

**No. 21-1832**

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

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MADISON M. LARA, *et al.*,

*Plaintiffs/Appellants,*

vs.

COMMISSIONER PENNSYLVANIA STATE POLICE,

*Defendant/Appellee.*

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ON APPEAL FROM THE UNITED STATES DISTRICT  
COURT FOR THE WESTERN DISTRICT OF  
PENNSYLVANIA, No. 2:20-cv-1582,  
The Hon. William S. Stickman IV

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**BRIEF OF *AMICI CURIAE* GIFFORDS LAW CENTER TO  
PREVENT GUN VIOLENCE AND CEASEFIRE  
PENNSYLVANIA EDUCATION FUND**

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September 29, 2021

## **CORPORATE DISCLOSURE STATEMENT**

Giffords Law Center to Prevent Gun Violence is a non-profit corporation that offers no stock; there are no parent corporations or publicly owned corporations that own 10 percent or more of this entity's stock.

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/s/ Jim Davy  
Jim Davy

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

*Amicus curiae* Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) is a non-profit policy organization dedicated to researching, writing, enacting, and defending laws and programs proven to effectively reduce gun violence. 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 October 2017 after joining forces with the gun-safety organization founded by former Congresswoman Gabrielle Giffords. Today, Giffords Law Center provides free assistance and expertise to lawmakers, advocates, legal professionals, law enforcement officials, and citizens who seek to improve the safety of their communities. Giffords Law Center has provided informed analysis as an *amicus* in many firearm-related cases, including in *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), *Ass’n of N.J. Rifle & Pistol Clubs v. Att’y*

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

*Gen. N.J.*, 910 F.3d 106 (3d Cir. 2018), and *Drummond v. Robinson Township*, 9 F.4th 217 (3d Cir. 2021). Several courts have cited research and information from Giffords Law Center’s *amicus* briefs in Second Amendment rulings. *E.g.*, *Ass’n of N.J. Rifle & Pistol Clubs*, 910 F.3d at 121-22; *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>2</sup>

*Amicus curiae* CeaseFire Pennsylvania Education Fund (“CeaseFirePA”) is a statewide organization committed to reducing gun violence in Pennsylvania. Through outreach, education, coalition building, and advocacy, CeaseFirePA works to reduce gun violence in Pennsylvania communities, stop the flow of illegal guns onto Pennsylvania streets, and keep guns out of the hands of people who should not have them.

Giffords Law Center and CeaseFirePA participated as *amici curiae* before the District Court in the proceedings below.

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<sup>2</sup> Giffords Law Center filed the last two briefs under its former name, the Law Center to Prevent Gun Violence.

## INTRODUCTION AND SUMMARY OF ARGUMENT

When high school seniors in Pennsylvania turn 18, certain privileges previously unavailable to them become automatically accessible: They can cast a ballot in a federal election. They can waste a couple of dollars on a lottery ticket, apply for a credit card, or deposit money in a bank account they can now open on their own. But other things remain unavailable. They cannot rent a car with their new credit cards. They cannot buy a beer or a pack of cigarettes. And for good reason: although they may have reached their full adult height, and certainly are more emotionally mature than when they entered high school, their brains are still developing. In particular, 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 more likely to deprioritize long-term outcomes than older adults.

When it comes to firearms, 18-year-old Pennsylvanians gain considerable rights. They can purchase rifles and shotguns and possess handguns. They can use those firearms to hunt, for target practice at a shooting range, and for self-defense. They may openly and publicly carry

any firearm lawfully possessed, except in an active state of emergency. But they are not eligible for licenses that would allow them to carry concealed handguns in public. For that, they have to wait until they turn 21.

Nothing in the Second Amendment prevents that modest, commonsense restriction. The right to bear arms announced by the Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008), is far from boundless. *See id.* at 626 (Second Amendment does not guarantee “a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose”). Although it protects the right of “responsible” and “law-abiding” individuals to use certain types of firearms for self-defense in their homes, *id.* at 635, *Heller* also enshrined 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. *See, e.g., id.* at 626 (Second Amendment compatible with “longstanding prohibitions on the possession of firearms by felons and the mentally ill”); *id.* (“[T]he majority of the 19th-century courts to consider the question held that prohibitions

on carrying concealed weapons were lawful under the Second Amendment or state analogues.”).

As the District Court correctly held, the regulations challenged in this case—18 Pa. C.S. §§ 6106, 6107 and 6109 (together, the “Challenged Laws”)—fall cleanly within the ambit of permissible firearm restrictions, both because, as age-based restrictions on 18-to-20-year-olds, they are the type of longstanding regulations that the District Court and numerous other courts have deemed fully consistent with the Second Amendment, and because they involve conduct that presumptively can be restricted (the public carry of concealed weapons). (J.A. 24.) 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.” (J.A. 20.) And numerous courts, including this Court, have likewise upheld various restrictions on the public carry of firearms. *See, e.g., Drake v. Filko*, 724 F.3d 426, 433 (3d Cir. 2013) (New Jersey regulation conditioning concealed carry permits on showing of “justifiable need” “fits

comfortably within the longstanding tradition of regulating the public carrying of weapons for self-defense”); *Peruta*, 824 F.3d at 939 (*en banc*) (Second Amendment right “does not include, in any degree, the right of a member of the general public to carry concealed firearms in public”); *Berron v. Ill. Concealed Carry Licensing Rev. Bd.*, 825 F.3d 843, 847 (7th Cir. 2016) (upholding concealed carry licensing law); *Peterson v. Martinez*, 707 F.3d 1197, 1201 (10th Cir. 2013) (concealed carry regulations fall outside Second Amendment protection). This Court should affirm the District Court’s holding at step one of the Second Amendment inquiry. (*See* Appellee’s Br. 20-46.)

