No. 07-

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 Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

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

PARTIES TO THE PROCEEDING

Petitioners District of Columbia and Mayor Adrian M. Fenty were defendants-appellees below. Mayor Fenty was substituted automatically for the previous Mayor, Anthony A. Williams, under Federal Rule of Appellate Procedure 43(b)(2).

Respondent Dick Anthony Heller was the only plaintiff-appellant below held by the court of appeals to have standing. The other plaintiffs-appellants were Shelly Parker, Tom G. Palmer, Gillian St. Lawrence, Tracey Ambeau, and George Lyon.

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JURISDICTION

The judgment of the court of appeals was entered on March 9, 2007. The court denied *en banc* review on May 8, 2007. App. 89a. On July 18, 2007, the Chief Justice extended the time for filing this petition to September 5, 2007. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

The Militia Clauses of the Constitution, art. I, § 8, cls. 15-16, empower Congress "[t]o provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions" and "[t]o provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress."

Relevant provisions of the laws of the District of Columbia are reprinted in the Appendix.

STATEMENT OF THE CASE

This petition seeks review of an extraordinary decision by a divided panel of the D.C. Circuit that the District of Columbia's longstanding law banning handguns but authorizing private possession of rifles and shotguns violates the Second Amendment. This is the first time in the Nation's history that a federal appellate court has invoked the Second Amendment

to strike down any gun-control law. Absent review by this Court, the District of Columbia—a densely populated urban locality where the violence caused by handguns is well-documented—will be unable to enforce a law that its elected officials have sensibly concluded saves lives.

This Court's intervention is required because the court below avowedly created a split with nine other federal courts of appeals and the highest local court of the District of Columbia over the central meaning of the Second Amendment. These other courts have held, contrary to the decision below, that the Amendment does not protect a right to own a gun for purely private uses.

The decision below is mistaken in three fundamental respects. First, as the overwhelming majority of circuit decisions conclude, the text and history of the Second Amendment establish that it protects weapons possession and use only in connection with service in state-regulated militias. That conclusion is supported by *United States v. Miller*, 307 U.S. 174 (1939), in which this Court unanimously directed that the Second Amendment "must be interpreted and applied" in view of its "obvious purpose to assure the continuation and render possible the effectiveness of such [militia] forces." *Id.* at 178. Second, even if there is a right to possess and use weapons unrelated to militia service, the Second Amendment restricts only federal interference with state-regulated militias and state-recognized gun rights. Legislation enacted by the District does not implicate the Amendment. Third, in any event, the District law at issue in this case does not infringe whatever right the Second Amendment could be read to protect, because it is eminently reasonable to permit private ownership of other types of weapons, including shotguns and rifles, but ban the easily concealed and uniquely dangerous modern handgun.

1. Handguns and other dangerous weapons have long been regulated in the Nation's capital. As early as 1858, the City of Washington made it unlawful "to carry or have concealed about their person any dangerous weapon, such as . . . [a] pis-

tol," and Congress itself so decreed in 1892. Act of Nov. 18, 1858, Laws of the City of Washington 418 (W.B. Webb ed., 1868); Act of July 13, 1892, ch. 159, § 1, 27 Stat. 116. Local legislation that Congress enacted in 1932 and extended in 1943 prohibited possession of machine guns and sawed-off shotguns and required licenses for carrying pistols outside the home or a place of business. Act of July 8, 1932, ch. 465, § 4, 47 Stat. 650, 651; Act of Nov. 4, 1943, ch. 296, 57 Stat. 586. Later police regulations required registration of pistols and other firearms. D.C. Police Regs. art. 50-55 (1968); *see Maryland & District of Columbia Rifle & Pistol Ass'n v. Washington*, 442 F.2d 123, 125 & nn.4-6 (D.C. Cir. 1971).

In 1976, soon after being granted home rule authority, the Council of the District of Columbia concluded that existing laws did not adequately curb gun-related violence. As a consequence, it enacted a comprehensive new law regulating firearms. At issue here is a provision generally prohibiting the registration, and thus the possession, of any pistol—defined as a gun "originally designed to be fired by use of a single hand," D.C. Code § 7-2501.01(12)—that was not registered in the District prior to the effective date of the law. D.C. Code § 7-2502.02; *see* D.C. Code §§ 7-2501.01, 7-2502.01. As Mayor Walter Washington emphasized in signing the law, it "does not bar ownership or possession of shotguns and rifles." Statement of Hon. Walter E. Washington Upon Approving Bill 1-164 (July 23, 1976), App. 116a; *see* D.C. Code §§ 7-2501.02, 7-2502.02.[1]

The Council banned handguns in a targeted effort to prevent needless death and injury from that class of weapons. Among other things, the District responded to the chilling regularity with which handguns were taking the lives of children: of the "[c]lose to 3,000 accidental deaths . . . caused by

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[1] Resolutions to disapprove the Council's 1976 act were introduced in the House of Representatives but were unsuccessful. *See McIntosh v. Washington*, 395 A.2d 744, 747 (D.C. 1978).

firearms" annually, the Council found, "1/4 of the victims are under 14 years of age." Comm. on the Judiciary and Criminal Law, Council of the District of Columbia, Report on Bill No. 1-164 (Apr. 21, 1976), App. 101a-02a. Women were also suffering disproportionately from handgun violence: in 1974, every rapist in the District who used a firearm to facilitate his crime used a handgun. Evening Council Sess. Tr., 11:4-5, June 15, 1976.

The Council also found that the handgun is a criminal's weapon of choice. It cited national statistics showing that "handguns are used in roughly 54% of all murders, 60% of robberies, 26% of assaults." App. 102a. Most strikingly, the Council responded to the fact that handguns, to the near exclusion of other weapons, were being used to kill police, accounting for "87% of all murders of law enforcement officials" nationwide. *Id.* Handguns were found to be particularly deadly tools when used by criminals: "A crime committed with a pistol is 7 times more likely to be lethal than a crime committed with any other weapon." *Id.*

These dangers were even more pronounced in the District. Within its "totally urban" environment, handguns were used in a stunning 88% of armed robberies and 91% of armed assaults. App. 102a, 104a. In 1974, handguns were responsible for 155 of the record 285 murders in the District. App. 102a.

Faced with the evidence that handguns pose a particularly serious threat to public safety, the Council chose to ban handguns because it concluded that less restrictive regulation would be ineffective. Since handguns present a singular danger, the solution was to stop the introduction of more handguns into the District. As the handgun ban's principal opponents conceded, *stolen* guns enable criminal gun violence. Afternoon Council Sess. Tr. 35-36, May 3, 1976 (Councilmember Barry). Ready availability also had made handguns "easy for juveniles to obtain." App. 103a. The Council thus decided to ban handguns in an effort to "freez[e] the pistol . . . population within the District of Columbia." App. 104a.

The choice of a ban further reflects the recognition that the threat of handgun violence extends well beyond the premeditated acts of criminals. The Council noted that guns "are more frequently involved in deaths and violence among relatives and friends than in premeditated criminal activities," and that many "murders are committed by previously law-abiding citizens, in situations where spontaneous violence is generated by anger, passion, or intoxication." App. 102a.

