

Case No. 19-56004

In the United States Court of Appeals
for the Ninth Circuit

STEVEN RUPP, et al.,
Plaintiffs-Appellants,

v.

XAVIER BECERRA,
in his official capacity as Attorney General of the State of California,
Defendant-Appellee.

On Appeal from the United States District Court
for the Central District of California
Case No. 8:17-cv-00746-JLS-JDE

**APPELLANTS' EXCERPTS OF RECORD
VOLUME XV OF XXII**

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January 27, 2020

Under Federal Rules of Appellate Procedure for the Ninth Circuit, rule 30-1, Plaintiffs-Appellants Steven Rupp, Steven Dember, Cheryl Johnson, Michael Jones, Christopher Seifert, Alfonso Valencia, Troy Willis, Dennis Martin, and California Rifle & Pistol Association, Incorporated, by and through their attorney of record, confirm to the contents and form of Appellants' Excerpts of Record.

Date: January 27, 2020

MICHEL & ASSOCIATES, P.C.

s/ Sean A. Brady

Sean A. Brady

Attorneys for Plaintiffs/ Appellants

Steven Rupp, et al.

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CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2020, an electronic PDF of APPELLANTS' EXCERPTS OF RECORD, VOLUME XV OF XXII was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Date: January 27, 2020

MICHEL & ASSOCIATES, P.C.

s/ Sean A. Brady

Sean A. Brady

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Steven Rupp, et al.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

STEVEN RUPP, et al.,

Plaintiffs,

vs.

XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California,

Defendant.

Case No.: 8:17-cv-00746-JLS-JDE

**EXHIBITS 45-48 TO
DECLARATION OF SEAN A.
BRADY IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

Hearing Date: May 31, 2019
Hearing Time: 10:30 a.m.
Courtroom: 10A
Judge: Josephine L. Staton

[Filed concurrently with Notice of
Motion for Summary Judgment,
Memorandum of Points and Authorities,
Statement of Uncontroverted Facts and
Conclusions of Law, Request for
Judicial Notice, Declarations of Steven
Rupp, Steven Dember, Cheryl Johnson,
Christopher Seifert, Alfonso Valencia,
Troy Willis, Michael Jones, Dennis
Martin, and Richard Travis]

EXHIBIT 45

1-800-741-0015

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[Rifle Stocks](#)
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Adjustable Rifle Stocks (44 items)

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STOCK ADJUSTABLE
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METAL & 2 7.62 MAGS
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STOCK ADJUSTABLE
PRO MAG

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EXHIBIT 46

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CZ 75/ 85 9MM, 16 RD
MAG
CZ USA
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EXHIBIT 47

Official - Subject to Final Review

1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - - x

3 DISTRICT OF COLUMBIA, :

4 ET AL., :

5 Petitioners :

6 v. : No. 07-290

7 DICK ANTHONY HELLER. :

8 - - - - - x

9 Washington, D.C.

10 Tuesday, March 18, 2008

11

12 The above-entitled matter came on for oral
13 argument before the Supreme Court of the United States
14 at 10:06 a.m.

15 APPEARANCES:

16 WALTER DELLINGER, ESQ., Washington, D.C.; on behalf
17 of the Petitioners.

18 GEN. PAUL D. CLEMENT, ESQ., Solicitor General,
19 Department of Justice, Washington, D.C.; on behalf
20 of the United States, as amicus curiae.

21 ALAN GURA, ESQ., Alexandria, Va.; on behalf of the
22 Respondent.

23

24

25

Official - Subject to Final Review

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| 5 | GEN. PAUL D. CLEMENT, ESQ. | |
| 6 | On behalf of the United States, | |
| 7 | as amicus curiae | 27 |
| 8 | ALAN GURA, ESQ. | |
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Official - Subject to Final Review

1 P R O C E E D I N G S

2 (10:06 a.m.)

3 CHIEF JUSTICE ROBERTS: We will hear
4 argument today in Case 07-290, District of Columbia
5 versus Heller.

6 Mr. Dellinger.

7 ORAL ARGUMENT OF WALTER DELLINGER

8 ON BEHALF OF THE PETITIONERS

9 MR. DELLINGER: Good morning, Mr. Chief
10 Justice, and may it please the Court:

11 The Second Amendment was a direct response
12 to concern over Article I, Section 8 of the
13 Constitution, which gave the new national Congress the
14 surprising, perhaps even the shocking, power to
15 organize, arm, and presumably disarm the State militias.
16 What is at issue this morning is the scope and nature of
17 the individual right protected by the resulting
18 amendment and the first text to consider is the phrase
19 protecting a right to keep and bear arms. In the
20 debates over the Second Amendment, every person who used
21 the phrase "bear arms" used it to refer to the use of
22 arms in connection with militia service and when Madison
23 introduced the amendment in the first Congress, he
24 exactly equated the phrase "bearing arms" with, quote,
25 "rendering military service." We know this from the

Official - Subject to Final Review

1 inclusion in his draft of a clause exempting those with
2 religious scruples. His clause says "The right of the
3 people to keep and bear arms shall not be infringed, a
4 well armed and well regulated militia being the best
5 security of a free country, but no person religiously
6 scrupulous of bearing arms shall be compelled to render
7 military service in person."

8 And even if the language of keeping and
9 bearing arms were ambiguous, the amendment's first
10 clause confirms that the right is militia-related.

11 CHIEF JUSTICE ROBERTS: If you're right,
12 Mr. Dellinger, it's certainly an odd way in the Second
13 Amendment to phrase the operative provision. If it is
14 limited to State militias, why would they say "the right
15 of the people"? In other words, why wouldn't they say
16 "state militias have the right to keep arms"?

17 MR. DELLINGER: Mr. Chief Justice, I believe
18 that the phrase "the people" and the phrase "the
19 militia" were really in -- in sync with each other. You
20 will see references in the debates of, the Federalist
21 Farmer uses the phrase "the people are the militia, the
22 militia are the people."

23 CHIEF JUSTICE ROBERTS: But if that's right,
24 doesn't that cut against you? If the militia included
25 all the people, doesn't the preamble that you rely on

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1 not really restrict the right much at all? It includes
2 all the people.

3 MR. DELLINGER: Yes, I do believe it
4 includes all the people in the sense of
5 Verdugo-Urquidez, all those who are part of the polity.
6 What -- what defines the amendment is the scope and
7 nature of the right that the people have. It's, it is a
8 right to participate in the common defense and you have
9 a right invocable in court if a Federal regulation
10 interferes with your right to train for or whatever the
11 militia has established. So that --

12 JUSTICE KENNEDY: One of the concerns,
13 Mr. Dellinger, of the framers, was not to establish a
14 practice of amending the Constitution and its important
15 provisions, and it seems to me that there is an
16 interpretation of the Second Amendment differing from
17 that of the district court and in Miller and not
18 advanced particularly in the red brief, but that
19 conforms the two clauses and in effect delinks them.
20 The first clause I submit can be read consistently with
21 the purpose I've indicated of simply reaffirming the
22 existence and the importance of the militia clause.
23 Those were very important clauses. As you've indicated,
24 they're in Article I and Article II. And so in effect
25 the amendment says we reaffirm the right to have a

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1 militia, we've established it, but in addition, there is
2 a right to bear arms. Can you comment on that?

3 MR. DELLINGER: Yes.

4 JUSTICE KENNEDY: And this makes, it does --
5 I think you're write right in the brief to say that the
6 preface shouldn't be extraneous. This means it's not
7 extraneous. The Constitution reaffirms the rights,
8 reaffirm several principles: The right of the people to
9 peaceably assemble, the right to be secure in their
10 homes, the Tenth Amendment reaffirms the rights, and
11 this is simply a reaffirmation of the militia clause.

12 MR. DELLINGER: Justice Kennedy, I think any
13 interpretation that delinks the two clauses as if they
14 were dealing with related but nonetheless different
15 subject matters has that to count against it, and what
16 you don't see in the debates over the Second Amendment
17 are references to, in those debates, the use of weapons
18 for personal purposes. What you see is the clause that,
19 that literally transposes to this: "Because a well
20 regulated militia is necessary to the security of a free
21 State, the right of the people to keep and bear arms
22 shall not be" --

23 JUSTICE KENNEDY: Well the subject is "arms"
24 in both clauses, as I've suggested is the common
25 subject, and they're closely related.

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1 MR. DELLINGER: I think, as this Court
2 unanimously held in Miller, or at least noted in
3 Miller -- I'll leave aside the debate. The court
4 unanimously said in Miller that the Second Amendment
5 must be interpreted in light of its obvious purpose to
6 ensure the continuation and render possible the
7 effectiveness of the military forces.

8 JUSTICE SCALIA: I don't see how there's
9 any, any, any contradiction between reading the second
10 clause as a -- as a personal guarantee and reading the
11 first one as assuring the existence of a militia, not
12 necessarily a State-managed militia because the militia
13 that resisted the British was not State-managed. But
14 why isn't it perfectly plausible, indeed reasonable, to
15 assume that since the framers knew that the way militias
16 were destroyed by tyrants in the past was not by passing
17 a law against militias, but by taking away the people's
18 weapons -- that was the way militias were destroyed.
19 The two clauses go together beautifully: Since we need
20 a militia, the right of the people to keep and bear arms
21 shall not be infringed.

22 MR. DELLINGER: Yes, but once you assume
23 that the clause is designed to protect the militia, it
24 -- surely it's the militia that decides whether personal
25 possession is necessary. I mean, Miller -- what makes

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1 no sense is for Miller to require the arm to be
2 militia-related if the right is not, and the key phrase
3 is "bear arms." If people --

4 JUSTICE KENNEDY: Well, do you think the
5 clause, the second clause, the operative clause, is
6 related to something other than the militia?

7 MR. DELLINGER: No. I think --

8 JUSTICE KENNEDY: All right. Well, then --

9 MR. DELLINGER: -- the second clause, the
10 phrase "keep and bear arms," when "bear arms" is
11 referred to -- is referred to in a military context,
12 that is so that even if you left aside --

13 JUSTICE KENNEDY: It had nothing to do with
14 the concern of the remote settler to defend himself and
15 his family against hostile Indian tribes and outlaws,
16 wolves and bears and grizzlies and things like that?

17 MR. DELLINGER: That is not the discourse
18 that is part of the Second Amendment. And when you read
19 the debates, the congressional debates, the only use of
20 the phrase "keep and bear arms" is a military phrase,
21 and --

22 JUSTICE SCALIA: Blackstone thought it was
23 important. Blackstone thought it was important. He
24 thought the right of self-defense was inherent, and the
25 framers were devoted to Blackstone. Joseph Story, the

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1 first commentator on the Constitution and a member of
2 this Court, thought it was a personal guarantee.

3 MR. DELLINGER: When Blackstone speaks of
4 the personal guarantee, he describes it as one of the
5 use of weapons, a common law right. And if we're
6 constitutionalizing the Blackstonian common law right,
7 he speaks of a right that is subject to due restrictions
8 and applies to, quote "such weapons, such as are allowed
9 by law." So Blackstone builds in the kind of
10 reasonableness of the regulation that the District of
11 Columbia has. Now, the --

12 CHIEF JUSTICE ROBERTS: Well, that may be
13 true, but that concedes your main point that there is an
14 individual right and gets to the separate question of
15 whether the regulations at issue here are reasonable.

16 MR. DELLINGER: I don't dispute, Mr. Chief
17 Justice, that the Second Amendment is positive law that
18 a litigant can invoke in court if a State were to decide
19 after recent events that it couldn't rely upon the
20 Federal Government in natural disasters and wanted to
21 have a State-only militia and wanted to have everybody
22 trained in the use of a weapon, a Federal law that
23 interfered with that would be a law that could be
24 challenged in court by, by an individual. I mean, I
25 think the better --

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1 JUSTICE GINSBURG: Mr. Dellinger --

2 MR. DELLINGER: Yes.

3 JUSTICE GINSBURG: -- short of that, just to
4 get your position clear, short of reactivating State
5 militias, on your reading does the Second Amendment have
6 any effect today as a restraint on legislation?

7 MR. DELLINGER: It would, Justice Ginsburg,
8 if the State had a militia and had attributes of the
9 militia contrary to a Federal law. And if it didn't --

10 JUSTICE GINSBURG: But it doesn't, as far as
11 I know.

12 MR. DELLINGER: As far as I know, today it
13 doesn't. And I'm not -- and the Respondents make that,
14 that argument that the amendment is without a use. But
15 you don't make up a new use for an amendment whose
16 prohibitions aren't being violated. I mean --

17 JUSTICE ALITO: Your argument is that its
18 purpose was to prevent the disarming of the organized
19 militia, isn't that correct?

20 MR. DELLINGER: That is correct.

21 JUSTICE ALITO: And if that was the purpose,
22 then how could they -- how could the Framers of the
23 Second Amendment have thought that it would achieve that
24 person, because Congress has virtually plenary power
25 over the militia under the militia clauses?

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1 MR. DELLINGER: That is because, I think,
2 Justice Alito, that those who wanted to retake State
3 authority over the militia didn't get everything they
4 wanted. Madison actually did this somewhat reluctantly
5 and wanted to maintain national control.

6 JUSTICE SCALIA: They got nothing at all,
7 not everything they wanted. They got nothing at all.
8 So long as it was up to the Federal Government to
9 regulate the militia and to assure that they were armed,
10 the Federal Government could, could disband the State
11 militias.

12 MR. DELLINGER: Yes, but if -- well --

13 JUSTICE SCALIA: So what, what was the
14 function served by the Second Amendment as far as the
15 militia is concerned?

16 MR. DELLINGER: It is by no means clear that
17 the Federal Government could abolish the State militia.
18 It may be presupposed by the Article I, Section 8,
19 clauses 15 and 16, and by the Second Amendment that the
20 States may have a militia. That issue has been left
21 open as to whether you could do that, and it can be
22 called into Federal service but only in particular
23 circumstances.

24 Now I think the better argument for the
25 other side, if, if there is to be a militia relatedness

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1 aspect of the Second Amendment, as we think clear from
2 all of its terms, then Heller's proposed use of a
3 handgun has no connection of any kind to the
4 preservation or efficiency of a militia and therefore
5 the case is over.

6 CHIEF JUSTICE ROBERTS: Well, but your
7 reading of the militia clause, the militia clause
8 specifically reserves concern rights to the States by
9 its terms. And as I understand your reading, you would
10 be saying the Second Amendment was designed to take away
11 or expand upon the rights that are reserved, rather than
12 simply guaranteeing what rights were understood to be
13 implicit in the Constitution itself.

14 MR. DELLINGER: I'm not sure I followed the,
15 the question exactly, but --

16 CHIEF JUSTICE ROBERTS: Well, the militia
17 clause, Article I, Section 8, says certain rights are
18 reserved to the States with respect to the militia. And
19 yet you're telling us now that this was a very important
20 right that ensured that they kept arms, but it wasn't
21 listed in the rights that were reserved in the militia
22 clause.

23 MR. DELLINGER: The debate over the militia
24 clause -- what is shocking about the militia clauses is
25 that this is a, a new national government that for the

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1 first time has the power to create a standing army of
2 professionals. The militia were people who came from
3 the people themselves, put down their weapons of trade.
4 The States were devoted to the ideo of their militia of
5 volunteers, and of all the powers granted to the Federal
6 Government one of the most surprising was to say that
7 Congress shall have the power to organize, arm, and
8 discipline the militia and to -- even though the
9 officers could be appointed by the State, the discipline
10 had to be according to Congress. And this was -- this
11 caused a tremendous negative reaction to the proposed
12 Constitution.

13 JUSTICE KENNEDY: But the Second -- the
14 Second Amendment doesn't repeal that. You don't take
15 the position that Congress no longer has the power to
16 organize, arm, and discipline the militia, do you?

17 MR. DELLINGER: No.

18 JUSTICE KENNEDY: So it was supplementing
19 it. And my question is, the question before us, is how
20 and to what extent did it supplement it. And in my view
21 it supplemented it by saying there's a general right to
22 bear arms quite without reference to the militia either
23 way.

24 MR. DELLINGER: It restricted in our view
25 the authority of the Federal Government to interfere

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1 with the arming of the militia by the States. And the
2 word that caused the most focus was to "arm" and that is
3 to disarm.

4 Now, what I think is happening is that two
5 different rights are being put together. One was a
6 textual right to protect the militia. I think the
7 better argument for the -- for the other side, for
8 Mr. Heller, is that the amendment's purpose is militia
9 protective, but it was overinclusive in the way that
10 several of you have suggested, and that is that, as the
11 court below said, preserving the individual right,
12 presumably to have guns for personal use, was the best
13 way to ensure that the militia could serve when called.

14 But that right, this right of personal
15 liberty, the Blackstonian right, is an unregulated right
16 to whatever arm, wherever kept, however you want to
17 store it, and for the purposes an individual decides,
18 that is a libertarian ideal. It's not the text of the
19 Second Amendment, which is expressly about the security
20 of the State; it's about well-regulated militias, not
21 unregulated individual license, as is --

22 JUSTICE SOUTER: So what you are -- what you
23 are saying is that the individual has a right to
24 challenge a Federal law which in effect would disarm the
25 militia and make it impossible for the militia to

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1 perform those functions that militias function. Isn't
2 that the nub of what you're saying?

3 MR. DELLINGER: Yes. That is correct.

4 JUSTICE SOUTER: Okay.

5 MR. DELLINGER: And if the Court --

6 JUSTICE STEVENS: May ask this question,
7 Mr. Dellinger? To what extent do you think the similar
8 provisions in State constitutions that were adopted more
9 or less at the same time are relevant to our inquiry?

10 MR. DELLINGER: I think they are highly
11 relevant to your inquiry because now 42 States have
12 adopted constitutional provisions.

13 JUSTICE STEVENS: I'm not talking about
14 those.

15 MR. DELLINGER: You're talking about at the
16 time.

17 JUSTICE STEVENS: I'm talking about the
18 contemporaneous actions of the States, before or at the
19 time of the adoption of the Second Amendment.

20 MR. DELLINGER: I think that the -- the
21 State amendments are generally written in different --
22 in different terms. If you're going to protect the kind
23 of right that is -- that is being spoken of here,
24 different from the militia right, the plain language to
25 do it would be "Congress or the States shall pass no law

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1 abridging the right of any person to possess weapons for
2 personal use." And that's not the right that is created
3 here.

4 One of the troublesome aspects of viewing
5 this as a right of personal use is that that is the kind
6 of fundamental liberty interest that would create a real
7 potential for disruption. Once you unmoor it from -- or
8 untether it from its connection to the protection of the
9 State militia, you have the kind of right that could
10 easily be restrictions on State and local governments
11 and --

12 JUSTICE KENNEDY: Well, there's no question
13 that the English struggled with how to work this. You
14 couldn't conceal a gun and you also couldn't carry it,
15 but yet you had a right to have it.

16 Let me ask you this: Do you think the
17 Second Amendment is more restrictive or more expansive
18 of the right than the English Bill of Rights in 1689?

19 MR. DELLINGER: I think it doesn't address
20 the same subject matter as the English Bill of Rights.
21 I think it's related to the use of weapons as part of
22 the civic duty of participating in the common defense,
23 and it's -- and it's -- it's --

24 JUSTICE KENNEDY: I think that would be more
25 restrictive.

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1 MR. DELLINGER: That -- that could well --
2 the answer then would be --

3 JUSTICE SOUTER: Well isn't it -- isn't it
4 more restrictive in the sense that the English Bill of
5 Rights was a guarantee against the crown, and it did not
6 preclude Parliament from passing a statute that would
7 regulate and perhaps limit --

8 MR. DELLINGER: Well --

9 JUSTICE SOUTER: Here there is some
10 guarantee against what Congress can do.

11 MR. DELLINGER: Parliament could regulate.
12 And Blackstone appears to approve of precisely the kinds
13 of regulations here. Now --

14 JUSTICE STEVENS: The Bill of Rights only
15 protected the rights of protestants.

16 MR. DELLINGER: This is correct.

17 JUSTICE STEVENS: And it was suitable to
18 their conditions then as allowed by law, so it was -- it
19 was a group right and much more limited.

20 MR. DELLINGER: I think that is -- that's
21 correct.

22 JUSTICE SCALIA: And as I recall the
23 legislation against Scottish highlanders and against --
24 against Roman Catholics did use the term -- forbade them
25 to keep and bear arms, and they weren't just talking

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1 about their joining militias; they were talking about
2 whether they could have arms.

3 MR. DELLINGER: Well, the different kind of
4 right that you're talking about, to take this to the
5 question of -- of what the standard ought to be for
6 applying this, even if this extended beyond a
7 militia-based right, if it did, it sounds more like the
8 part of an expansive public or personal -- an expansive
9 personal liberty right, and if it -- if it is, I think
10 you ought to consider the effect on the 42 States who
11 have been getting along fine with State constitutional
12 provisions that do expressly protect an individual right
13 of -- of weapons for personal use, but in those States,
14 they have adopted a reasonableness standard that has
15 allowed them to sustain sensible regulation of dangerous
16 weapons. And if you --

17 CHIEF JUSTICE ROBERTS: What is -- what is
18 reasonable about a total ban on possession?

19 MR. DELLINGER: What is reasonable about a
20 total ban on possession is that it's a ban only on the
21 possession of one kind of weapon, of handguns, that's
22 been considered especially -- especially dangerous. The
23 --

24 CHIEF JUSTICE ROBERTS: So if you have a law
25 that prohibits the possession of books, it's all right

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1 if you allow the possession of newspapers?

2 MR. DELLINGER: No, it's not, and the
3 difference is quite clear. If -- if you -- there is no
4 limit to the public discourse. If there is an
5 individual right to guns for personal use, it's to carry
6 out a purpose, like protecting the home. You could not,
7 for example, say that no one may have more than 50
8 books. But a law that said no one may possess more than
9 50 guns would -- would in fact be I think quite
10 reasonable.

11 CHIEF JUSTICE ROBERTS: The regulation --
12 the regulation at issue here is not one that goes to the
13 number of guns. It goes to the specific type. And I
14 understood your argument to be in your brief that
15 because rifles and shotguns are not banned to the staple
16 extent as handguns, it's all right to ban handguns.

17 MR. DELLINGER: That is correct because
18 there is no showing in this case that rifles and
19 handguns are not fully satisfactory to carry out the
20 purposes. And what -- and what the court below says
21 about -- about the elimination of this --

22 JUSTICE KENNEDY: The purposes of what?

23 MR. DELLINGER: I'm sorry.

24 JUSTICE KENNEDY: You said there is no
25 showing that rifles and handguns. I think you meant

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1 rifles and other guns.

2 MR. DELLINGER: Yes, I'm sorry. Rifles and
3 handguns.

4 JUSTICE KENNEDY: Is necessary for the
5 purpose of what? What is the purpose?

6 MR. DELLINGER: The purpose -- if the
7 purpose -- if we are shifting and if we assume for a
8 moment arguendo that you believe this is a right
9 unconnected to the militia, then the purpose would be,
10 say, defense of the home. And where the government
11 here, where the -- where the correct standard has been
12 applied, which is where a State or the district has
13 carefully balanced the considerations of gun ownership
14 and public safety, has eliminated one weapon, the court
15 below has an absolutist standard that cannot be
16 sustained. The court below says that once it is
17 determined that handguns are, quote, "arms," unquote,
18 referred to in the Second Amendment, it is not open to
19 the District to ban them. And that doesn't promote the
20 security of a free State.

21 JUSTICE GINSBURG: But wasn't there a leeway
22 for some weapon prohibition? Let me ask you, in
23 relation to the States that do have guarantees of the
24 right to possess a weapon at home: Do some of those
25 States say there are certain kinds of guns that you

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1 can't have, like machine guns?

2 MR. DELLINGER: Yes. And here what the
3 opinion below would do instead -- would -- it's hard to
4 see on the opinion below why machine guns or
5 armor-piercing bullets or other dangerous weapons
6 wouldn't be categorically protected --

7 JUSTICE BREYER: Could you go back to the --

8 MR. DELLINGER: -- in those States --

9 JUSTICE KENNEDY: If I could just have one
10 follow-on on Justice Ginsburg real quick. Do those
11 States -- Justice Ginsburg asked -- - that distinguish
12 among weapons, State constitutional provisions do not do
13 so?

14 MR. DELLINGER: No, it's not in the text of
15 the State constitutional provision; it's in their --

16 JUSTICE GINSBURG: It's in interpretation.

17 MR. DELLINGER: -- reasonable application.
18 And here, the question is how has the balance been
19 struck? The District allows law-abiding citizens to
20 have functioning firearms in the home. From the time it
21 was introduced in 1976, it has been the consistent
22 position that you're entitled to have a functioning
23 firearm. At issue is the one type of weapon --

24 JUSTICE SCALIA: Mr. Dellinger, let's come
25 back to your description of the opinion below as

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1 allowing armor-piercing bullets and machine guns. I
2 didn't read it that way. I thought the opinion below
3 said it had to be the kind of weapon that was common for
4 the people --

5 MR. DELLINGER: That is --

6 JUSTICE SCALIA: -- that is common for the
7 people to have. And I don't know -- I don't know that a
8 lot of people have machine guns or armor-piercing
9 bullets. I think that's quite unusual. But having a
10 pistol is not unusual.

11 MR. DELLINGER: The number of machine guns,
12 I believe, is in excess of a hundred thousand that are
13 out there now, that are --

14 JUSTICE SCALIA: How many people in the
15 country?

16 MR. DELLINGER: Well, there are 300 million,
17 but whether that's common or not, but the --

18 JUSTICE SCALIA: I don't think it's common.

19 MR. DELLINGER: But it's the -- the court
20 protects weapons suitable for military use that are
21 lineal descendants. I don't know why an improved bullet
22 wouldn't be covered, unless you adopt the kind of
23 reasonableness standard that we suggest, where you look
24 to the fact that -- and I don't -- some people think
25 machine guns are more dangerous than handguns -- they

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1 shoot a lot of people at once -- but a handgun is
2 concealable and movable. It can be taken into schools,
3 into buses, into government office buildings, and that
4 is the particular danger it poses in a densely populated
5 urban area.

6 CHIEF JUSTICE ROBERTS: Well, I'm not sure
7 that it's accurate to say the opinion below allowed
8 those. The law that the opinion, the court below, was
9 confronted with was a total ban, so that was the only
10 law they considered.

11 If the District passes a ban on machine guns
12 or whatever, then that law -- that law would be
13 considered by the court and perhaps would be upheld as
14 reasonable. But the only law they had before them was a
15 total ban.

16 JUSTICE SCALIA: Or a law on the carrying of
17 concealed weapons, which would include pistols, of
18 course.

19 MR. DELLINGER: Let me fight back on the
20 notion that it's a -- it's a total ban. It's not as if
21 every kind of weapon is useful.

22 CHIEF JUSTICE ROBERTS: Are you allowed to
23 carry the weapons that are allowed? I read the "carry
24 clause" to apply without qualification. So while you
25 say you might be able to have a shotgun in the home, you

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1 can't carry it to get there.

2 MR. DELLINGER: No. You can -- you can with
3 a proper license. The District has made it clear that
4 there is no doubt that it interprets its laws to allow a
5 functioning gun. And to say that something is a total
6 ban when you own only one particular kind of weapon
7 would apply to a machine gun if it were or came into
8 common use and --

9 JUSTICE ALITO: But even if you have -- even
10 if you have a rifle or a shotgun in your home, doesn't
11 the code prevent you from loading it and unlocking it
12 except when it's being used for lawful, recreational
13 purposes within the District of Columbia? So even if
14 you have the gun, under this code provision it doesn't
15 seem as if you could use it for the defense of your
16 home.

17 MR. DELLINGER: That is not the city's
18 position, and we have no dispute with the other side on
19 the point of what the right answer should be.

20 It is a universal or near universal rule of
21 criminal law that there is a self-defense exception. It
22 goes without saying. We have no argument whatsoever
23 with the notion that you may load and have a weapon
24 ready when you need to use it for self- defense.

25 I'm going to reserve the remainder of my

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1 time for rebuttal.

2 CHIEF JUSTICE ROBERTS: Why don't you
3 remain, Mr. Dellinger. We'll make sure you have
4 rebuttal.

5 JUSTICE KENNEDY: Because I did interrupt
6 Justice Breyer.

7 JUSTICE BREYER: I just wondered if you
8 could say in a minute. One possibility is that the
9 amendment gives nothing more than a right to the State
10 to raise a militia. A second possibility is that it
11 gives an individual right to a person, but for the
12 purpose of allowing people to have guns to form a
13 militia. Assume the second. If you assume the second,
14 I wanted you to respond if you -- unless you have done
15 so fully already, to what was the Chief Justice's
16 question of why, on the second assumption, this ban on
17 handguns, not the other part, of the District of
18 Columbia, a total ban, why is that a reasonable
19 regulation viewed in terms of the purposes as I
20 described them?

21 MR. DELLINGER: It's a reasonable regulation
22 for two kinds of reasons.

23 First, in order -- the amendment speaks of a
24 well-regulated militia. Perhaps it's the case that
25 having everybody have whatever gun they want of whatever

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1 kind would advance a well- regulated militia, but
2 perhaps not. But, in any event --

3 JUSTICE SCALIA: It means "well trained,"
4 doesn't it?

5 MR. DELLINGER: When you -- when you have
6 one --

7 JUSTICE SCALIA: Doesn't "well regulated"
8 mean "well trained"? It doesn't mean -- it doesn't mean
9 "massively regulated." It means "well trained."

10 MR. DELLINGER: Well, every -- every phrase
11 of the amendment, like "well regulated," "security of
12 the State," is something different than a -- a
13 libertarian right. Here you have, I think, a fully --
14 on this, particularly on a facial challenge, there is no
15 showing that rifles and shotguns are not fully available
16 for all of the purposes of defense.

17 There is no indication that the District
18 militia is an entity that needs individuals to have
19 their own handguns. You -- you -- there is a step that
20 is -- that is missing here. The well-regulated militia
21 is not necessarily about everyone having a gun. A
22 militia may decide to organize -- be organized that way,
23 in which case you would have a different notion.

24 But here, I think, when you come down to
25 apply this case, if you look at about five factors, that

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1 other weapons are allowed, important regulatory
2 interests of these particularly dangerous weapons are --
3 is clearly a significant regulatory, and important
4 regulatory, interest. In two respects this is removed
5 from the core of the amendment. Even if it is not
6 limited to militia service, even in the court below, no
7 one doubts that that was, as the court below said, the
8 most salient objective.

9 So this is in the penumbra or the periphery,
10 not the core. It was undoubtedly aimed principally, if
11 not exclusively, at national legislation which displaced
12 the laws in all of the States, rural as well as urban.

13 Here you've got local legislation responsive
14 to local needs, and this is local legislation in the
15 seat of the government where Congress, which was created
16 in order to protect the security of the national
17 government, and where it would be extraordinary to
18 assume that this is the one place that you're not going
19 to incorporate it, the one area in the United States
20 where no government, free of restrictions of the Second
21 Amendment, could control dangerous weapons.

22 CHIEF JUSTICE ROBERTS: Thank you,
23 Mr. Dellinger.

24 General Clement.

25 ORAL ARGUMENT OF GEN. PAUL D. CLEMENT

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1 ON BEHALF OF THE UNITED STATES,

2 AS AMICUS CURIAE

3 GENERAL CLEMENT: Mr. Chief Justice, and may
4 it please the Court:

5 The Second Amendment to the Constitution, as
6 its text indicates, guarantees an individual right that
7 does not depend on eligibility for or service in the
8 militia.

9 JUSTICE STEVENS: May I ask you a
10 preliminary question. Do you think it has the same
11 meaning that it would have if it omitted the
12 introductory clause referring to militia?

13 GENERAL CLEMENT: I don't think so, Justice
14 Stevens, because we don't take the position that the
15 preamble plays no role in interpreting the amendment.
16 And we would point to this court's decision in Miller,
17 for example, as an example of where the preamble can
18 play a role in determining the scope --

19 JUSTICE STEVENS: So you think some weight
20 should be given to the clause. And also, the other
21 question I wanted to ask you is: Does the right to keep
22 and bear arms define one or two rights?

23 GENERAL CLEMENT: Oh, I suppose it probably
24 does define two rights that are closely related.

25 JUSTICE STEVENS: There's a right to keep

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1 arms and a right to bear arms?

2 GENERAL CLEMENT: I think that's the better
3 view, and a number of State courts that have interpreted
4 analogous provisions have distinguished between the two
5 rights and looked at them differently.

6 And, obviously, the term "keep" is a word
7 that I think is something of an embarrassment for an
8 effort to try to imbue every term in the operative text
9 with an exclusively military connotation because that is
10 not one that really has an exclusive military
11 connotation. As Justice Scalia pointed out, "keep" was
12 precisely the word that authorities used in statutes
13 designed specifically to disarm individuals.

14 JUSTICE GINSBURG: It doesn't means all. It
15 doesn't mean -- "keep," on your reading, at least if
16 it's consistent with Miller, keep and bear some arms,
17 but not all arms.

18 GENERAL CLEMENT: Absolutely, Justice
19 Ginsburg, and just -- I mean, to give you a clear
20 example, we would take the position that the kind of
21 plastic guns or guns that are specifically designed to
22 evade metal detectors that are prohibited by Federal law
23 are not "arms" within the meaning of the Second
24 Amendment and are not protected at all.

25 And that would be the way we would say that

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1 you should analyze that provision of Federal law, as
2 those are not even arms within the provisions of the
3 Second Amendment.

4 I think to make the same argument about
5 machine guns would be a much more difficult argument, to
6 say the least, given that they are the standard-issue
7 weapon for today's armed forces and the State-organized
8 militia.

9 JUSTICE KENNEDY: So in your view this
10 amendment has nothing to do with the right of people
11 living in the wilderness to protect themselves, despite
12 maybe an attempt by the Federal Government, which is
13 what the Second Amendment applies to, to take away their
14 weapons?

15 GENERAL CLEMENT: Well, Justice Kennedy, I
16 wouldn't say that it has no application there. As I
17 say, I think the term "arms," especially if Miller is
18 going to continue to be the law, is influenced by the
19 preamble. But the way we would look at it --

20 JUSTICE KENNEDY: I agree that Miller is
21 consistent with what you've just said, but it seems to
22 me Miller, which kind of ends abruptly as an opinion
23 writing anyway, is just insufficient to subscribe -- to
24 describe the interests that must have been foremost in
25 the framers' minds when they were concerned about guns

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1 being taken away from the people who needed them for
2 their defense.

3 GENERAL CLEMENT: Well, Justice Kennedy, we
4 would analyze it this way, which is we would say that
5 probably the thing that was foremost in the framers'
6 minds was a concern that the militia not be disarmed
7 such that it would be maintained as a viable option to
8 the standing army. But especially when you remember, as
9 Justice Alito pointed out, that the Constitution in
10 Article I, Section 8, clauses 15 and 16, the militia
11 clauses, as unamended, gave the Federal power -- the
12 Federal authorities virtually plenary authority to deal
13 with the organization and regulation of the militia.
14 The most obvious way that you could protect the militia
15 --

16 JUSTICE STEVENS: Not plenary authority.
17 Not plenary authority.

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18             GENERAL CLEMENT:  Except for that which is
19 reserved in --

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20 JUSTICE STEVENS: Who appoints the officers?

21 GENERAL CLEMENT: Yes -- no, absolutely.

22 There is something reserved in clause 16.

23 But let me just say, if the Second Amendment
24 had the meaning that the District of Columbia ascribes
25 to it, one would certainly think that James Madison,

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1 when he proposed the Second Amendment would have
2 proposed it as an amendment to Article I, Section 8,
3 clause 16.

4 He didn't. He proposed it as an amendment
5 to Article I, Section 9, which encapsulates the
6 individual rights to be free from bills of retainer and
7 ex post facto clauses.

8 JUSTICE STEVENS: Do you think he was guided
9 at all by the contemporaneous provisions in State
10 constitutions?

11 MR. DELLINGER: I am sure he was influenced
12 by that, although I think, honestly --

13 JUSTICE STEVENS: And how many of them
14 protected an individual right? Just two, right?

15 GENERAL CLEMENT: I think -- I think
16 Pennsylvania and Vermont are the ones that most
17 obviously protected.

18 JUSTICE STEVENS: And the others quite
19 clearly went in the other direction, did they not?

20 GENERAL CLEMENT: Well, I don't know about
21 quite clearly. The textual indication in the State
22 amendments that probably most obviously goes in the
23 other direction is the phrase "keep and bear arms for
24 the common defense." And, of course, there was a
25 proposal during the debate over the Second Amendment to

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1 add exactly those words to the Second Amendment, and
2 that proposal was defeated, which does --

3 JUSTICE STEVENS: There was also a proposal
4 to make it clear there was an individual right, which
5 was also rejected.

6 GENERAL CLEMENT: I'm sorry, Justice
7 Stevens. Which aspect of that did you have in mind?

8 JUSTICE STEVENS: The Pennsylvania proposal.

9 GENERAL CLEMENT: Oh, but I don't think that
10 ever made it to the floor of the House or the Senate
11 that I'm aware of. And I think that this happened at
12 the actual Senate floor. There was a proposal to add
13 the words "in the common defense," and that was
14 rejected. I mean, but --

15 JUSTICE KENNEDY: You think Madison was
16 guided by the experience and the expressions of the
17 right in English law, including the Bill of Rights of
18 1689?

19 GENERAL CLEMENT: I do, Justice Kennedy, and
20 I think in that regard it is telling that -- I mean,
21 there are a variety of provisions in our Bill of Rights
22 that were borrowed from the English Bill of Rights. Two
23 very principal ones are the right to petition the
24 government and the right to keep and bear arms. I don't
25 think it's an accident --

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1 JUSTICE GINSBURG: If we're going back to
2 the English Bill of Rights, it was always understood to
3 be subject to the control and limitation and restriction
4 of Parliament. And I don't think there's any doubt
5 about that. And that's what we're talking about here,
6 are legislative restrictions.

7 GENERAL CLEMENT: Well, Justice Ginsburg, I
8 think you could say the same thing for every provision
9 of the English Bill of Rights. And obviously, when
10 those were translated over to our system you had to make
11 adjustment for --

12 JUSTICE SOUTER: But isn't there one
13 difference? Not every provision of the English Bill of
14 Rights had an express reference to permission by law,
15 which is a reference to parliamentary authority. So
16 that there -- there -- there was a peculiar recognition
17 of parliamentary legislative authority on this subject.

18 GENERAL CLEMENT: That's exactly right,
19 Justice Souter. And the way I counted it, I only found
20 three provisions in the English Bill of Rights that had
21 a comparable reference to Parliament.

22 JUSTICE STEVENS: This provision has the
23 additional limitation to "suitable to their conditions,"
24 and a large number of people were not permitted to have
25 arms.

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1 GENERAL CLEMENT: Again, that is also true
2 and is also relatively unique to this amendment. And if
3 I get to the point in the argument where I talk about
4 why we think that something less than strict scrutiny is
5 appropriate, I think I would point precisely to those
6 elements of the English Bill of Rights as being
7 relevant.

8 But what I was about to say is I think what
9 is highly relevant in considering the threshold question
10 of whether there's an individual right here at all is
11 that the parallel provisions in the English Bill of
12 Rights that were borrowed over included the right to
13 petition and the right to keep and bear arms. Both of
14 those appear with specific parallel references to the
15 people. They are both rights that are given to the
16 people.

17 And as this Court has made clear in
18 Verdugo-Urquidez, that's a reference that
19 appears throughout the Bill of Rights as a reference to
20 the entire citizenry.

21 JUSTICE SOUTER: May I go back to another
22 point, which is to the same point, and that is
23 consistent with your emphasis on the people was your
24 emphasis a moment ago on the distinction between keeping
25 and bearing arms. The "keep" part sounds in your, in

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1 your mind at least, to speak of an individual right not
2 necessarily limited by, by the exigencies of military
3 service.

4 My question is, if that is correct and
5 "keep" should be read as, in effect, an independent
6 guarantee, then what is served by the phrase "and bear"?
7 In other words, if the people can keep them and they
8 have them there for use in the militia as well as to
9 hunt deer, why do we -- why do we have to have a further
10 reference in there to a right to bear as well as to keep
11 arms? And my point is it sounds to me as though "keep
12 and bear" forms one phrase rather than two. But I want
13 to know what your answer is to that.

14 GENERAL CLEMENT: The way I would read it,
15 Justice Souter, is that "keep" is really talking about
16 private possession in the home. And the way that I
17 would look at it is in order to exercise, for example,
18 an opportunity to hunt, that you would need to bear the
19 arms as well. And I would point you -- I think it's a
20 useful point --

21 JUSTICE SOUTER: But wait a minute. You're
22 not saying that if somebody goes hunting deer he is
23 bearing arms, or are you?

24 GENERAL CLEMENT: I would say that and so
25 would Madison and so would Jefferson, I would submit.

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1 They use --

2 JUSTICE SOUTER: Somebody going out to -- in
3 the eighteenth century, someone going out to hunt a deer
4 would have thought of themselves as bearing arms? I
5 mean, is that the way they talk?

6 GENERAL CLEMENT: Well, I will grant you
7 this, that "bear arms" in its unmodified form is most
8 naturally understood to have a military context. But I
9 think the burden of the argument on the other side is to
10 make it have an exclusively military context. And as a
11 number of the briefs have pointed out, that's not borne
12 out by the framing sources.

13 In one place, although it's not bearing
14 arms, it's bearing a gun, I think it's highly relevant
15 that Madison and Jefferson with respect to this hunting
16 bill that Jefferson wrote and Madison proposed,
17 specifically used in the hunting context the phrase
18 "bear a gun," and so I do think in that context --

19 JUSTICE SOUTER: But it's "arms" that has
20 the kind of the military -- the martial connotation, I
21 would have thought.

22 JUSTICE SCALIA: Wasn't -- wasn't it the
23 case that the banning of arms on the part of the
24 Scottish highlanders and of Catholics in England used
25 the term, forbade them to "bear arms"? It didn't mean

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1 that could just not join militias; it meant they
2 couldn't carry arms.

3 GENERAL CLEMENT: And again, I think various
4 phrases were, were used. I also think that some of the
5 disarmament provisions specifically used the word
6 "keep." And so I think there is some independent
7 meaning there, which is one point.

8 And then I do think that, even in the
9 context of bearing arms, I will grant you that "arms"
10 has a military connotation and I think Miller would
11 certainly support that, but I don't think it's an
12 exclusively military connotation.

13 JUSTICE STEVENS: Not only Miller, but the
14 Massachusetts declaration. "The right to keep and bear
15 arms for the common defense" is what is the normal
16 reading of it.

17 GENERAL CLEMENT: Oh, absolutely. And I
18 grant you if this, if the Second Amendment said "keep
19 and bear arms for the common defense" this would be a
20 different case. But --

21 JUSTICE STEVENS: --- the right to keep and
22 bear -- I'm sorry. It's one right to keep and bear, not
23 two rights, to keep and to bear.

24 GENERAL CLEMENT: Well, I mean it's -- it's
25 my friends from the District that are emphasizing that

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1 no word in the Constitution is surplusage. So I would
2 say that in a context like this you might want to focus
3 both on "keep" and on "bear arms."

4 JUSTICE SOUTER: And you want to talk about
5 the standard, and your light's on.

6 (Laughter.)

7 GENERAL CLEMENT: Okay. I would like to
8 talk about the standard and my light is indeed on, so
9 let me do that.

10 I think there are several reasons why a
11 standard as we suggest in our brief rather than strict
12 scrutiny is an appropriate standard to be applied in
13 evaluating these laws. I think first and foremost, as
14 our colloquy earlier indicated, there is -- the right to
15 bear arms was a preexisting right. The Second Amendment
16 talks about "the right to bear arms," not just "a right
17 to bear arms." And that preexisting always coexisted
18 with reasonable regulations of firearms.

19 And as you pointed out, Justice Souter, to
20 be sure when you're making the translation from the
21 English Bill of Rights you always have to deal with
22 parliamentary supremacy. But it is very striking that,
23 as Justice Stevens said, the right was conditioned on
24 the conditions, which I think meant what class you were,
25 and also subject expressly to the Parliament, the laws

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1 of Parliament.

2 JUSTICE SCALIA: The freedom of speech that
3 was referred to in the Constitution was also "the"
4 freedom of speech, which referred to the pre-existing
5 freedom of speech. And there were indeed some
6 restrictions on that such as libel that you were not
7 allowed to do. And yet we've never held that simply
8 because it was pre-existing and that there were some
9 regulations upon it, that we would not use strict
10 scrutiny. We certainly apply it to freedom of speech,
11 don't we?

12 GENERAL CLEMENT: Justice Scalia, let me
13 make two related points. One, even in the First
14 Amendment context, this Court has recognized -- and I
15 point you to the Court's opinion in *Robertson* against
16 *Baldwin*, which makes this point as to both the First and
17 the Second Amendment. This Court has recognized that
18 there are certain pre-existing exceptions that are so
19 well established that you don't really even view them as
20 Second Amendment or First Amendment infringement.

21 JUSTICE SCALIA: Like libel.

22 GENERAL CLEMENT: Like libel, and I would
23 say like laws barring felons from possessing handguns.
24 I don't think --

25 JUSTICE KENNEDY: Or would you say like

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1 protecting yourself against intruders in the home?

2 GENERAL CLEMENT: Well, that gets to the
3 self-defense component and I don't know that I ever got
4 a chance to fully answer your question on that, Justice
5 Kennedy, which is we would say, notwithstanding the fact
6 that the preamble makes it clear that the preeminent
7 motive was related to ensuring that the militia remained
8 a viable option vis-a-vis the standing army, the
9 operative text is not so limited. And I think in that
10 regard it's worth emphasizing that the framers knew
11 exactly how to condition a right on militia service,
12 because they did it with respect to the grand jury
13 clause, and they didn't do it with respect to the Second
14 Amendment.

15 JUSTICE ALITO: If the amendment is intended
16 at least, in part to protect the right to self-defense
17 in the home, how could the District code provision
18 survive under any standard of review where they totally
19 ban the possession of the type of weapon that's most
20 commonly used for self-defense, and even as to long guns
21 and shotguns they require, at least what the code says
22 without adding a supposed gloss that might be produced
23 in a subsequent case, that even as to long guns and
24 shotguns they have to be unloaded and disassembled or
25 locked at all times, even presumably if someone is

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1 breaking into the home?

2 GENERAL CLEMENT: Well, Justice Alito, let
3 me answer the question in two parts if I can, because I
4 think the analysis of the trigger lock provision may
5 well be different than the analysis of the other
6 provisions.

7 With respect to the trigger lock provision,
8 we think that there is a substantial argument that once
9 this Court clarifies what the constitutional standard
10 is, that there ought to be an opportunity for the
11 District of Columbia to urge its construction, which
12 would allow for a relatively robust self-defense
13 exception to the trigger lock provision. And this Court
14 could very well, applying Ashwan to prevent --
15 principles allow for that kind of --

16 JUSTICE SCALIA: I don't understand that.
17 What would that be -- that you can, if you have time,
18 when you hear somebody crawling in your -- your bedroom
19 window, you can run to your gun, unlock it, load it and
20 then fire? Is that going to be the exception?

21 GENERAL CLEMENT: If that's going to be the
22 exception, it could clearly be inadequate. And I think
23 that -- I mean the District of Columbia can speak to
24 this, but it seems to me that if, for example, the
25 police were executing a warrant at evening and had cause

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1 for doing it at evening and saw somebody with a loaded
2 gun on their night stand, no children present without a
3 trigger lock, it seems to me that that would be a good
4 test case to decide whether or not their construction
5 would provide for an exception to the trigger lock
6 provision in that case.

7 JUSTICE GINSBURG: Can I interrupt for a
8 minute?

9 GENERAL CLEMENT: If it did, I think then
10 the statute might well be constitutional. If it didn't,
11 in my view, it probably wouldn't be.

12 JUSTICE GINSBURG: There is a lot of talk
13 about standards and stop words like strict scrutiny.
14 Does it make a practical difference whether we take your
15 standard or the strict scrutiny that was in the D.C.
16 Circuit's opinion? And specifically there is a whole
17 panoply of Federal laws restricting gun possession.
18 Would any of them be jeopardized under your standard?
19 And the same question with the District scrutiny, does
20 it make any difference?

21 GENERAL CLEMENT: In our view it makes a
22 world of difference, Justice Ginsburg, because we
23 certainly take the position, as we have since
24 consistently since 2001, that the Federal firearm
25 statutes can be defended as constitutional, and that

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1 would be consistent with this kind of intermediate
2 scrutiny standard that we propose. If you apply strict
3 scrutiny, I think that the result would be quite
4 different, unfortunately.

5 CHIEF JUSTICE ROBERTS: Well, these various
6 phrases under the different standards that are proposed,
7 "compelling interest," "significant interest," "narrowly
8 tailored," none of them appear in the Constitution; and
9 I wonder why in this case we have to articulate an
10 all-encompassing standard. Isn't it enough to determine
11 the scope of the existing right that the amendment
12 refers to, look at the various regulations that were
13 available at the time, including you can't take the gun
14 to the marketplace and all that, and determine how
15 these -- how this restriction and the scope of this
16 right looks in relation to those?

17 I'm not sure why we have to articulate some
18 very intricate standard. I mean, these standards that
19 apply in the First Amendment just kind of developed over
20 the years as sort of baggage that the First Amendment
21 picked up. But I don't know why when we are starting
22 afresh, we would try to articulate a whole standard that
23 would apply in every case?

24 GENERAL CLEMENT: Well, Mr. Chief Justice,
25 let me say a couple of things about that, which is to

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1 say that if this Court were to decide this case and make
2 conclusively clear that it really was focused very
3 narrowly on this case and it was in some respects
4 applying a sui generis test, we think that would be an
5 improvement over the court of appeals opinion, which is
6 subject to more than one reading, but as Justice
7 Ginsburg's question just said, it's certainly
8 susceptible to a reading that it embodies strict
9 scrutiny. In fact --

10 JUSTICE GINSBURG: Well, it did. It said
11 it's just like the First Amendment. First Amendment has
12 exceptions, but strict scrutiny applies. It says strict
13 scrutiny applies here too.

14 GENERAL CLEMENT: I --

15 JUSTICE SCALIA: But that opinion also, it
16 didn't use the militia prologue to say it's only the
17 kind of weapons that would be useful in militia, and
18 that are commonly -- commonly held today. Is there any
19 Federal exclusion of weapons that applies to weapons
20 that are commonly held today? I don't know what you're
21 worried about. Machine guns, what else? Armored
22 bullets, what else?

23 GENERAL CLEMENT: Well, Justice Scalia, I
24 think our principal concern based on the parts of the
25 court of appeals opinion that seemed to adopt a very

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1 categorical rule were with respect to machine guns,
2 because I do think that it is difficult -- I don't want
3 to foreclose the possibility of the Government, Federal
4 Government making the argument some day -- but I think
5 it is more than a little difficult to say that the one
6 arm that's not protected by the Second Amendment is that
7 which is the standard issue armament for the National
8 Guard, and that's what the machine gun is.

9 CHIEF JUSTICE ROBERTS: But this law didn't
10 involve a restriction on machine guns. It involved an
11 absolute ban. It involved an absolute carry
12 prohibition. Why would you think that the opinion
13 striking down an absolute ban would also apply to a
14 narrow one -- narrower one directed solely to machine
15 guns?

16 GENERAL CLEMENT: I think, Mr. Chief
17 Justice, why one might worry about that is one might
18 read the language of page 53a of the opinion as
19 reproduced in the petition appendix that says once it is
20 an arm, then it is not open to the District to ban it.

21 Now, it seems to me that the District is not
22 strictly a complete ban because it exempts pre-1976
23 handguns. The Federal ban on machine guns is not,
24 strictly speaking, a ban, because it exempts pre --
25 pre-law machine guns, and there is something like

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1 160,000 of those.

