IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

TANNER HIRSCHFELD; NATALIA MARSHALL, *Plaintiffs*, v. THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES; THOMAS E. BRANDON, in his official capacity as the Deputy and Acting Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives; WILLIAM P. BARR, in his official capacity as Attorney General of the United States, *Defendants*.	Civil Action No. 3:18-CV-00103

BRIEF OF *AMICUS CURIAE* GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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INTEREST OF THE *AMICUS CURIAE*[1]

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 over 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); *Kolbe* v. *Hogan*, 849 F.3d 114 (4th Cir. 2017) (*en banc*); *Wrenn* v. *District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017); *Woollard* v. *Gallagher*, 712 F.3d 865 (4th Cir. 2013); and *Woollard* v. *Sheridan*, 863 F. Supp. 2d 462 (D. Md. 2012).[2]

Giffords Law Center previously submitted an *amicus* brief in support of Defendants' Motion to Dismiss to alert the Court to the robust social science research confirming that Congress's concerns in enacting the law challenged in this action were well-founded and that the law and similar measures have proven effective in saving lives, and thereby to provide

[1] Neither Plaintiffs nor Defendants oppose the filing of this brief. 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.

[2] 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* v. *AG N.J.*, 910 F.3d 106, 121-22 (3d Cir. 2018); *Md. Shall Issue* v. *Hogan*, 353 F. Supp. 3d 400, 403-05 (D. Md. 2018); *Stimmel* v. *Sessions*, 879 F.3d 198, 208 (6th Cir. 2018); *Peruta* v. *Cty. of San Diego*, 824 F.3d 919, 943 (9th Cir. 2016) (*en banc*) (Graber, J., concurring). Giffords Law Center filed the latter two briefs under its former name, the Law Center to Prevent Gun Violence.

the Court further context as to why the law is constitutional under the governing two-part legal framework for Second Amendment claims. *See* ECF No. 29 (Apr. 25, 2019) ("Giffords MTD Brief"). Giffords Law Center now submits this brief in support of Defendants' Opposition to Summary Judgment to emphasize the two-part approach and its rationale, why it applies here, and why it requires that the Court reject Plaintiffs' claims.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Fourth Circuit, like every other federal Court of Appeals to announce a Second Amendment methodology post-*Heller*, has mandated a two-part decisional framework to analyze Second Amendment challenges. *First*, a court must answer "whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantee;" *second*, and only if the law does impose such a burden, the court applies "an appropriate form of means-end scrutiny." *Kolbe*, 849 F.3d at 133. Unless the law "severely burden[s] the core protection of the Second Amendment," no more than intermediate scrutiny applies, *id.* at 138, requiring "a reasonable fit between the challenged regulation and a substantial governmental objective," *United States* v. *Chester*, 628 F.3d 673, 683 (4th Cir. 2010) (internal quotes omitted).

This Court is bound to apply that framework to this case. *See infra* § II. Even if it were not, there are good reasons why the two-part approach has become binding law in this circuit and the judicial consensus nationwide: the framework "is entirely faithful to the *Heller* decision and appropriately protective of the core Second Amendment right," *Kolbe*, 849 F.3d at 141, but still provides legislatures common-sense flexibility, within the appropriate constitutional constraints, to protect the public and address profound rates of gun violence, *See infra* § III.

As explained in Defendants' Opposition to Plaintiffs' Motion for Summary Judgment (ECF No. 34 (June 7, 2019) ("Defs' Opp.")), the law Plaintiffs challenge comprises a "calibrated" and "safety-driven"[3] restriction on handgun purchases from federally licensed dealers by minors under the age of 21 and is consistent with a longstanding, historical tradition of restricting minors' access to firearms. For that reason, and others (*see* Giffords MTD Brief at 18-20), the challenged law does not regulate conduct protected by the Second Amendment, as the Fifth Circuit recognized in rejecting a nearly identical challenge. *See Nat'l Rifle Ass'n*, 700 F.3d at 203 ("We have summarized considerable evidence that burdening the conduct at issue—the ability of 18-to-20-year-olds to purchase handguns from [federal firearm licensees]—is consistent with a longstanding, historical tradition, which suggests that the conduct falls outside the Second Amendment's protection."). Even if, however, this Court "proceed[s] to step two" of the analysis, it is, as the Fifth Circuit explained, "[u]nquestionabl[e]" that "the challenged federal law triggers nothing more than 'intermediate' scrutiny," *id.* at 204-05, and the legislative history and extensive social science evidence (*see* Giffords MTD Brief at 4-17, 20-21) confirm that the law passes such scrutiny and is constitutional (*see infra* § IV). Accordingly, this Court should deny Plaintiffs' Motion for Summary Judgment and dismiss their claims.

