



IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRIDGEVILLE RIFLE & PISTOL CLUB,)
LTD.; et al.)

Plaintiffs Below, Appellants,)

v.)

DAVID SMALL, SECRETARY OF THE)
DELAWARE DEPARTMENT OF)
NATURAL RESOURCES AND)
ENVIRONMENTAL CONTROL; et al.,)

Defendants Below, Appellees.)

C.A. No. 15, 2017

Appeal from the Superior
Court of the State of Delaware,
C.A. No. S16C-06-0018 THG

**AMICUS BRIEF OF THE LAW CENTER TO PREVENT GUN
VIOLENCE IN SUPPORT OF APPELLEES AND AFFIRMANCE**

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INTEREST OF *AMICUS CURIAE*

Amicus curiae the Law Center to Prevent Gun Violence (“Law Center”) is a national, nonprofit organization dedicated to promoting gun control and firearms-related education. Founded after an assault weapon massacre at a San Francisco law firm in 1993, the Law Center provides comprehensive legal expertise in support of common sense gun laws, tracking and analyzing federal, state, and local firearms legislation, monitoring Second Amendment litigation nationwide, and providing support to jurisdictions facing legal challenges. The Law Center has provided informed analysis as an *amicus* in numerous firearm-related cases nationwide, including before the Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), *United States v. Castleman*, 134 S. Ct. 1405 (2014), and *Voisine v. United States*, 136 S. Ct. 2272 (2016), as well as the Third Circuit in *United States v. Palmetto State Armory PA-15 Machinegun Receiver/Frame*, 822 F.3d 136 (3d Cir. 2016).

The Law Center files this brief pursuant to Rule 28 and by leave of Court.

SUMMARY OF ARGUMENT

Appellants challenge regulations promulgated by the Department of Natural Resources and Environmental Control, and the Department of Agriculture (collectively, the “Agencies”), prohibiting the possession of firearms in Delaware State Parks and Forests, respectively. *See* 7 Del. Admin. Code § 9201-21, ¶ 21.1;

3 Del. Admin. Code § 402-8.0, ¶ 8.8 (collectively, the “Regulations”). In particular, Appellants claim the Regulations violate the right to bear arms afforded by Section 20 of the Delaware Constitution (hereinafter, “Section 20”).

Public parks and forests, however, have consistently been found to constitute sensitive areas that have long been subject to increased government regulation. Moreover, the Agencies’ legitimate need to protect the safety of visitors to such areas far outweighs the protections guaranteed by Section 20. Regardless, the Regulations pass constitutional muster under intermediate scrutiny, the appropriate analytical standard applicable here.

To assist the Court in its inquiry, *amicus* presents current and reputable research that supports Appellees’ contention that allowing broader concealed-carry of firearms has resulted in a dramatic *increase* in violent crime and accidents—not a decrease. Further, research shows that firearms are rarely used in self-defense and disproves claims put forward by Appellants and *amici* that concealed-carry licensees themselves are inherently more law-abiding than the regular population. Thus, the Agencies acted within their authority in promulgating the constitutionally-permissible Regulations at issue.

ARGUMENT

THE REGULATIONS ARE CONSTITUTIONALLY VALID RESTRICTIONS ON CARRYING FIREARMS OUTSIDE THE HOME

As Appellants concede, Section 20 does not protect an inviolable right to carry firearms outside one's home. *See* Appellants' Br. 22 n.16, 28; *see also Doe v. Wilmington Housing Authority*, 88 A.3d 654, 667 (Del. 2014). It is well established that restricting firearms in government buildings or sensitive places where children gather, such as schools, does not offend the Constitution. The locations subject to the Regulations—public recreation areas where large numbers of families, children, and tourists routinely gather—are sensitive areas where restrictions on the right to carry concealed firearms are consistent with the right to keep and bear arms. Regardless, the Regulations easily pass constitutional muster under intermediate scrutiny, the appropriate analytical standard recognized by both this Court and federal courts. *See Doe*, 88 A.3d at 666–67; *Drake v. Filko*, 724 F.3d 426, 436 (3d Cir. 2013).

