

Joyce Foundation, Obama, and Heller v. D.C.

Summary

The Obama campaign now seeks to portray him as a supporter of an individual rights reading of the Second Amendment. The campaign webpage proclaims, “Barack Obama believes the Second Amendment creates an individual right, and he respects the constitutional rights of Americans to bear arms.”

In 1998-2001, while Barack Obama sat on the board¹ of the \$750,000,000 Joyce Foundation, the Foundation formed a plan to use millions to influence the outcome of a future Second Amendment Supreme Court case. The plan involved using its assets to buy up legal and historical academia, and even universities and their foundations.

Joyce Foundation realized (1) a future Second Amendment Supreme Court case was probable; (2) the Court would consult legal scholarship, *i.e.* books and law reviews; (3) that scholarship had overwhelmingly concluded that the Second Amendment reflected an individual right, a result Joyce Foundation did not want.

The solution was simple: Joyce would lavish money on cash-starved law reviews and Universities, *provided* that they published *only* results acceptable to Joyce. In some cases, Joyce pressured the institutions to reject articles, and even to cancel academic presentations, that were contrary to its desires. Joyce also poured millions into creating shell organizations to support its views.

What we see today in the briefs in *District of Columbia v. Heller*, the DC gun case, is largely the product of that plan. Several amici who filed briefs are *entirely* the creation of Joyce’s money, and their briefs rely upon articles that Joyce paid to have written.

To analogize: suppose that the effectiveness of a prescription drug were at issue in the Supreme Court, and it was discovered that the drug’s maker had

- Paid the Journal of the American Medical Association to run an issue with articles praising its product, and rejecting any critical ones;
- Itself paid the authors for their writing;
- Created a Medication Research Center at a University, with the understanding all its results would favor the donor’s products; and
- Paid millions to fund fake medical consumer groups, which then would cite all the above results in amicus briefs to the Court.

¹ And, according to the Oct. 12, 2007 *Boston Globe*, in 2000 considered becoming the CEO.

Background

When their past decisions do not settle an issue, courts turn to the legal academic literature, often citing it as authority for their rulings. One mainstay here is the law review, of which there are over 500. Medicine has the Journal of the American Medical Association; law has Harvard Law Review. Reviews are usually edited by students. They are shoestring operations. Authors are rarely paid, editors get a few thousand a year.

Judges assume that the reviews are impartial, taking strong articles and rejecting weak or fallacious ones. They are no more likely to have an ulterior financial motive than would be the New England Journal of Medicine.

Joyce Foundation Begins By Buying Law Reviews

Joyce's effort begins in 1999, when Joyce issued an \$84,000 grant to Chicago-Kent Law Review.² The Review then produced an issue that included only anti-individual rights articles, edited by Carl Bogus.

Bogus was neither a Chicago-Kent student nor a faculty member: he was a professor at a different school in Rhode Island.³ He was, however, on the national advisory board of Violence Policy Center, which itself was a Joyce creation,⁴ and had previously been on the Board of Handgun Control Inc.. The arrangement would not be unlike NRA giving a large grant in exchange for one of its directors editing the Law Review. Needless to say, the issue of the Review contained nothing but articles arguing there was no individual 2nd Amendment right.⁵

Later, questions about this arose on an email list of legal academics (I have the originals)⁶, after it was discovered that the authors were paid to write. Bogus initially ducked the issue of how much they, and he, were paid. ("I don't think I'm authorized to provide that information, either with respect to Chicago-Kent's or

² Joyce has deleted its old grants from its webpage, but using Google's "cached" function it can be retrieved:

<http://209.85.173.104/search?q=cache:ckdwhnn5hMkJ:www.sitelisdesign.com/Joyce/programs/gunviolence/gungrantlst.html+joyce+foundation+2001+gun&hl=en&ct=clnk&cd=18&gl=us>

www.sitelisdesign.com/Joyce/programs/gunviolence/gungrantlst.html Chicago, Illinois
"\$84,000 For a symposium and law review on the Second Amendment (6 mos.)"

