

No. 07-290

IN THE
Supreme Court of the United States

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

Petitioners,

v.

DICK ANTHONY HELLER,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF PROFESSORS OF CRIMINAL JUSTICE
AS *AMICI CURIAE*
IN SUPPORT OF PETITIONERS

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**BRIEF OF PROFESSORS OF CRIMINOLOGY
AS *AMICI CURIAE*
IN SUPPORT OF PETITIONERS**

I. INTEREST OF AMICI CURIAE

Amici curiae, professors of criminology, submit this brief in support of the Petitioners and assert that the empirical evidence, documented in numerous well designed and peer reviewed studies, highlights the importance of Washington, D.C.'s gun law in diminishing handgun violence. Amici are scholars who teach, write and speak about criminal justice.¹ James Alan Fox is the Lipman Family Professor of Criminal Justice and Professor of Law, Policy and Society at Northeastern University.

¹ No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae* or their counsel made a monetary contribution to its preparation or submission. The parties have consented to the filing of this brief.

David McDowall is a Professor in the School of Criminal Justice at the State University of New York at Albany.

II. SUMMARY OF ARGUMENT

The gun control legislation enacted in the District of Columbia in 1976 that banned handguns in the city (“D.C. Gun Control Law”) is an effective law enforcement tool that has promoted the public health and safety by reducing the level of handgun violence in the District of Columbia (“District”). Criminological studies evaluating the effects of the D.C. Gun Control Law have proven that it has reduced the rate of firearm homicides and suicides committed in the District. The evidence illustrates that by reducing the number of handguns available in the District, the D.C. Gun Control Law restrains violent intent from elevating into actual gun violence. Studies also show that unrestrained access

to handguns can result in accidental or impulsive homicides, suicides, and unintentional injuries among people with no prior criminal propensities. Thus, curbing access to handguns lessens the risk of these most serious outcomes. Empirical analysis of the D.C. Gun Control Law shows that it has had just such an effect in the District. Moreover, the effectiveness of the D.C. Gun Control Law would only increase if the surrounding jurisdictions followed its example and implemented stricter gun control measures as well.

III. ARGUMENT

1. The D.C. Gun Law Is an Effective Mechanism for Reducing Handgun Violence.

Amici agree with, and hereby incorporate, Petitioners' position that "where a legislature has articulated proper reasons for enacting a gun-control law, with meaningful supporting evidence, and that

law does not deprive the people of a reasonable means to defend themselves, it should be upheld.” Brief for Petitioners 44, *citing* Adam Winkler, *Scrutinizing the Second Amendment*, 105 Mich. L. Rev. 683, 716-19 (2007). Amici review here the salient criminological research that, by itself, provides the District with more than enough “meaningful supporting evidence” to require the reversal of the U.S. Court of Appeals for the District of Columbia Circuit (“Court of Appeals”).

A. There Is A Proven Correlation between the Availability of Handguns and Incidents of Violence.

Handguns are unquestionably the weapon of choice for those involved in gun-related crimes. In 2006, for example, the Federal Bureau of Investigation (“FBI”) reports that handguns were used in 7,795 homicides, or 76.6 percent of murders

involving firearms and 52 percent of all reported murders in the United States. *See* FBI Uniform Crime Reports 2006, Expanded Homicide Data Table 7, *available at* http://www.fbi.gov/ucr/cius2006/offenses/expanded_information/data/shrtable_07.html (last visited January 10, 2008). Researchers have found that “increases in gun ownership lead to increases in the number of homicides.” *See* Mark Duggan, *More Guns, More Crime*, 109 J. Pol. Econ. 1086, 1100-01, 1104 (2001). It has been estimated that a ten percent increase in handgun ownership increases the homicide rate by two percent. *Id.* at 1095-98. These findings support other studies showing that because handguns are so readily available and so obviously lethal, they contribute to escalating violent crime to a deadly level. *See* Philip J. Cook, *The Technology of Personal Violence*, 14 Crime & Just. 1, 47 (1991). A

study by noted criminologists Frank Zimring and Gordon Hawkins found that eighty percent of handgun murders result from altercations that escalate to a deadly level. See F.E. Zimring & G. Hawkins, *The Citizen's Guide to Gun Control* 16 (1987). Zimring and Hawkins concluded that “the circumstances in which most homicides were committed suggested that they occurred in a moment of rage and were not the result of a single-minded intent to kill.” *Id.* Thus, it is “a combination of the ready availability of guns and the willingness to use maximum force in interpersonal conflict [that] is the most important single contribution to the high U.S. death rate from violence.” F. E. Zimring and G. Hawkins, *Crime is Not the Problem: Lethal Violence in America* 122-23 (1997).