I. Because State Parks and Forests Are “Sensitive Areas,” The Regulations Fall Outside Section 20’s Protections

It is axiomatic that the possession of firearms may be prohibited in sensitive areas. *See, e.g., Doe*, 88 A.3d at 668 (recognizing that a ban on firearms could be upheld in areas where, for example, “state employees work and state business is being done”); *District of Columbia v. Heller*, 554 U.S. 570, 626–27 & n.26 (2008) (acknowledging that limitations on the right to carry weapons in “sensitive places

such as schools and government buildings” are presumptively lawful); *United States v. Marzzarella*, 614 F.3d 85, 91–92 (3d Cir. 2010) (same); *Bonidy v. United States Postal Serv.*, 790 F.3d 1121, 1129 (10th Cir. 2015) (upholding regulation prohibiting firearms in government-owned parking lot connected to federal building); *Nordyke v. King*, 681 F.3d 1041, 1045 (9th Cir. 2012) (en banc) (upholding regulations on county property). Appellants do not suggest otherwise, conceding that “the Legislature can ban firearms in ‘sensitive places’ and some government buildings” and citing a range of examples in which Delaware Legislature has done just that. *See* Appellants’ Br. 22 n.16, 28.

The State Parks and Forests at issue here, of course, are publicly owned and are more analogous to sensitive areas such as schools, municipal parks, or government buildings—where limitations on the right to carry firearms have been found presumptively lawful—than they are to the home, where such limitations would be more problematic. *See, e.g., Griffin v. State*, 47 A.3d 487, 491 (Del. 2012).

Moreover, public recreation areas similar to those affected by the Regulations have long been viewed as uniquely sensitive, given the large number of families, children, and tourists. As the Tenth Circuit explained: “The right to carry weapons in public for self-defense poses inherent risks to others. Firearms may create or exacerbate accidents or deadly encounters, as the longstanding bans

on private firearms in airports and courthouses illustrate.” *Bonidy*, 790 F.3d at 1126. Indeed, prohibitions on firearms in public recreation areas predate many recreational areas themselves,¹ and many such restrictions remain in force today.² And while Congress has recognized a limited right to carry concealed firearms in National Parks, possession is permitted *only if* doing so complies with the laws of the state in which the park is located. *See* 54 U.S.C. § 104906(b)(1)–(2). This decision to conform federal regulations to state law reflects Congress’ desire to “recognize the expertise of the States” as it pertains to regulating firearms on public lands. *See* 73 Fed. Reg. 74,966, 74,967 (Dec. 10, 2008) (to be codified at 36 C.F.R. pt. 2, 50 C.F.R. pt. 27).

¹ The first-published edition of the Federal Register in 1936 prohibited firearms, “except upon written permission of the superintendent or custodian,” in all National Parks and Monuments controlled by the National Park Service or Department of the Interior. *See* 1 Fed. Reg. 672, 674 (Jun. 27, 1936). And from the moment Congress gave the U.S. Army Corps of Engineers authority to designate and maintain public recreational facilities in 1946, the Corps restricted firearms on the lands it administered, prohibiting “[l]oaded rifles, loaded pistols, and explosives,” while permitting hunting, where authorized. *See* 11 Fed. Reg. 9278, 9279) (Aug. 24, 1946) (originally codified at 36 C.F.R. § 301.8).

² Not including Delaware, at least 13 states and the District of Columbia—together constituting 34% of the U.S.—currently impose firearm restrictions on at least some public lands. *See, e.g.*, Ala. Code § 9-11-304; Ark. Code Ann. § 5-73-122; Cal. Code Regs. tit. 14, § 4313; D.C. Code § 22-4502.01; 430 Ill. Comp. Stat. 66 / 65; Minn. R. 6136.0550, 6218.0100; Md. Code. Ann., Crim. Law § 4-209; Mont. Code Ann. §§ 45-8-351, 87-5-401; Neb. Rev. Stat. §§ 37-708, 37-712; N.C. Gen. Stat. § 14-409.40(f); N.M. Stat. Ann. § 17-2-12; N.Y. Parks Rec. & Hist. Preserv. § 375.1(p); N.D. Cent. Code § 20.1-11-13; Vt. Stat. Ann. tit. 10, § 5226.

