



**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

DELAWARE DEPARTMENT OF )  
SAFETY AND HOMELAND )  
SECURITY, *et al.*, )

*Appellants / Cross-Appellees,* )  
*Defendants-Below,* )

v. )

GAVIN J. BIRNEY, *et al.*, )

*Appellees / Cross-Appellants,* )  
*Plaintiffs-Below.* )

) No. 412, 2025  
) Court Below:  
) Superior Court of the  
) State of Delaware  
) C.A. No. K23C-07-019 RLG

**APPELLANTS' AMENDED CORRECTED OPENING BRIEF**

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	<b>Error! Bookmark not defined.</b>
NATURE OF PROCEEDINGS .....	1
SUMMARY OF THE ARGUMENT .....	5
STATEMENT OF FACTS .....	7
A.    Legislative Findings Demonstrate Delaware’s Compelling Interest in Regulating Firearms Access for 18-to-20-Year-Olds.....	7
B.    The General Assembly’s Findings Are Corroborated by Academic Studies and Statistical Reports.....	10
PRELIMINARY STATEMENT.....	13
ARGUMENT .....	18
I.    THE SUPERIOR COURT ERRED IN ITS APPLICATION OF THIS COURT’S INTERMEDIATE SCRUTINY ANALYSIS.....	18
A.    Questions Presented .....	18
B.    Scope of Review.....	18
C.    Merits of Argument .....	19
1.    HB 451 Explicitly Protects the Fundamental Right to Bear Arms in Self-Defense.	25
2.    HB 451 Further Protects the Right of Self-Defense by Granting Unfettered Access to Shotguns and Other Deadly Weapons for 18-to-20-Year-Olds.	28
3.    HB 451 Protects the Right to Bear Arms in Self- Defense with Any Firearm, Including a Handgun, Through the CCDW Exemption.	39
II.   THE SUPERIOR COURT ERRED IN CONSIDERING THE CONSTITUTIONALITY OF DELAWARE’S CONCEALED CARRY LICENSING SCHEME. ....	41
A.    Question Presented.....	41
B.    Scope of Review.....	41

C.	Merits of Argument .....	41
1.	The Superior Court Erred by Failing to Analyze Criteria Established in Jones v. State for Claims Under the Delaware Constitution.	42
2.	The Superior Court Erred in Finding That Delaware’s CCDW Process Is Impermissibly Discretionary.	43
3.	The Superior Court’s Flawed Analysis of 11 Del. C. § 1441 Nullifies Its Intermediate Scrutiny Analysis.	46
	CONCLUSION .....	47
	SUPERIOR COURT OPINION.....EXHIBIT A <i>Birney v. Del. Dep’t of Safety &amp; Homeland Sec.</i> , 2025 WL 2836751 (Del. Super. Ct. Oct. 2, 2025)	

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Cases</b>	
<i>Birney v. Del. Dep't of Safety &amp; Homeland Sec.</i> , 2022 WL 16955159 (Del. Ch. Nov. 16, 2022) .....	2
<i>Birney v. Del. Dep't of Safety &amp; Homeland Sec.</i> , 2025 WL 2836751 (Del. Super. Ct. Oct. 2, 2025) .....	3
<i>Bridgeville Rifle &amp; Pistol Club, Ltd. v. Small</i> , 176 A.3d 632 (Del. 2017) .....	<i>passim</i>
<i>Capriglione v. State ex rel. Jennings</i> , 279 A.3d 803 (Del. 2021) .....	18
<i>Chavez v. Bonta</i> , 773 F. Supp. 3d 1028 (S.D. Cal. 2025) .....	3
<i>Commonwealth v. Mattis</i> , No. SJC-11693, 224 N.E. 3d 410 (Mass. Super. J. Ct. Jan. 11, 2024) .....	38
<i>Dickerson v. State</i> , 975 A.2d 791 (Del. 2009) .....	19
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008) .....	16, 28, 29, 39
<i>Doe v. Wilmington Hous. Auth.</i> , 88 A.3d 654 (Del. 2014) .....	<i>passim</i>
<i>Griffin v. State</i> , 47 A.3d 487 (Del. 2012) .....	16, 19
<i>Harris v. Tucker</i> , 2025 WL 1474162 (Del. May 22, 2025) .....	43
<i>Heartland Outdoor, Inc. v. Miller</i> , 2023 WL 6376751 (D. Kan. Sept. 29, 2023) .....	35

<i>In re Gen. Motors (Hughes) S'holder Litig.</i> , 897 A.2d 162 (Del. 2006) .....	9, 13, 35
<i>Interstate Nat. Gas Co. v. S. California Gas Co.</i> , 209 F.2d 380 (9th Cir. 1953) .....	35
<i>Jones v. State</i> , 745 A.2d 856 (Del. 1999) .....	42
<i>Justice v. Gatchell</i> , 325 A.2d 97 (Del. 1974) .....	18, 19, 36
<i>Klein v. Nat'l Pressure Cooker Co.</i> , 64 A.2d 529 (Del. 1949) .....	19, 36
<i>McCoy v. ATF</i> , 140 F.4th 568 (4th Cir.), <i>petition for cert. filed</i> , No. 25-24 (U.S. July 8, 2025).....	3, 32, 33
<i>Moises Maldonado's Makeovers v. Jones</i> , 2025 WL 1090989 (Del. Super. Ct. Apr. 8, 2025) .....	28, 42, 43
<i>N.Y. State Rifle &amp; Pistol Ass'n v. Bruen</i> , 597 U.S. 1 (2022).....	2, 3, 44, 45
<i>New Castle Cnty. Council v. State</i> , 688 A.2d 888 (Del. 1996) .....	36
<i>NRA v. ATF</i> , 700 F.3d 185 (5th Cir. 2012), <i>abrogated by Bruen</i> , 587 U.S. 1 .....	22, 33, 34
<i>NRA v. Bondi</i> , 133 F.4th 1108 (11th Cir.) .....	3, 21, 30
<i>Op. of Justs.</i> , 425 A.2d 604 (Del. 1981) .....	24
<i>Ortiz v. State</i> , 869 A.2d 285 (Del. 2005) .....	42, 43
<i>Pinales v. Lopez</i> , 765 F. Supp. 3d 1024 (D. Haw. 2025).....	3, 30

<i>R.T. Vanderbilt Co. Inc. v. Galliher</i> , 98 A.3d 122 (Del. 2014) .....	27
<i>Richardson v. Wile</i> , 535 A.2d 1346 (Del. 1988) .....	19, 36
<i>Rocky Mountain Gun Owners v. Polis</i> , 121 F.4th 96 (10th Cir. 2024) .....	3, 30
<i>Samuels v. CCUR Holdings, Inc.</i> , 2022 WL 1744438 (Del. Ch. May 31, 2022).....	35
<i>Scanlon v. Medtronic Sofamor Danek USA Inc.</i> , 61 F. Supp. 3d 403 (D. Del. 2014).....	35
<i>Short v. State</i> , 1991 WL 12101 (Del. Jan. 14, 1991) .....	16, 19
<i>Smith v. State</i> , 2005 WL 2149410 (Del. Aug. 17, 2005).....	19, 45
<i>Snell v. Engineered Sys. &amp; Designs, Inc.</i> , 669 A.2d 13 (Del. 1995) .....	24
<i>State ex rel. Battaglia v. Delaware Dep't of Elections, for New Castle Cnty.</i> , 344 A.2d 225 (Del. 1975) .....	9, 13
<i>State Highway Dep't v. Del. Power &amp; Light Co.</i> , 167 A.2d 27 (Del. 1961) .....	18
<i>State v. Robinson</i> , 251 A.2d 552 (Del. 1969) .....	29
<i>State v. Rumpff</i> , 308 A.3d 169 (Del. Super. Ct. 2023).....	<i>passim</i>
<i>Stephens v. State</i> , 916 S.E.2d 465 (Ga. 2025) .....	27
<i>Terreros v. State</i> , 312 A.3d 651 (Del. 2024) .....	42, 43

<i>United States v. Mills</i> , 472 F.2d 1231 (D.C. Cir. 1972).....	43
<i>United States v. Rahimi</i> , 602 U.S. 680 (2024).....	16, 32
<i>United States v. X-Citement Video, Inc.</i> , 513 U.S. 64 (1994).....	19, 36
<i>Walker v. State</i> , 154 A.3d 1167 (Del. 2017).....	35
<i>Watterson v. Bureau of Alcohol, Tobacco, Firearms &amp; Explosives</i> , 2024 WL 897595 (E.D. Tex. Mar. 1, 2024) .....	35, 36
<i>Zebroski v. State</i> , 179 A.3d 855 (Del. 2018) .....	31
<b>State Constitutional Authorities</b>	
Del. Const. art. 1 § 20 (1987).....	<i>passim</i>
<b>Rules</b>	
D.R.E. 201(b) .....	9, 13, 35
D.R.E. 202(d).....	9, 13, 35
Del. Supr. Ct. R. 8.....	25, 41
Del. Super. Ct. R. 10, App. & Admin. of 11 Del. C. § 1441 .....	44
Del. Super. Ct. R. 7, App. & Admin. of 11 Del. C. § 1441 .....	39, 44
<b>Statutes</b>	
11 Del. C. § 1441 .....	<i>passim</i>
11 Del. C. Section 1441 .....	47
11 Del. C. § 1441(a)(1)-(2) .....	39, 45
11 Del. C. § 1441(a)(3)(i) .....	39
11 Del. C. § 1441(a)(5)(a).....	39

11 Del. C. § 1445(a)(4) .....	1
11 Del. C. § 1448 .....	<i>passim</i>
11 Del. C. § 1448(a).....	1, 29
11 Del. C. § 1448(a)(5) .....	1, 7, 22, 26
11 Del. C. § 1448(a)(5)(a).....	12, 21
11 Del. C. § 1448(a)(5)(a)(1)-(3).....	5, 28
11 Del. C. § 1448(a)(5)(b)(3).....	6, 21, 32, 46
11 Del C. § 1448(a)(5)(d) .....	<i>passim</i>
11 Del. C. § 1448(a)(5)(e).....	22
18 U.S.C. § 922(b)(1).....	8, 33, 34

**Regulations**

Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197, 225-26 (1968) .....	33
---	----

