

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE**

HEIDI BERGMANN-SCHOCH,  
COALITION OF NEW JERSEY  
FIREARM OWNERS, GUN OWNERS OF  
AMERICA, INC, and GUN OWNERS  
FOUNDATION,

Plaintiffs,

v.

JENNIFER DAVENPORT, in her official  
capacity as Attorney General of New Jersey,  
JEANNE HENGEMUHLE, in her official  
capacity as Acting Superintendent of the  
New Jersey Division of State Police, and  
LACHIA L. BRADSHAW, in her official  
capacity as the Burlington County  
Prosecutor,

Defendants.

Hon. Christine P. O'Hearn, U.S.D.J.  
Hon. Matthew J. Skahill, U.S.M.J.

Docket No.: 1:25-cv-997-CPO-MJS

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**BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

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JENNIFER DAVENPORT  
ATTORNEY GENERAL OF NEW JERSEY  
R.J. Hughes Justice Complex  
P.O. Box 116  
Trenton, New Jersey 08625  
(609) 696-5366

Jonathan.Mangel@law.njoag.gov  
*Attorney for Defendants*

David E. Leit  
*Assistant Attorney General*  
Of Counsel

Sadia Ahsanuddin (NJ Bar No. 298432019)  
Jonathan B. Mangel (NJ Bar No. 281382018)  
Amanda I. Morejón (NJ Bar No. 405942022)  
Andrew H. Yang (NJ Bar No. 066382013)  
*Deputy Attorneys General*  
On The Brief

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## **PRELIMINARY STATEMENT**

Five hundred and eighty-one (581) days after filing their complaint, Plaintiffs Heidi Bergmann-Schoch, Coalition of New Jersey Firearm Owners, Gun Owners of America, Inc., and Gun Owners Foundation (together, “Plaintiffs”) ask this Court to disrupt the status quo and enjoin the enforcement of New Jersey’s hollow-point bullets (“HPBs”) carry law, N.J. Stat. Ann. § 2C:39-3(f) (the “HPB Carry Law”), a law enacted nearly a half century ago, in 1978. *See* P.L. 1978, c. 95. Plaintiffs do not meet any of the requirements for such extraordinary relief.

*First*, Plaintiffs bear the burden of establishing they will be irreparably harmed absent the requested relief. They have not carried that burden. The HPB Carry Law has been in effect for forty-seven years. Plaintiffs have had no issue complying with that law, even during the pendency of this action. If Plaintiffs truly required the sort of “drastic, speedy action” that is contemplated by preliminary injunctive relief, *Lanin v. Borough of Tenaflly*, 515 F. App’x 114, 117-18 (3d Cir. 2013), they would have asked for it at the inception of the suit, not after over a year and a half of litigation, including discovery and a now-terminated round of dispositive motion practice. Plaintiffs argue that constitutional harm is per se irreparable, but the Court generally “do[es] not presume constitutional harms irreparable.” *Delaware State Sportsmen’s Ass’n, Inc. v. Delaware Dep’t of Safety & Homeland Sec. (“DSSA”)*, 108 F.4th 194, 203 (3d Cir. 2024). The fact that this case

implicates constitutional rights does not excuse Plaintiffs from their obligation to seek prompt injunctive relief, if they genuinely think they need it. *See DSSA*, 108 F.4th at 206. Their failure to do so here is dispositive.

*Second*, Plaintiffs are unlikely to prevail on the merits of their claim. Under the two-step analysis articulated in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), HPBs are not “arms” entitled to Second Amendment protection, nor are they necessary for operating any firearm. HPBs are merely a specialized subset of ammunition that enhances a firearm’s lethality. Even if HPBs did qualify as “arms,” the United States has a well-documented history and tradition of regulating both unusually dangerous arms and firearms accessories—a history detailed in the undisputed declarations of several expert witnesses in this matter. *See United States v. Perez-Garcia*, 96 F.4th 1166, 1180 (9th Cir. 2024) (noting that the Second Amendment may not protect the right to possess or carry “dangerous and unusual weapons,” including “armor-piercing ammunition”). Plaintiffs rely exclusively on *Ass’n of New Jersey Rifle & Pistol Clubs, Inc. v. Attorney General of New Jersey*, 183 F.4th 211 (3d Cir. 2026) (“*ANJRPC*”), to support their merits argument but, in that case, the district court grounded its decision in statistical evidence presented by the plaintiffs about whether the assault weapons and large capacity magazines were “in common use for lawful purposes.” *Id.* at 241–42. Here, Plaintiffs have offered no such evidence. They only offer the conclusory allegation

that HPBs are in common use for self-defense and a single declaration by Plaintiff Bergmann-Schoch stating that she would like to carry and use HPBs. *See* ECF No. 63-1 at ¶¶ 7, 10; ECF No. 63-2 at 11.

*Third*, both public policy and the balance of the equities support denying preliminary injunctive relief. An injunction prohibiting the State from “enforc[ing] its duly enacted plans clearly inflicts irreparable harm on the State.” *Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018). Indeed, the State “suffers ... irreparable injury” when it is barred “from effectuating statutes enacted by representatives of its people.” *Maryland v. King*, 567 U.S. 1301, 1303 (2012). This is particularly true here, where the challenged statute was enacted nearly fifty years ago to ensure public safety.

For those reasons, this Court should deny Plaintiffs’ request.

### **STATEMENT OF FACTS**

#### **I. New Jersey’s Hollow Point Bullet Carry Law.**

In 1978, the New Jersey Legislature enacted Chapter 39 of the Criminal Code to regulate “dangerous weapons and instruments of crime.” *See* P.L. 1978, c. 95. The law prohibits “[a]ny person, other than a law enforcement officer” from possessing a “hollow nose or dum-dum bullet,” N.J. Stat. Ann. § 2C:39-3(f), with limited

exemptions.<sup>1</sup> Those found to be in possession of such ammunition, and not subject to an exemption, are “guilty of a crime of the fourth degree.” *Id.*

HPBs—dum-dum” or “hollow-nose” bullets—were developed for military purposes.<sup>2</sup> *See* Decl. of Jonathan Mangel Ex. 1, Rpt. of Dr. Robert Spitzer (hereafter “Spitzer”) ¶ 5.<sup>3</sup> HPBs have a hollow cavity in the tip, as opposed to the solid tip used in most other types of ammunition. *See* Decl. of Jonathan Mangel Ex. 2, Rpt. of Lucy Allen (hereafter “Allen”) ¶ 8. The hollow cavity is designed to expand or “mushroom” upon contact with soft tissue. *See* ECF No. 1 ¶ 57; Allen ¶ 8.<sup>4</sup> The mushroom effect disperses more of an HPB’s energy into the target, creating a cavity

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<sup>1</sup> The exceptions, which are not at issue here, include that such ammunition may be kept on an individual’s own property and transported from the place of purchase to such property. N.J. Stat. Ann. § 2C:39-3 (g)(2).

<sup>2</sup> Although Plaintiffs characterize HPBs as “self-defense ammunition,” ECF No. 63-2 at 1, that does not change the fact they were designed for warfare.

<sup>3</sup> For ease of reference, the list of frequently cited expert reports is as follows:

Ex. 1: Rpt. of Dr. Robert Spitzer;

Ex. 2: Rpt. of Lucy Allen;

Ex. 3: Rpt. of Dr. Stephen Hargarten; and

Ex. 4: Rpt. of Professor Eric Ruben.

<sup>4</sup> *See also State v. Aitken*, No. A-0467-10T4, 2012 WL 1057954, at \*15 (N.J. App. Div. Mar. 30, 2012) (“‘dum-dum’ is defined as ‘a bullet (as one with a hollow point) that expands more than usual upon hitting an object.’”); N.J. Courts Model Criminal Jury Charge, N.J. Stat. Ann. § 2C:39-3f (rev. May 13, 2013) (“‘hollow nose bullet or dum-dum bullet’ can be a cartridge of any caliber in which the front portion of the projectile is designed to expand upon entering a target.”), available at <https://tinyurl.com/5dawfe7a>.

in the body larger than the entrance wound. *See* Decl. of Jonathan Mangel Ex. 3, Rpt. of Dr. Stephen Hargarten (hereafter “Hargarten”) ¶¶ 16–17. This expansion makes HPBs less likely to pass through a target, *see* ECF No. 1 ¶ 66, and more likely to stop in the body, causing greater tissue damage and making it more likely the person will be killed, *see* Hargarten ¶¶ 21–22. The hollow tip enhances the bullet’s “ability to transfer its full energy to the intended target,” causing “greater tissue, cellular, and organ injury,” and making the bullet more likely to stop, knock down, grievously injure, or kill the person shot. *See id.* ¶¶ 16–17, 19, 23–24. These effects—severe wounds that are more likely to result in death—are what Plaintiffs euphemistically laud as “better stopping power.” ECF No. 1 ¶ 89. The purpose of HPBs is to increase injury, suffering, and lethality. This is why, since 1899, HPBs have been considered inhumane and banned in warfare under the Hague Convention. *See* Spitzer ¶ 5.

