

The Honorable Ronald B. Leighton

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DANIEL MITCHELL, ROBIN BALL, LUKE  
RETTMER, NATHANIEL CASEY,  
MATTHEW WALD, SECOND AMENDMENT  
FOUNDATION, AND NATIONAL RIFLE  
ASSOCIATION,

*Plaintiffs,*

v.

CHUCK ATKINS, in his official capacity as  
the Sheriff of Clark County, Washington,  
CRAIG MEIDL, in his official capacity as  
the Chief of Police of Spokane, Washington,  
and TERESA BERNTSEN, in her official  
capacity as the director of the Washington  
State Department of Licensing,

*Defendants,*

and

SAFE SCHOOLS SAFE COMMUNITIES,

*Defendant-Intervenor.*

NO. 3:19-CV-05106-RBL

**BRIEF OF AMICI CURIAE  
GIFFORDS LAW CENTER TO  
PREVENT GUN VIOLENCE  
AND BRADY IN SUPPORT OF  
DEFENDANTS AND  
INTERVENOR-DEFENDANT'S  
CROSS-MOTION FOR  
SUMMARY JUDGMENT AND  
OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT**

**NOTED ON MOTION  
CALENDAR: April 24, 2020**

AMICI-CURIAE GIFFORDS LAW CENTER AND BRADY ISO DEFS.'  
CROSS-MOT FOR SUMMARY JUDGMENT AND OPP. TO PLFS.'  
MOT FOR SUMMARY JUDGMENT  
NO. 3:19-CV-05106-RBD

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**CORPORATE DISCLOSURE**

1  
2 Giffords Law Center to Prevent Gun Violence and Brady have no parent corporations.  
3 They have no stock and hence no publicly held company owns 10% or more of their stock. None  
4 of their members or owners is in a joint venture or limited liability corporation (LLC), they have  
5 no partners in a partnership or limited liability partnership (LLP), and they have no corporate  
6 member.  
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*AMICI-CURIAE* GIFFORDS LAW CENTER AND BRADY ISO DEFS.’  
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MOT FOR SUMMARY JUDGMENT  
NO. 3:19-CV-05106-RBD

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**Page**

INTEREST OF *AMICUS CURIAE*..... 1

INTRODUCTION ..... 2

ARGUMENT ..... 3

    I.    Eighteen-to-Twenty-Year-Olds Attempt Suicide at Disproportionately High Rates, and Access to Firearms, Especially Long Guns, Increases the Likelihood and Lethality of Those Suicide Attempts..... 5

    II.   Eighteen-to-Twenty-Year-Olds Are Disproportionately Likely to Carry Out Mass Shootings at Schools..... 7

    III.  The Initiative Defines “Semiautomatic Assault Rifles” to Encompass an Exceptionally Lethal Subset of Long Guns. .... 9

CONCLUSION..... 11

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

*Ass’n of N.J. Rifle & Pistol Clubs v. Attorney Gen. N.J.*,  
910 F.3d 106 (3d Cir. 2018)..... 1

*Coal. for Econ. Equity v. Wilson*,  
122 F.3d 692 (9th Cir. 1997) ..... 11

*District of Columbia v. Heller*,  
554 U.S. 570 (2008)..... 1

*Fyock v. City of Sunnyvale*,  
779 F.3d 991 (9th Cir. 2015) ..... 1, 4

*Hirschfeld v. Bureau of Alcohol, Tobacco, Firearms & Explosives*,  
417 F. Supp. 3d 747 (W.D. Va. 2019) ..... 1

*Hirschfeld v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*,  
No. 19-2250 (4th Cir. 2020) ..... 2

*Kasler v. Lockyer*,  
23 Cal. 4th 472 (2000) ..... 9

*McDonald v. City of Chicago*,  
561 U.S. 742 (2010)..... 1

*Md. Shall Issue v. Hogan*,  
353 F. Supp. 3d 400 (D. Md. 2018) ..... 1

*Nat’l Rifle Ass’n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*,  
700 F.3d 185 (5th Cir. 2012) ..... 2, 7

*People v. Fields*,  
24 N.E.3d 326 (Ill. App. Ct. 2014) ..... 4

*Peruta v. County of San Diego*,  
824 F.3d 919 (9th Cir. 2016) ..... 1

*Silvester v. Harris*,  
843 F.3d 816 (9th Cir. 2016) ..... 4

1 *Stimmel v. Sessions*,  
879 F.3d 198 (6th Cir. 2018) ..... 1

2 *Teixeira v. County of Alameda*,  
3 873 F.3d 670 (9th Cir. 2017) ..... 1

4 *United States v. Chovan*,  
5 735 F.3d 1127 (9th Cir. 2013) ..... 3, 4

6 *United States v. Hayes*,  
555 U.S. 415 (2009)..... 1

7 *United States v. Masciandaro*,  
8 638 F.3d 458 (4th Cir. 2011) ..... 11

9 *United States v. Torres*,  
10 911 F.3d 1253 (9th Cir. 2019) ..... 3

11 *Washington v. State Department*,  
No. 2:20-cv-00111-RAJ (W.D. Wash. 2020) ..... 1

12 **Other Authorities**

13 *Active Shooter: Shooter’s Age*, K-12 School Shooting Database, Center for  
14 Homeland Defense and Security..... 8

15 Adam Lankford & James Silver, *Why Have Public Mass Shootings Become More  
16 Deadly? Assessing how Perpetrators’ Motives and Methods Have Changed  
Over Time*, 19 *Criminology & Public Policy* 37 (2020)..... 8

