No. 25-1160

UNITED STATES COURT OF APPEALS
For The First Circuit

ANDREA BECKWITH; EAST COAST SCHOOL OF SAFETY; NANCY COSHOW; JAMES WHITE; J. WHITE GUNSMITHING; ADAM HENDSBEE; THOMAS COLE; TLC GUNSMITHING AND ARMORY,

Plaintiffs-Appellees,

v.

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

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE (CASE NO. 1:24-cv-00384-LEW)

MOTION OF DEFENDANT-APPELLANT FOR STAY OF PRELIMINARY INJUNCTION ORDER PENDING APPEAL

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

INTRODUCTION AND RELIEF REQUESTED

In April 2024, Maine's Legislature enacted a law imposing a modest 72-hour waiting period for certain purchases of firearms. The undisputed record evidence demonstrates that waiting periods meaningfully reduce firearm suicides and homicides, with one study suggesting that a waiting period law would have prevented twelve suicides in Maine in just one year. Below, the district court entered a preliminary injunction barring the appellant (Maine's Attorney General) from enforcing the law, concluding that plaintiffs were likely to prevail on the merits of their Second Amendment challenge and that the other factors supported an injunction. The court erred.

The Attorney Geneal will likely prevail on the merits of his appeal. The Supreme Court has declared that laws regulating the commercial sale of firearms are "presumptively lawful." The Second Amendment's plain text protects the right to "keep" and "bear" arms. It does not apply to a law regulating the acquisition of arms unless the law is so burdensome that it effectively prohibits keeping and bearing arms. The Fifth, Ninth, and Tenth Circuits have all rejected Second Amendment challenges to laws imposing restrictions on the commercial sale of firearms, and three district courts have rejected challenges to waiting period laws. Even if the Second Amendment applied, waiting period laws are, as other courts have held, consistent with the "Nation's historical tradition of firearm regulation" and thus pass

muster under the Supreme Court's Second Amendment test. As to the other relevant factors, this Court has recognized that a government suffers irreparable harm when a court enjoins it from enforcing its duly-enacted laws. Any harm to plaintiffs if the waiting period law is not enjoined is speculative, at best. And given the undisputed evidence that waiting period laws save lives, the public interest would suffer if Maine's law were enjoined.

Accordingly, the Attorney General ask this Court to stay the district court's order enjoining enforcement of the waiting period law pending resolution of this appeal.

BACKGROUND

In April 2024, following extensive testimony that firearm waiting period laws save lives, the Maine Legislature enacted P.L. 2023, ch. 678, which is now codified at 25 M.R.S. § 2016. In relevant part, it provides: "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 law applies only to sales for which state or federal law requires a background check. *Id*. § 2016(4)(C)(3).[1] The law does not

[1] Under Maine law, and with some exceptions, background checks are required for sales at gun shows and sales resulting from advertisements. 15 M.R.S. § 395. Under federal law, federal firearms licensees must contact the national instant criminal background check system to verify an individual's eligibility to possess firearms before transferring firearms to non-licensees. 18 U.S.C. § 922(t). Federal statute allows up to three business days, and in the case of a transferee under age 21, ten business days, for a response. *Id*.

apply to sales to law enforcement officers, correction officers, certain private security guards, licensed firearm dealers, to sales between certain family members, or to sales of curio, relic, and antique firearms. *Id*. § 2016(4). The law went into effect on August 9, 2024.

On November 12, 2024, plaintiffs filed a lawsuit against the Attorney General alleging that the waiting period law violates the Second Amendment. ECF No. 1. With the complaint, plaintiffs filed a motion seeking to preliminarily enjoin the Attorney General from enforcing the law. ECF No. 4. On February 13, 2025, the court issued an order granting plaintiffs' preliminary injunction motion. ECF No. 30. On February 17, 2025, the Attorney General appealed the court's order to this Court. ECF No. 31. That same day, the Attorney General filed a motion asking the district court to stay its order pending appeal. ECF No. 32. On March 12, 2025, the district court denied the motion. ECF No. 42.

ARGUMENT

In deciding whether to stay an order pending an appeal, the Court considers four factors:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Hilton v. Braunskill, 481 U.S. 770, 776 (1987); *see also Nken v. Holder*, 556 U.S. 418, 426 (2009); *Common Cause Rhode Island v. Gorbea*, 970 F.3d 11, 14 (1st Cir. 2020).[2]

I. The Attorney General is sufficiently likely to succeed on the merits.

In resolving a Second Amendment challenge to a firearm regulation, a court must first determine whether "the Second Amendment's plain text covers an individual's conduct." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 17 (2022). If it does, the regulation is nevertheless valid if the government "demonstrate[s] that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.*

A. The Second Amendment's plain text does not cover the purchase of firearms.

On the first prong of the test, the plaintiffs did not meet their burden of establishing that the Second Amendment's plain text applies to Maine's waiting period law.[3] As the Supreme Court as recognized, to "keep" arms means to "have" or "possess" arms, and to "bear" arms means to "carry" arms. *District of Columbia*

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[2] This Court has suggested that when a "powerful showing of irreparable injury" is made by a party seeking a stay, the party need only establish that its claims "provide[] fair grounds for further litigation." *Pub. Serv. Co. of N.H. v. Patch*, 167 F.3d 15, 26-27 (1st Cir. 1998). And in a case where denial of a stay would result in arguably confidential documents being disclosed, this Court found it sufficient that the appeal presented "serious legal questions." *Providence J. Co. v. Fed. Bureau of Investigation*, 595 F.2d 889, 890 (1st Cir. 1979).

[3] Plaintiffs do not dispute that they bear this burden. *See, e.g., Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 113 (10th Cir. 2024).

v. Heller, 554 U.S. 570, 583-84 (2008). The Second Amendment says nothing about any right to purchase or otherwise acquire arms, much less to do so immediately. The Second Amendment thus confers a right to retain arms, not an unfettered right to immediately acquire them free of any regulation.

The Supreme Court has recognized that laws causing delays in carrying firearms do not, absent unusual circumstances, implicate the right to keep and bear arms. In *Bruen,* the Court clarified that it was not calling into question "shall-issue" licensing regimes that impose delays by requiring applicants to undergo a background check or pass a firearms safety course before being allowed to carry a handgun in public. 597 U.S. at 38 n.9. [4] Such laws "are designed to ensure only that those bearing arms in the jurisdiction are, in fact, law-abiding, responsible citizens" and "appear to contain only narrow, objective, and definite standards guiding licensing officials, rather than requiring the appraisal of facts, the exercise of judgment, and the formation of an opinion." *Id*. (cleaned up). Maine's waiting period law is the same. By deterring impulsive behavior, it helps ensure that purchasers will act responsibly with their newly acquired firearms. It has objective standards—it imposes a uniform 72-hour delay unless the sale falls within any expressly described exception and does not require government officials to exercise

[4] Under a "shall-issue" licensing regime, no showing beyond a general desire for self-defense need be made to obtain a public carry license.

discretion. As with public carry licensing laws, then, the law does not run afoul of the Second Amendment.[5]

In cases challenging laws regulating firearm sales (including waiting period laws), numerous courts have recognized that the Second Amendment's plain text does not apply to the purchase of firearms, or at least not the immediate purchase of firearms. *B & L Prods., Inc. v. Newsom*, 104 F.4th 108, 117 (9th Cir. 2024) ("The plain text of the Second Amendment directly protects one thing—the right to 'keep and bear' firearms. On its face, that language says nothing about commerce. . . ."); *McRorey v. Garland*, 99 F.4th 831, 838 (5th Cir. 2024) ("The plain text covers plaintiffs' right 'to keep and bear arms.' And on its face 'keep and bear' does not include purchase—let alone without background check.") (citation omitted);[6] *Mills v. New York City*, No. 23-CV-07460 (JSR), 2024 WL 4979387, at *9 (S.D.N.Y. Dec.

[5] The Supreme Court noted that "because any permitting scheme can be put toward abusive ends," it was "not rul[ing] 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. Maine's waiting period law imposes only a 72-hour wait time, does not impose fees, and is not otherwise being put to "abusive ends."

[6] In *Reese v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 127 F.4th 583 (5th Cir. 2025), the Fifth Circuit did not question its prior decision in *McRorey*. At issue in *Reese* was a federal law prohibiting the sale or delivery of handguns to persons under the age of 21. 127 F.4th at 586. In the context of that "outright ban," the court stated that "the right to 'keep and bear arms' surely implies the right to purchase them." *Id*., 590 & n.2. But Maine's law is not an outright ban on a category of sales – it simply delays the purchase of some sales for 72 hours. This is a much briefer delay than the ten-day delay that the law at issue in *McRorey* could cause.

4, 2024) ("[N]othing in the text of the Second Amendment suggests that plaintiffs have a right to immediately obtain firearms 'on demand' as opposed to having to wait a short period of time."); *Vermont Fed'n of Sportsmen's Clubs v. Birmingham*, 741 F. Supp. 3d 172, 207 (D. Vt. 2024) ("The Court concludes that the 'right of the people to keep and bear Arms,' does not facially include a right to immediately obtain a firearm through a commercial sale.") (citation omitted); *Ortega v. Lujan Grisham*, 741 F.Supp.3d 1027, 1072 (D.N.M. 2024) ("Having considered the normal and ordinary meaning of the Second Amendment's language, the Court agrees with the Defendants that the Second Amendment's plain text does not cover purchasing firearms.") (cleaned up); *Rocky Mountain Gun Owners v. Polis*, 701 F. Supp. 3d 1121, 1132 (D. Colo. 2023) ("From this reading of the [Second Amendment's] plain text, it is clear the relevant conduct impacted by the waiting period—the receipt of a paid-for firearm without delay—is not covered.").

That the Second Amendment's plain text does not apply to the purchase of firearms is reinforced by the Supreme Court's statements that regulations on commercial sales are presumptively valid. In *Heller*, the Court cautioned that the right to keep and bear arms is not "unlimited," and clarified that

> nothing in our 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 <u>laws imposing conditions and qualifications on the commercial sale of arms</u>.

554 U.S. at 626-27 (emphasis added). Such measures, the Court explained, are "presumptively lawful regulatory measures." *Id.* at 627 n.26. Two years later, the Supreme Court "repeat[ed] those assurances" and affirmed that *Heller's* holding "did not cast doubt" on "longstanding regulatory measures," including "laws imposing conditions and qualifications on the commercial sale of arms." *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 786 (2010); *see also Bruen*, 597 U.S. at 80-81 (Kavanaugh, J., concurring); *United States v. Rahimi*, 602 U.S. 680, 735 (2024) (Kavanaugh, J., concurring).

Lower federal courts have applied this presumption in challenges to laws regulating the sale of firearms. In *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96 (10th Cir. 2024), plaintiffs challenged a law establishing 21 as the minimum age to purchase firearms. The Tenth Circuit upheld the law, explaining that ""embedded within the quartet of recent Supreme Court Second Amendment cases is the recognition that certain 'longstanding' regulations – including 'laws imposing conditions and qualifications on the commercial sale of arms' – are 'presumptively lawful.'" *Id*. (quoting *Heller*, 554 U.S. at 626–27 & n.26). Similarly, in a case challenging a law prohibiting firearm sales on state property, the Ninth Circuit concluded that the "most reasonable interpretation" of *Heller's* statement that regulations on the commercial sale of arms are presumptively lawful "is that

commercial restrictions presumptively do not implicate the plain text of the Second Amendment at the first step of the *Bruen* test." *B & L Prods.*, 104 F.4th at 119.

Several courts have applied this presumption to waiting period laws. *See Ortega*, 741 F. Supp. 3d at 1077 ("Accordingly, if a firearm regulation falls into one of the presumptively Constitutional categories that *Heller* outlines, the regulation does not implicate the Second Amendment's plain text, and, thus, a court need not proceed to *Bruen's* second prong."); *Rocky Mountain Gun Owners*, 701 F. Supp. 3d at 1135 (explaining that its conclusion that the plain text of the Second Amendment does not apply to a waiting period law was "reinforced" by the presumption that commercial regulations of the sale of firearms are lawful).

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, thus overcoming any presumption of lawfulness. *Bruen*, 597 U.S. at 38 n.9 (referring to permitting scheme that could be put toward "abusive ends" to "deny ordinary citizens their right to public carry"); *McRorey*, 99 F.4th at 838 n.18 ("There is no question that regulations on purchase so burdensome that they act as de facto prohibitions on acquisition would be subject to constitutional challenge under *Bruen's* rigorous historical requirement."). The Attorney General is thus not suggesting that a law establishing, for example, a 25-year waiting period would withstand a Second Amendment challenge simply because it could be characterized

as a "law[] imposing conditions and qualifications on the commercial sale of arms." *Heller*, 554 U.S. at 626-27. But a law requiring certain buyers to wait 72 hours before taking possession of a firearm is neither abusive nor a de facto prohibition on keeping and bearing arms. *See Ortega*, 741 F. Supp. 3d at 1075 (concluding that a seven-day waiting period was "minimally burdensome" and did "not so substantially impinge the ability to acquire firearms that it functions as a de facto prohibition on the right to keep and bear arms"); *Vermont Fed'n of Sportsmen's Clubs*, 741 F. Supp. 3d at 209 (finding that 72-hour waiting period did not unduly burden the right to keep and bear arms and noting that Second Circuit has suggested that "thirty-day waiting periods are not unconstitutionally long"). Indeed, federal law already can delay a firearm sale for up to three days pending completion of a background check. 18 U.S.C. § 922(t)(1)(B)(ii)).[7] The Maine statute explicitly provides that the 72 hours "must be concurrent with any waiting period imposed by any background check process required by federal or state law." 25 M.R.S. § 2016(2). In some instances, then, Maine's law will impose no additional delay.

The Maine law imposes objective and definite standards. With the exception of certain sales expressly identified in the statute, buyers must wait 72 hours before taking possession of a firearm. The statute allows for no exercise of discretion—so,

[7] Under the Bipartisan Safer Communities Act enacted in 2022, Pub. L. 117-159, the allowance for a background check for persons under 21 is up to ten business days. 18 U.S.C. 922(t)(1)(C).

for example, a government official cannot extend or shorten the waiting period for a particular person. *See Polis*, 121 F.4th at 123 (a state's "minimum age requirement for firearm sales and purchases is nondiscretionary because it sets a narrow, objective, and definite standard that applies uniformly to all potential sellers and buyers, eliminating any possibility for subjective interpretation or exceptions"). There is thus no potential for abuse.

In sum, the Second Amendment, on its face, does not apply to Maine's 72-hour waiting period law, nor does the law impose such a burden as to interfere with what the Second Amendment does protect—the right to keep and bear arms.

B. Maine's waiting period law is consistent with the Nation's historical tradition of firearm regulation.

Even when the Second Amendment's plain text applies to the conduct at issue, a firearm regulation survives a Second Amendment challenge if the government "demonstrate[s] that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 17. The *Bruen* Court emphasized that this inquiry will sometimes be straightforward, but "cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach." *Id.* at 27.

In 2024, the Supreme Court clarified how courts should conduct this historical inquiry. *Rahimi*, 602 U.S. 680. The Court noted that it did not mean to suggest "a law trapped in amber," and that "the Second Amendment permits more than just

those regulations identical to ones that could be found in 1791." *Id.* at 691-92. The central questions are why and how the regulation at issue burdens Second Amendment rights:

> For example, if laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations. Even when a law regulates arms-bearing for a permissible reason, though, it may not be compatible with the right if it does so to an extent beyond what was done at the founding. And when a challenged regulation does not precisely match its historical precursors, "it still may be analogous enough to pass constitutional muster."

Id. (quoting *Bruen*, 597 U.S. at 30).

Maine's waiting period law addresses a societal problem that did not exist at our founding—the impulsive use of firearms to commit homicides and suicides. As Professor Randolph Roth explains, homicide rates were low in the colonial era, and even though household ownership of firearms was widespread, only ten to fifteen percent of family, household, and intimate partner homicides were committed with firearms. Roth Decl. (ECF No. 17), ¶ 16 (Exhibit A).[8] Professor Roth attributes this low rate to the technological limitations of firearms of that period—they were liable to misfire, usually had to be reloaded after every shot, reloading was time-consuming, and firearms could not be kept loaded for any length of time. *Id.*, ¶ 17.

[8] The exhibits attached to the declarations cited in this motion are not included here but are available via the district court's PACER docket.

"[C]olonists seldom went about with loaded guns, except to hunt, control vermin, or muster for militia training." *Id.*, ¶ 19. So, "[g]uns were not the weapons of choice in homicides that grew out of the tensions of daily life." *Id.*, ¶ 18.

Suicide rates were also low at the founding, and suicide by firearm was rare. After analyzing suicides in Vermont and New Hampshire from 1783 to 1824, Professor Roth determined that the suicide rate was between 3.1 and 5.7 per 100,000 persons ages 16 and older, and that only six percent of suicides were committed with firearms (despite the fact that 50–60 percent of households owned a firearm). *Id.*, ¶ 43. By the late 1920s and early 1930s, though, when technology had advanced and firearms could be kept loaded and used impulsively, not only did suicide rates increase, but so did the percentage of suicides committed with firearms. *Id.*, ¶ 44.[9] In sum, impulsive firearm homicides and suicides were simply not the societal problem that they are now.

Another significant difference between now and then is that, as Professor Robert Spitzer explains, firearms were not readily available during the 17th, 18th, and most of the 19th centuries. Spitzer Decl. (ECF No. 15), ¶¶ 9-10 (Exhibit B). Rather, "[r]apid, convenient gun sales processes did not exist in the U.S. until the end of the nineteenth century, when mass production techniques, improved

[9] In 2021, 277 Mainers committed suicide, and 56 percent of them used a firearm. ECF No. 13-14.

technology and materials, and escalating marketing campaigns all made guns relatively cheap, prolific, reliable, and easy to get." *Id*., ¶ 10. Professor John Donohue concurs with Professor Spitzer:

> There was a built-in waiting period for everyone who purchased a gun in 1791 because of issues of travel time, scarcity of gun parts, and the time it took to make a gun. The world today allows almost unlimited access to weaponry within minutes because there are far more licensed gun sellers than the combined number of McDonald's and Starbuck's stores.

Donohue Decl. (ECF No. 16), ¶ 51 (Exhibit C); *see also Vermont Fed'n of Sportsmen's Clubs*, 741 F. Supp. 3d at 213 ("There is substantial evidence in the record highlighting that instant availability of a wide variety of guns would not have been anticipated at the founding."). There was thus no need to impose waiting periods until recent times because, as a practical matter, a person necessarily had to wait before taking possession of a firearm.

While impulsive firearm purchasing was not a problem, other impulsive behavior was. As Professor Spitzer details, there were many laws in early America designed to keep firearms out of the hands of intoxicated individuals. Spitzer Decl., ¶¶ 14-31. From the 1600s through the early 1900s, laws in at least twenty states criminalized the carrying or use of firearms when intoxicated; laws in at least fifteen states regulated the commercial sale or distribution of alcohol when firearms were also present; and laws in at least two states barred gun sales to those who were intoxicated. *Id*., ¶ 20.

In addition, this country has a long history of weapon licensing and permitting. *Id*., ¶¶ 32-63. Licensing and permitting laws date to the 1600s and became more widespread in the 1800s and early 1900s. *Id*., ¶ 34. "Historic weapons licensing laws contemplated an evaluation process to improve the likelihood that individuals who sought access to firearms did not obtain that access until they were approved to receive a license." *Id*., ¶ 75. And as Professor Spitzer notes, "licensing by its nature thwarts any unrestricted ability to acquire or use firearms on demand." *Id*., ¶ 33.

Given that firearm homicides and suicides were relatively rare in our Nation's history, and because firearms were not readily available until the late 19th century, it is not surprising that there are no early examples of waiting period laws. Rather, it is "unprecedented societal concerns" (the increased use of firearms in homicides and suicides) and "dramatic technological changes" (the ability to quickly acquire firearms and easily use them) that call for the imposition of waiting periods. *See Bruen*, 597 U.S. at 27. In this circumstance, then, the Court should apply a "nuanced" approach and look for historical analogues by comparing the "how" and "why" of Maine's waiting period law to historical precursors.

In upholding waiting period laws against Second Amendment challenges, federal courts in Vermont, New Mexico, and Colorado held that such laws are consistent with the Nation's historical tradition of firearm regulation. *Vermont Fed'n of Sportsmen's Clubs*, 741 F. Supp. 3d at 210-14; *Ortega*, 741 F. Supp. 3d at

1085-89; *Polis*, 701 F. Supp. 3d at 1141-46. In two cases, courts held that laws restricting firearm acquisition and use by intoxicated persons are appropriate analogues. *Vermont Fed'n of Sportsmen's Clubs*, 741 F. Supp. 3d at 212 (concluding that for intoxication laws and waiting period laws, "the relevant legislature identifies a period during which it believes that firearms pose an extreme risk to public safety"); *Polis*, 701 F. Supp. 3d at 1144 (concluding that intoxication laws and waiting period laws "both work to prevent individuals in a temporary impulsive state from irresponsibly using a firearm"). These courts found that licensing laws are also an appropriate analogue "because they support that the Founders and Reconstruction generation would have accepted a modest delay on the delivery of a firearm in order to ensure that those receiving a firearm are law-abiding, responsible citizens." *Polis*, 701 F. Supp. 3d at 1145; *see also Vermont Fed'n of Sportsmen's Clubs*, 741 F. Supp. 3d at 212.[10]

[10] In *Ortega*, rather than focusing on laws relating to intoxication and licensing, the court considered "regulations demonstrate[ing] a deeply rooted historical tradition of restricting and even outright prohibiting the sale of firearms to large groups out of a fear that some among those groups might use those firearms to do harm in society." 741 F. Supp. 3d at 1088-89. Plaintiffs argued that such laws cannot serve as analogues because they were "rooted in racism and bias." *Id.,* 1093. The *Ortega* court rightly acknowledged that "[m]any founding-era gun regulations . . . undoubtedly are repugnant," but nevertheless concluded that it had to consider them "if it is to adhere faithfully to the Supreme Court's instruction to assess the Constitutionality of modern firearm regulations against those laws in existence in the eighteenth and early nineteenth century." *Id*.

The "how and why" Maine's waiting period law burdens Second Amendment rights (assuming for the sake of argument that the Second Amendment applies), is the same as the "how and why" of intoxication and licensing laws. With respect to "how," Maine's law imposes only a minor burden. It does not apply to sales for which no background check is required, and not all firearm purchases require a background check. The law does not prohibit anyone from acquiring a firearm. Instead, it simply imposes on covered sales a modest 72-hour waiting period. Intoxication and licensing laws imposed a similarly minor burden.

As to "why," the purpose of the waiting period law is to decrease the likelihood that firearm purchasers act irresponsibly by using firearms to harm themselves or others. Laws prohibiting intoxicated persons from acquiring or carrying firearms were similarly designed to reduce firearm violence by persons who might act impulsively. Licensing laws served a similar purpose—helping to ensure that persons acquiring firearms were responsible citizens who would be less likely to use firearms unlawfully.

In short, because both the "how" and the "why" are the same, Maine's modern waiting period law is sufficiently analogous to intoxication and licensing laws and is consistent with "this Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 17.

II. The State and its residents will suffer irreparable harm if a stay is not granted.

As the district court recognized, while the Attorney General is the named defendant, the lawsuit is functionally against the State of Maine. ECF No. 30, at 3 n.3. And this Court has recognized that "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." *Dist. 4 Lodge of the Int'l Ass'n of Machinists & Aerospace Workers Loc. Lodge 207 v. Raimondo*, 18 F.4th 38, 47 (1st Cir. 2021) (cleaned up). Here, moreover, enjoining enforcement of the waiting period law is more than just an abstract injury to Maine's interest in enforcing its laws. As is discussed below, the Attorney General presented undisputed evidence that Maine's waiting period law will save lives by reducing both homicides and suicides. This is precisely why the Legislature enacted the law. Real harms that are truly irreparable will result if the waiting period law cannot be enforced, and a stay will prevent those harms.

III. A stay will not substantially injure the plaintiffs.

As an initial matter, although the waiting period law was enacted in April 2024 and took effect in August 2024, the plaintiffs did not file this lawsuit until November 2024, undermining their claim of irreparable harm. *See Charlesbank Equity Fund II v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004). In any event, any harm to plaintiffs from a stay is, at best, speculative.

The firearm-dealer plaintiffs claim that the waiting period law is causing them to lose income. White, Hendsbee, and Cole Decls. (ECF Nos. 1-3, 1-4, and 1-5). Assuming that firearm dealers even have standing to challenge the waiting period law, the extent of any economic harm is, at this point, speculative. Plaintiff Coshow has purchased a firearm and expressed no intent to purchase another one, Coshow Decl. (ECF No. 1-2), so a stay will not cause her harm. Finally, plaintiff Beckwith already carries a gun and by now presumably has purchased the second gun that she alleged she wanted to purchase. Beckwith Decl. (ECF No. 1-1, ¶ 2). A stay will not harm her personally. While she alleges that her clients are at risk if they cannot immediately purchase firearms, it is doubtful that she has standing to allege harm on the part of people with whom she works, and plaintiffs have not demonstrated that the waiting period law harms Beckwith's clients. There is no competent evidence in the record that immediate access to firearms protects one's safety; her clients could borrow a firearm or acquire one through a sale not subject to the waiting period law; and the Maine Coalition to End Domestic Violence testified that services are available to keep victims safe during the waiting period. Stark Test (ECF No. 13-12).

IV. A stay would promote the public interest by saving lives.

The undisputed evidence in the record is that waiting periods save lives. As Professor Donohue explains:

> Substantial empirical evidence illustrates that waiting periods prior to the purchase of weapons such as those enacted by Maine will reduce suicides – particularly among young adults – and would be expected to reduce the risk of the type of episodes seen in recent years of enraged individuals buying firearms on the way to commit mass violence and other criminal acts.

Donohue Decl., ¶ 27. One study concluded that waiting period laws reduce firearm suicides by 7.4 percent—the same reduction in Maine's 158 firearm suicides in 2021 would have saved twelve lives that year alone. *Id*., ¶ 40. Professor Donohue's own research found that waiting period laws "are able to disrupt suicidal ideation and thereby significantly decrease firearm suicides," and reduce suicides by 21-34-year olds by 6.1 percent. *Id*., ¶ 41. As he notes, "[i]f a particularly lethal mechanism like a gun is readily available, many despondent individuals with what could be a merely passing moment of despair will end up committing suicide when a lapse of time would be enough to dissuade or divert them from such an irreversible action." *Id*., ¶ 43. Professor Donohue further opines that waiting periods may reduce the risk of at least some mass shootings. *Id*., ¶ 47; *see also Handgun waiting periods reduce gun deaths*, Luca, M., et al. (ECF No. 13-9) (study concluding that states adopting waiting periods experienced a seventeen percent decrease in homicides and a six percent decrease in suicides). In short, the public interest in saving lives by

preventing homicides and suicides overwhelmingly militates in favor of allowing the Attorney General to continue enforcing the waiting period while this appeal is heard.

CONCLUSION

The Attorney General requests that this Court stay the district court's preliminary injunction order pending resolution of this appeal.

Dated: March 12, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This motion contains 5,198 words, excluding the items exempted by Federal Rule of Appellate Procedure 27(a)(2)(B), and complies with the length limit in Federal Rule of Appellate Procedure 27(d)(2). For this Certification, I relied on the word count function of the word-processing software used to prepare this brief (Microsoft Word 2007). I further certify that all text in this brief is in proportionally spaced Times New Roman Font and is 14 points in size.

