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ANATOMY OF A LAWSUIT

District of Columbia v. Heller
By Robert A. Levy
Senior fellow in constitutional studies at the Cato Institute, co-counsel to Mr. Heller
Engage: The Journal of the Federalist Society Practice Groups
Volume 9, Issue 3
October, 2008

It took nearly 5-1/2 years of litigation, a feckless 32-year handgun ban in the nation's capital, and a 69-year old Supreme Court case, muddled and misinterpreted by appellate courts across the country. At the end, on June 26, 2008, by a 5-4 vote, the Supreme Court proclaimed unequivocally that the Second Amendment secured an individual right to keep and bear arms for self-defense. That was the holding in District of Columbia v. Heller, the most important Second Amendment case in U.S. history. Here's how it happened: the legal team, the timing, the plaintiffs, the location, the role of the National Rifle Association, and how the Justice Department nearly undermined our efforts.

THE LEGAL TEAM

Late in 2002 I was approached by Clark Neily, an attorney at the Institute for Justice (IJ), where I serve on the board of directors. Although decades apart in age (he's 40, I'm 66), Clark and I maintain a close friendship after clerking together on the federal courts. We also share a political philosophy centering on strictly limited government and expansive individual liberties. Clark and his colleague at IJ, Steve Simpson, had decided the time was right to file a Second Amendment challenge to Washington D.C.'s handgun ban. I was asked to become a member of the legal team, explore the prospects for a lawsuit, help with preliminary research, and provide funding.

At roughly the same time, I came in contact with Dane Von Breichenruchardt, who heads the Bill of Rights Foundation. Dane introduced me to Dick Heller, a private police officer who believed strongly in Second Amendment rights and wanted to challenge D.C.'s gun laws. Dick became our sole surviving plaintiff —about which more in a moment. Persuaded by Clark's and Steve's preliminary legal analyses, and heartened by Dick's enthusiasm, I agreed to sign on, and then convinced my Cato Institute associate, Gene Healy, to join us.

After our team of lawyers completed a more detailed review of the legal landscape, we resolved to move ahead. Clark and Steve had provided the strategic insight, but Steve was not able to participate in the litigation because of his duties at IJ. And because Clark, Gene, and I were busily engaged on other projects, we set out to hire an outside lawyer to serve as lead counsel. that position was filled by Alan Gura, 37, a private attorney in the DC area who had been a law clerk at IJ. , us, four of the five original attorneys had ties to IJ; two attorneys had ties to Cato, as did one of the plaintiff s (Cato vice president, Tom Palmer).

Neither organization was directly involved in the litigation, but both supported the lawsuit and filed amicus (friend-of-the court) briefs. Indeed, Justice Antonin Scalia cited IJ's brief favorably in his Heller majority opinion. Equally important, Cato and IJ provided extensive help with media relations — supervised by John Kramer, IJ's consummate communications expert. And perhaps most important, the Heller lawsuit had an IJ imprint from the outset. Fashioned as a public interest lawsuit, Heller required sympathetic clients, a media-savvy approach, and strategic lawyering—in short, the same characteristics that had brought IJ before the Supreme Court three times in the past six years, in cases involving eminent domain, interstate wine shipments, and school choice.

After we filed the lawsuit in February 2003, Gene Healy was called away by the press of other business. That left a three-man team—Alan Gura, Clark Neily, and I - which remained intact throughout the litigation. And therein lies an interesting sidebar: I had no prior litigation experience, much less a case before the Supreme Court. Clark was an experienced and talented trial and appellate litigator, but he too had no Supreme Court experience. Ditto for Alan, who, as lead counsel, had primary responsibility for crafting the briefs and arguing our case before three courts, including the Supreme Court. Not surprisingly, when the Supreme Court agreed to review Heller, I was besieged with advice from concerned allies to have a Supreme Court superstar argue the case. I was warned that someone like Ted Olson or Ken Starr was needed to go up against former solicitor general Walter Dellinger, who had agreed to argue on behalf of the city.

I rejected that advice, for several reasons: First, Alan had piloted our winning effort before the U.S. Court of Appeals for the District of Columbia Circuit. That was no small accomplishment—the first ever federal appellate decision to overturn a gun control regulation on Second Amendment grounds. Second, Alan had immersed himself in gun-related issues over more than five years. He knew the material cold, whereas a new attorney—even a superstar—would have a short, steep learning curve. Third, and most important, Alan had agreed to work on Heller for subsistence wages. He had made significant professional and financial sacrifices, in return for which I had committed to him that he would carry the ball, however far the case advanced. In the end, I was not willing to renege on that commitment. Clark fully supported that decision.

