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Sarah Nagy

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*Feature Article***Who's in the Sights: Fighting the Illegal Effects of Legal Gun Ownership in Chicago**

Sarah Nagy

When a Second-Amendment rights group asked Otis McDonald to act as the chief plaintiff in a case intended to overturn Chicago's 60-year handgun ban, McDonald knew why he had been selected.¹ He was a black man living in a high-crime neighborhood who believed that owning a handgun was the best way to protect his family from rampant gang violence – an unusual perspective in the predominantly white and middle-class pro-gun movement.²

As part of a legal strategy intended to present a diverse need for more permissive gun laws, he proved a compelling voice in a movement seeking to expand gun rights in Chicago.³ McDonald himself saw his role in the lawsuit not only as an opportunity to support the Second-Amendment rights that he believed in, but as an important step in an ongoing civil rights struggle, a push back against a time in American history when Southern states passed laws intended to keep guns out of the hands of freed blacks.⁴ He viewed his legal battle as part of a larger effort to right “a wrong done a long time ago.”⁵

McDonald's battle traveled all the way to the United States Supreme Court. On June 28, 2010, the Supreme Court decided in *McDonald v. City of Chicago* that the Second Amendment right to keep and bear arms applied to all states, overturning Chicago's ban on handgun ownership.⁶ The decision was the first in a series of changes that have continued to loosen Chicago's gun ordinances.

¹ Colleen Mastony, *The Public Face of Gun Rights*, CHICAGO TRIBUNE, Jan. 30, 2010, http://articles.chicagotribune.com/2010-01-30/news/ct-news-chicago-gun-ban-20100129_1_handgun-ban-supreme-court-second-amendment/2; See *McDonald v. City of Chicago*, 561 U.S. 742 (Sup. Ct. 2010).

² Mastony, *supra* note 1.

³ *Id.*

⁴ *Id.*

⁵ Dahleen Glanton & Otis McDonald, *1933-2014: Fought Chicago's Gun Ban*, CHICAGO TRIBUNE, Apr. 6, 2014, http://articles.chicagotribune.com/2014-04-06/news/ct-otis-mcdonald-obituary-met-20140406_1_gun-ban-illinois-state-rifle-association-gun-rights.

⁶ *McDonald*, 561 U.S. at 742.

GUN LAWS IN CHICAGO

In 2012, the state of Illinois repealed its concealed-carry ban, forcing Chicago to allow the sale of permits to residents.⁷ And in 2014, a federal court overturned a law preventing gun stores from operating within Chicago city limits and legalized the private sale and transfer of firearms between individuals.⁸ The changes found widespread support among gun-owning Chicagoans – in the year following the statewide legalization of concealed-carry permits, Cook County alone was responsible for more than a fourth of the permits issued throughout the state.⁹

The City has resisted change in some areas, however. Chicago maintains its ban on high-capacity magazines and assault weapons and continues to restrict the purchase of firearms without both state and city permits, as well as requiring buyers to undergo a 24-hour waiting period and a background check.¹⁰ In a city where police confiscate an illegal gun every 75 minutes, it is no surprise that controlling the flow of firearms into the city is a top priority for law enforcement.¹¹

But even though state and city gun laws have become far more permissive in recent years, prominent gun-rights advocates still consider Chicago's gun ordinances among the strictest in the country.¹² Matt Agorist of the Free Thought Project, speaking about Chicago gun control legislation, asks: "With these strict laws, how on earth are there still guns in Chicago?"¹³

⁷ *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012).

⁸ Dahleen Glanton & Jason Meisner, *Judge scraps Chicago's ban on retail gun shops*, CHICAGO TRIBUNE, Jan. 7, 2014, http://articles.chicagotribune.com/2014-01-07/news/chi-citys-gun-ordinance-ruled-unconstitutional-by-federal-judge-20140106_1_gun-ordinance-gun-rights-advocates-gun-ranges.

⁹ David Pierni, *Concealed-carry permits in Illinois top 91,000*, CHICAGO TRIBUNE, Jan. 16, 2015, available at <http://www.chicagotribune.com/news/local/breaking/chi-police-2014-conceal-edcarry-permits-in-illinois-top-91000-20150116-story.html>.

¹⁰ Monica Davey, *Strict Gun Laws In Chicago Can't Stem Fatal Shots*, NEW YORK TIMES, Jan. 29, 2013, <http://www.nytimes.com/2013/01/30/us/strict-chicago-gun-laws-cant-stem-fatal-shots.html>; See *Illinois Gun Buyer FAQ*, GAT GUNS, Oct. 12, 2015, <https://www.gatguns.com/information/illinois-gun-buyer-faq>.

