No. 24-

IN THE

Supreme Court of the United States

BOB JACOBSON, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE MINNESOTA DEPARTMENT OF PUBLIC SAFETY,

Petitioner,

v.

KRISTIN WORTH, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Minnesota allows young people significant access to firearms. Young people can use guns under the supervision of an adult at any age, and they can use them without supervision on their property or for hunting beginning at age 14. Yet Respondents insist that Minnesota burdens their Second Amendment rights when it restricts permits for carrying pistols in public to those aged 21 and older. The federal government and a majority of states have enacted similar restrictions.

Applying *Bruen* in a manner that this Court disavowed in *Rahimi*, the lower courts concluded that Minnesota's law was unconstitutional as applied to 18-to-20-year-olds. The district court found the absence of analogous restrictions from the Founding era determinative. Issued just three weeks after *Rahimi*—but without the benefit of any briefing regarding the impact of *Rahimi*—the Eighth Circuit committed the same error. It focused its historical analysis exclusively on a search for an elusive historical twin rather than focusing on historical principles. The question presented is:

Does Minnesota's statute limiting permits for public carry of pistols to those 21 and older comport with the principles underlying the Second Amendment?

PARTIES TO THE PROCEEDING

Petitioner was a defendant-appellant below. He is Bob Jacobson, Commissioner of the Minnesota Department of Public Safety (Commissioner).[1] Three Minnesota sheriffs, Don Lorge, Sheriff of Mille Lacs County, Troy Wolbersen, Sheriff of Douglas County, and Dan Starry, Sheriff of Washington County, were defendants below and elected not to appeal.

Respondents were the plaintiffs-appellees below. They are three organizational plaintiffs—Firearms Policy Coalition, Inc., Second Amendment Foundation, and the Minnesota Gun Owners Caucus—and three named members of those organizations, Kristin Worth, Austin Dye, and Axel Anderson.[2]

There are no publicly held corporations involved in this proceeding.

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1. Commissioner Jacobson was substituted into the case after he replaced the initial Defendant, John Harrington, as Commissioner. Fed. R. Civ. P. 25(d).

2. Worth, Dye, and Anderson were between 18 and 21 when the case was filed, but they turned 21 during the litigation. To avoid mootness, the organizational plaintiffs identified Joe Knudsen as a member during briefing at the Eighth Circuit. But Knudsen has not been made a party.

RELATED PROCEEDINGS

- *Worth v. Jacobson*, United States Court of Appeals for the Eighth Circuit, Case No. 23-2248 (judgment entered July 16, 2024).

- *Worth v. Jacobson*, United States District Court, District of Minnesota, Case No. 21-cv-01348 (judgment entered April 23, 2023).

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PETITION FOR A WRIT OF CERTIORARI

The Commissioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 108 F.4th 677 and is reproduced in the appendix at 1a-37a. The denial of rehearing en banc is not reported but is reproduced in the appendix at 109a-110a. The District Court's decision is reported at 666 F. Supp. 3d 902 and is reproduced in the appendix at 50a-108a.

JURISDICTION

The judgment of the Court of Appeals was entered on July 16, 2024. The Court of Appeals denied rehearing en banc on August 21, 2024. On October 31, 2024, Justice Kavanaugh extended the time to petition for a writ of certiorari to and including January 17, 2025. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second and Fourteenth Amendments to the United States Constitution as well as the relevant provisions of Minnesota Citizens' Personal Protection Act are reproduced in the appendix at 111a-138a.

INTRODUCTION

Seven months ago, in *Rahimi*, this Court clarified how lower courts should apply the two-part *Bruen* test for evaluating the constitutionality of firearm regulations.[3] Rather than rest a decision on whether the government could point to identical firearm regulations in the Founding era, lower courts were instructed to identify the principles animating the regulation being challenged to see if they comport with the principles underlying the Second Amendment.

Minnesota's common-sense age regulation—which limits permits to carry pistols to those 21 and older—did not benefit from this Court's corrective guidance. This case was fully briefed at the Eighth Circuit by mid-September 2023, argued in February 2024, and was awaiting decision when *Rahimi* was issued in late June 2024. But instead of inviting supplemental briefing regarding the impact of *Rahimi* or remanding to the district court to conduct that analysis, the Eighth Circuit simply added *Rahimi* ornamentation to the *Bruen*-based opinion it had drafted.

The Eighth Circuit's failure to meaningfully apply *Rahimi*'s methodology means this Court should grant certiorari, vacate, and remand (GVR). This Court recently did the same in a similar age-restriction case from Pennsylvania, *Paris v. Lara*, — S. Ct. —, 2024 WL 4486348 (Mem) (Oct. 15, 2024). And the Court has issued GVR orders in nearly twenty other cases involving Second Amendment challenges since *Rahimi*. This case should be treated the same.

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3. *United States v. Rahimi*, 602 U.S. 680 (2024); *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022).

Alternatively, this Court should grant plenary review. Whether the Second Amendment requires states to grant permits to 18-to-20-year-olds to carry pistols in public is an important public issue on which the circuits are split.

STATEMENT OF THE CASE

I. Minnesota Authorizes Liberal Use of Guns By Teenagers in Private.

Minnesota allows significant access to guns by those under 21. Minnesota does not restrict the possession or use of firearms by youths of any age when supervised by parents or guardians. Minn. Stat. § 624.713, subd. 1(1); Minn. Stat. § 97B.021. By age 14, teenagers may possess guns without parental supervision on their property or when hunting if they obtain a firearms safety certificate. Minn. Stat. § 97B.021. And by age 18, young people may possess a pistol or semiautomatic assault weapon in those same situations. *Id.*; Minn. Stat. § 624.713, subd. 1(1).

Against that backdrop, Minnesota's legislature enacted the Citizens' Personal Protection Act of 2003. Pet. App. 113a-138a. The Act imposes a modest age regulation on access to firearms: young people may not obtain a permit to carry a pistol in public until age 21. Minn. Stat. § 624.714, subd. 2(b)(2) (the Challenged Statute); Pet. App. 114a. Minnesota's law has been in effect for two decades. More than thirty states and the District of Columbia have similar regulations.[4]

4. 14 jurisdictions (including Minnesota) limit those under 21 from any public carry. Conn. Gen. Stat. §§ 29-28, 29-36f; Del. Code Ann. tit. 11, § 1448(a)(5); Fla. Stat. §§ 790.06, 790.053; Ga. Code Ann.

II. History and Empirical Data Support Restricting the Firearm Use of People Under 21.

A robust evidentiary record of historical principles and empirical data supports the constitutionality of the Challenged Statute. At the district court, the Commissioner submitted two expert reports. One was by a constitutional historian, Professor Saul Cornell, Ph.D., regarding early American history on guns and people under 21. CA8 Appellant's App'x (AA) 53-102. The other was by an expert in empirical legal studies, Professor John J. Donohue, Ph.D., on the risks of gun violence from 18-to-20-year-olds. AA 102-69. The expert evidence established that hundreds of years of history supports restricting gun use by those under 21. And the expert evidence showed that current data on gun violence affirms the wisdom in that unbroken history.

Appellees submitted no expert reports on any issue or rebuttal facts on these issues.

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§§ 16-11-125.1(2.1), 16-11-126(g)(1), 16-11-129(b)(2)(A); Haw. Rev. Stat. § 134-9(a)(6); 430 Ill. Comp. Stat. 66/25; Md. Code Ann., Pub. Safety §§ 5-306(a)(1), 5-133(d)(1); Mass. Gen. Laws ch. 140, § 131(d)(iv); Minn. Stat. § 624.714, subd. 2(b)(b)(2); N.J. Stat. Ann. § 2C:58-6.1b; N.Y. Penal Law § 400.00(1)(a); Okla. Stat. tit. 21 § 1272(A)(6); R.I. Gen. Laws §§ 11-47-11, 11-47-18; D.C. Code § 7-2509.02(a)(1). 19 more states bar people under 21 from concealed public carry. Alaska Stat. §§ 11.61.220(a)(6), 18.65.705; Ariz. Rev. Stat. Ann. §§ 13-3102(A)(2), 13-3112(E); Ark. Code Ann. § 5-73-309; Colo. Rev. Stat. § 18-12-203(1)(b); Ky. Rev. Stat. Ann. § 237.110; La. Stat. Ann. § 40:1379.3(C)(4); Mich. Comp. Laws § 28.425b(7)(a); Neb. Rev. Stat. § 69-2433; Nev. Rev. Stat. § 202.3657; N.M. Stat. Ann. § 29-19-4(A)(3); N.C. Gen. Stat. § 14-415.12(a)(2); Ohio Rev. Code Ann. § 2923.125(D)(1)(b); Or. Rev. Stat. § 166.291; 18 Pa. Cons. Stat. § 6109; Utah Code Ann. §§ 53-5-704, 76-10-505, 76-10-523(5); Va. Code Ann. § 18.2-308.02; Wash. Rev. Code § 9.41.070; Wis. Stat. § 175.60(3)(a); Wyo. Stat. Ann. § 6-8-104(a)(iv), (b)(ii).

A. Historical Regulation of Gun Use by Those Under 21.

Professor Cornell's report establishes that during the Founding era, people under 21 were minors who existed under total legal authority of their parents. AA 62-64. By the 19th century, states began to codify the common-law understanding. AA 67-70.

The Founding. Early American law saw minors as "infants" who were dependent constitutional actors until the age of 21. AA 56. Early legal scholarship explained "[t]he rule that a man attains his majority at age twenty-one years accomplished, is perhaps universal in the United States. At this period, every man is in the full enjoyment of his civil and political rights." AA 64 (citing John Bouvier, 1 *Institutes of American Law* 148 (1858)).

The common law denied minors rights because they were viewed as lacking judgment. *See* AA 66. The Founding generation saw children as "lack[ing] reason and decisionmaking ability," without any independent "Judgement or Will." *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 826-27 (2011) (Thomas, J., dissenting) (quoting Letter from John Adams to James Sullivan (May 26, 1776), in 4 Papers of John Adams 210 (Robert Taylor ed. 1979)). Indeed, the Founding generation thought people under 21 had "utter incapacity." *Id.* (internal quotation marks and citation omitted).

As a result, minors in the Founding era could not participate in the Nation's hallmark civic duties in the way today's 18-to-20-year-olds can. For example, "[c]hildren could not vote," nor could they "serve on juries." *Id.* at 834. The same was true of the military. As of 1813, all minors

under 21 required parental consent to enlist in the Army. *Commonwealth v. Callan*, 6 Binn 255, 256 (Pa. 1814) (per curiam) (citing Act of Jan. 20, 1813, ch. XII § 5, 2 Stat. 667, 791-92). And even before the 1813 federal law, 18-to-20-year-olds who enlisted without parental consent could be discharged from the military against their will upon their parents' request. *See United States v. Anderson*, 24 F. Cas. 813, 814 (C.C.D. Tenn. 1812). The common law thus "imposed age limits on all manner of activities that required judgment and reason." *Brown*, 564 U.S. at 834 (Thomas, J., dissenting).

Not only was their participation in voting, jury service, and the military curtailed, but minors under 21 existed under their parent or guardian's authority. AA 62-64. "The history clearly shows a founding generation that believed parents to have complete authority over their minor children." *Brown*, 564 U.S. at 834 (Thomas, J., dissenting); *id.* at 832-34 (citing Blackstone for the proposition that parents had "power" over their children and were entitled to the "value of th[e] [children's] labor and services," and various Founding-era state laws for the proposition that children could not marry "without parental consent" (alterations in original)).

Thus, at the time of our Nation's founding, "minors were not considered independent adults in the legal or political realm, the economy, or in the social or familial structure." Megan Walsh & Saul Cornell, *Age Restrictions and the Right to Keep and Bear Arms*, 108 Minn. L. Rev. 3049, 3057 (2024). Instead, "the prevailing legal understanding was that those under the age of twenty-one were not able to make mature, reasonable decisions, and thus required an adult to care for them." *Id.* (collecting sources).

Reconstruction. Around the Reconstruction era, states passed a slew of statutes codifying the common-law understanding that minors lacked full individual rights—including the right to keep and bear arms. As the Fifth Circuit summarized: "[B]y the end of the 19th century, nineteen States and the District of Columbia had enacted laws expressly restricting the ability of persons under 21 to purchase or use particular firearms, or restricting the ability of 'minors' to purchase or use particular firearms while the state age of majority was set at age 21." *Nat'l Rifle Ass'n of Am. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 202 (5th Cir. 2012), *abrogated on other grounds by Bruen*, 597 U.S. at 19 n.4, 24 (citing 1856 Ala. Acts 17; 16 Del. Laws 716 (1881); 27 Stat. 116-17 (1892) (D.C.); 1876 Ga. Laws 112; 1881 Ill. Laws 73; 1875 Ind. Acts 86; 1884 Iowa Acts 86; 1883 Kan. Sess. Laws 159; 1873 Ky. Acts 359; 1890 La. Acts 39; 1882 Md. Laws 656; 1878 Miss. Laws 175-76; Mo. Rev. Stat. § 1274 (1879); 1885 Nev. Stat. 51; 1893 N.C. Sess. Laws 468-69; 1856 Tenn. Pub. Acts 92; 1897 Tex. Gen. Laws 221-22; 1882 W. Va. Acts 421-22; 1883 Wis. Sess. Laws 290; 1890 Wyo. Sess. Laws 1253)); *see also* CA8 Appellant's Addendum (Add.) 54-57. For example, the earliest of these laws provided it was unlawful to "sell, or give, or lend, to any male minor, a[n] . . . air gun or pistol." 1856 Ala. Acts 17; Add. 54.

Some laws had exceptions for parents or guardians, which confirms that these laws codified the Founding-era common law. *See*, *e.g.*, 1859 Ky. Acts 245 § 23 (making it unlawful for anyone "other than the parent or guardian" to "sell, give or loan any pistol . . . cane-gun, or other deadly weapon . . . to any minor"); Mo. Rev. Stat. § 1274 (1879) (making it unlawful to "sell or deliver, loan or

barter to any minor" any "deadly or dangerous weapon . . . without the consent of the parent or guardian of such minor"); 1881 Ill. Laws 73 (making it unlawful for anyone other than a minor's father, guardian, or employer to "sell, give, loan, hire or barter," or to "offer to sell, give, loan, hire or barter to any minor within this state, any pistol, revolver, derringer . . . or other deadly weapon of like character"); 1897 Tex. Gen. Laws 221-22 (making it unlawful to "knowingly sell, give or barter, or cause to be sold, given or bartered to any minor, any pistol . . . without the written consent of the parent or guardian of such minor, or of someone standing in lieu thereof "); *see also* Add. 54-57. Indeed, a historian surveying firearm legislation during this period "concluded that in the period between 1868 and 1899 restrictions on minors' access and use of arms were more common than limits on felons." Walsh & Cornell, 108 Minn. L. Rev. at 3090 (citing Robert J. Spitzer, *Gun Law History in the United States and Second Amendment Rights*, 80 Law & Contemp. Probs. 55, 76 (2017)).

B. Data on Gun Misuse by 18-to-20-Year-Olds.

Hundreds of years of common and statutory law history supports restricting firearm use by minors. Modern social science research reinforces that history: it provides "a greater understanding than existed in the Founding era of *why* eighteen-to-twenty-year-olds do not have the capacity to make fully mature decisions, due to our greater understanding of the development of brain physiology and chemistry." *Id.* at 3101 (emphasis in original) (collecting sources).

Professor Donahue's report establishes that neurobiological and behavioral factors cause 18-to-20-year-olds to be the most dangerous and homicidal age group in the United States. AA 103-169. And the danger from this group is only increasing. From 2005 to 2018, for example, that age cohort experienced a "massive" 32.2 percent increase in firearms suicide. AA 140.

The heightened risk of gun-related violence among this group is due to three principal factors:

- the still-developing cognitive systems of 18-to-20-year-olds increases their risk of impulsive behavior;

- the onset of mental illness during emerging adulthood is correlated with self-harm and suicide attempts; and

- the frequency of binge drinking during emerging adulthood is a stimulant to violence that is obviously more dangerous when accompanied with gun possession.

AA 108.

III. Procedural History.

Respondents sued the Commissioner challenging the constitutionality of the Challenged Statute, which requires that applicants for a permit to carry a pistol in public be at least 21 years old. Respondents allege that the statute violates the Second Amendment, both facially and as applied to them and to 18-to-20-year-old women. D. Ct. Docket (Dkt.) 1, at 23-29.

After discovery, the parties cross-moved for summary judgment. The district court granted Respondents' motion in relevant part, ruling that the Challenged Statute's requirement that a person be at least 21 years old to receive a permit violates the Second Amendment. Pet. App. 107a-108a. In doing so, the district court did not consider all the evidence cumulatively proffered by Minnesota, nor did it evaluate whether a consistent principle of regulation supported the Challenged Statute. Indeed, the district court expressly concluded that *Bruen* precluded it from considering the common law context of the Founding era. *E.g.*, Pet. App. 62a-63a, 95a.

A panel of the Eighth Circuit affirmed. The panel applied the two-part test from *Bruen*, considering text first, and then history. As for text, the panel held that 18-to-20-year-olds were among the "people" protected by the Second Amendment. Pet. App. 15a-23a. As for history, the panel held that Minnesota's age regulation had no adequate historical analogue, rejecting each piece of historical evidence proffered by Minnesota for being insufficiently similar. Pet. App. 23a-32a.

Just three weeks before the Eighth Circuit released the opinion below, this Court released its decision in *Rahimi*. *Rahimi* offered important guidance to lower courts on how to analyze Second Amendment challenges. In particular, it instructed lower courts to focus on the principles underlying historical restrictions on firearms—not precise historical analogues. 602 U.S. at 691-92. Unlike other courts addressing similar challenges to age restrictions, the Eighth Circuit did not invite supplemental briefing on *Rahimi*'s impact.[5]

5. *Compare Reese v. Bureau of Alcohol Tobacco, Firearms & Explosives*, No. 23-30033 (5th Cir. reargued Sept. 23, 2024)

In a petition for rehearing, the Commissioner raised concerns about the failure of the decision below to abide by *Rahimi*'s guidance. The Eighth Circuit denied that petition without requesting a response from Respondents. Pet. App. 109a-110a.

REASONS FOR GRANTING THE WRIT

This Court recently granted a similar petition from Pennsylvania in *Paris v. Lara*, vacating the underlying ruling from the Third Circuit, and remanding the case for further consideration in light of *Rahimi*. *Paris v. Lara*, — S. Ct. —, 2024 WL 4486348 (Mem) (Oct. 15, 2024). The Court should do the same here. Both cases involve state laws regulating the use of firearms by young people who are 18-to-20 years old. And, in both cases, the briefing at the circuit courts of appeals was done without the benefit of this Court's guidance in *Rahimi*, leading the circuit courts to improperly focus on the absence of a historical twin in the Founding era.

To be sure, the Eighth Circuit decided *Worth* shortly after *Rahimi* came out. But this Court has not hesitated to GVR when the lower court failed to take proper account of existing—as opposed to intervening—Supreme Court precedent. And here, the Eighth Circuit did not engage in the principles-focused analysis that *Rahimi* requires. GVR is thus appropriate.

(requesting letter briefs addressing *Rahimi* on July 8, 2024, following initial argument in November 2023); and *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 127-28 (10th Cir. 2024) (reversing preliminary injunction after *sua sponte* directing supplemental briefing addressing *Rahimi* on June 25, 2024, after oral argument had been held).

Alternatively, plenary review is warranted due to the circuit split that has developed regarding whether states may impose regulations on 18-to-20-year-olds' access to firearms. Given the rates of gun violence among Americans in that age cohort, this is an important issue deserving the Court's attention.

I. This Court Should Vacate the Judgment Below and Remand for Further Proceedings Consistent with *Rahimi*.

By discounting Minnesota's evidence of longstanding principles that support the Challenged Statute and instead nit-picking each regulation that Minnesota offered as an inadequate analogue, the Eighth Circuit decision conflicts with *Rahimi*. Minnesota should receive the same opportunity that this Court gave Pennsylvania in *Lara*—the opportunity to have the Challenged Statute reconsidered in light of *Rahimi*.

A. The Eighth Circuit Decision Is Inconsistent with *Rahimi*.

This Court acknowledged in *Rahimi* that "some courts have misunderstood the methodology of our recent Second Amendment cases." 602 U.S. at 691. In particular, the Fifth Circuit had misunderstood its task when assessing whether a federal statute criminalizing firearm possession by those subject to a domestic violence restraining order violated the Second Amendment. The Fifth Circuit rejected every historical regulation offered by the government and looked for the equivalent of a "'historical twin.'" *Id.* at 701 (quoting *Bruen*, 597 U.S. at 30). For example, the Fifth Circuit had held that "going

armed laws" were not sufficiently analogous because they were "disarming those who had been adjudicated to be a threat to society generally, rather than to identified individuals." *United States v. Rahimi*, 61 F.4th 443, 459 (5th Cir. 2023). And it concluded that surety laws were not sufficiently analogous because they "did not prohibit public carry, much less possession of weapons, so long as the offender posted surety." *Id.* at 460 (citing *Bruen*, 597 U.S. at 58).

Yet the Supreme Court found that "[t]aken together, the surety and going armed laws confirm what common sense suggests: When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed." *Rahimi*, 602 U.S. at 698. The current law "does not need" to be "identical to these founding era regimes," *id.*, but only "'consistent with the Nation's historical tradition of firearm regulation,'" *id.* at 689 (quoting *Bruen*, 597 U.S. at 24). The critical question is "whether the challenged regulation is consistent with the *principles* that underpin our regulatory tradition." *Id.* at 692 (emphasis added) (citing *Bruen*, 597 U.S. at 26-31). The Court repudiated multiple times the need for historical regulations that were a perfect match for current statutes. *Id.* at 691-92, 700-01.

The district court here committed the same methodological error as the Fifth Circuit in *Rahimi*. It enjoined Minnesota's longstanding and limited regulation of firearm use by those under 21 because Minnesota could not identify a "historical twin." Rather than correct the district court's error, the Eighth Circuit repeated it, despite having additional guidance from the Court in *Rahimi*. It affirmed the district court's decision that the

Challenged Statute could not pass the test established in *Bruen*. And it never once attempted to identify the principle or principles that underpin our Nation's long tradition of regulating public gun use by young people. *See generally* Pet. App. 23a-37a. Instead, the Eighth Circuit demanded Minnesota identify "an adequate historical analogue" that was "well-established and representative." Pet. App. 23a-24a (citing *Bruen*, 597 U.S. at 19, 30). It then examined each analogue proffered by Minnesota in isolation for an exacting review of its "how" and "why." Pet. App. 25a-37a

The Eighth Circuit next rejected all of Minnesota's historical evidence—even though the Commissioner was the only party to present historical experts. For example, the court conceded that "Minnesota cites common law evidence that (as minors) 18 to 20-year-olds did not have full rights." Pet. App. 29a. But it disregarded that evidence because the Commissioner did not supply "analogues restricting the right to bear arms." *Id.*

Similarly, the panel acknowledged that "Minnesota proffer[ed] 20 state laws from the Reconstruction-era and late 19th Century that in some way limit the Second Amendment rights of those under 21 years old." Pet. App. 34a. But the panel refused to draw or consider principles from those laws. *Id.* Indeed, the panel questioned whether "Reconstruction-era sources have much weight." Pet. App. 33a. And it confidently asserted that "postenactment history of the Fourteenth Amendment is *not* given weight." *Id.* (emphasis added).

But this Court has yet to resolve that issue. *Rahimi*, 602 U.S. at 692 n.1 (declining to wade into "ongoing

scholarly debate"). And this Court's major Second Amendment cases have repeatedly considered—and found relevant—statutes, case law, and other legal sources from the 19th century. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570, 605-26 (2008) (examining a variety of legal sources "through the end of the 19th century"); *accord Rahimi*, 602 U.S. at 695-98 (citing Massachusetts surety statute from 1836 and "going armed" prohibitions from 1843 and 1849); *Bruen*, 597 U.S. at 60-66 (analyzing evidence "from around the adoption of the Fourteenth Amendment"); *McDonald v. Chicago*, 561 U.S. 742, 770-78 (2010) (plurality opinion) (analyzing understanding of right to keep and bear arms in 1868).

To be sure, the Eighth Circuit cited this Court's decision in *Rahimi*. But those few citations are mere window dressing because nowhere did the Eighth Circuit try to identify the principles underlying the historical restrictions on access to firearms by those under 21. Pet. App. 23a-37a.

B. A GVR Is Appropriate Here.

Because the Eighth Circuit's decision is inconsistent with *Rahimi*, this Court should GVR. On remand, the parties will have an opportunity to brief *Rahimi*'s impact. And the lower court will have the opportunity to fully consider those refined arguments—plus the developing case law from around the country on the issue of firearm regulation for 18-to-20-year-olds.

The Court's recent GVR in *Paris v. Lara* is instructive. — S. Ct. —, 2024 WL 4486348 (Mem) (Oct. 15, 2024). Like this case, *Lara* involved a challenge by 18-to-20-year-olds

to a state statute regulating their public use of guns. *See Lara v. Comm'r Penn. State Police*, 91 F.4th 122, 127 (3d Cir. 2024). Like this case, *Lara* was fully briefed in the circuit court of appeals before the *Rahimi* decision was issued. Like this case, the circuit court of appeals in *Lara* held that the state statute violated the Second Amendment rights of the young people. *Id.* at 134-37. And like this case, it did so after interpreting *Bruen* to require that the state point to Founding-era statutes imposing nearly the same restrictions. *Id.* Pennsylvania, the state whose regulation was challenged in *Lara*, petitioned for certiorari, arguing that the Third Circuit's decision could not be reconciled with *Rahimi*. *See* Pet. for Writ of Cert. at 11-13, *Paris v. Lara*, No. 24-93 (U.S. Oct. 15, 2024). This Court found GVR appropriate.

So too here. True, *Lara* predated *Rahimi* while *Worth* was decided (three weeks) afterward. But GVRs are appropriate not only to address "intervening developments," but also "*recent* developments that [the Supreme Court] has reason to believe that the court below did not fully consider." *Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam) (emphasis added). In those circumstances, a GVR is appropriate so the lower court may fully consider a relevant precedent—even if the precedent preceded the lower court's decision. *Id.* at 169 (explaining that, in *Robinson v. Story*, 469 U.S. 1081 (1984), the Court "GVR'd for further consideration in light of a Supreme Court decision rendered almost three months *before* the summary affirmance by the Court of Appeals that was the subject of the petition for certiorari" (emphasis in original)); *accord Youngblood v. West Virginia*, 547 U.S. 867, 869-70 (2006) (issuing GVR so lower court could reconsider decision given *Brady* v.

Maryland, 378 U.S. 83 (1963) (per curiam), which was decided decades earlier); *Stutson v. United States*, 516 U.S. 193, 194-97 (1996) (per curiam) (issuing GVR so lower court reconsider Supreme Court decision that was issued a year-and-a-half earlier).[6]

Indeed, the Court has issued GVR orders when the lower court's decision cites and discusses the relevant Supreme Court precedent. *See*, *e.g.*, *Valensia v. United States*, 532 U.S. 901 (2001) (GVR'ing in light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), even though lower court's decision, *United States v. Valensia*, 222 F.3d 1173, 1182 n.4 (9th Cir. 2000), cited *Apprendi*); *Schweninger v. Minnesota*, 525 U.S. 802 (1998) (GVR'ing in light of *Kansas v. Hendricks*, 521 U.S. 346 (1997), even though lower court's decision, *In re Schweninger*, No. C1-96-362, 1997 WL 613670, at *3 (Minn. Ct. App. Oct. 7, 1997), *rev. denied* (Minn. Dec. 15, 1997), discussed *Hendricks*); *Coleman v. Minnesota*, 524 U.S. 924 (1998) (same as to *In re Coleman*, Nos. C0-96-1521 & C1-96-216, 1997 WL 585902, at *5 (Minn. Ct. App. Sept. 23, 1997), *rev. denied* (Minn. Nov. 18, 1997), which also discussed *Hendricks*).

