Supreme Court ruling encourages right-wing campaign on gun possession

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1 July 2010

The US Supreme Court ruled Monday that state and municipal governments are precluded by the Second Amendment of the Constitution from banning possession of handguns in the home. The majority opinion in the case *McDonald v. City of Chicago*, was joined in by the five most conservative justices, over the dissent of the remaining four justices.

The ruling does nothing to promote the defense of democratic rights. It is based on specious legal reasoning and historical falsification.

As in the *Bush v. Gore* case in 2000, where the Court's right wing trumped up an "equal protection" argument to justify its predetermined decision to install George Bush in the White House, Monday's ruling amounts to judicial manipulation carried out for reactionary political purposes.

Two years ago in the case *District of Columbia v. Heller*, the same 5-4 majority ruled that the Second Amendment, part of the original Bill of Rights, prohibits the federal government from denying an individual the right to keep and bear arms for self-defense, at least in the home. (See "The reactionary politics of the Supreme Court's 'gun rights' decision").

This ruling contradicted 200 years of consensus that the Second Amendment guarantees the right of states to form militias, and is not an individual right to bear arms. The majority also overturned a 1939 Supreme Court precedent to the contrary.

The legal issue decided on Monday was whether the supposed individual right to bear arms should be "incorporated" under the Fourteenth Amendment to the Constitution so as to apply to states and cities as well as the federal government.

Originally the Bill of Rights did not apply to the states. This changed after the enactment of the Fourteenth Amendment in the wake of the Civil War, which provided that no state shall deprive any person of "life, liberty or property without due process of law."

In a series of subsequent decisions the Supreme Court began to selectively, but not automatically, use the due process clause to apply the amendments in the Bill of Rights to state governments. The First Amendment rights to free speech, assembly, and petition the government, the Fourth Amendment protection against unreasonable searches and seizures, the Fifth and Sixth Amendment guarantees of fair criminal procedure, and the Eighth Amendment protection against cruel and unusual punishment were all incorporated as to the states. Other rights, such as the right to a unanimous jury in a criminal case and to a jury in a civil case, were not.

Those rights that were incorporated were seen as essential to maintaining a democratic form of government, political equality, or freedom from infringement upon the most fundamental notions of personal liberty, such as freedom from arbitrary government arrest.

The Supreme Court majority's opinion on Monday attempts to place its recently self-created right to own a handgun for self-defense within that constellation of "fundamental" rights. From the standpoint of constitutional precedent and logical argument, that attempt fails miserably.

It rests in large part on the Court's plainly dishonest reading of the Second Amendment two years ago. The amendment reads: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

The amendment says nothing about an underlying right to bear arms for purposes of individual self-defense outside of militia service, but the Court nevertheless found this to be the underlying "core" of the amendment. So much for the right-wing justices' claim to be adhering to the "original intent" of the Founding Fathers.

The original purpose of the amendment was to prevent Congress from disarming the state militias, which would eliminate the militias as a bulwark against national tyranny. It was drafted in response to the Constitution's authorization of a permanent federal standing army.

The majority Monday also continues with its theory that a right to bear arms in self-defense separate from militia service had been recognized for centuries in England. That

view relies almost entirely on 1765 English legal commentary (by Blackstone) about a right of using arms for self-preservation under the English Declaration of Rights of 1689, which merely gave the King's Protestant subjects such right "as allowed by law."

That interpretation was the minority view of historians even two years ago, when Heller was decided. As Justice Stephen Breyer points out in his dissenting opinion Monday, in reaction to Heller there is now a clear consensus among historians on this subject. The right was that of Parliament, representing the People, to form a militia to oppose a potential tyrant, the King, if he threatened to deprive the People of their traditional liberties. Those liberties did not include an unregulated right of individuals to possess arms.

While some states at the time of the adoption of the Bill of Rights did have in their declaration of rights express guarantees of a right to bear arms for self-defense and hunting, others did not. Municipal regulation of arms was a widespread phenomenon both before adoption of the Constitution and afterward. In the 1800s courts routinely upheld statutes banning possession of concealed weapons such as handguns.

The conclusion is inescapable that the supposed right to bear arms clearly does not have the widespread and fundamental pedigree the Court majority's selective and shoddy history claims for it.

Even if a fundamental right to armed self-defense is recognized, why would that automatically translate into a right to keep a handgun in the home? The Court majority does not and cannot say.

The two dissenting opinions issued Monday by Justices John Paul Stevens and Stephen Breyer, the latter joined in by Stevens, Ruth Bader Ginsburg and Sonia Sotomayor, raise most of these historical and legal points against the majority's conclusion. They make additional substantial arguments.

Since the Second Amendment clearly refers to a right possessed *by* the states, it is incoherent and illogical to twist its interpretation into a right possessed by individuals *against* the state. Moreover, a right to individual self-defense usually occurs in confrontation with other individuals, rather than with the state.

They also point out the inconsistency of the right-wing majority, which habitually claims to champion the rights of the states to take action to meet their local problems free of federal interference, but now is intervening to block the gun restrictions adopted by the city of Chicago and its suburb, Oak Park.

While the immediate impact will be limited, the court ruling will generate considerable new litigation about rights to bear arms in all sorts of non-domestic contexts against states and cities without the budgets to respond. In the wake of Monday's ruling, gun rights groups have in fact already announced plans to test the limits of the rulings in Heller and McDonald.

The right wing of the judiciary and its political supporters have claimed to oppose "judicial activism," by which they claim to mean court action carrying out the personal political views of judges. In practice their call for "judicial restraint" has meant opposing government action that interferes with private property and supporting government action infringing upon democratic rights.

The majority's gun rulings truly amount to judicial activism of the highest order. Naked political considerations rather than legal or constitutional principles underlie them.

The gun control issue has been promoted to whip up divisions in the working class, particularly between workers in rural and suburban areas, where hunting is popular, and those in the urban centers, where gun violence has cost a colossal toll in lives, particularly among minority youth.

The campaign for an individual "right to bear arms" has been a key element in the attempt to give a populist gloss to the drastic shift to the right in official American politics over the past three decades. Demagogy about the Second Amendment has served to disguise the fundamentally anti-democratic character of the program of both parties.

It also encourages right-wing bullying of political opponents, as in the brandishing of weapons by tea partyers and other far-right elements, and such comments as that by Nevada Republican Senate candidate Sharron Angle, who suggested that voters might seek a "Second Amendment solution" to express their opposition to the Obama administration.

The individual possession of handguns does little or nothing to defend working people against unrelenting attacks on their jobs, living standards and democratic rights. These attacks cannot be combated through individual "self-defense," but require collective political and social struggle, based on the mass mobilization of the working class.