The Council concluded that existing regulations imposed on handguns and penalties associated with handgun-related crimes were insufficient to combat handgun violence, because handguns themselves are inherently dangerous. The very premise of the legislation was thus that "the ultimate resolution of the problems of gun created crimes and gun created accidents . . . is the elimination of the availability of handguns." Afternoon Council Sess. Tr. 3:22-24, May 18, 1976. As the Council summed up, "the bill reflects a legislative decision" that handguns "have no legitimate use in the purely urban environment of the District of Columbia." App. 112a.

2. Respondent Dick Anthony Heller and five other District residents challenged the constitutionality of the handgun ban under the Second Amendment. Heller was the only plaintiff to have applied to register a handgun, and his application was denied. Complaint at 2-4. The complaint alleges that he resides in a "high-crime" neighborhood and that the handgun ban prevents him from "possess[ing] a functional handgun . . . for self-defense within his home." *Id.* at 2-3. Heller owns both handguns and long guns already but stores them outside the District. *Id.* at 3. He did not allege an intent to use any firearm for any militia-related purpose.

The district court granted the District's motion to dismiss the complaint. "[I]n concert with the vast majority of circuit courts," the district court concluded that this Court's decision in *Miller* "reject[s] an individual right to bear arms separate and apart from Militia use." App. 75a. The district court also noted that this Court "has twice been presented with the oppor-

tunity to re-examine *Miller* and has twice refused to upset its holding." App. 75a (citing *Lewis v. United States*, 445 U.S. 55, 65 n.8 (1980), and *Burton v. Sills*, 394 U.S. 812 (1969)).

3. A divided panel of the court of appeals reversed in an opinion written by Senior Judge Silberman and joined by Judge Griffith. After holding that only Heller had standing to bring a pre-enforcement constitutional challenge, App. 12a, the majority turned to the meaning of the Second Amendment.

First, the majority aligned itself with the "camp" of "those who argue that the Second Amendment protects a right of individuals to possess arms for private use." App. 14a. It rejected the contrary view "that the Amendment protects only a right of the various state governments to preserve and arm their militias" or a right of individuals to possess and use weapons in service of such militias. App. 14a-15a. The majority acknowledged that its decision was in direct conflict with the holdings of the First, Third, Fourth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits and the District of Columbia Court of Appeals. *See* App. 15a-16a & nn.4-6.

Second, the majority rejected the District's argument that the Second Amendment is not implicated by local legislation for a federal district, legislation that has no possible impact on the states or their militias. App. 45a-48a. The majority thought this contention precluded by the fact that District residents enjoy the protections of the Bill of Rights. App. 45a.

Third, the majority held that the handgun ban violates its construction of the Second Amendment. It concluded that, although the "protections of the Second Amendment are subject to . . . reasonable restrictions," the District's handgun ban is not a reasonable restriction. App. 51a. The majority dismissed as "frivolous" the District's contention that its regulatory scheme is reasonable because residents still have access to many other weapons, such as shotguns and rifles. App. 53a. The majority adopted a categorical rule that any prohibition on the possession of any type of protected "Arm" is *per se* uncon-

stitutional, without regard to the reasonableness of the regulatory scheme as a whole: "Once it is determined . . . that handguns are 'Arms' referred to in the Second Amendment, it is not open to the District to ban them." App. 53.[2]

Judge Henderson dissented. In her view, *Miller*—"the only twentieth-century United States Supreme Court decision that analyzes the scope of the Second Amendment"—compels the conclusion that "the right of the people to keep and bear arms relates to those Militia whose continued vitality is required to safeguard the individual States." App. 57a, 60a. She also emphasized that the purpose of the Second Amendment was to guard against a perceived threat to the states from the federal government. App. 65a. She noted that if the District's militia is treated as a state militia, then the Second Amendment would not apply because it "does not apply to gun laws enacted by the States." App. 66a n.13.

4. The court of appeals denied the District's petition for rehearing *en banc*, although four of the ten active judges

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[2] The majority also addressed two other provisions that do not require extensive discussion here. First, D.C. Code § 22-4504(a) requires a license to "carry[]" a pistol. The majority acknowledged that the Second Amendment permits governments to deny firearms to felons and the insane, as well as to test for firearm proficiency and responsibility. App. 53a; *see Lewis*, 445 U.S. at 65 n.8 (felons). The majority, however, read D.C. Code § 22-4504(a) to forbid anyone from moving even a lawfully possessed firearm within the home. App. 54a. The majority held that, to the extent individuals have a constitutional right to possess a firearm, they have the ancillary right to move it about their homes. App. 54a. That holding was a corollary to the majority's holding on the handgun ban and thus does not require separate treatment.

Second, D.C. Code § 7-2507.02 requires firearms in homes to be "unloaded and disassembled or bound by a trigger lock or similar device." The majority read this provision to forbid loading, assembling, and unlocking even a lawfully possessed firearm for use in self-defense. App. 55a. On that reading, it held the provision unconstitutional. The District does not, however, construe this provision to prevent the use of a lawful firearm in self-defense.

(Randolph, Rogers, Tatel, and Garland, JJ.) would have granted it. App. 87a. The court subsequently stayed issuance of the mandate pending review by this Court. App. 84a.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW DIRECTLY CONFLICTS WITH THE RULINGS OF NINE CIRCUITS AND THE HIGHEST COURTS OF THE DISTRICT AND NUMEROUS STATES.

The court of appeals held that the Second Amendment protects a right that extends to private uses of guns unconnected with participation in a well-regulated militia. App. 44a. The court expressly acknowledged that its decision conflicts with those of nearly every other circuit and creates a conflict within the District of Columbia itself. App. 15a-16a & nn.4-6. Every regional federal court of appeals except one has now addressed the question. *See* App. 15a n.4.[3] Out of all those decisions, only the decision below invalidates a gun-control law. Because the decision drastically departs from the mainstream of American jurisprudence, it warrants review.

Since *Miller* was issued in 1939, the settled consensus of the courts of appeals has been that the right to keep and bear arms does not protect those who fail to allege participation in an organized state militia. In *United States v. Parker*, 362 F.3d 1279 (10th Cir. 2004), for example, the Tenth Circuit held that "an individual has a right to bear arms, but only in direct affiliation with a well-organized state-supported militia." *Id.* at 1284. The First, Third, Eighth, and Eleventh Circuits are in accord.[4] Similarly emphasizing that the Second Amendment's

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[3] Although it has not described precisely how it construes the Second Amendment, the Second Circuit has held that it creates no "fundamental" right. *United States v. Toner*, 728 F.2d 115, 128 (2d Cir. 1984).

