

## Supreme Court Hears Arguments in D.C. Gun Ban Case

Fairfax, Va.-Today, the Supreme Court heard oral arguments in [\*District of Columbia v. Heller\*](#), a case the Court has stated is "limited to the following question: Whether Washington, D.C.'s bans [on handguns, on having guns in operable condition in the home and on carrying guns within the home] violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes."

The case came before the Supreme Court on appeal by the District of Columbia, after a panel of the U.S. Court of Appeals for the District of Columbia Circuit declared the city's gun bans unconstitutional. The panel's decision was upheld by the full Court of Appeals.

The Court of Appeals decision--consistent with the views of the Framers of the Bill of Rights, respected legal commentators of the 19<sup>th</sup> century, the Supreme Court's ruling in *U.S. v. Cruikshank* (1876), numerous court decisions of the 19<sup>th</sup> century, the Supreme Court's ruling in *U.S. v. Miller* (1939), the position of the U.S. Department of Justice, and the vast majority of Second Amendment scholars today--concluded that "the Second Amendment protects an individual right to keep and bear arms. That right existed prior to the formation of the new government under the Constitution and was premised on the private use of arms for activities such as hunting and self-defense, the latter being understood as resistance to either private lawlessness or the depredations of a tyrannical government (or a threat from abroad)."

In today's argument, the Justices aggressively questioned advocates for all sides, including Walter Dellinger for the District, Solicitor General Paul Clement for the Department of Justice, and Alan Gura for the plaintiffs challenging D.C.'s law.

While it would be a mistake to predict the outcome of a case from questions at oral argument, some justices' questions clearly suggested where they stand--as when Chief Justice John Roberts, questioning the District's Dellinger, scoffed at the idea that a citizen awakened by an intruder in the middle of the night could "turn on the lamp . pick up [his] reading glasses," and disengage a trigger lock. Dellinger back-pedaled from D.C.'s longstanding position that its laws prohibit self-defense, claiming that D.C. actually supports citizens having functional firearms for defense.

Justices extensively questioned all three attorneys on the meaning and effect of the Second Amendment's "militia clause," with Dellinger taking the extreme position that unless a state "had attributes of [a state] militia contrary to a Federal law," the Second Amendment would have no effect as a restraint on legislation. Several justices seemed to disagree strongly with that view, with Justice Antonin Scalia noting that even if the militia clause describes the purpose of the Second Amendment, it's not unusual for a law to be written more broadly than necessary for its main purpose.

Justice Anthony Kennedy questioned the attorneys very actively, especially on the importance of self-defense in the Founding era. Justice Kennedy suggested that even the Supreme Court's 1939 *Miller* decision--which gun control advocates have often wrongly cited as protecting only a "collective" right--was "deficient" and may

not have addressed the "interests that must have been foremost in the Framers' minds when they were concerned about guns being taken away from the people who needed them for their defense."

Plaintiffs' attorney Gura-in addition to responding to many hypothetical questions-noted that the Second Amendment was clearly derived from common law rights described by Blackstone and other 18th Century commentators. Although the militia clause "gives us some guide post as to how we look at the Second Amendment," Gura said, "it's not the exclusive purpose of the Second Amendment."

NRA Executive Vice President Wayne LaPierre and NRA-ILA Executive Director Chris Cox (who both attended the arguments) commented, "Washington, D.C.'s ban on keeping handguns and functional firearms in the home for self-defense is unreasonable and unconstitutional under any standard. We remain hopeful that the Supreme Court will agree with the overwhelming majority of the American people, more than 300 members of Congress, 31 state attorneys general and the NRA that the Second Amendment protects the fundamental, individual right to keep and bear arms, and that Washington, D.C.'s bans on handguns and functional firearms in the home for self-defense should be struck down."

Amicus briefs filed with the Supreme Court in support of the Court of Appeals' decision included those by the National Rifle Association and the NRA Civil Rights Defense Fund; Vice-President Dick Cheney (in his capacity as President of the Senate) and Members of Congress; the state attorneys general; and noted Second Amendment scholars. All the briefs in the case are available at [www.nraila.org/heller](http://www.nraila.org/heller).