

No. 22-1482

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

JENNIFER J. MILLER, DARIN E. MILLER, SECOND
AMENDMENT FOUNDATION, INC., ILLINOIS STATE RIFLE
ASSOCIATION, and ILLINOIS CARRY,

Plaintiffs-Appellants,

v.

MARC D. SMITH, in his official capacity as Director of the Illinois Department
of the Illinois Department of Children and Family Services, and KWAME
RAOUL, in his official capacity as Attorney General of the State of Illinois,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF ILLINOIS (No. 3:18-CV-3085)
HONORABLE SUE E. MYERSCOUGH

**BRIEF OF *AMICI CURIAE* AMERICAN MEDICAL ASSOCIATION, ILLINOIS STATE MEDICAL
SOCIETY, AMERICAN ACADEMY OF PEDIATRICS AND ILLINOIS CHAPTER, AMERICAN
ACADEMY OF PEDIATRICS IN SUPPORT OF DEFENDANTS-APPELLEES AND AFFIRMANCE**

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Appellate Court No: 22-1482

Short Caption: Jennifer Miller, et al v. Marc Smith, et al

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INTEREST OF THE AMICI CURIAE

The American Medical Association (“AMA”) is the largest professional association of physicians, residents and medical students in the United States. Its purpose is to promote the art and science of medicine and the betterment of public health. Substantially all U.S. physicians, residents and medical students are represented in its policy-making process through state and specialty medical societies and other physician groups seated in its House of Delegates. AMA members practice and reside in all 50 States.¹

The Illinois State Medical Society (“ISMS”) is comprised of over 9,000 participating physicians, residents, and medical students, including pediatric specialists. ISMS’s mission is to promote the science and art of medicine, the protection of public health and the betterment of the medical profession. ISMS has a profound interest in this case because a negative outcome will detrimentally impact the health of Illinois’s most vulnerable citizens and the ability of Illinois physicians to care for those children. ISMS recognizes that firearm injuries and deaths are a public health problem and supports firearm regulation as it relates to daycare centers.

The AMA and ISMS submit this brief on their own behalves and as representatives of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center is a coalition of the AMA and the medical societies of each State and the District of Columbia. Its purpose is to represent the views of organized medicine in the courts.

The American Academy of Pediatrics (“AAP”) represents approximately 67,000 pediatricians nationwide and the Illinois Chapter, AAP (“ICAAP”) represents the approximately

¹ All parties have consented to this filing. This brief was not authored in whole or in part by counsel for any party. No person or entity other than *amici curiae*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

2,000 pediatricians in Illinois. Both are dedicated to the health, safety and well-being of infants, children, adolescents, and young adults

Amici respectfully submit this brief to offer their unique perspective, as health care providers to our children, including babies and infants, on the compelling need to uphold Illinois's firearm regulations for home daycare facilities and foster family homes. The firearm violence that is plaguing America and its youth is a public health crisis that *amici*'s members face every day. Physicians devote their lives to treating everyone, including in the most high-risk emergencies when patients are most vulnerable. Individuals put their lives, and their children's lives, in their physicians' hands. Physicians witness the reality, the brutal effects on our children's bodies, the deaths, the grief and suffering, and the life-long physical, psychological, social, and economic consequences that follow survivors who can never be made whole. The firearm violence emergencies and trauma never end for *amici*'s members and the other medical professionals and staff.

Amici's members are patriotic Americans who understand the importance of protecting our constitutional rights. They include many individuals who grew up with and value the recreational use of firearms or choose to own a firearm for self-defense. But *amici* share the strong conviction, informed by their health care work and research, that Illinois and other states must be able to respond to the untenable firearm violence by enacting and enforcing appropriate and constitutional firearm storage regulations to protect our children.

This country has already lost too many children to firearm violence, which is the leading cause of injury-related death among children. This Court should listen to the facts and the science, and decline Appellants' proposal to expand the Second Amendment and endanger children's lives.

Amici respectfully submit that this Court’s decision will directly affect whether children, including babies and infants, will live, die or have their lives changed forever by devastating gunshots and psychological trauma. The stakes can hardly be higher.

SUMMARY OF ARGUMENT

The issue presented is whether Illinois may enforce regulations enacted by the state’s Department of Children and Family Services (“DCFS”) to protect children in home daycare facilities and foster homes from the devastating effects of firearms. The Court should answer this question in the affirmative and affirm the decision below. DCFS’s “Foster Home Rule” appropriately prohibits loaded guns in foster homes and requires that firearms be stored locked, unloaded, and separately from ammunition, which must also be stored locked and inaccessible to children. 89 Ill. Admin. Code § 402.8(o). DCFS’s “Day Care Home Rule” (together with the Foster Home Rule, the “DCFS Rules”) appropriately prohibits handguns on the premises of a home daycare facility, requires that all other firearms be kept disassembled, unloaded, and locked in storage inaccessible to children, and requires that ammunition be stored in a locked location separate from the firearms. 89 Ill. Admin. Code §§ 406.8(a)(17) & (18).

