

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ROBERT ARAGON, et al.,)	
)	
Plaintiffs,)	
)	No. 1:20-cv-00325-MV-JHR
v.)	
)	
MICHELLE LUJAN GRISHAM,)	
Governor of New Mexico, in her official)	
capacity, et al.,)	
)	
Defendants.)	

**NATIONAL SHOOTING SPORTS FOUNDATION’S MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFFS’ MOTION FOR A
TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

National Shooting Sports Foundation (“NSSF”) hereby moves for leave to file an amicus curiae brief in support of Plaintiffs’ motion for a temporary restraining order and preliminary injunction. NSSF is the national trade association for the firearms, ammunition, and hunting and shooting sports industry. NSSF’s membership includes over 9,000 federally licensed firearm manufacturers, distributors, and retailers, as well as companies selling shooting and hunting-related goods and services, many of which are incorporated or conduct business in New Mexico.

NSSF seeks leave to file the attached brief to assist the Court in addressing the impact of New Mexico’s COVID-19 Order on New Mexico firearm retailers and law-abiding citizens. NSSF Counsel requested consent to this motion from counsel for Plaintiffs and counsel for Defendants. Plaintiffs consent. Defendants do not.

ARGUMENT

Plaintiffs’ motion challenges Defendants’ enforcement of COVID-19 Orders to close firearm retailers as “non-essential” businesses that are not permitted to operate for the duration of

the COVID-19 public health crisis. Notwithstanding the fact that firearm retailers provide essential services, Defendants have halted all firearm and ammunition commerce in the State, infringing on the Second Amendment rights of New Mexico citizens and its firearm retailers. This Order uniquely, and substantially, impacts NSSF's membership; therefore, NSSF seeks leave to file the attached amicus curiae brief to assist the Court in its ruling on the Plaintiffs' motion for a temporary restraining order and preliminary injunction.

Although there is no specific procedural rule permitting amicus briefs in federal district court, "[t]he decision to accept or reject an amicus curiae brief is left to the Court's sound discretion." *Cayaditto v. United States*, No. 04-1261 BB/LFG, 2005 WL 8157361, at *1 (D.N.M. Dec. 28, 2005). An amicus curiae brief should be accepted when it "may provide additional information for the trial court to consider in determining the issue at hand ." *See id.* The attached amicus curiae brief would provide additional information for the Court to consider because it would substantially advance this Court's contextual understanding by addressing the essential nature of firearm retailers and the Second Amendment right to sell firearms.

NSSF was formed in 1961, and for nearly 60 years its mission has been "to promote, protect and preserve hunting and the shooting sports" on behalf of its member firearm and ammunition manufacturers, distributors, and retailers. The COVID-19 Orders substantially hinder NSSF's mission and prohibit its members from engaging in firearm and ammunition commerce within the State. Because of NSSF's long history of advocating for its membership and for the Second Amendment rights of all citizens, it respectfully represents that it can provide this Court with a unique perspective on the issues before it.

CONCLUSION

For the foregoing reasons, National Shooting Sports Foundation requests that it be permitted to file the attached amicus curiae brief in support of the Plaintiffs' motion for a temporary restraining order and preliminary injunction.

NATIONAL SHOOTING SPORTS FOUNDATION,

By its Attorneys,

THE BARNETT LAW FIRM, P.A.

/s/ Jordy L. Stern

Jordy L. Stern

Colin L. Hunter

The Barnett Law Firm, P.A.

1905 Wyoming Boulevard NE

Albuquerque, NM 87112

(505) 275-3200

jordy@theblf.com

BRADLEY ARANT BOULT CUMMINGS LLP

John Parker Sweeney*

James W. Porter III*

Connor M. Blair*

Bradley Arant Boulton Cummings LLP

1615 L Street, N.W., Suite 1350

Washington, DC 20036

(202) 719-8216

jsweeney@bradley.com

jporter@bradley.com

cblair@bradley.com

**Pro hac vice application forthcoming*

CERTIFICATE OF SERVICE

I, Jordy L. Stern, CERTIFY that, on April 27, 2020, I filed the foregoing using CM/ECF, which causes the parties of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Jordy L. Stern
Jordy L. Stern

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ROBERT ARAGON, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 1:20-cv-00325-KK-JHR
)	
MICHELLE LUJAN GRISHAM,)	
Governor of New Mexico, in her official)	
capacity, et al.,)	
)	
Defendants.)	

**PROPOSED BRIEF OF THE NATIONAL SHOOTING SPORTS FOUNDATION, INC.
AS AMICUS CURIAE IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY
RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

THE BARNETT LAW FIRM, P.A.
Jordy L. Stern
Colin L. Hunter
The Barnett Law Firm, P.A.
1905 Wyoming Blvd NE,
Albuquerque, NM 87112
(505) 275-3200
jordy@theblf.com
colin@theblf.com

BRADLEY ARANT BOULT CUMMINGS LLP
John Parker Sweeney*
James W. Porter III*
Connor M. Blair*
Bradley Arant Boulton Cummings LLP
1615 L Street, N.W., Suite 1350
Washington, DC 20036
(202) 719-8216
jsweeney@bradley.com
jporter@bradley.com
cblair@bradley.com
*Pro hac vice application being filed

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTEREST OF AMICUS 1

INTRODUCTION 2

ARGUMENT 4

 I. New Mexico may not ban firearm sales by forcing Firearm Retailers to close..... 4

 A. Firearm Retailers are essential businesses under the COVID-19 Orders, and
 deeming them non-essential lacks a rational basis and is arbitrary. 4

 B. The Second Amendment prohibits New Mexico from banning firearm sales by
 forcing Firearm Retailers to close..... 9

CONCLUSION..... 16

CERTIFICATE OF SERVICE 18

TABLE OF AUTHORITIES

Cases

<i>A.N. by & through Ponder v. Syling</i> , 928 F.3d 1191 (10th Cir. 2019)	8
<i>Adams & Boyle, P.C. v. Slatery</i> , No. 3:15-CV-00705, 2020 WL 1905147 (M.D. Tenn. Apr. 17, 2020).....	15
<i>Ass’n of Firearms Retailers v. City of Chicago</i> , 961 F. Supp. 2d 928 (N.D. Ill. 2014)	10
<i>Bateman v. Perdue</i> , 881 F. Supp. 2d 709 (E.D.N.C. 2012).....	13
<i>Carey v. Population Servs., Int’l</i> , 431 U.S. 678 (1977).....	11
<i>City of Cleburne v. Cleburne Living Ctr.</i> , 473 U.S. 432 (1985).....	8
<i>Civil Rights Defense Firm, P.C. v. Wolf</i> , -- A.3d --, 2020 WL 1329008 (Pa. Mar. 22, 2020).....	12
<i>County of Sacramento v. Lewis</i> , 523 U.S. 833 (1998).....	8
<i>Dias v. City & Cty. of Denver</i> , 567 F.3d 1169 (10th Cir. 2009)	8
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008).....	<i>passim</i>
<i>Ezell v. City of Chicago</i> , 651 F.3d 684 (7th Cir. 2011)	9
<i>First Baptist Church v. Kelly</i> , No. 20-1102-JWB, 2020 WL 1910021 (D. Kan. Apr. 18, 2020)	14
<i>In re Abbott</i> , No. 20-50296, 2020 WL 1911216 (5th Cir. Apr. 20, 2020).....	15
<i>Jackson v. City & County of San Francisco</i> , 135 S. Ct. 2799 (2015).....	16
<i>Jackson v. City and County of San Francisco</i> , 746 F.3d 953 (9th Cir. 2014)	10