**Other Authorities**

Amanda E. Baker, et al., <i>The connecting brain in context: How adolescent plasticity supports learning and development</i> , Development Cognitive Neuroscience Vol. 71 (2025) .....	37
AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO FIREARMS, HB 451, 151st Gen. Assemb. (2022) .....	1
AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO FIREARMS, House Substitute 1 for House Bill 330, 149th General Assembly (2017-2018) .....	13
Bart Larsen, et al., <i>Adolescence as a neurobiological critical period for the development of higher-order cognition</i> , Nuerosci. Biobehav. Rev. Vol. 94 (Nov. 2018) .....	37
<i>Carrying Concealed Deadly Weapon (CCDW) FY2026</i> (Nov. 10, 2025) .....	45

Charles Puzzanchera, DOJ, Juv. Just. Stats., <i>Trends in Youth Arrests for Violent Crimes</i> (Aug. 2022) .....	10
Dep't of the Treasury, Bureau of Alcohol, Tobacco & Firearms, <i>Youth Crime Gun Interdiction Initiative: Crime Gun Trace Analysis Report: The Illegal Youth Firearms Market in Washington DC</i> (February 1999) .....	34
Dep't of the Treasury, Bureau of Alcohol, Tobacco & Firearms, <i>Youth Crime Gun Interdiction Initiative: Crime Gun Trace Reports</i> (1999) (Nov. 2000) .....	35
Dep't of the Treasury, Bureau of Alcohol, Tobacco & Firearms, <i>Youth Crime Gun Interdiction Initiative: Crime Gun Trace Reports</i> (July 2002) .....	35
House Amendment No. 8 to House Bill No. 451 (Rep. Schwartzkopf), 151st Gen. Assemb. (2021-2022) .....	24, 26
Leah H. Somerville, PhD, et al., <i>A time of change: Behavioral and neural correlates of adolescent sensitivity to appetitive and aversive environmental cues</i> , Brain Cogn. Vol. 72(1) (February 2010) .....	37
Magnus Lofstrom, et al., <i>Are Younger Generations Committing Less Crime?</i> , Pub. Pol'y Inst. Cal. (Sep. 2023) .....	10
S. Rep. No. 90-1097 (1968) .....	33
Samantha Putterman, <i>Ask PolitiFact: what does the data show on deadly shootings by 18-to-20-year-olds?</i> , Politifact (Feb. 6, 2024) .....	11
Video Recording: Del. H.R. Admin. Comm. Hearing on H.B. 451, 151st Gen. Assemb. (June 8, 2022) .....	9, 14, 36
Video Recording: Del. H.R. Floor Debate on H.B. 451, 151st Gen. Assemb. (June 14, 2022) .....	<i>passim</i>

## NATURE OF PROCEEDINGS

House Bill (“HB”) 451 amended two sections of Chapter 5, Title 11 of the Delaware Code: (1) § 1445; and (2) § 1448.<sup>1</sup> Section 1445 prohibits the unlawful dealing of dangerous weapons, including firearms, transfer of a firearm or ammunition to a person under 21, unless that individual or that firearm or ammunition meets one of HB 451’s exceptions. *See* 11 Del. C. § 1445(a)(4); A-57-58. Section 1448 defines those individuals who “are prohibited from purchasing, owning, possessing, or controlling a deadly weapon or ammunition for a firearm within the State.” *Id.* § 1448(a); A-58. As amended by HB 451, this generally includes any person under the age of 21, but with multiple exemptions and exceptions. *Id.* § 1448(a)(5).

Plaintiff Gavin Birney (a Delaware resident not yet 21 years old), and the organizational Plaintiffs, initially filed two separate Complaints in the Court of Chancery seeking permanent injunctions against enforcement of the as-then not effective HB 451. The Court of Chancery *sua sponte* dismissed both Complaints because they raised only legal issues and no determination as to the constitutionality

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<sup>1</sup> AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO FIREARMS, HB 451, 151st Gen. Assemb. (introduced June 2, 2022, enacted June 30, 2022); A-57. HB 451, effective on July 1, 2025, three years after it was signed into law, provided individuals who were 18 at the time of its enactment time to age out of the law’s restrictions. A-57-60.

had been made by any court.<sup>2</sup> Thereafter, Plaintiffs filed a declaratory judgment action in Superior Court alleging HB 451 violated the U.S. Constitution and the Delaware Constitution. Defendants removed the case to the U.S. District Court of Delaware.<sup>3</sup> That case is currently stayed by agreement of the parties.<sup>4</sup>

Plaintiffs then filed another Complaint in the Superior Court, asserting only that HB 451 violates Article I, Section 20 of the Delaware Constitution (“Section 20”), from which this appeal stems. Del. Const. art. I, § 20 (1987). Plaintiffs immediately filed a Motion for Summary Judgment. In the extensive briefing that followed, “the bulk of [the parties’] respective arguments focused on whether [Superior Court] should evaluate HB 451’s constitutionality using the test set forth” for analyzing Second Amendment claims under the U.S. Constitution in *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 14 (2022), or by applying means-end scrutiny, as this Court has done in analyzing other Section 20 challenges.<sup>5</sup> A-16; A-

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<sup>2</sup> *Birney v. Del. Dep’t of Safety & Homeland Sec.*, 2022 WL 16955159, at \*1 (Del. Ch. Nov. 16, 2022).

<sup>3</sup> *Birney v. Del. Dep’t of Safety & Homeland Sec.*, No. 22-cv-01624 (D. Del. Dec. 22, 2022). Plaintiffs’ counsel recently requested that the stay be lifted, to allow this case to proceed during the pendency of this appeal. The District Court declined to lift the stay.

<sup>4</sup> *Id.*, Order granting stipulation for a stay of case, (Nov. 27, 2023), Dkt. No. 18.

<sup>5</sup> While Delaware state courts have applied the federal *Bruen* test, they have only done so in the context of Second Amendment claims brought under the U.S. Constitution, and not in Section 20 challenges brought under the Delaware Constitution, as is the case here. *See, e.g., State v. Rumpff*, 308 A.3d 169, 175, n.

61.; *Birney v. Del. Dep't of Safety & Homeland Sec.*, 2025 WL 2836751, \*4 (Del. Super. Ct. Oct. 2, 2025) (hereafter, “Opinion” or “Op.”).<sup>6</sup> Defendants argued intermediate scrutiny was the correct test under this Court’s precedent.<sup>7</sup>

After oral argument on Plaintiffs’ Motion for Summary Judgment, the Superior Court indicated it was “inclined to agree with Defendants’ substantive arguments.” Op. at \*4. However, the Court said, “Defendants’ filings did not present a clear path forward” for a finding under intermediate scrutiny, and therefore requested that Defendants “address that issue in supplemental briefing.” *Id.* Defendants then filed a Cross Motion for Summary Judgment, and a supplemental

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26 (Del. Super. Ct. 2023) (applying *Bruen* test in rejecting Second Amendment defense invoked by defendant indicted on state charges related to Delaware’s PFA firearms restrictions where Defendant did not assert claims under the Delaware Constitution).

<sup>6</sup> The Superior Court originally issued its opinion on August 29, 2025. It then reissued its decision on October 2, 2025, in order to amend a typographical error in a footnote. Op. at \*n. 1. The citations to the Superior Court’s order in this brief correspond with the reissued October 2, 2025 opinion.

<sup>7</sup> Of note, federal courts applying *Bruen* Second Amendment text-and-history test have upheld age restrictions similar to those in HB 451. *See, e.g., McCoy v. ATF*, 140 F.4th 568 (4th Cir.), *petition for cert. filed*, No. 25-24 (U.S. July 8, 2025) (upholding federal handgun age restrictions); *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 122 (10th Cir. 2024) (upholding Colorado firearms age restrictions); *NRA v. Bondi*, 133 F.4th 1108, 1130 (11th Cir.) (en banc), *petition for cert. filed*, No. 24-1185 (U.S. May 20, 2025) (upholding Florida firearms age restrictions); *Chavez v. Bonta*, 773 F. Supp. 3d 1028 (S.D. Cal. 2025) (upholding California firearms age restrictions); *Pinales v. Lopez*, 765 F. Supp. 3d 1024, 1054 (D. Haw. 2025) (rejecting request for preliminary injunction enjoining Hawai‘i firearms age restrictions due to plaintiffs’ failure to show likelihood of success on merits of constitutional challenge).

brief to provide the Superior Court with such a “path forward.” *Id.*

Two months after HB 451 became effective, the Superior Court granted Plaintiffs’ Motion for Summary Judgment. *Id.* at \*22. Defendants timely filed this appeal, and Plaintiffs timely noticed a cross-appeal.

## SUMMARY OF THE ARGUMENT

1. The Superior Court erred in its application of this Court’s intermediate scrutiny test. While the Superior Court correctly found HB 451 addresses the important governmental objective of public safety by reducing gun violence and that HB 451 is, in fact, substantially related to furthering Delaware’s important governmental interest, the Superior Court erred in balancing the potential burden imposed by HB 451 on 18-to-20-year-olds’ Section 20 rights, and particularly their “right to bear arms in self-defense,” against the valid interest of the State to reduce gun violence and suicide (which is disproportionately carried out by individuals within the impacted age group). The Superior Court failed to exercise the judicial restraint and afford the General Assembly’s carefully tailored balancing of its objective against the burden on 18-20 year-olds’ right to bear arms the deference it is due.

The Superior Court erred in finding that HB 451 unreasonably burdens the Section 20 right to bear arms in self-defense in its analysis of the third prong of intermediate scrutiny by failing to give appropriate deference to the General Assembly’s intent to *protect* those rights in amending HB 451 to provide a myriad of codified exceptions and exemptions. This includes: (1) 11 Del C. § 1448(a)(5)(d), which provides a complete legal defense for individuals under 21 who use any firearm in acts of justifiable force (*i.e.*, self-defense); (2) *id.* § 1448(a)(5)(a)(1)-(3),

which permits the unrestricted purchase of shotguns by 18-to-20-year-olds; and (3) *id.* § 1448(a)(5)(b)(3), which exempts 18-to-20-year-olds with licenses to carry a concealed deadly weapon (“CCDWs”) from all of HB 451’s restrictions. All of these exceptions and exemptions allow 18-to-20-year-olds to effectuate their Section 20 rights with little-to-no delay. However, the Superior Court ignored (1), and dismissed the importance of, and the legislature’s intent behind, (2) and (3) for protecting the right to self-defense for the impacted age group. In doing so, the Superior Court’s analysis was factually and constitutionally flawed.

2. The Superior Court erred in considering the constitutionality of Delaware’s CCDW scheme, codified in 11 Del. C. § 1441, which was not a question presented by Plaintiffs’ Motion for Summary Judgment in this case. A-32. The Superior Court failed to consider § 1441 under criteria that Delaware courts must analyze for claims under the Delaware constitution. It further erred in finding that § 1441 is impermissibly discretionary in conflict with both U.S. Supreme Court precedent and Delaware court rules.

