

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

Knife Rights, Inc., Cameron Sjodin;  
David Draeger; and Kevin Crystal,

Plaintiffs,

v.

Keith Ellison, in his official capacity  
as Attorney General of the State of  
Minnesota; et al.,

Defendants.

Case No. 0:24-cv-3749

**PLAINTIFFS' CONSOLIDATED MOTION FOR SUMMARY  
JUDGMENT AND OPPOSITION TO DEFENDANTS' CROSS-MOTION,  
AND MOTION TO EXCLUDE DEFENDANTS' EXPERT WITNESS  
TESTIMONY**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Plaintiffs Knife Rights, Inc., Cameron Sjodin; David Draeger; and Kevin Crystal hereby move this Court for an order granting summary judgment and declaratory relief that Minn. Stat. § 609.66, subd. 1(a)(4) is unconstitutional in violation of

the Second Amendment, and permanently enjoined. This motion is made pursuant to Rule 56 and is based upon the memorandum of points and authorities and supporting documents filed in accordance with the local rules.

Pursuant to Federal Rule of Evidence 702, Plaintiffs Knife Rights, Inc., *et al.*, also move this Court for an order to exclude Defendants' proffered expert testimony of Robert Escobar in its entirety; and to exclude portions of Defendants' proffered expert testimony of Randolph Roth.

These motions are made pursuant to the applicable rules and court order, and are based on all supporting memoranda, declarations, and exhibits filed and served in accordance with D. Minn. LR 7.1 and 5.6; and all the files, records, and proceedings herein.

March 20, 2026

Respectfully submitted,  
DILLON LAW GROUP, APC

*/s/ John W. Dillon*  
John W. Dillon  
California Bar No. 296788  
*Pro Hac Vice*  
jdillon@dillonlawgp.com  
**DILLON LAW GROUP APC**  
2647 Gateway Road  
Suite 105, No. 255  
Carlsbad, California 92009  
Phone: (760) 642-7150  
Fax: (760) 642-7151

Attorney for Plaintiffs

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SUPPORT OF PLAINTIFFS' CONSOLIDATED MOTION FOR  
SUMMARY JUDGMENT AND OPPOSITION TO DEFENDANTS'  
CROSS-MOTION, AND MOTION TO EXCLUDE DEFENDANTS'  
EXPERT WITNESS TESTIMONY**

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## INTRODUCTION

This case challenges a categorical criminal ban on a class of commonly used bearable arms—automatically opening knives or “switchblade knives.” Minnesota law makes it a crime for “whoever” to manufacture, transfer, or possess such knives. Minn. Stat. § 609.66, subd. 1(a)(4). The statute therefore prevents law-abiding citizens from acquiring, possessing, or transferring these knives under threat of criminal punishment. Minnesota’s categorical ban cannot be reconciled with the Second Amendment.

The Supreme Court has held that the Second Amendment protects the right of law-abiding citizens to acquire, possess, and carry bearable arms. *District of Columbia v. Heller*, 554 U.S. 570, 582-585 (2008); *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022). Indeed, the Second Amendment extends “*prima facie, to all instruments that constitute bearable arms.*” *Bruen*, 597 U.S. at 28 (emphasis added).

*Bruen* reaffirmed *Heller*’s decision and rejected the means-end scrutiny analysis applied by lower courts in analyzing Second Amendment challenges post-*Heller*. *Bruen*, 597 U.S. at 17, 24. In determining the constitutionality of an arms regulation, courts first ask whether the challenged law regulates arms-bearing conduct covered by the Second Amendment’s plain text. *Id.*; see also *United States v. Rahimi*, 602 U.S. 680, 691 (2024). If it does, the

Constitution *presumptively protects that conduct*, and the burden is on the government to then justify the regulation by demonstrating that it is consistent with the Nation’s historical tradition of arms regulation. *Bruen*, 597 U.S. at 17, 24. The State cannot meet that burden.

In *Heller*, the Supreme Court examined the *historical tradition* of prohibiting certain weapons and identified the governing historical principle: the government may prohibit only those arms that are *both* “dangerous *and* unusual.” *Heller*, 554 U.S. at 625-627 (emphasis added). Arms that are in common use for lawful purposes by law-abiding citizens fall outside that historical category and therefore cannot be banned. *Id.*

Switchblades are simply a variant of the folding pocket knife—an arm that has been commonly carried and used in the United States since before the Founding. These knives are widely possessed by law-abiding citizens for numerous lawful purposes, including self-defense, recreation, hunting, fishing, camping, and everyday utility.

Defendants attempt to justify this prohibition by engrafting additional conditions and qualifications on *Heller* and *Bruen*’s text and history analysis through policy justifications that the Supreme Court has rejected, and through unsupported layman opinion regarding switchblades’ “suitability” for self-defense. Specifically, Defendants contend that under *Heller* and *Bruen*,

Plaintiffs must demonstrate that switchblades are commonly *used explicitly for self-defense* and that they are not *both* “dangerous and unusual.” Defendants also wrongly assert that their self-declared “Switchblade Ban” is “well within” the tradition of historic regulations on bladed weapons; and seek to exclude portions of Plaintiffs’ expert reports and testimony. *See* ECF No. 40 [Defendant Ellison’s Memorandum of Law, *et al.* (“Minn. Br.”) at 9, 12-19. But Defendants’ arguments misstate the governing framework.

Since the historical analysis of arms bans was already conducted in *Heller*, this Court need not conduct its own independent inquiry—the Supreme Court has already established the relevant historical principle that only those arms that are *both* “dangerous *and* unusual” may be restricted. *Heller*, 554 U.S. at 625-627. By necessity, if an arm is in common use, it cannot be unusual. On the record before this Court, switchblades are in common use and not both dangerous and unusual; and there is no “in common use for self-defense” standard.

Even if this Court re-conducts the historical inquiry resolved in *Heller*, the result would be the same. There is no historical tradition in this Nation of prohibiting the possession, manufacture, and transfer of knives. In short, there is no historical tradition of banning knives. The laws relied upon by Defendants are almost entirely of mid-to-late 19-century restrictions on the

*concealed carry* of certain weapons. Those laws did not ban possession of the arms themselves. Such laws are not analogous to the sweeping ban imposed here. Accordingly, Defendants cannot justify their Switchblade Ban under *Bruen*.

Defendants also attempt to defeat Plaintiffs' facial challenge, suggesting that the statute might be constitutional under certain hypothetical applications, such as a prohibition on *concealed carry*. Minn. Br., at 9, n.15, 19-21. Because an individual must first be able to lawfully acquire and possess an arm before any question arises about how it may be carried, Defendants' contrived *concealed-carry* restriction, which is not an element of the statute, cannot constitute a constitutional application that independently criminalizes possession of the arm itself. In short, the statute bans the arm before the question of carry ever arises; and in any case, "concealed carry" is not an element of the Switchblade Ban.