[3] *Nat'l Rifle Ass'n of Am., Inc.* v. *Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 207 (5th Cir. 2012), *rehearing en banc denied*, 714 F.3d 334 (5th Cir. 2013), *cert. denied*, 571 U.S. 1196 (2014).

ARGUMENT

I. LIKE THE OTHER COURTS OF APPEALS, THE FOURTH CIRCUIT HAS MANDATED APPLICATION OF A TWO-PART FRAMEWORK FOR SECOND AMENDMENT CHALLENGES.

In 2010, after the Supreme Court's decisions in *Heller* and *McDonald*, the Fourth Circuit held in *Chester* that "a two-part approach to Second Amendment claims" was "appropriate":

> The first question is whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantee. This historical inquiry seeks to determine whether the conduct at issue was understood to be within the scope of the right at the time of ratification. If it was not, then the challenged law is valid. If the challenged regulation burdens conduct that was within the scope of the Second Amendment as historically understood, then we move to the second step of applying an appropriate form of means-end scrutiny.

628 F.3d at 680 (citations and internal quotation marks omitted). After determining, at step one, that the historical record was inconclusive on "whether the possession of a firearm in the home by a domestic violence misdemeanant is protected by the Second Amendment," the *Chester* court determined at step two that intermediate and not strict scrutiny was appropriate, because the "claim is not within the core right identified in *Heller*—the right of a *law-abiding, responsible* citizen to possess and carry a weapon for self-defense." *Id.* at 680-83 (emphasis in original).

Since then, the Fourth Circuit has rejected multiple Second Amendment challenges, without "impart[ing] a definitive ruling at the first step of the *Chester* inquiry," *Woollard*, 712 F.3d at 875, by proceeding directly to the second step, applying intermediate scrutiny, and holding that the standard is met. *See*, e.g., *United States* v. *Masciandaro*, 638 F.3d 458, 469-74 (4th Cir. 2011) (rejecting Second Amendment challenge to a conviction of an otherwise "law-abiding citizen" for possessing a loaded handgun in a motor vehicle within a

national park area, because "the government has a substantial interest in providing for the safety of individuals who visit and make use of the national parks" and the prohibition was "reasonably adapted to that substantial governmental interest"); *Woollard*, 712 F.3d at 876-79 (rejecting challenge to state handgun permitting restrictions because of state's "substantial" interests, as evidenced by crime statistics, in "protecting public safety and preventing crime[,] particularly violent crime committed with handguns," and because restrictions "clearly . . . advance[d] the[se] objectives"); *United States* v. *Hosford*, 843 F.3d 161, 168-70 (4th Cir. 2016) (rejecting challenge to prohibition against unlicensed firearm dealing because "interests in public safety and preventing crime are indisputably substantial governmental interests" and because, as evidenced in the social science, licensing requirement represented a reasonable "attempt to stymie the unregulated flow of firearms to prohibited purchasers").

Finally, in 2017, the Fourth Circuit, sitting *en banc*, rejected a Second Amendment challenge to a state ban on assault weapons both because (i) the ban did not implicate the Second Amendment at step one; and (ii) even if it did, at step two, the ban was reasonably adapted to a "compelling" state interest "in the protection of its citizenry and the public safety." *Kolbe*, 849 F.3d at 121, 138-41. As the Fourth Circuit noted in *Kolbe*, the Second,[4] Third,[5] Fifth,[6] Sixth,[7] Seventh,[8] Ninth,[9] Tenth,[10] Eleventh,[11] and D.C. Circuit[12] Courts

[4] *N.Y. State Rifle & Pistol Ass'n* v. *Cuomo*, 804 F.3d 242, 254 (2d Cir. 2015).

[5] *United States* v. *Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010).

[6] *Nat'l Rifle Ass'n*, 700 F.3d at 194.

[7] *United States* v. *Greeno*, 679 F.3d 510, 518 (6th Cir. 2012).

[8] *Ezell* v. *City of Chicago*, 651 F.3d 684, 703-04 (7th Cir. 2011).

