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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBERT GREENE, *et al.*	:	
	:	Civil Action No. 1:24-CV-00021
Plaintiffs	:	
	:	
v.	:	
	:	
MERRICK GARLAND, *et al.*	:	
	:	Judge Cathy Bissoon
Defendants	:	

PLAINTIFFS' BRIEF IN OPPOSITION TO MOTION TO DISMISS

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Plaintiffs Robert Greene, James Irey, and the Second Amendment Foundation, by and through their attorneys, Joshua Prince and Adam Kraut, hereby submit this Brief in Opposition to Motion to Dismiss.

I. INTRODUCTION

Plaintiffs Robert Greene and James Irey (hereinafter "Mr. Greene" and "Mr. Irey," respectively, and "Individual Plaintiffs," collectively) have filed suit, complaining that the Defendants have collectively and individually prohibited a particular class of persons, including themselves and those similarly situated, from obtaining, possessing, keeping, bearing, or otherwise utilizing firearms and ammunition while being a user of medical marijuana as permitted by the laws of the Commonwealth of Pennsylvania.[1] Plaintiffs Greene and Irey desire only to exercise their fundamental, individual right to purchase, possess, and utilize a firearm for lawful purposes while using marijuana for medical treatment as permitted under Pennsylvania law. FAC, ¶¶ 14, 15, 66-76, 78-92. Plaintiff Second Amendment Foundation ("SAF") seeks to uphold the rights of its similarly situated members, including Mr. Greene and Mr. Irey, who would be able to lawfully possess, purchase, and utilize firearms and ammunition for lawful purposes while using medical marijuana for treatment pursuant to Pennsylvania law or who would be able to lawfully apply for, obtain, and utilize medical marijuana while continuing

[1] As addressed *infra*, Plaintiffs belief that as a result of the Congress' appropriation restriction since 2015, the Congress has amended the Controlled Substance Act to allow individuals to lawfully utilize medicinal marijuana in the absence of a prescription.

to possess and use firearms and ammunition, but for Defendants' continued enforcement of the challenged prohibitions. FAC, ¶¶ 16, 94-102.

Consistent with the U.S. Supreme Court's decisions in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022) and *United States v. Rahimi*, 144 S. Ct. 1889 (2024) as well as the Third Circuit's *en banc* decision in *Range v. Attorney Gen. United States of Am.*, 69 F.4th 96 (3d Cir. 2023) *vacated by* 144 S. Ct. 2706 (2024) and the Fifth Circuit's decision in *United States v. Connelly*, 117 F.4th 269 (5th Cir. 2024), it is clear that Defendants' enforcement of such prohibitions violates Plaintiffs' fundamental constitutionally protected right to keep and bear arms as enshrined in the Second Amendment to the U.S. Constitution. In fact, there can be no dispute, post-*Bruen*, that there is nothing in the Constitution's text nor in the Nation's historical tradition of firearm regulation – as elucidated by the *Bruen*, *Rahimi*, *Range*, and *Connelly* decisions – that supports the categorical ban that the prior and continuing enforcement of Defendants' laws and regulations imposes on Plaintiffs and as such, Defendants' prohibitions and enforcement thereof violate the Second Amendment.

II. FACTUAL BACKGROUND

For the sake of brevity, Plaintiffs incorporate by reference, as if set forth in full herein, the facts set forth in Plaintiffs' First Amended Complaint, ¶¶ 25-92, in Exhibits A-D attached thereto, and in the Declarations filed by Plaintiffs Mr. Robert Greene, Mr. James Irey, and Mr. Alan Gottlieb in his capacity as Executive Vice President of the Second Amendment Foundation.

While the Defendants' factual recitation is generally accurate, Plaintiffs point out that noticeably devoid of mention is the Congress' appropriation restriction, since 2015, precluding the DOJ from utilizing any appropriated money to prevent the enumerated states "from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana." FAC, ¶¶ 46-48. Further, contrary to the Defendants' contention that SAF did not "make any allegations of the specific circumstances of any other members" (Doc. 33, pg. 6), the FAC ¶¶ 94-102, explicitly detail SAF's similarly situated members and explain that they are in identical positions either to Greene or Irey.

III. STATEMENT OF QUESTION INVOLVED

Whether this Court should deny Defendants' Motion to Dismiss and advance its decision to a trial on the merits, or in the alternative, provide Plaintiffs with an opportunity to file an amended complaint?

Suggested answer in the *Affirmative*

IV. COUNTER STANDARD OF REVIEW

While Defendants correctly specify the standard of review for Rule 12(b)(1), in relation to Rule 12(b)(6), Plaintiffs would additionally point out that when considering a motion to dismiss, while a court is under no obligation to accept legal conclusions, it is under no duty to entirely disregard them. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210-211 (3d Cir. 2009). Moreover, dismissal pursuant to Rule 12(b)(6) is only proper when the factual allegations, accepted as true, are

insufficient to "state a claim to relief that is plausible on its face." *Gelman v. State Farm Mut. Auto. Ins. Co.*, 583 F.3d 187, 190 (3d Cir. 2009). Unless it is a "certainty" that no relief could be granted under any set of facts which could be proven, the motion to dismiss on the basis of failure to state a claim, must be denied. *Evancho v. Fisher*, 423 F.3d 347, 351 (3d Cir. 2005).

Furthermore, the Third Circuit has held that where a district court dismisses a case, the court must allow the plaintiff to file an amended complaint, "unless doing so would be inequitable or futile." *Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc.*, 482 F.3d 247, 251 (3d Cir. 2007). The Third Circuit has defined futility as meaning "that the complaint, as amended, would fail to state a claim upon which relief could be granted." *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1434 (3d Cir. 1997) (citation omitted).

V. ARGUMENT

a. Plaintiff Second Amendment Foundation has Associational Standing

As addressed in the FAC, ¶¶ 16, 94, SAF brought this action on behalf of Plaintiffs Greene and Irey, as well as, its members who are similarly situated to Greene and Irey. While Defendants contend that SAF lacks associational standing, they do not dispute that the first two prongs of associational standing stemming from *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977) are met. Doc. 33, pg. 9. Rather, Defendants claim that the third prong – "neither the claim asserted nor the relief requested requires the participation of individual members in

the lawsuit" – somehow bars SAF's participation and that the injunctive relief requested "would require fact-intensive individualized inquiries."

