

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

DWIGHT D. MITCHELL,

*Plaintiff,*

v.

JENNIFER DAVENPORT et al.,

*Defendants.*

Hon. Michael A. Shipp, U.S.D.J.  
Hon. Rukhsanah L. Singh, U.S.M.J.

Civil Action

Docket No. 3:26-cv-03986-MAS-RLS

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**DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR  
A PRELIMINARY INJUNCTION**

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### **PRELIMINARY STATEMENT**

Plaintiff Dwight D. Mitchell has held a New Jersey firearms license for over twenty-five years, owns a firearms training academy, and has had a handgun carry permit (“HCP”) since October 2024. Plaintiff claims he has, for many years, regularly traveled with his handgun in a vehicle. The law requires HCP holders who are transporting a gun in a car, and who are stopped or detained by a police officer, to disclose that a handgun is in the car and display their HCP permit. That was the law when Plaintiff obtained his HCP, and it has not changed since then. Plaintiff does not claim he has ever been in a situation in which his compliance with that law was required. But in November 2025, more than a year after he obtained his HCP, Plaintiff decided that, were he to someday be stopped by a police officer, he would not want to comply with that law. He has since voluntarily ceased transporting his handgun outside of his home due to an alleged fear of a possible future prosecution that might occur if he were stopped by a police officer, if he failed to comply with the disclosure law, and if that non-compliance was subsequently discovered by law enforcement.

Three months after making that decision, in February, 2026, Plaintiff filed a suit challenging the constitutionality of two provisions of the HCP law, specifically:

- (1) N.J. Stat. Ann. § 2C:58-4.4(b) (“Section 4.4(b)”), which requires an HCP holder who is stopped or detained by a law enforcement officer while carrying a handgun in public or traveling with one in a motor vehicle to (i) disclose to the officer

that they are carrying or transporting a handgun, and (ii) display the HCP.

(2) N.J. Stat. Ann. § 2C:58-4.4(c) (“Section 4.4(c)”), which requires an HCP holder who is detained by a law enforcement officer as part of a criminal investigation while carrying a handgun in public to provide their handgun to the officer upon request for inspection purposes.

Plaintiff requested this Court to preliminarily enjoin enforcement of these statutes against him. But two months later, he voluntarily dismissed the entire case one day after the parties had completed briefing his pending request, which he had repeatedly requested be expedited. Plaintiff then initiated the underlying action with virtually identical causes of action six days later. Whatever advantages Plaintiff was seeking to gain through his unusual maneuver, Plaintiff has wasted the State’s time and resources by doing so.

Moreover, despite his alleged imminent injury, Plaintiff did not move for a preliminary injunction or notify Defendants of this subsequent action until two weeks after filing his new complaint. Six months after Plaintiff claims he decided to stop transporting firearms, the parties are again briefing the same issues. The current delay is consistent with Plaintiff’s demonstrated lack of diligence in seeking immediate injunctive relief early on, which belies his claim of irreparable harm. Plaintiff delayed sixteen months after obtaining his HCP before filing the complaint in his first action, which was also four months after he claims he began suffering an “injury” caused by his decision to stop transporting firearms. He delayed nearly a

month before even serving that complaint. He moved for a preliminary injunction, but dismissed that case the day after briefing was complete. None of this is consistent with his claim that he will suffer imminent irreparable harm in the absence of preliminary injunctive relief. Whatever harm Plaintiff is allegedly suffering is caused entirely by his own decision to cease transporting firearms.

Plaintiff is also unlikely to succeed on the merits. The challenged law does not infringe Plaintiff's Second Amendment right, nor does it restrict lawful HCP holders from possessing or carrying a firearm in public. The challenged law also does not restrict speech in any way, and in any event meets any level of First Amendment scrutiny because it is necessary to serve the compelling state interest of preventing armed violence and misuse of firearms.

## **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

### **I. New Jersey's Handgun Carry Permit Laws**

New Jersey—like 20 other states and the District of Columbia—requires a permit to carry a handgun, N.J. Stat. Ann. § 2C:58-4, and has implemented safety requirements for concealed carry, N.J. Stat. Ann. §§ 2C:58-4(d), -4.1, -4.2, -4.4, & -4.5. A person who wishes to carry a handgun must first submit an online application and obtain an HCP. N.J. Stat. Ann. § 2C:58-4. The HCP laws require that licensing officials investigate whether each applicant is likely to engage in conduct that would result in harm to self or others. *Id.* § 2C:58-4(c). Applicants also must meet various

background checks and comply with mandatory gun safety trainings. *Id.* An HCP is valid for two years and “may thereafter be renewed every two years in the same manner and subject to the same conditions as in the case of original applications.” *Id.* § 2C:58-4(a).

