

WHO HAS THE RIGHT TO 'BEAR ARMS'?

MORE THAN 200 YEARS AFTER THE ADOPTION OF THE BILL OF RIGHTS, THE SUPREME COURT MAY FINALLY CLARIFY HOW FAR SECOND AMENDMENT RIGHTS GO

By Patricia Smith

Otis McDonald is fed up. His Chicago home has been broken into three times, and he wants to be able to keep a handgun in his house for self-defense. He can't, however, because Chicago bans the possession of handguns.

McDonald, who is 76, is challenging the ban, saying it violates his Second Amendment rights, and the Supreme Court is now considering his case, *McDonald v. Chicago*. The outcome of this closely watched case could have a powerful impact on the rights of individuals in all 50 states to own guns and the extent to which state and local governments can pass laws restricting gun ownership.

McDonald v. Chicago is actually the sequel to a landmark 2008 case in which the Supreme Court ruled for the first time that the Second Amendment's "right to bear arms" applies to individuals, not just to state militias, as many had interpreted it for more than 200 years. In striking down a handgun ban in Washington, D.C., in *District of Columbia v. Heller*, the Court established an individual right to keep a handgun at home for self-defense.

That 5-4 ruling, however, applies only to places under federal jurisdiction, like Washington. The current case will determine if that individual right to bear arms applies everywhere else.

When *McDonald* was argued before the Supreme Court in March, comments from the Justices suggested that a majority are prepared to strike down Chicago's ban and rule that the Second Amendment does apply to the states.

One of the most disputed passages in the Constitution, the

Second Amendment states, in its entirety: "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."

THE BILL OF RIGHTS

The first 10 amendments to the Constitution, known as the Bill of Rights, were adopted in 1791 in response to fears that the Constitution gave the new federal government in Washington too much power. The Bill of Rights was originally a restriction on only the power of the federal government, not the states.

It was only after the Civil War, with the passage of the 14th Amendment, that the Supreme Court began to apply most, but not all, of the protections in the Bill of Rights to the states. (The Court has ruled, for example, that the right to a trial by jury does *not* extend to state courts.)

For three decades, starting in the 1960s, the story of gun control was one of notorious crimes and laws passed in response, beginning with the 1968 federal gun-control law that followed the assassinations of Martin Luther King Jr. and Senator Robert F. Kennedy, who was running for President. In 1994, spurred in part by an assassination attempt on President Ronald Reagan years earlier, Congress created a national system of background checks for gun buyers and passed an assault-weapons ban (which was allowed to expire in 2004).

Today, there are 280 million firearms in private hands in

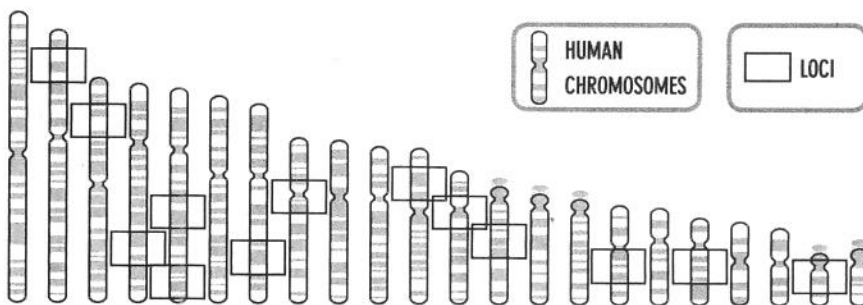
With reporting by Adam Liptak and Ian Urbina of The New York Times.

The F.B.I.'s DNA database is being expanded to include genetic material from people who've been arrested but not yet convicted. State laws differ as to who is required to submit DNA to the national database.



15 states, along with federal agencies, now collect DNA samples from some of those awaiting trial. In Kansas and Minnesota, juveniles are required to provide DNA samples upon arrest.

HOW A DNA MATCH IS MADE: Forensic scientists analyze 13 specific locations, or loci, on human chromosomes, which contain repeating sequences known as Short Tandem Repeats.



SOURCES: WRIGHT STATE UNIVERSITY; BIOFORENSIC CONSULTING; DNA.GOV; NATIONAL CONFERENCE OF STATE LEGISLATURES

to more exonerations: So far, more than 200 wrongfully convicted people have been freed based on DNA evidence.

