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In The  
**Supreme Court of the United States**

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DISTRICT OF COLUMBIA ET AL.,

*Petitioners,*

v.

DICK HELLER,

*Respondent.*

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**On Writ Of Certiorari To The United States  
Court Of Appeals For The District Of Columbia**

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**BRIEF OF THE INTERNATIONAL LAW  
ENFORCEMENT EDUCATORS AND TRAINERS  
ASSOCIATION (ILEETA), THE INTERNATIONAL  
ASSOCIATION OF LAW ENFORCEMENT  
FIREARMS INSTRUCTORS (IALEFI), MARYLAND  
STATE LODGE, FRATERNAL ORDER OF POLICE,  
SOUTHERN STATES POLICE BENEVOLENT  
ASSOCIATION, 29 ELECTED CALIFORNIA  
DISTRICT ATTORNEYS, SAN FRANCISCO  
VETERAN POLICE OFFICERS ASSOCIATION,  
LONG BEACH POLICE OFFICERS ASSOCIATION,  
TEXAS POLICE CHIEFS ASSOCIATION, TEXAS  
MUNICIPAL POLICE ASSOCIATION, NEW YORK  
STATE ASSOCIATION OF AUXILIARY POLICE,  
MENDOCINO COUNTY, CALIF., SHERIFF THOMAS  
D. ALLMAN, OREGON STATE REP. ANDY OLSON,  
NATIONAL POLICE DEFENSE FOUNDATION,  
LAW ENFORCEMENT ALLIANCE OF AMERICA,  
AND THE INDEPENDENCE INSTITUTE AS  
*AMICI CURIAE* IN SUPPORT OF RESPONDENT**

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## **INTERESTS OF THE *AMICI CURIAE***

*Amici* are district attorneys, police organizations, and other persons concerned with protecting the public safety benefits of citizens possessing handguns for self-defense in the home.<sup>1</sup>

### **International Law Enforcement Educators and Trainers Association**

The International Law Enforcement Educators and Trainers Association (ILEETA) is a professional association of 4,000 persons who provide training to law enforcement in the proper use of firearms, and on many other subjects.

ILEETA is participating because police recruits who already have personal civilian experience using handguns are better trainable to use handguns safely and proficiently as police officers.

### **29 California District Attorneys**

The elected California District Attorneys in this brief represent populous counties such as Orange,

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<sup>1</sup> The parties have consented to the filing of this brief. Counsel of record for all parties received written notice in December of intent to file this brief. No counsel for a party authored the brief in whole or in part. No counsel or party made a monetary contribution intended to fund the preparation or submission of the brief. The NRA Civil Rights Defense Fund has made contributions to the Independence Institute that have been used in part to fund the preparation of this brief.

Fresno, and San Bernardino, as well as mid-sized and rural counties.

### **Southern States Police Benevolent Association**

The Southern States Police Benevolent Association (SSPBA) consists of more than 20,000 law enforcement employees in 12 southeastern states. SSPBA's polling shows that its members strongly support the Second Amendment.

The interests of additional *amici* are described in Appendix C.

### **SUMMARY OF ARGUMENT**

Before the enactment of the handgun ban, fewer than ½ of 1% of guns seized by police in the District had been lawfully registered. Accordingly, the bans on ownership of registered handguns and on home self-defense by law-abiding people have virtually nothing to do with the legitimate government interest in crime control.

To the contrary, the handgun and self-defense bans are criminogenic.

Guns save lives. In the hands of law-abiding citizens, guns provide very substantial public safety benefits. In all 50 states—but not in the District—it is lawful to use firearms for defense against home invaders. The legal ownership of firearms for home defense is an important reason why the American

rate of home invasion burglaries is far lower than in countries which prohibit or discourage home handgun defense.

By drastically reducing the rate of confrontational home invasions, the deterrent effect of U.S. home defensive gun ownership greatly reduces the assault rate (since there are many fewer confrontations) and thereby reduces the total U.S. violent crime rate by about 9%.

Numerous surveys show that firearms are used (usually without a shot needing to be fired) for self-defense at least 97,000 times a year, and probably several hundred thousand times a year.

The anti-crime effects of citizen handgun ownership provide enormous benefits to law enforcement, because there are fewer home invasion emergencies requiring an immediate police response, and because the substantial reductions in rates of burglary, assault, and other crimes allow the police and district attorneys to concentrate more resources on other cases and on deterrence.

Lawful civilian handgun ownership improves police training, by providing a larger body of recruits who are experienced in handgun safety and accuracy, as well as providing civilian experts whose ideas are adopted by police trainers.

Ordinary law-abiding citizens are not too hot-tempered or accident-prone to possess firearms safely for home defense.

Especially for home defense in an urban area, long guns are inadequate substitutes for handguns. Handguns are safer for victims, for families, and for the community as a whole.

This Court's precedents point to the unconstitutionality of the handgun ban.

### **ARGUMENT**

In December 1976, the law-abiding citizens of Washington, D.C., were re-registering their handguns at police headquarters. Most police were appalled at the imminent ban:

"We don't appreciate being heels," Clark<sup>2</sup> said, pointing out the pain it takes to tell an elderly widow who is living alone "that even though your husband bought the gun legally and registered it properly, you can't keep it. Why that makes an innocent citizen a crook."

It was a theme heard often in D.C. today, and surprisingly, *it seems to gall policemen more than anybody else.*

"You're not controlling guns, you're controlling people," said Sgt. Jimmy King, a veteran robbery squad investigator.

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<sup>2</sup> Officer David Clark, one of two officers in charge of registration for the Gun Control Section of the D.C. police.

*“Honest citizens, the little old lady who’s not hurting anybody anyway is the real victim. We’re not stopping these bums killing each other, us, or committing armed robberies.” ...*

Like most officers, King believes the court is the real answer.

“The court is not enforcing the laws we already have on the books,” he said, explaining:

“There’s a law on the books today which allows a five-year additional sentence for any crime committed while armed, but it’s not enforced.”

*King’s sentiments were echoed throughout police headquarters and by officers on the streets.*

“I don’t know why they bother to make new laws, they don’t enforce the old ones,” said Fourth District Officer Andrew Way as he wrote a parking ticket yesterday.

Earl Byrd, *D.C.’s Gun Registration*, WASH. STAR, Dec. 2, 1976 (emphasis added).

The notion that most police support handgun prohibition is false.<sup>3</sup> Police critics of the D.C. ban

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<sup>3</sup> See, e.g., David Griffith, *Shooting Straight: The Majority of Cops Believe Citizens Should Have the Right to Own Handguns* POLICE, Mar. 2007, at 10, <http://www.policemag.com/Articles/2007/03/Editorial.aspx>; *Officers Emphatically Say “No”*

(Continued on following page)



have included D.C. Police Chief Maurice Turner (who was muzzled by Mayor Marion Barry), former Police Chief Charles Ramsey, and union leaders at the city jail who testified in favor of a repeal bill. Tom Sherwood, *Should the District Lift Its Freeze on Handguns?* WASH. POST, July 23, 1982; *Ramsey shifts stand on gun ban*, WASH. TIMES, Nov. 11, 2007. Inaccurate claims that “the police” support D.C.’s draconian laws alienate the public from the police.

*Amici* have no fears that upholding the rights of law-abiding citizens to possess handguns and other functional defensive firearms in their homes will endanger law enforcement officers.<sup>4</sup> Police in the District are killed at a rate about six times higher than the national rate, a statistic that hardly suggests that the

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*to Gun Control*, POLICE, Mar. 2007, at 14 (both articles reporting results of a survey conducted by the magazine); *Police Views on Gun Control*, AUSTIN AMERICAN-STATESMAN, Oct. 4, 1993, at A8 (1993 poll by the Southern States Police Benevolent Association shows that 90% of southern police feel that the Constitution protects the right of individuals to keep and bear arms); *Funny You Should Ask*, POLICE, Apr. 1993, at 56 (85% of police believe civilian gun ownership increases public safety); *The Law Enforcement Technology Gun Control Survey*, L.ENFORCEMENT TECH., July/Aug. 1991, at 14-15 (“75% do not favor gun control legislation ... with street officers opposing it by as much as 85%”).

<sup>4</sup> Cf. David Mustard, *The Impact of Gun Laws on Police Deaths*, 44 J.L. & ECON. 635 (2001) (allowing licensed, trained citizens to carry concealed handguns in public places does not increase police officer deaths, and may reduce police deaths).

District's ban on law-abiding citizens protecting their homes has helped protect the police.<sup>5</sup>

## **I. The Efficacy and Social Benefits of Armed Self-Defense**

Police carry handguns on duty and keep those guns for home protection for an obvious reason: the guns are essential, life-saving tools for protecting themselves, their families, and their communities. See James Jacobs, *Exceptions to a General Prohibition on Handgun Possession: Do They Swallow Up the Rule?* 49 L.& CONTEMP. PROBS. 6 (1986)(carefully analyzed, almost all the rationales for allowing police and security guards to possess handguns show that prohibition of handguns for other persons is illogical). Ample empirical evidence demonstrates that the home possession of firearms by law-abiding citizens also contributes substantially to public safety.

### **A. Burglary**

The only national study of how frequently firearms are used against burglaries was conducted by the Centers for Disease Control and Prevention (CDC). In 1994, random digit dialing phone calls were

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<sup>5</sup> The District has approximately 0.2% of the national population (2000 census), but accounts for 1.2% of police officers murdered. See FBI, LAW ENFORCEMENT OFFICERS KILLED AND ASSAULTED, 2006, table 1, available at <http://www.fbi.gov/ucr/killed/2006/table1.html> (cumulative data for 1997-2006).

made throughout the United States, resulting in 5,238 interviews. The interviewees were asked about use of a firearm in a burglary situation during the previous 12 months. Extrapolating the polling sample to the national population, the researchers estimated that in the previous 12 months, there were approximately 1,896,842 incidents in which a householder retrieved a firearm but did not see an intruder. There were an estimated 503,481 incidents in which the armed householder *did* see the burglar, and 497,646 incidents in which the burglar was scared away by the firearm. Robert Ikeda et al., *Estimating Intruder-Related Firearms Retrievals in U.S. Households, 1994*, 12 VIOLENCE & VICTIMS 363 (1997).

Only 13% of U.S. residential burglaries are attempted against occupied homes. U.S. Bureau of Justice Statistics, *Household Burglary*, BJS BULL. at 4 (1985). Criminologists attribute the prevalence of daytime burglary to burglars' fear of confronting an armed occupant; burglars report that they avoid late-night home invasions because, "That's the way you get yourself shot." GEORGE RENGERT & JOHN WASILCHICK, SUBURBAN BURGLARY: A TALE OF TWO SUBURBS 33 (2ded. 2000)(study of Delaware County, Penn., and Greenwich, Conn.); *see also* JOHN CONKLIN, ROBBERY AND THE CRIMINAL JUSTICE SYSTEM 85 (1972)(study of Massachusetts inmates, reporting that some gave up burglary because of "the risk of being trapped in the house by the police or an armed occupant.").

The most thorough study of burglary patterns was a St. Louis survey of 105 currently active burglars. The authors observed, "One of the most serious risks faced by residential burglars is the possibility of being injured or killed by occupants of a target. Many of the offenders we spoke to reported that this was far and away their greatest fear." As a result, most burglars tried to avoid entry when an occupant might be home. RICHARD WRIGHT & SCOTT DECKER, *BURGLARS ON THE JOB: STREETLIFE AND RESIDENTIAL BREAK-INS* 112-13 (1994).

Burglars in other nations behave differently.

