US Supreme Court Holds Due Process Clause of the Fourteenth Amendment Incorporates the Second Amendment Right to Possess a Handgun in the Home for the Purpose of Self-Defense Applicable to the States

On June 28th, in an opinion delivered by Justice Samuel A. Alito, Jr., the Court held 5 to 4 that the Fourteenth Amendment makes the Second Amendment right to keep and bear arms for the purpose of self-defense, which the Supreme Court recognized in District of Columbia v. Heller, 554 U.S. ___, 128 S. Ct. 2783 (2008) applicable to the States (McDonald v. City of Chicago; Docket No. 08-1521). The Supreme Court, in deciding the McDonald, held that the Due Process Clause, not the Privileges and Immunities Clause, of the Fourteenth Amendment applied.

The city of Chicago (City) and the village of Oak Park have laws that are similar to the District of Columbia’s, but the City and Oak Park argued that their laws are constitutional because the Second Amendment has no application to the States. Otis McDonald, Adam Orlov, Colleen Lawson, and David Lawson (Chicago petitioners) are Chicago residents who would like to keep handguns in their homes for self-defense but are prohibited from doing so by Chicago’s firearms laws. Several of the Chicago petitioners have been the targets of threats and violence. A City ordinance provides that “[n]o person shall…possess…any firearm unless such person is the holder of a valid registration certificate for such firearm.” The Code then prohibits registration of most handguns, thus effectively banning handgun possession by almost all private citizens who reside in the City. Chicago’s firearms laws. Several of the Chicago petitioners have been the targets of threats and violence. A City ordinance provides that “[n]o person shall…possess…any firearm unless such person is the holder of a valid registration certificate for such firearm.” The Code then prohibits registration of most handguns, thus effectively banning handgun possession by almost all private citizens who reside in the City. Chicago enacted its handgun ban to protect its residents “from the loss of property and injury or death from firearms.” Like Chicago, Oak Park makes it “unlawful for any person to possess…any firearm,” a term that includes “pistols, revolvers, guns and small arms…commonly known as handguns.”

After the decision in Heller, the Chicago petitioners and two groups filed suit against the City in the United States District Court for the Northern District of Illinois. They sought a declaration that the handgun ban and several related Chicago ordinances violate the Second and Fourteenth Amendments to the United States Constitution. Another action challenging the Oak Park law was filed in the same District Court by the National Rifle Association (NRA) and two Oak Park residents. In addition, the NRA and others filed a third action challenging the Chicago ordinances. All three cases were assigned to the same District Judge.

The District Court rejected plaintiffs’ argument that the Chicago and Oak Park laws are unconstitutional. The court noted that the Seventh Circuit had “squarely upheld the constitutionality of a ban on handguns a quarter century ago,” and that Heller had explicitly refrained from “opin[ing] on the subject of incorporation vel non of the Second Amendment.” The U.S. Cout of Appeals for the Seventh Circuit affirmed and the Supreme Court, thereafter, granted certiorari.

The Supreme Court, in turning to the question of whether the Second Amendment right to keep and bear arms is incorporated in the concept of due process, found, as it contended Heller points unmistakably, that individual self-defense is “the central component” of the Second Amendment right as it was “deeply rooted in this Nation’s history and tradition.”

In the wake of the Court’s June 28th decision making the City’s 28-year-old ban on handguns unenforceable, on July 2nd the Chicago City Council unanimously approved what city officials say is the strictest handgun ordinance in the United States called the “Responsible Gun Ownership Ordinance.” The new ordinance requires city-issued “permits,” registration, and special training for residents who wish to own
Philip Arends was an assistant troop mentor on the issue of agency.


First District Appellate Court of Illinois Affirms that Girl Scout Volunteer Assistant was Not an Agent of the Girl Scouts for Post-Cookie Sale Injury at McDonald’s Restaurant

On June 15th, Justice Theis writing on behalf of the Appellate Court of Illinois, First District (Krickl v. Girl Scouts—Illinois Crossroads Council, Inc.; Docket No. 1-09-2454) affirmed the circuit court’s grant of the defendant’s motion for summary judgment on the issue of agency.

