

Senate State, Veterans, & Military Affairs  
 03/16/2023 01:30 PM  
 HB23-1219 Waiting Period To Deliver A Firearm  
 Typed Text of Testimony Submitted

Name, Position, Representing	Typed Text of Testimony
<p>Rionda Osman                      For                      Legue of Women Voters of                      Colorado</p>	<p>TO: Senate State, Veterans, &amp; Military Affairs Committee                      FROM: Rionda Osman                      RE: HB23-1219 A Bill for an Act Concerning Establishing a Minimum Three-Day Waiting Period Prior to the Delivery of a Purchased Firearm.</p> <p>I urge you to support HB23-1219 Waiting Periods. The League of Women Voters of Colorado believes that this bill protects the health and safety of citizens through limiting the accessibility and regulating the ownership of handguns and semi-automatic weapons. The League supports regulation of firearms for consumer safety.</p> <p>This bill would establish a 3-day waiting period from purchase of a firearm until delivery. This 3-day delay falls within the delays envisioned in the background check process. This inconvenience to buyers should be minimal. By comparison, Hawaii requires a 14-day waiting period.</p> <p>Waiting periods are intended to reduce suicides by imposing a ‘cooling off’ period to allow a suicidal person to master the impulse or to receive help. Research reported by the Rand Corporation indicates that waiting periods may decrease suicides, even though risks remain after the time delays specified by law. Suicide by firearm is extremely effective compared to other methods, so restricting access to firearms may result in fewer suicides.</p> <p>Waiting periods allow law enforcement more time to investigate straw purchases and prevent unlawful possession of a firearm. Firearm trafficking and transfers to prohibited buyers would be disrupted by such investigations.</p> <p>Protect Coloradans by enacting a waiting period to impede impulsive purchases. Allow law enforcement more time to prevent firearm trafficking with a longer time period for investigations.</p>
<p>Katelyn Arterburn                      For                      herself</p>	<p>As a mother of two boys, I support HB23-1219, which implements a 3-day waiting period for gun purchases in Colorado. Waiting periods reduce gun homicides by up to 17% and suicide attempts by 7-11%. They also prevent impulsive acts of violence like the Columbine tragedy. As a parent, I fear for my children's safety every day. We owe it to ourselves and our children to take action to prevent future tragedies. Please support HB23-1219.</p>

<p>Lydia Ferrante-Roseberry For themselves</p>	<p>Dear Senators,</p> <p>Thank you very much for considering this important bill. I write to you as a Unitarian Universalist minister, serving a congregation in Lafayette, as a citizen and as a mother of two children, who has become very concerned about gun violence. We are in a time when mental health concerns are sky-rocketing, especially among young people. Colorado already has a very high suicide rate, and a shortage of behavioral health inpatient beds for those who are unable to adequately manage their illnesses. Suicide attempts are typically impulsive; waiting periods have been associated with a 7-11% decline in suicides.</p> <p>I see no need for anyone to be able to acquire a firearm on the spot, when the impacts of doing so are life-threatening. This waiting period allows those who responsibly want to buy a firearm to still acquire it, and those who may be impulsively buying one to be required to wait. I can only see good coming from this legislation, and hope you will support it.</p> <p>in peace,</p> <p>Rev. Lydia Ferrante-Roseberry Louisville, CO</p>
<p>Ronnie Broyles Against themselves</p>	<p>I am a resident of Colorado Springs, and I am writing to express my opposition to HB23-1219. This authors and sponsors of this bill wish us to believe that a 3 day waiting period will “save lives”. The only thing forcing law abiding citizens to wait a MINIMUM of 3 days to take possession of a legally purchased firearm will do is further victimize those who most need a firearm at the moment they need to purchase one. This bill targets the LAW ABIDING, it does ABSOLUTELY NOTHING to target or prohibit individuals who are legally barred from purchasing or possessing a firearm from doing so. The legislature always target the law abiding. You do ABSOLUTELY NOTHING to enforce the multitude of laws that you have already passed—and yet you pass more restrictions and then more, in a piecemeal effort to turn a Constitutional right into a “privilege” that you can restrict at your whim, whenever your incessant hatred of the Second Amendment, or whenever the well funded anti-gun lobby drives you to do so. This majority party on this committee is disingenuous, as your minds as to how you will vote on this bill was made up long before it came to this committee. Yet I still ask each of you to actually uphold the oath of office that you took when you were elected — which requires you to support, defend and preserve the Constitution of the United States and of the state of Colorado—and that includes the Amendments and Rights that you hate so badly. So I ask that you vote NO on HB23-1219.</p>
<p>Toby Davidow For themselves</p>	<p>Senators of the Committee,</p> <p>I am writing to you - for myself - and also as a volunteer of Moms Demand Action for Gun Sense in America - urging you to support and</p>

	<p>pass HB23-1219. A 3 day waiting period between the purchase or a gun and when the buyer can take possession of it may give needed time if this gun buyer has plans of violence with it.</p> <p>As a friend of a family with 2 sons in Parkland High School in Florida - thankfully with their sons unharmed - and several other friends who have lost their kids to guns, a cooling off period might have saved their lives.</p> <p>Your actions are critical! Please pass this.</p> <p>Thank you, Toby Davidow</p>
<p>Gwendolyn Gray For themselves</p>	<p>Dear Representatives,</p> <p>It's time we make some real, meaningful progress with legislation that will save lives in the midst of the public health crisis we have with gun violence in Colorado. Our kids are counting on us, as you saw with the huge turnout of East High students on March 3.</p> <p>A three-day waiting period will be an excellent addition to our state laws because it will help avert impulsive homicides and suicides. Waiting periods are seen to lower gun homicides by 17%, which is hugely significant. And suicide is shown to often be the result of mental health crises that are intense but relatively short and treatable. Access to a gun within that short period of crisis is most often fatal. A waiting period gives the individual time for the crisis to pass or for a person to get medical help.</p> <p>I thank our legislators who have brought this bill forward and hope all will support its passage. We must keep at the problem of gun violence from all possible angles to save lives.</p> <p>Sincerely, Gwen Gray Lafayette resident</p>
<p>Travis Couture-Lovelady Against National Rifle Association of America</p>	<p>House Bill 23-1219 imposes an arbitrary three-day delay on gun owners taking possession of their firearms and makes this delay longer or indefinite if authorities fail to complete a background check during that time. Criminals will not be affected by waiting periods. Most state inmates who were in possession of a firearm at the time of their arrest obtained the firearm through an illegal source or from a friend or family member. Proponents of the waiting period claim it is a "cooling off period" that supposedly gives the prospective buyer time to reconsider their intentions and protect against impulsive actions. This argument has no logical basis. Two-thirds of gun owners own more than one gun. A cooling-off period for these gun owners could not possibly have an effect, as they already own other firearms. Also, HB 23-1219 allows inefficiencies or failures by state bureaucrats to indefinitely delay Second Amendment rights.</p>

