

No. 21-12314

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

NATIONAL RIFLE ASSOCIATION OF AMERICA, INC., *et al.*,

Appellants,

vs.

RICK SWEARINGEN, in his official capacity as Commissioner of
the Florida Department of Law Enforcement,

Appellee.

On Appeal from the United States District Court for the
Northern District of Florida

**BRIEF OF *AMICI CURIAE* GIFFORDS LAW CENTER TO
PREVENT GUN VIOLENCE, BRADY, TEAM ENOUGH,
ORANGE RIBBONS FOR GUN SAFETY, AND MARCH
FOR OUR LIVES ACTION FUND IN SUPPORT OF
APPELLEE AND AFFIRMANCE**

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October 25, 2021

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Per Federal Rule of Appellate Procedure 26.1 and 11th Circuit Rule 26.1-1, *Amici* certify that the following trial judges, attorneys, persons, associations of persons, firms, partnerships, and corporations have an interest in the outcome of this case or appeal.

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Giffords Law Center to Prevent Gun Violence, Brady, Team ENOUGH, Orange Ribbons for Gun Safety, and March For Our Lives Action Fund state that none of these organizations have parent corporations. None of these organizations have stock, and therefore no publicly held company owns 10% or more of any organization's stock.

/s/ Madeline B. Jenks

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<i>GeorgiaCarry.Org, Inc. v. U.S. Army Corps of Eng’rs</i> , 788 F.3d 1318 (11th Cir. 2015).....	<i>passim</i>
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<i>Hirschfeld v. Bureau of Alcohol, Firearms, Tobacco & Explosives</i> , 2021 WL 4301564 (4th Cir. Sept. 22, 2021)	11
<i>Hirschfeld v. Bureau of Alcohol, Tobacco, Firearms & Explosives</i> , 417 F. Supp. 3d 747 (W.D. Va. 2019)	3
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<i>Horsley v. Trame</i> , 808 F.3d 1126 (7th Cir. 2015).....	16, 18
<i>Jackson v. San Francisco</i> , 746 F.3d 953 (9th Cir. 2014).....	32

Jones v. Becerra,
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Lara v. Evanchick,
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Md. Shall Issue v. Hogan,
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Mitchell v. Atkins,
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Nat’l Paint & Coatings Ass’n v. City of Chicago,
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*Nat’l Rifle Ass’n of Am., Inc. v. Bureau of Alcohol, Tobacco,
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Turner Broad. Sys., Inc. v. F.C.C.,
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Other Authorities	
Steve Almasy et al., <i>Police ID Gunman Who Killed 8 People at an Indianapolis FedEx Facility as 19-Year-Old Former Employee</i> , CNN (Apr. 17, 2021).....	22
American Public Health Association, <i>Reducing Suicides by Firearms</i> (Nov. 13, 2018)	26

Associated Press, *At Least 2 Handguns Used in School Shooting Near Columbine*, MPR NEWS (May 8, 2019)..... 23

Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 NEUROPSYCHIATRIC DISEASE & TREATMENT 449 (2013)..... 17, 19

J. Michael Bostwick et al., *Suicide Attempt as a Risk Factor for Completed Suicide: Even More Lethal Than We Knew*, 173 AM. J. PSYCHIATRY 1094 (2016)..... 27, 29

Glenn D. Braunstein, *Violent Events Have Long-Term Effects on Children*, HUFFINGTON POST (Sept. 24, 2012) 24

Jane E. Brody, *After a Suicide Attempt, the Risk of Another Try*, N.Y. TIMES (Nov. 7, 2016) 29

Centers for Disease Control and Prevention, Web-based Injury Statistics Query and Reporting System (WISQARS), *Leading Causes of Death Reports, 1981-2019*..... 26

Centers for Disease Control and Prevention, Wide-Ranging Online Data for Epidemiologic Research (WONDER)..... 28

Michael Dreyfuss et al., *Teens Impulsively React Rather Than Retreat from Threat*, 36 DEVELOPMENTAL NEUROSCIENCE 220 (2014) 19

The Florida Channel, *3/9/18 Bill Signing of SB 7026 – Public Safety*, Statement of Governor Rick Scott 9

Florida Senate, Bill Analysis and Fiscal Impact Statement of 7026 (Feb. 28, 2018)..... *passim*

Richard A. Friedman, *Why Are Young Americans Killing Themselves? Suicide Is Now Their Second-Leading Cause of Death*, N.Y. TIMES (Jan. 6, 2020) 19

Monika K. Goyal et al., *State Gun Laws and Pediatric Firearm-Related Mortality*, 144 PEDIATRICS No. 2 (2019) 30, 31

Thomas J. Hanlon et al., *Type of Firearm Used in Suicides: Findings from 13 States in the National Death Reporting System, 2005-2015*, 65 J. ADOLESCENT HEALTH 366 (2019) 28

Kay Jones & Holly Yan, *A Suspect Is in Custody in the Texas School Shooting that Left at Least 4 People Injured*, CNN (Oct. 7, 2021) 22

Jared Keller, *The Psychological Aftermath of Surviving School Shootings*, PAC. STANDARD (Mar. 25, 2019) 24

E. Michael Lewiecki & Sara A. Miller, *Suicide, Guns, and Public Policy*, 103 AM. J. PUB. HEALTH 27 (2013)..... 25

Sriraman Madhavan et al., *Firearm Legislation Stringency and Firearm-Related Fatalities Among Children in the US*, 229 J. AM. COLL. SURGEONS 150 (2019) 25

Luis Melgar, *Are School Shootings Becoming More Frequent? We Ran the Numbers*, CTR. FOR HOMELAND DEF. & SEC. (May 21, 2019) 23, 24

Mental Health Disorder Statistics, JOHNS HOPKINS MED..... 25

Matthew Miller & David Hemenway, *Firearm Prevalence and the Risk of Suicide: A Review*, 2 HARV. HEALTH POL'Y REV. 29 (2001) 27

Matthew Miller & David Hemenway, *Guns and Suicide in the United States*, 359 N. ENGL. J. MED. 989 (2008) 27

Matthew Miller et al., *Guns and Gun Threats at College*, 51 J. AM. COLL. HEALTH 57 (2002)..... 20

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 (2012) 28

Eboni Morris, *Youth Violence: Implications for Posttraumatic Stress Disorder in Urban Youth*, NAT’L URB. LEAGUE POL’Y INST. (2009) 24

Paul S. Nestadt et al., *Prevalence of Long Gun Use in Maryland Firearm Suicides*, 7 INJ. EPIDEMIOLOGY 1 (2020)..... 28

