



IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRIDGEVILLE RIFLE & PISTOL )  
CLUB, LTD., *et al.*, )  
)  
*Plaintiffs Below, Appellants,* )  
)  
v. ) No. 15, 2017  
)  
DAVID SMALL, SECRETARY OF THE ) Appeal from the Superior Court  
DELAWARE DEPARTMENT OF ) of the State of Delaware  
NATURAL RESOURCES, *et al.*, ) C.A. No. S16C-06-018 THG  
)  
*Defendants Below, Appellees.* )

**AMICUS CURIAE BRIEF OF LAW ENFORCEMENT LEGAL DEFENSE  
FUND, LAW ENFORCEMENT ACTION NETWORK, AND RETIRED  
DELAWARE POLICE OFFICERS HOSFELT, SMITH, DEPUTY, EGOLF,  
MONAGHAN, BRIGGS, ROE, BRODE, CAPITAN, KONNICK, AND  
GUITTARI IN SUPPORT OF APPELLANTS AND REVERSAL**

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## STATEMENT OF INTEREST OF *AMICI CURIAE*

*Amici curiae* are the Law Enforcement Legal Defense Fund (“LELDF”), Law Enforcement Action Network (“LEAN”), and the following retired Delaware police officers: Chief James Hosfelt (Ret.), Chief J. Richard Smith (Ret.), Capt. David E. Deputy (Ret.), Capt. Jack A. Egolf (Ret.), Capt. Francis T. Monaghan III (Ret.), Lt. Gary A. Roe (Ret.), Lt. Lewis W. Briggs (Ret.), Sgt. Harold K. Brode (Ret.), Cpl. Reginald A. Capitan (Ret.), Cpl. Michael P. Konnick (Ret.), and Patrol Officer Nicholas (Berna) Guittari (Ret.) (collectively, “*amici*”).<sup>1</sup>

The Law Enforcement Legal Defense Fund, a 501(c)(3) non-profit organization headquartered in Alexandria, Virginia, supports America's law enforcement officers through educational efforts designed to inform the public and the media on the challenges of policing. It engages in instructional activities with and for the media to expose the realities of dynamic police encounters that too often involve feloniously armed, and non-compliant violent offenders, people in mental health crisis, and those with drug abuse issues. It also raises funds to help offset the often massive cost of defending individual law enforcement officers who have been wrongly charged with crimes in the performance of their duties. Over 25 years, LELDF has aided approximately one hundred officers in such cases.

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<sup>1</sup> More detailed descriptions of the individual *amici* are set forth in the accompanying Motion for Leave to File.

The Law Enforcement Action Network, a 501(c)(4) non-profit that is a sister organization to LELDF, is a grassroots organization that supports the men and women of professional law enforcement as they work to enforce the rule of law, and to support and defend the Constitution and law-abiding Americans in the free exercise of their Second Amendment rights. It helps inform members of Congress, state legislatures, and other public officials and the media about law enforcement matters and the criminal justice system.

As law enforcement groups and retired officers, *amici* are well-positioned to provide law enforcement insight into whether allowing carry of firearms by law-abiding citizens in state parks and forests actually would create the dangers posited by the agencies in their brief below and in the opinion of the Superior Court. Law enforcement experience shows that legally armed, law-abiding citizens do not pose a danger to public safety, but are instead an aid to law enforcement. Particularly, concealed carry license holders, who are the group most likely to carry firearms legally for self-protection in public, are exceptionally law abiding. In addition, criminological research demonstrates that defensive gun uses to ward off criminal attack are frequent in this country, even though in most cases shots are not fired.

Appellants consent to the filing of this *amicus* brief. Counsel for Appellees has stated that Appellees oppose its filing.