17 American Public Health Association, *Reducing Suicides by Firearms* (2018) ..... 5

18 Centers for Disease Control and Prevention, Web-based Injury Statistics Query  
19 and Reporting System (WISQARS), *Leading Cause of Death Reports* ..... 5

20 Centers for Disease Control and Prevention, Wide-ranging Online Data for  
21 Epidemiologic Research (WONDER) ..... 6

22 Daniel W. Webster et al., *Association Between Youth-Focused Firearm Laws and  
Youth Suicides*, 292 *JAMA* 594 (2004) ..... 6

23 Eboni Morris, *Youth Violence: Implications for Posttraumatic Stress Disorder in  
24 Urban Youth*, National Urban League Policy Institute (2009) ..... 9

25 Elzerie de Jager et al., *Lethality of Civilian Active Shooter Incidents with and  
26 Without Semiautomatic Rifles in the United States*, 320 *JAMA* 1034 (2018) ..... 9, 10

1 Glenn D. Braunstein, *Violent Events Have Long-Term Effects on Children*,  
 Huffington Post, Sept. 24, 2012.....9

2 Heather Sher, *What I Saw Treating the Victims from Parkland Should Change the*  
 3 *Debate on Guns*, The Atlantic, Feb. 22, 2018 .....9

4 Initiative Measure No. 1639 ..... *passim*

5 *Initiative Measure No. 1639*, November 6, 2018 General Election Results,  
 6 Secretary of State (Nov. 27, 2018).....11

7 J. Michael Bostwick et al., *Suicide Attempt as a Risk Factor for Completed Suicide:*  
 8 *Even More Lethal Than We Knew*, 173 Am. J. of Psychiatry 1094 (2016).....5

9 Jane E. Brody, *After a Suicide Attempt, the Risk of Another Try*, N.Y. Times,  
 Nov. 7, 2016.....6

10 Jared Keller, *The Psychological Aftermath of Surviving School Shootings*, Pacific  
 Standard, Mar. 25, 2019.....9

11 Jeremy White, *When Lawmakers Try to Ban Assault Weapons, Gunmakers Adapt*,  
 12 N.Y. Times, July 31, 2019 .....10

13 Jillian K. Peterson & James A. Densley, *Database of Mass Shootings in the*  
 14 *United States*, The Violence Project (Nov. 2019).....7

15 Jillian Peterson & James Densley, *School shooters usually show these signs of*  
 16 *distress long before they open fire, our database shows*, The Conversation,  
 Feb. 8, 2019.....8

17 Joseph O’Sullivan, *Washington state voters approved new gun regulations in I-*  
 18 *1639. Here’s what the law will do*, Seattle Times, Nov. 8, 2018 .....2

19 Joshua D. Brown & Amie J. Goodin, *Mass Casualty Shooting Venues, Types of*  
 20 *Firearms, and Age of Perpetrators in the United States, 1982–2018*, 108 Am.  
 J. Pub. Health 1385 (2018) .....10

21 Melvin D. Livingston et al., *A Descriptive Analysis of School and School Shooter*  
 22 *Characteristics and the Severity of School Shootings in the United States,*  
 1999–2018, 64 J. of Adolescent Health 797 (2019) .....10

23 *Mental Health Disorder Statistics*, Johns Hopkins Medicine (2020).....5

24 Merete Nordentoft et al., *Absolute Risk of Suicide after First Hospital Contact in*  
 25 *Mental Disorder*, 68 Archives of General Psychiatry 1058 (2011).....5

1 Monika K. Goyal et al., *State Gun Laws and Pediatric Firearm-Related*  
*Mortality*, 144 *Pediatrics* No. 2 (2019) .....7

2 *Percentage of the population 3 to 34 years old enrolled in school, by age group:*  
 3 *selected years, 1940 through 2018*, National Center for Education Statistics.....8

4 RAND Corporation, *The Science of Gun Policy: A Critical Synthesis of Research*  
 5 *Evidence on the Effects of Gun Policies in the United States* (2018) .....4

6 Sriraman Madhavan et al., *Firearm Legislation Stringency and Firearm-Related*  
 7 *Fatalities Among Children in the US*, 229 *J. Am. College Surgeons* 150  
 (2019).....7

8 Thomas J. Hanlon et al., *Type of Firearm Used in Suicides: Findings from 13*  
 9 *States in the National Violent Death Reporting System, 2005–2015*, 65 *J.*  
*Adolescent Health* 366 (2019) .....6

10 Tomáš Paus et al., *Why do many psychiatric disorders emerge during*  
 11 *adolescence?*, 9 *Nature Reviews Neuroscience* 947 (2008).....5

12 U.S. Census Bureau, *Current Population Reports, Population Projections of the*  
*United States by Age, Sex, Race, and Hispanic Origin: 1995 to 2050* (1996) .....8

13 *Washington party shooting suspect read AR-15 gun manual right before attack,*  
 14 *The Guardian*, Aug. 1, 2016.....2

15 Zusha Elinson & Cameron McWhirter, *Gun Makers Adjust Rifles to Skirt Bans,*  
 16 *Wall St. J.*, June 21, 2019.....11

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19  
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**INTEREST OF AMICUS CURIAE**

