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A Legal Analysis of the University of Maine's Ban on Firearms Following *District of Columbia v. Heller*

Abigail MacDonald¹

Introduction

On April 16, 2007, the deadliest shooting by a single gunman took place on the college campus of Virginia Tech, taking the lives of 33 individuals (Johnson 2007). This event shook America, and yet the next year it was followed by six more shooting deaths at Northern Illinois University (Northern Illinois University 2008) and three more at Louisiana Technical College (BBC News 2008). Many universities around the country have responded to these events by either establishing firearm bans or strengthening and clinging to their existing policies, and the University of Maine is no exception (University of Maine 2004). Yet in more recent years, the weapons bans have come under heavier scrutiny as the public has taken a more active role in pursuing gun rights and the Supreme Court decision in the case *District of Columbia v. Heller*, holding that a ban on handguns is unconstitutional (District of Columbia v. Heller 2008). By evaluating *Heller* and subsequent decisions, considering the environment of the college campus, and finally conducting a legal analysis on the University's weapons ban, this essay will show that the University of Maine's ban on firearms does indeed survive *Heller*.

D.C. v. Heller

Before legally analyzing the University's weapons ban, it is important to understand any cases that act as precedent, and here the lodestar is *Heller*, decided in 2008. The District of Columbia had passed the United States' strictest gun control law to date, which effectively banned the possession of handguns by private citizens by requiring them to be registered, unloaded, and disassembled. This law permitted the Chief of Police to issue a certificate

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allowing an individual to possess and carry a handgun for only one year. Dick Heller had previously been permitted to possess a handgun while working as a security officer, and he additionally applied for a certificate to possess a handgun for self-defense purposes but was denied. Heller decided to bring a suit against the District of Columbia, and although the district court dismissed the case, the Court of Appeals reversed it and eventually it reached the Supreme Court (Epstein and Walker 2013). The Court ruled in favor of Heller in a five-four decision, marking the first time that the body had ever decided that a law violated the Second Amendment (Wasserman 2012). Justice Scalia penned the majority opinion, beginning first with an analysis of the Amendment's text and then with its historical context (District of Columbia v. Heller 2008). The 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 (U.S. Constitution, 2nd Amendment). He explained how "militia" was defined in *U.S. v. Miller* as "all males physically capable of acting in concert for common defense" (United States v. Miller 1939). In other words, the militia is not an organized militia like the modern military bodies we think of created by Congress; rather, it is assumed to be already in existence, made up by the ordinary people. Scalia then emphasizes that the phrase "Right of the People" is used only two other times in the Bill of Rights or the Constitution as a whole, both times clearly meaning individual rights, not collective rights. Thus, the Second Amendment belongs to all Americans. When Scalia compares the textual evidence with the historical context of the Amendment's writing, he finds more reason to agree with Heller's arguments. During America's founding, tyrants such as the King of England used to eradicate militias not by proscribing the militias directly, but by banning arms. In forming a standing army, the tyrant could enforce his opinions and suppress political dissidents, which is precisely what America's founders were preventing with the composition of the Second Amendment. By analyzing both the Amendment's text, and its historical context, the Supreme Court finds reason to re-establish the necessity of allowing handgun possession to everyone (not just those in an organized militia) for self-defense. It thus decides to affirm the Court of Appeals' ruling and so overturn the effective ban on handguns in the District of Columbia (District of Columbia 2008).

There are two important features of the majority opinion in *D.C. v. Heller* that deserve special attention during consideration of overturning the University of Maine's firearm ban. The first is the emphasis on maintaining the legality of handguns for the purpose of self-defense in the home. While he presents no test for future Second Amendment cases, Scalia does emphasize that a handgun ban would fail all tests, calling it, "the quintessential self-defense weapon" (District of Columbia 2008). The second point to consider is the "sensitive places" limitation, which is as follows:

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 place such as schools and

government buildings, or laws imposing conditions and qualifications on the commercial sale of arms (District of Columbia 2008).

It should be noted that this includes “government buildings,” such as those on the University of Maine campus. These structures may also be under the category of “school,” but there is some evidence that this label applies only to lower institutions; 18 U.S.C. § 921 (25) defines “school zone” as applying exclusively to elementary and secondary schools (18 U.S.C. § 921 (25) 1968). For the purposes of this essay, it can be assumed that the residence halls, academic buildings, and other buildings on the University of Maine campus are “government buildings” and so can be considered “sensitive places” as decided by *D.C. v. Heller*.

