UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DILLON SEVERINO;	:	
	:	DKT No.: 3:22-cv-01529 (VAB)
Plaintiff,	:	
	:	
v.	:	
	:	
FERNANDO SPAGNOLA; in his official capacity only; NED LAMONT, in his official capacity only; JAMES ROVELLA, in his official capacity only; PATRICK GRIFFIN, in his official capacity only; MARGARET E. KELLY, in her official capacity only; DAVID R. APPLEGATE, in his official capacity only; JOSEPH T. CORRADINO, in his official capacity only; SHARMESE L. WALCOTT, in her official capacity only; DAVID R. SHANNON, in his official capacity only; MICHAEL A. GAILOR, in his official capacity only; CHRISTIAN WATSON, in his official capacity only; JOHN P. DOYLE, JR., in his official capacity only, PAUL J. NARDUCCI, in his official capacity only; PAUL J. FERENCEK, in his official capacity only; MATTHEW C. GEDANSKY, in his official capacity only, MAUREEN PLATT, in her official capacity only; ANNE F. MAHONEY, in her official capacity only; CAROLYN M. FUTTNER, in her official capacity only; CYNTHIA CONRAD, in her official capacity only; ANTHONY IACONIS, in his official capacity only; GUDRUN JOHNSON, in her official capacity only; STEPHEN SANETTI, in his official capacity only; CHRIS LEWIS, in his official capacity only; CARL ROSENSWEIG, in his official capacity only;	:	
	:	
Defendants.	:	DECEMBER 2, 2022

PLAINTIFF'S EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AND, IN THE ALTERNATIVE, TO CONSOLIDATE THE PRELIMINARY INJUNCTION HEARING WITH THE TRIAL ON THE MERITS

Pursuant to Fed. R. Civ. P. 65 and Local Rule 7, the Plaintiff, Dillon Severino, hereby respectfully moves the Court to issue an emergency temporary restraining order and preliminary injunction against the Defendants. Severino request the following relief:

1. A temporary restraining order barring the Defendants from enforcing Conn. Gen. Stat. § 29-35 until the Court can determine the merits of Severino's application for a preliminary injunction;
2. A preliminary injunction barring the Defendants from enforcing Conn. Gen. Stat. § 29-35 until such time as the Court makes a final determination on the merits in this matter;
3. A temporary restraining order barring the Defendants from enforcing Conn. Gen. Stat. § 29-36f until the Court can determine the merits of Severino's application for a preliminary injunction;
4. A preliminary injunction barring the Defendants from enforcing Conn. Gen. Stat. § 29-36f until such time as the Court makes a final determination on the merits in this matter;
5. A temporary restraining order barring the Defendants from enforcing Conn. Gen. Stat. § 29-33(b) until the Court can determine the merits of Severino's application for a preliminary injunction;

ORAL ARGUMENT REQUESTED.

6. A preliminary injunction barring the Defendants from enforcing Conn. Gen. Stat. § 29-33(b) until such time as the Court makes a final determination on the merits in this matter;

7. A temporary restraining order barring the Defendants from withholding pistol permits under Conn. Gen. Stat. § 29-28's "suitability" requirement until the Court can determine the merits of Severino's application for a preliminary injunction;

8. A preliminary injunction barring the Defendants from withholding pistol permits under Conn. Gen. Stat. § 29-28's "suitability" requirement until such time as the Court makes a final determination on the merits in this matter;

9. A temporary restraining order prohibiting the Defendants from withholding Dillon Severino's Connecticut pistol permit in the absence of a timely and meaningful opportunity to be heard at a meaningful time in a meaningful manner regarding its denial until the Court can determine the merits of Severino's application for a preliminary injunction;;

10. A preliminary injunction prohibiting the Defendants from withholding Dillon Severino's Connecticut pistol permit in the absence of a timely and meaningful opportunity to be heard at a meaningful time in a meaningful manner regarding its denial until such time as the Court makes a final determination on the merits in this matter;

In the alternative, Severino moves the Court to order expedited discovery and consolidate the preliminary injunction hearing with the trial on the merits in this matter pursuant to Fed. R. Civ. P. 65.

The Plaintiff,

By: /s/ Cameron L. Atkinson /s/
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CERTIFICATION OF SERVICE

The Defendants have not appeared in this matter yet. The undersigned has identified their appropriate legal representatives though, notified them that he would be making this motion prior to filing it, and will provide them with copies of it immediately after he has verified that it has been electronically filed on the foregoing date.

/s/ Cameron L. Atkinson /s/

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DILLON SEVERINO; Plaintiff, v. FERNANDO SPAGNOLA; in his official capacity only; NED LAMONT, in his official capacity only; JAMES ROVELLA, in his official capacity only; PATRICK GRIFFIN, in his official capacity only; MARGARET E. KELLY, in her official capacity only; DAVID R. APPLEGATE, in his official capacity only; JOSEPH T. CORRADINO, in his official capacity only; SHARMESE L. WALCOTT, in her official capacity only; DAVID R. SHANNON, in his official capacity only; MICHAEL A. GAILOR, in his official capacity only; CHRISTIAN WATSON, in his official capacity only; JOHN P. DOYLE, JR., in his official capacity only, PAUL J. NARDUCCI, in his official capacity only; PAUL J. FERENCEK, in his official capacity only; MATTHEW C. GEDANSKY, in his official capacity only, MAUREEN PLATT, in her official capacity only; ANNE F. MAHONEY, in her official capacity only; CAROLYN M. FUTTNER, in her official capacity only; CYNTHIA CONRAD, in her official capacity only; ANTHONY IACONIS, in his official capacity only; GUDRUN JOHNSON, in her official capacity only; STEPHEN SANETTI, in his official capacity only; CHRIS LEWIS, in his official capacity only; CARL ROSENSWEIG, in his official capacity only; Defendants.	:	DKT No.: 3:22-cv-01529 (VAB) DECEMBER 2, 2022

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AND, IN THE ALTERNATIVE, TO CONSOLIDATE THE PRELIMINARY INJUNCTION HEARING WITH THE TRIAL ON THE MERITS

The Plaintiff, Dillon Severino, respectfully submits this memorandum of law in support of his emergency motion for a temporary restraining order and a preliminary injunction and, in the alternative, to consolidate the preliminary injunction hearing with the trial on the merits. He emphasizes to the Court that he does not seek *ex parte* relief, but that he does seek expedited relief pursuant to Local Rule 7(a)6 to protect his Second Amendment rights.

Severino respectfully asks the Court to issue a temporary restraining order and a preliminary injunction prohibiting the Defendants from withholding his pistol permit under Conn. Gen. Stat. § 29-28, enforcing Conn. Gen. Stat. §§ 29-35, 29-36f, 29-33(b), and denying him a meaningful opportunity to be heard.

FACTUAL BACKGROUND

On or around April 2022, Dillon Severino began the process of applying for a Connecticut pistol permit through the processes ordained by Connecticut law. *See* Dkt. 1, ¶ 48.[1] As a current Connecticut Department of Corrections officer, he did not expect to encounter any difficulty in obtaining his pistol permit. *Id*. at ¶ 47. Defendant Fernando Spagnola – the City of Waterbury's police chief – denied his application in writing though. *Id*. at ¶ 50. To provide context, Severino will briefly set forth the details of Connecticut's pistol permitting system here.

ORAL ARGUMENT REQUESTED.

[1] Severino has filed a verified complaint, which the Court may take as evidence in this matter.

I. Connecticut's Tiered Pistol Permitting & Appeal System:

Connecticut's pistol permitting system starts with its main three prohibitions. First, it prohibits people from carrying a pistol or revolver without a permit except when they are in their homes or places of business. Conn. Gen. Stat. § 29-35(a). A violation of this statutory prohibition constitutes a class D felony under Connecticut law and carries a mandatory minimum sentence of one-year of incarceration unless the sentencing court determines that there are mitigating circumstances. Conn. Gen. Stat. § 29-37(b). The maximum sentence is five years of incarceration. Conn. Gen. Stat. § 53a-35a(8).

Second, Connecticut prohibits the sale of delivery of a pistol or revolver to a person who does not hold a Connecticut pistol permit, a permit to sell pistols or revolvers, or an eligibility certificate for a pistol or revolver issued pursuant to Conn. Gen. Stat. § 29-36f. Conn. Gen. Stat. § 29-33(b). It, however, makes limited exceptions for federal marshals, parole officers, and peace officers. *Id*. A violation of this statutory prohibition is a class C felony under Connecticut law and carries a mandatory minimum sentence of two years' incarceration and a minimum fine of $5,000. Conn. Gen. Stat. § 29-33(i). The maximum sentence is ten years' incarceration. Conn. Gen. Stat. § 53a-35a(7).

Third, Connecticut prohibits Connecticut pistol permit holders from carrying their pistols or revolvers in public without carrying their permits with them. Conn. Gen. Stat. § 29-35(b). A violation of this statutory prohibition is an infraction under Connecticut law and carries a $35 fine. Conn. Gen. Stat. § 29-37(c).

There are two options by which a person can obtain Connecticut's permission to possess a pistol or revolver: a pistol permit (Conn. Gen. Stat. § 29-28) and a eligibility certificate for a pistol or revolver (Conn. Gen. Stat. § 29-36g). The permit and the eligibility

certificate, however, differ in what they permit a person to do. A pistol permit holder may purchase, possess, and carry a pistol or revolver in public, their homes, and their places of business. Conn. Gen. Stat. § 29-35. The only benefit offered by the eligibility certificate is that it permits a person to purchase a pistol or revolver as Conn. Gen. Stat. § 29-35(a) prohibits him from bearing it outside his home or place of business. Conn. Gen. Stat. § 29-33.

