

No. 07-290

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IN THE  
Supreme Court of the United  
States

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DISTRICT OF COLUMBIA, *ET AL.*,

*Petitioners,*

v.

DICK ANTHONY HELLER,

*Respondent.*

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*On Writ of Certiorari to the United States  
Court of Appeals for the District of Columbia Circuit*

**BRIEF FOR *AMICUS CURIAE* ASSOCIATION OF  
AMERICAN PHYSICIANS AND SURGEONS, INC.  
IN SUPPORT OF RESPONDENT**

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## QUESTION PRESENTED

Whether the following provisions—D.C. Code §§ 7-2502.02(a)(4), 22-4504(a), and 7-2507.02—violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes.

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**BRIEF FOR *AMICUS CURIAE* ASSOCIATION OF  
AMERICAN PHYSICIANS AND SURGEONS, INC.  
IN SUPPORT OF RESPONDENT**

**INTEREST OF *AMICUS CURIAE*<sup>1</sup>**

The Association of American Physicians and Surgeons, Inc. (“AAPS”) is a non-profit, national group of thousands of physicians founded in 1943. AAPS has physician members who rely on their freedom to own

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

and carry firearms to guard against criminal activity, which includes attempts to break into their offices to obtain controlled substances or potential attacks by patients on the physicians attempting to help them. AAPS also has members who treat children and psychiatric conditions related to the occasional misuse of firearms.

Moreover, AAPS has long defended the practice of ethical medicine, and firearms serve an essential role against misuse of medicine by tyrannical governments for unethical goals. AAPS has an interest in defending the right to bear arms as a deterrent to tyrannical government, as recognized by many commentators from James Madison to Joseph Story.

AAPS has filed *amicus curiae* briefs in numerous cases before the United States Supreme Court and federal Courts of Appeals, and its submissions have been cited in opinions. It files this brief in part to rebut *amici curiae* briefs filed by American Public Health Association and the American Academy of Pediatricians.

Based on the above, *Amicus* has a direct and vital interest in the issues presented to this Court.

### SUMMARY OF ARGUMENT

Constitutional law – specifically, the Second Amendment – cannot depend on politicized views of medicine. *Amici curiae* briefs submitted for Petitioners by the American Public Health Association (APHA) and the American Academy of Pediatricians (AAP) (the “Petitioners’ Medical *Amici*”) insist that medical evidence supports gun control. AAP claims that firearms are a medical “contagion”, and that “children cannot be taught gun safety.” AAP Brief at

5, 12. In fact, medical professionals have no more qualifications or basis to opine about the Second Amendment than anyone else. The attempt to shroud political gun control arguments in the white coat of physicians and public health officials is utterly baseless, and constitutional law should not be influenced by it.

Medical expertise is not required to recognize the obvious defects in the arguments and studies presented by Petitioners' Medical *Amici*. Undeniable benefits of firearms, which include self-defense and deterrence, are largely omitted and unaddressed in their submissions. The same logic underlying their briefs' approach to gun control could be used to insist on a ban on automobiles or swimming pools, by focusing only on the harm they cause and failing to address their benefits. But the benefits of guns are undeniable: one physician surveyed published studies and estimated that the defensive use of guns saves 25 to 75 lives for every one lost to a gun. Miguel Faria, M.D., "Public Health and Gun Control – A Review (Part I: The Benefits of Firearms)," 6 Medical Sentinel 11 (2001).<sup>2</sup> While the magnitude of that comparative benefit may be debated, there is no denying that there are substantial benefits from gun ownership, and no discussion of the harm is complete without addressing the benefits. Virtually all medical professionals support use of drugs and vaccines that cause serious adverse effects as long as they confer greater benefits, yet that basic analytical approach is missing from Petitioners' Medical *Amici*.

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<sup>2</sup> <http://www.jpands.org/hacienda/edcor6.html> (viewed 2/6/08).

Gun control leaves a society vulnerable to tyranny, as observed by James Madison and Joseph Story. Their concerns were tragically confirmed in the 20<sup>th</sup> century, when gun control was repeatedly followed by genocide or dictatorship, or both. To the extent the medical profession has any special insight here, it is to alert this Court to the horrific result of gun control in emasculating a society and rendering it vulnerable to genocide. It is essential that the individual right to bear arms under the Second Amendment remain a vital safeguard against the unintended consequences of gun control. The sweeping D.C. gun control statutes – which prohibit certain gun possession, even in one’s own home – cannot stand.

