



Legal Action

SPECIAL EDITION – SUMMER 2010

Supreme Court Rules Second Amendment Applies to States But Reasonable Gun Regulations Are Still Permissible

On June 28, 2010, the Supreme Court ruled in *McDonald v. City of Chicago* that the Second Amendment applies to state and local laws. The 5-4 ruling, like its previous ruling invalidating Washington, D.C.'s similar ban, held that the Second Amendment protects a narrow right to possess a handgun in the home for self-defense.

Although the ruling means that total handgun bans are off the table, for the second time in two years the Court's conservative majority went out of its way to state that reasonable regulations

limiting who may purchase and possess a gun, where guns can be taken, and limits on particularly dangerous weapons are not only permissible, but are "presumptively lawful" under the Second Amendment. In *McDonald*, the Brady Center, joined by several national law enforcement groups, filed an amicus (friend of the court) brief urging the Court to interpret the Second Amendment to allow for "reasonable" gun laws. Justice Stevens cited to the Brady Center's brief three times in his vigorous dissent.

The Court's narrow holding and assur-

ances that reasonable gun laws would not be jeopardized prompted the National Rifle Association to warn that the ruling could amount to a "practical defeat" for the NRA. The gun lobby vowed to file lawsuits challenging gun laws around the nation, even though the Court pointedly rejected the gun lobby's "any gun, for anybody, anywhere" agenda.

Justice Alito's plurality opinion cautioned, "It is important to keep in mind that *Heller*, while striking down a law that prohibited the possession of handguns in the home, recognized that the right to keep and bear arms is not 'a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.'" Justice Alito then reaffirmed the important language in *Heller* assuring the continued validity of broad categories of gun laws (including laws regulating the sale of guns, laws banning guns in sensitive places, and laws banning concealed weapons, among others) and added: "We repeat those assurances here."

The Brady Center's Legal Action Project will continue to assist states and cities in defeating gun lobby challenges and defending life-saving gun laws. Since the *Heller* ruling two years ago, there have been over 260 such challenges, yet the courts have continually rejected attempts to weaken gun laws and have instead set important precedents in several jurisdictions by upholding gun laws. State courts should rule similarly due to *McDonald's* strong language in defense of reasonable regulations. ●



Brady Center President Paul Helmke speaking at a press conference outside the U.S. Supreme Court following the *McDonald v. City of Chicago* ruling.

What the *McDonald* Court Said

The *McDonald* court held that the Second Amendment right recognized in *Heller* is “incorporated” — that is, it applies to and restricts state governments, not simply the federal government (or federal enclaves such as Washington, D.C.). However, in *Heller* the Supreme Court only held that the Second Amendment protects the right of law-abiding, responsible citizens to have a gun in the home for self-defense, and made clear that reasonable restrictions on the possession and use of firearms short of a total ban remain “presumptively lawful.” In *McDonald*, Justice Alito reaffirmed those central holdings and the Court specifically rejected “doomsday proclamations” that its Second Amendment rulings could “imperil every law regulating firearms.”

Four of the nine justices would not even go as far as *McDonald*'s limited ruling. They contested the central holding in *Heller* (that the Second Amendment is not limited to the militia purpose referenced in its text). Justice Breyer, joined by Justices Sotomayor and Ginsberg, wrote that a claim that the Second Amendment confers an individual right “is the historical equivalent of a claim that water runs uphill.” Justice Breyer further suggested the Court's historical account in support of *McDonald*

is “flawed,” asking, “Where *Heller*'s historical foundations are so uncertain, why extend its applicability?” In a fiery dissent that repeatedly cited the Brady Center's brief, Justice Stevens pointed out that firearm regulation is “a quintessential area in which federalism ought to be allowed to flourish,” bemoaning the Court's interference in local matters.

What *McDonald* Did Not Say

As the *McDonald* ruling merely reaffirmed the narrow holding in *Heller*, the ruling is especially important for what it did not say. The Court in no way endorsed the carrying of firearms outside of the home, or the possession of dangerous military-style assault weapons, or the right of criminals or other irresponsible persons to possess guns. On the contrary, the Court reaffirmed that a wide array of gun laws remain lawful.