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 25(d), I, Christopher C. Taub, Chief Deputy Attorney General for the State of Maine, hereby certify that on this, the 12th day of March, 2025, I filed the above brief electronically via the ECF system. I further certify that on this, 12th day of March, 2025, I served the above brief electronically on the following party, who is an ECF Filer, via the Notice of Docket Activity:

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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.	)	

DECLARATION OF RANDOLPH ROTH

I, Randolph Roth, pursuant to 28 U.S.C. § 1746, do depose and state as follows:

1. I am an Arts and Sciences Distinguished Professor of History and Sociology at The Ohio State University. I have personal knowledge of the facts set forth in this declaration, and if called upon as a witness, I could and would testify competently as to those facts.

2. I have been retained by the Office of the Attorney General of Maine to render expert opinions in this case. I am being compensated at a rate of $250 per hour.

BACKGROUND AND QUALIFICATIONS

3. I received a B.A. in History with Honors and Distinction in 1973 from Stanford University, where I received the James Birdsall Weter Prize for the outstanding honors thesis in History. I received a Ph.D. in History in 1981 from Yale University, where I received the Theron Rockwell Field Prize for the outstanding dissertation in the humanities and the George Washington Eggleston Prize for the outstanding dissertation in American history. I have taught courses in history, the social sciences, and statistics since 1978, with a focus on criminology and the history of crime. A true and correct copy of my curriculum vitae is attached as **Exhibit A** to this declaration.

4. I am the author of *American Homicide* (The Belknap Press of the Harvard University Press, 2009), which received the 2011 Michael J. Hindelang Award from the American Society of Criminology awarded annually for the book published over the three previous years that "makes the most outstanding contribution to research in criminology over the previous three years,"[1] and the 2010 Allan Sharlin Memorial Book Award from the Social Science History Association for outstanding books in social science history.[2] *American Homicide* was also named one of the Outstanding Academic Books of 2010 by *Choice*, and the outstanding book of 2009 by *reason.com*. The book is an interregional, internationally comparative study of homicide in the United States from colonial times to the present. I am a Fellow of the American Association for the Advancement of Science, and I have served as a member of the National Academy of Sciences Roundtable on Crime Trends, 2013-2016, and as a member of the Editorial Board of the *American Historical Review*, the most influential journal in the discipline. And in 2022 I received the inaugural Distinguished Scholar Award from the Historical Criminology Division of the American Society of Criminology.

5. I am the principal investigator on the National Homicide Data Improvement Project, a project funded by the National Science Foundation (SES-1228406, https://www.nsf.gov/awardsearch/showAward?AWD_ID=1228406) and the Harry Frank Guggenheim Foundation to improve the quality of homicide data in the United States from 1959 to the present. The pilot project on Ohio has drawn on a wide range of sources in its effort to create a comprehensive database on homicides (including narratives of each incident) based on the

[1] See American Society of Criminology, Michel J. Hindelang outstanding Book Award Recipients, https://asc41.com/about-asc/awards/michael-j-hindelang-outstanding-book-award-recipients/.

[2] See Social Science History Association, Allan Sharlin Memorial Book Award, https://ssha.org/awards/sharlin_award/.

mortality statistics of the Ohio Department of Health, the confidential compressed mortality files of the National Center for Health Statistics, the F.B.I.'s Supplementary Homicide Reports, death certificates, coroner's reports, the homicide case files of Cincinnati, Cleveland, and Columbus, obituaries, and newspaper accounts.

6. I have published numerous essays on the history of violence and the use of firearms in the United States, including a) "Guns, Gun Culture, and Homicide: The Relationship between Firearms, the Uses of Firearms, and Interpersonal Violence in Early America," *William and Mary Quarterly* (2002) 59: 223-240 (https://www.jstor.org/stable/3491655#metadata_info_tab_contents); b) "Counting Guns: What Social Science Historians Know and Could Learn about Gun Ownership, Gun Culture, and Gun Violence in the United States," *Social Science History* (2002) 26: 699-708 (https://www.jstor.org/stable/40267796#metadata_info_tab_contents); c) "Why Guns Are and Aren't the Problem: The Relationship between Guns and Homicide in American History," in Jennifer Tucker, Barton C. Hacker, and Margaret Vining, eds., *A Right to Bear Arms? The Contested Role of History in Contemporary Debates on the Second Amendment* (Washington, D.C.: Smithsonian Institution Scholarly Press, 2019); d) "The Opioid Epidemic and Homicide in the United States," co-authored with Richard Rosenfeld and Joel Wallman, in the *Journal of Research in Crime and Delinquency* (2021) (https://www.researchgate.net/publication/348513393_The_Opioid_Epidemic_and_Homicide_in_the_United_States), and e) "Government Legitimacy, Social Solidarity, and American Homicide in Historical Perspective" (New York: Harry Frank Guggenheim Foundation, 2024) (https://www.hfg.org/hfg_reports/government-legitimacy-social-solidarity-and-american-homicide-in-historical-perspective/).

7. I am also co-founder and co-director of the Historical Violence Database. The web address for the Historical Violence Database is: http://cjrc.osu.edu/research/interdisciplinary

/hvd. The historical data on which this declaration draws are available through the Historical Violence Database. The Historical Violence Database is a collaborative project by scholars in the United States, Canada, and Europe to gather data on the history of violent crimes and violent deaths (homicides, attempted murders, suicides, sexual assaults, accidents, and casualties of war) from medieval times to the present. The project is described in Randolph Roth et al., "The Historical Violence Database: A Collaborative Research Project on the History of Violent Crime and Violent Death." *Historical Methods* (2008) 41: 81-98 (https://www.tandfonline.com/doi/pdf/10.3200/HMTS.41.2.81-98?casa_token=PfjkfMsciOwAAAAA:1HrNKToUGfQT4T-L4wqloRc2DFsM4eRmKEc346vchboaSh-X29CkEdqIe8bMoZjBNdk7yNh_aAU). The only way to obtain reliable historical estimates of the incidence of homicides and suicides is to review every scrap of paper on criminal matters in every courthouse (indictments, docket books, case files, and judicial proceedings), every jail roll and coroner's report, every diary and memoir, every article in every issue of a number of local newspapers, every entry in the vital records, and every local history based on lost sources, local tradition, or oral testimony. That is why it takes months to study a single rural county, and years to study a single city.[3]

[3] It is also essential, in the opinion of historians and historical social scientists involved in the Historical Violence Database, to use capture-recapture mathematics, when multiple sources are available, to estimate the number of homicides or suicides where gaps or omissions exist in the historical record. The method estimates the percentage of the likely number of homicides or suicides that appear in the surviving records by looking at the degree to which homicides or suicides reported in the surviving legal sources overlap with homicides or suicides reported in the surviving non-legal sources (newspapers, vital records, diaries, etc.). A greater degree of overlap means a higher percentage in the surviving records and a tighter confidence interval. A lesser degree of overlap, which typically occurs on contested frontiers and during civil wars and revolutions, means a lower percentage and a wider confidence interval. See Randolph Roth, "American Homicide Supplemental Volume: Homicide Estimates" (2009) (https://cjrc.osu.edu/sites/cjrc.osu.edu/files/AHSV-Homicide-Estimates.pdf); Roth, "Child Murder in New England," *Social Science History* (2001) 25: 101-147

(continued…)

8. My work on data collection and my research for *American Homicide*, together with the research I have conducted for related essays, has helped me gain expertise on the causes of homicide and suicide, and on the role that technology has played in changing the nature and incidence of homicide and suicide. I hasten to add that the insights that my colleagues and I have gained as social science historians into the causes of violence and the history of violence in the United States stem from our tireless commitment to empiricism. Our goal is to gather accurate data on the character and incidence of violent crimes and deaths and to follow the evidence wherever it leads, even when it forces us to accept the fact that a hypothesis that we thought might be true proved false. As my colleagues and I are fond of saying in the Criminal Justice Network of the Social Science History Association, the goal is not to be right, but to get it right. That is the only way to design effective, pragmatic, nonideological laws and public policies that can help us address our nation's problem of violence.

9. I have previously served as an expert witness in cases concerning the constitutionality of state and municipal gun laws, including *Miller v. Bonta*, No. 3:19-cv-1537 (S.D. Cal.); *Duncan v. Bonta*, No. 3:17-cv-1017 (S.D. Cal.); *Steven Rupp et al. and California Rifle and Pistol Association v. Bonta*, 8:17-cv-00746-JLS-JDE (CA. Central District Western Division); *Jones v. Bonta*, No. 3:19-cv-01226-L-AHG (S.D. Cal.);); *Richards v. Bonta* 3:23-cv-00793-LAB-AHG (S.D.Calif): *Ocean State Tactical v. Rhode Island*, No. 22-cv-246 (D.R.I.); *Hanson v. District of Columbia*, No. 1:22-cv02256-RC (D.C.); *State of Vermont v. Max B.*

(https://www.jstor.org/stable/1171584#metadata_info_tab_contents); Roth and James M. Denham, "Homicide in Florida, 1821-1861: A Quantitative Analysis," *Florida Historical Quarterly* 86 (2007): 216-239; and Douglas L. Eckberg, "Stalking the Elusive Homicide: A Capture-Recapture Approach to the Estimation of Post-Reconstruction South Carolina Killings." *Social Science History* 25 (2001): 67-91 (https://www.jstor.org/stable/1171582#metadata_info_tab_contents).

Misch, Docket No. 173-2-19 Bnrc (Superior Court, Criminal Division, Bennington Unit, VT.); *National Association for Gun Rights and Capen v. Campbell*, No. 22-cv-11431-FDS (D.MA.); *National Association for Gun Rights, and Susan Karen Goldman v. City of Highland Park, Illinois*, No. 1:22-cv-04774 (N.D. Ill. Eastern Division); *Association Of New Jersey Rifle and Pistol Clubs v. Platkin*, No. 3:18-cv-10507 (D.N.J.); *Cheeseman v. Platkin*, No. 7-:22-cv-04360 (D.N.J.); *Ellman v. Platkin*, No. 3:22-cv-04397 (D.N.J.); *Oregon Firearms Federation, et al. v. Brown and Roseblum*, No. 2:22-cv-01815-IM (D.OR.); *National Association for Gun Rights v. Brown*, No 22-cv-00404-DKW-RT (D.HI.); *National Association for Gun Rights v. Lamont*, No. 3:22-cv-01118 (D.CT.); *Barnett v. Raoul*, 3:23-cv-209-SPM (S.D. Ill.); *Rocky Mountain Gun Owners et al. v. Polis*, No. 23-cv-01076-PAB (D.CO); *Ortega and Scott v. Grisham*, No. 1:24-cv-00471-JB-SCY (D. NM); *Vermont Federation of Sportsmen's Clubs v. Birmingham*, 2:23-cv-00710 (D. Vt.); *State of New Jersey v. Robert Fox*, FO-14-123-20, FO-14-141-21; and *State of New Jersey v. Michael J. Ricciardi*, FO-14-54-21, FO-14-149-22.

OPINIONS

I. SUMMARY OF OPINIONS

10. I have been asked by the State of Maine to provide opinions on the history of homicides and suicides in the United States, with special attention to the role that technologies have played in shaping the character and incidence of homicides and suicides over time, and the historical restrictions that local and federal authorities have imposed in response to new technologies that they deemed particularly lethal, prone to misuse, and a danger to the public because of the ways in which they reshaped the character and incidence of homicides and suicides. Since 1791, local, state, and federal governments have responded in measured ways

whenever new weapons, including certain classes of firearms, or new uses of deadly weapons have posed a threat to the safety of law enforcement, government officials, or the public.

11. For the past thirty-five years, I have dedicated my career to understanding why homicide rates rise and fall over time, in hopes of understanding why the United States—which, apart from the slave South, was perhaps the least homicidal society in the Western world in the early nineteenth century—became by far the most homicidal, as it remains today. I discovered that the key to low homicide rates over the past 450 years has been successful nation-building. High homicide rates among unrelated adults—friends, acquaintances, strangers—coincide with political instability, a loss of trust in government and political leaders, a loss of fellow feeling among citizens, and a lack of faith in the justice of the social hierarchy.[4] As a nation, we are still feeling the aftershocks of our failure at nation-building in the mid- and late-nineteenth century, from the political crisis of the late 1840s and 1850s through the Civil War, Reconstruction, and the rise of Jim Crow.

12. Our nation's homicide rate would thus be high today even in the absence of modern technologies that have made firearms far more capable of injuring multiple people over a short span of time than they were in colonial and Revolutionary era. But the evidence also shows that the availability of guns and changes in firearms technology, especially the emergence

[4] See Randolph Roth, "Measuring Feelings and Beliefs that May Facilitate (or Deter) Homicide," *Homicide Studies* (2012) 16: 196-217, (https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=99e1b9b2cccce19ceeb33808f90f75b7c8e835d0), for an introduction to the ways that social science historians can measure the feelings and beliefs that lead to successful nation-building. My research has shown that those measures have gone up and down with homicide rates among unrelated adults in the United States from colonial times to the present. In social science history, as in the non-experimental historical sciences (geology, paleontology, evolutionary biology), correlations that persist across wide stretches of time and space are not random. They reveal deep patterns that are causal.

of modern breech-loading firearms in the mid-nineteenth century, have pushed the homicide rate in United States well beyond what it would otherwise have been.

13. I have also gathered data on suicides from coroner's inquests, newspapers, vital records, and local histories, to understand the changing character and incidence of suicides. That effort has enabled me to determine that the incidence of suicide in northern New England during the early republic was low compared to today, and that suicides were rarely committed with firearms.

14. My opinion will address in turn:

a. firearms restrictions on colonists from the end of the seventeenth century to the eve of the Revolution, when homicide rates were low among colonists and firearms were seldom used in homicides among colonists when they did occur;

b. the development during the Founding and Early National periods of laws restricting the use or ownership of concealable weapons in slave and frontier states, where homicide rates among persons of European ancestry soared after the Revolution in large part because of the increased manufacture and ownership of concealable percussion cap pistols and fighting knives;

c. the spread of restrictions on carrying concealed weapons in every state by World War I, as homicide rates rose across the nation, beginning around the time of the Mexican War of 1846-1848 and lasting until World War I—a rise caused in part by the invention of modern revolvers, which were used in a majority of homicides by the late nineteenth century;

d. and the advent of waiting period laws in response to the rise since the mid-nineteenth century in impulsive homicides and suicides committed with firearms.

II. GOVERNMENT REGULATION OF FIREARMS IN RESPONSE TO HOMICIDE TRENDS

A. Homicide and Firearms in the Colonial Era (1688-1763)

15. In the eighteenth century, the use and ownership of firearms by Native Americans and African Americans, enslaved and free, were heavily regulated.[5] But laws restricting the use or ownership of firearms by colonists of European ancestry were rare, for two reasons. First, homicide rates were low among colonists from the Glorious Revolution of 1688-1689 through the French and Indian War of 1754-1763, thanks to political stability, a surge in patriotic fellow feeling within the British empire, and greater trust in government.[6] By the late 1750s and early 1760s, the rates at which adult colonists were killed were roughly 5 per 100,000 adults per year in Tidewater Virginia, 3 per 100,000 in Pennsylvania, and 1 per 100,000 in New England.[7] Violence among colonists was not a pressing problem on the eve of the Revolution.

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[5] Clayton E. Cramer, "Colonial Firearms Regulation" (April 6, 2016). Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2759961.

[6] Randolph Roth, *American Homicide* (Cambridge: The Belknap Press of Harvard University Press, 2009), 63, noting that "Fear of Indians and slaves, hatred of the French, enthusiasm for the new colonial and imperial governments established by the Glorious Revolution, and patriotic devotion to England drew colonists together. The late seventeenth century thus marks the discernible beginning of the centuries-long pattern linking homicide rates in America with political stability, racial, religious, and national solidarity, and faith in government and political leaders."

[7] Roth, *American Homicide*, 61-63, and especially the graphs on 38, 39, and 91. By way of comparison, the average homicide rate for adults in the United States from 1999 through 2016—an era in which the quality of emergency services and wound care was vastly superior to that in the colonial era—was 7 per 100,000 per year. See CDC Wonder Compressed Mortality Files, ICD-10 (https://wonder.cdc.gov/cmf-icd10.html, accessed September 8, 2022).

16. Second, the impact of firearms on the homicide rate was modest, even though household ownership of firearms was widespread. Approximately 50 to 60 percent of households in the colonial and Founding eras owned a working firearm, usually a musket or a fowling piece.[8] Fowling pieces, like muskets, were muzzle-loading. But unlike muskets, which were heavy, single-shot firearms used for militia service, fowling pieces were manufactured specifically to hunt birds and control vermin, so they were designed to fire shot, primarily, rather than ball, and were of lighter construction than muskets.[9] Family, household, and intimate partner homicides were rare, and only 10 to 15 percent of those homicides were committed with guns. In New England, the rate of family and intimate partner homicides stood at only 2 per million persons per year for European Americans and 3 per million for African Americans for the seventeenth and most of the eighteenth century, and fell to 1 per million for both European and African Americans after the Revolution. The rates in the Chesapeake were likewise low, at 8 per million per year for European Americans and 4 to 5 per million for African Americans.[10] And because the homicide rate among unrelated adults was low, the proportion of nondomestic homicides committed with guns was similarly low—never more than 10 to 15 percent.[11]

17. Firearm use in homicides was generally rare because muzzle-loading firearms, such as muskets and fowling pieces, had significant limitations as murder weapons in the colonial era.[12]

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[8] Randolph Roth, "Why Guns Are and Aren't the Problem: The Relationship between Guns and Homicide in American History," in Jennifer Tucker, Barton C. Hacker, and Margaret Vining, eds., *Firearms and the Common Law: History and Memory* (Washington, D.C.: Smithsonian Institution Scholarly Press, 2019), 116.

[9] *See, e.g.*, Kevin M. Sweeney, "Firearms, Militias, and the Second Amendment," in Saul A. Cornell and Nathan Kozuskanich, eds., *The Second Amendment on Trial: Critical Essays on District of Columbia v. Heller* (University of Massachusetts Press, 2013), 310, 327 & nn. 101-102.

[10] Roth, "Why Guns Are and Aren't the Problem," 116.

[11] Ibid., 116-119.

[12] Ibid., 117.

They were lethal and accurate enough at short range, but they were liable to misfire, given the limits of flintlock technology; and with the exception of a few double-barreled pistols, they could not fire multiple shots without reloading.[13] They could be used effectively to threaten and intimidate, but once they were fired (or misfired), they lost their advantage: they could only be used as clubs in hand-to-hand combat. They had to be reloaded manually to enable the firing of another shot, which was a time-consuming process that required skill and experience.[14] And more important, muzzle-loading firearms could not be used impulsively unless they were already loaded for some other purpose.[15] It took at least half a minute (and plenty of elbow room) to load a muzzle-loader if the weapon was clean and if powder, wadding, and shot or ball were at hand.[16] The user had to pour powder down the barrel, hold it in place with wadding, and drop or ram the shot or ball onto the charge.[17] The firing mechanism also had to be readied, often with a fresh flint.[18] And muzzle-loading guns were difficult to keep loaded for any length of time, because black powder absorbed moisture and could corrode the barrel or firing mechanism or make the charge liable to misfire.[19] The life of a charge could be extended by storing a gun in a warm, dry place, typically over a fireplace, but even there, moisture from boiling pots, drying

[13] Ibid.

[14] Harold L. Peterson, *Arms and Armor in Colonial America, 1526-1783* (New York: Bramhall House, 1956), 155-225; Priya Satia, *Empire of Guns: The Violent Making of the Industrial Revolution* (New York: Penguin Press, 2018), 9-10; and Satia, "Who Had Guns in Eighteenth Century Britain?" in Tucker, Hacker, and Vining, *Firearms and the Common Law*, 41-44.

[15] Roth, "Why Guns Are and Aren't the Problem," 117.

[16] Ibid.

[17] Ibid.

[18] Ibid.

[19] Ibid.

clothes, or humid weather could do damage.[20] That is why most owners stored their guns empty, cleaned them regularly, and loaded them anew before every use.[21]

18. The infrequent use of guns in homicides in colonial America reflected these limitations. Family and household homicides—most of which were caused by abuse or fights between family members that got out of control—were committed almost exclusively with hands and feet or weapons that were close to hand: whips, sticks, hoes, shovels, axes, or knives.[22] It did not matter whether the type of homicide was rare—like family and intimate homicides—or common, like murders of servants, slaves, or owners committed during the heyday of indentured servitude or the early years of racial slavery.[23] Guns were not the weapons of choice in homicides that grew out of the tensions of daily life.[24]

19. When colonists anticipated violence or during times of political instability gun use was more common. When homicide rates were high among unrelated adults in the early and mid-seventeenth century, colonists went armed to political or interpersonal disputes,[25] so the proportion of homicides committed with firearms was at that time 40 percent and rose even higher in contested areas on the frontier.[26] Colonists also armed themselves when they anticipated hostile encounters with Native Americans, so 60 percent of homicides of Native Americans by European Americans in New England were committed with firearms.[27] And slave

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[20] Ibid.

[21] Ibid.; and Herschel C. Logan, *Cartridges: A Pictorial Digest of Small Arms Ammunition* (New York: Bonanza Books, 1959), 11-40, 180-183.

[22] Roth, "Why Guns Are and Aren't the Problem," 117.

[23] Ibid.

[24] Ibid. Contrary to popular belief, dueling was also rare in colonial America. Roth, *American Homicide*, 45, 158.

[25] Roth, "Why Guns Are and Aren't the Problem," 118-119.

[26] Ibid., 116-117.

[27] Ibid., 118-119 (reporting that "In New England, 57 percent of such homicides were committed with guns between the end of King Phillip's War in 1676 and the end of the eighteenth century").

catchers and posses kept their firearms at the ready, so 90 percent of runaway slaves who were killed in Virginia were shot.[28] Otherwise, however, colonists seldom went about with loaded guns, except to hunt, control vermin, or muster for militia training.[29] That is why firearms had a modest impact on homicide rates among colonists.

B. The Rise in Violence in the South and on Contested Frontiers during the Early National Period, the Role of New Technologies and Practices, and Regulations on Concealable Weapons (1790s-1840s)

20. The Founding Generation was zealous in its defense of the people's rights, and so enshrined them in the Constitution. At the same time, they recognized that some citizens could be irresponsible or motivated by evil intent and could thus threaten the security of the government and the safety of citizens.[30] The threats that such citizens posed to public safety could be checked in most instances by ordinary criminal statutes, drawn largely from British common law. But at times those threats could be checked only by statutes that placed limits on basic rights.[31]

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[28] Ibid., 118 (reporting that "Petitions to the Virginia House of Burgesses for compensation for outlawed slaves who were killed during attempts to capture them indicate that 90 percent were shot").

[29] Ibid., 118-119.

[30] On the fears of the Founders that their republic might collapse because selfish or unscrupulous citizens might misuse their liberties, see Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill: University of North Carolina Press, 1969), 65-70, 282-291, 319-328, 413-425, 463-467; Drew R. McCoy, *The Last of the Fathers: James Madison and the Republican Legacy* (New York: Cambridge University Press, 1989), 42-45; and Andrew S. Trees, *The Founding Fathers and the Politics of Character* (Princeton: Princeton University Press, 2003), 6-9, 60-65, 86-104, 113-114.

[31] On the Founders' belief that rights might have to be restricted in certain instances, see Terri Diane Halperin, *The Alien and Sedition Acts: Testing the Constitution* (Baltimore: Johns Hopkins University Press, 2016), 1-8, on restraints on freedom of speech and the press during the administration of John Adams; Leonard Levy, *Jefferson and Civil Liberties: The Darker Side* (Cambridge: The Belknap Press of Harvard University Press, 1963), 93-141, on loosening restrictions on searches and seizures during the administration of Thomas Jefferson; and Patrick J. Charles, *Armed in America: A History of Gun Rights from Colonial Militias to Concealed Carry* (New York: Prometheus Books, 2018), 70-121, especially 108-109, as well as Saul

(continued…)

21. The Founders were aware that the rate at which civilians killed each other or were killed by roving bands of Tories or Patriots rose during the Revolution.[32] And they recognized that more civilians, expecting trouble with neighbors, public officials, and partisans, were likely to go about armed during the Revolution, which is why the proportion of homicides of European Americans by unrelated adults rose to 33 percent in Virginia and 46 percent in New England.[33] But the surge in violence ended in New England, the Mid-Atlantic states, and the settled Midwest once the Revolutionary crisis was over. In those areas homicide rates fell to levels in some instances even lower than those which had prevailed in the early and mid-eighteenth century. By the 1820s, rates had fallen to 3 per 100,000 adults per year in Cleveland and

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Cornell, *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America* (New York: Oxford University Press, 2006), 39-70, and Jack N. Rakove, "The Second Amendment: The Highest State of Originalism," in Carl T. Bogus, ed., *The Second Amendment in Law and History: Historians and Constitutional Scholars on the Right to Bear Arms* (New York: The New Press, 2000), 74-116, on the limited scope of the Second Amendment. Jack N. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York: Alfred A. Knopf, 1996), 291, notes that "Nearly all the activities that constituted the realms of life, liberty, property, and religion were subject to regulation by the state; no obvious landmarks marked the boundaries beyond which its authority could not intrude, *if* its actions met the requirements of law." See also Rakove, "The Second Amendment: The Highest State of Originalism," Chicago-Kent Law Review 76 (2000), 157 (https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=3289&context=cklawreview): "[At] the time when the Second Amendment was adopted, it was still possible to conceive of statements of rights in quite different terms, as assertions or confirmations of vital principles, rather than the codification of legally enforceable restrictions or commands."

[32] Roth, *American Homicide*, 145-149; Holger Hoock, *Scars of Independence: America's Violent Birth* (New York: Broadway Books / Penguin Random House, 2017), 308-322; Alan Taylor, *Divided Ground: Indians, Settlers, and the Northern Borderland of the American Revolution* (New York: Knopf, 2006), 91-102; George C. Daughan, *Revolution on the Hudson: New York City and the Hudson River Valley in the American War for Independence* (New York: W. W. Norton, 2016), 137-138; John B. Frantz and William Pencak, eds., *Beyond Philadelphia: The American Revolution in the Pennsylvania Hinterland* (University Park: Pennsylvania State University Press, 1998), 42-43, 141-145, 149-152; Francis S. Fox, *Sweet Land of Liberty: the Ordeal of the American Revolution in Northampton County, Pennsylvania* (University Park: Pennsylvania State University Press, 2000), 25-27, 32, 64-65, 91-92, 114; and Fox Butterfield, *All God's Children: The Bosket Family and the American Tradition of Violence* (New York: Vintage, 1996), 3-18.

[33] Roth, "Why Guns Are and Aren't the Problem," 119-120.

Philadelphia, to 2 per 100,000 in rural Ohio, and to 0.5 per 100,000 in northern New England. Only New York City stood out, at 6 per 100,000 adults per year.[34] And the proportion of domestic and nondomestic homicides committed with firearms was correspondingly low—between 0 and 10 percent—because people once again generally refrained, as they had from the Glorious Revolution through the French and Indian War, from going about armed, except to hunt, control vermin, or serve in the militia.[35]

22. The keys to these low homicide rates and low rates of gun violence in New England, the Mid-Atlantic states, and the settled Midwest were successful nation-building and the degree to which the promise of the democratic revolution was realized. Political stability returned, as did faith in government and a strong sense of patriotic fellow feeling, as the franchise was extended and political participation increased.[36] And self-employment—the bedrock of citizenship, self-respect, and respect from others—was widespread. By 1815, roughly 80 percent of women and men owned their own homes and shops or farms by their mid-thirties; and those who did not were often white-collar professionals who also received respect from their peers.[37] African Americans still faced discrimination and limits on their basic rights in most Northern states. But despite these barriers, most African Americans in the North were

[34] Roth, *American Homicide,* 180, 183-186; and Eric H. Monkkonen, *Murder in New York City* (Berkeley: University of California Press, 2001), 15-16.