	<p>The Second Amendment is not a second-class right. It is subject to the same limitations as other fundamental rights. And there are several judicial precedents upholding what MLK famously said: “a right delayed is a right denied.”</p> <p>A delay for the sake of a delay is unconstitutional.</p> <p>A more recent study by a trio of authors from Harvard Business School claims to have found that waiting periods reduce gun deaths by 17%. Their model fails to incorporate controls for educational attainment, crime rates, police resources, and incarceration rates – controls used by virtually every other researcher studying firearms-related policy effects. This study did find that waiting periods reduce all homicides and suicides, as well as specifically firearms-related suicides but found that background checks increase homicides. The authors also found that poverty decreased firearm-related homicides, and that poverty, urban areas, and younger aged cohorts were not associated with total homicides. The model is obviously misspecified, but the “finding” was run across popular media with no mention of the effect of background checks.</p> <p>For these reasons and we on behalf of our members in Colorado the National Rifle Association opposes this bill and respectfully asks for a no vote.</p>
<p>Keith Emerson Against themselves</p>	<p>When I took my first concealed carry class there was a black woman in the group who had never fired her new pistol before. It was a .22 and she didn't have the strength to work a normal pistol properly but that particular design allowed her to work it through an alternate method. The woman was terrified of a person who she though would be coming into her home. The saying is that, "When seconds count the police are just minutes away." These are the people you will be stopping from being able to defend themselves if you vote for to advance this bill!</p> <p>This bill, to require the longer of 3 days or completion of the background check before a firearm is delivered to a customer, will neither stop crime or many suicides. Statistics show criminals do not get firearms through a purchase just before committing their crimes. Those truly intent on committing suicide will find another way if a firearm is not available. Just see the testimony of Ronald Dietz, whose son hanged himself when he couldn't get into dad's firearms.</p>
<p>Kristen Bara Against Colorado Federation of Republican Women</p>	<p>Here is my testimony for Monday: I am opposed to HB23-1219. I am a Colorado resident. Crime continues to rise in Colorado due to poor public policy. I've lived in Colorado for over 25 years and this is the first time I've been afraid to take a walk at night in my own neighborhood.</p>

	<p>My friends and neighbors have had their cars broken into, bicycles stolen, been physically assaulted, and harassed by the homeless living on our streets. Reoffenders are being let out of jail with only a slap on the wrist. Fentanyl continues flood our state due to open borders and Americans are dying! This did not occur in a vacuum. This is the result of poor public policy. And if this law passes it will make it even harder for law abiding citizens to protect themselves. There is absolutely no reason why, a law-abiding citizen who has passed a background check should be delayed in obtaining a firearm. I've worked with women in domestic abuse situations and when restraining orders do not work, and when many times they do not, that three day waiting period can be the difference between life or death. So please, I ask you to oppose this bill. People's lives depend on it. Oppose this bill.</p>
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March 2023

To: Senate State, Civic, Military & Veterans Affairs Committee  
Re: AAUW support for HB23-1219 --Waiting Period To Deliver A Firearm

Dear Committee Members,

The American Association of University Women (AAUW) is one of the oldest women's organizations in the country, empowering women since 1881. The mission of AAUW is to advance equity for women and girls through research, education and advocacy

AAUW has declared that gun violence is a public health crisis, and women are especially vulnerable to domestic violence involving firearms.

AAUW of Colorado believes HB 1219 is a common sense approach to curbing this epidemic and strongly supports this bill. We request your YES vote in committee and throughout the process of becoming law.

Respectfully submitted,

A handwritten signature in blue ink that reads "Su Ryden".

**Su Ryden**  
**AAUW Colorado Public Policy Co-Director**

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*American Association of University Women--AAUW is a top-rated 501(c)3 charitable organization whose mission is to advance gender equity for women and girls through research, education, and advocacy.*



Testimony of Liddy Ballard, State Policy Manager  
Support for House Bill 1219  
Before the Colorado House State, Civic, Military, and Veterans Affairs Committee

March 16, 2023

Dear Chairman Coleman, Vice Chair Sullivan, and distinguished members of the State, Veterans, & Military Affairs Committee,

Founded in 1974, Brady works across Congress, courts, and communities, uniting gun owners and non-gun owners alike, to take action, not sides, and end America's gun violence epidemic. Brady today carries the name of Jim Brady, who was shot and severely injured in the assassination attempt on President Ronald Reagan. Jim and his wife, Sarah, led the fight to pass federal legislation requiring background checks for gun sales. Brady continues to uphold Jim and Sarah's legacy by uniting Americans from coast to coast, red and blue, young and old, liberal and conservative, to combat the epidemic of gun violence. **In furtherance of our goal to reduce firearm violence across Colorado, the Brady Campaign to Prevent Gun Violence is proud to support the passage of House Bill 1219.**

Each year, 850 Coloradans are killed by gun violence, 633 of whom die by firearm suicide.<sup>1</sup> Colorado's firearm suicide rate is a staggering 55% higher than the national average, but this does not need to be the case.<sup>2</sup> These deaths are preventable. Many people who contemplate suicide do so when in a moment of crisis, which is why cooling off periods for firearm purchases are an effective, necessary policy. 'Cooling off periods' create critical barriers between thoughts of self harm (or harm to others) and attempts or implementation of that harm by delaying access to firearms for a short period of time. HB23-1219, which implements a 3-day cooling off period between purchase and possession of a firearm, provides a necessary buffer to help protect people who might be reaching for a firearm in crisis and will save lives.

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<sup>1</sup> Centers for Disease Control and Prevention, National Center for Injury Prevention and Control. Web-based Injury Statistics Query and Reporting System (WISQARS) [online]. (2005) [cited 2023 March 4]. Available from URL: [www.cdc.gov/injury/wisqars](http://www.cdc.gov/injury/wisqars)

<sup>2</sup> *Id.*

cooling off periods are associated with reductions in both homicides and suicides rates. One study has found that any delay between the purchase and transfer of a firearm reduced gun suicide rates between 2-5% and prevented substitution of other methods of firearms suicide.<sup>3</sup> Further, cooling off periods have proven to reduce firearm homicides by approximately 17%;<sup>4</sup> in fact, research shows that the 17 states and the District of Columbia that had laws implementing cooling off periods in 2017 avoided roughly 750 firearm homicides each year.<sup>5</sup> This policy plays a critical role in interrupting potentially life-threatening situations in Colorado.

Colorado has taken crucial steps towards protecting its citizens by closing the “Charleston Loophole,” requiring a completed background check prior to accessing a recently purchased firearm; however, that policy only impacts firearm purchasers who might not immediately pass a background check. It is critical that the state fully protects its citizens by implementing HB23-1219, allowing a cooling off period for firearm purchasers who might be in crisis at the time of purchase.

The research and statistics are clear - cooling off periods are a common sense policy proven to reduce gun violence and save lives. A predictive modeling tool created by the RAND corporation shows that introducing cooling off periods of over 24 hours in Colorado could save up to 18 lives in the coming year.<sup>6</sup> Further, support for cooling off periods is overwhelmingly popular across the United States: a 2019 study found that 85% of non-gun owners and 72% of gun owners support mandatory cooling off periods on firearm purchases.<sup>7</sup>

## **Conclusion**

Nine states currently have laws in place requiring a cooling off period, and Colorado has the opportunity to join these states and protect its citizens—especially those in crisis— by reducing gun violence. ***For the reasons described above, Brady urges the committee to support the passage of House Bill 1219.***

Sincerely,  
Liddy Ballard

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<sup>3</sup> Griffin Edwards, Erik Nesson, Joshua J. Robinson, Fredrick Vars, Looking Down the Barrel of a Loaded Gun: The Effect of Mandatory Handgun Purchase Delays on Homicide and Suicide, *The Economic Journal*, Volume 128, Issue 616, 1 December 2018, Pages 3117–3140, <https://doi.org/10.1111/eoj.12567>

<sup>4</sup> Luca Michael, Malhotra Deepak, Poliquin Christopher, Handgun Waiting Periods Reduce Death, *Proceedings of the National Academy of Sciences of the United States of America*, Volume 114, No. 46, 16 October 2017, Pages 12162-12165, <https://www.pnas.org/doi/10.1073/pnas.1619896114>

<sup>5</sup> *Id.*

<sup>6</sup> RAND Corporation. Understanding Firearm Deaths By State - And How to Reduce Them. Firearm Law Effects and Mortality Explorer [online]. (2023) [cited 2023 March 6]. Available from URL: <https://www.rand.org/research/gun-policy/firearm-law-effects-mortality-explorer.html>

<sup>7</sup> Dixon Graham, Garrett Kelly, Susmann Mark, Bushman Brad, Public Opinion Perceptions, Private Support, and Public Actions of US Adults Regarding Gun Safety Policy. *JAMA network open*, 3(12), e2029571, 22 December 2020, <https://doi.org/10.1001/jamanetworkopen.2020.29571>

## Gun Control Research: The CDC Study

A comprehensive study done by one of the most prestigious scientific organizations in the country has found no statistically significant evidence that gun control has prevented a single violent crime.

