SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Domestic Violence Division

Officer Marcus Watson, Petitioner v. Douglas Wallis Wheeler, Respondent	)	Case No. 2022-EPO-00007

MOTION OF BRADY AND GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE FOR LEAVE TO FILE BRIEF AS *AMICI CURAIE* IN SUPPORT OF PETITIONER

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Brady and Giffords Law Center to Prevent Gun Violence, by and through undersigned counsel, respectfully request leave to file a brief as *Amici Curiae*. Movants' proposed *amicus* brief is attached as Exhibit A. Counsel for Petitioner consents to the filing of the *amicus* brief; counsel for Respondent also consents to the filing of the *amicus* brief provided that the date for his reply is extended by one week, from September 16 to September 23, which Respondent's counsel requests.

I. Proposed *Amici* are leading gun policy organizations.

Brady is the nation's most longstanding nonpartisan, nonprofit organization dedicated to reducing gun violence through education, research, and legal advocacy. Brady has a substantial interest in ensuring that the Constitution is construed to protect Americans' fundamental right to live. Brady also has a substantial interest in protecting the authority of democratically elected officials to address the nation's gun violence epidemic. Brady works across Congress, courts, and communities, uniting gun owners and non-gun-owners alike, to take action to prevent gun violence.[1]

Giffords Law Center to Prevent Gun Violence ("Giffords Law Center") is a non-profit policy organization serving lawmakers, advocates, legal professionals, gun violence survivors, gun owners, and others who seek to reduce gun violence and improve the safety of their communities. The organization was founded more than a quarter-century ago, and through key partnerships, Giffords Law Center researches, drafts, and defends the laws, policies, and programs proven to effectively reduce gun violence. With its partner organization Giffords, Giffords Law Center also

[1] No counsel for a party authored the proposed *amicus* brief in whole or in part, and no person other than *amici* or their counsel made any monetary contributions intended to fund the preparation or submission of the proposed *amicus* brief.

advocates for the interests of gun owners and law enforcement officials who understand that Second Amendment rights have always been consistent with gun safety legislation and community violence prevention strategies.

Proposed *Amici* Brady and Giffords Law Center have contributed their technical expertise and informed analysis in numerous cases involving firearm regulations and constitutional principles affecting gun policy. *See, e.g.*, *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) ("*Bruen*"); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008); *Libertarian Party v. Cuomo*, 970 F.3d 106 (2d Cir. 2020); *Bauer v. Becerra*, 858 F.3d 1216 (9th Cir. 2017). Several courts have cited research and information from *Amici*'s briefs in Second Amendment rulings. *See, e.g.*, *Ass'n of N.J. Rifle & Pistol Clubs v. Att'y Gen. N.J.*, 910 F.3d 106, 121-22 (3d Cir. 2018); *Stimmel v. Sessions*, 879 F.3d 198, 204, 208, 210 (6th Cir. 2018); *Peruta v. County of San Diego*, 824 F.3d 919, 943 (9th Cir. 2016) (en banc) (Graber, J., concurring); *Nat'l Ass'n for Gun Rights, Inc. v. San Jose*, No. 22-cv-501-BLF, 2022 U.S. Dist. LEXIS 138385, at *26, 30 & nn.4, 5 (N.D. Cal. Aug. 3, 2022); *Hirschfeld v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 417 F. Supp. 3d 747, 754, 759 (W.D. Va. 2019); *Md. Shall Issue v. Hogan*, 353 F. Supp. 3d 400, 403-05 (D. Md. 2018).

II. Proposed *Amici* offer policy and social science expertise relevant to the disposition of the matter before the Court.

Proposed *Amici*'s brief will assist the Court in deciding this important matter by adding to the parties' briefing on the types of evidence the Court may consider in conducting the analysis set forth in the Supreme Court's recent *Bruen* decision. And acceptance of the brief will not cause delay.

Proposed *Amici*'s brief explains that *Bruen* instructs courts to analyze whether modern gun regulations have historical analogues, and two of the considerations courts may weigh in this

analysis are the "how" and "why" of the modern and historic regulations. As the proposed brief explains, social science studies are evidence that a court may consider when weighing these "how's" and "why's." As organizations that closely study legal developments around gun violence issues, *Amici* are well-positioned to add to the parties' briefing in this case.

Amici curiae with policy and social science expertise often assist courts through so-called "Brandeis briefs," a "well-known technique for asking the court to take judicial notice of social facts," including empirical evidence. *McCleskey v. Kemp*, 753 F.2d 877, 888 (11th Cir. 1985) (internal quotation marks omitted), *aff'd*, 481 U.S. 279 (1987). *Amici*'s expertise in social science and public health research could be particularly helpful to the Court here by explaining the potential real-world impact of D.C.'s ERPO law. *See Graham v. Florida*, 560 U.S. 48, 68 (2010) (citing a Brandeis-style *amici* brief that described how "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds"). *Amici*'s proposed brief presents several publicly available, peer-reviewed social science studies, which the Court may properly consider at this stage of the proceedings. *See Papasan v. Allain*, 478 U.S. 265, 268 n.1 (1986) (at motion to dismiss stage, courts may consider "items in the public record"); *see also Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 210 (5th Cir. 2012) (considering social science evidence, including publicly available crime statistics, at summary judgment).

Amici's participation is desirable because they have substantial expertise with the ERPO law at issue in this case, the legal framework applicable to Second Amendment challenges as presented in the Supreme Court's *Bruen* decision, and the relevant social science evidence demonstrating the effectiveness of ERPO laws. The important constitutional principles at stake here are fundamental to *Amici*'s mission.

CONCLUSION

For these reasons, Proposed *Amici* respectfully request that the Court grant leave to file as *Amici* a brief in support of Petitioner.

Dated: September 7, 2022
Washington, DC

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 7, 2022, I caused this Motion of Brady and Giffords Law Center to Prevent Gun Violence for Leave to File Brief as *Amici Curiae* in Support of Petitioner on counsel for the parties via email and first class mail:

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Exhibit A

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
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v.	)	Case No. 2022-EPO-00007
Douglas Wallis Wheeler, Respondent	)	

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CORPORATE DISCLOSURE STATEMENTS

Amicus curiae Brady is a nonprofit organization. It has no parent corporations. It has no stock, and therefore no publicly held company owns 10% or more of its stock.

Amicus curiae Giffords Law Center to Prevent Gun Violence ("Giffords Law Center") is a nonprofit organization. It has no parent corporations. It has no stock, and therefore no publicly held company owns 10% or more of its stock.