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6. *See also*, *e.g.*, *White v. Kentucky*, 586 U.S. 1113 (2019) (GVR'ing in light of Supreme Court decision issued five months before lower court's original decision and one year before lower court's decision on rehearing); *Kaushal v. Indiana*, 585 U.S. 1028 (2018) (GVR'ing in light of Supreme Court decision issued one month before lower court's decision); *Webster v. Cooper*, 558 U.S. 1039 (2009) (GVR'ing in light of Supreme Court decision issued two months before lower court's decision); *Ravelo v. United States*, 532 U.S. 955 (2001) (GVR'ing in light of Supreme Court decision issued one month before lower court's decision); *Ford v. United States*, 532 U.S. 968 (2001) (same); *Wecht v. Inmates of Allegheny Cnty. Jail*, 493 U.S. 948 (1989) (GVR'ing in light of Supreme Court decision issued eight years before lower court's decision).

The same disposition is justified here. Given the focus in the Eighth Circuit's analysis, there is ample "reason to believe the court below did not fully consider" *Rahimi*. *Lawrence*, 516 U.S. at 167. And given the gaps in the Eighth Circuit's analysis, there is no reason to treat this case differently than *Lara*. Especially given the importance of the issue, *see infra* Section III, it does not make sense for Pennsylvania's statute regulating public gun use by 18-to-20-year-olds to fully benefit from this Court's clarification in *Rahimi*, but for Minnesota's statute to be denied the same benefit.[7]

The Third Circuit's just-issued decision on remand in *Lara* reinforces that GVR is appropriate. *See Lara v. Comm'r Penn. State Police*, No. 21-1832, — F.4th —, 2025 WL 86539 (3d Cir. Jan. 13, 2025). Although the Third Circuit erroneously reached the same bottom-line

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7. Nor is *Lara* an outlier. Since *Rahimi*, the Court has issued nearly twenty GVR orders because *Rahimi* clarifies the appropriate methodology for analyzing Second Amendment challenges. *Dubois v. United States*, 24-5744 (U.S. Jan. 13, 2025); *Canada v. United States*, 24-5391 (U.S. Nov. 4, 2024); *Talbot v. United States*, 24-5258 (U.S. Nov. 4, 2024); *Hoeft v. United States*, 24-5406 (U.S. Nov. 4, 2024); *Jones v. United States*, 24-5315 (U.S. Nov. 4, 2024); *Kirby v. United States*, 24-5453 (U.S. Nov. 4, 2024); *Lindsey v. United States*, 24-5328 (U.S. Nov. 4, 2024); *Pierre v. United States*, 24-37 (U.S. Oct. 21, 2024); *Borne v. United States*, 23-7293 (U.S. Oct. 7, 2024); *Farris v. United States*, 23-7501 (U.S. Oct. 7, 2024); *Willis v. United States*, 23-7776 (U.S. Oct. 7, 2024); *Garland v. Range*, 23-374 (U.S. July 2, 2024); *Antonyuk v. James*, 23-910 (U.S. July 2, 2024); *United States v. Daniels*, 23-376 (U.S. July 2, 2024); *United States v. Perez-Gallan*, 23-455 (U.S. July 2, 2024); *Vincent v. Garland*, 23-683 (U.S. July 2, 2024); *Jackson v. United States*, 23-6170 (U.S. July 2, 2024); *Cunningham v. United States*, 23-6602 (U.S. July 2, 2024); *Doss v. United States*, 23-6842 (U.S. July 2, 2024).

result, it at least identified the correct legal standard: whether Pennsylvania's age restriction on public carry of guns was "'consistent with the principles that underpin the Nation's historical tradition of gun regulation.'" *Id.* at *4 (quoting *Rahimi*, 602 U.S. at 690). Minnesota's statute should be subject to the same principles-focused analysis. *See*, *e.g.*, *United States v. Langston*, 110 F.4th 408, 418 (1st Cir. 2024), *cert. denied*, — S. Ct. —, 2024 WL 4805963 (Nov. 18, 2024) (holding that, after *Rahimi*, the "correct constitutional inquiry" focuses on principles); *United States v. Garcia*, 115 F.4th 1002, 1008 (9th Cir. 2024) (Sanchez, J., concurring) (emphasizing that the focus on principles, as opposed to specific historical analogues, is the "important methodological point" from *Rahimi*).

II. Alternatively, There Is a Circuit Split that Merits Plenary Review and the Question Presented Is Important.

Alternatively, this case merits review because there is a split among the circuit courts on whether age regulations like Minnesota's violate the Second Amendment.

A. There Is a Circuit Split Regarding the Constitutionality of Increased Gun Regulation for 18-to-20-Year-Olds.

The Eighth Circuit's decision here and the Third Circuit's just-issued, post-remand decision in *Lara* conflict with the Tenth Circuit's recent decision in *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96 (10th Cir. 2024). There, the Tenth Circuit upheld a Colorado statute on 18-to-20-year-olds' access to firearms, finding it was consistent with the Second Amendment. *See generally id.*

The Colorado statute criminalizes the purchase and sale of firearms to people under 21, with exceptions for young people in the military or law enforcement. *Id.* at 104-05. Before the law became effective, the plaintiffs challenged it as infringing the Second Amendment rights of those aged 18 to 20. The district court preliminarily enjoined the statute. *Id.* at 106.

The Tenth Circuit reversed. It found that Colorado's law was of the type that this Court has found presumptively legal in *Heller*, *McDonald*, and *Bruen*. *Id.* at 118-28. The opinion emphasized Justice Alito's concurrence in *Bruen*, which "strongly alluded to the constitutionality of a minimum purchase age of 21." *Id.* at 124. It also reviewed the historical and social science evidence proffered by Colorado, concluding that the district court abused its discretion when it ignored that evidence. *Id.* at 124-128.

The Tenth Circuit's decision conflicts with the decisions of the Eighth and Third Circuits. The Eighth Circuit concluded that Minnesota's refusal to issue public-carry permits to 18-to-20-year-olds is unconstitutional. Pet. App. 37a. The Third Circuit reached the same conclusion on remand with respect to Pennsylvania's statutory scheme. *Lara*, 2025 WL 86539, at *14. But the Tenth Circuit found that a similar age-based purchase restriction in Colorado was presumptively constitutional. *Rocky Mountain Gun Owners*, 121 F.4th at 118-28.

The conflicting decisions also reflect significant methodological divides. In *Rocky Mountain*, the Tenth Circuit majority held that Colorado's age regulation was presumptively lawful at *Bruen* "step one," so "the plain text of the Second Amendment" was not implicated. *Id.*

at 120. The majority thus did not proceed to step two's "history and tradition test." *Id.* at 114, 120-21. The Eighth and Third Circuits, by contrast, viewed step two's history-and-tradition test as critical to the constitutional question (as did one concurring member of the Tenth Circuit panel). *See* Pet. App. 23a-37a; *Lara*, 2025 WL 86539, at *8-12; *Rocky Mountain Gun Owners*, 121 F.4th at 128-29 (McHugh, J., concurring). Similarly, the Eighth Circuit disregarded Minnesota's unrebutted expert evidence that 18-to-20-year-olds pose special risks of dangerousness. Pet. App. 27a-28a. The Tenth Circuit, however, found the same unrefuted scientific evidence "compelling." *Rocky Mountain Gun Owners*, 121 F.4th at 126. The Court should grant certiorari to resolve these conflicts.[8]

B. Similar Age Regulation Issues Are Pending in Multiple Other Jurisdictions.

The existing circuit split is likely to deepen, as there are cases pending in federal courts around the country challenging similar age regulations by the federal government and at least four states.

Those suits are pending in three different circuit courts. The Eleventh Circuit recently sat en banc to rehear a challenge to a Florida statute precluding 18-to-20-year-olds from purchasing firearms. *Bondi*, 72 F.4th 1346. Meanwhile, the Fourth and Fifth Circuits are

8. The Tenth Circuit is not alone. In *Nat'l Rifle Ass'n v. Bondi*, a panel of the Eleventh Circuit held that a Florida statute precluding those under 21 from buying firearms was constitutional. 61 F.4th 1317 (11th Cir. 2023). But the Eleventh Circuit has since vacated the panel's opinion and granted rehearing en banc. *Nat'l Rifle Ass'n v. Bondi*, 72 4th 1346 (11th Cir. 2023).

considering challenges to federal statutes that ban federal firearm licensees from selling handguns to people under 21. 18 U.S.C. § 922(b)(1), (c)(1); *see*, *e.g.*, *Brown v. ATF*, No. 23-2275 (4th Cir.) (scheduled for oral argument on Jan. 30, 2025); *McCoy v. ATF*, No. 23-2085 (4th Cir.) (stayed pending Fourth Circuit's disposition in *Brown v. AFT*, No. 23-2275); *Reese v. Bureau of Alcohol*, No. 23-30033 (5th Cir.) (reargued Sept. 23, 2024).

More cases are pending in the federal district courts. For example, district courts are considering statutes passed in California, Georgia, and Illinois regulating gun use by those between 18 and 20. *E.g.*, *Chavez v. Bonta*, No. 3:19-cv-01226 (S.D. Cal.) (on remand from 9th Circuit); *Baughcum v. Jackson*, 3:21-cv-00036 (S.D. Ga.) (on remand from 11th Circuit); *Meyer v. Raoul*, Case No. 3:21-cv-00518 (S.D. Ill.). The volume of cases pending in various federal courts demonstrates that this issue is an important one, and that either the Court should GVR to ensure that Minnesota's statute enjoys the benefit of the percolation among the federal courts, or that it should grant plenary review now to give direction to the lower courts.

C. Age Regulation of Access to Firearms Is an Important Issue.

The issue presented here is important. More than thirty states and the federal government have determined that public safety is enhanced when people under 21 have modest restrictions on their gun access.[9] Any determination that the Fourteenth Amendment prevents

9. *See supra* 3 n.4 (collecting statutes).

these states from exercising their broad police powers in the arena of minors' firearm access and use is a significant issue of federalism. *See Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996) (noting that "the States traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons" (internal quotation marks and citation omitted)).

States across the political spectrum have attempted to reduce the gun violence by and against young people. As the number of gun deaths increases rapidly, these state efforts take on additional significance. The U.S. Centers for Disease Control and Prevention reports that in 2021, 48,830 people died from gun-related injuries in the U.S., a 23% increase over 2019.[10] The leading cause of death among children and teens is firearm injuries.[11] The violence impacts some communities more than others; the gun suicide rate among Latinos aged 15 to 19 has doubled over the past decade, while the gun suicide rate among African Americans in that age range has tripled in the same period.[12] Minnesota's expert reported that "in 2019, the single most homicidal age group in the nation was age 19, with both 18- and 20-year-olds having higher murder

10. John Gramlich, *What the data says about gun deaths in the U.S.*, Pew Research Center (Apr. 26, 2023), https://perma.cc/99R9-AGU4.

11. U.S. Centers for Disease Control and Prevention, *Fast Facts: Firearm Injury and Death* (July 5, 2024), https://perma.cc/M99U-9GLW.

12. John Hopkins Center for Gun Violence Solutions, *Continuing Trends: Five Key Takeaways from 2023 CDC Provisional Gun Violence Data* (Sept. 12, 2024), https://perma.cc/P9YB-QNW5.

arrest rates than any other age groups except for age 19." AA 114 (citing U.S. Fed. Bureau of Investigation, *Crime in the United States Table 19, Rate: Number of Crimes per 100,000 Inhabitants* (Sept. 28, 2020)). Given the gravity of these statistics, courts should not lightly set aside legislative attempts to address the increase in gun violence by young people.

CONCLUSION

The Court should GVR this case so the parties and the Eighth Circuit can apply the methodology from *Rahimi* in evaluating Minnesota's common-sense age regulation on the public carry of pistols. Alternatively, the Court should grant the petition and conduct plenary review.

Dated: January 17, 2025

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, FILED JULY 16, 2024

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 23-2248

KRISTIN WORTH; AUSTIN DYE; AXEL ANDERSON; MINNESOTA GUN OWNERS CAUCUS; SECOND AMENDMENT FOUNDATION; FIREARMS POLICY COALITION, INC.,

Plaintiffs - Appellees

v.

BOB JACOBSON, IN HIS INDIVIDUAL CAPACITY AND IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE MINNESOTA DEPARTMENT OF PUBLIC SAFETY,

Defendant - Appellant,

KYLE BURTON, IN HIS INDIVIDUAL CAPACITY AND IN HIS OFFICIAL CAPACITY AS SHERIFF OF MILLE LACS COUNTY, MINNESOTA; DAN STARRY, IN HIS INDIVIDUAL CAPACITY AND IN HIS OFFICIAL CAPACITY AS SHERIFF OF WASHINGTON COUNTY, MINNESOTA; TROY WOLBERSEN, IN HIS INDIVIDUAL CAPACITY AND IN HIS OFFICIAL CAPACITY AS SHERIFF OF DOUGLAS COUNTY, MINNESOTA,

Defendants,

Appendix A

EVERYTOWN FOR GUN SAFETY, FORMERLY KNOWN AS EVERYTOWN FOR GUN SAFETY ACTION FUND; UNITED STATES; STATE OF ILLINOIS; STATE OF ARIZONA; STATE OF CALIFORNIA; STATE OF COLORADO; STATE OF CONNECTICUT; STATE OF DELAWARE; DISTRICT OF COLUMBIA; STATE OF HAWAII; STATE OF MARYLAND; STATE OF MASSACHUSETTS; STATE OF MICHIGAN; STATE OF NEW JERSEY; STATE OF NEW MEXICO; STATE OF NEW YORK; STATE OF NORTH CAROLINA; STATE OF OREGON; STATE OF PENNSYLVANIA; STATE OF RHODE ISLAND; STATE OF VERMONT; STATE OF WASHINGTON; GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE; MARCH FOR OUR LIVES FOUNDATION; BRADY CENTER TO PREVENT GUN VIOLENCE; HOLLY BREWER,

Amici on Behalf of Appellant(s),

v.

NATIONAL RIFLE ASSOCIATION OF AMERICA, INC.,

Amicus on Behalf of Appellee(s).

Filed July 16, 2024, Submitted February 13, 2024

Appendix A

OPINION

Before SMITH, Chief Judge,[1] BENTON, and STRAS, Circuit Judges.

BENTON, Circuit Judge.

Minnesota's permit-to-carry statute, among its objective criteria, requires applicants to be at least 21 years old. Three gun rights organizations—the Second Amendment Foundation, the Firearms Policy Coalition, Inc., and the Minnesota Gun Owners Caucus, through their members Kristin Worth, Austin Dye, Alex Anderson, and Joe Knudsen—challenge this age restriction for violating the Second and Fourteenth Amendments to the United States Constitution. The district court[2] granted summary judgment to the Plaintiffs, finding the Second Amendment's plain text covered their conduct and that the Government did not meet its burden to demonstrate that restricting 18 to 20-year-olds' right to bear handguns in public was consistent with this Nation's historical tradition of firearm regulation. Minnesota appeals. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

I.

The Minnesota Citizens' Personal Protection Act of 2003 criminalized carrying handguns by ordinary people

1. Judge Smith completed his term as chief judge of the circuit on March 10, 2024. See 28 U.S.C. § 45(a)(3)(A).

2. The Honorable Katherine M. Menendez, United States District Judge for the District of Minnesota.

(non-peace officers) in "a public place," unless they have a permit-to-carry. **Minn. Stat. § 624.714, subd. 1a**. To get a permit-to-carry, among other objective criteria, an applicant must be "at least 21 years old." **Id. at subd. 2(b)(2)**. State law, since 2003, therefore, bans those under 21 years old from carrying handguns in public ("the Carry Ban").

The individual plaintiffs wish to carry handguns in public. The district court found: "Except for failing to meet the age requirement," they were "otherwise eligible to receive a permit to carry a pistol in Minnesota." ***Worth v. Harrington***, 666 F. Supp. 3d 902, 908 (D. Minn. 2023). The organizational plaintiffs collectively have thousands of members in Minnesota.

The Plaintiffs sued the Commissioner of the Minnesota Department of Public Safety (the permitting scheme's state administrator) and the Sheriffs of Mille Lacs County, Douglas County, and Washington County (local adjudicators of permit applications) in their official capacities.[3] The Plaintiffs allege Minnesota's statute is

3. The Commissioner tries to invoke sovereign immunity. *See* ***Ex parte Young***, 209 U.S. 123, 156, 28 S. Ct. 441, 52 L. Ed. 714 (1908). If sovereign immunity applies, then this court must dismiss the claims against the Commissioner for lack of subject-matter jurisdiction. *See* ***Seminole Tribe of Fla. v. Fla.***, 517 U.S. 44, 75-76, 116 S. Ct. 1114, 134 L. Ed. 2d 252 (1996). Under *Ex Parte Young*, Eleventh Amendment sovereign immunity does not apply and "a private party can sue a state officer in his official capacity to enjoin a prospective action that would violate federal law." ***281 Care Comm. v. Arneson***, 638 F.3d 621, 632 (8th Cir. 2011). For a

unconstitutional, facially and as applied to the individual plaintiffs.

Specifically, the Plaintiffs asked for the following relief:

> a) Declare that Minn. Stat. § 624.714, subd. 1a and § 624.714, subd. 2(b)(2), their derivative regulations, and all related laws, policies, practices, and customs violate—facially, as applied to otherwise qualified 18-20-year-olds, or as applied to otherwise qualified 18-20-year-old women—the right of Plaintiffs and Plaintiffs' similarly situated members to keep and bear arms as guaranteed by the Second Amendment

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defendant "to be amenable for suit challenging a particular statute the [defendant] must have some connection with the enforcement of the act." ***Id.*** (internal quotations omitted); ***Calzone v. Hawley***, 866 F.3d 866, 869 (8th Cir. 2017) (same). The district court properly found the Commissioner had some connection with enforcing the statutory scheme. The Commissioner, under the Minnesota permit statute, has several duties connected with the statute's enforcement: making application forms available on the internet, providing relevant data to Sheriffs, and collecting processing and renewal fees. **Minn. Stat. § 624.714, subd. 3**. The Commissioner is also required to adopt statewide standards governing the form and contents of all permit-to-carry applications. **Minn. Stat. § 624.7151**. In fact, the applications require the applicants to provide his or her date of birth, a key to enforcing the statute against those under 21 years old. Because he has some connection to enforcing the Carry Ban, the Commissioner is not entitled to state sovereign immunity.

and Fourteenth Amendments to the United States Constitution; [and]

b) Enjoin Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with him from enforcing, against Plaintiffs and Plaintiffs' similarly situated members Minn. Stat., § 624.714, subd. 1a and § 624.714, subd. 2(b)(2), their derivative regulations, and all related laws, policies, practices, and customs that would impede or criminalize Plaintiffs and Plaintiffs' similarly situated members' exercise of their right to keep and bear arms.

Worth, 666 F. Supp. 3d at 926-27.

The district court applied the two-part test in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 17, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022): (1) a textual analysis of the Second Amendment and (2) a historical analysis of the Nation's tradition of firearm regulation. *See* ***Worth***, 666 F. Supp. 3d at 910. The district court ruled that the plain text of the Second Amendment covered the Plaintiffs' conduct because 18 to 20-year-olds are among "the people" and that the Second Amendment presumptively guarantees Plaintiffs "the right" to bear handguns in public for self-defense. *See* ***id***. at 912-16. It then ruled that the government did not meet its burden to demonstrate that restricting the right to bear arms for 18 to 20-year-olds, based on their age, is consistent with

the Nation's history and tradition of firearm regulations. *See* ***id.*** at 916-25. It granted summary judgment to the Plaintiffs, declared the age restriction facially unconstitutional for otherwise qualified 18 to 20-year-olds, and enjoined enforcement against them. The district court stayed the injunction, pending appeal. The determination that the Carry Ban is facially unconstitutional, for otherwise qualified 18 to 20-year-olds, is on appeal.

This court reviews de novo a grant of summary judgment. ***Torgerson v. City of Rochester***, 643 F.3d 1031, 1042 (8th Cir. 2011) (en banc). As this is a facial challenge, the "individual circumstances" are not important as the Carry Ban must be "unconstitutional in *all* its applications" to 18 to 20-year-olds. ***United States v. Veasley***, 98 F.4th 906, 909 (8th Cir. 2024), *quoting* ***Bucklew v. Precythe***, 587 U.S. 119, 138, 139 S. Ct. 1112, 203 L. Ed. 2d 521 (2019).

"In effect," the Plaintiffs, by asking this court to affirm the grant of the facial challenge, are "speaking for a range of people," all those 18 to 20-year-olds who want to publicly carry a firearm for self-defense. ***Id.*** at 910. A facial challenge "requires [the challenger] to 'establish that no set of circumstances exists under which the Act would be valid.'" ***United States v. Rahimi***, 602 U.S., 219 L. Ed. 2d 351, 2024 WL 3074728, at *6 (U.S. 2024), *quoting* ***United States v. Salerno***, 481 U. S. 739, 745, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987). "To counter a facial challenge . . . all the government must do is identify constitutional applications . . . using the same text-and-historical-understanding framework." ***United States v. Veasley***, 98 F.4th at 910.

II.

All the individual plaintiffs, now over 21 years old, may now apply for a permit-to-carry. Their claims—by and through whom the organizational plaintiffs had standing—are moot. *See* ***Hawse v. Page***, 7 F.4th 685, 694 (8th Cir. 2021).

To avoid mootness of the entire case, before the last individual plaintiff turned 21, the Plaintiffs moved to supplement the record with the affidavit of Joe Knudsen—a 19-year-old Minnesotan seeking a permit-to-carry, who is a member of all three organizations—in order to continue the standing of the organizational plaintiffs.

The organizational plaintiffs assert "standing solely as the representative of its members." ***Warth v. Seldin***, 422 U.S. 490, 511, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975). To have standing "an organization must demonstrate that '(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.'" ***Students for Fair Admissions, Inc. v. Pres. and Fellows of Harvard College***, 600 U.S. 181, 199, 143 S. Ct. 2141, 216 L. Ed. 2d 857 (2023), *quoting* ***Hunt v. Washington State Apple Advert. Comm'n***, 432 U.S. 333, 343, 97 S. Ct. 2434, 53 L. Ed. 2d 383 (1977); ***Summers v. Earth Island Inst.***, 555 U.S. 488, 498, 129 S. Ct. 1142, 173 L. Ed. 2d 1 (2009) ("we held that the organization lacked standing because it failed to 'submit affidavits . . . showing, through

specific facts . . . that one or more of [its] members would . . . be 'directly' affected'"), *quoting* ***Lujan v. Defenders of Wildlife***, 504 U.S. 555, 563, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992).

As for (a), since the filing of the complaint, the organizational plaintiffs have demonstrated that at least one of their members has had continuous standing. *See* ***Friends of the Earth, Inc. v. Laidlaw Envtl. Services (TOC), Inc.***, 528 U.S. 167, 190, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000) ("[T]he description of mootness as 'standing set in a time frame' is not comprehensive."). *Cf.* ***Religious Sisters of Mercy v. Becerra***, 55 F.4th 583, 601-02 (8th Cir. 2022) (finding organizational plaintiff "lacks associational standing to sue on behalf of unnamed members" when it failed to identify any members who suffered the requisite harm).

As for (b), each organizational plaintiff's purpose is to promote gun rights. The interest they seek to protect, the exercise of the individual right to bear arms, is germane to their purpose.

As for (c), Plaintiffs assert that the Carry Ban is facially unconstitutional, and the relief sought is a permanent injunction on its enforcement. Neither requires an individual plaintiff's participation in the lawsuit. *See* ***Veasley***, 98 F.4th at 909. Thus, the organizational plaintiffs still have standing in this suit through Knudsen.

Minnesota does not contend that the organizational plaintiffs fail to meet the organizational standing test.

Instead, Minnesota asserts that the court should not supplement the record because the record below has no evidence about Knudsen. *See* ***Dakota Indus., Inc. v. Dakota Sportswear, Inc.***, 988 F.2d 61, 63 (8th Cir. 1993) ("Generally, an appellate court cannot consider evidence that was not contained in the record below. However, this rule is not etched in stone. When the interests of justice demand it, an appellate court may order the record of a case enlarged.") (citations omitted). *Cf.* ***Carpenters' Pension Fund of Illinois v. Neidorff***, 30 F.4th 777, 795 n.16 (8th Cir. 2022) (maintaining that the general principle of not supplementing the record on appeal is most applicable when the supplemental evidence does not impact the outcome of the present case); ***Torres v. City of St. Louis***, 39 F.4th 494, 503-04 (8th Cir. 2022) (same).

In a facial challenge, "individual circumstances" are irrelevant apart from establishing standing. ***Veasley***, 98 F.4th at 909. *See* ***Ezell v. City of Chicago***, 651 F.3d 684, 697 (7th Cir. 2011) ("In a facial constitutional challenge, individual application facts do not matter. Once standing is established, the plaintiff's personal situation becomes irrelevant."). Specific to mootness, courts "may consider any evidence bearing on whether the appeal has become moot." ***Constand v. Cosby***, 833 F.3d 405, 409 (3d Cir. 2016). *See* ***Lara v. Commr. Pennsylvania State Police***, 91 F.4th 122, 138 n.22 (3d Cir. 2024) (taking judicial notice of an individual plaintiff with standing to allow similarly situated organizational plaintiffs to continue their suit); ***Reese v. BATFE***, No. 23-30033 (5th Cir. 2024) (order granting a similar motion to supplement the record).

In *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701, 718, 127 S. Ct. 2738, 168 L. Ed. 2d 508 (2007), after an organization's members with standing aged out, the Supreme Court accepted an affidavit from the organization listing other members with standing. *See* ***Ala. Legis. Black Caucus v. Alabama***, 575 U.S. 254, 285-86, 135 S. Ct. 1257, 191 L. Ed. 2d 314 (2015) (Scalia, J., dissenting) (describing supplementation of the record in *Parents Involved*).

This court grants the motion to supplement the record (and denies the related motion to dismiss the appeal). The organizational plaintiffs have an unbroken chain of standing through Knudsen.

III.

The Second Amendment reads: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." **U.S. Const. amend. II**. The Supreme Court, in *Heller*, recognized that the Second Amendment's right to keep and bear arms "protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes. . . ." ***District of Columbia v. Heller***, 554 U.S. 570, 577, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008).

"[I]t has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right," "the natural right" to "resistance," "self-preservation and defence,"

not merely a common law right. ***Id.*** at 593-94, *quoting* 1 William Blackstone, **Commentaries On The Laws Of England** 139-40 (1765).