An HCP holder must comply with a number of safety requirements. For instance, an HCP holder may not carry a handgun while using, consuming, or under the influence of, alcohol, cannabis, or another controlled substance. *Id.* §§ 2C:58-4.4(a)(1)–(2). If stopped or detained by a law enforcement officer while carrying a handgun in public or travelling with a handgun in a motor vehicle, an HCP holder must (1) “immediately disclose to the law enforcement officer that they are carrying a handgun or that a handgun is stored in the vehicle” and (2) “display the permit to carry a handgun” issued pursuant to N.J. Stat. Ann. § 2C:58-4. *Id.* §§ 2C:58-4.4(b)(1)–(2). An HCP holder who is carrying a handgun in public and is detained by a law enforcement officer as part of a criminal investigation must provide the handgun to the law enforcement officer upon request for inspection. *Id.* § 2C:58-4.4(c).

To ensure that all HCP applicants and permit holders know about these safety requirements and are aware of their affirmative obligation to inform police about any concealed firearm, the State requires that all applicants “review[] the Firearms Safety

& Awareness power point that is integrated into the website application”<sup>1</sup> as part of the HCP application process. The Firearms Safety & Awareness presentation explicitly informs applicants about the disclosure and inspection requirements under Section 4.4(b)–(c).<sup>2</sup>

## **II. Plaintiff’s Handgun Carry Permit and Previous Action**

Plaintiff has held an HCP since October 30, 2024. ECF No 1-1, ¶ 4. For a year, Plaintiff regularly carried a handgun in public or traveled with a handgun in a motor vehicle. *Id.* ¶ 45. But since November 2025, Plaintiff has allegedly stopped transporting any firearm outside his home to avoid criminal liability. *Id.* ¶ 46.

On February 15, 2026, Plaintiff sued the Attorney General and the Acting Superintendent of the New Jersey State Police (“Defendants”) and moved for a preliminary injunction. *See Mitchell v. Davenport*, No. 3:26-cv-01511 (D.N.J.), ECF Nos. 1–2. Plaintiff did not serve this complaint or motion.

On March 9, 2026, Plaintiff filed and served Defendants with his First Amended Complaint and Amended Motion for Preliminary Injunction. *Id.*, ECF Nos. 7, 7-1. The Amended Complaint alleged that N.J. Stat. Ann. §§ 2C:58-4.4(b)–

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<sup>1</sup> See New Jersey State Police, *New Jersey Concealed Carry Permits Instructions for N.J. Residents & Dual Residents of New Jersey*, <https://tinyurl.com/38vcxc8p> (last visited Mar. 30 2026).

<sup>2</sup> See New Jersey State Police, *Firearms Safety & Awareness*, at 29, <https://tinyurl.com/4km6jabb> (last visited Mar. 30 2026).

(c) violates the Second Amendment (Counts I and II), the First Amendment (Count III), the Equal Protection Clause of the Fourteenth Amendment (Count IV), the Supremacy Clause (Count V), the Fourth Amendment (Count VI), and the Due Process Clause of the Fourteenth Amendment (Count VII). *Id.*, ECF No. 7-1.

The amended motion asked this Court to preliminarily enjoin Defendants from enforcing N.J. Stat. Ann. §§ 2C:58-4.4(b)–(c) as applied to Plaintiff during traffic stops. *Id.*, ECF No. 7, ¶¶ 11, 88–97. On April 6, 2026, the parties completed briefing on Plaintiff’s amended motion in accordance with a briefing schedule set by this Court. *Id.*, ECF No. 19. The next day, Plaintiff filed a Notice of Voluntary Dismissal, noting his intent to “correct deficiencies and refile the case.” *Id.*, ECF No. 26.

### **III. The Present Action**

Less than a week later, on April 13, 2026, Plaintiff again sued the Attorney General and the Superintendent of the New Jersey State Police. ECF No. 1. The Complaint makes claims virtually identical to Plaintiff’s prior action, alleging that N.J. Stat. Ann. §§ 2C:58-4.4(b)–(c) violates the Second Amendment (Count I), the Fourth Amendment (Count II), and the Due Process Clause of the Fourteenth Amendment (Count III). Plaintiff added claims alleging that the statute violates the First Amendment (Count IV), the Equal Protection Clause of the Fourteenth Amendment (Count V), and the Supremacy Clause (Count VI).

On April 27, 2026, Plaintiff filed yet another motion for a preliminary injunction, ECF No. 4, and effectuated service of the Complaint and the motion through a Rule 4(d) waiver. For purposes of preliminary injunctive relief, Plaintiff solely relies on his Second Amendment and First Amendment claims, ECF No. 4-1, ¶¶ 2, 6, 26, and asks this Court to preliminarily enjoin Defendants from enforcing N.J. Stat. Ann. § 2C:58-4.4(b) as applied to Plaintiff. ECF No. 4-1, ¶¶ 2, 9.