If you believe that scientific research is the most logical way to understand the reality of the world, then you pay attention to studies done by groups and individuals. You also give weight to surveys that attempt to draw conclusions by reviewing numbers of studies.

The survey in question was done by the Centers for Disease Control (CDC) to determine if gun control has made a difference in the crime rate in the United States. There are some important things to remember about this study, which was published in 2003.

The CDC is a governmental organization that generally favors strict gun control laws. The panel doing the review of studies on these laws was largely made up of advocates for restricting or banning civilian ownership of firearms in the United States.

The purpose of the survey was to evaluate gun control laws with regard to effectiveness in reducing crime and violence. Given the institutional and individual bias in favor of restrictive gun laws, the conclusions of the CDC Study are remarkable.

The CDC panel reviewed 51 studies regarding the effectiveness of gun control laws. Based on that review, they could not say that gun laws had prevented a single crime. The survey included, among other issues, studies of the effectiveness of gun and ammunition bans, licensing and registration laws, child access laws, and waiting periods. There was some slight evidence that waiting periods to purchase a firearm may reduce the gun suicide rate in older persons, while not affecting the overall suicide rate.

You would think that out of 51 scientific studies there would be more evidence of the effectiveness of gun control, if gun control were effective in preventing crime and violence. It is a tribute to the honesty of the CDC panel, given their preconceived ideas, that they were willing to issue this report at all. The survey did say in somewhat Orwellian fashion that “insufficient evidence to determine effectiveness should not be interpreted as evidence of ineffectiveness.” (Just because a review of 51 studies failed to find a significant result, it doesn’t mean that the result isn’t there.)

The panel recommended additional research. This CDC survey is corroborated by the results of an even more exhaustive review done by the National Academies of Sciences.

Thacker, Steven, M.D., Dixon, Richard E., M.D., *First Reports evaluating the effectiveness of strategies for preventing violence: Firearms Laws*, Task Force on Community Preventive Services, Centers for Disease Control.

<http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5214a2.htm>

Gun Control Research-Wright and Rossi Department of Justice Study  
(Deterrent effect of armed citizens upon criminal behavior)

Professors James D. Wright and Peter Rossi of the Social and Demographic Research Institute at the University of Massachusetts conducted a study in 1982 and 1983 paid for by the U.S. Department of Justice. (Professor Rossi was a former President of the American Sociological Association.) The researchers interviewed 1,874 imprisoned felons in ten states.

Professors Wright and Rossi initially believed that strict gun control deterred crime. The results of their research led them to the conclusion that armed citizens have a beneficial effect in reducing criminal behavior and that harsh laws, such as handgun bans could result in criminals using sawed off rifles and shotguns with more deadly results. 88% of the criminals surveyed by Wright and Rossi agreed with the statement that, "A criminal who wants a handgun is going to get one."

A 1986 review of the professors' work, *Armed and Considered Dangerous*, by Raymond G. Kessler of the Department of Criminal Justice of Memphis State University, concluded, "Although *Armed and Considered Dangerous* is not free of methodological problems, it is the best policy-oriented study of criminals and their guns available."

Wright and Rossi reported that:

81% of interviewees agreed that a "smart criminal" will try to determine if a potential victim is armed.

74% indicated that burglars avoided occupied dwellings, because of fear of being shot.

57% said that most criminals feared armed citizens more than the police.

40% of the felons said that they had been deterred from committing a particular crime, because they believed that the potential victim was armed.

57% of the felons who had used guns themselves said that they had encountered potential victims who were armed.

34% of the criminal respondents said that they had been scared off, shot at, wounded, or captured by an armed citizen.

Based on this government-funded research by Wright and Rossi, it would appear that armed citizens do have a deterrent effect on crime.

Wright, James D., Rossi, Peter H., Daly, Kathleen, *Under the Gun, Weapons, Crime, and Violence in America*, Aldine de Gruyter, New York, 1983.

Wright, James D., Rossi, Peter H., *The Armed Criminal in America*, U.S. Department of Justice, 1985.

Wright, James D., Rossi, Peter H., *Armed and Considered Dangerous, a Survey of Felons and their Firearms*, Aldine de Gruyter, New York, 1986.

Chair and Committee Members,

I am Robert Edmiston with The Firearms Coalition of Colorado, an NRA affiliate, grassroots, all-volunteer organization dedicated to individual rights and public safety. I am a former US Army officer and have a master's degree in psychology, counseling, and guidance.

I am writing in opposition to HB23-1219.

Setting Constitutional problems with the bill aside for now, we believe that anyone with enough money can buy a scientific study to prove whatever the individual wants to prove. The most interesting studies are the ones that result in findings that are contrary to the preconceptions of the researchers, such as the Wright and Rossi Study, which indicated that criminals are deterred by the potential presence of armed victims. Wright and Rossi initially believed that firearms were not useful for self-defense. After they reviewed the findings, they reversed their opinions in an admirable demonstration of the actual scientific method. (Wright and Rossi Study information attached.)

Another such study is the massive 2003 review of the literature done by the Centers for Disease Control (CDC), which indicated that waiting periods for firearms purchases do not lower the overall suicide rate. Although the CDC recommended more research, they should be commended for a willingness to publish results that contradicted the agency's institutional bias against the private ownership of firearms. (CDC Study information attached.)

We believe it is also true that a reliable older study is better than a newer study that was produced "on demand," and falls into the category of "junk science." Some more recent studies fail to inform, because of cherry-picked data, bias in the structure of the project, or downright fabrication of data, such as seems to have occurred in Michael Belleisle's book entitled *Arming America*. In the initial publication, he claimed to have access to information that was destroyed in the San Francisco Earthquake and Fire. (Mr. Belleisles was subsequently terminated from a university teaching position and stripped of The Bancroft Prize for the problems with his research.)

Another issue with specific studies may be flaws in the design of the data collection. For instance, as Professor David Kopel pointed out in his written testimony on this bill, the single study cited by the bill's sponsors failed to differentiate between justifiable homicides and murder. "Thus, we do not know how much of any homicide reduction" (claimed in the study) "was because victims were denied the means to defend themselves against attackers such as stalkers."

Incidentally, the same study cited by the bill sponsors also "...finds that background checks have no statistically discernable effect on homicide or suicide, and may lead to statistically significant increases in crime and suicide."

[Kopel: Colorado bill forcing delay of firearms acquisition on shaky constitutional ground - Complete Colorado - Page Two.](#)

We therefore request that the Committee take into consideration the findings of the massive CDC Study and the study cited by the bill sponsors and refrain from imposing any waiting periods on firearms purchases.

Thank you for your consideration.

