Gun Control in America

An Analysis of the Effects *District of Columbia v. Heller* Will Have on Gun Control Policy in the United States

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Introduction

Traditionally, the Second Amendment has been a hot-button issue in public discourse. Recently, the debate over gun control has been particularly pronounced because of the 2008 presidential election. Despite the public debates, the Second Amendment is one of the few rights to which the Supreme Court has not paid much attention. Even when the Court does address the Second Amendment, it has historically failed to provide a clear and complete interpretation of the amendment. Until the recent decision in *District of Columbia v. Heller* (2008), lower courts and the American public were forced to decipher cryptic clues from the Court’s clearest – albeit outdated and still ambiguous – decision: the 1939 holding from *United States v. Miller*. While *Miller* gave the nation a clear statement about where the Court stands on sawed-off shotguns, it left a host of issues for future justices to decide. It took almost seventy years for a new Court to begin addressing these issues.

*Heller* answered certain Second Amendment questions, such as the important issue of whether the Second Amendment grants an individual or a collective right to bear arms. However, many other issues have still not been addressed. Implications in the holding provide optimism for advocates on both sides of the gun control debate. As a result, several other bans have already been challenged in the courts, and more challenges are likely to come.

Furthermore, legislators have already begun working on new pieces of restrictive legislation to get around the problems cited by the Court. This clash of objectives and interpretations provides the foundations and the very purpose for the work at hand.

This work explores the arguments of advocates on both sides of the gun control debate. After discussing how both sides and the Court interpret the Second Amendment, this work looks at five main areas of gun control policy where the two sides cannot agree: licensing/registration,
rules on manufacturing, mandatory safety training, concealed weapons, and safe storage. The
work continues by examining potential changes in the Court and the long-term implications of
the Heller decision. It ultimately attempts to predict the future of gun control by looking at
trends in gun control policy and the court cases generated by disagreements over that policy.

While this work addresses both moral and legal issues, it is predominantly a
constitutional study. The ultimate purpose of this work is to present a comprehensive review of
the opposing viewpoints surrounding the most significant and interesting aspects of gun control.
In doing so, it will present informed conjecture regarding the future of gun control in the United
States. While a number of outside groups and factors have a larger impact on gun control than a
reader of this work might reasonably infer, it is not to suggest that these groups and factors are
insignificant or not worth mentioning. Rather, these issues can only be addressed insofar as they
relate to the primary purpose and constitutional theme of this work.

Part I: Interpretations of the Second Amendment

Despite being a particularly short amendment, the Second Amendment generates a lot of
controversy in public discourse. Individuals often debate the appropriate way of reading and
interpreting the amendment. The actual text of the amendment reads, “A well regulated Militia,
being necessary to the security of a free State, the right of the people to keep and bear Arms,
shall not be infringed.” Given the unusual syntax of the amendment, it is easy to understand why
it can generate such confusion and dispute.

Until the 1930s, even the Court was relatively unclear on what standards it would use for
interpreting the Second Amendment. Although legislators had been allowed to implement
various forms of gun control, there was nothing beyond tacit consent that indicated how future
Courts would handle the issue. Then, in 1939, the Court handed down its clearest statement on gun control in its decision in *United States v. Miller*. The most important aspect of the *Miller* holding was the restriction it set on the application of the Second Amendment. In an 8-0 opinion, the justices agreed that the Second Amendment was only meant to protect weapons that have “some reasonable relationship to the preservation or efficiency of a well regulated militia” (*United States v. Miller*, 1939). The decision further clarified things by defining a militia as “all males physically capable of acting in concert for the common defense” (*United States v. Miller*, 1939). Despite adopting the individual-rights definition of a militia, the Court gave a clear indication that the right to keep and bear arms was not absolute, and it seemed to generally (though not explicitly) support the collective-rights position for gun ownership.

Decades later, the Court issued an opinion in *District of Columbia v. Heller* (2008) that carefully and explicitly defined how it would interpret Second Amendment cases. While an analysis of the *Heller* decision follows the opposing arguments, it is important to have a basic understanding of the case to be able to understand the opposing arguments, which closely mirror those of the respondent and the petitioner respectively. The issue in *Heller* is that the laws of the District of Columbia essentially prohibited handgun possession by making it illegal to carry unregistered firearms and prohibiting the registration of handguns. The laws also required residents to keep lawful firearms in their homes unloaded and disassembled or bound by some sort of trigger lock (*District of Columbia v. Heller*, 2008).

In responding to a challenge to these laws, the Court answered a number of key questions. It discussed whether the Second Amendment gives an individual or a collective right to bear arms. It also determined whether the prefatory clause (“A well regulated Militia, being necessary to the security of a free State”) announces a purpose or places a limitation on the
operative clause (‘the right of the people to keep and bear Arms, shall not be infringed’) 
(District of Columbia v. Heller, 2008). In addressing the importance of the clauses, the Court was effectively deciding whether or not the right to bear arms is connected with service in a militia. Finally, the Court addressed whether the right to keep and bear arms is unlimited, and whether or not legislators can force individuals to store guns unloaded or bound (District of Columbia v. Heller, 2008).

Does the Second Amendment give an individual right to keep and bear arms?

The specific details of gun control policy are hotly contested, and advocates from both sides of the debate are unlikely to agree on exactly where the lines should be drawn. Given the controversial nature of gun control, such disagreements are to be expected. The gun control debate, however, also suffers from a more fundamental problem. Aside from being unable to agree on the Second Amendment’s implications, opponents are unable to even agree on the grammatical structure and literal meaning of the Second Amendment. Despite being one of the shortest amendments to the Constitution, the Second Amendment draws a number of complaints over the implications of capitalization and punctuation differences between its different versions. By closely considering the respective arguments of the respondent and the petitioners in the Heller case, this section examines the major points of contention regarding the interpretation of the Second Amendment. It concludes with an analysis of how the Court has decided to interpret the amendment.

The “Yes” Argument:
Those who believe that the Second Amendment provides an individual right first refer to the use of the word “militia” in the Amendment. They cite the common use of the word – dating back to approximately 1590 – which has historically referred to “the whole population of able-bodied men, ages sixteen to sixty, who were required to bear arms” (Poe 2001, 145). They argue that the Framers envisioned an armed populace that could provide a check against an executive branch that exercised too much power. Proponents of the individual right dismiss the argument that the National Guard has since replaced the militia referred to in the Amendment. They suggest that the Second Amendment was a response to Anti-Federalist warnings that Congress could one day disband the general militia and replace it with a select militia loyal to the government. They find further support for their case in the United States Code, which clearly distinguishes between an organized militia (the National Guard) and the unorganized militia (all able-bodied men) (Poe 2001). These advocates fear that without a populace that can unconditionally arm itself, the people would be forced to rely on government entities to protect them from a tyrannical government.

Gun control advocates argue that the Second Amendment’s protections against tyranny are outdated. They suggest that since the type of militia envisioned by the Framers – a non-specialized collection of individuals equipped with small arms – could not effectively resist a modern tyrant, the Second Amendment’s granting of an individual right to arms is not applicable. Simply put, since the militia cannot provide the protections sought in the first clause of the Amendment, the second clause does not retain any validity. Supporters of the individual right sentiment find immediate fault with this argument (LaPierre 1994). They propose that a resolute militia could be just as effective today as a militia at the time of the Revolutionary War. One author illustrates that sentiment pointedly:
The twentieth century provides no example of a determined populace with access to small arms having been defeated by a modern army. The Russians lost in Afghanistan, the United States lost in Vietnam, and the French lost in Indo-China. In each case, it was the poorly armed populace that beat the ‘modern’ army.

(LaPierre 1994, 19-20)

Those who oppose gun control also look at the function of an operative clause to support their argument. The operative clause of the Second Amendment secures the right of the people to keep and bear arms. The prefatory clause, referencing the importance of a militia, provides a reasonable justification for the operative clause. When taken as a whole, the Second Amendment provides a clear presentation of two related, non-exclusive concerns. If broken down, however, the prefatory clause cannot limit or negate the rights presented in the operative clause. A prefatory clause adds clarity or justification, but it cannot eliminate rights provided in the substantive portion of an amendment (District of Columbia v. Heller, 2008, Brief for Respondent). The Bill of Rights was added to the Constitution to placate the Anti-Federalists, who had a number of concerns regarding individual rights.\(^1\) While the language of the Second Amendment adds a prefatory clause that would have been reassuring to the Anti-Federalists, the history of the drafting and ratification process does not support the idea that such a clause could ever limit an individual right in another clause of an amendment (District of Columbia v. Heller, 2008, Brief for Respondent).

\(^1\) The Anti-Federalists feared a powerful central government. They believed that without stated rights, the government could take away their liberties for the purpose of advancing its own agenda. While the Bill of Rights (which was added in an attempt to get Anti-Federalists to support ratifying the Constitution) did not address all of the Anti-Federalists’ concerns, it did address many of the concerns. Ultimately, Anti-Federalist demands for the Bill of Rights prevailed in five of the seven constitutional ratifying conventions. Freedom of religion and the right to arms were the only rights common to all of those conventions (District of Columbia v. Heller, 2008, Brief for Respondent).
Furthermore, the operative clause of the Second Amendment is logically and grammatically capable of standing on its own. While the prefatory clause references the militia concern for the benefit of the Anti-Federalists, there is no reason that other prefatory clauses could not have been substituted or added. For example, other clauses referencing the value of diplomacy or large walls in protecting “the security of a free State” could have been included; they were simply left out because the concerns of the time period did not warrant their inclusion (District of Columbia v. Heller, 2008, Brief for Respondent). The rules of statutory construction and interpretation are clear in regard to self-standing operative clauses. As one author puts it, “the preamble may be resorted to in order to ascertain the inducements to the making of the statute; but when the words of the enacting clause are clear and positive, recourse must not be had to the preamble” (Kent 1858, 516). The standard rules of construction are clear in stating that a prefatory clause cannot limit or cast doubt upon an operative clause, and there is ample evidence in English precedents to suggest that the Framers would have been familiar with these rules (District of Columbia v. Heller, 2008, Brief for Respondent).

