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Courts & Law

Supreme Court won't review laws banning assault weapons

By Robert Barnes December 7 at 10:22 AM

The Supreme Court on Monday declined to review the ability of cities and states to prohibit semiautomatic high-capacity assault weapons that have been used in some of the nation's most deadly recent mass shootings.

The justices decided not to reconsider a lower court's decision in a case from the city of Highland Park, Ill., near Chicago. But seven states — Maryland, California, Connecticut, Hawaii, Massachusetts, New Jersey and New York — have similar bans, and all of the prohibitions remain in place.

Justices Clarence Thomas and Antonin Scalia said the court should review the ban, which "flouts" the court's Second Amendment jurisprudence. They criticized lower court decisions that have allowed jurisdictions and impose what Thomas called "categorical bans on firearms that millions of Americans commonly own for lawful purposes."

The court's action Monday continues a pattern. After deciding in *District of Columbia v. Heller* in 2008 that the Second Amendment provides the right for an individual to keep a weapon in the home, the court has avoided all cases that might clarify if that right is more expansive.

Gun rights advocates say cities and states continue to put unreasonable restrictions on the constitutional right. But the court has not yet found a case it thinks requires its intervention.

That could be because a majority of the court thinks the restrictions are legally justified or because the court is closely divided and neither side is sure of what the outcome of taking a case might be.

By its inaction, the court has left in place lower court rulings that allow restrictions on carrying a weapon outside the home, among other things, and on the kinds of guns that can be prohibited.

Highland Park cited shootings in Aurora, Colo., and at Sandy Hook Elementary School in Connecticut for prohibiting the semiautomatic weapons. President Obama in his address to the nation Sunday night called on Congress to make it harder to sell what he called "powerful assault weapons."

The decision that the Supreme Court decided not to review came from a divided panel of the U.S. Court of Appeals for the 7th Circuit. That ruling noted a statement in the *Heller* decision that said legislatures retained the ability to prohibit "dangerous and unusual" weapons, and Judge Frank Easterbrook said the guns Highland Park banned

qualified.

"Why else are they the weapons of choice in mass shootings?" he wrote. He said a ban may not prevent mass shootings "but it may reduce the carnage if a mass shooting occurs."

An appeals court in New York also upheld the bans in that state and Connecticut.

Gun rights advocates and 24 states had told the Supreme Court it needed to get involved, because the bans violated the intent of *Heller*.

They said the term "assault weapons" was anti-gun propaganda and there was nothing unusual about the guns.

They include "some of the most commonplace firearms in the nation, including the immensely popular AR-15, which is the best-selling rifle type in the United States," said the brief from Arie Friedman of Highland Park and the Illinois State Rifle Association.

Thomas and Scalia agreed with that. "The overwhelming majority of citizens who own and use such rifles do so for lawful purposes, including self-defense and target shooting," Thomas wrote. "Under our precedents, that is all that is needed for citizens to have a right under the Second Amendment to keep such weapons."

The court has privately debated whether to take the Highland Park case for months. Today's announcement that the challengers' petition would not be granted reflects that Thomas and Scalia could not persuade fellow conservatives who made up the majority in Heller to take the case.

It is *Friedman v. Highland Park*.

Robert Barnes has been a Washington Post reporter and editor since 1987. He has covered the Supreme Court since November 2006.
