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Gun Control and America's Cities: Public Policy and Politics

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GUN CONTROL AND AMERICA'S CITIES: PUBLIC POLICY AND POLITICS

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* Professor of Law, Roger Williams University School of Law. Copyright © 2008 by Carl T. Bogus. I wish to thank Michelle Fleming for her wonderful research assistance and participants in the Symposium on Firearms, The Militia and Safe Cities at Albany Law School, where this paper was originally presented, for their comments.
INTRODUCTION

America's cities are dangerous places. One has a far greater chance of being murdered or robbed at gunpoint in a major city in the United States than in any other high-income nation. According to conventional wisdom, this bleak state of affairs is hopeless. Our high rate of violent crime is due to an American exceptionalism created by a unique frontier history. A high crime rate is, therefore, part of the American cultural DNA, and immutable. Furthermore, it would not matter even if gun control worked because it is politically impossible. From 1968, when several of the nation’s most prominent Democratic members of the United States Senate were turned out of office, until the razor-thin presidential election of 2000 in which Albert Gore lost several states, including his home state of Tennessee, where gun rights are especially popular, gun control has made a decisive difference that cost advocates their political careers. To the extent that gun control measures are politically feasible, they are modest measures: trigger locks, background checks, or waiting periods. Thus, we must reconcile ourselves to our condition or be content with small improvements. That, anyway, is the conventional wisdom.

I shall argue in this article that the conventional wisdom is wrong on all counts. Effective gun control is both sociologically and politically possible. This does not mean that all gun control is effective. On the contrary, there are no persuasive data that show that the modest measures advocated by major gun control organizations and the few politicians who take up their cause will, in fact, reduce lethal violence. There is a disease, and strong medicine is available, yet most of what is being sold is placebos. Gun control advocates have chosen what to push based not on whether there are good grounds to believe those policies will work but on calculations of political feasibility. America is not ready to take the strong medicine so get her used to taking whatever elixir she will swallow, and then proceed incrementally. Professor Kristin A. Gross of Duke University recently published a book

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arguing that the gun control movement should adopt just this strategy – an argument that practically falls of its own weight in light of the fact that this has been the strategy the gun control movement has followed futilely for thirty years.³

There is, however, good news: the very kind of gun control that research tells us will be effective is also, over the long-run, the most politically feasible. Conventional wisdom about the politics of gun control has been nothing more than a self-fulfilling prophesy. What is politically feasible this year is not necessarily what is politically feasible five or ten years hence. Political attitudes can be changed. The way to get America to accept the real medicine is not to start her out with false elixirs. That only destroys faith in the prescribing physician. It is to explain honestly and forthrightly that real medicine is available, what that medicine is, and why we have good reasons to believe it will work. That requires a determined, sustained, and multi-faceted campaign, and the willingness to persevere without more instant gratifications from small, but truly Pyrrhic, victories. There are models that show that such campaigns work. I shall argue that this strategy can ultimately succeed, allowing gun control to make America, and especially her cities, safer.

My objective in this article is to provide a crisp description of what kind of gun control works, how we know it works, and why it is politically feasible. This article is compact rather than comprehensive. I seek to provide the reader with an overview of the most important data and research and a succinct argument about the politics. Part I of this article will focus on policy. I shall describe the problem of lethal violence that confronts America and her cities, and explain how we know this can be reduced by a certain kind of gun control. I shall propose a specific gun control regime for America's cities. Part II will turn to politics. I shall explain why it is far more likely to ultimately achieve effective gun control by advocating for it directly than through the incremental approach.

³ KLSTIN A. GOS, DISARMED: THE MISSING MOVEMENT FOR GUN CONTROL IN AMERICA (2006). To be fair to Professor Goss, she recommends that the gun movement combine incrementalism with a much stronger emphasis on grassroots organizing. I shall discuss Professor Goss' arguments in more detail infra.
GUN CONTROL AND AMERICA'S CITIES

I. POLICY

A. Violence in America: An Overview

We are presently in a time of relatively low violent crime rates. The murder rate in the United States hit a modern high in 1991 with 24,703 murders, a rate of 9.8 murders per 100,000 inhabitants. (Throughout this article, rates will be per 100,000 inhabitants unless otherwise mentioned.) During 2006, the last year for which data are available, there were 17,034 murders in the U.S., a rate of 5.7. The overall violent crime rate— which includes robbery, aggravated assault, and forcible rape, as well as murder— also hit a high in 1991 and has since made a parallel reduction. Although both violent crime and murder rates have increased for the past two years, these may represent fluctuations rather than the beginning of a sustained trend. In fact, the murder rate has remained within a range of 5.5 to 5.7 per 100,000 for each of the past eight years—an enormous improvement from the period 1990 to 1994 when the murder rate consistently exceeded 9.0.

It is a mistake, however, to think of our present crime rate as low. No other high-income nation has a homicide rate approaching that of the United States. During the mid-1990s, for example, the United States homicide rate was averaging 8.2. During this same period of time, Finland's rate, the second highest rate among twenty-two high-income nations, was 3.3.

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4 F.B.I., CRIME IN THE UNITED STATES 2006, tbl.1 (2007) [hereinafter CIUS], available at http://www.fbi.gov/ucr/cius2006/about/index.html. The FBI defines murder and nonnegligent homicide as “the willful (nonnegligent) killing of one human being by another.” Id. (select “Offense Definitions” hyperlink under “Resources”). Throughout this article, I use the words murder and homicide interchangeably, in accordance with this definition.

5 CIUS, supra note 4, at tbl.1.

6 The violent crime rate was 758.2 in 1991 and 473.5 in 2006. Id. Violent crime has risen about 2% over the past two years. Id. It is too early to tell whether this means that the violent crime hit a low in 2004 or whether we are in a stable period characterized by small fluctuations.

7 The murder rate is 5% higher than it was five years ago, but 6.4% lower than it was ten years ago. CIUS, supra note 4, at tbl.1A.

8 Id.

9 See WORLD HEALTH ORGANIZATION, supra note 1. Impoverished countries have higher homicide rates. Particularly high are Russia (21.6), Albania (21), Kazakhstan (17.1), and Mexico (15.9) (rates per 100,000 in 1998 or 1999). Id.

10 CIUS, supra note 4, at tbl.1.
only forty percent of the U.S. rate.\textsuperscript{11} Canada's rate was less than twenty percent of the U.S. rate, and the murder rates of France, Germany, and Israel were each only about twelve percent of that of the United States.\textsuperscript{12} England's murder rate was 0.6, about seven percent of the U.S. rate.\textsuperscript{13}

Murder and robbery are especially onerous problems for America's cities.\textsuperscript{14} The murder rate for the nation's metropolitan areas is about double the rates for either small cities or rural areas.\textsuperscript{15} The difference in the robbery rate is even more pronounced: the small city rate is only 36% of the metropolitan rate, and the rural rate is nine percent of the metropolitan rate.\textsuperscript{16}

Among large cities, however, size does not much matter. The murder and robbery rates are on average the same for large cities across the spectrum of population sizes, from those with 250,000 inhabitants to those exceeding one million.\textsuperscript{17} The murder rate for medium-sized cities of between 100,000 and 250,000, however, is about half that for large cities, the murder rate declines still further along with size for cities with less than 100,000 inhabitants.\textsuperscript{18} Similarly, robbery rates decline with size for cities with less than 100,000 inhabitants.\textsuperscript{19}

As criminologists Franklin Zimring and Gordon Hawkins have so effectively shown, what makes America and her cities different from other high-income nations is not the rate of crime but the rate of \textit{lethal} crime.\textsuperscript{20} For example, Zimring and Hawkins compared crime occurring in Los Angeles, California and Sydney, Australia, both cities with populations of 3.6 million, during

\textsuperscript{11} See \textsc{David Hemenway, Private Guns, Public Health} 46 tbl.3.4 (2004) (displaying data from the World Health Organization).
\textsuperscript{12} Id.
\textsuperscript{13} Id.
\textsuperscript{14} I use the term \textit{metropolitan area} to mean one of the 362 “metropolitan statistical areas” or “MSAs” defined by the U.S. Office of Management and Budget. See infra at note 152 and accompanying text for a definition and further description of MSAs.
\textsuperscript{15} The rates are 6.2 for MSAs, 3.3 for cities outside MSAs, and 3.1 for non-metropolitan counties. \textsc{CiUS, supra} note 4, at tbl.2.
\textsuperscript{16} Id. By contrast, the forcible rape rate for small cities slightly exceeds the metropolitan rate, and for rural areas it is more than three-quarters of the metropolitan rate. \textsc{Id.}
\textsuperscript{17} See \textit{id.} at tbl.16.
\textsuperscript{18} Id.
\textsuperscript{19} Id.
\textsuperscript{20} \textsc{Franklin E. Zimring \& Gordon Hawkins, Crime is Not the Problem: Lethal Violence in America} 1 (1997).
1992. Sydney had 73% as many thefts and 110.5% as many burglaries as did Los Angeles. These data seem to reflect cities with similar crime patterns. Sydney, however, had only 12.5% as many robberies and 4.8% as many homicides as Los Angeles.

Zimring and Hawkins also compared New York City with London, cities with populations of seven million and 6.6 million respectively. London had 66.5% more thefts and 57% more burglaries than did New York City during 1990. Yet London had 19.4% as many robberies and 8.9% as many homicides as did New York. By U.S. standards, moreover, New York City and Los Angeles are not particularly dangerous cities. Detroit's murder rate is more than double that of Los Angeles and nearly five times as high as that of New York.

