

No. 07-290

In The
Supreme Court of the United States

DISTRICT OF COLUMBIA AND
MAYOR ADRIAN M. FENTY,

Petitioners,

v.

DICK ANTHONY HELLER,

Respondent.

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

**BRIEF FOR AMERICAN PUBLIC
HEALTH ASSOCIATION, AMERICAN
COLLEGE OF PREVENTIVE MEDICINE,
AMERICAN TRAUMA SOCIETY, AND
AMERICAN ASSOCIATION OF SUICIDOLOGY
AS AMICI CURIAE IN SUPPORT OF PETITIONERS**

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HEALTH ASSOCIATION, AMERICAN
COLLEGE OF PREVENTIVE MEDICINE,
AMERICAN TRAUMA SOCIETY, AND
AMERICAN ASSOCIATION OF SUICIDOLOGY
AS AMICI CURIAE IN SUPPORT OF
PETITIONERS DISTRICT OF COLUMBIA
AND MAYOR ADRIAN M. FENTY**

The American Public Health Association, the American College of Preventive Medicine, the American Trauma Society, and the American Association of Suicidology respectfully submit this brief as amici curiae in support of petitioners.¹



INTERESTS OF THE AMICI

The American Public Health Association (APHA) is the oldest, largest, and most diverse organization of public health professionals in the world and has been working to improve public health since 1872. The Association aims to protect all Americans and their communities from preventable, serious health threats.

¹ Pursuant to Supreme Court Rule 37.3(a), the amici curiae state that the parties have consented to the filing of this brief and have filed letters of consent in the office of the clerk. Pursuant to Supreme Court Rule 37.6, the amici curiae state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici, their members, or their counsel made a monetary contribution to its preparation or submission.

Through its two flagship publications, the peer-reviewed *American Journal of Public Health* and the award-winning newspaper *The Nation's Health*, the Association communicates the latest public health science and practice to members, opinion leaders, and the public.

The American College of Preventive Medicine (ACPM) is the national professional society for physicians committed to disease prevention and health promotion. ACPM's 2,000 members are engaged in preventive medicine practice, teaching, and research. Many serve on ACPM committees and task forces and represent preventive medicine in national forums, contributing to the organization's role as a major national resource of expertise in disease prevention and health promotion. ACPM was established in 1954. Its members are specialists in preventive medicine and are uniquely trained in both clinical medicine and public health. They have the skills needed to understand and reduce the risks of disease, disability, and death in individuals and in population groups.

The American Trauma Society (ATS) is a leading spokes-organization for trauma care and trauma prevention in the United States. ATS has been the foremost advocate for trauma victims and their families for the past 30 years and continues to seek optimal care for all trauma victims. Many members of ATS are members of trauma teams in communities across the country. ATS works closely with the U.S. Congress, with various federal agencies, and with the

office of the President, supporting legislative and administrative efforts that address the financial and legal issues surrounding trauma. ATS provides critical information on trauma to its members, to policymakers, and to the public. It is also a strong supporter of injury prevention, creating and producing programs and providing those programs to its members.

The American Association of Suicidology (AAS) seeks to understand and prevent suicide. Founded in 1968 by Edwin S. Shneidman, Ph.D., AAS promotes research, public awareness programs, public education, and training for professionals and volunteers. In addition, AAS serves as a national clearinghouse for information on suicide. The membership of AAS includes mental health and public health professionals, researchers, suicide prevention and crisis intervention centers, school districts, crisis center volunteers, survivors of suicide, and a variety of laypersons who have an interest in suicide prevention.



INTRODUCTION AND SUMMARY OF ARGUMENT

Firearms have a profound effect on the public's health in the United States. In 2004 (the latest year for which complete data are available), there were 29,569 firearm-related deaths in the United States, including homicides, suicides, and accidental deaths.

Ctrs. for Disease Control & Prevention, *Web-Based Injury Statistics Query and Reporting System (WISQARS) Injury Mortality Reports, 1999-2004* (July 2007), http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html. In addition, there were more than 70,000 non-fatal shootings serious enough to require a hospital visit in the U.S. in 2006. There were also an estimated 477,040 victims of non-fatal violent crimes committed with a firearm in 2005. Ctrs. for Disease Control & Prevention, *Web-Based Injury Statistics Query and Reporting System (WISQARS) Nonfatal Injury Reports* (Sept. 2007), <http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html>; Bureau of Justice Statistics, *Firearms and Crime Statistics* (Mar. 2007), <http://www.ojp.usdoj.gov/bjs/guns.htm>. The total societal cost of this firearm-related violence has been estimated at \$100 billion per year. Philip J. Cook & Jens Ludwig, *Gun Violence: The Real Costs* 117 (Oxford Univ. Press 2000).

Scientific evidence is the starting point for the public health approach to problems like gun violence. “The scientific core of public health is epidemiology, which identifies the risk factors, trends, and causes of health problems.” David Hemenway, *Private Guns, Public Health* 9 (2004). Because gun violence is a major public health problem that needs to be addressed through a variety of actions, including legislation and regulation, amici respectfully submit the following information to aid the Court’s analysis of this controversial issue.

