



## ASK BIG JON

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# Liberty Preserved! – D.C. v. Heller

As long-time readers of *Whitetail News* know, the Whitetail Institute is committed to not only helping its customers improve the quality of their deer and deer-hunting experience, but also promoting the health of our entire hunting way of life. On June 26, 2008, the United States Supreme Court issued its final ruling on what is certainly the most important gun-rights case, and arguably the most important individual rights case, in recent memory, *District of Columbia v. Heller*. Accordingly, I wanted to do something a little different in this issue and, instead of answering a specific customer question about deer management, provide a brief synopsis of the *Heller* opinion and what it means to all Americans, gun owners and non-gun owners alike.

### WHAT THE HELLER CASE WAS ABOUT

Until the *Heller* decision, Washington D.C.'s gun laws had been among the strictest in the nation for many years. The *Heller* case was brought as a challenge to two things those laws did as administered by the D.C. government. First, they prohibited anyone in Washington D.C. from having a handgun in the home for self defense. Second, they required that shotguns and rifles, possession of which was allowed in the home, be kept in such condition that they would be unavailable as a practical matter for self defense (unloaded/disassembled/trigger-locked). In *Heller*, the United States Supreme Court struck down the D.C. gun laws on the ground that they violated the right to keep and bear arms protected by 2nd Amendment to the United States Constitution. *Here's the link to the Supreme Court's opinion:*

<http://www.supremecourt.us/opinions/07pdf/07-290.pdf>

The critical issue resolved in the case was whether the right protected by the 2nd Amendment is an "individual" right, or a "collective" right. The 2nd Amendment is part of our Bill of Rights, and any explanation of the difference between individual and collective rights requires an understanding of what the Bill of Rights, including the 2nd Amendment, actually does, and what it does not do.

### INDIVIDUAL RIGHTS VERSUS COLLECTIVE RIGHTS

The amendments that make up the Bill of Rights set out specific, or "enumerated," rights including freedom of religion, freedom of speech, freedom of the press, and in the case of the 2nd Amendment, the right to keep and bear arms. Almost all of the freedoms protected by the Bill of Rights have been

fairly universally understood to be inherent "individual" rights, meaning that each of us has these rights simply by virtue of being a free person. Accordingly, the amendments in the Bill of Rights do not "give" these rights to us (and, in fact, they couldn't since we already have them), but instead guarantee that the government can never blanketly take those rights away from us. Until *Heller*, though, the nature of one such right, the right to keep and bear arms enumerated in the 2nd Amendment, had been the source of heated debate for about a century.

The D.C. government argued in *Heller* that the right to keep and bear arms is not an individual right, but a "collective" right of the citizenry of the United States as a whole to keep and bear arms as part of a state militia. Had the court agreed, it could have meant that the government has the authority to completely disarm every citizen of the United States who is not a member of the National Guard, do so any time it wants, and without reason. If you want an example of how unconscionable the "collective-rights" theory is, consider that it would make perfectly legal the very sort of mass confiscations of guns from law-abiding citizens we saw in Louisiana during the aftermath of Hurricane Katrina!

Thankfully, the court clearly stated in *Heller* that the right to keep and bear arms is an inherent **individual right** guaranteed by the 2nd Amendment. As such, the court held, the D.C. gun laws as administered by the D.C. government violated the 2nd Amendment because, in effect, they prohibited all D.C. residents from legally having any kind of firearm readily accessible in the home for self-defense, a lawful purpose that the court noted was at the very core of the right to keep and bear arms.

This clear statement that the 2nd Amendment guarantees an individual right is potentially one of extremely broad implication. It's also the only logical inference one can draw as to what our Founding Fathers intended the 2nd Amendment to do. They crafted the Bill of Rights in 1789, which was right after the Revolutionary War — a war prompted in large measure by England's attempt to subjugate the people living in her American colonies by disarming them. With the Revolutionary War still fresh in their minds, the Founding Fathers took great care when creating the new American government to ensure that it could never prohibit the people it was created to serve from keeping and bearing arms for self defense in the home, for hunting and, if necessary, to prevent tyranny. In fact, that's the very reason for the entire Bill of Rights, including the 2nd Amendment — to prevent the government we set up to serve us from taking more power than the people choose to give it.

### HELLER'S SHORT-TERM FUTURE EFFECT

Obviously, the *Heller* decision is a huge sigh of relief to law-abiding residents of Washington D.C. Thankfully, folks like the NRA are also already moving forward to have other unconstitutional gun laws in other parts of the country overturned based on *Heller*, and that is truly great news for Americans who live in other places where the government may have overreached its authority. How far the NRA will be able to go in helping us remove other unconstitutional restrictions on our freedoms remains to be seen. They certainly deserve all the support we can give them.

As for the rest of us law-abiding gun owners, the *Heller* decision may not change our lives much as a practical matter, at least in the short term. The *Heller* court made a special effort to point out that other freedoms guaranteed in the Bill of Rights are subject to reasonable regulation, and that the right to keep and bear arms is no exception. For example, even though the Bill of Rights guarantees the right to free speech, that doesn't mean we're allowed to yell "Fire!" in a crowded theater when there's no fire, or that we can slander someone without consequence. Likewise, the court said that most current forms of regulation of the right to keep and bear arms are okay. That means unless and until such existing forms of regulation are overturned, we still must comply with carry-permit requirements and prohibitions against carrying guns in sensitive places such as schools and government buildings. The opinion also doesn't roll back any prohibitions of weapons not currently in common use in our society, such as machine guns. What the *Heller* opinion does change, though, for gun owners and non-gun owners alike, is that ALL Americans are finally assured that the most basic protection of individual liberty is intact, at least for now.

At least, that's the case for the near future. As wonderful as this news is, no court ruling is written in stone forever, and the *Heller* decision is no exception. Even with this victory, there's nothing to prevent the court from holding completely the other way later on, and if the wrong kind of justices are appointed to replace those who will likely retire from the Supreme Court soon, there is a very distinct possibility that this entire victory could be completely wiped out.

We must do two things if we are to protect this hard-won victory. First, we must elect a president who will appoint only non-activist judges to the Supreme Court. Second, we must continue to support the NRA in its tireless efforts to protect our rights.