



IN THE SUPREME COURT OF THE STATE OF DELAWARE

JANE DOE; CHARLES BOONE,

Plaintiffs Below,
Appellants,

v.

WILMINGTON HOUSING
AUTHORITY; FREDERICK S.
PURNELL, SR., in his capacity as
Executive Director of the Wilmington
Housing Authority,

Defendants Below,
Appellees.

§
§ No. 403, 2013
§
§
§ Certification of Questions of Law
§ from the United States
§ Court of Appeals for the
§ Third Circuit
§ No. 12-3433
§
§
§
§
§
§
§

**PINK PISTOLS' AMICUS CURIAE BRIEF
IN SUPPORT OF PLAINTIFFS BELOW, APPELLANTS**

Thomas D. Shellenberger, Esquire
Delaware Bar No. 002418
Law Office of Thomas D.
Shellenberger LLC
1601 Milltown Road, Suite 8
Wilmington, DE 19808
302-887-9116

September 20, 2013

Of Counsel

Brian Koukoutchos
28 Eagle Trace
Mandeville, LA 70471
(985) 626-5052

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTEREST OF AMICUS CURIAE.....	1
INTRODUCTION AND SUMMARY OF ARGUMENT.....	1
ARGUMENT.....	2
FIREARMS CARRIAGE IN PUBLIC BY LAW-ABIDING CITIZENS PROMOTES, RATHER THAN THREATENS, PUBLIC SAFETY.....	2
I. ARMED SELF-DEFENSE IN PUBLIC BY LAW-ABIDING CITIZENS IS BOTH PREVALENT AND EFFECTIVE	2
II. PRIVATE CITIZENS LICENSED TO CARRY WEAPONS DO NOT THREATEN PUBLIC SAFETY.....	10
III. THE CARRYING OF FIREARMS IN PUBLIC PLACES BY LAW-ABIDING CITIZENS DOES NOT INCREASE—AND MAY IN FACT <i>DECREASE</i> — VIOLENT CRIME	13
CONCLUSION.....	17

TABLE OF AUTHORITIES

	Page
CASES	
<i>Commonwealth v. Robinson</i> , 600 A.2d 957 (Pa. Super. Ct. 1991)	17
<i>Commonwealth v. Romero</i> , 673 A.2d 374 (Pa. Super. Ct. 1996).....	17
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008)	1, 2
<i>Moore v. Madigan</i> , 702 F.3d 933 (7th Cir. 2012)	2, 13, 14, 17
 STATUTES AND CONSTITUTIONAL PROVISIONS	
DEL. CONST., Art. I, § 20	2
13 Vt. Stat. § 4003	16
 OTHER	
A.L. Kellerman & D.T. Reay, <i>Protection or Peril? An Analysis of Firearm-Related Deaths in the Home</i> , 314 NEW ENG. J. OF MED. 1557-60 (1986)	11
A.L. Kellerman et al., <i>Gun Ownership As A Risk Factor for Homicide in the Home</i> , 329 NEW ENG. J. OF MED. 1084-91 (1993)	11
Charles C. Branas et al., <i>Investigating the Link Between Gun Possession and Gun Assault</i> , 99 AM. J. PUB. HEALTH 2034 (2009)	9
David B. Mustard, <i>Comment</i> , in EVALUATING GUN POLICY 325 (Jens Ludwig and Philip J. Cook eds., 2003).....	12, 14
David B. Mustard, <i>The Impact of Gun Laws on Police Deaths</i> , 44 J.L. & ECON. 635 (2001)	12, 13
David Hemenway & Deborah Azrael, <i>The Relative Frequency of Offensive and Defensive Gun Uses: Results from a National Survey</i> , 15 VIOLENCE & VICTIMS 257 (2000)	5, 10, 11
DEP'T OF HEALTH AND HUMAN SERVS., FIRST REPORTS EVALUATING THE EFFECTIVENESS OF STRATEGIES FOR PREVENTING VIOLENCE: FIREARMS LAWS, 52 MORBIDITY & MORTALITY WEEKLY REP. 11 (Oct. 3, 2003).....	15

Doug Wyllie, *PoliceOne's Gun Control Survey: 11 Key Lessons from Officers' Perspectives*, POLICEONE.COM (Apr. 8, 2013), www.policeone.com/Gun-Legislation-Law-Enforcement/articles/6183787-PoliceOnes-Gun-Control-Survey-11-key-findings-on-officers-thoughts..... 13

Fla. Dep't of Agric. and Consumer Servs., *Concealed Weapon or Firearm License Summary Report* www.freshfromflorida.com/content/download/7499/118851/cw-monthly.pdf..... 12

