


2008

Supreme Court Strikes Down D.C. Handgun Ordinance: Will Chicago Follow Suit?

Danielle Luisi

Follow this and additional works at: <http://lawcommons.luc.edu/pilr>

 Part of the [Courts Commons](#), and the [Second Amendment Commons](#)

Recommended Citation

Danielle Luisi, *Supreme Court Strikes Down D.C. Handgun Ordinance: Will Chicago Follow Suit?*, 14 Pub. Interest L. Rptr. 68 (2008).
Available at: <http://lawcommons.luc.edu/pilr/vol14/iss1/11>

This Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Public Interest Law Reporter by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

SUPREME COURT STRIKES DOWN D.C. HANDGUN ORDINANCE: WILL CHICAGO FOLLOW SUIT?

by DANIELLE LUISI

“It’s a very frightening decision,” said City of Chicago Mayor Richard M. Daley after the ruling in *D.C. v. Heller* was announced on June 26, 2008.¹

In *D.C. v. Heller*, the Supreme Court struck down the District of Columbia’s ban on handgun possession.² For the first time in the nation’s history, the Supreme Court held that the Second Amendment guarantees an individual’s right to own a gun for self-defense.³

Writing for the majority, Justice Antonin Scalia held that the District of Columbia's ban on handgun possession in the home "violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense."⁴ However, the dissenting opinion of Justice Stephen G. Breyer said the decision "threatens to throw into doubt the constitutionality of gun laws throughout the United States."⁵ He further warned that this is "a formidable and potentially dangerous" mission for the courts to undertake.⁶

"Does this lead to everyone having a gun in our society?" asked Mayor Daley, whose strict gun-control law now faces challenges in the wake of the Supreme Court's ruling in *D.C. v. Heller*.⁷ The City of Chicago handgun ordinance has been in effect since 1982 and is one of the toughest in the nation.⁸ Yet with the Supreme Court's latest ruling, many are concerned the ban may be struck down.⁹

OUT OF D.C. AND INTO THE CITY OF CHICAGO

For those living in Chicago, concerns over the constitutionality of the City of Chicago's handgun ordinance are now at the forefront due to recent litigation filed in the United States District Court for the Northern District of Illinois.¹⁰ On the same day the decision in *D.C. v. Heller* came down, Otis McDonald and three other individuals, as well as the Second Amendment Foundation, Inc. (SAF), and the Illinois State Rifle Association, brought suit challenging the constitutionality of the City of Chicago handgun ordinance.¹¹ This first of many ordinance challenges throughout the Chicagoland area put the case of *McDonald v. City of Chicago* on the court's docket.¹²

The pending case of *McDonald v. City of Chicago* challenges three aspects of the City of Chicago's handgun ordinance by alleging that the City of Chicago maintains and actively enforces a set of laws that deprive individuals of their right to keep and bear arms in violation of the Second and Fourteenth Amendments.¹³ First, the petitioners challenge the ordinance's outright ban on handguns.¹⁴ Second, they challenge the ordinance's requirement that individuals annually re-register each firearm.¹⁵ Third, petitioners challenge the ordinance's requirement that individuals register all firearms prior to their acquisition.¹⁶

As the debate ensues in *McDonald v. City of Chicago*, the Incorporation Clause of the 14th Amendment becomes a decisive factor in the outcome.¹⁷ The Incorporation Clause is governed by the Doctrine of Selective Incorporation created by the Supreme Court.¹⁸ The Doctrine of Selective Incorporation makes specific provisions of the Bill of Rights, which ensure citizens' constitutional liberties, applicable to the states.¹⁹ "Because the case before the U.S. Supreme Court in *D.C. v. Heller* arose from the District of Columbia and thus involved only federal law, the Court did not resolve the important question of whether the Second Amendment's protections apply to state and local laws."²⁰ Attorney for the plaintiffs in *D.C. v. Heller*, Robert A. Levy, states that in his opinion "there is a substantial amount of Second Amendment litigation to come but the incorporation issue will come first; either the lower courts will battle it out or ultimately the Supreme Court."²¹ "The question of how far state firearm regulations can go, that will take time to flesh out."²²