Jacobson v. Commonwealth of Massachusetts,
197 U.S. 11 (1905)..... 13, 14, 15, 16

Lovell v. City of Griffin, Ga.,
303 U.S. 444 (1938)..... 11

Luis v. United States,
136 S. Ct. 1083 (2016)..... 10

Lynchburg Range & Training, LLC v. Northam,
CL2000333 (City of Lynchburg Cir. Ct. Apr. 27, 2020)..... 13

McDonald v. City of Chicago, Ill.,
561 U.S. 742 (2010)..... 15, 16

On Fire Christian Ctr., Inc. v. Fischer,
No. 3:20-CV-264-JRW, 2020 WL 1820249 (W.D. Ky. Apr. 11, 2020) 14

Phillips v. City of New York,
775 F.3d 538 (2d Cir. 2015)..... 15

Planned Parenthood of Wis. v. Doyle,
162 F.3d 463 (7th Cir. 1998) 11

Radich v. Guerrero,
No. 1:14–CV–00020, 2016 WL 1212437 (D.N. Mar. I. Mar. 28, 2016)..... 10

Rhode v. Becerra,
No. 60 Civ. 18-cv-802-BEN (S.D. Cal. Apr. 23, 2020)..... 6

Robinson v. Marshall,
No. 2:19CV365-MHT, 2020 WL 1847128 (M.D. Ala. Apr. 12, 2020) 15

Silvester v. Becerra,
138 S. Ct. 945 (2018)..... 16

Teixeira v. County of Alameda,
873 F.3d 670 (9th Cir. 2017) 10, 11, 12

Teixeira v. Cty. of Alameda,
822 F.3d 1047 (9th Cir. 2016) 12

United States v. Marzzarella,
614 F.3d 85 (3d Cir. 2010)..... 9

Statutes

18 U.S.C. § 921(a)(34)..... 7

18 U.S.C. § 922(a)(3)..... 6, 9
 18 U.S.C. § 922(b)(3) 6, 9
 18 U.S.C. § 922(c) 6, 9
 18 U.S.C. § 922(t)..... 6, 9
 18 U.S.C. § 922(z) 7
 18 U.S.C. § 923(d)(1)(g)..... 7
 N.M. Stat. § 30-7-7.1(A)..... 6, 9

Regulations

27 C.F.R. § 478.124 6, 9
 27 C.F.R. § 478.96 6, 9

Other Authorities

1 Blackstone’s Commentaries 145–146, n. 42 (1803)..... 7
 Alex Napoliello, *Gun shops are now considered essential businesses in N.J., Gov. Murphy says*, NJ.COM (Mar. 30, 2020), <https://www.nj.com/coronavirus/2020/03/gun-shops-are-now-considered-essential-businesses-in-nj-gov-murphy-says.html> 13
 Apr. 6, 2020 Pub. Health Order, https://cv.nmhealth.org/wp-content/uploads/2020/04/DOH-PHO-4_6-.pdf..... 2, 5
 Associated Press Wire Content, *Wolf Reopens Gun Shops, Orders More Residents to Stay Home*, U.S. News (March 24, 2020), <https://www.usnews.com/news/best-states/pennsylvania/articles/2020-03-24/corrections-officers-push-state-to-stop-inmate-transfers>..... 13
 Christopher C. Krebs, Director, *Cybersecurity & Infrastructure Security Agency, Advisory Memorandum On Identification of Essential Critical Infrastructure Workers During COVID-19 Response 6*, U.S. DEP’T OF HOMELAND SECURITY (Mar. 28, 2020), <https://bit.ly/2UWevY8>..... 5
 David B. Kopel, *Does the Second Amendment Protect Firearms Commerce?*, 127 Harv. L. Rev. F. 230, 234–35 (2014)..... 12
 KRQE Media, *MDC releasing non-violent inmates susceptible to COVID-19*, KRQE (March 26, 2020), <https://www.krqe.com/news/albuquerque-metro/mdc-releasing-non-violent-inmates-susceptible-to-covid-19/> 6
 Laws of Va., Feb., 1676–77, Va. Stat. at Large, 2 Hening 403 12

Lisa Marie Pane, *Background checks for guns surge during coronavirus pandemic*, USA TODAY (Apr. 2, 2020), <https://www.usatoday.com/story/money/2020/04/02/coronavirus-gun-background-checks-surge-during-crisis/5112252002/> 7

March 23, 2020 Pub. Health Order, <https://www.governor.state.nm.us/wp-content/uploads/2020/03/COVID-19-DOH-Order-fv.pdf> 2

New Mexico Exec. Order No. 2020-004 (March 11, 2020), <https://www.governor.state.nm.us/wp-content/uploads/2020/03/Executive-Order-2020-004.pdf> 2

New Mexico Exec. Order No. 2020-022 (Apr. 6, 2020), https://cv.nmhealth.org/wp-content/uploads/2020/04/EO_2020_022.pdf 2

NRA-ILA, COVID-19: Threat to Second Amendment: “Emergency” Status of Gun Dealers By State, <https://www.nraila.org/coronavirus/> (last accessed, April 23, 2020)..... 5

NSSF, *Alabama Issues “Stay at Home” Order – Firearm Industry Deemed “Essential”* (Apr. 3, 2020), <http://www2.nssf.org/l/127421/2020-04-03/3zld9b> 3

NSSF, *Georgia Governor Issues Statewide Order – Firearm Industry Deemed “Critical Infrastructure”* (Apr. 2, 2020), <http://www2.nssf.org/l/127421/2020-04-02/3z132b> 3

Thomas Jefferson, 3 Writings 558 (H.A. Washington ed., 1853) 12

U.S. Dept. of Justice, *Guidance Letter to ATF Federal Firearms Licensees* (Apr. 10, 2020), <https://bit.ly/2Vop8mC> 8

INTEREST OF AMICUS

The National Shooting Sports Foundation, Inc. (“NSSF”) submits this brief in support of Plaintiffs’ Motion for a Temporary Restraining Order and/or Preliminary Injunction (“Plaintiffs’ Motion”). NSSF is the national trade association for the firearm, ammunition, and hunting and shooting sports industry. NSSF’s membership includes over 9,000 federally licensed firearm manufacturers, distributors and retailers; companies manufacturing, distributing and selling shooting and hunting related goods and services; sportsmen’s organizations; public and private shooting ranges; gun clubs; and endemic media. Many NSSF members are based and/or conduct business in New Mexico.

