

The Long Hard Road To Freedom

by Dave Kopel

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Illinois' new "shall issue" Right-to-Carry law is the most important pro-rights reform of 2013, and it has dramatic national implications. While Chris Cox's article in this issue recounts the final stages of the legislative battle, the Illinois victory also teaches some lessons about the long-term campaign for Second Amendment rights.

Right-to-Carry efforts in Illinois began in earnest in early 1995. At the time, Indiana was the only state bordering Illinois that had a fair system for law-abiding citizens to obtain a carry permit.

With relentless hard work, Right-to-Carry laws were enacted in Kentucky, Missouri, Iowa and Wisconsin. Missouri and Wisconsin proved the most challenging, with over a decade of exertion needed in each state. Illinois, the last holdout, was even more difficult due to a special legislative rule—any law that overrides the home rule powers of municipal governments must be passed by a three-fifths majority in each house of the Illinois legislature.

For years there has been majority support in the Illinois legislature, but obtaining simultaneous three-fifths majorities proved impossible. The eventual key to legislative victory would be a victory in court.

The decisive case had its origins on the afternoon of Sept. 28, 2009. Mary Shepard was a 69-year-old woman working as the secretary/treasurer at the First Baptist Church in Anna, Ill., near Carbondale. An 83-year-old woman was working with her in the office.

A 6-ft., 3-in. robber, weighing 245 lbs., entered the church. He had an established record of violence and crime. Shepard had Right-to-Carry permits from two states, but Illinois law forbade her from having a gun in any public place.

The robber beat the two women and left them for dead in the basement. Both women sustained severe injuries to their heads, necks and upper bodies. After several intensive surgeries, Shepard still needs physical therapy.

Shepard joined the Illinois State Rifle Association, the state affiliate of the National Rifle Association. The NRA provided the legal resources for Shepard and several other plaintiffs to file a federal civil rights lawsuit against Illinois' unconstitutional ban on defensive carry. Thus began *Shepard v. Madigan*.

In the Seventh Circuit, the *Shepard* case was combined for argument and decision with a similar case, *Moore v. Madigan*. The NRA brought in Charles Cooper, one of the top appellate advocates in the United States, for *Shepard's* part of the oral argument.

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Shepard v. Madigan was a carefully constructed test case, with stellar lawyering. The NRA did not rush into court with just any plaintiff; the NRA found compelling plaintiffs, and paired them with outstanding legal support.

The careful strategic planning paid off on Dec. 11, 2012, when the U.S. Court of Appeals for the Seventh Circuit announced its 2-1 decision striking down the Illinois carry ban.

Judge Richard Posner wrote the majority opinion. Nobody could ever accuse Judge Posner of having a pro-gun bias. Shortly after the landmark Second Amendment case of *District of Columbia v. Heller* was decided in 2008, he wrote an article in *The New Republic* criticizing the decision.

Yet while Judge Posner was no fan of *Heller*, he properly performed his judicial duty to follow the Supreme Court decision. He explained that the right to bear arms “implies a right to carry a loaded gun outside the home.”

While the gun prohibition lobbies argued that the Second Amendment is only for the home—and some lower courts have agreed—Judge Posner held that the Second Amendment guarantees the right of armed self-defense. In practice, this can be more important outside the home than inside:

“A Chicagoan is a good deal more likely to be attacked on a sidewalk in a rough neighborhood than in his apartment on the 35th floor of the Park Tower,” Posner said. “A woman who is being stalked or has obtained a protective order against a violent ex husband is more vulnerable to being attacked while walking to or from her home than when inside. She has a stronger self defense claim to be allowed to carry a gun in public than the resident of a fancy apartment building (complete with doorman) has a claim to sleep with a loaded gun under her mattress.”

The Seventh Circuit opinion also found the uniqueness of Illinois’ anti-carry statute to be a mark against it: “There is no suggestion that some unique characteristic of criminal activity in Illinois justifies the state’s taking a different approach from the other 49 states.” As common sense suggests, “If the Illinois approach were demonstrably superior, one would expect at least one or two other states to have emulated it.”

Courts are more likely to strike down an unusual, outlier law than to rule against a law that is common in other jurisdictions. So the NRA was correct to select Illinois’ unique law—which foreclosed even the theoretical possibility that somebody could be issued a carry permit—as the most vulnerable target for a Right-to-Carry challenge.

While some Chicago politicians blasted the decision upholding the Second Amendment, others were supportive. For example, Chicago Alderman Howard Brookins, the chair of the City Council’s black caucus, lauded the Seventh Circuit for leveling the playing field between criminals and decent people in rough neighborhoods.

Half a year later, the Illinois General Assembly barely beat the clock to comply with the Seventh Circuit’s decision. Importantly, support for House Bill 168 was bipartisan: In the House, Democrats voted yes by 42-28, with even 15 Chicago Democrats in favor. Republicans voted yes by 47-0. In the Senate, Democrats supported the bill 26-12, with eight of the yes votes coming from Chicago. Republicans favored it 19-0.

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In Illinois, as in other states, the NRA has always supported pro-rights officials of both major parties. To tie the NRA to a single party would be disastrous, for each party is in the minority some of the time, and legislative victories almost always depend on bipartisan support.

