



Chicago Law Banning Handguns in City Upheld by Court (Update3)

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By Andrew M. Harris

June 2 (Bloomberg) -- A Chicago ordinance banning handguns and automatic weapons within city limits was upheld by a U.S. Court of Appeals panel, which rejected a challenge by the **National Rifle Association**.

The unanimous three-judge panel ruled today that a U.S. Supreme Court decision last year, which recognized an individual right to bear arms under the U.S. Constitution's Second Amendment, didn't apply to states and municipalities.

"The Supreme Court has rebuffed requests to apply the second amendment to the states," U.S. Circuit Judge **Frank Easterbrook** wrote, upholding lower court decisions last year to throw out suits against Chicago and its suburb of Oak Park, Illinois.

The Fairfax, Virginia-based NRA sued the municipalities in June 2008, one day after the U.S. Supreme Court's decision in *District of Columbia v. Heller* struck down a hand-gun ban in the U.S. capital district encompassing Washington.

"We clearly disagree with the court's conclusion," NRA attorney William N. Howard, a partner in Chicago's Freeborn & Peters LLP, said in a telephone interview. "The next step will be an appeal to the Supreme Court."

"We recognize that this may not be the end of this litigation," **Jenny Hoyle**, a spokeswoman for the city of Chicago's law department said, acknowledging the likelihood the NRA would seek further review. "We're certainly prepared for that if this happens. We're prepared to aggressively defend our ordinance."

Second Amendment

Adopted in 1791 as part of the Bill of Rights, the Second Amendment reads in its entirety: "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."

In *Heller*, the high court struck down Washington's 32-year-old gun law, which barred most residents of the city from owning handguns and required that all legal firearms be kept unloaded and either disassembled or under trigger lock. Six residents had challenged the law, saying they wanted firearms available in their homes for self-defense.

"*Heller* dealt with a law enacted under the authority of the national government," Easterbrook wrote, "while Chicago and Oak Park are subordinate bodies of a state."

Chicago's law took effect in 1982, Hoyle said. While it allows ownership of long guns such as rifles, they must be registered annually with the city's police department. Concealed weapons, semi-automatic and automatic weapons are not permitted.

Some exemptions apply to members of the military and law enforcement agencies.

Following Precedent

Chicago U.S. District Judge **Milton Shadur** on Dec. 4 rejected the NRA's request that he apply the *Heller* ruling to the Chicago and Oak Park laws, stating he was bound to follow a 1982 appeals court ruling upholding a ban by the Illinois village of Morton Grove.

That decision came from the U.S. Court of Appeals in Chicago, the same body that issued today's opinion. The 15 judges of the Seventh Circuit hear appeals from the federal courts of Illinois, Indiana and Wisconsin.

Easterbrook, joined by Circuit Court Judges **Richard Posner** and **William Bauer**, said they, too, were bound to follow the precedent of a higher court, the U.S. Supreme Court, in its ruling on the Second Amendment not applying to states.

An appellate court departure from high court precedent "undermines the uniformity of national law," Easterbrook wrote.

The judges rendered their ruling one week after hearing arguments.

Applicable Law

A San Francisco-based federal appeals court, with jurisdiction over cases from California, Oregon, Washington and six other Western U.S. states, in April ruled the Second Amendment can be read as applicable to states and counties.

Still, the U.S. 9th Circuit Court of Appeals' decision in *Nordyke v. King* allowed to stand an Alameda County, California regulation that outlaws gun possession on county property.

Howard, the NRA's lawyer, cited the *Nordyke* ruling as one of the reasons for his client's challenge to the Chicago court outcome.

"This thing is headed for the Supreme Court," University of Chicago Constitutional Law Professor Richard Epstein said in a phone interview.

"This is a question where you cannot run a split administration and there's no way the circuits can resolve this amongst themselves," he said.

The 7th Circuit case is *National Rifle Association of America v. City of Chicago*, 08-4241, U.S. Court of Appeals for the Seventh Circuit (Chicago). The 9th Circuit case is *Nordyke v. King*, 07-15763, in the U.S. Court of Appeals for the Ninth Circuit (San Francisco).

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Last Updated: June 2, 2009 17:16 EDT



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