However, this could not be further from the truth. As is explicitly addressed in the FAC, ¶¶ 16, 94-102, SAF's similarly situated members are easily ascertainable based on objective criteria, as they are (1) individuals, identical to Greene, who possess a MMID pursuant to Pennsylvania law, use medical marijuana in compliance with Pennsylvania law, are not otherwise prohibited by 18 U.S.C. § 922(g), and would like to purchase, possess, and utilize firearms and ammunition, and (2) individuals, identical to Irey, who currently purchase, possess, and utilize firearms and ammunition, are not otherwise prohibited by 18 U.S.C. § 922(g), would obtain a MMID pursuant to Pennsylvania law, and would use medical marijuana pursuant to Pennsylvania law. Thus, contrary to the Defendants' contention that to provide relief to SAF's similarly situated members would require "fact-intensive individualized inquires" which "would hinge on members' legal eligibility to possess firearms apart from the challenged provisions" (Doc. 33, pgs. 9-10), as is specified in the FAC, ¶¶ 94-102, SAF's similarly situated members – identical to Greene and Irey – are not otherwise prohibited under federal law from possessing firearms and ammunition.

While the Defendants secondarily claim that SAF failed to plead a basis for direct organizational standing, contrary to Section II., A. of the Practice and Procedures of Judge Cathy Bissoon, counsel never raised this issue during the meet and confer conference and thus, it should be dismissed on that ground alone. If it

had been raised, the undersigned would have pointed counsel to the Declaration of Alan Gottlieb (Doc. 16-1) – which Defendants are unquestionably aware of, since they addressed it in their prior brief (Doc. 19, pg. 10) – which in ¶ 12 addresses that SAF has "expended and diverted resources because of Defendants' enforcement and resultant policies, practices, and customs challenged." And if counsel had nevertheless contended that he did not believe it sufficient, Plaintiffs would have addressed it with an amended complaint.

Regardless, Supreme Court precedent dispenses with any further analysis required on either of these points. An organization only needs *one* injured member to have standing. *Warth v. Seldin*, 422 U.S. 490, 511 (1975); *United Food and Com. Workers Union Loc. 751 v. Brown Grp., Inc.,* 517 U.S. 544, 555 (1996). Accordingly, as Greene and Irey are both SAF members (FAC, ¶¶ 16, 67, 79), if either Greene or Irey have standing – which Defendants do not dispute – so does SAF.

b. The Proper Analysis Post-Bruen and Rahimi

Even before the Supreme Court's decision in *Bruen*, the Court had already explicitly held that the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation." *District of Columbia v. Heller*, 554 U.S. 570, 584, 592 (2008). Pre-*Bruen*, constitutional challenges brought on Second Amendment grounds typically revolved around the appropriate analysis or framework a court was to utilize when assessing a Second Amendment challenge.

Addressing this issue, the Court in *Bruen* determined conclusively that "when the Second Amendment's plain text covers an individual's conduct, the

Constitution presumptively protects that conduct." 597 U.S. at 17. Once a plaintiff shows that his desired conduct is presumptively protected, it falls upon the government to "affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id.* at 19. The Court pronounced with absolute clarity that it is *the government* that bears the burden of justifying its firearm regulations. *See id.* at 24 ("The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation."); *id.* at 34 (explaining "the burden falls on respondents"); *id.* at 38 (holding that "respondents have failed to meet *their burden* to identify an American tradition" (emphasis added)). The Court in so holding expressly directed the courts to look to the "text, as informed by history" in determining whether a regulation is consistent. *Id.* at 19.

Specifically, when a challenged law regulates circumstance that existed at the time of the Founding, the lack of a distinctly similar regulation addressing that circumstance is evidence that the challenge law is unconstitutional. *Id.* at 26. For unique circumstances that did not exist at the time of the Founding, the Government may meet its burden by establishing a historical tradition through analogical analysis. *Id.* at 27. And for an analogue to be relevant, the Government must demonstrate "how" and "why" the historical regulations are distinctly similar to the modern-day restriction; whereby, the analogue must both address a comparable problem (the "why") and place a comparable burden on the rightsholder (the "how"). *Id.* at 28-29; *see also, Rahimi*, 144 S. Ct. at 1898; *Range*, 69 F.4th at

103; *id*. at 138-39 (Roth, J., dissenting). But a single historical analogue around the time of Founding of a state is not a tradition; rather, it is a mere aberration or anomaly, with no followers. *Heller*, 554 U.S. at 632 (declaring that "we would not stake our interpretation of the Second Amendment upon a single law . . . that contradicts the overwhelming weight of other evidence"). Even two or three historical analogues of the states around the time of Founding are at best a trend and not a tradition,[2] especially when short-lived.[3]

Most recently, the *Rahimi* Court considered whether a law *temporarily* prohibiting an individual from possessing a firearm was constitutional, where such deprivation is limited in duration, *only* occurring *after* a hearing where the defendant is provided due process, and when the court order includes a finding that the individual "represents a credible threat to the physical safety of [an] intimate partner." 144 S. Ct. at 1894.

In holding that "[a]n individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment" (*id*., at 1903), the Court reaffirmed the analysis provided in *Bruen* that "when a firearm regulation is challenged under the Second Amendment,

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[2] *See, Ezell v. City of Chicago*, 651 F.3d 684, 706 (7th Cir. 2011) (finding that two historical statutes "falls far short of establishing that [a regulated activity] is wholly outside the Second Amendment as it was understood" in 1791); *Illinois Ass'n of Firearms Retailers*, 961 F. Supp. 2d 928, 937 (N.D. Ill. 2014) ("[C]itation to a few isolated statutes—even to those from the appropriate time period—fall[s] far short of establishing that gun sales and transfers were historically unprotected by the Second Amendment.") (internal quotation marks omitted).