Despite being prohibited for use in international warfare, domestic law enforcement agencies began using HPBs in the 1970s. *Id.* ¶¶ 4–6; ECF No. 1 ¶ 75. Due to their capacity to cause severe, often fatal, wounds both to intended targets and bystanders, HPBs pose significant public safety and health risks.<sup>5</sup> These

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<sup>5</sup> The 2022 Uvalde school shooter purchased 1,740 rounds of HPBs days before killing 21 people, including 19 school children. *See* House Investigative Committee on the Robb Elementary Shooting Texas House of Representatives, Interim Report 2022 (2022), <https://tinyurl.com/3vt52brw>. The 2019 El Paso Walmart gunman who

concerns were well-known in New Jersey in the late 1970s when the New Jersey Legislature restricted the public carry of HPBs. *See* P.L. 1978, c. 95.<sup>6</sup> Although the New Jersey Legislature restricted this particularly dangerous and lethal type of ammunition, along with armor-piercing ammunition,<sup>7</sup> *see* N.J. Stat. Ann. § 2C:39-3(f), it left people free to carry many other types of ammunition for self-defense.

## **II. This Lawsuit.**

On February 4, 2025, Plaintiffs filed a one-count Complaint challenging New Jersey’s restriction on the public carry of HPBs, N.J. Stat. Ann. § 2C:39-3(f)(1) (“HPB Carry Law”), under the Second and Fourteenth Amendments. *See* ECF No.

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killed 23 and injured two dozen others specifically purchased 1,000 rounds of HPBs to increase the lethality of his weapon. *See* Michael Sisak, *22 Mass Shootings. 374 Dead. Here’s Where the Guns Came From*, ABC10 (May 27, 2022), <https://tinyurl.com/mpkex7tn>; Alain Stephens, *El Paso Shooter Coveted ‘Most Lethal’ Rifle Ammunition on the Market*, The Trace (Aug 4, 2019), <https://tinyurl.com/358ydr7m>. The 2007 Virginia Tech shooter used HPBs to kill 32 and wound at least 23 others. *See* Pete Williams, *Cho Prepared in Advance of Rampage*, NBC News (Apr. 19, 2007), <https://tinyurl.com/bp76hhxm>.

<sup>6</sup> Newspaper coverage from the 1970’s shows public concern about the proliferation of HPBs and makes clear the “quick-kill” capacity of HPBs was well-established at the time. *See* Decl. of Jonathan Mangel Ex. 5, Robert Wells, *Police Using Dum-Dum Bullets for Their ‘Quick-Kill’ Impact*, TRENTON EVENING TIMES (Jan. 9, 1970), at 9; *see also* Decl. of Jonathan Mangel Ex. 6, *Hyland letting troopers decide on ammo use*, STAR-LEDGER (July 18, 1974), at 30.

<sup>7</sup> *See United States v. Perez-Garcia*, 96 F.4th 1166, 1180 (9th Cir. 2024) (no right to possess or carry “dangerous and unusual weapons”).

1 at ¶¶ 98, 104. Discovery closed on February 13, 2026. *See* ECF No. 31.<sup>8</sup> On June 4, 2026, cross-motions for summary judgment were fully briefed. ECF No. 47.

On July 17, 2026, the Third Circuit issued its *en banc* decision in *Association of New Jersey Rifle & Pistol Clubs v. Attorney General of New Jersey*, 183 F.4th 211 (3d Cir. 2026) (“*ANJRPC*”), holding unconstitutional New Jersey’s laws regulating assault weapons and large capacity magazines, and adopting a methodology for Second Amendment cases involving challenges to the possession of particular types of weaponry distinct from other courts of appeal to have considered similar issues. On August 4, 2026, the Third Circuit stayed the issuance of the mandate of its decision in *ANJRPC*, pending the resolution of the New Jersey Attorney General’s petition for a writ of certiorari to the Supreme Court.<sup>9</sup>

On August 6, 2026, during a status conference, the Court acknowledged that *ANJRPC* is a significant change in the state of the law in this Circuit,

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<sup>8</sup> Defendants produced four expert reports on January 23, 2026. Plaintiffs proffered no expert reports in this matter.

<sup>9</sup> This petition is likely to be granted because the Supreme Court has already granted certiorari to two cases from two other circuits dealing with substantively similar statutes at issue in *ANJRPC*. *See Viramontes v. Cook Cnty.*, 24-1437, 2025 WL 1553896 (7th Cir. June 2, 2025), *cert. granted*, 146 S. Ct. 2813 (2026) (Mem); *Nat’l Assoc. for Gun Rights v. Lamont*, 153 F.4th 213 (2d Cir. 2025), *cert. granted sub nom.*, *Grant v. Higgins*, 25-566, 146 S. Ct. 2811 (2026) (Mem). As detailed *infra*, *ANJRPC* creates a circuit split not only on its ultimate holding of the constitutionality of those statutes, but in the framework and analyses the Third Circuit used to arrive at that holding.

administratively terminated the pending motions for summary judgment, and instructed Defendants to file a motion to reopen discovery. ECF Nos. 55, 56.

On August 20, 2026, Defendants filed a motion for a stay and/or to reopen limited discovery, ECF No. 61. Plaintiffs opposed on September 8, 2026, ECF No. 62, and, for the first time in the 581 days since filing suit, asked this Court to enter a preliminary injunction upending a half century of New Jersey law. ECF No. 63.

### **STANDARD FOR PRELIMINARY INJUNCTION**

Injunctive relief “is an extraordinary remedy ... which should be granted only in limited circumstances.” *Frank’s GMC Truck Ctr., Inc. v. Gen’l Motors Corp.*, 847 F.2d 100, 102 (3d Cir. 1988); *see also Adams v. Freedom Forge Corp.*, 204 F.3d 475, 487 (3d Cir. 2000) (confirming that “dramatic and drastic power of injunctive force may be unleashed only against conditions generating a presently existing actual threat”). Courts must consider if: (1) a plaintiff “will suffer irreparable harm if the injunction is denied;” (2) a plaintiff establishes a “likelihood of success on the merits;” (3) “granting preliminary relief will not result in even greater harm to the nonmoving party;” and (4) “the public interest favors such relief.” *Kos Pharms. Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004). The moving party bears the burden of “meet[ing] the threshold for the first two ‘most critical’ factors,” and the failure to establish *either* irreparable harm or likelihood of success requires a court to deny the application. *Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017). And

“[a]s a matter of equitable discretion, a preliminary injunction does not follow as a matter of course from a plaintiff’s showing of a likelihood of success on the merits.” *Benisek v. Lamone*, 585 U.S. 155, 158 (2018).

“Preliminary injunctions exist mainly to keep cases alive so that the parties can contest the merits.” *Ams. for Prosperity Found. v. Albence*, No. 26-2469, --- F.4th---, 2026 WL 2563151, at \*5 (3rd Cir. 2026). Where, as here, plaintiffs demand an injunction that would alter the status quo, the plaintiffs must meet an even higher burden of demonstrating that they will suffer irreparable harm unless the status quo is altered. *See Bennington Foods LLC v. St. Croix Renaissance Grp., LLP*, 528 F.3d 176, 179 (3d Cir. 2008); *Acierno v. New Castle Cnty.*, 40 F.3d 645, 653 (3d Cir. 1994). When, as here, plaintiffs seek to enjoin a statute that “has long been on the books and enforced, it is exceedingly unusual for a litigant who challenges its constitutionality to obtain (or even to seek) a preliminary injunction against its continued enforcement,” so the statute’s “age heightens the challengers’ burden.” *Albence*, 2026 WL 2563151, at \*3 (citation modified).