¹¹ Adam Sege, *Chicago Police Have Been Seizing an Illegal Gun Every 75 Minutes This Year*, THE TRACE, July 8, 2015, <http://www.thetrace.org/2015/07/chicago-police-have-been-seizing-an-illegal-gun-every-75-minutes-this-year/>.

¹² Davey, *supra* note 10.

¹³ Matt Agorist, *82 Shot, 15 Dead in City with the Strictest Gun Laws in the United States*, THE FREE THOUGHT PROJECT, July 6, 2015, <http://thefreethoughtproject.com/82-shot-15-dead-city-strictest-gun-laws-united-states>.

The question has no simple answer. But as both city and state continue to loosen restrictions on firearm ownership, gun violence prevention advocates in Chicago have turned their attention to the overlap between legal and illegal gun ownership, seeking answers in the spaces where even relatively strict laws fail to keep weapons from causing harm.¹⁴

CHICAGO GUN VIOLENCE & THE GRAY MARKET

Gun violence in Chicago is most concentrated in high-crime areas in the west and south sides of the city.¹⁵ These areas, like the neighborhood Otis McDonald lived in, tend to be poor and majority-black neighborhoods where gang violence remains a serious problem.¹⁶ Yet five years after the repeal of Chicago's handgun ban, the rate of legal gun ownership per capita is highest not in the highest-crime areas, but in the lowest-crime areas.¹⁷ Residents of low-crime areas tend to fit the profile of the average gun owner, according to the Pew Research Center—namely, older white men with middle- and upper middle-class incomes.¹⁸

¹⁴ See Aaron Ernst, *Why does Chicago have so many illegal guns?*, AL-JAZEERA AMERICA, Oct. 22, 2014, <http://america.aljazeera.com/watch/shows/america-tonight/articles/2014/10/22/why-does-chicagohavesomanyillegalguns.html>; Dan Noyes, *How Criminals Get Guns*, PBS FRONTLINE, Nov. 7, 2015, <http://www.pbs.org/wgbh/pages/frontline/shows/guns/procon/guns.html>; Evan Defilippis & Devin Hughes, *Gun Rights Advocates Claim Criminals Don't Follow Gun Laws. Here's The Research That Shows They're Wrong*, THE TRACE, Sept. 8, 2015, <http://www.the.trace.org/2015/09/gun-laws-work-criminals-effectiveness-research/>.

¹⁵ *Chicago Shooting Victims*, CHICAGO TRIBUNE, Oct. 16, 2015, <http://crime.chicago.tribune.com/chicago/shootings>.

¹⁶ *Id.*

¹⁷ Evan Defilippis & Devin Hughes, *Data Shows Highest Rates of Illinois Concealed Carry Permits in Low-Crime Zip Codes—Not More Dangerous Chicago Neighborhoods*, THE TRACE, July 10, 2015, <http://www.thetrace.org/2015/07/concealed-carry-data-illinois-chicago-per-capita/>; Frank Main, *High-crime and cop neighborhoods tops in concealed carry permits*, CHICAGO SUNTIMES, July 5, 2015, <http://chicago.suntimes.com/news/7/71/741625/concealed-carry-permits-chicago-illinois>. Some neighborhoods with high rates of gun violence also have high numbers of residents with firearm permits, but neighborhoods in low-crime areas have the highest number of concealed carry permits per capita.

¹⁸ Rich Morin, *The demographics and politics of gun-owning households*, PEW RESEARCH CENTER, July 15, 2014, <http://www.pewresearch.org/fact-tank/2014/07/15/the-demographics-and-politics-of-gun-owning-households/>; Defilippis & Hughes, *supra* note 17; NORC at the University of Chicago, *General Social Survey: Trends in Gun Ownership in the United States, 2010-2014* at 1-2 (Mar. 2015), http://www.norc.org/PDFs/GSS%20Reports/GSS_Trends%20in%20Gun%20Ownership_US_1972-2014.pdf; Telephone Interview with Devin Hughes, Co-Author, *Armed With Reason* (Oct. 15, 2015).

Devin Hughes, a vocal gun violence prevention advocate and co-author of the blog *Armed With Reason*, agrees that the overall demographics of legal gun ownership in Chicago fit the national trend.¹⁹ Hughes asserts that “these areas are already low-crime areas, even before the surge in gun ownership, and then [residents] buy a lot of guns and they remain low-crime areas.”²⁰ The trend suggests that legal gun ownership is not finding its way into the neighborhoods McDonald hoped the right to bear arms would help protect.

