

SIGHTS ON THE STATES: A STUDY ON THE INFLUENCE  
OF *MCDONALD V. CHICAGO* ON STATE  
GUN LEGISLATION

by

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## INTRODUCTION

Since 1803 and the decision of *Marbury v. Madison*, the Supreme Court has proven itself an active member of the political landscape, often framing the debates that develop both federal and state political agendas. Among the most important of its decisions include the cases categorized as Incorporation Cases, in which the Court incorporates a provision in the Bill of Rights into the Fourteenth Amendment's Due Process Clause. This renders it binding upon the state governments as well as binding upon the federal government. The incorporated rights are those rights the Court considers fundamental to ordered liberty—the rights that must not be infringed by any government in all but the most compelling of circumstances.

In June of 2010, the Supreme Court's landmark decision in the case of *McDonald v. Chicago* incorporated the Second Amendment, prohibiting state governments, not only the federal government, from infringing “the right of the people to keep and bear arms.”<sup>1</sup> The debate surrounding the meaning of the Second Amendment— whether it guarantees an individual right or merely a right tied to membership in a formal militia— has occupied the sphere of American politics for most of the nation's history.<sup>2</sup> However, two years before *McDonald*, the Court largely settled that question in the case of *District of Columbia v. Heller*, declaring the Second Amendment protects an individual citizen's right to own firearms for the purposes of personal self defense (although the Court stated

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<sup>1</sup> The Second Amendment to the United States Constitution. *McDonald v. City of Chicago, Ill.*, 130 S. Ct. 3020 (2010).

<sup>2</sup> Tushnet, Mark. *Out of Range: Why the Constitution Can't End the Battle over Guns*. Oxford University Press. New York: 2007.

that their opinion did not prohibit reasonable gun control measures).<sup>3</sup> Together, these two cases declare that the Constitution requires state governments to respect a fundamental individual right to own firearms for the purposes of self defense.

However, as with all Supreme Court cases, while the decision of *McDonald v. Chicago* will have extensive ramifications in the court system, it remains unclear whether the case will have any influence on the state governments it, in theory, most directly impacts. This study endeavors to determine the extent of *McDonald v. Chicago*'s influence on state level gun legislation. It is expected that *McDonald v. Chicago* will generally have influenced an increase in gun legislation (particularly less regulatory legislation) although its impact will tend to be muted by the Court's assertion that the decision does not preclude reasonable gun regulation.

### LITERATURE REVIEW

Existing literature consists mainly of either neutral analyses of state legislation or argument-based analyses that examine the legal standards and reasoning *McDonald v. Chicago* established and prescribe particular legal or political policies that, in their view, best accomplish the correct overall gun policy.

Blackman,<sup>4</sup> for example, analyzes both *District of Columbia v. Heller* and *McDonald v. Chicago* from the context of the tension between social costs and individual liberties that surrounds Second Amendment jurisprudence and debate. He presents extensive arguments that the courts and legislatures have historically considered the

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<sup>3</sup> *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008).

<sup>4</sup> Blackman, Josh. "The Constitutionality Of Social Cost." *Harvard Journal Of Law & Public Policy* 34.3 (2011): 951-1042. Political Science Complete. Web. 15 Mar. 2013.

Second Amendment a “second class right” unlike other individual liberties in the Bill of Rights. Given the public safety implications, the court has allowed the states to experiment with gun rights in a way that the Court has not allowed with other incorporated rights, such as the freedom of speech. Blackmun argues that while *McDonald v. Chicago* declares that the Second Amendment should be treated like other fundamental liberties, it does not effectively enforce that declaration as it continues to leave the door open for wide state experimentation with gun control. Similarly, Nieto<sup>5</sup> argues that the Court’s use of the Due Process clause to incorporate the Second Amendment resulted in a “legislate-from-the-bench” opinion that does not present a strong, well-reasoned standard for the uniform enforcement of the individual right to keep and bear arms. He further argues that *McDonald* would have been stronger if the Court had used the Privileges and Immunities clause instead, allowing for a more objective passage and judicial assessment of state gun laws rather than allowing a largely ideological basis.

Bone,<sup>6</sup> on the other hand, argues that the precedents of *Heller* and *McDonald* will result in the overturning of state prohibitions on felon gun ownership. She examines a North Carolina case, *Britt v. State*, in which an appeals court restored a felon’s right to gun ownership because it was considered a fundamental right and he could not be shown to be dangerous. Bone argues that based on the *McDonald* case, gun ownership is an

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<sup>5</sup> Nieto, Michael. "The Changing Landscape of Firearm Legislation in the Wake of *McDonald v. City Of Chicago*, 130 S. CT. 3020 (2010)." *Harvard Journal Of Law & Public Policy* 34.3 (2011): 1117-1130. Political Science Complete. Web. 15 Mar. 2013.

<sup>6</sup> Bone, Deborah. "The Heller Promise Versus The Heller Reality: Will Statutes Prohibiting The Possession Of Firearms By Ex-Felons Be Upheld After *Britt V. State?*." *Journal Of Criminal Law & Criminology* 100.4 (2010): 1633-1658. Political Science Complete. Web. 15 Mar. 2013.

inalienable right that cannot be restricted, even if it is in the best interest of society to do so. She uses the *McDonald* decision along with *Britt v. State* to urge that the Court and America in general should reject the *Heller* and *McDonald* standards in order to preserve states' ability to prohibit felon gun possession. Similarly, Riordan<sup>7</sup> examines the judicial impact of *McDonald* to make a policy argument, although she neither advocates against *McDonald* nor addresses gun control policy. Rather, Riordan examines the impact of *McDonald v. Chicago*'s incorporation standard in light of previous incorporation case law. She argues that the *McDonald* standard is more broad than the standard previous incorporation cases have employed and should be used to incorporate the Sixth Amendment requirement of a unanimous jury verdict in order to convict. Riordan thoroughly examines existing case law permitting less than twelve member juries and non-unanimous verdicts in state criminal law, as well as the social science perspectives on jury behavior, to establish that the Sixth Amendment is a fundamental right. She argues that based on *McDonald*'s standard, the Court should overturn the decision of *Apodaca v. Oregon* and incorporate the Sixth Amendment's unanimous jury provision.