## STATEMENT OF FACTS

The facts in this case are entirely uncontested. A-89-90. At no time in briefing nor argument did the Plaintiffs allege there was a disputed question of fact. Indeed, the Superior Court agreed there was no genuine material factual dispute. Op. at \*5.

### **A. Legislative Findings Demonstrate Delaware’s Compelling Interest in Regulating Firearms Access for 18-to-20-Year-Olds.**

Delaware’s General Assembly introduced the first version of HB 451 in the wake of an extremely lethal mass shooting committed by a 19-year-old, and then reintroduced HB 451 after two 18-year-olds carried out two more extremely lethal mass shootings.<sup>8</sup> *See infra* Preliminary Statement.

The General Assembly’s decision to pass HB 451 was not only a response to

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<sup>8</sup> The changes to § 1445 sought by HB 451’s amendments included specifically replacing the word “adult” with the phrase “a person 21 years of age or older,” and replacing the phrase “child under 18” with the phrase “person under 21.” HB 451’s amendments also proposed changes to § 1448, including replacing the word “juvenile” to “person under the age of 21”; exempting “shotguns” and “muzzle loading rifles” from the general list of “deadly weapons” prohibited under § 1448(a)(5); creating several pathways for an eighteen-year-old to be exempted from § 1448(a)(5), including becoming an active member of the military, becoming a law-enforcement officer, or obtaining a concealed carry permit; and allowing an individual aged eighteen or older to possess or control a firearm. Lastly, § 1448(a)(5)(d) states it is not a violation of this paragraph if a person under the age of 21 possesses or uses a firearm or projectile weapon during the use of force upon or towards another if such use of force is justifiable pursuant to Sections 464 (Justification-Use of force in self-protection), 465 (Justification-Use of force for the protection of other persons), 466 (Justification-Use of force for the protection of property), or 469 (Justification-Person unlawfully in dwelling) of this title.

these mass shootings; it was driven by the legislature’s specific findings and consideration of neuroscientific evidence, Delaware-specific crime and suicide statistics, and Delaware’s legal age for purchasing alcohol and tobacco products. A-57. It is also consistent with federal law prohibiting the purchase of firearms by individuals under the age of 21. 18 U.S.C. § 922(b)(1). The General Assembly also found that this age group was more likely to engage in gun violence, particularly in Delaware. A-411.

The legislature’s intent and some of its key findings are clearly stated in HB 451 itself:

WHEREAS, in 1968, federal law established that a buyer must be at least 21 years old for all handgun purchases; and

WHEREAS, the federal government recognized over 50 years ago that it was reasonable to place a restriction on young people purchasing firearms for their safety and the safety of our communities; and

WHEREAS, there is conclusive scientific research that shows the human brain is still developing in young adults aged 18 to 21 which impacts their decision making, self-control, aggressive impulses, and risk-taking behaviors; and

WHEREAS, the Statistical Analysis Center’s Delaware Shootings reports for the previous 3 years shows that the most common age for shooters was between 18 to 21 which represents 33% of all shooters in 2020, 29% in 2019, and 32% in 2018; and

WHEREAS, the age to purchase any alcohol and tobacco products in Delaware is 21 years old.

A-57. The General Assembly also recognized and credited data showing that the lack of neurological self-control and increased aggression among 18-to-20-year-olds yields an increase in gun violence and firearm-related suicide rates.<sup>9</sup> The General Assembly further found that suicides make up more than 50% of firearm deaths in Delaware, that 90% of suicide attempts with a gun are fatal, and that the suicide rate in recent years increased more among young people than any other group. *Id.* The

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<sup>9</sup> Appellants request that this Court also take judicial notice of the June 8, 2022 and June 14, 2022 hearing before the Delaware General Assembly on HB 451. *See* Video Recording: Del. H.R. Floor Debate on H.B. 451, 151st Gen. Assemb. (June 14, 2022) (statement of Rep. Schwartzkopf), at 6:04 (on file with Del. Gen. Assemb.), available at: <https://sg001-harmony.sliq.net/00329/harmony/en/PowerBrowser/PowerBrowserV2/00000000/-1/2033?startposition=20220614173731&viewMode=3&globalStreamId=3>. *See also* Video Recording: Del. H.R. Admin. Comm. Hearing on H.B. 451, 151st Gen. Assemb. (June 8, 2022) (statement of Rep. Schwartzkopf) (attached to Appendix and on file with Del. Gen. Assemb.), available at: <https://sg001-harmony.sliq.net/00329/harmony/en/PowerBrowser/PowerBrowserV2/00000000/-1/1960?startposition=20220608110837&viewMode=3&globalStreamId=3>.

Judicial notice is appropriate where, as here, the fact in question is an act of the Delaware General Assembly, can be determined by Delaware General Assembly sources, and cannot be subject to reasonable dispute or questioned as to accuracy. D.R.E. 201(b); D.R.E. 202(d). *See also In re Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 169 (Del. 2006) (courts “may also take judicial notice of matters that are not subject to reasonable dispute.”); *State ex rel. Battaglia v. Delaware Dep't of Elections, for New Castle Cnty.*, 344 A.2d 225, 228 (Del. 1975) (holding judicial notice of word usage in Delaware’s General Assembly was appropriate). All the General Assembly sourced information referenced in this brief about HB 451 is publicly available at: <https://legis.delaware.gov/BillDetail?LegislationId=109608>, and these video recordings have been attached to the Appendix for this Court.

General Assembly’s findings in enacting HB 451 conclusively underscore that 18-to-20-year-olds commit firearm-related offenses, and suffer from gun violence, at a rate higher than the general public, including in Delaware. *See Op.* at \*15.

**B. The General Assembly’s Findings Are Corroborated by Academic Studies and Statistical Reports.**

Plaintiffs did not dispute the General Assembly’s findings. Nor could they, because the General Assembly’s findings are consistent with a wealth of studies and research that have found that the brains of 18-to-20-year-olds are still developing in ways that make this age group more prone to misuse firearms. Many of these were detailed in the record through Defendant’s expert declarations and exhibits before the trial court. A-110; A-407.

Indeed, “[c]onsiderable contemporary data and analysis supports and confirms the understanding that young people are more likely to be perpetrators of violent crime.” A-223 (citing Charles Puzanchera, DOJ, Juv. Just. Stats., *Trends in Youth Arrests for Violent Crimes* (Aug. 2022)). As Robert Spitzer noted in his declaration: “‘One of the most robust relationships in criminology is between age and crime: criminal offending increases in adolescence, peaks in the late teens or early 20s, and then continually decreases. This relationship is the foundation for the well-known ‘age-crime curve,’ which underlies predictions and risk assessments about future offending.’” A-223 (quoting Magnus Lofstrom, et al., *Are Younger Generations Committing Less Crime?*, Pub. Pol’y Inst. Cal. (Sep.

2023)). Unsurprisingly, “experts agreed that general trends from state and FBI data show people ages 18 to 20... are likelier to commit deadly shootings than other age groups.” A-223 (quoting Samantha Putterman, *Ask PolitiFact: what does the data show on deadly shootings by 18-to-20-year-olds?*, Politifact (Feb. 6, 2024), <https://www.politifact.com/article/2024/feb/06/ask-politifact-what-does-the-data-show-on-deadly-s/>). For example, while the 18-to-20 age group comprises less than 4% of the population, they are responsible for more than 15% of manslaughter arrests and homicides. A-223 (citing FBI and U.S. Census Bureau data). In 2019, 19 was the most common age for perpetrators of homicides, followed by 18. *Id.* (citing FBI data).

This impulsive age group’s disproportionate involvement in crime can also be seen in Delaware-specific data. In Delaware, 18-to-20-year-olds are “disproportionally arrested for certain serious firearm offenses.” *See generally* A-411.

Absent satisfying one of HB 451’s multiple exemptions, the regulation on purchasing and possessing some, but not all, firearms imposed by the Delaware legislature is grounded in the “conclusive scientific evidence” described above and supported by a robust body of well-established scientific research and data on the affected age group’s involvement in gun violence and suicide.

HB 451 was carefully and purposefully crafted to regulate, not deny, Section

20 rights and explicitly protected the right to self-defense. Even for those within the affected age group, HB 451 explicitly exempts the following weapons (which can be used to engage in the rights protected by Section 20), impacted individuals, and protected activities:

- The purchase and possession of shotguns, muzzle-loading rifles, and deadly weapons other than firearms for individuals over 18, 11 Del. C. § 1448(a)(5)(a); A-58,
- Individuals 18-to-20 who are in the military, in law enforcement, or who have a CCDW license issued by the State, *id.* § 1448(a)(5)(b); A-59,
- The possession and control of any firearm for individuals under 21 when engaged in supervised hunting, instruction, sporting, or recreational activity, *id.* § 1448(a)(5)(c); A-59, and
- The possession or use of any firearm by individuals under 21 in self-defense or defense of others, *id.* § 1448(a)(5)(d). A-59.

As is clear from the plain language of the statute, HB 451 does not impose a ban on Section 20 rights. Rather, it provides guardrails to promote public safety in accordance with the General Assembly's police powers duties and responsibilities.