The Court also declined to announce a strict standard of review for firearms regulations. While the gun lobby favors a “strict scrutiny” standard — that would make it far too easy for courts to invalidate a gun law, second-guessing well-founded determinations by democratically-elected lawmakers — the Court's repeated assurances that reasonable gun laws remain “presumptively lawful” implicitly rejects such a standard.

What We Can Expect from the Gun Lobby

After *McDonald*, we can expect the gun lobby to bring a plethora of cases against gun laws across the country, as demonstrated by a recently filed challenge to Chicago's newly-enacted post-*McDonald* gun laws. However, these challenges should fail.

The NRA's chief lobbyist, Chris Cox, has said that the organization has already begun preparing the next round of challenges. Wayne LaPierre, the executive vice president of the NRA, has expressed concern about what he considers the potential for a “constitutional victory” to be “transformed into a practical defeat” for the NRA when courts around the country apply the Court's language to uphold reasonable gun laws.

Likely laws to be challenged include requirements that gun owners obtain licenses and register their firearms, waiting periods and background checks, restrictions on where gun owners can carry their guns, one handgun a month limits, age restrictions on gun ownership, prohibitions on domestic violence offenders and criminals from buying guns, and other sensible laws that keep our communities safe. With the Brady Center's assistance, cities and states should overwhelmingly prevail in defending these laws.

What We Can Expect from Gun Criminals

Gun criminals and criminal defense lawyers will invoke the *McDonald* decision in an attempt to challenge criminal convictions and the statutes under which criminals are charged. Yet the Supreme Court has made clear that the Second Amendment does not protect the rights of criminals or other dangerous persons to possess firearms. Attempts to use the *Heller* ruling to benefit gun criminals have so far largely failed, and attempts to use the *McDonald* ruling in the same way should also be unsuccessful.

Following *Heller*, felons and domestic violence abusers used the *Heller* decision in their defense arguments, trying to persuade judges that the individual right proclaimed in *Heller* made their state laws unconstitutional. Judges across the country summarily rejected these arguments based on *Heller*'s declaration that “nothing in our opinion should be taken to cast doubt on long-standing prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.”

These assurances that reasonable gun laws remain valid still hold true in

post-*McDonald* cases. Although the individual right to own a handgun in the home now applies to the states, the *McDonald* decision was very narrow — it only directly applies to laws that prohibit possession of handguns in the home for self defense — and it reaffirmed the language from *Heller* that allows for conditions and qualifications on the use and possession of firearms.

What Chicago Can Do Now

While the ruling in *McDonald* spells an end to Chicago's ban on handgun possession, the decision should not prevent the city from enforcing a comprehensive and stringent array of new firearm laws to protect the public. After the decision, Mayor Daley and the Chicago City Council moved quickly to pass tough laws including requiring gun owners to undergo extensive firearms training, requiring safe gun storage to protect children, restricting particularly dangerous military-style weapons, and limiting residents to registering only one handgun per month. Illinois law already generally prohibits the carrying of firearms in public. All of these measures should pass constitutional muster under the *McDonald* and *Heller* decisions.

Chicago's new comprehensive gun laws are similar to Washington D.C.'s

firearm laws that have already been upheld as lawful under the Second Amendment. Relying on *Heller*, Judge Ricardo Urbina of the U.S. District Court for the District of Columbia held that D.C. gun laws “permissibly regulate the exercise of the core Second Amendment right to use firearms for the purpose of self-defense in the home.” ●

The Brady Center to Prevent Gun Violence is a nonprofit, education, research, and legal advocacy organization established in 1983 to reduce the tragic toll of gun violence in America.

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Second Amendment Cases Across the Country

Just as the Supreme Court's 2008 ruling in *District of Columbia v. Heller* inspired a slew of lawsuits challenging gun laws as violations of the Second Amendment, the Court's *McDonald* opinion will inspire many more suits. A few significant Second Amendment challenges, and victories, are summarized below.

