President
Mark W. Pennak

MARYLAND SHALL ISSUE®
SELF DEFENSE IS A CIVIL RIGHT

February 7, 2025

**WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT,
MARYLAND SHALL ISSUE,
IN OPPOSITION TO SB 577 AND HB 713**

I am the President of Maryland Shall Issue ("MSI"). Maryland Shall Issue is a Section 501(c)(4), all-volunteer, non-partisan, non-profit organization dedicated to the preservation and advancement of gun owners' rights in Maryland. It seeks to educate the community about the right of self-protection, the safe handling of firearms, and the responsibility that goes with carrying a firearm in public. I am also an attorney and an active member of the Bar of the District of Columbia and the Bar of Maryland. I retired from the United States Department of Justice, where I practiced law for 33 years in the Courts of Appeals of the United States and in the Supreme Court of the United States. I am an expert in Maryland Firearms Law and the law of self-defense. I am also a Maryland State Police certified handgun instructor for the Maryland Wear and Carry Permit and the Maryland Handgun Qualification License ("HQL") and a certified NRA instructor in rifle, pistol and personal protection in the home and outside the home and muzzle loading. I appear today as President of MSI to provide information in OPPOSITION to the Bill.

The Bill: The Bill adds a new Section 5-901 in the Public Safety Article of the Maryland Code to provide that the Maryland Dept. of Health prepare and distribute to all County health departments in the State literature regarding firearm safety, firearm training, suicide prevention, mental health awareness and conflict resolution. The Bill then directs that each county health department to distribute this literature "to all establishments that sell firearms or ammunition within the county." The Bill then states that each such establishment "shall" make the literature "visible and available at the point of sale" and "distribute the literature to each person who purchases a firearm or ammunition." The Bill authorizes representatives from the county health department to issue citations to the establishment for any violation and imposes civil fines of $500 for the first violation and a fine of $1000 for any subsequent violation.

The Bill Is A Violation Of the First Amendment

There is no dispute in this Bill requiring dealers to display and distribute this literature created by the State is content-based, compelled speech and is thus "presumptively unconstitutional." *Nat'l Inst. Of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 766 (2018) ("*NIFLA*"). "A speaker's right to 'decide what not to say' is 'enjoyed by business corporations generally.'" *Moody v. NetChoice, LLC*, 144 S.Ct. 2383, 2410 (2024), quoting *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 573-74 (1995). Such speech may be compelled under *Zauderer v. Off. of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 628 (1985), **only** if the literature is merely "purely factual and uncontroversial"

"commercial speech." Under *NIFLA*, *Zauderer* is limited to "'purely factual and uncontroversial information about the terms under which . . . services will be available.'" *NIFLA*, 585 U.S. at 768-69, quoting *Zauderer*, 471 U.S. at 651. See, e.g. *NetChoice, LLC v. Attorney General, Florida,* 34 F.4th 1196, 1227 (11th Cir. 2022), *remanded on other grounds, Moody v. NetChoice, LLC,* 603 U.S. 707 (2024) (holding that that compelled speech under *Zauderer* must be "about their conduct toward their users and the 'terms under which [their] services will be available'") (citation omitted).

There are several constitutional aspects to this subject and, for those who wish to conduct a deep dive, these issues are addressed more fully in the attached petition for certiorari and reply brief filed in the Supreme Court in *MSI v. Anne Arundel Co.*, 91 F.4th 238 (4th Cir. 2024), *cert. denied*, 2024 WL 4426600 (U.S. Oct 07, 2024). In the *Anne Arundel County* case, the compelled speech of dealers was sustained with respect to two particular pieces of literature that focused on suicide prevention. No "training" literature was presented and the "firearm safety" page of the literature was limited to safe storage. The Fourth Circuit did not dispute that this literature was not about "the terms under which . . . services will be available" but held that the literature was justified as a label or "safety warning." The Fourth Circuit also adopted an extremely expansive view of "commercial speech" which is contrary to controlling precedent. See *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 561 (1980) (holding that commercial speech means an "expression related solely to the economic interests of the speaker and its audience").

The Supreme Court denied review undoubtedly to allow the issue to "percolate" in the lower courts. That is standard practice by the Court. MSI believes strongly that the *Anne Arundel County* case misapplied *NIFLA* and *Central Hudson* and was wrongly decided by the Fourth Circuit. We are committed to pursuing this issue further in an appropriate case. Indeed, the Fourth Circuit's First Amendment jurisprudence is currently before the Supreme Court in *Mahmoud v. McKnight*, 102 F.4th 191 (4th Cir. 2024), *cert. granted sub nom. Mahmoud v. Taylor*, No. 24-297, 2025 WL 226842 (Jan 17, 2025). That case involves Montgomery County's compelled education of children in the County's schools on LGBPQ topics over the objections of parents. Certiorari was probably granted to reverse.

These sorts of bills compelling dealer speech have very recently been enacted in New York and in California and those statutes will undoubtedly be challenged in due course. If a conflict in the circuits emerges, the Supreme Court will likely then review the First Amendment issues. And the scope of *Zauderer* is an open question and may arise in other kinds of cases as well. That issue is now pending in two circuits (the 11th Circuit and the 5th Circuit) on remand from the Supreme Court's decision in *Moody v. NetChoice, LLC*, 603 U.S. 707, 727 n.3 (2024) (noting that *Zauderer* should be addressed on remand). Suffice it to say this issue is still unresolved. See *Borgner v. Florida Bd. of Dentistry*, 537 U.S. 1080 (2002) (Thomas, Ginsburg, JJ., dissenting from a denial of certiorari) (noting that "guidance" was needed on this issue).

But even under the Fourth Circuit's wrong-headed approach, the constitutionality of the compelled speech authorized by this Bill will turn on a case-by-case examination of the content of the literature that is compelled. If the literature is not "purely factual and uncontroversial" it will be challenged and struck down. That test is strict. "Purely factual" and "uncontroversial" are distinctly different terms and cannot be collapsed into a single inquiry. The test for "controversial" speech focuses on the topic of the speech, not on whether individual statements in the literature are factually accurate. See *National Ass'n of Wheat Growers v. Bonta*, 85 F.4th 1263, 1277-78 (9th Cir. 2023); *X Corp. v. Bonta*, 116 F.4th 888 (9th Cir. 2024). *Wheat Growers*, for example, looked to "the topic of the disclosure and its effect on the speaker" to determine "whether something is subjectively controversial." 85 F.4th at 1277. Similarly, in *NIFLA*, the Supreme Court struck down the compelled notices and rejected *Zauderer* not only because the notices pertained to third-party services (not services rendered by the seller) but also because the notices concerned abortion which, the Court held, was "anything but an 'uncontroversial' topic." 585 U.S. at 769. There was no dispute that the "content" of the compelled notices in *NIFLA* was factually accurate but that did not matter. "Gun control" is a highly controversial topic that cannot be advanced through compelled speech. Compelled speech motivated by anti-gun ideology will not pass muster.

"Factually accurate" is likewise a strict standard. Technically true, but misleading speech is impermissible. As the Ninth Circuit explained in *Wheat Growers*, "a statement may be literally true but nonetheless misleading and, in that sense, untrue." 85 F.4th at 1276. Thus, even "literally true" speech cannot be compelled where it is "'nonetheless misleading.'" 85 F.4th at 1279. For example, statements that are supported only by correlation are not "factually accurate." See, e.g., *United States v. Valencia*, 600 F.3d 389, 425 (5th Cir.), *cert. denied*, 562 U.S. 893 (2010) ("Evidence of mere correlation, even a strong correlation, is often spurious and misleading when masqueraded as causal evidence."). See also *Free Speech Coalition, Inc. v. Paxton*, 95 F.4th 263, 282 (5th Cir. 2024), *cert. granted on other grounds*,144 S.Ct. 2714 (July 02, 2024). (dismissing the State's evidence of a "correlative relationship" as insufficient).

Before subjecting the State and the counties to the costs imposed by this Bill (including potential litigation costs), the Committee should wait for these issues to shake out in the federal courts. Indeed, the Supreme Court may have something to say about these sorts of First Amendment issues in *Free Speech Coalition,* which was argued before the Supreme Court on January 15, 2025. Compelled speech is likewise at issue in *Mahound*, which may likewise be decided this Term. Such subsequent Supreme Court decisions can easily provide a basis for a direct challenge to the Fourth Circuit's decision in the *Anne Arundel* case in a new lawsuit with different named dealers as plaintiffs. Similarly, if the compelled literature created and distributed by the Department of Health is not "purely factual and uncontroversial" it will be challenged.

Coerced Speech Will Be Resisted And Is Counter Productive.

Whatever the constitutional merits of this Bill, the practical reality is that dealers will object to being commandeered as mouthpieces for what will be seen as the

State's anti-gun political agenda. The Bill compels the dealers to display and distribute this speech, but the Bill does not (and cannot constitutionally) prohibit the dealers from engaging in First Amendment protected speech about the compelled literature. The dealers are thus free to put a trash bin next to the counter and invite their customers to toss the literature upon receipt. Many (if not most) customers will do exactly that, especially after the dealers inform them that the literature is being forced on them by the State. The compelled literature will be widely regarded as a new front in the cultural war and thus will spectacularly backfire. Compelled receipt will be rejected simply because it is compelled.

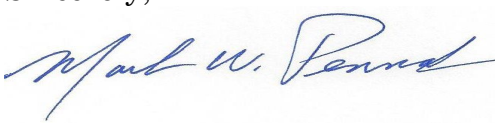
In short, the literature will be thrown away unread, and the State Department of Health will be stuck with the costs of printing and distributing this material to the counties to no point at all. The time and effort the counties will expend in redistributing this literature and enforcing the Bill's requirements will likewise be wasted. Such costs are a misallocation of scarce resources, especially now given the State's need to cut costs in order to reach a balanced budget. If the State truly wishes to communicate with the dealers' customers (rather than virtue-signal), then the display and distribution of literature must be purely voluntary. The State should try to persuade the dealers rather than threatening them with large fines and harassment. Customers buying firearms tend to trust dealers. If the literature is supported by the dealers, the State's message is much more likely to be heard. But no dealer wants to be seen as a puppet for the State or likes being threatened with heavy fines. The overwhelming majority of dealers will not willingly cooperate with the State's compelled speech program being imposed on them against their will. Compliance, if any, will be minimal and *pro forma*. Rural counties in this State are unlikely to assign priority to the distribution of the State's compelled speech or enforcing the display and distribution requirements.

The State Should Preempt Localities

If the State wishes to go ahead with this compelled speech program, then the State should preempt localities from imposing their own compelled speech on top of the State's compelled speech. Currently, both Anne Arundel County and Montgomery County have passed local legislation that requires dealers to display and distribute this sort of literature and those counties are widely seen as vehemently "anti-gun." See Anne Arundel County Code, § 12-6-108, Montgomery County Code, § 57-11A. Other urban counties, seen as equally "anti-gun," will likely follow suit. Without preemption, dealers will be subject to multiple sets of literature that may well conflict or be inconsistent. There is no need to coerce dealers from both the State and the localities. Doing so just invites more lawsuits.

We urge an unfavorable report.

Sincerely,



Mark W. Pennak
President, Maryland Shall Issue, Inc.

mpennak@marylandshallissue.org

No. 23-___

IN THE

Supreme Court of the United States

MARYLAND SHALL ISSUE, INC.; CINDY'S HOT SHOTS, INC.; FIELD TRADERS LLC; PASADENA ARMS LLC; AND WORTH-A-SHOT, INC.,

Petitioners,

v.

ANNE ARUNDEL COUNTY, MARYLAND,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

MARK W. PENNAK
Counsel of Record
MARYLAND SHALL ISSUE, INC.
9613 Harford Road
Ste. C #1015
Baltimore, MD 21234
(301) 873-3671
mpennak@marylandshallissue.org

Counsel for Petitioners

May 17, 2024

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

QUESTIONS PRESENTED

At issue in this case is a local ordinance, Bill 108-21 ("the Ordinance") enacted by Anne Arundel County, Maryland ("the County"). That Ordinance compelled sellers of firearms and/or ammunition in the County to display in their retail establishments and distribute, with each such sale of a firearm or ammunition, literature created or adopted by the County concerning, *inter alia*, "suicide prevention" and "conflict resolution." There is no dispute in this case that the County's forced display and distribution requirement is content-based, compelled speech and is thus "presumptively unconstitutional." *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 766 (2018) ("*NIFLA*"). Yet, the court of appeals held that the compelled speech mandated by the County's Ordinance was nonetheless constitutional under *Zauderer v. Off. of Disciplinary Couns. of Supreme Ct. of Ohio*, 471 U.S. 626, 628 (1985), because, in the court's view, the literature is merely "purely factual and uncontroversial" "commercial speech" and thus could be compelled under *Zauderer*. The court of appeals likewise affirmed the district court's exclusion of Petitioners' expert testimony that demonstrated that the compelled speech was not "purely factual and uncontroversial" information, holding that this exclusion was within the district court's discretion. The issues presented are:

1. Whether the court of appeals impermissibly allowed the County to violate Petitioners' First Amendment right "to remain silent," as reaffirmed in *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), by holding that the County's Ordinance compelling retail establishments to display and distribute the County's literature

was constitutional under *Zauderer*, as construed and limited by *NIFLA*, where there is no dispute that nothing in the compelled literature is "about the terms under which … services will be available" within the meaning of *Zauderer* and *NIFLA*.

2. Whether the court of appeals failed to apply the correct legal standard in holding that the County's "suicide prevention" and "conflict resolution" literature was "commercial speech," merely because the Ordinance applied to sales at retail establishments and thus could be compelled under *Zauderer's* relaxed scrutiny test without regard to the standard for "commercial speech" set forth in *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.,* 447 U.S. 557 (1980).

3. Whether the court of appeals erred in holding that the County's suicide prevention and conflict resolution literature was "purely factual and uncontroversial" under *Zauderer*, where it is undisputed that the supposed link between suicide and access to firearms set forth in the literature is supported only by a correlation and was disputed by Petitioners' expert witness as "probably false."

4. Whether the court of appeals erred under *General Electric Co. v. Joiner*, 522 U.S. 136 (1997), and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), in holding that a district court may exclude otherwise admissible expert witness testimony purely because the trial court disagreed with the expert's reading of the County's literature.

PARTIES TO THE PROCEEDINGS

Petitioner Maryland Shall Issue, Inc., is a not-for-profit, all-volunteer, non-partisan, Section 501(c)(4) Maryland corporation dedicated to the preservation and advancement of gun owners' rights in Maryland. The other Petitioners are Cindy's Hot Shots, Inc.; Field Traders, LLC; Pasadena Arms, LLC; and Worth-A-Shot, Inc., all of which are or were federal firearms licensees ("FFLs") located in Anne Arundel County, Maryland. They were plaintiffs in the district court and plaintiffs-appellants in the court of appeals.

The Respondent is Anne Arundel County, Maryland, which was the defendant in the district court and defendant-appellee in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, Petitioners state that Petitioner Maryland Shall Issue, Inc., has no parent corporation and no publicly held company owns 10 percent or more of its stock. The remaining Petitioners are privately held Maryland corporations. Each of these corporations has no parent corporation and no publicly held corporation owns 10 percent or more of their stock.

LIST OF RELATED PROCEEDINGS

Pursuant to this Court's Rule 14.1(a)(iii), Petitioners state that there are no "directly related" proceedings pending in this Court or in other state or federal court, as the term is defined by that Rule. The same or similar First Amendment issues are pending before this Court in *Moody v. NetChoice, LLC*, No. 22-277, *cert. granted*, 144 S.Ct. 478 (Sept. 29, 2023), and *NetChoice, LLC v. Paxton*, No. 22-555, *cert. granted*,

144 S.Ct. 477 (Sept. 29, 2023), which were argued to this Court on February 26, 2024.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Maryland Shall Issue, Inc., Field Traders LLC, Cindy's Hot Shots, Inc., Pasadena Arms, LLC, and Worth-A-Shot, Inc., respectfully petition this Court for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's opinion is reported at 91 F.4th 238 and reproduced at Pet.App. 3a. The order denying rehearing and rehearing en banc is reprinted at Pet.App. 62a. The district court's opinion is reported at 662 F.Supp.3d 557 and is reproduced at Pet.App. 26a-62a.

JURISDICTION

The Fourth Circuit issued its opinion on January 23, 2024. Pet.App. 3a. Petitioners filed a timely petition for rehearing, which the court denied on February 21, 2024. Pet.App. 62a. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Free Speech Clause of the First Amendment, U.S. Const. Amend. 1, provides that "Congress shall make no law * * * abridging the freedom of speech, or of the press." Bill 108-21 amended Anne Arundel County Code, Article 12, Title 6, § 12-6-108, to provide:

> (A) Duties of Health Department. The Anne Arundel County Health Department shall prepare literature relating to gun safety, gun training, suicide prevention, mental health, and conflict

> resolution and distribute the literature to all establishments that sell guns or ammunition.
>
> (B) Requirements. Establishments that sell guns or ammunition shall make the literature distributed by the Health Department visible and available at the point of sale. These establishments shall also distribute the literature to all purchasers of guns or ammunition.
>
> (C) Enforcement. An authorized representative of the Anne Arundel County Health Department may issue a citation to an owner of an establishment that sells guns or ammunition for a violation of subsection 8(b). Pet.App. 83a.

Bill 108-21 also provided that "a violation of this section is a Class C civil offense pursuant to § 9-2-101 of this code." *Id.* A Class C civil offense under Section 9-2-101 of the Anne Arundel County Code is punishable by a fine of "$500 for the first violation and $1,000 for the second or any subsequent violation."

STATEMENT OF THE CASE

A. Statutory Background and Procedural History

In their Complaint filed April 11, 2022 (Pet.App. 65a), Petitioners challenged the constitutionality of Anne Arundel County Bill 108-21 ("the Ordinance"), on First Amendment grounds. Bill 108-21 was enacted into law by Respondent, Anne Arundel County, Maryland ("the County"), on January 10, 2022, with an effective date of April 10, 2022. Complaint ¶ 1. Pet.App. 66a. The Ordinance requires the County to "prepare literature relating to gun safety, gun training, suicide prevention, mental health, and conflict resolution and distribute the literature to all

establishments that sell guns or ammunition." It further requires "[e]stablishments that sell guns or ammunition" to make the County's literature "visible and available at the point of sale" and to "distribute the literature to all purchasers of guns or ammunition."

Petitioner Maryland Shall Issue, Inc. ("MSI") is a Section 501(c)(4), non-partisan, all-volunteer, membership advocacy organization devoted to the protection of gun owners' rights in Maryland. Pet.App. 69a-70a. The other Petitioners are federally and State licensed firearms dealers located in Anne Arundel County, Maryland ("the dealers"). Pet.App. 71a-74a. Each of the dealers is a member of MSI. The Respondent is Anne Arundel County and is one of 23 counties in Maryland. Pet.App. 75a.

The County implemented the Ordinance by requiring firearms dealers in the County to distribute two pieces of literature. The first is a pamphlet entitled "Firearms and Suicide Prevention" published jointly by the National Shooting Sports Foundation and the American Foundation for Suicide Prevention ("the suicide pamphlet"). Pet.App. 85a. This pamphlet states that "Some People are More at Risk for Suicide than Others" and includes within that category people who have "Access to lethal means, including firearms and drugs." Pet.App. 88a. On the same page, the pamphlet states that "Risk factors are characteristics or conditions that increase the chance that a person may try to take their life." *Id.* The "conflict resolution" pamphlet (Pet.App. 93a) consists of a list of County and other third-party resources available for peaceful "conflict resolution." Under the Ordinance, only firearms dealers and ammunition vendors are required

to display and distribute the County's literature. Pet.App. 83a.

Petitioners objected to being forced to distribute the County's literature, asserting in the Complaint that "Bill 108-21 constitutes 'compelled speech' in violation of the dealers' First Amendment rights." Pet.App. 67a. Petitioners specifically disagreed with the statement set forth in the suicide pamphlet that asserts that mere "access" to firearms is a "risk factor" for suicide. Pet.App. 88a. Petitioners also disagreed with the implied messages sent by the County's literature, including the implicit suggestion that "the public should not buy guns because they cause suicides." Pet.App. 11a. See also 55a-56a n.8.

