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City ordinance prohibiting assault weapons upheld under Second Amendment attack

FACTS

The city of Highland Park, Illinois, had adopted an ordinance prohibiting possession of assault weapons or large-capacity magazines (those that can accept more than ten rounds). The ordinance defines an assault weapon as any semi-automatic gun that can accept a large-capacity magazine and has one of five other enumerated features. Some weapons were also prohibited by name such as AR-15s and AK-47s. Arie Friedman and the Illinois State Rifle Association sued, claiming that the ordinance violated the Second Amendment of the US Constitution. Friedman argued that the Supreme Court decision of District of Columbia v Heller which held that a law banning the possession of handguns in the home violates the individual right to keep and bear arms secured by the Second Amendment. The Heller court cautioned against interpreting its decision to cast doubt on "longstanding prohibitions," including the "historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.'" Friedman argued that there is no "historical tradition" of banning possession of semi-automatic guns and large-capacity magazines since semi-automatic guns have been in existence for over a hundred years and the ordinance was enacted in 2013. The Heller court also noted that state militias, when called to service, often had asked members to come armed with the sort of weapons that were "in common use at the time" and that such were protected by the Second Amendment while military-grade weapons such as machine guns were not.

☒ UESTION NO, 1

Should a law that prohibits possession of semi-automatic guns and large-capacity magazines be overturned on Second Amendment grounds if there is no historical tradition of prohibiting such weapons?

ANSWER ACCORDING TO THE SEVENTH CIRCUIT COURT OF APPEALS: NO. The Seventh Circuit found that simply because semi-automatic rifles have been marketed for civilian use for over a hundred years, Highland Park was not precluded from adopting an ordinance banning their use. The Court also noted that previous Supreme Court decisions contemplated that the type of weapons properly in private hands for militia use might change through legal regulation.

☒ UESTION NO, 2

Is a test that asks whether a regulation that bans weapons that were common at the time of ratification of the Second Amendment, i.e., 1791, or those that have "some reasonable relationship to the preservation or efficiency of a well-regulated militia," and whether law-abiding citizens retain adequate means of self-defense an appropriate inquiry as to the regulation's validity?

ANSWER ACCORDING TO THE SEVENTH CIRCUIT COURT OF APPEALS: YES. The court held that although the features prohibited by the Highland Park ordinance were not common in 1791, the weapons banned may have a relationship to the preservation of a state militia. Nonetheless, states, which are in charge of militias, should be allowed to decide when civilians can possess militia-grade weapons. The court further found that citizens still have adequate means of self-defense.

Friedman v City of Highland Park, No. 14-3091 (April 27, 2015)

EDITOR'S NOTE: On December 5, 2015, the United States Supreme Court denied certiorari to hear an appeal of the Seventh Circuit decision.

This column highlights a recent judicial decision or Michigan Municipal League Legal Defense Fund case that impacts municipalities. The information in this column should not be considered a legal opinion or to constitute legal advice.