NSSF supports Plaintiffs’ Motion because Defendants are using New Mexico’s COVID-19 orders to prohibit NSSF members from conducting their essential, constitutionally-protected business of selling firearms and ammunition to law-abiding, responsible citizens of New Mexico. As the federal COVID-19 policies and those of all but a few other states confirm, firearm retailers are essential businesses, and this Court should declare them so under New Mexico’s COVID-19 orders. Firearm retailers provide goods and services that are essential to maintaining the safety of private residences and essential businesses. Firearm retailers provide law enforcement agencies with the tools they need to carry out their vital public safety mission during times of emergency. Firearm retailers also are critically essential to the exercise by law-abiding, responsible citizens of their constitutionally-protected, natural right to protect the safety of their families, residences, and essential businesses. That right is never more important than during this COVID-19 pandemic because law enforcement response to an emergency may not be timely due to under-staffing and added duties. There is also legitimate concern among the law-abiding that criminal offenders are being released from custody or may be less likely to be taken into custody in the first place.

NSSF, on behalf of its members and their customers, asks this Court to declare that the lawful sale of firearms and ammunition by licensed firearm retailers is an essential business under the COVID-19 orders and, in any event, that the Second Amendment protects the right of licensed firearm retailers to sell firearms and ammunition and related services to law-abiding citizens exercising their Second Amendment right to acquire these products for lawful purposes, including maintaining the safety of their residences and essential businesses.

INTRODUCTION

To promote social distancing and help New Mexico slow the spread of COVID-19, New Mexico has ordered all non-essential businesses to close pending resolution of the COVID-19 outbreak.¹ Under the COVID-19 Orders, essential businesses are defined generally to include, in relevant part: “any business or non-profit entity falling within one or more of the following categories: . . . All facilities routinely used by law enforcement personnel, first responders, firefighters, emergency management personnel, and dispatch operators” or “[s]ervices necessary to maintain the safety and sanitation of residences or essential businesses including security services, towing services, custodial services, plumbers, electricians, and other skilled trades.” Pub. Health Order (Apr. 6, 2020). Essential businesses specified in the COVID-19 Orders include a wide range of brick and mortar retailers, such as automobile repair facilities, bike repair facilities, hardware stores, laundromats, banks, and grocery stores. *Id.*

¹ Governor Grisham issued COVID-19 Order No. 2020-004 on March 11, 2020, declaring a State of Public Health Emergency. *See* New Mexico Exec. Order No. 2020-004 (March 11, 2020), <https://www.governor.state.nm.us/wp-content/uploads/2020/03/Executive-Order-2020-004.pdf>. She issued COVID-19 Order No. 2020-022 on April 6, 2020, renewing and extending Executive Order No. 2020-004. *See* New Mexico Exec. Order No. 2020-022 (Apr. 6, 2020), https://cv.nmhealth.org/wp-content/uploads/2020/04/EO_2020_022.pdf. On March 23, 2020, Secretary Kunkel issued an Emergency Order requiring all non-essential businesses to close. *See* March 23, 2020 Pub. Health Order, <https://www.governor.state.nm.us/wp-content/uploads/2020/03/COVID-19-DOH-Order-fv.pdf>. Secretary Kunkel amended this order on April 6, 2020. *See* Apr. 6, 2020 Pub. Health Order, https://cv.nmhealth.org/wp-content/uploads/2020/04/DOH-PHO-4_6-.pdf. COVID-19 Order Nos. 2020-004 and 2020-022 as well as the updated April 6, 2020 order are referred to collectively as the “COVID-19 Orders.”

Firearm and ammunition manufacturers, distributors and retailers (hereinafter collectively referred to as “Firearm Retailers”) are essential businesses under the COVID-19 Orders.

The Department of Homeland Security (“DHS”), whose COVID-19 guidance is meant to “help State, local, tribal and territorial officials as they work to protect their communities, while ensuring continuity of functions critical to public health and safety, as well as economic and national security,” has determined that Firearm Retailers are essential businesses. The Bureau of Alcohol, Tobacco, and Explosives (“ATF”) has determined that Firearm Retailers may continue to conduct business during the COVID-19 emergency in conformity with the health precautions now recommended by the Centers for Disease Control (“CDC”). If allowed to remain open, Plaintiff Firearm Retailers Southwest Gun Technologies, LLC and Rose’s Guns confirm they would comply with the CDC guidelines, including by routinely disinfecting surfaces, enforcing social distancing, and limiting the number of people simultaneously in the store. *See* Jantz Aff, Dkt. 12-4, at ¶ 18; Kennedy Aff, Dkt. 12-5, at ¶ 12. And NSSF has repeatedly urged Firearm Retailers to “closely follow CDC guidelines, practice social distancing and take precautions to protect the health and safety of their employees and customers.” *See, e.g.,* NSSF, *Alabama Issues “Stay at Home” Order – Firearm Industry Deemed “Essential”* (Apr. 3, 2020), <http://www2.nssf.org/1/127421/2020-04-03/3zld9b>; NSSF, *Georgia Governor Issues Statewide Order – Firearm Industry Deemed “Critical Infrastructure”* (Apr. 2, 2020), <http://www2.nssf.org/1/127421/2020-04-02/3z132b>.

Although the COVID-19 Orders do not specify whether Firearm Retailers are essential businesses, various public officials—including spokespeople for Governor Grisham and the New Mexico State Police—have stated that they are not. *See* Complaint, Dkt. 1, at ¶¶ 81-82. Plaintiff Rose’s Guns closed because of “official statements from the Governor’s Office, the Attorney

General's office, Mayor Hart, Senator White, and the State Police." *See id.* at ¶¶ 70-75. And MAGS Indoor Range Shooting Range "was visited by the New Mexico Department of Public Safety who informed MAGS that it must cease all operations or that it would be subject to a \$60,000 fine." *Id.* at ¶ 78. As a result of this state action, Firearm Retailers throughout New Mexico have closed. *Id.* at ¶ 94.