A 1982 British survey found 59% of attempted burglaries involved an occupied home. Pat Mayhew, *Residential Burglary: A Comparison of the United States, Canada and England and Wales* (Nat'l Inst. of Just., 1987). The *Wall Street Journal* reported:

Compared with London, New York is downright safe in one category: burglary. In London, where many homes have been burglarized half a dozen times, and where psychologists specialize in treating children traumatized by such thefts, the rate is nearly twice as high as in the Big Apple. And burglars here increasingly prefer striking when occupants are home, since alarms and locks

tend to be disengaged and intruders have little to fear from unarmed residents.<sup>6</sup>

In the Netherlands, 48% of residential burglaries involved an occupied home. Richard Block, *The Impact of Victimization, Rates and Patterns: A Comparison of the Netherlands and the United States*, in VICTIMIZATION AND FEAR OF CRIME: WORLD PERSPECTIVES 26 tbl. 3-5 (Richard Block ed., 1984). In the Republic of Ireland (which, along with England, is one of the few European nations where handguns are banned), criminologists report that burglars have little reluctance about attacking an occupied residence. See Claire Nee & Maxwell Taylor, *Residential Burglary in the Republic of Ireland*, in WHOSE LAW AND ORDER? ASPECTS OF CRIME AND SOCIAL CONTROL IN IRISH SOCIETY 143 (Mike Tomlinson et al. eds., 1988). In Toronto, where handguns are legal but rare, 44% of home burglaries take place when the victim is home. See IRWIN WALLER & NORMAN OKHIRO, BURGLARY: THE VICTIM AND THE PUBLIC 31 (1978).

An American burglar's risk of being shot while invading an occupied home is greater than his risk of going to prison. Presuming that the risk of prison

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<sup>6</sup> Kevin Heilliker, *Pistol-Whipped: As Gun Crimes Rise, Britain Is Considering Cutting Legal Arsenal*, WALL ST.J., Apr. 19, 1994, at A1.

deters some potential burglars, the risk of armed defenders would deter even more.<sup>7</sup>

Florida State University criminologist Gary Kleck's book *Point Blank: Guns and Violence in America* won the highest honor awarded by the American Society of Criminology: the Michael Hindelang Book Award "for the greatest contribution to criminology in a three-year period." In the book Kleck detailed an important secondary consequence of the deterrence of home invasion. Suppose that the percentage of "hot" (occupied residence) burglaries rose from current American levels (around 13%) to a level similar to other nations (around 45%). Knowing how often a hot burglary turns into an assault, we can predict that an increase in hot burglaries to the levels of other nations would result in 545,713 more assaults every year. This by itself would raise the American violent crime rate 9.4%. GARY KLECK, *POINT BLANK: GUNS AND VIOLENCE IN AMERICA* 140 (1991).

Put another way, the American violent crime rate is significantly lower than it would otherwise be, because American burglars are so much less likely to enter an occupied home. Given that the average cost

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<sup>7</sup> JAMES WRIGHT, PETER ROSSI, & KATHLEEN DALY, *UNDER THE GUN: WEAPONS, CRIME AND VIOLENCE IN AMERICA* 139-40 (1983) (Nat'l Inst. of Just. study); *see also* Gary Kleck, *Crime Control Through the Private Use of Armed Force*, 35 *SOC. PROBS.* 1, 12, 15-16 (1988).

of an assault, in 2006 dollars, is \$12,032,<sup>8</sup> the annual cost savings from reduced assault amounts to more than six billion dollars (\$6,566,018,816).

Interestingly, because burglars do not know *which* homes have a gun, people who do not own guns enjoy substantial free-rider benefits because of the deterrent effect from the homes that do keep arms.<sup>9</sup>

## B. Deterrence

Intending to build the case for comprehensive federal gun restrictions, the Carter administration awarded a major National Institute of Justice (NIJ) research grant in 1978 to University of Massachusetts sociology professor James Wright and his colleagues Peter Rossi and Kathleen Daly. Wright had already editorialized in favor of much stricter controls. Rossi would later become president of the American Sociology Association. Daly would later win her own Hindelang Award, for her feminist perspectives on criminology.

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<sup>8</sup> See Ted Miller et al., *Victims Costs and Consequences* 9 (Nat'l Inst. of Just., NCJ 155282, 1996), <http://www.ncjrs.gov/pdffiles/victcost.pdf> (the 1996 figures were multiplied by 1.28, to account for 1996-2006 increases in the Consumer Price Index).

<sup>9</sup> David Kopel, *Lawyers, Guns, and Burglars*, 43 ARIZ. L.REV. 345, 363-66 (2001). For more, see Philip Cook & Jens Ludwig, *Guns & Burglary* and David Kopel, *Comment*, both in EVALUATING GUN POLICY (Jens Ludwig & Philip Cook eds., 2003)(pro/con analysis of guns/burglary relationship).

When the NIJ authors rigorously examined the data, they found no persuasive evidence in favor of banning handguns or self-defense. Notably, the D.C. bans had not reduced crime. JAMES WRIGHT, PETER ROSSI & KATHLEEN DALY, UNDER THE GUN: WEAPONS, CRIME, AND VIOLENCE IN AMERICA 294-96 (1983)(critiquing two previous studies, one of them by the U.S. Conference of Mayors; presumably the critiques were persuasive, since neither the USCM brief nor any other of Petitioners' *amici* cite the studies).

Wright and Rossi produced another study for the National Institute of Justice. Interviewing felony prisoners in 11 prisons in 10 states, Wright and Rossi discovered that:

- 34% of the felons reported personally having been “scared off, shot at, wounded or captured by an armed victim.”
- 8% said the experience had occurred “many times.”
- 69% reported that the experience had happened to another criminal whom they knew personally.
- 39% had personally decided not to commit a crime because they thought the victim might have a gun.
- 56% said that a criminal would not attack a potential victim who was known to be armed.
- 74% agreed with the statement that “One reason burglars avoid houses



where people are at home is that they fear being shot.”

JAMES WRIGHT & PETER ROSSI, *ARMED AND CONSIDERED DANGEROUS: A SURVEY OF FELONS AND THEIR FIREARMS* 146, 155 (expanded ed. 1994).

Notably, “the highest concern about confronting an armed victim was registered by felons from states with the greatest relative number of privately owned firearms.” *Id.* at 151. The authors concluded “the major effects of partial or total handgun bans would fall more on the shoulders of the ordinary gun-owning public than on the felonious gun abuser of the sort studied here....[I]t is therefore also possible that one side consequence of such measures would be some loss of the crime-thwarting effects of civilian firearms ownership.” *Id.* at 237.

### **C. The Frequency of Defensive Gun Use**

There have been 13 major surveys regarding the frequency of defensive gun use (DGU) in the modern United States. The surveys range from a low of 760,000 annually to a high of three million. The more recent studies are much more methodologically sophisticated. *See App. 1-3.*

In contrast, much lower annual estimates come from the National Crime Victimization Survey (NCVS), a poll using in-person home interviews conducted by the Census Bureau in conjunction with the Department of Justice. The NCVS for 1992-2005

would suggest about 97,000 DGUs annually, with 75,000 DGUs in 2005, the last year for which data are available. *See* App. 4-6.

A criticism of the NCVS figure is that it is too low because the NCVS never directly asks about DGUs, but instead asks open-ended questions about how the victim responded. Because the NCVS first asks if the respondent has been a victim of a crime, the NCVS results exclude people who answer “no” because, thanks to successful armed self-defense, they do not consider themselves “victims.” Further, the NCVS only asks about some crimes, and not the full scope of crimes from which a DGU might ensue. *See, e.g.*, GARY KLECK, *TARGETING GUNS: FIREARMS AND THEIR CONTROL* 152-54 (1997).

Gary Kleck and Mark Gertz conducted an especially thorough survey in 1993, with stringent safeguards to weed out respondents who might misdescribe a DGU story. Kleck and Gertz found a midpoint estimate of 2.5 million DGUs annually. *See* Gary Kleck & Marc Gertz, *Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun*, 86 *J.CRIM.L. & CRIMINOLOGY* 150 (1995).

The Kleck/Gertz survey found that 80% of defensive uses involved handguns, and that 76% of defensive uses do not involve firing the weapon, but merely brandishing it to scare away an attacker. *Id.* at 175.

Marvin Wolfgang, “the most influential criminologist”<sup>10</sup> in the English-speaking world, and an ardent supporter of gun prohibition, reviewed Kleck’s findings. Wolfgang wrote that he could find no methodological flaw, nor any other reason to doubt the correctness of Kleck’s figure:

I am as strong a gun-control advocate as can be found among the criminologists in this country....I would eliminate all guns from the civilian population and maybe even from the police. I hate guns....Nonetheless, the methodological soundness of the current Kleck and Gertz study is clear...

....

The Kleck and Gertz study impresses me for the caution the authors exercise and the elaborate nuances they examine methodologically. I do not like their conclusions that having a gun can be useful, but I cannot fault their methodology. They have tried earnestly to meet all objections in advance and have done exceedingly well.

Marvin Wolfgang, *A Tribute to a View I Have Opposed*, 86 J.CRIM.L. & CRIMINOLOGY 188, 191-92 (1995).

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<sup>10</sup> Ellen Cohn & David Farrington, *Who Are the Most Influential Criminologists in the English-Speaking World?* 34 BRIT.J. CRIMINOLOGY 204 (1994) (based on citations in top journals). Dr. Wolfgang was also President of the American Society of Criminology, and President of the American Academy of Political and Social Science. His research was cited in *Furman v. Georgia*, 408 U.S. 238, 250 n.15 (1972)(Douglas, J., concurring).

Philip Cook of Duke and Jens Ludwig of Georgetown were skeptical of Kleck's results, and so they conducted their own survey for the Police Foundation. That survey produced an estimate of 1.46 million DGUs.<sup>11</sup>

The National Opinion Research Center (NORC) argues that the figures from Kleck are probably too high, and from the NCVS too low; NORC estimates the actual annual DGU figure to be somewhere in the range of 256,500 to 1,210,000. Tom Smith, *A Call for a Truce in the DGU War*, 87 J.CRIM.L. & CRIMINOLOGY 1462 (1997).

This Court need not resolve the particulars of the debate among the social scientists. All social science research shows that defensive gun use is frequent in the United States.

#### **D. Natural Experiments**

In October 1966, the Orlando Police Department began conducting highly-publicized firearms safety training for women, after observing that many women were arming themselves in response to a

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<sup>11</sup> PHILIP COOK & JENS LUDWIG, GUNS IN AMERICA: RESULTS OF A COMPREHENSIVE NATIONAL SURVEY OF FIREARMS OWNERSHIP AND USE 62-63 (1996). Cook and Ludwig argue that their own study produced implausibly high numbers, and they prefer the NCVS estimate. *Id.* at 68-75. For a response, see Gary Kleck, *Has the gun deterrence hypothesis been discredited?* 10 J.FIREARMS & PUB. POL'Y 65 (1998), <http://saf.org/kleck1998.pdf>.

dramatic increase in sexual assaults in the area. Orlando rapes fell by 88% from 1966 to 1967. Burglary fell by 25%. Not one of the 2,500 trained women actually ended up firing her weapon; the deterrent effect of the publicity sufficed. As Gary Kleck and David Bordua note: "It cannot be claimed that this was merely part of a general downward trend in rape, since the national rate was increasing at the time. No other U.S. city with a population over 100,000 experienced so large a percentage decrease in the number of rapes from 1966 to 1967...."<sup>12</sup> That same year, rape increased by 5% in Florida and by 7% nationally.<sup>13</sup>

In March 1982, the Atlanta exurb of Kennesaw passed an ordinance requiring all residents (with exceptions, including conscientious objectors) to keep

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<sup>12</sup> Gary Kleck & David Bordua, *The Factual Foundation for Certain Key Assumptions of Gun Control*, 5 L. & POL'Y Q. 271, 284 (1983); Gary Kleck, *Policy Lessons from Recent Gun Control Research*, 49 J.L. & CONTEMP. PROBS. 35, 47 (1986).

<sup>13</sup> See Don Kates, *The Value of Civilian Handgun Possession As a Deterrent to Crime or Defense Against Crime*, 18 AM.J.CRIM.L. 113, 153 (1991).