In contrast, other examples of the existing literature analyze state legislation and do not argue a policy perspective based on *McDonald v. Chicago*. Jost<sup>8</sup> largely devotes his article to an analysis of how the *District of Columbia v. Heller* decision and *McDonald v. Chicago* could limit state gun laws. While he predicts a flood of litigation surrounding state gun provisions, he does not predict a vast change in state gun

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<sup>7</sup> Riordan, Kate. "Ten Angry Men: Unanimous Jury Verdicts In Criminal Trials And Incorporation After McDonald." *Journal Of Criminal Law & Criminology* 101.4 (2011): 1403-1433. Political Science Complete. Web. 15 Mar. 2013.

<sup>8</sup> Jost, Kenneth. "Gun Rights Debates." *CQ Researcher* 31 Oct. 2008: 889-912. Web. 2 Apr. 2012.



legislation and does not expect many state gun provisions to be struck down due to the limited scope of the decisions. Jost does not take any prescriptive stance nor does he empirically test the actual impacts on state legislation. Rather, he offers only reasoned prediction. Horner and Wilson also examine the politics of state gun control legislation, although they do so by studying legislation in particular states. Horner<sup>9</sup> analyzes the debate between 2003 and 2005 over the passage of a law establishing concealed carry in Missouri. He extensively examines the nuances of the concealed carry debate that had stemmed from citizen lawsuits over the lack of a concealed carry statute. The law passed both houses of the Missouri legislature overwhelmingly, twice overriding the governor's veto, and the Missouri Supreme Court later upheld the law's constitutionality. Horner considers the broad political landscape involving the lapsed federal assault weapons ban, including descriptions of interest groups, public opinion, and the like, as well as the local Missouri political landscape. Wilson<sup>10</sup> similarly analyzes the politics of gun control generally, as well as specific gun legislation in the Virginia legislature between 2003 and 2005. He details the major types of gun control laws as well as the influence of media, interest groups, and public opinion on gun legislation. The case study of the Virginia legislature evaluates the legislature's political makeup, the state population, the influence of public opinion, media, and interest groups. Both Horner and Wilson provide a wealth of information analyzing the legislative processes of specific state governments in passing gun related legislation.

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<sup>9</sup> Horner, William T. *Showdown in the Show-Me State: the fight over conceal-and-carry gun laws in Missouri*. Columbia, Mo.: University of Missouri Press, 2005

<sup>10</sup> Wilson, Harry L. *Guns, Gun Control, and Elections: The Politics and Policy of Firearms*. Rowman and Littlefield Publishers, Inc. Lanham, Maryland: 2007.

The existing research provides a wide array of information surrounding both state gun legislation and the jurisprudential impact of *McDonald v. Chicago*. However, the analyses of state gun legislation do not assess broader state trends and were written well before the *McDonald v. Chicago* decision. Also, the analyses of *McDonald v. Chicago*'s jurisprudential impact do not provide insight into the actual impact of the case beyond the courtroom. Existing literature, while enlightening, does not measure or evaluate the actual legislative influences of the case. This study will address this gap in the literature, analyzing the practical impact that *McDonald v. Chicago* has had on state level gun legislation. It will not present a policy prescription or a prediction about *McDonald*'s impact on future court cases, but rather will analyze the practical legislative influence that the case has already had.

#### METHODS

This research studies the dependent variable of state gun legislation as influenced by the independent variable of *McDonald v. Chicago*, measured primarily by time (before and after the decision). The study consists of two parts designed to measure the impact of *McDonald v. Chicago* on both the broader nation-wide trends in state gun legislation as well as on the legislation of individual states. The first section focuses on a broad quantitative analysis of state-level gun legislation trends across the nation over a period spanning three years before *McDonald* and two years afterward (the most recent full year of information available at the date of this writing). The second part analyzes four specific cases of gun legislation after *McDonald v. Chicago* to determine the practical impact on individual states' legislative process and guard against the overestimation of

the case's impact on trend fluctuations (which are also subject to the influence of alternative factors). This two-fold method enables the study to estimate the larger impact of *McDonald v. Chicago* on state gun legislation trends while also providing a more in-depth analysis of lawmaking in individual, unique legislatures to determine both the broad and targeted influences of *McDonald v. Chicago* on state law.

### ***Survey of State Legislation***

The quantitative analysis compiles a count of gun legislation bills that passed state legislatures between 2007 and 2012. Information on each state's gun legislation is drawn from each state's legislative website by conducting keyword or subject index searches of each session's legislation. The resulting legislation is recorded by state and year and coded according to nature. Laws that loosened restrictions on the general ownership, use, or carrying of firearms to any degree are coded as "AREG" (less regulatory). Laws that tightened restrictions on the general ownership, use, or carrying of firearms to any degree are classified as "REG" (or more regulatory). Each of the two categories is both counted and averaged across all states for each year and graphed for analysis over the five year period to determine if any change occurred after *McDonald v. Chicago*. These measures are also graphed for control purposes against other independent variables, including party control, national violent crime rate, rural population, major shootings, and the presence of a state constitutional equivalent to the Second Amendment.

Laws that loosened restrictions solely on current or former police officers, impacted Second Amendment issues neutrally (such as various hunting laws that did not restrict access to or ability to carry firearms) or consisted of a symbolic resolution (rather

than substantive law) are not counted in the final tallies. The analysis also gives further consideration to two particular kinds of gun laws: emergency powers restrictions and Castle Doctrine laws. Many states in the sample period passed emergency powers laws restricting their state governors from seizing legally owned firearms during a state of emergency. Castle Doctrine laws give civil and criminal immunity to the residents of a home, enabling them to use deadly force against an unlawful intruder without requiring them to retreat or ascertain if the intruder is armed. The law affords them the presumption that the intruder entered the home with the intent to harm its occupants and that their use of force was justified self defense. A Stand Your Ground law gives similar legal protections to individuals that use deadly force in self defense in a public place. For the purposes of this study, Castle Doctrine laws and Stand Your Ground laws are considered together. Since *McDonald v. Chicago* was decided a little over two years ago, establishing an accurate long-term trend through advanced statistical analysis is not practical. However, the broad quantitative analysis will help to establish a preliminary quantification of the degree to which *McDonald v. Chicago* marked a change, if any, in state gun legislation.