Finally, those opposing gun control promote the individual-rights argument. Gun control advocates suggest that the Second Amendment secures a collective right, particularly a right of the military (acting on behalf of the people) to bear arms. Opponents disagree, citing United States v. Verdugo-Urquidez (1990) as precedent. Verdugo-Urquidez holds that the rights granted to the people in the First, Second, or Fourth Amendments are no different than the rights reserved to the people in the Ninth and Tenth Amendments (District of Columbia v. Heller, 2008, Brief for Respondent). They are rights granted to individuals. Additionally, the idea of reserving the right to keep and bear arms solely for military purposes has no support in either legal or historical traditions. The right to keep arms refers to an individual’s right to possess a
weapon in his/her own home, and such a concept implies no military connotation (District of Columbia v. Heller, 2008, Brief for Respondent). Similarly, the term “bear” refers to one’s right to carry something, which also cannot be said to have an exclusively military application. As such, the idea that the right to keep and bear arms can only refer to a collective military right is simply unsupported (District of Columbia v. Heller, 2008, Brief for Respondent).

The “No” Argument:

Like those on the opposite side of the argument, those who oppose the idea of an individual right to arms also look first to the use of the term “militia.” They do not believe, however, that the term – as used in the Amendment – confers a right to arms on all able-bodied men capable of contributing to the common defense. Rather, those who oppose the individual right to arms suggest that the Second Amendment was added to the Constitution as a means of ensuring that the states retained control over their militias (Uviller and Merkel 2002). They argue that the Framers were fearful of the federal government growing too powerful and using the army against the people. After all, Article 1, Section 8 had just granted the new federal government the power to “call forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions.” Therefore, in order to appease the Anti-Federalists, the Second Amendment was added to check the power of the federal government and ensure that the state militias were not rendered ineffectual by having their right to arms seized. They further contend that since the intent of the Second Amendment was to guard against the suppression of state militias, it is accordingly limited in scope (Uviller and Merkel 2002; Pontonne 1997).

Supporters of this position also place extra emphasis on the prefatory clause of the Second Amendment, which reads, “a well regulated Militia, being necessary to the security of a
free State.” They argue that while the operative clause of the Amendment reads clearly on its own, the prefatory clause was not added for decorative purposes. They propose that the prefatory clause was added to ensure that the Amendment was used to protect state militias. According to gun-control supporters, the Amendment does not provide an individual right to arms, but rather it protects the collective right of the state militias. Under modern circumstances, the National Guard is comprised of well-regulated state militias that act under the authority of state officials to preserve the public safety. Therefore, while the National Guard currently has a constitutionally-protected right to keep and bear arms, individual citizens do not enjoy this same right (Bijlefeld 1999; Winkler 2007).

Finally, those who object to the unconditional right to keep and bear arms point out that the rights conferred by the Second Amendment, like other constitutional rights, are not absolute. In the same way that the rights to free speech guaranteed by the First Amendment do not allow one to falsely shout “Fire!” in a crowded theater, the rights of the Second Amendment are also not blanket rights; reasonable limits may be imposed. Given that legislative bodies have been regulating firearms for more than two hundred years, it seems rational to allow them to continue to impose reasonable limits on the right to keep and bear arms (District of Columbia v. Heller, 2008, Brief for Petitioners). Prior to the decision in Heller, no gun law had ever been struck down by the federal courts on the grounds that it violated the Second Amendment. While this history of deference to the legislature should not be said to remove the Court from gun-control issues, the legislative traditions should be considered when interpreting the Second Amendment (District of Columbia v. Heller, 2008, Brief for Petitioners). As Justice Frankfurter wrote in a concurring opinion in Youngstown Sheet & Tube Co. v. Sawyer (1952), “Deeply embedded traditional ways of conducting government cannot supplant the Constitution or legislation, but
they give meaning to the words of a text or supply them.” Given the history of allowing Congress to limit the right to keep and bear arms, it seems illogical to suddenly reverse this trend and declare an unconditional right (*District of Columbia v. Heller*, 2008, Brief for Petitioners).

**What the Court Says:**

The majority in *Heller* clarified a number of key questions relating to the interpretation of the Second Amendment. For example, the 5-4 decision finally addressed the appropriate standard for evaluating the two clauses of the amendment. Scalia, writing for the majority, wrote that while the prefatory clause announces a purpose, it does not limit or expand the scope of the operative clause. The operative clause grants an individual right to keep and bear arms, as is supported by both the text and history of the clause. The prefatory clause provides context for the operative clause, illustrating the desire of the Anti-Federalists to maintain the possibility of raising an armed citizens’ militia if necessary (*District of Columbia v. Heller*, 2008). Additionally, the opinion states that the premise for the conferral of an individual right (rather than a collective right) is supported by the drafting history of the Second Amendment and by state constitutions drafted at roughly the same time. The Court goes on to state that neither *United States v. Cruikshank* (1876), nor *Presser v. Illinois* (1886), each of which had previously (prior to *Miller*) set the standard for Second Amendment interpretation, refutes the individual-rights interpretation of the Second Amendment. Likewise, while *Miller* has been read to imply a collective-rights interpretation, there is nothing in its holding that precludes an individual-rights interpretation (*District of Columbia v. Heller*, 2008).

Further, the *Heller* decision goes on to uphold several key parts of the *Miller* decision. It supports the idea that the militia refers to all able-bodied men capable of contributing to the
common defense (*District of Columbia v. Heller*, 2008). It also protects the idea that the type of weapon to which the Second Amendment applies may be limited. The decision states that the protections of the Amendment are limited to weapons that were “in common use at the time for lawful purposes” (*District of Columbia v. Heller*, 2008, 52). It also clarifies that the *Miller* opinion does not limit the right to keep and bear arms to militia-related purposes. The opinion simply limits the type of weapon to which the Amendment’s protections apply (*District of Columbia v. Heller*, 2008).

Finally, the decision in *Heller* does not support the idea that the right to keep and bear arms is absolute. Like most rights, the Second Amendment is limited by reasonable restrictions that provide for the safety of the general public. Those joining in the *Heller* opinion did not attempt to list all of the restrictions that may be imposed, but they did clarify some specific safeguards that would not be removed by the decision:

> Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding 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. (*District of Columbia v. Heller*, 2008, 54-5)

While the decision did ultimately nullify some protections, such as the outright ban on handguns and the trigger-lock requirements, it generally left most decisions on gun control to legislators and past decisions.
Part II: Gun-Control Policy in post-Heller America

The Heller decision provides significant insight into how the Court will interpret Second Amendment cases in the future. On the other hand, the Court also left a lot of issues open for policy-makers to decide, and it only gave cryptic clues as to how it would respond to new laws and regulations. This section examines five of the most interesting and important types of gun control policy that could ultimately come before the Court: licensing/registration, rules on manufacturing, mandatory training, concealed weapons, and safe storage. This section will answer specific questions about each of those policy areas by exploring the opinions of advocates on both sides of the issues. It will also look at the Heller decision and other relevant case law to give an analysis of how the Court would be likely to rule in the future.

Should the registration and licensing of firearms become mandatory?

The licensing and registration of firearms is one of the most controversial aspects of gun control. Proponents argue that registration will make it easier for law enforcement officials to track criminals. They suggest that law-abiding gun users have nothing to fear. Opponents, on the other hand, find registration to be the most heinous form of control shy of physically prying guns from their owners’ hands. Gun rights advocates argue that licensing and registration would likely be ineffectual, and they further contend that most registration schemes are designed as backdoor methods of restricting a constitutional right to keep and bear arms. This section focuses on both the viability of licensing and registration as a means of crime control, as well as the level of intrusion that such systems would make on the rights of gun owners. It then discusses how the Court is likely to treat such policies in light of Heller.
The “Yes” Argument:

Those who advocate for mandatory licensing and registration try to advance two claims. First, they suggest that law-abiding gun owners have nothing to fear from registration. It will not preclude everyday citizens from purchasing and using firearms in the same ways they always have (Sugarmann 2001). Secondly, they argue that a national gun registry is necessary to aid law enforcement officials in tracking down criminals and solving crimes. They argue that officials would not access the registry for purposes other than traditional law enforcement (Carter 2006).

Despite the intense lobbying by those who oppose registration, advocates for registration point out that the United States is extremely lax in its current regulations. The United States is the only economically developed democracy that does not have a comprehensive registration system in place to keep track of guns and their owners (Carter 2006). When a citizen buys a gun from a licensed dealer, his name and address (as well as the gun model and serial number) are submitted to the ATF’s National Tracing Center. Although law enforcement officials may request this information from the Tracing Center if the gun is involved in a crime, this information is often out of date. Because laws do not require registration of a firearm in the secondary market, the ATF loses track of any gun with more than one owner (Carter 2006). The ATF will also be unable to provide any information if that gun was purchased from somewhere other than a federally licensed dealer. Only eight states and the District of Columbia have a form of mandatory registration that applies to secondary owners; the benefits of these laws are greatly diminished by a buyer’s ability to cross state lines to purchase a firearm (Carter 2006).

According to gun control advocates, licensing has limitless benefits for law enforcement officials. First, it would be helpful for tracing guns recovered from crime scenes if it were
implemented with a system of registration. A licensing system would also enforce ownership prohibitions, making sure that restricted individuals, such as convicted felons and those under restraining orders, were unable to purchase firearms (Sugarmann 2001). Although such a system would overlap with the current National Instant Check System (NICS), it could be expanded to the secondary market or used to prohibit a larger range of individuals, including those with convictions for violent misdemeanors (Sugarmann 2001). Additionally, a licensing system could be used to deter those who engage in reckless gun practices. If gun licenses were controlled by a system similar to the one that governs driving licenses, those who engaged in dangerous or reckless gun-related activities could have their licenses suspended or revoked (Jacobs and Potter 1998).

