RIGHT TO KEEP AND BEAR ARMS

We are all consumed with our daily lives and we have varying levels of awareness of what is going on in America and the world. And since 2016 is an election year the Republican and Democrat campaigns suck up much of our attention span. Recently a U.S. Supreme Court Justice, Antonin Scalia, died at the age of 79. "So what" most Americans would think, how will that affect me? Well as the readers of this column should know, the U.S. Supreme Court renders judgments that affect our rights and liberties, especially as they relate to our Second Amendment. The last two cases that we heard relating to the Second Amendment were both 5-4 decisions and Justice Scalia was in the majority on both and wrote the majority opinion on the *District of Columbia v. Heller in 2008*.

In his 1997 book, "A Matter of Interpretation," Scalia wrote that he viewed "the Second Amendment as a guarantee that the federal government would not interfere with the right of the people to keep and bear arms." This is evidence that Justice Scalia had given thought to the Second Amendment well before the *Heller* and *McDonald* cases.

Below is some of the text from Justice Scalia's majority opinion in the *Heller* case:

As the quotations earlier in this opinion demonstrate, the inherent right of self-defense has been central to the Second Amendment right. The handgun ban amounts to a prohibition of an entire class of "arms" that is overwhelmingly chosen by American society for that lawful purpose. The prohibition extends, moreover, to the home, where the need for defense of self, family, and property is most acute. Under any of the standards of scrutiny that we have applied to enumerated constitutional rights, banning from the home "the most preferred firearm in the nation to 'keep' and use for protection of one's home and family," 478 F. 3d, at 400, would fail constitutional muster.

In sum, ***we hold that the District's ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense.*** *Assuming that Heller is not disqualified from the exercise of Second Amendment rights, the District must permit him to register his handgun and must issue him a license to carry it in the home.*

We are aware of the problem of handgun violence in this country, and we take seriously the concerns raised by the many amici who believe that prohibition of handgun ownership is a solution. The Constitution leaves the District of Columbia a variety of tools for combating that problem, including some measures regulating handguns, see supra, at 54–55, and n. 26. But the enshrinement of constitutional rights necessarily takes certain policy choices off the table. These include the absolute prohibition of handguns held and used for self-defense in the home. Undoubtedly some think that the Second Amendment is outmoded in a society where our standing army is the pride of our Nation, where well-trained police forces provide personal security, and where gun violence is a serious problem. That is perhaps debatable, but what is not debatable is that it is not the role of this Court to pronounce the Second Amendment extinct. ***District of Columbia v. Heller****, 554 U.S. 570 (2008).*

So what does this mean for us as believers and protectors of our rights and liberties under the Second Amendment? It is the duty of the President to nominate a replacement for Justice Scalia and the approval falls to the U.S. Senate under the advice and consent clause. This is the battle that has been enjoined by President Obama and the Republican majority in the U.S. Senate.

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So the next justice could have profound impacts on the freedoms and liberties we hold dear. Another conservative justice and the opinions above remain law. A liberal justice and both *Heller* and *McDonald* could be revisited. So to get a glimpse into what a more liberal majority of the Supreme Court could hold for the Second Amendment, let's look at the minority opinions from the *Heller* case.

Justice Stevens writing for the minority:

Specifically, there is no indication that the Framers of the Amendment intended to enshrine the common-law right of self-defense in the Constitution.

"A well regulated Militia, being necessary to the security of a free State" The preamble to the Second Amendment makes three important points. It identifies the preservation of the militia as the Amendment's purpose; it explains that the militia is necessary to the security of a free State; and it recognizes that the militia must be "well regulated."

The parallels between the Second Amendment and these state declarations, and the Second Amendment's omission of any statement of purpose related to the right to use firearms for hunting or personal self-defense, is especially striking in light of the fact that the Declarations of Rights of Pennsylvania and Vermont did expressly protect such civilian uses at the time.

"To keep and bear Arms"

The term "bear arms" is a familiar idiom; when used unadorned by any additional words, its meaning is "to serve as a soldier, do military service, fight."

The stand-alone phrase "bear arms" most naturally conveys a military meaning unless the addition of a qualifying phrase signals that a different meaning is intended. When, as in this case, there is no such qualifier, the most natural meaning is the military one;

"[K]eep and bear arms" thus perfectly describes the responsibilities of a framing-era militia member.

When each word in the text is given full effect, the Amendment is most naturally read to secure to the people a right to use and possess arms in conjunction with service in a well-regulated militia.

http://www.supremecourt.gov/opinions/07pdf/07-290.pdf

This dear reader's is why we should care about the person who would fill Justice Scalia's vacancy. Let our Senators know how you stand and vote wisely in November.

Richard Stouder *– Oakridger48@msn.com*

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