District of Columbia

Heller v. District of Columbia: Following the Supreme Court's 2008 decision in *District of Columbia v. Heller* to strike down D.C.'s handgun ban, the same plaintiff, Dick Heller, challenged D.C.'s amended gun laws, which were enacted to conform to the Court's interpretation of the Second Amendment. Although the District's new gun laws do not prohibit law-abiding, responsible citizens from possessing guns in the home for self-defense (as required by *Heller*), Mr. Heller claims that these new laws are not permitted by the Second Amendment. The new laws include requirements that guns be registered to owners who must have satisfactory training, vision and knowledge of gun laws; handgun owners are limited to one registration per month; lost or stolen guns must be reported to police; guns must have ballistics identification; and assault weapons and high-capacity magazines are barred. At the trial level, U.S. District Court Judge Ricardo Urbina upheld the laws as constitutional in a lengthy, well-reasoned opinion. Mr. Heller then appealed the decision to the U.S. Court of Appeals for the D.C. Circuit, which has not yet heard the case.

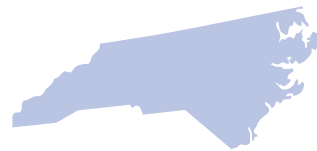
The Brady Center assisted D.C. in defending its laws, and on appeal will file an amicus brief arguing that D.C.'s amended gun laws are constitutional and should stand.

Palmer v. District of Columbia: In this case, Alan Gura, the same attorney who argued *McDonald* and *Heller* before the Supreme Court, is contending that the Second Amendment does not allow the District to prohibit the carrying of loaded guns in public. The *Palmer* plaintiffs appear to be at odds with the Supreme Court's ruling in *Heller* that noted — approvingly — that the courts have consistently held that “prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues.” The Brady Center is assisting Washington, D.C. in defending its laws.

Arguments were heard in early 2010 before U.S. District Court Judge Henry Kennedy, and a decision is expected soon.

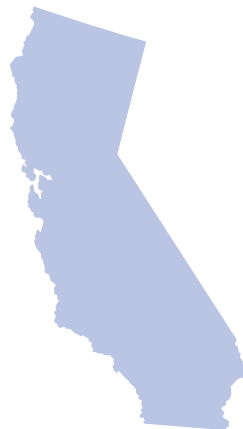
North Carolina

The gun lobby has filed a lawsuit in federal court alleging that North Carolina's emergency powers law, which allows restrictions on public gun carrying during states of emergency, is an unconstitutional infringement of the Second Amendment. However, in *McDonald*, the Supreme Court only recognized a right to possess firearms in the home for self-defense, and declared that prohibitions on where firearms can be carried outside of the home remain lawful. The Brady Center will assist in defending this law.



California

Gun lobby groups have also filed a number of lawsuits in California federal court challenging a wide array of state gun laws. In *Sykes v. McGinness*, the plaintiffs argue that requiring individuals who wish to carry guns in public to demonstrate “good cause” is an unconstitutional infringement on gun owner's Second Amendment rights. A law mandating that new guns sold in California be equipped with basic safety features, including safeties and chamber load indicators, has been challenged in *Peña v. Cid*. San Francisco's requirement that firearms in the home be kept locked in a container or equipped with a trigger lock has been contested in *National Rifle Association v. San Francisco*. The Brady Center will assist in defending these laws.



VICTORY! Court of Appeals for the Seventh Circuit

On July 13, 2010, the United States Court of Appeals for the Seventh Circuit held, in a 10-1 decision, that the federal ban on gun possession by domestic violence abusers is not violative of the Second Amendment. In *United States v. Skoien*, a convicted domestic violence abuser argued that the “Lautenberg Amendment” barring domestic violence offenders from possessing guns is unconstitutional. A three-judge panel of the Seventh Circuit initially agreed with Skoien, but after a full hearing by that court and an amicus brief filed by the Brady Center, the court allowed Skoien's conviction to stand. Judge Easterbrook, in the majority opinion, emphasized “that persons convicted of domestic violence are likely to offend again, so that keeping the most lethal weapon out of their hands is vital to the safety of their relatives.” ●