Who is killing whom, and why? We often think about murders as occurring during the course of another crime – during a convenience store holdup, street mugging, or burglary, for example. Yet only about 7% of murders occur during robberies. That is still a considerable number to be sure; in 2006, more than one thousand people – on average, almost three a day – were killed during robberies. Still, murders during robberies make up a smaller share of murders than many assume. In fact, only about 16% of homicides occur during the course of a felony of any kind. The largest percentage of murders, more than 40%, occurs during arguments. Most murderers, it appears, are killing

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21 Id. at 4.
22 Id. at 5 fig. 1.1.
23 Id.
24 Id. at 6.
25 Id. at 6 fig. 1.2.
26 ZIMRING & HAWKINS, supra note 20, at 6 fig. 1.2.
27 CIUS, supra note 4, at tbl. 6. It should be noted however that crime has declined especially dramatically in New York City since 1991. See, e.g., Clifford Krauss, Crime Lab; Mystery of New York, the Suddenly Safer City, N.Y. TIMES, July 23, 1995, at 4 at 1.
29 Id.
30 Id. Murders during narcotic drug crimes represent about 5% of all murders, making this the second largest category of murders occurring during the course of felonies. See id.
31 Id. The circumstances in which murders occurred were known in 9,767 of 14,990 total murders. Id. Of those, 3,697 occurred during brawls due to influence of alcohol or narcotics, arguments over money or property, or other arguments (the last category being by far the largest). EXPANDED HOMICIDE DATA, supra note 28, at tbl. 11.
people they know. In 2006, among murders where we know whether or not there was a relationship between murder and victim, the murders of family members, friends, and acquaintances were more than triple those of strangers.\textsuperscript{32} Franklin E. Zimring and Gordon Hawkins have written: “Most of the circumstances that generate homicide are not property crimes involving strangers, but arguments among acquaintances that nobody would regard as distinctively criminal until the attack began.”\textsuperscript{33}

So far I have focused on fatalities, but fatalities are the tip of the iceberg. Although guns are far more lethal than other weapons, nonfatal firearm injuries nonetheless exceed fatal injuries by a factor of about three to one.\textsuperscript{34} Hospital emergency rooms are presently treating about 39,000 Americans annually for nonfatal gunshot wounds sustained as a result of an assault.\textsuperscript{35} Some of those injuries render their victims permanently unable to use limbs or mental faculties, and the cost of all nonfatal firearm injuries has been estimated at $20 billion per year.\textsuperscript{36}

\textbf{B. The Handgun-Lethal Violence Connection}

America’s high rates of murders and robberies, and the special deadliness of aggravated assault in the United States, result in significant part from the prevalence of handguns in American society. If we can reduce the prevalence of handguns, we will reduce homicide and robbery rates and the number of people dying as a result of assaults. When I say that strong medicine is available to reduce violence in America, I therefore am referring to stringent controls on handguns. Meanwhile, weaker forms of

\textsuperscript{32} See \textit{id.} at tbl.9. These are somewhat slippery numbers because we do not know whether there was a relationship between murder and victim in 45\% of all murders, either because that information was not reported or the murder was not solved.

\textsuperscript{33} \textit{ZIMRING \\& HAWKINS, supra} note 20, at 78.


\textsuperscript{35} See \textit{supra} note 34.

\textsuperscript{36} This figure includes the cost of all firearm injuries, including those sustained as a result of attempted suicide and accidents. \textit{SUGARMANN, supra} note 34, at 179 (citing study by Kenneth W. Kizer et al.).
gun control such as waiting periods or trigger locks, or measures such as gun buy-back programs or mandated gun safety training, do not significantly reduce murders and robberies. In fact, some of those weaker measures make matters worse. This section will back up those claims with data.

We may start with some simple facts: most murders in America are committed with handguns. No other weapon is used nearly as often. During 2006, handguns were used in 60% of all murders while long guns (rifles and shotguns) were used only in 7%. Knives and cutting instruments were used in 12% of all homicides, personal weapons such as fists and feet in 5.5%, and blunt objects including clubs and hammers in 4%. This has long been the pattern. With respect to weaponry, America stands apart. As Zimring and Hawkins have written: “No large industrial democracy other than the United States reports firearms as the cause of a majority of its homicides.”

Handguns are not used more often in murders than long guns because there are more handguns. Quite the contrary, among the 192 million guns in America only 35% are handguns. Yet handguns are used in 88% of all firearm murders. Why? One factor is surely the portability of handguns. It’s a handgun that someone carries when setting out to commit a street mugging or

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37 See infra Part C.
38 EXPANDED HOMICIDE DATA, supra note 28, at tbl.7.
39 Id. In 2006, there were 14,990 homicides. Id. The FBI reports that 7,795 of these were committed with handguns (52%), 436 with rifles (3%), 481 with shotguns (3%), 107 with other guns (0.7%), and 1,358 with “firearms, type not stated.” Id. I calculate that 60% of all homicides were committed with handguns and 7% with long guns by distributing homicides with firearms of a type that was not reported among the other categories in proportion to their shares of homicides where the type of firearm was reported. Thus, among the 8,819 homicides with firearms where the type was reported, 88.4% were committed with handguns and 10.4% were committed with long guns (rifles and shotguns combined), and I have assumed the same percentages hold true for homicides with firearms of a type not reported.
40 Id.
42 ZIMRING & HAWKINS, supra note 20, at 109.
43 SUGARMANN, supra note 34, at 22.
44 Id. Rifles account for 38% and shotguns for 27% of guns in America. Id. at 22 fig.2-2.
45 See supra note 39 and accompanying text.
other robbery; it's a handgun that someone may have with them at an alcohol saturated argument in a bar or friend's house; it's a handgun that someone may keep in the car glove compartment.

However, because only a fraction of murders occur during the course of other felonies, portability cannot be the only factor that explains why handguns are associated with so many more murders than long guns. Another factor may be that because people tend to keep handguns for self-defense and long guns for hunting and recreation, handguns are more frequently kept loaded and in readily accessible locations than long guns so that during a brief moment of uncontrollable rage in a lovers' quarrel or other argument, it's a handgun that one is more likely to use before anger subsides or the other person flees. There are almost surely psychological factors at work as well. For reasons not well understood, it may be easier to point a handgun at someone else and pull the trigger than it is to do that with a long gun.46

In 2006, firearms were used in 155,770 aggravated assaults in the United States.47 An aggravated assault is an unlawful attack on another person that is intended to inflict severe bodily injury.48 The United States does not have higher rates of aggravated assaults than other high-income nations, but aggravated assaults in America are more lethal because guns are used more often.49 In fact, homicides are often not motivated by the specific intent to kill but rather by a more ambiguous desire to hurt the other person badly—a willingness to risk the other person's death rather than a clear objective to take the other person's life.50 These murders may, in a sense, be thought of as aggravated assaults gone bad. A study by Franklin E. Zimring found that gun attacks are five times as lethal as knife attacks.51 Firearms

46 Perhaps after having watched countless thousands of handgun shootings dramatized in television and movies, handguns are more psychologically associated with attacking another person than are long guns. It's simply something that leaps to mind during a moment of rage. Perhaps because handguns are smaller and lighter they are also somehow less weighty or formidable than long guns. Put conversely, maybe because of their size and heft, using long guns seems like a weightier—i.e., more serious and grave—undertaking. But for whatever the reason, handguns are used in lethal violence far more often than long guns.
47 CIUS, supra note 4, at tbl.15.
48 Id. (select "Offense Definitions" hyperlink under "Resources" to find definition for aggravated assault).
49 ZIMRING & HAWKINS, supra note 20, at 51.
50 Id. at 114.
51 Id. (citing earlier study by Zimring).
were also used in 153,285 robberies in the United States during 2006.52

Robberies are often less premeditated than many assume. Two men find themselves walking down a dark, deserted street together. One has a handgun in his pocket. That man did not set out on that particular night to find someone to rob. He often packed a gun because he lived in a dangerous neighborhood and was afraid. Now, however, opportunity presents itself, and that man robs the other at gunpoint. Maybe he has robbed before and maybe not. Maybe he thinks of himself as a robber, and maybe not. In other instances, people are driven by desperation—such as the addict who is needs a fix or the gambler who must pay a bookmaker—to acquire money immediately by any means possible. Maybe they carried a gun to protect themselves when buying drugs or because they feared their bookie, but at the right moment they impulsively use the gun for offensive purposes. Even shootings during the course of a robbery may be impulsive. Three-quarters of people who have fired guns while committing felonies say that they did not previously intend to do so.53 About half of the people who shoot another while committing another crime say they fired because a victim resisted or they were otherwise afraid of the victim.54

Gun-related robberies actually result in fewer injuries than strong-arm robberies or those with knives.55 Victims resist less often when a gun is pointed at them. Nonetheless, robberies at gun point are more deadly overall because, even though fewer victims are injured, among those injured far more die. Studies show that robberies at gun-point result in death three times as often as those at knife-point and ten times as often as those involving brute force alone.56

Just how prevalent are handguns in the America, and who owns them? In 1973, nearly half of households in the United States contained a firearm of some kind and about one-fifth contained a handgun.57 Over the next twenty years, the percentage of homes with long guns declined from 40% to 32%,

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52 CIUS, supra note 4, at tbl.15.
53 HEMENWAY, supra note 11, at 46 (citing J.D. WRIGHT, P.H. ROSSI & K. DALY, UNDER THE GUN: WEAPONS, CRIME, AND VIOLENCE IN AMERICA (1983)).
54 Id. (stating that half of those who fired guns during the course of other crimes said they did so to defend themselves).
55 ZIMRING & HAWKINS, supra note 20, at 114.
56 Id. (citing studies by Zimring and Zuehl, and by Philip J. Cook).
57 HEMENWAY, supra note 11, at 6 (citing studies by several researchers).
but the percentage of homes with handguns increased from 20% to 25%. However, it appears that over the past decade ownership of both long guns and handguns has been declining, and it is estimated that about 16% of adults in the United States now own a handgun. This decline in handgun ownership may have been at least roughly parallel to the decline in violent crime in America – both declines began in the early to mid-1990s and have continued for about a decade – but I make no claim of cause and effect. Many theories have been advanced for the decline of violent crime – from changes in police practices, to increases in the prison population, to increases in abortion starting a generation earlier. That there is much debate over so many diverse theories testifies to just how complicated the data are and how mysterious the crime drop remains.

