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To the Joint Standing Committee on The Judiciary, I offer my thanks for taking the time to allow me to apply observation and professional expertise on LD 1378, *An Act to Protect Maine Communities by Enacting the Extreme Risk Protection Order*. My name is Donny Ardell, and I represent House District 6.

My position is informed by my professional experience; I am a now-retired career special agent/criminal investigator of over twenty-five years and worked for various agencies in venues in the Southwest U.S., Maine, and in the Middle East. I enforced the *Arms Export Control Act* on behalf of the U.S. State Dept. with then-U.S. Customs Service and subsequently Homeland Security Investigations, and assisted foreign governments in the development of anti-smuggling investigative programs. I also was assigned to investigating more street-level crimes in a five-year assignment to Maine Drug Enforcement Agency, acting as a Maine law enforcement agent and enforcing state law.

Between 2005 and 2023, for eighteen years, I held a Federal Firearms License, and provided quality arms to Mainers for recreation, competition, sporting pursuits, and self-defense. I am fully versant with the NICS background check process, federal and Maine law regarding prohibited persons, and the U.S. Supreme Court rulings that have crafted our current understanding of the Second Amendment as the individual civil right of The People to keep in their homes and bear on their persons arms in common

use. As a result of that, I provide an uncommon series of layered perspectives on this and similar matters.

A search warrant is a temporary suspension of the Fourth Amendment right of The People to be secure against unreasonable searches and seizures, unless supported by probable cause. Consider that process of Fourth Amendment suspension: the application for a search warrant by a sworn law enforcement officer is a collection of law enforcement information, from a tipster or informant, field surveillance, interview of witnesses, restricted law enforcement database queries, products of subpoena, and collaboration with other law enforcement officers and supervisors from other agencies. Law enforcement officers, uniquely, query limited-access databases and can assess a tipster's credibility. Investigation may provide or develop non-criminal explanation for the behavior in question. With that assembled work product, these requests for suspension of the Fourth Amendment are reviewed by prosecutors for sufficient cause, form, content, and severity. Only then is the prepared warrant presented to a judicial officer for review, under oath by a law enforcement officer in good standing whose training and experience is summarized to support that officer's credibility to the reviewing judge. The warrant content then is judicially reviewed for sufficiency and severity to temporarily *suspend an individual civil right of the subject.* That suspension of an individual civil right is a very serious matter, and the multi-stage collaboration of law enforcement officers, prosecutors, and judges is the normal and time-proven process that engages experienced field fact-finders, the prosecutor that will champion the investigation on behalf of the government, and the judiciary, a neutral third party, to soberly assess the totality of the facts gathered and to balance the public safety interests of the executive branch of government and the protection of the individual Fourth Amendment right of the subject.

LD 1378, however, suggests a policy inconsistent with that long-standing standard American law enforcement practice. A direct petition by a member of the public directly to a judicial officer provides only that information, absent information to help weigh the credibility of the complainant, absent any supporting information neither the citizen complainant nor the judicial officer has any access to, absent input and collaboration from the prosecutor who will, ultimately be tasked to champion this situation on behalf of the Executive Branch, and absent the professional input from the very law enforcement officers who would be tasked to execute this fact-limited, unverified, and incomplete product without the application of their own expertise to strategize and verify those claims. Additionally, neither the complainant nor the judicial officer can be aware of an ongoing effort of law enforcement or criminal prosecutors without first engaging those officers.

The scenarios provided in *Section 2244 1. Petition*, are events normally and routinely reported to a law enforcement officer as part of routine public safety duties. Oddly, they require the petitioner state if he or she knows of a protection order, and bill language denies the petitioner any assistance in completing the forms necessary to make the complaint to the judicial officer. We're essentially expecting a petitioner to become the police with no assistance.

Subsection 2. Hearing, requires the petitioner to independently provide the judicial officer, by a preponderance of the evidence, or more than a 50% likelihood, a standard typically applied in civil matters, that the subject of the order offers sufficient danger to deny that subject his or her individual civil right to arms defined under the Second Amendment. This is a lower standard than probable cause, the requirement that facts and evidence presented in a case are of the type that would lead any reasonable person to believe that the suspect had committed a crime. *Probable cause* is

a standard long-applied for the *minimum* to suspend a citizen's Fourth Amendment right to protection from government search, and that this bill applies a lower standard to the suspension of one's Second Amendment rights is troubling. This bill allows one individual civil right enshrined in the U.S. Constitution, the Second Amendment, to be suspended for no less than *fourteen days* and up to several years based on a lower burden of proof than that of another individual civil right, the Fourth Amendment, breaking and inconsistent with long-standing standard of proof.

Although the process outlined in this bill is not criminal, the behavior identified in *Section 2244 1. Petition* can be acts of criminality, and this bill's process both blurs the line between and refuses to meaningfully differentiate between enforcing criminal acts and the civil penalty of suspension of a core individual civil right.

Ex parte provisions, *defined in §2245. Emergency extreme risk protection orders,* creates additional issues. *§2245 3. Duration* includes language involving 'voluntary' dismissal by the petitioner if the petitioner feels the respondent no longer poses a danger; however, no portion of the bill *mandates* the petitioner dismiss the order if the situation has changed. While exculpatory information needs to be provided by law enforcement in the case of a Fourth Amendment search warrant, this lack of protection in the bill puts the Second Amendment individual civil right of the respondent at the whim of the non-professional petitioner.

For these reasons, and more, I oppose this bill, and ask the committee to do the same. *We have an existing process that we know works when worked.* Direct petition to Maines' judicial officers by the people in public safety matters is abnormal; let's let our law enforcement officers be the police, our prosecutors be the prosecutors, and preserve our judicial officers from a process

traditionally served by and screened through the public-facing law enforcement agencies prepared to it. Thank you.