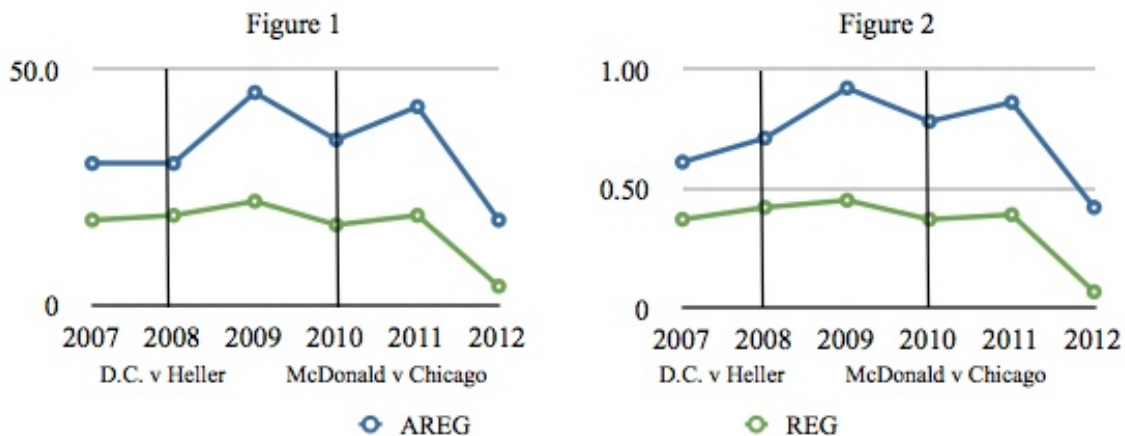
### ***Case Studies***

The second part of the study will qualitatively analyze four state gun laws passed the year after *McDonald v. Chicago*. The cases include the three 2011 Castle Doctrine laws and the only significant gun control law passed after 2010: North Carolina's HB650, Oklahoma's HB1439, New Hampshire's SB88, and California's AB144. Sources include legislative reports, hearings, and debates as they are available, local news reports, and

any other relevant sources as they were found. The analysis focuses on determining if *McDonald v. Chicago* had any impact on the consideration or passage of the various laws by searching for specific mentions of the case as well as assessing general Second Amendment references, judicial references, themes of debate, interest group involvement, and related local news and incidents. The case studies provide a means of determining if any broad national trends translate into practical effects at the state level.

### STATE LEGISLATION SURVEY

Between 2007 and 2012, the number of both less regulatory (AREG) and more regulatory (REG) gun legislation passed in the states tended to decrease. However, the totals for both tend to covary and spike in 2009 and 2011, the years following *District of Columbia v. Heller* and *McDonald v. Chicago*, and decrease in 2008, 2010, and 2012, the years after major shooting events (Virginia Tech, Fort Hood, and Arizona Representative Giffords, respectively). Figure 1 shows the total number of both AREG and REG gun laws over the sample period. Figure 2 shows the average number of both AREG and REG gun laws over the sample period. Averages in even-numbered years do not include biennial state legislatures in the tally, and Kansas is excluded from the sample due to

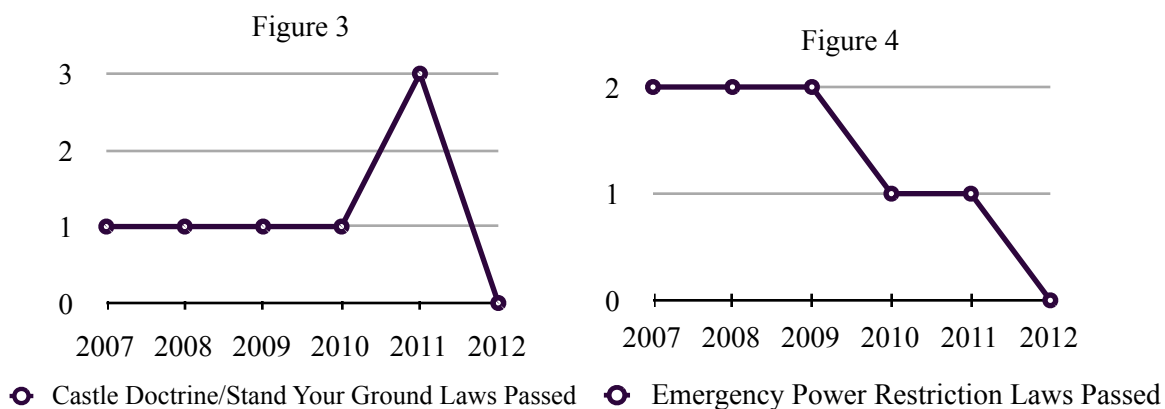


information collection difficulties. AREG and REG legislation tended to covary, although AREG laws consistently exceed REG legislation in number.

Violent crime rates did not seem to correlate in any significant way to either kind of gun legislation. Crime rates tended to decrease steadily through the sample period, while gun laws tended to fluctuate. The percentage of a state's population that lives in a rural area demonstrated no correlation whatsoever to the frequency of less regulatory gun legislation. As the rural population percentage increases, less regulatory gun legislation varied extremely between many and few instances. Republican controlled legislatures accounted for 55% of all AREG legislation, while Democratically controlled legislatures accounted for 29% and split legislatures 16%. Democratically controlled legislatures accounted for 60% of REG legislation, while Republican and split legislatures each accounted for 20%. States with an equivalent to the Second Amendment in the state constitution have twice the average number of AREG laws than states without a Second Amendment equivalent.

Emergency powers restriction laws followed a steady decline throughout the sample period and do not show any reaction to either *Heller* or *McDonald*. Castle Doctrine and Stand Your Ground laws, on the other hand, show a definite spike after *McDonald v. Chicago* before dropping below previous years' numbers a year later.

Figure 3 shows the Castle Doctrine legislation passed during the sample period. Figure 4 shows emergency powers legislation. The Appendix includes complete graphs of the other control variables.



Overall, *McDonald v. Chicago* (as well as *District of Columbia v. Heller*) seems to have served to bring the subject of gun legislation to the renewed attention of the state legislatures, who passed legislation consistent with their respective ideologies. Castle Doctrine laws appear to be the most significantly impacted. However, the influences of the case appear to be temporary as the awareness the case brought to gun rights issues fades.

