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## WHAT A BALANCING TEST WILL SHOW FOR RIGHT-TO-CARRY LAWS

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### I. INTRODUCTION

United States District Court Judge Benson Legg's decision to strike down Maryland's requirement of a "good and substantial reason" for issuance of a handgun permit in *Woollard v. Sheridan*<sup>1</sup> seemed inevitable after recent Supreme Court decisions.<sup>2</sup> In *District of Columbia v. Heller*, Justice Scalia wrote: "At the time of the founding, as now, to 'bear' meant to 'carry.' . . . [T]he carrying of the weapon is for the purpose of 'offensive or defensive action.'"<sup>3</sup> In *McDonald v. City of Chicago*, Justice Alito also stressed the fundamental "right to keep and bear arms."<sup>4</sup> While government might regulate how guns may be carried, it seems doubtful that it can completely ban the "bearing," or carrying, of guns. Whether such regulations must meet the same strict scrutiny test as regulations of other "fundamental" rights or a lesser standard of intermediate scrutiny, a balancing test is necessary. In the case of concealed carry laws restricting the right to carry a concealed gun in public, however, gun control proponents face a heavy burden.

Under "strict scrutiny," a regulation will only be upheld if it "furthers a compelling interest and is narrowly tailored to achieve that interest."<sup>5</sup> That is, the governmental goal must be something crucial and there cannot be other less restrictive means of accomplishing the same goal. Intermediate scrutiny is an easier to meet standard where, as Judge Legg writes: "the government's interest must be 'significant,' 'substantial,' or 'important,' . . . and the 'fit' between the challenged

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1. No. L-10-2068, 2012 WL 695674 (D. Md. Mar. 2, 2012).

2. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570, 580 (2008) (finding that the Second Amendment protects an individual's right to possess firearms separate from service in a militia); *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3050 (2010) (applying the Second Amendment's right to "keep and bear arms" to the individual states).

3. *Heller*, 554 U.S. at 584.

4. *McDonald*, 130 S. Ct. at 3037.

5. *Citizens United v. FEC*, 130 S. Ct. 876, 898 (2010).

regulation and the asserted objective must be reasonable, though not perfect.”<sup>6</sup>

Public safety might surely fit both the definitions of “compelling” or “important,” but there is still a balancing test of how large the public safety benefits are. Will the regulations reduce crime enough to justify infringing on a “fundamental” right to self-defense?<sup>7</sup> That is ultimately an empirical question. The only difference between “compelling” and “important” is how large that drop has to be before the regulation is allowed. In addition, under either standard, gun control advocates must show that there are not other ways of accomplishing the reduction in crime.

Yet, as Carlisle Moody and his co-authors recently summarized the literature:

There have been a total of 29 peer reviewed studies by economists and criminologists, 18 supporting the hypothesis that shall-issue laws reduce crime, 10 not finding any significant effect on crime, including the NRC report, and [Aneja, Donohue, and Zhang]’s paper, using a different model and different data, finding that right-to-carry laws temporarily increase one type of violent crime, aggravated assaults.<sup>8</sup>

Similarly, the only academic research examining the impact of concealed handgun laws on accidental gun deaths or suicides finds no relationship.<sup>9</sup>

If right-to-carry laws either reduce crime or leave it unchanged and if no one argues that they lead to more accidental gun deaths or suicides, regulations prohibiting people from carrying concealed handguns cannot withstand either strict or intermediate scrutiny. This Essay will review the empirical evidence of the impact carry laws have on crime rates and conclude that such laws cannot survive strict or intermediate scrutiny because they do not further the government’s interest in public safety.

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6. *Woollard*, No. L-10-2068, 2012 WL 695674, at \*3 (citing *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 662 (1994); *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 556 (2001)).

7. See *McDonald*, 130 S. Ct. at 3042 (“In sum, it is clear that the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty.”).

8. Carlisle E. Moody, John R. Lott Jr., Thomas B. Marvell & Paul R. Zimmerman, *Trust But Verify: Lessons for the Empirical Evaluation of Law and Policy* 3 (Coll. of William & Mary, Working Paper, 2012) (citations omitted), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2026957](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2026957).

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

## II. OVERVIEW

Police are probably the single most important factor in reducing crime, but even the police themselves understand that they almost always arrive on a crime scene after the crime has occurred.<sup>10</sup> Faced with that simple fact, even the most rabid public opponents of gun ownership have turned to concealed handguns for their own personal safety. The most prominent recent example is David Brock, the founder of Media Matters, who had a personal assistant illegally publicly carry a concealed handgun in the District of Columbia in order “to protect Brock from threats.”<sup>11</sup> Few organizations have declared their opposition to gun ownership and concealed carry laws as strongly as Media Matters.

