

No. 11-16255
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ADAM RICHARDS; SECOND AMENDMENT
FOUNDATION; CALGUNS FOUNDATION, INC.; BRETT
STEWART,

Plaintiffs-Appellants,

v.

ED PRIETO; COUNTY OF YOLO,

Defendants-Appellees.

Appeal from United States District Court for the Eastern District of California
Civil Case No. 2:09-CV-01235-MCE-DAD (Honorable Morrison C. England)

***AMICUS CURIAE BRIEF OF NATIONAL RIFLE
ASSOCIATION OF AMERICA, INC. IN SUPPORT OF
PLAINTIFFS-APPELLANTS URGING REVERSAL***

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CORPORATE DISCLOSURE STATEMENT

The National Rifle Association of America, Inc. has no parent corporations.

It has no stock; therefore, no publicly held company owns 10% or more of its stock.

Dated: August 31, 2011

Respectfully submitted,

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INTEREST OF AMICUS CURIAE

The National Rifle Association of America, Inc. (“NRA”) is a New York not-for-profit membership corporation founded in 1871. The NRA has approximately four million individual members and 10,700 affiliated members (clubs and associations) nationwide. The NRA is America’s foremost and oldest defender of Second Amendment rights, and the NRA is America’s leading provider of firearms marksmanship and safety training for both civilians and law enforcement. The NRA has a strong interest in this case because its outcome will affect the ability of the many NRA members who reside in California to exercise their fundamental right to carry a firearm.

Pursuant to Federal Rule of Appellate Procedure 29, the NRA certifies that this brief was not written in whole or in part by counsel for any party, and that no person or entity other than the NRA, its members, and its counsel has made a monetary contribution to the preparation and submission of this brief. All parties have consented to the filing of this brief.

INTRODUCTION

California law effectively places citizens who desire to carry a functional firearm to protect themselves in public at the mercy of the unbridled discretion of local officials. *See* CAL. PENAL CODE §§ 12025(a)(2), 12031(a)(1), 12050(a). As a result, in Yolo County residents cannot meaningfully exercise their fundamental

constitutional right to armed self-defense in public unless the Yolo County “Sheriff or his designee feels there is a sufficient reason to grant” them a license to carry a concealed firearm. *See* Dist. Ct. Doc. No. 18-2 at 4. And it is the County’s express policy that a desire to protect one’s person and one’s family, without more, will not suffice. *See id.* at 4 (“Self protection and protection of family (without credible threats of violence)” are “invalid reasons to request a permit.”).

This regime runs afoul of the Second Amendment regardless of any policy rationale Yolo County may articulate to attempt to justify it. In the words of the Supreme Court, that Amendment guarantees an individual right to “carry weapons in case of confrontation” for the “core lawful purpose of self-defense,” *District of Columbia v. Heller*, 554 U.S. 570, 592, 630 (2008), and that right is not limited to the home. Yolo County’s policy runs into the teeth of the Supreme Court’s admonition that “[t]he very enumeration of the right takes out of the hands of government ... the power to decide on a case-by-case basis whether the right is *really worth* insisting upon.” *Heller*, 554 U.S. at 634-35 (emphasis in original). It is flatly unconstitutional.

Nevertheless, both Yolo County and the district court have asserted that public safety concerns justify the County’s policy. *See Richards v. County of Yolo*, No. 2:09-CV-01235, 2011 WL 1885641, at *4 (E.D. Cal. May 16, 2011); Dist. Ct. Doc. No. 59 at 21-24. But as we shall explain, permitting law-abiding citizens to

carry firearms in public to defend themselves *promotes* public safety. Thus, even if this Court were free to rebalance the scales and to judge the utility of the Second Amendment right to bear arms, Yolo County's policy would be unsupportable.

ARGUMENT

FIREARMS CARRIAGE IN PUBLIC PLACES BY LAW-ABIDING CITIZENS IMPROVES PUBLIC SAFETY.

I. ARMED SELF-DEFENSE IN PUBLIC IS PREVALENT.

The district court's bare assertion that Yolo County's refusal to permit law-abiding citizens to carry firearms in public for self-defense serves "Yolo County's efforts to maintain public safety and prevent both gun-related crime and, most importantly, the death of its citizens," *Richards*, 2011 WL 1885641 at *4, runs headlong into two insuperable hurdles. First, the actual research on firearms refutes the district court's facile assertion. Second, dire forecasts of calamity if citizens are allowed to carry firearms cannot be squared with the experience of States that already permit such carriage.

