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Public gun-rights debate, suits continue

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CHICAGO -- From behind the wheel of his hulking GMC Suburban, 76-year-old Otis McDonald leads a crime-themed tour of his Morgan Park neighborhood. He points to the yellow brick bungalow he says is a haven for drug dealers. Down the street is the alley where five years ago he saw a teenager pull out a gun and take aim at a passing car.

Around the corner, he gestures to the weed-bitten roadside where three thugs once threatened his life.

"I know every day that I come out in the streets, the youngsters will shoot me as quick as they will a policeman," says McDonald, a trim man with a neat mustache and closely cropped gray hair. "They'll shoot a policeman as quick as they will any of their young gangbangers."

To defend himself, McDonald says, he needs a handgun. So, in April of 2008, the retired maintenance engineer agreed to serve as the lead plaintiff in a lawsuit challenging Chicago's 28-year-old handgun ban. Soon after, he walked into the Chicago Police Department and, as his attorneys had directed, applied for a .22-caliber Beretta pistol, setting the lawsuit into motion. When that case is argued before the U.S. Supreme Court on March 2, McDonald will become the public face of one of the most important Second Amendment cases in the nation's history.

Amid the clamor of the gun-rights debate, McDonald presents a strongly sympathetic figure: an elderly man who wants a gun to protect himself from the hoodlums preying upon his neighborhood. But the story of McDonald and his lawsuit is more complicated than its broad outlines might suggest. McDonald and three co-plaintiffs were carefully recruited by gun-rights groups attempting to shift the public perception of the Second Amendment as a white, rural Republican issue. McDonald, a Democrat and longtime hunter, jokes that he was chosen as lead plaintiff because he is African-American.

And no matter what the court -- and the public -- might make of his story or his case, legal experts say McDonald is poised to become an enduring symbol.

"Regardless of how this case goes, Mr. McDonald's name is set in legal history, at the same level as *Roe v. Wade* and *Plessy v. Ferguson*," said Nicholas Johnson, a law professor at Fordham University. "Schoolkids are going to recognize that in this case, something dramatic happened."

Just 19 months ago, the U.S. Supreme Court struck down the Washington, D.C., handgun ban in a landmark ruling that the Second Amendment protects an

individual's right to own a firearm for self-defense. That decision, in *District of Columbia v. Heller*, was a result of years of work by libertarian advocates who in 2001 had spotted an intriguing 5th Circuit Court of Appeals decision that they believed opened a crack in decades of legal precedent.

Since the early 1900s, federal courts and most state courts had agreed that the Second Amendment protected only a collective right to bear arms, which, at the time the Constitution was framed, was considered integral to maintaining militias. But the 5th Circuit decision in *United States v. Emerson* bucked that precedent, ruling that the amendment protected an individual right -- to possess a gun in the home for self-defense, for example. As the libertarian advocates had hoped, the U.S. Supreme Court agreed in the *Heller* case, handing down a historic decision that energized the gun-rights movement. But because Washington is a federal district, the decision did not apply to states and other cities.

So, the battle shifted to Chicago, an obvious second front because the city's handgun ban was widely considered the strictest in the nation behind the Washington law. By early 2008, Alan Gura, the Virginia-based attorney who successfully argued the *Heller* case, had spread the word that he was looking for litigants in Chicago. Financed by the Second Amendment Foundation, a gun-rights group based in Bellevue, Wash., Gura interviewed about a dozen Chicagoans, first by phone and e-mail, and then in person.

His goal was to find a diverse group of individuals willing to represent the cause. "You want good people who can tell the story well and in a way that the public can connect with," Gura said.

He eventually settled on four people: Adam Orlov, a white, 40-year-old libertarian who lives in Old Town and is a partner in an equity options trading firm; David Lawson, a white, 44-year-old software engineer who lives in Irving Park and keeps a collection of old guns outside the city; Lawson's wife, Colleen, a multiracial 51-year-old hypnotherapist who became interested in Second Amendment issues after an attempted burglary at the couple's home in 2006; and McDonald.