Merete Nordentoft et al., *Absolute Risk of Suicide After First Hospital Contact in Mental Disorder*, 68 ARCHIVES GEN. PSYCHIATRY 1058 (2011) 25

Tomáš Paus et al., *Why Do Many Psychiatric Disorders Emerge During Adolescence?*, 9 NATURE REV. NEUROSCIENCE 947 (2008) 25

Evan Perez et al., *What We Know About Dimitrios Pagourtzis, the Alleged Santa Fe High School Shooter*, CNN (May 21, 2018) 23

Quinnipiac University Poll, *Florida Voters Oppose Teachers with Guns, Quinnipiac University Poll Finds; Support for “Assault Weapon” Ban Almost 2-1* (Feb. 28, 2018)..... 9

RAND Corp., *The Effects of Minimum Age Requirements* (updated Apr. 22, 2020) 27, 28

Michael Scherer, *Florida Gov. Rick Scott Breaks with NRA to Sign New Gun Regulations*, WASH. POST (Mar. 9, 2018) 8, 9

Thomas R. Simon et al., *Characteristics of Impulsive Suicide Attempts and Attempters*, 32 (SUPP.) SUICIDE & LIFE-THREATENING BEHAV. 49 (2001)..... 26

Leah H. Somerville et al., *A Time of Change: Behavioral and Neural Correlates of Adolescent Sensitivity to Appetitive and Aversive Environmental Cues*, 72 BRAIN & COGNITION 124 (2010)..... 18, 19

Joe Sterling, *After Deadly Shooting, Florida Governor Calls for Raising Minimum Age to Buy Guns*, CNN (Feb. 23, 2018)..... 7, 34

Uniform Crime Reporting Program: Supplementary
Homicide Reports (SHR), Washington, DC: Department of
Justice, Federal Bureau of Investigation 22

U.S. Census Bureau, *Annual Estimates of the Resident
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U.S. Department of Justice, *Crime in the United States,
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U.S. Dep’t of Justice, Federal Bureau of Investigation, *A
Study of the Pre-Attack Behaviors of Active Shooters in the
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U.S. Military Academy Regulation 190-3..... 19

Katherine A. Vittes et al., *Legal Status and Source of
Offenders’ Firearms in States with the Least Stringent
Criteria for Gun Ownership*, 19 INJ. PREVENTION 26 (2013)..... 30

Laurel Wamsley et al., *17 People Died in the Parkland
Shooting. Here Are Their Names*, NPR (Feb. 15, 2018) 7

Daniel W. Webster et al., *Association Between Youth-Focused
Firearm Laws and Youth Suicides*, 292 JAMA 594 (2004)..... 30

Daniel W. Webster et al., *The Case for Gun Policy Reforms in
America*, JOHNS HOPKINS CTR. FOR GUN POL’Y & RSCH. 1
(2012)..... 21

Adam Winkler & Cara Natterson, *There’s a Simple Way to
Reduce Gun Violence: Raise the Gun Age*, WASH. POST
(Jan. 6, 2016)..... 17

Emily Witt, *How the Survivors of Parkland Began the Never
Again Movement*, NEW YORKER (Feb. 19, 2018) 8

Daniel Wolfe & John Murphy-Teixidor, *Deadliest Mass
Shootings in the US Fast Facts*, CNN 23

STATEMENT OF THE ISSUES

Whether the Florida Legislature's common-sense, bipartisan enactment regulating the purchase of firearms by young persons aged 18 to 20 is constitutional under this Court's binding two-part framework for evaluating Second Amendment challenges.

INTEREST OF *AMICI CURIAE*¹

Amicus curiae Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) is a non-profit policy organization serving lawmakers, advocates, legal professionals, gun violence survivors, and others who seek to reduce gun violence and improve the safety of their communities.² The organization was founded more than a quarter-century ago following a gun massacre at a San Francisco law firm and was renamed Giffords Law Center in 2017 after joining forces with the gun-safety organization led by former Congresswoman Gabrielle Giffords. Today, through partnerships with gun violence researchers, public health experts, and community organizations, Giffords Law Center researches, drafts, and defends the laws, policies, and programs proven to effectively reduce gun violence. Together with its partner

¹ Appellants and Appellee have both consented to *amici* filing this brief. *See* Fed. R. App. P. 29(a)(2). No counsel for a party authored this brief in whole or in part; no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief; and no person other than *amici*, their members, or their counsel made such a monetary contribution. *See* Fed. R. App. P. 29(a)(4)(E).

² Giffords Law Center’s website, www.giffords.org/lawcenter, is the premier clearinghouse for comprehensive information about federal, state, and local firearms laws and Second Amendment litigation nationwide.

organization Giffords, Giffords Law Center also advocates for the interests of gun owners and law enforcement officials who understand that Second Amendment rights have always been consistent with gun-safety legislation and community violence prevention strategies. Giffords Law Center participated as an *amicus curiae* before the District Court in the proceedings below. (ECF Nos. 79, 111.)

Giffords Law Center has contributed technical expertise and informed analysis as an *amicus* in numerous cases involving firearm regulations and constitutional principles affecting gun policy. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *Lara v. Evanchick*, 2021 WL 1432802 (W.D. Pa. Apr. 16, 2021); and *Mitchell v. Atkins*, 483 F. Supp. 3d 985 (W.D. Wash. 2020). Several courts have cited research and information from Giffords Law Center's *amicus* briefs in Second Amendment rulings. *See, e.g., Ass'n of N.J. Rifle & Pistol Clubs v. Att'y Gen. N.J.*, 910 F.3d 106, 121-22 (3d Cir. 2018); *Hirschfeld v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 417 F. Supp. 3d 747, 754, 759 (W.D. Va. 2019); *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).³

Amicus curiae Brady (formerly the Brady Center to Prevent Gun Violence) is a non-profit organization dedicated to reducing gun violence through education, research, and legal advocacy. Brady has a substantial interest in ensuring that the Second Amendment is not interpreted or applied in a way that would jeopardize the public's interest in protecting individuals, families, and communities from the effects of gun violence. Brady Legal participated as an *amicus curiae* before the District Court in the proceedings below (ECF Nos. 79, 111), and has filed numerous briefs in other cases in support of government regulation of firearms. *See, e.g., McDonald*, 561 U.S. 742; *United States v. Hayes*, 555 U.S. 415 (2009); *Heller*, 554 U.S. 570.

Amicus curiae Team ENOUGH is a youth-led, Brady-sponsored initiative, committed to bringing a fresh perspective and a common-sense approach to America's gun policy. Team ENOUGH has a particular interest in laws affecting Florida: it represents the interests of

³ Giffords Law Center filed the last two briefs under its former name, the Law Center to Prevent Gun Violence.

dozens of Florida students, including two executive council members who lost friends and family in the Marjory Stoneman Douglas shooting. Team ENOUGH participated as an *amicus curiae* before the District Court in the proceedings below. (ECF Nos. 79, 111.)