[3] *See Bruen*, 597 U.S. at 69 ("[T]hese territorial restrictions deserve little weight because they were . . . short lived.")

the Government must show that the restriction 'is consistent with the Nation's historical tradition of firearm regulation'."[4] *Id.,* at 1896 (citing *Bruen*, 597 U.S. at 24). The Court went on to declare:

> As we explained in *Bruen*, the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition. A court must ascertain whether the new law is "relevantly similar" to laws that our tradition is understood to permit, "apply[ing] faithfully the balance struck by the founding generation to modern circumstances" … Why and how the regulation burdens the right are central to this inquiry. For example, if laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations. Even when a law regulates arms-bearing for a permissible reason, though, it may not be compatible with the right if it does so to an extent *beyond what was done at the founding*. And when a challenged regulation does not precisely match its historical precursors, "it still may be analogous enough to pass constitutional muster." The law must comport with the principles underlying the Second Amendment, but it need not be a "dead ringer" or a "historical twin."

Id., at 1898 (citations omitted, emphasis added).

In finding that Rahimi could be temporarily prohibited as a result of surety and "going armed" laws, the Court emphasized that such was a result of the "why and how" analysis, as the "regulations target[ed] individuals who

[4] It bears noting that the Court focused on laws enacted around the time of the ratification of the Second Amendment in 1791. This is consistent with the Third Circuit's holding in *Lara v. Comm'r Pennsylvania State Police*, 91 F.4th 122, 134 (3d Cir. 2024)(*vacated by* 2024 WL 4486348 (U.S. Oct. 15, 2024)), that the Second Amendment must be "understood according to its public meaning in 1791," as well as the Fifth Circuit's holding in *United States v. Daniels*, 77 F.4th 337, 348 (5th Cir. 2023) (*vacated* by 144 S. Ct. 2707 (2024) that "[e]ven if the public understanding of the right to bear arms *did* evolve, it could not change the meaning of the Second Amendment, which was fixed when it first applied to the federal government in 1791."

physically threatened others," (*id.,* at 1899 (emphasis added)) and "reject[ed] the Government's contention that Rahimi may be disarmed simply because he is not 'responsible'." *Id.*, at 1903. Specifically, in relation to the surety laws, they permitted "magistrates to require individuals suspected of future misbehavior to post a bond…[and if] an individual failed to post a bond, he would be jailed." *Id.*, at 1900. In relation to "going armed" laws, these were laws "for punishing those who had menaced others with firearms;" whereby, if convicted, the individual could be punished by "forfeiture of the arms and imprisonment." *Id.,* at 1900-1901. The Court, in distinguishing *Bruen*'s analysis of the same surety and "going armed laws," explained that "Section 922(g)(8) restricts gun use to mitigate *demonstrated threats of physical violence*, just as the surety and going armed laws do." *Id.,* at 1901 (emphasis added).

Thus, like 18 U.S.C. § 922(g)(8), the historical surety and "going armed" laws only permitted the deprivation of one's Second Amendment rights *after* a hearing, providing for due process,[5] and then, only temporarily,[6]

[5] As the Court acknowledged, surety laws provided "significant procedural protections … [because before] the accused could be compelled to post a bond … a complaint had to be made to a judge or justice of the peace by 'any person having reasonable cause to fear' that the accused would do him harm or breach the peace. The magistrate would take evidence, and—if he determined that cause existed for the charge—summon the accused, who could respond to the allegations. Bonds could not be required for more than six months at a time, and an individual could obtain an exception if he needed his arms for self-defense or some other legitimate reason." *Id.*, at 1900.

[6] *Id.*, footnote 5, *supra*.

if at all, as the individual had to be offered an opportunity to post a bond or request exception for a purpose such as self-defense;[7] whereby, if the bond was posted or exception granted, the individual would continue to retain his Second Amendment rights.

With the proper analysis identified, we now turn towards applying it to 18 U.S.C. § 922(g)(3).

i. The Second Amendment's Plain Text Covers the Plaintiffs' Conduct

There can be no real dispute that Plaintiffs, including SAF's similarly situated members, are among the people protected by the Second Amendment, and that their desired conduct to be able to purchase, possess and utilize firearms and ammunition for purposes of self-defense in their homes and in public without violating the law (FAC, ¶¶ 14, 15, 71, 76, 87, 92), is protected by the Second Amendment.[8] As the Third Circuit, *en banc*, acknowledged, "[*Heller*] explained that 'the people' as used throughout the Constitution unambiguously refers to all members of the political community, not an unspecified subset . . . So the Second Amendment right, *Heller* said, presumptively belongs to all Americans." *Range*, 69 F.4th at 101 (internal citations and quotation marks omitted). Furthermore, the

[7] *Id.*, footnote 5, *supra*.

[8] As Plaintiffs previously noted, they are not advocating that laws relating to firearms and individuals *currently* under the influence are unconstitutional, nor is that at issue in the instant matter. The instant matter merely deals with whether an individual who uses a substance – in this case medical marijuana – may be subjected to a total bar on the exercise of their constitutional right to keep and bear arms, regardless of how frequently they utilize it.

Range court, in turning to whether 18 U.S.C. § 922(g)(1) regulates Second Amendment conduct, declared it to be an "easy question" and, in citing to *Heller's* pronouncement that the "Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding," held that "the Second Amendment's plain text covers Range's [desire "to possess a rifle to hunt and a shotgun to defend himself at home]." *Id.* at 103. It is so clear that the Second Amendment covers Plaintiffs' desired conduct, that Defendants' brief is devoid of discussion of this first step and resultantly, they should be deemed to concede it.

ii. Challenged Prohibitions must be Consistent with the Nation's Historical Tradition of Firearms Regulation

As addressed *supra*, the Supreme Court in *Bruen* and *Rahimi*, as well as, the Third Circuit in *Range*, have concluded unambiguously that the government bears the burden of demonstrating that a regulation on firearms falling within the protection of the plain text of the Second Amendment "is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Bruen*, 142 S. Ct. at 2127, 2130, 2135, 2138; *Rahimi*, 144 S. Ct. at 1896, 1897 *Range*, 69 F.4th at 101. Thus, we turn to the regulation in question, followed by the first question – whether 18 U.S.C. § 922(g)(3) addresses a general societal problem that has persisted since the 18th century.

