

INTEREST OF THE AMICUS CURIAE¹

The American Civil Rights Union (ACRU) is a non-partisan legal policy organization dedicated to defending all constitutional rights, not just those that might be politically correct or fit a particular ideology. It was founded by former Reagan White House Policy Advisor Robert B. Carleson in 1998, and since then has filed *amicus curiae* briefs on constitutional law issues in cases all over the country.

Those setting the organization's policy as members of the Policy Board are former U.S. Attorney General Edwin Meese III; former Federal Appeals Court Judge and Solicitor General Robert H. Bork; Pepperdine Law School Dean Kenneth W. Starr; former Assistant Attorney General for Civil Rights William Bradford Reynolds; Walter E. Williams, John M. Olin Distinguished Professor of Economics at George Mason University; former Harvard University Professor, Dr. James Q. Wilson; Ambassador Curtin Winsor, Jr.; and Dean Emeritus of the UCLA Anderson School of Management J. Clayburn LaForce.

This is exactly the kind of case that is of interest to the ACRU because we want to ensure that all constitutional rights are fully protected, not just those that may be politically correct or advance a particular ideology. We want to ensure in this case in particular that the rights of gun owners not be overlooked because of political correctness or ideological bias.

Counsel of Record for all parties were timely notified of this brief under Rule 37 and have consented to its filing.

¹ Peter J. Ferrara authored this brief for the American Civil Rights Union (ACRU). No counsel for either party authored the brief in whole or in part and no one apart from the ACRU made a monetary contribution to the preparation or submission of this brief. The letters of consent to the filing of this brief have been enclosed.

SUMMARY OF ARGUMENT

We join the Petitioners and Respondent in urging this Court to grant the requested Writ of Certiorari.

This case presents questions of the highest importance, involving the fundamental meaning of the Second Amendment. In over 200 years, this Court has still not resolved the basic questions regarding the Amendment's meaning. This case now presents a clear opportunity for the Court to do so.

Moreover, there is a widening split among the circuit courts over the basic meaning of the Second Amendment. Two circuits now agree that the Second Amendment does protect a right of individual citizens to keep and bear arms. Four circuits hold that the Amendment does not protect any individual right at all, but, rather, protects instead a power of each state to maintain its own militia. And four other circuits find that the Second Amendment does protect an individual right to keep and bear arms, but only in the case of a soldier serving in a state militia.

Consequently, there could not be a stronger case for granting the requested writ of certiorari.

However, Petitioners do not correctly state the Question Presented by this case. Petitioners Question Presented is:

“Whether the Second Amendment forbids the District of Columbia from banning private possession of handguns while allowing possession of rifles and shotguns.”

But that question is not consistent with the record in this case or the decision below.

This case actually presents two questions, as follows:

Does the Second Amendment protect the right of an individual citizen to keep and bear arms?

If so, do the legal provisions of the District of Columbia barring citizens from keeping and bearing handguns for self-defense and other uses violate the Second Amendment?

The decision below should be affirmed because, among many other reasons, the text of the Second Amendment plainly protects a right of each individual citizen to keep and bear arms, and there is no other logical interpretation of the Amendment.

Regardless of the District's policy arguments in favor of gun control, the Constitution and the Second Amendment govern. Nevertheless, the District's policy arguments are plain wrong. The District's ban on handguns has not been effective in reducing crime. The fundamental problem is that the District does not have the practical power to take guns away from criminals. At the same time, the District's ban on handguns and other gun control laws have taken guns for self defense out of the hands of law abiding citizens. As a result, the District's gun control restrictions have more likely increased crime.

The courts cannot treat the Second Amendment as a politically incorrect, disfavored stepchild of the Bill of Rights. Fidelity to the Constitution requires the courts to give it the same zealous protection as every other right stated in our founding document. The Amendment is not being read broadly to protect the rights and liberties of the people if

it is somehow interpreted to allow the government to adopt a virtually complete ban on handguns, and an effective prohibition on the use of rifles and shotguns, as in this case.