Robert Edmiston  
Volunteer  
The Firearms Coalition of Colorado

# Written testimony on HB23-1219, to delay the acquisition of firearms

Colorado Senate  
State Affairs Committee  
State Capitol  
Denver, Colorado  
Mar. 16, 2023

Testimony of David B. Kopel  
727 East 16<sup>th</sup> Ave.  
Denver, Colo. 80203  
303-279-6536

## Summary

This testimony covers two subjects:

- First, the constitutionality of forced delays on firearms acquisition.
- Second, HB23-1219's claim that "One study estimates that mandatory waiting periods to receive firearms led to a 7 to 11 percent reduction in suicides by firearm; the study also suggests that delaying the purchase of firearms by a few days reduces firearm homicides by approximately 17 percent."

The bill is on very shaky ground constitutionally. Forced delays in firearms acquisition by adults did not exist when the Second Amendment was ratified in 1791, nor in 1868, when the Fourteenth Amendment was ratified and made the Second Amendment enforceable against state governments. Forced waiting periods are therefore unconstitutional under the Supreme Court's 2022 *Bruen* and 2008 *Heller* precedents.

As for the "study," the lack of confidence that the drafters of HB23-1219 have in that study is shown by the choice not to even mention the study's name, lest interested persons find the study and read what it actually says. The study, by business school professors Michael Luca et al., was published in the journal *PNAS*. The study finds that background checks have *no* statistically discernable effect on homicide or suicide, and may lead to statistically significant increases in crime and suicide. Thus, persons who had genuine confidence in the *PNAS* article would be introducing legislation to repeal the

2013 Colorado statute that expanded background checks to include noncommercial firearms transfers and loans.

While finding that background checks have no beneficial effects, the study claims that handgun waiting periods reduce total gun homicide by 17%. If this is true, then in states that do not have waiting periods, about 17% (or in 1 in 6) of all gun homicides are perpetrated with a handgun what was purchased just a few days before the homicide. If this were true, then the bill's proponents should be able to list hundreds of examples of recent Colorado homicides in which a person went to a gun store, passed a background check, bought a handgun, and murdered someone within a few days.

However, according to the federal Bureau of Alcohol, Tobacco, Firearms & Explosives, only about 10% of crime guns in Colorado were acquired within three *months* of the crime. Thus, it is implausible that 17% of gun homicides are perpetrated with handguns purchased just a few days before a murder.

Finally, the *PNAS* article does not distinguish offensive, criminal homicide from defensive, justifiable homicide. Thus, we do not know how much of any homicide reduction was because victims were denied the means to defend themselves against attackers such as stalkers.

## **Background**

Since 1992 I have been Research Director at the Independence Institute, in Denver. I am also an adjunct law professor at the University of Denver, a senior fellow at the University of Wyoming College of Law's Firearms Research Center, and an adjunct scholar at the Cato Institute in D.C. My scholarship and briefs have been cited in 7 Supreme Court opinions, by Justices Alito, Breyer, Kagan, Stevens, and Thomas—most recently in Justice Thomas's opinion for the Court in *New York State Rifle & Pistol Association v. Bruen*. I have also been cited by 29 U.S. Circuit Courts of Appeals decisions, including 3 in the Tenth Circuit, and by 28 state or territorial appellate courts. In the 2008 Supreme Court case *District of Columbia v. Heller*, I sat at the counsel table and assisted the presentation of the oral argument.

My late father, Jerry Kopel, served 11 terms as a Democratic State Representative from northeast Denver. He and I are coauthors of the book *Jerry Kopel's Rules for State Legislators*.

## I. Constitutional analysis

### A. Bruen's Rules

In the 2023 *Bruen* case, the Supreme Court instructed lower courts to use the same Second Amendment methodology that the Supreme Court had used in *Heller* in 2008 and in *McDonald v. Chicago* in 2010.<sup>1</sup> Namely:

When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation.<sup>2</sup>

The right to “keep” “arms” necessarily implies the right to acquire arms. HB23-1219 bill applies only to firearms, not to other goods. The bill delays all acquisitions of firearms by three days.

Therefore, “The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation.”<sup>3</sup>

According to *Bruen*, judges may not engage in policy-based “interest balancing.” Nor may they defer to legislative judgements.<sup>4</sup> Rather, the deference is due to the fundamental right that the People chose to safeguard by ratifying the Second Amendment.

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<sup>1</sup> *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008);

<sup>2</sup> *Bruen* at 2129–30.

<sup>3</sup> *Id.* at 2129–30.

<sup>4</sup>

If the last decade of Second Amendment litigation has taught this Court anything, it is that federal courts tasked with making such difficult empirical judgments regarding firearm regulations under the banner of “intermediate scrutiny” often defer to the determinations of legislatures. But while that judicial deference to legislative interest balancing is understandable—and, elsewhere, appropriate—it is not deference that the Constitution demands here. The Second Amendment “is the very *product* of an interest balancing by the people” and it “surely elevates above all other interests the right of law-abiding, responsible citizens to use arms” for self-defense. It is this balance—struck by the traditions of the American people—that demands our unqualified deference.

*Id.* at 2131 (quoting *Heller*, 554 U.S. at 635).

Rather than making policy judgements, judges simply decide whether a particular gun control is “is consistent with the Nation’s historical tradition of firearm regulation.” The burden of proof is on the government, which “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.”<sup>5</sup>

That tradition is based on the understanding of the Founding Era, but it may be elucidated by later developments. According to the Court, developments close to the Founding Era are the most important, those of the late 19<sup>th</sup> century much less so, and those of the 20<sup>th</sup> century not at all.<sup>6</sup>

Some modern gun control laws are very similar to earlier laws that created an established tradition. For example, laws against shooting a gun toward the sky in a crowded area, where the falling bullet could injure a random person. Similarly, many states historically provided extra punishment for crimes that involved the misuse of certain types of arms, just as modern laws do.

Other modern laws may be justified by *analogy* to older laws. For example, starting in the 1830s, a number of states enacted laws requiring that persons carrying handguns must post a bond—if a court found that the person had been behaving in a way that threatened to breach the peace. These laws could be analogized to some modern restrictions on carrying arms by persons who have been acting dangerously.

To justify a gun control, the government must show “a well-established and representative historical *analogue*, not a historical *twin*. So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster.”<sup>7</sup>

Two key factors control analogies, under *Bruen’s* rules: why and how.

“How” means: “whether modern and historical regulations impose a comparable burden on the right of armed self-defense.”<sup>8</sup>

“Why” means: “whether that burden is comparably justified.”<sup>9</sup>

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<sup>5</sup> *Id.* at 2127.

<sup>6</sup> “As with their late-19th-century evidence, the 20th-century evidence presented by respondents and their amici does not provide insight into the meaning of the Second Amendment when it contradicts earlier evidence.” *Id.* at 2154 n.28.

<sup>7</sup> *Id.* at 2133.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

“Why” looks for similarity in the purpose of gun controls. For example, the Surety of the Peace statutes mentioned above were enacted to discourage dangerous behavior while carrying firearms, by persons who had been proven to have been acting irresponsibly.

“How” considers the scope of the burden imposed. For example, the Surety laws applied only to the small part of the population that was found in court to have been acting wrongfully. The laws forced the person either to stop carrying, or to post a bond. They did not forbid the person to keep arms at home.

### **B. There were no waiting periods before 1900**

What about waiting periods? Under modern Supreme Court doctrine, this is an easy case. There were no waiting periods on firearms or other arms anywhere in the United States before 1900.

The first waiting period law was enacted in California in the 1923, a one-day wait for handgun sales.<sup>10</sup> A minority of other states enacted handgun waiting period laws in the 1920s and 1930s.

Under *Bruen*, analogies from the 1920s are far too late to offer any insight on the original public meaning of the Second Amendment.