## SUMMARY OF ARGUMENT

Under intermediate scrutiny, governmental action must serve important objectives, be substantially related to achievement of those objectives, and must not burden the constitutional right more than necessary to achieve the objective. The agency defendants and the trial court have asserted that permitting law-abiding citizens to possess “unregulated” firearms in state parks and forests would create a “risk of harm” to the public and would “heighten the potential of injury or death” to visitors. They thus invoke “public safety” as justifying the ban.

However, the right to possess and carry firearms is guaranteed by Article I, § 20 of the Delaware Constitution, and the General Assembly has crafted a system of firearms laws in which individuals may generally carry firearms openly, and may carry firearms concealed if they obtain a concealed carry license, along with certain other rights and restrictions. If the agencies’ bans were to be invalidated, it would not create “an unlimited right” to carry firearms in state parks and forests, as the agencies contend. Instead, those areas would simply be subject to the same laws that apply elsewhere in Delaware.

No evidence has been cited to show that the feared threat to public safety would materialize, and a total ban on possession of firearms is overbroad under any balancing test.

Most people who legally carry firearms in public in Delaware for purposes

of defense carry them concealed. There is abundant information showing that concealed carry licensees are exceptionally law abiding. Although Delaware does not keep statistics on firearms discharges by concealed carry licensees, law enforcement experience reveals that licensees do not misuse firearms. Law enforcement officers also believe overwhelmingly that armed, law-abiding citizens, including concealed carry licensees, are an aid to law enforcement and help reduce crime.

One way in which armed citizens reduce crime is by using firearms defensively to ward off criminal attacks, usually without a shot being fired. Research shows that defensive gun uses occur frequently, probably well over a million times annually. A sizable, and probably growing proportion, of those defensive uses occur at places away from the intended victim's home.

## ARGUMENT

### I. THE AGENCIES' CONTENTION THAT BANNING POSSESSION OF FIREARMS IN STATE PARKS AND FORESTS IMPROVES PUBLIC SAFETY IS WITHOUT SUPPORT.

#### A. The burden is on the government to show that a public safety interest is advanced by these regulations and that they do not burden constitutional rights unnecessarily.

By administrative regulation, the Delaware Department of Natural Resources and Environmental Control (“DNREC”) bans possession of firearms in state parks, with no exceptions. 7 *Del. Admin. C.* § 9201-21, ¶ 21.1. Also by administration regulation, the Delaware Department of Agriculture (“DOA”) bans possession of firearms in state forests, with a limited exception for hunting. 3 *Del. Admin. C.* § 402-8.0, ¶ 8.8. Because possession is banned, the agencies’ regulations also amount to a total ban on carrying a firearm for lawful self-defense in state parks and state forests.

This Court recently applied intermediate scrutiny to determine whether certain restrictions on carry outside the home were justified in that case:

To survive intermediate scrutiny, governmental action must “serve important governmental objectives and [must be] substantially related to [the] achievement of those objectives.” The governmental action cannot burden the right more than is reasonably necessary to ensure that the asserted governmental objective is met.

*Doe v. Wilmington Housing Authority*, 88 A.3d 654, 666-67 (Del. 2014) (citing *Turnbull v. Fink*, 668 A.2d 1370, 1379 (Del. 1995); *United States v. Marzzarella*,

614 F.3d 85, 98 (3d Cir. 2010)).<sup>2</sup> Although the agencies have contended otherwise,<sup>3</sup> this Court made it clear that “the State has the burden of showing that the state action is constitutional.” *Doe*, 88 A.3d at 666.

**B. If the regulations were struck down, state parks and forests would simply be subject to the same set of laws that the General Assembly has enacted to govern the rest of Delaware.**

The agencies contended below that Plaintiffs seek an:

unlimited right to carry firearms of their choosing within State Parks and Forests at any time. They claim this right, regardless of the risk of harm presented to other members of the public.

A035. Similarly, the Superior Court expressed a fear that “unregulated firearms” would “heighten the potential of injury or death” to visitors to state parks and forests. *Bridgeville Rifle & Pistol Club, Ltd. v. Small*, 2016 WL 7428412, at \*5 (Del. Super. Ct. Dec. 23, 2016) (Ex. 1 at 4).