Handgun violence is a special plague on the African-American community. Blacks compose only 12% of the United States population, but 39.3% of murder offenders and 49.5% of murder victims. It is, however, a mistake to think of gun violence as a black problem. Zimring and Hawkins have made two especially revealing observations about this issue. First, they compared how United States homicide rates would compare to other high-income nations if all U.S. black offender cases were excluded. Although this would cut the U.S. homicide rate nearly in half, the U.S. rate would still dwarf those of all other high-income nations. It would still remain well over twice the Canadian rate, nearly seven times the British rate, and eight times the Japanese rate. “So,” Zimring and Hawkins write, “the total exclusion of offenses attributed to blacks would not alter the distinctive position of the United States as an industrial democracy with extraordinarily high rates of high-lethality violence.” Second, they looked at the black and white rates with respect just to city-

58 Id. (citing principally a 2001 study by Tom W. Smith).
59 Id.
61 NEW YORK TIMES 2008 ALMANAC 276 (John W. Wright et al. eds., 2007) [hereinafter N.Y. TIMES ALMANAC].
62 EXPANDED HOMICIDE DATA, supra note 28, at tbls.3 & 1.
63 ZIMRING & HAWKINS, supra note 20, at 79-86.
64 Id. at 80-81.
65 Id. at 81.
66 Id. at 80 fig.5.3.
67 Id. at 81.
dwellers in five major U.S. cities, and found that this markedly reduces the discrepancies between the white and black offender rates for both robberies and murders.\textsuperscript{68} They write: "So a major element in the explanation of the larger concentration of violence among African-Americans is the fact that they more often reside in cities where violent crime rates are high generally."\textsuperscript{69} Not only are blacks more concentrated in cities but they are disproportionately concentrated in economically impoverished areas with failing schools and other problems. It is the interaction between handguns and socio-economic problems that is so deadly. Gun violence places an especially heavy burden on people living in the inner-cities and, as the black victim figure so clearly illustrates, on black America especially. As painful a question as it may be, we must nonetheless ask: Would we, as a nation, be as complacent about gun violence if whites were suffering from gun violence as much as blacks?\textsuperscript{70}

C. Does Gun Control Work?

By now it should be clear that handguns are associated with murder, robbery, and aggravated assault. But if we could wave a magic wand and make all handguns disappear, would these violent crimes diminish? Or would the same level of mayhem be committed with other weapons? Some suggest that the wide prevalence of guns deters crime because criminals fear potential victims might be armed; and if that fear subsides criminals will become more brazen. This argument is promoted with slogan such as "If guns are outlawed only outlaws will have guns" and "More Guns, Less Crime."\textsuperscript{71} So we might ask: If handguns were

\begin{footnotesize}
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\item \textsuperscript{68} Id. at 82-83.
\item \textsuperscript{69} ZIMRING & HAWKINS, supra note 20, at 83.
\item \textsuperscript{70} In the main, whites murder whites and blacks murder blacks. See EXPANDED HOMICIDE DATA, supra note 28, at tbl.5.
\item \textsuperscript{71} The second slogan is also the title of a book by John R. Lott, Jr. JOHN R. LOTT, JR., MORE GUNS, LESS CRIME: UNDERSTANDING CRIME AND GUN-CONTROL LAWS (2d ed. 2000). Lott's book sold many copies and his theory was proffered as justification for concealed carry laws – that is, laws requiring authorities to issue permits to carry concealed weapons to any citizen without a criminal record or documented mental illness who requests one – which were eventually enacted in thirty-four states. Lott's work has been effectively discredited by serious researchers and will not be discussed in this article. See, e.g., HEMENWAY, supra note 11, at 100-04, 247-51 (stating that Lott's "all too often presents inaccurate information, uses inappropriate data and models, and obtains questionable results," and defending those statements); SUGARMANN, supra note 34, at 164-74 (describing the controversy over Lott's work and
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\end{footnotesize}
magically removed from American society, would certain crimes – burglaries, for example – increase? Of course, we have no magic wand, only the ability to enact legislation and try to enforce it. There are nearly two hundred million working guns in the United States, and guns are very durable. If we were, therefore, to drastically restrict ownership of new handguns but allow those who have previously owned guns to keep them, would it be many decades before that policy bore fruit? Would so many people evade gun control laws as to render them ineffective?

We can begin examining these questions with comparative studies, both domestic and international, that convincingly show that murder increases with the prevalence of firearms.

The prevalence of guns, and specifically handguns, varies widely by state and region within the United States. In 1999, for example, the National Opinion Research Center at the University of Chicago surveyed gun ownership across the nation. The survey asked respondents whether they had any guns in their home, car, or garage, and if so, whether any were handguns, and it provided results for individual states as well as the nine regions defined by the U.S. Census Bureau. The study found that handguns were present in 14.8% of households in Middle Atlantic region (New York, New Jersey, Pennsylvania) and in 40.0% of those in the East South Central region (Alabama, Kentucky, Mississippi, Tennessee). Or to compare two states:

providing, a convenient synopsis of serious researchers who have found Lott’s work to be flawed). For an exhaustive technical analysis of Lott’s work, see John J. Donohue, The Impact of Concealed-Carry Laws, in EVALUATING GUN POLICY: EFFECTS ON CRIME AND VIOLENCE 287 (Jens Ludwig & Philip J. Cook eds., 2003) (concluding that “most states experienced increases in crime from the passage of the shall-issue laws.”).

Hemenway, supra note 11, at 5.


Sugarmann, supra note 34, at 25. The study found that handguns were present in 24.8% of households in the United States, and that about two-thirds of those households had both at least one handgun and one long gun. Id. at 25 fig.2-3.

Id.
handguns were present in 10.9% of households in New York and 29.6% in Texas households.\textsuperscript{76} The wide variance among the fifty states has provided researchers with opportunities to evaluate whether the prevalence of guns affects homicides.

These studies have provided persuasive evidence that the prevalence of guns affects homicide rates. A 2004 study, for example, found a strong correlation between gun availability and homicide rates.\textsuperscript{77} In fact, researchers found that the homicide rates in high-gun states were \textit{triple} those of low-gun states.\textsuperscript{78} Moreover, the researchers found that the results remained statistically significant even after they controlled for poverty, unemployment, alcohol consumption, and violent crime other than homicide.\textsuperscript{79} That the results remain statistically significant when controlling for the rates of other violent crimes is particularly revealing. This shows that the correlation between guns and homicide does not result merely because residents in more violent states feel a greater need for self-defense, or that culture is the driving force, with a more violent culture driving both violence and gun ownership. Thus, the results convincingly demonstrate that the prevalence of guns is driving up the homicide rate rather than vice versa.

Many similar regional, state, county, and cross-sectional studies have confirmed that the prevalence of guns correlates with homicides.\textsuperscript{80} Based upon the data, one economist has estimated that a 10% increase in handgun ownership increases the homicide rate by 2%.\textsuperscript{81}

International comparisons yield similar results. A 1993 study of fourteen high-income nations for which gun ownership data were available also found a statistically significant correlation

\textsuperscript{76} Id.
\textsuperscript{77} HEMENWAY, supra note 11, at 50 (citing Azrael et al., \textit{State and Local Prevalence of Firearms Ownership: Measurement, Structure, and Trends}, 20 J. QUANTITATIVE CRIMINOLOGY 43 (2004)).
\textsuperscript{78} Id.
\textsuperscript{79} Id. (citing M. Miller et al., \textit{Firearm Availability and Unintentional Firearm Deaths, Suicide, and Homicide Among 5-14 Year Olds}, 52 J. TRAUMA 267 (2002); M. Miller et al., \textit{Firearm Availability and Unintentional Firearm Deaths, Suicide, and Homicide Among Women}, 79 J. URB. HEALTH 26 (2002); Miller et al., \textit{Rates of Household Firearm Ownership and Homicide Across US Regions and States, 1988-1997}, supra note 73.
\textsuperscript{80} See id. at 49-50 (supra note 73).
between gun ownership and homicide rates. Meanwhile, no negative correlation was found between gun ownership and homicide by other means. Thus, people in nations with fewer guns were not turning to other weapons. At least two other international studies have yielded similar results.

Two famous studies deserve some detailed description. In the first, popularly known as the “Tale of Two Cities” study, a team of epidemiologists led by John Henry Sloan compared crime rates over a seven year period (1980-86) in Seattle, Washington, and Vancouver, British Columbia. They selected these two cities because, although they are opposite sides of an international border, they had similar histories, geographies, cultures, and socio-economic profiles. Both cities had nearly identical population sizes, unemployment rates, and median household incomes in adjusted U.S. dollars. The percentages of inhabitants below the poverty line in both cities were also extremely close. Whites composed 79% of Seattle’s population and 76% of Vancouver’s. In Vancouver, Asians composed nearly all of the remaining quarter of the population while in Seattle the balance of the population was split among Blacks, Asians, and Hispanics. Most of the top-ten television shows in one city also

83 Id.
85 John Henry Sloan et al., Handgun Regulations, Crime, Assaults, and Homicide: A Tale of Two Cities, 319 NEW ENG. J. MED. 1256 (1988) [hereinafter Sloan et al., Tale of Two Cities]. I have adapted my description of this study, as well as of Colin Loftin’s study of District of Columbia handgun licensing system, infra at notes 112-27 and accompanying text, from my prior article entitled The Strong Case for Gun Control, AM. PROSPECT, Summer 1992, at 19.
86 Sloan et al., Tale of Two Cities, supra note 85, at 1256-57.
87 Id. at 1257 tbl.1.
88 Id. (households receiving incomes less than $10,000 in U.S. dollars annually).
89 Id.
90 Id. The breakdown for non-white ethnic and racial groups for Seattle was Blacks 9.5%, Asians 7.4%, Hispanics 2.6%, and Native North Americans 1.3%. Id. Native North Americans composed 1.5% of Vancouver’s population. Sloan et
ranked among the top-ten in the other.\textsuperscript{91} Seattle and Vancouver, moreover, are only 140 miles apart, and both are major ports in the Pacific Northwest.\textsuperscript{92} They also share a common frontier history. Both cities were formed as a result of the gold rush and the completion of the transcontinental railroads in the late nineteenth century.\textsuperscript{93}

As one might expect from twin cities, the burglary rates in Seattle and Vancouver were nearly identical.\textsuperscript{94} The aggravated assault rate, however, was slightly higher in Seattle.\textsuperscript{95} On examining the data more closely, the researchers found "a striking pattern."\textsuperscript{96} There were almost identical rates of assaults with knives, clubs, and fists, but there was a far greater rate of assault with firearms in Seattle.\textsuperscript{97} Indeed, the firearm assault rate was nearly eight times higher than in Vancouver.\textsuperscript{98}

