

FROM THE PRESIDENT

The Right to Bear Arms



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In this issue is an article titled “Two Linked Pillars of the North American Model: Equity in Access to Hunting and the Right to Bear Arms,” authored by two prominent B&C

Professional Members, Rep. Don Young (R-Alaska), and M. Carol Bambery, esq., general counsel for the Association of Fish and Wildlife Agencies (AFWA). The article is enlightening in how Americans’ right to bear arms guaranteed in the Second Amendment to the U.S. Constitution by definition and construction inherently supports our right to hunt. The original 13 states formed the union of the United States, established the Constitution in 1787, and in 1791 the Bill of Rights. The first 10 amendments we call the Bill of Rights were demanded as a condition of ratifying the U.S. Constitution by the original 13 states. We have taken for granted our right to bear arms is protected by the Second Amendment. The Bill of Rights is the very symbol and substance at the heart of America’s conception of individual liberty, a limited and controlled government, and the rule of law.

The complexities of constitutional law and how the U.S. Supreme Court has arcanelly interpreted the Constitution has always mystified me since I studied it over half a century ago in law school. For example, the Supreme Court in 1833 ruled that the Bill of Rights was a restraint only on the federal government and protected the individual liberties of U.S. citizens against the actions of the federal government only (and did not protect individuals against the actions

of the U.S. Constitution one at a time to determine their applicability, limits and scope.

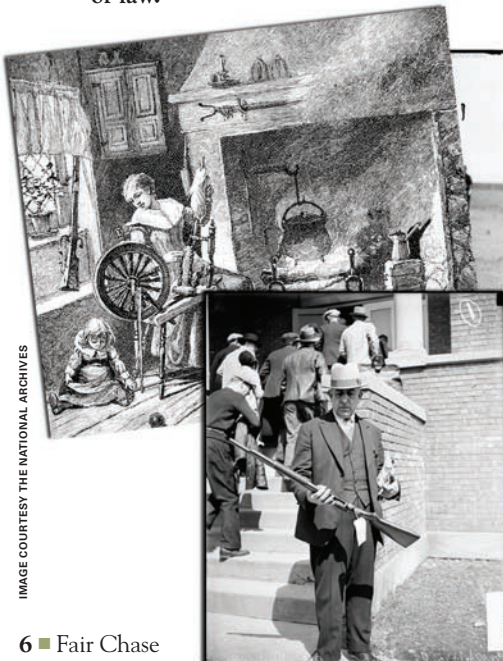
Finally, on March 2, 2010, the U.S. Supreme Court heard arguments on whether our Second Amendment right to bear arms applies to states and protects their citizens’ right to own a firearm as an individual liberty (McDonald v. City of Chicago). The court decided in 2009 the Second Amendment applied to a citizen in the District of Columbia, a federal enclave, but not to a state (District of Columbia v. Heller). This new case is a sleeper because if the Supreme Court decides the Second Amendment only applies to the federal government and not the states, that outcome would dictate that states have the right to prohibit the right to bear arms, i.e., ownership of firearms.

The case began a troubling thought process. What individual rights have we as hunters lost since our U.S. Constitution was enacted in 1787, followed by the original Bill of Rights in 1791? First, a brief review of the slow erosion of hunters’ gun rights from the beginning. The colonists, fearing English law when they created the Union, ensured their inalienable right to hunt and protect themselves from hostile forces through the right to bear arms. In fact, 13 state constitutions specify the right to hunt as an individual privilege

You can readily see that our right to the ownership and use of firearms for self-defense and hunting has been eroded so slowly over time, sportsmen have simply accepted them. Meanwhile, successive generations lose touch with what was our initial, historic right to use a firearm for hunting or self-defense without government interference and/or control.

of state governments). As the above-referenced Bambery-Young article explains, the Supreme Court has selectively said Amendments One, Four, Five and Six apply to both the federal and state governments, and the Court has for 200 years slowly been taking cases addressing the first 10 Amendments to

FROM LEFT TO RIGHT: To the early colonists self preservation was the first law of life. ■ In Chicago, 1929, a man holding rifle with evidence tag. ■ A marksman practicing in 1905. ■ A stop for “refreshments” during the prohibition era. ■ Soon each state may have the right to prohibit the right to own firearms. ■ The ATF works to regulate illegal use and trafficking of firearms.



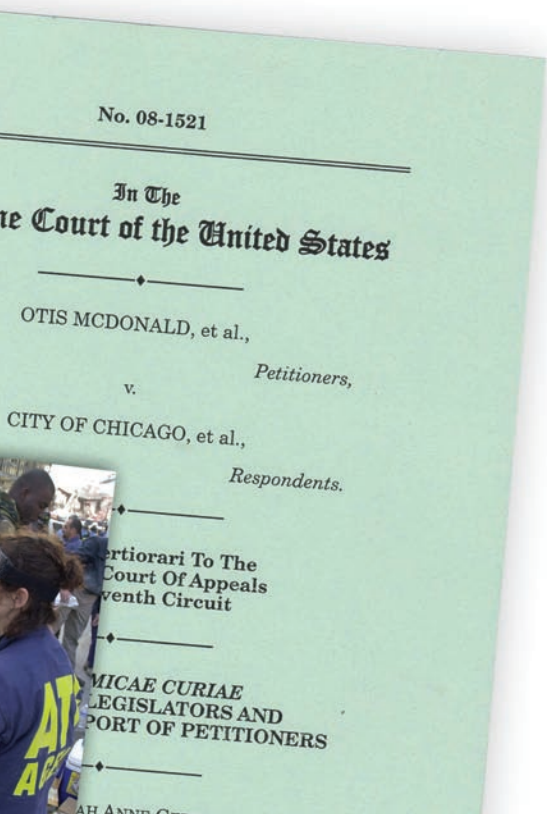
reserved for its citizens, and the constitutions of 44 states provide for a citizen's individual right to own firearms. The six states without constitutional protections for firearms ownership are California, Iowa, Maryland, Minnesota, New Jersey and New York. Eighteen of the 44 state constitutions that provide for firearms ownership further provide for regulations and restrictions established by the state's legislature, defining such things as the lawful use of a firearm, firearms licensing and registration requirements, mandatory waiting periods prior to delivery, and prohibitions on carrying a concealed weapon, etc. Most of the more restrictive firearms controls occurred after 1970. For example, Illinois prescribed that the "police powers" of that state shall be used to define lawful gun ownership and use. The terminology "police power" is subject to very broad and restrictive interpretations. The City of Chicago used it to restrict ownership of handguns, which is the issue in the *McDonald v. City of Chicago* case. Plaintiff's position is that the Second Amendment rights guaranteed by the U.S. Constitution have been violated.

