

No. 23-01251

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

ROCKY MOUNTAIN GUN OWNERS, et al.,

Plaintiffs-Appellees,

vs.

JARED POLIS, in his official capacity as Governor of the State of
Colorado,

Defendant-Appellant.

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

**BRIEF OF *AMICUS CURIAE* GUN OWNERS FOR SAFETY
IN SUPPORT OF DEFENDANT-APPELLANT AND IN
SUPPORT OF REVERSAL**

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INTEREST OF THE *AMICUS CURIAE*¹

Amicus curiae Gun Owners for Safety is a coalition of gun owners from varied backgrounds and political affiliations who believe lives can be saved through commonsense gun laws that do not infringe upon the constitutional rights of law-abiding gun owners. With chapters in Colorado and across the country, Gun Owners for Safety works to prevent gun violence while supporting and protecting Second Amendment rights. Gun Owners for Safety is comprised of over 20,000 experienced gun owners of all trades and hobbies, including law enforcement, military, hunting, sport shooting, collecting, and building guns.

In Colorado alone, Gun Owners for Safety has 620 gun owner members, including two “Senior Ambassadors,” who have educated the public and lawmakers through such activities as hosting seminars and testifying before the State Legislature. Gun Owners for Safety is an

¹ Defendant-Appellant and Plaintiffs-Appellees have both consented to *amicus* filing this brief. See Fed. R. App. P. 29(a)(2). *Amicus* Gun Owners for Safety submits this brief in support of Defendant-Appellant and in support of reversal. No counsel for a party authored this brief in whole or in part. No person other than *amicus* or its counsel contributed money to fund this brief’s preparation or submission.

affiliate of Giffords, the gun safety organization co-founded and led by former Congresswoman Gabrielle Giffords, a gun owner herself. Gun Owners for Safety fully respects the Second Amendment and simultaneously is devoted to encouraging safe and responsible gun ownership practices. Guns Owners for Safety promotes a shift in culture to inform Americans about ways to improve safe gun ownership, including commonsense gun laws.

INTRODUCTION AND SUMMARY OF ARGUMENT

Responsible gun ownership is a part of the American tradition, but that tradition is not without limits. While the Second Amendment protects the right to bear arms of “responsible” and “law-abiding” individuals, it coexists with the extensive authority of state and local governments to regulate firearm purchase, possession, and use, including by restricting certain categories of people from purchasing firearms. Indeed, in *District of Columbia v. Heller*, the Supreme 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). And in its most recent Second Amendment decision, *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, the Supreme Court rejected the means-end balancing test federal courts of appeals had adopted for their Second Amendment analyses in favor of an approach that compares modern regulations, if they implicate the plain text of the Second Amendment, to their historical counterparts. 597 U.S. 1, 17 (2022). The Court also reiterated the limits articulated in *Heller*, including that 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 22. Justice Alito’s concurrence also explained that *Bruen* did “not expand the categories of people who may lawfully possess a gun.” *Id.* at 73. In the same sentence, Justice Alito approvingly cited a federal law that “generally forbids the possession of a handgun by a person who is under the age of 18, *and bars the sale of a handgun to anyone under the age of 21.*” *Id.* (emphasis added) (citing 18 U.S.C. § 922(b)(1), (c)(1), (x)(2)–(5)).

Consistent with this history and tradition, many gun owners agree that part of responsible gun ownership is keeping our families and communities safe from the epidemic of gun violence that is sweeping our

nation. Colorado’s Senate Bill 23-169 (the “Minimum Age Law”), which prohibits the purchase of firearms by individuals under the age of 21—with certain exceptions, including for members of the armed forces—is an example of the kind of commonsense firearm regulation that comports with our nation’s history and with the Second Amendment.

Amicus Gun Owners for Safety submits this brief to provide both real-world context and an established body of empirical research showing how the Minimum Age Law is consistent with the nation’s tradition of safe and responsible gun ownership. Many Gun Owners for Safety members use firearms with their families, and teach their children about safe and responsible gun use and ownership. These experiences have deepened our members’ understanding of, and respect for, the grave responsibility that accompanies the freedom to own a deadly weapon. In our members’ experience, 18-to-20-year-olds are generally not ready for this heavy responsibility.