³ Bringing in an outsider as symposium editor appears to be unusual. The two most recent issues of the Review have Chicago-Kent faculty in that role.

http://lawreview.kentlaw.edu/current_issues_webpage.htm

⁴ <http://law.rwu.edu/content/pdf/directory/faculty/CBogusCV.pdf>

⁵ <http://lawreview.kentlaw.edu/articles/76-1/index.htm>

⁶ Some are online at <http://www.hnn.us/readcomment.php?id=7241&bheaders=1>

Roger Williams' usual sums or the augmentation made possible by the Joyce Foundation grant.”)

He later acknowledged that each author had been paid \$5,000, and other sums had gone into printing and distributing extra copies of the review (presumably to courts). Prof. Volokh of UCLA Law School, a big name in constitutional law, responded “Wow! I don't think I've ever gotten a \$5000 honorarium for anything... in my experience the norm has been more on the \$500 scale (especially when there are multiple panelists).”

On the email list, Prof. James Lindgren (who had taught at Chicago-Kent at the time the decision was made) noted:

At least at the time of the Bogus symposium, a committee of 3 faculty and 2 students chose symposia. Bogus's proposal was brought to Kent by Paul Finkelman, who had visited at Kent for at least a semester. I was on the committee then and might even have been the chair that year. **It was pitched as a one-sided symposium to balance out the writings on the pro-gun side. None of those of us voting on it knew much about the 2d amendment literature at the time.** I don't remember the Joyce Foundation being in the picture at the time, which means that Kent would have been committing a tiny fraction of what the Joyce Foundation committed. Indeed, if their website is correct, the **Joyce Foundation's contribution was probably several times more money than the funding for any other Kent symposium** during my 6 years at Chicago-Kent.

I left Kent for Northwestern before the symposium happened, but **when a distinguished pro gun rights professor BU's Randy Barnett** (who had founded the symposium format at Kent when Randy taught there) **asked to be let into the symposium, he was denied entry. He was given conflicting reasons, but the opposition of the Joyce Foundation was one that surfaced at some time** (a disturbing reason if it was really motivating the refusal).

Bogus conceded that he had excluded pro-individual rights authors:

Eugene writes that Chicago-Kent's Second Amendment was intentionally designed to consist only of pro-collective-rights works. That may not be far off the mark but it isn't exactly how I would put it. We felt that, for a variety of reasons, the collective rights model was under-represented in the debate, and wanted to give scholars an opportunity to enhance or further illuminate the collective rights position. **Sometimes a more balanced debate is best**

served by an unbalanced symposium. I did not, therefore, invite anyone who I knew subscribed to the individual rights model.

Another professor chimed in:

The scholarship at this "symposium" is of lesser quality than it would have been had it been exposed to the rigor of the sort of "peer review" provided by diversity among speakers and commentators.... **I think Chicago (NOT the participants), as a college, can be faulted for violating canons of academic integrity IF it took money from a foundation that made its funding explicitly or implicitly conditioned on the exclusion of any contrary opinions.**

Actually, Joyce apparently thought that its contribution gave it the right to silence *all* dissenting voices at the university. By taking its money, the university had become its tool. Prof. Glenn Reynolds of University of Tennessee posted:

It happens that Sandy Levinson, David Williams, and I spoke on the Second Amendment at Kent a couple of weeks before Carl's Symposium met. The Joyce Foundation folks apparently objected strenuously to our presence at that school, so close to their symposium. In fact, they complained, I was told, that our presence suggested that the Kent faculty had a "sinister agenda of balance" that was inconsistent with the Symposium's purpose.

Joyce Pays Ohio State to Create a Second Amendment Research Center

The beginnings of this part of the plan date back to 2001, when Joyce cut a "planning grant" to Prof. Saul Cornell, of Ohio State.⁷ Presumably, the planning went well, since Joyce then made a grant of \$400,000 to Ohio State, to create a Second Amendment Research Center, to be headed by Cornell.

Ohio State understood that the money, and the Center, were meant to influence a future Supreme Court ruling. In the OSU magazine, *Making History*, 45:17-18,⁸ we find:

"The new Center has attracted more than \$400,000 in funding from the Joyce Foundation,... The effort is timely: a series of test cases—based on a

⁷ See Cornell's History News Network page, <http://hnn.us/roundup/entries/32795.html>, "Joyce Foundation Planning Grant, (2001-2002)."

