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ATTORNEYS-AT-LAW

April 21, 2026

Catherine O'Hagan Wolfe, Clerk of Court
United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: *Vermont Federation of Sportsmen's Clubs v. Birmingham*, No. 24-2026

Dear Ms. Wolfe:

Pursuant to Federal Rule of Appellate Procedure 28(j), Plaintiffs-Appellants write to inform the Court of *Beckwith v. Frey*, No. 25-1160 (1st Cir. Apr. 3, 2026), in which the First Circuit reversed a preliminary injunction against Maine's 72-hour firearms waiting period. Appellants challenge Vermont's similar waiting period (13 V.S.A. § 4019a). *See* Opening Br. at 8–11, 28–37; Reply Br. at 14–23.

Beckwith does not control here and should not be followed, for three reasons.

First, *Beckwith* is irreconcilable with this Court's precedent. The First Circuit held that a waiting period regulates conduct "antecedent to" keeping or bearing arms and therefore falls outside the Second Amendment's plain text. But this Court cited 19th century precedent for the proposition that "[t]he right to keep arms, necessarily involves the right to purchase them." *Gazzola v. Hochul*, 88 F.4th 186, 196 (2d Cir. 2023) (quoting *Andrews v. State*, 50 Tenn. 165, 178 (1871)).

Second, *Beckwith* is distinguishable. The First Circuit relied on *Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38 (1st Cir. 2024), which actually mandated certain transfers of firearms by prohibiting their continued possession in the state rather than restricting the transfer of arms. This Court has no comparable precedent. To the contrary, this Court's framework in *Vereen* and *James* both held that there is a right to acquire firearms.

Third, *Beckwith* created a circuit split with *Ortega v. Grisham*, 148 F.4th 1134 (10th Cir. 2025) (*reh'g en banc denied*), which struck down New Mexico's waiting period. *Ortega* conducted a "how and why" analysis under *Bruen* and found no historical tradition of

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purposeless, post-clearance waiting periods. *Beckwith* largely bypassed this analysis. Both district courts—in *Ortega* and *Beckwith* itself, *Beckwith v. Frey*, 66 F.Supp.3d 123 (D. Me. 2025)—concluded that waiting periods are unconstitutional.

Beckwith does not alter the analysis in Appellants' briefs. This Court should follow its own precedent and that of the Supreme Court and reverse.

Respectfully submitted,

/s/ Brady C. Toensing
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cc: All counsel of record (via ECF)