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**From the Selected Works of Corey A Ciocchetti**

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2013

## 2nd Amendment: The Right to Keep & Bear Arms -- Teaching D.C. v. Heller

Corey A Ciocchetti, *University of Denver*



SELECTEDWORKS™

Available at: [http://works.bepress.com/corey\\_ciocchetti/31/](http://works.bepress.com/corey_ciocchetti/31/)

## Article I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

## Article II

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.

## Article III

deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and Territory where the crime has been committed, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

## 2<sup>ND</sup> AMENDMENT:

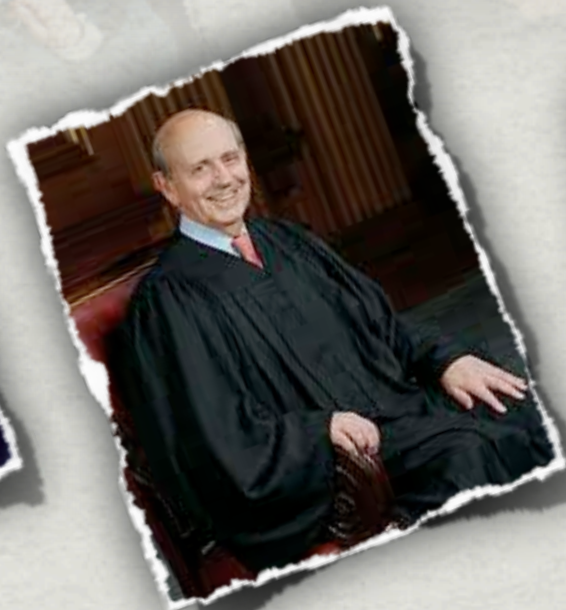
# The Right to Keep & Bear Arms

## Teaching D.C. v. Heller

## Constitution & Business



# FANTASY SCOTUS . . . IF HEARD TODAY





# The 2<sup>nd</sup> Amendment Right to Keep & Bear Arms

Constitution & Business



# THE 2<sup>ND</sup> AMENDMENT

"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 9<sup>TH</sup> AMENDMENT

"ENUMERATION IN THE  
CONSTITUTION,  
OF CERTAIN RIGHTS,  
SHALL NOT BE CONSTRUED TO  
DENY OR DISPARAGE OTHERS  
RETAINED BY THE PEOPLE."



# PRIMARY SOURCES

**SECOND AMENDMENT**



**WHAT TO MAKE OF  
THE TWO AWKWARD  
CLAUSES**

**NINTH AMENDMENT**



**CONCEPT OF  
RESERVED RIGHTS TO  
"THE PEOPLE"**



# A FEW INTERPRETATIONS OF 2<sup>ND</sup> AMENDMENT

**INDIVIDUAL RIGHT  
V. COLLECTIVE RIGHT**



**DO THE PEOPLE HAVE  
INDIVIDUAL RIGHT TO  
BEAR ARMS?**

**MILITIA BASED RIGHT**



**IS THE MILITIA  
PROTECTED FROM THE  
FEDERAL  
GOVERNMENT?**



# CASE OF FIRST IMPRESSION

"SINCE THIS CASE REPRESENTS  
THIS COURT'S FIRST IN-DEPTH  
EXAMINATION OF THE SECOND  
AMENDMENT, ONE SHOULD NOT  
EXPECT IT TO CLARIFY THE  
ENTIRE FIELD."

-- JUSTICE SCALIA'S MAJORITY OPINION



# Just the Facts

Constitution & Business



# D.C. LAW @ ISSUE

- **POSSESSION OF HANDGUNS PROHIBITED**
- **CRIME TO CARRY UNREGISTERED FIREARM & REGISTRATION OF HANDGUNS PROHIBITED**
- **OTHER GUNS MUST BE DISASSEMBLED OR BOUND BY TRIGGER LOCK @ HOME**



# **“A WELL-REGULATED MILITIA”**

**“ALL  
MALES PHYSICALLY  
CAPABLE OF ACTING IN  
CONCERT FOR THE  
COMMON DEFENSE” --  
MILLER**

**MILITIA CALLED FOR  
IN ARTICLE I**

**HAVE OTHER JOBS  
BUT KEEP ARMS @  
HOME**

**NOT A STANDING  
ARMY BUT CAN REPEL  
INVASIONS, SUPPRESS  
INSURRECTIONS &  
RESIST TYRANNY**

**BUT DOES THIS MEAN A  
MILITIA ORGANIZED BY  
CONGRESS INSTEAD?**



# THIS ISSUE GETS PEOPLE “FIRED” UP





# “THE SECURITY OF A FREE STATE”

**TWO WAYS TO READ  
THIS PHRASE . . .**

**DOES IT MEAN  
SECURITY OF  
INDIVIDUAL STATES?  
NARROW READING**

**DOES IT MEAN  
SECURITY OF THE  
ENTIRE POLITY?  
BROAD READING**

**“STATE” IN  
CONSTITUTION  
USUALLY PRECEDED  
BY MODIFIER**

**REFERS TO  
INDIVIDUAL STATES  
ELSEWHERE IN  
CONSTITUTION**

**TERM OF ART IN 18<sup>TH</sup>  
CENTURY TO REFER  
TO POLITY**



# STATISTICS

**300 MILLION  
FIREARMS OWNED IN  
AMERICA (2010)**

**(100M HANDGUNS)**

**.5% OF  
AMERICANS HAVE  
USED A GUN IN SELF-  
DEFENSE  
SITUATION**

**67% OWN A GUN  
FOR CRIME  
PREVENTION**

**316 MILLION PEOPLE  
LIVING IN AMERICA  
(2013)**

**16,272  
MURDERS IN U.S.  
IN 2008**

**67% COMMITTED  
WITH FIREARMS**

**47% OF MALES  
OWN GUNS  
V.  
13% OF FEMALES**

**41% OF  
REPUBLICANS OWN  
GUNS V. 23% OF  
DEMOCRATS**

**42% OF  
HOUSEHOLDS HAVE  
GUNS**

**GUN CONTROL FACTS  
JAMES D. AGRESTI &  
REID K. SMITH**



# STATISTICS

**5.3 MILLION VIOLENT  
CRIMES IN U.S.  
IN 2008**

**83% OF  
AMERICANS WILL  
FALL VICTIM TO  
ATTEMPTED OR  
COMPLETED VIOLENT  
CRIME**

**1 OUT OF EVERY  
240 AMERICANS  
WILL BE  
MURDERED**

**8% COMMITTED BY  
PERSON IN CLEAR  
POSSESSION OF A GUN**

**69%  
OF CONVICTED  
FELONS KNEW OF  
OTHER CRIMINALS  
SCARED OFF, SHOT,  
WOUNDED OR CAPTURED  
BY SOMEONE WITH  
A GUN**

