Written by **Bob Adelmann** on October 19, 2015

Supreme Court Could Review Chicago "Assault Rifle" Ban

In December 2013, Arie Friedman, M.D., a pediatrician and gun owner from Highland Park, Illinois joined with the Illinois State Rifle Association to sue in District Court, alleging that the city's ban on "assault rifles" and their attendant large-capacity magazines (LCMs) infringed his Second Amendment rights.

The court upheld the ban, and the doctor appealed. The Supreme Court put off consideration of that appeal last week, laying the groundwork for a possible reconsideration of the case this week. Either way, whether the Supreme Court decides to look at the case or not, there are huge ramifications involved. If the highest court doesn't take the appeal, the message will be delivered that local restrictions, such as those imposed in Highland Park, are acceptable, inviting other anti-gun cities and municipalities to pass similar restrictions.

If the justices take the appeal, the Supreme Court could expand its previous findngs in *Heller* and *McDonald*, ruling such restrictions unconstitutional. Or instead, it could reconsider those previous decisions and restrict Americans' right to keep and bear arms guaranteed under the Second Amendment.

The ruling against Dr. Friedman last fall used the language in the Supreme Court's ruling in *Heller* to affirm Highland Park's restrictions. Wrote U.S. District Court Judge John Darrah:

> The [Supreme] Court made it clear that there are limitations on this right … [that] the protection afforded by the Second Amendment … does not create "a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose."

The city council of Highland Park adopted the law based on the belief that "assault" weapons posed an "undue" threat to public safety, citing recent mass shootings in Newtown, Connecticut; Casas Adobes, Arizona; and Santa Monica College in California as examples of that threat. The council reminded the court that in Highland Park there are 15 schools, including Highland Park High School and numerous elementary schools, four community centers, and three nursing homes. The implication was that these are inviting targets for crazed killers using "assault rifles" to threaten and kill students and residents. Rather than address the issue of "gun free zones" that make those locations particularly inviting to psychopaths, the city council directed its attention, and its ire, toward the inanimate firearms themselves.

The offending ordinance provides that "no person shall manufacture, sell, offer or display for sale, give,

lend, transfer ownership of, acquire or possess any Assault Weapon or Large Capacity Magazine," going on to define said offending items:

> A semiautomatic rifle that has the capacity to accept a Large Capacity Magazine … [with] a pistol grip … attached [or] any feature capable of functioning as a … grip; a shroud attached to the barrel; [or] a Muzzle Brake or Muzzle Compensator….
>
> A semiautomatic pistol or any semiautomatic rifle that has a fixed magazine that has the capacity to accept more than ten rounds of Ammunition.

The ordinance requires that a citizen now finding himself in violation of the new law either remove the now-offending firearm from Highland Park, modify the offending firearm or its LCM so that it no longer offends, or surrender the offending firearm and its LCM to the chief of police, who will dispose of it forthwith.

Judge Darrah dutifully listened to the arguments presented by the doctor, who claimed infringement of his rights under the Second Amendment, and then dismissed them as being less important than the threat such weapons might have to "public safety" in Highland Park. The judge ruled that the "enhancements" to commonly owned rifles and shotguns, such as those just listed, actually made those weapons more dangerous and more "offensive" than "defensive." Wrote the judge:

> Highland Park persuasively argues that the Assault Weapon is not appropriate for home defense. The features of an Assault Weapon, as set out in the Ordinance, appear to be more valuable in an offensive capacity than a defensive one.

Therefore, he added:

> Although the Ordinance provides a marginal burden upon the Second Amendment core right to self-defense, it does not severely burden the right.

Besides, wrote the judge, there is an inherent "military heritage" involved in those offending weapons that must somehow be considered as well:

> The evidence [presented] demonstrates that Assault Weapons have a military heritage that makes them particularly effective for combat situations…. The particular features banned by the Ordinance … increase [their] lethality [including] protruding foregrips … folding or telescoping stocks … and [shrouds which] allow [the operator] to steady and control the rifle during rapid, repeat firing without getting burned by the hot barrel….
>
> The military weapons from which consumer Assault Weapons derive have a decidedly offensive function.

It is precisely this type of thinking that impels anti-gun city councils to propose such offensive ordinances in contravention of precious rights. If the Supreme Court declines to review Dr. Friedman's appeal, such thinking will get a boost by default. If the court decides to review, the same sort of thinking and conclusion might rule there as well, giving further encouragement to other city councils now taking a "wait and see" attitude before offering their own versions of the Highland Park ordinance.

It's helpful to remember that any decision that might be rendered is *the law of the case, and not the law of the land*.

Informed citizens on both sides of the issue are nevertheless holding their collective breaths, waiting to see whether the court will review the egregious case from Highland Park, Illinois.

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