

No. 07-290

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IN THE  
**Supreme Court of the United States**

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DISTRICT OF COLUMBIA AND ADRIAN M. FENTY,  
MAYOR OF THE DISTRICT OF COLUMBIA,  
*Petitioners,*

v.

DICK ANTHONY HELLER,  
*Respondent.*

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**On Writ Of Certiorari  
To The United States Court Of Appeals  
For The District of Columbia Circuit**

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**BRIEF OF VIOLENCE POLICY CENTER AND THE  
POLICE CHIEFS FOR THE CITIES OF LOS  
ANGELES, MINNEAPOLIS, AND SEATTLE AS  
AMICI CURIAE IN SUPPORT OF PETITIONERS**

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If the Court were to hold that private individuals not affiliated with a militia have a Second Amendment right, *amici curiae* Violence Policy Center and the Police Chiefs for the cities of Los Angeles, Minneapolis, and Seattle urge the Court to hold that the District of Columbia's handgun ban is a constitutionally permissible, reasonable restriction on that right, because these laws protect the citizens of the District from widespread violence from the use of handguns in an urban environment.

#### **INTEREST OF *AMICI CURIAE*<sup>1</sup>**

*Amicus curiae* Violence Policy Center is a national non-profit educational organization that conducts research and public education on firearms violence and provides information and analysis to policymakers, journalists, organizations, researchers, advocates, and the general public. The Violence Policy Center examines the role of firearms in the United States, analyzes trends and patterns in firearms violence and works to develop policies to reduce gun-related deaths and injuries. In addressing these matters, the Violence Policy Center conducts numerous fact-based studies on a full range

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<sup>1</sup> The parties have consented to the filing of this brief. Counsel of record for all parties received notice at least 10 days prior to the due date of the *amici curiae*'s intention to file this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

of gun violence issues that have influenced congressional policy-making and shaped congressional debates over gun control as well as state regulation of firearms. Accordingly, the Violence Policy Center is an active participant in the debate over the meaning of the Second Amendment, monitoring and participating in Second Amendment litigation throughout the country.

*Amici curiae* also include the Chiefs of Police for three of the nation's largest cities: Los Angeles, Seattle, and Minneapolis. These Police Chiefs are keenly aware of the devastation caused by handguns in American cities, and in particular the dangers handguns pose to law enforcement officers. The Police Chiefs have a substantial interest in enacting and upholding handgun restrictions in order to protect the lives of their citizens and their officers.

*Amicus curiae* William T. Bratton is the Chief of Police of the Los Angeles Police Department. Chief Bratton is the former police commissioner for the cities of New York and Boston. In his current position, Chief Bratton oversees the third largest police department in the United States, managing 9,500 sworn officers, 3,000 civilian employees, and covering a jurisdiction of 468 square miles. Chief Bratton holds a Bachelor of Science Degree in Law Enforcement from Boston State College/University of Massachusetts. He is a graduate of the FBI National Executive Institute and was a Senior Executive Fellow at the John F. Kennedy School of Government at Harvard University. He currently serves as the elected President of the Police Executive Research Forum. He is a frequent

lecturer, writer, and commentator. Among his many honors and awards, Chief Bratton holds the Schroeder Brothers Medal, the Boston Police Department's highest award for valor.

*Amicus curiae* Timothy J. Dolan is the Chief of the Minneapolis Police Department. Chief Dolan oversees a Department of approximately 800 sworn law enforcement officers and 300 civilian employees. Chief Dolan has more than 23 years of experience with the Minneapolis Police Department, including service as Assistant Chief of Police, Deputy Chief, Inspector and Commander of the 4th Precinct (north Minneapolis), Commander of Narcotics, Commander of Emergency Response, and Director of Training. Chief Dolan holds a Master of Arts in Public Administration and Education and a Bachelor of Arts in Sociology and Criminal Justice, both from the University of St. Thomas. He completed the Police Executive Research Forum's Senior Management Institute for Police in 2002 and the FBI's National Academy. Chief Dolan has participated in many efforts to reduce crime, including a recent presentation to the National Summit on Violent Crime in America hosted by the Police Executive Research Forum.

*Amicus curiae* R. Gil Kerlikowske is the Chief of the Seattle Police Department. Chief Kerlikowske is the former deputy director for the U.S. Department of Justice, Office of Community Oriented Policing Services, which provides federal grants to local police agencies in support of community policing services. Chief Kerlikowske also served as police commissioner for the cities of Buffalo, New York, and

Fort Pierce and Port St. Lucie, Florida. Currently, Chief Kerlikowske oversees a Department of approximately 1,200 sworn law enforcement officers and 700 civilians. Chief Kerlikowske is an active participant in many law enforcement-related organizations. He serves as Vice President of the Major Cities Chiefs Association, an organization composed of 55 of the largest law enforcement agencies in the United States. He is a member of the International Association of Chiefs of Police, the world's oldest and largest non-profit membership organization of police executives. Chief Kerlikowske is a notable speaker on law enforcement issues, including gun control.

## SUMMARY OF THE ARGUMENT

If the Court were to hold that private individuals unaffiliated with a militia have a Second Amendment right to keep handguns for use in their homes, the Court should also hold that such a right is subject to reasonable restrictions, and that the District of Columbia's handgun ban is an eminently reasonable restriction.

The handgun ban is a reasonable restriction, because handguns constitute a unique class of firearm that have an unmatched ability to cause violence and kill human beings. When the District's handgun ban was enacted in 1976, no other firearm had the same inherently dangerous design features or the same record of killing. Especially in small, densely-populated cities like the District of Columbia, handguns present a tremendous and grave threat to the public safety. The District's elected representatives recognized these facts in 1976, and they enacted the handgun ban as a reasonable response to the heightened dangers associated with handguns.

The reasonableness of the handgun ban has become even more obvious since 1976. Since 1976, handguns have evolved to become even deadlier. Today's handguns are increasingly designed to maximize lethality and mimic military-style weapons. Replacing the revolvers of thirty years ago, modern high-capacity semiautomatic pistols have the alarming ability—demonstrated all too often in mass shootings and the tragic deaths of innocent people—to kill more efficiently and more



effectively than their handgun predecessors. Affirming the court of appeals' judgment would open the District's doors to these modern semiautomatic pistols and other deadly handguns. Such a result would have catastrophic consequences.