In order to create a fully effective policy, gun control advocates want to pair licensing with registration. Whereas a licensing system simply allows firearms to be denied to select individuals, a system of licensing and registration allows for tracking of firearms. In addition to speeding up the tracing of guns used in crimes, a registration system would also allow police to determine the types of guns to which a suspect would have had easy access. Such a system would also allow officials to more easily expose gun traffickers. Registration would allow officials to notice high numbers of guns being sold to a single individual, and back-tracing of guns on the secondary market would correspond to a single source (Sugarmann 2001; Jacobs and Potter 1998). Ultimately, licensing and registration would make law enforcement easier and more efficient.

The “No” Argument:
Opponents of licensing and registration also rest their argument on two fundamental points. The first point is that registration systems are both expensive and relatively ineffective at controlling crime. These opponents argue that police departments have limited budgets, and they can spend their resources on more important things than unproductive questioning of law-abiding gun owners (Sugarmann 2001). The second point is that registration systems unlawfully encroach on the rights of gun owners. Opponents argue that registration systems are designed to limit who can own guns, and they provide a list of who to target should the government decide to unconstitutionally start taking away guns (LaPierre 1994).

Gun advocates argue that licensing, on its own, would not have a significant impact on reducing crime. A system that enforces the current prohibitions would only serve as a costly duplication of the services currently performed under NICS (Sugarmann 2001). In order to be effective, it would have to broadly increase the categories of prohibited purchasers, which would be heavily opposed by gun rights advocates. Additionally, the licensing system would need to apply to secondary markets, including the Internet, private sales, and gun shows (Sugarmann 2001). Although laws could expand licensing to these markets, such restrictions would be difficult to enforce.

These advocates also argue that a registration system would not do much to improve policing. Because criminals do not typically license and register their weapons, the registry would only contain the names of law-abiding citizens whose guns were not used in a crime (Lott 2006). Additionally, by filing off a gun’s serial number, a criminal could easily render the registry useless for that case. Gun control proponents argue that a registry could contain information about a gun’s ballistic fingerprint, which is a unique pattern of scratches and rifling imprinted on any bullet that travels through a gun’s barrel (Girard 2008). Even if the registry
stored information about a gun’s ballistic fingerprint, general wear and tear causes those fingerprints to change so much over time that the registry would be ineffectual for most firearms (Lott 2006).

Most importantly, gun proponents believe that a national registry is an encroachment on the rights of gun owners. Licensing regulations could enact specific times for obtaining licenses or high fees, either of which could restrict the right of an ordinary citizen to purchase a firearm (LaPierre 1994). They could also be used to restrict who could purchase firearms. Opponents to registration argue that a registry would also constitute an intrusion into the privacy of gun owners. They contend that the government has no business questioning the types or numbers of firearms purchased by law-abiding citizens (LaPierre 1994). While licensing proponents argue that such a system would be no more restrictive than one for driving, gun advocates are quick to point out that driving is not a constitutionally protected right (LaPierre 1994).

Simply put, a national registry is believed by gun rights advocates to be an authoritarian way of controlling the population. One noted author described this popular sentiment in writing, “As the Founding Fathers knew well, a government that does not trust its honest, law-abiding, taxpaying citizens with the means of self-defense is not itself worthy of trust. Laws disarming honest citizens proclaim that the government is the master, not the servant, of the people” (Snyder 1993, 192). Gun advocates criticize licensing and registration policies because they believe they do not work. These advocates take greater offense, however, to what they perceive to be unnecessary government intrusion into their lives (Snyder 1993).

What the Court Says:
Licensing and registration are interesting topics to examine in light of the *Heller* decision. While the policy emphasis in *Heller* was on handgun bans and trigger locks, licensing and registration played a key role in the facts of the case. The District of Columbia did not explicitly ban handguns within the city. Rather, it created a system of licensing and registration restrictions that acted as a *de facto* ban on handguns (*District of Columbia v. Heller*, 2008).

District of Columbia law made it a crime to carry unregistered firearms in the city; further, the law stipulated that it would be unlawful to register handguns. Separately, no person was allowed to carry an unlicensed handgun in the city, and only the chief of police was allowed to issue one-year licenses (*District of Columbia v. Heller*, 2008).

Although the Court found the combination of registration laws unconstitutional, it made this ruling because the requirements banned an entire class of weapons (*District of Columbia v. Heller*, 2008). Particularly, the registration requirements banned a class of weapons that is protected under the Second Amendment. Handguns receive specific Second Amendment protection for two reasons. First, they fall into the class of small arms that was in common use at the time of the amendment’s drafting.\(^2\) Second, they are overwhelmingly a preferred choice for the lawful purpose of self-defense (*District of Columbia v. Heller*, 2008). The *Heller* opinion did not, however, rule that registration requirements are inherently unconstitutional. Rather, the Court forced District officials to allow Heller to register his gun (*District of Columbia v. Heller*, 2008).

Additionally, the Court did not ban the practice of requiring the licensing of firearms. To the contrary, the Court’s opinion would suggest that a system of licensing that does not constitute

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\(^2\) While it is clear that today’s handguns were not around at the time the Second Amendment was written, small arms in general were around at the time. While modern handguns are more compact and more reliable, they are really just improved versions of those original small arms. Guns with characteristics that were unimaginable to the Framers (such as M-16s or grenade launchers) would not fall into this category.
a total ban would be entirely constitutional, assuming it does not infringe on one’s Second Amendment rights in other unforeseen ways. In fact, the remedy in this case was to allow Heller to obtain a license to carry a handgun, as long as he was not otherwise disqualified by the felony conviction and mental instability stipulations (*District of Columbia v. Heller*, 2008).

Prior to the decision in *Heller, Printz v. United States* (1997) was the Court’s only distinctive ruling on national registration. The problem in *Printz* was that interim provisions of the Brady Handgun Violence Prevention Act mandated that a national system for conducting background checks be established in individual states (*Printz v. United States*, 1997). The provisions forced local chief law enforcement officers to conduct background checks whenever handguns were transferred to new owners, essentially establishing a federal handgun registry through its constituent parts in individual states. While these interim provisions were found unconstitutional, they were not problematic in the sense that they created a national registry. Rather, they were unlawful because they violated dual sovereignty in forcing state officials to enact a federal regulatory system (*Printz v. United States*, 1997).

**Should rules be placed on gun manufacturers governing what features must (or must not) accompany new firearms?**

Many features could accompany guns to make them safer. Load indicators, trigger locks, and smart-gun technology could all reduce the number of accidental gun deaths suffered each year. On the other hand, these new features would not protect families exposed to older guns, and they could drive up the costs associated with new gun purchases. In addition to safety features, many gun accessories make guns inherently more dangerous, such as large-capacity ammunition clips and “cop-killer” bullets. This section explores the arguments of advocates who
are for and against protective features and enhancement accessories as well as the purported misinformation that surrounds these technologies. It then discusses how the Court is likely to treat restrictions on such features and accessories in light of *Heller*.

**The “Yes” Argument:**

Those who advocate for restrictions on gun manufacturers argue that there are a number of safety features that could easily be added to firearms to make them safer. Load indicators, trigger locks, smart-gun technology, and gun/bullet-specific markings all make guns safer for families or less attractive for criminals without placing harsh restrictions on ordinary users. Additionally, a number of accessories exist on the market that make killing people easier without aiding in sporting uses or self-defense. Gun-control advocates suggest implementing restrictions that take these harmful and unnecessary products out of production.

**Protective Features:**

As computers and electronics have become more sophisticated and more advanced, smart-gun technology has become an increasingly more popular suggestion among gun control advocates. Smart guns are high-tech firearms that only fire for authorized users (Sugarmann 2001). A number of methods could be employed to get the gun to recognize authorized users, including fingerprint identification or a radio transmitter concealed in a ring or wristband (Carter 2006). Smart-gun technology has a number of benefits. Those who should not be using the guns, such as children and trespassers, would not be able to fire them. Additionally, criminals would have no incentive to steal the gun, and recovered smart guns that were used in crimes would be easily traceable (Sugarmann 2001; Carter 2006).
Many less expensive alternatives could also help reduce accidental shootings. Magazine disconnects, load indicators, trigger locks, and heavier trigger pulls have all been suggested as mandatory features on new guns (Sugarmann 2001). While these features target different potential users (children, authorized users, and unauthorized users), they all share a common goal: reducing unintended gun deaths. Although these features could increase the cost of manufacturing or purchasing a firearm, supporters argue that these slight elevations in cost are a small price to pay to eliminate deaths caused by easily avoidable scenarios. After all, the life of a loved one who was unaware that a gun was loaded or the life of a child who did not know that a gun was real is a much steeper price to pay than the extra few dollars that would be necessary to purchase a safer gun (Sugarmann 2001).

A number of states have already begun implementing policies that prohibit the manufacturing of firearms that lack certain safety features. California introduced legislation mandating that all semiautomatic pistols produced after 2006 have either a loaded-chamber indicator or a safety for the magazine. California also mandated that all semiautomatic pistols produced after 2007 contain both features (Carter 2006). Massachusetts and Maryland have also passed restrictive legislation, requiring that all new handguns contain childproof safeties (Carter 2006). New Jersey has also gotten onboard with manufacturing restrictions, declaring that all new guns must be smart guns within three years of the perfection of the “dynamic grip” technology (Carter 2006).

**Bans on Weapons and Accessories:**

A debate that has raged for a while is the proposal to ban cheaply made handguns, commonly referred to as Saturday night specials. In 1968 the federal government passed the Gun Control Act, which outlawed the importation of Saturday night specials. As a result,
however, domestic production of these guns greatly increased, meaning that the stock of cheap
handguns was not reduced (Carter 2006). Those who advocate for banning the manufacture of
Saturday night specials advance three arguments. The first point is that these guns tend to be
purchased by the poor and the young; there are strong correlations between poverty and violence
and youth and violence.\(^3\) The second claim is that these guns are poor in quality and prone to
malfunctions because of the limited funds put into making them. The final argument is that
Saturday night specials are often small and concealable, making them easier to use in violent
crimes (Carter 2006).