**AMERICANS  
USE A GUN  
500,000 TIMES PER  
YEAR TO SCARE OFF  
INTRUDERS**

**34% OF  
CONVICTED  
FELONS SCARED OFF,  
SHOT, WOUNDED OR  
CAPTURED BY  
SOMEONE WITH A  
GUN**

**40% OF  
CONVICTED  
FELONS DECIDED NOT  
TO COMMIT A CRIME  
BECAUSE VICTIM  
THOUGHT TO HAVE  
A GUN**

**GUN CONTROL FACTS  
JAMES D. AGRESTI &  
REID K. SMITH**



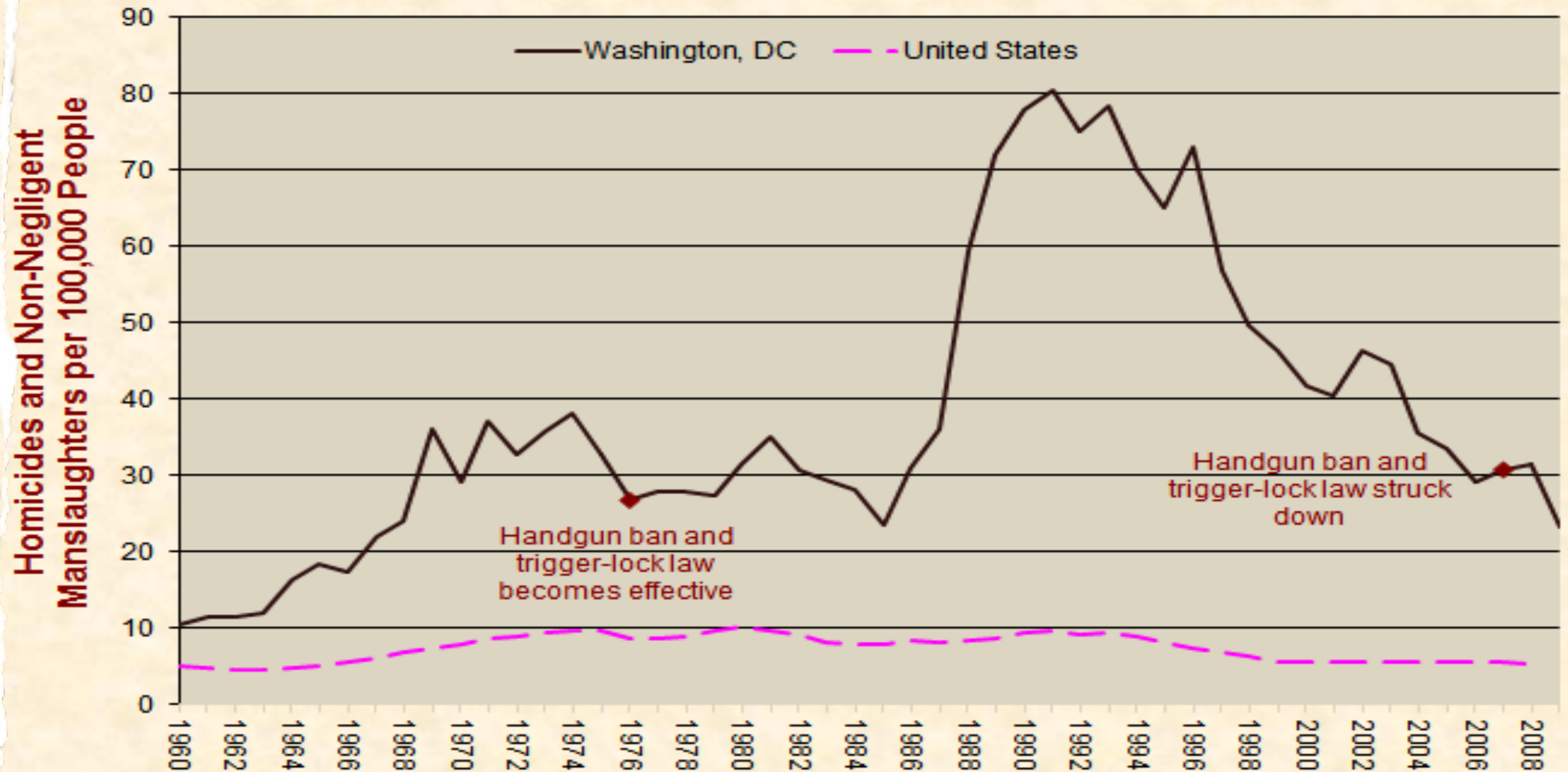
# STATISTICS: PRE- & POST-HELLER

**GUN CONTROL FACTS**

**JAMES D. AGRESTI &**

**REID K. SMITH**

## Murder Rates in Washington, D.C. and the United States



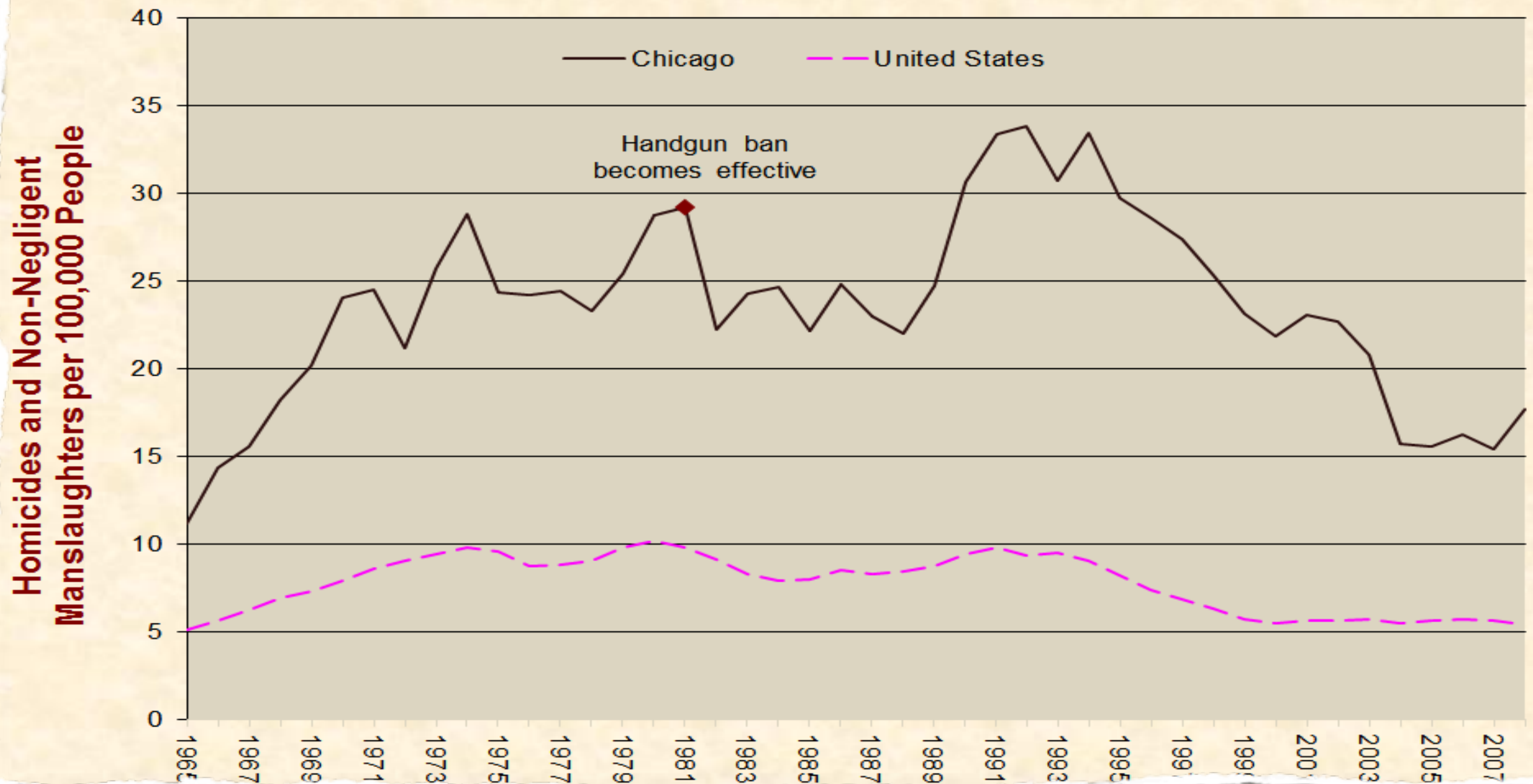
