

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA**

<p>TANNER HIRSCHFELD; NATALIA MARSHALL,</p> <p style="text-align:center"><i>Plaintiffs,</i></p> <p style="text-align:center">v.</p> <p>THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES; THOMAS E. BRANDON, in his official capacity as the Deputy and Acting Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives; WILLIAM P. BARR, in his official capacity as Attorney General of the United States,</p> <p style="text-align:center"><i>Defendants.</i></p>	<p>Civil Action No. 3:18-CV-00103</p>
---	---------------------------------------

**BRIEF OF AMICUS CURIAE GIFFORDS LAW CENTER TO PREVENT  
GUN VIOLENCE IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS**

Alison Deich (Virginia State Bar No. 87452)  
COHEN MILSTEIN SELLERS & TOLL PLLC  
1100 New York Ave. NW, Fifth Floor  
Washington, DC 20005  
(202) 408-4600  
ADeich@cohenmilstein.com  
*Counsel of Record for Amicus Curiae*

*Of Counsel for Amicus Curiae:*

Hannah Shearer  
GIFFORDS LAW CENTER TO  
PREVENT GUN VIOLENCE  
268 Bush St. # 555  
San Francisco, CA 94104  
(415) 433-2062

J. Adam Skaggs  
GIFFORDS LAW CENTER TO  
PREVENT GUN VIOLENCE  
223 West 38th St. # 90  
New York, NY 10018  
(917) 680-3473

Robert A. Sacks  
Leonid Traps  
Angela N. Ellis  
Jackson Froliklong  
SULLIVAN & CROMWELL LLP  
125 Broad Street  
New York, NY 10004-2498  
(212) 558-4000

April 17, 2019

## TABLE OF CONTENTS

	<b>Page</b>
INTEREST OF THE <i>AMICUS CURIAE</i> .....	1
INTRODUCTION AND SUMMARY OF ARGUMENT .....	1
ARGUMENT .....	4
<b>I.</b> Congress Enacted a “Calibrated” Law to Address the Problem of Handgun Violence by Minors Under the Age of 21 .....	4
<b>II.</b> Social Science Evidence Confirms That Congress’s Concerns Were Well-Founded and That Its Solution Was Effective . .....	8
<b>A.</b> Eighteen-to-Twenty-Year-Old Minors Are Generally More Impulsive and Emotionally Volatile Than Older Cohorts .....	8
<b>B.</b> Eighteen-to-Twenty-Year-Olds Are Disproportionately Likely to Commit Violent Crimes, Including Homicide, by Firearm .....	11
<b>C.</b> Eighteen-to-Twenty-Year-Olds Attempt Suicide at Disproportionately High Rates and Access to Firearms Increases the Likelihood and Lethality of Those Suicide Attempts. ....	13
<b>D.</b> Federal and State Minimum-Age Laws Have Proven Effective at Reducing Gun Violence Among Minors .....	14
<b>III.</b> Legislative History and Social Science Help Demonstrate That the Challenged Law Does Not Implicate the Second Amendment or, Alternatively, Survives Constitutional Scrutiny .....	17
<b>A.</b> The Challenged Law Does Not Regulate Conduct Protected by the Second Amendment .....	18
<b>B.</b> At Most, the Challenged Restriction on Some Handgun Purchases by 18-to-20-Year-Olds Triggers, and Survives, Intermediate Scrutiny .....	20
CONCLUSION.....	22

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Carter v. Baltimore Cty.</i> , 39 F. App'x 930 (4th Cir. 2002) .....	5
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008) .....	<i>passim</i>
<i>Drake v. Filko</i> , 724 F.3d 426 (3d Cir. 2013) .....	17
<i>Hamilton v. Pallozzi</i> , 848 F.3d 614 (4th Cir. 2017) .....	17
<i>Horsley v. Trame</i> , 61 F. Supp. 3d 788 (S.D. Ill. 2014) .....	19
<i>Horsley v. Trame</i> , 808 F.3d 1126 (7th Cir. 2015) .....	8, 9, 22
<i>Kolbe v. Hogan</i> , 849 F.3d 114 (4th Cir. 2017) ( <i>en banc</i> ) .....	<i>passim</i>
<i>Mance v. Sessions</i> , 896 F.3d 699 (5th Cir. 2018) .....	7
<i>McDonald v. City of Chicago</i> , 561 U.S. 742 (2010) .....	1, 3, 19
<i>N.Y. State Rifle &amp; Pistol Ass'n, Inc. v. Cuomo</i> , 804 F.3d 242 (2d Cir. 2015) .....	7, 21
<i>Nat'l Rifle Assoc. v. Bureau of Alcohol, Tobacco, Firearms, &amp; Explosives</i> , 700 F.3d 185 (5th Cir. 2012) .....	<i>passim</i>
<i>Nat'l Rifle Assoc. v. McCraw</i> , 719 F.3d 338 (5th Cir. 2013) .....	22
<i>People v. Aguilar</i> , 2 N.E.3d 321 (Ill. 2013) .....	18
<i>People v. Fields</i> , 24 N.E.3d 326 (Ill. App. Ct. 2014) .....	12

<i>Powell v. Tompkins</i> , 926 F. Supp. 2d 367 (2013) (D. Mass. 2013) .....	18
<i>United States v. Chester</i> , 628 F.3d 673 (4th Cir. 2010) .....	4, 21
<i>United States v. Masciandaro</i> , 638 F.3d 458 (4th Cir. 2011) .....	21
<i>United States v. Rene E.</i> , 583 F.3d 8 (1st Cir. 2009).....	18
<i>Wilson v. Lynch</i> , 835 F.3d 1083 (9th Cir. 2016) .....	17
<b>Statutes</b>	
18 U.S.C. § 922(b)(1) .....	4
18 U.S.C. § 922(c) .....	4
Pub. L. No. 90-351, Title IV, § 901(a)(6), 82 Stat. 197, 225-26 (1968).....	5, 7, 8
<b>Regulations</b>	
27 C.F.R. § 478.96(b) .....	4
27 C.F.R. § 478.99(b)(1).....	4
27 C.F.R. § 478.124(a).....	4
U.S. Military Academy Regulation 190-3, § II.1-6(b)(1).....	11
<b>Legislative Materials</b>	
114 Cong. Rec. 12309 (1968).....	1, 6, 8
<i>Federal Firearms Act: Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the Sen. Comm. on the Judiciary, 89th Cong. 67 (1965) .....</i>	2, 7
<i>Federal Firearms Act: Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the Sen. Comm. on the Judiciary, 90th Cong. 57 (1967) .....</i>	6
S. Rep. No. 88-1340 (1964) .....	6
S. Rep. No. 89-1866 (1966).....	2, 6, 7
S. Rep. No. 90-1097 (1968).....	1, 5, 6

**Other Authorities**

Adam Winkler & Cara Natterson, *There’s a simple way to reduce gun violence: Raise the gun age*, WASH. POST (Jan. 6, 2016).....8

American Public Health Association, *Reducing Suicides by Firearms* (2018) .....13

BLACK’S LAW DICTIONARY (10th ed. 2014).....18

Brian A. Reaves, *State Court Processing Statistics, 1990-2002*, U.S. Dep. of Justice (July 2006) .....20

Bureau of Alcohol, Tobacco, and Firearms Chief Counsel’s Opinion (Dec. 5, 1983) .....5