[35] For detailed figures and tables on weapons use in homicides by state, city, or county, see Roth, "American Homicide Supplemental Volume: Weapons," available through the Historical Violence Database, sponsored by the Criminal Justice Research Center at the Ohio State University (https://cjrc.osu.edu/sites/cjrc.osu.edu/files/AHSV-Weapons-10-2009.pdf). On weapons use in homicides in the North, see Figures 25 through 46.

[36] Roth, *American Homicide*, 180, 183-186.

[37] Ibid., 180, 183-186.

optimistic, after slavery was abolished in the North, about earning their own living and forming their own churches and voluntary organizations.[38]

23. That is why there was little interest among public officials in the North in restricting the use of firearms during the Early National period, except in duels. They took a strong stand against dueling in the wake of Alexander Hamilton's death, because of the threat the practice posed for the nation's democratic polity and the lives of public men: editors, attorneys, military officers, and politicians.[39]

24. Laws restricting the everyday use of firearms did appear, however, in the early national period in a number of slave states,[40] where violence among citizens increased after the Revolution to extremely high levels. Revolutionary ideas and aspirations wreaked havoc on the status hierarchy of the slave South, where homicide rates ranged from 8 to 28 per 100,000 adults per year.[41] Poor and middle-class whites were increasingly frustrated by their inability to rise in a society that remained class-bound and hierarchical.[42] Prominent whites were subjected to the rough and tumble of partisan politics and their position in society was threatened by people from

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[38] Ibid., 181-182, 195-196; Leon F. Litwack, *North of Slavery: The Negro in the Free States, 1790-1860* (Chicago: University of Chicago Press, 1961); Joanne Pope Melish, *Disowning Slavery: Gradual Emancipation and "Race" in New England, 1780-1860* (Ithaca: Cornell University Press, 1998); Sean White, *Somewhat More Independent: The End of Slavery in New York City, 1780-1810* (Athens: University of Georgia Press, 1991); and Graham R. Hodges, *Root and Branch: African Americans in New York and East Jersey, 1613-1863* (Chapel Hill: University of North Carolina Press, 1999).

[39] Joanne B. Freeman, *Affairs of Honor: National Politics in the New Republic* (New Haven: Yale University Press, 2001); and C. A. Harwell, "The End of the Affair? Anti-Dueling Laws and Social Norms in Antebellum America," *Vanderbilt Law Review* 54 (2001): 1805-1847 (https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=1884&context=vlr).

[40] Clayton E. Cramer, *Concealed Weapons Laws of the Early Republic: Dueling, Southern Violence, and Moral Reform* (Westport, Connecticut: Praeger, 1999); and Cornell, *Well-Regulated Militia*, 141-144.

[41] Roth, *American Homicide*, 180, 199-203.

[42] Ibid., 182.

lower social positions.[43] African Americans despaired over the failure of the abolition movement in the South, and whites were more fearful than ever of African American rebellion.[44] As a result, impatience with restraint and sensitivity to insult were more intense in the slave South, and during this period the region saw a dramatic increase in the number of deadly quarrels, property disputes, duels, and interracial killings.[45] The violence spread to frontier Florida and Texas, as well as to southern Illinois and Indiana—wherever Southerners settled in the early national period.[46] During the Early National period, the proportion of homicides committed with firearms went up accordingly, to a third or two-fifths, as Southerners armed themselves in anticipation of trouble, or set out to cause trouble.[47]

25. Citizens and public officials in these states recognized that concealable weapons—pistols, folding knives, dirk knives, and Bowie knives—were used in an alarming proportion of the era's murders and serious assaults.[48] They were used to ambush both ordinary citizens and political rivals, to bully or intimidate law-abiding citizens, and to seize the advantage in fist fights. As the Grand Jurors of Jasper County, Georgia, stated in a plea to the state legislature in 1834 for restrictions on concealable weapons,

> The practice which is common amongst us with the young the middle aged and the aged to arm themselves with Pistols, dirks knives sticks & spears under the specious pretence of protecting themselves against insult, when in fact being so armed they frequently insult others with impunity, or if resistance is made the pistol

[43] Ibid.
[44] Ibid.
[45] Ibid., 182, 199-203.
[46] Ibid., 162, 180-183, 199-203; Roth and James M. Denham, "Homicide in Florida, 1821-1861," *Florida Historical Quarterly* 86 (2007): 216-239; John Hope Franklin, *The Militant South, 1800-1861* (Cambridge: Belknap Press of Harvard University Press, 1961); and Bertram Wyatt-Brown, *Southern Honor: Ethics and Behavior in the Old South* (New York: Oxford University Press, 1982).
[47] Roth, "American Homicide Supplemental Volume: Weapons," Figures 51 through 57.
[48] Roth, *American Homicide*, 218.

> dirk or club is immediately resorted to, hence we so often hear of the stabbing shooting & murdering so many of our citizens.[49]

The justices of the Louisiana Supreme Court echoed these sentiments—"unmanly" men carried concealed weapons to gain "secret advantages" over their adversaries.[50] These concealed weapons laws were notably difficult to enforce, however, and did not address underlying factors that contributed to rising homicide rates. Nevertheless, these laws represent governmental efforts at that time to address the use of new weapons in certain types of crime.

26. The pistols of the early national period represented a technological advance. Percussion-lock mechanisms enabled users to extend the life of a charge, because unlike flint-lock mechanisms, they did not use hydroscopic black powder in their priming pans; they used a sealed mercury-fulminate cap as a primer and seated it tightly on a small nipple (with an inner diameter the size of a medium sewing needle) at the rear of the firing chamber, which restricted the flow of air and moisture to the chamber. Percussion cap pistols, which replaced flint-lock pistols in domestic markets by the mid-1820s, could thus be kept loaded and carried around for longer periods without risk of corrosion.[51] The new types of knives available in this era also represented technological advances over ordinary knives because they were designed expressly for fighting. Dirks and Bowie knives had longer blades than ordinary knives, crossguards to protect the combatants' hands, and clip points to make it easier to cut or stab opponents.[52]

27. The violence in the slave South and its borderlands, and the technological advances that exacerbated it, led to the first prohibitions against carrying certain concealable

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[49] Ibid., 218-219. See also the concerns of the Grand Jurors of Wilkes County, Georgia, Superior Court Minutes, July 1839 term.

[50] Roth, *American Homicide*, 219.

[51] Roth, "Why Guns Are and Aren't the Problem," 117.

[52] Harold L. Peterson, *American Knives: The First History and Collector's Guide* (New York: Scribner, 1958), 25-70; and Peterson, *Daggers and Fighting Knives in the Western World, from the Stone Age till 1900* (New York: Walker, 1968), 67-80.

weapons, which appeared in Kentucky, Louisiana, Indiana, Arkansas, Georgia, and Virginia between 1813 and 1838. These laws differed from earlier laws that restricted access to arms by Native Americans or by free or enslaved African Americans, because they applied broadly to *everyone* but also applied more *narrowly* to certain types of weapons and to certain types of conduct. Georgia's 1837 law "against the unwarrantable and too prevalent use of deadly weapons" was the most restrictive. It made it unlawful for merchants

> and any other person or persons whatsoever, to sell, or offer to sell, or to keep, or have about their person or elsewhere . . . Bowie, or any other kind of knives, manufactured or sold for the purpose of wearing, or carrying the same as arms of offence or defence, pistols, dirks, sword canes, spears, &c.

The sole exceptions were horseman's pistols—large weapons that were difficult to conceal and were favored by travelers. But the laws in the other five states were also strict: they forbid the carrying of concealable weapons in all circumstances. Indiana made an exemption for travelers.[53]

28. Thus, during the lifetimes of Jefferson, Adams, Marshall, and Madison, the Founding Generation passed laws in a number of states that restricted the use or ownership of certain types of weapons after it became obvious that those weapons, including certain fighting knives and percussion-cap pistols, were being used in crime by people who carried them concealed on their persons and were thus contributing to rising crime rates.[54]

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[53] Cramer, *Concealed Weapons Laws*, especially 143-152, for the texts of those laws. Alabama and Tennessee prohibited the concealed carrying of fighting knives, but not pistols. See also the Duke Center for Firearms Law, Repository of Historical Gun Laws (https://firearmslaw.duke.edu/search-results/?_sft_subjects=dangerous-or-unusual-weapons, accessed September 9, 2022). Note that the Georgia Supreme Court, in *Nunn v. State*, 1 Ga. 243 (1846), held that prohibiting the concealed carry of certain weapons was valid, but that the state could not also prohibit open carry, which would destroy the right to bear arms. That decision put Georgia in line with the five other states that had prohibited the carrying of concealable firearms.

[54] Cramer, *Concealed Weapons Laws*, 69-96; Cramer, *For the Defense of Themselves and the State: The Original Intent and Judicial Interpretation of the Right to Keep and Bear Arms*

(continued…)

C. Homicide, Concealable Weapons, and Concealable Weapons Regulations from the Mexican War through the Early Twentieth Century (1846-1920s)

29. By the early twentieth century, every state either banned concealed firearms or placed severe restrictions on their possession.[55] They did so in response to two developments: the nationwide surge in homicide rates, from the North and South to the Trans-Mississippi West; and the invention of new firearms, especially the revolver, which enabled the firing of multiple rounds in succession without reloading and made the homicide problem worse. Between the mid-nineteenth and the early twentieth century homicide rates fell in nearly every Western nation.[56] But in the late 1840s and 1850s those rates exploded across the United States and spiked even higher during the Civil War and Reconstruction, not only in the South and the Southwest, where rates had already risen in the early national period, but in the North. Rates that

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(Westport, Connecticut: Praeger Publishers, 1994); Don B. Kates, Jr., "Toward a History of Handgun Prohibition in the United States," in Cates, ed., *Restricting Handguns: The Liberal Skeptics Speak Out* (Croton-on-Hudson, New York: North River Press, 1979), 7-30; and Philip D. Jordan, *Frontier Law and Order—10 Essays* (Lincoln: University of Nebraska Press, 1970), 1-22. Thomas Jefferson and John Adams died on July 4, 1826, John Marshall on July 6, 1835, and James Madison on July 28, 1836. On the history of firearms regulations that pertained to African Americans, see Robert J. Cottrol and Raymond T. Diamond, "The Second Amendment: Toward an Afro-Americanist Reconsideration," *Georgetown Law Journal* 80 (1991): 309-361 (https://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1283&context=faculty_scholarship); Cottrol and Diamond, "Public Safety and the Right to Bear Arms" in David J. Bodenhamer and James W. Ely, Jr., eds., *The Bill of Rights in Modern America*, revised and expanded (Bloomington: Indiana University Press, 2008), 88-107; and Cramer, *For the Defense of Themselves and the State*, 74, 83-85, 97-140.

[55] Kates, "Toward a History of Handgun Prohibition," 7-30; and Jordan, *Frontier Law and Order*, 17-22. These sources identify laws that either banned concealed firearms or placed severe restrictions on their possession in every state except Vermont. However, Vermont also had such a law by the early twentieth century. *See* An Act Against Carrying Concealed Weapons, No. 85, § 1 (12th Biennial Session, General Assembly of the State of Vermont, Nov. 19, 1892) ("A person who shall carry a dangerous or deadly weapon, openly or concealed, with the intent or avowed purpose of injuring a fellow man, shall, upon conviction thereof, be punished by a fine not exceeding two hundred dollars, or by imprisonment not exceeding two years, or both, in the discretion of the court.").

[56] Roth, *American Homicide*, 297-300.

had ranged in the North in the 1830s and early 1840s from a low of 1 per 100,000 adults per year in northern New England to 6 per 100,000 in New York City, rose to between 2 and 33 per 100,000 in the northern countryside and to between 10 and 20 per 100,000 in northern cities. In the South, rates in the plantation counties of Georgia rose from 10 per 100,000 adults to 25 per 100,000, and rates soared even higher in rural Louisiana to 90 per 100,000 and in mountain communities in Georgia and Missouri from less than 5 per 100,000 adults per year to 60 per 100,000. And in the West, the rates reached 65 per 100,000 adults per year in California, 76 per 100,000 in Texas, 119 per 100,000 in mining towns in South Dakota, Nevada, and Montana, and 155 per 100,000 in cattle towns in Kansas. Americans, especially men, were more willing to kill friends, acquaintances, and strangers. And so, the United States became—and remains today—by far the most murderous affluent society in the world.[57]

30. The increase occurred because America's heretofore largely successful effort at nation-building failed at mid-century.[58] As the country struggled through the wrenching and divisive changes of the mid-nineteenth century—the crises over slavery and immigration, the decline in self-employment, and rise of industrialized cities—the patriotic faith in government that most Americans felt so strongly after the Revolution was undermined by anger and distrust.[59] Disillusioned by the course the nation was taking, people felt increasingly alienated from both their government and their neighbors.[60] They were losing the sense that they were

[57] Ibid., 199, 297-300, 302, 337, 347; and Roth, Michael D. Maltz, and Douglas L. Eckberg, "Homicide Rates in the Old West," *Western Historical Quarterly* 42 (2011): 173-195 (https://www.jstor.org/stable/westhistquar.42.2.0173#metadata_info_tab_contents).

[58] Ibid., 299-302, 384-385; and Roth, "American Homicide: Theory, Methods, Body Counts," *Historical Methods* 43 (2010): 185-192.

[59] Roth, *American Homicide*, 299-302, 384-385. See also Roth, "Measuring Feelings and Beliefs that May Facilitate (or Deter) Homicide."

[60] Roth, *American Homicide*, 300.

participating in a great adventure with their fellow Americans.[61] Instead, they were competing in a cutthroat economy and a combative political system against millions of strangers whose interests and values were antithetical to their own.[62] And most ominously, law and order broke down in the wake of the hostile military occupation of the Southwest, the political crisis of the 1850s, the Civil War, and Reconstruction.[63]

31. The proportion of homicides committed with firearms increased as well from the Mexican War through Reconstruction, as it had during previous increases in nondomestic homicides during the Revolution, in the postrevolutionary South, and on contested frontiers.[64] Because the pistols, muskets, fowling pieces, and rifles in use in the early years of the crisis of the mid-nineteenth century were still predominantly single-shot, muzzle-loading, black powder weapons, the proportion of homicides committed with guns stayed in the range of a third to two-fifths, except on the frontier.[65] Concealable fighting knives, together with concealable percussion-cap pistols, remained the primary murder weapons. But in time, new technologies added to the toll in lives, because of their lethality and the new ways in which they could be used.

32. Samuel Colt's cap-and-ball revolvers, invented in 1836, played a limited role in the early years of the homicide crisis, but they gained popularity quickly because of their association with frontiersmen, Indian fighters, Texas Rangers, and cavalrymen in the Mexican War.[66] They retained some of the limitations of earlier firearms, because their rotating

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[61] Ibid.
[62] Ibid.
[63] Ibid., 299-302, 332, 337, 354.
[64] Roth, "Why Guns Are and Aren't the Problem," 116-117.
[65] Roth, "American Homicide Supplemental Volume: Weapons," Figures 25 through 46, and 51 through 57.
[66] Patricia Haag, *The Gunning of America: Business and the Making of American Gun Culture* (New York: Basic Books, 2016).

cylinders—two of which came with each revolver—had to be loaded one chamber at a time. Users had to seat a percussion cap on a nipple at the rear of each chamber, pour powder into each chamber, secure the powder with wadding, and ram the bullet down the chamber with a rod or an attached loading lever. Thus cap-and-ball revolvers, like muzzle-loaders, could not be loaded quickly, nor could they be kept loaded indefinitely without risk of damaging the charge or the gun. But they were deadlier than their predecessors, because they made it possible for a person to fire five or six shots in rapid succession and to reload quickly with the second cylinder.[67]

33. Smith and Wesson's seven-shot, .22 caliber, breech-loading, Model 1 rimfire revolver, invented in 1857, appeared on the market when the homicide crisis was already well underway. But it had none of the limitations of percussion-cap pistols or cap-and-ball revolvers. It could be loaded quickly and easily because it did not require powder, wadding, and shot for each round; and it could be kept loaded indefinitely because its corrosive powder was encapsulated in the bullet.[68] And it did not require a new percussion cap for each chamber, because the primer was located in a rim around the base of the bullet, set to ignite as soon as it was hit by the hammer.[69] As Smith and Wesson noted in its advertisements,

> Some of the advantages of an arm constructed on this plan are:
>
> - The convenience and safety with which both the arm and ammunition may be carried;
> - The facility with which it may be charged, (it requiring no ramrod, powder-flask, or percussion caps);
> - Certainty of fire in damp weather;

[67] Edward C. Ezell, *Handguns of the World: Military Revolvers and Self-Loaders from 1870 to 1945* (Harrisburg, Pennsylvania: Stackpole Books, 1981), 24-28; Julian S. Hatcher, *Pistols and Revolvers and Their Use* (Marshallton, Delaware: Small-Arms Technical Publishing Company, 1927), 8-11; and Charles T. Haven and Frank A. Belden, *A History of the Colt Revolver and the Other Arms Made by Colt's Patent Fire Arms Manufacturing Company from 1836 to 1940* (New York: Bonanza Books, 1940), 17-43.

[68] Roy G. Jinks, *History of Smith and Wesson* (North Hollywood: Beinfeld, 1977), 38-57.

[69] Ibid., 38-57.

- That no injury is caused to the arm or ammunition by allowing it to remain charged any length of time.[70]

34. Smith and Wesson had created a near-perfect murder weapon. It was lethal, reliable, easy to carry and conceal, capable of multiple shots, and ready to use at any time.[71] Its only drawbacks were its small caliber and low muzzle velocity, which limited its ability to stop an armed or aggressive adversary on the first shot, and the difficulty and danger of reloading. The reloading problem was remedied by Colt's development in 1889 of the first double-action commercial revolver with a swing-out cylinder and Smith and Wesson's addition in 1896 of an ejector to push out spent cartridges.[72]

35. These new weapons were not the primary cause of the surge in violence that occurred in the United States from the Mexican War through Reconstruction. But they did contribute to the later stages of the crisis, as they superseded knives and black powder handguns as the primary weapons used in interpersonal assaults, not only because of their greater lethality, but because they were used in novel ways.[73] Easily concealed, they became the weapons of choice for men who stalked and ambushed estranged spouses or romantic partners, for suspects who killed sheriffs, constables, or police officers, and for self-styled toughs who engaged in shootouts in bars, streets, and even churchyards.[74] And as modern, breech-loading firearms replaced the muzzle-loading and cap-and-ball gunstock from the late 1850s through World War

[70] Ibid., 39.
[71] Ibid., 38-57.
[72] Rick Sapp, *Standard Catalog of Colt Firearms* (Cincinnati: F+W Media, 2011), 96; Jeff Kinard, *Pistols: An Illustrated History of Their Impact* (Santa Barbara: ABC-CLIO, 2003), 163; and Jinks, *History of Smith and Wesson*, 104-170.
[73] Roth, "Why Guns Are and Aren't the Problem," 124-126 (recognizing that "Americans used the new firearms in ways they could never use muzzle-loading guns [. . .] The ownership of modern breech-loading [firearms] made the homicide rate worse in the United States than it would have been otherwise because it facilitated the use of *lethal* violence in a *wide variety of circumstances*.") (emphasis added).
[74] Ibid., 124-125.

I, the proportion of homicides committed with firearms continued to climb even when homicide rates fell for a short time, as they did at the end of Reconstruction. By the eve of World War I, rates had fallen in the New England states to 1 to 4 per 100,000 adults per year, to 2 to 5 per 100,000 in the Prairie states, and 3 to 8 per 100,000 in the industrial states. In the West, rates had fallen to 12 per 100,000 adults per year in California, 15 per 100,000 in Colorado, and approximately 20 to 30 per 100,000 in Arizona, Nevada, and New Mexico. Homicide rates whipsawed, however, in the South. They fell in the late 1870s and 1880s, only to rise in the 1890s and early twentieth century, to just under 20 per 100,000 adults in Florida, Kentucky, Louisiana, Missouri, and Tennessee, and 35 per 100,000 in Virginia and North Carolina.[75] Ominously, too, firearms invaded families and intimate relationships, so relatives, spouses, and lovers were as likely to be killed with guns as unrelated adults—something that had never happened before in America's history.[76] That is why the proportion of homicides committed with firearms—overwhelmingly, concealed revolvers—reached today's levels by the 1920s, ranging from a median of 56 percent in New England and over 70 percent in the South and West.[77] And that is why every state in the Union restricted the right to carrying certain concealable weapons.

36. It is important to note that state legislators experimented with various degrees of firearm regulation, as the nation became more and more violent. In Texas, where the homicide rate soared to at least 76 per 100,000 adults per year from June, 1865, to June, 1868,[78] the

[75] Ibid., 125-127, 388, 403-404; and Roth, "American Homicide Supplemental Volume: American Homicides in the Twentieth Century," Figures 4a and 5a.

[76] Ibid., 125.

[77] Roth, "American Homicide Supplemental Volume: Weapons," Figures 2 through 7.

[78] Roth, Michael D. Maltz, and Douglas L. Eckberg, "Homicide Rates in the Old West," *Western Historical Quarterly* 42 (2011): 192, (https://www.jstor.org/stable/westhistquar.42.2.0173#metadata_info_tab_contents).

legislature passed a time-place-manner restriction bill in 1870 to prohibit the open or concealed carry of a wide range of weapons, including firearms, on social occasions;[79] and it followed in 1871 with a bill banning in most circumstances the carrying, open or concealed, of small deadly weapons, including pistols, that were not designed for hunting or militia service.[80] These laws

[79] Brennan Gardner Rivas, "Enforcement of Public Carry Restrictions: Texas as a Case Study," *UC Davis Law Review* 55 (2021): 2609-2610 (https://lawreview.law.ucdavis.edu/issues/55/5/articles/files/55-5_Rivas.pdf). "Be it enacted by the Legislature of the State of Texas, That if any person shall go into any church or religious assembly, any school room or other place where persons are assembled for educational, literary or scientific purposes, or into a ball room, social party or other social gathering composed of ladies and gentlemen, or to any election precinct on the day or days of any election, where any portion of the people of this State are collected to vote at any election, or to any other place where people may be assembled to muster or perform any other public duty, or any other public assembly, and shall have about his person a bowie-knife, dirk or butcher-knife, or fire-arms, whether known as a six-shooter, gun or pistol of any kind, such person so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not less than fifty or more than five hundred dollars, at the discretion of the court or jury trying the same; provided, that nothing contained in this section shall apply to locations subject to Indian depredations; and provided further, that this act shall not apply to any person or persons whose duty it is to bear arms on such occasions in discharge of duties imposed by law." An Act Regulating the Right to Keep and Bear Arms, 12th Leg., 1st Called Sess., ch. XLVI, § 1, 1870 Tex. Gen. Laws 63. See also Brennan Gardner Rivas, "The Deadly Weapon Laws of Texas: Regulating Guns, Knives, and Knuckles in the Lone Star State, 1836-1930" (Ph.D. dissertation: Texas Christian University, 2019) (https://repository.tcu.edu/handle/116099117/26778).

[80] Rivas, "Enforcement of Public Carry Restrictions," 2610-2611. Rivas, quoting the law, says that "The first section stated, 'That any person carrying on or about his person, saddle, or in his saddle bags, any pistol, dirk, dagger, slung-shot, sword-cane, spear, brass-knuckles, bowie knife, or any other kind of knife manufactured or sold for the purposes of offense or defense, unless he has reasonable grounds for fearing an unlawful attack on his person, and that such ground of attack shall be immediate and pressing; or unless having or carrying the same on or about his person for the lawful defense of the State, as a militiaman in actual service, or as a peace officer or policeman, shall be guilty of a misdemeanor, and, on conviction thereof shall, for the first offense, be punished by fine of not less than twenty-five nor more than one hundred dollars, and shall forfeit to the county the weapon or weapons so found on or about his person; and for every subsequent offense may, in addition to such fine and forfeiture, be imprisoned in the county jail for a term not exceeding sixty days; and in every case of fine under this section the fines imposed and collected shall go into the treasury of the county in which they may have been imposed; provided that this section shall not be so construed as to prohibit any person from keeping or bearing arms on his or her own premises, or at his or her own place of business, nor to prohibit sheriffs or other revenue officers, and other civil officers, from keeping or bearing arms while engaged in the discharge of their official duties, nor to prohibit persons traveling in the

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were enforced with little or no racial bias until the 1890s, when white supremacists disfranchised African Americans, legalized segregation, and took firm control of the courts and law enforcement.[81]

37. Tennessee and Arkansas went farther than Texas to stem the tide of post-Civil War interpersonal violence. In 1871, Tennessee flatly prohibited the carrying of pocket pistols and revolvers, openly or concealed, except for the large army and navy pistols commonly carried

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State from keeping or carrying arms with their baggage; provided, further, that members of the Legislature shall not be included under the term "civil officers" as used in this act.' An Act to Regulate the Keeping and Bearing of Deadly Weapons, 12th Leg. Reg. Sess., ch. XXXIV, § 1, 1871 Tex. Gen. Laws 25. The third section of the act reads, 'If any person shall go into any church or religious assembly, any school room, or other place where persons are assembled for amusement or for educational or scientific purposes, or into any circus, show, or public exhibition of any kind, or into a ball room, social party, or social gathering, or to any election precinct on the day or days of any election, where any portion of the people of this State are collected to vote at any election, or to any other place where people may be assembled to muster, or to perform any other public duty, (except as may be required or permitted by law,) or to any other public assembly, and shall have or carry about his person a pistol or other firearm, dirk, dagger, slung shot, sword cane, spear, brass-knuckles, bowie-knife, or any other kind of knife manufactured and sold for the purposes of offense and defense, unless an officer of the peace, he shall be guilty of a misdemeanor, and, on conviction thereof, shall, for the first offense, be punished by fine of not less than fifty, nor more than five hundred dollars, and shall forfeit to the county the weapon or weapons so found on his person; and for every subsequent offense may, in addition to such fine and forfeiture, be imprisoned in the county jail for a term not more than ninety days.' Id. § 3." The law did not apply, however, 'to a person's home or business, and there were exemptions for "peace officers" as well as travelers; lawmakers and jurists spent considerable time fleshing out who qualified under these exemptions, and how to allow those fearing an imminent attack to carry these weapons in public spaces. Also, the deadly weapon law did not apply to all guns or firearms but just pistols. The time-place-manner restrictions, however, applied to any "fire-arms . . . gun or pistol of any kind" and later "pistol or other firearm," as well as "any gun, pistol . . . ."'" See also Brennan Gardner Rivas, "The Deadly Weapon Laws of Texas: Regulating Guns, Knives, and Knuckles in the Lone Star State, 1836-1930 (Ph. D. dissertation: Texas Christian University, 2019), 72-83, 124-163 (https://repository.tcu.edu/handle/116099117/26778).