### **C. Historical law analogies to waiting periods**

Because there is not an iota of pre-1900 historical precedent for waiting period laws, the next question is whether there might be other historical laws to which analogies might be drawn. Were there other types of laws that in some way delayed an adult from being able to keep a firearm in his or her home?

Yes there were. These were laws that required some people to receive a license in order to keep a gun at home. These laws did not necessarily require waiting. A fortunate applicant might apply at the county courthouse in the morning, and walk out with a license before lunch. However, it seems plausible that, as with lots of other government licensing, the licensing authority might not issue a license immediately.

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<sup>10</sup> §§ 10–11, 1923 Cal. Stat. at 701.

For further discussion, see Kopel, [\*Background Checks for Firearms Sales and Loans: Law, History, and Policy\*](#), 53 Harvard Journal on Legislation 303 (2016). The article has been cited in [\*National Rifle Association of America, Inc. v. Swearingen\*](#), 545 F.Supp.3d 1247, 1262 n.24 (N.D. Fla. 2021); and [\*Marszalek v. Kelly\*](#), 2021 WL 2350913 at \*6, 9 (N.D. Ill., June 9, 2021).

All of the pre-1900 licensing laws were systemically racist, an enduring problem for some gun control laws, then and now. With one exception (Florida 1893), all of the licenses were textually applicable only to people of color. The Florida law was textually neutral but was never enforced against white people.

The first gun control law in America was enacted by the Colony of Virginia in 1619. Blacks and Indians who were “not house-keepers, nor listed in the militia” were generally prohibited from bearing arms.<sup>11</sup> However, these blacks and Indians living on frontier plantations could possess arms if they were granted a license “to keep and use guns, powder, and shot . . . .”<sup>12</sup>

The first session of Mississippi’s territorial legislature declared in 1799 that “No negro or mulatto shall keep or carry any gun, powder, shot, club or other weapon whatsoever, offensive or defensive.”<sup>13</sup> However, “the commanding officers of legions” could grant free black householders up to a twelve-months license to own and carry arms; slaves could also receive a permit, “on application of their owners, shewing sufficient cause . . . why such indulgence should be granted.”<sup>14</sup> In 1822, a statutory revision gave licensing powers to the justices of the peace (for slaves) and to county courts (for free blacks) and did not limit the duration of the licenses.<sup>15</sup> The licensing system was replaced by a prohibition in 1852.<sup>16</sup>

Maryland’s 1806 statute forbade “any negro or mulatto within this state to keep any dog, bitch, or gun.”<sup>17</sup> However, a free “negro or mulatto” could apply to a justice of the peace for a license, valid for no more than one year, to keep one dog or to carry a gun.<sup>18</sup>

North Carolina in 1841 required that all free persons of color must have an annual license from the Court of Pleas and Quarter Sessions in order to own or carry firearms, swords, daggers, or bowie knives.<sup>19</sup> The law was challenged

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<sup>11</sup> 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).

<sup>12</sup> *Id.*

<sup>13</sup> A Law for the regulation of Slaves, 1799 Laws of the Miss. Terr. 112, 113 (Mar. 30, 1799). Slaves were also forbidden to keep dogs. *Id.* at 118.

<sup>14</sup> *Id.*

<sup>15</sup> 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).

<sup>16</sup> An Act to prohibit Magistrates from issuing license to negroes to carry and use firearms, ch. 206, 1852 Miss. Laws 328 (Mar. 15, 1852).

<sup>17</sup> 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).

<sup>18</sup> *Id.*

<sup>19</sup> An Act to prevent Free Persons of Colour from carrying Fire-arms, ch. 30, 1840–41 N.C. Laws 61–62 (1841).

and upheld in the 1844 case *State v. Newsom*.<sup>20</sup> A trial court had ruled that arms licensing was a plain violation of the state constitutional right to keep and bear arms. The state supreme court unanimously agreed. However, said the supreme court, free people of color did not have the right to arms because they were a subordinate caste. “[F]ree people of color have been among us, as a separate and distinct class, requiring, from necessity, in many cases, separate and distinct legislation.”<sup>21</sup> It was up to “the control of the County Court, giving them the power to say, in the exercise of a sound discretion, who, of this class of persons, shall have a right to the licence, or whether any shall.”<sup>22</sup> The case is an example of mischief that results when judges think they can invent reasons not to follow the plain text of a constitution.

The North Carolina approach foreshadowed the U.S. Supreme Court’s 1856 decision in *Dred Scott v. Sandford*, which held that free blacks were not citizens of the United States.<sup>23</sup> Otherwise, warned the Court majority, free blacks would be entitled to the “privileges and immunities of citizens,” including the right to “carry arms wherever they went.”<sup>24</sup>

Indeed, a key legal distinction between free and slave is that the former is armed and the latter is not. Obviously, if enslaved persons were armed, they might be able to liberate themselves.

After losing the Civil War, the former Confederate States grudgingly accepted the abolition of *de jure* slavery, via the Thirteenth Amendment. However, they aimed to keep the former slaves in a condition of *de facto* servitude. The antebellum laws about slaves and free blacks were reenacted as Black Codes—imposing many of the “incidents” of slavery on the freedmen.<sup>25</sup> Among these incidents were prohibitions on arms possession without advance permission from the government.

The first session of the Florida legislature following the Confederate defeat provided that “it shall not be lawful 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.”<sup>26</sup> There was an exception if a probate judge had issued a license, based on “the

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<sup>20</sup> 27 N.C. (5 Ired.) 250 (1844).

<sup>21</sup> *Id.* at 252.

<sup>22</sup> *Id.*

<sup>23</sup> *See* 60 U.S. 393 (1856).

<sup>24</sup> *Id.* at 417.

<sup>25</sup> Section Two of the Thirteenth Amendment empowers Congress to abolish “all badges and incidents of slavery.” *Civil Rights Cases*, 109 U.S. 3, 4 (1883).

<sup>26</sup> 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).

recommendation of two respectable citizens of the county certifying the peaceful and orderly character of the applicant.”<sup>27</sup> The penalty was forfeiture of the weapon, plus thirty-nine lashes, or one hour in the pillory.<sup>28</sup>

White supremacist Mississippi required a license from the county board of police.<sup>29</sup> If the defendant without a license could not pay the fine, he would be “hired out” for labor to a white person who paid the fine.<sup>30</sup>

The Florida and Mississippi laws, and other laws in the former Confederacy restricting firearms possession by the Freedmen, led to corrective action by Congress: the Civil Rights Act, the Second Freedmen’s Bureau Bill, and finally the Fourteenth Amendment. Every one of them was explicitly intended by its sponsors to protect the arms rights of the Freedmen.<sup>31</sup>

Because of the Equal Protection Clause of the Fourteenth Amendment, racist gun control laws after the enactment of the Amendment in 1868 now had to be written in language that was formally racial neutral. The closest historic analogue for forced waits to exercise the right to keep arms was an 1893 Florida statute that required owners of Winchesters and other repeating rifles to apply for a license from the board of county commissioners. In 1901 the law was extended to also include handguns. As amended, “Whoever shall carry around with, or have in his manual possession, in any county in this State, any pistol, Winchester rifle, or other repeating rifle, without having a license from the county commissioners of the respective counties of this State,” should be fined up to \$100 or imprisoned up to 30 days.<sup>32</sup>

In 1941, a case arose as to whether a handgun in an automobile glove-box fit within the statutory language, “on his person or in his manual possession.” By 5–2, the Florida Supreme Court held that it did not; no license was necessary

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<sup>27</sup> *Id.* at 27.

<sup>28</sup> *Id.* at 25.