[4] *Cases v. United States*, 131 F.2d 916, 923 (1st Cir. 1942); *United States v. Rybar*, 103 F.3d 273, 286 (3d Cir. 1996); *United States v. Hale*, 978 F.2d 1016, 1020 (8th Cir. 1992); *United States v. Wright*, 117 F.3d 1265, 1274 (11th Cir. 1997).

purpose is to protect state militias, the Fourth, Sixth, Seventh, and Ninth Circuits have held that only states may enforce the Second Amendment.[5]

The District of Columbia Court of Appeals has also held that the Second Amendment does not protect a private right and, indeed, has upheld the same statutory scheme at issue here. *Sandidge v. United States*, 520 A.2d 1057, 1058 (D.C. 1987). It refused to reconsider that holding following the decision below. *Andrews v. United States*, 922 A.2d 449, 456-57 (D.C. 2007). As a result, the decision creates an intra-jurisdictional conflict as well as a circuit conflict.

The only federal appellate decision supporting some material aspect of the ruling below is *United States v. Emerson*, 270 F.3d 203 (5th Cir. 2001). In *Emerson*, the Fifth Circuit in dicta stated that the Second Amendment protects a right to keep and bear arms unrelated to militia service. *Id.* at 260; *see id.* at 272-74 (Parker, J., specially concurring). The court did not, however, strike down the federal gun-control law at issue, upholding it instead as reasonable. *Id.* at 261-62.[6]

State courts seldom construe the right secured by the Second Amendment because of their uniform agreement that the Amendment does not bind the states, as this Court held unanimously more than a century ago in *Presser v. Illinois*, 116 U.S. 252 (1886).[7] The court below nevertheless asserted

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[5] *United States v. Johnson*, 497 F.2d 548, 550 (4th Cir. 1974) (*per curiam*); *United States v. Warin*, 530 F.2d 103, 106 (6th Cir. 1976); *Gillespie v. City of Indianapolis*, 185 F.3d 693, 710 (7th Cir. 1999); *Silveira v. Lockyer*, 312 F.3d 1052, 1087 (9th Cir. 2002).

[6] Some later dissents have adopted the *Emerson* analysis. *See, e.g*, *Nordyke v. King*, 319 F.3d 1185, 1192 (9th Cir. 2003) (Gould, J., dissenting); *Silveira v. Lockyer*, 328 F.3d 567, 570 (9th Cir. 2003) (Kleinfeld, J., dissenting from denial of rehearing).

[7] *See, e.g.*, *Fife v. State*, 31 Ark. 455 (1876); *In re Application of Rameriz*, 226 P. 914 (Cal. 1924); *Brewer v. State*, 637 S.E.2d 677 (Ga. 2006); *State v. Mendoza*, 920 P.2d 357 (Haw. 1996); *Kellogg v. City of Gary*, 562 N.E.2d 685 (Ind. 1990); *State v. Amos*, 343 So. 2d 166 (La.

that at least seven state courts "have held that the Second Amendment protects an individual right." App. 16a n.6. That assertion, however, is seriously exaggerated. Each of the cited decisions simply mentions the Second Amendment in passing, with no analysis.[8] In the main, they discuss *state* constitutional provisions. State courts that have in fact separately addressed the meaning of the Second Amendment have rejected the approach used by the court below.[9]

Only this Court can resolve these conflicts about the central meaning of the Second Amendment, a question that it has not directly addressed since *Miller* and that is quite literally a matter of life and death. The decision of the court below is a marked departure from the reasoned consensus of other courts, and that departure was the basis for overruling the District's sensible legislative judgment on how best to protect children,

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1977); *State v. Goodno*, 511 A.2d 456 (Me. 1986); *Scherr v. Handgun Permit Review Bd.*, 880 A.2d 1137 (Md. Ct. Spec. App. 2005); *Commonwealth v. Davis*, 343 N.E.2d 847 (Mass. 1976); *State v. Keet*, 190 S.W. 573 (Mo. 1916); *Harris v. State*, 432 P.2d 929 (Nev. 1967); *State v. Sanne*, 364 A.2d 630 (N.H. 1976); *Burton v. Sills*, 248 A.2d 521 (N.J. 1968); *People v. Morrill*, 475 N.Y.S.2d 648 (N.Y. App. Div. 1984); *State v. Kerner*, 107 S.E. 222 (N.C. 1921); *Arnold v. City of Cleveland*, 616 N.E.2d 163 (Ohio 1993); *Ex parte Thomas*, 97 P. 260 (Okla. 1908); *State v. Kessler*, 614 P.2d 94 (Or. 1980); *Mosby v. Devine*, 851 A.2d 1031 (R.I. 2004); *Masters v. Texas*, 685 S.W.2d 654 (Tex. Ct. App. 1985); *Wisconsin v. Hopkins*, 706 N.W.2d 704 (Wis. Ct. App. 2005); *Mecikalski v. Office of the Atty. Gen.*, 2 P.3d 1039 (Wyo. 2000).

[8] *Hilberg v. F.W. Woolworth Co.*, 761 P.2d 236, 240 (Colo. Ct. App. 1988); *Brewer v. Commonwealth*, 206 S.W.3d 343, 347 & n.5 (Ky. 2006); *State v. Blanchard*, 776 So. 2d 1165, 1168 (La. 2001); *State v. Nickerson*, 247 P.2d 188, 192 (Mont. 1952); *Stillwell v. Stillwell*, 2001 WL 862620, at *4 (Tenn. Ct. App. July 30, 2001); *State v. Anderson*, 2000 WL 122218, at *7 n.3 (Tenn. Crim. App. Jan. 26, 2000); *State v. Williams*, 148 P.3d 993, 998 (Wash. 2006); *Rohrbaugh v. State*, 607 S.E.2d 404, 412 (W. Va. 2004).

[9] *See, e.g.*, *Salina v. Blaksley*, 83 P. 619, 620 (Kan. 1905); *Commonwealth v. Davis*, 343 N.E.2d 847, 850 (Mass. 1976); *In re Atkinson*, 291 N.W.2d 396, 398 n.1 (Minn. 1980).

police officers, and other potential victims of gun violence in an urban environment.

II. THE DECISION BELOW IS WRONG IN THREE RESPECTS.

Review is also warranted because the ruling below is wrong on the merits. The court of appeals erred in (A) its characterization of the nature of the Second Amendment right (which is linked to state militias), (B) its understanding of the scope of the right (which protects against federal interference with state militias and state gun laws), and (C) its conclusion that the right, however it might be construed, is infringed by the District's law (which is targeted at the special dangers created by handguns and allows the possession of rifles and shotguns). Each error independently requires reversal.

A. The Right Protected by the Second Amendment Is Limited to Weapons Possession and Use in Connection With Service in State-Regulated Militias.

The court below erred in rejecting the longstanding and nearly unanimous view of other courts that any right guaranteed by the Second Amendment may be exercised only in connection with service in a state-regulated militia.

1. The Amendment's text compels this interpretation. The opening clause expressly relates the right to keep and bear arms to the need for a "well regulated Militia." Such a force is said to be "necessary to the security of a free State." The word "Militia" naturally refers to the state-regulated military forces envisioned in the Militia Clauses of the Constitution, art. I, § 8, cls. 15-16. A militia that is "well regulated" is properly disciplined. *See Miller*, 307 U.S. at 179 (citizens enrolled for military discipline).