Amicus curiae Orange Ribbons for Gun Safety is a non-profit organization dedicated to pursuing gun safety. On February 14, 2018, Jaime Guttenberg and 16 others were murdered at Marjory Stoneman Douglas High School in Parkland, Florida. Thereafter, Fred Guttenberg started Orange Ribbons for Gun Safety. In addition to strongly supporting laws like the Marjory Stoneman Douglas High School Public Safety Act, Orange Ribbons for Gun Safety's mission includes working across the country to help protect laws that have been passed in the interest of public safety and to enact new laws that will bring down the gun violence death rate. Orange Ribbons for Gun Safety participated as an *amicus curiae* before the District Court in the proceedings below. (ECF Nos. 79, 111.)

Amicus curiae March For Our Lives Action Fund ("MFOL") is a non-profit organization of young people from across the country who are fighting for sensible gun violence prevention policies that will save

lives. After the mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida, MFOL was formed and immediately began advocating for common-sense gun violence prevention legislation to ensure what happened in Parkland would never again occur. Since then, young people seeking to effect change have formed hundreds of MFOL chapters across the country. These young people have a vital interest in ensuring that the Constitution is interpreted to allow the enactment of gun violence prevention measures that will protect all Americans, in all communities. MFOL participated as an *amicus curiae* before the District Court in the proceedings below. (ECF Nos. 79, 111.)

INTRODUCTION AND SUMMARY OF ARGUMENT

On February 14, 2018, a 19-year-old used an AR-15 semi-automatic rifle to kill 14 students and three instructors at Marjory Stoneman Douglas High School in Parkland, Florida.⁴ He purchased the AR-15 *legally*. It was one of “at least *seven* rifles” he purchased after turning 18 in September 2016.⁵ The massacre in Parkland was “one of the deadliest mass shootings in modern US history,”⁶ which stole the futures of 17 innocent victims, forever changing the lives of their classmates and families, and the millions who live in fear of a similar massacre touching their own communities.

⁴ Florida Senate, Bill Analysis and Fiscal Impact Statement of 7026, at 3 (Feb. 28, 2018) [hereinafter, “Florida Senate Bill Analysis of SB 7026”], <https://www.flsenate.gov/Session/Bill/2018/7026/Analyses/2018s07026.ap.PDF>; Laurel Wamsley et al., *17 People Died in the Parkland Shooting. Here Are Their Names*, NPR (Feb. 15, 2018), <https://www.npr.org/sections/thetwo-way/2018/02/15/586095587/17-people-died-in-the-parkland-shooting-here-are-their-names>.

⁵ Florida Senate Bill Analysis of SB 7026, at 4 (emphasis added).

⁶ Joe Sterling, *After Deadly Shooting, Florida Governor Calls for Raising Minimum Age to Buy Guns*, CNN (Feb. 23, 2018), <https://www.cnn.com/2018/02/23/us/florida-governor-reforms/index.html>.

The Parkland tragedy ignited an unprecedented movement of young people—led by the students at Marjory Stoneman Douglas and others across the nation—calling on legislatures to enact sensible gun-safety measures.⁷ The Florida Legislature responded by sending Governor Rick Scott a bipartisan bill to “address the crisis of gun violence” in the state, with a particular focus on preventing “gun violence on school campuses.”⁸ And on March 9, 2018, less than one month after the massacre, Governor Scott signed into law the Marjory Stoneman Douglas High School Public Safety Act (the “Act”). See Fla. Stat. § 790.065 (2018). Among several public-safety provisions, the Act generally prohibits those under the age of 21 from purchasing a firearm. Fla. Stat. § 790.065(13) (2018) (“Section 13”).

Governor Scott—a Republican and longtime defender of gun rights⁹—nevertheless recognized that Section 13 was one of several

⁷ Emily Witt, *How the Survivors of Parkland Began the Never Again Movement*, NEW YORKER (Feb. 19, 2018), <https://www.newyorker.com/news/news-desk/how-the-survivors-of-parkland-began-the-never-again-movement>.

⁸ Florida Senate Bill Analysis of SB 7026, at 4.

⁹ Michael Scherer, *Florida Gov. Rick Scott Breaks with NRA to Sign New Gun Regulations*, WASH. POST (Mar. 9, 2018), <https://www.washingtonpost.com/powerpost/florida-gov-rick-scott-breaks-with-nra->

“common-sense solutions”¹⁰ that would “dramatically improve school safety in hopes of never seeing another tragedy like [the Parkland shooting] again.”¹¹ The vast majority of Floridians agreed.¹²

Just a few hours after Governor Scott signed the Act into law, Appellants filed this lawsuit, contending that Section 13 prevented them from exercising rights conferred by the Second Amendment. (App. 19 (ECF No. 1).) But as the District Court correctly held, Section 13 does not run afoul of the Second Amendment. (App. 228-29 (Order, ECF No. 137, at 41-42).) The District Court conducted an extensive analysis at Step One of the framework applied by every court of appeals to have

to-sign-new-gun-regulation/2018/03/09/e5d1f02e-23b2-11e8-86f6-54bfff693d2b_story.html (noting that Governor Scott had “previously received an A-plus rating” from the NRA).

¹⁰ *Id.*

¹¹ The Florida Channel, *3/9/18 Bill Signing of SB 7026 – Public Safety*, Statement of Governor Rick Scott, <https://thefloridachannel.org/videos/3-9-18-bill-signing-sb-7026-public-safety/>.

¹² In February 2018, 78% of Floridians—including 68% of Republicans—supported raising the minimum age for gun purchases to 21. Quinnipiac University Poll, *Florida Voters Oppose Teachers with Guns, Quinnipiac University Poll Finds; Support for “Assault Weapon” Ban Almost 2-1*, at 7 (Feb. 28, 2018), https://poll.qu.edu/images/polling/fl/fl02282018_fqlv16.pdf/.

addressed the issue, correctly reasoning that Section 13 constitutes a “longstanding” regulation within the meaning of *District of Columbia v. Heller*, 554 U.S. 570 (2008), and therefore is a “constitutional [regulation]—end of story.” (App. 227-29 (Order, ECF No. 137, at 40-42).) This Court should affirm the District Court’s holding at Step One of the Second Amendment inquiry. (See Appellee’s Br. at 9-22.)