In the event that the Court nevertheless proceeds to step two,<sup>3</sup> *Amici* present empirical research that confirms the more than reasonable fit between the Challenged Laws’ restrictions and Pennsylvania’s interest in protecting the safety of its citizens. Research in the fields of neuro- and social science demonstrates that young people aged 18-to-20

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<sup>3</sup> Appellee urges the Court, if it concludes that the Challenged Laws do implicate conduct falling within the scope of the Second Amendment, to remand to the District Court to conduct the step-two analysis in the first instance. (Appellee’s Br. 50-51.) *Amici* do not disagree that remand would be appropriate, but offer their analysis in the event that the Court proceeds to step two rather than remanding.



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 because states of emergency are often characterized by widespread uncertainty, strained resources, and even violence, the Pennsylvania Legislature enacted a calibrated, effective solution to address the heightened risk of public carry presented by a population already prone to impulsivity and short-term thinking. The Challenged Laws easily pass constitutional muster.

## ARGUMENT

Like every federal Court of Appeals to consider the issue,<sup>4</sup> the Third Circuit uses a two-step framework to analyze Second Amendment claims. First, a court must “ask whether the challenged law imposes a

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<sup>4</sup> *Gould v. Morgan*, 907 F.3d 659, 668-69 (1st Cir. 2018); *N.Y. State Rifle & Pistol Ass’n v. Cuomo*, 804 F.3d 242, 254 (2d Cir. 2015); *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010); *Nat’l Rifle Ass’n of Am. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives (BATFE)*, 700 F.3d 185, 194-95 (5th Cir. 2012); *United States v. Greeno*, 679 F.3d 510, 518 (6th Cir. 2012); *Ezell v. City of Chicago*, 651 F.3d 684, 703-04 (7th Cir. 2011); *United States v. Chovan*, 735 F.3d 1127, 1136-37 (9th Cir. 2013); *United States v. Reese*, 627 F.3d 792, 800-01 (10th Cir. 2010); *GeorgiaCarry.Org, Inc. v. U.S. Army Corps of Eng’rs*, 788 F.3d 1318, 1322 (11th Cir. 2015); *Heller v. District of Columbia*, 670 F.3d 1244, 1252 (D.C. Cir. 2011).

burden on conduct falling within the scope of the Second Amendment's guarantee." *United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010). "If it does not, [the court's] inquiry is complete" and the Second Amendment is unbothered. *Id.* Second, and only if it finds that the law does impose such a burden, the court must "evaluate the law under some form of means-end scrutiny." *Id.*

The Challenged Laws easily pass muster at both steps. Appellee has correctly explained that history and tradition show that state and federal governments have imposed restrictions on the ability of 18-to-20-year-olds to access firearms since the founding of this nation, as well as longstanding regulations on transport and public carry of firearms outside the home. (*See* Appellee's Br. 27-35.)<sup>5</sup> As the District

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<sup>5</sup> Furthermore, it is beyond debate that legislatures may draw minimum age limits for various activities, including constitutionally protected ones. *See, e.g.*, 18 Pa. C.S. § 6308(a) (minimum age of 21 years old to purchase, consume, possess, or transport alcohol); *South Dakota v. Dole*, 483 U.S. 203, 206 (1987) (upholding Congress's authority "to encourage uniformity in the States' drinking ages" as 21 years of age); *Gabree v. King*, 614 F.2d 1, 2 (1st Cir. 1980) (recognizing that 18-to-21-year-olds "have historically been denied full rights of adulthood while shouldering such burdens of citizenship as military service" and rejecting equal protection challenge to state law raising drinking age to 20); *United States v. Olson*, 473 F.2d 686, 687-88 (8th Cir. 1973) (upholding prior version of federal law setting 21 as the age for jury service after Congress amended law to lower minimum age for jury service to 18); Jacqueline Howard, *The US*

Court correctly held, the Challenged Laws are therefore constitutional at the threshold inquiry, and the Court need not proceed further. (J.A. 24.)

Should the Court proceed to step two, then at most, intermediate scrutiny applies, because the Challenged Laws do not impose any significant burden on the core Second Amendment right. (See Appellee’s Br. 51-52.) Social science and neuroscience data demonstrate that the Challenged Laws survive such scrutiny: the Laws’ restrictions are more than substantially related to Pennsylvania’s paramount interest in ensuring public safety.