One article argued that the drop in Orlando rapes was statistically insignificant, being within the range of possibly normal fluctuations. David McDowall et al., *General Deterrence through Civilian Gun Ownership*, 29 CRIMINOLOGY 541 (1991). However, the authors' statistical model was such that even if gun-based deterrence had entirely eliminated rape in Orlando, the model would have declared the result to be statistically insignificant. KLECK, TARGETING GUNS, at 181.

firearms in their homes.<sup>14</sup> House burglaries fell from 65 per year to 26, and to 11 the following year.<sup>15</sup>

### **E. 911 Is Insufficient**

America's police officers work very hard to rescue crime victims as rapidly as possible. But it is simply impossible for the police to arrive quickly enough to prevent all victims from being injured by violent predators. For example:

- In Washington, D.C., in 2003, the average police response time for highest-priority emergency calls was 8 minutes and 25 seconds.<sup>16</sup>
- In Salt Lake City, 911 callers are frequently put on hold.<sup>17</sup>
- The average response time for Priority One calls (defined as life-threatening emergencies)

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<sup>14</sup> *Town to Celebrate Mandatory Arms*, N.Y. TIMES, Apr. 11, 1987, at 6.

<sup>15</sup> Kleck, 35 SOC. PROBS. at 13-15. The McDowall article (*supra* n.13) reports that there was no statistically significant change in the Kennesaw burglary rate. But the article improperly combined household burglaries (which did decline substantially) with other forms of burglary, such as unoccupied businesses. KLECK, POINT BLANK, at 136-38.

<sup>16</sup> *Ramsey defends 911 response*, WASH. TIMES, May 11, 2004, at A1.

<sup>17</sup> Debbie Dujanovic, *911 Nightmare Uncovered in Investigative Report*, KSL.com, Nov. 1, 2007, <http://www.ksl.com/?nid=148&sid=2077061>.

in Atlanta and its three surrounding counties is 11.1 minutes.<sup>18</sup>

- In Los Angeles, the average emergency response time is 10.5 minutes.<sup>19</sup>
- In New York City it is 7.2 minutes for crimes in progress.<sup>20</sup>
- The *New York Times* reported that in Nassau County in 2003, 11% of 911 callers got a pre-recorded message and soothing music, rather than a human operator.<sup>21</sup>
- The average response time for crime in progress calls in Rochester, New York, was 14 minutes, 31 seconds.<sup>22</sup>
- In Philadelphia the time for Priority One calls is just under 7 minutes.<sup>23</sup>

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<sup>18</sup> *911 Response Times: An I-Team Investigation*, FOX 5 ATLANTA, <http://www.fox5atlanta.com/iteam/911.html>.

<sup>19</sup> *LA police average over 10 minutes in responding to 911 calls*, A.P. wire, July 1, 2003; see also *Cop Response Slows*, L.A. DAILY NEWS, July 22, 2001 (median of 8 minutes, 30 seconds; average of 12.1 minutes).

<sup>20</sup> *Mayor Bloomberg Releases Fiscal 2005 Mayor's Management Report*, US STATES NEWS, Sept. 12, 2005.

<sup>21</sup> *Nassau 911 Callers Are Being Put on Hold*, N.Y. TIMES, Sept. 14, 2003.

<sup>22</sup> Tim Macaluso, *POLICE: East side response times too slow?* CITY NEWSPAPER, June 20, 2007, <http://www.rochester.citynewspaper.com/news/blog/POLICE%3A+East+side+response+times+too+slow+/>.

<sup>23</sup> Howard Goodman, *A System Geared To Preventing 'Another Polec'*, PHIL. INQUIRER, Aug. 3, 1998, at A1.

- The average in St. Petersburg, Florida, for Priority One (again, defined as “life-threatening”) is 7 minutes, 5 seconds.<sup>24</sup>

Note that the above times are how long it takes the police to arrive after being dispatched. The times do *not* include the time that the caller waits for the 911 operator to pick up, and then talks with the operator.

Petitioners’ law requiring crime victims to depend entirely on 911 ignores the fact that any criminal in control of a crime scene will not permit his victim to call the police, and that the neighbors may be unaware of the crime in progress. In contrast, when the victim of a home invasion has a handgun, the victim can prevent the criminal from gaining control of the scene, and the victim can use her free hand to dial 911.

#### **F. Self-Defense Does Not Make Victims Worse Off**

It is sometimes claimed that a victim resists with a gun will have the weapon taken away, or that resistance will enrage the criminal into a fatal attack. Yet data from the National Crime Victimization Survey show that a victim’s weapon is taken by the attacker in, at most, one percent of cases in which the victim uses a weapon. *See* KLECK, TARGETING GUNS, at

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<sup>24</sup> Leanora Minai, *Is that enough?* ST. PETERSBURG TIMES, Apr. 7, 2002, at 1B.



168-69. Data from the National Crime Victimization Survey and other sources also show that “There is no sound empirical evidence that resistance does provoke fatal attacks.”<sup>25</sup> Nor does resistance with a firearm increase the chance of victim injury.<sup>26</sup> Instead, “The use of a gun by the victim significantly reduces her chance of being injured....”<sup>27</sup>

### **G. Law Enforcement Benefits of Citizen Self-Defense**

A very important reason why most police officers join a public safety department, or why lawyers join a prosecutor’s office, is that they care deeply about public safety. Accordingly, when armed citizens deter

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<sup>25</sup> Gary Kleck & Jongyeon Tark, *Resisting Crime: The Effects of Victim Action on the Outcomes of Crimes*, 42 CRIMINOLOGY 861, 903 (2005).

<sup>26</sup> Kleck, 35 SOC. PROBS. at 7-9; Gary Kleck & Miriam DeLone, *Victim Resistance and Offender Weapon Effects in Robbery*, 9 J.QUANTITATIVE CRIMINOLOGY 55, 73-77 (1993)(study of all NCVS robbery data from 1979-85; most effective form of resistance, both for thwarting the crime, and for reducing the chance of victim injury, is resistance with a gun); Kleck & Gertz, 86 J.CRIM.L. & CRIMINOLOGY at 174-75; William Wells, *The Nature and Circumstances of Defense Gun Use: A Content Analysis of Interpersonal Conflict Situations Involving Criminal Offenders*, 19 JUST.Q. 127, 152 (2002).

<sup>27</sup> Lawrence Southwick, *Self-Defense with Guns: The Consequences*, 28 J.CRIM. JUST. 351, 362, 367 (2000)(NCVS robbery data, pertaining to situations where the robber has a non-gun weapon; if the robber has a gun, or has no weapon, victim gun possession did not seem to affect injury rates. If 10% more victims had guns, serious victim injury would fall 3-5%).

or thwart crime, citizens are helping to create the safe society to which the police and prosecutors have dedicated their careers.

The important deterrent effect of armed citizens—particularly in reducing hot burglaries and the assaults and rapes that often result from hot burglaries—substantially reduces the number of emergencies to which police must respond. Consequently, the police have more resources available for other emergencies, and for investigative and preventive work. District Attorneys benefit from having fewer crimes to prosecute, so that they can devote greater attention to other cases.

Further, the lawful availability of handguns for citizens provides the police with a much larger pool of recruits who have experience with handgun safety, and who have learned some basics (or developed proficiency) in handgun accuracy.

Significantly, many police firearms instructors are civilians. Many innovations in police firearms training have been created by civilian trainers, who themselves train police officers and police instructors. Civilian experts have more time to dedicate to the subject than do almost all police instructors—because many police instructors do not train full-time, and those that do must teach a variety of subjects. Civilian Jeff Cooper’s “The Modern Technique” is the foundation for defensive handgun instruction for an enormous number of departments. *See* JEFF COOPER, *PRINCIPLES OF PERSONAL DEFENSE* (rev.ed. 2007); *see*

*also* JOHN FARNAM, *THE FARNAM METHOD OF DEFENSIVE HANDGUNNING* (2ded. 2005).

In short, law-abiding armed citizens play a substantial role in the core governmental function of protecting public safety. Their role is a modern example of how the main clause of the Second Amendment (protecting negative liberty, by prohibiting citizen disarmament) reinforces the introductory clause (affirming the active liberty of citizen participation in public security). *Cf.* STEPHEN BREYER, *ACTIVE LIBERTY* (2005); ANTONIN SCALIA, *A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW* 137 n.13 (1997) (“police officers being necessary to law and order, the right of the people to carry handguns shall not be infringed”).

## **II. The Invidious Conflation of Law-Abiding Gun Owners with Incipient Murderers**

Petitioners’ prohibitions are now and always have been based on invidious prejudice that the law-abiding citizens of the District are incipient murderers.

For example, Petitioners darkly warn that the possession of handguns will lead to homicides even by people who are “generally law-abiding and responsible.” Pet. Br. 51. Likewise, the enactment of the bans was supported by “findings” claiming that “firearms are more frequently involved in deaths and violence among relatives and friends than in premeditated criminal activities. Most murders are committed by previously law-abiding citizens, in situations where

spontaneous violence is generated by anger, passion, or intoxication, and where the killer and victims are acquainted. Twenty-five percent of these murders are within families.” David A. Clarke, Chairperson of the Committee on the Judiciary and Criminal Law, *Bill No. 1-164, the “Firearms Control act of 1975”*, Apr. 21, 1976, at 5.

To see the error of Petitioners’ aspersions on the law-abiding citizens of the District, one need only look at District’s own data. Pursuant to a local law that took effect in 1969, all lawfully-owned firearms in the District had to be registered.

Before the bans, fewer than 0.5% of D.C. crime guns were registered to D.C. residents. Paul Valentine, *Mayor Signs Stringent Gun Control Measure*, WASH. POST, July 24, 1976, at E1, E3 (Police Chief Maurice “Cullinane acknowledged at the Mayor’s press conference that less than 0.5 per cent of the guns seized by police last year were registered. There are about 60,000 registered weapons in the city.”).

Regulatory excess aimed at the last 10% of a problem has been described as “tunnel vision” which “imposes high costs without achieving additional safety benefits.” STEPHEN BREYER, *BREAKING THE VICIOUS CIRCLE* 11 (1992). The D.C. prohibition is even worse, for it targets only 0.5% of the problem, at a great cost in reduced public safety.

The law-abiding gun owners of the District were not the cause of the District’s crime problems. That an infinitesimal number of registered gun owners did

misuse their guns does not justify barring all law-abiding persons from owning functional firearms, just as the fact that an infinitesimal number of police misuse their guns does not justify disarming all of the police. *Cf. Romer v. Evans*, 517 U.S. 620, 632 (1996)(law “seems inexplicable by anything but animus toward the class that it affects; it lacks a rational relationship to legitimate state interests.”); *Cleburne v. Cleburne Living Center*, 472 U.S. 432 (1985)(law based on irrational prejudice).

Likewise, the fact that law-abiding citizens and police officers are sometimes the victims of gun thefts does not justify banning either group from possessing functional guns. The problem of gun theft could be addressed by a narrowly tailored law, such as a requirement that guns be locked up when no one is home. The law review article (co-authored by the counsel of record of this brief) that Petitioners cite to dispute the efficacy of gun lock laws actually says that gun owners resist locking laws *if* the laws interfere with self-defense. Pet. Br. 54, citing Cynthia Leonardatos, David Kopel, & Paul Blackman, *Smart Guns/Foolish Legislators: Finding the Right Public Safety Laws, and Avoiding the Wrong Ones*, 34 CONN. L.REV. 157 (2001).

Petitioners implicitly claim that a typical citizen of the District who can pass a criminal records and mental records background check (such as the National Instant Check System) is at serious risk of committing murder. It is hard to imagine how such a population could be considered fit for home rule.

*Amici* (which include many Maryland and Virginia police officers) reject Petitioners' dire and suspicious attitude toward the law-abiding citizens of the District of Columbia.