INTEREST OF THE AMICI

Brady is the nation's most longstanding nonpartisan, nonprofit organization dedicated to reducing gun violence through education, research, and legal advocacy. Brady has a substantial interest in ensuring that the Constitution is construed to protect Americans' fundamental right to live. Brady also has a substantial interest in protecting the authority of democratically elected officials to address the nation's gun violence epidemic. Brady works across Congress, courts, and communities, uniting gun owners and non-gun-owners alike, to take action to prevent gun violence. Brady has filed amicus briefs in many cases involving the regulation of firearms, including *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) and *District of Columbia v. Heller*, 554 U.S. 570 (2008).[1]

Giffords Law Center is a non-profit policy organization serving lawmakers, advocates, legal professionals, gun violence survivors, gun owners, and others who seek to reduce gun violence and improve the safety of their communities. The organization was founded more than a quarter-century ago, and through key partnerships, Giffords Law Center researches, drafts, and defends the laws, policies, and programs proven to effectively reduce gun violence. With its partner organization Giffords, Giffords Law Center also advocates for the interests of gun owners and law enforcement officials who understand that Second Amendment rights have always been consistent with gun safety legislation and community violence prevention strategies.

[1] No counsel for a party authored this brief in whole or in part, and no person other than *amici* or their counsel made any monetary contributions intended to fund the preparation or submission of this brief.

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INTRODUCTION

Extreme Risk Protection Order ("ERPO") laws promote public safety by allowing courts to use objective risk factors and due process to issue civil orders temporarily removing firearms access from people who are a danger to themselves or others. Nothing in the Second Amendment prevents the District of Columbia from enforcing its ERPO law, D.C. Code § 7-2510.01, *et seq.* ("D.C.'s ERPO Law"), which provides a time-limited and individually adjudicated restriction on firearms access. As the Supreme Court has repeatedly emphasized, the right to bear arms is far from boundless. The Second Amendment protects certain rights of "responsible" and "law-abiding" individuals, but coexists with the extensive authority of state and local governments to regulate firearm purchase, possession, and use—including by banning certain categories of people from possessing firearms and by regulating the carrying of firearms in public spaces.

Indeed, in *District of Columbia v. Heller*, the Supreme Court provided a non-exhaustive list of "presumptively lawful regulatory measures," including "longstanding prohibitions on the possession of firearms by felons and the mentally ill" and "laws imposing conditions and qualifications on the commercial sale of arms." 554 U.S. 570, 626-27 & n.26 (2008). This June, in *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022), the Court reiterated the right's limits as articulated in *Heller*: the Second Amendment right is "not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 2128 (quoting *Heller*, 554 U.S. at 626).

Respondent's challenge to D.C.'s ERPO Law is foreclosed by *Bruen*. The Court held that "courts [are required to] assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding," recognizing this task "will often involve reasoning by analogy." *Id.* at 2131-32. To uphold a "modern-day regulation," courts need not find that the regulation is "a dead ringer for historical precursors." *Id.* at 2133. Instead, they need only

find that a challenged regulation has a "well-established and representative historical *analogue*, not a historical *twin*." *Id.* (emphasis in original). Here, D.C.'s ERPO Law is constitutional under *Bruen* because it is analogous to historical restrictions on dangerous persons and other groups of individuals who were perceived to present a heightened risk of violence. There is a long, established historical pedigree for identifying certain subsets of armed individuals as posing a risk to the public. The District has identified objective factors indicating that an individual poses a heightened risk to themselves and/or the community when armed with a gun. Accordingly it has provided a mechanism by which such arms can be temporarily removed from that individual and the purchase of additional arms temporarily prohibited while providing for an evidentiary hearing and the court's careful consideration of the facts. As Justice Kavanaugh emphasized in his *Bruen* concurrence, "[n]othing in [the Court's] 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 laws imposing conditions and qualifications on the commercial sale of arms"—all only "examples" of "presumptively lawful regulatory measures." 142 S. Ct. at 2162 (quoting *Heller*, 554 U.S. at 626-27 & n.26).

Amici submit this brief to provide further context for D.C.'s ERPO Law, showing how it is consistent with our historical tradition of firearm restrictions on specific groups. Public health and public policy data demonstrate that the justification for D.C.'s ERPO Law is analogous to and consistent with longstanding and presumptively lawful firearms regulations. *Amici* provide this Court with an established body of empirical research that demonstrates the law's soundness and real-world consequences, all of which confirm that D.C.'s ERPO Law is analogous to historical regulations and therefore accords with the Second Amendment's protections.

FACTUAL BACKGROUND

D.C.'s ERPO Law provides a mechanism for law enforcement, family or household members, and mental health professionals to petition a court to issue an order temporarily removing firearms from individuals who pose a danger to themselves or others. The court may determine that an individual poses such a danger by considering all relevant evidence, including: (1) any history or pattern of threats of violence, or acts of violence, by the person for whom the ERPO is sought (the "respondent" in an ERPO proceeding), directed toward themselves or others; (2) any recent threats of violence, or acts of violence, by the respondent, directed toward themselves or others; (3) the acquisition of firearms, ammunition, or other deadly or dangerous weapons within one year before the filing of the petition for an ERPO; (4) the unlawful or reckless use, display, or brandishing of a firearm or other weapon by the respondent; (5) the respondent's criminal history; (6) the respondent's violation of a court order; (7) evidence of the respondent's experiencing a mental health crisis or other dangerous mental health issues; and (8) the respondent's use of a controlled substance, as defined by the D.C. Code. *See* D.C. Code § 7-2510.01, *et seq.*

In this case, Officer Marcus Watson arrested Respondent after he brandished a gun at his neighbor. Gov't Opp'n to Resp't's Mot. to Dismiss at 3 ("Gov't Opp'n"). Officer Watson petitioned for an ERPO against Respondent after learning of, in addition to Respondent's threatening his neighbor with a firearm:

1. Respondent's prior arrest for assault;
2. an application for a protection order against Respondent;
3. Respondent's history of excessive drinking; and

4. fourteen firearms registered under his name, including one purchased mere months before the petition. *Id.*[2]

ARGUMENT

D.C.'s ERPO Law regulates people, like Respondent, who pose a danger to themselves or others. It is thus "presumptively lawful" under *Heller* and does not implicate the Second Amendment's protections. *See* 554 U.S. at 626-27 & n.26. *See* Section I, *infra*. Even should this Court conclude that D.C.'s ERPO Law regulates conduct covered by the "plain text" of the Second Amendment, the constitutional inquiry established in *Bruen* yields the same result: the D.C. ERPO Law's purpose and function barring dangerous persons from possessing firearms is consistent with our history and tradition of regulating firearm possession and is, therefore, constitutional. *See Bruen*, 142 S. Ct. at 2132-33. *See* Section II, *infra.*