⁸ <http://history.osu.edu/other/MH/Archive/MH2003.pdf>

new wave of scholarship, a recent decision by a federal Court of Appeals in Texas, and a revised Justice Department policy—are working their way through the courts. The litigants challenge the courts’ traditional reading of the Second Amendment as a protection of the states’ right to organize militia, asserting that the Amendment confers a much broader right for individuals to own guns. The United States Supreme Court is likely to resolve the debate within the next three to five years.

Joyce was paying the Center to generate academic support *for one side of the case only*. It was a propaganda machine rather than a true academic center. Prof. Randy Barnett of Georgetown Law noted:⁹

The Joyce Foundation also supports the Second Amendment Research Center at Ohio State. When I asked its director, Saul Cornell, in an email exchange if any participants in its academic programs could advocate the individual rights position, he responded that he would obtain separate funding to permit that to happen. I took that as an indication that Joyce does put strings on its funding.

Barnett concluded that this “compromises the academic integrity of Ohio State.... Would Ohio State want it to be known that all or most of the funding for its Center came from a foundation that would only fund a particular viewpoint? I think not. Or would OSU (or Joyce) want the center to be called "The Collective Rights Research Center"?”

Through Ohio State University, Joyce Buys More Law Reviews

Joyce continued purchasing legal scholarship to support its intended result. In 2004 Fordham University Law Review brought out a Second Amendment issue. It at least acknowledged "The conference was funded by a generous grant from The Joyce Foundation."

Two years later, Joyce bought the Stanford Law and Policy Review. The price had gone up, and the laundering of money become more sophisticated: its 2004 grants (now offline) listed:

Ohio State University Foundation John Glenn Institute for Public Service & Public Policy Columbus, OH \$125,000. To host a symposium at Stanford Law School on the connections between the Second Amendment and the

⁹ http://volokh.com/posts/chain_1112820316.shtml

Fourteenth Amendment, to publish papers in a major law review, and disseminate findings via the Web. (2 yrs.)"

Note that the funds were now being laundered via the University's Foundation. The issue was apparently a "customized" one. Stanford Law & Public Policy Review is a small journal, publishing twice a year. That year, however, it had three issues.

The Stanford publication made no acknowledgement that Joyce was underwriting the issue; with the money being laundered through OSU's Foundation, the editors may not even have been informed. *The discovery of the funding did embarrass the Review enough to cause its present editors to publish an open letter online,*¹⁰ which asserted that they had been told that OSU (not Joyce, note) offered to defray the cost of printing this special third issue. The editors noted that Saul Cornell had organized the conference for the Review, and that his Center had paid for it, They also noted that the Review does not now receive any payments supporting it, underscoring the unusual nature of the earlier grant. Essentially, Joyce money had been laundered through OSU's Center to organize the conference itself (with Prof. Cornell hand-picking the presenters), and more Joyce money had been laundered through the OSU Foundation to print a special issue of the Review with those papers.¹¹ It is hard to envision a more perfect corruption of the academic process.

Joyce Funds Artificial Public Groups, which Participate in the Supreme Court Briefings.

Most of the data we relate here comes directly from the Joyce Foundation's website,¹² or from its 2007 Report.¹³ By way of preface, Joyce also sent millions to Harvard University School of Public Health, which funded research by David Hemenway of Harvard University School of Public Health,¹⁴ and Joyce also made grants to Arthur Kellerman¹⁵ and Garen Wintemute.¹⁶ This research would supply arguments for the "guns are dangerous" amici in the Supreme Court.

¹⁰ <http://www.stanford.edu/group/slpr/statement.pdf>

¹¹ OSU Foundation's 990 forms for 2004-06 make no mention of this grant. All recite, at or near the end, that all disbursements were to OSU, in accord with the purpose of the Foundation. It may have been overlooked; but this underscores the peculiar nature of the grant.

¹² <http://www.joycefdn.org/GrantList/Default.aspx>

¹³ http://www.joycefdn.org/pdf/2007-sept_WIP.pdf.

¹⁴ \$700,000 in 2005, up from \$80,000 in 2003. Id.