Comedian Rosie O’Donnell, who emceed the so-called Million Mom March for gun control, found herself in a similar situation. O’Donnell claimed: “I also think you should not buy a gun anywhere.”<sup>12</sup> It created quite a ruckus when her bodyguards applied for permits to carry concealed handguns.<sup>13</sup> Or what about former Chicago Mayor Richard Daley, a strong supporter of Chicago’s handgun ban and other gun control laws, who insisted on round-the-clock armed bodyguards for him and his wife after retiring from office.<sup>14</sup>

Despite what is deemed best for their personal safety, time after time opponents of concealed carry laws have predicted disaster if a right-to-carry law was adopted. Yet now we see right-to-carry laws in forty-one states that allow people to carry concealed handguns once they meet certain objective standards such as passing a criminal background check and being a certain age.<sup>15</sup> Five of these states don’t

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10. For research showing that police are the single most important factor for reducing crime, see *id.*

11. Alex Pappas & Will Rahn, *Inside Media Matters: Sources, Memos Reveal Erratic Behavior, Close Coordination with White House and News Organizations*, DAILY CALLER (Feb. 12, 2012, 10:02 PM), <http://dailycaller.com/2012/02/12/inside-media-matters-sources-memos-reveal-erratic-behavior-close-coordination-with-white-house-and-news-organizations/>.

12. John R. Lott, Jr., Op-Ed., *When It Comes to Firearms, Do as I Say, Not as I Do*, L.A. TIMES, June 1, 2000, at B11.

13. *Id.*

14. See Fran Spielman, *Daley Calls Retirement Bodyguard Request ‘Appropriate,’* CHI. SUN-TIMES, May 5, 2011 (noting that shortly before stepping down as Chicago’s mayor, Richard Daley stated: “I’ve been mayor for 22 years, and my wife has made a commitment [to the city]. . . . Former mayors received security appropriately. . . . It’s appropriate for every former mayor. Yes, it’s always appropriate”).

15. See ‘*National Right to Carry Reciprocity Act of 2012*’ Introduced in U.S. Senate, DAILY CALLER (Mar. 14, 2012, 9:52 AM), <http://dailycaller.com/2012/03/14/”national-right-to-carry-reciprocity-act-of-2012”-introduced-in-u-s-senate/> (describing state and federal gun law requirements).

even require a permit to carry concealed handguns.<sup>16</sup> Eight other states have “may-issue” laws that give local law enforcement discretion over who to let carry a concealed handgun. Only Illinois still completely bans people from carrying concealed weapons, though a majority of the state legislature supports adopting a right-to-carry law.<sup>17</sup>

We have also seen a huge increase in Americans with permits to carry a concealed handgun, rising from 4.6 million in 2007 to over 7 million in 2011.<sup>18</sup> In 2012, the number is probably reaching close to 8 million. Indeed, as Table 1 shows, the number over the last few years for just twelve states alone has almost doubled from 2.46 million to over 4.5 million.

Table 1: Changes in the number of concealed handgun permits from 2007 to 2010 or later in selected states		
	2007	Latest Year available
Florida	445,038	912,132*
Indiana	295,643	420,711*
Iowa	28,383	94,516
Kentucky	95,638	176,448*
Michigan	155,000	311,786*
Missouri	36,105	132,335
Ohio	97,912	296,588*
Pennsylvania	668,372	822,762
Texas	288,909	512,913†
Utah	108,100	359,987*
Washington	236,975	358,335*
Wisconsin	0	100,000*
Total	2.46 million	4.5 million
Unmarked values in the third column are for 2011.		
† data from 2010		

16. Arizona, Alaska, Wyoming, and Vermont do not require a permit to carry concealed handguns. Montana doesn't require a permit to carry in about 99.4 percent of the state. Lindsey Erin Kroskob, *Concealed Weapons Law Hits Streets Friday*, WYO. TRIB. EAGLE, June 29, 2011, available at [http://www.wyomingnews.com/articles/2011/06/29/news/19local\\_06-29-11.txt](http://www.wyomingnews.com/articles/2011/06/29/news/19local_06-29-11.txt); Gary Marbut, *Bills on the Governor's Desk*, MONT. HUNTING TODAY, April 30, 2011, available at <http://montanahuntingtoday.com/blog/index.php/2011/04/30/bills-on-the-governors-desk/>.