Centers for Disease Control and Prevention, Web-based Injury Statistics Query and Reporting System (WISQARS), Fatal and Non-Fatal Injury Data .....13

Centers for Disease Control and Prevention, Web-based Injury Statistics Query and Reporting System (WISQARS), Leading Cause of Death Reports .....13

Daniel W. Webster et al., *Association between Youth-focused Firearm Laws and Youth Suicides*, 292 JAMA 594 (2004) .....14

Daniel W. Webster et al., *The Case for Gun Policy Reforms in America*, JOHNS HOPKINS CTR. FOR GUN POLICY & RESEARCH 1 (2012) .....11

James C. Fell et al., *The Impact of Underage Drinking Laws on Alcohol-Related Fatal Crashes of Young Drivers*, 33 ALCOHOLISM: CLINICAL & EXPERIMENTAL RESEARCH 1208, 1208 (2009) .....16

Katherine A. Vittes et al., *Legal Status and Source of Offenders’ Firearms in States with the Least Stringent Criteria for Gun Ownership*, 19 INJ. PREV. 26 (2013).....15

Leah H. Somerville et al., *A Time of Change: Behavioral and Neural Correlates of Adolescent Sensitivity to Appetitive and Aversive Environmental Cues*, 72 BRAIN AND COGNITION 124 (2010).....10

Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 NEUROPSYCHIATRIC DISEASE AND TREATMENT 449 (2013) .....8, 9, 10

Mark Gius, *The Impact of Minimum Age and Child Access Prevention Laws on Firearm-Related Youth Suicides and Unintentional Deaths*, 52 THE SOC. SCI. J. 168 (2015) .....15

Matthew Miller et al., *Guns and Gun Threats at College*, 51 J. AM. COLL. HEALTH 57 (2002).....10, 11

Matthew Miller et al., <i>Suicide Mortality in the United States: The Importance of Attending to Method in Understanding Population-Level Disparities in the Burden of Suicide</i> , 33 ANN. REV. PUB. HEALTH 393 (2012).....	14
<i>Mental Health Disorder Statistics</i> , JOHNS HOPKINS MEDICINE .....	13
Merete Nordentoft et al., <i>Absolute Risk of Suicide after First Hospital Contact in Mental Disorder</i> , 68 ARCHIVES OF GENERAL PSYCHIATRY 1058 (2011) .....	13
Michael Dreyfuss et al., <i>Teens Impulsively React Rather than Retreat from Threat</i> , 36 DEVELOPMENTAL NEUROSCIENCE 220 (2014) .....	10
<i>Minimum Age to Purchase &amp; Possess</i> , GIFFORDS LAW CENTER .....	14
RAND Corporation, <i>The Science of Gun Policy: A Critical Synthesis of Research Evidence on the Effects of Gun Policies in the United States 1</i> (2018) .....	12
Tomáš Paus et al., <i>Why Do Many Psychiatric Disorders Emerge During Adolescence?</i> , 9 NATURE REVIEWS NEUROSCIENCE 947 (2008) .....	13
U.S. Census Bureau, <i>U.S. Population Projections, State Interim Population Projections by Age and Sex: 2004–2030</i> .....	11
U.S. Department of Justice, <i>Crime in the United States, Arrests, by Age, 2017</i> .....	11
William DeJong & Jason Blanchette, <i>Case Closed: Research Evidence on the Positive Public Health Impact of the Age 21 Minimum Legal Drinking Age in the United States</i> , 75 J. STUD. ON ALCOHOL & DRUGS 108 (2014) .....	17

**CORPORATE DISCLOSURE STATEMENT**

Giffords Law Center to Prevent Gun Violence states that it has no parent corporations. It has no stock, and therefore no publicly held company owns 10% or more of its stock.

## **INTEREST OF THE AMICUS CURIAE**

*Amicus curiae* Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) is a non-profit policy organization dedicated to researching, writing, enacting, and defending laws and programs proven to effectively reduce gun violence. The organization was founded a quarter-century ago following a gun massacre at a San Francisco law firm and was renamed Giffords Law Center in October 2017 after joining forces with the gun-safety organization founded by former Congresswoman Gabrielle Giffords. Today, Giffords Law Center provides free assistance and expertise to lawmakers, advocates, legal professionals, law enforcement officials, and citizens who seek to improve the safety of their communities. Giffords Law Center has provided informed analysis as an *amicus* in many firearm-related cases, including in *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017) (*en banc*).

### **INTRODUCTION AND SUMMARY OF ARGUMENT**<sup>1</sup>

Fifty years ago, Congress undertook “a multi-year investigation that revealed a causal relationship between the easy availability of firearms to young people under 21 and [a] rise in crime.”<sup>2</sup> Congress found that “minors”—a term that included everyone under the age of 21—were responsible for a disproportionate share of “serious crimes of violence, including murder, rape, robbery, and aggravated assault”<sup>3</sup>; that at the time, the handgun was the

---

<sup>1</sup> Defendants consent, and Plaintiffs object, to the filing of this brief. No counsel for a party authored this brief in whole or in part. No person other than *amicus* or its counsel contributed money to fund this brief’s preparation or submission.

<sup>2</sup> *Nat’l Rifle Assoc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 207 (5th Cir. 2012), *rehearing en banc denied*, 714 F.3d 334 (5th Cir. 2013), *cert. denied*, 571 U.S. 1196 (2014).

<sup>3</sup> S. Rep. No. 90-1097, at 77, 79 (1968); 114 Cong. Rec. 12309 (1968) (Sen. Thomas J. Dodd, Chairman, Sen. Subcomm. on Juvenile Delinquency).

“predominant[.]” type of weapon used in such crimes<sup>4</sup>; that minors frequently evaded state firearm restrictions by crossing state lines to purchase handguns<sup>5</sup>; and that federally licensed dealers were responsible for “almost all” handgun sales to minors.<sup>6</sup>

These findings led Congress to conclude that the “clandestine acquisition of firearms by juveniles and minors” was “a most serious problem facing law enforcement and the citizens of this country,” including because the “easy availability” of handguns sold by federally licensed dealers to “emotionally immature, or thrill-bent” minors made their “tendency toward wild, and sometimes irrational behavior that much more violent, that much more deadly.”<sup>7</sup> Congress recognized what social science has repeatedly confirmed: because minors’ brains are still developing, minors are more impulsive and emotionally volatile than adults. They commit a disproportionate share of violent crimes and homicides (including of other minors), and are at higher risk of suicide, in part because major psychiatric conditions often first manifest in adolescence or early adulthood.<sup>8</sup>

Congress responded by enacting a targeted, “safety-driven”<sup>9</sup> restriction on (i) handgun (ii) purchases (iii) from federally licensed dealers (iv) by minors under the age of 21.

---

<sup>4</sup> S. Rep. No. 89-1866, at 4 (1966).

<sup>5</sup> *Id.* at 19.

<sup>6</sup> *Federal Firearms Act: Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the Sen. Comm. on the Judiciary, 89th Cong. 67 (1965)* (Statement of Sheldon S. Cohen, Commissioner of Internal Revenue).

<sup>7</sup> *Nat’l Rifle Assoc.*, 700 F.3d at 198-99 (quoting legislative history of the Omnibus Crime Control and Safe Streets Act of 1968).

<sup>8</sup> *See infra* n.32.

<sup>9</sup> *Nat’l Rifle Assoc.*, 700 F.3d at 199.

