UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

ANDREA BECKWITH, *et al*.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 1:24-cv-00384-LEW
	)	
AARON FREY, in his personal capacity and in his official capacity as Attorney General of Maine,	)	
	)	
Defendant.	)	

DEFENDANT'S REPLY IN SUPPORT OF HIS MOTION TO STAY PRELIMINARY INJUNCTION ORDER PENDING APPEAL

In their Opposition to the Attorney General's stay motion, Plaintiffs offer several points that call for a response.

I. In the First Circuit, the interests of an applicant seeking a stay pending appeal are prioritized over the interests of parties opposing a stay.

When considering a motion for stay pending appeal, courts examine "(1) [w]hether the stay applicant has made a strong showing that it is likely to succeed on the merits, (2) whether the applicant will be irreparably injured absent a stay, (3) whether [the] issuance of the stay will substantially injure the other parties interested in the proceeding, and (4) where the public interest lies." *Dist. 4 Lodge of the Int'l Ass'n of Machinists & Aerospace Workers Loc. Lodge 207 v. Raimondo*, 18 F.4th 38, 42 (1st Cir. 2021). In their Opposition, Plaintiffs imply that each factor is weighed equally, *see* Opp. at 2, but that is not accurate. Rather, "[t]he first two factors 'are the most critical.'" *District 4 Lodge*, 18 F.4th at 42; *see also Providence Journal Co. v. F.B.I.*, 494 F.2d 889, 890 (1st Cir. 1979) (granting stay pending appeal where applicants made a "sufficient

showing" that "their appeals [had] potential merit" and when denying a stay would "utterly destroy the status quo, irreparably harming" the applicants).

For the reasons set forth in the Attorney General's motion, there can be no doubt that his appeal has "potential merit" when similar statutes have been found to be consistent with the Second Amendment in multiple federal courts across the country.[1] *See Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96 (10th Cir. 2024); *B & L Prods., Inc. v. Newsom*, 104 F.4th 108 (9th Cir. 2024); *McRorey v. Garland*, 99 F.4th 831 (5th Cir. 2024); *Mills v. New York City*, No. 23-CV-07460 (JSR), 2024 WL 4979387 (S.D.N.Y. Dec. 4, 2024); *Vermont Fed'n of Sportsmen's Clubs v. Birmingham*, No. 2:23-CV-710, 2024 WL 3466482 (D. Vt. July 18, 2024); *Ortega v. Lujan Grisham*, No. CIV 24-0471 JB/SCY, 2024 WL 3495314 (D.N.M. July 22, 2024); *Rocky Mountain Gun Owners v. Polis*, 701 F. Supp. 3d 1121 (D. Colo. 2023).

II. In the First Circuit, enjoining a state statute constitutes per se irreparable harm.

Plaintiffs argue that the Court's preliminary injunction "causes the State no cognizable harm, let alone irreparable injury." *See* Opp. at 6. That statement is incorrect as a matter of law. According to binding First Circuit precedent, "any time a [government] is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *District 4 Lodge*, 18 F.4th at 47 (alterations in original) (quoting *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)).

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[1] Plaintiffs criticize the Attorney General's citation to this Court's prior observation that "a strong showing of one factor may compensate for a weak showing of other factors," arguing that "has never been the law in the First Circuit." *See* Opp. at 2 n.1. But Plaintiffs need only read the case cited by this Court in making its observation to understand that this is indeed how the law operates in the First Circuit. *See Providence Journal Co.*, 494 F.2d at 890 (granting a stay when the irreparable injury factor was stronger than the likelihood of success factor). Plaintiffs seem to have confused a "weak showing" of one factor with the failure to make any showing at all. In any event, the Attorney General explained in his original motion why his application for a stay pending appeal comfortably meets all four factors. *See* Stay Mot. at 3-10.

Plaintiffs retort that a state "has *no* interest in enforcing an unconstitutional law." *See* Opp. at 6 (emphasis in original). This is a red herring. The question of whether a statute violates the Constitution is a consideration when examining likelihood of success on the merits, not irreparable harm to the state. In *District 4 Lodge*, a federal district court had preliminarily enjoined a federal rule promulgated by the National Marine Fisheries Service, and the First Circuit subsequently granted the federal government's motion to stay the preliminary injunction pending appeal. 18 F.4th at 49. There—like here—the government demonstrated that it had a plausible chance of succeeding on the merits of appeal. And there—like here—the government would have no interest in enforcement if the underlying law were deemed illegal. Yet the First Circuit granted the stay, having analyzed the government's irreparable harm separate from its analysis of the government's likelihood of success. *Id.* at 47-49.

III. Suicides and homicides are irreversible.

As set forth in Part II above, the effects of enjoining enforcement of a statute enacted by representatives of the people is enough to establish Maine's irreparable harm from denying a stay. But the statute at issue is not merely some anodyne alteration of Maine's tax code or a slight regulatory change to the number of days a developer has to complete a project under Maine's Condominium Act. It is a statute intended to save lives.

Plaintiffs argue that the preliminary injunction results in "no cognizable harm" to Maine and that the Attorney General "comes nowhere close" to demonstrating irreparable harm. *See* Opp. at 6. They argue that true irreparable harm must be analogous to the metaphors of "unscrambling an egg" or "unringing a bell." *Id.* But as the Attorney General has explained,

supported by undisputed record evidence, this statute was passed to curb impulsive homicides and suicides. *See* Stay Mot. at 9-10. It is impossible to imagine a harm more irreparable than death.[2]

CONCLUSION

For the reasons set forth above and in the Attorney General's stay motion, the Attorney General respectfully requests that the Court stay its preliminary injunction order pending resolution of the appeal.

Dated: March 11, 2025

Respectfully submitted,

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[2] The Attorney General did not, as Plaintiffs claim, suggest that people in need of protection from abusers "can purchase a 'curio, relic, [or[antique firearm," nor did he suggest that people "use muskets . . . to defend themselves." Opp. at 8 (citing Mot. to Stay at 2). In the cited-to section of the stay motion, the Attorney General was summarizing the waiting period law, including its exceptions. And the waiting period law has exceptions beyond sales of curio, relic, and antique firearms. Sales for which no background check is required and sales between certain family members are also exempt. 25 M.R.S. § 2016(4). Further, the waiting period law does not apply to loans of firearms.

CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2025, I electronically filed this document and any attachments with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered participants as identified in the CM/ECF electronic filing system for this matter.

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