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The Swerve to "Guns Everywhere:" A Legal and Empirical Evaluation

Over the past forty years, there has been an astonishing shift in the American legal landscape on the issue of carrying of concealed handguns outside the home. At the start of that period most states – with strong Republican backing - either prohibited or at least regulated the practice. Today, the large majority of states confer the "right-to-carry" with little or no restriction, and many argue, with limited but increasing judicial support, that there is an individual right under the Second Amendment to carry guns outside the home. One argument used to justify this development was that good guys with guns would quickly thwart mass shootings in the U.S., yet since the end of the federal assault weapons ban in 2004, deaths from mass shootings have been rising sharply – even as lawful gun toting has increased substantially. Moreover, a growing body of evidence suggests that allowing expanded gun access outside the home has elevated violent crime. This paper discusses the empirical evidence on these issues and argues that courts considering constitutional decisions that may impose large social costs in terms of increased gun massacres and violent crime should reflect on this evidence in interpreting the Second Amendment.