## ARGUMENT

### I. THE INTERPRETATION OF THE CONSTITUTION CANNOT DEPEND ON POLITICIZED VIEWS OF MEDICINE.

Constitutional law does not vary or “evolve” based upon changing views by some medical professionals about broader social issues, such as the ownership of guns. The amendment process is the only proper mechanism for changing the Constitution if and only if new circumstances, technology or evidence warrants such a change.

In particular, contemporary “medical” studies about the benefits and harms of gun ownership should have no effect on interpreting a provision of a constitution enacted over 200 years ago. Yet the *amici* briefs filed by the medical groups APHA and AAP implicitly argue for interpreting the Constitution in a manner that is subject to the latest claims of

one-sided studies deficient in credibility, as discussed below.

Reported studies attempting to support gun control – and a narrow interpretation of the Second Amendment – have been particularly susceptible to bias and even fraud, perhaps due to the highly politicized nature of the topic. The biggest study in support of gun control in the past decade was published by then-Professor Michael Bellesiles, who wrote a book entitled *Arming America, The Origins of a National Gun Culture* (2000). Garry Wills gave it a glowing review in *The New York Times*, but admitted later that “I was took. The book is a fraud.” Jonah Goldberg, “Reports of the 2nd Amendment's death have been greatly exaggerated ...,” *Pittsburgh Tribune-Review* (Apr. 8, 2007).<sup>3</sup> Bellesiles later resigned from his position as Professor of History at Emory University in Atlanta when an independent committee of scholars examined his work and concluded that “his scholarly integrity is seriously in question.” George Mason University’s History News Network, “Summary of the Emory Report on Michael Bellesiles” (Oct. 25, 2002).<sup>4</sup>

But citations of flawed studies have undermined the judiciary. Four reported decisions have relied on Bellesiles’ work, and the Ninth Circuit felt compelled to amend one of its prior rulings to purge its prior reference to the then-discredited Bellesiles. *See Silveira v. Lockyer*, 2003 U.S. App. LEXIS 1242 (9<sup>th</sup> Cir. Jan. 27, 2003) (removing reference to Bellesiles’s

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<sup>3</sup>[http://www.pittsburghlive.com/x/pittsburghtrib/opinion/columnists/guests/s\\_501644.html](http://www.pittsburghlive.com/x/pittsburghtrib/opinion/columnists/guests/s_501644.html) (viewed 2/5/08).

<sup>4</sup><http://hnn.us/articles/1069.html> (viewed 2/5/08).

work from *Silveira v. Lockyer*, 312 F.3d 1052 (9th Cir. 2002), *cert. denied*, 540 U.S. 1046 (2003)).

Concerned professors “documented an emotional anti-gun agenda in the treatment of firearms issues in the medical and public health literature” in a thoroughly supported law review article. *See* Don Kates, *et al.*, “Guns and Public Health: Epidemic of Violence or Pandemic of Propaganda,” 62 *Tenn. L. Rev.* 513 (1995).<sup>5</sup> They concluded:

While the anti-gun editorials and articles discussed had the superficial form of academic discourse, the basic tenets of science and scholarship have too often been lacking. We call them “anti-gun health advocacy literature” because they are so biased and contain so many errors of fact, logic, and procedure that we can not regard them as having a legitimate claim to be treated as scholarly or scientific literature.

*Id.* at 595.

As implicitly allowed by this Court, and explicitly recognized by appellate courts, the Second Amendment does protect an individual right to bear arms. *See Printz v. United States*, 521 U.S. 898 (1997); *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007); *United States v. Emerson*, 270 F.3d 203 (5th Cir. 2001), *cert. denied*, 541 U.S. 1081 (2004).

Policy arguments – particularly those based on “anti-gun health advocacy literature” – should not dilute or distort this fundamental individual right. As observed by Justice Thomas, joined by Justice Scalia and Chief Justice Rehnquist, “none of this policy-laden decisionmaking is proper. Rather, the Court

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<sup>5</sup><http://www.guncite.com/journals/tennmed.html> (viewed 2/4/08).

should confine itself to interpreting the text of the Constitution ....” *Camps Newfound/Owatonna v. Town of Harrison*, 520 U.S. 564, 620 (Thomas, J., dissenting). The Second Amendment is not hostage to claims made in the latest study or the results of the latest poll. The individual right to bear arms should be as protected today by the Second Amendment as at “the time the Bill of Rights was adopted.” *Ford v. Wainwright*, 477 U.S. 399, 405 (1986).