The homicide rate was also markedly different in the two cities. During the seven years of the study, there were 204 homicides in Vancouver and 388 in Seattle – an enormous difference for two cities with nearly identical population sizes.\textsuperscript{99} Further analysis led to a startling finding: the entire difference was due to gun-related homicides.\textsuperscript{100} The murder rates with knives and all other weapons excluding firearms were nearly identical, but the murder rates with guns were five times greater in Seattle.\textsuperscript{101} That alone accounted for Seattle having nearly twice as many homicides.\textsuperscript{102}

During the study period, people in Seattle could purchase a handgun for any reason after a thirty-day waiting period, and handguns were present in 41\% of all households.\textsuperscript{103} Vancouver, on the other hand, required a permit for handgun purchases and issued them only to applicants with a lawful reason to own a

\textsuperscript{91} Id. at 1257.
\textsuperscript{92} Id. at 1256.
\textsuperscript{93} See N.Y. TIMES ALMANAC, supra note 61, at 236 (describing the history of Seattle); PAUL-ERIC DUMONTIER ET AL., WESTERN CANADA 53, 54-55 (4th ed. 2004) (sketching Vancouver's history).
\textsuperscript{94} Sloan et al., Tale of Two Cities, supra note 85, at 1257 tbl.1.
\textsuperscript{95} Id. at 1257.
\textsuperscript{96} Id.
\textsuperscript{97} Id.
\textsuperscript{98} Id.
\textsuperscript{99} Id.
\textsuperscript{100} Id.
\textsuperscript{101} Sloan et al., Tale of Two Cities, supra note 85, at 1258-59.
\textsuperscript{102} Id. at 1258.
\textsuperscript{103} Id. at 1257, 1258 tbl.2.
handgun and who, after a careful investigation, were found to have no criminal record and to be sane. Self-defense was not a valid reason to own a handgun in Vancouver, and recreational use was strictly regulated. The penalty for illegal use was severe: two years imprisonment. Twelve percent of Vancouver homes had handguns.

The central lesson of this study is that the prevalence of handguns is a major factor in homicides, aggravated assaults, and robberies. The study also suggests answers to several other important questions. Do handguns deter crime? If handguns deter burglaries, as some argue, the burglary rate in Seattle – where so many more homes had handguns – should have been lower than the burglary rate in Vancouver. But it was not. (This finding has been confirmed by a study that found that both U.S. states and individual counties with a greater prevalence of guns also have both more total burglaries and more home invasions, that is, burglaries when someone is at home.) How often are handguns used for self-defense? The Seattle-Vancouver study found that less than 4% of the homicides in both cities resulted from acts of self-defense. And particularly, if handguns are not available, will people switch to other weapons? The answer must be no. Otherwise, Seattle and Vancouver would have had similar total homicide rates, and Vancouver would have had higher rates of homicide with other weapons.

The second study that deserves detailed description involves handguns in the District of Columbia. In 1976, the District of Columbia enacted a ban on new handguns. Residents who lawfully owned firearms had sixty days to register them. After the sixty-day period, newly acquired handguns became illegal.

Id. at 1257; see also Canadian Criminal Code, R.S.C., ch. C-46 § 106(4) (1985).

Sloan et al., Tale of Two Cities, supra note 85, at 1257.


Sloan et al., Tale of Two Cities, supra note 85, at 1258 tbl.2.

HEMENWAY, supra note 11, at 82 (citing a 2003 study by Philip J. Cook and Jens Ludwig).

Sloan et al., Tale of Two Cities, supra note 85, at 1259.


D.C. CODE § 7-2502.01 (2001); Loftin et al., supra note 110, at 1615.

D.C. CODE § 7-2502.06(b).

Id. § 7-2502.02(a)(4). The statute creates an exception for police officers who have retired from the Metropolitan Police Department to register pistols. Id.
Residents could continue to register rifles and shotguns, provided they acquired them from licensed dealers and complied with other regulations. A team of researchers led by Colin Loftin evaluated the effect of the District's ban on new handguns by comparing gun-related violence in the nine years prior to the law's enactment with the following nine years. They also compared the experience in the District with that of the immediately surrounding areas in Maryland and Virginia. (The law was, of course, only in force within the political boundaries of the District of Columbia, and was not in force in contiguous areas belonging to the same metropolitan area.)

The results of the study were surprising even to the most ardent gun control supporters. Within the District, gun-related homicides fell by more than 25%. Meanwhile, there was no statistically significant change in gun-related homicides in adjacent areas. Here again, data demonstrated that people did not switch to other weapons: within the District there was no statistically significant change in homicides with other weapons. Perhaps most surprising was the suddenness of the change. Any decline in murders and suicides was expected to be gradual, as the number of weapons in the District slowly shrank. Yet homicides abruptly declined when the law went into effect. The D.C. law, therefore, had a significant and immediate benefit.

114 Id. § 7-2502.01(a). Sawed-off shotguns, machine guns, and short-barreled rifles are banned. Id. § 7-2502.02(1)-(3).
115 Loftin et al., supra note 110, at 1616 tbl.1.
116 Id.
118 Loftin et al., supra note 110, at 1615. Moreover, gun-related suicides declined by 23%. Id. In this article, I have focused exclusively on crimes against others, but data suggest that handgun control also will save many lives by reducing suicides, particularly among adolescents. See, e.g., Bogus, Pistols, Politics, and Products Liability, supra note 41, at 1118-20 (and the sources cited therein); Bogus, The Strong Case for Gun Control, supra note 85, at 23-24.
119 See Loftin et al., supra note 110, at 1616 tbl.1.
120 Id.
121 Id. at 1619.
122 Id. at 1615.
The D.C. study demonstrates that gun control can work in the United States, even gun control that is effective only on a small political island of only sixty-eight square miles that is surrounded by more permissive jurisdictions. Washington's gun control law did not transform the city into a utopia. It has remained a violent city, and — along with many other large cities — its murder rate rose sharply in the last few years of the study (1986-88), when the use of "crack" cocaine was increasing. Yet the fact remains that for the full nine-year period after the gun control law was enacted, the mean D.C. murder rate was 25% lower than in the preceding nine years. The effect of the law was not only immediate but sustained as well.

Collectively, these studies and data convincingly show that reducing handguns in general circulation reduces murders. Any form of gun control that accomplishes that will work. For example, one study found that even a 1990 Maryland law that banned just one kind of handgun — the short-barreled, inexpensive handguns known as "Saturday Night Specials" — appeared to have reduced homicides by 9% without any increase in homicides with other weapons. The more effective a gun control system is at reducing handguns in general circulation, the greater the benefit is likely to be.

There is no evidence that gun control measures that do not reduce handguns will save lives. For example, for seven years the flagship proposal of the Brady Campaign, the nation's largest gun control advocacy group, was a national waiting period for handgun purchases. This legislation, known as the Brady Bill, was finally enacted in November of 1993 and went into effect the

123 Id. at 1620.
124 Id. at 1616 tbl.1.
125 As this article goes to press, we are awaiting a decision from the United States Supreme Court as to whether the D.C. handgun ban violates the Second Amendment to the Constitution. Parker v. District of Columbia, 478 F.3d 370 (D.C. Cir. 2007) (holding that the D.C. law violates the Second Amendment), cert. granted sub nom. District of Columbia v. Heller, 128 S. Ct. 645 (U.S. Nov. 20, 2007) (No. 07-290).
126 HEMENWAY, supra note 11, at 170 (citing Daniel W. Webster et al., Effects of Maryland's Law Banning "Saturday Night Special" Handguns on Homicides, 155 AM. J. EPIDEMIOLOGY 406 (2002)).
127 The organization now known as the Brady Campaign was then called Handgun Control, Inc., but for simplicity I refer to it as the Brady Campaign throughout this article. I was a member of the governing board of the Brady Campaign or its legal action and education arm from 1987 to 1993. Nearly the entire period of time, the Brady Bill was the organization's main legislative objective. The Brady Campaign's website is http://www.bradycampaign.org.
following February. It created a five-business day waiting period for handgun purchases and required dealers to inform local police departments of the pending purchase so that they could perform background checks on the purchasers. In 1998, the waiting period was eliminated in favor of an instant, automated background check on all firearm purchases. (A major loophole was that the legislation did not cover sales at gun shows, and subsequent legislation created a second loophole for pawn shops.) The Brady Campaign has since touted the purported effectiveness of the legislation. It points to research showing that background checks performed pursuant to the law stopped nearly 600,000 prohibited individuals from completing a handgun purchase from 1994 to 2000. There is a strong tendency to assume that this must have translated into the saving of at least some lives. But how many of these individuals subsequently obtained a handgun through some other means – by having friends or other "straw" purchasers buy the gun for them; by buying a gun on the black market, a gun show, or pawn shop; or by stealing a gun? The Brady Campaign also proclaims: "Handgun Crime Declines and Lives Are Saved after the Brady Law Takes Effect." As the careful reader will notice, however, the Brady Campaign is stating that handgun crimes declined after passage of the Brady Law, but it is not expressly claiming that the Brady Law was responsible for that decline. As discussed above, violent crime in America has been declining since 1991, and thus it has been declining from the time the Brady Law was enacted until about two years ago. But has the Brady Law been a factor in that decline? The best evidence is that it has not. At the time the Brady Law went into effect, eighteen states and the District of Columbia were exempt because they already had waiting periods and

129 Id. § 922(s)(1).
130 Id. § 922(t)(1).
133 SPITZER, supra note 131, at 130.
134 Brady Campaign to Prevent Gun Violence, supra note 132.
135 See HEMENWAY, supra note 11, at 170-71.
background checks. And after the Brady waiting period expired, nineteen states—including such populous states as California, Florida, New Jersey, and New York—continued to have their own waiting periods. In a 2000 study, researchers compared the states that previously had waiting periods and background checks with those that did not. By looking at the adult homicide rates in these two separate sets of states, researchers were able to determine whether the Brady Law had an impact. Their analysis revealed "no detectable difference in homicide trends between the 'Brady' (treatment) and 'non-Brady' (control) states among people 25 and older."

Great claims have also been made about Project Exile, a program in Richmond, Virginia that combined faster prosecutions and longer prison terms for crimes committed with guns with an aggressive advertising campaign informing the public of the program. The program was ballyhooed as reducing homicides by 40%. However, a careful study revealed that if the program had any effect, it was too small to detect. An international comparison study has also found that major gun laws reduce homicides while modest regulations do not. Claims have been made for other measures, such as mandatory firearms training programs or firearms buy-back programs. Required training programs may have some small benefit because they add one more—albeit small—burden that people who wish to acquire firearms must bear and may reduce the number of people who choose to do so. The difference, however, is likely to be marginal.

