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A liberal's lament: The NRA might be right after all

By Jonathan Turley

This term, the Supreme Court may finally [take up the Voldemort Amendment](#), the part of the Bill of Rights that shall not be named by liberals. For more than 200 years, progressives and polite people have avoided acknowledging that following the rights of free speech, free exercise of religion and free assembly, there is "the right of the people to keep and bear arms." Of course, the very idea of finding a new individual right after more than two centuries is like discovering an eighth continent in constitutional law, but it is hardly the cause of celebration among civil liberties groups.

Like many academics, I was happy to blissfully ignore the Second Amendment. It did not fit neatly into my socially liberal agenda. Yet, two related cases could now force liberals into a crisis of conscience. The Supreme Court is expected to accept review of [District of Columbia v. Heller](#) and [Parker v. District of Columbia](#), involving constitutional challenges to the gun-control laws in Washington.

The D.C. law effectively [bars the ownership](#) of handguns for most citizens and places restrictions on other firearms. The District's decision to file these appeals after losing in the D.C. appellate court was driven more by political than legal priorities. By taking the appeal, D.C. politicians have put gun-control laws across the country at risk with a court more likely to uphold the rulings than to reverse them. It has also put the rest of us in the uncomfortable position of giving the right to gun ownership the same fair reading as more favored rights of free press or free speech.

The Framers' intent

Principle is a terrible thing, because it demands not what is convenient but what is right. It is hard to read the [Second Amendment](#) and not honestly conclude that the Framers intended gun ownership to be an individual right. It is true that the amendment begins with a reference to militias: "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." Accordingly, it is argued, this amendment protects the right of the militia to bear arms, not the individual.

Yet, if true, the Second Amendment would be effectively declared a defunct provision. The [National Guard is not a true militia](#) in the sense of the Second Amendment and, since the District and others believe governments can ban guns entirely, the Second Amendment would be read out of existence.

Another individual right

More important, the mere reference to a purpose of the Second Amendment does not alter the fact that an individual right is created. The right of the people to keep and bear arms is stated in the same way [as the right to free speech or free press](#). The statement of a purpose was intended to reaffirm the power of the states and the people against the central government. At the time, many feared the federal government and its national army. Gun ownership was viewed as a deterrent against abuse by the government, which would be less likely to mess with a well-armed populace.

Considering the Framers and their own traditions of hunting and self-defense, it is clear that they would have viewed such ownership as an individual right—consistent with the plain meaning of the amendment.

None of this is easy for someone raised to believe that the Second Amendment was the dividing line between the enlightenment and the dark ages of American culture. Yet, it is time to honestly reconsider this amendment and admit that ... here's the really hard part ... the NRA may have been right. This does not mean that Charlton Heston is the new Rosa Parks or that no restrictions can be placed on gun ownership. But it does appear that gun ownership was made a protected right by the Framers and, while we might not celebrate it, it is time that we recognize it.

Jonathan Turley is the Shapiro Professor of Public Interest Law at George Washington University and a member of USA TODAY's board of contributors.

Posted at 12:15 AM/ET, October 04, 2007 in [Criminal justice - Forum](#), [Ethics - Forum](#), [Forum commentary](#), [Free Speech - Forum](#), [Gun Control - Forum](#), [Law/Judiciary - Forum](#), [Politics, Government - Forum](#), [Supreme Court - Forum](#), [Turley](#) | [Permalink](#)

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Mickey Rat wrote: 15h 7m ago
That there is a real "inconvenient truth".

The ACLU dances around the second amendment like it isn't even there. They do it because they want a "safer" society, but safe is only safe when the good people are in control. Guns assure that the good people can't fall too far out of control. That is true on a personal level, and true on a societal level.

The bad guys will get guns regardless of laws, just like North Korea and Iran worked on nukes regardless of treaties. The question is, do you want to be at the mercy of lawbreakers? Your choice.

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Steve Adam wrote: 10h 40m ago
Could the Supreme Court argue that "a well regulated militia" and "the people" mean in this context that a state military unit and the people are the same thing? In other words, could the Court define only the people organized in a military unit have the right to bear arms?