A. Connecticut Pistol Permits

Applying for a Connecticut pistol permit is a two-step process. Applicants must first apply to their local police chief, resident state trooper or a designated state trooper, or a town official such as a first selectman (local issuing authorities) for a temporary state pistol permit. Conn. Gen. Stat. § 29-28(b). In this step, the applicant must provide proof that he has taken a pistol and revolver safety course and demonstrate that he is not prohibited from possessing a firearm under 18 U.S.C. § 922 and Conn. Gen. Stat. § 29-28(b). Dkt. 1, ¶ 33. If an applicant meets these requirements, the local issuing authorities may not issue the temporary state pistol permit unless they find "that such applicant intends to make no use of any or revolver… other than a lawful use and that such person is a suitable person to receive such permit." Conn. Gen. Stat. § 29-28(b). There are no statutory guidelines for officials on how to assess either factor. Dkt. 1, ¶ 34.

Assuming that an applicant passes the "suitability sniff test," the local issuing authorities issue a temporary state pistol permit that permits a person to carry, but not purchase, pistols or revolvers for a period of 60 days during which the applicant is required to appear at a Connecticut State Police location to receive their final state pistol permit. Conn. Gen. Stat. § 29-28(b). Like any government process, the Defendants require

applicants to pay a $140 fee for their pistol permit application, plus a fingerprinting fee and whatever fee that the FBI charges for a national criminal history records check. Dkt. 1, ¶ 36. Pistol permit holders must also renew their pistol permits every five years to the tune of $70. *Id*.

Just because an applicant has obtained a Connecticut pistol permit does not guarantee that he will keep it. After a person obtains their pistol permit, the Commissioner of the Department of Emergency Services and Public Protection retains the authority to revoke the person's pistol permit "upon the occurrence of any event which would have disqualified the holder from being issued the state permit or temporary state permit…," which includes a free-for-all determination that a person is no longer suitable to possess a pistol permit. *See* Conn. Gen. Stat. § 29-32(b).

B. Connecticut Pistol Eligibility Certificates

Applying for a pistol eligibility certificate is a single-step process. An applicant must submit an application to the Commissioner of the Department of Emergency Services and Public Protection. *See* Conn. Gen. Stat. § 29-36g. From the date of the application, the Commissioner has ninety days to "(A) approve the application and issue the eligibility certificate, (B) issue a temporary eligibility certificate, or (C) deny the application and notify the applicant of the reason for such denial in writing." *Id*. If a temporary certificate is issued while the Commissioner awaits the FBI's national criminal history records check report, the Commissioner has 60 days from the receipt of the report to approve or deny the application. *Id*.

To qualify for a pistol eligibility certificate, the applicant must not be prohibited from possessing a firearm under 18 U.S.C. § 922 and Conn. Gen. Stat. § 29-36f. Conn. Gen.

Stat. § 29-36f, however, does not vest the Commissioner with the discretion to deny a person an eligibility certificate under the guise of a "suitability" requirement. Instead, it requires him to issue the certificate if an applicant is not statutorily prohibited from possessing a firearm. Conn. Gen. Stat. § 29-36f.

Like the pistol permit, the eligibility certificate comes with fees; a $35 fee for the initial permit and a $35 renewal fee every five years. Conn. Gen. Stat. § 29-36h. The eligibility certificate is also revocable for any reason that would have disqualified them from originally obtaining it. Conn. Gen. Stat. § 29-36i.

C. Appeals From Denials Of Pistol Permits Or Eligibility Certificates

If a person's application for either a pistol permit or a pistol eligibility certificate is denied or their pistol permit or eligibility certificate is revoked, Conn. Gen. Stat. § 29-32b permits that person to pursue a state administrative appeal to the Board of Firearms Permit Examiners.

The Board of Firearms Permit Examiners is composed of eight members appointed by Connecticut's governor and one member who must be a retired Connecticut judge and must be appointed by Connecticut's Chief Court Administrator. Conn. Gen. Stat. § 29-32b(a). The governor enjoys virtual unfettered discretion as to two of the eight members that he may appoint. With respect to the other six appointments, he must appoint them from the nominees submitted by various government agencies and interest groups, which are specifically named in Conn. Gen. Stat. § 29-32b(a).

This system has proven woefully ineffective at processing appeals. The Board of Firearms Permit Examiners suffers from an extreme backlog of cases, and an applicant

who does not qualify for expedited consideration can expect to wait twelve months to two and a half years for a hearing. Dkt. 1, ¶ 44.

II. Dillon Severino

Dillion Severino is a twenty-seven-year-old, African-American, Connecticut citizen. Dkt. 1, ¶ 47. He is also a current Connecticut Department of Corrections officer.[2] *Id*. In or around April 2022, he submitted an application for a temporary state pistol permit to the Waterbury Police Department, complying with all application requirements: submitting to fingerprinting, completing a pistol and revolver safety course, and paying the appropriate fees. *Id*. at ¶ 48. Severino meets all of the qualifications to be issued a Connecticut pistol permit as he does not have any of the statutory disqualifiers under 18 U.S.C. § 922 and Conn. Gen. Stat. § 29-28(b).

On September 21, 2022, Defendant Spagnola denied Severino's application for a pistol permit, and he expressly based the denial on his conclusion that Severino is not a suitable person to lawfully carry pistols or revolvers. *Id*. at ¶ 50 & **Exhibit A to the Verified Complaint**. Spagnola cited three incidents that he believes make Severino an unsuitable person to receive a pistol permit: (1) "For your underlying conduct in an incident in Naugatuck, CT on 6/19/2022 where you were driving a vehicle with a misuse of plates, engaged police in a pursuit, and were driving recklessly;" (2) "For your underlying conduct in an incident in Waterbury, CT on 5/25/2016 where you were involved in a fight on Elmer Street;" and (3) "For your conduct during the pandemic on 2/12/2021 where you were

[2] Severino fears employment retaliation by the state of Connecticut for bringing this lawsuit, and he reiterates his statement in his complaint that "[h]e does not bring this lawsuit in his capacity as a state employee, nor does it reflect in any way on the Connecticut Department of Corrections." Dkt. 1, ¶ 47.

identified as the business manager of a bar which was not following curfew and social distancing restrictions." *Id*. at ¶ 51.

Defendant Spagnola, however, could not point to a single criminal conviction that Severino has or another statutory disqualifier that disqualifies him in any way from purchasing, keeping, and bearing a pistol or revolver. *Id*. at ¶ 52 His rationale grows even more ludicrous based on the facts of the underlying incidents:

First, Severino was the victim in the May 25, 2016 incident on Elmer Street in Waterbury, Connecticut, suffering stab wounds and a collapsed lung after he was attacked during a verbal dispute. *Id*. at ¶ 54. Despite him being unarmed, one of Severino's assailants discharged a firearm twice in the incident to threaten and intimidate him. *Id*. at ¶ 54. Connecticut never charged Severino, and it actually treated him as the victim in the incident. *Id*. at ¶ 54.

Second, Severino had no knowledge of the February 12, 2021 incident until Defendant Spagnola alleged that he was involved in it. *Id*. at ¶ 55. He has never owned or managed a bar – let alone done so during COVID-19. *Id*. at ¶ 55. The state never charged Severino for that incident, and Defendant Spagnola appears to have mistaken him for someone else. *Id*. at ¶ 55.

Third, while Severino was arrested for the June 19, 2022 incident by the Naugatuck Police Department, Connecticut chose to drop the charges against him within months of him being charged. *Id*. at ¶ 56. Severino never incurred a conviction for any of the alleged crimes, which were all misdemeanors. *Id*. at ¶ 56.

More tellingly, the Connecticut Department of Corrections has taken no action against Severino for any of these incidents. *Id*. at ¶ 58.

After Defendant Spagnola denied Severino's pistol permit application, Severino filed an administrative appeal on November 8, 2022. *Id*. at ¶ 60. Defendant Futtner sent him a letter on November 14, 2022, assigning him a tentative hearing date of May 22, 2025. *Id*. at ¶ 61. The tentativeness of this hearing date means that Severino could wait even longer for a hearing. *Id*. at ¶ 61.

LEGAL STANDARD

To obtain a preliminary injunction under Fed. R. Civ. P. 65, the moving party must establish "(a) irreparable harm and (b) either (1) likelihood of success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief." *Citigroup Glob. Markets, Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010) (internal quotation marks and citation omitted). Additionally, the moving party must show "that the public interest would not be disserved by the issuance of [the] injunction." *Salinger v. Colting*, 607 F.3d 68, 79-80 (2d Cir. 2010) (internal quotation marks omitted).

Districts courts within the Second Circuit apply the same legal standard governing preliminary injunctions to temporary restraining orders. *See Lazor v. University of Connecticut*, 560 F.Supp.3d 674, 677 (2021).