17. Benjamin Yount, *'Work in Progress' Concealed Carry Bill Moves Forward in Illinois*, SOUTHERN, Mar. 7, 2012, [http://thesouthern.com/news/local/work-in-progress-concealed-carry-bill-moves-forward-in-illinois/article\\_eb445dfa-6813-11e1-8c96-0019bb2963f4.html](http://thesouthern.com/news/local/work-in-progress-concealed-carry-bill-moves-forward-in-illinois/article_eb445dfa-6813-11e1-8c96-0019bb2963f4.html).

18. LOTT, *supra* note 9, at 238–39. See also John Lott, *What's Wrong with Making it Easier to Carry Guns Across State Lines?*, FOXNEWS.COM (Nov. 15, 2011) <http://www.foxnews.com/opinion/2011/11/15/whats-wrong-with-making-it-easier-to-carry-gun-in-usa/>.

\* data from 2012

See LOTT, *supra* note 9, at 238–39 for references on the sources of these numbers. Other sources are: Scott Bauer, *Department of Justice says 100,000 Wisconsin concealed carry permits issued in 6 months*, STAR TRIBUNE (Minneapolis), April 20, 2012, available at <http://www.startribune.com/148252875.html>; Laura A. Bischoff & Lynn Hulsey, *Concealed carry rules loosen; permits on rise*, DAYTON DAILY NEWS, April 22, 2012, at A1; Tracy Harris, *Oldham sees surge in concealed carry permits*, OLDHAM ERA, March 8, 2012, available at <http://www.oldhamera.com/content/oldham-sees-surge-concealed-carry-permits>; Dave Workman, *Five months, 12K new licenses; WA at front end of CCW surge*, EXAMINER.COM (April 10, 2012), <http://www.examiner.com/article/five-months-12k-new-licenses-wa-at-front-end-of-ccw-surge>.

Maryland has granted concealed handgun permits, but obtaining permits has been exceedingly difficult. In 2007, the last year for which data is available from Maryland, only 36,755 permits were issued, implying merely 0.86 percent of the adult population had permits.<sup>19</sup> In contrast, the most recent numbers show that over 8 percent of the adult population in neighboring Pennsylvania has a permit and about 3 percent has one in Virginia.<sup>20</sup>

One simple measure of how well these laws have worked is a political one: despite states adopting right-to-carry laws as long ago as the 1920s, there has never even been a legislative hearing held to rescind these laws.

#### A. Behavior of Permit Holders

The gun control debate largely focuses on what *might* go wrong, rather than what actually happens. For example, after 9/11, many were fearful that letting pilots carry guns on planes would endanger passengers' safety. Some worried that a gun being accidentally discharged would lead to an explosive depressurization, causing a plane to crash.<sup>21</sup> Yet, Boeing and other airplane manufacturers testified that bullet holes in the airplane skin would have little effect on cabin pressure and would not cause a plane to crash.<sup>22</sup> Still, the Bush Administration strongly fought against letting pilots carry guns.<sup>23</sup>

19. LOTT, *supra* note 9, at 238.

20. *Id.* at 238–39.

21. Richard Stenger, *Armed pilots offer added protection, new danger*, CNN.COM (Sept. 26, 2001, 8:39 AM), <http://edition.cnn.com/2001/TRAVEL/NEWS/09/25/rec.arms-pilots/index.html>.

22. Ron Hinderberger, Boeing's director of aviation safety, explained in testimony before the U.S. House of Representatives:

Boeing commercial service history contains cases where guns were fired on board in service airplanes, all of which landed safely. Commercial airplane structure is designed with sufficient strength, redundancy, and damage tolerance that a single or even multiple handgun holes would not result in loss of an aircraft. A

The debate gives the impression that arming pilots is either something that has not been tried before or that it had been tried and failed. But arming pilots is actually nothing new. Until 1963, American commercial passenger pilots on any flight carrying U.S. mail were required to carry handguns.<sup>24</sup> The practice was mandated during the 1920s because the federal government wanted to insure that the U.S. mail would be protected if a plane were forced to land away from an airport. U.S. pilots were allowed to carry guns until as recently as 1987, and the pilot unions claim that up to 10 percent of pilots regularly continued to do so up to that time.<sup>25</sup> There are no recorded instances where any of these pilots (either military or commercial) carrying guns have ever caused any significant problems.<sup>26</sup>

