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DC v. Heller: The Second Amendment

The issue of gun rights and gun control has been at the forefront of American politics during the last decades, in particular because there has been so much gun violence in the nation. It is indisputable that according to the U.S. Constitution, Americans have the right to possess guns; what is less clear is whether or not this is an absolute right with no limitations. In *US v. Heller*, the Supreme Court addressed the issue, arriving at a ruling that was considered to be both a triumph and a defeat for both gun rights advocates and opponents. This paper will discuss the case, providing the facts involved, the decision, and the ramifications.

In 2008, the Supreme Court heard a case involving challenges to the application of the Second Amendment pertaining to the decades-old ban on possession of handguns in Washington DC. The ban also included a requirement that guns that were being stored at home had to be put away safely and unloaded as well as disassembled or secured by a device that locked. It was the first time in 70 years that the Court had considered the parameters of the Second Amendment, exploring whether the Amendment was intended to protect the right of individuals to possess firearms, or if it only protected them in the situation of serving in state militias (Understanding *DC v. Heller*). The decision in this case was a significant departure from the Court's previous interpretation of the Second Amendment because it concluded that although the amendment does guarantee an individual right to have a weapon in the home, that should not mean that there is a "right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever

purpose” (Understanding *DC v. Heller*). The District of Columbia Code made carrying an unregistered firearm illegal, and prohibited the registration of handguns although the chief of police had the power to authorize one-year licenses. In addition, the Code contained certain provisions requiring owners of registered firearms that were lawfully purchased and owned to keep them unloaded and disassembled or bound by a trigger lock or other similar device (*District of Columbia v. Heller*). The exception to this mandate was if the firearms were situated in a business setting or were being utilized for recreational activities that were legal.

The case arose when Dick Heller, a police officer in DC who was authorized to carry gun when on duty, applied for a one-year license for a firearm that he wanted to keep in his home, but had his application denied. Heller sued the District of Columbia, seeking an injunction against enforcing the significant parts of the Code, and arguing that they represented a violation of his Second Amendment right to keep an unlicensed gun in his home. The complaint was dismissed by the District Court, but the US Court of Appeals for the District of Columbia circuit reversed that decision, holding that the Second Amendment protects the right to keep firearms in the home for self-defense purposes, and the requirement of the District Of Columbia that guns kept in the home must be nonfunctional was a violation of that right (*District of Columbia v. Heller*). The question posed to the Supreme Court was whether the provisions of the District of Columbia code restricting the licensing of handguns and requiring licensed weapons kept in homes to be nonfunctional was a violation of the Second Amendment.

The Supreme Court decided that the DC ban violated the Second Amendment in an opinion that was delivered by Antonin Scalia on behalf of the 5-4 majority decision. The Court held that the first clause of the Amendment which references a "militia" does not set limits on the operative clause of the Amendment; in addition, the Court decided that the term "militia" should

not be limited to those citizens who are serving in the military, since at the time that term was referring to all able-bodied men who were capable of being called to the service (*District of Columbia v. Heller*). Further, the Court said, if the Amendment was read to mean the right to bear arms was limited only to those people fighting in the government military force, it would be creating just the type of state-sponsored force that the original American colonists were rebelling against. The Court felt that the text of the Amendment must be interpreted in the way that gave the strongest impact on the simple meaning that it would have had when it was written: the operative clause should be interpreted to "guarantee an individual right to possess and carry weapons in case of confrontation" (*District of Columbia v. Heller*).

The decision held by the Court was consistent with legal writing of the time in which the Constitution was written as well as scholarship that followed. Therefore, placing a ban on handguns, a whole category of arms that is frequently used for the purpose of protection, and banning firearms from being kept functional in homes, which is the area that is generally in need of protection, is a violation of the Second Amendment. In the dissenting opinion, Justice John Paul Stevens expressed that the Amendment does not translate into giving unlimited rights to keep guns in homes for the purposes of self-defense. According to Justice Stevens, the most literal reading of the Second Amendment is that it provides protection for the right to keep and bear arms for certain military reasons but does not limit the power of the legislature to pass regulations on nonmilitary use and ownership of guns (*District of Columbia v. Heller*).

In addition, Justice Stevens made the case that the Second Amendment is clear in its stated purpose specifically in association with state militias, and simply neglects to address the right to use firearms for the purposes of self-defense. This perspective was extremely notable in view of the fact that similar provisions in different states at the same time did extend that right.

Justice Stevens also pointed out that "the people" does not necessarily widen the group being protected beyond the context of service in the state regulated militia (*District of Columbia v. Heller*). This interpretation by Justice Stevens was consistent with scholarly writings of that time period that puts the Amendment in context relating to militias of individual states as well as legislative history that was passed after the enactment of the Amendment. The dissent was joined by Justices Ruth Bader Ginsburg, Stephen Breyer, and David Souter. In addition, Justice Breyer wrote a separate dissent which argued that the Second Amendment protects interests related to militias rather than self-defense, but it does not provide complete protection from government intervention in pursuing these interests.

When the Second Amendment was ratified, there is historical evidence indicating that there were colonial laws regulating storing and using firearms in the home. Justice Breyer made the argument that the Supreme Court should establish a test to balance the interests of the American public with the Constitution when the interests of the government were weighty enough to justify the regulations that were being proposed. In this particular case, since the balancing interests were dependent on the analysis that the legislature, rather than the Court, is best positioned to make, the Court had a responsibility to defer to the legislature and uphold the restrictions (*District of Columbia v. Heller*). Justices Souter, Stevens, and Ginsburg joined Justice Breyer in their dissent. Generally, opponents of gun control were happy that the ruling confirmed the basic premise of the Second Amendment, but were not pleased that the Court did not hold that right to be absolute in all circumstances.

Works Cited

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