2 JUSTICE SCALIA: But that passage doesn't
3 mean once it's an arm in the dictionary definition of
4 arms. Once it's an arm in the specialized sense that
5 the opinion referred to it, which is -- which is the
6 type of a weapon that was used in militia, and it is --
7 it is nowadays commonly held.

8 GENERAL CLEMENT: Well --

9 JUSTICE SCALIA: If you read it that way, I
10 don't see why you have a problem.

11 GENERAL CLEMENT: Well, I -- I hope that you
12 read it that way. But I would also say that I think
13 that whatever the definition that the lower court
14 opinion employed, I do think it's going to be difficult
15 over time to sustain the notion -- I mean, the Court of
16 Appeals also talked about lineal descendants. And it
17 does seem to me that, you know, just as this Court would
18 apply the Fourth Amendment to something like heat
19 imagery, I don't see why this Court wouldn't allow the
20 Second Amendment to have the same kind of scope, and
21 then I do think that reasonably machine guns come within
22 the term "arms."

23 Now, if this Court wants to say that they
24 don't -- I mean -- I mean -- we'd obviously welcome that
25 in our -- in our obligation to defend the

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1 constitutionality of acts of Congress.

2 The one other thing I would say is that this
3 is an opinion that is susceptible of different readings.
4 It's interesting that Respondents' amici have different
5 characterizations of it. The Goldwater Institute calls
6 it strict scrutiny; the State of Texas calls it
7 reasonable -- reasonableness review.

8 CHIEF JUSTICE ROBERTS: Thank you, General.

9 GENERAL CLEMENT: Thank you.

10 CHIEF JUSTICE ROBERTS: Mr. Gura.

11 ORAL ARGUMENT OF ALAN GURA

12 ON BEHALF OF THE RESPONDENTS

13 MR. GURA: Thank you, Mr. Chief Justice, and
14 may it please the Court:

15 All 50 states allow law-abiding citizens to
16 defend themselves and their families in their homes with
17 ordinary functional firearms including handguns. Now,
18 I'd like to respond to one point that was raised lately
19 by the General --

20 JUSTICE SCALIA: Talk a little slower; I'm
21 not following you.

22 MR. GURA: Okay. I'd like to respond --
23 certainly, Justice Scalia. I'd like to respond to the
24 point about the -- the District of Columbia's position
25 over the years with respect to the functional firearms

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1 ban.

2 The Petitioners have had two opportunities
3 to urge courts to adopt this so-called self-defense
4 exception which they construed in the amendment. The
5 first opportunity came in 1978 in McIntosh versus
6 Washington, where the petitioners urged the Court of
7 Appeals of the District of Columbia to uphold the law
8 because it was irrational in their view to prohibit
9 self-defense in the home with firearms. They deemed it
10 to be too dangerous, and this was a legitimate policy
11 choice of the City Council, and they actually prevailed
12 in that view.

13 The second opportunity that the Petitioners
14 had to urge this sort of self-defense construction was
15 actually in this case in the district court. We had a
16 motion for summary judgment and we made certain factual
17 allegations in this motion, and on page 70a of the joint
18 appendix we see portions of our statement of undisputed
19 material facts. Fact number 29, which was conceded by
20 the District of Columbia, reads: The defendants
21 prohibit the possession of lawfully owned firearms for
22 self-defense within the home, even in instances when
23 self-defense would be lawful by other means under
24 District of Columbia law. The citation for that is a
25 functional firearms ban, and that point was conceded.

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1 Certainly the idea that people can guess as
2 to when it is that they might render the firearm
3 operational is -- is not a one that the Court should
4 accept, because a person who hears a noise, a person who
5 perhaps is living in a neighborhood where there has been
6 a spate of violent crimes, has no idea of when the
7 District of Columbia would permit her to render the
8 firearm operational. And, in fact, there is a
9 prosecution history not under this specific provision,
10 but certainly other under gun prohibition -- laws that
11 we are challenging here today to prosecute people for
12 the possession or for the carrying of a prohibited
13 firearm even when the police ruled the shooting has been
14 lawful self-defense.

15 JUSTICE BREYER: You're saying that this is
16 unreasonable, and that really is my question because I'd
17 like you to assume two things with me, which you
18 probably don't agree with, and I may not agree with
19 them, either.

20 (Laughter.)

21 JUSTICE BREYER: But I just want you to
22 assume them for the purpose of the question. All right.

23 Assume that the -- that there is an
24 individual right, but the purpose of that right is to
25 maintain a citizen army; call it a militia; that that's

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1 the basic purpose. So it informs what's reasonable and
2 what isn't reasonable.

3 Assume -- and this is favorable to you but
4 not as favorable as you'd like -- assume that we are
5 going to decide whether something is proportionate or
6 apply an intermediate standard in light of the purpose.
7 All right.

8 Now, focus on the handgun ban. As I read
9 these 80 briefs -- and they were very good, I mean
10 really good and informative on both sides -- and I'm
11 trying to boil down the statistics where there is
12 disagreement, and roughly what I get -- and don't
13 quarrel with this too much; it's very rough -- that
14 80,000 to 100,000 people every year in the United States
15 are either killed or wounded in gun-related homicides or
16 crimes or accidents or suicides, but suicide is more
17 questionable. That's why I say 80,000 to 100,000.

18 In the District, I guess the number is
19 somewhere around 200 to 300 dead; and maybe, if it's
20 similar, 1,500 to 2,000 people wounded. All right.

21 Now, in light of that, why isn't a ban on
22 handguns, while allowing the use of rifles and muskets,
23 a reasonable or a proportionate response on behalf of
24 the District of Columbia?

25 MR. GURA: Because, Your Honor, for the same

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1 reason it was offered by numerous military officers at
2 the highest levels of the U.S. military in all branches
3 of service writing in two briefs, they agree with us
4 that the handgun ban serves to weaken America's military
5 preparedness. Because when people have handguns --
6 handguns are military arms, they are not just civilian
7 arms -- they are better prepared and able to use them.
8 And, certainly, when they join the military forces, they
9 are issued handguns.

10 And so if we assume that the sort of
11 military purpose to the Second Amendment is an
12 individual right, then the handgun ban, as noted by our
13 military amici, would impede that.

14 JUSTICE BREYER: Well, I didn't read -- I
15 read the two military briefs as focusing on the nature
16 of the right, which was quite a pretty good argument
17 there that the nature of the right is to maintain a
18 citizen Army.

19 And to maintain that potential today, the
20 closest we come is to say that there is a right for
21 people to understand weapons, to know how to use them,
22 to practice with them. And they can do that, you see,
23 with their rifles. They can go to gun ranges, I guess,
24 in neighboring States.

25 But does that make it unreasonable for a

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1 city with a very high crime rate, assuming that the
2 objective is what the military people say, to keep us
3 ready for the draft, if necessary, is it unreasonable
4 for a city with that high crime rate to say no handguns
5 here?

6 JUSTICE SCALIA: You want to say yes.

7 JUSTICE BREYER: Now, why?

8 JUSTICE SCALIA: That's your answer.

9 JUSTICE BREYER: Well, you want to say yes,
10 that's correct, but I want to hear what the reasoning is
11 because there is a big crime problem. I'm simply
12 getting you to focus on that.

13 MR. GURA: The answer is yes, as Justice
14 Scalia noted, and it's unreasonable, and it actually
15 fails any standard of review that might be offered under
16 such a construction of individual rights because
17 proficiency with handguns, as recognized as a matter of
18 judicial notice by the First Circuit in Cases back in
19 1942 -- that was a handgun case where the First Circuit
20 examined the restriction on the carrying of the
21 30-caliber revolver. And the First Circuit accepted, as
22 a matter of judicial notice, that proficiency in use and
23 familiarity with the handgun at issue would be one that
24 would further a militia purpose. And so --

25 JUSTICE STEVENS: Let me ask this question:

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1 In answering yes, do you attach any significance to the
2 reference to the militia in the Second Amendment?

3 MR. GURA: Yes, I do, Your Honor.

4 JUSTICE STEVENS: You think that is -- to
5 understand the amendment, you must pay some attention to
6 the militia requirement?

7 MR. GURA: Yes, Your Honor, we must --

8 CHIEF JUSTICE ROBERTS: So a conscientious
9 objector who likes to hunt deer for food, you would say,
10 has no rights under the Second Amendment. He is not
11 going to be part of the militia. He is not going to be
12 part of the common defense, but he still wants to bear
13 arms. You would say that he doesn't have any rights
14 under this amendment?

15 MR. GURA: No, Your Honor. I think that the
16 militia clause informs the purpose -- informs a purpose.
17 It gives us some guidepost as to how we look at the
18 Second Amendment, but it's not the exclusive purpose of
19 the Second Amendment. Certainly, the Founders cared
20 very much about --

21 JUSTICE GINSBURG: Is it a limitation? Is
22 it any limitation on the legislature? Is the first
23 clause any limitation on the legislature?

24 MR. GURA: It is a limitation to one extent,
25 Your Honor, the extent recognized in Miller where the

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1 Miller Court asked whether or not a particular type of
2 arm that's at issue is one that people may individually
3 possess. It looked to the militia clause and,
4 therefore, adopted a militia purpose as one of the two
5 prongs of Miller.

6 And so, certainly, if there were -- if the
7 Court were to continue Miller -- and Miller was the only
8 guidance that the lower court had, certainly, as to what
9 arms are protected or unprotected by the Second
10 Amendment. And yet --

11 JUSTICE STEVENS: If it limits the kinds of
12 arms to be appropriate to a militia, why does it not
13 also limit the kind of people who may have arms?

14 MR. GURA: It does not eliminate the kind of
15 people, Your Honor, because the Second Amendment is the
16 right of the people. And it would certainly be an odd
17 right that we would have against the Congress, if
18 Congress could then redefine people out of that right.
19 Congress could tomorrow declare that nobody is in a
20 militia, and then nobody would have the right against
21 the government.

22 JUSTICE GINSBURG: If you were thinking of
23 "the people," what those words meant when the Second
24 Amendment was adopted, it was males between the ages of
25 what -- 17 and 45? People who were over 45 had no --

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1 they didn't serve in the militia.

2 MR. GURA: Well, certainly, there were many
3 people who were not eligible for militia duty, or not
4 subject to militia service, who nevertheless were
5 expected to, and oftentimes did, in fact, have guns.

6 JUSTICE SCALIA: Which shows that maybe
7 you're being unrealistic in thinking that the second
8 clause is not broader than the first. It's not at all
9 uncommon for a legislative provision or a constitutional
10 provision to go further than is necessary for the
11 principal purpose involved.

12 The principal purpose here is the militia,
13 but the -- but the second clause goes beyond the militia
14 and says the right of the people to keep and bear arms.

15 Now, you may say the kind of arms is colored
16 by the militia. But it speaks of the right of the
17 people. So why not acknowledge that it's -- it's
18 broader than the first clause?

19 MR. GURA: Well, we do acknowledge that,
20 Your Honor.

21 JUSTICE SOUTER: Then why have the first
22 clause? I mean what is it doing -- I mean what help is
23 it going to be?

24 MR. GURA: Well, it was a way in which to
25 remind us -- the Framers certainly felt that a militia

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1 was very important to the preservation of liberty. The
2 Framers had just fought a revolutionary war that relied
3 heavily on militia forces, and so they wanted to honor
4 that and remind us as to the purpose -- one purpose, not
5 the exclusive purpose, but a purpose -- of preserving
6 the right --

7 JUSTICE KENNEDY: Could it also be simply to
8 reaffirm that the provisions in the main text of the
9 Constitution remain intact?

10 MR. GURA: That's correct, Your Honor. In
11 fact, that view was taken by William Rawle in his 1828
12 treatise, view of the Constitution. Rawle was, of
13 course, a ratifier of the Second Amendment. He sat in
14 the Pennsylvania Assembly in 1790. And if you look at
15 his description of the Second Amendment, he bifurcates
16 it. First, he discusses the militia clause, and he
17 lavishes some qualified praise on it. And then --

18 JUSTICE KENNEDY: But you were about to tell
19 us before the course of the questioning began about the
20 other purposes that the amendment served. I'm -- I want
21 to know whether or not, in your view, the operative
22 clause of the amendment protects, or was designed to
23 protect in an earlier time, the settler in the
24 wilderness and his right to have a gun against some
25 conceivable Federal enactment which would prohibit him

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1 from having any guns?

2 MR. GURA: Oh, yes. Yes, Justice Kennedy.

3 The right of the people to keep and bear arms was
4 derived from Blackstone. It was derived from the
5 common-law English right which the Founders wanted to
6 expand.

7 In fact, the chapter in which Blackstone
8 discusses this in his treatise, his fifth auxiliary
9 right to arms, is entitled --

10 JUSTICE BREYER: That brings me back to the
11 question because Blackstone describes it as a right to
12 keep and bear arms "under law." And since he uses the
13 words "under law," he clearly foresees reasonable
14 regulation of that right. And so does the case not
15 hinge on, even given all your views, on whether it is or
16 is not a reasonable or slightly tougher standard thing
17 to do to ban the handgun, while leaving you free to use
18 other weapons?

19 I mean, I notice that the militia statute,
20 the first one, spoke of people coming to report, in
21 1790, or whenever, with their rifles, with their
22 muskets, but only the officers were to bring pistols.
23 So that, to me, suggests they didn't see pistols as
24 crucial even then, let alone now.

25 MR. GURA: Well, certainly they saw --

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1 JUSTICE BREYER: What's your response to the
2 question?

3 MR. GURA: Well, my response is that the
4 government can ban arms that are not appropriate for
5 civilian use. There is no question of that.

6 JUSTICE KENNEDY: That are not appropriate
7 to --

8 MR. GURA: That are not appropriate to
9 civilian use.

10 JUSTICE GINSBURG: For example?

11 MR. GURA: For example, I think machine
12 guns: It's difficult to imagine a construction of
13 Miller, or a construction of the lower court's opinion,
14 that would sanction machine guns or the plastic,
15 undetectable handguns that the Solicitor General spoke
16 of.

17 The fact is that this Court's Miller test
18 was the only guidance that we had below, and I think it
19 was applied faithfully. Once a weapon is, first of all,
20 an "arm" under the dictionary definition -- and Webster
21 has a very useful one -- then you look to see whether
22 it's an arm that is meant to be protected under the
23 Second Amendment, and we apply the two-pronged Miller
24 test. And usually one would imagine if an arm fails the
25 Miller test because it's not appropriate for common

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1 civilian applications --

2 JUSTICE GINSBURG: But why wouldn't the
3 machine gun qualify? General Clement told us that's
4 standard issue in the military.

5 MR. GURA: But it's not an arm of the type
6 that people might be expected to possess commonly in
7 ordinary use. That's the other aspect of Miller.
8 Miller spoke about the militia as encompassing the
9 notion that people would bring with them arms of the
10 kind in common use supplied by themselves. And --

11 CHIEF JUSTICE ROBERTS: Is there any
12 parallel --

13 JUSTICE GINSBURG: At this time -- I would
14 just like to follow up on what you said, because if you
15 were right that it was at that time, yes; but that's not
16 what Miller says. It says that the gun in question
17 there was not one that at this time -- this time, the
18 time of the Miller decision -- has a reasonable
19 relationship to the preservation or efficiency of a
20 well-regulated militia. So it's talking about this
21 time.

22 MR. GURA: That's correct. The time frame
23 that the Court must address is always the present. The
24 framers wished to preserve the right to keep and bear
25 arms. They wished to preserve the ability of people to

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1 act as militia, and so there was certainly no plan for,
2 say, a technical obsolescence.

3 However, the fact is that Miller spoke very
4 strongly about the fact that people were expected to
5 bring arms supplied by themselves of the kind in common
6 use at the time. So if in this time people do not have,
7 or are not recognized by any court to have, a common
8 application for, say, a machine gun or a rocket launcher
9 or some other sort of --

10 CHIEF JUSTICE ROBERTS: Is there any
11 parallel at the time that the amendment was adopted to
12 the machine gun? In other words, I understand your
13 point to be that, although that's useful in modern
14 military service, it's not something civilians possess.
15 Was there anything like that at the time of the
16 adoption, or were the civilian arms exactly the same as
17 the ones you'd use in the military?

18 MR. GURA: At the time that -- even at the
19 time Miller was decided, the civilian arms were pretty
20 much the sort that were used in the military. However,
21 it's hard to imagine how a machine gun could be a
22 "lineal descendent," to use the D.C. Circuit's wording,
23 of anything that existed back in 1791, if we want to
24 look to the framing era. Machine guns --

25 JUSTICE KENNEDY: It seems to me that

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1 Miller, as we're discussing it now, and the whole idea
2 that the militia clause has a major effect in
3 interpreting the operative clause is both overinclusive
4 and underinclusive. I would have to agree with Justice
5 Ginsburg that a machine gun is probably more related to
6 the militia now than a pistol is. But that -- that
7 seems to me to be allowing the militia clause to make no
8 sense out of the operative clause in present-day
9 circumstances.

10 MR. GURA: Your Honor, even within the
11 militia understanding, the understanding of the militia
12 was always that people would bring whatever they had
13 with them in civilian life. So if a machine gun, even
14 though it may be a wonderful --

15 JUSTICE KENNEDY: My point is: Why is that
16 of any real relevance to the situation that faces the
17 homeowner today?

18 MR. GURA: It's only of relevance if the
19 Court wishes to continue reading the militia clause as
20 informing the type of weapon which is protected.

21 JUSTICE KENNEDY: Well, you're being
22 faithful to Miller. I suggest that Miller may be
23 deficient.

24 MR. GURA: I agree with Your Honor, and
25 certainly in our brief we suggest that the militia

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1 emphasis of Miller is not useful as a limiting principle
2 to the type of arms that may be -- that may be
3 permitted. Because, on the one hand, there's a great
4 deal of weaponry that might be wonderful for military
5 duty but is not appropriate for common civilian use,
6 which would not be protected even under the Miller
7 test's first prong.

8 And, on the other hand, everything that
9 civilians today might wish to have in ordinary common
10 use -- handguns, rifles, and shotguns -- are militarily
11 useful weapons.

12 So we de-emphasize the military aspects of
13 Miller as being ultimately not very useful guidance for
14 courts. And the better guidance would be to emphasize
15 the commonsense rule that I think judges would have
16 really no trouble applying, and we do this all the time
17 in constitutional law: To simply make a decision as to
18 whether or not whichever arm comes up at issue is an arm
19 of the kind that you could really reasonably expect
20 civilians to have.

21 JUSTICE BREYER: Why -- now, when say "keep"
22 and "bear," I mean you are -- I think you're on to
23 something here. Because you say let's use our common
24 sense and see what would be the equivalent today. Fine.

25 If we know that at the time, in 1789,

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1 Massachusetts had a law that said you cannot keep loaded
2 firearms in the house, right, and you have to keep all
3 of the bullets and everything and all of the powder
4 upstairs, why did they have that law? To stop fires
5 because it's dangerous? They didn't have fire
6 departments. Now we do -- or they weren't as good.

7 We now have police departments, and the
8 crime wave might be said similar to what were fires
9 then. And, therefore, applying the similar kind of
10 thing, you say: Fine, just as you could keep pistols
11 loaded but not -- not loaded. You had to keep powder
12 upstairs because of the risk of fire. So today,
13 roughly, you can say no handguns in the city because of
14 the risk of crime.

15 Things change. But we give in both
16 instances, then and now, leeway to the city and States
17 to work out what's reasonable in light of their
18 problems. Would that be a way of approaching it?

19 MR. GURA: The legislature has a great deal
20 of leeway in regulating firearms. There is no dispute
21 about that. However, I wouldn't draw a complete analogy
22 between the Boston fire ordinances that Your Honor notes
23 and the functional firearms ban.

24 First, even the Boston firearms ordinances
25 did not include handguns actually. At the time the word

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1 "firearm" was not understood to include pistols.
2 General Gage's inventory of weapons seized from the
3 Americans in Boston included some 1800 or so firearms
4 and then 634 pistols. Nowhere in the Boston code do we
5 see a prohibition on keeping loaded pistols in the home.
6 And certainly the idea that -- that self-defense is a
7 harm is one that is --

8 JUSTICE BREYER: Not self-defense being the
9 harm. And I agree with you that this, the firearm
10 analogy, floats up there, but it isn't going to decide
11 this case, the Massachusetts statute. I agree with you
12 about that.

13 What you've suddenly given me the idea of
14 doing, which I'm testing, is to focus not just on what
15 the kind of weapon is -- don't just look to see whether
16 it's a cannon or a machine gun, but look to see what the
17 purpose of this regulation is, and does it make sense in
18 terms of having the possibility of people trained in
19 firearms?

20 Let's look at those military briefs. Let's
21 say that the generals have it right, there is some kind
22 of right to keep trained in the use of firearms subject
23 to regulation. We have regulation worried about crime,
24 back to my first question.

25 MR. GURA: Well, back to Your Honor's first

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1 question, we don't agree that the military purpose is
2 the exclusive purpose of the Second Amendment. And we
3 also don't agree that it could be a reasonable
4 regulation or under any standard of review to prohibit
5 people from having functional firearms in their own home
6 for purposes of self-defense.

7 JUSTICE SCALIA: You don't even agree that
8 Massachusetts was subject to the Second Amendment.

9 MR. GURA: Well, originally it was not. But
10 what we've seen with the Fourteenth Amendment, and we've
11 seen --

12 JUSTICE SCALIA: But the time we're talking
13 about, the firearms in the home ordinance, when was
14 that?

15 MR. GURA: 1783 I believe was the statute.

16 JUSTICE STEVENS: How do you explain the
17 fact that you include self-defense, but only two States,
18 Pennsylvania and Vermont, did refer to self-defense as a
19 permissible justification and all of the others referred
20 to common defense or defense of the State, and in the
21 Articles of Confederation and the Constitution itself
22 there is no reference to self-defense?

23 MR. GURA: Your Honor, the State courts
24 interpreting those provisions that you reference had a
25 different interpretation. For example, in 1895

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1 Massachusetts --

2 JUSTICE STEVENS: 1895. I'm talking about
3 contemporaneous with the adoption of the Second
4 Amendment.

5 MR. GURA: Well, at the time we haven't seen
6 State court decisions from exactly that era.

7 JUSTICE STEVENS: Just the text of the State
8 constitutional provisions, two of them refer to
9 self-defense. The rest refer only to common defense; is
10 that not correct?

11 MR. GURA: On their literal text, yes. But
12 judges did not interpret them that way, for example in
13 North Carolina --

14 JUSTICE STEVENS: I understand that judicial
15 interpretation sometimes is controlling and sometimes is
16 not. But the text itself does draw a distinction, just
17 as the Second Amendment does. It doesn't mention
18 self-defense.

19 MR. GURA: While it might not mention
20 self-defense, it was clear that the demands that the
21 States made at the ratifying conventions were for an
22 individual right, and Madison was interested in --

23 JUSTICE STEVENS: Well, if you look at the
24 individual rights I suppose you start back in 1689, the
25 Declaration of Rights in England. And the seventh

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1 provision that they talked about said that: "The
2 subjects which are protestants may have arms for their
3 defense suitable to their conditions and as allowed by
4 law." Now do you think the term "suitable to their
5 conditions" limited the number of people who had access
6 to arms for self-defense?

7 MR. GURA: It was in England, but that was
8 criticized by the framers. St. George Tucker's edition
9 of Blackstone --

10 JUSTICE STEVENS: So you think that the
11 Second Amendment is a departure from the provision in
12 the Declaration of Rights in England?

13 MR. GURA: It's quite clearly an expansion
14 upon it.

15 JUSTICE STEVENS: So that's not really
16 your -- you would not confine the right the way the
17 English did then.

18 MR. GURA: I think the common law of England
19 is a guide, and it's always a useful guide because
20 that's where the -- where we -- where we look to, to
21 interpret --

22 JUSTICE SCALIA: It's useful for such
23 purposes as what "keep and bear arms" means and things
24 of that sort.

25 MR. GURA: It certainly is, Your Honor. And

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1  it's also useful to see how --
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2 JUSTICE SCALIA: They certainly didn't want
3 to preserve the kind of militia that America had, which
4 was a militia separate from the state, separate from the
5 government, which enabled the revolt against the
6 British.

7 MR. GURA: That's correct, Your Honor.

8 JUSTICE SOUTER: Is there any -- is there
9 any record evidence that the anti-Federalist objections
10 to the Constitution that ultimately resulted in the
11 Second Amendment were premised on any failure to
12 recognize an individual right of self-defense or hunting
13 or whatnot, as distinct from being premised on concern
14 about the power of the national government and the
15 militia clauses in Article 1?

16 MR. GURA: Yes, Justice Souter. If we look
17 to, for example, the -- the demands of the Pennsylvania
18 minority, the anti-Federalists there were extremely
19 influential. They couched their demands in unmistakably
20 self-defense terms. In fact, they added a provision --

21 JUSTICE SOUTER: No, but they didn't -- they
22 didn't limit it to self-defense. I mean, what provoked
23 it, as I understand it, was concern about the militia
24 clauses, and here I mean you're certainly correct. I
25 agree with you. Pennsylvania went beyond that. It

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1 was -- it was one of three States, as I understand, that
2 did go beyond it. But the provocation for getting into
3 the subject, as I understand it, was, in each instance
4 including Pennsylvania, concern over the national
5 government's power over militias under Article 1.

6 MR. GURA: Justice Souter, we wouldn't see
7 the history that way. Certainly there is agreement that
8 the militia clauses in the Constitution were
9 controversial. And there were separate amendments that
10 were proposed and always rejected that would have
11 addressed that explicitly. In fact, if we look at
12 Virginia's proposals, it's agreed by the Petitioners
13 that Virginia was the model for the Bill of Rights and
14 specifically, of course, for the Second Amendment.

15 We saw one set of proposed amendments from
16 Virginia entitled Bill of Rights, and the Second
17 Amendment language comes from paragraph 17 of that Bill
18 of Rights. And then we see a list of other amendments,
19 and then we have the 11th proposed amendment, which
20 speaks exactly to the -- reverting control over the
21 militia back to the -- back to the States.

22 Now, there is no reason to suppose that
23 Virginia would have made the same demand twice, that
24 they would have, like all the other demands, it had
25 separate "keep and bear arms" provisions and separate

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1 militia provisions, that people were being duplicative
2 for no reason. The fact is that the militia concerns
3 were heard and they were voted down, and the Second
4 Amendment concerns were the ones that the Federalists
5 were easily agreeable to because the right to keep and
6 bear arms by individuals was not controversial, it would
7 not have altered the structure of our Constitution, and
8 so those were agreed to quite readily.

9 CHIEF JUSTICE ROBERTS: Why isn't the
10 trigger-lock provisions that are at issue here, why
11 aren't they similar to the various provisions that
12 Justice Breyer mentioned like the gunpowder restriction?
13 In other words, for reasons of domestic safety, they
14 said you can't store the gunpowder anywhere but on the
15 top floor. Why isn't the modern trigger-lock provision
16 similar to those?

17 MR. GURA: Well, it's not similar because
18 the modern trigger-lock provisions are aimed squarely at
19 self-defense in the home. There is no risk today that
20 the kind of powder we use --

21 CHIEF JUSTICE ROBERTS: Well, there is
22 always a risk that the children will get up and grab the
23 firearm and use it for some purpose other than what the
24 Second Amendment was designed to protect.

25 MR. GURA: Oddly enough, a child can access

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1 a firearm stored consistently with the District's law,
2 that is, a firearm which is disassembled and unloaded,
3 nothing would prevent a child --

4 CHIEF JUSTICE ROBERTS: Well, right. But, I
5 mean, you don't necessarily expect a young child to be
6 able to reassemble the pistol.

7 MR. GURA: That's true, Your Honor.
8 However, better safe storage approach is the one used by
9 the majority of jurisdictions, I believe, that do have
10 such laws, which is to require safe storage, for
11 example, in a safe. And that is a reasonable
12 limitation. It's a strict scrutiny limitation.
13 Whatever standard of view we may wish to apply, I think,
14 would encompass a safe storage provision.

15 But this is not a safe storage provision
16 because we have specific exceptions that allow you to
17 actually use the firearm in recreational shooting and
18 also in a place of business. And we have litigation
19 history from Washington, D.C., that tells us that we are
20 not supposed to have an operable firearm for purposes of
21 self-defense because they simply do not trust people to
22 defend themselves in our home. And -- and self-defense
23 is the heart of the Second Amendment right. That is
24 what Blackstone was getting at when he spoke of the
25 fifth auxiliary right to arms, because it protected the

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1 right of personal preservation.

2 JUSTICE STEVENS: You say that the right of
3 self-defense was the heart of the Second Amendment, in
4 your view. Strangely that some provisions suggested
5 that and were not accepted by the authors of the Second
6 Amendment.

7 MR. GURA: Which provisions were those,
8 Justice Stevens?

9 JUSTICE STEVENS: Pennsylvania.

10 MR. GURA: Well, Pennsylvania's provision
11 was certainly influential. Remember, Madison was trying
12 to mollify the anti-Federalists' concerns. The Second
13 Amendment is clearly addressed to Pennsylvania and New
14 Hampshire and New York and all these other States that
15 were demanding a right to keep and bear arms, and there
16 was always understood to be an individual right because
17 that is the way in which the right that was violated by
18 the British in the war of revolution that occurred not
19 too long ago. And --

20 I'm finished.

21 JUSTICE BREYER: Thinking of your exchange
22 with the Chief Justice and think of the trigger lock in
23 your view and what the question was, do you want -- I
24 don't know how well trigger locks work or not -- but do
25 you want thousands of judges all over the United States

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1 to be deciding that kind of question rather than the
2 city councils and the legislatures that have decided it
3 in the context of passing laws? I mean, isn't there an
4 issue here and a problem with respect to having courts
5 make the kinds of decisions about who is right or not in
6 that trigger-lock argument?

7 MR. GURA: When a fundamental right is at
8 stake, there is a role for judicial review, Your Honor.
9 We are not going to see a thousand judges review such
10 laws because Washington, D.C.'s is the only example of
11 it.

12 JUSTICE GINSBURG: If it's a fundamental
13 right, what about licensing? One piece -- we've talked
14 about trigger locks, we've talked about the ban on
15 handguns, but there is also a requirement that there be
16 a license for possession of a handgun. Assuming you're
17 right on the first question, that you couldn't flatly
18 ban handguns, what about a requirement that you obtain a
19 license to carry -- to have a handgun?

20 MR. GURA: Justice Ginsburg, that would
21 depend on the licensing law itself. We don't have a
22 problem with the concept of licensing so long as it's
23 done --

24 JUSTICE GINSBURG: What about this very law?

25 If you take out the ban -- there is a law on the books.

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1 It's one of the ones that you challenged. It's section
2 22-4504(a). Wouldn't that be okay -- would that be
3 okay? It says that you have to have a license to carry.

4 MR. GURA: So long as the licensing law is
5 not enforced in an arbitrary and capricious manner, so
6 long as there are some hopefully objective standards and
7 hopefully some process for --

8 JUSTICE GINSBURG: It just says -- it says
9 you have to get a license if you want to possess a gun.
10 What kind of standard? It just says you have to have a
11 license.

12 MR. GURA: Well, the government could set
13 reasonable standards for that, Your Honor. The
14 government could require, for example, knowledge of the
15 State's use of force laws. They can require some sort
16 of vision test. They could require, perhaps,
17 demonstrated competency. And those are the types of
18 things that we sometimes see; background checks, of
19 course. Those are going to be reasonable licensing
20 requirements.

21 However, if the license requirement is we
22 only wanted to give licenses to people who look a
23 certain way or depends on how we feel or if the
24 licensing office is only open Thursdays at 3:00 in the
25 morning -- I mean, it all depends on the implementation.

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1 And --

2 CHIEF JUSTICE ROBERTS: What about -- what
3 about age limits -- you've got to be over 18 or you've
4 got to be over 21 to get a license?

5 MR. GURA: Well, certainly the
6 age-of-majority issue is -- is an appropriate one. I
7 don't think there is a problem with requiring a majority
8 age 18 and then 21 for --

9 CHIEF JUSTICE ROBERTS: Is the age limit
10 necessarily the same nationwide? Maybe 16 in Wyoming
11 makes more sense but 21 in the District.

12 MR. GURA: Courts would have to examine
13 those at some point. The government would have to look
14 at the circumstances it confronted and enact, up to some
15 point, an age limit. I think it would be very difficult
16 to have an age limit that goes beyond 21, because that's
17 the majority age for most things in the United States.
18 And, in fact, we have the voting rights cases from the
19 late '60s where --

20 JUSTICE STEVENS: May I ask this question?
21 Are you, in effect, reading the amendment to say that
22 the right shall not be unreasonably infringed instead of
23 shall not be infringed?

24 MR. GURA: There is that inherent aspect to
25 every right in the Constitution.

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1 JUSTICE STEVENS: So we can -- consistent
2 with your view, we can simply read this: "It shall not
3 be unreasonably infringed"?

4 MR. GURA: Well, yes, Your Honor, to some
5 extent, except the word "unreasonable" is the one that
6 troubles us because we don't know what this unreasonable
7 standard looks like.

8 JUSTICE SCALIA: You wouldn't put it that
9 way. You would just say it is not being infringed if
10 reasonable limitations are placed upon it.

11 MR. GURA: That's another way to look at it,
12 Your Honor. Certainly --

13 CHIEF JUSTICE ROBERTS: -- you would define
14 "reasonable" in light of the restrictions that existed
15 at the time the amendment was adopted.

16 MR. GURA: Those restrictions --

17 CHIEF JUSTICE ROBERTS: You know, you can't
18 take it into the marketplace was one restriction. So
19 that would be -- we are talking about lineal descendents
20 of the arms but presumably there are lineal descendents
21 of the restrictions as well.

22 MR. GURA: Framing our practices would
23 inform the kind of restrictions that would be accepted.
24 But even beyond that, they also inform the contours of
25 the right. In the Fifth Circuit, for example, we have

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1 the Emerson decision now for seven years, and the way
2 that that court has examined the Second Amendment when
3 they get these felon and possession bans and drug addict
4 and possession challenges, what they say is, these
5 people simply are outside the right, as historically
6 understood in our country. And that's a very important
7 aspect to remember, that the Second Amendment is part of
8 our common law tradition, and we look to framing our
9 practices in traditional understandings of that right to
10 see both the reasonableness of the restrictions that are
11 available as well as the contours.

12 JUSTICE SOUTER: Can we also look to current
13 conditions like current crime statistics?

14 MR. GURA: To some extent, Your Honor, but
15 we have certainly --

16 JUSTICE SOUTER: Well, can they consider the
17 extent of the murder rate in Washington, D.C., using
18 handguns?

19 MR. GURA: If we were to consider the extent
20 of the murder rate with handguns, the law would not
21 survive any type of review, Your Honor.

22 JUSTICE SCALIA: All the more reason to
23 allow a homeowner to have a handgun.

24 MR. GURA: Absolutely, Your Honor.

25 JUSTICE BREYER: Whose judgment is that

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1 to --

2 JUSTICE SOUTER: The question is whether
3 they may consider those statistics, and I take it your
4 answer is yes?

5 MR. GURA: Well, those statistics might be
6 considered in some way, the fact is that at some point
7 there is a role for judicial review. And you can't just
8 grab at statistics -- and some of the statistics that
9 were used here are very weak, and studies that have been
10 rejected by the National Academy of Sciences repeatedly.
11 I mean, we don't really have -- it's hard to say that
12 those laws --

13 JUSTICE SOUTER: But I think -- I don't want
14 you to misunderstand my question. My question is that
15 by looking to the statistics, I'm not suggesting that
16 there is only sort of one reasonable response to them.
17 I want to know whether -- whether the policymakers may
18 look to them; and I take it your answer is yes?

19 MR. GURA: To some degree, yes, policymakers
20 have to be informed by what's going on in order to make
21 policy. However, there are constitutional limitations
22 enforced by courts that are going to limit those
23 policies. And when you have a ban which bans 40 percent
24 of all weapons that are the type of weapons used by
25 civilians, 80 percent of all self-defense occurs with

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1 handguns; when you have that kind of ban, functional
2 firearms ban, these are extreme measures --

3 JUSTICE SOUTER: They may be. I just want
4 to make sure you're not making the argument that because
5 there was not a comparable homicide rate, or for that
6 matter, a comparable need for self-defense from handgun
7 use in 1792, that there -- 1790 -- that therefore, the
8 statistics of today may not be considered? You're not
9 making that argument?

10 MR. GURA: No, Your Honor, the fact is that
11 we can always debate these things, but the object of the
12 Bill of Rights is to remove certain judgments from the
13 legislature, because we can make policy arguments,
14 normative arguments about many provisions of the
15 Constitution. But to make those arguments and say,
16 well, we've decided as a matter of policy that the right
17 to keep and bear arms is no longer a good idea and,
18 therefore, we are going to have restrictions that
19 violate that stricture in the Bill of Rights, that
20 shouldn't pass judicial review. At some point you have
21 to go to Article 5 if you think that the Constitution is
22 impractical.

23 JUSTICE KENNEDY: But Just to be clear --
24 and I don't want to misstate your position, but my
25 understanding, I at least inferred that you would

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1 consider it reasonable to ban shipment of machine guns
2 and sawed-off shotguns in interstate commerce?

3 MR. GURA: Yes, Your Honor.

4 JUSTICE STEVENS: And how about a State
5 university wants to ban students having arms in the
6 dormitory?

7 MR. GURA: Certainly that creates some sort
8 of an evidentiary record. Conceivably that --

9 JUSTICE STEVENS: That's the bare fact.
10 That's what -- a State regulation prohibits students
11 from having arms on campus.

12 MR. GURA: We would have to do --

13 JUSTICE STEVENS: You'd have to think about
14 that.

15 MR. GURA: -- some fact finding. It's
16 something that might be doable, but again, that's so far
17 from what we have here. We have here a ban on all guns,
18 for all people, in all homes, at all times in the
19 Nation's capital. That questionably is too broad and
20 too sweeping under any level of review.

21 Thank you, Your Honor.

22 CHIEF JUSTICE ROBERTS: Thank you, Gura.

23 Mr. Dellinger, 10 minutes.

24 REBUTTAL ARGUMENT OF WALTER DELLINGER,

25 ON BEHALF OF THE PETITIONERS

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1 MR. DELLINGER: Mr. Chief Justice, I want to
2 address first why this law is reasonable and should be
3 sustained, and why the judgement below has to be
4 reversed, however, whatever position you take on the
5 theories of the amendment. And in defending the eminent
6 reasonableness and careful balance of this law, I need
7 to start with the trigger law, about which Justice Alito
8 asked.

9 CHIEF JUSTICE ROBERTS: Well, before you
10 start with it, how many minutes does it take to remove a
11 trigger lock and load a gun? Because both the gun has
12 to be unloaded; it has to have a trigger lock under the
13 District laws.

14 MR. DELLINGER: Those are alternatives, Mr.
15 Chief Justice.

16 CHIEF JUSTICE ROBERTS: No, disassembled --

17 MR. DELLINGER: Just a trigger lock.

18 CHIEF JUSTICE ROBERTS: In either case it
19 has to be unloaded, correct?

20 MR. DELLINGER: There are some versions of
21 the trigger lock that allow you to put the trigger lock
22 on and then load the gun. But the piece that goes in
23 the trigger mechanism, even someone as clumsy as I could
24 remove it and effect it --

25 CHIEF JUSTICE ROBERTS: Well, the law, as I

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1 understand it, says that the gun has to be unloaded. So
2 under your hypothetical, I assume that would violate the
3 District's law if the gun is still loaded.

4 MR. DELLINGER: You know, it's a question of
5 where you put the parenthesis. I read that as
6 disassembled and unloaded or under a trigger lock, and
7 that's the, that's the way the District --

8 CHIEF JUSTICE ROBERTS: So how long does it
9 take? If your interpretation is correct, how long does
10 it take to remove the trigger lock and make the gun
11 operable.

12 MR. DELLINGER: You -- you place a trigger
13 lock on and it has -- the version I have, a few -- you
14 can buy them at 17th Street Hardware -- has a code, like
15 a three-digit code. You turn to the code and you pull
16 it apart. That's all it takes. Even -- it took me 3
17 seconds.

18 JUSTICE SCALIA: You turn on, you turn on
19 the lamp next to your bed so you can -- you can turn the
20 knob at 3-22-95, and so somebody --

21 MR. DELLINGER: Well --

22 CHIEF JUSTICE ROBERTS: Is it like that? Is
23 it a numerical code?

24 MR. DELLINGER: Yes, you can have one with a
25 numerical code.

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1 CHIEF JUSTICE ROBERTS: So then you turn on
2 the lamp, you pick up your reading glasses --

3 (Laughter.)

4 MR. DELLINGER: Let me tell you. That's
5 right. Let me tell you why at the end of the day this
6 doesn't -- this doesn't matter, for two reasons. The
7 lesson --

8 CHIEF JUSTICE ROBERTS: It may not matter,
9 but I'd like some idea about how long it takes.

10 MR. DELLINGER: It took me 3 seconds. I'm
11 not kidding. It's -- it's not that difficult to do it.
12 That was in daylight.

13 The other version is just a loop that goes
14 through the chamber with a simple key. You have the key
15 and put it together. Now, of course if you're going --
16 if you want to have your weapon loaded and assembled,
17 that's a different matter.

18 But here's where I want to address the
19 trigger lock. Here's why it doesn't matter for the
20 handgun law. The District believes that what is
21 important here is the ban on handguns. And it also
22 believes that you're entitled to have a functional,
23 usable weapon for self-defense in the home, and that's
24 why this is a very proportionate law.

25 CHIEF JUSTICE ROBERTS: Well, if

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1 proportionate, in other words you're saying your
2 interest is allowing self-defense in the home --

3 MR. DELLINGER: Yes.

4 CHIEF JUSTICE ROBERTS: Does it really make
5 sense to say the best self-defense arm is a rifle, as
6 opposed to a pistol?

7 MR. DELLINGER: It is -- there has been no
8 showing here that a rifle or a shotgun is inadequate for
9 the purposes of self-defense in this facial challenge.

10 JUSTICE ALITO: Is there anything to show
11 that the District Council ever considered the issue of
12 self-defense? That -- because they banned handguns and
13 they had this provision on the trigger lock which -- and
14 the issue -- my question with the trigger lock doesn't
15 have to do with whether trigger locks are generally a
16 good idea. It's whether you're ever allowed to take it
17 off for purposes of defense. There's no -- is there
18 anything to show that the -- that the council actually
19 considered what sort of weapon is appropriate for
20 self-defense?

21 MR. DELLINGER: There are decisions in the
22 District of Columbia about the right of self-defense
23 that apply to this. But here's the most important
24 point. It cannot affect the validity of the handgun
25 law. If you disagree with us that my statements are not

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1 sufficient to say that we believe that the law should be
2 read, given the self-defense compulsion, to allow
3 whatever use makes it functional, if you don't agree
4 with that and if you think there's a controversy on this
5 point, because we believe you should have a functional
6 firearm available in the home of law-abiding citizens
7 who wish one, if we are wrong about that and the trigger
8 lock is invalid, that has no effect on the handgun ban.

9 That is to say, the trigger lock applies to
10 all weapons. If it's valid and it means what they say
11 it does, none of the weapons would work. We don't need
12 a handgun; it's unusable. If it's invalid or if it has
13 the construction we believe, it cannot possibly affect
14 the handgun law. If you strike down the trigger lock
15 law, you're throwing us in the briar patch where we
16 think it's where we're happy to be if all we have to do
17 is to make clear in the trigger lock law what we have
18 said here today, that it's, it's available for
19 self-defense.

20 CHIEF JUSTICE ROBERTS: It's a related
21 point. Do you understand the ban -- the carry ban to
22 apply if you carry the firearm from one room in the
23 house to another?

24 MR. DELLINGER: That only applies if it's --
25 if it's unregistered. Now, you can't register a

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1 handgun, you can't carry a handgun, but that's because
2 its both -- its possession is prohibited. That is to
3 say you can't carry marijuana or heroin from one room to
4 the other either, because you can't use it at all, I
5 think.

6 CHIEF JUSTICE ROBERTS: Why is the -- why is
7 the D.C. law phrased in those terms? In other words, if
8 you can't have a handgun at all, why do you have a
9 separate provision saying that you can't carry it
10 anywhere?

11 MR. DELLINGER: Well, it's -- it's -- the
12 carry provision, you cannot carry unregistered firearms.
13 That's just a general requirement, that firearms be
14 registered. You're not allowed to register handguns is
15 the mechanism by which they are prohibited.

16 Now, here is -- to address your question
17 about why a ban is unreasonable, the one thing we know
18 the Second Amendment is not about is it's not about the
19 interest of collectors. Some people collect guns the
20 way they do stamps, and if that were what the amendment
21 were about then prohibiting someone from having a
22 particular type of gun would prevent them from
23 completing the set. But the notion --

24 CHIEF JUSTICE ROBERTS: Why isn't that
25 covered by the provision that you have the right to keep

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1 arms?

2 MR. DELLINGER: Well, the word "keep" would
3 encompass -- "keep" can encompass every use of an arm,
4 and that's why it provides no limit at all, unless you
5 read it in combination with "keep and bear" and that in
6 combination with "well-regulated militia."

7 JUSTICE SCALIA: You mean you can't have any
8 more arms than you would need to take with you to the
9 militia? You can't have a -- you can't have a -- you
10 know, a turkey gun and a duck gun and a 30.06 and a 270
11 and -- you know, different -- different hunting guns for
12 different --

13 MR. DELLINGER: Well --

14 JUSTICE SCALIA: You can't do that? I mean
15 a State could say you don't --

16 MR. DELLINGER: Of course you could do that.

17 JUSTICE SCALIA: You can have to have a 12
18 gauge and that's it.

19 MR. DELLINGER: And like the District that
20 allows that, as every State does. There are --

21 JUSTICE KENNEDY: I -- at least to me the
22 question is, what would be the constitutional basis for
23 insisting on Justice Scalia's suggestion that you need a
24 number of guns? You have argued, it seems to me, that
25 the District or a government could prohibit just what he

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1 said, unless you needed one to take to the militia.

2 MR. DELLINGER: I do not know why that would
3 pass the reasonableness scrutiny, but this law would
4 because a powerful, overwhelming case could be made that
5 you're eliminating the one type of weapon -- this law is
6 -- is designed only for the weapon that is concealable
7 and movable, that can be taken into schools and onto the
8 Metro, can be easily stolen and transmitted among --

9 JUSTICE KENNEDY: I'm asking about the
10 constitutional standard you apply to a hypothetical
11 statute which would prohibit the guns Justice Scalia
12 described. What is your position as to the validity of
13 such a hypothetical law?

14 MR. DELLINGER: You would apply this
15 standard. You would ask whether the ban is one that's
16 carefully balanced considerations of gun ownership and
17 public safety. I don't see how, once we are in the land
18 where you -- where there is a right, there is a far
19 weaker case if there is any need for public safety to --
20 to limit the number of guns one has. Here there is an
21 overwhelming case and we are talking about local
22 legislation.

23 I know, Justice Kennedy, that you would be
24 concerned about a national government which sets a
25 single standard for rural and urban areas, for East and

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1 West, North and South. Here you have legislation that
2 is adopted by a group of citizens in the District,
3 operating under the authority of Congress, but it is
4 local legislation. And if it's still good law, that
5 States and local governments across the country can
6 strike these balances, as they have, it would be deeply
7 ironic to preclude the District of Columbia as being the
8 only place that could enact legislation free of the
9 strictures of the Second Amendment.

10 And when you ask about the statistics, what
11 is critical here is not to apply the kind of categorical
12 standard the court below did or a kind of strict
13 scrutiny that would strike this law down. This is an
14 area, unlike areas where government regulation is
15 presumptively illegitimate, this text contemplates
16 regulation of inherently dangerous weapons. And where
17 the battle -- the great battle over methodology, to
18 which Justice Breyer replied, in these briefs --
19 indicates that this is the kind of right -- where you
20 have disputes among experts, it's a kind of right where
21 even if you recognize it, deference needs to be given to
22 the legislative resolution rather than have courts try
23 to decide how best to resolve the statistical and
24 methodological debates.

25 Thank you, Mr. Chief Justice.

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1 CHIEF JUSTICE ROBERTS: Thank you,
2 Mr. Dellinger.

3 The case is submitted.

4 (Whereupon, at 11:43 a.m., the case in the
5 above-entitled matter was submitted.)

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EXHIBIT 48

The New York Times | <https://nyti.ms/29yFEcC>

ARCHIVES | 1989

California Becomes the First State To Vote Curbs on Assault Rifles

By JANE GROSS and SPECIAL TO THE NEW YORK TIMES MARCH 14, 1989

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The California Assembly voted today to ban assault rifles, clearing the way for the state to become the first to prohibit the sale, possession or manufacture of the military-style, semiautomatic guns.

By a 41-to-38 vote, the Assembly joined the Senate, which passed a similar measure on Thursday, in dealing a stinging defeat to the National Rifle Association.

The two bills must be reconciled, probably this spring, and voted on again before going to Gov. George Deukmejian, a conservative Republican who backs this legislation although he has opposed sweeping gun controls. One area to be worked out in conferences is penalties for violators.

Spokesmen for gun-owner groups, which had lobbied fervently to stop the measure, said they had grown complacent from years of success in statehouses across the country and had underestimated their opponents' new strength.

Mike Roos, the Los Angeles Democrat who carried the bill in the Assembly, called this a "stunning day." Similar bills are under consideration in more than a dozen other states and in Congress.

"I think this action tells them that the largest state in the union thinks these guns are just too dangerous," Mr. Roos said.

Both the California Assembly and Senate bills contain clauses that would require registration of those semiautomatic assault weapons legally in private hands before last Oct. 1 and allow the owners to keep them.

The Assembly bill, driven by the outcry after the killings last January of five California schoolchildren, would ban 24 specific assault weapons, the AK-47 and the Uzi among them. Senate Bill Is Broader

A broader bill, carried in the Senate by President Pro Tem David A. Roberti and passed by a 27-to-12 margin, bans a generic category of weapons - "semiautomatic, centerfire rifles capable of accepting a detachable magazine of 20 rounds or more" - but lists exceptions.

Semiautomatic rifles are those that require no manual action except a separate trigger pull to fire each bullet, as distinct from machine guns, which fire a rapid stream of bullets with a single trigger pull. A centerfire rifle is one that fires a cartridge whose detonator is seated in the center of the cartridge base, where it is struck by the firing pin after the trigger is pulled. High-powered rifles typically use centerfire cartridges.

But, while some hunting rifles used by sportsmen are both semiautomatic and centerfire, many advocates of stricter gun controls have argued that a rifle that holds 20 or more cartridges at once ought to be considered a military rather than a sporting weapon. Hunters Not Alarmed

There appeared to be widespread agreement, even among hunters, that none of the weapons to be outlawed in California are

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The National Rifle Association expressed support from a "united and informed" gun-owning community in the "wasting" bill.

"This process is not over yet," said Steven F. Mays, an associaton spokesman. An association official in Washington, Wayne LaPierre, said the movement to ban assault rifles was "most intense in California," but he characterized New York and Florida as potential "hot spots."

The campaign to ban assault rifles began in Oakland and Los Angeles last fall, months before a drifter armed with a Chinese AK-47 semiautomatic rifle killed five schoolchildren in Stockton.

A groundswell of opposition against assault rifles had begun earlier in inner city neighborhoods transformed into war zones by drug gangs. Police chiefs, prosecutors, public officials and others joined to hold public hearings, do legal research and prepare drafts of sample legislation. Galvanized by a Massacre

But their efforts would likely have failed, according to both proponents and opponents, without the Stockton massacre, an event that turned a ghetto issue into a national one.

"We were able to hit the ground running," said Richard Iglehart, the chief assistant district attorney for Alameda County who has worked closely on the legislation.

H. L. Richardson, a recently retired State Senator who heads the Gun Owners of California, said gun control advocates chose "a very astute time to strike."