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Greg101 wrote: 10h 20m ago
30,000 Americans die each year due to gun deaths. America is known around the world as the most violent country to live in due to our passive gun laws.

Gun advocates: Please don't be surprized when the next Virginia Tech event happens, just pray no one in your family gets killed and then silently count yourself lucky if no one close to you gets gunned down.

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FrankJ wrote: 9h 52m ago
In 2006, 42, 642 Americans died due to traffic deaths. Banning the private ownership of cars should be our number one priority. There is no constitutional right to own a car. The framers never mentioned automobiles. But, they did mention guns.

The battle at Concord bridge was over the British coming to seize the guns. That's the first thing a totalitarian government does, seize the guns. Then they kill the dissidents. Killing armed dissidents is dangerous and totalitarian governments recognize that danger and attempt to mitigate it by seizing the guns. The framers understood this simple concept, why don't you?

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SCOTSGUARDS wrote: 9h 24m ago
Turley is correct.

1. It is accurate to state that even if the Second Amendment did refer to a professional militia rather than individual citizens, it does not forbid ownership by individual citizens and, therefore, individual ownership is a right not enumerated against in the Constitution, therefore it exists as well.

2. It's irrelevant anyway, because the Second Amendment is intended for the preservation private individual rights, not just for a professional militia.

3. The emotion -tugging Virginia Tech argument is baseless and illogical. Like alcohol Prohibition, firearms Prohibition would not work. The black market would explode and those who wanted firearms for violence would still find a way via it - and black marketeers would make a mint because firearms made totally illegal would become more expensive when bought on the black

market. Had they been illegal, in due time a black marketeer would have sold Cho a weapon. The failing that day was by campus security. Once the first incident occurred and Cho left campus, the decision should have been instantly made to lock down the entire perimeter of the campus and have broadcast on the local television news that students en route to class, or not yet en route, should steer clear of the campus, that classes were canceled for the day. Had I been the security commander for the campus, I would have done that and had all available campus vehicles, including security patrol vehicles and any other vehicles the campus had, such as vans, trucks, etc., put in place roadblocking every entrance to the campus.

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SCOTSGUARDS wrote: 9h 23m ago

101 is like a left of center broken record. Never met a left wing demand to give up a right to Big Brother that he didn't like.

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lawrenc1 wrote: 8h 39m ago

When I was growing up, my father owned over twenty guns, and used them all, either hunting, target shooting, or trap shooting. Never once did he shoot another person, aim a loaded (or even unloaded) gun at another person, or go out and commit an armed robbery. Should his guns have been confiscated because of someone else's criminal activity using guns? He always advocated longer prison sentences for those using a gun to commit a crime.

In short, it is not the criminal who would be hurt by a gun ban, but a law abiding citizen who happens to own guns. Also, he used to say that if you have the right to own a gun, you also have the right not to.

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Wyoming wrote: 8h 34m ago

Finally a left wing nut gets it. I don't understand why it is so hard to admit one is wrong about something, especially the total misreading of the Second Amendment to the US Constitution. Greg101 is one of those, obviously. His connection with reality is tenuous at best, but he is not alone. He is in the minority, I hope.

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knaug60 wrote: 8h 33m ago

Yes, it seems that the ACLU focuses mainly on 1st Ammendment issues, and the NRA on 2nd Ammendment issues. Given that the ACLU gets most of its support from the left and the NRA from the right, could one argue that the left wants the right to insult you and take your guns while the right wants the right to use those guns to silence people it doesn't like?

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MikePost wrote: 8h 24m ago

I believe the Supreme Court has never directly and specifically ruled on the 2nd Amendment phrase "a well regulated militia" so it will be interesting after all these years of gun control debates what the Court has to say about the phrase. Personally, if you want to be a strict constructionist, I doubt the framers ever envisioned that America would become so gun crazy with school children packing heat and government workers going postal. Parsing the "well regulated militia" phrase will be a difficult assignment for the justices, in my opinion. Time will tell.

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