Should this Court proceed to Step Two of the framework and evaluate Section 13 under means-end scrutiny,¹³ Section 13 should be upheld on the additional ground that it reflects the Florida Legislature’s well-founded, data-driven, and effective solution to the grave problem of gun violence, and thus substantially relates to an important state objective. *Amici* submit this brief to provide the Court with data demonstrating that 18-to-20-year-olds’ brains are still developing, that they are at higher risk of using firearms to commit crime and attempt suicide, and that they are disproportionately likely to be victims of

¹³ Appellee urges the Court, if it concludes that Section 13 does implicate conduct falling within the scope of the Second Amendment, to remand to the District Court to conduct the Step-Two analysis in the first instance. (See Appellee’s Br. at 22-24.) *Amici* do not disagree that remand would be appropriate, but offer their analysis in the event that the Court proceeds to Step Two rather than remanding.

firearm-related violence. In light of this data, the Florida Legislature crafted a well-calibrated solution that easily passes constitutional muster.¹⁴

ARGUMENT

Like every federal Court of Appeals to consider the issue,¹⁵ the Eleventh Circuit uses a two-step framework to analyze Second Amendment claims. First, a court must “ask if the restricted activity is

¹⁴ We note at the outset that Appellants rely heavily on *Hirschfeld v. Bureau of Alcohol, Firearms, Tobacco & Explosives*, 5 F.4th 407 (4th Cir. 2021), in which a divided panel of the Fourth Circuit recently struck down a federal age-based regulation. (See Appellants’ Br. at 10, 14, 15, 20, 22, 29, 31 n.4, 34, 40, 42, 45.) But that opinion has been vacated for mootness because the lone remaining plaintiff turned 21 before the mandate issued and before the government’s timely filed petition for *en banc* rehearing could be decided. The opinion now has “no persuasive value whatsoever”; indeed, it “do[es] not even bear the label of dicta.” *Hirschfeld v. Bureau of Alcohol, Firearms, Tobacco & Explosives*, 2021 WL 4301564, at *3 (4th Cir. Sept. 22, 2021) (Wynn, J., concurring).

¹⁵ *Gould v. Morgan*, 907 F.3d 659, 669 (1st Cir. 2018); *N.Y. State Rifle & Pistol Ass’n v. Cuomo*, 804 F.3d 242, 254 (2d Cir. 2015); *United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010); *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010); *Nat’l Rifle Ass’n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 195 (5th Cir. 2012); *United States v. Greeno*, 679 F.3d 510, 518 (6th Cir. 2012); *Ezell v. City of Chicago*, 651 F.3d 684, 703-04 (7th Cir. 2011); *United States v. Chovan*, 735 F.3d 1127, 1136 (9th Cir. 2013); *United States v. Reese*, 627 F.3d 792, 800-01 (10th Cir. 2010); *Heller v. District of Columbia*, 670 F.3d 1244, 1252 (D.C. Cir. 2011).

protected by the Second Amendment in the first place.” *GeorgiaCarry.Org, Inc. v. U.S. Army Corps of Eng’rs*, 788 F.3d 1318, 1322 (11th Cir. 2015). “If the challenged regulation does not burden conduct within the scope of the Second Amendment as historically understood, then the law comports with the Second Amendment.” *United States v. Focia*, 869 F.3d 1269, 1285 (11th Cir. 2017). Second, and only if it finds that the law does impose such a burden, the court should “apply the appropriate level of scrutiny.” *Id.*

Section 13 easily passes this test. The District Court correctly held that Section 13 is “longstanding” within the meaning of *Heller* and thus presumptively valid. (App. 227-29 (Order, ECF No 137, at 40-42).) And, as the State correctly explains, history and tradition dating back to the founding of this nation show that state and federal governments have long regulated 18-to-20-year-olds’ access to firearms. (Appellee’s Br. at 9-18.) Section 13 is therefore constitutional at the threshold inquiry, and this Court may affirm the decision below without resort to means-end scrutiny. *Amici* do not repeat those arguments here.

However, should the Court proceed to Step Two, perhaps out of an abundance of caution, then it should, at most, apply intermediate

scrutiny, because Section 13 does not substantially burden the core of the Second Amendment. To satisfy such scrutiny, laws need only substantially relate to an important governmental objective. *GeorgiaCarry.Org*, 788 F.3d at 1328. Scientific data and the law’s legislative history demonstrate that Section 13 easily passes constitutional muster because it directly advances Florida’s paramount interests in public safety.

I. AT MOST, SECTION 13 IS SUBJECT TO INTERMEDIATE SCRUTINY.

As the Supreme Court has explained, at its “core,” the Second Amendment protects the “right of law-abiding, *responsible* citizens to use arms in defense of hearth and home.” *Heller*, 554 U.S. at 635 (emphasis added). When a challenged restriction “does not substantially burden the core Second Amendment right, it is subject to intermediate scrutiny.” *United States v. Focia*, 2015 WL 3672161, at *4 (M.D. Ala. June 12, 2015), *aff’d*, 869 F.3d 1269 (11th Cir. 2017); *see id.* at *3 (collecting cases from courts of appeals); *see also, e.g., Kolbe v. Hogan*, 849 F.3d 114, 138 (4th Cir. 2017). Indeed, “there has been near unanimity in the post-*Heller* case law that, when considering regulations that fall within the scope of the Second Amendment, intermediate scrutiny is appropriate.” *United*

States v. Torres, 911 F.3d 1253, 1262 (9th Cir. 2019). This case is no exception: Section 13 is a common-sense measure that does not substantially burden the core Second Amendment right of responsible citizens to use arms in self-defense.

First, Section 13 applies for a limited duration to a limited group of people—18-to-20-year-olds—who historically have not fallen within the Second Amendment’s core protections. (See Appellee’s Br. at 12-18); *see also Nat’l Rifle Ass’n*, 700 F.3d at 207 (“Any 18-to-20-year-old subject to the ban will soon grow up and out of its reach. . . . The temporary nature of the burden reduces its severity.”).

Second, Section 13 is a commercial regulation on firearm sales—a type of restriction that *Heller* expressly recognized as presumptively valid. 554 U.S. at 626-27. The law does not prohibit 18-to-20-year-olds from *possessing* firearms. (See Appellee’s Br. at 26.) Furthermore, Section 13 has several exemptions, including for “a law enforcement officer or correctional officer . . . or a servicemember” to purchase a rifle or shotgun, despite being under 21. Fla. Stat. § 790.065(13); *see Chovan*, 735 F.3d at 1138 (applying intermediate scrutiny to a law that “substantially burdens Second Amendment rights”

because “the burden is lightened by [the law’s] exceptions”). Thus, the conduct regulated by Section 13 is—at most—at the periphery of the Second Amendment, rather than its core.