ARGUMENT

I. THIS CASE EASILY SATISFIES ALL OF THE CLASSIC CRITERIA FOR GRANTING A WRIT OF CERTIORARI.

We join both the Petitioners and the Respondent in urging this Court to grant the requested Writ of Certiorari. We submit that there could be no case where granting the writ could be more justified.

First, this case presents questions of the highest importance, involving the fundamental meaning of one of the first ten Amendments to the Constitution, the Bill of Rights. Over 200 years has gone by since the Second Amendment was adopted. Yet this Court has still not had a clear opportunity to delineate the fundamental meaning of that Amendment. The lower courts, the legal community, legislators, and the general public remain deeply divided and uncertain as to whether the Amendment even protects any individual right at all, not to mention the contours of any such right.

Secondly, there is a widening split among the circuit courts over the fundamental meaning of the Second Amendment. The Fifth Circuit, in *United States v. Emerson*, 270 F.3d 203 (5th Cir. 2001), joins the District of Columbia Circuit in the decision below, *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007) in finding that the Second Amendment does protect a right of individual citizens to keep and bear arms.

But the Fourth, Sixth, Seventh, and Ninth Circuits have held that the Amendment does not protect any individual right at all, but, rather, protects instead a power of each state to maintain its own militia.²

By contrast, the First, Third, Eighth and Eleventh Circuits find that the Second Amendment does protect an individual right to keep and bear arms, but only in the case of a soldier serving in a state militia.³

Consequently, this case presents questions of the highest importance on which the circuit courts are badly split. There could not be a stronger case for granting the requested writ of certiorari.

II. PETITIONERS DO NOT CORRECTLY STATE THE QUESTION PRESENTED BY THIS CASE.

Petitioners state that the Question Presented by this case is,

“Whether the Second Amendment forbids the District of Columbia from banning private possession of handguns while allowing possession of rifles and shotguns.”

But the record and reasoning of the Court below does not recognize this as the Question Presented by this case.

² *United States v. Johnson*, 497 F.2d 548 (4th Cir. 1974); *United States v. Warin*, 530 F.2d 103 (6th Cir. 1976); *Gillespie v. City of Indianapolis*, 185 F.3d 693 (7th Cir. 1999); *Silveira v. Lockyer*, 312 F. 3d 1052 (9th Cir. 2003).

³ *Cases v. United States*, 131 F. 2d 916 (1st Cir. 1942); *United States v. Rybar*, 103 F.3d 273 (3d. Cir. 1996); *United States v. Hale*, 978 F.2d 1016 (8th Cir. 1992); *United States v. Wright*, 117 F.3d 1265 (11th Cir. 1997).

First, the word “possession” does not appear in the Second Amendment. What that Amendment protects is the right of individuals to “keep and bear” arms, not merely to possess them. The Amendment is not satisfied by a local ordinance that allows possession of firearms only disabled in a glass enclosed frame like a museum piece. The word “bear” in the Amendment indicates use of such firearms in self-defense or in other uses.

Secondly, the Court below did not find that the plaintiff Dick Anthony Heller was free under the laws of the District of Columbia to keep and bear rifles and shotguns for self-defense and other uses. So there is no factual foundation for including a phrase in that regard in the Question Presented.

Indeed, quite to the contrary, the Court below did find that D.C. Code Section 7-2507.02 requires “that all lawfully owned firearms be kept unloaded and disassembled or bound by a trigger lock or similar device.” (App. 4a). This DC law prevents the plaintiff Heller from bearing rifles and shotguns as well for self defense or other uses. Indeed, the Court below found that this provision as applied to handguns prevents those weapons from being used for self-defense and other uses. (App. 55a).

Most importantly, as the Court below also found, once a weapon is determined to be covered by the Second Amendment, then the right of the people to keep and bear that weapon cannot be infringed, which means at a minimum that it cannot be banned completely. As the Court below said, “Once it is determined—as we have done—that handguns are ‘arms’ referred to in the Second Amendment, it is not open to the district to ban them.” (App. 53a). Therefore, the District of Columbia cannot argue that it can infringe on the right to keep and bear some arms, such as handguns, because it allegedly has not infringed on the right

to keep and bear other arms, such as rifles and shotguns. Yet, this is exactly what the District's Question Presented implies.