## II. THE PETITIONERS’ MEDICAL *AMICI* BRIEFS ARE FATALLY FLAWED IN IGNORING UNDENIABLE BENEFITS OF FIREARMS.

*Amici* briefs submitted for Petitioners by the American Public Health Association (APHA) and the American Academy of Pediatricians (AAP) (the “Petitioners’ Medical *Amici*”) rest on a fundamental defect: they ignore the benefits of gun ownership.

Guns are primarily a defensive weapon:

In contrast to most other weaponry, firearms are preeminently defensive in effect. Combat carried on barehanded or with swords, pikes, clubs and the like, generally results in the weaker, less numerous party surrendering whatever their adversary demands, what Spencer called the ‘ceaseless devouring of the weak by the strong.’ However, defenders armed with guns can often repulse a numerically stronger aggressor who possess only lesser weapons.”

Daniel Polsby and Don Kates, Jr., “Of Holocausts and Gun Control,” 75 Wash U. L. Q. 1237, 1241 (1997).<sup>6</sup> The misperception of guns as primarily an offensive

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<sup>6</sup> <http://ls.wustl.edu/WULQ/75-3/753-4.html> (viewed 2/5/08).

weapon can be traced to the influence of the media: an offensive use of a gun that causes violence is startling news, while a defensive use that prevents violence is not. Had someone used a gun to avert the 9/11 massacre, it would not have generated anything near the amount of news that did result.

As explained below, the Petitioner's Medical *Amici's* arguments omit undeniable benefits of firearms, which include self-defense and crime deterrence. By focusing only on harm resultant from an activity, those submissions falsely conclude that gun ownership is itself harmful. With that approach they would conclude that vaccines, heart surgery, and even bathtubs are harmful and could be profitably banned. But all those products and services – like the ownership of guns – confer benefits that far exceed the attendant harm.

**A. The Primary Use of Guns is Defensive, Having a Beneficial Effect.**

Gun control, like the D.C. statutes at issue here, robs citizens of the ability to defend themselves. D.C. Code §§ 7-2502.02(a)(4) (banning most pistols), 22-4504(a) (banning the carrying of a “dangerous weapon”), and 7-2507.02 (requiring that guns be “unloaded”). The police are often not present when citizens need defense, as in one's home, and only guns provide meaningful defense against stronger attackers. Statistical evidence demonstrates that armed victims are able to defend themselves far better against assailants than if not armed:

Gary Kleck's analysis of 1979-85 national data in *Point Blank* shows the following comparative rates of injury: only 12.1-17.4% of gun-armed vic-

tims resisting robbery or assault were injured; 24.7-27.3% of victims who submitted were nevertheless injured; 40.1-48.9% of those who screamed were injured, as were 24.7-30.7% of those who tried to reason with or threaten the attacker, and 25.5-34.9% of those who resisted.

Frank Vandall, "A Preliminary Consideration of Issues Raised in The Firearms Sellers Immunity Bill," 38 Akron L. Rev. 113, 119 n.36 (2005) (citing Randy Barnett and Don Kates, "Under Fire: The New Consensus on the Second Amendment," 45 Emory L. J. 1259 n.478 (1996)).

The hurtful effects of gun control are felt most greatly by children and the mentally disabled, who often lack the physical and mental capacity to defend themselves at all. Gun control makes citizens, particularly children and mentally disabled people, unprotected targets for crime. The right to bear arms enables these targets to obtain protection.

This past December, Matthew Murray arrived at New Life Church in Colorado Springs with an assault rifle, two handguns, and as many as 1000 rounds of ammunition. In the parking lot he killed two teenage sisters and wounded their father, and then proceeded towards hundreds of people at the church itself. A horrible massacre was averted when churchgoer Jeanne Assam repeatedly shot Murray in a defensive use of her own weapon. Had gun control prevented Assam from carrying her gun, Murray would likely have killed hundreds of people. The police responded within minutes to 911 calls, but that was not quick enough to stop the gunman. Only meaningful self-defense can do that. *See* Carlyn Ray Mitchell and R. Scott Rappold, "Cops Struggled to Keep Order in the

Confusion,” *The Gazette* (Colorado Springs, Colorado) A1 (Jan. 5, 2008).