II. SOCIAL SCIENCE AND LEGISLATIVE HISTORY SHOW THAT SECTION 13 EASILY SURVIVES INTERMEDIATE SCRUTINY.

In the Second Amendment context, a court must uphold a law under intermediate scrutiny if it is “substantially related to an important governmental objective.” *GeorgiaCarry.Org*, 788 F.3d at 1328. To “assess[] the fit between the challenged regulation and the government’s asserted objective,” courts consider “empirical data” and legislative history. *Id.* Importantly, a court evaluating a law’s constitutionality under intermediate scrutiny “must accord substantial deference to the predictive judgments of [the legislature]” and is “not at liberty to substitute [its] judgment for the reasonable conclusion of a legislative body.” *Turner Broad. Sys., Inc. v. F.C.C.*, 520 U.S. 180, 195, 212 (1997).

Here, neuroscience and social science show that 18-to-20-year-olds are at higher risk of violence due to their developing adolescent brains. Furthermore, the legislative history of the Act confirms that the Florida Legislature was motivated by the paramount governmental

interest of ensuring public safety, including and in particular the safety of Florida's schoolchildren. *Alford v. Walton County*, 2017 WL 8785115, at *7 (N.D. Fla. Nov. 22, 2017) ("It is well-settled that public safety is a significant interest."). The empirical evidence and the legislative history confirm that the Act's minimum-age provision is more than "substantially related" to the Legislature's public-safety objective.

A. Scientific Research Confirms That Section 13 Is a Data-Driven Solution to Promote Public Safety by Reducing Gun Violence.

Neuroscience and social science research confirm that 18-to-20-year-olds with easy access to firearms pose a substantial risk to themselves and others, and that the Legislature crafted a tailored solution to address that risk.¹⁶ Courts, including the Fifth and Seventh Circuits and multiple district courts, have relied on this research in rejecting similar challenges. *See Nat'l Rifle Ass'n*, 700 F.3d at 210 & n.21; *Horsley v. Trame*, 808 F.3d 1126, 1133 (7th Cir. 2015); *Jones v. Becerra*,

¹⁶ *Amici's* district court filings presented neuroscience and social science research demonstrating this risk. *See NRA v. Swearingen*, 4:18-cv-00147 (N.D. Fl. Sept. 10, 2020), ECF No. 111 (Exhibits 1-6). They are therefore a portion of the record on appeal and properly before the Court. *See Fed. R. App. P. 10(a)*.

498 F. Supp. 3d 1317, 1329-30 (S.D. Cal. 2020); *Mitchell v. Atkins*, 483 F. Supp. 3d 985, 995-96 (W.D. Wash. 2020).

1. *Eighteen-to-Twenty-Year-Old Minors Are Generally More Impulsive Than Older Cohorts.*

The scientific literature is clear that the human brain does not finish developing until the mid-to-late twenties.¹⁷ The *last* part of the brain to mature is the prefrontal cortex, which is responsible for impulse control, judgment, and long-range planning.¹⁸ The prefrontal cortex matures well after the limbic system, which controls basic emotions like fear, anger, and pleasure. This delay results in a period of reduced self-control in the late teens and early twenties.¹⁹ As a result, 18-to-20-

¹⁷ 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 (“The scientific literature over the past two decades has demonstrated repeatedly that the brain does not fully mature until the mid-to-late 20s.”).

¹⁸ *Id.*; see also Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 NEUROPSYCHIATRIC DISEASE & 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.”).

¹⁹ Arain, *supra* note 18, at 453 (“[S]tudies [have] determined that adolescents’ prefrontal cortices are used less often during interpersonal

year-olds are prone to take risks and deprioritize long-term outcomes. *See Nat'l Rifle Ass'n*, 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.”); *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.”).

In addition, minors are uniquely prone to negative emotional states.²⁰ These negative states are “frequent,” and adolescents’ responses to them “tend to be more intense, variable and subject to extremes relative to adults.”²¹ Scientists have reasoned that “[f]eeling sad,

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.”).

²⁰ Leah H. Somerville et al., *A Time of Change: Behavioral and Neural Correlates of Adolescent Sensitivity to Appetitive and Aversive Environmental Cues*, 72 *BRAIN & COGNITION* 124, 125 (2010).

²¹ *Id.* at 125.

depressed, or hopeless may be associated with the heightened rates of affective disorders, attempted and completed suicide, and addiction also observed during adolescence.”²² Because their limbic systems have matured while their prefrontal cortexes are still developing, minors are also more prone to act on aggressive negative emotions, *e.g.*, rage, when confronted by a stressful situation.²³

Because their brains are still developing, 18-to-20-year-olds are at a higher risk of violence when they have unfettered access to firearms.²⁴ Indeed, educational institutions serving this age group—such as colleges and military academies, which arguably admit only the most responsible young adults—recognize this risk. *See, e.g.*, U.S. Military

²² *Id.*; *see also* Richard A. Friedman, *Why Are Young Americans Killing Themselves? Suicide Is Now Their Second-Leading Cause of Death*, N.Y. TIMES (Jan. 6, 2020), https://www.nytimes.com/2020/01/06/opinion/suicide-young-people.html?action=click&module=Opinion&pg_type=Homepage.

²³ Arain, *supra* note 18, at 458 (“[T]he adolescent brain is structurally and functionally vulnerable to environmental stress.”).

²⁴ *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.”).

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); Matthew Miller et al., *Guns and Gun Threats at College*, 51 J. AM. COLL. HEALTH 57, 64 (2002) (“[O]ur findings also suggest that students who report having guns at college disproportionately engage in behaviors that put themselves and others at risk for injury.”).

2. *Eighteen-to-Twenty-Year-Olds Are Disproportionately Likely to Commit Violent Crimes, Including Homicide, With Firearms.*