Mr. Richardson said the smartest move of the "anti-gunners" was highlighting the support of law enforcement officials like Daryl F. Gates, the Los Angeles Police Chief, and Sheriff Glen Craig of Sacramento County. Since fully automatic machine guns were banned in 1934, such law enforcement officials often stood behind gun control legislation, but never led the movement for its passage.

"They never stepped across the line from professional concern to political action," said Don Perata of the Alameda County Board of Supervisors, who organized the hearings about assault rifles last October. "That was the single most important factor, because it dispelled the notion we were simply a group of liberal do-gooders."

The National Rifle Association's advertising agency hurried out newspaper and radio advertisments, mounting an effort of a size not seen since 1982, when a state referendum that would have banned handguns began with strong support but lost. Earlier bills to ban assault rifles - last year, in 1986 and in 1985, following a massacre at a fast-food restaurant in Southern California - died in the Legislature.

A version of this article appears in print on March 14, 1989, on Page A00001 of the National edition with the headline: California Becomes the First State To Vote Curbs on Assault Rifles.

CERTIFICATE OF SERVICE
IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Case Name: *Rupp, et al. v. Becerra*
Case No.: 8:17-cv-00746-JLS-JDE

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

**EXHIBITS 45-48 TO DECLARATION OF SEAN A. BRADY IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

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

Executed March 25, 2019.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

STEVEN RUPP, et al.,

Plaintiffs,

v.

XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California,

Defendant.

Case No.: 8:17-cv-00746-JLS-JDE

**PLAINTIFFS' STATEMENT OF
UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Hearing Date: May 31, 2019
Hearing Time: 10:30 a.m.
Courtroom: 10A
Judge: Josephine L. Staton

[Filed concurrently with Notice of Motion
for Summary Judgment, Memorandum of
Points and Authorities, Request for Judicial
Notice, Declarations of Sean A. Brady,
Steven Rupp, Steven Dember, Cheryl
Johnson, Christopher Seifert, Alfonso
Valencia, Troy Willis, Michael Jones,
Dennis Martin, and Richard Travis]

Plaintiffs Steven Rupp, Steven Dember, Cheryl Johnson, Michael Jones, Christopher Seifert, Alfonso Valencia, Troy Willis, Dennis Martin, and the California Rifle & Pistol Association, Incorporated, (“Plaintiffs”) respectfully submit the following Statement of Uncontroverted Facts and Conclusions of Law pursuant to Local Rule 56-1.

I. STATEMENT OF UNCONTROVERTED FACTS

| No. | Uncontroverted Facts | Supporting Evidence |
|-----|---|--|
| 1 | All individual plaintiffs are residents of the State of California. | Willis Decl. ¶ 1; Dember Decl. ¶ 1; Martin Decl. ¶ 1; Rupp Decl. ¶ 1; Valencia Decl. ¶ 1; Johnson Decl. ¶ 1; Seifert Decl. ¶ 1; Jones Decl. ¶ 1. |
| 2 | All individual plaintiffs are law-abiding and are not prohibited from owning firearms under the laws of the United States or the State of California. | Willis Decl. ¶ 2; Dember Decl. ¶ 2; Martin Decl. ¶ 2; Rupp Decl. ¶ 2; Valencia Decl. ¶ 2; Johnson Decl. ¶ 2; Seifert Decl. ¶ 2; Jones Decl. ¶ 2. |
| 3 | All individual plaintiffs have never been found by any law enforcement agency, any court, or any other government agency to be irresponsible, unsafe, or negligent with firearms in any manner. | Willis Decl. ¶ 2; Dember Decl. ¶ 2; Martin Decl. ¶ 2; Rupp Decl. ¶ 2; Valencia Decl. ¶ 2; Johnson Decl. ¶ 2; Seifert Decl. ¶ 2; Jones Decl. ¶ 2. |
| 4 | Plaintiff Troy Willis is a retired reserve officer for the Indio Police Department. | Willis Decl. ¶ 2. |
| 5 | Plaintiffs Willis and Christopher Seifert each lawfully own a semiautomatic, centerfire rifle with a detachable magazine equipped with one or more prohibited features under the AWCA. | Willis Decl. ¶ 3; Seifert Decl. ¶ 3. |

| No. | Uncontroverted Facts | Supporting Evidence |
|-----|--|--|
| 6 | Plaintiff Dennis Martin lawfully owns a semiautomatic, centerfire rifle with a non-fixed magazine that he registered with the California Department of Justice as an “assault weapon.” | Martin Decl. ¶ 3. |
| 7 | Plaintiff Martin is prohibited under the AWCA and its related regulations from replacing his firearm’s “bullet button” with a standard magazine release, and but for these restrictions would immediately do so. | Martin Decl. ¶ 4. |
| 8 | Plaintiffs Willis, Martin, and Seifert are each prohibited under the AWCA from engaging in certain activities with their registered “assault weapons” that are otherwise lawful with any other firearm not classified as an “assault weapon,” and but for these restrictions Plaintiffs Willis, Martin, . . . , and . . . would engage in such activities. | Willis Decl. ¶ 5; Martin Decl. ¶ 5; Seifert Decl. ¶ 4. |
| 9 | Plaintiff Steven Rupp and Michael Jones each own a semiautomatic, centerfire rifle with a non-fixed magazine that they were forced to modify to ensure it was no longer considered an “assault weapon” and therefore lawful to possess in the State of California. | Rupp Decl. ¶ 3; Jones Decl. ¶ 3. |
| 10 | Plaintiffs Rupp and Seifert each lawfully own a frame or “lower receiver” of a firearm that they | Seifert Decl. ¶ 5; Rupp Decl. ¶ 4. |

| No. | Uncontroverted Facts | Supporting Evidence |
|-----|---|--|
| | wish to assemble into fully functioning semiautomatic, centerfire rifles with a detachable magazine and either a pistol grip, flash suppressor, or adjustable stock, or in a configuration that has an overall length of less than 30 inches but more than 26 inches. | |
| 11 | Plaintiffs Rupp and Seifert are concerned that if multiple intruders attack them while at home, they will be required to immediately reassemble their firearm into such a configuration to effectively protect themselves and others in their home. | Rupp Decl. ¶ 6; Seifert Decl. ¶ 7. |
| 12 | Plaintiffs Rupp and Seifert believe that not being able to immediately assemble their frames or “lower receivers” into such a configuration will impact their ability to effectively defend themselves and others in their home. | Rupp Decl. ¶ 7; Seifert Decl. ¶ 8. |
| 13 | Plaintiffs Alfonso Valencia, Steven Dember, and Cheryl Johnson each would like to acquire a semiautomatic, centerfire rifle with a detachable magazine having one or more of the features that is prohibited by the AWCA to keep in their home for self-defense and other lawful purposes, including hunting, training, and recreation. | Valencia Decl. ¶ 3; Johnson Decl. ¶ 3; Dember Decl. ¶ 3. |

| No. | Uncontroverted Facts | Supporting Evidence |
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| 14 | All individual Plaintiffs will be continuously and irreparably harmed by the ongoing deprivation of their individual, fundamental right to possess and use commonly possessed firearms for lawful purposes, including in-home self-defense, without risking criminal prosecution. | Willis Decl. ¶ 6; Martin Decl. ¶ 6; Rupp Decl. ¶ 8; Seifert Decl. ¶ 9; Jones Decl. ¶ 5. |
| 15 | All individual Plaintiffs would like to acquire new semiautomatic, centerfire rifles with a detachable magazine, having one or more of the features that is prohibited by the AWCA, and were it not for the AWCA and fear of prosecution for violating it, would do so. | Willis Decl. ¶ 7; Dember Decl. ¶¶ 3-4; Martin Decl. ¶ 7; Rupp Decl. ¶ 9; Valencia Decl. ¶¶ 3-4; Johnson Decl. ¶¶ 3-4; Seifert Decl. ¶ 10; Jones Decl. ¶ 6. |
| 16 | All individual Plaintiffs who lawfully own “assault weapons” or firearms they were forced to modify in accordance with the AWCA acquired their firearm for use in their home for self-defense and other lawful purposes such as hunting, training, and recreation. | Willis Decl. ¶ 4; Rupp Decl. ¶ 5; Seifert Decl. ¶ 6; Jones Decl. ¶ 4. |
| 17 | Richard Travis is the Executive Director for Plaintiff California Rifle & Pistol Association, Incorporated (“CRPA”) | Travis Decl. ¶ 1. |
| 18 | Plaintiff CRPA is a non-profit membership and donor-supported organization classified under IRC section 501(c)(4) and incorporated under the laws of California with its headquarters in | Travis Decl. ¶ 1. |

| No. | Uncontroverted Facts | Supporting Evidence |
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| | Fullerton, California. | |
| 19 | Founded in 1875, CRPA seeks to defend the Second Amendment and advance laws that protect the rights of individual citizens. | Travis Decl. ¶ 2. |
| 20 | Plaintiff CRPA Works to preserve the constitutional and statutory rights of gun ownership, including the right to self-defense, the right to hunt, and the right to keep and bear arms. | Travis Decl. ¶ 2. |
| 21 | Plaintiff CRPA is dedicated to promoting the shooting sports, providing education, training, and organized competition for adult and junior shooters. | Travis Decl. ¶ 2. |
| 22 | Plaintiff CRPA's members include law enforcement officers, prosecutors, professionals, firearms experts, and members of the public. | Travis Decl. ¶ 2. |
| 23 | Plaintiff CRPA works to preserve the constitutional rights of all law-abiding individuals, including the fundamental right to keep and bear commonly owned firearms for the core lawful purpose of self-defense. | Travis Decl. ¶ 3. |
| 24 | Plaintiff CRPA has members who own semiautomatic, centerfire rifles with non-fixed magazines that were forced to register their firearm as an "assault weapon" with the California Department of | Travis Decl. ¶ 4. |

| No. | Uncontroverted Facts | Supporting Evidence |
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| | Justice before July 1, 2018. | |
| 25 | Plaintiff CRPA has members who are prohibited under the AWCA and its related regulations from replacing their firearm's "bullet button" with a standard magazine release, and but for those restrictions would do so. | Travis Decl. ¶ 4. |
| 26 | Plaintiff CRPA also has members who lawfully own semiautomatic, centerfire rifles with detachable magazines with one or more prohibited features under the AWCA, or firearms specifically identified by their make and model as "assault weapons" under the AWCA. | Travis Decl. ¶ 5. |
| 27 | Plaintiff CRPA has members who lawfully own firearms classified as "assault weapons" who are prohibited under the AWCA and related regulations from engaging in certain activities that are otherwise lawful with any other firearm not classified as an "assault weapon," and but for those restrictions would engage in such activities with their firearms. | Travis Decl. ¶ 6. |
| 28 | Plaintiff CRPA has members who, but for the AWCA and its related regulations, would acquire, transfer, and/or possess firearms classified as "assault weapons," and are continuously and irreparably harmed by the ongoing deprivation of their | Travis Decl. ¶ 7. |

| No. | Uncontroverted Facts | Supporting Evidence |
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| | individual, fundamental right to possess and use commonly possessed firearms for lawful purposes, including in-home self-defense, without risking criminal prosecution. | |
| 29 | Millions of rifles that are prohibited by the AWCA are in the hands of the American people. | Brady Decl., Ex. 2 [Expert Report W. English]; Ex. 7 [Depo. Tr. B. Graham] at 21:13-21, 25:9-15, 28:3-6; Exs. 11-25; Ex. 8 [DOJ Resp. to Seifert's Reqs. for Admission, Set One] at 4; Ex. 10 [DOJ Second Suppl. Resp. to Willis Interrogs., Set One] at 8. |
| 30 | Americans typically choose rifles prohibited by the AWCA for self-defense. | Brady Decl., Ex. 1 [Expert Report of J. B. Boone] at 5; Ex. 2 [Expert Report of W. English] at 4; Ex. 3 [Expert Report of S. Helsley] at 11-12; Exs. 28-29; 35-37. |
| 31 | Americans typically choose rifles prohibited by the AWCA for hunting. | Brady Decl., Ex. 2 [Expert Report of W. English] at 4, 7; Ex. 3 [Expert Report of S. Helsley] at 11-12; Ex. 30-33. |
| 32 | Americans typically choose rifles prohibited by the AWCA for competition. | Brady Decl., Ex. 2 [Expert Report of W. English] at 4; Ex. 3 Expert Report of S. Helsley] at 6; Ex. 22. |
| 33 | Americans typically choose rifles prohibited by the AWCA for target shooting. | Brady Decl., Ex. 2 [Expert Report of W. English] at 4; Ex. 3 [Expert Report of S. Helsley] at 11-12; Ex. 22. |
| 34 | The American public has had access to and has commonly owned semi-automatic, centerfire rifles with detachable magazines for more than a century. | Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 3-6; <i>see also</i> John Henwood, <i>The 8 and the 81: A History of Remington's Pioneer Autoloading Rifles</i> 4-5 (1993); John Henwood, <i>The Forgotten Winchesters: A History of the Models 1905, 1907, and 1910 Self-</i> |

| No. | Uncontroverted Facts | Supporting Evidence |
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| | | <i>Loading Rifles</i> 2-6, 22-23, 115-24 (1995). |
| 35 | The AR-15 has been available to the American public since at least 1959. | Brady Decl., Ex. 2 [Expert Report of W. English] at 3; Ex. 3 [Expert Report of S. Helsley] at 6. |
| 36 | The popularity of AR-15 type rifles has increased since its inception. | Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 11-12. |
| | Pistol Grips | |
| 37 | Rifles commonly come standard with a pistol grip. | Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 7; [Expert Report of W. English] at 3. |
| 38 | Pistol grips for rifles are commonly available aftermarket. | Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 11; Ex. 44. |
| 39 | Pistol grips do not affect a rifle's rate of fire. | Brady Decl.; Ex. 3 [Expert Report of S. Helsley] at 7-9. |
| 40 | [<i>SUF 40 intentionally left blank.</i>] | |
| 41 | Pistol grips do not affect a rifle's capacity to accept ammunition. | Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 7-9. |
| 42 | Pistol grips do not affect the power of the projectile a rifle discharge. | Brady Decl., Ex. 1 [Expert Report of J. B. Boone] at 5-7; Ex. 3 [Expert Report of S. Helsley] at 7-9. |
| 43 | Pistol grips are not dangerous per se. | Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 6-9. |
| 44 | The purpose of a pistol grip is to position the "trigger finger" for optimum trigger control and help absorb recoil. | Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 7. |
| 45 | Pistol grips allow a rifle to be used with one hand. | Brady Decl., Ex. 1 [Expert Report of J. B. Boone] at 12. |

| No. | Uncontroverted Facts | Supporting Evidence |
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| 46 | Pistol grips can accommodate a disabled person. | Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 9. |
| | Adjustable Stocks | |
| 47 | Rifles commonly come standard with an adjustable stock. | Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 10; [Expert Report of W. English] at 3. |
| 48 | Adjustable stocks for rifles are commonly available aftermarket. | Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 9; Ex. 45. |
| 49 | A “telescoping stock” allows the user of the rifle to adjust the length of a rifle a couple of inches as conditions dictate and has no material effect on the concealability of the rifle. | Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 10; Ex. 7 [Depo. Tr. B. Graham] at 81:2-19. |
| 50 | The purpose of a telescoping stock is to allow the user of a rifle to make it a comfortable length for that user’s body type or as conditions dictate. | Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 10; [Depo. Tr. B. Graham] at 94:1-4; 95:19-21. |
| 51 | People of different body sizes may need different length stocks to properly hold a rifle. | Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 9; Ex. 6 [Depo. Tr. M. Mersereau] at 37:2-11; [Depo. Tr. B. Graham] at 95:19-21. |
| 52 | What clothing a person is wearing may affect what length stock that person needs to properly hold a rifle. | Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 9; [Depo. Tr. B. Graham] at 94:1-4. |
| | Flash Suppressors | |
| 53 | Rifles commonly come standard with a flash suppressor. | Brady Decl., Ex. 2 [Expert Report of W. English] at 3; Ex. 3 [Expert Report of S. Helsley] at 10-11. |

| No. | Uncontroverted Facts | Supporting Evidence |
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| 54 | Flash suppressors for rifles are commonly available aftermarket. | Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 11; Ex. 46. |
| 55 | Flash suppressors do not hide the flash from those in the direct line of fire, but rather from the shooter. | Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 10; Ex. 5 [Expert Report of B. Graham] at 22, 28; Ex. 6 [Depo. Tr. M. Mersereau] at 56:14-18; Ex. 7 [Depo. Tr. B. Graham] at 103:15-20. |
| 56 | Flash suppressors only have an effect in low-light conditions. | Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 10; Ex. 6 [Depo. Tr. M. Mersereau] at 56:3-6; [Depo. Tr. B. Graham] at 103:21-24. |
| | Features Generally | |
| 57 | None of the features is inherently dangerous. | Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 6; Ex. 7 [Depo. Tr. B. Graham] at 108:2-16. |
| 58 | None of the features becomes inherently dangerous when used in conjunction with any of the other features. | Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 6; Ex. 7 [Depo. Tr. B. Graham] at 108:2-16. |
| 59 | The features increase accuracy of the rifle. | Brady Decl., Ex. 1 [Expert Report of J. B. Boone] at 8-12; Ex. 3 [Expert Report of S. Helsley] at 6-11, 12; Ex. 4 [Expert Report of M. Mersereau] at 8-11; Ex. 5 [Expert Report of B. Graham] at 19, 22, 26, 28; [Depo. Tr. B. Graham] at 119-123; 124:1-6. |
| 60 | The features increase user control of the rifle. | Brady Decl., Ex. 1 [Expert Report of J. B. Boone] at 8-12; Ex. 3 [Expert Report of S. Helsley] at 6-11, 12; Ex. 4 [Expert Report of M. Mersereau] at 8-11; Ex. 5 [Expert Report of B. Graham] at 19, 22, 26, 28; Ex. 6 [Depo. Tr. M. Mersereau] at 36:7-37:11; Ex. 7 [Depo. Tr. B. Graham] at 107:6-14, 108:2-16; |

| No. | Uncontroverted Facts | Supporting Evidence |
|-----|---|---|
| | | [Depo. Tr. B. Graham] at 119-123; 124:1-6. |
| 61 | The State’s designated expert witness, Blake Graham, opined that the features increase accuracy and the user’s control of the rifle. | Brady Decl., Ex. 3 [Expert Report of B. Graham] at 19, 22, 26, 28; Ex. 7 [Depo. Tr. B. Graham] at 107:6-14, 108:2-16; [Depo. Tr. B. Graham] at 119-123; 124:1-6. |
| 62 | The State’s designated expert witness, Michael Mersereau, opined that features increase accuracy and the user’s control of the rifle. | Brady Decl., Ex. 4 [Expert Report of M. Mersereau] at 8-11; Ex. 6 [Depo. Tr. M. Mersereau] at 36:7-37:11. |
| | “Assault Weapon” Laws | |
| 63 | California’s Assault Weapon Control Act was adopted in 1989 and was the first “assault weapon” law in the country. | Assemb. B. 357, 1989-1990 Reg. Sess. (Cal. 1989); Brady Decl., Ex. 48. |
| 64 | The federal “assault weapon” law took effect in 1994. | Req. Jud. Ntc., ¶ 8, Ex. 8. |
| 65 | Congress allowed the federal “assault weapon” law to expire in 2004. | Req. Jud. Ntc., ¶ 8, Ex. 8. |
| 66 | Federal law does not currently restrict “assault weapons.” | Req. Jud. Ntc., ¶ 8, Ex. 8. |
| 67 | Currently, other than California, there are six states in the country with an “assault weapon” law, plus the District of Columbia. | Req. Jud. Ntc., Exs. 1-7. |
| 68 | Every “assault weapon” law in the country other than California’s was originally adopted in the 1990s or later. | Req. Jud. Ntc., Exs. 1-7 (Conn. Gen. Stat. §§53-202a – 53-202k (first enacted in 1993); D.C. Code Ann. §§7-2501.01(3A), 7-2502.02 (a)(6) (enacted in 2008); Haw. Rev. Stat. Ann. §§ 134-1, 134-8 (first enacted in 1992); Md. |

| No. | Uncontroverted Facts | Supporting Evidence |
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| | | Code Ann., Crim. Law §§ 4-301, 4-303 (first enacted in 2002); N.J. Stat. Ann. §§ 2C:39-1w, 2C:39-3 (first enacted in 1999); N.Y. Penal Law §§ 265.00(22), 265.02(7) (first enacted in 1998)). |
| 69 | The United States government, through the Director of Civilian Marksmanship, used to operate a program that would sell semiautomatic, centerfire rifles with detachable magazines directly to the public, including some rifles that would be considered “assault weapons” under the AWCA. | Brady Decl., Ex. 3 [Expert Report of S. Helsley] at 5; Exs. 16, 42, 43. |

Dated: March 25, 2019

MICHEL & ASSOCIATES, P.C.

/s/ Sean A. Brady

Sean A. Brady

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE
IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Case Name: *Rupp, et al. v. Becerra*
Case No.: 8:17-cv-00746-JLS-JDE

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

**STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS
OF LAW IN SUPPORT OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Xavier Becerra
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San Francisco, CA 94102

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

Executed March 25, 2019.

/s/Laura Palmerin
Laura Palmerin

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

STEVEN RUPP, et al.,

Plaintiffs,

vs.

XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California,

Defendant.

Case No.: 8:17-cv-00746-JLS-JDE

**DECLARATION OF STEVEN RUPP
IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT**

Hearing Date: May 31, 2019
Hearing Time: 10:30 a.m.
Courtroom: 10A
Judge: Josephine L. Staton

[Filed concurrently with Notice of
Motion for Summary Judgment,
Memorandum of Points and Authorities,
Statement of Uncontroverted Facts and
Conclusions of Law, Request for
Judicial Notice, Declarations of Sean A.
Brady, Steven Dember, Cheryl Johnson,
Christopher Seifert, Alfonso Valencia,
Troy Willis, Michael Jones, Dennis
Martin, and Richard Travis]

DECLARATION OF STEVEN RUPP

I, Steven Rupp, am a plaintiff in the above-entitled action. I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

1. I am a current resident of Orange County, California.

2. I am a law-abiding adult who is not prohibited from owning firearms under the laws of the United States or the state of California. I have never been found by any law enforcement agency, any court, or any other government agency to be irresponsible, unsafe, or negligent with firearms in any manner.

3. I own a semi-automatic, center-fire rifle with a non-fixed magazine and a pistol grip, flash suppressor, and adjustable stock, making it an "assault weapon" under the latest amendment to the AWCA. Because this firearm was reclassified as an "assault weapon," I was forced to modify my firearm to ensure it was no longer considered an "assault weapon" and therefore lawful to possess.

4. I also own a frame or "lower receiver" of a firearm that I wish to assemble into a fully functioning semiautomatic, center-fire rifle with a detachable magazine that has a pistol grip, flash suppressor, and adjustable stock, and that is less than 30 but more than 26 inches in overall length.

5. I acquired the firearm with the magazine for use in my home for self-defense and other lawful purposes, like hunting, training, and recreation.

6. I am concerned that if multiple intruders attack me while at home, I will require assembling my firearm frame into such a configuration to effectively protect myself and others in my home.

7. I believe that not being able to immediately assemble my firearm frame into such a configuration will impact my ability to effectively defend myself and others in my home.


8. Because the AWCA bars residents from acquiring, transferring, or possessing "assault weapons", I will be continuously and irreparably harmed by the

1 ongoing deprivation of my individual, fundamental right to possess and use
2 commonly possessed firearms for lawful purposes, including in-home self-defense,
3 without risking criminal prosecution.

4 9. I would also like to acquire new semiautomatic, centerfire rifles with a
5 detachable magazine, having one or more of the features that is prohibited by the
6 AWCA. Were it not for the prohibitions in the AWCA, and the fear of prosecution
7 for violating it, I would do so.

8 I declare under penalty of perjury that the foregoing is true and correct.
9 Executed within the United States on March 25, 2019.

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Steven Rupp
Declarant

CERTIFICATE OF SERVICE
IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Case Name: *Rupp, et al. v. Becerra*
Case No.: 8:17-cv-00746-JLS-JDE

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

**DECLARATION OF STEVEN RUPP IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Xavier Becerra
Attorney General of California
Peter H. Chang
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San Francisco, CA 94102

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

Executed March 25, 2019.

/s/Laura Palmerin
Laura Palmerin

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180 East Ocean Boulevard, Suite 200
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

STEVEN RUPP, et al.,

Plaintiffs,

vs.

XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California,

Defendant.

Case No.: 8:17-cv-00746-JLS-JDE

**DECLARATION OF STEVEN
DEMBER IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

Hearing Date: May 31, 2019
Hearing Time: 10:30 a.m.
Courtroom: 10A
Judge: Josephine L. Staton

[Filed concurrently with Notice of
Motion for Summary Judgment,
Memorandum of Points and Authorities,
Statement of Uncontroverted Facts and
Conclusions of Law, Request for
Judicial Notice, Declarations of Sean A.
Brady, Steven Rupp, Cheryl Johnson,
Christopher Seifert, Alfonso Valencia,
Troy Willis, Michael Jones, Dennis
Martin, and Richard Travis]

DECLARATION OF STEVEN DEMBER

I, Steven Dember, am a plaintiff in the above-entitled action. I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

1. I am a current resident of Orange County, California.

2. I am a law-abiding, adult, citizen of the United States who is not prohibited from owning firearms under the laws of the United States or the state of California. I have never been found by any law enforcement agency, any court, or any other government agency to be irresponsible, unsafe, or negligent with firearms in any manner.

3. I would like to acquire a semiautomatic, centerfire rifle with a detachable magazine, having one or more of the features that is prohibited by the AWCA to keep in my home for self-defense and other lawful purposes, including hunting, training, and recreation.

4. Were it not for the prohibitions in the AWCA, and the fear of prosecution for violating it, I would acquire such a semiautomatic, centerfire rifle with a detachable magazine.

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

Executed within the United States on March 21, 2019.



Steven Dember

Declarant

CERTIFICATE OF SERVICE
IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Case Name: *Rupp, et al. v. Becerra*
Case No.: 8:17-cv-00746-JLS-JDE

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

**DECLARATION OF STEVEN DEMBER IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Xavier Becerra
Attorney General of California
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455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102

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

Executed March 25, 2019.

/s/Laura Palmerin
Laura Palmerin

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Sean A. Brady – SBN 262007
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MICHEL & ASSOCIATES, P.C.
180 East Ocean Boulevard, Suite 200
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Facsimile: 562-216-4445

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

STEVEN RUPP, et al.,

Plaintiffs,

vs.

XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California,

Defendant.

Case No.: 8:17-cv-00746-JLS-JDE

**DECLARATION OF CHERYL
JOHNSON IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

Hearing Date: May 31, 2019
Hearing Time: 10:30 a.m.
Courtroom: 10A
Judge: Josephine L. Staton

[Filed concurrently with Notice of
Motion for Summary Judgment,
Memorandum of Points and Authorities,
Statement of Uncontroverted Facts and
Conclusions of Law, Request for
Judicial Notice, Declarations of Sean A.
Brady, Steven Rupp, Steven Dember,
Christopher Seifert, Alfonso Valencia,
Troy Willis, Michael Jones, Dennis
Martin, and Richard Travis]

DECLARATION OF CHERYL JOHNSON

I, Cheryl Johnson, am a plaintiff in the above-entitled action. I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

1. I am a current resident of Orange County, California.


2. I am a law-abiding, adult, citizen of the United States who is not prohibited from owning firearms under the laws of the United States or the state of California. I have never been found by any law enforcement agency, any court, or any other government agency to be irresponsible, unsafe, or negligent with firearms in any manner.

3. I would like to acquire a semiautomatic, centerfire rifle with a detachable magazine, having one or more of the features that is prohibited by the AWCA to keep in my home for self-defense and other lawful purposes, including hunting, training, and recreation.

4. Were it not for the prohibitions in the AWCA, and the fear of prosecution for violating it, I would acquire such a semiautomatic, centerfire rifle with a detachable magazine.

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

Executed within the United States on March 21, 2019.


Cheryl Johnson
Declarant

CERTIFICATE OF SERVICE
IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Case Name: *Rupp, et al. v. Becerra*
Case No.: 8:17-cv-00746-JLS-JDE

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

**DECLARATION OF CHERYL JOHNSON IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Xavier Becerra
Attorney General of California
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455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102

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

Executed March 25, 2019.

/s/Laura Palmerin
Laura Palmerin

1 C. D. Michel – SBN 144258
2 cmichel@michellawyers.com
3 Sean A. Brady – SBN 262007
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5 Matthew D. Cubeiro – SBN 291519
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7 MICHEL & ASSOCIATES, P.C.
8 180 East Ocean Boulevard, Suite 200
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10 Telephone: 562-216-4444
11 Facsimile: 562-216-4445

12 Attorneys for Plaintiffs

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

STEVEN RUPP, et al.,

Plaintiffs,

vs.

XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California,

Defendant.

Case No.: 8:17-cv-00746-JLS-JDE

**DECLARATION OF
CHRISTOPHER SEIFERT IN
SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT**

Hearing Date: May 31, 2019
Hearing Time: 10:30 a.m.
Courtroom: 10A
Judge: Josephine L. Staton

[Filed concurrently with Notice of
Motion for Summary Judgment,
Memorandum of Points and Authorities,
Statement of Uncontroverted Facts and
Conclusions of Law, Request for
Judicial Notice, Declarations of Sean A.
Brady, Steven Rupp, Steven Dember,
Cheryl Johnson, Alfonso Valencia, Troy
Willis, Michael Jones, Dennis Martin,
and Richard Travis]

1 **DECLARATION OF CHRISTOPHER SEIFERT**

2 I, Christopher Seifert, am a plaintiff in the above-entitled action. I make this
3 declaration of my own personal knowledge and, if called as a witness, I could and
4 would testify competently to the truth of the matters set forth herein.

5 1. I am a current resident of Orange County, California.

6 2. I am a law-abiding adult who is not prohibited from owning firearms
7 under the laws of the United States or the state of California. I have never been
8 found by any law enforcement agency, any court, or any other government agency to
9 be irresponsible, unsafe, or negligent with firearms in any manner.

10 3. I own a semiautomatic, centerfire rifle with a non-fixed magazine,
11 making it a Category 3 “assault weapon” under the latest amendment to the AWCA.

12 4. The AWCA prohibits me from engaging in certain activities with my
13 registered “assault weapon” that are otherwise lawful with any other firearm not
14 classified as an “assault weapon.” But for the AWCA’s restrictions I would engage
15 in such activities.

16 5. I also own a frame or “lower receiver” of a firearm that I wish to
17 assemble into a fully functioning semiautomatic, center-fire rifle with a detachable
18 magazine that has a pistol grip, flash suppressor, and adjustable stock, and that is
19 less than 30 but more than 26 inches in overall length.

20 6. I acquired the firearm with the magazine for use in my home for self-
21 defense and other lawful purposes, like hunting, training, and recreation.

22 7. I am concerned that if multiple intruders attack me while at home, I will
23 require assembling my firearm frame into such a configuration to effectively protect
24 myself and others in my home.

25 8. I believe that not being able to immediately assemble my firearm frame
26 into such a configuration will impact my ability to effectively defend myself and
27 others in my home.

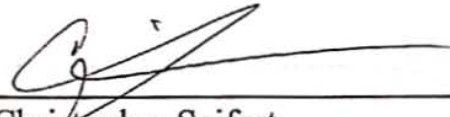
28 9. Because the AWCA bars residents from acquiring, transferring, or

1 possessing "assault weapons", I will be continuously and irreparably harmed by the
2 ongoing deprivation of my individual, fundamental right to possess and use
3 commonly possessed firearms for lawful purposes, including in-home self-defense,
4 without risking criminal prosecution.

5 10. I would also like to acquire new semiautomatic, centerfire rifles with a
6 detachable magazine, having one or more of the features that is prohibited by the
7 AWCA. Were it not for the prohibitions in the AWCA, and the fear of prosecution
8 for violating it, I would do so.

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

10 Executed within the United States on 23 MARCH, 2019.

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14 Christopher Seifert
15 Declarant
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CERTIFICATE OF SERVICE
IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Case Name: *Rupp, et al. v. Becerra*
Case No.: 8:17-cv-00746-JLS-JDE

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

**DECLARATION OF CHRISTOPHER SEIFERT IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Xavier Becerra
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San Francisco, CA 94102

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

Executed March 25, 2019.

/s/Laura Palmerin
Laura Palmerin

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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

STEVEN RUPP, et al.,

Plaintiffs,

vs.

XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California,

Defendant.

Case No.: 8:17-cv-00746-JLS-JDE

**DECLARATION OF ALFONSO
VALENCIA IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

Hearing Date: May 31, 2019
Hearing Time: 10:30 a.m.
Courtroom: 10A
Judge: Josephine L. Staton

[Filed concurrently with Notice of
Motion for Summary Judgment,
Memorandum of Points and Authorities,
Statement of Uncontroverted Facts and
Conclusions of Law, Request for
Judicial Notice, Declarations of Sean A.
Brady, Steven Rupp, Steven Dember,
Cheryl Johnson, Christopher Seifert,
Troy Willis, Michael Jones, Dennis
Martin, and Richard Travis]

CERTIFICATE OF SERVICE
IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Case Name: *Rupp, et al. v. Becerra*
Case No.: 8:17-cv-00746-JLS-JDE

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I am not a party to the above-entitled action. I have caused service of:

**DECLARATION OF ALFONSO VALENCIA IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Xavier Becerra
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San Francisco, CA 94102

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

Executed March 25, 2019.

/s/Laura Palmerin
Laura Palmerin

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Facsimile: 562-216-4445

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

STEVEN RUPP, et al.,

Plaintiffs,

vs.

XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California,

Defendant.

Case No.: 8:17-cv-00746-JLS-JDE

**DECLARATION OF TROY WILLIS
IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT**

Hearing Date: May 31, 2019
Hearing Time: 10:30 a.m.
Courtroom: 10A
Judge: Josephine L. Staton

[Filed concurrently with Notice of
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Conclusions of Law, Request for
Judicial Notice, Declarations of Sean A.
Brady, Steven Rupp, Steven Dember,
Cheryl Johnson, Christopher Seifert,
Alfonso Valencia, Michael Jones,
Dennis Martin, and Richard Travis]

1 **DECLARATION OF TROY WILLIS**

2 I, Troy Willis, am a plaintiff in the above-entitled action. I make this
3 declaration of my own personal knowledge and, if called as a witness, I could and
4 would testify competently to the truth of the matters set forth herein.

5 1. I am a current resident of Riverside County, California.

6 2. I am a law-abiding adult, citizen of the United States, and a retired
7 reserve officer for the Indio Police Department who is not prohibited from owning
8 firearms under the laws of the United States or the state of California. I have never
9 been found by any law enforcement agency, any court, or any other government
10 agency to be irresponsible, unsafe, or negligent with firearms in any manner.

11 3. I own a semiautomatic, centerfire rifle with a non-fixed magazine,
12 making it a Category 3 “assault weapon” under the latest amendment to the AWCA.

13 4. I acquired the firearm with the magazine for use in my home for self-
14 defense and other lawful purposes, like hunting, training, and recreation.

15 5. The AWCA prohibits me from engaging in certain activities with my
16 registered “assault weapon” that are otherwise lawful with any other firearm not
17 classified as an “assault weapon.” But for the AWCA’s restrictions I would engage
18 in such activities.

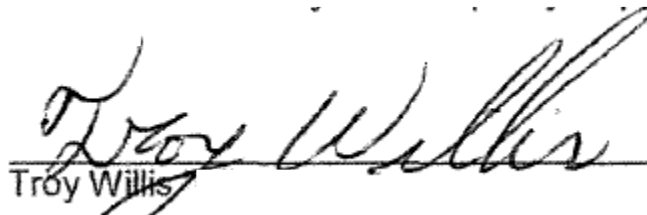
19 6. Because the AWCA bars residents from acquiring, transferring, or
20 possessing “assault weapons”, I will be continuously and irreparably harmed by the
21 ongoing deprivation of my individual, fundamental right to possess and use
22 commonly possessed firearms for lawful purposes, including in-home self-defense,
23 without risking criminal prosecution.

24 7. I would also like to acquire new semiautomatic, centerfire rifles with a
25 detachable magazine, having one or more of the features that is prohibited by the
26 AWCA. Were it not for the prohibitions in the AWCA, and the fear of prosecution
27 for violating it, I would do so.

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

2 Executed within the United States on March 25, 2019.

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7 Troy Willis
8 Declarant
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CERTIFICATE OF SERVICE
IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Case Name: *Rupp, et al. v. Becerra*
Case No.: 8:17-cv-00746-JLS-JDE

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

**DECLARATION OF TROY WILLIS IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Xavier Becerra
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Deputy Attorney General
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455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102

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

Executed March 25, 2019.

/s/Laura Palmerin
Laura Palmerin

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Facsimile: 562-216-4445

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

STEVEN RUPP, et al.,

Plaintiffs,

vs.

XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California,

Defendant.

Case No.: 8:17-cv-00746-JLS-JDE

**DECLARATION OF MICHAEL
JONES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

Hearing Date: May 31, 2019
Hearing Time: 10:30 a.m.
Courtroom: 10A
Judge: Josephine L. Staton

[Filed concurrently with Notice of
Motion for Summary Judgment,
Memorandum of Points and Authorities,
Statement of Uncontroverted Facts and
Conclusions of Law, Request for
Judicial Notice, Declarations of Sean A.
Brady, Steven Rupp, Steven Dember,
Cheryl Johnson, Christopher Seifert,
Alfonso Valencia, Troy Willis, Dennis
Martin, and Richard Travis]

1 **DECLARATION OF MICHAEL JONES**

2 I, Michael Jones, am a plaintiff in the above-entitled action. I make this
3 declaration of my own personal knowledge and, if called as a witness, I could and
4 would testify competently to the truth of the matters set forth herein.

5 1. I am a current resident of Orange County, California.

6 2. I am a law-abiding adult who is not prohibited from owning firearms
7 under the laws of the United States or the state of California. I have never been
8 found by any law enforcement agency, any court, or any other government agency to
9 be irresponsible, unsafe, or negligent with firearms in any manner.

10 3. I own a semiautomatic, centerfire rifle with a non-fixed magazine and a
11 pistol grip, flash suppressor, and adjustable stock, making it a Category 4 “assault
12 weapon” under the latest amendment to the AWCA. Because this firearm was
13 reclassified as an “assault weapon,” I was forced to modify my firearm to ensure it
14 was no longer considered an “assault weapon” and therefore lawful to possess.

15 4. I acquired the firearm with the magazine for use in my home for self-
16 defense and other lawful purposes, like hunting, training, and recreation.

17 5. Because the AWCA bars residents from acquiring, transferring, or
18 possessing “assault weapons”, I will be continuously and irreparably harmed by the
19 ongoing deprivation of my individual, fundamental right to possess and use
20 commonly possessed firearms for lawful purposes, including in-home self-defense,
21 without risking criminal prosecution.

22 6. I would also like to acquire new semiautomatic, centerfire rifles with a
23 detachable magazine, having one or more of the features that is prohibited by the
24 AWCA. Were it not for the prohibitions in the AWCA, and the fear of prosecution
25 for violating it, I would do so.

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

2 Executed within the United States on March 21, 2019.

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Michael Jones

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Declarant

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CERTIFICATE OF SERVICE
IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Case Name: *Rupp, et al. v. Becerra*
Case No.: 8:17-cv-00746-JLS-JDE

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

**DECLARATION OF MICHAEL JONES IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

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455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102

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

Executed March 25, 2019.

/s/Laura Palmerin
Laura Palmerin

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Telephone: 562-216-4444
Facsimile: 562-216-4445

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

STEVEN RUPP, et al.,

Plaintiffs,

vs.

XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California,

Defendant.

Case No.: 8:17-cv-00746-JLS-JDE

**DECLARATION OF DENNIS
MARTIN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

Hearing Date: May 31, 2019
Hearing Time: 10:30 a.m.
Courtroom: 10A
Judge: Josephine L. Staton

[Filed concurrently with Notice of
Motion for Summary Judgment,
Memorandum of Points and Authorities,
Statement of Uncontroverted Facts and
Conclusions of Law, Request for
Judicial Notice, Declarations of Sean A.
Brady, Steven Rupp, Steven Dember,
Cheryl Johnson, Christopher Seifert,
Alfonso Valencia, Troy Willis, Michael
Jones, and Richard Travis]

DECLARATION OF DENNIS MARTIN

I, Dennis Martin, am a plaintiff in the above-entitled action. I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

1. I am a current resident of Kern County, California.

2. I am a law-abiding citizen of the United States who is not prohibited from owning firearms under the laws of the United States or the state of California. I have never been found by any law enforcement agency, any court, or any other government agency to be irresponsible, unsafe, or negligent with firearms in any manner.

3. I own a semi-automatic, center-fire rifle with a non-fixed magazine and a pistol grip, flash suppressor, and adjustable stock, making it an “assault weapon” under the latest amendment to the AWCA. Because this firearm was reclassified as an “assault weapon,” I registered my firearm with the California Department of Justice as an “assault weapon.”

4. Because my lawfully owned firearm was recently classified and registered as an “assault weapon,” the AWCA and its related regulations prohibit me from replacing my firearm’s “bullet button” with a standard magazine release. But for the provisions of the AWCA and its related regulations, I would immediately replace my firearm’s “bullet button” with a standard magazine release.

5. The AWCA prohibits me from engaging in certain activities with my registered “assault weapon” that are otherwise lawful with any other firearm not classified as an “assault weapon.” But for the AWCA’s restrictions I would engage in such activities.


6. Because the AWCA bars residents from acquiring, transferring, or possessing “assault weapons”, I will be continuously and irreparably harmed by the ongoing deprivation of my individual, fundamental right to possess and use commonly possessed firearms for lawful purposes, including in-home self-defense,

1 without risking criminal prosecution.

2 7. I would also like to acquire new semiautomatic, centerfire rifles with a
3 detachable magazine, having one or more of the features that is prohibited by the
4 AWCA. Were it not for the prohibitions in the AWCA, and the fear of prosecution
5 for violating it, I would do so.

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

7 Executed within the United States on 21 MARCH, 2019.

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11 Dennis Martin
12 Declarant
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CERTIFICATE OF SERVICE
IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Case Name: *Rupp, et al. v. Becerra*
Case No.: 8:17-cv-00746-JLS-JDE

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

**DECLARATION OF DENNIS MARTIN IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

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Deputy Attorney General
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John D. Echeverria
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455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102

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

Executed March 25, 2019.

/s/Laura Palmerin
Laura Palmerin

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Facsimile: 562-216-4445

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

STEVEN RUPP, et al.,

Plaintiffs,

vs.

XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California,

Defendant.

Case No.: 8:17-cv-00746-JLS-JDE

**DECLARATION OF RICHARD
TRAVIS IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

Hearing Date: May 31, 2019
Hearing Time: 10:30 a.m.
Courtroom: 10A
Judge: Josephine L. Staton

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Brady, Steven Rupp, Steven Dember,
Cheryl Johnson, Christopher Seifert,
Alfonso Valencia, Troy Willis, Michael
Jones, and Dennis Martin]

DECLARATION OF RICHARD TRAVIS

I, Richard Travis, am the Executive Director for Plaintiff CALIFORNIA RIFLE & PISTOL ASSOCIATION, INCORPORATED (hereafter “CRPA”). I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

1. CRPA is a non-profit membership and donor-supported organization classified under IRC section 501(c)(4) and incorporated under the laws of California with its headquarters in Fullerton, California.

2. Founded in 1875, the CRPA seeks to defend the Second Amendment and advance laws that protect the rights of individual citizens. CRPA works to preserve the constitutional and statutory rights of gun ownership, including the right to self-defense, the right to hunt, and the right to keep and bear arms. CRPA is also dedicated to promoting the shooting sports, providing education, training, and organized competition for adult and junior shooters. CRPA’s members include law enforcement officers, prosecutors, professionals, firearms experts, and members of the public.

3. CRPA Works to preserve the constitutional rights of all law-abiding individuals, including the fundamental right to keep and bear commonly owned firearms for the core lawful purpose of self-defense.

4. I know members of Plaintiff CRPA who own semi-automatic, centerfire rifles with non-fixed magazines that were forced to register their firearm as an “assault weapon” with the California Department of Justice before July 1, 2018. These members are prohibited under the AWCA and its related regulations from replacing their firearm’s “bullet button” with a standard magazine release, and but for those restrictions would do so.

5. I know of members of Plaintiff CRPA who own firearms that were previously registered as “assault weapons,” including Category 1, Category 2, and Category 3 firearms.

1 6. Members of Plaintiff CRPA who lawfully own registered “assault
2 weapons” are prohibited by the AWCA and its related regulations from engaging in
3 certain activities that are otherwise lawful with any other firearm not classified as an
4 “assault weapon,” and but for those restrictions would engage in such activities with
5 their registered “assault weapon.”

6 7. I know of members of Plaintiff CRPA who, but for the AWCA and its
7 related regulations, would acquire, transfer, and/or possess firearms classified as
8 “assault weapons,” and are continuously and irreparably harmed by the ongoing
9 deprivation of their individual, fundamental right to possess and use commonly
10 possessed firearms for lawful purposes, including in-home self-defense, without
11 risking criminal prosecution.

12 I declare under penalty of perjury that the foregoing is true and correct.
13 Executed within the United States on March 25, 2019.

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Richard Travis
Declarant

CERTIFICATE OF SERVICE
IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Case Name: *Rupp, et al. v. Becerra*
Case No.: 8:17-cv-00746-JLS-JDE

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I am not a party to the above-entitled action. I have caused service of:

**DECLARATION OF RICHARD TRAVIS IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

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San Francisco, CA 94102

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

Executed March 25, 2019.

/s/Laura Palmerin
Laura Palmerin

XAVIER BECERRA
Attorney General of California
MARK R. BECKINGTON
Supervising Deputy Attorney General
JOHN D. ECHEVERRIA
Deputy Attorney General
PETER H. CHANG
Deputy Attorney General
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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

STEVEN RUPP, et al.,

Plaintiffs,

v.

**XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California, et al.,**

Defendants.

8:17-cv-00746-JLS-JDE

**DECLARATION OF PETER H.
CHANG IN SUPPORT OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Date: May 31, 2019
Time: 10:30 a.m.
Courtroom: 10A
Judge: Hon. Josephine L. Staton
Trial Date: N/A
Action Filed: April 24, 2017

I, Peter H. Chang, hereby declare and state the following:

1. I am a Deputy Attorney General at the California Department of Justice and serve as counsel to Attorney General Xavier Becerra in the above-titled matter.

2. I made this declaration in support of Defendant's Motion for Summary Judgement. Unless otherwise stated, I have personal knowledge of the facts set forth herein and am competent to testify thereto.

3. Attached are true and accurate copies of the following exhibits:

| Exhibit Number | Document Description | Page Number |
|-----------------------|---|--------------------|
| 1 | Expert Report and Declaration of John Donohue (Donohue Rpt.) | 1-117 |
| 2 | Expert Report and Declaration of Blake Graham (Graham Rpt.) | 118-132 |
| 3 | Expert Report and Declaration of Michael Mersereau (Mersereau Rpt.) | 133-143 |
| 4 | Expert Report and Declaration of Christopher Colwell (Colwell Rpt.) | 144-192 |
| 5 | Expert Report and Declaration of Lucy Allen (Allen Rpt.) | 193-231 |
| 6 | Updated Table and Appendix B to Expert Report of Lucy Allen (Exhibit 80 to Lucy Allen Deposition) | 232-244 |
| 7 | Rebuttal Expert Report and Declaration of John Donohue | 245-254 |
| 8 | Rebuttal Expert Report and Declaration of Blake Graham | 255-262 |
| 9 | Excerpts of Transcript of the Deposition of John Donohue | 263-289 |
| 10 | Excerpts of Transcript of the Deposition of Blake Graham | 290-341 |
| 11 | Excerpts of Transcript of the Deposition of Michael Mersereau | 342-393 |
| 12 | Excerpts of Transcript of the Deposition of Christopher Colwell | 394-435 |
| 13 | Excerpts of Transcript of the Deposition of Lucy Allen (Allen Dep.) | 436-471 |
| 14 | Excerpts of Transcript of the Deposition of J. Buford Boone (Boone Dep.) | 472-583 |
| 15 | Excerpts of Transcript of the Deposition of Gary Kleck (Kleck Dep.) | 584-730 |
| 16 | Excerpts of Transcript of the Deposition of Stephen Helsley (Helsley Dep.) | 731-877 |

| Exhibit Number | Document Description | Page Number |
|-----------------------|---|--------------------|
| 17 | Violence Policy Center, <i>Bullet Buttons: The Gun Industry's Attack on California's Assault Weapons Ban</i> (2012) | 878-888 |
| 18 | Defendant's Second Supplemental Response to Plaintiff Troy Willis's First Set of Interrogatories | 889-905 |
| 19 | Excerpt of United States Army, <i>Rifle Marksmanship M16/M4 - Series Weapons</i> (2008) | 906-926 |
| 20 | Brady Center to Prevent Gun Violence, <i>Assault Weapons "Mass Produced Mayhem"</i> (2008) | 927-989 |
| 21 | Excerpts of Bureau of Alcohol, Tobacco, and Firearms, <i>Department of the Treasury Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles</i> (1998) | 990-1042 |
| 22 | Bureau of Alcohol, Tobacco, and Firearms, <i>Report and Recommendation on the Importability of Certain Semiautomatic Rifles</i> (1989) (ATF Rpt.) | 1043-1061 |
| 23 | Christopher S. Koper, et al., <i>Criminal Use of Assault Weapons and High-Capacity Semiautomatic Firearms: an Updated Examination of Local and National Sources</i> , 95 <i>Journal of Urban Health</i> 3, 313-321 (2017) (Koper Article) | 1062-1070 |
| 24 | Colt.com, AR15A4 Advertisement | 1071-1071 |
| 25 | Colt.com, About Colt Rifles | 1072-1073 |
| 26 | David S. Fallis, <i>Data Indicate Drop in High-Capacity Magazines During Federal Gun Ban</i> , <i>Washington Post</i> (Jan. 10, 2013) | 1074-1077 |
| 27 | H.R. Rep. No. 103-489, Public Safety and Recreational Firearms Use Protection Act (H.R. Rep. 103-489) | 1078-1123 |
| 28 | Mark Follman, et al., <i>More than Half of Mass Shooters Used Assault Weapons and High-Capacity Magazines</i> , <i>Mother Jones</i> (Feb. 27, 2013) | 1124-1127 |
| 29 | S.B. 880 Report, 2015-2016 Reg. Sess., Assembly Committee on Public Safety (June 14, 2016) (S.B. 880 Rpt.) | 1128-1138 |
| 30 | U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, <i>Selection and Application Guide 0101.06 to Ballistic-Resistant Body Armor</i> (2014) | 1139-1242 |
| 31 | Violence Policy Center, <i>"Officer Down": Assault Weapons and the War on Law Enforcement</i> (2003) | 1243-1271 |
| 32 | Violence Policy Center, <i>The Militarization of the U.S. Civilian Firearms Market</i> (2011) | 1272-1324 |

| Exhibit Number | Document Description | Page Number |
|-----------------------|--|--------------------|
| 33 | Violence Policy Center, <i>Firearm Justifiable Homicides and Non-Fatal Self-Defense Gun Use: An Analysis of Federal Bureau of Investigation and National Crime Victimization Survey Data</i> (2018) | 1325-1342 |
| 34 | California Senate Bill 23, 1999 Cal. Stat. ch. 129 (S.B. 23) | 1343-1456 |
| 35 | Guns & Ammo: The New Breed of Assault Rifle, <i>Tomorrow's State-of-the-Art Sporting Rifle</i> (July 1981) (July 1981 Guns & Ammo) | 1457-1469 |
| 36 | Damien Cave and Charlotte Graham-McLay, <i>New Zealand to Ban Military-Style Semiautomatic Guns, Jacinda Arden Says</i> , New York Times (March 20, 2019) | 1470-1490 |
| 37 | Kaylee Hartung, et al., <i>Soneman Douglas shooting. Now parents are urged to be alert</i> , CNN (March 25, 2019) | 1491-1502 |
| 38 | Panagiotis K. Stefanopoulos, et al., <i>Gunshot wounds: A review of ballistics related to penetrating trauma</i> , Journal of Acute Disease, 178-185 (2014) | 1503-1510 |
| 39 | United States Census Bureau, <i>Quick Facts: California</i> (available at https://www.census.gov/quickfacts/ca) | 1511-1515 |
| 40 | Law Center to Prevent Gun Violence, <i>The California Model: Twenty Years of Putting Safety First</i> | 1516-1523 |
| 41 | U.S. DOJ Press Release, <i>California Man Charged with Conspiring to Provide Material Support to Terrorism and Being 'Straw Purchaser' of Assault Rifles Ultimately Used in San Bernardino, California, Attack</i> (Dec. 17, 2015) | 1524-1526 |
| 42 | Excerpt of National Shooting Sports Foundation, <i>NSSF Report: Modern Sporting Rifle (MSR) Comprehensive Consumer Report</i> (2013) | 1527-1535 |
| 43 | Excerpt of National Shooting Sports Foundation, <i>NSSF Report 2017 Edition: Firearms Retailer Survey Report, Trend Data 2008-2016</i> (2017) | 1536-1537 |
| 44 | FBI Training Division: FBI Academy, Quantico, VA, <i>Executive Summary of Justification for Law Enforcement Partners</i> (May 6, 2014) | 1538-1543 |
| 45 | Violence Policy Center, <i>Key Points About Assault Weapons</i> | 1544-1544 |

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 25, 2019, at San Francisco, California.