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From the start, it was clear that McDonald had the most compelling story to tell. The son of Louisiana sharecroppers, he was 17 years old when he borrowed \$18 from his mother and set off for Chicago in 1951, becoming one of millions of African-Americans who moved North during the Great Migration. McDonald settled in the city's Morgan Park neighborhood, had eight children and spent his career working at the University of Chicago, where he started as a janitor, worked his way up to become a maintenance engineer, and retired in 1997.

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He became interested in gun rights about 2005, when Chicago Mayor Richard Daley was pushing a statewide ban on assault weapons. Concerned that his shotgun might be outlawed under the proposed ban, McDonald attended several gun-rights rallies in Springfield, where he says he was one of the few people from Chicago and, he notes with a laugh, probably the only black person.

At the rallies, he caught the eye of a Valinda Rowe, a gun-rights activist who works for IllinoisCarry.com, a group that favors the legalization of concealed and open

carrying of weapons. When Rowe heard that Gura was looking for Chicago plaintiffs, she passed along McDonald's phone number.

In April, Gura flew to Chicago to meet with the four potential plaintiffs. Sitting around a long conference table at a Schiller Park law office borrowed for the occasion, the group talked about the case and exchanged their personal stories. Toward the end of the meeting, Gura suggested that McDonald become the lead plaintiff, a move that would mean the case would be named McDonald v. City of Chicago.

"Why would you name it after me?" McDonald remembers asking. "Is it just because I'm the only black?"

He meant the question as a joke. Nevertheless, McDonald had identified an important issue. Gun ownership is most common among middle-age, middle-class white men who live in suburban or rural areas, according to a 2008 survey by the University of Chicago's National Opinion Research Center.

But gun-rights advocates want to frame the issue more broadly. In preparation for the Heller case, attorneys interviewed two dozen to three dozen people, looking for diversity in terms of race, sex, age and income.

"We wanted to be able to present the best face not just to the court but also to the media," said Robert A. Levy, a lawyer who plotted strategy in the Heller case and who is now the chairman of the libertarian **Cato Institute**. Plaintiffs had to have a clean criminal background and a plausible reason to want a firearm for self-defense, Levy said. "We didn't want some Montana militia man as the poster boy for the Second Amendment."

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The strategy was partly inspired by the civil rights-era work of the NAACP and Thurgood Marshall, who challenged racial segregation in the 1940s and 1950s by searching for compelling plaintiffs and using the press to build public sympathy and support.

The NAACP's approach became the template for other reform movements, such as women's rights in the 1970s, and was taken up by a spectrum of activists, including conservative groups that have used it to challenge affirmative action, with moderate success.

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In the Chicago case, constitutional law experts say McDonald likely was chosen for another important reason. Arguments in the case center on the 14th Amendment, which says that a state may not "abridge the privileges or immunities" of citizens.

The amendment was adopted after the Civil War to protect former slaves in states that were passing laws restricting their rights and prohibiting them from owning guns. In the Heller decision, Justice Antonin Scalia, writing for the majority, referred to that chapter in history, arguing that those who had opposed the disarmament of freedmen did so with the understanding that the Second Amendment protected an individual right to own a gun for self-defense.

That interpretation is central to the plaintiffs' arguments in the Chicago case.

Like the freed slaves, McDonald is a black person who, the thinking goes, has been disarmed. Having an African-American plaintiff challenge the Chicago handgun ban does not technically bolster the legal argument, says Adam Samaha, a law professor at the University of Chicago, but could provide a resonant symbol "because it helps us remember that history."

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City attorneys say the details of the plaintiffs' lives have no bearing on the case.

"Although the particular parties to the case have their own story, the Supreme Court decides on legal issues only," said Benna Ruth Solomon, deputy corporation counsel for the city.

That may be true inside the marbled corridors of the U.S. Supreme Court, but the view is different from the two-story house in Morgan Park where Otis McDonald has lived for almost 40 years.