But even if the Court were not inclined to find that Delaware's parks and forests are sensitive areas, it should nonetheless uphold the Regulations.³ The Agencies' duty to protect the safety of visitors is among the most sacrosanct of the state's police powers. The extensive body of research discussed below justifies the Regulations, which do not offend the protections related to the carrying of firearms outside the home afforded under Section 20.

II. The Regulations Easily Pass Constitutional Muster Under Intermediate Scrutiny

Both this Court and the Third Circuit recognize that intermediate scrutiny is the appropriate standard for analyzing regulations that limit the right to bear arms in public spaces. *See Doe v. Wilmington Housing Authority*, 88 A.3d 654, 666–67 (Del. 2014); *Drake v. Filko*, 724 F.3d 426, 436 (3d Cir. 2013). Under an intermediate scrutiny analysis, regulations limiting fundamental rights are balanced

³ Circuit courts have upheld the validity of similar firearms regulations in public recreational areas and rejected challenges analogous to Appellants' without relying on the sensitive area determination. *See, e.g., GeorgiaCarry.Org, Inc. v. U.S. Army Corps of Eng'rs*, 788 F.3d 1318, 1329 (11th Cir. 2015) (rejecting Second Amendment challenge to prohibition on possessing loaded firearms on property managed by U.S. Army Corps of Engineers that did not completely destroy the constitutional right); *United States v. Masciandaro*, 638 F.3d 458, 475 (4th Cir. 2011) (upholding regulation prohibiting loaded firearms in vehicles in national parks under intermediate scrutiny). The attempt by Appellants' *amici* to minimize these cases by pointing to minor distinctions between the Regulations and the rules upheld in *Masciandaro* and *GeorgiaCarry.Org* is unavailing. Notwithstanding that no two regulations are identical, both *Masciandaro* and *GeorgiaCarry.Org* affirmed that firearms are amenable to regulation in areas "specifically designated for recreation." *GeorgiaCarry.Org*, 788 F.3d at 1326; *Masciandaro*, 638 F.3d at 473.

against the need to protect public safety and other important government interests. *See Doe*, 88 A.3d at 666–67. “To survive intermediate scrutiny, governmental action must serve important governmental objectives and [must be] substantially related to [the] achievement of those objectives.” *Id.* at 666 (citation and quotation marks omitted). The lower court concluded that the Regulations met this standard, holding that the Agencies acted reasonably in concluding that “unregulated firearms in State Parks and State Forests would heighten the potential of injury or death to the visitors thereto.” *Bridgeville Rifle & Pistol Club, Ltd. v. Small*, No. S16C-06-018 THG, 2016 Del. Super. LEXIS 647, at *8 (Del. Super. Ct. Dec. 23, 2016).

A. The Agencies Have a Legitimate Interest In Protecting Public Safety

The lower court appropriately recognized that “[w]ithout question, ensuring the safety of all visitors [was] an important consideration” for the Agencies in promulgating the Regulations. *See id.* at *10; *see also Drake*, 724 F.3d at 437 (“The State ... undoubtedly [has], a significant, substantial and important interest in protecting its citizens’ safety.”); *District of Columbia v. Heller*, 554 U.S. 570, 689 (2008) (Breyer, J., dissenting) (“[A]lmost every gun-control regulation will seek to advance ... a primary concern of every government—a concern for the safety and indeed the lives of its citizens.”) (citation and internal quotation marks omitted).

A state's interest is greater in public spaces because "as we move outside the home, firearm rights have always been more limited, because public safety interests often outweigh individual interests in self-defense." *United States v. Masciandaro*, 638 F.3d 458, 470 (4th Cir. 2011) (citing *Heller*, 554 U.S. at 626). Thus, while this Court has recognized that the state's interest in regulating gun possession is comparatively weaker in the home, given the "relatively minimal threat to public safety," *Griffin v. State*, 47 A.3d 487, 491 (Del. 2012), "where the government is a proprietor or employer"—as in the areas at issue here—"it has a legitimate interest in controlling unsafe or disruptive behavior on its property." *Doe*, 88 A.3d at 668.