The large majority of murderers have prior criminal records; thus, Petitioners' premise for the bans—the “finding” that “Most murders are committed by previously law-abiding citizens”—is indisputably false, and therefore irrational. The truth is that “Homicide offenders are likely to commit their murders in the course of long criminal careers consisting primarily of nonviolent crimes but including larger than normal proportions of violent crimes.” David Kennedy & Anthony Braga, *Homicide in Minneapolis: Research for Problem Solving*, 2 HOMICIDE STUD. 263, 276 (1998).<sup>28</sup> For example:

- A *New York Times* study of the murders in that city in 2003-05 found “More than 90 percent of the killers had criminal records....”<sup>29</sup>
- In 1989, the *New York Times* reported that in Washington, D.C., almost all the murderers

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<sup>28</sup> The article's analysis of 1988 national data on homicide in 33 large cities showed that 54% of killers had a prior adult criminal record, 2% had a juvenile record only; no information was available on 25% and 20% did not have criminal records; so 74% of killers for whom records were available had a prior criminal record.

<sup>29</sup> Jo McGinty, *New York Killers, and those Killed, by the Numbers*, N.Y. TIMES, Apr. 28, 2006.

and victims were “involved in the drug trade.”<sup>30</sup>

- In Lowell, Massachusetts, “Some 95% of homicide offenders” had been “arraigned at least once in Massachusetts courts” before they killed. “On average ... homicide offenders had been arraigned for 9 prior offenses....”<sup>31</sup>
- Of Illinois murderers in 2001, 43% had, within the last 10 years, an Illinois felony conviction and 72% had an Illinois arrest.<sup>32</sup>
- Baltimore police records show that 92% of 2006 murder suspects had criminal records.<sup>33</sup>
- A study of Minneapolis homicide offenders found that 73% had been arrested at least once by the Minneapolis Police Department, with an average number of 7.4 arrests.<sup>34</sup>

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<sup>30</sup> Richard Berke, *Capital Offers a Ripe Market to Drug Dealers*, N.Y. TIMES, Mar. 28, 1989, at 1, 6.

<sup>31</sup> Anthony Braga et al., *Understanding and Preventing Gang Violence: Problem Analysis and Response Development in Lowell, Massachusetts*, 9 POLICE Q. 20, 29-31 (2006).

<sup>32</sup> Philip Cook et al., *Criminal Records of Homicide Offenders*, 294 JAMA 538 (2005).

<sup>33</sup> Gus Sentementes, *Patterns persist in city killings: Victims, suspects usually black men with long criminal histories*, BALT. SUN, Jan. 1, 2007.

<sup>34</sup> Kennedy & Braga, 2 HOMICIDE STUD. at 276, 283 (studying homicides perpetrated from Jan. 1, 1994 to May 24, 1997, and examining suspects' MPD arrest records from 1990 onward;

(Continued on following page)

- “The vast majority of persons involved in life threatening violence have a long criminal record with many prior contacts with the justice system.” Delbert Elliott, *Life Threatening Violence is Primarily a Crime Problem*, 69 COLO. L.REV. 1081, 1093 (1998)(summarizing studies); *see also* Kennedy & Braga, 2 HOMICIDE STUD. at 267 (among the well-established “criminological axioms” of homicide is that a “relatively high proportion of victims and offenders have a prior criminal record (about two-thirds of offenders and half of victims)”)(parenthetical in original).

### A. Domestic Violence

The D.C. bans’ false findings that “Most murders are committed by previously law-abiding citizens” were supported by the claim that there are many murders involving “arguments” or “where the killer and victims are acquainted” and that a quarter of such murders are “within families.” Clarke, *supra* p. 25, at 5. The Council did not seem to realize that criminals too have acquaintances, relatives, homes, and arguments. In fact, the perpetrators of “argument” or “domestic” homicide are, like other homicide perpetrators, overwhelmingly persons with extensive criminal records (and who are therefore barred by federal law from possessing any firearm):

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the study did not examine records of arrests by other law enforcement).



- About 18% of homicides involve boyfriends/girlfriends, friends, or family members. It is misleading to combine these homicides with “acquaintance” homicides (which are about 28% of homicides), because the most common way that the “acquaintances” met was through “prior illegal transactions,” such as drug dealing.<sup>35</sup>
- A Police Foundation study of Kansas City revealed that in 90% of homicides among family members, the police had been called to the home within the past two years. The median number of previous calls was five.<sup>36</sup>
- Another study found that 72% of domestic murderers had prior criminal history; 40% had been under restraining orders.<sup>37</sup>
- “A history of domestic violence was present in 95.8%” of the intra-family homicides studied.<sup>38</sup>

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<sup>35</sup> KLECK, *TARGETING GUNS*, at 236, analyzing data from US DOJ, *Murder Cases in 33 Large Urban Counties in the United States 1988*, <http://webapp.icpsr.umich.edu/cocoon/ICPSR-STUDY/09907.xml>, and FBI, *Supplementary Homicide Reports* (1995).

<sup>36</sup> MARIE WILT ET AL., *DOMESTIC VIOLENCE AND THE POLICE* 23 (1977).

<sup>37</sup> Linda Langford et al., *Criminal and Restraining Order Histories of Intimate Partner-Related Homicide Offenders in Massachusetts, 1991-95* in *THE VARIETIES OF HOMICIDE AND ITS RESEARCH* (FBI Academy, 2000), <http://www.icpsr.umich.edu/HRWG/PDF/hrwg99.pdf>.

<sup>38</sup> Paige Hall-Smith et al., *Partner Homicide in Context*, 2 *HOMICIDE STUD.* 400, 410 (1998).

Thus, “Homicides are likely to be part of a pattern of continuing violence—especially, but not exclusively, for domestic homicide.”<sup>39</sup>

Significantly, many domestic shootings involve lawful self-defense. Data from Detroit, Houston, and Miami, showed very large majorities of wives who killed their husbands were not convicted, or even indicted, because they were “act[ing] in self-defense against husbands who are abusive to themselves, their children, or both.” MARGO DALY & MARTIN WILSON, *HOMICIDE* 15, 199-200 (1988); see also Angela Browne, *Assault and Homicide at Home: When Battered Women Kill*, in 3 *ADVANCES IN APPLIED SOCIAL PSYCHOLOGY* 61 (Michael Saks & Leonard Saxe eds., 1986)(FBI data show that 4.8% of U.S. homicides are women killing a mate in self-defense). In a study of domestic violence victims in West Virginia shelters, “26.5% reported that they believed they would have to use a gun to protect themselves.” MARGARET PHIPPS BROWN ET AL., *THE ROLE OF FIREARMS IN DOMESTIC VIOLENCE* 31 (2000).

There is no doubt that an abused woman is at much greater risk if her abuser has a gun. However, research shows *no* heightened risk to an abuse victim who lives apart from the abuser and who has her own gun. An abuser’s being armed creates a 7.59 odds ratio for increased risk of femicide. Living alone and having a gun yields an odds ratio of 0.22, far below

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<sup>39</sup> Kennedy & Braga, 2 *HOMICIDE STUD.* at 267.

the 2.0 level necessary for statistical significance. Jacquelyn Campbell et al., *Risk Factors for Femicide in Abusive Relationships*, 93 AM.J.PUB. HEALTH 1089, 1090-92 (2003). Petitioners and their *amici* relentlessly cite variants of the first figure, but ignore the second figure.

Federal law bans the possession of any firearm by a person subject to a domestic violence restraining order, by any person convicted of a domestic violence misdemeanor, or of a felony, including non-violent felonies such as drug possession. 18 U.S.C. §922(g). The bans for domestic abusers are not overbroad, and therefore do not violate the right to arms. *See Oregon v. Hirsch*, 338 Or. 622, 114 P.3d 1104 (2005)(felon-in-possession law not overbroad); *Wisconsin v. Thomas*, 274 Wis.2d 513, 683 N.W.2d 497 (Wis.App. 2004)(same). Petitioners' law disarming abuse victims is overbroad. *See West Virginia ex rel. Princeton v. Buckner*, 180 W.Va. 457, 377 S.E.2d 139 (1988)(gun restrictions may not be "overbroad" or "sweep unnecessarily broadly"); *State v. Kessler*, 289 Or. 359, 614 P.2d 94 (1980)(ban on home possession of a protected arm is *per se* unconstitutional); *Junction City v. Mevis*, 226 Kan. 516, 601 P.2d 1145 (1979)(ban on weapons transport was "constitutionally overbroad," even though "city maintains that the courts should read additional exceptions into the act which are not specifically contained therein"); *Lakewood v. Pillow*, 180 Colo. 20, 501 P.2d 744 (1972)("overbroad" restrictions on firearms possession and transport; a "legitimate and substantial" government "purpose cannot

be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.”).

## **B. Juveniles**

The instant case involves firearms ownership by law-abiding adults. Yet Petitioners and their *amici* cite statistics about gun misuse by juveniles.

The citations miss Justice Frankfurter’s point that it is unconstitutional to infantilize the entire nation by restricting adults to possessing only items suitable for children. *Butler v. Michigan*, 352 U.S. 380 (1957)(rejecting the notion that literature for adults should be censored to protect children from seeing inappropriate materials). Besides, ordinary American teenagers are, like ordinary American adults, not incipient murderers. The vast majority of young murderers are, like their older counterparts, established criminals:

- A Los Angeles study showed that gangs had a role in 80% of all adolescent homicides.<sup>40</sup>

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<sup>40</sup> Off. of Juv. Just. & Delinq. Prev., *Report to Congress on Juvenile Violence Research* 14 (July 1999), [www.ojjdp.ncjrs.org/pubs/jvr/contents.html](http://www.ojjdp.ncjrs.org/pubs/jvr/contents.html).

- 57% of homicides perpetrated by male youths are committed in the course of another crime, such as robbery or rape.<sup>41</sup>
- A study of young murderers found that 89% had psychotic symptoms.<sup>42</sup>

### C. Body Count Statistics

Petitioners and their *amici* cite various articles comparing the number of criminals killed by armed citizens with the number of deaths from gun misuse, and claim that since the former number is smaller than the latter, guns must be too dangerous for home defense.

Again, the comparison falsely combines two separate groups: law-abiding gun owners (who are disarmed by Petitioners' law) and illegal criminal gun owners (who are not, and who perpetrate the vast majority of murders).

More fundamentally, counting the number of criminal deaths is a very inappropriate measure of anticrime utility. *Amici* would strongly oppose making

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<sup>41</sup> Ann Loper & Dewey Cornell, *Homicide by Juvenile Girls*, 5 J.CHILD & FAM. STUD. 323, 326, 330 (1996)(also noting that males constitute 94% of juvenile homicide perpetrators).

<sup>42</sup> Wade Myers & Kerrilyn Scott, *Psychotic and Conduct Disorder Symptoms in Juvenile Murderers*, 2 HOMICIDE STUD. 160 (1998)(also noting prior studies showing young murderers to be distinguished by “neurological abnormalities,” “criminally violent family members” and “gang membership”).

the number of justifiable homicides into a positive metric for the performance of particular police forces or individual officers.

Besides, the survey evidence of defensive gun use (detailed in Part I) is unanimous that the large majority of DGUs consist only of brandishing a gun, rather than firing a shot, let alone a fatal one.

#### **D. Accidents**

One reason that the per capita death rate from firearms accidents has declined by 86% since 1948, while the per capita firearms supply has risen by 158% (*see* App. 12-13) is that handguns have replaced many long guns as the firearm kept in the home.<sup>43</sup> The gun accidental death rate for children has fallen even more sharply, by 91%. *See* App. 7-10. Handguns are more difficult for a small child to accidentally discharge than are long guns. The trigger on a rifle or shotgun is easier to pull than is the heavier trigger on a revolver or the slide on a self-loading pistol. Handguns

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<sup>43</sup> An additional reason for the 86% reduction in accidents may be expert-led safety programs, principally Project ChildSafe (created by the National Shooting Sports Foundation, funded in part by the DOJ, partnered with the National Lieutenant Governors Association, and promoted by local law enforcement)([www.projectchildsafe.org](http://www.projectchildsafe.org)), and Eddie Eagle Gun Safety (created by the NRA, winner of two awards from the National Safety Council, and taught by police and sheriffs departments all over America)([www.nrahq.org/safety/eddie/awards.asp](http://www.nrahq.org/safety/eddie/awards.asp)).

can be hidden from inquisitive children more easily than long guns can.