### CASE STUDIES

#### ***North Carolina House Bill 650***

House Bill 650 implemented the Castle Doctrine in North Carolina, affording the lawful occupants of a home, motor vehicle, or workplace the presumption that they held a reasonable fear of serious bodily harm when using defensive force against an unlawful intruder. HB650 provides such an individual with criminal and civil immunity. It does not impose a duty to retreat and persons may defend themselves in any place they have a right to be, so long as they themselves were not committing a felony or had provoked the conflict. Previous law required a citizen to prove that the intruder posed an imminent threat. Proposed by Representative Glen Bradley on 5 April 2011, the Republican

controlled legislature passed the bill relatively easily and the governor signed it into law on 20 June 2011.<sup>11</sup>

Although the 2011 North Carolina legislature was Republican controlled, Democratic Senator Berger and Representative Crawford co-sponsored the original bill. In both 2007 and 2009, similar Castle Doctrine legislation failed to clear committee. The 2011 bill as introduced extended Castle Doctrine protection only to residents within their own homes. However, Senator Newton proposed the successful amendment that expanded the bill's protection to the lawful occupants of motor vehicles and places of business. Senator Newton explained that he proposed the amendment because of an incident in which a North Carolina fruit stand owner fatally shot an armed robber who was trying to steal the cash box. The man was tried and convicted of voluntary manslaughter, although he was granted a new trial on appeal because the jury was not given instructions on self-defense.<sup>12</sup>

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<sup>11</sup> "HB650 Bill History." North Carolina Legislature. <http://www.ncleg.net/gascrpts/BillLookUp/BillLookUp.pl?Session=2011&BillID=HB650&submitButton=Go>  
 "HB650: Ratified Bill Text." General Assembly of North Carolina. 16 June 2011. <http://www.ncleg.net/Sessions/2011/Bills/House/PDF/H650v5.pdf>  
 House of Representatives Roll Call Vote." North Carolina General Assembly. 7 June 2011. <http://www.ncleg.net/gascrpts/voteHistory/RollCallVoteTranscript.pl?sSession=2011&sChamber=H&RCS=798>  
 Senate Roll Call Vote." North Carolina General Assembly. 14 June 2011. <http://www.ncleg.net/gascrpts/voteHistory/RollCallVoteTranscript.pl?sSession=2011&sChamber=S&RCS=659>  
 Valone, Paul. "Are N.C. Democrats trying to kill Castle Doctrine?" The Charlotte Examiner, 12 August 2009.

<sup>12</sup>Adcock, Sylvia. "Bill in N.C. would extend castle doctrine to cars, workplace." North Carolina Lawyers Weekly, 11 March 2011. NewsBank.  
 "Castle Doctrine extended to businesses, cars." The News and Observer: Web Edition Articles (Raleigh, NC), 28 February 2011.  
 "Castle Doctrine headed to Senate- Berger: Workplace provision too broad." The Daily Dispatch (Henderson, NC), 23 February 2011.  
 "Castle Doctrine is 'not guilty.'" Charlotte Examiner, 28 March 2012. NewsBank.  
 McFarland, Keith. "North Carolina's recently passed law: 'Stand Your Ground'." The Charlotte Examiner, 16 May 2012.



According to the House floor debate, the NRA requested the bill to make North Carolina consistent with the majority of the other states and the law encountered no major opposition. During the floor debate, the only provision of major interest to the representatives consisted of a provision allowing concealed carry holders to lock their weapons in their car on the parking lot of a business if the business prohibited concealed weapons on their premises. The debate became a lengthy discourse on the history of the common law of property and only involved a discussion of the Second Amendment insofar as it concerned concealed carry and the property rights interest. One representative referenced the Supreme Court only to emphasize that the Court had never declared concealed carry to be a right and that any Court decisions did not impact the question of a right to keep one's weapon in one's car when parked on another person's property.<sup>13</sup>

Overall, HB650 seems the successful conclusion of a long attempt to pass Castle Doctrine law in North Carolina rather than a direct result of *McDonald v. Chicago*'s influence. Legislative record references the Second Amendment and the Supreme Court cursorily as it impacted a relatively unimportant provision of the overall Castle Doctrine bill and tended to be referenced most strongly by the bill's opponents. *McDonald v. Chicago* seems to have had, at best, the indirect (and certainly not exclusive) influence of bringing the subject of gun policy to the legislature's attention in such a way that it passed where previous bills had failed.

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<sup>13</sup>“House Floor Debate on HB650.” North Carolina House Audio Archives. 7 June 2011, at 2:23. [http://www.ncleg.net/DocumentSites/HouseDocuments/2011-2012%20Session/Audio %20Archives/2011/06-07-2011.mp3](http://www.ncleg.net/DocumentSites/HouseDocuments/2011-2012%20Session/Audio%20Archives/2011/06-07-2011.mp3)

“House Vote Imminent After NRA-Backed Omnibus Bill Passes North Carolina House Subcommittee!” NRA Institute for Legislative Action, 1 June 2011. <http://www.nraila.org/legislation/state-legislation/2011/6/house-vote-imminent-after-nra-backed-om.aspx?s=%22HB+650%22&st=&ps=>

### *New Hampshire Senate Bill 88*

Senate Bill 88 greatly expanded the existing self defense statutes to function as a Stand Your Ground provision, removing the duty of citizens to retreat before using deadly force in self defense in any place they have a right to be. SB88 also removed the mandatory minimum sentencing in cases of attempted use of a deadly weapon and re-classified the brandishing of a firearm as non-deadly force. The law included a civil immunity provision for the use of a firearm in self-defense. Proposed by Republican Senator David Boutin of Hookset in early 2011, the Republican-controlled legislature passed the bill along largely partisan lines in June of 2011.<sup>14</sup> Governor Lynch vetoed the bill in July, but the legislature successfully overrode the veto in September and the law went into effect in November of 2011.<sup>15</sup> In 2006, the legislature had passed a similar bill, but did not override the governor's veto.<sup>16</sup>

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<sup>14</sup> "Docket of SB88." New Hampshire General Court Bill Status System. [http://www.gencourt.state.nh.us/bill\\_status/bill\\_docket.aspx?lsr=341&sy=2011&sortoption=&txtsessionyear=2011&txtbillnumber=SB88&q=1](http://www.gencourt.state.nh.us/bill_status/bill_docket.aspx?lsr=341&sy=2011&sortoption=&txtsessionyear=2011&txtbillnumber=SB88&q=1)

"SB88 Final Version." New Hampshire General Court. 1 June 2011. <http://www.gencourt.state.nh.us/legislation/2011/SB0088.html>

"SB88 House Override Roll Call." New Hampshire General Court Bill Status System. 14 September 2011. [www.gencourt.state.nh.us/bill\\_status/Roll\\_calls/billstatus\\_rcdetails.aspx?vs=243&sy=2011&lb=H&eb=SB0088&sortoption=&txtsessionyear=2011&txtbillnumber=SB88&ddlsporsors=&q=1&lsr=341](http://www.gencourt.state.nh.us/bill_status/Roll_calls/billstatus_rcdetails.aspx?vs=243&sy=2011&lb=H&eb=SB0088&sortoption=&txtsessionyear=2011&txtbillnumber=SB88&ddlsporsors=&q=1&lsr=341)