## PRELIMINARY STATEMENT

In 2018, after a 19-year-old, using a rifle he had legally purchased from a dealer, shot and killed 17 individuals, and wounded 17 more, in Marjory Stoneman Douglas High School in Parkland, Florida, legislation regulating the purchase and possession of firearms by 18-to-20-year-olds was first introduced in the Delaware General Assembly. *See AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO FIREARMS, House Substitute 1 for House Bill 330, 149th General Assembly (2017-2018), available at: <https://legis.delaware.gov/BillDetail/26368>.*<sup>10</sup> Four years later, in the wake of several additional high-profile mass shootings perpetrated by individuals under 21, including the May 14, 2022 mass shooting in Buffalo, New York, in which an 18-year-old gunman murdered ten people, and injured three others; and, ten days later, the Robb Elementary School shooting in Uvalde, Texas, in which an 18-year-old fatally shot 19 students and two teachers while injuring 17 others, HB 451 was introduced. A-57. As the General Assembly noted, both above-referenced 18-year-

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<sup>10</sup> Appellants request that this Court take judicial notice of House Substitute 1 for House Bill 330 in the 149th Delaware General Assembly. Judicial notice is appropriate where, as here, the fact in question is an act of the Delaware General Assembly, can be determined by Delaware General Assembly sources, and cannot be subject to reasonable dispute or questioned as to accuracy. D.R.E. 201(b); D.R.E. 202(d); *In re Gen. Motors (Hughes)*, 897 A.2d at 169; *State ex rel. Battaglia*, 344 A.2d at 228. All the General Assembly sourced information referenced in this brief about HB 451 is publicly available at: <https://legis.delaware.gov/BillDetail?LegislationId=109608>.

old mass shooters legally purchased their weapons.<sup>11</sup>

The General Assembly's intent in enacting HB 451 was to protect the public, and the impacted age group, from gun violence and suicide involving 18-to-20-year-olds, who are disproportionately likely to misuse firearms. This is clear from the General Assembly's emphasis in the June 14, 2022 legislative hearing on the fact that six of the nine most recent lethal mass shootings had been committed by individuals under the age of 21. *See* Video Recording: Del. H.R. Floor Debate on H.B. 451, 151st Gen. Assemb. (June 14, 2022) (statement of Rep. Schwartzkopf), at 6:07 (attached to Appendix and on file with Del. Gen. Assemb.), available at: <https://sg001-harmony.sliq.net/00329/harmony/en/PowerBrowser/PowerBrowserV2/00000000/-1/2033?startposition=20220614173731&viewMode=3&globalStreamId=3>. The General Assembly also highlighted data from a Delaware statistical analysis report showing that the most common age for Delaware shooters is between 18 and 21—

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<sup>11</sup> *See* Video Recording: Del. H.R. Admin. Comm. Hearing on H.B. 451, 151st Gen. Assemb. (June 8, 2022) (statement of Rep. Schwartzkopf) (attached to Appendix and on file with Del. Gen. Assemb.), available at: <https://sg001-harmony.sliq.net/00329/harmony/en/PowerBrowser/PowerBrowserV2/00000000/-1/1960?startposition=20220608110837&viewMode=3&globalStreamId=3>.

and that this age group that represented an average of 30% of all shooters in the years analyzed (2018-2020).<sup>12</sup>

The General Assembly, relying on “conclusive scientific research that shows the human brain is still developing in young adults aged 18 to 21[,] which impacts their decision making, self-control, aggressive impulses, and risk-taking behaviors[,]” A-57, and federal precedent demonstrating this age category is disproportionately likely to misuse handguns, *see infra* page 33-36, chose to regulate the purchase and possession of certain firearms by 18-to-20-year-olds. Simultaneously, the General Assembly protected the right of this category of people to bear arms through significant exceptions and exemptions, including complete legal protection for those using any firearm while acting in self-defense, and while engaged in other supervised protected activities. Put simply, HB 451 is a constitutional regulation that appropriately balances the interests and rights involved. It does not unreasonably burden the Section 20 right of law-abiding 18-to-20-year-olds.

As a matter of first impression, this Court is asked to balance the important policy interests of promoting the safety of Delawareans against the Article I, Section 20 right of an 18-to-20-year-old to bear arms in self-defense. Del. Const. art. I, § 20

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<sup>12</sup> *Id.* at 6:03, available at: <https://sg001-harmony.sliq.net/00329/harmony/en/PowerBrowser/PowerBrowserV2/00000000/-1/2033?startposition=20220614173731&viewMode=3&globalStreamId=3>.

(1987). While the right to bear arms is a fundamental right, this Court has made it clear that “it is not absolute.” *Doe v. Wilmington Hous. Auth.*, 88 A.3d 654, 667 (Del. 2014) (citing *Griffin v. State*, 47 A.3d 487, 488 (Del. 2012)). Delaware courts have consistently upheld firearm regulations that limit an individual’s fundamental right to bear arms when the person poses a danger to themselves and/or their communities. *See, e.g., Short v. State*, 1991 WL 12101, at \*1 (Del. Jan. 14, 1991) (upholding 11 Del. C. § 1448 prohibition on deadly weapon possession for individuals previously convicted of felonies); *Rumpff*, 308 A.3d at 200 (upholding Delaware protection from abuse (“PFA”) firearm restrictions, relying on studies and statistics showing the dangers posed by abusive intimate partners with firearms access, *id.* at 181-82, and noting that other courts have similarly upheld firearms restrictions for individuals who “fall into a presumptively dangerous category and are therefore exempt from [constitutional firearms] protections due to the danger they pose when in possession of firearms”, *id.* at 180); *United States v. Rahimi*, 602 U.S. 680 (2024) (similarly upholding federal disarmament law for individuals subject to domestic violence restraining orders); *id.* at 698 (“While we do not suggest that the Second Amendment prohibits the enactment of laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse[.]”) (citing *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008)). HB 451 survives constitutional scrutiny for the same reason.

Had the Superior Court properly analyzed HB 451 pursuant to this Court's intermediate scrutiny test for Section 20 challenges, the Superior Court would have likewise found HB 451 constitutional. Accordingly, in its *de novo* review, Appellants request this Court declare HB 451 constitutional, or in the alternative, remand for further proceedings.

## ARGUMENT

### **I. THE SUPERIOR COURT ERRED IN ITS APPLICATION OF THIS COURT’S INTERMEDIATE SCRUTINY ANALYSIS.**

#### **A. Questions Presented**

1. Whether the Superior Court erred in its balancing of the potential burden on 18-to-20-year-olds’ “right to bear arms in self-defense” protected by Article I, Section 20 of the Delaware Constitution against the valid interest of the State in protecting the public by reducing gun violence, suicide and crime committed by individuals within this age group. Op. at \*17-22.
2. Whether the Superior Court’s failure to consider and weigh HB 451’s inclusion of a self-defense exception in concluding that “Defendants have failed to show HB 451 does not restrict the right of self-defense more than is reasonably necessary” is reversible error. Op. at \*19.
3. Whether the Superior Court failed to exercise the required judicial self-restraint in its review of HB 451. Op. at \*39-60.

#### **B. Scope of Review**

Questions of law and constitutional claims are reviewed *de novo*. *Capriglione v. State ex rel. Jennings*, 279 A.3d 803, 806 (Del. 2021); *see also Doe*, 88 A.3d at 661.

The “proper approach” for Delaware courts reviewing statutes enacted by the General Assembly requires judicial restraint, with “a strong presumption of constitutionality attending a legislative enactment which, unless the evidence of unconstitutionality is clear and convincing, the court will be reluctant to ignore.” *Justice v. Gatchell*, 325 A.2d 97, 102 (Del. 1974) (citing *State Highway Dep’t v. Del. Power & Light Co.*, 167 A.2d 27, 31 (Del. 1961)). “[A] legislative enactment

is cloaked with a presumption of constitutionality and should not be declared invalid unless its invalidity is beyond doubt.” *Gatchell*, 325 A.2d at 102 (quoting *Klein v. Nat’l Pressure Cooker Co.*, 64 A.2d 529, 532 (Del. 1949); see also *Richardson v. Wile*, 535 A.2d 1346, 1350 (Del. 1988) (“[W]here a possible infringement of a constitutional guarantee exists, the interpreting court should strive to construe the legislative intent so as to avoid unnecessary constitutional infirmities.”); *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 69 (1994) (“[A] statute is to be construed where fairly possible so as to avoid substantial constitutional questions.”).

### C. Merits of Argument

Although the right to bear arms under Article 1, Section 20 is a fundamental right, this Court has repeatedly stated “it is **not absolute**.” *Doe*, 88 A.3d at 667 (by enacting Article I, Section 20 the legislative intent was not to invalidate laws regulating firearms) (citing *Griffin*, 47 A.3d at 488) (emphasis added). See also, e.g., *Short*, 1991 WL 12101, at \*1 (11 Del. C. § 1448 prohibition on deadly weapon possession for individuals previously convicted of felonies deemed constitutional); *Smith v. State*, 2005 WL 2149410, at \*3 (Del. Aug. 17, 2005) (Section 20, when enacted, did not invalidate Delaware law prohibiting the carrying a concealed deadly weapon without a license); *Dickerson v. State*, 975 A.2d 791, 795-96 (Del. 2009) (affirming conviction for carrying a concealed weapon without a license outside of the home); *Griffin*, 47 A.3d at 488-89 (although the right to bear

arms “is not absolute,” “it does allow a person to carry a concealed deadly weapon in his home, under certain circumstances”).

Article 1, Section 20 is multi-faceted, protecting not only the right to use arms in self-defense, but also for hunting, sporting, instruction, and recreational use.<sup>13</sup> The General Assembly took pains to provide that HB 451 did not infringe *any* of these categories of protected activities during the amendment process. Each of the amendments incorporated into the final version of HB 451 expanded the protections afforded to the right of 18-to-20-year-olds to bear arms, whether by adding exceptions or exemptions to the statutory prohibition (listed in statement of facts, *supra*).<sup>14</sup> As a result, HB 451, as enacted:

- protects the ability of 18-to-20-year-olds to purchase weapons, such as

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<sup>13</sup> Article I, Section 20 of the Delaware Constitution provides: “A person has the right to keep and bear arms for the defense of self, family, home and State, and for hunting and recreational use.” Del. Const. art. I, § 20.

<sup>14</sup> Amendment HA 3 to HB 451 (Rep. Gray) - Passed In House by Voice Vote (June 14, 2022) (adds National Guard to the exemption); Amendment HA 6 to HB 451 (Rep. Gray) - Passed In House by Voice Vote (June 14, 2022) (absolves users of paintball); Amendment HA 8 to HB 451 (Rep. Schwartzkopf) - Passed In House by Voice Vote (June 14, 2022) (clarifies no violation when firearm used in justifiable self-defense or defense of others or property; those under 21 may possess or control to hunt if compliant with already-existing Delaware law; Amendment SA 2 to HB 451 (Rep. Sokola) - Passed By Senate, Votes: 21 YES (June 28, 2022) ((1) permits those under 18 to possess firearm under supervision of person 21 or older, sunseting in 3 years from enactment; (2) For 3 years from the date of enactment of this Act, permits those at least 18 to possess or control firearm; (3) permits those under 21 to possess or control a firearm for transport for hunting and recreation.). Available at: <https://legis.delaware.gov/BillDetail?LegislationId=109608>.

shotguns, muzzle-loading rifles and deadly weapons other than firearms that are appropriate to effectuate all of Section 20's protected activities, 11 Del. C. § 1448(a)(5)(a);

- protects the ability of this age group to possess any firearm when engaging in supervised hunting, sporting, instruction and recreational activities protected by Section 20, *id.* § 1448(a)(5)(c)(1);
- protects the ability to purchase and possess any firearms for 18-to-20-year-olds whose communities have deemed them responsible to do so through the CCDW process, *id.* § 1448(a)(5)(b)(3); and
- protects the possession and use of any firearm by any 18-to-20-year-olds in acts of self-defense, *id.* § 1448(a)(5)(d).

