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## **Local Gun Laws Tested in Federal Courts; Conference Files Brief in Chicago Case**

By Laura DeKoven Waxman

Arguing that the Fourteenth Amendment does not extend the Second Amendment to state and local governments because doing so would make it impossible to maintain “ordered liberty” in high-crime neighborhoods, the U.S. Conference of Mayors filed an amicus brief April 24 in the U.S. Court of Appeals for the Seventh Circuit. The case being decided by the court is *Otis McDonald, et al, and National Rifle Association of America, Inc. et al, v. City of Chicago, et al, and Village of Oak Park*.

*McDonald v. Chicago* seeks to overturn Chicago’s handgun ban. It is the first such lawsuit to be filed since the Supreme Court ruled in *District of Columbia v. Heller* in June 2008 that the Second Amendment protected an individual right to “keep and bear arms” in the District of Columbia and, therefore, overturned Washington, DC’s gun ban.

*Heller*, however, applied only to the District of Columbia, a federal entity, and not to state or local governments. Further, while the Supreme Court found that the Constitution does not allow a general ban on handguns in the home in a 5-4 decision, it unanimously found that other less restrictive gun laws are consistent with the Constitution.

In addition to arguing that the Second Amendment does not extend to state and local governments, the Conference’s brief in *MacDonald v. Chicago* emphasizes the central role in fighting crime in cities which gun control laws play: “Intensive stop-and-frisk tactics targeting ‘hot spots’ of crime have been a critical tactic in the fight against violent crime. Stringent gun control laws, in turn, facilitate these tactics by granting police authority to conduct a stop-and-frisk when they reasonably believe that a suspect is unlawfully carrying a firearm.” The brief was prepared pro bono for the Conference by Lawrence Rosenthal, Professor of Law at Chapman University School of Law in Orange, California.

*MacDonald v. Chicago* was originally filed in the U.S. District Court for the Northern District of Illinois. That court rejected the plaintiffs’ argument last December. They then appealed to the Seventh Circuit Court.

### ***Nordyke v. King***

In a related development on April 20, the Ninth Circuit Court of Appeals upheld Alameda County’s ordinance banning possession and sale of firearms on county-owned property. The ordinance was enacted following a shooting that occurred during the county fair on the county fairgrounds. The plaintiffs – gun show promoters – contended that the ordinance burdened their Second Amendment right because it makes it more difficult to buy guns.

While the Court found that the Fourteenth Amendment extends the Second Amendment to state and local governments, consistent with *Heller* the Circuit Court concluded that the right is limited to “armed self-defense” in the home. The decision in *Nordyke v. King* is the first federal appeals court decision deciding whether a local gun law violates the Second Amendment since the U.S. Supreme Court decision in *Heller*.