The Supreme Court has applied that right against the states through the Fourteenth Amendment (with a plurality incorporating it through the Due Process Clause and Justice Thomas recognizing it as within the Privileges or Immunities Clause). ***McDonald v. City of Chicago***, 561 U.S. 742, 791, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010) (plurality opinion) ("We therefore hold that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*"); ***id.*** at 858 (Thomas, J., concurring in part) ("I agree with the Court that the Second Amendment is fully applicable to the States. I do so because the right to keep and bear arms is guaranteed by the Fourteenth Amendment as a privilege of American citizenship."). Thus, courts apply against the states, through the Fourteenth Amendment, the right to bear arms—the natural right of resistance, self-preservation, and defense.

"[C]onsistent with *Heller* and *McDonald*," *Bruen* held that "the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home." ***Bruen***, 597 U.S. at 10. The *Heller* opinion demands "a test rooted in the Second Amendment's text, as informed by history." ***Id.*** at 19.

Before *Bruen*, many circuits—but not this court—had "coalesced around a 'two-step' framework for analyzing Second Amendment challenges that combines history with

means-end scrutiny." ***Id.*** at 17. The Supreme Court, in *Bruen*, rejected the two-step test as "one step too many." ***Id.*** at 19. The Court provided a new test to evaluate the text consistent with *Heller*'s reasoning:

> [W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

Id., *quoting* ***Konigsberg v. State Bar of Cal.***, 366 U.S. 36, 50, n.10, 81 S. Ct. 997, 6 L. Ed. 2d 105 (1961).

The test has two parts: text, then history. (1) *If* a "focused" application of "the 'normal and ordinary' meaning of the Second Amendment's language" "covers an individual's conduct," *then* (2) "the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." ***Id.*** at 17, 19-20, *quoting* ***Heller***, 554 U.S. at 576-77.

First, this court conducts a textual analysis, determining if the Amendment's plain text covers the

Plaintiffs—are they part of 'the people' with a right to keep and bear arms? If so, then that conduct is presumptively protected.

Second, the burden shifts to the government to demonstrate that the regulation is consistent with the Nation's historical tradition of firearm regulation. "[W]hen the Government regulates arms-bearing conduct, as when the Government regulates other constitutional rights, it bears the burden to 'justify its regulation.'" ***Rahimi***, 219 L. Ed. 2d 351, 2024 WL 3074728, at *6, *quoting* ***Bruen***, 597 U.S. at 24. This court analyzes the government's identified historical analogues, whether "the government identif[ies] a well-established and representative historical *analogue*, not a historical *twin*." ***Bruen***, 597 U.S. at 30 (emphasis in original). If the regulation is consistent with the Nation's historical tradition of firearm regulation, it does not infringe the right of the people. If not, then the regulation improperly infringes the individual right to keep and bear arms.

A.

"*Bruen* does not command us to consider only 'conduct' in isolation and simply assume that a regulated person is part of 'the people.'" ***United States v. Sitladeen***, 64 F.4th 978, 987 (8th Cir. 2023), *citing Bruen*, 597 U.S. at 24.[4] Instead, we must begin by asking whether the Carry

4. In its reply brief, Minnesota argues that Plaintiffs did not meet their "burden" of proving *Bruen*'s textual part because they did not submit expert reports or facts about the Second Amendment's text. This court does not normally consider

Ban "governs conduct that falls within the plain text of the Second Amendment." ***Id.*** at 985, *citing* ***Bruen***, 597 U.S. at 17. That is, *Bruen* tells us to begin with a threshold question using the plain text, are the Plaintiffs part of the people? ***Range v. Attorney General***, 69 F.4th 96, 101 (3d Cir. 2023) (en banc) ("After *Bruen*, we must first decide whether the text of the Second Amendment applies to a person and his proposed conduct."), *cert. granted, vacated and remanded*, No. 23-374, 2024 U.S. LEXIS 2917 (U.S. July 2, 2024).

Minnesota asserts that ordinary, law-abiding, adult citizens that are 18 to 20-year-olds are not members of "the people," and, thus, the Plaintiffs are not protected under the plain text of the Second Amendment. *See* ***Bruen***, 597 U.S. at 31-32 ("It is undisputed that . . . ordinary, law-abiding, adult citizens—are part of 'the people' whom the Second Amendment protects"); ***Maryland Shall Issue, Inc. v. Moore***, 86 F.4th 1038, 1042-43 (4th Cir. 2023), *reh'g en banc granted*, 2024 U.S. App. LEXIS 766, 2024 WL 124290 (4th Cir. Jan. 11, 2024) ("'the people' whom the Second Amendment protects includes, at a minimum, 'ordinary, law-abiding, adult citizens'"), *quoting* ***Bruen***, 597 U.S. at 31-32; ***Lara***, 91 F.4th at 131 n.9 ("*Bruen* also stated that the protections of the Second Amendment extend to 'ordinary, law-abiding, adult citizens.'"), *quoting*

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arguments raised in a reply brief. ***Gatewood v. City of O'Fallon***, 70 F.4th 1076, 1080 (8th Cir. 2023). Regardless, this requirement contradicts *Bruen*'s command that part one is a "focused" application of "the 'normal and ordinary' meaning" that would have been discernable by the people. ***Bruen***, 597 U.S. at 20, *quoting* ***Heller***, 554 U.S. at 576-77.

Bruen, 597 U.S. at 31-32. *See generally* ***Sitladeen***, 64 F.4th at 984 (noting that *Bruen* did not specifically "address the meaning of 'the people'" in the Second Amendment).

Minnesota argues that 18 to 20-year-olds are not members of "the people" because at common law, individuals did not have rights until they turned 21 years old. *See* 1 William Blackstone, ***Commentaries on the Laws of England*** 451 (Oxford, Clarendon Press 1765) ("So that full age in male or female, is twenty one years . . . who till that time is an infant, and so styled in law."); John Bouvier, **1 Institutes of American Law 148** (1858) (explaining that upon reaching the age of majority, "every man is in full enjoyment of his civil and political rights.").

Ordinary, law-abiding, adult citizens that are 18 to 20-year-olds are members of the people because: (1) they are members of the political community under *Heller*'s "political community" definition; (2) the people has a fixed definition, though not fixed contents; (3) they are adults; and (4) the Second Amendment does not have a freestanding, extratextual dangerousness catchall.

First, the right to keep and bear arms "is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The second amendment declares that it shall not be infringed . . . ." ***United States v. Cruikshank***, 92 U.S. 542, 553, 23 L. Ed. 588 (1876); ***Heller***, 554 U.S. at 592 (same). The people codified that right, and that political tradition, in the Constitution. *Heller* recognizes the universal applicability of that right to "all Americans." ***Id.*** at 581.

Heller and *Bruen* command focus on the "normal and ordinary" meaning of the text of the Second Amendment. ***Bruen***, 597 U.S. at 20, *quoting* ***Heller***, 554 U.S. at 576-77; ***Heller***, 554 U.S. at 576 ("the Constitution was written to be understood by the voters"), *citing* ***United States v. Sprague***, 282 U.S. 716, 731, 51 S. Ct. 220, 75 L. Ed. 640 (1931). The 1773 edition of Samuel Johnson's dictionary definition of people reaffirms the definition used in *Heller*: "A nation; these who compose a community." **1 Dictionary of the English Language** (4th ed.) (reprinted 1978); *see* N. Bailey, **An Universal Etymological English Dictionary** 601-02 (1770) (defining "people" as "the whole Body of Persons who live in a Country[ ] or make up a Nation."). *See generally* ***United States v. Duarte***, 101 F.4th 657, 673 (9th Cir. 2024) (discussing additional, analogous dictionary definitions of "people").

Minnesota must overcome the "strong presumption" that the right applies to "all Americans." ***Heller***, 554 U.S. at 581. Further, "the term unambiguously refers to all members of the political community, not an unspecified subset." ***Id.*** at 580.

Eighteen to 20-year-olds are included in the "political community." *See* ***Cruikshank***, 92 U.S. at 549 ("Citizens are the members of the political community to which they belong. They are the people who compose the community, and who, in their associated capacity, have established or submitted themselves to the dominion of a government for the promotion of their general welfare and the protection of their individual as well as their collective rights."); ***United States v. Verdugo-Urquidez***, 494 U.S. 259, 265,

110 S. Ct. 1056, 108 L. Ed. 2d 222 (1990) (holding that "the people" covers even some non-citizens who are members of the "national community").[5] *See also* ***Duarte***, 101 F.4th at 673 ("This notion that one's status as a 'citizen' signified his membership among 'the people' traces its roots to English common law.").

Second, Minnesota asserts that because 18 to 20-year-olds did not possess all their "civil and political rights" as minors at the founding, they cannot today be considered members of the people. *See* 1 John Bouvier, **Institutes of American Law** 148 (Robert Peterson, ed., 1851). Minnesota emphasizes that the "political community at the time of the founding" was restricted not only to those over the age of 21, but also to "eligible voters, namely white, male, yeomen farmers." It concludes that because those 18 to 20-year-olds were not legally autonomous members of the political community at the founding, they are not part of the people in the plain text of the Second Amendment.

Arguments of this type, focusing on the original contents of a right instead of the original definition—i.e.,

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5. The parties dispute whether this court should use the "political community" definition of the people from *Heller* and *Bruen*, or the "national community" definition from *Verdugo-Urquidez*. *See* Note, *The Meaning(s) of 'The People' in the Constitution*, 126 **Harv. L. Rev.** 1078, 1079-86 (2013) (arguing *Verdugo-Urquidez*'s "national community" definition is more expansive than *Heller*'s "political community" definition). Any difference between these definitions does not affect this case. This court relies on the definition from *Heller* and *Bruen*, "political community."

that only those people considered to be in the political community in 1791 "are protected by the Second Amendment," instead of those meeting the original definition of being within the political community—are "bordering on the frivolous." ***Heller***, 554 U.S. at 582. "We do not interpret constitutional rights this way." ***Id.*** (examining the interpretation of First and Fourth amendments, which consider modern forms of communications and search, respectively). *Heller* rejected the idea that the Second Amendment protected only the original contents of the defined term "arms" and, instead, applied that original definition "to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." ***Id.*** at 582. *Cf.* ***Bruen***, 597 U.S. at 47 ("Whatever the likelihood that handguns were considered 'dangerous and unusual' during the colonial period, they are indisputably in 'common use' for self-defense today."). "Although its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." ***Id.*** at 28.

Similarly, *Heller* defines "the people" as "all members of the political community, not an unspecified subset." ***Heller***, 554 U.S. at 580 & 582. "[T]he Second Amendment extends, prima facie," to all members of the political community, "even those that were not [included] at the time of the founding." ***Id.*** Contrary to Minnesota's assertion, the political community is not confined to those with political rights (eligible voters) at the founding. *See* ***Verdugo-Urquidez***, 494 U.S. at 265; ***Bush v. Vera***, 517

U.S. 952, 1075 n.9, 116 S. Ct. 1941, 135 L. Ed. 2d 248 (1996) (Souter, J., dissenting) ("[Voting] is an assertion of belonging to a political community . . . ."), *quoting* Kenneth L. Karst, *Paths to Belonging: The Constitution and Cultural Identity*, 64 **N.C. L. Rev.** 303, 347, 350 (1986).

Even if Minnesota were correct in its assertions about the political community's definition, the contents of that defined term have changed. Since the founding, the guarantee of political rights has constitutionally expanded, especially in the right to vote. *See* **U.S. Const. amend. XV** (proscribing the abridgment of voting rights based on race); **U.S. Const. amend. XIX** (proscribing the abridgment of voting rights based on sex); **U.S. Const. amend. XXIV** (proscribing the poll tax); **U.S. Const. amend. XXVI** (proscribing the abridgment of voting rights based on age for those over 18). Reading the Second Amendment in the context of the Twenty-Sixth Amendment unambiguously places 18 to 20-year-olds within the national political community. *See* ***Armstrong v. Exceptional Child Ctr., Inc.***, 575 U.S. 320, 325-26, 135 S. Ct. 1378, 191 L. Ed. 2d 471 (2015) (explaining that constitutional exegesis requires reading each provision "in the context of the Constitution as a whole," suggesting later amendments can impact the context of prior amendments); John F. Manning, *Foreword: The Means of Constitutional Power*, 128 **Harv. L. Rev.** 1, 61 (2014) (arguing that constitutional textual provisions are best understood "only after reading its text in the context of the Constitution as a whole. Reading a text in the context of a surrounding text is a standard form of textual exegesis."). Reading the Constitution as a whole, the Third Circuit

recently (correctly) explained that "consistency has a claim on us." ***Lara***, 91 F.4th at 131. Those 18 to 20-years-old are "among 'the people' for other constitutional rights such as the right to vote, freedom of speech, peaceable assembly, government petitions, and the right against unreasonable government searches and seizures." ***Id.*** (internal citations omitted). "[T]here is no reason to adopt an inconsistent reading of 'the people.'" ***Id.***, *citing* ***Range***, 69 F.4th at 102. An inconsistent reading subjugates "the constitutional right to bear arms in public for self-defense [to] . . . 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.'" ***Id.*** at 132, *quoting* ***Bruen***, 597 U.S. at 70.

Minnesota asserts that this court has held that "the people" can have different meanings in different parts of the Constitution. *See* ***Sitladeen***, 64 F.4th at 983-84. In *Sitladeen*, this court held that *United States v. Flores*, 663 F.3d 1022, 1023 (8th Cir. 2011) is still good law post-*Bruen*, reaffirming the holding in *Flores* that illegal aliens are not part of the people. ***Id.***, *discussing* ***Flores***, 663 F.3d at 1023, *citing* ***United States v. Portillo-Munoz***, 643 F.3d 437, 441-42 (5th Cir. 2011). That holding is consistent with *Heller*—at a minimum, "all Americans" in the "political community" that are law-abiding "citizens" are members of the people. ***Heller***, 554 U.S. at 580 & 635; ***Kanter v. Barr***, 919 F.3d 437, 451-53 n.3 (7th Cir. 2019) (Barrett, J. dissenting) (interpreting *Heller*'s mandate that "all Americans" are members of the people to mean that the textual basis for gun regulation does not come from a narrow definition of the people, even those presumptively stripped of the right (i.e. felons) are members of the

people), *majority opinion abrogated by* ***Bruen***, 597 U.S. at 19. Even if the 18 to 20-year-olds were not members of the "political community" at common law, they are today.

Third, it is not disputed that plaintiffs are "ordinary," "law-abiding," or "citizens," only whether they are "adult" citizens. The "age of majority or minority is a status" "that lack[s] content without reference to the right at issue" rather than a fixed or vested right. ***Hirschfeld v. BATFE***, 5 F.4th 407, 435, *vacated as moot*, 14 F.4th 322 (4th Cir. 2021), *quoting* Jeffrey F. Ghent, Annotation, *Statutory Change of Age of Majority as Affecting Pre-Existing Status or Rights*, 75 **A.L.R. 3d** 228 § 3. Minnesota seems to assert the age of majority is fixed at 21 permanently. *But see* **Minn. Stat. § 645.451, subd. 3**. ("'Adult' means an individual 18 years of age or older."). That is not so. For political rights, the Twenty-Sixth Amendment sets the age of majority at age 18. *See* **U.S. Const. amend. XXVI**.

Fourth, Minnesota states that from the founding, states have had the power to regulate guns in the hands of irresponsible or dangerous groups, such as 18 to 20-year-olds. At the step one "plain text" analysis, a claim that a group is "irresponsible" or "dangerous" does not remove them from the definition of the people.

> Neither felons nor the mentally ill are categorically excluded from our national community[, the people]. That does not mean that the government cannot prevent them from possessing guns. Instead, it means that the question is whether the government has the

> power to disable the exercise of a right that they otherwise possess, rather than whether they possess the right at all.

Kanter, 919 F.3d at 453 (Barrett, J., dissenting). *See* ***Rahimi***, 219 L. Ed. 2d 351, 2024 WL 3074728, at *11 ("[W]e reject the Government's contention that Rahimi may be disarmed simply because he is not 'responsible.'").

Importantly, the Second Amendment's plain text does not have an age limit. *See e.g.*, **U.S. Const. art. I, § 2 & 3** (asserting, in the plain text, a 25-year-old age requirement to serve in the House of Representatives and a 30-year-old age requirement to serve in the Senate); **U.S. Const. art. III § 2** (asserting, in the plain text, a 35-year-old age requirement to serve as President); ***Hirschfeld***, 5 F.4th at 421 ("In other words, the Founders considered age and knew how to set age requirements but placed no such restrictions on rights, including those protected by the Second Amendment.").

Ordinary, law-abiding 18 to 20-year-old Minnesotans are unambiguously members of the people. Because the plain text of the Second Amendment covers the plaintiffs and their conduct, it is presumptively constitutionally protected and requires Minnesota to proffer an adequate historical analogue consistent with the Nation's historical tradition of firearm regulation. ***Bruen***, 597 U.S. at 19.

B.

The historical analysis presumes that the individuals' conduct is protected and requires Minnesota to "identify a

well-established and representative historical analogue." ***Id.*** at 30. "[W]hether modern and historical regulations impose a *comparable burden* on the right of armed self-defense and whether that burden is *comparably justified* are 'central' considerations when engaging in an analogical inquiry"—the "how and why," respectively, must be analogous. ***Id.*** at 29 (emphasis added).

As a threshold matter, the district court addressed which time period is better for understanding the scope of the Second Amendment as applied to the states, "1791 or 1868?" ***Worth***, 666 F.Supp.3d. at 918.

"*Bruen* cautions that 'not all history is created equal.'" ***Sitladeen***, 64 F.4th at 985, *quoting* ***Bruen***, 597 U.S. at 34. Rather, "Constitutional rights are enshrined with the scope they were understood to have when the people adopted them." ***Bruen***, 597 U.S. at 34, *quoting* ***Heller***, 554 U.S. at 634-35. "Strictly speaking," Minnesota "is bound to respect the right to keep and bear arms because of the Fourteenth Amendment, not the Second." ***Id.*** at 37. Even so, *Bruen* strongly suggests that we should prioritize Founding-era history. *See* ***id.*** Otherwise, the "individual rights enumerated in the Bill of Rights and made applicable against the States through the Fourteenth Amendment" might not have "the same scope as against the Federal Government." ***Id.*** And for decades, the Court has "generally assumed" that "the public understanding of the right when the Bill of Rights was adopted in 1791" governs. ***Id.***, *citing* ***Crawford v. Washington***, 541 U.S. 36, 42-50, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004) (Sixth Amendment); ***Virginia v. Moore***, 553 U.S. 164, 168-169, 128

S. Ct. 1598, 170 L. Ed. 2d 559 (2008) (Fourth Amendment); *and* ***Nevada Comm'n on Ethics v. Carrigan***, 564 U.S. 117, 122-125, 131 S. Ct. 2343, 180 L. Ed. 2d 150 (2011) (First Amendment).

While the Second Amendment is not a "regulatory straightjacket" and Minnesota does not need to provide this court with a "dead ringer," a regulation that "remotely resembles" the Carry Ban will not suffice. ***Id.*** at 30. "A court must ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit[.]" ***Rahimi***, 219 L. Ed. 2d 351, 2024 WL 3074728, at *6. Minnesota must prove that it "is consistent with this Nation's historical tradition of firearm regulation" for the state to ban, on account of their age, the public carrying of handguns by ordinary, law-abiding, adult citizens. *See* ***Bruen***, 597 U.S. at 34. For each proffered analogue, this court considers (1) the "how" (comparable burden) and (2) the "why" (comparably justified). ***Id.*** at 29; *see* ***Rahimi***, 219 L. Ed. 2d 351, 2024 WL 3074728, at *6 ("Why and how the regulation burdens the right are central to this inquiry.") (citation omitted).

The "how" of the Carry Ban—the burden to be compared—is a ban on the bearing of arms in an otherwise constitutional manner. *See* ***Bruen***, 597 U.S. at 70, *quoting* ***McDonald***, 561 U.S. at 780 (plurality opinion) ("The constitutional right to bear arms in public for self-defense is not 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.'").

Minnesota states the "why" of the Carry Ban is that 18 to 20-year-olds are not competent to make responsible

decisions with guns and pose a risk of dangerousness to themselves and to others as a result.

Minnesota proffers three reasons that the Carry Ban survives *Bruen*'s historical tradition test: (1) a freestanding catchall for groups the state deems dangerous; (2) founding-era and common law analogues; and (3) Reconstruction-era analogues.

1.

Minnesota contends that status-based restrictions from the founding-era created a freestanding dangerousness catchall analogue: if the state deems a group of people to pose a risk of danger, it may ban the group's gun ownership.[6] *See* Joseph Blocher & Catie Carberry, *Historical Gun Laws Targeting "Dangerous" Groups and Outsiders* 12, in **New Histories of Gun Rights and Regulation: Essays on the Place of Guns in American Law and Society** (Joseph Blocher, Jacob Charles, & Darrell Miller, eds., 2023) ("One can accept that the

6. Minnesota relies on *United States v. Jackson*, 69 F.4th 495, 502-03 (8th Cir. 2023), discussing restrictions on Catholics, American Indians, slaves, and people who would not swear a loyalty oath to the government. *Cf.* ***United States v. Jackson***, 85 F.4th 468, 470-72 (8th Cir. 2023) (Stras, J., dissenting from the denial of rehearing en banc) (reaching a different conclusion based on the same history). This court's *Jackson* opinion has, however, been vacated, and the case remanded. *See* ***Jackson v. United States***, No. 23-6170, 2024 U.S. LEXIS 2904 (U.S. July 2, 2024) (granting certiorari, vacating the judgment, and remanding for further consideration in light of *United States v. Rahimi*, 602 U.S. __, 219 L. Ed. 2d 351 (2024)).

Framers denied firearms to groups they thought to be particularly dangerous (or unvirtuous, or irresponsible) without sharing their conclusion about which groups qualify as such.").

Assuming that historical regulation of firearm possession can be viewed as an effort to address a risk of dangerousness, this risk does not justify the Carry Ban. Minnesota claims that 18 to 20-year-olds present a danger to the public, but it has failed to support its claim with enough evidence. *See* ***Rahimi***, 219 L. Ed. 2d 351, 2024 WL 3074728, at *9 (upholding a carry ban, the Court repeatedly emphasized that the law at issue "applies only once a court has found that the defendant 'represents a credible threat to the physical safety' of another.") (citation omitted). Although we take no position on how high the risk must be or what the evidentiary record needs to show, the answer is surely more than what Minnesota's general crime statistics say. According to the report, "the murder arrest rate for 18 to 20-year-olds is almost 33 percent higher than the murder arrest rate for the next most homicidal age group." And they are the "most likely" of any age group "to use firearms to commit homicides and other violent crimes."

Even if we have no reason to doubt the accuracy of these statistics, they do not support the Carry Ban. *See* ***Rahimi***, 219 L. Ed. 2d 351, 2024 WL 3074728, at *9 (noting that the statute at issue did "not broadly restrict arms use by the public generally"). For one thing, the Minnesota legislature could not have relied on them. The expert report, which was prepared solely for this case,

uses data from 2015 through 2019—more than 10 years *after* it enacted the Carry Ban. And the record is devoid of statistics that Minnesota could have used to justify a conclusion that 18 to 20-year-olds present an unacceptable risk of danger if armed. After all, even using these recent statistics, it would be a stretch to say that an 18-year-old "poses a clear threat of physical violence to another." ***Id.***

For another, Minnesota has not attempted to explain why its other statutory restrictions, none of which the Plaintiffs have challenged, do not reduce the risk of danger already. First, permit applicants must complete "training in the safe use of a pistol" and not be "listed in the criminal gang investigative data system." **Minn. Stat. § 624.714, subd. 2(b)(1), (5)**. Certain state and federal statutes might already render an applicant ineligible, *See* ***id.*** **§ 624.714, subd. 2(b)(4)**, including those who have been convicted of "a crime of violence" or a recent controlled-substance offense, *see* ***id.*** **§ 624.713, subd. 1(2), (3), (4)**. What the record lacks, in other words, is any support for the claim that 18 to 20-year-olds, who are otherwise eligible for a public-carry permit, "pose [such] a credible threat to the physical safety of others" that their "Second Amendment right may . . . be burdened." ***Rahimi***, 219 L. Ed. 2d 351, 2024 WL 3074728, at *9.

A legislature's ability to deem a category of people dangerous based only on belief would subjugate the right to bear arms "in public for self-defense" to "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." ***Bruen***, 597 U.S. at 70, *quoting* ***McDonald***, 561 U.S. at 780 (plurality

opinion); *see also* ***Rahimi***, 219 L. Ed. 2d 351, 2024 WL 3074728, at *11 ("[W]e conclude only this: An individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment."). While "our tradition of firearm regulation allows the Government to disarm individuals who present a credible threat to the physical safety of others[,]" Minnesota has failed to show that 18 to 20-year olds pose such a threat. *Id.* at *10. Accordingly, absent more, the Carry Ban cannot be justified on a dangerousness rationale.

2.

Minnesota proffers three founding-era sources: (1) the common law, (2) college gun rules, and (3) municipal regulations.

First, Minnesota reiterates that, at common law, 18 to 20-year-olds' Second Amendment rights were restricted because they were minors. The common law "is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." ***Bruen***, 597 U.S. at 19. *See* Roscoe Pound, *Common Law and Legislation*, 21 **Harv. L. Rev.** 383, 403 (1908) (discussing the importance of the common law to pre-Civil War jurisprudence). Minnesota cites common law evidence that (as minors) 18 to 20-year-olds did not have full rights. Minnesota, however, does not put forward common law analogues restricting the right to bear arms. Instead, Minnesota points to statutory law, such as the Militia Act of 1792 that required 18 to 20-year-olds to acquire firearms, as evidence the common law was

the inverse. *See The Militia Act of 1792*, ch. 33, **1 Stat. 271**, § 1. A mandate to acquire a firearm is hardly "evidence" that one was previously prohibited from owning one.

Inverse evidence of the common law is not a sufficient analogue to meet the state's burden. In fact, Minnesota contends elsewhere that statutes passed after the ratification of the Bills of Rights often codified the common law. *See* ***Bruen***, 597 U.S. at 39 ("'[T]he language of the Constitution cannot be interpreted safely except by reference to the common law and to British institutions *as they were when the instrument was framed and adopted*,' not as they existed in the Middle Ages."), *quoting* ***Ex parte Grossman***, 267 U.S. 87, 108-09, 45 S. Ct. 332, 69 L. Ed. 527 (1925) (emphasis in original). Minnesota does not provide convincing evidence why the Militia Act of 1792 is inverse evidence of the common law, rather than evidence of its codification. Further, if the state is correct that the Militia Act is inverse evidence of the common law, then the Militia Act may demonstrate that the Second Amendment and the common law diverge. *See* ***id.*** at 35. ("English common-law practices and understandings at any given time in history cannot be indiscriminately attributed to the Framers of our own Constitution . . . 'it [is] better not to go too far back into antiquity . . . unless evidence shows that medieval law survived to become our Founders' law."), *quoting* ***Funk v. United States***, 290 U.S. 371, 382, 54 S. Ct. 212, 78 L. Ed. 369 (1933).

Second, Minnesota cites college rules restricting students from possessing guns on campus. *See* ***Worth***, 666 F.Supp.3d at 921 (discussing rules from Yale College,

the University of Georgia, and the University of North Carolina).

These rules are very different in their "how." These school procedural rules are not laws subject to constitutional limitations. Minnesota acknowledges that universities had guardianship authority *in loco parentis*. Universities had many practices that if compelled by the government, would have violated students' constitutional rights. *See University Church in Yale*, **Yale University**, https://church.yale.edu/history (explaining that until 1927, chapel attendance was mandatory) (last accessed May 19, 2024). Thus, founding-era college rules are not persuasive sources to discern the constitutional rights of its students.