In examining the risks of gun violence, it is important to take into account that even in areas where guns play little or no role in deterring crime, legally-owned guns bring risks of harm. While many gun owners purchase guns intending only to use them against criminals in direct defense of their homes and families (as Otis McDonald did), criminals are not their usual victims.²¹ Rather, the greatest number of victims are household members who commit suicide.²² In 2013, the Centers for Disease Control (CDC) reported more than 20,000 deaths by suicide with a firearm nationwide, a number representing more than half of total suicides and almost double the total number of homicide deaths by firearm for that year.²³ A 2003 study of causes of death found that, out of 4,700 people who died of a violent or firearm-related injury, gun suicide was responsible for 18.9% of deaths among those who had purchased a gun in the past two years, as opposed to less than 1% of those who had not purchased guns.²⁴

Relaxing restrictions on gun purchases makes it easier for suicidal people to obtain a highly lethal weapon without the benefit of a waiting period in

¹⁹ Hughes, *supra* note 18.

²⁰ *Id.*

²¹ Art Swift, *Personal Safety Top Reason Americans Own Guns Today*, GALLUP, Oct. 28, 2013, <http://www.gallup.com/poll/165605/personal-safety-top-reason-americans-own-guns-today.aspx>; Evan Defilippis & Devin Hughes, *The Myth Behind Defensive Gun Ownership*, POLITICO MAGAZINE (Jan. 14, 2015), available at <http://www.politico.com/magazine/story/2015/01/defensive-gun-ownership-myth-114262>.

²² Margot Sanger-Katz, *Gun Deaths Are Mostly Suicides*, NEW YORK TIMES, Oct. 8, 2015, <http://www.nytimes.com/2015/10/09/upshot/gun-deaths-are-mostly-suicides.html>; See Madeline Drexler, *Guns and Suicide: The Hidden Toll*, HARVARD PUBLIC HEALTH MAGAZINE 24 (Spring 2013) (“[F]irearm suicides in states with the highest rates of gun ownership are 3.7 times higher for men and 7.9 times higher for women, compared with states with the lowest gun ownership—though the rates of non-firearm suicides are about the same”).

²³ Centers for Disease Control, *Deaths – Final Data for 2013* at 22, http://www.cdc.gov/nchs/data/nvsr/nvsr64/nvsr64_02.pdf (last visited Oct. 30, 2015).

²⁴ K.M. Grassel, G.J. Wintemute, M.A. Wright & M.P. Romero, *Association between handgun purchase and mortality from firearm injury*, INJURY PREVENTION 48, 49 (2003).

which to reconsider.²⁵ But even ruling out suicides, gun laws that fail to take into account how and why people purchase guns have a hand in facilitating violence. Most overlap between legal gun ownership and illegal gun violence occurs in what is known as the “gray market,” a term that refers to spaces where even strict gun-purchasing laws may be relaxed—such as at gun shows and in private sales between individuals.²⁶

Gun-rights advocates argue that no amount of restrictions on the legal purchase of guns can prevent criminals from stealing guns from law-abiding citizens for their own use, or purchasing them through illegal channels.²⁷ However, current regulations allow for the proliferation of a market that exists somewhere between licensed sellers—who are often required to perform background checks or restrict sales to people with certain criminal charges on their records—and black-market transactions—a market in which people buy guns, illegally, from those who purchased them legally.²⁸

In Chicago, a city that only recently lifted its long-standing ban on gun retailers, purchasers seeking to obtain a gun through a straw buyer or other gray-market source have to look outside the city limits.²⁹ A 2014 report by the Chicago Police Department and the Office of the Mayor shows that close to sixty percent of guns recovered from Chicago crime scenes in that year were purchased in states with weaker gun laws, with the vast majority of guns purchased in Indiana.³⁰

²⁵ Sanger-Katz, *supra* note 22 (“Studies suggest that suicide attempts often occur shortly after people decide to kill themselves, so people with deadly means at hand when the impulse strikes are more likely to use them than those who have to wait or plan”); See Hughes, *supra* note 18.

²⁶ Defilippis & Hughes, *supra* note 14 (“[The gray] market is comprised of both private sales (such as those taking place at gun shows or online) and black market transactions (such as a gang member buying a stolen gun from a street source), but ultimately the line separating the two is often blurry”).

²⁷ Wayne Lapiere, *Bloomberg Banking On The ‘Stupidity’ Of Gun Owners*, THE DAILY CALLER, Jan. 30, 2015, <http://dailycaller.com/2015/01/30/wayne-lapierre-bloomberg-banking-on-the-stupidity-of-gun-owners/>; Nevada Carry, *How Criminals Get Illegal Guns*, NEVADA-CARRY.ORG, Nov. 7, 2015, <http://www.nevadacarry.org/how-criminals-get-guns.html>.