[81] Rivas, "Enforcement of Public Carry Restrictions," 2609-2620. The study draws on enforcement data from four Texas counties, 1870-1930: 3,256 total cases, of which 1,885 left a record of final adjudication. See also Rivas, "Deadly Weapon Laws of Texas," 164-195.

by members of the military, which could be carried openly, but not concealed.[82] Arkansas followed suit in 1881.[83] Tennessee's law withstood a court challenge, and Arkansas's was never challenged.[84] And both states moved to prevent the sale or transfer of pocket pistols or ordinary revolvers. In 1879, Tennessee prohibited "any person to sell, or offer to sell, or bring into the State for the purpose of selling, giving away, or otherwise disposing of, belt or pocket pistols, or revolvers, or any other kind of pistol, except army or navy pistols."[85] Arkansas passed a similar prohibition in 1881, but went even further by prohibiting the sale of pistol cartridges as well: "Any person who shall sell, barter, or exchange, or otherwise dispose of, or in any manner furnish to any person any dirk or bowie knife, or a sword or a spear in a cane, brass or metal knucks, or any pistol, of any kind of whatever, except as are used in the army or navy of the United States, and known as the navy pistol, or any kind of cartridge for any pistol, or any person who shall keep such arms or cartridges for sale, shall be guilty of a misdemeanor."[86]

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[82] 1871 Tenn. Pub. Acts 81, An Act to Preserve the Peace and to Prevent Homicide, ch. 90, § 1; *State v. Wilburn*, 66 Tenn. 57, 61 (1872) ("It shall not be lawful for any person to publicly carry a dirk, sword cane, Spanish stiletto, belt or pocket pistol, or revolver, other than an army pistol, or such as are commonly carried and used in the United States army, and in no case shall it be lawful for any person to carry such army pistol publicly or privately about his person in any other manner than openly in his hands.").

[83] 1881 Ark. Acts 191, An Act to Preserve the Public Peace and Prevent Crime, chap. XCVI, § 1-2 ("That any person who shall wear or carry, in any manner whatever, as a weapon, any dirk or bowie knife, or a sword, or a spear in a cane, brass or metal knucks, razor, or any pistol of any kind whatever, except such pistols as are used in the army or navy of the United States, shall be guilty of a misdemeanor. . . . Any person, excepting such officers or persons on a journey, and on his premises, as are mentioned in section one of this act, who shall wear or carry any such pistol as i[s] used in the army or navy of the United States, in any manner except uncovered, and in his hand, shall be guilty of a misdemeanor.").

[84] See Brennan Gardner Rivas, "The Problem with Assumptions: Reassessing the Historical Gun Policies of Arkansas and Tennessee," *Second Thoughts*, Duke Center for Firearms Law (Jan. 20, 2022), https://firearmslaw.duke.edu/2022/01/the-problem-with-assumptions-reassessing-the-historical-gun-policies-of-arkansas-and-tennessee/.

[85] 1879 Tenn. Pub. Act 135-36, An Act to Prevent the Sale of Pistols, chap. 96, § 1; *State v. Burgoyne*, 75 Tenn. 173, 173-74 (1881).

[86] Acts of the General Assembly of Arkansas, No. 96 § 3 (1881).

38. California's legislature, recognizing that the homicide rate had reached catastrophic levels (over 65 per 100,000 adults per year),[87] banned concealed weapons in 1863, because, as the editor of the *Daily Alta Californian* declared,

> During the thirteen years that California has been a State, there have been more deaths occasioned by sudden assaults with weapons previously concealed about the person of the assailant or assailed, than by all other acts of violence which figure on the criminal calendar…. For many sessions prior to the last, ineffectual efforts were made to enact some statute which would effectually prohibit this practice of carrying concealed weapons. A radical change of public sentiment demanded it, but the desired law was not passed until the last Legislature, by a handsome majority.[88]

39. But the legislature repealed the law in 1870, as public sentiment veered back toward the belief that the effort to make California less violent was hopeless, and that the only protection law-abiding citizens could hope for was to arm themselves. And the legislature once again had the enthusiastic support of the editor of the *Daily Alta Californian*, which then opined, "As the sovereignty resides in the people in America, they are to be permitted to keep firearms and other weapons and to carry them at their pleasure."[89] A number of counties dissented, however, and made it a misdemeanor to carry a concealed weapon without a permit—ordinances that they enforced.[90] In 1917, the state made it a misdemeanor to carry a concealed weapon in incorporated cities and required that gun dealers register handgun sales and send the Dealer's

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[87] Roth, Maltz, and Eckberg, "Homicide Rates in the Old West," 183. On violence in California and across the Far West, see Roth, Maltz, and Eckberg, "Homicide Rates in the Old West," 173-195; Clare V. McKanna, Jr., *Homicide, Race, and Justice in the American West, 1880-1920* (Tucson: University of Arizona Press, 1997); McKanna, *Race and Homicide in Nineteenth-Century California* (Reno: University of Nevada Press, 2002); and John Mack Faragher, *Eternity Street: Violence and Justice in Frontier Los Angeles* (New York: W. W. Norton, 2016); and Roth, *American Homicide*, 354.

[88] Clayton E. Cramer and Joseph Olson, "The Racist Origins of California's Concealed Weapon Permit Law," Social Science Research Network, posted August 12, 2016, 6-7 (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2599851).

[89] Cramer and Olson, "Racist Origins of California's Concealed Weapon Permit Law," 7-10.

[90] Ibid., 11.

Record of Sale to local law enforcement.[91] And in 1923, the state extended the licensing requirement to unincorporated areas and prohibited non-citizens from carrying concealed weapons.[92]

40. Other states, like Ohio, tried to have it both ways. The Ohio legislature banned the carrying of concealable weapons in 1859, citing public safety. But it directed jurors, in the same law, to acquit persons who carried such weapons,

> If it shall be proved to the jury, from the testimony on the trial of any case presented under the first section of this act, that the accused was, at the time of carrying any of the weapon or weapons aforesaid, engaged in the pursuit of any lawful business, calling, or employment, and that the circumstances in which he was placed at the time aforesaid were such as to justify a prudent man in carrying the weapon or weapons aforesaid for the defense of his person, property or family.[93]

The burden of proof remained with the person who carried the concealed weapon.

41. It is important to remember, however, that even when states enacted different types of firearms restrictions, the fact remains that many jurisdictions enacted statutory restrictions at that time to ensure the safety of the public and law enforcement.

III. THE HISTORICAL CONTEXT FOR MAINE'S 2024 WAITING PERIOD LAW: THE PROBLEM OF FIREARMS SUICIDES

42. Scholars have long understood that most suicides are impulsive rather than premediated. While many suicide victims suffer from underlying conditions that place them at a higher risk for suicide, such as severe depression, the decision to commit suicide comes in the

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[91] Ibid., 11-13.

[92] Ibid., 13-15. Note that the title of the Cramer and Olson essay is misleading. It does not refer to the origins of the laws discussed here or to the ways in which they were enforced. It refers instead to an unsuccessful effort in 1878 and a successful effort in 1923 to deny resident aliens the right to bear arms.

[93] Joseph R. Swan, *The Revised Statutes of the State of Ohio, of a General Nature, in Force August 1, 1860* (Cincinnati: Robert Clarke & Co., 1860), 452.

great majority of cases less than a day before the attempt and can pass just as quickly.[94] That is why access to a firearm—the deadliest means for attempting suicides—can have such dire consequences when a citizen experiences a sudden burst of anger or despair.[95] Scholars have found a strong correlation between firearms regulations and lower rates of suicides with firearms and suicides as a whole.[96]

43. At the time of the nation's founding, suicides—and especially gun suicides—were rare, which is why today's gun suicide problem did not come to the attention of citizens or legislators in the early national period. I completed a historical analysis of suicides in Vermont and New Hampshire, 1783-1824, with evidence drawn from newspapers, coroner's inquests, and town histories. Using estimation techniques, I determined with 95 percent confidence that the suicide rate over those years was remarkably low by today's standards: between 3.1 and 5.7 per

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[94] See, for example, Harvard T. H. Chan School of Public Health Duration of Suicidal Crises, https://www.hsph.harvard.edu/means-matter/means-matter/duration/; Yari Gvion, Yossi Levi-Belz, Gergö Hadlaczky, and Alan Apter, "On the Role of Impulsivity and Decision-Making in Suicidal Behavior. World Journal of Psychiatry 5:3 (2015): 255–259, https://www.wjgnet.com/2220-3206/full/v5/i3/255.htm; O. R. Simon, A. C. Swann, K. E. Powell, L. B. Potter, M. Kresnow, and P. W. O'Carroll, "Characteristics of Impulsive Suicide Attempts and Attempters" Suicide Life Threat Behavior 32 (2001): supplement, 49-59, https://pubmed.ncbi.nlm.nih.gov/11924695/; and Eberhard A. Deisenhammer, Chy-Meng Ing, Robert Strauss, et al.. "The Duration of the Suicidal Process: How Much Time Is Left for Intervention between Consideration and Accomplishment of a Suicide attempt? Journal of Clinical Psychiatry 70:1 (2009):19-24.

[95] See for example L. G. Peterson, M. Peterson, G. J. O'Shanick, and A. Swann, "Self-Inflicted Gunshot Wounds: Lethality of Method versus Intent. American Journal of Psychiatry" 142 (1985): 228-231, https://pubmed.ncbi.nlm.nih.gov/3970248/; and Ziyi Cai, Alvin Junus, Qingsong Chang, and Paul S.F. Yip, "The Lethality of Suicide Methods: A Systematic Review and Meta-Analysis," Journal of Affective Disorders 300 (2022): 121-129, https://pubmed.ncbi.nlm.nih.gov/34953923/.

[96] Patrick Sharkey and Megan Kang, "The Era of Progress on Gun Mortality: State Gun Regulations and Gun Deaths from 1991 to 2016." Epidemiology 34 (2023): 786-792, https://journals.lww.com/epidem/abstract/2023/11000/the_era_of_progress_on_gun_mortality__state_gun.3.aspx; and Ziyi Cai, Alvin Junus, Qingsong Chang, and Paul S.F. Yip, "The Lethality of Suicide Methods: A Systematic Review and Meta-Analysis." Journal of Affective Disorders 300 (2022): 121-129, https://pubmed.ncbi.nlm.nih.gov/34953923/.

100,000 persons ages 16 and older per year for all suicides, and 0.19 and 0.35 per 100,000 per year for suicides by firearm, because only 6 percent of suicides were committed with firearms. That is remarkable, because 50 to 60 percent of households in northern New England owned a working muzzle-loading firearm.[97] Fifty-two percent of suicide victims in New Hampshire and Vermont hanged themselves, while another 35 percent drowned or cut themselves with knives or razors. Muzzle loading firearms were not the preferred means for committing impulsive suicides, just as they were not for committing homicides.[98]

44. As breech loading firearms replaced muzzle loading firearms, however, the proportion of suicides committed with firearms rose, as did the suicide rate, because they could be kept loaded all the time and used readily on impulse. By the late 1920s and early 1930s, when the transition to breech loaders was complete, the suicide rate in New Hampshire had risen to 22 per 100,000 persons ages fifteen and older per year and the rate with firearms to 9 per 100,000, because 41 percent of suicides were committed with guns. The suicide rate in Vermont had risen to 24 per 100,000 persons ages 15 and older per year and the rate with firearms had risen to 11 per 100,000, because 47 percent of suicides were committed with guns. And the suicide rate in Maine was 22 per 100,000 persons ages 15 and older per year and the rate with firearms was 9 per 100,000, because 40 percent of suicides were committed with firearms.[99]

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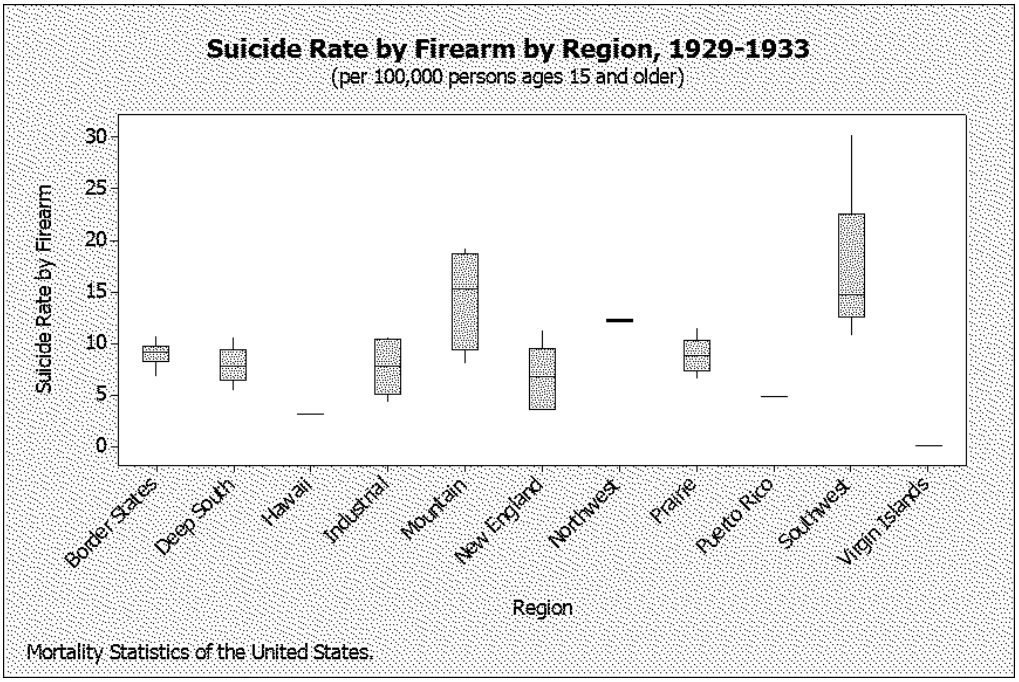
[97] Roth, "Guns, Gun Culture, and Homicide," 232-234; and James Lindgren and Justin L. Heather, "Counting Guns in Early America." *William & Mary Law Review* 43:1 (2002): 1777-1824. Of the 244 suicides for which the means is known, 15 were committed with a firearm.

[98] Red flag laws that required domestic abusers to surrender their firearms for a specified period were absent in the early national period for a similar reason. Domestic homicides were rare by today's standards, and few of those that occurred were committed with firearms, because muzzle-loading firearms were difficult to use on impulse. Roth, *American Homicide*, 115-116; Roth, "Why Guns Are and Aren't the Problem," 113, 117; and Roth's contribution to "Brief for Amici Curiae Professors of History and Law in Support of Petitioner," *United States of America v. Zachary Rahimi*, Supreme Court of the United States, No. 22-915, 23-24.

[99] Bureau of the Census, "Mortality Statistics," 1929-1933. Washington, D. C.: Government Printing Office, 1931-1935.

Figure 3



45. In recent years, 2018-2022, the suicide rate in Maine has been 23 per 100,000 persons ages 15 and older, 56 percent of which were committed with firearms.[100] When Maine passed its 2024 statute (P.L. 2023, ch. 678 (eff. Aug. 9, 2024), codified at 25 M.R.S. § 2016) to establish a 72-hour waiting period for the purchase of a firearm, it addressed a new and pressing problem—a problem that the nation's Founding Generation had not faced.

VI. CONCLUSION

46. From the Founding Generation to the present, the people of the United States and their elected representatives have recognized that there are instances in which the security of the republic and the safety of its citizens require new government-imposed restrictions. That is why every state passed and enforced laws against the carrying of concealable weapons by the end of

[100] CDC Wonder, Underlying Cause of Death by Single-Race Categories, 2018-2023, Centers for Disease Control and Prevention, https://wonder.cdc.gov/Deaths-by-Underlying-Cause.html, accessed June 3, 2024.

the nineteenth century, why the federal government passed the Ku Klux Klan Acts during Reconstruction, and why some states passed and enforced laws during and after Reconstruction against both open and concealed carrying of firearms. Public officials are not required to pass such laws, of course, but historically, they have always had the ability to do so, beginning with the generation that authored, ratified, and first interpreted the Second Amendment and continuing through the generation that authored, ratified, and first interpreted the Fourteenth Amendment. There is no evidence in the historical record to suggest that they took their decisions lightly when they imposed these restrictions on weapons and armed voluntary organizations.

47. The prevalence of impulsive firearms suicides and homicides is a recent phenomenon, caused by changes in technology that emerged from the mid-nineteenth century through the late twentieth century. Those changes prompted citizens and their elected representatives to support waiting period laws for the purchase of firearms. Public officials today are confronting criminological and sociological problems that did not exist in the Founding Era.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on December 19, 2024, in Franklin County, Ohio.

Randolph Roth

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.	)	

DECLARATION OF ROBERT SPITZER

I, Dr. Robert Spitzer, declare under the penalty of perjury that the following is true and correct:

The Office of the Maine Attorney General has asked me to provide an expert opinion pertaining to firearms waiting periods and related restrictions in the United States in the above-captioned matter. This expert report and declaration ("Declaration") provides that opinion and is based on my own personal knowledge and experience; if I am called as a witness, I could and would testify competently to the truth of the matters discussed in this Declaration.

BACKGROUND AND QUALIFICATIONS

1. I am a Distinguished Service Professor of Political Science Emeritus at the State University of New York at Cortland. I was also a visiting professor at Cornell University for thirty years. I am currently an adjunct professor at the College of William & Mary School of Law. I earned my Ph.D. in Government from Cornell University. I reside in Williamsburg, Virginia.

2. I am the author of 16 books on many American politics subjects, including six on gun policy. I have been studying and writing about gun policy for nearly forty years. My first publication on the subject appeared in 1985.[1] Since then, I have published six books and over one hundred articles, papers, and essays on gun policy. My expertise includes the history of gun laws, gun policy in American politics, and related historical, legal, political, and criminological issues. My book, *The Politics of Gun Control*, has been in print since its initial publication in 1995. It examines firearms policy in the United States through the lenses of history, law, politics, and criminology. The ninth edition of the book was recently published by Routledge Publishers (2024). My two most recent books on gun policy, *Guns across America* (Oxford University Press, 2015, 2017) and *The Gun Dilemma* (Oxford University Press, 2023), both deal extensively with the study of historical gun laws, a subject I have been studying and writing on for over ten years. I am frequently interviewed and quoted in the national and international media on gun-related matters. For nearly thirty years, I have been a member of the National Rifle Association and of Brady (formerly, the Brady Campaign to Prevent Gun Violence).

3. I have provided written testimony as an expert witness in the following cases (in addition to this case): *Worman v. Healey*, No. 1:17-10107-WGY (D. Mass.); *Hanson v. District of Columbia*, No. 1:22-cv-02256 (D.D.C.); *Brumback v. Ferguson*, No. 22-cv-3093 (E.D. Wash.); *Sullivan v. Ferguson*, No. 3:22-cv-05403 (W.D. Wash.); *Miller v. Bonta*, No. 3:19-cv-1537 (S.D. Cal.); *Duncan v. Bonta*, No. 17-cv-1017 (S.D. Cal.); *Fouts v. Bonta*, No. 19-cv-1662 (S.D. Cal.); *Rupp v. Bonta*, No. 17-cv-00746 (C.D. Cal.); *Gates v. Polis*, No. 1:22-cv-01866 (D. Colo.); *Oakland Tactical Supply LLC v. Howell Twp.*, No. 18-cv-13443 (E.D. Mich.); *State v. Misch*, No. 173-2-19 Bncr (Vt. Super. Ct. Bennington County); *Nat'l Ass'n for Gun Rights, Inc.*

[1] Robert J. Spitzer, "Shooting Down Gun Myths," *America* (June 8, 1985), 468–69.

v. City of Highland Park, No. 22-cv-4774 (N.D. Ill.); *Nat'l Ass'n for Gun Rights v. Campbell*, No. 22-cv-11431 (D. Mass.); *Abbott v. Connor*, No. 20-00360 (D. Haw.); *Nat'l Ass'n for Gun Rights v. Shikada*, No. 1:22-cv-00404 (D. Haw.); *Yukutake v. Shikada*, No. 1:22-cv-00323 (D. Haw.); *Nat'l Ass'n for Gun Rights v. Lopez*, No. 1:22-CV-00404 (D. Haw.); *Abbot v. Lopez*, No. 20-00360 (D. Haw.); *Santucci v. City & County of Honolulu*, No. 1:22-cv-00142 (D. Haw.); *Yukutake v. Lopez*, No. 1:22-cv-00323 (D. Haw.); *Baird v. Bonta*, No. 19-cv-00617 (E.D. Cal.); *Nichols v. Newsom*, No. 11-cv-9916 (C.D. Cal.); *Delaware State Sportsmen's Ass'n, Inc. v. Delaware Dept. of Safety and Homeland Sec.*, No. 1:22-cv-00951 (D. Del.); *Fitz v. Rosenblum*, No. 22-cv-01859 (D. Ore.); *Harrel v. Raoul*, No. 3:23-cv-00141 (S.D. Ill.); *Mitchell v. Atkins*, No. 19-cv-5106 (W.D. Wash.); *Keneally v. Raoul*, No. 23-cv-50039 (N.D. Ill.); *McGregor v. County of Suffolk*, No. 2:23-cv-01130 (E.D.N.Y.); *Lane v. James*, No. 22-cv-10989 (S.D.N.Y.); *Rocky Mountain Gun Owners v. The Town of Superior*, No. 22-cv-02680 (D. Colo.); *Wiese v. Bonta*, No. 17-cv-00903 (E.D. Cal.); *Harrel v. Raoul*, No. 23-cv-141-SPM (S.D. Ill.); *Langley v. Kelly*, No. 23-cv-192-NJR (S.D. Ill.); *Barnett v. Raoul*, No. 23-cv-209-RJD (S.D. Ill.); *Fed. Firearms Licensees of Illinois v. Pritzker*, No. 23-cv-215-NJR (S.D. Ill.); *Herrera v. Raoul*, No. 23-cv-532 (N.D. Ill.); *Banta v. Ferguson*, No. 23-cv-00112 (E.D. Wash.); *Hartford v. Ferguson*, No. 23-cv-05364 (W.D. Wash.); *Koppel v. Bonta*, No. 8:23-cv-00813 (C.D. Cal.); *Doe v. Bonta*, No. 8:23-cv-01324 (C.D. Cal.); *Calce v. City of New York*, No. 1:21-cv-08208-ER (S.D.N.Y.); *D.B. v. Sullivan*, No. 22-CV-282 (MAD)(CFH) (N.D.N.Y.); *Richey v. Sullivan*, No. 1:23-cv-344 (AMN-DJS) (N.D.N.Y.); *Commonwealth of Pennsylvania v. Tomlinson*, No. CP-31-CR-217-2023 (Pa. Court of Common Pleas); *Nat'l Ass'n for Gun Rights v. Polis*, No. 1:2024-cv-00001 (D. Colo.); *O'Neil v. Neronha*, No. 1:23-cv-00070 (D. RI); *State of Washington v. Gator's Custom Guns* (Cowlitz County Superior Court Case No. 23-2-00897-08); *Guardian Arms, LLC,*

et al. v. State of WA, et al., No.: 23-2-01761-34; *Virginia Citizens Defense League et al. v. City of Roanoke et al*., CL-2474; *Garcia v. Polis*, No. 1:23-cv-02563-JLK (D. Colo.); *Rocky Mountain Gun Owners v. Polis*, No.: 1:23-cv-1077-PAB-NRN (D. Colo.); *Ortega v. Lujan Grisham*, No. 1:24-cv-00471-JB-SCY (D. N.M.); *Vermont Federation of Sportsmen's Clubs v. Birmingham*, No. 2:23-cv-00710-WKS (D. Vt.); *Yzaguirre v. District of Columbia*, 24-cv-01828 (D.D.C.); *Clemendor v. District of Columbia*, 24-cv-01955 (D.D.C); *State of New Jersey v. Fox*, Docket No. FO-14-123-20, FO-14-141-21; *State of New Jersey v. Ricciardi*, Docket No. FO-14-54-21, FO-14-149-22, DOL Nos. 24-01899, 24-01900; *Birney et al., v. Delaware Department of Safety and Homeland Security, et al.* (C.A. No. K23C-07-019 RLG).

4. I have co-authored amicus briefs in numerous cases, including *Nordyke v. King*, 319 F.3d 1185 (9th Cir. 2003); *Republic of Iraq v. Beaty*, 556 U.S. 848 (2009); *McDonald v. Chicago*, 561 U.S. 742 (2010); *Ezell v. Chicago*, 651 F.3d 684 (7th Cir. 2011); and *People of the State of Illinois v. Aguilar*, Illinois Supreme Court, No. 08 CR 12069 (2012).

5. I have also presented written testimony to the U.S. Congress on "The Second Amendment: A Source of Individual Rights?" submitted to the Judiciary Committee, Subcommittee on the Constitution, Federalism, and Property Rights, U.S. Senate, Washington, D.C., September 23, 1998; "Perspectives on the 'Stand Your Ground' Movement," submitted to the Judiciary Committee, Subcommittee on the Constitution, Civil Rights and Human Rights, U.S. Senate, Washington, D.C., October 29, 2013; and "The Hearing Protection Act to Deregulate Gun Silencers," submitted to Committee on Natural Resources, Subcommittee on Federal Lands, the U.S. House of Representatives, Hearings on the Sportsmen's Heritage and Recreational Enhancement Act (SHARE Act), Washington, D.C., September 12, 2017.

6. A true and correct copy of my current curriculum vitae is attached as Exhibit A to this Declaration.

RETENTION AND COMPENSATION

7. I have been retained by the Office of the Attorney General of Maine to render expert opinions in this case. I am being compensated at a rate of $500 per hour for record review and consultation, document preparation, and other non-testimony services, and $750 per hour for deposition and trial testimony. My compensation is not contingent on the results of my expert analysis or the substance of my opinions or testimony in this matter.

OPINIONS

I. GUN PURCHASE WAITING PERIODS

8. Gun purchase waiting periods and related background checks as they are understood and implemented today did not exist early in the country's history. Yet no special wisdom is required to discern why. Three important differences between early America and the modern era explain why.

9. First, in the modern era, gun and ammunition purchases can be made easily and rapidly from tens of thousands of licensed gun dealers,[2] private sales, gun shows, and through internet sales. This modern sales system was key to the enactment of waiting periods. No "Guns-R-Us" outlets existed in the 1600s, 1700s, or most of the 1800s. In the eighteenth century and before, the vast majority of firearms available in American were European imports. Among American gunsmiths, according to early American historian Brian DeLay, most American gunsmith work consisted of repair work, not the construction of firearms from scratch.

[2] As of 2022, there were nearly 78,000 licensed gun dealers. "Gun Dealers in the United States," Everytown for Gun Safety, https://everytownresearch.org/wp-content/uploads/sites/4/2021/05/Inside-the-Gun-Shop-One-Pager.pdf

Moreover, for the few that did manufacture firearms from start to finish, "it would have taken an early American gunsmith around a week of work to produce a basic, utilitarian longarm from scratch."[3] According to DeLay, "repairs consumed the vast majority of [their] work. . . ."[4]

10. Rapid, convenient gun sales processes did not exist in the U.S. until the end of the nineteenth century, when mass production techniques, improved technology and materials, and escalating marketing campaigns all made guns relatively cheap, prolific, reliable, and easy to get. As Kennett and Anderson note, "By the 1880s gunmaking had completed the transition from craft to industry."[5] The rise of handgun mail order purchasing through such companies as Montgomery Ward and Sears in the 1870s and 1880s brought cheap handguns to buyers' doors.[6] When the adverse consequences of the spread of cheap handguns began to be felt, states enacted numerous anti-gun carry and other restrictions in the late 1800s and early 1900s.[7]

11. Second, no organized system of gun waiting periods and background checking could feasibly exist until the modern era. In fact, the contemporary uniform federal background check system with a five business day waiting period was established by the Brady Handgun Violence Prevention Act in 1993. The waiting period was phased out in 1998 and replaced with

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[3] Brian DeLay, "The Myth of Continuity in American Gun Culture," *California Law Review* 113(forthcoming 2025): 71; available at SSRN: https://ssrn.com/abstract=4546050 or http://dx.doi.org/10.2139/ssrn.4546050. The lengthy and painstaking process of producing a long gun from start to finish utilizing eighteenth century materials and methods is carefully chronicled in the hour-long film, "Gunsmith of Williamsburg," produced by Colonial Williamsburg, narrated by NBC reporter David Brinkley, 1969; https://www.youtube.com/watch?v=X_O1-chxAdk The film reports that the process to construct one long gun took 300 hours.

