24-2026

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

VERMONT FEDERATION OF SPORTSMEN'S CLUBS, INC., POWDERHORN OUTDOOR SPORTS CENTER, INC., JPC, INC., dba BLACK DOG SHOOTING SUPPLIES, PAUL DAME, MARSHA J. THOMPSON,

Plaintiffs-Appellants,

v.

MATTHEW BIRMINGHAM, Director of the Vermont State Police, in his official and personal capacities, CHARITY CLARK, Attorney General of the State of Vermont, in her official and personal capacities, SARAH GEORGE, State's Attorney for Chittenden County, in her official and personal capacities,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Vermont

BRIEF OF EVERYTOWN FOR GUN SAFETY AS AMICUS CURIAE IN SUPPORT OF DEFENDANTS-APPELLEES AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

Everytown for Gun Safety (formally, Everytown for Gun Safety Action Fund) has no parent corporations. It has no stock; hence, no publicly held company owns 10% or more of its stock.

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INTEREST OF AMICUS CURIAE

Everytown for Gun Safety ("Everytown") is the nation's largest gun-violence-prevention organization, with nearly eleven million supporters across the country. Everytown was founded in 2014 as the combined effort of Mayors Against Illegal Guns, a national, bipartisan coalition of mayors combating illegal guns and gun trafficking, and Moms Demand Action for Gun Sense in America, an organization formed after a gunman murdered twenty children and six adults at an elementary school in Newtown, Connecticut. Everytown also includes a large network of gun-violence survivors who are empowered to share their stories and advocate for responsible gun laws, as well as a national movement of high school and college students working to end gun violence.[1]

[1] No party's counsel authored this brief in whole or part and, apart from Everytown, no person contributed money to fund its preparation or submission. All parties consent to this brief's submission.

INTRODUCTION AND SUMMARY OF ARGUMENT

Vermont's law establishing a 72-hour waiting period for firearm transfers is constitutional under the framework set out in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024), for the reasons set out in the State's brief, Dkt. 58 ("State Br.").[2] As Vermont has explained, this Court should uphold the law at the initial, textual step of the *Bruen-Rahimi* framework. *See id.* at 14-15. That is because "regulations on the means of acquiring … firearms," like Vermont's law, "only implicate the text of the Second Amendment if they meaningfully constrain the right to possess and carry arms." *United States v. Vereen*, 152 F.4th 89, 95 (2d Cir. 2025), *cert. denied*, No. 25-6198, 2026 WL 79986 (U.S. Jan.12, 2026). Vermont's "short, non-discretionary waiting period[]" for firearm transfers, SPA-71 (district court opinion), does not do so, *see* State Br. 23-33. Thus, the law does not "constitute an infringement of the textually enumerated right to 'keep' and 'bear' arms." *Vereen*, 152 F.4th

[2] This brief addresses only aspects of Plaintiffs' likelihood of success on the merits of their challenge to Vermont's waiting-period law. The Court should affirm for all the reasons the State has set out.

at 96. That alone is enough to reject Plaintiffs' challenge and affirm the district court's decision.

If the Court proceeds to the second, historical step of the *Bruen-Rahimi* framework, however, Plaintiffs' challenge would still fail. As the State has demonstrated, Vermont's waiting-period law "fits easily within the nation's history and tradition of firearms regulations." State Br. 15; *see id.* at 33-47. Everytown submits this amicus brief to expand on two methodological points relevant to this historical inquiry.

First, because governments cannot be expected to legislate to address problems that do not yet exist, the Court must consider historical context. Such context is especially important in this case, where immediate access to highly lethal firearms and contemporary understandings of suicide are both markedly different from the access and understandings of our forebears. These differences explain why waiting-period laws like Vermont's did not arise until recently and support the conclusion that Vermont's law is a constitutional response to unprecedented present-day concerns.