Further, a restriction on the possession of firearms in a school (a sensitive place) is much different in scope than a blanket ban on public carry. *See* ***Bruen***, 597 U.S. at 30. The Supreme Court has distinguished between "sensitive places" and the public. ***Id.*** at 31 ("Put simply, there is no historical basis for New York to effectively declare the island of Manhattan a 'sensitive place' simply because it is crowded and protected generally by the New York City Police Department."). A sensitive place restriction is not analogous to a no-guns-in-public restriction.

Third, Minnesota cites three municipal ordinances. *See* ***Worth***, 666 F.Supp.3d at 923 (discussing ordinances from New York, New York and Columbia, South Carolina); Oliver H. Strattan & John M. Vaughan, eds., *A Collection of the State and Municipal Laws in Force and Applicable to the City of Louisville, KY* (C. Settle,

1857), 175 (1853), available at https://firearmslaw.duke.edu/laws/oliver-h-strattan-city-clerk-a-collection-of-the-state-and-municipal-laws-in-force-and-applicable-to-the-city-of-louisville-ky-prepared-and-digested-under-an-order-from-the-general-council-of-s (last accessed May 22, 2024).

The first two ordinances, New York and Columbia, fine anyone who discharges a weapon within the city, increasing the fines (or allowing seizure of weapon in Columbia) for minors. The third ordinance prohibited the sale of gunpowder (but not firearms) to minors in Louisville and is also not a founding-era source (enacted more than 60 years after 1791). All three are distinct from the "how" of the Carry Ban, a blanket ban on carrying a weapon in public. The "how" is also different in the New York and Columbia ordinances, which prohibit conduct regardless of age.

Minnesota's proffered founding-era analogues do not meet its burden to demonstrate that the Nation's historical tradition of firearm regulation supports the Carry Ban.

3.

Minnesota makes four arguments why the Reconstruction era evinces a historical tradition of firearm regulation sufficient to support the 18 to 20-year-old Carry Ban: (1) unprecedented social concerns in the second half of the 19th Century (the increased prevalence of handguns) require this court to take a more nuanced approach; (2) Reconstruction-era and late 19th Century statutes; (3) 19th Century state court cases; and (4) that,

as a longstanding prohibition, the Carry Ban should be considered presumptively constitutional.

As discussed, it is questionable whether the Reconstruction-era sources have much weight. *See* ***Bruen***, 597 U.S. at 37 ("that the scope of the protection applicable to the Federal Government and States [under the Bill of Rights] is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791."). Certainly, postenactment history of the Fourteenth Amendment is not given weight. ***Id.*** at 35 (explaining that for all history after the ratification of the Second Amendment, courts must "guard against giving postenactment history more weight than it can rightly bear"). Assuming it has any weight, this court will address Minnesota's arguments.

First, Minnesota argues that because the market revolution between the founding era and the Reconstruction era made pistols more accessible, this court must take a more "nuanced approach." *See* ***id.*** at 27 ("cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach").

Minnesota contends that because handguns were not "in common use" at the founding, founding-era regulations are insufficient to properly regulate them. This contention contradicts *Bruen* and *Heller*'s "in common use" doctrine: "the Second Amendment protects only the carrying of weapons that are those 'in common use at the time,' as opposed to those that 'are highly unusual in society at large.'" ***Id.*** at 47, *quoting* ***Heller***, 554 U.S. at 629.

"Whatever the likelihood that handguns were considered 'dangerous and unusual' during the colonial period, they are indisputably in 'common use' for self-defense today. They are, in fact, 'the quintessential self-defense weapon.'" ***Id.*** *See* Jamie McWilliam, *The Relevance of "In Common Use" After Bruen*, 37 **Harv. J. L. Pub. Pol'y (Per Curiam)** 1, 9 (2023) (describing how the "in common use" doctrine fits within *Bruen*'s test).

Second, Minnesota proffers 20 state laws from the Reconstruction-era and late 19th Century that in some way limit the Second Amendment rights of those under 21 years old. *See* ***NRA v. BATFE***, 700 F.3d 185, 202 (5th Cir. 2012) (citing the 20 state laws), *abrogated by* ***Bruen***, 597 U.S. at 19 n.4. Minnesota believes this represents a historical tradition of restricting the gun rights of those under 21 years old. As we have already discussed, however, these laws carry less weight than Founding-era evidence. *See* ***Bruen***, 597 U.S. at 37.

Besides, these laws have "serious flaws even beyond their temporal distance from the founding." ***Id.*** at 66. For starters, several prohibited only *concealed* carry. *See* **1859 Ky. Acts 245 § 23** (Kentucky); **1885 Nev. Stat. 51** (Nevada); **1890 La. Acts 39** (Louisiana); **1890 Wyo. Sess. Laws 1253** (Wyoming). Others prohibited only the kinds of weapons that could be easily concealed, like bowie knives and pistols. *See* **1856 Ala. Laws 17** (Alabama); *see also* ***State v. Reid***, 1 Ala. 612, 619 (1840) ("the Legislature cannot inhibit the citizen from bearing arms openly"); **1875 Ind. Acts 59** (Indiana) (prohibiting giving minors weapons

that can be "concealed upon or about the person"); **1881 Ill. Laws 73** (Illinois) (prohibiting giving minors weapons "capable of being secreted upon the person"); **1882 Md. Laws 656** (Maryland) (permitting the sale of "shot gun[s], fowling pieces[,] and rifles" to minors, but not other "deadly weapons"). And as *Bruen* clarifies, these "concealed-carry prohibitions were constitutional only if they did not similarly prohibit *open* carry." ***Bruen***, 597 U.S. at 53.

Many, including some already mentioned, criminalized the *sale* or *furnishing* of weapons to minors, meaning they could publicly bear arms subject to generally applicable concealed-carry rules. *See* **16 Del. Laws 716 (1881)** (Delaware); **1856 Tenn. Pub. Acts 92** (Tennessee); **1876 Ga. Laws 112** (Georgia); **1878 Miss. Laws 175-76** (Mississippi); **1893 N.C. Sess. Laws 468-69** (North Carolina); **1897 Tex. Gen. Laws 221-22** (Texas); **27 Stat. 116-17 (1892)** (D.C.); **Mo. Rev. Stat § 1274 (1879)** (Missouri). Several included exceptions for parental permission, *see* **1881 Ill. Laws 73**; **1897 Tex. Gen. Laws 221-22**; **Mo. Rev. Stat § 1274 (1879)**, or self-defense, *see* **1876 Ga. Laws 112**. And others prohibited the sale of only easily concealable weapons. *See* **1856 Tenn Pub. Acts 92**; **1878 Miss. Laws 175-76**. The point is "[n]one of these historical limitations on the right to bear arms approach" the burden of Minnesota's Carry Ban. ***Bruen***, 597 U.S. at 60.

Third, Minnesota argues that, because no historic cases found age restrictions to be unconstitutional, the Carry Ban is consistent with the historical tradition of firearms regulation. It cites four state supreme court

cases involving laws restricting access to firearms by 18 to 20-year-olds. *See* ***State v. Callicutt***, 69 Tenn. 714, 714-15 (1878); ***Coleman v. State***, 32 Ala. 581, 582-83 (1858); ***State v. Allen***, 94 Ind. 441, 441 (1884); ***Tankersly v. Commonwealth***, 9 S.W. 702, 703, 10 Ky. L. Rptr. 367 (Ky. 1888). Three of these cases do not analyze or discuss the constitutionality of the laws, rendering them irrelevant analogues.

Only one case addresses the constitutionality of a state law prohibiting carry by a minor. ***Callicutt***, 69 Tenn. at 714-15. *Callicutt*, a postenactment case interpreting a state statute that applies only to concealed carry by minors, is not analogous in its "how" (solely a conceal ban) or its "why" (only affecting minors).

Fourth, Minnesota argues the Carry Ban is a "presumptively lawful" "longstanding prohibition." *See* ***Heller***, 554 U.S. at 626-27 & n.26. *Heller* offered a list, which does not purport to be exhaustive, of longstanding prohibitions that were presumptively lawful. ***Id.*** Age restrictions are not on that list. ***Id.*** The Carry Ban here was enacted in 2003. Minnesota claims this court should look to Alabama's 1856 statute for the principle that all age restrictions are in the class of "longstanding prohibitions." *See* **1856 Ala. Acts 17**. Alabama's statute, a status-based law, targets only minors, a status not held by 18 to 20-year-olds in Minnesota. Further, Minnesota tries to link the Carry Ban to several 20th Century laws banning the carry of arms by the mentally ill or those with unsound minds. *See* ***Mai v. United States***, 974 F.3d

1082, 1089 (9th Cir. 2020) (Bumatay, J., dissenting from denial of rehearing en banc) (the 1930 Uniform Firearms Act "prohibited [the] delivery of a pistol to any person of 'unsound' mind"). Those laws, still in effect, prevent the mentally ill from acquiring firearms. Minnesota may not claim all 18 to 20-year-olds are comparable to the mentally ill. This court declines to read a new category into the list of presumptively lawful statutes.

Minnesota did not proffer an analogue that meets the "how" and "why" of the Carry Ban for 18 to 20-year-old Minnesotans. The only proffered evidence that was both not *entirely* based on one's status as a minor and not *entirely* removed from burdening carry—Indiana's 1875 statute—is not sufficient to demonstrate that the Carry Ban is within this nation's historical tradition of firearm regulation. *See* ***Bruen***, 597 U.S. at 65 (a "single" "postbellum" "state statute" is insufficient weight to meet the state's burden).

Minnesota has not met its burden to proffer sufficient evidence to rebut the presumption that 18 to 20-year-olds seeking to carry handguns in public for self-defense are protected by the right to keep and bear arms. The Carry Ban, § 624.714 subd. 2(b)(2), violates the Second Amendment as applied to Minnesota through the Fourteenth Amendment, and, thus, is unconstitutional.

* * * * * * *

The judgment is affirmed.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FILED APRIL 24, 2023

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Case No. 21-cv-1348 (KMM/LIB)

KRISTIN WORTH, AUSTIN DYE, AXEL ANDERSON, MINNESOTA GUN OWNERS CAUCUS, SECOND AMENDMENT FOUNDATION, FIREARMS POLICY COALITION, INC.,

Plaintiffs,

v.

BOB JACOBSON, IN HIS OFFICIAL CAPACITY COMMISSIONER OF THE MINNESOTA DEPARTMENT OF PUBLIC SAFETY; KYLE BURTON, IN HIS OFFICIAL CAPACITY AS SHERIFF OF MILLE LACS COUNTY, MINNESOTA; TROY WOLBERSEN, IN HIS OFFICIAL CAPACITY AS SHERIFF OF DOUGLAS COUNTY, MINNESOTA; AND DAN STARRY, IN HIS OFFICIAL CAPACITY AS SHERIFF OF WASHINGTON COUNTY, MINNESOTA;

Defendants.

Filed April 24, 2023

Appendix B

ORDER

On March 31, 2023, this Court granted in part the Plaintiffs' motion for summary judgment and found that Plaintiffs were entitled to declaratory and injunctive relief. The Commissioner of the Minnesota Department of Public Safety ("DPS"),[1] filed an emergency motion pursuant to Federal Rules of Civil Procedure 62(d) and 60(b)(6) asking the Court to stay the portion of its March 31st Order granting injunctive relief. [Doc. 85.] The Court directed the Clerk to delay entry of final judgment pending resolution of the Commissioner's motion and entered a Briefing Order. The Court held a hearing by videoconference on April 10, 2023. For the reasons discussed below, the Commissioner's motion is granted.

I. Background

Plaintiffs are three Minnesota citizens between the ages of 18 and 21 years old who wish to carry handguns in public for the purpose of self-defense, and three organizations with members in the same age group who also seek the ability to publicly carry handguns. The State of Minnesota requires a permit for a person to lawfully carry a handgun in public; carrying a handgun without such a permit is a gross misdemeanor. Minn. Stat.

1. When this case was filed, John Harrington was the Commissioner of DPS and Don Lorge was the Sheriff of Mille Lacs County. However, Bob Jacobson was sworn in as the Commissioner of DPS on January 3, 2023, and Kyle Burton is now the Mille Lacs County Sheriff. Under Fed. R. Civ. P. 25(d), Mr. Jacobson and Mr. Burton are automatically substituted as parties.

§ 624.714, subd. 1a. However, under Minn. Stat. § 624.714, subd. 2(b)(2), a person must be at least 21 years old to be eligible to receive a carry permit. Plaintiffs filed this suit alleging that the age requirement in Minnesota's permit-to-carry law violates their right to keep and bear arms guaranteed by the Second and Fourteenth Amendments of the United States Constitution.

Just over a year after Plaintiffs filed their Complaint, the Supreme Court decided *New York State Rifle & Pistol Assoc., Inc. v. Bruen*, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022), which established a new test for evaluating Second Amendment claims. Ultimately, this Court found that under *Bruen*, Plaintiffs were entitled to summary judgment on their Second Amendment claims. As a result, the Court declared that Minn. Stat. § 624.714, subd. 2(b)(2)'s requirement that a person must be at least 21 years of age to receive a carry permit violates the rights of otherwise-qualified 18-to-20 year olds to keep and bear arms protected by the Second and Fourteenth Amendments. Further, the Court enjoined Defendants from enforcing the 21-year minimum-age requirement in that statutory subdivision against the individual Plaintiffs and otherwise-qualified 18-to-20-year-olds. It is that injunction from which the Commissioner now seeks temporary relief.

II. Discussion

Fed. R. Civ. P. 62(d)

Unlike final orders granting monetary relief, when a court enters a "final judgment in an action for an

injunction," the proceedings are not automatically stayed. Fed. R. Civ. P. 62(c)(1). Nevertheless, Rule 62(d) allows a district court to "suspend" or "modify" an injunction on "terms that secure the opposing party's rights" pending appeal. Fed. R. Civ. P. 62(d). Courts deciding whether to stay an injunction pending appeal consider factors that are similar to those that govern requests for a preliminary injunction. *Rud v. Johnston*, Civil No. 23-0486 (JRT/LIB), 2023 U.S. Dist. LEXIS 57825, 2023 WL 2760533, at *2 (D. Minn. Apr. 3, 2023). "The Court balances: (1) the likelihood that the stay applicant will succeed on the merits of its appeal; (2) whether the denial of a stay will irreparably harm the moving party; (3) whether issuance of a stay will substantially injure the non-moving party; and (4) the public interest." *Id.* The first two factors—likelihood of success on the merits and irreparable harm—are considered "the most critical," but the court must ultimately balance all four cnosiderations in determining whether a stay is appropriate. *See Jensen v. Minn. Dep't of Human Servs.*, Civil No. 09-1775 (DWF/BRT), 2020 U.S. Dist. LEXIS 39741, 2020 WL 1130671, at *2 (D. Minn. Mar. 9, 2020). The court's assessment must focus on the circumstances of each case and "cannot be reduced to a set of rigid rules." *Hilton v. Braunskill*, 481 U.S. 770, 777, 107 S. Ct. 2113, 95 L. Ed. 2d 724 (1987).

Having considered the parties' positions and the factors governing the Commissioner's request, the Court concludes that it is appropriate to enter a stay for a period of 30 days to allow the Commissioner to implement the Court's March 31st Order, or if the Commissioner files an appeal, until the appellate process is concluded.

Appendix B

Likelihood of Success

The Court finds that the first factor—likelihood of success of the merits of an appeal—weighs in favor of a entering a stay. The Court thoroughly discussed its view of the merits of this dispute in its Order granting in part the Plaintiffs' motion for summary judgment. Plaintiffs naturally suggest that the Commissioner is unlikely to succeed on the merits of any appeal because they agree with the conclusions reached in that Order. But one need only read the March 31st Order closely to see that this area of law is far from settled and the questions presented by this dispute are open to differing conclusions. Reasonable minds can easily disagree about several aspects of the analysis.

First, another court could very well agree with the Commissioner's position that "the people" to whom the Second Amendment refers did not extend historically to those whom the law considered minors or "infants." The Eighth Circuit has not definitively spoken on the precise issue presented by this case, but it is worth noting that it has recently interpreted some of its pre-*Bruen* precedent as having been undisturbed by *Bruen* and having placed a limitation on the scope of "'the people' to whom the protections of the Second Amendment extend." *United States v. Sitladeen*, __ F.4th __, 64 F.4th 978, 2023 U.S. App. LEXIS 7927, 2023 WL 2765015, at *5 (8th Cir. Apr. 4, 2023) (discussing the holding in *United States v. Flores*, 663 F.3d 1022 (8th Cir. 2011) that the Second Amendment does not apply to unlawfully present aliens).

In addition, the Court notes that under *Bruen*, discerning whether a law qualifies as a relevantly similar historical analog that might justify a regulation of the right to public carry is not a straightforward endeavor. At least one other court found that this reality weighed in favor of staying an injunction under nearly identical circumstances. *See also Firearms Policy Coal., Inc. v. McCraw*, No. 4:21-cv-1245-P, __ F. Supp. 3d __, 623 F. Supp. 3d 740, 2022 U.S. Dist. LEXIS 152834, 2022 WL 3656996, at *12 (N.D. Tex. Aug. 25, 2022) (finding that if Texas appealed a judgment determining that a similar age requirement for a permit to carry a handgun was unconstitutional it had a likelihood of success on the merits even though the issue was the only factor that presented a "close call").

Third, as the Court noted in its March 31st Order, *Bruen* left open a critical doctrinal question concerning the proper historical lens for lower courts to consider when looking for possible historical analogues to justify a modern firearm regulation—the time when the Second Amendment was ratified, or when the Fourteenth Amendment was adopted, making the majority of the Bill of Rights applicable to the States. 142 S. Ct. at 2137-38. At least one Circuit Court of Appeals has found that the focus of that lens should be at a point in history—the period around adoption of the Fourteenth Amendment in 1868—when there was certainly a greater degree of firearm regulation that affected persons under the age of 21. *Nat'l Rifle Assoc. v. Bondi*, 61 F.4th 1317, 1322-24 (3rd Cir. 2023). It takes no great leap to conclude that once this case is appealed, the Eighth Circuit could view this issue differently than

this Court did in its March 31st Order, agree with *Bondi*, and view the historical analogues from the later period as sufficiently similar to uphold the constitutionality of Minnesota's age requirement.

Finally, the significance of the issues presented and the rapid development of this area of law also tip this factor in the Commissioner's favor. *In re Workers' Compensation Refund*, 851 F. Supp. 1399, 1401 (D. Minn. 1994) (finding that the likelihood-of-success factor supported a stay where the order involved resolution of "substantial and novel legal questions" (quoting *Sweeney v. Bond*, 519 F. Supp. 124, 133 (E.D. Mo. 1981)); *Ben Oehrleins & Sons & Daughter, Inc. v. Hennepin Cnty*, 927 F. Supp. 348, 351 (D. Minn. 1996) ("[N]otwithstanding the fact that the court believes its decision to be firmly grounded upon Supreme Court precedent, the court realizes that its order is one of first impression within a very controversial area; a fact which suggests that it presents a novel and substantial question sufficient to weigh in favor of granting a stay of its permanent injunction."); *see also* 11 Charles Alan Wright, et al., *Fed. Prac. & Proc.* § 2904 & n.13 (3d ed.) ("Many courts also take into account that the case raises substantial, difficult or novel legal issues meriting a stay." (collecting cases)). Accordingly, this Court concludes that, although it stand by the reasoning and conclusions of its Order, the above considerations related to the likelihood-of-success factor support entry of a stay of the injunction pending resolution of an appeal.

Appendix B

Balance of Harms

Balancing the remaining factors together with the first, the Court finds that the injunction should be stayed pending resolution of the appeal. The second and fourth factors favor entry of a stay. Specifically, the Court finds that failing to enter a stay will irreparably harm the Commissioner and DPS and that entry of the stay will be in the public interest. *See McCraw*, 2022 U.S. Dist. LEXIS 152834, 2022 WL 3656996, at *12 (indicating that the state's harm and the public interest merge). The entry of the injunction imposed by the March 31st Order will prevent a statute passed by the elected representatives of Minnesota citizens from being enforced. *Maryland v. King*, 567 U.S. 1301, 1303, 133 S. Ct. 1, 183 L. Ed. 2d 667 (2012) (Roberts, Circuit Justice) ("Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury" (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351, 98 S. Ct. 359, 54 L. Ed. 2d 439 (1977) (Rehnquist, J., in chambers))); *McCraw*, 2022 U.S. Dist. LEXIS 152834, 2022 WL 3656996, at *12. Plaintiffs argue that this factor cannot weigh in favor of a stay because this Court has declared the age restriction unconstitutional, and an unconstitutional law was never really duly enacted by the elected representatives of a state and they have no interest in its enforcement.[2] True,

2. The cases from which Plaintiffs draw the eloquent quotations to support this position do not address the propriety of entering a stay. *Norton v. Shelby County*, 118 U.S. 425, 442, 6 S. Ct. 1121, 30 L. Ed. 178 (1886) ("An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords

the Eighth Circuit has indicated that "it is in the public interest to uphold the will of the people, as expressed by the acts of the state legislature, when such acts appear harmonious with the Constitution." *Pavek v. Donald J. Trump for President, Inc.*, 967 F.3d 905, 909 (8th Cir. 2020) (citing *King*, 567 U.S. at 1303). But, contrary to Plaintiffs' argument, there is a sufficient debate about the merits in this case and the substantial, difficult, and novel legal issues raised support entry of the stay.

In addition, the Court is persuaded that the failure to enter a stay will have the potential to create unnecessary problems if the Court's March 31st Order is overturned on appeal. If no stay is entered, various county sheriffs will likely begin issuing permits to individuals between 18 and 21 years old while the Defendants' appeal is pending. If this Court's decision were later overturned on appeal, the parties do not agree and point to no definitive authority to resolve the question of what legal effect that would have on any permits issued to 18-to-20-year-olds in the interim. Plaintiffs, of course, take the position that anyone with a permit would still be lawfully able to carry a handgun in public. Defendants suggest that the 18-to-20-year-olds who received those permits could be

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no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed."); *Collins v. Yellen*, 141 S. Ct. 1761, 1788-89, 210 L. Ed. 2d 432 (2021) ("Although an unconstitutional provision is never really part of the body of governing law (because the Constitution automatically displaces any conflicting statutory provision from the moment of the provision's enactment), it is still possible for an unconstitutional provision to inflict compensable harm.").

in possession of carry permits that would potentially be rendered legally invalid, either automatically or through a subsequent revocation process.[33] If the permits were automatically rendered invalid, and the holders were to carry handguns in the mistaken belief that they were authorized to do so, they could be unsuspectingly subject to criminal liability. *See McCraw*, 2022 U.S. Dist. LEXIS 152834, 2022 WL 3656996, at *12. If such permits would only be rendered invalid after completion of a revocation process, this could force local authorities to incur the expense of defending against the legal challenges that would almost certainly be raised by those whose licenses were being revoked. Plaintiffs' counsel suggested at oral argument that if the Eighth Circuit Court of Appeals were to reverse this Court's March 31st Order, then Plaintiffs would not object to any revocation of their permits. But that ignores the obvious reality that Plaintiffs' counsel cannot commit to such a waiver for any individuals who are not themselves parties to this action. Given these considerations, the Court finds the second factor weighs in favor of granting a stay.

Stated plainly, the third factor—the harm to Plaintiffs if a stay is entered—weighs against entry of a stay. Plaintiffs have an interest in exercising their

3. Under Minn. Stat. § 624.714, subd. 8(a), a permit is "void at the time that the holder becomes prohibited by law from possessing a firearm," and the permit holder has five days to return the permit card to the sheriff. Otherwise, a person aggrieved by revocation of a permit may initiate a state district court proceeding in which the sheriff is required to show, by clear and convincing evidence, the basis for the revocation. *Id.* § 624.714, subd. 12(a)-(b).

constitutional rights. As this Court has interpreted this rapidly developing and uncertain area of the law, entering the stay requested by the Commissioner will affect the Plaintiffs' ability to exercise their rights under the Second Amendment. But this factor does not outweigh all the others. *See McCraw*, 2022 U.S. Dist. LEXIS 152834, 2022 WL 3656996, at *12 ("Though Plaintiffs' interest in the vindication of their Constitutional rights suffers while the judgment is stayed, the stay is necessary to militate the possible negative effects of relying on the injunction while it is subject to appellate review and possible reversal."). And if this Court's ruling is affirmed on appeal, Plaintiffs and other aged 18 to 21 will be able to seek the permits in question then.

For all these reasons, the Court concludes that it is proper to enter a stay of the injunctive relief granted in the Court's March 31st Order for a period of 30 days, or if the Commissioner files an appeal, until that appeal is concluded.[4]

III. Order

Based on the foregoing, the Court enters the following Order:

1. The Clerk of Court is directed to enter final judgment in this matter consistent with the terms of the Court's March 31, 2023 Order;

4. Because the Court concludes that the entry of a stay is appropriate under Fed. R. Civ. P. 62(d), the Court does not address the Commissioner's alternative argument that the Court should grant the same relief under Fed. R. Civ. P. 60(b)(6).

2. The Commissioner's Motion for a Stay [Doc. 85] is **GRANTED**; and

3. The injunction granted by the Court's March 31, 2023 Order is stayed for 30 days, or pending appeal, for the duration of the appellate process.

Date: April 24, 2023

/s/ Katherine Menendez
Katherine Menendez
United States District Judge

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FILED MARCH 31, 2023

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Case No. 21-cv-1348 (KMM/LIB)

KRISTIN WORTH, AUSTIN DYE, AXEL ANDERSON, MINNESOTA GUN OWNERS CAUCUS, SECOND AMENDMENT FOUNDATION, FIREARMS POLICY COALITION, INC.,

Plaintiffs,

v.

JOHN HARRINGTON, IN HIS OFFICIAL CAPACITY COMMISSIONER OF THE MINNESOTA DEPARTMENT OF PUBLIC SAFETY; DON LORGE, IN HIS OFFICIAL CAPACITY AS SHERIFF OF MILLE LACS COUNTY, MINNESOTA; TROY WOLBERSEN, IN HIS OFFICIAL CAPACITY AS SHERIFF OF DOUGLAS COUNTY, MINNESOTA; AND DAN STARRY, IN HIS OFFICIAL CAPACITY AS SHERIFF OF WASHINGTON COUNTY, MINNESOTA;

Defendants.

Filed March 31, 2023

Appendix C

ORDER

The State of Minnesota requires a person to obtain a permit to lawfully carry a handgun in public, but does not issue permits to anyone under the age of twenty-one. The Plaintiffs, who are 18-to-20-year-old individuals and firearms advocacy organizations with members in that age range, argue that the minimum age requirement in Minnesota's permit-to-carry law violates their Second Amendment right to keep and bear arms. The parties have filed cross-motions for summary judgment. The Supreme Court's recent decision in *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022), compels the conclusion that Minnesota's permitting age restriction is unconstitutional, and Plaintiffs are entitled to judgment as a matter of law.