Guns are frequently used to stop murderers or would-be murderers. Miguel Faria, M.D., described under-publicized examples of defensive and lifesaving uses of guns:

In Pearl, Mississippi, in 1997, 16-year-old Luke Woodham used a hunting rifle to kill his ex-girlfriend and her close friend and wound 7 other students. It was Assistant Principal Joel Myrick who retrieved his handgun from his automobile and halted Woodham’s shooting spree. ... In Edinboro, Pennsylvania, in 1998, a deadly scenario took place when 14-year-old Andrew Wurst killed one teacher and wounded another as well as two other classmates. The shooting rampage here was halted by merchant James Strand who used his shotgun to force the young criminal to halt his firing, drop his gun, and surrender to police. ... [I]n another unreported incident in Santa Clara, California, Richard Gable Stevens, rented a rifle for target practice at the National Shooting Club on July 5, 1999 and then began a shooting rampage, herding three store employees into a nearby alley, and stating he intended to kill them. When Stevens became momentarily distracted, a shooting club employee, who had a .45-caliber handgun concealed under his shirt, drew his weapon and fired.

Miguel Faria, M.D., “Public Health and Gun Control – A Review (Part II: Gun Violence and Constitutional Issues),” 6 *Medical Sentinel* 14, 15 (2001).<sup>7</sup>

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<sup>7</sup> <http://www.jpands.org/hacienda/article51.html> (viewed 2/6/08).

Contrary to public perception, violence was worse before the advent of guns:

[M]urderous brawls and violent deaths at the hands of robbers were everyday occurrences in medieval England. The average annual homicide rates for five rural counties, studied at scattered intervals between 1202 and 1276, [were found to have] ranged from 9 per 100,000 in Norfolk population to 23 in Kent .... Knives, axes, cudgels, and other implements found in every agricultural community were the typical instruments of death.

Ted Robert Gurr, “*Historical Trends in Violent Crime: Europe and the United States*,” in *Violence in America* 21, 28 (1989). The average homicide rate in the United States is lower with guns, being only 5.7 per 100,000 in 2004. See Jennifer Chacon, “Whose Community Shield?: Examining the Removal of the ‘Criminal Street Gang Member,’” 2007 U. Chi. Legal F. 317 (2007). In nearby Latin American countries this rate is much higher, such as 35 per 100,000 in Guatemala.

There was a rapid increase in crime among teenagers in the United States from 1983 to 1992. Bureau of Justice Statistics, U.S. Dep’t of Justice, *Sourcebook of Criminal Justice Statistics – 1995*, 360, tbls. 3.133 & 3.134 (1996). But firearms were less accessible then, not more so. In the two decades following World War II, the crime rates (including murder) were far lower. See *id.* at 324, tbl. 3.109.

**B. The AAP *Amici* Brief Relies on Flawed Studies and Unjustified Conclusions.**

The American Academy of Pediatrics Brief (“AAP Brief”) omits any reference to the benefits of deterrence from gun ownership, and instead relies heavily on the “anti-gun health advocacy literature,” Don Kates, *et al.*, *supra*, to argue that “[c]hildren [c]annot be [t]aught [g]un [s]afety” and “the District of Columbia enacted narrow legislation to staunch the contagion.” AAP Brief at 5, 11. Both claims are baseless and demonstrably false.

In Switzerland, a country where D.C.-style gun control is rejected, thousands of children have competed in an annual celebration of guns since 1657:

In Zurich [today], some 5,631 teens – 4,046 boys and 1,585 girls, aged 13-17 – have finished firing the Swiss service rifle, and it’s time for the shootoff. ... That rifle is the SIG Strumgeweher (assault rifle) model 1990 (Stgw 90), a selective fire, 5.6 mm rifle with folding skeleton stock, bayonet lug, bipod, and grenade launcher.

Stephen P. Halbrook, “Girl Beats Guys: A Swiss Teen Rifle Festival, Das Zürcher Knabenschiessen,” *Schiessen Schweiz*, SSV/FST, Nr. 48/25.11.04, S. 18-19. [English and German].<sup>8</sup> If it were impossible to teach children gun safety, as AAP claims in its brief, then this annual event could not exist.