FEDERAL BUREAU OF INVESTIGATION, CRIME IN THE U.S. 2011 www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/table-1..... 7

GARY KLECK & DON B. KATES, JR., ARMED: NEW PERSPECTIVES ON GUN CONTROL (2001)..... 3, 5

GARY KLECK, TARGETING GUNS: FIREARMS AND THEIR CONTROL (1997)... 3, 5, 6, 7

Gary Kleck, *Keeping, Carrying, and Shooting Guns for Self-Protection*, in DON B. KATES, JR. & GARY KLECK, THE GREAT AMERICAN GUN DEBATE: ESSAYS ON FIREARMS AND VIOLENCE (1997)..... 11

Gun Owners Foundation, *Gun Control Fact-Sheet 2004*, GUN OWNERS OF AMERICA (Sept. 19, 2008, 3:14 AM) www.gunowners.org/fs0404.htm..... 7

INST. OF MED. AND NAT'L RESEARCH COUNCIL, PRIORITIES FOR RESEARCH TO REDUCE THE THREAT OF FIREARM-RELATED VIOLENCE 15 (Alan I. Leshner et al. eds., 2013)3, 5, 6, 11

JAMES D. WRIGHT & PETER H. ROSSI, ARMED AND CONSIDERED DANGEROUS (2d ed. 2008) 10

JOHN R. LOTT, JR., MORE GUNS LESS CRIME: UNDERSTANDING CRIME AND GUN CONTROL LAWS (3d ed. 2010) 6, 7, 14

JOYCE LEE MALCOLM, GUNS AND VIOLENCE: THE ENGLISH EXPERIENCE (2002)..... 11

NAT'L RESEARCH COUNCIL, FIREARMS AND VIOLENCE: A CRITICAL REVIEW (Charles F. Wellford et al. eds., 2005)..... 4, 5, 7, 11, 14

Philip Cook et al., *Gun Control After Heller: Threats and Sideshows from A Social Welfare Perspective*, 56 UCLA L. REV. 1041 (2009)..... 10, 12, 13, 14

Robert Hahn et al., *Firearms Laws and the Reduction of Violence: A Systematic Review*, 28 AM. J. PREV. MED. 40 (2005) 15, 16

Ron Avery, *Police Gun Control Survey: Are Legally Armed Citizens the Best Solution to Gun Violence?*, POLICEONE.COM (Apr. 8, 2013), www.policeone.com/Gun-Legislation-Law-Enforcement/articles/6186552-Police-Gun-Control-Survey-Are-legally-armed-citizens-the-best-solution-to-gun-violence/ 13

Simon Rogers, *Gun Crime Statistics by U.S. State: Latest Data*, THEGUARDIAN.COM (Dec. 17, 2012, 7:01 AM EST), www.guardian.co.uk/news/datablog/2011/jan/10/gun-crime-us-state 16

U.S. DEP'T OF HOUS. & URBAN DEV., *IN THE CROSSFIRE: THE IMPACT OF GUN VIOLENCE ON PUBLIC HOUSING COMMUNITIES* (2000) available at www.ncjrs.gov/pdffiles1/nij/181158.pdf 7, 8, 9

INTEREST OF AMICUS CURIAE

Pink Pistols is a shooting society that honors diversity and is open to all. Pink Pistols has twenty-two chapters across the United States and is experiencing rapid growth. It advocates the responsible use of lawfully owned and lawfully carried firearms for self-defense, whether by sexual minorities (a group that FBI statistics identify as particularly subject to violence based on discriminatory animus) or by any other individuals, all of whom have a fundamental, enumerated constitutional right to armed self-defense. Pink Pistols therefore has a deep and abiding interest in the vindication of this right by the plaintiffs in this case. Pursuant to Rule 28 of the Rules of this Court, Pink Pistols states that its authority to file this brief is this Court's leave.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Second Amendment “guarantee[s] the individual right to . . . carry weapons in case of confrontation”—that is, to “wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person.” *District of Columbia v. Heller*, 554 U.S. 570, 592, 584 (2008) (alterations in original) (internal quotation marks omitted). As Judge Richard Posner of the United States Court of Appeals for the Seventh Circuit explained in that court's recent decision striking down an Illinois law banning the carrying of firearms in

public, “[c]onfrontations are not limited to the home. . . . A right to bear arms thus implies a right to carry a loaded gun outside the home.” *Moore v. Madigan*, 702 F.3d 933, 936 (7th Cir. 2012). The Supreme Court held in *Heller* that this right to armed self-defense is no longer “subject[] to a freestanding ‘interest-balancing’ approach. The very enumeration of the right” in the Constitution “necessarily takes certain policy choices off the table.” *Heller*, 554 U.S. at 634-35, 636. Thus “the Supreme Court made clear in *Heller* that it wasn’t going to make the right to bear arms depend on casualty counts.” *Moore*, 702 F.3d at 939. Without regard to whether the laws challenged here are reviewed under the Second Amendment or under Article I, Section 20 of the Delaware Constitution, the research on firearms violence does not support the proposition that the carrying of firearms in public by law-abiding citizens threatens public safety.

