

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

DAVID MEYER, EVA DAVIS, SECOND)
AMENDMENT FOUNDATION, ILLINOIS)
STATE RIFLE ASSOCIATION, AND)
FIREARMS POLICY COALITION, INC.;)

Plaintiffs,

v.

KWAME RAOUL, in his official capacity as)
Attorney General of Illinois, BRENDAN F.)
KELLY, in his official capacity as Director of)
the Illinois State Police, JOSHUA C.)
MORRISON, in his official capacity as State’s)
Attorney of Fayette County, Illinois, ERIC)
WEIS, in his official capacity as State’s)
Attorney of Kendall County, Illinois,)
CHRISTOPHER PALMER, in his official)
capacity as Sheriff of Fayette County, Illinois,)
and DWIGHT A. BAIRD, in his official)
capacity as Sheriff of Kendall County, Illinois;)

3:21-cv-518-SMY

Defendants.

**BRIEF OF AMICUS CURIAE GIFFORDS LAW CENTER TO
PREVENT GUN VIOLENCE IN SUPPORT OF
DEFENDANTS’ COMBINED MOTION FOR SUMMARY JUDGMENT**

Dated: January 17, 2023

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Civil Procedure 7.1, Giffords Law Center to Prevent Gun Violence states that it has no parent corporation. It has no stock and hence no publicly held company owns 10% or more of its stock.

INTEREST OF THE *AMICUS 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. 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.² 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

¹ *Amicus* Giffords Law Center submits this brief in support of Defendants’ Combined Motion for Summary Judgment (ECF No. 101) (“Defendants’ Motion for Summary Judgment”). No counsel for a party authored this brief in whole or in part. No person other than *amicus* or their counsel contributed money to fund this brief’s preparation or submission.

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.

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).³

INTRODUCTION AND SUMMARY OF ARGUMENT

When minors in Illinois turn 18, certain privileges previously unavailable to them become accessible: They can cast a ballot in a federal election or spend a couple of dollars on a lottery ticket.⁴ But other things remain unavailable, such as buying a beer or a pack of cigarettes.⁵ And for good reason: although they certainly are more emotionally mature than when they entered high school, 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 Illinois can possess a range of firearms for use in the home or when hunting—including handguns, rifles, shotguns, and assault weapons. However, they generally may not carry handguns in public. For that, they have to wait until they turn 21.

The recent wave of mass shootings by 18-to-20-year-olds is a tragic demonstration of the wisdom of Illinois's decision to regulate the use of firearms outside of the home for this age group more than it does for older adults. In the past eight months alone, mass shootings committed

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

⁴ U.S. CONST. amend. XXVI; 20 ILL. COMP. STAT. 1605 / 15.

⁵ 235 ILL. COMP. STAT. 5 / 6-20; 720 ILL. COMP. STAT. 675 / 1.

by 18-to-20-year-olds have killed 19 children and two teachers at an elementary school in Uvalde, Texas; killed ten people and wounded three others at a supermarket in Buffalo, New York; killed three people and wounded two others at a mall in Greenwood, Indiana; killed four people and wounded three others in Memphis, Tennessee; and killed two people and wounded several others at a high school in St. Louis, Missouri.⁶

Nothing in the Second Amendment prevents Illinois's commonsense and limited regulation. As the Supreme Court has emphasized, the right to bear arms is far from 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*, 142 S. Ct. 2111 (2022), the Supreme Court reiterated the limits articulated in *Heller*, and stated 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 2128. Though the Court rejected the

⁶ *A Partial List of Mass Shootings in the United States in 2022*, N.Y. TIMES (Jan. 5, 2023), <https://www.nytimes.com/article/mass-shootings-2022.html>; Adrian Sainz, *Memphis Gunman Arrested in Livestreamed Shootings That Killed 4*, PBS (Sept. 8, 2022), <https://www.pbs.org/newshour/nation/four-dead-in-memphis-livestreamed-shooting-one-man-arrested-police>; 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>.

means-end balancing test most circuits had incorporated into their Second Amendment analysis and held that “courts [should] assess whether modern firearms regulations are consistent with the Second Amendment’s text and historical understanding,” it recognized that this task “will often involve reasoning by analogy.” *Id.* at 2131-32. To uphold a “modern-day regulation,” courts need not find that the regulation is “a dead ringer for historical precursors.” *Id.* at 2133. Instead, they need only find that a challenged regulation has a “well-established and representative historical *analogue*, not a historical *twin*.” *Id.* (emphasis in original).