1 *Amicus curiae* Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”)<sup>1</sup>  
 2 is a non-profit policy organization dedicated to researching, writing, enacting, and defending laws  
 3 and programs proven to effectively reduce gun violence. The organization was founded more  
 4 than a quarter-century ago following a gun massacre at a San Francisco law firm and was renamed  
 5 Giffords Law Center in October 2017 after joining forces with the gun-safety organization  
 6 founded by former Congresswoman Gabrielle Giffords. Today, Giffords Law Center provides  
 7 free assistance and expertise to lawmakers, advocates, legal professionals, law enforcement  
 8 officials, and citizens who seek to improve the safety of their communities. Giffords Law Center  
 9 has provided informed analysis as an *amicus* in many firearm-related cases, including in  
 10 *Hirschfeld v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 417 F. Supp. 3d 747 (W.D.  
 11 Va. 2019), *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*,  
 12 561 U.S. 742 (2010), *Fyock v. City of Sunnyvale*, 779 F.3d 991 (9th Cir. 2015), and *Teixeira v.*  
 13 *County of Alameda*, 873 F.3d 670 (9th Cir. 2017) (*en banc*).<sup>2</sup>

14 *Amicus curiae* Brady (formerly the Brady Center to Prevent Gun Violence) is a non-profit  
 15 organization dedicated to reducing gun violence through education, research, and legal advocacy.  
 16 Brady has a substantial interest in ensuring that the Constitution and state laws are properly  
 17 interpreted to allow *strong* government action to prevent gun violence. Through its Legal Action  
 18 Project, Brady has filed numerous briefs in support of government regulation of firearms,  
 19 including in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), *United States v. Hayes*, 555 U.S.  
 20 415 (2009), *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *Washington v. State*  
 21 *Department*, No. 2:20-cv-00111-RAJ (W.D. Wash. 2020). Further, Brady filed *amicus* briefs  
 22

23 <sup>1</sup> Giffords Law Center was previously named Law Center to Prevent Gun Violence, and Legal Community  
 24 Against Violence.

25 <sup>2</sup> Several courts have cited research and information from Giffords Law Center’s *amicus* briefs in Second  
 26 Amendment rulings. *E.g.*, *Hirschfeld*, 417 F. Supp. 3d. at 754, 759; *Ass’n of N.J. Rifle & Pistol Clubs v. Attorney*  
 27 *Gen. N.J.*, 910 F.3d 106, 121-22 (3d Cir. 2018); *Md. Shall Issue v. Hogan*, 353 F. Supp. 3d 400, 403-05 (D. Md.  
 2018); *Stimmel v. Sessions*, 879 F.3d 198, 204, 208, 210 (6th Cir. 2018); *Peruta v. County of San Diego*, 824 F.3d  
 919, 943 (9th Cir. 2016) (*en banc*) (Graber, J., concurring).



1 supporting federal minimum age laws in *National Rifle Association of America., Inc. v. Bureau*  
 2 *of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185 (5th Cir. 2012) and *Hirschfeld v.*  
 3 *Bureau of Alcohol, Tobacco, Firearms, & Explosives*, No. 19-2250 (4th Cir. 2020).

### 4 INTRODUCTION<sup>3</sup>

5 On November 6, 2018, the people of Washington went to the polls and voted to reduce  
 6 gun violence in their communities, and among young people in particular. They did so by passing  
 7 a referendum—Initiative 1639 (the “Initiative”)<sup>4</sup>—to prohibit 18-to-20-year-olds from  
 8 purchasing *semiautomatic* assault rifles.<sup>5</sup> The Initiative passed by a strong majority, garnering  
 9 more than 59% of the vote.<sup>6</sup>

10 The grassroots movement to pass the Initiative began two years earlier, after three  
 11 teenagers were murdered at a house party in Mukilteo, Washington, by a former high school  
 12 classmate. The 19-year-old attacker in that tragedy used an AR-15 semiautomatic assault rifle  
 13 that he purchased *legally* the previous week.<sup>7</sup> The massacre animated Washington voters to  
 14 devise measures to reduce the gun violence that was all too prevalent in their state, particularly  
 15 shootings involving semiautomatic assault rifles, which they recognized “heavily” “impact[] . . .  
 16 children and teenagers.”<sup>8</sup>

17  
 18  
 19 <sup>3</sup> No counsel for a party authored this brief in whole or in part. No person other than *amici* or their counsel  
 contributed money to fund this brief’s preparation or submission.

20 <sup>4</sup> Initiative Measure No. 1639, approved Nov. 6, 2018, [https://www.sos.wa.gov/\\_assets/  
 elections/initiatives/finaltext\\_1531.pdf](https://www.sos.wa.gov/_assets/elections/initiatives/finaltext_1531.pdf).

21 <sup>5</sup> Plaintiffs’ Amended Complaint challenges only the Initiative’s restrictions on *purchase* (not possession) of  
 semiautomatic assault rifles. *See* Dkt. 17. However, Plaintiffs’ Motion for Summary Judgment challenges  
 22 restrictions on purchase and possession. *See* Pls.’ Mot. for Summ. J., Dkt. 76 (“Pls.’ MSJ”). Although the Court  
 need only resolve the challenge brought in the Complaint, both the purchase and possession restrictions in the  
 Initiative easily pass constitutional muster.

23 <sup>6</sup> MacNaughton Decl., Ex. 1, Joseph O’Sullivan, *Washington state voters approved new gun regulations in I-*  
 24 *1639. Here’s what the law will do*, Seattle Times, Nov. 8, 2018, [https://www.seattletimes.com/seattle-  
 news/politics/washington-state-voters-approved-new-gun-regulations-in-i-1639-heres-what-the-law-will-do/](https://www.seattletimes.com/seattle-news/politics/washington-state-voters-approved-new-gun-regulations-in-i-1639-heres-what-the-law-will-do/).

