

No. 07-290

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

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DISTRICT OF COLUMBIA AND ADRIAN M. FENTY,  
MAYOR OF THE DISTRICT OF COLUMBIA,

*Petitioners,*

v.

DICK ANTHONY HELLER,

*Respondent.*

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

—◆—  
**BRIEF OF *AMICI CURIAE*  
SOUTHEASTERN LEGAL FOUNDATION, INC.,  
SECOND AMENDMENT SISTERS, INC.,  
WOMEN AGAINST GUN CONTROL, 60 PLUS  
ASSOCIATION, INC., ROBERT B. SMITH, J.D.,  
CHRISTIE DAVIES, M.A., Ph.D., JOE MICHAEL  
COBB, AND MRS. MINNIE LEE FAULKNER  
IN SUPPORT OF RESPONDENT**

—◆—  
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**QUESTION PRESENTED**

Whether the following provisions – D.C. Code §§ 7-2502.02(a)(4), 22-4504(a), and 7-2507.02 – violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes?

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## INTERESTS OF *AMICI CURIAE*

*Amici curiae*, the Southeastern Legal Foundation, Inc., Second Amendment Sisters, Inc., Women Against Gun Control, 60 Plus Association, Inc., Professor Robert B. Smith, Dr. Christie Davies, Professor Joe Michael Cobb and Mrs. Minnie Lee Faulkner are four non-profit public interest organizations and four private individuals that share and promote the public interest in the proper construction and enforcement of the laws and the Constitution of the United States.<sup>1</sup>

Southeastern Legal Foundation, Inc. [hereinafter SLF], founded in 1976, is a national public interest law firm and policy center that advocates for constitutional individual liberties and free enterprise in the courts of law and public opinion. SLF drafts legislative models, educates the public on key policy issues, and litigates regularly before the Supreme Court of the United States.

Second Amendment Sisters, Inc. and Women Against Gun Control were formed to foster the interests of women's use of firearms and to promote their rights embodied in the Second Amendment.

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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 on February 1, 2008, of intent to file this brief. No counsel for a party authored the brief in whole or in part. No counsel or party made any monetary contribution intended to fund the preparation or submission of the brief.

60 Plus is a non-partisan senior citizen advocacy group. It has an interest in promoting the rights embodied in the Second Amendment, so government regulation will not adversely affect senior citizens.

Professor Robert B. Smith of the University of Oklahoma College of Law retired from the United States Army as a Colonel in 1981 after serving 20 years in the Judge Advocate General's Corps. He also served as the deputy attorney general of California. In 1981, he began directing the Oklahoma College of Law's research and writing program before becoming Associate Dean for Academics. Professor Smith is 74-years-old and owns a handgun for the reasons set out in this brief.

Christie Davies graduated from Cambridge University, England, M.A. (double first and Wrenbury Scholar) Ph.D. For eighteen years, he was a full Professor at Reading University. He is the author of several books and many academic articles in scholarly peer-reviewed journals in several countries.

Joe Michael Cobb is a retired professor from Orange Coast College and Concordia University. He is a former Senior John M. Olin Fellow in Economics at the Heritage Foundation, Washington, D.C.

Minnie Lee Faulkner is an elderly resident of Elbert County, Georgia, who defended herself with a handgun to stop an invasion of her home by a younger male perpetrator.

In particular, the entities and the individuals have a vital interest in protecting the Second Amendment's individual right of armed self-defense from unconstitutional regulation and infringement. In the action at bar, the District of Columbia has extinguished by legislative fiat individuals' Second Amendment protections by banning handgun ownership. The Second Amendment guarantees such government action shall not "infringe" on the people's right "to keep and bear Arms." The *amici* seek to protect this individual right to safeguard the citizens' use of firearms for self-defense. Advocating on behalf of women, the elderly and the physically disabled, the *amici* herein argue the actions of the District of Columbia have harmed the members of society most physically vulnerable to criminal attack.



### **SUMMARY OF ARGUMENT**

This right to use a handgun or firearm for self-defense is especially important to women, the elderly and the physically disabled because their physical characteristics make them the most vulnerable to attack. A firearm makes women, the elderly and the physically disabled an equal match to their attacker, grants them the ability to deter crime before it occurs or frustrate its completion, and enables them to protect life and property. To illustrate the significance of this individual right to these groups' members, this brief reviews empirical research demonstrating women, as a group, and the elderly and the physically



disabled by analogy, possess and use firearms defensively. This use of handguns or firearms occurs frequently and has quantifiable positive effects. The evidence shows the presence of handguns deters crime and, from a psychological standpoint, possession of a firearm gives these groups' members a greater sense of well-being when faced with danger. When the government strips the individual right from these groups' members, evidence shows that they, more than others, are vulnerable to predators because they are perceived to be weak.

The right "to keep and bear Arms" embodied in the Second Amendment is an individual right based not only on the interest of a free state in the security guaranteed by a trained and armed citizenry, but also in the ancient right of self-defense – a basic component of ordered liberty. The origins of the right of self-defense are articulated in applicable case law and highlighted by commentators from before the time of the Constitution's adoption. The historical record reflects no disagreement as to the existence of self-defense as a fundamental individual right, versus a collective right.

To annotate the scholarly observations and to provide clear illustrations of the critical meaning of the right of self-defense with a handgun or other firearm, this brief presents critical anecdotal evidence in the form of stories of women, the elderly and the physically disabled and their vital defensive use of handguns for self-protection. These stories demonstrate the critical human component that real people

– as would-be victims of violent crime – stand behind each statistical sample.

The *amici* believe the evidence and authority presented in this brief will assist the Court in preserving the right “to keep and bear Arms” for self-defense, a right that preexisted its recognition within the Second Amendment.

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## ARGUMENT

### I. The Brief’s Structure.

The brief focuses on personal security for women, the elderly and the physically disabled through the use of handguns. While the word “security” in the Second Amendment has been interpreted to mean that an armed citizenry will necessarily balance an overreaching government, THE FEDERALIST NO. 46, at 321 (James Madison), security has a broader meaning within the law. It means these individuals are entitled to possess and use handguns to protect themselves and their families.<sup>2</sup>

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<sup>2</sup> Such security involves not just the capacity to resist actual attack – which only a firearm provides – but the deterrent effect of victim handgun ownership in dissuading criminals from confrontation crime. Moreover, security has been defined as “Protection; effectual defense or safety from danger of any kind . . . Freedom from fear or apprehension; confidence of safety . . .” *Webster’s American Dictionary of the English Language*, <http://1828.mshaffer.com/d/search/word,security> (1828 ed.) (last visited February 5, 2008).

This brief is divided into three main sections. First, the brief will survey the compelling empirical research which shows women, as a group, possess and use firearms defensively in significant numbers each year, deterring crime and the completion of crime. Second, the brief will explore the historical context of the Second Amendment which demonstrates it preserved the right of self-defense embedded in English common law and understood at the time of the founding to be preexisting. Finally, the brief will present relevant, flesh-and-blood examples of women, the elderly and the physically disabled defending themselves with handguns against attack, adding an important dimension to the statistical review.<sup>3</sup>

One anomaly uncovered in approaching this issue from the viewpoint of women, the elderly and the physically disabled is that not all of these groups are equally represented in the literature. Studies referencing women are more prevalent. However, what is apparent from the anecdotal examples presented with this brief are the groups' members' characteristics for this discussion overlap to a great degree. Arguments asserted on behalf of women can be made, by analogy, on behalf of the members of the

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<sup>3</sup> Statistics are useful and compelling; however, statistics are sterile, sometimes failing to represent adequately a citizen's fear and dread of hearing an intruder in the night, or the sense of security when possessing a handgun for defense that makes her more than equal to her assailant.

other two groups. This reinforces the main theme that all three groups' members occupy a physically inferior position relative to their potential attackers and benefit from defensive use of handguns.

## **II. Empirical Research Illustrates the Use of the Individual Right of Armed Self-Defense Embodied in the Second Amendment for the Benefit of Women, the Elderly and the Physically Disabled.**

### **A. Empirical Research Supports the Common Sense Argument That the Use of Handguns Protects Women, the Elderly and the Physically Disabled from Greater Physical Threat.**

It is well-recognized that the disparity in size and strength between men and women generally provides men with an advantage during physical combat. In her note *Why Annie Can't Get Her Gun: A Feminist Perspective on the Second Amendment*, Inge Anna Larish supported this general statement with the following:

On average women are weaker than men of comparable height. Muscles form a lower proportion of female body weight than of male body weight (36% and 43%, respectively). Kenneth F. Dyer, *Challenging the Men: The Social Biology of Female Sporting Achievement* 71-72 (1982). Women can develop arm muscles only 75% to 85% the strength of men's muscles. Generally, actual differences in average strength tend to be

greater because women do not exercise their upper bodies adequately to develop their potential strength while men are more likely to engage in vigorous exercise to develop strength closer to their potential. *Id.* Men also have more power available for explosive events than women. *Id.* at 74.

Women are on average smaller than men. The average height of men in the United States ranges from 5' 7.4" to 5' 9.7" and from 163 to 178 pounds; the average height for women ranges from 5' 2.2" to 5' 4.3" and from 134 to 150 pounds. Bureau of the Census, U.S. Dep't of Commerce, *Statistical Abstract of the United States* 108 (107th ed. 1987).

Larish, Inge Anna, *Why Annie Can't Get Her Gun: A Feminist Perspective on the Second Amendment*, 1996 U. ILL. L. REV. 467, 494, fn. 213 (1996).