### **ARGUMENT**

This Court should deny Plaintiffs’ application for a preliminary injunction. Plaintiffs bear the twin burdens of establishing that they are a) likely to suffer irreparable harm unless this Court alters the status quo by enjoining a 48-year-old statute, and b) likely to succeed on the merits. *See Reilly*, 858 F.3d at 179. Failure to

establish either of these “threshold” factors dooms any preliminary injunction. *Id.* And even if Plaintiffs established both factors, this Court must exercise its discretion to determine whether issuing a preliminary injunction would be equitable, by considering both the balance of the equities and the public interest. *See Reilly*, 858 F.3d at 178. Here, each of these factors weighs against Plaintiffs’ request: Plaintiffs have not demonstrated that they will be irreparably harmed absent a mandatory injunction altering the status quo, as illustrated by their long delay in seeking a preliminary injunction; Plaintiffs’ claims are unlikely to succeed on the merits; and the equities weigh decisively against Plaintiffs’ requested relief.

**I. Plaintiffs Have Not Shown Irreparable Harm.**

Plaintiffs have not met their burden of establishing they will be irreparably harmed absent a preliminary injunction. *See Reilly*, 858 F.3d at 176; *Amalgamated Transit Union Loc. 85 v. Port Auth. of Allegheny Cnty.*, 39 F.4th 95, 102–03 (3d Cir. 2022) (emphasizing irreparable harm is a “gateway factor” that a plaintiff must establish to obtain preliminary relief). Plaintiffs’ decadeslong delay in seeking relief from a longstanding state law offers a “dispositive basis” for denying this motion. *Pharmacia Corp. v. Alcon Labs., Inc.*, 201 F. Supp. 2d 335, 382–83 (D.N.J. 2002); *see also Children’s Health Def., Inc. v. Rutgers State Univ. of N.J.*, No. 21-15333, 2021 WL 4398743, at \*7 (D.N.J. Sept. 27, 2021); *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016). Emergency relief is granted when “there is an

urgent need for speedy action to protect the plaintiffs’ rights,” but Plaintiffs’ long delay in “seeking enforcement of those rights” indicates the opposite, and likewise increases the risk that an injunction will *undermine* (rather than protect) the status quo. *Lanin v. Borough of Tenafly*, 515 F. App’x 114, 117–18 (3d Cir. 2013); *Acierno*, 40 F.3d at 647. If Plaintiffs truly required such “drastic, speedy action,” *Lanin*, 515 F. App’x at 118, they would not have waited 48 years after the HPB Carry Law was enacted—and over a year and a half after filing their original complaint—to request emergency relief.

Indeed, courts have found that delays of a much shorter period “knocks the bottom out” of claims of irreparable harm. *See Pharmacia Corp.*, 201 F. Supp. 2d at 383–384. In this Circuit, “[m]any courts have found that a delay of just weeks or months precludes a showing of irreparable harm.” *H-1 Auto Care, LLC v. Lasher*, No. 21-18110, 2022 WL 13003468, at \*4 (D.N.J. Oct. 21, 2022); *see, e.g., DSSA*, 108 F.4th at 206 (no irreparable harm after four-month delay); *Lanin*, 515 F. App’x at 117–18 (no irreparable harm after two-year delay); *N.J. Staffing All. v. Fais*, 751 F. Supp. 3d 419, 424–25 (D.N.J. 2024) (no irreparable harm after one-year delay); *Messina v. Coll. of New Jersey*, 566 F. Supp. 3d 236, 249–50 (D.N.J. 2021) (no irreparable harm after four-month delay). Other circuits have held the same. *See, e.g., Ng v. Board of Regents of Univ. of Minn.*, 64 F.4th 992, 998–99 (8th Cir. 2023) (thirteen-month delay was “unreasonable” and “alone sufficient” to deny

preliminary injunction); *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248–49 (11th Cir. 2016) (no irreparable harm after five-month delay); *Tough Traveler, Ltd. v. Outbound Prod.*, 60 F.3d 964, 968 (2d Cir. 1995) (no irreparable harm after thirteen-month delay); *Dallas Safari Club v. Bernhardt*, 453 F. Supp. 3d 391, 403 (D.D.C. 2020) (forty-four day delay before seeking injunctive relief was “inexcusable”). So, Plaintiffs’ delay alone is enough to deny a preliminary injunction. *See Benisek*, 585 U.S. at 160 (affirming denial of preliminary injunctive relief where there was an “unnecessary, years-long delay”); *Curaleaf Holdings, Inc. v. N.J. Cannabis Regul. Comm’n*, No. 25-16397, 2026 WL 1481529, at \*15 (D.N.J. May 27, 2026) (collecting cases).

Cases involving an alleged constitutional violation are treated no differently. *See, e.g., DSSA*, 108 F.4th at 206 (finding delay in filing suit weighed against need for urgent action in case alleging Second Amendment violation); *Kohls v. Ellison*, 166 F.4th 728, 733 (8th Cir. 2026) (“[A] plaintiff must generally show ‘reasonable diligence’ in seeking a preliminary injunction, even where First Amendment rights are allegedly at stake.”); *Yoseph v. Sec’y, Fla. Dep’t of Corr.*, No. 25-10113, 2025 WL 2366445, at \*6 (11th Cir. Aug. 14, 2025) (delay in seeking injunction showed lack of irreparable injury, even when “First Amendment freedoms [we]re involved”). Even when Second Amendment rights are at issue, “[d]elay in seeking

enforcement of [plaintiffs'] rights ... tends to indicate at least a reduced need for such drastic speedy action.” *DSSA*, 108 F.4th at 206 (citation modified).

Attempting to explain their decades-long delay, Plaintiffs argue that “any ‘delay’ in seeking preliminary relief at this stage” is not “dispositive,” citing only a single unpublished out-of-circuit decision in support. ECF No. 63-2 at 15 (citing *Adams v. Bordeaux Metals Se., LLC*, No. 23-299, 2025 WL 2270434 (N.D. Ga., May 21, 2025)). But even in *Adams*, the Eleventh Circuit vacated and remanded the District Court’s initial order granting a preliminary injunction because the court had failed “to consider the Plaintiffs’ alleged delay ... in the first instance.” *Adams*, 2025 WL 2270434, at \*3 (citation modified). On remand, the District Court acknowledged that while “a delay in seeking a preliminary injunction of even only a few months ... militates against a finding of irreparable harm,” such delay “is not dispositive” and the court “may consider an explanation for any such delay.” *Id.* at \*4 (citation modified). But here, Plaintiffs offer no explanation for their delay, not of “a few months” but of decades, including waiting another 581 days after filing their complaint, before finally requesting the extraordinary remedy of a preliminary injunction while a highly relevant case is pending before the U.S. Supreme Court.

The Third Circuit’s decision in *ANJRPC* does not excuse Plaintiffs’ delay either. The same arguments Plaintiffs raise now were available before *ANJRPC* was decided; in fact, Plaintiffs made similar arguments about the constitutionality of the

HPB Carry Law at the inception of this litigation. *See, e.g.*, ECF No. 1 at ¶¶ 2–4, 10–13. Contrary to Plaintiffs’ assertion, *ANJRPC* neither “solidif[ies]” nor “confirm[s] that New Jersey’s [HPB Carry Law] plainly violates the Second Amendment.” ECF No. 63-2 at 2. As Defendants made clear in their request to stay the matter pending the Supreme Court’s decision in *Viramontes*, ECF No. 65 at 3–12, *ANJRPC* announced new standards and methodologies at both steps of the *Bruen* test that create a split from how all other circuits have applied *Bruen* to laws regulating weapon-related items. *Contrast ANJRPC*, 183 F.4th 211, *with Capen v. Campbell*, 134 F.4th 660 (1st Cir. 2025), *and Nat’l Ass’n for Gun Rts. v. Lamont*, 153 F.4th 213 (2d Cir. 2025), *and Bianchi v. Brown*, 111 F.4th 438 (4th Cir. 2024), *and Bevis v. City of Naperville*, 85 F.4th 1175 (7th Cir. 2023). *See* ECF No. 65 at 5–8 (providing examples of how *ANJRPC* broke from other circuits). The Third Circuit granted the Attorney General of New Jersey’s request to stay the mandate in *ANJRPC* pending the Attorney General’s petition for certiorari to the U.S. Supreme Court. *See* Order on Mot. to Stay Mandate Pursuant to Fed. R. App. 41(d)(1), *ANJRPC*, No. 24-2415 (3d Cir. Aug. 4, 2026), ECF No. 129. *ANJRPC* does not excuse Plaintiffs’ failure to “show reasonable diligence” in “requesting a preliminary injunction” after waiting nearly fifty years to “move for a preliminary injunction in the District Court.” *Benisek*, 585 U.S. at 159 (no abuse of discretion in denying a preliminary injunction sought six years after the challenged government action went

into effect and three years after the first complaint was filed). Plaintiffs are free to challenge the HPB Carry Law, but their delay precludes them from seeking a preliminary injunction altering a 48-year status quo.