Crime and human injury statistics have confirmed the reasonableness of the handgun ban and proven the disparity between handgun lethality and other types of firearms. Handguns have devastated American society like no other firearm. Handguns are involved in more homicides, more suicides, more crime, and more police killings, than any other firearm.

Finally, the District's handgun ban is a reasonable and constitutional restriction because handguns are less effective than other firearms for self-defense. Although they are designed to be more lethal than other firearms, handguns are smaller and harder to shoot accurately. When faced with a real threat that requires self-defense, human beings encounter automatic physiological and mental impairments. The critical skills needed to shoot a handgun accurately are the very skills that are lost in a moment of life-threatening danger, resulting in a greater likelihood that innocent people are killed.

## ARGUMENT

This case presents the question whether the District of Columbia’s prohibition on registering (and therefore using) handguns is constitutional. The text of the D.C. Code refers to handguns as “pistol[s],” defined as guns “originally designed to be fired by use of a single hand.”<sup>2</sup> Such handguns present a unique menace to the public safety, and the District’s prohibition is a constitutionally permissible, reasonable restriction on any private right to use them within the District’s borders. Accordingly, the Court should reverse the judgment of the court of appeals.

### I. **THE SECOND AMENDMENT PERMITS REASONABLE RESTRICTIONS ON THE RIGHT TO BEAR ARMS**

*United States v. Miller*, 307 U.S. 174 (1939) is the only case in which this Court has directly addressed the right to bear arms guaranteed by the Second Amendment. In *Miller*, the Court affirmed the validity of a statute that regulated arms through registration requirements, firearm transfer taxes, and restrictions on the types of arms capable of being transferred or used.<sup>3</sup> The Court reasoned that “possession or use of a ‘shotgun having a barrel of less than eighteen inches in length’” did not bear a “reasonable relationship to the preservation or

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<sup>2</sup> D.C. Code § 7-2501.01(12).

<sup>3</sup> 307 U.S. at 175.

efficiency of a well regulated militia.”<sup>4</sup> Thus, *Miller* at a minimum strongly suggested that no right to possess a firearm exists outside of a well-regulated militia, and *Miller* also held that the right as it relates to a militia is not absolute but instead subject to reasonable restrictions.

*Amici curiae* Violence Policy Center and Police Chiefs support petitioners’ argument, supported by *Miller*, that the Second Amendment confers rights only to those affiliated with a militia.<sup>5</sup> However, if the Court were to hold that a private right exists unrelated to militias, it also should hold that the right is subject to reasonable restrictions. Such a conclusion is consistent with the holding of *Miller*, which affirmed the validity of the restrictions described above, and with *Lewis v. United States*, in which the Court held that a rational basis existed for prohibiting convicted felons from possessing firearms.<sup>6</sup> Citing *Miller*, the *Lewis* Court stated that the Second Amendment “guarantees no right to keep and bear a firearm that does not have ‘some

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<sup>4</sup> *Id.* at 178.

<sup>5</sup> *Amici* also support petitioners’ argument that the Second Amendment does not bar Congress or the District of Columbia from enacting a local handgun ban in the District, as the amendment only protects against federal interference with state militias and related state gun rights.

<sup>6</sup> 445 U.S. 55, 65 (1980) (holding that the “firearm regulatory scheme at issue here is consonant with the concept of equal protection embodied in the Due Process Clause of the Fifth Amendment if there is ‘some rational basis for the statutory distinctions made . . . or . . . they have some relevance to the purpose for which the classification is made.’” (citations omitted)).

reasonable relationship to the preservation or efficiency of a well regulated militia.”<sup>7</sup> Thus, the Court reasoned that the restrictions on the individual felons at issue were permissible.

Furthermore, the conclusion that any private right (unrelated to militias) would be subject to reasonable restrictions is consistent with the weight of authority interpreting state constitutional provisions addressing a private right to bear arms. Although the Second Amendment does not explicitly refer to such a right, 42 states either explicitly provide the private right in their constitutions or in official opinions interpreting their constitutions.<sup>8</sup>

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<sup>7</sup> *Id.* at 65 n.8.

<sup>8</sup> Ala. Const. of 1901, art. I, § 26; Alaska Const. art. I, § 19 (amended 1994); Ariz. Const. art. II, § 26; Ark. Const. of 1874, art. II, § 5; Colo. Const. art. II, § 13; Conn. Const. of 1818, art. I, § 15 (1965); Del. Const. of 1897 art. I, § 20 (1987); Fla. Const. art. I, § 8(a)-(d) (amended 1968); Ga. Const. of 1983, art. I, § 1, ¶ VIII (amended 1998); Idaho Const. of 1890, art. I, § 11 (amended 1978); Ill. Const. of 1818, art. I, § 22 (1970); Ind. Const. art. I, § 32 (amended 2001); Kan. Const. art. I, § 4 (amended 1975); Ky. Const. of 1891, § 1(7); La. Const. of 1974, art. I, § 11; Me. Const. art. I, § 16; Mich. Const. of 1963, art. I, § 6; Miss. Const. of 1890, art. III, § 12; Mo. Const. of 1945, art. I, § 23; Mont. Const. art. II, § 12; Neb. Const. art. I, § 1 (amended 1988); Nev. Const. art. II, § 11(1) (amended 1982); N.H. Const. of 1784, pt. 1, art. 2-a (amended 1982); N.M. Const. art. II, § 6 (amended 1986); N.C. Const. of 1971, art. I, § 30; N.D. Const. art. I, § 1 (amended 1984); Ohio Const. of 1851, art. I, § 4; Okla. Const. art. II, § 26; Or. Const. art. I, § 27; Pa. Const. of 1790, art. I, § 21; R.I. Const. art. I, § 22; S.C. Const. art. I, § 20; S.D. Const. art. VI, § 24; Tenn. Const. art. I, § 26; Tex. Const. art. I, § 23; Utah Const. art. I, § 6 (amended 1984); Vt. Const. ch. I, art. 16; Va. Const. art. I, § 13 (amended 1971); Wash. Const.