Second, despite Plaintiffs' and their amici's arguments to the contrary, Reconstruction-era and later evidence is an important part of

the Second Amendment historical inquiry. The Supreme Court made that clear in *Bruen*, *Rahimi*, and *District of Columbia v. Heller*, 554 U.S. 570 (2008), and this Court's application of those decisions in *Antonyuk v. James*, 120 F.4th 941 (2d Cir. 2024), *cert. denied*, 145 S. Ct. 1900 (2025), *Frey v. City of New York*, 157 F.4th 118 (2d Cir. 2025), and other cases has put the issue beyond doubt. Accordingly, if the Court reaches the second step of the analysis in this case, it should continue to give significant weight to such later history.

ARGUMENT

I. This Court Should Consider Historical Context in Evaluating Vermont's Waiting-Period Law

Plaintiffs have failed to carry their burden at the text step, and that ends this case. *See* State Br. 23-33. If, however, the Court proceeds to the second, historical step, it should consider the importance of historical context in discerning the "principles that underpin our regulatory tradition." *Rahimi*, 602 U.S. at 692. *Bruen* recognized that the "regulatory challenges posed by firearms today are not always the same as those that preoccupied the Founders in 1791 or the Reconstruction generation in 1868." 597 U.S. at 27; *see also Antonyuk*, 120 F.4th at 970 (explaining that "courts must be particularly attuned

to the reality that the issues we face today are different than those faced in medieval England, the Founding Era, the Antebellum Era, and Reconstruction"). Still, "the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Bruen*, 597 U.S. at 28.

To that end, *Bruen* instructed that "cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach" to history. *Id.* at 27. Recognizing that governments cannot be expected to "regulate for problems that do not exist" in their jurisdiction, *McCullen v. Coakley*, 573 U.S. 464, 481-82 (2014) (quoting *Burson v. Freeman*, 504 U.S. 191, 207 (1992) (plurality opinion)), this approach allows for particular weight to be given to regulations that emerged alongside or soon after the new condition became apparent.

This Court has applied the "more nuanced approach" where legislation seeks "to address a problem that is without direct historical precedent." *Nat'l Ass'n for Gun Rights v. Lamont*, 153 F.4th 213, 237 (2d Cir. 2025) ("*NAGR*") (pointing to the "dramatic technological changes" and "unprecedented societal concerns" presented by

contemporary assault weapons and large-capacity magazines), *petition for cert. filed*, No. 25-421 (U.S. Oct. 3, 2025); *see also, e.g.*, *Antonyuk*, 120 F.4th at 1026 (applying the more nuanced approach to assess a restriction on firearms in the "relatively modern institutions" of zoos); *Zherka v. Bondi*, 140 F.4th 68, 79 (2d Cir. 2025) (using the more nuanced approach because the federal Gun Control Act was enacted to address an "unprecedented scale of gun violence"), *petition for cert. filed*, No. 25-269 (U.S. Sept. 5, 2025). Here, a more nuanced approach is appropriate given the modern phenomenon of immediate availability of highly lethal firearms and modern understandings of suicide prevention that depart dramatically from the flawed thinking of earlier generations. And, regardless of whether this Court applies the more nuanced approach, this historical context demonstrates why waiting-period laws like Vermont's arose only recently, to address new and evolving needs and concerns.[3]

[3] As courts have recognized, historical context is relevant to assessing whether a law is "relevantly similar" to historical antecedents even when not applying the "more nuanced approach." *See, e.g.*, *Duncan v. Bonta*, 133 F.4th 852, 874-76 (9th Cir. 2025) (en banc) (considering historical context when applying "*Rahimi*'s straightforward approach," although it found that the "more nuanced approach" would also apply),

A. The immediate availability of highly lethal firearms is a modern phenomenon

As the district court correctly found, "the specific problem addressed by Vermont's law—immediate acquisition of highly lethal firearms—was not present at the founding." SPA-78; *see* State Br. 10-11, 45-47. Vermont's expert testified that firearms were not readily available for immediate purchase in the 17th, 18th, or most of the 19th century. A-573 (Spitzer Decl.). Accordingly, throughout most of American history, "the idea of waiting periods for firearm purchases would have been unnecessary and infeasible." A-603-04 (Spitzer Decl.). In the modern era, however, "gun and ammunition purchases can be made easily and rapidly" via numerous avenues. A-573 (Spitzer Decl.).