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<sup>8</sup>

[http://www.stephenhalbrook.com/articles/swiss\\_teen\\_rifle\\_festival.html](http://www.stephenhalbrook.com/articles/swiss_teen_rifle_festival.html) (viewed 2/5/08).

A closer look at the studies cited by AAP reveals that they do not support AAP's conclusions. At most, they demonstrate that some approaches to gun safety for children, such as telling children not to touch an unloaded gun that is then left with them, are misguided. For example, AAP relies on one study that showed that sending children to a playroom containing both toy and real guns would result in children playing with both despite being told not to play with the real gun. AAP Brief at 12. That proves nothing more than the obvious fact that children will play with objects left in a playroom, and it hardly requires a peer-reviewed study. Children are curious, and learn best through multisensory hands-on experiences. A better study – absent from AAP's brief – would be to observe how much respect a child develops for guns after having the opportunity to experience the damage a gun can do first hand, such as by firing a gun at a watermelon.

AAP's claim that handguns “[m]ake [s]uicide [m]ore [l]ikely” is likewise fallacious and unsupported by its cited studies. AAP Brief at 16. The use of handguns in suicide in no way proves that an alternative method would not be used if handguns were unavailable. In fact, the evidence is to the contrary. Japan, Hungary, and Scandinavia all have far more restrictive gun control than the United States, and yet they have suicide rates 2 to 3 times higher than the U.S. For example, the suicide rate in Hungary is 35.38 per 100,000, compared to only 12.06 per 100,000 in the United States. *See* “International Violent Death Rates” (May 17, 2003).<sup>9</sup>

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<sup>9</sup> [http://www.guncite.com/gun\\_control\\_gcgvintl.html](http://www.guncite.com/gun_control_gcgvintl.html) (viewed 2/6/08).

The AAP Brief relies on a country-by-country comparison in arguing that the firearm related death rate in the United States was much higher in 1995 in the United States than in Canada, Australia, and England and Wales, all of which have restrictive gun control. AAP Brief at 25. But the data for gun deaths in the United States include guns used in self-defense, as in fending off an assault, robbery or rape, and higher homicide rates in the United States existed long before there was gun control in other countries:

A study comparing New York and London over 200 years found the New York homicide rate consistently five times the London rate, although for most of that period residents of both cities had unrestricted access to firearms. When guns were available in England they were seldom used in crime. A government study for 1890-1892 found an average of one handgun homicide a year in a population of 30 million.

Joyce Malcolm, "Why Britain Needs More Guns," BBC News (Jan. 15, 2003).<sup>10</sup>

Different societies have different confounding factors, such as crime-inducing drug addiction, single-parent families, promotion of violence in the media, and varying approaches to juvenile delinquency and schooling, all of which inevitably affect crime rates. Those confounding factors are best eliminated by looking at the effect of gun control on the same society, and as shown below, gun control typically results in an increase in overall crime rather than a reduction. Gun control is hardly supported if murders by switchblades increase as death by firearms declines.

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<sup>10</sup> [http://news.bbc.co.uk/1/hi/uk\\_politics/2656875.stm](http://news.bbc.co.uk/1/hi/uk_politics/2656875.stm) (viewed 2/5/08).

Subsequent to gun control in England in 1997, for example, the following increase in crime occurred:<sup>11</sup>

From 1997 to 2001, the rate of violent crime more than doubled. Your chances of being mugged in London are now [as of 2002] six times greater than in New York. England's rates of assault, robbery, and burglary are far higher than America's, and 53 percent of English burglaries occur while occupants are at home, compared with 13 percent in the U.S., where burglars admit to fearing armed homeowners more than the police. In a United Nations study of crime in 18 developed nations published in July, England and Wales led the Western world's crime league, with nearly 55 crimes per 100 people.

Joyce Lee Malcolm, "Gun Control's Twisted Outcome: Restricting firearms has helped make England more crime-ridden than the U.S.," BBC News (Nov. 2002).<sup>12</sup>

AAP's emphasis on the death of children from firearms is also misleading. One study not cited by AAP found that 71% of the children and adolescents who were injured in drive-by shootings were, in fact, "documented members of violent street gangs." H. Range Hutson, *et al.*, *Adolescents and Children Injured or Killed in Drive-By Shootings in Los Angeles*, 330 *New Eng. J. Med.* 324, 325 (1994). Studies used by the AAP which confuse deaths of criminals from firearms with deaths of innocent victims are misleading and unreliable.