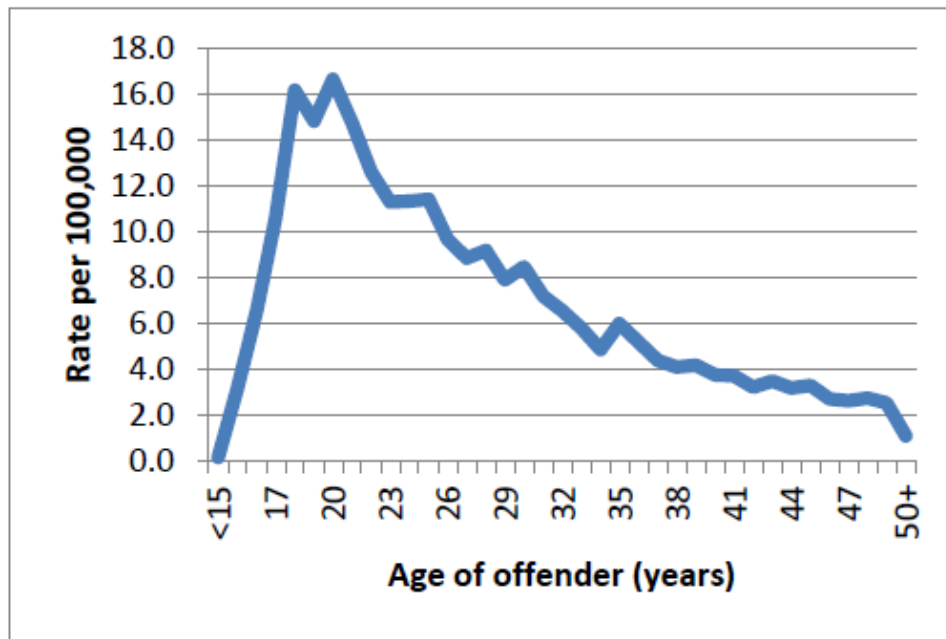
Eighteen-to-twenty-year-olds account for a disproportionate share of violent crimes and homicides—both as victims and as perpetrators. The statistics are stark:

- Arrests for homicide, rape, and robbery are higher among 18-to-20-year-olds than older adults.²⁵
- Though 18-to-20-year-olds make up less than 5% of the U.S. population, they account for more than 15% of homicide and manslaughter arrests.²⁶

²⁵ U.S. Department of Justice, *Crime in the United States*, Arrests by Age, 2019, tbl.38, <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/table-38>.

²⁶ *Id.*; U.S. Census Bureau, *Annual Estimates of the Resident Population by Single Year of Age and Sex: April 1, 2010 to July 1, 2019*,

- This general pattern has persisted over time. The following chart, showing homicide offending rate by age in 2009, vividly illustrates the disproportionate share of homicides committed by 18-to-20-year-olds that year:²⁷



- FBI data also suggests that young people are disproportionately convicted of homicides. For example, 18-to-20-year-olds account for 17% of known homicide offenders. And the victims of homicides perpetrated by 18-to-20-year-olds are also disproportionately likely to be under the age of 21 themselves.²⁸

National Population by Characteristics: 2010-2019, <https://www.census.gov/data/datasets/time-series/demo/popest/2010s-national-detail.html>.

²⁷ Daniel W. Webster et al., *The Case for Gun Policy Reforms in America*, JOHNS HOPKINS CTR. FOR GUN POL'Y & RSCH. 1, 5 (2012), https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/publications/WhitePaper020514_CaseforGunPolicyReforms.pdf.

²⁸ Calculated using data from the FBI's Supplementary Homicide Reports and US Census Bureau. Uniform Crime Reporting Program:

Just this spring, a 19-year-old shooter killed eight people and wounded several more before taking his own life at a FedEx facility in Indianapolis.²⁹ During this brief's drafting, an 18-year-old with a firearm wreaked havoc at a Texas high school—sending three people to the hospital.³⁰ And, in addition to the shooting at Marjory Stoneman Douglas High School that served as the impetus for Section 13, several of the other deadliest mass school shootings in our nation's history were also committed by young people under 21 years old, including the December 14, 2012 Sandy Hook Elementary School shooting in Newton, Connecticut, in which a 20-year-old shooter killed 20 schoolchildren, six adult school staff and faculty, and his mother, before turning the gun on himself, and the April 20, 1999 Columbine High School shooting in

Supplementary Homicide Reports (SHR), Washington, DC: Department of Justice, Federal Bureau of Investigation; US Census Bureau Population Estimates.

²⁹ Steve Almasy et al., *Police ID Gunman Who Killed 8 People at an Indianapolis FedEx Facility as 19-Year-Old Former Employee*, CNN (Apr. 17, 2021), <https://www.cnn.com/2021/04/16/us/indianapolis-shooting-fedex-facility/index.html>.

³⁰ Kay Jones & Holly Yan, *A Suspect Is in Custody in the Texas School Shooting that Left at Least 4 People Injured*, CNN (Oct. 7, 2021), <https://www.cnn.com/2021/10/06/us/timberview-high-school-shooting-texas/index.html>.

Littleton, Colorado, in which an 18-year-old and a 17-year-old killed 12 students and one teacher, before dying by suicide.³¹ Within weeks of the 20-year anniversary of the Columbine shooting, and just a few miles away, an 18-year-old and a juvenile shot and killed one of their classmates and injured eight others in a shooting at a charter school in Highlands Ranch, Colorado.³²

In the 20 years following the Columbine High School massacre, there were 486 incidents involving firearms at schools, including 68 incidents of an active shooter on school property during the school day.³³ And over time, school shootings have become more frequent:

³¹ Daniel Wolfe & John Murphy-Teixidor, *Deadliest Mass Shootings in the US Fast Facts*, CNN, <https://www.cnn.com/2019/08/19/us/mass-shootings-fast-facts/index.html> (last updated Oct. 21, 2021); Evan Perez et al., *What We Know About Dimitrios Pagourtzis, the Alleged Santa Fe High School Shooter*, CNN (May 21, 2018), <https://edition.cnn.com/2018/05/18/us/dimitrios-pagourtzis-santa-fe-suspect/>.

³² Associated Press, *At Least 2 Handguns Used in School Shooting Near Columbine*, MPR NEWS (May 8, 2019), <https://www.mprnews.org/story/2019/05/08/at-least-2-handguns-used-in-school-shooting-near-columbine>.

³³ Luis Melgar, *Are School Shootings Becoming More Frequent? We Ran the Numbers*, CTR. FOR HOMELAND DEF. & SEC. (May 21, 2019), <https://www.chds.us/ssdb/are-school-shootings-becoming-more-frequent-we-ran-the-numbers/>.

“From 1999 to 2014, the average number of days between [active school] shootings was 124 days. From 2015 to 2018, the average was 77 days.”³⁴

Compounding these tragic statistics is the fact that, even after the shooting stops, gun violence disproportionately harms young people. Young people exposed to gun violence are at a greater risk of developing PTSD³⁵ and harming themselves.³⁶ For instance, after the Columbine massacre, one student survivor suffering from PTSD died by suicide after watching his basketball coach die and losing two friends in the mass shooting.³⁷ Similarly, two teenage survivors of the Parkland shooting later died by suicide.³⁸

³⁴ *Id.*

³⁵ One study found that nearly 40% of children exposed to a shooting will develop PTSD. See Eboni Morris, *Youth Violence: Implications for Posttraumatic Stress Disorder in Urban Youth*, NAT'L URB. LEAGUE POL'Y INST. 7 (2009).