This solution was both “calibrated”<sup>10</sup> to the specific public safety concerns Congress identified, and effective in addressing them. Although gun violence remains a pervasive problem, Congress’s efforts have seen meaningful results, and studies confirm that this and similar restrictions on firearm purchases by minors have saved lives.

For these reasons—and because, as explained in Defendants’ brief, the law Plaintiffs challenge is consistent with a longstanding, historical tradition of restricting minors’ access to firearms—the challenged restriction simply does not hinder “the central right that the Second Amendment was intended to protect[,] that is, the ‘right of law-abiding, *responsible* citizens to use arms in defense of hearth and home.’”<sup>11</sup> Indeed, the restriction is in line with, and complementary to, the “longstanding prohibitions on the possession of firearms by felons and the mentally ill” and “laws imposing conditions and qualifications on the commercial sale of arms” that were specifically recognized as constitutional by the Supreme Court.<sup>12</sup> Accordingly, as the Fifth Circuit held in evaluating a nearly identical complaint, the restriction challenged by Plaintiffs does not implicate the Second Amendment,<sup>13</sup> and, even if it did, would easily “pass[] constitutional muster.”<sup>14</sup> Plaintiffs therefore do not state a claim, and this Court should grant Defendants’ motion to dismiss.

---

<sup>10</sup> *Id.* at 209.

<sup>11</sup> *Id.* at 193 (emphasis in original) (quoting *Heller*, 544 U.S. at 635).

<sup>12</sup> *Heller*, 544 U.S. at 626-27; *see also McDonald*, 561 U.S. at 786.

<sup>13</sup> *See Nat’l Rifle Assoc.*, 700 F.3d at 203 (“We have summarized considerable evidence that burdening the conduct at issue—the ability of 18-to-20-year-olds to purchase handguns from [federal firearm licensees]—is consistent with a longstanding, historical tradition, which suggests that the conduct falls outside the Second Amendment’s protection.”).

<sup>14</sup> *See id.* at 205, 207 (“Unquestionably, the challenged federal laws trigger nothing more than ‘intermediate’ scrutiny. . . . We conclude that the challenged ban passes constitutional muster under ‘intermediate’ scrutiny.”).

## ARGUMENT

Like most of the federal courts of appeal, the Fourth Circuit has endorsed a two-part approach to evaluating Second Amendment challenges: First, a court must ask “whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment’s guarantee”; if not, the “law is valid” without further review. *Kolbe*, 849 F.3d at 132-33. Second, and only if the law does impose such a burden, the court applies “an appropriate form of means-end scrutiny.” *Id.* Unless the law “severely burden[s] the core protection of the Second Amendment—i.e., the right of law-abiding, *responsible* citizens to use arms for self-defense in the home”—no more than intermediate scrutiny applies. *Id.* at 138 (emphasis added). That requires only “a reasonable fit between the challenged regulation and a substantial governmental objective.” *United States v. Chester*, 628 F.3d 673, 683 (4th Cir. 2010) (internal quotation marks omitted).

The challenged law’s purpose, as evidenced by its text and legislative record, and the existence of robust social science to support that purpose, are properly considered at both steps of this analysis. Indeed, the Fifth Circuit relied on these sources in rejecting an identical constitutional challenge. *See Nat’l Rifle Assoc.*, 700 F.3d at 207-10. The same analysis and result should govern here.

### **I. CONGRESS ENACTED A “CALIBRATED” LAW TO ADDRESS THE PROBLEM OF HANDGUN VIOLENCE BY MINORS UNDER THE AGE OF 21.**

In 1968, as part of the Omnibus Crime Control and Safe Streets Act and the Gun Control Act, Congress restricted federally licensed importers, manufacturers, or dealers (“federal firearms licensees” or “FFLs”) from selling (i) any firearms or ammunition to juveniles under the age of 18, and (ii) handguns or handgun ammunition, specifically, to minors under the age of 21. *See* 18 U.S.C. §§ 922(b)(1), (c); 27 C.F.R. §§ 478.99(b)(1), 478.124(a), 478.96(b). Plaintiffs

challenge the second restriction on the basis that it impermissibly burdens the Second Amendment rights of 18-to-20-year-olds. (Complaint ¶ 21, ECF No. 1.) However, as the Fifth Circuit recognized in rejecting an identical challenge, legislative history demonstrates that Congress fashioned the restriction to target, in a careful and constitutional manner, “an important public safety problem: the ease with which young persons—including 18-to-20-year-olds—were getting their hands on handguns through FFLs.” *Nat’l Rifle Assoc.*, 700 F.3d at 207.<sup>15</sup>

As Plaintiffs acknowledge, the 1968 Act itself states that it was enacted to aid in the “fight against crime,” and *not* “to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes.” (Complaint ¶ 16 (quoting Pub. L. No. 90-618, § 101, 82 Stat. 1213, 1213-14 (1968)) (alterations omitted).) Indeed, the restriction Plaintiffs challenge is a narrow one, regulating only: (i) sale (not possession or gifting); (ii) of handguns (not of rifles or shotguns); (iii) by FFLs (not by unlicensed sellers); (iv) to minors under the age of 21.<sup>16</sup> This carefully “calibrated” restriction, *Nat’l Rifle Assoc.*, 700 F.3d at 209, was meant to target an important problem Congress identified in enacting the statute: “[t]he clandestine acquisition of firearms by juveniles and minors,” S. Rep. No. 90-1097, at 79 (1968), and “a causal relationship between the easy availability of firearms other than a rifle or shotgun

---

<sup>15</sup> *See also id.* at 207-10 (examining legislative record). The Fourth Circuit has held that legislative history may properly be considered at the motion to dismiss stage. *See Carter v. Baltimore Cty.*, 39 F. App’x 930, 933 (4th Cir. 2002).

<sup>16</sup> *See, e.g.*, S. Rep. No. 90-1097, at 79 (1968) (“[A] minor or juvenile would not be restricted from owning, or learning the proper usage of [a] firearm, since any firearm which his parent or guardian desired him to have could be obtained for the minor or juvenile by the parent or guardian.”); *see also* Bureau of Alcohol, Tobacco, and Firearms Chief Counsel’s Opinion 23362 (Dec. 5, 1983) (opining that a dealer may lawfully sell a firearm to a parent or guardian who is purchasing it for a minor child as long as the minor is not otherwise prohibited from receiving or possessing a firearm).

and juvenile and youthful criminal behavior.” Pub. L. No. 90-351, Title IV, § 901(a)(6), 82 Stat. 197, 225-26 (1968).

Specifically, Congress’s multi-year investigation, comprising both “field investigation and public hearings,” S. Rep. No. 88-1340, at 1 (1964), uncovered the following disturbing facts:

- “[M]inors account for 64 percent of the total arrests” for “serious crimes in the United States.” S. Rep. No. 90-1097, at 77 (1968).
- “Minors under the age of 21 years accounted for 35 percent of the arrests for the serious crimes of violence including murder, rape, robbery, and aggravated assault.” 114 Cong. Rec. 12309 (1968) (Sen. Thomas J. Dodd, Chairman, Sen. Subcomm. on Juvenile Delinquency).
- According to federal law enforcement officials, at the time the law was enacted, “[t]he greatest growth of crime” was “in the area of young people, juveniles and young adults,” and “[t]he easy availability of weapons makes their tendency toward wild, and sometimes irrational behavior that much more violent, that much more deadly.” *Federal Firearms Act: Hearings Before the Subcomm. to Investigate Juvenile Delinquency* of the Sen. Comm. on the Judiciary, 90th Cong. 57 (1967) (Statement of Sheldon S. Cohen, Commissioner of Internal Revenue).
- Local law enforcement officers from around the country submitted “statistics documenting the misuse of firearms by juveniles and minors,” which “[took] on added significance when one considers the fact that in each of the jurisdictions . . . the lawful acquisition of concealable firearms by these persons was prohibited by statute,” S. Rep. No. 89-1866, at 59 (1966), and in light of the “serious problem of

individuals going across State lines to procure firearms which they could not lawfully obtain or possess in their own State and without the knowledge of their local authorities,” *id.* at 19.