But invalidating the agencies’ bans would not leave possession and carrying of firearms “unregulated,” or result in some “unlimited right to carry.” It would simply subject possession and carry to the same limitations that apply throughout

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<sup>2</sup> *Amici* do not address the appropriate constitutional test or level of scrutiny to be applied, but the arguments are similar if any form of balancing is utilized: the agencies have not shown that their bans would actually advance any interest in public safety, nor have they shown that those regulations do not burden the constitutional right any more than is necessary.

<sup>3</sup> The agencies contended below that “The Plaintiffs bear the burden of showing that such reasonable restrictions on recreation, hunting, and defense on State property violate the Delaware Constitution.” A043.

the state, as prescribed by the Delaware Constitution and by the statutes passed by the General Assembly. Those laws permit widespread carry, and in general do not carve out geographical exceptions.

Article I, § 20, states that “A person has the right to keep and bear arms for the defense of self, family, home and State, and for hunting and recreational use.” DEL. CONST. art. I, § 20. The right to bear arms means to “carry” them (albeit not necessarily concealed without a license). *Griffin v. State*, 47 A.3d 487 (Del. 2012). The right to keep and bear arms has been recognized as a fundamental constitutional right by this Court. *Doe*, 88 A.3d at 664, 667. This Court also has plainly held that the protections provided by Article I, § 20 are not limited to the home. *Id.* at 665.

Delaware law generally permits carrying of firearms openly without a license. *Doe*, 88 A.3d at 663. Concealed carry of deadly weapons without a license is a felony in Delaware. 11 *Del. C.* § 1442. However, state law does allow individuals to carry concealed weapons, including firearms, if the individual has a concealed carry license issued pursuant to 11 *Del. C.* § 1441. In addition, Delaware recognizes concealed carry permits from certain other states, allowing permit holders from those states to carry concealed firearms in Delaware. 11 *Del. C.* § 1441(j). The statutes of this state also provide for the issuance of temporary concealed carry permits to out-of-state residents. 11 *Del. C.* § 1441(k). Police and

other peace officers are exempted from the concealed carry license requirements, and may carry on or off duty. 11 *Del. C.* § 1441(g).<sup>4</sup>

Thus, the right of citizens to legally possess firearms and to carry them openly in public places, and the ability of lawful license holders to carry them concealed in public places, is the policy of Delaware, and is protected both by the Constitution and by state laws enacted by the General Assembly. The rights and limitations prescribed by the legislature apply statewide. They apply in cities and towns, in the suburbs, in rural areas, on private property and, on the whole, on public property.<sup>5</sup> What makes state parks and state forests different? The agencies have offered no legal justification to support their contention that an enumerated, fundamental constitutional right can be entirely eliminated by an administrative regulation.

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<sup>4</sup> State law specially provides for issuance of concealed carry permits to retired police officers in certain circumstances. 11 *Del. C.* §1441(h). In addition, by the provisions of 11 *Del. C.* §1441A, Delaware has implemented the federal Law Enforcement Officers Safety Act of 2004, 18 U.S.C. §§ 926B, 926C, which permits active and retired law enforcement officers to carry concealed weapons within or outside of their home jurisdictions provided certain conditions are met.

<sup>5</sup> Besides prohibiting guns in detention facilities as contraband, 11 *Del. C.* §§ 1256, 1258, the only place-related legislation that the General Assembly has passed regarding carrying of firearms generally on a statewide basis is 11 *Del. C.* § 1457, relating to “Safe School and Recreation Zones.” That law provides enhanced penalties for acts that are already illegal if the unlawful act is done on or near school property, in a school vehicle, or at a recreation center, athletic field or sports stadium. It does not, however, prohibit concealed carry by a licensee in those places or open carry by non-prohibited persons of adult age.