While the numbers of non-fatal shootings are troubling, this brief will focus on the most extreme consequences of improper firearm use – that is, the taking of human life. The studies detailed below show that the risk of suicide, homicide, and accidental gun death is greater in homes with guns, and in communities with a higher prevalence of guns. Numerous studies indicate that people who have guns in their homes are at a substantially increased risk of suicide. Similarly, the presence of a gun at home increases the risk of homicide for the occupants of that home. And handguns, in particular, are responsible for the majority of all firearm homicides and suicides. Ultimately, the evidence below shows that a substantial number of murders, suicides, and unintentional firearm deaths may be prevented by the statutes challenged in this case.



ARGUMENT

I. PUBLIC HEALTH RESEARCH MAY BE RELEVANT TO ASSESSING THE CONSTITUTIONALITY OF THE STATUTES AT ISSUE.

Amici are aware of, but take no position on, the argument that the Second Amendment only protects a right to keep and bear arms for use in a well-regulated militia. *See, e.g., Silveira v. Lockyer*, 312 F.3d 1052, 1066 (9th Cir. 2002); *Stevens v. United States*, 440 F.2d 144, 149 (6th Cir. 1971). Amici are also aware of, but take no position on, the argument

that the Second Amendment does not apply to state and local governments (even in the District of Columbia), as it limits only federal power. *See Presser v. Illinois*, 116 U.S. 252, 265 (1886); (Petitioners’ Brief at 35, 38.)² Amici review here the relevant public health research to assist the Court, should it determine that neither of these arguments decides the constitutionality of the statutes at issue.

Even the most expansive reading of the Second Amendment must acknowledge that the Constitution allows at least some regulation of firearms. As this Court long ago explained, to the extent the Bill of Rights “embod[ies] certain guaranties and immunities” inherited from the English common law, those rights have “from time immemorial been subject to

² Many relatively recent circuit court decisions have held that *Presser* remains good law. *See Bach v. Pataki*, 408 F.3d 75, 85-86 (2d Cir. 2005), *cert. denied*, 546 U.S. 1174 (2006); *Thomas v. Members of City Council of Portland*, 730 F.2d 41, 42 (1st Cir. 1984) (per curiam); *Love v. Pepersack*, 47 F.3d 120, 123 (4th Cir. 1995) (“The Second Amendment does not apply to the states.”); *Peoples Rights Org. v. City of Columbus*, 152 F.3d 522, 539 n.18 (6th Cir. 1998) (“The Supreme Court has held that the Due Process Clause of the Fourteenth Amendment does not incorporate the Second Amendment; hence, the restrictions of the Second Amendment operate only upon the Federal Government.”); *Quilici v. Vill. of Morton Grove*, 695 F.2d 261, 270 (7th Cir. 1982) (“The second amendment does not apply to the states.”), *cert. denied*, 464 U.S. 863 (1983); *Fresno Rifle & Pistol Club, Inc. v. Van de Kamp*, 965 F.2d 723, 731 (9th Cir. 1992) (“The Second Amendment limits only federal action, and we affirm the district court’s decision ‘that the Second Amendment stays the hand of the National Government only.’”).

certain well-recognized exceptions arising from the necessities of the case.” *Robertson v. Baldwin*, 165 U.S. 275, 281-82 (1897). As the United States Court of Appeals for the District of Columbia Circuit noted, “[t]he protections of the Second Amendment are subject to the same sort of reasonable restrictions that have been recognized as limiting, for instance, the First Amendment.” *Parker v. District of Columbia*, 478 F.3d 370, 399 (D.C. Cir.), *cert. granted*, 128 S. Ct. 645 (2007). Moreover, the text of the Second Amendment itself acknowledges that a militia should be “well-regulated,” implying that any right the amendment guarantees is subject to some limitation. U.S. Const. amend. II.

It is thus not surprising that the United States has a long history of firearm regulation in the pursuit of public safety. Such regulation includes bans on carrying concealed weapons (*see, e.g.*, Act of Mar. 18, 1859, 1859 Ohio Laws 56; Act of Feb. 2, 1838, ch. 101, 1838 Va. Acts at 76; Act of Oct. 19, 1821, ch. 13, 1821 Tenn. Pub. Acts 15; *Day v. State*, 37 Tenn. (5 Sneed) 496, 500 (1858)); bans on possessing certain types of weapons (*United States v. Miller*, 307 U.S. 174 (1939)), and bans on certain individuals possessing weapons at all (*United States v. Darrington*, 351 F.3d 632, 633-34 (5th Cir. 2003) (upholding law prohibiting felons from possessing firearms); Act of Mar. 14, 1776, ch. VII, 1775-1776 Mass. Acts 31 (requiring loyalty oath); Act of Apr. 1, 1778, ch. LXI, §§ 2, 5, 1777-1778 Pa. Laws 127-29 (requiring loyalty oath)). Even a complete ban on handguns is not without precedent.

