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Sanity and the Second Amendment

topic posted Tue, March 4, 2008 - 5:18 PM by emtbuff

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By LAURENCE H. TRIBE
March 4, 2008; Page A16

The Supreme Court is set to hear oral argument later this month in a politically charged gun-control case from the District of Columbia. The case involves a city resident who contends that the District is violating his rights under the Second Amendment with a citywide ban on handguns.

Gun enthusiasts on the right are all but daring justices who protect a woman's right to choose, nowhere mentioned in the Constitution, to trash the "right of the people to keep and bear arms," enshrined in the text of the Second Amendment. If the Supreme Court does what they fear and reduces the gun right to a relic of the days when all "able-bodied men" constituted each state's "militia," they will use that defeat to suggest that we need a president who will bring us a truly "conservative" Supreme Court.

Those on the left have at the same time challenged a court that they see as already leaning hard right to live up to its conservative principles, follow precedent, and limit the Second Amendment -- as the text of its preamble seems to invite -- to the preservation of each state's "well-regulated militia," ending once and for all the idea that the Constitution enshrines a personal right to wield firearms.

The court would be foolhardy to accept either side's invitation that it plunge headlong into the culture wars by accepting these extreme ways of framing the issue. It is true that some liberal scholars like me, having studied the text and history closely, have concluded, against our political instincts, that the Second Amendment protects more than a collective right to own and use guns in the service of state militias and national guard units. Opponents of the District's flat ban on handgun possession have cited my words to the court and in newspaper editorials in their support.

But nothing I have discovered or written supports an absolute right to possess the weapons of one's choice. The lower court's decision in this case -- the D.C. Circuit Court of Appeals found the District's ban on concealable handguns in a densely populated area to be unconstitutional -- went overboard. Under any plausible standard of review, a legislature's choice to limit the citizenry to rifles, shotguns and other weapons less likely to augment urban violence need not, and should not, be viewed as an unconstitutional abridgment of the right of the people to keep or bear arms.

For the Supreme Court to go any further than this in overturning the lower court's decision -- for it to hold, for instance, that no firearms ban could violate the Second Amendment unless it were to prevent states from organizing militias in their collective self-defense, as the District appears to urge -- would gratuitously fan the flames of doubt about the court's commitment to core constitutional principles, and would save no lives in the process.

Equally foolish would be a decision tilting to the other extreme and upholding the lower court's decision simply because the right to bear arms is, judicial precedent to the contrary notwithstanding, a right that belongs to citizens as individuals. Such a holding would confuse the right to bear arms with a right to own and brandish the firearms of one's choosing.

Worse than that, it would transform a constitutional provision clearly intended and designed to protect the people of the

several states from an all-powerful national government into a restriction on the national government's uniquely powerful role as governor of the nation's capital, over which Congress, acting through municipal authorities of the District, exercises the same kind of plenary authority that it exercises over Fort Knox.

Using a case about national legislative power over gun-toting in the capital city as a vehicle for deciding how far Congress or the state of California can go in regulating guns in Los Angeles would be a silly stretch.

Chief Justice John Roberts, ever since his days as a judge on the court of appeals, has virtually defined judicial modesty by opining that if it is not necessary for the court to decide an issue, then it is necessary for the court not to decide that issue. For this reason, and for the further reason that the scholarship on the reach of the Second Amendment and its implementation is still in its infancy, the court should take the smallest feasible step in resolving the case before it.

Issuing a narrow decision would disappoint partisans on both sides and leave many questions unresolved. But to do anything else would ill-suit a court that flies the flag of judicial restraint.

Mr. Tribe, a professor of constitutional law at Harvard Law School, is the author of the forthcoming book "The Invisible Constitution" (Oxford Press).

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emtbuff
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Unsu...

Re: Sanity and the Second Amendment

Tue, March 4, 2008 - 6:42 PM

Mr. Tribe?!

Sas :)

Unsu...

Re: Sanity and the Second Amendment

Wed, March 5, 2008 - 7:18 AM

"Mr. Tribe" is Lawrence Tribe a rather famous constitutional scholar.
He ought to be called Doctor or Attorney or Professor Tribe
Any one who earned a doctorate should be called "Doctor." It's their title, god knows they earned it.

My thinking on this case is that it's going to sputter
tinyurl.com/23fr9v

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Re: Sanity and the Second Amendment

Wed, March 26, 2008 - 11:04 PM

The very thought that an amendment grants us rights is already flawed.

No government entity gives it's citizens rights. We are born with them... the amendments are there to re-affirm them... to show that if anything, our rights should be safe-guarded by our government.