**I. AT MOST, THE CHALLENGED LAWS ARE SUBJECT TO INTERMEDIATE SCRUTINY.**

To determine what level of heightened scrutiny to apply in a Second Amendment challenge, courts consider whether the restriction at issue burdens the “core” right guaranteed by the Second Amendment—the “right of law-abiding, *responsible* citizens to use arms in defense of *hearth and home*.” *Heller*, 554 U.S. at 635 (emphasis added); see also *Marzzarella*, 614 F.3d at 92 (core Second Amendment right is “the right

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*Officially Raises the Tobacco Buying Age to 21*, CNN (Dec. 27, 2019), <https://www.cnn.com/2019/12/27/health/us-tobacco-age-21-trnd/index.html>.

of law-abiding citizens to possess non-dangerous weapons for self-defense in the home”). Appellants’ claim that the Challenged Laws should “be subjected to the strictest judicial scrutiny” merely because the Second Amendment is “enumerated in the constitutional text” is plainly wrong. (Appellants’ Br. 43.)

Courts overwhelmingly apply intermediate scrutiny in Second Amendment challenges. *See, e.g., Ass’n of N.J. Rifle & Pistol Clubs*, 910 F.3d at 118-19 (applying intermediate scrutiny to ban on large-capacity magazines); *Drake*, 724 F.3d at 429-30, 435-36 (state public carry license requirement); *Marzzarella*, 614 F.3d at 97 (federal statute criminalizing possession of handguns with obliterated serial numbers).

This case is no exception: even if the Challenged Laws did burden conduct protected by the Second Amendment (and they do not), that conduct is far outside the “core” Second Amendment protection. The Challenged Laws apply only to the public carrying of firearms, an activity this Court has already concluded is “not part of the core of the Amendment.” *Drake*, 724 F.3d at 436; *see also Nat’l Rifle Ass’n of Am. v.*

*McCraw*, 719 F.3d 338, 348 (5th Cir. 2013) (applying intermediate scrutiny to uphold Texas age-based public carry).

The Court was correct: publicly carried firearms are not commonly used for self-defense and there is therefore little evidence that this form of gun carrying implicates the Second Amendment's self-defense-in-the-home "core." Data from 2007 to 2011 collected by the U.S. Bureau of Justice Statistics reveals that, of 9,788 crime incidents in which a victim was present at the incident and the incident occurred away from the victim's home, the victim attacked or threatened the offender with a gun in just 0.9% of these incidents. David Hemenway et al., *The Epidemiology of Self-Defense Gun Use: Evidence from the National Crime Victimization Surveys 2007–2011*, 79 PREVENTIVE MED. 22, 23 (2015). The rarity of public defensive use of firearms today—when public concealed carry is relatively more widespread<sup>6</sup>—is a reflection of sound historical practices and the common-law regulation of self-defense in public spaces.

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<sup>6</sup> *Heller*, 554 U.S. at 626 (acknowledging the 19th century practice of states prohibiting the carry of concealed weapons entirely).

The defensive use of force outside the home—especially lethal force—has traditionally been more closely regulated than home defense, including because armed defense in public poses heightened risks—of shooting the wrong person, of injuring innocent bystanders, of creating confusion in a crowded space, of escalating otherwise less serious conflicts—that home defense does not. *See generally* Eric Ruben, *An Unstable Core: Self-Defense and the Second Amendment*, 108 CALIF. L. R. 63, 78 (2020) (self-defense law “has traditionally extended a broader right to use lethal defensive force in the home than in public”). One study of gun carriers in Philadelphia found that individuals carrying a firearm were 4.46 times *more* likely to be shot in an assault than those not carrying a gun, and 4.23 times more likely to be fatally shot. Charles Branas et al., *Investigating the Link Between Gun Possession and Gun Assault*, 99 AM. J. PUB. HEALTH 2034, 2037 (2009) (positing that “[a] gun may falsely empower its possessor to overreact, instigating and losing otherwise tractable conflicts with similarly armed persons”). Governments may cabin the riskier defensive use of lethal force outside the home because public gun carrying lies at the margins of the Second Amendment, rather than at its core.

Finally, the Challenged Laws apply for a limited duration to a limited group of people—minors under the age of 21—who historically have been outside the Second Amendment’s core protections. (See Appellee’s Br. 29-35.) “The temporary nature of the burden reduces its severity” because “[a]ny 18-to-20-year-old subject to the [restriction] will soon grow up and out of its reach.” *BATFE*, 700 F.3d at 207; see also *McCraw*, 719 F.3d at 348 (applying intermediate scrutiny because minimum-age qualification on public carry “has only a temporary effect that ends as soon as the person turns 21”); *Stiles v. Blunt*, 912 F.2d 260, 265 (8th Cir. 1990) (“[I]t is particularly appropriate to apply a deferential standard of review to age requirements affecting young people because such requirements do not result in an absolute prohibition but merely postpone the opportunity to engage in the conduct at issue.”).