[9] *United States* v. *Chovan*, 735 F.3d 1127, 1136 (9th Cir. 2013).

of Appeals have all also adopted the two-part framework; the First Circuit later adopted it as well. *Id.* at 132-33 (listing decisions); *Gould* v. *Morgan*, 907 F.3d 659, 669 (1st Cir. 2018).

II. THE COURT MUST APPLY THE GOVERNING TWO-PART FRAMEWORK TO THIS CASE, AND MAY, AS PART OF THAT ANALYSIS, CONSIDER SOCIAL SCIENCE EVIDENCE.

In their motion for summary judgment, Plaintiffs acknowledge, on the one hand, that the two-part legal framework governs (*see* ECF No. 32 at 5-6 & n.2 (May 10, 2019) ("Pls.' Brief")), while nevertheless urging the Court to disregard it, on the other (*see id.* at 22 ("the court should forego applying the traditional levels of scrutiny")). But *Chester* and its progeny are, of course, binding precedent that this Court must follow. This is true despite Defendants' decision not to address the framework in their opposition. Indeed, this Court must apply controlling Fourth Circuit law regardless of whether the parties invoke it, and irrespective of the parties' views on whether it was correctly decided. *See Dan Ryan Builders, Inc.* v. *Crystal Ridge Dev., Inc.*, 783 F.3d 976, 980 (4th Cir. 2015) ("A party's failure to identify the applicable legal rule certainly does not diminish a court's responsibility to apply that rule. . . . [I]t is well established that '[w]hen an issue or claim is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law.'" (quoting *Kamen* v. *Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99 (1991)); *United States* v. *Dickerson*, 166 F.3d 667, 680 n.14 (4th Cir. 1999) (applying legal framework proposed by *amici* despite parties' failure to invoke it "[b]ecause it is our duty to apply the governing law to every case or controversy before us"),

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[10] *United States* v. *Reese*, 627 F.3d 792, 800-01 (10th Cir. 2010).

[11] *GeorgiaCarry.Org, Inc.* v. *U.S. Army Corps of Eng'rs*, 788 F.3d 1318, 1322 (11th Cir. 2015).

[12] *Heller* v. *District of Columbia*, 670 F.3d 1244, 1252 (D.C. Cir. 2011).

rev'd on other grounds, 530 U.S. 428 (2000); *Altizer* v. *Deeds*, 191 F.3d 540, 543 n.7 (4th Cir. 1999) ("[W]e are benefitted by an adversary presentation of the issues raised by [a party]. As a result, federal courts have frequently appointed *amici* to participate in an appeal where a party will not brief an important position.").[13]

This Court also may, and should, consider social science evidence offered by an *amicus* in applying the framework. *See United States* v. *Staten*, 666 F.3d 154, 163 (4th Cir. 2011) ("To carry its burden [under step two of the Second Amendment two-part framework], the government primarily relies upon empirical evidence garnered from social science studies, the results of which and conclusions drawn therefrom appear in scholarly social science reports (also commonly referred to as articles)."); *id.* at 165 ("[B]ecause Staten has never disputed the accuracy of either the government's representations as to their ready availability via the Internet or the accuracy of the government's representations as to their content, we reject Staten's argument that the government cannot rely upon the reports to meet its burden under intermediate scrutiny in this case."); *see also McDonald*, 561 U.S. at 790 (relying on studies and statistics offered by *amici* on appeal); *McCleskey* v. *Kemp*, 753 F.2d 877, 888 (11th Cir. 1985) (explaining that *amici* often assist courts through so-called "Brandeis briefs" by presenting "persuasive social science evidence . . . to the courts" and introducing "social facts as corroborative in the judicial decisionmaking process"), *aff'd*, 481 U.S. 279 (1987); *Common Cause* v. *Rucho*, 318 F. Supp. 3d

[13] *See also In re Cmty. Bank of N. Va.*, 622 F.3d 275, 302 (3d Cir. 2010) ("'[T]here can be no waiver . . . of the Judge's duty to apply the correct legal standard.'" (quoting *United States* v. *Ali*, 508 F.3d 136, 144 n.9 (3d Cir. 2007)); *Hurtado* v. *Cty. of Sacramento*, 2016 WL 1450573, at *4 (E.D. Cal. Apr. 13, 2016) ("The court has an independent duty to apply the correct legal standard, lest it abuse its discretion. . . . Neither party shows how or why the Fourth Amendment applies given the facts of this case. As a threshold matter, therefore, the court itself determines whether the Fourth Amendment is properly invoked . . . ."); *FDIC* v. *Fid. & Deposit Co. of Md.*, 196 F.R.D. 375, 378 n.1 (S.D. Cal. 2000) (identifying and applying the correct legal standard *sua sponte*).