ARGUMENT

FIREARMS CARRIAGE IN PUBLIC BY LAW-ABIDING CITIZENS PROMOTES, RATHER THAN THREATENS, PUBLIC SAFETY.

I. ARMED SELF-DEFENSE IN PUBLIC BY LAW-ABIDING CITIZENS IS BOTH PREVALENT AND EFFECTIVE.

The right to “carry weapons in case of confrontation” that the Supreme Court described in *Heller*, 554 U.S. at 592, promotes public safety. Defensive gun use is a common and effective way for ordinary citizens to defend themselves from violence. The leading study designed specifically to gauge the frequency of

defensive gun use determined that every year 2.5 million crime victims use guns to defend themselves and that between 670,000 and 1,575,000 of those defensive gun uses involve carrying firearms in public places. GARY KLECK, TARGETING GUNS: FIREARMS AND THEIR CONTROL 192 (1997) (describing results of the National Self-Defense Survey); *see also* GARY KLECK & DON B. KATES, JR., ARMED: NEW PERSPECTIVES ON GUN CONTROL 224-26 (2001). Thus as many as 63% of the millions of defensive gun uses each year involve citizens carrying a firearm while outside their homes. KLECK, TARGETING GUNS, *supra*, at 179. Recently, the federal government’s National Research Council (“NRC”) and Institute of Medicine recognized that

[d]efensive uses of guns by crime victims is a common occurrence, although the exact number remains disputed. *Almost all national survey estimates indicate that defensive gun uses by victims are at least as common as offensive uses by criminals, with estimates of annual uses ranging from about 500,000 to more than 3 million per year*

INST. OF MED. AND NAT’L RESEARCH COUNCIL, PRIORITIES FOR RESEARCH TO REDUCE THE THREAT OF FIREARM-RELATED VIOLENCE 15 (Alan I. Leshner et al. eds., 2013) (emphasis added) (citations omitted) (hereafter “IOM-NRC FIREARM-RELATED VIOLENCE REPORT”).¹

¹ The final version of this report will be released soon. The citations here are to the “Prepublication Copy: Uncorrected Proof” posted online by the NRC, at www.nap.edu/openbook.php?record_id=18319&page=1. The report notes that the much lower annual estimate of 108,000 defensive gun uses offered by one outlier survey—and relied upon by the Brady Center—is “difficult to interpret because respondents were not asked specifically

Some opponents of the right to bear arms, such as the Brady Center to Prevent Gun Violence, which has appeared as an amicus in this case in the federal courts, dispute the frequency of defensive gun use by crime victims. *See* Brief of Amicus Curiae Brady Center at 16, No. 12-3433 (3d Cir. Nov. 30, 2012) (hereafter “Brady Ctr.”). But as noted in the preceding paragraph, the principal research arm of the federal government, the National Research Council of the National Academies, has recognized that almost all national survey data indicates that defensive gun use is indeed pervasive and frequent. This has been the NRC’s consistent position since it first evaluated the state of firearms research several years ago. The NRC conducted “an assessment of the strengths and limitations of the existing research and data on gun violence.” NAT’L RESEARCH COUNCIL, FIREARMS AND VIOLENCE: A CRITICAL REVIEW 1 (Charles F. Wellford et al. eds., 2005) (“NRC REVIEW”). The NRC surveyed *all* the extant literature on firearms regulation—approximately four hundred books, journal articles, government publications and peer-reviewed studies. *See id.* at 22-30, 78, 130-33, 156-61, 174-77, 186-92, 242-68.² The NRC concluded that Dr. Kleck’s figures have been

about defensive gun use,” whereas the estimate of three million annual defensive gun uses by crime victims is based on “19 national surveys.” IOM-NRC FIREARM-RELATED VIOLENCE at 16.