Any burden imposed by the Challenged Laws is also temporary in a second respect: the burden endures only so long as a government-declared state of emergency is in effect, which, under a recent amendment to the Pennsylvania Constitution, is limited to 21 days, unless extended by concurrent resolution of the General Assembly. Pa. Const. art. IV, § 20(c); see, e.g., *McDougall v. County of Ventura*

*California*, 2020 WL 2078246, at \*2 (C.D. Cal. Apr. 1, 2020) (applying intermediate scrutiny to evaluate county closure of gun stores pursuant to COVID-19 stay-at-home order because the order “does not specifically target handgun ownership, does not prohibit the ownership of a handgun outright, and is temporary”). Even Appellants concede that Pennsylvania “ordinarily *freely allows* 18-to-20-year-olds to carry firearms in public openly . . . *without even requiring them to obtain a license*” and that it is “only because of the currently active ‘state of emergency’” that Appellants are not able to publicly carry firearms in exactly the manner they would like. (Appellants’ Br. 2-3 (emphasis in original).)

## **II. SOCIAL SCIENCE AND NEUROSCIENCE CONFIRM THAT THE CHALLENGED LAWS EASILY SURVIVE MEANS-END SCRUTINY.**

In the Second Amendment context, a court must uphold a law under intermediate scrutiny if there is a “reasonable fit” between the challenged law and a “significant, substantial, or important” government interest “such that the law does not burden more conduct than is



reasonably necessary.”<sup>7</sup> *Drake*, 724 F.3d at 436. Importantly, “the fit between the challenged regulation and the asserted objective [should] be reasonable, not perfect.” *Marzzarella*, 614 F.3d at 98.<sup>8</sup>

In assessing reasonable fit, courts in this Circuit routinely consider empirical evidence such as social science and crime statistics. *See, e.g., Ass’n of N.J. Rifle & Pistol Clubs*, 910 F.3d at 120 n.24 (“[E]mpirical evidence may be useful to examine whether a law furthers a significant government interest . . . .”); *Williams v. Barr*, 379 F. Supp. 3d 360, 376-78 (E.D. Pa. 2019) (“[S]tatistics demonstrate a reasonable fit between Williams’ disarmament and the important government interest

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<sup>7</sup> Even if this Court were to apply strict scrutiny (and it should not), the Challenged Laws should be upheld because, as the social science discussed below demonstrates, the Legislature narrowly tailored the laws to a compelling governmental interest in safety and crime reduction. *See Marzzarella*, 614 F.3d at 99 (“[E]ven if strict scrutiny were to apply . . . the statute would still pass muster.”).

<sup>8</sup> Appellee observed that a divided panel of the Fourth Circuit recently struck down a federal age-based restriction. (*See* Appellee Br. 35 n.19, citing *Hirschfeld v. Bureau of Alcohol, Firearms, Tobacco & Explosives*, 5 F.4th 407 (4th Cir. 2021).) But that opinion has been vacated for mootness, because the remaining plaintiff turned 21 before the mandate issued and before the government’s timely-filed petition for *en banc* rehearing could be decided. The opinion now has “no persuasive value whatsoever,” indeed, it “do[es] not even bear the label of dicta.” *Hirschfeld v. Bureau of Alcohol, Firearms, Tobacco & Explosives*, 2021 WL 4301564, at \*3 (4th Cir. Sept. 22, 2021) (Wynn, J., concurring).

of preventing armed mayhem.”). Importantly, a court evaluating a law’s constitutionality “must accord substantial deference to the predictive judgments of [the legislature]” and is “not at liberty to substitute [its] judgment for the reasonable conclusion of a legislative body.” *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 195, 212 (1997); *see also Drake*, 724 F.3d at 436-37.

**A. Public Carry of Firearms by Eighteen-to-Twenty-Year-Olds Is Disproportionately Risky, Especially in States of Emergency.**

Neuroscience and social science research confirm that 18-to-20-year-olds with unencumbered access to firearms pose a substantial risk to themselves and others. The Pennsylvania Legislature crafted a limited solution to address that risk in public places in times of emergency. Courts have relied on such research in rejecting similar challenges, including the Fifth and Seventh Circuits and multiple district courts. *See BATFE*, 700 F.3d at 210 & n.21; *Horsley v. Trame*, 808 F.3d 1126, 1133 (7th Cir. 2015); *Jones v. Becerra*, 498 F. Supp. 3d 1317, 1329-30 (S.D. Cal. 2020); *Mitchell v. Atkins*, 483 F. Supp. 3d 985, 995-96 (W.D. Wash. 2020).

1. *Eighteen-to-Twenty-Year-Olds Are Generally More Impulsive than Older Cohorts.*

The scientific literature shows that the human brain does not finish developing until the mid-to-late twenties.<sup>9</sup> The *last* part of the brain to mature is the prefrontal cortex, which is responsible for impulse control, judgment, and planning.<sup>10</sup> The prefrontal cortex matures well after the limbic system, which controls basic emotions like fear, anger, and pleasure. As a result, people in their late teens and early twenties experience emotional triggers, but tend to have lower self-control and to make more impulsive decisions.<sup>11</sup>

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<sup>9</sup> Adam Winkler et al., *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).

<sup>10</sup> *Id.*; see also Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 NEUROPSYCHIATRIC DISEASE & TREATMENT 449, 453, 456 (2013).