In light of the differences, Larish concludes the possession of a gun not only serves to "equalize the differences between men . . . ," but also serves to "eliminate the disparity in physical power between the sexes." *Id.* Furthermore, she posits, "*The available information on civilian restriction of gun ownership indicates that one of the groups most harmed by restrictions on private gun ownership will be women.*" *Id.* (emphasis added). Larish further states, "Analysts repeatedly find that guns are the surest and safest method of protection for those who are most vulnerable to 'vicious male predators.' Guns are thus the most effective self-defense tools for women, the elderly, the weak, the infirm and the physically

handicapped.” *Id.* 498 (citing Edgar A. Suter, *Guns in the Medical Literature – A Failure of Peer Review*, 83 J. MED. ASS’N GA. 133, 140 (1994)).

Commenting on the effectiveness of gun control and women’s firearm ownership, Professor Hans Toch, a distinguished social psychologist in the areas of criminology and criminal justice administration and consultant to the National Commission on the Causes and Prevention of Violence, which advocated Federal gun control, observed that, “There are perhaps 20,000 gun laws now in effect in this country. That these laws have had limited or no effect is apparent.” Toch and Lizotte, *Research and Policy: The Case of Gun Control*, PSYCHOLOGY AND SOCIAL POLICY, 223, 224 (1992). Professors Toch and Lizotte go on to characterize that what seemed simple about the advantages of handgun control before informal recommendations were made to the National Commission in the late 1960s or early 1970s have now been rendered complicated by the facts present now. *Id.* at 223. In fact, the authors advocate an approach to gun control based on the “historical, political, psychological, cultural, and sociological parameters of the phenomenon to be regulated, as well as the costs and benefits. The monetary, civil liberty, and other costs must be balanced against related benefits before accepting or rejecting a policy initiative.” *Id.* at 236.

With regard to female firearms ownership, Dr. Toch found the following:

When violent crime rates are below average,  
women’s gun ownership looks like men’s – low

crime is associated with high rates of female ownership. When violent crime rates are above average, however, quite the opposite is true, and rates of female firearms ownership come to be positively associated with violent crime rates. This does not imply that urban women are responsible for the urban crime problem; it demonstrates that when violent crime rates are high, women arm themselves for protection.

There is some reason to believe that young, Black, urban women who live in high crime areas are the most likely to own firearms for protection (Bordua & Lizotte, 1979), and this is, of course, a group at high risk for victimization. In addition to the efficacy of keeping a gun for protection, we have mentioned that gun owners presumably enjoy some psychological benefit as well. This is so because those who keep guns for protection are less fearful of crime than those who do not (Lizotte & Bordua, 1980; Lizotte, Bordua, & White, 1981).<sup>4</sup>

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<sup>4</sup> Bordua, D.J. and Lizotte, A.J., *A Subcultural Model Of Firearms Ownership In Illinois*. LAW AND POLICY QUARTERLY, 2, 147-175 (1979).

Lizotte, A.J., and Bordua, D.J., *Firearms Ownership For Sport And Protection: Two Divergent Models*, AMERICAN SOCIOLOGICAL REVIEW, 45, 229-244 (1980).

Lizotte, A.J., Bordua, D.J and White, C.S., *Firearms Ownership For Sport And Protection: Two Not So Divergent Models*, AMERICAN SOCIOLOGICAL REVIEW, 46, 497-503 (1981).

Toch and Lizotte, *Research and Policy: The Case of Gun Control*, PSYCHOLOGY AND SOCIAL POLICY, 223, 233 (1992).

In addition, Dr. Toch noted the following in connection with the preceding passage concerning sexual assaults against women:

Women who are confronted with a sexual assault are *significantly less likely to experience a completed rape if they resist with a weapon* (Lizotte, 1986). *See also* Kleck (1988) on the protective efficacy of firearms.<sup>5</sup>

*Id.* (emphasis added).

Dr. Toch also observed concerning the following the costs of gun control:

There may also be crime control costs to banning firearms. Kleck (1988) argues that armed citizens are actually more likely than the police to deter crimes, catch criminals, and interrupt victimizations, and Wright and Rossi (1986) report that felons are more concerned about armed citizens than they are about the police. Elsewhere, Kleck (1985) points out other tantalizing crime control costs of gun control. He notes that armed criminals have the luxury to victimize hardened targets where the payoff is larger.

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<sup>5</sup> Lizotte, A.J., *Determinants of Completing Rape and Assault*, JOURNAL OF QUANTITATIVE CRIMINOLOGY, 2, 203-218 (1986).

Kleck, Gary, *Crime Control Through the Private Use of Armed Force*, SOCIAL PROBLEMS, Vol. 35, No. 1, 1-21 (February 1988).



Without the gun, however, they might be forced to prey on weaker targets where the payoff is smaller. This might result in an increase in the crime rate, because more offenses would be necessary to generate the same amount of money. In addition, weaker targets are those who can least afford victimization, such as the poor and aged.

*Id.* at 237.<sup>6</sup>

Women and the physically disabled, due to the physical differences discussed above, would logically be included within the “weaker targets.”

In addition to the above authority, the scholarship of Dr. Gary Kleck provides hard factual bases that defensive gun use affects crime.<sup>7</sup> Kleck, a professor in

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<sup>6</sup> Wright, J.D. and Rossi P., *Armed And Considered Dangerous: A Survey Of Felons And Their Firearms*, Hawthorne, NY (Aldine de Gruyter 1986).

Kleck, Gary, *Policy Lessons From Recent Gun Control Research*, LAW AND CONTEMPORARY PROBLEMS, Vol. 49, No. 1 35-62 (Winter, 1986).

<sup>7</sup> In *A Tribute to a View I Have Opposed*, Dr. Marvin E. Wolfgang, the doyen of American criminologists until his death, evaluated Kleck’s research: “I have guns – ugly nasty instruments designed to kill people. Can it be true that about two million instances occur each year in which a gun was used as a defensive measure against crime? It is hard to believe. Yet, it is hard to challenge the data collected. We do not have contrary evidence.” Wolfgang, *A Tribute to a View I Have Opposed*, THE JOURNAL OF LAW AND CRIMINOLOGY, at 188. He concluded, “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

(Continued on following page)

the School of Criminology and Criminal Justice at Florida State University, offered the following description of himself:

The author is a member of the American Civil Liberties Union, Amnesty International USA, Independent Action, Democrats 2000, and Common Cause, among other politically liberal organizations. He is a lifelong registered Democrat, as well as a contributor to liberal Democratic candidates. He is not now, nor has he ever been, a member of, or contributor to, the National Rifle Association, Handgun Control, Inc. nor any other advocacy organization, nor has he received funding for research from any such organization.

*Targeting Guns: Firearms and Their Control* (Aldine de Gruyter 1997).

According to Dr. Kleck's findings, firearms are used defensively 2.2 to 2.5 million times a year, with *handguns accounting for 1.5 to 1.9 million of the instances*. Kleck and Gertz, *Armed Resistance to Crime: The Prevalence And Nature Of Self Defense With A Gun*, THE JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY, Vol. 86, No. 1, 164 (1995) (emphasis added). Of the sample used to calculate the number of times a gun was used defensively during a year, women made up 46 percent. *Id.* at 178. Of the 2.5

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useful, but I cannot fault their methodology. They have tried earnestly to meet all objections in advance and have done exceedingly well."

million defensive gun uses each year, 8.2 percent involved sexual assault. This translates to approximately 205,000 occurrences each year. *Id.* at 185. In addition, overall, with a handgun, the odds in favor of reducing serious injury to the victim increase. Tark and Kleck, *Resisting Crime: The Effects of Victim Action on the Outcomes of Crimes*, CRIMINOLOGY, Vol. 42, No. 4, 861-909, 902 (November, 2004).

The empirical literature is unanimous in portraying defensive handgun use as effective, in the sense that gun-wielding victims are less likely to be injured, lose property, or otherwise have crimes completed against them than victims who either do nothing, resist or who resist without weapons. Kleck and Gertz, *Carrying Guns for Protection: Results from the National Self-Defense Survey*, JOURNAL OF RESEARCH IN CRIME AND DELINQUENCY, Vol. 35, No. 2, 193-224, 194 (May, 1998).<sup>8</sup>

With regard to the implications of gun control measures and self-protection, Kleck concludes:

The policy-related reasons are obvious: if self-protection with a gun is common place, it means that any form of gun control that disarms large numbers of prospective victims, either altogether, or in certain times and places victimization might occur, will carry

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<sup>8</sup> See generally Brief for International Law Enforcement Educators and Trainers Association, *et al.* as *Amici Curiae* Supporting Respondents at 12-17, *District of Columbia, et al. v. Dick Anthony Heller*, No. 07-290 (February 11, 2008).

significant social costs in terms of lost opportunities for self protection.

Kleck and Gertz, *Armed Resistance to Crime*, THE JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY, Vol. 86, 150-187, 151 (1995).

Likewise, he finds:

In sum, measures that effectively reduce gun availability among the noncriminal majority also would reduce DGUs (Defensive Gun Uses) that otherwise would have saved lives, prevented injuries, thwarted rape attempts, driven off burglars, and helped victims retain their property.

*Id.* at 180.

On the contrary, when there is widespread gun ownership, the *deterrent* effect functions to keep communities safer for all. For example, after the City of Kennesaw, Georgia, a suburb of Atlanta, passed an ordinance requiring heads of households to own a gun, the rate of burglaries declined 89 percent in the seven months after passage of the ordinance. This drop dwarfed the rates of decline during the same time for the entire State of Georgia, the South Atlantic states and the United States for similarly situated cities. Kleck, *Crime Control Through the Private Use of Armed Force*, SOCIAL PROBLEMS, Vol. 35, No. 1, 1-21, 15 (February 1988).

Dealing directly with issues affecting women, Constitutional scholar Don B. Kates noted, like to the Kennesaw example cited by Kleck that:

Similar results appeared from a highly publicized 1966 program in which 3,000 civilian women received defensive handgun training from Orlando, Fl. police. As of 1967, rape had dropped 88.2% in Orlando and aggravated assault and burglary 25%. While rape gradually increased again after the year-long program ended, five years later the rate was still 13% below the pre-program level; during that same period rape had increased 64% nationally, 96.1% in Florida and over 300% in the immediate area around Orlando.

