

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**Civil Action No. 23-cv-1076**

ROCKY MOUNTAIN GUN OWNERS, and  
ALICIA GARCIA,

Plaintiffs,

v.

JARED S. POLIS, in his official capacity as Governor of the State of Colorado

Defendant.

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**COMPLAINT**

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Plaintiffs Rocky Mountain Gun Owners (“RMGO”) and Alicia Garcia (“Garcia”) submit the following Complaint.

**I. INTRODUCTION**

This action is a challenge to the constitutionality of House Bill 23-1219 enacted by the Colorado General Assembly and signed by Governor Polis on April 28, 2023 (“HB23-1219”). HB23-1219 will become effective on August 4, 2023. HB23-1219 makes it unlawful for any person who sells a firearm to deliver the firearm to the purchaser until a minimum of three days after the seller has initiated a background check, even if a clean background check comes back immediately. As such, it is blatantly unconstitutional under the Second Amendment to the United States

Constitution as made applicable to the states by the Fourteenth Amendment. A copy of HB23-1219 in its final form is attached as Exhibit A.

## **II. PARTIES**

1. Plaintiff RMGO is a nonprofit organization. RMGO seeks to defend the right of all law-abiding individuals to keep and bear arms. RMGO has members who reside in Colorado who desire to exercise their Second Amendment right to purchase a firearm without having their right burdened by arbitrary, unnecessary, burdensome and useless delays. RMGO represents the interests of these members. Specifically, RMGO represents the interests of those who are affected by HB23-1219's unconstitutional burden on the Second Amendment rights of law-abiding citizen who purchase firearms. It is these members' present intention and desire to lawfully purchase firearms for lawful purposes, including self-defense in their home, and they desire to do so without arbitrary, unnecessary, burdensome and useless delays. These members are precluded from purchasing a firearm without arbitrary, unnecessary, burdensome and useless delays by HB23-1219.

2. Plaintiff Garica is an adult law-abiding citizen of Colorado and the United States. She is affected by HB23-1219's unconstitutional burden on the Second Amended rights of law-abiding citizens who purchase firearms. She has a present intention and desire to lawfully purchase a firearm for lawful purposes, including self-defense in her home, and she desires to do so without arbitrary, unnecessary, burdensome and useless delays. She is precluded from purchasing a firearm without arbitrary, unnecessary, burdensome and useless delays by HB23-1219.

3. Defendant Jared S. Polis is the Governor of the State of Colorado. This action is brought against him in his official capacity.

4. Defendant is or will enforce the unconstitutional provisions of the law against Plaintiffs under color of state law within the meaning of 42 U.S.C. § 1983.

### **III. JURISDICTION AND VENUE**

5. The Court has original jurisdiction of this civil action under 28 U.S.C. § 1331, because the action arises under the Constitution and laws of the United States. The Court also has jurisdiction under 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983 since this action seeks to redress the deprivation, under color of the laws, ordinances, regulations, customs and usages of the State, of rights, privileges or immunities secured by the United States.

6. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, respectively, and their claim for attorneys' fees is authorized by 42 U.S.C. § 1988.

7. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

### **IV. GENERAL ALLEGATIONS**

8. The Second Amendment to the United States Constitution declares that "the right of the people to keep and bear arms shall not be infringed." U.S. CONST. amend. II; *see also D.C. v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); and *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

9. The right to keep and bear arms recognized in the Second Amendment is made applicable to the states by the Fourteenth Amendment. *McDonald, supra*.

10. HB23-1219 states in relevant part:

It is unlawful for any person who sells a firearm, including a licensed gun dealer as defined in section 18-12-506 (6), to deliver the firearm to the purchaser until the later in time occurs: (i) three days after a licensed gun dealer has initiated a background check of the purchaser that is required pursuant to state or federal law; or (ii) the seller has obtained approval for the firearm transfer from the bureau after it has completed any background check required by state or federal law.

11. In *Bruen*, the Court held: “We reiterate that the standard for applying the Second Amendment is as follows: 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.” *Id.*, 142 S. Ct. at 2129-30.

12. Plaintiffs desire to purchase firearms for lawful purposes (including defense of their homes). HB23-1219 prohibits or soon will prohibit Plaintiffs from doing so without being subjected to an arbitrary, unnecessary, burdensome and useless delay. The right to keep arms necessarily implies the right to acquire arms. Therefore, because the Second Amendment’s plain text covers Plaintiffs’ conduct – i.e., acquiring bearable arms – “the Constitution *presumptively* protects that conduct.” *Id.*, 142 S. Ct. at 2126 (emphasis added). Plaintiffs have met their burden under *Bruen*, and HB23-1219 is presumptively unconstitutional.

