

June 27, 2008

New York Times

Landmark Ruling Enshrines Right to Own Guns

By LINDA GREENHOUSE

WASHINGTON — The Supreme Court on Thursday embraced the long-disputed view that the Second Amendment protects an individual right to own a gun for personal use, ruling 5 to 4 that there is a constitutional right to keep a loaded handgun at home for self-defense.

The landmark ruling overturned the District of Columbia ban on handguns, the strictest gun-control law in the country, and appeared certain to usher in a new round of litigation over gun rights throughout the country.

The court rejected the view that the Second Amendment's "right of the people to keep and bear arms" applied to gun ownership only in connection with service in the "well regulated militia" to which the amendment refers.

Justice Antonin Scalia's majority opinion, his most important in his 22 years on the court, said that the justices were "aware of the problem of handgun violence in this country" and "take seriously" the arguments in favor of prohibiting handgun ownership.

"But the enshrinement of constitutional rights necessarily takes certain policy choices off the table," he said, adding, "It is not the role of this court to pronounce the Second Amendment extinct."

Justice Scalia's opinion was signed by Chief Justice John G. Roberts Jr. and Justices Anthony M. Kennedy, Clarence Thomas and Samuel A. Alito Jr.

In a dissenting opinion, Justice John Paul Stevens took vigorous issue with Justice Scalia's assertion that it was the Second Amendment that had enshrined the individual right to own a gun. Rather, it was "today's law-changing decision" that bestowed the right and created "a dramatic upheaval in the law," Justice Stevens said in a dissent joined by Justices David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer. Justice Breyer, also speaking for the others, filed a separate dissent.

Justice Scalia and Justice Stevens went head to head in debating how the 27 words in the Second Amendment should be interpreted. The majority opinion and two dissents ran 154 pages.

Justice Stevens said the majority opinion was based on "a strained and unpersuasive reading" of the text and history of the Second Amendment, which provides: "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."

According to Justice Scalia, the "militia" reference in the first part of the amendment simply "announces the purpose for which the right was codified: to prevent elimination of the militia." The Constitution's framers were afraid that the new federal government would disarm the populace, as the British had tried to do, Justice Scalia said.

But he added that this "prefatory statement of purpose" should not be interpreted to limit the

meaning of what is called the operative clause — “the right of the people to keep and bear arms, shall not be infringed.” Instead, Justice Scalia said, the operative clause “codified a pre-existing right” of individual gun ownership for private use.

Contesting that analysis, Justice Stevens said the Second Amendment’s structure was notable for its “omission of any statement of purpose related to the right to use firearms for hunting or personal self-defense,” in contrast to the contemporaneous “Declarations of Rights” in Pennsylvania and Vermont that did explicitly protect those uses.

It has been nearly 70 years since the court last examined the meaning of the Second Amendment. In addition to their linguistic debate, Justices Scalia and Stevens also sparred over what the court intended in that decision, *United States v. Miller*.

In the opaque, unanimous five-page opinion in 1939, the court upheld a federal prosecution for transporting a sawed-off shotgun. A Federal District Court had ruled that the provision of the National Firearms Act the defendants were accused of violating was barred by the Second Amendment, but the Supreme Court disagreed and reinstated the indictment.

For decades, an overwhelming majority of courts and commentators regarded the Miller decision as having rejected the individual-right interpretation of the Second Amendment. That understanding of the “virtually unreasoned case” was mistaken, Justice Scalia said Thursday.

He said the Miller decision meant “only that the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns.”

Justice Stevens said the majority’s understanding of the Miller decision was not only “simply wrong,” but also reflected a lack of “respect for the well-settled views of all of our predecessors on the court, and for the rule of law itself.”

Despite the decision’s enormous symbolic significance, it was far from clear that it actually posed much of a threat to the most common gun regulations. Justice Scalia’s opinion applied explicitly just to “the right of law-abiding, responsible citizens to use arms in defense of hearth and home,” and it had a number of significant qualifications.

“Nothing in our opinion,” he said, “should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.”

The opinion also said prohibitions on carrying concealed weapons would be upheld and suggested somewhat less explicitly that the right to personal possession did not apply to “dangerous and unusual weapons” that are not typically used for self-defense or recreation.

The Bush administration had been concerned about the implications of the case for the federal ban on possessing machine guns.

President Bush welcomed the decision. “As a longstanding advocate of the rights of gun owners

in America,” he said in a statement, “I applaud the Supreme Court’s historic decision today confirming what has always been clear in the Constitution: the Second Amendment protects an individual right to keep and bear firearms.”

The opinion did not specify the standard by which the court would evaluate gun restrictions in future cases, a question that was the subject of much debate when the case was argued in March.

Among existing gun-control laws, just Chicago comes close to the complete handgun prohibition in the District of Columbia’s 32-year-old law. The district’s appeal to the Supreme Court, filed last year after the federal appeals court here struck down the law, argued that the handgun ban was an important public safety measure in a congested, crime-ridden urban area.

On the campaign trail on Thursday, both major-party presidential candidates expressed support for the decision — more full-throated support from Senator John McCain, the presumptive Republican nominee, and a more guarded statement of support from Senator Barack Obama, his presumptive Democratic opponent.

Mr. McCain called the decision “a landmark victory for Second Amendment freedom in the United States” that “ended forever the specious argument that the Second Amendment did not confer an individual right to keep and bear arms.”

Mr. Obama, who like Mr. McCain has been on record as supporting the individual-rights view, said the ruling would “provide much-needed guidance to local jurisdictions across the country.”

He praised the decision for endorsing the individual-rights view and for describing the right as “not absolute and subject to reasonable regulations enacted by local communities to keep their streets safe.”

Unlike the court’s ruling this month on the rights of the Guantánamo detainees, this decision, *District of Columbia v. Heller*, No. 07-290, appeared likely to defuse, rather than inflame, the political debate. The Democratic Party platform in 2004 included a plank endorsing the individual-rights view of the Second Amendment.

The case reached the court as a result of an assumption by the Cato Institute, a libertarian organization here, that the time was right to test the prevailing interpretation of the Second Amendment. Robert A. Levy, a lawyer and senior fellow of the institute, looked for law-abiding district residents rather than criminal defendants appealing convictions, to challenge the law.

Mr. Levy, who financed the case, recruited six plaintiffs. Five were dismissed for lack of standing. But the United States Court of Appeals for the District of Columbia Circuit ruled in favor of one, Dick Anthony Heller. He is a security guard who carries a gun while on duty at a federal judicial building here and was denied a license to keep his gun at home. The court said Thursday that assuming Mr. Heller was not “disqualified from the exercise of Second Amendment rights,” the district government must issue him a license.