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PRESS RELEASE

Re: 2ND Amendment and Illinois gun laws

A) "I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of States Attorney…according to the best of my ability." [55 ILCS 5/3-9001]

B) The duties of the State's Attorney include:
"1) to commence and prosecute all actions,…civil and criminal, in which the people of the state or county may be concerned." [55 ILCS 5/3-9005]

C) "The duty of a public prosecutor is to seek justice, not merely to convict." [Illinois Rules of Professional Conduct, Rule 3.8. See also Berger v. U.S., 295 U.S. 78, 55 S.C. 629, U.S. Supreme Court, 1935]

D) "The State's Attorney is not merely a ministerial officer but is vested with a large measure of discretion. In the exercise of that discretion, he has the responsibility of determining what offense should be charged." [Marcisz v. Marcisz, 65 Ill.2d 206, Illinois Supreme Court, 1976]

E) "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." [Second Amendment, United States Constitution]

Every State's Attorney is expected to prosecute persons who violate the criminal laws of the State of Illinois within his or her jurisdiction. However, there are literally thousands of criminal laws on the books, ranging in seriousness from extremely minor to extremely serious. Because of both budgetary and time limits, every State's Attorney must set priorities on which cases to prosecute and which to not prosecute. The pursuit of a just result and the wise use of taxpayer dollars are major factors in setting those priorities.

By law and precedent, State's Attorneys have great discretion in choosing to file or not file charges, which charges to file, and which charges to reduce or dismiss. In those decisions, the Courts have the power to limit that discretion in a few exceptional situations, but the primary check or balance on the power and authority of the State's Attorney is the power of the people to vote him or her out of office.

It is a basic principle of the legal process that all laws are presumed to be constitutional – that no lawmaker would intentionally choose to pass an unconstitutional law. However, that is a rebuttable presumption and, throughout our nation's history, many laws have been found to be unconstitutional (though only a tiny fraction of all laws passed).

For years, anti-gun legislators and judges have interpreted the Second Amendment to the U.S. Constitution to apply only to the right of States to arm their National Guard troops, or some other force which they equated to a government militia, based on the first phrase of the Amendment. But in 2008, in the case of District of Columbia v. Heller, the Supreme Court held that the word "militia" in the Second Amendment referred to all (male, at that time) citizens who possessed the ability to use firearms. Specifically, the Court held that the Amendment applies to ordinary citizens who wish to keep and bear arms for personal defense.

The response of the anti-gun authorities was that Heller only applied to the federal government (the District of Columbia being a federal enclave, not a State). That argument was put to rest two years ago in the case of McDonald v. City of Chicago, Illinois (decided June 28, 2010), when the Supreme Court held that "the Second Amendment right is fully applicable to the States." So, the highest court in the land has ruled that we ordinary people have the right to keep (i.e. possess) and bear (i.e. carry) firearms for personal defense. Granted, no constitutional rights are absolute. The old saying that "your right to swing your fist ends just before my nose" still applies. States have the right to enact reasonable laws on the keeping and carrying of firearms, so long as those laws do not "infringe", i.e. unduly burden, the exercise of our right.

What has been the response of the State of Illinois to the Supreme Court? So far, the City of Chicago and the State have done everything possible to defy, obfuscate and ignore the Court's substantive rulings. Illinois remains the only State in the Union to deny its citizens the legal right to "bear" firearms, either open or concealed, for personal defense. We are the only State to have a draconian FOID law that makes criminals out of ordinary citizens who have done nothing wrong except exercise their constitutional right to own a gun.

We have a law called "Unlawful Use (emphasis added) of Weapons" which criminalizes people for merely possessing (not using or threatening to use) a firearm in the wrong place or wrong kind of container. We have State and Federal laws which allow authorities to seize all the firearms of persons who are charged with certain felony and even misdemeanor offenses – offenses which may not involve the use, possession of, or threat to use a firearm or cause bodily harm in any way, prior to a trial, i. e. before guilt or innocence is determined. We also penalize citizens of neighboring states who possess or carry firearms in complete obedience to their state laws, but don't stop at the border of Illinois and switch the guns and ammunition around to accommodate our more stringent firearm laws.

Even the courts in parts of this State refuse to follow the Supreme Court's ruling, going so far as to hold that the Second Amendment gives citizens only the right to keep and bear arms within our houses! Can any person honestly say he or she believes our forefathers intended the Second Amendment to allow U.S. citizens to protect themselves only while inside their houses?