I. ERPO laws regulate conduct that is not protected by the Second Amendment.

"[T]he Second Amendment protects bearing arms for a *lawful purpose* by *law-abiding, responsible* citizens . . . in defense of hearth and home." *Howerton v. United States*, 964 A.2d 1282, 1289 (D.C. 2009) (emphasis added) (internal quotations and citation omitted). In *Heller*, the Supreme Court explained that "longstanding prohibitions on the possession of firearms by felons and the mentally ill" are "presumptively lawful regulatory measures," cautioning that those particular categories serve "only as examples" of presumptively lawful firearm regulations and do "not purport to be [an] exhaustive" list. 554 U.S. at 626-27 & n.26. The Court "repeated [*Heller*'s] assurances" that such laws should not be called into question in *McDonald v. City of Chicago*. 561 U.S. 742, 786 (2010). And in *Bruen*, Justice Kavanaugh, joined by Chief Justice Roberts, again

[2] For a detailed recitation of the facts regarding Respondent and the ERPO at issue here, *amici* respectfully refer this Court to the Government's Opposition.

confirmed the presumptive legality of these measures. *See* 142 S. Ct. at 2162 (Kavanaugh, J., concurring).

Under *Bruen*, any challenge pursuant to the Second Amendment must begin with the "plain text" to determine whether the Amendment is implicated at all. *Bruen*, 142 S. Ct. at 2134 (beginning its inquiry by asking "whether the plain text of the Second Amendment protects [the challengers'] proposed course of conduct[.]"); *see also, e.g., United States v. Tilotta*, No. 3:19-cr-4768-GPC, 2022 U.S. Dist. LEXIS 156715, at *10-11 (S.D. Cal. Aug. 30, 2022) (finding that the court need engage in *Bruen*'s historical analogical inquiry only "if the plain text includes the course of conduct"). D.C.'s ERPO Law "does not implicate the second amendment, as it does not restrict the right of *law-abiding, responsible* citizens to use arms in defense" of themselves. *Hope v. State*, 133 A.3d 519, 524 (Conn. App. Ct. 2016) (emphasis added); *see Bruen*, 142 S. Ct. at 2131 (the Second Amendment "elevates . . . the right of *law-abiding, responsible* citizens" (quoting *Heller*, 554 U.S. at 635 (emphasis added)).

Laws restricting firearms access based on dangerousness—such as D.C.'s ERPO Law—are presumptively lawful. The rights of law-abiding, responsible citizens—as determined by an evidentiary hearing before a judge—are unaffected. *See* D.C. Code § 7-2510.03. "[T]he Supreme Court [in *Heller*] was sending a message—not that *only* [convicted felons and the mentally ill] can be prohibited from possessing firearms without running afoul of the Second Amendment—but that other persons whose conduct has rendered them a danger to others could also be prohibited from possessing firearms without running afoul of the Second Amendment." *United States v. Yu Tian Li*, No. 08-cr-212, 2008 U.S. Dist. LEXIS 100867, at *10 (E.D. Wis. Sep. 22, 2008) (emphasis in original), *R&R adopted*, 2008 U.S. Dist. LEXIS 68966 (E.D. Wis. Oct. 15, 2008); *see also, e.g., United States v. Walker*, 709 F. Supp. 2d 460, 465 (E.D. Va. 2010) (finding that the federal bar on

firearm possession for perpetrators of domestic abuse is "presumptively lawful" and "may be constitutionally upheld on [that] basis alone"). Other courts considering ERPO laws agree that such laws are "an example of the longstanding 'presumptively lawful regulatory measures' articulated in *District of Columbia v. Heller*." *Hope*, 133 A.3d at 524-25; *see also San Diego v. Boggess*, 216 Cal. App. 4th 1494, 1505-07 (Cal. App. 2013).

This Court need go no further in its analysis. Under *Bruen*, Respondent bears the burden of establishing that he is "part of 'the people' whom the Second Amendment protects." 142 S. Ct. at 2134. He cannot do so because, as this Court has determined, he poses a danger to himself or others, and is therefore not the responsible, law-abiding citizen for whom the Second Amendment's protections attach.

II. The justifications behind D.C.'s ERPO Law demonstrate that it is analogous to historical firearm regulations.

That dangerous individuals may be prohibited from bearing arms was not a novel notion to the Founders, who "did not understand the right to keep and bear arms to extend to certain categories of people deemed too dangerous to possess firearms." *Binderup v. Att'y Gen. U.S.*, 836 F.3d 336, 367 (3d Cir. 2016) (Hardiman, J., concurring); *see also* Don B. Kates & Clayton E. Cramer, *Second Amendment Limitations and Criminological Considerations*, 60 HASTINGS L.J. 1339, 1360 (2009) ("[F]rom time immemorial, various jurisdictions recognizing a right to arms have nevertheless taken the step of forbidding suspect groups from having arms. American legislators at the time of the Bill of Rights seem to have been aware of this tradition[.]"). Awareness of this tradition—and agreement with it—is evident from colonial ratifying conventions, where these notions were voiced regularly. *See, e.g.*, Stephen P. Halbrook, THE FOUNDERS' SECOND AMENDMENT 190-215 (2019) (surveying debates at the constitutional ratifying conventions and highlighting the shared understanding that "dangerous persons could be

disarmed"). To that end, "categorical firearms bans are permissible" under the Second Amendment, including bans "enacted . . . to keep guns out of the hands of presumptively risky people." *United States v. Yancey*, 621 F.3d 681, 683 (7th Cir. 2010). Thus, "[h]istory is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns" in order to protect the broader public. *Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting). Indeed, there is a "longstanding tradition of . . . safety-based restrictions on the ability to access arms." *NRA v. BATFE*, 700 F.3d 185, 203 (5th Cir. 2012). *Amici* join the Government's review of the ERPO Law's historical antecedents. *See* Gov't Opp'n at 15-21.

In looking to historical practice, *Bruen* contemplates a broader "reasoning by analogy" that compares, at a minimum, "how and why [historical] regulations burden[ed] a law-abiding citizen's right to armed self-defense[.]" 142 S. Ct. at 2132-33. In order to assess whether a regulation is within our historical tradition, *Bruen* explains that a court must look to the objectives and methods of regulations and determine "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified." *Id*. at 2133. Courts may also look beyond "how and why" to identify other "features that render regulations relevantly similar." [3] *Id.* at 2132-33.

