

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

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**BRIEF OF ACADEMICS AS *AMICI CURIAE* 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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**Scholarly Publications**

Effects of Restrictive Licensing of Handguns on Homicide and Suicide in the District of Columbia, Colin Loftin, David McDowall, Brian Wiersema, & Talbert J. Cottey 325 New England Journal of Medicine ,(1991).....6, 16

More Guns, Less Crime: Understanding Crime and Gun Control, John R Lott Jr., University of Chicago Press (Second Edition 2000).....10, 17, 18

Crime, Deterrence, and Right-to-Carry Concealed Handguns, John R. Lott, Jr. and David Mustard, 26 J. Legal Studies (1997) .....10.

**STATEMENT OF INTEREST**

*Amici curiae*, academics representing a variety of fields of expertise including history, law, economics, business, political science and philosophy, submit this brief in support of the Respondent and assert that the empirical evidence concerning the murder rate in the District of Columbia, compared to other places, demonstrates convincingly that the District's handgun ban experiment was a failure.<sup>1</sup> The *amici* are:

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<sup>1</sup> No counsel for any party to this case authored this brief in whole or in part, no such counsel or a party made a monetary contribution intended to fund the preparation or submission of this brief, and no person or entity other than the *Amici Curiae* or their counsel made such a monetary contribution. This brief is filed with the written consent of all parties.

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## Summary of Argument

The District of Columbia's gun ban was promoted as an effective method to lower violent crime, especially murder. If so, the policy has had ample time in the thirty years since 1977 to demonstrate its beneficial effects. However, looking at the data, there is no evidence that the District of Columbia's gun ban, which became effective in February 1977, reduced murder rates.<sup>2</sup> Indeed, there is only one year after the ban started that the murder rate is below what it was in 1976.

The District's murder rate has risen relative other cities, the neighboring states of Virginia and Maryland, or the rest of the country. In 1976, the District's murder rate was 15th among America's 50 most populous cities. Far from the ban lowering the District's murder rate, in only one of the year after the ban (1985) did the District rank as low as 15th. In 15 years of the next 29 years after the ban, the District's murder rate was 1st or 2nd; in another four years it was 4th. Similarly, the District's murder rate rose relative to the average murder rate.<sup>3</sup>

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<sup>2</sup> The District of Columbia's brief and various amici point to murder as the violent crime category that was reduced after the District of Columbia handgun ban that went into effect during February 1977. No other violent crime rate is pointed to.

<sup>3</sup> These results are not particularly surprising given other research (see e.g., John R. Lott, Jr., *More Guns, Less Crime: Understanding Crime and Gun Control*, Chicago, Illinois: University of Chicago Press (2000, second edition) at 113-114).

**ARGUMENT****I.  
COMPARING THE DISTRICT'S  
MURDER RATE TO MURDER RATES IN  
OTHER JURISDICTIONS**

There are three obvious sets of comparisons: the District's murder rate relative to other large cities, the District's murder rate relative to neighboring Maryland and Virginia, and the District's murder rate relative to the rest of the United States. A study by Loftin *et. al.* (1991)<sup>4</sup> compared the mean homicide rates before and after the ban. They looked at the period from 1968 through 1987. Murders and homicides really took off in the District relative to the rest of the country in 1988, so excluding data after 1987 understates how much the District's murder rate rose after the ban. But because of their study we will look at the both the period from 1968 to 1987 as well as data after that point in time.<sup>5</sup> While this brief will discuss homicide data, its primary focus will be on murders since homicides include justifiable killings by police and civilians.

