COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SUFFOLK, ss. No. SJC-13856

COMMONWEALTH OF MASSACHUSETTS

v.

MIKAI THOMSON

ON APPEAL FROM A JUDGMENT OF THE BOSTON MUNICIPAL COURT, DORCHESTER DIVISION

AMICUS CURIAE BRIEF OF THE COMMITTEE FOR PUBLIC COUNSEL SERVICES, YOUTH ADVOCACY DIVISION, IN SUPPORT OF THE DEFENDANT AND ENTRY OF JUDGMENT OF NOT GUILTY

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STATEMENT OF INTEREST OF THE AMICUS CURIAE

The Committee for Public Counsel Services (CPCS) was created by the Legislature in 1983 "to plan, oversee, and coordinate the delivery of criminal and certain noncriminal legal services" to indigent parties in the commonwealth. St. 1983, c. 673, codified in G. L. c. 211D, § 1. Aside from the appointment of counsel for the indigent youth, CPCS has no financial interest in the case.

The Youth Advocacy Division (YAD) is the juvenile justice division of CPCS. YAD's juvenile public defenders and appointed private attorneys represent thousands of youth in a wide variety of proceedings, including delinquency, youthful offender, and juvenile homicide trials and appeals. Because YAD attorneys provide legal counsel to thousands of adolescent and young adult clients, the Court's decision in this case will affect the interests of YAD's present and future clients. See Patton v. United States, 281 U.S. 276, 304 (1930) ("Whatever rule is adopted affects not only the defendant, but all others similarly situated") (citation, quotation marks omitted).

AMICUS DECLARATION

Pursuant to Mass. R.A.P. 17(c)(5), amicus states that: (a) no party, and no party's counsel, authored this brief in whole or in part; (b) no party, no party's counsel, and no person or entity other than amicus and its counsel funded the preparation or submission of this brief; and (c) amicus and its counsel have not represented a party in this case, and have not been party to a legal transaction or proceeding at issue in this appeal.

STATEMENT OF THE ISSUES

This Court solicited amicus briefs concerning:

> "Where G. L. c. 140, § 131 (d) (iv), prohibits an individual under the age of twenty-one from obtaining a license to carry a firearm, whether that provision is unconstitutional; and, where the defendant, who is under the age of twenty-one, did not apply for a firearms license, whether he is entitled to raise an as-applied challenge to the constitutionality of the statute."

ARGUMENT

I. Mikai Thomson, as a 20-year-old adult, has standing to challenge the age restriction pursuant to G.L. c. 140, § 131 (d) (iv) because he was categorically prohibited from obtaining a license to carry a firearm in public.

In Marquis, this Court held that the defendant could not bring an as-applied challenge to the firearms licensing statutes because the defendant could have, but did not, apply for a firearms license. Commonwealth v. Marquis, 495 Mass. 434, 439-440 (2025). The colonel had the discretion to find the defendant not "unsuitable" to carry a firearm, see G.L. c. 140, § 131 (d) and G.L. c. 140, § 131F, yet the defendant did not submit to that process and challenge any denial of his application. See Marquis, 495 Mass. at 440. Thus, he could not be heard to complain about a licensing statute that did not interfere with his individual rights. " 'Only one whose rights are impaired by a statute can raise the question of its constitutionality, and he can object to the statute only as applied to him.' " Id. at 439, quoting Massachusetts Comm'n Against Discrimination v. Colangelo, 344 Mass. 387, 390 (1962).

In so reasoning, this Court "recognized the possibility of standing to bring an as-applied challenge to the firearm licensing scheme absent license denial where the defendant can show that

applying would have been futile." Marquis, 495 Mass. at 439 n.5. It should now hold that where people under 21 years old are entirely barred from obtaining a license to carry a firearm, then any defendant like Mikai Thomson, who was under 21 years old when arrested for this licensing offense, has standing to challenge Massachusetts' prohibition against their exercise of their Second Amendment rights.

