

OPEN FORUM *On the Supreme Court*

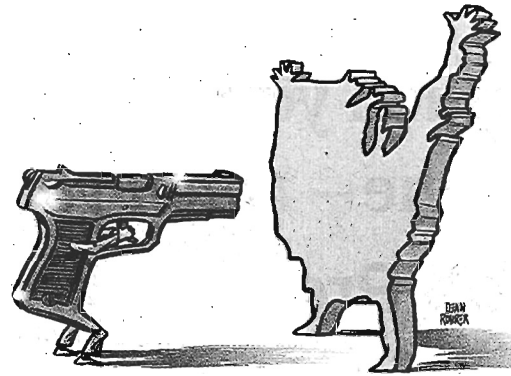
Preserving the right to regulate guns

By **Juliet A. Leftwich**

In 2006, Harvey Jackson pleaded guilty to illegal drug distribution and firearm possession after he was caught selling cocaine out of his home. Two years later, when the U.S. Supreme Court held that the Second Amendment protects a right to possess a firearm in the home for self-defense, however, Jackson challenged his conviction, arguing that the amendment guaranteed his right to keep a gun to protect himself while conducting his home drug enterprise. Jackson's conviction eventually was upheld, but his story demonstrates how

common frivolous Second Amendment challenges to our nation's gun laws have become. The situation could be made even worse, depending on the outcome of a case being heard by the U.S. Supreme Court today, *McDonald vs. City of Chicago*.

In the Supreme Court's controversial 2008 decision, *Heller vs. District of Columbia*, the court struck down a Washington, D.C., handgun ban, holding for the first time that the Second Amendment guarantees a right to possess a firearm unrelated to service in a state militia. Although the court held that some laws (e.g., those prohibiting gun possession by



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felons) are presumptively valid, it did not provide a test for lower courts to apply when considering challenges to other laws. Moreover, because Washington, D.C., is a federal district, *Heller* did not resolve the issue of whether the Second Amendment restricts state or local governments.

The *Heller* decision was a clear invitation to the NRA and other pro-gun groups to challenge our nation's gun laws,

and that's exactly what they did.

In fact, the gun lobby filed the *McDonald* case on the day the *Heller* decision was announced, seeking to extend the ruling to the states. A torrent of other legal challenges followed, including hundreds of actions by criminals like Harvey Jackson seeking to dismiss gun-related charges. Because California has the strongest state and local gun laws in the country, it has been

a particular target for Second Amendment lawsuits.

The chaos created by *Heller* will only be exacerbated if the Supreme Court holds that the Second Amendment restricts the states. The Second Amendment stands in stark contrast to other provisions of the Bill of Rights (such as the First Amendment, which protects free speech) because it involves guns — lethal objects that are used to kill or injure more than 100,000 Americans every year. State and local governments have long used their police powers to regulate guns in order to protect public safety, and should be allowed to continue to decide for themselves what gun laws are most appropriate for their particular needs. The people of Montana, for example, may not want or need the types of strong gun laws

that have been adopted by more urban states like California and New York.

Although opinion polls show that Americans support strong gun laws, gun violence prevention efforts languish at the federal level, in large part because of the enormous political influence of the NRA. Fortunately, California's state and local governments have demonstrated the courage to stand up to the gun lobby and enact common-sense laws. The Supreme Court must preserve the ability of jurisdictions across the United States to adopt a wide variety of laws to reduce gun violence, free from federal interference. It is truly a matter of life and death.

Juliet A. Leftwich is the legal director of Legal Community Against Violence, a national law center formed in the wake of the 101 California St. massacre in San Francisco.