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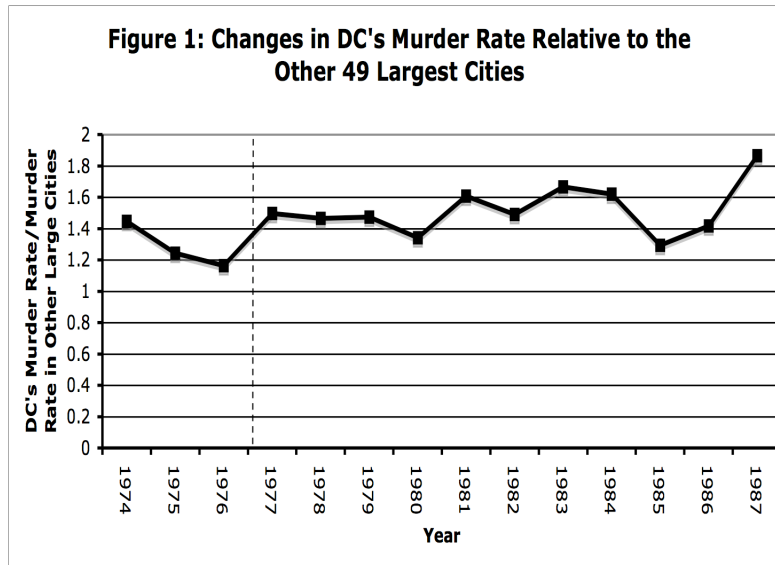
<sup>4</sup> Loftin, Colin, David McDowall, Brian Wiersema, & Talbert J. Cottey, "Effects of Restrictive Licensing of Handguns on Homicide and Suicide in the District of Columbia," 325 *New England Journal of Medicine* 1615 (1991).

<sup>5</sup> Loftin et al's study also examined the number of homicides and not the rate. Given the large drop in the District's population during this period, it is important to examine changes in rates so as not to falsely attribute part of any change in murders to the decline in the number of people living in the District.

**A.**  
**The Fifty Largest Cities.**

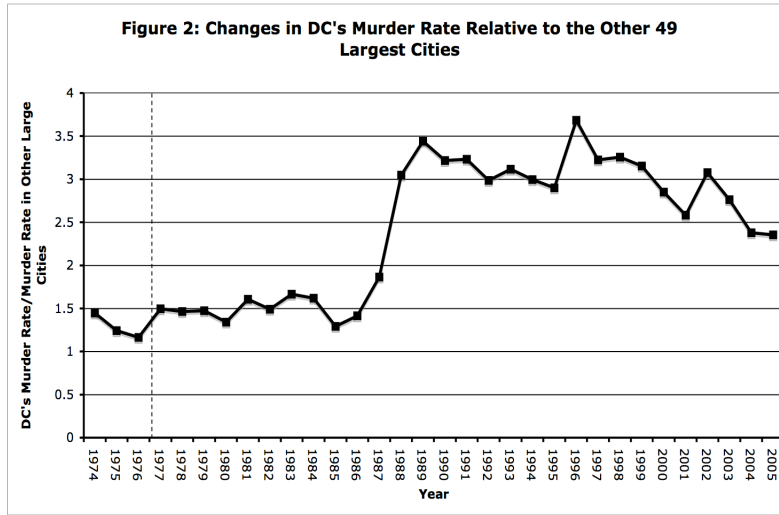
Figure 1 (below) shows how the District's murder rate has changed over time relative to the other 49 largest cities. In 1976, the last year before the ban, the District's murder rate was 16 percent greater than the average murder rate for the other large cities. A vertical line is drawn in the diagram to show that when the ban went into effect at the beginning of 1997.

After the ban, the District's murder rate between 1977 and 1987 averaged 55 percent greater than the average for these other cities, immediately rising to 50 percent above the average and getting as low as 29.4 percent greater in 1985. City level data from the FBI is only readily available from 1974 on so that is the period we start with. During the three years from 1974 to 1976, the District's murder rate averaged 28.5 percent more than the other cities, so there is not one single year after the ban where the ratio of the District's murder rate to the average for other cities fell below the pre-ban ratio.