<sup>11</sup> Arain, *supra* note 10, at 453 (“[S]tudies involv[ing] comparing a teen brain to an adult brain determined that adolescents’ prefrontal cortices are used less often during interpersonal interactions and decision making than their adult counterparts . . . provid[ing] a partial explanation for certain characteristics of adolescents and adolescent behaviors, such as quickness to anger, intense mood swings, and making decisions on the basis of ‘gut’ feelings.”).

Neuroscientific research demonstrates that eighteen-to-twenty-year-olds are prone to risk-taking and deprioritize 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.”); *id.* (quoting submission from the American Medical Association: “The brain’s frontal lobes are still structurally immature well into late adolescence, and the prefrontal cortex is ‘one of the last brain regions to mature.’ This, in turn, means that ‘response inhibition, emotional regulation, planning and organization . . . continue to develop between adolescence and young adulthood.” (omission in original)); *Horsley*, 808 F.3d at 1133 (“The evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable.” (quotation omitted)); *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” (quotation omitted)).

Studies show that minors are uniquely prone to negative emotional states, further exacerbating these risks. Leah 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). Adolescents’ responses to “frequent” negative states “tend to be more intense, variable and subject to extremes relative to adults.” *Id.* Scientists have reasoned that “[f]eeling sad, depressed, or hopeless may be associated with the heightened rates of affective disorders, attempted and completed suicide, and addiction also observed during adolescence.” *Id.* Minors are also more likely to *act* on negative emotions like stress or rage, because their limbic systems have matured while their cerebral cortexes (*i.e.*, impulse control centers) are still developing. Arain, *supra* note 10, at 458 (“[T]he adolescent brain is structurally and functionally vulnerable to environmental stress.”).

Because their brains are still developing, 18-to-20-year-olds are at a higher risk of violence when they have unfettered access to firearms. *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.”). Indeed, educational institutions serving this age group—such as colleges and military academies, which arguably admit only the most responsible young adults—recognize this risk. *See, e.g.*, U.S. Military Academy Regulation 190-3 at § II.1-6(b)(1) (“No pistols or handguns may be registered or carried by anyone under the age of twenty-one (21) to include Cadets.”) (on file with counsel).

Neuroscience confirms there is a reasonable fit between the Pennsylvania Legislature’s interest in public safety and its decision to limit 18-to-20-year olds’ ability to carry and transport firearms in public places during times of emergency.

2. *Eighteen-to-Twenty-Year-Olds Are Disproportionately Likely to Commit and Be Victimized by Violent Gun Crimes.*

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:

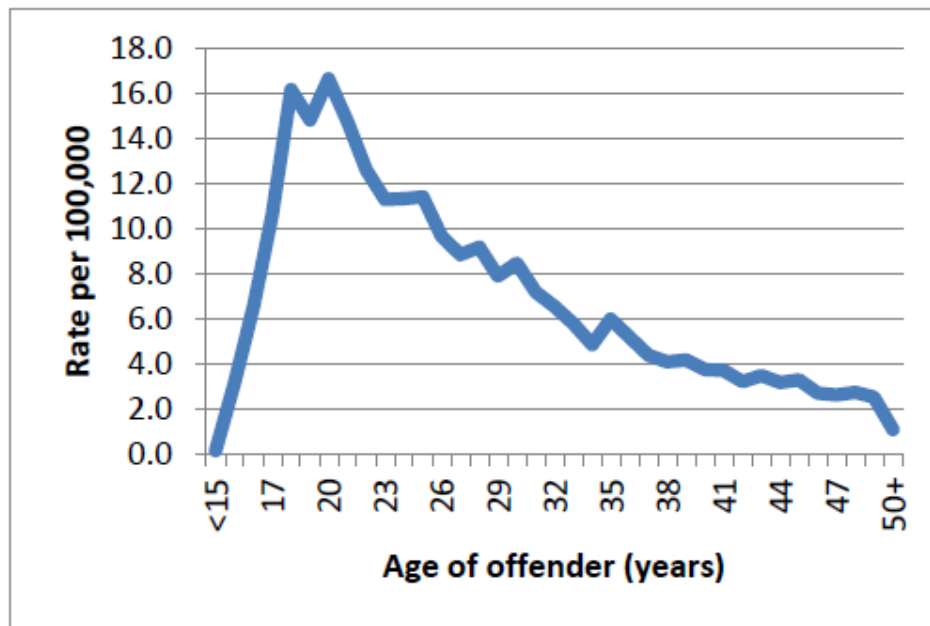
- Arrests for homicide, rape, and robbery are higher among 18-to-20-year-olds than older adults. U.S. Department of Justice, *Crime in the United States*, Arrests, by Age, 2019, at Table 38, <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/table-38>.
- Though 18-to-20-year-olds make up less than 5% of the population, they account for more than 15% of homicide and manslaughter arrests.<sup>12</sup> Moreover, FBI data suggest that this age group accounts for 17% of known homicide offenders.<sup>13</sup>
- This general pattern has persisted over time. The following chart, showing homicide offending rate by age in 2009, vividly illustrates the disproportionate share of homicides committed