This is just the opposite of Illinois Gov. Pat Quinn's approach; he even attempts to foment division within his own party. As he faces a Democratic primary challenge from former Obama chief of staff Bill Daley, Quinn's anti-gun antics pander to the anti-gun hardcore of primary votes in populous Cook County, while ignoring the legitimate concerns of the rest of the state.

The reason that there are so many anti-gun voters in Cook County is because of decades of systematic destruction of the right to arms in Chicago and its surrounding suburbs. Other than D.C., the only jurisdictions that banned handguns (until the *Heller* and *McDonald* decisions banned handgun bans) were Chicago and several of its suburbs. There are no gun stores in Chicago. Until the Seventh Circuit case of *Ezell v. Chicago* (2011), Chicago even outlawed target ranges.

What this means is that a large fraction of the people of Chicago and its suburbs have no experience with guns the way that most Americans do—as a normal part of everyday life.

In a vicious cycle of prejudice, people who do own guns in Chicago may actually keep their ownership a quiet secret for fear that if their friends or neighbors found out, that would be the end of social contact. As gun owners increasingly fear to “out” themselves, the rest of the population becomes increasingly sure that it does not know any respectable person who owns a gun.

Thus, too many people in the Chicago area are easy dupes for the anti-gun media. These people have no real-world point of reference about law-abiding gun owners, so they simply believe what the media tell them.

No wonder Chicago residents elect politicians like Rahm Emanuel, Jesse Jackson, Jr., Bobby Rush and others who pander to bigotry against gun owners. No wonder so many of the politicians who revel in persecuting gun owners come from places like Chicago, New York City or New Jersey, where the culture of lawful gun ownership has been suppressed.

This is one reason why the Illinois victory has such important national implications. Starting next spring, if you walk down Michigan Avenue in Chicago, or when you go to a shopping mall somewhere in Chicago, it's close to a statistical certainty that you will walk past several people who are lawfully carrying concealed handguns. And absolutely nothing bad will happen.

Right now, Quinn and Daley are fighting for the votes of people who are prejudiced against gun owners. But in a few years, when Right to Carry has become normal in Illinois, as it already has in 41 other states, some of those prejudiced voters may have become more open-minded. They may not have become “pro-gun,” but they also may have stopped voting for politicians whose forte is fomenting fear and bigotry.

The same political process occurred in the South during the civil rights era. For a while, politicians gained votes by pandering to white fears of racial integration. Yet once the state universities and the lunch counters were integrated and nothing bad happened, the appeal to prejudice began to lose its force. Politicians who specialized in promoting racial animosity began to lose their appeal to most voters.

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In the long run, the result was the reform of many Southern gun laws. Those gun control laws had been created in the Jim Crow era, based on fear of black people. In the integrated New South, those laws have been discarded as relics of an unfortunate past.

The civil rights revolution didn't take place overnight in the South, and it won't in Chicago, either. Part of the change is generational. Politicians who specialize in prejudice are replaced by a new generation with more pragmatic concerns.

That's why the NRA is so important. It's an organization that fights today's battles with full commitment. And it's also the organization that keeps its eye on the very long term—making sure that the Second Amendment is still strong 25, even 50 years from now. The victory in the *Shepard* case was made possible by strategic legal planning that began in the 1970s to bring the Second Amendment back into the mainstream of American law.

Election wins and legislative wins are also essential for progress. In 1986, Illinois was one of 16 states that had no provision for anyone to be issued a carry permit. That was the year that the NRA began working on carry reform, in support of the efforts of Marion Hammer (who would later serve as NRA president) and Unified Sportsmen of Florida. Florida's enactment of shall-issue licensing in 1987 started a national trend.

So by 2012, the Illinois no-issue law was no longer typical; it was a lone aberration. That legislative fact helped the Seventh Circuit see the unreasonableness of the Illinois law.

None of the progress that began in 1987 would have been possible if the NRA had insisted that the only acceptable law is a perfect law. Instead, the NRA has been willing to make a few compromises so that a good law can replace a terrible law. Once residents of a state become accustomed to Right to Carry, further improvements are usually enacted.

For the people of Illinois, the fruits of the NRA's victory will likely be enjoyed beginning in the spring of 2014, when the first carry permits are issued. From Chicago to Cairo, Illinoisans will no longer be defenseless against gangsters, rapists and other violent predators. The next Mary Shepard will have the choice to defend herself.

State Rep. Brandon Phelps' victory with Illinois' Firearms Concealed Carry Act completes a project that began when his uncle was serving in the state House two decades ago. Grassroots volunteers in Illinois worked long and hard, and had to resist the temptation to become discouraged when getting the three-fifths majority proved so difficult. The grassroots' pertinacity prevailed.

After Gov. Quinn's veto was overridden, the *Chicago Tribune* interviewed several Chicago police officers who work in high-crime neighborhoods. The officers had to speak anonymously, for fear of retribution from Mayor Rahm Emanuel and his political appointees who run the police department.

The officers said that the new law would give people a chance to defend themselves. "I'm happy for the average citizen who is not up to no good," one officer said. And gun owners throughout the U.S. should be just as happy for their counterparts in Illinois.