Criminological research has established that the high rate of handgun homicides in the United

States is due, at least in part, to the high rate of handgun ownership in the United States. Matthew Miller, MD, *et al.*, *Rates of Household Firearm Ownership and Homicide Across US Regions and States, 1988-1997*, 92 Am. J. of Pub. Health 1988 (2002) (surveying studies establishing the correlation between firearm availability and homicide). The rate of handgun ownership and the rate of handgun homicides in the United States, when compared to the same data from other countries, illustrate the strong correlation between the availability of handguns and the incidence of handgun homicides.

	Handguns	Handguns per 100,000	Handgun Homicides per 100,000
United States	56,833,000	22,696	3.56
Israel	171,448	3,716	0.542
Sweden	308,261	3,700	0.228
Canada	595,000	2,301	0.031
Australia	263,900	1,596	0.07
Great Britain	480,000	837	0.012

Nicholas Dixon, *Why We Should Ban Handguns in the United States*, 12 St. Louis U. Pub. L. Rev. 243, 249 (1993). According to the findings in the chart above, the United States experiences about four times the level of handgun homicides per 100,000 people than Israel, Sweden, Canada, Australia, and Great Britain combined.

Despite this well-established correlation between gun availability and gun violence, some researchers maintain that liberalizing gun control laws, such as allowing nearly anyone who applies to obtain a concealed weapons permit, actually reduces

gun violence. *See, e.g.,* John R. Lott *et al.*, *Crime, Deterrence, and Right-to-Carry Concealed Handguns*, 26 J. Legal Stud. 1 (1997) (“Lott Study”). The Lott Study concluded that “[a]llowing citizens without criminal records or histories of significant mental illness to carry concealed handguns deters violent crimes...If the rest of the country had adopted right-to-carry concealed handgun provisions in 1992, at least 1,414 murders and over 4,177 rapes would have been avoided.” *Id.* at 64.

However, subsequent analysis of the Lott Study points out several flaws in its methodology and results. The Lott Study compared changes in crime in ten states that passed “shall-issue” laws (i.e. laws allowing concealed weapons permits to almost anyone who applies) to states that did not have shall-issue laws. *See id.* at 12. The comparison, however, did not consider how the crack cocaine market

influenced crime in the shall-issue states, which were mostly less populated states with limited urban areas, as compared to the states without shall-issue laws, which were mostly heavily populated states with large urban areas. *See* Jens Ludwig and Philip J. Cook, *Evaluating Gun Policy: Effects on Crime and Violence* (2003), Chapter 8, *The Impact of Concealed-Carry Laws* 289. The crack cocaine market had a greater impact in poor, urban areas, which are primarily located in states that do not have shall-issue laws. *Id.* Thus, the Lott Study attributed smaller crime increases in states with shall-issue laws to the enactment of those laws “when wholly separate forces were really the explanation.” *Id.* Moreover, because spikes in crime rates encourage the adoption of shall-issue laws, subsequent returns to normal crime rates “will be inaccurately attributed to the passage of the law[s].” *Id.* If one extends

Lott's statistical model by five years, for example, and applies it to the period in the mid-1990s when high crime rates reversed, "suddenly shall-issue laws are associated with uniform *increases* in crime." *Id.* at 289-90 (emphasis in original). Broad national crime swings occurring in the late 1980s and 1990s and the inability to account for the criminogenic influence of crack render "strong claims about the likely impact of passing a shall-issue law" difficult to make. *Id.* at 325. The Lott Study therefore does little to undermine the widely-accepted conclusion that the availability of guns has a strong correlation to the level of gun-related crimes.

B. The Effectiveness of the D.C. Gun Control Law Demonstrates Its Reasonableness.

The D.C. Gun Control Law was designed to reduce the level of handgun violence in the District, and over the last 30 years, it has proven its

effectiveness. A comprehensive study of the District's D.C. Gun Control Law charted its effects over a period of twenty years, beginning in January 1968, eight years prior to the law's enactment, and extending to December 1987, eleven years subsequent to its enactment. The study concluded that an abrupt decline in gun-caused homicides in the District immediately followed the enactment of the ban, but that there was no comparable decline elsewhere in the region. Colin Loftin *et al.*, *Effects of Restrictive Licensing in Handguns on Homicide and Suicide in the District of Columbia*, 325 *New Eng. J. Med.* 1615 (1991) ("Loftin Study").