See, e.g., Quilici v. Vill. of Morton Grove, 695 F.2d 261 (7th Cir. 1982), *cert. denied*, 464 U.S. 863 (1983) (upholding a local ordinance banning handgun possession).

While others address the legal standard that should govern this Court's scrutiny of the statutes at issue, amici submit the following empirical information regarding the effect of firearms, and in particular handguns, on the public's health. *See, e.g., Brown v. Bd. of Educ.*, 347 U.S. 483, 494 & n.11 (1952) (empirical evidence informs constitutional analysis).

II. GUNS IN THE HOME INCREASE THE RISK OF SUICIDE, HOMICIDE, AND DEATH FROM ACCIDENTAL SHOOTING.

Every gun death is a unique tragedy, but taken together the approximately 30,000 lives lost each year in the United States to firearms are a public health phenomenon that has attracted serious study. Those studies reveal that where firearms are more common, so, too, are deaths from suicide, homicide, and firearm-related accidents.

A. Suicide risk is greater in homes with guns, and in communities with a higher prevalence of guns.

Suicide is a critically important public health problem, one that the District might reasonably choose to address through legislation. *See Washington v. Glucksberg*, 521 U.S. 702, 732 (1997). The majority

of the 32,439 suicides in the United States in 2004 were committed with a firearm. Indeed, there were more suicides committed with a firearm annually than all other methods of suicide *combined*.

Most firearm-related suicides occur in the home. Linda Dahlberg et al., *Guns in the Home and the Risk of Violent Death in the Home: Findings from a National Study*, 160 Am. J. Epidemiology 929 (2004). In particular, numerous studies have demonstrated that occupants of homes with guns are at a substantially increased risk of suicide compared with occupants of homes without guns. The number of studies demonstrating the relationship between firearm ownership and suicide, together with their variety in approach, and consistency in results, is compelling.

Many of these studies use what is called a “case-control” design. In these case-control studies, the cases represent suicide victims (or the homes where a suicide has occurred) – regardless of the method of suicide. The controls are individuals (or households) that did not experience a suicide, generally matched in some way to be an appropriate comparison with the cases. This is the same general methodology used in some studies that helped to establish an increased risk of lung cancer among cigarette smokers.

Case-control studies show that the risk of suicide is greater in homes with guns. According to one such study, firearms were 2.7 times more likely to have been present in the homes of adolescent suicide victims as compared to psychiatric in-patients who

had attempted or considered suicide, even after adjusting for other risk factors. David Brent et al., *Risk Factors for Adolescent Suicide: A Comparison of Adolescent Suicide Victims with Suicidal In-patients*, 45 Archives of Gen. Psychiatry 581, 585 (1988). A later study employing a larger sample of cases and controls found that adolescent suicide victims remained more than twice as likely as either suicide attempters or non-suicidal psychiatric patients to have had a gun in their home. David Brent et al., *The Presence and Accessibility of Firearms in the Homes of Adolescent Suicides*, 266 JAMA 2989 (1991). And in another well-known analysis, homes in which a suicide had occurred were found to be 4.8 times more likely to contain a firearm than matched neighborhood control homes that had not experienced a suicide, even after accounting for other risk factors for suicide. Arthur Kellermann et al., *Suicide in the Home in Relation to Gun Ownership*, 327 N. Eng. J. Med. 467 (1992).

As one would predict if firearms increased the risk of suicide, living in a home with firearms only increased the risk of suicide by firearms, but was not associated with an increased risk of suicide by other means. In addition, homes where a firearm was stored loaded had an even greater (nine-fold higher) suicide risk. *Id.* at 470. Finally, “homes with one or more *handguns* were associated with a risk of suicide almost twice as high as that in homes containing only long guns.” *Id.* (emphasis added).

The findings of these studies, each employing a sample from a selected community, are confirmed by two case-control studies using data from the entire nation. One study of a representative sample of deaths in the United States compared suicide victims with those who had died from non-violent causes. Among persons aged 15 years or older, those living in a home with a gun were at a 5.6-fold increased risk of suicide versus death by other causes. Dahlberg et al., *supra*, at 933. This increased risk was particularly prominent for males. Another study, also using a representative sample of suicides in the U.S., compared suicide victims with a matched group of living control subjects identified through a national health study. Among that group of adults, suicide victims were more than three times as likely (3.44) to have a gun in their home as the control group. This increased risk was restricted to suicide by firearm. Douglas J. Wiebe, *Homicide and Suicide Risks Associated with Firearms in the Home: A National Case-Control Study*, 41 *Annals of Emergency Med.* 771 (2003).

