despite multiple opportunities over four months of litigation, the state has never mustered a persuasive rejoinder to that straightforward approach. That is because there is none.

The state suggests that Section 2016 would escape Second Amendment scrutiny in "seven federal district and appellate courts," Dkt.32 at 6, but none of the appellate decisions the state cites involved a cooling-off period law, and each is readily distinguishable. *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96 (10th Cir. 2024), held that a minimum-purchase-age requirement did not implicate the Second Amendment on the theory that it "impose[d] conditions or qualifications upon the sale and purchase of arms." *Id.* at 118 & n.4, 127. But as this Court explained, Section 2016 is not a condition or qualification on selling or purchasing guns. *See* Dkt.30 at 8-9. *B&L Productions, Inc. v. Newsom* 104 F.4th 108 (9th Cir. 2024), concluded that a law barring the sale of firearms on state fairgrounds did not implicate the Second Amendment because the plaintiff

[2] *See also, e.g.*, *Md. Shall Issue, Inc. v. Moore*, 116 F.4th 211, 230 (4th Cir. 2024) (en banc) (Rushing, J., concurring in the judgment) ("Maryland's law regulates acquiring a handgun, and the Second Amendment's text encompasses that conduct."); *Teixeira v. Cnty. of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017) (en banc) ("the core Second Amendment right to keep and bear arms for self-defense 'wouldn't mean much' without the ability to acquire arms" (quoting *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011)); *Sedita v. United States*, 2025 WL 387962, at *8 (D.D.C. Feb. 4, 2025); *Brown v. ATF*, 704 F.Supp.3d 687, 700 (N.D. W. Va. 2023); *United States v. McNulty*, 684 F.Supp.3d 14, 20 (D. Mass. 2023); *Renna v. Bonta*, 667 F.Supp.3d 1048, 1065 (S.D. Cal. 2023); *United States v. Hicks*, 649 F.Supp.3d 357, 359 (W.D. Tex. 2023).

"essentially concede[d]" that the law "d[id] not 'meaningfully constrain' the right to keep and bear arms." *Id.* at 119. As this Court explained, Section 2016 *does* meaningfully constrain the right to keep and bear arms. *See* Dkt.30 at 6-7. *McRorey v. Garland*, 99 F.4th 831 (5th Cir. 2004), concluded that the state did not need to justify a law requiring "background checks preceding firearm sales" against historical tradition, but only because "*Bruen* and *Heller* make clear" that such laws "are presumptively constitutional." *Id.* at 836. Section 2016, of course, does not impose a background-check requirement. *See* Dkt.30 at 8-9. And while the state reprises its argument that "[t]he fact that a background check looks at a person's particular characteristics, while a waiting period does not, is a distinction without a difference," Dkt.32 at 7 n.2, that argument is irreconcilable with *United States v. Rahimi*, 602 U.S. 680 (2024)—a case the state does not even bother to cite, even though *Rahimi* expressly distinguishes between permissible efforts to keep firearms out of the hands of "citizens who have been found to pose a credible threat to the physical safety of others" and constitutionally suspect efforts to "broadly restrict arms use by the public generally." *Id.* at 698, 700.

To the extent the state contends that Section 2016 would *pass* historical muster in "seven federal district and appellate courts," Dkt.32 at 6, it falls even farther from the mark. No appellate court has ever squared cooling-off periods with our Nation's historical tradition of firearms regulation. And while three district courts have purported to do so, each rested on strained historical analogies to "background checks," "drunken-carry laws," and colonial laws "bann[ing] certain minorities from owning firearms." Dkt.30 at 13-14 & n.11. There is little reason to think that the First Circuit will find these analogies any more persuasive than this Court did.[3] And in all

[3] In fact, there is ample reason to expect that the First Circuit will reject those historical analogies. In *Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38 (1st Cir. 2024), the court

events, the state does not point to a single comparable case in which a court stayed its decision enjoining a law on constitutional grounds on the basis of inapt and/or nonbinding precedent.