Therefore, the Question Presented offered by the District in this case must be rejected. This case actually presents two questions, as follows:

Does the Second Amendment protect the right of an individual citizen to keep and bear arms?

If so, do the legal provisions of the District of Columbia barring citizens from keeping and bearing handguns for self-defense and other uses violate the Second Amendment?

We respectfully submit that the Court should grant the requested Writ of Certiorari on these revised Questions Presented.

III. THE TEXT OF THE SECOND AMENDMENT PLAINLY PROTECTS A RIGHT OF EACH INDIVIDUAL CITIZEN TO KEEP AND BEAR ARMS

The decision below should be affirmed because, among many other reasons, the text of the Second Amendment plainly protects a right of each individual citizen to keep and bear arms, and there is no other logical interpretation of the Amendment.

The text of the Amendment states in part, "The right of the people to keep and bear arms shall not be infringed." This phrase clearly protects a right of each individual citizen to keep and bear arms. As a matter of plain English, there is nothing in the introductory phrase of the Amendment, "A well-regulated militia being necessary to the security of a

free people,” that puts any limitation on the right granted by the rest of the Amendment.

A well-regulated militia may well be necessary to the security of a free people. Where does that say in any way that a state, let alone the Federal government as in this case, can bar any individual citizen from the right to keep and bear arms, as promised in the rest of the Amendment? It does not. As Professor Nelson Lund has stated,

If you parse the Amendment, it quickly becomes obvious that the first half of the sentence is an absolute phrase (or ablative absolute) that does not modify or limit any word in the main clause. The usual function of absolute phrases is to convey information about the circumstances surrounding the statement in the main clause, such as its cause. For example: “The teacher being ill, class was cancelled.”

Nelson A. Lund, *A Primer on the Constitutional Right to Keep and Bear Arms* (Virginia Institute for Public Policy, 2002), at 6. See as well Lund, at 6-7.

Defendants and their *amici* want to read that prefatory language as not only limiting, but nullifying the individual right stated in the rest of the Amendment, leaving the government with the power to completely ban handguns, as in this case, or any other weapon. That interpretation would leave the Amendment textually incoherent, flatly stating an individual right in the second half of the sentence that is supposedly nullified in the first half of the sentence. As a matter of plain English, the Amendment cannot be read that way.

This individual rights interpretation of the Second Amendment is reinforced by the recognition that there is no logical alternative interpretation of the Amendment.

Petitioners and their *amici* advance a collective rights interpretation of the Amendment, which holds that it does not provide for any individual right, but only a collective right of each state to arm and maintain its own militia. But that interpretation contradicts not only the language of the Second Amendment, but the language of other provisions of the Constitution as well.

First, the Second Amendment says that the right belongs to the people, not to the states. The phrase “the right of the people” refers to individual rights, not states rights. The terms “keep” and “bear” also refer to individual actions. Moreover, the Second Amendment is placed second in a long list of individual rights, indicating not only that it is an individual right, but a very important one.

Secondly, Article 1, Section 10 of the Constitution prohibits the states from maintaining troops in times of peace without the consent of Congress. Reading the Second Amendment to provide for the right of the states to arm and maintain their own militias would flatly contradict this section.

Thirdly, Article I, Section 8 provides that Congress has the authority to provide for arming the militia. That section grants the states only the authority to train the militia and appoint its officers. The states are granted no other authority over the militia anywhere else in the Constitution. Reading the Second Amendment as providing for the right of the states to arm the militia would again flatly contradict this provision.

Fourthly, Article II, Section 2 states that “[T]he President shall be Commander in Chief of the Army and Navy of the United States, and of the militia of the several states....” If the President orders a state militia to stand

down, abandon any arms provided by the state, and go home with any individually owned arms, are we to believe that the Second Amendment grants the states a constitutional right to disobey and refuse?