[3] This approach accords with evaluations of freedom of speech claims under the First Amendment, a right "which *Heller* repeatedly compared [to] the right to keep and bear arms." *Bruen*, 142 S. Ct. at 2130. When facing a freedom of speech challenge, "the government must generally point to historical evidence about the reach of the First Amendment's protections." *Id.* But that is not to the exclusion of all other relevant evidence. To the contrary, the government may justify a regulation under the First Amendment using social science evidence alongside historical evidence. As Justice Thomas himself wrote, a law violates neither the First Amendment nor Second Amendment if it is supported by "a long history, a substantial consensus, and simple common sense." *Silvester v. Becerra*, 138 S. Ct. 945, 948 (2018) (Thomas, J., dissenting from denial of certiorari) (quoting *Burson v. Freeman*, 504 U.S. 191, 211 (1992)).

As part of the *Bruen* inquiry, this Court must consider the modern-day "justifi[cations]" for the ERPO Law. Public health and social science research are important sources of modern day justifications, and the court may look to them to inform the analogical inquiry. Indeed, considering modern-day justifications will often show how modern laws comport with their historical analogues. *See United States v. Bena*, 664 F.3d 1180, 1184 (8th Cir. 2011) (discussing modern empirical studies and findings from the Surgeon General on domestic violence in order to show how a challenged law was justified in a manner "consistent with our common law tradition"). Here, research confirms that, similar to groups who were restricted from accessing firearms during the Founding era, the individuals identified by D.C.'s ERPO Law are defined by behaviors that constitute a substantial risk to themselves and/or others and continued access to firearms will likely heighten the likelihood and lethality of that risk. This research also shows that ERPO laws have been used successfully to intervene when people demonstrate a heightened risk of violence in circumstances other firearms regulations do not address. Understanding this "why" and "how" of ERPO laws is a necessary part of the analogical inquiry.[4]

A. ERPO laws are "relevantly similar" to historical firearms regulations because they restrict access to firearms by persons determined to pose a danger.

ERPO laws are designed to reduce violence by temporarily removing access to a lethal means of violence when the threat of violence is identified. That threat of violence is assessed by examining evidence-based predictors of future violence, such as past violence, domestic violence, and alcohol and drug abuse. As discussed next, studies of ERPO laws demonstrate that ERPO

[4] Considering social science evidence is not an attempt to "engage in independent means-end scrutiny under the guise of an analogical inquiry." *Bruen*, 142 S. Ct. at 2133 n.7. Rather, it is an essential step in the analogical reasoning mandated by *Bruen*. In order to assess whether the burden imposed by a modern regulation is "comparably justified," courts must consider *all* of the justifications and evidence that support the modern law. *Id.*

petitions respond to credible threats of suicide, interpersonal violence (including intimate partner violence), and mass shootings (including school shootings and workplace shootings).

1. Research supports specific risk factors as predictors of future violent behavior.

Research on violence suggests a number of specific factors that increase an individual's risk of committing future violence.[5] One factor is past violent behavior, which is the single biggest predictor of future violent behavior.[6] For example, an individual's being convicted of a violent misdemeanor suggests that the individual has a heightened risk of future violence.[7] When California instituted a law prohibiting firearm ownership for those convicted of violent misdemeanors, arrest rates dropped for gun crime perpetrated by those in that group,[8] demonstrating the effectiveness of restricting their firearm access.

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[5] *See* Consortium for Risk-Based Firearm Policy, "Guns, Public Health and Mental Illness: An Evidence-Based Approach for State Policy," December 2013, at 8 (available at: https://efsgv.org/wp-content/uploads/2014/10/Final-State-Report.pdf).

[6] Cook, P.J., Ludwig, J., & Braga, A.A. (2005), *Criminal Records of Homicide Offenders*, JAMA: The Journal of the American Medical Association, 294(5), 598-601; Wintemute, G.J., Wright, M.A., Drake, C.M., & Beaumont, J.J. (2001), *Subsequent Criminal Activity Among Violent Misdemeanants Who Seek To Purchase Handguns*, JAMA: The Journal of the American Medical Association, 285(8), 1019-1026.

[7] Wintemute, G.J., Wright, M.A., Drake, C.M., & Beaumont, J.J. (2001), *Subsequent Criminal Activity Among Violent Misdemeanants Who Seek To Purchase Handguns*, JAMA: The Journal of the American Medical Association, 285(8), 1019-1026; Cook, P.J., Ludwig, J., & Braga, A.A. *Criminal Records Of Homicide Offenders*, JAMA: The Journal of the American Medical Association, 294(5), 598-601; Vittes, K.A., Vernick, J.S., & Webster, D.W. (2013), *Legal Status And Source Of Offenders' Firearms In States With The Least Stringent Criteria For Gun Ownership*, Injury prevention, 19(1), 26-31.

[8] Vittes, K.A., Vernick, J.S., & Webster, D.W. (2013), *Legal status and source of offenders' firearms in states with the least stringent criteria for gun ownership, Injury prevention, 19*(1), 26-31; Wintemute, G.J., Wright, M.A., Drake, C.M., & Beaumont, J.J. (2001), *Subsequent Criminal Activity Among Violent Misdemeanants Who Seek To Purchase Handguns*, JAMA: The Journal of the American Medical Association, 285(8), 1019-1026.

A second risk factor is an individual's perpetrating domestic violence.[9] The majority of intimate partner homicides are committed with a gun.[10] Moreover, research shows that when an abuser has a firearm, the risk of intimate partner homicide increases.[11] Research also shows that policy solutions can be effective at reducing this domestic violence: in cities where respondents to domestic violence restraining orders were prohibited from purchasing or possessing guns, there were 25% fewer firearm-related intimate partner homicides.[12]

[9] Campbell, J.C., Webster, D., Koziol-McLain, J., Block, C., Campbell, D., Curry, M.A., & Laughon, K. (2003), *Risk Factors For Femicide In Abusive Relationships: Results From A Multisite Case Control Study*, American Journal Of Public Health, 93(7), 1089-1097; Zeoli, A.M., & McCourt, A., Buggs, S., Frattaroli, S., Liley, D., & Webster, D. W. (2018), *Analysis of the Strength of Legal Firearms Restrictions for Perpetrators of Domestic Violence and Their Associations With Intimate Partner Homicide*, American Journal of Epidemiology, 187:11; Campbell, J.C., Glass, N., Sharps, P.W., Laughon, K., & Bloom, T. (2007), *Intimate partner homicide review and implications of research and policy*, Trauma, Violence, & Abuse, 8(3), 246-269.