2. With nothing new to say on the merits, the state spends several pages arguing that "present[ing] 'serious legal questions'" is enough to satisfy "the 'likely to succeed' factor." Dkt.32 (quoting *Providence J. Co. v. FBI*, 595 F.2d 889, 890 (1st Cir. 1979)). But virtually all of the language the state cites comes from cases pre-dating the Supreme Court's 2009 directive in *Nken* that obtaining a stay pending appeal requires showing "[m]ore than a mere 'possibility' of relief" on appeal. 556 U.S. at 434 (alterations original); *accord Ass'n to Pres. & Protect Loc. Livelihoods v. Town of Bar Harbor*, 2024 WL 3088752, at *1 (D. Me. June 21, 2024) (Walker, C.J.) (denying a stay pending appeal on these grounds). What is more, most of the language comes from cases *denying* a stay pending appeal. *See Arnold v. Garlock, Inc.*, 278 F.3d 426, 430 (5th Cir. 2001); *Fitzmorris v. Weaver*, 2024 WL 231883, at *2-3 (D.N.H. Jan. 22, 2024) (denying a stay even though movant "raise[d] 'serious and difficult questions of law' worthy of the First Circuit's consideration" because—among other things—movant failed to establish irreparable harm); *SEC v. BioChemics, Inc.*, 435 F.Supp.3d 281, 296-97 (D. Mass. 2020). The state must establish more than just a "significant" merits issue—and it cannot even establish that much.

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emphasized the need to train "attention on two comparisons: '*how* and *why* the regulations burden a law-abiding citizen's right to armed self-defense.'" *Id.* at 44-45. That case concerns a Rhode Island law banning firearm magazines that hold more than ten rounds of ammunition. *Id.* at 41. The court upheld the Rhode Island law because it thought "one founding-era tradition" in particular "provide[d] an especially apt analogy": historical laws "limit[ing] the quantity of gunpowder that a person could possess, and/or limit[ing] the amount that could be stored in a single container." *Id.* at 49. In the eyes of the First Circuit, that historical tradition involved "both an analogous societal concern and an analogous response to that concern." *Id.* Regardless of whether one agrees with *Ocean State Tactical*'s application of *Heller*, *Bruen*, and *Rahimi*—the case is the subject of a pending petition for writ of certiorari, *see* No. 24-131 (U.S.) (docketed Aug. 2, 2024)—there can be no dispute that Maine's historical analogies are exceptionally thin gruel compared to the analogies Rhode Island proffered in *Ocean State Tactical*.

II. The Injunction Causes The State No Cognizable Harm, Let Alone Irreparable Injury, But A Stay Would Substantially And Irreparably Harm Plaintiffs.

1. The state comes nowhere close to showing the irreparable injury needed to stay a court order pending appeal. The state invokes its interest in "effectuating statutes enacted by representatives of its people." Dkt.32 at 8 (quoting *Dist. 4 Lodge v. Raimondo*, 18 F.4th 38, 47 (1st Cir. 2021)). But a state "has *no* interest in enforcing an unconstitutional law" like Section 2016. *Tirrell v. Edelblut*, --- F.Supp.3d ---, 2024 WL 3898544, at *6 (D.N.H. 2024) (emphasis added). In all events, the state has not demonstrated the kind of irreparable injury that counts.

To satisfy the irreparable-injury prong for purposes of a motion for a stay pending appeal, a movant must show not just an injury justifying equitable relief, but an injury necessitating *immediate* equitable relief. *Providence J. Co.*, 595 F.2d at 890. In essence, the question is whether letting the challenged order remain in place "will utterly destroy the status quo" in a way that "will entirely destroy appellants' rights to secure meaningful review" because the consequences of the district-court order cannot be unwound later. *Id*. That may be easy to do when, for instance, a district court orders a party in litigation to disclose confidential documents to the other side; once the party does so, the bell cannot be unrung. *See id.*; *see also Maine v. U.S. Dep't of Interior*, 2001 WL 98373, at *3 (D. Maine Feb. 5, 2001). It may also be easy to do when a district court orders a state to stop enforcing limits on campaign contributions, *see, e.g.*, *Lair v. Bullock*, 697 F.3d 1200, 1202 (9th Cir. 2012), or laws favoring in-state companies, *see, e.g.*, *Ne. Patients Grp. v. Me. Dep't of Admin. & Fin. Servs.*, 2021 WL 5041216, at *2 (D. Me. Oct. 27, 2021): Once excess contributions or out-of-state competitors enter the state, the egg cannot be easily unscrambled after a successful appeal. *See also, e.g.*, *McClendon v. City of Albuquerque*, 79 F.3d 1014, 1023 (10th Cir. 1996) (Kelly, J., in chambers) ("If the stay is not granted, Defendants will be forced to release

163 inmates.") But that sort of irreparable injury is absent here: If Maine prevails on appeal, it can simply resume enforcing Section 2016 where it left off.