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<sup>12</sup> U.S. Department of Justice, *supra*, at Table 38; 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>13</sup> Calculated using data from the FBI's Supplementary Homicide Reports and U.S. Census Bureau. Uniform Crime Reporting Program: Supplementary Homicide Reports (SHR), Washington, DC: Department of Justice, Federal Bureau of Investigation; U.S. Census Bureau Population Estimates.

by minors that year:<sup>14</sup>



- “Firearm homicides and violent crimes disproportionately involve individuals under age 21, both as perpetrators and as victims.” RAND Corporation, *The Science of Gun Policy: A Critical Synthesis of Research Evidence on the Effects of Gun Policies in the United States* 1, 145 (2018); see also *People v. Fields*, 24 N.E.3d 326, 344 (Ill. App. Ct. 2014) (“[T]he 18-to-20-year-old age group is more likely to be directly interacting with and, thus, endangering juveniles under 18 years of age.”).

<sup>14</sup> Daniel 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).



These crime statistics, which, as discussed above, have a neuroscientific explanation, underscore how the Challenged Laws reasonably fit the Legislature's goal of promoting public safety.

3. *States of Emergency Are Times of Uncertainty and Instability in Which the Risk of Firearm Violence Is Especially High.*

Social science further supports the Legislature's reasonable and balanced policy determination to impose stricter restrictions on public carry during emergencies. States of emergency can take various forms, from natural disasters, to violent civil disturbances, to medical crises. What these exigent circumstances have in common is that they are characterized by mass uncertainty and fear that threaten public safety. Indeed, both the opioid epidemic and the COVID-19 pandemic—the conditions underlying two states of emergency that were in place when Appellants filed this suit—are correlated with an increase in violent crime. *See, e.g.,* Michael Stein et al., *Loaded: Gun Involvement Among Opioid Users*, 187 DRUG ALCOHOL DEPEND. 205, 205-11 (2018) (finding that 31.3% of opioid users surveyed in an inpatient program carried a gun, 45.1% had been threatened with a gun, and 13.8% had shot at another person); *Gun Violence and COVID-19 in 2020*, EVERYTOWN

RSCH. & POL'Y (May 7, 2021), <https://everytownresearch.org/report/gun-violence-and-covid-19-in-2020-a-year-of-colliding-crises/#historic-levels-of-city-gun-violence> (“The COVID-19 pandemic has intensified the impact of our country’s gun violence crisis. There were 3,906 additional firearm deaths and 9,278 additional firearm injuries in 2020 compared to 2019 . . . . Unintentional shooting deaths by children increased by nearly one-third comparing incidents in March to December of 2020 to the same months in 2019.”). Through the enactment of the Challenged Laws decades ago, the Pennsylvania Legislature struck a careful balance between preserving the ability of citizens to bear arms even in such volatile environments—individuals over 21 may readily obtain a permit to carry firearms even in states of emergency, *see* §§ 6107, 6109—while imposing temporary restrictions on a limited subgroup of the population to meet the heightened risk to public safety.

To be sure, the risk of firearm violence may be more acute during some emergencies than others. But even in an emergency that may, at first blush, seem disconnected from gun violence, Pennsylvania may need to devote its medical bandwidth to those directly affected by the emergency and thus need to take measured steps to reduce the

likelihood that people unaffected by the emergency will require medical attention. *See, e.g.,* Nicoleta Stoicea et al., *Current Perspectives on the Opioid Crisis in the US Healthcare System*, MEDICINE (BALTIMORE) (2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6531094/> (“Opioid-related overdose is a leading cause of unintentional injury and thus adds significant financial and resource burden to hospital systems.”).

The Constitution does not require the Legislature to divine every possible exigent circumstance that might befall Pennsylvania and devise a different legal regime for each, particularly since there are documented risks attendant to carrying guns in public even absent a public emergency. *See* Branas, *supra*. Pennsylvania’s decision to address these risks during emergencies that tax its public health resources reflects nuanced tailoring of legislation to the risks at hand and the emergency being addressed. Intermediate scrutiny does not require the Legislature’s solution to be the “least restrictive means of serving the interest”; it requires a “reasonable,” not “perfect,” fit. *Marzzarella*, 614 F.3d at 98.

Because 18-to-20-year-olds are more impulsive and disproportionately likely to commit violent crime using firearms, and because gun violence often spikes during emergencies, restricting young people's access to concealed public carry licenses during an emergency reasonably fits the Pennsylvania Legislature's interest in promoting public safety.

**B. Research Establishes that Restrictions Like the Challenged Laws Are Effective in Reducing Firearm Violence.**

Studies showing the efficacy of firearm restrictions for public carry and/or with a minimum-age component illustrate the reasonableness of the Legislature's decision to target public carry by 18-to-20-year-olds in particular.

1. *Strong Public Carry Laws Reduce Homicide, Other Violent Crime, and Gun Theft.*

A substantial body of social science evidence shows that restrictions on public carry reduce crime, including violent crime, confirming that the Challenged Laws are a calibrated and effective solution to the public safety threat that the Pennsylvania Legislature sought to address.