The Loftin Study, which was published in the *New England Journal of Medicine*, analyzed gun-related homicides and suicides in the District and non-gun-related homicides and suicides in the District, and compared them to the same categories

in the District's Maryland and Virginia suburbs. *Id.* at 1615. The results showed rather dramatic benefits from the law. In the approximately eleven years after the law took effect, gun-related homicides decreased by twenty-five percent, and gun-related suicides decreased by twenty-three percent in the District. *Id.* at 1617. At the same time, non-gun-related homicides and suicides in the District did not change by a statistically significant amount, and the statistics for both gun-related and non-gun-related homicides and suicides remained largely the same in both the Maryland and Virginia suburbs included in the Loftin Study. *Id.* These results strongly indicate that the D.C. Gun Control Law, rather than a general reduction in the crime rate, "reduced gun-related suicides and homicides substantially and abruptly." *Id.* at 1620. The Loftin Study concluded:

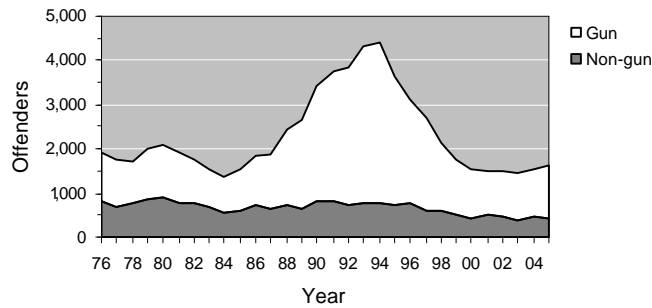
In light of our study, alternative explanations

appear implausible. The pattern of change in mortality rates that would be predicted from the effects of the gun law is specific and is unlikely to be simulated by coincidental changes in demographic, economic, cultural, or social factors.

Id. at 1618.

The Respondent has argued that the rise in violent crimes in the District from 1980 to 1997 establishes that the D.C. Gun Control Law was ineffective. Brief in Response to Petition for Certiorari 27-28. However, the entire nation experienced an increase in violent crimes during this period because of the emergence of the crack cocaine market and related gang activity. See James A. Fox & Marianne W. Zawitz, U.S. Dept. of Justice, Bureau of Justice Statistics, *Homicide Trends in the United States*, available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/htius.pdf> (last accessed January 10, 2008). In the mid-1980s, as

crack cocaine became the drug of choice in urban areas, drug dealers widely distributed crack in small single-hit quantities by recruiting large numbers of teenaged distributors. Alfred Blumstein, *Youth Violence, Guns, and the Illicit Drug Industry*, 86 *J. of Crim. L. and Criminology* 10–36 (1995). Because dealing drugs was a potentially violent undertaking, the teenagers peddling crack cocaine armed themselves with guns. See Joseph F. Sheley and James D. Wright, *In the Line of Fire: Youth, Guns and Violence in Urban America* (1995). Once some youngsters acquired guns, their peers did as well. David Hemenway *et al.*, *Gun Carrying Among Adolescents*, 59 *L. and Contemp. Problems* 39–53 (1996). A dramatic increase in gun-related violence among the nation's youth resulted.



As shown in the figure above, from 1985 to 1993, the number of teenagers who killed with a gun quadrupled. There was no concomitant increase in non-gun-related juvenile homicides. James Alan Fox *et al.*, *The Will to Kill: Making Sense of Senseless Murder* 88 (3d ed. 2008). Respondent's statistics therefore neither undermine the findings of the Loftin Study nor undermine the effectiveness of the D.C. Gun Control Law, but merely shed light on what was a national trend of gun-related violence among the nation's youth. *See Loftin Study, supra*, at 1620 ("It is reasonable to assume that the restrictions on access to guns in the [D]istrict

continued to exert a preventative effect even as homicide rates were driven up by conflict over drugs and other factors.”).

The American Civil Rights Union (“ACRU”), in its brief, challenges the Loftin Study by claiming that it did not undergo peer review. *See* Brief *Amicus Curiae* of the American Civil Rights Union in Support of the Respondents to Petition for a Writ of Certiorari 17. However, the Loftin Study was published in the *New England Journal of Medicine* (“NEJM”), which “employs a highly rigorous peer-review and editing process to evaluate manuscripts for scientific accuracy, novelty, and importance.” *See* NEJM Publication Process, *available at* <http://media.nejm.org/persistentpdfs/Press%20Kit%20Publication%20Process.pdf> (last accessed January 10, 2008).