**D.C. CITY COUNCIL PROHIBITED RESIDENTS FROM POSSESSING HANDGUNS & REQUIRING ALL FIREARMS IN PRIVATE HOMES BE (1) KEPT UNLOADED AND (2) RENDERED TEMPORALLY INOPERABLE VIA DISASSEMBLY OR INSTALLATION OF A TRIGGER LOCK. LAW OPERATIVE IN SEPT. 1976 | STRUCK DOWN JUNE 2008**



# STATISTICS: PRE- & POST-MCDONALD

**GUN CONTROL FACTS**  
**JAMES D. AGRESTI &**  
**REID K. SMITH**

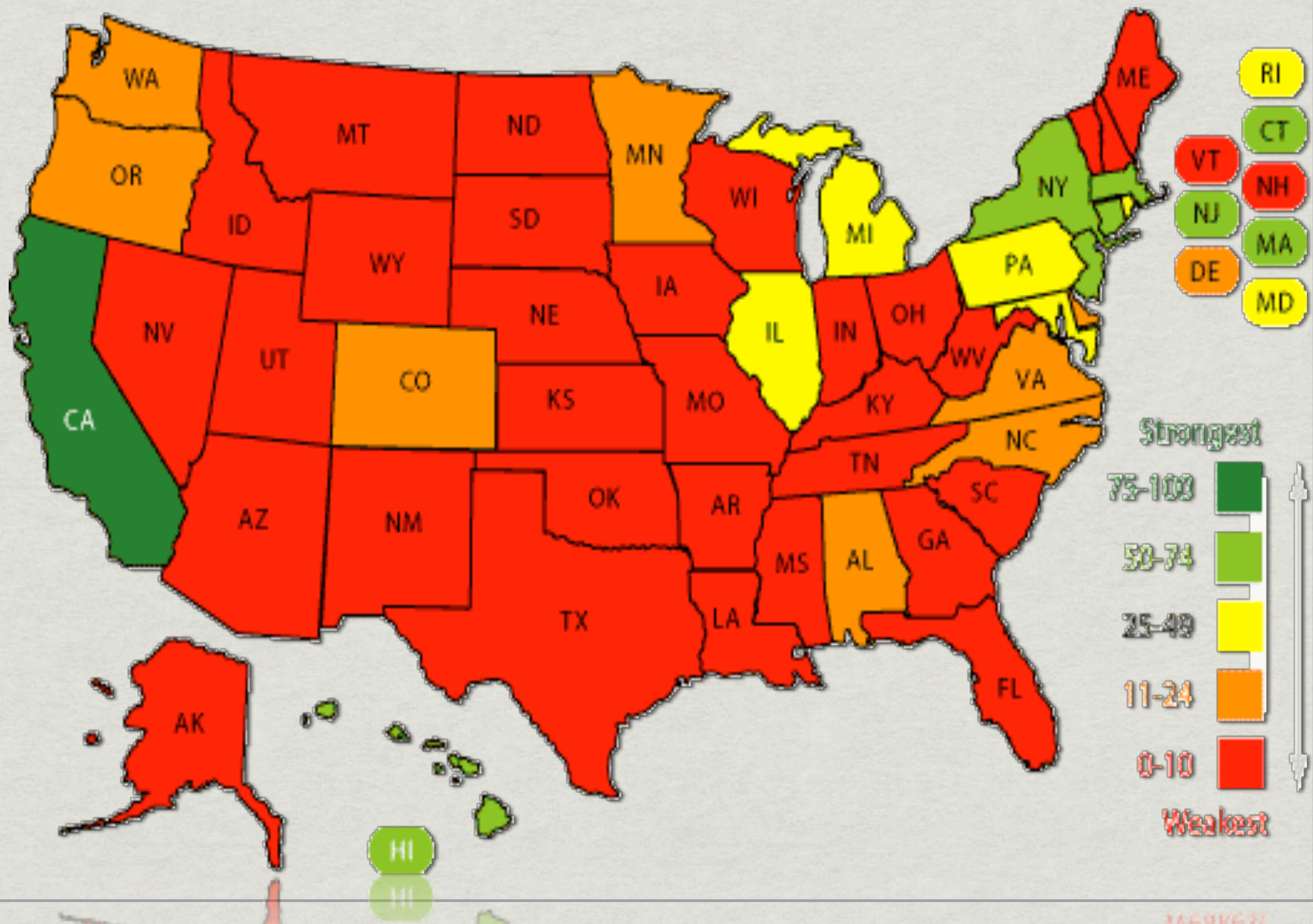
## Murder Rates in Chicago and the United States, 1965-2008



