

No. 23-2248

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

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KRISTIN WORTH, et al.,

*Plaintiffs-Appellees,*

vs.

BOB JACOBSON, in his individual capacity and in his official  
capacity as Commissioner of the Minnesota Department of Public  
Safety,

*Defendant-Appellant.*

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On Appeal from the United States District Court for the  
District of Minnesota

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**BRIEF OF *AMICI CURIAE* GIFFORDS LAW CENTER TO  
PREVENT GUN VIOLENCE, BRADY CENTER  
TO PREVENT GUN VIOLENCE, AND MARCH FOR  
OUR LIVES FOUNDATION IN SUPPORT OF  
DEFENDANT-APPELLANT**

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July 18, 2023

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

The undersigned counsel of record certifies that the following listed persons and entities have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal pursuant to Local Rule 29A.

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Giffords Law Center to Prevent Gun Violence, Brady Center to Prevent Gun Violence, and March For Our Lives Foundation state that each organization does not have parent corporations. They do not have stock, and therefore no publicly held company owns 10% or more of their stock.

*/s/ Sophie A. Kivett*

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July 18, 2023

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## **INTEREST OF THE *AMICI CURIAE*<sup>1</sup>**

*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.<sup>2</sup> 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

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<sup>1</sup> Defendant-Appellant and Plaintiffs-Appellees have both consented to *amici* filing this brief. *See* Fed. R. App. P. 29(a)(2). *Amici* Giffords Law Center, Brady Center to Prevent Gun Violence, and March For Our Lives Foundation submit this brief in support of Defendant-Appellant. 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.

<sup>2</sup> Giffords Law Center’s website, [www.giffords.org/lawcenter](http://www.giffords.org/lawcenter), is the premier clearinghouse for comprehensive information about federal, state, and local firearms laws and Second Amendment litigation nationwide.

proven to effectively reduce gun violence. Together with its partner 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 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); *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111 (2022). 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. BATFE*, 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).<sup>3</sup>

*Amicus curiae* Brady Center to Prevent Gun Violence (“Brady”) is the nation’s most longstanding nonpartisan, nonprofit organization dedicated to reducing gun violence through education, research, and legal advocacy. Brady works across Congress, courts, and communities, uniting gun owners and non-gun-owners alike, to take action to prevent gun violence. Brady has a substantial interest in ensuring that the Constitution is construed to protect Americans’ fundamental right to live. Brady also has a substantial interest in protecting the authority of democratically elected officials to address the nation’s gun violence epidemic.

Brady has filed *amicus* briefs in many cases involving the regulation of firearms, including in this Court. *See, e.g., Morehouse Enters., LLC v. ATF*, Nos. 22-2812, 22-2854 (8th Cir. Dec. 5, 2022); *Bruen*, 142 S. Ct. 2111; *Heller*, 554 U.S. 570. Multiple decisions have cited Brady’s research and expertise on these issues. *See, e.g., United States*

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

*v. Hayes*, 555 U.S. 415 (2009); *Nat’l Ass’n for Gun Rights, Inc. v. City of San Jose*, 2023 U.S. Dist. LEXIS 120797, at \*14–15, \*18–19 (N.D. Cal. July 13, 2023); *Hanson v. District of Columbia*, 2023 WL 3019777, at \*10, \*14, \*16 & nn.8, 10 (D.D.C. Apr. 20, 2023).

*Amicus curiae* March For Our Lives Foundation (“MFOL”) is a nonprofit organization of young people from across the country that seeks to promote civic engagement in support of sensible gun regulation and give voice to those who have been harmed by gun violence. After a gunman armed with an AR-15-style assault weapon murdered 17 people at Marjory Stoneman Douglas High School in Parkland, Florida on February 14, 2018, MFOL formed and immediately began organizing the largest single day of protest against gun violence in the nation’s history. Five years later, MFOL has established itself as one of the foremost authorities at the intersection of youth-led activism and advocacy for gun violence prevention, and thousands of young people have formed MFOL chapters across the country. In the nationwide effort to enact sensible gun regulation, MFOL serves as a platform for the indispensable voice of the younger generations and those impacted by gun violence.



MFOL has filed *amicus* briefs in multiple cases, contributing its expertise on the voices and experiences of the individuals, families, and communities indelibly harmed by gun violence. *See, e.g., Bruen*, 142 S. Ct. 2111; *Nat’l Ass’n for Gun Rights v. City of Highland Park*, No. 1:22-cv-04774 (N.D. Ill. Jan. 26, 2023); *Bevis v. City of Naperville*, No. 23-1353 (7th Cir. May 10, 2023); *Wade v. Univ. of Mich.*, No. 156150 (6th Cir. Mar. 1, 2021).