[10] Fox, J.A., and M.W. Zawitz. 2007, *Homicide Trends in the United States: Bureau of Justice Statistics*, https://bjs.ojp.gov/library/publications/homicide-trends-united-states.

[11] Bailey, J.E., Kellermann, A.L., Somes, G.W., Banton, J.G., Rivara, F.P., & Rushforth, N.P. (1997), *Risk factors for violent death of women in the home*, Archives of Internal Medicine, 157(7), 777-782; Kellerman, A.L., Rivara, F.P., Rushforth, N.B., Banton, J.G., Reay, D.T., Francisco, J.T., . . . & Somes, G. (1993), *Gun ownership as a risk factor for homicide in the home*, New England Journal of Medicine, 329(15), 1084-1091; Campbell, J.C., Webster, D., Koziol-McLain, J., Block, C., Campbell, D., Curry, M.A., . . . & Laughon, K. (2003), *Risk Factors For Femicide In Abusive Relationships: Results From A Multisite Case Control Study*, American journal of public health, 93(7), 1089-1097.

[12] Zeoli, A.M., & McCourt, A., Buggs, S., Frattaroli, S., Liley, D., & Webster, D. W. (2018), *Analysis of the Strength of Legal Firearms Restrictions for Perpetrators of Domestic Violence and Their Associations With Intimate Partner Homicide*, American Journal of Epidemiology, 187:11.

A third risk factor is substance abuse.[13] Alcohol abuse is connected to both interpersonal violence and suicide.[14] For example, a study of adults in large urban areas in Tennessee, Washington, and Ohio, found that there was an increased risk of both homicide and suicide for adults who abused alcohol,[15] and in another study, alcohol abuse and intimate partner homicide

[13] Elbogen, E.B., & Johnson, S.C. (2009), *The Intricate Link Between Violence and Mental Disorder Results from the National Epidemiologic Survey on Alcohol and Related Conditions*, Archives of General Psychiatry, 66(2), 152-161; Webster, D.W., & Vernick, J.S. (2009), *Keeping firearms from drug and alcohol abusers*, Injury Prevention, 15(6), 425-427; Boles, S.M., & Miotto, K. (2003), *Substance abuse and violence: A review of the literature*, Aggression and Violent Behavior, 8(2), 155-174; Volavka, J., & Swanson, J. (2010), *Violent behavior in mental illness: the role of substance abuse*, JAMA: The Journal of the American Medical Association, 304(5), 563-564; Afifi, T.O., Henriksen, C.A., Asmundson, G.J., & Sareen, J. (2012), *Victimization and perpetration of intimate partner violence and substance use disorders in a nationally representative sample*, The Journal of Nervous and Mental Disease, 200(8), 684-691; Friedman, A.S. (1998), *Substance use/abuse as a predictor to illegal and violence behavior: A review of the relevant literature*, Aggression and Violent Behavior, 3(4) 339-355.

[14] Afifi, T.O., Henriksen, C.A., Asmundson, G.J., & Sareen, J. (2012), *Victimization and perpetration of intimate partner violence and substance use disorders in a nationally representative sample*, The Journal Of Nervous And Mental Disease, 200(8), 684-691; Friedman, A.S. (1999), *Substance use/abuse as a predictor to illegal and violence behavior: A review of the relevant literature*, Aggression and Violent Behavior, 3(4) 339-355; Kelleher, K., Chaffin, M., Hollenberg, J., & Fischer, E. (1994), *Alcohol and drug disorders among physically abusive and neglectful parents in a community-based sample*, American Journal of Public Health, 84(10), 1586-1590; Auerhahn, K., & Parker, R.N. (1998), *Drugs, alcohol, and homicide*, Studying and preventing homicide: Issues and challenges, 97-114; Rivara, F.P., Mueller, B.A., Somes, G., Mendoza, C.T., Rushforth, N.B., & Kellermann, A.L. (1997), *Alcohol and illicit drug abuse and the risk of violent death in the home*, JAMA: The Journal of the American Medical Association, 278(7), 569-575; Sharps, P.W., Campbell, J., Campbell, D., Gary, F., & Webster, D. (2001), *The Role Of Alcohol Use In Intimate Partner Femicide*, The American Journal on Addictions, 10(2), 122-135; Walton-Moss, B.J., Manganello, J., Frye, V., & Campbell, J.C. (2005), *Risk factors for intimate partner violence and associated injury among urban women*, Journal of Community Health, 30(5), 377-389; Borges, G., Walters, E.E., & Kessler, R.C. (2000), *Associations of substance use, abuse, and dependence with subsequent suicidal behavior*, American Journal of Epidemiology, 151(8), 781-789; Borowsky, I.W., Ireland, M., & Resnick, M.D. (2001), *Adolescent suicide attempts: risks and protectors*, Pediatrics, 107(3), 485-493.

[15] Rivara, F.P., Mueller, B.A., Somes, G., Mendoza, C.T., Rushforth, N.B., & Kellermann, A.L. (1997), *Alcohol And Illicit Drug Abuse And The Risk Of Violent Death In The Home*, JAMA: The Journal of the American Medical Association, 278(7), 569-575.

were strongly connected.[16] Further, alcohol abuse among firearm owners is associated with an increased likelihood of risky behavior involving firearms.[17] The use of illegal controlled substances also correlates to a heightened risk of violence,[18] and the risk of future violence is heightened for people convicted of multiple misdemeanors involving controlled substances.[19]

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[16] Sharps, P.W., Campbell, J., Campbell, D., Gary, F., & Webster, D. (2001), *The Role Of Alcohol Use In Intimate Partner Femicide*, The American Journal on Addictions, 10(2), 122-135.

[17] Wintemute, G.J. (2011), *Association between firearm ownership, firearm-related risk and risk reduction behaviors and alcohol-related risk behaviors*, Injury prevention, 17(6), 422-427.

[18] Afifi, T.O., Henriksen, C.A., Asmundson, G.J., & Sareen, J. (2012), *Victimization and perpetration of intimate partner violence and substance use disorders in a nationally representative sample*, The Journal Of Nervous And Mental Disease, 200(8), 684-691; Friedman, A.S. (1998), *Substance use/abuse as a predictor to illegal and violence behavior: A review of the relevant literature*, Aggression and Violent Behavior, 3(4) 339-355; Auerhahn, K., & Parker, R.N. (1999), *Drugs, alcohol, and homicide*, Studying and preventing homicide: Issues and challenges, 97-114; Borges, G., Walters, E.E., & Kessler, R.C. (2000), *Associations of substance use, abuse, and dependence with subsequent suicidal behavior*, American Journal of Epidemiology, 151(8), 781-789; Boles, S.M., & Miotto, K. (2003), *Substance abuse and violence: A review of the literature*, Aggression and Violent Behavior, 8(2), 155-174.