Petitioners' expert, Prof. Gary Kleck, is a renowned expert in suicide and firearms. Pet.App. 115a. Prof. Kleck focused on "the suicide pamphlet" in his expert report, stating:

> [T]he County, via this pamphlet, is claiming that access to firearms causes an increased chance of a person committing suicide. This assertion will be hereafter referred to as 'the suicide claim.' It is my expert opinion that the suicide claim is not supported by the most credible available scientific evidence and is probably false. Pet.App. 118a.

He further states in his expert report that "[t]he suicide claim is contradicted by much of the available scientific evidence and is indisputably *not* purely factual and uncontroversial information." *Id.*

Prof. Kleck elaborated on these points in his videotaped deposition,[1] testifying: "The point that it

[1] A copy of the video was made available to the district court and court of appeals via a Dropbox link, https://bit.ly/3K6gOSF.

[the suicide pamphlet] conveyed that was relevant to my expert witness report was that guns -- this pamphlet effectively states that possession of a gun or ownership of a gun increases the likelihood one will commit suicide." Pet.App. 101a. At a later point in the deposition, Prof. Kleck explained:

> Q. Okay. Where on this page is the statement that you evaluated for purposes of your report?
>
> A. First of all, the title of the page as a whole, as you said, Some People Are More At Risk For Suicide Than Others, that introduces the topic of risk factors, which is reinforced in the lower right text, which reads, "Risk factors are characteristics or conditions that increase the chance that a person may try to take their life." That's unambiguously an assertion about causal effects.

Pet.App. 105a.

As Prof. Kleck further noted, "implicit in the notion that owning a gun is a risk factor for suicide, and any reader would think suicide is a bad thing, then the implication is – the recommendation implied is don't own a gun." Pet.App. 95a.

B. The District Court's Decision

Petitioners and the County submitted cross-motions for summary judgment. Petitioners' motion was supported by the verification declarations of each of the Petitioners, the expert witness report of Prof. Kleck (Pet.App. 116a), the interrogatories answers submitted by each Petitioner, portions of the deposition transcriptions of each Petitioner and the

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Excerpts from the deposition transcript are in the Appendix. Pet.App. 94a.

videotape and transcript of Prof. Kleck's deposition. Pet.App. 55a n.8. The County's cross-motion was supported by the reports of two purported experts and numerous exhibits.

In their motion, Petitioners contended that the Ordinance imposed content-based, compelled speech on the dealers, and was thus presumptively unconstitutional under *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755 (2018) ("*NIFLA*"), and other controlling case law. Petitioners also contended that the County's literature was not "commercial speech" and that the literature was not "purely factual and uncontroversial" within the meaning of *NIFLA* and *Zauderer*. In response, the County made no attempt to carry the burdens demanded by strict scrutiny, arguing in their motion for summary judgment that the County need only satisfy what it characterized as the "rational basis" test of *Zauderer v. Off. of Disciplinary Couns. of Supreme Ct. of Ohio*, 471 U.S. 626, 628 (1985). DCT Dkt. # 43-1 at 11,15-16.

In assessing this record, the district court agreed with Petitioners that the County's literature was content-based compelled speech and thus presumptively unconstitutional. Pet.App. 45a. But rather than apply that presumption, the district court held that the literature was commercial speech that could be compelled under *Zauderer*. Pet.App. 45a-46a, 50a-51a. The district court also held that the County's literature asserted only a correlative effect between suicide and firearms, rather than a causal effect, and that assertion of a "correlative relationship" was both "purely factual" and "uncontroversial" under *Zauderer*. Pet.App. 56a-57a. On that sole basis, the district court excluded the expert witness testimony and report of Prof. Kleck, which the court found

would have been otherwise "admissible." Pet.App. 54a. Having excluded Prof. Kleck's testimony, the district court granted summary judgment to the County and denied plaintiffs' motion for summary judgment. Pet.App. 62a-63a.

C. The Fourth Circuit's Decision

The court of appeals affirmed. The court likened the suicide pamphlet to warnings that "gun owners should store guns safely, especially to prevent misuse and child access." Pet.App. 14a, citing 27 C.F.R. § 478.103; N.C. Gen. Stat. § 14-315.2; Fla. Stat. § 790.175; Tex. Penal Code Ann. § 46.13(g). In so holding, the court construed *Zauderer* to hold that "compelled commercial speech is constitutional under the First Amendment so long as (1) it is 'purely factual and uncontroversial'; (2) it is 'reasonably related to the State's interest in preventing deception of consumers'; and (3) it is not 'unjustified or unduly burdensome.'" Pet.App. 15a, quoting *Zauderer*, 471 U.S. at 651. In the court's view, *Zauderer* was not limited to preventing deception, but also encompassed compelled speech relating to "other government interests" such as protecting "human health" and "labelling requirements." *Id.* at 15a-16a. The court thus rejected Petitioners' argument that the relaxed scrutiny permitted by *Zauderer* is limited to compelled speech "about the terms under which … services will be available" by the speaker.

The court of appeals then turned to the meaning of "commercial speech," holding that while the County's literature did not "propose a commercial transaction" the suicide pamphlet was nonetheless commercial speech solely because the literature required Petitioner dealers "to provide the specified literature in connection with the sales of firearms and ammunition to purchasers, which are commercial transactions."

Pet.App. 18a. The court acknowledged that *Zauderer* required that the speech be purely factual and uncontroversial but held that these requirements were satisfied because the suicide pamphlet did not assert a causal relationship but only that access to firearms was "a 'risk factor' that increases 'the chance' of suicide." *Id.* at 20a. The court also acknowledged that the suicide pamphlet "does state that access to guns increases the risk of suicide because guns are the primary means for committing suicide." *Id.* at 20a-21a. The court ruled that "[t]his, however, is merely a logical syllogism: If guns are the primary means of suicide and if guns are not accessible to persons with suicidal ideation, then the number of suicides would likely decline." *Id.* at 21a.

Finally, the court of appeals sustained the district court's decision to exclude the testimony of Petitioners' expert, reasoning that "[w]e agree with the district court that Dr. Kleck's opinion that the pamphlet was not factual and was controversial was predicated on his reading of the pamphlet as asserting that firearms cause suicide." *Id.* at 24a. In the court's view, the suicide pamphlet was good policy because it informed "purchasers of the nature, causes, and risks of suicides and the role that guns play in them." *Id.* at 25a. The court believed that the pamphlet was merely "a public health and safety advisory that does not discourage the purchase or ownership of guns," and that "gun dealers might well find it admirable to join the effort." *Id.*

REASONS FOR GRANTING THE PETITION

1. *NIFLA* held that *Zauderer* is expressly limited to commercial speech that is "'purely factual and uncontroversial information about the terms under which ... services will be available'" and "does not apply outside of these circumstances." *NIFLA*, 585 U.S. at 768-69, quoting *Zauderer*, 471 U.S. at 651. In so holding, *NIFLA* relied on *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 575 (1995), where the Court stated "[a]lthough the State may at times 'prescribe what shall be orthodox in commercial advertising' by requiring the dissemination of 'purely factual and uncontroversial information,' outside that context it may not compel affirmance of a belief with which the speaker disagrees." (Citation omitted).

These limitations are consistent with this Court's holding in *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 250 (2010), that an "essential feature[]" of *Zauderer* is that the "required disclosures" were "intended to combat the problem of inherently misleading commercial advertisements." As *NIFLA* and *Hurley* make clear, *Zauderer* does not permit the government to compel speech where, as here, the regulated person merely seeks to remain silent. It is well established that the right not to speak is constitutionally protected. *303 Creative*, 600 U.S. at 586 ("Nor does it matter whether the government seeks to compel a person to speak its message when he would prefer to remain silent or to force an individual to include other ideas with his own speech that he would prefer not to include."), citing *Hurley*, 515 U.S. at 568-570. See also *Riley v. Nat'l Fed'n of the Blind of N.C., Inc*., 487 U.S. 781, 797-98 (1988).

Here, there is no dispute that nothing in the compelled literature is "about the terms under which … services will be available" within the meaning of *Zauderer* and *NIFLA*. Petitioners do not provide "suicide prevention" or "conflict resolution" services. Such services are provided by third parties, including those listed in the suicide pamphlet (Pet.App. 92a) and the "conflict resolution" pamphlet (Pet.App. 93a).

2. The literature likewise does not relate to "commercial advertisements," or any speech otherwise undertaken by the dealers. The Ordinance's display and distribution requirements apply regardless of whether the dealers advertise or even speak. Rather, the court of appeals held that the County's literature was "commercial speech" *solely* because it provided "warnings of risks and proposed safety steps with respect to firearms sold by gun dealers in commercial establishments." Pet.App. 18a.

In the court of appeals' view, it was irrelevant that the literature did not propose a commercial transaction or relate to the economic interests of the dealers or their customers, the hallmarks of "commercial speech" as defined in *Central Hudson*. *Id.* at 17a. That the dealers merely desired to remain silent about suicide prevention and conflict resolution was similarly irrelevant to the court. These holdings conflict with *Central Hudson*, *Zauderer*, *NIFLA, 303 Creative* and *Brown v. Entertainment Merchants Ass'n*, 564 U.S. 786, 800-02 (2011). *NIFLA* expressly held that *Zauderer* cannot be applied to compel disclosure of third-party services, such as those listed in both the suicide pamphlet and the conflict resolution pamphlet. *NIFLA*, 585 U.S. at 769. *303 Creative* and *Brown* both struck down compelled speech in a commercial context and *303 Creative* expressly

ruled that a commercial context does not "make[] a difference" in the scope of First Amendment protection against compelled speech. 600 U.S. at 594.

3. A second "essential feature" of *Zauderer* is that the compelled speech must be "purely factual and uncontroversial." The Fourth Circuit failed to apply the correct legal standard and, under correct test, the literature compelled by the County is neither. The suicide pamphlet factually asserts that persons with mere "access" to a firearm "*are* more at risk for suicide than others" and is a "risk factor" that "increase[s] the chance that a person may try to take their life." Pet.App. 88a (emphasis added). Yet, it is undisputed that factual assertion is supported by no more than correlative evidence. That factual assertion was disputed by Petitioners' expert as "probably false" and highly controversial. *Id.* at 118a-120a. At a minimum, the statement is highly misleading to any reasonably objective reader. Such reliance on correlative evidence was expressly rejected as insufficient in the First Amendment context by this Court in *Brown*. The court of appeals simply ignored *Brown*.

4. The Fourth Circuit's affirmance of the district court's exclusion of Petitioners' expert is also at war with the limited scope of the district court's discretion recognized in *General Electric Co. v. Joiner*, 522 U.S. 136, 143 (1997), and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 595 (1993). The issue is whether a reasonable person could read the suicide pamphlet as asserting such a causal connection, a test that neither the district court nor the court of appeals ever purported to apply. That is a matter for the fact finder, and the expert's reading of the literature is admissible for consideration by the fact finder. That evidence cannot be excluded under *Daubert*'s "gate-

keeping" function merely because the district court disagreed with the expert. The holdings of the court of appeals and the district court conflict with *Daubert* and *Joiner* and otherwise warrant the exercise of this Court's supervisory power under Rule 10 of this Court's Rules.

5. The First Amendment issues presented by this Petition have split the courts of appeals in multiple ways and are obviously far reaching and important. In particular, the Fourth Circuit's decision is so erroneous and is so rife with potential for abuse that summary reversal is warranted. At a minimum, this Court should hold this petition pending a decision in *Moody v. NetChoice, LLC*, No. 22-277, and *NetChoice, LLC v. Paxton*, No. 22-555, both of which were argued February 26, 2024. The scope of *Zauderer* and *303 Creative* is squarely presented in both cases, and it is likely that the Court will provide controlling guidance in its decision and thus warrant either summary reversal or a GVR in this case. The Court should thus either grant plenary review or summarily reverse. Alternatively, the Court should hold this petition pending a decision in the *NetChoice* litigation. See S. Shapiro, *et al*., *Supreme Court Practice*, §4.16 at 4-49-4-50, §6.31(e) at 6-126 (11th ed. 2019).

I. THE DECISION BELOW DIRECTLY CONFLICTS WITH THIS COURT'S FIRST AMENDMENT PRECEDENTS

"At the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence." *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 641 (1994). As this Court recently stated, "our 'leading First Amendment precedents ... have established the principle that

freedom of speech prohibits the government from telling people what they must say.'" *303 Creative*, 600 U.S. at 596, quoting *Rumsfeld v. Forum for Academic & Institutional Rights, Inc*., 547 U. S. 47, 61-62 (2006). See also *Pacific Gas and Elec. Co. v. Public Utilities Com'n of California*, 475 U.S. 1, 10-11 (1986); *Janus v. AFSCME*, 585 U.S. 878, 891-92 (2018). "[T]his general rule, that the speaker has the right to tailor the speech, applies not only to expressions of value, opinion, or endorsement, but equally to statements of fact the speaker would rather avoid." *Hurley*, 515 U.S. at 573.

A. The Fourth Circuit's Decision Conflicts With *NIFLA*, *Hurley, 303 Creative* and Other Decisions Of This Court

The Fourth Circuit's application of *Zauderer* directly conflicts with express limitations imposed on *Zauderer* by this Court in *NIFLA*, limitations that the court ignored. Under *NIFLA*, *Zauderer* is limited to "'purely factual and uncontroversial information *about the terms under which . . . services will be available*.'" *NIFLA*, 585 U.S. at 768-69, quoting *Zauderer*, 471 U.S. at 651 (emphasis added). *NIFLA* reiterated the Court's prior holding in *Hurley* that "*Zauderer does not apply* outside of these circumstances." *Id.* at 769 (emphasis added). It is undisputed that nothing in the County's literature is "about the terms under which services will be available" by the dealers. If the Court meant what it said in *NIFLA* and *Hurley* about the limits of *Zauderer*, then summary reversal would be appropriate for that reason alone. See Shapiro, ch.5.12(a) at 5-36. That holding would resolve this case.

Zauderer is premised on the notion that the government may compel speech relating to "the terms

of service" to prevent the commercial entity from misleading or deceiving the public through speech otherwise voluntarily undertaken by the speaker. Thus, in *United States v. United Foods*, 533 U.S. 405, 416 (2001), the Court noted that the compelled speech in *Zauderer* applied to attorneys "who advertised by their own choice" and thus involved "voluntary advertisements." In *Milavetz*, the Court stated that "required disclosures are intended to combat the problem of inherently misleading commercial advertisements." 559 U.S. at 250. *Zauderer's* holding and rationale cannot possibly apply where, as here, the commercial entity is not otherwise voluntarily speaking about the matters on which the County has compelled speech. In such circumstances, *303 Creative* is controlling, not *Zauderer*.

In ignoring the limits placed on *Zauderer* by *NIFLA* and *Hurley* and holding that the government may compel speech that is completely unrelated to any speech otherwise being undertaken by the dealers, the court of appeals impermissibly expanded *Zauderer* far beyond its bounds. Under the court's ruling, the government may compel, as commercial speech, the display and distribution of the government's literature by any commercial entity that sells a product related to a policy that the government wishes to promote. This Court has never applied *Zauderer* in such a manner.

Indeed, in both *303 Creative* and *Brown* the compelled speech at issue directly applied to products or services being sold commercially, and yet in both cases, the Court found that the compelled speech was unconstitutional under strict scrutiny without applying *Zauderer*. As the Fifth Circuit recently explained, *Zauderer* was not applied in *303 Creative* "because

that case [*303 Creative*] dealt not with disclosures about the terms under which the service was available, *but instead with compelling those services*." *R J Reynolds Tobacco Co. v. FDA*, 96 F.4th 863, 875 n.33 (5th Cir. 2024) (emphasis added). That distinction also explains the result in *Brown*, which likewise never cited *Zauderer* in holding that the commercial speech there at issue (warnings on the sales of video games) could not be compelled under strict scrutiny. That the compelled speech takes place in a commercial context does not "make[] a difference." *303 Creative*, 600 U.S. at 594.

In this case, as in *303 Creative* and *Brown*, the County is not compelling disclosures about the "terms of service." It is instead "compelling those services" by requiring Petitioners to display and distribute the County's pamphlets, both of which endorse the services of third parties (Pet.App. 92a, 93a) and are intended to promote governmental policies (suicide prevention and peaceful conflict resolution). Those policies have nothing to do with any services rendered by the dealers. If allowed to stand, the court of appeals' decision will eviscerate the First Amendment protections recognized in *303 Creative* and *Brown* by abrogating the right of commercial entities not to speak on matters having nothing to do with their terms of services. Remarkably, the Fourth Circuit ignored *303 Creative* and *Brown*, even though both cases were extensively briefed to the court.

Effectively, the County has hijacked the dealers and expropriated the goodwill the dealers enjoy with their customers. In its brief filed with the court of appeals, the County argued that "the Ordinance is just one feature of an extensive gun-violence-prevention campaign" and that the dealers' customers are "more

likely to credit the information as coming from a trusted messenger." *MSI v. Anne Arundel Co.*, No. 23-1351, ECF # 26 at 40 (4th Cir. July 10, 2023). The County is thus enjoying "a free pass to spread their preferred messages on the backs of others." *American Meat Institute v. Dept. of Agriculture*, 760 F.3d 18, 31 (D.C. Cir. 2014) (en banc) (Kavanaugh, J., concurring).

According to the court of appeals, Petitioners should find this governmental theft of dealer goodwill "admirable." Pet.App. 25a. It is not. It is Orwellian. See *303 Creative*, 600 U.S. at 602 (noting "an unfortunate tendency by some to defend First Amendment values only when they find the speaker's message sympathetic"). "While the law is free to promote all sorts of conduct in place of harmful behavior, it is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government." *Hurley*, 515 U.S. at 579.

While denied by the court of appeals (Pet.App. 14a, 20a), the ideological message conveyed to a reasonable person is, as Prof. Kleck stated, "don't own a gun" because doing so increases the risk of suicide. Pet.App. 95a. That message stigmatizes and thus seeks to discourage legitimate and constitutionally protected firearm ownership. See *National Ass'n of Manufacturers v. SEC*, 800 F.3d 518, 523, 530 (D.C. Cir. 2015) ("*NAM*") (declining to apply *Zauderer* where the rule required speakers to "express certain views" that their products were "ethically tainted"); *American Hospital Ass'n v. Azar*, 983 F.3d 528, 541 (D.C.Cir. 2020) (reaffirming that "such expressive content" could not be compelled).

The Ordinance is also facially underinclusive. Suicide prevention is a concern shared by society, not

just by gun owners. That underinclusivity "raises serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint." *Brown*, 546 U.S. at 802. See also *Williams-Yulee v. Florida Bar*, 575 U.S. 433, 449 (2015) ("a law's under-inclusivity raises a red flag"). As stated in *NIFLA*, statutes that discriminate among speakers "run the risk that the State has left unburdened those speakers whose messages are in accord with its own views." 585 U.S. at 778. Here, as in *NIFLA*, the County's law "targets speakers, not speech." *Id*. See *Sorrell v. IMS Health*, 564 U.S. 552, 578-79 (2011) ("The State may not burden the speech of others in order to tilt public debate in a preferred direction.").

A similar ideological message is sent by the Ordinance with respect to "conflict resolution," *viz.*, that purchasers of firearms and ammunition are in special need of information concerning third party services on peaceful "conflict resolution." Contrary to the Fourth Circuit's belief (Pet.App. 16a), there is nothing "sarcastic" about that observation; it flows inexorably from the exclusive focus of the Ordinance on such purchasers. The universe of people who might find peaceful conflict resolution services useful obviously extends far beyond gun owners.

Finally, *NIFLA* squarely holds that *Zauderer* cannot justify compelled speech that "relates to the services" provided by *third parties*. *NIFLA*, 585 U.S. at 769. Both the suicide pamphlet (Pet.App. 92a) and the conflict resolution pamphlet (Pet.App. 93a), convey information about third party services. Indeed, the conflict resolution pamphlet is *completely* about the services of third parties. The County's literature fails under *NIFLA* for that reason alone.