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petition for cert. filed, No. 25-198 (U.S. Aug. 15, 2025). And, although one set of Plaintiffs' amici contends that the "relevantly similar" analysis is inapplicable when there is no unprecedented concern, *see* Brief of Amici Curiae Second Amendment Foundation et al., Dkt. 48 ("SAF Br.") 10 (asking whether laws are "distinctly similar"), this Court has squarely rejected that position, *see Vereen*, 152 F.4th at 99 (explaining that "*Rahimi* applied the 'relevantly similar' framework" to its historical inquiry "[w]ithout first holding that the statute implicated unprecedented societal concerns or dramatic technological changes"); *NAGR*, 153 F.4th at 232 (same); *see also* Pls. Br. 15 (recognizing "relevantly similar" analysis applies).

The guns themselves are also different: firearms in the colonial and founding eras "did not lend themselves to impulsive use" due to their unreliability and inaccuracy. A-574 (Spitzer Decl.). As Vermont's experts explained, muzzle-loading firearms such as muskets "could not be used impulsively unless they were already loaded for some other purpose" and were "difficult to keep loaded for any length of time." A-446 (Roth Decl.); *see* A-574-75 (Spitzer Decl.). These "significant" technological limitations meant that guns were not routinely used for the kinds of violence "that grew out of the tensions of daily life." A-446-47 (Roth Decl.). It was not until the latter part of the 19th century that "improved technology and materials" made firearms not just more available, but also more readily usable for impulsive acts. A-573 (Spitzer Decl.); *see also* A-458-59 (Roth Decl.).

One consequence of these developments in the availability and functioning of firearms is that guns are now the most common means of suicide in the United States. *Suicide Data and Statistics, Data Table: Suicide Methods*, Centers for Disease Control and Prevention (2025), https://perma.cc/3FNN-X4TG. In 2023, over 49,000 people died by suicide; over half of those suicides used a firearm. *Id.*; *see also Annual*

Suicide Data Report, Vermont Dep't of Health 11 (June 2025), https://perma.cc/4DVY-VFQ3 (reporting that guns "account for more than half of suicide deaths in Vermont"). The scale of this crisis, made possible by dramatic technological changes, would have been unthinkable to lawmakers in earlier eras. *See* A-1584 (Spitzer Hr'g Test.) ("[F]irearms clearly in the modern era are a far, far greater suicide problem than they were in the 1800's to 1700's.").

B. Earlier generations' flawed understanding of the causes of suicide prevented them from addressing it via modern solutions like waiting periods

As the scope and methods of intentional self-harm have evolved, so too has our societal understanding of the problem. *See* State Br. 47. Earlier generations did not conceive of suicide as resulting from psychological conditions that could be addressed by delaying access to lethal means. Instead, colonial-era evidence indicates that people frequently attributed suicide to the devil and responded to it with religious rituals. *See* Eric Ruben, *Scientific Context, Suicide Prevention, and the Second Amendment After* Bruen, 108 Minn. L. Rev. 3121, 3130, 3160-61 (2024). Alongside these practices, colonial and founding-era law responded to suicide with criminalization, punishing it in several

colonies "with a dishonorable burial" and "forfeiture of goods." *Id.* at 3163.

Even when suicidality was approached through a medical frame, doctors treated it as a blood-related disorder that could be addressed through bloodletting, "purges" (induced diarrhea or vomiting), and the ingestion of toxic substances such as mercury. *See id.* at 3130, 3168-72. It was not until the late 1800s and early 1900s that researchers like Sigmund Freud "beg[a]n to acknowledge the psychological determinants of suicidal behavior." *Id.* at 3173. And it was not until the mid- to late-20th century that researchers arrived at the modern understanding of "means restriction"—the idea that restricting the immediate availability of highly lethal means can effectively prevent, not merely delay, suicide. *See id.* at 3128, 3139-44.