**C. The agencies have cited no evidence regarding unique safety concerns in state parks and forests to justify abrogation of constitutional and statutory rights.**

From a law enforcement and public safety point of view, there is no justification for completely banning the possession and carry of firearms by law-abiding citizens for purposes of self-defense.

The trial court's opinion provides no evidence that these bans would actually promote public safety. The trial court merely states that "Firearms are designed to injure or kill." *Bridgeville Rifle & Pistol Club, Ltd. v. Small*, 2016 WL 7428412, at \*4 (Del. Super. Ct. Dec. 23, 2016) (Ex. 1 at 4). But as law enforcement officers are keenly aware, the purposes for which firearms are used depend on the individuals using them. Law enforcement personnel and law-abiding citizens will use them for lawful purposes, and criminals will use them to kill, threaten, or maim.

That opinion also states that the bans are designed to prevent "undue risk of harm" to visitors and that "permitting unregulated firearms" in state parks and forests would "heighten the potential of injury or death" to visitors." *Bridgeville*, 2016 WL 7428412, at \*5 (Ex. 1 at 4). These statements are not supported by any factual evidence. Furthermore, the obvious reply is that, if true, all of the State of Delaware presents an "undue risk of harm," and has a high "potential of injury or death," because the laws applicable to the lands in question would be identical to those applicable in the rest of the state if the agencies' regulations were to be

invalidated.

Regarding the need for self-defense, the trial court observed that “the need to respond to a threat with a firearm is diminished when firearms are prohibited in the area.” *Id.* That assumes that an armed criminal bent on murder, rape, or assault would be stopped in his tracks by an administrative regulation prohibiting possession of firearms. It is, in *amici’s* view, an assumption that is difficult to credit, and in any event is an unsupported one.

The section of the trial court’s opinion regarding the burden on plaintiffs’ rights consists of two *non sequiturs*. The opinion contends that there is no undue or unreasonable burden on plaintiffs’ constitutional rights to keep and bear arms because, first, they “remain free to hunt on State lands in accordance with the reasonable restrictions in place.” *Bridgeville*, 2016 WL 7428412, at \*5 (Ex. 1 at 4). But that addresses only hunting, which is only one part of the bundle of rights protected by Article I, § 20. It does not address individual self-defense, which the U.S. Supreme Court has called the “central component” of the right to keep and bear arms. *District of Columbia v. Heller*, 554 U.S. 570, 599 (2008). Regarding self-defense, the trial court offered only the enigmatic statement that “Their right to bear arms to protect themselves if the need for self-defense arises is not hindered but, rather, aided in effect by the presence of the Regulations.” *Bridgeville*, 2016 WL 7428412, at \*5 (Ex. 1 at 4). It is not explained how, when the need for arms

for self-defense actually arises, an individual is aided by being disarmed.

The agencies' regulations also paint with too broad a brush. Any firearms regulation that bans all possession is almost certain to be overbroad, because it imposes the most extreme remedy, and thus is not tailored to the interest that is allegedly sought to be protected.

In addition, the regulations fail to distinguish between mere possession of firearms, and the discharge of firearms. If there is a concern that discharging firearms could create a risk to bystanders in certain areas, or under certain conditions, then a restriction on discharges could be adopted, rather than imposing a total ban on possession. In *Doe*, this Court noted that the policy at issue “does more than proscribe the unsafe *use* of a firearm. It also prohibits *possession* in the [areas concerned] . . . .” *Doe*, 88 A.3d at 667 (emphasis in original). Accordingly, the government “must show more than a general safety concern and it has not done so.” *Id.* Neither has it done so here.

