



LCAV Case Study
Preserving Effective Gun Regulations –
Research and Analysis to Defeat a Court Challenge to a Local Illinois Handgun Ban

The Challenge: Handguns are a particular focus of regulatory efforts – up to and including outright bans – because of their frequent use in violent crime as compared to other firearms. According to a U.S. Department of Justice study, from 1993-2001, the U.S. suffered an annual average of 737,360 violent crimes committed with handguns, making handguns seven times more likely to be used to commit violent crimes than other firearms. Although many individuals choose to possess handguns for purposes of self-protection, several studies have shown that a gun in the home is more likely to be used in an unintentional shooting, criminal assault or suicide than used for self-defense.

In an effort to protect residents from the threat of death and injury from handguns, several local communities in Illinois adopted ordinances banning the sale and/or possession of handguns. The Village of Wilmette passed its ordinance prohibiting the possession of handguns in 1989, in the aftermath of a nearby school shooting. Wilmette's ordinance has never been challenged in court, although another handgun ban adopted by the Village of Morton Grove was upheld by the Illinois Supreme Court and the Seventh Circuit Court of Appeals.

In late 2003, a Wilmette resident shot and wounded a home invader with a handgun he owned in violation of the Village's handgun ordinance. In response to the Village's prosecution for violating the local ordinance, the resident filed a counterclaim challenging the constitutionality of the ordinance as a violation of his right to privacy in the home.

LCAV's Role: Attorneys for the Village of Wilmette asked LCAV to assist in researching other cases involving challenges to gun regulations under the constitutional right to privacy in the home. Because of the novelty of the resident's argument, there was no single source for this information. LCAV, with the assistance of *pro bono* counsel from its network of Illinois attorneys, conducted a thorough review of cases across the country and discovered that no court had ever invalidated a firearms regulation under the right to privacy. Conversely, several courts specifically rejected challenges to firearms laws based on the constitutional right to privacy in the home. LCAV prepared a memorandum analyzing these cases for the Village attorneys.

Results: The research and analysis conducted by LCAV gave the attorneys for the Village the confidence to argue to the court that no other court in the United States has ever overturned a firearm regulation under the theory advanced by the Wilmette resident challenging its handgun ban. In 2004 a judge hearing the case in the Circuit Court of Cook County agreed, concluding that the right to privacy does not extend to the possession of handguns, even when the possession is within the home. Unfortunately, in the aftermath of the Wilmette incident, the Illinois legislature enacted a statute (overriding the Governor's veto) that provides an affirmative defense to a violation of a municipal ordinance prohibiting or restricting the use of firearms in cases where the firearm is used in an act of self-defense or defense of others on one's land or in his or her abode or fixed place of business.

LCAV is a public interest law center dedicated to preventing gun violence. Formed in the wake of the 1993 assault weapon massacre at 101 California Street in San Francisco, LCAV provides free legal assistance to activists and public officials, including law enforcement and government attorneys, working to prevent gun violence. To learn more about our services or to request assistance, visit our web site, www.lcav.org, the nation's most comprehensive source for information on U.S. firearms regulation.

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