/s/ Peter H. Chang

Peter H. Chang
Deputy Attorney General

Exhibit 1

THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

RUPP, et al.,

Plaintiffs,

v.

**XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California; et al.,**

Defendants.

8:17-cv-00746-JLS-JDE

**EXPERT REPORT OF
JOHN J. DONOHUE**

BACKGROUND AND QUALIFICATIONS

1. I am the C. Wendell and Edith M. Carlsmith Professor of Law at Stanford Law School. (A copy of my complete cv is attached as Exhibit A.) After earning a law degree from Harvard and a Ph.D. in economics from Yale, I have been a member of the legal academy since 1986. I have previously held tenured positions as a chaired professor at both Yale Law School and Northwestern Law School. I have also been a visiting professor at a number of prominent law schools, including Harvard, Yale, the University of Chicago, Cornell, the University of Virginia, Oxford, Toin University (Tokyo), St. Gallens (Switzerland), and Renmin University (Beijing).

2. At Stanford, I regularly teach a course on empirical law and economics issues involving crime and criminal justice, and I have previously taught similar courses at Yale Law School, Tel Aviv University Law School, the Gerzensee Study Center in Switzerland, and St.

Gallen University School of Law in Switzerland. Since gun crime is such an important aspect of American criminal justice, my courses evaluate both the nature of gun regulation in the United States and the impact of gun regulation (or the lack thereof) on crime, which is an important part of my research, about which I have published extensively (as reflected in my c.v.). I have also consistently taught courses on law and statistics for two decades.

3. I am a Research Associate of the National Bureau of Economic Research, and a member of the American Academy of Arts and Sciences. I was a Fellow at the Center for Advanced Studies in Behavioral Sciences in 2000-01 and served as the co-editor (handling empirical articles) of the *American Law and Economics Review* for six years. I have also served as the President of the American Law and Economics Association and as Co-President of the Society of Empirical Legal Studies.

4. I am also a member of the Committee on Law and Justice of the National Research Council ("NRC"), which "reviews, synthesizes, and proposes research related to crime, law enforcement, and the administration of justice, and provides an intellectual resource for federal agencies and private groups." (See <http://www7.national-academies.org/claj/> online for more information about the NRC.)

5. I filed an expert declaration in each of two cases involving a National Rifle Association ("NRA") challenge to city restrictions on the possession of large-capacity magazines: *Fyock v. City of Sunnyvale*, United States District Court (N.D. Cal.), January 2014; *Herrera v. San Francisco*, United States District Court (N.D. Cal.), January 2014.

6. I also filed an expert declaration in a case involving an NRA challenge to Maryland's restrictions on assault weapons and large-capacity magazines: *Tardy v. O'Malley*, United States District Court (District of Maryland), February 2014. I filed an expert declaration,

and provided expert testimony, in response to a motion for a preliminary injunction in a case involving a challenge to New Jersey's restrictions on large-capacity magazines in *Association of New Jersey Rifle & Pistol Clubs, Inc. v. Grewal*, No. 3:18-cv-10507-PGS-LHG (D.N.J.)

7. In all these cases, the relevant gun regulations have (ultimately) been sustained in the relevant federal appellate courts (and in the New Jersey case the requested preliminary injunction to bar the implementation of the ban on high capacity magazines was denied on September 28, 2018).

8. I also filed (June 1, 2017) an expert declaration in a case involving a challenge to California's restrictions on carrying of weapons in public in *Flanagan v. Becerra*, United States District Court (C.D. Cal.), Case No. 2:16-cv-06164-JAK-AS and expert declarations on June 4, 2017 and June 16, 2017 in two separate cases challenging California's ban on the possession of large-capacity magazines: *Duncan v. Becerra*, United States District Court (S.D. Cal.), Case No. 17-cv-1017-BEN-JLB and *Weise v. Becerra*, United States District Court (E.D. Cal.), Case No. 2:17-cv-00903-WBS-KJN.

9. Finally, I recently filed an expert declaration in a case involving a challenge to Vermont's restrictions on large-capacity magazines in *Vermont Federation of Sportsmen's Clubs v. Birmingham*, No. 224-4-18 Wncv (Vermont Superior Court, Washington Unit).

10. I have been retained in this case by the California Attorney General. I am being compensated for my services in this matter at my usual government rate of \$425 per hour for consultation, review of documents, and preparation of my report, and \$850 per hour for deposition.

SUMMARY OF CONCLUSIONS

11. The problem of public mass shootings in the United States is a serious national problem that imposes substantial burdens on the American public far beyond the growing numbers of dead and injured victims that are besieged every year. Since so many of these shootings are committed by previously law-abiding citizens with no basis under current law to prevent them from possessing firearms and since such a large proportion of them die in the course of their deadly massacres, the available public-policy options to address this growing problem are limited. The empirical evidence indicates that efforts to arm the public with increased gun carrying is self-defeating since such measures generate substantial increases in violent crime.¹

12. It is a sound, evidenced-based, and longstanding harm-reducing strategy virtually uniformly embraced throughout the developed world for governments to place constraints on weapons because of the harm that weapons can inflict. Restrictions on weaponry most suitable for battlefield use – such as those prohibited under California’s assault weapons ban -- sit comfortably in this appropriate regulatory approach and can be expected to reduce deaths and injury from gun violence. Indeed, gun massacres fell substantially during the ten years of the federal assault weapons ban, and then rose sharply when the ban was lifted in 2004. FBI data show that the problem of active shooters inflicting mayhem on the public has been rising substantially since the end of the federal assault weapons ban.

¹ See Donohue, John, Abhay Aneja, and Kyle Weber, 2018, “Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Controls Analysis,” NBER Working Paper w23510, www.nber.org/papers/w23510.

13. One of the factors that led to the selection of assault rifles for use by the U.S. military was that they could generate such devastating and lethal wounds on the battlefield. This very fact underscores why any effort to reduce the death toll and the proliferation of the damaging wounds from mass shootings would seek to remove these weapons from the arsenal available to those who would turn them on the public.

14. Bans on assault weapons have little or no effect on the ability of individuals to possess weapons for self-defense in the home but should have a restraining impact on the effectiveness of those who have the criminal intent to kill as many individuals as possible. The assault weapons ban is thus well-tailored to limit the behavior of criminals engaging in the most dangerous forms of violent criminal behavior, and at the same time is likely to have little or no impact on the defensive capabilities of law-abiding citizens. This is especially true since the banned assault weapons are notably ill-suited for self-defense in the home because of their high penetration capacity, which leads their bullets to easily penetrate walls, thereby endangering other lawful occupants. Moreover, to the extent these weapons impose greater risks to law enforcement, one would expect that their presence would encumber police in ways that would put upward pressure on crime generally.²

15. It is my opinion that if, rather than allowing the federal assault weapons ban to lapse in 2004, the country had moved to a more complete ban, many of the gun tragedies of recent years would have been far less deadly and damaging to countless individuals who have been maimed and injured throughout the United States. California's ban on assault weapons is one tool in the important governmental effort to reduce the likelihood that Californians will be

² *Id.* (discussing the value of police in reducing crime and describing how the proliferation of dangerous weapons impairs police effectiveness).

killed in mass shootings by making it incrementally harder for prospective mass shooters to equip themselves with weapons that are both uniquely appealing to their criminal aspirations as well as uniquely designed to aid in their homicidal rampages.

16. Over the last few decades, the number of households owning firearms has been declining, currently down to about 31 percent of American households. At the same time, the growth in gun purchases reflects the highly concentrated rate of ownership with 20 percent of gunowners now owning 60 percent of the nation's firearms. Presumably, the ownership of assault weapons is at least as concentrated as gun ownership, but the fact that most Americans favor bans on assault weapons underscores the fact that only a relatively small minority of Americans owns these weapons.

17. The current level of assault weapons in circulation in the nation should have no bearing on whether the state of California is able to address the socially damaging and worsening problem of public mass shooting. A federal ban on assault weapons did, and could in the future, greatly curtail the number of assault weapons in circulation. A state's power to protect its citizenry cannot be lost simply because other jurisdictions either fail to take or delay in adopting such protective measures, especially when the threat from failing to act grows worse over time as in the case of public mass shootings.

DISCUSSION

Gun Ownership Is Becoming More Concentrated in a Declining Portion of the Population

18. A discussion of the social science literature concerning gun ownership rates must begin with the General Social Science Survey (GSS), which is an annual survey conducted by the National Opinion Research Center, headquartered at the University of Chicago. The GSS is widely regarded by social science researchers as the most reliable indicator of national social

trends, in part because of its professional implementation of face-to-face interviews using a very large sample size (the latest GSS data comes from 2,867 respondents versus roughly 1000 in a typical telephone survey) with a high response rate (always in excess of 70 percent versus telephone survey responses which have fallen below 10 percent in recent surveys). See Pew Research Center, "Assessing the Representativeness of Public Opinion Surveys," (May 15, 2012); <http://www.people-press.org/2012/05/15/assessing-the-representativeness-of-public-opinion-surveys/>.

19. GSS data from 2016, the most recent year that data is available, states that 30.8% of American households have at least one gun, and that 20.5% of adults personally own a gun. See Donohue & Rabbani, "Recent Trends in American Gun Prevalence," (attached as Exhibit B). A carefully executed 2015 national survey showed that 34% of households owned guns, and that ownership of private firearms is highly concentrated among a small percentage of gun owners.³

20. This is a considerable drop from the approximately 50% of United States households with one or more guns in the late 1970s, as reflected in GSS surveys. See Donohue & Rabbani, *supra*. Other national surveys show similar results, such as research by the Pew Research Center and the National Behavioral Risk Factor Surveillance System, which both find a persistent decline in household gun ownership over the past several decades. A recent report from the Pew Research Center states:

The Pew Research Center has tracked gun ownership since 1993, and our surveys largely confirm the General Social Survey trend. In our December 1993 survey, 45% reported having a gun in their household; in early 1994, the GSS found 44% saying they had a gun in their home. A January 2013 Pew Research Center survey found 33% saying they had a

³Azrael et al., "The Stock and Flow of US Firearms: Results from the 2015 National Firearms Survey," (Russell Sage Foundation J. Soc. Sci., forthcoming (2018) (attached as Exhibit C).

gun, rifle or pistol in their home, as did 34% in the 2012 wave of the General Social Survey.⁴

21. The weight of the survey evidence on gun ownership conducted over time shows that the percentage of households with guns today is lower than it was two decades ago.⁵

22. The evidence that gun ownership is concentrated is strong and uncontradicted. Researchers analyzing the results of a 2015 national survey found that 8% of individual gun owners reported owning ten or more firearms—collectively accounting for 39% of the American gun stock—and that 20% of gun owners, who owned the most guns collectively, possessed about 60% of the nation's guns.⁶ A decade earlier, researchers found a similar pattern: a 2004 survey indicated that 48% of gun owners possessed four or more guns and that the top 20% of firearms owners possessed 65% of all firearms.⁷

23. The FBI publishes records of the number of background checks requested, and such background checks are often initiated pursuant to a desired purchase of firearms. With only a couple of exceptions, the trend has been for the number of background checks conducted to grow every year.⁸ Gun industry trade groups cite increased background checks and an increase

⁴Pew Research Center, "Section 3: Gun Ownership Trends and Demographics," <http://www.people-press.org/2013/03/12/section-3-gun-ownership-trends-and-demographics>.

⁵While the GSS in 2016 put the percentage of American households with guns at less than 31%, the most recent Gallup survey found that 39% of American adults live in a household that contains a gun, and 29% personally own one. There is no consensus about why Gallup's estimates are somewhat higher than those from the more reliable GSS (and Pew) surveys, but it should be noted that the Gallup polls are far smaller surveys based on less reliable telephone interviews with dramatically lower response rates than the GSS. In any event, even the Gallup results confirm the long-term decline in the proportion of American households owning firearms.

⁶See Azrael et al., *supra*.

⁷Hepburn et al., "The US Gun Stock: Results from the 2004 National Firearms Survey," *Injury Prevention* 2007;13:15–19.

⁸See National Instant Criminal Background Check System (NICS) Firearm Checks: Month/Year 2017, available at https://www.fbi.gov/file-repository/nics_firearm_checks_-_month_year.pdf/view.

in collections of the federal excise taxes collected on the sale of firearms and ammunition as reflecting strong demand for firearms.⁹

24. Because reliable social science data shows that the number of households that own guns has likely dropped in recent decades, and certainly has not grown, it seems most likely that robust gun sales can be attributed not to increasingly broad gun ownership but instead largely to purchases of guns by members of households that previously owned guns.

25. While the precise number of American households that own assault weapons nationally is uncertain,¹⁰ it is clear that most gun-owning households do *not* possess these types of weapons.

26. Accordingly, the share of households containing an assault weapon will only be a subset of gun owners. This minority status of assault weapon ownership by household reflects the judgment of most Americans that assault weapons are not important to their self-defense.

27. The limited minority status of assault weapon ownership is also underscored by the large majority of Americans who support bans on assault weapons. This is certainly evident for California where the November 2016 ban on assaults weapons that is attacked in this litigation was approved by an almost 2-1 majority. It is also true nationally. A poll conducted for the *New York Times* from June 17-20, 2016 among a national sample of 1975 registered voters found that 67 percent of Americans favored such a ban. Importantly, the *New York Times* also polled “32 current or retired academics in criminology, public health and law, who have

⁹See, e.g., NRA-ILA, “The Myth Of “Declining” Gun Ownership,” (Jul. 13, 2016), available at <http://dailycaller.com/2016/07/13/the-myth-of-declining-gun-ownership/>.

¹⁰ Kate Irby, “Nobody knows exactly how many assault rifles exist in the U.S. – by design,” *McClatchy*, February 23, 2018, <https://www.mcclatchydc.com/news/nation-world/national/article201882739.html>. References to the number of guns manufactured in or imported into the U.S. can be misleading since they may fail to distinguish between guns provided to the military or guns subsequently transported, legally or illegally, to other countries.

published extensively in peer-reviewed academic journals on gun policy” to ask them what measures would be most effective in dealing with America’s mass shooting problem, and an assault weapons ban was deemed overall by this panel to be the single most effective measure.¹¹

28. Less than a year later, a Pew Research Center survey among 3,930 adults (conducted from March 13-27 and April 4-18, 2017) showed broad opposition to assault weapons across the political spectrum.¹² While overall, 68 percent favored banning assault weapons, even a solid 54 percent of Republicans (or those who lean Republican), as well as an overwhelming 80 percent of Democrats (or those leaning in that direction) did so.¹³ Note that this poll was conducted *prior* to two of the five deadliest mass shootings in modern US history, which occurred in October and November of 2017: “a staggering 58 people were killed and more than 500 were hurt when [Steven Paddock] opened fire on a Las Vegas concert and at least 26 people were killed in a Texas church” only five weeks later.¹⁴

29. The latest Pew survey results released on October 18, 2018 showed that the identical percentage of Americans – 67 percent – favored bans on assault weapons and on high-capacity magazines.¹⁵

¹¹ The list of 32 experts included not only me, but also many strong NRA supporters: Gary Kleck, John Lott, David Kopel, Carlisle E. Moody, and Eugene Volokh. Margot Sanger-Katz And Quoc Trung Bui, “How to Reduce Mass Shooting Deaths? Experts Rank Gun Laws,” *New York Times*, October 5, 2017, <https://www.nytimes.com/interactive/2017/10/05/upshot/how-to-reduce-mass-shooting-deaths-experts-say-these-gun-laws-could-help.html>.

¹² Ruth Igielnik and Anna Brown, “Key takeaways on Americans’ views of guns and gun ownership,” Pew Research Center, June 22, 2017, <http://www.pewresearch.org/fact-tank/2017/06/22/key-takeaways-on-americans-views-of-guns-and-gun-ownership/>

¹³ Ryan Struyk, “Here are the gun control policies that majorities in both parties support,” *CNN*, November 6, 2017, <https://www.cnn.com/2017/10/02/politics/bipartisan-gun-control-policies-majorities/index.html>.

¹⁴ *Id.*

¹⁵ Pew Research Center, “Gun Policy Remains Divisive, But Several Proposals Still Draw Bipartisan Support,” October 18, 2018, <http://www.people-press.org/2018/10/18/gun-policy-remains-divisive-but-several-proposals-still-draw-bipartisan-support/>. This survey had 5307 respondents and was conducted from September 24 through October 7, 2018.

Weapons Restrictions Have Historically Followed Growing Criminal Abuse

30. Restrictions on weaponry have historically corresponded with increased use and abuse, rather than with new inventions. This makes sense because it is not necessarily immediately clear when something new is invented whether its widespread use will have an adverse impact on public safety.

31. The first group of state restrictions on weapons deemed inappropriate for civilian use were adopted in the 1920s and 1930s after weapons like the Tommy gun became a preferred weapon for gangsters.¹⁶ More recently, the sharp increases in crime in the 1980s as more powerful weaponry started to proliferate led to a second round of restrictions limiting magazine capacity and banning assault weapons, including the now expired 10 year federal assault weapons ban of 1994-2004.¹⁷ State restrictions continued to be adopted following the expiration of the federal ban, often in response to public mass shootings.

The Devastating Problem of Public Mass Shootings Is Getting Worse

32. Any discussion of assault weapons must address the tragic problem of public mass shootings. While some find comfort that the deaths from mass shootings are only a relatively small portion of the total homicides in the United States, this fact should not obscure that major public mass shootings cause profound damage far beyond the mere body counts of the dead and injured.

33. Public mass shootings are particularly high-visibility events that are quite shocking to the public and unsettling to the sense of public safety. Horrific mass shootings---such as those perpetrated by Adam Lanza at Sandy Hook School, Stephen Paddock in Las

¹⁶ See Robert J. Spitzer, *Gun Law History in the United States and Second Amendment Rights*, 80 Law & Contemp. Probs. 55, 68 (2017).

¹⁷ See 1990 N.J. Sess. Law Serv. 32 (West); Haw. Rev. Stat. Ann § 34-(8); Pub. L. 103-322, § 110103 (Sep. 13, 1994).

Vegas, or by ISIS sympathizers at Inland Regional Center in San Bernardino¹⁸ and at Pulse in Orlando¹⁹-- although small in number compared to the total number of homicides, have generated widespread apprehension and increased demand for effective responses from government. It is abundantly clear that the horrors of a mass shooting such as the killing of 20 students and 6 teachers at Sandy Hook Elementary School in Newtown, Connecticut in December 2012 inflicted psychological distress far beyond the contours of that small community and indeed caused suffering throughout the state and indeed the entire country (and the world).

34. Although the long-term secular trend in overall crime has been benign over the last 25 years, the opposite is true for the trend in public mass shootings. According to a report of the Congressional Research Service, there were an average of 2.7 events public mass shootings per year in the 1980s rising to an average of 4.5 events per year from 2010 to 2013.²⁰

35. Writing in May of this year, Louis Klarevas, an Associate Lecturer of Global Affairs at the University of Massachusetts-Boston, noted:

"Last week's school shooting in Texas marks a new milestone in American history. It's the first time we have ever experienced four gun massacres resulting in double-digit fatalities within a 12-month period.

In October 2017, 58 were killed at a concert in Las Vegas. A month later, 26 were killed at a church in Sutherland Springs, Texas. Earlier this year, 17 people lost their

¹⁸Christine Hauser, San Bernardino Shooting: The Investigation So Far, N.Y. Times (Dec. 4, 2015), <http://www.nytimes.com/2015/12/05/us/san-bernardino-shooting-the-investigation-so-far.html> (on file with the Columbia Law Review) (noting fourteen were killed in December 2015).

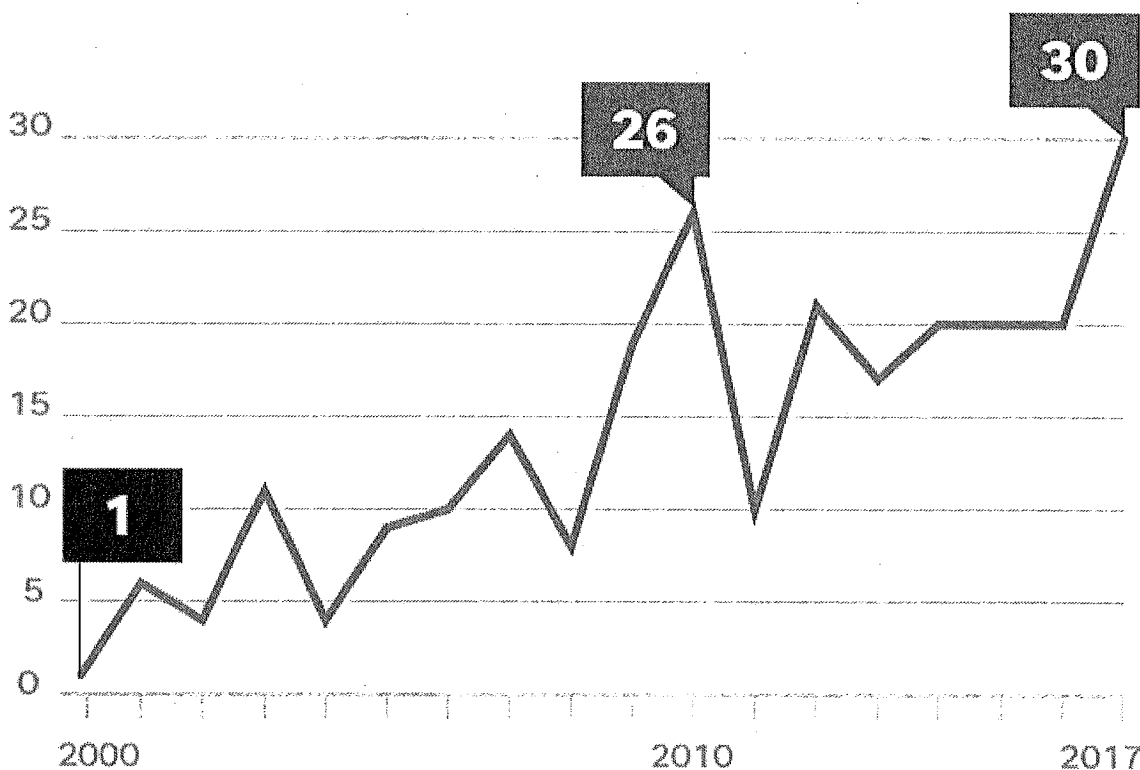
¹⁹Gregor Aisch et al., What Happened Inside the Orlando Nightclub, N.Y. Times (June 12, 2016), <http://www.nytimes.com/interactive/2016/06/12/us/what-happened-at-the-orlando-nightclub-shooting.html> (on file with the Columbia Law Review) (noting a gunman killed forty-nine in a June 2016 attack).

²⁰William J. Krouse & Daniel J. Richardson, Cong. Research Serv., R44126, Mass Murder with Firearms: Incidents and Victims, 1999--2013, at 14--15 (2015), <http://fas.org/sgp/crs/misc/R44126.pdf> [<http://perma.cc/RC4C-SP48>]; Mark Follman, Yes, Mass Shootings Are Occurring More Often, Mother Jones (Oct. 21, 2014, 5:05 am), <http://www.motherjones.com/politics/2014/10/mass-shootings-rising-harvard>

lives at a high school in Parkland, Fl. And to this list we can now add the 10 people who lost their lives at a high school in Santa Fe, Texas.”²¹

36. The latest data from the FBI underscores that the active shooter problem in the United States is growing, as illustrated in the following figure:

Active shooter incidents on the rise, with 2017 topping all years since 2000.



SOURCE FBI data and the FBI's report on active shooter incidents in the United States in 2016 and 2017

<https://www.usatoday.com/story/news/2018/06/20/fbi-most-active-shooters-dont-have-mental-illness-get-guns-legally/718283002/>

²¹Louis Klarevas, “After the Santa Fe massacre, bury the 'good guy with a gun' myth: Armed staffers won't deter shooters or keep kids safe,” *New York Daily News*, May 22, 2018, <http://www.nydailynews.com/opinion/santa-fe-massacre-bury-good-guy-gun-myth-article-1.4003952>

The ominous and steep upward trend in the FBI data charting the growth in active shooter incidents is unmistakable. Not surprisingly, the number of mass shootings clearly is higher following the termination of the federal assault weapons ban in 2004. Indeed, the FBI noted in its 2014 active shooter report that from 2000-2006 there were 6.4 active shooter incidents per year and that from 2007-2013 that number rose to 16.4 per year. The mayhem accelerated in 2014 and 2015, during which 20 incidents occurred each year,²² and jumped further to 25 per year in 2016 and 2017.²³

37. In addition to the well-documented overall increase in public mass shootings in the United States, there has been an equally dramatic rise of these events in school settings.²⁴ Indeed, the authors of a recent study on mass school shootings concludes that "More people have died or been injured in mass school shootings in the US in the past 18 years than in the entire 20th century."²⁵ The impact of the elevated stress experienced by students and parents across the country as the reality of America's tragic mass shooting problem penetrates their consciousness is undeniable. While these horrendous gun massacres are relatively rare, each one harms tens of millions if not hundreds of millions beyond those killed or wounded at the scene.

²² FBI, "Active Shooter Incidents in the United States in 2014 and 2015," [file:///Users/jjd/Downloads/ActiveShooterIncidentsUS_2014-2015%20\(1\).pdf](file:///Users/jjd/Downloads/ActiveShooterIncidentsUS_2014-2015%20(1).pdf).

²³ FBI, "Active Shooter Incidents in the United States in 2016 and 2017," <https://www.fbi.gov/file-repository/active-shooter-incidents-us-2016-2017.pdf/view>.

²⁴ Antonis Katsiyannis, Denise K. Whitford, Robin Parks Ennis. Historical Examination of United States Intentional Mass School Shootings in the 20th and 21st Centuries: Implications for Students, Schools, and Society. *Journal of Child and Family Studies*, 2018; DOI: 10.1007/s10826-018-1096-2.

²⁵Springer. "Rapid rise in mass school shootings in the United States, study shows: Researchers call for action to address worrying increase in the number of mass school shootings in past two decades." ScienceDaily. ScienceDaily, 19 April 2018. <www.sciencedaily.com/releases/2018/04/180419131025.htm>.

38. A considerable scientific literature has documented the significant emotional and mental health harms that mass shootings inflict on survivors, community members, wounded victims, active responders, and children. The consistent finding of these studies is that mass shooting can lead to increased levels of post-traumatic stress disorder (PTSD), anxiety, and depression.²⁶ For example, on February 14, 2008, Steven Kazmierczak opened fire in a crowd of Northern Illinois University students, killing 5 people and wounding 17 more before killing himself. This shooting led to dramatic increases in the levels of post-traumatic stress (PTS) symptoms in a sample of Northern Illinois University students.²⁷

39. Similar findings were reported in a Norway study of survivors of the 2011 Norway shooting, when Anders Breivik killed 67 people and wounded at least 32.²⁸ Four to five months following the shooting, survivors were six times more likely to exhibit elevated PTS symptoms compared to an age- and gender-adjusted sample derived from the overall population.

²⁶ Shultz, James M., Siri Thoresen, Brian W. Flynn, et al. 2014. "Multiple Vantage Points on the Mental Health Effects of Mass Shootings." *Current Psychiatry Reports*. 16:469. To complete this meta-analysis of the scientific literature from 2010 to early 2014, the authors searched the PUBMED, SCOPUS, PILOTS, PSYCINFO, and CINAHL databases using combinations of terms for mass shooting incidents with MeSH (Medical Subject Heading) vocabulary on mental health.

²⁷ Bardeen, Joseph R., Mandy J. Jumpula, and Holly K. Orcutt. 2013. "Emotional regulation difficulties as a prospective predictors of posttraumatic stress symptoms following a mass shooting." *Journal of Anxiety Disorders* 27, no.2 (March): 188-196. This longitudinal study assessed the presence of PTS symptoms in a sample of female undergraduates at Northern Illinois University at three time points: T1, the starting period (pre-shooting) (n=1,045), T2, short term post-shooting (17-100 days post-shooting, n=691), and T3, roughly 7-8 months post-shooting (n=588). In the sample of 691 students that were assessed at T1 and T2, clinically significant levels of PTS rose from 20% pre-shooting to almost 50% post-shooting.

²⁸ Dyb, Grete, Tine K. Jensen, Egil Nygaard, et al. 2014. "Post-traumatic stress reactions in survivors of the 2011 massacre on Utoya Island, Norway." *The British Journal of Psychiatry* 204, no. 5 (May): 361-367. Of the 490 survivors from the Utoya shooting invited to participate in the study, 325 agreed. Semi-structured face-to-face interviews were conducted by health personnel approximately 4-5 months after the shooting.

More generally, survivors of serious gunshot injuries and multiple victim incidents involving intentionally inflicted harm are at higher risk of experiencing PTS symptoms.²⁹

40. Shultz et al. (2014) report that those who have experienced previous trauma or psychological disorders are especially vulnerable to potential mental health problems after a mass shooting.³⁰ Children are more susceptible to experiencing symptoms of PTS following a mass shooting. For example, Elklit and Kurdahl (2013) found that seven months after a mass public shooting at a Danish high school, 35% of students reported PTS symptoms and 7% had PTSD.³¹

²⁹ Greenspan, Arlene I., and Arthur L. Kellerman. 2002. "Physical and Psychological Outcomes 8 Months After Serious Gunshot Injury." *The Journal of Trauma: Injury, Infection and Critical Care* 53, no.4 (Oct): 709-716. This study interviewed 60 patients who were admitted to a Level 1 trauma center for firearm-related injuries, first, at the time of their hospitalization, and second, 8 months after they were discharged. Most respondents indicated symptoms of PTS 8-months post-discharge, with 39% reporting severe symptoms of intrusion and 42% reporting severe avoidance behaviors.

Santiago, Patcho N., Robert J. Ursano, Christine L. Gray, et al. 2013. "A Systematic Review of PTSD Prevalence and Trajectories in DSM-5 Defined Trauma Exposed Populations: Intentional and Non-Intentional Traumatic Events." *PLoS One* 8, no. 4 (April). The authors identified 2,537 articles published from January 1, 1998 to December 31, 2010 and covering longitudinal studies of directly exposed trauma populations. Of these articles, they closely surveyed 58 articles that met the DSM-5 definition of having experienced a traumatic event and assessed PTSD symptoms at two or more time points within a 12-month window. The authors found that in the 5 studies with sufficient data, a median of 37.5% of individuals exposed to intentional traumatic events developed PTSD.

³⁰ Bardeen, Joseph R., Mandy J. Jumpula, and Holly K. Orcutt. 2013. "Emotion regulation difficulties as a prospective predictors of posttraumatic stress symptoms following a mass shooting." *Journal of Anxiety Disorders* 27, no.2 (March): 188-196. (See fn 25 for description of study). Littleton, Heather, Amie E. Grills-Tauchel, Danny Axsom, et al. 2012. "Prior Sexual Trauma and Adjustment Following the Virginia Tech Campus Shooting: Examination of the Mediating Role of Schemas." *Journal of Psychological Trauma* 4, no.6 (Nov): 579-586. This study had interviewed 215 Virginia Tech college women prior to the school's mass shooting and then followed up with them two months and then one year after the shooting. The authors compared the post-shooting PTSD and depression symptoms of women with and without a history of sexual trauma. The authors found that women who had experienced sexual trauma reported significantly higher levels of depression ($p=0.006$) and shooting-related PTSD symptoms ($p=0.04$) in the post-shooting interview.

³¹ Elklit, Ask, and Sessel Kurdahl. 2013. "The psychological reactions after witnessing a

41. In addition to the effects on victims and survivors of mass shootings, the surrounding community can be strongly negatively affected. The most important study of this phenomenon, following the Breivik shooting in Norway, found measurable increases in stress reactions in the general population, with the effects especially strong for young people with a prior history of trauma.³²

What Public Policy Measures Can Address This Growing Menace?

42. In response to the growing list of gun tragedies, President Obama signed into law in 2013 the Investigative Assistance for Violent Crimes Act of 2012, which granted authority to the U.S. Attorney General to assist in the investigation of “violent acts and shootings occurring in a place of public use” and in the investigation of “mass killings and attempted mass killings.”³³

killing in public in a Danish high school.” *European Journal of Traumatology* 4, (Jan). Seven months after the mass public shooting, researchers administered the Harvard Trauma Questionnaire to Danish students in the second and third grade of high school (this is roughly equivalent to the final two years of high school in the US system). The questionnaire was also mailed to parents’ addresses of students who had graduated in June. Of the 415 students enrolled at the time of the shooting, 320 students returned the questionnaire.

³² Thoresen, Siri, Helene Flood Aakvaag, Tore Wentzel-Larsen, et al. 2012. “The day Norway cried: Proximity and distress in Norwegian citizens following, 22nd July 2011 terrorist attacks in Oslo and on Utoya Island.” *European Journal of Traumatology* 3, (Nov). The study drew a representative sample from the Norwegian Population Registry. A total of 465 individuals living in Oslo and 716 individuals living in other parts of Norway were interviewed over the phone 4-5 months after the Breivik attacks. Nordanger, Dag, Kyrre Breivik, Bente Storm Haugland, et al. 2014. “Prior adversities predict posttraumatic stress reactions in adolescents following the Oslo terror events 2011.” *European Journal of Traumatology* 5, (May). The study was based on a survey of 10,220 Norwegian high school students that was conducted 7 months after the Oslo and Utoya terrorist attacks. It collected information both on adverse life experiences (e.g. exposure to sexual trauma, violence, etc.) and the exposure and reactions to the Breivik attacks.

³³ Blair, J. Pete, and Schweit, Katherine W. (2014). “A Study of Active Shooter Incidents, 2000 - 2013.” Texas State University and Federal Bureau of Investigation, U.S. Department of Justice, Washington D.C. 2014, at 4.

43. To better understand the nature of these threats, the Federal Bureau of Investigation (FBI) in 2014 initiated a study of “active shooter” incidents designed to identify the prevalence of and trend in these events, how they unfolded, what brought them to an end, and other details that would be of assistance to law enforcement (Id.).³⁴

44. The FBI’s analysis of active shooters over age 18 found that 65 percent had no adult convictions prior to the active shooting event.³⁵ In other words, most active shooters are “law-abiding citizens” in the jargon of the complaint in this case – until they launch their untended homicidal rampages. Moreover, the FBI report found that only a tiny fraction would have qualified as “adjudicated mental defectives” that would have been barred from possessing weapons.³⁶ In other words, the lack of a basis for prohibiting gun ownership under current law for most active shooters means that tighter background checks would not have likely blocked their homicidal objectives.

45. Nor can we hope to limit these horrific crimes by simply increasing the penalties on mass shooters or elevating the probability of apprehension once their crime is completed since almost all mass killers are either captured, commit suicide, or are killed at the scene.³⁷

46. Indeed, it was the availability of weapons to these individuals that enabled them to initiate such deadly attacks. Note the contrast of a school attack in China that occurred only

³⁴ Note that if an active shooter bent on inflicting widespread casualties is stopped quickly enough, this incident would not appear in a count of “public mass shootings” that required, say, at least four individuals to be shot and killed, not counting the shooter (which is a standard, although not the only, definition of a mass shooting).

³⁵ Silver, J., Simons, A., & Craun, S. (2018). A Study of the Pre-Attack Behaviors of Active Shooters in the United States Between 2000 – 2013. Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C. 20535.

³⁶ The Gun Control Act of 1968 prohibits gun possession by felons and adjudicated “mental defectives” (18 U.S.C. §922 (d) (4) 2016).

³⁷ According to the FBI, in 156 of the 160 episodes, the mass shooter was either captured, committed suicide (64 cases), or was killed (30 cases). Blair, J. Pete, and Schweit, Katherine W. (2014). “A Study of Active Shooter Incidents, 2000 - 2013.” Texas State University and Federal Bureau of Investigation, U.S. Department of Justice, Washington D.C. 2014.

hours before Adam Lanza used an assault weapon armed with 30 round magazines to kill 26: while 22 children and an adult were injured in the attack in China, no one died – because the killer used a knife.³⁸ In light of this and the limited other public policy options designed to curtail the death and injury toll from public mass shootings, an important tool in trying to reduce the harm these mass killers can commit is to reduce the destructive power of the weaponry that they already have or can acquire through purchase or theft, which is the central goal of California's ban on assault weapons and high capacity magazines.

47. A common refrain from the gun industry is that by promoting gun sales and gun carrying, one might curtail the mayhem in a mass shooting as a law-abiding gun carrier could quickly end the unfolding crime. There are two problems with this prescription. First, stopping a mass shooting is a perilous endeavor and untrained individuals likely added more to the mayhem than they have been able to curtail. Second, the best evidence suggests that increased gun carrying in the population leads to higher rates of violent crime, so the alleged remedy to the problem of mass shootings comes at a very steep price. These points are spelled out in detail in my work estimating the impact of laws allowing citizens to carry concealed handguns on crime.³⁹

48. Even well-intentioned interventions by permit holders intending to stop a crime have elevated the crime count when they ended with the permit holder either being killed by the criminal or shooting an innocent party by mistake. Indeed, an FBI study of 160 active shooter incidents found that in almost half (21 of 45) of the situations in which police engaged the

³⁸ Mallory Ortberg, "Man Arrested in China After Knife Attack on Students," <http://gawker.com/5968740/man-arrested-in-china-after-knife-attack-on-students>.

³⁹ Donohue, John, Abhay Aneja, and Kyle Weber, 2018, "Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Controls Analysis," NBER Working Paper w23510, www.nber.org/papers/w23510.

shooter to end the threat, law enforcement suffered casualties, totaling nine killed and 28 wounded. One would assume the danger to an untrained permit holder trying to confront an active shooter would be greater than that of a trained professional, which may in part explain why effective intervention in such cases by permit holders to thwart crime is so rare. While the same FBI report found that in 21 of a total of 160 active shooter incidents between 2000 and 2013, “the situation ended after unarmed citizens safely and successfully restrained the shooter,” there was only one case – in a bar in Winnemucca, Nevada in 2008 – in which a private citizen other than an armed security guard stopped a shooter, and that individual was an active-duty Marine.⁴⁰

49. Moreover, the notion of arming the populace to stop public mass shootings must contend with the consequences of increasing gun carrying. Here the best evidence shows that the increased gun carrying that follows from state adoption of right-to-carry laws leads to increases in violent crime of from 13-15 percent over the ensuing ten years. In other words, any attempt to curtail public mass shootings with more gun carrying will result in an array of unforeseen and unwanted consequences ranging from more gun thefts and added burdens on law enforcement to more unlawful use of weapons that on balance increases violent crime substantially.⁴¹

Banning Assault Weapons Should Save Lives and Reduce Injuries

50. With only 5 percent of the world’s population, the U.S. has roughly one-third of the public mass shootings across 171 countries since the late 1960s.⁴² It is widely recognized

⁴⁰ See, Id. at 8 for the details on these issues.

⁴¹ Id.

⁴² Lankford, Adam, “Public Mass Shooters and Firearms: A Cross-National Study of 171 Countries,” *Violence and Victims*, Vol 31, Issue 2, DOI: 10.1891/0886-6708.VV-D-15-00093, <http://connect.springerpub.com/content/sgrvv/31/2/187>.

that gun control can limit the extent of gun violence, and a variety of measures have been adopted throughout the developed world, including efforts to restrict who has access to weapons and where they may be carried and to restrict the types of guns in circulation and the size of ammunition magazines. As two political scientists explain, there are two primary rationales behind such measures: “One, they make it less likely that someone intent on violence will be able to get a gun. And two, by making the weapon less deadly, gun control laws reduce the danger that the victim of a gun attack will die.”⁴³

51. California adopted the restrictions at issue in this litigation in pursuit of this public safety rationale. California SB 880, which was signed into law on July 1, 2016, expanded the definition of “assault weapons” under Cal. Penal Code § 30515. The objective of the legislation is demonstrated by the attributes of the banned weapons. For example, § 30515(a)(1) identifies certain problematic attributes of rifles with detachable magazines:

- (A) A pistol grip that protrudes conspicuously beneath the action of the weapon.
- (B) A thumbhole stock.
- (C) A folding or telescoping stock.
- (D) A grenade launcher or flare launcher.
- (E) A flash suppressor.
- (F) A forward pistol grip.

52. The goal behind the delineation of these problematic attributes is to reduce the prevalence of weapons that will be most effective for committing mass murder or the type of rapid, sustained deadly fire that would be most advantageous for criminal purposes. As Senator Mark Warner notes in referring to a proposed federal assault weapons ban, we must “recognize that the features and tactical accessories that define assault weapons under this legislation were

⁴³Jonathan Spiegler and Jacob Smith, “More mental health care alone will not stop gun violence,” *The Conversation*, June 19, 2018, <https://theconversation.com/more-mental-health-care-alone-will-not-stop-gun-violence-94201>

designed for a specific purpose — to give soldiers an advantage over the enemy, not to mow down students in school hallways.”⁴⁴

53. Rifles that incorporate military-style features add to their capacity to enhance the death toll in a public mass shooting event: pistol grips and thumbhole stocks enable easier spray-firing; a collapsible or folding stock allows the weapon to be shortened and more easily concealed;⁴⁵ and a flash suppressor shields the shooter from blinding muzzle flashes during sustained rapid fire.⁴⁶ As a consequence, these attributes make these weapons particularly appealing to mass shooters, drug traffickers, and people who may want to exchange fire with law enforcement.⁴⁷

54. Assault weapons, at least of the long gun variety, tend to have higher muzzle velocities than, for instance, handguns.⁴⁸ They also tend to utilize .223 rounds, which are designed to fragment and mushroom in a person’s body.⁴⁹ These two factors in conjunction mean

⁴⁴ Mark Warner, “I voted against an assault weapons ban. Here’s why I changed my mind,” *The Washington Post*, October 1, 2018, https://www.washingtonpost.com/opinions/i-voted-against-an-assault-weapons-ban-heres-why-i-changed-my-mind/2018/10/01/3bfa76a0-c594-11e8-9b1c-a90f1daae309_story.html?noredirect=on&utm_term=.cc81495be426

⁴⁵ Erica Goodejan, “Even Defining ‘Assault Rifles’ Is Complicated,” *The New York Times* January 16, 2013, <https://www.nytimes.com/2013/01/17/us/even-defining-assault-weapons-is-complicated.html>.

⁴⁶ See *Rovella Aff.* ¶¶ 34-38, *Shew v. Malloy*, 994 F. Supp. 2d 234 (D. Conn. 2014), *aff’d in part, rev’d in part sub nom. New York State Rifle & Pistol Ass’n, Inc. v. Cuomo*, 804 F.3d 242 (2d Cir. 2015); H.R. Rep. No. 103-489 (1994) at 18-19.

⁴⁷ See H.R. Rep. No. 103-489 (1994) at 14-16; Brady Center to Prevent Gun Violence, *Assault Weapons: Mass Produced Mayhem*, October 7, 2008, available at <http://www.bradycampaign.org/resources/assault-weapons-mass-produced-mayhem> (last visited Oct. 12, 2018) at 3; Batts Decl. ¶¶ 33, *Kolbe v. O’Malley*, 42 F. Supp. 3d 768 (D. Md. 2014), *aff’d in part, vacated in part, remanded sub nom. Kolbe v. Hogan*, 813 F.3d 160 (4th Cir. 2016), *on reh’g en banc*, 849 F.3d 114 (4th Cir. 2017), and *aff’d sub nom. Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017).

⁴⁸ See Defts’ Stmt. Docket Entry 63 ¶¶ 44-45, 58-59, 61, 64-65, *Worman v. Healey*, 1-17-CV-10107, 293 F. Supp. 3d 251 (D. Mass. 2018).

⁴⁹ See Batts Decl. ¶¶ 44-45, *Kolbe v. O’Malley*, 42 F. Supp. 3d 768 (D. Md. 2014), *aff’d in part, vacated in part, remanded sub nom. Kolbe v. Hogan*, 813 F.3d 160 (4th Cir. 2016), *on reh’g*

that injuries from being shot by assault weapons tend to cause more complex damage to the body in ways that make these wounds more dangerous in both the short and long term.⁵⁰

55. Indeed, the experience from before, during, and after the ten-year period from 1994-2004 when the federal assault weapons ban was in effect provides important evidence that this federal law saved lives and reduced the mayhem from the deadliest mass shootings.

56. Louis Klarevas, the author of *Rampage Nation: Securing America from Mass Shootings* (Amherst, NY: Prometheus 2016), has illustrated in his graphic (reproduced below) that the federal assault weapons ban appears to have been quite successful in limiting the most deadly mass shootings. Examining gun massacres in which at least six were killed, Klarevas found that, from 1994-2004, there were only 12 such incidents – slightly over one per year – resulting in 89 deaths. In the following decade, when the federal assault weapons ban was no longer in place, there was a dramatic surge in both the number of gun massacres and the total death toll: From 2004-2014, the number of gun massacres rose from 12 to 34 and the number of gun deaths jumped from 89 to 302. Moreover, the dramatic jump in gun massacres in the ten years following the end of the assault weapons ban is in contrast to the downward drift in overall crime over this period, which further buttresses the link between the proliferation of assault weapons following the lapse in the federal assault weapon ban and the increased number of gun massacres. As the following figure shows, when one compares the ten years prior to the federal assault weapons ban to the ten years under that ban, we see a 37 percent drop in the number of gun massacres (from 19 down to 12) and 43 percent drop in the number of fatalities (falling from

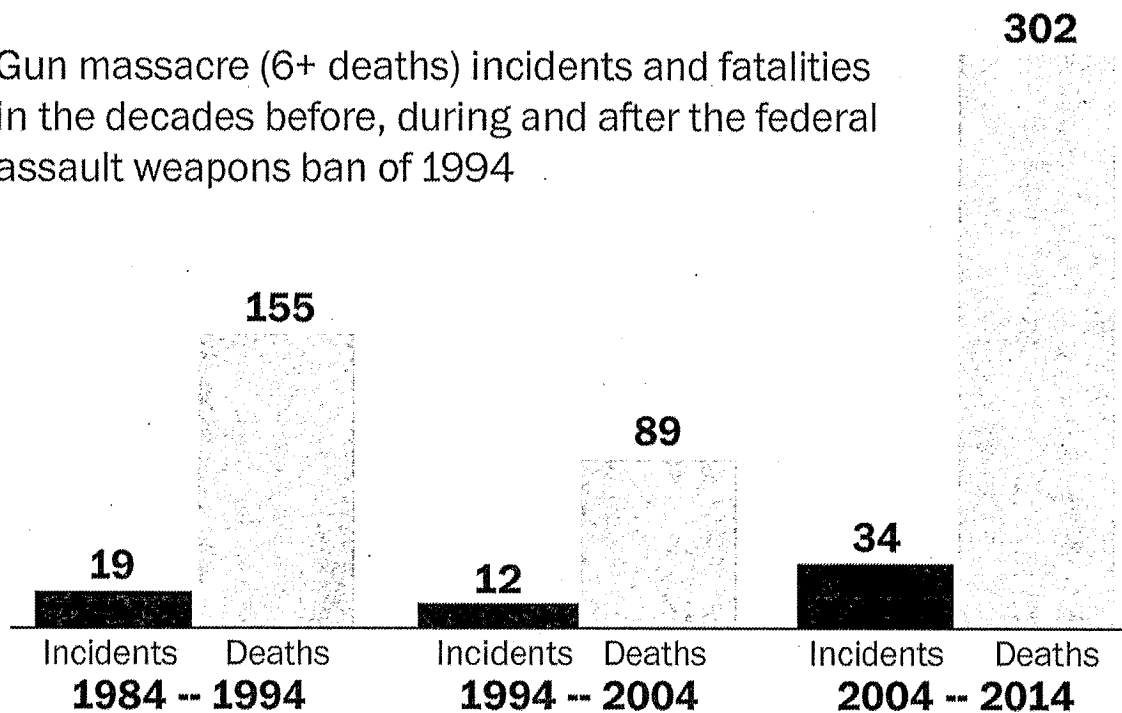
en banc, 849 F.3d 114 (4th Cir. 2017), and *aff'd sub nom. Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017); *Rovella Aff.* ¶¶ 39, *Shew v. Malloy*, 994 F. Supp. 2d 234 (D. Conn. 2014), *aff'd in part, rev'd in part sub nom. New York State Rifle & Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242 (2d Cir. 2015); Duncan Long, *The Complete AR-15/M16 Sourcebook* (2d ed.), 2001 at 50; Colwell Decl. at 2-4, *Worman v. Healey*, 293 F. Supp. 3d 251 (D. Mass. 2018)

⁵⁰ See Colwell Decl. at 3, *Worman v. Healey*, 293 F. Supp. 3d 251 (D. Mass. 2018)

155 to 89) during the years the federal assault weapons ban was in effect. When the ban ended, gun massacres skyrocketed by more than 183 percent in the following decade (from 12 to 34) and the number of fatalities rose by more than 239 percent (from 89 to 302). Of course, the problem of public mass shootings has only been getting worse since 2014, underscoring the need for governmental action to address this serious menace.

Gun massacres fell during the assault weapons ban

Gun massacre (6+ deaths) incidents and fatalities in the decades before, during and after the federal assault weapons ban of 1994



Source: Louis Klarevas
THE WASHINGTON POST

57. The dramatic increases in gun massacre incidents and fatalities closely tracks the growth in U.S. sales of assault weapons that was ignited by the expiration of the federal assault-weapons ban in 2004, the removal of potential liability on the part of gun merchants, and intense advertising of the militarized upgrades, ranging from high-capacity magazines to flash

suppressors, that stimulated the demand for this highly dangerous consumer product. Josh Sugarmann, executive director of the Violence Policy Center, notes that “The end of the assault-weapons ban allowed for the customization and modification of these weapons to make them look even more militaristic, even more grand in the eyes of their owners.”⁵¹

58. A year after the lapsing of the federal assault weapons ban, the Protection of Lawful Commerce in Arms Act (PLCAA) was passed, which provided gun manufacturers with near-blanket immunity from suits based on the criminal misuse of their products. This emboldened a torrent of consumer advertising designed to highlight the battlefield appeal of modern assault weapons, and sales soared in response. The dramatic rises in gun massacres followed.