[19] Afifi, T.O., Henriksen, C.A., Asmundson, G.J., & Sareen, J. (2012), *Victimization and perpetration of intimate partner violence and substance use disorders in a nationally representative sample*, The Journal Of Nervous And Mental Disease, 200(8), 684-691; Friedman, A.S. (1999), *Substance use/abuse as a predictor to illegal and violence behavior: A review of the relevant literature*, Aggression and Violent Behavior, 3(4) 339-355; Auerhahn, K., & Parker, R.N. (1999), *Drugs, alcohol, and homicide*, Studying And Preventing Homicide: Issues And Challenges, 97-114; Borges, G., Walters, E.E., & Kessler, R.C. (2000), *Associations of substance use, abuse, and dependence with subsequent suicidal behavior*, American Journal of Epidemiology, 151(8), 781-789; Boles, S.M., & Miotto, K. (2003), *Substance abuse and violence: A review of the literature*, Aggression and Violent Behavior, 8(2), 155-174; Goldstein, P.J., Brownstein, H.H., Ryan, P.J., & Bellucci, P.A. (1990), *Crack and Homicide in New York City, 1988: A Conceptually Based Event Analysis* Contemporary Drug Problems, 16(4), 651-687; Benson, B.L., Kim, I., Rasmussen, D.W., & Zhelke, T.W. (1992), *Is property crime caused by drug use or by drug enforcement policy?*, Applied Economics, 24(7), 679-692; Benson, B.L., Rasmussen, D.W. (1991), *Relationship Between Illicit Drug Enforcement Policy And Property Crimes*, Contemporary Economic Policy, 9(4), 106-115; Rasmussen, D.W., Benson, B.L., & Sollars, D.L. (1993), *Spatial Competition In Illicit Drug Markets: The Consequences Of Increased Drug Law Enforcement*. Review of Regional Studies, 23(3), 219-236; Reuter, P. (2009), *Systemic violence in drug markets*, Crime, Law And Social Change, 52(3), 275-284.

2. Case studies and numerous instances of use demonstrate ERPO laws' utility.

Studies of ERPOs and individual examples of their use demonstrate that they can be effective at addressing heightened risks of interpersonal violence, mass shootings, and suicide, informed by the specific risk factors detailed *supra*, Section II(A)(i).[20]

One study looked at a two-year period (2017 and 2018) in King County, Washington.[21] Use of ERPOs in situations where there was a heightened risk of interpersonal violence was significant: of the 75 petitions filed in that period, 60% of the respondents posed a risk as to others or as to themselves and others[22]—27% as to "others only," and 33% as "to themselves and others."[23] The factors considered in petitioning for the ERPOs are consistent with the specific risk factors identified in Section II(A)(i), *supra*. For example, for the individuals who posed a risk as to others only, 90% of the cases included threats or acts of violence, 60% specifically including brandishing a firearm, and 50% had a history of encounters with law enforcement.[24] For those who posed a risk as to themselves and others, 60% involved substance use that caused concern, and 56% had past law enforcement criminal encounters.[25] Seven percent of these cases involved a mass shooting threat (and in another study, in California, a mass shooting threat was present in 13% of cases).[26]

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[20] *See* Frattaroli, S., Omaki, E., Molocznik, A., Allchin, A., Hopkins, R., Shanahan, S., and Levinson, A. (2020), *Extreme risk protection orders in King County, Washington: the epidemiology of dangerous behaviors and an intervention response*, Injury Epidemiology, 7:44.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.* at 5.

Individual uses of ERPOs are in accord with this aggregated data:

- A 24-year-old California man with a history of excessive alcohol and marijuana use threatened to kill his family's business's employees, his family, and himself. He had made previous such threats and had a prior conviction for a weapons offense. An ERPO led to the surrender of 26 firearms.[27]
- A 61-year-old Colorado man who claimed to be formerly military special forces bragged about shooting individuals. An ERPO led to the removal of at least 59 guns and more than 50,000 rounds of ammunition.[28]
- In Virginia, law enforcement used an ERPO to remove firearms from a man who, according to police, stabbed his girlfriend in the face, neck, and abdomen.[29]
- A Connecticut man threatened to co-workers that there would be a mass shooting related to his workplace reassignments; an ERPO was used to recover 18 rifles, shotguns, and other weapons from his home.[30]
- Law enforcement used an ERPO to remove a handgun from a 21-year-old Florida college student who idolized mass shooters and posted online comments about shootings.[31]
- Law enforcement used an ERPO to recover firearms and ammunition (including four hundred rounds, a long rifle, and a hand grenade) from a Connecticut man who expressed an intention to build an AR-15 and listed "planning a mass murder" under his Facebook activities.[32]

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[27] Wintemute, G.J., Pear, V.A., Schleimer, J.P., Pallin, R., Sohl, S., Kravitz-Wirtz, M., & Tomsich, E. (2019), *Extreme Risk Protection Orders Intended to Prevent Mass Shootings*, Annals of Internal Medicine.

[28] Denver Post, *Colorado's red flag law is one year old. Here's who's using the law to confiscate guns — and why.*, (Jan. 10, 2021, 4:15 p.m.), https://www.denverpost.com/2021/01/10/red-flag-law-colorado-first-year-2020-stats/.

[29] Prince William Times, *More than 20 guns removed from Prince William, Manassas residents so far via 'red flag' law*, (Feb. 25, 2021), https://www.princewilliamtimes.com/news/more-than-20-guns-removed-from-prince-william-manassas-residents-so-far-via-red-flag/article_bb995dea-7785-11eb-b148-7f2fe4c3800a.html.

[30]Hartford Courant, A Stafford public works employee threatened a mass shooting. Police used Connecticut's 'red flag' law and seized 18 guns from his home, (Aug. 15, 2019) https://www.courant.com/politics/hc-pol-connecticut-red-flag-law-20190815-j3rwzldiz5b6toqj3hpdw2onpe-story.html.

[31]WKMG Click Orlando, *Orlando police use Risk Protection Order to take away gun from UCF student*, (Mar. 21, 2018, 11:28 p.m.), https://www.clickorlando.com/news/2018/03/22/orlando-police-use-risk-protection-order-to-take-away-gun-from-ucf-student/.

[32] The Hour, *'Very suspicious' phone call raised red flags for Brandon Wagshol's aunt*, (Oct. 8, 2019), https://www.thehour.com/news/article/Very-suspicious-phone-call-raised-red-flags-14500644.php.