"SB88 House Roll Call." New Hampshire General Court Bill Status System. 22 June 2011. [http://www.gencourt.state.nh.us/bill\\_status/Roll\\_calls/billstatus\\_rcdetails.aspx?vs=226&sy=2011&lb=H&eb=SB0088&sortoption=&txtsessionyear=2011&txtbillnumber=SB88&ddlsporsors=&q=1&lsr=341](http://www.gencourt.state.nh.us/bill_status/Roll_calls/billstatus_rcdetails.aspx?vs=226&sy=2011&lb=H&eb=SB0088&sortoption=&txtsessionyear=2011&txtbillnumber=SB88&ddlsporsors=&q=1&lsr=341)

"SB88 Senate Override Roll Call." New Hampshire General Court Bill Status System. 7 September 2011. [http://www.gencourt.state.nh.us/bill\\_status/Roll\\_calls/billstatus\\_rcdetails.aspx?vs=102&sy=2011&lb=S&eb=SB0088&sortoption=&txtsessionyear=2011&txtbillnumber=SB88&ddlsporsors=&q=1&lsr=341](http://www.gencourt.state.nh.us/bill_status/Roll_calls/billstatus_rcdetails.aspx?vs=102&sy=2011&lb=S&eb=SB0088&sortoption=&txtsessionyear=2011&txtbillnumber=SB88&ddlsporsors=&q=1&lsr=341)

<sup>15</sup>"SB88 Senate Roll Call." New Hampshire General Court Bill Status System. 30 March 2011. [http://www.gencourt.state.nh.us/bill\\_status/Roll\\_calls/billstatus\\_rcdetails.aspx?vs=40&sy=2011&lb=S&eb=SB0088&sortoption=&txtsessionyear=2011&txtbillnumber=SB88&ddlsporsors=&q=1&lsr=341](http://www.gencourt.state.nh.us/bill_status/Roll_calls/billstatus_rcdetails.aspx?vs=40&sy=2011&lb=S&eb=SB0088&sortoption=&txtsessionyear=2011&txtbillnumber=SB88&ddlsporsors=&q=1&lsr=341)

Rayno, Garry. "House Panel Debates Bill on Rights of Self-Defense." *The Union Leader*, 13 April 2011. Lexis Nexis Academic

<sup>16</sup>Landrigan, Kevin. "4 Bills Fail to Pass Muster with Lynch." *The Telegraph* (Nashua, NH). 14 July 2011. Access World News

In a Senate hearing, Senator Boutin described the bill as a self-defense bill, not a gun bill. He accordingly cast the law as a debate more of a general right to self-defense rather than a specific Second Amendment question. Debate centered around the validity of the duty to retreat. Supporters, such as Senator Baldasaro, emphasized that retreating makes a person vulnerable to attack and that in a conflict situation an individual does not have the time and opportunity to assess all of his or her options. Rather, they must act within a matter of seconds and the duty to retreat presents an unreasonable burden on individuals in a serious and high-pressure situation. Opponents, such as Associate Attorney General Ann Rice and Franklin Police Chief David Goldstein, emphasized that the current law was adequate for self-defense and that the duty to retreat is necessary to preserving the sanctity of life. On one's own home and its curtilage, one is entitled to a certain degree of autonomy and privacy, but that person is not entitled to the same protections when not on his or her own property.<sup>17</sup>

SB88, at least in part, was prompted by a local incident. In 2008, a New Hampshire farm owner named Ward Bird was convicted of criminal threatening and sentenced to the mandatory three year sentence after waving an unloaded pistol at a woman trespassing on his property. His conviction and subsequent appeals prompted a large campaign to free him from unjust imprisonment. His application for pardon came before the Executive Council in January of 2011, the same time Senator Boutin introduced SB88. The law's removal of mandatory sentencing requirements and reclassification of brandishing a firearm as not within the definition of criminal

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<sup>17</sup>“Senate Judiciary Committee SB88 Hearing Audio File.” New Hampshire General Court, 10 March 2011. [http://www.gencourt.state.nh.us/bill\\_status/BillStatus\\_Media.aspx?lsr=341&sy=2011&sortoption=&txtsessionyear=2011&txbillnumber=SB88&q=1](http://www.gencourt.state.nh.us/bill_status/BillStatus_Media.aspx?lsr=341&sy=2011&sortoption=&txtsessionyear=2011&txbillnumber=SB88&q=1)

threatening were specifically designed to address the circumstances of the Bird incident.<sup>18</sup>

However, the Stand Your Ground provision of the bill was an existing legislative agenda (which failed in 2006) and was likely not prompted in full by the Ward Bird case.

The debate surrounding SB88 shows a general concern for the right protected in the Second Amendment, but does not mention the Supreme Court or its decisions in either *Heller* or *McDonald*. The only reference to the Supreme Court consisted of a statement by Cato Institute Chairmain Robert Levy, who was involved in the *Heller* case. Levy did not remark at all on SB88, mentioning only his assessment that Ward Bird's case was not a Second Amendment case under the *Heller* precedent.<sup>19</sup> The NRA's Institute for Legislative Action, which showed significant interest in the bill, characterized the bill as a Second Amendment gun rights issue to a greater extent than any other party.<sup>20</sup> Ultimately, SB88's overwhelming passage, similar to the other case studies,

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<sup>18</sup> Duckler, Ray. "Bird pardon file 367 pages long - It includes support and prior incidents." *Concord Monitor* 14 January 2011. NewsBank.

"Editorial: Bird's bill: Good gun law changes." *The New Hampshire Union Leader*. 11 July 2011. Lexis Nexis Academic

"The Governor Vetoed 13 Bills This Year, But It's Not Over." *The Hookset Banner*. 4 August 2011. NewsBank.

Hitchcock, Melanie. "House Committee Finalizes Work on Castle Doctrine Bill." *The Union Leader*, 25 May 2011. Lexis Nexis Academic

"NH farmer is folk hero for gun rights advocates." *The Associated Press News Service*. 8 January 2011. NewsBank. 14 Mar. 2013.

Rayno, Garry. "Bill Expands Use of Deadly Force." *New Hampshire Union Leader*, 31 March 2011. Lexis Nexis Academic.