For all ages, the fatal gun accident rate is at an all-time low, even as the per capita gun supply is at an all-time high. The annual risk level for a fatal gun accident is 0.22 per 100,000 population—about the risk level for taking two airplane trips a year, or for a whooping cough vaccination. *See* App. 15 (2004 gun data); BREYER, *BREAKING THE VICIOUS CIRCLE*, at 5, 7 (AIRPLANE AND VACCINE DATA).

Swimming pools are involved in many more accidental child fatalities than are firearms. NATIONAL SAFETY COUNCIL, *INJURY FACTS 2007*, at 133, 144 (in 2003, there were 7 accidental firearms deaths for children aged under 5, and 49 for ages 5-14; for the combined age groups in that same year, there were 86 bathtub deaths, and 285 in swimming pools); STEVEN LEVITT & STEPHEN DUBNER, *FREAKONOMICS* 135-36 (rev.ed. 2006)(swimming pool accidents cause more deaths of children under 10 years than all forms of death by firearm combined. “The likelihood of death by pool (1 in 11,000) versus death by gun (1 in 1 million-plus) isn’t even close.”)(parentheticals in original).

To ban airplanes, swimming pools, or whooping cough vaccine based on a microscopic rate of fatal accidents would be absurd; the District’s assertion of accidents as a reason for banning handguns or functional firearms cannot pass rational basis review.

The people who cause gun accidents tend to have high rates of “arrests, violence, alcohol abuse, highway crashes, and citations for moving traffic violations.” Julian Waller & Elbert Whorton, *Unintentional Shootings, Highway Crashes, and Acts of Violence*, 5 ACCIDENT ANALYSIS & PREVENTION 351, 353 (1973). Unlike in 1973, many such people are now prevented from buying a gun by the National Instant Check System.

It is true, and trivial, that homes with guns have more gun accidents, just as homes with lawnmowers have more lawnmower accidents.

### III. Long Guns Are Inadequate Substitutes

Mayor Fenty claims that “It is plainly relevant that the District allows residents to possess other perfectly effective firearms....”<sup>44</sup> To the contrary, the District’s highest court has recognized that banning self-defense in the home is the intent of the gun lock statute, and has upheld that ban.<sup>45</sup> Moreover, handguns are often superior and safer for self-defense *especially* in urban environments. That is why 80% of

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<sup>44</sup> Adrian Fenty & Linda Singer, *Fighting for Our Handgun Ban*, WASH. POST, Sept. 4, 2007.

<sup>45</sup> *McIntosh v. Washington*, 395 A.2d 744, 755 (D.C. 1977)(noting the Council’s finding that “that for each intruder stopped by a firearm there are four gun-related accidents within the home”—and thereby showing that elimination of self-defense against intruders was considered by the Council to be a price worth paying).



defensive uses of firearms are with handguns.<sup>46</sup> That is why almost all police officers use handguns when entering a building, and why so many police officers use handguns for defense of their homes and families when off-duty:

- A handgun is much easier to hold while phoning (or for police, radioing) for help.
- The ability to summon help while simultaneously keeping the gun pointed at the criminal reduces the chance that the home-owner or the police officer will have to shoot the criminal; it is preferable that criminals be captured rather than killed.
- Especially in a home, a long gun is harder to maneuver (e.g., around corners) and shoot, and, because of its length, is easier for a criminal to grab. Thus, handguns are far superior as defensive arms for use in small urban spaces such as apartments.
- For persons who have relatively weak upper body strength (such as the elderly, or small persons, or some women), a handgun is much easier to hold, control, and aim accurately.

The reason that handguns have been called “equalizers”<sup>47</sup> is that they are the best tool for a person to

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<sup>46</sup> Kleck & Gertz, 86 J.CRIM.L. & CRIMINOLOGY, at 175.

<sup>47</sup> “Be not afraid of any man,  
No matter what his size.  
When danger threatens, call on me  
And I will equalize.”

(Continued on following page)

defend herself against larger or more numerous attackers, especially in a close-range setting such as the home.

#### **IV. The Handgun and Self-Defense Bans Violate Precedent and Original Intent**

While strict scrutiny is the appropriate standard of review for most gun controls, it unnecessary here, for this Court's own precedents indicate the unconstitutionality of a handgun ban.

*Robertson v. Baldwin* declared “the carrying of concealed weapons” (presumably, handguns and knives) to be an exception to the Second Amendment. 165 U.S. 275, 281-82 (1897). The exception proves the rule: that a ban on all handguns in the home violates the Second Amendment. Similarly, Justice Holmes’ opinion in *Patson v. Pennsylvania* upheld a state statute against legal aliens possessing long guns for hunting, because the statute “does not extend to weapons such as pistols that may be supposed to be needed occasionally for self-defence.” 232 U.S. 138, 143 (1914).

Petitioners’ extreme and unusual law is well outside the constitutional mainstream. *Cf. Lawrence v. Texas*, 539 U.S. 558 (2003)(only four states had the law at issue; here, only Chicago and a few of its

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Late 19th century advertisement for the Equalizer, a Colt handgun (which is now antique, but banned in the District).

suburbs ban handguns, and even they do not outlaw home self-defense with long guns); *Romer v. Evans* 517 U.S. 620 (1996)(emphasizing extreme, unique nature of the law); *Griswold v. Connecticut*, 381 U.S. 479, 485-86 (1965) (unusual statute “forbidding the use” of a lawful product in the home).

St. George Tucker—the leading legal scholar of the Early Republic, on whom this Court has relied many times for original intent—used an example of a law like the one at bar to illustrate the necessity of judicial review. 1 WILLIAM BLACKSTONE, COMMENTARIES, App. at 289 (St. George Tucker ed., Lawbook Exch., 1996)(1803)(arguing that the Necessary and Proper clause barred disarming citizens, because disarmament could never be necessary or proper). He further stated that self-defense is part of the Second Amendment: “This may be considered as the true palladium of liberty...The right of self defence is the first law of nature.” *Id.* at vol. 1, App. at 300. Justice Story later adopted the “true palladium” image of the Second Amendment in his own treatise. 2 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 607 (2ded. 1851).

In a passage ignored by Petitioners’ *amici* historians, Tucker wrote: “The right of the people to keep and bear arms shall not be infringed. Amendments to C. U.S. Art. 4, and this without any qualification as to their condition or degree, as is the case in the British government.” *Id.* at vol. 2, 143 n.40. (The right to

arms was originally the fourth of 12 amendments Congress proposed to the people.)

Like all 19th century commentators, Tucker recognized the Second Amendment as an individual right belonging to all citizens, and including the right to possess arms for self-defense. *See* David Kopel, *The Second Amendment in the Nineteenth Century*, 1998 BYU L.REV. 1359.

In 1846, the Supreme Court of Georgia held that a ban on handguns violated the Second Amendment, but that restrictions on concealed carry did not. *Nunn v. Georgia*, 1 Ga. 243 (1846); *see also* Jason Mazzone, *The Bill of Rights in Early State Courts*, 92 MINN. L.REV. 1 (2007)(observing that post-*Barron*, many state courts still applied the Bill of Rights to state laws, and several did so with the Second Amendment); Akhil Reed Amar, *The Bill of Rights and the Fourteenth Amendment*, 101 YALE L.J. 1193, 1203-17 (1992)(*Nunn* was one of several state opinions which provided the intellectual foundation for the Fourteenth Amendment).

The District has a legitimate interest in a screening system, such as the National Instant Check System, for purchasers of firearms. However, banning handguns and home defense because of invidious prejudice

amounts to unconstitutionally piling “inference upon inference”<sup>48</sup> and “prophylaxis upon prophylaxis.”<sup>49</sup>

## CONCLUSION

“I don’t intend to run this government around the moment of survival,” declared D.C. Councilman David A. Clarke, chairman of the committee that created the handgun and self-defense ban.<sup>50</sup> The Second Amendment forbids banning the tools of survival. Petitioners’ dangerous laws deprive the public and law enforcement of the life-saving, crime-reducing effects of gun ownership which are apparent in the 50 states.

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<sup>48</sup> *Gonzales v. Raich*, 545 U.S. 1, 35 (2005)(Scalia, J., concurring); *Sabri v. United States*, 541 U.S. 600, 608 (2004); *United States v. Lopez*, 514 U.S. 549, 567 (1995); *Mathews v. Lucas*, 427 U.S. 495, 522 (1976)(Stevens, J., dissenting); *Anderson v. United States*, 417 U.S. 211 (1974); *Ingram v. United States*, 360 U.S. 672, 680 (1959); *Pereira v. United States*, 347 U.S. 1, 15 (1954)(Minton, J., concurring and dissenting); *Direct Sales Co. v. United States*, 319 U.S. 703, 711 (1943); *United States v. Classic*, 313 U.S. 299, 332 (1941)(Douglas, J., dissenting); *United States v. Ross*, 92 U.S. 281, 282 (1875).

<sup>49</sup> *Fed. Election Comm’n v. Wis. Right to Life*, \_\_\_ U.S. \_\_\_, 127 S.Ct. 2652, 2673 (2007).

<sup>50</sup> Daniel Greene, *The Case for Owning a Gun*, THE WASHINGTONIAN, Mar. 1985.

The decision below should be affirmed.

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## **APPENDIX**

**APPENDIX A**  
**Self-Defense Data**

**1. The 13 studies of the frequency of defensive gun use**

| <b>Survey</b>                         | <b>Field</b>           | <b>Bordua</b> | <b>DMI one</b> | <b>DMI two</b> |
|---------------------------------------|------------------------|---------------|----------------|----------------|
| Area                                  | Calif.                 | Illinois      | U.S.           | U.S.           |
| Year of interviews                    | 1976                   | 1977          | 1978           | 1978           |
| Gun type covered                      | Handgun                | All           | All            | All            |
| Recall period                         | Ever/1 yr./2 yrs.      | Ever          | Ever           | Ever           |
| Exclude uses against animals?         | No                     | No            | No             | Yes            |
| Exclude military/police uses?         | Yes                    | No            | Yes            | Yes            |
| DGU question refers to                | Self                   | Self          | Househld.      | Househld.      |
| % who used gun                        | 8.6/1.4/3 <sup>a</sup> | 5.0           | 15             | 7              |
| % who fired gun                       | 2.9                    | n.a.          | 6              | n.a.           |
| Implied annual # of DGUs <sup>b</sup> | 3,052,717              | 1,414,544     | 2,141,512      | 1,098,409      |



| <b>Survey</b>                         | <b>Hart</b> | <b>Ohio</b> | <b>Mauser</b> | <b>Gallup</b> | <b>Gallup</b> |
|---------------------------------------|-------------|-------------|---------------|---------------|---------------|
| Area                                  | U.S.        | Ohio        | U.S.          | U.S.          | U.S.          |
| Year of interview                     | 1981        | 1982        | 1990          | 1991          | 1993          |
| Gun type covered                      | Handgun     | Handgun     | All           | All           | All           |
| Recall period                         | 5 year      | Ever        | 5 year        | Ever          | Ever          |
| Exclude uses against animals?         | Yes         | No          | Yes           | No            | No            |
| Exclude military/police uses?         | Yes         | No          | Yes           | No            | Yes           |
| DGU question refers to                | Household   | Self        | Household     | Self          | Self          |
| % who used gun                        | 4           | 6.5         | 3.79          | 8             | 11            |
| % who fired gun                       | n.a.        | 2.6         | n.a.          | n.a.          | n.a.          |
| Implied annual # of DGUs <sup>b</sup> | 1,797,461   | 771,043     | 1,487,342     | 777,153       | 1,621,377     |

| <b>Survey</b>                         | <b>Kleck &amp; Gertz</b> | <b>L.A. Times</b> | <b>Tarrance</b>  | <b>Police Foundation</b> |
|---------------------------------------|--------------------------|-------------------|------------------|--------------------------|
| Area                                  | U.S.                     | U.S.              | U.S.             | U.S.                     |
| Year of interviews                    | 1993                     | 1994              | 1994             | 1994                     |
| Gun type covered                      | All                      | All               | All              | All                      |
| Recall period                         | 1 year                   | Ever              | 5 year           | 1 year                   |
| Excluded uses against animals?        | Yes                      | No                | Yes              | Yes                      |
| Excluded military/police uses?        | Yes                      | Yes               | Yes              | Yes                      |
| DGU question refers to                | Self                     | Self              | Self/Household   | Self                     |
| % who used gun                        | 1.326                    | 8 <sup>c</sup>    | 1/2 <sup>d</sup> | 1.44                     |
| % who fired gun                       | 0.63                     | n.a.              | n.a.             | 0.70                     |
| Implied annual # of DGUs <sup>b</sup> | 2,549,862                | 3,609,682         | 764,036          | 1,460,000                |

Defensive Gun Use Surveys are from GARY KLECK, *TARGETING GUNS* (1997), chapter 5; PHILIP COOK & JENS LUDWIG, *GUNS IN AMERICA* 62-63 (1996)

Notes to Table:

- <sup>a</sup> 1.4% in past year, 3% in past two years, 8.6% ever.
- <sup>b</sup> Estimated annual number of DGUs of guns of all types against humans, excluding uses connected with military or police duties.
- <sup>c</sup> Covered only uses outside the home.
- <sup>d</sup> 1% of respondents, 2% of households.