Contrary to the view of the court of appeals, which considered the second clause of the Second Amendment in isolation, the first clause is not precatory surplusage merely "announcing the desirability of a well regulated militia." App. 34a. The Framers gave this language careful attention, revising it sev-

eral times, and considered it essential to the Amendment as a whole. *See The Complete Bill of Rights: The Drafts, Debates, Sources, and Origins* 169-81 (Neil H. Cogan ed., Oxford Univ. Press 1997).

Further, the phrase that defines the "right of the people"—"to keep and bear Arms"—was widely defined with a specifically military connotation. *See, e.g.*, The Declaration of Independence para. 28 (U.S. 1776) ("He has constrained our fellow citizens taken captive on the high seas to bear arms against their country . . . ."); Mass. Const., Pt. I, Art. XVII ("The people have a right to keep and to bear arms for the common defense."); N.C. Decl. of Rights, Art. XVII ("The People have a Right to Bear Arms, for the Defense of the State . . . ."). *See generally* David Yassky, *The Second Amendment: Structure, History, and Constitutional Change*, 99 Mich. L. Rev. 588, 618-21 (2000) (finding "overwhelmingly dominant" contemporaneous uses of "bear arms" to imply military use).

Thus, using the common language of the time, "[t]he whole sentence looks to military matters." Garry Wills, *To Keep and Bear Arms*, N.Y. Rev. of Books, Sept. 21, 1995, at 63. All the words of the short text are interrelated; none should be considered extraneous. *See* David T. Konig, *The Second Amendment: A Missing Transatlantic Context for the Historical Meaning of "The Right of the People to Keep and Bear Arms,"* 22 Law & Hist. Rev. 119, 154-57 (2004) (discussing eighteenth century modes of legislative drafting).

In *Miller*, this Court recognized the Amendment's military cast. The Court saw the "obvious purpose" to be to ensure the effectiveness and continuation of the state militias. It held that, absent proof that "possession or use" of a firearm "could contribute to the common defense" or have a reasonable relationship to the preservation or efficiency of the militias, a firearm—there, a short-barreled shotgun—is not an "Arm" protected by the Second Amendment. 307 U.S. at 178.

That same analysis logically applies to every term in the Amendment. If the "Arms" it protects must relate to the preservation and efficiency of a well regulated militia, then it follows that those "Arms" must be kept and borne for those purposes in order for the Amendment to afford protection. Indeed, far from focusing on the word "Arms" alone, the *Miller* Court emphasized that the Amendment in its entirety—the "declaration *and* guarantee"—must be interpreted with these purposes in view. *Id.* (emphasis added).

The court of appeals, by contrast, erred when it stripped "keep and bear Arms" of its obvious military character, for example, by defining "bear" in isolation, then turning to the word "keep" to justify its conclusion that the Second Amendment protects more than a right to "Arms" for militia purposes. App. 23a. Especially given the text of the Amendment as a whole, the more sensible conclusion is that the right "to keep . . . Arms" is a right to keep the firearms one "bears" in connection with service in the militia.

The court also emphasized that guns were used near the time of the Founding for private purposes. App. 23a-27a. That is true, but a non sequitur. There is no persuasive textual reason to believe that the Amendment protects such uses.

2. Nor is there a basis in history, as the reasons for the Second Amendment's adoption and the debates of the Founders also confirm that the court of appeals erred.[10] Before the Constitution was adopted, the various state militias had proven to be an ineffective national fighting force. *See* Carl T. Bogus, *The Hidden History of the Second Amendment*, 31 U.C. Davis L. Rev. 309, 337-44 (1998). The new nation's vulnerability to

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[10] *See generally* Saul Cornell, *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America* (Oxford Univ. Press 2006); Lawrence D. Cress, *An Armed Community*: *The Origins and Meaning of the Right to Bear Arms*, 71 J. Am. Hist. 22 (1984); Jack N. Rakove, *The Second Amendment: The Highest Stage of Originalism*, 76 Chi.-Kent L. Rev. 103, 126-46 (2000).

internal military strife was realized in 1786, when an uprising of disgruntled farmers led by Captain Daniel Shays "threatened a full-scale civil war" in Massachusetts, with some state militia units taking the side of the rebels against the state before the uprising was finally put down. *See* Paul Finkelman, *"A Well Regulated Militia": The Second Amendment in Historical Perspective*, 76 Chi.-Kent L. Rev. 195, 211 (2000). By the time the constitutional convention began the following spring, "Shays's Rebellion helped convince many of the need for a new constitution with a strong national military." *Id.* at 212. Accordingly, the Framers provided that the national government would have a professional army and also gave Congress important powers over state militias. U.S. Const. art. I, § 8, cls. 15-16; *see Perpich v. Dep't of Defense*, 496 U.S. 334, 340 (1990).

The Militia Clauses were denounced by Anti-Federalist delegates and produced a "storm of violent opposition" at state ratifying conventions. Frederick B. Wiener, *The Militia Clause of the Constitution*, 54 Harv. L. Rev. 181, 185 (1940); *see* 3 *Records of the Federal Convention of 1787*, at 330-31, 385, 387, 388 (Max Farrand ed., Yale Univ. Press 1937) (1911). Anti-Federalists feared that the Constitution would enable the federal government, whether by design or neglect, to disarm or do away with the militias, which had been exclusively creatures of state law prior to the Constitution. *See* 3 John Elliot, *Debates in the Several State Conventions on the Adoption of the Constitution, as Recommended by the General Convention at Philadelphia, in 1787*, at 378-88 (2d ed., 1836); *see also* Articles of Confederation art. VI ("every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutered"); R. Don Higginbotham, *The Federalized Militia*: *A Neglected Aspect of Second Amendment Scholarship*, 55 Wm. & Mary Q. 39, 40 (1998). The Anti-Federalists' concern was to eliminate the possibility that "the authority to arm and to discipline the militia was exclusively federal." *Wright*, 117 F.3d at 1273.