[4] DeLay, "The Myth of Continuity in American Gun Culture," 72.

[5] Lee Kennett and James LaVerne Anderson, *The Gun in America* (Westport, CT: Greenwood Press, 1975), 97.

[6] Kennett and Anderson, *The Gun in America,* 99-100. Sears ended handgun catalog sales in 1924, and other companies followed as pressure for government intervention rose. (194)

[7] Robert J. Spitzer, "Gun History in the United States and Second Amendment Rights," *Law and Contemporary Problems* 80(2017): 59-60, 63-67.

an instant background check system. No such system was operational when the law was passed, but bill supporters accepted the waiting period phase-out as part of the compromise to win passage of the bill.[8] As of this writing, 13 states plus D.C. have waiting period laws for at least some firearm purchases ranging in length from three to 30 days.[9] By its nature, a gun waiting period simply delays an otherwise lawful purchase for two sound reasons: to complete a proper background check to insure that the individual is not among those not qualified to have a gun; and to provide a cooling off period for those who seek to obtain a gun impulsively for homicidal or suicidal reasons.[10]

12. Third, as historian Randall Roth reports, homicide rates in the colonies and early Federal era were generally low, and when homicides occurred, guns were seldom used because of the time involved loading them, their unreliability, and (especially for pistols) their inaccuracy. More specifically, muzzle loading firearms were problematic as implements for murder: they did not lend themselves to impulsive use unless already loaded (and it was generally unwise to leave them loaded for extended periods because their firing reliability degraded over time). Nearly all firearms at the time were single shot weapons, meaning that reloading time rendered them all but useless if a second shot was needed in an interpersonal conflict.[11]

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[8] 107 Stat. 1536. Robert J. Spitzer, *The Politics of Gun Control,* 9th ed. (NY: Routledge, 2024), 221-28.

[9] "Waiting Periods," Giffords Law Center, https://giffords.org/lawcenter/gun-laws/policy-areas/gun-sales/waiting-periods/. In 2023 Minnesota enacted a law that provides for a 30 day waiting period for the purchase of handguns and assault weapon purchases from dealers.

[10] E.g. Michael Luca, Deepak Malhotra, and Christopher Poliquin, "Handgun waiting periods reduce gun deaths," *PNAS* 114(October 16, 2017): 12162-12165, https://www.pnas.org/doi/full/10.1073/pnas.1619896114.

[11] Randolph Roth, *American Homicide* (Cambridge, MA: Belknap Press, 2012), 61-144, 216-21; Randolph Roth, "Why Guns Are and Aren't the Problem: The Relationship between Guns and

13. Beyond these considerations, waiting periods can only exist through the interdiction of the government, or dealers, or both. Given the logical absence of historical twins to modern waiting periods in earlier American history, were there similar, analogous historical gun laws? A close examination of historical laws, ordinances, and regulations shows a long history in this country of (1) temporarily restricting or regulating weapons access based on assumptions about risks posed by an individual's perceived mental condition with respect to alcohol intoxication, and (2) enacting and enforcing licensing/permitting laws, which by their nature incorporated the passage of time between the attempt by individuals to acquire or use weapons and the granting of permission by the government to then do so. The Plaintiffs' Complaint in this case asserts that "[t]here is no longstanding tradition in this country of forcing law-abiding citizens to wait to acquire firearms."[12] The account below will demonstrate that this assertion is incorrect.

II. GUNS AND INTOXICATION

14. An instructive and analogous historical parallel to modern waiting period laws is the intersection of historic gun laws pertaining to alcohol use and intoxication with weapons possession and use. Just as those considered mentally ill are similarly understood to reflect a kind of "diminished capacity" such that they also may be deprived of access to weapons, alcohol intoxication was a basis for preventing gun acquisition or use because it diminished capacity,

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Homicide in American History," in Jennifer Tucker, Barton C. Hacker, and Margaret Vining, eds., *A Right to Bear Arms?* (Washington, D.C.: Smithsonian Institution Scholarly Press, 2019), 116-17. See also Roger Lane, *Murder in America* (Columbus, OH: Ohio State University Press, 1997), 344-45.

[12] Plaintiffs' Complaint, *Beckwith et al. v. Frey,* U.S. District Court for the District of Maine, Case 1:24-cv-00384-LEW, Filed 11/12/24, 24.

judgment, and reason. The effects of alcohol consumption in reducing and degrading an individual's judgment, reasoning, coordination, and skill were well understood in early America.

15. For example, the foremost American physician of the eighteenth century, Dr. Benjamin Rush, published a highly influential and widely read tract in 1785 titled, *An Inquiry into the Effects of Ardent Spirits Upon the Human Body and Mind*. (The phrase "ardent spirits" referred to strong distilled liquors.) In addition to his pioneering work in medicine, Rush was a signer of the Declaration of Independence, advisor to public officials including Thomas Jefferson, and a social activist. After first noting in his tract the physiological effects of inebriation and alcoholism, Rush then turned to its mental effects. "Not less destructive are the effects of ardent spirits upon the human mind. They impair the memory, debilitate the understanding, and pervert the moral faculties. . . . But the demoralizing effects of distilled spirits do not stop here. They produce not only falsehood, but fraud, theft, uncleanliness and murder."[13]

16. It is no crime to be intoxicated from alcohol consumption—a fact no less true today than hundreds of years ago. Similarly, the purchase of alcohol for those eligible to drink is and has been perfectly legal, with the exception of the Prohibition period in the 1920s. When alcohol consumption is combined with other activities or circumstances, however, it has been and is subject to a variety of regulatory measures, including state sanctions, such as those arising from operating a motor vehicle while under the influence of alcohol. When inebriation ends, drivers may resume driving, subject to any restrictions imposed by the government for prior instances of driving while drunk, such as license suspension for a fixed period.

[13] Benjamin Rush, *An Inquiry into the Effects of Ardent Spirits Upon the Human Body and Mind*, 6th ed. (NY: Cornelius Davis, 1811; first pub. 1785), 7, https://digirepo.nlm.nih.gov/ext/mhl/2569025R/PDF/2569025R.pdf

17. That aside, the government has long imposed a wide range of regulatory measures pertaining to the adverse consequences of alcohol consumption (including but not limited to those pertaining to weapons), incorporating "pricing and taxation measures, regulating the physical availability of alcohol, restricting alcohol marketing, education and persuasion strategies, drunk-driving countermeasures, modifying the drinking context, and treatment and early intervention."[14]

18. In the century and a half before the American Revolution, "the colonists of North America tended to regard heavy drinking as normal"[15] as such beverages "were considered important and invigorating foods, whose restorative powers were a natural blessing."[16] Reliance on alcoholic beverages was also common because of the baneful health effects of drinking contaminated water. Despite the normality of heavy drinking, drunkenness was also recognized even in this early period as a significant problem to be "condemned and punished"[17] partly for the reasons described by Benjamin Rush. Early weapons laws (see below) reflected this understanding. During this period, the adverse consequences of excessive drinking were mitigated to a significant degree because it largely occurred through community taverns where social pressures and a system of tavern licensing, dating to the 1600s, encouraged "responsible oversight"[18] by tavern owners.

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[14] Thomas F. Babor, et al., *Alcohol: No Ordinary Commodity: Research and Public Policy,* 3rd ed. (NY: Oxford University Press, 2023), Ch. 1, p. 9.
[15] "Alcohol in America: Taking Action to Prevent Abuse," National Library of Medicine, https://www.ncbi.nlm.nih.gov/books/NBK217463/
[16] Paul Aaron and David Musto, "Temperance and Prohibition in America: A Historical Overview," in *Alcohol and Public Policy: Beyond the Shadow of Prohibition,* Mark H. Moore and Dean R. Gerstein, eds. (Washington, D.C.: National Academies Press, 1981), 131.
[17] Aaron and Musto, "Temperance and Prohibition in America," 132.
[18] Aaron and Musto, "Temperance and Prohibition in America," 133.

19. The post-Revolution period, however, witnessed a dramatic change in alcohol products as cheaper and more abundant distilled spirits, like domestic whiskey, exploded in production and demand. As production and consumption skyrocketed, earlier safeguards declined, and public drunkenness became much more common.[19] Coinciding with these changes, attitudes began to change as well, as alcohol came to be thought of increasingly as "an addicting and even poisonous drug," the excessive consumption of which led to a host of familial, behavioral, social, and other problems.[20] This growing societal awareness of the adverse consequences of alcohol consumption gave rise to the temperance movement and the Anti-Saloon Leagues of the nineteenth and early twentieth centuries, culminating in the adoption of the Eighteenth (Prohibition) Amendment to the Constitution in 1919, which was then repealed by the Twenty-first Amendment in 1933.

20. Even though attitudes about alcohol use evolved over time, laws restricting or punishing the handling, carrying, or use of firearms while intoxicated appeared among the very earliest weapons regulations in America. From the 1600s through the early 1900s, laws were enacted in at least 30 states that regulated, restricted, and punished inebriation in connection with the ownership or use of weapons. These regulations included laws enacted in at least 20 states that criminalized the carrying or use of firearms when intoxicated. At least 15 states had laws that regulated the commercial sale or distribution of alcohol when firearms were also present; at least two states barred gun sales to those who were intoxicated; at least six states enacted laws prohibiting drunkenness in connection with militia activity; and one state (Arizona) barred providing guns to Native Americans if intoxicated (see Exhibits B and C).

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[19] Aaron and Musto, "Temperance and Prohibition in America," 134-36.
[20] "Alcohol in America"; W.J. Rorabaugh, *The Alcohol Republic* (NY: Oxford University Press, 1979), 125-46.

21. To parse the data chronologically, in the 1600s, at least seven intoxication laws were enacted in at least three states (which at the time were colonies); in the 1700s at least nine laws were enacted in seven colonies/states; in the 1800s at least 28 laws were enacted in 19 states ; and in the 1900s at least 32 laws were enacted in 15 states (note that some states enacted laws across more than one century). As noted, a number of these measures appeared very early in the Nation's history, punctuating the country's enduring struggle with "demon rum."

22. In 1623, 1631, and again in 1632, for example, Virginia enacted measures all directing that "[n]o commander of any plantation, shall either himself or suffer others to spend powder unnecessarily, that is to say, in drinking or entertainments."[21] One presumes that the expenditure of powder pertained both to firearms discharges and perhaps to the separate ignition of gun powder. Most important, however, is that the actions under regulation were barred specifically when "drinking" was involved. In a 1655 Virginia law, alcohol-fueled revelry was subject to fines for any who would "shoot any guns at drinking," although the law carved out two special occasions for regulatory exemption: "marriages and funerals only excepted."[22] While this admittedly amusing law was prompted by concern over whether colonists would hear an alarm warning of a Native American attack, the law's enactment was necessitated by rowdy "frequent shooting of guns at drinking" which the law dubbed "beastly vice spending much powder in vaine" that could otherwise be used in fending off an attack or for other purposes. Thus, the law applied only to the intersection of shooting and drinking, not all shooting, recognizing yet again

[21] 1623 Va. Acts 127 Acts of March 5th, 1623, 29; 1631 Va. Acts 173, Acts of February 24th, 1631, Act L; 1632 Va. Acts 198, Acts of September 4th, 1632, Act XLIV.
[22] 1655 Va. Acts 401, Acts of March 10, 1655, Act XII. Early in the country's history, alcoholic beverages played an especially important role in marrying and burying. Eric Burns, *The Spirits of America* (Philadelphia, PA: Temple University Press, 2004), 16-17.

the early understanding that alcohol-fueled firearms use led to undesirable (and therefore prohibitory) behavior.

23. In 1636 Rhode Island enacted a measure to punish any who would engage in "shooting out any gun . . . drinking in any tavern alehouse . . . on the first day of the week more than neccesity requireth." Any who did so would find themselves in the stocks or fined five shillings.[23] In 1663 Massachusetts criminalized any on board of ships docked at any colonial harbor where those on board would "be drunk within their vessels by day or night" and "shoot off any gun after the daylight is past, or on the sabbath day." The fine was a substantial twenty shillings for every gun so fired.[24] In 1750 Pennsylvania enacted a law "For Suppressing Idleness, Drunkenness, And Other Debaucheries" that punished with "penalties and forfeitures" any who fired guns or set off fireworks without a special license to do so.[25]

24. Such measures proliferated in the nineteenth and early twentieth centuries, most commonly as a bar to weapons carrying or discharging. For example, the Tennessee legislature granted a locality the authority to penalize "shooting and carrying guns" along with drinking in 1825.[26] In 1868, Kansas enacted a law to punish anyone found to carry a deadly weapon while "under the influence of intoxicating drink."[27] Nevada enacted measures in 1881 and 1885 that

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[23] 1636-1748 R.I. Pub. Laws 31, At A General Assembly Held For Rhode Island Colony At Newport 6th of May, 1679. 1636.
[24] The Charters and General Laws Of The Colony And Province Of Massachusetts Bay Page 190, Image 197 (1814) available at The Making of Modern Law: Primary Sources. 1663.
[25] 1750 Pa. Laws 208, An Act For The More Effectual Preventing Accidents Which May Happen By Fire, And For Suppressing Idleness, Drunkenness, And Other Debaucheries.
[26] 1825 Tenn. Priv. Acts 306, An Act to Amend an Act Passed at Murfreesboro, October 20, 1821, Incorporating Winchester and Reynoldsburgh, ch. 292.
[27] *The General Statutes of the State of Kansas, to Which the Constitutions of the United State of Kansas, Together with the Organic Act of the Territory of Kansas, the Treaty Ceding the Territory of Louisiana to the United States, and the Act Admitting Kansas into the Union are Prefixed* 378, Image 387 (1868) available at The Making of Modern Law: Primary Sources.

punished anyone who discharged firearms in various public spaces while "under the influence of liquor."[28] An 1883 Wisconsin law made it "unlawful for any person in a state of intoxication, to go armed with any pistol or revolver."[29] In 1878, 1880, and 1908, Mississippi enacted laws that made it illegal "to sell to any minor or person intoxicated" any pistol or other named weapon[30] (minors and those intoxicated were more than occasionally treated together within these laws, a clear indication of their inferior legal status[31]). In 1907, Arizona enacted a law making it "unlawful for any constable or other peace officer in the Territory of Arizona, while under the influence of intoxicating liquor of any kind, to carry or have on his person a pistol, gun, or other firearm."[32]

25. In 1879 and again in 1883, Missouri enacted a law to fine or imprison anyone who carried concealed or brandished "any kind of fire arms" or other listed weapons "when

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[28] 1881 Nev. Stat. 19-20, An Act to Prohibit the Use of Firearms in Public Places, ch. 7, § 1; David E. Aily, *The General Statutes of the State of Nevada. In Force. From 1861 to 1885, Inclusive. With Citations of the Decisions of the Supreme Court Relating Thereto* 1076, Image 1084 (1885) available at *The Making of Modern Law: Primary Sources. An Act to Prohibit the Use of Firearms in Public Places*, § 1.

[29] 1883 Wis. Sess. Laws 290.

[30] 1878 Miss. Laws 175-76, An Act To Prevent The Carrying Of Concealed Weapons And For Other Purposes, ch. 46, §§ 2-3; Josiah A. Patterson Campbell, *The Revised Code of the Statute Laws of the State of Mississippi: With References to Decisions of the High Court of Errors and Appeals, and of the Supreme Court, Applicable to the Statutes* 776-777, Image 776-777 (1880) available at The Making of Modern Law: Primary Sources; Laws regulating carrying and brandishing firearms, who can own them, where they can be brought, etc., Ch. 20, §§ 293-300, in The Charter and Code of the Ordinances of Yazoo City (1908).

[31] E.g. William H. Bridges, *Digest of the Charters and Ordinances of the City of Memphis, from 1826 to 1867, Inclusive, Together with the Acts of the Legislature Relating to the City, with an Appendix* 50, Image 50 (1867) available at The Making of Modern Law: Primary Sources. Police Regulations of the State. Selling Liquors or Weapons to Minors. § 4864.

[32] 1907 Ariz. Sess. Laws 15, An Act to Prohibit Officers from Carrying Firearms While Under the Influence of Liquor and for Other Purposes, ch. 16, § 1. Arizona became a state in 1912.

intoxicated or under the influence of intoxicating drinks."[33] At least 20 similar laws were also enacted in Missouri between 1873 and 1917 that applied to counties, cities, and towns (see Exhibits B and C).

26. A Maryland state law from 1884 pertaining to Baltimore stated that anyone found to be "drunk or disorderly" who was also carrying a concealed pistol or other weapon was subject to confiscation of the weapon and a fine.[34] Rhode Island enacted a similar law—fine plus weapon confiscation—in 1893.[35] An 1899 South Carolina law said that "any person who shall engage in any boisterous conduct, under the influence of intoxicating liquors" who discharged a firearm of any kind near a road would be subject to a fine and jail.[36] A 1909 Idaho law criminalized anyone who "shall have or carry any such weapon upon or about his person when intoxicated, or under the influence of intoxicating drinks."[37]

27. While the focus of these laws was on regulating persons who had weapons while drinking or drunk, another category of laws in early America restricted the sale or distribution of alcohol in the proximity of persons with firearms. A 1679 Massachusetts law prohibited bringing or selling "any wine, strong liquor, cider, or any other inebriating drinckes, excepting beere of a

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[33] MO. REV. STAT. § 1274 (1879), reprinted in 1 The Revised Statutes of the State of Missouri 1879 224 (John A. Hockaday et al. eds. 1879); 1883 Mo. Laws 76, An Act to Amend Section 1274, Article 2, Chapter 24 Of The Revised Statutes Of Missouri, Entitled "Of Crimes And Criminal Procedure," § 1.

[34] John Prentiss Poe, *The Maryland Code. Public Local Laws, Adopted by the General Assembly of Maryland March 14, 1888. Including also the Public Local Acts of the Session of 1888 Incorporated Therein* 522-523, Image 531-532 (Vol. 1, 1888) available at The Making of Modern Law: Primary Sources. 1884.

[35] *General Laws of the State of Rhode Island and Providence Plantations to Which are Prefixed the Constitutions of the United States and of the State* Page 1010, Image 1026 (1896) available at The Making of Modern Law: Primary Sources. 1893.

[36] 1899 S.C. Acts 97, An Act to Prevent Drunkeness and Shooting Upon The Highway, No. 67, § 1.

[37] 1909 Id. Sess. Laws 6, § 1.

penny a-quart" on and in the proximity of militia training days unless they were licensed to do so "from the hands of two magistrates" or the commanding military officer then present.[38] In 1746, New Jersey enacted a law penalizing anyone who would "presume to sell any strong Liquor. . . in such Days or Times. . . at the Place of Mustering or Training [of militias], or within a Mile thereof. . . ."[39] Similarly, a 1756 Delaware law forbade militia companies from meeting within a half mile of any inn or tavern. It also punished any attempting to sell "any strong liquor" in a booth or tent in proximity of a militia training area.[40] Also in 1756, Maryland enacted a similar measure to penalize attempts to sell "strong liquor" at the time and location of militia musters.[41] Pennsylvania enacted the same type of measure in 1780.[42] Such measures extended into the nineteenth century.[43] These laws make abundantly clear that diminished capacity caused by

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[38] "Order p[ro]hibbiting retayling strong drinckes at traynings," Boston, May 28th, 1679. Beer had a lower alcohol content than other alcoholic beverages.

[39] An Act for better settling and regulating the Militia of this Colony of New-Jersey, for the repelling Invasions, and Suppressing Insurrections and Rebellions. Passed May 8, 1746. Section 3. Officers and Soldiers to behave well while under Arms; and, Section 23. Penalty on selling strong Liquor near the mustering Place.

[40] An Act for Establishing a Militia in this Government (Delaware, 1756).

[41] An Act for Regulating the Militia of the Province of Maryland (MD General Assembly, Lower House, L.H.J. Liber No. 48, Assembly Proceedings, May 22, 1756).

[42] An Act for the Regulation of the Militia of the Commonwealth of Pennsylvania (20 March, 1780), § 57, Penalty on Officers Misbehaving while on Parade; § 60, Rules and regulations, 12th rule.

[43] Acts & Resolves of Vermont, 25, no. 24, An Act to Prevent Traffic in Intoxicating Liquors for the Purpose of Drinking, §15 (1852); An Act for the More Effectual Suppression of Drinking Houses and Tippling Shops, §10, Acts & Resolves of the General Assembly of the State of Rhode Island (1853); Temporary Buildings within One Mile of Muster Field, Used for Sale of Intoxicating Liquors, May Be Removed, Acts and Resolves of Maine, Ch. 265 "An Act to Organize and Discipline the Militia," §73 (1856); 1859 Conn. Acts 62, Temporary Erections for Sale of Liquors or Gaming, Near Parade Ground, May Be Abated as Nuisances. In Public Acts Passed by the General Assembly of the State of Connecticut, Ch. 82, §5; Amendments to Militia Regulations, Ohio Senate Bill No. 7, § 1, in The State of Ohio: General and Local Acts Passed, and Joint Resolutions Adopted by the Sixty-Seventh General Assembly at Its Regular Session (1886); Selling Liquors on Camp Grounds Prohibited, § 22 of Chapter 102—An Act to Revise, Amend, and Codify the Statutes Relative to the Militia in Acts and Resolutions Passed at the Regular Session of the Twenty-Sixth General Assembly of the State of Iowa (1896).

alcohol consumption when gun carrying and use was also occurring was serious enough to proscribe the intersection of the two by law.

28. Aside from these laws restricting the civilian commercial sale of alcohol, colonies and then states also enacted laws that directly restricted or punished drunkenness among militia ranks[44] for the obvious reason that excessive alcohol consumption undermined military order, morale, and effectiveness.[45] To be sure, alcohol was also very much a part of soldiering during this time. For example, General George Washington "insisted on alcohol for his men"[46] during the Revolutionary War, but like any good commander, he wanted to tightly control its dissemination and consumption. The normal daily alcohol ration for Washington's men was four ounces.[47]

29. States and localities enacted similar laws in the nineteenth and twentieth centuries. A Chicago, Illinois ordinance from 1851 imposed a series of strict and wide-ranging regulations concerning licensing for the storage, transport, and handling of gun powder and gun cotton that included this prohibition: "no permit shall be granted to any retailer of intoxicating

[44] E.g. An Act for regulating and ordering the Troops that are, or may be raised, for the Defence of this Colony, Article 19 (11 May, 1775); An Act For the better ordering of the Militia of this Province §19 Savannah, GA (25 March, 1765); An Act for Regulating the Militia of the Province of Maryland (MD General Assembly, Lower House, L.H.J. Liber No. 48, Assembly Proceedings, May 22, 1756); An Act to regulate the Militia of the Common-Wealth of Pennsylvania, §§ IX-X (1777); An Act for the Regulation of the Militia of this State (South Carolina) § 5 Regulations for the government of the militia, Rule 7 (1782).

[45] This concern is reflected in Frederick William Baron von Steuben, *Baron von Steuben's Revolutionary War Drill Manual* (NY: Dover Publications, 1985; first pub. 1779, rev'd. 1794), 82, 105.

[46] Burns, *The Spirits of America*, 16.

[47] Burns, *The Spirits of America,* 16. During the terrible winter at Valley Forge, Pa., of 1777-78, Washington doubled the daily alcohol ration for the men to eight ounces per day.

liquors or to any intemperate person."[48] St. Paul, Minnesota enacted a similar measure in 1858.[49] Delaware enacted laws in 1911 and 1919 that made it "unlawful for any person or persons, or a member of any firm, or the agents or officers of any corporation to sell to a minor, or any intoxicated person, any revolver, pistol, or revolver or pistol cartridges."[50]

30. The whole point of these laws—to keep firearms from the hands of the intoxicated while they were in a state of intoxication—provides a remarkable parallel to the "cooling off" purpose of modern waiting period laws. The intoxicated could generally acquire or reacquire guns after they sobered up, just as in the modern era gun license applicants can acquire their guns after the "cooling off" period.

31. Thus, "sobering up" might be thought of as the historical equivalent of "cooling off."

III. HISTORICAL WEAPONS LICENSING LAWS

32. Weapons licensing or permitting was a widespread and varied regulatory tool utilized in America. By one definition, licensing is the "permission by competent authority to do an act which, without such permission, would be illegal. . . ."[51] Despite the difference of hundreds of years, licensing in early America functioned largely in the way it functions today.

33. While different in its particulars, historical weapons licensing and permitting laws did, and do, operate in a manner similar to modern waiting periods, in that they are predicated on

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[48] George Manierre, *The Revised Charter and Ordinances of the City of Chicago: To Which are Added the Constitutions of the United States and State of Illinois* 123-125, Image 131-133 (1851) available at The Making of Modern Law: Primary Sources.
[49] *The Charter and Ordinances of the City of St. Paul, (To August 1st, 1863, Inclusive,) Together with Legislative Acts Relating to the City* 166-167, Image 167-168 (1863) available at The Making of Modern Law: Primary Sources. 1858.
[50] Vol. 26 Del. Laws 28, 28- 29 (1911); Vol. 30 Del. Laws 55, 55-56 (1919).
[51] Henry C. Black, *Black's Law Dictionary*, 6th ed. (St. Paul, MN: West Publishing, 1991), 634.

a process whereby a license applicant provides or submits some kind of information which is then evaluated and judged to be acceptable or not. If the judgment is affirmative, the license is granted. By its nature, then, licensing contemplates the passage of some period of time (even if it be brief) between the time the application for permission to do something is submitted (such as a hunting license application) and the license or permission is granted. In addition, licensing generally represented a more mature and nuanced form of regulation that in many instances succeeded or supplemented more rigid but less complicated laws (see discussion below). The same might be said of modern waiting periods, in that they are a more nuanced and sophisticated policy tool to winnow out those who might pose a threat with possession of a firearm. In addition, licensing by its nature thwarts any unrestricted ability to acquire or use firearms on demand.

34. Colonial, state, and local laws encompassing the licensing or permitting of dangerous weapons and substances date to the 1600s and 1700s, but became more wide-ranging and widespread in the 1800s and early 1900s. These laws mostly pertained to those weapons and substances that posed a threat to public safety: concealable weapons, including handguns, fighting knives, various types of clubs, and explosives (ranging from firecrackers and gunpowder to nitroglycerine after its invention). This is consistent with what became the widespread use of licensing by the nineteenth century, which was employed "to regulate and control a host of economic activities, trades, callings, and professions" though "the overall justification for licensing was the same as the police power generally—the public good and the people's welfare." [52]

[52] William J. Novak, *People's Welfare: Law and Regulation in Nineteenth Century America* (Chapel, Hill, NC: University of North Carolina Press, 1996), 90. For example, Bangor, Maine

35. At least 89 licensing requirement laws were enacted in at least 34 states for individuals as a pre-requisite for their weapons carrying or ownership during this time (including Maine[53]); laws in 18 states did so in the 1800s and 29 did so in the 1900s (some states enacted laws in multiple centuries; see Exhibits D and E). Laws in at least 27 states regulated firearms discharging through licensing, with 13 of those states doing so from the 1700s up to the start of the Civil War, and another 20 states doing so between the end of the Civil War and 1900 (some states enacted laws in both periods). Laws in at least 12 states licensed hunting with firearms from the 1800s through the early 1900s. At least 20 states had laws that licensed the commercial sale, transport, or firing of weapons at locations like shooting galleries from the 1600s through the early 1900s. Laws in at least 22 states licensed the possession, handling, or transport of gunpowder and other explosives from the 1600s through the early 1900s. Laws in at least 17 states required those selling or otherwise providing weapons to individuals to record and keep information pertaining to the buyers of weapons in the late 1800s and the early 1900s as the sales process matured and became regulated.

