No. 25-1160

IN THE 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; A&G SHOOTING,
Plaintiffs-Appellees,

v.

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

On Appeal from the United States District Court
for the District of Maine
Case No. 1:24-cv-00384-LEW
Chief District Judge Lance E. Walker

BRIEF OF AMICI CURIAE STATE OF MONTANA, 26 OTHER STATES, AND THE ARIZONA LEGISLATURE SUPPORTING PLAINTIFFS-APPELLEES

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INTERESTS OF AMICI CURIAE

Just a few years ago, this Court reminded lower courts that the right to keep and bear arms "is not 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.'" *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 70 (2022) (quoting *McDonald v. City of Chi.*, 561 U.S. 742, 780 (2010) (plurality op.)). Yet courts across the country continue to defer to legislative "judgments regarding firearm regulations" despite *Bruen*'s declaration that "judicial deference to legislative interest balancing … is not [the] deference that the [Second Amendment] demands." *Id.* at 26. But not here: the district court deferred to the balance struck by the American people—"'the right of law-abiding, responsible citizens to [acquire] arms' for self-defense." *Id.* (quoting *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008)).

Bruen's analogical inquiry requires courts to determine whether a modern and historical regulation are "relevantly similar"—that is, whether they impose a comparable burden and are comparably justified. *See United States v. Rahimi*, 602 U.S. 680, 692 (2024). To ensure that courts properly employ the "nuanced approach" that *Bruen*'s analogical inquiry requires, the States of Montana, Alabama, Alaska, Arkansas,

Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wyoming, and the Arizona Legislature ("Amici States") submit this amicus brief in support of Plaintiffs-Appellees and urge this Court to affirm the decision below.

STATEMENT OF THE CASE

In April 2024, Maine passed a waiting-period law that prohibited sellers from knowingly delivering a firearm to a buyer "sooner than 72 hours after the agreement." 2024 Me. Legis. Serv. ch. 678, 25 M.R.S.A. §2015(2) (S.P. 958) (L.D. 2238). Plaintiffs—who are Maine citizens and businesses, as well as federally licensed firearm dealers—sued Attorney General Frey, arguing that the waiting-period law violated the Second Amendment and seeking preliminary injunctive relief.[1] Add.2 & n.2. The district court entered the preliminary injunction, finding that the "acquisition of firearms is covered by the Second Amendment's plain text," *see*

[1] For ease of reference, this brief refers to Plaintiffs-Appellees as "Beckwith" and Defendant-Appellant as "Maine" unless otherwise indicated.

Add.5-11, and that the law's "cooling-off period is inconsistent with the Nation's historical tradition of firearm regulation," *see* Add.11-16.

SUMMARY OF ARGUMENT

Maine's waiting-period law addresses a problem—human impulsivity—that has existed since the Founding, yet Maine failed to produce any "distinctly similar" Founding-era or Reconstruction-era laws supporting its law. *See Bruen*, 597 U.S. at 26-27. Maine's failure to do so should be dispositive. But even if Maine's law addresses an "unprecedented societal concern" involving "dramatic technological changes,"—it doesn't—the district court rightly found that Maine's proposed analogues aren't "relevantly similar." *See Rahimi*, 602 U.S. at 692. This Court should reject the request by Maine's *amici* to resurrect the interest-balancing *Bruen* rejected.

ARGUMENT

After *Bruen*, courts must determine whether "the Second Amendment's plain text covers an individual's conduct." 597 U.S. at 24. If it

does, "the Constitution presumptively protects that conduct."[2] *Id.* And here, the Amendment's plain text "protects [Beckwith's] proposed course of conduct—[acquiring] handguns … for self-defense." *Id.* at 32. To justify its waiting-period law, Maine must show that it is "consistent with this Nation's historical tradition of firearm regulation"—only then "may a court conclude that [Beckwith's proposed] conduct falls outside the Second Amendment's 'unqualified command.'" *Id.* at 24 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.10 (1961)).

