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Editor's Note : This week, we are hosting a symposium before oral argument on December 2 in *New York State Rifle & Pistol Association v. City of New York*. Click here to read the contributions.

Breaking News : The Supreme Court released orders today from the November 22 conference. The justices added one new case, *FNU Tanzin v. Tanvir*, to their merits docket.

Alan Gura *Guest*

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McDonald – A Victory for the Second Amendment

Alan Gura, a lawyer at Gura & Possessky, represented the prevailing party, Otis McDonald, in McDonald v. Chicago.

The Second Amendment is a normal part of the Bill of Rights – that much is the essential rule of *McDonald v. City of Chicago*. In the glass-two-drops-full department, opponents of the right to arms find refuge in statements recalling that the Second Amendment "does not imperil every law regulating firearms." We can all breathe easier knowing that airport metal detectors are going nowhere.

Of course, the First Amendment, a Bill of Rights provision with which the courts are vastly more experienced, does not imperil the overwhelming majority of speech regulations. For example, the police may ask those of us reveling in the *McDonald* decision to keep the party within our neighborhoods' defined maximum noise levels. This much is just common-sense, confirmed by familiar time, place and manner standards. But just as the First Amendment will not tolerate the arbitrary licensing of political speech or punitive fees for expressive conduct, neither does the Second Amendment tolerate the gun prohibitionists' agenda of frustrating the right to arms with excessive regulation. Politicians can justify any law. With respect to laws reaching some topics – including arms – the Constitution requires much more than paeans to the public good

The Second Amendment is itself a reasonable, common-sense gun law – it provides powerful security for a fundamental individual right. Governments contemplating gun regulations out of legitimate concern for public safety may occasionally be reminded of their limits by courts, but good faith actors should find today's decision no more troubling than any other precedent effectuating basic constitutional limitations. On the other hand, politicians approaching gun regulation as a means of continuing their disagreement with the Constitution's enumerated policy choice on the subject will discover that doing so carries a price taxpayers do not wish to spend – and ultimately achieves nothing.

Finally, the reasoning matters as much as the result, and on this score there is tremendous cause for celebration as well. Justice Alito's plurality opinion firmly rejects turning the clock back to the days when Due Process incorporation was divorced from our unique American experience. Chicago's contrary arguments would have opened the door to reversing the entire incorporation enterprise.

And critically, Justice Thomas's opinion provides an excellent platform for restoring the Fourteenth Amendment's original public meaning. That today's result has a strong historical basis may have increased the plurality's comfort level in utilizing substantive due process, but Justice Thomas demonstrated that concern for the constitutional text's original public meaning was actually necessary to achieve the result. In 1868, the public meaning of the Fourteenth Amendment's Privileges or Immunities Clause commanded the support of a ratifying nation. After today, no one should doubt that it will yet command a majority of the Supreme Court.

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