THE TIMING

Looking back, fair-minded observers on both sides of the case acknowledge that our legal team—outmanned, out-financed, and inexperienced—performed commendably, capped by Alan's confident and persuasive oral argument before the Supreme Court. Our victory evolved over more than a half-decade, beginning with our first court submission in early 2003. Why, though, did we file at that time—three decades after enactment of the D.C. gun ban; seven decades after the Supreme Court's decision in United States v. Miller?

Three triggering events precipitated the litigation. First, there was an outpouring of scholarship on the Second Amendment, and some of it came from self-identified liberals 28! Engage Vol. 9, Issue 3 who concluded that the Amendment secured an individual, not a collective, right. Harvard's Alan Dershowitz, a former American Civil Liberties Union board member, says he "hates" guns and wants the Second Amendment repealed. But he has condemned "foolish liberals who are trying to read the Second Amendment out of the Constitution by claiming it's not an individual right…. They're courting disaster by encouraging others to use the same means to eliminate portions of the Constitution they don't like." Harvard's Laurence Tribe,

another respected liberal scholar, and Yale's professor Akhil Amar both recognize that there is an individual right to keep and bear arms, albeit limited by what they call "reasonable regulation in the interest of public safety."

In that respect, Tribe and Amar agree with advocates for gun-owners' rights on two fundamental issues: (1) the Second Amendment confirms an individual rather than a collective right; and (2) that right is not absolute; it is subject to regulation. To the extent there was disagreement, it hinged on what constitutes permissible regulation—that is, where to draw the line. It was apparent to us that D.C.'s ban fell on the impermissible side of that line.

The second triggering event was a 2001 decision by the U.S. Court of Appeals for the Fifth Circuit in United States v. Emerson. The Fifth Circuit was bound by the Supreme Court's Miller precedent, but concluded that Miller upheld neither the individual rights model of the Second Amendment nor the collective rights model. Miller decided simply that a sawed-off shotgun was not self-evidently the type of weapon that was protected. But the Fifth Circuit went further. It held that the Constitution "protects the right of individuals, including those not then actually a member of any militia… to privately possess and bear their own firearms… suitable as personal individual weapons."

That right is not absolute, said the appellate court. Killers do not have a constitutional right to possess weapons of mass destruction. Some persons and some weapons may be restricted. Indeed, the court held that Dr. Timothy Joe Emerson's individual right under the Second Amendment could be temporarily curtailed because there was reason to believe he might have posed a threat to his estranged wife. But setting Emerson's personal situation aside, the Fifth Circuit—alone in 2001 among all the federal appellate courts that tried to make sense of Miller's elusive logic—subscribed to the individual rights model of the Second Amendment.

The Supreme Court declined to review Emerson. Although the Fifth Circuit's interpretation of the Second Amendment differed fundamentally from the interpretation of all other federal appellate courts, the high Court sidestepped the question—probably because Dr. Emerson had lost. In the end, the Fifth Circuit upheld the federal statute at issue in Emerson. , at meant the statute was still good law in all U.S. jurisdictions. So the Supreme Court had no practical or pressing need at that time to resolve the Second Amendment debate.

The third triggering event was an unambiguous pronouncement on the Second Amendment from the Justice Department under former U.S. Attorney General John Ashcroft. First, in a letter to the NRA, he reaffirmed his long-held belief that all law-abiding citizens have an individual right to keep and bear arms. Ashcroft's letter was supported by 18 state attorneys general, including six Democrats. , e letter was followed by a Justice Department brief fi led in opposition to Supreme Court review of the Emerson case. Despite opposing Supreme Court review, the Justice Department expressly argued, for the first time in a formal court submission, against the collective rights position. Later, in 2004, the Justice Department affirmed its view of the Second Amendment in an extended and scholarly staff memorandum opinion prepared for the Attorney General. The opinion concluded that "[t]he Second Amendment secures a right of individuals generally, not a right of States or a right restricted to persons serving in militias."

THE PLAINTIFFS

Having decided that the timing was ripe, we turned next to the selection of plaintiff s. One of the disadvantages of public interest law is that the clients do not pay. One of the major advantages, however, is that we could be very selective in our choice of issues and, especially, plaintiff s. For starters, we knew that the case would unfold not only in the courtroom but in the court of public opinion. Accordingly, we needed plaintiff s who would project favorably and be able to communicate with the media and the public. Ideally, they should be diverse - by gender, race, profession, income, and age. they should believe fervently but not fanatically in Second Amendment rights, fear for their safety within their homes, and have need of a loaded weapon for self-defense. Naturally, we wanted law-abiding, responsible citizens, with no criminal record, but a compelling story to tell.