36. In addition, at least 15 states imposed licensing requirements on specified marginalized groups (variously including Native Americans, non-citizens, non-state residents, or minors). In the pre-Civil War period, at least 13 states allowed for licensing of enslaved persons or free Blacks. And nine states enacted regulatory taxes on firearms.

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enacted an ordinance in 1878 to license a variety of private activities with public consequences, including making or repairing any drains or aqueducts, the sale of various goods, the parking of commercial vehicles, activities that might block streets, and the use of explosives. Injurious Practices, §§ 27 & 28, BANGOR, CHARTER AND ORDINANCES OF THE CITY (Burr & Robinson 1878), https://firearmslaw.duke.edu/assets/1878,-me,-bangor,-injurious-practices,--27-&-28.pdf

[53] An Ordinance Relating to Concealed Weapons, §§ 1-5, reprinted in City of Portland Auditor's Fifty-First Annual Report of the Receipts and Expenditures of the City of Portland [Maine] for the Financial Year of 1909, 152-53 (1910).

37. A great many laws pertaining to weapons carrying, discharge, commercial sales, and gunpowder licensing generally were first enacted in or for municipalities (populated areas), since the misuse of weapons posed a far greater and more identifiable risk to public safety in areas where larger numbers of people lived in close proximity to each other, and because observing, monitoring, and enforcing these measures by local governments was more feasible in jurisdictions where larger numbers of people lived in more geographically defined and confined areas. Municipal laws are no less significant than state laws for three reasons: first, social and public safety problems arising from weapons typically appeared first in places where large numbers of people congregated and lived—i.e., cities and towns. These problems multiplied in the nineteenth century as the U.S. began to transition from an overwhelmingly rural nation to a majority urban one. Second, given that municipalities are legal creatures of state governments, localities' ability to enact these or other laws presumes that they did so as allowable public policy under state law. Third, the initial enactment of municipal regulations often led to subsequent enactment of similar state-wide regulations.

38. These licensing categories were generally instances where the prevailing legal standard had been to criminalize the activity or practice outright—criminalizing concealed carrying, banning weapons discharge in cities and towns, banning weapons from marginalized groups, etc. The governing units enacting licensing for these activities were now allowing firearms or other dangerous weapons or substances to be used or possessed with the granting of a license to do so, when their possession or use would otherwise be subject to criminal penalties. The proliferation of licensing represented in most instances a new and more mature form of government regulation of the activities in question.

39. With regard to concealed carry of pistols and other dangerous weapons, for example, from the 1700s through the early 1900s every state in the country restricted or criminalized such carrying.[54] With the spread of licensing requirements in the post-Civil War nineteenth century, however, governing units were now allowing legal weapons carrying, subject to the review criteria as conducted by local officials who were empowered to grant carry licenses. The criteria for the granting of these licenses were generally highly discretionary for the individuals or bodies granting them. In some laws, no criteria were specified; in others, the criteria were vague or broad, but often included wording that the applicants must be persons of good character or sound judgment, again emphasizing the determinative judgment of those granting the licenses. They usually set a time limit for permits, ranging from a month to a year (see below).

40. Regarding hunting licenses, many earlier laws criminalized various hunting practices, dating back to the 1600s, for reasons related to protection of private property and lands, conservation, and safety.[55] The hunting related laws listed here are all instances where hunting was allowed through permitting by a governing entity, meaning that the permits or licenses could be withdrawn if the licensees violated whatever rules the laws imposed (such as hunting out of season). Licensing related to Indigenous people, enslaved persons, and free persons of color is examined in more detail below.

A. Licensing of Weapons Carrying or Possession

[54] Spitzer, "Gun Law History in the United States and Second Amendment Rights," 63-67; Robert J. Spitzer, "Understanding Gun Law History after *Bruen:* Moving Forward By Looking Back," *Fordham Urban Law Journal* 51(October 2023): 99-100, 105-15.
[55] Spitzer, "Gun Law History in the United States and Second Amendment Rights," 73-74.

41. This analysis identified 89 concealed weapons carry license laws enacted by 34 states from the post-Civil War period through the early 1900s: 35 of these laws were enacted by 18 states between the end of the Civil War and 1900, and 53 were enacted by 29 states in the early 1900s (some states enacted laws in both centuries). Generally speaking, these laws criminalized the concealed carrying of various weapons, but all of the laws examined here carved out exceptions for those who applied for, and received, a carry license. In addition, most permit laws imposed a time limit on permit duration, generally ranging from a month to a year, regardless of other criteria.

42. Broadly speaking, these laws fell into two categories: those that specified criteria for granting a license, and those that did not: 54 of the 89 laws included discretionary criteria for the issuing of licenses, whereas the other 35 did not. Thus, about 60% of these licensing laws included discretionary criteria. Of the latter (no discretionary criteria listed) category, it is possible that criteria were specified in other laws, documents, oaths, or the like, but that were not specified in the laws enacting a weapons licensing scheme.

43. In 1871, Missouri enacted a measure to license the otherwise illegal practice of concealed carrying of handguns and other named weapons, including "any other dangerous or deadly weapon" in St. Louis by means of "written permission from the Mayor."[56] St. Louis enacted its own municipal version of this law in 1892.[57] A similar measure was enacted for

[56] Everett Wilson Pattison, The Revised Ordinance of the City of St. Louis, Together with the Constitution of the United States, and of the State of Missouri; the Charter of the City; and a Digest of the Acts of the General Assembly, Relating to the City Page 491-492, Image 499-500 (1871).
[57] The Municipal Code of St. Louis (St. Louis: Woodward 1901), p.738, Sec. 1471. 1892; Chapter 18. Of Misdemeanors, Sec. 1471.

Kansas City, Missouri, in 1880.[58] Jersey City, New Jersey enacted a licensing scheme in 1871 for concealed weapons carrying of pistols and other dangerous weapons, defined in the law as "any gun, pistol, cannon, or fowling piece or other fire-arms. . . ."[59] As this wording makes clear, this extended to long guns as well (a fowling piece is a long-barreled shotgun for shooting small animals[60]). Jersey City's 1873 law laid out a broadly discretionary set of criteria for granting licenses, described below (as determined by the city's municipal court), that bears great similarity to contemporary gun licensing schemes:

> The Municipal Court of Jersey City may grant permits to carry any of the weapons named in the first section to such persons as should, from the nature of their profession, business or occupation, or from peculiar circumstances, be allowed so to do; and may, in granting such permits, impose such conditions and restrictions in each case as to the court shall seem proper.[61]

44. The Jersey City ordinance added that carry permits would not be granted "to any person until the court is satisfied that such person is temperate, of adult age, and capable of exercising self-control."[62]

45. Hyde Park, Illinois enacted a similar licensing law for concealed weapons carrying, including handguns, in 1876. In this instance, the licenses were granted "by written

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[58] An Ordinance in the Revision of the Ordinances Governing the City of Kansas (Kansas City, MO; Isaac P. Moore's Book and Job, 1880), p. 264, Sec. 3. 1880; Chapter XXXIV. Public Safety, Sec. 3.

[59] Ordinances of Jersey City, Passed By The Board Of Aldermen since May 1, 1871, under the Act Entitled "An Act to Re-organize the Local Government of Jersey City," Passed March 31, 1871, and the Supplements Thereto Page 46, Image 46 (1874) available at The Making of Modern Law: Primary Sources. 1871.

[60] https://www.thefreedictionary.com/fowling+piece.

[61] Ordinances of Jersey City, Passed By The Board Of Aldermen since May 1, 1871, under the Act Entitled "An Act to Re-organize the Local Government of Jersey City," Passed March 31, 1871, and the Supplements Thereto Page 86- 87, Image 86-87 (1874) available at The Making of Modern Law: Primary Sources. 1873.

[62] Ordinances of Jersey City, Passed By The Board Of Aldermen since May 1, 1871.

permission of the Captain of Police."[63] Evanston, Illinois's concealed carry licensing law of 1893 granted licensing issuance authority to the city mayor.[64]

46. New York City criminalized the carrying of "a pistol of any description concealed on his person" in 1881 but provided for a legal carry license exception:

> Any person, except as provided in this article, who has occasion to carry a pistol for his protection, may apply to the officer in command at the station-house of the precinct where he resided, and such officer, if satisfied that the applicant is a proper and law abiding person, shall give said person a recommendation to the superintendent of police, or the inspector in command at the central office in the absence of the superintendent, who shall issue a permit to the said person allowing him to carry a pistol of any description.[65]

47. This provision also allowed for non-residents who had occasional business in the city to apply for permits as well. An 1884 New York state law barred the carrying or possession of named weapons, including fighting knives and types of clubs, from those under eighteen, unless they possessed a license to do so. Licenses could only be granted for up to one year and were subject to revocation "at the pleasure of the mayor."[66] A year later, the law was extended to

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[63] Consider H. Willett, Laws and Ordinances Governing the Village of Hyde Park Together with Its Charter and General Laws Affecting Municipal Corporations; Special Ordinances and Charters under Which Corporations Have Vested Rights in the Village. Also, Summary of Decisions of the Supreme Court Relating to Municipal Corporations, Taxation and Assessments Page 64, Image 64 (1876) available at The Making of Modern Law: Primary Sources. 1876. Misdemeanors, § 39.

[64] George W. Hess, Revised Ordinances of the City of Evanston : Also Special Laws and Ordinances of General Interest Page 131-132, Image 143-144 (1893) available at The Making of Modern Law: Primary Sources.

[65] Elliott Fitch Shepard, Ordinances of the Mayor, Aldermen and Commonalty of the City of New York, in Force January 1, 1881; Adopted by the Common Council and Published by Their Authority Page 214-215, Image 214-215 (1881) available at The Making of Modern Law: Primary Sources.

[66] George R. Donnan, Annotated Code of Criminal Procedure and Penal Code of the State of New York as Amended 1882-5 Page 172, Image 699 (1885) available at The Making of Modern Law: Primary Sources. 1884.

all cities in the state and included "any pistol or other firearms of any kind."[67] (This would have included long guns as it did not specify only concealed carry.) In 1891, the state extended permitting to Buffalo covering handguns and other dangerous weapons.[68]

48. Wheeling, West Virginia enacted a law in 1881 making it "unlawful for any person to carry" various named weapons, including a "colt" revolver, or to "carry about his person, hid from common observation" any pistol or other named weapon without a permit from the mayor.[69] Under the heading "License," an 1882 law applying to St. Paul, Minnesota criminalized any concealed weapons carrying, absent such licensing.[70]

49. An 1888 Salt Lake City, Utah ordinance barred the carrying of "any concealed weapon" unless the person obtained a permit from the city mayor.[71] New Haven, Connecticut enacted a similar anti-carry law in 1890, extending to pistols, unless the person first obtained a permit either from the mayor or police superintendent.[72] Oakland, California enacted a similar law in 1890 making it unlawful "to wear or carry concealed about his person" a pistol or other listed weapon unless the person obtained a permit from the mayor. The permit was good for up

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[67] George R. Donnan, Annotated Code of Criminal Procedure and Penal Code of the State of New York as Amended 1882-5. Fourth Edition Page 298, Image 824 (1885) available at The Making of Modern Law: Primary Sources.
[68] 1891 N.Y. Laws 129, 177, An Act to Revise the Charter of the City of Buffalo, ch. 105, tit. 7, ch. 2, § 209.
[69] Laws and Ordinances for the Government of the City of Wheeling, West Virginia (Wheeling, WV: W. Va. Printing 1891), p.206, SEC. 14. 1881.
[70] W. P. Murray, The Municipal Code of Saint Paul: Comprising the Laws of the State of Minnesota Relating to the City of Saint Paul, and the Ordinances of the Common Council; Revised to December 1, 1884 Page 289, Image 295 (1884) available at The Making of Modern Law: Primary Sources. 1882.
[71] The Revised Ordinances of Salt Lake City, Utah, Chapter XXVI, Misdemeanors, p. 283 Sec. 14 (1888), Dangerous and Concealed Weapons. SEC. 14.
[72] Charles Stoers Hamilton, Charter and Ordinances of the City of New Haven, Together with Legislative Acts Affecting Said City Page 164, Image 167 (1890) available at The Making of Modern Law: Primary Sources.

to a year, and could be granted to "any peaceable person whose profession or occupation may require him to be out at late hours of the night to carry a concealed deadly weapon upon his person."[73] The California cities of Stockton (1891)[74] and Fresno (1896)[75] did the same.

50. A law passed by the U.S. Congress in 1892 for the District of Columbia criminalized the concealed carry of "any deadly or dangerous weapons," including pistols, unless granted a permit by a judge of the police court "for a period of not more than one month at any one time, upon satisfactory proof to him of the necessity for the granting thereof. . . ."[76] Florida's 1893 law made it "unlawful to carry or own a Winchester or other repeating rifle or without first taking out a license from the County Commissioner. . . ." In addition, the law specified that the applicant "shall give a bond running to the Governor of the State in the sum of one hundred dollars, conditioned on the proper and legitimate use of the gun with sureties to be approved by the County Commissioners," along with "a record of the name of the person taking out such license, the name of the maker of the firearm so licensed to be carried and the caliber and number of the same."[77]

51. Montana enacted a wide-ranging state licensing law in 1895 that threatened imprisonment and fines for anyone "who brings into this state an armed person or armed body of

[73] Fred L. Button, ed., General Municipal Ordinances of the City of Oakland, California (Oakland, CA; Enquirer, 1895), p. 218, Sec. 1, An Ordinance to Prohibit the Carrying of Concealed Weapons, No. 1141. 1890.
[74] Charter and Ordinances of the City of Stockton (Stockton, CA: Stockton Mail Printers and Bookbinders, 1908), p. 240, Ordinance No. 53. 1891.
[75] L. W. Moultrie, Charter and Ordinances of the City of Fresno Page 30, Image 28 (1896) available at The Making of Modern Law: Primary Sources.
[76] Washington D.C. 27 Stat. 116 (1892), CHAP. 159.
[77] 1893 Fla. Laws 71-72, An Act to Regulate the Carrying of Firearms, chap. 4147, §§ 1-4.

men for the preservation of the peace or the suppression of domestic violence, except at the solicitation and by the permission of the legislative assembly or of the governor. . . ."[78]

52. A state law in Nebraska granted the mayor of Lincoln the authority to issue concealed carry weapons licenses good for a year "to so many and such persons as he may think proper" in 1895, adding that the mayor "may revoke any and all of such licenses at his pleasure."[79] The city of Spokane, Washington criminalized the concealed carrying of "either a revolver, pistol or other fire-arms" unless persons obtained a "special written permit from the Superior Court" to do so.[80] Milwaukee, Wisconsin enacted a permitting system in 1896 for persons to carry otherwise barred various dangerous weapons including "any pistol or colt" if the city police chief granted a license if "it is necessary for the personal safety of such person or for the safety of his property or of the property with which he may be entrusted, to carry such weapon." The chief could also "revoke such permit at any time."[81]

53. In the twentieth century, permitting accelerated, spread, and broadened. In 1905 New Jersey enacted a state law licensing concealed weapons carrying for a year "unless sooner revoked by the officer or body granting the same."[82] Licensing was extended to long guns—

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[78] Decius Spear Wade, The Codes and Statutes of Montana. In Force July 1st, 1895. Including the Political Code, Civil Code, Code of Civil Procedure and Penal Code. As Amended and Adopted by the Fourth Legislative Assembly, Together with Other Laws Continued in Force Page 873, Image 914 (Vol. 2, 1895) available at The Making of Modern Law: Primary Sources. 1895. Crimes Against the Public Peace, § 759.

[79] 1869 Neb. Laws 53, An Act to Incorporate Cities of the First Class in the State of Nebraska, § 47.

[80] Rose M. Denny, ed., The Municipal Code of the City of Spokane, Washington (Spokane, WA; W.D. Knight, 1896), p. 309-10, Ordinance No. A544, Sec. 1. 1895.

[81] Charles H. Hamilton, ed., The General Ordinances of the City of Milwaukee to January 1, 1896: With Amendments Thereto and an Appendix (Milwaukee, WI: E. Keough, 1896), pp.692-93, Sec. 25. Chapter XX. Misdemeanors. Section 25.

[82] 1905 N.J. Laws 324-25, A Supplement to an Act Entitled "An Act for the Punishment of Crimes," ch. 172, § 1.

machine guns and automatic rifles—in New Jersey in 1927[83] and 1934.[84] (A number of the 36 states that enacted anti-machine gun laws in the 1920s and 1930s made exceptions for possession via licensing.) In 1906 a Massachusetts state law noted that prosecution for carrying "a loaded pistol or revolver" did not apply to those with a license.[85] It extended licensing to a variety of guns in 1927.[86] In 1908 Virginia enacted a dangerous weapons concealed carry permit law, with permits granted for one year "upon a written application and satisfactory proof of the good character and necessity of the applicant to carry concealed weapon."[87] It extended the permitting process in 1926.[88]

54. In 1909, Portland, Maine enacted a discretionary weapons concealed carry law applying to the carrying of any "fire arm, slung shot, knuckles, bowie knife, dirk, stiletto, or other dangerous or deadly weapon" unless licensed to do so by the local police. It could issue licenses

> to any person of good moral character, whose business or occupation requires the carrying of such weapons for protection, a certificate setting forth that such person has complied with the requirements of this ordinance, and that he has been duly licensed to carry such weapon or weapons for protection. Such license shall continue in effect until revoked by the Chief of Police.[89]

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[83] 1927 N.J. Laws 180-81, A Supplement to an Act Entitled "An Act for the Punishment of Crimes," ch. 95, §§ 1-2.
[84] 1934 N.J. Laws 394-95, A Further Supplement to an Act Entitled "An Act for the Punishment of Crimes," ch. 155, §§ 1-5.
[85] 1906 Mass. Acts 150, ch. 172, An Act to Regulate by License the Carrying of Concealed Weapons.
[86] 1927 Mass. Acts 413, An Act Relative to Machine Guns and Other Firearms, ch. 326, §§ 1-2 (amending §§ 121, 123).
[87] 1908 Va. Laws 381, An Act To Amend And Re-Enact Section 3780 Of The Code In Relation To Carrying Concealed Weapons, § 3780.
[88] 1926 Va. Acts. 285-87, CHAP. 158.
[89] An Ordinance Relating to Concealed Weapons, §§ 1-5, reprinted in City of Portland Auditor's Fifty-First Annual Report of the Receipts and Expenditures of the City of Portland [Maine] for the Financial Year of 1909, 152-53 (1910). ORDINANCE RELATING TO CONCEALED WEAPONS. As early as 1840, Maine criminalized the carrying of weapons (not limited to

55. Georgia enacted a detailed handgun permitting system in 1910.[90] Thereafter, permitting was enacted in states (not including those that enacted permitting in the 1800s, most of which also enacted permitting laws in the 1900s as well) including Hawaii,[91] Indiana,[92] Michigan,[93] New Hampshire,[94] North Carolina,[95] North Dakota,[96] Ohio,[97] Oregon,[98] Pennsylvania,[99] Rhode Island,[100] and South Carolina.[101] As of 1938, "the carrying of concealed

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concealed carrying) including "any dirk, dagger, sword, pistol, or other offensive and dangerous weapon. . . ." Maine Rev. Stat. ch. 169, sec. 16 (1841), available at https://lldc.mainelegislature.org/Open/RS/RS1840/RS1840_c169.pdf.

[90] Orville Park, Park's Annotated Code of the State of Georgia 1914, Penal Code, Article 3, Carrying pistols without license, § 348(a)-(d). 1910.

[91] 1927 Haw. Sess. Laws 209-217, AN ACT Regulating the Sale, Transfer and Possession of Certain Firearms and Ammunitions, and Amending Sections 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2146 and 2147 of the Revised Laws of Hawaii 1925 (the "Small Arms Act"), §§ 10-11, § 17; 1933 Haw. Sess. Laws 39, An Act Regulating the Sale, Transfer, and Possession of Firearms and Ammunition, § 8, 10-16.

[92] 1925 Ind. Acts 495, 495-98.

[93] 1925 Mich. Pub. Acts 47, An Act to Regulate the Possession and Sale of Pistols, Revolvers and Guns; to Provide a Method of Licensing Those Carrying Such Weapons Concealed; and to Provide Penalties for Violations of Such Regulations, § 7; 1927 Mich. Pub. Acts 888-89, 91, An Act to Regulate and License the Selling, Purchasing, Possessing and Carrying of Certain Firearms, §§ 3, 9.

[94] 1923 N.H. Laws 138.

[95] 1919 N.C. Sess. Laws 397-99, Pub. Laws, An Act to Regulate the Sale of Concealed Weapons in North Carolina, ch. 197, §§1, 5.

[96] 1915 N.D. Laws 96, An Act to Provide for the Punishment of Any Person Carrying Concealed Any Dangerous Weapons or Explosives, or Who Has the Same in His Possession, Custody or Control, unless Such Weapon or Explosive Is Carried in the Prosecution of a Legitimate and Lawful Purpose, ch. 83, §§ 1-3, 5; 1923 N.D. Laws 379, 380-82 ch. 266; 1925 N.D. Laws 216–17, Pistols and Revolvers, ch. 174, § 2; 1931 N. D. Laws 305-06, An Act to Prohibit the Possession, Sale and Use of Machine Guns, Sub-Machine Guns, or Automatic Rifles and Defining the Same . . . , ch. 178, §§ 1-2.

[97] 1933 Ohio Laws 189-90, Reg. Sess., An Act. . . Relative to the Sale and Possession of Machine Guns, § 1.

[98] 1913 Or. Laws 497; 1917 Or. Sess. Laws 804-808; 1925 Or. Laws 468, 469-471.

[99] 1929 Pa. Laws 777; 1931 PA. Laws 498, No. 158.

[100] 1927 (January Session) R.I. Pub. Laws 256.

[101] 1934 S.C. Acts 1288.

pistols [was] either prohibited absolutely or permitted only with a license in every state but two."[102]

56. The existence and functioning of old licensing laws make clear that the government could take whatever time was needed to complete the licensing process, consistent with its police powers. The historical realities of licensing provide no notion nor inclination that there was anything resembling a "right" to obtain or use firearms on demand. Moreover, no license law examined here imposed any time limit by which a license application had to be approved or denied by the relevant governing authority. And often, these laws gave the individual or body that granted the license to also withdraw or cancel it at his or its pleasure. If one trait of these laws emerges, it is that those granting licenses had wide-ranging discretion to issue or not issue as they saw fit, and to do so according to any time frame they saw fit.

B. Permits for Firearms Discharge or Use of Explosives

57. As noted above, laws in at least 27 states established licensing mechanisms to allow firearms and like discharges under certain circumstances. Generally speaking, firearms and discharge licensing pertained to any firearm, not just handguns. From the 1700s to 1860, laws in at least 13 colonies/states assigned discharge licensing authority to local officials. The earliest were in Pennsylvania. In 1713, Philadelphia penalized various activities in the city including "firing a Gun without license."[103] An act pertaining to the entire colony from 1721 imposed "penalties and forfeitures" to anyone who engaged in various activities including firing "any gun or other fire arm" or selling or setting off various types of fireworks "without the governor's

[102] Sam B. Warner, *The Uniform Pistol Act*, 29 J. CRIM. L. & CRIMINOLOGY 529, 530 (1938).
[103] Pennsylvania Archives. Selected And Arranged From Original Documents In The Office Of The Secretary Of The Commonwealth, Conformably To Acts Of The General Assembly, February 15, 1851, & March 1, 1852 Page 160, Image 162 (1852) available at The Making of Modern Law: Primary Sources. 1713.

special license."[104] Another Philadelphia ordinance to prevent "mischief [that] may happen by shooting of guns" or setting off fireworks, criminalized such activities unless individuals first obtained a "governor's special license."[105] A 1750 law did the same for the District of Southwark,[106] as did a colony-wide law also in 1750.[107] In 1824, permission from the president of the board of commissioners was required for anyone seeking to test through firing any gun, cannon, or similar weapons in certain sections of Philadelphia.[108]

58. Charleston, South Carolina enacted an ordinance in 1802 similar to those of Philadelphia where Commissioners of the Streets would grant a license for gun firing and fireworks "at times of public rejoicing" and at specified locations.[109] New Hampshire enacted a discharge permit system for Portsmouth in 1823.[110] New York State enacted a law in 1824 that allowed the Schenectady mayor or other city officials to grant permission for discharge of any

[104] Act of 26th August 1721. [An Act of 9th of February, 1750-51], § 1.
[105] John C. Lowber, Ordinances of the Corporation of the City of Philadelphia; to Which are Prefixed, the Original Charter, the Act of Incorporation, and Other Acts of Assembly Relating to the City; with an Appendix, Containing the Regulation of the Bank of the River Delaware, the Portraiture of the City, as Originally Laid Out by the Proprietor, &c. &c. Page 15-16, Image 18-19 (1812) available at The Making of Modern Law: Primary Sources. 1721.
[106] Ordinances of the Corporation of the District of Southwark and the Acts of Assembly Relating Thereto Page 49, Image 47 (1829) available at The Making of Modern Law: Primary Sources. 1750.
[107] 1750 Pa. Laws 208.
[108] An Act of Incorporation for that Part of the Northern Liberties, Lying between the Middle of Sixth Street and the River Delaware, and between Vine Street and Cohocksink Creek, with Ordinances for the Improvement of the Same Page 51, Image 52 (1824) available at The Making of Modern Law: Primary Sources. 1824.
[109] Alexander Edwards, Ordinances of the City Council of Charleston, in the State of South-Carolina, Passed since the Incorporation of the City, Collected and Revised Pursuant to a Resolution of the Council Page 289, Image 299 (1802) available at The Making of Modern Law: Primary Sources. 1802.
[110] 1823 N.H. Laws 73-74, An Act to Establish a System of Police in the Town of Portsmouth, and for Other Purposes, ch. 34, § 4.

gun or various fireworks.[111] Marietta, Ohio enacted a discharge licensing law in 1823 because of concern that "the quiet of any of the inhabitants may be disturbed, or their lives and safety endangered."[112] New London, Connecticut singled out "some public day of review" in an 1835 law as a permissible reason for issuing a discharge permit,[113] and New Haven enacted a similar law in 1845.[114] The same was enacted for Quincy, Illinois in 1841,[115] Jeffersonville, Indiana in 1855,[116] and Richmond, Virginia in 1859.[117] Such laws were enacted in another 21 states from the end of the Civil War up to the end of the 1800s (not including laws in states enacted both before and after the Civil War: dealers in firearms, Arkansas, California, Colorado, Louisiana, Maine, New Jersey, Oregon, Texas, Vermont, Washington State, West Virginia, Wisconsin, and Wyoming). Most of them applied to specified cities and towns within their states.