1. 18 U.S.C. §§ 922(g)(3), (d)(3), 27 C.F.R. 478.11, and 27 C.F.R. 478.32

The challenged laws – 18 U.S.C. §§ 922(g)(3), (d)(3), 27 C.F.R. 478.11, and 27 C.F.R. 478.32 –set forth a regime of regulations that prohibit individuals who are "unlawful users of" a controlled substance from acquiring or possessing firearms[9] and ammunition. As marijuana is currently listed as a schedule 1 narcotic under the Controlled Substance Act ("CSA")[10], even if a state has legalized its consumption for medicinal purposes, as Pennsylvania has, individuals who choose to find relief for their symptoms using medical marijuana are considered "unlawful users" of a controlled substance for the purposes of the Gun Control Act ("GCA"), even if their use of medical marijuana does not coincide with their use of a firearm.

While the Government disingenuously contends throughout its brief that the challenged regulations only "impose a temporary prohibition on firearms possession and receipt during the time period that a person is *actively engaged in unlawful drug use*" (Doc. 33, pgs. 1, 21, 23, 24, 30, 32)(emphasis added), the truth of the matter, which the Government elects not to disclose to this Court, is that pursuant to 27 C.F.R. 478.11, an unlawful user includes those "even though the substance is not being used at the precise time the person seeks to acquire a firearm or receives or possesses a firearm." In fact, the "use or possession of a controlled

[9] As specified in the Amended Complaint and as used herein, Plaintiffs define "firearm" or "firearms" to mean handguns, rifles, and/or shotguns, including the frame or receiver of such, as set-forth by 18 U.S.C. § 921(a)(3).

[10] https://www.dea.gov/drug-information/drug-scheduling#:~:text=Schedule%20I%20drugs%2C%20substances%2C%20or,)%2C%20methaqualone%2C%20and%20peyote.

substance…within the past year" results in the individual constituting an unlawful user and ATF/FBI actively deny anyone seeking to purchase a firearm, if that person has been contended or found to be a user of marijuana within the past year, including the mere approval into a state's medical marijuana program, in the absence of any evidence that the individual has even utilized marijuana. Worse yet, where someone is charged with a drug-related offense, ATF/FBI contend that the individual is prohibited for a one-year period of time; however, if that person is thereafter convicted, which may be *YEARS* later, ATF/FBI contend that the individual is now additionally prohibited for a one-year period of time from that date of conviction. Thus, contrary to the Government's assertion, Plaintiff Greene would not "regain his right to possess a firearm simply by ending his drug [use]." Doc. 33, pg. 24.

It is also very interesting the Government elects not to inform this Court that pursuant to Section 922(g)(3) and Section 478.11, if an individual has a prescription for controlled substance, that individual may purchase, posses, and utilize firearms and ammunition, even while under the influence of that drug. So, for example, an individual could be under the influence of dilaudid, diamorphine, hydrocodone, morphine and/or oxycodone,[11] and still be able to possess and utilize firearms for any purpose. What is perhaps most interesting in this regard is that the Government contends if Plaintiffs' challenge is successful, it will no longer be able to enforce the law in relation to users of "cocaine, heroin, fentanyl, or

[11] https://www.dea.gov/drug-information/drug-scheduling

methamphetamines" and that people on "cocaine, heroin, fentanyl, and methamphetamines…present as much danger to the public" as Plaintiffs would in their use of marijuana (Doc. 33, pg. 22); yet, all of the listed drugs can either be prescribed or are derivatives of prescribable drugs. *See,* https://www.alabamapublichealth.gov/pharmacy/opioid-and-heroin.html. Thus, the Government can hardly espouse the "danger to the public" that it contends exists, when it allows individuals, pursuant to a prescription, not just to purchase, possess, and utilize firearms and ammunition while in the possession of one of these drugs, but to be actively intoxicated by these medications at the time the person is purchasing, possessing, or utilizing firearms and ammunition.

Having reviewed the challenged laws, we now turn to whether those laws address a general societal problem that has persisted since the 18th century.

2. Section 922(g)(3) addresses a general societal issue that has persisted since the 18th century

As addressed thoroughly in the FAC, ¶¶ 25-33, marijuana was well known to our Founding Fathers and even utilized for medical purposes prior to the start of the Revolutionary War and through the 19th Century. Although any concern over the use of firearms and marijuana would have existed during this time and the Government even declares that "[t]he founding generation recognized that those who regularly became intoxicated threatened the social and political order" (Doc. 33, pg. 19), there existed *no restrictions* on the possession and use of marijuana and firearms until 1968. FAC, ¶ 45. And the Government – upon whom the burden lies –

throughout its 35-page brief, points to *no* law, prior to the Gun Control Act of 1968 ("GCA"). *See*, Doc. 33, pgs. 1-2, acknowledging that Congress did not separate guns and drugs until the GCA. Moreover, the Government states numerous times, in different ways, that "[m]arijuana's physical and mental effects make it dangerous for a person to handle firearms and also impair a person's judgment" (*id*., pgs. 1, 13, 19, 22, 30, 32-33, 35); thereby, conceding that the same societal issue existed in the 18th and 19th Centuries and yet, no action was taken to restrict one's Second Amendment rights, until 1968. As *Bruen* directed, when there does not exist a "similar historical regulation addressing that problem…the challenged regulation is inconsistent with the Second Amendment." 142 S. Ct. at 2131.

Furthermore, there is no evidence of record to substantiate the Government's contention that "[m]arijuana's physical and mental effects make it dangerous for a person to handle firearms and al impair a person's judgment, including judgment about whether to use firearms" (Doc. 33, pg. 1) and a recent review of the currently available data from 2010-2020 led Nicholas Goldrosen to conclude that "[t]here is no evidence of a statistically significant treatment effect of either recreational or medical marijuana legalization on firearms deaths, homicides, or suicides." Nicholas Goldrosen, *Subtracting 420 from 922: Marijuana Legalization and the Gun Control Act After Bruen*, 21 Ohio St. J. Crim. L. 127, 140 (2024). Perhaps most damning for the Government is his conclusion that "there is no evidence of an increased danger posed by medical legalization, *nor that medical marijuana users are dangerous persons*." *Id*. at 135 (emphasis added).

3. In the alternative, the Government fails to point to any analogous laws

In the alternative, to the extent this Court finds, contrary to even the Government's concession, discussed *supra*, that marijuana's effect on individuals, who possessed firearms in the 18th Century was somehow not a societal issue that went unregulated until 1968, the Government fails to identify, under the appropriate analysis, any historical tradition from the Founding era.