In satisfying those criteria, we exhausted our contacts in the legal community, looked for names in newspaper articles and letters to the editor, spoke to friends and friends of friends, considered dozens of preliminary prospects, interviewed a smaller number, and settled finally on six. The plaintiff s comprised three men and three women, ranging in age from their mid-twenties to their early sixties. Four were white; two were African-American.

The lead plaintiff , Shelly Parker, was a neighborhood activist who lived in a high-crime area in the heart of the city. Drug dealers and addicts harassed residents of her block relentlessly. Ms. Parker decided to do something about it. She called the police—to no avail, time and again—then encouraged her neighbors to do the same. She organized block meetings to discuss the problem. For her audacity, Shelly Parker was labeled as a troublemaker by the dealers, who threatened her at every opportunity. Shortly before we fi led the case, a dealer tried to break into her house, cursing and yelling, “Bitch, I’ll kill you. I live on this block, too.” He was charged with felony threat but acquitted. Shelly Parker knew that the police wouldn’t do much about the drug problem on her block. She wanted a functional handgun within her home for self-defense; but she feared arrest and prosecution because of D.C.’s unconstitutional gun ban.

A second plaintiff, Dick Heller, was a special police officer who carried a handgun every day to provide security for a federal office building, the Thurgood Marshall Judicial Center. But when he applied for permission to possess that handgun within his home, to defend his own household, the D.C. government turned him down. Among the other plaintiff's was a gay man assaulted in California on account of his sexual orientation. While walking to dinner with a co-worker, he encountered a group of young thugs yelling “faggot,” “homo,” “queer,” “we’re going to kill you and they’ll never find your bodies.” He pulled his handgun—which his mother had given him, anticipating just such a need—out of his backpack and his assailants retreated. He could not have done that in Washington, D.C.—not even if the assailants had entered his home.

Originally, the case was captioned Parker v. District of Columbia—named after our lead plaintiff , Shelly Parker. That changed when fi ve of our six plaintiff s, including Parker, were dismissed for lack of legal standing. Only Dick Heller remained. From that point forward, his name was substituted for Shelly Parker’s.

“Standing” is a complex doctrine requiring that plaintiff's demonstrate that they have suffered a “redressable injury” before they can have their lawsuit heard by a court. In this instance, only Dick Heller had applied to register a firearm and been rejected by the District. , e denial of Heller’s application was his injury. By contrast, the other plaintiff s had not tried either to

register a weapon or obtain a license. Instead, they had simply declared their desire to have a loaded firearm in their homes, and then claimed that D.C.'s gun laws frustrated that goal. The court, applying the District's unique standing doctrine, noted that the plaintiff s had not actually broken any law. According to the court, their risk of prosecution was not sufficiently credible or imminent to constitute injury. Hence, no standing for five of six plaintiffs.

In D.C., law-abiding citizens who have not applied for registration cannot challenge the city's gun laws; that privilege is reserved to law-breaking citizens. Responsible plaintiff s are barred from court; only criminals can sue. Nor is it possible for most would-be plaintiff s in D.C. to follow Heller's example and apply for registration. In that respect, D.C.'s rules are the ultimate Catch-22. No one can register an imaginary handgun; he or she must own one to register it. But from 1976 until now, it has been illegal to buy a handgun in Washington, D.C. And federal law says it's illegal to buy a handgun anywhere except the state in which the buyer resides. , us, to obtain standing today, a D.C. resident would have to move out of D.C., buy a gun, move back to D.C. with proof of ownership, and then apply for registration.

As for Heller, he had legally acquired a handgun years ago. He could not keep the gun in his D.C. home, but he did have the paperwork to prove the weapon was his. Dane Von Breichenruchardt, who had introduced Heller to us, prevailed on Heller to apply for registration in July 2002, seven months before we filed the lawsuit. When we became aware that Heller had followed Dane's advice and registration had been denied, we included a statement to that eff- ect in our complaint and, later, an affidavit from Heller as well as a copy of his rejected application. Those documents proved sufficient to confer standing on Heller. Technically, because we were not seeking monetary damages for each client, one plaintiff was all we needed to stop D.C. from enforcing its unconstitutional gun ban. But the five other plaintiff s were sorely disappointed.