Don B. Kates, *Firearms and Violence: Old Premises, Current Evidence, Violence in America*, Vol. 1, 208 (T. Gurr ed. 1989).

The empirical evidence is clear: the presence of guns deters crime, women possess guns in large numbers and they use them for defense, and the possession of a handgun or other firearm can provide significant psychological confidence. When gun prohibitions are present, the aforementioned positive aspects are reduced, providing only marginal ability to defend self, family and property. These findings translate by analogy to the elderly and the physically disabled.

**B. The *Amici Curiae* Brief Filed By Violence Policy Center in Support of Appellants Incorrectly Characterizes the Value of the Handgun as an Effective Means of Self-Defense.**

On pages 29-31 of the brief submitted in this case by Violence Policy Center [hereinafter VPC], it argues that handgun use is the least effective method for self-defense and that shotguns and rifles are better suited for this purpose. Brief for Violence Policy Center, *et al.* as *Amici Curiae* Supporting Petitioners at 29-31, *District of Columbia, et al. v. Dick Anthony Heller*, No. 07-290 (January 11, 2008). VPC further states that this argument is supported by a “wealth of evidence.” *Id.* at 30.

The problem with this contention is VPC fails to cite *any* evidence supporting its proposition. Moreover, for women, the elderly and the physically disabled, VPC’s “one-size-fits-all” approach ignores the physical requirements necessary to use shotguns or other long guns. Finally, the argument disregards the obvious: a handgun’s compact nature lends itself to easier use by individuals with lesser physical ability, including but not limited to persons who are unable to brandish a shotgun when threatened.

VPC cites to “[f]irearms expert” Chris Bird, quoting from his book *The Concealed Handgun Manual, How to Choose, Carry and Shoot a Gun in Self Defense* in support of its assertion that the “handgun

is the least effective firearm for self defense.”<sup>9</sup> The absurdity of pretending a book advocating the use of handguns *really* contains the opposite conclusion does not go unnoticed. The quote used by VPC, “a handgun ‘is the least effective firearm for self defense’ and in almost all situations ‘shotguns and rifles are much more effective in stopping a [criminal],’” however will be examined. The quote is drawn from *Chapter 5, Choosing a Handgun: Semi-automatics and Revolvers* and reads in its entirety:<sup>10</sup>

Like many things in life, a handgun is a compromise. It is the least effective firearm for self-defense. Except at very close quarters – at arm’s length – shotguns and rifles are much more effective in stopping a drug-hyped robber or rapist intent on making you pay for his lack of social skills. A handgun is the hardest firearm to shoot accurately, and, even when you hit what you are shooting at, your target does not vaporize in a red mist like on television.

*Id.* at 114.

Contrary to VPC’s assertion, Bird’s point is not that handguns are ineffective, but their effectiveness depends on the ammunition’s stopping power. He states in the same section:

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<sup>9</sup> Chris Bird, *The Concealed Handgun Manual: How to Choose, Carry and Shoot a Gun in Self Defense* (2007).

<sup>10</sup> The edition cited by VPC is dated 1998, but the current edition is the fourth edition from 2007.

In choosing a handgun for self defense, remember that the gun has two functions. In some cases, presentation of the gun, coupled with a shouted order to “STOP, GO AWAY, BACK UP,” will be enough, to diffuse the threat. It reminds the potential robber or rapist he has urgent business in another county. . . . While any handgun will do, a large gun with a hole in the business end as big as a howitzer reinforces the seriousness of your intentions.

In cases where the threat is not enough, the gun is a delivery system for those little missiles, scarcely bigger than a cigarette filter, that rip and tear your attacker’s anatomy. It is the bullet that stops the attack, not the gun. The size and weight of the bullet depend mostly on the caliber of the gun from which it is fired. So one of your first decisions on picking a gun is deciding on a caliber.

*Id.* at 115.

None of this material, nor the balance of Bird’s book, supports VPC’s assertion that handguns are ineffective to deter crime or as a means of self-defense.

Moreover, VPC fails to support its additional argument that handguns are hard to shoot accurately because when characterized correctly, the cited work by noted firearms instructor Massad Ayoob, *In the Gravest Extreme, The Role of the Firearm in Personal*



*Protection*, is contrary to VPC's contention.<sup>11</sup> First, the section of Ayooob's book to which VPC refers has nothing to do with personal defense of the individual or the homeowner; instead, the quote comes from *Chapter 6, How and When to Use Firearms in Your Store. Id.* at 43. Thus, this section is concerned with the proficiency of handgun use to avoid "wild shots" in order to avoid endangering customers or other persons. *Id.* at 47. Individual defense of the person and deterrence are treated in other chapters. *Id.* at 51, 75.

Second, the "accuracy" argument ignores that a criminal encounter is not a target shoot or practice. Moreover, it ignores a handgun's deterrent effect. Ayooob corrects, qualifies and explains VPC's mischaracterization of his statements in his declaration. He attests that:

The statements in question in the VPC brief glaringly ignore the well-established fact that the great majority of times when a private citizen draws a gun on a criminal suspect, the very presence of the gun suffices to end hostilities with no shots fired. This simple fact makes marksmanship skill under stress a moot point in the majority of instances when defensive firearms are brought

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<sup>11</sup> Massad F. Ayooob, *In the Gravest Extreme, The Role of the Firearm in Personal Protection* 47 (Massad F. and Dorothy A. Ayooob 1980).

into action by private citizens acting in defense of themselves or others.

*See* Declaration of Massad F. Ayoub *infra* p. App. 4.

Further, Ayoub observes, from a practical standpoint the use of a handgun, as opposed to a long gun, is superior in that long guns are more easily taken away during defensive use. He states:

The VPC brief falsely attributes its imputation that rifles and shotguns are superior to handguns for defensive purposes, to me among others. Yet in going through “In the Gravest Extreme” carefully enough to cherry-pick the misleading out-of-context quotes, that brief pointedly ignores my flat statements on Page 100 of the book in question: “High powered rifles are not recommended for self-defense . . . A major problem with any rifle or shotgun is that it is too awkward to get into action quickly, or to handle in close quarters. A burglar will find it much easier to get a 3 ½ foot weapon away from you, than a pistol you can hold and fire with one hand.” This is especially true with regard to any person who may be at a physical disadvantage when contrasted with the physical ability of their attacker, such as a woman, an elderly person or someone who is physically disabled.

*Id.* at pp. App. 4-5.

In addition, VPC’s argument fails to acknowledge the logical proposition that one may dial 911 when

holding a handgun, but it is difficult to do so with two hands occupied with a long gun.

VPC, as shown above, incorrectly characterizes the substance of its cited materials resulting in a misguided presentation of valid and authoritative studies. Most importantly to *amici* is that these substantive mischaracterizations attempt to diminish the utility of handguns as a defensive tool to victims of attack generally, but to the greater detriment of women, the elderly and the physically disabled. When the salient facts are presented accurately and sources are used properly in analyzing the defensive use of handguns, there is but one conclusion: handguns are an effective tool for defense of person and home.

### **III. The Historical Context of the Second Amendment Conclusively Demonstrates the Preexisting Right of Personal Armed Self-Defense.**

The historical context of the Second Amendment reveals that the Framers knew the right of self-defense was established in the common law and recognized in the English Bill of Rights.

Judge Silberman, writing below for the majority, correctly held that the Second Amendment preserved and recorded a preexisting right. For this finding, he relied heavily on commentary contemporary with the adoption of the Constitution, the Bill of Rights and on other 19th Century commentary and sources.

Likewise, regarding the Founders' emphasis on self-defense within the Second Amendment, Justice Janice Rogers Brown, then on the California Supreme Court, made a similar observation in her concurrence in *Kasler v. Lockyer*, 23 Cal. 4th 472 (2000). Justice Brown observed:

The founding generation certainly viewed bearing arms as an individual right based upon both English common law and natural law, a right logically linked to the natural right of self-defense. Blackstone described self-defense as the "primary law of nature," which could not be taken away by the law of society. (2 Jones's Blackstone (1976) p. 4.) "[T]he peaceable part of mankind will be continually overrun by the vile and [the] abandoned, while they neglect the means of self defence. . . . The supposed quietude of the good man allures the ruffian; . . . (but) arms like laws discourage and keep the invader and the plunderer in awe, and preserve order in the world. . . . Horrid mischief would ensue were [the good] deprived of the use of [weapons] . . . the weak will become a prey to the strong." (1 Paine, *The Writings of Thomas Paine* (Conway edit. 1894) p. 56.) Extant political writings of the period repeatedly expressed a dual concern: facilitating the natural right of self-defense and assuring an armed citizenry capable of repelling foreign invaders and quelling tyrannical leaders.

*Kasler* at 505.

When the Bill of Rights was adopted in 1791, the United States and its citizens faced threat of attack from without and within. Citizens needed to be ready to respond quickly to numerous and varied threats because, for the most part, the government offered little or no protection. The individual right “to keep and bear Arms” for self-defense functioned to fill the gap, and acted to reduce and deter the threat of personal violence.

Although technology and advances in law enforcement have made society more stable and arguably safer, danger to the individual in the form of criminal activity justifies the use of handguns or other firearms for self-defense. This is true for all citizens, but particularly true for those who are physically disadvantaged relative to their attacker.<sup>12</sup>

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<sup>12</sup> The need for self-defense with handguns is underscored by the fact that citizens do not have a guarantee of adequate police protection. *Warren v. District of Columbia*, 444 A.2d 1 (D.C. Appeals 1981); *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189, 103 L. Ed. 2d 249, 109 S.Ct. 998 (1989). Thus, these cases show that government cannot protect all the people all the time.

#### **IV. Anecdotal Evidence and Declarations Illustrate the Critical Importance of the Individual Right of Armed Self-Defense Embodied In the Second Amendment for Women, the Elderly and the Physically Disabled.**

Although statistics and empirical data are critical to understanding the broad spectrum of what defensive gun use means to society, the actual flesh-and-blood people, who have had to defend themselves or their families with handguns or other firearms, stand behind the data.