Proponents of the status quo continue to argue that such laws as these are "reasonable" restrictions on our Second Amendment rights. But as pointed out in McDonald, "Chicago Police Department statistics reveal that the City's handgun murder rate has actually increased since the ban [which was struck down by the Supreme Court] was enacted and that Chicago residents now face one of the highest murder rates in the Country and rates of other violent crimes that exceed the average in other comparable cities."

In fact, the result of most gun control laws is that law-abiding citizens go defenseless while criminal thugs are armed.

I believe these facts to be incontrovertible:

1) No State that has gone from no-carry to concealed-carry or open-carry of firearms has experienced a significant increase in firearm violence.
2) Any evil or deranged person who is intent on killing others will find a way to do so, no matter how strict our laws.
3) Murder is already against the law and carries very serious penalties. If that is not enough to deter someone from committing the crime, why would they be deterred by laws against gun possession?
4) The police can't be everywhere to protect us. Only on rare occasions is a policeman present to prevent a violent crime. Mostly they arrive after the fact, to investigate and apprehend the offender if possible.

People who don't like guns—who don't want to own or carry a gun for protection, have the right to rely on the government to do that for them. They do not have the right to require everyone else to do so. The Supreme Court has so decided.

As the State's Attorney, I have to make a choice. Do I continue to enforce laws that I believe to be unconstitutional, a belief that is supported by decisions of the highest court in the land, or do I continue to prosecute citizens who run afoul of State gun laws but have no evil intent or purpose in mind? Certainly the more cautious approach to such controversial issues is to keep enforcing the law, whenever possible in the least harmful way, until enough higher court cases are resolved against them that the anti-Second Amendment folks are forced to change. I'm not willing to do that anymore—too many good people will be harmed.

In fact, since I was appointed State's Attorney last December, I have been quietly changing our policies to bring them in accordance with the rulings of the U.S. Supreme Court. Now I am announcing publicly that the McLean County State's Attorney's Office will no longer enforce those parts of the following Illinois statutes relating to firearms: Firearm Owners Identification Card Act (430 ILCS 65), Unlawful Use of Weapons (720 ILCS 5/24-1), Aggravated Unlawful Use of Weapons (720 ILCS 5/24-1.6) and provisions of any other statutes that appear to be in contravention of the Heller and McDonald decisions.

The questions we will seek to answer in determining whether or not to file charges are:

1) What appears to be the reason or purpose for the person's possession of carrying a firearm?
2) Was the firearm actually displayed, or used, for an improper purpose or in a reckless manner?
3) Was the person under the influence of alcohol or drugs, or have illegal drugs on his or her person or in their vehicle?
4) If the person is not an Illinois citizen, was the weapon possessed or carried in accordance with the laws of the State of his or her residency?

5) Is the person a member of or affiliated with any gang known to engage in illegal activities?
6) Has the person been convicted of a felony offense? If so, how long ago and for what offense(s)?

Other questions may arise as we continue to improve our policy.

At this point, I must remind everyone that I am just the State's Attorney of McLean County and can only enforce the laws within McLean County. I am not urging anyone to disregard the laws of the State of Illinois or of the Federal government with regard to firearms. The penalties for doing so can be very harsh. Additionally, I have no right and no intention of telling local law enforcement agencies when or under what circumstances to make arrests for firearms offenses. Officer safety must remain the highest priority, and departmental policies must be followed.

My purpose is to send a message to the Governor and legislators of this State who continue to ignore the U.S. Supreme Court decisions, and who continue to oppose reasonable legislation that would bring Illinois into compliance with the Second Amendment. I know that other State's Attorneys share my views and am hoping they will join in this effort.

Our message is this: we will no longer use the power and authority of our office to criminalize and punish decent, otherwise law-abiding citizens who choose to exercise the rights granted to them by the Second Amendment of the United States' Constitution to keep and bear arms in defense of themselves and their families.

Date: 08/21/12

Ronald C. Dozier
McLean County State's Attorney

Bio:

Ron Dozier was an Assistant State's Attorney of McLean County from 1973-76, then the elected State's Attorney from 1976-87, when he was appointed (and later elected) to the position of Circuit Judge. He served as Circuit Judge for 19 ½ years.

After retiring as a Judge in 2006, Dozier engaged briefly in the private practice of law, served as President and/or Executive Director of a non-profit agency assisting ex-offenders for 4 years, and became a Reserve Sheriff's Deputy in 2007 (now on inactive status due to his current position).

On December 1, 2011, he was appointed State's Attorney of McLean County, to fill the remainder of the term of the elected State's Attorney, who received a judicial appointment.