### **LEGAL STANDARD**

A preliminary injunction “is an extraordinary remedy which should be granted only in limited circumstances.” *Frank’s GMC Truck Ctr., Inc. v. Gen. Motors Corp.*, 847 F.2d 100, 102 (3d Cir. 1988) (citation modified). Since “the bar is set particularly high” in the Third Circuit, preliminary injunctions are “rarely granted.” *Conestoga Wood Specialties Corp. v. Sec’y of the U.S. Dep’t of Health and Hum. Servs.*, No. 13-1144, 2013 U.S. App. LEXIS 2706, \*3 (3d Cir. Feb. 8, 2013). “To obtain any preliminary injunction, a plaintiff must show (1) he will likely succeed on the merits; (2) he will likely suffer irreparable injury; (3) the balance of equities favors him; and (4) the injunction serves the public interest.” *Kim v. Hanlon*, 99 F.4th 140, 154 (3d Cir. 2024). The first two prongs are “gateway factors”—prerequisites to be “balance[d]” against the remaining prongs. *Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017).

## **ARGUMENT**

### **I. There Is No Article III Standing.**

In order to establish standing, Plaintiff must establish (a) an injury in fact, (b) caused by Defendants, that is (c) redressable by a court order. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). And “it must be ‘likely,’ as opposed to merely ‘speculative,’ that the [plaintiff’s] injury will be ‘redressed by a favorable decision.’” *Id.* (quoting *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 38 (1976)). Plaintiff fails to establish any of these necessary elements.

Plaintiff argues that “pre-enforcement standing exists” because “[h]e is the direct object of a self-executing criminal statute that applies . . . whenever a permit holder is ‘stopped or detained’ while traveling with a handgun[.]” ECF No. 4-1, ¶¶ 15, 17. But Article III harm must be “actual or imminent,” meaning it is “certainly impending.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013). “[A]llegations of possible future injury” alone do not suffice. *Id.*; *see Trump v. New York*, 592 U.S. 125, 131 (2020) (Article III is not satisfied if harm is “dependent on ‘contingent future events that may not occur as anticipated, or indeed may not occur at all’” (citation modified)). In other words, Plaintiff must show that “there must at least be a substantial risk that the harm will occur.” *Nat’l Shooting Sports Found. v. Att’y Gen. of N.J.*, 80 F.4th 215, 218 (3d Cir. 2023) (“*NSSF*”) (citation modified).

The Third Circuit has held that “a strong sign of future enforcement is that a law has been enforced against the plaintiff, a closely related party, or others for similar conduct.” *NSSF*, 80 F.4th at 220; *see also Steffel v. Thompson*, 415 U.S. 452, 459 (1974) (finding that petitioner’s alleged threats of prosecution were not “imaginary or speculative” because police officers had twice warned him to stop his allegedly protected conduct and threatened with arrest if he failed to do so, and his companion was subsequently prosecuted for the same conduct). Plaintiff’s filings are devoid of any similar facts. He has not been the subject of any enforcement actions under Section 4.4(b). As further discussed in Section II, *infra*, Plaintiff’s claims rest both on a wholly self-inflicted injury and on speculation about future events.

For Plaintiff’s claims to rise beyond mere speculation, he would need to demonstrate that (a) there is a substantial likelihood that he would be stopped by police, (b) when stopped, Plaintiff would be transporting his lawfully permitted handgun in his vehicle, (c) Plaintiff would, in that moment, actually decide to violate his disclosure duty under Section 4.4, or that he would be unable to produce his HCP because he inadvertently left it elsewhere,<sup>3</sup> *and* (d) the police officer would,

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<sup>3</sup> This also cannot be his first Section 4.4(b)(2) violation since only a second or subsequent offense is considered a crime in New Jersey. *See* N.J. Stat. Ann. § 2C:58-4.4(b)(2).

nonetheless, find probable cause to search Plaintiff's trunk and discover the weapon "secured in a locked container placed in the trunk of his vehicle" despite Plaintiff's nondisclosure, ECF No. 4-1, ¶ 8; *see United States v. Burton*, 288 F.3d 91, 100 (3d Cir. 2002) (holding that police may search a vehicle without a warrant if "probable cause exists to believe it contains contraband."). None of the speculative steps have ever actually occurred, nor are they "certainly impending." Plaintiff's reference to a number of "routine law-enforcement encounters" he has experienced over the past 10 years, ECF No. 4-2, ¶ 12, do not transform this speculative chain of future potential events into something that is "certainly impending" within the meaning of *Clapper*, 568 U.S. at 409. Plaintiff does not allege if he has ever received a warning or citation for a failure to comply with Section 4.4(b) to legitimize his fear of future prosecution, or whether he was even transporting a handgun in his vehicle during a stop to trigger the requirements under Section 4.4(b). Plaintiff also fails to establish that that he would even be transporting a firearm if and when he is stopped by unknown police officers for an unknown future traffic infraction and that at that unknown future stop he would choose not to comply with Section 4.4(b).