Source: FBI Uniform Crime Reports. The District's rates are easily available at <http://www.disastercenter.com/crime/dccrime.htm>

Extending the sample out past 1987 shows how the District's murder rate explodes above the rate in the rest of the cities (Figure 2). After the ban from 1977 to 2005, the District's murder rate averaged 144 percent greater than the other cities. A rate 5 times greater than it was in the pre-ban period.



Looking at these simple averages, there is no evidence in comparing the District's murder rate to the murder rate in other cities that the ban lowered murder rates. If anything, the ban appears to have been associated with an increase in murder rates.

The brief by Fox and McDowall argues that:

The Respondent has argued that the rise in violent crimes in the District from 1980 to 1997 establishes that the DC Gun Control Law was ineffective. Brief in Response to Petition for Certiorari 27-28. However, the entire nation experienced an increase in violent crimes during this period because of the emergence of the crack cocaine market and related gang activity.

Brief of Professors of Criminal Justice as Amici Curiae in Support of Petitioner at 14.

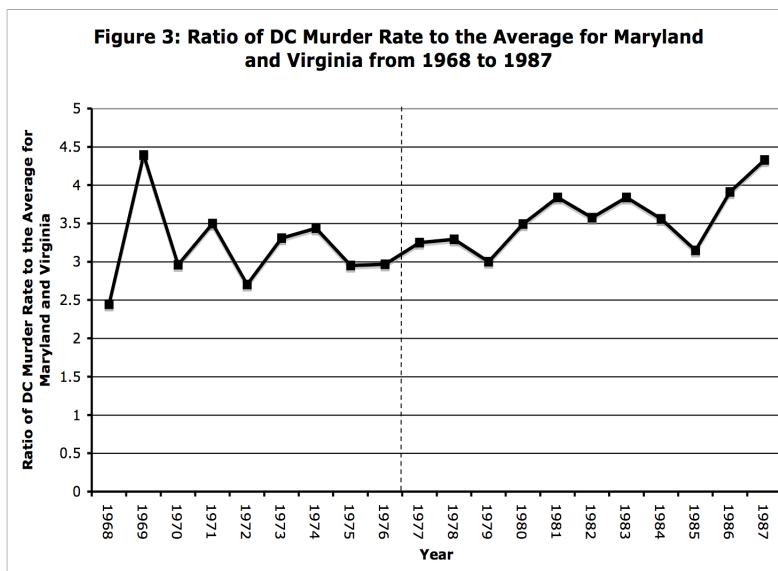
Yet, the District's murder rate increased relative to other cities *before* crack cocaine became an issue in the last half of the 1980s. In addition, crack cocaine affected cities nationwide and after 1987 the District's murder rate still increased dramatically relative to the murder rate in other cities. While the crack cocaine epidemic clearly increased the District's murder rate, it is hard to see how cocaine can explain the District's relative increase in murder rates either anytime from 1977 to 1987 or afterwards. Nor can it explain why the District's murder rate was still almost 2.5 times that of the average of other large cities as late as 2005.

Not only are Fox and McDowall incorrect in their brief about the changes in the District's murder rates relative to other jurisdictions being due to the crack cocaine epidemic, but they are incorrect that past work on concealed handgun laws has not accounted for the impact of cocaine on crime rates. In fact, the work that they are discussing dealt extensively with the cocaine/crack issue. For example, see page 24, fn. 50 in the paper that they cite as the "Lott Study" (John R. Lott, Jr. and David Mustard, "Crime, Deterrence, and Right-to-Carry Concealed Handguns," 26 J. Legal Studies. 24 (1997). For a more extensive discussion on this see *More Guns, Less Crime*, John R. Lott, Jr., University of Chicago Press (2000, second edition) at 213-215.

## B.

**Comparison of the District to Maryland and Virginia.**

Another obvious comparison is between the District and the two states that surround it, Maryland and Virginia. Figure 3 examines the period from 1968 through 1987. In the last year before the ban the District's murder rate was 197 percent greater than the average murder rate in Maryland and Virginia and the average during the period that the ban was in effect from 1977 to 1987 the District's murder rate was 257 percent greater than the average for these two states. Indeed, there was not one year after the ban was in place where the ratio was as low as it was in 1976. The average ratio from 1968 to 1976 was 219 percent compared to the average rate of 257 percent from 1977 to 1987.