Consequently, we asked the Supreme Court to restore standing to our five dismissed plaintiff s. Without explanation, however, the Court refused to review D.C.'s standing doctrine. Here's what that means: nearly everywhere in the country, except in the nation's capital, courts do not require citizens first to violate a law in order to contest its constitutionality. Yet, when it comes to restrictions on fi rearms ownership, D.C. says that a threat of enforcement is not sufficient to confer standing. The plaintiff s in our case were specifically threatened with prosecution by D.C. officials—in open court, in newspaper interviews, and in a town meeting. Still, no standing.

Moreover, fear of enforcement—even without threats— causes people to refrain from doing what they would otherwise do. If a person could show he would have acquired a handgun, but did not out of concern that he would be prosecuted, then he has suffered the type of injury that is classic in pre-enforcement suits. Consider, for example, an abortion or First Amendment case. Would a pregnant woman have to be charged for having an illegal abortion before she could assert standing to challenge a restrictive law? If a shop owner wants to test a statute banning storefront political posters, does he first have to display the poster and risk punishment? Not even D.C. would impose such impediments to raising those constitutional claims. Evidently, however, the Second Amendment is different. When it comes to keeping arms for self-defense, D.C.'s shameful message is: "If you want to challenge the law, first you have to break it."

THE LOCATION

Even though we were unable to obtain standing for five plaintiff s under D.C.'s prohibitive rules, the nation's capital was still the best venue to file our lawsuit. First, the city's rate of gun violence was, and is, among the highest in the nation. Second, D.C. had the most restrictive gun laws of any major city—in fact, the most sweeping gun laws in the history of the country. Essentially, all handguns acquired after 1976 were banned; no handguns acquired before 1976 could be carried anywhere—even from room to room in a person's own home—without a permit, which in practice was never issued; and all rifles and shotguns in the home had to be unloaded and either disassembled or trigger-locked.

Because of D.C.'s draconian regulations, we were able to pursue an "incremental" Second Amendment strategy— analogous to the strategy that Thurgood Marshall and the NAACP had pursued with great success in the civil rights arena. That meant: (1) seek only narrow relief—i.e., don't ask the Court, in its fi rst Second Amendment case since 1939, for permission to carry concealed weapons in public or to own a machine gun; (2) focus solely on the Second Amendment—no statutory issues or other constitutional issues that might distract the Court; and (3) challenge only the worst provisions of DC law—a ban on all functional firearms in all homes of all people at all times for all purposes—thereby negating the city's claim that its regulations are "reasonable."

Our third reason for selecting D.C. involved the legal question of "incorporation." Until the Fourteenth Amendment was ratified in 1868, the Bill of Rights applied only against the 30! Engage Vol. 9, Issue 3 federal government. Unlike most of the other Ten Amendments, which have now been "incorporated" against the states by means of the Fourteenth Amendment, the applicability of the Second Amendment to the states has not been resolved. By filing our Second Amendment challenge in Washington, D.C., we did not have to address that issue. , e U.S. Congress, not a state, is constitutionally empowered "To exercise exclusive Legislation in all Cases whatsoever" over the nation's capital—which means the Bill of Rights directly limits Washington, D.C., laws.

Fourth, D.C. is where the federal government lives. That means Second Amendment claims against the federal government can be litigated in D.C., no matter where a rights violation allegedly occurred. It's always proper to sue a defendant where the defendant resides. In that respect, D.C. was clearly the most important of all the judicial circuits. A victory in D.C. would alter Second Amendment jurisprudence not only for cases arising under D.C. law, but for all cases arising under federal law as well—no matter where the claim initially surfaced. Moreover, the U.S. Justice Department, which defends federal statutes against Second Amendment claims, was already on record as supporting an individual right to keep and bear arms.

Finally, the U.S. Court of Appeals for the District of Columbia Circuit was the only federal appellate court that had not yet fleshed out its view of the Second Amendment. In order to reach the Supreme Court—which was our principal objective—we had to create a split of authority among the appellate circuits that only the Supreme Court could resolve. Inconsistent federal law from circuit-to-circuit is typically the single most important criterion in persuading the high Court to accept a case for review. All of the other federal appellate courts had disallowed Second Amendment challenges to gun control regulations. Only in D.C. did we have a chance of convincing a federal appellate court, for the first time, to declare a gun regulation unconstitutional.

