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Comments: Rights, Regulations, and Revolvers: Baltimore City's Complex Constitutional Challenge Following District of Columbia v. Heller

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RIGHTS, REGULATIONS, AND REVOLVERS: BALTIMORE CITY'S COMPLEX CONSTITUTIONAL CHALLENGE FOLLOWING *DISTRICT OF COLUMBIA V. HELLER.*

I. INTRODUCTION

Uncertainty lurks around the corner. As another innocent youth is lost due to a senseless act of gun violence, a West Baltimore neighborhood mourns and vows that the latest victim will not die in vain as another nondescript member of a growing tally.[1] The death of Ronald Jackson, 14, who was shot and killed while attempting to deliver two grapefruits to an elderly neighbor, serves as a chilling reminder of the omnipresent threat of gun violence that afflicts American cities.[2] Relatives believe an unfortunate case of mistaken identity claimed the eighth grader's life—a heartrending situation of a good deed met by violence.[3] The cold sidewalk bears a splotch of dried blood which represents the only outward remnant of the seemingly familiar tragedy that claimed a young, promising life.[4] Jackson was one of twenty-nine victims slain before their eighteenth birthday and the fifth 14-year-old murdered in Baltimore in 2008.[5]

The victims' names are often forgotten as another violent sequence blurs each distinct episode that abruptly ends another life.[6] The cumulative trauma, however, scars the outlook of those who bear witness to the violence in their communities.[7] Fear has replaced shock as the commonplace sentiment that reverberates after each tragedy.[8] Although virtually desensitized by the violence, citizens

1. Peter Hermann, *Another Innocent Victim of the Slaughter, Another Memory Desecrated*, BALT. SUN, Dec. 10, 2008, at 6.
2. *Id.*
3. Gus G. Sentementes, *A Good Deed Goes Bad*, BALT. SUN, Dec. 9, 2008, at 1.
4. *Id.*
5. *Id.*
6. *See, e.g.*, Hermann, *supra* note 1 (noting that Ronald Jackson's death represents the second shooting death of a youth at Tiffany Square, named after a six-year-old girl who was struck in the head by a stray bullet fired during a shootout between rival drug dealers in 1991).
7. *See id.*
8. Luke Broadwater & Kathleen Cullinan, *Murder in the City: A Deadly January Outrages Community, Frustrates Police*, BALT. EXAMINER, Feb. 2, 2007, at 10.

resolve to regain control of an evolving battleground and fight to protect their most precious right—the right to life.[9]

As uncertainty of the next deadly eruption of violence swells throughout American cities, a recent Supreme Court of the United States decision will likely generate a wave of Second Amendment litigation, challenging the bedrock of cities' gun regulations.[10] In the seminal case, *District of Columbia v. Heller*,[11] the majority of the Court struck down Washington, D.C.'s total ban on handgun possession in an individual's residence, which embodied one of the strictest gun-control laws in the nation.[12] The Court also ruled that the Second Amendment protects an individual's right to possess a firearm detached from service in a militia and grants citizens the right to utilize a firearm for self-defense purposes.[13] The majority contended that the decision preserves the right of lawful defense of self, family, and property in the place where citizens need it the most—the home.[14]

The dissent retorted that the *Heller* decision threatens to increase the difficulties that local law enforcement already face in combating handgun violence on the streets.[15] Although the federal regulatory structure will likely remain largely intact, opponents argue that state and local governments alike now face a quandary of defending current gun regulations[16] while crafting future laws to conform to *Heller*.[17] The cessation of innovative and progressive polices designed to fight unlawful gun possession, due to forced conformity to this recent decision, will almost certainly present significant issues for state and local law enforcement, resulting in escalated crime.[18]

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9. *See* Hermann, *supra* note 1.
10. Linda Greenhouse, *D.C. Ban Rejected: Landmark Decisions on Proper Meaning of 2nd Amendment*, N.Y. TIMES, June 27, 2008, at A1.
11. 128 S. Ct. 2783 (2008).
12. *See* Adam Liptak, *Carefully Plotted Course Propels Gun Case to Top*, N.Y. TIMES, Dec. 3, 2007, http://www.nytimes.com/2007/12/03/us/03bar.html?scp=1&sq=carefully%20plotted%20course%20propels%20%20gun%20case%20to%20top&st=cse.
13. *Heller*, 128 S. Ct. at 2786.
14. *See* Greenhouse, *supra* note 10, at A1.
15. *See Heller*, 128 S. Ct. at 2868 (Breyer, J., dissenting).
16. *See infra* Part V.
17. 128 S. Ct. at 2821–22.
18. *See* Joan Biskupic & Kevin Johnson, *Landmark Ruling Fires Challenges to Gun Laws*, USA TODAY, June 27, 2008, http://www.usatoday.com/news/Washington/2008-06-26-scotus-guns_N.htm. Washington, D.C. Mayor Adrian Fenty responded that the *Heller* decision will have consequences for "'the entire country'" and that "'more handguns in the District of Columbia will only lead to more handgun violence.'" *Id.*

Part II of this Comment will discuss the historical development of gun regulation in the United States, commencing with the colonial era. This section will expand upon the origins of the right to bear arms principle and describe the Second Amendment's evolution from an interest protected in state constitutions to a right enumerated in the Bill of Rights. In Part III, this Comment will address the paucity of Supreme Court case law on this subject and the Court's underdeveloped interpretation of the Second Amendment throughout American history. Part IV will focus on the landmark *Heller* decision. This section will discuss Justice Scalia's parsing of each significant phrase of the Second Amendment and his general interpretation of how each expression impacts an individual's right to bear arms. In particular, this section will delineate the self-defense ideal that the majority established. Also, this section will address the dissent's three-part rebuttal to the majority's opinion.

Part V will explore the likelihood of a substantial wave of contentious litigation concerning current codified gun regulation that may threaten American cities. This section also addresses the grim impact of gun violence in American cities and whether an increase in gun possession as a consequence of *Heller* will engender further crime. Finally, Part VI will glean how Baltimore City, a city riddled with gun violence and a close neighbor of Washington, D.C., can continue its commitment to reducing the volume of guns on the streets while avoiding constitutional conflicts. This section also offers several strategies that Baltimore City, along with other American cities, can use to defeat challenges to current gun laws.

II. THE SECOND AMENDMENT'S DEVELOPMENT DURING THE PRE-CONSTITUTION ERA

The origins of the Second Amendment pre-date the Bill of Rights and can be traced to at least the 1689 English Bill of Rights.[19] This historical document provided English citizens the right to bear private weapons for lawful purposes.[20] At common law during the colonial

19. *See* Thomas B. McAffee & Michael J. Quinlan, *Bringing Forward the Right to Keep and Bear Arms: Do Text, History, or Precedent Stand in the Way?*, 75 N.C. L. REV. 781, 806 (1997) [hereinafter *Bringing Forward the Right*].

20. 1 BLACKSTONE COMMENTARIES 143 (St. George Tucker ed., 1803). Blackstone explained that the purview of bearing arms under English common law included citizens' "defence [sic] suitable to their condition and degree, and such as are allowed by law. . . . [I]t is indeed, a public allowance under due restrictions, of the natural right of resistance and self-preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression." *Id.*

period, the colonists accepted the right to bear arms as a basic freedom.[21] John Adams invoked this basic right when acting as lead defense attorney for the British soldiers on trial for the Boston Massacre.[22] Adams argued that "every private person is authorized to arm himself, and on the strength of this authority, I do not deny the inhabitants had a right to arm themselves at that time, for their defence [sic], not for offence [sic]."[23]

The print media of the Revolutionary Era also captured the ubiquitous sentiment that the colonists held in common the right to keep arms in newspaper articles.[24] Boston's *Journal of the Times* espoused this principal in a 1769 article in which the author referred to the right to bear arms as "a natural right which the people have reserved to themselves."[25] Although the founding generation championed this natural right, the colonists had not memorialized this protection or its capacity in a national binding document.[26] The thirteen colonies operated a national government under the Articles of Confederation, ratified in 1781, which omitted any mention of a right to bear arms.[27] States' bills of rights drafted during this period served as the only guarantee of colonists' basic rights.[28] As the colonists defeated the British in organized militias during the Revolutionary War, the right to bear arms and its scope as an individual or collective right remained unclear.[29]

After the founding generation won the Revolution, each colony met at the constitutional convention in 1787 in Philadelphia to form a permanent government.[30] Unrest reverberated throughout the colonies as statesmen proposed a federal constitution without a bill of rights.[31] During the New Hampshire Convention, it became the first colony in which a majority voted to recommend a bill of rights when

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21. *See id.*
22. John Adams, *Adams' Argument for the Defense*, *in* 3 LEGAL PAPERS OF JOHN ADAMS 242, 248 (L. Kinvin Wroth & Hiller B. Zobel eds., 1965).
23. *Id.* at 248.
24. *See* STEPHEN P. HALBROOK, A RIGHT TO BEAR ARMS: STATE AND FEDERAL BILLS OF RIGHTS AND CONSTITUTIONAL GUARANTEES 7 (2d ed. 1989).
25. *Id.*
26. *See id.*
27. David T. Hardy, *Armed Citizens, Citizen Armies: Toward a Jurisprudence of the Second Amendment*, 9 HARV. J.L. & PUB. POL'Y 559, 594 (1986).
28. *Id.*
29. *See* John Adams, *supra* note 22, at 247–48.
30. *See* Stephen P. Halbrook, *Rationing Firearms Purchases and the Right to Keep Arms: Reflections on the Bills of Rights of Virginia, West Virginia, and the United States*, 96 W. VA. L. REV. 1, 13 (1993).
31. *Id.*

it ratified the Constitution in 1788.[32] The recommended amendments addressed the right to bear arms: "Congress shall never disarm any citizen, unless such as are [sic] or have been in actual rebellion."[33] The Virginia delegation joined as ardent supporters to draft a protection of this right and warned of the tyranny that could otherwise afflict the country.[34] George Mason typified this rallying cry as he declared that "disarm[ing] the people . . . was the best and most effectual way to enslave them."[35]

Motivated by the principle to "embody a present consensus of opinion about the obvious rights of human beings," James Madison sought to draft a collection of civil liberties that would protect the colonists from tyranny.[36] Madison purchased a pamphlet enumerating approximately two hundred state conventions' demands, which he used to develop the Bill of Rights' framework that would elicit the statehouses' approval.[37] The statesman especially championed the ideal that the creation and preservation of a militia represented the primary means of protection from foreign invasion.[38] To achieve the most effective phrasing of this right, Madison consulted contemporary state constitutions and carefully studied their language.[39] In particular, Madison closely modeled the prefatory clause of the Second Amendment after the 1776 Virginia Declaration of Rights.[40] The Second Amendment's thirteen-word preamble,

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32. *See* In Convention of the Delegates of the People of the State of New Hampshire (June 21, 1788), *in* 1 THE DEBATES IN THE SEVERAL STATE CONVENTIONS: ON THE ADOPTION OF THE FEDERAL CONSTITUTION 326 (J.B. Lippincott ed., 1937) [hereinafter THE DEBATES IN THE SEVERAL STATE CONVENTIONS].

33. *Id.*

34. *See* The Debate Over the Constitution in Virginia 3 September 1787 – 31 March 1788, *in* 8 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION xxxix, 3, 10 (John P. Kaminski & Gaspare J. Saladino eds., 1988).

35. The Debates in the Convention of the Commonwealth of Virginia, *in* THE DEBATES IN THE SEVERAL STATE CONVENTIONS, *supra* note 32, at 380. Samuel Johnson similarly defended the proposed federal constitution because he staunchly believed that "the people are not to be disarmed of their weapons." *Id.* at 646.

36. Hardy, *supra* note 27, at 605.

37. Scott Bursor, *Toward a Functional Framework for Interpreting the Second Amendment*, 74 TEX. L. REV. 1125, 1130 (1996) (citing 12 THE PAPERS OF JAMES MADISON 58 (Charles F. Hobson & Robert A. Rutland eds., 1979)).

38. *See id.* at 1132; *see also* Stephen P. Halbrook, *To Keep and Bear Their Private Arms: The Adoption of the Second Amendment, 1787–1791*, 10 N. KY. L. REV. 13, 16 (1982).

39. *See* N.H. CONST. pt. 1, art. II-a; N.C. CONST. art. I, § 30; R.I. CONST. art. I, § 22; VA. CONST. art. I, § 13.