## INTRODUCTION AND SUMMARY OF ARGUMENT

When minors in Minnesota turn 18, certain privileges previously unavailable to them become accessible: They can cast a ballot in a federal election.<sup>4</sup> They can purchase a lottery ticket, apply for a credit card, or deposit money in a bank account they can now open on their own.<sup>5</sup> But other things remain unavailable, such as buying a beer or a pack of cigarettes.<sup>6</sup> And for good reason: although 18-year-olds may be more mature than when they entered high school, scientific research reveals that their brains are still very much developing. Their prefrontal cortex—the part of the brain that governs impulsivity and emotional regulation—has not yet fully matured. That makes them more prone to risk-taking, and to deprioritizing long-term outcomes.

When it comes to firearms, 18-year-olds in Minnesota are generally permitted to purchase a variety of firearms—including shotguns and rifles. However, they are not eligible to apply for licenses that would allow them to carry handguns in public until they turn 21.

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<sup>4</sup> U.S. CONST. amend. XXVI.

<sup>5</sup> Minn. Stat. §§ 349A.12, 325E.63; *see id.* § 645.452.

<sup>6</sup> Minn. Stat. § 340A.503; 21 U.S.C. § 387f(d)(5).

The tragic wave of recent mass shootings by 18-to-20-year-olds underscores the particular dangers posed by this age group's access to firearms. Just a few weeks ago, a 19-year-old and a 20-year-old killed three people and injured eight others in a mass shooting in Fort Worth, Texas.<sup>7</sup> Over the past few months, 18-to-20-year-olds committed at least eight other mass shootings across the nation, leaving seven people dead and 47 people wounded.<sup>8</sup> And in the past several years, the nation has experienced a wave of mass shootings by 18-to-20-year-olds, including on May 24, 2022, when an 18-year-old killed 19 children and two teachers at an elementary school in Uvalde, Texas.<sup>9</sup>

Nothing in the Second Amendment prevents Minnesota from regulating 18-to-20-year-olds' ability to carry firearms outside the home. As the Supreme Court has emphasized, the right to bear arms is far from

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<sup>7</sup> Frank Heinz & Lili Zheng, *2 Arrested, Charged with Murder in Como Mass Shooting that Killed 3*, NBC DFW (July 7, 2023), <https://www.nbcdfw.com/news/local/coming-up-police-update-on-comofest-mass-shooting-investigation-2-arrests-made/3291834/>.

<sup>8</sup> *Mass Shootings in 2023*, MASS SHOOTING TRACKER, <https://massshootingtracker.site/data/?year=2023> (last visited July 15, 2023).

<sup>9</sup> *A Partial List of Mass Shootings in the United States in 2022*, N.Y. TIMES (Jan. 24, 2023), <https://www.nytimes.com/article/mass-shootings-2022.html>.

boundless. Although it protects certain rights of “responsible” and “law-abiding” individuals, the Second Amendment coexists with the extensive authority of state and local governments to regulate firearm purchase, possession, and use, including by banning certain categories of people from possessing firearms and by regulating the carrying of firearms in public spaces. Indeed, in *District of Columbia v. Heller*, the Court provided a non-exhaustive list of “presumptively lawful regulatory measures,” including “longstanding prohibitions on the possession of firearms by felons and the mentally ill” and “laws imposing conditions and qualifications on the commercial sale of arms.” 554 U.S. 570, 626–27 & n.26 (2008).

In its most recent Second Amendment decision, *New York State Rifle & Pistol Ass’n v. Bruen*, the Supreme Court reemphasized the limits articulated in *Heller*, and that the Second Amendment right is “not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” 142 S. Ct. 2111, 2128 (2022). The Court rejected the means-end balancing test federal courts of appeals had incorporated into their Second Amendment analyses. Instead, the Court established a new two-part test: first, courts must determine

whether the regulated conduct is protected by the “plain text” of the Second Amendment, and if so, “whether modern firearms regulations are consistent with . . . historical understanding” of the Second Amendment, which “will often involve reasoning by analogy.” *Id.* at 2131–32. To uphold a “modern-day regulation” implicating the Second Amendment right, courts need not find that the regulation is “a dead ringer for historical precursors,” but rather must identify a “well-established and representative historical *analogue*, not a historical *twin*.” *Id.* at 2133 (emphasis in original).

Despite the district court’s acknowledgement of these standards, it nonetheless found that the requirement in Minnesota Statute Section 624.714, subdivision 2(b)(2) (the “Minnesota Law”), that a person must be at least 21 years old to receive a permit to publicly carry a handgun, “violates the rights of individuals 18–20 years old to keep and bear arms.” App. 50; R. Doc. 84, at 50. While expressing “reservations about the required historical inquiry” and noting that such an inquiry is “fraught with potential for error and confirmation bias,” the district court held that there is no “tradition of relevantly similar regulations that prohibit 18-to-20-year-olds from publicly carrying handguns for self-

defense.” App. 20–22; R. Doc. 84, at 20–22. Contrary to the district court’s conclusion, the Minnesota Law survives constitutional scrutiny under the test set forth in *Bruen* because it is analogous to historical regulations of 18-to-20-year-olds and other groups of individuals who have been understood to present a heightened risk of violence.

