



Supreme Court Affirms Individual Right to Keep and Bear Arms

District of Columbia v. Heller – Decision: June 26, 2008

By a closely divided, 5 to 4 vote, in a split decision that adds new emphasis to the importance of the Presidential Power to Appoint Judges, the Supreme Court of the United States ruled that the District of Columbia violated the constitutional rights of a City resident by banning him from owning and possessing a handgun in his own home. The decision came in an opinion for the Court by Justice Antonin Scalia, joined by Chief Justice Roberts, and Justices Kennedy, Thomas, and Alito.

The decision, *District of Columbia v. Heller*, answers one of the long-standing unanswered and highly contentious questions about the Constitution:

Does the Second Amendment right to keep and bear arms protect the right of each individual citizen to keep and bear arms, or is a right of each State with respect to State militias?

Justice Scalia produced a lengthy and thorough researched opinion. In it, he overwhelmingly showed that, as written by our Founders, the Second Amendment could only be correctly understood to protect individual rights:

"There seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms. Of course the right was not unlimited, just as the First Amendment's right of free speech was not . . . Thus, we do not read the Second Amendment to protect the right of citizens to carry arms for any sort of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for any purpose."

This point is precisely one which the American Center for Law and Justice made when we filed an amicus curiae brief in the Supreme Court, supporting the private right to keep and bear arms and opposing the District's onerous restrictions on that right:

"The Founding Fathers believed that every human being is endowed with certain "inalienable rights" and that the establishment of good government was necessary to the preservation of such pre-existing rights. Based on this premise, American government, with its attendant Constitution and Bill of Rights, was established. Thus, by virtue of the Second Amendment's placement within the Bill of Rights, one must necessarily conclude that the Second Amendment was drafted with the purpose of preserving an individual right, namely, the right to keep and bear arms."

Two separate dissenting opinions, one written by Justice Stevens and one by Justice Breyer, were each joined by all the dissenters. Justice Stevens' dissent tried but failed to undermine Justice Scalia's thorough and sound historical analysis. Justice Breyer's dissent, intended to show that the restrictions under DC law would be permissible even if the Second Amendment protects individual rights to keep and bear arms, also failed to draw a majority of the Court.

Justice Scalia summarized the majority decision this way:

"We are aware of the problem of handgun violence in this country The Constitution leaves the District of Columbia a variety of tools for combating that problem, including some measures regulating handguns But the enshrinement of constitutional rights necessarily takes certain policy choices off the table. These include the absolute prohibition of handguns held and used for self-defense in the home. [W]hat is not debatable is that it is not the role of this Court to pronounce the Second Amendment extinct. We affirm the judgment of the Court of Appeals."