40. *See* VA. CONST. art. I, § 13. The particular language reads:

which reads, "[a] well regulated Militia, being necessary to the security of a free State," has sparked a constitutional conundrum related to whether this clause preserves a military means to defend the free state from foreign invasion or forges a natural right of man to own firearms for self-defense to preserve civil order.[41]

The Second Amendment's prefatory clause has created a plethora of debate, and some argue that its unique diction should engender a different interpretation than other constitutional provisions.[42] Scholars have noted that "[w]hat is special about the Amendment is the inclusion of an opening clause . . . [n]o similar clause is a part of any other Amendment."[43] Scholars have posited numerous theories about the Framers' intention, including the interpretation that the justification clause places a condition on the operative clause.[44] This group contends that the right to bear arms is activated only when this action contributes to a well-regulated militia and belongs solely to state governments to maintain a military force.[45] Others argue that Madison drafted this clause to offer justification for his command, and not to limit its scope to participation in militia activities.[46] This group recognizes the right of all citizens to keep and bear arms for all lawful purposes.[47] Before *Heller*, this divisive topic had remained largely unresolved for the better part of two centuries, both sides staunchly defending their interpretation of the Second Amendment.[48]

> That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state, therefore, the right of the people to keep and bear arms shall not be infringed; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

Id.

41. U.S. CONST. amend. II.
42. *See* Eugene Volokh, *The Commonplace Second Amendment*, 73 N.Y.U. L. REV. 793, 793–94 (1998).
43. Sanford Levinson, *The Embarrassing Second Amendment*, 99 YALE L.J. 637, 644 (1989).
44. *See* Volokh, *supra* note 42, at 801. The operative clause reads, "the right of the people to keep and bear Arms, shall not be infringed." *Id.* at 794.
45. *See* David E. Vandercoy, *The History of the Second Amendment*, 28 VAL. U. L. REV. 1007, 1008 (1994).
46. *See* Volokh, *supra* note 42, at 802–04.
47. *See* Vandercoy, *supra* note 45, at 1038.
48. *Id.* at 1024–25.

III. THE HISTORICAL EVOLUTION OF SECOND AMENDMENT INTERPRETATION

Until the *Heller* decision, the Second Amendment had been a dormant topic on the Supreme Court's docket for nearly seventy years and traditionally represented an underdeveloped area of the law.[49] The Court's initial opinions on the Second Amendment date to the nineteenth century when the Court exercised the non-incorporation doctrine to find that the Bill of Rights did not apply to the states, but only to the federal government.[50]

A. The Supreme Court Declines to Incorporate the Second Amendment in United States v. Cruikshank[51]

The Supreme Court adopted the non-incorporation ideal in *Cruikshank* where it held that the Second Amendment only guarantees a citizen's right to bear arms against Congressional interference.[52] In *Cruikshank*, three defendants had been convicted under the Enforcement Act of 1870 for conspiring to "hinder and prevent" two African-Americans from exercising their First Amendment right of peaceful assembly and their Second Amendment right to keep and bear arms.[53] Congress had enacted the Enforcement Act to protect the constitutional rights of southern blacks following the ratification of the Fourteenth Amendment as part of the Civil War Reconstruction.[54] In overturning the convictions, the Court declared that the Second Amendment was not intended to limit the powers of the state governments with respect to their own citizens.[55] An

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49. Anthony J. Dennis, *Clearing the Smoke From the Right to Bear Arms and the Second Amendment*, 29 AKRON L. REV. 57, 87 (1995). The Supreme Court indirectly addressed the federal judiciary's interpretation of a citizen's basic rights guaranteed by the Bill of Rights in *Dred Scott v. Sandford*, 60 U.S. 393, 416–17 (1856). The Supreme Court ruled that it would "give to persons of the negro race, who were recognized as citizens in any one State of the Union, the right . . . to keep and carry arms wherever they went." *Id.* at 417. This statement provides evidence that Chief Justice Taney supported the view that the Second Amendment protected an individual right to bear arms and not a collective right associated with service in a state militia. *See id.*

50. MICHAEL KENT CURTIS, NO STATE SHALL ABRIDGE: THE FOURTEENTH AMENDMENT AND THE BILL OF RIGHTS 173 (1986) (citing Barron v. Baltimore, 32 U.S. 243 (1833)).

51. 92 U.S. 542 (1875).

52. *Id.* at 542 (holding that the Second Amendment "has no other effect than to restrict the powers of the national government.").

53. *Id.* at 543.

54. *See id.* at 546–47.

55. *Id.* at 547.

important historical facet of this case is that its record is devoid of any indication that the two defendants had any affiliation with a militia.[56] Moreover, there is not a single militia reference in the Court's opinion.[57] "If the purpose of the Second Amendment was to confer a 'collective right' on states to maintain militias, the Court could have simply rejected any claim to an individual right in the Second Amendment on those grounds."[58] Instead the Court ruled that the Second Amendment "has no other effect than to restrict the powers of the national government," and left unresolved the question of the Amendment's scope.[59]

The Supreme Court affirmed this decision in *Presser v. Illinois*,[60] upholding the conviction of the defendant who unlawfully led over four-hundred armed members of a paramilitary organization down the streets of Chicago "without having a license from the governor, [with arms not part of] . . . 'the regular organized volunteer militia' of the state of Illinois, or the troops of the United States."[61] In striking down the defendant's contention that the Illinois law violated his right to bear arms, the Court declared that the Second Amendment does not prohibit this legislation because it places "a limitation only upon the power of [C]ongress and the national government, and not upon that of the state."[62] Although significant portions of *Cruikshank* and *Presser* have been overturned by later decisions, these decisions remain valid authority on whether the Second Amendment applies to the states through Fourteenth Amendment incorporation.[63] These decisions also represent the only significant Supreme Court interpretations of the Second Amendment until the murky *United States v. Miller*[64] decision.[65]

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56. Michael J. Quinlan, *Is There a Neutral Justification for Refusing to Implement the Second Amendment or Is the Supreme Court Just "Gun Shy"?*, 22 CAP. U. L. REV. 641, 666 (1993).
57. *Id.*
58. *Id.*
59. *Id.* at 665 (quoting *Cruikshank*, 92 U.S. at 553).
60. 116 U.S. 252 (1886)
61. *Id.* at 254, 265 ("The [S]econd [A]mendment declares that [the right to bear arms] shall not be infringed, but this . . . means no more than that it shall not be infringed by [C]ongress. This is one of the amendments that has no other effect than to restrict the powers of the national government . . . .").
62. *Id.* at 265. The Court again refused to address the Second Amendment's scope and instead solely referred to the non-incorporation principle to decide the right to bear arms issue. *See id.*
63. William Van Alstyne, *The Second Amendment and the Personal Right to Arms*, 43 DUKE L.J. 1236, 1239 n.10 (1994).
64. 307 U.S. 174 (1939).
65. *See* Van Alstyne, *supra* note 63, at 1239 n.10.

B. United States v. Miller*: The Supreme Court Rejects an Opportunity to Examine the Precise Purview of the Substantive Right Protected by the Second Amendment*

In *Miller*, the Court rejected a Second Amendment challenge to a federal statute, which banned sawed-off shotguns and submachine guns.[66] Two defendants were arrested for transporting an unlicensed short-barreled shotgun across state lines in violation of the National Firearms Act of 1934, which regulated the transfer of firearms and imposed a tax upon such activity.[67] At trial, the defendants argued that the National Firearms Act violated the Second Amendment because it restricted the individual possession of arms and contended that "[t]he National Firearms Act is not a revenue measure but an attempt to usurp police power reserved to the States, and is therefore unconstitutional."[68] The trial court agreed, ruling that the National Firearms Act violated the Second Amendment's prohibition of federal infringement of the right to bear arms.[69] However, the case was appealed to the Supreme Court where neither the defendants nor their legal counsel appeared before the Court.[70] In interpreting and applying the Second Amendment, the Court analyzed the statute's purpose and weighed the means that would render possible the greatest effectiveness of the militia.[71] On May 15, 1939, the Court declared that no constitutional conflict existed between the Second Amendment and the federal statute.[72] The Court ruled:

> In the absence of any evidence tending to show that possession or use of a 'shotgun having a barrel less than eighteen inches in length' at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second

66. *Miller*, 307 U.S. at 178–79 (holding that the Colonies' history, debates at Constitutional Conventions, and the writings of approved commentators have consistently defined the term "militia" to include all males physically capable of acting in concert for the common defense).

67. *Id.* at 175.

68. *Id.* at 176. The defendants further argued that "[t]he National Firearms Act . . . offends the inhibition of the Second Amendment to the Constitution." *Id.*

69. *Id.* at 177.

70. *Id.* at 175, 177.

71. *Id.* at 178.

72. *See id.* at 183.

> Amendment guarantees the right to keep and bear such an instrument.[73]

Although the Court's decision appears to support a collective rights interpretation of the Second Amendment, the Court never defined the Second Amendment's scope because it remanded the case to the federal district court "for further proceedings" which never transpired.[74] *Miller's* uncertain and ambiguous conclusion sparked vehement constitutional debate.[75]

Miller was and continues to remain a focal point of Second Amendment debate as both gun control opponents and advocates cite this significant case to bolster their arguments.[76] Gun control opponents claim that this decision merely ruled that a sawed-off shotgun was not a military weapon and an individual maintains the right to bear arms of "ordinary military equipment."[77] Furthermore, they condemn the Court's decision on faulty rationale because the judges failed to recognize that American soldiers commonly used short-barreled shotguns in World War I and point out that neither the defendants, nor their counsel, had an opportunity to present this argument before the Court.[78] In addition, gun control opponents argue that when the state called men for militia service, the individual was expected to appear bearing his own arms.[79]

Conversely, gun control advocates contend that *Miller* further clarified that the Second Amendment protects the rights of states to maintain militias and the rights of citizens to serve as militia members.[80] They emphasize that the decision focused on the type of militia arms that were constitutionally protected.[81] In addition, gun control advocates contend that the federal circuit courts have cited the *Miller* precedent for over six decades while dismissing legal challenges to federal firearm regulations.[82] In 2008, in *Heller*, the

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73. *Id.* at 178.
74. *Id.* at 183. The further proceedings never took place because at the time of the Supreme Court's decision, Miller had died and the other defendant struck a plea bargain after the Court rendered its decision. *See* Brian L. Frye, *The Peculiar Story of* United States v. Miller, 3 N.Y.U. J. L. & LIBERTY 48, 68–69 (2008).
75. *See* Dennis, *supra* note 49, at 90.
76. *Id.*
77. Don B. Kates, Jr., *Handgun Prohibition and the Original Meaning of the Second Amendment*, 82 MICH. L. REV. 204, 248 (1983) (quoting *Miller*, 307 U.S. at 178).
78. *Id.*
79. *See* Dennis, *supra* note 49, at 82.
80. *Id.* at 90.
81. *Id.*
82. *See* Kates, *supra* note 77, at 248, 250.

Supreme Court addressed the specific scope of the Second Amendment and clarified the judiciary's interpretation of *Miller*.[83]

IV. *DISTRICT OF COLUMBIA V. HELLER*'S PRECEDENT: AN INDIVDUAL RIGHT TO SELF-DEFENSE

In the landmark case *District of Columbia v. Heller*, the Supreme Court sought to clarify the scope of the Second Amendment.[84] In particular, the Court addressed whether a Washington, D.C. resident had a constitutional right to possess a loaded handgun at home for the purpose of self-defense.[85] The Court emphatically ruled that the Second Amendment protects an individual's right to own a gun for personal use.[86]

Dick Heller, a Washington, D.C. special police officer, filed a lawsuit in the Federal District Court for the District of Columbia seeking to enjoin the city from enforcing its law that banned the registration of handguns on Second Amendment grounds.[87] The plaintiff also challenged the city's licensing requirement, which prohibited the possession of a firearm in the home without a license, and the trigger-lock requirement which barred the use of "functional firearms [with]in the home."[88] The district court dismissed Heller's complaint,[89] but the Court of Appeals for the District of Columbia Circuit reversed this decision and directed the district court to enter summary judgment for the plaintiff.[90] The District of Columbia

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83. District of Columbia v. Heller, 128 S. Ct. 2783, 2814 (2008) ("*Miller* stands only for the proposition that the Second Amendment right . . . extends only to certain types of weapons. It is particularly wrongheaded to read *Miller* for more than what it said, because the case did not even purport to be a thorough examination of the Second Amendment.").

84. *See id.* at 2787–88.

85. *Id.* at 2788.

86. *Id.* at 2818.

87. *Id.* at 2788. The District of Columbia made it a crime to carry an unregistered firearm and also prohibited the registration of handguns within city limits. *See* D.C. CODE §§ 7-2501.01(12), 7-2502.01(a), 7-2502.02(a)(4) (2001).