James Madison actively participated in the Virginia ratifying convention, trying to reassure the delegates that state militias would not be disarmed by Congress acting under the new Constitution's Militia Clauses. *See* 3 Elliot, *supra*, at 378-88. Soon after, in drafting the first version of the Second Amendment, Madison closely tracked language adopted by that convention to address this concern. *Compare id.* at 659 ("17th" and "19th" paragraphs of Virginia's proposed amendments), *with* Cogan, *supra*, at 169 (Madison's draft). He did not use language proffered by the New Hampshire ratifying convention and by dissenters in the Pennsylvania and Massachusetts conventions that would have explicitly recognized a right to arms for personal uses, unrelated to participation in the militia and to the security of the states. *See id.* at 181-83.[11]

Significantly, all remarks recorded in Congress's debate on the Amendment related to military service; none pertained to any private use of weapons. *Id.* at 185-91; *see* Roy G. Weatherup, *Standing Armies and Armed Citizens: An Historical Analysis of the Second Amendment*, 2 Hastings Const. L.Q. 961, 995 (1975). In particular, members of the House debated a conscientious-objector clause, contained in Madison's draft, providing that "no person religiously scrupulous of bearing arms, shall be compelled to render military service." Cogan, *supra*, at 170, 185-91. Although this clause did not survive, its initial inclusion supports the conclusion that the drafters understood the Amendment as a whole to relate to military ser-

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[11] The Pennsylvania dissenters, for instance, opposed the new Constitution in part because it failed to guarantee that "the people have a right to bear arms for the defence *of themselves* and their own state, or the United States, *or for the purpose of killing game*; and no law shall be passed for disarming the people *or any of them*, unless for crimes committed, or real danger of public injury from individuals." The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania To Their Constituents (Dec. 18, 1787) (emphasis added). The court of appeals construed the language of the Second Amendment as if the dissenters' language had been selected.

vice. Indeed, the clause's use of "bear[] arms" in a clearly military sense shows that the same sense was meant for those words in the Amendment as enacted.

3. The court of appeals' construction of the Second Amendment is, moreover, inconsistent with the greater context in which it was adopted and the Nation's subsequent experience. Although the common law has long protected the right to self-defense, the use of guns has always been subject to broad regulation. The most significant regulation of firearms in the eighteenth century, at a time of high concern about military preparedness, more often required than prohibited the possession of firearms—the states in the exercise of their military authority required members of their militias to own and present arms. *See* Saul Cornell & Nathan DeDino, *A Well-Regulated Right: The Early American Origins of Gun Control*, 73 Fordham L. Rev. 487, 508-09 (2004); *Miller*, 307 U.S. at 179-82; *see also* Act of May 2, 1792, ch. XXVIII, 1 Stat. 264 (second federal Militia Act). But that obligation and any concomitant right to own a gun were frequently conditioned on an oath of loyalty, as the states commonly forbade possession of arms by those unwilling to swear their allegiance. *See* Cornell & DeDino, *supra*, at 506-07 (citing Act of Mar. 14, 1776, ch. VII, 1775-1776 Mass. Acts 31; Act of Apr. 1, 1778, ch. LXI, § 5, 1777-1778 Pa. Laws 123, 126).

Despite the need for a readily armed citizenry evidenced by the militia laws, state laws regulated gun possession and uses. *See id.* at 510-12. For example, Massachusetts prohibited Boston citizens from keeping loaded firearms in their homes. Act of Mar. 1, 1783, ch. XIII, 1783 Mass. Acts 218 (providing for fine and forfeiture for anyone keeping a loaded firearm in "any Dwelling-House, Stable, Barn, Out-house, Ware-house, Store, Shop or other Building"). Pennsylvania and Delaware passed acts prohibiting the firing of guns in cities and towns. Act of Feb. 9, 1750, ch. CCCLXXXVIII, 1750-1751 Pa. Laws 108; Act of Feb. 2, 1812, ch. CXCV, 1812 Del. Laws 522.

In the next century, as concerns about military preparedness waned and fears of violent crime grew, state legislatures began to regulate weapons more heavily. By the time of the Civil War, the City of Washington and the states of Alabama, Indiana, Ohio, and Virginia had banned concealed weapons. *See* Act of Nov. 18, 1858, Laws of the City of Washington 418; Act of Feb. 1, 1839, no. 77, 1839 Ala. Laws 67; Act of Feb. 10, 1831, ch. XXVI, § 58, 1831 Rev'd Laws of Ind. 180, 192; Cornell & DeDino, *supra*, at 513-14 (citing Act of Mar. 18, 1859, 1859 Ohio Laws 56; Act of Feb. 2, 1838, 1838 Va. Acts ch. 101, 76). Several states, like Tennessee, went further, banning entirely the sale of any concealable weapon, including all pistols "except such as are used in the army and navy of the United States, and known as the navy pistol." Act of Jan. 27, 1838, ch. 137, 1837-1838 Tenn. Pub. Acts 200; *see* Act of Apr. 1, 1881, no. XCVI, 1881 Acts of Ark. 191; Act of Dec. 25, 1837, 1837 Ga. Laws 90.

Federal regulation of gun possession and use was added in the twentieth century. High-profile gang killings led to the perception of an epidemic of gun violence. In 1934, Congress passed the National Firearms Act, the statute at issue in *Miller*, which required gun owners to register their firearms with the federal government, and required licensing for machine guns, sawed-off shotguns, silencers, and concealable weapons other than pistols or revolvers. Act of June 26, 1934, ch. 757, 48 Stat. 1236 (amended version at 26 U.S.C. §§ 5801-5872 (1994)). Congress continued to regulate firearms throughout a century that witnessed the political assassinations of the 1960s and the violence of later decades, passing the Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213 (current version at 18 U.S.C. §§ 921-928 (1994)), the Brady Handgun Violence Prevention Act of 1993, Pub. L. No. 103-159, 107 Stat. 1536, and the (now expired) assault-weapons ban of 1994, Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 110101, 108 Stat. 1796, 1996.

The debate over the proper extent and limits of gun control legislation has thus for the most part remained where it belongs—in state and federal legislatures and city council chambers. The courts occasionally have stepped in—*see Nunn v. State*, 1 Ga. (1 Kel.) 243 (1846); *Bliss v. Commonwealth*, 12 Ky. (2 Litt.) 90 (1822)—but in the main the debate has been understood to involve not a protected right in the constitutional sense but an interest for legislatures to weigh against countervailing interests.

Not until 2001, in *Emerson*, did any federal appellate court endorse the view that the Second Amendment protects a right to firearms unrelated to militia service. And it was not until 2007, well past the Amendment's bicentennial anniversary, that any of the courts of appeals used that view of the Second Amendment to strike down a statute. Judicial understandings had long been settled, and for good reason. The court below set out a view that wears the trappings of a bona fide legal theory, but it distorts both the words of the Amendment and the plain intent of the Founders. It should be rejected.

Contrary to the view of the court below, the Amendment under the proper interpretation is not a "dead letter." App. 13a. It remains, as the Framers intended, a bulwark for state militias against undue federal interference. *See* Carl T. Bogus, *What Does the Second Amendment Restrict? A Collective Rights Analysis*, 18 Const. Comment. 485, 493-94 (Winter 2001) (discussing how Second Amendment was raised in opposition to post-Civil War attempt to prohibit militias in former Confederate states). To be sure, the Amendment rarely need be invoked today, but that is because, as is true with the neighboring Third Amendment, the government rarely takes action that may violate it.

B. Laws Limited to the District of Columbia Do Not Violate the Second Amendment.

Even if the Second Amendment were read to protect a right to possess and use guns for private purposes, the court of

appeals independently erred in concluding that the Second Amendment limits legislation enacted exclusively for the District of Columbia. The fact that the Second Amendment was particularly designed to limit federal interference with state authority explains why its principles do not apply to state and local restrictions on guns. It similarly explains why the purposes of the Second Amendment are not implicated by laws limited to the District.