THE ROLE OF THE NRA

With our legal team in place, the right timing, great clients, and the perfect venue, all we needed was a few dollars to cover litigation costs. , at's an area where I was able to help—with generous assistance from Clark, who received no compensation, and Alan, who received next-to-no compensation. Other gun-rights advocates and organizations had offered financial aid. But we didn't want the case portrayed as litigation that the gun community was sponsoring. First and foremost, our interest was to ensure that the D.C. government complied with the text, purpose, structure, and history of the Second Amendment. For us, Heller was about the Constitution; guns merely provided context.

Another advantage in funding the lawsuit ourselves was the ability to retain complete control over plaintiff selection, legal arguments, and litigation strategy. , at did not mean we ignored potential alliances with groups like the NRA. Indeed, when we first considered fi ling a lawsuit, we notifi ed the NRA and sought input from its Second Amendment specialists. To our surprise, the NRA advised us not to proceed. , e NRA's stated concern was that the case might be good enough to win at the appellate level, but would not be victorious before a less than hospitable Supreme Court. As a result, we could win the battle, but lose the war.

We declined the NRA's advice for a number of reasons. First, and most important from our perspective, the Fifth Circuit's 2001 Emerson decision had prompted criminal defense attorneys nationwide to raise Second Amendment defenses to gun charges. We feared that one of those cases would eventually make its way to the Supreme Court, resulting in an accused murderer or drug dealer becoming the poster child for the Second Amendment. Second, the Court looked more favorable from a Second Amendment perspective than it had looked in some time. And with a Republican president filling vacancies, we thought the Court's composition might even improve by the time our case wound its way up. (In fact, it did.) third, the gun controllers had more to lose than we did. Federal appeals courts covering 47 states had denied that the Second Amendment protected a private, individual right. Those decisions could be no worse even if we lost in the Supreme Court. On the fl ip side, 44 states had their own statutory or constitutional provisions protecting an individual right to bear arms, and 48 states allowed concealed carry with varying degrees of police discretion. None of those laws rested on the Second Amendment, so they too would be unaffected if the Supremes did the wrong thing. Fourth, we had the support—or so we thought—of the Department of Justice, which could easily change its view under a more liberal administration.

Accordingly, we went forward despite the NRA's opposition. Two months later, evidently not wishing to remain on the sidelines, the NRA sponsored a copycat suit, Seegars v. Ashcroft (later Gonzales), in the same court, raising many of the same issues and asking virtually the same relief. the NRA then filed a motion to consolidate its case with ours - a none too subtle attempt to take control of the litigation. Of course, we opposed that motion, and after three months of legal wrangling, we won: the suits were not consolidated. , at was good news. But now there were two different Second Amendment suits moving through D.C.'s federal courts on parallel tracks—one of which was wholly unnecessary and, as we shall see, legally weaker.

By chance, the NRA's suit - filed months after ours and assigned to a different judge - was decided first. The NRA lost, then appealed to the U.S. Court of Appeals in D.C. We too lost at the trial court level, and appealed shortly thereafter. But the NRA litigation had reached the appellate court before ours, so the court put our case on hold pending the outcome of the NRA appeal, which seemed likely to dictate the outcome of our appeal as well. At that point the NRA had accomplished its objective: it had taken control of the litigation.

That was not to last very long. the NRA had - mistakenly, in our view - sued not only the city of Washington, D.C., but also the Justice Department. And it was the Justice Department, not the city, which raised a standing defense to the NRA lawsuit. As noted above, plaintiff s are required to demonstrate concrete injury in order to file suit. Pursuant to the D.C. Circuit's idiosyncratic Second Amendment standing doctrine, it's not enough for a plaintiff to assert an interest in owning a prohibited gun. Instead, the would-be plaintiff must actually apply to register a forbidden weapon, and then be denied by the city. Unlike Mr. Heller in our case, none of the NRA's Seegars plaintiff s had submitted the requisite application. All were dismissed by the court of appeals for lack of standing. And because the Seegars decision never addressed the underlying Second Amendment question, our case was allowed to go forward.

We hoped that would be the end of our problems with the NRA. Unfortunately, it was not. The NRA's next step was to renew its lobbying effort in Congress to repeal the D.C. gun ban. Ordinarily that would have been a good thing, but not this time. Repealing D.C.'s ban would have rendered the Heller litigation moot. After all, no one can challenge a law that no longer exists. And of course Heller was a much better vehicle to vindicate Second Amendment rights than an act of Congress. Among other things, legislative repeal of the D.C. ban could simply be reversed by the next liberal Congress. Nor would repeal of D.C.'s ban have any impact on the raft of criminal cases filed in other jurisdictions. Any one of those cases might reach the Supreme Court and become the vehicle for reading the Second Amendment out of the Constitution. By contrast, a foursquare pronouncement from the Supreme Court upholding a challenge by law-abiding citizens in Heller would establish lasting precedent and eventually have significance in all 50 states.