*(footnote continued on next page)*

Courts in these states have consistently upheld gun control laws—including bans on the private sale and possession of handguns—that are a reasonable regulation of the explicitly-defined individual right to bear arms, so long as they do not completely destroy<sup>9</sup> or nullify<sup>10</sup> the right.<sup>11</sup> Among other things, these courts have held that a ban on classes of weapons—just like the District of Columbia’s ban on handguns—does not constitute a destruction or nullification of the right to bear arms if other classes of arms are permissible.<sup>12</sup>

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art. I, § 24; W. Va. Const. art. III, § 22 (amended 1986); Wis. Const. art. I, § 25 (amended 1998); Wyo. Const. art. I, § 24.

<sup>9</sup> See, e.g., *State v. Dawson*, 159 S.E.2d 1, 11 (N.C. 1968); *State v. McAdams*, 714 P.2d 1236, 1237 (Wyo. 1986); *State v. Hamdan*, 665 N.W.2d 785, 799 (Wis. 2003).

<sup>10</sup> See, e.g., *Trinen v. City of Denver*, 53 P.2d 754, 757 (Colo. Ct. App. 2002).

<sup>11</sup> The first state case to address the reasonable regulation of firearms was *State v. Shelby*, 2 S.W. 468 (Mo. 1886). The Missouri Supreme Court held that although the Missouri Constitution “secures to the citizen the right to bear arms in the defense of his home, person, and property,” prohibiting intoxicated persons from possessing firearms was “a regulation . . . to which the citizen must yield, and a valid exercise of the legislative power.” *Id.* at 469. See also Adam Winkler, *Scrutinizing the Second Amendment*, 105 Mich. L. Rev. 683, 716-19 (2007).

<sup>12</sup> States and localities commonly prohibit the possession or use of certain classes of weapons, including total bans on sawed-off shotguns, machine guns, stun guns, assault weapons, and semiautomatic weapons. See Winkler, *supra* at n.9 (citations omitted). Courts have upheld legislation in densely-populated areas that banned handguns. *Id.* at n.207 (citing *Kalodimos v. Vill. of Morton Grove*, 470 N.E.2d 266, 269-73 (Ill.

*(footnote continued on next page)*

**II. THE DISTRICT OF  
COLUMBIA'S HANDGUN BAN IS  
A REASONABLE RESTRICTION ON  
ANY PRIVATE RIGHT TO BEAR ARMS**

The District of Columbia's handgun ban is a reasonable restriction on any private right to bear arms under the Second Amendment. The District enacted the ban in 1976, in response to an alarming rise in handgun violence. The ban was also a reaction to the unique threat handguns posed to citizens of the District, a small and entirely urban area.

The handgun ban was a plainly reasonable restriction in 1976, when handguns did not yet have the firepower of today's high-capacity semiautomatic pistols. The handgun ban is even more obviously reasonable in the new millennium. Over the past thirty years, the gun industry has developed innovations that dramatically enhance handguns' lethality. Today's handguns are much more suitable than their predecessors for injurious and unlawful uses, and the disparity between the singular lethality of handguns and other firearms is even greater than before.

The reasonableness of the District's handgun ban is further supported by a wealth of data plainly demonstrating that handguns are much more likely than other firearms to be used in crimes and acts of violence.

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1984); *City of Cleveland v. Turner*, No. 36126, 1977 WL 201393, at \*3-4 (Ohio Ct. App. Aug. 4, 1977).

Finally, the District's handgun ban is a reasonable restriction because handguns are a less effective form of self-defense than other types of firearms, a proposition confirmed even by experts who support gun ownership.

**A. The District's Handgun Ban  
Was a Manifestly Reasonable  
Restriction at the Time It Was Enacted**

The District's decision to place greater restrictions on handguns than apply to rifles and shotguns was based on a determination that the number of crimes committed with handguns, including robberies and murder, was increasing dramatically.<sup>13</sup> The District was reacting to what was, at the time, a recent rise in handgun use. From 1946 through 1950, handguns represented only 13 percent of domestic firearm production, and handguns remained relatively uncommon throughout the 1950s. During the 1960s, however, a firearm market dominated by long guns designed to kill deer and pheasant was overtaken by handguns—guns specifically designed to kill human beings.<sup>14</sup> It was this deadly trend to which the District was responding when it banned handguns in 1976.

The District's elected representatives were well aware of the inherent design characteristics of handguns that made them easy to steal and conceal,

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<sup>13</sup> See Petr.'s Br. at 48-50 (citing legislative history).

<sup>14</sup> Tom Diaz, *Making a Killing: The Business of Guns in America* 83 (1999).

and therefore far more dangerous than other firearms commonly available at the time. And the Council reasoned that, as “a totally urban” area, the District is “a unique place” in which handguns had virtually no legitimate, practical use.<sup>15</sup>

**B. The Reasonableness  
of the District’s Handgun  
Ban is Increasingly Evident  
in Today’s Handgun Environment**

Although all firearms are capable of inflicting human injury and mortal wounds, not all firearms are designed with equal killing power. Modern handguns—even more so than their predecessors and other categories of firearm—are uniquely designed to deliver deadly force in a wide variety of circumstances. Handguns’ deadliness stems primarily from a combination of their small (and shrinking) size and their extreme (and growing) firepower. As technology advances, the gun industry continues to develop and market increasingly deadly handguns.<sup>16</sup> The rapid advancement in handgun lethality is epitomized by the recent introduction of *pistol* versions of military-style semiautomatic assault rifles. Photographs of some of these weapons are included in the appendix to this brief.<sup>17</sup>

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<sup>15</sup> Morning Council Sess. Tr. 73:9-12, May 3, 1976; *see also* Morning Council Sess. Tr. 47:20-21, May 18, 1976; *see also* Petr.’s Br. at 49.

<sup>16</sup> Diaz, *supra*, at 83.

<sup>17</sup> *See* App. at 1a-4a.