A printed compilation of the instances when women, the elderly or physically disabled defensively used guns in the United States would be unwieldy (though compelling), so the efficacy of statistics is obvious. Behind the rows and columns of data analyzed as statistics, however, are the faces of real, frightened and vulnerable people who have reached for their handguns after hearing the sounds of intruders in the night. These individuals, discussed below, avoided injury or death because they resisted their attackers with handguns. But, sadly, the same may not have been true if their homes were in the District of Columbia.

##### **A. Recent Anecdotes Effectively Illustrate the Importance of the Personal Right of Armed Self-Defense for Women, the Elderly and the Physically Disabled.**

The following includes instances where women, the elderly and the physically disabled defended

themselves during home invasions as well as attacks outside the home. The attacks were perpetrated by younger, stronger assailants. Moreover, the victims in some instances protected not only themselves, but also loved ones.

The anecdotes are arranged in reverse chronological order and by type. The home invasions come first, followed by parking lot incidents.<sup>13</sup>

## 1. Home Invasions

On January 25, 2008 in Atlanta, Georgia, an intruder assaulted a wheelchair-bound homeowner at the homeowner's front door. During the struggle, the homeowner was able to use his handgun to shoot the attacker.<sup>14</sup>

In December 2007, there were numerous instances of home invasion attacks on women and the elderly. On December 14, 2007 in Lexington, Kentucky, two women were inside their home when they heard a man trying to break in. They dialed 911, keeping the dispatcher on the phone while they warned the man to stop. When he would not stop, one of the women shot

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<sup>13</sup> In addition, other anecdotes may be found in the National Rifle Association's *Armed Citizen* column. The NRA has collected these stories and offers them in paperback form.

<sup>14</sup> Christensen, Tracy, 11 Alive News Home Page, *Wheelchair-Bound Man Shoots Attacker*, [http://www.11alive.com/news/article\\_news.aspx?storyid=110152](http://www.11alive.com/news/article_news.aspx?storyid=110152) (last visited February 5, 2008).

him. Investigators ruled the shooting self-defense.<sup>15</sup> On December 8, 2007 at Hialeah Gardens, Florida, four armed men attacked a 74-year-old heart patient, Jorge Leonton, in his driveway. After he withdrew money from an ATM, the four followed him home and choked him after he got out of the car, demanding money. While being choked by one of the attackers, Leonton took out his gun, for which he had a concealed weapon permit, and told the attacker three times he had a heart condition, could not breathe and the assailant was killing him. When the attacker would not let go, Leonton shot him. The other three men fled. Leonton's wife said, "If he wouldn't have been armed, I think he would have been killed."<sup>16</sup>

In November 2007, there were several attacks against all groups' members. On November 27, 2007 in Carthage, Missouri, a 63-year-old grandmother brandishing a handgun caused two burglars to run away after they broke down her back door. Her grandchild was in the house at the time.<sup>17</sup> Two weeks earlier, on November 16, 2007 in Waynesville, Missouri, a disabled man chased one intruder away and

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<sup>15</sup> Lex 18 News Home Page, *Police Investigate Bizarre Shooting*, [http://www.lex18.com/Global/story.asp?S=7496356&nav=menu203\\_2](http://www.lex18.com/Global/story.asp?S=7496356&nav=menu203_2) (last visited February 5, 2008).

<sup>16</sup> Stone, Shomari, CBS 4 Home Page, *Man Turns on Would-Be Robbers, Kills One*, <http://cbs4.com/local/crimestoppers.home.invasion.2.606903.html> (last visited February 5, 2008).

<sup>17</sup> Fox News Home Page, *Pistol-Packing Grandma Stops Would-Be Burglars*, <http://www.foxnews.com/story/0,2933,313148,00.html> (last visited February 5, 2008).



took one prisoner for the police with his handgun. Before breaking into the disabled man's trailer, the two male assailants had broken into a local motel room where they had beaten two people with a baseball bat so severely that one had to be taken by "life flight" to the hospital. Later, the two intruders entered the trailer and confronted the disabled man and his wife. One intruder pulled a pellet gun, but the homeowner pulled a "real gun." The pellet gun-wielding intruder fled while the other was held until the police arrived.<sup>18</sup>

Two days earlier, on November 14, 2007 in Hessville, Indiana, a woman who was being stalked had her door kicked in by a former date. Later, when he returned to her home, she called 911 and was told to lock herself in the bedroom. When she retreated to the bedroom, she found a pistol which had been given to her for protection. She hid in a closet, the stalker opened the door, she told him to stop, but when he advanced toward her, she fired three times. She struck the stalker in the abdomen and he died from his wounds.<sup>19</sup> On November 5, 2007 in Bartlett,

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<sup>18</sup> Waynesville Daily Guide Home Page, *Disabled Man Pulls Gun, Ends Violent Armed Robbery Spree*, <https://secure.townnews.com/shared-content/subscription/authenticate/index.php?mode=start&domain=waynesvilledailyguide.com&usereg=&url=http%3A%2F%2Fpulaskicountyweekly.com%2F%2Farticles%2F2007%2F11%2F16%2Fnews%2Fnews02.txt&discover=0&amex=0> (last visited February 7, 2008).

<sup>19</sup> NBC 5 Home Page, *Police: Woman Shoots Stalker to Death After Break-In*, <http://www.nbc5.com/news/14596016/detail.html?rss=chi&psp=news> (last visited February 5, 2008).

Tennessee, Dorothy “Bobbi” Lovell’s charges were dropped after a review of the evidence indicated self-defense in the shooting of her husband. Mrs. Lovell shot her husband with a .357-caliber magnum handgun after he held Mrs. Lovell and her 21-year-old son hostage, threatening their lives.<sup>20</sup>

October 2007 was replete with the defensive use of handguns. On October 27, 2007 in Gainesville, Florida, a 28-year-old male tried to kick down the door of a home owned by Arthur Williams, a 75-year-old, legally blind, retired taxi dispatcher. The homeowner fired on the intruder, striking him in the neck. Local officials praised Williams for defending himself.<sup>21</sup> On October 24, 2007 in Wichita, Kansas, a 76-year-old man shot his 52-year-old live-in girlfriend after she poured bleach on him, sprayed him with mace and beat him with a frying pan. The police called the use of the weapon self-defense.<sup>22</sup> On October 15,

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<sup>20</sup> Lawrence Buser, *Charges Against Bartlett Wife Dropped in Shooting of Husband*, COMMERCIAL APPEAL, Home Page, <http://www.commercialappeal.com/news/2007/nov/05/charges-against-bartlett-wife-dropped-shooting-hus/> (last visited February 5, 2008).

<sup>21</sup> WESH Home Page, *Blind Man Shoots Home Intruder in Neck*, <http://www.wesh.com/news/14437963/detail.html?rss=orl&psp=news> (last visited February 5, 2008).

<sup>22</sup> Kansas Home Page, *Woman Shot, Man Injured in Domestic Dispute*, [http://nl.newsbank.com/nl-search/we/Archives?p\\_product=WE&p\\_theme=we&p\\_action=search&p\\_maxdocs=200&s\\_dispstring=76-year-old%20man%20asked%20his%2052-year-old%20girlfriend%20AND%20date\(all\)&p\\_field\\_advanced-0=&p\\_text\\_advanced-0=\(76-year-old%20man%20asked%20his%2052-year-old](http://nl.newsbank.com/nl-search/we/Archives?p_product=WE&p_theme=we&p_action=search&p_maxdocs=200&s_dispstring=76-year-old%20man%20asked%20his%2052-year-old%20girlfriend%20AND%20date(all)&p_field_advanced-0=&p_text_advanced-0=(76-year-old%20man%20asked%20his%2052-year-old)

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2007 in Kansas City, Missouri, a 69-year-old man thwarted a home invasion by firing a shot from his .40-caliber handgun at his bedroom door when he heard an intruder approaching after his front door had been pried open. The intruder fled without apparent injury.<sup>23</sup>

In July 2007, there were several reported attacks against the elderly and the disabled. On July 30, 2007 in Limestone County, Alabama, a disabled man who collected aluminum cans to supplement his income confronted two men, ages 20 and 24, stealing his cans. He immediately called the sheriff's office. The men thought he had left, walked back onto the property and, when they discovered him in his truck, one of them came toward the homeowner and threatened him. The homeowner told him to stop. When he did not, the homeowner showed his gun and demanded the two men lie on the ground to wait for the sheriff.<sup>24</sup> On July 27, 2007 in El Dorado, Arkansas, a 24-year-old intruder beat 93-year-old Mr. Hill with a soda can, striking him 50 times before he passed out. Covered with blood, the elderly man awoke and

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%20girlfriend)&xcal\_numdocs=20&p\_perpage=10&p\_sort=YMD\_date:D&xcal\_useweights=no (last visited February 7, 2008).

<sup>23</sup> Kansas City Home Page, *Shots Exchanged During KC Home Invasion*, <http://www.kansascity.com> (last visited February 7, 2008).

<sup>24</sup> WAFF 48 News Home Page, *Two Men Arrested For Stealing Garbage*, <http://www.waff.com/global/story.asp?s=6861004> (last visited February 7, 2008).

retrieved a .38-caliber handgun. The assailant charged at him, forcing Hill to shoot him in the throat. Police arrived and took both Hill and the intruder to the hospital.<sup>25</sup> On July 4, 2007 in Hickory, North Carolina, a 79-year-old man shot a 23-year-old intruder in his bedroom. After the intruder broke into the house, the homeowner's wife escaped to the neighbors and the homeowner shot the intruder. The intruder was expected to survive.<sup>26</sup>

On April 26, 2007 in Augusta, Georgia, an assailant awakened his 57-year-old neighbor, Theresa Wachowiak, putting a knife to her throat. She resisted and managed to grab her .357-caliber handgun, and she shot the intruder in the stomach. The intruder survived. *See* Declaration of Theresa M. Wachowiak *infra* pp. App. 21-23.<sup>27</sup>

2006 saw notable examples of defensive gun use. On December 2, 2006 in Zion, Illinois, a 55-year-old wife heard her kitchen doorjamb shatter. She grabbed her pistol and shot the intruder in the chest after he

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<sup>25</sup> PINE BLUFF COMMERCIAL, *Police: El Dorado Man, 93, Shoots Robber After Beating* (July 27, 2007).