Meanwhile, a number of studies have shown that gun training courses either provide no benefit or make it more likely that those

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136 See Goss, supra note 3, at 177.
137 Spitzer, supra note 131, at 130.
139 Philip J. Cook & Jens Ludwig, Pragmatic Gun Policy, in EVALUATING GUN POLICY: EFFECTS ON CRIME AND VIOLENCE, supra note 71, at 1, 21. The researchers studied only adult mortality trends between Brady and non-Brady states.
140 Id. at 27.
141 Id.
143 Hemenway, supra note 11, at 169-70 (citing a 1994 study by S. Podell and D. Archer).
who take such courses will store their guns loaded or unlocked.\textsuperscript{144}
This is not surprising because the more familiar people are with
an activity, the more confident they become that they can
dispensewith safety measures.\textsuperscript{145}Studies have also shown that
programs for educating children about the danger of guns —
instructing them, for example, that if they come upon a gun in
their own or a friend’s home they should not touch it and
immediately go to tell an adult — are also ineffective.\textsuperscript{146}And the
evidence is that gun buy-back programs, where people are paid
for turning guns into the police with no questions asked, have
also been shown to have little if any effect.\textsuperscript{147}

I am not arguing that handguns are the only cause of violence
in America. Of course, violence results from a complicated
interaction of many factors. Broken homes, alcohol, drugs,
personality disorders, mental illness, poverty, gangs, blighted
neighborhoods — not to mention normal human emotions such as
jealousy, shame, and anger — play roles. But when handguns are
available, problems become more deadly.

Our policy choice is between strong medicine — a regulatory
framework that will severely restrict the number of handguns in
general circulation — or placebos that make advocates, politicians,
and voters believe that they have accomplished something when,
in fact, they have produced no meaningful benefit. Franklin E.
Zimring and Gordon Hawkins have written:

So the choice in handgun control is between two unpalatable
alternatives. Gun control in the twenty-first century will either be
an expensive, unpopular, and untested attempt at bringing the
U.S. handgun policy to the standard of the rest of the developed
world, or it will consist of minor adjustments to current regulations
that will all but guarantee persisting high rates of death. It is
likely that this hard choice will amount to the definitive

\textsuperscript{144} Id. at 84 (citing multiple studies).
\textsuperscript{145} Some pilots like to say: The second most dangerous time for a pilot is
after he has flown a thousand hours and he thinks he knows everything. The
most dangerous time is after he's flown ten-thousand hours and he knows he
knows everything.
\textsuperscript{146} Id. at 84-85 (citing multiple studies).
\textsuperscript{147} See id. at 217 (stating that buyback programs “have a minimal effect on
street gun violence but could reduce gun accidents, suicides, and the use of
firearms in domestic disputes.”). Conversely, buyback programs may make
matters worse because some people may turn in old revolvers and use the money
to upgrade to newer, higher-caliber handguns that hold more rounds of
ammunition.
In the second part of this article, I shall explain why I believe what Zimring and Hawkins refer to as an "expensive, unpopular, and untested" campaign for meaningful handgun control is politically feasible. But before I do, I shall briefly describe the policy I propose.

**D. A Gun Control Proposal**

There are only two types of handgun control approaches: (1) allowing everyone to own a handgun except those who fall into certain prohibited categories such as minors, convicted felons, the insane, and others who present identifiable risks; or (2) allowing no one to own a handgun unless they fall into certain categories such as law enforcement officers, licensed security guards, members of the military, and others with special identifiable needs. The first is called a permissive regulatory system and the second a restrictive system. The first system is pretty much what we have, and it does not work. There are no adequate ways to identify people who are special risks. It is worth here repeating Zimring and Hawkins' observation that "[m]ost of the circumstances that generate homicide are not property crimes involving strangers, but arguments among acquaintances that nobody would regard as distinctively criminal until the attack began." As long as there are emotions such as anger, hatred, fear, and people who have trouble controlling them, there should not be handguns within reach. Moreover, even if we could separate people who can and cannot be trusted with handguns, handguns would still be present in so many households that they would be available not only to the trustworthy but to their family members, friends, and acquaintances as well. There is simply no way to "keep guns out of the wrong hands."

Only a restrictive method that drastically reduces the number of handguns in general circulation can be effective. We should adopt such a system in our cities, where gun violence is especially acute. Although the experience of the District of Columbia has taught us that such systems can have some effect on a city-wide basis, we also know that a gun control scheme is hampered by

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148 ZIMRING & HAWKINS, supra note 20, at 201.
149 Id.
150 See, e.g., id. (using this nomenclature).
151 Id. at 78.
being so geographically constrained. We know that some people who live in cities — including people engaged in criminal activities — travel to gun stores located just outside the city limits, often with “straw purchasers,” that is, friends without criminal records who agree to purchase guns for their friend who cannot pass a background check. It makes sense, therefore, to institute such a system on metropolitan-wide rather than city-wide bases.

I propose instituting a need-based handgun licensing system within all of the nation’s metropolitan areas with more than one million inhabitants. The metropolitan areas would be the Metropolitan Statistical Areas (MSAs) designated by the U.S. Office of Management and Budget. An MSA is defined as “a core area containing a substantial population nucleus, together with adjacent communities having a high degree of economic and social integration with that core.” It includes the county in which the central city is located plus adjacent counties in which at least half of the population lives in the urbanized area. Outlying counties may also be included depending upon population density and commuting patterns. Many MSAs cross state lines. MSAs, therefore, represent the socio-economic realities of cities, ignoring synthetic political boundaries. There are presently fifty MSAs with more than one million people: the largest is the New York-New Jersey-Northern Long Island MSA with 18.3 million people, and the smallest with more than one million is the Salt Lake City, Utah MSA.

These fifty MSAs comprise only a small fraction of the nation’s land mass but include about 58% of the nation’s population. It is in these areas that gun violence is especially severe. This violence is taking a toll on the economies of these areas and of the nation as a whole, and Congress would have the authority to impose a gun control system in these areas under the commerce power. Ironically, such a system has a heritage in America — and

152 See N.Y. Times Almanac, supra note 61, at 252, for an especially clear and succinct description of MSAs, together with lists including population size, racial composition, and population change. Except as otherwise noted, I rely on this source for information about MSAs.


154 Id. (highlighting the difference among states in New England where cities and towns rather than counties are the geographic units).

155 See N.Y. Times Almanac, supra note 61.

156 See id.
just where we may not expect to find it. We think of the American gun culture arising from the Wild West, but as Garry Wills writes of that place and time: "Those entering the towns had to come disarmed, since it was against the law for anyone but law enforcement officials to carry a gun."\textsuperscript{157} Wills observes: "The West was not settled by the gun but by gun-control laws."\textsuperscript{158}

A proposal for handgun control in metropolitan areas will be politically popular within those metropolitan areas without generating strong political opposition in rural areas. Only 29% of urban residents own a gun while 56% of rural residents do so.\textsuperscript{159}

II. POLITICS

A. Conventional Wisdom

In the political realm, carefully nurtured myths become reality. In 1977, there was a revolution within the National Rifle Association (NRA), often referred to as the Cincinnati Revolt, in which political hardliners seized power.\textsuperscript{160} This watershed event turned a principally sporting and shooting association into a principally political advocacy group and lobby. The NRA is a powerful lobby, to be sure. Moreover, in the world of politics, reputation is itself a source of power: politicians are reluctant to oppose constituencies they perceive as powerful, and thus perception and reality are very much one and the same. Organizations, therefore, can benefit from taking credit for political events, whether or not they actually deserve the credit. Perhaps no organization has so successfully cultivated its reputation for power as successfully as the post-Cincinnati Revolt NRA.\textsuperscript{161}

The NRA started burnishing its image as a giant killer in 1980, the year Ronald Reagan was elected President. Reagan, of

\begin{verbatim}
\textsuperscript{157} GARRY WILLS, REAGAN'S AMERICA: INNOCENTS AT HOME 89 (1987).
\textsuperscript{158} Id. at 380.
\textsuperscript{159} THE GALLUP POLL: PUBLIC OPINION 2005, at 141 (Alec M. Gallup & Frank Newport eds., 2006) [hereinafter GALLUP POLL 2005].
\textsuperscript{160} See generally JOSH SUGARMANN, NATIONAL RIFLE ASSOCIATION: MONEY, FIREPOWER & FEAR 45-64 (1992) (providing background information on the Cincinnati Revolt).
\textsuperscript{161} Although it is by far the largest gun rights organization, the NRA is not the only gun rights organization. For simplicity's sake, however, I often use the NRA to refer both to itself and to the gun rights movement generally.
\end{verbatim}
course, defeated the hapless Jimmy Carter, whose administration was plagued by stagflation, long lines at gas stations, a hostage crisis in Iran, and, as Carter himself described it, a national “malaise.”\textsuperscript{162} The public’s repudiation of Carter was unequivocal – he won only 41% of the vote – although its approval of Reagan, who received just 51% of the popular vote, was less than rousing.\textsuperscript{163} What was far more stunning was a dramatic shift in Congress: Republicans gained nearly three dozen seats in the U.S. House of Representatives and twelve seats in the Senate, taking control of the higher chamber for the first time since 1928.\textsuperscript{164} Moreover, a number of the most prominent Democratic members of the Senate were turned out of office.\textsuperscript{165}

A coalition of New Right groups had drawn up a “hit list” of six liberal Democratic senators and had launched a coordinated advertising campaign against them.\textsuperscript{166} When four of the targets lost, the coalition claimed credit. Many believed gun control was one of the issues that brought these liberal lions to their knees, and the gun lobby had ever reason to support that view. Nevertheless, it is not at all clear that gun control made a significant difference. Frank Church, for example, lost his election to a popular young congressman by 4,262 votes.\textsuperscript{167} The New Right coalition had subjected Church to a blistering fifteen months of attack ads, radio, and television.\textsuperscript{168} The overarching theme of this campaign was to paint Church as a liberal,

\textsuperscript{162} President Jimmy Carter, Televised Address, Crisis of Confidence (July 15, 1979), \textit{text available at} http://www.pbs.org/wgbh/amex/carter/filmmore/ps_crisis.html.