In 1886, this Court in *Presser* held that the Second Amendment "is a limitation only upon the power of Congress and the National government." 116 U.S. at 265. That holding is consistent with what the *Miller* Court later recognized as the "obvious purpose" underlying this particular Amendment, and it remains valid today.[12] States remain free to regulate arms within their boundaries so long as they do not thereby deprive the United States of the ability to obtain the assistance of an armed citizenry in time of need. *Id.*

The same conclusion applies to local laws passed by the District government or even to federal laws that apply only to the federal seat. Legislation limited to the District can pose no threat to the interests the Second Amendment was enacted to protect. The District is the very "seat of the Government of the United States," U.S. Const. art. I, § 8, cl. 17, and one of the few places where Congress and the District government as its delegate may exercise "all the legislative powers which a state may exercise over its affairs." *District of Columbia v. Carter*, 409 U.S. 418, 429 (1973) (quoting *Berman v. Parker*, 348 U.S.

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[12] *See, e.g., Bach v. Pataki*, 408 F.3d 75, 84 & n.22 (2d Cir. 2005) (joining "five . . . sister circuits" in holding that the Second Amendment "imposes a limitation on only federal, not state, legislative efforts"); *Quilici v. Village of Morton Grove*, 695 F.2d 261, 269-70 (7th Cir. 1982) (rejecting argument that "*Presser* is no longer good law"). Although this Court after *Presser* has invoked the Fourteenth Amendment to apply various provisions of the Bill of Rights against the states, it has refused to endorse a wholesale and mechanical application of the entire Bill of Rights. *See Adamson v. California*, 332 U.S. 46, 67 (1947).

26, 31 (1954)); *District of Columbia v. John R. Thompson Co.*, 346 U.S. 100, 110 (1953); *see* D.C. Code §§ 1-201.01 *et seq.*

There is no evidence that those in the state ratifying conventions who expressed a desire for an amendment limiting the national government's authority to regulate the keeping and bearing of arms were the least bit concerned with any gun regulations that Congress might enact to carry out its responsibilities over the federal enclave that was to serve as the seat of the new national government. Nor is there evidence that the first Congress intended to limit its ability to restrict weapons in that area. Indeed, the decision to establish a seat for the federal government was precipitated by an incident in 1783 in which disgruntled, armed soldiers surrounded the State House in Philadelphia, leading the Continental Congress to flee. Kenneth R. Bowling, *The Creation of Washington D.C.: The Idea and Location of the American Capital* 30-34, 76 (1991); *see* The Federalist No. 43, at 272 (James Madison) (Clinton Rossiter ed., 1961) ("complete authority over the seat of government" necessary because without it "the public authority might be insulted and its proceedings be interrupted"). Having looked to the District as a safe haven from armed insurrectionists, the Framers had no reason to limit local legislative authority to control weapons within the District to less than the authority a state would have.

It is no answer that, as the court of appeals noted, this Court has held that certain constitutional provisions apply directly to the District as if it were effectively an extension of the national government. App. 37a n.13. The court of appeals erred in its assumption that decisions from distinguishable contexts apply equally to the Second Amendment. This Court has considered, for instance, how the Seventh Amendment right to trial by jury in civil suits and the guarantee in Article III against diminishment of judicial compensation apply to the District. *See Pernell v. Southall Realty*, 416 U.S. 363 (1974); *O'Donoghue v. United States*, 289 U.S. 516 (1933). There is no suggestion, however, that such provisions were, like the

Second Amendment, designed to limit federal interference with state authority. Because the Second Amendment was animated by concerns peculiar to the exercise by Congress of national rather than local power, it does not constrain local legislative authority in the District. Accordingly, the court erred even if the Second Amendment protects a right to possess and use weapons for private purposes.

C. Under Any View of the Second Amendment, the District's Law, Which Permits Ownership of Rifles and Shotguns But Bans Handguns, Does Not Infringe the Right to Keep and Bear Arms.

Finally, even if the court of appeals were correct about the nature of the right protected by the Second Amendment, the District's law would not infringe that right. A law that bans handguns but permits private ownership of rifles and shotguns does not deprive anyone of the right to keep and bear Arms, however that right is construed. The court below rejected this conclusion as "frivolous" and held categorically that a ban on any type of "Arm" is necessarily invalid under the Second Amendment. App. 53a. That holding is insupportable.

1. Over a century ago this Court explained that the Bill of Rights "embod[ies] certain guaranties and immunities which we had inherited from our English ancestors, and which had from time immemorial been subject to certain well-recognized exceptions arising *from the necessities of the case*." *Robertson v. Baldwin*, 165 U.S. 275, 281 (1897) (emphasis added). "Thus . . . the right of the people to keep and bear arms (article 2) is not infringed by laws prohibiting the carrying of concealed weapons." *Id*. at 281-82. Because the District allows its residents to own other types of firearms and because easily concealed handguns are involved in a substantially and demonstrably disproportionate number of murders, accidents, and suicides, the District's handgun ban, well-founded on "the necessities of the case," does not infringe any right to own firearms for non-militia-related use.

The court of appeals nominally recognized that gun-control laws are constitutional if they constitute "reasonable restrictions" on the exercise of the right. App. 51a. But the court never inquired into the justifications for the handgun ban, instead flatly declaring that *any* ban of *any* type of "Arm" can never amount to a "reasonable restriction," regardless of the circumstances. App. 53a. The conclusion that a handgun ban is *per se* invalid is unsupported by the jurisprudence of this Court or state courts that have considered similar questions.[13]

2. Whatever the outer limits of "reasonable regulation" under the Second Amendment, the District's laws are well within the core of permitted regulation and come nowhere close to disarmament of residents. The District's overwhelming interest in reducing death and injury caused by handguns outweighs respondent's asserted need to own a particular *type* of weapon that presents unique dangers to innocent persons—a handgun—rather than other weapons such as rifles and shotguns. The District's Council recognized that murders, robberies, and assaults are all more likely to be committed with the handgun than with any other weapon. App. 102a. It found that a "crime committed with a pistol is 7 times more likely to be lethal than a crime committed with any other weapon." App. 102a. During 1974 alone, handguns were responsible for 155 of the record 285 murders and all rapes involving firearms in the District. *Id.*; Evening Council Sess. Tr., 11:4-5, June 15,

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[13] State courts construing their respective constitutions "overwhelmingly have recognized that the right is not infringed by reasonable regulation by the state." *Benjamin v. Bailey*, 662 A.2d 1226, 1233 (Conn. 1995); *see also* Adam Winkler, *Scrutinizing the Second Amendment*, 105 Mich. L. Rev. 683 (2007) (analyzing state cases and concluding that challenges to laws on Second Amendment grounds should be subject to a "reasonableness" standard). Those courts have sustained similar restrictions as reasonable. *See, e.g.*, *Benjamin*, 662 A.2d at 1226; *Arnold*, 616 N.E.2d at 173; *Robertson v. City & County of Denver*, 874 P.2d 325, 328 & nn.15-16 (Colo. 1994); *Kalodimos v. Village of Morton Grove*, 470 N.E.2d 266, 273 (Ill. 1984); *State v. LaChapelle*, 451 N.W.2d 689, 690-91 (Neb. 1990).