B. Substantial and Credible Social Science Supports the Agencies' Conclusion that the Regulations Are Necessary To Protect Public Safety

The overwhelming weight of credible social science research demonstrates a direct link between the Regulations at issue and the Agencies' legitimate interest in protecting public safety. The data demonstrates that firearms are *rarely* used in self-defense and that firearm ownership is associated with *higher* levels of crime. The evidence plainly does not support Appellants' assertion that concealed-carry licensees pose no danger to society, and it supports the Agencies' conclusion that the Regulations promote their interest in protecting the public by minimizing the risks of accidental shootings in Delaware's parks and forests.

Despite this substantial body of research, Appellants and their *amici* contend there is a “mountain of evidence that the carriage of firearms by such individuals promotes, rather than impairs, public safety,” Pink Pistols Br. 1, that “legally armed, law abiding citizens do not pose a danger to public safety,” and that “legally armed citizens often save lives by repelling criminal attacks,” LELDF Br. 2, 21. As demonstrated below, the supposed evidence on which these assertions are based has been widely discredited, and is both outdated and misleading.⁴

Even assuming there were equally credible evidence on both sides of the issue, intermediate scrutiny allows the Agencies to draw upon the research *they* believe to be the most reliable when formulating policies to protect public safety.⁵

⁴ The problems social scientists face when trying to empirically measure criminal behavior and the inherent limitations of attempts to do so are well-recognized. *See generally* JOEL L. HOROWITZ, *Appendix D: Statistical Issues in the Evaluation of the Effects of Right to Carry Laws*, in FIREARMS AND VIOLENCE—A CRITICAL REVIEW 299–308 (Charles F. Wellford et al. eds., 2004) (discussing problems created both by omitting or controlling for too many variables in analyzing the effects of right-to-carry laws).

⁵ *See Drake v. Filko*, 724 F.3d 426, 439 (3d Cir. 2013) (“Even accepting that there may be conflicting empirical evidence as to the relationship between public handgun carrying and public safety, this does not suggest, let alone compel, a conclusion that the ‘fit’ between [the state’s] individualized, tailored approach and public safety is not ‘reasonable’”); *accord Kachalsky v. Cnty. of Westchester*, 701 F.3d 81, 97 (2d Cir. 2012) (clarifying that under intermediate scrutiny, a court’s role is “to assure that, in formulating its judgments,” the state “has drawn reasonable inferences based on substantial evidence”) (*citing Turner Broadcast Systems, Inc. v. FCC*, 512 U.S. 622, 665 (1994)).

Thus, the more modern and reputable research available to the Agencies demonstrates that the Regulations pass constitutional muster.

1. *Firearms Are Rarely Used in Self-defense and Do Not Increase Safety*

The most reliable data demonstrates that crime victims rarely use guns in self-defense, and persons brandishing firearms are no safer than other crime victims. This evidence rebuts any argument that defensive gun uses by victims are “at least as common as offensive uses by criminals,” *Pink Pistols* Br. 9, and that defensive gun-use “saves lives,” *see* LELDF Br. 16.

Guns are rarely used defensively to thwart crime: according to the National Crime Victimization Survey, victims of violent crimes use a firearm in less than 1% of all criminal incidents.⁶ In an attempt to suggest defensive gun use is more routine, Appellants’ *amici* point to a 1993 paper claiming that upwards of 2.5 million defensive gun uses occur each year. *See* LELDF Br. 20. But the nation’s leading firearm researchers have concluded that these results “cannot be accepted as valid” because the results are impossibly high.⁷ For example, the number of

⁶ *See* David Hemenway & Sara J. Solnick, *The Epidemiology of Self-Defense Gun Use—Evidence From the National Crime Victimization Surveys 2007–2011*, 79 PREVENTIVE MED. 22, 23 (2015).