Each of these exceptions ensures that HB 451 restricts Section 20 rights only as necessary to meet the State's objectives in reducing gun violence and suicide by this age group. For example, HB 451 generally restricts handgun access because handguns are commonly used by the impacted age group in acts of violence and other crime, *see infra* Section I.C.2, but reserves access to shotguns, which are effective firearms in all Section 20 protected activities, for this age group. Further, if an 18-to-20-year-old believes it is necessary to have one of the restricted firearm types in order to effectuate their Section 20 rights, HB 451 allows the purchase and possession of any firearm—the 18-to-20-year-old need only obtain a CCDW first.

The General Assembly further ensured that HB 451 is not a complete prohibition that unreasonably burdens the right to bear arms by making the restriction applicable for only a short period of time. Once individuals age out of this particularly risky age range, the law no longer applies to them. *See, e.g., Bondi,*

133 F.4th at 1122-23 (“But when an individual reaches the age of reason [21] and the need to protect him and the public from his immaturity and impulsivity dissipates, the Florida law permits him to purchase firearms.”). Additionally, the law provided a three-year grace period, allowing 18-year-olds at the time of passage to age out before the restrictions applied to them. 11 Del. C. § 1448(a)(5)(e) (as originally passed in 2022).<sup>15</sup>

Relying on this Court’s precedent in *Doe*, 88 A.3d 654 and *Bridgeville Rifle & Pistol Club, Ltd. v. Small*, 176 A.3d 632 (Del. 2017) (hereinafter “*Bridgeville I*”), the Superior Court applied the intermediate scrutiny analysis to Plaintiffs’ constitutional challenge to HB 451 under Article I, Section 20 of the Delaware Constitution. Op. at \*10; *see also Doe*, 88 A.3d at 666-68 (where challenged restriction was not a “total ban,” the “General Assembly’s careful and nuanced approach supports an intermediate scrutiny analysis that allows a court to consider public safety and other important governmental interests[.]”); *Bridgeville I*, 176 A.3d at 655 & n.125 (“[C]ourts are more likely to apply stricter scrutiny to regulations that limit the rights of all citizens, instead of merely a ‘narrow class of individuals...’”) (citing, *inter alia*, *NRA v. ATF*, 700 F.3d 185, 205 (5th Cir. 2012), *abrogated by Bruen*, 587 U.S. 1 (applying intermediate scrutiny to federal ban on

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<sup>15</sup> HB 451 amendments to 11 Del. C. § 1448(a)(5) at issue in this appeal would have become effective July 1, 2025.

handgun sales to individuals under 21 because it “does not disarm an entire community, but instead prohibits commercial handgun sales to 18-to-20-year-olds—  
—a discrete category”)).

“Intermediate scrutiny seeks to balance potential burdens on fundamental rights against the valid interests of government.” *Doe*, 88 A.3d at 666. The three-pronged intermediate scrutiny analysis for tailored Section 20 challenges required the Superior Court to determine whether: (1) the legislature articulated important government objectives or interests in enacting HB 451; (2) HB 451’s regulation of the purchase and possession of firearms and ammunition by 18-20 year olds is substantially related to achieving those objectives or interests; and (3) the State demonstrated HB 451 does not burden the right to bear arms “more than is reasonably necessary to ensure that the asserted governmental objectives are met.” *Op.* at \*14 (quoting *Bridgeville I*, 176 A.3d at 656 (citing *Doe*, 88 A.3d at 666-67)).

In applying intermediate scrutiny, the Superior Court correctly found that Delaware articulated the important governmental objectives of promoting public safety and preventing gun violence and that HB 451’s regulation of access to firearms by 18-to-20-year-olds does in fact substantially relate to achieving those objectives. *Op.* at \*14-17. The Superior Court, however, in balancing the potential burdens on the fundamental right of 18-to-20-year-olds to bear arms against the compelling interests of public safety, gun violence and suicide prevention, failed to

give the General Assembly’s careful and nuanced approach to HB 451 the deference it is due. *See, e.g., Snell v. Engineered Sys. & Designs, Inc.*, 669 A.2d 13, 17 (Del. 1995) (quoting *Op. of Justs.*, 425 A.2d 604, 605 (Del. 1981) (noting “the strong judicial tradition in Delaware in support of a presumption of the constitutionality of a legislative enactment”)). Specifically, the Court failed to consider HB 451’s self-defense exception, undervalued the shotgun exception, and misinterpreted 11 Del. C. § 1441 (Delaware’s CCDW law, incorporated as an exception to HB 451’s restrictions).

The Superior Court also erred by not following Delaware’s strong judicial tradition favoring the presumption of constitutionality of legislative enactments, especially here, where the General Assembly passed House Amendment 8 (HA 8) in order to specifically protect each of Section 20’s enumerated fundamental rights.<sup>16</sup> It further failed to exercise the appropriate judicial restraint in its determination that HB 451 burdened the right of 18-to-20-year-olds to bear arms more than is reasonably necessary to advance the State’s interest in preventing gun violence by this specific age group. Accordingly, this Court, in its *de novo* review, should give weight to the General Assembly’s deliberate intent in enacting this public policy, reverse the Superior Court’s finding that HB 451 imposes a burden on the Section

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<sup>16</sup> *See* House Amendment No. 8 to House Bill No. 451 (Rep. Schwartzkopf), 151st Gen. Assemb. (2021-2022), available at: <https://legis.delaware.gov/BillDetail?legislationId=129709>.

20 rights of 18-to-20-year-olds more than is reasonably necessary, and deem HB 451 constitutional.

**1. HB 451 Explicitly Protects the Fundamental Right to Bear Arms in Self-Defense.**

The Superior Court’s finding that HB 451 burdens the right of 18-to-20-year-olds to bear arms in self-defense more than is reasonably necessary to ensure public safety and reduce gun violence and suicide is both factually wrong and constitutionally flawed. Op. at \*19. HB 451 does not “completely eviscerate[] the right to self-defense.” *Id.* To the contrary, as the State noted in oral argument, the plain language of HB 451 *explicitly protects* the right to bear arms in self-defense. *See* A-452 (“section 1448 does permit exceptions for self-defence [sic], protecting others, property”). As proposed and amended by HB 451, 11 Del. C. § 1448(a)(5)(d) preserves the right to bear arms in self-defense:

It is not a violation of paragraph (a)(5) of this section if a person under the age of 21 possesses or uses a firearm during the use of force upon or towards another person if such use of force is justifiable pursuant to § 464, § 465, § 466, or § 469 of Title 11.<sup>17</sup> A-59.

The Superior Court’s failure to consider the self-defense exception renders the

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<sup>17</sup> The Superior Court noted in its Opinion that Defendants “have not argued HB 451 *does not* infringe on the rights of 18-to-20-year-olds to bear arms for self-defense,” Op. at \* 19, potentially because HB 451’s self-defense exception because it was not emphasized below. In its *de novo* review, this Court should consider this exception as it bears heavily on the determination of the constitutional question before the Court and because the interests of justice so require. Del. Supr. Ct. R. 8.

Court’s analysis factually and constitutionally flawed.

In *Bridgeville I*, this Court declared “the State must preserve an avenue for carrying out Section 20’s core purposes, which includes the right of possession of lawful firearms for self-defense, including outside the home.” 176 A.3d at 638. The legislature intended to, and in fact did, effectively preserve the right of *any* person under the age of 21 to possess or use *any* firearm in justifiable force for the protection of self or others or property. 11 Del. C. § 1448(a)(5)(d). HA 8 specifically addressed and ensured the protection of the right to bear arms in self-defense, as the “Original Synopsis” to HA 8 evidences:

This amendment also makes clear that a person is not in violation of § 1448(a)(5) if the person possesses or uses a firearm during the use of force upon or towards another person if such use of force is justifiable for the protection of self or others or property.<sup>18</sup>

Even though Delaware’s self-defense doctrine already protects individuals under 21 who use firearms in justifiable force, the legislature chose to add HA 8 to

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<sup>18</sup> The “Original Synopsis” to HA 8 also made clear that the possession of firearms for the purpose of hunting was also protected:

This amendment adds that a person under the age of 21 may possess or control a firearm for the purpose of engaging in lawful hunting so long as the person is in compliance with already-existing Delaware law that identifies the firearm accoutrements, ammunition, and number of cartridges that may be used on specific lands during a particular hunting season.

House Amendment No. 8 to House Bill No. 451 (Rep. Schwartzkopf), 151st Gen. Assemb. (2021-2022), available at: <https://legis.delaware.gov/BillDetail?legislationId=129709>.

“make it perfectly clear” that a person under 21 can use or possess any weapon, including ones they are otherwise restricted from accessing, in self-defense.<sup>19</sup> In other words, HB 451 respects the core right of self-defense enshrined in the Delaware Constitution.

The Superior Court’s failure to consider and weigh HB 451’s inclusion of a self-defense exception in reaching its conclusion that “Defendants have failed to show HB 451 does not restrict the right of self-defense more than is reasonably necessary” is plainly reversible error where this exception was properly before the court and a dispositive factor in the legal analysis. *Compare* DI 58 at 4 (“Subsection (d) does not prohibit those under 21 years old from using a firearm in self-defense, to protect others or property, and when in one’s home and quick action is necessary or the occupant reasonably believes the intruder will hurt someone. § 1448(a)(5)(d).”) *with* Op. at \*19; and *see, e.g., R.T. Vanderbilt Co. Inc. v. Galliher*, 98 A.3d 122, 129 (Del. 2014) (finding “reversible error” where trial court failed to provide jury instruction on a “dispositive question”); *see also Stephens v. State*, 916 S.E.2d 465, 466 (Ga. 2025) (emphasizing that “even then, if a person uses a handgun

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<sup>19</sup> *See* Video Recording: Del. H.R. Floor Debate on H.B. 451, 151st Gen. Assemb. (June 14, 2022) (statement of Rep. Schwartzkopf), at 5:58, available at: <https://sg001-harmony.sliq.net/00329/harmony/en/PowerBrowser/PowerBrowserV2/00000000/-1/2033?startposition=20220614173731&viewMode=3&globalStreamId=3>.

for self-defense or to defend others, it is an absolute defense under Georgia law for any alleged violation of state firearm regulations” in upholding Georgia’s statutory handgun age restriction). Where a lower court lacks a sufficient factual basis to come to a legal conclusion, that legal conclusion is reversible error. *Moises Maldonado's Makeovers v. Jones*, 2025 WL 1090989, at \*1 (Del. Super. Ct. Apr. 8, 2025) (finding lower court did not properly analyze relevant facts underlying its legal conclusion thus reversing and remanding judgement for further proceedings). The inclusion by the legislature of the self-defense exception deserves deference and demonstrates that the State met its burden to establish HB 451 does not unnecessarily burden the right to bear arms in self-defense.