## II. **LAWFUL CARRYING OF FIREARMS BY CIVILIANS IN DELAWARE IS PREDOMINANTLY DONE BY CONCEALED CARRY LICENSE HOLDERS.**

If the agencies' bans were lifted, who would likely carry firearms in state parks and forests, and under what conditions? Pursuant to state law in effect throughout the rest of Delaware, individuals can engage in open carry without a license, *Doe*, 88 A.3d at 663, and individuals with a concealed carry license can carry firearms concealed. 11 *Del. C.* § 1441. Active and off duty police officers can carry, as can those active and retired law enforcement officers, from Delaware and other states, whose right to carry is recognized by 11 *Del. C.* § 1441(h), 11 *Del. C.* § 1441A, and 18 U.S.C. §§ 926B, 926C.

Common experience, and the experience of law enforcement officers, attests that open carry is unusual for defense of self and family outside the home or off one's own property. Open carry of shotguns and rifles is unwieldy for self-protection outside the home, whether on foot or in a vehicle, and transporting of loaded shotguns and rifles in a vehicle is unlawful. 7 *Del. C.* § 708. Except for carry by law enforcement officers, one rarely sees open carry of handguns in holsters in public places, even though the constitutional right to do so exists. Many individuals may feel that they may attract undue attention by carrying a firearm openly, that other people may find it alarming, or that criminals may try to steal the weapon or turn it on them. It is not the intention of *amici* to debate the merits of

open carry vs. concealed carry, but only to note that most law-abiding individuals who wish to carry firearms for protection opt to obtain a license.

There is no reason to believe that the situation would be significantly different in state parks and forests. Certainly, the agencies have made no such showing. Instead, as shown below, the facts demonstrate that concealed carry holders are exceptionally law abiding, that law enforcement officers know that and support carrying of firearms by law-abiding citizens to help reduce crime, and that defensive gun use to protect innocent life against criminal attacks is widespread in this country.

### III. CONCEALED CARRY LICENSEES ARE EXCEPTIONALLY LAW ABIDING.

In several “shall issue” states (that is, states where a carry license must be issued if the applicant meets certain objective criteria, and there is little or no discretion on the part of the issuing agency) a state agency produces annual reports of all criminal justice incidents involving concealed handgun licensees. While the details of how the data are reported vary among the states, the reports unanimously show that licensees as a group are highly law-abiding.

For example, Colorado issued 154,434 concealed handgun carry permits between 2009 and 2013.<sup>6</sup> During that same period, only 1,390 were revoked, of which 931 (.6% of permits issued) were due to an arrest. Contrast this with the arrests of more than 230,000 individuals in Colorado *in the year 2013 alone*,<sup>7</sup> constituting 4.4% of the population.<sup>8</sup> Data from other states are consistent:

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<sup>6</sup> David Kopel, *Guns on University Campuses: The Colorado Experience*, The Washington Post (Apr. 20, 2015), [https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/04/20/guns-on-university-campuses-the-colorado-experience/?utm\\_term=.98ec9def0fa7](https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/04/20/guns-on-university-campuses-the-colorado-experience/?utm_term=.98ec9def0fa7).

<sup>7</sup> *Crime in the United States: Table 69, Arrests by State, 2013*, U.S. Department of Justice, Federal Bureau of Investigation, [https://ucr.fbi.gov/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/tables/table-69/table\\_69\\_arrest\\_by\\_state\\_2013.xls](https://ucr.fbi.gov/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/tables/table-69/table_69_arrest_by_state_2013.xls).

<sup>8</sup> Colorado had an estimated population of 5,271,132 in 2013. <https://www.census.gov/data/datasets/2015/demo/popest/state-total.html>.

*Minnesota:* One handgun crime (broadly defined, such as driving while under the influence if a handgun is in the car) per 1,423 licensees.<sup>9</sup>

*Michigan:* 161 charges of misdeeds involving handguns (including duplicate charges for one event, and charges which did not result in a conviction) in 2007 and 2008 out of an approximate Michigan population of 190,000 licensees.

*Ohio:* 142,732 permanent licenses issued since 2004, and 637 revocations for any reason, including moving out of state.