- A 37-year-old California man went target shooting with friends, where they used alcohol, marijuana, and cocaine. The man expressed an intent to bring his firearms to work and kill people. Using an ERPO, law enforcement recovered three firearms from him (a pistol, and AR-type rifle, and a shotgun).[33]

The study in King County also demonstrated significant use of ERPOs in situations where there was a heightened risk of self-harm. Of the 75 petitions studied in King County, 40% of the cases described the respondents' risk as to "themselves only." [34] The same risk factors were implicated: of those who posed a risk to themselves only, substance abuse was a cause for concern in 47% of those cases, and in 27% of the cases the person had brandished a firearm.[35]

Individual cases of ERPO use also demonstrate their utility in suicide prevention:

- An Oregon woman who had an alleged addiction to pain pills repeatedly demanded that her husband give her his firearm and ammunition so that she could use them to die by suicide was the subject of an ERPO for her protection.[36]
- Police in Virginia used an ERPO to confiscate six rifles and six handguns from a 41-year-old military veteran who suffers from post-traumatic stress disorder and who threatened to take his own life.[37]
- In Washington, an ERPO was issued after a man who had made a recent suicide attempt expressed an interest in purchasing a firearm. The man did not object to the ERPO and, indeed, expressed gratitude for it.[38]

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[33] Wintemute, G.J., Pear, V.A., Schleimer, J.P., Pallin, R., Sohl, S., Kravitz-Wirtz, M., & Tomsich, E. (2019), *Extreme Risk Protection Orders Intended to Prevent Mass Shootings*, Annals of Internal Medicine.

[34] Frattaroli, S., Omaki, E., Molocznik, A., Allchin, A., Hopkins, R., Shanahan, S., and Levinson, A. (2020), *Extreme risk protection orders in King County, Washington: the epidemiology of dangerous behaviors and an intervention response*, Injury Epidemiology, 7:44, 4.

[35] *Id.*

[36] OPB, *2 Years In, Oregon's Red Flag Law Paints A Picture Of Crisis*, (Dec. 17, 2019), https://www.opb.org/news/article/oregon-red- flag-law-two-year-firearms-protection-order/.

[37] Prince William Times, *More than 20 guns removed from Prince William, Manassas residents so far via 'red flag' law*, (Feb. 25, 2021), https://www.princewilliamtimes.com/news/more-than-20-guns-removed-from-prince-william-manassas-residents-so-far-via-red-flag/article_bb995dea-7785-11eb-b148-7f2fe4c3800a.html.

[38] Hearing Before the United States Senate Committee on the Judiciary, Written Testimony of Kimberly Wyatt, Senior Deputy Prosecuting Attorney, King County Prosecuting Attorney's

- After a 41-year-old woman in Virginia sent photos of an AR-15 rifle to her husband, accompanied by text messages stating an intent to die by suicide, police used an ERPO to obtain the weapon, which the woman voluntarily then relinquished.[39]

These studies and anecdotes demonstrate that ERPOs are effective and life-saving tools for reducing the risk of interpersonal and self-inflicted gun violence by removing—only from those with manifest risk-factors—an especially lethal means of perpetuating such violence.

B. ERPO laws are enacted for the same reasons and using the same regulatory tools—"why" and "how"—as historical bars on firearm possession.

Since the Founding, federal and state governments have barred certain categories of people from possessing or accessing firearms. Those categories include individuals under a particular age[40]; drug or alcohol users[41]; the mentally ill or those of "unsound mind"[42]; and people convicted

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Office, Mar. 26, 2019, https://www.judiciary.senate.gov/imo/media/doc/Wyatt%20Testimony.pdf.

[39] Prince William Times, *More than 20 guns removed from Prince William, Manassas residents so far via 'red flag' law*, (Feb. 25, 2021), https://www.princewilliamtimes.com/news/more-than-20-guns-removed-from-prince-william-manassas-residents-so-far-via-red-flag/article_bb995dea-7785-11eb-b148-7f2fe4c3800a.html.

[40] *See, e.g.*, 1856 Ala. Acts, No. 26 § 1; 1856 Tenn. Acts, Chapter 82 § 2; 1859 Ky. Acts, 245 § 23; Ky. Gen. Stat. Chapter 29, Article 29 § 1; 1875 Ind. Laws, Chapter XL § 1; 1876 Ga. Acts and Resolutions, No. CXXVIIII (O. No. 63) § 1; 1878 Miss. Laws Chapter 46 §§ 2-3; Mo. Rev. Stat., Chapter 24 § 1274; 16 Del. Laws, Chapter 548 § 1; 1881 Fla. Laws 87, Chapter 3285 §§ 1-2; 1881 Ill. Laws 73 § 2; 1882 W. Va. Acts, Chapter 135 § 1; 1882 Md. Laws, Chapter 24 § 2; 1883 Wis. Laws, Chapter 329 §§ 1-3; 1883 Kan. Sess. Laws, Chapter 105 §§ 1-2; 1884 Iowa Acts and Resolutions, Chapter 78 § 1; 1885 Nev. Stat., Chapter 51 § 1; 1885 N.J. Laws, Chapter XLIV §§ 2-3; District of Columbia, Chapter 159, Stat. 116-17 § 5; 1890 La. Acts, No. 46 §§ 1-2; Wyo. Rev. Stat., Chapter 4 § 5052; N.C. Pub. L. & Res., Chapter 514 §§ 1-2; 1897 Tex. Gen. Laws, Chapter 155 § 1; 1911 N.Y. Laws Chapter 195 §§ 1896-97; 26 Del. Laws, Chapter 15 § 3.

[41] *See, e.g.*, 1655 Va. Acts 402; 26 Del. Laws, Chapter 15 § 3.

[42] *See, e.g.*, 1881 Fla. Laws 87, Chapter 3285 §§ 1-2; 1883 Kan. Sess. Laws, Chapter 105 §§ 1-2; Sam Kimble Revised Ordinances of the City of Manhattan and Rules of the Council (1887); 1927 N.J. Laws Chapter 321 § 7; 1931 Pa. Laws No. §§ 4, 8; D.C. Act of July 8, 1932, Chapter 465 § 7; 1933 Haw. Sess. Laws 39 § 8; 1935 S.D. Sess. Laws Chapter 208 §§ 4, 8; 1935 Wash. Sess. Laws Chapter 172 §§ 4, 8; 1936 Ala. Laws 82, §§ 4, 8.

of felonies or "crimes of violence," as defined by state law.[43] "[T]he Second Amendment is neither a regulatory straightjacket nor a regulatory blank check." *Bruen*, 142 S. Ct. at 2162 (Kavanaugh, J., concurring) (citation omitted).