We now know that access to "highly lethal means," such as a firearm, is an "independent predictor[] of suicide, separate from any underlying psychological or social causes." *Id.* at 3142. Because suicidality is linked to impulsivity, "[i]f a particularly lethal mechanism like a gun is readily available, many 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 them from such an irreversible action." A-402 (Donohue Decl.). This means that even short delays "are able to disrupt suicidal ideation and thereby significantly decrease firearm suicides." *Id.*

Waiting periods create this short but crucial delay, and studies have demonstrated that they lead to tangible reductions in firearm suicides. A-401 (Donohue Decl.); *see also* Ruben, 108 Minn. L. Rev. at 3146. It is true that earlier generations did not make use of this particular intervention. But the historical context demonstrates that their failure to do so was not a product of constitutional concerns with the concept of a waiting period. Without the benefit of our current understanding of suicide, earlier generations had no reason to think that a waiting period would be effective at preventing suicide. If the Court conducts a historical inquiry here, it should take full account of this context.

II. Reconstruction-Era and Later Evidence is an Important Part of the *Bruen-Rahimi* Historical Analysis

Plaintiffs and their amici contend that this Court should "look primarily to laws in existence at the founding of the Nation" when conducting the *Bruen-Rahimi* historical analysis. Brief for Plaintiffs-

Appellants, Dkt. 31 ("Pls. Br.") 15; *see* SAF Br. 22 ("To be clear, Amici firmly believe that the proper time period for historical analogues is the founding era, not the later 19th century."); Brief for Amicus Curiae National Shooting Sports Foundation, Inc., Dkt. 40, 18-19 (emphasizing the "early days of the Republic"). They are wrong. Any suggestion that Reconstruction-era and later history should not be considered here is inconsistent with Supreme Court precedent and foreclosed by Second Circuit cases.

A. Confining the historical analysis to the founding era is inconsistent with Supreme Court decisions

The Supreme Court has made clear—in *Heller*, *Bruen*, and *Rahimi*—that examination of this nation's historical tradition of firearms regulation must extend long past the founding era.[4] *Heller* established that post-ratification history "is a critical tool of constitutional interpretation." 554 U.S. at 605. And in its analysis, it

[4] The Court has done so while expressly leaving open whether the founding (when the Second Amendment was ratified) or Reconstruction era (when the Fourteenth Amendment made it applicable to the states) should be the central focus of the historical analysis. *See Rahimi*, 602 U.S. at 692 n.1; *Bruen*, 597 U.S. at 37-38. As such, no matter which period has primary relevance, this post-founding evidence is a critical part of the analysis.

relied on "19th-century cases that interpreted the Second Amendment," "'discussion of the Second Amendment in Congress and in public discourse' after the Civil War," and "how post-Civil War commentators understood the right." *Bruen*, 597 U.S. at 21 (describing and quoting *Heller*, 554 U.S. at 610, 614, 616-19).

Bruen subsequently "reaffirmed the appropriateness of relying on post-Founding history" in determining the original public understanding. *Frey*, 157 F.4th at 129. It relied on mid-19th-century cases and statutes, *see Bruen*, 597 U.S. at 51-57, and surveyed "public discourse surrounding Reconstruction," *id.* at 60. The Court further indicated that "18th *and 19th-century*" laws restricting firearms possession in certain sensitive places satisfied its historical analysis. *Id.* at 30 (emphasis added).