*Louisiana:* Licensee gun misuse rate, all reasons, of less than 1 in 1,000.

*Texas:* Concealed handgun licensees are 79 percent less likely to be convicted of crimes than the non-licensee population. Only 2/10 of 1 percent of licensees were ever convicted of a violent crime or firearms regulation crime.

*Florida:* The data show a rate of 27 firearms crimes per 100,000 licensees.

In sum, people with carry licenses are *much more law-abiding* than the general population.

Delaware does not maintain statistics on discharges of firearms by licensees. However, the experience of law enforcement personnel in a position to know shows that there have been virtually no problems with licensees in committing crimes or otherwise misusing firearms. According to a recent article:

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<sup>9</sup> The full data and details for Minnesota, Michigan, Ohio, Louisiana, Texas, and Florida are presented in David B. Kopel, *Pretend "Gun-Free" School Zones*, 42 CONN. L. REV. 515, 564-69 (2009).

The Dover Police Department encounters people carrying legally concealed deadly weapons, but can't remember a time when one was discharged. There have been no investigations into how a legally concealed weapon was handled during an incident, according to Dover police. The Delaware Department of Justice doesn't have researchable data on permitted concealed deadly weapons involved in any matters, and do not remember any issues either. A survey of some Justice prosecutors evoked no specific circumstances, spokesman Carl Kanefsky said. "We don't track cases in a way we could search for that, and no one had any anecdotal recollections," Mr. Kanefsky said.<sup>10</sup>

Instead, evidence and law enforcement experience show that most violent crimes are committed by repeat offenders, who would almost always be ineligible to receive a concealed carry license (assuming, implausibly, that criminals would apply for one). According to the New York City Police Department, over a three year period more than 90 percent of the killers and more than 50 percent of the homicide victims in New York City had criminal records. Jo Craven McGinty, *New York Killers, and Those Killed, by Numbers*, New York Times (April 28, 2006).

Data from another metropolitan area confirm this pattern. The most recent annual report for Milwaukee homicides states that "Almost 100% of the 2015 known suspects had a criminal history" and adds that "The overwhelming majority of suspects have criminal histories going back to 2005." Milwaukee Homicide

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<sup>10</sup> Craig Anderson, *More Delawareans seeking personal protection*, Delaware State News (Jan. 30, 2016), <http://delawarestatenews.net/news/more-delawareans-seeking-personal-protection/>

Review Commission, *Annual Report 2015, Homicide and Non-Fatal Shootings* 48.<sup>11</sup> Moreover, 83% of the homicide victims had prior arrest histories. *Id.* at 42. Most unlawful homicides, at least in urban areas, involve criminals with a prior record, not law-abiding citizens who suddenly start shooting. Law-abiding concealed carry licensees in Delaware, who safely carry firearms elsewhere in public throughout the state, would not create a danger in state parks and forests.

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<sup>11</sup><http://city.milwaukee.gov/ImageLibrary/Groups/cityHRC/reports/2015AnnualReportFINAL.pdf>

#### **IV. DEFENSIVE GUN USE AGAINST CRIMINAL ATTACK IS PREVALENT AND SAVES LIVES.**

The agencies argued below that the Plaintiffs had made “no showing of any plausible danger within State public lands presenting a need for self-defense or the defense of family . . . .” A049. This reverses the burden of proof, because the burden is not on citizens to show that they need firearms for self-defense. Rather, citizens have the constitutional right to possess and carry firearms for various purposes, including self-defense, and the burden is on the state to show some very strong reason, that will actually have the intended effect and not unnecessarily burden protected conduct, for curtailing that right.

Nevertheless, the agencies call any need for self-defense or the defense of family within state parks or forests “theoretical,” and assert that “It is hard to even imagine a legitimate defensive use of a firearm at Lums Pond or Killens Pond or Cape Henlopen, or in Blackbird State Forest.” A035, A050.