Modern research in the fields of neuroscience and social science confirms our members’ firsthand experience. Although 18-to-20-year-olds may be more mature than when they entered high school, scientific research reveals that they tend to be more impulsive than older

adults because their brains are still 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—traits that are incompatible with responsible gun ownership. Research shows that they are also at a heightened risk of suicide, account for a disproportionate share of homicides and violent crimes, and are all too frequently perpetrators of mass shootings.

Anecdotal evidence underscoring this research requires looking no further than the daily news. On September 3, 2023, an 18-year-old shot three people—including a 3-year-old and a 15-year-old—in Atlanta, Georgia.² Just earlier this month, on December 3, 2023, a 21-year-old shot and killed four people, including a one-year-old boy, in Dallas, Texas.³ Indeed, so far in 2023 alone, 18-to-20-year-olds have

² *Suspect dead after shooting 5 people, including 3-year-old and 15-year-old, at home, APD says*, WSBTV (Sept. 3, 2023), <https://www.wsbtv.com/news/local/police-investigating-multiple-people-shot-northwest-atlanta-home/4M2ZQNKUZJCBLHFXVQG6MH5NJQ/>.

³ Bill Hutchinson, *Suspect in fatal Dallas shooting of 4 people, including baby, dies in police chase*, ABC NEWS (Dec. 5, 2023), <https://abcnews.go.com/US/1-year-boy-4-killed-dallas-house-shooting/story?id=105353284>.

committed at least 52 mass shootings across the nation, leaving 63 people dead and 236 people wounded.⁴ And in the past several years, the nation has experienced an ongoing wave of mass shootings by 18-to-20-year-olds, including on May 14, 2022, when an 18-year-old white supremacist killed ten Black people and wounded three others at a supermarket in Buffalo, New York, and on May 24, 2022, when an 18-year-old killed 19 children and two teachers at an elementary school in Uvalde, Texas.⁵

Sadly, these recent tragedies reflect a trend that is not new. For example, on February 14, 2018, a 19-year-old shooter killed 17 victims at a school in Parkland, Florida⁶; a little over a decade ago, on December 14, 2012, a 20-year-old shooter killed 20 children and 6 adults

⁴ GUN VIOLENCE ARCHIVE, <https://www.gunviolencearchive.org/query> (last visited Dec. 13, 2023).

⁵ *A Partial List of Mass Shootings in the United States in 2022*, THE N.Y. TIMES (Jan. 24, 2023), <https://www.nytimes.com/article/mass-shootings-2022.html>.

⁶ Mark Abadi et al., *The 30 Deadliest Mass Shootings in Modern US History Include Monterey Park and Uvalde*, BUSINESS INSIDER (last updated Jan. 23, 2023), <https://www.businessinsider.com/deadliest-mass-shootings-in-us-history-2017-10/>.

at Sandy Hook Elementary School in Newtown, Connecticut;⁷ and on April 20, 1999, an 18-year-old and a 17-year-old killed 12 fellow students and a teacher at Columbine High School in Colorado.⁸ These mass shootings—each committed by an 18-to-20-year-old—underscore the acute dangers posed by this age group’s unfettered access to firearms.

The collective experience of Gun Owners for Safety combined with contemporary research and the all-too-frequent news of mass shootings by 18-to-20-year-olds demonstrate why regulation of this age group’s ability to purchase firearms is consistent with the historical tradition of safeguarding gun ownership for responsible and law-abiding citizens and comports with the Second Amendment.⁹

⁷ *Sandy Hook School Shooting Fast Facts*, CNN (last updated Dec. 6, 2013), <https://www.cnn.com/2013/06/07/us/connecticut-shootings-fast-facts/index.html>.

⁸ Abadi, *supra* note 6.

⁹ *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.”) (citation omitted).