Point I presents the firsthand experiences of some of *amici*’s members who treat victims of firearm violence. They explain the grave public health crisis for children, including babies and infants, that Illinois’ DCFS Rules address.

Point II describes the medical and public health research that documents the terrible physical and psychological consequences for children when firearms in the home are not stored safely. Safe storage requirements reduce the risk of firearm injury.

Point III shows the DCFS Rules are completely consistent with the Second Amendment, and advance Illinois’s important and compelling interest in ensuring the safety of children in home daycare facilities and foster homes.

ARGUMENT

I. **AMICI'S PHYSICIAN MEMBERS HAVE FIRSTHAND KNOWLEDGE OF THE ENORMOUS PHYSICAL, PSYCHOLOGICAL, AND SOCIAL HARM WROUGHT BY THE FIREARM VIOLENCE PUBLIC HEALTH CRISIS**

A. **Dr. Marion Henry**

Dr. Henry is a Professor of Surgery at the University of Chicago. She treats pediatric patients at the Comer Children's Hospital in Hyde Park. Dr. Henry was a contributing author for the American Pediatric Surgical Association's position statement on firearm injuries and children. She was a U.S. Navy surgeon from 2008 to 2017, and was trained to use a gun.

Dr. Henry knows from first-hand experience how a gunshot can injure or kill a child. Tragically, she treats patients under the age of 16 in the pediatric trauma center for gunshot related-injuries almost every day. Her patients who have been injured by firearms this past year have been as young as five months old. Firearms are now the number one cause of death in children. Even when a child survives, the injuries can cause lifelong health complications such as abdominal and gastrointestinal problems, paralysis, and the need for recurring surgical procedures. These gunshot deaths and injuries result from suicide attempts, negligent or unintentional shootings by friends or family, or the natural curiosity of a child who finds a gun in a home. The wounds are usually to the head or torso. And studies show that those who are injured or killed are not the only victims of gun violence. Even being in the vicinity of a shooting can cause severe mental health distress as shown in studies in Philadelphia and in John Woodrow Cox's journalistic book, *Children Under Fire*.

Dr. Henry believes guns should be inaccessible to children because they are inherently dangerous in the wrong hands. They are more lethal than other weapons. Access to guns leads to more deaths of children. If a gun is available in a home, the risk of suicide is three times as high.

The use of a firearm for suicide is fatal 95% of the time. Children as young as 9 take their own lives.

Foster homes and daycares should be safe havens. The state has a responsibility to promote safety, particularly when children are entrusted to others. Children cannot speak up for themselves. Many injuries and deaths can be avoided if guns are securely locked unloaded, and stored away from ammunition. Dr. Henry believes that with proper safety precautions, like the laws that require proper restraints and car seats in cars, the epidemic of firearm injuries to children can be significantly reduced.

B. Dr. Hena Ibrahim

Dr. Ibrahim is a pediatrician at Saint Anthony Hospital in Chicago. She treats children for gunshot injuries almost every week. Dr. Ibrahim recalls a three-year-old boy who shot himself in the head after finding the gun of his mother's boyfriend. The hospital's emergency department report informed Dr. Ibrahim the boy was "coming up to die." She looked at a scan of the boy's head. Even though the bullet exited, it left his head full of shrapnel.

Dr. Ibrahim treated another young boy who lost his eye when his brother shot him unintentionally. Such gun violence is tragically common in the communities she serves. After returning from a recent humanitarian trip to Ukraine where she treated children and families who were shot by Russian artillery, Dr. Ibrahim showed x-rays of their injuries to a colleague. He noted the injuries look just like what he sees every day treating patients on Chicago's West Side.

Dr. Ibrahim strongly supports Illinois' DCFS Rules. She believes it is time to protect children from the devastating mental, physical, academic, economic and family impact of gun violence.

C. Dr. Brian Jones

Dr. Jones is a pediatric surgeon at Comer Children's Hospital and Advocate Lutheran General Hospital in Chicago. He has lost count of the number of children he has treated for gunshot wounds. One boy was unintentionally shot by his older brother. The boy survived the shooting but was paralyzed on one side of his body. It changed his and his family's lives forever.

Dr. Jones recently treated another boy who was unintentionally shot by his brother and died. As Dr. Jones was about to deliver the news to the boy's mother, he looked down at his shoe and saw a piece of brain matter that had fallen out while he was trying to resuscitate the boy. He wiped the boy's brain off his shoe and then broke the news to the boy's mother. Dr. Jones is tired of wiping children's brains off his shoes because of the firearm violence that afflicts his patients.