<sup>26</sup> WSOC TV Home Page, *79-Year-Old Man Shoots Intruder During Hickory Home Invasion*, <http://www.wsoc.tv/news/13621816/detail.html> (last visited February 5, 2008).

<sup>27</sup> WJBF Home Page, *Homeowner Fights Back*, [http://www.wjbf.com/midatlantic/jbf/news\\_index.apx.-content-articles-JBF-2007-04-26-0001.html](http://www.wjbf.com/midatlantic/jbf/news_index.apx.-content-articles-JBF-2007-04-26-0001.html) (last visited February 7, 2008).

forced his way into her house. The intruder was wearing a black ski mask and gloves.<sup>28</sup>

On October 18, 2006 in Santa Clarita, California, an intruder broke the lock on Nadine Teter's back door and barged into her home. She fled to her backyard with a gun, but he followed and charged at her. She shot him. The intruder fell, got back up and advanced again, requiring her to shoot him two more times. The attacker then jumped over a fence and ran away. He was later apprehended when the intruder's mother, who was driving the "get-away" car, flagged down law enforcement for medical attention. The intruder survived, and he and his mother were convicted in December 2007 of charges arising out of the attack. With regard to the use of the firearm, Teter said she thinks every woman should carry a gun. She also said:

Never in a million years, did I think I would use (the gun) – never. And whatever higher power, whatever gave me the strength to pull that trigger . . . You're looking at him or me. My life or his life. I was not going to get raped. I was not going to get murdered. There was no way – and I didn't.<sup>29</sup>

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<sup>28</sup> CHICAGO TRIBUNE Home Page, *Cops: Zion Woman Killed Armed Home Invader*, [www.chicagotribune.com](http://www.chicagotribune.com) (last visited February 7, 2008).

<sup>29</sup> KNBC Home Page, *Woman Who Shot Intruder Three Times Talks to KNBC*, <http://www.knbc.com/news/14842132/detail.html> (last visited February 5, 2008).

On April 27, 2006 in Red Bank, Tennessee, at 1:30 a.m., a disabled man saw a masked man crawling through his bedroom window. After he was awakened by the window breaking, David McCutcheon, the disabled homeowner, reached for his .32-caliber revolver and fired four times, forcing the masked man to flee. The intruder was arrested.<sup>30</sup>

2005 saw attacks on the elderly thwarted by defensive handgun use. On May 31, 2005 in Indialantic, Florida, Ms. Judith Kuntz, a 64-year-old widow armed with a .38-caliber revolver shot an intruder in the chest after he broke into her home. She fired at him as he entered her bedroom with a flashlight. She stated, "I'm doing fine under the circumstances . . . I don't take any joy in somebody being dead. My self-preservation instinct took over." See Declaration of Judith Kuntz *infra* pp. App. 19-20.<sup>31</sup> On March 30, 2005 in Kingsport, Tennessee, an 83-year-old woman wrestled with a home intruder. Although he left with her purse, she was able to fire her handgun at him during the struggle, causing him to flee.<sup>32</sup>

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<sup>30</sup> Chattanooga Home Page, *Disabled Red Bank Man Gets Off Four Shots at Home Invader*, [http://www.chattanooga.com/articles/article\\_84691.asp](http://www.chattanooga.com/articles/article_84691.asp) (last visited February 5, 2008).

<sup>31</sup> Orlando Sentinel Home Page, *Widow Uses Gun, Instincts to Fend Off Burglar (sic)*, <http://www.orlandosentinel.com> (last visited February 7, 2008).

<sup>32</sup> WMC TV Home Page, *83-Year-Old Woman Wrestles, Shoots at Burglar*, <http://www.wmcstations.com/global/story.asp?s=8945> (last visited February 7, 2008).

Women and the elderly used handguns to stave off assailants in 2004. On March 22, 2004 in Springfield, Ohio, 49-year-old Melanie Yancey shot and killed a 21-year-old intruder when he and an accomplice broke into her home after kicking in her door. She sealed herself in her bedroom, but the two tried to break in. She then fired a shot at them from her .40-caliber handgun and they returned fire. When she heard them go into another unoccupied bedroom, she ran out of the room and fired at them as she ran out of the house. Later, one of the intruders was found lying on a nearby driveway.<sup>33</sup>

On November 4, 2004 in Pensacola, Florida, a 77-year-old retired oil worker, James Workman, shot an intruder who entered the trailer where Workman and his wife, Kathryn, were at home. The intruder advanced toward the trailer despite a warning shot, and Workman struggled with the intruder inside the trailer, shooting him in the process. *See Declaration of James H. Workman, Jr. infra pp. App. 24-25.*<sup>34</sup>

## 2. Parking Lot Incidents

On December 27, 2007 in Orlando, Florida, a 65-year-old man fought off five thugs with a handgun.

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<sup>33</sup> SPRINGFIELD NEWS-SUN Home Page, *Woman Kills Intruder*, <http://www.springfieldnewssun.com> (last visited February 7, 2008).

<sup>34</sup> LOCAL 6 Home Page, <http://www.local6.com/news/3889532/detail.html> (last visited February 7, 2008).

He was collecting money for parking at a church when a man, accompanied by four other men, put a gun to his head. The victim reached inside his jacket as if to pull out money, but instead, pulled out a handgun and started firing. The men ran away. The elderly man reported he obtained a concealed weapon permit after he was previously attacked by eight teens who tried to rob him with a pipe.<sup>35</sup>

On July 1, 2007 in Dallas, Texas, a 31-year-old man stopped Amor Kerboua, a 79-year-old man, in Kerboua's apartment parking lot. The man put a gun in Kerboua's face and demanded money. Thinking the attacker was joking, Kerboua pushed the gun away. Again, the man put the gun in his face and Kerboua handed him a cup containing \$242.50. The assailant then told Kerboua he was going to kill him, pointing the gun at his stomach. Instead, Kerboua, who had a concealed weapon permit, drew his .38-caliber revolver and shot the assailant in the throat. The assailant fell, but maintained his gun aim at Kerboua, forcing Kerboua to fire two more times. The police determined Kerboua acted in self-defense. The assailant survived.<sup>36</sup>

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<sup>35</sup> Florida Today Home Page, *Gun-Packing Man, 65, Fights Off 5 Thugs*, <http://www.floridatoday.com/apps/pbcs.dll/article?AID=/20071227/BREAKINGNEWS/71227025/1086> (last visited February 7, 2008).

<sup>36</sup> Dallas News Home Page, *Senior: Man I Shot Robbed Me*, [http://www.dallasnews.com/sharedcontent/dws/news/localnews/stories/DN-robberyshoot\\_01met.ART.North.Edition1.43b8c05.html](http://www.dallasnews.com/sharedcontent/dws/news/localnews/stories/DN-robberyshoot_01met.ART.North.Edition1.43b8c05.html) (last visited February 7, 2008).



**B. Nancy Hart and Minnie Lee Faulkner:  
Historical and Present Day Illustrations  
of How Firearms Deter Assailants.**

**1. Nancy Hart: Revolutionary War Notable  
Used Firearms for Personal  
and Family Security.**

During the war for American Independence, there lived a six-foot-tall, red-haired woman with a fiery temper named Nancy Hart in what is now Elbert County, Georgia. Bernice McCullar, *This is Your Georgia* 284 (The American Southern Publishing Company 1966). During this time, she was married and had children. Loula Kendall Rogers, *A True Story of Nancy Hart*, ATLANTA JOURNAL, October 14, 1901. The war in upcountry Georgia was more in the nature of a civil war, pitting neighbors, Tories and patriots, against one another. During one brutal incident, the Tories murdered one of Nancy's neighbors, a patriot hero named John Dooley, in front of his family. McCullar, *supra*, at 277. Nancy had to call on her abilities with a rifle to protect her family. Clay Ouzts, *Nancy Hart (ca. 1735-1830), History and Archeology*, *The New Georgia Encyclopedia*, <http://www.newgeorgiaencyclopedia.org/nge/Article.jsp?id=h-2876&hl=y> (last visited February 7, 2008).

Historical records reflect that, while her husband Benjamin was away, Nancy was working at her cabin when a band of Tories, part of the same group that murdered John Dooley, surprised her and forced her to cook a meal for them – the meal being her prized

turkey. *Id.*, McCullar, *supra*, 285. While Nancy cooked and liberally supplied corn whiskey to the intruders, she surreptitiously passed their weapons through a space between the hewn logs of her home to one of her children. Nancy had already sent another of her children to call for her neighbors on a conch shell used for raising the hue and cry. Ouzts, *supra*. When the intruders discovered what Nancy had been doing, they demanded their guns. *Id.* Nancy had possession of at least two of their rifles and fired. One Tory fell dead and, with a second shot, another fell wounded. Nancy's husband and other neighbors arrived soon after. *Id.*

Although the rifle may have been of more utility to Nancy's generation, low-maintenance revolvers and self-loading handguns are now prevalent. Handguns are also more useful in close quarters where the handgun's size and ease of use not only recommends its general employment, but also makes it particularly suited for women, the elderly and the physically disabled. A rifle or shotgun as a primary defensive weapon is simply not as manageable as a handgun because either of these weapons weigh more and the barrels can be cumbersome.