² Amicus Brady Center and others who oppose the right to bear arms labor under the misapprehension that all articles about firearms regulation are created equal, and that any given article that they cite cancels out a study cited by those supporting the right to armed self-defense. That is why this brief relies principally on *two non-partisan reviews, by federal agencies, of the entire body of firearms literature*: the one conducted by the NRC that is discussed in the text above, and another conducted by the Centers for Disease Control (“CDC”), which is discussed in

replicated, whereas the lower figure on which the Brady Center relies—which is based on the National Crime Victimization Survey (“NCVS”)—has not: “*At least 19 other surveys* have resulted in estimated numbers of defensive gun uses that are similar (i.e., statistically indistinguishable) to the results found by Kleck and Gertz. *No other surveys have found numbers consistent with the NCVS. . . .*” NRC REVIEW at 103 (emphasis added).³

Defensive gun use is not only common, it is also effective. Data from the U.S. Bureau of Justice Statistics indicate that, in confrontations with criminals, 99% of victims maintain control of their firearms. *See* KLECK, TARGETING GUNS, *supra*, at 168-69. Numerous studies have found that robbery victims who resist

the text below. These two massive undertakings reviewed hundreds of studies, including virtually all of those cited by the Defendants and the Brady Center. Both reviews assessed the state of research on the efficacy of firearms regulations and whether there was sufficient evidence to form a basis for policy recommendations. They concluded that the data are utterly insufficient. This fatally impeaches the empirical evidence proffered by the Brady Center and its fellow advocates.

The NRC and the Institute of Medicine recently reconfirmed that firearms-violence research is insufficient to support gun-control policies and recommended a five-year research program to correct this deficiency. *See* IOM-NRC FIREARM-RELATED VIOLENCE REPORT at 1-2. *See also id.* at 3 (“In the absence of this research, policy makers will be left to debate controversial policies without scientifically sound evidence about their potential effects.”).

³ The Brady Center contests the efficacy and frequency of defensive gun use, citing David Hemenway & Deborah Azrael, *The Relative Frequency of Offensive and Defensive Gun Uses: Results from a National Survey*, 15 VIOLENCE & VICTIMS 257 (2000). This article embraces and relies upon the NCVS, *see id.* at 257-58, which is the very survey that the NRC found to be a solitary outlier that has never been confirmed by other research. Furthermore, Dr. Hemenway’s analysis has been discredited for misrepresenting its own survey results: his actual data indicate at least *six times* as many defensive gun uses as the estimates he reports in his article. *See* KLECK & KATES, ARMED, *supra*, at 230 & n. 27. In contrast, Dr. Kleck’s figure of 2.5 million defensive gun uses per year has been confirmed by 19 other surveys, many of them conducted not by gun advocates *but by gun-control supporters*, including the CDC and the *Washington Post*. *See* KLECK & KATES, ARMED, *supra*, at 228-31.

with firearms are significantly less likely to have their property taken and are also less likely to be injured. *See id.* at 170. “Robbery and assault victims who used a gun to resist were less likely to be attacked or to suffer an injury than those who used any other methods of self-protection or those who did not resist at all.” *Id.* at 171. “[V]ictim resistance with a gun almost never provokes the criminal into inflicting either fatal or nonfatal violence.” *Id.* at 174. Similarly, “rape victims using armed resistance were less likely to have the rape attempt completed against them than victims using any other mode of resistance,” and defensive gun use did not increase the victim’s risk of “additional injury beyond the rape itself.” *Id.* at 175. Justice Department statistics reveal that the probability of serious injury from any kind of attack is 2.5 times greater for women offering no resistance than for women resisting with a gun. *See* John R. Lott, Jr., *MORE GUNS LESS CRIME: UNDERSTANDING CRIME AND GUN CONTROL LAWS* 4 (3d ed. 2010). *See also* IOM-NRC *FIREARM-RELATED VIOLENCE REP.* at 16 (“Studies that directly assessed the effect of actual defensive gun uses (i.e., incidents in which a gun was ‘used’ by the crime victim in the sense of attacking or threatening an offender) have found consistently lower injury rates among gun-using crime victims compared with victims who used other self-protective strategies.”).

Indeed, to prevent completion of a crime it is usually necessary only for the intended victim to display the firearm rather than pull the trigger. A national

survey “indicates that about 95 percent of the time that people use guns defensively, they merely have to brandish a weapon to break off an attack.” See Lott, MORE GUNS LESS CRIME, *supra*, at 3. Fewer than one in a thousand defensive gun uses results in a criminal being killed. See KLECK, TARGETING GUNS, *supra* at 178.⁴

Citizens need to be able to carry firearms to defend themselves in public because the sad truth is that the police are, unfortunately, rarely around when a person is being assaulted. Consider the FBI’s national crime statistics for 2011: in that year the police were unable to prevent 14,612 murders and non-negligent manslaughters, 83,425 forcible rapes, and 354,396 robberies.⁵ Indeed, in 1989, the Justice Department found that there were 168,881 crimes of violence where it took the police over an hour to respond.⁶ Those who live in public housing are particularly at risk: the federal government has found that “[p]ersons residing in public housing are over twice as likely to suffer from firearm-related victimization

⁴ The Brady Center has also argued generally that firearms ownership causes gun violence. Brady Ctr. 15-16 & n. 3. But all of the research on this subject has been reviewed by the National Research Council and dismissed as proving absolutely nothing. See, e.g., NRC REVIEW at 242, 243, 247, 248, 259. Even when statistical *associations* between gun ownership and homicide have been found, no *causal link* could be demonstrated. *Id.* at 5. The NRC found the research fatally flawed in multiple ways and concluded that the studies “do not credibly demonstrate a causal relationship between the ownership of firearms and the causes or prevention of criminal violence or suicide.” *Id.* at 6.