777, 857 (M.D.N.C. 2018) (explaining that "the Supreme Court has embraced new social science theories and empirical analyses to resolve a variety of constitutional and statutory disputes," and citing cases).

III. THE FOURTH CIRCUIT'S TWO-PART FRAMEWORK IS CONSISTENT WITH *HELLER* AND WELL-REASONED.

Despite recognizing in their motion for summary judgment that the "Fourth Circuit joined other circuits" in adopting the two-part framework and that, "[b]ased on the weight of Fourth Circuit authority," the Court "will likely apply" that framework, Plaintiffs nevertheless argue that "traditional levels of heightened scrutiny should not apply to Second Amendment challenges." Pls.' Brief at 5-6 & n.2; *see also id.* at 23. It is no accident, however, that every federal Court of Appeals to announce a Second Amendment methodology since *Heller* has endorsed the framework. Indeed, the consensus approach is fully consistent with the Supreme Court's decisions in *Heller* and *McDonald* and well-reasoned, including because it (i) treats Second Amendment rights like other constitutional rights; (ii) gives effect to *Heller*'s non-exhaustive list of "presumptively regulatory measures"; (iii) provides a more workable approach than an alternative based only on history; and (iv) gives legislatures the necessary flexibility to protect the public, save lives, and address an epidemic of gun violence.

A. Consistently with *Heller* and *McDonald*, the Two-Part Framework Treats the Second Amendment Right Like Other Constitutional Rights.

Both *Heller* and *McDonald* explain that courts should treat the Second Amendment right as similar to—not better than—other constitutional rights. *See Heller*, 554 U.S. at 582 (analogizing scope of Second Amendment to scope of First Amendment); *id.* at 595 ("Of course the [Second Amendment] right was not unlimited, just as the First Amendment's right of free speech was not. Thus, we do not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation, just as we do not read the First Amendment

to protect the right of citizens to speak for *any purpose*." (internal citation omitted)); *id.* at 626 ("*Like most rights*, the right secured by the Second Amendment is not unlimited." (emphasis added)); *McDonald*, 561 U.S. at 780 (refusing to treat Second Amendment right as "subject to an entirely different body of rules than the other Bill of Rights guarantees that we have held to be incorporated into the Due Process Clause"); *id.* at 802 ("But this too is true of other rights we have held incorporated. No fundamental right—not even the First Amendment—is absolute.").

As the Fourth Circuit observed in adopting the two-part framework, other constitutional rights, including First Amendment rights, are also analyzed under a means-end scrutiny analysis. *See Chester*, 628 F.3d at 682 ("Given *Heller*'s focus on 'core' Second Amendment conduct and the Court's frequent references to First Amendment doctrine, we agree with those who advocate looking to the First Amendment as a guide in developing a standard of review for the Second Amendment."); *id.* ("We do not apply strict scrutiny whenever a law impinges upon a right specifically enumerated in the Bill of Rights. In the analogous First Amendment context, the level of scrutiny we apply depends on the nature of the conduct being regulated and the degree to which the challenged law burdens the right."). There is no reason to exempt the Second Amendment from this traditional constitutional analysis. *See Nat'l Rifle Ass'n*, 700 F.3d at 198 ("In harmony with well-developed principles that have guided our interpretation of the First Amendment, we believe that a law impinging upon the Second Amendment right must be reviewed under a properly tuned level of scrutiny—*i.e.*, a level that is proportionate to the severity of the burden that the law imposes on the right.").

B. The Two-Part Framework Is Consistent with the "Core Protection" and "Presumptively Lawful Regulatory Measures" Described in *Heller*.

Heller makes clear that the Second Amendment right contains a "core protection" for "law-abiding, responsible citizens to use arms in defense of hearth and home," 554 U.S. at

634-35, the clear implication being that other conduct may fall outside the "core" of the Second Amendment's protections—or outside the scope of the Amendment entirely. Indeed, *Heller* provides (and *McDonald* reiterates) a non-exhaustive list of "presumptively lawful regulatory measures," including "prohibitions on the possession of firearms by felons and the mentally ill," "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings," and "laws imposing conditions and qualifications on the commercial sale of arms." *Heller*, 554 U.S. at 626-27 & n.26; *McDonald*, 561 U.S. at 786 ("We repeat those assurances here. Despite municipal respondents' doomsday proclamations, incorporation does not imperil every law regulating firearms.").