Senate Judiciary Committee SB88 Hearing Audio File. 10 March 2011.

Wood, Sherry. "Deadly Force: Lynch's Veto Falls." *New Hampshire Union Leader*, 15 September 2011. Lexis Nexis Academic.

<sup>19</sup> "NH farmer is folk hero for gun rights advocates." AP, 2011.

<sup>20</sup>Buckland, Timothy. "Governor under fire over deadly force." *New Hampshire Union Leader*, 24 August 2011. Lexis Nexis Academic

"Governor Lynch, Police Chiefs Urge Lawmakers Not to Put Ideology Above Public Safety." *State News Service*, 1 September 2011. Lexis Nexis Academic.

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is an example of a previously unsuccessful legislative agenda brought back into legislators' and communities' awareness by a combination of a local high-profile case, existing partisan beliefs, and the increased state applicability of the Second Amendment that *McDonald v. Chicago* created.

### ***Oklahoma House Bill 1439***

House Bill 1439 expanded the existing Castle Doctrine law to include places of business. The law affords business owners and their employees the same legal protections against unlawful intruders as homeowners, giving them the presumption that their life was threatened and that they acted in self defense. Existing Castle Doctrine law protected homeowners during home invasions and car owners during carjackings.<sup>21</sup> The expansion to include vehicles in the Castle Doctrine passed in 2006.<sup>22</sup> Representative Steve Vaughan proposed HB1439 on 7 February 2011, and the legislature passed it by overwhelming margins on 14 April 2011.<sup>23</sup>

By all accounts, the bill was not at all controversial. The House debated the bill for less than an hour before passing it by a vote of eighty-seven to six, and the Senate

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<sup>21</sup> "HB 1439 Final Bill Text." Oklahoma State Legislature, 18 April 2011. [http://webserver1.lsb.state.ok.us/cf\\_pdf/2011-12%20ENR/hB/HB1439%20ENR.PDF](http://webserver1.lsb.state.ok.us/cf_pdf/2011-12%20ENR/hB/HB1439%20ENR.PDF)

<sup>22</sup> Morava, Kim. "Businesses support right to use deadly force." *The Shawnee News-Star*. 18 May 2011. NewsBank.

<sup>23</sup> "HB1439 House Vote." Oklahoma State Legislature, 17 March 2011. [http://webserver1.lsb.state.ok.us/cf/2011-12%20SUPPORT%20DOCUMENTS/votes/House/HB1439\\_VOTES.HTM](http://webserver1.lsb.state.ok.us/cf/2011-12%20SUPPORT%20DOCUMENTS/votes/House/HB1439_VOTES.HTM)  
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passed it without any debate by a margin of forty-two to three.<sup>24</sup> During the House floor debate, several representatives of both parties relayed personal experiences with armed robbery in their businesses. Representative Rebecca Hamilton, a Democrat from Oklahoma City, also brought up an example from 2009 where an employee in an Oklahoma City pharmacy shot a robber and was subsequently convicted of murder. Many of the local news articles discussing HB1439 also discuss that incident. Representative Vaughn asserted that while he did not propose HB1439 in direct response to the pharmacy shooting, it served as a perfect example of why the Castle Doctrine expansion was necessary.<sup>25</sup>

In general, the legislature, governor, and various media sources characterized HB1439 as both a matter of Second Amendment rights and practical concerns of self defense. Most supporter statements emphasized the split-second nature of armed confrontation. If an armed robber breaks into a person's business, the individual does not have the time (and should not have to) consider that defending themselves could cost them a life sentence. Beyond assertions of a broad Second Amendment interest, no

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<sup>24</sup>"HB 1439 Co-Authors." Oklahoma State Legislature. <http://www.oklegislature.gov/BillInfo.aspx?Bill=HB1439&Session=1100>

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<sup>25</sup>"Committee Approves Expansion of Make My Day Law - Ponca City Lawmaker Pleased by Committee Passage of First Bill." *Pauls Valley Daily Democrat*. 17 February 2011. NewsBank.

"House Floor Video." Oklahoma State Legislature, 17 March 2011. <http://www.oklegislature.gov/BillInfo.aspx?Bill=HB1439&Session=1100>

"Lawmakers Praise Governor for Signing Gun Rights Law." *Pauls Valley Daily Democrat*. 26 April 2011. NewsBank.

records indicate any mention of the Supreme Court or the *McDonald* decision.<sup>26</sup>

Ultimately, the bill passed easily and supporters did not need to resort to using *McDonald* as supporting evidence that the bill was warranted. However, the decision does not seem to have been entirely without influence. At the same time as HB1439 advanced out of committee, the legislature sent HB1511 to the governor. HB1511 established June 28, the day the Court issued its opinion in *McDonald v. Chicago*, as Second Amendment Day in commemoration of the “monumental ruling” that “reinforced the rights of the states and people of those states to enjoy liberties offered to them by the U.S. Constitution.”<sup>27</sup> Thus, legislators unquestionably were aware of the Supreme Court decision and it likely served, along with local issues, to bring the subject of the Second Amendment and gun rights to legislative attention.

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<sup>26</sup> Biehn, Steve. "Ownbey, Simpson had high hopes for AHEC passage." *The Daily Ardmoreite*. 1 May 2011. NewsBank.

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<sup>27</sup> Hoberock, Barbara. "Gun-law extension passes committee." *Tulsa World*. 8 April 2011. NewsBank.

### ***California Assembly Bill 144***

Assembly Bill 144 banned the open carry of unloaded firearms and represents the most restrictive gun control law passed between 2010 and 2012. Representative Anthony Portantino of western Los Angeles proposed the law on 13 January 2011, shortly after the shooting that injured Arizona Congresswoman Gabrielle Giffords. The bill was a measure that failed to pass the legislature in the previous legislative session. Both houses of the California legislature passed the bill along party lines, and Governor Brown signed the bill into law on October ninth.<sup>28</sup>

AB144 made the open carry of an unloaded firearm in a public place or vehicle a misdemeanor offense. The bill contained numerous exemptions, including current or retired police officers, members of a non-profit organization or the military engaged in a lawful parade, individuals engaged in the manufacture, wholesale, or repairing of firearms, individuals transporting the weapon for lawful target shooting in order to complete certification for a concealed carry permit, or individuals engaged in legal hunting, within a gun show, involved in the production of a motion picture, or on the individual's own land. As a resubmitted version of a bill that failed in the 2010 legislative session, the bill closed the existing loophole in the current California open carry ban. Though the law at the time banned the open carry of loaded firearms, it did

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<sup>28</sup> "AB 144 Complete Bill History." California Legislature. [http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0101-0150/ab\\_144\\_bill\\_20111009\\_history.html](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0101-0150/ab_144_bill_20111009_history.html)

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Nichols, Charles. "California bill to ban Open Carry introduced - AB 144." Los Angeles Examiner. 14 January 2011. NewsBank.

