
The Right to Keep and Bear Arms: *Quilici v. Morton Grove*

“**Y**OU KNOW, MOST PEOPLE HAVE this John Wayne ‘You’ve got to have a gun, it’s your right to have a gun, this is America’ syndrome. If you ask people on the street whether they have a right to have a gun under the Constitution, most people would say, ‘You betcha!’” says Greg Youstra, a trustee of the Village of Morton Grove, Illinois, at the time it became the first town in the United States to ban the possession of handguns.

In constitutional terms, it is known as the right to keep and bear arms. It is rooted in the Second Amendment, which provides, “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.” And although the gun lobby and certain scholars are convinced that citizens have a constitutional right to pack a gun, the courts have not supported this interpretation.

On March 30, 1981, John Hinckley attempted to kill President Ronald Reagan with a gun. Six weeks later, on May 13, Pope John Paul II was shot in Saint Peter’s Square. Two weeks after

that, Geoffrey LaGioia applied for a permit to open a gun store in a small shopping mall in the Chicago suburb of Morton Grove. "People didn't like the idea," says Martin Ashman, the village's attorney. "They didn't like the idea of a gun shop where children could watch people buy guns and window-shop for guns. This was in an all-night convenience food mart; the walls weren't very secure. Anyone could break in and take a whole load of guns."

Neil Cashman, the longest-serving village trustee and father of nine, was also troubled. He called Ashman, told him that the trustees were concerned about having a gun shop in town, and asked Ashman what they could do about it. After some legal research, Ashman concluded that a town could ban the sale of guns. He called Cashman on the Thursday before a Monday trustees meeting and told him, "We could keep these people out. We can pass a law which bans the sale of all guns in Morton Grove."

Ashman continues: "As an aside I said, 'You know, if you want to ban the possession of handguns you probably can get away with that too. I'm not sure, because nobody has done it.' Cashman said, 'I think I may want to propose that.' I said, 'Well, you better think real hard, because you don't want to go way out on a limb. Check with people before you do it.' Cashman replied, 'I will. Over the weekend I will.' But he didn't."

At the trustees' Monday meeting, the chambers were full of people against the gun shop. A proposal that Ashman draft an ordinance banning the sale of guns passed easily. Then, "out of the clear blue," Ashman says, "Neil Cashman proposed a law banning the private possession of handguns. There was a long moment of silence. And finally Don Sneider, another trustee, seconded the motion."

The proposal was tabled until the next meeting, at which time the trustees voted to have a public hearing on the ordinance, to allow each side to air its views. As the trustees lined up, there were two in favor of the ordinance banning handguns, Cashman and Sneider; two opposed, Joan Dechert and Dick Hohs; and two undecided, Lou Greenberg and Greg Youstra. All of them realized that Morton Grove would be the first town in the United States to ban the private possession of handguns.

So did the National Rifle Association (NRA), the powerful gun lobbying group, nearly three million strong. The NRA began to campaign publicly against the ordinance, deluging Morton Grove

with pamphlets and calling residents who were opposed to the ordinance, specifically targeting American Legion members, veterans, and registered gun owners. The NRA also encouraged its out-of-town members to travel to Morton Grove to speak at the public hearing. Greg Youstra, a black belt in karate, high school physical education teacher, and recreational gun user, says, "I'd owned guns for years, but I never gave it any thought. All of a sudden I'm inundated from both sides; do it, don't do it. [People] would call, they wanted coffee, they wanted dinner, they wanted to start seeing me. Suddenly I was getting the rush from everybody."

In addition to pressure from the people in town, Morton Grove became a focus of both the Chicago and the national media. Editorials appeared in the local paper, the churches in town began to stake out their positions. The trustees were barraged with phone calls, requests for interviews, and appearances on television talk shows. Both sides held rallies in the junior high school auditorium and petitions circulated through town.

On the evening of June 8, 1981, it was raining lightly. The police department had canceled all vacations; they were expecting a large crowd. At the public hearing, the council chambers were packed. A closed-circuit television hookup enabled the hundreds of people gathered outside to see what was going on inside the room. The networks were there carrying the story, excerpts of the hearing were shown on the "MacNeil-Lehrer NewsHour," and the debate was reenacted on "Nightline." Correspondents from as far away as Japan and Australia converged on the usually tranquil bedroom community. Ashman, Cashman, and Youstra agree that most of the people in the crowd were not locals. "The night of the vote, the NRA trucked them in by truck, bus, car; American flags all over the place, John Deere hats. It looked like rural America was here," says Youstra.

"They were hollering and yelling and everything. 'Taking away our rights. Taking away our rights,'" says Cashman.

"I mean, they surrounded the village hall where it was fifty deep," adds Youstra. "This guy doesn't scare very easily, but I was scared that night. I was afraid I was going to get shot."