ARGUMENT

I. New Mexico may not ban firearm sales by forcing Firearm Retailers to close.

Firearm Retailers should be declared essential businesses under the COVID-19 Orders. In any event, the right of law-abiding, responsible citizens to purchase and the Firearm Retailers' right to sell arms are both protected by the Second Amendment. The Second Amendment prohibits Defendants from closing Firearm Retailers and thereby denying law-abiding, responsible citizens the ability to acquire firearms and ammunition for lawful purposes including maintaining the safety of their residences and essential businesses. This Court should permit Firearm Retailers to remain open during the COVID-19 emergency.

A. Firearm Retailers are essential businesses under the COVID-19 Orders, and deeming them non-essential lacks a rational basis and is arbitrary.

The COVID-19 Orders state that a business is essential if it is a "facilit[y] routinely used by law enforcement personnel, first responders, firefighters, emergency management personnel, and dispatch operators" or if it offers "[s]ervices necessary to maintain the safety and sanitation of residences or essential businesses including security services, towing services, custodial services, plumbers, electricians, and other skilled trades." Pub. Health Order (Apr. 6, 2020). Firearm Retailers are essential businesses under these categories. The federal guidance identifying which businesses are essential during the COVID-19 pandemic confirms that Firearm Retailers are essential businesses. *See* Christopher C. Krebs, *Cybersecurity & Infrastructure*

Security Agency, Advisory Memorandum On Identification of Essential Critical Infrastructure Workers During COVID-19 Response 6, U.S. DEP'T OF HOMELAND SECURITY (Mar. 28, 2020), <https://bit.ly/2UWevY8>. And nearly every state to consider whether Firearm Retailers are essential during the COVID-19 pandemic has determined that they are. *See* NRA-ILA, COVID-19: Threat to Second Amendment: “Emergency” Status of Gun Dealers By State, <https://www.nraila.org/coronavirus/> (last accessed, April 23, 2020). Firearm Retailers should be essential businesses under the COVID-19 Orders, as they are expressly recognized under the federal guidance and in most other states.

Firearm Retailers are essential businesses because they are facilities routinely used by law enforcement personnel and because they are essential to maintaining the safety of residences and essential businesses in an emergency. Most law enforcement agencies and their officers obtain firearms and ammunition from their local federally licensed firearm retailer. *See* NSSF Letter to Department of Homeland Security (March 20, 2020), p. 2, attached hereto as Exhibit A. Law enforcement often turns to Firearm Retailers in times of civil unrest, which may occur in New Mexico during the COVID-19 crisis. *Id.* For instance, during the Los Angeles riots in 1992, local law enforcement relied on retailers to obtain more effective firearms to restore the peace and protect residents and local businesses. *Id.* It is essential that law enforcement have ready access to the firearms and ammunition they need to serve, protect, and defend New Mexico’s communities.

New Mexico Firearm Retailers are the sole providers of firearms to New Mexico citizens, who may not acquire firearms from private parties, *see* Complaint, Dkt. 1, at ¶ 44 (citing N.M. Stat. § 30-7-7.1(A)), or from out-of-state Firearm Retailers, *see* 18 U.S.C. § 922(a)(3), (b)(3), (c), (t); 27 C.F.R. § 478.96, 478.124. Firearms are essential for law-abiding, responsible citizens to

maintain their safety, the safety of their families, and the safety of their residences and businesses, especially during this emergency. The effects of the COVID-19 pandemic may reduce the number of law enforcement personnel available to respond and add significantly to the work of law enforcement. The combined impact may well reduce the ability and timeliness of law enforcement to respond to criminal activity. Moreover, convicted criminals are being released from custody, and criminal offenders may be less likely to be taken into custody in the first place.² It is especially for times like these that the Second Amendment protects against government infringement upon the natural right to self-defense:

Presently, California and many other states sit in isolation under pandemic-inspired stay-at-home orders. Schools, parks, beaches, and countless non-essential businesses are closed. Courts are limping by while police make arrests for only the more serious crimes. Maintaining Second Amendment rights are especially important in times like these. Keeping vigilant is necessary in both bad times and good, for if we let these rights lapse in the good times, they might never be recovered in time to resist the next appearance of criminals, terrorists, or tyrants.

Rhode v. Becerra, No. 60 Civ. 18-cv-802-BEN (S.D. Cal. Apr. 23, 2020). “Americans understood the ‘right of self-preservation ‘as permitting a citizen to ‘repe[] force by force ‘when the intervention of society in his behalf, may be too late to prevent an injury.’” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008) (quoting 1 Blackstone’s Commentaries 145–146, n. 42 (1803)). Law-abiding, responsible citizens around the country are choosing to purchase firearms, some for the first time, to maintain their and their loved ones’ safety and to maintain safety in their homes and essential businesses in this uncertain time.³

² See KRQE Media, *MDC releasing non-violent inmates susceptible to COVID-19*, KRQE (March 26, 2020), <https://www.krqe.com/news/albuquerque-metro/mdc-releasing-non-violent-inmates-susceptible-to-covid-19/>.

³ Background checks required to buy firearms have spiked to record numbers in the past month, fueled by Americans worried about their safety during the coronavirus crisis; the FBI conducted 3.7 million background checks for firearm purchases in March, the most ever recorded in a single month by the bureau and over one million more than March 2019. See Lisa Marie Pane, *Background checks for guns surge during coronavirus pandemic*, USA TODAY (Apr. 2, 2020), <https://www.usatoday.com/story/money/2020/04/02/coronavirus-gun-background-checks->

In addition to providing firearms and ammunition, Firearm Retailers provide services that are essential to maintaining firearm safety in residences and essential businesses. Firearm Retailers provide expert training on how to safely handle and responsibly store firearms. They also provide the means to do so by offering secure gun storage and safety devices, which are defined to include storage units such as safes as well as devices that “prevent the firearm from being operated without first deactivating the device” or “prevent the operation of the firearm by anyone not having access to the device.” *See* 18 U.S.C. § 921(a)(34). Firearm Retailers are required to provide a secure gun storage or safety device when selling or transferring a handgun to a consumer. 18 U.S.C. § 922(z). Furthermore, Firearm Retailers must certify to the ATF that they stock and provide such devices on their licensing application and renewal. 18 U.S.C. § 923(d)(1)(g).

Defendants’ closure of Firearm Retailers is wholly unrelated to New Mexico’s ability to timely and effectively respond to the COVID-19 emergency. Firearm Retailers do not use medical supplies or hospital space. Nor are they incapable of following the social distancing and sanitation guidelines in their stores. Firearm Retailers present no special health concerns different in kind or degree from any other business the state has deemed “essential” such as bike repair shops or laundromats. DHS’ inclusion of Firearm Retailers in the list of essential businesses established that Firearm Retailers are essential businesses, and ATF has confirmed that Firearm Retailers can adhere to social distancing and sanitation guidelines.⁴ The Firearm Retailer Plaintiffs demonstrate they are just as capable of meeting the CDC guidelines as any

[surge-during-crisis/5112252002/](https://www.fda.gov/oc/2020/04/10/firearm-retailers-reported-that-the-overwhelming-majority-of-buyers-over-the-past-month-have-been-first-time-gun-owners). Firearm retailers reported that the overwhelming majority of buyers over the past month have been first-time gun owners. *See id.*

⁴ U.S. Dept. of Justice, *Guidance Letter to ATF Federal Firearms Licensees* (Apr. 10, 2020), <https://bit.ly/2Vop8mC>.

other business that New Mexico deems essential—most of which are not critical to the exercise of a constitutionally-protected right that is an essential component of public safety.

