

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SHAWN GOWDER,)	
)	
Plaintiff,)	
)	
v.)	
)	No. 11-cv-1304
CITY OF CHICAGO, a municipal corporation,)	
the CITY OF CHICAGO DEPARTMENT OF)	Judge Der-Yeghiayan
ADMINISTRATIVE HEARINGS, MUNICIPAL)	
HEARINGS DIVISION, SCOTT V. BRUNER,)	
Director of the City of Chicago Department of)	
Administrative Hearings, the CITY OF CHICAGO)	
DEPARTMENT OF POLICE, and JODY P. WEIS,)	
Superintendent of the City of Chicago Department)	
of Police,)	
)	
Defendants.)	

**BRIEF OF AMICI CURIAE MARY SHEPARD AND THE ILLINOIS STATE RIFLE
ASSOCIATION**

INTEREST OF AMICI CURIAE

Mary Shepard is a resident of Cobden, Illinois. The Illinois State Rifle Association (“ISRA”) is a non-profit association incorporated under the laws of Illinois. ISRA has members residing throughout the State of Illinois. Its purposes include the protection of the right of citizens to bear arms for the lawful defense of their families, persons, and property, and to promote public safety and law and order.

Ms. Shepard and the ISRA are plaintiffs in a Second Amendment challenge to Illinois’s ban on carrying firearms in public. *See Shepard v. Madigan*, No. 3:11-cv-00405 (S.D. Ill.).¹ Ms.

¹ On March 30, 2012, after the Court granted Amici’s motion for leave to file this brief, the district court in *Shepard* ruled for the defendants and dismissed Amici’s claims. Amici will be appealing that ruling to the 7th Circuit.

Shepard and the ISRA are thus keenly interested in this case for several reasons. First, to determine whether Chicago may use Mr. Gowder's conviction for violating Illinois's carriage ban as a basis for prohibiting him from possessing firearms, the Court may address the constitutionality of that carriage ban. Second, a determination regarding the standard of review to be applied to Mr. Gowder's claim could impact the standard of review to be applied to other Second Amendment claims in courts in the Seventh Circuit, particularly if any such determination is affirmed on appeal. Third, public safety is the purported justification for both Illinois's carriage ban and Chicago's law challenged here. The challenges to both laws thus implicate a similar body of social science research—a body of research that, as we shall demonstrate, provides no empirical support for Chicago's ban on citizens like Mr. Gowder possessing firearms.

ARGUMENT

THE POSSESSION OF FIREARMS IN THE HOME ENHANCES, RATHER THAN THREATENS, PUBLIC SAFETY.

I. THE POSSESSION OF FIREARMS IN HOMES DOES NOT INCREASE CRIMINAL VIOLENCE.

The City bans gun possession by those who have even a single, decades-old conviction for a non-violent firearms misdemeanor solely on the ground that allowing such persons to have guns would increase violent crime. But the only authority the City has cited to date is a single medical journal article that is fatally flawed and proves nothing. Moreover, the federal government's own comprehensive reviews of the scientific literature show that lawful possession of firearms in the home does not increase the risk of criminal violence. Indeed, the uniformly declining rates of violent crime in the wake of the Supreme Court's decisions in *District of*

Columbia v. Heller, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), confirm that the possession of firearms by households does not threaten public safety.

A. THE LONE STUDY CITED BY THE CITY DOES NOT SHOW THAT BANNING FIREARMS POSSESSION BY PEOPLE LIKE MR. GOWDER ADVANCES PUBLIC SAFETY.

In its briefing to date, Chicago has identified “one study concluding that handgun purchasers who ‘had prior convictions for nonviolent firearm-related offenses such as carrying concealed firearms in public, but not for violent offenses, were at increased risk for later violent offenses.’ ” Doc. No. 30 at 15 (quoting Garen J. Wintemute, et al., *Prior Misdemeanor Convictions as a Risk Factor for Later Violent and Firearm-Related Criminal Activity Among Authorized Purchasers of Handguns*, 280 J. AM. MED. ASS’N 2083, 2086 (Dec. 1998)). We will not repeat here all the flaws identified by Mr. Gowder relating to the Wintemute study. Suffice it to say that it does not provide any evidence that public safety is advanced by banning firearms possession by individuals with a prior misdemeanor conviction for carrying a firearm, because it does not compare outcomes for prior misdemeanants who later possessed a firearm with those who did not. And it does not even purport to separately evaluate individuals like Mr. Gowder who have been law-abiding for many years following a single misdemeanor conviction.

