Gun Control: It Is Time

DEVIKA SINGH*

The Supreme Court’s denial of certiorari in Friedman v. Highland Park, a Seventh Circuit case upholding a local Illinois ordinance banning assault weapons and large capacity magazines may have revealed the Court’s reluctance to strike down gun control legislation, particularly given recent mass shootings.1 Tighter gun control legislation in general correlates with lower gun violence and can work within the bounds of the Second Amendment.2 Therefore, the federal and local governments should look to implement it.

In April of last year, the Seventh Circuit ruled that the Second Amendment does not preclude a local government from outlawing the possession of semi-automatic assault weapons and large capacity magazines.3 Judge Easterbrook, writing for the majority, held that in order to determine whether the Second Amendment applies, a court must ask whether the gun control regulation bans weapons that: (1) were common at the time of ratification; or (2) have some reasonable relationship to the preservation or efficiency of a well-regulated militia and whether law-abiding citizens retain adequate means of self-defense in light of the regulation.4

In December 2015, the Supreme Court denied appellant Arie Friedman and members of the Illinois State Rifle Association certiorari, rendering the Seventh Circuit’s decision final.5 Justice Thomas vehemently opposed the decision, stating that the Supreme Court should have heard the case to prevent the Seventh Circuit from “relegating the Second Amendment to a second class right.” Justice Thomas pointed out that in District of Columbia v. Heller, the Supreme Court held that the Second Amendment only excludes from protection weapons not “typically possessed by law-abiding citizens for lawful purposes.”7 The Seventh Circuit’s test in Friedman flouted the Heller standard.8 Despite the contradiction, the Supreme Court denied certiorari, refusing to decide the matter definitively.9

Legal commentators speculate that recent mass shootings may have swayed the Court.10 Striking down gun control legislation in the shadow of recent shootings such as San Bernardino, Charleston, Oregon may not have appealed to the Justices. Policy was certainly one of the pillars

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3 Friedman, 784 F.3d at 412.
4 Id. at 410.
6 Id. at 450 (Thomas, J., dissenting).
7 Id. at 448 (Thomas, J., dissenting) (quoting District of Columbia v. Heller, 554 U.S. 570, 625 (2008)).
8 Id. at 449 (Thomas, J., dissenting).
9 Id. at 447.
10 Liptack, supra note 1.
of Judge Easterbrook’s Seventh Circuit opinion. Judge Easterbrook pointed out that although banning assault weapons would not eliminate gun violence in Highland Park, it would reduce the dangerousness of violence that does occur.\textsuperscript{11} Moreover, the ordinance could increase the public’s sense of safety, which in itself would be a substantial benefit.\textsuperscript{12}

While the mere possibility of increasing something as ambiguous as the public’s “sense of safety” seems a poor reason to uphold a law, public safety itself—that is, preventing gun violence—is a valid policy goal. America is an inordinately violent country when it comes to firearm related deaths. According to a study conducted by associate professor Adam Lankford at the University of Alabama Department of Criminal Justice, the United States held less than five percent of the world’s population, but thirty-one percent of the world’s shootings between 1966 and 2012.\textsuperscript{13} The U.S. had five times as much gun violence as the next highest country, the Philippines. Adjusted for population, the U.S. had sixty-five percent more gun violence per capita than the Philippines.\textsuperscript{14} Compared to other countries belonging to the Organization for Economic Cooperation and Development, the United States has the fourth highest number of homicides per 100,000 people, behind Mexico, Turkey, and Estonia.\textsuperscript{15} FBI data from 2011 shows that roughly sixty-eight percent U.S. homicides were committed with firearms.\textsuperscript{16}

Why is this the case? More Americans possess guns compared to other countries. Lankford’s study indicates that countries with higher rates of gun ownership have more mass shooters per capita.\textsuperscript{17} The U.S. ranks first in the world in terms of gun ownership per capita, with roughly 89 firearms per 100 residents.\textsuperscript{18} This should hardly come as a surprise. The right to bear arms, enumerated in the Bill of Rights,\textsuperscript{19} is part of the American psyche. As Justice Scalia pointed out in \textit{Heller}, by the time of the founding, the right to bear arms had become fundamental for English subjects. In the 1760s and 1770s, the Crown began to disarm residents in rebellious areas.\textsuperscript{20} Americans demanded their rights as Englishmen to maintain arms. Fear of the government restricting possession of weapons came from the times of Stuart Kings Charles II and James II, who used armed militias to suppress political dissidents, in part by disarming their opponents.\textsuperscript{21} The perception of arms as a means of self-defense and protection from an abusive State sets America apart from other countries.

However, this does not mean that gun control is impossible without eviscerating the Second Amendment. For instance, the assault weapons banned by Highland Park only constitute one to two percent of America’s private arsenal, which means that banning those weapons or even just forbidding new purchases would cause a minimal intrusion on private citizens’ right to

\begin{itemize}
  \item \textsuperscript{11} \textit{Friedman}, 784 F.3d at 412.
  \item \textsuperscript{12} Id.
  \item \textsuperscript{13} Megan Hickey et al., \textit{Here’s a Map of All the Mass Shootings in 2015}, PBS NEWSHOUR: THE RUNDOWN (Dec. 2, 2015), http://www.pbs.org/newshour/rundown/heres-a-map-of-all-the-mass-shootings-in-2015/.
  \item \textsuperscript{14} Id.
  \item \textsuperscript{17} Hickey et al., supra note 13.
  \item \textsuperscript{19} U.S. CONST. amend. II.
  \item \textsuperscript{21} Id. at 592.
\end{itemize}
bear arms. Furthermore, a Harvard study finds a strong negative correlation between areas that have banned assault rifles and firearm deaths. In other words, laws banning the possession of assault rifles correlate with fewer firearm deaths. Given the minimal intrusion on the Second Amendment and the public safety benefits, the Highland Park legislation is common sense.

That being said, reducing gun violence is more than just a matter of banning certain classes of weapons. Other measures including comprehensive and mandatory background checks, safe storage requirements, and limitations on carrying guns in public all have a relationship with decreased gun violence. These sorts of measures are not infringements on the Second Amendment, but regulations that mitigate the negative consequences of a society where firearms are prolific.

At the end of the day, gun control critics and proponents both agree that no initiative will completely eliminate gun violence. Syed Rizwan Farook and Tashfeel Malik, perpetrators of the San Bernardino shooting, purchased rifles legally under California law but modified the weapons in ways that violated the state’s ban on assault weapons. Despite California outlawing the modified rifles, Farook and Malik found a way to acquire them regardless. Still, research shows that while it does not eliminate gun violence, gun control does have a correlational effect on decreased violence. If such regulations can prevent even one more San Bernardino and pose minimal intrusion on Second Amendment rights, they are at least worth considering.

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24 Id.

25 Id.