A determination that Firearm Retailers are non-essential lacks a rational basis, violating Firearm Retailers' Equal Protection rights. The Equal Protection Clause of the Fourteenth Amendment provides: "No State shall . . . deny to any person within its jurisdiction the equal protection of the law." This is "essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985); *A.N. by & through Ponder v. Syling*, 928 F.3d 1191, 1196 (10th Cir. 2019) (same). Because similarly situated entities must be treated equally, a state violates the Equal Protection Clause by drawing distinctions without at least a rational basis. *Id.* Firearm Retailers are similarly situated with other retailers that New Mexico expressly deems essential, like bike repair shops and laundromats. The COVID-19 Orders' distinction between these entities lacks a rational basis. As discussed above, closing Firearm Retailers provides no health or safety benefit to New Mexico. ATF and Plaintiff Firearm Retailers have confirmed that Firearm Retailers pose no unique risk by remaining open and are as capable as any other retailer of adhering to health and safety guidelines. New Mexico has not provided any basis for distinguishing between Firearm Retailers and other retailers that it has deemed essential, and none exists.

The COVID-19 Orders also violate Firearm Retailers' due process rights. "[T]he touchstone of due process is protection of the individual against arbitrary action of government." *Dias v. City & Cty. of Denver*, 567 F.3d 1169, 1181 (10th Cir. 2009) (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998)). "The Due Process Clause of the Fourteenth Amendment . . . guards against arbitrary legislation by requiring a relationship between a statute and the government interest it seeks to advance." For the reasons detailed above, however, the

COVID-19 Orders' distinction between Firearm Retailers and other retailers it deems essential is arbitrary. Closing Firearm Retailers and banning firearm sales has no relationship to promoting social distancing or helping New Mexico slow the spread of COVID-19.

B. The Second Amendment prohibits New Mexico from banning firearm sales by forcing Firearm Retailers to close.

Even if Defendants contend, or this Court determines, that the COVID-19 Orders do not include Firearm Retailers as essential businesses, the Second Amendment prohibits New Mexico from closing them. The COVID-19 Orders are unconstitutional to the extent they force Firearm Retailers to close because the Second Amendment protects the law-abiding citizen's right to purchase and the Firearm Retailers' right to sell arms. Defendants' actions closing Firearm Retailers effect a statewide ban on acquisitions of firearms because only Firearm Retailers may sell firearms in New Mexico, and New Mexico citizens may not acquire arms outside New Mexico. *See* Complaint, Dkt. 1, at ¶¶ 44-50 (citing N.M. Stat. § 30-7-7.1(A)); 18 U.S.C. § 922(a)(3), (b)(3), (c), (t); 27 C.F.R. § 478.96, 478.124. This broad prohibition is beyond the power of state government even in an emergency.

The right to purchase and the right to sell arms are concomitant to the right to keep and bear arms enshrined in the Second Amendment. The United States Courts of Appeals for the Third, Seventh, and Ninth Circuits—the only circuit courts to consider the issue—have confirmed this principle. The Third Circuit, in *United States v. Marzzarella*, 614 F.3d 85, 92 n. 8 (3d Cir. 2010), cautioned that a ban on firearm sales would be unconstitutional: “If there were somehow a categorical exception for [commercial] restrictions, it would follow that there would be no constitutional defect in prohibiting the commercial sale of firearms. Such a result would be untenable under *Heller*.” The Seventh Circuit, in *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011), held that the right to possess firearms entails the “corresponding right to acquire and

maintain proficiency” See also *Luis v. United States*, 136 S. Ct. 1083, 1097 (2016) (Thomas, J., concurring) (“Constitutional rights thus implicitly protect those closely related acts necessary to their exercise The right to keep and bear arms, for example ‘implies a corresponding right to obtain the bullets necessary to use them.’”) (quoting *Jackson v. City and County of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014); *Ass’n of Firearms Retailers v. City of Chicago*, 961 F. Supp. 2d 928, 930 (N.D. Ill. 2014) (“[T]he right to keep and bear arms for self-defense under the Second Amendment . . . must also include the right to acquire a firearm”); *Radich v. Guerrero*, No. 1:14–CV–00020, 2016 WL 1212437, at *7 (D.N. Mar. I. Mar. 28, 2016) (“If the Second Amendment individual right to keep and bear a handgun for self-defense is to have any meaning, it must protect . . . the complimentary right to sell handguns.”).

The Ninth Circuit in *Teixeira v. County of Alameda*, 873 F.3d 670, 682 (9th Cir. 2017) (en banc), echoed this conclusion: “[c]ommerce in firearms is a necessary prerequisite to keeping and possessing arms for self-defense” *Teixeira* also specified that commerce in firearms includes both the right to acquire and to sell. See *id.* At issue in *Teixeira* was a zoning ordinance that prohibited a firearm dealer from being located within 500 feet of certain identified entities. *Id.* at 673-76. Because the zoning ordinance affected only one “particular proprietor,” the Ninth Circuit concluded that it was “wholly detached from any customer’s ability to acquire firearms” generally and therefore did not affect the established right to acquire a firearm. *Id.* at 682. Rather than impacting only one firearm retailer, the COVID-19 Orders prohibit all Firearm Retailers from manufacturing, distributing, or selling firearms. Because New Mexico citizens may acquire a firearm only by doing so in person at a Firearm Retailer, Defendants’ enforcement of the COVID-19 Orders effects a complete ban on firearm sales, destroying the exercise of the right; it is not a mere burden incidental to the exercise of the right.

Where the exercise of a right requires the participation of other actors, putting those other actors out of business necessarily infringes on the constitutional rights of the person seeking to exercise those rights. *See Carey v. Population Servs., Int'l*, 431 U.S. 678, 689 (1977) (holding that “[l]imiting the distribution of nonprescription contraceptives to licensed pharmacists clearly imposes a significant burden on the right of the individuals to use contraceptives”); *Planned Parenthood of Wis. v. Doyle*, 162 F.3d 463, 471 (7th Cir. 1998) (holding that “[t]he constitutional right to an abortion carries with it the right to perform medical procedures that many people find distasteful or worse”); *see also Lovell v. City of Griffin. Ga.*, 303 U.S. 444, 447, 452 (1938) (striking down an ordinance criminalizing the distribution of certain literature because prohibiting distribution of constitutionally protected speech amounts to “censorship in its baldest form” that renders the First Amendment protection meaningless).