OPPOSING FORCES IN THE CHICAGO BATTLE

The substantial arguments about the constitutionality of the ordinance are persuasive on both sides. Attorney for the plaintiffs in *McDonald v. City of Chicago*, David G. Sigale, states that "when you talk about a crime problem in Chicago two points bear noting: first, that most people don't feel any safer since the handgun ordinance went into effect, and second, that [his] clients are not the ones wanting to use their guns to commit crimes or violent acts."²³ For instance, plaintiff Otis McDonald, a retiree who has been working with police to rid his neighborhood of drug dealers, wants the right to have a handgun in his home.²⁴ "It is time the City of Chicago trusts its honest, law-abiding residents with this Constitutional right," said Mr. Sigale.²⁵ Further, SAF founder, Alan Gottlieb points out that "Chicago's handgun ban has failed to stop violent crime."²⁶

Contrarily, Mayor Daley has long been an outspoken opponent of handgun ownership in the city.²⁷ Mike Forti, Deputy Corporation Counsel for the City of Chicago Law Department, Constitutional and Commercial Litigation Division, states, "handgun violence is viewed as a very serious problem [in the City of Chicago] and the City Council thought that one of the ways to address the violence of the community, including gang violence, is to have an absolute ban on handguns with very few exceptions."²⁸ The City, at this time, does not intend to amend their ban, unlike other Chicago suburbs that amended their

handgun ordinances in response to lawsuits filed against them. In Mike Forti's opinion, even if the City did amend their handgun ordinance, the plaintiff's in *McDonald v. City of Chicago* may still proceed with their claim; therefore it would be "imprudent to scratch the handgun ban at this juncture."²⁹

Opponents of the ban also argue that guns are embedded in American culture as in no other developed nation in the world.³⁰ From the Revolution to the frontier of the Wild West to the traditions of rural and small-town life, guns have occupied a central role in U.S. history and national mythology.³¹ Yet, Mayor Daley continues to stand by his stance that changing the Chicago gun laws would be disastrous.³² He mockingly asked, "Why don't we do away with the court system and go back to the Old West? You have a gun, and I have a gun. We'll settle it on the streets."³³

Yet Chicago streets may already resemble the Wild West to some.³⁴ And while many individuals have argued that is all the more necessity to be secure in their Second Amendment individual right to bear arms as announced in *D.C. v. Heller*, others have argued it is all the more reason to enforce and enact strict gun control laws, like the one in the City of Chicago.

However, undeniable to both sides of the argument is the startling fact that handguns are responsible for about 75 percent of crimes in the United States.³⁵ Tio Hardiman, Director of Gang Mediation and Community Organizing for the anti-violence group CeaseFire, takes a public health approach to issues of violence in America, standing firmly against all forms of violence, including handgun violence.³⁶ It is Mr. Hardiman's belief that "you can change all of the laws in the world yet you need to change the way of thinking."³⁷ To Mr. Hardiman, it is neither a total ban on handguns or the ability to bear arms to protect oneself that is going to keep individuals safe.³⁸ Rather, a total revamping of our culture's recourse to violence is what is necessary to change these statistics.³⁹

Meanwhile, in *McDonald v. City of Chicago*, neither side is showing any indication of backing down. Jennifer Hoyle, spokeswoman for Chicago's law department, states that the City has "no plans to amend [its] ordinance at this time," and it is "prepared to take this fight to the Supreme Court if necessary."⁴⁰ Only time can tell what impact the monumental holding in *D.C. v. Heller* will have on state firearm regulations nationwide.