B. The Fourth Circuit's Decision Conflicts With *Central Hudson* On The Limits Of The "Commercial Speech" Doctrine

The court of appeals also held that the County's suicide pamphlet was "commercial speech." The court reasoned that the pamphlet was "commercial" merely because it "provide[s] warnings of risks and proposed safety steps with respect to firearms sold by gun dealers in commercial establishments." Pet.App. 18a. That construction of the commercial speech doctrine is so open to abuse and so obviously wrong as to warrant summary reversal.

Central Hudson holds that commercial speech means an "expression related *solely* to the economic interests of the speaker and its audience." *Central Hudson*, 447 U.S. at 561 (emphasis added). See also *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 762 (1976). It is undisputed here that nothing in the compelled pamphlets relate to "economic interests" of the dealers or their customers. The Fourth Circuit refused to apply the *Central Hudson* test, holding the suicide pamphlet was commercial speech merely because Petitioners sell firearms. Pet.App. 17a-18a.

The core error of the Fourth Circuit's decision is that it conflates *where* speech is compelled with the *content* of the speech itself. Nothing in the *content* of the County's compelled speech is remotely commercial. The court's holding thus eliminates the requirement that compelled speech *itself* relate "solely" to the economic interest of the speaker. Under the court's test, there is no practical or principled limit on the speech the government could compel as "commercial speech." The commercial speech inquiry would be bounded only by the government's imagination in

claiming a relationship between the compelled speech and the product. The potential for abuse is apparent.

Zauderer's underlying rationale is that the speaker's "constitutionally protected interest in *not* providing any particular factual information in his advertising is minimal." 471 U.S. at 651. In other words, purely factual and uncontroversial commercial speech may be compelled where the commercial entity *is already voluntarily speaking* on the matter. See *United Foods*, 533 U.S. at 416. That rationale is lost if *Zauderer* is construed, as the court of appeals did here, to permit compelled speech on any product sold at retail, regardless of the content of the speech and regardless of whether the speaker merely wishes to exercise the constitutional right to remain silent.

NIFLA states that "we do not question the legality of health and safety warnings long considered permissible, or purely factual and uncontroversial disclosures about commercial products." 585 U.S. at 775. Seizing on this dictum, the Fourth Circuit likened the County's compelled speech to posting requirements imposed on dealers by a federal regulation and by three State laws. Pet.App. 14a. Yet, such provisions have never been challenged as they merely require the distribution or posting of a *statute*, such as legal restrictions on the sales of firearms to minors. Such restrictions may well relate to "terms of services" (e.g., no sales to minors). Nothing in those minimal requirements remotely compares to compelled speech on government policies like "suicide prevention" and "conflict resolution."

To be sure, the government may compel "commercial disclosures that are common and familiar to American consumers, such as nutrition labels and health warnings." *American Meat*, 760 F.3d at 31 (Kavanaugh, J.,

concurring). But such labels and health warnings necessarily accompany *other* speech voluntarily made by manufacturers in marketing the very product on which the labels or warnings are attached. The labels and warnings are thus intended to ensure full disclosure to prevent consumer confusion or deception about the product being sold, a goal consistent with *Zauderer*. The suicide and conflict resolution pamphlets at issue here are not labels or health warnings. Rather, as noted above, they are "just one feature" of the County's "gun-violence-prevention campaign." That campaign is not "commercial" and cannot be justified by any need to avoid confusion or deception on the sale of a particular product.

The Fourth Circuit plainly misread Justice Stevens' concurrence in *Rubin v. Coors Brewing Co.*, 514 U.S. 476 (1995) (Stevens, J. concurring), as supporting its ruling. Pet.App. 17a-18a. There, Justice Stevens concurred in the Court's judgment that the beer label restrictions imposed by the Federal Alcohol Administration Act, 27 U.S.C. § 205(e)(2), were unconstitutional. But Justice Stevens wrote separately because, in his view, "[a]s a matter of common sense, any description of commercial speech that is intended to identify the category of speech entitled to less First Amendment protection should relate to the reasons for permitting broader regulation: namely, commercial speech's potential to mislead." *Rubin*, 514 U.S. at 494 (Stevens, J., concurring). Justice Stevens' reference to specific disclosure requirements in a footnote, cited by the court of appeals (Pet.App. 17a-18a), must thus be understood as examples of *this* type of speech.

That same rationale forms the basis of *Milavetz*, 559 U.S. at 250, *United Foods*, 533 U.S. at 416, and *Zauderer* itself. See also *Bolger v. Youngs*

Drug Products Corp., 463 U.S. 60, 64-65 (1983) ("regulation of commercial speech based on content is less problematic" because of "the greater potential for deception or confusion in the context of certain advertising messages"). Those considerations are absent where, as here, the compelled speech is not intended to prevent deception or confusion and the compelled speaker merely wishes to remain silent. The County has never contended (nor could it) that dealer silence about the County's "gun-violence-prevention campaign" could mislead any purchaser.

C. The Fourth Circuit's Decision Conflicts With *Zauderer* and *Brown* On What Constitutes "Purely Factual and Uncontroversial" Speech

The Fourth Circuit held that the suicide pamphlet's statement that "access to firearms is a 'risk factor' that increases 'the chance' of suicide" was "purely factual" and "uncontroversial" *solely* by reference to what it called a "logical syllogism," *viz*., "[i]f guns are the primary means of suicide and if guns are not accessible to persons with suicidal ideation, then the number of suicides would likely decline." Pet.App. 21a. But the court's "logic" assumes its conclusion and amounts to nothing more than *post hoc ergo propter hoc*, or *cum hoc ergo propter hoc* reasoning. That is not a "logical syllogism," it is a logical fallacy.

The district court ruled, and the County conceded, that the supposed link between firearms access and suicide is supported only by a "correlation" or a "correlational relationship." Pet.App. 56a,59a. The Fourth Circuit agreed. *Id.* at 9a,20a. But if access is not a causal factor for suicide, then the court's "logical syllogism" falls apart. As Petitioners' expert explained, "you can't prevent suicide by eliminating

something that's merely coincidentally associated with suicide. It's got to be a factor that has some causal effect." Pet.App. 97a. That point is too self-evident to admit of rational dispute. Thus, in insisting that the pamphlet did not assert a causal connection (Pet.App. 20a), the court of appeals refuted the very premise of its "logical syllogism" that supposedly made the pamphlet "purely factual and uncontroversial." The Fourth Circuit cannot have it both ways.

At a minimum, the suicide pamphlet is seriously misleading in factually asserting that persons with access to firearms "are more at risk of suicide than others" (Pet.App. 88a) where it is undisputed that access and suicide are merely correlated. See, e.g., *United States v. Valencia*, 600 F.3d 389, 425 (5th Cir.), *cert. denied*, 562 U.S. 893 (2010) ("Evidence of mere correlation, even a strong correlation, is often spurious and misleading when masqueraded as causal evidence."). In *Brown*, this Court rejected correlation evidence as insufficient to justify content-based compelled speech. *Brown*, 564 U.S. at 800-01 ("ambiguous proof will not suffice"). See also *Free Speech Coalition, Inc. v. Paxton*, 95 F.4th 263, 282 (5th Cir. 2024), *petition for cert. pending*, No. 23-1122 (filed, April 12, 2024) (dismissing the State's evidence of a "correlative relationship" as insufficient). Inexplicably, the court of appeals never addressed *Brown*.

As Petitioners' expert explained, restricting access to firearms could reduce suicide only if guns were the only means or the most lethal means of committing suicide. Pet.App. 119a. Yet, the second most common means of suicide (hanging) is readily available (e.g., a bed sheet) and is just as likely to result in death. Pet.App. 109a-110a, 119a. And, of course, there are many other means of committing suicide that are

100% effective. *Id.* Not surprisingly, "[t]he technically strongest macro-level studies find no significant association between gun ownership rates and total suicide rates." Pet.App. 129a.

At a minimum, the supposed connection between access and suicide is open to legitimate debate and thus cannot be "purely factual and uncontroversial." See *Free Speech Coalition*, 95 F.4th at 281-82 ("a compelled statement is 'uncontroversial' for purposes of *Zauderer* where the truth of the statement is not subject to good-faith scientific or evidentiary dispute and where the statement is not an integral part of a live, contentious political or moral debate"); *National Ass'n of Wheat Growers v. Bonta*, 85 F.4th 1263, 1278 (9th Cir. 2023) (same). See also *Sorrell*, 564 U.S. at 578 ("resolution" of "divergent views" "must result from free and uninhibited speech").

Instead of faithfully applying *Brown* the court of appeals disposed of the issue with an *ipse dixit*, stating that "any reasonable reader would understand from the pamphlet that it only gives the message that *because firearms are the leading means by which suicide is committed, firearms should be stored safely to reduce suicides by firearms.*" Pet.App. 13a. That statement makes the same error as the pamphlet because it assumes that safe storage would, in fact, cause a reduction in suicide, a point disputed by Petitioners' expert. Pet.App. 100a. And the suicide pamphlet's assertions are not remotely "only" so limited. No observant reader would fail to note the pamphlet's misleading and "probably false" factual assertion (Pet.App. 106a, 118a) that persons who have mere "access" to firearms "*are* more at risk for suicide than others." Pet.App. 88a (emphasis added). The court's assertion ignores all the other statements in

the eight-page pamphlet concerning suicide warnings, causes of suicide, the importance of reaching out and the availability of third-party resources (Pet.App. 89a-92a), all of which are directed exclusively at purchasers of firearms or ammunition. There is nothing "purely factual and uncontroversial" about the implicit message sent by the Ordinance that gun owners are uniquely in need of suicide prevention information.

II. THE LOWER COURTS ARE IN CONFLICT ON THE SCOPE OF *ZAUDERER*

A. The Circuits Are In Conflict Concerning Whether *Zauderer* Is Limited To The Terms of Services

NIFLA holds that *Zauderer* is limited to "'purely factual and uncontroversial information *about the terms under which . . . services will be available*'" and "does not apply outside of these circumstances." *NIFLA*, 585 U.S. at 768-69 (emphasis added). The Ninth, Fifth and Fourth Circuits have refused to adhere to that "terms-of-services" limitation. Two other circuits, the Eleventh Circuit, and the D.C. Circuit, have been faithful to *NIFLA* and hold that the compelled speech must about the "terms" of such "services." This circuit split has developed post-*NIFLA* and warrants plenary review or summary reversal to remind the lower courts, including the Fourth Circuit in this case, that the limits placed on *Zauderer* in *NIFLA* and *Hurley* may not be ignored.

Specifically, the Ninth Circuit, sitting en banc, has held that "[t]he *Zauderer* test, as applied in *NIFLA*, contains three inquiries: whether the notice is (1) purely factual, (2) noncontroversial, and (3) not unjustified or unduly burdensome." *American Beverage Ass'n v. City and County of San Francisco*, 916

F.3d 749, 756 (9th Cir. 2019) (en banc). That statement of the test drew a sharp dissent from Judge Ikatu, who stated that "[t]o determine whether the *Zauderer* exception applies, a court must consider whether the compelled speech governs only [1] 'commercial advertising' and requires the disclosure of [2] 'purely factual and [3] uncontroversial information about [4] *the terms under which . . . services will be available*.'" *Id.*, 916 F.3d at 759 (Ikuta, J., dissenting from the reasoning) (emphasis added) (brackets in original). Judge Ikatu would have held that the "compelled speech" there at issue did not pass muster because it did not relate to "the terms on which that product is provided." *Id.* at 761. Thus, in the Ninth Circuit, the government need only show that "the compelled disclosure . . . *relates to* the service or product provided." *CTIA - The Wireless Ass'n v. City of Berkeley*, 928 F.3d 832, 842 (9th Cir.), *cert. denied*, 140 S.Ct. 658 (2019) (emphasis added).

Similarly, in the Fifth Circuit, the rule is that "'[s]tates may require commercial enterprises to disclose 'purely factual and uncontroversial information' *about* their services.'" *Chamber of Commerce of United States v. SEC*, 85 F.4th 760, 768 (5th Cir. 2023), quoting *NetChoice, LLC. v. Paxton*, 49 F.4th 439, 485 (5th Cir. 2022), *cert. granted*, 144 S.Ct. 477 (2023) (emphasis added). That test was key to the Fifth Circuit's ruling in *NetChoice* that the Texas law regulating social media platforms was constitutional. *NetChoice*, 49 F.4th at 485. The Ninth Circuit and the Fifth Circuit have thus effectively abrogated the *Zauderer* requirement that compelled commercial speech be "*about the terms* under which [the speaker's] services will be available." *Zauderer*, 471 U.S. at 651 (emphasis added).

In this case, the Fourth Circuit likewise has held that compelled speech need not be about the *terms* on which services are available, holding that compelled speech need only be "linked" to a product sold commercially. Pet.App. 17a. The Fourth Circuit, the Ninth Circuit and the Fifth Circuit thus allow governments to compel speech that merely "relates to" or is "about" or is "linked" to a product or service. The standard employed by these courts is thus unmoored from the full disclosure rationale of *Zauderer* emphasized in *NIFLA, Hurley, Milavetz*, *United Foods*, *Bolger*, and by Justice Stevens in *Rubin*. By divorcing *Zauderer* from its rationale, the standard adopted by these courts allows governments to inflict compelled speech on businesses who merely wish not to speak.

In contrast, the Eleventh Circuit and the D.C. Circuit have been faithful to *Zauderer* as limited by *NIFLA*. Thus, in *NetChoice, LLC v. Attorney General, Florida*, 34 F.4th 1196, 1227 (11th Cir. 2022), *cert. granted*, 144 S.Ct. 478 (2023), the Eleventh Circuit held that compelled speech under *Zauderer* must be "about their conduct toward their users *and* the 'terms under which [their] services will be available.'" (Citation omitted) (emphasis added) (brackets in original). Similarly, the D.C. Circuit has stated, post-*NIFLA*, that "[c]ritical to the Court's decision, the disciplinary ruling required disclosure [in *Zauderer*] of only 'purely factual and uncontroversial information *about the terms under which [the attorney's] services will be available*.'" *American Hospital Ass'n.*, 983 F.3d at 540, quoting *Zauderer*, 471 U.S. at 651 (emphasis added). The D.C. Circuit applied that test to hold that a federal rule requiring disclosure of hospital rates was "directly relevant to 'the terms under which [hospitals'] services will be available' to consumers." *Id.* These splits warrant review.

B. The Circuits Are In Conflict Over the Meaning of "Commercial Speech"

The courts of appeals are also divided on what constitutes "commercial speech." The Fourth Circuit held the requirement of commercial speech was satisfied in this case merely because the County's Ordinance compelled speech was "linked" (by the County) to a product sold at retail. Pet.App. 17a-18a. The court expressly declined to apply the definition established by *Central Hudson*. *Id.*

In contrast, the Fifth Circuit, in *Book People, Inc. v. Wong*, 91 F.4th 318, 339 (5th Cir. 2024), held that commercial speech under *Zauderer* is limited to "'[e]xpression related solely to the economic interests of the speaker and its audience,'" quoting *Central Hudson*, 447 U.S. at 561, or "speech which does 'no more than propose a commercial transaction,'" quoting *Virginia State Bd. of Pharmacy*, 425 U.S. at 762. The Fifth Circuit quoted with approval then-Judge Kavanaugh's view that "'*Zauderer* is best read simply as an application of *Central Hudson*, not a different test altogether.'" *Book People*, 91 F.4th at 339 n.124, quoting *Am. Meat Inst.*, 760 F.3d at 33 (Kavanaugh, J., concurring). See also *Free Speech Coalition*, 95 F.4th at 279-80 (holding that the compelled speech was "commercial" because it was explicitly tied to speech that "propose commercial transactions").

If *Zauderer* is tied to *Central Hudson*, then "commercial speech" under *Zauderer* cannot be given a broader meaning than the term has under *Central Hudson*. That is particularly so given that *Central Hudson* requires the government to satisfy intermediate scrutiny and *Zauderer*, at least in the Fourth Circuit, merely requires "rational basis" review. *Greater Baltimore Center for Pregnancy Concerns, Inc. v. Mayor and City*

Council of Baltimore, 721 F.3d 264, 283 (4th Cir. 2013) (en banc).

This Court stated in *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 455-56 (1978), "[w]e have not discarded the 'common-sense' distinction between speech proposing a commercial transaction, which occurs in an area traditionally subject to government regulation, and other varieties of speech." That distinction is at the heart of both *Central Hudson* and *Zauderer*. See also *Bolger*, 463 U.S. at 64-65. Under the Fourth Circuit's test, the government may compel, as "commercial speech," *any* speech "linked" to the sale of *any* product by *any* commercial entity, *regardless* of the content of the speech and *regardless* of whether the speaker merely desires to remain silent. No court has gone that far.

C. The Fourth Circuit Is In Conflict With The Ninth Circuit And The D.C. Circuit Over The Test For "Purely Factual and Uncontroversial Information"

There is also a conflict between the Fourth Circuit's decision in this case and the Ninth Circuit's decision in *Wheat Growers* with respect to what constitutes "purely factual and uncontroversial information." *Wheat Growers* holds that "[i]nformation that is purely factual is necessarily 'factually accurate,' but that alone is not enough to qualify for the *Zauderer* exception." 85 F.4th at 1276. Rather, the Ninth Circuit warned that "a statement may be literally true but nonetheless misleading and, in that sense, untrue." *Id.* (citation omitted). The court thus ruled that, under *Zauderer*, "the topic of the disclosure and its effect on the speaker is probative of determining whether something is subjectively controversial." *Id.* at 1277. The court applied that test to reject the safety

warnings in that case because they could be materially misleading to a "reasonable person." *Id.* at 1280-81.

Similarly, the D.C. Circuit has held that "purely factual and uncontroversial" speech cannot include speech that implies that the speaker's product is "ethnically tainted" or otherwise puts the speaker in a bad light. *NAM*, 800 F.3d at 530. Post-*NIFLA*, the D.C. Circuit reaffirmed *NAM* as involving the type of "expressive content" that could not compelled under *Zauderer*. *American Hospital Ass'n*., 983 F.3d at 541.

Here, neither the district court nor the Fourth Circuit employed the *Wheat Growers* test in ruling that the County's literature was "purely factual and uncontroversial." In a footnote (Pet.App. 55a-56a n.8), the district court dismissed Petitioners' objections about the misleading "messages" sent by the pamphlets and refused to consider whether such messages were the type of adverse "expressive content" that could not be compelled under *Zauderer*. That decision by the district court, affirmed by the Fourth Circuit, is incompatible with *Wheat Growers*, which holds that even "literally true" speech cannot be compelled where it is "'nonetheless misleading.'" 85 F.4th at 1279 (citation omitted).

III. THIS CASE IS THE IDEAL VEHICLE

This case is an excellent vehicle to address all of these issues. The Fourth Circuit reviewed a final judgment entered after full discovery on cross motions for summary judgment. There are no procedural obstacles or factual issues that would preclude reaching the merits. The legal issues are unquestionably important and squarely presented. Resolution of these issues is especially appropriate in this case because the compelled speech at issue here implicates the right

to keep and bear arms protected by the Second Amendment. If governments may compel speech stigmatizing the exercise of a fundamental constitutional right, then "there would be no end to the government's ability to skew public debate" about such rights. *NAM*, 800 F.3d at 530. Skewing the debate is precisely what the County's Ordinance does here.

Allowing these issues to fester will result in more jurisdictions enacting such laws.[2] But such issues are hardly limited to the Second Amendment. People in the United States are sharply divided on a host of other cultural issues, as the *NetChoice* litigation illustrates. If the approach to compelled speech adopted by the Fourth, Fifth and Ninth Circuits is allowed to stand, "red states" will feel entitled to compel speech on their preferred policies and way of thinking while "blue states" will feel entitled to do likewise and in opposite ways. That result is made all the more likely by the Fourth Circuit's extraordinary and expansive view of "commercial speech." Allowing further "percolation" of these issues invites such laws, and a corresponding destruction of First Amendment values in the Fourth Circuit and around the country.