- “[A]lmost all of these firearms . . . are put into the hands of juveniles [and minors] by importers, manufacturers, and dealers who operate under licenses issued by the Federal Government.” *Federal Firearms Act: Hearings Before the Subcomm. to Investigate Juvenile Delinquency* of the Sen. Comm. on the Judiciary, 89th Cong. 67 (1965) (Statement of Sheldon S. Cohen, Commissioner of Internal Revenue).
- “[E]specially concern[ing]” was “the particular type of weapon that is predominantly used by the criminal”: the handgun. S. Rep. No. 89-1866, at 4 (1966). Indeed, the handgun’s “size, weight, and compactness make it easy to carry, to conceal, to dispose of, or to transport,” and “[a]ll these factors make it the weapon most susceptible to criminal use” by minors. *Id.*<sup>17</sup>

Based on these findings, Congress concluded that concealable firearms “have been widely sold by federally licensed importers and dealers to emotionally immature, or thrill-bent juveniles and minors prone to criminal behavior,” and “that only through adequate Federal control over interstate and foreign commerce in these weapons, and over all persons engaging in the businesses of importing, manufacturing, or dealing in them, can this grave

---

<sup>17</sup> Much of the evidence cited above applies to all firearms, not just handguns, and arguably supports restricting minors’ access to long guns as well. The fact that Congress did “not address all aspects of a problem in one fell swoop” does not make its targeted steps to achieve incremental results reducing handgun crime unconstitutional. *Mance v. Sessions*, 896 F.3d 699, 708 (5th Cir. 2018) (upholding allegedly “underinclusive” interstate handgun sales restrictions and observing that “policymakers may focus on their most pressing concerns” (internal quotation marks omitted)), *petition for cert. filed* (U.S. Nov. 21, 2018) (No. 18-663); *see also N.Y. State Rifle & Pistol Ass’n, Inc. v. Cuomo*, 804 F.3d 242, 263 (2d Cir. 2015) (“[G]un control legislation need not strike all evils at the same time to be constitutional.” (internal quotations omitted)).

problem be properly dealt with, and effective State and local regulation of this traffic be made possible.” Pub. L. No. 90-351, Title IV, § 901(a)(3), (a)(6), 82 Stat. 197, 225-26 (1968). Though fully aware “that there are some youngsters under the age of 21 who are more mature than others,” and that its age restriction “could cause minor inconveniences to certain youngsters who are mature, law abiding and responsible,” Congress viewed its chosen compromise as necessary and reasonable “in light of the continuing increase of crimes of violence by persons under 21 years of age.” 114 Cong. Rec. at 12309 (Sen. Dodd).

## **II. SOCIAL SCIENCE EVIDENCE CONFIRMS THAT CONGRESS’S CONCERNS WERE WELL-FOUNDED, AND THAT ITS SOLUTION WAS EFFECTIVE.**

Congress’s concerns were legitimate. Social science research confirms that the problem Congress identified was (and remains) very substantial, and that Congress acted appropriately and carefully to craft a solution. Courts, including the Fifth Circuit and Seventh Circuit, have relied on this research in rejecting challenges similar or identical to the one here,<sup>18</sup> and this Court should do the same.

### **A. Eighteen-to-Twenty-Year-Old Minors Are Generally More Impulsive and Emotionally Volatile Than Older Cohorts.**

The scientific literature is clear that the human brain does not fully mature until the mid-to-late twenties.<sup>19</sup> The *last* part of the brain to mature is the prefrontal cortex, the region

---

<sup>18</sup> See *Nat’l Rifle Assoc.*, 700 F.3d at 210 n.21; *Horsley v. Trame*, 808 F.3d 1126, 1133 (7th Cir. 2015).

<sup>19</sup> Adam Winkler & Cara Natterson, *There’s a simple way to reduce gun violence: Raise the gun age*, WASH. POST (Jan. 6, 2016), [https://www.washingtonpost.com/posteverything/wp/2016/01/06/there-a-simple-way-to-fight-mass-shootings-raise-the-gun-age/?utm\\_term=.e8adc7e6c1da](https://www.washingtonpost.com/posteverything/wp/2016/01/06/there-a-simple-way-to-fight-mass-shootings-raise-the-gun-age/?utm_term=.e8adc7e6c1da) (“The scientific literature over the past two decades has demonstrated repeatedly that the brain does not fully mature until the mid-to-late 20s.”).

underlying “executive” functions like impulse control, judgment, and long-range planning.<sup>20</sup> On the other hand, the limbic system—which controls basic emotions like fear, anger, and pleasure—matures well before the prefrontal cortex, resulting in a period of reduced self-control and decision making in the late teens and early twenties.<sup>21</sup> As a result, 18-to-20-year-olds are prone to take risks and deprioritize long-term outcomes. *See Nat’l Rifle Assoc.*, 700 F.3d at 210 n.21 (“[M]odern scientific research supports the commonsense notion that 18-to-20-year-olds tend to be more impulsive than young adults aged 21 and over.”); *id.* (quoting submission from the American Medical Association: “The brain’s frontal lobes are still structurally immature well into late adolescence, and the prefrontal cortex is ‘one of the last brain regions to mature.’ This, in turn, means that ‘response inhibition, emotional regulation, planning and organization . . . continue to develop between adolescence and young adulthood.”); *Horsley*, 808 F.3d at 1133 (“The evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable.” (quoting Declaration of Ruben C. Gur, Ph.D., [http://www.americanbar.org/content/dam/aba/publishing/criminal\\_justice\\_section\\_newsletter/crimjust\\_juvjus\\_Gur\\_affidavit.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_juvjus_Gur_affidavit.authcheckdam.pdf))).

---

<sup>20</sup> *Id.*; *see also*, Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 NEUROPSYCHIATRIC DISEASE AND TREATMENT 449, 453, 456 (2013) (“Behavioral control requires a great involvement of cognitive and executive functions. These functions are localized in the prefrontal cortex, which matures independent of puberty and continues to evolve up until 24 years of age.”).

<sup>21</sup> Arain, *supra* note 20, at 453-54 (“[S]tudies involv[ing] comparing a teen brain to an adult brain determined that adolescents’ prefrontal cortices are used less often during interpersonal interactions and decision making than their adult counterparts. . . . Thus, an understanding of how the limbic system and the prefrontal cortex are used has provided a partial explanation for certain characteristics of adolescents and adolescent behaviors, such as quickness to anger, intense mood swings, and making decisions on the basis of ‘gut’ feelings.”).