A. The Founding Era Is The Appropriate Timeframe

While the Government asks this Court to ignore the *Heller*, *Bruen,* and *Rahimi* Court's binding precedent by analyzing its contended, allegedly analogous laws from well outside of the Founding Era (Doc. 33, pgs. 17-19), *Bruen* directs that, in evaluating whether there is a "historical tradition" capable of supporting a given regulation, evidence from the Founding era is the most decisive, while evidence from around the "mid- to late- 19th century" is at most "secondary." *Bruen*, 142 S. Ct. at 2137. "19th-century evidence [is] treated as mere confirmation of what the Court thought had *already been established*" in the Founding era. *Id*. Hence, evidence from the Reconstruction period or later is rarely of any relevance in determining whether a challenged regulation has a historical analogue. Rather, the date of the Second Amendment's enactment in 1791 is the relevant time to "peg[]… the public understanding of the right." *Id*.; *see also*, *Gamble v. United States*, 139 S. Ct. 1960, 1975–76 (2019) (explaining that *Heller* sought to determine "the public understanding in 1791 of the right codified by the Second Amendment").

While the Supreme Court in *Bruen* mentioned a broad range of historical laws from outside the immediate Founding period,[12] the Court has repeatedly stated that it is the Founding Era that informs the discussion. "As we recognized in *Heller* itself, because post-Civil War discussions of the right to keep and bear arms 'took place 75 years after the ratification of the Second Amendment, they do not provide as much insight into its original meaning as earlier sources.' 554 U. S. at 614; cf. *Sprint Communications Co.*, 554 U. S. 269, 312 (2008) (Roberts, C. J., dissenting) ('The belated innovations of the mid- to late-19th-century courts come too late to provide insight into the meaning of [the Constitution in 1787]')." *Bruen*, 597 U.S. at 36–37 (citations cleaned up).

In its decision in *Lara*, 91 F.4th at 134, the Third Circuit, noting that "*Bruen* has already instructed that historical evidence from 1791" is of key importance, disregarded a collection of statutes from during and after the Reconstruction period, noting that they were "enacted at least 50 years after the ratification of the Second Amendment." More recently, following *Bruen*, the Supreme Court in *Rahimi* applied its own historical-tradition test, briefly discussing the development of English law before finding a firearm restriction valid by analogy to two distinct legal regimes established in "the 1700s and early 1800s," very close to the time of the Founding. 144 S. Ct. at 1899.

[12] These were historical laws that were raised in the briefing before the Court.

Thus, contrary to the Government's contention, the Court's binding precedent establishes that this Court should only consider historical, analogous laws from the Founding Era.

B. The Challenged Law Are Not Analogous To Intoxication Laws

Initially, the Government contends that the challenged laws are analogous to "those under the influence of alcohol." Doc. 33, pgs. 19-25.

As addressed *supra*, it is important that the proper "how" and "why" analysis be applied, as the analogue must both address a comparable problem (the "why") and place a comparable burden on the rightsholder (the "how"). *Bruen*, 597 U.S. at 28-29. And as *Rahimi* reminded us, even where "a law regulates arms-bearing for a permissible reason…it may not be compatible with the right if it does so to an extent *beyond what was done at the founding*." 144 S. Ct. at 1898.

First, in regards to the challenged laws being analogous to the laws cited by the Government to those under the influence, beyond the fact that, as addressed *supra*, that most are prior to or well beyond the Founding Era and marijuana was well known and utilized in the Founding Era and yet, the Founding Era did not restrict, in any manner, the possession of firearms by those under the influence of marijuana, in applying the "how" and "why" analysis it is clear that none of the cited laws are anywhere close to being analogous.

While the "why" of allegedly protecting people and property would, at first blush, seemingly be aligned, the "why" house of cards comes crashing down, when,

as addressed *supra*, the Government contends that individuals without a prescription for a drug and merely in possession of that drug, pose a "danger to the public" but those with a prescription and actively under the influence of that drug, do not pose a "danger to the public" in possession and use of firearms and ammunition. Of course, as Nicholas Goldrosen concluded, "there is no evidence of an increased danger posed by medical legalization, *nor that medical marijuana users are dangerous persons*." Nicholas Goldrosen, *Subtracting 420 from 922: Marijuana Legalization and the Gun Control Act After Bruen*, 21 Ohio St. J. Crim. L. at 135 (emphasis added).

Regardless, even if one turns a blind eye to the fact that the Government, in enacting the challenged laws, is not truly concerned with the danger to the public with individuals possessing and utilizing firearms while under the influence of drugs, the Government cannot escape the un-comparable burden placed on those, pursuant to the challenged laws, in comparison to the laws cited. Specifically, beyond being too early or late in time, every single law cited to by the Government addresses restrictions on individuals who *are* under the influence. Doc. 33, pgs. 19-25. Not one of them limited, *in any manner*, an individual *prior to* becoming intoxicated or merely because the individual purchased and/or possessed alcohol. None divested the individual of his possession of firearms, even during periods of intoxication. And the Government admits all of this, declaring that the "historical laws understandably allowed alcohol drinks to possess firearms, limiting their use only during period of intoxication." Doc. 33, pg. 25. As Plaintiffs have consistently

stated, they are not seeking to be able to utilize firearms and ammunition *while* under the influence; rather, they are merely seeking the ability to maintain possession of their firearms and ammunition and have the ability to utilize them when not under the influence of marijuana.

The other insurmountable issue for the Government in relation to its cited laws is that not one of them divested the individual of possession of his firearms and ammunition for a period of time or prohibited the individual from utilizing his firearms beyond the period of drunkenness, as the Government concedes, which was addressed *supra*. While the Government contends that the "how" is met because the challenged laws only "impose a temporary restriction on possession or receipt" (Doc. 33, pg. 23), as addressed *supra*, the challenged laws deprive an individual for, *at a minimum*, a one-year period of time, since use of the controlled substance. Not one of the laws cited to by the Government deprived the individual in advance of becoming intoxicated or beyond the individual's period of drunkenness.

As the *Rahimi* Court declared, even if a law regulates arms-bearing for a permissible reason (*i.e.* "why"), it is unconstitutional "if it does so to an extent beyond what was done at the founding." 144 S. Ct. at 1898. And here, there can be no dispute that the challenged laws regulate the purchase, possession, and use of firearms and ammunition, well beyond that what was done at founding, as conceded by the Government.