Because Saturday night specials are inherently dangerous, advocates tend to be
passionate about banning them (Wilson 2007). A number of local laws have been proposed or
enacted to ban the manufacture of cheap handguns and prevent their trafficking. Maryland,
California, Hawaii, Illinois, Minnesota, and South Carolina have all enacted laws that ban the
production and sale of these firearms (Wilson 2007). While the bans have had success in
shutting down some of the prominent producers of cheap handguns, some manufacturers have
simply relocated to nearby safe states such as Nevada, Arizona, and Utah (Wilson 2007). While
state-level bans are believed to have an impact, a national ban on the manufacture of cheap
firearms would be even more effective. Localized bans see reduced success because of problems
with interstate trafficking and black-market sales. Supporters of a nationwide ban point to the
success of the Undetectable Firearms Act (also known as the Terrorist Firearms Detection Act),
which banned the manufacture, importation, possession, receipt, or transfer of guns containing
less than 3.7 ounces of metal (Carter 2006).

\(^3\) It is important to note that these correlations can be misleading. The correlation between youth and violence fails
to distinguish between youth aggression and youth victimization. Furthermore, the poor tend to live in areas with
higher crime rates. Therefore, limiting the rights of the poor to purchase firearms could result in disarming non-
violent individuals who rely on guns for self-defense.
Finally, those who advocate gun control through manufacturing limitations suggest banning accessories that have primarily criminal applications, such as large-capacity clips and armor-piercing rounds. Proponents of these bans argue that large-capacity clips have no pressing value for sporting or self-defense purposes; they simply make it easier to instigate mass killings. They also argue that so-called “cop-killer” bullets – those capable of lethally penetrating police body armor – should be banned for similar reasons (Kates and Kleck 1997). The now-expired 1994 Assault Weapons Ban that was signed into law under President Clinton originally banned assault-style firearms that supported these features. The ban also prohibited the manufacture, sale, and possession of large-capacity ammunition dispensers, defined as magazines that could hold more than ten bullets (Koper and Roth 2001). While the Assault Weapons Ban was allowed to expire after ten years due to a lack of congressional action, California passed legislation coinciding with the end of the ban that affected a similar issue (Koper and Roth 2001; Wilson 2007). In 2004 California became the first state in the country to ban the production of rifles that support .50 caliber ammunition (Wilson 2007).

**The “No” Argument:**

On the other side of the debate, those who oppose restrictions on manufacturing have a number of reasons to support their own argument. Mandatory safety accessories would certainly make firearms less dangerous, but they could also be costly. According to gun rights advocates, increasing gun costs, vague legislative definitions, and product registration all threaten the Second Amendment rights of gun owners. Those who oppose manufacturing restrictions fear that in addition to creating immediate burdens, these restrictions will help set a trend, making it easier for legislators to further restrict gun rights in the future.
Opponents to manufacturing restrictions do not contest that new technology can add safety benefits. Smart-gun technology and loaded-chamber indicators, for example, would prevent a number of accidental gun deaths. At the same time, however, this new technology is not perfected, and it is expensive (Carter 2006). Adding electronic sensors and radio transmitters would drastically increase costs for manufacturing firearms, and a great deal of these increases would be passed on to the consumer. Additional restrictions on manufacturers would force them to change their means of production, ultimately making their products more expensive (Carter 2006). Additionally, because restrictions vary by state, it would be harder for manufacturers to achieve economies of scale in their production, ensuring that initial cost increases would not diminish in the short-term.

Detractors argue that smart guns are more of a last-ditch effort from an ailing firearms industry to sell more guns than anything else. Hundreds of millions of non-smart guns currently circulate among the American population, including over 65 million handguns (Sugarmann 2001). These guns would remain in American hands, impervious to the benefits of smart-gun technology. Moreover, smart guns would do nothing to prevent the millions of deaths that occur each year due to suicides or accidents involving hunting or gun cleaning (Sugarmann 2001). Although smart guns could reduce the number of crimes committed with stolen guns if they could replace non-personalized firearms, the entire existing arsenal of traditional firearms cannot simply be replaced.

Gun rights advocates also argue that gun personalization technology actually makes the guns more dangerous in several ways. First, the reliance on safety technology will result in less safe gun owners. Because owners will believe that their guns are inherently safe, they will be less likely to practice traditional safety procedures. Gun owners would be more likely to leave
their weapons loaded, unlocked, and unhidden (Carter 2006). In the event of an electronic or mechanical failure, the guns will be more dangerous than ever. A frayed wire or a burnt-out bulb would be undetectable to gun owners, causing them to think that the identification technology is working or that the chamber is unloaded when, in fact, the opposite is true (Carter 2006). Also, the smart-gun technology could create delays for gun owners facing attackers. If the owner has to find the ring that allows the gun to fire or wipe away smudges so that the firearm can correctly read the owner’s fingerprint, he may find that the safety technology makes him less able to defend himself (Carter 2006).

While gun rights advocates acknowledge the potential benefits of safety features such as smart-gun technology, they are less willing to accept that rules mandating ballistic fingerprint databases or serial numbers on bullets will be in their best interest. First of all, guns can be easily altered after initial ballistic fingerprints are made. A criminal would only need a small file to change the characteristics of the firing pin or barrel. These serial number databases would only act as encouragement for criminals to steal guns and ammunition or use fake identification when purchasing them (Carter 2006). Additionally, a gun’s ballistic fingerprint changes naturally over time. Friction created by the bullet speeding through the barrel causes wear and abrasions every time a gun is fired. Therefore, a gun’s initial ballistic fingerprint would only be of value if the gun used in a crime had rarely been used (Lott 2006).

Moreover, those who oppose mandatory bullet coding feel that these laws are simply backdoor policies for creating a national gun registration system, which is arguably the most feared and hated form of gun control in the eyes of gun rights activists. Aside from the plethora of complaints regarding civil liberties violations, gun rights advocates argue that a gun registry would be ineffectual anyway. Criminals do not register their guns. Although guns are initially
registered when they are purchased from a licensed dealer, they often trade hands many times. Only 12% of guns used in crimes are obtained (and therefore registered) through licensed retail stores or pawn shops. The rest are virtually untraceable, and a registry would only lead law enforcement officials to the last law-abiding person in the chain of ownership (Carter 2006; Lott 2006).

Another area of concern for gun owners is the topic of manufacturing restrictions that prohibit cheap handguns. While low-quality handguns may raise safety concerns, they are also the only viable option for many of their purchasers. Many so-called Saturday night specials can be purchased from a retailer for between $85 and $300 (Carter 2006). Higher-quality guns only increase in price from there, often costing hundreds more than these cheap alternatives (Wilson 2007). Many underprivileged individuals are forced by economic constraints to live in less desirable neighborhoods with high crime rates. They live in areas where they are most in need of protection, and they are in the worst financial position to acquire such protection (Wilson 2007). By eliminating cheap gun alternatives, legislators would be eliminating one of the few means these individuals have to protect themselves.

Finally gun rights advocates fear restrictions on gun accessories because they are often based on appearance and ambiguous qualifications (Koper and Roth 2001). Restriction opponents argue that bans on accessories tend to broadly proscribe accessories without cause as a way of punishing gun owners and the industry as a whole (Wilson 2007). A look at the 1994 Assault Weapons Ban, for example, shows that the law banned the manufacture of nineteen types of semiautomatic weapons, and it further restricted the production and sale of accessories for nearly half of the types of guns sold in the United States. The ban prohibited the manufacture of guns and accessories based on physical appearance, meaning that many other guns that
functioned almost identically to the banned firearms were still legal because they looked slightly different (Koper and Roth 2001).

While legislators often have good intentions when they suggest manufacturing restrictions, they often neglect many of the considerations that gun owners and industry employees feel are important. They tend to overlook the burdens that would be placed on legitimate gun users, and they undervalue the costs that would be placed on owners and manufacturers. While gun rights advocates appreciate the value that legislators place on safety, they also believe that there are less restrictive methods that could be employed to improve gun safety.4

What the Court Says:

The *Heller* decision suggests that restrictions on manufacturing are unlikely to be ruled unconstitutional. The justices state, “nothing in our opinion should be taken to cast doubt on longstanding…laws imposing conditions and qualifications on the commercial sale of arms” (*District of Columbia v. Heller*, 2008, 54-5). Although nothing in the opinion explicitly mentions manufacturing restrictions, the tone of the opinion conveys the idea that longstanding safety regulations will not be overturned in light of the new standard for interpreting the Second Amendment. While new kinds of restrictions could be open to challenges if they created safety concerns, the justices indicated that existing restrictions (or similar safety features) would not be unconstitutional (*District of Columbia v. Heller*, 2008)

Additionally, the sale of arms and the production of arms are not distinctly separate actions. If legislation prohibits certain features in the manufacturing stage, then the legal

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4 For example, since 1999 the Department of Justice has been working with the National Shooting Sports Foundation to distribute millions of free trigger locks through their HomeSafe and ChildSafe programs (Carter 2006).
commercial sale of weapons containing such features would be impossible by default. Alternately, it does little good to manufacture weapons with features that will be outlawed in legislation affecting the sale of firearms. Moreover, a great number of the laws proscribing dangerous firearms apply to the production, sale, and possession stages, thus linking the stages even more. For these reasons, the cautionary note of the justices stating that conditions can be imposed on the commercial sale of arms can be read to imply that conditions can also be imposed on the manufacturing of arms (District of Columbia v. Heller, 2008).

On the other hand, the holding in Heller stated that a requirement that a handgun be stored disassembled or bound by trigger lock is unconstitutional. Citing an individual’s right to self-defense, the Court ruled that any law implementing a requirement that had the effect of rendering a firearm inoperable would be unconstitutional (District of Columbia v. Heller, 2008). Therefore, built-in features (such as trigger locks) that would render a firearm unusable would not be allowed under the Heller guidelines. Additionally, any requirements that were found to severely limit a person’s right to self-defense would also be thrown out. Features that do not hamper a person’s ability to easily use the firearm, such as load indicators, serial numbers, or safeties, would be allowed under this standard.