²⁸ Defilippis & Hughes, *supra* note 14; Ernst, *supra* note 14.

²⁹ Defilippis & Hughes, *supra* note 14; See Whet Moser, *Where Do Chicago’s Guns Come From?*, CHICAGO MAGAZINE, Aug. 1, 2012, <http://www.chicagomag.com/Chicago-Magazine/The-312/July-2012/Where-Do-Chicagos-Guns-Come-From/> (comparing illegal firearm transactions before and after Chicago’s handgun ban was struck down, with commentary on the role of street gangs in moving illegal firearms into the city).

³⁰ Chicago Police Department, *Tracing the Guns: The Impact of Illegal Guns on Violence in Chicago* 5, May 27, 2014, available at <http://www.scribd.com/doc/270805008/Exhibit-A-to-the-Complaint>.

Close to twenty percent of guns—that is, one out of every five guns recovered from Chicago crime scenes in 2014—came from only four stores, three of them located right on the borders of Chicago’s city limits.³¹ The pattern suggests that relatively strict gun laws in Chicago have limited effectiveness when surrounding areas provide loopholes through which nominally legal gun purchases can move guns into illegal circulation.³²

COALITION FOR SAFE CHICAGO COMMUNITIES LAWSUIT

A recent lawsuit, aimed at forcing Illinois to crack down on gray market gun sales, offers a different connection between Chicago’s problems with gun violence and civil rights issues. This past summer, the Coalition for Safe Chicago Communities (CSCC) brought a lawsuit against the three municipalities in which the stores supplying much of Chicago’s illegal gun market are located.³³ They allege that guns purchased at those stores that move illegally into Chicago are responsible for a disproportionate amount of harm to black communities—as evidenced by the disproportionately large numbers of black victims.³⁴

According to a 2011 Chicago Police Department report cited by CSCC, more than 75 percent of murders committed in that year involved black victims.³⁵ CSCC contends that the municipalities must be held liable for failing to enforce measures intended to prevent straw purchases.³⁶ Because Chicago homicides are overwhelmingly concentrated in black communities and with black victims, CSCC is seeking damages from the municipalities on civil rights equal protection grounds.³⁷

Hughes is unsure whether the lawsuit will succeed.³⁸ He notes that the 2005 Protection of Lawful Commerce in Arms Act (PLCAA) protects gun manufacturers and dealers from many suits related to harm caused by the

³¹ *Id.* at 6.

³² Defilippis & Hughes, *supra* note 14.

³³ Complaint at 1, *Coalition for Safe Chicago Communities et al. v. Village of Riverdale et al.*

³⁴ *Id.* at 2.

³⁵ Chicago Police Department, *2011 Murder Analysis Report 37*, available at <http://home.chicagopolice.org/wp-content/uploads/2014/12/2011-Murder-Report.pdf>.

³⁶ *Id.* at 7, 8; Complaint, *supra* note 33 at 6, 7.

³⁷ Complaint, *supra* note 33 at 8, 9 (“[F]ailure of the defendant villages to use effective methods of administration. . .has a racially disparate and terrible effect on the communities in which plaintiffs and the members of the plaintiff organization live and has the effect of discriminating against plaintiffs because of race.”).

³⁸ Hughes, *supra* note 18.

products they sell, particularly against charges of negligence.³⁹ This makes it harder for plaintiffs seeking damages from gun stores to prove that retailers are failing to follow gun ordinances intended to prevent guns falling into the wrong hands.⁴⁰ Hughes explains, “That throws out a whole host of various lawsuits you can use to help tamp down on stores that are selling a lot of crime guns. . . [t]he gun violence prevention movement has had to get very creative in finding ways around this and routes to sue.”⁴¹

But the PLCAA applies only to retailers—not to governments.⁴² By bringing its complaint against the municipalities in which the offending stores are located rather than the gun retailers themselves, CSCC may still have a viable civil rights claim.

They are already seeing results. As part of a settlement with CSCC, Lyons, one of the three municipalities named in the lawsuit, passed an ordinance in October requiring its single gun store to keep more extensive purchase records, report suspicious activity to local authorities, and establish stricter surveillance and security measures.⁴³

The store will be required to keep digital records of all buyers who purchase multiple firearms within a twelve-month period and maintain a ‘do not sell’ list of buyers whose guns are later traced to a crime; employees will be required to hold valid firearm owner’s identification cards; and the store will be subject to regular inspections by both county and federal officials.⁴⁴ The city will also enforce the use of exterior lighting and surveillance equipment at the point of sale.⁴⁵ The scope of the new ordinance exceeded even CSCC’s hopes.⁴⁶

The changes have already drawn criticism from some gun rights advocates, who claim that the ordinance is at best a restatement of existing federal law,

³⁹ Protection of Lawful Commerce in Arms Act (PLCAA), 15 U.S.C. § 7901 (2005); Hughes, *supra* note 18.