One 2019 study, for example, examined 33 states that between 1981 and 2007 adopted right-to-carry laws—*i.e.*, laws that require officials to issue handgun carry permits to anyone who meets certain minimal statutory requirements—and concluded that “the net effect of state adoption of [right-to-carry] laws is a substantial increase in violent crime.” John Donohue et al., *Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Control Analysis*, 16 J. EMPIRICAL LEGAL STUD. 198, 200, 240 (2019). After controlling for factors “that might be expected to influence crime,” including incarceration levels, poverty, and unemployment, the study found that the passage of lax public carry laws increased violent crime rates by around 14% compared to what the rates otherwise would have been. *Id.* at 215-16, 232. Although there was a nationwide decrease in violent crime between 1977 and 2014, the nine states that never adopted right-to-carry laws experienced a 42.3% decrease in violent crime during that period whereas those states that did adopt right-to-carry laws experienced a mere 4.3% reduction. *Id.* at 213-14 & fig. 1. Thus, states with more restrictive public carry laws experienced a decline

in violent crime that was nearly *ten times greater* than the decline in states with lax public carry laws.<sup>15</sup>

Numerous studies also reveal a link between lax public carry laws and an increase in homicides:

- A 2017 study found that between 1991 and 2015, right-to-carry laws were associated with 6.5% higher total homicide rates, 8.6% higher firearm homicide rates, and 10.6% higher handgun homicide rates.<sup>16</sup> Michael Siegel et al., *Easiness of Legal Access to Concealed Firearm Permits and Homicide Rates in the United States*, 107 AM. J. PUB. HEALTH 1923, 1923, 1927 (2017).
- A 2018 study found that between 1990 and 2014, states that switched from a law that prohibits concealed carry of firearms to a law that requires officials to issue concealed carry permits to qualified applicants “experienced a 12.3% increase in gun-related murder rates and a 4.9% increase in overall murder rates when compared to other states.” Mark Gius, *Using the Synthetic Control Method to Determine the Effects of*

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<sup>15</sup> See also Marjorie McElroy et al., *Seemingly Inextricable Dynamic Differences: The Case of Concealed Gun Permit, Violent Crime and State Panel Data 1*, 31-32 (June 24, 2017) (concluding that had states with lax “shall-issue” public carry laws not implemented such laws, “total violent crimes” would be reduced by “about one third” from 1980 to 2011).

<sup>16</sup> This result was corroborated in two subsequent studies employing different research methodologies. See Michael Siegel et al., *The Impact of State Firearm Laws on Homicide and Suicide Deaths in the USA, 1991–2016: A Panel Study*, 34 J. GEN. INTERN. MED. 2021, 2021-28 (2019); Anita Knopov et al., *The Impact of State Firearm Laws on Homicide Rates among Black and White Populations in the United States, 1991– 2016*, 44 HEALTH & SOC. WORK 232, 232-40 (2019).

*Concealed Carry Laws on State-Level Murder Rates*, 57 INT'L REV. L. & ECON. 1, 8 (2019).

- A 2018 study found that between 1984 and 2015, right-to-carry laws were associated with a 7% increase in firearm homicides in large, urban U.S. counties. Cassandra Crifasi et al., *Association Between Firearm Laws and Homicide in Urban Counties*, 95 J. URB. HEALTH 383, 386-87 (2018) (as modified by 95 J. URB. HEALTH 773, 773-76 (2018)).
- A 2019 study found that “[s]tates that had [a right-to-carry] law between 1992 and 2017 experienced 29% greater rates of firearm [workplace homicides]” than those that did not, and that the 25 states that passed a right-to-carry law during that period, “on average, experienced 24% greater rates in firearm [workplace homicides] incidence after law implementation.” Mitchell Doucette et al., *Right-to-Carry Laws and Firearm Workplace Homicides: A Longitudinal Analysis (1992–2017)*, 109 AM. J. PUB. HEALTH 1747, 1751 (2019).

The correlation between crime and public carry does not stop with homicides and other violent crimes. Research has also connected public carry to increased risk of gun thefts, contributing to the estimated 200,000 to 500,000 guns that are stolen each year in the United States, which often find their way into the hands of young persons and those with criminal histories. David Hemenway et al., *Whose Guns are Stolen? The Epidemiology of Gun Theft Victims*, 4 INJ. EPIDEMIOLOGY 1, 1, 3 (2017) (people who carried a loaded handgun at least once in the last month were over three times more likely to have a firearm stolen than other gun owners).