Would we really want a Second Amendment that says an openly rebellious state has a constitutional right to arm and maintain a militia, and the Federal government cannot order it to disband and leave all but personal weapons behind? If so, wouldn't the actions of the Federal government in the Civil War have been unconstitutional? Isn't such an interpretation far more dangerous than to interpret the Amendment to provide for an individual right of the Plaintiff in this case, sorely in need of individual self-defense, to keep and bear arms?

Petitioners and their *amici* offer another alternative interpretation. They argue that the Second Amendment does provide for an individual right, but only a right of citizens to keep and bear arms while serving in the militia.

But are we to believe that what the Framers were concerned about in the Second Amendment was to protect the right of citizens to be armed while serving in the military? Indeed, that they were so concerned about it that they listed it second in the sacred list of protected individual rights consecrated in the Bill of Rights? Were the Framers concerned that without the Second Amendment Americans might be sent into battle by the government unarmed?

And how exactly would this supposed right to unrestricted access to firearms while serving in the military work? If a commanding officer orders his troops to advance with rifles, could they insist on machine guns instead? Could the ACLU sue the commanding officer if their request for machine guns was not honored? Would soldiers have the constitutional right to ditch their military issue weapons in

favor of weapons they brought from home that they preferred?

Quite clearly, a right to keep and bear arms while serving in the military could not be more meaningless, for surely those serving would be provided with weaponry, and they would be required to use the weapons their commanding officers ordered them to use. Indeed, in today's National Guard, the modern version of the state militias, all weapons are provided by the Federal government.

Reading the Second Amendment in this way again effectively just reads the entire Amendment out of the Constitution altogether. For these reasons, that could not be what the Framers meant. *See Emerson*, 270 F.3d at 232 n.30. The only possible interpretation of the Second Amendment is that it provides for an individual right to keep and bear arms.

The courts cannot treat the Second Amendment as a politically incorrect, disfavored stepchild of the Bill of Rights. Fidelity to the Constitution requires that the Judicial branch give it the same zealous protection as every other right stated in our founding document. The Amendment is not being read broadly to protect the rights and liberties of the people if it is somehow interpreted to allow the government to adopt a virtually complete ban on the right to keep and bear arms, or on any particular armament protected under the Amendment, as in this case.

IV. THE DISTRICT OF COLUMBIA'S GUN CONTROL LAWS HAVE NOT BEEN EFFECTIVE IN REDUCING CRIME, AND MAY HAVE BEEN COUNTERPRODUCTIVE.

Finally, Petitioners argue that regardless of what the Constitution says, the District of Columbia's prohibition on

handguns, and its other gun control laws, have been effective in reducing crime and other harms. Therefore, they insist, these gun prohibitions cannot reasonably be found to infringe on the Constitutional right to keep and bear arms.

Regardless of the District's policy arguments, the Constitution and the Second Amendment govern. Nevertheless, the District's policy arguments are plain wrong. The District's ban on handguns has not been effective in reducing crime. The fundamental problem is that the District does not have the practical power to take guns away from criminals. At the same time, the District's ban on handguns and other gun control laws have taken guns for self defense out of the hands of law abiding citizens. As a result, the District's gun control restrictions have more likely increased crime.

In the five years before the District banned handguns in 1976, the murder rate fell from 37 to 27 per 100,000. In the five years after the ban, the murder rate rose back up to 35.⁴ Indeed, the murder rate in D.C. has been higher than in 1976 in every year since then except one, 1985.⁵ From 1977 to 2003, the District's violent crime rate was higher than before 1976 in every year but two.⁶ Moreover, after adopting the 1976 handgun ban, the rate of murder and violent crime rose in the District relative to nearby Maryland and Virginia, and to other cities with more than 500,000 people.⁷ Indeed, after the handgun ban, D.C. regularly ranked first in murder rates for cities over 500,000.⁸

The same experience with handgun bans has been suffered elsewhere. Chicago's murder rate was dropping before it banned handguns in 1982. The city's murder rate

⁴ Federal Bureau of Investigation Uniform Crime Reports.

