



A Right to a Gun

By Jermaine A. Wyrick

The crux of the peace versus violence controversy focuses on the dispute between gun control and the right to own a handgun. In the watershed 2010 decision of *McDonald v Chicago*,¹ the United States Supreme Court ruled in favor of the right to own a handgun. The *McDonald* Court held that the Second Amendment right to bear arms must be regarded as a substantive guarantee and that the Constitution restrains state and local governments from restricting an individual's right to possess guns. The ruling overturned Chicago's law that had banned handgun ownership.

Writing for the majority, Justice Alito noted that it was first necessary to determine whether the Second Amendment right to keep and bear arms is "fundamental" to the American scheme of ordered liberty² and whether it is "deeply rooted in this Nation's history and tradition."³ After answering these questions in the affirmative, the *McDonald* Court held that the Second Amendment guarantee is incorporated by the Fourteenth Amendment and therefore applies equally to the federal government and to the states.⁴

Two years earlier, in *District of Columbia v Heller*,⁵ the United States Supreme Court struck down the District of Columbia's handgun ban and trigger lock requirement, holding that the Second Amendment protects an individual's right to possess guns, at least for self-defense in the home. Before 2008, the District of Columbia had "generally prohibit[ed] the possession of usable handguns...."⁶ For instance, the District of Columbia required the registration of all firearms but simultaneously prohibited the registration of any handgun.⁷ The District of Columbia also prohibited carrying a handgun without a license and required "residents to keep their lawfully owned firearms, such as registered long guns, 'unloaded and disassembled or bound by a trigger lock or similar device' unless they are located in a place of business or are being used for lawful recreational activities."⁸ After observing that individual self-defense is "the central component" of the Second Amendment guarantee, the *Heller* Court concluded that the District of Columbia's regulations banning the possession of all handguns and requiring the inoperability of all firearms in the home violated the Second Amendment.⁹

FAST FACTS:

The Constitution of the State of Michigan of 1963, Article 1, Section 1, reads: "Every person has a right to keep and bear arms for the defense of himself and the state."

In Michigan, a person "shall not purchase, carry, or transport a pistol in this state without first having obtained a license for the pistol," as prescribed in MCL 28.422

Michigan concealed carry law is "shall issue," meaning that anyone 21 or older may obtain a license to carry a concealed pistol, so long as the person is not prohibited from owning a firearm, has not been found guilty or been accused of certain felonies or misdemeanors within a certain period, and has completed state-approved firearms training.

At the same time, however, the *Heller* Court also held that "the right secured by the Second Amendment is not unlimited," and that the states retain considerable latitude to prohibit "the possession of firearms by felons and the mentally ill," to forbid "the carrying of firearms in sensitive places such as schools and government buildings," and to enact "laws imposing conditions and qualifications on the commercial sale of arms."¹⁰ After citing this language from *Heller*, the *McDonald* Court specifically stated, "We repeat those assurances here."¹¹ Accordingly, it appears that neither the 2010 decision in *McDonald* nor the 2008 decision in *Heller* threatens the ability of the states to impose reasonable regulations concerning handgun use and possession.

Dissenting in *McDonald*, Justice Stevens disagreed with the high court's determination that the Second Amendment guarantees an individual right to gun ownership.¹² Justice Stevens opined that the majority's opinion "could prove far more destructive—quite literally—to our nation's communities and to our constitutional structure,"¹³ thereby appearing to suggest that violence could actually increase as a result of the *McDonald* decision. But New York Mayor Michael Bloomberg has offered his opinion that the *McDonald* decision will allow cities "to keep guns out of the hands of criminals and terrorists while at the same time respecting the constitutional right of law-abiding citizens."¹⁴

What is clear is that the *McDonald* decision will have implications for other states and municipalities. For instance, Massachusetts has a state law that requires gun owners to lock weapons in their homes.¹⁵ Similarly, Virginia has a law that limits handgun purchases to once a month.¹⁶ In *McDonald*, Chicago vigorously defended its handgun ban before the courts. Chicago Mayor Richard Daley, who was accompanied at a news conference by the parents of a Chicago teenager shot on a bus as he returned home from school, emphatically asked, "How many more of our children, our brothers and sisters, mothers and fathers must needlessly die because guns are too easily available in our society?"¹⁷ The Brady Center to Prevent Gun Violence similarly urged the Supreme Court to afford state and local governments the ability to enact "the reasonable laws they desire and need to protect their families and communities from gun violence."¹⁸

In the end, Justice Alito wrote that while the Second Amendment is fully binding on states and cities, it "limits (but by no

means eliminates) their ability to devise solutions to social problems that suit local needs and values."¹⁹ In the wake of the *McDonald* decision, it remains to be seen whether American states and cities will retain the regulatory flexibility that Justice Alito has predicted or whether gun violence will actually begin to increase. ■



Jermaine A. Wyrick has practiced law since 1997 in the areas of civil litigation, criminal defense, police misconduct, and family law. He has lectured for Lorman Education Services, the Detroit Branch NAACP George W. Crockett Community Law School, and Wayne State University Law School's Black History Month program. He is currently the monthly legal advisor for the College

World Reporter Magazine.

FOOTNOTES

1. *McDonald v Chicago*, 561 US ___; 130 S Ct 3020; 177 L Ed 2d 894 (2010).
2. *Id.* 130 S Ct at 3036; see also *Duncan v Louisiana*, 391 US 145, 149; 88 S Ct 1444; 20 L Ed 2d 491 (1968).
3. *McDonald*, 130 S Ct at 3036, quoting *Washington v Glucksberg*, 521 US 702, 721; 117 S Ct 2258; 138 L Ed 2d 772 (1997).
4. *McDonald*, 130 S Ct at 3050.
5. *District of Columbia v Heller*, 554 US 570, 626; 128 S Ct 2783; 171 L Ed 2d 637 (2008).
6. *Id.* at 574.
7. *Id.* at 574–575.
8. *Id.* at 575.
9. *Id.* at 599, 635.
10. *Id.* at 626–627.
11. *McDonald*, 130 S Ct at 3047.
12. *Id.* at 3119 (Stevens, J., dissenting).
13. *Id.* (Stevens, J., dissenting).
14. McCormick & Kolker, *Supreme Court's Chicago Ruling Challenges Gun Restrictions Across Country* <<http://mobile.bloomberg.com/news/2010-06-28/top-court-s-chicago-gun-ruling-challenges-weapons-restrictions-across-us>>. All websites cited in this article were accessed November 15, 2011.
15. Newsmax.com, *Mass. Court Upholds State Gun-Lock Requirement* <<http://www.newsmax.com/US/US-Massachusetts-Gun-Locks/2010/03/10/id/352280>>.
16. Urbina, *Fearing Obama Agenda, States Push to Loosen Gun Laws*, NY Times, February 23, 2010.
17. Chinn, *Handguns and the High Court*, Weekly Citizen <<http://www.thechicagocitizen.com/community-focus/handguns-and-the-high-court/>>.
18. *Winning by Losing* <<http://www.gunpoliticsny.com/?p=906>>.
19. *McDonald*, 130 S Ct at 3046.