59. These advertising campaigns reveal exactly how the gun industry sought to market assault weapons: they are hawked with explicit depictions of combat and phrases like “The closest you can get without having to enlist.”⁵²

60. Unsurprisingly, a growing number of mass killers – including terrorists like the San Bernardino shooters – turn to these assault rifles when they launch their deadly onslaughts. Moreover, an industry survey of civilian assault-rifle ownership “reveals that the average civilian assault-rifle owner keeps a small arsenal, owning three or more of the guns; 27 percent of owners have bought four or more. [Unfortunately,] many civilian assault-rifle owners fail to secure their arms; nearly one owner in five does not lock up his rifle, and more than 30 percent take no care

⁵¹ Quoted in Tim Dickinson, “All-American Killer: How the AR-15 Became Mass Shooters’ Weapon of Choice,” *Rolling Stone*, February 22, 2018, <https://www.rollingstone.com/politics/politics-features/all-american-killer-how-the-ar-15-became-mass-shooters-weapon-of-choice-107819/>

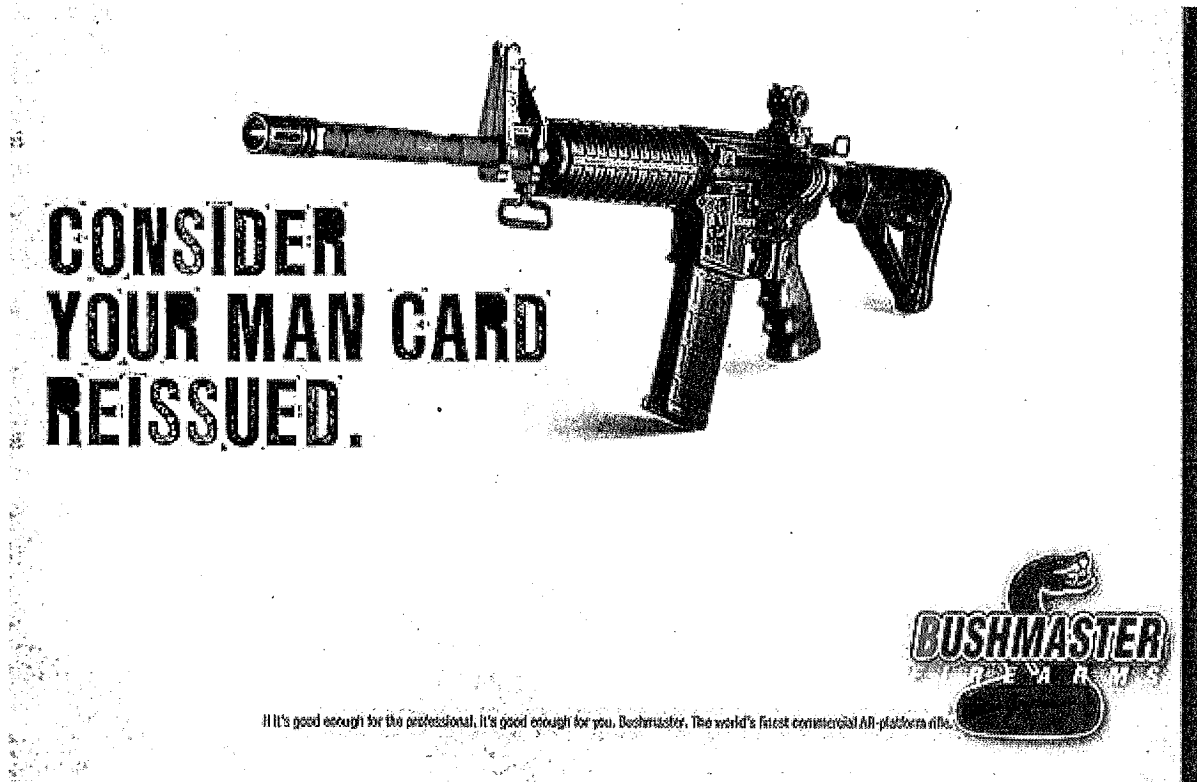
⁵² *Id.*

to secure their ammunition.”⁵³ In other words, a very substantial fraction of owners of assault rifles act irresponsibly, thereby exposing their weapons to loss or theft and resulting criminal misuse. For example, the weapons used by Adam Lanza to kill his mother, Nancy Lanza, and in the Newtown shooting were owned by his mother.

61. Indeed, the makers of the Bushmaster assault rifle Nancy Lanza owned and that her son Adam Lanza used in Newtown was sold under the slogan “Forces of opposition, bow down.” While such weapons are designed for and appropriately used by trained military personnel and law enforcement, they are exceedingly dangerous when wielded by mentally unstable civilians.

62. While the United States does not have a higher rate of mental illness than other advanced industrialized nations, it certainly has a higher rate of public mass shootings. This is in part because young men are saturated in a gun culture created by advertising designed to exploit their weaknesses. Consider the following Bushmaster advertisement for the gun that Adam Lanza used, and imagine the impact it could have on someone struggling with his substantial mental health problems:

⁵³ The NSSF periodically conducts research on civilian assault rifles intended for gun sellers, and these figures are from their latest survey. Tim Dickinson, “All-American Killer: How the AR-15 Became Mass Shooters’ Weapon of Choice,” *Rolling Stone*, February 22, 2018, <https://www.rollingstone.com/politics/politics-features/all-american-killer-how-the-ar-15-became-mass-shooters-weapon-of-choice-107819/>



63. Notably, while Lanza used a Savage Mark II bolt-action .22-caliber rifle to kill his sleeping mother, he chose the much more dangerous Bushmaster assault weapon with 30-round magazines that enabled him to fire 154 bullets over the 264 seconds in his lethal rampage at Sandy Hook School.⁵⁴ We will never know if the assault weapon dangled before him in luring advertisements had never been available whether Lanza would have concocted his same deadly plan, but we do know if he had only a bolt action hunting rifle with a ten round magazine he could not have fired as many bullets and many lives would have been spared.

64. The impact of the gun industry's efforts to exploit messages directed at those with deep insecurities and even mental health issues showed up in another recent mass shooting.

⁵⁴ Coalition to Stop Gun Violence, "What Adam Lanza Took, and Didn't Take, to Sandy Hook Elementary," <https://www.csgv.org/adam-lanza-took-didnt-take-sandy-hook-elementary/> (last visited on October 22, 2018).



65. The nineteen-year old killer of 17 at Parkland High School (on February 14, 2018) was moved to post the above NRA image on his Instagram account. He stated in a recording that he had had enough of being told what to do and was tired of being called “an idiot.” “I am nothing. I am no one, my life is nothing and meaningless. With the power of the A.R., you will know who I am.”

66. Of course, banning assault weapons does not eliminate the threat from troubled individuals, but since these weapons are particularly attractive to troubled potential mass killers and specifically designed to facilitate the most rapid and effective annihilation of all intended targets, bans on assault weapons is not only prudent but indeed indispensable in any governmental effort designed to reduce the mass shooting problem in America. A brief discussion of how and why the AR-15 came to be chosen as the primary military combat weapon used by the U.S. in Vietnam explains why.

67.

The Army Adopts the AR-15 for Battlefield Use

68. In 1957, the Army invited Armalite's chief gun designer, Eugene Stoner, to produce a lightweight, high-velocity rifle, that could operate in both semi- and full-automatic modes with firepower capable "of penetrating a steel helmet or standard body armor at 500 yards." Stoner devised the AR-15 to meet these specifications. The Advanced Research Projects Agency (ARPA) –today known as DARPA – was so impressed with the AR-15's value as a combat weapon that it pushed to have 1,000 rifles shipped for use by South Vietnamese troops and their American special-forces trainers in 1961.

69. The performance of this new assault weapon was assessed in a confidential ARPA report in July 1962, stating "The AR-15 Armalite rifle has been subjected to a comprehensive field evaluation under combat conditions in Vietnam."⁵⁵ The report noted that "The lethality of the AR-15 and its reliability record were particularly impressive." *Id.* at 15. The wounds generated by this weapon were prodigious:

"At a distance of approximately 15 meters, one Ranger fired an AR-15 full automatic hitting one VC [(Viet Cong)] with 3 rounds [of Caliber .223] with the first burst. One round in the head-took it completely off. Another in the right arm, took it completely off, too. One round hit him in the right side, causing a hole about five inches in diameter. It cannot be determined which round killed the VC but it can be assumed that *any one of the three would have caused death.*" *Id.* at 22 (emphasis added).

70. The report enumerated the wounds in a Ranger ambush of a Viet Cong position, including: a back wound that "caused the thoracic cavity to explode"; a buttock wound that "destroyed all tissue of both buttocks"; and finally "a heel wound," where "the projectile entered

⁵⁵ Advanced Research Projects Agency, Office of the Secretary of Defense, *Field Test Report, AR-15 Armalite Rifle*, at 4 (July 31, 1962,). Retrieved October 12, 2018 from <http://www.dtic.mil/dtic/tr/fulltext/u2/343778.pdf>

the bottom of the right foot causing the leg to split from the foot to the hip.” All the deaths were “instantaneous,” “except the buttock wound. He lived approximately five minutes.”⁵⁶

71. The “phenomenal lethality” of the AR-15 described by ARPA led the Army in December 1963 to adopt the AR-15 – rebranding it the M16.

72. Of course, the civilian AR-15 lacks the fully automatic (and burst) mode of the M16, but it still retains all the other aspects that made it such a valuable lethal weapon for deadly combat. In fact, the Army’s own Field Manual states that semi-automatic fire is the “most important firing technique during fast-moving, modern combat,” noting, “It is surprising how devastatingly accurate rapid semi-automatic fire can be.”⁵⁷ In other words, saying that this semi-automatic assault weapon is not a weapon of war because it doesn’t have fully automatic capacity is like saying that a conventional bomber is not a war plane because it isn’t carrying a nuclear payload. Indeed, the ability to convert a civilian AR-15 into a fully automatic weapon – or the near fully-automatic capacity that Stephen Paddock used in the Las Vegas shooting of a year ago – is yet an additional factor that renders it unusually dangerous.

73. According to one of its designers, the AR-15 assault rifle was originally engineered to generate “maximum wound effect.” “It’s a perfect killing machine,” says Dr. Peter Rhee, a trauma surgeon and retired Navy captain.⁵⁸

74. Rhee was the doctor who saved the life of Arizona Rep. Gabby Giffords after she was shot in the head with a handgun fired during a mass shooting in 2011. According to Rhee:

⁵⁶ Tim Dickinson, “All-American Killer: How the AR-15 Became Mass Shooters’ Weapon of Choice,” *Rolling Stone*, February 22, 2018, <https://www.rollingstone.com/politics/politics-features/all-american-killer-how-the-ar-15-became-mass-shooters-weapon-of-choice-107819/>

⁵⁷ Id.

⁵⁸ Tim Dickinson, “All-American Killer: How the AR-15 Became Mass Shooters’ Weapon of Choice,” *Rolling Stone*, February 22, 2018, <https://www.rollingstone.com/politics/politics-features/all-american-killer-how-the-ar-15-became-mass-shooters-weapon-of-choice-107819/>

“A handgun [wound] is simply a stabbing with a bullet. It goes in like a nail. [But with the AR-15,] it’s as if you shot somebody with a Coke can.”

The Allure of and Value to Mass Shooters of Assault Weapons

75. It is not surprising that mass shooters employing these particularly lethal weapons are able to kill so many so quickly: Adam Lanza was able to slaughter 26 in less than five minutes with his Bushmaster AR-15. James Holmes used a Smith & Wesson “Military & Police” (M&P) AR-15 fitted with a 100-round magazine to kill 12 and wound 58 movie theater. The ISIS-inspired San Bernardino, California, shooters used a pair of AR-15s to kill 14. Orlando shooter Omar Mateen unleashed Sig Sauer’s concealable “next-generation AR” to leave 49 dead and dozens more injured at the Pulse nightclub.

76. Moreover, there is not the slightest evidence that the federal restrictions on assault weapons that was enacted in 1994 (and lapsed ten years later) compromised the safety of law-abiding citizens. Since these weapons are useful for those bent on mass killing, further limiting their availability should have a beneficial effect on the active shooter and mass shooting problems that are serious and worsening in the United States.

77. It should be noted that even if an assault weapons ban failed to reduce the overall criminal use of guns, it can be expected to reduce the overall death toll from the criminal use of guns.

78. As noted above, Adam Lanza was able to kill more because he was using a lawfully purchased assault weapon equipped with a 30-round large-capacity magazine. Telling us that Nancy Lanza was a law-abiding citizen so there would be no reason to deprive her of the right to buy an assault weapon entirely misses the point of the benefit of an assault weapons ban: it was the weaponry of a totally law-abiding citizen that paved the way not only to her own death

but also directly led to horrific slaughter of 20 first-grade students and six adults. Law abiding citizens can and do themselves cross over the line into criminal misconduct but also facilitate and enable others to engage in deadly misconduct when they make their guns available to others through loss or theft. In other words, the assault weapons ban is designed precisely to save lives and by raising the costs for killers, it would be expected to advance that goal.

79. On November 5, 2009, Nidal Hasan killed 13 and injured more than 30 others at Fort Hood, near Killeen, Texas. When Hasan purchased his killing arsenal, he asked for "the most technologically advanced weapon on the market and the one with the highest standard magazine capacity."⁵⁹ Searching for the deadliest assault weapon is exactly what one would do if one wanted to simply kill as many people as possible in the shortest amount of time. If one is serious about stopping mass killings, a good first step is to deprive such killers of their preferred killing approaches.

80. The response that bans on assault weapons will have a limited effect on overall gun crime, which is most commonly committed with a handgun, is misplaced because California's assault weapons ban was not enacted to address gun crime generally, but rather was adopted in response to the growing mass shooting problem in the United States. The Republican legislature in Vermont recently adopted a series of gun control measures including barring sales of assault weapons to those under 21 after the arrest of Jack Sawyer based on evidence that he intended to commit a mass school shooting in Fair Haven, Vermont.⁶⁰ Among other things,

⁵⁹Scott Huddleston, "Hasan Sought Gun with 'High Magazine Capacity,'" October 21, 2010, <http://blog.mysanantonio.com/military/2010/10/hasan-sought-gun-with-high-magazine-capacity/>.

⁶⁰The Vermont State police arrested Jack Sawyer the day after the Parkland, Florida mass school shooting. *See State v. Sawyer*, 2018 VT 43, ¶¶ 5-10. Several public officials shortly thereafter announced their support for new gun safety legislation. *See John Walters, Scott Shifts Gun Stance Following Fair Haven Threat*, Seven Days (Feb. 16, 2018), available at

police recovered a diary titled “Journal of an Active Shooter” and were told by Mr. Sawyer that he had recently purchased a shotgun and was hoping to buy an AR-15 rifle.⁶¹ A prudent government will take steps to deprive determined mass shooters of their dream weapons.

81. Empirical studies of public mass shootings by both Mr. Koper and others lead them to support restrictions on assault weapons and the large-capacity magazines that can enhance their lethality. Mr. Koper concludes from his research that a revived federal assault weapons ban should “help to reduce the number and severity of mass shooting incidents.”⁶² Moreover, he has repeatedly observed, large-capacity magazines are disproportionately used in mass shootings and to kill law enforcement officers.⁶³

82. The data about criminal LCM use, initially reviewed by Mr. Koper, came from four relatively small locations, Baltimore, Milwaukee, Anchorage, and a forensic lab in Louisville, Kentucky and was limited in time. The available data from Kentucky ended in 2000, Milwaukee in 2001, Anchorage in 2002, and Baltimore in 2003.⁶⁴

<https://www.sevendaysvt.com/OffMessage/archives/2018/02/16/walters-scott-shifts-gun-stance-following-fair-haven-threat>; Alan J. Keays, *Scott says ‘everything’s on the table’ as pressure builds for gun measures*, VTDigger (Feb. 22, 2018), <https://vtdigger.org/2018/02/22/updated-scott-says-everythings-on-the-table-as-pressure-builds-for-gun-measures/>.

⁶¹ Alan J. Keays, *Court Shown Video of Alleged School Shooting Plotter’s Interrogation*, VTDigger (Feb. 27, 2018), <https://vtdigger.org/2018/02/27/ex-student-accused-fair-haven-shooting-plot-details-plans/>.

⁶² Carolyn Lochhead, “Feinstein renews effort to ban assault weapons,” *San Francisco Chronicle*, March 3, 2018, <https://www.sfchronicle.com/nation/article/Feinstein-renews-effort-to-ban-assault-weapons-12725959.php>.

⁶³ See Christopher Koper, *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003* (Koper 2004 Assessment), 14, 18; Christopher Koper, *America’s Experience with the Federal Assault Weapons Ban, 1994 – 2004: Key Findings and Implications*, in *Reducing Gun Violence in America*, 161, 162 (Daniel Webster & Jon Vernick, eds., 2013) (Koper 2013 Findings).

⁶⁴ Koper 2004 Assessment at 68.

83. More recent Virginia data cover a significantly larger area and timeframe and reflects the trends predicted by the supply changes caused by the federal ban. Reporters from the Washington Post obtained the data from the Criminal Firearms Clearinghouse for the years 1993 through 2010. It was collected by the Virginia State Police from more than 200 local law enforcement agencies throughout the state. The percentage of police-recovered firearms that had LCMs in the Virginia data rose steadily after supply increased from about 13% in 1993 to nearly 18% in 1997 before sharply dropping to about 10% in the last year of the federal ban. After the ban ended, the percentage of police-recovered firearms with LCMs rose sharply as supply increased from 10% in 2004 to more than 14% in 2005 and continued to rise in subsequent years until LCM equipped guns accounted for 22% of all police-recovered firearms in Virginia.⁶⁵

84. The troubling gun massacres of the last year have underscored—yet again—the wisdom of the efforts of the California legislature and referendum voters “to aid in the shaping and application of those wise restraints that make men free” by banning the assault weapons that have been a key element enabling the escalating threat and lethality of horrific mass shootings.⁶⁶

85. It is my opinion that if, rather than allowing the federal assault weapons ban to lapse in 2004, the country had moved to a more complete ban, many of the gun tragedies of recent years would have been far less deadly and damaging to countless individuals who have been maimed and injured throughout the United States. It is also my opinion that California’s ban on assault weapons is one tool in the important governmental effort to reduce the likelihood that Californians will be killed in mass shootings by making it incrementally harder for

⁶⁵Fallis, David, VA data show drop in criminal firepower during assault gun ban, The Washington Post, January 23, 2011.

⁶⁶The quote is from John MacArthur Maguire and is enshrined at the Harvard Law School library. See <https://asklib.law.harvard.edu/friendly.php?slug=faq/115309> (last visited Nov. 1, 2017).

prospective mass shooters to equip themselves with weapons that are both uniquely appealing to their criminal aspirations as well as uniquely designed to aid in their homicidal rampages.

Uses of Assault Weapons for Self-Defense are Extremely Rare

86. In the face of the clear evidence from around the United States and the world, some of the comments in the complaint in this case seem to suggest that assault weapons might protect against crime rather than simply increase the death toll. First, it is worth noting that the vast majority of the time that an individual in the United States is confronted by violent crime, they do *not* use any gun for self-defense. Specifically, over the period from 2007-2011 when roughly 6 million violent crimes occurred each year, data from the National Crime Victimization Survey shows that the victim did not defend with a gun in 99.2 percent of these incidents – this in a country with 300 million guns in civilian hands.

87. Second, even if a gun were available for self-defense use, the need for an assault weapon is virtually non-existent according to decades of statements by NRA-affiliated and pro-gun experts. For example, John Lott has repeatedly made the following claims:

- based on “about 15 national survey[s] ... about 98 percent of [defensive gun uses] involve people brandishing a gun and not using them.”⁶⁷
- “When victims are attacked, 98 percent of the time merely brandishing a gun is enough to cause the criminal to stop his attack.”⁶⁸

⁶⁷Statements by John R. Lott, Jr. on Defensive Gun Brandishing Posted by Tim Lambert on October 17, 2002 <http://scienceblogs.com/deltoid/2002/10/17/lottbrandish/>. Page 41, State of Nebraska, Committee on Judiciary LB465, February 6, 1997, statement of John Lott, Transcript prepared by the Clerk of the Legislature, Transcriber's Office.

⁶⁸John R. Lott, Jr., Packing Protection, Letters, *Chicago Sun-Times*, April 30, 1997, Pg. 52.

- “Considerable evidence supports the notion that permitted handguns deter criminals. In 98% of the cases, people simply brandish weapons to stop attacks.”⁶⁹

88. Gary Kleck offers a similar albeit less precise claim: “More commonly, guns are merely pointed at another person, or perhaps only referred to (“I’ve got a gun”) or displayed, and this is sufficient to accomplish the ends of the user, whether criminal or non- criminal.”⁷⁰

89. Gun Owners of America cite published survey results on gun brandishing by Gary Kleck for the following statement about gun brandishing: “Of the ... times citizens use their guns to defend themselves every year, the overwhelming majority merely brandish their gun or fire a warning shot to scare off their attackers.”⁷¹

90. In other words, a gun is used in defense less than 1 percent of the time when someone is attacked in the United States. In the “overwhelming majority” of the less than 1% of cases in which a gun *is* used, brandishing is all that is needed for defense. The U.S. Supreme Court in *Heller* considered a handgun the quintessential self-defense weapon. It cannot be seriously maintained that an assault weapon plays any important role in furtherance of this Second Amendment goal. Indeed, if they were, the industry would have marketed them as protection weapons instead of assault weapons – or in the more recent marketing jargon “sporting” or “tactical” rifles.

91. Consequently, California’s assault weapons ban, which is designed to limit the mayhem caused by criminals engaging in the most dangerous forms of violent criminal behavior,

⁶⁹John R. Lott Jr., “Unraveling Some Brady Law Falsehoods,” *Los Angeles Times*, July 2, 1997.

⁷⁰Guns and Self-Defense by Gary Kleck, Ph.D.,
<http://www.pulpless.com/gunclock/kleck2.html>.

⁷¹Gary Kleck and Marc Gertz, “Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun,” 86(1) *Journal of Criminal Law and Criminology* 150-187 (Fall 1995).
<https://pdfs.semanticscholar.org/91da/afbf92d021f06426764e800a4e639a1c1116.pdf>.

is likely to have little or no impact on the defensive capabilities of law-abiding citizens in their homes.

92. Assault weapons are the mass killers' armaments of choice. A study of 62 public mass shooting incidents occurring between August 1982 and December 2012 found that more than half the time, the attackers used assault rifles, high-capacity magazines, or both.⁷²

93. Opponents to regulation sometimes think that because hunting rifles can deliver devastating injuries to humans almost as fast as a modern assault rifle, there is no point in an assault weapons ban. This argument is misguided. First, "almost as fast" is a huge caveat. Mass shootings start and end quickly in most cases, and anything that slows down the rate of fire of a mass killer is beneficial. Second, an assault rifle facilitates the type of spray fire with little recoil that would not be easily reproducible in a larger, heavier hunting rifle. Elevating the barriers to entry to those who would commit mass murder is clearly advantageous at the margins. Finally, any side by side comparison of a large hunting rifle and an AR-15 style assault weapon reveals that the AR-15 would have much more allure for mass killers who think of themselves as commandoes, demonstrating their immense power, as they seek to destroy their putative enemies. But the troubled, feckless individuals who predominate among public mass shooters

⁷² Follman M, Aronsen G, and Lee J, More than half of mass shooters used assault weapons and high-capacity magazines. <http://www.motherjones.com/politics/2013/02/assault-weapons-high-capacity-magazines-mass-shootings-feinstein>. This study defines a mass shooting as an incident where 4 or more victims are killed with a firearm, in a public place, and excludes familicide mass shootings and mass shootings related to other crimes such as gang violence or armed robbery. Out of the 62 incidents, the authors identified 31 mass shooting incidents involving high capacity magazines, 14 mass shooting cases involving assault weapons, and overall 33 cases involving assault weapons or high capacity magazines or both. The authors identify guns using high capacity magazines or assault weapons based on the definitions in the Feinstein Assault Weapons Ban Senate bill of 2013. <https://www.motherjones.com/politics/2012/07/mass-shootings-map/>

have often marinated in exactly this distorted mode of thinking, as judged by their conduct and often by their written pronouncements prior to their last acts of desperation.

Law Enforcement and Military Support for Assault Weapon and LCM Bans

94. The testimony of United States Attorney (District of Colorado) John Walsh before the Senate Judiciary Committee on February 27, 2013, is worth quoting:

From the point of view of most law enforcement professionals, a perspective I share as a long-time federal prosecutor and sitting United States Attorney, shutting off the flow of military-style assault weapons and high-capacity magazines is a top public safety priority. [...]

Like military-style assault weapons, high-capacity magazines should be reserved for war, and for law enforcement officers protecting the public.⁷³[The citation is from Walsh's statement.]⁷⁴

95. Dean L. Winslow, a retired Air Force colonel, flight surgeon, and professor of medicine at Stanford University has particularly valuable insight into the wisdom of having assault weapons in civilian hands.

96. Dr. Winslow noted that "as commander of an Air Force hospital in Baghdad during the surge, I have seen what these weapons do to human beings. The injuries are devastating."⁷⁵ Moreover, unlike a shotgun filled with birdshot, which is far more likely to hit a

⁷³See, David S. Fallis and James V. Grimaldi, *In Virginia, high-yield clip seizures rise*, Washington Post, Jan. 23, 2011, *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012204046.html> (last visited Nov. 1, 2017).

⁷⁴Statement of John F. Walsh before the United States Senate Committee on the Judiciary, <https://www.judiciary.senate.gov/imo/media/doc/2-27-13WalshTestimony.pdf> (last visited Nov. 1, 2017).

⁷⁵See also, Heather Sher, "What I Saw Treating the Victims From Parkland Should Change the Debate on Guns," *The Atlantic Monthly*, February 22, 2018, <https://www.theatlantic.com/politics/archive/2018/02/what-i-saw-treating-the-victims-from-parkland-should-change-the-debate-on-guns/553937/>

target and not penetrate through walls than a bullet from an assault weapon, assault weapons are simply not well suited for defensive use in the home. Based on his extensive military and medical experience, Dr. Winslow noted that it is "insane ... that in the United States of America a civilian can go out and buy a semiautomatic weapon like an AR-15."

97. Since AR-15's were selected by the Defense Department as a weapon of choice for the battlefield in Vietnam because the destructive force of the gun made it especially lethal to even outer extremity wounds, the point could not be clearer: keeping these weapons out of civilian hands will reduce the death toll and seriousness of woundings in cases of mass shootings or other criminal or accidental uses of these weapons.

Gun Control Dramatically Reduced Mass Shootings in Australia

98. In this regard, consider what happened in Australia after a gunman shot and killed 35 people in Port Arthur, Tasmania in 1996. The Australian federal government persuaded all states and territories to implement tough new gun control laws. Under the National Firearms Agreement (NFA), firearms legislation was tightened throughout the country, national registration of guns was imposed, and it became illegal to hold certain long guns that might be used in mass shootings. The effect was that both while there were 7 public mass shootings in Australia during the seventeen-year period 1979-96 (a per capita rate that was higher than in the U.S. at the time), there have been none in the 22 years since (while the problem of mass shootings in the United States is getting worse⁷⁶). Adjusting for the relative populations of the

⁷⁶ Dan Diamond, "Mass Shootings Are Rising. Here's How To Stop Them," *Forbes*, June 18, 2015, <https://www.forbes.com/sites/dandiamond/2015/06/18/charleston-deaths-are-an-american-tragedy-mass-shootings-are-rising/#12bd32ef787b>.

two countries, it would be as though there were 103 separate mass shooting events in the 18 years prior to the massive Australian gun buyback and none in the 22 years since.⁷⁷

99. The important point of the Australian experience for present purposes is that by depriving disturbed individuals of the vehicle by which they imagined they would unleash their murderous impulses, Australia showed that strong gun control measures such as bans on semiautomatic rifles could dramatically reduce the number of mass shootings – even if guns are still widely available, as they remain in Australia.

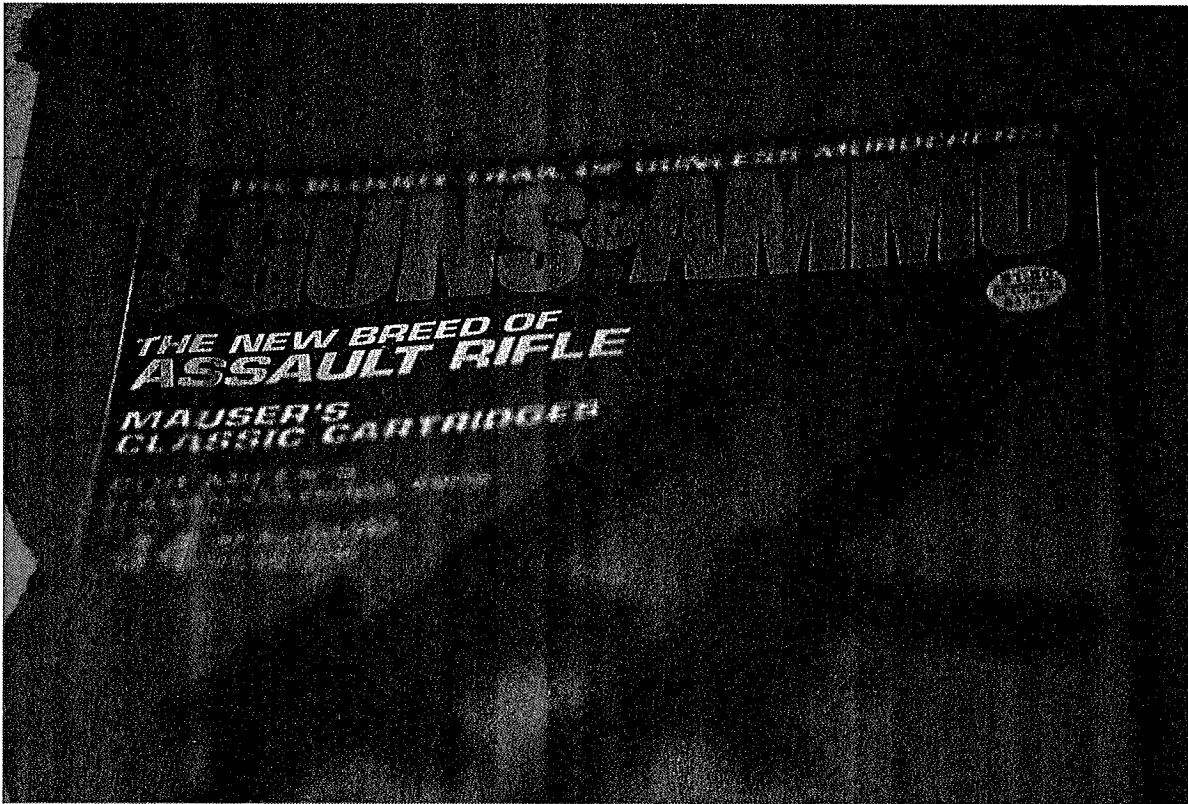
Some Responses to Points in the Complaint

100. The first footnote in the complaint provides the following quote that, although now taken as gospel among certain gun enthusiasts, bears no relationship to the truth: “Prior to 1989, the term “assault weapon” did not exist in the lexicon of firearms. It is a political term, developed by anti-gun publicists to expand the category of “assault rifles” so as to allow an attack on as many additional firearms as possible on the basis of undefined “evil” appearance.” This is utter nonsense. In fact, throughout the 1980s the gun industry marketed “assault” weapons because that promoted sales. The image below of a Guns & Ammo magazine cover highlighting assault rifles in July 1981 is just one of the numerous such advertisements and gun industry publications concerning assault weapons that one can find on the web throughout the 1980s.⁷⁸ Only when the increase in civilian ownership of these weapons was followed by outrage over (and fears of potential tort liability for) prominent mass shootings did the industry shift away from that direct terminology in its advertisements (while continuing to market guns

⁷⁷ The population of Australia in 1996 was 18.31 million and the population of the US in the same year was 269.39 million, according to data from the World Bank.

⁷⁸ See, <https://www.democraticunderground.com/126210025>.

with appeals to their military character).



The July 1981 issue of Guns & Ammo. (Reproduced from the New York Times, <https://www.nytimes.com/2013/01/17/us/even-defining-assault-weapons-is-complicated.html>)

101. The repeated references to “law-abiding citizens” in Plaintiffs’ complaint (I counted 40 such references) reflects an inaccurate assessment of the potential impact on “law-abiding citizens” of California’s assault weapons ban. Hundreds of law-abiding citizens have been killed in mass shootings and the problem of mass shootings is getting worse. Since the value of assault weapons for legitimate self-defense is virtually non-existent, the primary impact of removing such weapons from circulation will be to decrease the prospect that a law-abiding citizen will be confronted by a criminal with such weaponry.

102. “[L]aw-abiding citizens” whose guns are lost or stolen each year are one of the most important sources of weapons for criminals in the United States. The best current estimates are that roughly 400,000 guns move into the hands of criminals this way each year in the United States.⁷⁹ In other words, it is orders of magnitudes more likely that a criminal will steal a gun of a law-abiding citizen than a law-abiding citizen will fire an assault weapon in lawful self-defense. More assault weapons in the hands of law-abiding citizens like Nancy Lanza means more assault weapons in the hands of criminals such as Adam Lanza.

103. Further, many of the most horrific mass shootings in America were perpetrated by previously law-abiding citizens. The list, which is too long to recite, includes Stephen Paddock, who killed 58 in Las Vegas; Omar Mateen, who killed 49 in the Pulse nightclub; Adam Lanza, who killed 26 in Newtown, Connecticut; and the Batman killer in Aurora, Colorado, who killed 12.

104. The suggestion is also made that law-abiding citizens should have access to the same type of weaponry available to “trained police officers.” This analogy fails because police have very different needs than private individuals.

⁷⁹According to Larry Keane, senior vice president of the National Shooting Sports Foundation (a trade group that represents firearms manufacturers), “There are more guns stolen every year than there are violent crimes committed with firearms.” More than 237,000 guns were reported stolen in the United States in 2016, according to the FBI’s National Crime Information Center. The actual number of thefts is obviously much higher since many gun thefts are never reported to police, and “many gun owners who report thefts do not know the serial numbers on their firearms, data required to input weapons into the NCIC.” The best survey estimated 380,000 guns were stolen annually in recent years, but given the upward trend in reports to police, that figure likely understates the current level of gun thefts. See, Freskos, Brian. 2017c. “These Gun Owners Are at the Highest Risk of Having Their Firearms Stolen.” The Trace. 4/11/2017. <https://www.thetrace.org/2017/04/gun-owners-high-risk-firearm-theft/> and Freskos, Brian. 2017b. “Missing Pieces.” The Trace. 11/20/2017. <https://www.thetrace.org/features/stolen-guns-violent-crime-america/>.

105. To defend themselves, private individuals only need to scare off criminals. For that reason, many defensive gun uses consist entirely of scaring off criminals without any shots being fired at all. In contrast, police need to make arrests. Thus, while having a criminal run away is a desired outcome for the average citizen, it is a bad outcome for a police officer, which is why an extended gun battle is extremely rare for law-abiding citizens and far more common for the police. Accordingly, any effort to look to officer-involved shootings to make judgments about the needs of average citizens widely misses the mark.

106. Moreover, bullets fired by an assault weapon will easily penetrate walls, threatening family members or occupants in attached dwellings. This point was dramatically underscored when a concealed carry permit holder attending a gun safety class inadvertently fired a simple pistol, which discharged a bullet that easily penetrated the classroom wall, striking and killing the owner of the gun store who was working in the next room.⁸⁰ Encouraging the even greater danger of using an assault weapon for self-defense is a recipe for generating similar unwelcome outcomes that will put family members and neighbors at considerable risk.

107. According to Maryland Police Superintendent Marcus Brown, “in many home defense situations assault weapons are likely to be less effective than handguns because they are less maneuverable in confined areas.”⁸¹ Assault weapons are also more likely to shoot through walls and potentially injure or kill passers-by or innocent people in nearby residences; according to James E. Yurgealitis, a legal and forensic consultant, “projectiles travelling at velocities found

⁸⁰Peter Holley, *Ohio gun store owner accidentally killed by student during firearm-safety class*, *Washington Post*, June 19, 2016, available at https://www.washingtonpost.com/news/morning-mix/wp/2016/06/19/ohio-gun-store-owner-accidentally-killed-by-student-during-firearm-safety-class/?utm_term=.ed4c232d20ad (last visited Nov. 1, 2017).

⁸¹Brown Decl. ¶ 20, *Kolbe v. O'Malley*, 42 F. Supp. 3d 768 (D. Md. 2014).

in banned weapons pose a serious risk of over-penetration in most home construction materials.”⁸² Experts consider handguns clearly more suitable than assault weapons for self-defense. Massachusetts Chief of Police Mark K. Leahy said that when “asked to recommend a weapon for home defense or concealed carry, I always recommend a handgun.”⁸³

108. While defensive gun ownership is designed to prevent violence, the intent of the public mass shooter is to kill as many people as possible. Accordingly, the lethal capacity of the weapon will influence that toll of these homicidal events (as opposed to the defensive setting when brandishing typically achieves its goal). As Klarevas, Koper, and courts have observed, assault weapons with large capacity magazines are disproportionately used in mass shootings.⁸⁴ When such weapons are deployed in mass shootings, they “result in ‘more shots fired, persons wounded, and wounds per victim than do other gun attacks.’”⁸⁵ Among the mass shootings identified in a 2016 study by Everytown for Gun Safety, use of a large capacity magazine, or assault weapon that likely included a large capacity magazine, was associated with more than twice as many people being shot and nearly 50% more people being killed.⁸⁶

109. Many mass shooters seem to prefer using assault weapons, and mass shootings in which assault weapons are used tend to result in worse outcomes. Some estimates suggest that

⁸²Yurgealitis Decl. ¶ 79, *Worman v. Healy*, 293 F. Supp. 3d 251 (D. Mass. 2018).

⁸³Leahy Decl. ¶ 22, *Worman v. Healy*, 293 F. Supp. 3d 251 (D. Mass. 2018).

⁸⁴Christopher Ingraham, *It's Time to Bring Back the Assault Weapons Ban, Gun Violence Experts Say*, Washington Post, February 15, 2018, https://www.washingtonpost.com/news/wonk/wp/2018/02/15/its-time-to-bring-back-the-assault-weapons-ban-gun-violence-experts-say/?noredirect=on&utm_term=.e7c185b7f107; Koper 2004 Assessment), 14, 18.

⁸⁵*N.Y.S. Rifle*, 804 F.3d at 264 (quoting *Heller v. District of Columbia*, 670 F.3d 1244, 1263 (D.C. Cir. 2011)).

⁸⁶Mass Shootings in the United States: 2009 – 2016, Appendix of Shootings Profiled, <https://everytownresearch.org/documents/2017/03/appendix-mass-shootings-united-states-2009-2016.pdf>

around 11-13% of mass shootings are with assault weapons but these numbers tend to be biased downward.⁸⁷ For example, Christopher S. Koper et al. examine a sample of 145 mass shooting incidents (with incomplete weapons data) from 2009-2015 and estimated that assault weapons were used in at least 10.3% of all incidents.⁸⁸ This figure, however, rose to 35.7% when limiting the sample to the 42 cases where there is sufficiently detailed information to definitively determine whether an assault weapon was used.⁸⁹ Research by Luke Dillon shows that mass shooting incidents using assault weapons result in more people injured and more total victims.⁹⁰

110. Assault weapons also pose particular dangers and problems to law enforcement. Because of the types of rounds typically fired by assault weapons as well as the muzzle velocities they tend to have, assault weapons are “capable of penetrating the soft body armor customarily worn by law enforcement.”⁹¹ The ability to fire rapidly also allows criminals to more effectively engage with responding police officers, even from a significant distance.⁹² Empirical research by the Violence Policy Center shows that “one in five law enforcement officers slain in the line of duty was killed with an assault weapon,” despite the relative rarity of assault weapon use in crime in general.⁹³ Christopher S. Koper et al. find that assault weapons, virtually all of which

⁸⁷Everytown for Gun Safety, *Analysis of Recent Mass Shootings*, July 2014, available at <https://everytownresearch.org/documents/2015/04/analysis-of-recent-mass-shootings.pdf> (last visited Oct. 12, 2018) at 4; Mark Follman, Gavin Aronsen, and Deanna Pan, “A Guide to Mass Shootings in America,” *Mother Jones* (Sept. 20 2018).

⁸⁸Christopher S. Koper et al., “Criminal Use of Assault Weapons and High Capacity Semi-Automatic Firearms: An Updated Examination of Local and National Sources,” 95(3) *Journal of Urban Health* 313-321 (2017) at 317.

⁸⁹Christopher S. Koper et al. 2017 Finding at 317.

⁹⁰Luke Dillon, *Mass Shootings in the United States: An Exploratory Study of the Trends from 1982-2012*, Fall 2013, available at http://mars.gmu.edu/bitstream/handle/1920/8694/Dillon_thesis_2013.pdf?sequence=1&isAllowed=y (last visited Oct. 12, 2018).

⁹¹Brown Decl. ¶ 23, *Kolbe v. O'Malley*, 42 F. Supp. 3d 768 (D. Md. 2014).

⁹²Kyes Decl. ¶ 15-17, *Worman v. Healy*, 293 F. Supp. 3d 251 (D. Mass. 2018).

⁹³Violence Policy Center, *Officer Down: Assault Weapons and the War on Law*

were assault rifles, “accounted for 13.2% of the firearms used in [police murders]” from 2009-2013 (note that this excludes cases involving the officer’s own firearm).⁹⁴ Many law enforcement officers and agencies report that the possibility of encountering criminals with assault weapons necessitates that they spend a great deal of time and resources preparing for such encounters.⁹⁵

111. Assault weapons, acquired in the United States, are particularly popular weapons for drug traffickers and gang members, both in the United States and in Mexico.⁹⁶

112. There is evidence that the federal assault weapons ban was effective in limiting criminal use of assault weapons. Brady Center to Prevent Gun Violence analysis suggests that the share of gun crimes committed with assault weapons declined following the institution of bans.⁹⁷ This study used the share of Bureau of Alcohol, Tobacco, and Firearms (ATF) firearm traces that are of assault weapons as a dependent variable, even though it is likely that this measure is marred by changes in the nature and frequency of gun tracing behavior by ATF.⁹⁸ The Police Executive Research Forum found that the relative usage of assault weapons in crime increased after the ban’s end, with 38% of police agencies reporting that criminals’ use of assault weapons had increased.⁹⁹

Enforcement, May 2003, available at <http://www.vpc.org/studies/officer%20down.pdf> (last visited Oct. 12, 2018) at 5.

⁹⁴Christopher S. Koper et al. 2017 Finding at 317.

⁹⁵Brady Center to Prevent Gun Violence 2008 at 4-6.

⁹⁶Brady Center to Prevent Gun Violence 2008 at 3-6; Violence Policy Center, *Assault Pistols: The Next Wave*, January 2013, available at http://www.ncdsv.org/images/VPC_AssaultPistolsTheNextWave_1-2013.pdf (last visited Oct. 12, 2018) at 1-2; Spitzer Aff. ¶ 4, *Worman v. Healy*, 293 F. Supp. 3d 251 (D. Mass. 2018).

⁹⁷Brady Center to Prevent Gun Violence, *On Target: The Impact of the 1994 Federal Assault Weapons Ban*, March 2004, available at https://www.bradycampaign.org/sites/default/files/on_target.pdf (last visited Oct. 12, 2018).

⁹⁸Violence Policy Center, *A Further Examination of Data Contained in the Study On Target Regarding Effects of the 1994 Federal Assault Weapons Ban*, April 2004, available at <http://vpc.org/graphics/AWAnalysisFinal.pdf> (last visited Oct. 12, 2018) at 7-8.

⁹⁹Police Executive Research Forum, *Guns and Crime: Breaking New Ground By Focusing*

113. No one has a greater desire or use for an assault weapon than a determined mass killer, and governments have a responsibility to thwart those desires and those uses. A ban on such assault weapons is an important tool and prudent step in the effort to stop and/or diminish the harm from the most egregious homicidal rampages.

114. Any argument that because a large number of individuals throughout the United States have assault weapons today, they are “in common use” and therefore cannot be banned in California is wholly misguided. The current level of ownership cannot be taken as an expression of American approval of this dangerous weaponry. The existing stock of guns is a function of legislation and marketing and it provides a very slippery basis for determining what guns are presumptively legal or subject to appropriate prohibition, which should be determined from a more fact-based assessment of the nature of the threats and the relevant safety considerations.

115. As the Fourth Circuit held in upholding Maryland’s assault weapons ban in 2017: “the issue is whether the banned assault weapons and large-capacity magazines possess an amalgam of features that render those weapons and magazines like M16s and most useful in military service. The uncontroverted evidence ... is that they do.”¹⁰⁰

116. Indeed, the industry is constantly striving to find new ways to increase the lethality of their merchandise, so the notion that some threshold of “common use” erects a constitutional impediment that can obstruct governmental initiatives to promote citizen safety is wholly misguided. The ability and right of citizens to enact safety promoting measures designed

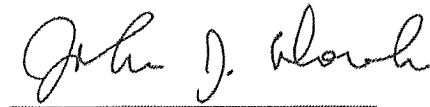
on the Local Impact, May 2010, available at https://www.policeforum.org/assets/docs/Critical_Issues_Series/guns%20and%20crime%20-%20breaking%20new%20ground%20by%20focusing%20on%20the%20local%20impact%202010.pdf (last visited Oct. 12 2018) at 2.

¹⁰⁰ *Kolbe v. Hogan*, (4th Circuit Court of Appeals, February 21, 2017), <https://cases.justia.com/federal/appellate-courts/ca4/14-1945/14-1945-2017-02-21.pdf?ts=1487707284>.

to deal with the serious and growing problem of public mass shootings should not be affected by the marketing ability of the gun industry to hawk their wares.

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

Date: October 25, 2018



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EXHIBIT A

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EMPLOYMENT

Full-time Positions

- Stanford Law School, C. Wendell and Edith M. Carlsmith Professor of Law, September 2010 to the present.
- Yale Law School, Leighton Homer Surbeck Professor of Law, July 2004 to August 2010.
- Stanford Law School, Professor of Law, September 1995 to June 2004.
 - William H. Neukom Professor of Law, February 2002 – June 2004.
 - John A. Wilson Distinguished Faculty Scholar, March 1997 – January 2002.
 - Academic Associate Dean for Research, since July 2001 – July 2003.
 - Stanford University Fellow, September 2001 – May 2003.
- Northwestern University School of Law:
 - Class of 1967 James B. Haddad Professor of Law, September 1994-August 1995
 - Harry B. Reese Teaching Professor, 1994-1995
 - Professor of Law, May 1991-September 1994
 - Associate Professor, May 1989-May 1991
 - Assistant Professor, September 1986-May 1989.
- Research Fellow, American Bar Foundation, September 1986-August 1995.
- Associate Attorney, Covington & Burling, Washington, D.C., October 1978-July 1981 (including last six months as Attorney, Neighborhood Legal Services)
- Law Clerk to Chief Justice T. Emmet Clarie, U.S. District Court, Hartford, Connecticut, September 1977-August 1978.

Temporary Appointments

- Visiting Professor, Bocconi University, Milan, Italy, October- November 2012, April 2014, and June 2015.
- 2011 Faculty Scholar in Residence, University of Denver Sturm College of Law, April 21-22, 2011.
- Visiting Fellow, The Milton Friedman Institute for Research in Economics, University of Chicago, October 2009
- Schmidheiny Visiting Professor of Law and Economics, St. Gallen University, November – December, 2007.

- Visiting Lecturer in Law and Economics, Gerzensee Study Center, Switzerland, June 2007.
- Visiting Professor, Tel Aviv University School of Law, May 2007.
- Herbert Smith Visitor to the Law Faculty, University of Cambridge, England, February 2006.
- Visiting Professor, Harvard Law School, January 2003.
- Fellow, Center for Advanced Studies in the Behavioral Sciences, Stanford, California, Academic year 2000-01.
- Visiting Professor, Yale Law School, Fall, 1999.
- Professor, Center for the Study of American Law in China, Renmin University Law School, Beijing, July 1998.
- Visiting Professor of Law and Economics, University of Virginia, January 1997.
- Lecturer, Toin University School of Law, Yokohama, Japan, May-June 1996.
- Cornell Law School, Distinguished Visiting Fellow in Law and Economics, April 8-12, 1996 and September 25-29, 2000
- Visiting Professor, University of Chicago Law School, January 1992-June 1992.
- Visiting Professor of Law and Economics, University of Virginia Law School, January 1990-May 1990.
- Fellow, Yale Law School Program in Civil Liability, July 1985-August 1986.
- Private Practice (part-time), New Haven, Connecticut, September 1981-August 1986.
- Instructor in Economics, Yale College, September 1983-August 1985.
- Summer Associate, Donovan Leisure Newton & Irvine, New York, Summer 1982.
- Summer Associate, Perkins, Coie, Stone, Olsen & Williams, Seattle, Washington, Summer 1976.
- Research Assistant, Prof. Laurence Lynn, Kennedy School of Government, Harvard University, Summer 1975.
- LSAT Tutor, Stanley Kaplan Education Center, Boston, Massachusetts; Research Assistant, Prof. Philip Heymann, Harvard Law School; Research Assistant, Prof. Gordon Chase, Harvard School of Public Health. (During Law School).

EDUCATION

Yale University, 1981-1986

- University Fellow in Economics; M.A. 1982, M. Phil. 1984, Ph.D. 1986.
 - Dissertation: "A Continuous-Time Stochastic Model of Job Mobility: A Comparison of Male-Female Hazard Rates of Young Workers." Awarded with Distinction by Yale.
 - Winner of the Michael E. Borus Award for best social science dissertation in the last three years making substantial use of the National Longitudinal Surveys--awarded by the Center for Human Research at Ohio State University on October 24, 1988.
- National Research Service Award, National Institute of Health.
- Member, Graduate Executive Committee; Graduate Affiliate, Jonathan Edwards College.

Harvard Law School, 1974-1977 (J.D.)

- Graduated Cum Laude.

- Activities: Law Clerk (Volunteer) for Judge John Forte, Appellate Division of the District Court of Central Middlesex; Civil Rights, Civil Liberties Law Review; Intra-mural Athletics; Clinical Placement (Third Year): (a) First Semester: Massachusetts Advocacy Center; (b) Second Semester: Massachusetts Attorney General's Office--Civil Rights and Consumer Protection Divisions. Drafted comments for the Massachusetts Attorney General on the proposed U.S. Department of Justice settlement of its case against Bechtel Corporation's adherence to the Arab Boycott of Israeli companies.

Hamilton College, 1970-1974 (B.A.)

- Departmental Honors in both Economics and Mathematics
 - Phi Beta Kappa (Junior Year)
- Graduated fourth in class with the following academic awards:
 - Brockway Prize
 - Edwin Huntington Memorial Mathematical Scholarship
 - Fayerweather Prize Scholarship
 - Oren Root Prize Scholarship in Mathematics
- President, Root-Jessup Public Affairs Council.

PUBLICATIONS

Books and Edited Volumes:

- Law and Economics of Discrimination, Edward Elgar Publishing, 2013.
- Employment Discrimination: Law and Theory, Foundation Press, 2005, 2009 (2d edition) (with George Rutherglen).
- Economics of Labor and Employment Law: Volumes I and II, Edward Elgar Publishing, 2007. http://www.e-elgar.co.uk/bookentry_main.lasso?id=4070
- Foundations of Employment Discrimination Law, Foundation Press, 2003 (2d edition).
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Book Chapters:

- "Drug Prohibitions and Its Alternatives." Chapter 2 in Cook, Philip J., Stephen Machin, Olivier Marie, and Giovanni Mastrobuoni, eds, *Lessons from the Economics of Crime: What Reduces Offending?* MIT Press. 45-66 (2013).
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- "Rethinking America's Illegal Drug Policy," in Philip J. Cook, Jens Ludwig, and Justin McCrary, eds, Controlling Crime: Strategies and Tradeoffs (2011), pp.215-289 (with Benjamin Ewing and David Peloquin).