**CHICAGO BANNED HANDGUNS IN 1982. BAN BARRED CIVILIANS FROM POSSESSING HANDGUNS EXCEPT FOR THOSE REGISTERED PRIOR TO ENACTMENT. SUCH HANDGUNS HAD TO BE RE-REGISTERED EVERY TWO YEARS OR OWNERS WOULD FORFEIT RIGHT TO POSSESS THEM. LAW WAS AMENDED IN 1994 TO REQUIRE ANNUAL RE-REGISTRATION | STRUCK DOWN JUNE 2010.**



# STRICTNESS OF GUN LAWS





**Legend:**

VT
NH
MA
CT
RI
NJ
DE
MD
DC
VI
PR
NMI
AS
GU

**Policy Legend:**

Shall Issue to Residents Only
Shall Issue to Residents and Non-Residents
May Issue to Residents Only
May Issue to Residents and Non-Residents
Right Denied



# Much Different Opinions

Constitution & Business



**THIS ISSUE GETS PEOPLE “FIRED” UP**

# **Nothing to See Here. Just a Coincidence.**

**Country with the loosest  
gun control laws in  
the developed world.**



**Country with the highest  
gun-related homicides in  
the developed world.**



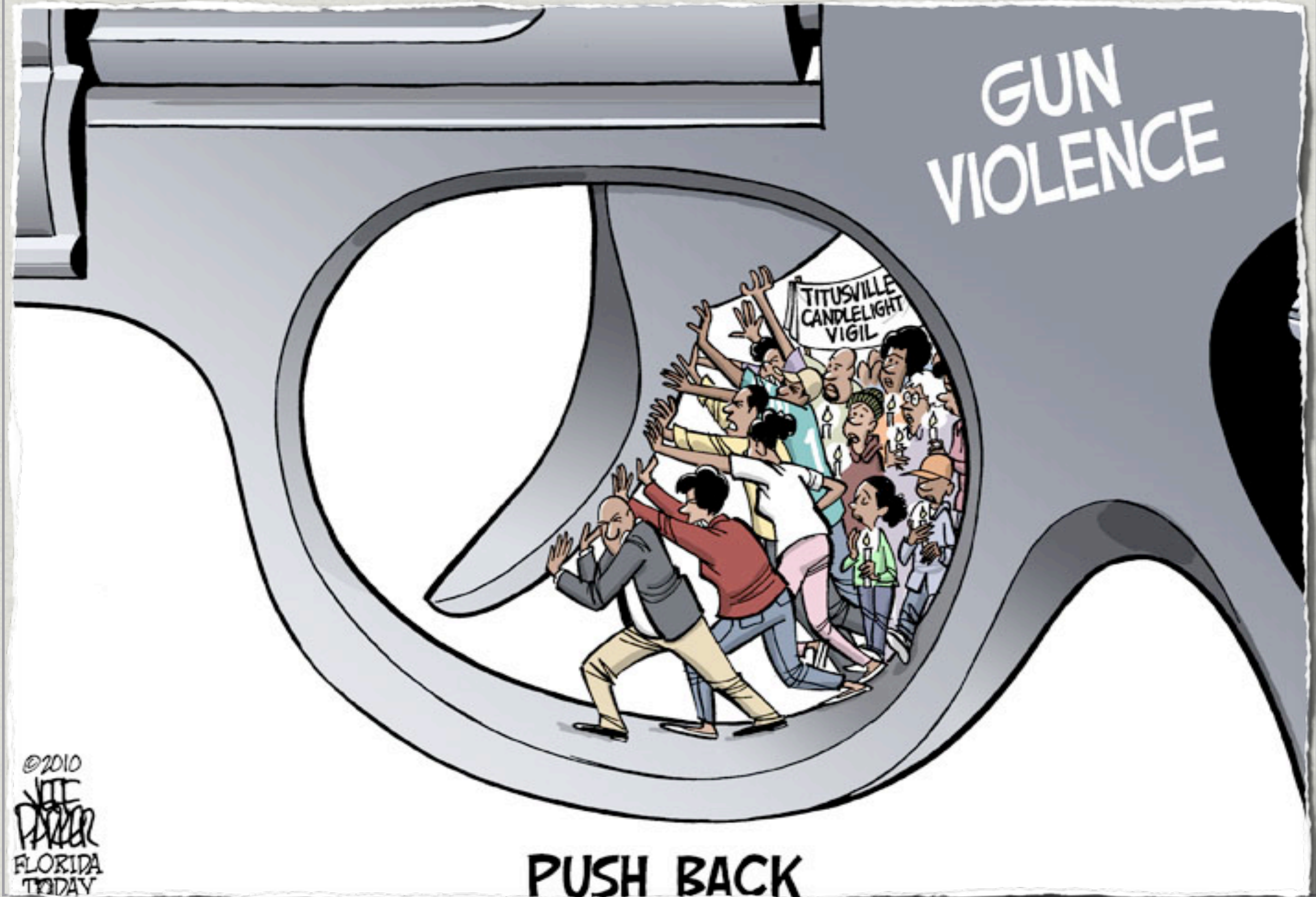


# THIS ISSUE GETS PEOPLE “FIRED” UP





# THIS ISSUE GETS PEOPLE “FIRED” UP



©2010  
VTE  
PAPER  
FLORIDA  
TODAY

**PUSH BACK**



**LAST YEAR, HANDGUNS KILLED  
48 PEOPLE IN JAPAN.  
8 IN GREAT BRITAIN.  
34 IN SWITZERLAND.  
52 IN CANADA.  
58 IN ISRAEL.  
21 IN SWEDEN.  
42 IN WEST GERMANY.  
10,728 IN THE UNITED STATES.**

