



The U.S. Supreme Court's Pending Second Amendment Case

In March 2008, the United States Supreme Court is scheduled to hear arguments in a case known as *District of Columbia v. Heller*. This closely-watched case involves a challenge to the District of Columbia law banning most handgun possession in Washington, D.C. The issue before the Court is whether the ban violates the Second Amendment to the U.S. Constitution.

What does the Heller case mean for proposed gun violence prevention legislation in Illinois?

The *Heller* case should have no impact on the policies proposed in Illinois to reduce gun violence. First, none of the proposed policies pending in Illinois this year are directly at issue in the case. The *Heller* case will decide only whether the District of Columbia's handgun ban is constitutional under the Second Amendment. The pending legislation in Illinois (e.g. to require background checks on all handgun transfers, to license gun dealers, and to require gun owners to report lost or stolen firearms) all involve much more modest regulations than a ban on handguns.

In addition, it is well established that the Second Amendment limits only the power of Congress, and that state laws are not subject to challenge under the Second Amendment.¹ The Seventh Circuit Court of Appeals, which includes Illinois, Indiana and Wisconsin, has adopted this position as well.² Because the District of Columbia is not a state, the Supreme Court should have no occasion to revisit this settled principle.

What are the issues in the Heller case?

The case arises from a 2007 decision by the U.S. Court of Appeals for the District of Columbia Circuit striking down the District of Columbia's strict laws banning most handgun possession and requiring lawfully owned firearms to be kept unloaded and disassembled or bound by a trigger lock or similar device.³ The appellate court held that these laws violate the Second Amendment, interpreting the Amendment to protect a private right of individuals to keep and bear firearms unrelated to service in the militia.

On November 20, 2007, the U.S. Supreme Court agreed to hear the case and to decide the following question: Do the challenged provisions "violate the Second Amendment rights of individuals who wish to keep handguns and other firearms for private use in their homes?"⁴

This will be the first time the Supreme Court will address the scope of the Second Amendment since 1939.

What does the Second Amendment to the U.S. Constitution say?

The Second Amendment to the U.S. Constitution states, "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."

Does the Second Amendment mean that U.S. citizens have an inalienable right to own a gun?

No. In 1939 the U.S. Supreme Court held in *United States v. Miller* that the “obvious purpose” of the Second Amendment is to “assure the continuation and render possible the effectiveness” of the state militia, and the Amendment “must be interpreted and applied with that end in view.”⁵ The Court rejected a Second Amendment challenge brought by two individuals charged with violating a federal law prohibiting the interstate transportation of sawed-off shotguns. In other words, the Court refused to find an individual right to bear arms unrelated to service in a state militia and reiterated the right of the federal government to regulate firearms.

Since then, over 200 federal and state appellate courts have upheld numerous common-sense gun regulations, including laws that:

- Ban assault weapons
- Prohibit firearm possession by persons who have been:
 - Involuntarily committed to a mental institution
 - Convicted of a felony or a misdemeanor crime of domestic violence
 - Dishonorably discharged from the military
- Require firearms dealers to be licensed
- Require registration of firearms
- Require handgun owner identification cards.⁶

Despite this precedent, the gun lobby and others have long argued that the Second Amendment guarantees an individual right to keep and bear arms. Former Supreme Court Justice Warren Burger once characterized the gun lobby’s relentless misinformation campaign regarding the Second Amendment as “one of the greatest pieces of fraud, I repeat the word *fraud*, on the American public by special interest groups that I have ever seen in my lifetime.”⁷

How is the Supreme Court expected to rule in the Heller case?

It is impossible to predict how the Court will rule in the case. There have been numerous *amicus curiae* (“friend of the court”) briefs filed on both sides of the case. It is worth noting that the Office of the Solicitor General of the United States filed a brief arguing that, while the Second Amendment does protect an individual right to bear arms, that right is subject to reasonable regulation that would allow the many federal laws regulating guns to stand (including federal laws banning machine guns, requiring background checks on gun purchasers, and licensing gun dealers).

The Supreme Court is expected to issue its ruling in the case by June 2008.

What have Illinois courts said about the Second Amendment?

The Seventh Circuit Court of Appeals, which includes Illinois, Indiana and Wisconsin, has held that the Second Amendment is inextricably tied to the preservation of a militia, and does not guarantee an individual right to keep and bear handguns.⁸ The Illinois Supreme Court also upheld Morton Grove’s handgun ban.⁹

¹ See *Miller v. Texas*, 153 U.S. 535 (1894); *Presser v. Illinois*, 116 U.S. 252 (1886); *United States v. Cruikshank*, 92 U.S. 542, 553 (1876).

² *Quilici v. Village of Morton Grove*, 695 F.2d 261, 270-71 (7th Cir. 1982), cert. denied, 464 U.S. 863 (1983). Other federal appellate courts continue to reiterate this position. See, e.g., *Love v. Pepersack*, 47 F.3d 120, 123-24 (4th Cir. 1995), cert. denied, 516 U.S. 813 (1995); *Fresno Rifle & Pistol Club, Inc. v. Van De Kamp*, 965 F.2d 723, 729-31 (9th Cir. 1992).

³ *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007).

⁴ *District of Columbia v. Heller*, 128 S. Ct. 645, 169 L. Ed. 2d 417 (2007).

⁵ *United States v. Miller*, 307 U.S. 174 (1939).

⁶ For a detailed summary of Second Amendment cases, go to http://www.lcav.org/content/secondamend_index.asp.

⁷ Interview by Charlayne Hunter-Gault with Warren Burger, former Chief Justice, United States Supreme Court, The MacNeil/Lehrer NewsHour, First Freedoms (PBS television broadcast, Dec. 16, 1991).

⁸ *Quilici v. Village of Morton Grove*, 695 F.2d 261 (7th Cir. 1982), cert. denied, 464 U.S. 863 (1983) (upholding Morton Grove’s ban on handgun possession). See also *Brown v. City of Chicago*, 250 N.E.2d 129 (Ill. 1969) (the Second Amendment does not prohibit regulations that do not impair maintenance of a state militia).

⁹ *Kalodimos v. Village of Morton Grove*, 103 Ill.2d 483 (1984).