C. The Challenged Law Are Not Analogous To Laws Disarming Those Deemed Dangerous

Grasping at straws, the Government seeks to hang its hat on laws – including ones it notes are "repugnant," which disarmed groups of people based on religion and race – based on dangerousness to save the challenged laws (Doc. 33, pgs. 25-31), but once again, not only fails to cite to any analogous laws from the relevant time-period, but also, argues a vague, undefined "dangerous test" [13] that has yet to have been adopted by any court and is no different than the Government's prior "responsible" test, which the *Rahimi* Court outright "reject[ed]." 144 S. Ct. at 1903.

The death knell for the Government's cited laws right out the gate, is that none of the historical evidence suggests that when the Founders ratified the Second Amendment, they authorized Congress to disarm anyone it deemed dangerous. To permit the legislature to have unchecked power to designate a group of persons as "dangerous" and thereby disarm them, is directly contrary to everything our Founders stood for and what they sought to protect against in enshrining our rights in the Constitution. In this vein, one must remember the context of the Second Amendment – our Founders had just dealt with a king, who attempted to disarm them, resulting in their taking up arms against him, as they deemed him

[13] It is quite interesting that the Government argues for a dangerousness standard/test, when it was the Government that argued *against* a dangerousness standard in *Range*. *See* 69 F.4th at 104 n.9., declaring that "[t]he Government replies that 10 of the 15 judges in *Binderup* and the Court in *Holloway* and *Folajtar* rejected dangerousness or violence as the touchstone."

"dangerous" to their continued, independent existence. *See*, Stephen P. Halbrook, "The Arms of All The People Should Be Taken Away," (January 1, 1989), *available at*, https://www.independent.org/publications/article.asp?id=1422.

Even if, *arguendo*, this Court were to nevertheless consider the "how" and "why," while at first blush, the Government's cited laws targeting "dangerous" persons might appear relevant, the historical context compels the opposite conclusion, as the Second Amendment was the result of English resistance to "dangerous" person laws, as the Founding generation sought to *prevent* being disarmed by those, they deemed dangerous. *See*, *Rahimi*, 144 S. Ct. at 1934-1935 (Thomas, J., dissenting). Moreover, while other laws address the English concern about preventing insurrection and armed rebellion, the challenged laws lack any relevancy to such concern, as they are only concerned with preventing unlawful users of controlled substances.

Furthermore, the Government attempts to argue that constitutional proposals *not* adopted, should somehow, someway operate to limit the language actually ratified? Doc. 33, pg. 27. What is perhaps the most troubling is that the Government does not even attempt to endeavor, in good faith, to apply the "how" and "why" analysis to the myriad of laws that it cites in a shotgun-type approach; the same laws they cited to in *Rahimi* and which the Court did not find relevant. *Rahimi*, 144 S. Ct. at 1899-1901, 1933-1938. Similarly, the Government does not even attempt to explain how the challenged regulations could be for public safety reasons, when it explicitly permits an individual, with a prescription and actively

under the influence of that drug – for example, dilaudid, morphine, or oxycodone – to not only possess, but also utilize, firearms and ammunition.

The Government also compares medical marijuana users to the mentally ill. Doc. 33, pg. 26. But this comparison fails to prove convincing. As the Fifth Circuit court noted, the Founding Era believed drunkenness to be a "temporary fit of madness" or "temporary insanity." *Daniels*, 77 F.4th at 349. However, even if the same were accepted for marijuana, "that comparison could justify disarming a citizen only while he is in a state comparable to lunacy. Just as there was no historical justification for disarming a citizen of sound mind, there is no tradition that supports disarming a sober citizen who is not currently under an impairing influence." *Id*.

D. Congress Does Not Believe Marijuana Users Are Inherently Dangerous and Not Only Are Plaintiffs Not Engaged in Criminal Conduct but The Congress' Appropriation Has Removed Medical Marijuana From the Controlled Substances Act

While the Government argues that, as marijuana is still putatively unlawful at the federal level, Plaintiffs are subject to the alleged general belief of Congress that drug users are inherently dangerous, even if, *arguendo*, our Congress has unfettered power to label as dangerous anyone it deems fit and such a legislative determination could support a prohibition on the exercise of Second Amendment rights, this suggestion is itself doubtful given that 38 states have legalized medical marijuana (11 FAC at ¶ 57) and since 2015, Congress has annually renewed a provision in the appropriations acts that *prohibits* the Department of Justice from

using appropriated funds to prevent certain states, including Pennsylvania, and territories, along with the District of Columbia, from "implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana." *See,* Pub. L. No. 117–328, 136 Stat. 4561 (2022). Thus, it is abundantly clear that the U.S. Congress, by preventing the DOJ for taking any action against a state implementing a medical marijuana scheme, wants to permit individuals to utilize medical marijuana and does not consider them to be breaking the law, when using it for medical purposes. Otherwise, there would be no reason for the appropriation restriction.

Perhaps even more interesting, the same Government agencies (excluding FBI) have previously argued that Congress' defunding of the firearms relief provision of 18 U.S.C. § 925(c) through an appropriations bill, "effectively repealed § 925(c)." *Kelerchian v. Bureau of Alcohol, Tobacco, Firearms and Explosives, et al.*, 2:2)-cv-253, (E.D. Pa.), doc. 34, pg.15 (*see also*, pg. 1, declaring "Congress repealed that provision [through the appropriations bill] in 1992"; pg. 4, declaring "Congress revoked § 925(c) in 1992 through a ban on ATF appropriations"). And the Government was successful in that argument. *See*, *Kelerchian v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 655 F. Supp. 3d 334, 347, fn. 4 (E.D. Pa. 2023) (declaring that "Congress may amend statutory provisions through an appropriations law, as here"). As the Supreme Court previously declared, Congress may "amend substantive law in an appropriations statute, as long as it does so clearly." *Robertson v. Seattle Audubon Soc.*, 503 U.S. 429, 440 (1992). In this

matter, it would seem that the Congress clearly amended the Controlled Substance Act, 21 U.S.C. § 812, by removing, *in toto*, marijuana from the schedules, since any scheduled drug requires a prescription and instead of allowing doctors to prescribe marijuana in all the states that have medical marijuana programs, it allowed those states to provide medical marijuana in the absence of a prescription. Thus, assuming the Government was being forthright in its arguments to the *Kelerchian* court, it would appear that the Government would have to take the position that the Congress has repealed the classification of marijuana and thus, it would be an impossibility for Plaintiffs Greene or Irey to be "engaged in criminal conduct." Doc. 33, pg. 34.