**GOD BLESS AMERICA.**

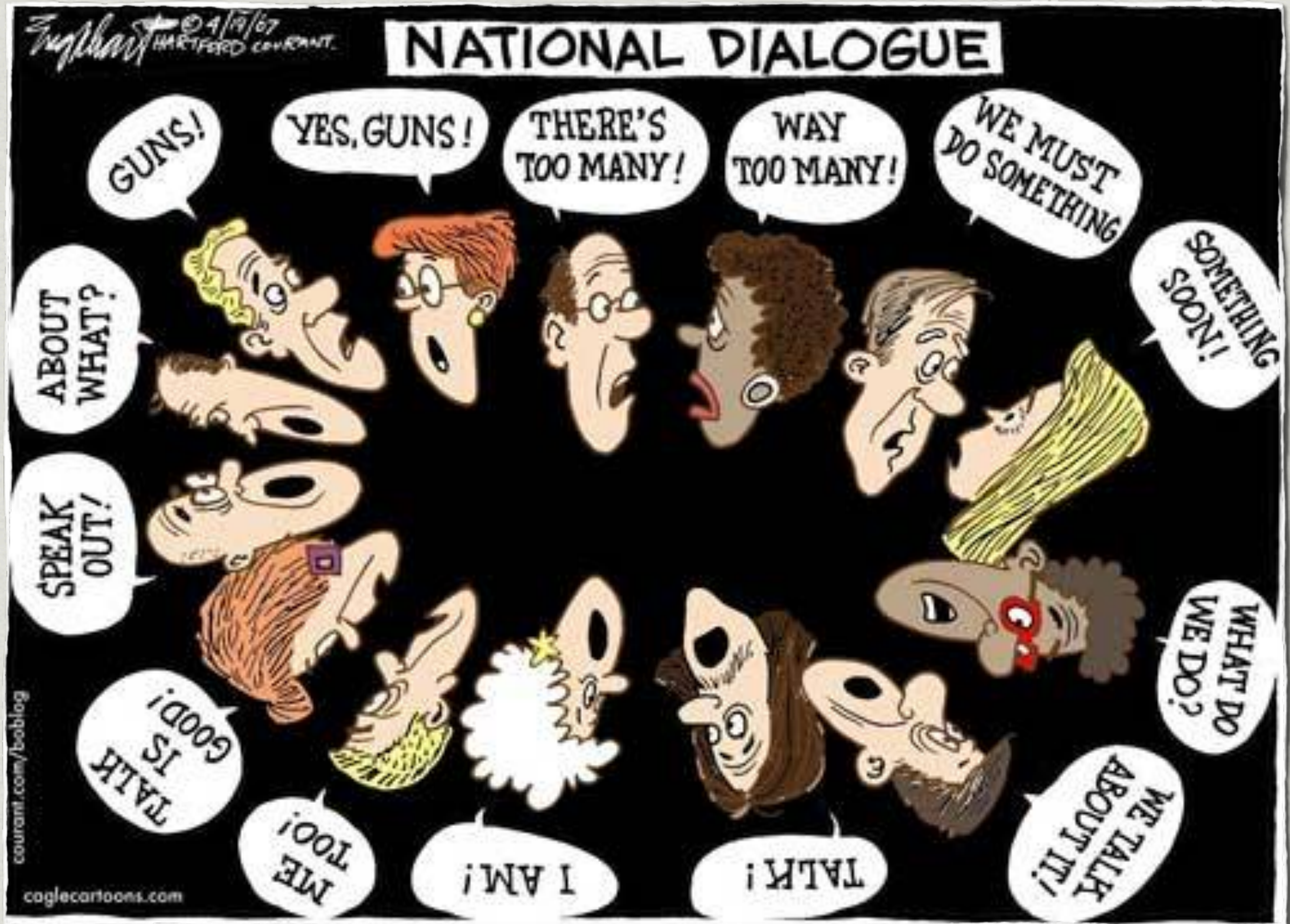


The pen is mightier than the gun.  
Write Handgun Control, Inc. Now,  
810 18th Street N.W., Washington, D.C. 20006  
Or call (202) 638-4723