But violent crime and threats do occur in state parks and forests. On September 20, 1986, 28-year-old Jane Marie Prichard, a student working on her master’s degree in botany, was brutally murdered by a shotgun blast while she was performing research at Delaware’s Blackbird State Forest. Her partially clothed body was found off a trail by a couple on a camping trip to Blackbird State Forest.

The case was never solved, but is now being revisited as a “cold case.”<sup>12</sup>

In 2001, the body of Dr. Andrew Bagby, was discovered in a state park in Pennsylvania. He was enrolled in a Family Practice medical residency and was 27 years old. His body was discovered by two people out for an early morning walk in the state park. Bagby had been shot five times: once in the head, chest and face, and twice in the buttocks, as well as suffering a blow to the head.<sup>13</sup>

It is not necessary to multiply examples. One article catalogs fourteen murders and attempted murders resulting in physical injury (including at least one murder involving rape and torture) along the Appalachian Trail.<sup>14</sup>

Allowing law abiding citizens with concealed carry permits to possess their firearms in state parks and forests will not threaten public safety; rather, it will aid law enforcement and help reduce crime. That is the overwhelming opinion of experienced law enforcement personnel as revealed in a recent, large scale, national survey.

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<sup>12</sup> Robin Brown, *Cold case unit tackles 1986 killing of student in Delaware forest*, The News Journal (Jun. 12, 2015), <http://www.delawareonline.com/story/news/local/2015/06/12/student-slaying-first-investigation-new-cold-case-unit/71126428/>.

<sup>13</sup> Richard Gazarik, *Police investigate doctor's murder at area state park*, TribLIVE (May 14, 2012), [http://triblive.com/x/pittsburghtrib/news/westmoreland/s\\_2751.html](http://triblive.com/x/pittsburghtrib/news/westmoreland/s_2751.html); Michael A. Fuoco, *Film gives a shocking look at killing*, Pittsburgh Post-Gazette (Jan. 8, 2009), <http://www.post-gazette.com/local/westmoreland/2009/01/08/Film-gives-a-shocking-look-at-killing/stories/200901080306>.

<sup>14</sup> Mark Kelley, *Murder on the Appalachian Trail*, Adventure Possible (Aug. 1, 2014), <http://adventurepossible.com/adventure/murder-on-the-appalachian-trail/>.

The national law enforcement organization PoliceOne conducted its Gun Policy & Law Enforcement Survey between March 4 and March 13, 2013, receiving 15,595 responses from verified police professionals across all ranks and department sizes.<sup>15</sup> Respondents were asked: “Do you support the concealed carry of firearms by civilians who have not been convicted of a felony and/or not been deemed psychologically/medically incapable?” PoliceOne Survey, Question 19. The results were overwhelming: 91.3% of the respondents selected “Yes, without question and without further restrictions,” and only 8.6% were of the belief that concealed carry should be restricted to law enforcement officers, were neutral, or were unsure.

The respondents were also asked: “On a scale of one to five—one being low and five being high—how important do you think legally-armed citizens are to reducing crime rates overall”? *Id.*, Question 20. Over half of these law enforcement professionals (54.7%) believed legally-armed citizens should be given the top ranking score of “five.” A total of 90.4% ranked legally-armed citizens as being in the range of three to five on the scale of importance. Those who believed that

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<sup>15</sup> PoliceOne, *Gun Policy & Law Enforcement Survey* (2013), [http://ddq74coujkl1i.cloudfront.net/p1\\_gunsurveysummary\\_2013.pdf](http://ddq74coujkl1i.cloudfront.net/p1_gunsurveysummary_2013.pdf) (“PoliceOne Survey”). A description of the study can be found at <http://www.policeone.com/police/products/press-releases/6188461-policeone-com-releases-survey-of-15-000-law-enforcement-professionals-about-u-s-gun-control-policies/>.

armed citizens were of relatively little or no importance (one to two on the ranking scale) constituted only 9.6% of respondents. *Id.*