<sup>29</sup> An Act to punish certain Offences therein named, and for other purposes, ch. 23, § 1, 1865 Miss. Laws 165.

<sup>30</sup> Ch. 23, § 5, 1865 Miss. Laws 165, 166–67.

<sup>31</sup> The history is described in detail in the Supreme Court’s decision in *McDonald v. Chicago*, including in Justice Alito’s opinion for the Court and Justice Thomas’s concurrence.

<sup>32</sup> The county commissioners could issue a two-year license only if the applicant posted a bond of \$100. The commissioners were required to record “the maker of the firearm so licensed to be carried, and the caliber and number of the same.” *Revised General Laws of Florida*, § 7202–03 (1927); 1893 Fla. Laws ch. 4147; 1901 Fla. Laws ch. 4928. The bond of \$100 was exorbitant. It was equivalent to over \$3,400 today. (Fed. Reserve Bank of Minneapolis, [Consumer Price Index 1800](#): 2022=884.6. 1893=27. 1901= 25. Avg. = 26.)

to carry a handgun or repeating rifle in an automobile.<sup>33</sup> A four Justice majority granted the defendant's petition for habeas corpus because of the rule of lenity: in case of ambiguity criminal statutes should be construed narrowly. Justice Rivers H. Buford concurred with the 4-Justice majority opinion. His opinion went straight to the core problem with the statute.<sup>34</sup>

The Florida Constitution of 1885 had provided: "The right of the people to bear arms in defence of themselves and the lawful authority of the State, shall not be infringed, but the Legislature may prescribe the manner in which they may be borne."

Concurring, Justice Buford wrote that the statute should be held to violate the Florida Constitution and the Second Amendment:

I concur in the judgment discharging the relator because I think that Section 5100, R.G.S., § 7202, C.G.L., is unconstitutional because it offends against the Second Amendment to the Constitution of the United States and Section 20 of the Declaration of Rights of the Constitution of Florida.

Proceedings in habeas corpus will lie for the discharge of one who is held in custody under a charge based on an unconstitutional statute. [citations omitted]

The statute, *supra*, does not attempt to prescribe the manner in which arms may be borne but definitely infringes on the right of the citizen to bear arms as guaranteed to him under Section 20 of the Declaration of Rights of the Florida Constitution.

He explained the history of the exorbitant licensing laws of 1893 and 1901:

I know something of the history of this legislation. The original Act of 1893 was passed when there was a great influx of negro laborers in this State drawn here for the purpose of working in turpentine and lumber camps. The same condition existed when the Act was amended in 1901 and the Act was passed for the

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<sup>33</sup> *Watson v. Stone*, 148 Fla. 516, 4 So. 2d 700 (1941).

<sup>34</sup> Born in 1878, Buford had worked from ages 10 to 21 in Florida logging and lumber camps. In 1899, at the suggestion of a federal judge who owned a logging camp, Buford began the study of law. He was admitted to the Florida bar the next year. In 1901, he was elected to the Florida House of Representatives. Later, he was appointed county prosecuting attorney, elected state's attorney for the 9th district, and elected state attorney general. He was appointed to the Florida Supreme Court in 1925. 3 *History of Florida: Past and Present* 156 (1923); Florida Supreme Court, [Justice Rivers Henderson Buford](#). As of 1923, "His principal diversion is hunting." *History of Florida* at 156.

purpose of disarming the negro laborers and to thereby reduce the unlawful homicides that were prevalent in turpentine and saw-mill camps and to give the white citizens in sparsely settled areas a better feeling of security. The statute was never intended to be applied to the white population and in practice has never been so applied. We have no statistics available, but it is a safe guess to assume that more than 80% of the white men living in the rural sections of Florida have violated this statute. It is also a safe guess to say that not more than 5% of the men in Florida who own pistols and repeating rifles have ever applied to the Board of County Commissioners for a permit to have the same in their possession and there had never been, within my knowledge, any effort to enforce the provisions of this statute as to white people, because it has been generally conceded to be in contravention of the Constitution and non-enforceable if contested.<sup>35</sup>

One reason that a person might need a firearm right away is defense against violent mobs whom the police cannot or will not control. The 1893 Florida law appears to have been enacted to prevent black people from self-defense against mobs.

By the 1880s, manufacturing improvements had made repeating rifles affordable to many black people. They were using such rifles to drive off lynch mobs, such as in famous 1892 incidents in Paducah, Kentucky, and Jacksonville Florida. In Jacksonville, as the state Attorney General later reported:

[W]hen a white man, having been killed by a negro, and threats of lynching the prisoner from the Duval County Jail being made, a large concourse, or mob of negroes, assembled around the jail and defied and denied the sheriff of the county ingress to the building. This mob, refusing to disburse upon the reading of the riot act by the sheriff, he called for assistance from the militia to aid him in enforcing the laws.<sup>36</sup>

#### **D. Conclusion of legal analysis**

The *Bruen* opinion repeated the Supreme Court's words from the 2010 case *McDonald v. Chicago*, which had held the city's handgun ban unconstitutional:

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<sup>35</sup> *Watson*, 4 So.2d at 703.

<sup>36</sup> Report of the Adjutant-General for the Biennial Period Ending December 31, 1892, at 18, in [Florida] *Journal of the Senate* (1893); Nicholas J. Johnson, *Negroes and Gun: The Black Tradition of Arms* 110–12 (2014).

The constitutional right to bear arms in public for self-defense is not ‘a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.’ We know of no other constitutional right that an individual may exercise only after demonstrating to government officers some special need.<sup>37</sup>

Nowhere else in American law are there arbitrary delays about when a law-abiding American adult may acquire an item to exercise constitutional rights in his or her own home.

If there were no Second Amendment rights, then HB23-1219 would not violate the U.S. Constitution. Former New York City Mayor Michael Bloomberg and his various lobbying entities attempted are supporters of HB23-1219; they previously tried, unsuccessfully, to convince the courts that Americans have no Second Amendment rights.<sup>38</sup>

The effort at constitutional nullification failed. To impose an arbitrary time period forbidding an adult to exercise the Second Amendment right to keep arms is unlawful.

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<sup>37</sup> *Id.* at 2156 (quoting *9*, 561 U.S. at 780).

<sup>38</sup> Brief of Major American Cities, et al. as Amici Curiae Supporting Petitioners, at 1, 18 n.3, 19, *District of Columbia v. Heller*, 554 U.S. 570 (2008) (No. 07-290), 2008 WL 157195 at \*1 (“Amici cities are: . . . New York City, New York.”); *id.* at \*18 (“[T]he Second Amendment was not intended to vest armed power in citizens acting outside of any governmental military effort [nor] to protect the right to possess guns for self defense and hunting.”); *see also* Brief of the Commonwealth of Massachusetts, et al. as Amici Curiae Supporting Defendant-Appellee District of Columbia and Affirmance of the Decision Below at 2, *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007) (No. 04-7041), 2006 WL 5846068, at \*i (“Michael R. Bloomberg, Mayor, City of New York, by its Attorney Michael A. Cardozo, Corporation Counsel.”); *id.* at \*2 (“Appellants and their amici are simply wrong that the Second Amendment provides an individual right to bear arms.”).

## II. The PNAS Study

HB23-1219 oddly does not name the study to which it indirectly refers as the only empirical justification for waiting periods.

Here is the citation for the study that HB23-1219 dared not name: Michael Luca, Deepak Malhotra, and Christopher Poliquin, *Handgun waiting periods reduce gun deaths*, vol. 114 of PNAS, issue no. 46, pages 12162–65 (Nov. 14, 2017), <https://www.pnas.org/doi/10.1073/pnas.1619896114>. The authors are professors at Harvard Business School.