As Appellants’ constitutional challenge hinges on Pennsylvania’s public carry restrictions during states of emergency, which have the incremental effect of banning 18-to-20-year-olds from carrying openly visible firearms while emergency circumstances are ongoing (Appellants’ Br. 2-3), it bears emphasizing that research suggests the presence of visible firearms may pose particular risks. For example, a 2018 meta-analysis found evidence that “merely seeing a weapon can increase aggressive thoughts, hostile appraisals, and aggressive behavior.” Arlin Benjamin Jr. et al., *Effects of Weapons on Aggressive Thoughts, Angry Feelings, Hostile Appraisals, and Aggressive Behavior: A Meta-Analytic Review of the Weapons Effect Literature*, 22 PERSONALITY AND SOC. PSYCHOL. REV. 1, 13 (2018). Openly carried firearms also complicate police responses during emergencies, including their efforts to identify criminal shooters and respond to active shooters. See, e.g., Molly Hennessy-Fiske, *Dallas Police Chief: Open Carry Makes Things Confusing During Mass Shootings*, L.A. TIMES (July 11, 2016), <http://www.latimes.com/nation/la-na-dallas-chief-20160711-snap-story.html>; Jesse Paul, *Open Carry Becomes Focus After Colorado Springs Shooting Rampage*, DENVER POST (Nov. 3, 2015),



<http://www.denverpost.com/2015/11/03/open-carry-becomes-focus-after-colorado-springs-shooting-rampage/>; *Gun Rights Walk in Portland Spurs 911 Calls, Lockdown*, THE COLUMBIAN (Jan. 10, 2013), <http://www.columbian.com/news/2013/jan/10/gun-rights-walk-spurs-911-calls-lockdown/>.

The body of research establishing a direct link between permissive public carry regimes and crime (including homicide) suggests that the Challenged Laws, by placing limitations on public carry for an age demographic that accounts for a disproportionate percentage of violent crime, are likely a highly effective means of reducing crime. The efficacy of such laws underscores the “reasonable fit” that exists between the Legislature’s interest in public safety and the solution that it devised.

2. *Minimum-Age Restrictions Are Effective in Reducing Gun Violence.*

Studies have also found a connection between age restrictions like the Challenged Laws and a decline in firearm-related adolescent deaths, especially suicides and unintentional shootings.<sup>17</sup> For instance,

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<sup>17</sup> The same concerns regarding minors’ heightened impulsiveness led to 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 motor vehicle crashes involving

an August 2004 study found that state laws raising the minimum age for handgun purchases to 21 were associated with a 9% decline in firearm suicide rates among 18-to-20-year-olds. Daniel Webster et al., *Association Between Youth-Focused Firearm Laws and Youth Suicides*, 292 JAMA 594, 598 (2004). Another study from 2015 found that, after Congress raised the minimum age for handgun possession to 18 in 1994, youth suicide rates dropped by more than 50%—decreasing from approximately 2.1 suicides per 100,000 in 1994 to 0.9 suicides per 100,000 in 2010. Mark Gius, *The Impact of Minimum Age and Child Access Prevention Laws on Firearm-Related Youth Suicides and Unintentional Deaths*, 52 SOC. SCI. J. 168, 173-74 (2015). The decline in unintentional firearm death rates among youth was also dramatic: in 1994, the rate of youth unintentional gun deaths was approximately 0.67 per 100,000 persons, but after the federal minimum-age law was enacted in 1994, the rate fell by 70% to approximately 0.2 per 100,000 persons. *Id.*

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minor drivers. William DeJong et al., *Case Closed: Research Evidence on the Positive Public Health Impact of the Age 21 Minimum Legal Drinking Age in the United States*, 17 J. STUD. ON ALCOHOL & DRUGS 108, 113 (2014).

Separately, a survey of convicted gun offenders in 13 states found that a minimum legal age of 21 would have prohibited 17% of the offenders from obtaining firearms at the time of their crimes, a finding that “underscore[d] the importance of minimum-age restrictions.” Katherine 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). These studies confirm the reasonable fit between Pennsylvania’s minimum-age for open carry of firearms during states of emergency, which would effectively deter 18-to-20-year-olds from public carry for the duration of the emergency, and the public safety benefit of a corresponding decrease in violence.

### CONCLUSION

For the foregoing reasons and those set forth by Appellee, the longstanding Pennsylvania laws Appellants challenge do not implicate the Second Amendment. Even if they did, these laws easily survive the appropriate level of scrutiny. In the decades since the Challenged Laws were enacted, neuroscience and social science have confirmed that the public safety threat posed by 18-to-20-year-olds publicly carrying firearms during states of emergency is substantial, and the Pennsylvania

Legislature's measured solution is effective. Appellants ask this Court to intervene to strip the Legislature of its power to respond to the grave public safety threats targeted by the Challenged Laws. Nothing in the Second Amendment requires that result.

Dated: September 29, 2021

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## **CERTIFICATE OF COMPLIANCE**

In accordance with Federal Rules of Appellate Procedure 32(g), I certify that this brief:

(i) complies with the type-volume limitation of Rule 29(a)(5) because it contains 6,482 words, excluding the parts of the brief exempted by Rule 32(f);

(ii) complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font;

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## **CERTIFICATE OF BAR MEMBERSHIP**

I certify pursuant to L.A.R. 28.3(d) that I am a member in good standing of the Bar of the Third Circuit.

/s/ Jim Davy

Jim Davy

Dated: September 29, 2021

## CERTIFICATE OF SERVICE

I certify that on September 29, 2021, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

*/s/ Jim Davy*

\_\_\_\_\_

Jim Davy

Dated: September 29, 2021