Accessories, such as large-capacity magazines and “cop-killer” bullets, can be dealt with separately from other manufacturing restrictions. The Court would uphold a ban on these items with little or no consideration. The Second Amendment protects the right of individuals to keep and bear arms. The amendment mentions nothing about protecting accessories for these arms. Of course, an outright ban on something such as ammunition would be struck down since it has the effect of rendering all firearms useless. A ban on excessively powerful ammunition, however, would face no difficulties. Further, Heller upholds the Miller application of the
Second Amendment to firearms that were in common use at the time (*District of Columbia v. Heller*, 2008). Given that large-capacity clips and laser sights were not around when the Bill of Rights was passed, they receive no protection under the Second Amendment.

Finally, the issue of cheap handguns (Saturday night specials) warrants consideration. The *Heller* decision makes it clear that a law cannot revoke an individual’s right to self-defense. For many underprivileged families, Saturday night specials are the only affordable guns on the market. Additionally, the Second Amendment protects weapons that were in common use at the time of its adoption; cheaply-made handguns certainly fit within the Court’s interpretation of that criterion (*District of Columbia v. Heller*, 2008). On the other hand, a ban on Saturday night specials would not constitute an outright ban on a class of guns. Other handguns that met minimum safety standards would still be legal. All consumer products sold in the United States are required to meet a certain level of safety standards. While guns are constitutionally protected under the Second Amendment, that protection is not absolute. Given that a Saturday night special is just as likely to malfunction for the owner as it is to adequately protect him, it seems unlikely that the Court would not allow restrictions mandating a certain level of quality in the production of handguns.

To further explore how the Court would address cheap handguns in the future, it is helpful to look at the case of *Kelley v. R. G. Industries, Inc.* (1985), which was argued before the Maryland Supreme Court. The opinion of the court held that Saturday night specials had no legitimate purpose for law, sport, or self-defense. It further held that Saturday night specials are known to be a weapon of choice for criminals (*Kelley v. R. G. Industries, Inc.*, 1985). Using

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5 It is worth noting that “in common use” does not simply refer to muskets. A careful reading of *Miller* will show that the standard is meant to protect small arms that could be supplied by an individual to contribute to the common defense. The standard is meant to preclude firearms that are not standard in a given population or ones that go beyond simply modernizing outdated technology.
Farber 31

legislation from the United States Congress and the Maryland General Assembly, the court
decided that Saturday night specials could be distinguished from other lawful guns because of
their heightened probability of being used for criminal purposes (Carter 2006). Because the
Supreme Court would have a similar obligation as the Maryland Supreme Court to consider the
safety of the general public and the likelihood of criminal activity resulting from the purchase of
a Saturday night special, it is likely that the Court would uphold a ban on Saturday night
specials.

Should gun owners be forced to take mandatory training classes?

The Second Amendment specifically refers to a well-regulated militia, and the idea of a
well-regulated militia suggests that those keeping and bearing arms should know how to use
them. Simply put, training gun owners on the proper use of firearms will make them safer gun
owners. Opponents to mandatory training classes do not dispute that firearm users would be
properly trained in an ideal world. Rather, they take issue with the burdens that these mandatory
classes would place on gun owners, and they fear the repercussions that such a precedent could
cause. The two main questions to be explored in regard to this issue are the fairness of imposing
such an obligation on gun owners and the constitutionality of imposing such a burden under the
Heller standards.

Additionally, the idea of mandatory training classes is not without precedent. Some
jurisdictions already require gun safety courses for those applying for hunting licenses or
concealed-weapons permits. The extension of these regulations to simple gun licenses is not
much of a stretch (Rosman 2008). Additionally, the District of Columbia City Council recently
passed (in a 10-3 vote) an amendment to a new post-Heller bill governing the regulation of
handguns within the District that would mandate proper firearm training for those applying for permits to possess firearms within the city (DeBonis 2008). The penal laws of New York State also mandate that some residents pass a gun safety course and test before they can receive a license to possess a firearm. The law says that “No license shall be issued or renewed…in the county of Westchester” unless the applicant “has successfully completed a firearms safety course and test as evidenced by a certificate of completion…endorsed and affirmed…by a duly authorized instructor” (NY State Penal Law § 400.00, 2006). While laws mandating gun safety training courses are not particularly common, there are several examples of laws and regulations that lend credibility to the idea.

The “Yes” Argument:

The main issue for those who believe in mandatory training classes is safety. If they cannot ban guns, they believe that they should at least try to make gun use safer. By training gun owners in proper use and storage techniques for firearms, it reduces the likelihood of accidental shootings. Those who know how to use guns will feel more confident in their ability to do so when they are required to defend themselves (Rosman 2008). Further, gun safety courses teach owners how to properly store their guns, reducing the chances of children being killed in shootings involving loaded and unsecured firearms (Rosman 2008). In a report based on several studies of accidental shootings in the home, the Government Accountability Office (GAO), which acts as the investigative arm of the United States Congress, has recognized a need for “proper education in the use and handling of firearms” (Weil and Hemenway 1992, 3036). According to several studies, over 50% of gun owners tend to store their guns loaded, and only about 10% of those who store loaded guns equip the guns with locks or other child-proof safety
devices (Weil and Hemenway 1992). Mandatory gun safety classes could increase the probability of guns being stored safely, thus reducing the number of accidental shootings involving children.

Another potential benefit – albeit a considerably more controversial benefit – from mandatory safety training classes is the ability of professional trainers to recognize gun owners who could pose a future threat to public safety. As one author writes, professionals would be better able to detect those “whose personal judgment should be questioned” (Rosman 2008). Licenses to possess firearms are typically issued based on the results of background checks and information contained in applications. Mandatory training classes would introduce a personal element, wherein professionals could assess the suitability of a person to possess a firearm after face-to-face interaction.

The “No” Argument:

Those on the other side of the debate do not believe that mandatory training classes are fair for the average gun owner. Gun safety courses take time and cost money. For those who want to acquire a gun for self-defense, time may be of the essence. Those worried about stalkers or other immediate threats may not be able to wait until they have the time to take the appropriate classes (Kopel 1991). Moreover, the cost of these classes could be prohibitive to the underprivileged. Those who live in poor, crime-ridden neighborhoods may not be able to afford these safety classes, even though they may need guns for self-protection more than those with greater wealth (Kopel 1991).

Those against the mandatory classes also cite numerous studies suggesting that these classes do little to prevent accidental shootings. Some studies suggest that even those who
voluntarily attended gun safety courses were not significantly more likely to follow all of the proper handling procedures, particularly those related to safe storage. Some of the safety courses did not even teach safe-storage procedures (Weil and Hemenway 1992). Additionally, safety courses teach gun owners how to properly handle firearms. Therefore, these courses would do nothing to reduce accidental shootings among non-owners such as children.

Those who object to mandatory training classes also object on principle. They contend that they should not have to pass a test in order to exercise their constitutional right to keep and bear arms. No test is given before someone can exercise his right to free speech or a fair trial (Kopel 1991). Because laws mandating safety courses would place burdens on the purchaser’s time and finances, it is likely that such laws would lead to a chilling effect, discouraging potential purchasers from exercising their right to keep and bear arms for legitimate purposes.

Finally, many groups and individuals are against mandatory classes because of the potential for government abuse. They fear that legislators could make the classes unreasonably expensive or at inopportune times as a method for discouraging buyers. Among other groups, the National Rifle Association (NRA) opposes mandatory classes because they could lead to national registration and licensing laws that would track gun owners. While the NRA supports safe gun use, it also advocates for the protection of the privacy of gun owners (Kopel 1991; LaPierre 2008).

What the Court Says:

The holding in Heller does not make a clear statement about whether or not mandatory training would be constitutional. In fact, the concept of training is only briefly discussed in the entire opinion of the Court. Despite the lack of a specific statement regarding mandatory
training courses, some clues can be divined from the opinion. In discussing the role of the prefatory clause of the Second Amendment, the justices write, “the adjective ‘well-regulated’ implies nothing more than the imposition of proper discipline and training” (*District of Columbia v. Heller*, 2008, 23). The term “well-regulated” refers to the militia, which was defined as all able-bodied men. It seems plausible, then, that the Court would have no objection to imposing proper training regulations on those able-bodied individuals choosing to keep and bear arms. In fact, the justices write plainly, “when the able-bodied men of a nation are trained in arms and organized, they are better able to resist tyranny” (*District of Columbia v. Heller*, 2008, 24-5).

The second time the term “training” is used in the opinion is in an excerpt from Article 1, Section 8 of the Constitution. Clause 16 explicitly “reserv[es] to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.” This passage suggests that the training of the militia can be regulated under state law. To alleviate any confusion over whether that passage applies to the National Guard or simply all able-bodied men, Justice Scalia, writing for the Court, adds, “It could not be clearer that Congress’s ‘organizing’ power, unlike its ‘governing’ power, can be invoked even for that part of the militia not ‘employed in the Service of the United States’” (*District of Columbia v. Heller*, 2008, 27). Nothing in this opinion indicates that training requirements imposed by the states would be unconstitutional.

While *Heller* only makes limited references to gun safety training, the Supreme Court of Connecticut did address mandatory training in a more specific instance in *State of Connecticut v. John Lutters* (2004). In reversing a lower court’s ruling, the court wrote, “Indeed, we can think of no good reason why not to require taxicab drivers to obtain a handgun permit – and the mandatory training on handgun use and safety – before allowing them to carry such deadly
The court seems to have made it clear that it has no objections to mandatory safety training. While this area of the law is still open to interpretation, there is enough specific language to suggest that mandatory training laws would not be inherently unconstitutional.

**Should gun owners be allowed to carry concealed weapons contingent on the issuance of proper permits?**

While the topic of allowing individuals to own firearms is controversial in and of itself, the notion of allowing citizens to carry concealed weapons emphasizes many of the same arguments present in the larger debate. Those who support concealed weapon permits argue that people have the constitutional right to be able to defend themselves. Those who oppose concealed firearms argue that vigilante justice is not the solution to high crime rates and that allowing concealed weapons will only increase the amount of violent crime. This section explores the arguments for and against concealed firearms, as well as the Court’s position on the issue since the ruling in *Heller*.