Plaintiffs’ challenge to Illinois laws and regulations restricting 18-to-20-year-olds’ ability to carry handguns outside the home (the “Illinois Laws”) is foreclosed by *Bruen*. The Illinois Laws meet constitutional scrutiny under the *Bruen* test because they are analogous to historical restrictions on 18-to-20-year-olds and other groups of individuals who were understood to present a heightened risk of violence. Indeed, “the established consensus of federal appellate and district courts from around the country is that age-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.” *Lara v. Evanchick*, 534 F. Supp. 3d 478, 486-89 (W.D. Penn. 2021) (summarizing cases).

Adding credence to this consensus, in his *Bruen* concurrence, Justice Alito approvingly cited a federal law that “bars the sale of a handgun to anyone under the age of 21,” and explained that the Court’s decision did not “expand the categories of people who may lawfully possess a gun.” 142 S. Ct. at 2157-58. There is also a long, established historical pedigree for recognizing the risk posed by certain subsets of armed individuals. Thus Illinois’s regulation of a group that it has identified as posing a greater risk to the community than the rest of the population

(armed 18-to-20-year-olds) and regulating their ability to carry handguns outside the home is consistent with the historical tradition of firearm regulation.

Numerous courts have held that regulations on 18-to-20-year-olds' access to and use of firearms are among the "longstanding," "presumptively lawful" regulations that *Heller* declared constitutional. So too should this Court grant Defendants' Motion for Summary Judgment. *Amicus* submits this brief to provide further context for the Illinois Laws, to show how they are consistent with the Nation's historical tradition of firearm restrictions on specific groups, and to identify an established body of empirical research demonstrating the laws' soundness and real-world consequences, and confirming their accordance with analogous historical regulations.

Research in the fields of neuroscience and social science demonstrate that 18-to-20-year-olds are analogous to other groups that are understood to pose a heightened risk to public safety when armed. *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."). Young people ages 18 to 20 tend to be more impulsive than older adults because their brains are still developing. Individuals in this age group also account for a disproportionate share of homicides and violent crimes and are all too frequently involved in mass shootings. Neuroscience and social science data thus demonstrate that the reasoning behind Illinois's regulation of 18-to-20-year-olds' ability to carry handguns outside the home is analogous to and consistent with longstanding and presumptively lawful firearms regulations.

ARGUMENT

I. THE ILLINOIS LAWS ARE PRESUMPTIVELY CONSTITUTIONAL.

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, 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 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. In discussing these presumptively lawful measures, the Seventh Circuit has recognized that certain categories of people “are more likely to have difficulty exercising self-control, making it dangerous for them to possess deadly firearms.” *United States v. Yancey*, 621 F.3d 681, 685 (7th Cir. 2010).

The notion that individuals considered to be dangerous may be prohibited from bearing arms was not novel to the Founders. “[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”). Thus, “[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). This “common sense” understanding of presumptively lawful measures is not limited to the laws in place at the Founding. 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.*

Age-based regulations like the one challenged here fall into this presumptively lawful category. “[T]he established consensus of federal appellate and district courts from around the country is that age-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.” *Lara*, 534 F. Supp. 3d at 486-89 (collecting cases); *NRA v. McCraw*, 719 F.3d 338, 346 (5th Cir. 2013) (“[S]tatutes 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.’” (citations omitted)); *NRA v. Swearingen*, 545 F. Supp. 3d 1247, 1267 (N.D. Fla. 2021) (holding that “age-based restrictions on the purchase of firearms are longstanding” because “restrictions on 18-to-20-year-olds’ right to purchase firearms are both longstanding in time in relation to *Heller*’s

list and analogous to other restrictions on that list”); *Mitchell v. Atkins*, 483 F. Supp. 3d 985, 993-94 (W.D. Wash. 2020) (“[R]easonable age restrictions on the sale, possession, or use of firearms have an established history in this country” and are “consistent with a longstanding tradition of targeting select groups’ ability to access and to use arms for the sake of public safety.”). 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* Defendants’ Motion for Summary Judgment ¶¶ 14-26.