*Amici* submit this brief to provide further context for the Minnesota Law, to show how it is consistent with the Nation’s historical tradition of firearm regulations for this age group, and to identify an established body of empirical research that demonstrates the law’s soundness and real-world consequences, which confirm its accordance with analogous historical regulations.<sup>10</sup> Modern research in the fields of neuroscience and social science demonstrates that 18-to-20-year-olds tend to be more impulsive than older adults because their brains are still developing. They are at a heightened risk of suicide, account for a

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<sup>10</sup> While *amici*’s brief is focused on the second part of the test established in *Bruen*, nothing in this brief should be read to concede that the conduct regulated by the Minnesota Law is protected by the “plain text” of the Second Amendment. Indeed, *amici* agree with Defendant-Appellant that the plain text of the Second Amendment does not cover 18-to-20-year-olds freely carrying guns in public for self-defense. Appellant’s Br. at 8–30.

disproportionate share of homicides and violent crimes, and are all too frequently involved in mass shootings. This contemporary research demonstrates why regulation of this age group’s ability to purchase firearms is consistent with longstanding and presumptively lawful firearms regulations, and thus comports with the Second Amendment.<sup>11</sup>

## ARGUMENT

### **I. THE DISTRICT COURT ERRED IN FINDING THAT THE MINNESOTA LAW IS NOT ANALOGOUS TO LONGSTANDING PRESUMPTIVELY CONSTITUTIONAL FIREARM REGULATIONS.**

The district court’s conclusion that there is no historical analogue for the Minnesota Law (App. 28–36; R. Doc. 84, at 28–36), is inconsistent with Supreme Court precedent. In *Heller*, the Supreme Court made clear that “nothing in [the] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms” by people with felony convictions and certain people suffering from severe

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<sup>11</sup> Cf. *Graham v. Florida*, 560 U.S. 48, 68 (2010) (“As petitioner’s *amici* point out, developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence.”); *Gall v. United States*, 552 U.S. 38, 58 (2007) (“[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage.”).

mental illness, as well as “laws imposing conditions and qualifications on the commercial sale of arms,” adding that these “presumptively lawful regulatory measures [serve] only as examples” and do “not purport to be exhaustive.” 554 U.S. at 626–27 & n.26.

In *McDonald v. City of Chicago*, the Supreme Court “repeat[ed] [*Heller*’s] assurances” that such laws should not be called into question. 561 U.S. 742, 786 (2010). And Justice Kavanaugh’s concurrence in *Bruen*, joined by Chief Justice Roberts, again confirmed the presumptive legality of these measures. 142 S. Ct. at 2162. As the Supreme Court emphasized in *Bruen*, the Second Amendment right is “not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Id.* at 2128.

Prohibiting individuals who (perhaps temporarily) pose a heightened risk of dangerousness to the public was a familiar notion to the Founders. As this Court recently observed, “[h]istory shows that the right to keep and bear arms was subject to restrictions that included prohibitions on possession by certain groups of people” including “those who are deemed more dangerous than a typical . . . citizen.” *United States v. Jackson*, 69 F.4th 495, 502 (8th Cir. 2023). “[T]he founding generation



did not understand the right to keep and bear arms to extend to certain categories of people deemed too dangerous to possess firearms.” *Binderup v. Att’y Gen. U.S.*, 836 F.3d 336, 367 (3d Cir. 2016) (Hardiman, J., concurring); *see also* Don B. Kates & Clayton E. Cramer, *Second Amendment Limitations and Criminological Considerations*, 60 HASTINGS L.J. 1339, 1360 (2009) (“[F]rom time immemorial, various jurisdictions recognizing a right to arms have nevertheless taken the step of forbidding suspect groups from having arms. American legislators at the time of the Bill of Rights seem to have been aware of this tradition[.]”).

Awareness of this tradition—and agreement with it—is evident from colonial ratifying conventions, where these notions were voiced with regularity. *See, e.g.*, Stephen P. Halbrook, *THE FOUNDERS’ SECOND AMENDMENT 190–215* (2019) (surveying debates at the constitutional ratifying conventions and highlighting the shared understanding that “dangerous persons could be disarmed”).

This “[h]istory is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns” in order to protect the broader public.

*Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting). Furthermore, this “common sense” understanding of presumptively lawful measures is not limited to the laws in place at the Founding. To uphold a “modern-day regulation,” courts need not find that the regulation is “a dead ringer for historical precursors,” but rather must identify a “well-established and representative historical *analogue*, not a historical *twin*.” *Bruen*, 142 S. Ct. at 2133 (emphasis in original).