ARGUMENT

I. Severino Is Entitled To A Presumption Of Irreparable Harm At This Stage.

To show irreparable harm, Severino must show that, absent a preliminary injunction, he will "suffer an injury that is neither remote nor speculative, but actual and imminent, and one that cannot be remedied if a court waits until the end of trial to resolve

the harm." *Faiveley Transp. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009). "Whether there is an adequate remedy at law, such as an award of money damages, injunctions are unavailable except in extraordinary circumstances." *Id*. at 118-19. Courts, however, will presume that a movant has established irreparable harm when the movant's claim involves the alleged deprivation of a constitutional right. *Am. Civil Liberties Union v. Clapper*, 804 F.3d 617, 622 (2d Cir. 2015).

There is no question that Severino is entitled to the presumption of irreparable harm. He claims a constitutional right to purchase, keep, and bear a pistol or revolver for the purposes of self-defense inside the home and outside the home. The Supreme Court has twice established that the Second Amendment's text protects the right to keep and bear arms in case of confrontation. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111, 2127 (Jun. 23, 2022); *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008).

Every day that passes where Severino cannot purchase, keep, and bear a pistol or revolver without facing criminal consequences is an injury that money cannot remedy. In fact, the law itself would not permit a monetary remedy unless the Court or a higher court rewrote constitutional law entirely. Sovereign immunity would bar Severino's monetary damages claims against the state of Connecticut, and qualified immunity would bar damages claims against the Defendants in their individual capacities. In other words, declaratory and injunctive relief is the only meaningful remedy that Severino has. He should not be required to wait for it, especially in a case where the Defendants bear the heavy burden of proving the constitutionality of their conduct and are highly unlikely to

carry that burden. For these reasons, Severino submits that he has met his burden to establish good cause for expedited and emergency relief under Local Rule 7(a)6.

II. Severino Demonstrates A Likelihood Of Success On The Merits Or Sufficiently Serious Questions Going To The Merits That Make Them A Fair Ground For Litigation.

Severino advances three substantive claims: (1) the Second Amendment does not permit the Defendants to prevent him from purchasing, possessing, or carrying a pistol or revolver without government permission; (2) the Second Amendment does not permit the Defendants to employ an opaque suitability requirement to deny him permission to purchase, possess, or carry a pistol or revolver; and (3) due process does not permit the Defendants to deprive him of a fundamental constitutional right for years without giving him a meaningful opportunity to be heard in a meaningful manner.

A. The Supreme Court Has Established A New Constitutional Standard For Evaluating Firearms Regulations.

On June 23, 2022, the U.S. Supreme Court drastically reshaped Second Amendment jurisprudence in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111 (Jun. 23, 2022). The central portion of its holding abrogated the use of tiers of "means-end" scrutiny – e.g., strict scrutiny – that American courts have habitually used to assess constitutional rights claims since the famous footnote four of *United States v. Carolene Products Co.*, 304 U.S. 144 (1938), and it replaced it with a textual and historical analysis. While *Bruen*'s textual and historical analysis places the ultimate burden on the Defendants to justify the laws and conduct at issue here, Severino carries his burden to show either "likelihood of success on the merits" or "sufficiently serious questions going to the merits to make them a fair ground for litigation" at this stage.

Bruen explicitly rejects "means-end" scrutiny and the two-step test employed by the circuit courts[3] as being inconsistent with *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010):

> Despite the popularity of this two-step approach, it is one step too many. Step one of the predominant framework is broadly consistent with Heller, which demands a test rooted in the Second Amendment's text, as informed by history. But Heller and McDonald do not support applying means-end scrutiny in the Second Amendment context.

Bruen, 142 S.Ct. at 2127. Instead, *Bruen* holds that, under *Heller* and *McDonald*, "the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id*.

Bruen's analysis starts with the Second Amendment's text: "[W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id*. at 2126. The individual conduct that the Second Amendment's plain text protects is "the individual right to possess and carry weapons in case of confrontation that does not depend on service in the militia." *Id*. at 2127 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008)) (internal quotation marks omitted). As *Bruen* indicates, the Second Amendment's text and history left "no doubt" that the "Second Amendment confers an individual right to keep and bear arms." *Id*. at 2127 (quoting *Heller*, 554 U.S. at 595) (internal quotation marks omitted).

There is absolutely no question that Severino seeks to exercise the precise right contemplated and protected by the Second Amendment and affirmed in both *Heller* and *Bruen*: the purchasing, keeping, and bearing of a pistol or revolver for personal protection

[3] *See*, e.g., *New York State Rifle and Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242 (2d Cir. 2015).

in the event of a confrontation. Thus, there is no question that the Second Amendment's plain text encompasses his conduct.

Relying on *Heller*, *Bruen* then turned to the historical understanding and tradition. It acknowledged that the Second Amendment does not confer unlimited rights, and it cited the fact that, "[f]rom Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was 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) (internal quotation marks omitted). Thus, it requires courts to assess "whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding" through "reasoning by analogy – a commonplace task for any lawyer or judge." *Id*. at 2131, 2132. It contemplates two types of cases: the straightforward cases and "other cases implicating unprecedented societal concerns or dramatic technological changes." *Id*. at 2131-32.

Bruen describes the straightforward cases as follows:

> For instance, when a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment. Likewise, if earlier generations addressed the societal problem, but did so through materially different means, that also could be evidence that a modern regulation is unconstitutional. And if some jurisdictions actually attempted to enact analogous regulations during this timeframe, but those proposals were rejected on constitutional grounds, that rejection surely would provide some probative evidence of unconstitutionality.

Id. at 2131.

When a court considers "modern regulations that were unimaginable at the founding," however, *Bruen* requires the Defendants to identify "a well-established and representative historical analogue…" to its modern regulations. *Id*. at 2133. To determine

whether the analogue is representative and "relevantly similar under the Second Amendment," *Bruen* provides courts with "at least two metrics" that "are [the] *central* considerations when engaging in an analogical inquiry" from *Heller* and *McDonald*: "how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Id*. at 2132-33 (internal quotation marks and citations omitted) (emphasis in original).

Bruen indicates that the historical inquiry must focus on the scope of constitutional rights that "they were understood to have *when the people adopted them*." *Id*. at 2136 (internal quotation marks and citations omitted) (emphasis in original). It cautions courts to focus on common law practices that "prevailed up to the period immediately before and after the framing of the Constitution" and contemporary history in the immediate postenactment period. *Id*. at 2136-37 (internal quotation marks and citations omitted). In particular, *Bruen* cautions courts "against giving postenactment history more weight than it can rightly bear," and it describes mid-to-late 19th century evidence as confirmation of the original public meaning instead of being of independent significance. *Id*. at 2136-37.

Bruen closes its instructions on these more complex cases with two cautions to courts. First, it expressly forbids courts from entertaining or engaging in "independent means-end scrutiny under the guise of an analogical inquiry." *Id*. at 2133 n.7. Second, while *Bruen* does not require the Defendants to "identify… a historical *twin*" or "a dead ringer" as a historical analogue, it also does not permit courts to "uphold every modern law that remotely resembles a historical analogue… because doing so risks endorsing outliers that our ancestors would never have accepted." *Id*. at 2133 (internal quotation marks, citations, and alteration marks omitted) (emphasis in original).

B. The Second Amendment Does Not Permit The Defendants To Prevent Severino From Purchasing, Possessing, Or Carrying A Pistol Without Government Permission.

Until the 20th century, American firearms permitting laws were racially motivated and only applied to people who were not considered full citizens. To the best of counsel's knowledge and research, no colonial or antebellum firearms permitting law applied to full citizens entitled to either common law rights or constitutional rights. Instead, the history shows that the laws were racially motivated and specifically targeted people who were not considered citizens. Additionally, Reconstruction Era firearms permitting statutes were explicit Black Code remakes of colonial and antebellum laws that the Thirteenth Amendment precluded.

Thus, there are no well-established and representative historical analogues that support the constitutionality of pistol permitting laws, and the Court should enjoin Connecticut's pistol permitting laws immediately.

1. Colonial and antebellum firearms permitting laws were racially discriminatory, and none of them applied to citizens entitled to either common law rights or constitutional rights.

The Virginia Colony enacted the first law in America requiring government permission to possess a firearm in 1619. The law had two features. First, it generally prohibited all Blacks and Indians who were "not house-keepers, nor listed in the militia" from bearing arms. William Waller Hening, 4 *The Statutes At Large; Being A Collection Of All The Laws Of Virginia, From The First Session of The Legislature, In The Year* 1619, at 131 (1823). Second, it permitted Blacks and Indians who lived on frontier plantations to possess arms if they were granted a government license "to keep and use guns, powder, and shot…." *Id*.

In 1715, Maryland enacted a licensing law, which read in relevant portion as follows: "[t]hat no Negro or other slave, within this Province, shall be permitted to carry any Gun or any offensive Weapon, from off their Master's land, without Licence from their said Master…." 75 *Archives of Maryland* 268 (William Hand Browne ed., 1885) (enacted 1715).

In 1740, South Carolina followed Maryland's example, enacting a law that required a master's written permission for a black person to possess a firearm. *An Act for the better Ordering and Governing Negroes and other Slaves in this Province*, Act of May 10, 1740, no.695, § 23, in 1 731-1743 S.C. PUB. LAWS 163, 168-69. Even the written permission came with severe limitations as South Carolina prohibited licensed blacks from carrying firearms from sundown Saturday to sunrise Monday. *Id*. Blacks could also possess a firearm for purposes of hunting if they were doing so under the supervision of a white person sixteen or older. *Id*.