ARGUMENT

I. THE MINIMUM AGE LAW IS A COMMONSENSE REGULATION THAT IS CONSISTENT WITH THE LONGSTANDING TRADITION OF SAFEGUARDING RESPONSIBLE GUN OWNERSHIP.

Perhaps more than any other group, gun owners understand that purchasing a gun is no casual act—firearm ownership must be taken seriously and treated with the utmost respect. By regulating the ability of individuals under the age of 21 to purchase a gun, the Minimum Age Law helps to ensure that firearm purchases are conducted by responsible persons. Moreover, the Minimum Age Law provides sensible exceptions for active-duty members of the United States Armed Forces, peace officers who are “on duty,” and persons “certified by the [Peace Officer Standards and Training] Board.”¹⁰ Also, by regulating firearm purchases, the Minimum Age Law does not restrict the ability of 18-to-20-year-olds to inherit or receive firearms as gifts from family members.¹¹ Responsible gun owners understand that learning how to use a firearm in service to our country as a member of the armed forces—or under the

¹⁰ Minimum Age Law at § 18-12-112.5(1)(a.5).

¹¹ Minimum Age Law at § 18-12-112(6)(b).

watchful supervision of an adult family member—is markedly different from 18-to-20-year-olds having unfettered access to purchase firearms. When supervised and instructed by responsible, law-abiding adults, individuals in this age cohort learn how to handle a gun in a responsible way, and are therefore less likely to endanger themselves and others.

The Minimum Age Law is consistent with the longstanding tradition of regulating gun purchases (and possession) by people who are deemed to pose a greater risk of violence when armed. 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 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). The Tenth Circuit has acknowledged *Heller*’s list of presumptively lawful measures, noting that

“[s]ince *Heller* and *McDonald* we have quoted [the list of ‘longstanding regulatory measures’] and considered ourselves bound by it.” *Bonidy v. U.S. Postal Serv.*, 790 F.3d 1121, 1124–25 (10th Cir. 2015).

In *Bruen*, the Court established a new two-part test for analyzing Second Amendment challenges: courts must first determine (i) whether the regulated conduct is protected by the “plain text” of the Second Amendment, and (ii) if so, “whether modern firearms regulations are consistent with . . . historical understanding” of the Second Amendment, which “will often involve reasoning by analogy.” 597 U.S. at 24–28. 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 30 (emphasis in original). The Court also emphasized that 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 21. And Justice Kavanaugh’s concurrence in *Bruen*, joined by Chief Justice Roberts, again confirmed the presumptive legality of the “longstanding prohibitions” referenced in *Heller*. *Id.* at 81.

Regulating firearm purchase and possession by individuals whose access to firearms would pose an unusual danger to the public—such as 18-to-20-year-olds—was a familiar notion to the Founders. As the Fifth Circuit has concluded, “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, because such restrictions are ‘consistent with’ both the ‘longstanding tradition of targeting select groups’ ability to access and to use arms for the sake of public safety’ and the ‘longstanding tradition of age- and safety-based restrictions on the ability to access arms.’” *NRA v. McCraw*, 719 F.3d 338, 347 (5th Cir. 2013) (citations omitted).¹²

The Minimum Age Law puts in place a sensible age-based regulation on who can purchase firearms in order to reduce gun violence

¹² See also *Lara v. Evanchick*, 534 F. Supp. 3d 478, 486–89 (W.D. Pa. 2021) (“[A]ge-based restrictions limiting the rights of 18-20-year-old adults to keep and bear arms fall under the ‘longstanding’ and ‘presumptively lawful’ measures recognized by the Supreme Court in *Heller* as evading Second Amendment scrutiny.” (collecting cases)).

while respecting the Second Amendment rights of responsible citizens, like *amicus* Gun Owners.

II. NEUROSCIENCE AND SOCIAL SCIENCE CONFIRM THAT THE MINIMUM AGE LAW DOES NOT INFRINGE UPON SECOND AMENDMENT RIGHTS OF RESPONSIBLE CITIZENS.