The HPB Carry Law’s decadeslong history aside, Plaintiffs have otherwise failed to show irreparable harm. Plaintiffs “spend little time showing irreparable harm,” *Albence*, 2026 WL 2563151, at \*4, other than to argue that the HPB Carry Law “violates Plaintiffs’ constitutional rights, and such harm is *per se* irreparable,” ECF No. 63-2 at 14. But the Third Circuit has made clear that the Court generally “do[es] not presume constitutional harms irreparable.” *DSSA*, 108 F.4th at 203 (“Presuming irreparable harm is the exception, not the rule.”). Like the challengers in *DSSA*, Plaintiffs have argued only that they “wish” to obtain HPBs, *see id.* at 205, “not that anything bad [will] happen to them if they” cannot, ECF No. 63-2 at 14. For example, Plaintiffs have not argued that there is “a time-sensitive need for such [bullets].” *DSSA*, 108 F.4th at 205. Plaintiff Bergmann-Schoch offers only a “generalized claim of harm,” *id.*, from being unable to carry what she considers to be “the best available ammunition in her firearm to defend her own life,” ECF No. 63-2 at 15. She continues to carry lawful firearms with non-expanding bullets and may possess HPBs in her home, if she chooses. Such alleged harm is a far cry from what is needed for the “extraordinary remedy” of a preliminary injunction. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008).

## **II. Plaintiffs Are Unlikely to Succeed on the Merits.**

Plaintiffs have also failed to establish a likelihood of success on the merits. Plaintiffs rely almost exclusively on the Third Circuit’s recent *en banc* decision in *ANJRPC*. 183 F.4th 211 (2026); ECF No. 63-2 at 5–7, which said nothing about the constitutional status of particular types of ammunition. Moreover, the Attorney General is seeking review of *ANJRPC* and the Third Circuit has stayed issue of the mandate pending appeal to the U.S. Supreme Court. *See* Order on Mot. to Stay Mandate Pursuant to Fed. R. App. 41(d)(1), *ANJRPC*, No. 24-2415, Dkt. No. 129 (3d Cir. Aug. 4, 2026). But regardless of how *ANJRPC* fares after the Supreme Court’s forthcoming decision in *Viramontes*, Plaintiffs’ claims fail at *Bruen*’s first step because HPBs are not “arms” under the Second Amendment. HPBs are not themselves “arms,” nor are they “required to operate . . . firearms.” *ANJRPC*, 183 F.4th at 248–49. And under *Bruen*’s second step, even if HPBs were considered arms, the HPB Law is constitutional because it is consistent with the principles underpinning the well-established national history of banning disproportionately lethal weapons-related items.

### *A. Hollow Point Bullets Are Not “Arms” Protected by the Second Amendment*

HPBs are not “arms” protected by the Second Amendment. Regulated conduct only implicates the Second Amendment if the Amendment’s “plain text covers [that] conduct.” *Bruen*, 597 U.S. at 17, 20 (quoting *D.C. v. Heller*, 554 U.S. 570, 576

(2008)); *see also* *Wolford v. Lopez*, 609 U.S. 185, 195 (2026) (*Bruen*’s first step requires analyzing whether the challenged statute “concern[s] any form of ‘Arms.’”). The *Bruen* Court explained that the Second Amendment’s plain text protects arms that are “‘in common use’ today for self-defense.” 597 U.S. at 32. Plaintiffs bear the burden of establishing their desired conduct is covered by “the Second Amendment’s plain text.” *Id.* at 24; *see also, e.g., Bianchi*, 111 F.4th at 473 (Diaz, J., concurring) (noting burden-shift framework); *Ocean State Tactical, LLC v. Rhode Island*, 646 F. Supp. 3d 368, 388 (D.R.I. 2022) (holding that “plaintiffs have failed to meet their burden of establishing that LCMs are ‘Arms’ within the textual meaning of the Second Amendment”); *Vt. Fed. Of Sportsmen’s Clubs v. Birmingham*, 741 F. Supp. 3d 172, 187 (D. Vt. 2024). But Plaintiffs have proffered no evidence, data, or statistics demonstrating the commonality of HPBs, including Plaintiff Bergmann-Schoch’s declaration (the only evidence attached to the motion). ECF Nos. 63-1, 63-2.

1. *HPBs are not protected by the Second Amendment.*

Plaintiffs have not established that HPBs are “arms” entitled to Second Amendment protection. The “Second Amendment’s definition of ‘arms’ is fixed according to its historical understanding,” which focuses on the word’s “‘normal and ordinary’ meaning.” *Bruen*, 597 U.S. at 20, 28 (quoting *Heller*, 554 U.S. at 576–77). As defined at the Founding, “arms” generally includes “weapons of offence” that

are “use[d] in wrath to cast at or strike another,” and the term applies “to weapons that were not specifically designed for military use and were not employed in a military capacity.” *Heller*, 554 U.S. at 581 (citation modified).

Plaintiffs rely on the fact that *ANJRPC* held that LCMs are protected by the Second Amendment to urge this Court to “simply apply *ANJRPC* to preliminarily enjoin enforcement” of the HPB Carry Law. ECF No. 63-2 at 4. *ANJRPC* held that, though not themselves weapons, LCMs are necessary for the operation of a firearm, and thus protected by the Second Amendment. *ANJRPC*, 183 F.4th at 248. This conclusion rests on the Third Circuit’s adoption of the concept that the Second Amendment “implies a corresponding right to obtain ... bullets.” *Id.* at 247 (quoting *Jackson v. City & Cnty. of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014)). But even under this framing, neither the Supreme Court, nor any other court, has ever held that the Second Amendment protects the right to carry and use *any type* of bullets, including, as relevant here, bullets with increased lethality due to their maximal “stopping power.” See ECF No. 1 ¶ 89 (explaining Plaintiffs seek hollow point bullets for their “better stopping power”) (citation modified). On the contrary, the Supreme Court has made it clear that “the right secured by the Second Amendment ... [is] not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Heller*, 554 U.S. at 626. Nor is it a right to keep and carry any bullets whatsoever and for whatever purpose. Even if the

Second Amendment protects a right to carry and use ammunition, *ANJRPC*'s holding that ammunition is “necessary to make meaningful an individual’s right to carry a gun for self-defense,” *see ANJRPC*, 183 F.4th at 247 (citation modified), does not mean it is necessary to carry maximally lethal ammunition.

While bullets “as a general class” may be “necessary” to operate a firearm, HPBs are not. Plaintiffs do not dispute that they can carry fully functional firearms for self-defense without HPBs; they simply “prefer” to use HPBs. *See* ECF No. 1 ¶ 70 (HPBs are “preferred for self-defense”); ¶ 78 (“Bergmann-Schoch does not currently possess [HPBs] in her home,” but “routinely carries her firearm outside her home for self-defense”); ¶ 80 (“Bergmann-Schoch prefers to use [HPBs] in the firearm she publicly carries”). Plaintiffs never allege that their ability to use a firearm for self-defense is impaired by lack of access to HPBs. *See id.* ¶¶ 85–93 (members of institutional Plaintiffs stating their preference for HPBs, but not an inability to carry a loaded firearm for self-defense without them). An individual’s *preference* to load her firearm with HPBs for self-defense (*see* ECF No. 1 ¶ 80) has no bearing on the firearm’s ability to function or her ability to exercise her right to lawful self-defense. *See also Duncan v. Bonta*, 133 F.4th 852, 868–69 (9th Cir. 2025) (explaining that a benefit to the shooter does not bring an accessory within the scope of the Second Amendment’s text).