⁷ *See* David Hemenway, *Survey Research and Self-Defense Gun Use: An Explanation of Extreme Overestimates*, 87 J. CRIM. L. & CRIMINOLOGY 1430, 1430 (1997). Estimates of defensive gun use can be inflated for numerous reasons. “Telescoping,” or mistakenly believing that an incident occurred during the time period in question, can increase reported incidents by 40–50%. *See*

rapes involving defensive gun-use cited by the 1993 study *exceeds the overall number* of rapes reported.⁸ Additionally, the 1993 study found that 2.5% of all respondents reported being robbed, translating to five million robberies nationwide; however, only *1.2 million robberies were reported* in 1992.⁹

Credible research, on the other hand, demonstrates that incidences of defensive gun use are dwarfed by occasions in which guns are used to threaten or commit crimes. In a Harvard University survey, researchers attempted to “be as conservative as possible” by eliminating hostile incidents of offensive gun use, but including almost all of the reports of self-defense.¹⁰ Despite this conservative methodology, the incidence of gun use for self-defense was far outweighed by reports of gun threats: more than three-times as many respondents reported being threatened with guns as reported using them in self-defense.¹¹

David Hemenway et al., *Gun Use in the United States—Results From Two National Surveys*, INJURY PREVENTION 263, 263 (2000). Moreover, incorrect reports of self-defense gun can be magnified because the incidents are rare compared to the overall sample size. See PHILIP J. COOK & JENS LUDWIG, NAT’L INSTITUTE OF JUSTICE, GUNS IN AMERICA: NATIONAL SURVEY ON PRIVATE OWNERSHIP AND USE OF FIREARMS 10 (May 1997). “[S]mall percentage bias, when extrapolated, can lead to extreme overestimates” and the author of the 1993 paper “[did] little to reduce the bias or to validate their findings by external measures.” Hemenway, *supra* note 7, at 1431.

⁸ See Cook & Ludwig, *supra* note 7, at 9.

⁹ See Hemenway, *supra* note 7, at 1441.

¹⁰ Hemenway et al., *supra* note 7, at 266.

¹¹ See *id.* at 265.

Reputable research also indicates that persons who carry firearms are no safer than other victims of crimes. In fact, research shows that persons who carry guns are more than four times more likely to be shot in an assault; such persons may escalate conflicts or have the firearm co-opted by an assailant.¹² Evidence indicates that the likelihood of injury remains identical regardless of whether a gun is used in self-defense or the victim takes no protective action.¹³

2. *Concealed Carry Laws Are Associated With Higher Levels of Violent Crime*

According to the most recent and comprehensive study of the relationship between crime and laws permitting guns in public, conducted by researchers at Stanford and Johns Hopkins Universities, permissive concealed-carry laws are associated with higher rates of murder, aggravated assault, robbery, and burglary.¹⁴ University of Chicago professor Mark Duggan conducted a similar analysis, concluding that the data weakened any “claim that [concealed-carry] legislation

¹² Charles C. Branas et al., *Investigating The Link Between Gun Possession and Gun Assault*, 99 AM. J. PUB. HEALTH 2034, 2037 (2009).

¹³ Hemenway & Solnick, *supra* note 6, at 24.

¹⁴ Abhay Aneja et al., *The Impact of Right to Carry Laws and the NRC Report—The Latest Lessons for the Empirical Evaluation of Law and Policy* 58 (Stanford Law & Economics Olin, Working Paper No. 461, 2014).

could plausibly have reduced violent crime rates.”¹⁵ Duggan also found that increased gun ownership more broadly is associated with a higher homicide rate.¹⁶

In an attempt to cast doubt on these studies, Appellants’ *amici* point to an outdated and disproven book—John Lott’s *More Guns, Less Crime*¹⁷—which they argue proves that “laws requiring the issuance of gun-carry permits to law-abiding citizens are strongly associated with fewer murders, aggravated assaults, and rapes.” *Pink Pistols* Br. 12. However, the limitations of Lott’s data and methodology are well-recognized and the conclusion that right-to-carry laws were associated with lower crime-rates has been widely discredited.¹⁸ Lott’s findings resulted from a combination of methodological errors and the fact that his data

¹⁵ See Mark Duggan, *More Guns, More Crime*, 109 J. POL. ECON. 1086, 1089 (2001).