Likewise, Plaintiff cannot establish that Defendants caused his alleged injury "in the form of ongoing chilled constitutional exercise and recurring exposure to a coercive choice between compelled speech and criminal sanction." ECF No. 4-1, ¶ 61. "Allegations of subjective 'chill' are not an adequate substitute for a claim of

specific present objective harm or a threat of specific future harm.” *Laird v. Tatum*, 408 U.S. 1, 13–14 (1972); *see, e.g., NSSF*, 80 F.4th at 220 (“A plaintiff must do more than assert ‘subjective chill’” to assert a violation of Second Amendment rights); *Sherwin-Williams Co. v. Cnty. of Delaware*, 968 F.3d 264, 269–70 (3d Cir. 2020) (“an allegation that certain conduct has (or will have) a chilling effect on one’s speech must claim a . . . threat of specific future harm.”). “[T]he chilling effect associated with a potentially unconstitutional law being on the books is insufficient to justify federal intervention in a pre-enforcement suit. Instead, [the Supreme] Court has always required proof of a more concrete injury.” *Whole Woman’s Health v. Jackson*, 595 U.S. 30, 50 (2021) (citation modified).

Plaintiff alleges nothing more than exactly that type of “subjective chill:” he says the fact that the mere existence of Section 4.4(b) has “chilled” his exercise of his right to transport his firearms. ECF No. 4-1, ¶ 19. But Section 4.4(b) does not limit Plaintiff’s right to possess or carry his firearms in any way. Nor does it regulate speech based on the message, idea, or subject matter being expressed. *See Ft. Wayne Books, Inc. v. Indiana*, 489 U.S. 46, 59-60 (1989) (rejecting argument that “sanctions imposed” were so “draconian” that they had “an improper chilling effect on First Amendment freedoms” because “[t]he mere assertion of some possible self-censorship” was “not enough” to render a statute “unconstitutional”); *see also United States v. Sindel*, 53 F.3d 874, 878 (8th Cir. 1995) (“A First Amendment

protection against compelled speech, however, has been found only in the context of governmental compulsion to disseminate a particular political or ideological message.”). Plaintiff also does not explain how his decision to voluntarily cease transporting his firearms deters his free expression. *Cf. Free Speech Coal., Inc. v. Att’y Gen. of the U.S.*, 974 F.3d 408, 426 (3d Cir. 2020) (“deterrent effect, alone, does not warrant invalidating a penalty on First Amendment grounds.”). And in order to establish a causal connection, Plaintiff’s objectively reasonable injury must be fairly traceable to Defendants’ actions, not the result of self-imposed limits on his activities. *See id.*; *see also Fair Hous. Council v. Montgomery Newspapers*, 141 F.3d 71, 82 (3d Cir. 1998) (Nygaard, J., concurring in part and dissenting in part).

Plaintiff’s claims also could not be fully redressed by an injunction preventing the enforcement of Section 4.4(b) against him. Redressability requires courts to evaluate “the relationship between ‘the judicial relief requested’ and the ‘injury’ suffered”—*i.e.*, if the former will remedy the latter. *California v. Texas*, 593 U.S. 659, 671 (2021); *see also Lujan*, 504 U.S. at 561 (noting “it must be ‘likely,’ as opposed to merely ‘speculative,’ that the alleged injury will be ‘redressed by a favorable decision’”). A plaintiff’s claims are not redressable if a plaintiff challenges one legal requirement, but does not challenge a second requirement that is independently responsible for the alleged injury. For example, in *McConnell v. Fed. Election Comm’n.*, 540 U.S. 93, 229 (2003), the Supreme Court held that plaintiffs

lacked standing to challenge one provision of a campaign finance statute where a separate, unchallenged provision independently imposed the same requirement plaintiffs complained about. Cases from the Third Circuit are in accord. *See, e.g., Fischer v. Gov. of N.J.*, 842 F. App'x 741, 750–51 (3d Cir. 2021) (“[T]he redressability element is not satisfied if a favorable result would eliminate one of multiple causes of an injury without actually decreasing the injury at all.”) (quoting 15 Moore’s Federal Practice: Civil § 101.42 (2020)).