Rahimi then put the relevance of 19th-century evidence even further beyond doubt. It rested its decision upholding a challenged federal law in large part based on laws passed between 1836 and 1868. See 602 U.S. at 696 (relying on Massachusetts surety statute from 1836); *id.* (invoking similar statutes of nine other jurisdictions by citation to *Bruen*, 597 U.S. at 56 & n.23, citing 1838 Wisconsin, 1840

Maine, 1846 Michigan, 1847 Virginia, 1851 Minnesota, 1854 Oregon, 1857 District of Columbia, 1860 Pennsylvania, and 1868 West Virginia surety laws). In addition, Justice Kavanaugh explained in his concurring opinion that "the Framers[] expected[ed] and inten[ded] that post-ratification history would be a proper and important tool" of constitutional interpretation. *Id.* at 725 (Kavanaugh, J., concurring). And Justice Barrett emphasized that "postenactment history can be an important tool." *Id.* at 738 (Barrett, J., concurring).

In short, the Supreme Court has repeatedly made clear that post-ratification history plays a vital role in resolving Second Amendment challenges.

B. Confining the historical analysis to the founding era is irreconcilable with Second Circuit caselaw

Even if the Supreme Court's decisions had left any room to doubt the significance of post-founding evidence, binding Second Circuit caselaw eliminates it. This Court has carefully analyzed and faithfully applied *Heller*, *Bruen*, and *Rahimi* in several subsequent decisions. Those decisions have extensively addressed the role of post-founding history in the *Bruen-Rahimi* inquiry and confirmed its importance.

To begin, in *Antonyuk*, the Court explained that evidence from the Reconstruction era is "at least as relevant as evidence from the Founding era" to revealing the public understanding of the right that constrains the states. 120 F.4th at 988 n.36. Thus, even though the Supreme Court has so far declined to expressly decide whether the primary reference point for historical analysis should be 1791 or 1868, *see supra* note 4, *Antonyuk* correctly concluded that both periods are "fertile ground." *Id.* at 974.

This Court has reaffirmed that view on multiple occasions. In considering a challenge to Connecticut laws restricting assault weapons and large-capacity magazines in *NAGR*, the Court stated that the "'prevailing understanding of the right to bear arms' in both 1791 … and in 1868" was "relevant" to the analysis. 153 F.4th at 235 (quoting *Antonyuk*, 120 F.4th at 972). It then considered laws stretching into the 20th century in upholding Connecticut's laws. *See id.* at 245-46.[5] Similarly, *Giambalvo v. Suffolk County* relied on *Antonyuk*'s instruction

[5] *NAGR* explained that 20th-century evidence, though "less instructive," "may be considered so long as it does not contradict the text of the Second Amendment or evidence from before or during the period of ratification." 153 F.4th at 245 n.39.

that "1868 and 1791 are both focal points" of the historical inquiry when considering a challenge to New York's firearm licensing regime. 155 F.4th 163, 178 (2d Cir. 2025) (quoting *Antonyuk*, 120 F.4th at 972).

Most recently, in *Frey*, this Court relied on Reconstruction-era history to uphold several New York laws regulating public carry. 157 F.4th at 129. *Frey* noted that *Antonyuk* "suggested that the incorporation of the Second Amendment against the states through the Fourteenth Amendment may have, as commentators observe, 'invested those original 1791 texts with new 1868 meanings.'" *Id.* at 128 (quoting Kurt T. Lash, *Respeaking the Bill of Rights: A New Doctrine of Incorporation*, 97 Ind. L.J. 1439, 1441 (2022)). But, as in *Antonyuk*, it found it unnecessary to decide whether the 1791 or 1868 understanding of the right "has primacy." *Id.* at 129. "Even if the 1791 understanding primarily controls," the Court explained, it could still "comfortably rely" on Reconstruction-era and other post-founding history. *Id.*

The Court then laid out why that was so. To begin with, *Heller* itself "explicitly sanctioned" looking to post-founding history to understand the "original public meaning … in 1791," and "underscored the importance of Reconstruction-era evidence." *Id.* This approach also

comports with James Madison's liquidation theory, under which "a regular course of practice can liquidate [and] settle the meaning of disputed or indeterminate" constitutional terms or phrases. *Id.* at 129 (cleaned up).[6] Accordingly, "[w]here there is no strong historical evidence from the Founding era, it is appropriate to look toward, and rely upon, later historical evidence." *Id.* at 130.