The right to "carry weapons in case of confrontation" that the Supreme Court described in *Heller*, 554 U.S. at 592, *promotes* public safety. Defensive gun use ("DGU") is a common and effective way for ordinary citizens to defend themselves from violence. The leading study designed specifically to gauge the frequency of DGU determined that every year there are between 670,000 and

1,575,000 defensive gun uses associated with carrying firearms in public places. Gary Kleck, *TARGETING GUNS: FIREARMS AND THEIR CONTROL* 192 (1997) (describing results of the National Self-Defense Survey) (“NSDS”); *see also* Gary Kleck & Don B. Kates, Jr., *ARMED: NEW PERSPECTIVES ON GUN CONTROL* 225-26 (2001). Thus, of the roughly 2.5 million DGUs each year, as many as 63% involve citizens carrying a firearm while away from their home. Kleck, *TARGETING GUNS*, *supra*, at 179, 192. This data indicates that measures that effectively reduce gun carrying “among the noncriminal majority also would reduce DGUs that otherwise would have saved lives, prevented injuries, [and] thwarted rape attempts.” Gary Kleck & Marc Gertz, *Armed Resistance to Crime*, 86 *J. CRIMINAL LAW & CRIMINOLOGY* 150, 180 (1995); *see also id.* (“as many as 400,000 people a year use guns in situations where the defenders claim that they ‘almost certainly’ saved a life by doing so”).

Gun-control proponent Dr. David Hemenway has disputed the efficacy and frequency of defensive gun use. *See* David Hemenway & Deborah Azrael, *The Relative Frequency of Offensive and Defensive Gun Uses: Results from a National Survey*, 15 *VIOLENCE & VICTIMS* 257, 271 (2000). But Dr. Hemenway’s study has been discredited for misrepresenting its own survey results: his actual data indicate at least *six times* as many defensive gun uses as the estimates he reports in his article. *See* Kleck & Kates, *ARMED*, *supra*, at 230 & n. 27. In contrast, Dr.

Kleck's results, indicating approximately 2.5 million DGUs per year, *have been replicated and confirmed by 19 other studies*. Many of those studies were not by firearms advocates, but by such perennial supporters of gun control as the federal Centers for Disease Control and Prevention, the Police Foundation, the U.S. Justice Department, and the WASHINGTON POST. *See Kleck & Kates, ARMED, supra*, at 228-31. Indeed, Dr. Hemenway himself served on the board that designed one of the principal studies that has confirmed Dr. Kleck's research about the prevalence of DGU: the Police Foundation's National Survey of the Private Ownership of Firearms. *Id.* at 265.¹

The debate over firearms regulation is so ridden with strife that statisticians, criminologists and public health researchers can sometimes sound less like objective social scientists than zealous advocates. We therefore refer this Court to the principal research arm of the federal government, the National Academy of Sciences, which has conducted a review of the entire body of firearms literature. The National Research Council of the National Academies of Science was asked

¹ This study by the Police Foundation, sponsored by the National Institute of Justice, found that "1.44% of the adult population had used a gun for protection against a person in the previous year, implying 2.73 million defensive gun users." Kleck, *TARGETING GUNS, supra* at 151-52. This figure, like Dr. Kleck's own lower estimate of 2.5 million incidents of DGU per year, "is probably a conservative estimate . . . [because] cases of [respondents] intentionally withholding reports of genuine DGUs were probably more common than cases of [respondents] falsely reporting incidents that did not occur or that were not genuinely defensive." *Id.* at 151.

by a consortium of federal and private agencies, including the Centers for Disease Control and Prevention and the National Institute of Justice, “to assess the data and research on firearms.” Charles F. Wellford, John V. Pepper & Carol V. Petrie (eds.), *FIREARMS AND VIOLENCE: A CRITICAL REVIEW* 13 (2005) (“NATIONAL RESEARCH COUNCIL REVIEW”).²

The NRC undertook “an assessment of the strengths and limitations of the existing research and data on gun violence.” NATIONAL RESEARCH COUNCIL REVIEW at 1. Its goal was “to raise the science of firearms research so that it can begin to inform public policy.” *Id.* at X. The NRC surveyed *all* the extant literature on firearms regulation – hundreds of books, journal articles, and peer-reviewed studies. *See id.* at 22-30, 78, 130-33, 156-61, 174-77, 186-92, 242-68.³ The National Research Council noted that Dr. Kleck’s estimate of defensive gun use from the NSDS was much larger than the National Crime Victimization Survey (“NCVS”) estimate preferred by Dr. Hemenway. NATIONAL RESEARCH COUNCIL REVIEW at 7. The difference is that Dr. Kleck’s results have been replicated and

² Another of the groups that urged the NRC to undertake this review was the Joyce Foundation, *see* NATIONAL RESEARCH COUNCIL REVIEW at 13, which finances some of Dr. Hemenway’s research and that of other gun-control advocates, such as the Violence Policy Center.