Here, even if this Court were to enjoin Section 4.4(b)(2), it would not “materially alleviate the injury alleged,” ECF No. 4-1, ¶ 18, because Plaintiff would remain subject to the requirements of N.J. Stat. Ann. § 2C:58-4.5, which prohibits carrying a concealed handgun without possessing a valid HCP on their person. *Compare* N.J. Stat. Ann. § 2C:58-4.5, with ECF No. 4-1, ¶ 2 (seeking relief for failure to display HCP during a traffic stop). Moreover, an injunction against the Attorney General and the Superintendent of the New Jersey State Police would have no effect on enforcement by myriad local law enforcement authorities in New Jersey, any of which might someday stop Plaintiff in his car. Thus, any injunction entered by this Court would not redress most of the future hypothetical scenarios that Plaintiff claims are causing him to voluntarily cease transporting his firearms.

Plaintiff cannot establish a non-speculative injury, cannot establish that the alleged injury was caused by anyone other than himself, or that an injunction would

redress his alleged injury. His motion for a preliminary injunction should be denied and complaint dismissed for lack of jurisdiction.

## **II. There Is No Immediate and Irreparable Harm.**

Even if Plaintiff could demonstrate standing, he would still not be entitled to preliminary relief because he has suffered no immediate or irreparable harm. *See Del. State Sportsmen's Ass'n v. Del. Dep't of Safety & Homeland Sec.*, 108 F.4th 194, 202 (3d Cir. 2024) (“*DSSA*”) (“‘[A] preliminary injunction is an extraordinary remedy never awarded as of right.’”) (quoting *Winter v. NRDC, Inc.*, 555 U.S. 7, 24 (2008)).

“Constitutional harm is not necessarily synonymous with the irreparable harm necessary for issuance of a preliminary injunction.” *DSSA*, 108 F.4th at 203 (citation modified).<sup>4</sup> There are two reasons that Plaintiff’s claims of irreparable constitutional harm are especially weak. First, Section 4.4(b) was signed into law in December 2022, Plaintiff obtained his HCP in October 2024, *see* ECF No. 1-1, ¶ 4, and he allegedly stopped carrying a handgun outside his home in November 2025, *see* ECF No. 1, ¶ 35. Plaintiff did not initiate his first suit until February 15, 2026, and did not effectuate service upon Defendants until March 9, 2026. Plaintiff’s initial

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<sup>4</sup> *DSSA* recognized limited exceptions, holding that “courts may presume that suppressing speech or worship inflicts irreparable injury.” 108 F.4th at 204. This is not such a case.

unreasonable delay in seeking injunctive relief “indicate[s] at least a reduced need for such drastic, speedy action.” *DSSA*, 108 F.4th at 206 (noting the “maxim of equity is that it ‘assists the diligent, not the tardy’” and finding a “four-month delay suggests that [the party] felt little need to move quickly”) (citation modified); *see also Def. Distrib. v. Att’y Gen. of N.J.*, 972 F.3d 193, 201 (3d Cir. 2020) (finding a party’s choice to “prolong” alternative litigation, rather than pursue injunction in a parallel cases “represent[ed] ‘a strong indication that the status quo can continue’ and belies an assertion of irreparable harm.”); *Messina v. Coll. of N.J.*, 566 F. Supp. 3d 236, 249 (D.N.J. 2021) (finding that any purported harm plaintiffs may face was a consequence of their own delay because they waited over four months to request injunctive relief). Courts in this District have repeatedly held that delays ranging from a year to even just a few months “knocks the bottom out of any claim of immediate and irreparable harm,” offering a “dispositive basis” to reject a preliminary injunction. *Pharmacia Corp. v. Alcon Labs.*, 201 F. Supp. 2d 335, 382–83 (D.N.J. 2002) (collecting cases); *see also Messina*, 566 F. Supp. 3d at 249.

Plaintiff’s unreasonable delay goes beyond waiting a few months to file a lawsuit. Plaintiff voluntarily dismissed his first action on April 7, 2026, *after* his motion for preliminary injunction was fully briefed. Then, after dismissing the first action, Plaintiff initiated the instant action on April 13, 2026, ECF No. 1, but did not move for a preliminary injunction or serve Defendants until April 27, 2026, ECF

No. 4. Plaintiff's deliberate choice to repeatedly start and stop this litigation, delay service, and even withdraw his application for a preliminary injunction demonstrates that the harm cannot be so imminent that it requires such an extraordinary remedy.

Second, as discussed in Section I, *supra*, because Plaintiff's claim of harm is entirely speculative and entirely self-imposed, it is not irreparable injury. *See Caplan v. Fellheimer Eichen Braverman & Kaskey*, 68 F.3d 828, 839 (3d Cir. 1995) ("If the harm complained of is self-inflicted, it does not qualify as irreparable."). Plaintiff claims that the injury imposed by Section 4.4(b) is "the ongoing subjection to a regime that conditions the exercise of constitutional rights on compelled speech during police encounters." ECF No. 4-1, ¶ 28. But Plaintiff voluntarily ceased the conduct that subjects him to Section 4.4(b)'s requirement in November 2025, despite having no apparent issue with carrying or traveling with a firearm for a year, between October 2024 and October 2025.