**2. HB 451 Further Protects the Right of Self-Defense by Granting Unfettered Access to Shotguns and Other Deadly Weapons for 18-to-20-Year-Olds.**

The Superior Court improperly negated HB 451’s exception that permits the unrestricted purchase and possession of shotguns, muzzle-loading rifles and deadly weapons other than firearms, 11 Del. C. § 1448(a)(5)(a)(1)-(3), in its analysis of HB 451’s burden on the right to self-defense by declaring handguns are entwined with the right to self-defense. Op at \*19-20.<sup>20</sup> The Court found persuasive the dicta in *Heller*, noting handguns are “the quintessential self-defense weapon,” stating:

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<sup>20</sup> In its Opinion, the Superior Court addressed Defendants’ argument that “possession of shotguns without qualifications” “contributes to HB 451 not

Though perhaps not an explicit adoption, *Bridgeville* appears to harmonize with *Heller* in holding that handguns are inexorably intertwined with the right to self-defense. Regardless, this Court is persuaded of that entwinement for the same reasons articulated in *Heller*.”

*Id.* (citing *Heller*, 554 U.S. at 628-29). In essence, the Superior Court held that handguns are so “intertwined with the right to self-defense,” that any regulation of the purchase, ownership or control of handguns imposes an unreasonable burden on Section 20 rights. *Op.* at \*20. The Court’s conclusion is clearly erroneous.

It is within the power of the State to restrict the purchase, possession, ownership and control of firearms, including handguns, in order to protect the public from individuals deemed to be dangerous or a threat to society. *See State v. Robinson*, 251 A.2d 552, 555 (Del. 1969) (General Assembly’s establishment of firearm regulations, such as prohibiting felons from possessing firearms, constitutes a reasonable exercise of the state’s police power to protect its citizens.); *Rumpff*, 308 A.3d at 181 (legislatures retain the power to disqualify certain categories of individuals from possessing firearms when necessary to protect public safety); 11 Del. C. § 1448(a) (prohibiting categories of individuals from purchasing, owning, possessing, or controlling deadly weapons or ammunition, such as convicted felons,

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burdening Section 20 ‘more than reasonably necessary.’” *Op.* at \*19. The Superior Court does not specifically address the exemptions for the purchase and/or “possession of deadly weapons other than firearms” and muzzle-loading rifles bears on the right to bear arms in self-defense.

those involuntarily committed for mental health conditions, and others deemed a threat to public safety). The Superior Court found the State established that HB 451 addressed a specific public safety concern:

The General Assembly identified a subsection of the population that disproportionately committed firearm-related offenses, and sought to mitigate the commission of those offenses by designating them as ‘persons prohibited.’ The General Assembly made that identification based on both statistics and scientific research.

Op. at \*16. In other words, it is because 18-to-20-year-olds pose an increased threat to the public that the General Assembly imposed a narrowly tailored prohibition on the purchase, possession, ownership and control of some, but not all, firearms (as it has with other categories of individuals who are deemed to pose an increased threat to the public).<sup>21</sup>

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<sup>21</sup> In evaluating firearms age restrictions, other courts have also made neuropsychological findings that explain why 18-to-20-year-olds are considered to pose such increased threats to the public and to themselves with access to firearms. *See, e.g., Polis*, 121 F.4th at 126-27 (detailing “compelling scientific evidence” presented by Colorado, including that “psychological studies provide that individuals in their late teens and early 20s are less mature than adults in several significant and relevant ways”); *Bondi*, 133 F.4th at 1131 (Rosenbaum, J., concurring) (describing how the “prefrontal cortex, the part of the brain responsible for exercising judgment and moderating behavior in social situations, is one of the last regions of the brain to mature—and it doesn’t hit that point until around the age of 25”); *Pinales*, 765 F. Supp. at 1054 (finding that evidence submitted by State expert on neurobiological development of 18-to-20-year-olds “may help explain why criminal offending ‘peaks in the late teens or early 20s,’” and that this evidence was “good reason[] why denial of the preliminary injunction serves the public’s

Specifically, under HB 451, the purchase and possession of handguns is prohibited *unless* the individual demonstrates that he or she is a law-abiding citizen who does not pose an increased threat to the public. In upholding Delaware’s PFA restrictions in *Rumpff*, the Superior Court detailed studies and statistics submitted by the State showing the dangers posed by abusive intimate partners with firearms access. 308 A.3d at 181-82. “With these statistics in the background, the Delaware Legislature determined that those subject to PFAs should have their rights temporarily restricted on the basis they are presumptively dangerous individuals. Quite often, these PFAs are issued to firearm owners who have, or who are likely to use, their firearms in an improper manner.... Thus, the Second Amendment allows legislatures to disarm them.” *Id.* at 182-83; *see also id.* at 180 (explaining that other courts similarly upheld firearms restrictions for individuals who “fall into a presumptively dangerous category and are therefore exempt from Second Amendment protections due to the danger they pose when in possession of firearms”).

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interest” in challenge to Hawaii firearm age restrictions) (internal citations omitted). This Court has also considered such neuropsychological evidence in other contexts. *See, e.g., Zebroski v. State*, 179 A.3d 855, 861-62 (Del. 2018) (citing studies and precedent from the U.S. Supreme Court recognizing fundamental differences between juveniles and adult minds in criminal punishment context, and acknowledging that adolescent development continues beyond the age of 18).

A year later, in *Rahimi*, the U.S. Supreme Court affirmed that legislatures can at least temporarily disarm dangerous people consistent with the Second Amendment. 602 U.S. at 699, 702 (upholding federal disarmament law for individuals subject to domestic violence restraining orders). As this brief makes clear, 18-to-20-year-olds in Delaware fall under such a category, and, like the temporal restrictions upheld in *Rumpff* and *Rahimi*, HB 451’s restrictions are temporal. Individuals who are restricted due solely to HB 451 will have the ability to purchase and possess firearms without qualification once they are no longer considered to be dangerous—here, once they have aged out of this age group that the General Assembly found, and the State proves here, are particularly prone to firearms misuse.

Such a demonstration may be made by anyone in the impacted age group by obtaining a CCDW license under the requirements set forth in 11 Del. C. § 1441. *See id.* § 1448(a)(5)(b)(3); *see also infra* Section I.C.3. The exception for those who obtain a CCDW license is another affirmative protection of the right to bear arms in self-defense, and specifically allows individuals 18-to-20 to both purchase and possess a handgun.

The increased risk of misuse of handguns by individuals under 21 has long been recognized, as shown by the ubiquity of handgun age restrictions throughout our nation. *See, e.g., McCoy*, 140 F.4th at 579 (“it is not lost upon us that in modern

times “[m]any states (and the District of Columbia) proscribe or restrict the sale of handguns to persons under 21””) (quoting *NRA*, 700 F.3d at 190 n.4). Indeed, “as soon as handguns came on the scene, legislatures quickly prohibited their sale to minors[.]” *Id.*; *see also id.* (recognizing the “widespread restrictions on handgun sales to those under 21” as a “testament to the continuity of the historical tradition” of regulating access to such weapons for individuals within this age group). These historical handgun age restrictions were “enacted for a familiar reason: a concern that youths lacked the maturity and judgment to responsibly buy their own pistols.” *Id.* (internal citation omitted).

Handgun age regulations are not only a product of the States. Federal law also restricts handgun access for this age group. 18 U.S.C. § 922(b)(1) (prohibiting commercial sales of handguns to individuals under 21). Passed in 1968, § 922(b)(1)’s prohibition on sales of firearms “other than a shotgun or rifle” was “primarily designed to reduce access to *handguns*.” *See McCoy*, 140 F.4th at 572 (quoting S. Rep. No. 90-1097, at 189 (1968) (statement of Sen. Tydings)). After “years of investigation,” Congress found “a causal relationship between the easy availability of [handguns] and juvenile and youthful criminal behavior[.]” *Id.* (citing Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197, 225-26 (1968)). Accordingly, Congress enacted § 922(b)(1) “to prohibit handgun sales ‘to emotionally immature’ and ‘thrill-bent juveniles and

minors.” *Id.*; *see also* *NRA*, 700 F.3d at 207 (further detailing § 922(b)(1)’s legislative history, including the “multi-year investigation that revealed a causal relationship between the easy availability of firearms to young people under 21 and the rise in crime,” and particularly a “causal relationship between the easy availability of firearms other than a rifle or shotgun and juvenile and youthful criminal behavior”) (internal citations omitted).

These risks have been recognized in years since, through government reports as facts published by the government that are not subject to reasonable dispute. For example, the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) published a series of reports analyzing crime gun trace recoveries in major cities nationwide at the turn of the century as part of its Youth Crime Gun Interdiction Initiative (“YCGII”). An ATF’s YCGII report from 1998 found that semiautomatic pistols, which made up 52% of all reviewed trace requests, were most prevalent for the “youth” (18-24) age group (60.2%) as compared to the juvenile (57.7%) and adult (46.6%) age groups. ATF, *YCGII: Crime Gun Trace Reports (1998)* 10-11 (Feb. 1999).<sup>22</sup> ATF found similar patterns of handgun misuse by this

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<sup>22</sup> Appellants request that this Court take judicial notice of the ATF YCGII Crime Gun Trace Analysis Report from February 1999. *See* Dep’t of the Treasury, Bureau of Alcohol, Tobacco & Firearms, *Youth Crime Gun Interdiction Initiative: Crime Gun Trace Analysis Report: The Illegal Youth Firearms Market in Washington DC* (February 1999), available at: <https://www.atf.gov/resource-center/docs/washingtpdf/download>. Judicial notice is appropriate where, as here,

age group in subsequent YCGII reports.<sup>23</sup>

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the fact in question is a report of a federal agency, can be determined by the agency sources, and cannot be subject to reasonable dispute or questioned as to accuracy. D.R.E. 201(b); D.R.E. 202(d); *In re Gen. Motors (Hughes)*, 897 A.2d at 169; *Samuels v. CCUR Holdings, Inc.*, 2022 WL 1744438, at \*2 (Del. Ch. May 31, 2022) (taking judicial notice of federal agency filings); *Scanlon v. Medtronic Sofamor Danek USA Inc.*, 61 F. Supp. 3d 403, 413 n. 16 (D. Del. 2014) (taking judicial notice of the contents of a federal agency document from the agency website); *Walker v. State*, 154 A.3d 1167 at \*1, n.9 (Del. 2017) (taking judicial notice of fact from National Center for Health Statistics published by the U.S. Centers for Disease Control and Prevention); *Interstate Nat. Gas Co. v. S. California Gas Co.*, 209 F.2d 380, 385 (9th Cir. 1953) (“We may take judicial notice of records and reports of administrative bodies.”); *Heartland Outdoor, Inc. v. Miller*, 2023 WL 6376751, at \*6 (D. Kan. Sept. 29, 2023) (taking judicial notice of an adjudicative fact by relying on ATF document published on ATF website); *Watterson v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 2024 WL 897595, at \*17 (E.D. Tex. Mar. 1, 2024) (taking judicial notice of information from ATF website).