Dr. Jones strongly supports common sense safe storage requirements like Illinois's DCFS Rules. He grew up in rural Indiana. As children, he and his friends knew where all the guns were kept at his friends' homes and how to access them. They were curious about the household guns—some of which were loaded—and played with them. Dr. Jones feels extremely lucky that he and his friends were never injured by these guns. He believes safe storage requirements prevent at least some of the physical and emotional trauma that gun violence inflicts on countless children and their families.

D. Dr. Nicole Kafati

Dr. Kafati is a pediatrician in Chicago. She has cared for children with life-threatening gunshot wounds in the pediatric ICU, and witnessed the heartbreaking effects of gun violence on them. Dr. Kafati has explained to parents that their child has permanent brain damage from a gunshot wound to the head, and helped teach a child to walk again after bullets damaged his spinal cord. These children are the "lucky" ones who survived, and made it to the hospital.

Dr. Kafati could go on about the gut-wrenching physical damage gun violence inflicts on its victims. The psychological damage of gun violence is even more widespread: it affects those who are nowhere near the bullets that ravage human bodies, especially the smallest bodies.

Dr. Kafati wants to comfort children and let them know grown-ups are doing everything possible to prevent gun violence. She wants to comfort parents who are scared to send their children to school. She wants to comfort her colleagues, and herself, with the hope that one day they will not have to treat bullet wounds in children, inform parents their child did not make it, or wonder what to tell a frightened child who is scared of being shot.

For that to happen, society must do everything possible, including the DCFS Rules, to protect children from gun violence.

E. Dr. Sandi Lam

Dr. Lam is the Division Head of Neurosurgery at Ann & Robert H. Lurie Children's Hospital of Chicago ("Lurie Children's") and a Professor of Neurological Surgery at Northwestern University's Feinberg School of Medicine ("Northwestern"). After treating numerous children with firearm injuries to the head, Dr. Lam believes it is her responsibility to advocate for solutions that prevent such injuries.

Dr. Lam has treated children as young as six weeks old who have been shot in the head. Many, especially babies and those with bullet damage to both sides of the brain, die from their injuries. When a bullet enters only one side of a child's head, the child must often undergo intensive and emergency surgery to survive. That can include removing a portion of the child's skull to give the brain room to swell and stop any bleeding. The skull must then be reconstructed at a later date. But even these measures cannot fully repair the damage a bullet causes to the brain. A child may suffer from paralysis, be left with blindness, be unable to walk without assistance, lose the full use of his hands, or be unable to eat or swallow. Children who suffer

firearm brain injuries may also experience other neurological issues as they get older, including epilepsy, and are often unable to live independent lives.

Dr. Lam recognizes that as a neurosurgeon, there is only so much she can do to save the life of a child injured by a gunshot, or preserve any quality of life for the child and his family. Prevention is the best way to save children's lives and ensure they do not have to live with the devastating physical, emotional, and mental health consequences of a firearm injury.

Before Dr. Lam's children visit a friend's home, she checks whether the home has guns. She has seen too many examples of children injured by firearms at a friend's or relative's house. She wants to ensure her children are in a safe environment.

Dr. Lam believes that by implementing common sense prevention strategies and research-proven methods, such as safe firearm storage requirements, ammunition stored separately, home safety screening, education, and community engagement, we can fulfill our societal responsibility to ensure healthy futures for our children.

F. Dr. Melissa LoPresti

Dr. LoPresti is a pediatric neurosurgery fellow at Lurie Children's. She has seen the effects of unintentional and intentional firearm injuries resulting from attempts at suicide, homicide, and unintentional discharges. Dr. LoPresti recently treated a child who was unintentionally shot through the upper portion of the spine at a backyard birthday party. Bullet wounds to the brain and spine are particularly devastating for children. The force of the bullet shears and destroys surrounding tissue. The damage is often irreparable. This young child can no longer move their arms and legs, take care of themselves, or even eat or breathe on their own. Such injuries exact a heavy physical and emotional toll on the injured children and their families. Their lives are changed forever. Their hopes and dreams are destroyed. These children may never grow up to be independent, drive a car, or hold a job.

Dr. LoPresti has also treated children who are victims of an unintentional gunshot, for example at a friend's home when a young friend excitedly presents his parents' gun. Parents often report that these children were playing out of sight, found the parents' gun, played with it, and unintentionally shot themselves. Dr. LoPresti has seen parents who assumed their child did not know where a gun was hidden or how to access it. She has seen the devastation when the child finds the gun and kills or injures herself or someone else. When these families woke up on the days of the unintentional shootings, no one imagined their children would die or become severely injured playing in their own homes.

Recently, during the COVID-19 pandemic, Dr. LoPresti has observed through research that the number of adolescents using firearms to attempt suicide is increasing. Children in foster homes, who have already suffered the trauma of removal from their families, and may have less support and stability, are at greater risk. When a firearm is used, the suicide attempt is far more likely to be fatal. And if the child survives, the damage can be severe. Often these adolescents must undergo multiple surgeries to place permanent breathing and feeding tubes, painful facial reconstructive surgery, and intensive long-term care and therapy. Some lose their sight, some lose their independence, and many others never have their mental abilities restored.