In yet another series of studies, states and regions with higher rates of household firearm ownership were found to have, on average, higher suicide rates. Matthew Miller et al., *Household Firearm Ownership and Suicide Rates in the United States*, 13 *Epidemiology* 517 (2002). This relationship holds up after controlling for differences among states including rates of poverty, urbanization, unemployment, mental illness, and alcohol or drug

abuse. Matthew Miller et al., *Household Firearm Ownership and Rates of Suicide Across the 50 United States*, 62 J. TRAUMA® Injury, Infection, & Critical Care 1029 (2007). In fact, states with the highest prevalence of household firearm ownership had suicide rates that were about 60 percent higher than states with the lowest level of firearm ownership. Men, women, and children all have higher suicide rates where household gun ownership rates are higher. Matthew Miller et al., *Firearm Availability and Unintentional Firearm Deaths, Suicide, and Homicide Among 5-14 Year Olds*, 52 J. TRAUMA® Injury, Infection, & Critical Care 267 (2002); Matthew Miller et al., *Firearm Availability and Suicide, Homicide, and Unintentional Firearm Deaths Among Women*, 79 J. Urb. Health 26 (2002).

The difference may be especially pronounced among children. Thus, for example, a child living in Alabama, Idaho, or another state where guns are more prevalent is more than twice as likely to die from suicide as a child living in Hawaii, New Jersey, or another state where guns are less common. Hemenway, *Private Guns, supra*, at 110. Summarizing much available research in a Consensus Statement on Youth Suicide by Firearms, more than 30 public health, biomedical, and social policy organizations agreed that “[g]uns in the home, particularly loaded guns, are associated with increased risk for suicide by youth . . .” and “[p]ublic policy initiatives that restrict access to guns (*especially handguns*) are associated with a reduction of firearm suicide and suicide

overall. . . .” Youth Suicide by Firearms Task Force, *Consensus Statement on Youth Suicide by Firearms*, 4 Archives of Suicide Research 89, 90 (1998) (emphasis added).³

In an attempt to minimize the importance of firearm-related suicide, some may argue (incorrectly) that if a firearm is not available, a suicidal person will invariably choose an equally lethal method. This is simply not so. Firearms are among the most lethal methods of suicide. In one study, more than 90 percent of all suicide attempts with a firearm, if serious enough to require at least hospital treatment, result in death. This compares with, for example, a 34 percent fatality rate for suicide attempts by jumping and just two percent for poisoning by drugs. Matthew Miller et al., *The Epidemiology of Case Fatality Rates for Suicide in the Northeast*, 43 Annals of Emergency Med. 723, 726 (2004). Other studies have confirmed the very high lethality of firearm-related suicide attempts compared with many other common methods. Rebecca S. Spicer & Ted R. Miller, *Suicide Acts in 8 States: Incidence and*

³ The participants signing on to this Consensus Statement included representatives from the National Shooting Sports Foundation and the American Firearms Association, and organizations such as the American Academy of Pediatrics, the American Psychological Association, the National Association of Social Workers, the National Education Association, and the Society for Adolescent Medicine. See also Am. Ass’n of Suicidology, *National Organizations Co-Sign AAS Consensus Statement*, Newslink 23(3) at 5 (1997).

Case Fatality Rates by Demographics and Method, 90 Am. J. Pub. Health 1885 (2000). Because firearms are so lethal, where there are fewer firearms there are fewer completed suicides.

B. Homicide risk is greater in homes with guns, and in communities with a higher prevalence of guns.

Examining the effects on homicide rates of guns in the home may be more challenging than for suicide, because it can be more difficult to control for the many factors that influence homicide rates. Nevertheless, several studies have determined that the presence of a gun in the home increases the homicide risk for occupants of that home. Using a study design similar to their examination of suicides in the home, Arthur Kellermann et al. compared homes in three metropolitan counties in which a homicide had occurred, with matched control homes where no homicide had occurred. After controlling for other known risk factors for violence, homes with guns were 2.7 times more likely to have been the site of a homicide than homes without guns. Arthur Kellermann et al., *Gun Ownership as a Risk Factor for Homicide in the Home*, 329 N. Eng. J. Med. 1084 (1993).

As with suicide, national case-control studies confirm an increased homicide risk associated with guns in the home, though the magnitude of the enhanced risk is smaller than with Kellermann's regional analysis. Dahlberg et al., *supra*; Wiebe,

Homicide and Suicide Risks, supra. Taken together, these results are significant because of the strong link they reveal between the availability of firearms and the risk of being killed with a firearm, even after accounting for other demographic and behavioral factors.

Rates of homicide are also greater in states where guns in the home are more common. This is the finding of one study that also controlled for other homicide risk factors. Matthew Miller et al., *Rates of Household Firearm Ownership and Homicide Across US Regions and States, 1988-1997*, 92 Am. J. Pub. Health 1988 (2002). Another analysis, using a proxy measure of gun ownership, demonstrated that *changes* in state-level homicide rates were associated with changes in gun ownership. In fact, in that study, “a 10% increase in the rate of gun ownership is associated with an approximately 2 percent increase in the homicide rate.” Mark Duggan, *More Guns, More Crime*, 109 J. Pol. Econ. 1086, 1096 (2001); *see also* Susan Sorenson & Richard Berk, *Handgun Sales, Beer Sales, and Youth Homicide, California, 1972-1993*, 22 J. Pub. Health Pol’y 182, 189-90 (2001) (finding a connection between handgun sales and homicide).