**STOP HANDGUNS BEFORE THEY STOP YOU.**

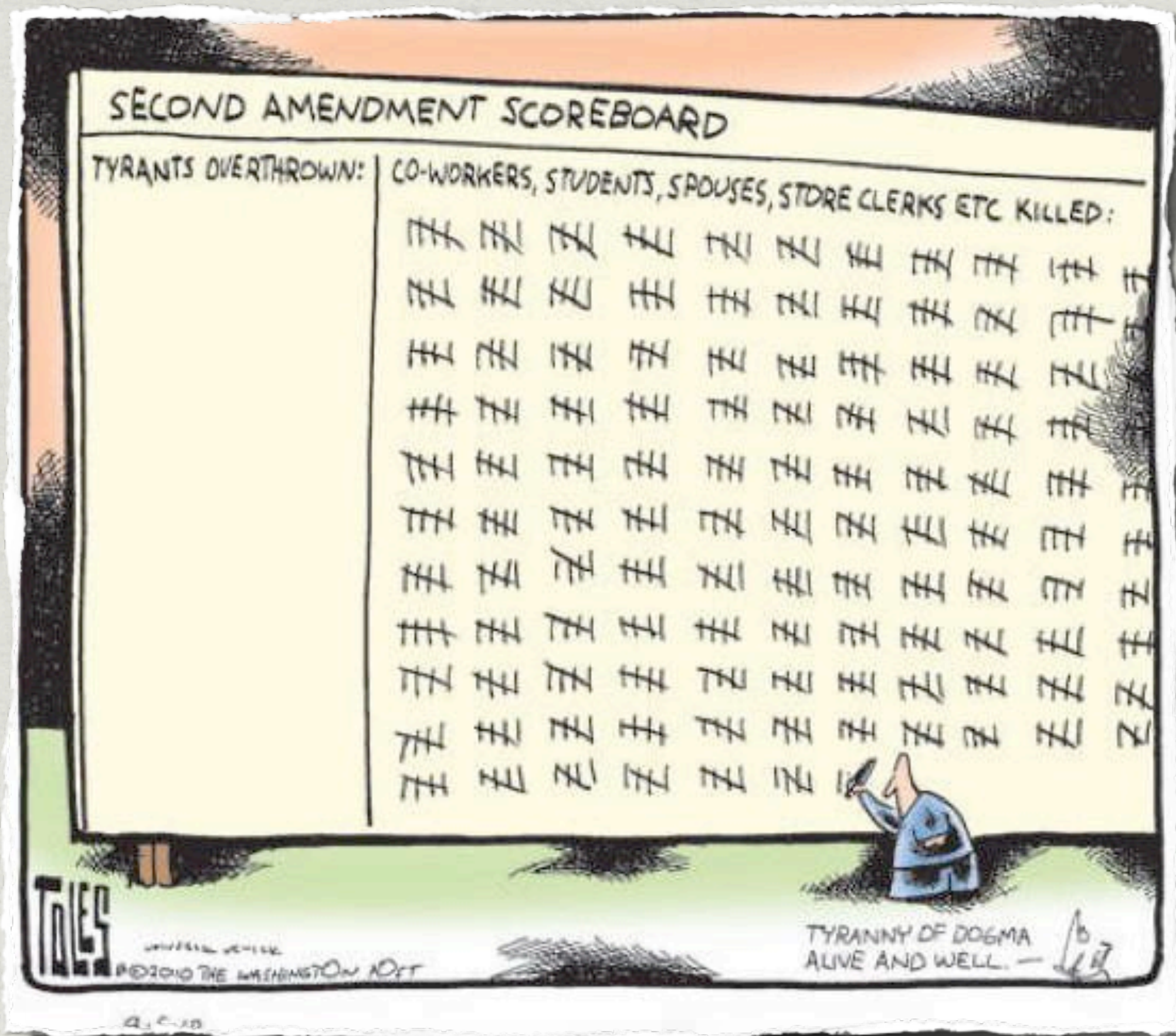


# THIS ISSUE GETS PEOPLE “FIRED” UP





# THIS ISSUE GETS PEOPLE “FIRED” UP





# THIS ISSUE GETS PEOPLE “FIRED” UP





**THIS ISSUE GETS PEOPLE “FIRED” UP**

# **IF GUNS WERE AS REGULATED AS CARS**



Title and Tag at Each Point of Sale	Title and Tag at Each Point of Sale
Driver Training	Gun Training
Written Test	Written Test
Practical Test	Practical Test
Health Requirements	Health Requirements
Liability Insurance on Each Vehicle	Liability Insurance on Each Gun
Renewals and Inspections at Intervals	Renewals and Inspections at Intervals



THIS ISSUE GETS PEOPLE “FIRED” UP

# ASSAULT VEHICLE

It's black, scary-looking, and was clearly **designed to kill innocent people** by enabling the driver to exceed the legal speed limit by over 100 mph.

**32,367 people were killed**  
on the roadways in 2011. Americans don't need 470 HP.

## Ban them.





# THIS ISSUE GETS PEOPLE “FIRED” UP





THIS ISSUE GETS PEOPLE “FIRED” UP

THE NRA ISN'T THE ENEMY...  
**HOME DEPOT IS!**

THE NUMBER OF PEOPLE KILLED IN 2011 BY



**323**

**496**

AMERICA...IT'S <sup>control</sup>  
**HAMMER TIME**

THIS MESSAGE IS BROUGHT TO YOU BY **AAAAAH!**  
(ABSURDLY ANGRY AMERICANS AGAINST ABUSING HAMMERS!)



THIS ISSUE GETS PEOPLE “FIRED” UP

# TIMOTHY MCVEIGH DIDN'T USE A GUN.



- KILLED 168 INNOCENT PEOPLE.
- *KILLED 19 CHILDREN UNDER AGE 6.*
- INJURED OVER 680 INNOCENT PEOPLE.
- YOU CAN STILL BUY FERTILIZER.
- YOU CAN STILL BUY RACING FUEL.
- YOU CAN STILL RENT BOX TRUCKS.

*MURDERERS WILL MURDER WITH OR WITHOUT A GUN.*

## GUNS ARE NOT THE PROBLEM.



# THIS ISSUE GETS PEOPLE “FIRED” UP



**Ever heard of the Pearl River, MS shooting?  
Probably not.**

**This 16 year old kid  
was stopped by  
Assist. Principial Joel Myrick  
and his .45 pistol retrieved  
from his car.**

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**Did the Gun Free Zone law stop this nut? Nope.**

**Did an armed citizen with a .45 pistol? Yep.**

**Will you hear this in the mainstream media? Nope.**

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# THIS ISSUE GETS PEOPLE “FIRED” UP





# THIS ISSUE GETS PEOPLE “FIRED” UP





# Arguments

- ★ Petitioner's Arguments
- ★ Respondent's Arguments

Constitution & Business



# ISSUES

**DOES A D.C. LAW  
TOTALLY BANNING  
HANDGUN POSSESSION AT  
HOME VIOLATE THE 2<sup>ND</sup>  
AMENDMENT?**

**DOES A D.C. LAW  
REQUIRING LEGAL GUNS  
IN HOMES BE DISABLED  
OR TRIGGER-LOCKED  
VIOLATE THE 2<sup>ND</sup>  
AMENDMENT?**

**IS HELLER ENTITLED TO A  
GUN LICENSE?**



# D.C. v. Heller

- ★ Petitioner's Brief
  - ★ Respondent's Brief
  - ★ Oral Argument
  - ★ Lower Court Opinion
  - ★ Supreme Court Opinion
- Constitution & Business



# PROCEDURE: D.C. CIRCUIT CASE

**FEDERAL DISTRICT COURT  
(D.C.)**

**CAN CITY ENFORCE  
HANDGUN BAN?**

**YES TO ALL**

**IS LICENSE BAN FOR  
GUNS IN THE HOME  
CONSTITUTIONAL?**

**NO  
IND. RIGHT TO CARRY  
GUN OUTSIDE OF THE  
MILITIA**

**IS TRIGGER-LOCK BAN  
CONSTITUTIONAL?**

**NONE OF THESE PS  
CLAIM TO BE IN THE MILITIA**

**D.C. CIRCUIT COURT OF  
APPEALS**

**REVERSED**

**2ND AMENDMENT  
PROTECTS IND. RIGHT TO  
CARRY HANDGUNS**

**HANDGUN AND NON-  
FUNCTIONAL GUN LAW  
VIOLATE THAT RIGHT**



# OPERATIVE CLAUSE (TO THE MAJORITY)

"... THE RIGHT OF THE  
PEOPLE TO KEEP AND BEAR  
ARMS, SHALL NOT BE  
INFRINGED."



# PREFATORY CLAUSE (TO THE MAJORITY)

"A WELL REGULATED  
MILITIA, BEING NECESSARY  
TO THE SECURITY OF A FREE  
STATE, . . ."