Moreover, Plaintiff relies solely on highly generalized allegations about the challenged law's supposed chilling effect on Plaintiff's First and Second Amendment rights. Plaintiff's First Amendment claim is limited to Section 4.4(b), relying predominantly on a theory of compelled speech. *See generally* ECF No. 4-1. But Plaintiff does not articulate how Section 4.4(b) causes a constitutionally impermissible chilling effect upon the exercise of his First Amendment rights. *NSSF*, 80 F.4th at 220 ("A plaintiff must do more than assert 'subjective chill.'"); *see also*

*Sindel*, 53 F.3d at 878 (holding that a First Amendment right to refrain from speaking has been limited to the context of government-compelled speech with respect to a particular political or ideological message). There is no cognizable First Amendment injury under the statute. *See infra* Section III.B.

The same analysis applies to Plaintiff's asserted Second Amendment right. Plaintiff simply claims that Section 4.4(b) "burdens activity protected by the Second Amendment and does so through a form of compelled disclosure for which the State can identify no relevantly similar historical analogue." ECF No. 4-1, ¶ 52. Such generalized claims, entirely unsupported by the record and Second Amendment jurisprudence, *see infra* Section III.A, do not establish a "threat of specific future harm." *NSSF*, 80 F.4th at 220 (quoting *Sherwin-Williams Co.*, 968 F.3d at 270); *see also id.* at 223 (noting that plaintiff must show their constitutional rights are "threatened by significant penalties, and those penalties might well be imposed, as shown by past enforcement in similar situations or some other evidence of the threat.").

### **III. There Is No Likelihood of Success on the Merits.**

#### **A. The Challenged Law Does Not Infringe the Second Amendment.**

Nothing in Section 4.4(b) prohibits Plaintiff from keeping and bearing arms. Because the challenged law regulates conduct that falls outside the scope of the right

secured by the Second Amendment, Plaintiff's Second Amendment claim can be easily rejected.

The Second Amendment protects the right of individuals to keep and bear arms for "the core lawful purpose of self-defense." *District of Columbia v. Heller*, 554 U.S. 570, 630 (2008). The challenged law does not implicate any conduct protected by the Second Amendment. Plaintiff argues that the challenged law infringes his right to engage in lawful public carry, "specifically for lawful vehicle-based transport of handguns for self-defense-related training, instruction, and competition," thereby requiring a historical analysis under *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). ECF No. 4-1, ¶¶ 19–34; Pl. App'x. ECF No. 4-1, at MITC0001-0066.<sup>5</sup>

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<sup>5</sup> While Plaintiff incorrectly asserts (as demonstrated *infra*), in perfunctory and wholly conclusory terms, that his proposed conduct is conduct covered by the plain text of the Second Amendment, ECF No. 4-1, ¶ 33, he spends a substantial portion of his brief, ECF No. 4-1, ¶¶ 33–52, imagining what historical laws he thinks Defendants might cite, and then arguing that they are not analogous to Section 4.4(b). In a sense, he is right: the historical laws he has propped up as straw man arguments are not analogous to Section 4.4(b), because those laws did implicate conduct protected by the Second Amendment and were nevertheless found permissible. Section 4.4(b) does even less. Plaintiff's proposed conduct is not covered by the plain text of the Second Amendment, so the Court need consider for historical statutes analogous to the challenged statute, as would be required by the second step of the *Bruen* analysis. But even if it did, shall-issue permitting laws like New Jersey's, which are presumptively constitutional under *Bruen*, see, e.g., *Md. Shall Issue, Inc. v. Moore*, 116 F.4th 211, 227 (4th Cir. 2024), by definition involve the issuance and inspection of permits. To the extent historical analogues are considered, it is worth noting that Section 4.4(b) is part of a shall-issue permitting system, a system the Supreme Court expressly held constitutional in *Bruen*.

But nothing in the challenged law prevents Plaintiff from engaging in the conduct he describes as protected by the Second Amendment. Nothing in the challenged law prevents him from carrying or transporting firearms for self-defense-related training, instruction, and competition. He remains free to carry his firearms with him as he travels, including in his car for his intended purposes.