Before getting into the individual arguments, it is helpful to understand the types of concealed firearm laws that can be implemented. Most states (38) operate under a shall-issue policy for concealed firearm permits. In shall-issue states, officials must issue concealed weapon permits to anyone who meets the state’s criteria (Carter 2006). So, assuming the applicant is not a felon and is willing to comply with technical requirements such as training classes, applicants can easily get permits in these states. Another 11 states, however, operate under a may-issue policy, wherein the final decision to issue a permit rests with local law enforcement agencies. Since these agencies are often reluctant to issue permits, it is considerably harder to get a permit.
in these states. Finally, two states (Illinois and Wisconsin) and the District of Columbia do not allow concealed firearms at all (Carter 2006).

The “Yes” Argument:

Those in favor of allowing individuals to carry concealed firearms tend to take a citizen’s protection stance. They argue that there are not enough police to protect everyone, and the police have no responsibility for the protection of individuals (LaPierre 1994). They suggest that citizens need to be able to carry firearms on their persons so that they can adequately defend themselves in the case of an attack. Proponents argue that by not allowing individuals to carry concealed weapons, officials are setting them up to be victims. If citizens cannot carry concealed weapons, proponents argue that criminals will be able to target and victimize them without inhibition (Wilson and Rozell 1998). As the CEO of the NRA writes, “The courts around the nation, including the U.S. Supreme Court, have repeatedly and consistently ruled that police have no duty to protect individuals – their duty is only to the community at large” (LaPierre 1994, 31). Concealed weapons proponents believe that since the police are not necessarily going to be around to defend individuals, concealed weapons are the only remaining practical option for self-defense.

To support the idea that the police do not have an obligation to protect individuals, LaPierre turns to a federal appellate case in Washington, D.C. In Warren v. District of Columbia (1981), the court ruled that the police have a duty only to the “public at large and not to individual members of the community.” The court went on to say that “a government and its agents are under no general duty to provide public services, such as police protection, to any particular individual citizen” (LaPierre 1994, 31). South v. Maryland (1856) and Rogers v. City
of Port Huron (1993), which were decided by the Supreme Court, support the assertion that the police do not have a duty to protect individuals (LaPierre 1994).

Aside from personal protection issues, proponents argue that concealed weapons do not contribute to increased violence. They often point to Florida as a prime example. Florida began the trend of switching from may-issue laws to shall-issue laws with the enactment of its right-to-carry concealed firearms law in 1987 (LaPierre 1994). Researchers found that in Florida, concealed weapons did not contribute to an increase in gun violence, and they also found that concealed weapons could even deter violent criminals who would have to fear the possibility of armed victims (McDowall, Loftin, and Wiersema 1995). Proponents argue that the Florida statistics support the idea that concealed weapons do not inherently create danger. In the 6½ years following the enactment of the 1987 law, officials issued 204,108 licenses for concealed weapons. In that same time period, only 17 of those licenses were revoked for “unlawful conduct that involved possession of a firearm,” which amounts to only .00008% of the total number of licenses that were issued (LaPierre 1994, 36).

Additionally, a number of influential individuals went on the record in Florida supporting the idea that concealed firearms do not contribute to violent crime. For example, one year after the law was enacted, the executive director of the Florida Police Chiefs Association noted, “At this point, it would appear the law is working very well. There are no horror stories that can be attributed to the passage of the law” (qtd. in LaPierre 1994, 36). The general counsel for the Florida Sheriff’s Association agreed saying, “I haven’t seen where we have had any instance of persons with permits causing violent crimes, and I’m constantly on the lookout” (qtd. in LaPierre 1994, 37). Even Robert Creighton, the agent in charge of the ATF’s Florida division, agreed that concealed weapons do not contribute to violent crime. Creighton argued that since criminals
who commit violent crimes do not apply for permits, shall-issue policies that increase the number of guns in circulation will not necessarily increase the number of violent crimes (LaPierre 1994).

Despite the claims of gun control advocates, proponents of concealed weapons permits assert that violent crime rates have not drastically increased since states started allowing widespread concealed weapons in the early 1990s. They further contend that no statistically significant difference exists in violent crime or murder rates between shall-issue and may-issue states (Carter 2006). These individuals argue that restrictions against concealed weapons are based on historical prejudice and misinformation rather than real concerns for safety. Because southern states were the first to restrict the right to carry concealed weapons, proponents often postulate that these restrictions were intended to keep guns away from African-Americans and impoverished Caucasians. Further support for these claims is found in Chicago’s legislation from the 1880s, where increased handgun restrictions directly coincided with an increased immigrant population (Weaver 2002).

Those who advocate for concealed weapons also counter the argument that laws that restrict the carrying of concealed weapons result in less crime. They point out that although gun possession was strictly regulated during the Prohibition era, these restrictions did not stop Al Capone and other mobsters from turning the time period into one of the most gun-violent periods in American history (Weaver 2002). Rather than denying the right to carry concealed weapons, some advocates argue that legislators should use concealed weapons permits as an opportunity to regulate gun owners. Requiring permits for concealed weapons allows regulators to require prerequisites such as mandatory safety courses, background checks, and registration (Wilson and
Rozell 1998). Instead of banning concealed firearms, legislators could use concealed firearm licensing as an opportunity for effective and efficient gun control.

**The “No” Argument:**

Those against allowing individuals to carry concealed weapons rely on two basic arguments. One is that allowing people to carry hidden guns will result in an upsurge in crime. The other is that vigilante justice is an inappropriate response to the crime that exists now. These individuals believe that the police should protect the community from criminals (Carter 2006). After all, even though the police may not have a duty to protect an individual, they are supposed to protect the community as a whole by getting violent criminals off the street. As an additional—albeit minor—point of support, those who dislike the idea of concealed weapons also point out that the typical holder of a concealed weapon permit is a white, middle-aged, Republican male. Since the typical person who carries a concealed firearm faces a very low risk of victimization, opponents maintain that almost no safety benefit exists to this individual being armed (Carter 2006).

Opponents of concealed weapons also reason that shall-issue laws contribute to higher levels of violent crime. Since shall-issue laws mandate that permits be given to applicants who meet certain requirements, it is relatively easy for individuals to get permits that allow them to carry concealed weapons. As a result, there tend to be greater numbers of armed individuals walking the streets. Opponents of concealed weapons cite a McDowall, Loftin, and Wiersema (1995) study, which suggests that easy access to guns (which exists in shall-issue states) – and subsequently the increased presence of guns – presents more opportunities for violent crime, and thus a higher likelihood of violent crime. These opponents attribute a large amount of the
alleged increase in violent crime to an increase in spur-of-the-moment shootings (Carter 2006). They believe that since guns can permanently resolve disputes with ease and efficiency, fights that previously ended with black eyes and broken bones now end in homicide.

Additionally, opponents to concealed weapons believe that the increase in legitimate concealed weapons will also promote an increase in gun crime and illicit firearm possession. They suggest that the increased number of guns in circulation would result in more gun thefts. They also contend that more criminals would start carrying guns because of the increased likelihood that their potential targets will also be armed (Carter 2006). Criminals who previously used generally less lethal methods for committing crimes would be forced to carry guns to ensure that they were equally successful at carrying out their crimes. These criminals could also start carrying guns for their own protection to fend off potential victims who decided to arm themselves (McDowall, Loftin, and Wiersema 1995).

Finally, opponents of concealed weapons point to alternate data related to Florida’s concealed weapons laws. In a study of three states that enacted shall-issue laws around the same time, homicide levels were tracked before and after the laws were passed (McDowall, Loftin, and Wiersema 1995). The results from Florida show that homicides increased by a statewide average of 26% after the adoption of the shall-issue laws in the late 1980s. Because of an inability to consistently replicate the results of the data and wide variations in the data across city and county lines, the researchers could not definitively conclude that the shall-issue laws caused the increase in firearm homicides. The researchers did, however, suggest that there was a heightened likelihood that the new laws caused the increase. They stated that further studies could potentially have more success at determining the extent of the relationship between the variables (McDowall, Loftin, and Wiersema 1995).
What the Court Says:

The opinion in *Heller* indicates that while the Second Amendment confers a right to keep and bear arms, it does not grant the right to carry concealed weapons. The *Heller* opinion specifically mentions past case law and scholarly interpretations by post-Civil War commentators with regard to concealed weapons. The Court makes it clear that while it may be broadening the rights of gun owners by explicitly adopting an individual rights interpretation, it is not creating an unlimited right. The *Heller* opinion cites the Tennessee Supreme Court’s decision in *Aymette v. State* (1840), which held that the state constitution’s conferral of a right to bear arms did not prohibit the banning of a concealed weapon (*District of Columbia v. Heller*, 2008).

When reiterating that the Second Amendment is not an absolute right, Justice Scalia, writing for the Court, specifically mentions concealed weapons as an example of a right not guaranteed by the amendment. The section on concealed weapons reads as follows:

Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose…For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues. (*District of Columbia v. Heller*, 2008, 54)

The Court clearly indicates that it has considered concealed weapons and does not wish to cast doubt on the constitutionality of laws that prohibit them.
**Should the government require individuals to safely store their guns inside their homes?**

This section addresses the issue of the safe storage of firearms, with a particular concentration on trigger locks and mandatory storage requirements. Those who support safe storage argue that it protects gun owners and their children from accidental shootings. Those who oppose safe storage suggest that neither trigger locks nor safe storage laws will actually have a significant impact on reducing serious injuries or fatalities. This section concludes with a clear ruling by the Court on the constitutionality of safe storage requirements.

**The “Yes” Argument:**

Those who suggest that the government should require gun owners to safely store their firearms in their homes argue that such measures would reduce the risks associated with accidental shootings without severely hindering the ability of gun owners to defend themselves (Jacobs 2002). They suggest that the possession of a handgun in the home rarely prevents burglaries or homicides. Instead, they say that the use of a firearm to fend off an intruder leads to serious injury or death among innocent parties more often than it leads to the death of an intruder (Yeager, Alviani, and Loving 1976). One study suggests that a gun kept in the home is six times more likely to be used against a friend or a relative than against an intruder (Spitzer 1998). Since guns in the home have such a minimal chance of successfully being used for self-defense, proponents believe that the benefits of trigger locks and safe storage outweigh the costs.