¹⁶ See *id.* at 1088.

¹⁷ JOHN R. LOTT, JR., *MORE GUNS LESS CRIME* (3d ed. 2010).

¹⁸ See, e.g., CHARLES F. WELLFORD ET AL., NAT’L RESEARCH COUNCIL, *FIREARMS AND VIOLENCE—A CRITICAL REVIEW* 42 (2004) “[W]ith 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.”); Ian Ayres & John J. Donohue III, *Shooting Down The More Guns, Less Crime Hypothesis* 44 (Nat’l Bureau of Econ. Research, Working Paper No. 9336, 2002) (“We take these results to be generally devastating to Lott’s “More Guns, Less Crime” hypothesis”); Emily Badger, *More Guns, Less Crime? Not Exactly*, WASH. POST, July 29, 2014, https://www.washingtonpost.com/news/wonk/wp/2014/07/29/more-guns-less-crime-not-exactly/?utm_term=.bf39a67e05c9.

only includes periods of rising crime.¹⁹ More recent research indicates that allowing concealed carry permits and wider gun ownership is associated with higher levels of both violent and property-based crime.

a. Lott's Selective Findings Relied Upon a Temporary Spike in Crime in the 1980s and Resulted From Methodological Errors

Lott's conclusion that concealed-carry legislation correlated with reduced crime rates is partially the result of a disconnect between the states that experienced spikes in crime between 1977 and 1992 and those that passed concealed-carry laws. Many such laws were passed in states with already lower crime rates between 1977 and 1992 in response to their concerns regarding rising crime:²⁰ 70% of states with the lowest incidence of crack-cocaine abuse passed a right-to-carry law by 1994.²¹ Conversely, many of the states experiencing spikes in crime, particularly those attributable to the 1980s crack wars, did not pass such laws.²² Under these circumstances, it is unsurprising that the study “found” less increase in crime in the states that passed right to carry laws.

¹⁹ See Ayres, *supra* note 18, at 27–28; Steven D. Levitt, *Understanding Why Crime Fell in the 1990s—Four Factors that Explain the Decline and Six That Do Not*, 18 J. ECON. PERSP. 163, 163 (2004) (“Crime fell sharply in the United States in the 1990s[.]”).

²⁰ See Ayres, *supra* note 18, at 27–28.

²¹ See Aneja, *supra* note 14, at 61 n.49.

²² See *id.*

Lott's analysis suffers from additional methodological problems. First, Lott failed to control for the effect of policing and incarceration²³ or the effect of crack-cocaine abuse in his analysis.²⁴ Policing and incarceration, combined with the reduced use of crack-cocaine, were the main drivers of lower levels of crime—not an armed citizenry.²⁵ Second, he aggregated the impact of gun law passage for all the states studied. When researchers disaggregate the effects for each state, it becomes clear that crime *rose* more often *after* the passage of concealed-carry laws than it decreased.²⁶ Third, he used crime data at the county-level and did not account for changing laws at the state-level. When researchers adjusted his analysis to account for this oversight, the results became statistically insignificant.²⁷ In light of these methodological problems, the Court—like the overwhelming majority of academic researchers affiliated with accredited universities—should reject them.

²³ *See id.* at 24.

²⁴ Lott's only attempt to control for crack-cocaine was to control for price in particular areas, but not to control for its impact of crime-rates, nor for the fact that data was only collected from 21 cities. *See id.* at 57 n.44.

²⁵ *See Levitt, supra* note 19, at 171, 177–181.

²⁶ When the states are aggregated, Florida and Texas are over-represented and they experienced drops in crime. *See Ayres, supra* note 18, at 39–40.

