



NEWS RELEASE  
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## Thomas Jefferson School of Law Professor's Works Cited In *McDonald v. Chicago* Gun Rights Case

SAN DIEGO -- The U.S. Supreme Court is expected to rule any day now on a gun rights case, *McDonald v. Chicago*, that advocates and opponents of gun control across the nation are watching very closely. No matter which side wins, Professor Bryan H. Wildenthal of the Thomas Jefferson School of Law here may have influenced the decision.

Fourteen of the numerous briefs filed both by parties to the case and *amici curiae* ("friends of the court"), at both the certiorari petition and merits stages of the case, contain a total of 22 citations to three of Professor Wildenthal's scholarly works on the Fourteenth Amendment. Even more noteworthy is that both sides of the case cite his works.

Otis McDonald, the main petitioner in the case, is an elderly Chicago man, victimized by crime on several occasions, who wants to possess a handgun in his home for self-defense. The Court must decide the constitutionality of ordinances in Chicago and Oak Park, Illinois, which severely restrict handgun ownership.

"It is gratifying that both sides seem to view my scholarship as sufficiently reliable and balanced to cite," says Professor Wildenthal. Indeed, the leading merits briefs by both the National Rifle Association (NRA), a co-party on McDonald's side, and the City of Chicago on the other side, cite Professor Wildenthal's works, along with amicus briefs by nationally respected legal scholars and historians, on both sides of the case.

In 2008, the Supreme Court's controversial 5-4 decision in *District of Columbia v. Heller* supported the Second Amendment right to bear arms for self-defense by striking down a D.C. gun ordinance that severely restricted handgun ownership. Because Washington, D.C. is a federal jurisdiction and not a state, the Court in *McDonald* must decide whether that Second Amendment right applies to state and local governments via the Fourteenth Amendment.

"My scholarship actually says very little about the Second Amendment or gun rights specifically," Professor Wildenthal explains. "What my work does focus on is the more general issue whether all of the individual rights protected by the Bill of Rights, against federal violation, are also protected by the Fourteenth Amendment against violation by state and local governments."

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Editors, Please Note: *Professor Wildenthal is available for interviews. Please contact the Communications Office at [communications@tjssl.edu](mailto:communications@tjssl.edu).*

## Details on Citations to Professor Wildenthal's Works:

A total of 14 of the briefs (4 at the cert petition stage and 10 at the merits stage), cite 3 of Professor Wildenthal's articles, with a total of 22 separate citations.

Total of 2 cites to Wildenthal, *The Lost Compromise: Reassessing the Early Understanding in Court and Congress on Incorporation of the Bill of Rights in the Fourteenth Amendment*, 61 *Ohio St. L.J.* 1051 (2000), available at <http://ssrn.com/abstract=229228>

Total of 15 cites to Wildenthal, *Nationalizing the Bill of Rights: Revisiting the Original Understanding of the Fourteenth Amendment in 1866-67*, 68 *Ohio St. L.J.* 1509 (2007), available at <http://ssrn.com/abstract=963487>

Total of 5 cites to Wildenthal, *Nationalizing the Bill of Rights: Scholarship and Commentary on the Fourteenth Amendment in 1867-1873*, 18 *J. Contemp. Legal Issues* 153 (2009), available at <http://ssrn.com/abstract=1354404>

### **Cites in Briefs at Petition for Certiorari Stage (cert was granted on Sept. 30, 2009)**

1. Petition for Certiorari (June 9, 2009) (2 cites to 2007 article)
2. Amicus Brief for Constitutional Law Professors in Support of Petition [Richard Aynes, Jack Balkin, Randy Barnett, Michael Kent Curtis, Michael Lawrence & Adam Winkler] in Support of Petitioners (July 9, 2009) (2 cites to 2007 article)
3. Brief for Respondents in Opposition to Cert (Aug. 5, 2009) (1 cite to 2009 article)
4. Petitioners' Reply Brief seeking Cert (Aug. 18, 2009) (1 cite to 2007 article, 1 to 2009 article)

### **Cites in Briefs at Merits Stage (case was orally argued on the merits on March 2, 2010)**

5. Brief for Respondent NRA in Support of Petitioners (Nov. 16, 2009) (1 cite to 2007 article)
6. Amicus Brief for Academics for the Second Amendment in Support of Petitioners (Nov. 23, 2009) (1 cite to 2007 article)
7. Amicus Brief for American Civil Rights Union, Family Research Council, et al, in Support of Petitioners (Nov. 23, 2009) (1 cite to 2000 article)
8. Amicus Brief for Constitutional Law Professors [Richard Aynes, Jack Balkin, Randy Barnett, Steven Calabresi, Michael Kent Curtis, Michael Lawrence, William Van Alstyne & Adam Winkler] in Support of Petitioners (Nov. 23, 2009) (3 cites to 2007 article)
9. Amicus Brief for American Center for Law & Justice in Support of Petitioners (Nov. 23, 2009) (1 cite to 2000 article)
10. Amicus Brief for Maryland Arms Collectors Association in Support of Petitioners (Nov. 23, 2009) (1 cite to 2009 article)
11. Brief for Respondents City of Chicago and Village of Oak Park (Dec. 30, 2009) (2 cites to 2007 article, 1 cite to 2009 article)
12. Amicus Brief for Historians and Legal Scholars in Support of Respondents [Bret Boyce, Jonathan Lurie, William Merkel, William Nelson, Donna Schuele & George Thomas] (Jan. 6, 2010) (2 cites to 2007 article)
13. Amicus Brief for U.S. Conference of Mayors in Support of Respondents (Jan. 6, 2010) (1 cite to 2007 article)
14. Petitioners' Reply Brief (Jan. 29, 2010) (1 cite to 2009 article)