Section 4.4(b) only requires that, if he is stopped or detained by law enforcement, Plaintiff must inform the officer that he has a gun that is secured and inaccessible, and display his HCP. Thus, the only conduct actually at issue is Plaintiff's desire not to no longer comply with the requirements of Section 4.4(b), which he agreed to abide by when he was issued an HCP. By definition, Section 4.4(b) can only apply to someone who is *already* lawfully armed. Abiding by safety requirements and requests to display an HPC does not limit Plaintiff's exercise of his Second Amendment right. *See, e.g., Md. Shall Issue, Inc. v. Moore*, 116 F.4th 211, 227 (4th Cir. 2024) (“[B]ackground checks and training instruction, which necessarily occasion some delay, ordinarily will pass constitutional muster without requiring the government to justify the regulation.”); *cf. id.* (“‘[S]hall-issue’ licensing laws are presumptively constitutional even though such laws require compliance *before* individuals may exercise their Second Amendment rights.”).

Section 4.4(b) does nothing to burden conduct protected by the Second Amendment, and does nothing to burden Plaintiff's ability to carry his weapon on

his person or in a secure and inaccessible location in his vehicle if he chooses to do so. Plaintiff's desire not to comply with the law and tell a police officer he is carrying a gun is not conduct protected by the Second Amendment. *Cf. United States v. Scheidt*, 103 F.4th 1281, 1284 (7th Cir. 2024) (adhering to "[o]rdinary information-providing requirements" that are "enforced through criminal statutes . . . is conduct that is outside the scope of the Second Amendment's protections, not requiring application of *Bruen*'s historical analysis framework"); *Doe v. Bonta*, 101 F.4th 633, 640 (9th Cir. 2024) (collecting and disclosing gun owners' information does not "restrict conduct covered by the plain text of the Second Amendment"). Thus, "the analysis can stop there; the regulated activity is categorically unprotected." *Bruen*, 597 U.S. at 18 (citation modified). Rather, Section 4.4(b) details the responsibilities of permit holders as it relates to the carrying of their weapons. It imposes no additional burdens or restrictions regarding whether Plaintiff can carry a firearm, including in his vehicle. *Cf. Scheidt*, 103 F.4th at 1284; *Johnson v. Jacobson*, 804 F. Supp. 3d 928, 939 (D. Minn. 2025) (noting that a reciprocity provision did not "independently burden Second Amendment rights," because it imposed no further burdens on who could carry).

Because Section 4.4(b) does not implicate conduct protected by the Second Amendment, Plaintiff cannot establish a likelihood of success on his Second Amendment argument.

**B. The Challenged Law Does Not Implicate the First Amendment.**

Plaintiff claims that Section 4.4(b) compels speech, because it requires an affirmative disclosure of the existence of a handgun during a police encounter, and requires display of an HCP. ECF No. 4-1, ¶ 53. But Section 4.4(b) does not implicate the First Amendment because (1) it does not regulate content-based speech; (2) it does not compel speech; and (3) even if it did implicate the First Amendment, it easily withstands constitutional scrutiny.

The First Amendment generally prohibits laws “restricting or burdening expression because of its message, its ideas, its subject matter, or its content” and “distinguish[es] between content-based and content-neutral regulations of speech.” *Vidal v. Elster*, 602 U.S. 286, 292 (2024) (citation modified). “A content-based regulation targets speech based on its communicative content” by “restricting discussion of a subject matter or topic.” *Id.* at 292–93 (citation modified). As a general matter, content-based regulations are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. *See Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

Plaintiff argues that Section 4.4(b) “compels [him] to communicate a state-mandated factual message during a stop or detention.” ECF No. 4-1, ¶ 53. That is not a content-based disclosure. In *Nat’l Inst. of Family & Life Advocates v. Becerra*,

the Court held that “compelling individuals to *speak a particular message*,” such as a government-drafted script, “alters the content of their speech” such that it creates a “content-based regulation of speech.” 585 U.S. 755, 766 (2018) (citation modified) (emphasis added). Here, the government does not compel anyone to speak any particular message. If pulled over, one only has to disclose the existence of a firearm if that firearm is present in his vehicle at the time of the traffic stop, and display the HCP. There is no regulation of speech based on the message, idea, or subject matter being expressed, such as political or religious content. And a law does not implicate the Free Speech Clause if its “effect on speech” is “only incidental to its primary effect on conduct.” *Expressions Hair Design v. Schneiderman*, 581 U.S. 37, 47 (2017). After all, “it has never been deemed an abridgement of freedom of speech . . . to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed.” *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 62 (2006) (citation modified).