In 1755, Georgia adopted a functionally identical model to South Carolina, and it reenacted the law in 1768. *The Colonial Records of the State of Georgia* 76-78, 117-18 (Allen D. Candler ed., 1904).

All of these pre-constitutional licensing regimes targeted people – Native Americans and Blacks – who were not considered citizens entitled to the rights that white citizens enjoyed. There is no evidence from the colonial period that licensing regimes were imposed on those who the colonies considered citizens.

After the Constitution and the Bill of Rights were adopted in 1791, similar licensing regimes arose. In 1799, Mississippi's territorial legislature enacted a law stating "[n]o negro or mulatto shall keep or carry any gun, powder, shot, club or other weapon

whatsoever, offensive or defensive." *A Law for the regulation of Slaves,* 1799 Laws of the Miss. Terr. 112, 113 (Mar. 30, 1799). The general prohibition, however, came with two exceptions: (1) Militia commanders could grant free blacks a twelve-months license to own and carry arms, and (2) slave owners could apply for a license for their slaves to carry firearms if they showed "sufficient cause… why such indulgence should be granted." *Id*. Mississippi subsequently added a third form of licensing with no limitations on the period for which they were valid in 1822, giving licensing powers to justices of the peace to license slaves and to county courts to license free blacks. *An Act to reduce into one, the several acts, concerning Slaves, Free Negroes, and Mulattoes*, 1822 Miss. Laws 179, 181-83, §§ 10, 12 (June 18, 1822). It subsequently repealed this licensing scheme and replaced it with a general prohibition in 1852. *An Act to prohibit Magistrates from issuing license to negroes to carry and use firearms*, ch. 206, 1852 Miss. Laws 328 (Mar. 15, 1852).

In 1806, Maryland prohibited "any negro or mulatto within this state [from] keep[ing] any dog, bitch, or gun." *An Act to restrain the evil practices from negroes keeping dogs, and to prohibit them from carrying guns or offensive weapons*, ch. 81, §§ 1-2, 1806 Md. Laws (Jan. 4, 1807). A free "negro or mulatto," however, could apply to a justice of the peace for a one-year license to keep one dog or to possess and carry a firearm. *Id*.

Louisiana's 1806 Black Code prohibited slaves from possessing firearms, but it allowed them to hunt on their owners' plantations if they had, and were carrying, written permission from their owner. *Act of June 7, 1806*, ch.33, § 19, 1806 La. Acts 150, 160. Free blacks, however, had to carry "a certificate of a justice of the peace, attesting their

freedom," or they forfeited their firearms. *Act of June 7, 1806*, ch.33, §§ 19, 21, 1806 La. Acts 150, 160-62, 164.

In 1819, South Carolina prohibited slaves from possessing firearms unless the slave was "in the company and presence of some white person" or with "a ticket or license in writing from his owner or overseer." *An Act to provide for more effectual performance of Patrol Duty*, 1819 S.C. Acts 29, 31.

Delaware's 1827 slave code took a narrower view, prohibiting slaves from carrying arms "without special permission of his or her master or mistress." *An Act concerning certain crimes and offences committed by slaves, and for the security of slaves properly demeaning themselves*, ch. 50, § 8, 1827 Del. Laws 125, 125-26.

Florida enacted a short-lived licensing regime in 1828 for free "negros" and "mulattoes" to obtain licenses from justices of the peace, but it repealed the licensing law in 1831. *An Act Relating to crimes and misdemeanors committed by slaves, free negroes and mulattoes*, § 9, 1828 Fla. Laws 174, 177; Act of Jan. 12, 1828, § 9, 1827 Fla. Laws 97, 100; *An Act to amend an act relating to Crimes and Misdemeanors committed by slaves, free negroes and mulattoes*, 1831 Fla. Acts 30 (1831).

North Carolina established the foundation for the United States Supreme Court's ultimate indirect characterization of these laws in 1844. The North Carolina Supreme Court rejected a constitutional challenge to North Carolina's 1841 requirement that all free persons of color were required to obtain an annual license from the Court of Pleas and Quarter Sessions to own or carry firearms, swords, daggers or bowie knives. *See State v. Newsom*, 27 N.C. (5 Ired.) 250 (1844); *see also An Act to prevent Free Persons of Colour from carrying Fire-arms,* ch. 30, 1840-41 N.C. Laws 61-62 (1841). The North

Carolina Supreme Court minced no words regarding how it did not consider people of color to be citizens entitled to the full privileges enjoyed by the community: "free people of color have been among us, as a separate and distinct class, requiring, from necessity, in many cases, separate and distinct legislation." *Newsom*, 27 N.C. (5 Ired.) at 252.

The rationale for these laws rang its clearest in *Dred Scott v. Sanford*, 60 U.S. 393 (1856), which unequivocally held that free blacks were not United States citizens. In reaching that decision, the Supreme Court relied heavily on Connecticut law and the Connecticut Supreme Court's decision in *Crandall v. State*, 10 Conn. 339 (1834). The United States Supreme Court explained its reliance on Connecticut law as follows:

> We have made this particular examination into the legislative and judicial action of Connecticut, because, from the early hostility it displayed to the slave trade on the coast of Africa, we may expect to find the laws of that State as lenient and favorable to the subject race as those of any other State in the Union; and if we find that at the time the Constitution was adopted, they were not even there raised to the rank of citizens, but were still held and treated as property, and the laws relating to them passed with reference altogether to the interest and convenience of the white race, we shall hardly find them elevated to a higher rank anywhere else.

Dred Scott, 60 U.S. at 415.

In particular, the Supreme Court noted the *Crandall* decision in which the Connecticut Supreme Court held that blacks "were not citizens of a State, within the meaning of the word citizen in the Constitution of the United States, and were not therefore entitled to the privileges and immunities of citizens in other States." *Dred Scott*, 60 U.S. at 415. Thus, the Supreme Court adopted the Connecticut Supreme Court's conclusion in *Dred Scott* and concluded that free blacks could not be considered citizens.

Of the ills that *Dred Scott* enumerated would happen if free blacks were declared citizens was that free blacks would become entitled to the "privileges and immunities of

citizens…," including the right to "carry arms wherever they went." *Id*. at 417. The *Dredd Scott* Court was undoubtedly aware of the licensing schemes described above, and it indirectly indicates through its cataloguing of ills that it did not think that those laws could survive constitutional scrutiny if free blacks were considered citizens.

2. The firearms licensing schemes enacted during the Reconstruction Era were exclusively Black Code remakes of colonial and antebellum laws that the Thirteenth Amendment precluded.

Although the Thirteenth Amendment abolished slavery through its full ratification in 1865 and the former Confederate States subsequently accepted it as a condition of their reconciliation to the Union, its text did not explicitly place newly freed people of color on the same footing of equality in terms of rights and citizenship as their white contemporaries.[4] The former Confederate States took full advantage of the ambiguity through the Black Codes, which specifically targeted firearm ownership by free blacks. *See McDonald*, 561 U.S. at 771 (noting the Southern States' "systematic efforts" to disarm blacks); *see also* S. Exec. Doc. No. 43, 39th Cong., 1st Sess., 8 (1866) ("Pistols, old muskets, and shotguns were taken away from [freed slaves] as such weapons would be wrested from the hands of lunatics").

Florida's first legislative session following the Confederate defeat in the Civil War yielded a law that made it unlawful "for any negro, mulatto, or other person of color, to own, use or keep in his possession or under his control, any Bowie-Knife, dirk, sword, fire-arms or ammunition of any kind." *An Act prescribing additional penalties for the commission of offenses against the State and for other purposes*, ch. 1,466, no. 3, § 12, 1865 Laws of Fla. 25 (1865). Similar to colonial and antebellum laws, the law had an

[4] The Supreme Court did not interpret the Thirteenth Amendment as giving Congress the power to abolish the "incidents" of slavery until 1883. *See Civil Rights Cases,* 109 U.S. 3, 4 (1883).

exception to permit probate judges to issue licenses based on "the recommendation of two respectable citizens of the county certifying the peaceful and orderly character of the applicant." *Id*. at 27.

Mississippi followed suit in even more drastic fashion, requiring free people of color to obtain a license from the county board of police. *An Act to punish certain Offences therein named, and for other purposes*, ch.23, § 1, 1865 Miss. Laws 165. If a free person of color was caught with a firearm, they were subject to a substantial fine, and the county sheriff could forcibly place them in service with a white person who would pay their fine for them in exchange for their labor, essentially placing them back into slavery. *An Act to punish certain Offences therein named, and for other purposes*, Ch. 23, § 5, 1865 Miss. Laws 165, 166-67.

Since these licensing regimes arose before the Fourteenth Amendment and *Barron ex rel. Tiernan v. Mayor of Baltimore*, 7 Pet. 243, 250–251, 8 L.Ed. 672 (1833)'s decision that the Bill of Rights only applied to the federal government remained binding precedent, the onus was on Congress to act. Congress did act forcefully. In 1866, Congress passed the Second Freedmen's Bureau Act over President Andrew Johnson's veto, which ordered him to use military force to ensure that "negroes, mulattoes, freedmen or any other persons…" were guaranteed "the full and equal benefit of all laws and proceedings for the security of person and estate *including the constitutional right to bear arms*... on account of race, color, or any previous condition of slavery or involuntary servitude." 14 Stat. 173, 176-77 (1866) (emphasis added).

