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## Supplemental Testimony in Support of L.D. 2283.

Dear Chair Carney, Chair Moonen and Members of the Judiciary Committee:

Please find below responses to Committee members' requests for further explanation of certain issues raised in my April 5 testimony in support of LD 2283.

### 1. Provide examples of laws in the country's "historical tradition of firearm regulation"<sup>1</sup> that are "analogous" to L.D 2283's provision for removing firearms from people who are believed to threaten community safety

For centuries, there have been laws in the country prohibiting the ownership of firearms by persons believed to threaten the community's safety, including: First Americans (referred to in the statutes as "Indians")(such as enacted by the colony of Virginia in 1619<sup>2</sup>); "seditious" persons (such as enacted by Massachusetts (which included Maine at the time) in 1637<sup>3</sup>); persons who would not swear loyalty to the new government (such as enacted by Pennsylvania in 1779<sup>4</sup>); persons "armed offensively, to the fear or terror of... citizens"(such as enacted by Massachusetts (which included Maine at the time)<sup>5</sup> in 1798); persons "armed with... any... pistol...without a reasonable cause to fear an assault on himself"(such as enacted by the State of Maine in 1840<sup>6</sup>); persons who were African-American (referred to in the statutes as "Negroes")

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<sup>1</sup> See *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 15:

"When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation...When confronting such present-day firearm regulations, this historical inquiry that courts must conduct will often involve reasoning by analogy."

<sup>2</sup> In 1619 the First General Assembly of the Virginia colony enacted a law stating that: "*no man shall sell or give any Indians any...arms offensive or defensive, upon pain of being held a traitor to the colony and of being hanged as soon as the fact is proved, without all redemption.*"

<sup>3</sup>In 1637 the Massachusetts Colony enacted a law that required "seditious" individuals who "led [others] into dangerous errors" to turn in all "guns, pistols, swords, powder, shot, & match," and barred them from "buy[ing] or borrow[ing]" guns.<sup>3</sup>

<sup>4</sup> 1779 Pa. Laws 193: "[It is] dangerous that persons disaffected to the liberty and independence of this state shall possess or have in their keeping, or elsewhere, any firearms,..and therefore, [the] state, shall be, and is hereby empowered to disarm any person or person who shall not have taken any oath or affirmation of allegiance to this...state..."

<sup>5</sup> 1798, Perpetual Laws of the Commonwealth of Massachusetts, From the Establishment of its Constitution to the Second Session of the General Court (Worcester, Isaiah Thomas 1799).

<sup>6</sup> The Revised Statutes of the State of Maine, October 22, 1840 at 709 (William R. Smith & Co., Augusta, 1841):" *Any person, going armed with any dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without a reasonable cause to fear an assault on himself. . . shall be punished...*"

(such as enacted by Florida in 1825)<sup>7</sup>; persons displaying their firearms in an “*angry or threatening manner*” (such as enacted by Arizona in 1867 <sup>8</sup>); peace officers who were “*intoxicated*” (such as enacted by Florida in 1881<sup>9</sup>).

**2. The §§4108-10 (4) due process for *ex parte* emergency PFA gun removal orders, compared to the due process for L.D. 2283’s *ex parte* emergency crisis intervention gun removal orders, and compared to the due process for the yellow flag law**

<b>Sections 4108-10 Due Process for <i>ex parte</i> Emergency PFA Gun Removal Orders</b>	<b>L.D. 2283 Due Process for Emergency <i>ex parte</i> Crisis Intervention Gun Removal Orders</b>	<b>Yellow Flag Law §3852-A Due Process for Emergency <i>ex parte</i> Gun Removal Endorsements</b>
Plaintiff must show “ <b>good cause</b> ” for the gun removal order, demonstrating “abuse that involves a firearm” or a “heightened risk of immediate abuse to the plaintiff or a minor child”	Plaintiff must make oath of “specific facts” of defendant’s “imminent and significant danger” of “causing severe harm” with firearms, acknowledging that a “false statement...is a crime,” and must prove allegations by “ <b>clear and convincing evidence</b> ” --- Order may be issued “by telephone or by reliable electronic means...”	Law enforcement seeks judicial “endorsement” that the defending “person” in protective custody has a “dangerous weapon” and has been found by a medical practitioner to “present a likelihood of foreseeable harm” (“serious physical harm”)-- An electronic endorsement is valid
[ <b>No requirement for expedited service of the order on defendant</b> ] [ <b>No appointment of attorney required</b> ] If defendant “moves for dissolution or modification of [the] temporary order... the “court shall proceed to hear and determine the motion as expeditiously as possible” [ <b>no 14 day or other specified expiration</b>	The order is “ <b>for a period of up to 14 days.</b> ” Defendant must be served <b>notice</b> of the order “ <b>at the earliest possible time</b> and service takes “precedence over other summonses and orders.” The notice must include a “date and time of the [contested] <b>hearing [which] may not be more than 14 days</b> after the issuance of the order”, and an <b>attorney will be appointed if [the defendant] cannot afford</b>	The defending person must be served with notice of the judicial endorsement “ <b>no later than 24 hours</b> ” and be advised of the “right” to a <b>hearing within 14 days, and “has a right to be represented by counsel... and the court may appoint counsel for an indigent party.”</b> “[T]he district attorney has the burden to prove by