"Portantino's ban on 'open carry' passes Committee." San Gabriel Valley Tribune (West Covina, CA) 12 April 2011 NewsBank.



not prohibit the open carry of unloaded firearms and the simultaneous possession of that weapon's ammunition. As a result of California's "may issue" concealed carry standard that made it difficult (requiring proof of a substantive personal threat beyond a general interest in self defense) for individuals to obtain concealed carry permits, open carry functioned as the most practicable method individuals could use to legally carry a weapon with them for the purposes of self defense.

The debate surrounding AB144 showed the most significant impact of the case studies from the Supreme Court decision of *McDonald v. Chicago* (as well as *District of Columbia v. Heller*). The Senate Committee on Public Safety drafted an analysis that included a section discussing the constitutionality of the bill. The analysis was specifically concerned with *District of Columbia v. Heller* (although *McDonald v. Chicago* rendered such consideration necessary), asserting that while the Court established that the Second Amendment protected an individual right to own handguns, it did not preclude reasonable gun control measures. Supporters argued that open carry could lead to dangerous situations in public places and that limiting open carry was a reasonable gun control measure that did not infringe of the ability of citizens to own handguns for self-defense. Opposition argued that banning open carry would effectively result in banning all carrying of firearms for self-defense.

Supporting interest groups included the Legal Community Against Violence, the Brady Campaign to Prevent Gun Violence, California Police Chiefs Association, the Peace Officer Research Association of California, and the City of West Hollywood. These supporters argued that the practice of openly carrying handguns served to endanger

public safety by increasing the likelihood of violent conflicts and intimidating law abiding citizens. Open carry, they argued, also wasted law enforcement resources and presented an unnecessary potential for violence as frightened individuals report a lawful gun carrier to the police, who respond to these calls without knowing that the individual is carrying lawfully. Such a situation has the potential to easily escalate and result in needless tragedy if the police perceive a threatening action and respond with lethal force.<sup>29</sup>

Opposing interest groups included the Bay Area Open Carry Movement, the California Rifle and Pistol Association, Californians for Natural Rights, Capitol Resource Family Impact, Contra Costa Open Carry, Gun Owners of California, Responsible Citizens of California, South Bay Open Carry, and the National Rifle Association. Those in opposition argued that open carry is protected under the Second Amendment and offers the only method of self defense available to the majority of law abiding citizens given the restrictive concealed carry statutes. Opposing arguments pointed out the decision of a Ninth Circuit District Court in the case of *Peruta v. County of San Diego*, in which the court upheld California's restrictive "may issue" concealed carry permitting process as not violating the Second Amendment because individuals had the alternative of open carry. Without the alternative to carry openly, the "may issue" concealed carry scheme would not have been upheld.<sup>30</sup>

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<sup>29</sup>"AB 144 Bill Analysis." Senate Committee on Public Safety, 7 June 2011. [http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0101-0150/ab\\_144\\_cfa\\_20110606\\_154352\\_sen\\_comm.html](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0101-0150/ab_144_cfa_20110606_154352_sen_comm.html)  
"Assembly bans open carrying of unloaded guns." Associated Press State Wire: California. 16 May, 2011. NewsBank.

<sup>30</sup> "AB 144 Bill Analysis." Senate Committee on Public Safety.

Various local news sources indicated that several open carry advocacy groups staged protests in which they open carried their unloaded sidearms, emphasizing that the question of open carry was a question of a fundamental constitutional right. One article characterized the bill as “a direct defiance” of the Supreme Court’s decision of *District of Columbia v. Heller*.<sup>31</sup> Opponents of the law cast the argument in terms of constitutionality, Supreme Court precedent, and the state’s obligation to respect the Second Amendment as a right not only to own firearms but to carry them as well. The bill’s supporters emphasized that openly carrying firearms is not protected under the Second Amendment nor prohibited by the cases of *Heller* or *McDonald*. As the bill’s author stated, “You don’t need a gun to buy a cheeseburger.”<sup>32</sup>

Ultimately, AB144 shows the best illustration of the effects of *McDonald v. Chicago*. Both sides use the case and its immediate precursor (*Heller*) to support their positions. Gun control supporters emphasized that the Supreme Court did not prohibit laws like AB144 and gun rights advocates emphasized the necessity of open carry as part of the Second Amendment. After AB144 was passed, the open carry groups began to stage protests where they open carried their rifles and shotguns, and the National Rifle

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<sup>31</sup> Nichols, Charles. "South Bay Open Carry responds to proposed ban on openly carried handguns." Los Angeles Examiner. 16 January 2011. NewsBank.

<sup>32</sup> Brown, Michelle R. and Terry Miller. "Second Amendment Group Plans Thursday Protest of Portantino Bill in Pasadena." The Arcadia Weekly. 21 April 2011. NewsBank.

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association threatened to file suit.<sup>33</sup> The Supreme Court decision seems to have served, along with shooting incidents like that of Tuscon, Arizona, to bring the gun law subject to legislative attention. However, both sides of the argument used the case to support their positions, and it became another piece of contested evidence rather than a proximate cause of legislation. Ultimately, it seems as though the democratically controlled legislature tried to emphasize that AB144 would pass constitutional muster, daring gun rights groups to try to overturn it. The gun rights groups, in turn, were happy to oblige.

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<sup>33</sup> "Around Pasadena, April 13." Pasadena Star-News 12 April 2011. NewsBank.  
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## CONCLUSION

Overall, *McDonald v. Chicago* seems to have affected state gun legislation to a short-term extent. The nature of the holding itself, however, does not seem to have influenced the passage of less regulatory and more regulatory laws differently. Legislatures will tend to behave consistently with their controlling party regardless of the Court's holdings.

The case studies showed an interesting trend in that *McDonald v. Chicago* seems to have had its least impact in the Castle Doctrine cases, examples of the most significant pro-gun legislation. Legislative records do not mention the Court's decision and only generally refer to a Second Amendment interest. Many of the interests in the bill stem from practical and local concerns rather than national or constitutional concerns. In contrast, debates on California's open carry ban explicitly evaluated its constitutionality in light of *District of Columbia v. Heller* and *McDonald v. Chicago*, arguing that the decisions did not preclude the gun regulations they proposed. The Court's decision, therefore, seems to occupy the legislatures proposing laws that the decision threatens, while legislatures whose agendas are not threatened are not concerned with the Court's decision to any large policy-making extent.

