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Testimony of Kelsey Rogers, Senior Manager of State Policy at Brady
Opposition to SB 360
Before the Ohio Senate Government Oversight and Reform Committee
September 22, 2020

Chairman Coley and Other Distinguished Members of the Ohio Senate Government Oversight and Reform Committee,

Thank you for allowing us to submit testimony before your committee today. Founded in 1974, Brady works across Congress, courts, and communities, uniting gun owners and non-gun owners alike, to take action, not sides, and end America's gun violence epidemic. Our organization today carries the name of Jim Brady, who was shot and severely injured in the assassination attempt on President Ronald Reagan. Jim and his wife, Sarah, led the fight to pass federal legislation requiring background checks for gun sales. Brady continues to uphold Jim and Sarah's legacy by uniting Americans from coast to coast, red and blue, young and old, liberal and conservative, to combat the epidemic of gun violence.

We ask you to reject the bill before you today, SB 360, that would prevent any public official from temporarily shuttering gun stores, even in the case of a national or state emergency like the COVID-19 pandemic. We believe that this bill is dangerous and puts public health at risk when officials need to be doing the most to protect residents of Ohio.

In order to slow the spread of the COVID-19 virus during the global pandemic, many state and local officials issued stay-at-home orders and closed non-essential businesses based on the guidance of public health experts. It is well within the authority of public officials to take appropriate and temporary measures to protect the health of their constituents. This includes temporarily closing gun stores where it is deemed necessary in the interests of public safety. Many states and localities chose to designate gun stores, among many other businesses as "non-essential" during the height of the pandemic, as medical professionals took critical time to begin to understand the route of transmission and which activities carried highest risk.

State and local governments are within their rights to designate gun stores as “non-essential” and order their temporary closure in order to prevent the spread of coronavirus. Temporary and emergency scenarios—like the COVID-19 pandemic or natural disasters that pose an unprecedented risk to public health and safety—necessitate a temporary change in Americans’ way of life. As we have seen during this pandemic, the exercise of certain business or activities may be curtailed, limited, or postponed in the broader interest of public safety. There is simply no reason that gun dealers should be exempt from public safety protections.

Even under ordinary circumstances, the Second Amendment does not entitle immediate gun purchases. In fact, courts have repeatedly upheld laws that temporarily restrict access to firearms to protect the general public welfare. In line with this, the mandated temporary closure of gun shops during the pandemic did not implicate the Second Amendment. State and local governments must have the ability to impose temporary, reasonable, and good faith restrictions during the course of an emergency, including the closure of gun dealers when appropriate.¹

Throughout the COVID-19 pandemic, we’ve seen record-high gun sales due to fear and uncertainty. It is critical to recognize that purchasing a firearm is a process that inherently requires significant person-to-person interactions and is generally not conducive to physical and social distancing as recommended by the U.S. Centers for Disease Control and Prevention.² Typically, a responsible gun dealer will be interacting directly with a potential purchaser to physically obtain identification, run a background check, and observe them to ensure s/he is a responsible and legal buyer. For many, guns are a significant purchase, and prospective buyers will want to handle several firearms before making a purchasing decision. Public officials should be allowed to make the decision to close gun stores, along with other types of stores, if it is deemed necessary to slow the flow of a virus that can potentially live on surfaces or in the air for hours and possibly, days.

If this bill passes, it would hamper public officials from doing their jobs to protect their citizens during a national emergency such as a pandemic or natural disaster. It is not only entirely within the powers of Governor DeWine and other state and local officials to temporarily restrict the actions of private industries in an effort to increase public safety, it is also the responsible decision to make. In times of emergency, we must come together to protect each other and our communities.

¹ See e.g., *Smith v. Avino*, 91 F.3d 105 (11th Cir. 1996) (“In an emergency situation, fundamental rights such as the right of travel and free speech may be temporarily limited or suspended.”), abrogated on other grounds by *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998); *United States v. Chalk*, 441 F.2d 1277, 1278 (4th Cir. 1971) (upholding a curfew during a state of emergency and noting that a mayor’s “invocation of emergency powers necessarily restricts activities that would normally be constitutionally protected”)

² U.S. Centers for Disease Control and Prevention, “Social Distancing,” available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html#:~:text=Social%20distancing%2C%20also%20called%20%E2%80%9Cphysical,both%20indoor%20and%20outdoor%20spaces.>

For these reasons, we are encouraging members of this committee to vote no on SB 360.

Thank you for the opportunity to offer our testimony before your committee today and we appreciate your consideration.