International comparisons of the United States with its peer group of high-income, well-developed democracies point in the same direction. Looking just at “high-income” nations as defined by the World Bank, “[t]he U.S. rates of death and injuries due to firearms, and the rate of crimes committed with

firearms, are far higher than those in any other high-income country. . . .” David Hemenway, *The Public Health Approach to Reducing Firearm Injury and Violence*, 17 *Stan. L. & Pol’y Rev.* 635 (2006). It is not that Americans are necessarily more violent. Non-fatal violent crime rates in this country are similar to those in most other high-income, developed countries, but “[e]very other high-income country has fewer guns (especially handguns), stronger gun control regulations, and much lower homicide rates.” Hemenway, *Private Guns*, *supra*, at 61.⁴

Despite the magnitude and consistency of the research findings regarding the risks posed by guns in the home, some have claimed that a gun makes the home safer. Gary Kleck – a criminologist whose study results are often used to oppose restricting access to guns – has argued that firearms are used as often as 2.5 million times per year to prevent an actual or threatened criminal attack. This estimate comes from a telephone survey of approximately 5,000 U.S. adults conducted in 1993. Other telephone surveys have yielded similar estimates. Gary Kleck & Marc

⁴ One article reaching different conclusions (Don B. Kates & Gary Mauser, *Would Banning Firearms Reduce Murder and Suicide?: A Review of International and Some Domestic Evidence*, 30 *Harv. J.L. & Pub. Pol’y* 649, 687-88 (2007)) often compares countries that are politically, economically, culturally, and/or demographically very different from one another, without attempting to statistically control for these differences. This makes reliable comparisons of homicide rates especially problematic.

Gertz, *Armed Resistance to Crime: The Prevalence and Nature of Self-Defense With a Gun*, 86 J. Crim. L. & Criminology 150 (1995).

Telephone surveys may be, however, an ill-suited methodology for estimating defensive gun use, potentially overstating estimates by orders of magnitude. David Hemenway, *Survey Research and Self-Defense Gun Use: An Explanation of Extreme Overestimates*, 87 J. Crim. L. & Criminology 1430 (1997). Even one research team whose telephone survey estimates were similar to Kleck's concluded that the methodology that produced those estimates was prone to bias that likely exaggerated the number of defensive gun uses. Philip J. Cook & Jens Ludwig, *Guns in America: Results of a Comprehensive National Survey on Firearms Ownership and Use* 71 (Police Found. 1996). In addition, many so-called "defensive" uses of guns reported in surveys may in fact reflect aggressive or even illegal conduct by the respondent. David Hemenway et al., *Gun Use in the United States: Results from Two National Surveys*, 6 Injury Prevention 263 (2000).

One reason survey-based estimates are likely to greatly overestimate the incidence of defensive gun use is that survey respondents may not be completely objective or accurate in assessing whether their actions with a gun were truly "defensive." *Understanding and Preventing Violence* 266 (Albert J. Reiss & Jeffrey A. Roth eds., National Academy Press 1993). For example, a survey by Harvard researchers asked a nationally representative sample of adults to

describe their interpersonal encounters with firearms. The researchers then asked criminal court judges to review the respondents' descriptions of their defensive gun uses. The majority were deemed to have been most likely illegal uses of the guns. Hemenway et al., *Gun Use in the United States, supra*.

In addition, survey-based estimates often produce findings that are not consistent with known facts about gun violence. For example, survey respondents' statements about whether they wounded or killed their attacker – if true – would imply more firearm-related deaths and injuries from defensive gun uses *alone* than *all causes* of firearm-related deaths and serious non-fatal injuries in the United States, as identified by commonly-accepted national vital statistics data. Cook & Ludwig, *Guns in America, supra*, at 71; Hemenway, *Survey Research and Self-Defense Gun Use, supra*, at 1442.

By comparison, the National Crime Victimization Survey (NCVS) is a nationally representative household survey conducted by the U.S. Department of Justice. It now includes 77,000 households and approximately 134,000 persons. Although not designed specifically to address defensive gun use (survey respondents are asked about defensive acts after they report being the victim of a crime), the survey suggests many fewer defensive gun uses per year than violent crimes with guns. For example, one analysis of NCVS data indicated an average of just 64,615 self-defensive uses of guns per year by crime victims from 1987 to 1990, compared with more than

800,000 persons victimized by an offender with a gun in 1990. David McDowall & Brian Wiersema, *The Incidence of Defensive Firearm Use by US Crime Victims, 1987 Through 1990*, 84 Am. J. Pub. Health 1982, 1983 (1994). A later analysis using NCVS data estimated the number of defensive gun uses per year at approximately 108,000 – still far less than the number of gun crimes. Philip J. Cook et al., *The Gun Debate's New Mythical Number: How Many Defensive Uses Per Year?*, 16 J. Pol'y Analysis & Mgmt. 463, 468 (1997). Finally, the FBI reported just 195 “justifiable homicides” by a private citizen nationwide in 2006. Fed. Bureau of Investigation, *Crime in the United States: Expanded Homicide Data Table 14*, http://www.fbi.gov/ucr/cius2006/offenses/expanded_information/data/shrtable_14.html (Sept. 2007).