### A. Lawful self-defense is equated with murder

Notably, the PNAS authors do not distinguish criminal homicide from justifiable defensive homicide.<sup>39</sup> Both are treated as being equally bad. One way that waiting periods can reduce homicide is by preventing victims from shooting criminals. For example, waiting periods prevent stalking victims from immediately being able to defend themselves. While the victim is forced to wait, the criminal is not, because the criminal can buy a gun on the black market. During the victim's waiting period, the criminal can attack her with impunity. The result might be one fewer homicide, since the victim of the rape and assault was prevented from shooting the perpetrator.

The PNAS article makes no claims about how much of the gun homicide reduction was from fewer homicides by criminals, rather than by fewer defensive justifiable homicides by the victims of criminal attacks.

Similarly, the PNAS article does not investigate whether nonhomicide crimes, such as attacks by stalkers, increased in states that adopted waiting periods.

### B. The missing control variables

Social science studies that aim to test a hypothesis, such as whether a particular item (e.g., waiting periods) affects a particular outcome (e.g., gun homicides) must control for other factors that might cause the outcome to increase or decrease. The PNAS authors controlled for “alcohol consumption, poverty, income, urbanization, black population, and seven age groups.”<sup>40</sup>

That is a good start, but the authors failed to take into account other factors that have major effects on homicide: changes in police resources (more police per capita tends to lead to less crime), incarceration rates (more criminals in

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<sup>39</sup> The authors use firearms deaths data from the Centers for Disease Control and Prevention.

<sup>40</sup> *Id.* at 12165.

prison is generally associated with reduced crime on the streets), educational attainment (as education improves, crime tends to fall), and crime rates in general (if all types of crime are falling, then changes in gun control laws might not be the explanation for a fall in gun crime).

### **C. The study shows that background checks are useless or harmful**

One does not need to delve into control variables to decide that the PNAS business professors are not credible on gun policy. The very proponents of HB23-1219 who cherry-pick quotes from the PNAS article obviously do not believe the article.

The PNAS article finds that background checks have *no* statistically discernable benefits in reducing homicide or suicide. (Tables 1 & 2, for studies of 1970–2014, of 1977–2014, and of 1990–1998). In fact, some of the data show that background checks to be associated with a statistically significant *increase* of 15% in non-gun homicide. And with a statistically significant *increase* of 11% in total suicide, including a nearly 20% (.199) increase non-gun suicide. (Table 1, model 2.). None of the tables or models shows any statistically significant benefit from background checks.<sup>41</sup>

According to the PNAS article, background checks have no statistically significant benefits, and might be quite harmful; in contrast, waiting periods are said have large benefits.

To believe in PNAS, you have to believe that a law that prevents some people from ever acquiring guns lawfully (background checks) accomplishes nothing, and even may increase danger. Whereas in contrast, a law that delays acquisition by several days by people who pass background checks has enormous benefits. This defies common sense.

### **D. HB23-1219 will reduce background checks**

The “background check” statute enacted by the legislature in 2013 applies to far more than the purchases of firearms. It even applies to temporary transfers of more than 72 hours. For example, a person who is going out of town on vacation want to store her guns at a neighbor’s house, to prevent them from being stolen while her own home is empty.

Under current Colorado law, the gunowner and the temporary holder must both to the gun store. There, the store will require the parties to fill out all the paperwork, and pay all the fees as if the temporary holder were buying a gun

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<sup>41</sup> Tables 1 and 2 report 24 different results for various effects of background checks. Of these, 20 results show background checks making problems worse.

from the store's inventory. The process must be repeated for every single firearm.

Then, when the gun owner returns from vacation, she and the temporary holder must return to the gun store. They must fill out the same paperwork and pay the same fees as if the gun owner were buying new guns from the store.

This bureaucratic burden is already ridiculous, and HB23-1219 would bring the burden to the point of absurdity. When the guns were being loaned for safe storage, the storer would have to return to the gun store three days later to pick up the guns. Likewise, when the vacation had ended, the gun owner would have to go to the gun store twice, three days apart, in order to get her own guns back.

The fiscal notes for the 2013 background check bill budgeted for 200,000 additional background checks annually, for private sales and loans. Instead, the number of checks on private transfers barely changed. Obviously the Colorado system was too burdensome for compliance by most people, including with the ridiculous rule that a person needs to fill out paperwork and pay fees in order to get her own gun back.<sup>42</sup>

Adding an additional visit to the gun store and a three day wait (for private sales) or two additional visits to the gun store and six days of waits (for loans) will discourage even more people from going through the cumbersome Colorado system. Rather than fixing the problems that caused the failure of the 2013 Colorado statute to lead to more background checks, HB23-1219 makes an already dysfunctional system even worse.

#### **E. The 17% gun homicide reduction claim is not plausible**

If handgun waiting periods reduced gun homicide by 17%, then it would necessarily be true that in states without waiting periods, 17% of gun

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<sup>42</sup> See Reply-brief of appellants nonprofit organizations, disabled firearms owners and firearms manufacturers and dealers, *Colorado Outfitters' Assoc. v. Hickenlooper* (10<sup>th</sup> Cir. May 29, 2015), at pages 19–21, and Appendix B. Available at <http://coloradoguncase.org/reply-nonprofits-disabled-manufacturers-dealers.pdf> and <http://coloradoguncase.org/reply-attachment-B-CBI-background-data.pdf>

homicides are perpetrated by people who buy a handgun at a retail stores, pass the background check, and kill someone a few days later.<sup>43</sup>

If this were true, then the lobbyists for gun prevention organizations would be able to cite thousands of such cases nationally, and hundreds in Colorado. But the lobbyists do not because they cannot. At most, there are occasional anecdotes about a handgun buyer who commits a crime within a week of buying a handgun. These are far too few to support a purported 17% reduction in gun homicide.

The best data from the federal government provide further reason for skepticism about PNAS.

Below is the 2021 Colorado firearms trace data from the Bureau of Alcohol, Tobacco, Firearms, and Explosives. The data reports the time between the retail sale of a firearm and when the ATF was asked by law enforcement to trace a gun. Firearms Trace Data: Colorado – 2021, <https://www.atf.gov/resource-center/firearms-trace-data-colorado-2021#time-to-crime>

*Time-To-Crime Rates for Firearms with a Colorado Recovery*

January 1, 2021 – December 31, 2021

<b>Under 3 Months</b>	609
<b>3 Months to Under 7 Months</b>	479
<b>7 Months to Under 1 Year</b>	524
<b>1 Year to Under 2 Years</b>	815
<b>2 Years to Under 3 Years</b>	397
<b>3 Years and Over</b>	2,875

1/1/2021-12/31/2021 Colorado Average Time-to-Crime: **6.59**  
**Years**

1/1/2021-12/31/2021 National Average Time-to-Crime: **6.24**  
**Years**

Thus, about 10% (609 of 5,699) of Colorado guns traced by ATF in 2021 had been sold at retail in the preceding three months. We do not know how many were sold in the preceding three *days* before the trace, but the figure must be much smaller.

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<sup>43</sup> Of course waiting periods only affect lawful buyers. Criminals generally acquire firearms on the black market, where sellers do not impose waiting periods, regardless of what the law says.

The ATF data are further reason to conclude that the extravagant 17% figure of the PNAS article is the result of flaws in the authors' methodology, and does not reflect reality.