To maintain civil order, certain restrictions are patently necessary and readily understandable. The factual record, however, speaks for itself, and is summarized below to illustrate the slow erosion of gun ownership rights at the federal level over the last century.

- **1934: National Firearms Act** – Brought about by the lawlessness and rise of gangster culture during prohibition, this act eliminated automatic-fire weapons like machine guns, short-barreled shotguns and rifles, silencers, etc. All gun sales and gun manufacturers were taxed \$200 on each firearm, and all buyers were required to fill out paperwork subject to Treasury Department approval.
- **1938: Federal Firearms Act** – Anyone involved in selling and shipping firearms through interstate or a foreign country was required to obtain a federal firearms license from the secretary of commerce. They were also required to record the names and addresses of everyone to whom they sold

guns, and were prohibited from selling to people who were convicted of certain crimes or lacked a permit.

- **1968: Gun Control Act** – Federal firearms license requirements were expanded to include more dealers, and more detailed record-keeping was expected of them; handgun sales over state lines were restricted; the list of people to whom dealers could not sell grew to include those convicted of felonies (with some exceptions), those found mentally incompetent, drug users and more. The act also defined persons who were banned from possessing firearms. The key element of this bill outlawed mail-order sales of rifles and shotguns. Until this law, mail-order consumers only



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had to sign a statement that they were over age 21 for a handgun (18 for a rifle or shotgun). It also detailed more persons who were banned from possessing certain guns, and further restricted shotgun and rifle sales.

- **1972: Bureau of Alcohol Tobacco and Firearms Created** – Enforcement of the 1968 Gun Control Act was given to the Department of the Treasury’s Alcohol and Tobacco Tax Division of the Internal Revenue Service. The organization replaced “tax” with “firearms,” nearly doubled in size, and became the Bureau of Alcohol, Tobacco and Firearms (ATF).
- **1986: Law Enforcement Officers Protection Act** – Made it illegal for anyone to manufacture or import armor-piercing handgun ammunition.
- **1986: Firearms Owners’ Protection Act** – Eased restrictions on gun sellers and the sale of some guns. Imposed additional penalties for persons using a firearm during certain crimes and persons with robbery or burglary convictions who illegally ship guns.
- **1990: Crime Control Act** – Directed the U.S. attorney general to develop a strategy for establishing “drug-free school zones,” including criminal penalties for possessing or discharging a firearm in a school zone. Outlawed the manufacture and assembly of illegal semiautomatic rifles or shotguns from legally imported parts.
- **1994: Brady Handgun Violence Prevention Act** – Imposed, on an interim basis, a five-day waiting period and background check before a licensed gun importer, manufacturer or dealer could sell or deliver a handgun to an unlicensed individual. Required a new National Instant Criminal Background Check System run by the FBI (which replaced the waiting period provision) by November 30, 1998. The new background check system applies to all firearms, and allows checks to be done over the phone or electronically with results returned immediately in most cases.
- **1994: Violent Crime Control and Law Enforcement Act** – Commonly referred to as the “assault weapons ban,” this bill banned the manufacture, possession, and

importation of new semiautomatic assault weapons and large-capacity ammunition feeding devices (or magazines) for civilian use. Criteria for semiautomatic assault weapons that fall under the ban are provided, as well as a list of 19 specific firearms. The act prohibits juveniles from possessing or selling handguns and directs the attorney general to evaluate proposed and existing state juvenile gun laws.

From this brief history, you can readily see that our right to the ownership and use of firearms for self-defense and hunting has been eroded so slowly over time, sportsmen have simply accepted them. Meanwhile, successive generations lose touch with what was our initial, historic right to use a firearm for hunting or self-defense without government interference and/or control.

Could the pending Supreme Court case that will interpret the Second Amend-

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ment authority over state actions be the final blow that would allow states to deny our right to own firearms? If so, this may cause states to lose control of wildlife management by default; if a state denies its citizens the right to bear arms, ergo hunt, that state’s loss of hunting license revenues could no longer fund its DNR budgets or programs to manage wildlife. More-

over, many firearms and ammunition manufacturers would be out of business, and countless jobs in America would be lost.

That is the logical sequence of events should the Supreme Court hold that states have the right to deny firearm ownership to its citizens; if a state elects to do so by amending its constitution or regulating firearms ownership so severely, ownership would become oppressive. As indicated earlier, 44 states have constitutional provisions protecting their citizens’ right to bear arms. Without the Second Amendment protections, each of these 44 states would be free to amend its individual state constitution prohibiting the right to firearms ownership. Moreover, the legislatures of the remaining six states without constitutional provisions would be free to prohibit firearms ownership as well. If you think this can’t happen, then how did this insidious case get all the way to the top of the federal judicial system and before the United States Supreme Court to begin with? *Semper Fidelis!* ■