The same type of concerns about hypothetical things that might go wrong was brought up when states first adopted concealed handgun laws and have been raised again during attempts to end gun-free zones in everyplace from restaurants to schools to college campuses. Prior to the end of 1995, when the Federal Safe School Zone Act was passed, states allowed concealed handgun permit holders to carry guns on school property.<sup>27</sup> In some states guns had been carried in schools for decades. Even since the Act was passed in 1995, Oregon, New Hampshire, and Utah have let permit holders carry guns anywhere at school.<sup>28</sup> And many other states enacted limits such as allowing a gun only in the school parking lot or only when someone is

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bullet hole in the fuselage skin would have little effect on cabin pressurization. Aircraft are designed to withstand much larger impacts whether intentional or unintentional. For instance, on 14 occasions Boeing commercial airplanes have survived, and landed, after an in flight bomb blast.

John R. Lott, Jr., *P.C. Air Security: When Will Our Pilots Be Armed?*, NAT'L REV. ONLINE (Sept. 2, 2003), <http://www.nationalreview.com/articles/207887/p-c-air-security/john-r-lott-jr#>.

23. See Richard Simon, *Pilots Told No Guns in Cockpit*, L.A. TIMES, May 22, 2002, available at <http://articles.latimes.com/2002/may/22/nation/na-pilots22>. I worked with several of the pilot unions on helping pilots again carry guns.

24. Serena Parker, *Arming Airline Pilots*, VOICE OF AMERICA NEWS, Sept. 4, 2003. See also John R. Lott, Jr., *Marshals Are Good, But Armed Pilots Are Better*, WALL ST. J. EUROPE, Jan. 2, 2004, available at <http://online.wsj.com/article/SB107299581523057500.html?mod=opinion%255Furope%255Fcommentaries>.

25. Based on conversations with Tracy Price and Bob Lambert with the Airline Pilots' Security Alliance and union representatives from Southwest and American Airlines.

26. Based on conversations both with pilot union officials as well as with officials from the TSA during 2002 and 2003.

27. John R. Lott, Jr., Op-Ed., *Letting Teachers Pack Guns Will Make America's Schools Safer*, L.A. TIMES, July 13, 2003, available at <http://articles.latimes.com/2003/jul/13/opinion/oe-lott13>.

28. LOTT, *supra* note 9, at 242.

going to pick up a student.<sup>29</sup> “Yet, over all this time, there has not been a single example of an improper use of a permitted concealed handgun at a school, not even the improper exposure of the gun or an accidental gunshot.”<sup>30</sup>

Outside of the Brady Campaign and the Violence Policy Center, there is little debate on the behavior of concealed handgun permit holders. The gun control groups don’t actually point to real court cases. They look at news stories and selectively report what is reported in those stories, not the final outcome of the cases, and they fail to note that in most of the cases the permit holder is never even charged with a crime. When someone uses a gun defensively in public they will be arrested unless the police and prosecutor are quickly convinced that the shooting was in self-defense.

A June 2010 analysis of the gun control groups’ claims examined the groups’ claims for Florida: “the Brady Campaign and the Violence Policy Center portray Florida as Ground Zero for problems with concealed handgun permit holders. They boldly assert that seventeen Florida permit holders have ‘killed’ people with their guns over the past three years [from May 2007 to May 2010] and that this one state by itself accounts for seventeen of the ninety-six ‘killer’ permit holders nationwide.”<sup>31</sup> Yet even though a newspaper reported on the shooting, seven cases were such clear-cut cases of self-defense that no one was even charged with a crime, three cases involved suicide, and two of the other cases, including one involving a police officer, actually didn’t involve permit holders.<sup>32</sup>

The numbers from Florida paint a very clear picture. Between, October 1, 1987, and July 31, 2011, Florida issued permits to over 2 million people, many of whom have had their permits renewed multiple times. Only 168 had their permits revoked for any type of firearms related violation—about 0.01%.<sup>33</sup> Overwhelmingly these revocations involved people accidentally carrying concealed handguns into restricted areas.<sup>34</sup> Over the last forty-three months, since January

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29. *Id.*

30. *Id.* My own extensive research, as well as calls to the National Education Association and the American Federation of Teachers, confirms that there have been no incidents involving permit holders at schools.

31. John R. Lott, Jr., *In Debate Over Gun-Carry Laws, Critics Are Quick to Shoot Down the Facts*, AUDACITY OF LOGIC BLOG (June 24, 2010), [http://audacityoflogic.blogspot.com/2010\\_06\\_01\\_archive.html](http://audacityoflogic.blogspot.com/2010_06_01_archive.html).