- "Assessing the Relative Benefits of Incarceration: The Overall Change Over the Previous Decades and the Benefits on the Margin," in Steven Raphael and Michael Stoll, eds., "Do Prisons Make Us Safer? The Benefits and Costs of the Prison Boom," pp. 269-341 (2009).
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- "The Evolution of Employment Discrimination Law in the 1990s: A Preliminary Empirical Evaluation" (with Peter Siegelman), in Laura Beth Nielsen and Robert L. Nelson, eds., Handbook of Employment Discrimination Research (2005).
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- "Some Thoughts on Affirmative Action," 75 Washington University Law Quarterly 1590 (1997).
- "Executive Compensation," 3 Stanford Journal of Law, Business & Finance 1 (1997).
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- "Liberal Law and Economics," (reviewing Rethinking the Progressive Agenda by Susan Rose-Ackerman), 13 Journal of Policy Analysis and Management 192 (1994).
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- "Law and Macroeconomics: Employment Discrimination Over the Business Cycle," 66 University of S. Calif. L. Rev. 709 (1993) (with Peter Siegelman).
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- "The Effects of Fee Shifting on the Settlement Rate: Theoretical Observations on Costs, Conflicts, and Contingency Fees," 54 Law and Contemporary Problems 195 (1991).
- "Re-Evaluating Federal Civil Rights Policy," 79 Georgetown Law Journal 1713 (1991) (with James Heckman).
- "Opting for the British Rule; Or, If Posner and Shavell Can't Remember the Coase Theorem, Who Will?" 104 Harvard Law Review 1093 (1991).
 - Reprinted in Saul Levmore, Foundations of Tort Law 160 (1994).
- "Continuous versus Episodic Change: The Impact of Civil Rights Policy on the Economic Status of Blacks," 29 Journal of Economic Literature 1603 (December 1991) (with James Heckman).
 - Reprinted in Paul Burstein, ed., Equal Employment Opportunity, Aldine De Gruyter, New York (1994).
- "The Impact of Federal Civil Rights Policy on the Economic Status of Blacks," 14 Harvard Journal of Law and Public Policy 41 (1991).
- "Studying the Iceberg From Its Tip: A Comparison of Published and Unpublished Employment Discrimination Cases," 24 Law and Society Review 1133 (1990) (with Peter Siegelman).
- "Prohibiting Sex Discrimination in the Workplace: An Economic Perspective," 56 University of Chicago Law Review 1337 (1989).
- "The Law & Economics of Tort Law: The Profound Revolution," 102 Harvard Law Review 1047 (1989).
- "Using Market Incentives to Promote Auto Occupant Safety," 7 Yale Law and Policy Review 449 (1989).
- "Diverting the Coasean River: Incentive Schemes to Reduce Unemployment Spells," 99 Yale Law Journal 549 (1989).
 - Winner of the 1989 Scholarly Paper Competition, Association of American Law Schools.
- "Reply to Professors Ellickson and Stigler," 99 Yale Law Journal 635 (1989).
- "Law and Economics: The Road Not Taken," 22 Law and Society Review 903 (1988).
- "Further Thoughts on Employment Discrimination Legislation: A Reply to Judge Posner," 136 U. Pa. L. Rev. 523 (1987).
- "Judge Bork, Anti-Trust Law, and the Bending of 'Original Intent'," Chicago Tribune, sec.1, pg. 15, July 22, 1987.
- "Posner's Third Symphony: Thinking about the Unthinkable," 39 Stanford Law Review 791 (1987)(with Ian Ayres).
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- "Is Title VII Efficient?" 134 U. Pa. L. Rev. 1411 (1986).
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- "Section I Cases," Sherman's Summations, Vol.3, No.2, Sherman Act Committee of the A.B.A. Antitrust Section, Fall, 1982, at 49.
- "An Evaluation of the Constitutionality of S. 114, The Proposed Federal Death Penalty Statute," Hearings before the U.S. Senate Judiciary Committee, April 27, 1981, at 151.
- "Godfrey v. Georgia: Creative Federalism, the Eighth Amendment, and the Evolving Law of Death," 30 Catholic University Law Review 13 (1980).
- "Criminal Code Revision--Contempt of Court and Related Offenses," Hearings before the Subcommittee on Criminal Justice of the House Judiciary Committee, July 18, 1979, at 1087.

Blog Posts:

- "Arming Teachers Is Not a Good Option," Scientif American, February 28, 2018, <https://blogs.scientificamerican.com/observations/arming-teachers-is-not-a-good-option/>
- "Another Mass Shooting: An Update on U.S. Gun Laws," Stanford Law School Legal Aggregate Blog, February 18, 2018, <https://law.stanford.edu/2018/02/18/another-mass-shooting-ga-us-gun-laws/>
- "Orlando to Las Vegas: Guns, Law, and Mass Shootings in the U.S.," Stanford Law School Legal Aggregate Blog, October 3, 2017, <https://law.stanford.edu/2017/10/03/orlando-to-las-vegas-guns-and-law/>
- "Moore v. Texas and the Pathologies that Still Mar Capital Punishment in the U.S.," March 29, 2017, <https://law.stanford.edu/2017/03/29/moore-v-texas-and-the-pathologies-that-mar-capital-punishment-in-the-u-s/>
- "Trump and Gun Policy," Stanford Law School Legal Aggregate Blog, November 12, 2016, <http://stanford.io/2eoWnna>
- "Facts Do Not Support Claim That Guns Make Us Safer" Stanford Law School Legal Aggregate Blog, October 12, 2015, <https://law.stanford.edu/2015/10/12/professor-john-donohue-facts-do-not-support-claim-that-guns-make-us-safer/>
- "When will America wake up to gun violence?" CNN.com, July 20, 2012, <http://www.cnn.com/2012/07/20/opinion/donohue-gun-control/index.html>
- "It Takes Laws to Control the Bad Guys," The New York Times -- Room For Debate: <http://www.nytimes.com/roomfordebate/2011/01/11/more-guns-less-crime> (January 11, 2011).

- "Have "Woman-Protective" Studies Resolved the Abortion Debate? Don't Bet on It," <http://balkin.blogspot.com/2008/09/have-woman-protective-studies-resolved.html> (September 2008).
- "Dodging the Death Penalty Bullet On Child Rape," <http://balkin.blogspot.com/2008/07/dodging-death-penalty-bullet-on-child.html> (July 2008).
- "Why I'd Stick With Yale Clerks-- Some Econometric Ruminations," <http://balkin.blogspot.com/2008/04/why-id-stick-with-yale-clerks-some.html> (April 2008).

WORKSHOPS AND ADDRESSES

- "Gun Policy in America at a Critical Juncture," SAFE, **Stanford Medical School**, September 17, 2018.
- "Empirical Evaluation of Law and Policy: The Battle for Truth," **Woodside Rotary Club**, September 12, 2018.
- "Discussing America's Second Amendment," **San Jose Museum of Quilts & Textiles**, July 15, 2018.
- "The Legal Battle to End the Death Penalty in Connecticut," **Law School of the University of Reggio Calabria, Italy**, June 15, 2018.
- Panelist, "Newtown and Gun Violence in the US, Humanity is Indivisible Series, **Stanford University**, May 31, 2018.
- "Gun Policy In California and the US," Human Rights Seminar; **Stanford Medical School**, May 29, 2018.
- "Gun Policy in the Wake of Parkland," Sigma Alpha Epsilon Leadership Speaker Series, **Stanford Law School**, March 13, 2018; Stanford in Government event, Haas Center, **Stanford University**, April 20, 2018.
- Panelist, Town Hall Meeting on Gun Violence with Congresswoman Jackie Speier, **Burlingame High School**, April 14, 2018.
- Moderator, In Studio Conversation with Berkeley Law School Dean Erwin Chemerinsky: "Defining the Limits of Free Speech," **Palo Alto League of Women's Voters**, March 27, 2018. <https://youtu.be/cqHEIAVoTLY>
- "More than Thoughts & Prayers," **American Constitution Society** and the **Federalist Society, U.C. Hastings School of Law**, March 14, 2018.
- Panelist, "Addressing Gun Violence," **American Constitution Society**, Stanford Law School, March 8, 2018.
- "Impact of Right to Carry Laws on Violent Crime," Public Policy colloquium, Stanford Economics Department, January 22, 2018; SPILS Methods Workshop, **Stanford Law School**, January 25, 2018; Quantlaw, **University of Arizona Law School**, March 2, 2018.
- Panelist, "Public Carry: Defending Against Efforts to Expand Carry Laws," **National Gun Violence Prevention Meeting**, Washington, D.C., October 18, 2017.

- "Keynote Presentation: Right-to-Carry Laws and Violent Crime," Second Amendment Litigation & Jurisprudence Conference, **The Law Center to Prevent Gun Violence**, October 16, 2017.
- "The Latest Evidence on Abortion Legalization and Crime," Conference on Empirical Legal Studies, **Cornell University**, October 13, 2017.
- "Comey, Trump, and the Puzzling Pattern of Crime in 2015 and Beyond," **University of Texas School of Law and Economics Seminar**, April 24, 2017, Faculty Workshop, **UC Davis School of Law**, April 10, 2017; Law and Social Science Seminar, **Texas A&M University School of Law**, March 6, 2017; Quantlaw, **University of Arizona Law School**, February 17, 2017.
- Debate with Kent Scheidegger on Capital Punishment, Philosophy of Punishment Seminar, **JFK University School of Law**, March 18, 2017.
- "The Evidence on Guns and Gun Laws," **Federal Bar Council Program on Guns and Gun Laws** -- Rancho Mirage, California, February 23, 2017.
- "Guns, Crime and Race in America," Stanford's Center for Population Health Sciences, **Stanford Medical School**, October 17, 2016.
- "Evaluating the Death Penalty," Forum on California Propositions 62 and 66, **Stanford Law School**, September 14, 2016.
- "Empirical Analysis and the Fate of Capital Punishment," Colloquium, Presley Center for Crime and Justice Studies; **University of California, Riverside**, October 24, 2016.
- "Gun Violence and Mental Illness," Department of Psychiatry, **Stanford University**, August 25, 2016.
- "The Battle Over Gun Policy In America," Physicians and Social Responsibility" seminar; **Stanford Medical School**, October 3, 2016; **Bioethics Committee of the San Mateo County Medical Association**, April 27, 2016; **The League of Women Voters of Palo Alto**, April 19, 2016; Human Rights and Health Seminar, **Stanford University**, April 12, 2016; Bechtel International Center, **Stanford University**, February 23, 2016; Stanford in Government Seminar, Haas Center, **Stanford University**, February 2, 2016.
- American Economic Association Continuing Education Course "The Economics of Crime" (with Jens Ludwig), **AEA Annual Meeting**, San Francisco, January 5-7, 2016.
- "Race and Arbitrariness in the Connecticut Death Penalty," **University of Connecticut School of Law**, Nov. 20, 2015.
- "*Connecticut v. Santiago* and the Demise of the Connecticut Death Penalty," Faculty Workshop, **Stanford Law School**, August 19, 2015.
- "Do Handguns Make Us Safer? A State-Level Synthetic Controls Analysis of Right-to-Carry Laws," Second Amendment Conference, **Covington and Burling, New York**, May 14, 2015; **NBER Summer Institute**, Cambridge, MA, July 23, 2015; Faculty Workshop, **Stanford Law School**, November 11, 2015.

- "U.S. Criminal Justice Under Siege : Will Becker or Beccaria Prevail?" Faculty Seminar, **Bocconi University School of Law, Milan, Italy**, June 18, 2015.
- "Can You Believe Econometric Evaluations of Law, Policy, and Medicine?" **Stanford Law School**, Legal Theory Workshop, March 1, 2007; Faculty Workshop, **Tel Aviv University School of Law**, May 14, 2007; Faculty Workshop, **University of Haifa Law School**, May 16, 2007; Law and Economics Workshop, **Georgetown Law School**, September 19, 2007; Law and Economics Workshop, **St. Gallen Law School**, Switzerland, November 29, 2007; and Yale Law School, February 25, 2008; Law and Economics Workshop, **Swiss Institute of Technology**, Zurich, Switzerland, May 21, 2008; Faculty Workshop, **University of Virginia Law School**, October 24, 2008; Plenary Session, Latin American and Caribbean Law and Economics Association, **Universitat Pompeu Fabra (Barcelona)**, June 15, 2009; **Google, Milan, Italy**, June 8, 2015.
- Commentator: "'Throw Away the Jail or Throw Away The Key? The Effect of Punishment on Recidivism and Social Cost,'" by Miguel F. P. de Figueiredo, American Law and Economics Association Meetings, **Columbia Law School**, May 15, 2015.
- "Broken Windows, Stop and Frisk, and Ferguson," 2015 Justice Collaboratory Conference: Policing Post-Ferguson, **Yale Law School**, April 17, 2015.
- "Assessing the Development and Future of Empirical Legal Studies," **Stanford Law School** course on Modern American Legal Thought, February 25, 2015.
- Commentator: "Payday Lending Restrictions and Crimes in the Neighborhood," by Yilan Xu, 9th Annual Conference on Empirical Legal Studies, **Boalt Hall**, Berkeley, CA, November 7, 2014.
- "An Empirical Evaluation of the Connecticut Death Penalty Since 1973: Are There Unconstitutional Race, Gender and Geographic Disparities?" Faculty Workshop, **Economics Department, Rice University**, Houston, TX, Feb. 18, 2014; Law and Economics Workshop, **University of Virginia Law School**, September 11, 2014; Faculty Colloquium, **University of San Diego School of Law**, October 3, 2014.
- "What's Happening to the Death Penalty? A Look at the Battle in Connecticut," **Hamilton College**, Clinton, New York, June 6, 2014.
- Panel Member, Research Methods Workshop, Conference for Junior Researchers on Law and Society, **Stanford Law School**, May 15, 2014.
- "Logit v. OLS: A Matter of Life and Death," Annual Meeting of the American Law and Economics Association, **University of Chicago**, May 9, 2014.
- "Guns: Law, Policy, Econometrics," Second Amendment Litigation and Jurisprudence Conference, **Jenner & Block**, Chicago, May 8, 2014.
- "The Impact of Antidiscrimination Law: The View 50 Years after the Civil Rights Act of 1964," **Renaissance Weekend**, Liguna Niguel, CA, Feb. 15, 2014.
- "Concealed Carry and Stand Your Ground Law," **Renaissance Weekend**, Liguna Niguel, CA, Feb. 15, 2014.

- "Reducing Gun Violence," Forum on Gun Violence Reduction, Mountainview City Hall, Mountainview, CA, Feb. 8, 2014.
- "Gun Policy Debate," C-SPAN, National Cable Satellite Corporation, Jan. 16, 2014. <<http://www.c-span.org/video/?317256-1/GunPoli>>.
- "Trial and Decision in the Connecticut Death Penalty Litigation," Faculty Workshop, **Stanford Law School**, November 20, 2013.
- "Rethinking America's Illegal Drug Policy," Law and Economics Workshop, **Harvard Law School**, April 20, 2010; NBER Conference, "Economical Crime Control," **Boalt Hall**, Berkeley, CA, January 16, 2010; **NBER Summer Institute** Pre-Conference "Economical Crime Control," July 23, 2009; **Whitney Center** Lecture Series, Hamden, CT, October 5, 2009; Law and Economics Workshop, **University of Chicago Law School**, October 13, 2009; Seminar for Spanish Law Professors, **Harvard Law School**, October 23, 2009; The Criminal Law Society, **Stanford Law School**, March 31, 2011, **University of Denver Sturm College of Law**, April 21, 2011; Law and Economics Workshop, **Boalt Hall**, Berkeley, CA, October 17, 2011; Shaking the Foundations Conference, **Stanford Law School**, November 2, 2013.
- "The Challenge to the Connecticut Death Penalty," **Yale Law School**, Death Penalty Clinic, November 5, 2007; Graduate Student Seminar, November 11, 2009; Stanford Program in International Legal Studies Seminar, **Stanford Law School**, Nov. 11, 2010; Faculty Workshop, **Stanford Law School**, June 8, 2011; Faculty workshop, **Duke Law School**, April 13, 2012; Program on Public Policy, **Stanford University**, May 2, 2012; Annual Meeting of the American Law and Economics Association, **Vanderbilt Law School**, Nashville, TN, May 18, 2013; Faculty Workshop, **University of Arizona Law School**, October 17, 2013; 8th Annual Conference on Empirical Legal Studies, **University of Pennsylvania Law School**, October 26, 2013.
- Commentator: "How to Lie with Rape Statistics" by Corey Rayburn Yung, 8th Annual Conference on Empirical Legal Studies, **University of Pennsylvania Law School**, October 2013.
- "An Empirical Look at Gun Violence in the U.S." **University of Arizona Law School**, October 17, 2013
- Discussant, "Sex Offender Registration and Plea Bargaining," **NBER Labor Summer Institute**, Cambridge, MA, July 25, 2013.
- "What Works in the War Against Crime?" **Renaissance Weekend**, Jackson Hole, Wyoming, July 5, 2013.
- Seminar Presentation, "Statistics and the Streets – Curbing Crime, Realities of the Death Penalty, and Successes in Public Safety," **Renaissance Weekend**, Jackson Hole, Wyoming, July 5, 2013.
- Flashes of Genius (Glimpses of Extra-ordinarily Novel Thinking) -- "Stemming Gun Violence," **Renaissance Weekend**, Jackson Hole, Wyoming, July 5, 2013.
- "Can Laws Reduce Crime?" Safe Oakland Speakers Series, Holy Names University, Oakland, CA, May 1, 2013, <http://www.ustream.tv/channel/safe-oakland-speaker-series>
- Presentation on "The Death Penalty in America" on a panel on "human rights and criminal justice systems in the world," Science for Peace conference at Bocconi University in Milan, Italy, November 15, 2012. <http://>

www.fondazioneveronesi.it/scienceforpeace2012/

- Seminar Presentation, "America's Criminal Justice System," **Renaissance Weekend**, Santa Monica, CA., Feb. 19, 2012.
- "Statistical Inference, Regression Analysis and Common Mistakes in Empirical Research," SPILLS Fellow's Workshop, **Stanford Law School**, February 2, 2012.
- "New Evidence in the 'More Guns, Less Crime' Debate: A Synthetic Controls Approach," Conference on Empirical Legal Studies, **Northwestern Law School**, November 4, 2011.
- "Drug Legalization and its Alternatives," *Lessons from the Economics of Crime: What Works in Reducing Offending?* **CESifo Venice Summer Institute Workshop**, July 22, 2011.
- "Incapacitating Addictions: Drug Policy and American Criminal Justice," in Rethinking the War on Drugs through the US-Mexico Prism, **Yale Center for the Study of Globalization**, May 12, 2011.
- Plenary Session: Flashes of Genius (Glimpses of Extra-ordinarily Novel Thinking) -- "Has Legalized Abortion Reduced Crime?" **Renaissance Weekend**, Liguna Niguel, CA., Feb. 18, 2011.
- "An Evidence-Based Look at the More Guns, Less Crime Theory (after Tucson)" The American Constitution Society for Law and Policy (ACS), **Stanford Law School**, January 25, 2011; **Renaissance Weekend**, Liguna Niguel, CA., Feb. 19, 2011; "Faculty Forum" at the External Relations Office, **Stanford Law School**, April 5, 2011.
- "Empirical Evaluation of Law: The Dream and the Nightmare," SPILLS Fellows Lecture, **Stanford Law School**, January 15, 2015; Legal Studies Workshop, **Stanford Law School**, Feb. 7, 2011; **Renaissance Weekend**, Liguna Niguel, CA., Feb. 20, 2011; **University of Denver Sturm College of Law**, April 22, 2011; Presidential Address, Annual Meeting of the American Law and Economics Association, **Columbia University**, May 20, 2011.
- Death Sentencing in Connecticut, **American Society of Criminology Annual Meeting**, San Francisco, Nov. 17, 2010.
- "The Impact of Right to Carry Laws and the NRC Report: Lessons for the Empirical Evaluation of Law and Policy," Conference on Empirical Legal Studies, **Yale Law School**, Nov. 6, 2010.
- Comment on Bushway and Gelbach, "Testing for Racial Discrimination in Bail Setting Using Nonparametric Estimation of a Parametric Model," Conference on Empirical Legal Studies, **Yale Law School**, Nov. 6, 2010.
- Commentator, "A Test of Racial Bias in Capital Sentencing," **NBER Political Economy Program Meeting**, April 23, 2010.
- "The (Lack of a) Deterrent Effect of Capital Punishment," Faculty Workshop, **University of Chicago Economics Department**, October 21, 2009.
- Keynote Address, "The Evolution of Econometric Evaluation of Crime and Deterrence," 1st Paris& Bonn Workshop on Law and Economics: The Empirics of Crime and Deterrence, **University of Paris Ouest Nanterre**, September 24, 2009.

- Comment on Cook, Ludwig, and Samaha, "Gun Control after *Heller*: Litigating Against Regulation," NBER Regulation and Litigation Conference, **The Boulders**, Carefree, Arizona, September 11, 2009.
- "Impact of the Death Penalty on Murder in the US," Faculty Workshop, Law School, **Universitat Pompeu Fabra (Barcelona)**, June 18, 2009.
- Comment on Joanna Shepherd's "The Politics of Judicial Opposition," Journal of Institutional and Theoretical Economics Conference, **Kloster Eberbach, Germany**, June 12, 2009.
- "The Great American Crime Drop of the '90s: Some Thoughts on Abortion Legalization, Guns, Prisons, and the Death Penalty," **Hamilton College**, Clinton, NY, June 5, 2009.
- "The Impact of the ADA on the Employment and Earnings of the Disabled," **American Law and Economics Association Meetings**, University of San Diego, May 15, 2009.
- "Crime and Punishment in the United States," **Eastern State Penitentiary, Yale Alumni Event**, Philadelphia, PA, April 26, 2009.
- "Measuring Culpability in Death Penalty Cases," Conference on Applications of Economic Analysis in Law, **Fuqua School of Business, Duke University**, April 18, 2009.
- "Autopsy of a Financial Crisis," Workshop on New International Rules and Bodies for Regulating Financial Markets, **State University of Milan**, March 23, 2009.
- "Yet Another Refutation of the More Guns, Less Crime Hypothesis – With Some Help From Moody and Marvell, Law and Economics Workshop, **NYU Law School**, March 10, 2009.
- Intelligence-Squared Debate: "Guns Reduce Crime," **Rockefeller University**, New York, October 28, 2008.
- "The D.C. Handgun Controls: Did the Supreme Court's Decision Make the City Safer?" Debate, **The Contemporary Club of Albemarle**, Charlottesville, VA, October 23, 2008.
- "Evaluating the Empirical Claims of the Woman-Protective Anti-Abortion Movement," Panel on The Facts of the Matter: Science, Public Health, and Counseling, Yale Conference on the Future of Sexual and Reproductive Rights, **Yale Law School**, October 11, 2008.
- "Empirical Evaluation of Gun Policy," **Harvard Law School**, October 9, 2008.
- "Assessing the Relative Benefits of Incarceration: The Overall Change Over the Previous Decades and the Benefits on the Margin," **Russell Sage Foundation**, New York, May 3, 2007; Law and Economics Workshop, **Tel Aviv University School of Law**, May 28, 2008.
- Death Penalty Debate with Orin Kerr, Bloggingheads, April 11, 2008.
- "Evaluating Connecticut's Death Penalty Regime," Faculty Public Interest Conversation, **Yale Law School**, April 9, 2008.
- "The Death Penalty in Connecticut and the United States," **The Whitney Center**, Hamden, CT, November 5, 2007; Seminar on Advanced Criminal Law: Criminal Sentencing and the Death Penalty, **Fordham Law School**, April 8, 2008; Law and Economics Workshop, **Swiss Institute of Technology**, Zurich, Switzerland, May 20, 2008.

- Radio Interview, "The Death of Capital Punishment?" Morning Edition: Where We Live. WNPR. Connecticut, March 10, 2008.
- Comment on Thomas Dee's "Born to Be Mild: Motorcycle Helmets and Traffic Safety," **American Economics Association Meetings**, New Orleans, Louisiana, January 4, 2008.
- "The Empirical Revolution in Law and Policy: Jubilation and Tribulation," **Keynote Address, Conference on Empirical Legal Studies, NYU Law School**, November 9, 2007.
- "The Optimal Rate of Incarceration," **Harvard Law School**, October 26, 2007.
- "Empirical Evaluation of Law: The Impact on U.S Crime Rates of Incarceration, the Death Penalty, Guns, and Abortion," Law and Economics Workshop, **St. Gallen Law School, Switzerland**, June 25, 2007.
- Comment on Eric Baumer's "A Comprehensive Assessment of the Contemporary Crime Trends Puzzle," Committee on Law and Justice Workshop on Understanding Crime Trends, **National Academy of Sciences**, Washington, D.C., April 25, 2007.
- Comment on Bernard Harcourt, Third Annual Criminal Justice Roundtable Conference, **Yale Law School**, "Rethinking the Incarceration Revolution Part II: State Level Analysis," April 14, 2006.
- "Corporate Governance in America: The Disney Case," **Catholic University Law School**, Milan, Italy, March 19, 2007.
- "The U.S Tort System," (Latin American) Linkages Program, **Yale Law School**, February 13, 2007.
- Panel Member, "Guns and Violence in the U.S.," **Yale University, International Center**, January 24, 2007.
- "Economic Models of Crime and Punishment," Punishment: The U.S. Record: A Social Research Conference at **The New School**, New York City, Nov. 30, 2006
- Comment on Baldus et al, "Equal Justice and the Death Penalty: The Experience fo the United States Armed Forces, Conference on Empirical Legal Studies, **University of Texas Law School**, Austin, Texas, October 27, 2006.
- "Empirical Evaluation of Law: The Promise and the Peril," **Harvard Law School**, October 26, 2006.
- "Estimating the Impact of the Death Penalty on Murder," Law and Economics Workshop, **Harvard Law School**, September 12, 2006; Conference on Empirical Legal Studies, **University of Texas Law School**, October 28, 2006; Joint Workshop, Maryland Population Research Center and School of Public Policy, **University of Maryland**, March 9, 2007.
- "Why Are Auto Fatalities Dropping so Sharply?" **Faculty Workshop, Wharton**, Philadelphia, PA, April 19, 2006.
- "The Law of Racial Profiling," Law and Economic Perspectives on Profiling Workshop, **Northwestern University Department of Economics**, April 7, 2006.
- "Landmines and Goldmines: Why It's Hard to Find Truth and Easy To Peddle Falsehood in Empirical Evaluation of Law and Policy," **Rosenthal Lectures, Northwestern University School of Law**, April 4-6, 2006.
- "The Impact of Legalized Abortion on Crime," **American Enterprise Institute**, March 28, 2006.

- "The Impact of Damage Caps on Malpractice Claims: Randomization Inference with Difference-in-Differences," **Conference on Medical Malpractice, The Rand Corporation**, March 11, 2006.
- "Powerful Evidence the Death Penalty Deters?" **Leighton Homer Surbeck Chair Lecture, Yale Law School**, March 7, 2006.
- "Uses and Abuses of Empirical Evidence in the Death Penalty Debate," Faculty Workshop, **University of Connecticut Law School**, October 18, 2005; Faculty Workshop, **UCLA Law School**, February 3, 2006; Law and Economics Workshop, **Stanford Law School**, February 16, 2006; ; Law Faculty, **University of Cambridge, Cambridge, England**, February 28, 2006; **University of Illinois College of Law**, Law and Economics Workshop, March 2, 2006; Faculty Workshop, **Florida State University Law School**, March 30, 2006; **ALEA**, Berkeley, CA May 6, 2006; **University of Chicago Law School**, Law and Economics Workshop, May 9, 2006.
- "Is Gun Control Illiberal?" Federalist Society Debate with Dan Kahan at Yale Law School, January 31, 2006.
- "Witness to Deception: An Insider's Look at the Disney Trial," **2005-2006 Distinguished Lecture, Boston University School of Law**, November 10, 2005; Center for the Study of Corporate Law, **Yale Law School**, November 3, 2005; **Law Offices of Herbert Smith, London, England**, February 23, 2006; Law Faculty, **University of Cambridge, Cambridge, England**, February 27, 2006.
- "Understanding the Surprising Fall in Crime in the 1990s," **Rotary Club**, Orange, CT, August 5, 2005; Faculty Workshop, **Yale School of Management**, September 21, 2005.
- Panel Member, "The Board's Role in Corporate Strategy," The Yale Global Governance Forum, **Yale School of Management**, September 8, 2005.
- "Crime and Abortion," **Museo de la Ciudad de Mexico**, Mexico City, October 20, 2003.
- "Allocating Resources towards Social Problems and Away From Incarceration as a Means of Reducing Crime," **MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice**, San Francisco, CA, February 28, 2003.
- "Shooting Down the More Guns, Less Crime Hypothesis," **Stanford Law School**, Law and Economics Seminar, January 28, 2003; Faculty Workshop, Center for the Study of Law and Society, **Boalt Hall**, University of California, Berkeley, Feb. 24, 2003; Development Workshop, **Stanford Law School**, April 25, 2003; Faculty Workshop, **Stanford Law School**, July 2, 2003; Law and Public Affairs Program Workshop, **Princeton University**, September 29, 2003; Stanford Alumni Weekend, **Stanford University**, October 17, 2003; Faculty Workshop, **CIDE**, Mexico City, October 20, 2003.
- "The Impact of Legalized Abortion on Teen Childbearing," **NBER Labor Summer Institute**, Cambridge, MA, July 30, 2002.
- "Do Concealed Handgun Laws Reduce Crime?" Faculty Workshop, **Stanford Law School**, October 4, 2000; First-Year Orientation, **Stanford Law School**, September 5, 2001; Faculty Workshop, **Harvard Law School**, April 26, 2002; Faculty Workshop, **Columbia Law School**, April 29, 2002.
- "The Evolution of Employment Discrimination Law in the 1990s: An Empirical Investigation," Fellows Workshop, American Bar Foundation, February 11, 2002.
- "The Role of Discounting in Evaluating Social Programs Impacting on Future Generations: Comment on Arrow and Revesz," Colloquium on Distributive Justice, **Stanford Law School**, Oct. 18, 2001.

- "The Impact of Wrongful Discharge Laws," **NBER Labor Summer Institute**, Cambridge, MA, July 30, 2001; Labor and Employment Seminar, **NYU Law School**, October 16, 2001; Faculty Workshop, **Stanford Law School**, September 18, 2002; **Yale Law School**, January, 2004.
- "Racial Profiling: Defining the Problem, Understanding the Cause, Finding the Solution," **American Society of Criminology Conference**, San Francisco, CA, November 15, 2000.
- "Institutional Architecture for Building Private Markets," Conference on "Latin America and The New Economy" at **Diego Portales University** in Santiago, Chile, October 26, 2000.
- "The History and Current Status of Employment Discrimination Law in the United States," Unicapital School of Law, (Centro Universitario Capital), Sao Paulo, Brazil, March 10, 2000.
- "Corporate Governance in Developing Countries: Opportunities and Dangers," Conference on Neoliberal Policies for Development: Analysis and Criticism," University of Sao Paulo Law School, March 13, 2000
- "Legalized Abortion and Crime," Law and Economics Workshop, **University of Pennsylvania Law School**, September 21, 1999; Faculty Workshop, **Yale Law School**, September 27, 1999; **John Jay College of Criminal Justice**, October 7, 1999; Faculty Workshop, **Quinnipiac Law School**, October 13, 1999; Faculty Workshop, **University of Connecticut Law School**, October 19, 1999; **University of Virginia Law School**, October 25, 1999; Faculty Workshop, **Baruch College**, November 9, 1999; MacArthur Foundation Social Interactions and Economic Inequality Network Meeting, **Brookings Institution**, December 4, 1999; Faculty Workshop, **NYU Law School**, January 21, 2000; Faculty Workshop, **University of San Diego Law School**, February 18, 2000; Public Economics Workshop, Department of Economics, **Stanford University**, April 28, 2000; Law and Economics Workshop, **University of California at Berkeley Law School**, September 18, 2000; Faculty Workshop, **Cornell Law School**, September 26, 2000; OB-GYN Grand Rounds, **Stanford Medical School**, October 2, 2000; **Center for Advanced Studies in the Behavioral Sciences**, October 11, 2000; Faculty Workshop, **Graduate School of Business**, February 5, 2002.
- Panel member, Session on Executive Compensation, Director's College, **Stanford Law School**, March 23, 1999.
- "Exploring the Link Between Legalization of Abortion in the 1970s and Falling Crime in the 1990s," Law and Economics Workshop, **Harvard Law School**, March 16, 1999; Law and Economics Workshop, **University of Chicago Law School**, April 27, 1999; Faculty Workshop, **Stanford Law School**, June 30, 1999.
- "Is the Increasing Reliance on Incarceration a Cost-Effective Strategy of Fighting Crime?" Faculty Workshop, **University of Wisconsin School of Social Science**, February 19, 1999.
- "What Do We Know About Options Compensation?" Institutional Investors Forum, **Stanford Law School**, May 29, 1998.
- Commentator on Orlando Patterson's presentation on "The Ordeal of Integration," **Stanford Economics Department**, May 20, 1998.
- "Understanding The Time Path of Crime," Presentation at Conference on Why is Crime Decreasing? **Northwestern University School of Law**, March 28, 1998; Faculty Workshop, **Stanford Law School**, September 16, 1998; Faculty Workshop, **University of Michigan Law School**, February 18, 1999.
- Commentator, Conference on Public and Private Penalties, the **University of Chicago Law School**, Dec. 13-14, 1997.

- "Some Thoughts on Affirmative Action," Presentation at a conference on Rethinking Equality in the Global Society, **Washington University School of Law**, November 10, 1997.
- Commentator on Chris Jencks' Presentation on Welfare Policy, **Stanford Economics Department**, October 8, 1997.
- "The Impact of Race on Policing, Arrest Patterns, and Crime," Faculty Workshop, **Stanford Law School**, September 10, 1997; Law and Economics Workshop, **University of Southern California Law School**, October 23, 1997; Law and Economics Workshop, **Columbia University Law School**, November 24, 1997; Law and Economics Workshop, Haas School of Business, **University of California at Berkeley**, February 19, 1998; Annual Meeting of the American Law and Economics Association, **University of California at Berkeley**, May 8, 1998; Conference on the Economics of Law Enforcement, **Harvard Law School**, October 17, 1998.
- "Crime in America: Understanding Trends, Evaluating Policy," **Stanford Sierra Camp**, August 1997.
- "Executive Compensation: What Do We Know?" TIAA-CREF Committees on Corporate Governance and Social Responsibility, Center for Economic Policy Research, **Stanford University**, June 27, 1997; NASDAQ Director's Day, **Stanford University**, June 30, 1997.
- Panel Chair, Criminal Law (Theory), Criminal Law (Empirical), and Labor/Discrimination/Family Law, American Law and Economics Association, **University of Toronto Law School**, May 9-10, 1997.
- Commentator, "Diversity in Law School Hiring," **Stanford Law School**, February 25, 1997.
- Keynote Speaker, "The Optimal Rate of Crime," 11th Annual Conference, **The Oklahoma Academy for State Goals**, Tulsa, Oklahoma, May 7, 1996.
- Panel member, Session on Executive Compensation, Director's College, **Stanford Law School**, March 28-29, 1996.
- "The Power of Law: Can Law Make a Difference in Improving the Position of Women and Minorities in the Labor Market?" The Fellows of the **American Bar Foundation**, Baltimore, Maryland, February 3, 1996.
- "Public Action, Private Choice and Philanthropy: Understanding the Sources of Improvement in Black Schooling Quality in Georgia, 1911-1960," **Stanford Faculty Workshop**, January 24, 1996; Faculty Workshop, **University of Virginia Law School**, January 22, 1997; **National Bureau of Economic Research**, Cambridge, Massachusetts, Labor Studies Conference, April 3, 1998.
- Commentator, "The Effect of Increased Incarceration on Crime," Meetings of the **American Economics Association**, San Francisco, January 6, 1996.
- Commentator, Symposium on Labor Law, **University of Texas Law School**, November 10-11, 1995.
- Panel Member, Symposium on Criminal Justice, **Stanford Law School**, October 6-7, 1995.
- Commentator, "The Litigious Plaintiff Hypothesis," Industrial and Labor Relations Conference, **Cornell University**, May 19, 1995.
- Commentator on Keith Hylton's, "Fee Shifting and Predictability of Law," Faculty Workshop, **Northwestern University School of Law**, February 27, 1995.

- "The Selection of Employment Discrimination Disputes for Litigation: Using Business Cycle Effects to Test the Priest/Klein Hypothesis," **Stanford University**, Law and Economics Seminars, October 31, 1994.
- "Is the United States at the Optimal Rate of Crime?" Faculty Workshop, **Indiana University School of Law**, Indianapolis, November 18, 1993; Faculty Workshop, **Northwestern University School of Law**, April 18, 1994; Law and Economics Workshop, **Stanford Law School**, April 28, 1994; Meetings of the American Law and Economics Association, **Stanford Law School**, May 13, 1994; **American Bar Foundation**, September 7, 1994; Faculty Workshop, **DePaul Law School**, September 21, 1994; Law and Economics Workshop, **University of Chicago Law School**, October 11, 1994; Faculty Seminar, **Stanford Law School**, October 31, 1994; Law and Economics Luncheon, **Stanford Law School**, November 1, 1994; Faculty Seminar Workshop, **University of Illinois College of Law**, Champaign, November 22, 1994; Law and Economics Workshop, **Harvard Law School**, November 29, 1994; School Alumni Luncheon, Chicago Club, December 13, 1994; **Northwestern Law School**; Law and Economics Workshop, **Yale Law School**, February 1, 1996; Faculty Workshop, **Cornell Law School**, April 10, 1996; Faculty Workshop, **Tokyo University Law School**, June 4, 1996; Panel on "The Economics of Crime," **Western Economics Association** Meeting, San Francisco, July 1, 1996.
- "The Broad Path of Law and Economics," Chair Ceremony, **Northwestern University School of Law**, September 30, 1994.
- Commentator on Paul Robinson's "A Failure of Moral Conviction," **Northwestern University School of Law**, September 20, 1994.
- "The Do's of Diversity, The Don'ts of Discrimination," Kellogg School of Business, **Northwestern University**, May 17, 1994.
- "Does Law Matter in the Realm of Discrimination?" **Law and Society Summer Institute**, Pala Mesa Lodge, Fallbrook, California, June 25, 1993.
- Commentator, "The Double Minority: Race and Sex Interactions in the Job Market," Society for the Advancement of Socio-Economics, **New School for Social Research**, March 28, 1993.
- "The Effects of Joint and Several Liability on Settlement Rates: Mathematical Symmetries and Meta-Issues in the Analysis of Rational Litigant Behavior," Economic Analysis of Civil Procedure, **University of Virginia School of Law**, March 26, 1993.
- Debate with Richard Epstein on Employment Discrimination Law, **Chicago Federalist Society**, February 23, 1993.
- Panel Chair, "Optimal Sanctions and Legal Rules in Tort and Criminal Law," Meetings of Annual Association of Law and Economics, **Yale Law School**, May 15, 1992.
- Panel Member, "The Law and Economics of Employment at Will," **The Institute For Humane Studies**, Fairfax, Virginia, March 27, 1992.
- "The Efficacy of Title VII," Debate with Professor Richard Epstein, **University of Chicago Law School**, February 26, 1992.
- Moderator, "Using Testers to Demonstrate Racial Discrimination," **University of Chicago Law School**, February 13, 1992.

- "Law & Macroeconomics: The Effect of the Business Cycle on Employment Discrimination Litigation," Law and Society Workshop, **Indiana University**, November 6, 1991; Faculty Workshop, **University of North Carolina Law School**, Chapel Hill, November 8, 1991; Faculty Workshop, **Northwestern University School of Law**, December 11, 1991; Law and
- Economics Conference, **Duquesne Law School**, March 14, 1992; **University of Chicago Law School**, April 2, 1992.
- Panel Chair and Commentator, "New Perspectives on Law and Economics," **Society for the Advancement of Socioeconomics**, Stockholm, June 17, 1991; **Law and Society Meetings**, Amsterdam, June 29, 1991.
- Panel Chair, "Regulation of International Capital Markets," **Law and Society Meetings**, Amsterdam, June 27, 1991.
- Panel Chair, "The Law and Economics of Discrimination," American Association of Law and Economics, **University of Illinois Law School**, May 24, 1991.
- "The Economics of Employment Discrimination Law," **Industrial Relations Research Association**, Chicago, Illinois, March 4, 1991.
- "Does Current Employment Discrimination Law Help or Hinder Minority Economic Empowerment?" Debate with Professor Richard Epstein, The Federalist Society, **Northwestern Law School**, February 26, 1991.
- Panel Member, "The Law and Economics of Employment Discrimination," **AALS Annual Meeting**, Washington, D.C., January 6, 1991.
- "Re-Evaluating Federal Civil Rights Policy," Conference on the Law and Economics of Racial Discrimination in Employment, **Georgetown University Law Center**, November 30, 1990.
- "Opting for the British Rule," Faculty Seminar, **Northwestern Law School**, September 11, 1990; Faculty Seminar, **University of Virginia Law School**, September 14, 1990; Law and Economics Seminar, **University of Michigan Law School**, October 18, 1990; Faculty Workshop, **NYU Law School**, November 14, 1990; Faculty Workshop, **University of Florida Law School**, March 18, 1991.
- "The Effects of Fee Shifting on the Settlement Rate: Theoretical Observations on Costs, Conflicts, and Contingency Fees," at the **Yale Law School Conference** "Modern Civil Procedure: Issues in Controversy," June 16, 1990.
- "Studying the Iceberg From Its Tip?: An Analysis of the Differences Between Published and Unpublished Employment Discrimination Cases," **Law and Society Meetings**, Berkeley, California, May 31, 1990.
- Panel Discussion on Tort Reform, **University of Pennsylvania Law School**, April 27, 1990.
- Panel Discussion of "The Role of Government in Closing the Socio-Economic Gap for Minorities," at the Federalist Society National Symposium on "The Future of Civil Rights Law," **Stanford Law School**, March 16, 1990.
- "Continuous versus Episodic Change: The Impact of Affirmative Action and Civil Rights Policy on the Economic Status of Blacks," **University of Virginia Economics Department**, February 15, 1990; **Princeton University Department of Economics**, February 21, 1990 (with James Heckman); Law & Economics Workshop, **University of Toronto Law School**, October 8, 1991.

- "Sex Discrimination in the Workplace: An Economic Perspective," Fellows Seminar, **American Bar Foundation**, October 16, 1989.
- "The Changing Nature of Employment Discrimination Litigation," Law and Economics Workshop, **Columbia Law School**, March 23, 1989; Faculty Seminar, **University of Virginia Law School**, March 24, 1989; Law and Economics Workshop, **University of Chicago**, April 25, 1989; **Law & Society Meeting**; Madison, Wisconsin, June 8, 1989; Labor Economics Workshop, **University of Illinois**, Chicago, November 1, 1989; Law & Economics Workshop, **University of Pennsylvania Law School**, November 9, 1989; Law and Economics Seminar, **University of California at Berkeley**, October 4, 1990; Law and Social Science Workshop, **Northwestern University**, February 3, 1991; Law and Economics Seminar, **Stanford Law School**, March 21, 1991; Faculty Workshop, **Cornell Law School**, April 3, 1991; Visiting Committee, **Northwestern Law School**, April 5, 1991.
- "Law & Economics: The Third Phase," The Association of General Counsel, **Northwestern University School of Law**, October 14, 1988.
- "Employment Discrimination Litigation," **Northwestern Law School** Alumni Monthly Loop Luncheon. **Chicago Bar Association**, May 31, 1988.
- "The Morality of the Death Penalty." A debate with Ernest Van Den Haag. **Northwestern University School of Law**, April 19, 1988.
- "Models of Deregulation of International Capital Markets." A presentation with David Van Zandt, Faculty Seminar, **Northwestern University School of Law**, April 1, 1988; Visiting Committee, May 5, 1988.
- "Is Title VII Efficient?" A debate with Judge Richard Posner, Faculty Seminar, **Northwestern University School of Law**, November 20, 1987.
- "The Senate's Role in Confirming Supreme Court Nominees: The Historical Record," **Northwestern University School of Law**, September 22, 1987.
- "Diverting the Coasean River: Incentive Schemes to Reduce Unemployment Spells," **Yale Law School** Civil Liability Workshop, March 30, 1987; Faculty Seminar, **Northwestern University School of Law**, March 18, 1987; **University of Southern California Law Center**, May 1, 1987; and Seminar in Law and Politics, Department of Political Science, **Northwestern University**, May 8, 1987; Labor Workshop, Department of Economics, **Northwestern University**, October 27, 1987; **AALS Annual Meeting**, New Orleans, January 7, 1989.
- "Women in the Labor Market--Are Things Getting Better or Worse?" **Hamilton College**, February 23, 1987.
- "The Changing Relative Quit Rates of Young Male and Female Workers," **Hamilton-Colgate Joint Faculty Economics Seminar**, February 23, 1987.
- "Living on Borrowed Money and Time--U.S. Fiscal Policy and the Prospect of Explosive Public Debt," **Orange Rotary Club**, February 22, 1985.
- "Capital Punishment in the Eighties," **Hamilton College**, April 6, 1981.
- "Terms and Conditions of Sale Under the Uniform Commercial Code," Executive Sales Conference, **National Machine Tool Builders' Association**, May 12, 1980.

PROFESSIONAL ACTIVITIES

- Member, Committee on Law and Justice, National Research Council, October 2011 – December 2018.
- Fellow of the Society for Empirical Legal Studies, 2015 - present.
- Co-Editor (with Steven Shavell), American Law and Economics Review, May 2006 – August 2012.
- President, American Law and Economics Association, May 2011 – May 2012.
- Co-President, Society for Empirical Legal Studies, November 2011 - August 2012. Member, Board of Directors from November 2011 - November 2014.
- Testified before the Connecticut Legislature in Support of Senate Bill 1035 and House Bill 6425 (A Bill to Eliminate the Death Penalty), March 7, 2011; Testified again before the Connecticut Judiciary Committee on March 14, 2012.
- Member of the Special Committee on ALI Young Scholars Medal, October 2009 – February 2011.
- Vice-President/President Elect, American Law and Economics Association, June 2010 – May 2011.
- Secretary-Treasurer, American Law and Economics Association, June 2009 – May 2010.
- Board of Advisors, Yale Law School Center for the Study of Corporate Law, July 2004 – August 2010.
- Evaluated the Connecticut death penalty system: "Capital Punishment in Connecticut, 1973-2007: A Comprehensive Evaluation from 4600 murders to One Execution," http://works.bepress.com/john_donohue/137/
- Member, Panel on Methods for Assessing Discrimination, National Academy of Sciences, September 2001 – June 2004. Resulting Publication: National Research Council, Measuring Racial Discrimination (2004), <http://www.nap.edu/catalog/10887.html>
- Member, National Science Foundation Review Panel, Law and Social Sciences, September, 1999 – April 2001.
- Editorial Board, Journal of Empirical Legal Studies, July 2003 – present.
- Editorial Board, International Review of Law and Economics, October 1999 – present.
- Editorial Board, Law and Social Inquiry, February 2000 – present.
- Board of Editors, American Law and Economics Review, August 1998 – April 2013.
- Consultant, Planning Meeting on Measuring the Crime Control Effectiveness of Criminal Justice Sanctions, National Academy of Sciences, Washington, D.C., June 11, 1998
- Member, Board of Directors, American Law and Economics Association, June 1994-May 1997. Member, ALEA Nominating Committee, July 1995-May 1996. Member, Program Committee, July 1996-May 1998 and July 2000 – May 2002.
- Statistical Consultant, 7th Circuit Court of Appeals Settlement Conference Project (December, 1994).
- Testified before U.S. Senate Labor Committee on evaluating the Job Corps, October 4, 1994.

- Assisted the American Bar Association Standing Committee on the Federal Judiciary in evaluating the qualifications of Ruth Bader Ginsburg (June 1993) and David Souter (June, 1990).
- Chair, AALS Section on Law and Economics, January 1990-January 1991.
- Economic Consultant to Federal Courts Study Committee. Analyzing the role of the federal courts and projected caseload for Judge Richard Posner's subcommittee. February 1989-March 1990.
- Member, 1990 AALS Scholarly Papers Committee.
- Member, Advisory Board, Corporate Counsel Center, Northwestern University School of Law. Since December 1987.
- Associate Editor, Law and Social Inquiry. Summer 1987-December 1989.
- Interviewed Administrative Law Judge candidates for U.S. Office of Personnel Management. Chicago, Illinois. May 23, 1988.
- Member, Congressman Bruce Morrison's Military Academy Selection Committee. Fall 1983.
- 1982 Candidate for Democratic Nomination, Connecticut State Senate, 14th District (Milford, Orange, West Haven).

PRO BONO LEGAL WORK

- Death Penalty case: Heath v. Alabama. Fall 1986-Fall 1989.
- Wrote brief opposing death sentence in Navy spy case. Court ruled in favor of defendant on September 13, 1985.
- Staff Attorney, Neighborhood Legal Services, January-July 1981.
- Appealed sentence of death for Georgia defendant to the United States Supreme Court. Sentence vacated on May 27, 1980. Baker v. Georgia.
- Court-appointed representation of indigent criminal defendant in District of Columbia Superior Court, February-July 1980.

RESEARCH GRANTS

- Stanford University Research Fund, January 1997 and January 1998.
- The National Science Foundation (project with James Heckman), December 1992; (project with Steve Levitt), July 1997.
- Fund for Labor Relations Studies, University of Michigan Law School, March 1988.

BAR ADMISSIONS

- Connecticut - October 1977; District of Columbia - March 1978 (Currently Inactive Status); United States Supreme Court - November 1980; U.S. District Court for the District of Connecticut - February 14, 1978.

PROFESSIONAL and HONORARY ASSOCIATIONS

- American Academy of Arts and Sciences (since April 2009).

- Research Associate, National Bureau of Economic Research (since October 1996) – in Law and Economics and Labor Studies.
- American Law Institute (since September 29, 2010).
- Member, Fellows of the Society for Empirical Legal Studies (since October 2015).
- American Bar Association
- American Economic Association
- American Law and Economics Association.

PERSONAL

- Born: January 30, 1953.

EXHIBIT B

Recent Trends in American Gun Prevalence*

John J. Donohue III[†] and Isaac J. Rabbani[‡]

June 23, 2017

Abstract

We explore trends in a variety of measures of gun prevalence, including direct surveys, proxies, and economic indicators. We find that firearm ownership, measured at both the individual and household levels, has declined significantly since the 1970s, though concentration of ownership has increased. The decrease seems attributable largely to reduced interest in hunting, as it has been driven by a drop in ownership of rifles and shotguns. Ownership of handguns, which are typically bought for self-defense, has remained stable, despite decreases in crime and in fear of danger.

Introduction

Recent high-visibility incidents involving firearms—especially mass shootings, such as that at Sandy Hook Elementary School—have renewed public interest in firearms legislation. In order to effectively tailor gun policy, it is important to understand the extent of gun prevalence in American society, whether this prevalence has changed over time, and if so, how—all of which have been the subjects of considerable media discussion (Bialik, 2013a; Brennan, 2012; NRA-ILA, 2016). One spokesperson for the National Rifle Association ascribed the drop in violent crime rates over recent decades to the passage of shall-issue laws, claiming that “[i]t would be disingenuous for anyone to not credit increased self-defense laws to account for this decline” (Miller, 2012). Opponents of this position claim that the reduction in crime was due to other factors; that despite the initiation of concealed-carry programs, gun ownership has actually declined; and further, that this decline, reflecting a shift in popular preferences, justifies calls for stricter regulation of firearm sales (Waldman, 2012).