\textsuperscript{163} MICHAEL SCHALLER, RECKONING WITH REAGAN: AMERICA AND ITS PRESIDENT IN THE 1980’S, at 33 (1992). Third-party candidate John Anderson received 7%.


\textsuperscript{165} \textit{Id}.

\textsuperscript{166} The six targets were Birch Bayh of Indiana, Frank Church of Idaho, George McGovern of South Dakota, and John Culver of Iowa, all of whom were defeated, and Alan Cranston of California and Thomas Eagleton of Missouri, who won reelection. For a discussion on the “hit lists” of groups such as National Conservative Political Action Committee (NCPAC), see Chuck Lane, \textit{NCPAC's Waterloo: Taking Sides}, HARV. CRIMSON (Sept. 25, 1982), available at http://www.thecrimson.com/article.aspx?ref=234513.


philosophically out-of-step with Idaho, and it attacked him on many issues including Church's support for deficit spending and abortion, as well as gun control. The ads also sought to undermine Church's integrity by complaining he voted to raise Senate salaries, and to appeal to latent anti-Semitism by accusing him of "pandering to . . . Zionism." Church was best known for his work on foreign affairs, and that was where the conservative coalition concentrated its attacks. A TV ad lambasted Church for wanting to cut the defense budget. With an empty missile silo depicted on the screen, a narrator intoned that Church "almost always opposed a strong national defense." Ads also accused Church of being "chummy" with Cuba, and supporting the "giveaway" of the Panama Canal.

The gun control attacks against Church were strange. The Citizens' Committee for the Right to Keep and Bear Arms, an especially hard-edge gun rights group and an enthusiastic member of the New Right coalition, participated actively in the campaign against Church. However, Church was an opponent of gun control. He earned an "A" rating from the NRA for a perfect anti-gun control voting record, and had even written a forward to an anti-gun control book. A representative of the gun group claimed that it wanted to defeat Church because Church's opponent, Representative Steve Symms, who also had an "A" rating from the NRA was more reliable. "Church votes the way he does because he'd be tarred and feathered if he didn't," the gun lobby representative explained. Quite clearly the gun lobby wanted so much to participate with the New Right campaign to defeat the targeted liberals that it was willing to oppose someone like Church who had a perfect voting record on

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169 Hatzenbuehler & Marley, supra note 167, at 108.
170 Id. The characterization of attempting to appeal to anti-Semitism is mine.
171 Id. at 107-08.
172 Id. at 108.
173 Id.
174 Id.
175 Hatzenbuehler & Marley, supra note 167, at 111.
177 Id.
178 Id.
179 Id.
180 Id.
the gun issue. Iowa voters probably were not fooled however. Church had represented Iowa in the Senate for twenty-four years, and his positions were well known to voters. Church had always been controversial in Idaho for his liberal foreign policy positions, and in this election – running against a strong opponent and with an especially weak presidential candidate at the head of the Democratic ticket – he simply lost a very close election.

In fact, in their post-election articles analyzing the 1980 Senate races as a whole, neither *Time* nor *Newsweek* attribute any of the results to gun control.\footnote{The GOP's Senate Surprise, *Newsweek*, Nov. 17, 1980, at 40; Reagan Gets a G.O.P. Senate, *Time*, Nov. 17, 1980, available at http://www.time.com/time/printout/0,8816,950490,00.html.} Said *Time*: “[I]t is questionable how much [the New Right] groups accomplished. For the most part, the G.O.P. candidates rejected their strident tactics, fearing a backlash. In general, the Republicans won because their opponents had grown too liberal for their states.”\footnote{Reagan Gets a G.O.P. Senate, supra note 181. *Time* added presciently: “Yet the conservative groups may have become a permanent feature of the political landscape.” *Id.*} Nonetheless, the gun lobby began to achieve a reputation of invincibility. Here is what the famous observer of American politics, Theodore H. White, wrote two years later:

It was certain that handguns were responsible for most killing crimes... The first and most necessary step in crime control was gun control. But politicians were powerless to enforce that truth. The gun lobby controlled district after district, where its single-minded advocates could make or unmake congressmen. Even the President of the United States, himself nearly killed by a handgun, would not challenge the gun lobby.\footnote{White, supra note 164, at 360.}

As a result, few politicians seeking national office advocated gun control until the Clinton administration. In November 1993, the Brady Bill passed the House by a vote of 238-187,\footnote{Final Vote Results for Roll Call 614 (1993), http://clerk.house.gov/evs/1993/roll614.xml.} and the Senate by 63-36.\footnote{United States Senate, U.S. Senate Roll Call Votes, 103rd Cong., 1st Session (1993), http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=103&session=1&vote=00394.} Here is what Bill Clinton says about this legislation in his autobiography:

Ever since John Hinckley Jr. shot Jim in Hinckley's attempt to assassinate President Reagan, Jim and Sarah had crusaded for sensible gun-safety laws. They had worked for seven years to pass
a bill requiring a waiting period for all handgun purchases so that buyers' backgrounds could be checked for criminal or mental-health problems. . . . Most Americans were for the Brady bill, but once it passed, it was no longer a voting issue with them. By contrast, the NRA was determined to defeat as many members of Congress who voted against them as possible.186

Was the Brady Bill "sensible" legislation? As previously discussed, it was not sensible from a policy perspective because it did not save lives.187 Even before it was enacted, few people expected it have a significant impact on homicide rates. Political scientist Robert Spitzer has written: "In policy terms, the Brady law's consequences were expected to be modest."188 The Brady Campaign hoped the measure would provide the gun control movement with a relatively quick victory because the gun lobby and their allies in Congress would not be able to credibly oppose it, and it hoped to then be able to build on that victory to achieve more meaningful gun control legislation.189 That was not to be. It took seven years to get this measure enacted.190 The public overwhelming supported the Brady Bill throughout the seven year fight. In 1988, for example, the Gallup Poll reported that 91% of Americans favored the bill and only 9% opposed it.191 Those are breathtaking numbers; public opinion is almost never so lopsided on controversial issues. By 1990, 95% of Americans supported the Brady Bill.192 The gun lobby, however, was neither embarrassed at opposing such a modest measure nor intimidated by public opinion. It opposes all gun control measures — whether modest or stringent — with its full ferocity. In part this is because gun rights organizations increase membership and revenue by whipping up their base with cries of imminent disaster. Every fight is a last stand at the Alamo. If the measure seems modest, the gun groups argue that it would establish a principle and precedent that will lead inevitably to the banning of all guns in America, enforced by a Gestapo-like police searching every home.

187 See supra notes 127-39 and accompanying text.
188 SPITZER, supra note 131, at 129.
189 I speak from personal experience as someone who served on the Brady Campaign's governing board during the relevant time period. See supra note 127.
190 See SPITZER, supra note 131, at 126-31 (providing an excellent description of the congressional battle over the Brady Bill).
191 George Gallup Jr. & Dr. Frank Newport, Support for Gun Control at All Time High, GALLUP POLL MONTHLY, Sept. 1990, at 34.
192 Id.
The gun lobby was able to resist the Brady Bill for seven years because its small constituency cared intensely about the issue while the vast majority of Americans who favored the Brady Bill gave it a much lower priority. As was natural, advocates often oversold the law’s potential during the long political battle over the bill, and after the law was passed they wanted to be able to claim that it worked. Echoing some of these claims, President Clinton wrote in his autobiography that the Brady Law “saved countless lives.”

Later in 1994, Congress also enacted an assault weapon ban as part of the Violent Crime Control and Law Enforcement Act of 1994. The ban prohibited domestic manufacturers from producing nineteen specified models of assault weapons and other firearms with two or more assault weapon-type features specified in the legislation. These features included bayonet mount, pistol grip, flash suppressor, barrel shroud, and telescopic sight. This portion of the Act was largely cosmetic: what makes a gun particularly dangerous is not whether it has a pistol grip but whether it can fire many rounds rapidly. While automatic weapons have long been banned, semi-automatic firearms can fire as rapidly as one can flick the trigger, which is more than one shot per second. The most meaningful part of this legislation was that it prohibited the production of ammunition magazines holding more than five rounds. The problem was that the legislation grandfathered previously manufactured ammunition clips—some of which hold thirty rounds—and people could lawfully continue to own, use, and sell them.

President Clinton writes in his autobiography that the “NRA had already lost the fight to defeat the Brady bill and was determined to prevail on this one.” As he recounts it, shortly before the final vote House Speaker Tom Foley and Senate Majority Leader Dick Gephardt “made a last-ditch appeal to me to remove the assault weapons ban from the bill.” Jack Brooks, chairman of the House Judiciary Committee, made a similar plea.

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193 CLINTON, supra note 186, at 558.
196 Id.
197 See id.
198 CLINTON, supra note 186, at 610.
199 Id. at 611.
Clinton persisted however, and in August 1994 the crime bill, with the assault weapon ban included, passed the House 235-195 and the Senate 61-38.\textsuperscript{200} Forty-six Republicans supported the bill in the House, and six Republicans did so in the Senate.\textsuperscript{201}

Just a little over two months later, Republicans made dramatic gains in the mid-term elections, picking up eight seats in the Senate and fifty-four in the House.\textsuperscript{202} Clinton largely blames this political watershed on the Brady Bill and the assault weapon ban. “Foley, Gephardt, and Brooks were right and I was wrong,” he laments.\textsuperscript{203} President Clinton continues:

The victories on the economic plan with its tax increases on high-income Americans, the Brady bill, and the assault weapon ban inflamed the Republican base voters and increased their turnout. The turnout differential alone probably accounted for half of our losses... The gun lobby claimed to have defeated nineteen of the twenty-four members on its hit list. They did at least that much damage and could rightly claim to have made Gingrich the House Speaker... After the election I had to face the fact that the law enforcement groups and other supporters of responsible gun legislation, though they represented the majority of Americans, simply could not protect their friends in Congress from the NRA. The gun lobby outspent, outorganized, outfought, and outdemagogued them.\textsuperscript{204}