88. *Heller*, 128 S. Ct. at 2785. The District of Columbia criminalized handgun possession without a license, but the chief of police could issue licenses for one-year periods. *See* D.C. CODE §§ 22-4504(a), 22-4506. In addition, the District of Columbia required residents to secure their lawfully registered firearms, such as long guns, "unloaded and disassembled or bound by a trigger lock or similar device" unless the firearms were "kept at [the owner's] place of business" or the owner was using the firearm for a "lawful recreational purpose." *See id.* § 7-2507.02.

89. *See* Parker v. District of Columbia, 311 F. Supp. 2d 103, 109 (D.C. Cir. 2004), *rev'd*, 478 F.3d 370 (D.C. Cir. 2007).

90. *See* Parker v. District of Columbia, 478 F.3d 370, 401 (D.C. Cir. 2007).

petitioned the Supreme Court to hear the case, and after granting a writ of certiorari,[91] the Court held that the city's total ban on handguns violated Heller's right because the Second Amendment protects an individual's right to possess firearms.[92] In addition, the Court struck down the District of Columbia's law requiring citizens to keep firearms neutralized even when necessary for self-defense.[93]

For the Supreme Court, Justice Antonin Scalia delivered the majority opinion, which represented his most important decision in his twenty-two years on the Court.[94] Justice Scalia trumpeted the majority's view clearly that, "it is not the role of this Court to pronounce the Second Amendment extinct."[95] Justice Scalia carefully countered each argument offered by Justice Stevens's dissent[96] as both sides analyzed the history and text of the Second Amendment.[97] Justice Scalia commenced his analysis of the meaning of the Second Amendment by dissecting each clause and defining its collection of terms.[98]

A. Unlocking the Meaning of the Second Amendment's Operative Clause

Justice Scalia first employs an intratextualism approach to examine the Second Amendment's operative clause to demonstrate that the right to bear arms is an individual right.[99] Justice Scalia declares that the phrase "right of the people" in the Second Amendment should not be viewed in isolation from other similar clauses in the Constitution because the intended interpretation of the Founding Fathers' larger

91. District of Columbia v. Heller, 552 U.S. 1035, 1035 (2008) ("[The p]etition for a writ of certiorari [is] . . . granted limited to the following question: Whether the following provisions—D.C. CODE §§ 7-2502.02(a)(4), 22-4504(a), and 7-2507.02—violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep firearms for private use in their homes?").

92. District of Columbia v. Heller, 128 S. Ct. 2783, 2821–22 (2008).

93. *Id.*

94. *See* Greenhouse, *supra* note 10, at A1.

95. *Heller*, 128 S. Ct. at 2822.

96. *See id.* at 2869 (Breyer, J., dissenting) ("The majority spends the first 54 pages of its opinion attempting to rebut Justice Stevens' evidence that the Amendment was enacted with a purely militia-related purpose.").

97. U.S. CONST. amend. II.

98. *See Heller*, 128 S. Ct. at 2788–92.

99. *See id.* at 2790. Justice Scalia's approach typifies a classic example of an intratextualist who reads "a word or phrase in a given clause by self-consciously comparing and contrasting it to identical or similar words or phrases elsewhere in the Constitution." Akhil Reed Amar, *Intratextualism*, 112 HARV. L. REV. 747, 748 (1999).

pattern of meaning would be lost.[100] Justice Scalia notes that the phrase "right of the people" appears throughout the Constitution, specifically in both the First Amendment's Assembly-and-Petition clause and in the Fourth Amendment's Search-and-Seizure clause, which refer to individual rights.[101] The majority emphasizes that these parallel constitutional references are distinct from the requirement to exercise the respective right through participation in a collective organization; consequently, an interpretation of the Second should conform to this standard meaning of the phrase, as a right held by the individual.[102]

The majority opinion then transitions its focus from the possessor of the right, to the substance of the right.[103] Justice Scalia defines the phrase "keep and bear Arms" as the right to use all devices that "constitute bearable arms, even those that were not in existence at the time of the founding."[104] Justice Scalia defends the notion that "Arms" not only has the limited scope of weapons in existence during the creation of the Bill of Rights, but it also includes modern instruments.[105] He analogizes that the First Amendment similarly shelters "modern forms of communications" and not simply the limited media found in the colonial era.[106]

Justice Scalia further argues that state constitutions contemporaneous with the signing of the Bill of Rights referred to a self-defense principle when referencing the right to bear arms, which corroborates the majority's Second Amendment interpretation.[107] The majority cites nine eighteenth and nineteenth century state constitutional provisions, which granted, "the people have a right to bear arms for the defence [sic] of themselves and the state."[108]

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100. *See Heller*, 128 S. Ct. at 2790.

101. *Id.*

102. *See id.* at 2788–91 (arguing that the phrase "right of the people" creates "a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans").

103. *Id.* at 2791.

104. *Id.* at 2791–92.

105. *Id.*

106. *Id.* Justice Scalia further defines the phrase "bear arms" as having the natural connotation to "have weapons," which supports the idea that citizens have a basic right to own firearms for self-defense. *Id.* at 2792.

107. *Id.* at 2793–94.

108. *Id.* (indicating that the following 18th and 19th century state constitutions contained the above-referenced phrase: PA. DECLARATION OF RIGHTS, § XIII (1776); VT. DECLARATION OF RIGHTS § XV (1777); KY. CONST. art. XII, cl. 23 (1792); OHIO CONST. art. VIII, § 20 (1802); IND. CONST. art. I, § 20 (1816); MISS. CONST. art. I, § 23

Justice Scalia counters the dissent's argument that "bear Arms" had an idiomatic meaning during the Founders' generation "to serve as a soldier, do military service, fight or to wage war" by noting that this meaning only applied when followed by the preposition "'against.'"[109] Justice Scalia notes that the dissent's "bear Arms" definition, "[h]e has constrained our fellow Citizens taken Captive on the high Seas to bear Arms *against* their Country," applied to the Declaration of Independence, but not to the general Second Amendment interpretation.[110] Supported by this evidence, the majority concludes that the operative clause of the Second Amendment "codified a *pre-existing* right" that guarantees an individual right to carry a weapon for the purpose of securing one's defense.[111] Following this conclusion, the majority proceeds to dissect the prefatory clause and addresses whether the Second Amendment's preamble conforms to its interpretation of the operative clause.[112]

B. The Legal Interpretation of the Prefatory Clause and Its Enigmatic Phraseology

The majority argues that the prefatory clause merely announces the significant purpose of preserving an individual right to bear arms and does not define the outside scope of the right.[113] To substantiate this contention, the majority opinion defines "'[w]ell-[r]egulated Militia'" in the prefatory clause as "'all males physically capable of acting in concert for the common defense.'"[114] This definition comports with the Federalist Papers and news articles from the Revolutionary War Era which use the term "militia" to describe the general free male populace of the colonies, all of whom were able to bear arms and resist the British government.[115] Justice Scalia notes that the "[p]etitioners take a seemingly narrower view of the militia, stating that '[m]ilitias are the state- and congressionally-regulated military forces described in the Militia Clauses'" in the Constitution.[116] The Militia Clause authorizes Congress:

(1817); CONN. CONST. art. I, § 17 (1818); ALA. CONST. art. I, § 23 (1819); MO. CONST. art. XIII, § 3 (1820)).

109. *See Heller*, 128 S. Ct. at 2830.

110. *Id.* at 2794 (emphasis added).

111. *Id.* at 2797.

112. *See generally id.* at 2797–800.

113. *Id.* at 2789–90.

114. *Id.* at 2799 (quoting United States v. Miller, 307 U.S. 174, 179 (1930)).

115. *See id.*

116. *Id.* (citing U.S. CONST. art. I, § 8, cls. 15–16).

> To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.[117]

Justice Scalia acknowledges that "militia" holds the same meaning in both Article I and the Second Amendment, but he contends that the petitioners "identify the wrong thing, namely, the organized militia."[118] Congress has the power to raise armies and navies, but Article I presumes that a militia is already in existence because "Congress is given the power to 'provide for calling forth the militia' and the power not to create, but to [merely] 'organiz[e].'"[119] Thus, Congress has the power to organize the units that comprise an effective force, but it need not conscript every able-bodied man into the militia "because nothing in Article I suggests that in exercising its power to organize, discipline, and arm the militia, Congress must focus upon the entire body."[120] Justice Scalia concludes that "[a]lthough the militia consists of all able-bodied men, the federally organized militia may consist of a[ny] subset of them," thus conferring an individual right to bear arms to those not in the organized militia.[121] Finally, Justice Scalia notes that this interpretation conforms to the Court's ruling in *Miller* and to the rulings of other state courts.[122]

Justice Scalia then turns to the final prefatory phrase "security of a free state" and concludes that the drafting history of the Second Amendment and the Framers' intention demonstrate that this phrase references the entire country and does not address each individual

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117. U.S. CONST. art. I, § 8, cl. 16.

118. *Heller*, 128 S. Ct. at 2799–800.

119. *Id.* at 2800 (citing U.S. CONST. art. I, § 8, cl. 15).

120. *Id.* Congress exercised this right in the first Militia Act, which specified that "each and every free able-bodied white male citizen of the respective states, resident therein, who is or shall be of the age of eighteen years, and under the age of forty-five years . . . shall severally and respectively be enrolled in the militia." Act of May 8, 1792, ch. 33, 1 Stat. 271.

121. *See Heller*, 128 S. Ct. at 2800.

122. *Id.* at 2800, 2809; *see also* Nunn v. State, 1 Ga. 243, 251 (1846) ("The right of the whole people, old and young, men, women and boys, and not militia only, to keep and bear *arms* of every description, and not *such* merely as are used by the *militia*, shall not be *infringed*, curtailed, or broken in upon . . . .").

states' security.[123] The majority argues that although the term "State" refers to individual states in a few instances in the Constitution, the Framers intended this word to have multiple meanings depending on the particular context.[124] Justice Scalia illustrates once again through an intratextualism approach that in other sections of the Constitution, the Framers included modifiers to the term "State" to emphasize a reference to the several states.[125] For instance, these references include the phrase "each state" or "any state" to denote that a particular provision was applicable to an individual state.[126] Justice Scalia notes, however, that in this instance, the word "state" is not accompanied by a similar modifier; consequently, the Second Amendment's underlying purpose is for able-bodied men to possess firearms to repel tyranny and not for the protection of the state via a militia.[127]

C. *Piecing the Puzzle Together: The Constitutional Guarantee of an Individual Right to Bear Arms*

The final stage of the majority's dissection of the Second Amendment's language examines the relationship between the operative and prefatory clauses.[128] Justice Scalia declares that the prefatory clause definitively "announces the purpose for which the right was codified: to prevent elimination of the militia" while also preserving the accompanying purposes of self-defense and hunting.[129] He contends that this phrase explicitly protects an individual's right to form a "citizens' militia" over which Congress has no power or authority to regulate membership.[130] As further evidence, the majority asserts that the contemporaneous state constitutions of Pennsylvania and Vermont, which contain similar language to the Second Amendment, embrace an individual right to bear arms divorced from militia service; therefore, the Court cannot accept the Second Amendment as an outlier, protecting a right unknown in state

123. *Heller*, 128 S. Ct. at 2800 (citing 1 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 208 (Hilliard, Gray, & Co. 1833)) ("[T]he word 'state' is used in various senses [and in] its most enlarged sense, it means the people composing a particular nation or community.").

124. *Id.*

125. *See id.*

126. *Id.*

127. *Id.* at 2800–01.

128. *See id.* at 2801–05.

129. *Id.* at 2801.

130. *Id.*

constitutions or at English common law.[131] The majority concludes that the prefatory clause "fits perfectly" with the operative clause as the Framers knew that tyrants historically secured power "not by banning the militia but simply by taking away the people's arms, enabling a select militia or standing army to suppress political opponents."[132]

D. *The Second Amendment Is Not an Absolute Right: Certain Gun Regulations Preserved By* Heller

Although the *Heller* ruling expanded the Second Amendment's scope to permit an individual's use of firearms, the majority made clear that this right is not an absolute right, but remains subject to regulation.[133] Justice Scalia states, "[l]ike most rights, the right secured by the Second Amendment is not unlimited . . . . the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose."[134] Cognizant of the potential dangers of unfettered gun ownership, the Court remains resolute in restricting gun ownership by felons.[135] The Court's decision extends the right to law-abiding and "responsible citizens to use arms in defense of hearth and home."[136] In addition, gun regulations will persist to restrict the mentally ill from possessing firearms and criminalize the act of individuals "carrying . . . firearms in sensitive places such as schools and government buildings."[137]

Finally, the majority categorically recognizes that the Second Amendment does not protect the individual use of "dangerous and

131. *See* Volokh, *supra* note 42, at 795. Similar language in the state constitution of Pennsylvania states, "the people have a right to bear arms for the defense of themselves and the state." *See* PA. CONST. OF 1776, Declaration of Rights, cl. 13 (1873); *see also* VT. CONST. OF 1777, Declaration of Rights, ch. 1, art. XV (1793).