As a result of these design enhancements, the District of Columbia's handgun ban is even more reasonable today than when it was enacted. Affirming the court of appeals' judgment, which invalidated that ban, would naturally result in a proliferation of newer, highly lethal semiautomatic pistols in the District, thereby jeopardizing public safety and undermining the District's efforts to curb violent crime.<sup>18</sup>

**1. The Handgun Industry Has Shifted Production from Revolvers to High-Capacity Semiautomatic Pistols**

Since the early 1980s, the handgun industry has shifted production from the traditional revolver to the high-capacity semiautomatic pistol.<sup>19</sup> Revolvers typically are capable of holding five or six rounds of

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<sup>18</sup> The definition of "pistol" in the D.C. Code includes both revolvers and pistols (including semiautomatic assault pistols), and therefore both types of handgun are subject to the ban. See D.C. Code § 7-2501.01(12) (defining "pistol" as a gun "originally designed to be fired by use of a single hand"). Semiautomatic assault pistols also are separately banned under the District's law because they are considered a form of "machine gun." See D.C. Code §§ 7-2501.01(1), 7-2502.02(a)(2). Of course, as explained herein, *all handguns*, including those that are defined as machine guns under District law, present unique and extreme risks to District residents.

<sup>19</sup> Josh Sugarmann, *Every Handgun is Aimed at You: The Case for Banning Handguns* 7 (2001); see also John Malloy, Gun Digest 2000, *Handguns Today: Autoloaders* 117 (Ken Warner ed., Krause Publications 1999) ("As the concealed-carry movement grows across the country, the demand for small but powerful handguns grows.").

ammunition in a revolving cylinder and take a relatively long time to reload. Semiautomatic pistols are capable of easily holding three times the ammunition of the traditional “wheelgun” revolver and have a reloading process utilizing a pre-loaded ammunition “magazine” that takes seconds.

Revolvers were the most prevalent form of handgun manufactured and imported in the 1970s, and thus were a substantial catalyst for the District’s handgun ban. In 1987, for the first time, pistol production surged past revolver production. Semiautomatic pistols now lead the handgun market by a wide margin. Today, the handgun most likely to be used in acts of violence is a semiautomatic pistol.<sup>20</sup>

The rise of the high-capacity semiautomatic pistol has dramatically increased the unique dangers to the public posed by handguns. That is because, as we explain below, the critical design features of the handgun—the same features that in more primitive forms motivated the ban in 1976—have been modernized in a manner increasingly focused on maximizing lethality.

## **2. The Modern Handgun is Designed for Superior Lethality**

Modern handguns have several unique design features that, in combination, make them particularly dangerous among firearms. Compared

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<sup>20</sup> Sugarmann, *supra*, at 7.

to other firearms and earlier versions of handguns, today's handguns (i) have the *capacity* to hold larger amounts of ammunition; (ii) use higher *caliber* ammunition that is continually increasing in size and power; and (iii) are more *concealable*.

**a. The Ammunition  
Capacity of Handguns  
Has Increased Dramatically**

Modern handguns are increasingly designed to provide greater ammunition *capacity*, a critical factor that affects the outcome of an armed encounter.<sup>21</sup> Unlike the six-shot revolvers dominant three decades ago, the high-capacity pistols available today routinely use 10-, 13-, 15-, 18- and even 30-round ammunition magazines.<sup>22</sup> When more rounds are fired and guns can be more quickly reloaded, the likelihood of inflicting wounds, and the severity of the resulting injuries, increases.<sup>23</sup> This unfortunate

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<sup>21</sup> See *Pocket Rockets: The Gun Industry's Sale of Increased Killing Power*, available at <http://www.vpc.org/studies/pockcont.htm>.

<sup>22</sup> High-capacity pistol magazines are readily available for purchase by consumers. See, e.g., <http://www.ednnsports.com> (listing numerous high-capacity pistol magazines for sale) (last visited Jan. 10, 2008).

<sup>23</sup> Dean Dahlstrom & Kramer D. Powley, et al., "Comparative Performance of 9mm Parabellum, .38 Special and .40 Smith & Wesson Ammunition in Ballistic Gelatin," CPRC Reporter No. TR-01-95 (1994); see also Martin Fackler, "Gunshot Wound Review," 28 *Annals of Emergency Medicine*, 194-203 (1996); "USSOCOM calls for .45-cal 'offensive handgun,'" *International Defense Review* at 1401 (1990) (describing Dr. Fackler's emphasis on the wounding effect of the permanent cavity as  
(footnote continued on next page)

fact is illustrated all too often in mass shootings in America's schools, malls, places of worship, and other public arenas.

More than any other recent handgun trend, the rise of semiautomatic assault pistols demonstrates the elevated dangers that come from increased handgun ammunition capacity. Semiautomatic assault pistols are military-style weapons that incorporate enhanced design features born out of the unique needs of the military. For example, two important design features of firearms developed for the military allow a shooter to lay down a wide field of fire (sometimes referred to as "hosing down" an area). These design features include: (1) high capacity detachable ammunition magazines; and (2) devices, such as an additional pistol grip or barrel shroud, that make it easier simply to point the gun (as opposed to aiming carefully) while rapidly pulling the trigger. These same design features that enable military personnel to "hose down" an area are now available on handguns sold to civilians in other jurisdictions but banned under the District of Columbia's statute.

Semiautomatic assault pistols include many highly lethal weapons that an uninformed observer might not even recognize as a "handgun."<sup>24</sup> For example, manufacturers have recently developed

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equating to "the bigger the bullet, the bigger the hole, the more rapid the incapacitation due to circulatory collapse").

<sup>24</sup> Photographs of some examples of assault pistols that are "handguns" under the D.C. Code are included in the appendix. See App. at 1a-4a.

*pistol* versions of AK-47 and AR-15 semiautomatic assault rifles.<sup>25</sup> These assault pistols commonly utilize ammunition magazines of 20, 30, or even 40 rounds.

**b. Handguns Have Higher Caliber Ammunition Designed for Increased Lethality**

Today's handguns are also more lethal than their predecessors because of the *caliber*<sup>26</sup> of the ammunition they fire.<sup>27</sup> And today's handgun ammunition is increasingly more lethal *by design*.