After all, HPBs are bullets that simply impart enhanced lethality—what

Plaintiffs euphemistically refer to as “stopping power.” *Compare* Hargarten ¶¶ 21–24 (HPBs impart greater force on a body because of their expanding features and increased surface area, inflicting greater bleeding and tissue damage, leading to higher risk of death), *with* ECF No. 1 ¶ 89 (stating a desire for HPBs for their greater “stopping power”) (citation modified). Rather than just allow a shooter to fire more times before needing to reload (as an LCM does), HPBs inflict significantly more damage with each shot. *See* Hargarten ¶¶ 21–24. Indeed, because they mushroom upon impact, HPBs are designed to leave a larger wound cavity than a typical full metal jacket bullet. *See* Allen ¶ 8; Hargarten ¶¶ 12, 19–22. Even *ANJRPC*’s pronouncement that the Second Amendment “implies a corresponding right to obtain ... bullets” does not secure a right to obtain maximally lethal bullets. *See ANJRPC*, 183 F.4th at 247.<sup>10</sup> HPBs are not required to operate *any* firearm, nor to facilitate self-defense. Because the regulated conduct falls outside the scope of the right, “the

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<sup>10</sup> Nor should it. If this Court follows Plaintiffs’ logic to its natural conclusion, it is not just the HPBs at issue in this case that would be entitled to Second Amendment protection. The same statute that regulates carry of HPBs regulates possession of “armor piercing ammunition.” N.J. Stat. Ann. § 2C:39-3(f). Armor piercing ammunition is colloquially known as “cop killer” ammunition because it is designed to penetrate deeper than more conventional ammunition, including penetrating the type of body armor generally worn by American law enforcement officers. That is surely, as Plaintiffs put it, more “effective” ammunition with more “stopping power.” If this Court enjoins or strikes down the HPB Carry Law based on Plaintiffs’ *ANJRPC*-backed logic, there is no meaningful obstacle to a Second Amendment right to armor piercing ammunition, flechettes, exploding bullets, or any other type of ammunition designed for maximal lethality.

analysis can stop there.” *Bruen*, 597 U.S. at 18 (citation modified).

2. *HPBs are disproportionate for self-defense.*

Even if HPBs are considered “arms,” Plaintiffs’ conduct still falls outside the Second Amendment because HPBs are disproportionate for lawful self-defense. The Second Amendment has never protected “any weapon whatsoever;” *Heller*, 554 U.S. at 626–27; the “sorts of weapons protected” by the Second Amendment are those “in common use at the time for lawful purposes like self-defense,” *id.* at 624–25, 627 (citation modified). The right ensures individuals have arms to protect themselves; “it emphatically does not stretch to encompass excessively dangerous weapons ill-suited and disproportionate to such a purpose.” *Bianchi*, 111 F.4th at 452; *see Bevis v. City of Naperville*, 85 F.4th 1175, 1194 (7th Cir. 2023). This principle dates back centuries: weapons “not reasonably related or proportional to the end of self-defense” were “understood to fall outside the reach of the right.” *Bianchi*, 111 F.4th at 450 (citing Blackstone and antebellum decisions).

In determining if a weapon is proportional to the end of self-defense, courts assess the objective features and actual uses of the weapon. *See Heller*, 554 U.S. at 622–24, 629 (“examin[ing]” handgun’s objective “character” and “nature”—such as its ease of usage in one hand, and its ease of storage—that make it “the quintessential self-defense weapon” entitled to protection); *id.* at 621–22, 624–25, 627 (permitting bans on short-barreled shotguns and machineguns); *Bianchi*, 111 F.4th at 451

(describing dangerous features of a short-barreled shotgun, including its “more destructive power” making it “desirable to malefactors and crooks”) (citation modified); *United States v. One Palmetto State Armory*, 822 F.3d 136, 142 (3d Cir. 2016) (agreeing machineguns warrant no protection given their “exceedingly dangerous” features).

The objective features of HPBs demonstrate that they are ill-suited for self-defense. For example, HPBs, like weapons other circuits have held to be outside the scope of the Second Amendment, are specifically designed to generate the “maximum wound effect.” *See Bianchi*, 111 F.4th at 455. HPBs “have a hollow cavity in the tip that causes the bullet to flatten and expand when it strikes a target.” *Allen* ¶ 8. Because they mushroom upon impact, HPBs are designed to impart greater force upon a target and leave a larger wound cavity than a typical full metal jacket bullet. *See id.*; *Hargarten* ¶¶ 12, 19–22. HPBs’ “design” is thus “to cause more damage by transferring more of the bullet’s energy into its target” through its “expanding features.” *Hargarten* ¶ 21 (citation modified).

These design features make HPBs uniquely lethal. HPBs are “2.7 times more lethal and 1.9 to 2.5 times more injurious than non-hollow point bullets.” *Allen* ¶ 6. HPBs were designed specifically to expand and cause greater injuries and more death compared to “full metal jacket” ammunition, which was less lethal because the bullets kept their shape and passed through the body. *See Spitzer* ¶ 5. Because

the HPB expands upon impact, it causes “greater tissue, cellular, and organ injury.” Hargarten ¶ 19. For instance, “if a person is shot in the liver with” an HPB as compared to a full metal jacket bullet, “the earlier onset of the temporary cavity is disastrous, with direct impact and greater tissue destruction, severing multiple collateral arteries and veins,” resulting “in hemorrhage, shock, and a high risk of death.” *Id.* ¶ 20. That is because the HPB’s “mushrooming” creates a larger projectile surface area and larger cavities, “causing greater and more immediate damage to the body” than non-hollow point ammunition. *Id.* ¶¶ 12, 19, 22. Because the use of HPBs was considered to be inhumane, the 1899 Hague Convention outlawed their use in international warfare. Spitzer ¶ 5.<sup>11</sup>

Modern courts have relied upon the law of self-defense as understood around the time of the Second Amendment’s ratification to hold that bearing weapons that are disproportionate for self-defense is not protected by the Second Amendment. As the Fourth Circuit explained, “[j]ust as the right to self-defense had limitations at the time of the founding, so too did the right to keep and bear arms that enabled it.” *Bianchi*, 111 F.4th at 450. The “Framers aimed to safeguard the right to individual self-preservation while recognizing appropriate limitations—including those

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<sup>11</sup> While the United States is not a party to that declaration on HPBs, it “is a party to the Hague Convention IV,” which prohibits “weapons calculated to cause unnecessary suffering.” Spitzer ¶ 5. (citation modified). And the U.S. military restricts the use of ammunition “calculated to cause superfluous injury.” *Id.* ¶ 6 (citation modified).

*already inherent in the common-law right to self-defense.” Id.* (emphasis added). Thus, arms that “amplify an individual’s power to protect himself without empowering him to single-handedly reign terror upon a community” are “generally within the ambit of the Second Amendment,” while “excessively dangerous arms were not reasonably related or proportional to the end of self-defense—but rather were better suited for offensive criminal or military purposes—and were thus understood to fall outside the reach of the right.” *Id.* Such weapons are “excessively dangerous weapons ill-suited and disproportionate to” the purpose of lawful self-defense and are “beyond the scope of the Second Amendment.” *Id.* at 451–52.

As the Supreme Court has consistently held, “individual self-defense” is the “*central component*” of the Second Amendment right. *Bruen*, 597 U.S. at 29 ; *Heller*, 554 U.S. at 599 (emphasis in original). Given their phenomenally lethal nature, HPBs exceed what is necessary and proportional for self-defense. Carrying HPBs outside the home “exceed[s] the needs of the typical self-defense situation.” *Bianchi*, 111 F.4th at 453; *see Allen* ¶ 6 (finding HPBs are “2.7 times more lethal and 1.9 to 2.5 times more injurious than non-[HPBs]”). Rather, it is evidence of a default “intention to take away ... life” or do “enormous bodily harm,” no matter the actual threat one may eventually face, *The Trial of Thomas O. Selfridge for the Killing of Charles Austin, Boston, 1806*, in *2 American State Trials* 691 (John D. Lawson ed., 1914-1936) (emphasis added). As a result, in this facial posture, New Jersey’s HPB

Carry Law “is constitutional in some of its applications,” *United States v. Rahimi*, 602 U.S. 680, 693 (2024), because carrying HPBs capable of “phenomenal lethality” for self-defense in public will often exceed the scope of permissible self-defense conduct protected by the Second Amendment. *See Bianchi*, 111 F.4th at 455. The HPB Carry Law thus falls outside the scope of the Second Amendment right at step one of the *Bruen* analysis, and this Court need go no further in upholding the law against this facial challenge.<sup>12</sup>