IV. THE EXCLUSION OF PETITIONERS' EXPERT VIOLATES *DAUBERT* AND *JOINER*

The district court excluded the otherwise admissible testimony (Pet.App. 54a) of Petitioners' expert because the court disagreed with Prof. Kleck's reading of

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[2] Another Maryland county has already followed Respondent's lead. See Montgomery County Code, § 57-11A (effective March 24, 2024) (requiring a "gun shop" to "make conspicuous and available" county literature on, *inter alia,* "suicide prevention," "mental health," and "conflict resolution."

the suicide pamphlet as asserting a causal connection between access to a firearm and suicide. The court reasoned that because, in the court's view, the pamphlet asserted only a correlation and not a causal connection, Prof. Kleck's testimony was not "'sufficiently tied to the facts of the case.'" Pet.App. 56a, quoting *Daubert*, 509 U.S. at 591. The Fourth Circuit sustained that ruling as a permissible exercise of discretion. Pet.App. 24a. These result-driven holdings conflict with *Daubert* and *Joiner*, present important questions concerning the admissibility of expert testimony, and otherwise so far depart from the accepted and usual course of judicial proceedings that the exercise of this Court's supervisory power is warranted.[3]

The district court did not have discretion to exclude otherwise admissible expert evidence just because it disagreed with the expert's opinion. First, the district court imposed its reading without applying the 'reasonable reader" legal standard of *Wheat Growers*, 85 F.4th at 1281-82. The court thus willfully blinded itself to misleading messages sent by the County's Ordinance. Pet.App.55a-56a n.8. That failure to employ the correct test is a *per se* abuse of discretion. *Cooter & Gell v. Hartmarx Corp*., 496 U.S. 384, 405 (1990) ("A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law").

Second, and more fundamentally, the district court far exceeded its gatekeeping powers by excluding otherwise admissible expert evidence that the factfinder was entitled to consider. In *Daubert*, 509 U.S.

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[3] This *Daubert* issue relates solely to expert evidence on whether the County's compelled speech is "purely factual and uncontroversial."

at 595, and *Joiner*, 522 U.S. at 146, this Court ruled that in performing the district court's gatekeeping function with respect to experts, "the focus, of course, must be solely on principles and methodology, not on the conclusions that they generate." The court of appeals ignored that holding. The Fourth Circuit even ignored its own circuit case law which makes clear that "[t]o determine whether an opinion of an expert witness satisfies *Daubert* scrutiny, courts *may not evaluate the expert witness' conclusion* itself, but only the opinion's underlying methodology." *Bresler v. Wilmington Trust Co.*, 855 F.3d 178, 195 (4th Cir. 2017) (citation omitted) (emphasis added).

The district court did not fault Prof. Kleck's "methodology," it merely disagreed with his conclusions about the suicide pamphlet. But the credibility and weight of an expert's opinion are for the fact finder. *Rodríguez v. Hospital San Cristobal, Inc.*, 91 F.4th 59, 71-72 (1st Cir. 2024) ("questions about the strength of 'the factual underpinning of an expert's opinion' are 'matter[s] affecting the weight and credibility of the testimony' and therefore 'a question to be resolved by the jury'") (citation omitted). The district court does not sit as a fact finder on summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Tolan v. Cotton*, 572 U.S. 650, 660 (2014) (summarily reversing). By stepping outside its gatekeeping role, the district court excluded the very expert evidence that demonstrated that the County's literature was neither purely factual nor uncontroversial.

V. ALTERNATIVELY, THE COURT SHOULD HOLD THIS PETITION PENDING A DECISION IN THE *NETCHOICE* LITIGATION

The scope of *Zauderer* and the right not to speak reaffirmed in *303 Creative* are squarely before this Court in the *NetChoice* litigation. In deciding those cases, the Court may make clear that the right not to speak bars governments from compelling speech where the speaker wishes to remain silent, at least with respect to services that the speaker does not otherwise provide. See, e.g., Brief of the *Paxton* Petitioners at 19 ("The freedom to disseminate speech necessarily includes the right to choose *whether* and *how* to do so."). Petitioners here prevail under such a holding.

Similarly, both the Eleventh and Fifth Circuits limited *Zauderer* to speech intended to ensure full disclosure with respect to commercial speech *otherwise* voluntarily undertaken by a commercial entity. Affirmance of that approach would compel reversal here. The Court will likely make clear that *303 Creative* is controlling, not *Zauderer*, with respect to laws compelling speech on services not otherwise voluntarily provided. See *R J Reynolds*, 96 F.4th at 875 n.33.

Other issues in this case are also presented in *NetChoice*. The Eleventh Circuit ruled that, under *Zauderer*, "[a] commercial disclosure requirement must be 'reasonably related to the State's interest *in preventing deception of consumers*.'" *NetChoice, LLC*, 34 F.4th at 1230, quoting *Milavetz*, 559 U.S. at 250 (emphasis added). Here, the Fourth Circuit held that *Zauderer* allows the government to compel a commercial entity to display and distribute any

"safety" message the government wishes to convey about a product without regard to whether such speech was intended to prevent deception or consumer confusion. Pet.App. 16a-17a. If the Eleventh Circuit is correct (and it is), then summary reversal or a GVR is appropriate on that ground alone.

Similarly, the private media parties in both cases contend that *Zauderer* is limited to compelled speech in *advertising*. See Brief of Petitioner in *Paxton*, at 16; Brief of Respondent in *Moody* at 39 n.6. Acceptance of that argument would compel reversal here. The decision in the *NetChoice* litigation may well also provide additional guidance on the other issues posed by this Petition, including what constitutes "commercial speech" or the meaning of "purely factual and uncontroversial."

CONCLUSION

The petition for certiorari should be granted. The Court should either grant plenary review or summarily reverse the Fourth Circuit. Alternatively, the Petition should be held pending a decision in the *NetChoice* litigation.

Respectfully submitted,

MARK W. PENNAK
Counsel of Record
MARYLAND SHALL ISSUE, INC.
9613 Harford Road
Ste. C #1015
Baltimore, MD 21234
(301) 873-3671
mpennak@marylandshallissue.org

Counsel for Petitioners

May 17, 2024

No. 23-1225

IN THE

Supreme Court of the United States

MARYLAND SHALL ISSUE, INC.; CINDY'S HOT SHOTS, INC.; FIELD TRADERS LLC; PASADENA ARMS LLC; AND WORTH-A-SHOT, INC.,

Petitioners,

v.

ANNE ARUNDEL COUNTY, MARYLAND,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

REPLY BRIEF FOR PETITIONERS

MARK W. PENNAK
Counsel of Record
MARYLAND SHALL ISSUE, INC.
9613 Harford Road
Ste. C #1015
Baltimore, MD 21234
(301) 873-3671
mpennak@marylandshallissue.org

Counsel for Petitioners

September 6, 2024

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, Petitioners state that Petitioner Maryland Shall Issue, Inc., has no parent corporation and no publicly held company owns 10 percent or more of its stock. The remaining Petitioners are privately held Maryland corporations. Each of these corporations has no parent corporation and no publicly held corporation owns 10 percent or more of their stock.

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I. *Zauderer* Does Not Apply

Nat'l Inst. of Fam. & Life Advocs. v. Becerra, 585 U.S. 755, 768-69 (2018) ("*NIFLA*"), held that *Zauderer v. Off. of Disciplinary Couns. of Supreme Ct. of Ohio,* 471 U.S. 626, 651 (1985), is limited to commercial speech that is "'purely factual and uncontroversial information about the terms under which . . . services will be available'" and "does not apply outside of these circumstances." An "essential feature[]" of *Zauderer* is that the "required disclosures" were "intended to combat the problem of inherently misleading commercial advertisements." *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 250 (2010). It applies only where the regulated party is otherwise *voluntarily* engaging in *commercial* speech that might otherwise be deceptive. *United States v. United Foods*, 533 U.S. 405, 416 (2001).

Compelled speech about services or products offered by *third* parties cannot possibly address the "problem" of misleading speech of the regulated party, *especially* where that party wishes to remain silent on the subject matter on which speech is being compelled. *Zauderer* did "not apply" in *NIFLA* because the notice there at issue "no way relates to the *services* that licensed clinics provide" but "[i]nstead it requires these clinics to disclose information about *state*-sponsored services." 585 U.S. at 768-69 (emphasis the Court's). Here, both the suicide pamphlet and the conflict resolution pamphlet require the dealers "disclose information" about *county*-sponsored services as well as services provided by *third* parties. Pet.App.92,93. The dealers do not provide suicide prevention or conflict resolution services or voluntarily engage in speech about such services. Here, as in

NIFLA, the rationale of *Zauderer* is completely absent. The County does not dispute it.

The County argues that *NIFLA* is inapplicable because the clinics there were not selling commercial products. *Id*. That point is irrelevant because the commercial context for compelled speech does not "make[] a difference." *303 Creative LLC v. Elenis*, 600 U.S. 570, 594 (2023). Both *303 Creative* and *Brown v. Entertainment Merchants Ass'n*, 564 U.S. 786 (2011), involved compelled speech in a commercial context and neither even cited *Zauderer*. "A speaker's right to 'decide what not to say' is 'enjoyed by business corporations generally.'" *Moody v. NetChoice, LLC*, 144 S.Ct. 2383, 2410 (2024), quoting *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 573-74 (1995). "The government may not, in supposed pursuit of better expressive balance, alter a private speaker's own editorial choices about the mix of speech it wants to convey." *NetChoice*, 144 S.Ct. at 2403.

The County argues that *303 Creative* involved "a law that forced a plaintiff to create art expressing a message she disagreed with." BIO 16. The dealers likewise disagree with the County's message. The compelled speech at issue in *303 Creative* and the compelled dissemination of the County's pamphlets at issue here both involve the same "inherently expressive choice 'to exclude a message [they] did not like from' their speech compilation." *NetChoice*, 144 S.Ct. 2410, quoting *Hurley*, 515 U.S. at 574. The web designer at least had the option of not creating *wedding* websites and could thus avoid communicating the State-mandated message. The dealers here have no such choice.

The County also argues that *303 Creative* and *Brown* did not "involve[] commercial disclosure requirements." BIO 16. But *303 Creative* involved compelled speech in the commercial production of professional websites, a fact the Court rejected as irrelevant. 600 U.S. at 594. *Brown* involved labeling requirements on the sale of commercial products, violent video games. 564 U.S. at 789. The Court applied strict scrutiny because the law "imposes a restriction on the content of protected speech," not because it banned sales to minors. 564 U.S. at 799. The Court ruled that "predictive judgments," touted by the County (BIO 23), are permissible only as "to content-neutral regulation." 564 U.S. at 799. The County's pamphlets are not "content-neutral."

The County relies on this Court's observation in *NIFLA* that the Court does "not question the legality of health and safety warnings long considered permissible, or purely factual and uncontroversial disclosures about commercial products." BIO 16-17, quoting *NIFLA*, 585 U.S. at 775. But "health and safety warnings" or "product disclosures" are no more presented in this case than they were in *NIFLA*. The County does not dispute that the Ordinance is just one "feature" of an "extensive gun-violence-prevention campaign" that intentionally expropriates the "trust" and goodwill that dealers have with their customers. Pet.15-16. "Misattribution" is not merely a "risk," it is an integral part of the County's "campaign." See *NetChoice*, 144 S.Ct. at 2432 & n.18; *Hurley*, 515 U.S. at 574. The campaign is not the type of "warnings" or "disclosures" referenced in *NIFLA*. To hold otherwise would overrule the limits on *Zauderer* identified in *NIFLA*.

The County's "campaign" is intended to "promot[e] an approved message" and that is impermissible no matter how "enlightened" the compelled speech "may strike the government." *Hurley*, 515 U.S. at 579. See *NIFLA*, 585 U.S. at 768-69 (incorporating *Hurley*'s rejection of *Zauderer*); *NetChoice*, 144 S.Ct. at 2431 ("If a compilation is inherently expressive, then the compiler may have the right to refuse to accommodate a particular speaker or message"), citing *Hurley*, 515 U.S. at 573. "[T]his general rule, that the speaker has the right to tailor the speech, applies not only to expressions of value, opinion, or endorsement, but equally to statements of fact the speaker would rather avoid." *Hurley*, 515 U.S. at 573. See *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781, 790-91 (1988) ("the government, even with the purest of motives, may not substitute its judgment as to how best to speak for that of speakers and listeners; free and robust debate cannot thrive if directed by the government.").

II. Suicide Prevention and Conflict Resolution Is Not Commercial Speech

The County's opposition hinges on its assertion that the Ordinance merely "imposes a commercial disclosure requirement and is therefore subject to review under *Zauderer*." BIO 13. The County argues that the Ordinance is commercial speech because it regulates "retailers" and requires display and distribution "at the point of sale" to "purchasers" and "thus regulates retailers who 'propose a commercial transaction'" and therefore relate solely "'to the economic interests of the speaker and its audience.'" *Id*. 15, quoting *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557 (1980)

(emphasis added). That view eviscerates the First Amendment rights of businesses.

The commercial speech inquiry under *Central Hudson* is not controlled *by whom* the law regulates or by *where* the speech takes place, but rather by the *content* of the speech being regulated, a point stressed in the Petition (Pet.18-19) but ignored by the County. The First Amendment protects "expression." *NetChoice*, 144 S.Ct. at 2399-2400. *Central Hudson* thus held that "we must determine whether *the expression* is protected by the First Amendment." 447 U.S. at 566. (Emphasis added). Whether the "expression" is commercial is, in turn, controlled by whether the "*speech* does … 'no more than propose a commercial transaction'" or relates solely to the "economic motivation" of the speaker. *Bolger v. Youngs Drug Prods. Corp*., 463 U.S. 60, 66-67 (1983), quoting *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 762 (1976). (Emphasis added). See *Board of Trustees of State University of N.Y. v. Fox*, 492 U.S. 469, 473-34 (1989); *City of Cincinnati v. Discovery Network, Inc*., 507 U.S. 410, 423 (1993).

Bolger is instructive. There, manufacturers and distributors of contraceptives challenged a federal statute banning the mailing of contraceptive advertisements. This Court held that "[t]he mere fact that these pamphlets are conceded to be advertisements clearly does not compel the conclusion that they are commercial." 463 U.S. at 67. The Court further held that "the reference to a specific product does not by itself render the pamphlets commercial speech" and nor was it sufficient that the regulated party had "an economic motivation for mailing the pamphlets." *Id.* Rather the Court found that the pamphlets were

commercial speech only because of "[t]he combination of *all* these characteristics." *Id*. (Emphasis the Court's). None of that analysis would have been necessary if all that mattered was that the pamphlets were distributed by a commercial entity, the test adopted by the Fourth Circuit here. Pet.App.16a-17a.

The County's pamphlets are not "advertisements," do not "propose a commercial transaction," and are not limited to a "specific product." Neither the dealers nor their customers have any "economic motivation" or economic interest in the suicide prevention and conflict resolution "speech" contained in the pamphlets. See *X Corp. v. Bonta*, --- F.4th ----, 2024 WL 4033063 at *8 (9th Cir. Sept. 4, 2024) (applying *Bolger* and holding that commercial speech is limited to speech that "communicates the terms of an actual or potential transaction"); *NetChoice, LLC v. Bonta*, --- F.4th ----, 2024 WL 3838423 at *12 (9th Cir. Aug. 16, 2024) (applying the "*Bolger* factors"). The pamphlets are not commercial speech.

III. The Literature Is Not "Purely Factual And Uncontroversial"

The second "essential feature" of *Zauderer* is that the compelled speech must be "purely factual and uncontroversial" and the County's literature is neither. Pet.21-24. In response, the County concedes that the suicide pamphlet's factual assertions are supported only by a correlation but asserts that is enough. BIO 21. The County thus ignores *Brown*'s holding that correlation evidence is insufficient to justify content-based restrictions on speech. *Brown*, 564 U.S. at 800-01. See also *Free Speech Coalition, Inc. v. Paxton*, 95 F.4th 263, 281-82 (5th Cir. 2024), *cert. granted*, No. 23-1122 --- S.Ct. ----, 2024 WL 3259690 (July 2, 2024). The Fourth Circuit's flawed "logical

syllogism" was the sole basis for its holding on this point, Pet. 21-22, as the County admits. BIO 21.

The County argues that Petitioners and their expert "misinterpret" the literature. BIO 22. Not so. The pamphlet *factually* asserts that persons with access to firearms "are More at Risk for Suicide than Others" (Pet.App.88a), and that statement goes far beyond any assertion of correlation. "Correlation" is not even mentioned in this literature. The pamphlets use correlation to imply causation and that is "junk science." JA0278-JA0279. See Pet.21-22. Such misleading speech can never be "purely factual." *National Ass'n of Wheat Growers v. Bonta,* 85 F.4th 1263, 1278 (9th Cir. 2023).

"Purely factual" and "uncontroversial" are distinctly different terms and cannot be collapsed into a single inquiry as the Fourth Circuit did here. Pet.App.20a; Amici Br.14. The test for "controversial" speech focuses on the *topic* of the speech, not whether individual statements in the literature are factually accurate. See *Wheat Growers*, 85 F.4th at 1277; *X Corp.*, 2024 WL 4033063 at *8. For example, the compelled notices in *NIFLA* failed under *Zauderer* not only because they pertained to third-party services but *also* because the notices concerned abortion which, the Court held, was "anything but an 'uncontroversial' *topic*." 585 U.S. at 769. (Emphasis added). There was no dispute that the "content" of the compelled notices in *NIFLA* was factually accurate but that did not matter. "Firearm safety and violence are white-hot political topics." Amici Br.16.

IV. The Circuits Are In Conflict

The County discounts the Eleventh Circuit's application of *Zauderer* in *NetChoice, LLC v. Attorney*

General, Florida, 34 F.4th 1196, 1227 (11th Cir. 2022), arguing the conflict with that decision disappeared when the case was vacated and remanded in *NetChoice*. BIO 26. But this Court *endorsed* the Eleventh Circuit's approach, 144 S.Ct. at 2399, while rejecting the Fifth Circuit's analysis. 144 S.Ct. at 2399-2404. See Pet. 24-26. Those holdings support Petitioners. Pet.25-26. The cases were remanded so that the lower courts could evaluate the "full range of activities" covered by the statutes, an issue not presented here. 144 S.Ct. at 2397-98.

The County acknowledges that *American Hospital Ass'n v. Azar*, 983 F.3d 528, 541 (D.C. Cir. 2020), focused on the *terms* of services, but argues that "nothing" in that decision limited *Zauderer* to terms of services. BIO 25. *Azar* held that a focus on the terms of services was "critical" to *Zauderer*. 983 F.3d at 540. A "critical" element is not a "nothing." The County cites *Azar*'s reference to a "particular product trait" (BIO 25-26) but that discussion concerned the *separate Zauderer* requirement that the compelled speech must be "'reasonably related' to the State's interest in preventing deception of consumers." *Azar,* at 540-41, quoting *Zauderer*, 471 U.S. at 650-51. The Fourth Circuit expressly rejected that limitation on *Zauderer*. Pet.App.15a. The Fourth Circuit's decision thus conflicts with *Azar* twice over.

Nothing in *American Meat Institute v. Dept. of Agriculture,* 760 F.3d 18 (D.C. Cir. 2014) (en banc), allows the government to compel speech about any "product trait," as the County asserts. BIO 26. See 760 F.3d at 31-32 (Kavanaugh J., concurring) ("it is plainly not enough for the Government to say simply that it has a substantial interest in giving consumers information"). "Suicide prevention" and

"conflict resolution" are not "product traits" and the "national origin" product information at issue in *American Meat* is nothing like the County's "gun-violence-prevention campaign." Id. 760 F.3d at 30.[1]

Book People, Inc. v. Wong, 91 F.4th 318, 339 (5th Cir. 2024), holds that commercial speech is limited to "'[e]xpression related solely to the economic interests of the speaker and its audience.'" (Citation omitted). *Free Speech Coalition* ruled that the speech must "propose commercial transactions." 95 F.4th at 279-80. The County asserts (BIO 27-28) that "nothing" in these holdings conflicts with the Fourth Circuit's test. But the Fourth Court held that the "economic interests" inquiry "understands 'commercial' far too narrowly," ruling that "commercial" includes any "safety advisory" about a product sold commercially. Pet.App.16a-17a. That holding is irreconcilable with the test applied in *Book People* and *Free Speech Coalition*. It is also at odds with the Ninth Circuit's recent holdings in *X Corp*., 2024 WL 4033063 at *8-*9, and *NetChoice*, 2024 WL 3838423 at *12, both of which applied *Bolger* to reject compelled speech.