Handguns for the civilian market now fire ammunition capable of piercing *body armor*—the last line of defense responsible for saving thousands of police officers' lives. The first of these handgun “vest-busters” was the Model 500, a 50 caliber magnum handgun introduced by Smith & Wesson in

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<sup>25</sup> This includes, for example, the Bushmaster Carbon 15, the Olympic Arms AR-15 pistol, and the Ewbank AK-47 pistol. See Bushmaster Carbon 15, available at [http://www.bushmaster.com/catalog\\_defense\\_recreation\\_index.asp](http://www.bushmaster.com/catalog_defense_recreation_index.asp) (last visited Jan. 9, 2008); Olympic Arms AR-15 pistol, available at [http://www.olyarms.com/index.php?page=shop.browse&category\\_id=8&option=com\\_virtuemart&Itemid=37%20\(last%20visited%20Jan.%209,%202008\)](http://www.olyarms.com/index.php?page=shop.browse&category_id=8&option=com_virtuemart&Itemid=37%20(last%20visited%20Jan.%209,%202008)) (last visited Jan. 9, 2008); Ewbank AK-47 pistol, available at [http://ewbankak47.com/AK47\\_Pistols.php](http://ewbankak47.com/AK47_Pistols.php) (last visited Jan. 9, 2008).

<sup>26</sup> Caliber is the diameter of a bullet.

<sup>27</sup> Sugarmann, *supra*, at 6-11; *Pocket Rockets*.

February 2003.<sup>28</sup> The Model 500 was designed around a new cartridge called the .500 Smith & Wesson Magnum. The striking power of the .500 Smith & Wesson Magnum round substantially exceeds the protection level of the highest grade of concealable body armor normally worn by law enforcement officers in the field.<sup>29</sup> Smith & Wesson also recently introduced another handgun with “vest-busting” power, the Model 460 XVR (X-treme Velocity Revolver).<sup>30</sup> Other manufacturers have followed suit with their own versions of handguns chambered for the .500 Smith & Wesson Magnum round.

More shockingly, gun manufacturer FN Herstal recently introduced into the civilian market a pistol and cartridge *specifically* designed to defeat body armor—the Model Five-seveN.<sup>31</sup> This handgun is

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<sup>28</sup> See Smith & Wesson Model 500 Revolver (available at <http://www.smith-wesson.com/webapp/wcs/stores/servlet/ProductDisplay?catalogId=10001&storeId=10001&productId=12761&langId=-1&isFirearm=Y>) (last visited Jan. 10, 2008).

<sup>29</sup> *Vest Buster: The .500 Smith & Wesson Magnum—The Gun Industry’s Latest Challenge to Law Enforcement Body Armor*, Violence Policy Center (2004), also available at <http://www.vpc.org/graphics/S&W500%20final.pdf>

<sup>30</sup> See Smith & Wesson Model 460 XVR, available at <http://www.smith-wesson.com/webapp/wcs/stores/servlet/ProductDisplay?catalogId=10001&storeId=10001&productId=14776&langId=-1&isFirearm=Y> (last visited Jan. 10, 2008).

<sup>31</sup> The model’s name appears to be a play on the company’s name, as FN Herstal is often referred to as “FNH” in the gun media. Unlike the Five-seveN, the Smith & Wesson handguns  
(footnote continued on next page)

chambered for a very high velocity 5.7 mm round that was originally developed specifically as an armor-piercing round and designed for use by law enforcement and counter-terrorism teams.<sup>32</sup>

**c. Handguns Used Today  
Are More Concealable**

Unlike shotguns or rifles, handguns have always been *concealable* and *portable*. The modern trend in handgun design is toward guns that are smaller and even more concealable. But smaller size does not mean less power. Because of modern materials, the smaller handguns manufactured today have even greater firepower than their bulkier predecessors.

Gun manufacturers exploit their ability to produce handguns that are smaller but more powerful by highlighting these characteristics in their marketing materials. In the mid-1990s, one manufacturer dubbed this new generation of

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were not specifically designed to penetrate body armor. That capability is an unfortunate result of the company's design choices in pursuit of enhanced lethality.

<sup>32</sup> After an initial outcry from law enforcement agencies about the availability of this combination of gun and armor-piercing ammunition, the manufacturer agreed not to import into the United States the variety of its 5.7 mm ammunition specifically designed to penetrate body armor. Nevertheless, questions remain about the viability of the current federal definition of what constitutes banned "armor-piercing ammunition," the capabilities of the ammunition the manufacturer continues to import, and the availability of its armor-piercing ammunition through channels in informal markets such as gun shows.

handguns “Pocket Rockets.”<sup>33</sup> “Pocket Rocket” pistols can be smaller than a human hand, but as gun publications boast, they have “a size/power ratio undreamed of 25 years ago.”<sup>34</sup> The editor of *Shooting Sports Retailer*, a gun industry magazine, summed up the phenomenon: “Firepower is increasing. So is the killing potential as guns shrink in size and concealability.”<sup>35</sup>

The adverse effects of increased handgun concealability are not surprising. Guns that are easily concealed are more likely to be carried on the person than larger firearms.<sup>36</sup> Criminals use handguns far more often than other weapons in homicides, at least in part because they are easily hidden.<sup>37</sup> Increased concealability also leads to greater *accessibility* in a moment of anger or emotion. In real world terms, this means the difference between a non-lethal verbal altercation or fist-fight and a deadly shoot-out.

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<sup>33</sup> See *Pocket Rockets*; see, e.g., Jim Grover, *Glock’s New Pocket Rockets! Guns & Ammo*, Jan. 1996, at 36, 37.

<sup>34</sup> See *Pocket Rockets*.

<sup>35</sup> Bob Rogels, *Headache Cure #2000*, *Shooting Sports Retailer*, Jan. 1997, at 6.

<sup>36</sup> See Garen J. Wintemute, *The Relationship Between Firearm Design and Firearm Violence*, 275 *JAMA* 1749 (June 1996).

<sup>37</sup> See Wintemute, *supra*, at 1749; see also Sugarmann, *supra*, at 75 (citing statistics showing that from 1990 to 1998 handguns were used in more homicides than all other weapons combined).



The devastating effect of handgun accessibility in the United States is demonstrated by comparing crime statistics in this country to those of other Western industrial nations. The rate of nonviolent crimes (burglary, theft, and other property crimes) is similar across countries, but the rate of *lethal* violence resulting from crimes is much higher in the United States.<sup>38</sup> Experts have drawn the unremarkable conclusion that a primary cause of this disparity is the easy accessibility of handguns in the United States. As one study concluded: “Our rate of assault is not exceptional; our death rate from assault is exceptional.”<sup>39</sup>

**C. The Handgun Ban is Reasonable Because Handguns are Much More Commonly Used in Acts of Violence Than Other Firearms**

The District’s decision to ban a specific class of firearm, while allowing other types of firearms, is eminently reasonable in light of data proving that handguns are much more likely than other firearms to be used in acts of violence.