The right to sell arms is embedded in the Second Amendment’s text, history, and tradition. The text codifies the pre-existing right of law-abiding, responsible citizens to acquire arms for lawful purposes. *Heller*, 554 U.S. at 576–603. History and tradition confirm that the Second Amendment protects the right to sell arms. *See Teixeira*, 873 F.3d at 693 (J. Tallman, concurring in part and dissenting in part) (“History supports the view that the Second Amendment must contemplate the right to sell firearms if citizens are to enjoy the core, fundamental right to own and possess them in their homes.”). Thomas Jefferson recognized in 1793 the history and tradition supporting the right to sell arms: “Our citizens have always been free to make, vend, and export arms.” Thomas Jefferson, 3 Writings 558 (H.A. Washington ed., 1853). In colonial Virginia, for instance, all persons had “liberty to sell armes and ammunition to any of his majesties loyall subjects inhabiting this colony.” Laws of Va., Feb., 1676–77, Va. Stat. at Large, 2 Hening 403 (cited in *Teixeira v. Cty. of Alameda*, 822 F.3d 1047, 1054 (9th Cir.

2016)), on reh'g en banc, 873 F.3d 670 (9th Cir. 2017). “In terms of the original meaning of the Second Amendment, the right to engage in firearms commerce is clear.” David B. Kopel, *Does the Second Amendment Protect Firearms Commerce?*, 127 Harv. L. Rev. F. 230, 234–35 (2014).

History and tradition also confirm that the Second Amendment protects the right to sell during an emergency, including the current COVID-19 pandemic. It is therefore not surprising that the federal government and all but a very few state governments have preserved firearm sales during the current pandemic.

In *Civil Rights Defense Firm, P.C. v. Wolf*, -- A.3d --, 2020 WL 1329008 (Pa. Mar. 22, 2020) (per curiam), the Pennsylvania Supreme Court dismissed as moot an effort to block the application of Pennsylvania's emergency closure order to attorneys' offices because the Governor reversed course and determined that they may remain open. Three justices filed a concurring and dissenting opinion, declaring that the Application for Emergency Relief had brought “to the Court's attention a deprivation of a constitutional right” because the emergency closure order made “no allowance for any continued operation of licensed firearm dealers.” *Id.* at *1. The Justices went on to conclude: “In light of the regulatory framework attending the sale and transfer of firearms, the inability of licensed firearm dealers to conduct any physical operations amounts to a complete prohibition upon the retail sale of firearms—an activity in which the citizens of this Commonwealth recently have been engaging on a large scale, and one guaranteed by [] the United States Constitution. . . .” *Id.* “Unlike the vast majority of other items, the sale and transfer of firearms sold at retail cannot be completed merely by way of telecommunication and mailing under existing law.” *Id.* at *2. Pennsylvania subsequently

changed the order to allow Firearm Retailers to remain open.⁵ New Jersey, too, revised its COVID-19 order to allow Firearm Retailers to remain open after litigation was initiated.⁶ Similarly, in *Bateman v. Perdue*, 881 F. Supp. 2d 709, 712 (E.D.N.C. 2012), the Eastern District of North Carolina held that a North Carolina statute restricting the sale of firearms during declared states of emergency was unconstitutional. Today, a Virginia state court ruled that Governor Northam may not force indoor shooting ranges to close during the COVID-19 pandemic because the state emergency powers statute precluded its use to limit or prohibit the right to keep and bear arms guaranteed by the state and federal constitutions. *Lynchburg Range & Training, LLC v. Northam*, CL2000333 (City of Lynchburg Cir. Ct. Apr. 27, 2020) (citing Virginia Code § 44-146.15(3)).⁷

Because the Second Amendment protects the purchase and sale of arms, New Mexico cannot prohibit the exercise of these rights by forcing Firearm Retailers to close. Such a ban is per se unconstitutional. No interest balancing test is necessary, or even appropriate, because the infringement of a right protected by the Second Amendment is a policy choice the Constitution takes “off the table.” *See Heller*, 554 U.S. at 616, 628, 636 (holding that a ban on possession of protected arms was not only per se unconstitutional, but it would have been invalid “[u]nder any of the standards of scrutiny that we have applied to enumerated constitutional rights”). Even if the Court were to apply a standard of scrutiny, such a broad prohibition on a fundamental right would require strict scrutiny. *See Bateman*, 881 F. Supp. 2d. at 715.

⁵ Associated Press Wire Content, *Wolf Reopens Gun Shops, Orders More Residents to Stay Home*, U.S. News (March 24, 2020), <https://www.usnews.com/news/best-states/pennsylvania/articles/2020-03-24/corrections-officers-push-state-to-stop-inmate-transfers>

⁶ *See* Alex Napoliello, *Gun shops are now considered essential businesses in N.J., Gov. Murphy says*, NJ.COM (Mar. 30, 2020), <https://www.nj.com/coronavirus/2020/03/gun-shops-are-now-considered-essential-businesses-in-nj-gov-murphy-says.html>.

⁷ Available at <https://www.scribd.com/document/458615211/Judge-F-Patrick-Yeatts-opinion-letter>.

Defendants cannot use the current public health crisis as an excuse to suspend even temporarily the constitutionally-protected purchase and sale of arms. *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 29 (1905), held that a state may reasonably restrict constitutional rights “as the safety of the general public may demand.” But *Jacobson* provides that states may implement emergency measures that curtail constitutional rights only so long as the measures have at least some “real or substantial relation” to the public health crisis and are not “beyond all question, a plain, palpable invasion of rights secured by the fundamental law” *Id.* at 31.

Defendants’ prohibition of firearm sales in New Mexico under the COVID-19 Orders fails both *Jacobson* prongs. First, there is no real or substantial relation between closing Firearm Retailers and New Mexico’s ability to respond to the COVID-19 crisis. Firearm Retailers are no different than the long list of other businesses that have been allowed to remain open.