Dr. LoPresti recognizes that there is only so much she and her neurosurgery colleagues can do when a child is shot. She supports strategies that prevent these injuries from happening in the first place. Reasonable data-driven solutions, such as limiting access to firearms or requiring safe storage, are the best way to reduce such injuries.

G. Rebecca Mitsos

Ms. Mitsos is a Certified Child Life Specialist for the Division of Pediatric Surgery at Lurie Children's. She provides an emotional support system for children undergoing surgery and their families.

In her eight years at Lurie Children's, Ms. Mitsos has worked with numerous children who have been injured by firearms. She recalls an incident involving children who lived together in a foster home. While their foster caregiver was outside, several children found an unlocked firearm in a closet. The child who found the gun unintentionally shot one of the foster siblings, who was a young child. The bullet then ricocheted and struck a slightly older foster sibling. The younger child was killed. The older one was injured and traumatized by what occurred. The child became extremely withdrawn and was visibly terrified of adults. Tragically, Ms. Mitsos has worked with many children who were shot in their own homes and are now fearful of an environment that is supposed to be nurturing and safe.

Ms. Mitsos strongly supports safe storage requirements for firearms. She believes many adults who run home daycare centers or serve as foster parents genuinely care about the children in their homes and want to provide a safe environment for them to thrive. But children are curious by nature and keen to explore. Securely storing any dangerous materials, including firearms, is essential to ensure children remain safe.

H. Dr. Elizabeth Powell

Dr. Powell is an Emergency Medicine physician at Lurie Children's and a Professor of Pediatrics at Northwestern. She grew up in a conservative, gun-owning household in Indiana. Dr. Powell is not anti-gun. But she knows from her experience treating children injured by firearms that placing children in environments where firearms are not securely stored is unsafe and irresponsible.

When Dr. Powell began her career in the early 1990s, she treated a young child who was shot while walking to school. The child died from the injuries. That led Dr. Powell to conduct research on firearm injuries to children. Her research and personal experience have shown that it is essential that children not have access to firearms in the home. Children do not fully

understand the damage a firearm can cause and do not have the physical skills to safely manage a firearm.

Safe storage requirements for firearms can greatly reduce the frequency of firearm-related injuries to children. It is essential to store and lock up a gun separately from the ammunition.

I. Dr. Julia Rosebush

Dr. Rosebush is a pediatric infectious disease specialist at Comer Children's Hospital in Chicago. She treats children who have infectious complications from gunshot wounds, such as pneumonia, urinary tract infections, and abscesses in their abdomens. These children often also suffer long-term mental health consequences, including PTSD, anxiety, and recurring nightmares.

Dr. Rosebush believes it is time to stop being silent. She wonders how many more children will lose their lives to gun violence before society finally says, "Enough." Our children should not have to fear for their lives as they move through places such as schools, home daycares, and foster homes that are often viewed as a "safe haven" for children.

J. Dr. Wendy Binstock Rush

Dr. Rush is an anesthesiologist at Lurie Children's and an Associate Professor of Anesthesiology at Northwestern. She has treated numerous child gunshot wound victims. The shootings are often unintentional. A child playing in his home or a friend's home may discover a gun, and shoot himself or another child. There is no rational basis for putting children in a position where such awful deaths can occur. It is devastating when Dr. Rush has to inform a family that a gunshot has killed their child. The loss is unbearable and the psychological trauma for surviving siblings and parents is enormous.

Dr. Rush was present at the Highland Park Fourth of July parade this year. She treated an individual who was shot and tragically succumbed to his injuries. Before the parade, Dr. Rush believed in regulating access to guns. After witnessing the tragedy of a mass shooting, she now feels a responsibility to advocate for solutions and policies that prevent firearm violence.

Dr. Rush strongly supports Illinois's DCFS Rules. She respects the rights of individuals to keep firearms in their homes. But an adult's decision to do so should be regulated when it impacts other people's children. Daycares and foster homes should be safe environments for children. Any firearms should be stored safely. That is the least we can do to protect children from firearm death and injury.

Dr. Rush's husband is a firearm owner. They have no children living in their home. But their young grandchildren visit. Dr. Rush and her husband take all possible steps to minimize any risk to their safety. They are always careful to ensure the firearm is securely locked and stored separately from the ammunition. Children who find a firearm are often curious. Most cannot recognize the difference between a real gun and a toy. They can end up shooting themselves or others.

K. Dr. Karen Sheehan

Dr. Sheehan is a Pediatric Emergency Medicine physician at Lurie Children's. Her experience treating far too many child victims of gun violence has led her to dedicate her career to injury and gun violence prevention, and to research and advocacy for public health solutions to prevent these tragedies. Dr. Sheehan has witnessed the devastating physical impact a firearm injury can have on a child. She has also observed the emotional trauma a child and her family experience after surviving a gunshot wound. That stress can have life-long effects. Many never feel safe.

