

## The Breakfast Club

### Constitutional Minute for 12 April 2022

#### Gun Control After Heller

Two weeks ago, we discussed the natural right of self-preservation as being the foundation for a right to keep and bear arms. Last week, we reviewed the compelling evidence from the founding period that firearms were seen to support the right of self defense and were not only related to militia duty. Finally, we discussed the 2008 *District of Columbia v. Heller* decision which affirmed, categorically, that Americans had a right to defend themselves with handguns, at least in their homes. *Heller* sent the Left into foaming-at-the-mouth fits. Today we look at the aftermath of *Heller*.

The *Heller* decision was announced on June 26, 2008, five years after the initial suit was filed. The very next month, CATO Institute conducted an online debate of the decision in their "[CATO Unbound](#)" forum. If you want to understand the decision and the passions it released, read the debate. It is largely between **David Kopel**, one of America's most prolific gun rights authors, **Robert Levy** from the CATO Institute and **Dennis Henigan** from the Brady Center to Prevent Gun Violence, with occasional offering from **Erwin Chemerinsky**. Given the rhetoric we see online today, what is remarkable about this online debate is its civility. Ideas are advanced and supported, everyone remains calm and controlled, no one uses ALL CAPS; there is no snowflake sophistry. None of the gentlemen change the opinion of the others, but it is still a remarkable exchange; I strongly suggest you read it if the 2<sup>nd</sup> Amendment is your passion, because *Heller* really was a watershed decision.

By way of review, in *Heller v. District of Columbia* the Supreme Court affirmed by a vote of 5 to 4 the decision of the Court of Appeals for the D.C. Circuit. The Court decided that firearms were instrumental to self-defense unrelated to militia duty, struck down provisions of the Firearms Control Regulations Act of 1975 as unconstitutional, decided that handguns are "arms" for the purposes of the Second Amendment, found that District of Columbia's Regulations Act effectively constituted an unconstitutional ban on handguns, and struck down the portion of the Regulations Act that had required any firearms including rifles and shotguns kept in the home be "unloaded and disassembled or bound by a trigger lock."

The decision was anything but sweeping. One of the decisions most important statements: "*The Court's opinion should not 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,*" left those opposed to guns a lot of "wobble room." And, at the time, *Heller* only applied to the D.C. law. Two years later, in *McDonald v. City of Chicago*, the court held that the 2<sup>nd</sup> Amendment, as now interpreted by *Heller*, should be incorporated via the 14<sup>th</sup> Amendment, and that all states and local governments were now bound to respect it. Before *McDonald*, federal appeals courts covering 47 out of 50 states had ruled that plaintiffs had no redress under the Second Amendment if they thought their right to keep and bear arms was violated by state law. Now, after *Heller* and *McDonald* every citizen (felons excluded) has redress under the Second Amendment if they feel their right to keep and bear

arms is violated by state law. So, what has happened to gun control attempts since then? Detractors of *Heller* predicted an avalanche of gun control litigation would follow. Has that happened?

While *Heller* and *McDonald* resulted in the striking of many state gun laws, given the Left's undying hatred of guns, laws outside the scope of *Heller* remained in place. And events like the Las Vegas mass shooting gave governments at all levels the "boogymen" they needed to attack related aspects such as "bump stocks," "ghost guns" (even though those were not used at Las Vegas), and other gun manufacturing and ammunition issues.

Here's a partial list of *federal* gun control efforts, post-*Heller*/*McDonald*:<sup>i</sup>

**February 2010.** A federal law effect allowing licensed gun owners to bring firearms into national parks and wildlife refuges as long as they are allowed by state law.

**Dec. 9, 2013.** The Undetectable Firearms Act of 1988, requiring that all guns must contain enough metal to be detectable by security screening machines, was extended through 2035.

**July 29, 2015.** In an effort to close the so-called "gun show loophole" allowing gun sales conducted without Brady Act background checks, U.S. Rep. Jackie Speier (D-Calif.) introduced the Fix Gun Checks Act of 2015 (H.R. 3411), to require background checks for all gun sales, including sales made over the internet and at gun shows. **Status: not passed.**

**September 2017.** A bill titled "Sportsmen Heritage and Recreational Enhancement Act," or SHARE Act (H.R. 2406) advanced to the floor of the U.S. House of Representatives. While the main purpose of the bill was to expand access to public land for, hunting, fishing, and recreational shooting, a provision added by Rep. Jeff Duncan (R-S.C.) called The Hearing Protection Act would reduce the current federal restrictions on purchasing firearm silencers, or suppressors. **Status: failed in the Senate.**

**Oct. 4, 2017.** Less than a week after the Las Vegas shooting, U.S. Sen. Dianne Feinstein (D-Calif.) introduced the "Automatic Gunfire Prevention Act" that would ban the sale and possession of bump stocks and other devices that allow a semiautomatic weapon to fire like a fully-automatic weapon. **Status: not passed**

**Oct. 5, 2017.** The next day, Sen. Feinstein introduced the Background Check Completion Act which would close a loophole in the Brady Handgun Violence Prevention Act. **Status: went nowhere.**

**July 31, 2018.** U.S. District Judge Robert Lasnik in Seattle issued a temporary restraining order blocking the release of blueprints that could be used to produce untraceable and undetectable 3D-printable plastic guns.

**January 20, 2020.** Rep. Hank Johnson (D-GA) introduced H.R. 5717, which would, among other items, ban the purchasing and possession of assault weapons. Sen. Elizabeth Warren, D-Mass., introduced in February the Senate version of the bill, S.3254. **Status: died in committee.**

Meanwhile in the states:

**April 23, 2021.** Montana Gov. Greg Gianforte signed a bill banning enforcement of any new federal gun control. The law prohibits police officers, state employees, and employees of any political subdivision of the state from enforcing, assisting in the enforcement of, or otherwise cooperating in the enforcement of any new “federal ban” on firearms, magazines, or ammunition. Ten other states have followed suit.<sup>ii</sup>

The bill anticipated two new ATF regulations that were set to go into effect summer 2020, dealing with “80 percent lowers,” and “pistol braces.”

**June 2021.** Missouri passed a law similar to, but more expansive than Montana’s. On February 16, 2022, the department of Justice filed a federal lawsuit blocking implementation of Missouri’s law.

**March 11, 2022.** The Kentucky House passed a bill similar to Montana’s

**April 4, 2022.** The Kentucky Assembly passes a bill, if not vetoed by the Governor, which would allow attorneys to carry firearms inside courtrooms.

This week Georgia becomes the 25th state to approve "constitutional carry," meaning half our nation's states have now fully affirmed the right "to keep and bear arms." Constitutional carry means that those who can legally possess a firearm can legally carry that firearm without first obtaining a permit. The other constitutional carry states are Alabama, Alaska, Arizona, Arkansas, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Mississippi, Missouri, Montana, New Hampshire, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia, and Wyoming.

It should be clear by now that the Heller and McDonald decisions did not deflect the Left from their goal of banning all guns from the face of the earth. These two decisions will make it much harder for them, but if they are able to achieve a liberal majority on the Court they will definitely try to reverse these two key decisions.

What can you do? Glad you asked. Stay informed of what is happening in 2<sup>nd</sup> Amendment litigation; there are several organizations which track this closely; join their mailing list. Communicate your concerns to your elected representatives, even if you know it falls on deaf ears; they need to know everyone does not think like them.

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<sup>i</sup> Source: <https://www.thoughtco.com/us-gun-control-timeline-3963620>

<sup>ii</sup> Idaho, Kansas, South Dakota, Utah, Wyoming, Arizona, Missouri, Kentucky, Tennessee and Alaska