Thus, a “regulation can be deemed ‘longstanding,’” and therefore constitutional, “even if it cannot boast a precise founding-era analogue.” *NRA v. BATFE*, 700 F.3d 185, 196 (5th Cir. 2012). Indeed, *Heller*’s enumerated examples of presumptively lawful measures themselves “are of mid-20th century vintage.” *Id.*

Similar to bans targeting people with felony convictions or those suffering from mental illness, laws “targeting minors under 21 are an outgrowth of an American tradition of regulating certain groups’ access to arms for the sake of public safety.” *BAFTE*, 700 F.3d at 205; *NRA v. McCraw*, 719 F.3d 338, 347 (5th Cir. 2013) (“statutes enacted to safeguard the public using age-based restrictions on access to and use of firearms are part of a succession of ‘longstanding prohibitions,’ that are

likely outside the scope of the Second Amendment”). Indeed, numerous “revolutionary and founding-era gun regulations . . . targeted particular groups for public safety reasons,” including “minors” and “infants,” terms which were understood at the time to “appl[y] to persons under the age of 21, not only to persons under the age of 18.” *BATFE*, 700 F.3d at 200–01; *see also* Appellant’s Br. at 8–17.

In light of the foregoing, the district court’s conclusion that the Minnesota Law is not “consistent with the nation’s history and tradition of firearm regulations” (App. 37–38; R. 84, at 37–38), is incorrect. As this Court has itself recognized, firearm possession by minors is similar to *Heller*’s list of constitutional restrictions. *See United States v. Bena*, 664 F.3d 1180, 1183 (8th Cir. 2011) (“[T]he right to arms does not preclude laws disarming the unvirtuous (i.e. criminals) or those who, *like children* or the mentally unbalanced, are deemed incapable of virtue.” (emphasis added)). Indeed, the Eighth Circuit has upheld a comparable (and in fact, more restrictive) federal statute “mak[ing] it unlawful for anyone ‘who is an unlawful user of or addicted to any controlled substance’ to possess a firearm,” because it was “the type of ‘longstanding prohibition[] on the possession of firearms’ that *Heller*

declared presumptively lawful.” *United States v. Seay*, 620 F.3d 919, 924–25 (8th Cir. 2010). The Court reached this conclusion despite the fact that the challenged federal statute was not specifically enumerated in *Heller*’s non-exhaustive list of examples. *Id.*; see also *United States v. Walker*, 2023 WL 3932224, at \*4 (D. Neb. June 9, 2023) (explaining that “*Bruen* does not directly repudiate, nor is it inconsistent with, the Eighth Circuit’s holding in *Seay*.”).

Here, the record amply demonstrates that the Minnesota Law falls squarely within “the Nation’s historical tradition of firearm regulation” and thus the regulated conduct is not protected by the Second Amendment. *Bruen*, 142 S. Ct. at 2130.

Moreover, modern-day empirical research supports Defendant-Appellant’s argument that the Minnesota Law is analogous to historical regulation. The district court here declined to consider such research, noting that “the outcome here would likely be different” if it were “permitted” to take into account evidence such as “the still-developing nature of 18–20-year-olds’ brains.” App. 38–39; R. 84, at 38–39. In concluding that there is “no basis in the record” to consider *amici*’s evidence, the district court failed to consider that scientific

research can assist in the comparative analysis of “why” and “how” the Minnesota Law comports with constitutional historical analogues.

**II. NEUROSCIENCE AND SOCIAL SCIENCE CONFIRM THAT THE MINNESOTA LAW IS ANALOGOUS TO HISTORICAL REGULATIONS OF GROUPS POSING A HEIGHTENED RISK OF VIOLENCE WHEN ARMED.**

Empirical research, which establishes that 18-to-20-year-olds’ brains are still developing, demonstrates that the Minnesota Law is analogous to historical regulations of certain groups that were perceived to pose a public safety threat when armed. *Bruen* contemplates a broad “reasoning by analogy” that compares “how and why [historical] regulations burden[ed] a law-abiding citizen’s right to armed self-defense” to the “how and why” of modern regulations. 142 S. Ct. at 2132–33. This comparative inquiry determines “whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified.” *Id.* at 2133. Furthermore, courts may look beyond “how and why” to identify other “features that render regulations relevantly similar.” *Id.* at 2132.

As part of this inquiry, this Court naturally should consider the modern-day “justifi[cations]” for the Minnesota Law. Indeed, considering modern-day justifications will often show how modern laws

comport with their historical analogues. *See Bena*, 664 F.3d at 1184 (discussing modern empirical studies and findings from the Surgeon General on domestic violence in order to show how challenged law was justified in a manner “consistent with our common law tradition”). Those justifications include neuroscience and social science research confirming that, similar to groups who were restricted from accessing firearms during the Founding era, 18-to-20-year-olds with unencumbered access to firearms pose a substantial risk to themselves and others.

**A. Eighteen-to-Twenty-Year-Olds 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.<sup>12</sup> The *last* part of the brain to mature is the prefrontal cortex, which is responsible for impulse control, judgment, and long-range planning.<sup>13</sup> The prefrontal cortex

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<sup>12</sup> Adam Winkler & Cara Natterson, *There’s a Simple Way to Reduce Gun Violence: Raise the Gun Age*, WASH. POST (Jan. 6, 2016), [https://www.washingtonpost.com/posteverything/wp/2016/01/06/there-a-simple-way-to-fight-mass-shootings-raise-the-gun-age/?utm\\_term=.e8adc7e6c1da](https://www.washingtonpost.com/posteverything/wp/2016/01/06/there-a-simple-way-to-fight-mass-shootings-raise-the-gun-age/?utm_term=.e8adc7e6c1da) (“The scientific literature over the past two decades has demonstrated repeatedly that the brain does not fully mature until the mid-to-late 20s.”).