Because the purpose of the hearing was to give Morton Grove's residents a chance to express their opinions to the trustees, persons wishing to speak had first to give their name and address.

After these were checked against the town water registry, people were permitted to approach the microphone. The mayor of Morton Grove had decided that each person who wanted to speak would be allowed. "There were some pretty irrational arguments," Neil Cashman says. "It was four and a half hours of Archie Bunker. I was called everything in the book. And the more names they called me the more determined I was."

At 1:30 a.m. a vote was called. No one knew how it would go. Youstra's was the last vote. "When they mentioned my name, that it was going to be Greg Youstra's vote, a cheer went up from outside, like you know, Caesar Augustus. They were all out there saying, 'There's no way in the world the guy is going to vote for this thing.' And when I said, 'I vote for the ordinance, [there were] boos and 'You sold us out, you dirty commie.' It was unbelievable."

By a vote of four to two Morton Grove became the first town in the United States to prohibit the possession of handguns in the home. "I hope we saved a couple of lives," Neil Cashman says. "I guess I'll never see the complete ban of handguns. I don't know whether my Patty [his daughter] will ever see it, but I sure hope that little Emily and Patrick and Sean [his grandchildren] do see the complete ban of guns. That's my wish."

Martin Ashman had worked on the ordinance for over a month to ensure that it would stand up to a legal challenge. "I knew that if it passed it was going to go to the U.S. Supreme Court, and I knew from what was happening—the media attention was intense—that I had better do it right."

Morton Grove's ordinance actually prohibited possession of bludgeons, blackjacks, slug shots, sand clubs, sandbags, metal knuckles, switchblades, sawed-off shotguns, bombs, Molotov cocktails, and *any handgun unless it had been rendered permanently inoperative*. Exceptions were made for peace officers, prison wardens, members of the armed forces or the National Guard carrying a gun on-duty, private security guards, licensed gun collectors, licensed gun clubs, and antique firearms. Transporting guns through Morton Grove, provided they were dismantled or were being transported for the purpose of competitive target shooting, was also allowed.

Any person who owned a handgun was required to turn it in to the police department. Those found with a gun after the ordi-

nance took effect faced a fine of up to five hundred dollars (later raised to a thousand dollars). Gun owners wishing to use their weapons for recreational shooting could store them at their gun clubs.

The morning after the ordinance was passed the media deluge began again. Hate mail started coming in. The trustees who had voted for the ordinance and Ashman received threats to themselves and their families. Those eventually stopped. The real attack came from Victor Quilici, a lawyer and gun-owning resident of Morton Grove, who filed a lawsuit challenging the ordinance. Quilici claimed it violated his Second Amendment right to keep and bear arms.

The lawsuit and the controversy over the right to arms center on whether the right belongs to the individual or to the people as a group. Does the Constitution protect a person's right to have a gun for hunting and self-defense, or does it provide a collective right to defend the state?

The Second Amendment debate turns traditional constitutional arguments inside out. Some scholars who usually favor restricting individual rights and a narrow construction of the Constitution believe that the Second Amendment should be interpreted broadly. In contrast, those who often argue for an expansive reading of the Constitution with strong protection for individual rights, argue that the Second Amendment applies only to the federal government's right to raise a militia, and does not provide an individual the right to keep and bear arms.

The arguments begin with the language of the Second Amendment itself. Proponents of the individual-right theory argue that the first clause of the Second Amendment, "a well regulated Militia being necessary to the security of a free State," is an amplifying clause intended to illustrate one application of the right to bear arms, but not the only one. Next, they claim that "the right of the people" means the right of each person, just as it does in the First Amendment or the Fourth Amendment. Finally, they argue that "to keep and bear arms" means precisely what it says: to keep arms in one's home and to bear them in self-defense, or in defense of the state.

These textual arguments are rebutted by the collective-right advocates, who claim that the Second Amendment must be read

as a whole, not split into phrases that, when read separately, distort its meaning. To them, its meaning is clear. The Framers included the first clause to justify and explain the right at issue: "A well regulated Militia being necessary to the security of a free State . . ." They maintain that this clause qualifies, rather than amplifies, the right to arms, restricting it to activities that the state determines are necessary to maintain a militia.

In addition to arguments based on the language of the Constitution, each side makes a number of historical arguments to support its position. These are based on English common law, the English Bill of Rights, the American colonial experience, and debates over the ratification of the American Bill of Rights.

Individual-right advocates argue that the Framers intended to protect a personal right to bear arms when they wrote the Bill of Rights because such a right was widely accepted in the eighteenth century, having been recognized in English common law since before the Norman Conquest in 1066. Not only were English citizens allowed to possess arms, they were required to do so because England depended for its defense on a citizen's militia, not a royal army. Englishmen were also required to respond with their weapons in good condition when summoned by the sheriff in local disturbances and to take turns keeping watch over their villages at night. The progun side interprets the historical record to support an underlying and implicit right to keep and bear arms.