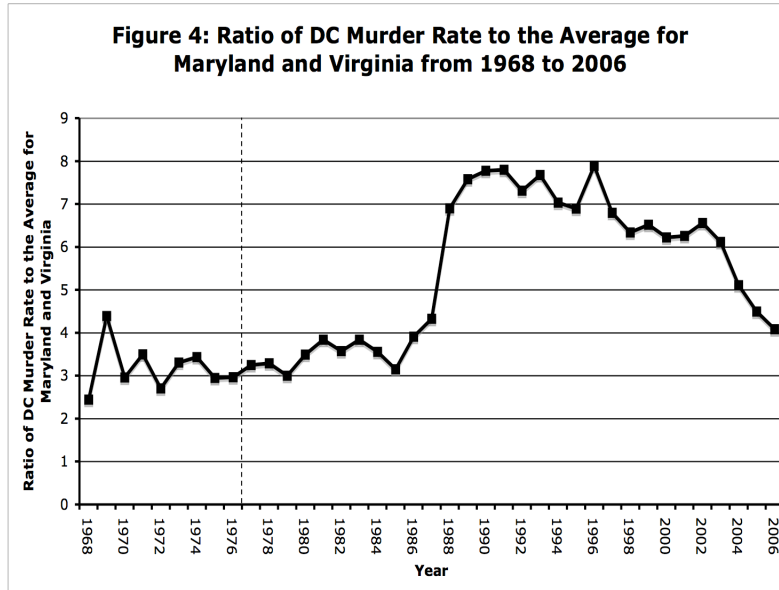


Source: FBI Uniform Crime Reports. The District's rates are easily available at <http://www.disastercenter.com/crime/dccrime.htm>. Maryland's data is available at <http://www.disastercenter.com/crime/mdcrime.htm> and Virginia's at <http://www.disastercenter.com/crime/vacrime.htm>.

Including data past 1987 shows a dramatic increase in the District's murder rate relative to Maryland and Virginia. The District's murder rate averaged 450 percent more than Maryland and Virginia's from 1977 to 2006, over twice the District to Maryland and Virginia ratio from 1968 to 1976.

Again, comparing the District to Maryland and Virginia provides no evidence that the ban reduced the District's murder rate. If anything, the District's murder rate increased after the ban.