Massachusetts law is unequivocal that "a prohibited person shall be a person who…is younger than 21 years of age at the time of the application[.]" G.L. c. 140, § 131 (d) (iv) (2021).[1] There are no exceptions. The licensing authority then has no discretion to grant such prohibited person a license to carry a firearm. Thus, Mr. Thomson, who was 20 years old at the time of his arrest, (see Def. Br. p. 9), has made a "substantial showing that application for the benefit (or in this case, registration [or license]) would have been futile." Jackson-Bey v. Hanslmaier, 115 F.3d 1091, 1096 (2nd Cir. 1997).

Two significant decisions comport with the common-sense conclusion that a person need not submit a futile application for a firearms license or registration card to establish standing. In Plummer

[1] The current version of Section 131 (d) also requires the "lawful resident" to be 21 years of age as a precondition to apply for a firearms license. See 2024, 135, § 49, eff. October 23, 2024.

v. United States, the District of Columbia Court of Appeals held that Mr. Plummer had standing to contest the District of Columbia's firearms and registration scheme under the Second Amendment even though he had not applied for a registration card. Plummer v. United States, 983 A.2d 323, 340-341 (D.C. App. 2009). It reasoned that given the District of Columbia's then-highly restrictive scheme, Plummer "could not have registered his handgun, but registration was a prerequisite to obtaining a license[.]" Plummer, 983 A.2d at 340. In Bach v. Pataki, the Court of Appeals for the Second Circuit held that once Mr. Bach received notice that as a nonresident, he was ineligible for a New York carry license, he "had nothing to gain thereafter by completing and filing an application." Bach v. Pataki, 408 F.3d 75, 82-83 (2nd Cir. 2005).

Because Thomson, by nature of his age alone, fell into the "prohibited person" category under Section 131, that fact triggered his prosecution under G.L. c. 269, § 10 (a) (2). The Boston Municipal Court instructed the jury that "under Massachusetts law, a person under 21 years of age is ineligible for a license to carry a firearm." (See Def. Br. p. 20). That instruction inevitably led to Thomson's conviction by virtue of his accruing only 20 years of age which

precluded him from possessing the firearm in public. As a result, Thomson has a "direct and substantial personal interest in the outcome," City of Chicago v. Atchison, 357 U.S. 77, 83 (1958), about whether this age restriction is constitutional.

As with a prior felony conviction, see Commonwealth v. Collins, 496 Mass. 151, 152 (2025), the Commonwealth was permitted to wield Thomson's age as a categorical legal bar for his possession of the firearm. Yet it now asserts that Thomson may not use that same categorical bar to establish standing even though a licensing application would have been doomed. Requiring Thomson or any other "prohibited person" to apply for licenses despite their clear status would " 'require them to pump oil from a dry hole.' " Orion Corp. v. State, 103 Wn.2d 441, 457 (1985), quoting Ogo Assocs. v. Torrance, 37 Cal. App. 3d 830, 834 (1974). See also People v. Tarazona, 239 A.D.3d 544, 545 (N.Y. App. Div. June 24, 2025) ("Defendant had standing to assert a Second Amendment challenge to the state's gun licensing scheme, even though he did not apply for a license, where an application would have been futile because he did not meet the minimum age requirement").

The constitutional claim is also the same whether it is decided in a civil case or a criminal case. Bruen was a civil case in which the plaintiffs had applied for unrestricted licenses to carry and had been denied them for failure to present "proper cause" for carrying a handgun beyond their stated purpose of self-defense. N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 15-16 (2022). Despite the different procedural posture in Bruen, this Court did not hesitate to apply its universal holding that the Second Amendment protects a person's right to carry an ordinary firearm outside one's home to a criminal case. Commonwealth v. Guardado, 491 Mass. 666, 688-694 (2023); Bruen, 597 U.S. at 32. Likewise, here, the Second Amendment provides universal protection to young adults whether they seek the auspices of that protection as a civil plaintiff or as a criminal defendant. "[T]he statute imposed upon the appellant obligations [or deprivations] to which the state had no constitutional authority to subject him[.]" Smith v. Cahoon, 283 U.S. 553, 564 (1931).