Moreover, *arguendo*, even if this Court were to disagree, although the Government attempts to lump the Plaintiffs together, as clearly reflected in the FAC, ¶¶ 15, 78, 86-92, Plaintiff Irey is not currently utilizing marijuana and has not obtained his MMID, as he does not want to lose his Second Amendment protections, because of Defendants' active enforcement of the challenged laws. Thus, it is a legal impossibility for him to be engaged in criminal conduct, simply by him espousing his desire to obtain an MMID and utilize medical marijuana for his chronic pain – which is protected speech – unless the Government has abridged in an Orwellian fashion the First Amendment to the U.S. Constitution as well…

E. The *Rahimi* Death Knell For The Government

The Court's holding in *Rahimi* could not be worse for the Government in relation to the challenged laws. As discussed *supra*, the *Rahimi* Court only found

Section 922(g)(8) to be constitutional, because, like the historical surety and "going armed" laws, it provided due process and then was only temporary. Specifically, in relation to due process, the *Rahimi* Court declared: "Second Amendment right *may only be burdened* once a defendant has been found to pose a credible threat to the physical safety of others." 144 S. Ct. at 1902 (emphasis added). In relation to it being temporary, the Court emphasized that it was consistent with the surety laws, because it "only prohibits firearm possession so long as the defendant 'is' subject to a restraining order." *Id.*

However, in relation to the challenged laws, neither the statutory nor regulatory law provide for *any* form of due process, either *pre-* or *post*-deprivation, and the prohibition is not just a permanent deprivation for as long as the individual utilizes a controlled substance, but rather, pursuant to the enacted definition of an unlawful user in Section 478.11, additionally prohibits the individual from purchasing, possessing, and utilizing firearms and ammunition for 1 year after last use or 1 year since conviction, whichever is later. Moreover, due to the lack of due process, there exists no nexus between an unlawful user of a controlled substance and the establishment that the individual poses a physical threat to another (*i.e.* dangerousness of the individual). Furthermore, in performing the "why and how" analysis, it was the combination of due process protections being provided, where a judicial determination was made that the individual posed a threat to another, *along with* the temporary nature of the deprivation that resulted in Section

922(g)(8)'s constitutionality; none of which is provided for in relation to Section 922(g)(3).

F. The Fifth Circuit's *Connelly* Decision

Shortly after *Rahimi* was decided, the Fifth Circuit in *Connelly*, 117 F.4th 269, addressed the constitutionality of Sections 922(g)(3) and (d)(3), pursuant to *Rahimi*, in relation to a non-violent marijuana smoker who was indicted by a grand jury for violations of Sections 922(g)(3) and (d)(3) due to the police breaking up a disturbance at her residence caused by a neighbor. Connelly admitted to the officers that she used marijuana as a sleep aid and a subsequent sweep of her home revealed drug paraphernalia, as well as, firearms and ammunition. Connelly levelled *as-applied* and facial challenges to Sections 922(g)(3) and (d)(3), which were both granted by the district court. The Fifth Circuit affirmed the *as-applied* challenge but reversed as to the facial challenges.[14]

First, in light of the *Rahimi decision*, the Fifth Circuit noted,

> *Rahimi 2024* gives the following guidance for determining whether a regulation presents a sufficiently historically similar 'why': 'if laws at the Founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category.' And it provides the below for determining whether a challenged law employs a sufficiently historically similar 'how': 'a law . . . may not be compatible with the right if it [is regulated] to an extent beyond what was done at the Founding[,]' '*even when [that] law regulates arms-bearing for a permissible reason.*'

[14] It does not appear that Connelly argued overbreadth in relation to her facial challenge.

Connelly, 117 F.4th at 274 (emphasis original) (internal citations omitted).

The court concluded that Connelly was a member of the political community and has a presumptive right to bear arms, "[m]arijuana user or not." *Id.* The Government's arguments for the constitutionality of the challenged statutes were summarized into three broad categories "(1) laws disarming the mentally ill, (2) laws disarming 'dangerous' individuals, and (3) intoxication laws" – the same broad categories the Government advances in this matter – which the Fifth Circuit outright rejected *as-applied*.

Finding that the Founding Era believed drunkenness was a "temporary fit of madness" and likening marijuana intoxication to "short-term mental impairment," the court concluded that "there is no historical justification for disarming a sober citizen not presently under an impairing influence." *Id.* at 276. "The Founders purportedly institutionalized 'lunatics' and stripped them of firearms yet allowed alcoholics to carry firearms while sober (and possess them generally)." *Id.* More succinctly stated "[w]hile intoxicated, [Connelly] *may* be comparable to a severely mentally ill person whom the Founders would disarm. But, while sober, she is like a repeat alcohol user between periods of intoxication, whom the Founders would *not* disarm." *Id.* at 277.

The Fifth Circuit concluded, as it relates to the laws disarming "dangerous" individuals,

> [t]he government identifies no class of persons at the Founding who were "dangerous" for reasons comparable to marijuana users. Marijuana users are not a class of political traitors, as English Loyalists were perceived to

> be. Nor are they like Catholics and other religious dissenters who were seen as potential insurrectionists.
>
> And § 922(g)(3) is not limited to those judicially determined to have had a history of violent behavior (or a propensity to engage in same) like those persons discussed in *Rahimi 2024*—not all members of the set "drug users" are violent. As applied, the government has not shown how [Connelly]'s marijuana use predisposes her to armed conflict or that she has a history of drug-related violence.

Id. at 278-279. Indeed, the Court identified that "[t]he government provides no meaningful response to the fact that neither Congress nor the states disarmed alcoholics, the group most closely analogous to marijuana users in the 18th and 19th centuries." *Id*. at 279.

And the Government's proffered laws pertaining to intoxication fared no better.