Philip Arends was an assistant troop leader for his daughter’s Brownie troop. On March 3, 2007, Arends and his wife, the troop leader, were supervising the troop’s Girl Scout cookie sale outside a grocery store in Des Plaines. The night before the sale, Arends had packed a table and some chairs that he had borrowed from a friend into his minivan. The morning of the sale, he packed the boxes of cookies that were going to be sold at the site and drove to the site with his daughter. His wife drove her car to the site with a few of the girls and a few of the girls were dropped off at the site by their own parents. Arends pulled his minivan up to the front of the grocery store, unloaded the cookies, the table and chairs, and then parked his minivan in the store’s lot. The sale was scheduled to run from 11 a.m. to 1 p.m., but the girls sold out of cookies before the scheduled end of the sale.

Arends drove his minivan up to the front of the store and loaded the table and chairs into the back. He then drove his minivan, with one of the girls as a passenger, around the parking lot to where his wife was parked and called her cell phone to discuss taking the girls to lunch. Arends and his wife previously had talked about taking the girls out to lunch after the sale as a reward. They decided to take the girls, who had complained during the sale about being cold and hungry, to McDonald’s for lunch. However, one of the girls was picked up from the grocery store by her parents and did not join the group for lunch. Arends does not recall many details about the accident, but the relevant facts are not in dispute. Arends drove forward toward where his wife was parked, struck a parked car, hit plaintiff (Donna Krickl), struck a pole and then backed up and ran over plaintiff, trapping her under his rear tire. Plaintiff was seriously injured as a result of the accident.

At the time of the accident, the Girl Scouts—Illinois Crossroads Council, Inc. (Council) was the administrative head of the Girl Scouts for the northeast Illinois geographic area, which contained approximately 15 vistas, essentially smaller geographic units within northeastern Illinois. Although the Council created an application for approval of a cookie site sale, these applications were not submitted to the Council, but were instead submitted to and reviewed by the cookie site coordinator for the applicable vista. The site coordinator approved the troop’s application for the cookie sale. The application did not contain any information about a lunch to be held after the cookies were sold. Neither Arends nor his wife informed the Council about their plan to take the girls to lunch after the sale and the Council was not otherwise aware of the lunch plan. No trip forms or permission slips were completed for the lunch at a McDonald’s restaurant.

Krickl filed a lawsuit against the Council for her injuries. The Council filed a motion for summary judgment and argued that Arends was not acting as an agent of the Council at the time of the accident. The circuit court granted the Council’s motion and the plaintiff appealed.

The Court, in setting forth the law regarding agents stated: “A principal is liable for the tort of his agent under the doctrine of respondeat superior when the tort is committed within the scope of the agent’s agency. The test of agency is whether the alleged principal has the right to control the manner and method in which work is carried out by the alleged agent and whether the alleged agent can affect the legal relationships of the principal. The ability or right to control is a key element to the determination, regardless of whether or not the principal exercises that right to control. A principal may be liable for the torts of an agent even where that agent is a volunteer. The purpose for which a volunteer acts may be important when determining whether he or she is an agent. The burden of proving the existence and scope of an agency relationship is on the party seeking to impose liability on the principal. Although the existence of an agency relationship usually is a question of fact, it is an issue of law where the facts relating to the relationship are undisputed or no liability exists as a matter of law.”

On appeal, the Court found no genuine issue of material fact with respect to whether Arends was an agent of the Council. The undisputed facts in the record establish that Arends was not acting as an agent of the Council at the time of the accident. The cookie site sale was over because the girls had finished selling all of the cookies. The table and chairs had been reloaded into the minivan that was owned and operated by Arends. One of the girls had been picked up by her parents. Arends had driven away from the front of the grocery store, where the troop had sold the cookies, to the other side of the parking lot and was calling his wife to confirm where they were going to take the remaining girls for lunch. The Council was not aware that Arends and his wife planned to take some of the girls to lunch after the sale and no permission slips were completed for the lunch. Arends and his wife decided of their own accord to take the girls to lunch as a reward for their hard work and because they were complaining about being cold and hungry. The lunch did not further the purposes of the Council.