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## One Month after *McDonald*

The state of the Second Amendment.

One month ago, the Supreme Court held in [McDonald v. City of Chicago](#) that states, not just the federal government, are prevented from violating Americans' Second Amendment right to keep and bear arms. The Supreme Court did not, however, define the full scope of the right, nor the standard of review by which challenged statutes will be judged.

In other words: It ain't over yet. A number of pending lawsuits across the country will further shape how the Second Amendment will be applied.

The first lawsuit of note comes from Chicago. As soon as the Supreme Court struck down the city's handgun ban in *McDonald*, Mayor Richard Daley worked with the city council to pass a [very restrictive](#) gun-control regime to take the ban's place. The National Rifle Association promptly [filed suit](#), challenging, [among other things](#): a ban on having more than one "assembled and operable" firearm in the home at any time; a rule forbidding gun owners to carry their firearms in their own garages, porches, and places of business; and a policy outlawing gun shops and shooting ranges in the city in spite of the training and range time the city requires for obtaining a permit.

California, which has long been the darling of gun-control groups for its heavy firearm restrictions, is also facing a day in court. Gun-show promoters have been litigating their right to have a show on Alameda County grounds, an action barred by a county ordinance. A three-judge panel [decided](#) last April that the Second Amendment applied to California, anticipating the conclusion in *McDonald*, but found that the ban on gun shows on county property was still constitutional.

The Ninth Circuit voted to re-hear the case en banc (that is, all eleven judges would review the decision of the three-judge panel), but in light of *McDonald*, that order has been rescinded and the case remanded to the original panel for reconsideration. Rescinding an en banc re-hearing is an unusual turn of events, but nothing follows the norm in this suit. The panel has [asked for further briefing](#) from the parties, indicating that it may reverse itself on the constitutionality of the gun-show ban.

Also, the Supreme Court has vacated a [decision](#) of the Second Circuit upholding New York's ban on [nunchuks](#) and remanded the case for reconsideration in light of its holding in *McDonald*. Though the *McDonald* case focused on firearms, the text of the Second Amendment encompasses "arms" in general, and the Second Circuit will provide some guidance on the constitutional protection of martial-arts weapons.

Just up the Hudson River, Alan Gura, the attorney who carried the day in the [Heller](#) and *McDonald* decisions, filed [suit](#) to challenge the discretionary permitting system for handgun carry in Westchester County, N.Y. At issue is whether permit applicants can

constitutionally be required to show a “unique, heightened need for self-defense apart from the general public” in order to carry a gun. The Second Amendment allows for no such restriction on the right to bear arms, and by the time a need for self-defense arises — think, for example, of a woman who’s being stalked — a potential victim needs to be able to carry a gun *right now*, not after pulling together paperwork and waiting for government approval.

The New York right-to-carry case joins a [similar suit](#) that Gura filed against the District of Columbia in the wake of the *Heller* decision. California guns activists have an existing lawsuit [challenging](#) the concealed-carry policies of Yolo and Sacramento counties that will now be reconsidered in light of the *McDonald* decision. At least one Wisconsin prosecutor has [declared](#) that he will no longer enforce the state’s ban on concealed carry because of the recent Supreme Court action.

Yet another Alan Gura lawsuit is a [challenge](#) to North Carolina’s emergency-powers statutes. In essence, whenever a state of emergency is declared at any level of government in the Tarheel State, firearms sales or transfers are outlawed, as is carrying a firearm off one’s own premises (even for those with concealed-handgun permits). That doesn’t sound unreasonable at first blush, but officials have declared at least a dozen emergencies since September 2004, usually encompassing the entire state. This is an on/off switch for an enumerated right. Why have rights at all if the government can turn them off at will?

The future of the scope of the Second Amendment is unclear, but *McDonald* has guaranteed that, at last, a liberty the Founders considered worthy of a constitutional amendment will be taken seriously in courts across the land.

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