13. Since the Second Amendment presumptively protects Plaintiffs' conduct, the State must justify HB23-1219 by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. But it is impossible for the State to meet this burden because there is no such historical tradition of firearms regulation in this Nation. See Complete Colorado, *Kopel: Colorado bill forcing delay of firearms acquisition on shaky constitutional ground*, available at:

<https://pagetwo.completecolorado.com/2023/03/01/kopel-colorado-bill-forcing-delay-of-firearms-acquisition-on-shaky-constitutional-ground/> (March 1, 2023). This article sets forth the written testimony of Law Professor David B. Kopel (whose work was cited favorably in *Bruen*) on HB23-1219, which was submitted to the Colorado House of Representatives State, Civic, Military & Veterans Affairs Committee. Professor Kopel's exhaustive historical research led him to conclude that there is no historical tradition supporting firearm purchase waiting periods.

14. In summary, the plain text of the Second Amendment covers Plaintiffs' conduct. Therefore, HB23-1219 is presumptively unconstitutional. The State is unable to rebut this presumption because the law is not consistent with Nation's historical tradition of firearm regulation. Therefore, HB23-1219 is unconstitutional.

**V. FIRST CLAIM FOR RELIEF**  
**Right to Keep and Bear Arms**  
**U.S. Const., amends. II and XIV**

15. Paragraphs 1-14 are realleged and incorporated by reference.

16. HB23-1219 burdens the right of residents of the State, including Plaintiffs, in exercising their right to acquire arms protected by the Second Amendment. There are significant penalties for violations of the law.

17. These restrictions infringe on the right of the people of the State, including Plaintiffs, to keep and bear arms as guaranteed by the Second Amendment and made applicable to Colorado and its political subdivisions by the Fourteenth Amendment.

18. HB23-1219's prohibitions arbitrarily delay the right of law-abiding citizens to purchase arms even if they immediately pass all required background checks and even if they desire to purchase an arm for the purpose of self-defense in the home, where Second Amendment protections are at their zenith.

19. The State cannot meet its burden of justifying these restrictions on the Second Amendment right of the People by demonstrating that they are consistent with this Nation's historical tradition of firearm regulation.

## **VI. PRAYER FOR RELIEF**

Plaintiffs pray that the Court:

20. Enter a declaratory judgment pursuant to 28 U.S.C. § 2201 that HB23-1219 is unconstitutional on its face or as applied;

21. Enter preliminary and permanent injunctive relief enjoining Defendant and his officers, agents, and employees from enforcing HB23-1219;

22. Award remedies available under 42 U.S.C. § 1983 and all reasonable attorneys' fees, costs, and expenses under 42 U.S.C. § 1988, or any other applicable law;

23. Award actual or nominal damages to the individual Plaintiff (RMGO does not seek damages); and

24. Grant any such other and further relief as the Court may deem proper.

Respectfully submitted this 28th day of April 2023.

*/s/ Barry K. Arrington*

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**NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.**

Exhibit A



HOUSE BILL 23-1219

BY REPRESENTATIVE(S) Froelich and Amabile, Bacon, Boesenecker, Brown, deGruy Kennedy, Dickson, Epps, Garcia, Gonzales-Gutierrez, Hamrick, Herod, Jodeh, Joseph, Kipp, Lindsay, Lindstedt, Mabrey, McCormick, Michaelson Jenet, Ortiz, Parenti, Ricks, Sirota, Story, Willford, Woodrow, Bird, Daugherty, English, Mauro, Snyder, Titone, Valdez, Velasco, Weissman, McCluskie, Duran;  
also SENATOR(S) Sullivan and Hansen, Cutter, Fields, Gonzales, Jaquez Lewis, Kolker, Mullica, Bridges, Buckner, Coleman, Danielson, Exum, Ginal, Marchman, Moreno, Winter F., Zenzinger, Fenberg.

CONCERNING ESTABLISHING A MINIMUM THREE-DAY WAITING PERIOD PRIOR  
TO THE DELIVERY OF A PURCHASED FIREARM.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1. Legislative declaration.** (1) The general assembly finds and declares that:

(a) In 2020, according to the Centers for Disease Control and Prevention, firearm-related injury was among the five leading causes of death for people ages 1 to 44 in the United States;

*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*



(b) From 2014 to 2019, the number of firearm-related deaths in Colorado was greater than the number of deaths due to motor vehicle crashes, opioid overdoses, HIV, and colon cancer. Among firearm-related deaths, more than 75 percent were caused by intentional self-harm or suicide and more than 20 percent were as a result of assaults or homicides.

(c) In 2021, Colorado had its highest number of homicides by discharge of a firearm since 2000. There were 274 homicides by firearm in Colorado in 2021, and the age group with the highest rate of firearm homicide victims was people ages 15 to 24, with 74 deaths.

(d) In 2020, Colorado had the seventh highest suicide rate in the United States; in 2021, there were 740 suicides by firearm in Colorado, which was more than half of all suicides in the state;

(e) Nationwide, from 2000 to 2018, rural suicide rates were higher than urban suicide rates, and although suicide rates increased in both rural and urban areas during that period, since 2007, rural suicide rates increased at a greater rate than in urban areas;

(f) 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; and

(g) The Colorado bureau of investigation employs and trains personnel to process background checks, in accordance with section 24-33.5-424 (7)(b)(IV)(C), Colorado Revised Statutes.