<sup>23</sup> Appellants request that this Court take judicial notice of the ATF YCGII Crime Gun Trace Analysis Report from November 2000 and July 2002. See Dep’t of the Treasury, Bureau of Alcohol, Tobacco & Firearms, *Youth Crime Gun Interdiction Initiative: Crime Gun Trace Reports (1999)* (Nov. 2000), available at: <https://www.atf.gov/resource-center/docs/ycgii-report-1999-general-findingspdf-0/download> (finding that the “dominance of handguns and semiautomatic pistols is especially present among juveniles and youth,” with semiautomatic pistols being most prevalent among youth); Dep’t of the Treasury, Bureau of Alcohol, Tobacco & Firearms, *Youth Crime Gun Interdiction Initiative: Crime Gun Trace Reports* (July 2002), available at: <https://www.atf.gov/file/5491/download> (finding that the 9mm semiautomatic pistol—“the most frequently traced type of crime gun”—was “especially frequent among youth possessors”). Judicial notice is appropriate where, as here, the fact in question is a report of a federal agency, can be determined by the agency sources, and cannot be subject to reasonable dispute or questioned as to accuracy. D.R.E. 201(b); D.R.E. 202(d); *In re Gen. Motors (Hughes)*, 897 A.2d at 169; *Samuels*, 2022 WL 1744438, at \*2; *Scanlon*, 61 F. Supp. 3d at 413 n. 16 (taking judicial notice of the contents of a federal agency document from the agency website); *Interstate Nat. Gas Co.*, 209 F.2d at 385 (“We may take judicial notice of records and reports of administrative bodies.”); *Heartland*, 2023 WL 6376751, at \*6 (taking judicial notice of an adjudicative fact by relying on ATF document published

Accordingly, the fact that HB 451’s restrictions apply to handguns, while exempting shotguns, does not result in it being unreasonably burdensome on the Section 20 rights of 18-to-20-year-olds. Instead, it evidences the General Assembly’s intent to tailor the restrictions to apply to the types of firearms most likely to be misused by this age group, while exempting weapons that are not.

The General Assembly’s judgment should be afforded deference and its findings great weight. *See New Castle Cnty. Council v. State*, 688 A.2d 888, 891 (Del. 1996) (analyzing bill passed by General Assembly and acknowledging “presumption of constitutionality” which “requires” courts to give “deference to legislative judgment...”); *see also Gatchell*, 325 A.2d at 102 (Del. 1974); *Klein*, 64 A.2d at 529; *Richardson*, 535 A.2d at 1350; *X-Citement Video, Inc.*, 513 U.S. at 69. Specifically, 18-to-20-year-olds are disproportionately involved in mass shootings and other types of violent and firearms-related crime both nationwide and in Delaware; that firearm-by-suicide is a serious issue impacting Delawareans,<sup>24</sup> and

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on ATF website); *Watterson*, 2024 WL 897595, at \*17 (taking judicial notice of information from ATF website).

<sup>24</sup> *See* Video Recording: Del. H.R. Floor Debate on H.B. 451, 151st Gen. Assemb. (June 14, 2022) (statement of Rep. Schwartzkopf), at 6:04:06-6:05:30, available at: <https://sg001-harmony.sliq.net/00329/harmony/en/PowerBrowser/PowerBrowserV2/00000000/-1/2033?startposition=20220614173731&viewMode=3&globalStreamId=3>; *see also Del. House Bill Minutes on H.B. 451*, 151st Gen. Assemb. (June 8, 2022) at 4, 90-91 (submissions by constituents including Camden Weber, State Policy Manager).

that suicide is a growing problem for individuals under 21; and that these statistics are explained by “conclusive scientific research that shows that human brains are still developing” in those aged 18-to-20, impacting their “decision making, self-control, aggressive impulses, and risk-taking behaviors.”<sup>25</sup> A-57; Op. at \*1 (noting that HB 451 itself includes some of these findings).

Put simply, HB 451 was enacted out of the General Assembly’s great concern for the “safety of those under the age of 21 years old and the safety of their

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<sup>25</sup> See Video Recording: Del. H.R. Floor Debate on H.B. 451, 151st Gen. Assemb. (June 14, 2022) (statement of Rep. Schwartzkopf), at 6:02:30-6:04; 6:07-6:07:25, available at: <https://sg001-harmony.sliq.net/00329/harmony/en/PowerBrowser/PowerBrowserV2/00000000/-1/2033?startposition=20220614173731&viewMode=3&globalStreamId=3> (discussing statistics of gun violence by individuals under age 21 including consideration of several neurological studies). The General Assembly’s findings that the 18-to-20 age group poses increased risks is supported by a wealth of scientific studies. Because the human brain is still maturing during this age, the prefrontal cortex remains significantly underdeveloped, affecting functions like impulse control, emotion control, reaction times and decision-making. See, e.g., Leah H. Somerville, PhD, et al., *A time of change: Behavioral and neural correlates of adolescent sensitivity to appetitive and aversive environmental cues*, *Brain Cogn.* Vol. 72(1) (February 2010), available at: <https://pmc.ncbi.nlm.nih.gov/articles/PMC2814936/pdf/nihms133419.pdf>; see also Amanda E. Baker, et al., *The connecting brain in context: How adolescent plasticity supports learning and development*, *Development Cognitive Neuroscience* Vol. 71 (2025), available at: <https://legis.delaware.gov/BillDetail?legislationId=129709> (neurobiological changes at the 18-to-20 age range impact attention, task control, and social processing systems). In addition to the prefrontal cortex, the hippocampus is also still developing between 18-20, resulting in a “maturation mismatch” causing more emotionally-driven and impulsive choices. Bart Larsen, et al., *Adolescence as a neurobiological critical period for the development of higher-order cognition*, *Nuerosci. Biobehav. Rev.* Vol. 94 (Nov. 2018), available at: <https://pmc.ncbi.nlm.nih.gov/articles/PMC6526538/pdf/nihms-1506581.pdf>.

communities.” A-110.<sup>26</sup> Accordingly, its focus is on protecting public health and safety against gun violence carried out by a set of persons who have since time immemorial demonstrated a serious lack of the mature judgment that society should demand of anyone carrying deadly weapons. The legislature’s intent and purpose in regulating access to the ownership, possession and control of firearms, specifically handguns, by 18-to-20-year-olds was a policy decision firmly based on gun violence statistics and scientific evidence that was recognized and accepted by the Superior Court, is narrowly limited to address specific public safety concerns posed by 18-to-

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<sup>26</sup> Of note, the provisions of HB 451 are fully consistent with Anglo-American law, which “has always countenanced restrictions based on age for good reasons,” but “recent developments in neuroscience have vindicated the Founding era’s wisdom on this matter by demonstrating that brain development of [18-to-20-year-olds] is incomplete, a fact that limits their ability to evaluate risk and heightens their inclination to make reckless decisions.” A-110 (Cornell Decl. ¶ 30) (citing, *inter alia*, *Commonwealth v. Mattis*, No. SJC-11693, 224 N.E. 3d 410 (Mass. Super. J. Ct. Jan. 11, 2024) (slip op.) (holding that sentencing 18-to-20-year-olds to life in prison without the possibility of parole was unconstitutional as cruel and unusual punishment based on the underdeveloped capacity of the brains of this age group). In *Mattis*, the trial court judge made four core findings of fact following an evidentiary hearing, including that 18-to-20-year-olds: “(1) have a lack of impulse control similar to sixteen and seventeen year olds in emotionally arousing situations, (2) are more prone to risk taking in pursuit of rewards than those under eighteen years and those over twenty-one years, (3) are more susceptible to peer influence than individuals over twenty-one years, and (4) have a greater capacity for change than older individuals due to the plasticity of their brains.” A-110. “If the brains of eighteen-to-twenty-year-olds are different enough that the Constitution prohibits them from being sentenced in the same way as older adults, it should follow that governments can lawfully determine that this age group’s access to and carry of firearms poses sufficient risk that limitations are necessary.” *Id.* (internal citations omitted).

20-year-olds, and, through its myriad exemptions, provides a “meaningful avenue[s] [for 18-to-20-year-olds] to exercise the right to bear arms[.]” *Bridgeville I*, 176 A.3d at 644 n.58.

**3. HB 451 Protects the Right to Bear Arms in Self-Defense with Any Firearm, Including a Handgun, Through the CCDW Exemption.**

Assuming the U.S. Supreme Court was correct in its observation in *Heller* that a handgun is the “quintessential” weapon used in self-defense, the General Assembly protected the right of 18-to-20-year-olds to possess, own and control any legal guns, including handguns, by including a statutory exemption to HB 451 for those who obtain a CCDW license pursuant to 11 Del. C. § 1441.<sup>27</sup> To qualify to obtain the license, a person must demonstrate completion of a firearms safety course and

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<sup>27</sup> To obtain a CCDW license under 11 Del. C. § 1441, an individual must fill out an application, which asks, *inter alia*, for a statement explaining why the individual is submitting the application. *See id.* § 1441(a). The individual must also certify that he or she is “of full age” (18 and older), of “good moral character,” and “bears a good reputation for peace and good order[.]” *Id.* § 1441(a)(1)-(2). The application is submitted to Prothonotary, reviewed by the Office of the Attorney General, and then approved or denied by the Superior Court, which also conducts a background check. *See id.*; If approved, the applicant must submit proof that the firearms training requirement has been satisfied before the license is granted. 11 Del. C. § 1441(a)(3)(i). If denied, the applicant may then appeal that decision. Del. Super. Ct. R. 7, App. & Admin. of 11 Del. C. § 1441 (“Any applicant aggrieved by any action of the Court may file a written request for a hearing no later than 10 days after notification of the contested action. Upon receipt of a request for a hearing, the Court shall notify the applicant and the Attorney General of the date and time of the hearing.”), <https://courts.delaware.gov/superior/weapons.aspx>. Once issued, a new CCDW is valid for three years; renewal licenses are good for five-year periods. 11 Del. C. § 1441(a)(5)(a).

provide references that establish the individual is a responsible, law-abiding citizen. *Doe*, 88 A.3d at 665 (Del. 2014) (discussing rights of “law-abiding, responsible citizens” under Delaware Constitution).