Dr. Sheehan has also treated children who die from firearm-related injuries. In one harrowing instance, a teenager who had been shot in the head was brought to the emergency room. Dr. Sheehan and her colleagues attempted to resuscitate the teenager, but were unsuccessful. Dr. Sheehan vividly remembers how tragic and terrible it felt to inform this teenager's family of the death.

Dr. Sheehan believes the safe storage of firearms is essential to prevent firearm injuries to children. Since 2008, firearms have been the number one cause of death of children in Illinois. Children as young as three have the strength to pull a trigger. They are naturally curious. And there is an ongoing pediatric mental health crisis. We do not always know when children are depressed. Suicides by guns are increasing. Suicide is an impulsive decision. Most children who try once and survive do not try again. But if a gun is used, the first attempt is almost always fatal.

In a 2020 study, Dr. Sheehan and her colleagues examined the efficacy of state-level child access prevention firearm laws that impose liability on a parent or guardian for actions a child takes or could take with a firearm. Hooman Alexandar Azad, et al., *Child Access Prevention Firearm Laws and Firearm Fatalities Among Children Aged 0 to 14 Years, 1991-2016*, 174 J. OF THE AM. MED. ASS'N PEDIATRICS 463, 463-64 (2020). The study found that states that impose liability when a child can access a firearm, whether or not the child does so, had 28% fewer firearm deaths and 59% fewer unintentional firearm deaths. *Id.* at 466.

L. Dr. Leah Tatebe

Dr. Tatebe, a Trauma and Critical Care surgeon in Chicago and Associate Professor of Surgery at Northwestern, has treated many children who have suffered firearm-related injuries. She recalls a three-year-old boy whose seven-year-old brother found a neighbor's loaded and unsecured rifle and unintentionally shot his younger brother, almost severing his leg. Dr. Tatebe also vividly recalls an eight-year-old girl who was hit by a bullet on Halloween. The girl arrived

at the hospital in a bumblebee costume, pieces of which had to be removed from her body during the operation to save her life. During the COVID-19 pandemic, Dr. Tatebe has observed a substantial increase in the number of children injured by unintentional shootings or negligent discharges of a firearm. Children spent more time at home, found loaded, unsecured weapons, and shot themselves or others.

Dr. Tatebe strongly supports safe storage requirements for firearms. As a parent and firearm owner, she takes steps to ensure her firearm is securely stored and unloaded with the ammunition locked away separately.

Dr. Tatebe believes it is critical to remember that more firearm deaths are suicides than homicides. Safe storage is critically important to prevent youth suicides. This concern is especially heightened in environments like foster homes. Foster children often have experienced difficult circumstances that leave them at higher risk of depression, anxiety, impulsivity, and suicidality. Dr. Tatebe believes that imposing safe storage requirements in these environments is essential to keep children safe from firearm-related injuries. Easy access to firearms increases the likelihood that children may attempt suicide by firearm, and die as a result.

Suicide attempts with firearms are more lethal than any other method by far. More than 80% are successful. AMERICAN COLLEGE OF SURGEONS, *Firearm Safety and Patient Health: A Proactive Guide to Protecting Patients and Their Families* 10 (2022). Since approximately 90% of the individuals who survive a suicide attempt do not subsequently die by suicide, it is essential to limit access to firearms of those most at-risk of attempting suicide. *Id.*

M. Dr. Ashley Wolf

Dr. Wolf is a Pediatric Critical Care physician at Comer Children's Hospital and an Assistant Professor of Pediatrics at the University of Chicago. She has treated numerous children

who were injured by gun violence. She has witnessed the catastrophic physical, emotional, and mental health consequences that firearm injuries inflict on the children and their families.

Firearm injuries are unique. They cause more local damage. Bullets impact the body at a high velocity and with searing heat. The force of a bullet entering the body is so great that it can cause the soft tissues around the bullet to go into shock. The body's resistance to that force is very limited. Bullets therefore travel farther within the body and are more likely to hit a vital structure. The physical impact of bullet injuries is more pronounced and dangerous in young children. Children's internal organs are closer together. The risk is far greater that a bullet will hit a vital vessel or organ, with lethal effect.

Firearm injuries often cause irreparable long-term damage to bodily organs and functions. A bullet in the stomach can lead to bowel removal and the long-term inability to produce stool. Bullet injuries to the chest or abdomen can result in loss of spinal cord function and partial paralysis. Children may be on ventilators for the rest of their lives. Some may never be able to eat, walk, talk, or even breathe normally.

Dr. Wolf recalls a 14-year-old girl who experienced intense bullying at school. In an effort to cheer her up, her parents suggested she visit her grandparents for Father's Day. The girl knew her grandfather kept a handgun unlocked and loaded in his study. She found the gun and committed suicide. She was rushed to the emergency room with a brain injury but could not be saved.