Importantly, the *absence* of legislation in the founding era does not constitute such "strong historical evidence," because it does not necessarily mean that anybody "deemed such a regulation inconsistent with the right to bear arms." *Id.* (quoting *Antonyuk*, 120 F.4th at 969). "Thus," the Court explained, "the dearth of similar Founding-era laws does not help us discern with clarity the scope of the Second Amendment right," and a court must then "continue [its] march through history to ascertain the meaning of that as-yet ambiguous Constitutional provision." *Id.*

Applying these principles, the Court rejected the plaintiffs' argument that regulations postdating the ratification of the Second

[6] As this Court noted, the Supreme Court has endorsed Madison's liquidation theory "on several occasions," including in *Bruen*. *Frey*, 157 F.4th at 129.

Amendment could not justify one of the challenged laws. *See id.* at 142-43. It reiterated that "Supreme Court precedents and this Court's opinion in *Antonyuk* confirm that we can use 19th century evidence to discern our American tradition—at least where it does not conflict with Founding-era evidence." *Id.* at 143. And it had already explained that founding-era silence does not amount to conflicting evidence; to the contrary, "*Antonyuk* and Supreme Court precedents support reliance on 19th-century history in the face of uncertain *or silent* Founding-era history." *Id.* at 139 n.12 (emphasis added). The Court then laid out 19th-century and early 20th-century regulations supporting New York's law and rejected the plaintiffs' challenge. *See id.* at 142-43.

Plaintiffs here make the same flawed arguments, downplaying the significance of Reconstruction-era evidence and attempting to give meaningful weight to the absence of founding-era laws restricting immediate purchase. *See* Pls. Br. 15-16, 36. In doing so, Plaintiffs disregard this Court's clear and detailed conclusions on the proper

methodology for the *Bruen-Rahimi* historical inquiry, which includes affording vital significance to post-ratification history.[7]

* * *

In sum, if the Court reaches the second, historical step of the *Bruen-Rahimi* analysis, it should take into account historical context, consider this nation's entire tradition of firearms regulation—including Reconstruction-era and later history—and conclude that Vermont's law is consistent with that tradition.

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[7] Several other circuits have likewise concluded that the *Bruen-Rahimi* historical inquiry should encompass later evidence. *See, e.g.*, *United States v. Rush*, 130 F.4th 633, 642 (7th Cir. 2025) (explaining that "the government is not constrained to only Founding Era laws"), *cert. denied*, No. 24-1259, 2025 WL 3620422 (U.S. Dec. 15, 2025); *Nat'l Rifle Ass'n v. Bondi*, 133 F.4th 1108, 1121 (11th Cir. 2025) (en banc) (relying on "[m]id-to-late nineteenth-century laws consistent with [earlier] principles"), *petition for cert. filed sub nom. Nat'l Rifle Ass'n v. Glass*, No. 24-1185 (U.S. May 16, 2025); *Bianchi v. Brown*, 111 F.4th 438, 465-71 (4th Cir. 2024) (en banc) (relying on 19th- and 20th-century evidence), *cert. denied*, 145 S. Ct. 1534 (2025); *Hanson v. District of Columbia*, 120 F.4th 223, 237-40, 238 n.7 (D.C. Cir. 2024) (same), *cert. denied*, 145 S. Ct. 2778 (2025); *Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38, 46-48, 51-52 (1st Cir. 2024) (same), *cert. denied*, 145 S. Ct. 2771 (2025).

CONCLUSION

The Court should affirm the district court's decision.

Dated: January 16, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B)(i) and Local Rules 29.1(c) and 32.1(a)(4)(A) because this brief contains 3664 words, excluding the portions exempted by Fed. R. App. P. 32(f), and complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

Dated: January 16, 2026

/s/ Rachel A.B. Danner
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