Congress subsequently took a second step by enacting the Civil Rights Act of 1866, which provided a statutory cause of action for any violations of the Bill of Rights. 14

Stat. 27 (1866). The Civil Rights Act of 1866 led directly to the Fourteenth Amendment, which sought to guarantee the protections of the Bill of Rights to all citizens regardless of their race or color. The lack of Supreme Court precedent striking down the Black Codes' firearms licensing provisions did not result from merits determinations as to whether the Second Amendment permitted them, but rather a practical reason and a doctrinal error of epic proportions.

The practical reason as to why the United States Supreme Court never reached the Second Amendment merits of the Black Codes' firearms licensing provision was that Congress took the issue out of its hands by using martial law during the Reconstruction Era to quash the Black Codes. Since Congress chose to use force rather than law, the United States Supreme Court never had the opportunity to apply the law.

The doctrinal error came in *United States v. Cruikshank*, 92 U.S. 542 (1875). In *Cruikshank*, the United States Supreme Court declined to apply both the First and Second Amendments against the states, citing *Barron v. Baltimore* as having settled that question. *Cruikshank*, 92 U.S. at 552-53. *Cruikshank* flatly dismissed the Fourteenth Amendment as being nothing more than a equal protection provision rather than constraining the states to the guarantees established by the Bill of Rights. *Id*. at 554-55. The United States Supreme Court did not correct its error regarding the First Amendment's incorporation until 1925 in *Gitlow v. New York*, 268 U.S. 652 (1925) and the Second Amendment's incorporation until 2010 in *McDonald v. City of Chicago, IL.*, 561 U.S. 742 (2010).

The common theme, however, that runs through colonial America, antebellum America, and Reconstruction America is that a firearms licensing scheme would have been unconscionable had it been applied to people – white people – who possessed all

of the privileges of citizenship. *Dred Scott*, 60 U.S. at 417 (cautioning that free blacks would become entitled to the "privileges and immunities of citizens…," including the right to "carry arms wherever they went" if it recognized them as equal citizens). Nothing in the history of colonial America, antebellum America, or Reconstruction America even hints that people who enjoyed full civil rights had to request and obtain government permission before obtaining a firearm. Rather, such licensing schemes were limited to inferior members of society who were not entitled to the rights of normal citizens.

The bottom line is that the Defendants cannot show a well-established and representative historical analogue from the Reconstruction era either. Rather, the history favors Severino's contention here. The Reconstruction Era history shows that Congress – the voice of the people – expressed its view as to the Second Amendment's protections meant in no uncertain terms. It twice overrode presidential vetoes from President Johnson – an unprecedented action at the time – to put a stop to treating the newly freed people of color as inferior citizens, and Congress explicitly targeted licensing restrictions on people of color that it viewed as unconscionable if they were imposed on whites who enjoyed the full privileges of citizenship.

3. So-called neutral firearms licensing laws first arose on a sporadic basis in the early 1900s well after *Cruikshank* immunized them from Second Amendment review.

New York enacted the first general firearms licensing law in the United States in 1911. *Sullivan Dangerous Weapons Act*, 1911 N.Y. Laws ch. 195, sec. 1, § 1897 (codified as amended at N.Y. Penal Law §§ 265.01(1), 265.20(a)(3)). It required a government permit for handgun possession, purchases, and the carrying of any pistol or revolver. *Id*. Contemporary evidence, however, indicates that the Sullivan Act was not as general as

it appeared, but rather was a targeted crackdown on legal immigrants, particularly Italians. *See* Robert J. Cottrol & Raymond T. Diamond, "*Never intended to be applied to the white population": Firearms regulation and racial disparity--The redeemed south's legacy to a national jurisprudence?*, 70 CHI.-KENT L. REV. 1307, 1334 (1995) ("[T]he Sullivan Law was aimed at New York City, where the large foreign born population was deemed peculiarly susceptible and perhaps inclined to vice and crime"); *see also Editorial, Concealed Pistols*, N.Y. TIMES (Jan. 27, 1905), http://query.nytimes.com/gst/abstract.html?res=9C03E4D8163DE733A25754C2A9679C946497D6CF [http://perma.cc/XMJ8-9GVB] (touting a proposal similar to the Sullivan Act as "corrective and salutary in a city filled with immigrants and evil communications, floating from the shores of Italy and Austria-Hungary").

New York's Sullivan Act served as a model for several other laws in the early 1900s. Oregon enacted a 1913 law that made it illegal "to sell at retail, barter, give away, or dispose" of a handgun unless the purchaser produced a licensed from a municipal judge, city recorder, or county judge. *An Act Forbidding the sale, barter, giving away, disposal of or display for sale of pocket pistols and revolvers, and fixing a penalty for violation thereof*, ch.256, § 1, 1913 Or. Laws 497. To obtain a permit, the applicant had to present two affidavits signed by "reputable freeholders" attesting to his "good moral character." Ch. 256, § 2, 1913 Or. Laws 497. Oregon subsequently repealed its permit law in 1925. *An Act to control the possession, sale and use of pistols and revolvers, to provide penalties*, ch. 260, 1925 Or. Laws 468.

North Carolina followed suit in 1919, enacting the law that forms the basis of its current permitting law. It required a purchaser to obtain a permit from the clerk of the

superior courts before purchasing or receiving as a gift any pistol, so-called pump gun,255 bowie knife, dirk, dagger or metallic knucks." *An Act to Regulate the Sale of Concealed Weapons in North Carolina*, ch. 197, § 1, 1919 N.C. Sess. Laws, 397, 397 (1919).

Missouri enacted a more expansive licensing law in 1921. Its permitting law was straightforward: "No person… shall directly or indirectly buy, sell, borrow, loan, give away, trade, barter, deliver or receive" any handgun to a person without a permit. *See An Act to provide for the public safety by requiring each pistol, revolver, or other firearm of a size which may be concealed upon the person, to be stamped with the description of the same, and a record of all sales thereof to be kept by all dealers therein, and regulating the buying, selling, borrowing, loaning, giving away, trading, bartering, delivering or receiving of such weapons, and prescribing punishments for the violation thereof, and with an emergency clause*, § 2, 1921 Mo. Laws 691, 692 (Apr. 7, 1921). Missouri, however, repealed this law in 2007.

Arkansas took the strangest approach in 1923. It required all handgun owners to obtain an ownership permit that they were required to renew on an annual basis. *An Act to regulate the Ownership of Pistols and Revolvers*, Act 430, 1923 Ark. Acts 379 (1923). It, however, repealed the law in 1925 because, as one of its commissioners stated, the law "proved a complete failure, that scarcely anybody registered his pistols and it was realized that it worked an injustice to the few who did so." *Third Report of the Committee on a Uniform Act to Regulate the Sale and Possession of Firearms, in Handbook of the National Conference of Commissioners On Uniform State Laws And Proceedings Of The Thirty-Sixth Annual Meeting Denver, Colorado, July 6-12, 1926*, at 571, 572 (1926).

Cruikshank flatly foreclosed any federal judicial review of these laws on Second Amendment grounds, and state constitutional challenges appear to have been non-existent because people simply chose to ignore the laws as happened in Arkansas. In any event, these laws cannot supply the well-established and representative historical analogue that *Bruen* requires for several reasons. First, the lack of federal judicial review on Second Amendment grounds sheds no light on the scope of the Second Amendment's protections. Second, the laws are outliers in the American legal system rather than indicia of a well-established and widely accepted regulatory practice. *See Bruen*, 142 S.Ct. at 2153 (rejecting New York's contention that two state statutes and several state court decisions affirming those statutes in the face of Second Amendment grounds were sufficient to establish a well-established and representative historical analogue). Third, *Bruen* characterized late nineteenth century laws' "temporal distance from the founding" as a serious flaw militating against relying on them to interpret the Second Amendment. *Id*. at 2153-54. Laws of the Sullivan Act era suffer from the same serious flaw, and *Bruen* forecloses reliance on them.

Additionally, early 20th century history shows that the Sullivan Act model became an outlier in its own era. The United States Revolver Association viewed the Sullivan Act model as carrying serious constitutional concerns precisely because of its permitting system. Karl T. Frederick, *Pistol Law* (1964). To combat the spread of the Sullivan Act model, the United States Revolver Association drafted its own model gun control law – which eliminated pistol permitting schemes – and promoted it across the United States as the Revolver Association Act.[5] *Id*. North Dakota became the first state to adopt the

[5] The Revolver Association Act went through a number of names including the Uniform Revolver Act and the Uniform Firearms Act.

Revolver Association Act in 1923. *An Act To Control the Possession, sale, and use of pistols and revolvers, to provide penalties, and for other purposes*, ch. 266 § 5, 1923 N.D. Laws 379, 380. Oregon quickly replaced its 1913 adoption of the Sullivan Act model with the Revolver Association Act in 1925. *See An Act to control the possession, sale and use of pistols and revolvers, to provide penalties*, ch. 260, 1925 Or. Laws 468. In 1926, the National Conference of Commissioners on Uniform State Laws adopted the Revolver Association Act as the Uniform Firearms Act, and it became the predominant model of firearms regulation in the early 20th century. Charles V. Imlay, *The Uniform Firearms Act*, 12 A.B.A. J. 767, 767 (1926).

Thus, even if the Court can properly consider it under *Bruen*, early 20th century history also fails to supply the Defendants with the well-established and historical analogue required by *Bruen*.

4. The colonial and antebellum historical record establishes a tradition of governments compelling firearms ownership rather than conditioning it on government permission.