1976. The Council had a manifestly reasonable basis to conclude that handguns are uniquely dangerous weapons, and nothing in the Second Amendment gives courts authority to override the judgment of the legislature simply because they may disagree with it.

The District is hardly alone in its assessment of handguns. Alongside Washington, the country's three largest cities all have local laws banning handguns or tightly regulating their possession and use.[14] Given their jurisdiction-specific needs and policy preferences, states have adopted a variety of means to address the particular dangers that handguns pose. For instance, some states have waiting periods for handgun purchases and limit the number that can be purchased per month; require background checks or permits for those purchasing handguns; have design safety standards for handguns; and have concealed-carry laws most obviously applicable to handguns.[15]

Other nations have reached the same considered conclusion as the District. "[M]ost industrialized countries strictly control civilian access to handguns and allow the carrying of handguns for personal protection only under very restrictive conditions . . . ." Wendy Cukier & Victor W. Sidel, *The Global Gun Epidemic: From Saturday Night Specials to AK-47s* 144 (2006). Great Britain has banned possession of handguns since 1997. Firearms (Amendment) Acts, 1997, chs. 5, 64. Other countries like Australia, Canada, Denmark, Finland, Japan, Luxembourg, New Zealand, and Sweden similarly ban handguns or grant permits in only exceptional cases. *See*

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[14] *E.g.*, Chicago Mun. Code §§ 8-20-040, 8-20-050(c); L.A. Mun. Code ch. V, art. 5, §§ 55.14, 55.16, 55.18; N.Y.C. Admin. Code § 10-131; N.Y.C. Rules tit. 38, ch. 5; N.Y.C. Local Laws No. 30, 31 (July 27, 2006).

[15] *See* Legal Community Against Violence, *Regulating Guns in America: An Evaluation and Comparative Analysis of Federal, State and Selected Local Gun Laws* (2006), *available at* http://www.lcav.org/library/reports_analyses/National_Audit_Total_8.16.06.pdf.

David Hemenway, *The Public Health Approach to Reducing Firearm Injury and Violence*, 17 Stan. L. & Pol'y Rev. 635, 638 (2006) (citing United Nations, *International Study on Firearm Regulation* (1998)).

3. The Council's legislative judgment that a handgun ban was necessary and appropriate to ensure public safety was amply supported and is entitled to deference. That judgment remains valid today, as the most credible social science research confirms. Substantial evidence of the special risks posed by handguns makes banning them reasonable, even if there is a Second Amendment right to own guns. Significantly, every one of the demonstrable harms caused by handguns exists even when the gun owner is generally law-abiding and responsible.

First, handguns are particularly vulnerable to theft and thus to falling into the hands of criminals. Far more handguns than other firearms are stolen annually, at a rate in the hundreds of thousands per year. Caroline W. Harlow, U.S. Dep't of Justice, Bureau of Justice Statistics, *Survey of Inmates in State and Federal Correctional Facilities: Firearm Use by Offenders* 1-3 (Special Rep. Nov. 2001), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/fuo.pdf; Marianne W. Zawitz, U.S. Dep't of Justice, Bureau of Justice Statistics, *Firearms, Crime, and Justice: Guns Used in Crime* 3 (July 1995), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/guic.pdf. It is also clear that increased lawful ownership of handguns increases the incidence of theft. *See* Philip J. Cook *et al.*, *Regulating Gun Markets*, 86 J. Crim. L. & Criminology 59, 81 (1995).

Inmates report and statistics demonstrate that the handgun is their "preferred firearm." Harlow, *supra*, at 1-3. Handguns are the weapon most likely to be used in a street crime. Although only a third of the Nation's firearms are handguns, they are responsible for far more killings, woundings, and crimes than all other types of firearms combined. Zawitz, *supra*, at 2. Eighty-seven percent of all crime guns are handguns. Craig Perkins, U.S. Dep't of Justice, Bureau of Justice Statistics, *Na-*

tional Crime Victimization Survey, 1993-2001: Weapon Use and Violent Crime 3 (Special Rep. Sept. 2003), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/wuvc01.pdf.

Handguns pose particular dangers to police officers performing their duties, including executing warrants and pursuing felons. Of the 55 police officers feloniously killed in 2005, 42 were killed by handguns. *See* Federal Bureau of Investigation, *Uniform Crime Report—Law Enforcement Officers Killed and Assaulted* at Table 28 (2005), *available at* http://www.fbi.gov/ucr/killed/2005/table28.htm. In short, handguns are a widely available means of wreaking death and destruction in a civilian population with tragic efficiency.

Second, all too often, handguns in the heat of anger turn domestic violence into murder. Seventy-two percent of females killed in firearm homicides in 2004 were killed by handguns. Violence Policy Center, *When Men Murder Women: An Analysis of 2004 Homicide Data* at 3 (Sept. 2006), *available at* http://www.vpc.org/studies/wmmw2006.pdf. People who live in houses with firearms, particularly handguns, are 2.7 times more likely to die in a homicide, and much more likely to die at the hands of a family member or intimate acquaintance than people who do not. *See* Arthur L. Kellermann *et al.*, *Gun Ownership as a Risk Factor for Homicide in the Home*, 329 New Eng. J. Med. 1084 (1993); *see also* Linda E. Saltzman *et al.*, *Weapon Involvement and Injury Outcomes in Family and Intimate Assaults*, 267 JAMA 3043 (1992) (finding that firearms frequently escalate domestic violence to lethal violence).

Third, handguns cause accidents, frequently involving children. The smaller the weapon, the more likely a child can use it, and children as young as three years old are strong enough to fire today's handguns. David Hemenway, *Private Guns, Public Health* 32 (2004). Every year, the majority of people killed in handgun accidents are under the age of 24, including dozens of children under the age of 14. *See* National Center for Health Statistics, *Trend C Table 292: Deaths for*

282 Selected Causes at 1888 (2006), *available at* http://www.cdc.gov/nchs/data/statab/gm292_3.pdf.

Fourth, handguns are easy to bring to schools, where their concealability and capacity to fire multiple rounds in quick succession make them especially dangerous. In urban areas, as many as 25% of junior high school boys carry or have carried a gun. Jack M. Bergstein *et al., Guns in Young Hands: A Survey of Urban Teenagers' Attitudes and Behaviors Related to Handgun Violence*, 41 J. Trauma 794 (1996). In the recent Virginia Tech shooting, a single student with two handguns discharged over 170 rounds in nine minutes, killing 32 people and wounding 25 more. Reed Williams & Shawna Morrison, *Police: No Motive Found*, Roanoke Times, April 26, 2007, at A1.