2. On the flip side, a stay *would* harm Plaintiffs (and their clients[4]), for all the same reasons this Court "ha[d] little trouble finding irreparable injury" in its preliminary-injunction order. Dkt.30 at 16. The state's contrary argument not only is at odds with this Court's decision, but also ignores the preliminary-injunction record. For example, the state baldly contends that "the extent of any economic harm" to Plaintiffs White, Hendsbee, Cole, and their respective businesses is "speculative." Dkt.32 at 9. But Plaintiffs' sworn statements show that Section 2016 caused sales to drop by double digits, *see, e.g.,* Dkt.1-3 ¶4 (Plaintiff White: "handgun sales are down 50% and rifle sales down 25% from the typical sales volume in prior years"), and "caused compounding harm to [the] business," Dkt.1-4 ¶¶6-7, 9 (Plaintiff Hendsbee). For Plaintiff Cole in particular, the injury he would suffer were Section 2016 reinstated is especially stark: The 2025 gun-show season is fast approaching, and "Section 2016 makes it impossible to transfer possession of any firearm sold during [a] show." Dkt.1-5 ¶4. If Section 2016 springs back during the several months (or more) it takes the First Circuit to resolve this appeal, Cole will again be faced with the prospect of "paus[ing] TLC Gunsmithing's operations" and potentially "liquidat[ing] [his] substantial inventory at auction." *Id.* at p.3.

The state's arguments as to Plaintiff Beckwith and her clients are equally divorced from the record before this Court—not to mention the public interest. The state contends that "access to firearms" will not "protect[]" women facing credible, imminent threats of violence. Dkt.32 at 9. Beckworth and the many women she has helped beg to differ. Dkt.1-1 ¶¶3, 6-9, 13, 15-17. The

[4] The state claims in passing (and without authority) that "it is doubtful that" the dealers, Beckwith, and her business have "standing to allege harm on the part of" their clients. That is incorrect for the reasons this Court already explained, *see* Dkt.30 at 2 n.2, which the state ignores.

state also suggests that women who do not share its views about the utility of firearms in protecting themselves and their families from abusive partners can purchase a "curio, relic, [or] antique firearm[]"[5] or buy/borrow a gun from a qualifying family member (assuming they have a trusted and qualifying family member nearby who has a gun and is willing to lend or sell it). Dkt.32 at 2. But the state fails to explain how it would serve *anyone*'s interest to force women to use muskets or a borrowed firearm to defend themselves instead of letting them work with people like Beckwith, White, Hendsbee, and Cole to acquire both the firearm with which they are most comfortable and the training to safely store and use it.

III. The Public Interest Weighs Decisively Against A Stay.

This Court correctly rejected the state's public-interest arguments at the preliminary-injunction stage, *see* Dkt.30 at 17, and it should do so again here. It is bedrock law that "the public interest is harmed by the enforcement of laws repugnant to the United States Constitution." *Tirrell*, 2024 WL 3898544, at *6. Accepting the state's invitation to "engage in … a comparative weighing of respective [policy] interests," Dkt.30 at 10 n.9, would take this Court far outside its proper lane. "[I]t is not [the] function [of] judges to read [their] views of policy into a Constitutional guarantee," *Thomas v. Collins*, 323 U.S. 516, 557 (1945), or "to arrogate to [themselves] the power to adjust a balance settled by the explicit terms of the Constitution," *Pub. Citizen v. U.S. Dep't of Just.*, 491 U.S. 440, 486 (1989) (Kennedy, J., concurring in the judgment). And the judicial role does not change in the Second Amendment context just because public safety may be at stake: "A

[5] Under Section 2016, a "curio" or "relic" is a gun that is either 50 years old; certified by the curator of a public museum to be of museum interest; or "novel, rare, bizarre, or … associat[ed] with some [significant] historical figure, period, or event." 27 C.F.R. §478.11; *see* 25 M.R.S. §2016(4)(C)(2)(a) (incorporating this definition). To qualify as an "antique firearm" under Section 2016, a gun must either be "manufactured in or before 1898" (or a period-correct replica) or be a "muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition." 18 U.S.C. §921(16); *see* 25 M.R.S. §2016(4)(C)(2)(b) (incorporating this definition).

constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all." *District of Columbia v. Heller*, 554 U.S. 570, 634 (2008). "The very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is *really worth* insisting upon" based on vaguely Orwellian statistics that leave domestic-violence victims and others with an acute self-defense need out in the cold. *Id.* Properly understood, "[t]he Second Amendment 'is the very *product* of an interest balancing by the people'" that "'surely elevates above all other interests the right of law-abiding, responsible citizens to use arms' for self-defense." *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 26 (2022) (quoting *Heller*, 554 U.S. at 635). "It is this balance—struck by the traditions of the American people—that demands our unqualified deference." *Id.*

CONCLUSION

The Court should deny the state's motion.

Respectfully submitted,

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