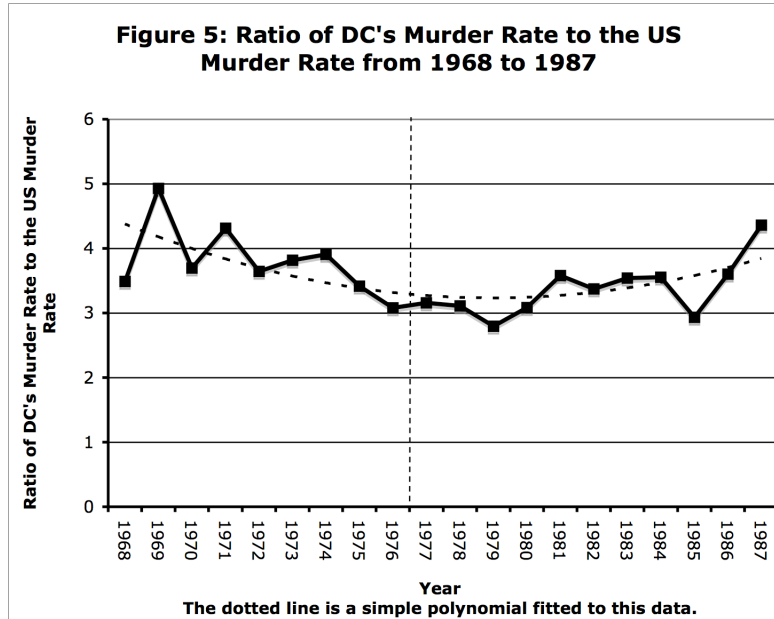




C.  
**Comparing the District's Murder Rate to that  
 for the United States.**

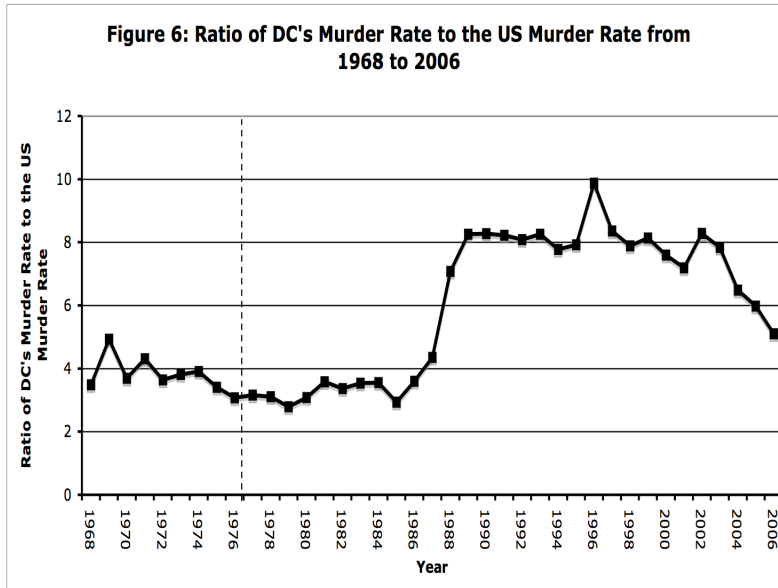
Examining the District's murder rate relative to the US's from 1968 to 1987 shows that the District's murder rate was declining before the ban and rising afterwards (Figure 5). The ban seems to be associated with this adverse change in the District's murder rate relative to the rest of the country. By 1976, the District's murder had fallen to being 3.08 times greater than the US's. There is only two years after that (1979 and 1985) when the ratio of the District's to the US's murder rate fell below what it was in 1976. Expanding the data to include the period after 1987 continues to show the increase in the District's murder rate relative to the US's that we observed in Figures 2 and 4. Again, whether one is looking at the period from 1968 to 1987 or

including the later period, there is no evidence that the gun ban reduced the District's murder rates.



Source: FBI Uniform Crime Reports. The District's rates are easily available at <http://www.disastercenter.com/crime/dccrime.htm>. The United States data is available at <http://www.disastercenter.com/crime/uscrime.htm>.

Expanding the data past 1987 (Figure 6) shows the same large increase in the District's murder rate relative to the US murder rate that we saw in Figures 2 and 4.

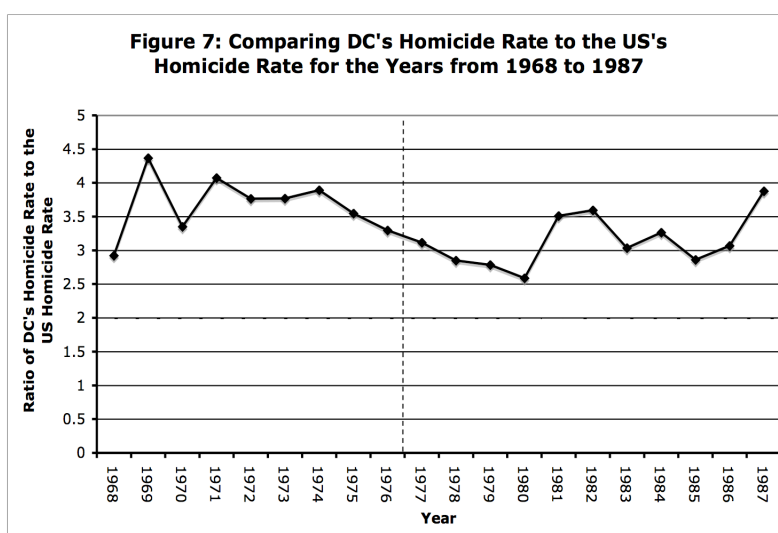


Thus, whether looking at the period from 1968 to 1987, or including the later period, there is no evidence that the District handgun ban reduced the District's murder rate.