³ By one count, the NRC reviewed “253 journal articles, 99 books, 43 government publications, and some original empirical research.” *See* Don Kates and Gary Mauser, *Would Banning Firearms Reduce Murder and Suicide? A Review of International and Some Domestic Evidence*, 30 HARV. J. L. & PUB. POL’Y 649, 654 (2007).

confirmed, whereas Dr. Hemenway's have not: "*At least 19 other surveys* have resulted in estimated numbers of defensive gun uses that are similar (*i.e.*, statistically indistinguishable) to the results found by Kleck and Gertz. *No other surveys have found numbers consistent with the NCVS*" figures used by Dr. Hemenway. NATIONAL RESEARCH COUNCIL REVIEW at 103 (emphasis added). *See also id.* at 113. And the NRC noted that even the most conservative estimates of DGU indicate "hundreds of defensive uses every day." *Id.* at 102.

II. CARRIAGE AND USE OF FIREARMS BY LAW-ABIDING CITIZENS IS AN EFFECTIVE MEANS OF SELF-DEFENSE.

Defensive gun uses are not only common, they are also effective. Data from the U.S. Bureau of Justice Statistics indicate that, in confrontations with criminals, 99% of victims maintain control of their firearms; even the 1% of DGUs that result in criminals taking firearms away from defenders is probably an overestimate, because it includes, *e.g.*, instances where a burglar leaving a home with a victim's weapon is confronted by the victim wielding a second firearm. *See* Kleck, TARGETING GUNS, *supra*, at 168-69. Furthermore, fewer than "1-in-90,000" attempts at defensive gun use result in a householder shooting a family member mistaken for a criminal. *Id.* at 168. Indeed, only about 30 people per year are killed by private citizens when they are mistaken for intruders; in contrast, trained police officers kill *eleven times* that many innocent individuals annually. *See* John

R. Lott, Jr., *MORE GUNS LESS CRIME: UNDERSTANDING CRIME AND GUN CONTROL LAWS 2* (3d ed. 2010). Numerous studies have found that robbery victims who resist with firearms are significantly less likely to have their property taken and are also less likely to be injured. *See* Kleck, *TARGETING GUNS*, *supra*, at 170.

“Robbery and assault victims who used a gun to resist were less likely to be attacked or to suffer an injury than those who used any other methods of self-protection or those who did not resist at all.” *Id.* at 171. “[V]ictim resistance with a gun almost never provokes the criminal into inflicting either fatal or nonfatal violence.” *Id.* at 174. Similarly, “rape victims using armed resistance were less likely to have the rape attempt completed against them than victims using any other mode of resistance,” and such DGU did not increase the victim’s risk of “additional injury beyond the rape itself.” *Id.* at 175. Justice Department statistics reveal that the probability of serious injury from any kind of attack is 2.5 times greater for women offering no resistance than for women resisting with a gun. *See* Lott, *MORE GUNS LESS CRIME*, *supra*, at 4.

Indeed, to prevent completion of a crime it is usually necessary only for the intended victim to display the firearm rather than pull the trigger. A national survey “indicates that about 95 percent of the time that people use guns defensively, they merely have to brandish a weapon to break off an attack.” *See* Lott, *MORE GUNS LESS CRIME*, *supra*, at 3. Fewer than one in a thousand

defensive gun uses results in a criminal being killed. *See* Kleck, TARGETING GUNS, *supra* at 178.⁴

Some dispute the efficacy of defensive gun use. *See, e.g.*, Charles C. Branas, et al., *Investigating the Link Between Gun Possession and Gun Assault*, 99 AMER. J. PUB. HEALTH 1, 4 (Nov. 2009). The Branas study, however, like others of its ilk merely found that there was an *association* between victim gun possession and being shot, not that there was a *causal link*. *See id.* at 4-5. Regardless of the effectiveness of defensive gun use, one would expect a positive association between victim gun possession and victim injury, because those people *most at risk*

⁴ There are studies purporting to link high rates of gun ownership with high rates of home homicide. In the first place, all such evidence, however compelling, is profoundly irrelevant to the case before the court, which involves only Yolo County's restriction on carrying weapons in *public* places. California law permits citizens to keep firearms at home for self-defense, *see* CAL. PENAL CODE §§ 12026(a), 12031(1), so whatever risks accompany gun possession at home *already* exist and cannot possibly be affected by the outcome of this case.