⁵ FEDERAL BUREAU OF INVESTIGATION, CRIME IN THE U.S. 2011, Table 1, www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/table-1

⁶ Gun Owners Foundation, *Gun Control Fact-Sheet 2004*, GUN OWNERS OF AMERICA (Sept. 19, 2008, 3:14 AM), www.gunowners.org/fs0404.htm (citing BUREAU OF JUSTICE STATISTICS, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS—1990 257 (1991)).

as other members of the population.” U.S. DEP’T OF HOUS. & URBAN DEV., IN THE CROSSFIRE: THE IMPACT OF GUN VIOLENCE ON PUBLIC HOUSING COMMUNITIES 2 (1999) (hereafter “HUD REPORT”), *available at*

www.ncjrs.gov/pdffiles1/nij/181158.pdf (emphasis omitted). *See also id.* at 4.

The Brady Center sees this as a justification for *disarming* those who reside in public housing, Brady Ctr. 11-13, but that is perverse: residents of public housing have perhaps the greatest need for armed self-defense. The HUD report did not identify law-abiding public-housing residents as the source of the firearms problem; rather, the culprits are criminal offenders, particularly gang members and the young who engage in drug trafficking, gunfights, and feuds. HUD REP. at 5, 6, 13, 22, 23, 29, 32, 33, 34. Nor did the report mention disarmament as a solution to the problem; rather, it supported “combat[ing] gun violence in public housing communities” by means of “increased law enforcement presence, community policing, increased security personnel, coordinated tenant patrols, physical security improvements and crime prevention programs for at-risk youth,” *id.* at 4, as well as screening housing applicants for criminal records and evicting tenants who engage in crime, *id.* at 8, 11, 13. Indeed, far from implicating law-abiding tenants exercising self-defense as part of the problem, the report repeatedly stressed that they should be considered part of the solution, in the form of “tenant patrols” that would involve residents in policing the common areas of their own public housing

projects. *See id.* at 4, 6, 11, 22, 24, 30.

Some advocates, such as amicus Brady Center, contend that defensive gun use does not protect crime victims, citing Charles C. Branas et al., *Investigating the Link Between Gun Possession and Gun Assault*, 99 AM. J. PUB. HEALTH 2034 (2009). *See* Brady Ctr. 17. But as the authors of that article conceded, their study found merely a statistical *association* between gun possession by “urban adults” who become crime victims and the risk of being shot—it did not purport to find a *causal link*. *See* Branas, *supra*, at 2037. Regardless of the effectiveness of defensive gun use, one would expect a positive statistical association between victim gun possession and victim injury, because those urban dwellers *most at risk of victimization* (e.g., because they reside in a dangerous neighborhood) are also the *most likely to arm themselves for protection*—this is known as reverse causation. Going to the doctor has an extremely high positive association with being sick, but that hardly proves that going to the doctor causes illness. In fact, the Branas study acknowledged that it “did not account for the potential of reverse causation between gun possession and gun assault.” *Id.* at 2039. It further admitted that its results had no application to those citizens engaging in “regular training with guns”—precisely the training that most States reasonably require of gun-permit holders. Consequently, the study concluded with the limited advice

that those bearing arms should “understand that regular possession necessitates careful safety countermeasures.” *Id.* at 2039.

Some opponents of the right to bear arms suggest that carrying a firearm for self-defense merely increases one’s risk of injury because it initiates a sort of arms race where criminals are more motivated to carry guns by the anticipation that their victims may be armed. *See Philip Cook et al., Gun Control After Heller: Threats and Sideshows from A Social Welfare Perspective*, 56 *UCLA L. REV.* 1041, 1081 (2009); Brady Ctr. 17. But in fact criminals are *deterred* by the prospect of facing armed resistance from their intended victims. *See JAMES D. WRIGHT & PETER H. ROSSI, ARMED AND CONSIDERED DANGEROUS* 155 (2d ed. 2008). For example, 69% of the felons interviewed in the Wright and Rossi study said they knew a fellow criminal who had been “scared off, shot at, wounded, captured or killed by an armed victim,” *id.* at 155, and 56% opined that that “a criminal is not going to mess around with a victim he knows is armed with a gun.” *Id.* at 146. None of this is surprising: it merely confirms the common-sense expectation that criminals prefer their victims unarmed and defenseless—which is precisely how the regulations challenged here would leave the residents of Delaware public housing.