Despite the differences in technology, the constant factor both historically and now is that the presence of firearms in the hands of women, the elderly and the physically disabled, at a minimum, serve as an equalizer between the victims and their attackers.

## **2. Minnie Lee Faulkner: A Modern Illustration That the Use of a Firearm Deters an Attacker.**

Living in almost the exact geographical spot as Nancy Hart, Mrs. Minnie Lee Faulkner, 88, lives alone in her home in Elbert County, Georgia near the Savannah River. Elbert County is still rural though settled early in the State's history. *See Declaration of Minnie Lee Faulkner infra* pp. App. 26-29.

Faulkner purchased a handgun for personal defense and home protection after the death of her husband in 1993. Faulkner chose a handgun over a rifle or shotgun because it was small, maneuverable and easy to use for home defense by someone of her age, size and strength. *Id.* at p. App. 26.

On October 10, 2004, Faulkner's doorbell rang at one o'clock in the morning. From the porch, a voice called, "Minnie Lee, I've got car trouble – open the door." Faulkner replied that she was not going to open the door, and the man on her porch started kicking the door. He split the door and Faulkner called 911. *Id.* at p. App. 27.

Faulkner told the man that she had called 911 and he stopped kicking. With pistol in hand, Faulkner then peered out the window and she saw a young man's face with a clear complexion. Faulkner said in a stout voice, "I have my gun and I have it trained right on you." *Id.* The intruder left. Later, when the front door was examined, it was determined that one more kick would have broken the door. Later that

night, the intruder broke into a nearby trailer and attacked an elderly woman while she was in bed. *Id.* Faulkner believes that the intruder would have tried to kill her had he entered. *Id.*

Faulkner spoke with the local sheriff's office and was able to provide information for a composite drawing, identifying the intruder as the son of a deceased neighbor. *Id.* at pp. App. 27-28. Faulkner specifically noted his clear eyes and good complexion. Using this information and other evidence, the sheriff's office was able to apprehend the intruder. *Id.* He was convicted of burglary and aggravated assault with intent to rape. *Id.* at p. App. 28.

Faulkner was badly frightened by the attack. She believes that her handgun is her only protection, and she is glad she had it the night of the attack. She did not have to shoot the intruder because the mere presence of the weapon scared him away. Faulkner believes people have a right to have a gun for protection and self-defense. *Id.*

Faulkner's experience poignantly illustrates why the individual right of self-defense through the use of a handgun is so vital to women, the elderly and the physically disabled. Faulkner is from the same county where Nancy Hart stood against the Tories during the War for Independence. As Hart used her intelligence, courage and the Tories' own rifles against them, Faulkner used her courage, fortitude and handgun against an intruder in the night. These women,

though separated by two hundred thirty years, have in common the necessity of firearms to deter their bigger, stronger or more numerous assailants. Without firearms, both Nancy Hart and Minnie Lee Faulkner, living on the same land but separated by time, would have been victims. With firearms, they became more than equal to the imminent danger they faced.

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### CONCLUSION

For the foregoing reasons, Southeastern Legal Foundation, Inc., Second Amendment Sisters, Inc., Women Against Gun Control, 60 Plus Association, Inc., Professor Robert B. Smith, Dr. Christie Davies, Professor Joe Michael Cobb and Minnie Lee Faulkner respectfully submit that the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

SHANNON L. GOESSLING

*Counsel of Record*

STEPHEN D. MORRISON JR.

SOUTHEASTERN LEGAL

FOUNDATION, INC.

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Suite 520

Atlanta, Georgia 30328

(404) 257-9667

February 11, 2008

*Counsel for Amici Curiae*

DECLARATION OF MASSAD F. AYOOB

COMES NOW Massad Ayoob and gives this his declaration, based upon personal knowledge, showing that the following facts are true and correct,

1.

I am of the age of the majority and am laboring under no mental difficulty that would prevent me giving evidence in this case.

2.

My name is Massad F. Ayoob. I have been a firearms owner since childhood, a competitive shooter since approximately 1967, Handgun Editor for *Guns* magazine for more than 30 years, and Law Enforcement Editor for *American Handgunner* magazine. I served for more than 19 years as chair of the firearms committee of the American Society of Law Enforcement Trainers and presently serve on the advisory board of the International Law Enforcement Educators and Trainers Association. I have written and published numerous books on firearms and self-defense, including *In the Gravest Extreme: the Role of the Firearm in Personal Protection* and *StressFire: Volume I of Gunfighting for Police: Advanced Tactics and Techniques*. I have attached my *curriculum vitae* to this declaration as Exhibit A.

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3.

I aver under oath that I am the same Massad F. Ayooob who wrote the books *In the Gravest Extreme* and *StressFire*, mentioned above and quoted out of context in an *amicus* brief filed by the Violence Policy Center in the *Heller* case now before the Supreme Court of the United States.

4.

I aver under oath that the quotes attributed to me appearing on pages 30 and 31 of said Violence Policy Center *amicus* brief, hereinafter VPC brief, offered in support of the Appellant in the *Heller* case is taken blatantly out of context, both within the passage from which they were extracted, and from the overall contexts of the books in which they appear.

5.

At Page 30 of the VPC brief, the statement is made by the brief's author(s) that, "Even pro-gun advocates recognize that handguns are not well-suited for self-defense . . . As (Chris) Bird has noted and many others have echoed, '(a) handgun is the hardest firearm to shoot accurately.'<sup>(64)</sup> Because of their smaller size and shape, which allows them to be concealed and carried easily, handguns – compared with larger shotguns and rifles that are designed to be held with two hands – require a greater degree of dexterity.<sup>(65)</sup>"

6.

Footnote number 64 quoted in the paragraph immediately above reads, “*Id.*; see also Massad F. and Dorothy A. Ayoob, *In the Gravest Extreme: The Role of the Firearm in Personal Protection* 47 (1980) (The handgun is the most difficult firearm to shoot accurately and rapidly; skill comes only with practice.’).”

7.

The actual passage from which that quote was extracted reads as follows: “The ability to use your gun effectively is not only an asset, but indeed a responsibility. You must become sufficiently adept to be sure (a) that you will not endanger standers-by with wild shots, and (b) that you can neutralize an armed, violent offender before he terminates innocent lives. The handgun is the most difficult firearm to shoot accurately and rapidly; skill comes only with practice. Spend some time at a local gun club or police pistol range, learning the fundamentals of marksmanship and gun handling from experts.”

8.

The affiant sees nothing, and indeed intended nothing, in that passage to indicate that “handguns are not well-suited for self-defense.” The very wording of the passage makes it clear that “learning the fundamentals” is sufficient, and that the experts are the ones who should teach those fundamentals, not the only ones who can practice them. If it were true



## App. 4

that “handguns are not well-suited for self-defense,” all of our nation’s fully sworn police officers would not be routinely armed with them.

### 9.

The statements in question in the VPC brief glaringly ignore the well-established fact that the great majority of times when a private citizen draws a gun on a criminal suspect, the very presence of the gun suffices to end hostilities with no shots fired. This simple fact makes marksmanship skill under stress a moot point in the majority of instances when defensive firearms are brought into action by private citizens acting in defense of themselves or others. Moreover, most situations involving personal defense and defense of family offer very little risk to bystanders.

### 10.

The VPC brief falsely attributes its imputation that rifles and shotguns are superior to handguns for defensive purposes, to me among others. Yet in going through *In the Gravest Extreme* carefully enough to cherry-pick the misleading out-of-context quotes, that brief pointedly ignores my flat statements on Page 100 of the book in question: “High powered rifles are not recommended for self defense . . . A major problem with any rifle or shotgun is that it is too awkward to get into action quickly, or to handle in close quarters. A burglar will find it much easier to get a 3½ foot

weapon away from you, than a pistol you can hold and fire with one hand.” This is especially true with regard to any person who may be at a physical disadvantage when contrasted with the physical ability of their attacker, such as a woman, an elderly person or someone who is physically disabled.

11.

At Page 31 the VPC brief quotes me from my book *StressFire*, and quotes other colleagues well known to me personally and professionally such as Loren Christensen and Dr. Alexis Artwohl, to the effect that when facing imminent death, human beings will suffer effects of “fight or flight response” such as “the loss of fine motor skills, tunnel vision, auditory exclusion, trembling, and loss of control of bodily functions.” This is true as far as it goes, but in a giant leap past logic that seems to define the term *non sequitur*, the VPC brief then blatantly concludes, “A handgun owner faced with the ‘fight-or-flight reflex’ is *less* likely to be able to manipulate his handgun effectively for self-defense, but he is also *more* likely to endanger himself, his family, and other innocent bystanders.”

12.

This is false on its face. It blatantly overlooks the incredibly obvious fact that “fight or flight” response is triggered *by the perception of clear and present mortal danger*, the situation I wrote the books in

## App. 6

question, and the other authors from my field wrote *their* books, to help people in such deadly danger to cope with. There is *no* evidence of “frequent” shootings of innocent bystanders by armed citizens, and it is obvious and within the common knowledge that when the private citizen draws a gun to ward off a lethal threat, that very threat is the danger to bystanders, not the defending citizen.

### 13.

Moreover, it has been my experience in an adult lifetime spent studying and researching this discipline that “fight or flight response” is born in fear, and fear in turn is largely born in helplessness against the given threat. Therefore, it is axiomatic and well within the realm of common sense that the person armed with a mechanism that can neutralize the threat will be far less in the grip of fear, and far less danger to themselves or others than the original, criminal threat itself.

### 14.

Let the affiant close by noting that the theme of my books, quoted out of context by VPC in their *amicus* brief, was that nothing less than the firearm will suffice to protect against imminent, unavoidable danger of death or grave bodily harm at the hands of violent criminals who create that clear and present danger as reasonably perceived by a prudent person. Moreover, an adult lifetime as a firearms instructor

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for both law enforcement and qualified private citizens has shown me that the handgun is faster to deploy and easier to protect against a criminal disarming attempt than a rifle or shotgun. Moreover, because of the very nature of a handgun, its size, its ease of use and its compactness, allows its effective use for personal defense by persons of lesser physical ability.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Live Oak, Florida, this 28th day of January, 2008.