## 2. National Crime Victim Survey calculations

Most of the NCVS data are not published in a narrative format. Instead, they are available for researchers at the website of the Inter-University Consortium for Political and Social Research (ICPSR), <http://www.icpsr.umich.edu/>.

The NCVS data for 1992-2005 suggest 97,000 defensive gun uses annually during that period. The figure is based on “National Crime Victimization Survey, 1992-2005: Concatenated Incident-Level File.” (Available at: <http://search.icpsr.umich.edu/NACJD/query.html?nh=500&rq=0&col=abstract&op0=%2B&rf=3&tx0=national+crime+victimization+survey&fl0=title%3A&ty0=p&ty1=w&op1=%2B&fl1=archive%3A&tx1=NACJD>).

Tabulate V4144. Self-protective action: Attacked of-fender with gun

|                 | Frequency | Percent | Cumulative |
|-----------------|-----------|---------|------------|
| No              | 29,906    | 17.53   | 17.53      |
| Yes             | 83        | 0.05    | 17.58      |
| Out of Universe | 140,639   | 82.42   | 100        |
| Total           | 170,628   |         | 100        |

App. 5

Tabulate V4147, Self-protective action: Threatened offender with gun

|                 | Frequency | Percent | Cumulative |
|-----------------|-----------|---------|------------|
| No              | 29,708    | 17.41   | 17.41      |
| Yes             | 281       | 0.16    | 17.58      |
| Out of Universe | 140,639   | 82.42   | 100        |
| Total           | 170,628   |         | 100        |

The combined tabulations suggest a DGU rate of 1.2% for violent crimes. The NCVS average crime rate per 1,000 US population over the age of 12 in 1992-2005 was 35.8. The average population of the US between 1992 and 2005 was 275,768,380. Of that population, 82% was over the age of 12. So:

Multiply total US population by .82 = 226,130,072  
(population over age 12)

Divide by 1,000 = 226,130.072 (over-12 population in thousands)

Multiply by 35.8 = 8,095,457 (number of annual violent crimes)

Multiply by 1.2% (NCVS rate of DGUs for 1992-2005)  
= 97,145 (average annual DGUs)

Sources :

Population:

[http://www.fbi.gov/ucr/cius2006/data/table\\_01.html](http://www.fbi.gov/ucr/cius2006/data/table_01.html)

Percent of the population over 12:

<http://www.census.gov/prod/2001pubs/c2kbr01-12.pdf>

NCVS violent crime rate per 1,000 persons over age 12

<http://www.ojp.usdoj.gov/bjs/glance/tables/viortrdtab.htm>

## App. 6

The data for 2005 suggest 74,695 DGUs that year. Calculations are as follows:

US Population in 2005: 296,410,404

Subtract 20% = 237,128,323 (population over age 12)

Divide by 1,000 = 237,128.404 (over-12 population in thousands)

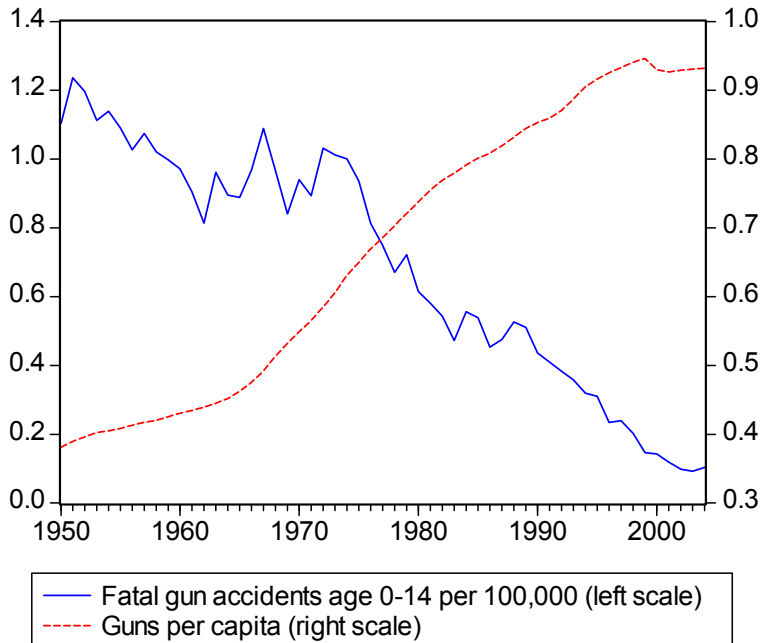
Multiply by 21 (the NCVS 2005 violent crime rate per thousand persons over the age of 12) = 4,979,695 (number of violent crimes in 2005)

Multiply by 1.5% (NCVS rate of DGUs for 2005) = 74,695 (DGUs in 2005).

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**APPENDIX B  
Accident Data**

**1. Child gun fatality rate compared to guns per capita, 1950-2004**



**Important note:** There is a magnitude difference of 100,000 between the left and right scales. The right scale measures a single gun; it begins with less than .4 guns per American in 1950, and ends with more than .9 guns per American in 2004. The scale on the left is fatal accidents per 100,000 persons aged 14 or under. The youth fatal gun accident rate declines by 91%, from 1.1 fatalities per 100,000 youths in 1950, to about 0.1 per 100,000 youths in 2004.

App. 8

Sources: Fatal gun accidents from Centers for Disease Control, *Compressed Mortality File*, <http://wonder.cdc.gov/mortSQL.html>.

Guns per capita from GARY KLECK, *TARGETING GUNS: FIREARMS AND THEIR CONTROL 96-97* (1997), and Bureau of Alcohol, Tobacco, Firearms & Explosives, *Annual Firearms Manufacture and Export Report*, <http://www.atf.gov/firearms/stats/index.htm>.

Data Table for the Chart

| <b>Year</b> | <b>Fatal gun accidents for ages 14 &amp; under</b> | <b>Population under 14</b> | <b>Fatal accidents per 100,000 children</b> | <b>Guns per capita</b> |
|-------------|--|----------------------------|---|------------------------|
| 1950        | 451  | 40,853,299                 | 1.10  | 0.38                   |
| 1951        | 520  | 42,064,604                 | 1.24  | 0.39                   |
| 1952        | 519  | 43,376,761                 | 1.20  | 0.40                   |
| 1953        | 498  | 44,759,194                 | 1.11  | 0.40                   |
| 1954        | 527  | 46,265,590                 | 1.14  | 0.40                   |
| 1955        | 522  | 47,866,820                 | 1.09  | 0.41                   |
| 1956        | 508  | 49,448,548                 | 1.03  | 0.41                   |
| 1957        | 549  | 51,079,515                 | 1.07  | 0.42                   |
| 1958        | 538  | 52,698,698                 | 1.02  | 0.42                   |
| 1959        | 542  | 54,345,325                 | 1.00  | 0.43                   |
| 1960        | 544  | 55,971,292                 | 0.97  | 0.43                   |
| 1961        | 507  | 56,045,549                 | 0.90  | 0.43                   |
| 1962        | 456  | 56,018,882                 | 0.81  | 0.44                   |
| 1963        | 538  | 55,946,055                 | 0.96  | 0.44                   |

## App. 9

|      |     |            |      |      |
|------|-----|------------|------|------|
| 1964 | 500 | 55,835,037 | 0.90 | 0.45 |
| 1965 | 494 | 55,618,888 | 0.89 | 0.46 |
| 1966 | 535 | 55,287,117 | 0.97 | 0.48 |
| 1967 | 598 | 54,889,988 | 1.09 | 0.49 |
| 1968 | 527 | 54,491,901 | 0.97 | 0.51 |
| 1969 | 455 | 54,088,773 | 0.84 | 0.53 |
| 1970 | 506 | 53,802,863 | 0.94 | 0.55 |
| 1971 | 481 | 53,834,598 | 0.89 | 0.57 |
| 1972 | 554 | 53,699,935 | 1.03 | 0.58 |
| 1973 | 541 | 53,450,214 | 1.01 | 0.61 |
| 1974 | 532 | 53,162,742 | 1.00 | 0.63 |
| 1975 | 495 | 52,894,592 | 0.94 | 0.65 |
| 1976 | 428 | 52,604,523 | 0.81 | 0.67 |
| 1977 | 392 | 52,325,064 | 0.75 | 0.69 |
| 1978 | 349 | 52,059,828 | 0.67 | 0.70 |
| 1979 | 372 | 51,523,398 | 0.72 | 0.72 |
| 1980 | 316 | 51,368,905 | 0.62 | 0.74 |
| 1981 | 298 | 51,275,045 | 0.58 | 0.76 |
| 1982 | 279 | 51,367,319 | 0.54 | 0.77 |
| 1983 | 243 | 51,458,409 | 0.47 | 0.78 |
| 1984 | 287 | 51,580,345 | 0.56 | 0.79 |
| 1985 | 278 | 51,615,831 | 0.54 | 0.80 |
| 1986 | 234 | 51,592,128 | 0.45 | 0.81 |
| 1987 | 247 | 51,965,425 | 0.48 | 0.82 |
| 1988 | 277 | 52,603,938 | 0.53 | 0.83 |
| 1989 | 273 | 53,404,219 | 0.51 | 0.84 |



App. 10

|      |     |            |      |      |
|------|-----|------------|------|------|
| 1990 | 236 | 54,065,132 | 0.44 | 0.85 |
| 1991 | 227 | 55,352,258 | 0.41 | 0.86 |
| 1992 | 216 | 56,297,147 | 0.38 | 0.87 |
| 1993 | 205 | 57,202,683 | 0.36 | 0.89 |
| 1994 | 185 | 57,918,481 | 0.32 | 0.91 |
| 1995 | 181 | 58,379,928 | 0.31 | 0.92 |
| 1996 | 138 | 58,850,406 | 0.23 | 0.93 |
| 1997 | 142 | 59,217,153 | 0.24 | 0.93 |
| 1998 | 121 | 59,659,176 | 0.20 | 0.94 |
| 1999 | 88  | 59,955,368 | 0.15 | 0.95 |
| 2000 | 86  | 60,253,375 | 0.14 | 0.93 |
| 2001 | 72  | 60,434,835 | 0.12 | 0.93 |
| 2002 | 60  | 60,646,433 | 0.10 | 0.93 |
| 2003 | 56  | 60,737,916 | 0.09 | 0.93 |
| 2004 | 63  | 60,821,996 | 0.10 | 0.93 |

Before 1950, mortalities from child firearm accidents were combined with all non-motor vehicle accidents, so reliable firearm-only data before 1950 were not available.