(2) Therefore, the general assembly declares that:

(a) Delaying immediate access to firearms by establishing a waiting period for receipt of firearms can help prevent impulsive acts of firearm violence, including homicides and suicides; and

(b) The establishment of a waiting period is a matter of mixed state and local concern because the state has an interest in preventing suicides and homicides, and local governments are equipped to determine the length of waiting periods best suited for their jurisdictions.

**SECTION 2.** In Colorado Revised Statutes, **add** 18-12-115 as follows:

**18-12-115. Waiting period for firearms sales - background check required - penalty - exceptions.** (1) (a) IT IS UNLAWFUL FOR ANY PERSON WHO SELLS A FIREARM, INCLUDING A LICENSED GUN DEALER AS DEFINED IN SECTION 18-12-506 (6), TO DELIVER THE FIREARM TO THE PURCHASER UNTIL THE LATER IN TIME OCCURS:

(I) THREE DAYS AFTER A LICENSED GUN DEALER HAS INITIATED A BACKGROUND CHECK OF THE PURCHASER THAT IS REQUIRED PURSUANT TO STATE OR FEDERAL LAW; OR

(II) THE SELLER HAS OBTAINED APPROVAL FOR THE FIREARM TRANSFER FROM THE BUREAU AFTER IT HAS COMPLETED ANY BACKGROUND CHECK REQUIRED BY STATE OR FEDERAL LAW.

(b) A PERSON WHO VIOLATES THIS SUBSECTION (1) COMMITS A CIVIL INFRACTION AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY A FINE OF FIVE HUNDRED DOLLARS; EXCEPT THAT FOR A SECOND OR SUBSEQUENT OFFENSE, THE FINE SHALL BE NOT LESS THAN FIVE HUNDRED DOLLARS AND NOT MORE THAN FIVE THOUSAND DOLLARS.

(2) THIS SECTION DOES NOT APPLY TO:

(a) THE SALE OF AN ANTIQUE FIREARM, AS DEFINED IN 18 U.S.C. SEC. 921 (a)(16), AS AMENDED, OR A CURIO OR RELIC, AS DEFINED IN 27 CFR 478.11, AS AMENDED;

(b) THE SALE OF A FIREARM BY A PERSON SERVING IN THE ARMED FORCES OF THE UNITED STATES WHO WILL BE DEPLOYED OUTSIDE OF THE UNITED STATES WITHIN THE NEXT THIRTY DAYS TO ANY FAMILY MEMBER, INCLUDING:

(I) REGARDLESS OF AGE, A BIOLOGICAL, ADOPTED, OR FOSTER CHILD; A STEPCHILD OR LEGAL WARD; A CHILD OF A DOMESTIC PARTNER; A CHILD TO WHOM THE SELLER STANDS IN LOCO PARENTIS; OR A PERSON TO WHOM THE SELLER STOOD IN LOCO PARENTIS WHEN THE PERSON WAS A MINOR;

(II) A BIOLOGICAL, ADOPTIVE, OR FOSTER PARENT; A STEPPARENT OR

LEGAL GUARDIAN OF THE SELLER OR SELLER'S SPOUSE OR DOMESTIC PARTNER; OR A PERSON WHO STOOD IN LOCO PARENTIS WHEN THE SELLER OR SELLER'S SPOUSE OR DOMESTIC PARTNER WAS A MINOR CHILD;

(III) A PERSON TO WHOM THE SELLER IS LEGALLY MARRIED UNDER THE LAWS OF ANY STATE OR A DOMESTIC PARTNER OF A SELLER;

(IV) A GRANDPARENT, GRANDCHILD, OR SIBLING, WHETHER A BIOLOGICAL, FOSTER, ADOPTIVE OR STEP RELATIONSHIP, OF THE SELLER OR SELLER'S SPOUSE OR DOMESTIC PARTNER; OR

(V) AS SHOWN BY THE SELLER, ANY OTHER INDIVIDUAL WITH WHOM THE SELLER HAS A SIGNIFICANT PERSONAL BOND THAT IS OR IS LIKE A FAMILY RELATIONSHIP, REGARDLESS OF BIOLOGICAL OR LEGAL RELATIONSHIP; OR

(c) A FIREARM TRANSFER FOR WHICH A BACKGROUND CHECK IS NOT REQUIRED PURSUANT TO STATE OR FEDERAL LAW.

(3) PURSUANT TO THE AUTHORITY GRANTED IN SECTION 29-11.7-103, A LOCAL GOVERNMENT MAY ENACT AN ORDINANCE, REGULATION, OR OTHER LAW CONCERNING A WAITING PERIOD.

**SECTION 3. Act subject to petition - effective date - applicability.** (1) This act takes effect October 1, 2023; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the

governor.

(2) This act applies to offenses committed on or after the applicable effective date of this act.

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Julie McCluskie  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Steve Fenberg  
PRESIDENT OF  
THE SENATE

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Robin Jones  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

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Cindi L. Markwell  
SECRETARY OF  
THE SENATE

APPROVED \_\_\_\_\_  
(Date and Time)

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Jared S. Polis  
GOVERNOR OF THE STATE OF COLORADO