

## Guns at Supreme Court for 96th Time

### *D.C. v. Heller Case Addresses Second Amendment, Again*

By Alan Korwin, Co-author, *Supreme Court Gun Cases*

The question posed by the Court is: "Whether [three gun-ban provisions of the D.C. Code] violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes."

The "news" media is fond of saying: the Supreme Court has rarely addressed the Second Amendment, everything they've said shows you have no rights, and the Heller case, argued on March 18, 2008, was the first gun case since Miller in 1939.

Like much of what you see and hear in the lamestream media, none of that is true.

The Court has used the word gun in some form (rifle, shotgun, pistol, Winchester, etc.) more than 2,900 times in its decisions. For two hundred years they have consistently recognized an individual right to keep and bear arms. I'm not making this up — I spent six years with two co-authors digging out the cases and putting them into a 672-page book.

Don't believe me? Look for yourself, every case is summarized at [gunlaws.com](http://gunlaws.com). But don't count on The New York Times to do it — they prefer to say the Court may find a "newly recognized right" (NYT, 3/19/08, Pg. 1) in the Heller case. Will someone tell them we've exercised this right for centuries? Fuggedaboutit, their hoplophobic gun hatred deafens them.

## The Trouble with "Enhanced" Driver's Licenses

Why remotely readable ID cards are a very bad idea

By Katherine Albrecht, Ed.D.

A number of U.S. states have begun working with the Department of Homeland Security to issue new remotely-readable driver's licenses to their residents. Known as the "Enhanced Driver's License," or EDL, the card is being promoted as a way to facilitate travel between the U.S. and Canada and Mexico. The dual-purpose card would serve both as a driver's license and as a passport card for all land and sea border crossings.

Washington, Arizona, Michigan, New York, and Vermont have already agreed to participate in the program. California and Texas have also been in talks with DHS regarding the plan.

The licenses will contain EPC Gen 2 RFID inlays, or antenna-microchip

Our capitol has the most restrictive gun laws in the nation. Since 1976, people cannot legally keep a working firearm at home (which, not surprisingly, hasn't stopped criminals). If you have one (handguns prior to 1976 are grandfathered), it has to be unloaded and disassembled or locked. If you put it together and load it, you're automatically a criminal — even if a criminal breaks in and you act in self defense. No exceptions. It's a perfect test case.

Well, the District's lawyer Walter Dellinger plainly said, in open court, the city would carve out an exception for self defense. It was pure joy to see him disemboweled over that, by Heller's lawyer Alan Gura who said that, first, your Honors, the law has no exception whatsoever, and second, in the two court cases where they had an opportunity to do that, they refused.

Poor Dellinger hadn't had enough, and in trying to claim the city's absolute ban was reasonable, said he could open a gun lock in three seconds. He stood humiliated as Chief Justice Roberts and Justice Scalia rebuked him, insisting you would also have to load the darn thing after unlocking it, and then Roberts got the biggest laugh of the day, noting that after you heard breaking glass you'd need to turn on a night light and find your reading glasses to work the tumblers.

The case attracted 47 briefs supporting the right to arms, and 19 against, more than any case in recent memory. Although 18 members of Congress signed on to deny these rights, 305 (250 representatives and 55 senators) signed on to vice president Cheney's brief in support of these civil and human rights. That brief was written by my co-author, Stephen Halbrook. My other co-author, David Kopel, was asked to sit as Dick

combinations, containing unique ID numbers that will link to a data record on each participating citizen. This remotely-readable tag will allow border agents to call up an individual's file and view his or her information on a computer screen while the person is still 20 or 30 feet away idling in a car.

While any form of RFID tag in an identity document would be problematic, it is especially difficult to understand why DHS selected the EPC Gen 2 tag for this application. The EPC Gen 2 standard is the most widely used commercial standard for RFID in the U.S., and readers that can scan them can be easily obtained. That means that anyone in possession of a reader can read an enhanced driver's license, as there is no encryption planned (or even possible) on this type of RFID tag.

There are numerous privacy problems associated with remotely readable, RFID-tags in driver's licenses:

- The use of a unique, persistent serial number associated with an individual creates the very real po-

tential for tracking. The number contained in an enhanced driver's license represents that individual consistently. This means that someone who wants to track Jane Smith, for example, need only scan her RFID driver's license once to learn that it emits unique serial number #234567. From that point forward, Jane's ID card serves as a beacon emitting that number wherever she goes to indicate her presence.

Heller's co-counsel and provide on-the-spot expertise. Me, I was just lucky (and honored) to get a reserved seat as a guest of the Court.

My friend Bob Blackmer, a CCW-instructor who suggested going in the first place, had to sleep out overnight to get in, and his story (along with pregame and postgame reports) has as much drama as the proceedings, detailed with pictures, also at [gunlaws.com](http://gunlaws.com) (along with links to everything and plain-English analysis that won't fit here). If he hadn't convinced me, I would have missed the most important gun case in the country's history.

It's the most important case because the Court is using it (hopefully) to put to rest what anti-rights advocates are doing to destroy RKBA. In recent decades, gun bigots have fabricated one lame invention after another to claim you have no rights — only the states are protected where it says "the right of the people," you only have rights if you're in the National Guard (a government-run military force invented in the early 1900s), and "people" really means "the collective." Review the briefs — the anti-rights ones tie largely to documents from the past few decades, the pro-rights ones go extensively back to writings contemporary with constitutional debates.

Among the finest results of this case so far, those briefs unequivocally inform the record. The truth, stellar research and facts are undeniably exposed. It will help stop the lying. Maybe.

Everyone wants to know how it will end, but nobody will until the decision arrives in June, and maybe not even then. The Justices seemed inclined to recognize an individual right, and to find D.C.'s ban in violation of that. But the decision will be complex, with concurrences and dissents, and its effect

on future legislation will only emerge over time. What new law will D.C. write if this one is overturned? What guidance will the High Court provide?

And therein lies the rub. Some limits are permissible (sorry, libertarians) even under strict scrutiny of "shall not be infringed." You can disarm a suspected felon upon arrest and in prison, without offending 2A. A sentence can be enhanced for threatening people

1774 in Boston, 2005 in New Orleans



Any Questions?

with a cavalry saber (or gun) during a robbery. But how much regulation is "reasonable"?

For me, the bright line's between exercise of rights and commission of crimes. A normal capacity magazine exactly like police use, bans on where you can carry (so-called known-to-be-dangerous fallacious "gun-free" zones), bans on tasteful, discreet carry in public by innocent women (or men), government mandated license/tax/test/expiration-date/required-papers/fingerprint/photo/magnetic-stripe — strike me as unreasonable limits on a fundamental right. Does the Court agree? We wait until June and then, it doesn't end, it begins.

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cense could be read through a wallet or purse. Radio waves travel easily through fabric, paper, leather, plastic — and even walls. Simply aiming a reader at an individual would return that person's unique ID number from an enhanced driver's license, right through a person's wallet, purse, pocket, or backpack. Readers in the environment would not need to be aimed. Simply walking through a reader-rigged doorway or passing by a stationary reader



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