Caveat: The guns per capita figure in this Table and the next Table are based on manufacturer data recorded by the BATFE, then modified to account for net imports and exports. The data do not account for the home manufacture of firearms (which is generally legal for personal use, but not for sale). Nor do they account for guns which are seized by the police and then destroyed. (Many seized guns are re-sold by the police to licensed manufacturers or gun dealers, and

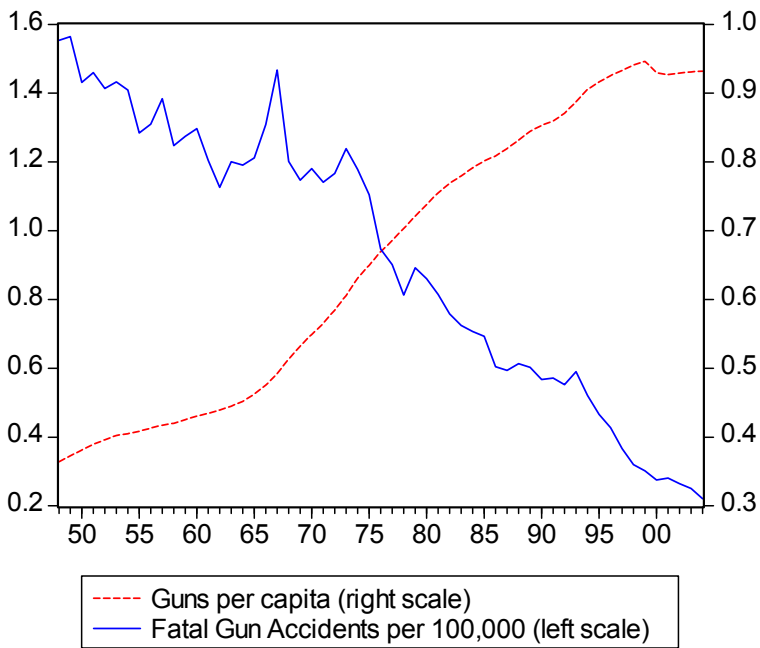
thereafter re-sold to ordinary buyers.) Nor do the data account for guns that become dysfunctional due to rust or wear and tear. There are no general studies on the subject. However, unless a gun is exposed to a moist climate for an extended time, is neglected, and then rusts, guns can remain functional for centuries. A heavily-used target competition gun might eventually need to have the barrel or a spring replaced in order to retain optimal accuracy, but in general, guns may be one of the most durable consumer products in existence. Over the last few decades, an increasingly large fraction of guns (such as pistols from Glock, or Smith & Wesson) have been partially made from plastic polymers, and such guns appear to be even more durable.

Even if one made an arbitrary assumption that no gun lasts for longer than 50 years (or 40 years, or 30 years), the revised data would still show an increase in guns per capita being accompanied by an enormous decline in accidents. A 1994 study by the Police Foundation estimated that there were 192 million privately-owned guns in the United States—lower than the 235 million estimate in the table below, but broadly consistent with the evidence of a large increase in the U.S. gun supply in the past half-century. See PHILIP COOK & JENS LUDWIG, *GUNS IN AMERICA: RESULTS OF A COMPREHENSIVE NATIONAL SURVEY OF FIREARMS OWNERSHIP AND USE* 13 (1996).

The Small Arms Survey, an international research organization affiliated with the Graduate Institute of International Studies, Geneva, Switzerland, reports that estimates of the current U.S.

civilian gun supply range from 250 million to 290 million, while the Survey's own methodology suggests a supply of about 317 million (for a U.S. population of about 300 million). SMALL ARMS SURVEY 2007, at 59 (Eric G. Berman et al. eds., 2007). These estimates are generally compatible with the per-capita figures presented in the Data Table below, with 273 million guns as of 2004.

**2. Fatal gun accident rate compared to the number of guns per capita, 1948-2004**



Again, the left and right scales differ by a magnitude of 100,000. The right scale (ownership) is guns per person. In 1948 there were .36 guns per person. (That

is, about one gun for every three Americans.) By 2004, there was nearly one gun for every American. The left scale (accidents) is per 100,000 persons. In 1948, there were 1.6 fatal gun accidents per 100,000 persons. By 2004, the rate had fallen by 86%, so that there were .22 fatal accidents per 100,000 persons.

Sources: fatal gun accidents from Centers for Disease Control, *Compressed Mortality File*, <http://wonder.cdc.gov/mortSQL.html>, and GARY KLECK, *TARGETING GUNS: FIREARMS AND THEIR CONTROL* 323-24 (1997).

The gun supply figures are from GARY KLECK, *TARGETING GUNS: FIREARMS AND THEIR CONTROL* 96-97 (1997), and Bureau of Alcohol, Tobacco, Firearms & Explosives, *Annual Firearms Manufacture and Export Report*, <http://www.atf.gov/firearms/stats/index.htm>.

Data Table for the Chart

| <b>Year</b> | <b>Total gun stock</b> | <b>Fatal gun acdnts.</b> | <b>Popul. (in 1000s)</b> | <b>Guns per capita</b> | <b>Fatal gun acdnts. per 100,000 persons</b> |
|-------------|------------------------|--------------------------|--------------------------|------------------------|--|
| 1948        | 53,203,031             | 2,270                    | 146,091                  | 0.36                   | 1.55   |
| 1949        | 55,406,460             | 2,326                    | 148,666                  | 0.37                   | 1.56   |
| 1950        | 57,902,081             | 2,174                    | 151,871                  | 0.38                   | 1.43   |
| 1951        | 59,988,664             | 2,247                    | 153,970                  | 0.39                   | 1.46   |
| 1952        | 61,946,315             | 2,210                    | 156,369                  | 0.40                   | 1.41   |
| 1953        | 63,945,235             | 2,277                    | 158,946                  | 0.40                   | 1.43   |

## App. 14

|      |             |       |           |      |      |
|------|-------------|-------|-----------|------|------|
| 1954 | 65,558,052  | 2,281 | 161,881   | 0.40 | 1.41 |
| 1955 | 67,387,135  | 2,120 | 165,058   | 0.41 | 1.28 |
| 1956 | 69,435,933  | 2,202 | 168,078   | 0.41 | 1.31 |
| 1957 | 71,416,509  | 2,369 | 171,178   | 0.42 | 1.38 |
| 1958 | 73,163,450  | 2,172 | 174,153   | 0.42 | 1.25 |
| 1959 | 75,338,188  | 2,258 | 177,136   | 0.43 | 1.27 |
| 1960 | 77,501,065  | 2,334 | 179,972   | 0.43 | 1.30 |
| 1961 | 79,536,616  | 2,204 | 182,976   | 0.43 | 1.20 |
| 1962 | 81,602,984  | 2,092 | 185,739   | 0.44 | 1.13 |
| 1963 | 83,834,808  | 2,263 | 188,434   | 0.44 | 1.20 |
| 1964 | 86,357,701  | 2,275 | 191,085   | 0.45 | 1.19 |
| 1965 | 89,478,922  | 2,344 | 193,457   | 0.46 | 1.21 |
| 1966 | 93,000,989  | 2,558 | 195,499   | 0.48 | 1.31 |
| 1967 | 97,087,751  | 2,896 | 197,375   | 0.49 | 1.47 |
| 1968 | 102,302,251 | 2,394 | 199,312   | 0.51 | 1.20 |
| 1969 | 107,111,820 | 2,309 | 201,298   | 0.53 | 1.15 |
| 1970 | 111,917,733 | 2,406 | 203,798.7 | 0.55 | 1.18 |
| 1971 | 116,928,781 | 2,360 | 206,817.5 | 0.57 | 1.14 |
| 1972 | 122,304,980 | 2,442 | 209,274.9 | 0.58 | 1.17 |
| 1973 | 128,016,673 | 2,618 | 211,349.2 | 0.61 | 1.24 |
| 1974 | 134,587,281 | 2,513 | 213,333.6 | 0.63 | 1.18 |
| 1975 | 139,915,125 | 2,380 | 215,456.6 | 0.65 | 1.10 |
| 1976 | 145,650,789 | 2,059 | 217,553.9 | 0.67 | 0.95 |
| 1977 | 150,748,000 | 1,982 | 219,760.9 | 0.69 | 0.90 |
| 1978 | 156,164,518 | 1,806 | 222,098.2 | 0.70 | 0.81 |
| 1979 | 161,888,861 | 2,004 | 224,568.6 | 0.72 | 0.89 |

App. 15

|      |             |       |           |      |      |
|------|-------------|-------|-----------|------|------|
| 1980 | 167,681,587 | 1,955 | 227,224.7 | 0.74 | 0.86 |
| 1981 | 173,262,755 | 1,871 | 229,465.7 | 0.76 | 0.82 |
| 1982 | 178,218,890 | 1,756 | 231,664.4 | 0.77 | 0.76 |
| 1983 | 182,273,263 | 1,695 | 233,792.0 | 0.78 | 0.73 |
| 1984 | 186,683,867 | 1,668 | 235,824.9 | 0.79 | 0.71 |
| 1985 | 190,658,136 | 1,649 | 237,923.7 | 0.80 | 0.69 |
| 1986 | 194,182,072 | 1,452 | 240,132.8 | 0.81 | 0.60 |
| 1987 | 198,526,508 | 1,440 | 242,288.9 | 0.82 | 0.59 |
| 1988 | 203,306,821 | 1,501 | 244,499.0 | 0.83 | 0.61 |
| 1989 | 208,489,609 | 1,489 | 246,819.2 | 0.84 | 0.60 |
| 1990 | 212,823,547 | 1,416 | 249,438.7 | 0.85 | 0.57 |
| 1991 | 216,695,946 | 1,441 | 252,127.4 | 0.86 | 0.57 |
| 1992 | 222,067,343 | 1,409 | 254,994.5 | 0.87 | 0.55 |
| 1993 | 228,660,966 | 1,521 | 257,746.1 | 0.89 | 0.59 |
| 1994 | 235,604,001 | 1,356 | 260,289.2 | 0.91 | 0.52 |
| 1995 | 240,770,928 | 1,225 | 262,764.9 | 0.92 | 0.47 |
| 1996 | 245,379,137 | 1,134 | 265,189.8 | 0.93 | 0.43 |
| 1997 | 249,748,101 | 981   | 267,743.6 | 0.93 | 0.37 |
| 1998 | 254,199,406 | 866   | 270,248.0 | 0.94 | 0.32 |
| 1999 | 257,991,026 | 824   | 272,690.8 | 0.95 | 0.30 |
| 2000 | 261,592,676 | 776   | 281,421.9 | 0.93 | 0.28 |
| 2001 | 264,360,377 | 802   | 285,317.6 | 0.93 | 0.28 |
| 2002 | 267,556,289 | 762   | 287,973.9 | 0.93 | 0.26 |
| 2003 | 270,695,992 | 730   | 290,809.8 | 0.93 | 0.25 |
| 2004 | 273,643,000 | 649   | 293,655.4 | 0.93 | 0.22 |

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## **APPENDIX C**

### **Statement of Interest of Additional *Amici***

#### **Maryland State Lodge, Fraternal Order of Police**

Founded in 1967, the Maryland State Lodge of the Fraternal Order of Police is the largest organization of rank and file law enforcement officers in Maryland, comprising 19,198 members and 68 subordinate lodges. The Maryland FOP's mission is to support the interests of law enforcement and public safety.

#### **San Francisco Veteran Police Officers Association**

San Francisco Veteran Police Officers Association (SFVPOA) represents retired San Francisco officers. SFPVOA members and their families need to be able to defend themselves from the criminals they have arrested throughout their careers, and SFPVOA recognizes the self-defense needs of all law-abiding citizens. The SFVPOA participated in the lawsuit that overturned a handgun ban in San Francisco. *Fiscal v. City & County of San Francisco*, \_\_\_ Cal. Rptr. 3d \_\_\_, 2008 WL 81550 (Cal. Ct. App. 2008).

#### **Long Beach Police Officers Association**

The Long Beach Police Officers Association represents members in the police officer, corporal,

sergeant and lieutenant ranks, who police the 35th-largest city in the United States.