Further, minors are uniquely prone to negative emotional states.<sup>22</sup> These states “are not only frequent” but adolescents’ “emotional responses [to these states] also tend to be more intense, variable and subject to extremes relative to adults.”<sup>23</sup> Scientists have reasoned that “[f]eeling sad, depressed, or hopeless may be associated with the heightened rates of affective disorders, attempted and completed suicide, and addiction also observed during adolescence.”<sup>24</sup> Because their limbic systems have matured while their cerebral cortexes are still developing, minors are also more prone to act on aggressive negative emotions, *e.g.*, rage, when confronted by a stressful situation.<sup>25</sup>

These qualities—impulsiveness and emotional volatility—render easy handgun access by 18-to-20-year-olds a disproportionate public health risk. *See, e.g.*, Michael Dreyfuss et al., *Teens Impulsively React Rather than Retreat from Threat*, 36 DEVELOPMENTAL NEUROSCIENCE 220, 220 (2014) (“Adolescents commit more crimes per capita than children or adults in the USA and in nearly all industrialized cultures. Their proclivity toward . . . risk taking has been suggested to underlie the inflection in criminal activity observed during this time.”). Indeed, institutions responsible for educating individuals in this age group—such as colleges and military academies, which arguably admit only the most responsible young adults—recognize this risk. *See, e.g.*, Matthew Miller et al., *Guns and Gun Threats at College*, 51 J. AM. COLL. HEALTH 57, 63-64 (2002) (“[O]ur findings also suggest that students who report having

---

<sup>22</sup> Leah H. Somerville et al., *A Time of Change: Behavioral and Neural Correlates of Adolescent Sensitivity to Appetitive and Aversive Environmental Cues*, 72 BRAIN AND COGNITION 124, 125 (2010).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Arain, *supra* note 20 (“The adolescent brain is structurally and functionally vulnerable to environmental stress.”).

guns at college disproportionately engage in behaviors that put themselves and others at risk for injury.”); U.S. Military Academy Regulation 190-3 at § II.1-6(b)(1) (“No pistols or handguns may be registered or carried by anyone under the age of twenty-one (21) to include Cadets.”) (on file with counsel).

**B. Eighteen-to-Twenty-Year-Olds Are Disproportionately Likely to Commit Violent Crimes, Including Homicide, by Firearm.**

Given their impulsiveness and emotional volatility, it is unsurprising that 18-to-20-year-olds account for a disproportionate share of violent crimes and homicides. The statistics are stark:

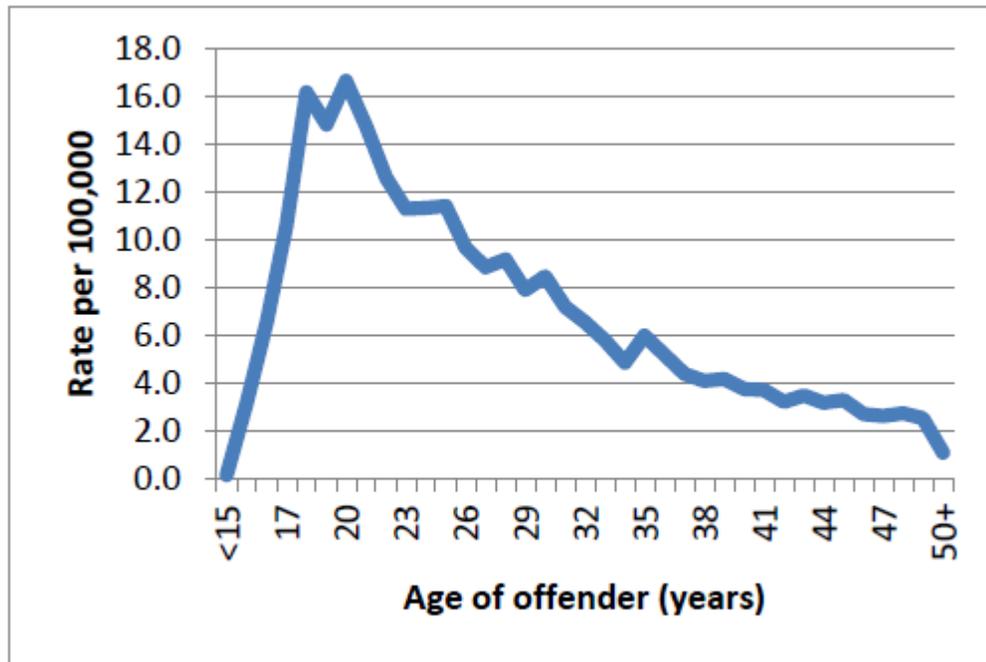
- Arrests for homicide, rape, and robbery peak from ages 18 to 20.<sup>26</sup>
- Though 18-to-20-year-olds make up under 5% of the population, they account for over 15% of homicide and manslaughter arrests.<sup>27</sup>
- This general pattern has persisted over time. The following chart, from 2009 and showing homicide offending rate by age, vividly illustrates the disproportionate share of homicides committed by minors that year<sup>28</sup>:

---

<sup>26</sup> U.S. Department of Justice, *Crime in the United States*, Arrests, by Age, 2017, at Table 38, <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-38>.

<sup>27</sup> *Id.*; U.S. Census Bureau, *U.S. Population Projections*, State Interim Population Projections by Age and Sex: 2004 – 2030, Annual projections by single year of age.

<sup>28</sup> Daniel W. Webster et al., *The Case for Gun Policy Reforms in America*, JOHNS HOPKINS CTR. FOR GUN POLICY & RESEARCH 1, 5 (2012), [https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/publications/WhitePaper020514\\_CaseforGunPolicyReforms.pdf](https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/publications/WhitePaper020514_CaseforGunPolicyReforms.pdf).



- FBI data also suggests that young people disproportionately commit gun homicides. For example, 18-to-20-year olds comprise under 5% of the US population, but account for 17% of known homicide offenders.<sup>29</sup>
- “Firearm homicides and violent crimes disproportionately involve individuals under age 21, both as perpetrators and as victims.”<sup>30</sup>

<sup>29</sup> Calculated using data from the FBI’s Supplementary Homicide Reports and US Census Bureau. Uniform Crime Reporting Program: Supplementary Homicide Reports (SHR), Washington, DC: Department of Justice, Federal Bureau of Investigation; US Census Bureau Population Estimates.

<sup>30</sup> RAND Corporation, *The Science of Gun Policy: A Critical Synthesis of Research Evidence on the Effects of Gun Policies in the United States* 1, 145 (2018); see also *People v. Fields*, 24 N.E.3d 326, 344 (Ill. App. Ct. 2014) (“We also note that the 18-to-20-year-old age group is more likely to be directly interacting with and, thus, endangering juveniles under 18 years of age.”).

**C. Eighteen-to-Twenty-Year-Olds Attempt Suicide at Disproportionately High Rates and Access to Firearms Increases the Likelihood and Lethality of Those Suicide Attempts.**

Suicide risk “increase[s] steeply during the first few years after” an individual’s first contact with psychiatric services,<sup>31</sup> and many major psychiatric conditions first develop in adolescence.<sup>32</sup> Indeed, suicide is the second-most common cause of death among 18-to-20-year olds.<sup>33</sup> Minors under 21 also attempt suicide at disproportionately high rates. Data from the Centers for Disease Control and Prevention shows that suicide attempts that result in death or hospital treatment are at the highest rates from age 14 through age 21.<sup>34</sup>

“Access to firearms is a key risk factor for suicide.”<sup>35</sup> Firearm suicide is the suicide method with the highest fatality rate: 85% of Americans who attempt suicide with a

---

<sup>31</sup> Merete Nordentoft et al., *Absolute Risk of Suicide after First Hospital Contact in Mental Disorder*, 68 ARCHIVES OF GENERAL PSYCHIATRY 1058, 1061 (2011).