25 <sup>7</sup> MacNaughton Decl., Ex. 2, *Washington party shooting suspect read AR-15 gun manual right before attack*,  
 The Guardian, Aug. 1, 2016, [https://www.theguardian.com/us-news/2016/aug/01/washington-shooting-suspect-  
 allen-ivanov-ar-15-gun-manual](https://www.theguardian.com/us-news/2016/aug/01/washington-shooting-suspect-allen-ivanov-ar-15-gun-manual).

26 <sup>8</sup> Initiative 1639 § 1.

1 Plaintiffs contend that the Initiative prevents them from exercising rights conferred by the  
2 Second Amendment. Dkt. 17 ¶ 3. This ignores well-established Second Amendment law, which  
3 has long permitted sensible firearm regulations like the Initiative that reasonably fit the state’s  
4 interest in promoting public safety.

5 Social science data cited in Defendants’ cross-motion for summary judgment confirms  
6 the more than reasonable fit between the Initiative’s restrictions and Washington’s compelling  
7 interest in protecting the safety of its citizens. This *amicus* brief presents three additional  
8 arguments, rooted in social science research, that further justify the Initiative under the applicable  
9 legal standard: (i) young people aged 18 to 20 are at higher risk of using firearms to attempt  
10 suicide, (ii) this group is disproportionately likely to carry out mass shootings at schools using  
11 semiautomatic assault rifles, and (iii) the Initiative’s definition of semiautomatic assault rifles,  
12 which focuses on these rifles’ mechanics, ensures that the most lethal types of rifles are regulated.  
13 The Initiative easily passes constitutional muster.

#### 14 ARGUMENT

15 Courts in the Ninth Circuit apply a “two-step inquiry to analyze claims that a law violates  
16 the Second Amendment.” *United States v. Torres*, 911 F.3d 1253, 1258 (9th Cir. 2019). This  
17 test “(1) asks whether the challenged law burdens conduct protected by the Second Amendment  
18 and (2) if so, directs courts to apply an appropriate level of scrutiny.” *Id.* (quoting *United States*  
19 *v. Chovan*, 735 F.3d 1127, 1136 (9th Cir. 2013)). Here, the Initiative’s minimum age requirement  
20 passes at both steps. As Defendants explained, history and tradition show that state and federal  
21 governments have regulated 18-to-20-year-olds’ access to firearms since the founding of this  
22 nation. *See* Defs.’ & Intervenor-Defs.’ Cross-Mot. for Summ. J. & Opp’n to Pls.’ Mot. for Summ.  
23 J., Dkt. 84 (“Defs.’ MSJ”) at 12-15. The Initiative’s minimum age requirement is therefore  
24 constitutional at the threshold inquiry. *Id.*

1 But even if this Court proceeds to step two, the Initiative’s minimum age requirement  
 2 easily survives intermediate scrutiny.<sup>9</sup> Intermediate scrutiny requires “(1) the government’s  
 3 stated objective to be significant, substantial, or important; and (2) a reasonable fit between the  
 4 challenged regulation and the asserted objective.” *Chovan*, 735 F.3d at 1139. Courts may look  
 5 to legislative history as well as scientific or other studies to determine whether intermediate  
 6 scrutiny is satisfied. *Fyock*, 779 F.3d at 1000 (considering “studies in the record or cited in  
 7 pertinent case law”) (citation & internal quotation marks omitted).

8 The Initiative satisfies both criteria of intermediate scrutiny. *First*, it is beyond question  
 9 that the Initiative’s stated public safety goals are “substantial”; the Initiative raises the minimum  
 10 age to purchase semiautomatic rifles because “[s]emiautomatic assault rifles are specifically  
 11 designed to kill quickly and efficiently and have been used in some of the country’s deadliest  
 12 mass shootings.”<sup>10</sup> These weapons are also disproportionately used by young people in suicide  
 13 attempts. The Ninth Circuit found it “self-evident” that the government’s interests in addressing  
 14 these grave public safety concerns are “substantial and important.” *Fyock*, 779 F.3d at 1000.

15 *Second*, empirical research overwhelmingly supports the voters’ judgment: 18-to-20-  
 16 year-olds are disproportionately likely to attempt suicide and commit mass shootings at schools.<sup>11</sup>  
 17 In part, this is because young people’s brains are still developing, causing them to act impulsively  
 18 and making them more likely to use guns irresponsibly. *See* Defs.’ MSJ at 21-23. Research  
 19 confirms that age-based firearm restrictions reduce firearm-related injuries and deaths. *Infra*  
 20 Section I. Data also show that suicide attempts and mass shootings are far deadlier when carried  
 21

22 <sup>9</sup> As Defendants explain in their Motion for Summary Judgment, intermediate scrutiny is the appropriate level  
 23 of scrutiny because the Initiative neither “implicates the core of the Second Amendment right” nor “severely  
 burdens that right.” *Silvester v. Harris*, 843 F.3d 816, 821 (9th Cir. 2016); *see* Defs.’ MSJ at 16-19.

24 <sup>10</sup> Initiative 1639 § 1.

25 <sup>11</sup> As Defendants note, 18-to-20-year-olds are also disproportionately likely to commit violent crime, *see* Defs.’  
 26 MSJ at 22-23, but there’s more: This cohort is also disproportionately the *victim* of gun violence. *See*  
 27 MacNaughton Decl., Ex. 3, RAND Corporation, *The Science of Gun Policy: A Critical Synthesis of Research  
 Evidence on the Effects of Gun Policies in the United States*, 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.”).