As detailed in Plaintiffs' Daubert motion herein, Defendants' expert Robert Escobar admits that he lacks expertise in numerous fields directly implicated by his opinions. Those admissions alone render his opinions unreliable under the governing standards for expert testimony, and his testimony should be *excluded in its entirety*. Further, Defendants' historian, Randolph Roth, likewise made significant concessions regarding the limits of

his expertise and scope of his opinions. While Mr. Roth may offer historical observations *within his field*, those concessions substantially limit the weight this Court should give to his testimony.

Accordingly, Plaintiffs respectfully request that the Court grant Plaintiffs' motion for summary judgment, deny Defendants' cross-motion, exclude Defendants' expert witness testimony as requested, and declare Minnesota's Switchblade Ban unconstitutional and permanently enjoin its enforcement.

#### **STATEMENT OF UNDISPUTED FACTS**

Minnesota makes it a crime for "whoever" to manufacture, transfer, or possess a switchblade knife. Minn. Stat. § 609.66, subd. 1(a)(4). Defendants declare the law to be a "Switchblade Ban." Minn Br. at 2. The statute, therefore, enforces a categorical ban prohibiting law-abiding citizens from acquiring, possessing, or transferring these knives under threat of criminal punishment.

Plaintiffs desire to keep and bear these bladed arms for self-defense and other lawful purposes. *See* Appendix in Support of Plaintiffs' Motion for Summary Judgment ("Appendix"), at KR007-008; KR011-012; KR015-016; and KR019-023. Plaintiffs are ordinary, law-abiding, adult citizens, and

residents of Minnesota and are therefore unequivocally part of the people whom the Second Amendment protects. *Id.*, see also *Bruen*, 597 U.S. at 579.

The actions at issue—namely, the ability for Plaintiffs, Knife Rights members, and other similarly situated Minnesota residents and visitors to Minnesota to manufacture, transfer, and possess switchblade knives fall within the plain text of the Second Amendment protecting the right to “keep and bear arms.” *Teixeira v. County of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017). Among these rights is “the ability to acquire arms.” *Id.*, at 677-78 (citing to *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011)).

Switchblades were first produced in the 1700s. Appendix, at KR190, KR195, KR282, KR709, KR770, KR789, KR1157. By the mid-19th century, factory mass production of switchblades made them affordable and available to everyday customers. *Id.* Most American-made switchblades made after the 1900s were utilitarian-style pocket knives. Appendix, at KR770, KR773, KR 777, and KR1026. This production of utilitarian-style pocket knife switchblades never ceased after the 1950s. *Id.*, at KR1032.

Congressional materials from the 1950s reported that approximately 1.2 million switchblades were being sold each year in the United States by just two U.S. manufacturers. Appendix, at KR414, KR537, KR636, KR668,

KR789. Today, there are approximately 30 to 35 manufacturers producing automatic-opening knives in the United States. Appendix, at KR025-027.

Minnesota itself describes a “switchblade” as “a pocketknife having a spring-operated blade that opens instantly when a release on the handle is pressed.” Minn. Br., at 3. Defendants’ purported expert, Robert Escobar admits that switchblades are pocket knives. Appendix, at KR1078.

Defendants provide no evidence that the millions of switchblades sold in the mid-20th century are no longer in civilian possession today. Defendants provide no evidence that the number of automatically opening knives sold today is less than the number sold during the 1950s.

Defendants’ expert Robert Escobar admits that criminals do not prefer switchblades over other knives. Appendix, at KR1008. There is no evidence that shows switchblades are used in crime at higher rates than any other knife. Appendix, at KR654, KR670, KR1008-1013. The only evidence in the record concerning criminal misuse of switchblades consists of generalized allegations derived from materials from the 1950s, and they are wrong. *Id.*

Defendants make various claims regarding switchblades’ “dangerousness,” concealability, function, reliability, and suitability based on Mr. Escobar’s report (Minn. Br., at 14, 17-19, 24), but he admits that he’s not an expert in: (i) knife self-defense (*e.g.*, using knives in self-defense), (ii) knife

manufacturing, (iii) knife engineering, (iv) knife sales, (v) knife design, (vi) materials science, (vii) biomechanics, or (viii) medicine. Appendix at KR978-982, KR984-985, KR987-988, KR989-990, KR991-993, KR994-997, KR999-1000, KR1051-1054, KR1056-1057

Mr. Escobar also identifies various purported characteristics of switchblades (*e.g.*, mechanical failure, user error, training, “psychological” barriers) that are not unique to switchblades, but rather apply to all folding knives. Appendix, at KR1057-1058, KR1061, KR1065, KR1070, KR1075. He also admits he has no data regarding a switchblades’ alleged mechanical failure rates, and concedes that his statements are “anecdotal” and “based on inference.” *Id.*, at KR1067-1069. He concedes that switchblades do not cause greater injury or trauma than other knives, they do not pose a greater danger to the public than any other knife or that they are more concealable than other folding knives; or that they open faster. *Id.*, at KR1029-1030, KR1049, KR1059, KR1049. He further admits that switchblades are pocket knives that serve useful purposes for sportsmen and others engaged in lawful pursuits and that they function just like any other knife when opened. *Id.*, at KR1029, KR1031.

Defendants’ historian Randolph Roth states his field of expertise is the history of violence. Appendix, at 1122. Professor Roth acknowledges that he

is not an expert in historical arms regulation, and he concedes he has not studied 20<sup>th</sup>-century “violence” involving switchblades. *Id.*, at KR1157-1158.

There were no statutes that banned the possession of *any knife* during the colonial or founding era. *Id.*, at KR1121-1126. Indeed, Colonial governments frequently required citizens to possess arms, including bladed weapons, for militia and public-safety purposes. Appendix, at KR239-240, KR267-268. During the 1800s, there were no laws that banned the possession of any kind of knife. Appendix, KR1178, KR1180-1181, KR1182. Professor Roth acknowledges that the historical statutes he discusses in his report almost exclusively regulated the *concealed carry* of certain weapons. Appendix, at KR1149-1150, 1177-1178. These laws did not prohibit the sale, purchase, possession, transfer, manufacture, or open carry of any knife. *Id.*

According to Professor Roth, during the mid-19th century—when knife violence was at its peak—states chose to regulate the *manner of carrying* certain knives rather than enact more restrictive laws banning the possession, sale, purchase, manufacture, transfer, or open carry of knives. *Id.*, at KR1152-1153.

Despite these undisputed facts, Minnesota’s enforcement of its Switchblade Ban denies individuals who reside and visit Minnesota, including the named plaintiffs and organizational plaintiff Knife Rights’

members, their fundamental right to keep and bear these common, constitutionally protected arms for lawful purposes, including self-defense.

## **SUMMARY JUDGMENT STANDARD**

Plaintiffs move for summary judgment under the Federal Rules of Civil Procedure Rule 56. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The “mere existence of some” unsubstantiated allegations of a “factual dispute between parties will not defeat an otherwise properly supported motion for summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248 (1986). Disputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment. *Id.*, 447 U.S. at 478; *see also Krein v. DBA Corp.*, 327 F.3d 723, 726 (8th Cir. 2003).