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<sup>11</sup> <http://www.reason.com/news/show/28582.html> (viewed 2/5/08).

<sup>12</sup> [http://news.bbc.co.uk/1/hi/uk\\_politics/2656875.stm](http://news.bbc.co.uk/1/hi/uk_politics/2656875.stm) (viewed 2/5/08).

Surely the death of any child is a tragedy. But studies have shown that children are 14.5 times more likely to die from car accidents, 5 times more likely to die from fire or drowning, and 3 times more likely to die even from bicycle mishaps than they are to die from gun accidents. *See* John Lott, Jr. *More Guns, Less Crime: Understanding Crime and Gun Control Laws* (1998). Firearm accident rates for children in the United States have generally declined for a hundred years, with sharper declines in the last several decades since 1975. By 1986 the accidental firearm death rate had fallen to about 6 per million, and by 1993 dropped further to only 5 per million. Don Kates, *et al.*, *supra*, at 557 n.178 (citing National Safety Council, “Accident Facts 1993”). That is comparable to the rate of serious injury from vaccination, a risk widely accepted within the medical profession and even the public at large.

While the AAP Brief purports to defend the interests of children, in fact the gun is the best protector for the weak and vulnerable in society, as it removes any advantage held by a stronger aggressor. Victims who resist crime with a gun are only half as likely to be injured as those who put up no defense, and one-fourth as likely to be injured as those resisting by other means.<sup>13</sup> For centuries, the gun has been a family’s best defense against criminal attack, and the Second Amendment enshrines that essential safeguard in the Constitution. It is worth observing that “about half of all American homes contain a gun” and thus “burglars tend to avoid all occupied American homes.” David Kopel, “Lawyers, Guns, and Burglars,” 43 *Ariz. L. Rev.* 345, 361 (Summer 2001). The

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<sup>13</sup> <http://www.haciendapub.com/gunpage5.html> (viewed 2/5/08).

sweeping D.C. statutes are not narrowly tailored to a sensible protection of children.

**C. The AHPA *Amici* Brief Ignores the Greater Benefits of Gun Ownership.**

The *amici brief* submitted by the American Public Health Association, et al. (the “AHPA Brief”) cites 30,000 deaths and 70,000 injuries from firearms, but does not say how many resulted from use of illegal rather than lawful guns and how many were in self-defense against illegal activity. The misperception, based on Hollywood and newspaper bias, is that virtually all uses of guns are offensive rather than defensive. In fact, guns are mostly a defensive weapon. Polsby and Kates, *supra*, at 1241. The data cited by AHPA is meaningless unless coupled with an assessment of the benefits deriving from defensive uses of guns.

The AHPA brief claims that the risk of firearm-related death is greater in homes with guns than homes without, but again, such data are defective for failure to specify who fired the gun and whether the gun in the home was the one fired. There is much reason to expect that most of their deaths were by criminal assailants and the presence of the gun in the home had nothing to do with the death. One study not cited in the AHPA brief, for example, found that 71% of the victims were killed by an assailant who did not live in the home, presumably using a gun that was not kept in the victim’s home. Don Kates, *et al.*, *supra*, at 586-87.

The unreliability of the Kellerman study about home use of guns – a central issue in this case – is illustrative. AHPA Brief at 14 (citing Arthur L. Kel-

lermann, *et al.*, *Gun Ownership as a Risk Factor for Homicide in the Home*, 329 *New Eng. J. Med.* 1084 (1993)). In fact, the Kellerman data do:

not show that even one homicide victim was killed with a gun ordinarily kept in that household. Indeed, the indirect evidence indicates that most of the homicide victims in the study were killed using guns not kept in the victim's home: 70.9% of the homicide victims were killed by people whose relationship to the victim indicates that the killer did not live in the victim's household, and thus presumably used a gun not kept in the victim's household.

Kates, *et al.*, *supra*, at 586-87. Moreover, Kellerman's conclusions depend on a maximum of 20% higher gun ownership concealed by false denials of having guns. The study by Kates, *et al.*, suggests the rate of false denials is higher, thereby invalidating Kellerman's conclusions. *Id.* at 593-94.