1 out using semiautomatic assault rifles. Accordingly, there is more than a “reasonable fit” between  
 2 the voters’ public safety objectives and the data-driven reforms advanced by the Initiative.

3 **I. Eighteen-to-Twenty-Year-Olds Attempt Suicide at Disproportionately High Rates,  
 4 and Access to Firearms, Especially Long Guns, Increases the Likelihood and  
 5 Lethality of Those Suicide Attempts.**

6 Eighteen-to-twenty-year-olds are disproportionately at risk of attempting suicide, and  
 7 firearm access exacerbates this risk. Many major psychiatric conditions first develop in  
 8 adolescence,<sup>12</sup> and suicide risk “increase[s] steeply during the first few years after” an  
 9 individual’s first contact with psychiatric services.<sup>13</sup> Data from the Centers for Disease Control  
 10 and Prevention show that suicide accounts for a higher percentage of deaths for 15-to-24-year-  
 11 olds than for any other age group.<sup>14</sup> Indeed, suicide is the second-most common cause of death  
 12 among 18-to-20-year-olds.<sup>15</sup>

13 “Access to firearms is a key risk factor for suicide.”<sup>16</sup> Firearm suicide is also the suicide  
 14 method with the highest fatality rate—the odds of completing a suicide attempt are 140 times  
 15 greater when a gun is used than for any other commonly used method.<sup>17</sup> Moreover, less than 3%  
 16 of people who survive one suicide attempt later die by suicide.<sup>18</sup> As scholars have noted,  
 17 “[s]uicide attempters often have second thoughts, but when a method like a gun works so

18  
 19 <sup>12</sup> See MacNaughton Decl., Ex. 4, Tomáš Paus et al., *Why do many psychiatric disorders emerge during*  
 20 *adolescence?*, 9 Nature Reviews Neuroscience 947, 952 (2008) (“Anxiety disorders, bipolar disorder, depression,  
 21 eating disorder, psychosis including schizophrenia and substance abuse all most commonly emerge during  
 22 adolescence.”); MacNaughton Decl., Ex. 5, *Mental Health Disorder Statistics*, Johns Hopkins Medicine,  
 23 <https://www.hopkinsmedicine.org/health/wellness-and-prevention/mental-health-disorder-statistics> (last visited Apr.  
 24 6, 2020) (explaining that schizophrenia typically “first appears in men during their late teens or early 20s”).

25 <sup>13</sup> MacNaughton Decl., Ex. 6, Merete Nordentoft et al., *Absolute Risk of Suicide after First Hospital Contact in*  
 26 *Mental Disorder*, 68 Archives of General Psychiatry 1058, 1061 (2011).

27 <sup>14</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>15</sup> *Id.*

<sup>16</sup> MacNaughton Decl., Ex. 7, 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-](https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2019/01/28/reducing-suicides-by-firearms)  
 suicides-by-firearms.

<sup>17</sup> MacNaughton Decl., Ex. 8, J. Michael Bostwick et al., *Suicide Attempt as a Risk Factor for Completed*  
*Suicide: Even More Lethal Than We Knew*, 173 Am. J. of Psychiatry 1094, 1097 (2016).

<sup>18</sup> *Id.* at 1098.

1 effectively, there's no opportunity to reconsider."<sup>19</sup> Therefore, a minor's access to firearms  
 2 during a suicide attempt often determines whether they die or recover.

3 Eighteen-to-twenty-year-olds are particularly at risk for suicides involving long guns, a  
 4 category of firearm that includes semiautomatic assault rifles. Of suicides where the firearm type  
 5 is known, adults are nearly three times as likely to die by handgun suicide as they are by long  
 6 gun suicide.<sup>20</sup> But 18-to-20-year-olds are much more likely to die by *long gun* suicides than other  
 7 groups, likely at least in part because, prior to the enactment of laws like the Initiative, they have  
 8 had far easier access to long guns compared to handguns. In fact, 18- and 19-year-olds are the  
 9 only groups more likely to die by long gun suicide than handgun suicide.<sup>21</sup> A recent study found  
 10 that, while handguns are the most common weapon utilized in suicides, long gun use is relatively  
 11 higher among adolescents compared with adults.<sup>22</sup> Long guns therefore pose a unique risk to the  
 12 18-to-20-year-old age group.

13 Moreover, studies have repeatedly found a connection between age restrictions such as  
 14 the Initiative and a decline in firearm-related adolescent deaths, especially suicides. For instance,  
 15 an August 2004 study found that state laws raising the minimum legal age to purchase a handgun  
 16 to 21 were associated with a 9% decline in firearm suicide rates among 18-to-20-year-olds.<sup>23</sup>

17 State gun safety laws more generally have also proven effective in reducing gun deaths  
 18 among young people, including in the 18-to-20-year-old range. A 2019 study examined the  
 19 21,241 firearm-related deaths among U.S. children from 2011 to 2015. Eighteen-to-21-year-olds  
 20 made up more than two-thirds of these deaths (68.7%). But state laws make a difference: The  
 21

22 <sup>19</sup> MacNaughton Decl., Ex. 9, Jane E. Brody, *After a Suicide Attempt, the Risk of Another Try*, N.Y. Times,  
 Nov. 7, 2016, <https://www.nytimes.com/2016/11/08/well/live/after-a-suicide-attempt-the-risk-of-another-try.html>.