## **ARGUMENT**

### **I. Minnesota’s Categorical Ban On Switchblades Is Unconstitutional.**

#### **A. The *Heller/Bruen* Standard.**

Under *Heller* and *Bruen*, courts evaluating Second Amendment challenges apply a straightforward framework. The threshold question is whether the challenged law regulates conduct covered by the Amendment’s plain text—i.e., whether it restricts the keeping or bearing of “arms.” *Heller*, 554 U.S. at 576-577; *Bruen*, 597 U.S. at 20; *Rahimi*, 602 U.S. at 691. If it does, the conduct is presumptively protected. *Id.*

The government then bears the burden of demonstrating that the regulation is consistent with the Nation’s historical tradition of firearms regulation. *Bruen*, 597 U.S. at 17. This inquiry replaces any form of means-end scrutiny or interest balancing, which the Supreme Court has rejected. *Id.* at 17-20, 26. (the Second Amendment “is the very product of an interest balancing by the people”).

Accordingly, unless the government can justify the challenged law through a relevant and analogous historical tradition, the regulation violates the Second Amendment. *Id.*, at 17-20.

**B. All Knives, including Switchblades, Are Arms Under The Plain Text.**

In considering the plain meaning of the term “arms,” *Heller* provided two Eighteenth Century definitions of the term: “[w]eapons of *offense*, or armor of *defense*,” and “*any thing* that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another.” *Heller*, 554 U.S. at 581 (emphasis added). There is no dispute that the banned switchblades fit these definitions of “arms.” *Id.*

*Bruen* also acknowledged that knives are protected arms noting that “[i]n the medieval period, [a]lmost everyone carried a knife or a dagger in his belt.” *Id.* 597 U.S. at 41. “While these knives were used by knights in warfare, [c]ivilians wore them for self-protection,’ among other things.” *Id.*

(noting that “smaller medieval weapons ... strike us as most analogous to modern handguns”). In early colonial America, “edged weapons were also absolutely necessary.” Appendix, at KR 274, KR308. At the time of the Second Amendment’s ratification, every state required ordinary citizens to own some type of *edged* weapon as part of the militia service laws. Appendix, at KR812-814.

### **C. Defendants’ Argument Lacks Merit.**

Instead of applying the required straightforward plain-text inquiry, Defendant engraft additional conditions onto the plain text of the Second Amendment, arguing that Plaintiffs must prove that the arms at issue are “commonly used in self-defense” before they can even qualify as “arms” under the plain text. Minn. Br. at 9, 12-19. That argument has no support in the Supreme Court’s decisions.

Defendant relies on a single, out-of-context statement in *Bruen* noting that handguns are “in common use” for self-defense. *Bruen*, 597 U.S. at 32. But *Bruen* did not impose any requirement that plaintiffs prove common use in self-defense at the textual stage. To the contrary, the Supreme Court concluded that carrying handguns falls within the Second Amendment’s plain text and then proceeded to the historical analysis, placing the burden on the government to justify the regulation. *Id.*, 597 U.S. at 33-71.

That approach is consistent with *Heller*, which defined “arms” broadly to include weapons that may be possessed and carried for confrontation. 554 U.S. at 581–92. “[T]he Second Amendment guarantees an “individual right to possess and carry weapons *in case of confrontation*.” *Id.*, 554 U.S. at 592. The Court determined the most natural reading of “keep Arms” is to “*have weapons*.” *Heller*, 554 U.S. at 582 (emphasis added).

Neither *Heller* nor *Bruen* requires Plaintiffs to produce statistical evidence showing how often a particular weapon is used in self-defense in order to establish that it is an “arm” under the Second Amendment’s plain text. Nor do those decisions impose any requirement that an arm be “suitable” for self-defense. These are policy arguments of the type rejected by *Heller* and *Bruen*. *Heller*, 554 U.S. at 636 (“[T]he enshrinement of constitutional rights necessarily takes certain policy choices off the table”); *Bruen*, 597 U.S. at 26 (“The Second Amendment ‘is the very product of an interest balancing by the people’...It is this balance...that demands our unqualified deference.”)

Both *Heller* and *Bruen* addressed the historical principle of dangerous and unusual arms (e.g., not in common use) as a limitation on the Second Amendment’s protections based *on the historical record*. *Heller*, 554 U.S. at 627-628; *Bruen*, 597 U.S. at 4-5, 21, 47; see also *Caetano v. Massachusetts*,

577 U.S. 411, 412 (2016) (*per curiam*) (referring to “the historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons’ as the “important limitation on the right to keep and carry arms”).

Defendants’ assertion would fundamentally alter the Second Amendment. Under their rule, numerous weapons that are unquestionably protected—such as rifles, traditional knives, and other commonly owned arms—could be banned because they are not frequently used in documented self-defense incidents.

Moreover, numerous courts have consistently recognized that knives are “arms” protected by the Second Amendment. See *State v. Deciccio*, 315 Conn. 79, 128, 122, 105 A.3d 165 (2014). (holding dirk knives were “arms’ within the meaning of the second amendment.”); *State v. Delgado*, 298 Or. 395 (Or. 1984) (Oregon Supreme Court held that Oregon’s ban on the possession of switchblades violated the Oregon Constitution’s right to arms and that a switchblade is constitutionally protected based on historical predecessors); *State v. Herrmann*, 366 Wis. 2d 312, 325, 873 N.W.2d 257, 263 (2015) (Wisconsin Court of Appeals overturned a conviction for possession of a switchblade as unconstitutional.); *State v. Montalvo*, 229 N.J. 300, 162 A.3d 270 (2017) (New Jersey Supreme Court held that machete-type knives are protected by the Second Amendment); See also *State v. Griffin*, 2011 WL

2083893, \*7, n.62 (Del Super Ct., May 16, 2011) (“a knife, even if a ‘steak’ knife, appears to be a ‘bearable arm’ that could be utilized for offensive or defensive purposes.”) *reversed and remanded on other grounds*, *Griffin v. State*, 47 A.3d 487 (Del. 2012); *See City of Akron v. Rasdan*, 105 Ohio App.3d 164, 663 N.E.2d 947 (Ohio Ct. App., 1995) (holding the “right to keep and bear arms” under the Ohio Constitution extends to knives).

Defendants’ contrary argument rests on the same interest-balancing and “suitability” arguments that *Heller* and *Bruen* rejected. *Heller*, 554 U.S. at 636; *Bruen*, 597 U.S. at 24, 26.

## **II. *Heller* Already Conducted the Historical Analysis, It Applies Only To *Both* “Dangerous And Unusual” Arms.**

Bearable arms are presumptively protected by the Second Amendment and may be prohibited only if they are both “dangerous and unusual” under the historical tradition identified in *Heller*, 554 U.S. at 627-628; *Bruen*, 597 U.S. at 4-5, 21, 47. As *Bruen* explained, this principle is grounded in history: the Second Amendment protects weapons “in common use,” while permitting regulation only of those arms historically understood to be *both* “dangerous *and* unusual.” *Id.*

Thus, in the context of arms bans, *Heller* already resolved the relevant historical inquiry. The government may not ban arms in common use for lawful purposes because such arms, by definition, are not unusual. *Id.* The

test is conjunctive: a weapon may be prohibited only if it is *both* dangerous and unusual. *Caetano*, 557 U.S. at 417 (Alito, J., concurring). Because switchblades are in common use, they are not unusual, and the inquiry ends there. The State cannot justify its categorical ban.