Gun control proponents respond that the common law right to keep and bear arms was not an individual right to keep weapons, but existed primarily for the defense of the state and community. Furthermore, they argue, it was never an absolute right; as early as 1328, Parliament placed limits on the right. The early restrictions prohibited carrying weapons in public; later, Parliament restricted gun ownership to the wealthy. During and after the English Civil War in the seventeenth century, the Stuart kings further limited gun ownership, allowing only their religious or political supporters to possess weapons. To gun control advocates, these repeated efforts to regulate, restrict, and disarm segments of the population do not support an underlying right to arms, but rather prove the validity of legislative attempts to restrict it, including modern gun control laws.

The historical debate then crosses the ocean to the United

States. Under the Articles of Confederation, the states had maintained their "sovereignty, freedom and independence" at the expense of a weak central government. Each state was required to keep a "well regulated and disciplined militia, sufficiently armed and accoutred." These militias required men between the ages of approximately sixteen and sixty to keep weapons and be ready to defend their state. Congress's military powers, on the other hand, were severely limited. The federal government could not maintain any army at all without the consent of nine of the thirteen states.

The delegates to the Constitutional Convention in the summer of 1787 debated the relative merits of the militia system and a national standing army. The tyranny of the British army during colonial times had made Americans intensely suspicious of military power not subject to civilian control. In spite of this distrust of standing armies, however, the American experience in the Revolutionary War and under the Articles of Confederation had convinced most delegates that Congress needed the authority to raise and support an army to protect the frontier, the national government, and the nation itself.

As part of the system of checks and balances, they came up with a compromise that divided the military power between the federal government and the states. Under the Constitution, Congress has the authority to declare war, raise an army, and call up the militia, but the states keep the power to appoint militia officers and train militia members, subject to the instructions of Congress.

The progun side in the *Morton Grove* case interpreted the Framers' support for the militia as evidence of their acceptance of private possession of firearms and their intent to secure an individual right to keep and bear arms.

First, Quilici argued that as a general matter, guns played an important role in eighteenth-century America. At that time, guns were an everyday tool used to procure food, pursue livelihoods, and protect settlements in a hostile frontier.

Quilici also argued that the right to bear arms was essential to a man's ability to serve (with his own weapon) in the militia, which, in turn, is necessary to the national defense. He argued that after the gun ban, citizens of Morton Grove would be unable

to respond if called as part of the reserve militia in a national emergency or foreign invasion.

The gun control side rejected this contention as absurd. They argued that private weapons are unnecessary for reserve militia duty because the state of Illinois provides weapons for its militia, and, in any event, residents could keep their weapons at a club, collect them, and report for duty in case of an emergency. To gun control advocates, the Framers' solution prevents the federal government's usurpation of the state's power to control its militia. It does not protect an individual right to keep and bear arms. As they are quick to point out, there was no mention of individual arms ownership, hunting, or even self-defense in the debates over the ratification of the Bill of Rights.

The courts have overwhelmingly supported the collective rights interpretation. The federal courts in the *Morton Grove* case were no exception. The district court held that Morton Grove's ordinance did not violate the Illinois Constitution or the Second Amendment. It based its holding on the fact that the Second Amendment has never been incorporated into the Fourteenth and made applicable against the states. The Second Amendment, therefore, acts only as a restriction on the federal government, keeping it from passing legislation that would infringe on a state's right to arm and train its militia. State legislatures remain free to regulate or restrict state militias. Municipalities may also limit private access to weapons under their power to provide for the public health and safety. "Since the Second Amendment does not apply to the States and localities," the court held, "it is not infringed by the Morton Grove ordinance."

On December 6, 1982, the U.S. Court of Appeals for the Seventh Circuit affirmed. It agreed that the Second Amendment does not apply to the states. To the court, the words of the Second Amendment made clear that the right to bear arms is "inextricably connected to the preservation of a militia." Under the controlling authority of the only Supreme Court case to address the scope of the Second Amendment, *U.S. v. Miller*, the court concluded that "the right to keep and bear handguns is not guaranteed by the Second Amendment." The U.S. Supreme Court declined to hear the case, letting the lower-court rulings stand. Gun control advocates were on a roll. They envisioned a movement sweeping across the United States town by town. Nearly

was another Chicago suburb, Evanston, a liberal, affluent college town. In Evanston, a gun control ordinance was introduced by the Board of Trustees and passed with little fanfare.