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<sup>38</sup> See Franklin Zimring and Gordon Hawkins, *Crime Is Not the Problem: Lethal Violence in America* 52 (1997).

<sup>39</sup> Zimring & Hawkins, *supra*, at 122-123; see also Susan P. Baker, *Without Guns, Do People Kill People?*, 75 Am. J. of Pub. Health 587, 588 (June 1985) (concluding: “People without guns *injure* people; guns *kill* them.”).

**1. Handguns Continue to be Responsible for a Disproportionately High Number of Homicides, Including Mass Shootings**

Because handguns are designed to maximize lethality, it is not surprising that handguns cause death at a rate significantly higher than other generally available categories of firearms. The District's handgun ban benefits public safety by removing the class of weapon most likely to kill innocent people—yet another reason why banning this particular class of firearm is a reasonable restriction on any private constitutional right.

Although they have grown in prevalence, handguns currently comprise only about one-third of the total number of firearms in the United States.<sup>40</sup> Approximately 65 percent of all firearms in this country are rifles and shotguns. Only one out of every five Americans—a distinct minority—owns a handgun.<sup>41</sup> Yet handguns account for a drastically disproportionate percentage of firearm deaths. In fact, more than two out of three of the Americans who have died by firearm violence since 1962 were killed with handguns—an alarming total now exceeding 670,000 lives.<sup>42</sup>

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<sup>40</sup> Sugarmann, *supra*, at 22, 176.

<sup>41</sup> *A Shrinking Minority: The Continuing Decline of Gun Ownership in America*, Violence Policy Center, available at <http://www.vpc.org/studies/gunownership.pdf>.

<sup>42</sup> Sugarmann, *supra*, at 177.

From 1990 to 1998, for example, handguns were used in the vast majority—*81 percent*—of all firearm homicides.<sup>43</sup> In fact, expanding the data to include *all* homicides (even those that did not involve a firearm), handguns were used in a remarkable *55 percent* of all killings.<sup>44</sup> Handguns are used to kill human beings in the United States more than all other weapons *combined*.<sup>45</sup>

Handguns also are used in an extraordinary percentage of this country's well-publicized shootings, including the large majority of mass shootings. A review of 50 high-profile shootings over the past four decades revealed that from 1980 onward the bulk of such incidents (39) were mass shootings. A handgun was used in 74 percent of these mass shootings as the only or primary weapon. In 62 percent of these incidents, the handguns were purchased legally.<sup>46</sup>

In one recent example of the devastation caused by handguns, a shooter on the Virginia Tech campus used two pistols to murder 32 students and faculty in April 2007. The two pistols were a Glock 19 pistol (with 15-round ammunition magazines) and a Walther P22 pistol (with 10-round ammunition magazines). The catalog for the Glock 19 boasted, "comparable in size and weight to the small .38 revolvers it has replaced, the . . . Glock 19 is

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<sup>43</sup> *Id.* at 75.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 156.

significantly more powerful with greater firepower, and is much easier to shoot fast and true.”<sup>47</sup>

## **2. Handguns are Used in Firearm Suicides at a Disproportionately High Rate**

Handguns are also more likely than other firearms to be used in a suicide. The District’s ban prevents suicides by eliminating the most common suicide tool.

The death toll resulting from handgun suicides is astronomical. Firearm suicide deaths consistently outpace firearm homicides.<sup>48</sup> In the twenty-year period from 1978 to 1997, handguns were likely used in 241,000 out of just over 350,000 firearm suicides.<sup>49</sup>

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<sup>47</sup> *Backgrounder on Pistols Used in Virginia Tech Shooting*, Violence Policy Center (2007), available at <http://www.vpc.org/studies/vatechgunsbackgrounder.pdf> (last visited Jan. 10, 2008).

<sup>48</sup> For example, from 1990 to 1997 there were 147,000 suicides committed with a firearm in contrast to 100,000 firearm homicides. See Garen J. Wintemute, Stephen P. Teret et al., *The Choice of Weapons in Firearm Suicides*, 78 Am. J. of Pub. Health 824-826 (1988); Stephen W. Hargarten, Trudy A. Karlson et al., *Characteristics of Firearms Involved in Fatalities*, 275 JAMA 42-45 (1996); Ronald V. Clarke and Peter R. Jones, *Suicide and Increased Availability of Handguns in the United States*, 28 Soc. Sci. Magazine 805-09 (1989); Arthur L. Kellermann, F.P. Rivara et al., *Suicide in the Home in Relation to Gun Ownership*, 327 New Eng. J. Med. 467-72 (1992).

<sup>49</sup> Sugarmann, *supra*, at 38.

The *availability* of firearms, especially handguns, is a major driver of suicide rates. Where there are more handguns, more people successfully commit suicide. Multiple studies have confirmed that “gun ownership, rather than the strictness of gun control laws, [is] . . . the strongest correlate of the rates of suicide and homicide by guns.”<sup>50</sup> Handgun ownership in particular plainly affects suicide rates. A six-year study of almost a quarter-million California residents, for example, showed that the suicide rate during the first week after the purchase of a handgun was *57 times higher* than for the population as a whole.<sup>51</sup> While suicide rates decreased after this initial spike, even five years later the suicide rate among handgun owners remained *double* that of the rest of the population.<sup>52</sup>

The availability of handguns also increases the likelihood that a suicide attempt will succeed. The overwhelming majority of those who attempt suicide fail. Not surprisingly, the presence and availability of a handgun all but guarantees that a suicide attempt will end in a fatality.<sup>53</sup>

Handgun suicide is even more of a threat in the densely urban environment of the District of Columbia. Several studies have established that

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<sup>50</sup> David Lester, *Research Note: Gun Control, Gun Ownership, and Suicide Prevention*, 18 *Suicide and Life-Threatening Behavior* 176 (1988).

<sup>51</sup> Garen J. Wintemute et al., *Mortality Among Recent Purchasers of Handguns*, 341 *New Eng. J. Med.* 1583 (1999).