II. PRIVATE CITIZENS LICENSED TO CARRY WEAPONS DO NOT THREATEN PUBLIC SAFETY.

The defendants and their amici would have this Court believe that armed, law-abiding citizens constitute an acute threat to public safety. In particular, the

Brady Center asserted in the federal proceedings that guns carried by private citizens for self-defense are “ ‘used far more often to intimidate and threaten than they are used to thwart crimes.’ ” Brady Ctr. 16 (quoting Hemenway & Azrael, *supra*, 15 VIOLENCE & VICTIMS at 271). As demonstrated in Part I, *supra*, the NRC has rejected this canard: “Almost all national survey estimates indicate that *defensive gun uses by victims are at least as common as offensive uses by criminals*, with estimates of annual uses ranging from about 500,000 to more than 3 million per year” IOM-NRC FIREARM-RELATED VIOLENCE REP. at 15 (emphasis added).⁷ Thus armed civilians are an asset, not a threat, to public safety: “Regardless of which counts of homicides by police are used, the results indicate that civilians legally kill far more felons than police officers do.” Gary

⁷ The Brady Center also asserts that firearms kept in the home are “a threat to gun owners, and their family members, friends and houseguests.” Brady Ctr. 15-16 & n.3. This is yet another canard, and the original research on which it is based was thoroughly discredited years ago. Indeed, the research was so egregiously flawed that, when the National Research Council reviewed the state of firearms literature, it singled out these studies for particular censure. The NRC concluded that the studies failed to show that gun ownership increased the risk of violence to the owner and that their conclusions “that owning firearms for personal protection is ‘counterproductive’ and that ‘people should be strongly discouraged from keeping guns in the home’ ” were simply “not tenable.” NRC REVIEW at 118-19 (analyzing, *inter alia*, A.L. Kellerman & D.T. Reay, *Protection or Peril? An Analysis of Firearm-Related Deaths in the Home*, 314 *New Eng. J. of Med.* 1557-60 (1986); A.L. Kellerman et al., *Gun Ownership As A Risk Factor for Homicide in the Home*, 329 *New Eng. J. of Med.* 1084-91 (1993)). These are precisely the studies on which the Brady Center’s favorite authority, Dr. Hemenway, erroneously relies. See Hemenway & Azrael, *supra*, 15 VIOLENCE & VICTIMS at 271. The truth is that armed civilians defending themselves with firearms make far fewer lethal mistakes than the police, even though they outnumber the police by several orders of magnitude. There are about thirty instances each year in which an armed civilian mistakenly shoots and kills an innocent person who was not actually a burglar or similar threat—but “[o]ver the same period the police erroneously kill *five to eleven times* more innocent people.” JOYCE LEE MALCOLM, GUNS AND VIOLENCE: THE ENGLISH EXPERIENCE 239 & n.71 (2002) (emphasis added).

Kleck, *Keeping, Carrying, and Shooting Guns for Self-Protection*, in DON B.

KATES, JR. & GARY KLECK, *THE GREAT AMERICAN GUN DEBATE: ESSAYS ON FIREARMS AND VIOLENCE* 199 (1997).

It is equally well established that the proportion of private citizens licensed to carry firearms in public who commit crimes with their weapons is miniscule. Since they must pass background checks and other investigations conducted by the police, it is hardly surprising that gun-permit holders are among the most law-abiding citizens.⁸ “[E]ven those who vehemently opposed shall-issue laws have been forced to acknowledge that license holders are extremely law abiding and pose little threat.” David B. Mustard, *Comment*, in *EVALUATING GUN POLICY* 325, 331 (Jens Ludwig and Philip J. Cook, eds., 2003). The President of the Dallas Police Association, who had lobbied against the Texas concealed-carry law, admitted that “[a]ll the horror stories I thought would come to pass didn't happen. No bogeyman. I think it's worked out well, and that says good things about the citizens who have permits. I'm a convert.” David B. Mustard, *The Impact of Gun Laws on Police Deaths*, 44 *J.L. & ECON.* 635, 638 (2001). *See also* Cook, *Gun*

⁸ Consider Florida, which has the most extensive experience with a regime under which gun permits are widely issued to citizens unless they are disqualified because of a condition such as being a convicted felon or a mental patient. In over 25 years Florida has issued 2,522,722 licenses and revoked just 168 due to crimes (including non-violent crimes) by license holders involving the use of a firearm—a rate of less than .007%. *See* Fla. Dep't of Agric. & Consumer Servs., *Concealed Weapon or Firearm License Summary Report*, www.freshfromflorida.com/content/download/7499/118851/cw_monthly.pdf (last visited September 13, 2013).