<sup>13</sup> *Id.*; see 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

matures well after the limbic system, which controls basic emotions like fear, anger, and pleasure, resulting in a period of reduced self-control in the late teens and early twenties.<sup>14</sup> As a result, 18-to-20-year-olds are prone to taking risks and deprioritizing long-term outcomes. *See BATFE*, 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.”); *Miller v. Alabama*, 567 U.S. 460, 471–72 (2012) (noting that “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds—for example, in parts of the brain involved in behavior control”—and finding that juveniles possess “transient rashness, proclivity for risk, and inability to assess consequences”).

Minors are also uniquely prone to negative emotional states.<sup>15</sup>

Adolescents’ responses to “frequent” negative states “tend to be more

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executive functions. These functions are localized in the prefrontal cortex, which matures independent of puberty and continues to evolve up until 24 years of age.”).

<sup>14</sup> Arain, *supra* note 13, at 453.

<sup>15</sup> Leah H. Somerville et al., *A Time of Change: Behavioral and Neural Correlates of Adolescent Sensitivity to Appetitive and Aversive Environmental Cues*, 72 *BRAIN & COGNITION* 124, 125 (2010).

intense, variable and subject to extremes relative to adults.”<sup>16</sup> And minors are also more likely to *act* on negative emotions like stress or rage because their limbic systems have matured while their cerebral cortices (*i.e.*, impulse control centers) are still developing.<sup>17</sup>

Because the behavior-regulating functions of their brains are still developing, 18-to-20-year-olds are at a higher risk of perpetrating and suffering from violence when they have unfettered access to firearms.<sup>18</sup>

**B. Eighteen-to-Twenty-Year-Olds Are Disproportionately Likely to Commit Violent Crimes with Firearms.**

Eighteen-to-twenty-year-olds account for a disproportionate share of violent crimes and homicides—both as victims and as perpetrators. The below statistics demonstrate that 18-to-20-year-olds

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<sup>16</sup> *Id.*

<sup>17</sup> Arain, *supra* note 13, at 458 (“[T]he adolescent brain is structurally and functionally vulnerable to environmental stress.”).

<sup>18</sup> *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.”).



pose a heightened risk of dangerousness when armed and illustrate why regulations on carrying in public, such as the Minnesota Law, are analogous to historical regulations of groups who likewise posed an increased threat to public safety when armed:

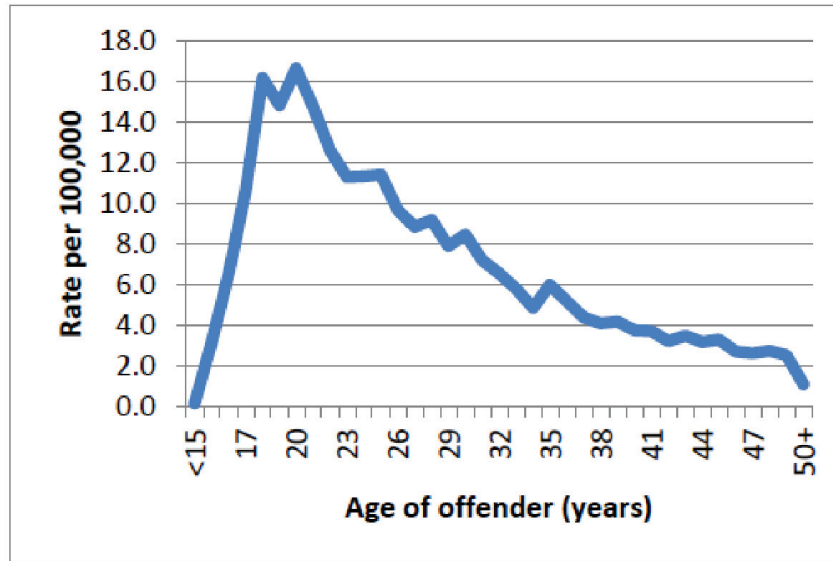
- Arrests for homicide, rape, and robbery are higher among 18-to-20-year-olds than older adults.<sup>19</sup>
- Though 18-to-20-year-olds make up less than 5% of the U.S. population, they account for more than 15% of homicide and manslaughter arrests.<sup>20</sup>
- This general pattern has persisted. 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:<sup>21</sup>

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<sup>19</sup> U.S. Dep't 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>.

<sup>20</sup> *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*, National Population by Characteristics: 2010–2019, <https://www.census.gov/data/datasets/time-series/demo/popest/2010s-national-detail.html>.

<sup>21</sup> 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](https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/publications/WhitePaper020514_CaseforGunPolicyReforms.pdf).