Second, this body of research was reviewed by the National Research Council and dismissed as proving nothing. *See, e.g.*, NATIONAL RESEARCH COUNCIL REVIEW at 242, 243, 247, 248, 259. Even when statistical *associations* between gun ownership and homicide were valid, no *causal link* could be demonstrated. *Id.* at 5. The NRC committee identified three fatal flaws in this research: “[T]hese studies do not adequately address the problem of self-selection. Second, these studies must rely on proxy measures of ownership that are certain to create biases of unknown magnitude and direction. Third, because the ecological correlations are at a higher geographic level of aggregation, there is no way of knowing whether the homicides or suicides which occurred in the same areas in which the firearms are owned.” *Id.* at 6. Therefore the studies “do not credibly demonstrate a causal relationship between the ownership of firearms and the causes or prevention of criminal violence or suicide.” *Id.*

of victimization (e.g., because they reside in a dangerous neighborhood) are also the most likely to arm themselves for protection. Going to the doctor has an extremely high positive association with being sick, but that hardly proves that going to the doctor causes illness.

Others posit that carrying a firearm for self-defense may increase one's risk of injury because it could initiate a sort of arms race whereby criminals are more motivated to carry guns by the anticipation that their victims may be armed. *See, e.g., Philip Cook, et al., Gun Control After Heller: Threats and Sideshows from a Social Welfare Perspective*, 56 UCLA L. REV. 1041, 1081 (2009). This speculation is based on surveys interviewing criminals about their thoughts on firearms. A look at the underlying survey research subverts the argument. The prison inmates who were surveyed listed 14 possible reasons for carrying guns and nine of the 14 reasons were rated by a majority of the inmates as "somewhat important" or "very important." *See James D. Wright & Peter H. Rossi, ARMED AND CONSIDERED DANGEROUS* 128 (2d ed. 2008). Thus, concerns about possible victim gun possession did not stand out as an important motivation for criminals to carry guns. *Id.* Far from concluding that armed victims motivated criminals to carry guns, the study actually demonstrated that criminals were *deterred* by the prospect of facing armed resistance. *See id.* at 155 (69% of the felons said they knew a crook who had been "scared off, shot at, wounded, captured or killed by an

armed victim”); *id.* at 155 (40% said they had on at least one occasion decided not to commit a crime because they knew or believed the victim was carrying a gun.); *id.* at 146 (58% of felons surveyed agreed or strongly agreed that “a store owner who is known to keep a gun on the premises is not going to get robbed very often,” and 56% agreed or strongly agreed that “a criminal is not going to mess around with a victim he knows is armed with a gun”). None of this should be surprising; the research merely confirms the common-sense expectation that criminals prefer their victims unarmed and defenseless – which is precisely how Yolo County’s policy leaves them.

III. PRIVATE CITIZENS LICENSED TO CARRY WEAPONS DO NOT THREATEN PUBLIC SAFETY.

Yolo County’s policy is premised on the assumption that law-abiding citizens who have been screened and licensed by the government to carry firearms constitute an acute threat to public safety. But this assumption is belied by the actual experience of States that allow law-abiding citizens to carry weapons in public. Where such carriage is allowed, few – if any – permit holders have committed offenses with their firearms. Since they all must pass background and other checks conducted by the police, it is hardly surprising that carry-permit holders tend to be far more law-abiding than most ordinary citizens.