But criminal-justice experts worry that the nation is becoming a genetic-surveillance society and say that in some cases, compulsory DNA collection may violate the Fourth Amendment, which states that “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . .”

“DNA databases were built initially to deal with violent sexual crimes and homicides,” says Harry Levine, a sociology professor at City University of New York. “Over time, more and more crimes of decreasing severity have been added to the database. Cops and prosecutors like it because it gives everybody more information and creates a new suspect pool.”

Courts have generally upheld laws authorizing compulsory DNA collection from convicts on the grounds that criminal acts diminish privacy rights. Minors are required to provide DNA samples in 35 states upon conviction; in Kansas and Minnesota, juveniles must provide DNA samples upon arrest.

Last November, three juvenile suspects in Arizona filed the only current constitutional challenge against taking DNA at the time of arrest. The judge temporarily stopped DNA collection from them and the case is pending.

Sixteen states now take DNA from some who have been found guilty of misdemeanors. But civil rights advocates say the government’s power is being applied too broadly. “What we object to—and what the Constitution prohibits—is the indis-

criminate taking of DNA for things like writing an insufficient-funds check, shoplifting, drug convictions,” says Michael Risher, a lawyer for the American Civil Liberties Union.

Law-enforcement officials maintain that DNA collection upon arrest is no different from fingerprinting a suspect. States purge profiles after people are cleared, but defense lawyers say this is a laborious process that can involve a court order.

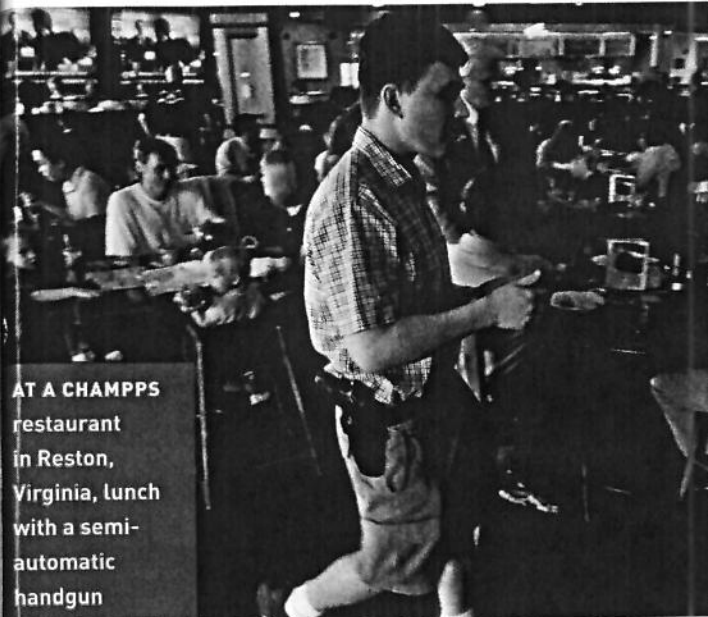
RACIAL QUESTIONS

Critics are also concerned about the demographics of DNA databases. Hank Greely, a Stanford University Law School professor, estimates that blacks—about 12 percent of the U.S. population—make up 40 percent of the DNA profiles in the federal database, reflecting their prison population. He expects Hispanics, who are about 13 percent of the population and committed 40 percent of last year’s federal offenses—nearly half of them immigration-related—also to figure heavily in databases.

Law-enforcement officials contend that DNA is blind to race: Federal profiles include little more information than the DNA sequence and the referring police agency.

Rock Harmon, a former prosecutor for Alameda County, California, says that even if an innocent person’s DNA is in a genetic database, it means nothing unless there’s a crime-scene sample that matches it. “If you haven’t done anything wrong,” he says, “you have nothing to fear.” ●

Solomon Moore is a Los Angeles correspondent for The New York Times.