Scientific research confirms what *amicus* Gun Owners know from personal experience: 18-to-20-year-olds’ brains are still developing. As such, the Minimum Age Law is not only a sensible regulation that promotes responsible gun ownership, but it is also analogous to historical regulations of firearm possession or purchase by certain groups who were considered “not responsible citizens” because they pose a heightened 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. 597 U.S. at 28–29. 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 29.

As part of this inquiry, this Court naturally should consider the modern-day “justifi[cations]” for the Minimum Age 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”). Here, the record amply demonstrates that the Minimum Age Law was intended to protect young people from gun violence. As Senator Danielson explained in her floor statement in support of the bill, “[f]irearms are the leading cause of death among children and teens in Colorado, and an average of 79 children and teens die by guns every year.”¹³ And as Vic Bencomo, a member of the Colorado chapter of Gun Owners for Safety, emphasized in his testimony before the Colorado State Senate, “responsible gun ownership is an essential part of our national heritage,” but these “rights come with responsibilities” and “increasing the minimum age for purchase of firearms can help [protect] vulnerable young people in a critical time of their lives.”¹⁴

¹³ Colorado State Senate (March 10, 2023) (Statement of Senator Jessie Danielson), <https://www.youtube.com/watch?v=Ix8CUZ5AAFI>.

¹⁴ Colorado Senate State, Veterans, & Military Affairs Committee Hearing (March 8, 2023) (Testimony of Vic Bencomo), <https://sg001->

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.¹⁵ The *last* part of the brain to mature is the prefrontal cortex, which is responsible for impulse control, judgment, and long-range planning.¹⁶ The prefrontal cortex 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.¹⁷ As a result, 18-to-20-year-olds are prone to taking risks and deprioritizing long-term outcomes, tendencies that *amicus* Gun Owners know from experience are cause for concern

harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/20230310/-1/14229.

¹⁵ 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.

¹⁶ *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 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.”).

¹⁷ Arain, *supra* note 16, at 453.

when it comes to firearm ownership. *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.¹⁸ Adolescents’ responses to “frequent” negative states “tend to be more intense, variable and subject to extremes relative to adults.”¹⁹ 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

¹⁸ 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).

¹⁹ *Id.*

(i.e., impulse control centers) are still developing.²⁰ As explained by Professor Steinberg in the district court, 18-to-20-year-olds are also “more apt to focus on the potential rewards of a given decision than on the potential costs, including the risks to self and others as well as the potential negative consequences of the decision.”²¹

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.²²

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

Amicus Gun Owners both respects the Second Amendment and understands that, in order to ensure public safety, firearms must be

²⁰ Arain, *supra* note 16, at 458 (“[T]he adolescent brain is structurally and functionally vulnerable to environmental stress[.]”).

²¹ App. Vol. 2 at 388.

²² 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.”).

purchased and handled in a responsible, lawful way. Gun ownership alone need not lead to violence. However, when young people who are not mature enough to handle the responsibility of gun ownership are given access to firearms, the consequences can be deadly. In fact, 18-to-20-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 pose a heightened risk of dangerousness when armed and illustrate why regulations on the purchase of firearms by this age group, such as the Minimum Age Law, are analogous to historical regulations of groups who likewise posed an increased threat to public safety when armed:

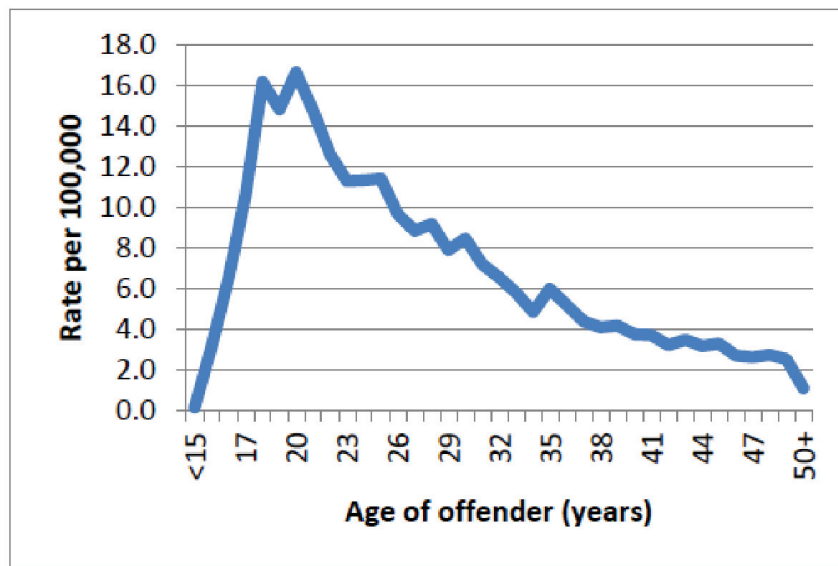
- Arrests for homicide, rape, and robbery are higher among 18-to-20-year-olds than older adults.²³
- Though 18-to-20-year-olds make up less than 5% of the U.S. population, they account for more than 15% of homicide and manslaughter arrests.²⁴

²³ 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>.

²⁴ *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>.

- 18-to-20-year-olds also account for more than 12% of property crime arrests.²⁵

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.²⁶



In addition to these statistics, our nation has faced a disturbing and persistent wave of mass shootings, many involving perpetrators in or around the age group regulated by the Minimum Age Law. For example, as longtime Colorado residents are well-aware, one

²⁵ *Crime in the United States*, *supra* note 23.

²⁶ Daniel W. Webster et al., *The Case for Gun Policy Reforms in America*, JOHNS HOPKINS CTR. FOR GUN POL'Y & RSCH. 1, 5 (2012).

of the deadliest school shootings in our nation's history occurred on April 20, 1999, when an 18-year-old and a 17-year-old killed 12 fellow students and a teacher at Columbine High School. More recently, 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.²⁷ 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.²⁸ 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.²⁹ And just a few months ago, on September 3, 2023, an 18-year-old shot three people—

²⁷ *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/>.

²⁸ 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), <https://www.cnn.com/2023/04/19/us/dadeville-alabama-birthday-party-shooting-wednesday/index.html>

²⁹ Elise Hammond et al., *The Latest on Mass Shooting in Farmington, New Mexico*, CNN (last updated May 17, 2023), <https://www.cnn.com/us/live-news/farmington-new-mexico-shooting-05-16-23>.

including a 3-year-old and a 15-year-old—in Atlanta, Georgia.³⁰ Even more recently, on December 3, 2023, a 21-year-old shot and killed four people, including a one-year-old boy, in Dallas, Texas.³¹

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.³² Then, ten days later, on May 24, 2022, an 18-year-old killed 19 children and two teachers at an elementary school in Uvalde, Texas.³³ On July 4, 2022, 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 turning 21.³⁴ And on October 24, 2022, a 19-year-old killed two

³⁰ *Suspect dead after shooting 5 people, supra* note 2.

³¹ Hutchinson, *supra* note 3.

³² *Partial List, supra* note 5.

³³ *Id.*

³⁴ Casey Tolan & Daniel A. Medina, *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>.

people and wounded seven others at his former high school in St. Louis, Missouri.³⁵

Colorado has not escaped the recent carnage—in November 2021, three teenagers were charged in a shooting outside a high school in Aurora, Colorado that left three people injured.³⁶ In fact, Colorado's rate of gun deaths is 13 percent above the national average.³⁷

Other examples include the February 14, 2018, Parkland, Florida school shooting, in which a 19-year-old shooter killed 17 victims; the December 14, 2012, Newtown, Connecticut school shooting, in which a 20-year-old shooter killed, among others, 20 children at Sandy Hook

³⁵ Jenna Fisher et al., *Teen and Woman Killed in Shooting at St. Louis High School*, THE N.Y. TIMES (Oct. 24, 2022), <https://www.nytimes.com/2022/10/24/us/st-louis-high-school-shooting.html>.

