

EXAMINERS' ANALYSIS OF QUESTION NO. 7

Federal Constitutional Law: The Second Amendment to the United States Constitution provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

In *District of Columbia v Heller*, 554 US 570 (2008), under very similar facts, the United States Supreme Court rejected the argument that the Second Amendment protected only the right to possess and carry a firearm in connection with military service. Rather, the Court held that the Second Amendment conferred an individual right to keep and bear arms unconnected with militia service, and to use those arms for traditionally lawful purposes, such as self-defense within the home. The Court further held that the Second Amendment is not limited to those types of weapons in existence during the 18th century. Rather, the Second Amendment extends "to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *Id.* at 582. Subsequently, in *McDonald v City of Chicago*, 561 US 742 (2010), the United States Supreme Court held that the Second Amendment right to keep and bear arms was applicable to the States via the Fourteenth Amendment.

Handgun ordinance -- Under *Heller*, statutes that entirely ban handgun possession in the home violate the Second Amendment. Banning handguns prohibits an entire class of arms "that is overwhelmingly chosen by American society" for the lawful purpose of self-defense in the home. Rational basis scrutiny was not applicable to a specific, enumerated constitutional right. And, under any of the standards of scrutiny applicable to enumerated constitutional rights, banning handguns from the home to use for protection "would fail constitutional muster." *Id.* at 628-629. Thus, Barker would be successful in having the Portertown ordinance struck down under the federal constitution.

Trigger lock requirement - *Heller* further held that laws requiring firearms in the home be kept inoperable at all times violated the Second Amendment. Requiring that firearms be kept in an inoperable state "makes it impossible for citizens to use them for the core lawful purpose of self-defense and is hence unconstitutional." *Id.* at 630. Rather, Barker is entitled to have "any lawful firearm in the home operable for purpose of immediate self-defense." *Id.* at 635. Thus, Barker would be successful in having the trigger lock requirement struck down as well.

Michigan Constitution: Art 1, § 6 of the Michigan constitution explicitly states that "[e]very person has a right to keep and bear arms for the defense of himself and the state." Thus, there is no question that the Michigan constitution plainly confers an individual right to keep and bear arms for self-defense. See *People v Brown*, 253 Mich 537, 540 (1931) ("The protection of the Constitution is not limited to militiamen nor military purposes, in terms, but extends to 'every person' to bear arms for the 'defense of himself' as well as of the state.")

Handgun ordinance: Barker will prevail under the Michigan constitution. In *People v Zerillo*, 219 Mich 635 (1922), the Michigan Supreme Court held that the Michigan constitutional provision includes handguns. "[W]hile the legislature has power in the most comprehensive manner to regulate the carrying and use of firearms, that body has no power to constitute it a crime for a person, alien or citizen, to possess a revolver for the legitimate defense of himself and his property." *Id* at 638. (Emphasis added.)