132. *Heller*, 128 S. Ct. at 2801.

133. *Id.* at 2816–17.

134. *Id.* (citing several nineteenth century cases and commentaries that have historically held that the right secured by the Second Amendment is not unlimited: State v. Chandler, 5 La. Ann. 489, 490 (1850); United States v. Sheldon, *in* 5 TRANSACTIONS OF THE SUPREME COURT OF THE TERRITORY OF MICHIGAN 337, 346 (W. Blume ed., 1940); WILLIAM RAWLE, A VIEW OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA 122–23 (1825)).

135. *Heller*, 128 S. Ct. at 2816–17.

136. *Id.* at 2821.

137. *Id.* at 2816–17.

unusual weapons."[138] The Court defers to *Miller*, the controlling precedent on this particular issue, which explained that the types of weapons protected are those "'in common use at the time.'"[139] The conception of the militia during the era of the Second Amendment's ratification included all citizens capable of military service, who would bring the type of lawful weapons that they possessed at home to militia duty.[140] Unwilling to deviate from precedent, the Court refuses to lift its restrictions on non-traditional firearms.[141]

E. The Dissent Cites Precedent to Discredit the Majority's Second Amendment Interpretation

In his dissent, Justice Stevens counters that the Second Amendment's text and relevant history, among other factors, forecloses any valid interpretation that grants an individual the right to bear arms for personal self-defense.[142] Justice Stevens characterizes the majority's Second Amendment analysis as "a strained and unpersuasive reading of the . . . text" that recklessly overturns longstanding precedent, and offers three main arguments to discredit the majority's erroneous ruling.[143]

1. The Founding Fathers' Purposeful Omission of an Express Grant for an Individual Right to Bear Arms

Justice Stevens asserts that the absence of specific allusions to the self-defense principle in the drafting of the Second Amendment is a conspicuous omission, considering that the presence of this specific reference appears in numerous state constitutions.[144] The dissent specifically notes that the Pennsylvania and Vermont Declarations of Rights explicitly provide a statement of purpose in their preamble related to the right to use firearms for self-defense.[145] Justice Stevens

138. *Id.* at 2817 (refusing to announce a list of weapons that fit the category of "dangerous and unusual weapons" but explaining that any sophisticated arms that are highly unusual in society at large, such as M-16 rifles, are prohibited).

139. *Id.* (quoting United States v. Miller, 307 U.S. 174, 179 (1939)).

140. *Id.*

141. *Id.* at 2815–17.

142. *See id.* at 2822 (Stevens, J., dissenting).

143. *Id.* at 2822–24.

144. *Id.* at 2825.

145. *Id.* at 2825–26. Article XIII of Pennsylvania's 1776 Declaration of Rights announced, "[t]hat the people have a right to bear arms for the defence [sic] *of themselves* and the state." *See* 1 BERNARD SCHWARTZ, THE BILL OF RIGHTS: A DOCUMENTARY HISTORY 215, 266 (1971) (emphasis added). Likewise, Article XV of the 1777 Vermont Declaration of Rights guaranteed, "[t]hat the people have a right to bear arms for the defence [sic] *of themselves* and the State." *See id.* at 319, 324 (emphasis added).

argues that "[t]he contrast between those two declarations and the Second Amendment reinforces the clear statement of purpose announced in the Amendment's preamble."[146] The dissent argues that this purposeful exclusion in the Second Amendment's verbiage of any individual right protection confirms the Founding Father's single-minded focus in creating a constitutional guarantee "to keep and bear arms" for military uses of firearms only.[147]

2. The Second Amendment's "Militia" Preamble Encompasses Its Sole Purpose: The Right to Bear Arms Is a Collective Right Exercised in Militia Service Only

The dissent contends that the Second Amendment's prefatory clause establishes the object of the Amendment and the meaning of the remainder of its text.[148] Justice Stevens attacks the majority's denigration of the prefatory clause's significance by discrediting the majority's interpretative process.[149] In particular, the majority begins analyzing the Amendment's operative provision and then returns to the preamble merely to ensure that its "reading of the operative clause is consistent with the announced purpose."[150] Justice Stevens argues that this method deviates from how the Court ordinarily reads texts and distorts how the Framers' viewed the prefatory clause upon the Second Amendment's adoption.[151] The dissent makes clear that "[w]hen each word in the text is given full effect, the Amendment is most naturally read to secure to the people a right to use and possess arms in conjunction with service in a well-regulated militia."[152] The dissent argues that any group that advocates a departure from the well-established interpretation of the Second Amendment's purpose identified in the prefatory clause must meet a strict burden.[153] Justice Stevens notes that the textual analysis embraced by the Court unequivocally "falls far short of sustaining that heavy burden."[154]

146. *Heller*, 128 S. Ct. at 2826 (Stevens, J., dissenting).
147. *Id.*
148. *Id.*
149. *Id.*
150. *Id.*
151. *Id.* (quoting Marbury v. Madison, 5 U.S. 137, 174 (1803)). Justice Stevens discredits the majority's contention that the prefatory clause's language is merely superfluous because "'[i]t cannot be presumed that any clause in the Constitution is intended to be without effect.'" *See id.* (alteration in original).
152. *Id.* at 2831.
153. *Id.*
154. *Id.*

3. Every Lower Court Has Cited the Second Amendment's Collective Right Interpretation Under *United States v. Miller*

Finally, the dissent criticizes the Court for failing to distinguish *Miller* and for placing more emphasis on the judiciary's "decisional process" than on the precedent's reasoning.[155] Justice Stevens identifies numerous lower court cases where judges followed the precedent established in *Miller* to find that the Second Amendment does not protect the individual right to possess and use firearms for purely private purposes.[156] Justice Stevens highlights, in particular, *Lewis v. United States*,[157] whereby the Supreme Court affirmed the *Miller* precedent in 1980.[158] Justice Stevens states, "[n]o new evidence has surfaced since 1980 supporting the view that the Amendment was intended to curtail the power of Congress to regulate civilian use or misuse of weapons."[159] The dissent argues that the majority failed to give proper deference to the well-established views of their predecessors and to the law itself.[160] Justice Stevens references Justice Cardozo who trumpets the Court's traditionalist view that the "'labor of judges would be increased almost to the breaking point if every past decision could be reopened in every case, and one could not lay one's own course of bricks on the secure foundation of the courses laid by others who had gone before him.'"[161] For these reasons, the dissent argues that the well-established precedent "would prevent most jurists from endorsing such a dramatic upheaval in the law."[162]

The dissent also criticizes the majority's failure to follow the Framers' chief policy position developed over two hundred years

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155. *Id.* at 2824.

156. *See id.* at 2823 n.2 (indicating that other than a recent Fifth Circuit decision, every federal court of appeals to consider the question had interpreted *Miller* to endorse a "collective rights" interpretation of the Second Amendment). *See, e.g.*, United States v. Haney, 264 F.3d 1161, 1164–66 (10th Cir. 2001); United States v. Napier, 233 F.3d 394, 402–04 (6th Cir. 2000); Gillespie v. Indianapolis, 185 F.3d 693, 710–11 (7th Cir. 1999), *abrogated by* 587 F.3d 803 (7th Cir. 2009); United States v. Wright, 117 F.3d 1265, 1271–74 (11th Cir. 1997); United States v. Rybar, 103 F.3d 273, 285–86 (3d Cir. 1996); Hickman v. Block, 81 F.3d 98, 100–03 (9th Cir. 1996), *abrogated by* 563 F.3d 439 (9th Cir. 2009); United States v. Hale, 978 F.2d 1016, 1018–20 (8th Cir. 1992).

157. 445 U.S. 55 (1980).

158. *Heller*, 128 S. Ct. at 2823 (Stevens, J., dissenting).

159. *Id.*

160. *Id.* at 2824.

161. *Id.* (quoting BENJAMIN N. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 149 (Yale Univ. Press 1921)).

162. *Id.*

ago.[163] Justice Stevens rejects the majority's view that James Madison consciously chose to limit the apparatus available to elected officials without compelling evidence to support this contention.[164] Furthermore, the dissent denounces the majority's authorization of the "common-law process of case-by-case judicial lawmaking" to identify the boundaries of tolerable gun-control policy.[165] Justice Stevens asserts, "I fear that the District's policy choice may well be just the first of an unknown number of dominoes to be knocked off the table."[166] With this statement, the dissent signaled the inevitable result of a cataclysmic wave of litigation that could jeopardize the tools available to elected officials to fight crime.[167]

V. PROSPECTIVE OUTLOOK ON THE *HELLER* DECISION: UNCERTAINTY LURKS FOR STATES AND CITIES ACROSS THE COUNTRY

As the landmark case on the meaning of the Second Amendment, *Heller* could set off a steady stream of litigation as pro-firearm interest groups organize challenges to current regulations.[168] This litigation has the potential to exhaust federal court and governmental resources where economically struggling cities, states, and the federal government have to vehemently defend diverse challenges to current gun regulations.[169] As one expert notes, "the greatest practical effect of *Heller* will be to disable crime-ridden urban centers from dealing with the plague of guns."[170] This unfortunate prediction has come to fruition as Chicago's gun laws have been challenged.[171] The magnitude of this wave of litigation, with its matching rip current, has a strong potential for destruction and the degree of its damaging erosion will be measured by the resolution of several key issues left

163. *Id.* at 2847.

164. *Id.* ("The Court would have us believe that over 200 years ago, the Framers made a choice to limit the tools available to elected officials wishing to regulate civilian uses of weapons . . . . I could not possibly conclude that the Framers made such a choice.").

165. *Id.*

166. *Id.* at 2846.

167. *See id.*

168. *See* Greenhouse, *supra* note 10, at A1.

169. Aziz Huq, *Justice Scalia's Dueling Opinions*, THE AMERICAN PROSPECT, June 30, 2008, at para. 13, http://www.prospect.org/cs/articles?article=justice_scalias_dueling opinions.

170. *Id.* at para. 15.

171. *See id.*

unresolved by *Heller*, and further, by states' and cities' resolve to defend current gun measures.[172]

A. An Evolving Issue: The Supreme Court's Incorporation of the Second Amendment

One of the primary issues left unresolved by *Heller* relates to the incorporation of the Second Amendment and whether the courts can enforce this decision against state and local governments.[173] Until Congress ratified the Fourteenth Amendment in 1868, the Bill of Rights applied only to the federal government and states and municipalities legislated under state authority.[174] However, during a series of post-Civil War cases, the Supreme Court ruled that the Fourteenth Amendment was designed to incorporate most of the Bill of Rights to hold state governments accountable for violations.[175] The Court applied a three-prong test for incorporation which measured whether a particular right "is among those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions,' whether it is 'basic in our system of jurisprudence,' and whether it is a 'fundamental right, essential to a fair trial.'"[176] Throughout its history, the Court has never ruled that the Second Amendment has been incorporated, and Justice Scalia's majority opinion in *Heller* emphatically states that incorporation is "a question not presented by this case."[177] Nonetheless, the Court

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172. *See id.* at paras. 16, 18.

173. Robert A. Levy, District of Columbia v. Heller*: What's Next?*, CATO UNBOUND, July 14, 2008, http://www.cato-unbound.org/2008/07/14/robert-a-levy/district-of-columbia-v-heller-whats-next. "The Fifth Amendment right to grand jury indictment, and the Seventh Amendment's civil jury right, are the only other rights with any potential application to modern circumstances that have yet to be incorporated." *Bringing Forward the Right, supra* note 19, at 784 n.7.

174. Levy, *supra* note 173.

175. *Id.* "The Supreme Court uses a process called 'selective incorporation' to determine whether specific provisions of the [B]ill of [R]ights are to be applied to the states as well as to the federal government." Letter from Kathryn M. Rowe, Assistant Attorney General for Maryland, to Samuel I. Rosenberg, Delegate, Maryland General Assembly, at 1 n.1 (July 18, 2008) (on file with author), *available at* http://www.oag statemd.us/opinions/advice2008/08_03_rosenberg.pdf [hereinafter Letter].