³⁶ 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.

³⁷ *Id.*

³⁸ Jared Keller, *The Psychological Aftermath of Surviving School Shootings*, PAC. STANDARD (Mar. 25, 2019), <https://psmag.com/education/the-psychological-aftermath-of-surviving-school-shootings>.

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

Eighteen-to-twenty-year-olds are also disproportionately at risk of attempting suicide, and firearm access exacerbates this risk. Many major psychiatric conditions first develop in adolescence,³⁹ and “suicide risk increase[s] steeply during the first few years after first contact with psychiatric services.”⁴⁰ Furthermore, 18-to-20-year-olds’ impulsivity and propensity toward negative emotional states puts them at particular risk of suicide, which “is commonly an impulsive act by a vulnerable individual.”⁴¹ One study found that of 153 survivors of nearly

³⁹ Tomáš Paus et al., *Why Do Many Psychiatric Disorders Emerge During Adolescence?*, 9 NATURE REV. 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 MED., <https://www.hopkinsmedicine.org/health/wellness-and-prevention/mental-health-disorder-statistics> (schizophrenia typically “first appears in men during their late teens or early 20s”).

⁴⁰ Merete Nordentoft et al., *Absolute Risk of Suicide After First Hospital Contact in Mental Disorder*, 68 ARCHIVES GEN. PSYCHIATRY 1058, 1061 (2011).

⁴¹ E. Michael Lewiecki & Sara A. Miller, *Suicide, Guns, and Public Policy*, 103 AM. J. PUB. HEALTH 27, 27 (2013).

lethal suicide attempts aged 13-to-34, close to a quarter reported that *less than five minutes* passed between their decision to attempt suicide and their attempt.⁴² Thus, it is troubling, yet unsurprising, that suicide accounts for a higher percentage of deaths for 15-to-24-year-olds than for any other age group.⁴³ Indeed, from 2010 to 2019, suicide was the second-most-common cause of death among 18-to-20-year-olds.⁴⁴

Stemming from the speed with which suicidal ideation gives way to action, “[a]ccess to firearms is a key risk factor for suicide.”⁴⁵ In fact, “at least a dozen U.S. case-control studies in the peer-reviewed literature . . . have found that a gun in the home is associated with an

⁴² Thomas R. Simon et al., *Characteristics of Impulsive Suicide Attempts and Attempters*, 32 (SUPP.) SUICIDE & LIFE-THREATENING BEHAV. 49, 50-52 (2001).

⁴³ Centers for Disease Control and Prevention, Web-based Injury Statistics Query and Reporting System (WISQARS), *Leading Causes of Death Reports, 1981-2019*, <https://wisqars.cdc.gov/fatal-leading>.

⁴⁴ *Id.*

⁴⁵ American Public Health Association, *Reducing Suicides by Firearms* (Nov. 13, 2018), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2019/01/28/reducing-suicides-by-firearms>.

increased risk of suicide. The increase in risk is large, typically 2 to 10 times that in homes without guns.”⁴⁶

Those prone to “act impulsively . . . are more likely to be affected by availability of the means at hand,” which explains why “the preponderance of current evidence indicates that gun availability is a risk factor for suicide, especially among youth.”⁴⁷ Compounding the increased risk of suicide posed by firearm access is the inherent lethality of firearms. Firearm suicide is the suicide method with the highest fatality rate—the odds of completing a suicide attempt are 140 times greater when a gun is used than for any other commonly used method.⁴⁸ Framed differently, while 4% of non-firearm suicide attempts are fatal,

⁴⁶ Matthew Miller & David Hemenway, *Guns and Suicide in the United States*, 359 N. ENGL. J. MED. 989, 990 (2008).

⁴⁷ Matthew Miller & David Hemenway, *Firearm Prevalence and the Risk of Suicide: A Review*, 2 HARV. HEALTH POL’Y REV. 29, 34 (2001); see also RAND Corp., *The Effects of Minimum Age Requirements* (updated Apr. 22, 2020) (“[T]he association between firearm availability and suicide is strongest among adolescents and young adults[.]”).

⁴⁸ J. Michael Bostwick et al., *Suicide Attempt as a Risk Factor for Completed Suicide: Even More Lethal Than We Knew*, 173 AM. J. PSYCHIATRY 1094, 1098 (2016).

85% of suicide attempts with a gun are fatal.⁴⁹ In 2017, nearly half of the 3,556 suicide deaths among 16-to-21-year-olds involved a firearm.⁵⁰

Moreover, 18-to-20-year-olds are particularly at risk for suicides involving long guns. Several recent studies have found that, while handguns are used in most suicides, long-gun use is relatively higher among adolescents compared with adults.⁵¹ In fact, 18- and 19-year-olds are the only groups more likely to die by long-gun suicide than handgun suicide.⁵² This is likely at least in part because, in other states

⁴⁹ 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) (establishing that in 2001, there were 333,765 non-firearm suicide attempts and 13,753 fatalities, compared to 19,849 firearm suicide attempts and 16,869 fatalities).

⁵⁰ RAND Corp., *supra* note 47.

⁵¹ Thomas J. Hanlon et al., *Type of Firearm Used in Suicides: Findings from 13 States in the National Death Reporting System, 2005-2015*, 65 J. ADOLESCENT HEALTH 366, 367 (2019); Paul S. Nestadt et al., *Prevalence of Long Gun Use in Maryland Firearm Suicides*, 7 INJ. EPIDEMIOLOGY 1, 4-5 (2020); *see also* RAND Corp., *supra* note 47 (collecting studies “suggesting that minimum age laws that cover all firearms (i.e., long guns and handguns) may have larger effects on suicide rates compared with laws focused on handguns alone”).

⁵² Centers for Disease Control and Prevention, Wide-Ranging Online Data for Epidemiologic Research (WONDER), <https://wonder.cdc.gov/controller/datarequest?stage=search&action=current>.

and in Florida prior to the effective date of the Act, they have had easier access to long guns compared to handguns.

Preventing access to firearms can save lives from suicide. Research shows that fewer than 3% of people who survive one suicide attempt later die by suicide.⁵³ But, as scholars have noted, although “[s]uicide attempters often have second thoughts, . . . when a method like a gun works so effectively, there’s no opportunity to reconsider.”⁵⁴ A young adult’s access to firearms when contemplating a suicide attempt, therefore, often determines whether they die or recover.