In addition to these statistics, our nation has faced a disturbing wave of mass shootings in just the past few months alone, many involving perpetrators in or around the age range targeted by the Minnesota Law. For example, in January 2023, an 18-year-old was charged for his involvement in a shooting that killed two students and injured an adult in Des Moines, Iowa.<sup>22</sup> Just a few months later, in April 2023, a 19-year-old and two 20-year-olds were charged in a mass shooting at a Sweet 16 birthday party in Dadeville, Alabama that killed four people and injured 32 others, many of them high school students.<sup>23</sup> And

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<sup>22</sup> *Two Students Dead After Shooting at Des Moines Outreach Center; Shooter Identified*, KCRG (Jan. 23, 2023), <https://www.kcrg.com/2023/01/23/multiple-injured-after-shooting-des-moines-school/>.

<sup>23</sup> Isabel Rosales et al., *6 People Face Murder Charges for the Sweet 16 Party Massacre that Left 4 Dead and 32 Injured*, CNN (Apr. 21, 2023),

on May 16, 2023, an 18-year-old gunman killed three people and wounded six others in Farmington, New Mexico, with a firearm purchased shortly after his 18th birthday.<sup>24</sup> Minnesota has not escaped the carnage—on New Year’s Eve 2022, an 18-year-old shot and injured two people inside the Mall of America<sup>25</sup>

Last year, on May 14, 2022, an 18-year-old gunman at a supermarket in Buffalo, New York, killed ten people and wounded three others.<sup>26</sup> Then, ten days later, on May 24, an 18-year-old killed 19 children and two teachers at an elementary school in Uvalde, Texas.<sup>27</sup> On July 4, a 21-year-old killed seven people and wounded dozens more at a parade in Highland Park, Illinois—with a gun he purchased prior to

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<https://www.cnn.com/2023/04/19/us/dadeville-alabama-birthday-party-shooting-wednesday/index.html>

<sup>24</sup> Elise Hammond et al., *The Latest on Mass Shooting in Farmington, New Mexico*, CNN (May 16, 2023), <https://www.cnn.com/us/live-news/farmington-new-mexico-shooting-05-16-23>.

<sup>25</sup> *St. Paul Man Kahlil Wiley, 18, Pleads Guilty in MOA Shooting That Injured 2*, CBS MINN. (Mar. 11, 2022), <https://www.cbsnews.com/minnesota/news/st-paul-man-kahlil-wiley-18-pleads-guilty-in-moa-shooting-that-injured-2/>.

<sup>26</sup> *Partial List*, *supra* note 9.

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

turning 21.<sup>28</sup> And on October 24, 2022, a 19-year-old killed two people and wounded seven others at his former high school in St. Louis, Missouri.<sup>29</sup>

Mass shootings committed by 18-to-20-year-olds are sadly not a new phenomenon in the United States. Several of the deadliest school shootings in our nation's history were committed by young adults in the age range targeted by the Minnesota Law: the February 14, 2018 Parkland, Florida school shooting, in which a 19-year-old shooter killed 17 victims; the December 14, 2012 Newtown, Connecticut elementary school shooting, in which a 20-year-old shooter killed, among others, 20 schoolchildren; the April 16, 2007 shooting at Virginia Tech, in which a student killed 32 people; and the April 20, 1999 Littleton, Colorado

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<sup>28</sup> Daniel A. Medina & Casey Tolan, *Highland Park Gunman's Family Was in Turmoil for Years Leading Up to Parade Shooting*, CNN (July 9, 2022), <https://www.cnn.com/2022/07/08/us/highland-park-suspect-family-turmoil-invs/index.html>.

<sup>29</sup> Jenna Fisher et al., *Teen and Woman Killed in Shooting at St. Louis High School*, N.Y. TIMES (Oct. 24, 2022), <https://www.nytimes.com/2022/10/24/us/st-louis-high-school-shooting.html>.

shooting at Columbine High School, in which an 18-year-old and a 17-year-old killed 12 fellow students and a teacher.<sup>30</sup>

In addition to the victims killed or injured in school shootings, there are lasting effects on youth who experience these traumatic incidents: one study found that in the two years following a fatal school shooting, antidepressant use by youth aged 20 and younger in the area increased by 21.3%,<sup>31</sup> a statistic that is all the more troubling given the risk of suicide discussed in Section II.C.

But gun violence by young people in schools is—tragically— even more commonplace than the list of high-profile mass shootings suggests. According to a recent study, more than 70 school shootings took place in each of the last three years.<sup>32</sup> And school shootings have only

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<sup>30</sup> Mark Abadi et al., *The 30 Deadliest Mass Shootings in Modern US History Include Monterey Park and Uvalde*, BUSINESS INSIDER (last updated Jan. 23, 2022), <https://www.businessinsider.com/deadliest-mass-shootings-in-us-history-2017-10/>.

<sup>31</sup> Maya Rossin-Slater et al., *Local Exposure to School Shootings and Youth Antidepressant Use*, 117 PNAS 23484, 23486 (2020).