In sum, the more reliable data suggests that a gun is much more likely to be used in a crime than in legitimate self-defense, and that those who live with a gun in the home face a higher risk of homicide, controlling for other factors, than those who do not.

C. The risk of death from accidental shooting is greater in homes with guns, and in communities with a higher prevalence of guns.

Rates of fatal firearm-related accidents are also higher where household gun ownership is greater. Matthew Miller et al., *Firearm Availability and Unintentional Firearm Deaths*, 33 Accident Analysis

& Prevention 477 (2001). Again, this relationship holds up even after accounting for other factors, including rates of non-lethal violent crime, that differ among states. In fact, in one analysis, the four States with the highest rates of gun ownership had an unintentional firearm death rate among children under age fifteen more than thirteen times greater than that of the four States with the lowest rates of gun ownership. *Id.* at 480-81. In a case-control study of gun deaths using nationally representative mortality data, persons who died from an accidental shooting were more than three times as likely (3.7) to have had a gun in their home compared with the control group drawn from a national health interview study. There was also evidence that having more than one gun in the home made the risk of accidental death even greater. Douglas J. Wiebe, *Firearms in US Homes as a Risk Factor for Unintentional Gunshot Fatality*, 35 *Accident Analysis & Prevention* 711, 713-14 (2003).

III. THE DISTRICT OF COLUMBIA'S LAWS BANNING MOST HANDGUNS AND REQUIRING SAFE STORAGE OF ALL FIREARMS ARE CONSISTENT WITH PUBLIC HEALTH RESEARCH AND DATA DEMONSTRATING THE RISKS ASSOCIATED WITH HANDGUNS AND THE BENEFITS OF THE LAWS THEMSELVES.

A. Banning handguns in Washington D.C. appears to have reduced suicide and homicide rates, as handguns pose a particular public health risk.

Although handguns represent only an estimated forty percent of all firearms owned in the United States, Lisa Hepburn et al., *The U.S. Gun Stock: Results from the 2004 National Firearms Survey*, 13 *Injury Prevention* 15, 16 (2007), they are responsible for a clear majority of all firearm-related homicides and suicides. In 2004, fully 88 percent of all firearm homicides and 56 percent of all firearm suicides for which the type of firearm was specified were committed with a handgun. Fed. Bureau of Investigation, *Murder Victims by Weapons, 2002-2006* (Sept. 2007), http://www.fbi.gov/ucr/cius2006/offenses/expanded_information/data/shrtable_07.html (homicides); Ctrs. for Disease Control & Prevention, *Compressed Mortality, 1999-2004* (Aug. 2007), <http://wonder.cdc.gov/cmfi-icd10.html> (suicides).

In this context, the District of Columbia's decision to focus its firearm regulations on handguns makes public health sense. Indeed, handguns have

been regulated in the Nation's capital since at least 1858. See Act of Nov. 18, 1858, *Laws of the Corporation of the City of Washington* 418 (William B. Webb ed. 1868) (making it unlawful "to carry or have concealed about their person any dangerous weapon, such as . . . [a] pistol"); Act of July 13, 1892, ch. 159 § 1, 27 Stat. 116. And the most rigorous, comprehensive study of the effects of the District's handgun ban indicates that the law appears to have saved lives.

In 1991, criminologist Dr. Colin Loftin and colleagues published a study in the *New England Journal of Medicine* evaluating the effects of the District's handgun ban on homicide and suicide. Colin Loftin et al., *Effects of Restrictive Licensing of Handguns on Homicide and Suicide in the District of Columbia*, 325 *N. Eng. J. Med.* 1615 (1991). They examined both firearm and non-firearm homicides and suicides in the District from 1968 to 1987 – before and after the District's law took effect in 1976. They compared these findings with homicides and suicides for the same time period in areas of Maryland and Virginia, just outside of District, that had not enacted a similar law. Loftin et al. concluded that the District's law was associated with an abrupt, statistically significant 25 percent decline in homicide by firearm and a 23 percent decline in suicide by firearm. Importantly, they found no change in non-firearm homicide or suicide rates in the District coincident with the law. This makes it less likely that some factor other than the District's law was responsible for the change in death rates. Similarly, they found no significant

changes in either firearm or non-firearm homicide and suicide in the nearby jurisdictions without the law.⁵