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id.

subsequently rose from 5.5 times as large as in the 5 neighboring counties to 12 times as large.⁹

Great Britain banned handguns in 1997. But deaths and injuries from gun crimes in England and Wales rose 340% from 1998 to 2005. Armed robberies, rapes, homicides, and other serious violent crimes also soared.¹⁰

Ireland banned all handguns and center fire rifles in 1972, but by 1974 murder rates had increased by 5 times. In the 20 years after 1972, the murder rate in Ireland averaged 114% higher than before.¹¹ Similarly, after Jamaica banned all guns in 1974, murder rates almost doubled from 11.5 per 100,000 in 1973 to 19.5 in 1977, doubling again to 41.7 in 1980.¹²

The reason for this was explained in the seminal, peer-reviewed work, John R. Lott, Jr., *More Guns, Less Crime* (University of Chicago Press, 2d. ed. 2000). That book showed through extensive econometric analysis that more widespread ownership of guns among the law abiding public actually results in less crime, because criminals are deterred by the fear of encountering a gun owner, and because gun owners often stop crimes in progress.

Lott's position is extensively supported by other research showing that where the law has allowed for increased ownership and possession of functional firearms crime has been reduced. The refereed studies demonstrating this result include William Alan Bartley & Mark A. Cohen, *The Effect of Concealed Weapons Laws: An Extreme Bound Analysis*, 36 *Econ. Inquiry* 258 (1998); Carlisle E. Moody,

⁹ Federal Bureau of Investigation Uniform Crime Reports

¹⁰ David Leppard, *Ministers 'Covered Up' Gun Crime*, *Financial Times*, August 26, 2007

¹¹ John R. Lott, Jr., "D.C.'s Flawed Reasoning," *Washington Times*, September 7, 2007.

¹² *Id.*

Testing for the Effects of Concealed Weapons Laws: Specification Errors and Robustness, 44 J.L. & Econ. 799 (2001); David B. Mustard, *The Impact of Gun Laws on Police Deaths*, 44 J.L. & Econ. 635 (2001); David E. Olsen & Michael D. Maltz, *Right-to-Carry Concealed Weapons Laws and Homicide in Large U.S. Counties: The Effect on Weapons Types, Victim Characteristics, and Victim-Offender Relationships*, 44 J.L. & Econ. 747 (2001); Florenz Plassmann & T. Nicholas Tideman, *Does the Right to Carry Concealed Handguns Deter Countable Crimes: Only A Count Analysis Can Say*, 44 J.L. & Econ. 771 (2001); John R. Lott, Jr. & David B. Mustard, *Crime, Deterrence and Right-to-Carry Concealed Handguns*, 26 Journal of Legal Studies (1997); Bruce L. Benson and Brent D. Mast, *Privately Produced General Deterrence*, 44 J. L. & Econ. 725 (2001); Eric Helland and Alexander Taborrak, *Using Placebo Laws to Test More Guns Less Crime*, 4 Advances in Economic Analysis and Policy 1 (2004); James Q. Wilson, *Appendix A Dissent*, Firearms and Violence: A Critical Review, National Academies Press (2005); John R. Lott, Jr. and John E. Whitley, *Abortion and Crime: Unwanted Children and Out-of-Wedlock Births*, Economic Inquiry, April, 2007; John R. Lott, Jr. and John E. Whitley, *A Note on the Use of County Level UCR Data*, Journal of Quantitative Criminology (2003); John R. Lott, Jr. & John E. Whitley, *Safe Storage Gun Laws: Accidental Deaths, Suicides, and Crime*, 44 J.L. & Econ. 659 (2001); Thomas B. Marvell, *The Impact of Banning Juvenile Gun Possession*, 44 J.L. & Econ. 691 (2001); Lott, *More Guns, Less Crime, supra.*

The bigger the increase in the percent of the adult population with conceal and carry permits that allow for the broader availability and presence of firearms among the law abiding, the bigger the drop in violent crime. Over time, as a state issues more conceal and carry permits, the drop in crime increases. Lott, *More Guns, Less Crime, supra.*

Crimes involving multiple victim public shootings show the largest drop with conceal and carry policies because, as compared to other violent crimes where only one or at most a few potential victims are present, there is a relatively large chance that one of the potential victims will have a weapon that can be used to defend all of them. John R. Lott, Jr. and William Landis, *The Bias Against Guns*, (2003).