/s/ Massad Ayooob  
MASSAD AYOOB

**“EXHIBIT A”**

*Curriculum Vitae*, **Massad F. Ayoob**

D.O.B. 7/20/48

**Areas of Expertise:** Dynamics of violent encounters, training standards for safe weapons handling (law enforcement/civilian), training standards of firearms and use of force (police/civilian), homicide/use of force investigation, personal and professional security, weapon retention/disarming, law enforcement internal investigation/discipline.

**Teaching Experience:**

Director, Lethal Force Institute, 1981-present.

Chair of firearms committee, American Society of Law Enforcement Trainers (ASLET), 1987-present. Also served on Ethics Committee. Leads annual Panel of Experts on firearms/deadly force issues at ASLET's international seminars.

Special Instructor, Chapman Academy, 1981-88.

International Instructor, PR-24 baton; has lectured several times at annual international seminar. Trains other instructors and trainers of instructors.

Advisory Board member, International Law Enforcement Educators' and Trainers' Association, has lectured there on investigation and management of police use of force cases.

## App. 9

National Instructor, Weapon Retention & Disarming, National Law Enforcement Training Center. Trains other instructors and trainers of instructors. 1990-present.

Assistant professor teaching weapons and chemical agents, Advanced Police Training Program of New Hampshire, 1974-77.

Co-instructor (w/former world pistol champion Ray Chapman) of Advanced Officer Survival Seminars through Police Marksman Assn., in the 1980s.

International Instructor, Persuader Mini-Baton, certified by Joe Truncale.

Instructor, Kubotan self-defense, certified by Soke Takayuki Kubota.

National Instructor, Telescoping baton, certified by CASCO.

Instructor, straight baton, certified by COPSTK.

Has taught on relevant topics for National, International, and Regional seminars of International Association of Law Enforcement Firearms Instructors; regional seminars for CLE credit on defending deadly force cases (NACDL, MA. CDL Assn.); International Homicide Investigators' Seminar (investigation of officer-involved shootings and characteristics of self-defense shootings); McGill University School of Medicine (medico-legal aspects of gunshot and knife wounds); officer survival tactics (Ordnance Expo, Los Angeles; National Tactical Invitational; New England

SWAT Seminar; DEA National Academy; Metro-Dade Police Academy; DEA/Miami).

***Personal Training***

Smith & Wesson Academy: Advanced Combat Shooting (1st in class), Instructor course; Instructor Update (twice); Officer Survival Course (1st in class); Weapon Retention instructor course; advanced revolver shooting course.

Glock: Glock Instructor Course; Glock Armorer Course.

Firearms Instructor Courses: National Rifle Association.

Ordnance Expo: Firearms and Ballistic Evidence; Officer Involved Shooting Investigation; Advanced Officer Involved Shooting Investigation; Officer Survival; Management of Barricaded Suspects.

International Police Academy: Defensive Tactics (Unarmed Combat and Restraint) Instructor Course, rated Master Instructor by sensei James Morell.

NYPD: "Hostage Negotiation for Supervisors", "Post Shooting Tactics", "House Clearing Techniques", "Off Duty Confrontation Tactics", "Summary of Violent Encounter Patterns", "Police Shotgun Program."

Advanced Homicide Investigator school, by Vern Geberth, NYPD Ret., author of "Practical Homicide Investigation."

International Homicide Investigators' Seminar (2 occasions).

Medical/Legal Death Investigation (Dade County Medical Examiner's Office).

AELE: "Police Civil Liability Seminar."

PPCT: Pressure Point Control Tactics, taught by Bruce Siddle.

Federal Law Enforcement Training Center: BOSS program including officer survival, intelligence briefings on outlaw bike gangs, booby traps, counter-ambush tactics, arrest techniques.

Escrima (stick- and knife-fighting), Grandmaster Remy Presas.

Knife/Counter-Knife courses: Master Paul Vunak, Hank Renhardt, Sensei Jim Maloney, Michael de Bethencourt.

Has studied personally with world handgun champions Ray Chapman, Rob Leatham, Jerry Miculek, and Frank Garcia in advanced shooting programs.

**Has studied special units and their training on-site, including but not limited to:**

NYPD Firearms & Tactics Unit, Emergency Services Unit, Armed Robbery Stakeout Unit.

LAPD SWAT, Firearms Training Unit.

FBI Firearms Training Unit.



Metro-Dade Police Firearms/SWAT Training Unit.

Illinois State Police Ordnance Section.

NH State Police SWAT, EVOC, Firearms Training.

Kentucky State Police, Firearms Training and SRT Training.

Arizona Highway Patrol Firearms Training.

London, England Metropolitan Police firearms training and special services unit (D.11, PT-17, SO-19).

Has reviewed or audited numerous other law enforcement firearms training programs.

### **Publication Credits**

#### ***Books:***

“Fundamentals of Modern Police Impact Weapons,” Charles C. Thomas, Publishers, 1978.

“In the Graves Extreme: the Role of the Firearm in Personal Protection,” Police Bookshelf, 1979.

“Hit the White Part,” Police Bookshelf, 1982.

“The Truth About Self Protection,” Bantam, 1983.

“StressFire,” Police Bookshelf, 1984.

“StressFire II,” Advanced Combat Shotgun,” Police Bookshelf, 1992.

“The Semiautomatic Pistol in Police Service and Self Defense,” Police Bookshelf, 1988.

“Ayoob Files: the Book,” Police Bookshelf, 1995.

“Complete Book of Handguns,” Volume 10 (1993) through Volume 27 (2006), Harris Publications.

“Gun Digest Book of Combat Handgunnery, Fifth Edition,” Krause Publications, 2002.

“Gun Digest Book of SIG-Sauer Pistols,” Krause Publications, 2004.

“Gun Digest Book of Beretta Pistols,” Krause Publications, 2005.

***Monographs:***

“Gunproof Your Children,” Police Bookshelf/Potshot Press.

“Handgun Primer,” Police Bookshelf/Potshot Press.

“The Police View of Gun Control,” Second Amendment Foundation.

“Armed and Alive,” Second Amendment Foundation.

***Forewords for Authoritative Texts:***

“Mu Tau: The Modern Greek Karate” by James Arvanitis

“Realistic Defensive Tactics” by John Peters

“Modern Centerfire Handguns” by Stanley Trzoniec

“You Can’t Miss” by John Shaw

“MasterTips” by Jon Winokur

“Effective Defense” by Gila May-Hayes

“In Self Defense” by Michael Izumi

“The Tactical Pistol” by David Lauck

“The Tactical Rifle” by David Lauck

***Periodicals***

Handgun Editor, *Guns* magazine  
Law Enforcement Editor, *American Handgunner* magazine  
Contributing Editor, *Shooting Industry* magazine  
Contributing Editor, *On Target* magazine  
Firearms Editor, *Backwoods Home* magazine  
Associate Editor, *Combat Handguns* magazine  
Associate Editor, *Guns & Weapons for Law Enforcement* magazine  
Associate Editor, *Gun Week*

Has published thousands of articles in various professional journals and newsstand periodicals, the overwhelming majority related to law enforcement, weaponry, martial arts and personal defense. Firearms articles have appeared in *Guns*, *American Handgunner*, *Handguns*, *GUNsport*, *Handgunner*, *Home Defense*, *Glock Annual*, *Colt Annual*, *Magnum*, *Gun World*, *Combat Handguns*, and others. Martial arts/unarmed combat articles have appeared in *Black Belt*, *Official Karate*, *Inside Kung-fu*, *Inside Karate*, *Warriors*, *Fighting Stars*, and other such publications. Law enforcement articles have been published in *American Police Beat*, *Law & Order*, *Police*, *Police Product News*, *Sentinel*, *Trooper*, *Patrolman*, *Police Marksman*, *Guardian*, *Guns & Weapons for Law Enforcement*, *Guns & Ammo Law Enforcement Annual*, and other police professional journals and law enforcement related periodicals. Has also been published in *Car & Driver*, *Gentlemen's Quarterly*, *Man's Magazine*, *Modern Jeweler*, *New Hampshire Outdoorsman*, *New Hampshire Times*, *Prism*, *Sexology*,

*Sports Afield*, and assorted other general interest publications.

***Training Films***

“StressFire Handgun,” 2002  
“StressFire Shotgun,” 2002  
“StressFire Rifle,” 2002  
“Deadly Force Cases,” ALI-ABA, 2001  
“Judicious Use of Deadly Force,” 1990  
“Post Violent Event Trauma,” 1990  
“LFI Handgun Safety,” 1990  
“Off Duty Survival,” 1993  
“Shoot to Live,” 1986  
“How Close is Too Close,” 1986  
“Cute Lawyer Tricks,” 1986  
“Physio-Psychological Aspects of Violent Encounters,”  
1981  
Has appeared in various other training films.

***Quoted as authoritative reference in:***

FBI Journal  
“Law Enforcement Handgun Digest” (Grennell)  
“Gun Digest Book of Combat Handgunnery, 1st edition  
(Lewis & Mitchell), 2nd and 3rd editions (Karwan)  
“Shooting Schools: An Analysis” (Winter)  
“Street Survival: Tactics for Armed Encounters”  
(Adams, McTernan, Remsberg)  
“Tactical Edge: Tactics for High Risk Patrol” (Remsberg)  
“Handgun Retention System” (Lindell)  
“The Street Smart Gun Book” (Farnam)  
“Police Handgun Manual” (Clede)  
“Police Shotgun Manual” (Clede)  
“High Tech SWAT Weapons” (Bane)

“PR-24 Baton Manual” (Starrett)

“Police Officers Guide” (Clede)

Cited as authoritative reference in numerous other publications.