B. LAWFUL FIREARMS OWNERSHIP DOES NOT INCREASE VIOLENT CRIME.

The principal research arm of the federal government, the National Academy of Sciences, has conducted a review of the entire body of firearms literature. See Charles F. Wellford, et al., *FIREARMS AND VIOLENCE: A CRITICAL REVIEW* (2005) (“NRC REVIEW”). The Academy’s National Research Council undertook “an assessment of the strengths and limitations of the existing research and data on gun violence.” NRC REVIEW at 1. The Council surveyed *all* the

literature on firearms regulation—hundreds of books, journal articles, and peer-reviewed studies. *See id.* at 22-30, 78, 130-33, 156-61, 174-77, 186-92, 242-68.²

The National Research Council concluded that “existing research studies and data include a wealth of descriptive information on homicide, suicide, and firearms but, because of the limitations of existing data and methods, *do not credibly demonstrate a causal relationship between the ownership of firearms and the causes or prevention of criminal violence or suicide.*” *Id.* at 6 (emphasis added). Indeed, many of the studies purporting to show a mere *association*—that is, a correlation rather than a causal link—of gun homicide and gun availability are so rife with “methodological problems” that the National Research Council concluded that it could not rely on this body of research. *Id.* at 54.

The federal Centers for Disease Control (“CDC”) has likewise reviewed the entire body of firearms literature and found that it does not support the proposition that restricting firearms reduces violence. The CDC convened an independent Task Force on Community Preventive Services (“the Task Force”) to conduct “a systematic review of scientific evidence regarding the effectiveness of firearms laws in preventing violence, including violent crimes, suicide and unintentional injury.” *First Reports Evaluating the Effectiveness of Strategies for Preventing Violence: Firearms Laws*, 52 Morbidity & Mortality Weekly Report 11 (CDC Oct. 3, 2003) (“MMWR”).³ Nearly all the members of the Task Force were physicians or epidemiologists. MMWR at 11. The Task Force reviewed all the firearms studies from eleven different databases of public health, medical, sociological, psychological, criminal justice, legal, economics, and

² By one count, the National Research Council reviewed “253 journal articles, 99 books, 43 government publications, and some original empirical research.” *See* Don Kates and 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, 654 (2007).

³ The CDC report is available at <http://www.cdc.gov/mmwr/PDF/rr/rr5214.pdf>.

public policy research. See Robert Hahn, *et al.*, *Firearms Laws and the Reduction of Violence: A Systematic Review*, 28 Am. J. Prev. Med. 40, 44 (2005).

The CDC Task Force concluded that the scientific research on laws restricting the acquisition or possession of firearms based on the individual's history of crime and violence—such as being a convicted felon or being the subject of a domestic-violence restraining order—was “insufficient to determine the effectiveness of acquisition restrictions on violent outcomes.” *Recommendations to Reduce Violence Through Early Childhood Home Visitation, Therapeutic Foster Care, and Firearms Laws*, 28 Am. J. Prev. Med. 6, 7 (2005). More generally, the Task Force considered “whether a greater degree of firearms regulation in a jurisdiction results in a reduction of violence in the same jurisdiction,” and concluded that “[t]he evidence ... is currently insufficient to determine the effectiveness of the degree of firearms regulation in preventing violence.” 28 Am. J. Prev. Med. at 8. See also 28 Am. J. Prev. Med. at 59 (“Based on findings from national law assessments, cross-national comparisons, and index studies, evidence is insufficient to determine whether the degree or intensity of firearms regulation is associated with decreased (or increased) violence.”).

These comprehensive reviews of firearms research by the NRC and CDC reveal why the City of Chicago has been unable to adduce evidence in this case to support the challenged ordinance—the evidence simply does not exist.

C. GUN VIOLENCE ACTUALLY DECLINED IN THE DISTRICT OF COLUMBIA AND CHICAGO FOLLOWING THE SUPREME COURT'S DECISIONS STRIKING DOWN THOSE CITIES' RESTRICTIONS ON FIREARMS IN THE HOME.

In 2005, prior to the Court's decisions in *Heller* and *McDonald*, the National Research Council concluded that major firearms restrictions in force in Washington, D.C., and Chicago did not reduce armed violence. Thus, the NRC found that the District of Columbia's “handgun

ban yields no conclusive evidence with respect to the impact of such bans on crime and violence.” NRC REVIEW at 98. *Cf. id.* at 95 (even the federal Brady Act “did not have any apparent effect in gun availability for violent acts in Chicago, as the percentage of homicides with guns did not drop after 1994 [when the Brady Act became law].”). Crime statistics in those cities in the wake of *Heller* and *McDonald* support that same conclusion.