<sup>52</sup> *Id.*

<sup>53</sup> Wintemute & Teret et al., *supra*, at 824-26.

“the more urban the environment, the more likely a handgun is to be the firearm of choice in a suicide.”<sup>54</sup>

Given the statistics described above, it is not surprising that thirty years after enacting its handgun ban, the District of Columbia has the lowest suicide rate in the nation.<sup>55</sup> Not coincidentally, the District has guns (of any type) in only 5 percent of its homes—also the lowest percentage in the nation.<sup>56</sup> Between 2000 and 2004, there were 1,406 firearm suicide victims aged 16-years and younger across the United States. During this same span, *not a single* child 16 years or younger committed suicide with a firearm in the District of Columbia.<sup>57</sup>

### **3. Handguns are Used in Non-Lethal Crimes at a Disproportionately High Rate**

Handguns are also the firearm most commonly used in the commission of crimes that do not result in homicide, including rape and sexual assault,

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<sup>54</sup> Sugarmann, *supra*, at 36.

<sup>55</sup> National Center for Injury Prevention and Control, WISQARS database. (statistics available at <http://webappa.cdc.gov/sasweb/ncipc/leadcaus10.html> (last visited Jan. 10, 2008) (last visited Jan. 10, 2008).

<sup>56</sup> Catherine A. Okoro et al., *Prevalence of Household Firearms and Firearm-Storage Practices in the 50 States and the District of Columbia: Findings from the Behavioral Risk Factor Surveillance System*, 2002, 116 *Pediatrics* 370 (2005).

<sup>57</sup> *Id.*

robbery, and aggravated assault.<sup>58</sup> The District's handgun ban not only saves lives but also deters would-be criminals from carrying out such acts.

Because they are desired by criminals and easily concealed, handguns also are stolen more than any other firearm, increasing the likelihood that an unlawful user will utilize the handgun to commit a crime. In fact, according to the FBI's National Crime Information Center, at least 60 percent of all stolen firearms are handguns (even though handguns comprise a distinct minority of all firearms in the United States).<sup>59</sup>

#### **4. Handguns Kill Far More Police Officers Than Any Other Firearm**

Handguns are also distinct from other firearms because they are used far more often to kill police officers. Between 1983 and 1998, well over one thousand law-enforcement officers in the United States were killed while responding to felony crimes. Almost all of these deaths—over 90 percent—were caused by firearms. And of those police officer fatalities involving firearms, an alarming 77 percent were caused by handguns.<sup>60</sup>

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<sup>58</sup> Sugarmann, *supra*, at 71-83.

<sup>59</sup> *Id.* at 60.

<sup>60</sup> *Id.* at 79.

**D. The Handgun Ban is Reasonable  
Because Handguns are Less Effective  
for Self-Defense than Other Firearms**

The District's handgun ban also is a reasonable restriction on any private Second Amendment right because handguns are not an effective means of self-defense. Handguns are deadly weapons that, more than any other firearm in the United States, kill human beings. Ironically, however, the handgun is the *least* effective firearm for self-defense for all but a small group of exceptionally well-trained individuals (such as police officers) who maintain their skills with regular and intensive practice.

Many of the features that make handguns particularly lethal also render them less effective in situations requiring a gun owner to fend off an attacker.<sup>61</sup> Numerous studies have confirmed that handgun owners put their own safety and the safety of others in jeopardy.<sup>62</sup>

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<sup>61</sup> That handguns are not effective for self-defense is further confirmed by statistics on justifiable homicide. In 2006, only 1.9% of all handgun homicides were justifiable homicides. DOJ, Expanded Homicide Data Table (2006), available at [http://www.fbi.gov/ucr/cius2006/offenses/expanded\\_information/data/shrtable\\_07.html](http://www.fbi.gov/ucr/cius2006/offenses/expanded_information/data/shrtable_07.html); DOJ, Expanded Homicide Data Table 14 (2006), available at [http://www.fbi.gov/ucr/cius2006/offenses/expanded\\_information/data/shrtable\\_14.html](http://www.fbi.gov/ucr/cius2006/offenses/expanded_information/data/shrtable_14.html). Statistics for prior years were very similar. *See id.*

<sup>62</sup> *See generally Unintended Consequences: Pro-Handgun Experts Prove That Handguns Are a Dangerous Choice for Self-*  
*(footnote continued on next page)*



Even pro-gun advocates recognize that handguns are not well-suited for self-defense. Firearms expert Chris Bird has explained that a handgun “is the least effective firearm for self defense” and in almost all situations “shotguns and rifles are much more effective in stopping a [criminal].”<sup>63</sup> That contention is supported by a wealth of evidence.

As Bird has noted and many others have echoed, “[a] handgun is the hardest firearm to shoot accurately.”<sup>64</sup> Because of their smaller size and shape, which allows them to be concealed and carried easily, handguns—compared with larger shotguns and rifles that are designed to be held with two hands—require a greater degree of dexterity.<sup>65</sup>

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*Defense, Violence Policy Center (2001); see also Sugarmann, supra, at 55-61.*

<sup>63</sup> Chris Bird, *The Concealed Handgun Manual: How to Choose, Carry, and Shoot a Gun in Self Defense* 40 (1998).

<sup>64</sup> *Id.*; see also Massad F. and Dorothy A. Ayoob, *In the Gravest Extreme: The Role of the Firearm in Personal Protection* 47 (1980) (“The handgun is the most difficult firearm to shoot accurately and rapidly; skill comes only with practice.”); Duane Thomas, *The Truth About Handguns: Exploding the Myths, Hype, and Misinformation* 42 (1997) (“Most cops and civilian gun carriers are lousy handgun shots.”) (emphasis in the original).

<sup>65</sup> Handguns may be effectively used in self-defense by the very tiny percentage of handgun users who are highly-trained and who routinely practice their skills (this includes, most notably, law enforcement officers). But even those who have these qualifications cannot fully simulate the types of physical and psychological effects of a real life shootout. See *Unintended Consequences* at 27-34.