McDonald v. Chicago

While *D.C. v. Heller* was groundbreaking, it is important to note that the District of Columbia is not a state and so is directly controlled by the federal government. This is significant because in 2008 (when *D.C. v. Heller* was decided), the Second Amendment had not yet been incorporated into the Due Process Clause of the Fourteenth Amendment (Epstein and Walker 2013). Thus, when the case *McDonald v. Chicago* originated in 2010, the Second Amendment did not restrict the legislative power of state or local governments, only that of the federal government. This case involved the cities of Chicago and Oak Park, Illinois, essentially banning the possession of handguns by most private citizens. Chicago residents filed suit against Chicago, saying that the law violated their Second and Fourteenth Amendment rights, and Chicago replied that the Second Amendment did not apply to the states (Rose 2010). The case reached the Supreme Court, and in a five-four opinion, the majority decided to make the case about incorporation of the Second Amendment rather than about specifically resolving the gun possession issue. In writing the majority opinion, Justice Alito considers a variety of tests that the Court has used in the past to incorporate Bill of Rights protections, and he eventually settles on “whether the right to keep and bear arms is fundamental to our scheme of ordered liberty... deeply rooted in this Nation’s history and tradition.” Justice Alito draws attention to the fact that multiple states include the right to possess and carry arms in their state constitutions and uses this as evidence that “self-defense” must be a fundamental right. Thus, the Second Amendment is incorporated into the Due Process Clause of the Fourteenth Amendment by this decision, making the Amendment applicable to the states. Justice Alito relieves assurances that crime may escalate due to increased possession of handguns, repeating what Scalia said in the majority opinion in *D.C. v. Heller* regarding continuing regulatory measures on possession of weapons by the mentally ill, carrying weapons into schools and government buildings, imposing laws qualifying weapons sales, and so on. He states: “We repeat those assurances here. Despite municipalities respondents’ doomsday proclamations, incorporation does not imperil every law regulating firearms” (*McDonald v. City of Chicago* 2010).

Sensitive Places v. The Home

With a clear background of *D.C. v. Heller* and *McDonald v. Chicago*, one may consider the situation involved in the debate over the firearms ban. The main issue at hand whether students residing in residence halls on campus should have to register their weapons and keep them with the University of Maine Police Department or be allowed to possess them in their rooms. Both the students and the University may use *D.C. v. Heller* as evidence in their arguments here. The University would make the obvious “sensitive places” argument, stating that since the University of Maine is a state school, all of its buildings are owned by the state and so are “government buildings”. The students may then cite the section of the majority opinion in *D.C. v. Heller* that emphasizes the need for weapons in protecting the home. This of course raises the question of what constitutes a “home,” since for most students, their residence hall is not a permanent residence. The University would most likely make this argument in opposition, and they would probably also argue that a residence hall has certain undeniable differences from a “home,” for example shared bathrooms, lounges, cooking areas, etc. The students could counter-argue that they sign a contract with the University very much like they would sign a lease for an apartment, and that they conduct most of their living activities inside of their residence halls (Smith 2014). The case *Piazzola v. Watkins* held that a student occupying a residence hall enjoys Fourth Amendment rights (*Piazzola v. Watkins* 1971), and this could be assumed as evidence that the Second Amendment can also apply. Therefore, the students would most likely win the argument that a residence is a home. But here a court would reach a conundrum in which a residence hall is both a “sensitive pace” and a “home” as decided by *D.C. v. Heller*.

Strict Scrutiny

Now it is time to establish a legal framework for deciding whether or not the University of Maine's firearms ban survives *D.C. v. Heller*. Before creating such a framework, a standard of judicial review must be chosen for testing the constitutionality of the ban. Since a firearms ban is restricting an individual's right to bear arms in a residence hall – which has been determined to be a “home” – it is restricting an individual's ability of self-defense, which Justice Alito considered the “central component” of the Second Amendment right (Rose 2010). Any law or policy that limits a person's fundamental right as established by the Constitution meets the requirements for strict scrutiny, and so we will examine this case from that most stringent standard of review. There are three tests that the policy must satisfy to pass strict scrutiny: it must be justified by a compelling government interest, it must be narrowly tailored, and it must be the least restrictive alternative (Epstein and Walker 2013). These three tests will be the framework for determining if the University of Maine weapons policy survives *D.C. v. Heller*.

Compelling Government Interest

The first assessment we must make of the University's weapons policy is whether it serves a compelling government interest. It is not difficult for the University to meet this requirement, for its interest here is safety and thus the prevention of violence. Concern for the physical wellbeing of citizens is a primary function of government, and so this interest is likely to be acknowledged as of utmost importance.

