

U.S. SUPREME COURT TO CONSIDER MOST SIGNIFICANT SECOND AMENDMENT CASE IN HISTORY: D.C. v Heller

Position: A federal appeals court struck down a gun law as violating the Second Amendment for the first time in American history in March 2007. We believe this decision was judicial activism at its worst and was wrong.

The case is winnable because of history and precedent. We urge the Supreme Court to:

- reaffirm the settled meaning of the Second Amendment,
- follow more than two hundred years of American history; and
- choose the will of the people over judicial activism.

The Problem: Communities should have the authority to enact the gun laws needed to protect their safety. The appeals court ruling uses a misguided view of the Constitution to limit their power.

Almost 70 years ago, the Supreme Court issued a unanimous and definitive ruling in the case of *United States v. Miller*, 307 U.S. 174 (1939), holding that the “declaration and guarantee” of the Second Amendment “must be interpreted and applied” in accord with its “obvious purpose” – “to assure the continuation and render possible the effectiveness” of a “well regulated Militia.”¹ This militia purpose has always defined and limited Second Amendment rights.

The *Miller* case upheld the 1934 National Firearms Act, which tightly regulated machine guns and sawed-off shotguns. Every other federal gun law – including the 1968 Gun Control Act and the 1993 Brady Law – has been enacted based on *Miller*’s clear holding. In addition, countless state gun laws have been enacted since *Miller* was decided. More than 75 federal and state court decisions issued since *Miller* have affirmed its central premise – that gun laws are constitutional if they do not impinge upon the “well regulated Militia” that the Second Amendment was written to protect. No case, until *D.C. v. Heller*, had ever struck down a gun law as a violation of the Second Amendment.

If the Supreme Court reverses this long-standing precedent, it could potentially cause a tidal wave of new litigation in which courts, rather than state and federal legislatures, would be deciding the validity of democratically-enacted life-saving gun laws. Depending on the breadth of the Court’s ruling, many of these gun laws would be placed at risk.

¹ 307 U.S. at 178.

Urgency: If the Supreme Court unjustifiably limits this power, life-saving gun laws such as the Brady Law and the Machine Gun Ban could be at risk. Sensible gun laws save lives.

Sensible gun laws save lives. For example, an estimated 1.4 million prohibited purchasers have been turned down in their attempts to buy firearms because of the Brady Law.² Not coincidentally, after this law took effect, gun crime declined steadily for the next 10 years.

The Solution: Let the people choose their own life-saving gun laws: follow over two hundred years of American history and strike down the activist appeals court decision.

The Supreme Court should strike down the activist lower-court decision in Heller and reaffirm its unanimous Miller decision that held the “declaration and guarantee” of Second Amendment must be interpreted and applied to protect the “well regulated Militia.” This is the only solution that will allow the people, not the courts, to decide what gun laws should be enacted to save lives.

Brady Expertise: As the nation’s leading defender of gun laws in court, with recognized expertise on the Second Amendment, the Brady Center will continue to lead the fight against the appeals ruling. We are publishing a series of detailed critiques of the ruling of the appeals court at <http://www.gunlawsuits.org/defend/second/fantasy/>.

² See Bureau of Justice Statistics, Background Checks for Firearm Transfers, 2005, available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/bcft05.pdf>