<sup>32</sup> See Tomáš Paus et al., *Why Do Many Psychiatric Disorders Emerge During Adolescence?*, 9 NATURE REVIEWS NEUROSCIENCE 947, 952 (2008) (“Anxiety disorders, bipolar disorder, depression, eating disorder, psychosis including schizophrenia, and substance abuse all most commonly emerge during adolescence.”); *Mental Health Disorder Statistics*, JOHNS HOPKINS MEDICINE, <https://www.hopkinsmedicine.org/health/wellness-and-prevention/mental-health-disorder-statistics> (explaining that schizophrenia “typically first appears in men during late teens or early twenties”) (last visited Apr. 17, 2019).

<sup>33</sup> Centers for Disease Control and Prevention, Web-based Injury Statistics Query and Reporting System (WISQARS), Leading Cause of Death Reports, <https://webappa.cdc.gov/sasweb/ncipc/leadcause.html>.

<sup>34</sup> Centers for Disease Control and Prevention, Web-based Injury Statistics Query and Reporting System (WISQARS), Fatal and Non-Fatal Injury Data, <https://www.cdc.gov/injury/wisqars>.

<sup>35</sup> American Public Health Association, *Reducing Suicides by Firearms* (2018), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2019/01/28/reducing-suicides-by-firearms>.

firearm die from the attempt.<sup>36</sup> By contrast, only 4% of suicide attempts by other means are fatal.<sup>37</sup> Because most do not keep attempting suicide—more than 90% of people who survive a suicide attempt do not later die by suicide<sup>38</sup>—the involvement of a firearm in a minor’s or other person’s suicide attempt is a dispositive factor in whether the person dies or recovers.

**D. Federal and State Minimum-Age Laws Have Proven Effective at Reducing Gun Violence Among Minors.**

In addition to the federal law challenged here, several states impose minimum-age restrictions, and at least 18 states and the District of Columbia prohibit those under 21 from purchasing a handgun.<sup>39</sup> Researchers have studied the impact of these laws and have found connections between their enactment and a decline in firearm-related adolescent deaths, especially suicides and unintentional shootings.

For instance, an August 2004 study found that state laws raising the minimum legal age to purchase a handgun to 21 years were associated with a nine percent decline in firearm suicide rates among 18-to-20-year-olds.<sup>40</sup> A survey of convicted gun offenders in 13 states also found that 17% of the offenders would have been prohibited from obtaining firearms

---

<sup>36</sup> Matthew Miller et al., *Suicide Mortality in the United States: The Importance of Attending to Method in Understanding Population-Level Disparities in the Burden of Suicide*, 33 ANN. REV. PUB. HEALTH 393, 397 (2012).

<sup>37</sup> *Id.* In 2001, there were 333,765 non-firearm suicide attempts and 13,753 fatalities. *Id.*

<sup>38</sup> *Id.* at 402-03.

<sup>39</sup> See *Minimum Age to Purchase & Possess*, GIFFORDS LAW CENTER, <https://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/minimum-age/> (last visited Apr. 17, 2019).

<sup>40</sup> Daniel W. Webster et al., *Association between Youth-focused Firearm Laws and Youth Suicides*, 292 JAMA 594, 598 (2004).

at the time of the crime if the minimum legal age in that state had been 21 years, a finding that, according to the authors, “underscore[d] the importance of minimum-age restrictions.”<sup>41</sup>

Research also confirms that other federal minimum-age restrictions effectively reduce youth suicide and unintentional death rates, and, in fact, may be even more successful than their state counterparts.<sup>42</sup> According to a 2014 study, after Congress enacted a federal law in 1994 prohibiting those under 18 from possessing handguns, youth suicide rates dropped by 1.2 per 100,000 persons—a remarkable decline given that between 1981 and 2010, the entire period considered in the study, the average youth suicide rate was 1.49 per 100,000 persons.<sup>43</sup> The decline in youth unintentional firearm death rates was equally dramatic: between 1981 and 2010, the rate of youth unintentional gun deaths was 0.67 per 100,000 persons, but, after the federal minimum-age law was enacted in 1994, the rates fell by 0.47 per 100,000 persons.<sup>44</sup> The following charts illustrate the sharp decline in youth suicide and unintentional firearm death rates after the 1994 federal law went into effect:

---

<sup>41</sup> Katherine A. Vittes et al., *Legal Status and Source of Offenders’ Firearms in States with the Least Stringent Criteria for Gun Ownership*, 19 INJ. PREV. 26, 29-30 (2013).

<sup>42</sup> Mark Gius, *The Impact of Minimum Age and Child Access Prevention Laws on Firearm-Related Youth Suicides and Unintentional Deaths*, 52 THE SOC. SCI. J. 168, 173 (2015).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

Chart 1 – Youth Suicide Rate<sup>45</sup>

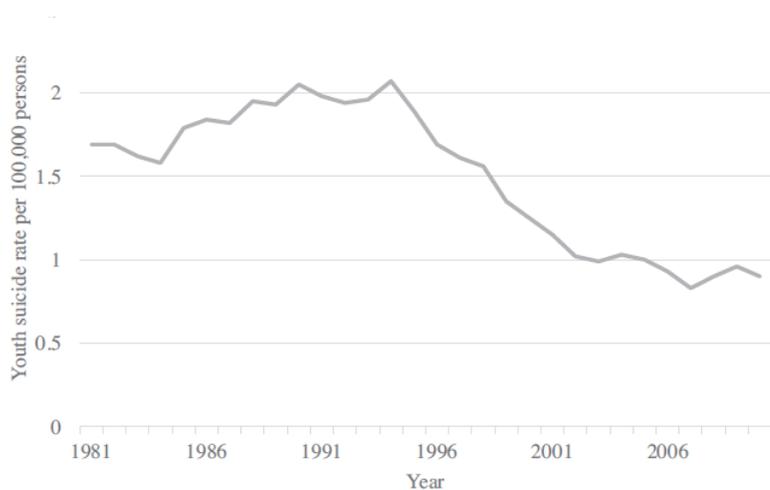
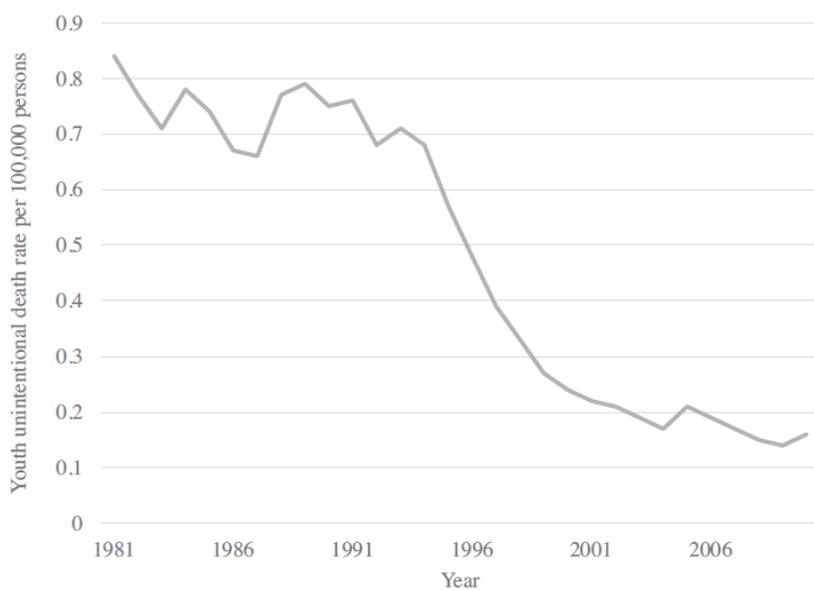


Chart 2 – Youth Unintentional Firearm Death Rate<sup>46</sup>



Finally, studies demonstrate the effectiveness of minimum-age laws in analogous contexts also involving serious potential risks minors pose to public safety. The same concerns regarding minors' heightened impulsiveness led to passage of laws in all 50 states establishing

---

<sup>45</sup> *Id.* at 174.