I. Background

The Minnesota Legislature enacted the Minnesota Citizens' Personal Protection Act of 2003 "recognize[ing] and declar[ing] that the second amendment of the United States Constitution guarantees the fundamental, individual right to keep and bear arms," while also enacting statutory provisions considered "to be necessary to accomplish compelling state interests in regulation of those rights." Minn. Stat. § 624.714, subd. 22. As part of that Act, Minnesota requires persons who are not law enforcement officers to obtain a "permit to carry [a] pistol" in a public place. Minn. Stat. § 624.714, subd. 1a.[1]

1. There are exceptions to the permitting requirement. For example, a person does not need a permit to carry a handgun about

Carrying a pistol in public without a permit is a gross misdemeanor, and a conviction for a second or subsequent offense is a felony. *Id.*

To obtain such a permit, the statute requires a person to submit an application to the sheriff in their county of residence, and the sheriff "must issue a permit to an applicant if the person" satisfies enumerated criteria. *Id.* § 624.714, subd. 2(a)–(b). The condition at issue in this case is that the applicant must be "at least 21 years old." *Id.* § 624.714, subd. 2(b)(2).[2] In addition to completing the application and meeting the age requirement, a person must also have "training in the safe use of a pistol" within a year of the application and not be prohibited from possessing a firearm by state or federal law. *Id.* §§ 624.714, subd 2a, and subd. 2(b)(1), (3), and (4).[3]

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her own place of business or dwelling; to carry a pistol between her home and place of business; to carry a pistol in the woods, fields, or open waters of Minnesota for hunting or target shooting; or to transport a pistol in a motor vehicle if it is unloaded and contained in a closed case or package. Minn. Stat. § 624.714, subd. 9.

2. In the original version of Minnesota's permit-to-carry statute, enacted in 1975, the minimum age for eligibility was 18. 1975 Minn. Laws 1280–82 (H.F. No. 679, Ch. 378 §§ 3, 4). The Minnesota Citizens' Personal Protection Act of 2003 amended that law to substantially its current form, introducing the language requiring an applicant to be "at least 21 years old." 2003 Minn. Sess. Laws Serv. Ch. 28, art. 2, § 6.

3. If a person meets these criteria, the sheriff may only deny a permit in the event "that there exists a substantial likelihood that the applicant is a danger to self or the public if authorized to carry a pistol under a permit." Minn. Stat. §§ 624.714, subd. 2(b), and subd. 6(a)(3).

Appendix C

Kristin Worth, Austin Dye, and Axel Anderson, the individual Plaintiffs in this case, are older than 18, but under the age of 21.[4] Except for failing to meet the age requirement, it appears they are otherwise eligible to receive a permit to carry a pistol in Minnesota. They wish to carry pistols for self defense, but don't because they do not want to be subject to arrest or prosecution for violating the permitting requirement. If they could obtain a permit, they state that they would take the required safety training course and submit applications to their respective County Sheriffs. [Doc. 43-2; Doc. 43-3; Doc. 43-4].

The other Plaintiffs are gun-rights advocacy organizations: the Minnesota Gun Owners Caucus ("MGOC"), the Second Amendment Foundation ("SAF"), and the Firearms Policy Coalition ("FPC"). Each of the individual Plaintiffs is a member of all three of these organizations. MGOC has thousands of members in Minnesota, some of whom are over 18, but under the age of 21, and "who would exercise their right to bear arms

4. At oral argument, counsel for the Plaintiffs confirmed that although this case was filed on June 7, 2021, the individual Plaintiffs are still under the age of 21, and there is no evidence before the Court to suggest otherwise. Accordingly, the Court finds that the "requisite personal interest that must exist at the commencement of the litigation [has] continue[d] throughout its existence," and the controversy is not moot. *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397, 100 S. Ct. 1202, 63 L. Ed. 2d 479 (1980). Moreover, the evidence before the Court indicates that the organizational Plaintiffs also have members who are both 18–20-year-olds and otherwise qualified to receive a permit to carry.

and acquire carry licenses if it were not for" the age requirement in Minn. Stat. § 624.714. [Doc. 43-5 ¶¶ 4, 6]. Similarly, SAF and FPC have members between the ages of 18 and 21 who would obtain permits and publicly carry pistols in Minnesota if they were legally allowed to do so. [Doc. 43-6 ¶¶ 3–7; Doc. 43-7 ¶¶ 3–7].

Plaintiffs claim that the Defendants' "active enforcement" of the permitting and age requirements bar them from obtaining a permit to carry handguns in public. [Compl. ¶¶ 43–44, 56–57, 69–70]. One of those Defendants is John Harrington, the Commissioner of the Minnesota Department of Public Safety.[5] The statutory scheme tasks the Commissioner with oversight and other responsibilities related to permitting. For example, the Commissioner is required by statute to adopt statewide standards governing the form and contents of all applications for carry permits. Minn. Stat. § 624.7151. The Commissioner must also make the forms for new and renewal applications available on the internet. *Id.* § 624.714, subd. 3(h). Further, the Commissioner is required to maintain a database of persons authorized to carry pistols. *Id.* § 624.714, subd. 15(a). The Commissioner

5. Although Plaintiffs originally sued the Commissioner in his individual capacity as well as his official capacity, all that remain are Plaintiffs' official-capacity claims against him. [Doc. 74 at 3 n.1 ("Plaintiffs note that the Commissioner seeks summary judgment for claims against him in his individual capacity (for both nominal damages and injunctive relief) based on qualified immunity. As in Plaintiffs' stipulation regarding these same claims as to the Sheriffs . . . , Plaintiffs agree to dismiss the individual capacity claims against the Commissioner.")].

must keep track of other states with laws governing the issuance of permits to carry weapons that differ from Minnesota's permit-to-carry law, and execute reciprocity agreements with other jurisdictions whose carry permits are recognized in Minnesota. *Id.* § 624.714, subd. 16(a), (d). Finally, the Commissioner receives set amounts from the fees for new and renewal applications that are paid to the individual county sheriffs who process the applications. *Id.* § 624.714, subd. 3(f).

Defendant Don Lorge is the Sheriff of Mille Lacs County, where Ms. Worth resides; Dan Starry is the Sheriff of Washington County, where Mr. Dye resides; and Troy Wolberson is the Sheriff of Douglas County, where Mr. Anderson resides (collectively "the Sheriffs"). As noted, applications for permits to carry must be made to the sheriff in the county where a person resides. Minn. Stat. § 624.714, subd. 2(a). And a sheriff who receives an application "must issue a permit" if an applicant satisfies the statutory criteria. *Id.* § 624.714, subd. 2(b). Each of the Sheriffs explains that his respective County played no role in the State's enactment of the permit-to-carry law and that he strictly follows the requirements of the statute. Moreover, the Sheriffs declare that they have never received applications from the individual Plaintiffs who reside within their Counties, and indeed, have never received an application for a permit to carry by a person under the age of 21. [Doc. 55; Doc. 56; Doc. 57].

II. Summary Judgment Standard

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986); *Dowden v. Cornerstone Nat'l Ins. Co.*, 11 F.4th 866, 872 (8th Cir. 2021). In ruling on a motion for summary judgment, the court must view the facts in the light most favorable to the nonmoving party and draws reasonable inferences in that party's favor. *Grant v. City of Blytheville*, 841 F.3d 767, 770 (8th Cir. 2016).

III. Plaintiffs' Motion

Plaintiffs seek summary judgment in their favor on their claim that the age requirement in Minn. Stat. § 624.714, subd. 2, violates their Second Amendment rights.[6] In light of the Supreme Court's ruling in *Bruen*, the Court concludes that Plaintiffs are entitled to summary judgment.

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6. In their summary judgment briefing, the Plaintiffs characterize the statute they are challenging as "the Carry Ban." However, it is clear from their arguments that they are specifically challenging the minimum age requirement of the permitting scheme found in Minn. Stat. § 624.714, subd. 2(b)(2). They have neither argued nor demonstrated that any other aspect of Minnesota's permit-to-carry law raises a constitutional concern.

Appendix C

A. Second Amendment Framework

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed." U.S. Const. amend. II. In two cases decided over a decade ago, the Supreme Court held that "the Second and Fourteenth Amendments protect the right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense." *Bruen*, 142 S. Ct. at 2122 (citing *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008) and *McDonald v. Chicago*, 561 U.S. 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010)). And in *Bruen* last year, the Court held "that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home." *Id.*

In the decade of litigation following *Heller*, Courts of Appeals around the country adopted a variety of balancing tests which weighed a government's interest in a particular gun control measure against the extent and nature of that law's infringement of Second Amendment rights. *Id.* at 2126–27 (describing the tests in several circuits). Indeed, every Circuit Court to address the issue prior to *Bruen* gave weight in the analysis to the societal goals served by the regulation at issue. *United States v. Jackson*, Crim. No. ELH-22-141, 2023 U.S. Dist. LEXIS 33579, 2023 WL 2499856, at *3 (D. Md. Mar. 13, 2023) (discussing federal appellate courts uniform approach between *Heller* and *Bruen*). But *Bruen* rejected any "two-step," "means-end scrutiny" entirely. 142 S. Ct. at 2125–26. Instead, the Court adopted the following test for evaluating whether a government regulation of firearms is permissible:

> [W]e hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

Id. at 2126.[7] Although the first step of the Supreme Court's test refers to the amendment's "plain text" and the second step to "historical tradition," both steps of the analysis are historical in focus.

Step One—Textual Analysis

At the first step, *Bruen* requires a court to conduct a "textual analysis" that is "focused on the 'normal and ordinary' meaning of the Second Amendment's language." 142 S. Ct. at 2127 (quoting *Heller*, 554 U.S. at 576–77, 578). This inquiry into the "normal meaning" of the "words and phrases used" is backward looking, focused on what those words meant in 1791 when the Second Amendment

7. *Bruen* states that it "made the constitutional standard endorsed in *Heller* more explicit." 142 S. Ct. at 2134.

was ratified, and "excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation." *Heller*, 554 U.S. at 576–77. A court applying the first step of "*Heller*'s methodological approach," *Bruen*, 142 S. Ct. at 2127, can employ several tools in discerning the text's normal and ordinary meaning. These may include: (1) comparison of a phrase within the Second Amendment to the same or similar language used elsewhere in the Constitution, *Heller*, 554 U.S. at 579–81 (comparing "right of the people" in the Second Amendment to the same and similar language in the First, Fourth, and Ninth Amendments); (2) consideration of historical sources, including dictionaries, founding-era statutes, 18th-century legal treatises, and others, that could suggest a common understanding of the terms used, *id.* at 581–92 (examining the meaning of "keep and bear arms");[8] and (3) evaluation of the historical background leading to the Second Amendment's adoption, *id.* at 592–95. See also *Hirschfeld v. Bureau of Alcohol, Firearms, Tobacco, and Explosives*, 5 F.4th 407, 418–19, 421–23 (4th Cir. 2021) (discussing sources relevant to understanding the original public meaning of the Second Amendment), *vacated as moot*, 14 F.4th 322, 328 (4th Cir. 2021); *Nat'l Rifle Ass'n, Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 714 F.3d 334, 337 (5th Cir. 2013) ("*NRA II*") (Jones, J., dissenting from denial of rehearing en banc) ("First, the text of the Constitution was interpreted [in *Heller*] in light of historical documents bearing on each

8. *See id.* at 595–96 (consulting "founding-era sources" to illuminate the meaning of "well-regulated militia"); *id.* at 597–98 (similar for "security of a free state").

phrase and clause of the Second Amendment as those were understood at the time of its drafting.").[9]

Step Two—Historical Analysis

If the normal and ordinary meaning of the Second Amendment's text protects the individual's proposed course of conduct, then the Amendment "presumptively guarantees" the individual's right related to firearms, and the burden falls on the government to justify the challenged regulation. *Bruen*, 142 S. Ct. at 2135. However, *Bruen* held that this justification cannot be based on the policy reasons that motivated the regulation at issue. *Id.* at 2127 (describing the two-step approach adopted by Courts of Appeals post-*Heller* as "one step too many" and stating that "*Heller* and *McDonald* do not support applying means-end scrutiny in the Second Amendment context"). Instead, the government must show that the law is "consistent with this Nation's historical tradition of firearm regulation." *Id.* at 2135.

Such an assessment ultimately comes down to "reasoning by analogy." *Id.* at 2132. The government must identify historical firearm regulations that are consistent with the modern, challenged regulation, and courts must decide whether a "historical regulation is a proper analogue" through "a determination of whether the

9. Though Judge Jones' opinion in *NRA II* was a dissent from the denial of the request for rehearing by the Fifth Circuit *en banc*, her reasoning, including her discussion of *Heller*'s analytical approach, largely tracks the test clarified by the Supreme Court in *Bruen*.

two regulations are "'relevantly similar.'" *Id.* (quoting C. Sunstein, *On Analogical Reasoning*, 106 Harv. L. Rev. 741, 774 (1993)). *Bruen* did not "provide an exhaustive survey of the features that render regulations relevantly similar under the Second Amendment," but it did instruct courts to consider "how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Id.* at 2132–33. Courts applying *Bruen* must consider "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. However, the Court has cautioned that "[t]his does not mean that courts may engage in independent means-end scrutiny under the guise of analogical reasoning."[10] *Id.* at 2133 n.7.

Bruen explains that on occasion, the inquiry required at the second step of the test "will be fairly straightforward" and offers a few examples. *Id.* at 2131. A law directed at a "general societal problem that has persisted since the 18th century," will likely be "inconsistent with the Second Amendment," if there is a

10. Courts have struggled with deciphering exactly how to apply *Bruen's* instruction to consider only "relevantly similar" historical analogues through evaluation of how and why they burden the right to keep and bear arms without engaging in means-end scrutiny. *E.g., United States v. Price*, No. 2:22-CR-00097, __ F. Supp. 3d __, 2022 U.S. Dist. LEXIS 186571, 2022 WL 6968457, at *4 n.3 (S.D.W. Va. Oct. 12, 2022) (stating that the *Bruen* Court's "discussion of what constitutes an 'analogous regulation' is curious," and noting the tension between applying the "relevantly similar" analysis and the instruction not to engage in interest-balancing).

"lack of distinctly similar historical regulation addressing that problem."[11] *Id.* And a modern regulation might also be unconstitutional if, in the face of a persistent societal problem, historical regulations used "materially different means" to address it. *Id.*

"[C]ases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach." *Id.* at 2132. Although *Bruen* cautioned that it is not enough for a contemporary regulation to "remotely resemble[]" a colonial era law, the government is only required to "identify a well-established and representative historical *analogue*, not a historical *twin*." *Id.* at 2133. The modern regulation at issue need not be "a dead ringer for historical precursors" to be "analogous enough to pass constitutional muster." *Id.*[12]

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11. According to *Bruen*, the District of Columbia's "flat ban on the possession of handguns in the home" at issue in *Hellller* was an example of a case involving a "straightforward historical inquiry." 142 S. Ct. at 2131. The D.C. law addressed an issue—"firearm violence in densely populated communities"—by adopting a measure that the Founders could have just as easily adopted to address the same problem. *Id.* But because the historical tradition of firearm regulation identified nothing analogous to the total ban on firearm possession in the home that D.C. had adopted, the law was unconstitutional. *Id.*

12. *Bruen* offers as an example another analogical scenario through another reference to *Heller*. 142 S. Ct. at 2133. *Bruen* notes that *Heller* identified a tradition of "'laws forbidding the carrying of firearms in sensitive places such as schools and government buildings." *Id.* (quoting *Heller*, 554 U.S. at 626). Although the *Bruen* Court identified few *other* founding-era sensitive places with outright prohibitions on weapons, the

The *Bruen* Court acknowledged that the framework it adopted might be challenging to apply. "To be sure, '[h]istorical analysis can be difficult; it sometimes requires resolving threshold questions, and making nuanced judgments about which evidence to consult and how to interpret it.'" *Bruen*, 142 S. Ct. at 2130 (quoting *McDonald*, 561 U.S. at 803–04 (Scalia, J., concurring)). But the *Bruen* Court decided that reliance on history is "more legitimate, and more administrable, than asking judges to make difficult empirical judgments about the costs and benefits of firearms restrictions." *Id.* (cleaned up).

B. Applying the Textual Analysis

The Court now applies *Bruen*'s two-part framework to Minnesota's age requirement for a permit to publicly carry a handgun. The first step—textual analysis—requires the Court to consider the Plaintiffs' "proposed course of conduct" and ask whether the Second Amendment's plain text "covers" that conduct.[13] 142 S. Ct. at 2134, 2136.

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lack of evidence of "disputes regarding the lawfulness of such prohibitions" suggested that "arms carrying could be prohibited [in schools and government buildings] consistent with the Second Amendment." *Id.* Accordingly, a court could permissibly compare those historical regulations to a modern regulation and determine that prohibitions on carrying firearms in "*new* and analogous sensitive places are constitutionally permissible." *Id.* (emphasis in *Bruen*).

13. Courts reading the Second Amendment's "plain text" do not always reach the same conclusion about whether it covers particular conduct. *Compare Def. Distributed v. Bonta*, Case

It is already settled that the plain text of the Second Amendment covers "carrying handguns publicly for self-defense," *id.* at 2134, and here, the parties do not dispute that the course of conduct proposed by the Plaintiffs involves doing just that. [Doc. 43-2 ¶ 4; Doc. 43-3 ¶ 4; Doc. 43-4 ¶ 4]. So, consistent with *Bruen*'s holding, the parties do not dispute that Plaintiffs' proposed course of conduct is covered by the plain text of the Second Amendment. But that clarity does not end the textual analysis.

In this case, the dispute is not about whether the conduct is covered by the text, but whether the Plaintiffs are covered if they engage in that conduct. The parties disagree whether the Plaintiffs are among "the people" referred to in the Second Amendment's so-called operative clause—"the right of the people to keep and bear arms shall not be infringed." Plaintiffs argue that the Second Amendment's reference to *the people* applies to *all* the

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No. CV 22-6200-GW-AGRx, 2022 U.S. Dist. LEXIS 195839, 2022 WL 15524977, at *– (C.D. Cal. Oct. 21, 2022) (concluding that the plaintiff's proposed conduct of selling a milling machine used for the self-manufacturing of certain untraceable firearms is not covered by the plain text of the Second Amendment because it has nothing to do with keeping or bearing arms), *tentative ruling adopted by* Case No. CV 22-6200-GW-AGRx, 2022 U.S. Dist. LEXIS 198110, 2022 WL 15524983 (C.D. Cal. Oct. 24, 2022), *with Rigby v. Jennings*, C.A. No. 21-1523 (MN), 630 F. Supp. 3d 602, 2022 U.S. Dist. LEXIS 172375, 2022 WL 4448220, at *8 (D. Del. Sept. 23, 2022) (stating that "the right to keep and bear arms implies a corresponding right to manufacture arms" and concluding that plaintiffs demonstrated a likelihood of success on the merits of their claim that a statute prohibiting them from manufacturing untraceable firearms violated the Second Amendment).

people, including adults who are over the age of eighteen, but not yet twenty-one. Defendants argue that the plain and ordinary meaning of "the people," as understood at the time the Second and Fourteenth Amendments were adopted, would not have included persons under twenty-one, and adopting the Plaintiffs' *all*-the-people reading too literally would lead to absurd results, such as allowing young children to publicly carry firearms. For the reasons that follow, the Court concludes that the Second Amendment's plain text is better read to include adults 18 and older in its protections.

First, although it did not address the age-related issue before the Court in this case, *Heller*'s discussion of the normal and ordinary meaning of the phrase "the right of the people" places a thumb on the scale in favor of the Plaintiffs' preferred interpretation. The *Heller* majority compared "the people" in the Second Amendment to the Constitution's other references to the same or similar phrases, then explained that "the term unambiguously refers to all members of the political community, not an unspecified subset." 554 U.S. at 580. So construed, *Heller* explained that "the people" is a "term of art" within the Constitution that "refers to a class of persons who are a part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community." *Id.* (quoting *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265, 110 S. Ct. 1056, 108 L. Ed. 2d 222 (1990)). The *Heller* Court concluded that such an interpretation supports a "strong presumption that the Second Amendment right is exercised individually and belongs to *all Americans*."

Id. at 580–81 (emphasis added). *Bruen* repeated this broad articulation of the Second Amendment's scope: "The Second Amendment guaranteed to 'all Americans' the right to bear commonly used arms in public subject to reasonable, well-defined restrictions." 142 S. Ct. at 2156 (quoting *Heller*, 554 U.S. at 581). Neither *Heller* nor *Bruen* addressed the specific issue of whether the Second Amendment's text protects the rights of 18-to-20-year-olds. But because the normal and ordinary meaning of "the people" includes all Americans who are a part of the national community, the right codified by the Amendment appears to include them. *Firearms Pol'y Coal. v. McCraw*, No. 4:21-cv-1245-P, 623 F. Supp. 3d 740, 2022 U.S. Dist. LEXIS 152834, 2022 WL 3656996, at *4 (N.D. Tex. Aug. 25, 2022) ("*McCraw*") (discussing *Heller*'s interpretation of "the people" and concluding that it protects the rights of 18–20-year-olds).

Second, neither the Second Amendment's text nor other provisions within the Bill of Rights include an age limit. However, the Founders placed age requirements elsewhere in the Constitution, including for eligibility to be a House Member, Senator, or the President. U.S. Const. art I, §§ 2–3; *id.* art II, § 1. "In other words, the Founders considered age and knew how to set age requirements but placed no such restrictions on rights, including those protected by the Second Amendment." *Hirschfeld*, 5 F.4th at 421. This lends additional support to the notion that the Second Amendment's "plain text" does not include an age restriction.

Third, the inclusion of "the people" elsewhere in the Bill of Rights supports the interpretation that the Second

Amendment extends to individuals over the age of eighteen. The Supreme Court found meaning in the Constitution's use of the same or a similar phrase as that used in the Second Amendment. *Heller*, 554 U.S. at 579; *McCraw*, 2022 U.S. Dist. LEXIS 152834, 2022 WL 3656996, at *4 (stating that both *Heller* and *Verdugo-Urquidez* "suggest that the term 'the people' is defined consistently throughout the Constitution"). Indeed, in considering the reach of the Second Amendment, the *Heller* Court considered the fact that both the First Amendment and the Fourth Amendment refer to a right belonging to "the people." *Heller*, 554 U.S. at 579. The First, of course, protects "the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const., amend. I. And the Fourth proscribes violations of the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. Although one can find certain limitations upon the rights of young people secured by both the First and Fourth Amendments, neither has been interpreted to exclude 18-to-20-year-olds from their protections. *Hirschfeld*, 5 F.4th at 422 (reasoning that the inclusion of young people within the scope of the First and Fourth Amendments' protections suggests the Second Amendment applies to those over the age of eighteen); *McCraw*, 2022 U.S. Dist. LEXIS 152834, 2022 WL 3656996, at *4-5 (same).

Finally, founding era militia laws lend support to the understanding that "the people" referred to in the Second Amendment includes 18-to-20-year-olds. "Before ratification, when militias were solely defined by state law,

most colonies and states set the age for militia enlistment at 16. . . . Every colony passed, at some point, laws identifying 18-year-olds as persons required to possess arms." *Jones v. Bonta*, 34 F.4th 704, 718 (9th Cir. 2022), *vacated and remanded on rehearing by* 47 F.4th 1124 (9th Cir. 2022) (mem.) (vacating district court decision for further proceedings consistent with *Bruen*). These early laws reflected a "tradition of young adults keeping and bearing arms . . . deep-rooted in English law and custom." *Id.* at 717. While some laws in the colonial period increased the "minimum age requirements for militia service to not include 18- to 20-year-olds," the majority of pre-ratification and post-ratification militia laws suggest that persons between the ages of 18 and 20 were expected to supply their own weapons in connection with their militia service. *Id.* at 718-19, 734-40 (Appendix 1 & 2). Shortly after ratification of the Second Amendment, the Second Congress passed the Militia Act, ch. 33 § 1, 1 Stat. 271, which set the minimum age for membership in the militia at 18 and required each member to "equip himself with appropriate weaponry." *Id.* at 719 (quoting *Perpich v. Dep't of Defense*, 496 U.S. 334, 341, 110 S. Ct. 2418, 110 L. Ed. 2d 312 (1990)). Other courts examining founding-era militia laws have similarly found that because 18-to-20-year-olds were "within the 'core' rights-holders at the founding, their rights should not be infringed today." *NRA II*, 714 F.3d at 339–41 (Jones, J. dissenting) (discussing the 1792 Militia Act and the laws prior to and immediately surrounding the ratification of the Second Amendment); *Hirschfeld*, 5 F.4th at 440 ("At the time of ratification, every state and the federal government required 18-year-old men to enroll in the militia."); *McCraw*, 2022 U.S. Dist. LEXIS 152834,

2022 WL 3656996, at *6 (same). Founding-era militia laws requiring service in the militia by 18–20-year-olds who are responsible for supplying their own weapons is consistent with a contemporary understanding that this age group was not excluded from the class of persons who had the right to keep and bear arms. And the fact that the Second Amendment itself discusses the "well regulated militia" means the age-range of militia laws is of particular relevance to the reach of its protections.

The Commissioner suggests several reasons why the Court should find that such militia laws are not evidence that 18–20-year-olds had Second Amendment rights. [Doc. 72 at 6–9]. For example, the Commissioner suggests that militia laws compelling some men under the age of 21 to keep and bear arms did not automatically create a right because imposition of a duty does not necessarily confer individual rights. [*Id.* at 7 ("The fact that early America governments compelled some infants to keep and bear arms did not establish a right that an infant could claim against the government." (quoting Doc. 50-1 at 5))]. While true, the significance of the Militia Act of 1792, or indeed any of the founding-era militia laws referenced in the cases cited above, is not that they *created* a right to keep and bear arms at all. Indeed, *Heller* described the Second Amendment as having "codified a *pre-existing* right." 554 U.S. at 592. Similarly, *Heller* explained that the "well-regulated militia" mentioned in the Amendment's text was a reference to an entity "already in existence." *Id.* at 596. The militia laws' significance is that they provide some indication that the existing right to keep and bear arms likely included those who were included in the already existing militia.

Nor is the Court persuaded by the Commissioner's assertion that because certain state militia laws from 1776 through 1825 required parents to provide weapons to their minor children, such minors would have been understood to fall outside of the Second Amendment's scope. As the *Hirschfeld* court noted:

> [T]hose laws do little to suggest that those under 21 were not required to keep and bear arms. Most of those laws require 18-year-olds to enlist but do not set an age for parental liability, just requiring guardians to be liable for the equipment and food of those "who shall be under their care." And the existence of these laws is unsurprising given that some states required those older than 16 to enroll in the militia. Regardless, "the point remains that those minors were in the militia and, as such, they were required to own their own weapons," even if their parents had to buy those weapons or consent to them joining.

5 F.4th at 434 (citations and footnote omitted).

The Commissioner's remaining textual arguments are similarly unavailing. For example, the Commissioner suggests that a literal reading of Plaintiffs' interpretation would place no limits on Second Amendment rights such that "even toddlers or those declared mentally unfit by the courts would have the right to bear arms." [Doc. 72 at 3]. The Court disagrees. Of course, "[l]ike most rights, the right secured by the Second Amendment is not

unlimited." *Heller*, 554 U.S. at 626. No court has read the Second Amendment to cover those under the age of 18, and this case does not raise that issue.[14] Moreover, this decision neither addresses nor calls into question whether Minnesota may constitutionally prohibit the possession or carrying of firearms by any individual whom a court has determined is mentally unfit to have a weapon, nor whose right to possess firearms has been restricted due to violations of the law.[15]

Next, the Commissioner argues that the Second Amendment's reference to "the people" should not be understood to include 18–20-year-olds because at the time that both the Second and Fourteenth Amendments were ratified the age of majority was 21. Consequently, 18-to-20-year-olds would have been minors who could not

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14. At least one court suggested that Second Amendment protections do not "extend in full force to those under 18" and stated that "the history of the right to keep and bear arms, including militia laws, may well permit drawing the line at 18." *Hirschfeld*, 5 F.4th at 422 & n.13.