#### **A. Defendants Misread The Eighth Circuit’s Precedent.**

Defendants misread Eighth Circuit precedent by treating “common use” as part of the Second Amendment’s textual inquiry. The cases they cite do not support that position.

In *United States v. Charles*, 159 F.4th 545, 547-548 (8th Cir. 2025), the Eighth Circuit addressed only whether certain weapons qualified as “bearable arms” under the plain text. The court observed that some machine guns are not bearable, and therefore, fall outside the Amendment’s text and scope. *Id.* However, *Charles* did not hold that plaintiffs must prove “common use” for self-defense at the textual stage. Instead, *Charles* applied the *Bruen* framework as written: once the plain text covers the conduct, the Constitution presumptively protects it, and the government bears the burden of demonstrating a historical tradition. *Id.*, 159 F.4th at 547.

In *Fincher*, 538 F.3d 868, 873-874 (8th Cir. 2008), the court explained that *Heller* identified an “important limitation” on the right to keep and bear arms: the sorts of weapons protected are those “in common use” by law-

abiding citizens *for lawful purposes*. The court then explained that this limitation is supported by the historical tradition of prohibiting “dangerous and unusual weapons.” *Id.* Applying that historically derived rule, the court concluded that machine guns may be prohibited because they “are not in common use by law-abiding citizens *for lawful purposes....*” *Id.* (emphasis added). That analysis tracks *Heller’s* historical framework—it is not a textual prerequisite.

*United States v. Veasley*, 98 F.4th 906, 910 (8th Cir. 2024), is no different. There, the court assumed the conduct fell within the Second Amendment’s plain text, that “drug users are part of ‘the people,’” and “handguns are weapons ‘in common use’ today.” *Id.* The court then went to the historical inquiry required by *Bruen*. *Id.* The reference to handguns being “in common use” simply reflects *Heller’s* recognition of handguns as paradigmatic protected arms; it does not impose a textual requirement. Nor does *Veasley* impose any “for self-defense” or “suitability” requirement into the plain text analysis.

Properly understood, these cases confirm Plaintiffs’ contention. The Second Amendment’s text protects bearable arms. Whether a weapon may be prohibited is resolved at the historical stage, where only those that are *both* dangerous *and* unusual fall outside the right. Nothing in Eighth Circuit

precedent converts that historically derived rule into a threshold textual requirement that Plaintiffs must satisfy.

### **III. Switchblades Are In Common Use For Lawful Purposes.**

As explained above, the government has the burden to justify its Switchblade Ban by demonstrating that the regulated arm falls outside the class of arms commonly possessed by law-abiding citizens for lawful purposes. *Bruen*, 597 U.S. 1, 17, 24. Thus, to sustain Minnesota's ban, Defendants must demonstrate that automatically opening knives are *not* arms in common use for lawful purposes. *Id.*, see also *Fincher*, 538 F.3d at 873-874 (8th Cir. 2008); *Charles*, 159 F.4th at 547-548 (8th Cir. 2025).

Defendants fail to meet their burden. In fact, the record evidence establishes the opposite. Switchblades are widely possessed throughout the United States. Appendix, at KR024-028, KR067, KR091, KR102, KR195, KR198-201, KR212, KR414-415, KR537, KR636, KR641-642, KR668, KR670 n. 103; KR674, KR676, KR684, KR694, KR698, KR709, KR723, KR731, KR770, KR773-774, KR789, KR1047. There are substantial numbers of switchblades historically and presently manufactured and sold in the United States. *Id.* Switchblades are merely a mechanical variation of the ubiquitous

folding pocket knife. Switchblades are recognized as common arms by most jurisdictions that do not prohibit them as “dangerous and unusual” weapons.<sup>1</sup>

#### **A. Numerical Commonality.**

Switchblades were manufactured and sold in large quantities in the United States long before modern knife restrictions were enacted. Appendix, at KR709. For example, congressional findings acknowledged that two manufacturers alone were producing over one million switchblades per year in the United States in 1958. Appendix, at KR414, KR537, KR636, KR668. That production figure represented only a portion of the national market at that time.

Moreover, nothing in the record suggests that those knives disappeared from circulation. Nor is there any evidence that switchblade manufacturing ceased in the United States. In fact, Defendants’ expert states the opposite. Appendix, at KR1032. To the contrary, expert testimony and record evidence confirm that switchblades have been continuously manufactured, sold, and owned in the United States for over 100 years and continue today. Appendix, at KR668, KR672-673, KR 676, KR684, KR694, KR698, KR702, KR730-731, KR770-773, KR789, KR1047. Ernest Emerson, an experienced knife designer, explains that “there are millions of automatically opening knives

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<sup>1</sup> The Minnesota statute itself only addresses “dangerous” weapons, and not “dangerous *and* unusual” edged weapons. Minn. Stat. § 609.66, subd. 1(a)(4).

(switchblades) owned and possessed throughout the United States,” and that switchblades have been continuously manufactured and sold since the early 20th century. Appendix, at KR789.

Moreover, while 2 manufacturers manufactured over 1.2 million switchblades per year in 1958, there at least 26 to 35 manufacturers in the United States today that manufacture and sell switchblade knives. Appendix, at KR024-028.

### **B. Categorical Commonality.**

Switchblades are also simply a variation of the common folding pocket knife. Expert testimony establishes that manual one-hand-opening knives, assisted-opening knives, and automatically opening knives are “mere variations of common folding pocket knives,” differing only in the mechanical method used to deploy the blade. Defendants’ expert agrees. Appendix, at KR723-724, KR726, KR727-731, KR771-772, KR774-777, KR788-789, KR1029.

Similarly, Michael Janich, expert, explains that switchblades are simply “a category of folding knives that open automatically with the push of a button or operation of some other trigger mechanism.” Appendix, at KR776. Ken Onion, one of the world’s leading knife experts, explains that folding knives are among the most widely owned knives in the United States and

that the number of folding knives in circulation is “conservatively in the tens of millions.” Appendix, at KR730. Because automatically opening knives are just one form of folding knife, their ownership necessarily reflects that broader market. KR730-731, KR770-773, KR789, KR1078.

Once opened, Janich explains, a switchblade is “functionally no different[] than any other knife.” Appendix, at KR 776; *see also* KR028, KR261, KR704. Janich explains that historically the only meaningful distinction between switchblades and traditional pocket knives was the convenience of one-hand opening, which made them particularly useful for common tasks where the user’s other hand is occupied. Appendix, at KR 771; *see also* KR723-724.