<sup>7</sup> The 1825 Florida law authorized “white people” to “enter into all Negro houses” and “lawfully seize and take away all such arms, weapons, and ammunition.” (Robert J. Cottrol & Raymond T. Diamond, *The Second Amendment: Toward an Afro-Americanist Reconsideration*, in *Gun Control and the Constitution* 403, 403 (Robert J. Cottrol ed., 1994).

<sup>8</sup> 1867 Ariz. Sess. Laws 21: “any person in this Territory, having, carrying or procuring from another person, any... gun who shall ... exhibit any of said deadly weapons in a rude, angry or threatening manner, not in necessary self-defense [shall be fined and/or jailed] not less than one nor more than six months, in the discretion of the court...”

<sup>9</sup> 1881 Fla. Laws 87, barring any “peace officer...while under the influence of intoxicating liquor of any kind, to carry or have on his person a pistol, gun, or other firearm...”

<b>date-temporary order lasts until a hearing is held]</b>	<b>one.”</b>	<b>clear and convincing evidence</b> that [the defending person] presents a likelihood of foreseeable harm”
Defendant must <b>“relinquish, within 24 hours of service of the order [or earlier as ordered] all firearms...to a law enforcement officer or other individual...”</b>	Upon service of the order, defendant <b>“shall immediately relinquish the firearm to a law enforcement agency or a federally licensed firearm dealer”</b>	Must <b>“immediately and temporarily surrender any weapons...to [] law enforcement”</b>

**3. Compare LD 2283 to Maine’s PFA statute as to the definition of “family or household member,” and who is eligible to go to court, and whether the harm has to have already occurred, as opposed to being likely to occur in future.**

1. Definition of “family or household members”:

The definition of “family or household members” in Title 19-A §4002 regarding protection from “abuse” is:

“Spouses or domestic partners or former spouses or former domestic partners, individuals presently or formerly living together as spouses, parents of the same child, adult household members related by consanguinity or affinity or minor children of a household member when the defendant is an adult household member and, for the purposes of [other statutory cites] includes individuals presently or formerly living together and individuals who are or were sexual partners.”

The definition of “family or household member” in LD 2283 is:

“[A] spouse or domestic partner of the respondent, a former spouse or former domestic partner of the respondent, an individual presently or formerly living as a spouse of the respondent, a parent of a child of the respondent or an adult related by consanguinity or affinity to the respondent.”

**The definition of “family or household member” in LD 2283 is narrower than the definition of “family or household members” in Maine’s PFA statute.** LD 2283, for the most part, replicates the language of the PFA statute but it stops short of, and does not include, the following further provisions in the PFA statute: “minor children of a household member when the defendant is an adult household member,” and “individuals presently or formerly living together and individuals who are or were sexual partners.”

2. Eligibility to go to court/ Need for harm to have already occurred vs. harm being likely to occur:

The PFA statute limits those who can go to court to “victims”.

Section 4103 of the PFA statute<sup>10</sup> states that those persons who are eligible to go to court to “seek relief” to those persons “[w]ho have been a victim of abuse;” “a victim of [specified types of] conduct;” or a person with authority to act on behalf of a minor child, or an older, dependent or incapacitated adult<sup>11</sup> who is a victim of abuse or victim of [specified types ] conduct by a family or household member, a dating partner or an individual related by consanguinity or affinity.”

LD 2283 (as amended), unlike the PFA statute, does not limit who may go to court to those family or household members who are victims, but allows them to “file a petition in court” if they can attest under oath to “clear and convincing” evidence that “the respondent poses a significant danger of causing severe harm to the respondent or another person,” including “respondent's threats of harm.”<sup>12</sup>

Thus, a key distinction between the PFA statute and LD 2283 is that “abuse,” as defined in the statute, must have *already occurred* before the victim can go to court for a PFA order, in contrast to LD 2283 that would allow families to go directly to court to *prevent* an imminent, significant danger that a shooting may occur.

Thank you for your consideration of these further comments.

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<sup>10</sup> Title 19-A M.R.S.A. §4103 (Eligibility).

<sup>11</sup> As to eligibility as to older, dependent or incapacitated adults, PFA protection can apply to an “extended family member or unpaid care provider”. 19-A M.R.S.A. §4103 (3)(B).

<sup>12</sup> L.D. 2283’s Section 4804.