In this respect, the COVID-19 Orders are substantially similar to Louisville, Kentucky’s and the state of Kansas’ bans on congregating for religious services that were recently ruled unconstitutional. Citing *Jacobson*, the District Court for the Western District of Kentucky recently held that the City of Louisville cannot ban drive-in religious gatherings because such a ban does not relate to preventing the spread of COVID-19. *On Fire Christian Ctr., Inc. v. Fischer*, No. 3:20-CV-264-JRW, 2020 WL 1820249, at *6, 8 (W.D. Ky. Apr. 11, 2020). The Court found: “Louisville has targeted religious worship by prohibiting drive-in church services, while not prohibiting a multitude of other non-religious drive-ins and drive-throughs Moreover, Louisville has not prohibited parking in parking lots more broadly.” *Id.* at *6. The court also found that drive-in churchgoers in Louisville can keep “social distancing in accordance with CDC guidelines.” *Id.* at *7. So, too, can NSSF’s Firearm Retail members, according to both the retailer Plaintiffs’ declarations and the ATF’s determination. The District

Court for the District of Kansas likewise held that *Jacobson* does not provide for a ban on the exercise of a constitutional right when the ban does not relate to the public health crisis at issue but is instead is “an arbitrary distinction,” as evidenced by the other, similar types of activities that are not banned by the regulation. *First Baptist Church v. Kelly*, No. 20-1102-JWB, 2020 WL 1910021, at *7-8 (D. Kan. Apr. 18, 2020). Because Firearm Retailers can operate safely and within the COVID-19 Orders’ social distancing and sanitation requirements, they must be allowed to exercise their right to sell arms.

While *Jacobson* may allow the state to reasonably restrict some rights, it does not allow the state to ban the exercise of the right entirely, or to engage in “a plain, palpable invasion of rights secured by the fundamental law,” as New Mexico has done here. The COVID-19 Orders, in direct contravention of *Jacobson*, prohibit Firearm Retailers from exercising their right to sell protected arms and law-abiding citizens from exercising their right to acquire. In this respect, the COVID-19 Orders are akin to the abortion bans in Alabama and Tennessee that were recently ruled to be unconstitutional under *Jacobson* because they “effect[ed] a prohibition on abortion[.]” “a fundamental right.” *Robinson v. Marshall*, No. 2:19CV365-MHT, 2020 WL 1847128, at *9 (M.D. Ala. Apr. 12, 2020); *Adams & Boyle, P.C. v. Slatery*, No. 3:15-CV-00705, 2020 WL 1905147, at *5 (M.D. Tenn. Apr. 17, 2020); see also *In re Abbott*, No. 20-50296, 2020 WL 1911216, at *12, 16-17 (5th Cir. Apr. 20, 2020) (holding that limited abortion restrictions that are related to Texas’ COVID-19 response are acceptable under *Jacobson* because they do not effect a ban, but refusing to reverse the district court’s injunction allowing certain abortions).

Importantly, *Jacobson* did not consider rights that, as of the time it was decided, “had not yet been held to bind the state.” *Phillips v. City of New York*, 775 F.3d 538, 543 (2d Cir. 2015) (“*Jacobson* did not address the free exercise of religion because, at the time it was decided, the

Free Exercise Clause of the First Amendment had not yet been held to bind the states.”). Accordingly, the Court should be circumspect about the precedential authority of *Jacobson* in light of the progressive advance of constitutional rights in this country, including the individual Second Amendment right recognized in *Heller* and held binding on the states in *McDonald*. *Jacobson* simply does not allow the prohibition on the exercise of a fundamental right that Defendants have caused here.

If emergency bans on church services and abortions cannot stand then neither can a total ban on firearm sales. The Second Amendment is not “a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees that we have held to be incorporated into the Due Process Clause.” *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 780 (2010); *see also Jackson v. City & County of San Francisco*, 135 S. Ct. 2799, 2799-2800 (2015) (Thomas, J., dissenting from the denial of cert.) (“Second Amendment rights are no less protected by our Constitution than other rights enumerated in that document”); *Silvester v. Becerra*, 138 S. Ct. 945, 952 (2018) (Thomas, J., dissenting from the denial of cert.) (“The right to keep and bear arms [should not be] this Court’s constitutional orphan.”).

Defendants’ enforcement of the COVID-19 Orders unconstitutionally infringes upon the exercise of the fundamental Second Amendment right by prohibiting the purchase and sale of firearms.

CONCLUSION

For the foregoing reasons, this Court should declare that Firearm Retailers are essential businesses under the COVID-19 Orders and, in any event, even during an emergency the Second Amendment protects the right of law-abiding citizens to purchase and the right of Firearm Retailers to sell firearms and ammunition and related safety services. This Court should enjoin enforcement of the COVID-19 Orders against Firearm Retailers.

NATIONAL SHOOTING SPORTS FOUNDATION,

By its Attorneys,

THE BARNETT LAW FIRM, P.A.

/s/ Jordy L. Stern

Jordy L. Stern

Colin L. Hunter

The Barnett Law Firm, P.A.

1905 Wyoming Blvd NE,

Albuquerque, NM 87112

(505) 275-3200

jordy@theblf.com

colin@theblf.com

BRADLEY ARANT BOULT CUMMINGS LLP

John Parker Sweeney*

James W. Porter III*

Connor M. Blair*

Bradley Arant Boult Cummings LLP

1615 L Street, N.W., Suite 1350

Washington, DC 20036

(202) 719-8216

jsweeney@bradley.com

jporter@bradley.com

cblair@bradley.com

**Pro hac vice* application forthcoming

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 27, 2020, the foregoing was served, via electronic delivery to all counsel via CM/ECF system which will forward copies to Counsel of Record.

/s/ Jordy L. Stern
Jordy L. Stern



NATIONAL SHOOTING SPORTS FOUNDATION, INC.

Headquarters: 11 Mile Hill Road, Newtown, CT 06470-2359
400 N. Capitol Street NW, Suite 490, Washington, D.C. 20001
202-220-1340 ext. 249 lkeane@nssf.org

Lawrence G. Keane

SVP Gov't & Public Affairs
Assistant Secretary & General Counsel

March 20, 2020

The Honorable Christopher Krebs
Director of Cybersecurity and Infrastructure Security Agency
Department of Homeland Security
300 7th Street, SW
Washington, D.C. 20528

Dear Director Krebs:

The National Shooting Sports Foundation (NSSF) is America's trade association for the firearm, ammunition, hunting and recreational shooting sports industry. Our over 9,000 member companies include federally licensed manufacturers, distributors and retailers of firearms and ammunition products. On behalf of our members nationwide, I am writing to thank you for your leadership and the ongoing efforts of your agency to combat the COVID-19 (Coronavirus) pandemic.

I am also respectfully requesting that your agency designate the firearm and ammunition industry as a "National Critical Infrastructure Industry" and the employees who work in our industry should be clearly identified and listed as "Essential Critical Infrastructure Workers."

The firearm and ammunition industry is proud to provide the U.S. military and federal, state and local law enforcement agencies with the tools they need to carry out their vital national security and public safety missions. While we are facing a different kind of war in combatting an unprecedented public health crisis, it is imperative that we maintain a strong national defense and maintain public order.