Dr. Wolf remembers a three-year-old boy who was shot in the stomach by his five-year-old brother, who found his parents' gun. Although the child survived, he experienced significant complications, including the loss of part of his intestines and the inability to feed normally.

Aside from the devastating physical consequences, firearm injuries often inflict significant emotional trauma on victims and their families. Children who survive firearm injuries may struggle with post-traumatic stress disorder and adjustment disorder. They often need long-term mental health therapy to cope with the aftermath of their injuries. Children may have difficulty revisiting the scene where a firearm injury occurred or returning to the routine of daily life. Parents experience intense emotional trauma, including post-traumatic stress disorder and severe feelings of guilt.

Dr. Wolf grew up in a home with guns that were always stored separately from the ammunition. She strongly supports Illinois' firearm storage requirement regulations for home daycare centers and foster homes. Young children explore, find guns, pick them up and shoot. Older children show off guns. Requiring that firearms be stored separately from ammunition, and keeping both locked, saves lives and has an immense impact on the physical and emotional safety of children and their families. Dr. Wolf, who recently became a parent, will not visit a home unless weapons are securely locked and ammunition is stored separately. For her, the day when she no longer has to treat a child for a firearm injury cannot come soon enough.

II. FIREARM SAFE STORAGE PRACTICES REDUCE FIREARM-RELATED DEATHS AND INJURIES AMONG CHILDREN

A. Firearm Injuries Cause Significant Harm to Children

The public health crisis of firearm violence in this country has resulted in the injury or death of thousands of children. In 2019, firearm injuries surpassed motor vehicle collisions to become the leading cause of death of children between the ages of 0 and 19, after excluding deaths due to prematurity and congenital anomalies. Annie L. Andrews, et al., *Pediatric Firearm Injury Mortality Epidemiology*, 149 PEDIATRICS 1, 3 (2022). In Illinois, firearm violence remains

the number one cause of death of children. Matthew M. Davis, et al., *Firearm Safety, Gun Violence and Chicago Families*, 3 VOICES OF CHILD HEALTH IN CHICAGO REPORT 1, 1 (2021).

The presence of a firearm in the home exacerbates the risk of suicide and firearm death or injury among children. Aisha King, et al., *Firearm Storage Practices in Households with Children: A Survey of Community-Based Firearm Safety Event Participants*, 131 PREVENTIVE MED. 1, 1 (2020); *Firearm Related Injuries Affecting the Pediatric Population*, 130 PEDIATRICS 1416-17 (2012). Nearly “90% of firearm-related fatalities of young children (0-14 years) occur in the home, and a majority of all unintentional, firearm-related child and adolescent (0-18 years) fatalities involve a firearm found in the home.” King, at 1; *see also* Deborah Azrael, et al., *Firearm Storage in Gun-Ownning Households with Children: Results of a 2015 National Survey*, 95 J. OF URB. HEALTH 295, 295-96 (2018). In 2015, approximately 1,100 of the 2,800 children who were killed by gunfire died from suicide or unintentional firearm use. Michael C. Monuteaux, et al., *Association of Increased Safe Household Firearm Storage with Firearm Suicide and Unintentional Death Among U.S. Youths*, 173 J. OF THE AM. MED. ASS’N, PEDIATRICS 657, 659 (2019). “For suicides and unintentional deaths, the gun used in the death almost always comes from the child’s home. A large body of evidence has shown that the presence of guns in a child’s home substantially increases the risk of suicide and unintentional firearm death, though recent data suggests that few gun owners appreciate this risk.” Azrael, at 295-96. Tragically, suicides attempted with a firearm are significantly more likely to be fatal than suicides attempted by other means. *See, e.g.*, David C. Grossman, et al., *Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries*, 293 J. OF THE AM. MED. ASS’N 707, 710 (2005) (77% of the shooting incidents included in the study were suicides and 95% were fatal); *see also* AMERICAN COLLEGE OF SURGEONS, at 10.

Firearm injuries also exact a heavy psychological and mental health toll on children. Children who experience a firearm event as victims, witnesses, or vicariously are often traumatized. Soc’y for Adolescent Health & Med., *Preventing Firearm Violence in Youth Through Evidence-Informed Strategies*, 66 J. OF ADOLESCENT HEALTH 260, 262 (2020). They experience stressor-related disorders, substance-related and addictive disorders, and disruptive, impulse control, and conduct disorders. Elizabeth R. Oddo, et al., *Increase in Mental Health Diagnoses Among Youth with Nonfatal Firearm Injuries*, 21 ACADEMIC PEDIATRIC ASS’N 1203, 1205 (2021); see also Megan Ranney, et al., *What Are the Long-Term Consequences of Youth Exposure to Firearm Injury, And How Do We Prevent Them? A Scoping Review*, 42 J. OF BEHAVIORAL MED. 724, 725 (2019).