23 <sup>20</sup> MacNaughton Decl., Ex. 10, Thomas J. Hanlon et al., *Type of Firearm Used in Suicides: Findings from 13*  
*States in the National Violent Death Reporting System, 2005–2015*, 65 J. Adolescent Health 366, 367 (2019).

24 <sup>21</sup> Centers for Disease Control and Prevention, Wide-ranging Online Data for Epidemiologic Research  
 (WONDER), <https://wonder.cdc.gov/>. The supporting Wonder database query is on file with the author and will be  
 25 supplied upon request.

26 <sup>22</sup> MacNaughton Decl., Ex. 10, *supra* n.20, at 366-67.

27 <sup>23</sup> MacNaughton Decl., Ex. 11, Daniel W. Webster et al., *Association Between Youth-Focused Firearm Laws*  
*and Youth Suicides*, 292 JAMA 594, 598 (2004).

1 study found that every 10-point increase in a score measuring the strictness of a state’s gun  
 2 control laws “decreases the firearm-related mortality rate in children by 4%” in its fully adjusted  
 3 model.<sup>24</sup> Another 2019 study using the same gun-law scores found that the quartile of states with  
 4 the strictest laws “have an annual pediatric firearm mortality rate of 2.563 per 100,000 [children  
 5 aged 0-to-19-years-old] compared with states in the lowest quartile [with the least strict laws],  
 6 where the mortality rate is almost twice as high at 5.005 per 100,000.”<sup>25</sup> These studies show that  
 7 minimum age laws save lives and thereby also confirm a “reasonable fit” between Washington’s  
 8 public safety objective and the Initiative’s restrictions.

9 **II. Eighteen-to-Twenty-Year-Olds Are Disproportionately Likely to Carry Out Mass**  
 10 **Shootings at Schools.**

11 Eighteen-to-twenty-year-olds are also especially prone to take risks and deprioritize long-  
 12 term outcomes. *See Nat’l Rifle Assoc. of Am.*, 700 F.3d at 210 n.21 (“[M]odern scientific research  
 13 supports the commonsense notion that 18-to-20-year-olds tend to be more impulsive” because  
 14 key brain functions such as “response inhibition, emotional regulation, planning and organization  
 15 . . . continue to develop between adolescence and young adulthood.”) (alteration in original)  
 16 (quoting, in part, American Medical Association submission). These qualities—impulsiveness  
 17 and emotional volatility—make easy gun access a disproportionate public health risk for young  
 18 people.

19 Nowhere is this clearer than in the epidemic of deadly mass shootings committed by  
 20 young people in schools or targeting peers from school settings. Mass shooters tend to target  
 21 people or institutions against which they have a grievance,<sup>26</sup> which is why most school shooters—

22 <sup>24</sup> MacNaughton Decl., Ex. 12, Monika K. Goyal et al., *State Gun Laws and Pediatric Firearm-Related*  
 23 *Mortality*, 144 *Pediatrics* No. 2 at 3 & tbl. 2 (2019).

24 <sup>25</sup> MacNaughton Decl., Ex. 13, Sriraman Madhavan et al., *Firearm Legislation Stringency and Firearm-Related*  
 25 *Fatalities Among Children in the US*, 229 *J. Am. College Surgeons* 150, 152 (2019).

26 <sup>26</sup> A comprehensive analysis of mass shootings shows that 70% of mass shooters knew at least some of their  
 27 victims, and school shooters “in particular were ‘insiders.’” MacNaughton Decl., Ex. 14, Jillian K. Peterson &  
 James A. Densley, *Database of Mass Shootings in the United States*, The Violence Project, at 19 (Nov. 2019),  
<https://www.theviolenceproject.org/wp-content/uploads/2019/11/TVP-Mass-Shooter-Database-Report-Final-compressed.pdf>.



1 as high as 91% in one recent study—were current or former students of the school at which the  
 2 attack occurred.<sup>27</sup> As a result, the median age of school shooters is high-school-aged or slightly  
 3 older. According to data on active shooter incidents in schools collected by the Center for  
 4 Homeland Defense and Security, nearly three-quarters of known active school shooters were  
 5 under 21 at the time of their attack. Roughly 14% were between 18 and 21, despite this age group  
 6 accounting for less than 5% of the population.<sup>28</sup> Scholars have also noted that the age of  
 7 perpetrators of high-fatality mass shootings has continually decreased over the past decade.<sup>29</sup>  
 8 This data shows that the Initiative’s age restriction is tailored to encompass the cohort that poses  
 9 the greatest risk to Washington’s students.

10 As the Initiative recognized in its statement of intent, “[t]he impacts of gun violence by  
 11 assault weapons fall heavily on children and teenagers. According to one analysis, more than  
 12 two hundred eight thousand students attending at least two hundred twelve schools have  
 13 experienced a shooting on campus since the Columbine mass shooting in 1999.”<sup>30</sup> Data from the  
 14 National Center for Education Statistics show that in 2018, 18.6% of 18- and 19-year-olds in the  
 15 United States were enrolled in secondary education.<sup>31</sup> Extrapolating that percentage to  
 16 Washington, there are likely almost 50,000 18- and 19-year-olds in Washington enrolled in  
 17

18  
 19 <sup>27</sup> MacNaughton Decl., Ex. 15, Jillian Peterson & James Densley, *School shooters usually show these signs of*  
 20 *distress long before they open fire, our database shows*, The Conversation, Feb. 8, 2019,  
<https://theconversation.com/school-shooters-usually-show-these-signs-of-distress-long-before-they-open-fire-our-database-shows-111242>.