Photos of McDonald's children, smiling in their graduation caps and gowns, hang on the walls alongside portraits of Barack Obama and Bill and Hillary Clinton. A large Bible rests on the coffee table next to a crystal bowl of peppermints. And, sitting in the green wingback chair nearby, McDonald says the days he once spent tending to his three hunting beagles, speed-walking at the high school track and cooking catfish dinners are now increasingly devoted to fielding calls from reporters.

A national news crew from CBS recorded a segment at the house this fall, and CNN is scheduled to come by. As McDonald spoke, the phone rang again; a radio reporter was on the line. Poised and easygoing, he ran upstairs to take the call.

His wife of 52 years sighed.

"I'll be glad when this is over," said Laura McDonald, 74. Dressed in a green velour track suit, just back from her morning walk, she talked about her early worries that someone might try to hurt her husband because of his involvement with the case. But she too believes they have the right and the need to own a handgun.

"It used to be a real nice neighborhood, but now it's different," she said quietly. A petite woman with a big smile and an easy laugh, she described how old friends have moved away and how drug dealers have moved in.

The family's house was burglarized three times in the 1980s and early 1990s, Otis McDonald says. Five years ago, a teenager pulled out a gun and aimed at a fleeing car in the rear alley. Three days later, that teenager and two other young men surrounded McDonald's car and, according to a police report, threatened to "off" him. Last summer, according to a police report, someone broke into the garage.

McDonald says he has spotted drug deals in the back alley and watches with suspicion as flashy cars roll down the street. He disdains the young men who wear their "pants hanging off of their butts," and the people who blare their rap music and toss bottles on his lawn.

His wife wants to move, but McDonald refuses to be intimidated. Although he keeps two shotguns in the house, he says those weapons would be difficult to handle against an assailant.

"I would like to have a handgun so I could keep it right by my bed," he says, "just in case somebody might want to come in my house."

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Shotguns have been stolen from his home before, but McDonald dismisses the suggestion that legalizing handguns would make it easier for weapons to fall into criminal hands. "They get all the guns they want anyway," he says.

Though his challenge to Chicago's handgun ban might be the most prominent lawsuit that McDonald has filed, it's not the first. Court records show that McDonald has filed six other cases since the late 1980s. He filed two unsuccessful work-related lawsuits, one in 1987 when he and several co-workers argued that a faulty air-filtration system at the University of Chicago left them exposed to harmful fumes, and another in 1988, claiming he had hurt his back lifting a heavy object. McDonald also sued the driver of a car who rear-ended him in 1990, in a case that was settled for an undisclosed amount. He filed several small-claims cases, including a successful claim against a mechanic for \$200 in 1990, a successful claim for \$1,000 against a tenant living in his daughter's house in 1993, and a current case, filed in 2009, against a roofer for \$6,000.

He doesn't enjoy filing lawsuits, he says, but he'll do what is necessary to stand up for what he believes is right.

"I know there are some people out there who don't like what I'm doing," he said, "but you can't live in this world and be guided by what people think."

McDonald and his wife plan to travel to Washington in March to watch the historic oral arguments at the Supreme Court. Many legal experts predict that the court will strike down Chicago's handgun ban.

Even if that happens, no one expects a dramatic spike in the number of handguns in Chicago. Daley and the City Council most likely will replace the ban with tight regulations.

In the interim, McDonald keeps a close eye on his neighborhood. On a snowy evening in December, he trudged into the Morgan Park Police District headquarters for the regular community meeting, where he has been a fixture for more than two decades.

Bundled into a blue, zip-front sweatshirt, jeans and a gray scarf, he waved hello to several organizers, greeting everyone by name. He chatted with the representative from the alderman's office before settling into a chair to look over the list of recent crimes, marking those closest to his house.

Later, as people gathered their belongings to leave, McDonald looked around at the 16 other residents there and said he wished more would attend.

"You need the people in the community. They are there, they see and they know what's going on," he said. "Without them, you're out there in the wind."

Then, he wrapped his scarf around his neck and prepared to head home.

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