Bruen's historical inquiry varies based on whether a challenged regulation addresses a longstanding or new "societal problem." *Id.* at 27-28. Whether the "societal problem" is old or new, courts must compare modern regulations with similar historical regulations. The only difference is the fit necessary to show that a modern regulation aligns with our Nation's historical tradition of firearm regulation. *See id.* When a modern

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[2] The district court rightly rejected Maine's attempt to reframe Beckwith's conduct as the right to the "immediate purchase of firearms." Add.8; *see id.* n.4 (noting that *Bruen* rejected the "obviously silly conclusion" that public carry wasn't covered by the Second Amendment because it wasn't specifically mentioned). The relevant question is whether the Second Amendment covers the acquisition of firearms. *See* Add.8 ("Any interpretation to the contrary requires the type of interpretive jiu jitsu that would make Kafka blush."). If courts consider the degree of the burden, they do so at *Bruen*'s second step.

regulation addresses a longstanding issue that traces back to the Founding era or earlier, the modern and historical regulations should be a close fit. *See id.* at 26-27 (in "straightforward" cases, the "lack of … distinctly similar historical regulation[s]" addressing the same problem or regulations addressing it "through materially different means" is evidence that the modern regulation is unconstitutional).

When evaluating modern regulations addressing new problems "that were unimaginable at the founding," courts must employ "a more nuanced approach." *See id.* at 27-28. In these cases, the fit need not be so close: the government must identify a "well-established and representative historical *analogue*, not a historical *twin*." *Id.* at 30. *Bruen*'s analogical inquiry requires courts to determine that a modern regulation is "relevantly similar" to a proposed historical analogue—that is, that the "modern and historical regulations impose a *comparable burden* on the right of armed self-defense and … [are] *comparably justified*." *Id.* at 29 (emphasis added). But whether the modern regulation addresses longstanding or new societal problems, discerning "the *original meaning* of the Constitution" remains the guiding light of *Bruen*'s analogical inquiry. *See id.* at 81 (Barrett, J., concurring); *see also id.* at 83 ("[T]oday's

decision should not be understood to endorse freewheeling reliance on historical practice from the mid-to-late 19th century to establish the original meaning of the Bill of Rights.").

Bruen cautioned courts "against giving postenactment history more weight than it can rightly bear." *Id.* at 35. A regular course of conduct *can* sometimes "liquidate and settle the meaning of disputed or indeterminate terms and phrases in the Constitution," *id.* (cleaned up), but "postratification adoption or acceptance of laws that are *inconsistent* with the original meaning of the constitutional text obviously cannot overcome or alter that text," *id.* at 36 (quoting *Heller v. District of Columbia*, 670 F.3d 1244, 1274 n.6 (D.C. Cir. 2011) (Kavanaugh, J., dissenting)); *see also* William Baude, *Constitutional Liquidation*, 71 STAN. L. REV. 1, 13-14 (2019) (liquidation requires indeterminacy because "[i]f first-order interpretive principles make the meaning clear in a given context, there is no need to resort to liquidation").

I. Maine fails to show that its waiting-period law aligns with this Nation's historical tradition of firearm regulation.

Viewed through the proper lens—both in timing and fit—Maine failed to carry its burden to show that its waiting-period law is "part of the historical tradition that delimits the outer bounds of the right to keep

and bear arms." *See Bruen*, 597 U.S. at 19. The district court found that Beckwith was likely to succeed on the merits of her Second Amendment claim because the waiting-period law "employs no standard at all to justify disarming individuals, let alone a standard that can be described as narrow, objective, or definite." Add.16.

A. Maine's proposed analogues are not relevantly similar to its waiting-period law.

Heller found that the Second Amendment, ratified in 1791, "codified a preexisting right" that is "rooted in 'the natural right of resistance and self-preservation.'" *Bruen*, 597 U.S. at 71 (Alito, J., concurring) (citation omitted). So historical evidence from the Founding era provides the most relevant insight into the Second Amendment's original meaning. *See id.* at 36. Yet Maine offers no evidence of waiting-period laws from the Founding era. Br. of Def.-Appellant ("Maine.Br."), at 28 (conceding that "there are no early examples of waiting period laws"). Because Maine bears the burden to rebut Beckwith's constitutional right to acquire firearms, its failure to produce any evidence of similar waiting-period laws from the Founding era strongly suggests no such tradition existed. Add.13 & n.10 (noting the absence of "comparable precedent before the

[late] Twentieth Century"); *cf. Bruen*, 597 U.S. at 60 (not courts' burden "to sift the historical materials for evidence to sustain" the regulation).