### ***Career Accomplishments***

Voted Outstanding American Handgunner of the Year, 1998.

Winner of first annual National Tactical Advocate Award, 1995, awarded by American Tactical Shooting Association.

Winner of the Roy Rogers Award for promotion of firearms safety.

Winner of first George C. Nonte Award for excellence in firearms journalism, 1978.

### ***Firearms Qualifications and Awards***

Combat Master, NRA Police Revolver

First 5-gun Master, International Defensive Pistol Association

Master, Revolver, National Marksman Sports Society

Master, Automatic, National Marksman Sports Society

Class A, International Practical Shooting Confederation

Grand Mastershot, UK Practical Shooting Association

Master Blaster, Second Chance

Expert, NRA Action Shooting

Honorary Distinguished Expert, Federal Law Enforcement Training Center

Several times top shooter in statewide NH police combat matches, 1973-2003

Five times New England Regional champion in various handgun disciplines

Co-winner with daughter Justine, National Champion Parent/Child Team, National Junior Handgun Championships, 1998

Has won numerous individual/local combat shooting tournaments, has competed successfully in five countries.

### ***Law Enforcement Experience***

Hooksett (NH) Police Dept.: 1972-73, auxiliary policeman. 1973-1980, fully sworn Police Officer. Duties under four chiefs included patrol, firearms training, community relations and crime prevention assignments, dept. firearms instructor for most of this period. Served in part time capacity with full police authority.

Deerfield (NH) Police Dept.: 1982-1990. Fully sworn officer, rank of Sergeant ('82-'84) in charge of all police training, and Lieutenant ('84-'90), in charge of

police training and crime prevention activities. Served in part time capacity with full police authority.

Grantham (NH) Police Dept.: 1990-present. Fully sworn Captain and Police Prosecutor, in charge of training, research, and other administrative functions. Serve in part time capacity with full police authority.

***References available upon request.***

Massad Ayooob  
PO Box 1477  
Live Oak, FL 32064  
(386) 688-1932  
massadayoob@aol.com

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DECLARATION OF JUDITH KUNTZ

COMES NOW Judith Kuntz and gives this her declaration, based upon personal knowledge, showing that the following facts are true and correct,

1.

I am of the age of the majority and am laboring under no mental difficulty that would prevent me giving evidence in this case.

2.

I am a 67-year-old widow and live in Indialantic, Florida.

3.

I own a .38-caliber handgun for personal defense. I believe my ownership of the gun and the use of it for personal defense saved my life. I chose a handgun over a rifle or shotgun because it is small, maneuverable and easy to use. I did not choose the rifle or shotgun because they are heavy, unwieldy and difficult to use in a confined space such as my home.

4.

On May 31, 2005, I shot an intruder who unlawfully entered my home. I attempted to hide from the intruder in my bedroom, but the intruder proceeded



to enter my bedroom while I was in it. I shot the intruder in order to protect myself and my property.

5.

I am glad I had my handgun during the incident and that I was able to defend myself and my property, I believe people have a right to own and use a gun for personal defense.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Indialantic, Florida, this 1st day of February, 2008.

/s/ Judith Kuntz  
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JUDITH KUNTZ

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DECLARATION OF THERESA WACHOWIAK

COMES NOW Theresa Wachowiak and gives this her declaration, based upon personal knowledge, showing that the following facts are true and correct,

1.

I am of the age of the majority and am laboring under no mental difficulty that would prevent me giving evidence in this case.

2.

I am 57-years-old, and I live in Augusta, Georgia.

3.

I own a .357-caliber handgun for personal defense. I believe my ownership of this gun and the use of it for personal defense saved my life. I defer to a handgun over a rifle or shotgun because it is small, maneuverable and easy to use. I did not choose the rifle or shotgun because they are heavy, unwieldy and difficult to use in a confined space such as my home if an intruder actually entered.

4.

On April 26, 2007, an intruder gained entrance into my house, in the early morning hours, woke me up, and put a knife to my throat with the intent of doing me bodily harm. He was in my bed and

unaware of the handgun I kept in my bed stand. I protested against his covering my mouth with his hand as he pressed his knife to my throat repeatedly, threatening to kill me as I was struggling to remove his hand. This interaction provided me an opportunity to keep his focus on my resistance while I secured my handgun with his being unaware of my other activities. I appeared to comply finally with his 'being in control' and ceased struggling upon securing my weapon. I asked him what did he want. Simultaneously, he realized there were dogs in the room and demanded I 'get the dogs out.' With him at my back and his knife still ready, we moved off of my bed to the bedroom door. When at the dog gate he demanded the dogs be removed from the room, I unfastened the dog gate and with him preoccupied with their imminent release I pivoted and shot him in the right side of his chest. I did not randomly exercise force, only sufficient force to remove him as a personal threat. He was still mobile and anxious to get away through the now opened dog gate. I called the police and secured medical help for him as I did not expect he could get very far. He did survive his single wound. I was saddened and shocked to find out that the man was a neighbor and a relative of a family I cared about and had known for decades.

5.

I am glad I had my handgun that morning and was able to defend my self and my property. I would be no match in a physical contest of strength with my

assailant and would have just been another sad statistic. My handgun was the tool I used to preserve my life. A handgun has been referred to as a peacemaker for a reason. I believe people have a right to own and use a handgun for personal defense. When there is great disparity in age, gender and physical ability, the hand held weapon is the great equalizer in insuring a balance of resolve and positive action in confronting those who would do harm. I have owned a handgun for decades and believe in the individual's right to have the ability to confront and stop conduct that is a threat to the individual and to society. I also believe it is the individual's responsibility to do so as well. I do not believe that government has the means to 'protect' me except for the Constitutional sense of allowing me to have unrestricted access to the tools that will insure life, liberty and the pursuit of happiness. I firmly believe the ownership of handguns for personal defense complies with the mandate of this government as envisioned by our founding fathers.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Augusta, Georgia, this 6th day of February, 2008.

/s/ Theresa Wachowiak  
THERESA WACHOWIAK

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DECLARATION OF JAMES H. WORKMAN, JR.

COMES NOW James H. Workman and gives this his declaration, based upon personal knowledge, showing that the following facts are true and correct,

1.

I am of the age of the majority and am laboring under no mental difficulty that would prevent me giving evidence in this case.

2.

I am 80-years-old, a retired oil industry worker and I live with my wife Kathryn in Pensacola, Florida.

3.

I own a .38-caliber handgun for personal defense. I believe my ownership of the gun and the use of it for personal defense saved my wife Kathryn's life and mine. I chose a handgun over a rifle or shotgun because it is small, maneuverable and easy to use. I did not choose the rifle or shotgun because they are heavy, unwieldy and difficult to use in a confined space such as my home if an intruder actually entered.

4.

On November 4, 2004, I shot an intruder who entered the trailer where my wife and I were staying. We were living in a trailer in front of our home that was damaged by Hurricane Ivan. When the intruder entered our yard at 2:20 A.M., I confronted him. Despite my firing a warning shot into the ground, the intruder advanced toward the trailer. I struggled with him inside the trailer, shooting him in the process

5.

I am glad I had my handgun that night and was able to defend my wife, myself and our property. I believe people have a right to own and use a gun for personal defense.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Pensacola, Florida, this 28th day of Jan., 2008.

/s/ James H. Workman, Jr.  
JAMES H. WORKMAN, JR.

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DECLARATION OF MINNIE LEE FAULKNER

COMES NOW Minnie Lee Faulkner and gives this her declaration, based upon personal knowledge, showing that the following facts are true and correct,

1.

I am of the age of the majority and am laboring under no mental difficulty that would prevent me giving evidence in this case.

2.

I am 88-years-old and I live alone in Elbert County, Georgia. Elbert County is a rural county located on Georgia's eastern border with South Carolina in an area that was settled early in the State's history. My home is located near the Savannah River in the country.

3.

I purchased a handgun after the death of my husband in 1993 for personal defense and home protection. I chose a handgun over a rifle or shotgun because it is small, maneuverable and easy to use for someone of my age, size and strength. I did not choose the rifle or shotgun because they are heavy, unwieldy and difficult to use in a confined space such as my home if an intruder actually entered.

4.

On October 10, 2004, my doorbell rang at one o'clock in the morning. A voice called, from the porch, "Minnie Lee, I've got car trouble – Open the door." I replied that I was not going to open the door, and the man on my porch started kicking the door. He split the door and I called 911.

5.

I told the man that I had called 911 and he stopped kicking. With my pistol in my hand, I then peered out the window, and saw his face. He was a young man with a clear complexion. I said in a stout voice, "I have my gun and I have it trained right on you." The intruder left. I felt that the Lord was with me. When my front door was examined, one more kick would have broken the door. I thought that the intruder would have tried to kill me had he gotten in.

6.

Later that night, the intruder broke into a nearby trailer and attacked an elderly lady while she was in bed, breaking her wrist.

7.

I spoke with the local sheriff's office and was able to provide information for a composite drawing, identifying the intruder as a deceased neighbor's son. I specifically noted his clear eyes and good complexion.



Using this information and other evidence, the sheriff's office was able to apprehend the intruder. He is presently serving time in the State prison system. He was convicted of aggravated assault with intent to rape and burglary.

8.

I live in fear because of this occurrence, and my handgun is the only protection I have. I am still scared because I have heard a lot about home invasions. I broke my right wrist in February and I do not know whether I can pull the trigger. I do have a hammer, but I am not sure whether it would be enough for defense. I still enjoy my independence, living alone and keeping house.

9.

I am glad I had my handgun that night. The intruder went away after I told him I had one. I believe people have a right to have a gun for protection and self defense.

10.

Not far from my house in Elbert County is where Nancy Hart of Revolutionary War fame captured the Tories and had them hung.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Elberton, Georgia, this 17th day of January, 2008.

/s/ Minnie Lee Faulkner  
MINNIE LEE FAULKNER

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