15. *Bruen* referred to the Second Amendment's protections for the rights of "law-abiding" Americans on more than one occasion, but some courts applying *Bruen*'s two-part test have considered whether a person's violations of the law disqualify them from keeping or bearing arms under the second part of the analysis, rather than as an aspect of the textual inquiry. *Price*, 2022 U.S. Dist. LEXIS 186571, 2022 WL 6968457, at *7 (S.D. W. Va. Oct. 12, 2022) ("The plain text of the Second Amendment does not include 'a qualification that Second Amendment rights belong only to individuals who have not violated any laws.'" (quoting *United States v. Jackson*, No. CR-22-59-D, 2022 U.S. Dist. LEXIS 148911, 2022 WL 3582504, at *2 (W.D. Okla. Aug. 19, 2022)).

have purchased a firearm without the consent of a parent or guardian and would have been subject to an array of legislative restrictions under states' police powers. [Doc. 72 at 4–6]. However, as other courts have observed, "the age of majority—even at the Founding—lacks meaning without reference to a particular right." *Hirschfeld*, 5 F.4th at 435. Although the full age of majority was often 21, "that only mattered for specific activities"; for others, such as taking an oath (12), selling land (21), receiving capital punishment (14), serving as an executor or executrix (17), being married (for a woman 12), choosing a guardian (for a woman 14), the age of majority varied widely. *Id.* Essentially, 18-year-olds might have been considered minors for some purposes during the founding era, and adults for others. But the Defendants offer no authority to support the proposition that the voters who adopted the Second Amendment would have used the phrase "the people" in the "normal and ordinary" sense to express a limitation based on the general common law age of majority. *See Heller*, 554 U.S. at 576 ("In interpreting [the Second Amendment's] text, we are guided by the principle that 'the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from their technical meaning.'" (quoting *United States v. Sprague*, 282 U.S. 716, 731, 51 S. Ct. 220, 75 L. Ed. 640 (1931)) (cleaned up).

For all these reasons, the Court concludes that the text of the Second Amendment includes within the right to keep and bear arms 18-to-20-year-olds, and therefore, the Second Amendment "presumptively guarantees [Plaintiffs'] right to 'bear' arms in public for self-defense." *Bruen*, 142 S. Ct. at 2135.

C. Applying the Historical Analysis

Because the Second Amendment's text presumptively guarantees Plaintiffs' right to publicly carry a handgun for self-defense, under *Bruen* Defendants must demonstrate that the age requirement in Minn. Stat. § 624.714, subd. 2(b)(2), is consistent with the nation's history and tradition of firearms regulation. Based on a careful review of the record, the Court finds that Defendants have failed to identify analogous regulations that show a historical tradition in America of depriving 18–20-year-olds the right to publicly carry a handgun for self-defense. As a result, the age requirement prohibiting persons between the ages of 18 and 20 from obtaining such a permit to carry violates the Second Amendment.

The Court pauses here to comment on the task set before it by the second step in the *Bruen* framework. This Court shares the reservations about the required historical inquiry expressed by other courts and commentators. As observed before *Bruen*[16] and after it was decided,[17]

16. *Nat'l Rifle Ass'n of Am., Inc. v. Swearingen*, 545 F. Supp. 3d 1247, 1254 n.8 (N.D. Fla. 2021) ("Judges are not historians").

17. *United States v. Bullock*, No. 3:18-CR-165-CWR-FKB, 2022 U.S. Dist. LEXIS 203513, 2022 WL 16649175, at *1 (S.D. Miss. Oct. 27, 2022) ("This Court is not a trained historian. The Justices of the Supreme Court, distinguished as they may be, are not trained historians. We lack both the methodological and substantive knowledge that historians possess. The sifting of evidence that judges perform is different than the sifting of sources and methodologies that historians perform. . . . And we are not experts in what white, wealthy, and male property owners

judges are not historians. The process of consulting historical sources to divine the intent of those responsible for ratifying constitutional amendments is fraught with potential for error and confirmation bias. *See Bruen*, 142 S. Ct. at 2177–79 (Breyer, J., dissenting) (cataloguing criticism of the historical analysis in *Heller*); *Bullock*, 2022 U.S. Dist. LEXIS 203513, 2022 WL 16649175, at *2 (noting criticism of the Supreme Court's historical analysis in the Second Amendment context as having involved "cherry-picked" evidence from "the historical record to arrive at its ideologically preferred outcome"); *Swearingen*, 545 F. Supp. 3d at 1254 n.8 (quoting David A. Strauss, *The Living Constitution* 20–21 (2010) ("Time and again, judges—and academics, too—have found that the original understandings said pretty much what the person examining them wanted them to say")).

Certainly, the *Bruen* majority expressed a preference for a historical inquiry, despite its flaws, because the Justices considered the problems presented by means-end scrutiny to be a greater threat. 142 S. Ct. at 2130. But even beyond concerns with training and objectivity, the workability of the historical approach presents challenges. The *Bruen* majority says the solution lies in the traditional role of judges to resolve controversies presented through

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thought about firearms regulation in 1791. Yet we are now expected to play historian in the name of constitutional adjudication."); *United States v. Kelly*, Case No. 3:22-cr-00037, 2022 U.S. Dist. LEXIS 215189, 2022 WL 17336578, at *3 n.5 (M.D. Tenn. Nov. 16, 2022) (questioning whether appointment of experts pursuant to Fed. R. Evid. 706 "can be scaled to the level that would be required by the federal courts' massive docket of gun prosecutions").

the adversarial process: judges must answer questions about the constitutionality of modern firearm regulations "based on the historical record compiled by the parties." 142 S. Ct. at 2130 n.6. Perhaps this takes the sting out of the concern that lower courts lack the time and research resources to conduct deep historical inquiries on a scale akin to that undertaken by the *Bruen* Court. 142 S. Ct. at 2177 (Breyer, J., dissenting). But relying too heavily on party presentation to resolve a dispute about constitutional history opens the door to other problems. For example, courts faced with virtually identical issues could easily reach different conclusions based not on a complete or accurate picture of the relevant aspects of the nation's history and tradition of firearms regulation, but on something as ahistorical as expert witness availability or the researching acumen of the litigants appearing before them.

In the end, despite its apprehenshion about the historical inquiry that *Bruen* commands, the Court must analyze the age requirement in Minnesota's permit-to-carry law to determine its consistency with the nation's history and tradition of firearms regulation. Applying *Bruen*'s analogical reasoning to decide whether Defendants have identified a tradition of relevantly similar regulations that prohibit 18-to-20-year-olds from publicly carrying handguns for self-defense, the Court concludes that they have not.

1. 1791 or 1868?

In searching for historical analogues, the Court must first decide where to look. This is a difficult question

and one which highlights a serious tension in *Bruen*'s analytical framework. Plaintiffs insist that 1791, when the Second Amendment was ratified, and the nearby years of the founding era are the most relevant historical reference points for finding analogous firearms regulations. In contrast, the Commissioner argues that the years surrounding 1868, the year the Fourteenth Amendment was ratified, mark the correct period in which to review historical analogues. It was, after all, the Fourteenth Amendment that "incorporated" the protections of many parts of the Bill of Rights, including the Second Amendment, against the states. *Bruen*, 142 S. Ct. at 2137 (describing incorporation of Bill of Rights against the states through the Fourteenth Amendment); *McDonald*, 561 U.S. at 750 (holding that the Second Amendment is applicable to the states). But *Bruen* left this very question open because it found that the public understanding of the right to keep and bear arms was, for purposes of the New York statute it was considering, the same regardless of which era was considered. 142 S. Ct. at 2138.

In its very recent decision in *National Rifle Ass'n v. Bondi*, 61 F.4th 1317, 2023 WL 2484818 (11th Cir. 2023), the Eleventh Circuit confronted that open question. *Bondi* noted that *Bruen* "expressly declined to decide whether 'courts should primarily rely" on sources from the time of the Fourteenth Amendment's adoption in 1868 when considering the constitutionality of state laws, or sources from 1791 and the founding era. 61 F.4th 1317, *Id.* at *4 (quoting *Bruen*, 142 S. Ct. at 2138). But unlike in *Bruen*, the *Bondi* court found the dispute before it could not be decided without resolving that issue. *Bondi*, 61 F.4th 1317,

2023 WL 2484818, at *5. In *Bondi*, the dispute involved the constitutionality of a Florida law that prohibits individuals under the age of 21 from purchasing a firearm. 61 F.4th 1317, *Id.* at *7 (citing Fla. Stat. § 790.065(13)). The reason *Bondi* could not avoid the issue was because the historical sources in 1791 and 1868 pointed toward different conclusions about the public understanding of the scope of the right in each of those two periods. *Id.*

Bondi's answer to the question that *Bruen* left open begins with the premise that the "claim to democratic legitimacy" for originalist theory of constitutional interpretation is that it is governed by the understanding of the scope of constitutional rights held by the people who adopted them. *See* 61 F.4th 1317, *id.* at *3 (citing *Bruen*, 142 S. Ct. at 2136 and *Heller*, 554 U.S. at 634–35). When courts adhere to originalism, they must "respect the choice that those who bound themselves to be governed by the constitutional provision in question understood themselves to be making when they ratified the constitutional provision." *Id.*

But of course not all individual rights enshrined in the Constitution were ratified at the same time. As *McDonald* made clear, the Bill of Rights did not apply against the states when the Second Amendment was ratified in 1791. 561 U.S. at 742. Most of those rights did not become applicable to the states until 1868 when, according to the theory of incorporation, the Fourteenth Amendment was adopted. *Bondi*, 61 F.4th 1317, 2023 WL 2484818, at *4 (citing *McDonald*, 561 U.S. at 764). More than 70 years separates the group of people who ratified the

Second Amendment, making it applicable to the federal government, and those who agreed that it applied to the states as well.

Notwithstanding the realities of the passage of time, the rights enumerated in the Bill of Rights, including Second Amendment rights, have generally been assumed to have the same scope whether the right is asserted against the federal government or in response to a state regulation. *Bruen*, 142 S. Ct. at 2137. Thus, for the originalist, if the public understood that the Second Amendment would not have permitted certain firearms regulations in 1791, and the people who chose to make that right applicable against the states in 1868 understood its scope to allow a regulation that was previously forbidden, arguably either principled originalism or uniform application of constitutional rights to states and the federal government must give way.

Bondi suggests that the only path through this thicket while following *Bruen*'s emphasis on originalism is to stay "faithful to the principle that constitutional rights are enshrined with the scope that they were understood to have *when the people adopted them*." 61 F.4th 1317, *Id.* at *5 (quoting *Bruen*, 142 S. Ct. at 2136). Because the later ratification of the Fourteenth Amendment was the act by which the states made the Second Amendment applicable against themselves, the understanding of the scope of the right by those who ratified it in 1868 is, therefore, "the more appropriate barometer" for gauging what scope the Second Amendment right was enshrined with when it was incorporated against the

states. *Id.* Per *Bondi*'s reasoning "it makes no sense to suggest that the States would have bound themselves to an understanding of the Bill of Rights—including that of the Second Amendment—that they did not share when they ratified the Fourteenth Amendment." 61 F.4th 1317, 2023 WL 2484818, at *5; *Ezell v. City of Chicago*, 651 F.3d 684, 702 (7th Cir. 2011) ("*McDonald* confirms that when state-or local-government action is challenged, the focus of the original-meaning inquiry is carried forward in time; the Second Amendment's scope as a limitation on the States depends on how the right was understood when the Fourteenth Amendment was ratified.").

It is difficult to see an answer to the question that *Bruen* saw no need to resolve that is different from the one reached by the *Bondi* court if the answer is derived from adherence to originalist theory. But, in this Court's view, *Bondi* declined to follow rather clear signs that the Supreme Court favors 1791 as the date for determining the historical snapshot of "the people" whose understanding of the Second Amendment matters. *See Bruen*, 142 S. Ct. at 2137 ("And we have generally assumed that the scope of the protection applicable to the Federal Government and States is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791."). *Bondi* does not mention the *Bruen* Court's warning to "guard against giving postenactment history more weight than it can rightly bear." *Bruen*, 142 S. Ct. at 2136. The *Bruen* majority made no small effort to distance itself from even *Heller*'s reliance on postenactment history except to the extent that such history was consistent with the founding-era public meaning. *Bruen*, 142 S. Ct. at 2136–37; *see*

also Gamble v. United States, 139 S. Ct. 1960, 1975–76, 204 L. Ed. 2d 322 (2019) (stating that *Heller* treated 19th century treatises "as mere confirmation of what the Court thought had already been established"). And the *Bruen* Court further explained that "post-ratification adoption or acceptance of laws that are inconsistent with the original meaning of the constitutional text obviously cannot overcome or alter that text." *Heller*, 670 F.3d at 1274, n.6 (Kavanaugh, J., dissenting). And *Bondi*'s conclusion is difficult to square with the Supreme Court's emphasis on applying the Bill of Rights against the states and federal government according to the same standards. *Bruen*, 142 S. Ct. at 2137; *Ramos v. Louisiana*, 140 S. Ct. 1390, 1398, 206 L. Ed. 2d 583 (2020) (explaining that the Supreme Court has "rejected the notion that the Fourteenth Amendment applies to the States only a watered-down, subjective version of the individual guarantees of the Bill of Rights") (cleaned up); *Timbs v. Indiana*, 139 S. Ct. 682, 687, 203 L. Ed. 2d 11 (2019) ("[I]f a Bill of Rights protection is incorporated, there is no daylight between the federal and state conduct it prohibits or requires.").

This reasoning makes it difficult to agree with the Commissioner's position that 1868 should control. Other courts applying *Bruen*'s second step have similarly placed particular emphasis on founding-era analogues. *Price*, 2022 U.S. Dist. LEXIS 186571, 2022 WL 6968457, at *5–6; *McCraw*, 2022 U.S. Dist. LEXIS 152834, 2022 WL 3656996, at *11; *United States v. Harrison*, Case No. CR-22-00328-PRW, __ F. Supp. 3d __, 2023 WL 1771138, at *8 & n.41 (W.D. Okla. Feb. 3, 2023), *appeal filed.* Feb. 3, 2023), appeal filed No. 23-6028 (10th Cir. Mar. 30, 2023). This is not to say that post-enactment history, including that from around the time of the Fourteenth Amendment's

ratification, could never shed light on the original understanding of the scope of the Second Amendment. *See Frey v. Nigrelli*, No. 21 CV 05334 (NSR), 2023 U.S. Dist. LEXIS 42067, 2023 WL 2473375, at *13 (S.D.N.Y. Mar. 13, 2023) (finding "no issue in considering the abundance of examples provided by the Defendants regarding the existence of municipal gun regulations from 1750 to the late 19th century" because the Supreme Court left open the question of the appropriate period for consideration). But the Commissioner offers no persuasive reason why this Court should rely upon laws from the second half of the nineteenth century to the exclusion of those in effect at the time of the founding in light of *Bruen*'s warnings not to give post-Civil War history more weight than it can rightly bear. 142 S. Ct. at 2136.

Ultimately, however, *Bondi* does not impact this Court's conclusion because, even if *Bondi* is correct, analyses based on 1791 and on 1868 yield the same results in *this* case. The contour of the Second Amendment right that we are addressing in this case is not whether a law prohibiting the *sale* of handguns to 18-to-21-year-olds is consistent with the nation's history and tradition of firearm regulation as it existed in either 1791 or in 1868, as it was in *Bondi*. Instead, the issue here concerns the right of that cohort to publicly carry a handgun for self-defense. As discussed below, the laws reviewed and considered by the *Bondi* court no more reveal a history and tradition of firearms regulations relevantly similar to Minnesota's age requirement than do those cited by the Commissioner.[18]

18. Of the laws cited in *Bondi*'s Appendix, only the Nevada (1885) and Wisconsin (1883) statutes outlawed any form of public carry by a person under the age of 21, and Nevada's was limited in

2. Proposed Analogues

Following the roadmap laid out in *Bruen*, the Court must assess any historical analogues identified by the Commissioner using two metrics to determine if they are "relevantly similar": "how" and "why" they burden the Second Amendment right as compared to the challenged regulation. *Bruen*, 142 S. Ct. at 2132–33. The Commissioner has identified rules limiting students' possession of guns on campus and two municipal ordinances as possible colonial-era analogues for Minnesota's age requirement. The Court considers them in turn.

College Campus Restrictions

To support the position that there is a tradition of firearm regulation limiting firearms rights for 18–20-year-olds, the Commissioner first points to policies on college campuses prohibiting students from owning weapons, including firearms. The Defendants assert that persons under the age of 21 "who left their parental home and went to college then lived under the guardianship authority of their college *in loco parentis*. Many colleges prohibited students from possessing or keeping firearms." [Doc. 72 at 13; *see also* Doc. 49 at 26–27]. Evidence of

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its application to "concealed" weapons. *See* 1883 Wis. Sess. Laws 290 § 1 ("It shall be unlawful for any minor, within this state, to go armed with any pistol or revolver . . . ."); 1885 Nev. Stat. 51 § 1 ("Every person under the age of twenty-one (21) years who shall wear or carry any dirk, pistol, . . . or other dangerous or deadly weapon concealed upon his person shall be deemed guilty of a misdemeanor. . .").

such collegiate regulations is found in the report of the Commissioner's expert, Professor Saul Cornell. These include the following:

- Yale College's prohibition in 1800 on students' possession of any guns or gun powder.[19]

- An 1811 regulation at the University of Georgia providing that: "no student shall be allowed to keep any gun, pistol, Dagger, Dirk sword cane or any other offensive weapon in College or elsewhere, neither shall they or either of them be allowed to be possessed of the same out of the college in any case whatsoever."[20]

- An 1838 University of North Carolina Ordinance which stated: "No Student shall keep a dog, or firearms, or gunpowder. He shall not carry, keep, or own at the College, a sword, dirk, sword-cane."[21]

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19. *The Laws of Yale-College, in New-Haven, in Connecticut, Enacted by the President and Fellows, the Sixth Day of October, A.D. 1795*, at 26 (1800).

20. *The Minutes of the Senatus Academicus* 1799–1842, p.73 University of Georgia Libraries (1976), *available at* http://dlg.galileo.usg.edu/do:guan ua0148 ua0148-002-004-001.

21. Acts of the General Assembly and Ordinances of the Trustees, for the Organization and Government of the University of North Carolina 15 (1838). Aside from the other problems

[Doc. 50-1 at 14–15 & nn.64–66 and accompanying text]. According to Professor Cornell, these rules "support the conclusion that, for individuals below the age of majority, there was no unfettered right to purchase, keep, or bear arms." [Doc. 50-1 at 15].

The Court cannot agree that these rules and regulations demonstrate a relevantly similar historical tradition of restrictions on 18-to-20-year-olds possessing or carrying firearms. For one thing, none of these proposed analogues appears to be the product of a legislative body elected by founding-era voters, but instead they are rules established by the institutions' boards of trustees or other leadership. Moreover, the reach of these prohibitions—students at three colleges in an era when higher education was attended by few—is not enough to suggest an original public understanding that restrictions on 18-to-20-year-olds' possession and carrying of firearms were consistent with the Second Amendment. Indeed, they would not have prevented a person under the age of 21 who was not a student at one of the schools from possessing or carrying a firearm, and they undoubtedly applied with equal force to students older than 21.

Moreover, considering whether such regulations are "relevantly similar" must also involve an inquiry into why the cited university regulations at issue burden the students' right to armed self-defense, and whether that motivation is akin to the purpose of the age requirement

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identified with these proposed analogues below, a rule from 1838 stretches the boundaries of what may reasonably be interpreted as falling within the period referred to as the founding era.

in Minnesota's permitting scheme. *Bruen*, 142 S. Ct. at 2132–33. The Minnesota Legislature made the empirical judgment that individuals under 21 present greater risks when carrying firearms and believed preventing them from carrying the handguns in public is consistent with the Second Amendment. *See* Minn. Stat. § 624.714, subd. 22 (indicating that the legislature recognizes the "fundamental, individual right to keep and bear arms" protected by the Second Amendment and stating that the "provisions of this section are declared to be necessary to accomplish compelling state interests in regulation of those rights").[22] One can similarly surmise that the leadership of Yale and the Universities of Georgia and North Carolina imposed restrictions on student possession of firearms for comparable safety reasons. But identifying that a proposed analogue and a modern regulation are both aimed at promoting safety by limiting accidents and intentional violence is not enough to suggest that the

22. The Minnesota Supreme Court has observed that the permitting requirement was enacted "'to prevent the possession of firearms in places where they are most likely to cause harm in the wrong hands, i.e., in public places where their discharge may injure or kill intended or unintended victims.'" *State v. Hatch*, 962 N.W.2d 661, 664 (Minn. 2021) (quoting *State v. Paige*, 256 N.W.2d 298, 303 (Minn. 1977)). The Expert Report of Professor John J. Donohue, offered by the Commissioner, also observes that "the age-based restriction on gun carrying adopted by Minnesota and challenged in this case promotes public health and safety by generating meaningful reductions in violent crime, firearm accidents, gun theft, and suicide." [Doc. 50-1 at 54]. Generally speaking, Professor Donohue's report catalogues the evidence he relied on to support his opinion that individuals under the age of 21 present greater public safety risks.

campus rules are "distinctly similar" historical analogues. *Bruen*, 142 S. Ct. at 2131.

The Commissioner fares no better with the suggestion that because these rules derive from the colleges' *in loco parentis* guardianship responsibilities, they reveal a historical tradition that people under 21 were minors without rights. [Doc. 72 at 13]. The argument is that the rules stemmed from the institutions' assumption of the "obligations incident to the parental relation," because they have acquired custody of the student and "such power of control over the person of the child as is incident to the family government." 29 William Mack, *Cyclopedia of Law and Procedure* 1670–71 (1908).[23] However, the age requirement in Minnesota's permit-to-carry law does

23. *See Brinkerhoff v. Merselis' Executors*, 24 N.J.L 680, 683 (1855) (stating that the "proper definition of a person *in loco parentis* to a child is, a person who means to put himself in the situation of the lawful father of the child, with reference to the father's office and duty of making provision for the child" or someone "discharging parental duties" (citing, among other English cases, *Wetherby v. Dixon* [1815], 34 Eng. Reprint 568)).

It seems likely that the Commissioner's focus on the *in loco parentis* rationale behind these regulations is to provide further support for his position that those who were legally minors in 1791 would not have been included among "the people" to whom the Second Amendment's protections extend. The Court has considered it in that context as well, and unfortunately for the Defendants, the argument does not change the Court's conclusion regarding the first step of the *Bruen* test.

not stem from a similar justification.[24] These proposed analogues, therefore, are "relevantly similar" in their motivation for intruding on the right at the center of the Second Amendment in only the most general way. Overall, they do not demonstrate a founding-era tradition of firearm regulation consistent with the challenged law.

Municipal Ordinances

The Commissioner also points to two municipal laws that, although they post-date ratification, can reasonably be linked to the founding era: an 1803 New York ordinance, and an 1817 ordinance from Columbia, South Carolina. [Doc. 49 at 27; Doc. 50-1 & nn.67–68]. The New York ordinance "To Prevent the Firing of guns in the City of New York," provided that if the person firing the weapon was a minor, then the guardian would responsible for paying the $5 fine.[25] The 1817 Columbia ordinance

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24. It is also worth noting that a person standing *in loco parentis* may have a duty to prevent the minor from harming others to avoid incurring tort liability. 67A Corpus Juris Secundum, Parent and Child § 370, *Tort liability and rights of action*. If the campus rules at issue were passed with the purpose of institutional avoidance of tort liability in mind, one would be hard pressed to say that such a reason is relevantly similar to any reason the Minnesota Legislature likely included the age requirement in its permitting scheme.

25. Ordinance of the City of New York, to Prevent the Firing of Guns in the City of New York § 1, *Laws and Ordinances, Ordained and Established by the Mayor, Alderman and Commonalty of the City of New-York, in Common-Council Convened, for the Good Rule and Government of the Inhabitants and Residents of Said City* 83–84 (1803), https://firearmslaw.duke.

similarly prohibited the firing of weapons by anyone within the town, subject to a $5 fine for any violation, but if a minor or indigent person broke the law and was unable to pay, then the firearm could be seized and sold to pay the fine.[26] However, these proposed analogues are not "relevantly similar" because they burden the right to bear arms for different reasons and in different ways than Minnesota's age requirement. As to *how* they burden the right, they place restrictions on the discharge of firearms, but do not ban carrying them outright. And as to the *why*, both ordinances contain a whereas clause generally citing dangers associated with the discharge of weapons within city or town. Though the remedies for each recognize that a minor might be less able to pay the fine, both the laws governed conduct regardless of age, prohibiting conduct of adults of any age.

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edu/laws/edward-livingston-laws-and-ordinances-ordained-and-established-by-the-mayor-aldermen-and-commonalty-of-the-city-of-new-york-in-common-council-convened-for-the-good-rule-and-government-of-the-inh/.

26. An Ordinance for Prohibiting the Firing of Guns in the Town of Columbia (1817), *Ordinances of the Town of Columbia, (S.C.) Passed Since the Incorporation of Said Town: To Which are Prefixed the Acts of the General Assembly, for Incorporating the Said Town, and Others in Relation Thereto* 61 (1823), https://firearmslaw.duke.edu/laws/ordinances-of-the-town-of-columbia-s-c-passed-since-the-incorporation-of-said-town-to-which-are-prefixed-the-acts-of-the-general-assembly-for-incorporating-the-said-town-and-others-in-relati/.

Appendix C

Other Founding-Era Analogues

The Commissioner has proposed no other founding-era firearm regulations as historical analogues justifying Minnesota's age requirement. Other courts looking for historical restrictions from the founding era on the rights of 18-to-20-year-olds to keep and bear arms have similarly come up empty. *McCraw*, 2022 U.S. Dist. LEXIS 152834, 2022 WL 3656996, at *9–10 (finding that Texas had failed to identify any relevantly similar historical analogue for its law prohibiting 18–20-year-olds from applying for a license to carry); *Hirschfeld*, 5 F.4th at 439 ("At the time of ratification, there were no laws restricting minors' possession or purchase of firearms").[27] But the Commissioner argues that a narrow focus on the presence—or absence—of laws expressly prohibiting people under 21 from carrying firearms creates a skewed perception of the reality of gun possession during the founding era.

The Commissioner states that "context is key to understanding historical analogues to Minnesota's permitting scheme from the Founding Era." [Doc. 72 at 13]. The Commissioner points to Professor Cornell's

27. *See also Swearingen*, 545 F. Supp. 3d at 1256 ("[T]his Court has found no case or article suggesting that, during the Founding Era, any law existed that imposed restrictions on 18-to-20-year-olds' ability to purchase firearms. . . . Given the amount of attention this issue has received, if such a law existed, someone surely would have identified it by now. Thus, this Court proceeds under the assumption that no law restricting the purchase of firearms by 18-to-20-year-olds existed at the Founding.").

response to a deposition question asking him to identify a law from the founding era restricting 18-to-20-year-olds from purchasing or carrying firearms. Professor Cornell testified that he was aware of no such laws, but deemed the inquiry a "bad question." [Doc. 72 at 14 (citing Cornell Dep. 177:9–21) (alteration in original)]. And in his expert report, Professor Cornell explains that "[a]ny effort to understand the Second Amendment and the history of gun regulation must . . . canvass a variety of historical topics, including such diverse subfields as legal history, social history, cultural history, economic history, and military history," because failing to do so risks adopting a "discredited 'tunnel vision' approach to historical analysis." [Doc. 50-1 at 9–10]. Essentially, the Commissioner's expert argues that the absence of founding-era laws restricting 18-to-20-year-olds from publicly carrying firearms only permits an inference that the public understood that group to possess a corresponding constitutional right to public carry if one makes anachronistic and flawed assumptions about what that regulatory silence means.