<sup>46</sup> *Id.*

21 as the minimum legal age for alcoholic beverage consumption. Multiple studies confirm that these laws led to significant reductions in death from motor vehicle crashes involving minor drivers.<sup>47</sup> As with minimum-age drinking laws, minimum-age firearm laws protect the public—and minors themselves—from deadly situations caused by minors’ relative irresponsibility, and thereby save lives.

**III. LEGISLATIVE HISTORY AND SOCIAL SCIENCE HELP DEMONSTRATE THAT THE CHALLENGED LAW DOES NOT IMPLICATE THE SECOND AMENDMENT OR, ALTERNATIVELY, SURVIVES CONSTITUTIONAL SCRUTINY.**

The legislative history and social science research discussed above provide strong additional support for holding, as the Fifth Circuit did, that the challenged restriction: (i) “falls outside the Second Amendment’s protection”; and (ii) even if it implicates the Second Amendment, “[u]nquestionably . . . trigger[s] nothing more than ‘intermediate’ scrutiny,” and “passes constitutional muster” under that standard. *Nat’l Rifle Assoc.*, 700 F.3d at 203-07. It is appropriate to decide both of these issues on a motion to dismiss, and the Court should do so here and grant Defendants’ motion. *See Hamilton v. Pallozzi*, 848 F.3d 614 (4th Cir. 2017) (affirming dismissal of Second Amendment complaint for failure to state a claim); *see also Wilson v. Lynch*, 835 F.3d 1083 (9th Cir. 2016) (affirming dismissal of Second Amendment complaint for failure to state a claim where challenged policy survived intermediate scrutiny); *Drake v. Filko*, 724 F.3d 426 (3d Cir. 2013) (affirming dismissal of Second Amendment

---

<sup>47</sup> William DeJong & Jason Blanchette, *Case Closed: Research Evidence on the Positive Public Health Impact of the Age 21 Minimum Legal Drinking Age in the United States*, 75 J. STUD. ON ALCOHOL & DRUGS 108, 113 (2014) (“Recent research on the age 21 [minimum legal drinking age] has reinforced the position that the current law has served the nation well by reducing alcohol-related traffic crashes.”); James C. Fell et al., *The Impact of Underage Drinking Laws on Alcohol-Related Fatal Crashes of Young Drivers*, 33 ALCOHOLISM: CLINICAL & EXPERIMENTAL RESEARCH 1208, 1208 (2009).

complaint for failure to state a claim where challenged law did not burden conduct within the scope of the Second Amendment and, alternatively, survived intermediate scrutiny).

**A. The Challenged Law Does Not Regulate Conduct Protected by the Second Amendment.**

To determine whether a law regulates conduct that falls inside or outside the Second Amendment's protection, courts consider "whether the law harmonizes with the historical traditions associated with the Second Amendment guarantee." *Nat'l Rifle Assoc.*, 700 F.3d at 194. More specifically, the Fourth Circuit, sitting *en banc*, has evaluated whether a law implicated the Second Amendment by comparing it to the historical limitations on the right to keep and bear arms that were explicitly recognized as legitimate in the Supreme Court's *Heller* decision. *See Kolbe*, 849 F.3d at 135-36 (holding that law was "outside the ambit of the Second Amendment" because it was a weapon "most useful in military service" and *Heller* referenced prohibitions on such weapons as permissible).

As Defendants explain in their brief, the challenged restriction is fully consistent with longstanding, historical restrictions on firearm purchases by minors and infants, who historically were defined as individuals under the age of 21. *See, e.g.*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining "infant" as "a person under the age of twenty-one years"); *Nat'l Rifle Assoc.*, 700 F.3d at 200-05 (marshalling historical evidence that at-issue restriction was "firmly historically rooted").<sup>48</sup> But even putting aside the extensive historical record, as in

---

<sup>48</sup> *See also United States v. Rene E.*, 583 F.3d 8, 13-16 (1st Cir. 2009) (discussing historical restrictions on firearm access by juveniles and minors); *Powell v. Tompkins*, 926 F. Supp. 2d 367, 388 (2013) (D. Mass. 2013) ("Case law from jurisdictions across the country confirms that during the late nineteenth and early twentieth centuries, minors' capacity to purchase and own firearms was significantly curtailed."), *aff'd*, 783 F.3d 332 (1st Cir. 2015); *People v. Aguilar*, 2 N.E.3d 321, 329 (Ill. 2013) ("[S]everal courts have since [*Heller*] undertaken a thorough historical examination . . . , and all of them have concluded that . . . the possession of handguns by minors is conduct that falls outside the scope of the second amendment's protection.").

*Kolbe*, *Heller* itself provides persuasive reasoning for holding that the challenged restriction does not implicate Second Amendment protection.

First, *Heller* holds that the central right protected by the Second Amendment is that of “law-abiding, *responsible* citizens to *use* arms in defense of hearth and home.” 554 U.S. at 635 (emphasis added). As described above, Congress concluded, consistent with well-established social science, that 18-to-20-year-old minors—who were historically considered “infants” under the law—are not sufficiently “responsible citizens.” See, e.g., *Horsley v. Trame*, 61 F. Supp. 3d 788, 793 (S.D. Ill. 2014) (“Many courts have noted that the risk of irresponsibility is higher in minors, and consequently, the danger of damage is greater.”), *aff’d*, 808 F.3d 1126 (7th Cir. 2015). Further, unlike the laws rejected in *Heller* and *McDonald*, the law here does not prohibit “use” or possession of “arms in defense of hearth and home.” To the contrary, the law operates only to prohibit *purchase* of a *particular* class of weapon from a *subset* of sellers by individuals in a *narrow* age group.

Second, and relatedly, *Heller* recognized several non-exhaustive “examples” of “presumptively lawful regulatory measures,” including “prohibitions on the possession of firearms by felons and the mentally ill” and “laws imposing conditions and qualifications on the commercial sale of arms.” 554 U.S. at 626-27 & n.26; see also *McDonald*, 561 U.S. at 786 (“repeating th[e] assurances” regarding legitimate “longstanding regulatory measures” identified in *Heller*). The restriction challenged here is clearly a “law[] imposing . . . qualifications on the commercial sale of arms,” and thus presumptively lawful under *Heller* and *McDonald*. Further, a restriction on handgun purchases by 18-to-20-year-olds is consistent with and complementary to “prohibitions on the possession of firearms by felons and the mentally ill”: Because both

felon status and mental illness often first manifest in this age range,<sup>49</sup> the restriction creates a period for minors in this high-risk age range to show whether or not they fall inside these categories and thereby outside the protection of the Second Amendment.