In this paper, we review annual survey data at the national, state, and Census-Division levels, that track the prevalence of firearms in American households. Drawing on the larger gun policy literature, we then examine several commonly used proxy measures for gun prevalence. Both approaches lead to the same conclusions: Gun ownership in the U.S. has undergone a sustained and significant decrease over the past 35 years, and has simultaneously become more concentrated. Finally, we offer potential explanations for this decline, finding that the most salient is an abatement in interest in hunting, and that it is more difficult to judge the effects of other factors.

A Note on Terminology

For the remainder of the paper, we use the terms gun ownership and gun prevalence (or firearm ownership and firearm prevalence) interchangeably. One could argue that the two are actually subtly different: If one were studying the phenomenon of suicide committed by firearm, then perhaps a relevant factor to consider would be how accessible guns are to the everyday person—that is to say, prevalence. On the other hand, if one were studying changes in societal attitudes towards keeping a gun in the home, one might be more interested in the rate of household ownership. In practice, however—in part due to the paucity of data on

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guns—the literature on this subject tends to use the ownership rate, especially the household ownership rate, as a yardstick for prevalence.

Survey Measures

Perhaps the most widely cited measure of national gun ownership is that of the General Social Survey (GSS), which has collected data on household gun ownership since 1973, and personal gun ownership since 1980, switching between annual and biennial collection in various years (Smith & Son, 2015). The GSS is considered to be one of the most reliable instruments for tracking broad social trends, especially relative to telephone surveys, because of its in-person interview format, large sample size (2,867 respondents in the 2016 survey), high response rates (consistently over 70%), and careful efforts to generate a representative sample of the U.S. population. Figure 1 shows that the GSS data reflect a substantial drop in household gun ownership levels since the late 1970s. In 2016, the GSS-reported percentage of households that contained a gun was 30.8%, a significant drop from a high¹ of 50.4% in 1977. Personal gun ownership, meanwhile, dropped from a peak of 30.5% in 1985 to 20.5% in 2016.

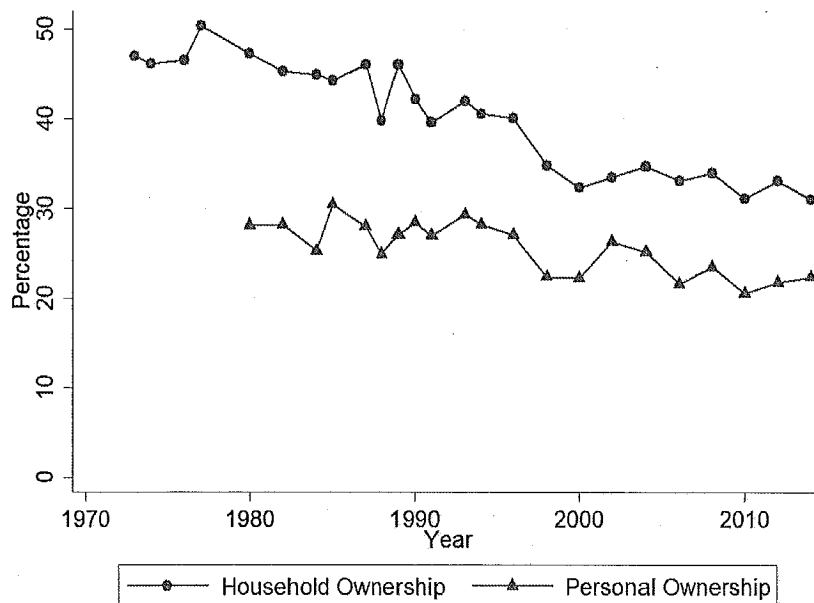


Figure 1: GSS-Measured Trends in Gun Ownership, 1973 - 2016.

The Pew Research Center has tracked gun ownership since 1993, and also reports a significant decrease. In Pew's 1993 survey, 45% responded yes to having a gun in their household (the corresponding GSS rate was 43.8%), and by 2013 this number had fallen to 33% (when the GSS recorded 34.4%) (Pew Research Center, 2013). In a report for the National Opinion Research Center—the organization that conducts the GSS, at the University of Chicago—Smith *et al.* (2014), using the iPoll archive, compile the results of 415 polls conducted between 1959 and 2013 that have surveyed national gun ownership. Going by the 364 of these that estimated a household rate, the authors estimate a decline in household gun ownership of 9 percentage points from the late 1970s to 2013,² and find that the annual trend of abatement is statistically significant and robust to controlling for various survey methodologies.³

¹ All maximum and minimum survey values are taken over the entire period for which a survey question is asked.

² The authors use year ranges instead of individual years, and estimate a drop from 48.4% before 1980 to 39.4% in 2006-2013.

³ Such methodological variations include in-person interviewing versus telephone interviewing; use of all adults as the polling base, versus restriction to registered voters; and different wordings of gun possession questions.

One major survey that deviates from the GSS, Pew, and the iPoll study is Gallup, which has tracked gun ownership since 1960, but finds a different pattern, as shown in Figure 2 (Gallup, 2015). Essentially, the Gallup surveys suggest that after 1960, gun ownership declined for twenty years, and since then has roughly stayed constant, albeit with some substantial temporary swings. Part of the reason for this volatility could be that the response rates for Pew's and Gallup's surveys—as they are conducted via telephone as opposed to in person—are typically much lower than that of the GSS (Pew Research Center, 2012).

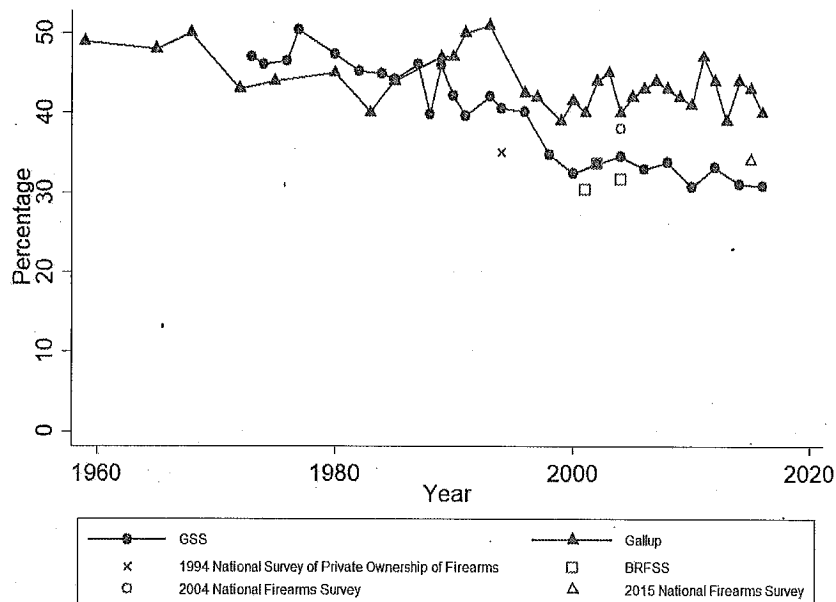


Figure 2: Survey Rates of National Household Gun Ownership, 1959 - 2015.

Criticism of Survey Evidence

The accuracy of survey results for controversial subjects such as gun ownership is often subject to debate. Skeptics of an ownership decline contend that many firearm owners are loath to reveal their true ownership status (Bialik, 2013b). Downward response error could result from fear that one owns or uses a gun illegally (whether or not that is the case), fear that the government will acquire the survey information and secretly maintain a database of gun owners, or from simply not knowing there is a gun in the household at all (National Research Council, 2004). But at least in the past, survey respondents seemed to answer gun questions willingly and accurately. In one survey of concealed-carry permit holders, Smith (2003) found that 94% accurately reported their status. Another experiment found that only 1 of 35 people living at addresses where handguns had recently been registered denied that any kind of gun had been kept in their home (Kellermann *et al.*, 1990).⁴ According to Tom Smith, director of the GSS, less than 1% of respondents have refused to answer the GSS gun ownership question since it started being asked (in 1973); the question is “asked well into [the] survey...They’ve already told us all kinds of things about themselves” (Bialik, 2013a).⁵ Low response rates are also cited as cause for concern, though once again this is principally a problem for telephone surveys, and in any case there is little reason to believe that non-responders are more likely than

⁴31 respondents acknowledged possession of a gun, and the other 3 claimed that a gun was recently kept in their home, but is no longer. False positives were not assessed since only those who had recently registered guns were surveyed. See Rafferty *et al.* (1995) for another example of such evidence.

⁵For further discussion of survey validity and methodologies, see Smith *et al.* (2014) and Chapter 2 of National Research Council (2004)

responders to be gun owners.⁶ Overall, the gun prevalence decline in the GSS data seems most likely to be accurate.

Proxy Measures

Background

Most surveys that include questions on gun ownership are conducted at the national level or within particular states, and are not conducted every year. The GSS, for example, is only constructed to be representative at the levels of the nine Census Divisions and the country. The CDC's Behavioral Risk Factor Surveillance System (BRFSS), another commonly used state-level survey, only included questions on gun ownership in all states in 2001, 2002, and 2004. Because these limitations often make survey data difficult to employ, especially when analyzing more granular geographic units, firearms researchers have developed several proxy metrics that are highly correlated with survey measures of gun ownership, but cover broader time periods and finer units. In order to build a more complete picture of recent trends in gun ownership, we compile several of these proxies,⁷ namely: the proportion of suicides committed by gun, the circulation rate of the firearm magazine *Guns & Ammo*, the per capita numbers of hunting licensees and federal firearms background checks, and the rate of accidental firearm death among children. Table 1 presents fixed-effects regressions, at the Census-Division and state levels, of the log of the GSS ownership rate on the log of each proxy.⁸ In the appendix, we also present simple pairwise correlation coefficients between national, Census-Division level, and state gun ownership rates and the corresponding proxies.

Criticism of Proxies

It should be noted that Kleck (2004) rejects the use of any gun ownership proxy to analyze inter-temporal trends, claiming that of the twelve proxies he examines, some capture inter-spatial variation in gun ownership, but none captures inter-temporal variation. His methodology, however, is to compare the annual percent change in each proxy to that of the GSS national gun ownership rate. As Hemenway (2012) rightly points out, in doing so he fails to take into account that "year-to-year changes in the GSS national measure of gun ownership...are probably almost entirely 'noise.' That changes in no other firearm proxy are highly correlated with this 'noise' does not mean other measures are bad (or good) proxies." As Table 1 and Appendix Table 2 indicate, levels of certain proxies are strongly predictive of survey rates at the national and sub-national levels, even after controlling for region- and year-fixed effects.

Proxies

First validated by Miller *et al.* (2001), the fraction of suicides that are committed by gun—abbreviated FS/S, for firearm suicides divided by total suicides—is constructed from the CDC's National Vital Statistics System's Fatal Injury Reports, and is available from 1981 to 2015. FS/S has been shown to have strong and significant correlations with survey measures of gun ownership, both cross-sectionally and inter-temporally,

⁶Finally, Smith has said, and we have confirmed, that the rate of respondents refusing to answer the gun ownership questions has increased in recent years. As a check, we created an upper bound rate for which all refusers were assumed to have a gun in their home. For the Census Division-level data, for 180 of 225 observations (80%), this upper bound was at most 5% larger than the regular estimate. For the national-level data, the equivalent statistic is 22 of 25 (88%) observations with a difference below 5%.

⁷While there are specific criticisms against the use of each of the following proxies in statistical analysis, and we will enumerate some of those below, our goal is simply to get a more complete (if blurry) picture of gun prevalence trends. To that end, we defer to the literature, examining some of the proxies that are more commonly used by firearms researchers.

⁸The GSS is not constructed to be representative at the state level. However, note that for three of the five proxies—FS/S, licenses per capita, and circulation per capita—the coefficients at the Census-Division level are similar to those at the state level. This suggests that the state-level results are not too misleading, and that the other two proxies may simply be less reliable (for the reasons described below).

| | (1) | (2) | (3) | (4) | (5) |
|-------------------------|-------------------|---------------------|---------------------|--------------------|--------------------|
| | FS/S | Acc. Gun Death Rate | Licenses per Capita | Circ. per Capita | Checks per Capita |
| Coefficient | 0.626* (0.308) | 0.0573** (0.024) | 0.207** (0.084) | 0.331** (0.140) | 0.609** (0.194) |
| Year Range | 1982-2014 | 1982-1998 | 1973-2014 | 1980-2014 | 2000-2014 |
| Number of Years | 20 | 12 | 25 | 9 | 8 |
| Adjusted R ² | 0.438 | 0.219 | 0.461 | 0.395 | 0.127 |
| N | 180 | 107 | 225 | 81 | 72 |

All regressions are log-log, and include Division- and year-fixed effects. Standard errors (in parentheses) are clustered by Division.
Number of years used does not correspond exactly to year range due to gap years in administration of GSS gun ownership question.
All nine Census Divisions' data were included in this regression.

* p < 0.10, ** p < 0.05, *** p < 0.01

(a) Census-Division Level

| | (1) | (2) | (3) | (4) | (5) |
|-------------------------|------------------|---------------------|---------------------|--------------------|--------------------|
| | FS/S | Acc. Gun Death Rate | Licenses per Capita | Circ. per Capita | Checks per Capita |
| Coefficient | 0.593 (0.522) | 0.0138 (0.042) | 0.221** (0.089) | 0.393** (0.188) | -0.0327 (0.020) |
| Year Range | 1982-2014 | 1982-1998 | 1973-2014 | 1980-2014 | 2000-2014 |
| Number of Years | 20 | 12 | 25 | 9 | 8 |
| Adjusted R ² | 0.641 | 0.642 | 0.663 | 0.637 | 0.577 |
| N | 515 | 286 | 644 | 230 | 203 |

All regressions are log-log, and include state- and year-fixed effects. Standard errors (in parentheses) are clustered by state.
Number of years used does not correspond exactly to year range due to gap years in administration of GSS gun ownership question.
Regressions are weighted by the number of respondents coming from the state in each year.
Because many states had small numbers of respondents in many years, these regressions include only the 26 states for which at least 10 years exist when the number of respondents from the state was greater than or equal to 20.
Regressions do not include the District of Columbia.

* p < 0.10, ** p < 0.05, *** p < 0.01

(b) State Level

Table 1: Regressions of Gun Ownership Rate on Proxies.

and as a result, has become the most widely-used proxy for the level of gun ownership (Cook & Ludwig, 2006; Briggs & Tabarrok, 2014; Kalesan *et al.*, 2015). Various criticisms have been levelled against its validity (Duggan, 2003; National Research Council, 2004; Shenassa *et al.*, 2006). Perhaps the most serious of these is that if use of a gun to commit suicide, given that it is a more effective method than drug overdose and hanging, is the result of a higher level of suicidal intent, then FS/S could simply be capturing “the average level of suicidal intent in the population” (Kleck, 2004). Furthermore, if suicidal intent is at least partly driven by some latent social unrest or dysfunction, and that unrest also pushes people to acquire guns (perhaps for self-defense), then a spurious positive correlation exists between FS/S and gun ownership. Nonetheless, our results, combined with those of the previously cited studies validating it, give us confidence in using the percentage of suicides by gun to proxy for gun ownership.

The Fatal Injury Reports also contain the rate of unintentional death by firearm, which exists from 1981 to 1998 at the state level, and 1981 to 2015 at the national level.⁹ We use this death rate among children aged 0 to 14 as another intuitive proxy for the level of gun prevalence: The number of unintentional firearm deaths in a given population and unit of time is feasibly a Poisson random variable whose rate parameter is proportional to, or at least increasing in, the availability of guns. One problem with this proxy is that it exhibits significant truncation, as roughly 20% of state-year rates are 0.¹⁰

Duggan (2001) first proposed utilizing per capita circulation of the firearm magazine *Guns & Ammo* as a proxy for gun ownership, and since then the practice has spread (Briggs & Tabarrok, 2014; Siegel *et al.*,

⁹This variable stops at 1998 at the state level because from 1999 on the CDC stopped reporting rates based on fewer than 10 deaths.

¹⁰The measurement of unintentional firearm deaths has also been found to suffer from some degree of error (Barber & Hemenway, 2011).

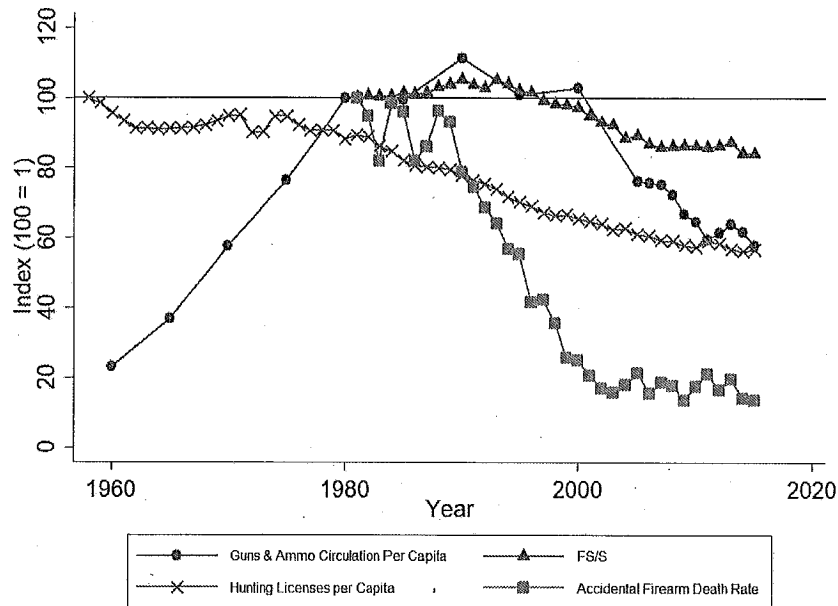


Figure 3: Trends in Gun Ownership Proxies, 1977 - 2015.

2014).¹¹ The magazine is one of the most popular amongst gun enthusiasts, with a total circulation of over 4.5 million in 2015, roughly 90% of which comes from subscriptions. Circulation data, which we have annually from 2005 to 2015, and in five-year increments from 1960 to 2000, is taken from the Alliance for Audited Media.

Siegel *et al.* (2014) introduce a novel proxy for gun ownership, a composite of FS/S with the (per capita) number of hunting license holders, the latter of which is available from the U.S. Fish and Wildlife Service starting in 1958. We look at FS/S and the hunting license measure separately, instead of as a composite. One caveat about this proxy is that it includes license holders who reside in *other* states as well, which means it is inflated for states where many people travel to hunt.¹²

Finally, the per capita number of background checks conducted through the National Instant Criminal Background Check System (NICS) is available from 1999, and has been offered as a proxy for firearm ownership. This measure is only valid if purchase rates for new firearms are proportional to current ownership rates.¹³ Even assuming this proportionality requirement holds, there is reason to be skeptical of the measure's usefulness: For one, NICS checks are only necessarily conducted by federally licensed firearms dealers, whereas a significant portion of gun sales are made through state or private dealers. Since regulations defining precisely which transactions require background checks vary widely from state to state and over time, it is problematic to compare this metric between states or years.

The way check numbers are aggregated is also important. The total number of NICS checks includes, among others, checks that are undergone when one *pawns* her firearm or applies for a firearm permit,¹⁴ as

¹¹Some opt to use circulation of *Field & Stream*, which is more hunting-oriented. We believe that our measure of hunting licenses per capita adequately captures the hunting pathway of gun ownership, and therefore utilize *Guns & Ammo*, which caters to a broader audience.

¹²This proxy is also vulnerable to significant year-to-year fluctuations due to animal movements and the like. However, because we have such a large sample on this variable (57 years for each state), we feel comfortable looking at its long-term trend nonetheless.

¹³One must also assume that each background check represents one gun purchase. Close inspection of the NICS data reveals that most checks for gun sales seem to represent only one gun type—that is, either handgun(s) or long gun(s). However, as the FBI itself warns, “based on varying state laws and purchase scenarios, a one-to-one correlation cannot be made between a firearm background check and a firearm sale.”

¹⁴Thirteen states and the District of Columbia have laws requiring a background check to purchase or possess a firearm (commonly known as “permit-to-purchase” laws). For these states, some proportion of the checks undergone for a firearm

well as administrative checks—essentially system tests—that are run when no firearm transaction is made at all. Moreover, when A sells a gun to B in a private transaction that is subject to a background check, the count of checks is augmented, but there is no change in gun prevalence. (Only the owner of the firearm has changed.) In the last ten years alone, four states—Colorado, Delaware, Oregon, and Washington—have adopted laws mandating universal background checks on private sales, thereby expanding the number of purchases that are counted without increasing the number of guns in circulation. We limit the checks we count to those resulting from the non-private purchases of handguns, rifles, shotguns, other gun types, and multiple gun types.¹⁵

We construct indices of each proxy, indexing values to the first observation of the series within a state or Division,¹⁶ and track their progress over the study period. Figure 3 shows that, at the national level, since 1980 four of our gun prevalence proxies have undergone decreases, ranging from 15% for FS/S to 85% for the accidental firearm death rate. Figure 4 shows a starkly different pattern for firearm background checks. We address this discrepancy in the next section.

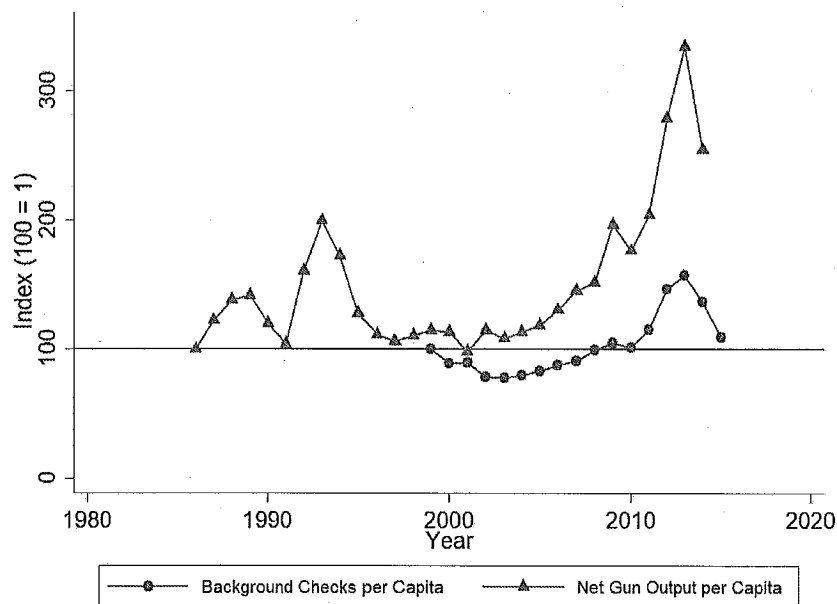


Figure 4: Trends in Gun Sales, 1986 - 2015.

Ownership Concentration

The increase in (per capita) NICS checks seems to indicate that the (per capita) number of guns in circulation has risen considerably, which is consistent with data from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) U.S. Firearms Commerce Report (Department of Justice, 2015). As Figure 4 shows, per capita net output of firearms, where net output is defined as manufactures plus net imports, has increased

permit actually represent a purchase as well. After reviewing these states' laws, and consulting at length with FBI staff on how exactly checks are counted, we decided not to count permit checks towards the NICS metric, with one exception—Hawaii, which conducts solely permit checks because its firearm dealers opt not to re-check permit holders at the point of sale.

¹⁵To give readers an idea of this dataset, as of 2015, NICS check numbers are broken down into the following categories: Pre-Pawn, Redemption, Returned/Disposition, Rentals, Private Sale, Return to Seller - Private Sale, Permit, and four non-private sale categories representing the type(s) of gun being sold. It is these four columns (plus permit checks, for Hawaii) that go into our metric.

¹⁶The exception is the Guns & Ammo proxy, which we index to its 1980 value, as its initial movements more likely reflect the magazine's initial popularization—circulation began in 1958—than underlying gun ownership trends.

dramatically since the mid-2000s. An increase in privately held guns may seem counterintuitive in light of the evidence that household gun ownership has decreased. However, it is possible, given that the number of households has increased over the study period, that newer households have been less likely to buy guns than existing households, which are acquiring more of them. This would tend to increase the number of firearms in circulation but decrease overall prevalence.

Indeed, there is empirical evidence that individual households have been accumulating multiple firearms. Cook & Ludwig (1997), examining the results of the 1994 National Survey of Private Ownership of Firearms, found that 74% of gun owners owned two or more firearms, and that the 20% of owners who possessed the most guns collectively controlled 55% of privately owned firearms. Ten years later, Hepburn *et al.* (2007), looking at another national survey, found that of all individuals (households) that possessed a firearm, 48% (41%) owned at least four, and that the top 20% of owners controlled 65% of the country's guns. And most recently, in the 2015 iteration of the same survey, Azrael *et al.* (2017) find that 74% of owners have more than one gun, and that the top 20% possess 60% of the stock.¹⁷ Thus to the extent that NICS checks provide a useful proxy, it is crucial that they be interpreted as a proxy for firearm *sales*, and not for ownership, or they will tell a misleading story.

The Mexican Gun Trade

Another factor that compromises the validity of the NICS checks as a U.S. gun prevalence proxy is the scope of the illegal firearms trade, which exports many American-purchased guns to the rest of the world. According to the ATF's Firearms Tracing System, which traces guns recovered at crime scenes and logs their origins, 87,253, or 70.3%, of the firearms recovered in Mexico from 2009 to 2015 came from the US.¹⁸ The Government Accountability Office (2016) finds, further, that most of these had been bought legally at gun shops and gun shows in Texas, Arizona, and California. Another study estimated that from 2010 to 2012, 2.2% of domestic arms sales were attributable to U.S.-Mexico traffic, and 46.7% of federally licensed firearms dealers depended in part on demand from this trade to stay in business (McDougal *et al.*, 2015). To the extent that Mexico-bound guns are bought from federally licensed dealers, which are required to run background checks on unlicensed purchasers, or from state or private dealers that do run background checks, the NICS checks resulting from them artificially inflate the checks per capita proxy.

Explanations

Hunting

The most common purposes that firearm owners give for possessing a gun have consistently been self-protection and hunting (Azrael *et al.*, 2017; Hepburn *et al.*, 2007; Pew Research Center, 2013; Jelen, 2012). (The proportion that cites political beliefs as a reason is quite small.) Thus if gun prevalence has indeed declined on the scale we have suggested—and assuming supply-side factors have remained relatively stable—it is probably due to a decline in either the perceived need for self-defense, interest in hunting, or both. In Figure 5 we plot the evolution of the GSS-reported hunting rate alongside hunting licensees per capita; both indicate that Americans' tastes for hunting have abated steadily and substantially since the late 1970s. Whereas in 1977, 31.6% of adults reported being a hunter or married to one, in 2016 the corresponding rate was only 17.1%.

¹⁷An analysis of California's gun market from 1996 to 2015 finds that among dealerships, sales are highly and increasingly concentrated, with the top dealership handling over 10% of transactions (California Department of Justice, n.d.). If perennial gun buyers tend to stay loyal to particular dealerships over time, then this increase in dealership concentration could be consistent with an increase in ownership concentration, through a smaller gun-buying demographic buying more guns from a smaller pool of sellers.

¹⁸This figure consists of all recovered firearms "that were determined by ATF to be manufactured in the U.S. or legally imported into the U.S. by a Federal firearms licensee" (Bureau of Alcohol & Explosives, 2015, 2016). It is also likely an underestimate, as, for the other 29.7% of recovered firearms, the ATF cannot determine whether "the firearms were imported directly into Mexico, or if the firearms were legally imported into the U.S. or went to another country and then made their way to Mexico by legal or illegal means."

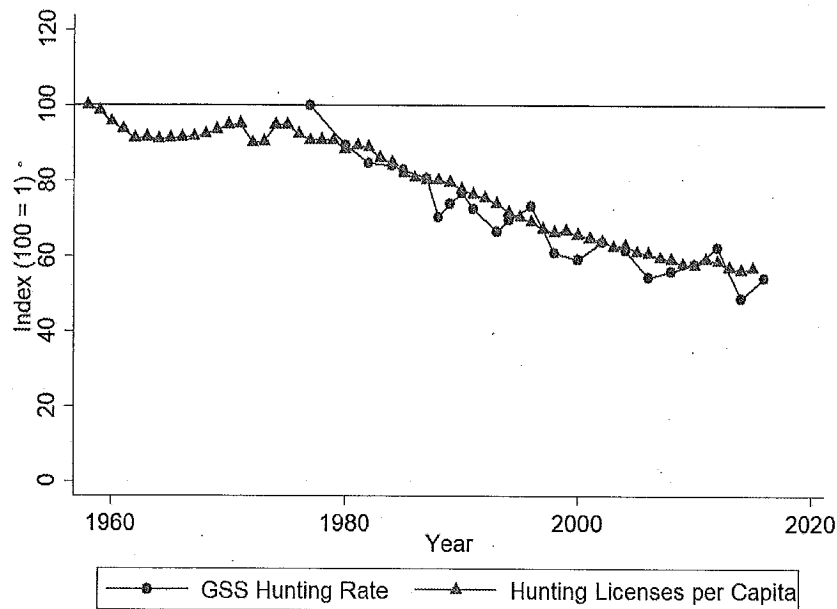
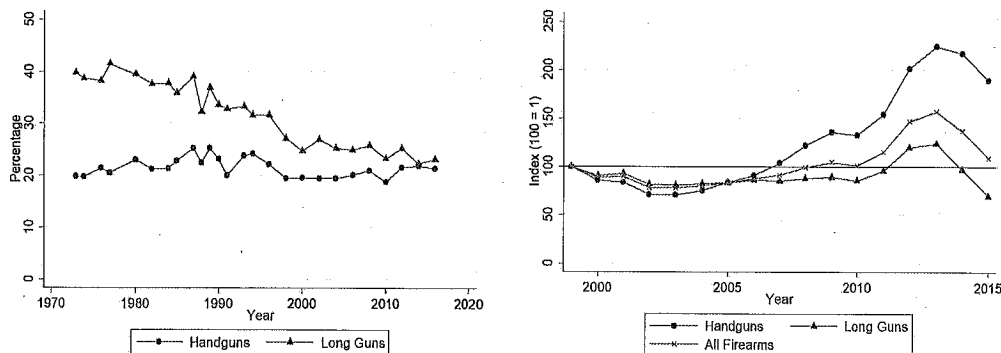


Figure 5: Trends in Hunting, 1977 - 2015.

If gun prevalence has declined through reduced interest in hunting, one would also expect to observe decreases in ownership of long guns—that is, rifles and shotguns—as these are disproportionately used by hunters. And indeed, between 1973 and 2016, the rate of handgun ownership remained relatively stable while that of long guns decreased dramatically, from 39.8% to 23.2% (Figure 6a). Furthermore, when we decompose per capita federal background checks based on whether they went towards handgun or long gun purchases, we find that the increase in checks noted above—and often cited in the press as indicating that overall ownership is actually increasing—has been overwhelmingly driven by increased handgun sales (Figure 6b). As we show in the Appendix, these findings are not confined to a particular region, but are consistent throughout the country.



(a) Household Gun Ownership by Type, 1973 - 2016. (b) Federal Background Checks per Capita, 1999 - 2015.

Figure 6: Handgun and Long Gun Trends.

Demographics

Demographic shifts could also partially explain the decrease in firearm prevalence. If certain groups own guns at systematically lower rates than their complements, and the proportion of the population in the lower-ownership groups increases, then overall gun ownership mechanically decreases as well. This seems a plausible story in the U.S., whose gun ownership rate varies significantly by sex, race, and other dimensions. In particular, going by national GSS ownership data, from 1980 to 2016 gun ownership was on average 31 percentage points higher among males than females, and 12 and 15 percentage points higher among Whites than Blacks and other-race respondents, respectively. The proportion of Whites in the U.S. population has decreased steadily by 10 percentage points since 1970, which would indeed tend to reduce overall gun ownership. The male proportion of the population, however, has actually increased by 1 percentage point since 1980, so shifts in the gender distribution cannot have been a channel of general ownership decreases.

Several publications have reported that interest in firearms and shooting sports has been increasing among women in recent years (Goode, 2013; Mann, 2012). Tabulating gun ownership by demographic, however, we find that female ownership has remained stable between 10 and 14% since 1980 (Figure 7).

Urbanization could also explain part of the gun prevalence decline. In the 2015 National Firearms Survey, 15% of urban, 19% of suburban, and 33% of rural dwellers owned at least one firearm. (Previous iterations of this survey yielded similar relative proportions.) From 1977 to 2015, the percentage of the U.S. population living in Census-designated Metropolitan Statistical Areas increased from 66 to 85%.¹⁹

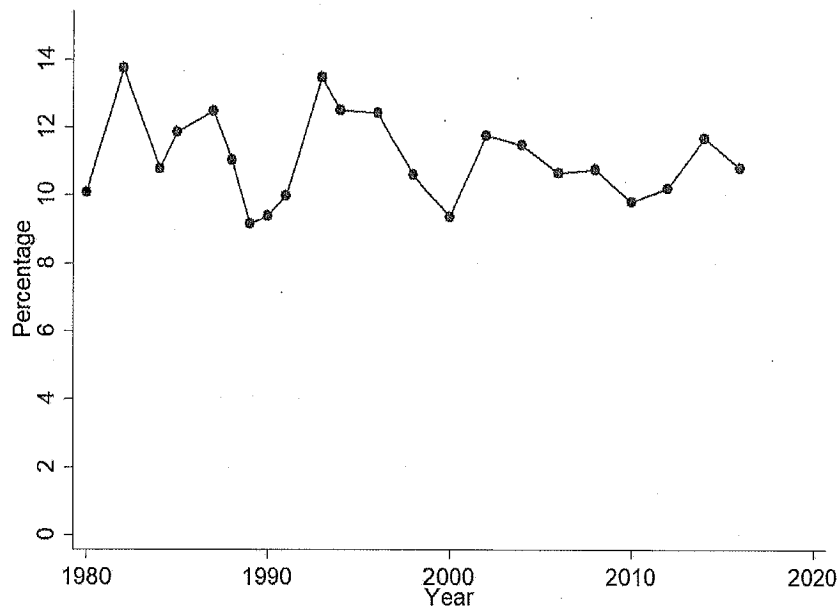


Figure 7: Gun Ownership Among Women, 1973 - 2016.

Crime and Other Factors

Given that a plurality of handgun owners possess handguns for self-defense, it seems likely that handgun ownership in a given time and place is largely determined by the perceived fear of danger there. To track this variable, we examine the GSS question about whether the respondent is afraid of walking around his

¹⁹While part of this could be attributed to non-gun owners self-sorting into urban areas, it is also true that urban jurisdictions tend to have stricter gun laws than rural ones, thereby curtailing ownership among people who may have otherwise had one.

neighborhood at night.²⁰ As one would expect given the large decline in crime that occurred starting in the early 1990s, this measure of fear decreased significantly over a similar period (Figure 8).

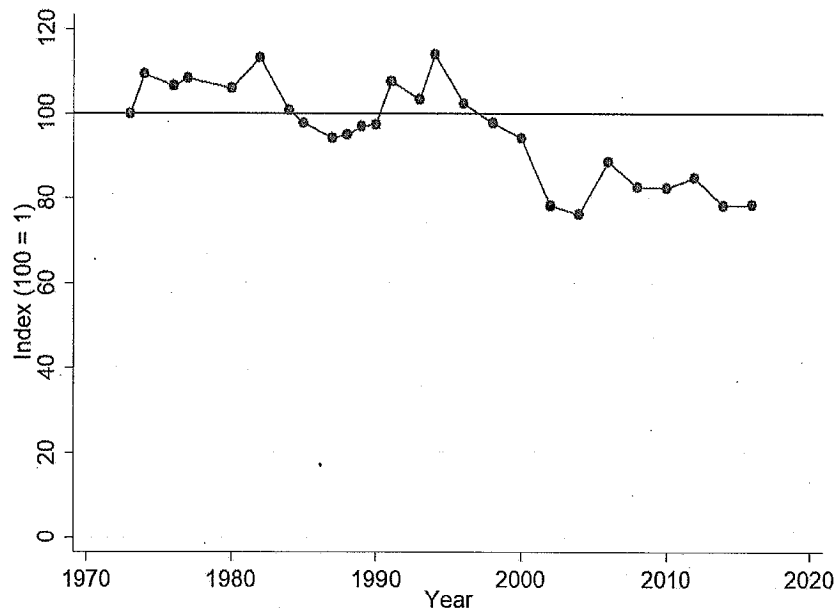


Figure 8: Neighborhood Fear Index.

However, this leaves us with the puzzle of why handgun ownership has remained stable over the study period if crime, as well as the fear resulting from it, have both gone down so dramatically. (Indeed, the decline in hunting also should have contributed to a decrease in handgun ownership.) Going by Figure 9, which plots handgun ownership against the fear rate for each Census Division, it would appear that even within any region, there is no relationship between the two variables. One explanation for this is that we have hitherto ignored (handgun-specific) supply-side dynamics that have served to increase ownership, such as reductions in manufacturing costs or the market becoming less concentrated. The latter is not the case: The Herfindahl-Hirschman Indices for the pistol and revolver markets have not changed significantly since 1986 (Brauer, 2013). The cost explanation is also unlikely, as the price of steel mill products, a strong determinant of costs to gun manufacturers (First Research, 2012), has increased precipitously over the study period, reaching over five times its 1973 level in late-2008 (Bureau of Labor Statistics, 2016). Another possibility is that we have misidentified the direction of causality: Perhaps reduced fear of danger does not significantly reduce the desire to own a handgun, but owning a handgun does reduce one's fear—and this mechanism is prevalent enough to scale up to a general trend. Finally, because much of the wear-and-tear on a firearm occurs through the number of rounds fired, and handguns bought for concealed-carry or home self-defense purposes are not likely to be fired very many times (especially relative to long guns bought for target shooting or hunting), it is plausible that the average handgun would last much longer than the average long gun (perhaps by decades),²¹ resulting in the trends documented above.

²⁰The exact wording is: "Is there any area right around here—that is, within a mile—where you would be afraid to walk alone at night?"

²¹There is little hard data on the life spans of different guns or their determinants, but the bulk of opinions shared on online firearm enthusiast forums suggest that certain parts in every gun need to be replaced after some number of rounds are fired, and that this "round ceiling" is the main limiting factor on a firearm's longevity.

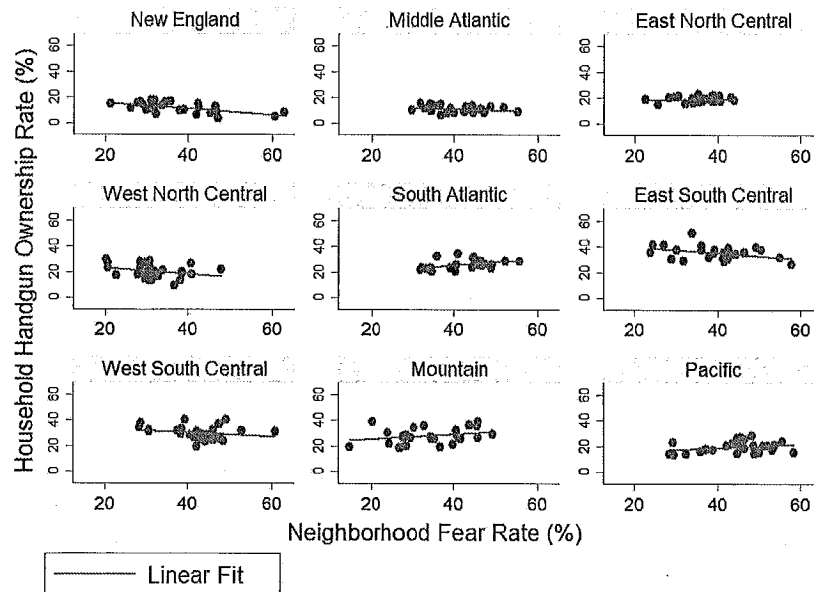


Figure 9: Handgun Ownership and Neighborhood Fear by Census Division. $r = -0.013$

Conclusion

Those advocating weaker regulations on guns often claim that gun ownership has increased substantially since the early 1990s, and that the concurrent drops in violent crime rates can be attributed to this trend (National Rifle Association, 2010). And indeed, the claim that violent crime is down is accurate: From 1990 to 2015, the national murder, aggravated assault, and robbery rates have dropped by roughly 48, 44, and 60%, respectively. However, for the nation as a whole and for 7 of 9 Census Divisions, gun ownership also seems to be down considerably—though those with guns have acquired larger stocks.

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Appendix

Proxy Correlations

Table 2 presents pairwise correlations, at the state, Census Division, and national levels, between the gun ownership proxies and a survey measure of gun ownership. At the state level, proxies are compared to gun ownership as captured by the BRFSS household rate in 2001, 2002, and 2004, while at the Census Division and national levels, the GSS household rate is the survey metric. Because correlations at the state level between our proxies and the BRFSS ownership rate are based on only three years of data, it is important to note that they largely capture inter-spatial, rather than inter-temporal, similarities. The same issue does not exist at the coarser levels, since we have national and Census Division-level ownership rates for many more years.

| | BRFSS | | GSS |
|--|----------|--|----------|
| Licenses per Capita | 0.792*** | FS/S | 0.836*** |
| NICS Checks per Capita | 0.806*** | Accidental Death Rate | 0.830*** |
| FS/S | 0.770*** | Licenses per Capita | 0.694*** |
| | | Circulation per Capita | 0.576*** |
| | | NICS Checks per Capita | 0.639*** |
| * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$ | | * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$ | |
| (a) State Level | | (b) Census-Division Level | |

| | GSS |
|--|----------|
| FS/S | 0.822*** |
| Accidental Death Rate | 0.932*** |
| Licenses per Capita | 0.945*** |
| Circulation per Capita | 0.734 |
| NICS Checks per Capita | -0.422 |
| * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$ | |
| (c) National Level | |

Table 2: Correlations Between Surveyed Gun Ownership Rates and Proxies.

Regional Trends

One potential objection to our claims would be that the national trends illustrated above mask significant regional heterogeneity. Perhaps it is only in certain areas that the prevalence of long guns has decreased relative to that of handguns, or perhaps the decline in overall ownership is confined to relatively populous regions (whereas other areas have even experienced increases). As it turns out, data at the Census Division level confirm that these patterns are mostly consistent across regions. In Figures 10, 11, and 12 we reproduce three of the previous charts, plotted for each individual Census Division. (Figure 13 is a map of the Divisions.) With the exceptions of two Divisions, it appears that the decreases in access to firearms and interest in hunting, as well as the convergence between handgun and long gun ownership rates, are not limited to a particular area, but are present throughout the country. The exceptions, New England and West North Central, are also the only Divisions for which we also do not observe a downward trend in prevalence.

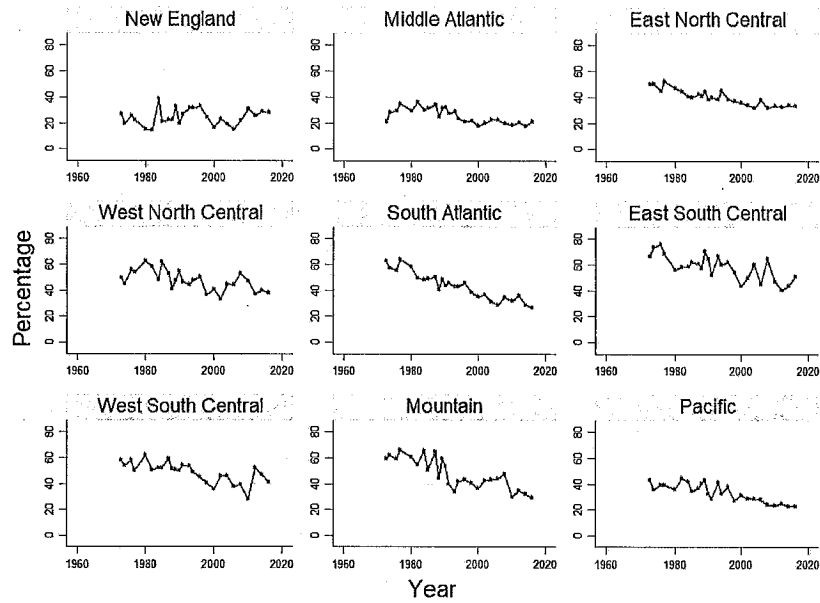


Figure 10: Household Gun Ownership by Census Division, 1973 - 2016.

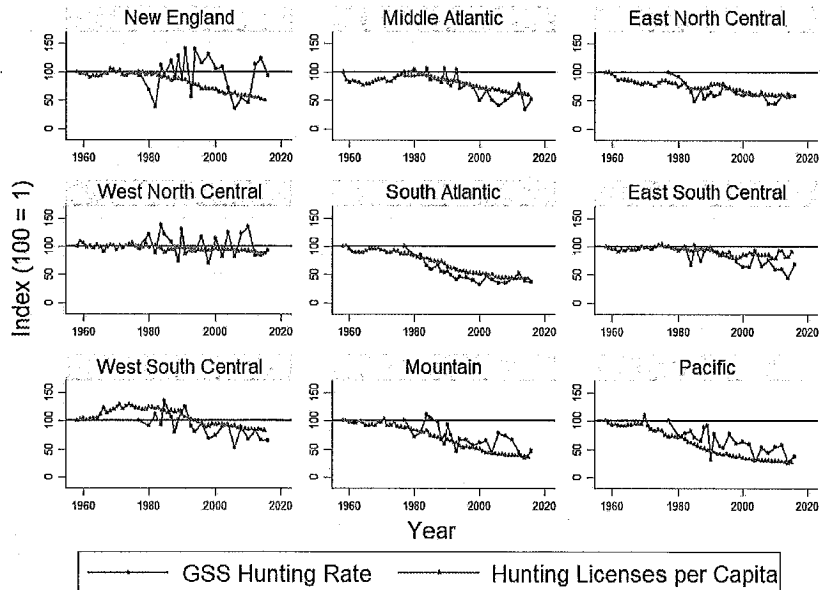


Figure 11: Trends in Hunting by Census Division, 1977 - 2015.

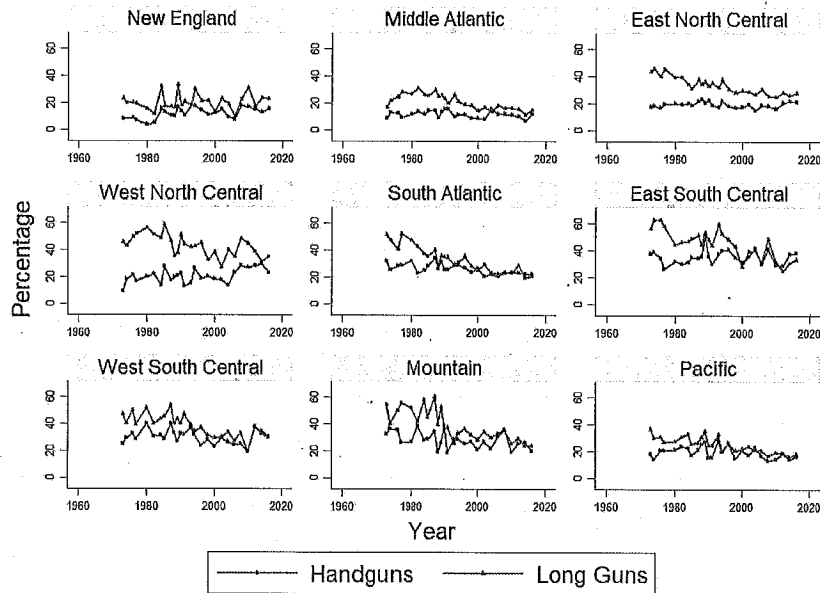


Figure 12: Household Gun Ownership by Type and Census Division, 1973 - 2016.

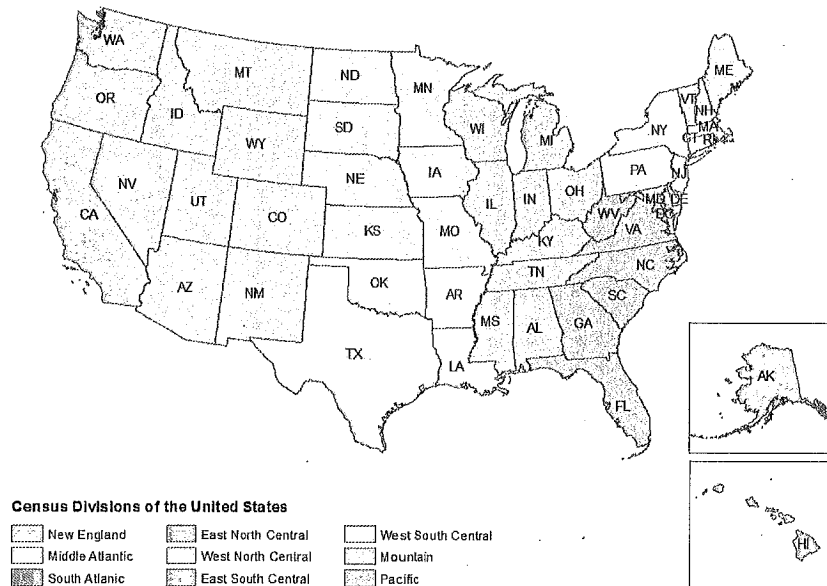


Figure 13: Map of Census Divisions. Courtesy of Iowa State University.

EXHIBIT C

The Stock and Flow of U.S. Firearms: Results from the 2015 National Firearms Survey



DEBORAH AZRAEL, LISA HEPBURN, DAVID HEMENWAY,
AND MATTHEW MILLER

Since the mid-1990s, the U.S. civilian gun stock has grown from approximately 192 million (65 million handguns) to approximately 265 million (113 million handguns). In 2015, gun owners owned more weapons and were more likely to own both handguns and long guns than in 1994. As in 1994, ownership in 2015 was highly concentrated: the median owner owned two, but the 8 percent of all owners who owned ten or more accounted for 39 percent of the stock. Approximately seventy million firearms changed hands within the past five years (from 2011 to 2015); most were purchased. Two and a half percent of Americans had guns stolen within the past five years, accounting for an estimated five hundred thousand guns per year.

Keywords: firearms, guns, gun stock, handguns

In 2015, 36,252 people died of a firearm-related injury in the United States, approximately the same number of deaths as occurred in motor vehicle crashes. The same year, more than eighty thousand people were nonfatally injured (CDC 2017). The distribution of firearm deaths in 2015 is typical of the distribution over

the past several decades: the majority of firearm deaths were suicides (22,018), followed by homicides (13,463) and then unintentional firearm injuries (fewer than one thousand). By contrast, of the more than eighty thousand nonfatal firearm injuries, 60,470 were assault related, 15,928 were unintentional (self or

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other) injuries, and fewer than 3,320 were acts of deliberate self-harm that proved nonlethal.

The firearms involved in these injuries, and the millions more not involved in any injuries, all start out as legally manufactured or imported guns introduced into the primary market through federally licensed dealers. Subsequently, these firearms may exchange hands through private sales, some of which involve federally licensed dealers, or through gifts, inheritance, or nonpurchase transfers such as theft or borrowing, arrangements that characterize the underground gun market (as Cook and Pollack describe in the introduction).

Beyond that, little more is known about these guns than that they are owned by roughly one in five U.S. adults and can be found in approximately one of three U.S. households. In fact, the most recent peer-reviewed nationally representative survey that focused on details about firearms other than these two basic measures of exposure was conducted in 2004 (Hepburn et al. 2007). Between 2004 and today, we know that the proportion of adults who personally own firearms (and the proportion who live in households with guns) has continued to decline, modestly but steadily, largely because of a decline in personal gun ownership by men. In 2014, for example, the National Opinion Research Center's General Social Survey, an annual survey that every other year or so includes the same two questions (about personal and household firearm ownership) estimated that 22 percent of U.S. adults personally owned a firearm (35 percent of men and 12 percent of women) and that 31 percent of American households included at least one firearm, compared with 28 percent of U.S. adults (50 percent of men and 10 percent of women) and 47 percent of U.S. households in 1980 (Smith and Son 2015).