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<sup>12</sup> In their Complaint, Plaintiffs argue that, because law enforcement officers carry HPBs for self-defense, HPBs are also ideal “‘self-defense’ ammunition” for civilians and thus within the scope of the Second Amendment. *See* ECF No. 1 ¶ 3. This argument incorrectly conflates a civilian’s right to use HPBs for self-defense with the use of HPBs by law enforcement officers. Law enforcement officers are tasked with protection of the public safety and swear an oath to wield the power vested in them for that purpose. As the Seventh Circuit explained, “[b]oth the states and federal government have long contemplated that the military and law enforcement may have access to especially dangerous weapons, and that civilian ownership of those weapons may be restricted.” *Bevis*, 85 F.4th at 1201. Furthermore, courts have recognized the principles underpinning the distinction between law enforcement agents and civilians in bearing particularly dangerous weapons. *See, e.g., Pena v. Lindley*, 898 F.3d 969, 987 (9th Cir. 2018) (recognizing that legislatures are reasonable to distinguish between civilians and law enforcement because officers “receive extensive training and are expected to respond to emergencies even when off duty”). New Jersey’s officers explained this clearly when HPBs became the law enforcement standard, stating that HPBs were “a last resort[] to save the life of a citizen or police officer.” Mangel Decl. Ex. 6, at 30.

*B. Even if the Second Amendment Applies, the HPB Carry Law is Constitutional.*

Even if “the Second Amendment’s plain text” (*Bruen*, 597 U.S. at 17) covered the public carry of HPBs, Plaintiffs have failed to show a likelihood of success on the merits because New Jersey’s law is “consistent with the principles that underpin our regulatory tradition.” *Rahimi*, 602 U.S. at 692; *see id.* at 740 (Barrett, J., concurring) (“Historical regulations reveal a principle, not a mold.”). This historical analysis requires courts to consider both “how” and “why” the law burdens the right to keep and bear arms relative to historical “laws that our tradition is understood to permit.” *Id.* at 692. Although a modern regulation “must comport with the principles underlying the Second Amendment,” the law “need not be a ‘dead ringer’ or a ‘historical twin’” to its predecessors. *Id.* (quoting *Bruen*, 597 U.S. at 30). If modern laws are “relevantly similar” to historical regulations—in that they “impose a comparable burden on the right of armed self-defense” that “is comparably justified”—they are constitutional. *Bruen*, 597 U.S. at 29.

In examining historical analogues, courts need not decide whether to rely on Founding-era or Reconstruction-era evidence if there is no direct conflict between them. *See id.* at 37–38. If English law, Founding-era law, and 19th-century law all point in the same direction, this Court can consider them all. *See Lara v. Comm’r Pa. State Police*, 125 F.4th 428, 440–41 (3d Cir. 2025); *Schoenthal v. Raoul*, 150 F.4th 889, 913 (7th Cir. 2025) (“[W]e and other circuits concur that evidence

stretching into the nineteenth century is useful to a *Bruen* inquiry.”); *McCoy v. ATF*, 140 F.4th 568, 574–75 (4th Cir. 2025). Laws “through the end of the 19th century” can “be a critical tool of constitutional interpretation because they can be evidence of a historical tradition and shed important light on the meaning of the Amendment as it was originally understood.” *Lara*, 125 F.4th at 441 (citation modified). So long as there is no conflict among them, each period of history provides analogical evidence under *Bruen*.

Moreover, “cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach,” as today’s concerns are not “the same as those that preoccupied the Founders in 1791 or the Reconstruction generation in 1868.” *Bruen*, 597 U.S. at 27; see *Zherka v. Bondi*, 140 F.4th 68, 79 (2d Cir. 2025). This Court must consider what restrictions on arms existed historically, and then ask whether the principles that underlie them are *relevantly* similar to the modern law. See generally *Bruen*, 597 U.S. at 80 (Kavanaugh, J., concurring) (emphasizing that “the Second Amendment allows a ‘variety’ of gun regulations” (quoting *Heller*, 554 U.S. at 636)). So if the challenged law addresses an unprecedented societal concern or a technological change, a more generalized historical principle will suffice to uphold the modern law.

The HPB Carry Law warrants such a nuanced approach, both because HPBs did not exist at the time the States ratified the Second and Fourteenth Amendments

and because the HPB Carry Law addresses an unprecedented societal concern: the lethal effects of modern ammunition and mass shootings. Plaintiffs attempt to align this case with *ANJRPC*'s framing of the law at issue in that case: that the analysis is straightforward because it "implicates the societal concern of people 'misusing weapons to harm or menace others' that has persisted since the 18th century." ECF No. 63-2 at 13 (citation modified) (quoting *ANJRPC*, 183 F.4th at 246). But that ignores the record in this case. HPBs were originally developed for military use in the 1890s, *see* Spitzer ¶ 5, and did not emerge in the non-military market until the 1970s, when they were adopted by law enforcement agencies, *see id.* ¶¶ 4–6. The bullet technology available to civilians today must be examined with "nuance[]" because it represents an "unprecedented societal concern[] or dramatic technological change[]" compared to the ammunition technology that existed at the Framing. *See Bruen*, 597 U.S. at 27. Therefore, this Court should consider "how" and "why" analogous historical laws burdened the right to keep and bear arms and apply the underlying principles about regulating particularly dangerous weaponry that causes excessive injury and ammunition for public safety. That history shows a number of historical laws consistent with the "how" and "why" of the HPB Carry Law.

Against that historical precedent, Plaintiffs fail to provide any evidence to support their arguments that HPBs are "in common use for lawful purposes," and therefore that the "American people's" alleged "overwhelming preference for

hollow point ammunition is dispositive.” *See* ECF No. 63-2 at 13. In holding New Jersey’s regulation of assault weapons unconstitutional, the Third Circuit relied on the evidence presented in that case of “the many millions of semi-automatic rifles in circulation for lawful purposes,” establishing that they “are plainly in common use.” *ANJRPC*, 183 F.4th at 242. But here, Plaintiffs have offered no evidence to show how many HPBs are in circulation, nor how many people carry or own HPBs, nor for what purposes. Absent the type of evidence relied upon in *ANJRPC*, there is no basis for this Court to find that HPBs are in common use for self-defense.

1. *There is a longstanding national regulatory tradition of restricting particularly dangerous instruments.*

From pre-Founding English history through the Prohibition era, “[o]ur nation has a strong tradition of regulating excessively dangerous weapons once it becomes clear that they are exacting an inordinate toll on public safety and societal wellbeing.” *Bianchi*, 111 F.4th at 446. This is the “historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons’”—of regulating unusually dangerous firearms<sup>13</sup>—that a wide range of Founding era sources and *Heller* itself recognize. 554 U.S. at 627. These include colonial-era limits on certain types of

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<sup>13</sup> Courts have concluded that the phrase “dangerous and unusual” is a “hendiadys”—“‘two terms,’ often with one modifying the other, that are ‘separated by a conjunction’ (here, ‘and’) ‘that work together as a single complex expression’”—and thus is best understood to mean “unusually dangerous.” *Lamont*, 153 F.4th at 234 n.19 (citation modified); *see Hanson v. District of Columbia*, 120 F.4th 223, 238 n.7 (D.C. Cir. 2024) (similar), *cert. denied*, 145 S. Ct. 2778 (2025).

armor and weapons, Founding-era limits on gunpower and ammunition, Reconstruction-era limits on dangerous knives, and more modern limits on HPBs.

*a. Colonial and Pre-Colonial Weapon Restrictions.*

English and colonial governments restricted particularly dangerous weapons while permitting other tools of self-defense. *See, e.g., Bruen*, 597 U.S. at 41 (noting English prohibitions on weapons “generally worn or carried only when one intended to engage in lawful combat or ... to breach the peace” (citing 7 Rich. 2 c. 13 (1383); 20 Rich. 2 c. 1 (1396))). Indeed, the English Bill of Rights, “the predecessor to our Second Amendment,” protected the right of the people to “have Arms for their Defence *suitable to their Conditions, and as allowed by Law.*” *Heller*, 554 U.S. at 593 (emphasis added) (quoting 1 W. & M., ch. 2, § 7, in 3 Eng. Stat. at Large 441 (1689)). The very foundations of the Second Amendment distinguished between the types of arms “suitable” for self-defense, and those that are not.

