



Written by [Bob Adelman](#) on December 8, 2015

Supreme Court Rejects Challenge to Gun Restrictions

With Monday's [refusal by the Supreme Court](#) to hear on appeal *Friedman v. City of Highland Park, Illinois*, the Second Amendment has, by default, suffered a grievous blow.

After the New Town, Connecticut, shooting, the Highland Park city council, following a contentious public debate, enacted a law banning possession of semi-automatic "assault rifles" similar to the one used at Sandy Hook Elementary School. It also banned possession of "high-capacity" magazines (those containing more than 10 rounds). Law-abiding citizens owning them were instantly — and now, apparently permanently — turned into criminals unless they could get rid of the now-illegal items within 60 days, as they would face either fines or jail.



Appeals by Dr. Arie Friedman and the National Rifle Association (NRA), along with those of 24 states' attorneys general, were turned back to lower courts despite cogent arguments that those lower courts were making new law in contravention of the Second Amendment and the Supreme Court's rulings in *District of Columbia v. Heller* and *McDonald v. Chicago*.

This rejection opens the door to anti-gunners across the land to push for more local infringements, believing that they can now make those infringements with impunity. The liberal *Los Angeles Times* rejoiced:

The court's decision was not a formal ruling — the justices simply decided not to consider an appeal by gun-rights advocates. But it strongly suggests [that] the majority of the court does not see the Second Amendment as protecting a right to own or carry powerful weapons in public.

Adam Winkler, a law professor at UCLA, concurred, stating, "The court's decision will encourage gun control advocates to push more cities and states to enact assault weapons bans."

Even worse, the rejection may reflect a change in the Supreme Court's attitude toward the Second Amendment itself. Said Winkler:

The justices appear anything but eager to enter into the Second Amendment fray again. Perhaps ... some of the justices are viewing gun control through the lens of the recent mass shootings.

Translation: Some of those voting for *Heller* and *McDonald* may be having second thoughts.

It takes four justices to decide to hear such an appeal; however, after six separate informal conversations about Friedman, only two could be found: Justices Clarence Thomas and Antonin Scalia. In an almost unprecedented move, Thomas wrote a scathing dissent to the court's majority in which



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Scalia joined, outlining not only how lower courts had stretched the Supreme Court's rulings in *Heller* and *McDonald* to fit their preconceptions, but that this rejection was just one of many since 2010, the last time the court even considered the issue.

When the Seventh Circuit court upheld the ban, said Thomas, it "adopted a new test for gauging the constitutionality of bans on firearms." The test asked whether the weapons banned were common at the time of ratification (no), or have some reasonable relationship to the efficiency of a well-regulated militia (no), or whether law-abiding citizens had others means for defending themselves even without the now-banned weapons (yes). Therefore, wrote the lower court, the Highland Park ban didn't infringe on the Second Amendment.

Thomas wrote that such a three-pronged test was irrelevant in determining Second Amendment infringements: "Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures and (yes) even future judges think that scope too broad."

Thomas added:

Because the Second Amendment confers rights upon individual citizens — not state governments — it was doubly wrong for the Seventh Circuit to delegate to States and localities the power to decide which firearms people may possess.

It should be noted here, for the record, that the Second Amendment does no such thing: It does not "confer" rights but instead *guarantees* rights conferred by God Himself to all people. Having said that, the point of Thomas is well made: Lower courts, no matter how grand the argument or superficially attractive the language, may not infringe on precious rights guaranteed under the Constitution. Thomas said that by avoiding the opportunity to clarify the point in *Friedman*, the court is denigrating the importance of the Second Amendment:

If a broad ban on firearms can be upheld based on conjecture that the public might feel safer [one of the specious arguments used by the Seventh Circuit], (while being no safer at all), then the Second Amendment guarantees nothing....

There is no basis for a different result when our Second Amendment precedents are at stake. I would grant certiorari to prevent the Seventh Circuit from relegating the Second Amendment to a second-class right.

In the meantime, the bunch from the Brady Center are rejoicing. Said Dan Gross, its president:

By rejecting this case, the Supreme Court sided with a community that has taken action to protect itself from the type of violence we've seen in San Bernardino, on college campuses and in movie theaters.

Chuck Michel, a Long Beach lawyer and president of the California Rifle & Pistol Association, takes the proper view of the long war against the Second Amendment:

It's only a matter of time before the Supreme Court takes a case, sets things straight, and properly subjects this and similar unconstitutional laws to renewed challenge.

Photo: [Matthew J. O'Brien](#)

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