



Written by [Bob Adelman](#) on January 8, 2014

## Federal Judge Rules Chicago Gun Ban Unconstitutional

Following U.S. District Judge Edmond Chang's [ruling on Monday](#) against Chicago's gun control legislation, the response by National Rifle Association (NRA) spokesman Todd Vandermyde was predictable. The fact that a federal judge appointed by President Obama "ruled in favor of the Second Amendment shows how out of step and outrageous Chicago's ordinances really are," said Vandermyde.



What Vandermyde was celebrating was the dismantling of the last piece of the law Chicago's City Council enacted just days after the Supreme Court's ruling in *McDonald v. the City of Chicago* back in June 2010. That Chicago law reflected the City Council's disgust with Supreme Court ruling. [At the time](#) Alderman Daniel Solis said, "The decision made by the Supreme Court is not really in the best interests of our citizens," while Alderman Sharon Dixon called the Supreme Court's decision a "blatant ... misreading of the law."

So they enacted [one of the most draconian gun control laws in the city's history](#), allowing ownership permits to be issued but only on the condition that applicants take training at shooting ranges, many of which were conveniently banned. The law required the registration of every gun owner, five hours of training, penalties for transporting legally owned firearms (the penalty included confiscation of the vehicle), possession of a firearm only inside the four corners of the owner's residence (not including a patio or a garage), trigger locks on guns while possessed at home, a ban on laser sights, and a ban on the use of real firearms on a stage or movie set.

Further, the ban prohibited the purchase or sale of firearms inside the city limits, as well as the transfer of firearms from one family member to another, except through inheritance.

Within days the NRA [filed suit](#) against the city — *Benson v. City of Chicago* — to enforce the Supreme Court's decision, and over time, one by one, each of those restrictions was erased. One of the last occurred in September when the city council was forced to rewrite its law to conform with one passed by the Illinois State Legislature regarding the carrying of concealed weapons in the city. At that time NRA spokesman Vandermyde also rejoiced:

Mayor Daley's pinnacle handgun ordinance ... is now for all intents and purposes gutted, and I think that this is a great day for gun owners in the city of Chicago and the state of Illinois....

[It's a victory] for the little guy who wants to keep a lawful gun in his home or a concealed handgun for protection.

The only remaining piece from that "pinnacle handgun ordinance" concerned the ban on purchasing firearms from dealers in the city. That ban was overturned by Judge Chang on Monday, January 6. As noted by the Chang:

[The plaintiffs are] challenging the constitutionality of City ordinances that ban virtually all sales and transfers of firearms inside the City's limits. The ban covers federally licensed firearms dealers; even validly licensed dealers cannot sell firearms in Chicago. The ban covers gifts amongst family



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members; only through inheritance can someone transfer a firearm to a family member. Chicago does all this in the name of reducing gun violence.

The judge recognized the fundamental role of government under the Constitution — to protect the rights of its citizens — writing, “Certain fundamental rights are protected by the Constitution, put outside government’s reach, including the right to keep and bear arms for self-defense under the Second Amendment.”

He then added:

This right must also include the right to *acquire* a firearm.... But Chicago’s ordinance goes too far in outright banning legal buyers and legal dealers from engaging in lawful acquisitions and lawful sales of firearms.... Evidence does not support that the complete ban sufficiently furthers the purposes that the ordinance tries to serve. [Emphasis in original.]

Not that the attorneys representing the city didn’t try to persuade the judge that such evidence did exist. The city argued that the ban was appropriate and necessary for three reasons: 1) It would restrict criminals’ access to licensed dealers; 2) It would restrict gun sales in the underground market and make such sales prohibitively expensive; and 3) It would continue to eliminate gun stores from Chicago as they are dangerous in and of themselves and could not be sufficiently and safely regulated.

After considering each of these arguments in turn, Judge Chang concluded that, concerning the first argument, “It is doubtful that keeping criminal users away from legitimate retail stores will choke the supply of guns to those users.” Very few criminals shop in retail gun stores but instead obtain most of them “as a result of theft, most commonly residential burglary.” He concluded, “Without a valid explanation for how its chosen means actually achieves its goal of reducing criminal access to guns, the City’s first justification fails.”

Regarding the second instance, such a ban would have little impact on restricting criminals’ access to firearms and would not make them prohibitively expensive, according to the judge:

There is no evidence that the challenged ordinances would ... keep illegal-market transaction costs high.... That means that the sales-and-transfer ban does not significantly reduce illegal-market gun acquisition by increasing the frictions inherent in illegal sales. So the City’s second justification fails as well.

The judge took umbrage to the third example when the city claimed that federally licensed firearms dealers are part of “a chronically-diseased regime that is fundamentally broken ... [and that gun stores are] caches just waiting to be raided.” This was no argument at all, he said, just a rehash of the claim that making guns less available on the lawful market would raise their price in the black market, and he had already dealt with that frivolous claim “This rationale for banning gun sales and transfers is insufficient to justify the ban, because relatively few criminals buy guns from legitimate retail dealers and the ban’s burdens fall even more harshly on Chicagoans who want to legitimately own guns for self-defense,” Judge Chang noted.

As for the ban on inter-family transfers, the judge handled that with a single sentence: “In barring ... family gifts, the ordinance goes well beyond federal and state law.”

In his conclusion, Chang said the city failed on all their points: “The City has not demonstrated that allowing gun sales and transfers within city limits creates such genuine and serious risks to public safety that flatly prohibiting them is justified.”



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If that were the end of the ruling, then Vandermyde's rejoicing might be justified. However, deep inside Judge Chang's 35-page ruling there were several unsettling comments from the judge, including the assurance that his ruling would be "stayed" until the city decides to file an appeal. In addition, inter-family transfers would now be allowed, but only "so long as that person is over eighteen years old, is not disqualified from possessing a gun, and has a valid Firearm Owner Identification Card (FOIC)." Translation: it's OK for the government to track and follow where those firearms wind up, just in case, through the use of its gun owner registration database.

And if the City Council is really interested in protecting the public from those horrible, scheming, "chronically-diseased" gun dealers, the judge said the city can consider designating special zones for gun stores to limit the area that police would have to patrol to deter burglaries. He added, "Nothing in this opinion prevents the City from considering other regulations — short of the complete ban — on sales and transfers of firearms to minimize the access of criminals to firearms and to track the ownership of firearms."

Apparently the judge failed to read the Second Amendment in its entirety — nowhere in his opinion does he quote it — where it says the right to keep and bear arms "shall not be infringed." Some infringements are necessary, according to the judge. Registration, tracking, regulation of dealers, requiring FOIC cards for transferees, limiting gun dealers (as with porn shops) to certain geographical locations — all these infringements apparently aren't enough to concern Obama's appointee.

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