<sup>32</sup> Zach Schonfeld, *School Shootings at Highest Number in 20 Years: Research*, THE HILL (June 22, 2022), <https://thehill.com/policy/national-security/3539820-school-shootings-at-highest-number-in-20-years-research/>.

become more frequent: In the 2020–2021 school year, there were 93 school shootings that caused injuries or death, “the highest figure recorded in 20 years.”<sup>33</sup>

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

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,<sup>34</sup> and “suicide risk increase[s] steeply during the first few years after [an individual’s] first contact with psychiatric services.”<sup>35</sup> Eighteen-to-twenty-year-olds’ impulsivity and propensity toward negative emotional states puts them at particular risk of suicide, which “is commonly an

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<sup>33</sup> *Id.*

<sup>34</sup> Tomáš Paus et al., *Why Do Many Psychiatric Disorders Emerge During Adolescence?*, 9 NATURE REV. NEUROSCIENCE 947, 952 (2008).

<sup>35</sup> Merete Nordentoft et al., *Absolute Risk of Suicide After First Hospital Contact in Mental Disorder*, 68 ARCHIVES GEN. PSYCHIATRY 1058, 1061 (2011).

impulsive act by a vulnerable individual.”<sup>36</sup> One study found that, of 153 survivors of nearly lethal suicide attempts aged 13-to-34, close to 25% reported that *less than five minutes* passed between their decision to attempt suicide and their suicide attempt.<sup>37</sup>

In another study, 47.6% of people who were referred to a psychiatric hospital following a suicide attempt stated that ten minutes or fewer had passed between when they first began contemplating the act and their attempt.<sup>38</sup> It is unsurprising, then, that suicide accounts for a higher percentage of deaths for 15-to-24-year-olds than for older age groups.<sup>39</sup>

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<sup>36</sup> E. Michael Lewiecki & Sara A. Miller, *Suicide, Guns, and Public Policy*, 103 AM. J. PUB. HEALTH 27, 27 (2013).

<sup>37</sup> Thomas R. Simon et al., *Characteristics of Impulsive Suicide Attempts and Attempters*, 32 (SUPP.) SUICIDE & LIFE-THREATENING BEHAV. 49, 50–52 (2001).

<sup>38</sup> Eberhard A. Deisenhammer et al., *The Duration of the Suicidal Process: How Much Time Is Left for Intervention Between Consideration and Accomplishment of a Suicide Attempt?*, 70 J. CLINICAL PSYCHIATRY 19, 20 (2009).

<sup>39</sup> Centers for Disease Control and Prevention, Web-based Injury Statistics Query and Reporting System (WISQARS), *Leading Cause of Death Reports, 1981–2020*, <https://webappa.cdc.gov/sasweb/ncipc/leadcause.html>.

From 2010 to 2020, suicide was the third most common cause of death among 18-to-20-year-olds.<sup>40</sup> And the upward trend in gun suicides among young people was especially acute among youth of color: from 2012 to 2020, the firearm suicide rate rose 35% among white teens.<sup>41</sup> During the same period it rose 88% among Native American teens and *more than doubled* among Black, Latino, and Asian teens.<sup>42</sup>

This striking increase in firearm suicides across our nation's youths constitutes an "unprecedented societal concern[]," requiring "a more nuanced approach" to the Second Amendment analysis to account for "circumstances beyond those the Founders specifically anticipated." *Bruen*, 142 S. Ct. at 2131.

Given the rapidity with which suicidal ideation gives way to action, "[a]ccess to firearms is a key risk factor for suicide."<sup>43</sup> In fact, "at

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<sup>40</sup> *Id.* Centers for Disease Control and Prevention has not reported cause of death statistics post-dating 2020.

<sup>41</sup> *Id.*

<sup>42</sup> Jennifer Mascia & Olga Pierce, *Youth Gun Suicide Is Rising, Particularly Among Children of Color*, THE TRACE (Feb. 24, 2022), <https://www.thetrace.org/2022/02/firearm-suicide-rate-cdc-data-teen-mental-health-research/>.

<sup>43</sup> American Public Health Association, *Reducing Suicides by Firearms* (Nov. 13, 2018), <https://www.apha.org/policies-and-advocacy/>



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 increased risk of suicide. The increase in risk is large, typically 2 to 10 times that in homes without guns.”<sup>44</sup> 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.”<sup>45</sup>

The inherent lethality of firearms compounds the increased risk of suicide posed by firearm access. 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.<sup>46</sup> In other words, while 4% of non-firearm

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[public-health-policy-statements/policy-database/2019/01/28/reducing-suicides-by-firearms](https://www.hhs.gov/press/2019/01/28/reducing-suicides-by-firearms).

<sup>44</sup> Matthew Miller & David Hemenway, *Guns and Suicide in the United States*, 359 NEW ENGL. J. MED. 989, 990 (2008).

<sup>45</sup> Matthew Miller et al., *Firearm Prevalence and the Risk of Suicide*, 2 HARV. HEALTH POL’Y REV., Fall 2001, at 34.