176. Letter, *supra* note 175, at 1 n.1.

177. District of Columbia v. Heller, 128 S. Ct. 2783, 2813 n.23 (2008). Lower courts have consistently held that the Second Amendment does not apply against the states or their subdivisions. *See, e.g.*, Bach v. Pataki, 408 F.3d 75, 84 (2d Cir. 2005) ("[T]he Second Amendment's 'right to keep and bear arms' imposes a limitation on only federal, not state, legislative efforts."); Quilici v. Village of Morton Grove, 695 F.2d 261, 270 (7th Cir. 1982) ("[A]ppellants offer no authority, other than their own opinion to support

repeatedly compares the incorporated First Amendment to the unincorporated Second Amendment as a guarantee of fundamental individual rights.[178] As groups challenge gun-control regulations in states and cities throughout the country, the judiciary will be compelled to resolve this conflict.[179] Although some uncertainty remains on this issue, the overwhelming sentiment among legal scholars is that the Court will ultimately incorporate the Second Amendment.[180] Second Amendment incorporation will allow direct challenges to state and local governments' gun regulations; however, the degree to which those regulations will fall depends on the constitutional standard of review.[181]

B. The Undecided Constitutional Standard of Review in Second Amendment Cases

Another murky facet of *Heller* is what constitutional standard the Court will apply in subsequent cases to determine the type of gun restrictions that remain permissible.[182] The Court must decide whether to review gun regulations under rational basis review, intermediate or "heightened scrutiny" review, or strict scrutiny review.[183] If the Court chooses to apply a strict standard, it would

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their arguments that *Presser* is no longer good law or would have been decided differently today . . . . [T]he [S]econd [A]mendment does not apply to the states . . . .").

178. *See Heller*, 128 S. Ct. at 2797–99.

179. *See* Levy, *supra* note 173. The Supreme Court has denied certiorari in several cases, most notably in *Love v. Pepersack*, 47 F.3d 120 (4th Cir. 1995), *cert. denied*, 116 S. Ct. 64 (1995), where the Court had an occasion to acknowledge that there are limits to the government's power to infringe on the right of gun ownership. In *Love*, Maryland State police denied the plaintiff her right to purchase a firearm because she had been arrested four times, even though her arrests had yielded only one misdemeanor conviction. *See id.* at 122. Standard Maryland State Police practice required that police deny applications based on prior arrests even though the relevant statute had not listed such a ground as a reason for denial. *See id.*

"It is interesting to note that the Maryland State Police are overruled in 78% of the appeals taken from permit application denials." *See Bringing Forward the Right*, *supra* note 19, at 784 n.12. After *Heller*, future litigation will challenge the Court's reluctance to entertain whether the Second Amendment imposes any meaningful limits on state authority.

180. Levy, *supra* note 173.

181. *See id.*

182. *Id.*

183. *Id.* Rational basis review requires the plaintiff to bear the burden of showing a constitutional violation; intermediate or "heightened scrutiny" requires the government to show its regulation is "substantially" related to an important governmental interest; and strict scrutiny requires the government to demonstrate a

frustrate state and local governments' efforts to regulate the possession and distribution of firearms in the United States.[184] Conversely, a lax standard would allow many current gun regulations throughout the country to survive constitutional muster.[185] Although it seems likely that the Court will ultimately apply either intermediate review or strict scrutiny review based on the *Heller* decision, the Court did not definitively choose one particular standard.

1. The Supreme Court Rejects Rational Basis Review for Second Amendment Inquiries

The Supreme Court in *Heller* rejected rational basis review, the lowest level of scrutiny applied by courts deciding constitutional issues through judicial review.[186] Rational basis review inquires whether the governmental action at issue is a reasonable means to an end that may be legitimately pursued by government.[187] Under this standard, state and local governments, alike, could easily defend current gun measures, because the government merely needs to present one common-sense argument to preserve a law.[188] However, the majority noted that this low level of review is inappropriate for Second Amendment review because "[i]f all that was required to overcome the right to keep and bear arms was a rational basis, the Second Amendment would be redundant with the separate constitutional prohibitions on irrational laws, and would have no effect."[189] Justice Scalia declared that a higher standard of review is required when a constitutional right is at issue.[190] The Court could revisit this standard in the future, which would be favorable to state

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compelling interest as the Court assumes the regulation is unconstitutional. 16A AM. JUR. 2D *Constitutional Law* § 403 (2009); 16B AM. JUR. 2D *Constitutional Law* § 861 (2009).

184. *See* Levy, *supra* note 173 (noting that state governments would have to have stronger justifications for laws restricting firearms under this standard of scrutiny).

185. *See id.* (explaining that a lower level of review functions as a rubber stamp for legislation).

186. District of Columbia v. Heller, 128 S. Ct. 2783, 2818 n.27 (2008).

187. 16B AM. JUR. 2D *Constitutional Law* § 859 (2009).

188. Levy, *supra* note 173. For example, in *McCulloch v. Maryland*, 17 U.S. 316, 421 (1819), the government's argument that the creation of a national bank falls within Congress's rights because it is a reasonable means for regulating commerce satisfied rational basis review. *See* Matthew D. Taggart, *Title II of the Americans With Disabilities Act After* Garrett*: Defective Abrogation of Sovereign Immunity and Its Remedial Impact*, 91 CAL. L. REV. 827, 845 (2003).

189. *Heller*, 128 S. Ct. at 2818 n.27.

190. *See id.* at 2817–18.

and local gun-control initiatives, but the *Heller* decision seems to foreclose this option.[191]

2. The Supreme Court Refuses to Apply Intermediate Review as Suggested by Amici Supporting the District of Columbia

Several amicus briefs for *Heller* urged the Supreme Court to consider applying an intermediate standard of review.[192] Most notably, Paul Clement, the Justice Department's Solicitor General, urged the Court to apply a form of heightened scrutiny in analyzing firearm regulations.[193] Under heightened scrutiny, the governmental action must be substantially related to an important governmental interest.[194] Clement requested the Court to consider "the practical impact of the challenged restriction on the plaintiff's ability to possess firearms for lawful purposes . . . and . . . the strength of the government's interests in enforcement of the relevant restriction."[195] Clement reminded the Supreme Court that, similar to the Second Continental Congress expressing its judgments about what type of "Arms" were appropriate for militia members, Congress in today's society holds discretion in regulating "Arms," which includes those with military uses, through means that further legitimate government interests.[196] Justice Stevens hinted that intermediate scrutiny would be appropriate because *Heller* expressly approves some Second Amendment statutory restrictions including the types of people who may exercise the right to bear arms, the places where this freedom may be exercised, and the ability to buy and sell firearms.[197] The Court ultimately declined to apply intermediate scrutiny as proposed

191. *See* Levy, *supra* note 173.

192. *Id.*

193. Brief for the United States as Amici Curiae Supporting Petitioners at 8, District of Columbia v. Heller, 128 S. Ct. 2783 (2008) (No. 07-290).

194. Craig v. Boren, 429 U.S. 190, 197 (1976).

195. Brief for the United States as Amici Curiae Supporting Petitioners, *supra* note 193, at 8. Clement took exception to the Court of Appeals's adoption of a more categorical approach that the Second Amendment precludes any prohibition of a category of "Arms" that can be traced back to the Founding era. *Id.* at 9. He warns that "[i]f adopted by this Court, such an analysis could cast doubt on the constitutionality of existing federal legislation prohibiting the possession of certain firearms, including machineguns." *Id.* Clement further argues that "the text and history of the Second Amendment point to a more flexible standard of review." *Id.*

196. *Id.* Clement concluded that "[u]nder an appropriate standard of review, existing federal regulations, such as the prohibition on machineguns [sic], readily pass constitutional muster." *Id.*

197. District of Columbia v. Heller, 128 S. Ct. 2783, 2844 (2008) (Stevens, J., dissenting).

by Clement, but unlike rational basis review, the Court remained open to applying this particular standard in the future.[198]

3. The Supreme Court Declines to Honor Plaintiff's Demand for Strict Scrutiny When Reviewing Gun Regulations

Plaintiff Heller urged the Court to adopt strict scrutiny review, although he claimed that the District of Columbia's gun ban is unconstitutional no matter what standard of review the Supreme Court decided to apply.[199] In order to justify a firearm regulation under strict scrutiny, the government would bear a heavy burden to demonstrate a compelling state interest for the law and provide evidence that the restrictions imposed were narrowly tailored, meaning no more invasive than necessary to accomplish the government's objectives.[200] The Supreme Court has regularly applied strict scrutiny to government regulations that infringe on a fundamental right, which are rights that are "'implicit in the concept of ordered liberty'" or "'deeply rooted in the Nation's history and traditions.'"[201] The Court refused to entertain Heller's strict scrutiny argument and rule whether the right to bear arms qualifies as a fundamental right, but the Court's decision did not foreclose the judiciary's application of this standard in the future.[202] This is important because the Court has traditionally held that all protections in the Bill of Rights are indisputably fundamental, which the Court could extend in the future to include the right to bear arms.[203] If strict scrutiny review becomes the standard, state and local governments will likely bear an insurmountable burden which will result in the demise of effective gun-control measures throughout the country.

Ultimately, the Supreme Court declined an invitation to select a particular standard of review in *Heller* and left this decision to future cases.[204] The Court agreed with Heller that the District of Columbia's blanket ban on all functional guns in the home is unconstitutional "[u]nder any of the standards of scrutiny [the Court has] applied to enumerated constitutional rights," which allowed the Court to remain ambivalent on the proper standard.[205] However, Justice Scalia indicated that "there will be time enough to expound upon the

198. Greenhouse, *supra* note 10, at A1.
199. *Heller*, 128 S. Ct. at 2851 (Stevens, J., dissenting).
200. Levy, *supra* note 173.
201. *Id.*
202. *Id.*
203. *Id.*
204. *Id.*
205. *Heller*, 128 S. Ct. at 2817.

historical justifications for the exceptions we have mentioned if and when those exceptions come before us."[206] The standard of review that the Court selects to evaluate gun regulations will largely dictate current and future firearm statutes' constitutionality.[207]

VI. FIGHTING GUN VIOLENCE: BALTIMORE CITY'S CHALLENGE FOLLOWING *HELLER*

The *Heller* decision will pose a great obstacle in American cities' endeavors to curtail and manage firearm casualties.[208] Prior to the Supreme Court striking down Washington, D.C.'s total ban on handgun possession and its trigger-lock requirement, eleven American cities joined in unison to write a brief to support the District of Columbia.[209] The amici's chief concern entailed "ensuring that states and localities retain the flexibility to counter the risks of guns to protect public safety through reasonable firearms regulations."[210] Although gun violence afflicts the entire nation, large cities have been disproportionately affected over the past thirty years.[211]

The eleven-city amici focused on the threat of gun violence, which is a sobering reality for citizens living in an urban setting.[212] Research indicates that twenty-five percent of low income urban youth have witnessed a murder.[213] In addition, urban dwellers are sixty percent more likely to fall victim to a violent crime compared to those living in the suburbs and are eighty-two percent more likely compared to citizens residing in a rural area.[214] American cities have

206. *Id.* at 2821.

207. *See* Andrew R. Gould, *The Hidden Amendment Framework Within* District of Columbia v. Heller, 62 VAND. L. REV. 1535, 1548–51 (2009).

208. *See* Greenhouse, *supra* note 10, at A1.

209. Brief for Amici Curiae Major American Cities, et al. as Amici Curiae Supporting Petitioners at 1, District of Columbia v. Heller, 128 S. Ct. 2783 (2008) (No. 07-290) [hereinafter Amici]. The cities that represented the amici include: Baltimore, Cleveland, Los Angeles, Milwaukee, New York City, Oakland, Philadelphia, Sacramento, San Francisco, Seattle, and Trenton. *Id.*

210. *Id.*

211. *Id.* at 5. The U.S. Department of Justice reports that large American cities witnessed approximately 340,000 homicides over this time span and sixty-four percent of these homicides involved guns. *Id.* at 4–5.

212. *See id.* at 1.

213. FIREARM & INJURY CENTER AT PENN, FIREARM INJURY IN THE U.S. 20 (2006), *available at* http://www.uphs.upenn.edu/ficap/resourcebook/pdf/monograph.pdf [hereinafter FIREARM & INJURY CENTER].

214. *See* Amici, *supra* note 209, at 2.

achieved a reduction in violent crime since its peak in the 1990s, but there are still remarkably high homicide rates.[215] For example, in 2006, approximately 9000 homicides occurred in American cities with populations greater than 100,000 citizens.[216]

A pertinent component of this issue relates to whether a higher rate of gun possession breeds more crime.[217] Some researchers argue that *Heller* will not have a profound negative impact on American cities' safety because an increase in the prevalence of guns could actually result in a decrease in crime.[218] An evolving theory in criminology suggests that an armed victim may deter criminals from attempting a crime.[219] Studies reveal nearly forty percent of convicted felons in one survey claimed that they decided not to commit a crime because of the trepidation that their potential victim may be carrying a gun.[220] In another survey of incarcerated criminals, eighty percent concurred with the statement that "a smart criminal always tries to find out if his potential victim is armed."[221] Gun control opponents argue that if the government repealed laws that restrict the general population from obtaining firearms, crime would decline because criminals respond rationally to deterrence threats.[222]

However, despite these theoretical claims, empirical data demonstrates that there is a strong correlation between local gun ownership and gun-related crime.[223] During the ten-year period after the District of Columbia's ban on handgun acquisitions in 1976, the number of homicides and suicides declined approximately twenty-five percent in Washington, D.C., led by a declining rate of gun-related homicides and suicides.[224] Similarly, Chicago witnessed a

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215. *Id.* at 5.

216. FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES 2 (2006), *available at* http://www.fbi.gov/ucr/cius2006/data/table_12.html.

217. *See* Jennifer McMenamin, *Justices Back Gun Owners, Court Upholds Right to Keep Weapons at Home*, BALT. SUN, June 27, 2008, at A1 (citing Washington, D.C. Mayor Adrian Fenty who believes more guns will lead to more violence and Rep. Cummings who expressed frustration with the decision).

218. *Id.*

219. JAMES D. WRIGHT & PETER H. ROSSI, ARMED AND CONSIDERED DANGEROUS: A SURVEY OF FELONS AND THEIR FIREARMS 15 (Aldine De Gruyler expanded ed., 1994) (1986).

220. *Id.* at 155.

221. *Id.* at 15.

222. *See id.*

223. Edward L. Glaeser & Spencer Glendon, *Who Owns Guns? Criminals, Victims, and the Culture of Violence*, 88 AM. ECON. REV. 458, 461 (1998).

224. Colin Loftin, Ph.D., David McDowall, Ph.D., Brian Wiersema & Talbert J. Cottey, M.S., *Effects of Restrictive Licensing of Handguns on Homicide and Suicide in the District of Columbia*, 325 NEW ENG. J. MED. 1615, 1616 (1991). Criminologists

decrease in homicides following a general handgun ban in 1982.[225] These examples highlight the almost certain rise in crime that will occur in the District of Columbia after the city repeals its total ban on handguns. In addition, although a significant number of gun owners use their firearms for recreational purposes, surveys suggest that nearly half of gun owners claim their primary motivation for possessing a gun relates to self-protection against crime.[226] Currently, criminals use guns in only about one-quarter of robberies and approximately one out of every twenty assaults.[227] However, if increased gun possession among potential victims causes criminals to carry and use guns more frequently to avoid armed self-defense, then violent crime will inevitably increase.[228] This cause-and-effect relationship between civilian and criminal gun ownership,[229] enhanced by the elimination of proven gun measures in cities, could precipitate an arms race that will result in more lethal attacks.

The primary culprit that accounts for a vast majority of homicides throughout large cities is handguns.[230] Although handguns represent only one-third of the total amount of firearms in the U.S.,[231] criminals are seven times more likely to use a handgun to commit a violent

originally questioned the efficacy of the District of Columbia's handgun ban enacted in 1976 and whether other factors played a role in the city's homicide and suicide decline. *Id.* at 1618. Researchers first compared the District of Columbia's gun crime statistics to the neighboring affluent Maryland and Virginia suburban cities and concluded that Washington, D.C. had achieved a greater decline in gun violence due to the total handgun ban. *Id.* Critics, however, moved to compare Washington, D.C. to Baltimore, a similarly situated city in the region, to facilitate more meaningful results. Phillip J. Cook & Jens Ludwig, *Aiming for Evidence-Based Gun Policy*, 25 J. POLICY ANALYSIS & MGMT. 691, 709 (2006). This revised study demonstrated that Baltimore had experienced an analogous decline in homicides in 1976, related to a similar decrease in the volume of guns. *Id.*

225. Brief and App. of Professors of Criminal Justice as Amici Curiae Supporting Respondents, McDonald v. City of Chicago, 2010 WL 59027 (No. 08-1521).

226. PHILLIP J. COOK & JENS LUDWIG, DUKE U. TERRY SANFORD INST. OF PUB. POL'Y, THE SOCIAL COST OF GUN OWNERSHIP 8, SAN04-07 (Dec. 2004), *available at* http://www.sanford.duke.edu/research/papers/san04-07.pdf [hereinafter THE SOCIAL COST OF GUN OWNERSHIP].

227. MICHAEL R. RAND, BUREAU OF JUSTICE STATISTICS BULLETIN, CRIMINAL VICTIMIZATION, 2008 at 6, (Sept. 2009), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/cv08.pdf.

228. *See* THE SOCIAL COST OF GUN OWNERSHIP, *supra* note 226, at 7–8.

229. *See id.* at 8.

230. *See* Amici, *supra* note 209, at 5.

231. PHILLIP J. COOK & JENS LUDWIG, GUNS IN AMERICA: RESULTS OF A COMPREHENSIVE SURVEY OF GUN OWNERSHIP AND USE 13 (1996).

crime compared to any other weapon.[232] As a member of the eleven-city amici, Baltimore City typifies the general escalating trend of violent crime attributable to firearms and, in particular, handguns.[233] In 2007, nearly ninety-nine percent of all Baltimore City's homicides caused by firearms involved the use of a handgun.[234] As Washington, D.C. struggles to redraft its gun regulations, Baltimore City confronts a daunting task of preserving gun regulations and formulating future innovative initiatives to combat gun violence amidst potential litigation.[235]

A. Baltimore City's Grim Violent Reality: A Perpetual Presence of Gun Violence

Gun violence has gripped Baltimore City for several decades.[236] Although Baltimore's total number of homicides fluctuates each year, the annual homicide figure remains dangerously high.[237] In 2007, Baltimore, a city of approximately 631,000 residents, witnessed 232 homicides caused by guns, which represented its highest total since 1999.[238] The impact of deadly gun incidents has emerged as a true epidemic afflicting both adults and youths alike.[239] Dr. Joshua M. Sharfstein, Commissioner of the Baltimore City Health Department, noted that homicide represents the leading cause of death in adolescents and young adults in the city.[240] Gun violence also poses a detrimental danger to police officers and first responders.[241] Reports show that five Baltimore City officers tragically fell victim to shootings between 1997 and 2007.[242]

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232. CRAIG PERKINS, BUREAU OF JUSTICE STATISTICS, NATIONAL CRIME VICTIMIZATION SURVEY, 1993-2001: WEAPONS USE AND VIOLENT CRIME 3 (Sept. 2003), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/wuvc01.pdf. From 1993 to 2001, handguns accounted for more than 700,000 incidents of violent crime each year. *Id.*

233. Amici, *supra* note 209, at 6–7.

234. *Id.* at 7.

235. *See id.* at 8, 25; *see also infra* Part IV.B (discussing Baltimore City's current and future gun policies under review).

236. *See* Amici, *supra* note 209, at 6.

237. *See id.* at 7.

238. *Id.*

239. *See* Press Release, Sheila Dixon, Mayor, Balt. City, Mayor Dixon Launches Safe Streets Weekend (June 13, 2008), *available at* http://www.baltimorehealth.org/press/2008_06_13.safestreets.pdf [hereinafter Mayor Dixon Launches].

240. *Id.*

241. *See* Amici, *supra* note 209, at 7.

242. *See* The Officer Down Memorial Page, Inc., http://www.odmp.org/agency/214-baltimore-city-policedepartment-maryland (last visited Mar. 30, 2010). Baltimore is part of a general disturbing national trend involving police shootings: between 1997 and 2006, ninety-three percent of fallen police officers in the United States were killed

Homicide totals demonstrate only a portion of the grave impact of gun violence in Baltimore.[243] In addition to the deadly gun attacks, 650 non-fatal shootings occurred in the city in 2007— nearly two per day.[244]

From a public health perspective, the impact of firearms on suicide rates ranks equally as important because guns increase the lethality of suicide attempts.[245] Approximately fifty percent of all suicides in Baltimore tragically involved firearm use.[246]

Furthermore, the social ramifications of gun violence are palpable in American cities and are similarly felt in Baltimore. City residents' quality of life suffers due to the constant barrage of shootings and violent crime that disturb the peace.[247] As one commentator states, "[g]un violence is what makes people afraid to go to the corner store at night."[248] Gun violence has partially contributed to a declining Baltimore population as the city lost 11.5% of its population in the 1990s.[249] The monetary costs associated with gun shootings have placed an additional heavy burden on large cities' budgets like Baltimore's.[250] Gun injuries serve as the primary cause of uninsured hospital stays and American taxpayers bear approximately half of the medical costs of gunshot injuries.[251] Baltimore has not escaped these

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by a gun. *See* FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, TABLE 27-LAW ENFORCEMENT OFFICERS KILLED & ASSAULTED, 2006 (Oct. 2007), *available at* http://www.fbi.gov/ucr/cius2006/data/table_12html. In 2006, the deaths of a staggering forty-six out of forty-eight officers killed in the line of duty were directly attributable to a firearm. FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, LAW ENFORCEMENT OFFICERS FELONIOUSLY KILLED (Oct. 2006), *available at* http://www.fbi.gov/ucr/killed/2006/downloadable pdfs/feloniouslykilled.pdf.

243. *See* Amici, *supra* note 209, at 8 (discussing the costs associated with hospital care and treatment of shooting victims).

244. *Id.* at 6.

245. *Id.* at 7; *see* FIREARM & INJURY CENTER, *supra* note 213 (noting that firearms are involved in approximately fifty-five percent of suicides, which is the most common method of suicide).

246. Loftin, et al., *supra* note 224, at 1616.

247. *See* Amici, *supra* note 209, at 5 (noting that urban dwellers are sixty percent more likely to be victims of violent crimes than residents of suburbs and eighty-two percent more likely than rural dwellers).

248. J. M. Kalil, *A New Approach: Prosecutors Take Aim at Gun Crimes*, LAS VEGAS REV. J., Mar. 8, 2002, at 1B.

249. DeWayne Wickham, *Baltimore Goes From Urban Revival to Angst*, USA TODAY, July 1, 2001, http://www.usatoday.com/news/opinion/columnists/wickham/2001-06-01-wickham.htm.

250. *See* Amici, *supra* note 209, at 7–8.

251. *Id.* at 7. This trend afflicts nearly every large city in the country. For example, Milwaukee expends more than $4000 to send trained personnel to respond to each

expenses as it cost approximately $30.2 million to provide hospital treatment for the city's 657 non-fatal shooting victims in 2006.[252] This unnecessary drain on Baltimore City's resources reduces revenue that the city could expend to curtail illegal gun possession, which is now a more complex endeavor after the *Heller* decision.

B. Baltimore City's Current and Future Gun Policies under Review

The most pertinent question presented by the Supreme Court's decision in *Heller* relates to what degree cities like Baltimore will have to scale back gun regulations.[253] Assuming the Court affirmatively incorporates the Second Amendment, cities across the country will likely face constitutional challenges to current and future gun regulations.[254] In Baltimore City, there are several laws that the *Heller* decision will jeopardize, and the Court's decision will also cripple Baltimore's ability to implement proven innovative gun-prevention measures in the future.[255]

1. Baltimore City's Trigger-Lock Requirement in Jeopardy

The contentious litigation related to the *Heller* decision could challenge Baltimore City's regulation that mandates trigger locks on all licensed firearms that are accessible to minors.[256] The Baltimore City Code defines a "child safety lock," or trigger lock, as "[a] device that, when locked in place, prevents the trigger from being moved and can itself be removed only by using a key or combination."[257] Baltimore City's trigger-lock requirement fits the precise type of regulation that *Heller* invalidated because it interferes with an individual's right to readily use functional firearms in the home.[258] Upon striking down Washington, D.C.'s trigger-lock law, the Court

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shooting. *Id.* at 8. In addition, in 2005, the average hospital bill to provide care to a shooting victim in Milwaukee exceeded $38,000, not including rehabilitation or physician fees. *Id.*

252. *Id.*

253. Greenhouse, *supra* note 10, at A1.

254. *See* Levy, *supra* note 173.

255. *See, e.g.*, Mayor Dixon Launches, *supra* note 239, at 1 (describing a recent initiative to prevent shootings and killings that was modeled after an effective Chicago Program known as CeaseFire).

256. BALT. CITY, MD., CODE art. 19, § 59-12(a)-(b) (2009).

257. *Id.* § 59-11(c).