- In the first 10 years that Florida granted concealed-carry permits, 457,299 licenses were issued and only 85 were revoked because the permit holder committed an offense – a rate of just under .02%. *See Samuel Francis, Evidence shows concealed-carry laws are safe, LAS VEGAS REVIEW-JOURNAL at 1D (Jan. 18, 1997).*
- In Ohio, about 178,000 people had concealed-handgun permits in 2010 and “just 206 — 0.1 percent — had their permits revoked. Most revocations involved people losing their permits because they moved out of state, died or decided not to hold their license anymore.” John Lott, *Responding to Jack D'Aurora's piece in the Columbus Dispatch*, (available at <http://johnrlott.blogspot.com/2011/08/responding-to-jack-dauroras-piece-in.html>).
- “In the first year following the enactment of concealed-carry legislation in Texas, more than 114,000 licenses were issued, and only 17 [were] revoked.” Stan Schellpeper, *Case for a Handgun-Carry Law*, OMAHA WORLD HERALD, p. 27 (Feb. 6, 1997). Texas concealed-carry licensees have been found to have “arrest rates far lower than the general population for every category of crime.” H. Sterling Burnett, National Center for Policy Analysis, *Texas*

Concealed Handgun Carriers: Law-Abiding Public Benefactors 1 (2000), available at <http://www.ncpa.org/pdfs/ba324.pdf>.

- One year after Nevada began to issue concealed carry licenses, “[l]aw enforcement officials throughout the state could not document one case of a fatality that resulted from irresponsible gun use by someone who obtained a permit under the new law.” Lott, *MORE GUNS LESS CRIME*, *supra* at 12-13.
- In Virginia (as of the beginning of 1997), not a single permit holder had committed a violent crime. See David B. Mustard, *Comment*, in *EVALUATING GUN POLICY* 331 (Jens Ludwig and Philip J. Cook eds. 2003).
- After Kentucky’s concealed carry law had been in effect for a year, numerous police officers and chiefs confirmed that there had been no cases in which a concealed-carry permit holder had committed an offense with a firearm. Terry Flynn, *Gun-toting Kentuckians Hold Their Fire*, *CINCINNATI ENQUIRER* (June 16, 1997) (available at http://www.enquirer.com/editions/1997/06/16/loc_kycarry.html).
- In South Carolina, between 1989 and 1997, only one permit holder was charged with a felony (a non-firearms related crime) and the charge was dropped. See Mustard, *Comment*, in *EVALUATING GUN*

POLICY, *supra*, at 331. *See also* Lawrence Messina, *Gun Permit Seekers Not the Criminal Type*, CHARLESTON GAZETTE, P. C1 (July 28, 1997) (“The sort of people who ask to carry concealed pistols legally in Kanawha County aren’t the sort of people who commit felony offenses, court records show.”).

- In North Carolina by 1997, over 26,000 permits had been registered and not a single one was revoked as the result of a permit holder committing a crime. *See* Lee Anderson, *North Carolina’s Guns*, CHATTANOOGA FREE PRESS, P.A4 (May 31, 1997).

As a result of this experience, “even those who vehemently opposed shall-issue laws have been forced to acknowledge that license holders are extremely law abiding and pose little threat. The President of the Dallas Police Association, who had lobbied against the Texas concealed-carry law, admitted after it was enacted that ‘[a]ll the horror stories I thought would come to pass didn't happen. No bogeyman. I think it’s worked out well, and that says good things about the citizens who have permits. I’m a convert.’ ” David B. Mustard, *The Impact of Gun Laws on Police Deaths*, 44 J.L. & ECON. 635, 638 (2001). Similarly, the “president and the executive director of the Florida Chiefs of Police and the head of the Florida Sheriff’s Association admitted that despite their best efforts to document problems arising from the law, they were unable to do so.” Mustard,

Comment, in EVALUATING GUN POLICY at 331. *See also* Daniel D. Polsby & Don B. Kates, Jr., *American Homicide Exceptionalism*, 69 U. Colo. L. Rev. 969, 1007 & n.90 (1998). “Speaking on behalf of the Kentucky Chiefs of Police Association, Lt. Col. Bill Dorsey stated, ‘We haven’t seen any cases where a [concealed-carry] permit holder has committed an offense with a firearm.’ ” Mustard, *Comment*, in EVALUATING GUN POLICY at 331 & n.63. A sheriff in Campbell County, Kentucky admitted that, prior to the passage of the concealed carry law, he worried that he would be uncomfortable with the type of people who were applying for concealed carry licenses, but after the law passed he discovered that “ ‘[t]hese are all just everyday citizens who feel they need some protection.’ ” Terry Flynn, *Gun-toting Kentuckians Hold Their Fire*, CINCINNATI ENQUIRER, *supra*.