II. The Commonwealth may no longer constrain 18-20-year-old adults to possession of specific weapons in their homes or businesses because the Nation's longstanding historical tradition treats young adults as among the People entitled to exercise their fundamental Second Amendment rights equally in public.

Even when Massachusetts considered it only a privilege to keep and carry a firearm, it has permitted 18-20-year-old adults to obtain Firearms Identification (FID) cards without barrier. See 2005 ALM G.L. c. 140, § 129B (1) & (1) (vi) (2005). Although an FID card does not permit this cohort to possess or purchase a handgun, see Commonwealth v. Ewan, 105 Mass. App. Ct. 42, 43-44 (2024), it does allow them to possess and control a rifle or shotgun in their home or business. Section 129B (3)-(7) (2021). Massachusetts has then never defined 18-20-year-old adults as categorically incapable of properly and safely handling dangerous weapons. And now that carrying an ordinary firearm in public is encompassed within the fundamental Second Amendment right, see Bruen, 597 U.S. at 32-33, the Commonwealth may no longer grant young adults only part of that right.

Like all other adults, people like Thomson have the right to possess a handgun. "It is no answer to say…that it is permissible to ban the possession of handguns so long as the possession of other

firearms (i.e., long guns) is allowed. It is enough to note, as we have observed, that the American people have considered the handgun to be the quintessential self-defense weapon." District of Columbia v. Heller, 554 U.S. 570, 629 (2008). The right to possess that handgun is equal in or out of the home. "[C]onfining the right to 'bear' arms to the home would make little sense given that self-defense is 'the *central component* of the [Second Amendment] right itself.' " Bruen, 597 U.S. at 32-33, quoting Heller, 554 U.S. at 599.

The Commonwealth's invocations of Commonwealth v. Mattis, 493 Mass. 216 (2024) and a vague "public safety" rationale fail on their own terms even if the Second Amendment were subject to a means-end scrutiny test. (See Comm. Br. p. 25). The Commonwealth may not deprive any *individual* of his or her constitutional rights due to *group* characteristics which operate as a shield against cruel or unusual punishment (i.e., life imprisonment without the possibility of parole). Neuroscientific findings that 18-20-year-old adults generally evince reckless and immature behavior due to their developing brains does not mean that there are not individuals within that cohort who would demonstrate the maturity and capability required to possess handguns. The Commonwealth does not explain, for example, why

the Chief of Police would not be able to discern whether the young adult applicant is or is not mature enough to safely possess and carry a handgun. If the Chief of Police deems the young adult reckless or immature, then it may deem that person "unsuitable" pursuant to G.L. c. 140, § 131 (d), and deny him or her a license to carry.

Plain text and tradition, not policy rationale, comprise the test under the Second Amendment. "The very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is really worth insisting upon." McDonald v. City of Chicago, 561 U.S. 742, 791 (2010), quoting Heller, 554 U.S. at 634. "The Second Amendment 'is the very product of an interest balancing by the people' and it 'surely elevates above all other interests the right of law-abiding, responsible citizens to use arms' for self-defense." Bruen, supra at 26, quoting Heller, supra at 635. This test thus does not include the "contemporary standards of decency", see Mattis, 493 Mass. at 222, under Article 26.

Just as youth do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate[,]" see Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 (1969), young

adults do not shed their Second Amendment rights at the doors of their homes. And the U.S. Supreme Court has made clear that the fact that the Second Amendment encompasses arms rather than speech does not relegate the Second Amendment to "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." Bruen, supra at 70, quoting McDonald, 561 U.S. at 780.