**B. At Most, the Challenged Restriction on Some Handgun Purchases by 18-to-20-Year-Olds Triggers, and Survives, Intermediate Scrutiny.**

Even if this court decides, perhaps out of “an abundance of caution,” to “proceed to step two” of the Second Amendment test, it is “[u]nquestionabl[e],” as the Fifth Circuit concluded in evaluating an identical challenge, that “the challenged federal laws trigger nothing more than ‘intermediate’ scrutiny.” *Nat’l Rifle Assoc.*, 700 F.3d at 205. Indeed, the Fourth Circuit has explained that strict scrutiny is appropriate only where the law “severely burden[s] the core protection of the Second Amendment, i.e., the right of law-abiding, responsible citizens to use arms for self-defense in the home,” *Kolbe*, 849 F.3d at 138 (emphasis added). The challenged restriction does no such thing. In fact, the challenged restriction bans neither the use nor the possession of firearms—including handguns—by minors under the age of 21. *See supra* at 5. Under the challenged restriction, 18-to-20-year-olds may receive handguns as gifts, and they are free to purchase them from unlicensed private dealers. *Nat’l Rifle Assoc.*, 700 F.3d at 190. The challenged restriction impedes only the commercial sale of handguns by FFLs to minors in this age group. *Id.* at 206. There can be no serious argument that this limited restriction “severely burden[s] the core protection of the Second Amendment.” *Kolbe*, 849 F.3d at 138.

---

<sup>49</sup> *See, e.g., supra* n.32 (research showing that symptoms of major psychiatric conditions often first develop in adolescence); Brian A. Reaves, *State Court Processing Statistics, 1990-2002*, U.S. Dep. of Justice (July 2006), at <https://www.bjs.gov/content/pub/ascii/vfluc.txt> (statistics showing that only six percent of violent felons were under age 18 at time of arrest, but 25% were under age 21).

Plaintiffs' Complaint illustrates this point. In a section titled "The Impact of the Ban on the Plaintiffs," Plaintiffs contend that the law "unduly limit[s]" their "access to acquiring a handgun" because they each "want[] to purchase a handgun from a FFL." (Compl. ¶¶ 27, 35.) The Complaint lists several reasons Mr. Hirschfeld and Ms. Marshall desire to buy handguns from FFLs, including the "larger supply of choices" at FFLs, as well as "the reputation of these regulated dealers" and the "guarantee" they purportedly offer that a firearm "has not been used or tampered with." (*Id.*) This "burden" does not even approach the type of severe restriction that the Fourth Circuit contemplated would be necessary to trigger strict scrutiny—*i.e.*, one that would "effectively disarm individuals or substantially affect their ability to defend themselves." *Kolbe*, 849 F.3d at 139 (quoting *N.Y. State Rifle & Pistol Ass'n*, 804 F.3d at 260). "Far from a total prohibition on handgun possession and use, these laws resemble 'laws imposing conditions and qualifications on the commercial sale of arms,' which *Heller* deemed 'presumptively lawful.'" *Nat'l Rifle Assoc.*, 700 F.3d at 206 (citing *Heller*, 554 U.S. at 626-27 & n.26)).

Therefore, at most, intermediate scrutiny applies, requiring only "a reasonable fit between the challenged regulation and a substantial governmental objective." *Chester*, 628 F.3d at 683 (internal quotations omitted); *see also United States v. Masciandaro*, 638 F.3d 458, 474 (4th Cir. 2011) ("[I]ntermediate scrutiny does not require that a regulation be the least intrusive means of achieving the relevant government objective, or that there be no burden whatsoever on the individual right in question."). Under this test, the challenged restriction easily passes constitutional muster. *Nat'l Rifle Assoc.*, 700 F.3d at 211 ("Because Congress's intended scheme reasonably fits [its] objective, the ban at bar survives 'intermediate' scrutiny.").

The Fourth Circuit has explained that the government's "interest in the protection of its citizenry and the public safety is not only substantial, but compelling." *Kolbe*, 849 F.3d at 139. In reviewing a law under intermediate scrutiny, the court must recognize that the

legislature is entitled to “weigh conflicting evidence and make policy judgments” without “second-guessing by a court,” and must “accord substantial deference to the” legislature’s “predictive judgments.” *Id.* at 140. “[A]ll that is required” is a “reasonable, if not perfect, fit between the [law] and [the government’s] interest in protecting public safety.” *Id.* at 140-41.

The legislative history and social science discussed above confirm, and the Fifth Circuit correctly held, that Congress focused on and addressed “a particular problem”—“*young persons under 21*, who are immature and prone to violence, easily accessing *handguns*, which facilitate violent crime, primarily by way of *FFLs*”—through a reasonable, “calibrated, compromise approach.” *Nat’l Rifle Assoc.*, 700 F.3d at 208-09 (emphasis in original); *see also Nat’l Rifle Assoc. v. McCraw*, 719 F.3d 338 (5th Cir. 2013) (“Texas’s handgun carriage scheme is substantially related to this important government interest in public safety through crime prevention. . . . [T]he record in this case emphasize[s] that those under 21 years of age are more likely to commit violent crimes with handguns than other groups.”); *Horsley*, 808 F.3d at 1132-33 (“The Illinois statute is substantially related to the achievement of the state’s interests. The goal of protecting public safety is supported by studies and data regarding persons under 21 and violent and gun crimes.”). Accordingly, there is a “reasonable fit” between “the challenged regulation” and the “substantial governmental objective” in public safety and protecting lives, and the regulation passes constitutional muster.

### **CONCLUSION**

For the foregoing reasons and those set forth by Defendants, the longstanding federal law Plaintiffs challenge does not implicate Second Amendment protection and survives the appropriate level of scrutiny even if it did. Congress acted deliberately and appropriately to

address a problem through a calibrated solution, and social science confirms that the problem was substantial and that Congress's solution was effective in saving lives.

This Court should therefore grant Defendants' motion to dismiss.

Dated: April 17, 2019

Respectfully submitted,

/s/ Alison Deich

Alison Deich (Virginia State Bar No. 87452)  
COHEN MILSTEIN SELLERS & TOLL PLLC  
1100 New York Ave. NW, Fifth Floor  
Washington, DC 20005  
(202) 408-4600  
ADeich@cohenmilstein.com

*Counsel of Record for Amicus Curiae Giffords  
Law Center to Prevent Gun Violence*

*Of Counsel for Amicus Curiae Giffords Law  
Center to Prevent Gun Violence:*

Hannah Shearer  
GIFFORDS LAW CENTER TO  
PREVENT GUN VIOLENCE  
268 Bush St. # 555  
San Francisco, CA 94104  
(415) 433-2062  
hshearer@giffords.org

J. Adam Skaggs  
GIFFORDS LAW CENTER TO  
PREVENT GUN VIOLENCE  
223 West 38th St. # 90  
New York, NY 10018  
(917) 680-3473  
askaggs@giffords.org

Robert A. Sacks  
Leonid Traps  
Angela N. Ellis  
Jackson Froliklong  
SULLIVAN & CROMWELL LLP  
125 Broad Street  
New York, NY 10004-2498  
(212) 558-4000  
sacksr@sullcrom.com