The difficulty of shooting a handgun accurately is substantially compounded when an individual is faced with a life-threatening situation. Even a well-trained shooter will experience dramatic physiological effects in response to mortal danger. Commonly known as the “fight-or-flight reflex,” and accompanied by an enormous surge in adrenaline—described by one gun expert as “the most powerful hormone in the body”<sup>66</sup>—the resulting effects include the loss of fine motor skills, tunnel vision, auditory exclusion, trembling, and loss of control of bodily functions.<sup>67</sup> Although these effects may be lessened through intensive training, their advent is “an *automatic* physical reaction to a perceived threat that will result in predictable *physical, emotional, perceptual, and cognitive* changes because of high physical arousal states.”<sup>68</sup>

The effect of these unavoidable physiological changes is profound. A handgun owner faced with the “fight-or-flight reflex” is *less* likely to be able to manipulate his handgun effectively for self-defense, but he also is *more* likely to endanger himself, his family, and other innocent bystanders.<sup>69</sup> Loss of fine motor skills in particular severely affects an individual’s ability to accomplish tasks like

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<sup>66</sup> Massad F. Ayoob, *Stressfire*; Volume I of *Gunfighting For Police: Advanced Tactics and Techniques* 6 (1999).

<sup>67</sup> *Unintended Consequences* at 49.

<sup>68</sup> Alexis Artwohl and Loren W. Christensen, *Deadly Force Encounters: What Cops Need to Know to Mentally and Physically Prepare for and Survive a Gunfight* 33 (1997) (emphasis in original).

<sup>69</sup> *Unintended Consequences* at 49.

squeezing a trigger or aiming and reloading a handgun.<sup>70</sup> This factor, when combined with other physiological effects, can easily result in the killing of an innocent bystander.<sup>71</sup>

The relative ineffectiveness of the handgun among firearms as a self-defense tool is yet another reason why the District of Columbia's handgun ban satisfies constitutional analysis. The District of Columbia's decision to deny homeowners a less effective firearm for self-defense, while permitting more effective firearms, is a plainly reasonable and constitutional restriction.

### CONCLUSION

The District of Columbia's handgun ban is an eminently reasonable restriction on any private right to bear arms for persons unaffiliated with a militia, given the manifest dangers to the public safety that handguns present. The Court should reverse the judgment of the court of appeals.

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<sup>70</sup> *Id.* at 51.

<sup>71</sup> *Id.* at 52.

Respectfully submitted,

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January 11, 2008

## APPENDIX

1a

Phone (800) 228 - 3471 • Fax (360) 491 - 3447 • www.olyarms.com



**Model: OA-93**  
7075 T6 Aluminum Forged Receivers Machined By Olympic Arms  
Black Matte Anodized Receivers, Parkerized Steel Parts  
Gas Operated Semi-automatic Action  
Upper type: OA-93 FT  
Front sight: N/a  
Handguard: F23A  
Barrel: 6.5", button rifled, 416 stainless steel  
Chambering: 5.56 nato  
Bore: Long-life non-chromed bore  
Twist rate: 1x7  
Muzzle: Phantom flash suppressor  
Stock: N/a  
Length/Weight: 17.00" / 4.46 lbs  
Misc:  
*The OA-93 is the original AR-15 pistol.*

\$ 89995 DLR ..... \$ 1,080 MSRP  
UR \$ 695 DLR ..... \$ 834 MSRP

The OA-98 has been tested to be the best AR PISTOL in the industry.\* The OA integrated recoil system eliminates the need for a buttstock!

See page 9 for our new AR-15 pistol, the K23P, which features a 6.5" barrel and no buttstock.



**Model: OA-98**  
7075 T6 Aluminum Forged Receivers Machined By Olympic Arms  
Black Matte Anodized Receivers, Parkerized Steel Parts  
Gas Operated Semi-automatic Action  
Upper type: OA-93 FT Skeletonized  
Front sight: N/a  
Handguard: N/a  
Barrel: 6.5", button rifled, 416 stainless steel  
Chambering: 5.56 nato  
Bore: Long-life non-chromed bore  
Twist rate: 1x7  
Muzzle: Not threaded  
Stock: N/a  
Length/Weight: 15.25" / 49 oz.  
Misc:  
*The skeletonized version of the OA-93 and light as a pistol.*

\$ 89995 DLR ..... \$ 1,080 MSRP

*This model is shipped without a magazine.*

\* Based on a Gun Tests review and comparison. Gun Tests V16 N.9 Sept. 2004.

*The OA-98 uses standard AR-15/M16 magazines. Not available as an upper conversion kit. Legal in "post ban" restricted states. Not legal in California.*

60 Day Satisfaction Guarantee • Lifetime Warranty

18

Source: *Olympic Arms*, Olympic Arms catalog 2007 at 18.

**The Civilian Legal**  
**Brügger & Thomet TP-9 Pistol**

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**Tactical Power**  
**"Swiss Timing"**



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Tel: 847-277-7258 / Fax: 847-277-7259  
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**Celebrating our 21st Year in Business!**

Source: "The Civilian Legal: Brügger & Thomet TP-9 Pistol," 62 Shotgun News, Jan. 1, 2008.

3a



Source: *Romanian AK Pistol*, 62 Shotgun News, Jan. 1, 2008 at 32.




4a

**BW5 FSA SA RIFLE & PISTOL 9x19mm**

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9mm Parabellum or 9mm Luger



Semi-auto version of the primary firearm used by FBI's Hostage Rescue Team, SWAT Units and other world class counter-terrorist organizations. Blowback operated with a stationary barrel and delayed roller lock bolt system, fires from a closed and locked bolt position, fed from a 10, 30 or 40 round mag.

- High grade steel receiver
- Paddle magazine release
- Front sight: Fixed post in ring
- Rear sight: Rotating drum 3 aperture open "V"
- 9 inch 3-lug stainless steel barrel with fluted chamber, 1:10 twist
- Navy/FBI style lower polymer grip houses fire control, ambi safety
- High impact, glass filled nylon forend and buttstock or buttcap

**BW5 FSA SA Rifle** with permanently attached aluminum fake suppressor, extends barrel length to 16.5 inches . . . . . **\$1,520**

**BW5 FSA SA Pistol** . . . . . **\$1,545**

Optional Vented Forend Shown on Pistol . . . . . **\$50**

Source: *BW5 FSA SA Rifle and Pistol*, 62 Shotgun News, Jan. 1, 2008 at 25.