# MILITIA . . . TO THE MAJORITY

**CONGRESS HAS THE  
POWER TO CALL  
FORTH THE MILITIA**

**MEANING THAT IT  
ALREADY EXISTS**

**CONGRESS CAN  
THEN ORGANIZE IT TO  
A COMMON FIGHTING  
FORCE**



# TAKEN TOGETHER

**WELL REGULATED  
MILITIA NECESSARY FOR  
THE SECURITY OF A FREE  
STATE**

**RIGHT OF THE PEOPLE TO  
KEEP & BEAR ARMS**

**TYRANTS  
USED TO TAKE  
AWAY ARMS &  
ENSURE RULE WITH  
STANDING ARMY**

**CLAUSE PREVENTS  
ELIMINATION OF THE  
MILITIA**

**SO . . . PEOPLE  
NEED TO REMAIN  
ARMED TO SECURE  
THEIR FREEDOM**



# PREFATORY & OPERATIVE CLAUSE

## PREFATORY CLAUSE

**MANY FOUNDING  
ERA DOCUMENTS HAD  
PREFATORY CLAUSE**

**DOES NOT LIMIT OR  
EXPAND SCOPE OF THE  
OPERATIVE CLAUSE**

**MAJORITY FIRST  
LOOKS AT THE  
OPERATIVE CLAUSE  
THEN COMES BACK**

**“THE PEOPLE”  
PROVIDES AN IND.  
RIGHT**

**“BEAR ARMS”  
MEANS CARRYING  
GUNS OUTSIDE OF  
MILITIA SERVICE**

**IND. RIGHT TO  
POSSESS & CARRY  
WEAPONS IN CASE OF  
SOME  
CONFRONTATIONS**

## OPERATIVE CLAUSE



# THE OPINION



2<sup>ND</sup> AMENDMENT GRANTS IND. RIGHT TO KEEP & BEAR ARMS  
IN THE HOME FOR SELF-DEFENSE



2<sup>ND</sup> AMENDMENT DOES NOT ENSHRINE SELF-DEFENSE RIGHT



CANNOT SHOW D.C. LAW IS UNREASONABLE UNDER 2<sup>ND</sup> AMEND.  
INTEREST-BALANCING INQUIRY



# OPINION STRUCTURE

BLUE = LAW | RED = DICTA

**INTRODUCTION**

**PART I**

**PART II-A**

**PART II-B & C**

**PART II-D**

**PART III**

**PART IV**

**CONCLUSION**

**ISSUE**

**BACKGROUND**

**MEANING**

**STATE CONST. &  
LEG. HISTORY**

**INTERPRETATION  
& PRECEDENT**

**LIMITING  
PRINCIPLES**

**D.C. LAW @ ISSUE**

**GUN VIOLENCE**

**BRIEF**

**LESS THAN  
1 FULL PAGE**

**INDIVIDUAL  
RIGHT**

**INDIVIDUAL  
RIGHT**

**INDIVIDUAL  
RIGHT**

**2<sup>ND</sup>  
AMENDMENT NOT  
UNLIMITED**

**BAN & CARRY  
STRUCK DOWN**

**2<sup>ND</sup>  
AMENDMENT LIVES!**



# A LITTLE DICTA INTERSPERSED IN HELLER

**“...NOTHING IN OUR  
OPINION SHOULD BE TAKEN TO  
CAST DOUBT ON LONGSTANDING  
PROHIBITIONS ON THE  
POSSESSION OF FIREARMS BY  
FELONS...”**



# SCRUTINY OF GUN LAWS & SCALIA'S RESPONSE

**RATIONAL BASIS**

**GUNS LAWS NOT ANALYZED UNDER THIS  
PERMISSIVE STANDARD  
AS THIS IS AN ENUMERATED  
CONSTITUTIONAL RIGHT**

**INTEREST TEST**

**2ND AMENDMENT NOT SUBJECT TO CASE  
BY CASE ANALYSIS OF WHETHER IT IS  
REALLY WORTH PROTECTING**

**STRICT SCRUTINY**

**UNCLEAR . . . THIS TEST IS USED FOR  
FUNDAMENTAL RIGHTS**



# TEXT & HISTORY

**ORIGINALISM:  
(DREAM OPINION FOR JUSTICE SCALIA)**

**LOOK TO  
CONSTITUTIONAL  
TEXT**

**2ND AMENDMENT TEXT MAKES CLEAR THAT IT'S  
AN INDIVIDUAL RIGHT TO KEEP & BEAR ARMS  
FOR SELF DEFENSE**

**LOOK TO AMERICAN  
& COMMON LAW  
HISTORY**

**NOT AN  
UNLIMITED  
RIGHT!**

**BRITISH & AMERICAN HISTORY MAKE CLEAR  
THAT IT'S AN INDIVIDUAL RIGHT TO KEEP &  
BEAR ARMS**



# LIMITING PRINCIPLES

**NOT AN  
UNLIMITED RIGHT**

**NOT A RIGHT TO CARRY  
ANY WEAPON,  
IN ANY MANNER,  
FOR ANY PURPOSE**

**PROHIBITIONS MAY STILL STAND ON:**

- ★ **MENTALLY ILL**
- ★ **FELONS**
- ★ **SENSITIVE PLACES (SCHOOLS & GOV'T BUILDINGS)**
- ★ **CONDITIONS ON COMMERCIAL ARMS SALES**



# D.C. LAW STRUCK DOWN

**BANS HANDGUNS IN  
THE HOME -- STRUCK  
DOWN**

**LEGAL GUNS IN  
HOME MUST BE  
DISASSEMBLED OR  
TRIGGER-LOCKED --  
STRUCK DOWN**

**D.C. MUST GRANT  
HELLER LICENSE IF  
QUALIFIED**

**ENUMERATED RIGHTS CANNOT BE  
RELEGATED TO CASE BY CASE  
ANALYSIS**

**THE PEOPLE DID THIS INTEREST  
BALANCING DURING RATIFICATION**

**LAW BANS EXACTLY THE TYPE OF ARMS  
AMERICANS USE FOR SELF DEFENSE**

**IN THE HOME . . . THE PLACE WHERE  
NEED FOR SELF DEFENSE IS MOST ACUTE**

**ENSHRINEMENT OF CONSTITUTIONAL  
RIGHTS TAKES POLICY CHOICES OFF THE  
TABLE**



# STEVENS, J. DISSENTING

- (1) QUESTION NOT WHETHER 2<sup>ND</sup> AMEND. PROTECTS INDIVIDUAL OR COLLECTIVE RIGHT
- (2) QUESTION IS WHETHER IT ALLOWS INDIVIDUALS TO POSSESS WEAPONS FOR NON-MILITARY PURPOSES
- (3) POINT WAS TO KEEP FEDERAL GOVERNMENT FROM DISBANDING STATE MILITIAS IN LIEU OF A STANDING ARMY
- (4) FOUNDERS DIDN'T ARGUE THAT LEGISLATURES COULD NOT BAN PRIVATE OWNERSHIP | AND . . . THE TEXT DOESN'T INDICATE THAT
- (5) HUNDREDS OF JUDGES HAVE RELIED ON MILLER & NO NEW EVIDENCE HAS COME TO LIGHT TO OVERRULE IT
- (6) THIS IS GOING TO LEAD TO RIGHT TO BEAR ARMS IN PUBLIC



# BREYER, J. DISSENTING

- (1) HELLER DECISION THREATENS GUNS LAWS NATIONWIDE
- (2) 2<sup>ND</sup> AMENDMENT DOESN'T PROTECT RIGHT OF PERSONAL SELF-DEFENSE
- (3) AMENDMENT PROTECTS MILITIA-RELATED INTERESTS
- (4) PROTECTION IT PROVIDES IS NOT ABSOLUTE
- (5) PERMISSIBLE LEGISLATIVE RESPONSE TO SERIOUS PROBLEM
- (6) COURTS SHOULD USE AN INTEREST BALANCING TEST - INTERESTS OF SELF-DEFENSE VERSUS GOV'T INTERESTS IN SAFETY
- (7) COURTS SHOULDN'T PRESUME CONSTITUTIONALITY OR UNCONSTITUTIONALITY
- (8) D.C. LAW IS A PROPORTIONATE RESPONSE TO PROBLEM IN "CRIME-RIDDEN URBAN AREAS" LIKE D.C.