Proponents suggest that trigger locks, which render guns unable to fire while the locks are engaged, could play a substantial role in preventing accidental shootings. They argue that
curious children are often injured or killed by accidentally pulling the trigger while examining unlocked firearms (Jacobs 2002). Trigger locks would also distinguish real guns from toys, which would both reduce the risks associated with playing with loaded firearms and reduce the appeal as well. Furthermore, trigger locks could reduce the likelihood of domestic disputes turning lethal. In assaults, people tend to defend themselves by reaching for the most lethal weapon that is readily available. By increasing the time it would take to render a locked gun useful, trigger locks would deter the use of guns in domestic disputes (Kellermann and Reay 1986).

In addition to trigger locks, proponents argue that safe storage laws – which mandate that guns must be stored unloaded or in a way that makes them inaccessible to children – would help prevent accidental shootings among children (Jacobs 2002). Simply put, if children come across unloaded guns or cannot access the guns at all, the danger is avoided entirely. Proponents agree that these same safe storage laws could also help reduce gun thefts and violent crime (Jacobs 2002). In general, proponents argue that any form of mandatory safe storage will increase safety for gun owners, children, and innocent bystanders.

The “No” Argument:

Those who oppose mandatory safe storage laws argue that the proposed methods for securing firearms are ineffective, and they further contend that safely storing firearms precludes the opportunity to use them for self-defense. These opponents argue that those in favor of safe storage requirements greatly exaggerate the potential benefits. According to the National Safety Council, there are 10-15 accidental, handgun-related fatalities that involve children under the age of 5 in a given year. That range still only reaches a height of 50-55 fatalities when the results
include all children under the age of 15 (Kates 1990). As a point of comparison, the average year brings 381 deaths for children who drown in swimming pools and 432 deaths for children who die in house fires caused by adults falling asleep while smoking (Kates 1990). While opponents to safe storage laws feel that accidental shootings involving children are tragic, they do not believe that the problem is large enough to warrant restrictive legislation that impedes an individual’s right to self-defense.

Aside from arguing that safe storage laws are inherently bad because they limit an individual’s opportunity for self-defense, opponents also argue that the particular options for safe storage laws are ineffective. Opponents claim, for example, that trigger locks are notoriously unreliable. While some do not consistently prevent guns from firing, many others can be easily defeated with common household tools such as pliers, screwdrivers, and wire-cutters (Jacobs 2002). The presence of faulty locks is particularly alarming because gun owners who use these locks may be less likely to store their guns in areas inaccessible to children. Additionally, opponents argue that requiring that guns be sold with trigger locks is ineffective because officials cannot enforce the use of these devices in the home. Nothing stands in the way of a gun owner throwing away or disabling the lock (Jacobs 2002).

Finally, opponents of safe storage believe that these laws could cause increases in crime and violence. Opponents fear that safe storage laws could lead to a more brazen class of criminals since invaders will no longer fear that their victims will have easy access to firearms. Additionally, even a number of pro-control advocates oppose safe storage laws. They argue that if people start believing that there is a foolproof way of safely storing guns and preventing accidental shootings that more people will decide to buy guns (Jacobs 2002). In general,
opponents claim that safe storage laws are ineffective; even if they were effective, opponents find the restrictions on self-defense to be too dangerous.

**What the Court Says:**

The *Heller* opinion makes a particularly clear statement about a specific kind of safe storage requirement, but, at the same time, it fails to address the topic of safe storage requirements in general. The law under scrutiny in the *Heller* case mandates that firearms be kept inoperable at all times while in the home (*District of Columbia v. Heller*, 2008). The justices declared that inoperable firearms do not allow individuals to defend themselves in a crisis. They struck down this requirement, adding, “This makes it impossible for citizens to use them for the core lawful purpose of self-defense and is hence unconstitutional” (*District of Columbia v. Heller*, 2008, 58).

The *Heller* decision therefore seems to indicate that any law requiring a gun to be bound by a trigger lock or stored unloaded would be unconstitutional. Similarly, any law that severely hinders an owner’s ability to defend himself in a time of crisis would be unconstitutional. The justices did not, however, provide a clear answer regarding safe storage laws meant to protect children. As of 2002, 14 states had enacted Child Access Prevention (CAP) laws that specifically require owners to store guns unloaded or in a location that children cannot access (Jacobs 2002). While owners clearly cannot be forced to store their guns unloaded, it is unclear on whether or not they can be forced to make their guns inaccessible to children. The question that would need to be answered is whether or not such laws impede an individual’s right to access his gun in a crisis. The CAP laws in those 14 states have the potential to be challenged in front of the Court in the future. The specifics of how inaccessible the gun must be to children
versus how accessible the gun must be for the owner will likely result in a narrow decision that provides little definitive guidance if and when such a case is brought before the Court.

Part III: The Future of Gun Control

This section explores the future of gun control in America by looking at outside influential factors and the long-term impacts of the *Heller* decision. Specifically, it examines the potential for changes in the makeup of the Court under the Obama administration. This section will look at overarching trends in the Court’s composition as well as specific personalities that could ultimately affect the way the Court rules in gun control cases. It also explores other cities that are seeing (or may see) challenges to their gun control laws in the wake of the *Heller* decision. The structure of this section departs from the tri-pronged approach of the preceding sections. While previous sections looked at opposing responses to a particular question – tempered by an evaluation of the Court’s statements regarding each issue – this section will instead explore a singular, neutral view of the Court’s future. It abandons the rhetoric of interested pro- and anti-gun control advocates in an attempt to divine the realistic future of gun control based on the writings of the Court and other outside factors.

The Post-*Heller* Roberts Court

As it stands, the Roberts Court is just like its many predecessors. Despite its sometimes deep political divides, the Court passes down its rulings in a reserved and dignified fashion. In fact, of the first 64 decisions handed down in the 2006-2007 term, nearly a quarter of them were unanimous. Another seven of those decisions were summary opinions unopposed by any
dissenting opinions (Curry 2007). Despite the Court’s appreciation for history and tradition, however, it is getting younger, and it has been marked by several controversial decisions. The departures of Chief Justice William Rehnquist and Associate Justice Sandra Day O’Connor led the way for two young Republican-appointees: Chief Justice John Roberts and Associate Justice Samuel Alito. Since those appointments, a five-member conservative bloc has surfaced in key politically-charged cases, including cases on abortion, sex discrimination, and the death penalty (Curry 2007). Given the inherently political nature of gun control, the liberal-conservative split will likely affect the future of gun control as well.

Underscoring the divisive attitude the Court has shown in several of its late-term decisions, one constitutional scholar describes the last day of the 2006-2007 term:

Moments after Chief Justice Roberts finishes speaking, a voice both incredulous and distressed pierces the High Court’s etiquette. Bristling with barely concealed anger but tempered by the circumspection of the law professor he once was, Justice Stephen Breyer informs those assembled that he takes strong objection to Chief Justice Roberts’s pronouncements of the law. Justice Breyer, too, offers a simple statement: ‘The majority is wrong.’…The five Republican appointees, he suggests, are dictating their own policy preferences in the name of the law. Justice Breyer denounces Chief Justice Roberts’s temerity with sixteen memorable words: ‘It is not often in the law that so few have so quickly changed so much.’ (Guinier 2008, 9)

Justice Breyer’s criticism of the conservative bloc expresses a sentiment that has likely dominated the thinking of the Court’s most liberal members. His comments illustrate the idea that a young conservative Court has taken the reigns, safe in the knowledge that its decisions will
last. Furthermore, it is important to note that these comments came before the conservative bloc repeated its dominant triumph (including the *Heller* decision) at the end of the 2007-2008 term.

While the next appointments to the Court will likely bring more drastic reductions in age, they are significantly less likely to bring a dramatic swing in political persuasion. The oldest justices, and arguably the most likely to retire, are Stevens, 89, and Ginsburg, 76 (Stohr 2008). With Stevens being the oldest justice by over a decade and Ginsburg facing serious health problems, it seems likely that they will leave the Court during the tenure of the Obama administration. The Democrats currently have a significant majority in the Senate. The Judiciary Committee would likely have no trouble pushing an Obama nominee to the Senate Floor (Frey 2009). All indications suggest that Obama would be able to fill any Court vacancies with apparently liberal justices.

For those hoping for a political change in the Court, however, they will likely be disappointed. According to a 2003 statistical analysis of the Court’s voting patterns, Stevens and Ginsburg are decidedly the most liberal members of the Court (Frey 2009). Even if Obama managed to get two liberal justices confirmed to replace the two, he would only be replacing liberals with liberals. On the other hand, Souter, 69, is a potential wildcard who has been mentioned in a fair amount of Court gossip. Although he often votes with the liberals on the Court, he is the appointee of a Republic president, and he is considerably less liberal than several of his colleagues. Rumors that Souter dislikes Washington, resents a number of the Court’s conservative decisions, and plans to have a working life after his tenure on the Court have generated speculation that he will also leave the Court during the Obama administration (Frey 2009). Moreover, Scalia, 73, and Kennedy, 72, are the oldest two justices on the Court after Stevens and Ginsburg (Frey 2009). Although it is significantly less likely that Obama would
have an opportunity to name their successors, there is a chance that one of the two could leave the Court during the course of a two-term Obama presidency.

Given that Obama will likely name two to three new justices during his time in office, it is helpful to examine some of the individuals who could be named to the Court. One panel of legal and political experts – which included Cass Sunstein, a University of Chicago law professor and Obama advisor, and Charles Ogletree, a Harvard Law School professor and Obama advisor – discussed likely characteristics of nominees. This group ultimately came up with a list of 10 potential nominees: Sonia Sotomayor, Deval Patrick, Elena Kagan, Merrick Garland, Cass Sunstein, Diane P. Wood, Jennifer Granholm, Leah Ward Sears, Harold Hongju Koh, and Ruben Castillo (Jouvenal 2008). While some of the choices seem particularly unlikely, such as Patrick and Granholm, others on the list have been heavily discussed by a number of scholars.