Even if Reconstruction-era historical evidence were as probative of the scope of the Second Amendment right as Founding-era evidence,[3] Maine still failed to show a historical tradition of relevantly similar waiting-period laws. *Bruen* directs courts to canvass the period from the founding through Reconstruction for similar regulations, always with an eye to "what the Founders understood the Second Amendment to mean." *Atkinson v. Garland*, 70 F.4th 1018, 1020 (7th Cir. 2023). Maine produced no evidence of historical waiting-period laws between 1791 and 1868, which strongly suggests that no such tradition existed at the Founding or during the Reconstruction era. *See* Add.13 & n.10. Maine tries to sidestep this deficiency by arguing that this Court should apply *Bruen*'s "nuanced" approach because its waiting-period law seeks to

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

address "unprecedented societal concerns" ("increased use of firearms in homicides and suicides") involving "dramatic technological changes" ("ability to quickly acquire firearms and easily use them"). *See* Maine.Br.28.

Maine's argument misses the mark. To qualify as an unprecedented societal concern, the problem must be "unheard of and likely unimaginable at the Founding," *Bianchi v. Brown*, 111 F.4th 438, 463 (4th Cir. 2024), "a relatively recent phenomenon," *Hanson v. District of Columbia*, 120 F.4th 223, 241 (D.C. Cir. 2024), or have "no direct precedent," *Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38, 44 (1st Cir. 2024). And to qualify as a dramatic technological change, the technology must "differ[] in form and kind," *Hanson*, 120 F.4th at 241-42, "differ completely," *Duncan v. Bonta*, 133 F.4th 852, 873 (9th Cir. 2025), or involve "[r]apid advancements in gun technology," *Bianchi*, 111 F.4th at 463-64. While *Bruen* anticipated the need "to be careful and thoughtful in scrutinizing the government's claim of historical analogues" in these cases, it did not authorize the "creation of alternate *Bruen* tests" that discard history altogether. *Duncan*, 133 F.4th at 910-11 (Bumatay, J., dissenting).

Embracing such an ahistorical approach departs from *Bruen* and simply resurrects the pre-*Bruen* "interest-balancing regime." *Id.* at 911.

Maine argues that its waiting-period law addresses a problem that did not exist at the Founding—"the impulsive use of firearms to commit homicides and suicides." Maine.Br.24. But human impulsivity is not a new problem, nor would it have been "unheard of or unimaginable at the Founding" for people to impulsively purchase firearms to harm others or themselves. *See Bianchi*, 111 F.4th at 463.

Maine's argument that dramatic technological changes warrant a more flexible approach fares no better. Maine points to no "[r]apid advancements in gun technology." *See id.* at 463-64. And Maine fails to point to any law before the late twentieth century addressing the "impulsive" use of firearms. Add.13 & n.10. So this Court should reject Maine's request to apply *Bruen*'s "more nuanced approach." 597U.S. at 27-28.

But even if Maine were right that its waiting-period law addresses "unprecedented societal concerns" involving "dramatic technological changes," *see* Maine.Br.28, its proposed analogues flunk *Bruen*'s inquiry. Failing to produce any waiting-period laws, Maine instead offers two categories of historical analogues: (1) laws "designed to keep firearms out of

the hands of intoxicated individuals," and (2) licensing and permitting laws. *See* Maine.Br.27. Maine argues that these laws are relevantly similar in part because the "how" is similar—that is, its waiting-period law and the intoxication and licensing laws all "impose[] only a minor burden." *See* Maine.Br.31. But that is a major oversimplification. To be sure, there is an artificial similarity between Maine's waiting-period law and its proposed analogues: all of them involve some delay before a person can acquire a firearm. But on closer inspection, those ostensible similarities disappear as to both intoxication and licensing laws.