Guns are not pathogens, and the loss of lives from guns is not a public health phenomenon in any meaningful sense. Vaccines could be taken as a public health analogy for guns. Vaccines are widely recommended or even mandated with the support of the APHA and AAP despite the fact that many are killed or injured by them, and their effectiveness is imperfect. But the APHA's and AAP's logic could be applied to vaccines with the false conclusion that all vaccination programs are harmful because all vaccines have some side effects. The benefits of vaccines and guns are both indirect, but the benefits are very real in both cases, and it is essential to address those benefits in any argument attempting to ban the product.

### III. THE RIGHT TO BEAR ARMS HAS AN ESSENTIAL ROLE IN DETERRING TYRANNY, TERRORISM AND GENOCIDE.

Unarmed, defenseless societies are vulnerable to tyranny, terrorism and genocide:

[A] society's weapons policy might be one of the institutional arrangements that contributes to the probability of its government engaging in some of the more extreme varieties of outrage. ... [I]t is [] an arresting reality that not one of the principal genocides of the twentieth century, and there have been dozens, has been inflicted on a population that was armed.

Daniel Polsby and Don Kates, Jr., *supra*, at 1238. Without the right to bear arms, an emasculated citizenry becomes vulnerable to tyranny, terrorism and genocide.

Other commentators have likewise observed that "gun control is an essential precondition for genocide." Jay Simkin, Aaron Zelman, and Alan M. Rice, *Lethal Laws 9-12 (Jews for the Preservation of Firearms Ownership: 1995)*. Children are as much the victims of genocide as adults, and a right to bear arms protects both against that horrendous evil. Armed citizens are less likely to submit to removal and murder of their children, and their dictators are less likely to try. Anne Frank, a tragic victim of the Holocaust, was only 13 years old. "A connection exists between the restrictiveness of a country's civilian weapons policy and its liability to commit genocide upon its own people." Polsby and Kates, *supra*, at 1237.

While the Founding Fathers may not have anticipated genocide, they certainly did anticipate tyranny and added the Second Amendment to safeguard against it. James Madison observed “the advantage of being armed, which the Americans possess over the people of almost every other nation” and noted how this was an important check and balance on the power of government. The Federalist No. 46. The very purpose of the Bill of Rights was to set forth *individual* rights to limit tendencies of government to usurp *individual* liberties. In 1787 Thomas Jefferson wrote, “What country can preserve its liberties if its rulers are not warned from time to time that their people preserve the spirit of resistance? *Let them take arms.*” Letter from Thomas Jefferson to William Stephens Smith, 1787, *The Works of Thomas Jefferson*, Federal Edition, Vol. 5 (1904-5) (emphasis added). The right to bear arms is analogous in the Bill of Rights to the right to trial by jury, as both establish well-recognized limits on government power.

Supreme Court Justice Joseph Story considered the Second Amendment to be the most important individual right of all:

The right of the citizens to keep and bear arms has justly been considered the palladium of the liberties of a republic; since it offers a strong moral check against usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them.

Joseph Story, “Commentaries on the Constitution of the United States” (1830), *quoted in* Les Adams, “The Second Amendment Primer” (1996).

Self-defense with firearms also protects against threats to liberty other than tyranny, such as terrorism. The disarming of pilots and passengers rendered airplanes easy prey for the 9/11 terrorists who, likewise unarmed with guns, took control and flew the planes into the World Trade Center and the Pentagon. Israel, long experienced in defending against terrorism, rejects gun control and promotes an armed citizenry as self-defense. Israeli anti-terrorism expert David Schiller attributed terrorist attacks against children to the immense publicity given to it by the media:

Schools/kindergartens make for very attractive targets for the deranged gunman as well as for the profit-oriented hostage gangsters or terrorist groups. [I]f you crave media attention, as for instance the PLO did [in Israel] in the '70s, nothing will catch the headlines better than an attack on a school full of kids."

David Schiller, "Israel's answer to eliminating school terrorism" *The Libertarian Enterprise*, No. 45 (May 1, 1999). Gun control merely exposes the population to greater exploitation by media-seeking terrorists.

**CONCLUSION**

The decision below should be affirmed.

Respectfully submitted,

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Dated: February 7, 2008