The ACRU also contends that the Loftin Study used an incorrect date for determining when the D.C. Gun Control Law could influence handgun violence in the District (“intervention date”), and that another researcher, Gary Kleck, found that the law had no effect when using the purportedly correct intervention date. *Id.*; *see also* Chester L. Britt, Gary Kleck, and David Bordua, *A Reassessment of the DC Gun Law: Some Cautionary Notes On the Use of Interrupted Time Series Designs For Policy Impact Assessment*, 30 *Law and Society Review*, 361 (1996) (“Kleck Study”). However, a subsequent review of the Kleck Study found that even if one accepts (which one should not) the intervention date suggested in the Kleck Study, it only affects the data on homicides (not suicides), and the Kleck Study did not find that the effect of the D.C. Gun Control Law disappeared even with a different intervention date.

See David McDowall et al., Using Quasi-Experiments to Evaluate Firearm Laws: Comment on Britt et al.'s Reassessment of the DC Gun Law, 30 Law and Society Review, 381, 386 (1996) (“McDowall Study”).

The Kleck Study also suggested that Baltimore was a better comparison for the District than were the suburban counties that the Loftin Study considered. *See* Kleck Study, *supra*, at 365-66. While the Kleck Study stated that gun-related homicides fell in Baltimore after the District enacted the D.C. Gun Control Law, indicating that the law could not account for the decrease in gun violence in the District, the McDowall Study established that the data underlying the Kleck Study failed to account for significant information obtained in the Loftin Study, particularly the reduction in gun-related suicides in the District after the effective date of the D.C. Gun Control Law. McDowall Study,

supra, at 382-83. According to the McDowall Study, while the Kleck Study correctly found that the rate of firearm homicides fell in Baltimore from 1968 to 1987, the non-gun-related homicides and suicides also fell in Baltimore during the same period. *Id.* at 383. In the District, by contrast, the non-gun-related homicides and suicides remained largely the same after the effective date of the D.C. Gun Control Law, suggesting that Kleck’s data from Baltimore does not show “a pattern of decrease that is specific to gun-related deaths,” *id.*, while the data from the District does. The McDowall Study also analyzed gun-related and non-gun-related homicides and suicides from Memphis and Boston, the United States cities then closest in population to the District. *Id.* at 385-86. In neither of these cities did gun-related homicides and suicides change by a statistically significant amount in the period after the effective

date of the D.C. Gun Control Law. *Id.* at 385. This conclusion bolsters the findings of the Loftin Study that the D.C. Gun Control Law was effective in reducing the levels of gun-related homicides and suicides in the District.

C. The D.C. Gun Control Law Effectively Reduces the Supply of Handguns in the District.

The D.C. Gun Control Law inhibits the supply of handguns in the District, and therefore helps to reduce the level of handgun homicides and suicides in the District. Criminologists have established that commerce in handguns flows from two sources: primary and secondary market suppliers. Philip J. Cook *et al.*, *Underground Gun Markets*, 117 *Economic Journal* F588, F591 (2007) (“Cook Study”). The primary market consists of sales of new or used firearms by licensed gun dealers, such as retail

firearm store owners or private individuals holding the requisite federal firearms license. Glenn L. Pierce *et al.*, *Characteristics and Dynamics of Illegal Firearms Markets: Implications for a Supply-Side Enforcement Strategy*, 21 *Justice Q.* 391, 393 (2004). These suppliers, by virtue of their federal license, are required to maintain appropriate records of transactions and conduct background checks of potential purchasers. *Id.* The secondary market consists of all private sales from individual to individual that transpire through private sales or gun shows. *Id.*; *see also* Philip J. Cook *et al.*, *Regulating Gun Markets*, 86 *J. Crim. L. & Criminology* 59, 68-69 (1995).

Efforts to control these markets, and thus to reduce the prevalence of gun crime, follow two basic strategies: supply-reduction and demand-reduction. The supply-side initiatives, such as the D.C. Gun

Control Law and the Brady Handgun Violence Prevention Act, 18 U.S.C. §§ 921-22, attempt to limit the availability of guns either across-the-board or to certain specified groups. *See* Anthony A. Braga *et al.*, *The Illegal Supply of Firearms*, 29 *Crime & Just.* 319, 341 (2002). Demand-side approaches, such as gang intervention programs and special prosecution of gun offenders, strive to lessen the need or desire within offender populations to carry and use guns for illegitimate purposes. *See, e.g.*, Cook, *Underground Gun Markets*, *supra*, at F600-01 (describing police intervention to deal with possession of guns by gang members).