³⁶ Stephanie Butzer, *Three 16-year-olds charged in shooting outside Hinkley High School in Aurora*, DENVER ABC 7 (last updated Dec. 7, 2021), <https://www.denver7.com/news/crime/three-16-year-olds-charged-in-shooting-outside-hinkley-high-school-in-aurora>.

³⁷ Veronica Penney, *Colorado breaks mass shooting record as gun deaths rise*, CPR NEWS (Dec. 8, 2022), <https://www.cpr.org/2022/12/08/colorado-break-mass-shooting-record-as-gun-deaths-rise/>.

Elementary School; and the April 16, 2007 shooting at Virginia Tech, in which a 23-year-old student killed 32 people.³⁸

Young people committing gun violence 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.³⁹ And school shootings have only 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.”⁴⁰

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

³⁸ Abadi, *supra* note 6.

³⁹ Zach Schonfeld, *School Shootings at Highest Number in 20 Years: Research*, THE HILL (June 28, 2022), <https://thehill.com/policy/national-security/3539820-school-shootings-at-highest-number-in-20-years-research/>.

⁴⁰ *Id.*

increased by 21.3%,⁴¹ a statistic that is all the more troubling given the heightened risk of suicide discussed in Section II.C below.

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.

Responsible gun owners, many of whom are parents themselves, also understand that placing limits on young people's access to firearms protects vulnerable persons and their families from the risk of suicide. Eighteen-to-twenty-year-olds are disproportionately at risk of attempting suicide, and firearm access exacerbates this risk. Many major psychiatric conditions first develop in adolescence,⁴² and "suicide risk increase[s] steeply during the first few years after [an individual's] first contact with psychiatric services."⁴³ Eighteen-to-twenty-year-olds' impulsivity and propensity toward negative emotional states puts them

⁴¹ Maya Rossin-Slater et al., *Local Exposure to School Shootings and Youth Antidepressant Use*, 117 PNAS 23484, 23486 (2020).

⁴² Jay N. Giedd et al., *Why Do Many Psychiatric Disorders Emerge During Adolescence?*, 9 NATURE REV. NEUROSCIENCE 947, 952 (2008).

⁴³ Merete Nordentoft et al., *Absolute Risk of Suicide After First Hospital Contact in Mental Disorder*, 68 ARCHIVES GEN. PSYCHIATRY 1058, 1061 (2011).

at particular risk of suicide, which “is commonly an impulsive act by a vulnerable individual.”⁴⁴ 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.⁴⁵

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.⁴⁶ It is unsurprising, then, that suicide accounts for a higher percentage of deaths for 15-to-24-year-olds—who are more impulsive and more likely to act on negative emotions—than for older age groups.⁴⁷

⁴⁴ E. Michael Lewiecki & Sara A. Miller, *Suicide, Guns, and Public Policy*, 103 AM. J. PUB. HEALTH 27, 27 (2013).

⁴⁵ Thomas R. Simon et al., *Characteristics of Impulsive Suicide Attempts and Attempters*, 32 (SUPP.) SUICIDE & LIFE-THREATENING BEHAV. 49, 50–52 (2001).

⁴⁶ 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).

⁴⁷ Centers for Disease Control and Prevention, Web-based Injury Statistics Query and Reporting System (WISQARS), *Leading Cause of*

From 2010 to 2021, suicide was the third most common cause of death among 18-to-20-year-olds.⁴⁸ 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.⁴⁹ During the same period it rose 88% among Native American teens and *more than doubled* among Black, Latino, and Asian teens.⁵⁰

This striking increase in firearm suicides across our nation's youth 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*, 597 U.S. at 28.

Death Reports, 1981–2021, <https://webappa.cdc.gov/sasweb/ncipc/leadcause.html>.

⁴⁸ *Id.*

⁴⁹ 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/>.