21 <sup>28</sup> Based on data from 1970 to present. MacNaughton Decl., Ex. 16, *Active Shooter: Shooter’s Age*, K-12  
 22 *School Shooting Database*, Center for Homeland Defense and Security, <https://www.chds.us/ssdb/active-shooter-shooters-age/> (last visited Apr. 6, 2020); MacNaughton Decl., Ex. 20 at 76, U.S. Census Bureau, *Current Population Reports, Population Projections of the United States by Age, Sex, Race, and Hispanic Origin: 1995 to 2050* (1996), available at <https://www.census.gov/library/publications/1996/demo/p25-1130.html>.

23 <sup>29</sup> MacNaughton Decl., Ex. 17 at 43, Adam Lankford & James Silver, *Why Have Public Mass Shootings*  
 24 *Become More Deadly? Assessing how Perpetrators’ Motives and Methods Have Changed Over Time*, 19  
*Criminology & Public Policy* 37, 43 (2020).

25 <sup>30</sup> Initiative 1639 § 1.

26 <sup>31</sup> MacNaughton Decl., Ex. 18, *Percentage of the population 3 to 34 years old enrolled in school, by age group: selected years, 1940 through 2018*, National Center for Education Statistics, available at [https://nces.ed.gov/programs/digest/d19/tables/dt19\\_103.20.asp?current=yes](https://nces.ed.gov/programs/digest/d19/tables/dt19_103.20.asp?current=yes) (last visited Apr. 6, 2020).

1 secondary schools. The Initiative's sensible age restrictions are designed to protect precisely  
2 these students, who are the same age as the victims of the Mukilteo house party shooting.

3 But even after a shooting ends, gun violence disproportionately harms young people.  
4 Young people exposed to gun violence are at a greater risk of developing PTSD<sup>32</sup> and harming  
5 themselves.<sup>33</sup> For instance, after the Columbine massacre, one student survivor suffering from  
6 PTSD died from suicide after losing two friends and watching his basketball coach die in the  
7 mass shooting.<sup>34</sup> Similarly, two teenage survivors of the 2018 mass shooting in Parkland, Florida  
8 later died by suicide.<sup>35</sup> By seeking to prevent mass school shootings and other gun violence, the  
9 Initiative's age restrictions squarely fit the state's objective of protecting the mental health and  
10 safety of young adults.

### 11 **III. The Initiative Defines "Semiautomatic Assault Rifles" to Encompass an** 12 **Exceptionally Lethal Subset of Long Guns.**

13 Semiautomatic assault rifles are exceptionally lethal.<sup>36</sup> See Defs.' MSJ at 24-25. These  
14 weapons fire bullets at a higher velocity than other types of firearms (such as semiautomatic  
15 handguns), which medical evidence shows results in more grievous injuries.<sup>37</sup> School shootings  
16 in the United States involving rifles have a 9.73 times higher causality rate and a 14.74 times

17  
18 <sup>32</sup> One study found that nearly 40% of children exposed to a shooting will develop PTSD. See MacNaughton  
19 Decl., Ex. 19 at 7, Eboni Morris, *Youth Violence: Implications for Posttraumatic Stress Disorder in Urban Youth*,  
National Urban League Policy Institute, at 7 (2009).

20 <sup>33</sup> MacNaughton Decl., Ex. 21, Glenn D. Braunstein, *Violent Events Have Long-Term Effects on Children*,  
Huffington Post, Sept. 24, 2012, [https://www.huffingtonpost.com/glenn-d-braunstein-  
md/childrenptsd\\_b\\_1901651.html](https://www.huffingtonpost.com/glenn-d-braunstein-md/childrenptsd_b_1901651.html).

21 <sup>34</sup> *Id.*

22 <sup>35</sup> MacNaughton Decl., Ex. 22, Jared Keller, *The Psychological Aftermath of Surviving School Shootings*,  
Pacific Standard, Mar. 25, 2019, [https://psmag.com/education/the-psychological-aftermath-of-surviving-school-  
shootings](https://psmag.com/education/the-psychological-aftermath-of-surviving-school-shootings).

23 <sup>36</sup> See MacNaughton Decl., Ex. 23 at 1034, Elzerie de Jager et al., *Lethality of Civilian Active Shooter Incidents*  
with and Without Semiautomatic Rifles in the United States, 320 JAMA 1034, 1034 (2018).

24 <sup>37</sup> See, e.g., MacNaughton Decl., Ex. 24, Heather Sher, *What I Saw Treating the Victims from Parkland Should*  
25 *Change the Debate on Guns*, The Atlantic, Feb. 22, 2018, [https://www.theatlantic.com/politics/  
archive/2018/02/what-i-saw-treating-the-victimsfrom-parkland-should-change-the-debate-on-guns/553937/](https://www.theatlantic.com/politics/archive/2018/02/what-i-saw-treating-the-victimsfrom-parkland-should-change-the-debate-on-guns/553937/)  
26 (explaining difference between injuries inflicted by semiautomatic rifles vs. handguns); *Kasler v. Lockyer*, 23 Cal.  
4th 472, 484 (2000) (citing medical evidence on "special wounding characteristics" of the high-velocity ammunition  
27 like that used in semiautomatic rifles).