### **C. Jurisdictional Commonality.**

The widespread legality of automatically opening knives across the United States further confirms their common use. Automatically opening knives are lawful to possess in the vast majority of states. Appendix, at KR198-201. “Today, only seven States and the District of Columbia categorically ban switchblades or other automatic knives, and only two States impose blade length restrictions of less than two inches.” *Commonwealth v. Canjura*, 494 Mass. 508, 516, 240 N.E.3d 213 (2024).

Specifically, as of September 2023, at least 45 states allow the sale, purchase, transfer, acquisition, and possession of automatically opening knives that are prohibited by Minnesota’s ban; and at least 36 states permit the public carry of said knives in some manner. Appendix, at KR198-201. Moreover, since 2010, nineteen states have repealed bans/restrictions on automatically opening knives.<sup>2</sup> *Id.*; see also KR224-225, KR652, KR698. “From these facts, we can reasonably infer that switchblades are weapons in common use today by law-abiding citizens for lawful purposes; more specifically, we can infer they are ‘widely owned and accepted as a legitimate means of self-defense across the country.’” *Canjura*, 494 Mass. at 516 (citing *Caetano*, 557 U.S. at 420 (Alito, J., concurring) (highlighting general acceptance of stun guns)).

**D. Defendants Offer No Evidence That Switchblades Are Uncommon or Unusual.**

Defendants’ principal criticism of Plaintiffs’ common-use evidence is that Plaintiffs have not established the precise nationwide ownership figures

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<sup>2</sup> While Defendants place great weight on the restrictions that were placed on switchblades in the 1950’s—more than 60 years ago—including Minnesota’s own ban, most of the state restrictions implemented during the 1950s on switchblades have since been repealed or invalidated. Defendants’ motion ignores these undisputed facts. Appendix, at KR198-201, KR224-225, KR652, KR698.

for switchblades. But criticism unsupported by evidence does not defeat Plaintiffs' showing.

Courts must therefore evaluate whether an arm is commonly possessed using the best available indicators of prevalence, including historical production figures, industry market data, expert testimony, and evidence of commercial and jurisdictional availability. Plaintiffs have provided each of those forms of evidence. Defendants, by contrast, offer no evidence demonstrating that automatically opening knives are not in common use by law-abiding citizens.

Rule 56 of the Federal Rules of Civil Procedure makes clear that a party opposing summary judgment cannot create a genuine dispute of material fact by criticizing the opposing party's evidence. Once the moving party supports its position with record evidence, the opposing party must "go beyond the pleadings" and identify specific facts showing that a genuine dispute exists. *Celotex Corp.*, 477 U.S. at 324. Unsupported argument cannot defeat summary judgment evidence because "the mere existence of a scintilla of evidence" is insufficient to create a triable issue of fact. *Anderson*, 477 U.S. at 252. The Eighth Circuit applies the same rule. *Torgerson v. City of Rochester*, 643 F.3d 1031, 1042 (8th Cir. 2011) (en banc).

Plaintiffs have presented multiple forms of evidence demonstrating that switchblades are widely possessed. Defendants, by contrast, offer no competent evidence demonstrating that switchblades are not in common use, nor any evidence that contradicts Plaintiffs' evidence.

Defendants instead rely primarily on assertions from their purported expert, Mr. Escobar. But he admits that he's not an expert in knives, knife design, knife manufacturing, knife sales, or the knife industry. Appendix, at KR978-981, KR983, KR984-985, KR989-997, KR999-1000, KR1051-1054, KR1056-1062, KR1065-1069, KR1072-1073, KR1078. He has no professional experience designing, manufacturing, marketing, or selling knives, and no specialized knowledge regarding knife production or ownership patterns. *Id.* Mr. Escobar acknowledges that his purported "research" into switchblade prevalence consisted of conducting a single search on Amazon, in which he observed the first five switchblade knives for sale. Appendix, at KR1037-1041. Mr. Escobar's opinions regarding switchblade prevalence, therefore, fall outside the scope of his expertise.

Defendants' argument is reduced to the claim that while all available evidence supports the claim that there are millions of switchblades in common use in the United States, because Plaintiffs have not proven *precisely* how many millions are currently in the United States, they are

somehow “unusual.” Defendants offer no evidence that contradicts any of Plaintiffs’ evidence. On this record, there is no genuine dispute that switchblades are commonly possessed by law-abiding citizens for lawful purposes. They are not “unusual.”

#### **IV. Switchblades Are Not Both Dangerous and Unusual.**

*Heller* held the Second Amendment permits prohibitions only on weapons that are both “dangerous and unusual.” *Heller*, 554 U.S. at 627. The corollary of that principle is that arms in common use by law-abiding citizens for lawful purposes cannot be banned. *Id.* Because this rule arises from historical tradition, the burden rests with the government to justify any categorical prohibition by demonstrating that the regulated arm falls outside that protected category.

Here, Plaintiffs have already demonstrated that switchblades are in common use for lawful purposes. Defendants have offered no competent evidence to the contrary. Under *Heller*, an arm that is in common use cannot simultaneously be “unusual.” For that reason alone, Minnesota’s attempt to justify a categorical ban fails.

Defendants also assert that switchblades are uniquely “dangerous,” but the evidentiary record contradicts the assertion and it is based almost entirely on assertions from Mr. Escobar. However, Mr. Escobar admits he is

not an expert in any of the fields he offers testimony in. Appendix, at KR978-981, KR983, KR984-985, KR989-997, KR999-1000, KR1051-1054, KR1056-1062, KR1065-1069, KR1072-1073, KR1078. Thus, his opinions regarding the alleged “dangerousness” of switchblades falls far outside the scope of his relevant expertise. He acknowledges that he has never designed a knife, never manufactured a knife, and never conducted any testing of the safety or functionality of switchblade mechanisms, aside from cutting a piece of cardboard tubing on four occasions unrelated to this case. Appendix, at KR1002-1004. Such testimony reflects nothing more than the views of a lay observer and cannot rebut the extensive expert evidence presented by Plaintiffs.

Mr. Escobar also contradicts Defendants’ claims regarding switchblades’ dangerousness, lethality, criminal misuse, and concealability.