The fact that Plaintiff must speak in order to inform law enforcement of the presence of a firearm, as required by Section 4.4(b), does not mean that his First Amendment rights are implicated. Courts have not recognized a First Amendment right of a person not to speak during a police interview. *See, e.g., Alexander v. City of Round Rock*, 854 F.3d 298, 308–09 (5th Cir. 2017) (holding there is no clearly

established First Amendment right not to answer an officer's questions during a traffic stop); *Koch v. City of Del City*, 660 F.3d 1228, 1244 (10th Cir. 2011) (“[W]e . . . have found no authority recognizing a First Amendment right to refuse to answer questions during a *Terry* stop.”); accord *Hawthorne v. Cty of the Putnam*, 492 F. Supp. 3d 281, 303 (S.D.N.Y. 2020); see also *W.V. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 645 (1943) (Murphy, J., concurring) (opining that there is no right to refrain from speaking when “essential operations of government may require it for the preservation of an orderly society, —as in the case of compulsion to give evidence in court”). It is true that the government cannot compel a person to publicly declare or affirm a personal “belief” or “an attitude of mind.” See *Barnette*, 319 U.S. at 633. But Section 4.4(b) does not compel such speech. It only requires the disclosure of factual and noncontroversial information: the existence of a firearm in a vehicle, and the HCP. This disclosure has no bearing on the individual's personal belief or attitude of mind. It is not a form of compelled speech prohibited by the First Amendment. See *Sindel*, 53 F.3d at 878 (holding that a protection against compelled speech “has been found only in the context of governmental compulsion to disseminate a particular political or ideological message”).

Even if Section 4.4(b) implicated the First Amendment—which it does not—Plaintiff's claim would still fail because the requirement of handgun disclosure in a vehicle meets any level of scrutiny. The strict scrutiny standard requires that a law

be “the least restrictive means of achieving a compelling state interest.” *McCullen v. Coakley*, 573 U.S. 464, 478 (2014). Since the disclosure “is necessary to serve [the] compelling state interest,” *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983), of preventing armed violence it satisfies the strict scrutiny standard. *See Brown v. Peyton*, 437 F.2d 1228, 1231 (4th Cir. 1971) (noting limiting a “substantial threat to public safety, peace or order” can be a “compelling state interest”).<sup>6</sup> Whether an individual has a handgun in their vehicle during a traffic stop is information that allows officers assess risk to themselves or others, and is crucial to the State’s interests in public as well as officer safety.

Because Plaintiff does not suffer from any infringement of his First Amendment rights, Plaintiff is unlikely to succeed on the merits of his First Amendment claim, and the request for preliminary injunction should be denied.

#### **IV. The Other Preliminary Injunction Factors Foreclose Relief.**

The remaining equities also prove fatal. *See Winter*, 555 U.S. at 23 (holding that “even if plaintiffs have shown irreparable injury . . . any such injury” can be “outweighed” by the equities); *DSSA*, 108 F.4th at 202 (noting that an injunction can be overturned “solely on the balance of equities and the public interest”). Generally,

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<sup>6</sup> Intermediate scrutiny and rational basis review are accordingly also satisfied. Since Section 4.4(b) is integral to protecting officer and public safety, it satisfies any level of scrutiny.

when the government is the opposing party, the last two factors of the preliminary-injunction test “merge.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). And here, equitable factors weigh heavily against Plaintiff.

When “challengers seek to enjoin enforcement of . . . democratically enacted state laws,” federal “[c]ourts rightly hesitate to interfere with exercises of executive or legislative authority,” especially when “federal courts are asked to block states from enforcing their laws.” *DSSA*, 108 F.4th at 205. Given the role of states as “laboratories of democracy,” the Third Circuit has found it especially inappropriate to invalidate laws passed by a state legislature and signed by a governor on a truncated and rushed process, choosing to instead “err on the side of respecting state sovereignty.” *Id.* at 206. Enjoining such a law, the Third Circuit has recognized, works its own “form of irreparable injury” on the State and its people. *Id.* (citation modified); *see also Cameron v. EMW Women’s Surgical Ctr., P.S.C.*, 595 U.S. 267, 277 (2022) (recognizing a state’s “legitimate interest in the continued enforceability of its own statutes” (citation modified)).

The public interest here goes beyond the State’s interest in the enforceability of its duly enacted laws: states have an especially “substantial and important interest in protecting [their] citizens’ safety.” *Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Att’y Gen., N.J.*, 910 F.3d 106, 119 (3rd Cir. 2018), *abrogated in other part by Bruen*, 597 U.S. 1 (citation modified). By stripping state law enforcement officers of the ability

to quickly identify the presence of a concealed firearm during traffic stops or criminal investigations, a preliminary injunction would threaten the very public-safety interests the State is empowered to protect.

**CONCLUSION**

This Court should deny Plaintiff's motion for a preliminary injunction.

Respectfully submitted,  
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**CERTIFICATE OF SERVICE**

I certify that on May 18, 2026, I electronically filed the foregoing Defendants' Brief in Opposition to Plaintiff's Motion for a Preliminary Injunction and accompanying papers with the Clerk of the United States District Court for the District of New Jersey. Counsel for all parties are registered CM/ECF users and will be served via CM/ECF.

Dated: May 18, 2026

/s/ Lucy I. Sprague  
Lucy I. Sprague