¹⁵ Kellerman's CV, <http://www.utsystem.edu/news/2007/UTMB/Kellermann-CV.pdf>, p. 13, shows \$46,000 directly from Joyce and \$190,000 from Harvard School of Public Health.

We can quickly sum up the amicus briefs supporting the District's ban in the Supreme Court. The lead amicus for each will be bolded. We will then note any other amici joining in that brief, or attorney representing that side. The amount paid to the party or attorney by Joyce over 2003-06 will be in parenthesis. We will finally note if the brief cites other research funded by Joyce.

Violence Policy Center (\$1.65 million)

(VPC is essentially a subsidiary of Joyce, which provided the money for its creation and whose grants are 66%-100% of its income.¹⁷)

The brief cites: Kellermann, Wintemute (3 articles).

Historians (Jack Racove)

Attorney: Carl Bogus (Chicago-Kent editor)

Other amici:

Saul Cornell (head of OSU's Center, entirely funded by Joyce)

Paul Finkelman, who proposed the Chicago-Kent L Rev.

Four authors of articles in the Chicago-Kent issue

Cites: Chicago-Kent article, Saul Cornell, Nathan Kozuskanich
(a Cornell staffer at the Center)

American Jewish Committee

Other amici cosigning this brief:

Ill. Council Against Handgun Viol. (\$1.1 million from Joyce)¹⁸

Iowans for Prevention of Gun Violence (\$250,000 from Joyce)¹⁹

Ohio Coalition against Gun Violence \$350,000)²⁰

Wisconsin Anti Violence Effort (\$1.6 million)²¹

Freedom States Alliance (\$650,000)²²

¹⁶ http://www.ucdmc.ucdavis.edu/welcome/features/20070620_gunstudy/index.html ("The study, ... was funded by the Chicago-based Joyce Foundation...")

¹⁷ VPC's 2005 Form 990 (see www.guidestar.org) showed revenues of \$661,000: Joyce's grant was over 2/3 of its income. Fundraising expenses consumed half of its non-Joyce income.

¹⁸ A wholly-owned subsidiary. Joyce's 2006 grant of \$770,000 is far more than ICAHL's 2005 income of \$672,000 (the 2005 990 is the most recent one online. It lists two working employees.

¹⁹ Wholly-owned subsidiary. Joyce lists a \$250,000 grant in 2004. Its 990 handwritten 990 indicates total income of \$134,000. It shows one employee. Its 2005 990 indicates income of \$140,000 and one employee. Membership dues are shown as zero.

²⁰ Wholly-owned. The 2004 grant of \$200,000 compares to \$151,000 income on its 990 that year. It had one paid employee.

²¹ A recent Joyce creation, and certainly wholly-owned. Guidstar shows no 990s for it because its income in 2005 and before was less than the \$25,000 threshold for filing.

(As noted in footnotes, these are “wholly owned subsidiaries” of Joyce, and in most cases simple “fronts,” with no members and 1-4 employees).

Cites: Saul Cornell, Chicago-Kent article.

American Public Health Ass’n

Other amici cosigning:

American College for Preventative Medicine (\$685,000)

Cites: Heminway (4 articles), Kellerman (2 articles)

Major American Cities

Other amici cosigning:

Legal Community Against Violence (\$905,000)²³

Cites:

Saul Cornell (two articles)

Carl Bogus

David Hemenway

Chicago-Kent article

Summary

The Joyce Foundation years ago realized that a Supreme Court case on the Second Amendment was likely, and decided to use its millions to buy the case indirectly. It created a supposed academic research center as its wholly-owned subsidiary. It corrupted law reviews, dictating their content, and even trying to dictate who could speak at universities accepting Joyce’s money. It laundered its money through its Center and thru a University’s Foundation.

An attorney named Barak Obama was right in the middle of the plan.

²² Almost certainly wholly-owned. Its 2006 990 indicates total income of \$408,000, no income in any past year, no membership dues, and no paid workers. Joyce’s 2005 grant was for \$650,000.

²³ Not quite a wholly-owned Joyce subsidiary, but close. Its 2005 Form 990 indicates no income from member dues; Joyce’s \$380,000 grant made up over half its \$703,000 income. The 990 also suggests it has but five working employees.