Professor Cornell's testimony raises a compelling question about the propriety of drawing conclusions about a modern regulation's validity from the absence of laws prohibiting 18-to-20-year-olds from possessing weapons during the founding era. Professor Cornell persuasively argues that without the proper contextual framing, the straightforward search for so-called "relevantly similar" laws will yield a conclusion that is unsound as a matter of historical methodology. And such a critique highlights the challenge of having judges, most of whom are not trained historians, look narrowly at laws on the books to discern true historical understandings. But persuasive

as one may find this criticism, *Bruen* instructs lower courts that "when a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment." 142 S. Ct. at 2131. Here, while it might be more analytically sound to consider the context Professor Cornell referenced, the Court cannot discern how to incorporate that context into *Bruen*'s mandated approach to analogical reasoning. Ultimately, the Court is constrained to conclude that Defendants have not met their burden to show that Minnesota's challenged law is consistent with the nation's founding-era history and tradition of firearm's regulation.

Reconstruction-Era Analogues

The Commissioner points to potential analogues from before and after ratification of the Fourteenth Amendment as evidence that Minnesota's age requirement is consistent with the nation's history and tradition of firearm regulation. These include several laws from shortly before the Civil War,[28] and 19 regulations enacted between 1875 and 1899 that prohibited, with limited exception, selling

28. 1856 Ala. Acts 17; 1856 Tenn. Pub. Acts. 92; 1859 Ky. Acts 245. The text of these statutes, and others referenced in this section, may be found online at https://firearmslaw.duke.edu/repository/search-the-repository/ (under Subjects, select "Possession by, Use of, and Sales to Minors and Others Deemed Irresponsible," choose desired Jurisdictions from the list below, and click on "Submit" button).

or otherwise furnishing pistols, revolvers, or other deadly weapons to groups variously identified as minors, minors under 16, and minors under the age of 21.[29] As explained above, relying on laws so far removed in time from the ratification of the Second Amendment to demonstrate the "historical tradition of firearm regulation" contemplated by *Bruen* would "giv[e] postenactment history more weight than it can rightly bear." 142 S. Ct. at 2135–36; *McCraw*, 2022 U.S. Dist. LEXIS 152834, 2022 WL 3656996, at *11 (same).

Nonetheless, the Court has carefully reviewed the text of each of the 19th century laws offered by the Commissioner as possible analogues. Even aside from the fact that they were enacted decades after the founding, for various reasons, none of these regulations is

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29. 1883 Kan. Sess. Laws 159; 1883 Wis. Sess. Laws 290 § 2; 1890 La. Acts 39, § 1; 1882 Md. Laws 656, § 2; 1875 Ind. Acts 59; 1876 Ga. Laws 112; 1878 Miss. Laws 175; 1881 Del. Laws 716; 1881 Fla. Laws 87; 1881 Ill. Laws 73; 1881 Pa. Laws 111; 1882 W. Va. Acts 421; 1883 Mo. Laws 78; 1884 Iowa Acts 86; 1890 Okla. Laws 495; 1890 Wyo. Sess. Laws 127; 1893 N.C. Sess. Laws 468; 1895 Neb. Laws Relating to the City of Lincoln 237; 1897 Tex. Gen. Laws 221. See also Doc. 50-1 at 25–26 (Table Two); *Nat'l Rifle Ass'n of Am., Inc. v. Bur. of Alcohol, Tobacco, Firearms, and Explosives*, 700 F.3d 185, 202 & n.14 (5th Cir. 2012) ("Arms-control legislation intensified through the 1800s, . . . and by the end of the 19th century, nineteen states and the District of Columbia had enacted laws expressly restricting the ability of persons under 21 to purchase or use particular firearms, or restricting the ability of 'minors' to purchase or use particular firearms while the state age of majority was set at age 21."), *abrogated by Bruen*, 142 S. Ct. at 2127 n.4.

"relevantly similar" to the age requirement in Minnesota's permit-to-carry law. Several of the Reconstruction-era laws pointed to by the Commissioner prohibited sales of firearms to minors, but did not place restrictions on minors receiving them from parents or even employers.[30] And other proffered laws limited firearm possession by those under the age of 16, but not the 18-to-20-year-old cohort at issue in Minnesota's law. 1881 Fla. Laws 87; 1881 Pa. Laws 423. In addition, the Nevada statute "only prohibits those under twenty-one from *concealed* carry of pistols," but not from carrying altogether. *NRA II*, 714 F.3d at 344 (Jones, J. dissental) (emphasis in original). These restrictions do not burden the Second Amendment right in a manner distinctly similar to the age requirement Minnesota's permit-to-carry law.

In sum, the Commissioner's reliance on statutes passed in the second half of the 19th century does not support his burden to show the age requirement in Minn. Stat. § 624.714, subd. 2(b)(2), is consistent with the nation's history and tradition of firearm regulations as required by *Bruen*.

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30. 1878 Miss. Laws 175–76, § 2 (prohibiting only sales to minors); 1881 Fla. Laws 87, § 1 (allowing sales or other transactions to minors with permission of the parent); 16 Del. Laws 716 (1881) (prohibiting sales to minors); 1881 Ill. Laws 73 (exceptions for transfers by the "father, guardian, or employer" of a minor); 1883 Mo. Laws 76 (allowing transfers to minors with parental consent); 1897 Tex. Gen. Laws 221–22 (permitting transfers with written consent of parent or guardian).

D. Policy Concerns

Missing from the above application of *Bruen*'s test is any discussion of either the legitimacy of the reasons Minnesota adopted the age requirement or the tailoring of the means to fit the purposes served by the law. The Commissioner submitted the Expert Report of Professor John J. Donohue in connection with the summary judgment briefing. Professor Donohue, an economist and law professor with a focus on empirical legal studies, discusses the relevant population of young adults, including important features of their neurobiological and behavioral development, increased risks associated with them having greater access to weapons, the effectiveness of Minnesota's existing regulations in addressing higher rates of violence among the population of young adults, the empirical data regarding whether public carry among the population will actually result in effective use of guns for protection, and other issues. [Doc. 50-1 (beginning at p.54 of the attachment)]. *Amici curiae*, Giffords Law Center to Prevent Gun Violence and Protect Minnesota, similarly link the still-developing nature of 18–20-year-olds' brains to increased impulsivity and a prediction that greater access to firearms among young adults leads to disproportionate rates of violent crimes involving firearms and suicides. [Doc. 71 at 12–28]. Indeed, Minnesota enacted the age requirement in 2003 for reasons that align with these very concerns, with the Legislature balancing safety interests against its understanding of the right to keep and bear arms. Minn. Stat. § 624.714, subd. 22. There is no basis in the record for the Court to question the conclusions reached by Professor Donohue's Report and *amici*.

If the Court were permitted to consider the value of these goals and how well Minnesota's age requirement fits the ends to be achieved, the outcome here would likely be different. But whatever the evidence may reveal about the wisdom behind enacting a 21-year-old requirement for publicly carrying a handgun, such analysis belongs to a regime of means-end scrutiny scuttled by *Bruen*. Under *Bruen*, the balancing of interests in public safety and the right to keep and bear arms has already been "struck by the traditions of the American people." 142 S. Ct. at 2131 (citing *Heller*, 554 U.S. at 635). Second Amendment jurisprudence now focuses a lens entirely on the choices made in a very different time, by a very different American people. Given the relative dearth of firearms regulation from the most relevant period where that lens is aimed, the endeavor of applying *Bruen* seems likely to lead, generally, to more guns in the hands of more people, not just young adults.[31] Some Minnesotans are surely fine with that result. Others may wonder what public safety measures are left to be achieved through the political process where guns are concerned. But *Bruen* makes clear that today's policy considerations play no role in an analytical framework that begins and ends more than two hundred years ago.

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31. *United States v. Rahimi*, 61 F.4th 443, 2023 WL 2317796 (5th Cir. 2023) (applying *Bruen* to hold that 18 U.S.C. § 922(g)(8), which makes it a crime to possess a firearm while subject to a domestic violence restraining order, violates the Second Amendment).

E. Conclusion

Because the plain text of the Second Amendment covers the Plaintiffs' proposed course of conduct and Defendants have not met their burden under the historical prong of *Bruen*'s test, Plaintiffs are entitled to judgment as a matter of law on their Second Amendment claim. As noted above, Plaintiffs seek both a declaratory judgment and injunctive relief. Specifically, they ask for the following relief in their Complaint:

a) Declare that Minn. Stat. § 624.714, subd. 1a and § 624.714, subd. 2(b)(2), their derivative regulations, and all related laws, policies, practices, and customs violate—facially, as applied to otherwise qualified 18–20-year-olds, or as applied to otherwise qualified 18–20-year-old women—the right of Plaintiffs and Plaintiffs' similarly situated members to keep and bear arms as guaranteed by the Second Amendment and Fourteenth Amendments to the United States Constitution; [and]

b) Enjoin Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with him from enforcing, against Plaintiffs and Plaintiffs' similarly situated members Minn. Stat., § 624.714, subd. 1a and § 624.714, subd. 2(b)(2), their derivative regulations,

> and all related laws, policies, practices, and customs that would impede or criminalize Plaintiffs and Plaintiffs' similarly situated members' exercise of their right to keep and bear arms.

[Compl., Prayer for Relief].

Based on the record here, the Court grants Plaintiffs' motion for summary judgment, but will not direct entry of Judgment giving Plaintiffs the declaratory and injunctive relief specifically requested in their Complaint. Because the Court has concluded that the age requirement is unconstitutional, Defendants will ultimately be enjoined from denying a permit to carry a pistol from an otherwise-qualified applicant who is at least 18 years old. However, nothing before the Court establishes that, once enforcement of the age requirement is enjoined and it forms no impediment to receipt of a permit by those over the age of 18, it would still be unconstitutional to require 18–20-year-olds to first obtain a permit pursuant to the permitting requirement in Minn. Stat. § 624.714, subd. 1a, as older Minnesotans must now do.

Consistent with the foregoing, the Court finds that Plaintiffs are entitled to the following relief: (1) a declaration that Minn. Stat. § 624.714, subd. 2(b)(2)'s requirement that a person must be at least 21 years of age to receive a permit to publicly carry a handgun violates the federal constitutional right of 18–20-year-olds to keep and bear arms; and (2) Defendants are enjoined from enforcing the minimum-age requirement in Minn. Stat. § 624.714, subd. 2(b)(2), against 18–20-year-olds, provided that any

individual Plaintiff or other 18–20-year-old who applies to receive a permit-to-carry is not otherwise ineligible.[32]

IV. Defendants' Motions

For the same reasons that the Court has granted the Plaintiffs' summary judgment on the merits of their Second Amendment claim, the Court concludes that the Defendants are not entitled to summary judgment on the merits of the constitutional arguments explored above. In support of their motions, Defendants raised other arguments that have not yet been addressed in this Order. These remaining issues do not change the outcome for the Defendants, and their motions are denied.

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32. The Court notes that in *McCraw*, a case involving a successful challenge to Texas' 21-year-old minimum-age requirement for a permit-to-carry, the court stated that although "Texas cannot impose a 'substantial burden on public carry' for 18-to-20-year-olds, Texas could, under *Bruen*, require 18-to-20-year-olds to satisfy additional objective criteria when compared to those above the age of 21." *McCraw*, 2022 U.S. Dist. LEXIS 152834, 2022 WL 3656996, at *11 n.9.

Appendix C

A. Standing

The Commissioner argues that the Plaintiffs cannot establish standing. [Doc. 78 at 3]. And in any event, standing "is a jurisdictional requirement, [that] 'can be raised by the court sua sponte at any time during the litigation.'" *Pucket v. Hot Springs Sch. Dist. No. 23-2*, 526 F.3d 1151, 1156–57 (8th Cir. 2008) (quoting *Delorme v. United States*, 354 F.3d 810, 815 (8th Cir. 2004)). Article III standing requires a plaintiff to show "(1) that he or she suffered an 'injury-in-fact, (2) a causal relation between the injury and the challenged conduct, and (3) that the injury likely will be redressed by a favorable decision." *Id.* at 1157 (quoting *Steger v. Franco, Inc.*, 228 F.3d 889, 892 (8th Cir. 2000)). An organization may bring suit on behalf of its members when: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Red River Freethinkers v. City of Fargo*, 679 F.3d 1015, 1022 (8th Cir. 2012) (quotations omitted).

The Court has no trouble concluding that Plaintiffs have met their burden to show that they have standing. Courts addressing nearly identical claims on very similar records have found the requisite criteria are satisfied for Article III standing. *See McCraw*, 2022 U.S. Dist. LEXIS 152834, 2022 WL 3656996, at *2 (finding that individual and organizational plaintiffs had standing to challenge 21-year-old age restriction in Texas' permit-to-carry law

on similar facts). The Sheriffs' implicit suggestion that Plaintiffs have shown no injury because the Sheriffs have never received an application for a permit-to-carry from the individual Plaintiffs or anyone else under the age of twenty-one does not defeat the Plaintiffs' standing. Indeed, submission of such an application would have been futile.[33] *See Pucket*, 526 F.3d at 1162 ("[W]e may find a plaintiff has standing even if he or she has failed to take steps to satisfy a precondition if the attempt would have been futile."); *McCraw*, 2022 U.S. Dist. LEXIS 152834, 2022 WL 3656996, at *2 (noting that the plaintiffs did not need to violate the permit-to-carry statute to show standing, but could meet the injury requirement by showing they intended to engaged in arguably protected, but prohibited conduct, with a credible threat of prosecution). Similarly, the Commissioner's suggestion at the hearing that the discovery in this case failed to reveal any immediate harm does not undermine the Plaintiffs' standing. Publicly carrying a handgun in Minnesota without a permit is a criminal offense, Plaintiffs have provided uncontroverted evidence of an intention to engage in conduct arguably protected by the Second Amendment, and nothing in the record suggests Plaintiffs would be free from enforcement of any criminal penalties should they choose to violate the law. Because there exists a credible threat of prosecution if Plaintiffs engage in the arguably protected conduct at issue, they satisfy the imminence requirement of injury-in-fact. *See Susan B. Anthony List v. Driehaus*, 573 U.S.

33. Moreover, the declarations submitted by organizational plaintiffs MGOC, SAF, and FPC set forth a sufficient basis for the Court to conclude that these associations have standing to bring claims on behalf of their members.

149, 158–59, 134 S. Ct. 2334, 189 L. Ed. 2d 246 (2014) (discussing the injury-in-fact requirement where there is a credible threat of prosecution) (quotation marks omitted); *Christian v. Nigrelli*, 22-CV-695 (JLS), ___ F. Supp. 3d ___, 2022 U.S. Dist. LEXIS 211652, 2022 WL 17100631, at *4 (W.D.N.Y. Nov. 22, 2022) (applying *Driehaus* in the Second Amendment context). Accordingly, the Court concludes that Plaintiffs have Article III standing in this matter.

B. Proper Defendants

In slightly different ways, the Commissioner and the Sheriffs argue that they are each entitled to summary judgment because they are not the proper parties against whom Plaintiffs should have brought their Second Amendment claims. The Commissioner does not point his finger directly at the Sheriffs, and they, in turn, do not expressly say that Plaintiffs should only have sued the Commissioner. But the Commissioner essentially contends he is not the proper defendant because he is not directly responsible for issuing the permits, and the Sheriffs suggest that the responsibility rests with the State rather than their respective counties. If both the Commissioner and the Sheriffs were correct, Plaintiffs would potentially be without a means to obtain relief for the alleged violation of their constitutional rights.

The Court concludes that the Commissioner and the Sheriffs are both properly named Defendants in this litigation.

Appendix C

1. *Ex Parte Young* and the Commissioner

The Commissioner asserts that the Plaintiffs' official-capacity claims against him are jurisdictionally barred by Eleventh Amendment sovereign immunity. Because Minnesota has not waived that immunity, and 42 U.S.C. § 1983 does not override it, the Commissioner argues that the only exception that would allow Plaintiffs' claims to go forward would be that recognized in *Ex parte Young*, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908). "In *Ex parte Young*, the Supreme Court recognized Eleventh Amendment sovereign immunity does not bar certain suits seeking declaratory and injunctive relief against state officers in their individual capacities based on ongoing violations of federal law." *Minn. RFL Republican Farmer Lab. Caucus v. Freeman*, File No. 19-cv-1949 (ECT/DTS), 2020 U.S. Dist. LEXIS 49778, 2020 WL 1333154, at *2 (D. Minn. Mar. 23, 2020) ("*Freeman*") (brackets and internal quotation omitted) (quoting *Kodiak Oil & Gas (USA) Inc. v. Burr*, 932 F.3d 1125, 1131 (8th Cir. 2019)).[34] According to the Commissioner, the *Ex parte Young* exception does not apply because the Commissioner is not responsible for enforcement of the permit-to-carry statute and has not threatened to commence any proceedings to enforce the statute.

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34. *Freeman* explains that discussion of the *Ex parte Young* exception has not always been precise regarding a distinction about official-capacity or individual-capacity claims, but the distinction appears to be "insignificant in these cases. The point is that *Ex parte Young* permits suits against state officers for prospective declaratory and injunctive relief—not damages—the Eleventh Amendment notwithstanding." 2020 U.S. Dist. LEXIS 49778, 2020 WL 1333154, at *2 n.3.

The Court concludes that Plaintiffs' claims for prospective declaratory and injunctive relief may proceed against the Commissioner. Under the *Ex parte Young* doctrine, for the defendant "to be amenable for suit challenging a particular statute the [defendant] must have some connection with the enforcement of the act." *281 Care Comm. v. Arneson*, 638 F.3d 621, 632 (8th Cir. 2011) (internal quotation marks omitted); *Calzone v. Hawley*, 866 F.3d 866, 869 (8th Cir. 2017) (same). But the official's connection "'does not need to be primary authority to enforce the challenged law.'" *Church v. Missouri*, 913 F.3d 736, 748 (8th Cir. 2019) (quoting *281 Care*, 638 F.3d at 632).

Here, the thrust of the Commissioner's argument is that the Sheriffs, and not the Commissioner, are "responsible for reviewing, investigating, denying and issuing licenses under the statute." The Commissioner suggests that his connection to the statute is only "ministerial" and he is not charged with enforcing the statute as a matter of law. [Doc. 49 at 13]. But the statutory scheme plainly gives the Commissioner "some connection" with enforcement of the act. Indeed, the Commissioner is required by Minn. Stat. § 624.7151 and § 624.714, subd. 3, to develop statewide standards for application forms that are consistent with the criteria set forth in § 624.714, subd. 2(b). The record demonstrates that the Commissioner created such a form, which among other things, requires an applicant to provide his or her date of birth. [Doc. 43-1]. Though no one suggests an injunction should require removal of the date-of-birth box from the form, it is clear that the Commissioner facilitates enforcement of the age requirement. More directly, the Commissioner is

required to make the standardized forms available on the Internet, Minn. Stat. § 624.714, subd. 3(h), which he has done.[35] And on that same Minnesota Department of Public Safety website, the requirements for getting a permit to carry are listed on a Frequently Asked Questions page. That FAQ section includes an indication that the applicant "[m]ust be at least 21 years of age."[36] The Commissioner, consistent with the current language of the statute, informs members of the public who are 18–20-year-olds that they are ineligible to receive a permit to carry.

The Court concludes that the Commissioner is not entitled to summary judgment based on his argument that he is the wrong Defendant. Even if the Commissioner does not "have the full power to redress [Plaintiffs'] injury," *281 Care*, 638 F.3d at 633, Plaintiffs have sufficiently demonstrated that he has some connection to enforcement of the statute such that he can be ordered to provide meaningful prospective injunctive relief.

2. *Monell* and the Sheriffs

The Sheriffs likewise argue that they are the wrong defendants, but they base their argument on *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). Under *Monell*, a municipality can be a "person" subject to liability for

35. https://dps.mn.gov/divisions/bca/bca-divisions/administrative/Pages/firearms-permit-to-carry.aspx.

36. https://dps.mn.gov/divisions/bca/bca-divisions/administrative/Pages/Permit-to-Carry-FAQ.aspx.

constitutional violations pursuant to 42 U.S.C. § 1983 when the violation at issue was caused by an official municipal policy. 436 U.S. at 690–91. "For a municipality to be liable, a plaintiff must prove that a municipal policy or custom was the moving force behind the constitutional violation." *Mettler v. Whitledge*, 165 F.3d 1197, 1204 (8th Cir. 1999) (quotations and brackets omitted). The Sheriffs argue that Plaintiffs cannot prevail against them under *Monell* because when the Sheriffs deny a permit to carry a handgun, they are simply following a statutory obligation to apply Minn. Stat. § 624.714.[37] According to the Sheriffs, Plaintiffs cannot show that any county policy is implicated in this case at all, let alone one that is the moving force behind the alleged violation of Plaintiffs' Second Amendment rights.

Here, for purposes of enforcing the age requirement in Minn. Stat. § 624.714, subd. 2(b)(2), and issuing permits to carry, the Sheriffs are arms of the State. The Court reaches this conclusion based on its review of the Sheriffs' role in the statutory licensure scheme. *Evans v. City of Helena-West Helena*, 912 F.3d 1145, 1146 (8th Cir. 2019)

37. The Sheriffs aptly and thoroughly discuss the unsettled answer to the issue of when a municipality may be sued pursuant to *Monell* for enforcement of state law. As one court in this District put it: "[t]he short story is that the Supreme Court has not decided the issue. Nor has the Eighth Circuit. And the other circuits are split." *Freeman*, 2020 U.S. Dist. LEXIS 49778, 2020 WL 1333154, at *2 (quoting *Slaven v. Engstrom*, 710 F.3d 772, 781 n.4 (8th Cir. 2013) ("Whether, and if so when, a municipality may be liable under § 1983 for its enforcement of state law has been the subject of extensive debate in the circuits.")).

("Whether the clerk acts on behalf of the State, the City, or the County depends on the definition of the clerk's official functions under the relevant state law.").

Under Minnesota's permit-to-carry law, the Sheriffs implement the permitting scheme. In doing so, they process applications on a form created by the Commissioner for statewide administration. Minn. Stat. § 624.714, subd. 3 (form and contents of application); *id.* § 624.7151 (requiring adoption of standardized forms). While Sheriffs process applications for residents of the counties in which they have been elected, "nonresidents" are permitted to apply to any sheriff for a permit to carry. *Id.* § 624.714, subd. 2 (citing § 171.01, subd. 42). When they review, process, and issue or deny a permit, including if they were to deny a permit to a person under the age of 21, the Sheriffs are exercising authority on behalf of the State of Minnesota. *Id.* § 624.714, subd. 2(b) (providing that the sheriff "must issue a permit to an applicant if the person" meets specified criteria); *id.* § 624.714, sudb. 6(a). The permit cards issued by the Sheriffs are on a standardized form adopted by the Commissioner. *Id.* § 624.714, subd. 7(a). The Sheriffs collect application fees, but are required to send portions of those fees back to the Commissioner to be deposited into the general fund. *Id.* § 624.714, subd. 3(f); *id.* § 624.714, subd. 7(c)(1). Any portion of the fees collected by the Sheriffs must be held in a segregated fund and only used to pay the costs of administering the permitting regime. *Id.* § 624.714, subd. 21. The Sheriffs are required to provide the Department of Public Safety with basic data required to allow the Commissioner to complete reports to the Minnesota Legislature regarding the issuance of carry permits. *Id.* § 624.714, subd. 20(b).

Considering "the definition of the [Sheriffs'] functions under relevant state law," *McMillian v. Monroe County*, 520 U.S. 781, 786, 117 S. Ct. 1734, 138 L. Ed. 2d 1 (1997), the Court finds that for purposes of enforcing the provisions of Minn. Stat. § 624.714, the Sheriffs actually represent the State of Minnesota. And like the Commissioner, the Sheriffs are significantly involved in implementing the unconstitutional prohibition on law-abiding 18–20-year-olds' right to publicly carry firearms for self-defense. Accordingly, as acting State officials for purposes of their enforcement of the permit-to-carry law, the Sheriffs have a sufficient connection with the ongoing enforcement to allow the Plaintiffs' claims for prospective injunctive relief to go forward against them under the doctrine of *Ex parte Young*. *See Freeman*, 2020 U.S. Dist. LEXIS 49778, 2020 WL 1333154, at *2–3; *see also McMillian* (holding that Alabama sheriffs acting in their law enforcement capacities represented the State of Alabama).

V. Order

For the foregoing reasons, **IT IS HEREBY ORDERED that**:

1. Plaintiffs' Motion for Summary Judgment [Doc. 40] is **GRANTED IN PART**;

2. Judgment is granted to Plaintiffs on the issue of whether Minn. Stat. § 624.714, subd. 2(b)(2), violates the right of the individual Plaintiffs and the otherwise-qualified 18–20-year-old members of MGOC, SAF, and FPC to keep and bear arms

as guaranteed by the Second and Fourteenth Amendments to the United States Constitution;

a. The Court declares that Minn. Stat. § 624.714, subd. 2(b)(2)'s requirement that a person must be at least 21 years of age to receive a permit to publicly carry a handgun in Minnesota violates the rights of individuals 18–20 years old to keep and bear arms protected by the Second and Fourteenth Amendments; and

b. Defendants are enjoined from enforcing the 21-year minimum-age requirement in Minn. Stat. § 624.714, subd. 2(b)(2), against the individual Plaintiffs and otherwise-qualified 18–20-year-olds;

3. Commissioner Harrington's Motion for Summary Judgment [Doc. 45] is **DENIED**; and

4. Sheriffs Lorge, Wolbersen, and Starry's Motion for Summary Judgment [Doc. 52] is **DENIED**.

Let Judgment be Entered Accordingly.

Date: March 31, 2023

/s/ Katherine Menendez
Katherine Menendez
United States District Judge

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, FILED AUGUST 21, 2024

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 23-2248

KRISTIN WORTH, *et al.*,

Appellees,

v.

BOB JACOBSON, IN HIS INDIVIDUAL CAPACITY AND IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE MINNESOTA DEPARTMENT OF PUBLIC SAFETY,

Appellant.

KYLE BURTON, IN HIS INDIVIDUAL CAPACITY AND IN HIS OFFICIAL CAPACITY AS SHERIFF OF MILLE LACS COUNTY, MINNESOTA, *et al.*

EVERYTOWN FOR GUN SAFETY, FORMERLY KNOWN AS EVERYTOWN FOR GUN SAFETY ACTION FUND, *et al.*,

Amici on Behalf of Appellant(s),

Appendix D

NATIONAL RIFLE ASSOCIATION
OF AMERICA, INC.,

Amicus on Behalf of Appellee(s).