Wisconsin recently passed a concealed weapons law, but law enforcement officers there do not fear that it will lead to increased crime. A police representative stated that “[t]he majority of people carrying concealed weapons will be law-abiding people who have proper permits and pose no threat Those likely to cause trouble might already have been concealing weapons.” Nick Paulson, *Police Not Fretting Over Looming Concealed Carry Law*, STEVENS POINT JOURNAL, Aug. 6, 2011 (available at <http://www.stevenspointjournal.com/article/20110806/SPJ0101/108060501/Police->

not-fretting-over-looming-concealed-carry-law). One sheriff observed that, after the law passes, “ ‘It’s pretty much going to be business as usual for us.’ ” *Id.*

Law enforcement officers across the nation – not just the many “converts” quoted above – support the carrying of firearms by private citizens. *See, e.g.,* Mustard, *The Impact of Gun Laws on Police Deaths*, 44 J.L. & ECON. at 638 (a survey conducted by the magazine *Law Enforcement Technology* found that “76 percent of street officers and 59 percent of managerial officers agreed that all trained, responsible adults should be able to obtain handgun carry permits”).

A webpage maintained by the Violence Policy Center (“VPC”) entitled “Concealed Carry Killers” purports to tally the number of people killed by citizens who have permits to carry firearms in public. *See* www.vpc.org/cckillers.htm. We shall demonstrate below that this proves nothing, but let us assume for the moment that these figures are accurate and meaningful. According to the VPC’s website, between May 2007 and August 30, 2011 (the date we viewed the site), 370 people were allegedly shot and killed by people with permits to carry guns. In 2007 there were approximately 3.5 million concealed-carry permits in the United States. *See* Don B. Kates & Gary Mauser, *Would Banning Firearms Reduce Murder and Suicide? A Review of International and Some Domestic Evidence*, 30 HARV. J. L. & PUB. POL’Y 649, 671 (2007). If we make the conservative assumption that this number did not increase from 2007 until now, that means that

a mere one-one-hundredth of one percent of concealed-carry permit holders committed homicide over that approximately four-year time span. That works out to a homicide commission rate of about 2.5 per 100,000 per year. This is less than half the national homicide rate for that period, which was about 5.4 per 100,000 per year. *See* Federal Bureau of Investigation, *Crime in the United States* (2009) (Available at http://www2.fbi.gov/ucr/cius2009/data/table_16.html). Citizens who are granted carry permits are thus far more law-abiding and less homicidal than the public at large. And note that this is not a fair comparison and actually overstates the homicide rate of carry-permit holders, because the 370 deaths cited by the VPC include not just murder, but also suicides and all types of manslaughter and even firearm accidents, whereas the FBI's figure includes only intentional acts of murder and non-negligent manslaughter.

The homicide threat presented by carry-permit holders is in fact far less than even this, as examination of the VPC's "Concealed Carry Killers" website reveals. The VPC's webpage does not even purport to be a study; it describes itself as a collection of "vignettes" of suicides, homicides and firearms accidents culled from news clippings, and it acknowledges that it does not have "detailed information on such killings." *See* www.vpc.org/cckillers.htm. If one goes to this website and clicks on the "tally" of "Total People Killed by Concealed Carry Killers: 370," one arrives at a 165-page document which collects the aforementioned "vignettes,"

usually with one vignette per page. (Hereafter, citations to this document will be styled “VPC Vignettes at ___”; unfortunately, the VPC did not put page numbers in its document.)

Much of the VPC’s compilation consists of incidents that took place in the home, where California law already permits people to keep guns for self-defense. At least 33 of the 165 pages in the VPC compilation describe firearms-related killings in the gun-owner’s home. *See, e.g.*, VPC Vignettes at 17, 51, 58, 63, 99, 157. Plainly, this proves nothing about the supposed risk presented by public carriage of firearms.

The VPC list also includes a significant number of incidents that likewise prove nothing about the supposed homicide risk of allowing citizens to carry firearms in public: (i) incidents involving rifles and shotguns rather than concealable weapons that are more typically carried in public, *see e.g., id.* at 91, 94, 151, 155; (ii) at least 100 incidents that involved suicide rather than the killing of another, and that do not even indicate if a firearm was the means of suicide, *see id.* at 66, 75, 79; (iii) accidental gun discharges in which nobody was charged with a crime, *see id.* at 51; (iv) homicide by strangulation, which hardly shows that guns constitute a unique threat, *see id.* at 40; and even (v) a “vignette” in which the gun-permit owner – whom the VPC says had just been “hailed as a hero” for rescuing an abandoned baby from a trash bin – was not charged because police found that

he acted lawfully in self-defense, *see id.* at 71. The VPC's tally of "Concealed Carry Killers" is a sham and proves nothing.