Current research suggests that both supply-side and demand-side approaches to gun regulation are promising. *See* Pierce, *supra*, at 420 (recommending that jurisdictions interested in reducing the availability of guns “develop a portfolio

of interventions.”). While substitute guns from jurisdictions with more permissive gun control laws can influence the effectiveness of attempts to regulate the supply of guns, research shows that even when substitute guns from out-of-state enter a jurisdiction with supply-side regulations, such as the District, the price of such out-of-state, illegally imported guns is higher, thereby inhibiting demand.

In cities such as New York and Boston, where the prevalence of gun ownership is low because legal transactions are subject to onerous regulations or are banned, prices in the secondary market are higher than in other east coast locales. The street prices of guns are actually higher than the prices of guns in gun stores. As a result, dealers have long been able to make a profit by buying guns in Virginia or points south and running them northward to the street markets of northeastern cities. The high price of guns in the secondary market in New York and Boston is the direct result of the regulation of the primary market.

Cook, *Regulating Gun Markets*, *supra*, at 72. The increased retail price of out-of-state guns purchased

in jurisdictions with strict gun control measures suggests that even supply-side regulations can decrease the demand for guns by effectively increasing the price for substitute guns. *Id.* at 79.

In Chicago, for example, researchers found that “Chicago’s handgun ban may...have helped to reduce criminal access to guns by preventing the location of licensed gun dealers in high-crime neighbourhoods.” Cook, *Underground Gun Markets*, *supra*, at F606. Thus, supply-side gun control laws, such as the D.C. Gun Control Law, while unable to completely foreclose the illegal gun market, are nonetheless effective in reducing gun crime. *Cf.* Philip J. Cook *et al.*, *Comprehensive Firearms Tracing: Strategic and Investigative Uses of New Data on Firearms Markets*, 43 *Ariz. L. Rev.* 277, 300 (2001) (“A successful supply-side strategy for reducing gun crime does not require that today’s

street criminals have guns taken away from them. It is sufficient to block the transactions that supply guns for criminal use.”).

2. Stricter Gun Control Laws in Adjacent Jurisdictions Would Make Individual Gun Control Laws More Effective.

Supply-side gun control regulations are valuable tools for tightening the illegal gun market. However, as alluded to *supra*, permissive gun control regulations existing in other, particularly adjacent jurisdictions, can limit the reach of such regulations. These permissive regulations explain, together with other factors such as the crack cocaine market and gang activity, the increase in gun homicides in the District in the late 1980’s.

A recent study of 25 cities across the entire continental United States bears this point out. In cities located in states with strict gun control laws,

including permit-to-purchase licensing, mandatory registration of handguns, and waiting periods, the number of handguns purchased that originated in those states was significantly less than in cities located in states with more permissive gun control laws. See D.W. Webster, J.S. Vernick, L.M. Hepburn, *Relationship Between Licensing, Registration, and Other Gun Sales Laws to the Source of State Crime Guns*, 7 *Injury Prevention*, 184, 189 (2001) (“Webster Study”). For example, the cities of Boston, Jersey City, and New York, are all located in states with permit-to-purchase requirements, registration requirements, and waiting periods greater than seven days. *Id.* at 186. The percentages of crime guns in those cities first purchased *within* the state were 31.4 percent, 13 percent, and 14 percent, respectively. *Id.* By contrast, in Atlanta, Houston, and Miami, where

there are no permit-to-purchase requirements, registration requirements, or wait periods longer than seven days, the percentages of crime guns first purchased within the state were 86 percent, 88.3 percent, and 90.1 percent, respectively. *Id.* The Webster Study concluded that “comprehensive gun sales regulations...can affect the availability of guns to criminals.” *Id.* at 189. However, the “potential benefits from comprehensive state gun control measures appear to be diminished by the lack of such controls in other states...[because] proximity to people living in states with weak gun laws increased the proportion of a city’s crime guns originating from out-of-state gun dealers.” *Id.* at 188. In the District, for example, of the 991 successfully traced firearms that police recovered in 2006, “more than half originated in Maryland or Virginia and illegally made their way into the District.” Annual Report on

Guns in the District of Columbia 5 (2006), *available at*

http://mpdc.dc.gov/mpdc/lib/mpdc/publications/2006_AR_Guns_in_DC.pdf (last accessed January 10, 2008). Thus, where certain governments have more permissive gun control regulations, adjacent governments with stricter gun control measures suffer the consequences when guns obtained in the more permissive jurisdictions are imported.

Regulations such as the D.C. Gun Control Law represent an appropriate and important part of reducing gun-related violence and would only prove more effective if the surrounding jurisdictions also adopted stricter gun control measures.

CONCLUSION

The judgment of the Court of Appeals should
be reversed.

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