After 1987 – the last year for which complete data were available at the time that Loftin et al. conducted their study – homicide rates in the District and in most other large U.S. cities rose sharply. The authors speculate that this increase in the District might have been due to the rise of especially violent crack cocaine markets in the District. Nevertheless, for at least the first twelve years (1976 through 1987) after enactment of the District’s handgun law, it appears that homicide and suicide rates were lower than they would have been without the law. And even today, suicide rates in the District are less than half of the overall U.S. suicide rate. Ctrs. for Disease Control & Prevention, *Web-based Injury Statistics*

⁵ In a study published in 1996, Britt and colleagues criticized the findings of the Loftin et al. study regarding homicides. For example, Britt et al. argued that Baltimore was a more appropriate comparison jurisdiction. But importantly, Britt et al. did not even address the findings of the Loftin et al. study regarding suicides. Chester L. Britt et al., *A Reassessment of the D.C. Gun Law: Some Cautionary Notes on the Use of Interrupted Time Series Designs for Policy Impact Assessment*, 30 *Law & Soc’y Rev.* 361 (1996). In a rejoinder, the authors of the original study ably defended their use of the surrounding Maryland and Virginia communities as a comparison and provided evidence that Baltimore may not have been an appropriate control. See David McDowall et al., *Using Quasi-experiments to Evaluate Firearm Laws: Comment on Britt et al.’s Reassessment of the D.C. Gun Law*, 30 *Law & Soc’y Rev.* 381 (1996).

Query and Reporting System (WISQARS) Injury Mortality Reports, 1999-2004, supra. Indeed, the District of Columbia has a lower suicide rate than that of any State in the United States, with just 33 suicides (a rate of 5.69 per 100,000) in 2004. Just five of these suicides were committed with a firearm. *Id.*

Research from other parts of the country corroborates that this remarkably low suicide rate may be a result of D.C.'s handgun ban. One study found that suicide was the leading cause of death in the first year after handgun purchase in California, and that handgun buyers were at a more than four-fold increased risk of suicide during that time period. Garen J. Wintemute et al., *Mortality Among Recent Purchasers of Handguns*, 341 N. Eng. J. Med. 1583 (1999). Another study reported that, among members of a large health maintenance organization in Washington State, purchase of a handgun from a licensed gun dealer was associated with an almost two-fold (1.9) increased risk of suicide. Peter Cummings et al., *The Association Between Purchase of a Handgun and Homicide or Suicide*, 87 Am. J. Pub. Health 974 (1997). In each study, the increased risk of suicide persisted for at least five years after the handgun's purchase.

Also relevant to the District's decision to ban handguns are studies linking handgun sales and

homicide rates. One study analyzed the effects of a 1990 Maryland law banning the sale of so-called Saturday Night Special handguns. The authors found that the law was associated with an approximately eight percent reduction in firearm homicide rates in Maryland, translating to about 40 lives saved per year. Daniel Webster et al., *Effects of Maryland's Law Banning "Saturday Night Special" Handguns on Homicides*, 155 Am. J. Epidemiology 406 (2002). Another study examined the relationship between handgun sales and homicide rates in California from 1972 to 1993. After controlling for other risk factors, the authors concluded that "4,810 fewer 15- to 34-year-olds would have died of homicide if handgun sales had remained at their [lower] 1972 sales level . . . through 1992. . . ." Sorenson & Berk, *Handgun Sales, supra*, at 189-90.

B. Safe storage practices appear to reduce gun deaths.

D.C.'s safe storage law prescribes that a gun registrant "shall keep any firearm in his possession unloaded and disassembled or bound by a trigger lock or similar device." D.C. Code § 7-2507.02. Many localities have decided to implement similar safety measures. Massachusetts, for example, prohibited Boston citizens from keeping loaded firearms in their homes more than two hundred years ago. Act of Mar. 1, 1783, ch. XLVI, 1782 Mass. Acts 119-20. Although the research described above demonstrates that the safest choice is not to keep a gun in the home, safe

storage regulations are entirely consistent with public health research and do not interfere with legitimate gun use.

A wide variety of experts, including hunting associations, agree that “[i]f a gun is to be kept in the home, . . . it should generally be stored unloaded and locked up, with the ammunition stored separately – whether or not there are children in the household.” Hemenway, *Private Guns*, *supra*, at 83 (citing Police Exec. Research Forum, *Handgun Safety Guidelines* (1990); Am. Acad. of Pediatrics, *Stop Firearm Injury* (1994); Int’l Hunter Educ. Ass’n, *Ten Commandments of Firearm Safety* (1988), now available at <http://www.dfg.ca.gov/huntered/faq.aspx>; Glock Corp., *Basic Firearm Safety Rules* (2002), now available at http://www.glock.com/english/index_safety.htm; Remington Arms Co., *The Ten Commandments of Firearms Safety*, now available at http://www.remington.com/safety/10_commandments/; Sporting Arms & Ammunition Mfrs.’ Inst., *Firearm Safety Depends on You* (2002)).