Far more prominent during the mid-term elections was the “Contract with America,” which was signed on the steps of the Capitol by all Republican members of the House of Representatives but two, and every non-incumbent Republican candidate for the House.\textsuperscript{205} The signatories promised that if voters gave Republicans a majority of the House in the mid-term elections, then on the first day of the new session they would institute eight specific procedural reforms, and within the first one hundred days of the session they would bring to the floor ten specific pieces of legislation.\textsuperscript{206} This brilliant political gimmick was the brainchild of Newt Gingrich and his allies, and the legislative proposals were carefully selected and crafted with assistance from pollster Frank Luntz. Gingrich and Luntz also

\begin{footnotes}
\item[200] Id.
\item[201] SPITZER, supra note 131, at 123-24.
\item[202] CLINTON, supra note 186, at 629.
\item[203] Id. at 612.
\item[204] Id. at 629-30.
\item[205] Id. at 621.
\item[206] Id.
\end{footnotes}
provided Republican candidates with a pamphlet on how to use poll-tested language to promote themselves and attack their opponents and the Democratic Party.\(^{207}\)

Clinton concedes the Contract was a political success, and that post-election polls showed Americans knew two things: Republicans had a plan, and balancing the budget was part of that plan.\(^{208}\) Yet he seems to attribute the disastrous mid-term election results more to gun control than to the Contract. That seems unlikely. Perhaps it is more convenient for Clinton to blame the two battles over gun control than to admit that Gingrich and the Republicans outmaneuvered him in the 1994 elections. Although one of the ten legislative proposals of the Contract was a so-called “Taking Back our Streets Act”\(^{209}\) that, among other things, would have made changes to the legislation in which the assault weapon had been included, the Contract said nothing whatever about repealing the Brady Bill or the assault weapon ban, or indeed anything about gun control at all.\(^{210}\) That is not surprising. All of the Contract’s provisions had been carefully poll-tested, and gun control enjoyed enormous political support.

Mid-term elections are often referenda on how the President is doing, and the Clinton administration was not doing well in the fall of 1994. About six weeks before the mid-term election, Senate Majority Leader George Mitchell publicly announced that he had given up working to pass the President’s most important proposal, health-care reform that would have provided medical insurance for all Americans.\(^{211}\) This had been the administration’s most important initiative. Although universal medical insurance would have been difficult to maneuver through Congress under any circumstances, the President weakened its prospects by making Hillary head of the project. Giving the President’s wife this responsibility – instead of, for example, Donna Shalala who, as Secretary of Health and Human Services, had been confirmed by the Senate to lead the relevant government department – was unprecedented and controversial.\(^{212}\) Such a difficult initiative did not need another

\(^{207}\) Id. at 622.
\(^{208}\) CLINTON, supra note 186, at 622.
\(^{210}\) Id.
\(^{211}\) CLINTON, supra note 186, at 620.
\(^{212}\) President Clinton himself writes:
millstone around its political neck. Hillary then proceeded to make matters worse by fashioning an incredibly prolix proposal behind closed doors, without meaningfully including even the Democratic members of Congress.\textsuperscript{213} And the President himself further disrespected Congress – a Democratic Congress – by holding up a pen during his 1994 State of the Union address and dramatically stating that he would use it to veto any health-care reform that Congress passed that did not guarantee health care for all Americans, thereby not only making him and his wife seem to be arrogantly declaring it was their way or the highway, but suggesting that Congress was untrustworthy and was properly dealt with through threats.\textsuperscript{214} Clinton had placed Democratic members of Congress between a rock and hard place: if they gave him and his wife what they wanted, they looked like pawns; if they did not, they looked ineffectual. It is small wonder that after health-care reform expired without Congress ever doing anything beyond holding committee hearings, many voters thought it was a good time to experiment with a Republican Congress that promised to bring ten pieces of legislation to a vote within its first one hundred days. Moreover, the Republicans took control of not only both chambers of Congress, they also made enormous gains in the states, picking up eleven new governorships and most state legislatures\textsuperscript{215} – races in which the Brady Bill and the assault weapon ban were irrelevant.

On April 19, 1999, two students armed with a small arsenal of guns, killed twelve fellow students and teacher and injured twenty-three others at Columbine High School in Littleton, Colorado.\textsuperscript{216} The incident refocused the nation on the subject of gun control.\textsuperscript{217} Vice President Gore flew to Colorado and delivered

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Heading up the effort to reform health care was an unprecedented thing for a First Lady to do, as was my decision to give Hillary and her staff offices in the West Wing, where the policy action is, as opposed to the traditional space in the East Wing, where the social affairs of the White House are run. Both decisions were controversial; when it comes to the First Lady's role, it seemed Washington was more conservative than Arkansas.

\textit{Id.} at 482.

\textsuperscript{213} Although President Clinton says that claims that Mrs. Clinton operated in secret were “exaggerated,” he concedes this was the general perception. “After a great initial appearance on Capitol Hill, Hillary was being criticized for the closed meetings of her health-care task force.” \textit{Id.} at 499.

\textsuperscript{214} Clinton himself concedes the veto threat was a mistake. \textit{Id.} at 577.

\textsuperscript{215} \textit{Id.} at 629.

\textsuperscript{216} \textit{Id.} at 853.

\textsuperscript{217} It appears that the nation has since become so inured to school and
a passionate eulogy for the victims. A week after the shootings, President Clinton asked Congress to enact a package of gun control measures, the most significant of which would have closed the gun show and pawn shop loopholes in the Brady Bill. On May 14, 2000, Vice President Gore dramatically broke a tie in the Senate by voting in favor of that legislation, but it failed to pass the House. In his State of the Union address in January 2000, President Clinton identified a parent of one of the slain Columbine students who was sitting with Hillary in the House gallery, and then he proposed further gun control legislation to close the gun show loophole and require photo-ID cards and gun-safety training courses for handgun purchases. The President spent much of the first half of March campaigning for that gun control package. He was not running again, but Vice President Gore was running for president in the fall. Would the administration have pushed gun control if it thought it had proven to be politically disastrous? Would it have been reasonable to expect a member of Congress to vote for it? This too makes one wonder how much of President Clinton’s claim about gun control being such a decisive issue in 1994 is revisionist history.

When he sought to wrest the Democratic presidential nomination away from Vice President Gore during the primary battles, Senator Bill Bradley of New Jersey attempted to out-do Gore on gun control by calling for a national firearm registry.

university shootings that such incidents no longer prompt much national discussion about gun control. A massacre in April 2007 at Virginia Tech University, when thirty-two people were killed, failed to stimulate significant discussion about gun control. I write this shortly after a gunman killed five students and injured sixteen others at Northern Illinois University on February 14, 2008. See Alan Finder & Sara Rimer, Seeking Campus Security, But Gaps Likely to Persist, N.Y. TIMES, Feb. 15, 2008, at A13 (discussing concerns about campus security following Virginia Tech massacre but not mentioning anything about gun control); Susan Saulny & Monica Davey, Gunman Slays Five in Illinois at a University, N.Y. TIMES, Feb. 15, 2008, at A1 (regarding Northern the Illinois University incident).

219 See CLINTON, supra note 186, at 853 (regarding his legislative proposals following Columbine); see also SPITZER, supra note 131, at 72-74 (regarding school shootings during the 1990s) and 141-43 (regarding the political reaction to Columbine).
220 CLINTON, supra note 186, at 858.
221 Id. at 892, 897.
222 Id. at 895.
223 Michael Crowley, Gun Control Returns to the Fore on Campaign Trail,
Gore claimed he was just as rigorous on gun control as Bradley and that he also supported licensing, registration, and safety training for handguns, but Bradley argued that Gore wanted these requirements to apply only for new handgun purchases while he, Bradley, wanted to require them for owners of existing handguns as well.224 After securing the Democratic nomination, however, Gore attempted to be as quiet as possible on the subject of gun control. George W. Bush attacked Gore for flip-flopping, claiming that Gore had towed the NRA line when he was a member of Congress during the 1980s. Bush also said Gore had also been a member of the NRA.225 A bizarre exchange then followed over a period of days during which Gore demanded that Bush present evidence to back up his claim that he, Gore, had been an NRA member, and Bush teased Gore for saying that he might have “inadvertently” joined the NRA sometime in the past.226 The point of the attack, of course, was not that Gore was pro-gun control but that he was a politician with little integrity or courage – one who would switch sides when politically convenient and was afraid to forthrightly state whether he changed his mind on an issue. Moreover, Bush’s attack worked to his benefit in another way. A May 2000 Harris poll found that most Americans thought Bush was a stronger gun control supporter than Gore.227 Gun zealots were not fooled. But many Americans who favor gun control but pay no special attention to the issue apparently were fooled. This may have allowed Bush to benefit from both pro-gun control and anti-gun control votes.

The conventional wisdom is that gun control ultimately cost Albert Gore three states – Arkansas, West Virginia, and his home state of Tennessee – and thus the presidency in the 2000 election.228 The NRA did in fact campaign against Gore, and Gore did lose those states. But was gun control decisive in those

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224 David Sarasohn, Anti-Gun Plan May Undercut Bradley, Democrats, SAN JOSE MERCURY NEWS, Feb. 9, 2000, at 7B.
227 WESTEN, supra note 218, at 207.
228 Gun Owners of America, for example, includes a statement to that effect on its website. See Gun Control Fact Sheet (Mar. 2004), http://www.gunowners.org/fs0404.htm (quoting, at part H of the fact sheet, an article from the Baltimore Sun to that effect).
Just a few days before the election the Knight Ridder Newspapers published an article about how gun control might effect the election. The article stated that the “vice president’s support for tighter gun control laws has . . . greatly complicated his efforts to win a handful of hotly contested states with large numbers of hunters and gun owners who deeply mistrust efforts to tighten the regulation of firearms.” It said those states were “primarily, Pennsylvania, Ohio, Michigan, Wisconsin, and West Virginia.” Gore won three of those five states. In fact, the election was regional. Gore carried the Northeast, the Mid-Atlantic States, the upper Midwest, and the West Coast, with Bush winning the West, the Plain States, the Border States and the South. The Midwest was split. Bush carried the two Midwestern states – Indiana and Ohio – that are adjacent to the Border States, and Gore carried the rest of the Midwest. If one looks at a map, one will quickly see that only two states resisted regional trends: New Mexico and New Hampshire. Although Bush carried Arkansas, he also carried the entire South, including all seven states that border Arkansas. Gore lost his home state Tennessee; but not only was he fighting regional trends, he disrespected his home state by not campaigning there at all, not even to touch down at a Tennessee airport for a brief speech on the tarmac. The conventional wisdom that gun control cost Gore three particular states is a post hoc rationalization happily supported by the gun lobby but lacking real support.