⁵⁰ *Id.*

Given the rapidity with which suicidal ideation gives way to action, “[a]ccess to firearms is a key risk factor for suicide.”⁵¹ 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 increased risk of suicide. The increase in risk is large, typically 2 to 10 times that in homes without guns.”⁵² 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.”⁵³

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

⁵¹ 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>.

⁵² Matthew Miller & David Hemenway, *Guns and Suicide in the United States*, 359 NEW ENGL. J. MED. 989, 990 (2008).

⁵³ Matthew Miller et al., *Firearm Prevalence and the Risk of Suicide*, 2 HARV. HEALTH POL’Y REV., Fall 2001, at 34.

commonly used method.⁵⁴ In other words, while 4% of non-firearm suicide attempts are fatal, 85% of suicide attempts with a gun are fatal.⁵⁵ In 2017, nearly half of the 3,556 suicide deaths among 16-to-21-year-olds involved firearms.⁵⁶

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.⁵⁷ Although “[s]uicide attempters often have second thoughts, . . . when a method like a gun works so effectively, there’s no opportunity to reconsider.”⁵⁸ A young adult’s access

⁵⁴ 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).

⁵⁵ Matthew Miller et al., *Suicide Mortality in the United States*, 33 ANN. REV. PUB. HEALTH 393, 397 (2012).

⁵⁶ RAND Corp., *The Effects of Minimum Age Requirements* (updated Apr. 22, 2020).

⁵⁷ Bostwick, *supra* note 54, at 1098.

⁵⁸ Jane E. Brody, *After a Suicide Attempt, the Risk of Another Try*, THE 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>.

to firearms when contemplating a suicide attempt, therefore, often determines whether they live or die.

D. Federal and State Minimum-Age Laws Have Proven Effective at Reducing Gun Violence and Suicides 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 Minimum Age 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.⁵⁹

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

⁵⁹ Daniel W. Webster et al., *Association Between Youth-Focused Firearm Laws and Youth Suicides*, 292 JAMA 594, 598 (2004).

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%.”⁶⁰ 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.⁶¹

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,”⁶² indicating that the perpetrators seek easy access to weapons and do not necessarily have knowledge of or access to the black market for firearms.

⁶⁰ Monika K. Goyal et al., *State Gun Laws and Pediatric Firearm-Related Mortality*, 144 PEDIATRICS, Aug. 2019, at 3 & tbl. 1.

⁶¹ Sriraman Madhavan et al., *Firearm Legislation Stringency and Firearm-Related Fatalities Among Children in the US*, 229 J. AM. COLL. SURGEONS 150, 152 (2019).

⁶² 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>.

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 had been 21 years, a finding that “underscore[d] the importance of minimum-age restrictions.”⁶³

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.⁶⁴

Lawmakers therefore have good reason to conclude that regulating minors’ access to firearms will deter the use of firearms for criminal or suicidal purposes—precisely the type of reasonable conclusion that underlies virtually all laws aimed at regulating

⁶³ 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).

⁶⁴ 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).

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 (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

Amicus Gun Owners has the utmost respect and appreciation for the Second Amendment. *Amicus* also understands that the right to gun ownership is an enormous responsibility and one that has been subject to limitations throughout our country’s history in order to safeguard the public against the dangers of irresponsible persons having unfettered access to firearms. The Minimum Age Law is a similar limitation and is consistent with the Second Amendment.

Indeed, as set forth above and in Defendant-Appellant’s brief, the Minimum Age Law is part of a “longstanding” tradition of regulating firearm access for 18-to-20-year-olds as persons who pose a heightened risk of violence.⁶⁵ This regulation survives *Bruen*’s historical analogy test

⁶⁵ See Appellant’s Br. at 37-50.

because “how” the Minimum Age Law regulates firearms—restricting firearm purchases 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 Colorado Legislature’s considered judgment on this critical public safety issue. As one court of appeals reasoned: “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.”⁶⁶

⁶⁶ *United States v. Masciandaro*, 638 F.3d 458, 475 (4th Cir. 2011).

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CERTIFICATE OF SERVICE

I certify that on December 14, 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 5,835 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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