Ironically, while many parents say they own firearms for protection (Davis, at 1), the mere presence and availability of firearms is “significantly related to increased depressive symptoms” in their children. Jinho Kim, *Beyond the Trigger: The Mental Health Consequences of In-home Firearm Access Among Children of Gun Owners* 12 (author manuscript in PMC Apr. 1, 2019), published 203 SOC. SCI. MED. 51-59 (Apr. 2008).

B. Safe Storage Requirements for Firearms Reduce the Risk of Death and Injury Among Children

Maintaining a home without firearms is the most effective way to keep children safe from firearms. Davis at 3; see also Soc’y for Adolescent Health & Med., at 261. If firearms are present, public health research shows that safe storage practices, such as those required by the DCFS Rules, are critical. See, e.g., *Firearm-Related Injuries Affecting the Pediatric Population*, at 1416; Sara M. Naureckas, et al., *Children’s and Women’s Ability to Fire Handguns*, 149 ARCHIVES OF PEDIATRICS & ADOLESCENT MED., 1318, 1321 (1995); Kim, at 14; Andrews, at 17; Grossman, at 712-13. The four practices of “keeping a gun locked, unloaded, and storing

ammunition locked and in a separate location were each associated with a protective effect.” Grossman, at 712-13. Guidelines “intended to reduce firearm injury to children, first issued by the American Academy of Pediatrics in 1992, assert that . . . risk can be reduced substantially, although not eliminated, by storing all household firearms locked, unloaded, and separate from ammunition.” Azrael, at 296. These safe storage requirements would eliminate up to 32% of youth firearm-related deaths. Davis, at 3; *see also* Kiesha Fraser Doh, et al., *The Relationship Between Parents’ Reported Storage of Firearms and Their Children’s Perceived Access to Firearms: A Safety Disconnect*, 60 CLINICAL PEDIATRICS 42, 47 (2021). “A multisite study found that keeping a gun locked and keeping a gun unloaded have protective effects at 73% and 70% respectively, with regard to risk of both unintentional injury and suicide for children and teenagers.” *Firearm-Related Injuries Affecting the Pediatric Population*, at 1420. The AAP recommends that all household firearms be stored locked and unloaded and separately from ammunition.

In contrast, unsafe firearm storage exacerbates the risk of injury to children. States with a higher reported incidence of gun owners storing their firearms loaded and unlocked had higher rates of unintentional firearm injury. *Id.* This evidence further supports the need for safe storage requirements, like the DCFS Rules, for children who are entrusted to the care of those who are not their parents.

Research shows that parents and adults underestimate children’s knowledge of and access to firearms. A study conducted at a pediatric office found that 39% of parents incorrectly stated their child had no knowledge of where their firearm was stored. Doh, at 43. 22% of children contradicted their parents as to whether the children had ever handled a firearm. *Id.*

Approximately 86% of gun-owning parents and caregivers believed their children could distinguish between a real gun and a toy gun. Angela Renee Goepferd, *Most Children Cannot Tell Real Guns from Toys*, INFECTIOUS DISEASES IN CHILDREN 9 (2018). However, when presented with images of real and toy guns, fewer than half the children were able to correctly identify the real gun. *Id.*

In another study, nearly 75% of parents said their child would not touch a gun if he found one. Kavita Parikh, et al., *Pediatric Firearm-Related Injuries in the United States*, 7 HOSPITAL PEDIATRICS 303, 305 (2017). However, a study of school-age boys revealed that 76% handled a gun after finding it hidden in a drawer, and 48% pulled the trigger. *Id.*; see also Geoffrey A. Jackman, et al., *Seeing is Believing: What Do Boys Do When They Find a Real Gun?*, 107 PEDIATRICS 1247, 1248 (2001).

Children as young as three years old have the strength to pull the trigger of a gun. Naureckas, at 1319-1320.

III. THE DCFS RULES ARE NOT BARRED BY THE SECOND AMENDMENT

Appellants argue the Second Amendment bars the DCFS Rules. That is incorrect. The Second Amendment states “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” Until the Supreme Court’s decision in *District of Columbia v. Heller*, in 2008, the Court had rejected any argument that the Second Amendment provides an individual right to bear arms. 554 U.S. 570 (2008). *Heller* changed that, but even that decision did not suggest that any of the plain language of the Second Amendment would bar the DCFS Rules in home daycare facilities or foster homes, and it plainly does not.

Heller disclaimed any intention “to cast doubt” on “longstanding” and “presumptively lawful” regulations of firearms. *Id.* at 626-27 & n.26. The Court provided a non-exhaustive list

of such measures, including “laws forbidding the carrying of firearms in sensitive places such as schools and government buildings.” *Id.* In June 2022, *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111, 2133 (2022), reaffirmed the “sensitive places” doctrine.