In addition to the 10 names posited by the panel, experts have also frequently suggested Kim McLane Wardlaw and Seth Waxman as potential Obama nominees. Scholars believe that women and Hispanics will be given preference as potential first-round nominees, while the other individuals would be more likely as second or third picks (Stohr 2008). For the purpose of examining how Obama’s choices could influence the future of gun control, this work will examine three of the most likely choices for the Court: Sotomayor, Kagan, and Wood.

Sotomayor is a Hispanic female currently serving on the 2nd Circuit Court of Appeals. She is in her mid-50s, and she would be a good way to add diversity to the Court. Additionally, she is politically moderate and has bipartisan appeal (Jouvenal 2008). Although her age, gender, ethnicity, and political appeal make her a popular choice and allow for an easy confirmation, her political stance makes her a somewhat risky choice for Obama. On the other hand, her case
history with gun issues suggests that she might be friendlier to the liberal side in future gun cases. In *United States v. Sanchez-Villar*, Sotomayor wrote that “the right to possess a gun is clearly not a fundamental right” (Kopel 2008). If a member of the conservative bloc were to leave the Court, Sotomayor would be able to replace him without too much of an uproar from either party. While she would probably not shift the Court’s general ideology too far in the liberal direction, she could be the deciding vote in future gun cases.

Kagan is another young female, and she is arguably the best qualified and most likely of the candidates. Before being confirmed as the Solicitor General, she was the dean of Harvard Law School, Obama’s alma mater. Like Obama, she taught at the University of Chicago. She served in the Clinton White House, and she clerked for Thurgood Marshall (Jouvenal 2008). While she may be more liberal than Sotomayor, Kagan has not given any indication that she would be inclined to rule differently than the justices did in *Heller*. Overall, she has taken a relatively centrist view that is in line with recent Supreme Court precedent (Raju 2009). In response to intense questioning by Senator Arlen Specter (the ranking member of the Senate Judiciary Committee), she was unwilling to give much useful information, except to say that her duties would come before her personal feelings (Hutchins 2009). She did reveal, however, that with regard to the *Heller* decision, she has “no reason to believe that the court’s [*sic*] analysis was faulty” (Raju 2009).

Wood is another female and likely nominee for a Court opening. She is arguably the most liberal of the three. She is a senior lecturer at the University of Chicago, and she is also a judge on the 7th Circuit Court of Appeals. She had previously clerked for Harry Blackmun (Jouvenal 2008). Although she is widely regarded as one of the best legal minds on the bench, there is a chance that Wood’s age could work against her; she is in her late 50s (Stohr 2008).
Although her liberal stance might suggest that she would disagree the holding in *Heller*, Wood has also demonstrated a commitment to precedent over personal philosophy. While moderating a panel discussion on the rule of law, she noted that “it seems to [her] that most of our appeals judges do a very good job of following the directions of the Supreme Court, so when the Court takes a conservative turn, for example, Courts of Appeals across the country have taken a conservative turn, regardless of the particular backgrounds of their judges on those appeals” (Wood 2008, 69). It seems unlikely that Wood would be willing to stray far from the holding of *Heller* in deciding future gun cases, regardless of her personal feelings about guns.

Regardless of which individual Obama might pick to fill a vacancy on the Court, it is unlikely that his pick would do much to drastically affect the future of gun control. The circumstances under which such a pick could have a real influence are incredibly narrow. Many of the important challenges to gun control legislation will have worked their way through the courts before a vacancy is likely to open. Rather, it is likely that the conservative bloc that currently sits on the Roberts Court will continue to dictate gun control policy, ultimately producing results similar to those that have evolved out of *Heller*.

**The Coming Challenges**

Since the Court initially decided to hear the *Heller* case, speculators have been predicting which other cities would see challenges to their laws if the D.C. handgun ban got overturned. Then, on the day the *Heller* decision was handed down, the NRA immediately filed suits challenging the gun bans in San Francisco and Chicago (Maclachlan 2008). Dozens of additional challenges are expected if these initial lawsuits are successful. This section examines
several cities with controversial gun control restrictions and the implications of overturning those laws.

While the full extent of Heller’s implications for gun cases in the courts has yet to be seen, the decision has encouraged pro-gun advocates to be more aggressive. Additionally, the decision has already scared some cities into repealing their bans. Within a month of the opinion’s release, Wilmetter and Morton Grove, two suburbs of Chicago, had already repealed their gun bans. Evanston, another Chicago suburb, is considering amending its gun ban as well (Wildeboer 2008). Chicago itself has been unwilling to give up so easily. Chicago has had a ban on new handguns since 1982, and officials there know that courts and legislatures around the country are looking at the outcome of the Chicago challenge for guidance (Altman 2008).

In response to a question about the Heller decision, Benna Ruth Solomon, a lawyer for the city of Chicago argued that “this decision does not apply to the city of Chicago. It does not apply to the states or municipalities. The court [sic] has held that on three prior occasions. Those precedents remain good law until the Supreme Court says they do not” (Liptak 2008).

The precedents to which Solomon was referring were mentioned in the Court’s opinion. Scalia questioned the validity of those decisions in a footnote, however, arguing that one of the decisions also suggests that the First Amendment does not apply to the states (Liptak 2008). At present, Chicago has won the first round of challenges. U.S. District Judge Milton Shadur rejected two lawsuits in December that challenged Chicago’s gun ban. Those cases are currently under appeal (Gilmer 2008).

San Francisco has not shown the same resilience as Chicago. San Francisco had a total ban on guns and ammunition in public housing units. Legal scholars and Second Amendment experts expected the city’s ban to fail because of the problems it had in common with D.C.’s ban
and because it targeted citizens who had done nothing wrong. Eugene Volokh, a UCLA law professor, noted that “there’s a very substantial chance that these kinds of ordinances will be struck down because they are aimed at people who have shown no reason to be viewed as untrustworthy” (“Felons Raise Challenges” 2008). The San Francisco Housing Authority voluntarily repealed its bans before the courts had a chance to rule. In a separate case regarding firearm bans at gun shows in Alameda County, however, the Ninth Circuit Court of Appeals did rule that the Second Amendment gives private citizens the right to challenge gun laws at the state and local levels (Egelko 2009). It will be interesting to see whether or not the Seventh Circuit agrees when in rules on the Chicago ban and what the Supreme Court adds to the debate if either case gets taken to the highest level.

Although San Francisco and Chicago have seen the first challenges and amassed most of the media attention, other cities will likely see challenges if gun advocates are successful in Chicago. New York, Philadelphia, and Detroit appear to be the frontrunners if a second wave of lawsuits breaks out (Liptak 2008). While these cities have stringent gun laws, their bans are not as restrictive as those in San Francisco and Chicago (Zremski 2008). Therefore, if the ban in Chicago stands, opponents would have to develop a new legal strategy before challenging the less severe bans. According to LaPierre, even though the NRA’s strategy is to start by challenging cities with handgun bans, cities like New York will probably see challenges in the relatively near future (Liptak 2008).

In addition to the municipal suits, felons have begun challenging federal laws that ban them from keeping guns. They argue that *Heller* grants them the right to at least keep loaded guns in their homes for the purpose of self-defense. They further contend that their histories and past associations give them a greater need to be able to defend themselves. Scholars believe that
these felons will ultimately be unsuccessful (“Felons Raise Challenges” 2008). They have proven that they can be violent and/or untrustworthy, and the *Heller* decision specifically mentions that it is not meant to overturn longstanding safeguards such as restrictions against felons (*District of Columbia v. Heller*, 2008).

**Conclusion**

*District of Columbia v. Heller* has thrust the Second Amendment from relative obscurity into the national spotlight. Legal scholars had barely given it a second glance, and even the Supreme Court had never bothered to decipher its meaning. While the Court has not completely settled the debate over how to interpret the Second Amendment, it has added significant clarity with the *Heller* decision. Furthermore, the decision finally pushed the Second Amendment and gun control issues back into the mainstream media. News outlets around the country are scrambling to keep abreast of court opinions and changes in gun control policy.

While *Heller* may have reopened the debate over gun control, it may not have had as much of an effect on actual policy as advocates on both sides of the debate like to suggest. To be fair, the decision did finally settle the idea that the right to keep and bear arms is an individual right. More importantly, the resultant legal challenges have caused a number of municipalities to repeal their gun bans. Lawyers and lawmakers have been working feverishly to find holes in court decisions and the existing legislation. Ultimately, however, the *Heller* decision has not had an impact on *gun control*, so much as it has had an impact on *gun bans*. The Court made it clear that many of the longstanding regulations would be immune from challenges. Only the most restrictive policies have any real chance of being changed.
Additionally, even though many cities are fighting to keep their gun bans, the value of such bans is questionable. The cities that have seen (or are likely to see) challenges – namely Washington, D.C., Chicago, New York, Philadelphia, and Detroit – are not known for having low rates of crime and violence, even with the bans in place. The voluntary withdrawal of gun bans in places such as San Francisco and the Chicago suburbs suggests that these bans may not really be worth a long and arduous fight. Ultimately, the time and money could be better spent developing methods of gun control that actually work.

While a number of effective and valuable gun control policies do exist, many of the regulations are soft policies that play well in the media and appease political constituents. Although advocates for and against each of these policies will loyally and passionately defend their positions, much of the discussion is simply self-serving rhetoric. Given that advocates on both sides are against crime and violence, they should be able to reach a compromise that results in effective policy. Because of the emotional and political stakes involved, however, it is unlikely that such a practical compromise will ever surface. More likely, the public will have to be satisfied with half-hearted regulations that offend proponents on both sides of the debate.

So as to not end this work on a negative tone, it is worth noting that some forms of gun control are effective and generally well liked. Restrictions that bar convicted felons or the mentally-ill from owning guns rarely draw criticism. Legislation that prohibits individuals from possessing guns in school zones has also been well received. While it has been more controversial, the idea of placing restrictions on manufacturers has also been particularly effective, and manufacturers have even voluntarily implemented some safeguards. At the end of the day, new technology will ultimately be the solution that decreases danger for users and
bystanders while making it harder for criminals to commit crimes. Until then, advocates will simply have to argue and speculate about Chicago.
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