The County argues (BIO 29) that *Wheat Growers* is consistent with the Fourth Circuit's test for "uncontroversial" speech, but *Wheat Growers* looked to "*the topic* of the disclosure and *its effect on the speaker*" to determine "whether something is *subjectively* controversial." 85 F.4th at 1277. (Emphasis added). The Fourth Circuit never considered *any* of those factors. Pet. 21-22. As Amici suggest, the court's

[1] To the extent the majority opinion in *American Meat* divorced *Zauderer* from its deception-prevention rationale for "expressive content," that reasoning has been superseded by *NIFLA*. *Azar,* 983 F.3d at 541; Pet.25.

"paper thin" analysis on this point conflicts with the approaches followed by other circuits. Amici Br.14-16. Those conflicts are ignored by the County.

V. The Exclusion of Petitioners' Expert Cannot Stand

The exclusion of Petitioners' expert was not "fact-bound," as the County asserts. BIO 25. It was result-driven. See *Free Speech Coalition*, 95 F.4th 281-82 (a "good-faith scientific or evidentiary dispute" precludes application of *Zauderer*); *Wheat Growers*, 95 F.4th at 1281-82 (same). The district court's exclusion was not based on the expert's "principles and methodology." *General Electric Co. v. Joiner*, 522 U.S. 136, 143 (1997), and *Daubert v. Merrell Dow Pharmaceuticals*, Inc., 509 U.S. 579, 595 (1993). Pet.32. The court improperly assessed the weight or credibility of the expert's testimony. Pet.31-32; *Doucette v. Jacobs*, 106 F.4th 156, 169 (1st Cir. 2024); *Quiet Tech. DC–8, Inc. v. Hurel–Dubois UK Ltd.,* 326 F.3d 1333, 1345 (11th Cir. 2003).

VI. This Case Is An Excellent Vehicle

The Court has already plowed this ground in *NIFLA*, *303 Creative*, *Hurley*, *Milavetz*, *United Foods, Central Hudson, Bolger* and now *NetChoice*. Summary disposition is therefore appropriate. Pet.13; *Caetano v. Massachusetts*, 577 U.S. 411, 412 (2016). At a minimum, the Court should grant plenary review or, alternatively, GVR this case with instructions to reconsider the application of *Zauderer* in light of *NetChoice,* just as the Court did with respect to the *Zauderer* issues in *NetChoice*. 144 S.Ct. at 2399 n.3. This case is particularly important because of the Second Amendment concerns raised by the Ordinance. Pet.29-30, Amici Br.17-22.

The County faults Petitioners for supposedly failing to "reconcile" the legal issues posed by the compelled speech at issue here with the issues associated with disclosures required by a myriad of *other* regulatory schemes not before this Court. BIO 31. But cases are decided "one at a time." *United States v. Hillary*, 106 F.3d 1170, 1173 (4th Cir. 1997). This Court will have ample opportunity to address *Zauderer* issues raised by the County's "parade of horribles" should the occasion arise. See *Simmons v. Himmelreich*, 578 U.S. 621, 629 (2016).

Review is urgently needed because the type of compelled speech at issue here is rapidly becoming more and more Orwellian. The New York Legislature has just passed Senate Bill 6649, which will impose a $1,000 fine and 15 days of imprisonment for each day the firearms dealer fails to post or distribute to each customer dire warnings about firearms access. See https://bit.ly/4gbkDVs (last viewed Sept. 5, 2024). These requirements and punishments are in addition to any imposed by local jurisdictions, such as by Westchester County, New York. Westchester County Code of Ordinances, § 529.21.

The law enacted by Montgomery County, Maryland (Pet.30 n.2) provides that any failure by the dealer to display and distribute the County's speech is a "Class A" misdemeanor punishable, at the County's "discretion," either by a civil fine of $500 for a first offense or by a criminal fine of $1,000 and up to *six months* of imprisonment. Montgomery County Code, §§ 57-11A(d), 1-19. More State and local jurisdictions can be expected to follow suit. See, e.g, City of Boulder, Colorado Ordinances, § 5-8-40(b). As *NetChoice*, and the Ninth Circuit's decisions in *X Corp.* and *NetChoice v. Bonta* illustrate, compelled speech is fast becoming the norm in other areas as well. See Amici Br.1-2.

CONCLUSION

The petition for certiorari should be granted. The Court should summarily reverse, grant plenary review, or GVR this case for reconsideration in light of *NetChoice*.

Respectfully submitted,

MARK W. PENNAK
Counsel of Record
MARYLAND SHALL ISSUE, INC.
9613 Harford Road
Ste. C #1015
Baltimore, MD 21234
(301) 873-3671
mpennak@marylandshallissue.org

Counsel for Petitioners

September 6, 2024

Expert Report, Maryland Shall Issue v. Anne Arundel County

Gary Kleck
College of Criminology and Criminal Justice
Florida State University
Tallahassee, Florida 32306-1273

August 25, 2022

My Qualifications

I am an Emeritus Professor of Criminology and Criminal Justice at Florida State University. I received my doctorate in Sociology from the University of Illinois in 1979, where I received the University of Illinois Foundation Fellowship in Sociology. I was the David J. Bordua Professor of Criminology at Florida State University from 1978 to 2016. My research has focused on the impact of firearms and gun control on violence, and I have been called "the dominant social scientist in the field of guns and crime" (Vizzard, 2000, p. 183).

I have published the most comprehensive reviews of evidence concerning guns and violence in the scholarly literature, which informs and serves as part of the basis of my opinions. I am the author of Point Blank: Guns and Violence in America, which won the 1993 Michael J. Hindelang Award of the American Society of Criminology, awarded to the book of the previous several years which "made the most outstanding contribution to criminology." Subsequently, I authored Targeting Guns (1997) and, with Don B. Kates, Jr., The Great American Gun Debate (1997) and Armed (2001).

I have published scholarly research in all of the leading professional journals in my field. Specifically, my articles have been published in the American Sociological Review, American Journal of Sociology, Social Forces, Social Problems, Criminology, Journal of Criminal Law and Criminology, Law & Society Review, Journal of Research in Crime and Delinquency, Journal of Quantitative Criminology, Law & Contemporary Problems, Law and Human Behavior, Law & Policy Quarterly, Violence and Victims, Journal of the American Medical Association, and other scholarly journals.

More specifically, I have published seven scholarly articles and chapters on the relationship between firearms and suicide.

I have testified before Congress and state legislatures on gun control issues, and worked as a consultant to the National Research Council, National Academy of Sciences Panel on the Understanding and Prevention of Violence, as a member of the U.S. Sentencing Commission's Drugs-Violence Task Force, and, most recently, as a member of the Institute of Medicine and National Research Council Committee on Priorities for a Public Health Research Agenda to Reduce the Threat of Firearm-Related Violence. I am a referee for over a dozen professional journals, and serve as a grants consultant to the National Science Foundation.

Finally, for over 30 years I taught doctoral students how to do research and evaluate the quality of research evidence. I taught graduate courses on research design and causal inference, statistical techniques, and survey research methodology. My current curriculum vitae is attached as Appendix A..

I am being compensated for my work at the rate of $400 per hour.

My Expert Opinions

Anne Arundel County (hereinafter "the County") compels firearms dealers to distribute a pamphlet ("Firearms and Suicide Prevention") that asserts that "Access to lethal means including firearms and drugs" is a "risk factor" for suicide, further explaining that "risk factors are characteristics or conditions that increase the chance that a person may try to take their life." That is, the County, via this pamphlet, is claiming that access to firearms causes an increased chance of a person committing suicide. This assertion will be hereafter referred to as "the suicide claim."

It is my expert opinion that the suicide claim is not supported by the most credible available scientific evidence and is probably false. The suicide claim is contradicted by much of the

available scientific evidence, and is indisputably *not* purely factual and uncontroversial information.

Further, as a logical point, the County's mandate to require only firearms dealers to distribute this pamphlet is under-inclusive as to who might be distributing materials whose availability might affect suicide. The ordinance does not require pharmacies to distribute the pamphlet, even though it explicitly identifies access to drugs as a risk factor for suicide. Further, the pamphlet cited "firearms and drugs" in a non-comprehensive way, as merely as examples of "lethal means," using the wording "Access to lethal means *including* firearms and drugs" (emphasis added). The ordinance, however, does not require hardware stores and other suppliers of rope to distribute the pamphlet, even though rope can be used to fashion a noose for use in a suicide. This is especially noteworthy in light of the fact that hanging is the second-most common method of suicide in the United States (Kleck 2019a). Likewise, the ordinance does not require the owners of tall apartment buildings and hotels to distribute the pamphlet, even though jumping from high places is also a common method of suicide. The narrow, indeed exclusive, focus of the ordinance on firearms dealers is arbitrary and inconsistent with accepted information on the many and varied ways that people commit suicide.

The exclusive focus on firearms dealers could conceivably be justified if shooting was a uniquely lethal method of suicide, but it is not. The best available national data indicates that there is no significant difference in the percent of suicide attempters who die between those who attempt suicide by hanging (the second-most common suicide method) and those who do so by shooting (Kleck 2019a, pp. 317-320). Indeed, there are subtypes of most other suicide methods that are almost certainly 100% fatal, such as jumping from a 20th story window or a similarly high bridge or cliff, or swallowing 30 barbiturate tables in combination with a pint of alcohol. Thus, there is

no justification for the County's ordinance to require only firearms dealers to distribute suicide prevention materials.

The Evidence on the Potential Effect of Gun Access on Suicide

Popular Opinion.

Leaving aside scientific evidence for the moment, the County's suicide claim is highly controversial in the sense that it is contrary to the views held by the vast majority of Americans. The issue of whether gun access makes suicide more likely was posed in the following way to a representative sample of U.S. adults in a national survey conducted for the Pew Research Center in April of 2017. Respondents were asked:

> "Thinking about people who commit suicide using a gun, which comes closer to your view, even if neither is exactly right?...
>
> - They would find a way to do it whether they had access to a gun or not.
>
> - They would be less likely to do it if they didn't have access to a gun."

75% endorsed the first view, that those attempting suicide with gun would, if denied a gun, still have committed suicide (Roper Center, 2022 - iPoll Database). In short, three out of four Americans would disagree with the County's claim the access to firearms causes an increase in the chance that a person will commit suicide.

The Purported Scientific basis for the Suicide Claim – Case-control Studies.

The purported scientific basis for the suicide claim consists almost entirely of poor quality "case-control" studies. These are studies that compare persons who committed suicide with people who did not – either persons still living or persons who had died of some non-suicide cause. As nonexperimental studies, the validity of their findings is critically dependent on the extent to which

researchers statistically control or adjust for confounding factors. In this context, a confounding factor would be an attribute that affects suicide but that also happens to be correlated with access to firearms. For example, gender is a confounder since being male increases the likelihood of committing suicide but also makes it more likely a person will own guns. If a researcher measured the association between guns and suicide but failed to control for gender, they would attribute a higher likelihood of committing suicide to gun access that was actually due to being male.

To illustrate how important controlling for confounders is, consider one of the confounders, suicidal intent (SI). No one disputes that having a stronger desire or motivation to kill one's self makes it more likely that the person will actually do so. A stronger SI, however, is also likely to induce some people to acquire a gun for the purpose of carrying out the suicide attempt. Even if possessing or using a gun did not actually influence whether a person attempted suicide or whether an attempt was fatal, one could still find higher gun ownership among those who killed themselves because people *believed* that shooting was more lethal than other methods. That is, one would find a positive guns/suicide association. But this would be a non-causal "spurious" association between guns and suicide. Having a gun does not necessarily cause a higher risk of suicide; rather, having a stronger SI caused the higher risk of suicide, and also caused a higher likelihood of gun ownership (to provide the means for committing suicide), creating a non-causal association between gun ownership and suicide.

One need not speculate what happens to the guns/suicide association once suicidal intent is controlled, because Brent and his colleagues (1988) measured SI and controlled for it while estimating the suicide/guns association. Before controlling for SI, there was a strong, significant association between gun access and suicide. Once the researchers introduced a control for SI, the association was no longer significant. The finding was later replicated in another analysis of

a somewhat larger overlapping sample by the same group of researchers. When they introduced the control for SI, the guns/suicide association was halved (Brent et al. 1991).

What makes case-control studies so hard to execute in a competent fashion likely to yield credible findings about the effect of gun access is that there are so many confounders. That is, many suicide risk factors happen to be correlated with gun ownership, and the confounders' effects are easily confused with any possible effects of gun access on suicide.

The following are partial lists of some of the likely confounders that should be controlled in case-control studies, but almost never are. We can start with a list of some variables that are *known* to be associated with both gun ownership and suicide, and then consider variables known to be related to gun ownership, for which there also are strong theoretical reasons to expect that they affect suicide, but no empirical evidence testing the proposition.

a. <u>Known</u> Confounders of the Guns/Suicide Association

The first set of variables are those that have empirically documented associations with both gun ownership/possession and suicide:

(1) <u>Strength of suicidal intent</u> (in studies that compared completed suicides vs. attempts). No one disputes that persons more determined to kill themselves are more likely to do so - the proposition is virtually a tautology. It is also true, however, that people more intent on committing suicide are more likely to choose more lethal suicide methods such as shooting or hanging to attempt suicide, and some will acquire guns specifically for the purpose of using them to commit suicide. Supporting these ideas, Brent et al. (1988) initially found a significant positive guns/suicide association, but once they controlled for strength of suicidal intent, no significant association remained.

(2) Age. Middle-aged persons are more likely to own guns (Kleck 1997, p. 101) and more likely to commit suicide (Wiebe 2003, p. 777).

(3) Sex. Males are more likely to own guns (Kleck 1997, p. 101) and more likely to commit suicide (Wiebe 2003, p. 777) .

(4) Race. African-Americans are less likely to own guns than whites (Kleck 1997, p. 101), and less likely to commit suicide (Centers for Disease Control and Prevention 2016).

(5) Region. People living in the Northeast part of the U.S. are less likely to own guns than people in other regions (Kleck 1997, p.101), and less likely to commit suicide (Wiebe 2003, p. 779).

(6) Marital status. Married people are more likely to own guns than unmarried people (Kleck 1997, p.101), and are less likely to commit suicide (Wiebe 2003, p. 779).

(7) Income. Poor people are less likely to own guns than middle- or upper-income people (Kleck 1997, p. 101), but more likely to commit suicide (Wiebe 2003, p. 777).

(8) Living alone. People who live alone are less likely to own guns than persons who live with others (Kleck 1997), and (surprisingly) are also less likely to commit suicide (Wiebe 2003, p. 779).

(9) Education. College graduates are less likely to own guns (Kleck 1997, p.102), and less likely to commit suicide (Wiebe 2003, p. 777).

(10) Population size of place of residence. People who live in places with larger populations are less likely to own guns (Kleck 1997, p. 102), and less likely to commit suicide than people who live in places with smaller populations (Wiebe 2003, p. 779).

(11) Alcoholism or heavy drinking. Alcohol abuse and heavy drinking are positively associated with gun ownership (Brent 2001; Hemenway and Miller 2002) and positively associated with

suicide (Brent, Perper, and Allman 1987; Kellermann 1992; Rivara, Mueller, Somes, Mendoza, and Kellermann 1997; Brent 2001).

(12) Illicit drug use. Illicit drug use is positively associated with firearm ownership (Carter, Walton, Newton, Cleary, Whiteside, Zimmerman and Cunningham 2013; Rivara et al. 1997), and positively associated with suicide (Kellermann 1992; Brent 2001).

(13) Gang membership. Gang members are more likely to own guns than other youth (Callahan and Rivara 1992, p. 3042) and are more likely to commit suicide (Knox and Tromanhauser 1999).

(14) Experience as a victim of violent crime, especially sexual assault. Experience as a victim of violent crime is positive associated with gun ownership (Kleck 1997) and positively associated with suicide (Bryan, Mcnaugton-Cassill, Osman, and Hernandez 2013).

(15) Sociability. Diener and Kerber (1979) found that gun owners are less sociable than nonowners. Those who are more socially isolated and who have less social support are more likely to commit suicide (Trout 1980).

b. Likely Confounders of the Guns/Suicide Association

The following are variables known to be related to gun ownership, and for which there is sound theoretical reasons to believe that they would affect suicide, but as yet no empirical evidence testing such effects.

(16) Self-reliance/self-blame. Gun owners are known to be more self-reliant (Feagin 1970), and there are sound reasons to believe this makes people more prone to suicide. A person possessing a personality that emphasizes self-reliance and a belief that they are in charge of their own fate is

also more likely to believe that they are to blame for their own problems when things go wrong. A person who blames themselves for their problems is more likely to commit suicide.

(17) Residence in a high-crime area. Living in high-crime places makes people more likely to acquire guns for self-protection, especially handguns (Kleck 2015, p. 44), and the many life stresses common to such places are likely to make suicide more likely.

(18) Perception of the world as a hostile place. People who believe they are surrounded by threats of victimization are more likely to own guns for self-protection (Kleck 1997), but also more likely to believe there are few people around them who would be willing to help them with their problems. This lack of felt social support is likely to raise the risk of suicide.

(19) Drug dealing. Drug dealing is positively associated by possession of firearms (Sheley and Wright 1992), and is likely to be positively correlated with suicide due to both the misery produced by the drug addiction that commonly accompanies drug dealing and the intense emotional stress produced by the ongoing risk of arrest, imprisonment, or death at the hands of one's customers and competitors.

This list is by no means comprehensive. One could no doubt add still more variables to the list. Controlling for these 19 variables can nevertheless be seen as the start of a serious effort to estimate the causal effect of gun ownership on suicide. One distinct pattern evident among these confounders should be stressed: almost all are factors that are positively correlated with both gun ownership and suicide. The effect of failing to control for such a variable is to bias the estimate guns/suicide association upward, i.e. to make it larger and more positive, and thus more supportive of the suicide claim than it should be. Analysts failing to control for a variable like this will wrongly attribute to gun ownership the suicide-elevating effects of the confounder. The more confounders of this type the researcher fails to control, the worse the distortion.

How well have case-control researchers studying the gun/suicide association done in controlling for confounders? Based on my systematic 2019 review of the case-control literature (Kleck 2019a, Gun Studies chapter 17), the short answer is "very poorly." *Not a single study has controlled for even half of the aforementioned confounders.* Most researchers controlled for fewer than four confounders and many controlled for none at all!

Further, it is evident that most of the researchers in this field have not even made an earnest effort to identify confounders. Doing so would necessarily require reviewing research on the correlates of gun ownership, not just the determinants of suicide. Yet none of the authors of case-control studies cite even a single review of gun ownership patterns (e.g. Wright and Rossi 1986; Sheley and Wright 1995; Kleck 1997), and usually do not even discuss whether their control variables are correlated with gun ownership. Variables uncorrelated with gun ownership do not have any effect on the guns/suicide association, so only controls for variables that *are* correlated with gun access, as well as suicide, help produce less biased estimates of the effect of gun access on suicide. Unless authors in this area have been unusually modest about their scholarly efforts, and failed to report reviews of gun correlates that they did conduct, they could not have made a systematic search for confounders since this necessarily would have required knowing the correlates of gun ownership. Instead, the common practice appears to be to include in the analysis whatever correlates of suicide have been identified by prior suicide researchers, no matter how poorly chosen, and regardless of whether they are correlated with gun ownership.

Summary of the Case-control Research: Until researchers make a serious effort to measure and control for confounding variables, case-control studies will have little to say about the causal effect of gun access on suicide. Thus, the case-control literature does not offer a credible scientific basis for the County's suicide claim.

A Contrary Body of Evidence: Macro-level Studies of the Association of Gun Rates and Suicide Rates

Macro-level studies examine the association of gun rates with suicide rates among aggregates like the populations of cities, states, regions, or nations. For example, some researchers have studied whether nations with higher gun ownership rates have higher suicide rates (e.g. Kleck, 2021). Since committing suicide with a gun requires, as a matter of definition, access to a gun, it is no surprise that places with higher gun ownership rates have higher rates of *gun* suicide. This, however, does not imply that more people commit suicide in places with more gun ownership, since it may only mean that a higher fraction of people who kill themselves do so with guns. The critical issue, then, is whether higher gun rates cause higher *total* suicide rates.