Viewed against the backdrop of the NRC’s findings, the declining crime rates in Chicago and the District of Columbia after the Supreme Court’s landmark decisions striking down firearms bans in those two cities provide fresh evidence that allowing gun possession in the home does not increase the risk of violent crime. The Court struck down the District’s ban on handguns in the home in its *Heller* decision in June of 2008. Contrary to the forecasts of Second Amendment opponents, in the three years since *Heller* authorized possession of operable handguns in the home, the District experienced its lowest homicide totals in half a century.⁴ Homicides plummeted from 186 in 2008 to 108 in 2011—a 42% decline.⁵ From 1993 through 2008 the District averaged 270 homicides per year; the average was less than half of that during 2009-2011.⁶ Thus, there is no indication that the presence of newly armed handgun permittees in the households of the District of Columbia constituted a threat to public safety.

The story is the same for Chicago after the Supreme Court’s decision in *McDonald* in June of 2010. Using statistics for the period from January to May, between 2010 and 2011 every

⁴ See Allison Klein, *Homicide totals in 2009 plummet in District*, WASHINGTON POST (Jan. 1, 2010) (140 slayings in D.C. in 2009 was lowest number in 45 years), available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/31/AR2009123103039.html>; Matthew Cella, *D.C. homicides fall 9% in 2010 to 131, lowest toll since '63*, WASHINGTON TIMES (Jan. 1, 2011), available at <http://www.washingtontimes.com/news/2011/jan/1/dc-homicide-rate-drops-lowest-1963/>.

⁵ See Metropolitan Police Department, Citywide Crime Statistics Annual Totals 1993-2011, available at http://mpdc.dc.gov/mpdc/cwp/view,a,1239,q,547256,mpdcNav_GID,1556.asp.

⁶ *Id.*

category of violent crime witnessed a decline: murder dropped 16.3%, aggravated assault dropped 15.3%, aggravated battery also dropped 15.3%, and violent crime overall was down 9.6%.⁷ To be sure, Second Amendment rights have been vindicated in Chicago for only a short time, so these crime statistics are based on a relatively small data sample. But the data we have are uniformly at war with the City's contention that permitting possession of firearms in the home results in an increase in violent crime.

II. PERMITTING CITIZENS WHO HAVE NO RECORD OF CRIMINAL VIOLENCE TO EXERCISE THE RIGHT OF ARMED SELF-DEFENSE IN THEIR HOMES REDUCES CRIME.

The City's public-safety arguments are undermined by its persistent failure to take into account the benefit to public safety that flows from having a law-abiding, armed citizenry. Defensive gun use ("DGU") is a common and effective way for ordinary citizens to defend themselves from violence. The leading study designed specifically to gauge the national frequency of DGU determined that every year there are approximately 1.8 million defensive gun uses associated with keeping firearms in the home. *See* Gary Kleck, *TARGETING GUNS: FIREARMS AND THEIR CONTROL* 192 (1997); *see also* Gary Kleck & Don B. Kates, Jr., *ARMED: NEW PERSPECTIVES ON GUN CONTROL* 225-26, 229 (2001) (yearly defensive gun use in the home includes, among other things, approximately 862,000 instances of resort to a firearm to prevent a burglary). Of the roughly 2.5 million total DGUs each year, approximately 73.2% involve citizens carrying a firearm while inside or adjacent to their homes. Kleck, *TARGETING GUNS*, *supra*, at 179, 192 (37.3% of annual DGUs, or approximately 925,000, occur inside the home; 35.9%, or approximately 897,500, occur in adjacent areas such as the carport or yard).

⁷ *See* Chicago Police Department, Index Crime Summary for January to May, 2010 and 2011, *available at* http://blogs.wttw.com/moreonthestory/files/2011/07/YearToDate_CrimeStatistics_May111.pdf.