32. *Id.*

33. Updated data obtained from the Concealed Weapon or Firearm Program, Division of Licensing, Florida Department of Agriculture and Consumer Services, August 15, 2011.

34. *Id.*

2008, only four additional permit holders have had their permit revoked for a firearms related violation. With over 843,000 active permit holders, there is an annual revocation rate of 0.00013%.<sup>35</sup>

The behavior of permit holders is the easiest question to answer. And Florida is not unusual. The third edition of *More Guns, Less Crime* presents detailed data for 25 right-to-carry states, and any type of firearms-related violation is at hundredths or thousandths of one percent.<sup>36</sup>

### B. Overview of the Evidence on Crime

There have been five qualitatively different tests confirming that right-to-carry laws reduce violent crime. These studies show that violent crime falls after right-to-carry laws are adopted, with bigger drops the longer the right-to-carry laws are in effect.<sup>37</sup>

Great differences exist across states in how difficult it is to obtain a concealed carry permit, and that difficulty determines the percentage of the population that obtains permits. Also it takes about eight years or so before the state reaches the steady state rate of permit holding. The size of the drop in violent crime depends on the percent of the population with permits. The greater the percentage of the population with permits, the bigger the drop in violent crime.

Concealed carry laws have different impacts on different types of crime. Violent crime falls relative to property crime.<sup>38</sup> Murder rates fall relative to multiple victim public shootings.<sup>39</sup>

Possibly the most interesting evidence compares changes in crime rates in adjacent counties on opposite sides of state borders.<sup>40</sup> The counties in the state adopting the right-to-carry law see a drop in

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35. *Id.*

36. LOTT, *supra* note 9.

37. *Id.* at Ch. 10. Other work of mine includes: John R. Lott, Jr., *The Concealed-Handgun Debate*, 27 J. LEGAL STUD. 221 (1998); John R. Lott, Jr. & John E. Whitley, *Measurement Error in County-Level UCR Data*, 19 J. QUANTITATIVE CRIMINOLOGY 185 (2003), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=320102](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=320102); John R. Lott, Jr. & John E. Whitley, *Abortion and Crime: Unwanted Children and Out-of-Wedlock Births*, 45 ECON. INQUIRY 304 (2007).

38. Eric Helland & Alex Tabarrok, *Using Placebo Laws to Test "More Guns, Less Crime"*, 4 ADVANCES ECON. ANALYSIS & POL'Y 1 (2004); LOTT, *supra* note 9.

39. See John R. Lott, Jr. and William M. Landes's discussion in Chapter 6 of JOHN R. LOTT, JR., *THE BIAS AGAINST GUNS: WHY ALMOST EVERYTHING YOU'VE HEARD ABOUT GUN CONTROL IS WRONG* 97 (2003); LOTT, *supra* note 9.

40. Stephen Bronars & John R. Lott, Jr., *Criminal Deterrence, Geographic Spillovers, and Right-to-Carry Laws*, 88 AM. ECON. REV. 475 (1998); LOTT, *supra* note 9.



violent crime, while the adjacent county in a state without right-to-carry laws sees a slight increase.

The importance of having so many different types of evidence is that it makes it less likely that some alternative explanation can explain the drop in violent crime from right-to-carry laws. Even if there is some left-out factor that just happens to change when right-to-carry laws are passed in different states, it would still need to be explained why the impact of that left-out factor increases over time, why it is associated with the rate at which permits are issued in different states, why it would impact violent crime relative to property crime and murders relative to multiple victim public shootings, and impact adjacent counties on opposite sides of state borders.

There are basically two groups of people who tend to benefit the most from right-to-carry laws: (1) poor blacks who live in high crime urban areas, who are most likely to be victims of violent crime, and (2) people who are relatively weaker physically, such as women and the elderly.

Those who benefit the most tend to be the most vulnerable people. Unfortunately, the permitting rules have a big impact not only on the number of people who get permits, but also on the composition of those who get permits. Higher fees reduce the crime decreasing benefits from right-to-carry laws in two ways: (1) reducing the percentage of the population with permits and thus reducing the probability that a criminal will attack someone who is able to defend themselves, and (2) primarily discouraging poor blacks from getting permits and thus preventing those who are most likely to be crime victims from getting a permit.