Adding even more force to Severino's argument is the clear historical record that demonstrates a well-established tradition of compelling firearms ownership. In other words, the colonial and Founding Era attitude toward firearms did not manifest itself in a system of government benevolence that forced individuals to obtain government permission to keep and bear firearms. Rather, both the colonial and Founding Era history are replete with examples of governments compelling, by duly enacted laws, citizens to keep, maintain, and bear firearms.

The United States Supreme Court itself recognized this history in *Heller*: "Many colonial statutes required individual arms bearing for public safety reasons – such as the

1770 Georgia law that 'for the security and *defence of this province* from internal dangers and insurrections' required those men who qualified for militia duty individually 'to carry fire arms' 'to places of public worship.'" *Heller*, 554 U.S. at 601 (quoting 19 Colonial Records of the State of Georgia 137–139 (A. Candler ed.1911 (pt. 1)) (emphasis in original).

Professor Robert H. Churchill enumerates some of these laws, including Connecticut's own version:

> While some states limited this individual duty of keeping arms to those subject to militia training, others did not. Connecticut's earliest militia law ordered that all persons exempt from militia duty "shall yet in all respects provide, keep and maintain in constant readiness, compleat arms." In 1684, New York passed a similar provision, ordering that all persons "freed from training by the law, yet that they be obliged to keep convenient arms and ammunition in their houses as the law directs to others." Delaware law ordered that "every freeholder and taxable," even those exempt from training, provide himself with arms and "shall be obliged to keep such arms and ammunition by him." Virginia's militia law provided that "every person" exempt from mustering "shall always keep in his house or place of abode such arms, accoutrements, and ammunition, as are by the said act required to be kept by the militia of this colony."

Robert H. Churchill, *Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment*, 25 Law & Hist. Rev. 139, 148 (2007) (collecting statutes).

These laws took on a national character one year after the ratification of the Second Amendment when Congress enacted the Uniform Militia Act. *See* Act of May 8, 1792, 1 Stat. 271. The Uniform Militia Act required every able-bodied white male citizen between the ages of 18 and 45 to be enrolled in the militia, and it required him to "provide himself with a good musket or firelock" and

> a sufficient bayonet and belt, two spare flints, and a knapsack, a pouch with a box therein to contain not less than twenty-four cartridges, suited to the

> bore of his musket or firelock, each cartridge to contain a proper quantity of powder and ball: or with a good rifle, knapsack, shot-pouch and powder-horn, twenty balls suited to the bore of his rifle and a quarter of a pound of powder.

Id.

As discussed previously, no colony prior to the Founding required a citizen to obtain the government's permission before keeping and bearing a firearm. No state imposed a similar requirement in the antebellum period. Instead, the colonies, the states, and the federal government *actually made firearms ownership, possession, and bearing compulsory*.

Thus, even though it is not Severino's burden to show a well-established and representative historical tradition, the history that he does present shows that modern pistol permitting laws are impossible to square with America's history. The right to keep and bear arms did not depend on government benevolence in the colonies and in the antebellum period. The Second Amendment still does not permit the government to condition the exercise of the right the Constitution guarantees on government benevolence.

C. The Second Amendment Does Not Permit The Defendants From Employing An Opaque "Suitability" Requirement To Deny Severino Permission To Purchase, Possess, Or Carry A Pistol Or Revolver.

Bruen specifically singled out Connecticut's pistol permitting system as being somewhat different than a strict "shall-issue" jurisdiction because of the discretion that the "suitability" standard gives officials, but it indicated that Connecticut's system appears to operate like a "shall-issue" jurisdiction. *Bruen*, 142 S.Ct. at 2123 n.1. In its dicta on this point, *Bruen* interpreted the Connecticut Supreme Court's holding in *Dwyer v. Farrell*, 193 Conn. 7, 12 (1984) as establishing a narrow standard that "precludes permits only to

those individuals whose conduct has shown them to be lacking the essential character [or] temperament necessary to be entrusted with a weapon." *Id*. The *Bruen* Court, however, did not have the benefit of a complete record to opine on this point, and its uninformed dicta does not mirror reality.

Bruen's characterization of "shall-issue" jurisdictions contradicts its characterization of Connecticut's pistol permitting system. *Bruen* characterized a "shall-issue" jurisdiction as establishing "narrow, objective, and definite standards" to guide licensing officials rather than requiring them to appraise facts, exercise judgment, and form an opinion about someone. *Id*. at 2138 n.9 (internal quotation marks and citations omitted). Connecticut's "suitability" standard, however, requires an official to conduct significant and highly subjective appraisal of facts pertaining to an individual's character and temperament and then to exercise their judgment to form an opinion about that person's "suitability" to receive a pistol permit. Since Connecticut pistol permit applicants must demonstrate both that they are not statutorily disqualified and that they are suitable individuals to possess a firearm, Connecticut pistol permitting system is entirely discretionary with no real meaningful criteria to guide the assessment of someone's character and temperament.

This system invites constitutional abuses as Severino's plight demonstrates. Not only did Defendant Spagnola completely fail to make any personal assessment of Severino or have one of his subordinates do so, but he also contorted and extrapolated three isolated incidents to form the basis of concluding that Severino was unsuitable. *See* **Exhibit A** to Dkt. 1; *see also* Dkt. 1, ¶¶ 49-56. He first concluded that Severino was guilty of several misdemeanors despite Defendant Platt's office dropping the charges against

him. Dkt. 1, ¶ 55. Second, he converted Severino from a victim to an uncharged ruffian for his involvement in a 2016 verbal altercation where several other individuals turned violent and physically assaulted and seriously injured him. Dkt. 1, ¶ 53. Finally, Spagnola relied on what appears to be a case of mistaken identity to accuse Severino of operating or managing a bar in violation of COVID-19 restrictions on February 12, 2021 despite Severino never owning or managing a bar in his life. Dkt. 1, ¶ 54.

Severino's lack of a conviction for any of these incidents means that any accusations against him remain just that: unproven accusations. Conn. Gen. Stat. § 29-35, however, gave Spagnola the discretionary leeway to act as judge, jury, and executioner in a massacre of Severino's presumption of innocence, and his determination functionally saddles Severino with the stigma of criminal convictions for conduct that a court of law has never convicted him – all under the cloak of assessing Severino's character and temperament.

There is absolutely no historical support for disarming anyone on such a flimsy, subjective, and summary inquiry, and the implications are enormous and frightening. It defies no one's imagination to conclude that Robert Watts would likely be denied a Connecticut pistol permit even though the Supreme Court held that his hyperbolic protest of the draft was constitutionally protected. *See Watts v. United States*, 394 U.S. 705, 706 (1969) (reciting Watts' statement: "If they ever make me carry a rifle the first man I want to get in my sights is L.B.J."). Similarly, anyone can easily imagine a myriad of constitutionally protected, hyperbolic political speech that would result in an "unsuitability" determination simply because it rubbed the issuing authority's sensibilities the wrong way. Equally likely to be denied under this "suitability" standard is someone who, unarmed,

physically defended themselves in a confrontation using boxing or a modern martial art and the police and prosecutors conclude that he properly acted in self-defense. If Severino could be denied on the basis of his simple involvement despite being an unarmed victim, what chance would someone who successfully defended himself and left his assailant with a black eye and a bloody nose have?

In short, the "suitability" standard established by Connecticut law is really standardless and opaque. It functionally provides issuing authorities with a blank check to deny anyone their pistol permit as long as they can link it to a person's character or temperament, which is easier than a federal prosecutor indicting a ham sandwich in front of a grand jury. Nothing in our nation's history justifies Connecticut's "suitability" standard, and the Defendants' application of it to Severino is blatantly unconstitutional.

D. Due Process Requires That Severino Be Given Notice And A Meaningful Opportunity To Be Heard At A Meaningful Time And In A Meaningful Manner.

The Defendants' errors in this case began when Defendant Spagnola denied Severino's pistol permit application without giving him a meaningful opportunity to be heard. Spagnola's failure to provide Severino with a pre-deprivation hearing violates Severino's due process rights.

While due process does not always "require a hearing before the state *interferes* with a protected interest," the "general rule" is "that a pre-deprivation is required." *Nnebe v. Daus*, 644 F.3d 147, 158 (2d Cir. 2011) (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Exceptions to this "general rule" must be justified under the well-established *Matthews v. Eldridge,* 424 U.S. 319 (1976) three-factor balancing test. *Id*. The

Defendants' failure to afford Severino a pre-deprivation hearing cannot be justified under the *Matthews* balancing test.

The first factor requires the Court to consider the nature of the private interest at stake. *See Kuck v. Danaheri,* 600 F.3d 159, 164 (2d Cir. 2010). Severino will not belabor the point any more than he has above. He has a right to purchase, possess, and bear arms under the Second Amendment. The Supreme Court stated in *Bruen* that "[t]he 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." *Bruen*, 142 S.Ct. at 2131 (internal citations and quotation marks omitted) (emphasis in original). Thus, it "demands" courts' "unqualified deference." *Id*. at 2131. Thus, there is no question that Severino's private interest in exercising that right is of the highest importance and that he suffers an ongoing and irreparable injury in not being able to exercise it.