When questioned, Mr. Escobar admitted that:

- (i) He does not claim criminals prefer switchblades over other knives or that switchblades are used in crimes at higher rates. Appendix, at KR1007-1011, KR1019.
- (ii) Switchblades do not open faster than legal assisted opening knives, switchblades require no more manual effort to open than assisted opening knives. *Id.*, at KR1019, KR1048-1049.
- (iii) Switchblades are no more concealable than any other folding knife *Id.*

- (iv) Most American-made switchblades knives made after 1900 were patterned after standard utilitarian pocket knives *Id.*, at KR1026.
- (v) Utilitarian pocket knife style switchblades did not cease production in the U.S. in the 1950s. *Id.*, at KR1032.
- (vi) Switchblades *are not inherently dangerous or more dangerous than any other knife, and they are just like any other knife when opened.* *Id.*, at KR1029 (emphasis added).
- (vii) The opening mechanism of a switchblade *does not affect its “dangerousness” or lethality.* *Id.* at KR1030 (emphasis added).
- (viii) Switchblades serve useful lawful purposes for sportsmen, shipping clerks, and others engaged in lawful pursuits. *Id.*, at KR1031.
- (ix) His assertion that switchblades are particularly ill-suited for self-defense is not based on his expertise in knife self-defense, and not as a knife fighting expert. It is not based on expertise in teaching self-defense or self-defense using knives. Nor is it based on any expertise in knife design. This assertion is also not based on any documented testing, experiments, injury statistics, crime data, *Id.*, at KR1051-1053.
- (x) His assertion about switchblades having a higher chance of mechanical failure is not based on his expertise or testing, and he has no idea what the asserted mechanical failure rate is; his opinion is “based on inference” because some switchblades may have more parts than other knife models. *Id.*, at KR1053, KR1068-1069
- (xi) His claim about switchblades being “susceptible to user error” is not based on any expertise or any controlled testing, and this criticism is not restricted to switchblades but all self-defense weapons. *Id.*, at KR1056-1059.

- (xii) *Switchblades do not pose any greater danger to the public than any other knife. Id.*, at KR1059 (emphasis added).
- (xiii) His assertion about switchblades that may fail to lock open in a self-defense incident would apply to any folding knife, not just switchblades. *Id.*, at KR1059-1061.
- (xiv) His assertion about switchblades requiring training to use effectively in a self-defense incident is not unique to switchblades; all self-defense weapons require training to use most effectively, and the need for training does not mean a weapon is unsuitable for self-defense. *Id.*, at KR1065, KR1071-1072.
- (xv) His assertion about switchblades posing a danger of opening up in the user’s pocket is his anecdotal opinion and not based on any studies, surveys, tests, or data. *Id.*, at KR);
- (xvi) That a switchblade (like all knives) is a close-quarter weapon does not make it unsuitable for self-defense. *Id.*, at KR1069-1063.
- (xvii) His assertion about a psychological barrier that must be overcome to use a switchblade in self-defense is not unique and applies to all knives and other self-defense weapons. *Id.*, at KR1072-1075. and
- (xviii) The “typical switchblade is a pocket knife.” *Id.*, at KR1078.

These admissions contradict Defendants’ attempt to portray switchblades as “uniquely dangerous weapons.”

Defendant’s reliance on several cases in support of its dangerousness argument is misplaced because none of the cited cases address the constitutional question presented here—whether Minnesota’s switchblade ban survives the Second Amendment under *Heller* and *Bruen*. Instead, each

case arises in a wholly different legal context and turns on statutory or factual determinations unrelated to the text-and-history framework that governs this analysis. *United States v. Wolfe*, No. 24-3167, 2025 WL 2452369 (8th Cir. Aug. 26, 2025), merely held that a switchblade qualified as a “dangerous weapon” for purposes of a probation violation, *without* any Second Amendment analysis. Likewise, *In re Welfare of S.M.L.*, No. A10-1661, 2011 WL 2750298 (Minn. Ct. App. July 18, 2011), an unpublished juvenile delinquency case, the court addressed whether a pocket knife constitutes a dangerous weapon on school property; it did not involve switchblades, did not consider constitutional claims, and did not apply *Heller* or *Bruen*.

The remaining authorities are even further afield. *Crowley Cutlery Co. v. United States*, 849 F.2d 273 (7th Cir. 1988), rejected a Fifth Amendment due process challenge under rational-basis review and did not implicate the Second Amendment. *Fall v. Esso Standard Oil Co.*, 297 F.2d 411 (5th Cir. 1961), is a maritime negligence case discussing switchblades in a tort context decades before modern Second Amendment jurisprudence. And *State v. Winters*, 821 N.W.2d 287 (Iowa Ct. App. 2012), is unpublished, nonprecedential, and labels a switchblade a “dangerous weapon” under state law *without* any constitutional analysis. None of these cases apply the *Heller/Bruen* framework, none examine whether switchblades fall within the

Second Amendment’s plain text, and none evaluate whether a categorical ban is consistent with this Nation’s historical tradition.

In contrast, Plaintiffs’ experts—including experienced knife designers, knife self-defense experts, and knife industry experts—have decades of firsthand experience designing, manufacturing, selling folding knives, and using knives in self-defense—including switchblades. Automatically opening knives are simply one variation of the common folding pocket knife and operate in the same manner as other folding knives once the blade is opened. Appendix, at KR723-724, KR726, KR727-731, KR771-772, KR774-777, KR788-789, KR1029. The method by which a folding knife’s blade deploys does not change the knife’s basic function or potential lethality. *Id.* As Plaintiffs’ experts explain, automatic knives, assisted-opening knives, and manually opened folding knives all share the same essential structure and perform the same utilitarian functions. *Id.* And that switchblades are no more dangerous than any other knife. *Id.* Indeed, Mr. Escobar’s sworn testimony *aligns* with the above defense expert opinions. *See* pages 26-28 above.

## **V. Minnesota’s Ban Cannot Survive a Facial Challenge**

Defendant invokes the Supreme Court decisions in *Salerno* and *Rahimi* for the proposition that a facial challenge fails if the statute has any

constitutional applications. Defendants argue that Plaintiffs’ facial challenge fails because there may be contrived circumstances in which the State could constitutionally prohibit the *concealed carry* of switchblades under an explicitly different law. *See* Minn. Br., at p.9, n.15, 19-21. But neither decision authorizes the methodology Defendant asserts in its brief.

A facial challenge is “an attack on *a statute itself* as opposed to a particular application.” *City of Los Angeles, Calif. v. Patel*, 576 U.S. 409, 415 (2015) (emphasis added). The inquiry, therefore, concerns the statute *as enacted*. Under *Salerno*, a challenger must establish that “no set of circumstances exists under which the Act would be valid.” *Salerno*, 481 U.S. 739, 745 (1987). That standard presupposes evaluation of the law’s *actual prohibitions*, not a party-drafted recharacterization of the statute.

The Supreme Court has made clear that only conduct that the statute “actually authorizes or prohibits” may be considered in facial review. *Patel*, 576 U.S. at 418. Courts may not uphold a statute by hypothesizing constitutional applications divorced from the text. *See Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449-450 (2008) (“In determining whether a law is facially invalid, we must be careful not to go beyond the statute’s facial requirements and speculate about ‘hypothetical’ or ‘imaginary’ cases.”). There is no “plainly legitimate sweep” under Minn.

Stat. § 609.66, subd. 1(a)(4). *Id.* The challenged statute does *not prohibit concealed carry of switchblades*. It prohibits outright possession, transfer, or manufacturing. Carrying a switchblade in public, in any manner, *is not an element of the offense*. Nor does the statute create separate and independent regulatory schemes. It enacts a categorical prohibition on the manufacture, transfer, and possession of a switchblade.