C. Hunting Licensing Laws

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[111] Laws of the State of New-York, Relating to the City of Schenectady: And the Laws and Ordinances of the Common Council of the City of Schenectady Page 58, Image 58 (1824) available at The Making of Modern Law: Primary Sources.
[112] The Act of Incorporation, and the Ordinances and Regulations of the Town of Marietta, Washington County, Ohio Page 17-18, Image 17-18 (1837) available at The Making of Modern Law: Primary Sources. 1823.
[113] The By-Laws of the City of New London, with the Statute Laws of the State of Connecticut Relative to Said City Page 47-48, Image 47-48 (1855) available at The Making of Modern Law: Primary Sources. 1835.
[114] 1845 Conn. Acts 10, An Act Prohibiting the Firing of Guns and Other Fire Arms in the City of New Haven, chap. 10.
[115] Samuel P. Church, The Revised Ordinances of the City of Quincy, Ill. to Which are Prefixed the Charter of the City of Quincy, and the Amendment Thereto Page 47, Image 47 (1841) available at The Making of Modern Law: Primary Sources. 1841.
[116] W. G. Armstrong, The Ordinances and Charter of the City of Jeffersonville Page 15-17, Image 15-17 (1855) available at The Making of Modern Law: Primary Sources. 1855.
[117] The Charters and Ordinances of the City of Richmond, with the Declaration of Rights, and Constitution of Virginia Page 227, Image 274 (1859) available at The Making of Modern Law: Primary Sources. 1859.

59. Many early laws criminalized various hunting practices, dating back to the 1600s, for reasons related to protection of private property and lands, conservation, and safety.[118] The states with hunting-related laws listed here all allowed hunting as permitted or authorized by or through a government entity or policy, meaning that the permits or licenses could be withdrawn if the licensees violated whatever rules the laws imposed (such as hunting out of season, or hunting certain types of game). Hunting licensing or permission laws were enacted in at least 12 states from the 1700s through the early 1900s. Two colonies, New Jersey and New York, enacted laws in the 1700s. The rest spanned the 1800s to the early 1900s.

D. Commercial Licensing Laws

60. As noted, commercial licensing laws were enacted in a total of at least 20 states, enacted with 15 states doing so throughout the 1800s, and 9 states doing so in the early 1900s (laws were enacted in some states in both centuries).

61. A remarkably early, if limited, commercial licensing law was enacted by the Connecticut colony in 1642. The law barred the sale or barter of weapons to Indigenous people as well as "to any person inhabiting out of this Jurisdiction" but excepted people who first obtained a license to engage in such transactions from "the particular Court" or "two magistrates"[119] to do so. Strictly speaking, this statute was aimed at any individual who might contemplate such trade, but the focus was on regulating commercial activity, to the extent feasible, in the mid-seventeenth century. (The law did not specify the conditions or circumstances under which such a license might be granted.)

[118] Spitzer, "Gun Law History in the United States and Second Amendment Rights," 73-74.
[119] Act of Dec. 1, 1642, CONN. GEN. STAT. (Brown & Parsons 1850) (Law Passed 1642).

62. An 1814 Illinois measure that made it unlawful for whites to engage in commercial activities with Native Americans for guns, knives, tomahawks, or other items, unless they first obtained a license from the governor.[120] A century later a Chicago ordinance imposed a licensing requirement both on persons or entities to sell concealable weapons, and also a licensing requirement to those seeking to buy them.[121] An 1854 law for San Francisco, California licensed commercial shooting galleries.[122] Indeed, at least 10 of the states in this category enacted shooting gallery licensing requirements, such as an ordinance for Martinsburg, West Virginia in 1876 that required a license issued by the mayor for the opening and maintenance of a pistol gallery.[123] This historical category of law is consistent with the notion that the government could and can regulate the commercial activity of selling and commercially using weapons.

E. Licensing Restrictions on Gunpowder

63. Gunpowder was widely and extensively regulated in the colonies and states. In fact, every state in the country but one enacted one or more gunpowder laws from the seventeenth century through the start of the twentieth century.[124] One element of this regulation

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[120] An Act concerning the Kaskaskia Indians, in Nathaniel Pope, Laws of the Territory of Illinois (1815). 1814. This law is placed under this category because it pertained to white settler commerce; it was not a law that licensed Natives to engage in commerce.
[121] Samuel A. Ettelson, Opinions of the Corporation Counsel and Assistants from May 1, 1915, to June 30, 1916 Page 458-459, Image 458-459 (Vol. 7, 1916) available at The Making of Modern Law: Primary Sources. 1914.
[122] Ordinances and Joint Resolutions of the City of San Francisco; Together with a List of the Officers of the City and County, and Rules and Orders of the Common Council Page 220, Image 256 (1854) available at The Making of Modern Law: Primary Sources. 1854.
[123] J. Nelson Wisner, Ordinances and By-Laws of the Corporation of Martinsburg: Berkeley Co., West Virginia, Including the Act of Incorporation and All Other Acts of a Special or General Nature Page 76, Image 76 (1875) available at The Making of Modern Law: Primary Sources. 1876.
[124] Mark Anthony Frassetto, "The Duty to Bear Arms: Historical Militia Law, Fire Prevention Law, and the Modern Second Amendment," *New Histories of Gun Rights and Regulation: Essays on the Place of Guns in American Law and Society,* Jacob Charles, Joseph Blocher and

was gunpowder licensing; with such licensing laws enacted in at least 22 states from the 1700s through the early 1900s. This pertained directly to the operation of firearms, as gunpowder was indispensable to firearm discharge for most guns through the post-Civil War period.

F. Weapons Sellers Recording Purchases

64. Aside from direct licensing of weapons purchasers by a government official or entity, at least 17 states had laws that required those who sold or otherwise transferred guns (mostly handguns) or other weapons to others to record information about the buyer, with that information to be maintained and subject to possible later examination. This regulatory mechanism put the burden of information collection and maintenance on the seller or dealer, rather than directly on the government, though it served the same purpose: to acquire and maintain information about those who obtained the weapons in question and when, for future reference or inspection by government officials or others. In some instances these requirements existed along with direct governmental licensing.

In 1885, Illinois enacted this registration requirement for weapons dealers:

> All persons dealing in deadly weapons, hereinbefore mentioned, at retail within this State shall keep a register of all such weapons sold or given away by them. Such register shall contain the date of the sale or gift, the name and age of the person to whom the weapon is sold or given, the price of the said weapon, and the purpose for which it is purchased or obtained. The said register shall be in the following form. [Form of Register] Said register is to be kept open for inspection of the public. . . .[125]

Darrell Miller, eds. (NY: Oxford University Press, 2023), 206 (the one state with no gunpowder regulation to be found was Arizona); Saul Cornell and Nathan DeDino, "A Well Regulated Right: The Early American Origins of Gun Control," *Fordham Law Review* 73(2004): 510; Adam Winkler, *Gunfight* (NY: W.W. Norton, 2011), 116-17, 286.

[125] Merritt Starr & Russell H. Curtis, Annotated Statutes of the State of Illinois in Force (1885), Criminal Code Ch. 38, para. 90.

65. With minor variations, this law was typical of such requirements. For example, a 1911 Colorado law offered this detailed set of instructions:

> Every individual, firm or corporation engaged . . . in the- retail sale, rental or exchange of firearms, pistols or revolvers, shall keep a record of each pistol or revolver sold, rented or exchanged at retail. Said record shall be made at the time of the transaction in a book kept for that purpose and shall include the name of the person to whom the pistol or revolver is sold or rented, or with whom exchanged; his age, occupation, residence, and, if residing in a city, the street and number therein where he resides; the make, calibre and finish of said pistol, or revolver, together with its number and serial letter, if any; the date of the sale, rental or exchange of said revolver; and the name of the employee or other person making such sale, rental or exchange. Said record-book shall be open at all times to the inspection of any duly authorized police officer.[126]

66. A 1911 New York law required every person selling any handgun to maintain a register "at the time of sale, the date of sale, name, age, occupation and residence of every purchaser of such a pistol, revolver or other firearm, together with the calibre, make, model, manufacturer's number or other mark of identification on such pistol, revolver or other firearm."[127] The purchaser also had to produce a permit at the time of the transaction, with the seller to note the permit information. Regulations being placed on the sellers of weapons are a historic normality.

G. Licensing Pertaining to Named Groups

67. The licensing of "Named Groups" referenced in Exhibit D includes the granting of weapons licenses to non-state residents, non-citizens, minors, felons, the intoxicated (who stood to lose their licenses), and Native Americans/Indigenous people. Licensing the sale of weapons to Native Americans might seem paradoxical, since white leaders fought protracted conflicts with Natives from the 1600s through the end of the nineteenth century. But whites also

[126] 1911 Colo. Sess. Laws 408, Section 3.
[127] 1911 N.Y. Laws 444-45, An Act to Amend the Penal Law, in Relation to the Sale and Carrying of Dangerous Weapons. ch. 195, § 2.

traded arms with Natives throughout this entire period, as they sought profitability, access to highly desired goods made available by Indians, and security alliances with some Indians through the supplying of weapons. This steady and enduring trade revealed "the high degree of interdependence between Indians and Euro-Americans."[128] At least seven states imposed nine licensing laws pertaining to Indigenous people.

68. As for licensing related to enslaved persons and free persons of color (listed as "Pre-Civil War Blacks" in Exhibit D), it is well understood that white racist regimes before the Civil War were frantic to keep weapons out of the hands of enslaved persons, most specifically because "the South was perpetually terrified of slave revolts."[129] The laws listed here, however, are all instances when enslaved persons or free persons of color were allowed to have possession of weapons under listed, restricted circumstances through licensing in the pre-Civil War era. Some whites who owned enslaved persons sought the convenience of allowing the enslaved to carry weapons for hunting or other purposes designated by, and often under the supervision of, the white owners.

69. Despite assertions that the only pre-twentieth century weapons licensing laws that existed in America pertained to African Americans and Indigenous people,[130] the data presented here demonstrate that, of the many weapons permitting laws enacted during this time, only a very small percent pertained to African Americans: of the 316 permitting laws listed in Exhibit D, 20 (6.3%) enacted in 13 states pertained to African Americans. The nine laws pertaining to Native Americans accounted for fewer than 3% of all licensing laws.

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[128] David J. Silverman, *Thundersticks* (Cambridge, MA: Harvard University Press, 2016), 15-16 and passim.
[129] Carl T. Bogus, *Madison's Militia* (NY: Oxford University Press, 2023), 159. See also 98-107.
[130] David B. Kopel, "Background Checks for Firearms Sales and Loans: Law, History, And Policy," *Harvard Journal on Legislation* 53(Winter 2016), 336.

70. The fact that groups treated as marginalized in prior centuries—especially African Americans and Native Americans—were authorized to gain even limited access to dangerous weapons through licensing may seem incompatible with an otherwise racist tradition aimed at subjugating these groups, but such measures reflect the fact that it was in the interest of whites to allow weapons acquisition to these groups under limited circumstances.

H. Regulatory Taxes

71. Regulatory taxes on weapons, which are defined as "fees imposed by governments on specific activities or behaviors, primarily aimed at discouraging undesirable practices or encouraging compliance with regulations," were enacted in at least nine states.[131] In this category, individual weapons owners were assessed a money tax on various types of weapons they owned with the dual goals of raising revenue but also, in effect, monitoring and regulating the ownership or use of weapons. Failure to pay the tax could result in forfeiture of the weapons in question, or other penalties. For example, an 1867 Alabama law imposed a tax on "all pistols or revolvers in the possession of private persons not regular dealers holding them" of two dollars each, and a three dollar tax on all privately owned "bowie knives, or knives of the like description. . . ." Failure to pay the tax resulted in seizure of the weapons to then be "sold at

[131] "Regulatory Taxes," https://library.fiveable.me/key-terms/ap-macro/regulatory-taxes. Political scientist Theodore J. Lowi identifies regulatory taxes as a governmental technique of control designed not simply to raise revenue but to act as a regulatory mechanism to shape behavior. *The End of the Republican Era* (Norman, OK: University of Oklahoma Press, 1995), 46-47. For example, so-called "sin taxes"—taxes on products like cigarettes, alcohol, or gambling—are designed both to raise revenue but also to discourage or minimize the legal behavior being taxed. "Are Sin Taxes Healthy for State Budgets?" *Pew Trusts*, July 19, 2018, https://www.pewtrusts.org/en/research-and-analysis/reports/2018/07/19/are-sin-taxes-healthy-for-state-budgets. Regulatory taxes (also considered a type of excise tax) can also be understood as mechanisms "to offset the costs associated with regulating public safety." "What are Excise Taxes and How Do They Affect the Federal Budget?" *Peter G. Peterson Foundation,* July 15, 2024, https://www.pgpf.org/article/what-are-excise-taxes-and-how-do-they-affect-the-federal-budget/

public outcry before the court house door. . . ."[132] An 1872 ordinance for the city of Galveston, Texas assessed a tax on the owner of any "pistol or rifle gallery."[133] Note that this law is not listed in the category of the licensing of commercial shooting galleries in Exhibit E because in this instance the regulatory mechanism is the tax rather than a license. Failure to pay the tax would presumably result, sooner or later, in the closure of the establishment. To take a different example, a 1909 Delaware state law assessed a special "license fee" of ten dollars on non-state resident "gunners" that was an increase in the earlier fee. The fee was increased because "our neighboring States charge non-resident gunners a license fee of more than Five Dollars."[134] While this law calls it a license fee, the purpose is to increase the financial burden on non-resident gunners, making it a regulatory tax.

IV. CONCLUSION

72. Gun purchase waiting periods are an artifact of the modern era, but with deep roots in American history and tradition. While the idea of waiting periods as a public policy tool was both beyond contemplation and beyond the reach of the immature and undeveloped American nation-state earlier in history, American society did respond to the intersection of weapons acquisition and problematic behavior similar to the modern policy remedy of waiting periods. And as Jacob Charles has persuasively noted, "the absence of positive law. . . . tells us nothing about what our ancestors thought their elected representatives *could* do."[135] There is no

[132] The Revised Code of Alabama Page 169, Image 185 (1867) available at The Making of Modern Law: Primary Sources. 1867.
[133] Ordinances of the City of Galveston, Taxes – License Tax and Ad-Valorem Tax, Art. 418, § 26.
[134] 1909 Del. Laws 577, House Joint Resolution Providing for Increase in Non-Resident Gunners License Fee, ch. 271.
[135] Jacob D. Charles, "The Dead Hand of a Silent Past: *Bruen*, Gun Rights, and the Shackles of History," 73 *Duke Law Journal* 73(October 2023), 111.

reason to believe that the absence of firearm purchase waiting periods early in American history somehow means that our ancestors would have disapproved of such a policy option now. Far from it, especially considering the inherently modest nature of waiting periods.

73. The examples of old weapons laws pertaining to intoxication and weapons, and old licensing/permitting laws, provide remarkably similar analogs to modern waiting period laws.

74. For historic guns and intoxication laws, "sobering up" might be thought of as the historic equivalent of the modern waiting period "cooling off" period. Intoxication laws and licensing laws both utilized the passage of time.

75. Historic weapons licensing laws contemplated an evaluation process to improve the likelihood that individuals who sought access to firearms did not obtain that access until they were approved to receive a license. No licensing law examined here imposed a time limit for the issuance of a license, and many of these laws gave the license issuer discretion to withdraw said license if, in the judgment of the issuer, the recipient failed to abide by the terms under which the license was issued.

76. When our ancestors in the colonial, post-colonial, and developmental periods of the seventeenth, eighteen, and nineteenth centuries encountered social, behavioral, and other problems with respect to firearms, they responded with public policy techniques appropriate to their time, place, and circumstances. The examples pertaining to alcohol consumption and weapons licensing are all appropriate examples that are analogous to modern waiting period laws.

DECLARATION UNDER PENALTY OF PERJURY
PURSUANT TO 28 U.S.C. § 1746

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on December 23, 2024, at Williamsburg, VA.

Robert J. Spitzer

Dr. Robert Spitzer

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.	)	

DECLARATION OF JOHN J. DONOHUE

I, John J. Donohue, being duly sworn, hereby declare under the penalty of perjury as follows, based on my personal knowledge:

1. I am a citizen of the United States and a resident of California.

2. I am over 21 years of age.

BACKGROUND AND QUALIFICATIONS

3. I am the C. Wendell and Edith M. Carlsmith Professor of Law at Stanford Law School. (A copy of my complete cv is attached as Exhibit A.) After earning a law degree from Harvard and a Ph.D. in economics from Yale, I have been a member of the legal academy since 1986. I have previously held tenured positions as a chaired professor at both Yale Law School and Northwestern Law School. I have also been a visiting professor at a number of prominent law schools, including Harvard, Yale, the University of Chicago, Cornell, the University of Virginia, Oxford, Toin University (Tokyo), St. Gallens (Switzerland), Tel Aviv University, and Renmin University (Beijing).

4. For many years, I have taught a course at Stanford on empirical law and economics issues involving crime and criminal justice, and I have previously taught similar courses at Yale Law School, Tel Aviv University Law School, the Gerzensee Study Center in Switzerland, St. Gallen University School of Law in Switzerland, and the Universidad del Rosario in Bogota, Colombia. Since gun crime is such an important aspect of American criminal justice, my courses evaluate both the nature of gun regulation in the United States and the impact of gun regulation (or the lack thereof) on crime, which is an important part of my research, about which I have published extensively (as reflected in my c.v.). I have also consistently taught courses on law and statistics for three decades.

5. I am a Research Associate of the National Bureau of Economic Research, a Senior Fellow in the Stanford Institute for Economic Policy Research (SIEPR), and an elected member of the American Academy of Arts and Sciences. I was a Fellow at the Center for Advanced Studies in Behavioral Sciences in 2000-01 and served as the co-editor (handling empirical articles) of the *American Law and Economics Review* for six years. I have also served as the President of the American Law and Economics Association and as Co-President of the Society of Empirical Legal Studies.

6. From October 2011 – December 2018, I served on the Committee on Law and Justice of the National Research Council ("NRC"), which "reviews, synthesizes, and proposes research related to crime, law enforcement, and the administration of justice, and provides an intellectual resource for federal agencies and private groups." (See http://www7.national-academies.org/claj/ online for more information about the NRC.)

7. I filed an expert declaration in each of two cases involving a National Rifle Association ("NRA") challenge to city restrictions on the possession of large-capacity

magazines: *Fyock v. City of Sunnyvale*, United States District Court (N.D. Cal.), January 2014; *Herrera v. San Francisco*, United States District Court (N.D. Cal.), January 2014.

8. I also filed an expert declaration in a case involving an NRA challenge to Maryland's restrictions on assault weapons and large-capacity magazines: *Tardy v. O'Malley*, United States District Court (District of Maryland), February 2014.

9. I filed (June 1, 2017) an expert declaration in a case involving a challenge to California's restrictions on carrying of weapons in public in *Flanagan v. Becerra*, United States District Court (C.D. Cal.), Case No. 2:16-cv-06164-JAK-AS.

10. I filed expert declarations on June 4, 2017, and June 16, 2017, in two separate cases challenging California's ban on the possession of large-capacity magazines: *Duncan v. Becerra*, United States District Court (S.D. Cal.), Case No. 17-cv-1017-BEN-JLB and *Wiese v. Becerra*, United States District Court (E.D. Cal.), Case No. 2:17-cv-00903-WBS-KJN. I filed a supplemental declaration in *Duncan* (now *Duncan v. Bonta*) on November 8, 2022.

11. I filed an expert declaration, and provided expert testimony, in a case involving a challenge to New Jersey's restrictions on large-capacity magazines in *Association of New Jersey Rifle & Pistol Clubs, Inc. v. Grewal*, No. 3:18–cv–10507–PGS–LHG (D.N.J.), August 2018. In October 2018, I also filed an affidavit in a case involving a challenge to Vermont's restrictions on large-capacity magazines. *Vermont Federation of Sportsmen's Clubs v. Birmingham*, Superior Court, Washington Unit, Docket No. 224-4-18 Wncv.

12. In August 2019, I testified at trial in a case challenging the University of Missouri's ban of guns on campus: *State ex rel. Schmitt v. Choi*, No. 16BA-CV03144, Circuit Court of Boone County, State of Missouri.

13. I filed an expert declaration in *Chambers v. City of Boulder*, Case No. 2018CV30581, in the District Court of Boulder County in September 2020, involving a challenge to the City of Boulder's restrictions on assault weapons.

14. At the request of the United States Department of Justice, I filed an expert declaration in July 2020 and testified at trial in April 2021 in a case arising out of the Sutherland Springs mass shooting that killed 26 in November 2017: *Holcombe, et al. v. United States*, Case No. 5:18-CV-555-XR (W.D. Tex.). On December 9, 2020, I submitted an expert report on behalf of the City of San Francisco in a wrongful conviction lawsuit, *Caldwell v. City of San Francisco*, Case No. 12-cv-1892 DMR, United States District Court, Northern District of California, Oakland Division. I was deposed in this case on December 16, 2020.

15. I was the main author of the Brief of Amici Curiae Social Scientists and Public Health Researchers in Support of Respondents, which was submitted to the United States Supreme Court on September 21, 2021 in *New York State Rifle & Pistol Association v. Bruen*, Case No. 20-843.

16. I filed expert reports in *Jones v. Bonta*, Case No. 3:19-cv-01226-L-AHG, United States District Court (S.D. Cal.), on June 2, 2021, and March 16, 2023. This case involved a challenge to California's restriction of purchasing long-guns to those who were 21 years of age.

17. On January 24, 2022, I submitted an expert declaration in *Worth v. Harrington*, a lawsuit in the District of Minnesota (Case No. 21-cv-1348) challenging how Minnesota regulates the concealed carry of firearms by individuals aged 18 to 20. I was deposed in this case on March 28, 2022.

18. On May 31, 2022, I submitted an expert declaration in *Meyer v. Raoul*, a lawsuit in the Southern District of Illinois (Case No. 21-cv-518-SMY) challenging how Illinois regulates the concealed carry of firearms by individuals aged 18 to 20.

19. On September 14, 2022, I submitted an expert declaration in *Viramontes v. The County of Cook*, a lawsuit in the Northern District of Illinois (Case No. 1:21-cv-04595) challenging the Blair Holt Assault Weapons Ban enacted by Cook County, Illinois in 2006.

20. On October 13, 2022, I submitted an expert declaration in *Miller v. Bonta*, a lawsuit in the Southern District of California (Case No. 3:19-cv-01537-BEN-JLB) challenging how California regulates assault weapons. This report supplemented my earlier work in that case which involved submission of an expert declaration on January 23, 2020, followed by testimony on October 23, 2020 during an evidentiary hearing on the Plaintiffs' motion for a preliminary injunction.

21. On January 6, 2023, I submitted an expert declaration in *Rupp v. Bonta*, a lawsuit in the Central District of California (Case No. 8:17-cv-00746-JLS-JDE) challenging how California regulates assault weapons.

22. On January 6, 2023, I submitted an expert declaration in *State of Vermont v. Misch*, Criminal Division, Docket No. 173-2-19 Bncr, in a case challenging magazine-size restrictions for handguns and long guns.

23. On January 26, 2023, I submitted two expert declarations: 1) in *NAGR v. Lamont,* Case No. 3:22-cv-01118, a case challenging Connecticut's restrictions on assault weapons and limits on magazine size, and 2) in *NAGR v. Campbell*, Civil Action No. 1:22-cv-11431-FDS, U.S. District Court for the District of Massachusetts, a similar case involving the comparable restrictions in Massachusetts.

24. On February 27, 2023, I submitted an expert report in *Herrera v. Kwame Raoul, et al*., 23 CV 0532, in the U.S. District Court for the Northern District of Illinois, Eastern Division. This case also involved a challenge to the restrictions in Illinois on assault weapons and magazine size.

25. In February 2024, I submitted an expert report in *Vermont Federation of Sportsmen's Clubs v. Birmingham*, 2:23- CV-710, in the U.S. District Court for the District of Vermont in a case challenging the state's restrictions on high-capacity magazines and its waiting period law.

26. On May 14, 2024, I submitted an expert report in *Virginia Citizens Defense League v. City of Roanoke*, Case No. CL 24-0074 in the Circuit Court of the City of Roanoke, Virginia, which involved a challenge to an ordinance that restricted the possession and carrying of guns in city parks.

SUMMARY OF CONCLUSIONS

27. It is a sound, evidence-based, and longstanding harm-reducing strategy virtually uniformly embraced throughout the developed world for governments to place constraints on the purchase of firearms. Maine's modest 72-hour purchase-delay law sits comfortably in this appropriate regulatory approach and can be expected to reduce firearm deaths and injuries. Substantial empirical evidence illustrates that waiting periods prior to the purchase of weapons such as those enacted by Maine will reduce suicides – particularly among young adults – and would be expected to reduce the risk of the type of episodes seen in recent years of enraged individuals buying firearms on the way to commit mass violence and other criminal acts.

28. The limited purchase-delay restriction imposed by the state of Maine that is challenged in this litigation is well-tailored to protect the citizens of the state from impulsive misconduct with a weapon, whether directed at the firearm purchaser or others. Given the very brief duration of the restriction and the evidence that gaining access to a firearm *increases* the

risk of homicide and suicide, the law in question is likely to have little or no negative impact to offset its clear social benefits. Indeed, these factors establish that Maine's law is one of those "wise restraints that make men free."[1]

29. It should be emphasized that the empirical evidence indicates that increased gun carrying by the untrained public rarely generates any benefit in thwarting crime and is indeed self-defeating since it generates substantial increases in violent crime.[2]

30. The empirical evidence on laws requiring waiting periods for transfers of firearms indicates that waiting periods substantially reduce suicides – particularly for those under the age of 35. This is a noteworthy finding given the increasing rates of suicide over the last twenty years, particularly among the young.

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[1] Harvard Law Professor John MacArthur Maguire composed this declaration, which has been used by Harvard Presidents when conferring degrees at Commencement since the late 1930s: "You are ready to aid in the shaping and application of those wise restraints that make men free." https://asklib.law.harvard.edu/faq/115309.

[2] See Donohue, John, Abhay Aneja, and Kyle Weber, 2019, "Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Control Analysis," *Journal of Empirical Legal Studies*, https://onlinelibrary.wiley.com/doi/full/10.1111/jels.12219. The amicus brief submitted to the United States Supreme Court on behalf of "Social Scientists and Public Health Researchers in Support of Respondents" in *New York State Rifle & Pistol Association v. Bruen*, September 21, 2021, further discusses the evidence that right-to-carry laws increase violent crime, citing 14 studies that had so found in the five previous years.

Since that brief was submitted, five additional empirical studies have confirmed the conclusion that increased gun carrying *increases* violent crime: Van Der Wal, W. M. (2022). Marginal Structural Models to Estimate Causal Effects of Right-to-Carry Laws on Crime. *Statistics and Public Policy*, 9(1):163–174.; Doucette, M. L., Ward, J. A., McCourt, A. D., Webster, D., and Crifasi, C. K. (2022). "Officer-Involved Shootings and Concealed Carry Weapons Permitting Laws: Analysis of Gun Violence Archive Data, 2014–2020." *Journal of Urban Health*, pages 1–12.; Donohue, J. J., Cai, S. V., Bondy, M. V., and Cook, P. J. (2022). "More Guns, More Unintended Consequences: The Effects of Right-to-Carry on Criminal Behavior and Policing in US Cities." Working paper no. 30190, National Bureau of Economic Research; Doucette, M. L., McCourt, A. D., Crifasi, C. K., & Webster, D. W. (2023). Impact of Changes to Concealed Carry Weapons Laws on Fatal and Non-Fatal Violent Crime, 1980-2019. *American Journal of Epidemiology*, 192(3):342–355 ("Shall-Issue CCW law adoption was associated with a 9.5% increase in rates of assaults with firearms during the first 10-years post-law adoption"). Stansfield, R., Semenza, D. & Silver, I., (2023) The Relationship between Concealed Carry Licenses and Firearm Homicide in the US: A Reciprocal County-Level Analysis. *Journal of Urban Health* ("increases in the number of CCWs in 2010–2017 were statistically associated with increases in total gun homicide in 2011–2018…. Far from concealed carry making people safer, our model finds acute safety risks associated with expansion of legal firearm carrying.")