4. *State-Level Gun Control Measures, Including Age Restrictions, Are Effective.*

Section 13 is substantially related to Florida’s safety objectives. *See GeorgiaCarry.Org*, 788 F.3d at 1328. Studies have found a connection between age restrictions such as Section 13’s and a decline in firearm-related adolescent deaths, especially suicides and unintentional shootings. For instance, a 2004 study found that state laws

⁵³ Bostwick, *supra* note 48, at 1098.

⁵⁴ 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>.

raising the minimum legal age to purchase a handgun to 21 were associated with a 9% decline in firearm suicide rates among 18-to-20-year-olds.⁵⁵ A survey of convicted gun offenders in 13 states found that 17% of the offenders would have been prohibited from obtaining firearms at the time of the crime if the minimum legal age in that state had been 21 years, a finding that “underscore[d] the importance of minimum-age restrictions.”⁵⁶

Strong state gun laws have also proven effective in reducing gun violence among young people, including in the 18-to-20-year-old range. A 2019 study found that 18-to-21-year-olds made up more than half (68.7%) of the 21,241 firearm-related deaths among U.S. children and adolescents from 2011 to 2015.⁵⁷ But state laws make a difference: the study found that every 10-point increase in a score measuring the strength of a state’s gun laws “decreases the firearm-related mortality

⁵⁵ Daniel W. Webster et al., *Association Between Youth-Focused Firearm Laws and Youth Suicides*, 292 JAMA 594, 598 (2004).

⁵⁶ Katherine A. Vittes et al., *Legal Status and Source of Offenders’ Firearms in States with the Least Stringent Criteria for Gun Ownership*, 19 INJ. PREVENTION 26, 29-30 (2013).

⁵⁷ Monika K. Goyal et al., *State Gun Laws and Pediatric Firearm-Related Mortality*, 144 PEDIATRICS No. 2, at 3 & tbl. 1 (2019).

rate in children by 4%.”⁵⁸ Another study using the same gun-law scores found that the pediatric firearm mortality rate amongst children aged 0-to-19-years-old was almost twice as high in the quartile of states with the weakest laws than in the quartile of states with the strongest laws.⁵⁹

Finally, research demonstrates that most mass shooters obtain their weapons lawfully. In a report examining active shootings from 2000 to 2013, the FBI concluded that “only very small percentages [of shooters] obtain[ed] a firearm illegally,”⁶⁰ indicating that these perpetrators are seeking easy access to weapons and are not necessarily sophisticated participants in the black market for firearms. Lawmakers therefore can, and should, conclude that restricting access to firearms will deter criminal use of firearms—precisely the type of reasonable conclusion that underlies virtually all laws aimed at regulating

⁵⁸ *Id.*

⁵⁹ Sriraman Madhavan et al., *Firearm Legislation Stringency and Firearm-Related Fatalities Among Children in the US*, 229 J. AM. COLL. SURGEONS 150, 152 (2019).

⁶⁰ U.S. Dep’t of Justice, Federal Bureau of Investigation, *A Study of the Pre-Attack Behaviors of Active Shooters in the United States Between 2000 and 2013*, at 7 (June 2018), <https://www.fbi.gov/file-repository/pre-attack-behaviors-of-active-shooters-in-us-2000-2013.pdf/view>.

dangerous products. *Cf., e.g., Nat'l Paint & Coatings Ass'n v. City of Chicago*, 45 F.3d 1124, 1128-29 (7th Cir. 1995).

B. Legislative History Demonstrates That Section 13 Is a Commonsense and Evidence-Based Response to a Grave Public Safety Risk.

Section 13's legislative history further demonstrates that the Florida Legislature sought to address the public safety risk posed by 18-to-20-year-olds purchasing firearms. Courts routinely consult legislative history to determine whether a challenged regulation survives intermediate scrutiny. *See, e.g., Jackson v. San Francisco*, 746 F.3d 953, 968-69 (9th Cir. 2014); *United States v. Chapman*, 666 F.3d 220, 226 (4th Cir. 2012) (“[T]he government identifies reducing domestic gun violence as the substantial governmental objective of” the challenged law and “legislative history is fully consistent with this position.”).

In enacting Section 13, the Florida Legislature was careful to strike a constitutional balance.⁶¹ It noted that “there is a need to comprehensively address the crisis of gun violence, including, but not

⁶¹ In fact, the Florida Legislature expressly considered the two-step framework when it crafted and debated Section 13, highlighting that “overbroad prohibitions on gun possession have been struck down, but more narrowly tailored restrictions . . . have been upheld.” *See Florida Senate Bill Analysis of SB 7026*, at 6.

limited to, gun violence on school campuses,” and that the Act would achieve this end by “provid[ing] law enforcement, the courts, and schools with the tools to enhance public safety.”⁶²

The Florida Legislature noted that the Parkland shooter was 19 years old, and that he “used an AR-15 semi-automatic rifle during the shooting spree, the same type of firearm used during the Sandy Hook shooting and the Pulse Nightclub shooting in Orlando that left 49 dead and 53 injured.”⁶³ Moreover, the Legislature emphasized that “the Parkland shooter began *legally* buying firearms, including the one used [at Parkland], on or around his eighteenth birthday” and that “he had collected at least seven rifles [since] that time.”⁶⁴ In light of long guns’ role in recent mass shootings, including when the shooters were 18-to-20-year-olds, the Florida Legislature determined (correctly) that prohibiting both handgun and long-gun purchases by individuals in that age group was a justifiable means to promote public safety.

⁶² *Id.* at 1, 4.

⁶³ *Id.* at 3.

⁶⁴ *Id.* at 4 (emphasis added).

Together with the neuroscience and social science summarized above, the legislative history confirms that the Act's minimum-age provision is more than "substantially related" to the "important governmental objective" of public safety. *GeorgiaCarry.Org*, 788 F.3d at 1328.

CONCLUSION

One week after the tragic shooting at Marjory Stoneman Douglas High School, Governor Scott committed to take action to address mass shootings, including by raising the minimum age to purchase a firearm.⁶⁵ His message was simple: "We must take care of our kids."⁶⁶ That imperative has been echoed by thousands of students and citizens across the country who have asked their leaders to enact common-sense measures, like Section 13, which enjoy broad public support and have extraordinary potential to save lives. Appellants, in contrast, ask this Court to step in and strip legislatures of their power to promote public safety. Nothing in the Second Amendment requires that result.

⁶⁵ Sterling, *supra* note 6.

⁶⁶ *Id.*

Section 13 of the Marjory Stoneman Douglas High School Public Safety Act is a bipartisan, common-sense, calibrated, and data-driven solution with enormous potential to save lives that does not substantially burden Second Amendment rights. The decision below should be affirmed.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

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October 25, 2021

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) because this brief contains 6,491 words, excluding the parts of the brief exempted by Rule 32(f). This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

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