#### **D. The District's Homicide Rate.**

Finally, we compare the District's homicide rate to the US's for the years from 1968 to 1987. Murder rates seem like the more appropriate comparison because the difference between murder and homicides primarily involves the use and ownership of guns by police, something that is not being questioned by the District's gun ban. In addition, if criminals were previously being killed to stop them from doing some bad act, such as a victim stopping her rapist, a reduction in justifiable homicides could be viewed as a bad outcome.

In any case, while the District's homicide rate was declining relative to the US's after the ban went into effect, it was also declining before the ban. Indeed, it is very difficult to see even the slightest change in the rate of this decline as a result of the ban. It is hard to see any impact of the relative homicide rates as a result of the ban. Homicides surely did not fall "substantially and abruptly."<sup>6</sup> Continuing the data past 1987 shows the same increase in the District's relative homicide rate that we observed in Figures 2, 4, and 6.



National Health Center, Vital Statistics of the United States, Vol. 2, various years.

<sup>6</sup> Loftin *et. al.* make this claim at 1620, but they provide no statistical evidence of an abrupt change, only a comparison of the before and after ban homicide rates for two broad periods of time. No attempt was made to account for a pre-existing downward trend in homicide rates.

Whether one examines the District's murder rates relative to other large US cities, the neighboring states of Maryland and Virginia, or relative to the US as a whole there is no evidence that the ban reduced the District's relative murder rate. Indeed, if anything, the evidence points to the opposite conclusion. The District's rising murder rate cannot be explained as a result of the crack cocaine epidemic during the late 1980s because this increase started occurring right after the ban was instituted, long before crack cocaine became an issue.

Everyone wants to disarm criminals. However, the problem with bans is who is most likely to obey them. If the ban primarily disarms law-abiding citizens and not criminals, the ban can have the opposite effect of what was intended.

## **II. NOTES ON OTHER CLAIMS**

Fox and McDowall are incorrect when they write:

If one extends Lott's statistical model by five years, for example, and applies it to the period in the mid-1990s when high crime rates reversed, 'suddenly shall-issue laws are associated with uniform increases in crime.

Brief of Professors of Criminal Justice as Amici Curiae in Support of Petitioner at 10-11.

Lott (2000, pp. 167-202) extends the data up through "the mid-1990s" (1996) and shows that the results are strengthened (John R. Lott, Jr., *More Guns, Less Crime, Chicago, Illinois: University of Chicago Press* (2000, second edition)).

Fox and McDowall further err when they note that:

shall-issue states, which were mostly less populated states with limited urban areas, as compared to the states without shall-issue laws, which were mostly heavily populated states with large urban areas . . . . The crack cocaine market had a greater impact on poor, urban areas, which are primarily located in states that do not have shall-issue laws.

Brief of Professors of Criminal Justice as Amici Curiae in Support of Petitioner at 10.

For the original "Lott study," the data was county level data and a large number of urban counties were in states with right-to-carry laws by 1992: such as Philadelphia, Miami, Atlanta, Seattle, Portland, Indianapolis, Pittsburgh. Indeed, all the states that passed right-to-carry laws had urban and rural areas. Over time more states adopted right to carry laws. The 2000 edition of *More Guns, Less Crime* studied additional large cities that were in states with right-to-carry laws such as Houston, Dallas, and Phoenix.

**CONCLUSION**

This Court should affirm the judgment of the Court of Appeals.

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