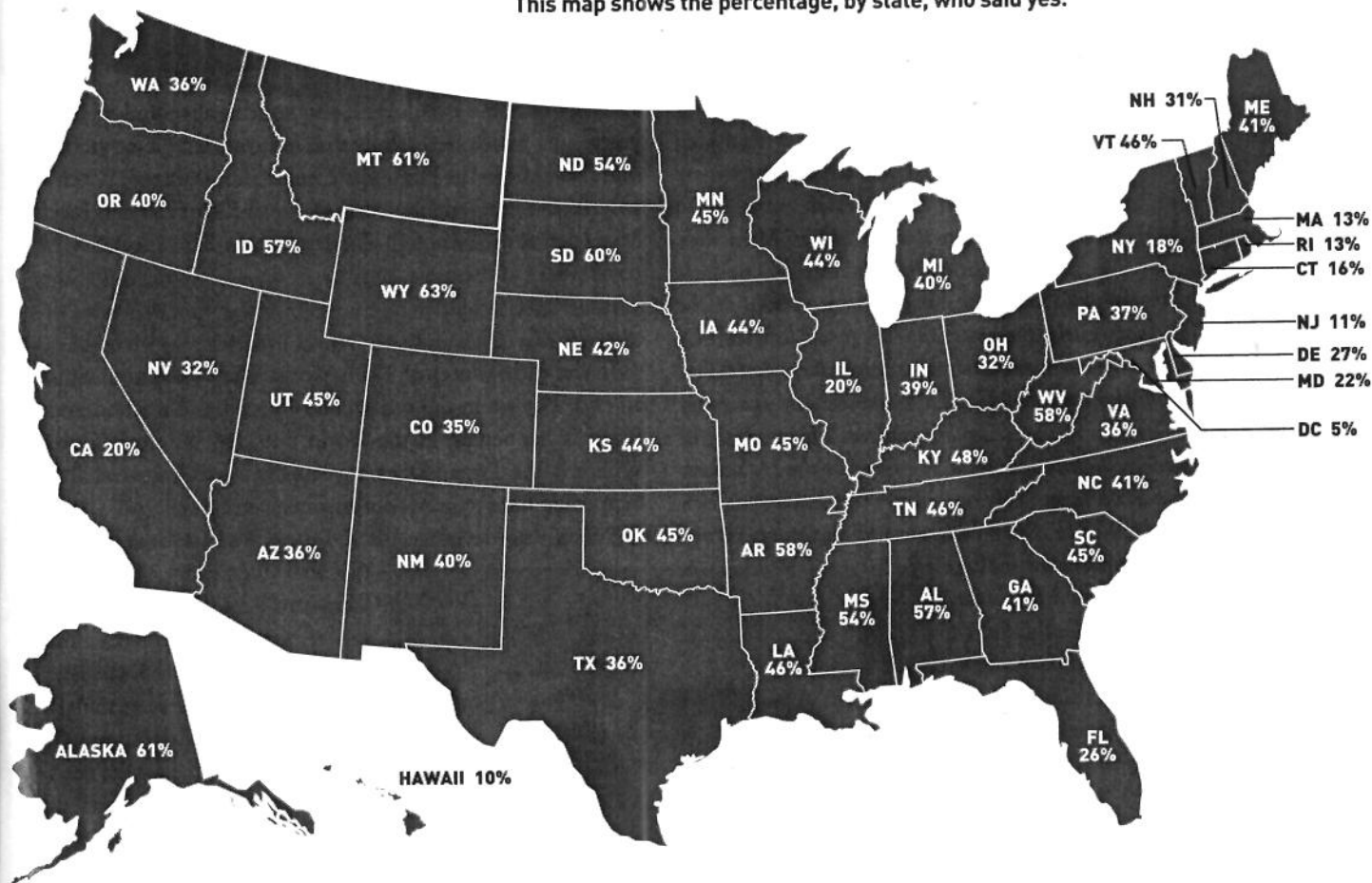
AT A CHAMPPS restaurant in Reston, Virginia, lunch with a semi-automatic handgun



A RESTAURANT in Nashville that has banned guns from its premises

GUN OWNERSHIP BY STATE

A 2002 survey asked more than 220,000 Americans if they kept firearms in or around their homes. This map shows the percentage, by state, who said yes.



SOURCE: BEHAVIORAL RISK FACTOR SURVEILLANCE SYSTEM; NUMBERS HAVE BEEN ROUNDED.
NOTE: ALASKA AND HAWAII ARE NOT DRAWN TO SCALE OR PLACED IN THEIR PROPER GEOGRAPHIC POSITIONS.