> Boiled down, § 922(g)(3) is much broader than historical intoxication laws. *These laws may address a comparable problem*—preventing intoxicated individuals from carrying weapons—*but they do not impose a comparable burden on the right holder*. In other words, they pass the "why" but not the "how" test. Taken together, the statues provide support for banning the *carry* of firearms *while actively intoxicated*. Section 922(g)(3) goes much further: it bans *all* possession, and it does so for an undefined set of "user[s]," even while they are not intoxicated.

Id. at 281-282 (internal citations omitted) (emphasis added and original).

G. Facial and As-Applied Challenges

First and foremost, while the Government contends that the Supreme Court "has not recognized an 'overbreadth' doctrine outside the limited context of the First

Amendment" (Doc. 33 pg. 13), beyond the statement being false[15] and failing to address the Court's declaration that "[e]ven though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental *personal liberties* (*Aptheker*, 378 U.S. at 508) (emphasis added), it fails to provide any argument as to how the overbreadth doctrine does not apply to the Second Amendment or how the judiciary can constitutionally analyze different provisions of the Constitution differently than others, absent explicit language in the provision. No differently, the overbreadth doctrine applies to all constitutionally protected rights and liberties.

The "overbreadth doctrine instructs a court to hold a statute facially unconstitutional even though it has lawful applications, and even at the behest of

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[15] *See e.g.*, *Berger v. New York*, 388 U.S. 41, 58-60 (1967) (holding a state statute authorizing eavesdropping pursuant to a court order but on less than probable cause for a two-month period, with no termination provision or after-the-fact notice, is contrary to the Fourth and Fourteenth Amendments); *New York v. Ferber*, 458 U.S. 747, 772-72 (1982) (declaring that substantial overbreadth claims can be successfully mounted where "applied to statutory challenges which arise in defense of a criminal prosecution as well as civil enforcement or actions seeking a declaratory judgment."); *H.L. v. Matheson*, 450 U.S. 398, 427 fn. 2 (1981) (Marshall, J., dissenting) ("Because of the risk that exercise of personal freedoms may be chilled by broad regulation, we permit facial overbreadth challenges without a showing that the moving party's conduct falls within the protected core."); *Griswold v. Connecticut*, 381 U.S. 479, 485 (1965) (holding, in relation to a law forbidding the use of contraceptives, "that a governmental purpose to control or prevent activities … may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."); *Aptheker v. Sec'y of State*, 378 U.S. 500, 505, 514 (1964) (declaring that the Subversive Activities Control Act "sweeps too widely and too indiscriminately" and "is patently not a regulation narrowly drawn to prevent the supposed evil," by restricting the right to travel and thus, abridging due process liberties guaranteed by the Fifth Amendment.); *United States v. Reese*, 92 U.S. 214 (1876) (utilizing the overbreadth doctrine in relation to the Fifteenth Amendment).

someone to whom the statute can be lawfully applied." *United States v. Hansen*, 599 U.S. 762, 769 (2023). The basis for the doctrine is that "[o]verbroad laws may deter or chill constitutionally protected [rights]." *Id.* at 769-770. Or stated slightly differently, government proscriptions may not utilize "means which sweep unnecessarily broadly and thereby invade the area of *protected freedoms*." *Zwickler v. Koota*, 389 U.S. 241, 250 (1967) (emphasis added). To mount an overbreadth challenge, "the plaintiff must establish injury under a particular provision of a regulation that is validly applied to its conduct, then assert a facial challenge, under the overbreadth doctrine, to vindicate the rights of others not before the court under that provision." *SEIU, Local 5 v. City of Hous.,* 595 F.3d 588, 598 (5th Cir. 2010) (internal quotation omitted). And "[i]f the challenger demonstrates that the statute 'prohibits a substantial amount of [a] protected [right]' relative to its 'plainly legitimate sweep,' then society's interest in [that protected right] outweighs its interest in the statute's lawful applications, and a court will hold the law facially invalid." *Hansen*, 599 U.S. at 770.

In this matter, in relation to the facial challenge, Plaintiffs contend that Section 922(g)(3)'s lawful application sweeps far too broadly, by including medical marijuana users, whom, as discussed *supra*, even the Congress does not believe should be precluded from obtaining and utilizing medicinal marijuana. Yet, by using medicinal marijuana, the Defendants contend that the individual's Second Amendment protections are, *in toto*, eviscerated, until one year after last use or one year from conviction, whichever is later. As such, society's interest in our Second

Amendment protections outweighs Section 922(g)(3)'s lawful applications and thus, the challenged laws should be held facially unconstitutional, as it sweeps too broadly by including medicinal marijuana.

In relation to Plaintiffs' as-applied challenge, even if, *arguendo*, this Court were to find that Plaintiffs have not successfully mounted a facial challenge, Plaintiffs contend that the challenged laws, as applied to them, are unconstitutional, as they include medicinal marijuana users, which results in the Government's contention that Plaintiff Greene is prohibited, *in toto*, from purchasing, possessing, and utilizing firearms and ammunition for one year from the last time he utilizes marijuana and Plaintiff Irey would lose his Second Amendment protections if he were to procure an MMID or utilize marijuana. And for clarity, Plaintiffs are not arguing that laws preventing intoxicated individuals from possessing or using firearms while intoxicated may not survive constitutional scrutiny. That is not at issue in the instant matter. Plaintiffs are arguing that a flat ban on their possession and use of firearms because they either use or want to use medical marijuana pursuant to Pennsylvania law to treat their symptoms is unconstitutional. To say that an individual loses their right to keep and bear arms for self-defense and other lawful purposes merely because they may be "intoxicated" at some point in time, by virtue of using a lawful medicine pursuant to state law, eludes logic.

c. In the Alternative, Plaintiffs Request an Opportunity to File an Amended Complaint

In the alternative, in the event this Court grants Defendants' Motion to Dismiss, consistent with the Third Circuit's precedent that where a district court dismisses a case, the court must allow the plaintiff to file an amended complaint, "unless doing so would be inequitable or futile," Plaintiffs respectfully request an opportunity to file an amended complaint. *Fletcher-Harlee Corp.*, 482 F.3d at 251.

VI. CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss should be denied and as this matter involves strictly a legal issue, this Court should advance its decision to a trial on the merits.

Dated: October 28, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

On October 28, 2024, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Western District of Pennsylvania, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

_____

Joshua Prince, Esq.
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