Police leadership shares that view. The National Association of Chiefs of Police recently posted the results of their 28<sup>th</sup> Annual Survey (2016), in which survey questions were posed by mail to Chiefs of Police and Sheriffs in the United States. According to NACOP, the survey “represents a broad cross section of professional command officers involving every state and every size department.”<sup>16</sup> In answer to the question “Can qualified, law-abiding armed citizens help law enforcement reduce violent criminal activity?” over three-fourths (76%) said “Yes,” more than four times the percentage who said “No” (18.6%). Regarding concealed carry specifically, the chiefs and sheriffs were asked “Does your department support nationwide recognition of state issued concealed weapon permits?” Of these law enforcement leaders, 86.4% answered “Yes,” eight times as many as the 10.6% who answered “No.”<sup>17</sup>

One way in which licensed carry promotes the safety of individuals and reduces crime is when individuals licensed to carry use their firearms to repel an attack. There have been more than a dozen major surveys regarding the frequency

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<sup>16</sup> See <http://www.nacoponline.org/>.

<sup>17</sup> See also Cody Derespina, *Growing number of police chiefs, sheriffs join call to arms*, FOXNEWS.COM (Jan. 15, 2016), <http://www.foxnews.com/us/2016/01/15/growing-number-police-chiefs-sheriffs-join-call-to-arms.html>.

of defensive gun use (“DGU”) in the modern United States. The results of the surveys range from a low of 760,000 annually to a high of 3 million. The more recent studies, which report higher numbers, are much more methodologically sophisticated. GARY KLECK, TARGETING GUNS: FIREARMS AND THEIR CONTROL 149-64, 187-89 (1997).

Gary Kleck and Mark Gertz conducted an especially thorough survey in 1993, with stringent safeguards to weed out respondents who might misdescribe or misdate a DGU story. Kleck and Gertz found results indicating between 2.2 and 2.5 million DGUs annually. Gary Kleck & Marc Gertz, *Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun*, 86 J. Crim. L. & Criminol. 150 (1995).

The Kleck/Gertz survey found that most defensive uses involved handguns, and the large majority of defensive uses do not involve firing the weapon, but merely displaying it to deter an attacker. *Id.* at 175 (80 percent of DGUs are handguns; 76 percent do not involve a shot being fired).<sup>18</sup>

Philip Cook of Duke and Jens Ludwig of Georgetown were skeptical of

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<sup>18</sup> Professor Kleck’s research found that 26.8% of DGUs occurred in a location away from the user’s home, and that another 35.9% took place in places near the defender’s home (yard, carport, street adjacent to the home, etc.) GARY KLECK, TARGETING GUNS 192 (1997). The percentages of DGUs in a location away from home are likely to be significantly larger now, because the number of concealed carry permit holders has risen from roughly 2.7 million in 1999 to 14.5 million in 2016. Crime Prevention Research Center, *Concealed Carry Permit Holders Across the United States: 2016* 3.

Kleck's results, so they conducted their own survey for the Police Foundation. That survey produced an estimate of 1.46 million DGUs. PHILIP COOK & JENS LUDWIG, *GUNS IN AMERICA: RESULTS OF A COMPREHENSIVE NATIONAL SURVEY OF FIREARMS OWNERSHIP AND USE* (1996). The National Opinion Research Center argues that the actual annual DGU figure is in the range of 256,500 to 1,210,000. Tom W. Smith, *A Call for a Truce in the DGU War*, 87 *J. Crim. L. & Criminol.* 1462 (1997). There is no need to determine the precise figure. All social science research shows that defensive gun use is frequent in the United States.

Thus, the need for protection outside the home, including in state parks and forests is not "theoretical," as the agencies claim, and legally armed citizens often save lives by repelling criminal attacks.

## CONCLUSION

The decision of the Superior Court should be reversed.

Respectfully Submitted,

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