# INCORPORATION . . . WAIT, WHAT?

**DOES THIS MAKE  
SENSE?**

- ★ **BILL OF RIGHTS APPLIES TO FEDERAL GOV'T**
- ★ **14<sup>TH</sup> AMENDMENT APPLIES TO STATES**
- ★ **IMPORTANT PROTECTIONS LEFT OUT**
- ★ **SCOTUS GOT CREATIVE**
- ★ **SOME AMENDMENTS “INCORPORATED” TO  
SOVEREIGN NOT MENTIONED IN AMENDMENT**
- ★ **DUE PROCESS CLAUSE - “LIFE, LIBERTY, PROPERTY”  
| LIBERTY INTERESTS PROTECTED BY THE BILL OF  
RIGHTS**
- ★ **REVERSE INCORPORATION - APPLYING EQUAL  
PROTECTION TO FEDERAL GOVERNMENT**



# INCORPORATION TEST

**BASIC  
INCORPORATION  
TEST**

- ★ **IS A FUNDAMENTAL RIGHT INVOLVED?**
- ★ **IS THE ONLY WAY TO PROTECT THAT RIGHT VIA  
INCORPORATION?**



# SELECTIVE INCORPORATION

1st Amendment	2nd Amendment	3rd Amendment
<b>FULLY INCORPORATED</b> RELIGION CLAUSE SPEECH CLAUSE PRESS CLAUSE ASSEMBLY CLAUSE PETITION CLAUSE	<b>FULLY INCORPORATED</b> INDIVIDUAL RIGHT TO BEAR ARMS <u>MCDONALD CASE</u>	<b>UNCLEAR</b>
4th Amendment	5th Amendment	6th Amendment
<b>FULLY INCORPORATED</b> SEARCH & SEIZURE EXCLUSIONARY RULE	TAKINGS CLAUSE SELF-INCRIMINATION DOUBLE JEOPARDY (SCOTUS REFUSED TO INCORPORATE GRAND JURY INDICTMENT)	<b>FULLY INCORPORATED</b> RIGHT TO COUNSEL PUBLIC TRIAL FAIR TRIAL CONFRONTATION IMPARTIAL JURY SPEEDY TRIAL



# SELECTIVE INCORPORATION

7 <sup>th</sup> Amendment	8 <sup>th</sup> Amendment
<b>NOT INCORPORATED</b>  <b>(SCOTUS REFUSED TO INCORPORATE JURY IN CIVIL CASES)</b>	<b>CRUEL &amp; UNUSUAL PUNISHMENT</b>  <b>(UNCLEAR ON EXCESSIVE FINES &amp; BAIL CLAUSE)</b>
9 <sup>th</sup> Amendment	10 <sup>th</sup> Amendment
<b>UNCLEAR</b>	<b>UNCLEAR</b>



# PUBLIC POLICY: THE MERITS

**PROS**

**CONS**



# TOUGH QUESTIONS W/ PROF. C

**THINK  
DEEPLY**

- (1) DOES NATURAL LAW PROTECT GUN RIGHTS (RIGHT TO RESISTANCE & SELF-PRESERVATION)?
- (2) IS SELF-DEFENSE A RIGHT OR PRIVILEGE THAT CAN BE REVOKED BY THE GOVERNMENT?
- (3) IS 2<sup>ND</sup> AMENDMENT PROTECTION VS. TYRANNY? ISN'T THAT THE ANTHESIS OF CONSTITUTIONAL DEMOCRACY?
- (4) WHAT OF THE CHASM BETWEEN A BAN ON HANDGUNS (UNCONSTITUTIONAL) & A BAN ON FELONS OR THE MENTALLY ILL WITH HANDGUNS (CONSTITUTIONAL)?
- (5) SHOULD THE 2ND AMENDMENT HAVE BEEN INCORPORATED AGAINST THE STATES? WHY WOULD SOME CONSERVATIVES SUPPORT INCORPORATION HERE?
- (6) BOTH SIDES SAY THE ISSUE IS CLEAR . . . HOW?



# TOUGH QUESTIONS W/ PROF. C

**THINK  
DEEPLY**

(7) WHY IS D.C. SUBJECT TO 2<sup>ND</sup> AMENDMENT? HUGE ROLE IN D.C. CIRCUIT COURT OPINION . . .

(8) DOES HELLER HAD STANDING? NOT CHALLENGED BY D.C. ON APPEAL TO SCOTUS . . .

(9) WHAT ABOUT SELF-DEFENSE AGAINST AGGRESSIVE FAMILY MEMBERS IN ADDITION TO INTRUDERS?

(10) DOES THIS OPINION PROTECT BANS ON CONCEALED WEAPONS?

(11) HOW DOES HELLER AFFECT BUSINESS?

(12) THIS CASE CAME DOWN TO ONE VOTE? IS THAT OK ON AN ISSUE THIS IMPORTANT?

(13) WHAT ABOUT GUNS OUTSIDE THE HOME?



# TOUGH QUESTIONS W/ PROF. C

**THINK  
DEEPLY**

- (14) WHAT ABOUT SUICIDES, ACCIDENTS, HARM TO FAMILY MEMBERS AFTER HELLER?
- (15) SHOULD PEOPLE STILL BE REQUIRED TO OBTAIN A LICENSE? A BACKGROUND CHECK?
- (16) WHAT ABOUT FEDERAL LAWS THAT INCREASE SENTENCES FOR GUN USE?
- (17) DO WE REALLY WANT CITIZENS SHOOTING IT OUT WITH CRIMINALS?





next: 4<sup>th</sup> Amendment Privacy Issues  
(Florida v. Harris)

Constitution & Business