Control After Heller, 56 UCLA L. REV. at 1082 (“The available data about permit holders also imply that they are at fairly low risk of misusing guns, consistent with the relatively low arrest rates observed to date for permit holders.”).⁹

III. THE CARRYING OF FIREARMS IN PUBLIC PLACES BY LAW-ABIDING CITIZENS DOES NOT INCREASE—AND IN FACT MAY *DECREASE*—VIOLENT CRIME.

Numerous studies indicate that allowing law-abiding citizens to carry firearms either lowers rates of violent crime or has no impact at all. Either result defeats the Delaware regulation challenged here because the burden is on the State “to make a ‘strong showing’ that a gun ban [i]s vital to public safety.” *Moore v. Madigan*, 702 F.3d at 940. Plaintiffs do not need to prove that allowing citizens to carry firearms in the common spaces of public housing projects actually reduces crime because the justification for the right to bear arms is not that it is sound policy but that it is an enumerated constitutional right.

⁹ The overwhelming majority of law enforcement officers throughout the nation “favor an armed citizenry, would like to see more guns in the hands of responsible people, and are skeptical of any greater restrictions placed on gun purchase, ownership, or accessibility.” Doug Wyllie, *PoliceOne’s Gun Control Survey: 11 Key Lessons from Officers’ Perspectives*, POLICEONE.COM (Apr. 8, 2013), www.policeone.com/Gun-Legislation-Law-Enforcement/articles/6183787-PoliceOnes-Gun-Control-Survey-11-key-findings-on-officers-thoughts (reporting results of a survey of 15,000 law enforcement officers); Ron Avery, *Police Gun Control Survey: Are Legally Armed Citizens the Best Solution to Gun Violence?*, POLICEONE.COM (Apr. 8, 2013), www.policeone.com/Gun-Legislation-Law-Enforcement/articles/6186552-Police-Gun-Control-Survey-Are-legally-armed-citizens-the-best-solution-to-gun-violence (“More than 91 percent of respondents support the concealed carry of firearms by civilians who have not been convicted of a felony and/or not been deemed psychologically/medically incapable.”); Mustard, *The Impact of Gun Laws on Police Deaths*, *supra*, 44 J.L. & ECON. at 638 (Survey found that “76 percent of street officers and 59 percent of managerial officers agreed that all trained, responsible adults should be able to obtain handgun carry permits.”).

Nonetheless, a great deal of research indicates that an armed citizenry reduces crime. For example, so-called “shall-issue” statutes requiring the issuance of gun-carry permits to law-abiding citizens are strongly associated “with fewer murders, aggravated assaults and rapes.” John Lott, *MORE GUNS LESS CRIME* 57. Although some contest this point, *see* NRC REVIEW at 120-51 (reviewing the scientific literature), it is beyond cavil that the evidence does not support the *opposite* proposition that the defendants must establish here—that is, that allowing the carriage of firearms in public spaces would *increase* crime. Even the most respected gun-control advocates acknowledge that, “[b]ased on available empirical data, . . . [they] expect relatively little public safety impact if courts invalidate laws that prohibit gun carrying outside the home, assuming that some sort of permit system for public carry is allowed to stand.” Philip J. Cook et al., *Gun Control After Heller, supra*, 56 *UCLA L. REV.* at 1082. *See also Moore v. Madigan*, 702 F.3d at 938 (same) (quoting the Cook article); Mustard, *Comment, supra* at 326 (“[N]o empirical research has made a case for shall-issue laws increasing crime. Instead, the literature has disputed the magnitude of the decrease and whether the estimated decreases are statistically significant.”). Consequently, the National Research Council concluded that, “with the current evidence it is not possible to determine that there is a causal link between the passage of right-to-carry laws and crime rates.” NRC REVIEW at 150.

The federal Centers for Disease Control (“CDC”) likewise reviewed the entire corpus of firearms literature and found that it does not support the proposition that increasing the number of law-abiding citizens carrying firearms in public spaces increases gun violence. The CDC convened an independent Task Force and conducted “a systematic review of scientific evidence regarding the effectiveness of firearms laws in preventing violence, including violent crimes, suicide, and unintentional injury.” DEP’T OF HEALTH AND HUMAN SERVS., FIRST REPORTS EVALUATING THE EFFECTIVENESS OF STRATEGIES FOR PREVENTING VIOLENCE: FIREARMS LAWS, 52 MORBIDITY & MORTALITY WEEKLY REP. 11 (Oct. 3, 2003) (“MMWR”).¹⁰ The CDC took pains to note that, unlike other research—including the studies on which the Brady Center and its fellows rely—the CDC’s review involved “systemic epidemiologic evaluations and syntheses of all available literature meeting specified criteria.” Robert Hahn et al., *Firearms Laws and the Reduction of Violence: A Systematic Review*, 28 AM. J. PREV. MED. 40, 42 (2005). The CDC reviewed every firearms study in eleven different databases of medical, sociological, criminal justice, legal, economic, and public policy research. See 28 AM.J.PREV. MED. at 44. It concluded that there were insufficient data to support the hypothesis “that the presence of more firearms” being carried in public by licensed citizens “increases rates of unintended and intended injury in interpersonal