### **Texas Police Chiefs Association**

The Texas Police Chiefs Association was founded in 1958 to promote, encourage and advance the professional development of Chiefs of Police and senior police management personnel throughout the State of Texas. TCPA represents over 600 law enforcement executives in Texas.

### **Texas Municipal Police Association**

Founded in 1950 to promote professionalism in law enforcement, the Texas Municipal Police Association represents 14,000 officers. TMPA provides law enforcement training in a wide variety of subjects, with special emphasis on bringing courses to rural departments that cannot afford to send officers to big cities for classes.

### **New York State Association of Auxiliary Police**

The New York State Association of Auxiliary Police represents uniformed police volunteers in 55 police departments throughout New York State. Auxiliary police in New York date back to 1932; their status was formalized by the statewide Defense Emergency Act of 1951.



**Alpine County, California, District Attorney  
Will Richmond**

Will Richmond previously served as District Attorney for Tulare County, and as Deputy Chief Assistant U.S. Attorney for Eastern District of California. He was appointed Alpine County District Attorney in 2002, and then elected to the position.

**Amador County, California, District Attorney  
District Attorney Todd Reibe**

First elected in 1999, Todd Reibe was re-elected in 2002 and 2006.

**Butte County, California, District Attorney  
Michael Ramsey**

Michael Ramsey has served as a prosecutor for 29 years, and as Butte County District Attorney for over 20 years. During his administration the department has instituted 17 special prosecution units and investigative programs.

**Colusa County, California, District Attorney  
John Poyner**

John Poyner was first elected District Attorney in 1986, and has been re-elected ever since. He is California District Attorneys Association President-Elect for 2007-2008.

**Del Norte County, California, District Attorney  
Michael D. Reise**

Michael D. Reise was elected to his first term in 2002, and re-elected in 2006.

**El Dorado County, California, District Attorney  
Vern Pierson**

As a career prosecutor, Vern Pierson has served as a vertical prosecutor for domestic violence and sexual assault. He helped create the *Field Guide* used by thousands of California police officers, and he is the author of the annually-updated *California Evidence Pocketbook*. He teaches trial advocacy and the laws of evidence to California prosecutors. Since 1999, he has served on the committee that provides the annual legal revisions for Peace Officers Standards and Training (P.O.S.T.).

**Fresno County, California, District Attorney  
Elizabeth A. Egan**

Elizabeth Egan was elected in 2002. She heads one of the largest prosecutorial agencies in California.

**Glenn County, California, District Attorney  
Robert Holzapfel**

Robert Holzapfel was first elected District Attorney of Glenn County in 1990 and was re-elected 1994, 1998, 2002, and 2006.

**Imperial County, California, District Attorney  
Gilbert Otero**

Gilbert Otero was first elected in 1992, and is currently serving his fourth term. He is Past President of the California District Attorneys Association.

**Kern County, California, District Attorney  
Edward Jagels**

Edward Jagels was first elected District Attorney of Kern County in 1983, at the age of 33. He is a Past President of the California District Attorneys Association. He has served on the Governor's Law Enforcement Steering Committee, the Attorney General's Policy Council on Violence Prevention, and was co-author and campaign chair of the Crime Victims Justice Reform Act (Prop. 115).

**Kings County, California, District Attorney Ron  
Calhoun**

Ron Calhoun was first elected in 1999, and is currently serving his third term.

**Madera County District Attorney Ernest J.  
LiCalsi**

Ernest J. LiCalsi was first elected in 1992. He is an Adjunct Professor at California State University, Fresno, where he teaches Criminal Legal Process and Advanced Criminal Legal Process for the Department of Criminology.

**Mariposa County, California, District Attorney  
Robert H. Brown**

Former Naval Commander Robert H. Brown began his career as a lawyer after retiring from the U.S. Navy. He has been a prosecutor since 1985, and was elected District Attorney in 2002 and re-elected in 2006.

**Mendocino County, California, Sheriff Thomas  
D. Allman**

Thomas Allman has been a law enforcement officer since 1981. He has served in a variety of assignments, including undercover narcotics work targeting methamphetamine. He was elected Sheriff in 2006.

**Merced County, California, District Attorney  
Larry Morse**

Larry Morse joined the District Attorney's office in 1993, and was elected District Attorney in 2006. He was named Prosecutor of the Year by A Women's Place of Merced County and by the Central Valley Arson Investigators Association.

**Modoc County, California, District Attorney  
Gary Woolverton**

After more than 30 years in private practice, specializing in workman's compensation, Gary Woolverton was elected District Attorney in 2006.

**Mono County, California, District Attorney  
George Booth**

George Booth has worked as both a criminal defense attorney and Deputy District Attorney and Assistant District Attorney for Mono County. He has been in the District Attorney's Office for 18 years.

**Orange County, California District Attorney,  
Tony Rackauckas**

Before being elected District Attorney, Tony Rackauckas had served as Presiding Judge of the Appellate Department of the Superior Court, and before that as a judge of the Superior Court and the Municipal Court. He was elected District Attorney in 1998, and re-elected in 2002 and 2006. During his time in office, gang membership has decreased by 8,500 members, a reduction of 45 percent. There are 55 fewer gangs.

**Placer County, California, District Attorney  
Brad Fenocchio**

Brad Fenocchio joined Placer County District Attorney's office in 1985, and was first elected District Attorney in 1994. He received the Rural and Medium County Outstanding Prosecutor of the Year Award for the State of California in 2003; the National Association of Counties 2003 Achievement Award presented to the Placer County District Attorney's Office for its innovative Community Agency Multidisciplinary Elder Team; and the Attorney General's Distinguished

Service Award for Elder Abuse Prosecution presented by California Attorney General's Office in 2003.

**San Bernardino, California, District Attorney Michael Ramos**

Michael Ramos was elected 2002 and re-elected in 2006. In 2004 he was appointed to California Victim Compensation and Government Claims Board, and was elected to the California District Attorneys Association Board of Directors. He was given the Latino of the Year Award in 1999, by the Redlands Northside Impact Committee.

**Santa Barbara County, California, District Attorney Christie Stanley**

Christie Stanley joined the Santa Barbara County District Attorney's office in 1980. In 1984 she was recognized as "Deputy District Attorney of the Year." She was elected in 2006.

**Shasta County, California, District Attorney Gerald C. Benito**

Shasta County, California, District Attorney Gerald C. Benito Gerald C. Benito was first elected District Attorney in 2003.

**Sierra County, California, District Attorney  
Larry Allen**

Larry Allen was elected District Attorney/Public Administrator of Sierra County on March 5, 2002 and took office as the County's 37th District Attorney on January 6, 2003.

**Siskiyou County, California, District Attorney J.  
Kirk Andrus**

J. Kirk Andrus was appointed District Attorney in 2005, and was elected in 2006. He is the youngest District Attorney in California.

**Solano County, Calif., District Attorney David  
W. Paulson**

Before joining the District Attorney's Office in 1977, David W. Paulson had served as a military trial judge and as an appellate military judge on the Navy's highest court, the Navy-Marine Corps Court of Criminal Appeals.

He was appointed District Attorney by the Board of Supervisors in 1993, elected in 1994, and re-elected in 1998, 2002, and 2006. He is a Past President (2004-2005) of the California District Attorneys Association (CDAA), and served as CDAA Director in 1995-1997.

He is also a Past President (2005-2006) of the Board of Directors of the Institute for the Advancement of Criminal Justice (IACJ), and currently serves

as the Editor-in-Chief of *The Journal of the Institute for the Advancement of Criminal Justice*. Mr. Paulson was recently appointed Chair of the Board of Advisors for the new LL.M. in Prosecutorial Science program at Chapman University School of Law.

**Sutter County, California, District Attorney  
Carl V. Adams**

Carl V. Adams is the senior elected District Attorney in California. He was first elected in 1982, and has been re-elected six times after that. He serves on the Board of the California District Attorneys Association.

**Tehama County, California, District Attorney  
Gregg Cohen**

Gregg Cohen was first elected in 1998, and is serving his 3rd term. He served on the California District Attorneys Association Board of Directors in 2005 and 2006, as Vice-Chairman of Rural Counties in 2007, and also served on the Corrections and Parole Committee. His prior experiences includes service in the Criminal Division of the San Diego City Attorney's Office, the Shasta County District Attorney's Office, in the U.S. Attorney's Office in San Diego, and in private firms specializing in toxic tort litigation.



**Trinity County, California, District Attorney  
Michael Harper**

Michael Harper was elected in 2006. Prior to taking office he was Deputy District Attorney in Trinity County from 2001-2007, and has worked as a prosecutor for 15 years.

**Tulare County, California, District Attorney  
Phil Cline**

Phil Cline began his career as a prosecutor in 1978 with the Tulare County District Attorney's Office. Before being appointed District Attorney in 1992, he had specialized for seven years in homicide cases. He was first elected in 1994. He created Tulare County's Rural Crime Program, the first of its kind in the nation. He is a Past President of the Tulare County Police Chiefs Association.

**Ventura County, California, District Attorney  
Gregory Totten**

Gregory Totten was first elected in 2002, and was re-elected in 2006. He has been named the Ventura County Kiwanis "Law Enforcement Officer of the Year." He serves on the Board of Directors of the California District Attorneys Association

**Rep. Andy Olson**

Oregon State Rep. Olson is Vice-chair of the Human Services and Women's Wellness Committee,

and also the Deputy Republican Leader. Before joining the legislature, he was a Lieutenant in the Oregon State Police, where he served for 29 years.

### **National Police Defense Foundation (NPDF)**

The National Police Defense Foundation (NPDF) is a non-profit organization of over 100,000 members and supporters dedicated to protecting and defending law enforcement. The NPDF offers free medical support services to all law enforcement personnel who experience a job-related illness and disability. NPDF also provides legal support for police officers who are the victims of fabricated allegations, or of retaliation for whistle-blowing. NPDF's "Safe Cop" program was recognized by Congress in 1995; the program offers a \$10,000 reward for public information leading to the arrest and conviction of any person who shoots a law enforcement officer. Safe Cop produced the information that led to the arrest and conviction of the murderers of Orange, New Jersey, Police Officer Joyce Carnegie and of Deputy Sheriff Paul Rein of the Broward County Sheriff's Department. The State Troopers Coalition of the National Police Defense Foundation was established to address the needs of state troopers nationwide. More than 60 law enforcement organizations are affiliated with NPDF.

### **Law Enforcement Alliance of America**

Founded in 1991, the Law Enforcement Alliance of America (LEAA) has 75,000 members and supporters; they are law enforcement officers, crime victims, and concerned citizens. LEAA's focus is public education on effective crime control policies.

### **Independence Institute**

Founded in 1985, the Independence Institute is a nonpartisan, nonprofit public policy research organization dedicated to providing information to concerned citizens, government officials, and public opinion leaders. It is based in Golden, Colorado.

Independence Institute staff have written or co-authored scores of law review and other scholarly articles on the gun issue, and several books, including the only law school textbook on the subject: ANDREW MCCLURG, DAVID B. KOPEL & BRANNON P. DENNING, GUN CONTROL AND GUN RIGHTS (NYU Press, 2002). The Institute's work has been cited in over 400 law review articles.

### **International Association of Law Enforcement Firearms Instructors**

The International Association of Law Enforcement Firearms Instructors (IALEFI) is the world's largest association of police firearms instructors. Founded in 1981, IALEFI conducts national and regional training conferences for instructors. IALEFI

comprises over 10,000 members, approximately ninety percent of whom are active, non-retired instructors. IALEFI instructors include members of every federal law enforcement agency, and every branch of the U.S. military. Most IALEFI members are Americans, with Canadians comprising the largest group from the 15 other nations also having members. IALEFI publishes a quarterly magazine, *The Firearms Instructor*, and also publishes various manuals, including *Firearms Training Standards for Law Enforcement Personnel* and the *Standards & Practices Reference Guide for Law Enforcement Firearms Instructors*. IALEFI strongly supports the right of law-abiding citizens to own handguns for self-defense, and is particularly cognizant of how widespread civilian handgun ownership leads to better police firearms training, as described in Part I.G. of this Brief.

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