The next town to try was Skokie, which lies between Morton Grove and Evanston. Skokie's population includes a large number of Holocaust survivors, some of whom had lived through the Warsaw uprising. They vowed to themselves and their children, "Never again." They were afraid that if disarmed, they would be vulnerable once more, and at an emotional town meeting the gun control ordinance was defeated. But the tough questions and policy debate were revived in Oak Park, the fourth Chicago suburb to consider a ban on handguns.

Maureen and Jim Piszczor used to read the newspaper together at the end of the day after they put their kids to bed. Jim was a lawyer in Chicago. The young couple had met and married while Jim was in law school, then settled in the integrated suburban community of Oak Park. Though they had never been politically active, one Thursday night they discussed an article about the upcoming weekend's annual march against handgun violence.

The next morning, October 21, 1983, Jim was shot in a Chicago courtroom by the ex-husband of a woman he was representing in a postdivorce proceeding. Still conscious as he was wheeled into the hospital, Jim repeated Maureen's name over and over, and the image inundated the local newscasts. Jim died that night.

A few hours after his death, Maureen asked Jim's best friend, Chris Walsh, to write a statement encouraging people to support the gun control march because, she says, "I knew what kind of person Jim was. I remembered him talking about the march, and I just kept thinking about it. People were so upset and angry, everything was so negative and sad, and I just felt this need to somehow reach out in his memory for something more positive."

Neither Maureen nor Chris Walsh had ever been particularly interested in gun control before, but by December Jim's friends had decided that as their memorial to Jim, they wanted his community, Oak Park, to pass an ordinance banning the possession of handguns. By then they had researched the issue, formed the Oak Park Citizen's Committee for Handgun Control, and joined with other Oak Park residents. But most of the others had never been politically active either, and only one even knew the names of the

village trustees. Chris Walsh describes their early meetings: "I remember going to bed at night and thinking, how will we ever do this? We don't know anybody. Nobody knows who we are. We decided that we had to do a petition drive to demonstrate that the issue was not one that was simply of interest to a small group of people who knew and loved Jim Piszczor, but was rather a matter of widespread concern throughout the community."

By February, the other side was ready. The Oak Park Freedom Committee, led by tax accountants Jim Zangrilli and Isaiah Stroud, began circulating petitions against the ban. They pointed out that a gun ban would not have saved Jim Piszczor's life, and argued that just as the remedy for drunk driving is not to confiscate cars, the remedy for handgun violence is not to ban guns. They argued that safety education and increased public awareness were the solutions. In March, the Freedom Committee lobbied the trustees to put the issue before the people in an advisory referendum, rather than allowing it to be decided by a trustees-only vote.

In April, the Oak Park trustees voted four to three in favor of an ordinance like Morton Grove's, which banned the possession of handguns. The Freedom Committee, not wanting to leave the decision in the hands of a few trustees, immediately filed petitions demanding a referendum. As a result of their efforts, the Oak Park trustees agreed to place a question on the ballot in the local school board election. The question asked Oak Park voters whether the ban should be repealed, making Oak Park the first community in the nation to put a gun ban to a vote by the people.

Both sides swung into high gear. Maureen Piszczor and Chris Walsh concentrated on door-to-door, precinct-by-precinct, standing-at-the-el-at-rush-hour efforts. "This story is as much about the First Amendment as it is about the Second Amendment," says Chris Walsh, "because it was really people assembling to petition the government." The progun side outspent them more than two to one, but when the votes were tallied, Maureen and Chris had won: 8,031 to 6,368.

Some hard questions remained for both sides, however. Most important was the question of self-defense. Two days after the ban went into effect, Don Bennett, a gas station owner, was held up at gunpoint. Before the ban, he had always worn a gun at work, making sure it was conspicuous because he had been

robbed a number of times. But Bennett had taken it off to appear to be in compliance with the law. The robbers held a gun to his head, forced him to empty his cash register and pockets, and left. Bennett ran outside and grabbed his gun from his car. According to Bennett, the robbers shot at him and he returned five shots into the back of their station wagon. Then he went inside to call the police. When they arrived, the police confiscated Bennett's gun and arrested him for violating the ordinance. The robbers were never caught.

To Jim Zangrilli, Bennett's story illustrates the misguided emphasis of the ordinance. Zangrilli argues that the ordinance penalizes the victim, not the criminal, putting law-abiding citizens on trial for exercising their right to self-defense. To Zangrilli, personal security is exactly what the Constitution should protect, or else we risk losing the ability to enforce our other rights.

Chris Walsh argues that Zangrilli and his fellow believers are wrong. "Their anger comes from their belief that a handgun will protect them, and by taking that handgun away you're taking away their right to defend themselves. My anger comes from the fact that I don't have my best friend around to talk to anymore. Maureen doesn't have her husband around to talk to anymore and Rachel and Bob don't have a father. And the reality is that our case is a lot more common than their case.... My neighbor's gun threatens my life."