If crime rates in neighboring counties on opposite sides of state borders are compared, the counties in conceal and carry states experience a drop in violent crime at the same time that their neighboring counties across state borders suffer an increase. Indeed, the drop in violent crime in the counties in conceal and carry states is generally four times as large as the increase in violent crime in the counties in other states. Stephen G. Bronars & John R. Lott, Jr., *Criminal Deterrence, Geographic Spillovers, and Right-to-Carry Laws*, *Am. Econ. Rev.*, May, 1998.

Because of overwhelming, compelling evidence like this, 40 states now have conceal and carry permits. Only Wisconsin and Illinois, along with D.C., completely ban citizens from carrying concealed handguns. John R. Lott, Jr., *Freedomnomics, Why the Free Market Works and Other Half-Baked Theories Don't* (2007).

Moreover, while Petitioners assert that the nation's three largest cities follow the same gun control policies as the District, that is not true. Los Angeles does not ban handguns, New York City allows conceal and carry permits, and no city prohibits the effective use of rifles and shotguns in self-defense as the District does. Indeed, since 1976, the District of Columbia has had the most restrictive gun control laws anywhere in the country, and yet during that time it has become notorious as perhaps the nation's worst locus of gun violence.

Petitioners argue that Lott's work has somehow been "debunked", citing Ian Ayres & John J. Donohue III, *Shooting Down the "More Guns, Less Crime" Hypothesis*, 55 Stan. L. Rev. 1193 (2003). But the Ayres and Donohue article was not refereed and does not involve scientifically passable statistical analysis. For example, their flawed methodology in trying to fit a straight line to a data curve led them to find an initial increase in crime after conceal and carry laws are passed, when the actual plotted data show a decline from the start that only accelerates over time. Florenz Plassman and John E. Whitley, *Confirming 'More Guns, Less Crime'*, 55 Stan. L. Rev. 1313, 1328 (2003). Moreover, to get their results they limited the time period of observations to 5 years and dropped states out of the sample. Even then, instead of "Shooting Down the More Guns, Less Crime Hypothesis", they had to confess that their results were ambiguous, saying, "We're still not sure what the true impact is. It's very easy to get it wrong."¹³

Petitioners also cite Mark Duggan, *More Guns, More Crime*, 109 J. Pol. Econ. 1086 (2001), another study that was not refereed. But Duggan measured gun ownership distribution by sales of *Guns and Ammo* magazine, only the fourth largest gun magazine in the United States. As much as 20% of the distribution of that magazine each year is given away for free by the publisher in high crime areas where the publisher thought interest in the magazine might be increasing. That would naturally cause a distorted correlation between supposed gun ownership and crime.

Even so, of the 30 estimates of the impact of conceal and carry laws that Duggan provides, correcting 4 typing errors leaves 16 actually showing statistically significant decreases in crime, while only one shows a significant

¹³ Erin Grace, "Concealed-carry absolutes are a moving target," *Omaha World-Herald*, July 16, 2006.

increase. Using any other gun magazine as the proxy for gun ownership leaves no significant increase in crime correlated with gun ownership.¹⁴ Carlisle E. Moody and Thomas B. Marvel, “*Guns and Crime*”, 71 So. Econ. J. 720 (2005); Florenz Plassmann and John R. Lott, Jr., *More Readers of Gun Magazines, But Not More Crimes*, American Enterprise Institute Working Paper (2006); Lott and Landis, *supra* (2003).