²⁷ *See Duggan, supra* note 15, at 1109–1110.

b. Concealed Carry of Firearms Correlates with Higher Levels of Crime

As noted above, the most credible contemporary research indicates that increased levels of gun ownership and shall-issue laws may lead to higher levels of crime. A 2014 study published by Stanford University corrected the errors of the Lott analysis²⁸ by controlling for incarceration rates and policing, and using state-level data rather than county-level data.²⁹ The researchers also utilized data from 1993–2010 to take into account the fact that crime fell precipitously throughout the 1990s.³⁰ The 2014 study concluded that concealed-carry laws are associated with higher rates of murder, aggravated assault, robbery, and burglary.³¹ Moreover, an independent analysis by University of Chicago professor Mark Duggan found

²⁸ See Christopher Ingraham, *More Guns, More Crime: New Research Debunks a Central Thesis of the Gun Rights Movement*, WASH. POST (Nov. 14, 2014), https://www.washingtonpost.com/news/wonk/wp/2014/11/14/more-guns-more-crime-new-research-debunks-a-central-thesis-of-the-gun-rights-movement/?utm_term=.816055803080; Clifton B. Parker, *Right-to-Carry Gun Laws Linked to Increase in Violent Crime, Stanford Research Shows*, STANFORD NEWS (Nov. 14 2014), <http://news.stanford.edu/news/2014/november/donohue-guns-study-111414.html>.

²⁹ Aneja, *supra* note 14, at 40, 48.

³⁰ For example, between 1991 and 2000, homicide rates fell by 43%, rape by 25%, robbery by 46%, aggravated assault by 27%, burglary by 41%, and larceny by 23%. See Levitt, *supra* note 19, at 166.

³¹ Aneja, *supra* note 14, at 58.

implausible Lott's claims that more permissive public carry laws could have reduced violent crime.³²

3. *Credible Research Belies the Claim That Concealed Carry Licenses Are Less Dangerous As a Group*

As unfortunately illustrated by the recent mass shooting in the Fort Lauderdale airport by a valid concealed-carry permit holder who killed five people and wounded six others,³³ claims—without empirical support—that concealed-carry licensees are “highly law-abiding,” LELDF Br. 3, and uniformly “pose little threat,” Pink Pistols Br. 11, are overstated. Indeed, one research group has tallied at least 928 firearm fatalities perpetrated by concealed-carry permit holders within the past decade.³⁴

Furthermore, even assuming Delaware appropriately screens its concealed-carry licensees, it allows public carry by people holding licenses from 19 other states, including several with well-recognized flaws in their licensing requirements.³⁵ Studies from states that keep comprehensive records of crimes

³² See Duggan, *supra* note 15, at 1112.

³³ See Keith Allen & Darran Simon, *Suspected Fort Lauderdale Airport Shooter Indicted*, CNN (Jan. 26, 2017, 10:32PM), <http://www.cnn.com/2017/01/26/us/fort-lauderdale-suspect-indictment/>.

³⁴ See Violence Policy Center, *Concealed Carry Killers* (Apr. 27, 2017), www.concealedcarrykillers.org.

³⁵ See e.g., Michael Luo, *Guns In Public, And Out of Sight*, N.Y. TIMES, Dec. 26, 2011, at A1 (investigation in North Carolina found, over a five-year period, 2,400 concealed carry permit holders were convicted of crimes, but roughly half of the

committed by concealed license holders indicate that licensees are, in fact, arrested for weapons-related offenses at *higher* rates than the general public,³⁶ refuting any blanket assertion that licensees pose little threat to society.

4. *Data—and Common Sense—Confirm that Minimizing Civilian Gun Carriage in Delaware’s Parks and Forests Minimizes the Risks of Unintentional Shootings*

Finally, evidence supports the conclusion that by limiting the number of guns carried by civilians in Delaware’s parks and forests the Regulations will reduce the number of *unintentional* shootings. Unintentional or accidental shootings, of course, do not require the presence of *ex ante* criminal intent and a recent investigation confirmed that a majority of unintended shootings involving children happened with handguns *legally* owned by adults.³⁷ This risk has been

felons retained permits); Megan O’Matz & John Maines, *In Florida, It’s Easy to Get a License to Carry a Gun*, SOUTH FLORIDA SUN-SENTINEL, Jan. 28, 2007, at 1A (investigation of Florida concealed carry permits found that the state issued licenses to thousands of felons within a six-month period).