Under *Bruen*, Plaintiffs bear the burden of establishing that they “are part of ‘the people’ whom the Second Amendment protects.” 142 S. Ct. at 2134. They are unable to make this showing. The Illinois Laws fall squarely within “the Nation’s historical tradition of firearm regulation” and thus the regulated conduct is not protected by the Second Amendment. *Id.* at 2130. While nothing more is required to grant Defendants’ Motion for Summary Judgment, as discussed *infra* Section II, modern-day empirical research further supports Defendants’ argument that the Illinois Laws are analogous to historical regulation.

II. NEUROSCIENCE AND SOCIAL SCIENCE CONFIRM THAT THE ILLINOIS LAWS ARE ANALOGOUS TO HISTORICAL FIREARM RESTRICTIONS FOR GROUPS POSING A HEIGHTENED RISK OF VIOLENCE.

Bruen contemplates a broad “reasoning by analogy” that compares, at a minimum, “how and why [historical] regulations burden[ed] a law-abiding citizen’s right to armed self-defense” with the objectives and methods 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 Illinois Laws. Indeed, considering modern-day justifications will often show how modern laws comport with their historical analogues. *See, e.g., United States v. Bena*, 664 F.3d 1180, 1184 (8th Cir. 2011) (discussing modern empirical studies and findings from the Surgeon General on domestic violence 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, like 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: the human brain does not finish developing until the mid-to-late twenties.⁷ The *last* part of the brain to mature is the prefrontal cortex, which is responsible for impulse control, judgment, and long-range planning.⁸ 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.⁹ As a result, 18-to-20-year-olds are prone to taking risks and deprioritizing long-term outcomes. *See BATFE*, 700

⁷ 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.”).

⁸ *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.”).

⁹ Arain, *supra* note 8, at 453.

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.¹⁰ Adolescents’ responses to “frequent” negative states “tend to be more intense, variable and subject to extremes relative to adults.”¹¹ 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.¹²

Because the behavior-regulating functions of their brains are still developing, 18-to-20-year-olds are at a higher risk of violence when they have unfettered access to firearms.¹³ Indeed, educational institutions serving this age group recognize this risk—even the U.S. military has placed restrictions on this age group’s ability to access handguns while at military academies.

¹⁰ 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).

¹¹ *Id.*

¹² Arain, *supra* note 8, at 458 (“[T]he adolescent brain is structurally and functionally vulnerable to environmental stress.”).

¹³ 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.”).

See, e.g., U.S. Military Academy Regulation 190-3 at § II.1-6(b)(1) (on file with counsel) (“No pistols or handguns may be registered or carried by anyone under the age of twenty-one (21) to include Cadets.”). In addition, over 15 states and the District of Columbia have effectively prohibited the concealed carry of guns on college campuses.¹⁴

B. Eighteen-to-Twenty-Year-Olds Are Disproportionately More 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 statistics are stark:

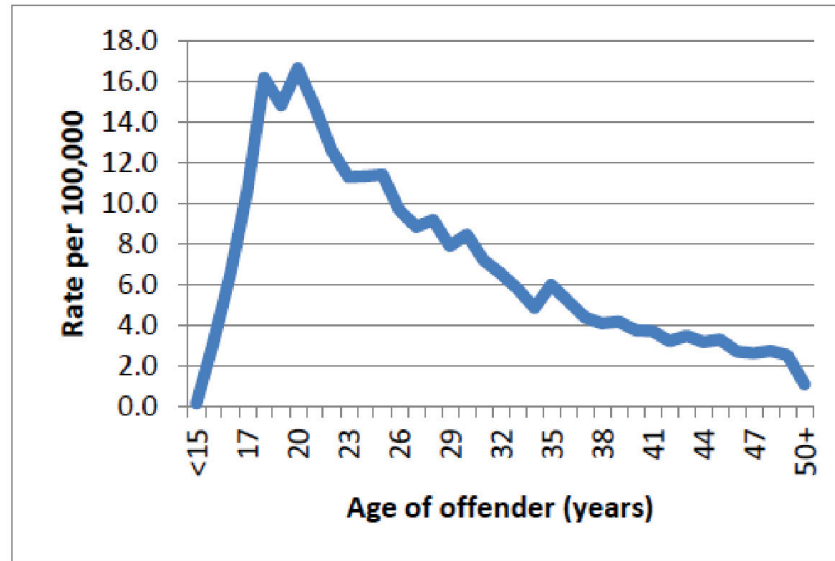
- Arrests for homicide, rape, and robbery are higher among 18-to-20-year-olds than older adults.¹⁵
- Though 18-to-20-year-olds make up less than 5% of the U.S. population, they account for more than 15% of homicide and manslaughter arrests.¹⁶
- This general pattern has persisted. The following chart, showing homicide offending rate by age in 2009, illustrates the disproportionate share of homicides committed by 18-to-20-year-olds that year.¹⁷

¹⁴ *See, e.g.*, CAL. PENAL CODE § 626.9(h); D.C. CODE ANN. § 22-4502.01; FLA. STAT. § 790.06(12)(a)(13); 720 ILL. COMP. STAT. 66/65(a)(15); LA. REV. STAT. ANN. §§ 40:1379.3(N)(11), 14:95.2, 14:95.6; MASS. GEN. LAWS CH. 269, § 10(j); MICH. COMP. LAWS § 28.425o(1)(h); MO. REV. STAT. § 571.107.1(10); NEB. REV. STAT. §§ 69-2441(1)(a), 28-1204.04(1); NEV. REV. STAT. ANN. §§ 202.3673(3)(a), 202.265(1)(e); N.J. STAT. ANN. § 2C:39-5(e); N.M. STAT. ANN. § 30-7-2.4(A); N.Y. PENAL LAW §§ 265.01(3), 265.01-a; N.C. GEN. STAT. §§ 14-269.2(b), (i); N.D.C.C. § 62.1-02-05(1)(a); S.C. CODE ANN. § 16-23-420; WYO. STAT. ANN. § 6-8-104(t)(x).

¹⁵ 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>.

¹⁶ *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>.

¹⁷ 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_Case forGunPolicyReforms.pdf.



In addition to these statistics, our nation has faced a disturbing wave of mass shootings in the last year alone, many involving perpetrators in or around the age range targeted by the Illinois Laws. On May 14, 2022, an 18-year-old gunman at a supermarket in Buffalo, New York, killed ten people and wounded three others.¹⁸ Just ten days later, on May 24, 2022, an 18-year-old killed 19 children and two teachers at an elementary school in Uvalde, Texas.¹⁹ 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 21.²⁰ On July 17, 2022, a 20-year-old gunman killed three people and wounded two others at a mall in Greenwood, Indiana.²¹ Then, in September 2022, a 19-year-old “livestreamed himself driving around Memphis shooting at people, killing

¹⁸ *Partial List, supra* note 6.

¹⁹ *Id.*

²⁰ 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>.

