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Supreme Court Decision Ignores Precedent, Common Sense

By Juliet A. Leftwich

Christmas came early for the NRA this year. The big gift: the Supreme Court's June 26 ruling in the case of District of Columbia vs. Heller, which struck down the District's decades-old handgun ban and held that the Second Amendment guarantees the right to possess a handgun in the home for self-defense.

The court did just what the gun lobby wanted - it disregarded long-standing judicial precedent (including a 1939 Supreme Court decision holding that the Second Amendment confers a right to bear arms only in the context of a well regulated state militia) and opened the floodgates to litigation challenging our nation's gun laws. It is ironic that Justice Antonin Scalia, writing for the narrow 5-4 conservative majority, has proved himself to be one of the so-called activist judges he has so harshly criticized in the past.

Fortunately, the Heller decision didn't entirely fulfill the gun lobby's wish list. The court found that the right secured by the Second Amendment is not unlimited, i.e., it is "not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." The opinion provides examples of permissible firearms laws, including those prohibiting the possession of firearms by felons and the mentally ill, and forbidding firearm possession in sensitive places such as schools and government buildings (the court would not want to suggest that the prohibition on guns in its own workplace would violate the Constitution). The court also found that laws imposing conditions on the commercial sale of firearms and banning dangerous and unusual weapons, such as M-16 rifles used by the military, would pass muster.

So the good news - if indeed good news can be found in an intellectually dishonest, outcome-driven decision by our highest court - is that Heller leaves the door open to a variety of gun laws. The bad news, however, is that the opinion provides no guidance whatsoever to lower courts regarding the standards they should use to review those laws.

Instead, the decision creates uncertainty where none existed before, inviting the gun lobby to file lawsuits and forcing litigants to battle it out in the courts on a haphazard, case-by-case basis. The first salvos in that battle were fired immediately after the Heller decision was issued, when the gun lobby sued San Francisco, Chicago and other Illinois cities that ban handgun possession (the San Francisco prohibition applies only to public housing).

Although the Heller case has changed the legal landscape surrounding gun regulation, it has not changed the realities surrounding gun violence in our nation. It has not changed the fact that more than 30,000 Americans die each year from firearm-related homicides, suicides and accidental shootings - an average of 80 gun deaths each day. It has not changed the fact that the rate of gun deaths in America is higher than in all of the other industrialized nations of the world, or that our gun laws are incredibly

weak when compared to the laws of those nations. It has not changed the fact that most Americans support commonsense laws to reduce firearm-related deaths and injuries. Nor has it changed the fact that many legislators throughout our country - particularly in cities and states most ravaged by gun violence - are willing to do battle with the NRA to secure passage of such laws.

As the rash of Heller-inspired lawsuits make their way through the courts, we can only hope that trial and appellate court judges will have the courage to stand up to the gun lobby, and the wisdom to make clear that our Constitution provides no excuse for allowing the needless bloodshed wrought by guns in our society to continue unabated. Too many lives depend on it.

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