In addition, each bill that the study analyzed was a bill that had failed in previous legislative sessions, but succeeded in the 2011 session after *McDonald v. Chicago*. Overall, the research demonstrates that the *McDonald v. Chicago* has had a short-term influence on gun legislation by bringing the subject to public view and legislative awareness rather than directly prompting legislation consistent with the opinion. Once

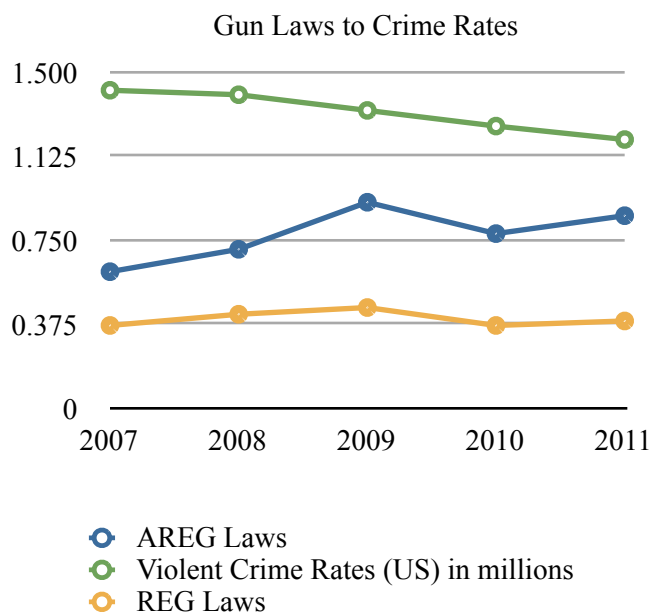
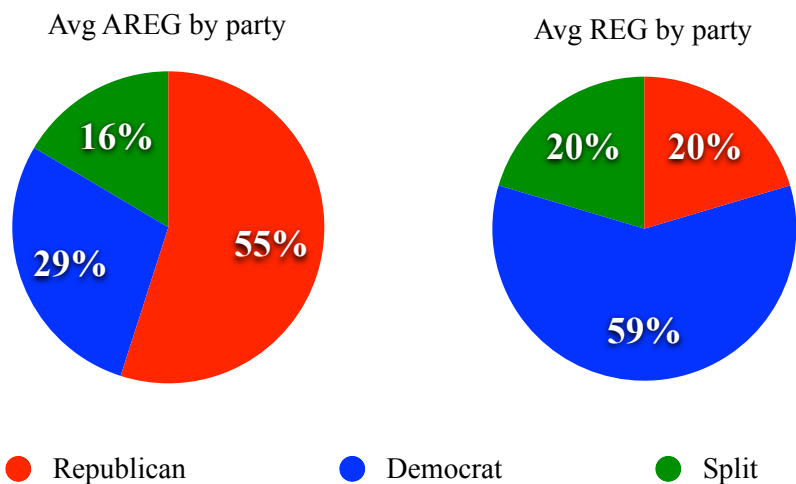
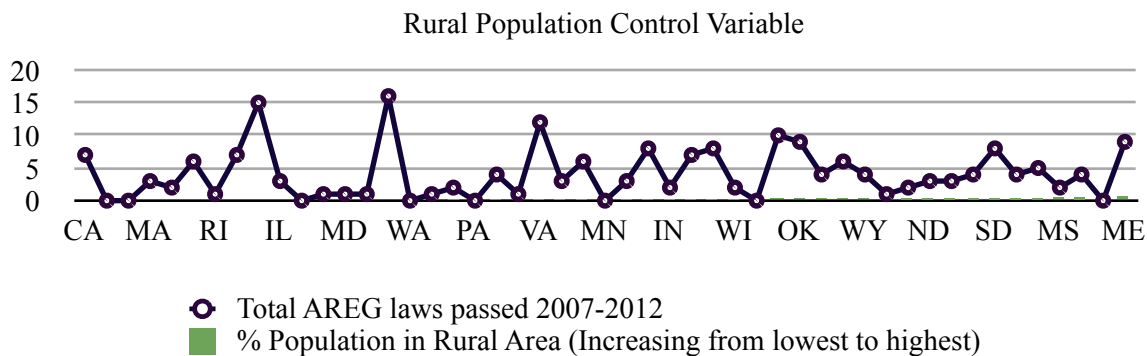
the subject has the legislature's attention, they will form the policy based on the majority party's ideology and local incidents. It is important to note that the sample period was not able to include legislation passed after the Sandy Hook shooting. Whether that particular shooting will have an impact different from impact of the other gun-related events in the study remains to be seen. However, it is worth noting that the New Hampshire legislature is considering repealing the 2011 Castle Doctrine law in the current legislative session.<sup>34</sup>

Further research will be required to assess any long-term legislative impact of *McDonald v. Chicago*, although the decision's greatest influence and lasting impact will unquestionably occur in the courtroom. Ultimately, the research demonstrates that, not unlike the aftermath of *Brown v. Board of Education*, Supreme Court decisions do not enforce themselves.

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APPENDIX: CONTROL VARIABLES



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## ABSTRACT

This study focused on ascertaining the impact of the 2010 Supreme Court decision of *McDonald v. Chicago* on state gun legislation. In *McDonald v. Chicago*, the Court declared the Second Amendment to protect a fundamental individual right to own firearms that states are prohibited from infringing. To determine if this landmark case has had any impact on state-level policy, the study first surveyed the gun legislation passed by state legislatures between 2007 and 2012, coding them as either less regulatory or more regulatory and comparing the results before and after *McDonald*. The results were also compared to other variables, including political party, crime rates, and shooting incidents. The general trend in state gun legislation showed that less restrictive and more restrictive gun policy covary, both spiking in the year after *McDonald* and its precursor *District of Columbia v. Heller*. The study then conducted four case studies of post-*McDonald* legislation to determine if and to what extent the case exerted any influence. Results showed that the case exerted a short-term influence that was uniform between types of gun legislation, serving to bring the issue of gun policy to legislative attention rather than serving as an independent policy prescription. Legislative dynamics and the influence on Castle Doctrine laws are also discussed.