### **Conclusion**

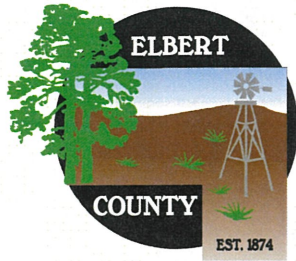
In defiance of the U.S. Constitution, and with empirical "support" that even HB23-1219's supporters do not treat as credible, the bill seems to be more about culture war than reducing suicide or criminal homicide.

Hi, my name is Norah Krause and I am a freshman from East High School testifying on behalf of Students Demand Action. There have already been at least 30 shootings at schools this year. Meaning that in the last three months there have been 30 instances of gunfire at schools. Put simply this is unacceptable.

School is a place where I should be worrying about tests, assignments, and other seemingly obscene things. I should not be sitting in a biology classroom planning out where I'm going to go if that alarm goes off, these are facts. It is also a fact more access to guns increases the risk of shootings. This is common knowledge and should be common sense. Which is why I feel it is controversial to claim you are doing something to fight these school shootings while as representatives you're not taking action to combat these issues.

Today the waiting period bill is something that I believe can save lives. It will put a barrier between a person in crisis and an irreversible decision and can prevent loss of life. This is important to keep in mind while discussing the waiting bill to prevent both suicide and homicide. A suicidal crisis can spark from a lot of different things including serious mental illness and there is no reason you should be able to hold a firearm the same day you decide to obtain one. Time to make sure emotions are stable can save many lives.

I hope that as you make decisions as representatives you understand that this is a subject that means life or death. It determines if students like me feel safe at school. It will help combat deaths due to serious mental illness, both on the suicide and homicide perspectives. This bill isn't a collection of letters. This letter isn't just another kid trying to create problems. I am not complaining or whining. I am here to encourage you to save lives. I am here to beg you to keep me safe at school. Please consider the things I have said. Thank you for your time.



# COUNTY OF ELBERT

PO Box 7, 215 Comanche St, Kiowa, CO, 80117, 303-621-2341

Chris Richardson, Commissioner District 1  
Dallas Schroeder, Commissioner District 2  
Grant Thayer, Commissioner District 3

March 15, 2023

RE: Opposition to House Bill 23-1219 *Waiting Period to Deliver a Firearm*

Dear Chairman & Committee Members,

The Elbert County Board of County Commissioners urges you to postpone indefinitely HB23-1219 *Waiting Period to Deliver a Firearm*.

While a waiting period may be intuitively appealing, a study by the U.S. Department of Justice, Office of Justice Programs, indicates that gun waiting periods actually threaten public safety (NCJ Number 153751). This report that studied waiting periods proposed by gun control advocates prior to the retail purchase of a handgun concludes that a real possibility exists that gun waiting periods threaten public safety by diverting law enforcement resources and disarming law-abiding citizens. Ultimately, the report concluded that both practicality and constitutionality are best served by strategies that focus on the underground market where most criminals obtain most of their guns.

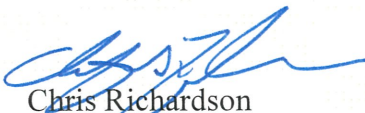
Further studies by the ATF show that the average time from purchase to use in a crime for those firearms used illegally is nine (9) years. Purchase of a firearm then used immediately in a crime of passion is rare and uncommon enough to be statistically insignificant.

Most gun-owners own more than one firearm, and a waiting period could not possibly influence those purchasing an additional firearm. First-time buyers seeking a firearm for self-defense would be affected by a waiting period that limits their ability to safeguard themselves and their loved ones. The background check simply confirms an individual can legally possess a firearm, it does not reveal mental or emotional issues or prevent sales to those who might be suffering from such.

In our rural county, there are firearms in most homes. Travel distance from many areas in our county to point of sale for firearms can be extensive. Placing a waiting period will require two trips and places our citizens at a disadvantage and risk if a firearm is needed.

This board opposes the passage of this bill and asks that effort instead be directed to addressing the mental health and criminal issues that lead to firearm deaths.

Respectfully,

  
Chris Richardson  
Commissioner Dist 1

  
Dallas Schroeder  
Commissioner Dist 2

  
Grant Thayer  
Commissioner Dist 3

Testimony on HB23-1219

Waiting Period to Deliver Firearm

Senate State, Veterans, & Military Affairs

March 16, 2023

Ray Merenstein

Executive Director

NAMI Colorado

[executivedirector@namicolorado.org](mailto:executivedirector@namicolorado.org)

Chairman and Members of the Committee. My name is Ray Merenstein and I have the honor of representing the Colorado chapter of the National Alliance on Mental Illness as its Executive Director. NAMI's mission is to build communities of recovery and hope by educating, supporting, and advocating for individuals affected by mental illness and their families. On behalf of our affiliates from the Western Slope to the Southeast border and over the I-25 Corridor, I testify in support of HB1219. Before I continue, I would like to thank the bill's sponsors, all strong supporters of mental health and public safety.

Among NAMI's biggest priorities is the prevention of suicide, and the protection of those living with mental illness, a population who are more likely to be victims of violence. NAMI believes that gun violence is a public health crisis that endangers the life, safety and mental health of people throughout the U.S. NAMI supports public policies and laws that create waiting periods for purchasing firearms to reduce impulsive acts of gun violence and self-harm.

In 2020, firearm-related deaths rose to the highest number on record and became the leading cause of death for children and adolescents in the U.S. Self-inflicted gun violence is a significant concern, with suicide accounting for more than half of all gun-related deaths in 2020. Of particular concern, veterans are at a greater risk of suicide by firearm. In 2020, 72% of all male Veteran suicides and nearly 50% of all female Veteran suicides resulted from a self-inflicted gunshot wound.

Nearly 90% of suicide attempts with a gun result in death. While someone can experience suicidal ideation over a long period of time, a suicidal crisis often escalates quickly. This is why limiting access to means of suicide can play a significant role in prevention, especially when focused on such lethal means as a firearm.

Purchase waiting periods are policies intended to prevent impulsive acts of gun violence, including firearm suicides, and create a “cooling off” period during a crisis. While research on self-inflicted gun violence is limited, there is evidence that waiting period laws could reduce gun-related suicides 7-11%. Suicides are preventable, and a comprehensive public health approach to firearm safety can help reduce the number of tragedies we see each year. For the children and young adults. For the veterans. For their families. And for grieving communities. Please support House Bill 1219.

My name is Stella Kaye, I am a member of my school's chapter of Students Demand Action. I am in full support for House Bill 1219 Waiting Period to Deliver a Firearm.

Being a student at Denver East High School, I have unfortunately seen the effects that gun deaths can have on a community. Not only has my school been affected by the convenience of buying a gun, but also other schools in Colorado. Yes, we elected you to represent us, and in light of recent events at Denver East it may seem that we have faced more gun violence than many but, you must remember that we are not the only ones struggling, and this is a statewide issue.

According to the American Foundation for Suicide Prevention, In 2020 firearms accounted for 52.83% of all suicide deaths and, in 2021, that number has risen to almost 54.64%. And, according to research, access to a gun triples the risk of dying by suicide. A 2022 analysis found that Colorado has the second-fastest growing rate of gun suicide among young people in the nation. It is extremely easy to see the danger of increasing rates in youth suicide and easy access to purchasing a gun in Colorado.

If passed, HB-1219 along with SB-169 would decrease the chances that a teenager would be able to both purchase a gun, and use that gun the same day. Ultimately, reducing the likelihood that they could die from gun suicide and, allowing for the opportunity to receive mental health support and care. My classmates and I should not be able to purchase a gun and, furthermore, purchase one without a “cooling off” period to contemplate actions and consequences.

I hope you will continue to listen to the youth as we raise our voices and advocate for much needed and overdue change. Please vote yes on HB-1219. Thank you.