Petitioners cite as well 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) as showing that “the District’s handgun ban... coincided with an abrupt decline in firearm-caused homicides in the District but no comparable decline elsewhere in the metropolitan area.” (App.) But the authors of this study started counting firearm caused homicides from the date the District’s handgun ban and other gun control laws were passed in 1976, rather than from the date the laws became effective 6 months later. When the study is redone with the corrected date, the supposed effect of the law disappears. Gary Kleck, *Targeting Guns*, (1997).

This study by Loftin *et al.* was also not peer reviewed. Indeed, not one peer reviewed study has ever shown that wider gun ownership among law abiding citizens is associated with an increase in crime.

The gun control Lysenkoism represented by the studies Petitioners cite does not begin to compare with the avalanche of scholarly work cited above showing that more guns among law abiding citizens reduces crime, which has resulted in so many states adopting conceal and carry laws.

¹⁴ Petitioner also cites Dan A. Black and Daniel S. Nagin, *Do Right-to-Carry Laws Deter Violent Crime?*, 27 J. Legal Stud. 209 (1998). That study disregarded all counties with fewer than 100,000 people, and the entire state of Florida. But it still found declines in robberies and aggravated assaults due to conceal and carry laws.

Since the District cannot show that its ban on handguns has reduced crime, and, indeed, it probably has increased crime based on the academic literature, the District cannot argue that the ban is a reasonable restriction on the right to keep and bear arms. Indeed, the District has not shown anywhere, and cannot show, that its handgun ban has reduced access to such guns by criminals. As a result, all of the statistics the District cites regarding use of handguns by criminals to commit crimes are irrelevant. They cannot justify the handgun ban if the ban does not reduce access to guns by criminals. And if the ban does not reduce access to guns by criminals, it cannot be a reasonable restriction on the right to keep and bear arms.

Petitioners also repeatedly argue that the handgun ban is reasonable because it only bans one type of weapon, and citizens are still free to utilize rifles and shotguns for self-defense and other uses. But this assertion contradicts the record and the decision below. Again, D.C. Code Section 7-2507.02 requires “that all lawfully owned firearms be kept unloaded and disassembled or bound by a trigger lock or similar device.” (App. 4a). This section, by its very terms, prevents the use of rifles and shotguns as well for self-defense and other uses. Moreover, in any event, it denies citizens access to functional firearms for self-defense and possibly other uses. See Lott and Whitley (2001), *supra*. Even less extreme gun lock regulations in other states have been associated with more violent crime because locking the guns makes self defense difficult. *Id.*

Indeed, again the Court below ruled that this very provision as applied to handguns is unconstitutional because it prevents those weapons from being used for self-defense and other uses. (App. 55a). This provision applied to rifles and shotguns would have this same effect as well. Therefore, it cannot be said that under the District’s gun control laws

citizens are free to use rifles and shotguns for self-defense and other uses.¹⁵

Petitioners also argue that the handgun ban is reasonable because the availability of handguns results in accidents causing death, frequently involving children. But lethal handgun accidents are actually quite rare. With 100 million gun owners across the nation in 2004, there were only 649 reported cases of accidental gun deaths.¹⁶

Moreover, among the 40 million children in the U.S. under the age of 10, the Centers for Disease Control report 20 accidental gun deaths in 2003. Another 36 accidental gun deaths were reported for children between 10 and 14. Children are 41 times more likely to die from accidental suffocation, 32 times more likely to die from accidental drowning, and 20 times more likely to die due to accidental fires.¹⁷ Of course, random accidents can never be used to justify abridgement of a constitutional right, all the more so when the incidence is so rare.

CONCLUSION

For all of the foregoing reasons, *Amicus Curiae* American Civil Rights Union respectfully submits that this Court should grant the requested Writ of Certiorari, and affirm the decision of the District of Columbia Circuit below.

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¹⁵ In addition, the Court below also again ruled in any event that the text of the Amendment does not allow a protected armament to be banned entirely even if other arms are not banned.

¹⁶ Centers for Disease Control, National Center for Injury Prevention and Control, WISQARS Fatal Injuries: Mortality Reports, 1999-2004.

¹⁷ *Id.*

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