Dr. Kleck's findings on defensive gun use by citizens in their homes have been reconfirmed by many other studies, including studies conducted by such supporters of gun control as the Centers for Disease Control, the Police Foundation, the U.S. Department of Justice, and the WASHINGTON POST. *See* Kleck & Kates, ARMED, *supra*, at 228-31 (reviewing results of DGU studies, including the Police Foundation's National Survey of the Private Ownership of Firearms).⁸ For example, a large-scale survey by the Centers for Disease Control in 1994 found that there were approximately one million incidents every year in which residents used firearms to respond to burglars attempting to break into their homes. *See* Robin M. Ikeda, *et al.*, *Estimating Intruder-Related Firearm Retrievals in U.S. Households, 1994*, 12 VIOLENCE AND VICTIMS 363-72 (1997); *see also* Kleck & Kates, ARMED, *supra*, at 229 (discussing CDC research). In its comprehensive review of the entire body of firearms literature, the National Research Council found that "[a]t least 19 other surveys have resulted in estimated numbers of defensive gun uses that are similar (i.e., statistically indistinguishable) to the results found by Kleck and Gertz." NRC REVIEW at 103 (emphasis added); *see also id.* at 113.

The defensive use of firearms is an extremely effective means of deterring and stopping crime. Data from the U.S. Bureau of Justice Statistics indicate that, in confrontations with criminals, 99% of victims maintain control of their firearms; even the 1% of DGUs that result in criminals taking firearms away from defenders is probably an overestimate because it includes, for example, instances where a burglar leaving a home with a victim's weapon is confronted by

⁸ This study by the Police Foundation, sponsored by the National Institute of Justice, found that "1.44% of the adult population had used a gun for protection against a person in the previous year, implying 2.73 million defensive gun users." Kleck, TARGETING GUNS, *supra* at 151-52. This figure, like Dr. Kleck's own lower estimate of 2.5 million incidents of DGU per year, "is probably a conservative estimate . . . [because] cases of [respondents] intentionally withholding reports of genuine DGUs were probably more common than cases of [respondents] falsely reporting incidents that did not occur or that were not genuinely defensive." *Id.* at 151.

the victim wielding a second firearm. *See* Kleck, TARGETING GUNS, *supra*, at 168-69.

Furthermore, fewer than “1-in-90,000” attempts at defensive gun use results in a householder shooting a family member mistaken for a criminal. *Id.* at 168. Indeed, only about 30 people per year are killed by private citizens when they are mistaken for intruders; in contrast, trained police officers kill *eleven times* that many innocent individuals annually. *See* John R. Lott, Jr., MORE GUNS LESS CRIME: UNDERSTANDING CRIME AND GUN CONTROL LAWS 2 (3d ed. 2010).

Numerous studies have found that robbery victims who resist with firearms are significantly less likely to have their property taken and are also less likely to be injured. *See* Kleck, TARGETING GUNS, *supra*, at 170. “Robbery and assault victims who used a gun to resist were less likely to be attacked or to suffer an injury than those who used any other methods of self-protection or those who did not resist at all.” *Id.* at 171. “[V]ictim resistance with a gun almost never provokes the criminal into inflicting either fatal or nonfatal violence.” *Id.* at 174. Similarly, “rape victims using armed resistance were less likely to have the rape attempt completed against them than victims using any other mode of resistance,” and such DGU did not increase the victim’s risk of “additional injury beyond the rape itself.” *Id.* at 175. Justice Department statistics reveal that the probability of serious injury from any kind of attack is 2.5 times greater for women offering no resistance than for women resisting with a gun. *See* Lott, MORE GUNS LESS CRIME, *supra*, at 4.

Indeed, to prevent completion of a crime it is usually necessary only for the intended victim to display the firearm rather than pull the trigger. A national survey “indicates that about 95 percent of the time that people use guns defensively, they merely have to brandish a weapon to break off an attack.” *Id.* at 3. The National Research Council has agreed with Dr. Kleck that “[s]uccessful deterrence, after all, may yield no overt event to count.” NRC REVIEW at 108.

Fewer than one in a thousand defensive gun uses results in a criminal being killed. *See* Kleck, TARGETING GUNS, *supra* at 178.⁹

Some researchers argue that defensive gun use does not protect victims. *See, e.g.,* Charles C. Branas, *et al., Investigating the Link Between Gun Possession and Gun Assault*, 99 AMER. J. PUB. HEALTH 1, 4 (Nov. 2009), *available at* http://works.bepress.com/cgi/viewcontent.cgi?article=1087&context=dennis_culhane. That study, however, merely found that there was an *association* between victim gun possession and being shot, not that there was a *causal link*. *See id.* at 5-6. Regardless of the effectiveness of defensive gun use, one would expect a positive association between victim gun possession and victim injury, because those people *most at risk of victimization* (*e.g.,* because they reside in a dangerous neighborhood) are also those *most likely to arm themselves for protection*. Going to the doctor has an extremely high positive association with being sick, but that hardly proves that going to the doctor causes illness.