Whether gun control was a net plus for Bush or Gore is an open question. No one knows for sure. What is quite certain, however, is that by running away from the issue during the general election Gore failed to motivate gun control supporters to vote for him. The gun lobby worked hard to stoke the fires of paranoia among its constituency. By making them afraid that Gore might support confiscatory gun control policies, the NRA gave members

230 Id.
231 Id.
232 Id.
234 Id.
235 Id.
236 Id.
237 Id.
a high incentive to vote for Bush, even if they otherwise would have preferred Gore. But gun control supporters—who overwhelmingly outnumber opponents—had little reason to give the issue a high priority. One demographic very much discussed during the election was suburban mothers or “soccer moms,” for whom safety is a much higher priority than hunting. Gore failed to give them, or anyone else who favored gun control, reason to make that issue a priority in the voting booth.

B. Changing Conventional Wisdom

Whether or not gun control may—today—be a net plus for candidates who support it, conventional wisdom says that that it is not. Politicians who like to favor gun control, therefore, are likely to steer clear of the issue. Or worse, they may try to support “sensible” or “reasonable” measures—placebos that will make them and voters feel good but that will not significantly reduce crime. This has been the history of gun control politics over the past three decades. It has significantly set back chances for bringing meaningful gun control to America. The nation is worse off today than it was before the Clinton administration, before either the Brady Bill or the assault weapon ban were enacted. Both of those bills have expired. Attempts to renew them have failed. And even if they were renewed, they would not meaningfully reduce violent crime in America.

If the gun control movement is going to succeed, it must change conventional wisdom. The way to do this is to tell the truth: strong gun control works; weak gun control does not. Enacting weak measures will consume enormous political capital, and result in Pyrrhic victories. The success will not be reinforced in the public's mind by lower crime. What weak control seems to teach is that gun control does not work.

Public attitudes are not set in stone. They can be changed. In fact, they are constantly being affected by events and the public discussion about those events. Attitudes are undergoing change all the time, whether they are being shaped by a deliberate effort or mere happenstance. Gun control proponents have made public attitude less favorable to their position over the past two decades. During the seven years that the gun control movement promoted the Brady Bill as its flagship proposal, it framed the gun control debate as being between doing nothing or having a waiting period and background checks for handgun purchases. How issues are
framed determine how people think about them. Psychologist Drew Westen writes: “Frames influence not only what people think and feel about an issue but what they don’t think about it.” By framing the issue as a debate between weak gun control and no gun control, the movement made strong gun control almost literally unthinkable.

Westen goes on to write: “The position of the NRA . . . is not the position of most Americans, urban or rural, and it is so powerful today because no one has offered a sensible counternarrative.” The powerful counternarrative is the simple truth: gun control can make a real difference, and it is in fact making a difference in other high-income nations. That narrative is supported by evidence. If that narrative seems difficult to sell it is because the gun control movement has made it difficult to sell. Simply ignoring it would have done damage enough, but the gun control movement has done a great deal more to damage its own cause. By repeatedly trying to sell ineffective measures by calling them “sensible” or “reasonable” regulations, the gun control movement has implicitly portrayed effective control as not sensible and unreasonable.

That damage is significant—and measurable—but not irreversible. Over the past sixteen years, the Gallup organization repeatedly has asked Americans whether, in general, they believe “laws covering the sale of firearms should be made more strict, less strict, or kept as they are now?” When Gallup first asked that question in 1990, 78% of Americans thought gun control laws should be more strict and only 2% said less strict. The percentage of Americans who believe gun control laws should be more strict has undergone a reasonably steady decline and today stands at 56%. Meanwhile, for nearly half a century Gallup repeatedly has asked Americans whether they think “there should be or should not be a law that would ban the possession of handguns, except by the police and other authorized persons?” When Gallup first asked this question in 1959, 60% of Americans favored and 32% opposed a handgun ban.

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238 Westen, supra note 218, at 264.
239 Id. at 208.
240 THE GALLUP POLL: PUBLIC OPINION 2006, at 439 (Alec M. Gallup & Frank Newport eds.).
241 Id.
242 Id.
243 Id. at 440.
244 Id.
now nearly reversed. The October 2006 poll found that only 32% of American favor a handgun ban while 66% oppose such a ban. These numbers reflect a substantial loss in public opinion for gun control generally — a loss for which the gun control movement itself bears considerable responsibility. This is a self-inflicted wound, critically weakening public support for the kind of gun control that works.

The solution is not more of the same. It is a concerted and sustained campaign to educate Americans that real medicine is available and what that medicine is. Public opinion will change along with the frame of the discussion, but it will not change overnight. The gun control movement needs to muster the will to persevere. It must resist the seductive appeal of winning any legislative battle in the next session of Congress. It is not necessary to drive support for real gun control up to the levels enjoyed by the Brady Bill. Indeed, it is not desirable to do so. Paradoxically, the gun control movement should have been concerned when polls showed that more than 90% of Americans supported the Brady Bill. Numbers that high suggest the popularity of tapioca: everyone likes it but no one is passionate about it. In politics, intensity matters. It is not enough that voters care enough to tell a pollster they favor something. They must care enough to vote the issue. And some must care enough to tell legislators and candidates how they feel about the issue. Political scientists call this "salience."247

Drew Westen writes that a narrative that explains why one should favor or oppose a particular policy is not effective unless it appeals to 60% of the electorate — and alienates about 30% of the electorate.248 Unless a narrative makes people who disagree with your position angry, it lacks the emotional resonance necessary to motivate people who agree with your position.249 While Westen is talking about narratives rather than policy proposals — that is, about a storyline that explains why one should support a proposal

245 Id.
247 See, e.g., Goss, supra note 3, at 173 (using term).
248 See Westen, supra note 218, at 166 (discussing potential narratives for the Democratic Party and stating that "[a]bout a third of the electorate won't turn left under any circumstances, and if the Democrats' story doesn't make them angry, there's something wrong with it.").
249 Id. at 165-66.
Arguing directly for strong gun control has another advantage. The gun lobby opposes all gun control proposals, no matter how modest, because it believes gun control advocates are engaged in a cynical campaign of incrementalism. It tells its constituents that “gun grabbers” ultimate goal is the total confiscation of all guns in America. While the public-at-large does not believe gun control advocates seek total confiscation, it knows that the gun control movement is in fact pursing an incrementalist approach. This allows the public to understand – and forgive – the gun lobby for its unyielding opposition to all proposals, including modest measures. The gun lobby is trying not to be dragged out onto the slippery slope. And, indeed, the American people have not held the NRA’s intransigence against it. The NRA has been so extreme that it even opposed a ban on Teflon-coated bullets, the so-called “cop-killer bullets” that are designed to pierce a police officer’s protective vest. Yet a 2005 Gallup poll found that 60% of Americans have a favorable view of the NRA. It is not merely gun owners who think well of the NRA, as only 40% of Americans now own a gun. Normally, we would expect the public-at-large to have a negative impression of so extreme an organization. By pursuing an incrementalist strategy however, the gun control movement has made the NRA’s extremism seem sensible. Advocating for strong gun control will not weaken the zealous opposition of the gun lobby. It will, however, allow the public-at-large, which does not share the gun lobby’s paranoia, to understand why what is being proposed is, in fact, the genuine and final objective. And they will have less sympathy for the gun lobby’s fear of a slippery slope.

Political scientist Kristin Goss argues that the gun control movement must build a grass roots movement, and to do that it must pursue a strategy of incrementalism. She believes that the only way to keep individuals working on the issue is to give

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250 Westen and Goss agree that rational arguments are inadequate to change attitudes and inspire action. It is not enough to describe a public problem and explain why a particular solution will work. Advocates must present narratives that will move people emotionally. As Goss puts it, social-movement leaders “must turn a ‘public problem’ into a personal threat.” Goss, supra note 3, at 107.

251 Id. at 112.

252 GALLUP POLL 2005, supra note 159, at 139.

253 Id. at 140.

254 See generally Goss, supra note 3, at 145-75.
them goals they can periodically achieve. She is, however, confusing ends and means. It is politically necessary to develop a body of public support that is not only broad but deep, or as she herself would put it, that has high salience. A highly motivated slim majority is more powerful than an overwhelming majority with low motivation. For some issues, the way to achieve that goal may be through grassroots organizations built through a series of incremental campaigns. But that method has not worked for gun control. What is required is a sustained campaign to change the frame of the debate, however that campaign is conducted.

CONCLUSION

We now know what kind of gun control works and what does not. Reducing handguns works; reducing them dramatically makes a dramatic difference. Cities will benefit most from this regime because they suffer the highest rates of violent crime. And, understandably, it is in the cities that handgun control is most politically popular. Therefore, such a regulatory system makes sense both from the perspective of policy and politics. Because cities are not sociologically and commercially confined by synthetic political boundaries, a handgun control system will be far more effective if implemented on a metropolitan-wide basis. I propose, therefore, instituting a need-based handgun licensing system within all metropolitan areas in the United States with a population of more than one million. There are presently fifty such metropolitan areas in the country of that size. Smaller metropolitan areas would be brought within the regulatory system if and when a decennial census found them to have grown to more than one million inhabitants.

Such a proposal is politically feasible if gun control advocates launch a concerted and sustained campaign to explain to the American public why we know such a system would work. This will mean that there will be a period of time when no modest gun control measures are enacted. As a policy matter, that is not a

255 Id. at 185-89.
256 Kristin Goss also believes that incrementalism reduces fear of the slippery slope. Id. at 188. She writes: "Once people are comfortable with some limited amount of regulation a little bit more doesn't seem so threatening. . . . Incrementalist policy approaches reduce the perception of risk and create logical precedents for further policy making." Id. at 67. But here too she is over-generalizing. On this issue, just the reverse is true.
loss because the evidence shows that weak gun control does not provide meaningful benefits. Politically, it is preferable to be frank and forthright with the American people, and to educate them about what we know about what kind of gun control works and what does not. This period of education will be neither easy nor brief. But in time it will produce the political prerequisite for meaningful gun control – a sufficiently motivated majority.