Fifth, handguns enable suicide. The District's handgun ban was associated with a sharp decline in suicides, and the District's overall, youth, and firearms-related suicide rates have been the lowest in the Nation. 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); *see* National Center for Injury Prevention and Control, WISQARS Injury Mortality Reports, 1999-2004, *available at* http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html (interactive database). Handguns pose a higher suicide risk than other firearms; indeed, purchasing a handgun correlates to a doubled risk that the buyer will die in a homicide or a suicide. *See* Hemenway, *Private Guns, supra*, at 41; Peter Cummings *et al., The Association Between the Purchase of a Handgun and Homicide or Suicide*, 87 Am. J. Pub. Health, 974, 976–77 (1997).

4. The District's decision to address these handgun-specific problems by banning the private possession of handguns was more than reasonable, because handgun bans work. Controlled research demonstrates a significant relationship between handgun ownership in particular and violent crime. A study of the District's handgun ban concluded that it coincided

with an abrupt decline in firearm-caused homicides in the District but no comparable decline elsewhere in the metropolitan area. Loftin, *supra*. More recently, researchers found that a 10% increase in handgun ownership increases the homicide rate by 2%. *See* Mark Duggan, *More Guns, More Crime*, 109 J. Pol. Econ. 1086, 1095-98 (2001). Indeed, other countries have had success with handgun bans and near-bans. Cukier & Sidel, *supra*, at 178-205; *cf.* Franklin E. Zimring & Gordon Hawkins, *Crime Is Not the Problem: A Reply*, 69 U. Colo. L. Rev. 1177, 1198 (1998) ("We know of no way for the United States to move toward a homicide rate even fifty percent higher than that of Australia or Canada without serious attempts to restrict the availability and use of handguns.").

The Council had good reason to conclude that less restrictive measures were insufficient and would continue to be so. App. 104a. Safety mechanisms, while helpful, can prove technically inadequate, and compliance rates with mandatory safety measures are spotty. *See* Cynthia Leonardatos *et al.*, *Smart Guns/Foolish Legislators: Finding the Right Public Safety Laws, and Avoiding the Wrong Ones*, 34 Conn. L. Rev. 157, 169-70, 178-80 (2001).

Furthermore, there is no doubt that the handgun ban saves lives in the home where safe-storage policies and trigger locks would not alone prevent misuse, either because an enraged gun user is determined to circumvent the safeguards or because of a technical failure or accident. Studies also demonstrate that many "serious criminals often buy rather than steal their guns," and most guns are used close to where they are purchased, which means that regulating the local market for guns is a vital first step in reducing gun deaths in the District.[16] *See*

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[16] As Mayor Washington recognized, "no system of firearms control can be fully effective without appropriate controls at the regional and national level." App. 116a. But just as "reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind," *Williamson v. Lee Optical of Oklahoma, Inc*, 348 U.S.

Garen J. Wintemute, *Where the Guns Come from: The Gun Industry and Gun Commerce*, 12 Future of Children 54, 62-64 (2002); *see also* Philip J. Cook & James A. Leitzel, *"Perversity, Futility, Jeopardy": An Economic Analysis of the Attack on Gun Control*, 59 Law & Contemp. Probs. 91, 94, 107-08 (1996) (explaining why *ex ante* regulation of handguns in particular is a qualitatively superior approach to *ex post* penalties for deviant gun use).

Respondent Heller wants to keep a handgun for self-defense. Complaint at 3. The straightforward answer is that he may lawfully possess a rifle or shotgun to protect himself. Although the handgun ban limits the choice of gun owners, "the barriers thereby created do not significantly interfere with th[e] right [to bear arms]." *Robertson*, 874 P.2d at 333. Indeed, Heller himself owns long guns but chooses to keep them outside the District. Complaint at 3. At least some in the gun community recognize that the portability and concealability of handguns suit them for carrying outside the home, but that other weapons are better suited to self-defense in the home. *E.g.*, Dave Spaulding, *Shotguns for Home Defense: Here's How to Choose and Use the Most Effective Tool for Stopping an Attack*, Guns & Ammo, Sept. 2006, at 42; Clint Smith, *Home Defense*, Guns Magazine, July 2005, at 50.

Handguns, by contrast, are uniquely dangerous, and having a gun in the home actually makes it far *more* likely that its inhabitants will die in a homicide or suicide. Kellermann, *supra*; Arthur L. Kellermann *et al.*, *Suicide in the Home in Relation to Gun Ownership*, 327 New Eng. J. Med. 467 (1992). Criminal gun use is far more common than successful uses of guns in self-defense. Hemenway, *Private Guns*, *supra*, at 58-59, 64-78. The thesis that armed victims deter crime by raising the cost to the rationally calculating criminal (*see, e.g.*, John R. Lott & David B. Mustard, *Crime, Deterrence, and Right-to-*

483, 489 (1955), a local legislature cannot be faulted for addressing only that part of a nationwide problem over which it has power.

Carry Concealed Handguns, 26 J. Legal Stud. 1 (1997)) has been debunked (*see, e.g.*, Ian Ayres & John J. Donohue III, *Shooting Down the "More Guns, Less Crime" Hypothesis*, 55 Stan. L. Rev. 1193 (2003); *see also* Dan A. Black & Daniel S. Nagin, *Do Right-to-Carry Laws Deter Violent Crime?*, 27 J. Legal Stud. 209 (1998)).

5. Without even considering the reasons supporting the Council's legislative judgment—let alone providing appropriate deference—the court of appeals concluded that none of these concerns matters at all. It asserted summarily that "[o]nce it is determined . . . that handguns are 'Arms' referred to in the Second Amendment, it is not open to the District to ban them." App. 53a. That holding is insupportable. The court misread *Miller* as standing for the proposition that because a handgun is an "Arm[]," the District could not outlaw it. App. 48a-49a. While holding that it is necessary for the weapon in question to be an "Arm[]" in order for the Second Amendment to be implicated, 307 U.S. at 178, *Miller* nowhere suggested that if a sawed-off shotgun had been such an "Arm[]," that would have been sufficient to render the statute at issue unconstitutional. In confusing the necessary with the sufficient, the court of appeals committed a basic logical error.

The view of the court below is also particularly cold-hearted. It holds that despite the fact that District residents can defend themselves and their homes with rifles and shotguns, the District is powerless to fight murder, assault, and rape by banning the one weapon that is overwhelmingly used to commit them. No other provision of the Bill of Rights even arguably requires a government to tolerate serious physical harm on anything like the scale of the devastation worked by handguns. *Cf. Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (state may regulate speech "directed to inciting or producing imminent lawless action and . . . likely to incite or produce such action"); *Maryland v. Buie*, 494 U.S. 325 (1990) (Fourth Amendment does not require endangering safety of law enforcement officers); *New York v. Quarles*, 467 U.S. 649 (1984) (same for

Fifth Amendment). "[W]hile the Constitution protects against invasions of individual rights, it is not a suicide pact." *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 160 (1963). Having a handgun, whether in the home or outside it, comes at the expense of the safety of those who may be victims. Whatever right the Second Amendment guarantees, it does not require the District to stand by while its citizens die.

CONCLUSION

For the reasons stated, the Court should grant the petition.

Respectfully submitted,

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