As you are aware, the Department of Homeland Security (DHS) oversees the country's National Infrastructure Protection Plan (the "Plan")¹. This Plan outlines how government and private sector participants in the critical infrastructure community work together to manage risks and achieve security and resilience outcomes. The Plan identifies 16 different critical infrastructure sectors, including Defense Industrial Base (DIB)² and Emergency Services Sector (ESS)³.

¹ National Infrastructure Protection Plan, Cybersecurity and Infrastructure Security Agency. Retrieved March 19, 2020 from <https://www.cisa.gov/national-infrastructure-protection-plan>

² National Infrastructure Protection Plan, 2010 Defense Industrial Base Sector-Specific Plan, Cybersecurity and Infrastructure Security Agency. Retrieved March 19, 2020 from <https://www.cisa.gov/sites/default/files/publications/nipp-ssp-defense-industrial-base-2010-508.pdf>

³ Emergency Services Sector-Specific Plan, An Annex to the National Infrastructure Protection Plan, 2015. Retrieved March 19, 2020 from <https://www.cisa.gov/sites/default/files/publications/nipp-ssp-emergency-services-2015-508.pdf>

Defense Industrial Base

The United States military acquires virtually all its small arms from domestic commercial firearm manufacturers. All handgun ammunition used by the U.S. military is sourced from commercial ammunition manufacturers. The Department of Defense arsenal located in Lake City, Missouri, is operated by a commercial ammunition manufacturer under a DOD contract. Most of the rifle ammunition used by the U.S. military is produced in Lake City. The U.S. military also purchases rifle ammunition directly from domestic commercial ammunition manufacturers. The federal government recognizes the importance of ammunition and firearm manufacturing in times of crisis.

We believe federally licensed firearm and ammunition manufacturers, and their employees, are clearly part of the Defense Industrial Base.

Manufacturers cannot remain operational if they are unable to secure necessary raw material and component parts in order to produce finished products for the military, law enforcement and commercial market. Therefore, it is vital that the supply chain upon which our industry relies, including the ability to transport materials, parts and finished products, must also be designated as critical infrastructure industry.

Emergency Services Sector – Public Safety

According to DHS Cybersecurity and Infrastructure Security Agency (CISA), “The mission of the Emergency Services Sector (ESS) is to save lives, protect property and the environment, assist communities impacted by disasters, and aid recovery during emergencies.” Law enforcement is one of the five distinct disciplines composing the ESS sector that encompasses a wide range of emergency response functions and roles.

Members of our industry provide federal, state, local and tribal law enforcement agencies with the firearms and ammunition products they use to protect our communities and keep the peace. While large law enforcement agencies typically obtain the firearms, ammunition and related products directly from the manufacturer, most law enforcement agencies and their officers obtain firearms and ammunition from their local federally licensed firearms retailer. Our industry primarily functions on a traditional two-step distribution system whereby retailers generally acquire firearms from federally licensed wholesale distributors. In addition, many law enforcement officers supplement their income by working at firearm retailers.

We have seen in the past that law enforcement has turned to firearm retailers in times of civil unrest, such as when during the Los Angeles riots in 1992 local law enforcement went to retailers to obtain more effective firearms in order to restore the peace and protect residents and local businesses.

We cannot expect law enforcement to do its job of serving, protecting, and defending our communities without making sure they have access to the tools they need and which our industry provides. Our industry’s manufacturers, distributors and retailers are a vital part of the Emergency Services Sector.

Second Amendment – The Right to Keep and Bear Arms

Food, water, shelter and adequate medical care are paramount for survival, but so too is the ability for an individual to defend his or herself, their family, as well as their home, business and property.

The firearm and ammunition industry is essential for law-abiding Americans to exercise their Second Amendment right to acquire a firearm and ammunition for personal protection and home defense. Right now, across America, tens of thousands of our fellow citizens are lining up at their local federally licensed firearm retailer to purchase firearms (after an industry-supported background check) and ammunition to protect themselves and family during this uncertain time. Law enforcement resources will be taxed and stressed thin if this pandemic continues to spread. Americans increasingly understand that they cannot always rely on law enforcement to be there in a time of need. They have a duty to be responsible for their own safety. The Second Amendment protects each law-abiding American's God-given right to self-defense. And, the lawful commerce in firearms and ammunition products is constitutionally protected. Without our industry, the right to keep and bear arms would be a mere illusion.

Unfortunately, as with past major disasters like Hurricane Katrina, a growing number of jurisdictions are ordering federally licensed firearm retailers to close their stores as "non-essential" businesses. For example, the Santa Clara and Contra Costa counties and the City of San Jose in California have all ordered firearm retailers to close. Just last night, Athens-Clarke County in Georgia passed an ordinance that requires firearm retailers to close as "non-essential" businesses.

The line of customers outside of firearm retailers across America is testament to the fact that Americans believe the ability to exercise their constitutional rights protected by the Second Amendment is essential. Law abiding citizens owning firearms for their own protection assists law enforcement and aids in keeping the peace.

Further, the psychological impact of having firearm retailers and manufacturers shuttered should not be underestimated. Americans are concerned that in this time of crisis, they will not be able to protect themselves, their families or their property. Ordering the shuttering of retailers will only serve to fuel this fear unnecessarily. The firearm and ammunition industry is present in every community. We know first-hand the importance of ensuring that families are able to focus on what's important right now: following government guidance to help stop the spread of this deadly virus. The last thing an American should be worrying about is how to make sure they are physically safe. Even for those who are not purchasing firearms or ammunition right now, allowing these essential businesses to remain open, while abiding by the important social-distancing guidelines, demonstrates that Americans are not going to be deprived of their right to bear arms.

In addition, shooting ranges, both public and private, are also essential to public safety and the exercise of the Second Amendment. Shooting ranges are where firearm safety education is taught especially to new and inexperienced gun owners. It is also where law enforcement officers typically train to be proficient with their duty weapon. And, members of the military also frequent shooting ranges to train before they deploy to defend our nation.

Economic Impact

Our industry contributes to our nation's economic well-being. In 2019, the firearm and ammunition industry was responsible for \$60 billion in total economic activity, employing as many as 150,707 people in the U.S. and generating an additional 181,501 jobs in supplier and ancillary industries.

Whether it is providing firearms or ammunition to military, law enforcement, and law-abiding citizens or ensuring that they have access to shooting ranges for training, the firearm industry is a critical component of our nation's security, public safety, and economic well-being. We must remain open for business. By including our industry among our nation's critical infrastructure industries, you can help ensure that we are able to do so.

We appreciate your support for the men and women who proudly wear our nation's uniform, our nation's law enforcement and first responders, as well as protecting our constitutional right to keep and bear arms and supporting the very industry that helps make that right a reality for tens of millions of Americans. Thank you for your consideration of this important request.

Sincerely,

A handwritten signature in cursive script that reads "Lawrence G. Keane".

Lawrence G. Keane