The historical bars were enacted because people in these categories' acquiring and possessing firearms were believed to pose a risk to the public or to themselves. *See Yancey*, 621 F.3d at 683; *United States v. Carter*, 669 F.3d 411, 415 (4th Cir. 2012) ("Placed in the wrong hands, firearms present a grave threat to public safety, and for this reason, the Anglo-American right to bear arms has always recognized and accommodated limitations for persons perceived to be dangerous."). This reasoning holds true for restrictions on the young, felons, people considered mentally ill, and those who abuse alcohol or drugs: all are or were perceived to pose a risk to themselves or the public. *See NRA v. McCraw*, 719 F.3d 338, 346 (5th Cir. 2013) ("[S]tatutes enacted to safeguard the public using age-based restrictions" are enacted to "target[] select groups' ability to access and to use arms for the sake of public safety.") (citation and quotations omitted); *see Mitchell v. Atkins*, 483 F. Supp. 3d 985, 993-94 (W.D. Wash. 2020) (same). "The historical justification[] for the prohibition on firearm possession by the mentally ill" was the concern that such individuals were "dangerous to themselves or others in society." *Simpson v. Sessions*, Civ. Action No. 16-1334-JLS, 2017 U.S. Dist. LEXIS 71109, at *13 (E.D. Pa. May 9, 2017) (citation omitted); *see United States v. Dugan*, 657 F.3d 998, 999 (9th Cir. 2011) (there is "danger" in allowing "mentally ill people," or unlawful users of, or those addicted to a controlled substance to

[43] *See, e.g.*, 1923 Cal. Stat. Chapter 339 §§ 2, 10; 1923 N.D. Laws Chapter 266 §§ 4, 9; 1923 N.H. Laws Chapter 118 §§ 3, 7, 8; 1925 Ind. Acts Chapter 207 §§ 4, 8; 1925 Or. Laws Chapter 260 §§ 2, 10; 1927 Mass. Chapter 326 § 3; 1927 Mich. Pub. Acts No. 372 §§ 2, 6; 1931 Pa. Laws No. §§ 4, 8; D.C. Act of July 8, 1932, Chapter 465 § 7; 1933 Haw. Sess. Laws 39 § 8; 1935 S.D. Sess. Laws Chapter 208 §§ 4, 8; 1935 Wash. Sess. Laws Chapter 172 §§ 4, 8; 1936 Ala. Laws 82 §§ 4, 8.

"traffic in firearms."); *Mai v. United States*, No. C-17-0561-RAJ, 2018 U.S. Dist. LEXIS 21020, at *4 (W.D. Wash. Feb. 8, 2018) (opining that Congress enacted the federal prohibition on possession of firearms by a person who "has been adjudicated as a mental defective or who has been committed to a mental institution" because such people "have demonstrated that they are dangerous, or that they may become dangerous") (quoting 18 U.S.C. § 922(g)(4); 27 C.F.R. § 478.11. 18 U.S.C. § 925(c)); *Keyes v. Lynch*, 195 F. Supp. 3d 702, 720 (M.D. Pa. 2016) ("[I]t logically appears that the historical justifications for the prohibition on firearm possession by the 'mentally ill' most likely involved a concern over individuals who had mental impairments that made them dangerous to themselves or others in society."); *Michigan v. Deroche*, 829 N.W.2d 891, 895 (Mich. Ct. App. 2013) ("restrictions preventing . . . the mentally ill . . . from possessing firearms [exist] because they are viewed as at-risk people in society who should not bear arms"). Courts have explained that restrictions on felons' possessing handguns are enacted to advance "the public safety objective of preventing gun violence." *Wisconsin v. Roundtree*, 952 N.W.2d 765, 774-75 (Wis. 2021).

Modern research has informed an evolved understanding of the behaviors that suggest a person may pose a risk to society. *See* Section II(A)(i), *supra*. But the underlying premise—that the government can and should bar firearms acquisition and possession for those who may pose a risk to themselves or others—remains unchanged. ERPO laws serve this same purpose. ERPO laws are designed to—and are successful at—temporarily preventing risky people from possessing firearms during the time when they pose an imminent danger to themselves or others. *See* Section II, *supra*. In analyzing firearm restrictions under *Heller* and *Bruen*, courts engage in analogical reasoning when determining whether a restriction is constitutional. *See, e.g.*, *United States v. Jackson*, No. CR-22-59-D, 2022 U.S. Dist. LEXIS 148911, at *7 (W.D. Okla. Aug. 19, 2022)

(finding the federal bar on firearms possession by "domestic violence misdemeanants" "relevantly similar" to other historical bars); *United States v. Daniels*, No. 1:22-cr-58-LG-RHWR-1, 2022 U.S. Dist. LEXIS 120556, at *11 (S.D. Miss. July 8, 2022) (the federal bar on firearms possession by a user of a controlled substance is constitutional because "analogous statutes which purport to disarm persons considered a risk to society—whether felons or alcoholics—were known to the American legal tradition"); *see also United States v. White*, 593 F.3d 1199, 1206 (11th Cir. 2010) (reasoning by analogy that restrictions on perpetrators of domestic abuse are constitutional because the justifications for excluding them from firearms possession are comparable to bars on firearms possession by felons); *NRA v. Swearingen*, 535 F. Supp. 3d 1247, 1267 (N.D. Fla. 2021) (same, as to age-based restrictions); *United States v. Walker*, 709 F. Supp. 2d at 464 (same, as to domestic abuse perpetrators).

The justification for D.C.'s ERPO Law is the same as the justification for these other historical (and constitutional) bars on firearm possession, and therefore, it is "relevantly similar" and constitutional. Moreover, ERPO laws provide for a more nuanced assessment of the need for firearm dispossession as compared to other, constitutional bars (like felon prohibitions) because they involve both an individual adjudication of dangerousness *and* are time bound. Ultimately, "[t]he historical evidence . . . support[s] . . . [the] proposition[] that the legislature may disarm those who have demonstrated a proclivity for violence or whose possession of guns would otherwise threaten the public safety." *Kanter*, 919 F.3d at 454 (Barrett, J., dissenting). D.C.'s ERPO Law addresses people who are not only *presumptively* risky, but *demonstrably* so.

CONCLUSION

The Second Amendment is no bar to enforcing D.C.'s ERPO Law. The conduct D.C.'s ERPO Law regulates falls outside the plain text of the Second Amendment. And even if it does

not, the "how" and "why" of D.C.'s ERPO Law demonstrates that it is relevantly similar to other constitutional firearms regulations and, thus, constitutional.

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