Bruen explained that “courts can use analogies to those historical regulations of ‘sensitive places’ to determine that modern regulations prohibiting the carry of firearms in *new* and analogous sensitive places are constitutionally permissible.” *Id.* “[E]ven if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster.” *Id.* Justice Kavanaugh’s concurrence underscored that “the Second Amendment ‘is neither a regulatory straightjacket nor a regulatory blank check.’” *Id.* at 2162. “Properly interpreted, the Second Amendment allows a ‘variety’ of gun regulations,” including laws “forbidding the carrying of firearms in sensitive places” *Id.* (quoting *Heller*, 554 U.S. at 626-27 & n. 26).

Courts have long acknowledged that the presence of children weighs in favor of an environment being deemed “sensitive” under *Heller*. *See, e.g., Ezell v. City of Chicago*, 846 F.3d 888, 899 (7th Cir. 2017) (“*Ezell II*”) (Rovner, J., concurring in part) (the government has “wide latitude” to enact regulations that will protect children from the “inherent dangers of firearms”); *Solomon v. Cook Cnty. Bd. of Comm’rs*, 559 F. Supp. 3d 675, 694 (N.D. Ill. 2021) (the presence of children would likely qualify nature preserve sites as “sensitive places”); *Christopher v. Ramsey Cnty.*, 2022 WL 3348276, at *5 & n.3 (D. Minn. Aug. 12, 2022) (state fairground was “sensitive place” due in part to presence of children); *Hall v. Garcia*, 2011 WL 995933, at *4 (N.D. Cal. Mar. 17, 2011) (schools are sensitive places due to “the presence of large numbers of children either at school or traveling to and from it”); *Warden v. Nickels*, 697 F. Supp. 2d 1221, 1229 (W.D. Wash. 2010) (regulation prohibiting concealed carry of firearms at

park facilities where children and youth are likely to be present was permissible restriction of firearms in a “sensitive place”).

As the district court correctly explained, “[t]he fact that day cares are designated spaces for the care of young children is a powerful indicator that they may be ‘sensitive places.’” *Miller v. Smith*, 2022 WL 782735, at *9 (C.D. Ill. Mar. 14, 2022). Foster homes are similarly “sensitive places” because they are designated spaces for children for whom the state has assumed legal responsibility and who have complex trauma histories. Indeed, the physical and psychological risks to children from firearms are more serious in a home daycare facility or foster home setting than a school. Nearly “90% of firearm-related fatalities of young children (0-14 years)” and “a majority of all unintentional, firearm-related child and adolescent (0-18 years) fatalities” involve a firearm found in the home. *King*, at 1; *Azrael*, at 295-96. *Amici*’s members’ personal experiences further demonstrate that a combination of youthful curiosity and access to loaded firearms in the home poses a significant risk of firearm-injury and death and can have devastating physical and psychological consequences for children and their families. *See Point I.*²

Appellants do not dispute that the government has a compelling interest in protecting children in home daycare facilities and acting in the best interest of foster children. Dkt. No. 8 at 39. Appellants nevertheless argue that the DCFS Rules fail to advance and are not narrowly tailored to serve those compelling interests. *Id.* That argument ignores the public health research and data which provides a modern justification for the Rules that “is consistent with this Nation’s historical tradition of firearm regulation.” *Bruen*, 142 S.Ct. at 2126. Safe storage requirements

² Appellant Darin Miller says if the DCFS Rules are struck down, he will carry two loaded firearms on his person and store three loaded handguns and a loaded AR-15 in a safe. District Court Dkt No. 56 at ¶¶ 85, 86.

materially reduce the rate of firearm-related injuries and death among children. The experiences of physicians, surgeons, and child life specialists treating children who have suffered firearm injuries due to improperly stored firearms in the home also show this.

Moreover, although narrow tailoring is not required by *Bruen*, the DCFS Rules are narrowly tailored, as the district court correctly found. The Day Care Home Rule “applies only during the daytime hours when [a] home most closely resembles a school or other ‘sensitive place,’” and the Foster Home Rule requires only that firearms and ammunition be stored and locked separately at all times and in places inaccessible to children. *Miller*, 2022 WL 782735, at *10.

CONCLUSION

Amici respectfully ask this Court to affirm the judgment below. The consequences of this Court’s decision could not be more critical.

Dated: October 12, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Circuit Rule 29 because this brief contains 6,994 words, excluding the parts of the brief excluded by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Circuit Rule 32 and the typestyle requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in 12-point, proportionally spaced, Times New Roman font in the body of the brief and in 11-point, proportionally spaced, Times New Roman font in the footnotes of the brief.

Dated: October 12, 2022

/s/ Michael J. Dell

Michael J. Dell

CERTIFICATE OF SERVICE

I certify that on October 12, 2022, I served the foregoing with the Clerk of the Court using the CM/ECF System, which will send notice of filing to all registered CM/ECF users.

Dated: October 12, 2022

/s/ Michael J. Dell

Michael J. Dell