IV. PERMITTING LAW-ABIDING CITIZENS TO CARRY FIREARMS IN PUBLIC DOES NOT INCREASE -- BUT MAY DECREASE -- CRIME RATES.

Numerous studies indicate that the passage of more permissive carriage laws either lowers rates of violent crime or has no impact at all. So-called "shall-issue" statutes requiring the issuance of carry permits to eligible, law-abiding citizens are strongly associated "with fewer murders, aggravated assaults and rapes." John Lott, *MORE GUNS, LESS CRIME* 57 (3rd ed., 2010). Although some contest this point, *see NATIONAL RESEARCH COUNCIL REVIEW* at 120-51 (reviewing the extensive body of literature supporting or contradicting Lott's research), many experts find the evidence that shall-issue laws reduce murder rates to be compelling. Consider the views of James Q. Wilson, perhaps America's most revered and influential criminologist, who is currently Professor at Boston College and who previously held endowed chairs at Harvard, UCLA and Pepperdine. Professor Wilson was on the NRC committee and he summarized the research this way: "with only a few exceptions, the studies ... including those by Lott's critics, do not show that the passage of RTC [right to carry] laws drives the crime rates up (as might be the case if one supposed that newly armed people went about looking for someone to shoot)." James Q. Wilson, *Dissent*, Appendix A to NATIONAL

RESEARCH COUNCIL REVIEW at 270. Moreover, “[i]n view of the confirmation of the findings that shall-issue laws drive down the murder rate, it is hard for me to understand why these claims are called ‘fragile.’ ” *Id.* at 270. *See also id.* at 269 (“some of [Lott’s] results survive virtually every reanalysis done by the [NRC] committee”); *id.* at 270 (“for people interested in RTC [right to carry] laws, the best evidence we have is that they impose no costs but may confer benefits”). Professor Wilson also noted that the NRC committee’s own tabulation of the research results largely confirmed the hypothesis that permissive concealed carry laws reduce murder rates. *Id.* He concluded that the evidence presented “suggests that RTC laws do in fact help drive down the murder rate, though their effect on other crimes is ambiguous.” *Id.* at 271. It is important to remember that “no empirical research has made a case for shall-issue laws increasing crime. Instead, the literature has disputed the magnitude of the decrease and whether the estimated decreases are statistically significant.” David B. Mustard, *Comment, in* EVALUATING GUN POLICY 326 (Jens Ludwig and Philip J. Cook eds., 2003). *See also id.* at 326 (“Even if one uncritically accepts the most negative reviews of Lott-Mustard [research] at face value, there is still more evidence that shall-issue laws reduce, rather than raise, crime.”).

The majority of the members of the NRC committee found the evidence more ambiguous than did Professor Wilson, and concluded “that with 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.*” NATIONAL RESEARCH COUNCIL REVIEW at 150 (emphasis added). That conclusion, without getting into the back and forth between Lott and his critics, is sufficient to dispose of any hope Yolo County may have for justifying its policy. For it is its contention that allowing the carrying of firearms will *increase* crime, and it bears the burden of proof on that policy argument.

* * *

Neither Plaintiffs-Appellants nor the NRA has predicated the challenge to Yolo County’s policy on any argument that allowing carriage in public would *reduce* crime rates. Whichever way the debate goes on that issue, the *constitutional right* to bear arms remains the same, and it cannot be trumped by *policy* considerations – especially on the basis of evidence that the most comprehensive and authoritative review of the literature, that of the National Research Council, has found to be too ambiguous and inconclusive to serve as a basis for firearms policy.

CONCLUSION

For the reasons given above, *Amicus Curiae* NRA respectfully submits that the district court’s judgment should be reversed.

Dated: August 31, 2011

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a)(7)(C) of the Federal Rules of Appellate Procedure (“FRAP”) and Ninth Circuit Rule 32-1, the undersigned certifies that the attached amicus-curiae brief is proportionally spaced, has a typeface of 14 points or more, and contains 5,042 words, excluding matters that may be omitted under Rule 32(a)(7)(B)(iii) of the FRAP, according to the word count feature of the word processing program used to prepare this brief.

Dated: August 31, 2011

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on August 31, 2011. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: August 31, 2011

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