Such regulations do not materially interfere with legitimate gun uses like hunting, target-shooting, and even self-defense because many of today’s compact safes, lockboxes, and trigger locks can be opened or removed with ease and speed. *See, e.g., Selling Modern Safety and Storage: These Must-Sell Products Have Changed To Meet the Demands of Today’s Safety-Conscious Consumers*, Cover Story, Shooting Industry, Nov. 1, 2003. One trigger lock can apparently be removed in less than three seconds. Bob Marshall, *SHOT Full of Idea; SHOT Show Overwhelms the*

Senses for Outdoorsmen, Times-Picayune, Jan. 14, 2001, at 12 (“One trend at the show was gun safety, with at least 15 manufacturers displaying gear designed to make household guns child and burglar-proof, from simple trigger locks to palm-activated safes. One of the most sophisticated devices with practical applications for hunters was the Smart Trigger Lock, from Alarm It, Inc. which fits over the trigger guard, locks with a simple combination and then emits a high-pitched, 110-decibel siren when the gun is disturbed. It takes less than three seconds, however, to remove the device and ready the gun. The Smart Trigger Lock retails for around \$29.95.”). Another manufacturer advertises that its lock can be removed in just one second. Lisa Parsons, *Securing The Firearm – These Budget-Conscious Safety Devices Can Prevent Disasters; Arms and the Woman*, Shooting Industry, July 1994 (“The Gun/Trigger Gard marketed by AMX is a clever, inexpensive device with a built in ‘trick’ to confound children and uninitiated adults. It locks onto the trigger guard, and its manufacturer claims it can be opened in one second once the operator knows the secret.”).

A number of states have child access prevention (CAP) laws requiring the safe storage of firearms in the home to prevent unauthorized access by children and youth. An analysis of the first 12 of these laws to be enacted concluded that the CAP laws were associated with a 23 percent reduction in unintentional (accidental) shootings of children younger than 15 years old. Peter Cummings et al., *State Gun Safe*

Storage Laws and Child Mortality Due to Firearms, 278 JAMA 1084 (1997). A subsequent analysis examining fifteen state CAP laws concluded that the beneficial effects of these laws may be limited to states – notably Florida in this analysis – which impose stiff penalties on violators and in which public awareness of the law is enhanced by news coverage or other means. Daniel Webster & Marc Starnes, *Reexamining the Association Between Child Access Prevention Gun Laws and Unintentional Shootings of Children*, 106 Pediatrics 1466 (2000). Safe storage laws, in other words, are effective only as long as they are followed.

Requiring the safe storage of firearms can also prevent youth suicides. The overwhelming majority of firearm-related youth suicides involve a firearm kept in the victim's home, or the home of a friend or relative. David Grossman et al., *Self-inflicted and Unintentional Firearm Injuries Among Children and Adolescents: The Source of the Firearm*, 153 Archives of Pediatric & Adolescent Med. 875 (1999). A case-control study determined that the guns involved in youth suicides or attempted suicides were much less likely to have been stored unloaded and/or locked than guns in control homes where no suicide (or attempt) had occurred. David Grossman et al., *Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries*, 293 JAMA 707 (2005). Not surprisingly, therefore, an analysis examining eighteen CAP laws determined that the laws were associated with an 8.3 percent decrease in

suicides among youth aged 14-17. Daniel Webster et al., *Association Between Youth-Focused Firearm Laws and Youth Suicides*, 292 JAMA 594 (2004). Similarly, a Centers for Disease Control study of school shootings found that the majority of firearms used in such shootings between 1992 and 1999 came from the perpetrators', or their friends' or relatives', homes, and emphasized the need for safe storage. Ctrs. for Disease Control & Prevention, *Source of Firearms Used by Students in School-Associated Violent Death – United States 1992-1999*, Morbidity & Mortality Wkly. Rep., 169-72 (Mar. 7, 2003), <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5209a1.htm>.⁶

Although clearly beneficial, requiring safe storage alone will not prevent most homicides, suicides, or accidental deaths. Hence the need for additional legislation aimed at reducing the risks associated with firearms, including handguns.



⁶ Just one study of which we are aware has found no beneficial effect of CAP laws. That study was conducted by John Lott (a noted proponent of easing restrictions on gun-carrying). It employs a primary methodology that often produces unreliable results when used with data with substantial variance, resulting in part from small sample sizes such as those used in his study. See Daniel Webster et al., *Association Between Youth-Focused Firearm Laws and Youth Suicides*, 292 JAMA 594, 600 (2004) (discussing John R. Lott et al., *Safe-Storage Gun Laws: Accidental Deaths, Suicides, and Crime*, 44 J.L. & Econ. 659 (2001)).

CONCLUSION

As illustrated above, firearm-related homicide, suicide, and fatal accidental shootings are a major public health problem in the United States today. The public health approach seeks to illuminate policy options by examining the environmental, not just individual, causes of violence and injuries. State and local legislators must be able to respond to the science as it develops. We thus urge the Court to take the evidence presented in this brief into consideration as it analyzes these important legal issues.

Respectfully submitted,

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