As the Fourth Circuit explained in *Chester*, however, *Heller* listed these measures "without alluding to any historical evidence that the right to keep and bear arms did not extend to felons, the mentally ill or the conduct prohibited by any of the listed gun regulations." 628 F.3d at 679. "Federal felon dispossession laws, for example, were not on the books until the twentieth century, and the historical evidence and scholarly writing on whether felons were protected by the Second Amendment at the time of its ratification is inconclusive." *Id.* In other words, history alone may not account for *Heller*'s list of "presumptively lawful regulatory measures." Rather, the way to reconcile the list with a global approach to all Second Amendment challenges is, as *Chester* decided, to apply a framework that includes means-end scrutiny. *Id.* ("[*Heller*] could still have viewed the regulatory measures as 'presumptively lawful' if it believed they were valid on their face under any level of means-end scrutiny applied."); *see also Heller*, 554 U.S. at 628-29 (explaining that prohibition would "fail constitutional muster" "[u]nder any of the standards of scrutiny that we have applied to enumerated constitutional rights"); *Kolbe*, 849 F.3d at 141 ("We are confident that our approach here is entirely faithful to the *Heller* decision and

appropriately protective of the core Second Amendment right."); *Nat'l Rifle Ass'n*, 700 F.3d at 197 ("Having sketched our two-step analytical framework, we must emphasize that we are persuaded to adopt this framework because it comports with the language of *Heller*.").

C. The Two-Part Framework Is Better Than the Alternatives, Including a History-Only Test.

For the reasons discussed above, the two-part framework is most consistent with *Heller* and *McDonald* and it is no surprise then that every Court of Appeals to announce a post-*Heller* methodology has adopted it. The framework also, however, offers important practical advantages over the alternatives, including an approach that would evaluate Second Amendment challenges based only on a historical analysis.

A history-only framework suffers from a number of problems. Although the historical record is clear in this case that age restrictions on firearm purchases were common and longstanding (*see, e.g.*, Defs' Opp. at 4-10), in many other cases the historical evidence conflicts, sometimes even regarding "simple" factual assertions such as the extent to which and in what manner laws were enforced. *See, e.g.*, *Wrenn*, 864 F.3d at 659-60 (discussing disagreement among scholars regarding whether a centuries-old English statute banned the carrying of all firearms in crowded areas). Indeed, in *Chester*, the court proceeded to step two because the historical evidence at step one was "not conclusive." 628 F.3d at 680-82. Similarly, a purely historical test provides no answers as to which timeframes and the laws of which states or regions a court should consider, nor to what renders a regulation "longstanding," *Heller*, 554 U.S. at 626-27. Firearm technology and the different approaches to regulating it have changed dramatically since the Constitution was ratified, and new technologies (*e.g.*, guns manufactured with 3D-printers) offer few or no historical analogs. The two-part framework endorsed by the

Fourth Circuit alleviates these problems by including, but not wholly relying, on historical precedent.

D. The Two-Part Framework Maintains the Necessary Flexibility for Legislatures to Address Gun Violence and Save Lives.

Finally, and critically, the two-part framework allows legislatures common-sense flexibility, as long as they can satisfy constitutional scrutiny, to devise and implement novel solutions to effectively address gun violence and thereby protect public safety and save lives. *Heller* did not purport to end this flexibility. 554 U.S. at 636 (explaining that the "Constitution leaves the [legislature] a variety of tools for combating th[e] problem" of gun violence); *see also McDonald*, 561 U.S. at 785 ("[S]tate and local experimentation with reasonable firearms regulations will continue under the Second Amendment." (internal quotation marks omitted) (quoting Brief for State of Texas *et al.*, at 23)). As Judge Wilkinson put it in his concurring opinion in *Kolbe*:

> Disenfranchising the American people on this life and death subject would be the gravest and most serious of steps. It is their community, not ours. It is their safety, not ours. It is their lives, not ours. To say in the wake of so many mass shootings in so many localities across this country that the people themselves are now to be rendered newly powerless, that all they can do is stand by and watch as federal courts design their destiny—this would deliver a body blow to democracy as we have known it since the very founding of this nation. . . .
>
> Providing for the safety of citizens within their borders has long been state government's most basic task. In establishing the "right of law-abiding, responsible citizens to use arms in defense of hearth and home," *Heller* did not abrogate that core responsibility. . . . *Heller* was a cautiously written opinion, which reserved specific subjects upon which legislatures could still act.