NOTES

- 1 *Chicago's gun law expected to come under fire*, ABC7CHICAGO, June 26, 2008, <http://abclocal.go.com/wls/story?section=news/local&id=6229712&pt=print>.
- 2 Robert Barnes, *Justices Reject D.C. Ban on Handgun Ownership*, THE WASHINGTON POST, June 27, 2008, http://www.washingtonpost.com/wp-dyn/content/article/2008/06/26/AR2008062600615_pos=list.
- 3 *Id.*
- 4 *Id.*
- 5 *Id.*
- 6 *Id.*
- 7 Dan Balz & Keith B. Richburg, *Historic Decision Renews Old Debate*, THE WASHINGTON POST, June 27, 2008, <http://www.washingtonpost.com/dyn/content/article/2008/06/26/AR2008062604247.html?sid=ST2008062300649>.
- 8 *See generally Chicago's gun law expected to come under fire*, *supra* note 1.
- 9 *Id.*
- 10 Complaint, McDonald v. City of Chicago, No. 08 CV 3645, (N.E.Ill filed June 26, 2008).
- 11 *Id.*
- 12 *Id.*
- 13 Telephone interview with David G. Sigale, Attorney, Law Firm of David G. Sigale, P.C. (Oct. 16, 2008).
- 14 McDonald v. City of Chicago, *supra* note 10.
- 15 *Id.*
- 16 *Id.*
- 17 Telephone interview with Robert A. Levy, Senior Fellow in Constitutional Studies, Cato Institute (Oct. 14, 2008).
- 18 16A Am. Jur. 2d *Constitutional Law* § 404 (2008).
- 19 *Id.*
- 20 Adam Liptak, *Coming Next, Court Fights on Guns in Cities*, THE NEW YORK TIMES, June 27, 2008, http://www.nytimes.com/2008/06/27/washington/27guns.html?_r=1&coref=slogin.
- 21 Telephone interview with Robert A. Levy, *supra* note 17.
- 22 *Id.*
- 23 Telephone interview with David G. Sigale, *supra* note 13.
- 24 *Id.*
- 25 Press Release, Second Amendment Foundation, SAF Files Lawsuit Challenging Chicago's Handgun Ban (June 26, 2008) *available at* <http://www.chicagoguncase.com/2008/06/26/saf-files-lawsuit-challenging-chicagos-handgun-ban/>.
- 26 *Id.*
- 27 *Pro-Gun Groups File Lawsuit Vs. Chicago Gun Ban*, NEWSVINE.COM, June 26, 2008, http://regbarc.newsvine.com/_news/2008/06/26/1615874-pro-gun-groups-file-lawsuit-vs-chicago-gun-ban.
- 28 Telephone interview with Mike Forti, Deputy Corporation Counsel for the City of Chicago, Attorney, Constitutional and Commercial Litigation Division, City of Chicago Law Department (Oct. 28, 2008).
- 29 *Id.*
- 30 Balz & Richburg, *supra* note 7.
- 31 *Id.*

- 32 Eric Horng, *In Chicago, Some Want More Guns, Not Less*, ABCNEWS , June 28, 2008, <http://abcnews.go.com/print?id=5269292>.
- 33 *Id.*
- 34 *Id.*
- 35 UNIFORM CRIME REPORTING PROGRAM, U.S. DEPARTMENT OF JUSTICE FEDERAL BUREAU OF INVESTIGATION, EXPANDED HOMICIDE DATA TABLE 7, *available at* http://www.fbi.gov/ucr/05cius/offenses/expanded_information/data/shrtable_07.html (last visited Nov. 17, 2008).
- 36 Telephone interview with Tio Hardiman, Director of Gang Mediation and Community Organization, CeaseFire (Oct. 14, 2008).
- 37 *Id.*
- 38 *Id.*
- 39 *Id.*
- 40 *Chicago suburb ends gun ban after D.C. ruling*, THE WASHINGTON TIMES, Aug. 1, 2008, <http://www.washingtontimes.com/news/2008/aug/01/chicago-suburb-ends-gun-ban-after-dc-ruling/>.