Intoxication Laws. Maine identified three categories of intoxication laws as historical analogues: (1) laws criminalizing possession or use of firearms while intoxicated; (2) laws banning gun sales to intoxicated individuals; and (3) laws regulating the commercial sale or distribution of alcohol when guns were present. Maine.Br.27. Unlike Maine's waiting-period law, these laws include conditions or qualifications that a person can satisfy, "not an absolute prohibition uninformed by any individualized consideration." Add.13 (citation omitted). Intoxication laws arise from a "common understanding that mixing guns and excessive alcohol is fraught with peril." Add.14. Individuals can avoid an intoxication law's

burden (by not drinking and carrying), but Maine's waiting-period law applies no matter what a person does. Rather than burdening the right to address an identified risk (like dangerousness), Maine's law simply assumes that because some small subset of its citizens may impulsively buy a gun to hurt themselves or others that everyone must wait to get their gun. But none of Maine's proposed analogues indiscriminately burden citizens' Second Amendment rights like its waiting-period law.[4]

Licensing Laws. Maine also pointed to licensing laws as a historical analogue because they "imposed a delay until licensing authorities could be certain that the relevant criteria were met." Maine.Br.31. But this analogue fails for at least two reasons. *First*, like the intoxication laws, licensing laws include conditions a person can satisfy to avoid the law's burden. But with Maine's waiting-period law, the condition is the

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

burden—people trying to buy a gun must wait 72 hours before taking possession no matter what. *Second*, the similarity between licensing laws and Maine's waiting-period law only holds up for initial purchases. For all future purchases, Maine's waiting-period law still requires a 72-hour waiting period but license holders do not have to resubmit applications to buy legal firearms. So Maine's waiting-period law does not impose a "*comparable* burden" on Beckwith's right to acquire firearms.[5] *See Bruen*, 597 U.S. at 29 (emphasis added); *Rahimi*, 602 U.S. at 692.

Maine's reliance on three poorly reasoned district court decisions from Colorado, Vermont, and New Mexico should not carry the day. The Colorado and Vermont cases—*Rocky Mountain Gun Owners v. Polis*, 701 F.Supp.3d 1121 (D. Colo. 2023) and *Vt. Fed'n of Sportsmen's Clubs v. Birmingham*, 741 F.Supp.3d 172 (D. Vt. 2024)—both rely on the same

[5] Maine's argument—that its waiting period law, like "early licensing and intoxication laws," imposes conditions a person could satisfy—falls flat. Maine.Br.34. Licensing and intoxication laws have conditions that could be satisfied—*i.e.*, completing a licensing application, not drinking irresponsibly—to avoid the law's burden. But with Maine's law, the condition and the burden are the same. Nothing can be done to avoid the waiting period, and it applies every time a person buys a gun no matter how responsible or law-abiding they are. Maine's law thus infringes a fundamental right with a "condition" that is anything but "*narrow*, objective, and definite." Add.9-10 & n.6 (emphasis added; citation omitted).

misguided analogues as Maine. That is, they both treat the incidental waiting periods caused by licensing and intoxication laws' conditions as analogous to a waiting-period law. *See Polis*, 701 F.Supp.3d at 1141, 1144-46; *Birmingham*, 741 F.Supp.3d at 210-14. But these analogies fail for the reasons discussed above: (1) licensing and intoxication laws impose conditions that people can satisfy to avoid the law's burden, while the condition and burden of a waiting-period law are the same; and (2) licensing laws only impose a burden when a person first applies for a license but waiting-period laws impose a burden on every purchase.

The New Mexico case—*Ortega v. Grisham*, 741 F.Supp.3d 1027 (D. N.M. 2024)—rests on even shakier ground. *Ortega* relied on "commercial firearm regulations [that] restricted the sale of arms to slaves," in concluding that New Mexico's proposed analogues "demonstrated 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." *Id.* at 1088-89. But the Constitution did not incorporate this odious history. Rather, the Equal Protection Clause "sought to reject the Nation's history of racial discrimination, not to backdoor … racially discriminatory and

oppressive historical practices and laws into the Constitution." *Rahimi*, 602 U.S. at 723 (Kavanaugh, J., concurring); *id.* ("[C]ourts must exercise care to rely only on the history that the Constitution actually incorporated and not on the history that the Constitution left behind.").