Narrowly Tailored

The Second test to consider is whether or not the policy is narrowly tailored, and while this proves to be the most difficult test of the three, it is not impossible to surpass. The University of Maine's Weapons Policy specifically states that weapons and ammunition may not be "worn, displayed, used, or possessed on campus," that they must be stored with the University Police Department, and that permission must be granted for their use for "instructional purposes" or in other "special circumstances" (University of Maine 2004). This is meant only to address the prevention of weapon possession (the compelling interest) and accomplishes nothing else. However, students might argue that the policy is overbroad in that it applies to both convicted criminals and eligible fire owners. This is a valid point, and the most effective counterargument from the University would be that college is a unique environment and that students are exposed to stresses and situations that are unlike any other, in particular higher suicide and stance abuse rates, and that these circumstances warrant extra protections. Beginning with the suicide issue, the University could cite specific data, such as the following from the Center for Disease Control: suicide accounts for 20 percent of deaths of 15-to-24 year olds annually, and the frequency of suicidal thoughts, plans, and attempts are "significantly" more common among those between ages 18 and 29 than those aged 30 and above (Center for Disease Control 2012). Furthermore, a statistical correlation has been found between gun ownership in the home and suicide (Kellermann *et al* 1992). While this may prove correlation and not causation, guns have been proven a more lethal method of suicide – one study found that case fatality rates for suicide via firearm were over 90 percent compared to below 5 percent for the three most-common approaches (drugs, cutting, and piercing) (Miller *et al* 2003). So even if one argues that gun ownership does not cause suicide, it can at least be said that suicide is much more effective with a gun than without. Students might then suggest that the policy could be limited only to those with a history of mental illness, but then the University is relying on students' honesty about past struggles with mental illness. This is very private information – information that the average student might be reluctant to share – and so the data gathered could not be considered reliable. Also, not every persona who might develop a mental illness over the four (or more) years of schooling at the University is aware that they might develop such illness, making it impossible for them to report it. Suicide is indeed suffered at a particularly high rate in college, and this is one of the reasons that the University's weapons ban is narrowly tailored;

since the school cannot accurately identify, which students may be or may become suicidal, it is more effective to prevent access to the most lethal weapons for all students. The second element that makes the circumstances of college-age students unique is increased drug and alcohol use. In a study conducted by Harvard University found that two-thirds of college-age students who own guns also engage in binge drinking. The same study discovered that such students are more likely to engage in reckless behavior while intoxicated (such as driving under the influence and getting into fights) (Miller *et al* 2002). If students in a college setting are more likely to be under the influence, their possession of firearms could potentially make them more dangerous to other students. The original argument made by students was that the policy was overbroad in that it did not only apply to convicted criminals. The high substance use at a university leads to a larger number of convictions during the college years, and so the University could claim that the policy is protecting all students from both the convicted and the potential criminals. Thus, due to a college's unique qualities of having a high suicide rate and substances use issue, the weapons ban does pass the test of being narrowly tailored.

Least Restrictive Means

The final assessment decides whether or not the policy is the least restrictive means, and in this instance, the University passes this test fairly well. Students are still able to access their weapons to take off campus by going to the University Police Department, and they are occasionally allowed to use them on campus “for instructional purposes” or “in other special circumstances and under conditions as approved by the Chief” (University of Maine 2004). It could be argued that it would be less restrictive to allow each person without a criminal history or history of mental illness to possess a weapon at any time of their choosing, but as has been said previously, the unique college environment makes this much too risky, not to mention requiring a history of mental illness depends far too much on a person's truthful account of his or her own mental health. Also, one must bear in mind that most students live in rooms with one or more other person; if one person were granted permission to possess and carry a firearm, this weapon might become easily accessible to other students. In sum, the University's current policy does allow reasonable access to weapons when needed for off-campus use, and this is the least restrictive means of banning weapons, specifically firearms from student possession.

Other Buildings

Until this point only residence halls have been addressed with regards to the firearms ban, but the University's weapons policy applies to the entire campus. The rest of the buildings on campus, such as academic buildings, dining halls, and the Union, are all much easier for the University to defend when applying the policy. These are all strictly “government buildings,” and so they fall directly into the “sensitive places” category as described in *D.C. v.*

Heller (District of Columbia v. Heller 2008). There is no overlap between this and the “home” category of the residence halls, so the University would not have to argue why it is taking away the fundamental right to self-defense in the home guaranteed by the Second Amendment.

Conclusion

The use of firearms or any weapon will continue to be a controversial topic for decades to come. It will be interesting to see whether the Supreme Court will decide to determine the constitutionality of university firearms bans in the light of *D.C. v. Heller*, especially after *McDonald v. Chicago* determined that the Second Amendment is indeed incorporated into the Due Process Clause of the Fourteenth Amendment. If the Supreme Court does choose to take on the challenge, it will most likely follow the reasoning outlined in this essay. While strict scrutiny must apply to any policy restricting a right as fundamental as the right to bear arms (District of Columbia v. Heller 2008), if the side representing a university puts forth a logical argument showing a compelling government interest of safety, a narrowly tailored policy proving the necessity of covering all students in the weapons ban, and provides the least restrictive alternative in such a policy, then there should be no reason why this side should not prevail in the case. The safety of college students has long been recognized as a compelling interest, and it should remain so to prevent future tragedies in the same vein as Virginia Tech, Northern Illinois University, and Louisiana Technical College.

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