³⁶ See, e.g., KAREN BROCK ET AL., VIOLENCE POLICY CENTER, LICENSE TO KILL IV—MORE GUNS, MORE CRIME 5 (2002).

³⁷ Ryan Foley et al., *Chronicle of Agony: Gun Accidents Kill at Least 1 Kid Every Other Day*, USA TODAY (Oct. 14, 2016, 8:03AM), <https://www.usatoday.com/story/news/2016/10/14/ap-usa-today-gun-accidents-children/91906700/article>; see also EVERYTOWN FOR GUN SAFETY, INNOCENTS LOST: A YEAR OF UNINTENTIONAL CHILD GUN DEATHS 3 (2014), <https://everytownresearch.org/documents/2015/04/innocents-lost.pdf>. Accidental shootings unfold in large part in familial settings where siblings, parents, or friends are the accidental shooters. See David Hemenway et al., *Unintentional Firearm Deaths—A Comparison of Other-inflicted and Self-inflicted Shootings*, 42 ACCIDENT ANALYSIS & PREVENTION 1184, 1187 (2010) (47% of shooters are

historically underreported by the official governmental methodology, sometimes by as much as one-third the actual number when it comes to shootings involving children.³⁸ Delaware's low gun ownership rate does not immunize it from this risk,³⁹ and allowing more civilian carriage of guns in Delaware's parks and forests would necessarily increase the risk of gun accidents. The Regulations, of course, minimize these risks.

Other courts have recognized that restrictions on guns in parks advance the interest in preventing unintended shootings, particularly those created by the

family, 43% are friends). Nonfatal injuries involving children result as much from the handling of the gun by the child as by another. *See id.* (study using data from hospital emergency departments found that 48% of unintentional firearm child injuries were self-inflicted).

³⁸ *See* C. Barber et al., *Underestimates of Unintentional Firearm Fatalities: Comparing Supplementary Homicide Report Data with the National Vital Statistics System*, 8 INJURY PREVENTION 252, 254 (2002) (out of all incidents involving a handgun classified as type B homicides by the National Vital Statistics System of the Center for Disease Control ("CDC") in 1997, 60% actually resulted from negligent handling of a firearm and 31% from children playing with a gun); Ryan Foley et al., *supra* note 37 (the federal government underreported by a third the number of minors dying from accidental firearm discharges in 2014). The underreporting results from the CDC's reliance on the information that the medical examiner or the coroner supply on the victim's death certificate regarding the circumstances and injuries that triggered death. C. Barber et al., *supra*, at 252. Where one person killed another person, medical examiners usually choose to classify that as a homicide, leaving the determination of the legal dimension of the death to the courts. *Id.* at 252–253.

³⁹ *See* Jessica Masulli Reyes, *Data on Accidental Shootings of Kids Raises Questions*, NEWS J. (Oct. 14, 2016, 3:02AM), <http://www.delawareonline.com/story/news/local/2016/10/14/data-accidental-shootings-kids-raises-questions/91862974/> (6 child injuries resulting from unintended shootings between 2014 and 2016).

presence of children within a park's confines. *See United States v. Masciandaro*, 638 F.3d 458, 473 (4th Cir. 2011); *see also United States v. Parker*, 919 F. Supp. 2d 1072, 1084 (E.D. Cal. 2013) (upholding prohibitions on carrying concealed firearms in Yosemite National Park, noting that carrying a concealed and accessible firearm "has the potential to endanger visitors and workers"). Thus, at least one court has recognized a concern with the "risk of children finding unattended firearms and hurting themselves or others, fights escalating through gun violence, and accidental discharges of firearms." *Warden v. Nickels*, 697 F. Supp. 2d 1221, 1227 (W.D. Wash. 2010) (rejecting challenge to Seattle Parks Department regulation making it illegal to carry concealed firearms or display firearms at certain parks facilities). As these courts have recognized, the relevant data confirms public park administrators' decision to limit guns in park lands in order to protect the vast majority of park visitors, including children, who come to enjoy nature unarmed.

CONCLUSION

For the reasons set forth above, the Superior Court's judgment should be affirmed.

Respectfully submitted,



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