²¹ *Partial List, supra* note 6.

four and wounding three others.”²² 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.²³

In addition to the aforementioned recent mass shootings, there have also been numerous other recent mass shootings in which 18-to-20-year-olds were armed with handguns:

- A 20-year-old who possessed a Glock handgun was charged in a Milwaukee mass shooting in May 2022 that left 17 people injured.²⁴
- An 18-year-old in Philadelphia was charged for his involvement in a June 4, 2022 mass handgun shooting that left three people dead and 11 injured.²⁵
- A 19-year-old woman with a handgun shot four people at an Indianapolis party on June 12, 2022, after an argument.²⁶

Tragically, these recent mass shootings by 18-to-20-year-olds are not a new phenomenon, as several of the deadliest mass school shootings in our nation’s history were also committed by young adults in the age range addressed by the Illinois Laws: the February 14, 2018 Parkland, Florida school shooting, in which a 19-year-old shooter killed 17 children and educators; the December 14, 2012 Newtown, Connecticut elementary school shooting, in which a 20-year-old shooter killed, among others, 20 schoolchildren; and the April 20, 1999 Littleton, Colorado

²² Sainz, *supra* note 6.

²³ Fisher, *supra* note 6.

²⁴ Madison Goldbeck, *3 Charged in Connection to Mass Shooting That Left 17 Injured on Water Street*, WTMJ (May 17, 2022) <https://www.tmj4.com/news/local-news/3-charged-in-connection-to-mass-shooting-that-left-17-injured-on-water-street>.

²⁵ Mark Eichmann, *Second Suspect in Custody After South Street Mass Shooting*, WHYY (June 7, 2022) <https://whyy.org/articles/philadelphia-district-attorney-krasner-investigation-ongoing-south-street-mass-shooting/>.

²⁶ Kyle Bloyd, *Docs: Fight at Party Preceded 4 Women Shot; At Least 40 Shots Heard on Video*, WISH (June 13, 2022) <https://www.wishtv.com/news/crime-watch-8/docs-fight-at-party-preceded-4-women-shot-at-least-40-shots-heard-on-video/>.

shooting at Columbine High School, in which an 18-year-old and a 17-year-old killed 12 fellow students and one teacher.²⁷ But gun violence by young people in schools is—tragically—more commonplace than the list of high-profile mass shootings suggests.

In the 20 years following the Columbine High School massacre, there have been 486 reported incidents involving firearms at schools and 68 incidents of an active shooter on school property during the school day.²⁸ And school shootings have only become more frequent: “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.”²⁹ Mass shooters tend to target people or institutions against which they have a perceived grievance,³⁰ which explains why most school shooters—as high as 91% in one recent study—were current or former students of the school at which the attack occurred.³¹ Furthermore, semiautomatic handguns are especially common in mass shootings. In a study of 189 mass shootings, 9mm semiautomatic handguns were the most commonly used

²⁷ Mark Abadi et al., *The 30 Deadliest Mass Shootings in Modern US History Include Buffalo and Uvalde*, BUSINESS INSIDER (May 26, 2022), <https://www.businessinsider.com/deadliest-mass-shootings-in-us-history-2017-10/>.

²⁸ Luis Melgar, *Are School Shootings Becoming More Frequent? We Ran the Numbers*, WAMU (Aug. 13, 2019), <https://wamu.org/story/19/08/13/are-school-shootings-becoming-more-frequent-we-ran-the-numbers/>.

²⁹ *Id.*

³⁰ A comprehensive analysis of mass shootings shows that about “70% of mass shooters knew at least some of their victims,” and school shooters “in particular were ‘insiders.’” Jillian K. Peterson & James A. Densley, *Database of Mass Shootings in the United States*, VIOLENCE PROJECT 19 (Nov. 2019), <https://www.theviolenceproject.org/wp-content/uploads/2019/11/TVP-Mass-Shooter-Database-Report-Final-compressed.pdf>.

³¹ Jillian Peterson & James Densley, *School Shooters Usually Show These Signs of Distress Long Before They Open Fire, Our Database Shows*, THE CONVERSATION (Feb. 8, 2019), <https://theconversation.com/school-shooters-usually-show-these-signs-of-distress-long-before-they-open-fire-our-database-shows-111242>.

weapons, including by the college student who killed 32 people at Virginia Tech in 2007.³² Another study found that 81% of mass shootings involved the use of at least one handgun, and that 60% involved only handguns.³³

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,³⁴ and “suicide risk increase[s] steeply during the first few years after [an individual’s] first contact with psychiatric services.”³⁵ Eighteen-to-twenty-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.”³⁶ 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.³⁷ Another study asked

³² Bonnie Berkowitz & Chris Alcantara, *The Terrible Numbers that Grow with Each Mass Shooting*, WASH. POST, <https://www.washingtonpost.com/graphics/2018/national/mass-shootings-in-america/> (last updated May 12, 2021).