Firearms critics have also asserted that keeping a gun for self-defense merely increases one's risk of injury because it initiates a sort of arms race where criminals are more motivated to carry guns by the anticipation that their victims may be armed. *See* Philip J. Cook, *et al., Gun Control After Heller: Threats and Sideshows From a Social Welfare Perspective*, 56 U.C.L.A. L. REV. 1041, 1081 (2009)). But examination of the underlying prison-inmate interviews on which

⁹ Some opponents of private gun ownership argue that firearms kept in the home are primarily a threat to their owners and guests, citing studies purporting to link high rates of gun ownership with high rates of home homicide. *See, e.g.,* David Hemenway & Deborah Azrael, *The Relative Frequency of Offensive and Defensive Gun Uses: Results from a National Survey*, 15 VIOLENCE & VICTIMS 257, 271 (2000)). But all of the research invoked to support this proposition (or the predecessor studies on which the research relied) has been reviewed by the National Research Council and dismissed as proving nothing. *See, e.g.,* NRC REVIEW at 242, 243, 247, 248, 259. The studies “do not credibly demonstrate a causal relationship between the ownership of firearms and the causes or prevention of criminal violence or suicide.” *Id.* at 6.

this objection was based actually subverts its premise. Far from concluding that armed victims motivated criminals to carry guns, the study actually demonstrated that criminals were *deterred* by the prospect of facing armed resistance. *See* James D. Wright & Peter H. Rossi, ARMED AND CONSIDERED DANGEROUS 155 (2d ed. 2008) (69% of the felons said they knew a criminal who had been “scared off, shot at, wounded, captured, or killed by an armed victim”); *id.* (40% said they had on at least one occasion decided not to commit a crime because they knew or believed the victim was carrying a gun.); *id.* at 146 (58% of felons surveyed agreed or strongly agreed that “[a] store owner who is known to keep a gun on the premises is not going to get robbed very often,” and 56% agreed or strongly agreed that “[a] criminal is not going to mess around with a victim he knows is armed with a gun”). None of this should be surprising; the research merely confirms the common-sense expectation that criminals prefer their victims unarmed and defenseless—which is precisely how Chicago law leaves the Plaintiff and other citizens whom it strips of the right of gun ownership based on a single conviction for a non-violent misdemeanor. The National Research Council examined the articles and studies that contend “that owning firearms for personal protection is ‘counterproductive’ ... and that ‘people should be strongly discouraged from keeping guns in the home.’ ” NRC REVIEW at 118. The Council concluded that this position was simply “not tenable.” *Id.*

CONCLUSION

For the reasons given above, *amici* respectfully submit that the Plaintiff’s motion for summary judgment should be granted.

Dated: April 2, 2012

/s/ Christian D. Ambler

Christian D. Ambler
Attorney Number 6228749
STONE & JOHNSON, CHTD.
200 East Randolph Street
Chicago, Illinois 60601
Tel: (312) 332-5656
Fax: (312) 332-5858
Email: cambler@stonejohnsonlaw.com

*Local counsel for amici Mary Shepard and
the Illinois State Rifle Association*

Respectfully submitted,

Charles J. Cooper*
David H. Thompson*
Peter A. Patterson*
COOPER & KIRK, PLLC
1523 New Hampshire Ave., NW
Washington, D.C. 20036
Tel: (202) 220-9600
Fax: (202) 220-9601
Email: ccooper@cooperkirk.com

Brian Koukoutchos*
28 Eagle Trace
Mandeville, LA 70471
Tel: (985) 626-5052
Email: bkoukoutchos@gmail.com

*Motion for admission *pro hac vice*
pending

*Counsel for amici Mary Shepard and
the Illinois State Rifle Association*

CERTIFICATE OF SERVICE

I, Christian D. Ambler, hereby certify that on this 2nd day of April, 2012, I caused a copy of the foregoing to be served by electronic filing on:

Andrew W. Worseck
Mardell Nereim
Rebecca Alfert Hirsch
City of Chicago, Department of Law
Constitutional and Commercial Litigation
Division
30 N. LaSalle St., Suite 1230
Chicago, IL 60602

Stephen A. Kolodziej
Meghan A. Gonnissen
Ford & Britton, P.C.
Suite 300
Chicago, IL 60602

s/ Christian D. Ambler
Christian D. Ambler