Of 29 macro-level studies, 15 found no significant association between gun rates and total suicide rates (Kleck 2019b, Table 1). The full body of research, however, is even less supportive of the suicide-elevating effect of guns than this distribution of findings suggests, since the supportive studies are far more technically flawed than the studies yielding unsupportive findings. Much of this body of research is plagued by the same methodological problems afflicting case-control studies, For example, this review found that in 26 of 32 analyses, the researchers did not control for a single variable that was shown to be significantly related to suicide rates, and only two of the remaining six controlled for more than three such variables.

This problem makes a huge difference in the results. For example, Miller, Lippman, Azrael and Hemenway (2007) reported a significant suicide/guns association controlling for six variables, but my reanalysis of their data found that none of their six control variables were

confounders. Five of the six were not significantly related to suicide rates, and the remaining one was not correlated with gun ownership. When I reestimated their model including six genuine confounders, 84% of the suicide/guns association disappeared, and the remaining association was not significantly different from zero (Kleck 2019b, Table 2).

Many macro-level studies are also flawed because they use invalid or "contaminated" measures of gun ownership levels. A gun measure can be contaminated in the sense that it includes counts of suicide. Some researchers used the percent of suicides committed with guns (PSG) as a measure of gun levels, i.e. gun suicides/total suicides. This is problematic because the number of gun suicides is also part of the suicide rate, (gun suicides + nongun suicides)/population. Thus, an analyst who uses PSG as a gun measure and finds it related to the suicide rate is to some extent finding that the number of gun suicides is correlated with itself – a meaningless finding. Of 32 macro-level analyses, 12 used contaminated or invalid measures of gun levels.

Excluding the most flawed studies, the findings of macro-level studies are overwhelmingly contrary to the proposition that more access to firearms causes more suicides. The technically strongest macro-level studies find no significant association between gun ownership rates and total suicide rates. All studies that reported controlling for more than two significant confounders and that used an uncontaminated measure of gun levels found that higher rates of gun ownership are not significantly associated with higher rates of *total* suicide rates (Kleck 2019b, Table 1).

More access to guns appears to affect how many people *use guns* to commit suicide, but not how many kill themselves (Kleck 2019b). There is no public health benefit to merely getting people to kill themselves with non-firearms methods but without reducing the total number of

people who kill themselves. Thus, a gun control measure that appeared to reduce firearms suicide but not total suicides would be a failure from the standpoint of public health. This is why the County's experts' citation of the association of gun availability (or gun control laws) with *firearms* suicide, but without addressing its association with total suicide is so misleading (for examples, see Kalyanaraman 2022, p. 4, Point 16, citation of Siegel study; p. 5, Point 16, concluding sentence).

Claims by the County's Experts

Anne Arundel County (hereafter "the County") offers reports from two individuals, Alexander McCourt (hereafter AM) and Nilesh Kalyanaraman (hereafter NK). The latter is not in any meaningful sense an expert on the effects of firearms or gun control measures on suicide, so his expert report can carry no weight regarding the accuracy of the claims in the "Firearms and Suicide Prevention" pamphlet that access to firearms increases "the chance that a person may try to take their life." NK has never published a single scholarly article on this issue, and does not claim to have ever conducted any relevant research. His second-hand knowledge of the research of others is highly selective, primitive, and wholly uncritical. His report makes no effort to distinguish technically stronger studies from weaker ones, and uncritically accepts the conclusions stated even in the most seriously flawed studies. The report shows no evidence that NK was even aware of the critical flaws afflicting the research he cites, or that he ever received any training that would allow him to identify methodological flaws or know what research procedures are available to avoid or ameliorate those problems.

More specifically, NK never once addresses the principal flaw in the research in this area – the failure to control for confounding variables. Without statistically controlling for confounding variables, it is impossible to reliably assess the impact of firearms access or

separate its impact from that of suicide-affecting factors with which gun access happens to be correlated. Like Dr. McCourt, NK shows no sign of even being aware of this problem, never mind applying such knowledge to assessing the scientific reliability of the studies on which he relies.

The report of Dr. McCourt (AM) requires more detailed consideration because AM has more serious credentials bearing on whether firearms access is a risk factor for suicide. Nevertheless, his Expert Report is seriously misleading regarding what the scientific literature has to say about this question.

AM's summary of what he believes research has shown on this question is compromised by his complete failure to apply any critical standards to the studies on which he relies. As far as one can tell from his Report, he considers all research equally valid, and believes that one can always take researchers' conclusions at face value. This is not an accepted scientific stance and is especially unhelpful when one is assessing a body of research as seriously flawed as the research on the impact of firearms on suicide. Each of the studies on which AM relies have their own serious problems, but one that characterizes all of them is the aforementioned failure to control for confounding variables. Studies such as those cited in AM's Point 7 (p. 2, fn. 3-7) made no serious effort to do this, instead only performing irrelevant controls for variables that either had no significant effect on suicide or had no known correlation with gun ownership. Controlling for such variables is worthless in an effort to isolate the effect of gun access.

AM's characterization of the macro-level research on the effect of gun access on suicide is inaccurate. Macro-level research studies can examine any large units or populations such as states, counties, cities, regions, or nations. AM's carefully worded claim is that "*State-level analyses* have found that states with higher rates of gun ownership generally have higher levels

of overall suicide and firearm suicide" (p. 2, Point 7, emphasis added). This claim is misleading because most macro-level studies other than those examining states have *not* found that areas with higher rates of gun ownership have higher levels of overall suicide. If one does not cherry-pick state-level studies and comprehensively reviews the entire body of macro-level studies, one finds that there is generally no relationship between firearm rates and overall suicide rates (Kleck 2019a, Table 1, pp. 939-941. I found that 15 of 29 macro-level analyses found no significant association between these variables.

More significantly, only the most methodologically flawed macro-level studies find support for this claim. These poor quality studies all have at least one, and usually most of the following flaws:

(1) they fail to control for confounders, i.e. other factors that both affect suicide rates and are correlated with gun ownership rates,
(2) they use an invalid measure of gun ownership levels,
(3) they study extremely small samples of areas (as few as six), yielding high unstable results, and
(4) they study unduly large, heterogeneous areas, with the result that researchers fail to discover that it is not the subareas with higher gun rates that have the higher suicide rates.

Making distinctions between stronger studies and weaker ones is highly consequential with this body of research. For example, if one separately considers studies that controlled for more than two confounders (surely a minimal effort) and used valid measures of gun levels, *not a single one* supports AM's claim that higher gun levels cause higher overall suicide rates (Kleck

2019a, pp. 939-941, 948). In sum, AM's characterization of this body of research relies on (1) a cherry-picked subset of the relevant research that is unrepresentative of the full set of studies, and (2) an unscientific reliance on the methodologically weakest studies.

At only one point in his report, AM does allude to "controlling for other factors" (p. 2, point 7), but fails to note that the variables controlled in most of the studies in this area were *not* known confounders, either because they were not shown to be significantly related to suicide or they were uncorrelated with access to firearms. Since such controls are worthless for isolating the effect of gun access on suicide, it was irrelevant at best, misleading at worst for AM to state (p. 2) that "research has consistently shown that suicide deaths are more likely to occur in homes with firearms than homes without firearms, *even after controlling for other factors*." (p. 2, emphasis added). Public health researchers like AM typically do not document that even a single one of the "other factors" that they control for are actually confounders.

There are at least 19 confounders of the guns/suicide relationship, i.e. factors that both affect suicide and are correlated with gun ownership (Kleck 2019b, pp. 310-312), yet no study has ever controlled for even half of them. Indeed, only three studies controlled for more than four of them (p. 316). This body of research therefore does not provide a scientifically sound basis for the assertion that access to firearms increases the risk of suicide.

AM presents a similarly distorted view of the scholarly research on the issue of the relative lethality of different suicide methods. The underlying issue in this area is whether firearms provide a uniquely lethal method of suicide and whether other methods likely be substituted for shooting if guns were unavailable would be equally likely to have fatal outcomes. AM distorts the issue (p. 3, point 8) by comparing the case fatality rate (CFR) of shooting suicide attempts

with the CFR of poisoning attempts. This comparison is misleading and irrelevant because it is implausible that people with sufficiently lethal intentions to shoot themselves in the head would, if a gun were not available, substitute one of the *least* lethal methods of suicide. A more meaningful comparison is between shooting and an alternate method of sufficient lethality that it is actually likely to be substituted for shooting if a gun were not available.

AM fails to note that the CFR of the second-most common method of suicide, hanging, is not significantly different from that of shooting attempts – national data indicate that both are about 80% (Kleck 2019b, p. 319). Thus, if people who otherwise would have attempted suicide by shooting did not have guns and substituted hanging as their method, the best available evidence indicates that just as many attempters would die.

This brings up another of AM's misleading claims. He states (p. 3, Point 8) that "Multiple studies have estimated the case fatality rate for firearms at approximately 90%." What he omits is that nearly all *other* studies, besides the handful he cites (see his fn. 8-10), do *not* find CFRs this high for firearms attempts. A more comprehensive review of studies comparing the CFRs of shooting attempts with those of hanging attempts reveals CFRs as low as 75% for shooting attempts and as high as 90% for hanging attempts. Two studies even found higher CFRs for hanging attempts than for shooting attempts (Kleck 2019b, pp. 318-319). In sum, there is no scientific consensus that shooting is a more lethal method of suicide than hanging, the method most likely to be substituted for shooting if a firearm were not available.

AM also ignores a large body of research indicating that much of the higher CFR of shooting attempts is attributable to the greater lethality of suicidal intentions of attempters using firearms, rather than the lethality of the method itself. Most suicide attempters do not want to die, but

rather are making "a cry for help," communicating the depth of their suffering to those around them. That is, they have less-than-lethal suicidal intentions. They consequently are more likely to use less lethal methods, such as swallowing a small number of pills or cutting a few superficial scratches on their wrists. In contrast, people with strong intentions to die are more likely to use methods like shooting or hanging (see evidence reviewed in Kleck 2019b, pp. 321-323).

The difference in lethality of intentions between shooting attempters and other attempters is huge. Denning and his colleagues (2000) measured suicidal intent among persons who had committed suicide, and found that suicidal intent was 6.3 times higher among those who had used firearms than among those using other methods. Thus the differences in CFRs of suicide attempts by shooting and attempts by other methods could easily be entirely attributable to the far stronger suicidal intentions of those who chose to use firearms, rather than the lethality of the method itself. In sum, AM's uncritical belief that firearms provide a uniquely lethal method of suicide is unsupported by a fuller review of the relevant scientific research. As far as one currently tell, on the basis of the existing body of evidence, the absence of a firearm in the home of a lethally minded suicide attempter would merely result in the substitution of other methods with equally frequent fatal outcomes – just as most Americans believe.

AM inserted a discussion of the impact of gun control laws on suicide in his report (p. 4, Point 13), but it is unclear why since the current case does not concern any gun control laws of the sort addressed in AM's discussion. Certainly the County's challenged ordinance did not introduce a license or permit for gun ownership or acquisition, and neither of the required pamphlets made any claims about the effectiveness of gun control laws. In any case, AM's claims on this topic are inaccurate. He asserts that "laws requiring a permit or license to

purchase a gun have consistently been found to have a relationship with reductions in homicide and suicide" (p. 4, Point 13). The results of these studies, however, appear consistent to AM only because he cherry-picked only poor quality public health studies to consider, and ignored the more technically sound social science studies that did *not* find that licensing and permit laws reduce suicide (e.g., Kleck and Patterson 1993, p. 271; Cook and Ludwig 2000). The studies on which AM relied (see his footnotes 27 and 30) used a nonscientific research design in which the researchers selectively identified isolated episodes in which introduction of new state gun laws happened to be followed by declines in suicide – without establishing whether there were even more instances of changes in gun laws in which suicide rates remained unchanged or even increased. These "studies" amount to little more than statistical anecdotes, and have no scientific value for assessing the impact of gun laws on suicide.

In sum, neither of the County's experts provide any scientifically sound basis for the claim that access to firearms causes an increased risk of suicide.

Overall Summary of Scientific Evidence:

There is at present no reliable body of scientific evidence to support the County's claim, via its mandated "Firearms and Suicide Prevention" pamphlet, that access to firearms causes an increase in the risk that a person will kill themselves. The claim is at best highly questionable; at worst, it is false.

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Kates, Don B., and Gary Kleck. 1997. *The Great American Gun Debate.* San Francisco: Pacific Research Institute for Public Policy.

Kleck, Gary. 1991. *Point Blank: Guns and Violence in America.* N.Y.: Aldine de Gruyter.

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Kung, Hsiang-Ching, Jane L. Pearson, and Xinhua Liu. 2003. Risk factors for male and female suicide decedents ages 15-64 in the United States. *Social Psychiatry and Psychiatric Epidemiology* 38:419-426.

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Miller, Matthew, and David Hemenway. 1998. The relationship between firearms and suicide: a review of the literature. *Aggression and Violent Behavior* 4:59-75.

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Sheley, Joseph F., and James D. Wright. 1995. *In the Line of Fire.* NY: Aldine.

Trout, Deborah L. 1980. The role of social isolation in suicide. *Suicide and Life-Threatening Behavior* 10:10-23.

Vizzard, William J. 2000. *Shots in the Dark*. Lanham MD: Rowman & Littlefield.

Weibe, Douglas J. 2003. Homicide and suicide risks associated with firearms in the home. *Annals of Emergency Medicine* 41:771-782.

Wright, James, and Peter Rossi. 1986. *Armed and Considered Dangerous*. NY: Aldine.

Appendix A – Kleck Vitae

CURRICULUM VITAE

GARY KLECK

(Updated May 27, 2021)

PERSONAL

Place of Birth:	Lombard, Illinois
Date of Birth:	March 2, 1951
Address:	College of Criminology and Criminal Justice The Florida State University 112 S. Copeland Street Tallahassee, FL 32306-1273 Tallahassee, Florida 32306-1127
Telephone Number:	Home: (850) 559-0922
e-mail Address:	gkleck@fsu.edu
website:	http://criminology.fsu.edu/faculty-and-staff/college-faculty/gary-kleck/

CURRENT POSITION

David J. Bordua Emeritus Professor of Criminology, Florida State University

COURTESY APPOINTMENT

Courtesy Professor, College of Law, Florida State University

PROFESSIONAL MEMBERSHIPS

American Society of Criminology

Academy of Criminal Justice Sciences

EDUCATION

A.B. 1973 - University of Illinois, with High Honors and with Distinction in Sociology

A.M. 1975 - University of Illinois at Urbana, in Sociology

Ph.D. 1979 - University of Illinois at Urbana, in Sociology

ACADEMIC HONORS

National Merit Scholar, 1969

Freshman James Scholar, University of Illinois, 1969

Graduated from University of Illinois with High Honors and with Distinction in Sociology, 1973

University of Illinois Foundation Fellowship in Sociology, 1975-76

1993 Winner of the Michael J. Hindelang Award of the American Society of Criminology, for the book that made "the most outstanding contribution to criminology" (for Point Blank: Guns and Violence in America).

Awarded Named Professorship, Florida State University, 2012.

Nominated for University Teaching Award, Florida State University, 2014.

Paper of the Year awarded by Criminal Justice Review for "Does Gun Control Reduce Crime?," Volume 4, pp. 488-513 (2016).

TEACHING POSITIONS

Fall, 1991 to May 2016	Professor, College of Criminology and Criminal Justice, Florida State University
Fall, 1984 to Spring, 1991	Associate Professor, School of Criminology, Florida State University.
Fall, 1979 to Spring, 1984	Assistant Professor, School of Criminology, Florida State University.
Fall, 1978 to Spring, 1979	Instructor, School of Criminology, Florida State University.

COURSES TAUGHT

Criminology, Applied Statistics, Regression, Introduction to Research Methods, Law Enforcement, Research Methods in Criminology, Guns and Violence, Violence Theory Seminar, Crime Control, Assessing Evidence, Survey Research, Research Design and Causal Inference.

DISSERTATION

Homicide, Capital Punishment, and Gun Ownership: An Aggregate Analysis of U.S. Homicide Trends from 1947 to 1976. Department of Sociology, University of Illinois, Urbana. 1979.

PUBLICATIONS (sole author unless otherwise noted)

BOOKS

1991, 2005 Point Blank: Guns and Violence in America. Hawthorne, N.Y.: Aldine de Gruyter. Winner of the 1993 Michael J. Hindelang award of the American Society of Criminology. Republished in 2005 in paperback by Transaction Publishers.

Reviewed in Contemporary Sociology, American Journal of Sociology, Social Forces, Journal of Criminal Law and Criminology, The Criminologist, The Public Interest, Criminal Law Forum, Social Science Review, Criminal Justice Abstracts, Crime, Criminal Justice and Law Enforcement, Newsletter of Public Policy Currents, Commonweal, Choice, and others.

1997 Targeting Guns: Firearms and their Control. Hawthorne, N.Y.: Aldine de Gruyter.

1997 The Great American Gun Debate: Essays on Firearms and Violence (with Don B. Kates, Jr.). San Francisco: Pacific Research Institute for Public Policy.

2001 (with Don B. Kates) Armed: New Perspectives on Gun Control. N.Y.: Prometheus Books.

Selected to Choice: Current Reviews for Academic Libraries' 39th annual "Outstanding Academic Title List," awarded for "excellence in scholarship and presentation, the significance of their contribution to their field, and their value as an important treatment of their topic." Awarded to less than one percent of books.

2017 (with Brion Sever) Punishment and Crime: The Limits of Punitive Crime Control. NY: Routledge.

RESEARCH MONOGRAPH

1979 Bordua, David J., Alan J. Lizotte, and Gary Kleck. Patterns of Firearms Ownership, Use and Regulation in Illinois. A Report to the Illinois Law Enforcement Commission, Springfield, Illinois.

ARTICLES IN PEER-REVIEWED JOURNALS

1979 "Capital punishment, gun ownership, and homicide." American Journal of Sociology 84(4):882-910.

1981 "Racial discrimination in criminal sentencing: A critical evaluation of the evidence with additional evidence on the death penalty." American Sociological Review 46(6):783-804.

1982 "On the use of self-report data to determine the class distribution of criminal behavior." American Sociological Review 47(3):427-33.

1983 (with David Bordua) "The factual foundation for certain key assumptions of gun control." Law and Policy Quarterly 5(3):271-298.

1985 "Life support for ailing hypotheses: modes of summarizing the evidence on racial discrimination in criminal sentencing." Law and Human Behavior 9(3):271-285.

1986 "Evidence that 'Saturday Night Specials' not very important for crime." Sociology and Social Research 70(4):303-307.

1987 "American's foreign wars and the legitimation of domestic violence." Sociological Inquiry 57(3):237-250.

1988 "Crime control through the private use of armed force." Social Problems 35(1):1-21.

1988 "Miscounting suicides." Suicide and Life-Threatening Behavior 18(3):219-236.

1990 (with Susan Sayles) "Rape and resistance." Social Problems 37(2):149-162.

1991 (with Karen McElrath) "The effects of weaponry on human violence." Social Forces 69(3):669-92.

1993 (with Miriam DeLone) "Victim resistance and offender weapon effects in robbery." Journal of Quantitative Criminology 9(1):55-82.

1993 (with E. Britt Patterson) "The impact of gun control and gun ownership levels on

violence rates." Journal of Quantitative Criminology 9(3):249-287.

1993 "Bad data and the 'Evil Empire': interpreting poll data on gun control." Violence and Victims 8(4):367-376.

1995 "Guns and violence: an interpretive review of the field." Social Pathology 1(1):12-47.

1995 "Using speculation to meet evidence." Journal of Quantitative Criminology 11(4):411-424.

1995 (with Marc Gertz) "Armed resistance to crime: the prevalence and nature of self-defense with a gun." Journal of Criminal Law & Criminology 86(1):150-187.

1996 "Crime, culture conflict and sources of support for gun control: a multi-level application of the General Social Surveys." American Behavioral Scientist 39(4):387-404.

1996 (with Chester Britt III and David J. Bordua) "A reassessment of the D.C. gun law: some cautionary notes on the use of interrupted time series designs for policy impact assessment." Law & Society Review 30(2):361-380.

