

## ***DISTRICT OF COLUMBIA v. HELLER (2008)***

### ***Facts***

The Second Amendment protects “the right to keep and bear arms,” but there has been an ongoing national debate about exactly what this phrase means. Many lower courts have ruled that reasonable gun regulations, like handgun registration, are allowed under the Amendment. Others continue to argue, however, that any gun regulation deprives individuals of their constitutional right to bear arms. This case, which is about whether the District of Columbia can ban handguns altogether, squarely addresses this debate and the meaning of the Second Amendment.

In 1976, the District of Columbia enacted strict gun control laws, including a ban on all handguns and a requirement that all other guns in homes be kept unloaded and disassembled (or bound by a trigger lock). Richard Heller and five other D.C. residents challenged these regulations in 2003, claiming that they need functional guns in their homes for self-defense. They did not object to a registration requirement for their guns nor did they seek to carry them outside their homes.

The District of Columbia argued that the opening phrase of the amendment, “A well regulated militia, being necessary to the security of a free state,” known as the prefatory clause, limited the “right of the people” to have weapons only in connection with militia service. The city also pointed out that the law did not ban all guns, and that it was a reasonable way to prevent crime.

The federal trial court upheld D.C.’s gun control laws. But the federal court of appeals reversed, ruling that the Second Amendment protects an individual right to keep and bear arms and that handguns are “arms” covered by the Amendment. The District of Columbia appealed to the Supreme Court, and for the first time in almost seventy years, the Court agreed to hear a case on the central meaning of the Second Amendment.

### ***Issues***

Do the D.C. provisions violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia (like the National Guard), but who wish to keep handguns and other firearms for private use in their homes?

### ***Constitutional Case***

- *U.S. v. Miller* (1939)
  - *U.S. v. Miller* is the only Supreme Court decision to directly address the meaning of the Second Amendment. In this case, the defendants, Jack Miller and Frank Layton, were suspected bank robbers and moonshiners being watched by agents of the Department of the Treasury. In 1938, they were arrested for transporting an unlicensed, sawed-off shotgun across state lines while engaged in interstate commerce, in violation of the National Firearms Act (“NFA”). Miller and Layton appealed their conviction, arguing that the NFA violated the Second Amendment.
  - The Supreme Court held that this application of the NFA did not violate the Second Amendment. It explained that “in the absence of any evidence tending to show that possession or use of a ‘shotgun having a barrel of less than eighteen inches in length’ at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense.”

### ***Arguments for the District of Columbia***

- 1) The Second Amendment relates to the right of government-organized militia, not private citizens, to possess arms. In fact, “arms” was the historic term for military weapons, and the Amendment was originally adopted to allow states to protect themselves from a tyrannical federal government.
- 2) Like the short-barrel shotguns in *Miller*, the handguns in D.C. are not necessary for the “preservation or efficiency” of a militia.
- 3) Government has the obligation to protect public safety and therefore courts that review gun control laws should require only that the laws be a reasonable effort to do so.
- 4) Less restrictive government means for preventing gun deaths—such as an FBI background check—would not be adequate since citizens who lack a criminal history commit many of the nation’s murders.
- 5) Guns were and continue to be dangerous weapons. At the time of the law’s passage, handguns were used in the majority of armed robberies, armed assaults, murders, and rapes. There is also a link between handguns and accidental deaths and injuries, particularly involving small children.
- 6) Overturning the District of Columbia’s law would call into question the constitutionality of federal, state and local gun-control laws and regulations throughout the country and lead to a flood of lawsuits to overturn those gun laws.

### ***Arguments for Heller***

- 1) The Second Amendment protects a private individual's right to own guns. At the time the Amendment was adopted, militiamen used their own private guns when they served in the state militia
- 2) Because the right to bear arms is fundamental, when courts review gun-control laws they should apply a strict standard and only allow these laws to stand when the government can show that it has a very important interest that is advanced by the law.
- 3) The outright handgun ban is not the best means to achieve the government's goal in reducing crime: an FBI background check of the purchaser would sufficiently meet this goal without infringing on the Second Amendment right.
- 4) The right to bear arms protects two of the most fundamental rights – the defense of one's life inside one's home, and the defense of society against government misuse of authority.
- 5) No state and only one other city (Chicago) bans handguns outright. It is important for the nation's capital to obey the Constitution and set an example for other states and cities.

### ***Majority***

In a 5-4 decision, ***the Court struck down the District of Columbia's ban on handguns, holding that the Second Amendment guarantees an individual right to gun ownership.***

The justices first examined the text of the Second Amendment in two separate parts: "A well regulated militia being necessary to the security of a free state," and "the right of the people to keep and bear arms shall not be infringed." They determined that the purpose of the first phrase was to explain *why* the Framers thought that the right to bear arms was important. Its purpose was not to limit this right to those in the military.

The majority then explored the development of the right to bear arms throughout history. They examined English laws from the 1600s and 1700s as well as several state constitutions written at the same time as the Constitution and Bill of Rights. These laws recognized an inherent right for individuals to possess weapons for self-defense. According to the Court, the Framers recognized that the right of individuals to bear arms was a fundamental right existing even before the Bill of Rights. They included the Second Amendment to protect this pre-existing individual right, not to create a new right that would only apply to those in the military.

The justices agreed, however, that the right to bear arms is not absolute. It only guarantees the right to possess guns which, like handguns, are "in common use at the time," while still allowing the government to outlaw other types of guns. In addition, reasonable regulations such as licensing requirements, laws preventing felons from owning firearms, and laws forbidding the carrying of guns into school zones do not violate the Second Amendment.

### ***Dissent***

The dissenting justices believe that the Second Amendment only protects the right to possess and use guns in connection with a state-organized military force. It does not prevent legislatures from regulating the nonmilitary use and ownership of guns. The dissenting justices examined the history of the adoption of the Second Amendment, and discovered that the Framers were concerned about the balance of power between the federal government and the states. The Framers were worried that the federal government could use the army against the states, so they included the Second Amendment to ensure that state militias could arm themselves against the federal government.

The amendment was not, according to the dissent, intended to protect an individual right to own and use a gun for personal self-defense, but was only intended to protect the ability of those associated with the state militias to bear arms.

### ***QUESTIONS TO THINK ABOUT:***

1. **Why did Richard Heller challenge the District of Columbia's law banning virtually all handguns?**
2. **What are two arguments the District of Columbia made in support of the law's constitutionality? Two arguments Heller made against the law's constitutionality?**
3. **Hypothesize D.C.'s crime rate if ALL guns were banned.**
4. **Explain the decision of the Supreme Court.**
5. **Critique the Supreme Court judges' beliefs that the right to bear arms is not absolute.**