The founding generation (just as today's generation) entrusted 18-20-year-old adults to fight for their country and defend themselves and their families against foreign and tyrannical threats. In 1792, the newly formed government required that "each and every free able-bodied white male citizen of the respective states, resident therein, who is or shall be of the age of eighteen years…shall severally and respectively be enrolled in the militia[.]" Militia of the United States Act of 1792, Chapter XXXIII, 1 Stat. 271 (Section 1). Any such adult was further required to "provide himself with a good musket or firelock, a sufficient bayonet and belt," and various forms of ammunition. Id. The General Court of Massachusetts in 1784 "provided for the organization and government of the Militia. It directed that the Train Band should 'contain all able bodied men, from

sixteen to forty years of age, and the Alarm List, all other men under sixty years of age.' " United States v. Miller, 307 U.S. 174, 180 (1939), quoting from The General Court of Massachusetts, January Session 1784 (Laws and Resolves 1784, c. 55, pp. 140, 142).

"[T]he conception of the militia at the time of the Second Amendment's ratification was the body of all citizens capable of military service, who would bring the sorts of lawful weapons that they possessed at home to militia duty." Heller, supra at 627. Thus, young adults, as a subset of those "citizens", were expected to already have unfettered access to arms in their personal lives. "Instead of refusing to arm young Americans for fear of their irresponsibility, founding-era regulations required them to *be* armed to secure public safety." Reese v. Bureau of Alcohol, 127 F.4th 583, 598 (5th Cir. 2025) (emphasis in original). And the U.S. Supreme Court has already rejected disarmament of a group based upon their perceived "irresponsibility." " 'Responsible' is a vague term. It is unclear what such a rule would entail. Nor does such a line derive from our case law." United States v. Rahimi, 602 U.S. 680, 701 (2024).

The U.S. Supreme Court has "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." Bruen, supra at 37. To support this ban under the Second Amendment, the Commonwealth relies upon a Massachusetts enactment of a loyalty oath in 1776, which is the only founding-era source that the Commonwealth cites. (Comm. Br. p. 23). This loyalty oath is not analogous to Section 131's age restriction because it applied to *all* people above the age of 16-years old.

This sole source then fails the "how" and "why" analogical test, see Bruen, supra at 29, since the "how" of the loyalty oath was to disarm all grown residents (not just some subset) who could not be trusted to fight for or otherwise support the American cause. The "why" of the loyalty oath was to protect national security and prevent arms from transferring to enemy hands. "In 1776, Massachusetts passed, at the behest of the Continental Congress, an act that disarmed 'such Persons as are notoriously disaffected to the Cause of America, or who refuse to associate to defend by Arms the United American Colonies.' "[2] Saul Cornell and Nathan DeDino, Symposium: The Second Amendment and the Future of Gun Regulation: Historical,

[2] The U.S. Supreme Court has since declared such loyalty oaths unconstitutional. Baggett v. Bullitt, 377 U.S. 360, 371-372 (1964).

Legal, Policy, and Cultural Perspectives: Panel I: Historical Perspective: A Well Regulated Right: The Early American Origins of Gun Control, 73 Fordham L. Rev. 487, 507 (Nov. 2004), quoting from Ch. VII, 1775-1776 Mass. Acts at 31. By contrast, the "how" of Section 131's age restriction is to disarm young adults when they are anywhere in public. The "why" of banning this subset of adults from carrying handguns is presumably the legislative judgment that young adults cannot responsibly carry certain weapons in public.

"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." Bruen, supra at 17. The Commonwealth's proposed analogy to widespread disarmament of potential wartime enemies in the founding-era fails that burden. The identification of a "relevantly similar" tradition, see Bruen, supra at 29, that compares to a modern-day firearms regulation requires more precision. "[B]ecause '[e]verything is similar in infinite ways to everything else,'…one needs 'some metric enabling the analogizer to assess which similarities are important and which are not[.]'...For instance, a green truck and a green hat are relevantly

similar if one's metric is 'things that are green.'…They are not relevantly similar if the applicable metric is 'things you can wear.' Bruen, supra at 29 (citation omitted). The U.S. Supreme Court has also disclaimed any reliance upon loyalty oaths or the disarmament of Catholics and other oppressed religious groups as reflective of a national tradition. "Through these centuries, English law had disarmed not only brigands and highwaymen but also political opponents and disfavored religious groups. By the time of the founding, however, state constitutions and the Second Amendment had largely eliminated governmental authority to disarm political opponents on this side of the Atlantic." Rahimi, 602 U.S. at 694.