Appeal from U.S. District Court for the
District of Minnesota
(0:21-cv-01348-KMM)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

August 21, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

APPENDIX E — CONSTITUTIONAL PROVISIONS AND STATUTES

Second Amendment

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Fourteenth Amendment

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the

basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3

No person shall be a Senator or Representative in Congress, or elector of President and Vice- President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Appendix E

MINNESOTA STATUTES 2024

624.714 CARRYING OF WEAPONS WITHOUT PERMIT; PENALTIES.

Subdivision 1. [Repealed, 2003 c 28 art 2 s 35; 2005 c 83 s 1]

Subd. 1a. **Permit required; penalty.** A person, other than a peace officer, as defined in section 626.84, subdivision 1, who carries, holds, or possesses a pistol in a motor vehicle, snowmobile, or boat, or on or about the person's clothes or the person, or otherwise in possession or control in a public place, as defined in section 624.7181, subdivision 1, paragraph (c), without first having obtained a permit to carry the pistol is guilty of a gross misdemeanor. A person who is convicted a second or subsequent time is guilty of a felony.

Subd. 1b. **Display of permit; penalty.** (a) The holder of a permit to carry must have the permit card and a driver's license, state identification card, or other government-issued photo identification in immediate possession at all times when carrying a pistol and must display the permit card and identification document upon lawful demand by a peace officer, as defined in section 626.84, subdivision 1. A violation of this paragraph is a petty misdemeanor. The fine for a first offense must not exceed $25. Notwithstanding section 609.531, a firearm carried in violation of this paragraph is not subject to forfeiture.

(b) A citation issued for violating paragraph (a) must be dismissed if the person demonstrates, in court or in

the office of the arresting officer, that the person was authorized to carry the pistol at the time of the alleged violation.

(c) Upon the request of a peace officer, a permit holder must write a sample signature in the officer's presence to aid in verifying the person's identity.

(d) Upon the request of a peace officer, a permit holder shall disclose to the officer whether or not the permit holder is currently carrying a firearm.

Subd. 2. **Where application made; authority to issue permit; criteria; scope.** (a) Applications by Minnesota residents for permits to carry shall be made to the county sheriff where the applicant resides. Nonresidents, as defined in section 171.01, subdivision 42, may apply to any sheriff.

(b) Unless a sheriff denies a permit under the exception set forth in subdivision 6, paragraph (a), clause (3), a sheriff must issue a permit to an applicant if the person:

(1) has training in the safe use of a pistol;

(2) is at least 21 years old and a citizen or a permanent resident of the United States;

(3) completes an application for a permit;

(4) is not prohibited from possessing a firearm under the following sections:

(i) 518B.01, subdivision 14;

(ii) 609.224, subdivision 3;

(iii) 609.2242, subdivision 3;

(iv) 609.749, subdivision 8;

(v) 624.713;

(vi) 624.719;

(vii) 629.715, subdivision 2;

(viii) 629.72, subdivision 2; or

(ix) any federal law; and

(5) is not listed in the criminal gang investigative data system under section 299C.091.

(c) A permit to carry a pistol issued or recognized under this section is a state permit and is effective throughout the state.

(d) A sheriff may contract with a police chief to process permit applications under this section. If a sheriff contracts with a police chief, the sheriff remains the issuing authority and the police chief acts as the sheriff's agent. If a sheriff contracts with a police chief, all of the provisions of this section will apply.

Appendix E

Subd. 2a. **Training in safe use of a pistol.** (a) An applicant must present evidence that the applicant received training in the safe use of a pistol within one year of the date of an original or renewal application. Training may be demonstrated by:

(1) employment as a peace officer in the state of Minnesota within the past year; or

(2) completion of a firearms safety or training course providing basic training in the safe use of a pistol and conducted by a certified instructor.

(b) Basic training must include:

(1) instruction in the fundamentals of pistol use;

(2) successful completion of an actual shooting qualification exercise; and

(3) instruction in the fundamental legal aspects of pistol possession, carry, and use, including self-defense and the restrictions on the use of deadly force.

(c) The certified instructor must issue a certificate to a person who has completed a firearms safety or training course described in paragraph (b). The certificate must be signed by the instructor and attest that the person attended and completed the course.

(d) A person qualifies as a certified instructor if the person is certified as a firearms instructor within the past

five years by an organization or government entity that has been approved by the Department of Public Safety in accordance with the department's standards.

(e) A sheriff must accept the training described in this subdivision as meeting the requirement in subdivision 2, paragraph (b), for training in the safe use of a pistol. A sheriff may also accept other satisfactory evidence of training in the safe use of a pistol.

Subd. 3. **Form and contents of application.** (a) Applications for permits to carry must be an official, standardized application form, adopted under section 624.7151, and must set forth in writing only the following information:

(1) the applicant's name, residence, telephone number, if any, and driver's license number or state identification card number;

(2) the applicant's sex, date of birth, height, weight, and color of eyes and hair, and distinguishing physical characteristics, if any;

(3) the township or statutory city or home rule charter city, and county, of all Minnesota residences of the applicant in the last five years, though not including specific addresses;

(4) the township or city, county, and state of all non-Minnesota residences of the applicant in the last five years, though not including specific addresses;

(5) a statement that the applicant authorizes the release to the sheriff of commitment information about the applicant maintained by the commissioner of human services or any similar agency or department of another state where the applicant has resided, to the extent that the information relates to the applicant's eligibility to possess a firearm; and

(6) a statement by the applicant that, to the best of the applicant's knowledge and belief, the applicant is not prohibited by law from possessing a firearm.

(b) The statement under paragraph (a), clause (5), must comply with any applicable requirements of Code of Federal Regulations, title 42, sections 2.31 to 2.35, with respect to consent to disclosure of alcohol or drug abuse patient records.

(c) An applicant must submit to the sheriff an application packet consisting only of the following items:

(1) a completed application form, signed and dated by the applicant;

(2) an accurate photocopy of the certificate described in subdivision 2a, paragraph (c), that is submitted as the applicant's evidence of training in the safe use of a pistol; and

(3) an accurate photocopy of the applicant's current driver's license, state identification card, or the photo page of the applicant's passport.

(d) In addition to the other application materials, a person who is otherwise ineligible for a permit due to a criminal conviction but who has obtained a pardon or expungement setting aside the conviction, sealing the conviction, or otherwise restoring applicable rights, must submit a copy of the relevant order.

(e) Applications must be submitted in person.

(f) The sheriff may charge a new application processing fee in an amount not to exceed the actual and reasonable direct cost of processing the application or $100, whichever is less. Of this amount, $10 must be submitted to the commissioner and deposited into the general fund.

(g) This subdivision prescribes the complete and exclusive set of items an applicant is required to submit in order to apply for a new or renewal permit to carry. The applicant must not be asked or required to submit, voluntarily or involuntarily, any information, fees, or documentation beyond that specifically required by this subdivision. This paragraph does not apply to alternate training evidence accepted by the sheriff under subdivision 2a, paragraph (d).

(h) Forms for new and renewal applications must be available at all sheriffs' offices and the commissioner must make the forms available on the Internet.

(i) Application forms must clearly display a notice that a permit, if granted, is void and must be immediately returned to the sheriff if the permit holder is or becomes

prohibited by law from possessing a firearm. The notice must list the applicable state criminal offenses and civil categories that prohibit a person from possessing a firearm.

(j) Upon receipt of an application packet and any required fee, the sheriff must provide a signed receipt indicating the date of submission.

Subd. 4. **Investigation.** (a) The sheriff must check, by means of electronic data transfer, criminal records, histories, and warrant information on each applicant through the Minnesota Crime Information System and the National Instant Criminal Background Check System. The sheriff shall also make a reasonable effort to check other available and relevant federal, state, or local record-keeping systems. The sheriff must obtain commitment information from the commissioner of human services as provided in section 246C.15 or, if the information is reasonably available, as provided by a similar statute from another state.

(b) When an application for a permit is filed under this section, the sheriff must notify the chief of police, if any, of the municipality where the applicant resides. The police chief may provide the sheriff with any information relevant to the issuance of the permit.

(c) The sheriff must conduct a background check by means of electronic data transfer on a permit holder through the Minnesota Crime Information System and the National Instant Criminal Background Check System at

least yearly to ensure continuing eligibility. The sheriff may also conduct additional background checks by means of electronic data transfer on a permit holder at any time during the period that a permit is in effect.

Subd. 5. [Repealed, 2003 c 28 art 2 s 35; 2005 c 83 s 1]

Subd. 6. **Granting and denial of permits.** (a) The sheriff must, within 30 days after the date of receipt of the application packet described in subdivision 3:

(1) issue the permit to carry;

(2) deny the application for a permit to carry solely on the grounds that the applicant failed to qualify under the criteria described in subdivision 2, paragraph (b); or

(3) deny the application on the grounds that there exists a substantial likelihood that the applicant is a danger to self or the public if authorized to carry a pistol under a permit.

(b) Failure of the sheriff to notify the applicant of the denial of the application within 30 days after the date of receipt of the application packet constitutes issuance of the permit to carry and the sheriff must promptly fulfill the requirements under paragraph (c). To deny the application, the sheriff must provide the applicant with written notification and the specific factual basis justifying the denial under paragraph (a), clause (2) or (3), including the source of the factual basis. The sheriff must inform the applicant of the applicant's right to submit, within 20

business days, any additional documentation relating to the propriety of the denial. Upon receiving any additional documentation, the sheriff must reconsider the denial and inform the applicant within 15 business days of the result of the reconsideration. Any denial after reconsideration must be in the same form and substance as the original denial and must specifically address any continued deficiencies in light of the additional documentation submitted by the applicant. The applicant must be informed of the right to seek de novo review of the denial as provided in subdivision 12.

(c) Upon issuing a permit to carry, the sheriff must provide a laminated permit card to the applicant by first class mail unless personal delivery has been made. Within five business days, the sheriff must submit the information specified in subdivision 7, paragraph (a), to the commissioner for inclusion solely in the database required under subdivision 15, paragraph (a). The sheriff must transmit the information in a manner and format prescribed by the commissioner.

(d) Within five business days of learning that a permit to carry has been suspended or revoked, the sheriff must submit information to the commissioner regarding the suspension or revocation for inclusion solely in the databases required or permitted under subdivision 15.

(e) Notwithstanding paragraphs (a) and (b), the sheriff may suspend the application process if a charge is pending against the applicant that, if resulting in conviction, will prohibit the applicant from possessing a firearm.

(f) A sheriff shall not deny an application for a permit to carry solely because the applicant is a patient enrolled in the registry program and uses medical cannabis flower or medical cannabinoid products for a qualifying medical condition or because the person is 21 years of age or older and uses adult-use cannabis flower, adult-use cannabis products, lower-potency hemp edibles, or hemp-derived consumer products.

Subd. 7. **Permit card contents; expiration; renewal.** (a) Permits to carry must be on an official, standardized permit card adopted by the commissioner, containing only the name, residence, and driver's license number or state identification card number of the permit holder, if any.

(b) The permit card must also identify the issuing sheriff and state the expiration date of the permit. The permit card must clearly display a notice that a permit, if granted, is void and must be immediately returned to the sheriff if the permit holder becomes prohibited by law from possessing a firearm.

(c) A permit to carry a pistol issued under this section expires five years after the date of issue. It may be renewed in the same manner and under the same criteria which the original permit was obtained, subject to the following procedures:

(1) no earlier than 90 days prior to the expiration date on the permit, the permit holder may renew the permit by submitting to the appropriate sheriff the application packet described in subdivision 3 and a renewal processing

fee not to exceed the actual and reasonable direct cost of processing the application or $75, whichever is less. Of this amount, $5 must be submitted to the commissioner and deposited into the general fund. The sheriff must process the renewal application in accordance with subdivisions 4 and 6; and

(2) a permit holder who submits a renewal application packet after the expiration date of the permit, but within 30 days after expiration, may renew the permit as provided in clause (1) by paying an additional late fee of $10.

(d) The renewal permit is effective beginning on the expiration date of the prior permit to carry.

Subd. 7a. **Change of address; loss or destruction of permit.** (a) Within 30 days after changing permanent address, or within 30 days of having lost or destroyed the permit card, the permit holder must notify the issuing sheriff of the change, loss, or destruction. Failure to provide notification as required by this subdivision is a petty misdemeanor. The fine for a first offense must not exceed $25. Notwithstanding section 609.531, a firearm carried in violation of this paragraph is not subject to forfeiture.

(b) After notice is given under paragraph (a), a permit holder may obtain a replacement permit card by paying $10 to the sheriff. The request for a replacement permit card must be made on an official, standardized application adopted for this purpose under section 624.7151, and, except in the case of an address change, must include a

notarized statement that the permit card has been lost or destroyed.

Subd. 8. **Permit to carry voided.** (a) The permit to carry is void at the time that the holder becomes prohibited by law from possessing a firearm, in which event the holder must return the permit card to the issuing sheriff within five business days after the holder knows or should know that the holder is a prohibited person. If the sheriff has knowledge that a permit is void under this paragraph, the sheriff must give notice to the permit holder in writing in the same manner as a denial. Failure of the holder to return the permit within the five days is a gross misdemeanor unless the court finds that the circumstances or the physical or mental condition of the permit holder prevented the holder from complying with the return requirement.

(b) When a permit holder is convicted of an offense that prohibits the permit holder from possessing a firearm, the court must take possession of the permit, if it is available, and send it to the issuing sheriff.

(c) The sheriff of the county where the application was submitted, or of the county of the permit holder's current residence, may file a petition with the district court therein, for an order revoking a permit to carry on the grounds set forth in subdivision 6, paragraph (a), clause (3). An order shall be issued only if the sheriff meets the burden of proof and criteria set forth in subdivision 12. If the court denies the petition, the court must award the permit holder reasonable costs and expenses, including attorney fees.

(d) A permit revocation must be promptly reported to the issuing sheriff.

Subd. 8a. **Prosecutor's duty.** Whenever a person is charged with an offense that would, upon conviction, prohibit the person from possessing a firearm, the prosecuting attorney must ascertain whether the person is a permit holder under this section. If the person is a permit holder, the prosecutor must notify the issuing sheriff that the person has been charged with a prohibiting offense. The prosecutor must also notify the sheriff of the final disposition of the case.

Subd. 9. **Carrying pistols about one's premises or for purposes of repair, target practice.** A permit to carry is not required of a person:

(1) to keep or carry about the person's place of business, dwelling house, premises or on land possessed by the person a pistol;

(2) to carry a pistol from a place of purchase to the person's dwelling house or place of business, or from the person's dwelling house or place of business to or from a place where repairing is done, to have the pistol repaired;

(3) to carry a pistol between the person's dwelling house and place of business;

(4) to carry a pistol in the woods or fields or upon the waters of this state for the purpose of hunting or of target shooting in a safe area; or

(5) to transport a pistol in a motor vehicle, snowmobile or boat if the pistol is unloaded, contained in a closed and fastened case, gunbox, or securely tied package.

Subd. 10. **False representations.** A person who gives or causes to be given any false material information in applying for a permit to carry, knowing or having reason to know the information is false, is guilty of a gross misdemeanor.

Subd. 11. **No limit on number of pistols.** A person shall not be restricted as to the number of pistols the person may carry.

Subd. 11a. **Emergency issuance of permits.** A sheriff may immediately issue an emergency permit to a person if the sheriff determines that the person is in an emergency situation that may constitute an immediate risk to the safety of the person or someone residing in the person's household. A person seeking an emergency permit must complete an application form and must sign an affidavit describing the emergency situation. An emergency permit applicant does not need to provide evidence of training. An emergency permit is valid for 30 days, may not be renewed, and may be revoked without a hearing. No fee may be charged for an emergency permit. An emergency permit holder may seek a regular permit under subdivision 3 and is subject to the other applicable provisions of this section.

Subd. 12. **Hearing upon denial or revocation.** (a) Any person aggrieved by denial or revocation of a permit to carry may appeal by petition to the district court having

jurisdiction over the county or municipality where the application was submitted. The petition must list the sheriff as the respondent. The district court must hold a hearing at the earliest practicable date and in any event no later than 60 days following the filing of the petition for review. The court may not grant or deny any relief before the completion of the hearing. The record of the hearing must be sealed. The matter must be heard de novo without a jury.

(b) The court must issue written findings of fact and conclusions of law regarding the issues submitted by the parties. The court must issue its writ of mandamus directing that the permit be issued and order other appropriate relief unless the sheriff establishes by clear and convincing evidence:

(1) that the applicant is disqualified under the criteria described in subdivision 2, paragraph (b); or

(2) that there exists a substantial likelihood that the applicant is a danger to self or the public if authorized to carry a pistol under a permit. Incidents of alleged criminal misconduct that are not investigated and documented may not be considered.

(c) If an applicant is denied a permit on the grounds that the applicant is listed in the criminal gang investigative data system under section 299C.091, the person may challenge the denial, after disclosure under court supervision of the reason for that listing, based on grounds that the person:

(1) was erroneously identified as a person in the data system;

(2) was improperly included in the data system according to the criteria outlined in section 299C.091, subdivision 2, paragraph (b); or

(3) has demonstrably withdrawn from the activities and associations that led to inclusion in the data system.

(d) If the court grants a petition brought under paragraph (a), the court must award the applicant or permit holder reasonable costs and expenses including attorney fees.

Subd. 12a. **Suspension as condition of release.** The district court may order suspension of the application process for a permit or suspend the permit of a permit holder as a condition of release pursuant to the same criteria as the surrender of firearms under section 629.715. A permit suspension must be promptly reported to the issuing sheriff. If the permit holder has an out-of-state permit recognized under subdivision 16, the court must promptly report the suspension to the commissioner for inclusion solely in the database under subdivision 15, paragraph (a).

Subd. 13. **Exemptions; adult correctional facility officers.** A permit to carry a pistol is not required of any officer of a state adult correctional facility when on guard duty or otherwise engaged in an assigned duty.

Subd. 14. **Records.** (a) A sheriff must not maintain records or data collected, made, or held under this section concerning any applicant or permit holder that are not necessary under this section to support a permit that is outstanding or eligible for renewal under subdivision 7, paragraph (b). Notwithstanding section 138.163, sheriffs must completely purge all files and databases by March 1 of each year to delete all information collected under this section concerning all persons who are no longer current permit holders or currently eligible to renew their permit.

(b) Paragraph (a) does not apply to records or data concerning an applicant or permit holder who has had a permit denied or revoked under the criteria established in subdivision 2, paragraph (b), clause (1), or subdivision 6, paragraph (a), clause (3), for a period of six years from the date of the denial or revocation.

Subd. 15. **Commissioner; contracts; database.** (a) The commissioner must maintain an automated database of persons authorized to carry pistols under this section that is available 24 hours a day, seven days a week, only to law enforcement agencies, including prosecutors carrying out their duties under subdivision 8a, to verify the validity of a permit.

(b) The commissioner may maintain a separate automated database of denied applications for permits to carry and of revoked permits that is available only to sheriffs performing their duties under this section containing the date of, the statutory basis for, and the initiating agency for any permit application denied or

permit revoked for a period of six years from the date of the denial or revocation.

(c) The commissioner may contract with one or more vendors to implement the commissioner's duties under this section.

Subd. 16. **Recognition of permits from other states.** (a) The commissioner must annually establish and publish a list of other states that have laws governing the issuance of permits to carry weapons that are not similar to this section. The list must be available on the Internet. A person holding a carry permit from a state not on the list may use the license or permit in this state subject to the rights, privileges, and requirements of this section.

(b) Notwithstanding paragraph (a), no license or permit from another state is valid in this state if the holder is or becomes prohibited by law from possessing a firearm.

(c) Any sheriff or police chief may file a petition under subdivision 12 seeking an order suspending or revoking an out-of-state permit holder's authority to carry a pistol in this state on the grounds set forth in subdivision 6, paragraph (a), clause (3). An order shall only be issued if the petitioner meets the burden of proof and criteria set forth in subdivision 12. If the court denies the petition, the court must award the permit holder reasonable costs and expenses including attorney fees. The petition may be filed in any county in the state where a person holding a license or permit from another state can be found.

(d) The commissioner must, when necessary, execute reciprocity agreements regarding carry permits with jurisdictions whose carry permits are recognized under paragraph (a).

Subd. 17. **Posting; trespass.** (a) A person carrying a firearm on or about his or her person or clothes under a permit or otherwise who remains at a private establishment knowing that the operator of the establishment or its agent has made a reasonable request that firearms not be brought into the establishment may be ordered to leave the premises. A person who fails to leave when so requested is guilty of a petty misdemeanor. The fine for a first offense must not exceed $25. Notwithstanding section 609.531, a firearm carried in violation of this subdivision is not subject to forfeiture.

(b) As used in this subdivision, the terms in this paragraph have the meanings given.

(1) "Reasonable request" means a request made under the following circumstances:

(i) the requester has prominently posted a conspicuous sign at every entrance to the establishment containing the following language: "(INDICATE IDENTITY OF OPERATOR) BANS GUNS IN THESE PREMISES."; or

(ii) the requester or the requester's agent personally informs the person that guns are prohibited in the premises and demands compliance.

(2) "Prominently" means readily visible and within four feet laterally of the entrance with the bottom of the sign at a height of four to six feet above the floor.

(3) "Conspicuous" means lettering in black arial typeface at least 1-1/2 inches in height against a bright contrasting background that is at least 187 square inches in area.

(4) "Private establishment" means a building, structure, or portion thereof that is owned, leased, controlled, or operated by a nongovernmental entity for a nongovernmental purpose.

(c) The owner or operator of a private establishment may not prohibit the lawful carry or possession of firearms in a parking facility or parking area.

(d) The owner or operator of a private establishment may not prohibit the lawful carry or possession of firearms by a peace officer, as defined in section 626.84, subdivision 1, paragraph (c), within the private establishment or deny the officer access thereto, except when specifically authorized by statute. The owner or operator of the private establishment may require the display of official credentials issued by the agency that employs the peace officer prior to granting the officer entry into the private establishment.

(e) This subdivision does not apply to private residences. The lawful possessor of a private residence may prohibit firearms, and provide notice thereof, in any lawful manner.

(f) A landlord may not restrict the lawful carry or possession of firearms by tenants or their guests.

(g) Notwithstanding any inconsistent provisions in section 609.605, this subdivision sets forth the exclusive criteria to notify a permit holder when otherwise lawful firearm possession is not allowed in a private establishment and sets forth the exclusive penalty for such activity.

(h) This subdivision does not apply to a security guard acting in the course and scope of employment. The owner or operator of a private establishment may require the display of official credentials issued by the company, which must be licensed by the Private Detective and Protective Agent Services Board, that employs the security guard and the guard's permit card prior to granting the guard entrance into the private establishment.

Subd. 18. **Employers; public colleges and universities.** (a) An employer, whether public or private, may establish policies that restrict the carry or possession of firearms by its employees while acting in the course and scope of employment. Employment related civil sanctions may be invoked for a violation.

(b) A public postsecondary institution regulated under chapter 136F or 137 may establish policies that restrict the carry or possession of firearms by its students while on the institution's property. Academic sanctions may be invoked for a violation.

(c) Notwithstanding paragraphs (a) and (b), an employer or a postsecondary institution may not prohibit

the lawful carry or possession of firearms in a parking facility or parking area.

Subd. 19. **Immunity.** Neither a sheriff, police chief, any employee of a sheriff or police chief involved in the permit issuing process, nor any certified instructor is liable for damages resulting or arising from acts with a firearm committed by a permit holder, unless the person had actual knowledge at the time the permit was issued or the instruction was given that the applicant was prohibited by law from possessing a firearm.

Subd. 20. **Monitoring.** (a) By March 1, 2004, and each year thereafter, the commissioner must report to the legislature on:

(1) the number of permits applied for, issued, suspended, revoked, and denied, further categorized by the age, sex, and zip code of the applicant or permit holder, since the previous submission, and in total;

(2) the number of permits currently valid;

(3) the specific reasons for each suspension, revocation, and denial and the number of reversed, canceled, or corrected actions;

(4) without expressly identifying an applicant, the number of denials or revocations based on the grounds under subdivision 6, paragraph (a), clause (3), the factual basis for each denial or revocation, and the result of an appeal, if any, including the court's findings of fact, conclusions of law, and order;

(5) the number of convictions and types of crimes committed since the previous submission, and in total, by individuals with permits including data as to whether a firearm lawfully carried solely by virtue of a permit was actually used in furtherance of the crime;

(6) to the extent known or determinable, data on the lawful and justifiable use of firearms by permit holders; and

(7) the status of the segregated funds reported to the commissioner under subdivision 21.

(b) Sheriffs and police chiefs must supply the Department of Public Safety with the basic data the department requires to complete the report under paragraph (a). Sheriffs and police chiefs may submit data classified as private to the Department of Public Safety under this paragraph.

(c) Copies of the report under paragraph (a) must be made available to the public at the actual cost of duplication.

(d) Nothing contained in any provision of this section or any other law requires or authorizes the registration, documentation, collection, or providing of serial numbers or other data on firearms or on firearms' owners.

Subd. 21. **Use of fees.** Fees collected by sheriffs under this section and not forwarded to the commissioner must be used only to pay the direct costs of administering

this section. Fee money may be used to pay the costs of appeals of prevailing applicants or permit holders under subdivision 8, paragraph (c); subdivision 12, paragraph (e); and subdivision 16, paragraph (c). Fee money may also be used to pay the reasonable costs of the county attorney to represent the sheriff in proceedings under this section. The revenues must be maintained in a segregated fund. Fund balances must be carried over from year to year and do not revert to any other fund. As part of the information supplied under subdivision 20, paragraph (b), by January 31 of each year, a sheriff must report to the commissioner on the sheriff's segregated fund for the preceding calendar year, including information regarding:

(1) nature and amount of revenues;

(2) nature and amount of expenditures; and

(3) nature and amount of balances.

Subd. 22. **Short title; construction; severability.** This section may be cited as the Minnesota Citizens' Personal Protection Act of 2003. The legislature of the state of Minnesota recognizes and declares that the second amendment of the United States Constitution guarantees the fundamental, individual right to keep and bear arms. The provisions of this section are declared to be necessary to accomplish compelling state interests in regulation of those rights. The terms of this section must be construed according to the compelling state interest test. The invalidation of any provision of this section shall not invalidate any other provision.

Subd. 23. **Exclusivity.** This section sets forth the complete and exclusive criteria and procedures for the issuance of permits to carry and establishes their nature and scope. No sheriff, police chief, governmental unit, government official, government employee, or other person or body acting under color of law or governmental authority may change, modify, or supplement these criteria or procedures, or limit the exercise of a permit to carry.

Subd. 24. **Predatory offenders.** Except when acting under the authority of other law, it is a misdemeanor for a person required to register by section 243.166 to carry a pistol whether or not the carrier possesses a permit to carry issued under this section. If an action prohibited by this subdivision is also a violation of another law, the violation may be prosecuted under either law.

History: *1975 c 378 s 4; 1976 c 269 s 1; 1977 c 349 s 3; 1983 c 264 s 10; 1986 c 444; 1992 c 571 art 15 s 8,9; 1993 c 326 art 1 s 32; 1994 c 618 art 1 s 45,46; 1994 c 636 art 3 s 38-40; 1998 c 254 art 2 s 69; 2003 c 28 art 2 s 4-28,34; 2005 c 83 s 1,3-10; 2009 c 139 s 6; 2015 c 65 art 3 s 32; 2017 c 95 art 3 s 25; 2023 c 63 art 6 s 69; 2024 c 79 art 10 s 2*