Table 2: Modern Statistical Research on Right-to-Carry Laws and Crime by Academic Economists and Criminologists

	<i>Reduced Violent Crime</i>	<i>No Discernable Effect on Violent Crime</i>	<i>Increased Violent Crime</i>
<i>Refereed Academic Publication</i>	1) Lott & Mustard, JOURNAL OF LEGAL STUDIES, 1997. 2) Bartley & Cohen, ECONOMIC INQUIRY, 1998. 3) Lott, JOURNAL OF LEGAL STUDIES, 1998. 4) Bartley, ECONOMICS LETTERS, 1999. 5) Benson & Mast, JOURNAL OF LAW AND ECONOMICS, 2001. 6) Moody, JOURNAL OF LAW	1) Black & Nagin, JOURNAL OF LEGAL STUDIES, 1998. 2) Ludwig, INT'L REV. OF LAW AND ECONOMICS, 1998. 3) Donohue & Levitt, QUARTERLY JOURNAL OF ECONOMICS, 1999. 4) Hood & Neeley, SOCIAL SCIENCE QUARTERLY, 2000. 5) Duggan, JOURNAL	1) Aneja, Donohue & Zhang, AMERICAN LAW AND ECONOMICS REVIEW, 2011

	<p>AND ECONOMICS, 2001.</p> <p>7) Mustard, JOURNAL OF LAW AND ECONOMICS, 2001.</p> <p>8) Olsen &amp; Maltz, JOURNAL OF LAW AND ECONOMICS, 2001.</p> <p>9) Plassmann &amp; Tideman, JOURNAL OF LAW AND ECONOMICS, 2001.</p> <p>10) Marvel, JOURNAL OF LAW AND ECONOMICS, 2001.</p> <p>11) Lott &amp; Whitley, JOURNAL OF LAW AND ECONOMICS, 2001.</p> <p>12) Lott &amp; Whitley, JOURNAL OF QUANTITATIVE CRIMINOLOGY, 2003.</p> <p>13) Helland &amp; Tabarrok, ADVANCES IN ECONOMIC ANALYSIS AND POLICY, 2004.</p> <p>14) Wilson, NATIONAL ACADEMIES PRESS, 2005.</p> <p>15) Lott &amp; Whitley, ECONOMIC INQUIRY, 2007.</p> <p>16) Moody &amp; Marvel, ECON WATCH, 2008.</p> <p>17) Kendall &amp; Tamura, JOURNAL OF LAW AND ECONOMICS, 2010.</p> <p>18) Lott, UNIVERSITY OF CHICAGO, 2010.</p>	<p>OF POLITICAL ECONOMY, 2001.</p> <p>6) Duwe, Kovandzic &amp; Moody, HOMICIDE STUDIES, 2002.</p> <p>7) Kovandzic &amp; Marvel, CRIMINOLOGY AND PUBLIC POLICY, 2003.</p> <p>8) Dezhbakhsh &amp; Rubin, INT'L REV. OF LAW AND ECONOMICS, 2003.</p> <p>9) National Research Council, NATIONAL ACADEMIES PRESS, 2005.</p> <p>10) Kovandzic, Marvel &amp; Vieraiis, HOMICIDE STUDIES, 2005.</p>	
<p><i>Non-Refereed Publications by Academics</i></p>	<p>1) Bronars &amp; Lott, AMERICAN ECONOMIC REVIEW, 1998.</p> <p>2) Plassmann &amp; Whitley, 55 STAN. L. REV. 1313 (2003).</p> <p>3) Lott &amp; Landes, THE BIAS AGAINST GUNS, 2003.</p>	<p>1) Ayres &amp; Donohue, AMERICAN LAW AND ECONOMICS REVIEW, 1999 (book review).</p>	<p>1) Ayres &amp; Donohue, 55 STAN. L. REV. 1193 (2003). See also Donohue, 2003.</p> <p>2) Ayres &amp; Donohue, ECON WATCH, 2009.</p>

Regarding the eighteen recent studies finding a benefit from right-to-carry laws [see Table 2 above], here are some of the comments.

- Florenz Plassmann and Nicolaus Tideman find that “right-to-carry laws do help on average to reduce the number of these crimes.”<sup>41</sup>
- Carl Moody explains that his findings “confirm and reinforce the basic findings of the original Lott and Mustard study.”<sup>42</sup>

41. Florenz Plassmann & T. Nicolaus Tideman, *Does the Right to Carry Concealed Handguns Deter Countable Crimes? Only a Count Analysis Can Say*, 44 J.L. & ECON. 771, 796 (2001).