Defendants nonetheless assert that this Court should evaluate the constitutionality of an *entirely different law*. See Minn. Br., at p.9, n.15, 19-21. According to Defendants, this Court should adopt Defendants’ contrived *concealed carry* law and the historical analysis pursuant to *Heller* and *Bruen* on that *concealed carry* prohibition. *Id.*

However, a person violates the statute the moment the person possesses a switchblade, regardless of whether the knife is ever carried in public or concealed. Because Minnesota’s law imposes a categorical prohibition on possession, the question is whether the State may ban switchblades *entirely*. Where a statute bans possession of such arms outright, the law is unconstitutional *in every application*. See *Heller*, 554 U.S. at 635; see also *Baird v. Bonta*, 163 F.4th 723, 745-747 (9th Cir. 2026).

Supreme Court precedent does not permit parties or courts to rewrite statutes in order to uphold them. “In considering a facial challenge, this

Court may impose a limiting construction on a statute only if it is ‘readily susceptible to such a construction.’ *Reno v. American Civil Liberties Union*, 521 U.S. 844, 884 (1997). However, a court may not “rewrite a ... law to conform it to constitutional requirements.” *Id.*, at 885; *see also United States v. Stevens*, 559 U.S. 460, 481 (2010).

The Supreme Court’s decision in *Airport Comm’rs v. Jews for Jesus* underscores this principle. 482 U.S. 569 (1987). There, the Court refused to adopt a narrowing construction where “the words of the resolution simply leave no room for a narrowing construction.” *Id.* at 575. The same is true here. By attempting to redefine Minn. Stat. section 609.66, subd. 1(a)(4) to include a concealment element not found in the statutory text, Defendant tries to insert a limitation the Minnesota Legislature did not enact.

By attempting to redefine the challenged statute as a concealed-carry restriction and have this Court evaluate only that party-contrived law, Defendants attempt to avoid constitutional review of the challenged statute *as enacted* and foreclose consideration of the law’s full sweep. That methodology conflicts with controlling Supreme Court precedent.

Any reliance on *United States v. Veasley* by the Defendant fares no better. *Veasley* involved a different statute and a different constitutional theory; it did not hold that a categorical arms ban survives a facial challenge

because a state could regulate the manner of carrying weapons in some circumstances. *Veasley*, 98 F.4th 906, 910 (8th Cir. 2024). Nothing in *Veasley* suggests that a statute prohibiting possession of a protected arm becomes constitutional because a different, narrower regulation (not in existence) might be permissible. *Id.*

## **VI. Defendants’ Historical Justification is Insufficient**

Defendants have not met their burden to demonstrate that Minnesota’s Switchblade Ban is consistent with the Nation’s historical tradition of arms regulation. Even if this Court were to independently conduct the historical inquiry described in *Heller* and *Bruen*, the result is the same.

Under *Bruen*, the relevant inquiry focuses on whether the challenged regulation is consistent with the historical understanding of the right at the time of the Founding. *Bruen*, 597 U.S. at 34. While the Court surveyed multiple historical periods, it made clear that not all history carries equal weight and cautioned against relying on late-19th or 20th-century evidence that contradicts earlier sources. *Id.*, 597 U.S. at 34-39. “As we recognized in *Heller* itself, because post-Civil War discussions of the right to keep and bear arms ‘took place 75 years after the ratification of the Second Amendment, they do not provide as much insight into its original meaning as earlier sources.’” *Id.* 597 U.S. at 36 (citing *Heller*, 554 U.S. at 614). Accordingly, only

relevant and analogous historical regulations from the appropriate period may be considered.

Defendants' attempt to justify Minnesota's ban through historical analogy fails at the outset. This is not a case involving a novel weapon or a modern technological development that requires abstract analogical reasoning. Automatically opening knives have existed for centuries. Moreover, knife violence has always been a social issue, reaching its peak in the mid-1800s in the United States. KR243-244. The inquiry is therefore straightforward: whether there is any historical tradition of banning the possession of knives. There is none. *Bruen*, 597 U.S. at 27-29.

Defendants assert that 19<sup>th</sup>-century governments imposed "outright bans" on certain knives. Minn. Br. at p. 22. But their own expert does not support that claim. Professor Roth confirms that there were no colonial or Founding-era laws prohibiting the possession, sale, or ownership of knives. Appendix, at KR1121-1122, KR1125-1126. Instead, the historical laws he identifies are limited almost entirely to state statutes restricting only concealed carry. *Id.*, at KR1123-1125, KR1137-1150, KR1152, KR1155, KR1165-1176. From 1688 to 1899, Roth identified no state statutes prohibiting the possession of any knife or weapon. *Id.*, at KR1178, KR1180-1182, KR1185. From 1688 to 1900, Roth identifies a total of 3 state statutes

that ever enacted any prohibition on the sale of any knife or weapon *and* one was ruled subsequently unconstitutional. *Id.*, at KR1150, KR1155, KR1179, KR1185.

These laws are not remotely analogous to Minnesota’s statute. Concealed-carry regulations presuppose that individuals remain free to acquire, possess, and openly carry arms. Here, by contrast, Minnesota criminalizes the manufacture, transfer, and possession of switchblades altogether. It leaves no lawful avenue to possess the arm.

The historical record is therefore dispositive. As Roth explained, even during periods of heightened knife violence in the 19th century, legislatures chose to regulate only the *manner of carry*—not to prohibit possession. Appendix, at KR1177-1178. Nothing in the record identified by Defendants resembles a categorical ban.

Defendants’ attempt to distinguish *Commonwealth v. Canjura* is unpersuasive. There, the court concluded that switchblades are not “dangerous and unusual,” relying on their widespread prevalence and legality across jurisdictions. *Canjura*, 494 Mass. at 515-516. While *Canjura* reached its conclusion without historical expert testimony, the historical record here only reinforces that conclusion. Defendants’ own expert confirms that the laws he identifies were far less restrictive than Minnesota’s Switchblade Ban

and did not prohibit possession. Appendix, at KR1123-1125, KR1137-1150, KR1152, KR1155, KR1165-1176.

In short, Defendants cannot identify any historical analogue supporting a categorical prohibition on the possession of knives. Because Minnesota's statute is fundamentally inconsistent with the Nation's historical tradition of arms regulation, it cannot survive under *Bruen*.

## **VII. DAUBERT MOTION AND RESPONSE**

### **A. The Court Should Reject Defendants' Request To Exclude Plaintiffs' Experts.**

Defendants' request to exclude Plaintiffs' experts misunderstands both Rule 702 and the role of expert testimony in a constitutional case. Expert testimony based on specialized knowledge or experience is admissible so long as the witness is qualified and the testimony will assist the trier of fact. *See Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 150 (1999). Nothing in Rule 702 requires that experts rely exclusively on empirical studies or statistical datasets, particularly where their opinions derive from decades of professional experience in the relevant field.