<sup>46</sup> 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).

suicide attempts are fatal, 85% of suicide attempts with a gun are fatal.<sup>47</sup> In 2017, nearly half of the 3,556 suicide deaths among 16-to-21-year-olds involved firearms.<sup>48</sup>

Regulating access to firearms can save lives from suicide because research shows that fewer than 3% of people who survive one suicide attempt later die by suicide.<sup>49</sup> Although “[s]uicide attempters often have second thoughts, . . . when a method like a gun works so effectively, there’s no opportunity to reconsider.”<sup>50</sup> A young adult’s access to firearms when contemplating a suicide attempt, therefore, often determines whether they live or die.

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<sup>47</sup> Matthew Miller et al., *Suicide Mortality in the United States*, 33 ANN. REV. PUB. HEALTH 393, 397 (2012).

<sup>48</sup> RAND Corp., *The Effects of Minimum Age Requirements* (updated Apr. 22, 2020).

<sup>49</sup> Bostwick, *supra* note 46, at 1098.

<sup>50</sup> 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>.

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

Age-based regulations are also “justifi[ed]” under the *Bruen* framework because they are effective. Studies have found a connection between age-based regulations like the Minnesota Law and a decline in firearm-related adolescent deaths, especially suicides and unintentional shootings. For instance, a 2004 study found that state laws 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.<sup>51</sup>

Age-based regulations have also proven effective in reducing gun violence among young people, including in the 18-to-20-year-old range. While 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, 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 rate in children by 4%.”<sup>52</sup>

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<sup>51</sup> Daniel W. Webster et al., *Association Between Youth-Focused Firearm Laws and Youth Suicides*, 292 JAMA 594, 598 (2004).

<sup>52</sup> Monika K. Goyal et al., *State Gun Laws and Pediatric Firearm-Related Mortality*, 144 PEDIATRICS, Aug. 2019, at 3 & tbl. 1.

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.<sup>53</sup>

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,”<sup>54</sup> indicating that the perpetrators seek easy access to weapons and are not necessarily sophisticated participants in the black market for firearms.

Indeed, 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

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<sup>53</sup> Sriraman Madhavan et al., *Firearm Legislation Stringency and Firearm-Related Fatalities Among Children in the US*, 229 J. AM. COLL. SURGEONS 150, 152 (2019).

<sup>54</sup> U.S. Dep’t of Justice, Federal Bureau of Investigation, *A Study of 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>.

had been 21 years, a finding that “underscore[d] the importance of minimum-age restrictions.”<sup>55</sup>

The same concerns regarding minors’ heightened impulsiveness motivated passage of laws in all 50 states establishing 21 as the minimum legal age for alcoholic beverage consumption. Studies confirm that these laws led to significant reductions in death from car crashes involving minor drivers.<sup>56</sup>

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 dangerous products, and consistent with our nation’s history and tradition of regulating access to firearms. *Cf., e.g., Nat’l Paint & Coatings Ass’n v. City of Chicago*, 45 F.3d 1124, 1128–29

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<sup>55</sup> Katherine A. Vittes et al., *Legal Status and Source of Offenders’ Firearms in States with the Least Stringent Criteria for Gun Ownership*, 19 INJ. PREVENTION 26, 29–30 (2013).

<sup>56</sup> William DeJong & Jason Blanchette, *Case Closed: Research Evidence on the Positive Public Health Impact of the Age 21 Minimum Legal Drinking Age in the United States*, (SUPP.) 17 J. STUD. ON ALCOHOL & DRUGS 108, 113 (2014).

(7th Cir. 1995) (discussing the reasonableness of legislatures’ restricting access to hazardous products including guns, fireworks, and liquor, despite the fact that other means of procurement exist).

### CONCLUSION

For the foregoing reasons and those set forth by Defendant-Appellant, the Minnesota Law is part of a “longstanding” tradition of regulations restricting firearm access for 18-to-20-year-olds as persons who pose a heightened risk of violence. This regulation easily survives *Bruen’s* historical analogy test because “how” the Minnesota Law regulates firearms—restricting licenses for public carrying by those who pose a heightened risk—and “why” it regulates firearms—protecting the public from individuals who pose a heightened risk of violence—are consistent with a long history of analogous regulation.

The “why” of this analogy is further confirmed by modern neuroscience and social science research on the dangers of individuals under the age of 21 having easy access to firearms. Nothing in the Second Amendment requires this Court to overrule the Minnesota Legislature’s considered judgment on this critical public safety issue. As one court of appeals stated: “This is serious business. We do not wish to be even

minutely responsible for some unspeakably tragic act of mayhem because in the peace of our judicial chambers we miscalculated as to Second Amendment rights.”<sup>57</sup>

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<sup>57</sup> *United States v. Masciandaro*, 638 F.3d 458, 475 (4th Cir. 2011).

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## CERTIFICATE OF SERVICE

I certify that on July 18, 2023, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

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## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) because this brief contains 6,252 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. This brief complies with Eighth Circuit Rule 28A(h)(2) because it has been scanned for viruses and is virus-free.

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