- In another paper that studies county crime rates from 1977 until 2000, co-authored by Moody and Thomas Marvell, the authors write that “the evidence, such as it is, seems to support the hypothesis that the shall-issue law is generally beneficial with respect to its overall long run effect on crime.”<sup>43</sup>
- Eric Helland and Alex Tabarrok studied county crime rates from 1977 to 2000 to conclude that “shall-issue laws cause a large and significant drop in the murder trend rate” and that “there is considerable support for the hypothesis that shall-issue laws cause criminals to substitute away from crimes against persons and towards crimes against property.”<sup>44</sup>
- David Olsen and Michael Maltz found “a decrease in total homicides,” however the different set of data they use shows that the decrease was driven by a drop in gun killings.<sup>45</sup>
- Bruce Benson and Brent Mast found that their results “are virtually identical to those in [Lott and Mustard]. Therefore, the hypothesis that the [Lott and Mustard estimates] suffer from missing-variable bias owing to the lack of control for the private security industry is rejected . . . .”<sup>46</sup>
- David Mustard supplies evidence that “[a]fter enactment of the right-to-carry laws, states exhibit a reduced likelihood of having felonious police deaths . . . .”<sup>47</sup>
- The late James Q. Wilson, often described as the preeminent criminologist in the United States, reviewed a report on Firearms and Violence published by the National Academy of Sciences and found that while there might be disagreement over some types of violent crime, “I find that the evidence presented by Lott and his supporters suggests that RTC laws do in fact help drive down the murder rate.”<sup>48</sup>

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42. Carlisle E. Moody, *Testing for the Effects of Concealed Weapons Laws: Specification Errors and Robustness*, 44 J.L. & ECON. 799, 799–813 (2001).

43. Carlisle E. Moody & Thomas B. Marvell, *The Debate on Shall-Issue Laws*, 5 ECON. J. WATCH 269, 292 (2008).

44. See Helland & Tabarrok, *supra* note 38.

45. David E. Olsen & Michael D. Maltz, *Right-to Carry Concealed Weapons Laws and Homicide in Large U.S. Counties: The Effect on Weapons Types, Victim Characteristics, and Victim-Offender Relationships*, 44 J.L. & ECON. 747, 759 (2001).

46. Bruce L. Benson & Brent D. Mast, *Privately Produced General Deterrence*, 44 J.L. & ECON. 725, 734–35 (2001).

47. David B. Mustard, *The Impact of Gun Laws on Police Deaths*, 44 J.L. & ECON. 635 (2001).

48. James Q. Wilson, “Dissent,” Appendix A, in FIREARMS AND VIOLENCE: A CRITICAL REVIEW 271 (Charles F. Wellford, John V. Pepper & Carol V. Petrie eds., 2005).

- My work with John Whitley finds that “the longer a right-to-carry law is in effect, the greater the drop in crime.”<sup>49</sup>

These researchers have used a variety of approaches: different statistical techniques, different data sets, different control variables, or a variety of specifications. Yet, despite these alternative set ups, the consensus is the same: right-to-carry laws reduce violent crime.<sup>50</sup>

A 2011 paper by Aneja, Donohue, and Zhang claims to find temporary bad effects from the law for aggravated assaults,<sup>51</sup> but even in that case, beyond numerous data errors in their data set, they made a significant specification error that biased their results to finding a bad effect from right-to-carry laws. As Moody et al. note:

ADZ ignored the “truncation bias” that they are introducing into the estimates by making this seemingly innocent change in the model specification. The truncation bias occurs in county-level data because in some years many counties do not experience certain types of crimes at all—80 percent have no murders for instance. If the murder rate in a county is zero before the law goes into effect, simple randomness means that sometimes the crime rate will go up,

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49. John R. Lott, Jr. & John E. Whitley, *Safe-Storage Gun Laws: Accidental Deaths, Suicides, and Crime*, 44 J.L. & ECON. 659, 680 (2001).

50. LOTT, *supra* note 9, at 283. The only study that tried to replicate my results for the Brady Act was by Philip Cook and Jens Ludwig and they also found that the law had no statistical impact on murder rates or overall accidental gun deaths or suicides. Their study did not examine rapes, the one crime category for which I found an increase in crime. Even though they concede that the Brady Act had no effect on total suicides, they claim that it reduced suicides for those over age fifty-five. According to them, this is what we should expect since making it more difficult to obtain guns will impact those who have the lowest gun ownership rate and the highest suicide rate, which they say is true for this age group.