That tradition continued in the United States, where a range of governments enacted laws regulating weapons and ammunition that posed threats to public safety because of certain dangerous features. As the State’s historical expert explains, all these historical laws shared a common denominator: “the public policy judgment that all posed a unique hazard or threat to public and physical safety.” Spitzer ¶ 48.

*b. Gunpowder and Ammunition Restrictions.*

Ammunition was regulated in America before the Founding and such regulation has continued through today as ammunition has evolved. Gunpowder, indispensable for the function of firearms, was regulated as early as 1633 in colonial Massachusetts. Spitzer ¶¶ 16–17. Such regulations focused on safe storage, transport, and use and existed because gunpowder was inherently dangerous and posed a threat to public safety. *Id.* ¶¶ 18, 32. From the 17th century through the start of the 20th century, with one exception, every state in the country enacted one or more gunpowder regulations. *Id.* ¶ 17. “[A]t least seven gunpowder laws were enacted in the colonies in the 1600s, thirty gunpowder laws were passed in the 1700s, 175 laws in the 1800s, and 76 laws in the 1900s up until 1934,” for “a total of over 300 laws in 49 states.” *Id.* ¶¶ 17, 29; *see also* Spitzer Exs. B, C, D, E.

At the Founding, States required gunpowder be stored safely even when it might have “made it more difficult for people to load their guns quickly to defend themselves against attack.” Spitzer ¶ 18. In fact, “virtually every jurisdiction heavily regulated the possession, transportation, sale, and manufacture of gunpowder,” and “regulated the shooting of guns both to protect against unintentional shootings and fires caused by gunshots.” *Id.* ¶19; *see also id.* ¶ 32 (noting gunpowder laws “provided a check on the creation of a private arsenal”). For example, “[a] 1783 Massachusetts law restricting firearms and gunpowder in Boston began by noting that ‘The depositing of loaded arms in the houses of the town of Boston is

dangerous.” *Id.* ¶ 29. That law “barred bringing gunpowder or gunpowder-loaded firearms into any house or other structure in the city,” with the penalty for doing so “that ‘such person shall forfeit’ the firearm and pay a fine.” *Id.* Maine also enacted two related measures in 1821. *Id.* And an 1857 New Jersey law stated that no more than two pounds of gunpowder could be kept inside any building. *Id.* ¶ 30. Such limitations existed “for the good of public safety.” *Id.* ¶ 22. Since “the basic idea that gun possession must be balanced with gun safety laws was one that the founders endorsed,” *id.* ¶ 32, regulation over gunpowder “was extensive, ubiquitous, and plenary, encompassing and superseding any contemplated private uses of the same as part of government’s efforts to protect the public from gunpowder’s inherent danger,” *id.* ¶ 33.

From colonial America through much of the 19th century, ammunition consisted of front-loaded musket balls manually loaded with gunpowder. *See id.* ¶ 11. Cartridge-firing guns with modern ammunition cartridges began to circulate after about 1873 and “represented a dramatically different type of firearm from those of the past.” *Id.* ¶ 14. Shortly after enclosed metallic cartridges (what we today call bullets) emerged around the 1870s, states began to regulate them. *Id.* ¶¶ 14, 34. For example, “at least four states enacted sweeping laws to penalize the sale or acquisition of pistol ammunition.” *Id.* ¶ 34. An 1881 Arkansas law titled “An Act to Preserve the Public Peace and Prevent Crime” made it a misdemeanor to sell pistol

bullets to any other person. *Id.* And an 1883 Tennessee law made it “unlawful for any person or persons to buy or sell or give away any pistol cartridges in th[e] [S]tate.” *Id.* Oklahoma and Massachusetts enacted similar pistol ammunition restrictions around this time. *Id.*

*c. Fighting Knife Restrictions.*

The Bowie knife was considered an inherently dangerous “fighting knife” because of numerous features designed to make it easier to injure a victim. Spitzer ¶¶ 36–37; *Duncan*, 133 F.4th at 875–76. In the 1830s, the “Bowie knife,” a “long-bladed and usually single-edged knife with a hand guard,” became widespread in the United States. *Id.* ¶ 37. Its distinctive features were “intended for combat.” *Id.* The knives were “widely used in fights and duels, especially at a time when single-shot pistols were often unreliable and inaccurate.” *Id.* In response, nearly every state eventually restricted Bowie (or similar long-bladed) knives, in various ways. *Id.* ¶¶ 38, 43–45; Spitzer Ex. H (listing Bowie knife restrictions by manner, state, and year); *see also Duncan*, 133 F.4th at 876. Other States, such as Tennessee, prohibited the carry and sale of bowie knives. *See id.* ¶ 39.

Contemporary courts upheld these laws. In upholding Tennessee’s law, a court noted the state had “a right to prohibit the wearing or keeping [of] weapons dangerous to the peace and safety of the citizens.” *Id.* ¶ 39; *see also id.* ¶ 40 (finding

that Tennessee Bowie knife law was “design[ed] to regulate a weapon that “had proven to be extremely dangerous and destructive to human life”).

*d. Hollow Point Bullet Restrictions.*

For over a century, HPBs have been banned for use in war by various countries because they cause “unnecessary suffering.” Spitzer ¶ 5. In 1899, the Hague Declaration stated that “the contracting parties agree to abstain from the use of bullets which expand or flatten easily in the human body.” Allen ¶ 10; Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, Nov. 12, 1868, <https://tinyurl.com/34c5hvmh> (the use of weapons that “render ... death inevitable” is “contrary to the laws of humanity”). While not a party to this declaration, *see supra* note 11, the United States accepted the principle of prohibiting weapons “calculated to cause unnecessary suffering,” Spitzer ¶ 5.

2. *The HPB Carry Law is consistent with our regulatory tradition of restricting particularly dangerous instruments.*

New Jersey’s prohibition on the public carry of HPBs operates similarly to (the “how”) and exists for similar reasons (the “why”) as these historical regulations. Like many of these historical analogues, New Jersey has prohibited carrying HPBs outside the home. *See* N.J. Stat. Ann. § 2C:39-3(f). New Jersey’s law does not functionally prevent individuals from carrying firearms for self-defense because it is tailored: it only bans for public carry a specific type of ammunition disproportionate for self-defense. Given that limited scope, prohibiting their use does

not burden the right to self-defense because “the historical antecedents, like the challenged statute[], preserved alternative avenues for the legal possession of less inherently dangerous arms for self-defense and other lawful purposes.” *Lamont*, 153 F.4th at 236; *Hanson*, 120 F.4th 223, 240 (D.C. Cir. 2024), *cert. denied*, 145 S. Ct. 2778 (2025). Thus, the HPB Carry Law “impose[s] a comparable burden on the right of armed self-defense,” as these analogous historical laws, and that “burden is comparably justified.” *Bruen*, 597 U.S. at 29.

Like these historical laws, HPBs are prohibited from public carry because they are unusually dangerous and pose a heightened threat to public safety. *See Spitzer* ¶¶ 5, 10. The hollow tip of an HPB causes it to flatten and expand when it strikes a victim, enlarging its surface area. *See Hargarten* ¶¶ 12, 19–22; *Allen* ¶¶ 8–10, 27, 30–31. That expansion transfers more kinetic energy from the bullet into the person’s body, crushing more tissue as it moves through the body and resulting in greater hemorrhage, shock, and a higher risk of death. *Hargarten* ¶¶ 12, 23. More specifically, this energy creates “larger permanent cavities and more immediate temporary cavity[ies],” which “caus[e] greater and more immediate damage to the body,” *id.* ¶ 12, by shredding, tearing, and crushing organs and tissue, *id.* ¶ 20. .

If all shootings occurring from 2020 to 2024 had been committed with HPBs, the lethality rate would have been 2.7 times greater—“yield[ing] 1,684 additional deaths in New Jersey over this five-year period.” *Allen* ¶ 34. The HPB Carry Law

thus shares a comparable justification as the analogous historical laws: protecting the public from harm and death caused by this unnecessary weaponry. *See, e.g., Duncan*, 133 F.4th at 877 (comparing historical gunpowder storage laws to modern magazine capacity and explaining that they “share the same justification for burdening the right to armed self-defense: to protect innocent persons from infrequent but devastating harm caused or exacerbated by” the regulated item).