⁴⁰ Wilson Dizard, *Chicago anti-gun activists see hope in Milwaukee gun shop verdict*, AL-JAZEERA AMERICA, Oct. 14, 2015, http://america.aljazeera.com/articles/2015/10/14/gun-suit-offers-hope-to-chicago-activists.html?utm_content=main&utm_campaign=ajam&utm_source=facebook&utm_medium=socialFlow.

⁴¹ Hughes, *supra* note 18.

⁴² 15 U.S.C. § 7901(b)(1), *supra* note 39.

⁴³ Dahleen Glanton & Dawn Rhodes, *Lyons OKs ‘unprecedented’ gun shop regulations*, CHICAGO TRIBUNE, Oct. 28, 2015, <http://www.chicagotribune.com/news/ct-lyons-gun-shop-ordinance-20151027-story.html>.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

and at worst “commercial suicide” for the store.⁴⁷ Thus far, however, city law enforcement, local officials, and the store’s owners have all expressed their commitment to putting the new ordinance into practice.⁴⁸

CONCLUSION

Lyons has been dropped from the lawsuit, but whether CSCC’s civil rights approach will prove creative enough to succeed against the two municipalities who have chosen not to settle remains to be seen. However, there may be some hope. Earlier this year, a federal court ordered a gun store in Milwaukee to pay more than 6 million dollars in damages to two police officers wounded by guns obtained through straw buyers.⁴⁹ It is one of the very few recent cases in which a charge against a gun retailer found its way to a jury, and may provide persuasive authority for CSCC’s claim as it continues.⁵⁰ The relief CSCC demands would, the organization hopes, help to close administrative loopholes that move guns into vulnerable neighborhoods.⁵¹

The CSCC and Otis McDonald, though working from opposite sides of the gun-regulation debate, have at heart the same goal: To protect the people in their families and their communities from suffering at the hands of people who use guns outside of the law. But with gun permits still scarce in Chicago’s most violent neighborhoods and illegal guns continuing to flow into the city through gray-market channels, the focus involved has changed. Voices have shifted from McDonald’s belief in his right to legally defend himself to an emphasis on refining the laws that control who obtains guns, why, and how.

⁴⁷ Robert Farago, *New Front in the War on Guns: Chicago Suburb Gun Store Ordinance*, THE TRUTH ABOUT GUNS (Oct. 28, 2015), <http://www.thetruthaboutguns.com/2015/10/robert-farago/new-front-in-the-war-on-guns-chicago-suburb-gun-store-ordinance/> (“The ordinance requires Midwest Sporting Goods to commit commercial suicide. How many gun owners would put up with this Big Brother law?”); Glanton & Rhodes, *supra* note 43 (“Richard Pearson, executive director of the Illinois State Rifle Association, said he doesn’t support the ordinance and is concerned that there are pitfalls in it for dealers and buyers, particularly with the ‘do not sell’ list”).

⁴⁸ Glanton & Rhodes, *supra* note 43.

⁴⁹ Dizard, *supra* note 40; John Diedrich, *Jury finds for wounded officers in Badger Guns lawsuit*, MILWAUKEE JOURNAL SENTINEL, Oct. 13, 2015, <http://www.jsonline.com/watchdog/watchdogreports/jury-finds-for-wounded-officers-in-badger-guns-lawsuit-b99596217z1-332567372.html>.

⁵⁰ Diedrich, *supra* note 49; Ralph Ellis, *Milwaukee gun shop found negligent in police officers’ lawsuit*, CNN, Oct. 14, 2015, <http://www.cnn.com/2015/10/13/us/milwaukee-badger-guns-negligence-lawsuit/> (reporting that it is only the second such case to make it to trial since passage of the PLCAA).

⁵¹ Complaint, *supra* note 33 at 11.

The continuing debate, both in courts and among city and state lawmakers, will hinge on the balance between the rights of gun owners to possess and use their weapons, and the rights of those around them to remain free from the risks posed by all forms of gun ownership. Moving forward, Chicago activist groups like the CSCC will work to ensure that Chicago's new gun laws do not only benefit gun owners but also protect all people at risk from gun violence.