Although the National Opinion Research Center's General Social Survey and other surveys have asked respondents whether they personally own a firearm or live in a home with firearms, few have asked about the *number* of guns respondents own, let alone more detailed information about these firearms and the people who own them, such as reasons for firearm ownership, where firearms were acquired, how much firearms cost, whether they are carried

in public, and how they are stored at home (Smith and Son 2015; Gallup 2016; Morin 2014). Because of this, the best and most widely cited estimates of the number of firearms in civilian hands are derived from two national surveys dedicated to producing detailed, disaggregated, estimates of the U.S. gun stock, one conducted in 1994, the other in 2004 (Cook and Ludwig 1997, 1996; Hepburn et al. 2007). In the 1994 survey, sponsored by the National Institute of Justice, Philip Cook and Jens Ludwig estimated that American civilians owned approximately 192 million firearms, approximately one-third of which (sixty-five million) were handguns. In 2004, using a random-digit dial survey toward the end of an era when most Americans had land lines and answered their telephones, we estimated that U.S. adults owned approximately 283 million firearms (more than four per owner), 40 percent of which were handguns. These two surveys, taken together, suggested several important trends in firearm ownership between 1994 and 2004: a steady increase in the number of firearms in civilian hands, a growing proportion of the U.S. gun stock represented by handguns, and concentration of firearms among fewer gun owners.

Less is known about the movement of firearms between people than about the gun stock. Firearm manufacturing data provide one measure of the annual number of new guns available to be purchased (flow of new guns into the market); other data collected by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) provide a related, but overlapping measure: the annual number of adults who undergo a background check before acquiring (or attempting to acquire) one or more guns. Other movements of firearms, such as dispositions by the police and military, are not centrally recorded (Wright, Rossi, and Daly 1983; Cook and Ludwig 1996). The National Crime Victimization Survey (NCVS) collects information on firearm theft (Langton 2012; Rand 1994). Recent estimates suggest that between 2005 and 2010 approximately 250,000 guns were stolen annually (Langton 2012). No single source provides an estimate of the flow of guns, however. In consequence, as with the gun stock, the best available evidence to date regarding the frequency of gun transfers and

the number of guns transferred comes from the 1994 and 2004 surveys.

To learn more about private ownership and use of firearms in the United States today, as well as to characterize where and the extent to which new and used firearms have exchanged hands over the past five years, we conducted the first nationally representative survey of firearm ownership and use in more than a decade—the 2015 National Firearms Survey (NFS). In this article, we focus on features related to the gun stock (such as its size, composition, and distribution and the reasons for private gun ownership) and on salient aspects of firearm transfers between parties, such as where current firearm owners acquired their most recent firearm, by type of gun and recency of acquisition.

METHODS

Data for this study come from the NFS, a national web-based survey (N=3949) designed by the authors and conducted in January 2015 by the survey research firm Growth for Knowledge (GfK). Respondents were drawn from GfK's KnowledgePanel (KP), an online panel that includes approximately fifty-five thousand U.S. adults.¹ The KP panel is selected on an ongoing basis, using an equal probability of selection design, to provide samples, after minor adjustments for deviations from equal probability se-

lection (base weights), that are representative of the U.S. population. Prior to selection of a study sample, GfK adjusts panel base weights to account for any discrepancies between panel composition and the distribution of key demographic characteristics of the U.S. population as reflected in the most recent Current Population Survey (GfK 2013).²

KP panel members complete an initial demographic survey and then periodic subsequent surveys, answers to which allow efficient panel sampling and weighting for future surveys. For the NFS, the study target population comprised adults eighteen years or older who fell into one of three groups: gun owners, non-gun owners living in a gun-owning household, or non-gun owners living in a non-gun-owning household, ascertained from the demographic surveys. An additional target population was veterans, who could fall into any of the three groups. To sample this population, GfK targeted respondents who met the criteria in GfK profile surveys and reconfirmed their gun ownership and veteran status within the survey. The final study weights provided by GfK combined pre-sample weights with a set of study-specific poststratification weights accounting for oversampling and for survey non-response.³

For this survey, 7,318 KP panel members received an invitation to participate. Of these,

1. As discussed at greater length later, historically, most estimates of gun ownership come from either random-digit dial telephone surveys or, in the case of the General Social Survey, in-person interviews of respondents. Online panels such as KP have been used increasingly in the social science literature to overcome the cost and response rate limitations of these survey modalities.

2. GfK structures recruitment for the KP with the goal of having the resulting panel represent the adult population of the United States with respect to a broad set of geodemographic distributions including particular subgroups of hard-to-reach adults (for example, those without a landline telephone or those who primarily speak Spanish). Panel members are randomly recruited through probability-based sampling, and participating households are provided with access to the Internet and hardware if needed. GfK recruits panel members by using address-based sampling (previously, GfK relied on random-digit dialing methods). For selection of general population samples from KP, GfK uses an equal probability of selection method design by weighting the entire KP to the benchmarks from the latest March supplement of the U.S. Census Current Population Survey. The geo-demographic dimensions used for weighting the entire KP typically include sex, age, race, ethnicity, education, census region, household income, home ownership status, metropolitan area, and Internet access. Using these weights as the measure of size for each panel member, in the next step a probability proportional to size procedure is used to select study specific samples. Application of the proportional to size procedure methodology with the above measure of size values produces fully self-weighting samples from KP, for which each sample member can carry a design weight of unity.

3. After the study sample was selected and fielded and all of the survey data were edited and made final, design weights were adjusted for any survey nonresponse (to the initial and to the supplemental survey) as well as for

3,949 completed the survey, yielding a survey completion rate of 54.6 percent.⁴ In contrast, nonprobability, opt-in, online panels typically achieve a survey completion rate between 2 percent and 16 percent (Callegaro and DiSogra 2008). All panel members except those serving in the U.S. armed forces at the time were eligible to participate. Invitations to participate were sent by email; one reminder email was sent to nonresponders three days later. Participants were not given any specific incentive to complete this survey, although GfK has a point-based program through which participants accrue points for completing surveys and can later redeem them for cash, merchandise, or participation in sweepstakes. The final sample consisted of gun owners (n=2,072), non-gun owners in gun households (n=861), and non-gun owners (n=1,016). The sample also included 1,044 veterans, distributed across the three gun ownership groups.

Following earlier work, our estimates of the

magnitude and distribution of the U.S. gun stock, as well as gun transfers and theft, come from the reports of those who personally own guns (Cook and Ludwig 1997; Hepburn et al. 2007). Gun owners were identified through two questions: "Do you or does anyone else you live with currently own any type of guns?" followed by, among all respondents who answered in the affirmative, "Do you personally own a gun?" Gun owners were then asked about the types of guns they owned (handguns, divided into pistols and revolvers), long guns, and other guns) and the number of each type. Respondents were also asked about the main reasons they owned guns, as well as about their most recent firearm acquisition, including whether they bought the gun or acquired it in some other way (such as an inheritance), and whether, and if so how many, guns had been stolen from them in the past five years.⁵ Data for this article come from respondents who personally own guns.

any under- or overcoverage imposed by the study-specific sample design. For this study, the following strata of gun ownership from weighted KP data and veteran status from the 2014 veteran supplemental survey of the census Current Population Survey were used for the raking adjustment of weights: gender by age (eighteen to twenty-nine, thirty to forty-four, forty-five to fifty-nine, sixty to sixty-nine, or seventy and older); census region (Northeast, Midwest, South, West) by metropolitan area (yes or no); gender by veteran status (yes or no); age (eighteen to twenty-nine, thirty to forty-four, forty-five to fifty-nine, sixty to sixty-nine, or seventy and older) by veteran status (yes or no); race-Hispanic ethnicity (white or non-Hispanic, black or non-Hispanic, other or non-Hispanic, two or more races and non-Hispanic, Hispanic) by veteran status (yes or no); census region (Northeast, Midwest, South, West) by veteran status (yes or no); metropolitan area (yes or no) by veteran status (yes or no); education (less than high school or high school, some college, bachelor's or greater) by veteran status (yes or no); household income (less than \$25,000, \$25,000 to less than \$50,000, \$50,000 to less than \$75,000, \$75,000 or more) by veteran status (yes or no); Internet access (yes or no) by veteran status (yes or no); veteran serving year (less than two years, four to nine years, or ten or more years); armed services branch (Air Force, Army, Coast Guard or Marines or other, Navy). An iterative proportional fitting (raking) procedure was used to produce final weights aligned with respect to all strata simultaneously. In the final step, calculated weights were examined to identify and, if necessary, trim outliers at the extreme upper and lower tails of the weight distribution. The resulting weights were then scaled to the sum of the total sample size of all eligible respondents.

4. The 55 percent participation rate, according to GfK, is within the expected range for its surveys and does not signal that recruitment for this survey was particularly difficult. We did not add incentives because the participation rate was unexceptional. In surveys of this sort the participation rate can be artificially inflated by waiting a longer time for eligible parties to respond or contacting eligible members of the panel with reminders. We did not need to do so as we hit our target number of participants within a short period.

5. Each gun-owning respondent was asked separately for handguns and long guns: "What are the main reasons you own . . . ?" Response categories were as follows: "1) For protection against strangers; 2) For protection against people I know; 3) For protection against animals; 4) For hunting; 5) For other sporting use; 6) For a collection; 7) For some other reason." Respondents could check multiple responses and provide a free text answer if they indicated that a main reason for owning guns was "other." Respondents who reported that they owned other guns were asked to indicate a single primary reason they owned these guns.

A supplement to our survey was conducted by GfK in November 2015. For the supplement, all gun owners from the original survey (n=2072) who were still in the KP panel (n=1880) were invited to answer an additional set of questions about the timing of their most recent gun acquisition, the number of guns they had acquired in the previous five years, and the number of guns stolen from them in the previous five years.⁶

Of those eligible for the survey (n=1,880), 1,613 responded (86 percent). The respondents to the supplemental survey did not differ from respondents to the original survey with respect to age, gender, race, type of gun most recently acquired, or acquisition patterns. Nonresponders (n=267) were more likely than responders to be younger and female and to have acquired their most recent firearm as a gift or inheritance than by purchase. Respondents to the original survey who were no longer in the GfK panel (n=192) were more likely to be younger and have refused to describe the type of gun they most recently acquired than those in the original sample. They were also less likely to have purchased their most recent firearm. These differences did not affect the overall similarities between the supplemental and original samples. We use a supplemental survey weight provided by GfK for analyses using the supplemental survey.

The Northeastern University Institutional Review Board approved this study.

RESULTS

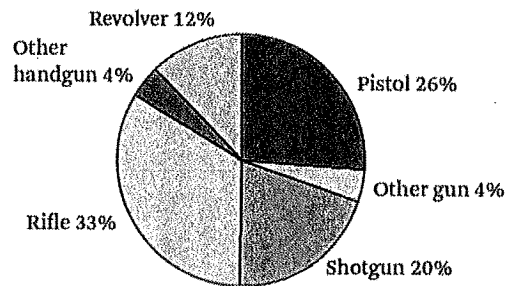
Results from the NFS detail the U.S. gun stock, including its size, distribution, and reasons for gun ownership, as well as gun transfers, including sales and theft.

6. Respondents were asked "When you completed the prior national firearms survey, sponsored by Northeastern University, in April 2015, you said that the gun you acquired most recently was a [insert type based on type noted in the April 2015 survey]. Thinking about this gun, approximately when did you acquire it?" Three options were offered: "1) Within the past two years; 2) Between two and five years ago; 3) More than five years ago." The second question was "What was the exact year that you acquired this gun?" Respondents were asked to specify the exact year or to report that they did not know what year.

7. Including or excluding those who reported being a gun owner but reported owning no guns, or calculating the mean number of guns per gun owner including those who reported owning no guns, does not materially change our estimates (21.8 percent personal gun ownership; mean number of guns, 4.7).

8. We did not ask respondents to specify what type of gun. Other guns might include single-shot "black powder" guns or machine guns.

Figure 1. U.S. Gun Stock by Gun Type



Source: Authors' tabulations based on the National Firearms Survey.

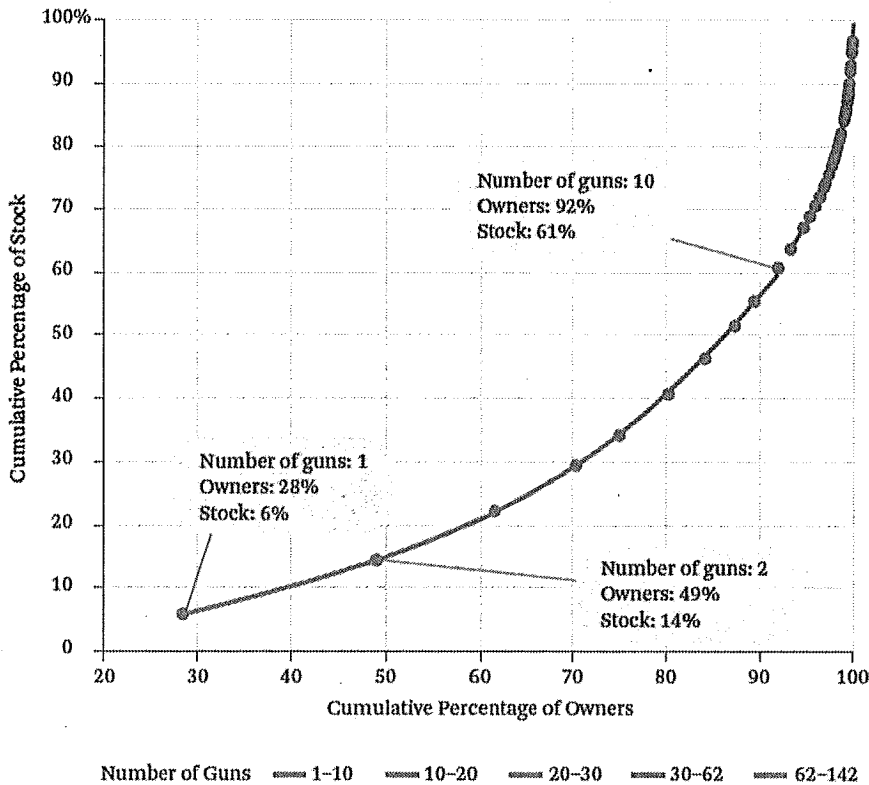
The Gun Stock

Twenty-two (22) percent of our sample reported that they personally owned a gun. Extrapolating to the U.S. population of adults age eighteen and older (245,157,000 in 2014) (Colby and Ortman 2015), we estimate approximately 54.7 million gun owners in the United States (CI: 50.7–58.8). Sixty respondents who said that they owned guns did not answer our questions about how many guns they owned. We use results from the 2012 respondents who did provide an answer to estimate the mean number of guns owned by gun owners: 4.8 (CI: 4.37–5.32), yielding a gun stock of 265 million (CI: 245 million to 285 million).⁷

Number and Types of Guns in U.S. Gun Stock

Of the estimated 265 million guns in civilian hands in the United States, approximately four in ten (42 percent) are handguns, the remainder primarily (53 percent) long guns (4 percent are "other" guns).⁸ Among handguns, the majority are semiautomatic pistols (62 percent) and revolvers (29 percent); the remainder are described by respondents as "other" hand-

Figure 2. Cumulative Distribution of Gun Stock



Source: Authors' tabulations based on the National Firearms Survey.

guns. Approximately six in ten long guns (62 percent) are rifles and four in ten (38 percent) are shotguns (see figure 1).

Distribution of Gun Ownership

Gun-owning respondents owned an average of 4.8 firearms (range: 1 to 140); the median gun owner reported owning approximately two guns. As seen in figure 2, approximately half (48 percent) of gun owners report owning one or two guns, accounting for 14 percent of the total U.S. gun stock, while those who own ten or more (8 percent), own 39 percent. Put another way, half of the gun stock (approximately 130 million guns) is owned by approximately 86 percent of gun owners, and the other half

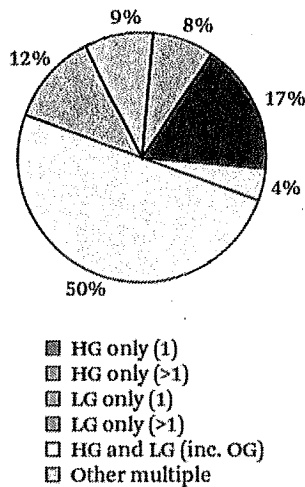
is owned by 14 percent (14 percent of gun owners equals 7.6 million adults, or 3 percent of the adult U.S. population).⁹

Distribution of Gun Ownership, by Gun Type

Although the majority of guns in the U.S. gun stock are long guns, in terms of the distribution of gun types, only one in five gun owners (21 percent) own long guns only, 25 percent of gun owners own handguns only (2 percent report own "other guns" only), and half of gun owners own both handguns and long guns (44 percent) or handguns, long guns, and other guns (6 percent). The remainder of gun owners (4 percent) reported owning either "other guns" along with handguns or long guns, or

9. About one quarter (22 percent) of gun owners reported that one of the primary reasons they owned a firearm was as part of a collection, although the large majority of those who cited owning guns for a collection also cited other reasons for owning (for example, 72 percent of collectors also said they owned guns for protection). Not surprisingly, gun collectors owned more guns than those who do not collect guns (ten versus three guns), and gun collectors accounted for most of the upper range of number of guns owned (noncollectors owned one to forty-three guns; collectors owned between one and 140).

Figure 3. U.S. Gun Ownership by Number and Type of Firearm



Source: Authors' tabulations based on the National Firearms Survey.

did not specify.¹⁰ Among those who own handguns only, two-thirds (67 percent) own one gun; for those owning long guns only, 43 percent own only a single gun (see figure 3).

Distribution of Gun Ownership by Gun Owner Demographics

Table 1 describes the demographic characteristics of respondents who own handguns only, long guns only, and both handguns and long guns (for simplicity of presentation, it does not include the small number of respondents (ninety-one) who are not in one of these three categories). The demographic characteristics of gun owners have been well established in multiple surveys. Consistent with these surveys, we find that gun owners overall are disproportionately male, white, older, non-urban, and from the South.

Differences among gun owners emerge, however, when those who own handguns only and those who own long guns only are compared with those who own both types. Handgun-only owners, in particular, appear to be a distinct group: they are more likely to be female, nonwhite, and living in urban areas, and are less likely to have grown up in a house

with a gun compared to other gun owners. For example, whereas approximately 20 percent of long gun owners are female, among gun owners who own handguns only, 43 percent are women, versus 13 percent of long gun owners and 14 percent of those who own both.

Reasons for Gun Ownership

Almost two in three gun owners (63 percent) reported that one of the primary reasons they own their guns is for protection against people (not shown). Three-quarters of handgun owners (76 percent) reported that they owned one primarily for protection (not shown). Other reasons include hunting (40 percent), collecting (34 percent), sporting use (28 percent), protection against animals (20 percent), and some other reason (40 percent). Other reasons volunteered by respondents included gift or inheritance or the right to have them (see table 2).

Reasons for ownership varied significantly depending on the types of guns respondents owned (handguns only, long guns only, or both) and demographic characteristics. Overall, those who own only handguns or both handguns and long guns were similar to one another with respect to protection, whereas those who own only long guns and those who own both were similar with respect to hunting and sporting use. For example, almost 80 percent of people who own handguns cite protection against strangers as a reason for ownership, as do 72 percent of those who own both handguns and long guns, but only 31 percent of those who own only long guns do. Likewise, 2 percent of those who only own handguns report that hunting is a primary reason for gun ownership, while 57 percent of those who only own long guns and 55 percent of those who own handguns and long guns do.

Across demographic characteristics, female gun owners were more likely than their male counterparts to report owning any gun for protection and less likely to report owning a gun for any other reasons (see table 2). Reasons for ownership were relatively consistent across age groups, although owning a gun for protection was less common among older gun owners,

10. Other guns may include single-shot black powder guns or machine guns.

THE STOCK AND FLOW OF FIREARMS

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Table 1. Demographic Characteristics of Gun Owners

| Demographic (Percent Total Survey Population) | Any Firearm | Handgun Only | Long Gun Only | Both |
|---|-------------|--------------|---------------|------|
| All respondents | 22 | 6 | 5 | 11 |
| Age | | | | |
| Eighteen to twenty-nine (19.1) | 13 | 3 | 4 | 6 |
| Thirty to forty-four (23.5) | 21 | 6 | 4 | 10 |
| Forty-five to fifty-nine (28.2) | 24 | 6 | 5 | 13 |
| Sixty or older (29.2) | 25 | 6 | 5 | 14 |
| Sex | | | | |
| Male (48.3) | 32 | 7 | 8 | 18 |
| Female (51.7) | 12 | 5 | 2 | 5 |
| Race | | | | |
| White (70.5) | 25 | 5 | 6 | 13 |
| Hispanic (11.7) | 16 | 6 | 3 | 7 |
| Black (11.0) | 14 | 8 | 1 | 5 |
| Multiracial (1.4) | 25 | 4 | 6 | 15 |
| Other (5.5) | 8 | 3 | <1 | 5 |
| Marital status | | | | |
| Married (54.0) | 26 | 6 | 6 | 14 |
| Never married (23.6) | 12 | 3 | 3 | 5 |
| Divorced (9.2) | 23 | 6 | 5 | 12 |
| Living with partner (6.9) | 19 | 6 | 4 | 9 |
| Widowed (5.4) | 21 | 5 | 4 | 12 |
| Separated (1.0) | 24 | 14 | 2 | 8 |
| Community | | | | |
| Urban (23.0) | 15 | 6 | 3 | 7 |
| Suburban (50.3) | 19 | 6 | 4 | 10 |
| Rural (26.1) | 33 | 5 | 9 | 19 |
| Education | | | | |
| Less than high school (10.5) | 11 | 4 | 3 | 5 |
| High school (29.5) | 23 | 6 | 5 | 12 |
| Some college (28.6) | 26 | 6 | 5 | 15 |
| College (31.4) | 20 | 5 | 5 | 10 |
| Annual income | | | | |
| Less than 25,000 (16.9) | 13 | 4 | 3 | 6 |
| 25,000–59,999 (29.2) | 22 | 6 | 5 | 11 |
| 60,000–99,999 (27.6) | 24 | 7 | 4 | 12 |
| 100,000 or more (26.3) | 25 | 5 | 6 | 14 |
| Military service | | | | |
| Veteran (9.7) | 44 | 10 | 9 | 25 |
| Non-veteran (90.3) | 19 | 5 | 4 | 10 |
| Political views | | | | |
| Liberal (20.2) | 14 | 5 | 3 | 7 |
| Moderate (46.3) | 19 | 6 | 4 | 9 |
| Conservative (31.5) | 30 | 6 | 7 | 17 |

(continued)

Table 1. (continued)

| Demographic (Percent Total Survey Population) | Any Firearm | Handgun Only | Long Gun Only | Both |
|---|-------------|--------------|---------------|------|
| Region | | | | |
| Northeast (18.3) | 15 | 3 | 4 | 7 |
| Midwest (22.4) | 23 | 4 | 6 | 12 |
| South (36.9) | 25 | 8 | 4 | 13 |
| West (22.4) | 20 | 5 | 4 | 11 |
| Child under eighteen | | | | |
| Yes (29.8) | 19 | 5 | 7 | 9 |
| No (70.2) | 23 | 6 | 5 | 12 |
| Grew up with a gun | | | | |
| Yes (47.5) | 35 | 7 | 8 | 20 |
| No (48.0) | 9 | 4 | 2 | 3 |
| Don't know (3.2) | 17 | 9 | 4 | 4 |

Source: Authors' compilation based on the National Firearms Survey.

Note: Reported values are percentage of respondents indicating ownership of the specified firearm.

Table 2. Given Reasons for Gun Ownership

| | Protection From | | | Other Sporting | Collection | Other |
|--------------------------|-----------------|---------|---------|----------------|------------|-------|
| | People | Animals | Hunting | Use | | |
| Gun type | | | | | | |
| Handgun only, 1 | 0.78 | 0.10 | 0.03 | 0.00 | 0.16 | 0.03 |
| Handgun only, >1 | 0.83 | 0.12 | 0.01 | 0.00 | 0.18 | 0.01 |
| Long gun only, 1 | 0.36 | 0.14 | 0.46 | 0.17 | 0.11 | 0.46 |
| Long gun only, >1 | 0.27 | 0.20 | 0.65 | 0.41 | 0.21 | 0.65 |
| Handgun and long gun | 0.72 | 0.27 | 0.55 | 0.47 | 0.36 | 0.55 |
| Sex | | | | | | |
| Male | 0.60 | 0.20 | 0.49 | 0.32 | 0.37 | 0.44 |
| Female | 0.69 | 0.21 | 0.32 | 0.21 | 0.28 | 0.32 |
| Age | | | | | | |
| Eighteen to twenty-nine | 0.60 | 0.21 | 0.38 | 0.26 | 0.39 | 0.38 |
| Thirty to forty-four | 0.67 | 0.18 | 0.41 | 0.30 | 0.38 | 0.41 |
| Forty-five to fifty-nine | 0.65 | 0.24 | 0.41 | 0.27 | 0.33 | 0.41 |
| Sixty or older | 0.58 | 0.18 | 0.41 | 0.29 | 0.32 | 0.41 |
| Census region | | | | | | |
| Northeast | 0.53 | 0.18 | 0.40 | 0.29 | 0.37 | 0.40 |
| Midwest | 0.55 | 0.16 | 0.51 | 0.38 | 0.36 | 0.51 |
| South | 0.73 | 0.23 | 0.37 | 0.25 | 0.28 | 0.37 |
| West | 0.56 | 0.18 | 0.35 | 0.25 | 0.42 | 0.35 |

Source: Authors' tabulations based on the National Firearms Survey.

and more common among those from the South.

Gun Transfers

In addition to characterizing the stock of firearms in civilian hands, our survey provided information on the flow of guns in the United States over the past five years, including gun acquisitions, dispositions, and theft.

Firearms Acquisitions

We asked current gun owners a series of questions about the firearm they had acquired most recently. Approximately half said within the past five years (28 percent within the past two years, 21 percent between three and five years ago) and half (50 percent) more than five years ago (see tables 3, 4, and 5). Extrapolating to the U.S. population, we estimate that U.S. firearm owners acquired approximately seventy million guns in the past five years.¹¹

The large majority of gun owners purchased their most recently acquired gun, with purchase more common for guns acquired in the past one to two years (86 percent) than for those acquired more distally (79 percent two to five years ago, 61 percent more than five years ago). Across all three periods, the most commonly acquired firearm was a handgun, with handguns constituting almost six of ten guns acquired in the past five years, and five of ten guns acquired more than five years ago. Stores (gun

stores, sporting good stores, and so on) were the most common source of purchased guns, while gifts and inheritance were the most common form of nonpurchase transfer.

Firearms most recently acquired by gun owners tended to be new rather than used (see tables 6, 7, and 8). The proportion of new guns was higher among those acquired more recently; used guns account for four of ten firearms acquired more than five years ago, but only three of ten acquired in the past two years. The majority of new guns were purchased (89 percent in the past two years, 91 percent two to five years ago, 78 percent more than five years ago). Among used guns, nearly six of ten acquired more than five years ago were not purchased, versus only one-third of those acquired within the past two years. Inherited guns constitute 40 percent of used guns acquired more than five years ago, but only 16 percent of those acquired in the past two years, mirroring a decrease in the overall share of guns obtained by inheritance from 21 percent of those acquired more than five years ago to 4 percent of those acquired in the past two years.

The cost of the most recent firearm purchased (among respondents whose most recently acquired gun was purchased) was relatively evenly distributed around the mode of \$250 to \$500 (see table 9). Overall, used guns were less expensive than new guns and guns acquired longer ago were less expensive than

11. The NFS asked respondents who reported that they were current gun owners to describe when they acquired their most recently acquired firearm still in their possession and, separately, how many guns they had acquired in the past five years (regardless of whether those guns were still in their possession). Some respondents reported that they had acquired one or more guns during the past five years even though they had previously indicated that their most recent firearm acquisition (among the guns they currently owned) took place more than five years ago. Overall, when directly asked when they had most recently acquired a gun in their possession, 49 percent of people reported doing so within the past five years, whereas 62 percent said that they had acquired one or more firearms in the past five years when prompted to provide the number of firearms acquired (irrespective of whether those guns were still in their possession). In estimating that seventy million firearms were acquired over the past five years, we privileged the stem question to mitigate the well-established phenomenon of telescoping (that is, we excluded from our five-year estimate the 23 percent of respondents who reported acquiring at least one gun in the past five years yet also indicated their last acquisition was more than five years ago) (see table A1). Including respondents who initially reported that their most recent acquisition was more than five years ago increases our estimate of the total number of guns acquired over the past five years to eighty-five million. One possible explanation for this discrepancy is the tendency to telescope, which may have inflated the latter estimate. Alternatively, since only the second question explicitly asked respondents to consider guns that are no longer in their possession, these guns may have been excluded when respondents considered the first question.

Table 3. Distribution of Where Current Owners Acquired Most Recent Firearm, Less Than Two Years (28 Percent)

| | All Guns (100%) | Handguns (59%) | Long Guns (40%) |
|---------------------------------------|--------------------|-------------------|--------------------|
| Percent purchased at or from | | | |
| Any store | 62 | 65 | 54 |
| Family | 2 | 3 | 1 |
| Friend or acquaintance | 6 | 6 | 7 |
| Gun show | 4 | 3 | 5 |
| Pawn shop | 5 | 4 | 6 |
| Online | 2 | 2 | 2 |
| Other | 3 | 3 | 4 |
| All purchased firearms | 84 | 86 | 79 |
| Percent nonpurchased transfers | | | |
| Gift | 8 | 8 | 9 |
| Inheritance | 4 | 3 | 8 |
| Trade | 0 | 0 | 0 |
| Other | 5 | 4 | 6 |
| All nonpurchased firearms | 17 | 15 | 23 |
| All transfers | 100 | | |

Source: Authors' tabulations based on the National Firearms Survey.

Table 4. Distribution of Where Current Owners Acquired Most Recent Firearm, Two to Five Years Prior (21 Percent)

| | All Guns (100%) | Handguns (60%) | Long Guns (39%) |
|---------------------------------------|--------------------|-------------------|--------------------|
| Percent purchased at or from | | | |
| Any store | 54 | 48 | 58 |
| Family | 3 | 2 | 4 |
| Friend or acquaintance | 9 | 11 | 8 |
| Gun show | 3 | 4 | 2 |
| Pawn shop | 6 | 7 | 3 |
| Online | 1 | 1 | 2 |
| Other | 3 | 3 | 4 |
| All purchased firearms | 79 | 76 | 81 |
| Percent nonpurchased transfers | | | |
| Gift | 11 | 16 | 8 |
| Inheritance | 8 | 6 | 9 |
| Trade | 1 | 0 | 0 |
| Other | 1 | 2 | 6 |
| All nonpurchased firearms | 21 | 24 | 19 |
| All transfers | 100 | | |

Source: Authors' tabulations based on the National Firearms Survey.

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Table 5. Distribution of Where Current Owners Acquired Most Recent Firearm, More Than Five Years Prior (50 Percent)

| | All Guns (100%) | Handguns (51%) | Long Guns (48%) |
|---------------------------------------|--------------------|-------------------|--------------------|
| Percent purchased at or from | | | |
| Any store | 42 | 42 | 42 |
| Family | 3 | 2 | 3 |
| Friend or acquaintance | 7 | 9 | 5 |
| Gun show | 2 | 3 | 2 |
| Pawn shop | 3 | 4 | 2 |
| Online | <1 | 1 | 0 |
| Other | 3 | 4 | 2 |
| All purchased firearms | 61 | 65 | 57 |
| Percent nonpurchased transfers | | | |
| Gift | 15 | 13 | 15 |
| Inheritance | 21 | 17 | 25 |
| Trade | 0 | 0 | 1 |
| Other | 3 | 4 | 2 |
| All nonpurchased firearms | 39 | 34 | 43 |
| All transfers | 100 | | |

Source: Authors' tabulations based on the National Firearms Survey.

Table 6. Percentage of Where Current Owners' Most Recent Transfer Occurred, Less Than Two Years (28 Percent)

| | Percent Transfers (100%) | New (71%) | Used (26%) |
|---------------------------------------|-----------------------------|--------------|---------------|
| Percent purchased at or from | | | |
| Any store | 62 | 78 | 16 |
| Family | 2 | 0 | 6 |
| Friend or acquaintance | 6 | 1 | 19 |
| Gun show | 4 | 3 | 6 |
| Pawn shop | 5 | 2 | 11 |
| Online | 2 | 1 | 5 |
| Other | 3 | 3 | 4 |
| All purchased firearms | 84 | 89 | 67 |
| Percent nonpurchased transfers | | | |
| Gift | 8 | 6 | 12 |
| Inheritance | 4 | 0 | 16 |
| Trade | 0 | 0 | 0 |
| Other | 5 | 5 | 5 |
| All nonpurchased firearms | 17 | 11 | 33 |
| All transfers | 100 | | |

Source: Authors' tabulations based on the National Firearms Survey.

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Table 7. Percentage of Where Current Owners' Most Recent Transfer Occurred, Two to Five Years Prior (21 Percent)

| | Percent Transfers (100%) | New (61%) | Used (37%) |
|---------------------------------------|-----------------------------|--------------|---------------|
| Percent purchased at or from | | | |
| Any store | 54 | 79 | 10 |
| Family | 3 | 1 | 6 |
| Friend or acquaintance | 9 | 1 | 23 |
| Gun show | 3 | 3 | 3 |
| Pawn shop | 6 | 3 | 10 |
| Online | 1 | 1 | 2 |
| Other | 3 | 3 | 2 |
| All purchased firearms | 79 | 91 | 56 |
| Percent nonpurchased transfers | | | |
| Gift | 11 | 9 | 20 |
| Inheritance | 8 | 0 | 20 |
| Trade | 1 | 0 | 1 |
| Other | 1 | 1 | 0 |
| All nonpurchased firearms | 21 | 10 | 41 |
| All transfers | 100 | | |

Source: Authors' tabulations based on the National Firearms Survey.

Table 8. Percentage of Where Current Owners' Most Recent Transfer Occurred, More Than Five Years Prior (50 Percent)

| | Percent Transfers (100%) | New (71%) | Used (26%) |
|---------------------------------------|-----------------------------|--------------|---------------|
| Percent purchased at or from | | | |
| Any store | 42 | 69 | 9 |
| Family | 3 | 0 | 6 |
| Friend or acquaintance | 7 | 1 | 15 |
| Gun show | 2 | 3 | 2 |
| Pawn shop | 3 | 1 | 5 |
| Online | 1 | 1 | 0 |
| Other | 3 | 4 | 3 |
| All purchased firearms | 61 | 78 | 40 |
| Percent nonpurchased transfers | | | |
| Gift | 15 | 14 | 15 |
| Inheritance | 21 | 3 | 41 |
| Trade | 0 | 0 | 1 |
| Other | 3 | 3 | 2 |
| All nonpurchased firearms | 39 | 20 | 59 |
| All transfers | 100 | | |

Source: Authors' tabulations based on the National Firearms Survey.

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Table 9. Cost of Purchased Firearms, in U.S. Dollars

| | \$0-99 | \$100-249 | \$250-499 | \$500-999 | \$1,000 or more |
|---------------------------|--------|-----------|-----------|-----------|-----------------|
| All | 4.2 | 18.0 | 48.1 | 25.1 | 4.6 |
| Handguns | 3.1 | 14.3 | 50.3 | 29.6 | 2.7 |
| Long guns | 5.1 | 22.8 | 45.4 | 19.3 | 7.5 |
| New | 2.5 | 14.3 | 49.9 | 28.0 | 5.3 |
| Used | 9.1 | 29.1 | 41.9 | 17.3 | 2.7 |
| Five years or less | 2.3 | 11.6 | 48.6 | 30.2 | 7.4 |
| More than five years | 6.9 | 26.1 | 46.7 | 18.6 | 1.7 |
| Protection from strangers | 3.6 | 15.3 | 51.0 | 27.1 | 3.1 |
| Hunting | 4.2 | 24.5 | 45.7 | 18.9 | 6.7 |
| Sport shooting | 6.7 | 15.3 | 48.9 | 25.2 | 5.0 |
| Collection | 2.6 | 17.7 | 42.4 | 28.2 | 9.0 |

Source: Authors' tabulations based on the National Firearms Survey.

Note: All figures in percentages.

those purchased more recently. The most commonly cited reason for buying a firearm was self-protection, a reason more common for those purchased within the last five years (43 percent) than more than five years ago (35 percent).

Firearm Dispositions

Approximately 5 percent of gun owners reported that they had sold or otherwise gotten rid of a gun in the past five years (the average number of guns disposed of was two). Of these, the large majority (71 percent) had sold the gun they disposed of most recently, 13 percent had given the gun as a gift, and 10 percent had traded it for something else. A few who had disposed of a gun (1 percent) reported having gotten rid of it in a buy-back program. When gun owners sold guns, they most often sold them to a friend directly (35 percent) or to a gun dealer (32 percent), 12 percent reporting that they had sold the gun via an online advertisement and another 14 percent having sold it to a family member (not shown).

Firearm Theft

Approximately 2.4 percent of gun owners (CI: 1.6-3.6) reported having had one or more stolen from them in the past five years, the mean number at 1.9 (a range of 1 to 6). Assuming that theft was evenly distributed across the years, we estimate that approximately 2.3 million

guns were stolen over the past five years (five hundred thousand annually).

DISCUSSION

In 1994, when the National Survey of Private Ownership of Firearms (NSPOF) was conducted, Philip Cook and Jens Ludwig estimated an approximate 192 million guns in the hands of U.S. civilians (1997). In 2015, we estimate that that number has grown by more than seventy million to approximately 265 million. The guns acquired over the past twenty years are disproportionately handguns, the share of which in the total gun stock is now 42 percent, versus approximately 33 percent in 1994.

The shift we observe in the gun stock toward a greater proportion of handguns may reflect the decline in hunting and a change in motivations for firearm ownership and use (Smith 2001). Indeed, a perceived, and growing, need for self-protection appears to drive contemporary gun ownership in the United States (Pew Research Center 2013). Consistent with our finding that the majority of the guns that have been added to the gun stock are handguns and that gun owners in 2015 were more likely than gun owners in 1994 to report that they owned any handgun primarily for self-protection (76 percent versus 48 percent), we find that almost 70 percent of gun owners report that a primary reason for owning a gun is protection against people. Consistent with this

trend, we find that respondents who owned only handguns were just as likely to live in an urban environment as a rural one, and to be demographically more diverse than owners of long guns (who, as a group, are more likely to be white, male, and rural).

Not only are there many more guns overall, there are also more gun owners (approximately 55 million from the NFS compared to approximately 44 million from the NSPOF), although the percentage of the adult population that owns guns has declined from 25 percent in the 1994 NSPOF (no confidence interval provided), to 22 (CI: 21–24) percent in 2015.¹² Indeed, gun owners today each own, on average, more guns (4.8 in the NFS versus approximately 4.3 in the NSPOF). Moreover, gun ownership appears to be somewhat more concentrated in 2015 than it was in 1994: the top 20 percent of gun owners owned 55 percent of the gun stock in 1994; they now own 60 percent.

In the absence of a gold standard against which to compare our estimates (of the sort that would render survey-based estimates largely unnecessary), two sources of administrative data—from the ATF and FBI—provide an opportunity to grossly validate results (ATF 2015; FBI 2016). Firearm manufacturing and import-export data available from the ATF suggest that, from 1899 through 2013 (the last year for which data are available), approximately 363 million firearms have been available for sale in the United States (see table A1).¹³ Although guns are highly durable, it is reasonable to ex-

pect that every year some fraction is permanently removed from the marketplace through seizure, irrecoverable loss, or breakage. Following Cook, applying a 1 percent per year depreciation (permanent removal from use) rate to the available manufacturing data yields an estimated gun stock in 2013 of approximately 270 million (Cook 1993; Cook and Goss 2014). Assuming the number of guns was added to the market in 2014 (the last full year before our survey) was the same as the number added in 2015 (sixteen million, the largest number of guns manufactured or imported in U.S. history), the estimate of the U.S. gun stock (using the ATF data) increases to 285 million, close to the 265 million we estimate from our survey.¹⁴

Our estimate that approximately seventy million firearms changed hands within the past five years is also broadly consistent with estimates derived separately using—first—ATF data on firearm manufacturing, imports, and exports (which should track our estimates of new firearms acquired), and—second—National Instant Criminal Background Check System (NICS) background check data (which should correspond to the number of people who acquired firearms and underwent a background check). Given the percentage of people in the NFS who report that their most recently acquired gun was new (rather than used) and assuming that new guns correspond to the firearms that the ATF report enumerates, the total number of firearms acquired over the past five years should be approximately eighty-two mil-

12. A similar decline has been reported from the General Social Survey, in which personal gun ownership declined from 28 percent in 1994 to 22 percent in 2014 (Smith and Son 2015).

13. The data series presented in table A1 combines a summary (1899–1968), assembled from ATF reports on manufacturing plus imports (Newton and Zimring 1968), ATF data compiled by Gary Kleck (1969–1986, 1991), and the remainder from online ATF data (ATF 2015).

14. The NSPOF estimate of 192 million guns in 1994 is also remarkably consonant with ATF data up to 1994, applying the same 1 percent annual removal from market estimate. However, our estimate is 30 percent, not 15 percent lower than ATF figures. The estimate of approximately 270 million guns from our 2004 random digit dial telephone survey, appears to be an overestimate. Extrapolating from surveys to the U.S. population, especially for relatively rare events (such as owning an extremely large number of guns), has been shown to have the potential to lead to large overestimates. In the 2004 survey, two factors came into play: first, by 2004 RDD surveys were increasingly plagued, as our survey was, by low response rates, suggesting the possibility that even with the application of poststratification weights, results may not have been generalizable (and thus suitable for extrapolation) to the U.S. population. Second, because ownership of large numbers of guns is relatively uncommon, our estimates of the gun stock were sensitive to the inclusion (or exclusion) of respondents who reported that they owned large numbers of guns.

lion.¹⁵ Our estimates based on ATF data may be an underestimate because they were calculated based on commerce data from a five-year period ending in 2013, the most recent year for which ATF data were available (and sales have been accelerating upward). Nonetheless, our estimates using NICS data are remarkably similar: eighty-three million (derived using our published finding that approximately 75 percent of gun owners who acquired their most recent firearm within the past five years underwent a background check for that acquisition, not shown).¹⁶

Our estimate of the number of guns stolen annually also squares well with external data sources, although our estimate that five hundred thousand guns are stolen annually is somewhat higher than the most recent gun theft estimate (233,000) reported from the NCVS. Overall, however, the number of guns stolen appears to have remained relatively stable over time. In the late 1980s, the NCVS estimated that approximately 340,000 firearms were stolen each year. Using data from the NSPOF, combined with data from a state-level survey that estimated the number of guns stolen per theft incident in that state, Cook and Ludwig estimate that slightly fewer than five hundred thousand guns per year were stolen in the United States in the mid-1990s.

The NFS used an existing probability-based online panel (KnowledgePanel) to examine U.S.

gun ownership, whereas our 2004 survey and the NSPOF both relied on random digit dialing. It is possible that online panel surveys and random-digit dial (RDD) surveys elicit systematically different responses from survey participants, suggesting that comparisons over time (and across survey modes) should be undertaken with some caution. Even if it were possible (or desired) to conduct an RDD survey about gun ownership today, such a survey would be unlikely to be comparable to surveys from 1994 or 2004 due to increasingly poor response rates on telephone surveys (Link et al. 2008). Moreover, probability-based online samples have been found to reduce social desirability bias and yield more accurate results than telephone surveys (Chang and Krosnick 2009).

Although the NFS is thus likely to produce a good estimate of firearms in civilian hands, as well as to accurately characterize the flow of guns and other characteristics of gun ownership, some gun owners may nevertheless have chosen not to report their gun ownership on a survey, and some non-gun owners may have reported owning guns when in fact they do not. What evidence there is, however, suggests that gun owners appear to respond accurately with respect to their firearm ownership on surveys. Studies that have validated survey reports of gun ownership against administrative data have reported low levels of

15. Missing answers as to whether the most recently acquired gun was new (as opposed to used) were imputed, based on the assumption that the 3 percent of respondents with missing data with respect to whether their most recently acquired firearm was new or old, were missing at random. The estimate we arrive at using ATF data is higher (ninety-one million versus seventy million) if we do not restrict respondents to those who indicated in a stem question that they had acquired the last firearm currently in their possession within the past five years. The reason for this is that some of these respondents indicated that they had acquired a nonzero number of firearms in the past five years when asked directly how many firearms they had acquired regardless of whether they still had the firearm in their possession. Incorporating these respondents' answers into our estimate of the gun flow increased the estimate we arrived at using ATF data because the flow of all guns (both new and used) is derived by dividing the ATF enumeration of new guns by the percentage of new guns that our respondents reported were acquired in the past five years (and, ignoring the stem question restriction decreased the percentage of new guns from 68 percent to 62 percent).

16. If respondents were not required to indicate in the stem question that their most recently acquired firearm was acquired within the past five years, 69 percent of gun owners reported having undergone a background check with respect to their most recently acquired gun (and therefore the estimate of the number of firearms acquired over the past five years increases to ninety-one million). This number is likely to be an underestimate given that each NICS background check may result in the acquisition of more than one firearm (for additional details regarding background check data, see Miller, Hepburn, and Azrael 2017).

false negative reports (approximately 10 percent), and virtually no false positive reports (Kellermann et al. 1990; Rafferty et al. 1995). In the NFS, fewer than 1 percent of respondents refused to answer our stem question about household gun ownership, and none refused the subsequent question regarding whether they personally owned a gun. Nonetheless, it is likely that some groups of gun owners (such as those who possess firearms illegally, such as someone with a felony conviction), are not reflected in our estimates, and possible that nonresponse to some questions may affect the validity of our findings if those choosing not to answer a question differed systematically from those who did. Given that 2 percent or fewer of respondents refused to answer the vast majority of our questions about firearms, nonresponse bias among those in our survey is unlikely to have had a material influence on our findings.

CONCLUSION

As of 2015, we estimate approximately 265 million guns in the U.S. civilian gun stock, an increase of approximately seventy million guns since the mid-1990s. Over that time, the proportion of handguns in the gun stock—most often bought for self-protection—has grown (to more than 40 percent), as has the proportion of gun owners who own both handguns and long guns (to more than 75 percent). Although the proportion of U.S. adults who report owning guns has declined only modestly, from 25 percent in 1994 to 22 percent in 2015, fewer men own them (32 percent in 2015 versus 42 percent in 1994), slightly more women do (12 percent in 2015 versus 9 percent in 1994), and owners in general are more likely to have

more guns (the mean number increased from four to five). Despite the increase in the average number of guns, the median owner owns only two (28 percent own one and 31 percent own two, accounting for 14 percent of the total U.S. stock); the 8 percent of all owners who own ten or more account for 39 percent of the gun stock (and 14 percent of owners own half the U.S. stock).

With respect to firearm transfers, we estimate that approximately seventy million firearms changed hands within the past five years, a number broadly consistent with manufacturing data from the ATF, the large majority of which were purchased, more so in the past two years (86 percent) than for those acquired more remotely (79 percent two to five years ago; 61 percent more than five years ago). Across all three periods, the most commonly acquired firearm was a handgun.

Guns not only move into but also out of the hands of owners. Five percent of gun owners in our sample reported having disposed of a gun within the past five years, most often (35 percent) through a sale to family or friends. Another 2.4 percent report having had a gun stolen within that time, accounting for an estimated five hundred thousand guns per year.

The National Firearms Survey provides the first nationally representative data about the stock and flow of guns in the United States since 2004 (and the second such since 1994). These data have the potential to ground public health, public safety and public policy discussions about guns and gun transfers in what we assume is largely the legal firearms market, which is where firearms, even those that end up in the gray or black market, all start out.

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APPENDIX

Table A1. Estimation of Gun Stock Using Gun Manufacturing Data

| Year | Total Guns (Millions) | Δ | Adjusted Estimate (.99) | Year | Total Guns (Millions) | Δ | Adjusted Estimate (.99) |
|-----------|-----------------------------|---|-------------------------------|------|-----------------------------|----|-------------------------------|
| 1899-1945 | 47 | | | 1980 | 168 | 6 | 140 |
| 1946 | 48 | 1 | 48 | 1981 | 173 | 5 | 144 |
| 1947 | 51 | 3 | 50 | 1982 | 178 | 5 | 147 |
| 1948 | 53 | 2 | 52 | 1983 | 182 | 4 | 150 |
| 1949 | 55 | 2 | 53 | 1984 | 186 | 4 | 152 |
| 1950 | 58 | 3 | 56 | 1985 | 191 | 5 | 156 |
| 1951 | 60 | 2 | 57 | 1986 | 194 | 3 | 157 |
| 1952 | 62 | 2 | 58 | 1987 | 198 | 4 | 160 |
| 1953 | 64 | 2 | 60 | 1988 | 203 | 5 | 163 |
| 1954 | 66 | 2 | 61 | 1989 | 209 | 6 | 167 |
| 1955 | 67 | 1 | 62 | 1990 | 213 | 4 | 170 |
| 1956 | 69 | 2 | 63 | 1991 | 217 | 4 | 172 |
| 1957 | 71 | 2 | 64 | 1992 | 223 | 6 | 176 |
| 1958 | 73 | 2 | 66 | 1993 | 231 | 8 | 182 |
| 1959 | 75 | 2 | 67 | 1994 | 238 | 7 | 188 |
| 1960 | 78 | 3 | 69 | 1995 | 243 | 5 | 191 |
| 1961 | 80 | 2 | 71 | 1996 | 247 | 4 | 193 |
| 1962 | 81 | 1 | 71 | 1997 | 252 | 5 | 196 |
| 1963 | 84 | 3 | 73 | 1998 | 256 | 4 | 198 |
| 1964 | 86 | 2 | 75 | 1999 | 261 | 5 | 201 |
| 1965 | 89 | 3 | 77 | 2000 | 265 | 4 | 203 |
| 1966 | 93 | 4 | 80 | 2001 | 270 | 5 | 206 |
| 1967 | 97 | 4 | 83 | 2002 | 274 | 4 | 208 |
| 1968 | 102 | 5 | 87 | 2003 | 279 | 5 | 211 |
| 1969 | 107 | 5 | 92 | 2004 | 284 | 5 | 214 |
| 1970 | 112 | 5 | 96 | 2005 | 289 | 5 | 217 |
| 1971 | 117 | 5 | 100 | 2006 | 295 | 6 | 220 |
| 1972 | 122 | 5 | 104 | 2007 | 301 | 6 | 224 |
| 1973 | 128 | 6 | 109 | 2008 | 308 | 7 | 229 |
| 1974 | 135 | 7 | 115 | 2009 | 316 | 8 | 235 |
| 1975 | 140 | 5 | 118 | 2010 | 325 | 9 | 241 |
| 1976 | 146 | 6 | 123 | 2011 | 334 | 9 | 248 |
| 1977 | 151 | 5 | 127 | 2012 | 347 | 13 | 258 |
| 1978 | 156 | 5 | 131 | 2013 | 363 | 16 | 272 |
| 1979 | 162 | 6 | 135 | | | | |

Source: Authors' compilation based on Newton and Zimring 1968, Kleck 1991, and ATF 2015.

Note: We apply a 1 percent depreciation (permanent removal from use) rate to each year's adjusted stock. Pre-1969 figures do not appear to include import (and net out export) data.

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