1 higher fatality rate compared to shootings involving handguns.<sup>38</sup> A recent study estimated that  
 2 one-fourth of school shooting deaths nationwide could have been prevented if 18-to-20-year-olds  
 3 were barred from buying long guns.<sup>39</sup>

4 Despite this data, Plaintiffs contend the Initiative’s “scope” is too broad because the  
 5 Initiative defines semiautomatic assault rifles in terms of their fundamental mechanics rather than  
 6 by particular features. Pls.’ MSJ” at 8-10. Specifically, the Initiative defines semiautomatic  
 7 assault rifles as “any rifle which utilizes a portion of the energy of a firing cartridge to extract the  
 8 fired cartridge case and chamber the next round, and which requires a separate pull of the trigger  
 9 to fire each cartridge.”<sup>40</sup> This definition differs from some other states’ assault weapons bans,  
 10 which restrict specific features, “such as pistol grips or bayonet lugs or muzzle brakes.” Pls.’  
 11 MSJ at 10.

12 The Initiative’s approach is entirely reasonable, especially given that its goal is much  
 13 narrower than an assault weapons ban. The Initiative does not ban any weapons, but restricts  
 14 minors’ access to otherwise-available firearms capable of causing exceptionally serious harm if  
 15 misused. Research on the enhanced lethality of semiautomatic rifles, defined as in the Initiative,  
 16 amply justifies the Initiative’s holistic definition.<sup>41</sup> Moreover, gun manufacturers have a well-  
 17 documented history of circumventing regulations that prohibit specific features on semiautomatic  
 18 rifles by engineering slight modifications so that a rifle complies with the regulation but remains  
 19 similarly lethal in operation.<sup>42</sup> Washington sought to avoid this pitfall in the Initiative by defining

20  
 21 <sup>38</sup> MacNaughton Decl., Ex. 25 at 798, Melvin D. Livingston et. al, *A Descriptive Analysis of School and School  
 Shooter Characteristics and the Severity of School Shootings in the United States, 1999–2018*, 64 J. of Adolescent  
 Health 797, 798 (2019).

22 <sup>39</sup> MacNaughton Decl., Ex. 26 at 1386, Joshua D. Brown & Amie J. Goodin, *Mass Casualty Shooting Venues,  
 Types of Firearms, and Age of Perpetrators in the United States, 1982–2018*, 108 Am. J. Pub. Health 1385, 1386  
 23 (2018).

24 <sup>40</sup> Initiative 1639 § 16.

25 <sup>41</sup> See MacNaughton Decl., Ex. 23, *supra* n.36 at 1034 (finding that active shootings involving a semiautomatic  
 rifle, defined similarly to the Initiative’s definition, were associated on average with more injuries and deaths than if  
 a different kind of gun was used).

26 <sup>42</sup> See MacNaughton Decl., Ex. 27, Jeremy White, *When Lawmakers Try to Ban Assault Weapons, Gunmakers  
 Adapt*, N.Y. Times, July 31, 2019, <https://www.nytimes.com/interactive/2019/07/31/us/assault-weapons-ban.html>;

1 semiautomatic assault rifles by their fundamental mechanical traits that enable their lethality. In  
 2 doing so, the Initiative ensures that the limited restriction it places on 18-to-20-year-olds' ability  
 3 to purchase the most lethal type of rifles promotes public safety (by, among other things, reducing  
 4 fatalities from mass shootings and suicide attempts) rather than incentivizing gun manufacturers  
 5 to design around the law.

### 6 CONCLUSION

7 The Initiative's minimum-age restrictions reflect the judgment of nearly two  
 8 million Washington voters<sup>43</sup> who voted to address the grave danger of gun violence.<sup>44</sup> Nothing  
 9 in the Second Amendment requires this Court to strip the people of their power to protect their  
 10 children and communities. Indeed, "[a] system which permits one judge to block with the stroke  
 11 of a pen what [nearly two million] state residents voted to enact as law tests the integrity of our  
 12 constitutional democracy." *Coal. for Econ. Equity v. Wilson*, 122 F.3d 692, 699 (9th Cir. 1997).  
 13 As Judge Wilkinson, speaking for the Fourth Circuit, said: "This is serious business. We do not  
 14 wish to be even minutely responsible for some unspeakably tragic act of mayhem because in the  
 15 peace of our judicial chambers we miscalculated as to Second Amendment rights." *United States*  
 16 *v. Masciandaro*, 638 F.3d 458, 475 (4th Cir. 2011).

17 \* \* \*

18 The Initiative is a commonsense, calibrated, and data-driven solution with  
 19 enormous potential to save lives that does not substantially burden Second Amendment rights.  
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 21  
 22

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23  
 24 MacNaughton Decl., Ex. 28, Zusha Elinson & Cameron McWhirter, *Gun Makers Adjust Rifles to Skirt Bans*, Wall  
 St. J., June 21, 2019, <https://www.wsj.com/articles/gun-makers-adjust-rifles-to-skirt-bans-11561109521>.

25 <sup>43</sup> MacNaughton Decl., Ex. 29, *Initiative Measure No. 1639*, November 6, 2018 General Election Results,  
 Secretary of State (Nov. 27, 2018), available at [https://results.vote.wa.gov/results/20181106/State-Measures-](https://results.vote.wa.gov/results/20181106/State-Measures-Initiative-Measure-No-1639-Initiative-Measure-No-1639-concerns-firearms_ByCounty.html)  
 26 [Initiative-Measure-No-1639-Initiative-Measure-No-1639-concerns-firearms\\_ByCounty.html](https://results.vote.wa.gov/results/20181106/State-Measures-Initiative-Measure-No-1639-Initiative-Measure-No-1639-concerns-firearms_ByCounty.html).

27 <sup>44</sup> Initiative 1639 § 1.

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