The second factor requires the Court to assess the risk of erroneous deprivation and the probable value of alternative procedures. *Kuck*, 600 F.3d at 165. This factor also favors Severino. Spagnola never provided Severino with notice and an opportunity to be heard regarding his suitability to carry a firearm in public prior to determining that he was unsuitable. In fact, Spagnola and his subordinates never bothered to interview Severino even though the purported function of the "suitability" determination is to determine whether someone possesses "the essential character or temperament necessary to be entrusted with a weapon." *Dwyer v. Farrell*, 193 Conn. 7, 12 (1984) (internal quotation marks and citations omitted). The result was that Spagnola massacred Severino's presumption of innocence – implicit in due process – and replaced well-considered

conclusions by other Connecticut officials with his belief in unproven allegations without giving Severino an opportunity to correct his prejudices. Thus, he reclassified Severino from being a victim of a violent crime to being complicit in it, hoisted him on a false-flag of mistaken identity, and functionally convicted him of criminal charges that prosecutors dropped while completely ignoring the fact that Connecticut considers Severino of a temperament suitable to guard and care for inmates who are suffering from mental illness.

His so-called "suitability" determination was completely erroneous, and it could have been avoided by simply interviewing Severino or by giving him another chance to respond before denying his pistol permit. In other words, pre-deprivation procedures do not need to be elaborate, but they must be sufficient to provide a safeguard against a travesty of justice such as the one Spagnola perpetrated here.

The third factor requires the Court to assess the nature of the governmental interest in the challenged procedures. *Kuck*, 600 F.3d at 166. Assuming *arguendo* that pistol permits are constitutional, *Kuck* held that Connecticut "clearly has a strong and compelling interest in ensuring that firearm permits are not issued to those lacking the essential character or temperament necessary to be entrusted with a weapon." *Id*. at 166 (internal quotations marks and citations omitted). Its interest, however, supplies no justification on why it cannot provide Severino with a pre-deprivation hearing before denying him the right to bear a pistol in public and condemning him to administrative appellate purgatory.

The same factors apply to Severino's administrative appellate purgatory. Connecticut has created a functional quasi-judicial court in the form of the Board of Firearms Permit Examiners that meets far too infrequently to act as an effective check to

or remedy for Second Amendment violations.[6] Dkt. 1, ¶ 78. Severino's case does not require significant evidence gathering, and the parties could easily compile a record within 90 days. *Id*. at ¶ 78. The Defendants, however, have confined Severino to wait two and a half years to even receive a hearing and even then have hedged on whether his May 25, 2025 hearing date is a definite date. *Id*. at ¶¶ 60, 77.

Kuck already held that claims of an overburdened bureaucracy, routine administrative delay, and the importance of public safety are woefully insufficient. *Kuck*, 600 F.3d at 166-67. The Defendants' argument has not evolved significantly from *Kuck*, and the Court should not accept it. Severino has a clear right to be heard on his administrative appeal sooner rather than later, given the nature of the constitutional right at issue. The Defendants are actively denying him that right in violation of his Fourteenth Amendment right to due process.

III. The Public Interest Will Be Served By The Issuance Of Emergency Or Preliminary Injunctive Relief.

The Supreme Court stated in *Bruen* that "[t]he 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." *Bruen*, 142 S.Ct. at 2131 (internal citations and quotation marks omitted) (emphasis in original). Thus, it "demands" courts' "unqualified deference." *Id*. at 2131.

As Severino has shown above, the Defendants cannot and will not meet their constitutional burden. There is no well-established and representative, historical analogue to Connecticut's pistol permitting laws. Instead, there is ample evidence

[6] *Bruen* indicates that lengthy "wait times" could unconstitutionally deny ordinary citizens their right to carry. *Bruen*, 142 S.Ct. at 2138 n.9.

demonstrating that such laws would have been considered unthinkable in colonial, antebellum, and post-14th Amendment-ratification eras.

Connecticut's pistol permitting laws reduce the Second Amendment's protections to those of a "second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *Id*. at 2156 (internal quotation marks and citations omitted). This reduction contradicts the very public interest that the Second Amendment establishes, and it places law-abiding citizens such as Severino at the mercy of the Defendants' whims.

Emergency or preliminary injunctive relief would preserve, protect, and uphold the public interest articulated in the Second Amendment. At the same time, it would not disturb prohibitions on felons and other statutorily disqualified individuals from possessing firearms. Thus, the public interest favors injunctive relief in this case.

IV. If the Court Is Disinclined To Grant Emergency Or Preliminary Injunctive Relief, Consolidation Of The Preliminary Injunction Hearing With The Trial On The Merits Is Appropriate because The Case's Legal Issues Predominate Over The Factual Issues.

Fed. R. Civ. P. 65(a)(2) permits the Court to advance the trial on the merits of a permanent injunction and consolidate it with a preliminary injunction hearing. The rule's purpose is to provide "a means of ensuring prompt consideration of the full merits of the plaintiffs' claims rather than the 'likelihood' of their success." *Able v. United States*, 44 F.3d 128, 132 (2d Cir. 1995), *vacated on other grounds*, 88 F.3d 1280 (2d. Cir. 1996). The rule also furthers judicial economy by avoiding "the repetition of evidence at trial…," expediting final determinations of sensitive issues, and avoiding "piecemeal vindication of civil rights…" claims. *Norwalk Core v. Norwalk Bd. of Ed.*, 298 F.Supp. 203 (D.Conn. 1968). Additionally, in considering whether to advance a trial on the merits of a permanent

injunction, this Court (Bryant, J.) has considered the potential damages that might result from a delay in resolving the merits. *See Maxum Petroleum Inc. v. Hiatt*, 2016 WL 5496283, at *2 (D.Conn. 2016).

Expediting discovery and advancing the trial on the merits of this action is more appropriate in this action than it was in *Hiatt* and similar to the advancement of the trial on the merits in *Able*. In *Hiatt*, Judge Bryant found that expediting discovery and a trial on the merits was appropriate in a lawsuit between two petroleum competitors because of the "potential damages resulting from the disclosure of confidential business information and trade secrets" subject to a restrictive covenant. *Id*. at *2.

In *Able*, "six gay or lesbian members of the armed forces" filed a lawsuit against the federal government claiming that the newly enacted "Don't Ask, Don't Tell" law – then-codified at 10 U.S.C. § 654 – and its accompanying regulations violated their constitutional rights under the Fourteenth Amendment's Equal Protection Clause and the First Amendment. *Able*, 44 F.3d at 130. Based on statements made by the plaintiffs outside of the lawsuit and the lawsuit itself, the Department of Defense initiated investigations against one plaintiff and discharge proceedings against two others. *Id*. at 130. While the Second Circuit held that the district court had erred in the standard that it applied to the "success" element of the preliminary injunction standard, it left the preliminary injunction in place to preserve the plaintiffs' facial constitutional challenges. *Id*. at 132. Instead, the Second Circuit held that the legal issues predominated over a largely-completed factual record and "that the important questions raised in [the] case should not be left unanswered by the courts any longer than necessary." *Id*. at 132-33. Thus, it ordered a trial on the merits within three months of its decision. *Id*. at 133.

Like *Able*, this case involves questions of significant public importance. The Supreme Court stated in *Bruen* that "[t]he 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." *Bruen*, 142 S.Ct. at 2131 (internal citations and quotation marks omitted) (emphasis in original). Determining the Second Amendment's scope and protecting Severino and other similarly situated individuals' rights is of the utmost public importance, particularly here where the delay of relief only contributes to the injury that Severino incurs as described previously. The Defendants have completely deprived Severino of his Second Amendment rights through a pistol permitting process that raises unresolved questions that *Bruen* creates and characterizes of being of paramount importance.

This case also bears a critical distinction from *Hiatt*. Judge Bryant did not find that a presumption of irreparable harm was applicable, but she still expedited discovery and consolidated the trial with the preliminary injunction hearing to limit potential damages. *Hiatt*, 2016 WL 5496283, at *2. In cases involving alleged deprivations of constitutional rights, however, it is well-established that a presumption of irreparable harm applies. *Am. Civil Liberties Union v. Clapper*, 804 F.3d 617, 622 (2d Cir. 2015).

This is such a case. Every day that Severino is subject to the Defendants' denial of his pistol permit and enforcement of laws that criminalize his exercise of his Second Amendment rights is an irreparable constitutional injury. He will never receive the opportunity to exercise his constitutional rights on those days. Monetary damages are unavailable and insufficient to remedy that injury. Thus, this case's speedy resolution is

appropriate to ensure that Severino is relieved from the Defendants' unconstitutional deprivation of Severino's constitutional rights.

Finally, the relevant evidence in this case will largely be the same for a preliminary injunction hearing as it will be for a trial. The relevant category of evidence is historical laws and analogues. *Bruen*, 142 S.Ct. at 2132 ("When confronting such present-day firearm regulations, this historical inquiry that courts must conduct will often involve reasoning by analogy—a commonplace task for any lawyer or judge…"). *Bruen* specifically places the responsibility upon the parties to compile the required historical record – *id*. at 2130 n.6 – and it cautions courts not to engage in "independent means-end scrutiny under the guise of an analogical inquiry." *Id*. at 2133 n.7. To prevail on the merits, the Defendants must "identify a well-established and representative historical analogue…" to the "assault weapons" ban. *Id*. at 2133.