As is explained below, the Superior Court misinterpreted 11 Del. C. § 1441 to be a discretionary licensing regime with no remedy for a denial of an application, and thus discredited it entirely in its balancing of the State’s interests against the rights enshrined in Section 20. In doing so, the Court compounded its errors, rendering a constitutionally flawed decision.

## **II. THE SUPERIOR COURT ERRED IN CONSIDERING THE CONSTITUTIONALITY OF DELAWARE’S CONCEALED CARRY LICENSING SCHEME.**

### **A. Question Presented**

1. Whether the Superior Court procedurally erred by considering the constitutionality of Delaware’s CCDW license law, which was not at issue in this case. Op. at \*20-22.
2. Whether the Superior Court substantively erred by finding that Delaware’s CCDW license scheme was unconstitutional. Op. at \*20-22.

### **B. Scope of Review**

Review of legal questions and constitutional claims is *de novo*. *See supra* Section I.B. While the constitutionality of HB 451’s CCDW exception was not presented below, this Court should consider this question because the interests of justice so require. Del. Supr. Ct. R. 8.<sup>28</sup>

### **C. Merits of Argument**

Compounding the Superior Court’s flawed analysis under the third prong of this Court’s intermediate scrutiny test, the Superior Court — without the benefit of briefing on this issue by either party — erroneously concluded Delaware’s CCDW license scheme, laid out in 11 Del. C. § 1441, is not a “shall-issue” regime. *See Op.* at \*20-21. In doing so, the Superior Court erred both procedurally and substantively.

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<sup>28</sup> Of note, Plaintiffs did not present the questions of whether 11 Del C. § 1441 was constitutional in their summary judgment briefing, and therefore the question was not briefed by either party. A-32.

**1. The Superior Court Erred by Failing to Analyze Criteria Established in *Jones v. State* for Claims Under the Delaware Constitution.**

First, the Superior Court procedurally erred by considering the constitutionality of Delaware's permitting structure for concealed weapons (even though the statute was not presented to the Court by Plaintiffs' summary judgment filings) without consideration of this Court's established criteria for the "proper presentation" of an alleged constitutional violation. *Ortiz v. State*, 869 A.2d 285, 291 n.4 (Del. 2005), *overruled on other grounds by Rauf v. State*, 145 A.3d 430 (Del. 2016) (citing *Jones v. State*, 745 A.2d 856, 864-65 (Del. 1999)). In *Jones*, this Court set forth a list of non-exhaustive criteria to be analyzed by a trial court in addressing a constitutional claim under the Delaware Constitution, including textual language, legislative history, pre-existing state law, structural differences, matters of particular state interest or local concern, state traditions, and public attitudes. 745 A.2d at 864-65. Additionally, in *Terreros v. State*, 312 A.3d 651 (Del. 2024), this Court noted the importance of adversarial briefing on constitutional claims and that without such, this Court cannot "properly address" a claim under the Delaware Constitution. *Id.* at 672.

In this case, the Superior Court erred when it bypassed all of the criteria set forth by this Court in *Jones* and *sua sponte* decided 11 Del. C. § 1441 is not a "shall-issue" licensing regime and for that reason should be reversed. *Op.* at \*20-21. In

the alternative, this Court should remand the issue.<sup>29</sup> Defendants were not afforded an opportunity to present evidence nor argument regarding the constitutionality of this unchallenged statute.<sup>30</sup> In short, the adversarial process failed, and in the absence of reversal, this Court should remand this case for further proceedings consistent with precedent in *Ortiz, Jones and Terreros*. See *Terreros*, 312 A.2d at 673 (remanding case for further proceedings where *Jones* criteria were not considered by trial court).

## **2. The Superior Court Erred in Finding That Delaware’s CCDW Process Is Impermissibly Discretionary.**

The Superior Court also erred in finding that Delaware’s CCDW law is “discretionary,” which proved to be fatal for HB 451 under the Superior Court’s analysis because “[t]he exercise of a constitutionally-protected right cannot be

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<sup>29</sup> Should the Court find a more fulsome record would assist its deliberations or would have assisted the lower court in its deliberations, then Appellants submit remand would be appropriate. *Harris v. Tucker*, 2025 WL 1474162, at \*5 (Del. May 22, 2025) (remanding to the Superior Court in a custody modification action where there was an incomplete evidentiary record); see also *United States v. Mills*, 472 F.2d 1231, 1235 (D.C. Cir. 1972) (“Appellate courts are called upon [...] to accord justice in the particular case; and to settle underlying principles of law. When cases raise constitutional or other basic questions, it is often a responsible exercise of the function to remand for a full record developed on hearing, rather than decide the matter on the record as made in the trial court.”).

<sup>30</sup> Although Defendants were not able to properly brief this question, evidence was submitted showing that 11 Del. C. § 1441 does satisfy some of *Jones*’s criteria, such as state traditions. Indeed, Delaware has codified firearms age restrictions throughout the State’s history. See, e.g., A-228; A-237; A- 220; A-152. As these historical statutes show, HB 451 is consistent with Delaware’s historical regulation of this age group’s purchase of firearms, and HB 451 is not an outlier.

reliant on a discretionary licensing procedure.” Op. at \*21. In its finding that the CCDW law is “discretionary,” the Superior Court emphasized that “an applicant who receives a denial has no appellate options.” *Id.* But this is factually inaccurate.

Pursuant to Superior Court Procedural Rules for Application and Administration of 11 Del. C. § 1441, if an application is denied, the aggrieved applicant has the right to request a hearing.<sup>31</sup> The applicant may also present evidence as permitted by the Delaware Uniform Rules of Evidence. Del. Super. Ct. R. 10, App. & Admin. of 11 Del. C. § 1441.<sup>32</sup>

The Superior Court’s conclusion not only contradicts its own procedural rules, but also conflicts with rulings by the U.S. Supreme Court, *see Bruen*, 597 U.S. at 13 n.1 (suggesting that Delaware’s permitting structure is constitutional under the Second Amendment because, while the plain text may suggest discretion, it operates as a “shall issue” regime), and with suggestions by this Court. *See Bridgeville I*, 176 A.3d at 638-39 (“We acknowledged in *Doe* that the right to carry a firearm for self-defense is not absolute and may be restricted. For example, the State validly ... limits

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<sup>31</sup> Del. Super. Ct. R. 7, App. & Admin. of 11 Del. C. § 1441 (“Any applicant aggrieved by any action of the Court may file a written request for a hearing no later than 10 days after notification of the contested action. Upon receipt of a request for a hearing, the Court shall notify the applicant and the Attorney General of the date and time of the hearing.”), <https://courts.delaware.gov/superior/weapons.aspx> (last visited Dec. 10, 2025).

<sup>32</sup> <https://courts.delaware.gov/superior/weapons.aspx> (last visited Dec. 10, 2025).

possession of concealed deadly weapons outside the home to people who hold permits.”) (citing *Doe*, 88 A.3d at 664 (citing *Smith*, 882 A.2d 762)). Indeed, Delaware’s CCDW law has several procedural requirements, but its substantive requirements are objective: the individual must simply state that he or she wishes to carry a concealed firearm for any reason, including for personal protection or protection of property, and must submit five forms signed by members of that individual’s community—of the applicant’s choice—certifying their belief that the applicant is of “good moral character” and “bear[s] a good reputation for peace and good order” in their community. 11 Del. C. § 1441(a)(1)-(2).

The fact that § 1441 operates as a “shall-issue” regime is further demonstrated by State statistics, the most recent of which show that the State approved 990 new CCDW applications in Fiscal Year 2026, while only denying 45; in the same period, the State approved 576 renewal CCDW applications, while denying only 24. *See Carrying Concealed Deadly Weapon (CCDW) FY2026*, at 5 (Nov. 10, 2025), <https://courts.delaware.gov/forms/download.aspx?ID=125408>. These numbers align with the Delaware statistics cited in *Bruen* to demonstrate the U.S. Supreme Court’s finding that Delaware’s CCDW scheme “operate[s] like [a] ‘shall issue’” regime. *See Bruen*, 597 U.S. at 13 n.1 (“As for Delaware, the State has thus far processed 5,680 license applications and renewals in fiscal year 2022 and has denied only 112.”). All an eligible applicant must do to be approved for a CCDW is

complete the required procedures, pass the required background check, and certify that they received firearms training. Once an applicant has done so, the State has no reason to deny a license for individuals who have not been otherwise found to pose a danger if armed.

**3. The Superior Court’s Flawed Analysis of 11 Del. C. § 1441 Nullifies Its Intermediate Scrutiny Analysis.**

The Superior Court then erred in applying its “discretionary” finding under the third prong of the intermediate scrutiny test, leading it to determine that HB 451 unreasonably burdened 18-to-20-year-olds because “[t]he exercise of a constitutionally-protected right cannot be reliant on a discretionary licensing procedure,” Op. at \*21. Accordingly, the Superior Court mistakenly held that the CCDW exemption “does not salvage the unconstitutionality of HB 451.” *Id.*

With the CCDW exception, the General Assembly provided a mechanism for 18-to-20-year-olds to avoid all of HB 451’s restrictions that would otherwise apply to them: they simply need to obtain a license. 11 Del. C. § 1448(a)(5)(b)(3). Because Delaware’s concealed carry licensing scheme is a presumptively constitutional “shall issue” regime, HB 451 is wholly consistent with the Delaware Constitution.

This Court should reverse the Superior Court’s finding that this unchallenged statute was unconstitutional because § 1441 was not at issue in this case, and because the Superior Court’s findings were factually and legally incorrect.

## CONCLUSION

Delaware requests that the Court reverse the Superior Court and find HB 451 and 11 Del. C. Section 1441 constitutional under the Delaware Constitution. Alternatively, if the Court would prefer full consideration in the first instance below, Delaware requests that the Court remand to permit the Superior Court to assess the constitutionality of Section 1441, as the parties were not afforded a proper opportunity to address the pertinent criteria; to apply proper intermediate scrutiny analysis to its third prong; and to clarify the effect on its analysis and reasoning of the numerous exceptions and protections that HB 451 expressly provides.

Respectfully submitted,

s/ Jennifer Kate Aaronson

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**CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT  
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I, Jennifer Kate Aaronson, hereby certify that the foregoing Brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Times New Roman 14-point typeface using Microsoft Word for Microsoft 365.

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/s/ Jennifer Kate Aaronson