The Eighth Circuit applies these principles with particular flexibility where, as here, the case will be decided by the Court rather than a jury. In bench trials, the court may admit expert testimony and later determine the weight it deserves. *See David E. Watson, P.C. v. United States*, 668 F.3d

1008, 1015 (8th Cir. 2012) (recognizing the “relaxed Daubert standard” in bench trials because the judge can independently evaluate reliability). The Eighth Circuit has repeatedly cautioned that alleged weaknesses in an expert’s factual basis generally go to weight, not admissibility. *See Lauzon v. Senco Products, Inc.*, 270 F.3d 681, 686 (8th Cir. 2001). Exclusion is appropriate only where expert testimony is so fundamentally unsupported that it cannot assist the factfinder at all. *See Bonner v. ISP Technologies, Inc.*, 259 F.3d 924, 929-30 (8th Cir. 2001).

Defendants’ challenge falls far short of that standard. Plaintiffs’ experts—Michael Janich, Ken Onion, and Ernest Emerson—are among the most experienced professionals in the knife industry. *See* Appendix at KR721-723, KR766-768, KR785-787. Their opinions are based on decades of first-hand experience and expertise in designing, manufacturing, marketing, and studying knives—including switchblades and in knife self-defense. *Id.* Rule 702 expressly recognizes that expert testimony may be grounded in “knowledge, skill, experience, training, or education,” and courts routinely admit expert testimony based on professional experience in specialized industries. *See Kumho Tire Co.*, 526 U.S. at 150. Defendants’ criticism that Plaintiffs’ experts rely on industry experience rather than statistical studies therefore provides no basis for exclusion.

Nor do Defendants identify any genuine reliability problem. Their argument amounts to the assertion that Plaintiffs' experts did not cite enough empirical data. But the Eighth Circuit has rejected the notion that an expert opinion must be supported by formal studies or quantitative analysis to be admissible. *See Lauzon, Inc.*, 270 F.3d at 686. Experience-based testimony is admissible so long as the expert explains the basis of that experience and how it informs the opinion. Plaintiffs' experts have done exactly that. *See* Appendix, at KR720-732, KR765-782, KR784-790.

Defendants' relevance argument is also misplaced. Plaintiffs' experts explain the operation, design, manufacture, and prevalence of automatically opening knives and comparable folding knives. Those subjects are *directly relevant* to the central constitutional questions in this case, including whether switchblades are commonly possessed and whether they are materially different than other folding knives. That the analysis discusses related knife designs—such as assisted-opening knives or other folding knives—does not render the testimony irrelevant. To the contrary, those comparisons help the Court evaluate whether switchblades are uniquely dangerous or simply a variation of the common folding pocket knife. Defendants' motion to exclude should be denied.

## **B. Defendants' Experts Fail to Satisfy Rule 702**

**(i) Escobar’s Testimony Should Be Excluded.**

Defendants’ purported expert, Robert Escobar’s report and testimony should be excluded because his opinions do not satisfy the requirements of Federal Rule of Evidence 702. Expert testimony must be based on reliable principles and methods and must reflect expertise in the subject matter of the opinion. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589–93 (1993). The Supreme Court later clarified that courts must ensure the expert “employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.” *Kumho Tire Co.*, 526 U.S. at 152.

Escobar’s opinions fail this standard. As detailed above and incorporated herein, he admits he lacks expertise in the very subject on which he opines. *See* pages 26-28 above. As an example, he admits that switchblades are sold in large numbers in the United States. Appendix, at KR1047. He admits he’s not a knife expert, has never designed a knife, has never manufactured a knife, and has no professional experience in knife engineering, knife design, or knife manufacturing. *See* pages 26-28 above. He admits he is not an expert in the use of knives for self-defense, and has no specialized training or experience in defensive knife use. Appendix, at KR999-1000. Indeed, as a project manager, Escobar acknowledges that his

involvement with knives is limited to personal hobbyist interest, and not professional expertise. *Id.*, at KR981.

Escobar likewise lacks expertise regarding the operation or mechanical design of switchblades. He admits he has never conducted any engineering analysis or testing of switchblade mechanisms, nor ever performed any documented or reproducible testing regarding their safety or reliability aside from his four cardboard experiments of “his own invention.” Appendix, at KR1003-1004, KR1051-1053, KR1053, KR1068-1069, KR1056-1059, KR1059-1061, KR1065, KR1071-1072, KR1072-1075. When questioned about his research into the prevalence of switchblades, Escobar acknowledges that it consists of performing a single search on Amazon in which he observed the prices of the first five switchblades listed for sale. *Id.*, at KR1036-1038, KR1040-1042.

At most, Escobar’s academic work concerns the historical regulation of certain 19<sup>th</sup>-century impact weapons such as slungshots, batons, and similar implements. That narrow historical specialty does not qualify him to opine on modern knife design, the mechanics of automatic knives, the defensive use of knives, or the suitability of certain knife designs for self-defense. Rule 702 requires that an expert’s qualifications match the subject matter of the testimony. *See Lauzon* 270 F.3d at 686 (8th Cir. 2001). Because Escobar

admits he lacks expertise in all the subject matter he provides testimony in, his testimony cannot assist and should be excluded.

**(ii) Roth's Testimony Should Be Limited to His Actual Area of Expertise.**

Professor Roth's testimony suffers from a different problem. Unlike Escobar, Roth possesses academic expertise—but that expertise is limited to the history of violence, *not* the history of arms regulations in the United States. Roth repeatedly acknowledges that he's not an expert on historical weapons laws or arms regulations. Appendix, at KR1122. Instead, Roth explained that his work focuses on patterns of violence and homicide in the 19th century. *Id.*

Roth further admits he has not studied the history of switchblade violence, has not conducted research regarding the criminal use of switchblades, and has not performed any historical study of automatic opening knives. Appendix, at KR1164. He acknowledges that his expertise largely concerns the 19th century (1800s) and does not extend to the 20th century (1900s), including the legislative history surrounding switchblades. *Id.*, at KR1157-1158. Indeed, Roth confirms that many of his statements on weapons regulations simply summarize other historians' conclusions rather than reflect his own original research. *Id.*, at KR1169.

Rule 702 permits expert testimony only within the expert's field of expertise. The Eighth Circuit has repeatedly held that courts must ensure that experts do not testify outside the scope of their qualifications. *Wheeling Pittsburgh Steel Corp. v. Beelman River Terminals, Inc.*, 254 F.3d 706, 715 (8th Cir. 2001). When an expert ventures beyond his discipline, the testimony must be excluded or limited.

Here, Roth's expertise may assist the Court with a narrow issue: general patterns of violence and/or homicide during the 19th century. But Roth lacks the specialized historical expertise necessary to opine on the development of weapons regulations, the regulation of knives, or the historical tradition governing arms bans under the Second Amendment. His testimony should therefore be limited to his actual field of expertise—historical patterns of violence—and excluded to the extent it attempts to address the history or constitutionality of weapons regulations.

## **CONCLUSION**

Based on the foregoing, Plaintiffs request that this Court issue an order finding that the challenged statute is unconstitutional and permanently enjoin it.

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Respectfully submitted,

DILLON LAW GROUP, APC

Attorneys for Plaintiffs

          /s/ John W. Dillon  
John W. Dillon