HPBs maximize the damage inflicted on a target. As Colonel Callahan testified, HPBs are “intended to create more trauma, which would then equate to the threat being stopped quicker.” Decl. of Jonathan Mangel Ex. 7, 36:7–11. The United States has a deeply rooted tradition of regulating weapons capable of such “phenomenal lethality.” *See Bianchi*, 111 F.4th at 455. Just as the nation has regulated the carrying of Bowie knives, which are “extremely dangerous and destructive to human life,” Spitzer ¶ 40, the HPB Carry Law addresses the same dangers. Applying the “nuanced approach” required by *Bruen* makes clear that these historical laws are apt analogues for the reasons (the “why”) and the methods (the “how”) inherent in New Jersey’s modern restrictions on the public carry of HPBs. *Bruen*, 597 U.S. at 27.

3. *The HPB Carry Law is consistent with the principles underlying historical common law self-defense.*

As explained above, *supra* Section II.A.2, the common law doctrine of self-defense, as understood in the Founding and Reconstruction Eras, was rooted in

principles of necessity and proportionality. Those principles are part of a “long unbroken line of common-law precedent” that provide an apt historical analogue to the HPB Carry Law. *See McCoy*, 140 F.4th at 574–75 (quoting *Bruen*, 597 U.S. at 35).<sup>14</sup> Regulating the civilian carry of HPBs is consistent with historical common law self-defense, which “tilt[s] in favor of the preservation of human life.” Decl. of Jonathan Mangel Ex. 4, Rpt. of Professor Eric Ruben (hereafter “Ruben”) ¶ 18. The common law of self-defense only permits one to use a degree of force proportional to the threat one faces. The HPB Carry Law, consistent with those common law principles, only regulates ammunition that is “disproportionate to self-defense,” because of its lethality. *See Bianchi*, 111 F.4th at 451.

### **III. The Equities Favor Maintaining the Status Quo.**

Even if Plaintiffs meet their burden on the likelihood of success on the merits and irreparable harm, a preliminary injunction is not warranted because this Court must consider whether all four factors “balance in favor of granting the requested preliminary relief.” *Amalgamated Transit Union Local 85*, 39 F.4th at 103; *see Benisek*, 585 U.S. at 158 (“[A] preliminary injunction does not follow as a matter of

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<sup>14</sup> Courts have relied on common law to determine the “public understanding of the right when the Bill of Rights was adopted in 1791.” *See Nat’l Rifle Ass’n. v. Bondi*, 133 F.4th 1108, 1115 (11th Cir. 2025). For example, Circuit Courts of Appeal have relied on the principles underpinning historical common law contract doctrine to justify the “how” and “why” of regulations on possession and sale of firearms to people under 21 years of age. *See McCoy*, 140 F.4th at 575–77 (citing contract law “infancy doctrine”); *see Bondi*, 133 F.4th at 1117 (same).

course from a plaintiff’s showing of a likelihood of success on the merits.”); *Albence*, 2026 WL 2563151, at \*4 (“‘[A] federal judge sitting as chancellor is not mechanically obligated to grant an injunction for every violation of law,’ let alone every *likely* violation of law.” (quoting *Weinbeger v. Romero-Barcel*, 456 U.S. 305, 313 (1982))). When “the Government is the opposing party,” the final two factors—“harm to the opposing party” and “the public interest”—merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Both weigh strongly against a preliminary injunction.

“‘The presumption of constitutionality which attaches to [legislation] is not merely a factor to be considered in evaluating success on the merits, but an equity to be considered in favor of [the government] in balancing hardships.’” *Albence*, 2026 WL 2563151 at \*5 (quoting *Walters v. Nat’l Ass’n of Radiation Survivors*, 468 U.S. 1323, 1324 (1984) (Rehnquist, J., in chambers)). The State’s “inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State.” *Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018). That is because the State “suffers ... irreparable injury” whenever it is barred “from effectuating statutes enacted by representatives of its people.” *Maryland v. King*, 567 U.S. 1301, 1303 (2012); *see also Cameron v. EMW Women’s Surgical Ctr., P.S.C.*, 595 U.S. 267, 277 (2022) (the State “has a legitimate interest in the continued enforceability of its own statutes” (citation modified)); *Robinson v. Ardoin*, 37 F.4th 208, 227 (5th Cir. 2022) (“When a statute is enjoined, the State necessarily suffers the irreparable harm of denying the public

interest in the enforcement of its laws.” (citation modified)). That harm is especially pronounced where, as here, there is “an ongoing and concrete harm to [the State’s] law enforcement and public safety interests.” *King*, 567 U.S. at 1303 (Roberts, C.J., in chambers).

Here, Plaintiffs challenge a law that has existed for the past half-century to ensure that particularly dangerous and lethal ammunition is limited to law enforcement officers and to individuals licensed to have a firearm on their own property. *See supra* at 3–6. An injunction would create new risks to public safety by allowing individuals to carry bullets originally developed for military purposes and so disproportionately deadly they were banned in warfare under the Hague Convention. *See* Spitzer ¶ 5. Non-lethal confrontations could result in more severe injury, increased suffering, and lethality.<sup>15</sup> Lost or stolen firearms loaded with HPBs

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<sup>15</sup> Studies show that when a person is in the presence of a firearm, they are more likely to perceive others as hostile, increasing the chances that they will react aggressively to ambiguous situations. *See* A.J. Benjamin Jr. et al., *Effects of the Mere Presence of Weapons on Aggressive Thoughts, Angry Feelings, Hostile Appraisals, and Aggressive Behavior: A Meta-Analytic Review of the Weapons Effect Literature*, *Personality & Soc. Psych. Rev.*, 359 (2018), <https://tinyurl.com/4uz59wvu>; compare D. Hemenway et al., *Defensive gun use: What can we learn from news reports?*, *Injury Epidemiology*, 8 (2022), <https://tinyurl.com/5f2henyr>. By contrast, epidemiological studies have found “little evidence that self-defense gun use reduces the likelihood of victim injury during a crime.” D. Hemenway & S.J. Solnick, *The epidemiology of self-defense gun use: Evidence from the National Crime Victimization Surveys 2007–2011* 27, *Preventive Medicine*, 27 (2015), <https://tinyurl.com/323tudnw>. Add to this bullets that result in severe wounds and increased likelihood of death—what Plaintiffs laud as “better stopping power,” ECF

would flow into the black market.<sup>16</sup> Law enforcement officers responding to violent crime would be at greater risk of being shot with more dangerous bullets that are more likely to grievously injure or kill them. *See* Hargarten ¶¶ 16–17, 23–24.

A shooting death or injury cannot be undone. The HPB Carry Law protects the public from “the single most irreparable harm of all: death itself.” *Turner v. Epps*, 842 F. Supp. 2d 1023, 1028 (S.D. Miss. 2012); *see also* *L.A. Unified Sch. Dist. v. S&W Atlas Iron & Metal Co.*, 506 F. Supp. 3d 1018, 1036 (C.D. Cal. 2020). Plaintiffs “have not shouldered their heavy burden to disturb” the HPB Carry Law. *See Albence*, 2026 WL 2563151 at \*5. Given the “[S]tate’s weighty interest in enforcing” the HPB Carry Law’s “longstanding requirements,” the public interest and equitable factors militate against an injunction. *See id.*

### **CONCLUSION**

This Court should deny Plaintiffs’ Motion for Preliminary Injunction.

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No. 1 ¶ 89—and the increased harm to public safety if the State cannot enforce the HPB Law is clear.

<sup>16</sup> Hundreds of thousands of guns are stolen each year. *See* D. Hemenway et al., *Whose guns are stolen? The epidemiology of Gun theft victims*, Injury Epidemiology, 4 (2017), <https://tinyurl.com/44wj9y6x>.

Dated: October 13, 2026

Respectfully submitted,

JENNIFER DAVENPORT  
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Jonathan B. Mangel  
Jonathan B. Mangel  
Deputy Attorney General

**CERTIFICATE OF SERVICE**

I, Jonathan B. Mangel, hereby certify that I have filed a true and correct copy of the foregoing documents with this Court's CM/ECF system, which generated a Notice of Electronic Filing, and provided a copy of the above to all counsel of record.

Dated: October 13, 2026

/s/ Jonathan B. Mangel  
Jonathan B. Mangel  
Deputy Attorney General