After expending considerable time and energy in the halls of Congress, we were able, with help, to frustrate congressional consideration of the NRA-sponsored bill. By that time, the NRA had apparently decided the political climate was not right for legislative repeal. Therefore, we were told, the NRA would put repeal on the back burner and support our lawsuit. Happily, that promise was kept. Once committed, the NRA was a valued ally in the Supreme Court phase of our case - garnering support from the gun rights community, crafting amicus briefs, and joining our battle against a Justice Department that we thought was on our side.

HOW THE JUSTICE DEPARTMENT NEARLY UNDERMINED OUR EFFORTS

Incredibly, there were 67 amicus briefs fi led with the Supreme Court in the Heller case - 47 for us, 19 for the city, and 1 supposedly split brief from the Justice Department. , at's not a record, but it's very close to the top. (All of the briefs, along with other Court filings and articles, are posted on our website, **www.dcguncase.com**, which has developed into a leading repository of scholarship on the Second Amendment.) Many of the briefs, too numerous to mention by name, were enormously helpful. But potentially the most unhelpful—and perhaps the most surprising—was the brief filed by Solicitor General Paul Clement for the Justice Department.

The Department's announced position under Attorney General John Ashcroft was that "the Second Amendment secures a right of individuals" not restricted to militia service. Without abandoning that principle altogether, the Bush Justice Department under Attorney General Michael Mukasey significantly diluted it by recommending an elastic standard for determining whether a handgun ban is permissible. How elastic? The SG's brief urged the courts to consider "the nature and functional adequacy of available alternatives" to banned firearms.

Imagine, in a First Amendment context, advising courts to weigh the "functional adequacy" of magazines in a city that banned all newspapers. To implement its toothless standard, the SG proposed that Heller be remanded to the lower courts, which would engage in "appropriate fact finding" to determine whether DC's gun ban—the most far-reaching on American soil since the British disarmed the colonists in Boston—passed constitutional muster.

That came as quite a shock to those of us who believed the administration's professed allegiance to gun owners' rights. What we got instead was a recommendation that could have been the death knell for the only Second Amendment case to reach the Supreme Court in nearly 70 years. Rather than a definitive statement that the D.C. handgun ban is unreasonable by any standard, the Justice Department suggested a course that would have entailed years of depositions and expert testimony, followed by an eventual return to a Supreme Court that could well have grown more hostile during the intervening years. That possibility could not have been overlooked by the savvy Justice Department lawyers who crafted the strategy. In effect, a so-called conservative administration threw a lifeline to gun controllers—paying lip service to an individual right while simultaneously stripping it of any real meaning. After all, if the D.C. ban could survive judicial scrutiny, it is difficult to envision a regulation that would not.

Supporters of the Constitution could only hope that the Supreme Court would embrace an individual rights view of the Second Amendment while rejecting the notion that D.C. could treat the Amendment as if it did not exist. Lamentably, when the time came to take sides in this long-simmering debate, the Bush administration - supposed proponent of gun rights and devotee of the Constitution - stood for a watered-down version of the Second Amendment that refused to declare a categorical ban on all functional fi rearms within the home "unreasonable," and argued that such a ban might even be consistent with a right to keep and bear arms that the Constitution says "shall not be infringed."

Thankfully, waiting in the wings was the NRA. With organizational skills and political connections, the NRA was able to gather support for a congressional amicus brief. It was signed by 250 members of the House of Representatives, including 68 Democrats; by 55 members of the Senate, including 9 Democrats; and by Dick Cheney, not as vice president, but in his capacity as president of the Senate. It was a remarkably powerful demonstration that the political branches - and derivatively, the people - were on our side, notwithstanding the administration's bewildering and pernicious brief.

The rest is history. On June 26, 2008, the highest Court in the land revived the Second Amendment and set the stage for nationwide reclamation of the right celebrated during the Framing era as "the true palladium of liberty.

Robert A. Levy is senior fellow in constitutional studies at the Cato Institute, co-counsel to Mr. Heller, and co-author of The Dirty Dozen: "How Twelve Supreme Court Cases Radically Expanded Government and Eroded Freedom"