849 F.3d at 150 (Wilkinson, J., concurring) (citations omitted).

IV. PLAINTIFFS' CLAIMS FAIL AT BOTH STEPS OF THE TWO-PART FRAMEWORK.

As demonstrated by Defendants (Defs' Opp. at 4-10), the challenged law is fully consistent with longstanding, historical restrictions on firearm purchases by minors, and that is enough for the two-part analysis. *See also* Giffords MTD Brief at 18-19 (explaining why the law falls outside the central right and within the lawful regulatory measures recognized in *Heller*). Should this Court choose to proceed to step two, however, that step also provides an independent and adequate basis for the Court to deny summary judgment and reject Plaintiffs' claims. Indeed, in evaluating a nearly identical suit, the Fifth Circuit determined that the law challenged here did not implicate the Second Amendment, but, citing "institutional challenges in conducting a definitive review of the relevant historical record" and an "abundance of caution," nevertheless also proceeded to a step-two analysis, at which it determined that the law "passe[d] constitutional muster" under intermediate scrutiny. *Nat'l Rifle Ass'n*, 700 F.3d at 199-211.

Here, a step-two analysis confirms the law's constitutionality. Because the law does not "severely burden the core protection of the Second Amendment, *i.e.*, the right of law-abiding, *responsible* citizens to *use* arms for self-defense in the home," *Kolbe*, 849 F.3d at 138 (emphasis added), strict scrutiny is inappropriate. Particularly because the law at issue applies only to minors and does not restrict their *use* of firearms, it is "[u]nquestionabl[e]" that "the challenged federal law[]" at issue in this action "trigger[s] nothing more than 'intermediate' scrutiny." *Nat'l Rifle Ass'n*, 700 F.3d at 205; *see* Giffords MTD Brief at 20-21 (explaining that the challenged law impedes only the commercial sale of handguns by federal firearm licensees to minors under the age of 21, and not either the use or possession of firearms, including handguns, by minors).

As for the means-end fit, the government's "interest in the protection of its citizenry and the public safety" is "compelling." *Kolbe*, 849 F.3d at 139. Congress's multi-year investigation included specific findings regarding the propensity of minors under the age of 21 to commit serious crimes of violence with handguns purchased from federally licensed dealers, and the solution was carefully "calibrated" to that problem. *Nat'l Rifle Ass'n*, 700 F.3d at 198-99, 207-10; Giffords MTD Brief at 4-8 (discussing legislative history). Social science overwhelmingly confirms that Congress's concerns and solutions were well-founded. *See, e.g.*, Mariam Arain *et al.*, *Maturation of the Adolescent Brain*, 9 Neuropsychiatric Disease & Treatment 449, 453-54, 458 (2013) (attached as Exhibit A) (explaining that "the adolescent brain is structurally and functionally vulnerable to environmental stress" and citing "quickness to anger, intense mood swings, and making decisions on the basis of 'gut' feelings" as characteristic behaviors); 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) (attached as Exhibit B) (asserting that minors are uniquely prone to "negative emotional states"); Daniel W. Webster *et al.*, Johns Hopkins Ctr. for Gun Policy & Research, *The Case for Gun Policy Reforms in America*, 5 (2012) (attached as Exhibit C) (illustrating disproportionate share of homicides committed by minors); 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, 28-30 (2013) (attached as Exhibit D) (summarizing survey of convicted gun offenders in 13 states and finding that "nearly a quarter of the entire sample of firearm 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"); 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) (attached as Exhibit E) (discussing the "very significant decline" in youth suicide and unintentional firearm death rates as a result of the federal minimum-age law); *see also* Giffords MTD Brief at 8-17 (discussing social science research). Accordingly, whether at step one or step two of the governing two-part legal framework, the challenged law unquestionably passes constitutional muster.

CONCLUSION

For the foregoing reasons and those set forth by Defendants and in Giffords Law Center's earlier brief, this Court should deny Plaintiffs' motion for summary judgment and reject their Second Amendment challenge.

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Respectfully submitted,

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