³³ *Mass Shootings in America*, EVERYTOWN RSCH. & POL’Y (last updated June 4, 2021), <https://everytownresearch.org/maps/mass-shootings-in-america-2009-2019/>.

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

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

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

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

people who were referred to a psychiatric hospital following a suicide attempt how much time passed between when they first began contemplating the act and their attempt, and 47.6% stated that ten minutes or fewer had passed.³⁸ It is unsurprising then that suicide accounts for a higher percentage of deaths for 15-to-24-year-olds than for older age groups.³⁹ Indeed, from 2010 to 2020, suicide was the third most common cause of death among 18-to-20-year-olds.⁴⁰ 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.⁴¹ During the same period, it doubled among Black, Latino, and Asian teens, and rose a staggering 88% among Native American teens.⁴²

Stemming from the rapidity with which suicidal ideation gives way to action, “[a]ccess to firearms is a key risk factor for suicide.”⁴³ 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

³⁸ 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. CLIN. PSYCHIATRY 19, 20 (2009).

³⁹ 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>.

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

⁴¹ *Id.*

⁴² 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/>.

⁴³ 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.”⁴⁴ 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.”⁴⁵

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.⁴⁶ Framed differently, while 4% of non-firearm suicide attempts are fatal, 85% of suicide attempts with a gun are fatal.⁴⁷ In 2017, nearly half of the 3,556 suicide deaths among 16-to-21-year-olds involved a firearm.⁴⁸

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.⁴⁹ Although “[s]uicide attempters often have second thoughts, . . . when a method like a gun works so

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

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

⁴⁶ 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).

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

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

⁴⁹ Bostwick, *supra* note 46, at 1098.

effectively, there's no opportunity to reconsider."⁵⁰ A young adult's access 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 Among Minors.

Age-based restrictions are also "justifi[ed]" under the *Bruen* framework because they are effective. Studies have found a connection between age-based regulations like the Illinois Laws and a decline in firearm-related adolescent deaths, especially suicides and unintentional shootings.⁵¹ 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.⁵²

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

⁵⁰ 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>.

⁵¹ 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. 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).

⁵² Daniel W. Webster et al., *Association Between Youth-Focused Firearm Laws and Youth Suicides*, 292 JAMA 594, 598 (2004).

children by 4%.”⁵³ 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.⁵⁴

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,”⁵⁵ 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 had been 21 years old, a finding that “underscore[d] the importance of minimum-age restrictions.”⁵⁶ Lawmakers therefore can, and should, conclude that restricting access to firearms will deter the 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 (7th Cir. 1995) (discussing the

⁵³ Monika K. Goyal et al., *State Gun Laws and Pediatric Firearm-Related Mortality*, 144 PEDIATRICS, Aug. 2019, at 3 & tbl. 1.

⁵⁴ Sriraman Madhavan et al., *Firearm Legislation Stringency and Firearm-Related Fatalities Among Children in the US*, 229 J. AM. COLL. SURGEONS 150, 152 (2019).

⁵⁵ 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>.

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).

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 Defendants, the Illinois Laws are part of a “longstanding” tradition of regulations restricting firearm access for this age group and persons who pose a heightened risk of violence. They easily survive *Bruen*'s historical analogy test because “how” the Illinois Laws regulate firearms—restricting where firearms may be carried by those who pose a heightened risk—and “why” they regulate firearms—protecting the public from individuals who pose a danger—is consistent with a long history of analogous regulation. The “why” of this analogy is further confirmed by neuroscience and social science research on the dangers of individuals under the age of 21 with easy access to firearms. Nothing in the Second Amendment requires this Court to overrule Illinois'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.”⁵⁷

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

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