Surveying the entire body of research, the RAND Corporation has concluded – at its highest level of evidentiary support – that RTC laws increase "total homicides, firearm homicides, and violent crime." RAND Corporation, Effects of Concealed-Carry Laws on Violent Crime, updated July 16, 2024, https://www.rand.org/research/gun-policy/analysis/concealed-carry/violent-crime.html.

DISCUSSION

31. By a wide margin, most Americans do not own guns. According to recent survey data, 70 percent of all American adults do not own any firearm, consistent with the widespread understanding that such weaponry is not essential to their safety or important for their self-defense.[3]

32. For decades, evidence has been building that firearm accessibility in the home *increases* rather than decreases the risk of homicide victimization and suicide (Anglemyer, Horvath, and Rutherford 2014).[4]

33. A recent, meticulous study with extraordinarily detailed individual data from 2004–2016 has powerfully confirmed this conclusion.[5] In this study, David Studdert and his coauthors were able to assess how the risk of homicide was influenced by having guns in the home by observing almost 600,000 California residents who transitioned from being without a gun in the home to being with someone who did. This transition led to a considerably higher risk of dying by homicide.

34. Studdert et al. (2022) used extended Cox proportional hazard models adjusted for cohort members' gender, age, racial and ethnic group, and, partially, the presence of a long gun in the home to examine the impact of gun possession. The models allowed the baseline hazard to vary by census tract, ensuring that people who resided with handgun owners (exposed) were compared only with people living in gun-free homes (unexposed) in the same small

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[3] This is the finding of a June 2021 survey of 10,606 adults by the Pew Research Center. https://www.pewresearch.org/fact-tank/2021/08/04/wide-differences-on-most-gun-policies-between-gun-owners-and-non-owners-but-also-some-agreement/.

[4] Anglemyer A, T . Horvath, and G. Rutherford. 2014. The accessibility of firearms and risk for suicide and homicide victimization among household members: a systematic review and meta-analysis. Annuals of Internal Medicine, 160:101–110.

[5] Studdert, David M., Yifan Zhang, Erin E. Holsinger, and Lea Prince. 2022. Homicide deaths among adult cohabitants of handgun owners in California, 2004 to 2016. Annals of Internal Medicine, June. doi:10.7326/M21-3762.

neighborhood. In this way, the study adjusted for local factors, such as crime rates and economic conditions, that might otherwise have confounded the relationship of interest. In other words, bringing a gun in the home elevates the risk of death, thereby undermining the view that private gun purchases on balance protect household members from homicidal victimization.

35. Cook and Ludwig (2006) sort out the causal link between gun prevalence and homicide in a county-level panel data analysis for the period 1980–1999.[6] They summarize their primary finding as follows:

> In sum, gun prevalence is positively associated with overall homicide rates but not systematically related to assault or other types of crime. Together, these results suggest that an increase in gun prevalence causes an intensification of criminal violence—a shift toward greater lethality, and hence greater harm to the community. (387).[7]

Waiting Period Laws Clearly Save Lives

36. Strong empirical evidence shows that Maine's 72-hour waiting period for acquiring firearms is a reasonable measure that will reduce the number of suicides. There can be no doubt that suicide is a serious and growing problem. About a quarter of the American adult population in 2022 struggles with mental illness -- a rate that has grown by nearly 25% since 2012.[8] At the same time, the number of Americans who died at the hands of a firearm[9] also increased a staggering 44% between 2012 and 2022, up to 48,222 people. Importantly, firearm suicide remains the leading cause of firearm deaths in the US. Of the 48,222 firearm deaths in 2022, nearly 60% were suicides. Of the 49,513[10] Americans who died by suicide in 2022, 27,040 used

[6] Cook, Philip J., and Jens Ludwig. 2006. The social costs of gun ownership. *Journal of Public Economics*, 90 (1–2): 379–391. https://doi.org/10.1016/j.jpubeco.2005.02.003.

[7] Cook and Ludwig provide further affirmation of the strength of this relationship. Cook, Philip J., and Jens Ludwig. 2019. The social costs of gun ownership: A reply to Hayo, Neumeier, and Westphal. *Empirical Economics* 56 (1): 13–22. https://doi.org/10.1007/s00181-018-1497-5.

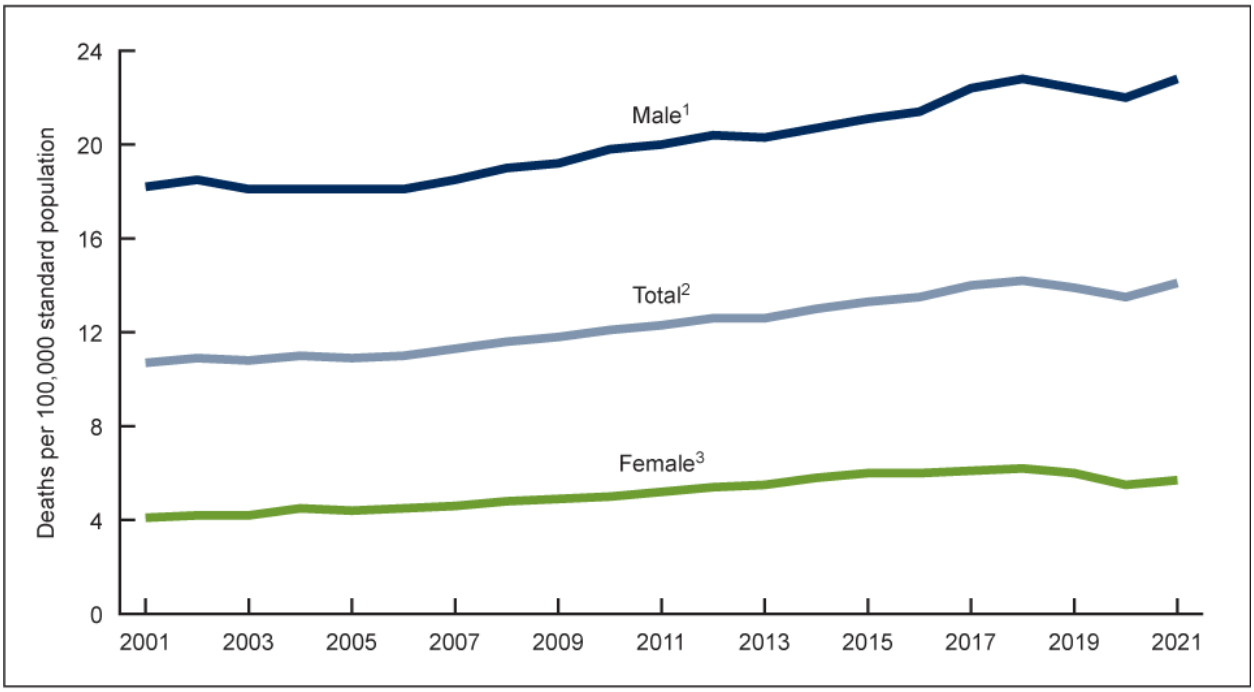
[8] https://www.samhsa.gov/data/report/behavioral-health-trends-united-states-results-2014-national-survey-drug-use-and-health.

[9] https://wonder.cdc.gov/mcd.html.

[10] https://wonder.cdc.gov/mcd.html.

a firearm. The tragic pattern of increasing overall suicide rates – adjusted for the age of the population – is well illustrated in this graphic from the CDC.[11]

Figure 1. Age-adjusted suicide rates, by sex: United States, 2001–2021



[1]No statistically significant trend from 2001 through 2006; significant increasing trend from 2006 to 2018; no statistically significant trend from 2018 through 2021, $p < 0.05$. The rate in 2021 was significantly higher than the rate in 2020, $p < 0.05$.
[2]No statistically significant trend from 2001 through 2006; significant increasing trend from 2006 to 2018, with different rates of change over time; no statistically significant trend from 2018 through 2021, $p < 0.05$. The rate in 2021 was significantly higher than the rate in 2020, $p < 0.05$.
[3]Significant increasing trend from 2001 to 2017; significant decreasing trend from 2017 through 2021, $p < 0.05$. The rate in 2021 was significantly higher than the rate in 2020, $p < 0.05$.
NOTES: Suicide deaths are identified using *International Classification of Diseases, 10th Revision* underlying cause-of-death codes U03, X60–X84, and Y87.0. Age-adjusted death rates are calculated using the direct method and the 2000 U.S. standard population. Access data table for Figure 1 at: https://www.cdc.gov/nchs/data/databriefs/db464-tables.pdf#1.
SOURCE: National Center for Health Statistics, National Vital Statistics System, Mortality.

[11] https://www.cdc.gov/NCHS/IMAGES/DATABRIEFS/451-500/DB464-FIG1.PNG.

37. This ominous trend is naturally a subject of substantial public policy concern and a significant justification for state action to try to reduce the alarming and rising death toll from suicide. In evaluating a purchase-delay law, it is important to note that a major 1999 study found that, "[i]n the first week after the purchase of a handgun, the rate of suicide by means of firearms among purchasers (644 per 100,000 person-years) was 57 times as high as the adjusted rate in the general population."[12]

38. A second important study by Studdert et al. (2020) articulates the crucial elements that make firearm access such an important risk factor for suicide:

> Suicide attempts are often impulsive acts, driven by transient life crises. Most attempts are not fatal, and most people who attempt suicide do not go on to die in a future suicide. Whether a suicide attempt is fatal depends heavily on the lethality of the method used, and firearms are extremely lethal.[13]

Of critical importance is the fact that if one can divert a despondent individual from access to a firearm during a transient life crisis, the chance that the individual will survive and avoid future suicide is highly elevated.

39. Studdert et al. (2020) meticulously examined data on all California adults to see how gun acquisition would influence their likelihood of dying by suicide. The authors summarize their findings as follows:

> In this study of firearm ownership and mortality in a cohort of 26.3 million adult residents of California, we found an elevated risk of suicide among a large sample of first-time handgun owners. This risk was driven by a much higher rate of suicide by firearm -- not by higher rates of suicide by other methods. Handgun owners' risk of

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[12] Garen J. Wintemute et al., *Mortality Among Recent Purchasers of Handguns*, 341 N.E. J. of Medicine 1583, 1583 (1999), *available at* https://bit.ly/3kEMaEo.

[13] David Studdert et al., "Handgun Ownership and Suicide in California," *New England J Med* (2020); 382:2220-9, at 2221, DOI: 10.1056/NEJMsa1916744. Specifically, firearm suicide attempts are fatal about 85% of cases, while the fatality rates for other methods of attempted suicide are only 9%. Miller, M., Azrael, D. and Barber, C. (2012). "Suicide mortality in the United States: the importance of attending to method in understanding population-level disparities in the burden of suicide," *Annual Review of Public Health*, vol. 33(April), pp. 393–408. Importantly, the vast majority of survivors of an attempted suicide, do not later die from suicide. Owens, D., Horrocks, J. and House, A., "Fatal and non-fatal repetition of self-harm: systematic review," *British Journal of Psychiatry*, vol. 181(3), pp. 193–9 (2002).

> suicide by firearm peaked in the period immediately after their first handgun acquisition.…[14]

40. Examining data from 1977-2014, a 2017 study concluded that waiting period laws reduced firearm suicides by 7.4 percent and had no impact on non-gun suicide.[15] The same reduction in the 158 firearm suicides in Maine in 2021 would have saved 12 lives in one year.[16] Nationally, reducing the 27,040 gun suicides in 2022 by 7.4 percent would save 2001 lives. In other words, a waiting period alone would save dramatically more lives by a very wide margin than any plausible estimate of the impact of all defensive gun use across the nation.[17]

41. My own recent research (with my coauthors) has examined the impact of firearm waiting period (or "purchase delay") laws on suicide by adults (those over 21) for the period from 1987-2019.[18] Our analysis considered the full range of state waiting period laws as well as a federal waiting period law that went into effect in 1994 when the Brady Act[19] established a 5-day waiting period on some firearm transactions in certain states and then ended in 1998. We find that these laws – even when they delay gun purchases for as little as 48 hours – are able to disrupt suicidal ideation and thereby significantly decrease firearm suicides. Specifically, we estimate that waiting period laws reduce suicides by 21–34-year-olds by 6.1 percent.

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[14] *Id*. at 2226.

[15] *See* Luca, Michael, Deepak Malhotra, and Christopher Poliquin. 2017. "Handgun waiting periods reduce gun deaths." *PNAS*, 114(46): 12162–12165, Table 1, column 3.

[16] Maine Center for Disease Control and Prevention, "Report to the Legislature," February 2023, https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=181957.

[17] Another study that examines the link between waiting periods and suicide is Edwards, Griffin, Erik Nesson, Joshua Robinson, and Frederick Vars. 2017, "Down the Barrel of a Loaded Gun: The Effect of Mandatory Handgun Purchase Delays on Homicide and Suicide." *The Economic Journal*, 128(616): 3117–3140. This study is based on a slightly shorter data period than Luca, Malhotra, and Poliquin, supra n. 15, using 1990-2013, and it again finds that waiting period laws lead to a statistically significant 2-5 percent reduction in the rate of firearm suicide.

[18] John J. Donohue, Samuel V. Cai & Arjun Ravi, "Age and Suicide Impulsivity: Evidence from Handgun Purchase Delay Laws," NBER Working Paper 31917 (2023), https://www.nber.org/papers/w31917.

[19] https://www.atf.gov/rules-and-regulations/brady-law.

42. The particular vulnerability of young individuals to suicide is underscored by the fact that in 2021 over half of 18-25-year-olds suffered from mental illness, engaged in illicit substance abuse, binge drinking or heavy alcohol use, or had serious thoughts of suicide.[20]

43. Moreover, a study[21] of suicides in Illinois between 2005 and 2010 revealed that the circumstances surrounding and risk factors contributing to suicide differ substantially by age group.[22] School problems are a major contributor to youth suicide. Employment problems and alcohol dependence are most common among middle aged people who die by suicide. Indeed, our study shows that waiting period laws are particularly impactful at preventing suicide among younger adults because suicidality is often more impulsive for this group. If a particularly lethal mechanism like a gun is readily available, many despondent individuals with what could be a merely passing moment of despair will end up committing suicide when a lapse of time would be enough to dissuade or divert them from such an irreversible action.

44. This fact was underscored when a simple policy shift in the behavior of members of the Israeli military led to a 40 percent reduction in suicides by young members of the military. Prior to the shift, Israeli soldiers would carry the weapons when they went home for weekend leave. Momentary stressors on these weekend leaves, often when the soldiers had been drinking, led to a substantial number of suicides using their service weapons. When the policy shifted in 2006 and soldiers were instructed to leave their weapons at their bases when headed home for

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[20] SAMHSA (Substance Abuse and Mental Health Services Administration). 2021. Key substance use and mental health indicators in the United States: Results from the 2020 National Survey on Drug Use and Health. Rockville, MD: SAMHSA; https://www.samhsa.gov/data/sites/default/files/reports/rpt39443/2021NSDUHNNR122322/2021NSDUHNNR122322.htm#execsumm.

[21] https://journals.lww.com/jtrauma/fulltext/2016/10001/suicide_in_illinois,_2005_2010__a_reflection_of.7.aspx.

[22] McLone, Suzanne G.; Loharikar, Anagha; Sheehan, Karen,; Mason, Maryann, "Suicide in Illinois, 2005–2010: A reflection of patterns and risks by age groups and opportunities for targeted prevention," *Journal of Trauma and Acute Care Surgery* 81(4):p S30-S35, October 2016. | *DOI:* 10.1097/TA.0000000000001141.

weekend leave, there was a highly statistically significant 40 percent drop in suicides among soldiers aged 18-21. Suicides in this age group had averaged 28 per year in the three years prior to the policy shift and fell to an average of 16.5 per year after the change.[23] This brief delay in access to weapons at a vulnerable moment reduced weekend suicides, and yet led to no offsetting increase in suicides when the soldiers were back on base with access to guns. This experience underscores the benefit from stopping someone from impulsively attempting suicide with the most lethal modality.

45. Given the array of benefits that flow from firearm waiting period laws, it is not surprising that Americans consistently and overwhelmingly support the adoption of these laws. The latest Gallup Poll inquiring into this support found that 77 percent of American adults favor "Enacting a 30-day waiting period for all gun sales."[24] This support evokes the famous statement by former U.S. Supreme Court Chief Justice Warren Burger who was asked on the 200th Anniversary of the Bill of Rights if he supported a proposed five-day federal waiting period for gun purchases. Burger replied that "I am very much against it. It should be 30 days waiting period…."[25]

46. Burger emphasized that additional time to evaluate gun purchasers could be effective in reducing the risk of substantial firearm violence. Indeed, in the horrific Charleston, South Carolina church shooting of June 17, 2015, we saw how prescient Burger was. On that date, Dylann Roof, who had patiently waited until his 21st birthday to buy a gun, fired a total of

[23] Gad Lubin et al., "Decrease in Suicide Rates After a Change of Policy Reducing Access to Firearms in Adolescents: A Naturalistic Epidemiological Study," *Suicide and Life-Threatening Behavior*, 2010, 40(5):421-24, https://www.academia.edu/96400821/Decrease_in_suicide_rates_after_a_change_of_policy_reducing_access_to_firearms_in_adolescents_a_naturalistic_epidemiological_study.

[24] This Gallup Poll result from a survey conducted over the period June 1-20, 2022, mimicked previous Gallup Poll results. https://news.gallup.com/poll/1645/guns.aspx.

[25] Warren Burger discussing the Second Amendment on its 200th Anniversary on the MacNeil/Lehrer News Hour, December 16, 1991, at minute 1:12. https://www.youtube.com/watch?v=hKfQpGk7KKw.

approximately 77 rounds at the Emanuel African Methodist Episcopal Church in Charleston, killing nine people during a Bible study session.[26] Had federal law allowed a full investigation of Roof's background they would have realized he was a prohibited purchaser, and his ability to purchase a gun would have been curtailed. Unfortunately, federal law did not mandate the completion of the background check, which enabled Roof to buy the weapon he used for the mass killing.

47. The wisdom of Burger's remarks is also underscored by the events of March 16, 2021, when an unhinged 21-year-old killed eight in Atlanta. The shooter had legally bought a 9-millimeter handgun in a gun shop on the very day of the shooting — so that he could commit mass murder. Thankfully, when police released a picture of the assailant from video footage, his parents contacted authorities, leading to his capture before he achieved his intended goal of killing more in Florida.[27] How much better for all involved if he had not been able to take possession of a gun when he was in a distressed and vulnerable state? A waiting period would have provided an opportunity for the shooter's immediate mental health crisis — he had just been thrown out of his home by his parents — to pass, potentially saving many lives.

Comments on Some of The Plaintiffs' Allegations

48. In the face of the clear contrary evidence from the United States and around the world, Plaintiffs' motion for preliminary injunction overstates the potential benefit of firearms as a means of self-defense. First, it is worth noting that in the vast majority of cases, when an individual in the United States is confronted by violent crime, they do *not* use a gun for self-defense. Specifically, over the period 2007-2011, when roughly 6 million violent crimes

[27] Kate Brumback, *Atlanta-Area Shootings Leave 8 Dead, Many of Asian Descent*, WHYY (Mar. 16, 2021), https://whyy.org/articles/georgia-massage-parlor-shootings-leave-8-dead-man-captured.

occurred each year, data from the National Crime Victimization Survey shows that the victim did not defend with a gun in 99.2 percent of these incidents – this in a country with 350 million or more guns in civilian hands. In other words, a gun is used in self-defense about 0.8 percent of the time when someone is attacked in the United States.

49. In my view, some of the comments in the Plaintiffs' Complaint and Motion for Preliminary Injunction badly misrepresent the relationship between guns, crime, and citizen safety. For example, the statement in ¶ 3 of the Complaint that "One need look no further than the Plaintiffs in this case to see the devastating effect that Section 2016 has had on law-abiding citizens in Maine." The alleged "devastating impact" is that Plaintiff Andrea Beckwith is unable to send women home with a gun as soon as she meets them. If it took a few days to provide "the training needed to safely operate and store" a weapon, the waiting period would have no impact. Giving stressed women and men who have little or no training in firearm use immediate access to a weapon is unlikely to advance their safety or the safety of their family and community as the discussion of the overall effects of gun ownership discussed above makes clear.

50. ¶ 5 of the Complaint then asserts abused women will not be able to secure weapons while their abusers will already have them, but federal law already prohibits possession of firearms by or transfer of firearms to persons subject to certain protection from abuse orders and persons convicted or under indictment for certain crimes of domestic violence. Given the unequivocal research findings described above, the thought that providing untrained, stressed individuals with guns will lead to socially beneficial outcomes has no empirical support.

51. ¶ 1 of the Complaint asserts that a 72-hour waiting period law would have been "unimaginable at the founding." Indeed, the thought of imposing a waiting period to purchase guns likely was unimaginable at the founding because it was completely unnecessary. There was

a built-in waiting period for everyone who purchased a gun in 1791 because of issues of travel time, scarcity of gun parts, and the time it took to make a gun. The world today allows almost unlimited access to weaponry within minutes because there are far more licensed gun sellers than the combined number of McDonald's and Starbuck's stores. It is this capacity to turn a momentary suicidal impulse or fleeting homicidal ideation into a horrible tragedy that leads prudent legislatures to enact waiting period laws designed to limit these avoidable harms.

52. The Complaint goes on to state:

> While these waiting periods helped facilitate investigations into the purchaser, they also came at a significant cost to law-abiding citizens. In 2015, a New Jersey woman was fatally stabbed by her ex-boyfriend (against whom she had a restraining order) while waiting for the state to process her application to own a handgun. Greg Adomaitis, N.J. gun association calls Berlin woman's death an 'absolute outrage', NJ.com (June 5, 2015), https://tinyurl.com/mn32h8f. And in Wisconsin, a woman was killed by her stalker before she could take possession of the handgun she was attempting to purchase. See Kopel, supra, at 309-10.

These highly contentious claims need to be addressed.

53. Beginning with the final sentence about a Wisconsin woman killed by her stalker, it is important to note that the claim that she was "attempting to purchase" a gun has been widely discredited, specifically by the brother of the deceased Wisconsin woman. The case dates back to 1991, when a husband killed his wife, and two children, and a gun rights activist claimed that the woman had contacted him about getting a gun the day before she was killed at a time when Wisconsin had a 48-hour waiting period. The gun rights activist had no proof that the victim had ever contacted him, and the woman's brother said she would never have contacted such a person, nor would she have ever sought to buy a gun. Nonetheless, the improbable tale is repeated by gun advocates without any mention of the strong grounds for disbelief.[28]

[28] Michael Daly, "Scott Walker's Gun Bill Is Based on a Lie," Daily Beast, June 26, 2015, https://www.thedailybeast.com/scott-walkers-gun-bill-is-based-on-a-lie/. Another implausible claim concerns a

54. The other case that the Complaint alludes to is a case where a New Jersey woman was killed in June 2015 after starting the process to procure a state handgun application in April. The type of 72-hour waiting period that Maine has adopted would have made no difference in the New Jersey case since the woman would have readily gotten the gun in mid-April, long before she was killed. Equally importantly, it should be emphasized that it is highly speculative that the New Jersey woman would have avoided death had she gotten her gun more promptly. This woman (Carol Bowne) had just returned home when was "ambushed" as she walked from her vehicle toward the house and stabbed to death by an attacker who "came out of nowhere." Most homicidal attackers surprise their victims, which is part of the reason why armed self-defense in response to a violent attack is so rare in a country with 350 million guns.

55. Even highly trained army veterans have been victimized by sudden attacks despite being full armed. For example, on February, 2013 in Texas, Chris Kyle (the *American Sniper)*[29] and Chad Littlefield, who were aware their killer was a threat, were shot 6 and 7 times each by the 25 year old killer, and they never got their guns out of their holsters. Similarly, when Philadelphia permit holder Louis Mockewich shot and killed a popular youth football coach over a dispute concerning snow shoveling in January 2000, the coach was also a permit holder carrying his gun, which he never got out of his holster.[30]

56. In other words, against the empirical evidence showing that waiting period laws could save thousands of lives nationally each year, the plaintiffs only offer two unconvincing

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survey that John Lott claimed to have conducted about defensive gun use. The esteemed sociologist Otis Dudley Duncan and Northwestern Law Professor James Lindgren were skeptical that the survey was actually conducted, and when they wrote of their concerns, a former NRA board member supported Lott by saying he (the board member) had been surveyed. The chance that an NRA board member would be captured in a nationally representative random sample is highly remote. Mike Spies, "The Right's Favorite Gun Researcher," *The Trace*, Nov. 3, 2022, https://www.thetrace.org/2022/11/john-lott-gun-crime-research-criticism/.

[29] https://en.wikipedia.org/wiki/American_Sniper_(book).

[30] Gibbons, Thomas, & Robert Moran (2000) "Man Shot, Killed in Snow Dispute," *Philadelphia Inquirer*. https://www.newspapers.com/article/the-philadelphia-inquirer-m-kirkpatrick/58685890/.

anecdotes drawn from across the nation over the last 33 years. The plaintiffs have provided no evidence of any "substantial cost" associated with Maine's waiting period.

57. As I explained in a chapter in *The Oxford Handbook of Evidence-Based Crime and Justice Policy*,

> The best evidence on the percentage of crimes in which a victim does use a gun defensively is less than 0.9% of the time that victims are confronted by criminals. Interestingly, … the NCVS data revealed an identical but extremely low percentage of defensive gun uses for both 1992-2001 as well as for 2007-2011. This constant and low percentage is telling because it shows that as RTC [right-to-carry gun] laws expanded greatly across the nation, there was absolutely no increase in the likelihood that a potential victim would defend against crime with a gun. Specifically, in the first period from 1992 to 2001, 41% of the population lived in states with RTC (or permitless carry) laws. By the second period, this percentage had jumped to 67%—a 63% increase in the proportion of the country living in RTC states. And yet this massive increase in gun carrying did nothing to elevate the overall likelihood of defensive gun use, which was at exactly the same low rate it had been in the earlier period.[31]

58. As one of the greatest historians of Colonial America – Jack Rakove, Pulitzer-Prize Winning Historian, and Coe Professor of History and American Studies, Stanford University – indicated in discussing this issue:

> [O]ur modern assumptions about the protective value of firearms presuppose facts that the adopters of the Second Amendment would not have shared. As Randolph Roth, the leading historian of American homicide, has demonstrated, firearms were not the weapon of choice for anyone needing to protect himself or his family from some imminent danger. The primitive guns of the founding era were unreliable and hard to use. Only in the late 19th and early 20th century would revolvers and then semi-automatic weapons acquire their terrifying effectiveness.[32]

Conclusion

59. The problem of firearm homicide in the United States is socially damaging and growing worse. No one measure is adequate to address this scourge, but a combination of sound

[31] Donohue, "Applying What We Know and Building an Evidence Base: Reducing Gun Violence," 2023, in Brandon C. Welsh, Steven N. Zane, and Daniel P. Mears, eds., *The Oxford Handbook of Evidence-Based Crime and Justice Policy*.

[32] Jack Rakove, "The Justices Are Bad Gun Historians," *The Wall Street Journal*, November 4 - 5, 2023.

DECLARATION UNDER PENALTY OF PERJURY
PURSUANT TO 28 U.S.C. § 1746

I declare that the foregoing is true and correct under penalty of perjury under the laws of the United States.

Executed on December 27, 2024

John J. Donohue

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