Yet even their own poll data show that gun ownership rates are at least as high for this age group as it is for younger people. In addition, a closer look at narrower age groupings contradicts the pattern that they predict. The reduced incidence of firearm suicides for persons over fifty-four is overwhelmingly driven by the change for just those from ages fifty-five to sixty-four, but this subcategory has the lowest suicide rate for those over age fifty-four and they have the highest gun ownership rate. The different age groups experienced apparently random increases and decreases in firearm suicides after enactment of the law: the groups aged thirty-five to forty-four years, forty-five to fifty-four years, and older than age eighty-five all show increases in firearm suicides after the Brady Act. See Jens Ludwig & Philip J. Cook, *Homicide and Suicide Rates Associated with Implementation of the Brady Handgun Violence Prevention Act*, 284 JAMA 585, 585–91 (2002); John R. Lott, Jr., *Impact of the Brady Act on Homicide and Suicide Rates*, 284 JAMA 2718 (2000). For survey information on suicides, see Edward L. Glaeser & Spencer Glendon, *Who Owns Guns?: Criminals, Victims, and the Culture of Violence*, 88 AM. ECON. REV. 458 (1998).

51. Abhay Aneja, John J. Donohue III & Alexandria Zhang, *The Impact of Right-to-Carry Laws and the NRC Report: Lessons for the Empirical Evaluation of Law and Policy*, 13 AM. L. & ECON. REV. 565 (2011).

but no matter how effective the law is, the reverse cannot happen because crime rates cannot fall below zero. Using the arrest rate for murder, which is usually missing or zero in counties with zero murders, drops those counties out of the regression and allows murder to both increase and decrease in the remaining counties. However, when the arrest rate for violent crime is used, counties with zero murders are kept in the murder regression, truncating the dependent variable at zero. An entire literature has emerged within the debate on right-to-carry laws that has dealt with this issue using Tobit, negative binomial, or other limited dependent variable methods . . . .<sup>52</sup>

### III. CONCLUSION

Murder and violent crime rates were supposed to soar after the Supreme Court struck down gun control laws in Washington, D.C., in 2008 and Chicago in 2010. These were the *Heller* and *McDonald* decisions that divided the Supreme Court in close five-to-four votes.<sup>53</sup>

Politicians predicted disaster. “[M]ore handguns in the District of Columbia will only lead to more handgun violence,” Washington’s Mayor Adrian Fenty warned the day the Court announced its decision.<sup>54</sup> In Chicago, Mayor Richard Daley predicted that we would “go back to the Old West, you have a gun and I have a gun and we’ll settle it in the streets.”<sup>55</sup> Similarly, the *New York Times* editorialized about the Supreme Court’s “wrongheaded” *Heller* decision.<sup>56</sup>

Worries by some Supreme Court Justices about crime increasing animated the dissenting opinions in *Heller*. Justice Breyer warned: “If a resident has a handgun in the home that he can use for self-defense, then he has a handgun in the home that he can use to commit suicide or engage in acts of domestic violence.”<sup>57</sup> Three other Justices joined in his dissent.<sup>58</sup> The possible harm from guns was central to Justice

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52. Moody, *supra* note 8, at 12–13.

53. *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010).

54. Paul Duggan & David Nakamura, *D.C. Government Faces a New Reality*, WASH. POST, June 27, 2008, at A9.

55. James Oliphant & Jeff Coen, *Daley Vows to Fight for Chicago’s Gun Ban*, CHI. TRIB., June 27, 2008.

56. Editorial, *Packing Heat Everywhere*, N.Y. TIMES, Sept. 18, 2011, at A26.

57. *Heller*, 554 U.S. at 711 (Breyer, J., dissenting).

58. Justices Ginsburg, Souter, and Stevens joined Justice Breyer in his dissent. *See id.* at 681.

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Breyer's dissent, and the words "crime," "criminal," "criminologist," "homicide," "murder," "rape," "robbery," and "victim" were used in the dissent a total of 109 times in forty-four pages. The term "suicide" was mentioned an additional thirteen times.<sup>59</sup>

But Armageddon never happened. Data released for Chicago and Washington shows that murder and gun crime rates didn't soar, they didn't even rise after the gun bans were eliminated—they plummeted. In fact, Chicago and Washington's crime rates have fallen much more than the national crime rate.<sup>60</sup>

The fears over letting Americans carry concealed handguns are no different. In state after state when right-to-carry laws have been adopted, the entire debate quickly becomes a non-issue within a year after the laws are passed. If Judge Legg's decision stands, the same will soon be true for Maryland.

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59. *See id.*

60. John Lott, *Media Silence Is Deafening About Important Gun News*, FOXNEWS.COM (Sept. 30, 2011), <http://www.foxnews.com/opinion/2011/09/30/media-silence-is-deafening-about-important-gun-news/>.