258. *See supra* Part IV. The Court invalidated D.C. Code § 7–2507.02 which required lawfully owned firearms to be "unloaded and disassembled or bound by a trigger lock or similar device unless such firearm[s are] kept at [the firearm owner's] place of business, or [are] being used for lawful recreational purposes within the District of Columbia." WASH., D.C. CODE § 7-2507.02 (2001).

held that its regulation "makes it impossible for citizens to use them for the core lawful purpose of self-defense and is hence unconstitutional."[259] Baltimore City officials can strive to distinguish its trigger-lock mandate from Washington, D.C.'s law, because Baltimore's regulation does not require gun owners to keep all firearms both "unloaded and disassembled," a requirement which elicited the ire of the *Heller* majority.[260] Baltimore City representatives can argue that its trigger-lock requirement is minimally invasive because the regulation achieves its purpose of increasing safety while merely requiring the gun owner to take an extra step to unlock the firearm.[261] However, the *Heller* majority took exception to similar locking mechanisms that interfere with an individual's use of a firearm, which likely implicates that Baltimore's law would be found to be unconstitutional as well[262]

Future challenges to Baltimore City's gun-lock requirement will likely defeat this codified gun-control measure, which will result in more gun accidents and a higher rate of criminals illegally acquiring guns.[263] Trigger locks aid in the prevention of accidents and mishandling of firearms, because they immobilize the trigger or hammer of the firearm to which they are attached, preventing inadvertent discharge.[264] Baltimore's law, in particular, requires users to input a key or the correct combination which serves to protect children from inadvertent use of the firearm.[265] Furthermore, in order to use many trigger locks effectively, the owner must remove the ammunition from the gun before engaging the lock, which acts as a shield to thwart criminals from stealing another's gun and readily

259. District of Columbia v. Heller, 128 S. Ct. 2783, 2818 (2008).

260. *Id.* Baltimore City Code provides that the gun may be loaded so long as the child safety lock is engaged. § 59-12(b)(3).

261. *Heller*, 128 S. Ct. at 2844.

262. If Baltimore's child safety lock "render[s]" the firearm inoperable in the home "for immediate self-defense," it may very well be unconstitutional under *Heller*. *See id.* at 2821–22.

263. *See id.* at 2856–57 (Breyer, J., dissenting) (noting that statistics with respect to harm to children and adolescents are "particularly striking" based in part on criminals' access to handguns and handgun use during the commission of violent crimes).

264. *See* § 59-11(c) (describing effect of child safety locks). Firearms experts determined that any trigger lock that gun owners could disengage in fewer than three seconds would comply with the *Heller* decision. *See* Nikita Stewart & Michael Bimbaum, *Lots of Questions, Little Agreement at D.C. Hearing on Gun Laws*, WASH. POST, July 3, 2008, at B1.

265. BALT. CITY, MD., CODE art. 19, §§ 59-11(c), 59-12(a)-(b).

using it to perpetrate a crime.[266] With the probable termination of this law, the rise in accidental gun casualties and the volume of gun thefts may very well swell, which will compromise safety on Baltimore's streets.

2. Baltimore City's Code Provision That Criminalizes All Firearm Discharges Will Likely Be Challenged

Post-*Heller* cases will also likely challenge Baltimore City's code provision that criminalizes the discharge of any firearm within city limits. Baltimore City Code, article 19, section 59-2(a) prohibits any firearm expulsion unless the discharge occurred during a licensed military parade.[267] This Baltimore firearm regulation arguably runs afoul of *Heller*, because it prevents the individual use of firearms for the purpose of self-defense in the home without punishment.[268] Specifically, this regulation states:

> If any person shall fire or discharge any gun, pistol, or firearm within the City, unless it be on some occasion of military parade, and then by order of some officer having the command, every such person for every such offense shall be guilty of a misdemeanor and, upon conviction, pay a fine not to exceed $1,000, or be imprisoned for a term not to exceed 1 year, or both.[269]

The Baltimore City Code qualifies this law by including an exception that permits firearm discharge at pre-approved Baltimore City Police Department target ranges.[270] However, if challenged, this provision would likely fail constitutional review, because this law institutes a blanket ban on firearm expulsion within city limits and criminalizes one of the basic protections guaranteed by *Heller*—the right to use firearms for self-defense.[271] On account of this provision's susceptibility to annulment, the overall use of firearms

266. John R. Lott, Jr. and John E. Whitley, *Safe-Storage Gun Laws: Accidental Deaths, Suicides, and Crime*, 44 J.L. & ECON. 659, 660 (2001).

267. § 59-2(a).

268. *See id.*

269. *Id.*

270. *Id.* § 59-2(c) ("Nothing in this section shall be held to apply to or prohibit the discharge or firing of any such firearms on permanently located, properly posted and bona fide target ranges, the location of which has been filed [sic] with the Police Department of Baltimore City.").

271. *See* District of Columbia v. Heller, 128 S. Ct. 2783, 2817–18 (2008) (explaining the "inherent right of self-defense").

will most certainly increase because the deterrence factor of criminal punishment would be neutralized.

3. *Heller* Has Eliminated Several Innovative Measures That Were Previously Available to Baltimore City to Combat Gun Violence

The Supreme Court has taken several proven gun-control methods off the policy table and has effectively frozen some of the existing gun-control political victories.[272] Over the past decade, Baltimore City has considered several regulatory methods to discourage handgun ownership, including a deterrence system whereby the city collaborates with federal prosecutors to punish felons for a minimum five-year prison sentence.[273] In addition, other states and cities have devised innovative gun control measures, like Illinois's proposed law that would require gun owners to carry personal liability insurance of at least $1 million for "any damages resulting from negligent or willful acts involving the use of such firearm," which would further deter handgun ownership.[274] Although none of these provisions have been passed into law, the *Heller* decision has crippled the possibility of these and similar measures from ever being passed in Baltimore City and in other cities in the future.

Another type of innovative crime prevention operation that the *Heller* decision will serve to thwart is New York City's multifaceted campaign instituted in the 1990s.[275] In response to a historic number of homicides in 1990, New York City began launching several firearm regulations to curtail crime.[276] In 1991, officials initiated a complete ban on assault weapons within city limits.[277] Following this successful provision and state mandated licensing requirements, New York City also mandated trigger-lock requirements on all long arms and handguns in 1998 and 2000, respectively.[278] The results of this

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272. *Id.* at 2846 (Stevens, J., dissenting) (fearing that the invalidation of the D.C. gun control laws by *Heller* "may well be just the first of an unknown number of dominoes to be knocked off the table").

273. *See* Tim Craig, *Ehrlich Makes Pledge on Guns*, BALT. SUN, Oct. 30, 2002, at B1.

274. *Illinois Bill Would Require Gun Owners to Buy $1M in Liability Insurance*, INS. J., Feb. 18, 2009, http://www.insurancejournal.com/news/midwest/2009/02/18/97987.htm.

275. Amici, *supra* note 209, at 10.

276. *Id.* In 1990, New York City witnessed a historic high of 2245 murders, the most in the United States. *Id.*

277. *Id.*

278. *Id.* The state of New York adopted a similar statewide trigger-lock requirement in 2000. *Id.* at 10–11. Future litigation will likely jeopardize this provision, as the

anti-gun campaign proved staggering as the shooting incidents in New York City declined over seventy-one percent from 1993 to 2005 and the homicide rate fell fifty-four percent.[279] Furthermore, New York City adopted the nation's toughest penalty for carrying a loaded, unlicensed assault weapon and handgun in 2006, which raised the mandatory minimum sentence from one to three-and-a-half years.[280] This law proved equally effective as the homicide rate in New York City fell to its lowest level ever officially recorded in 2007.[281] This general reduction in violent crime came during a time period when New York City's population expanded from 7.3 to 8.1 million citizens.[282] Baltimore City would benefit from a similar operation in order to reduce crime, but future litigation related to *Heller* would nullify a similar campaign because these regulations would not survive constitutional challenges.

4. The State of Maryland's Law under Fire: The Imminent Impact of Straw Purchases on Baltimore City

The actions of the State of Maryland could additionally exacerbate the safety of Baltimore City's residents as *Heller* could jeopardize the state's gun-rationing system. In 1996, the Maryland General Assembly passed the landmark Maryland Gun Violence Act, which mandated a limit on handgun purchases to no "more than one regulated firearm in a 30-day period."[283] The Maryland State Assembly instituted this common-sense regulation to curtail straw purchases whereby criminals coordinate illegal gun transactions with buyers who have clean criminal records.[284] A straw purchaser is

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Heller decision struck down the District of Columbia's gun-lock requirement. *See Heller*, 128 S. Ct. at 2821–22.

279. Amici, *supra* note 209, at 11.

280. *Id.*

281. *Id.*

282. *Id.*

283. MD. CODE ANN., PUB. SAFETY § 5-128(b) (LexisNexis 2003). The Senate received the bill from the House on April 3, 1996, and debated its contents within the Senate Finance Committee where the bill passed 31-15. Bill Info-1996 Regular Session-HB 297, http://mlis.state.md.us/1996rs/Billfile/hb0297.htm (last visited Mar. 4, 2010). Upon review, Maryland Governor Parris Glendening signed the bill into law on May 23, 1996. *Id.*

284. Although Congress has repeatedly refused to pass a comparable national law, proponents of gun rationing have argued before Congress to limit gun purchases because "the life of a handgun seems to be measured in decades, generations, and even centuries," which has helped to galvanize the gun-rationing movement on the state level. *See* 139 CONG. REC. S31641-42 (daily ed. Nov. 3, 1993) (statement of Sen. Moynihan).

typically used when the actual buyer is prohibited from possessing firearms, such as a convicted felon or an individual who is less than twenty-one years of age.[285] These transactions plague the East Coast as many of the weapons end up in the northeastern cities where straw purchasers attempt to sell the guns for a profit.[286] However, Maryland's gun-rationing law dramatically hindered the profitability of gun running because gun traffickers could only purchase one firearm per month.

Baltimore City is the chief beneficiary of this law as the number of Maryland multiple-sale guns turning up at crime scenes after the law took effect fell over seventy-five percent within the city limits.[287] In 1995, Maryland State Police set up Operation Maryland Cease Fire to investigate some of the larger volume purchases that were suspected of bringing a disproportionate number of firearms to the streets of Baltimore.[288] During one instance, Maryland State Police went to the home of a twenty-one-year-old man who had recently bought twenty-seven guns in several pawnshops in the Baltimore suburbs.[289] Upon further investigation, the police found that the guns had been resold to a Baltimore narcotics ring.[290] State laws addressing straw purchases can be an effective means to curtail the number of guns on the street which ultimately results in less crime and less violence.[291] However, despite the significant progress against straw purchases,

285. Annie Linskey, *Illicit Guns Flow into Maryland*, BALT. SUN, June 1, 2008, at A1.

286. *Id.*

287. Philip P. Pan, *Md. Handgun Sales Down 25 Percent; Drop Comes Year After One-A-Month Buying Limit Was Imposed*, WASH. POST, May 27, 1998, at A1. Maryland witnessed a drastic reduction in gun transactions immediately after the state imposed purchasing limits in 1996. *Id.* Handgun sales plummeted more than twenty-five percent during the first year of the law, and the state witnessed an eighty percent decrease in multiple-gun sales. *Id.*

288. Pennsylvanians Against Trafficking Handguns Frequently Asked Questions, http://bradynetwork.org/site/DocServer/PATH_FAQ.pdf?docID=361 (last visited Feb. 1, 2010).

289. *Id.*

290. *Id.*; *see* Mayors Against Illegal Guns, *Inside Straw Purchasing: How Criminals Get Guns Illegally*, at 3, *available at* http://www.mayorsagainstillegalguns.org/downloads/pdf/inside-straw-purchases.pdf (last visited Mar. 30, 2010) [hereinafter Mayors Against Illegal Guns] (explaining that when police recover a gun at a crime scene, the Bureau of Alcohol, Tobacco and Firearms uses the gun's serial number to determine "where it first left the legal market—tracing from the first sale of the firearm by an importer or manufacturer, to the wholesaler or retailer, to the first retail purchaser. In some cases, that first retail purchaser is the link between the legal and illegal markets").

291. *See* Mayors Against Illegal Guns, *supra* note 290, at 19.

zealous gun-rights advocates will likely seek to overturn this law on Second Amendment grounds.

Challengers will argue that gun-rationing laws set an unconstitutional precedent for the government to quantitatively limit the exercise of citizens' right to bear arms.[292] They will contend that one-gun-per-month statutes check an individual's Second Amendment rights unlawfully because the government could not similarly restrict one's right to speak freely only once per month as protected by the First Amendment, deny a citizen the right to refrain from incriminating himself or herself more than once per month pursuant to the Fifth Amendment, or curtail a citizen's right to obtain counsel to only one time per month if accused of a crime as protected by the Sixth Amendment.[293] As a result of the impending challenges to the state's gun-rationing laws, Baltimore City will almost probably witness a spike in multi-sale firearms, which would once again plague its neighborhoods.