¹⁰ The CDC report is available at www.cdc.gov/mmwr/PDF/rr/rr5214.pdf.

confrontations.” *Id.* at 53. The CDC noted that, if anything, the more reliable studies—those of “greatest design suitability”—indicated that homicide rates went *down* when more carry permits were issued. *Id.* at 54.¹¹ The available data, the CDC concluded, are fatally infected with “systemic flaws that preclude reliable conclusions” and therefore no policy recommendation could be made about the supposed risks of increasing the carrying of firearms in public without “[f]urther research.” *Id.*

Regardless which way the debate goes on that question, the *constitutional right* to bear arms remains the same, and it cannot be trumped by *policy* considerations, especially when the *only* two comprehensive and authoritative reviews of the literature—those of the National Research Council and the Centers

¹¹ It is instructive to compare the rate of firearms crime in Illinois, the only State that, until just a few months ago, flatly forbade citizens to carry firearms in public, with the rates in other States that permit law-abiding citizens to carry firearms in public on some basis. Despite its total ban, no other State had a higher percentage of murders committed with firearms: the figure in Illinois is 83%, well above the national average. *See* Simon Rogers, *Gun Crime Statistics by U.S. State: Latest Data*, THEGUARDIAN.COM (Dec. 17, 2012, 7:01 AM EST), www.guardian.co.uk/news/datablog/2011/jan/10/gun-crime-us-state. Thus Illinois, despite its ban, has long had a gun-murder rate higher than that of many States where the law mandates that carry permits be issued to law-abiding citizens who pass the government’s background checks and other criteria. *See id.* The District of Columbia, which likewise bans carrying firearms in public, had the highest gun-murder rate in the nation. *See id.* The State of Vermont, which does not require anyone—whether a Vermont resident or just a visitor—to obtain a permit to carry a concealed weapon in public, *see* 13 Vt. Stat. § 4003, has a gun-murder rate about one-fourth that of Illinois and one-sixteenth that of D.C. *Id.*

for Disease Control—have found the evidence to be too ambiguous and inconclusive to serve as a basis for firearms policy.¹²

CONCLUSION

For the reasons given above, amicus curiae Pink Pistols respectfully submits that the challenged Delaware gun regulations cannot be justified on the basis that the public carrying of firearms threatens public safety.

Dated: September 20, 2013

Respectfully submitted,

/s/ Thomas D. Shellenberger, Esquire
Thomas D. Shellenberger, Esquire
Delaware Bar No. 002418
Law Office of Thomas D.
Shellenberger LLC
1601 Milltown Road, Suite 8
Wilmington, DE 19808
302-887-9116

¹² The Brady Center contends that allowing “the carrying of firearms in public negatively implicates other social issues and portends societal ills” because “law enforcement’s ability to protect the public could be greatly restricted if officers were required to effectively presume that a person carrying a firearm well outside his apartment, and in the presence of unrelated bystanders, was doing so lawfully.” Brady Ctr. 17-18. The Seventh Circuit rejected this argument as “weak” in *Moore v. Madigan*, which struck down Illinois’s ban on carrying firearms in public. See 701 F.3d at 938. The Brady Center’s only authority are two Pennsylvania decisions concerning the standards for probable cause to approach and detain an individual carrying a firearm. See *Commonwealth v. Robinson*, 600 A.2d 957 (Pa. Super. Ct. 1991); *Commonwealth v. Romero*, 673 A.2d 374 (Pa. Super. Ct. 1996). Those cases involved the suppression of evidence under the Fourth Amendment and had nothing to do with the constitutional right to bear arms; neither case even hinted that allowing firearms carriage in public spaces impairs law enforcement. On the contrary, they held that possession of a firearm, even in a state like Pennsylvania which widely issues permits to carry firearms, is sufficient to give the police probable cause to stop an individual without regard to whether the individual is “on public streets” or “in a public housing project.” *Romero*, 673 A.2d at 200; see also *Robinson*, 600 A.2d at 959. Therefore these cases provide no support for the notion that invalidating the regulations challenged here would impair law enforcement.