These principles limit the necessary and relevant record to legal questions instead of complex factual questions that would ordinarily take months of discovery to fully develop the answers to. As Severino has demonstrated by way of this motion, his counsel has compiled that historical record in a matter of days. The parties will not uncover new evidence in this action after an ordinary period of discovery. They will likely present the same evidence as they will for a preliminary injunction hearing. Thus, expediting discovery and consolidating the trial on the merits with the preliminary injunction hearing will promote judicial efficiency and efficiently resolve this case.

All of the factors that traditionally inform a Fed. R. Civ. P. 65(a)(2) decision weigh in favor of expediting discovery and consolidating the trial on the merits of a permanent

injunction with the preliminary injunction hearing here. Thus, Severino respectfully asks the Court to order the expedition of discovery and to set a speedy trial date for this matter.

CONCLUSION

No one knows what will happen tomorrow or the day after that. Dillon Severino could wake up, head to work, stop for gas, and become the victim of a violent crime. He could awaken from a sound sleep to find a burglar breaking into his house with the intent to commit far more heinous crimes than just theft. Severino could die in either instance – an unarmed victim of a crime. Regardless of whether Severino died by a criminal's bullet or another violent means, he would become a mere political talking point and a statistic. Virtually no one, however, would question why Severino was not armed or why the Defendants prohibited from exercising his Second Amendment rights. His family would have no legal remedy against the Defendants for denying him the means to defend himself and his home in the case of confrontation. *Bruen*, 142 S.Ct. at 2134.

Severino poses no danger to public safety. He meets every statutory qualification to purchase, keep, and bear a pistol or a revolver. The Defendants' denial of his application for a Connecticut pistol permit and delay of his appeal for two and a half years are blatantly unconstitutional and are actively depriving Severino of his Second Amendment right to obtain, keep, and bear arms to defend himself and his right to due process.

Thus, for the foregoing reasons, Severino respectfully asks the Court to issue a temporary restraining order and a preliminary injunction prohibiting the Defendants from withholding his pistol permit under Conn. Gen. Stat. § 29-28, enforcing Conn. Gen. Stat. §§ 29-35, 29-36f, 29-33(b), and denying him a meaningful opportunity to be heard.

The Plaintiff,

By: /s/ Cameron L. Atkinson /s/
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CERTIFICATION OF SERVICE

The Defendants have not appeared in this matter yet. The undersigned has identified their appropriate legal representatives though, notified them that he would be making this motion prior to filing it, and will provide them with copies of it immediately after he has verified that it has been electronically filed on the foregoing date.

/s/ Cameron L. Atkinson /s/

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DILLON SEVERINO; Plaintiff, v. FERNANDO SPAGNOLA; in his official capacity only; NED LAMONT, in his official capacity only; JAMES ROVELLA, in his official capacity only; PATRICK GRIFFIN, in his official capacity only; MARGARET E. KELLY, in her official capacity only; DAVID R. APPLEGATE, in his official capacity only; JOSEPH T. CORRADINO, in his official capacity only; SHARMESE L. WALCOTT, in her official capacity only; DAVID R. SHANNON, in his official capacity only; MICHAEL A. GAILOR, in his official capacity only; CHRISTIAN WATSON, in his official capacity only; JOHN P. DOYLE, JR., in his official capacity only, PAUL J. NARDUCCI, in his official capacity only; PAUL J. FERENCEK, in his official capacity only; MATTHEW C. GEDANSKY, in his official capacity only, MAUREEN PLATT, in her official capacity only; ANNE F. MAHONEY, in her official capacity only; CAROLYN M. FUTTNER, in her official capacity only; CYNTHIA CONRAD, in her official capacity only; ANTHONY IACONIS, in his official capacity only; GUDRUN JOHNSON, in her official capacity only; STEPHEN SANETTI, in his official capacity only; CHRIS LEWIS, in his official capacity only; CARL ROSENSWEIG, in his official capacity only; Defendants.		DKT No.: 3:22-cv-01529 (VAB) DECEMBER 2, 2022

CERTIFICATION OF COUNSEL PURSUANT TO FED. R. CIV. P. 65(b)(1)

Pursuant to Fed. R. Civ. P. 65(b)(1), the undersigned – as counsel for Plaintiff Dillon Severino – makes this certification pursuant to Fed. R. Civ. P. 65(b)(1) out of an abundance of caution. While Severino does not seek *ex parte* relief of the kind that typically necessitates this certification, he does seek emergency or expedited relief, and the undersigned has made substantial efforts to notify counsel for the Defendants of both this action and Severino's emergency motion for a temporary restraining order and a preliminary injunction.

I. Specific Facts Showing Immediate And Irreparable Injury, Loss, Or Damage.

Pursuant to Fed. R. Civ. P. 65(b)(1)(A), the undersigned submits that Severino's verified complaint (Dkt. 1) contains specific facts to show that he is incurring an immediate and irreparable injury by virtue of the Defendants' violation of his Second and Fourteenth Amendment rights.

Conn. Gen. Stat. § 29-35(a) prohibits a person from carrying a pistol or a revolver in public without a permit on the pain of a Class D felony conviction and a mandatory minimum one-year sentence of incarceration. Dkt. 1, ¶ 28. Conn. Gen. Stat. § 29-33(b) also prohibits the sale or delivery of a pistol or revolver to any person who does not hold a valid Connecticut pistol permit, a valid permit to sell pistols or revolvers, or a valid eligibility certificate for a pistol or revolver issued pursuant to Conn. Gen. Stat. § 29-36f. *Id*. at ¶ 30.

Following Connecticut's process for obtaining a pistol permit, *see id*. at ¶¶ 32-36, Severino submitted an application for a Connecticut temporary statement pistol permit to the Waterbury Police Department in or around April 2022, complying with all of the

requirements to submit that application. *Id*. at ¶ 47. Severino meets all of the qualifications to be issued a Connecticut pistol permit. *Id*. at ¶ 48. On September 21, 2022, Defendant Fernando Spagnola denied Severino's pistol permit application on the grounds that Severino is not a suitable person to carry a pistol or revolver. *Id*. at ¶ 49.

On November 8, 2022, Severino filed an administrative appeal of Defendant Spagnola's decision. *Id*. at ¶ 59. On November 14, 2022, Defendant Carolyn Futtner provided him with a written notice that assigned him an appeal hearing date of May 22, 2025. *Id*. at ¶ 60. In the meantime, Conn. Gen. Stat. §§ 29-35(a) and 29-33(b) prevent Severino from obtaining or carrying a pistol or revolver. *Id*. at ¶¶ 28, 30.

It is well-established that there is a presumption of irreparable harm or injury when government conduct violates a person's constitutional rights. *Am. Civil Liberties Union v. Clapper*, 804 F.3d 617, 622 (2d Cir. 2015). Severino is entitled to the presumption of irreparable harm. He claims a constitutional right to purchase, keep, and bear a pistol or revolver for the purposes of self-defense inside the home and outside the home. The Supreme Court has twice established that the Second Amendment's text protects the right to keep and bear arms in case of confrontation. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111, 2127 (Jun. 23, 2022); *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008).

Severino is also facing actual irreparable harm because every day that passes where he cannot purchase, keep, and bear a pistol or revolver without facing criminal consequences is an injury that money cannot remedy.

II. Efforts Made To Give Notice

Since the Defendants are sued in their official capacities under *Ex Parte Young*, 209 U.S. 123 (1908), their proper legal representatives are government attorneys. Defendant Spagnola's proper legal representative is the City of Waterbury's Corporation Counsel, Attorney Angela Juliani. The remaining Defendants' proper legal representative is the Connecticut Attorney General's Office.

The undersigned has never had the pleasure of litigating with or against Attorney Juliani. Thus, he was limited to finding her contact information on the Waterbury Corporation Counsel's website. There, the undersigned found a publicly listed fax number for her. The undersigned faxed a letter to her that alerted her that he would be seeking emergency relief in this matter and enclosing a copy of the complaint at approximately 12:15 PM, December 2, 2022. The undersigned subsequently received a fax confirmation that his fax was delivered at approximately 12:23 PM on December 2, 2022. He has yet to receive a reply to that notification. He will immediately fax Severino's emergency motion, its supporting memorandum of law, and this certification to her upon its electronic filing, and he will continue to try to provide them actual notice of Severino's emergency motion.

Conversely, the undersigned is currently litigating a Second Amendment case with three members of the Connecticut Attorney General's office: Janelle Medeiros, James Belforti, and Terrence O'Neill. As such, he has their email addresses. At approximately 12:18 PM, December 2, 2022, he emailed them a letter that alerted them that he would be seeking emergency relief in this matter and enclosing a copy of the complaint. He received notification from his email service that all three emails were delivered at

approximately 12:18 PM, December 2, 2022. At 12:18 PM, December 2, 2022, the undersigned received automatic email replies from Attorneys O'Neill and Belforti: the former indicating that he was not in the office on December 2, 2022 and the latter indicating that he was on trial and would have limited access to email until December 19, 2022. The undersigned has not received a response from Attorney Medeiros. He will immediately email Severino's emergency motion, its supporting memorandum of law, and this certification to these three attorneys upon its electronic filing, and he will continue to try to provide them actual notice of Severino's emergency motion.

CONCLUSION

Severino does not seek *ex parte* relief in this matter. The undersigned, however, believed that the emergency nature of Severino's motion necessitated this certification pursuant to Fed. R. Civ. P. 65. Thus, he respectfully submitted it out of an abundance of caution.

The Plaintiff,

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CERTIFICATION OF SERVICE

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/s/ Cameron L. Atkinson /s/