1996 (with Chester Britt III and David J. Bordua) "Avoidance and misunderstanding." Law & Society Review 30(2):393-397.

1997 (with Marc Gertz) "The illegitimacy of one-sided speculation: getting the defensive gun use estimate down." Journal of Criminal Law and Criminology 87(4):1446-1461.

1997 (with Tomislav Kovandzic and Marc Gertz) "Defensive gun use: vengeful vigilante imagery vs. reality: results from the National Self-Defense Survey." Journal of Criminal Justice 26(3):251-258.

1998 (with Marc Gertz) "Carrying guns for protection: results from the National Self-Defense Survey." Journal of Research in Crime and Delinquency 35(2):193-224.

1998 “What are the risks and benefits of keeping a gun in the home?" Journal of the American Medical Association 280(5):473-475.

1998 (with Charles Crawford and Ted Chiricos) “Race, racial threat, and sentencing of habitual offenders." Criminology 36(3):481-511.

1999 (with Michael Hogan) "A national case-control study of homicide offending and gun ownership." Social Problems 46(2):275-293.

1999 "BATF gun trace data and the role of organized gun trafficking in supplying guns to criminals." St. Louis University Public Law Review 18(1):23-45.

2001 "Can owning a gun really triple the owner's chances of being murdered?" Homicide Studies 5:64-77.

2002 (with Theodore Chiricos) "Unemployment and property crime: a target-specific assessment of opportunity and motivation as mediating factors." Criminology 40(3):649-680.

2004 "Measures of gun ownership levels for macro-level crime and violence research." Journal of Research in Crime and Delinquency 41(1):3-36.

2004 (with Jongyeon Tark) "Resisting crime: the effects of victim action on the outcomes of crimes." Criminology 42(4):861-909.

2005 (with Brion Sever, Spencer Li, and Marc Gertz) "The missing link in general deterrence research." Criminology 43(3):623-660.

2006 (with Jongyeon Tark and Jon J. Bellows) "What methods are most frequently used in research in criminology and criminal justice?" Journal of Criminal Justice 34(2):147-152.

2007 "Are police officers more likely to kill African-American suspects?" Psychological Reports 100(1):31-34.

2007 (with Shun-Yung Wang and Jongyeon Tark) "Article productivity among the faculty of criminology and criminal justice doctoral programs, 2000-2005." Journal of Criminal Justice Education 18(3):385-405.

2008 (with Jongyeon Tark, Laura Bedard, and Dominique Roe-Sepowitz) "Crime victimization and divorce." International Review of Victimology 15(1):1-17.

2009 "Mass shootings in schools: the worst possible case for gun control." American Behavioral Scientist 52:1447-1464.

2009 (with Shun-Yung Wang) "The myth of big-time gun trafficking and the overinterpretation of gun tracing data." UCLA Law Review 56(5):1233-1294.

2009 (with Tomislav Kovandzic) "City-level characteristics and individual handgun ownership: effects of collective security and homicide." Journal of Contemporary Criminal Justice 25(1):45-66.

2009 (with Marc Gertz and Jason Bratton) "Why do people support gun control?" Journal of Criminal Justice 37(5):496-504.

2011 (with James C. Barnes) "Article productivity among the faculty of criminology and criminal justice doctoral programs, 2005-2009." Journal of Criminal Justice Education 22(1):43-66.

2011 (with Tomislav Kovandzic, Mark Saber, and Will Hauser). "The effect of perceived risk and victimization on plans to purchase a gun for self-protection." Journal of Criminal Justice 39(4):312-319.

2013 (**w**ith Will Hauser) "Guns and fear: a one-way street?" Crime and Delinquency 59:271-291.

2013 "Gun control after Heller and McDonald: what cannot be done and what ought to be done." Fordham Urban Law Journal 39(5):1383-1420.

2013 (with J. C. Barnes) "Deterrence and macro-level perceptions of punishment risks: is there a "collective wisdom?" Crime and Delinquency 59(7):1006-1035.

2013 (with Tomislav Kovandzic and Mark Schaffer) "Estimating the causal effect of gun prevalence on homicide rates: A local average treatment effect approach." Journal of Quantitative Criminology 28(4):477-541.

2014 (**w**ith Jongyeon Tark) "Resisting rape: the effects of victim self-protection on rape completion and injury." Violence Against Women 23(3): 270-292.

2014 (with J. C. Barnes) "Do more police generate more crime deterrence?" Crime and Delinquency 60(5):716-738.

2015 "The impact of gun ownership rates on crime rates: a methodological review of the evidence." Journal of Criminal Justice 43(1):40-48.

2016 (with Tomislav Kovandzic and Jon Bellows) "Does gun control reduce violent crime?" Criminal Justice Review 41:488-513.

2016 "Objective risks and individual perceptions of those risks." Criminology & Public Policy 15:767-775.

2016 (with Dylan Jackson) "What kind of joblessness affects crime? A national case-control study of serious property crime." Journal of Quantitative Criminology 32:489-513.

2016 "Large-capacity magazines and the casualty counts in mass shootings: the plausibility of linkages." Justice Research and Policy 17:28-47.

2017 (**w**ith Will Hauser) "The impact of police strength and arrest productivity on fear

of crime and subjective assessments of the police." American Journal of Criminal Justice 42:86-111.

2017 (with Dylan Jackson) "Does crime cause punitiveness?" Crime & Delinquency. 63(12):1572-1599.

2017 (with Bethany Mims) "Article productivity among the faculty of criminology and criminal justice doctoral programs, 2010-2014." Journal of Criminal Justice Education 28(4):467-487.

2018 (**w**ith Moonki Hong) "The short-term deterrent effect of executions: an analysis of daily homicide counts." Crime & Delinquency 64(7):939-970.

2018 "Response errors in survey estimates of defensive gun use." Crime & Delinquency 64(9):1119-1142.

2019 "Macro-level research on the effect of firearms prevalence on suicide rates: a systematic review and new evidence." Social Science Quarterly 100(3):936-950.

2019 "Regulating guns among young adults." American Journal of Criminal Justice 44:689-704.

2021 "What do CDC's surveys say about the prevalence of defensive gun use?" American Journal of Criminal Justice 46:401-421.

2021 "The continuing vitality of bad research on guns and violence: a comment on Fridel." Justice Quarterly 38(5):916-924.

2021 "Compliance with universal background check gun laws." Journal of Crime and Justice (published online 9-2-20).

2021 Tomislav Kovandzic and Kleck. "The impact of firearm levels on homicide rates: the effects of controlling for cultural differences in cross-national research." American Journal of Criminal Justice (published online 1-4-21).

2021 "The cross-national association of gun ownership rates and suicide rates: an analysis of 192 nations." Archives of Suicide Research (published online 5-12-21).

OTHER PUBLISHED ARTICLES

1985 "Policy lessons from recent gun control research." Law and Contemporary Problems 49(1):35-62.

1992 "Assault weapons aren't the problem." New York Times September 1, 1992, p.

A15. Invited Op-Ed page article.

1993 "The incidence of violence among young people." The Public Perspective 4:3-6. Invited article.

1994 "Guns and self-protection." Journal of the Medical Association of Georgia 83:42. Invited editorial.

1998 "Using speculation to meet evidence: reply to Alba and Messner." Journal on Firearms and Public Policy 9:13-49.

1998 "Has the gun deterrence hypothesis been discredited?" Journal on Firearms and Public Policy 10:65-75.

1999 "There are no lessons to be learned from Littleton." Criminal Justice Ethics 18(1):2, 61-63. Invited commentary.

1999 "Risks and benefits of gun ownership - reply." Journal of the American Medical Association 282(2):136-136.

1999 "The misfire that wounded Colt's." New York Times October 23, 1999. Invited Op-Ed page article.

1999 "Degrading scientific standards to get the defensive gun use estimate down." Journal on Firearms and Public Policy 11:77-137.

2000 "Guns aren't ready to be smart." New York Times March 11, 2000. Invited Op-Ed page article.

2000 (with Chester Britt III and David J. Bordua) "The emperor has no clothes: using interrupted time series designs to evaluate social policy impact." Journal on Firearms and Public Policy 12:197-247.

2001 "School lesson: armed self-defense works." Wall Street Journal March 27, 2001. Invited opinion article.

2001 "Impossible policy evaluations and impossible conclusions: a comment on Koper and Roth." Journal of Quantitative Criminology 17:75-80.

2001 "Absolutist politics in a moderate package: prohibitionist intentions of the gun control movement." Journal on Firearms and Public Policy 13:1-43.

2002 "Research agenda on guns, violence, and gun control." Journal on Firearms and Public Policy 14:51-72.

2006 "Off target." New York Sun January 5, 2006. Invited opinion article.

2009 "How not to study the effect of gun levels on violence rates." Journal on Firearms and Public Policy 21:65-93.

2011 "Mass killings aren't the real gun problem --- how to tailor gun-control measures to common crimes, not aberrant catastrophes." Wall Street Journal January 15, 2011. Invited opinion article.

2011 "The myth of big-time gun trafficking." Wall Street Journal May 21, 2011. Invited opinion article.

2015 "Defensive gun ownership is not a myth: why my critics still have it wrong." Politico Magazine, February 17, 2015. Online at Politico.Com.

2021 "The futility of non-response responses: a reply to Fridel." Justice Quarterly (in press).

BOOK CHAPTERS

1984 (with David Bordua) "The assumptions of gun control." Pp. 23-48 in Don B. Kates, Jr. (ed.) Firearms and Violence: Issues of Regulation. Cambridge, Mass.: Ballinger.

(Also appeared in Federal Regulation of Firearms, report prepared by the Congressional Research Service, Library of Congress, for the Committee on the Judiciary, United States Senate, 1982).

1984 "The relationship between gun ownership levels and rates of violence in the U.S." Pp. 99-135 in Kates, above.

1984 "Handgun-only gun control: a policy disaster in the making." Pp. 167-199 in Kates, above.

1996 "Racial discrimination in criminal sentencing." Pp. 339-344 in Crime and Society, Volume III – Readings: Criminal Justice, edited by George Bridges, Robert D. Crutchfield, and Joseph G. Weis. Thousand Oaks, Calif.: Pine Forge Press.

1996 "Gun buy-back programs: nothing succeeds like failure." Pp. 29-53 in Under Fire: Gun Buy-Backs, Exchanges and Amnesty Programs, edited by Martha R. Plotkin. Washington, D.C.: Police Executive Research Forum.

2000 "Firearms and crime." Pp. 230-234 in the Encyclopedia of Criminology and Deviant Behavior, edited by Clifton D. Bryant. Philadelphia: Taylor

& Francis, Inc.

2001 (with Leroy Gould and Marc Gertz) "Crime as social interaction." Pp. 101-114 in What is Crime?: Controversy over the Nature of Crime and What to Do About It, edited by Stuart Henry and Mark M. Lanier. Lanham, Md.: Rowman and Littlefield.

2003 "Constricted rationality and the limits of general deterrence." Chapter 13 in Punishment and Social Control: Enlarged Second Edition, edited by Thomas G. Blomberg. New York: Aldine de Gruyter.

2004 "The great American gun debate: what research has to say." Pp. 470-487 in The Criminal Justice System: Politics and Policies, 9th edition, edited by George F. Cole, Marc Gertz, and Amy Bunger. Belmont, CA: Wadsworth-Thomson.

2008 "Gun control." Article in The Encyclopedia of Social Problems, edited by Vincent N. Parrillo. Thousand Oaks, CA: Sage.

2009 "Guns and crime." Invited chapter. Pp. 85-92 in 21st Century Criminology: A Reference Handbook, edited by J. Mitchell Miller. Thousand Oaks, CA: Sage.

2012 Kovandzic, Tomislav, Mark E. Schaffer, and Gary Kleck. "Gun prevalence, homicide rates and causality: A GMM approach to endogeneity bias." Chapter 6, pp. 76-92 in The Sage Handbook of Criminological Research Methods, edited by David Gadd, Susanne Karstedt, and Steven F. Messner. Thousand Oaks, CA: Sage.

2012 (with Kelly Roberts) "What survey modes are most effective in eliciting self-reports of criminal or delinquent behavior?" Pp. 415-439 in Handbook of Survey Methodology for the Social Sciences, edited by Lior Gideon. NY: Springer.

2013 "An overview of gun control policy in the United States." Pp. 562-579 in The Criminal Justice System, 10th edition. Edited by George F. Cole and Marc G. Gertz. Wadsworth.

2014 "Deterrence: actual vs. perceived risk of punishment. Article in Encyclopedia of Criminology and Criminal Justice. Berlin: Springer Verlag.

2019 "The effect of firearms on suicide." Pp. 309-329 in Gun Studies: Interdisciplinary Approaches to Politics, Policy, and Practice, edited by Jennifer Carlson, Kristin Goss, and Harel Shapira. NY: Routledge.

2019 "Gun control." Pp. 153-166 in The Handbook of Social Control, edited by Mattieu Deflem. Hoboken, NJ: Wiley-Blackwell.

2021 "Research on guns and crime." Chapter in The Encyclopedia of Research Methods and Statistical Techniques in Criminology and Criminal Justice, edited by J. C. Barnes and David R. Forde for Wiley Blackwell.

BOOK REVIEWS

1978 Review of Murder in Space City: A Cultural Analysis of Houston Homicide Patterns, by Henry Lundsgaarde. Contemporary Sociology 7:291-293.

1984 Review of Under the Gun, by James Wright et al. Contemporary Sociology 13:294-296.

1984 Review of Social Control, ed. by Jack Gibbs. Social Forces 63: 579-581.

1985 Review of Armed and Considered Dangerous, by James Wright and Peter Rossi, Social Forces 66:1139-1140.

1988 Review of The Citizen's Guide to Gun Control, by Franklin Zimring and Gordon Hawkins, Contemporary Sociology 17:363-364.

1989 Review of Sociological Justice, by Donald Black, Contemporary Sociology 19:261-3.

1991 Review of Equal Justice and the Death Penalty, by David C. Baldus, George G. Woodworth, and Charles A. Pulaski, Jr. Contemporary Sociology 20:598-9.

1999 Review of Crime is Not the Problem, by Franklin E. Zimring and Gordon Hawkins. American Journal of Sociology 104(5):1543-1544.

2001 Review of Gun Violence: the Real Costs, by Philip J. Cook and Jens Ludwig. Criminal Law Bulletin 37(5):544-547.

2010 Review of Homicide and Gun Control: The Brady Handgun Violence Prevention Act and Homicide Rates, by J. D. Monroe. Criminal Justice Review 35(1):118-120.

LETTERS PUBLISHED IN SCHOLARLY JOURNALS

1987 "Accidental firearm fatalities." American Journal of Public Health 77:513.

1992 "Suicide in the home in relation to gun ownership." The New England Journal of Medicine 327:1878.

1993 "Gun ownership and crime." Canadian Medical Association Journal 149:1773-1774.

1999 "Risks and benefits of gun ownership." Journal of the American Medical Association 282:136.

2000 (with Thomas Marvell) "Impact of the Brady Act on homicide and suicide rates." Journal of the American Medical Association 284:2718-2719.

2001 "Violence, drugs, guns (and Switzerland)." Scientific American 284(2):12.

2002 "Doubts about undercounts of gun accident deaths." Injury Prevention Online (September 19, 2002). Published online at http://ip.bmjjournals.com/cgi/eletters/8/3/252.

2005 "Firearms, violence, and self-protection." Science 309:1674. September 9, 2005.

UNPUBLISHED REPORT

1987 Violence, Fear, and Guns at Florida State University: A Report to the President's Committee on Student Safety and Welfare. Reports results of campus crime victimization survey and review of campus police statistics on gun violence (32 pages).

RESEARCH FUNDING

1994 "The Impact of Drug Enforcement on Urban Drug Use Levels and Crime Rates." $9,500 awarded by the U.S. Sentencing Commission.

1997 "Testing a Fundamental Assumption of Deterrence-Based Crime Control Policy." $80,590 awarded by the Charles E. Culpeper Foundation to study the link between actual and perceived punishment levels.

PRESENTED PAPERS

1976 "Firearms, homicide, and the death penalty: a simultaneous equations analysis." Presented at the annual meetings of the Illinois Sociological Association, Chicago.

1979 "The assumptions of gun control." Presented at the annual meetings of the American Sociological Association, New York City.

1981 "Lethality comparisons between handguns and weapons which might be substituted in assault if handguns were prohibited." Presented at the annual meetings of the American Society of Criminology, Washington, D.C.

1982 "Life support for ailing hypotheses: Modes of summarizing the evidence on racial discrimination." Presented at the annual meetings of the American Society of Criminology, Toronto.

1984 "Policy lessons from recent gun control research." Presented at the Duke University Law School Conference on Gun Control.

1985 "Policy lessons from recent gun control research." Presented at the annual meetings of the American Society of Criminology, San Diego.

1986 "Miscounting suicides." Presented at the annual meetings of the American Sociological Association, Chicago.

1987 (with Theodore G. Chiricos, Michael Hays, and Laura Myers) "Unemployment and crime: a comparison of motivation and opportunity effects." Presented at the annual meetings of the American Society of Criminology, Montreal.

1988 "Suicide, guns and gun control." Presented at the annual meetings of the Popular Culture Association, New Orleans.

1988 (with Susan Sayles) "Rape and resistance." Presented at the annual meetings of the American Society of Criminology, Chicago.

1989 (with Karen McElrath) "The impact of weaponry on human violence." Presented at the annual meetings of the American Sociological Association, San Francisco.

1989 (with Britt Patterson) "The impact of gun control and gun ownership levels on city violence rates." Presented at the annual meetings of the American Society of Criminology, Reno.

1990 "Guns and violence: a summary of the field." Presented at the annual meetings of the American Political Science Association, Washington, D.C.

1991 "Victim resistance and weapons effects in robbery." Presented at the annual meetings of the American Society of Criminology, San Francisco.

1991 "News media bias in covering gun control issues." Presented at the annual meetings of the American Society of Criminology, San Francisco.

1992 "Interrupted time series designs: time for a re-evaluation." Presented at the annual meetings of the American Society of Criminology, New Orleans.

1993 (with Chester Britt III and David J. Bordua) "The emperor has no clothes: Using

interrupted time series designs to evaluate social policy impact." Presented at the annual meetings of the American Society of Criminology, Phoenix.

1993 "Crime, culture conflict and support for gun laws: a multi-level application of the General Social Surveys." Presented at the annual meetings of the American Society of Criminology, Phoenix.

1994 (with Marc Gertz) "Armed resistance to crime: the prevalence and nature of self-defense with a gun." Presented at the annual meetings of the American Society of Criminology, Miami.

1995 (with Tom Jordan) "The impact of drug enforcement and penalty levels on urban drug use levels and crime rates." Presented at the annual meetings of the American Society of Criminology, Boston.

1996 (with Michael Hogan) "A national case-control study of homicide offending and gun ownership." Presented at the annual meetings of the American Society of Criminology, Chicago.

1997 "Evaluating the Brady Act and increasing the utility of BATF tracing data." Presented at the annual meetings of the Homicide Research Working Group, Shepherdstown, West Virginia.

1997 "Crime, collective security, and gun ownership: a multi-level application of the General Social Surveys." Presented at the annual meetings of the American Society of Criminology, San Diego.

1998 (with Brion Sever and Marc Gertz) "Testing a fundamental assumption of deterrence-based crime control policy." Presented at the annual meetings of the American Society of Criminology, Washington, D.C.

1998 "Measuring macro-level gun ownership levels." Presented at the annual meetings of the American Society of Criminology, Washington, D.C.

1999 "Can owning a gun really triple the owner's chances of being murdered?" Presented at the annual meetings of the American Society of Criminology, Toronto.

2000 "Absolutist politics in a moderate package: prohibitionist intentions of the gun control movement." Presented at the annual meetings of the American Society of Criminology, San Francisco.

2001 (with Tomislav V. Kovandzic) "The impact of gun laws and gun levels on crime rates." Presented at the annual meetings of the American Society of Criminology, Atlanta.

2001 "Measures of gun ownership levels for macro-level violence research." Presented at the annual meetings of the American Society of Criminology, Atlanta.