This Court need not even engage in historical analogical reasoning given the affirmative evidence at the time the Second Amendment was enacted that 18-20-year-old adults, whether in or out of militia service, kept and carried weapons without interference. Young adults are, and have always been, among "the People" embraced by the Second Amendment since they "are part of a national community or […] have otherwise developed sufficient connection with this country to be considered part of that community." Heller, supra at 580, quoting United States v. Verdugo-Urquidez, 494 U.S.

259, 265 (1990). Eighteen-to-twenty-year-old adults have a host of rights and responsibilities in our national community from the right to vote, U.S. Const. Amend. XXVI, the right to marry, G.L. c. 207, § 24, the right and responsibility to rear and educate children[3], the right and responsibility of jury service, G.L. c. 234A, § 4 (1), and the duty (if male) to register for selective service in the U.S. Army, 50 USCS § 3802 (a). See also Obergefell v. Hodges, 576 U.S. 644, 671-672 (2015) (the right to marry is fundamental under the Due Process and Equal Protection Clauses of the Fourteenth Amendment) and Attorney Gen. v. Suffolk County Apportionment Comm'rs, 224 Mass. 598, 601 (1916) ("The right to vote is a fundamental personal and political right. The equal right of all qualified to elect officers is one of the securities of the Declaration of Rights, arts. 1-9.").

The Commonwealth may no longer erase young adults from "the People" and subject them to a mandatory minimum sentence of 18 months in jail, see G.L. c. 269, § 10 (a) (5) (6), for exercising their Second Amendment rights. See Rahimi, supra at 699 (concluding that "the penalty" is "another relevant aspect of the burden" upon the

[3] See https://www.mass.gov/info-details/adoption-eligibility (Massachusetts residents who are 18 or older may foster and adopt children).

Second Amendment right). Striking down this unconstitutional provision does not preclude the Commonwealth from enacting other regulations since "[l]ike most rights, the right secured by the Second Amendment is not unlimited." Heller, supra at 626. For example, it could require additional training courses or additional application questions for young adults to complete before they may obtain firearms licenses. It could require the licensing authority to conduct a more rigorous background check of young adults, which might include interviewing parents, guardians, and/or teachers. See N.Y. State Firearms Ass'n v. James, 157 F.4th 232, 246-247 (2nd Cir. 2025) (New York's background check regime did not offend the Second Amendment). The Commonwealth would likely be able to show that such regulations either do not "infringe" upon the Second Amendment right or are grounded in historically analogous regulations. But completely banning young adults from possessing or carrying handguns is a non-starter under the Second Amendment. See Heller, supra at 633-634; McDonald, supra at 783-785.

CONCLUSION

This Court should hold that G.L. c. 140, § 131 (d) (iv) is unconstitutional on its face and as applied to Mikai Thomson and enter a judgment of not guilty.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, K. Hayne Barnwell, hereby certify that I have served one copy of this **BRIEF OF AMICUS CURIAE** by e-filing it on this 9th day of February 2026 to all counsel of record including:

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CERTIFICATE OF COMPLIANCE

I hereby certify that the brief in this matter complies with the rules of court that pertain to the filing of briefs, including but not limited to: Mass. R. App. P. 16(a)(6) (pertinent findings or memorandum of decision); Mass. R. App. P. 16(c) (references to the record); Mass. R. App. P. 16(f) (reproduction of statutes, rules, regulations); Mass. R. App. P. 16(h) (length of briefs); Mass. R. App. P. 17 (brief of amicus curiae); and Mass. R. App. P. 20 (form of briefs, appendices and other papers). The brief was produced, using Microsoft Word for Mac Version 16.105.3, in proportional font (Times New Roman 14) and the brief consists of 3,482 non-excluded words (or less than the maximum of 7,500 words) in compliance with Rules 17(c) and 20(a)&(b).

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