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

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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.[1] 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.[2]

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."[3]

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

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[1] *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);

[2] *Bruen* at 2129–30.

[3] *Id.* at 2129–30.

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> 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."[5]

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 19th century much less so, and those of the 20th century not at all.[6]

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."[7]

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."[8]

"Why" means: "whether that burden is comparably justified."[9]

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[5] *Id.* at 2127.
[6] "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.
[7] *Id.* at 2133.
[8] *Id.*
[9] *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.[10] 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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[10] §§ 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.[11] 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 . . . ."[12]

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."[13] 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."[14] 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.[15] The licensing system was replaced by a prohibition in 1852.[16]

Maryland's 1806 statute forbade "any negro or mulatto within this state to keep any dog, bitch, or gun."[17] 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.[18]

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.[19] The law was challenged

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[11] 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).
[12] *Id.*
[13] 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.
[14] *Id.*
[15] 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).
[16] An Act to prohibit Magistrates from issuing license to negroes to carry and use firearms, ch. 206, 1852 Miss. Laws 328 (Mar. 15, 1852).
[17] 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).
[18] *Id.*
[19] 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*.[20] 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."[21] 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."[22] 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.[23] 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."[24]

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.[25] 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."[26] There was an exception if a probate judge had issued a license, based on "the

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[20] 27 N.C. (5 Ired.) 250 (1844).
[21] *Id.* at 252.
[22] *Id.*
[23] *See* 60 U.S. 393 (1856).
[24] *Id.* at 417.
[25] 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).
[26] 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."[27] The penalty was forfeiture of the weapon, plus thirty-nine lashes, or one hour in the pillory.[28]

White supremacist Mississippi required a license from the county board of police.[29] 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.[30]

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.[31]

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.[32]

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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[27] *Id.* at 27.
[28] *Id.* at 25.
[29] An Act to punish certain Offences therein named, and for other purposes, ch. 23, § 1, 1865 Miss. Laws 165.
[30] Ch. 23, § 5, 1865 Miss. Laws 165, 166–67.
[31] 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.
[32] 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.[33] 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.[34]

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.
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> 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]
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> 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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[33] *Watson v. Stone*, 148 Fla. 516, 4 So. 2d 700 (1941).

[34] 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.[35]

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.[36]

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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[35] *Watson*, 4 So.2d at 703.

[36] 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.[37]

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.[38]

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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[37] *Id.* at 2156 (quoting *9*, 561 U.S. at 780).

[38] 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.[39] 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."[40]

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

[39] The authors use firearms deaths data from the Centers for Disease Control and Prevention.
[40] *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.[41]

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.

If the lobbyists who write up talking points based on PNAS actually believed the article, they would be lobbying to repeal background checks.

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.

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

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 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.[42]

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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[42] *See* Reply–brief of appellants nonprofit organizations, disabled firearms owners and firearms manufacturers and dealers, *Colorado Outfitters' Assoc. v. Hickenlooper* (10th 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.[43]

If this were true, then the lobbyists for anti-gun 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

Under 3 Months	609
3 Months to Under 7 Months	479
7 Months to Under 1 Year	524
1 Year to Under 2 Years	815
2 Years to Under 3 Years	397
3 Years and Over	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.

[43] 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 blatant 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 focused on culture war aggression than on reducing suicide or criminal homicide.