2002 "The effects of gun ownership levels and gun control laws on urban crime rates." Presented at the annual meetings of the American Society of Criminology, Chicago.

2003 (with Tomislav V. Kovandzic) "The effect of gun levels on violence rates depends on who has them." Presented at the annual meetings of the American Society of Criminology, Denver.

2003 (with KyuBeom Choi) "Filling in the gap in the causal link of deterrence." Presented at the annual meetings of the American Society of Criminology, Denver.

2004 (with Tomislav Kovandzic) "Do violent crime rates and police strength levels in the community influence whether individuals own guns?" Presented at the annual meetings of the American Society of Criminology, Nashville.

2004 (with Jongyeon Tark) "Resisting crime: the effects of victim action on the outcomes of crime." Presented at the annual meetings of the American Society of Criminology, Nashville.

2004 (with Jongyeon Tark) "The impact of self-protection on rape completion and injury." Presented at the annual meetings of the American Society of Criminology, Nashville.

2004 (with Kyubeom Choi) "The perceptual gap phenomenon and deterrence as psychological coercion." Presented at the annual meetings of the American Society of Criminology, Nashville.

2005 (with Jongyeon Tark) "Who resists crime?" Presented at the annual meetings of the American Society of Criminology, Toronto.

2005 (with Jongyeon Tark and Laura Bedard) "Crime and marriage." Presented at the annual meetings of the American Society of Criminology, Toronto.

2006 (with Shun-Yang Kevin Wang) "Organized gun trafficking, 'crime guns,' and crime rates." Presented at the annual meetings of the American Society of Criminology, Los Angeles.

2006 "Are police officers more likely to kill black suspects?" Presented at the annual meetings of the American Society of Criminology, Los Angeles.

2007 (with Shun-Yang Kevin Wang) "The myth of big-time gun trafficking. "Presented at the annual meetings of the American Society of Criminology, Atlanta.

2007 (with Marc Gertz and Jason Bratton) "Why do people support gun control?" Presented at the annual meetings of the American Society of Criminology, Atlanta.

2010 (with J. C. Barnes) "Deterrence and macro-level perceptions of punishment risks: Is there a "collective wisdom?" Presented at the annual meetings of the American Society of Criminology, St. Louis.

2011 "The myth of big-time gun trafficking." Presented at UCLA Law Review Symposium, "The Second Amendment and the Right to Bear Arms After DC v. Heller." January 23, 2009, Los Angeles.

2009 (with Shun-Yung Wang) "Employment and crime and delinquency of working youth: A longitudinal study of youth employment." Presented at the annual meetings of the American Society of Criminology, November 6, 2009, Philadelphia, PA.

2009 (with J. C. Barnes) "Do more police generate more deterrence?" Presented at the annual meetings of the American Society of Criminology, November 4, 2009, Philadelphia, PA.

2010 (with J. C. Barnes) "Article productivity among the faculty of criminology and criminal justice doctoral programs, 2005-2009." Presented at the annual meetings of the American Society of Criminology, November 18, 2010, San Francisco, CA.

2012 (with Will Hauser) "Fear of crime and gun ownership." Presented at the annual meetings of the American Society of Criminology, November 18, 2010, San Francisco, CA.

2010 "Errors in survey estimates of defensive gun use frequency: results from national Internet survey experiments." Presented at the annual meetings of the American Society of Criminology, November 19, 2010, San Francisco, CA.

2010 (with Mark Faber and Tomislav Kovandzic) "Perceived risk, criminal victimization, and prospective gun ownership." Presented at the annual meetings of the American Society of Criminology, November 19, 2010, San Francisco, CA.

2013 (with Shun-young Wang) "The impact of job quality and career commitment on delinquency: conditional or universal?" Presented at the annual meetings of the American Society of Criminology, November 17, 2011, Washington, D.C.

2011 (with Moonki Hong) "The short-term deterrent effect of executions on homicides in the United States, 1984-1998." Presented at the annual meetings of the American Society of Criminology, November 16, 2011, Washington, D.C.

2011 (with Kelly Roberts) "Which survey modes are most effective in getting people to admit illegal behaviors?" Presented at the annual meetings of the American Society of Criminology, November 17, 2011, Washington, D.C.

2011 (with Will Hauser) "Pick on someone your own size: do health, fitness, and size influence victim selection?" Presented at the annual meetings of the American Society of Criminology, November 18, 2011, Washington, D.C.

2011 (with Tomislav Kovandzic) "Is the macro-level crime/punishment association spurious?" Presented at the annual meetings of the American Society of Criminology, November 18, 2011, Washington, D.C.

2012 (with Dylan Jackson) "Adult unemployment and serious property crime: a national case-control study." Presented at the annual meetings of the American Society of Criminology, November 15, 2012, Chicago, IL.

2013 (with Will Hauser) "Confidence in the Police and Fear of Crime: Do Police Force Size and Productivity Matter?" Presented at the annual meetings of the American Society of Criminology, November 22, 2013, Atlanta, GA.

2013. (with Dylan Jackson) "Adult unemployment and serious property crime: a national case-control study." Presented at the annual meetings of the American Society of Criminology, November 22, 2013, Atlanta, GA.

2014 (with Dylan Jackson) "Does Crime Cause Punitiveness?" Presented at the annual meetings of the American Society of Criminology, November 20, 2014, San Francisco, CA.

2015 "The effect of large capacity magazines on the casualty counts in mass shootings." Presented at the annual meetings of the American Society of Criminology, November 18, 2015, Washington, D.C.

2015 (with Bethany Mims) "Article productivity among the faculty of criminology and criminal justice doctoral programs, 2010-2014." Presented at the annual meetings of the American Society of Criminology, November 20, 2015, Washington, D.C.

2016 "Firearms and the lethality of suicide methods." Presented at the annual meetings of the American Society of Criminology, November 16, 2016, New Orleans, L.A.

2017 "Macro-level research on the effect of firearms prevalence on suicide rates: a systematic review and new evidence." Presented at the annual meetings of the American Society of Criminology, November 15, 2017, Philadelphia, PA.

2018 "Interstate gun movement is almost entirely due to migration, not gun trafficking." Presented at the annual meetings of the American Society of Criminology, November 16, 2018, Atlanta, GA.

2019 "What do CDC's surveys say about the prevalence of defensive gun use?" Presented at the annual meetings of the American Society of Criminology, November 13, 2019, San Francisco, CA.

2020 "Compliance with universal background check requirements." Accepted to be presented at the annual meetings of the American Society of Criminology which were to be held in Washington, D.C., November 18-21, 2020 but were cancelled due to Covid-19 issues.

CHAIR

1983 Chair, session on Race and Crime. annual meetings of the American Society of Criminology, Denver.

1989 Co-chair (with Merry Morash), roundtable session on problems in analyzing the National Crime Surveys. annual meetings of the American Society of Criminology, Reno.

1994 Chair, session on Interrupted Time Series Designs. annual meetings of the American Society of Criminology, New Orleans.

1993 Chair, session on Guns, Gun Control, and Violence. annual meetings of the American Society of Criminology, Phoenix.

1995 Chair, session on International Drug Enforcement. annual meetings of the American Society of Criminology, Boston.

1999 Chair, Author-Meets-Critics session, More Guns, Less Crime. annual meetings of the American Society of Criminology, Toronto.

2000 Chair, session on Defensive Weapon and Gun Use. annual meetings of the American Society of Criminology, San Francisco.

2002 Chair, session on the Causes of Gun Crime. annual meetings of the American Society of Criminology, Chicago.

2004 Chair, session on Protecting the Victim. annual meetings of the American Society

of Criminology, Nashville.

DISCUSSANT

1981 Session on Gun Control Legislation, annual meetings of the American Society of Criminology, Washington, D.C.

1984 Session on Criminal Sentencing, annual meetings of the American Society of Criminology, Cincinnati.

1986 Session on Sentencing, annual meetings of the American Society of Criminology, Atlanta.

1988 Session on Gun Ownership and Self-protection, annual meetings of the Popular Culture Association, Montreal.

1991 Session on Gun Control, annual meetings of the American Statistical Association, Atlanta, Ga.

1995 Session on International Drug Enforcement, annual meetings of the American Society of Criminology, Boston.

2000 Session on Defensive Weapon and Gun Use, annual meetings of the American Society of Criminology, San Francisco.

2004 Author-Meets-Critic session on Guns, Violence, and Identity Among African-American and Latino Youth, by Deanna Wilkinson. annual meetings of the American Society of Criminology, Nashville.

2007 Session on Deterrence and Perceptions, University of Maryland 2007 Crime & Population Dynamics Summer Workshop, Aspen Wye River Center, Queenstown MD, June 4, 2007.

2009 Session on Guns and Crime, at the DeVoe Moore Center Symposium On The Economics of Crime, March 26-28, 2009.

2014Panel discussion of news media coverage of high profile crimes
Held at the Florida Supreme Court On September 24-25, 2012, sponsored by the Florida Bar Association as part of their 2012 Reporters' Workshop.

PROFESSIONAL SERVICE

Editorial consultant -
American Sociological Review
American Journal of Sociology

Social Forces
Social Problems
Law and Society Review
Journal of Research in Crime and Delinquency
Social Science Research
Criminology
Journal of Quantitative Criminology
Justice Quarterly
Journal of Criminal Justice
Violence and Victims
Violence Against Women
Journal of the American Medical Association
New England Journal of Medicine
American Journal of Public Health
Journal of Homicide Studies

Grants consultant, National Science Foundation, Sociology Program.

Member, Gene Carte Student Paper Committee, American Society of Criminology, 1990.

Area Chair, Methods Area, American Society of Criminology, annual meetings in Miami, November, 1994.

Division Chair, Guns Division, American Society of Criminology, annual meetings in Washington, D.C., November, 1998.

Dissertation evaluator, University of Capetown, Union of South Africa, 1998.

Division Chair, Guns Division, American Society of Criminology, annual meetings in Washington, D.C., November, 1999.

Member of Academy of Criminal Justice Sciences selection committee for Editor of Justice Quarterly, 2007.

Outside reviewer of Dr. J. Pete Blair for promotion to Full Professor in the School of Criminal Justice at Texas State University, San Marcos, 2014.

UNIVERSITY SERVICE

Member, Master's Comprehensive Examination Committee, School of Criminology, 1979-1982.

Faculty Advisor, Lambda Alpha Epsilon (FSU chapter of American Criminal Justice Association), 1980-1988.

Faculty Senate Member, 1984-1992.

Carried out campus crime survey for President's Committee on Student Safety and Welfare, 1986.

Member, Strategic Planning and Budgeting Review Committee for Institute for Science and Public Affairs, and Departments of Physics and Economics, 1986.

Chair, Committee on Ph.D. Comprehensive Examination in Research Methods, School of Criminology, Summer, 1986.

Member, Committee on Ph.D. Comprehensive Examination in Research Methods, School of Criminology, Summer, 1986 to 2016.

Chair, Committee on Graduate Assistantships, School of Criminology, Spring, 1987.

Chair, Ad Hoc Committee on Computers, School of Criminology, Fall, 1987.

Member, Recruitment Committee, School of Criminology, Spring, 1988; Spring, 1989; and 1989-90 academic year.

Member, Faculty Senate Committee on Computer-Related Curriculum, Spring, 1988 to Fall, 1989.

Chair, Ad Hoc Committee on Merit Salary Distribution, School of Criminology, Spring, 1988.

Chair, Ad Hoc Committee on Enrollment Strains, Spring, 1989.

Member, Graduate Handbook Committee, School of Criminology, Spring, 1990.

Member, Internal Advisement Committee, School of Criminology Spring, 1990.

University Commencement Marshall, 1990 to 1993.

Member, School of Criminology and Criminal Justice Teaching Incentive Program award committee.

Chair, Faculty Recruitment Committee, School of Criminology and Criminal Justice, 1994-1995.

Chair, Committee on Ph.D. Comprehensive Examination in Research Methods, School of Criminology and Criminal Justice, 1994-1995.

Member, University Computer and Information Resources Committee, 1995-1998.

Member, University Fellowship Committee, 1995 to 2000.

Member, University Library Committee, 1996 to 1999.

Chair, Electronic Access Subcommittee, University Library Committee, 1998 to 1999.

Member, Ad Hoc Committee on Merit Salary Increase Allocation, School of Criminology and Criminal Justice, 1998-1999.

Member, Academic Committee, School of Criminology and Criminal Justice, 2000-2008t.

Member, Recruiting Committee, School of Criminology and Criminal Justice, 2000-2001.

Member, Promotion and Tenure Committee, School of Criminology and Criminal Justice, 2000-2008.

Chair, Committee on Ph.D. Comprehensive Examination in Research Methods, School of Criminology and Criminal Justice, 2000-2002.

Chair, Promotion and Tenure Committee, School of Criminology and Criminal Justice, 2001-2002.

Faculty Adviser, School of Criminology and Criminal Justice Graduate Student Association, 2001-2010.

Member, ad hoc committee on survey research, School of Criminology and Criminal Justice, 2002.

Coordinator of Parts 2 and 4 of the School of Criminology and Criminal Justice Unit Review, 2002.

Chair, Academic Committee, School of Criminology and Criminal Justice, 2002-2003.

Director, Honors Programs, School of Criminology and Criminal Justice, 2002-?.

Member, University Promotion and Tenure Committee, Fall, 2003 to ?.

Member of University Graduate Policy Committee, Fall 2003 to 2011.

Director of Graduate Studies, School (later College) of Criminology and Criminal Justice, April 2004 to May 2015.

Chair, Promotion and Tenure Committee, College of Criminology and Criminal Justice, 2005-2006

Served as major professor on Area Paper by Christopher Rosbough, completed in 2012.

Served as member of dissertation committee of Kristen Lavin, dissertation completed in 2012.

Served as member of dissertation committee of Elizabeth Stupi, dissertation completed in 2013.

Served as outside member on two dissertation committees in 2014-2015: Brian Meehan in the Department of Economics and Adam Weinstein in the English Department. Both dissertations were completed.

Served as major professor on Area Paper on legalization of marijuana for Pedro Juan Matos Silva, Spring 2015. Paper completed.

Served as major professor for doctoral students, Moonki Hong who defended his dissertation on April 14, 2016.

PUBLIC SERVICE

Television, radio, newspaper, magazine, and Internet interviews concerning gun control, racial bias in sentencing, crime statistics, and the death penalty. Interviews and other kinds of news media contacts include Newsweek, Time, U.S. News and World Report, New York Times, Washington Post, Chicago Tribune, Los Angeles Times, USA Today, Boston Globe, Wall Street Journal, Kansas City Star, Philadelphia Inquirer, Philadelphia News, Atlanta Constitution, Atlanta Journal, Arizona Republican, San Antonio Express-News, Dallas Morning News, Miami Herald, Tampa Tribune, Jacksonville Times-Union, Womens' Day, Harper's Bazaar, Playboy, CBS-TV (60 Minutes; Street Stories) ABC-TV (World News Tonight; Nightline), NBC-TV (Nightly News), Cable News Network, Canadian Broadcasting Company, National Public Radio, Huffington Post, PolitiFact.com, and many others.

Resource person, Subcommittee on Crime and Justice, (Florida House) Speaker's Advisory Committee on the Future, February 6-7, 1986, Florida State Capitol.

Testimony before the U.S. Congress, House Select Committee on Children, Youth and Families, June 15, 1989.

Discussant, National Research Council/National Academy of Sciences Symposium on the Understanding and Control of Violent Behavior, April 1-4, 1990, Destin, Florida.

Colloquium on manipulation of statistics relevant to public policy, Statistics Department,

Florida State University, October, 1992.

Speech to faculty, students, and alumni at Silver Anniversary of Northeastern University College of Criminal Justice, May 15, 1993.

Speech to faculty and students at Department of Sociology, University of New Mexico, October, 1993.

Speech on the impact of gun control laws, annual meetings of the Justice Research and Statistics Association, October, 1993, Albuquerque, New Mexico.

Testimony before the Hawaii House Judiciary Committee, Honolulu, Hawaii, March 12, 1994.

Briefing of the National Executive Institute, FBI Academy, Quantico, Virginia, March 18, 1994.

Delivered the annual Nettler Lecture at the University of Alberta, Edmonton, Canada, March 21, 1994.

Member, Drugs-Violence Task Force, U.S. Sentencing Commission, 1994-1996.

Testimony before the Pennsylvania Senate Select Committee to Investigate the Use of Automatic and Semiautomatic Firearms, Pittsburgh, Pennsylvania, August 16, 1994.

Delivered lectures in the annual Provost's Lecture Series, Bloomsburg University, Bloomsburg, Pa., September 19, 1994.

Briefing of the National Executive Institute, FBI Academy, Quantico, Virginia, June 29, 1995.

Speech to personnel in research branches of crime-related State of Florida agencies, Research and Statistics Conference, sponsored by the Office of the State Courts Administrator, October 19, 1995.

Speech to the Third Annual Legislative Workshop, sponsored by the James Madison Institute and the Foundation for Florida's Future, February 5, 1998.

Speech at the Florida Department of Law Enforcement on the state's criminal justice research agenda, December, 1998.

Briefing on news media coverage of guns and violence issues, to the Criminal Justice Journalists organization, at the American Society of Criminology annual meetings in Washington, D.C., November 12, 1998.

Briefing on gun control strategies to the Rand Corporation conference on "Effective Strategies for Reducing Gun Violence," Santa Monica, Calif., January 21, 2000.

Speech on deterrence to the faculty of the Florida State University School of Law, February 10, 2000.

Invited address on links between guns and violence to the National Research Council Committee on Improving Research Information and Data on Firearms, November 15-16, 2001, Irvine, California.

Invited address on research on guns and self-defense to the National Research Council Committee on Improving Research Information and Data on Firearms, January 16-17, 2002, Washington, D.C.

Invited address on gun control, Northern Illinois University, April 19, 2002.

Invited address to the faculty of the School of Public Health, University of Alabama, Birmingham, 2004.

Invited address to the faculty of the School of Public Health, University of Pennsylvania, March 5, 2004.

Member of Justice Quarterly Editor Selection Committee, Academy of Criminal Justice Sciences, Spring 2007

Testified before the Gubernatorial Task Force for University Campus Safety, Tallahassee, Florida, May 3, 2007.

Gave public address, "Guns & Violence: Good Guys vs. Bad Guys," Western Carolina University, Cullowhee, North Carolina, March 5, 2012.

Invited panelist, Fordham Law School Symposium, "Gun Control and the Second Amendment," New York City, March 9, 2012.

Invited panelist, community forum on "Students, Safety & the Second Amendment," sponsored by the Tallahassee Democrat.

Invited address at University of West Florida, Department of Justice Studies, titled "Guns, Self-Defense, and the Public Interest," April 12, 2013.

Member, National Research Council Committee on Priorities for a Public Health Research Agenda to Reduce the Threat of Firearm-related Violence, May 2013.

Invited address at Davidson College, Davidson, NC, April 18, 2014. Invited by the Department of Philosophy.

Public lecture, "Do Guns Cause Homicide?," Center for the Study of Liberal Democracy, University of Wisconsin-Madison, December 5, 2018.

OTHER ITEMS

Listed in:

- Marquis Who's Who
- Marquis Who's Who in the South and Southwest
- Who's Who of Emerging Leaders in America
- Contemporary Authors
- Directory of American Scholars
- Writer's Directory

Participant in First National Workshop on the National Crime Survey, College Park, Maryland, July, 1987, co-sponsored by the Bureau of Justice Statistics and the American Statistical Association.

Participant in Second National Workshop on the National Crime Survey, Washington, D.C., July, 1988.

Participant, Seton Hall Law School Conference on Gun Control, March 3, 1989.

Debater in Intelligence Squared program, on the proposition "Guns Reduce Crime." Rockefeller University, New York City, October 28, 2008. Podcast distributed through National Public Radio. Further details are available at http://www.intelligencesquaredus.org/Event.aspx?Event=36.

Subject of cover story, "America Armed," in Florida State University Research in Review, Winter/Spring 2009.

Grants reviewer, Social Sciences and Humanities Research Council of Canada, 2010.

Named one of "25 Top Criminal Justice Professors" in the U.S. by Forensics Colleges website (http://www.forensicscolleges.com/), 2014.