B. *Bruen* forecloses the policy arguments advanced by Maine's *amici*.

As *Bruen* explained, the prior decade of Second Amendment litigation revealed that "federal courts tasked with making … difficult empirical judgments regarding firearm regulations under the banner of 'intermediate scrutiny' often defer to the determinations of legislatures." 597 U.S. at 26. That deference is appropriate in some settings, but "it is not the deference the Constitution demands here." *Id.* Rather, the "Second Amendment 'is the very *product* of an interest balancing by the people,' and it 'surely elevates above all other interests the right of law-abiding, responsible citizens to use arms' for self-defense." *Id.* (quoting *Heller*, 554 U.S. at 635). This balance—struck by our Nation's traditions—demands this Court's "unqualified deference." *Id.*

Yet Maine's *amici* ask this Court, in function if not in form, to return to the state of play that *Bruen* rejected. *See* Br. for D.C., et al. as Amici Curiae Supp. Def.-Appellant ("D.C.Amicus.Br."), at 8, 15-18; *see id.*

at 18 (arguing that waiting periods promote the public interest as "a critical tool to reduce gun deaths" while "preserving the rights of law-abiding, responsible citizens to carry firearms for self-defense"). Maine's *amici* argue that waiting-period laws are permissible because they can "reduce gun violence and deaths" and "prevent suicides." D.C.Amicus.Br.15-16. No question these are laudable aims. But even if their empirical claims were true—and there is ample reason to doubt their accuracy[6]—that isn't the appropriate inquiry.

Bruen's inquiry is instead limited to whether the Second Amendment covers Beckwith's right to acquire firearms (it does) and, if so, whether Maine's waiting-period law is consistent with our Nation's historical tradition of firearm regulations (it isn't). *See* 597 U.S. at 24; *supra*

[6] For example, Maine's *amici* claim that waiting periods can "prevent suicide." D.C.Amicus.Br.16. In support, *amici* observe that "[s]uicidal crises are often short-lived, and the method used depends on its *ready availability*." *Id.* In deciding to pass the law, Maine's legislature relied in part on a study saying that 70% of suicide survivors said that "less than an hour elapsed between when they first thought of suicide and when they attempted it," and 24% said that "less than five minutes elapsed." Maine.Br.5. So for many suicide victims, the waiting-period would not affect whether they ultimately follow through. That is, the law would not prevent suicide for those who already owned a firearm, and for those who didn't possess one, there is reason to believe that the episode would pass by the time they arrived at a store to buy one.

Sect.I.A. The American people already weighed "the costs and benefits of firearms restrictions" in the Second Amendment, *id.* at 25 (quoting *McDonald*, 561 U.S. at 790-91), and that "balance … demands [this Court's] unqualified deference." *Id.*; *Rahimi*, 602 U.S. at 709 (Gorsuch, J., concurring) (courts "have no authority to question that judgment"). This Court should reject *amici*'s not-so-subtle invitation to resurrect pre-*Bruen* legislative interest balancing.

CONCLUSION

Bruen explained that "when it comes to interpreting the Constitution, not all history is created equal." 597 U.S. at 34. Rather, "[c]onstitutional rights are enshrined with the scope they were understood to have *when the people adopted them*." *Id.* (quoting *Heller*, 554 U.S. at 634-35). So evidence closer in time to the Second Amendment's adoption is most relevant for understanding the Amendment's scope. Evidence of historical regulations through the end of the nineteenth century *could* be relevant, but only if it confirms what prior evidence "already … established." *Id.* at 37 (quoting *Gamble v. United States*, 139 S. Ct. 1960, 1976 (2019)).

The Second Amendment protects the right to acquire handguns for self-defense. *McDonald*, 561 U.S. at 767; *Bruen*, 597 U.S. at 70-71. With

few exceptions, Maine relies on out-of-date historical analogues passed well after Reconstruction—"surely too slender a reed on which to hang a historical tradition" of burdening the right to acquire firearms. *See Bruen*, 597 U.S. at 58. Even if Reconstruction-era statutes and local ordinances could provide probative evidence of the Second Amendment's original meaning, Maine's evidence *still fails* to identify relevantly similar historical analogues. Sweeping aside Maine's irrelevant evidence leaves little remaining historical support for its waiting-period law, even when employing *Bruen*'s "more nuanced approach." *Id.* at 27-28. This Court should affirm the district court's order.

DATED: June 4, 2025.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B)(i) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 3,634 words.

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CERTIFICATE OF SERVICE

I certify that on this date, an accurate copy of the foregoing document was served electronically through the Court's CM/ECF system on registered counsel.

Dated: June 4, 2025

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