C. Baltimore City's Methods to Stem the Heller *Aftermath*

Despite the potential challenges ahead, Baltimore City's safety will not entirely be compromised because some of its most effective gun measures should pass constitutional muster.[294]

1. Baltimore City's Gun-Control Measures That Will Likely Withstand Litigation

Baltimore's criminal surveillance program will most likely survive constitutional challenges. Baltimore requires criminals to register with the City Police Commissioner within 48 hours of a documented violation of a firearm law.[295] In addition, criminals must update their information on a regular basis.[296] This Baltimore City law requires

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292. Challenges will most certainly overturn the most recent controlling decision in the Maryland high courts, Scherr v. Handgun Permit Review Bd., 163 Md. App. 417, 450, 880 A.2d 1137, 1156 (Md. Ct. Spec. App. 2005) ("[T]here [is no case that] supports the proposition that the mere fact that a constitution provides for the establishment of a militia means that the citizens have a right to bear arms.").

293. *See* District of Columbia v. Heller, 128 S. Ct. 2783, 2786, 2790 (2008).

294. *See, e.g.*, Mayor Dixon Launches, *supra* note 239, at 1.

295. BALT. CITY, MD., CODE art. 19, § 60-4(a) (2008). This provision provides that the offender must register within forty-eight hours of "(1) the date that the sentence is imposed, if the gun offender receives a sentence that does not include imprisonment; (2) the date that probation before judgment is granted; (3) or the date of release from a correctional facility, if the gun offender receives a sentence that includes imprisonment." *Id.*

296. *Id.* § 60-6(b).

that "within 20 calendar days after each 6-month anniversary of a gun offender's initial registration, the gun offender must personally appear at an office designated by the Police Commissioner to verify and update, as appropriate, the contents of the registration."[297] Although this provision interferes with an individual's right to bear arms, Baltimore City could capitalize on the majority opinion that made clear that the *Heller* decision protects only "the right of law-abiding, responsible citizens to use arms in defense of hearth and home."[298] In addition, this regulation would survive even strict scrutiny review, because it serves a compelling state interest related to preventing repeat offenders from committing future crimes, and it is narrowly tailored to achieve that objective because the law only applies to citizens who have committed gun crimes in the past.[299]

Baltimore City's law, which bans the use of stun guns within city limits, could also survive the onslaught of future litigation.[300] The *Heller* majority declared that the right to bear arms is extended to modern weapons just as an individual's First Amendment right is extended to modern forms of communication.[301] One could argue that the blanket ban against possession or use of stun guns, especially within an individual's home, interferes with one's mode of self-defense similar to the District of Columbia's total ban on handgun use.[302] Baltimore City could likely overcome this challenge, however, by arguing that it has a compelling state interest in preventing the misuse of "dangerous and unusual weapons," which *Heller* determined should not have constitutional protection. Baltimore's law also adheres to the narrowly tailored requirement because it singles out only these prohibited arms.[303]

2. Baltimore City's Non-Regulatory Programs to Halt Violence

Baltimore City has also instituted several community outreach programs to curtail illegal gun possession and the prevalence of violent crime.[304] For example, in 2008, Baltimore launched its "Safe

297. *Id.* § 60-6(b)(1).
298. *Heller*, 128 S. Ct. at 2821–22.
299. *See id.* at 2851–52.
300. BALT. CITY, MD., CODE art. 19, § 59-28(a)(2) (2003) ("It further shall be unlawful for any person to possess, fire, or discharge any such stun gun or electronic device within the City.").
301. *Heller*, 128 S. Ct. at 2791–92.
302. *See id.* at 2821–22.
303. *See supra* notes 134–35, 300 and accompanying text.
304. *See* Mayor Dixon Launches, *supra* note 239, at 1.

Streets" campaign, which City authorities modeled after the effective CeaseFire Chicago plan developed at the University of Illinois School of Public Health.[305] This program has successfully reduced shootings and homicides in targeted areas by approximately twenty-five percent.[306] Safe Streets collaborates with community organizations to develop and implement strategies to curtail violent crime.[307] Former Baltimore City Mayor, Sheila Dixon, acknowledged the program's progress stating: "'Safe Streets is helping us reduce shooting and homicides in Baltimore. . . . This effort demonstrates that everyone has a role to play in making Baltimore safer.'"[308] After the initial success of the program in targeted areas, Baltimore officials decided to expand the program to the entire city.[309] Baltimore City's health commissioner signaled the importance of this expansion noting, "Safe Streets represents a significant opportunity for Baltimore communities to reduce violence by changing behavior, a key strategy in public health."[310] The combination of local outreach programs and strong gun-control measures has helped curb crime.

In addition to internal strategies to reduce gun violence, Baltimore has also joined an east coast coalition to combat illegal gun possession.[311] In February 2008, Baltimore City hosted a regional conference with mayors and police chiefs from cities in seven states that identified the necessity to collaborate as a region to combat illegal gun dealers.[312] The coalition's ultimate objective involves constructing a "clearinghouse of criminal evidence" for regional police departments to penetrate the "Iron Pipeline," a gun trafficking network that traverses the interstate highway corridor from New York City to Baltimore.[313] This cooperative scheme could have a

305. *Id.*

306. Press Release, Sheila Dixon, Mayor, Balt. City, Mayor Dixon Announces Safe Streets Expansion at 1 (Aug. 8, 2008), 1, *available at* http://www.baltimorehealth.org/press/2008_08_08.SafeStreets.pdf [hereinafter Safe Streets Expansion].

307. Mayor Dixon Launches, *supra* note 239, at 1. Furthermore, Safe Streets organizes outreach workers, faith leaders, and other prominent figures within communities to intervene in conflicts to promote alternatives to violence. *Id.*

308. Safe Streets Expansion, *supra* note 306, at 1.

309. *Id.* at 1–2.

310. Mayor Dixon Launches, *supra* note 239, at 1.

311. Press Release, Sheila Dixon, Mayor, Balt. City, Mayor Dixon and Mayor Bloomberg Host Mayors' Regional Violence Reduction Summit in Baltimore at 1 (Feb. 13, 2008), *available at* http://www.baltimorecity.gov/LinkClick.aspx?filetickect=PqCFpSxQqoo%3dtabid=1177&mid=2230 [hereinafter Regional Violence Summit].

312. *Id.*

313. *See id.* at 1–2.

significant effect in reducing the illegal gun traffic between cities, noted New York City Mayor Michael Bloomberg.[314] This coalition's cohesiveness will become more vital than ever in combating urban crime in the post-*Heller* era.

However, it is undeniable that unless Baltimore City fights to protect its current gun restrictions and proactively enacts future provisions to curtail gun violence, these non-regulatory schemes will cease to make a major impact on Baltimore City's safety because weak crime-prevention laws will not deter criminals from obtaining guns. For this reason, this Comment offers the following two recommendations to continue the fight to reduce gun violence in Baltimore City.

a. Recommendation #1: Fight to retain current gun measures

Baltimore City should refrain from repealing any of its current gun regulations. Although the potential exists that gun rights advocates could overturn the city's trigger-lock provision, Baltimore should not alter this provision and should be prepared to defend such a suit. In the wake of the *Heller* decision, Washington, D.C. enacted emergency legislation to appease the gun lobbyists, but refused to completely erase the trigger-lock requirement.[315] Washington, D.C. officials continued the mandate that all guns in the home must be stored unloaded and secured with a trigger lock or in a gun safe, but added an exception that would not require the lock when a reasonably perceived threat of immediate harm existed.[316] In response, plaintiff Dick Heller has launched another lawsuit to challenge the modified provision, which experts claim, "could take months, if not years, to resolve."[317] This development is a political victory because, until the courts resolve Heller's new suit, the new regulations will remain in place. Similarly, it is paramount that Baltimore defends this particular provision, because a potential domino effect could occur if one law falls under the *Heller* precedent.

As evidence of this effect, the gun regulatory dominoes have begun to fall in the Chicago metropolitan area.[318] First, Morton Grove, a

314. *Id.*

315. *See* Michael Falcone, *Washington Council Enacts Tough Gun-Control Measure*, N.Y. TIMES, Dec. 17, 2008, at A19.

316. Del Quentin Wilber & Paul Duggan, *New York on Guns Facing Lawsuit*, WASH. POST, July 29, 2008, at B1.

317. *Id.*

318. *See* Deborah Horan, *Evanston Latest Suburb to Repeal Handgun Ban in Wake of High Court Ruling*, CHI. TRIBUNE, Aug. 12, 2008, at D1.

village north of Chicago, voluntarily lifted one of the oldest handgun bans in the country, which had effectively combated the crime that migrated from the City into the village.[319] However, despite the handgun ban's success, Morton Grove's mayor refused to wait for a legal battle because the town had every intention to comply with the Supreme Court's ruling, as it proposed and passed an ordinance that eliminated the possession-of-handgun ban within the village.[320] Second, the City of Evanston repealed its handgun ban in order to avoid the expense of combating a lawsuit recently filed by the National Rifle Association.[321] An Evanston City Council member stated, "this city was facing hundreds of thousands of dollars in legal expenses. We'll be better off getting [the ordinance] off the books."[322] Although some municipalities have rescinded total firearm bans, some Chicago towns have elected to amend their ordinances to include some restrictions, whereas others have repealed handgun bans while resolving to enact restrictions at a later date.[323] Baltimore City should resist any cost-saving litigation tactics and refrain from voluntarily repealing any of its laws because, as discussed earlier, the consequences of losing effective gun regulatory measures are immeasurable.

b. Recommendation #2: Remain proactive in creating new tactics

Most importantly, Baltimore City must continue to devise innovative regulatory schemes that will combat gun violence. Although city-wide programs like Safe Streets have successfully galvanized the community to combat gun violence, Baltimore City must not stop there, but must continue to plan and implement cutting-edge initiatives. The *Heller* decision has eliminated the potential for cities like Baltimore to enact city-wide handgun bans, but the Supreme Court's ruling has not entirely squelched a progressive enterprise to *regulate* handgun possession within city limits.[324] For instance, in the face of litigation, New York City has announced that it will continue to pursue "reasonable regulations," including instituting a progressive licensing scheme to further screen gun transactions and requiring gun owners to both register their firearms

319. *Id.*
320. *See id.*
321. *Id.*
322. *See id.* (alteration in original).
323. *Id.*
324. *See supra* Part VI.C.

every three years and undergo a criminal background check every six years.[325]

Baltimore should similarly take advantage of the *Heller* decision and the fact that the Court has eliminated the gun-rights advocates' slippery-slope argument that government has the discretion to enact blanket bans on guns. Consequently, the common-sense gun control provisions that Washington, D.C. has devised will no longer be viewed as "the final step before firearm confiscation."[326] Baltimore City should pursue proactive measures to tighten its grip on combating illegal gun purchases and broadcast a strong message to criminals that law enforcement will not tolerate violent crime.

VII. CONCLUSION

Despite the current firearm regulatory struggles in the courts throughout the country, cities must not be deterred by potential litigation that challenges present gun laws. *Heller* poses the greatest threat not to current gun regulations, but rather to future innovative regulatory schemes.[327] American cities could come to fear the risk of possible litigation and could choose a more conservative approach to avoid constitutional conflict.[328] Baltimore, like its counterparts throughout the country, must remain proactive in its response to combat gun violence despite the judicial resistance. If city officials do not remain proactive, and adopt conservative policies that passively fight gun possession in order to avoid potential litigation, the prevalence of illegal handguns will increase and gun violence will wreak further peril on already weary neighborhoods.[329]

Baltimore City's social, economic, and overall wellness depends on its city council's continued devotion to ensuring that everything is done to protect its citizens from the perils of gun violence. Although where the next rash of firearm aggression may take place will always remain uncertain, the most proven method to deter gun violence's menacing terror remains reducing the number of both illegal and legal guns, weakening criminals' access to weapons and diminishing

325. *See* Falcone, *supra* note 315, at A19.

326. Declan McCullagh, *Sorry, Mandatory Gun Registration is Constitutional*, TAKING LIBERTIES, Aug. 21, 2009, http://www.cbsnews.com/8301-504383_162-5258192-504383.html?tag=contentMain;contentBody (last visited Apr. 16, 2010).

327. *See supra* Part VI.B.

328. *See supra* Part VI.C.2.a.

329. *See supra* Part I.

the related assaults, injuries, and deaths.[330] Baltimore's communities have gathered in unison to halt the escalation of crime. Now, lawmakers must take up their part in this critical time of constitutional change to secure the public's safety and curtail the deaths of innocent victims. The well being of Baltimore's citizens at large and the city's youth who may tragically fall victim to gunfire, like Ronald Jackson, depend on this commitment.

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330. *See* OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, PROMISING STRATEGIES TO REDUCE GUN VIOLENCE 87–94 (1999) (profiling three American cities' attempts to reduce gun violence by reducing access to guns).