

# **DISTRICT OF COLUMBIA V. HELLER – WILL IT BE “THE CULMINATION OF EVOLUTION” OF THE SECOND AMENDMENT’S INTERPRETATION DOCTRINES?**

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## **Key words**

Right to Keep and Bear Arms – Incorporation Doctrine – Individual Right – Collective Right – Well Regulated Militia – Second Amendment – Fourteenth Amendment – Due Process Clause – Privileges or Immunities Clause.

## **Resume**

*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.*

2<sup>nd</sup> Amendment to the American Constitution

The author of this article is focusing on interpretations of the Second Amendment to the American Constitution. Firstly, he aptly explains, which particular provisions and words of the Amendment in question create the most difficulties for interpretation. In this respect, he emphasizes the importance of carefully considering the incorporation doctrines that have an enormous relevance for the actual meaning of the Second Amendment’s rights. All three basic approaches to the incorporation theory are closely described in the article.

There are two major questions related to the “right to keep and bear arms”: (1) **Should this particular right be understood as a right of every single individual, or does it apply only to a “well regulated militia”?**; and (2) **Does the Second Amendment keep only the federal government from infringing on guaranteed rights, or does it apply to the governments of all individual states too?** The author of this article is presenting many different points of view for understanding the meaning of the “right to keep and bear arms”.

He demonstrates the evolution of interpreting the rights in question by looking at relevant judicial acts. The leading cases, such as: *United States v. Cruikshenk*, *Presser v. Illinois*, *United States v. Miller*, *United States v. Emerson*, and many others, are briefly described in the article and the author always pinpoints the most important connections among them. He clearly shows the slow, but continuous advancement in understanding the Second Amendment’s rights.

The recent case, *Parker v. District of Columbia*, is understood as a turning point to the mentioned interpretations of the “right to keep and bear arms”. The United States Court of Appeals for the District of Columbia was the first federal appeals court that ruled, that the “gun control law” in Washington D. C. had been infringing the “individual right to keep and bear arms”. The author of this article also points out some of the reactions and comments relevant to this judgment, which were done by famous American law professors and other specialists, including professors Chemerinsky, Tribe, Amar and others. The case, *Parker v. District of Columbia*, is now pending at the Supreme Court under the label *District of Columbia v. Heller*. The hearing started on March 18<sup>th</sup> and a final judgment is expected to be announced in Summer 2008.

The last chapter of the article deals with the theoretic and philosophic ideas and thoughts concerning **whether the “right to keep and bear arms” can be understood as one of the natural human rights, or if it should be read only as an expression of social standards and norms.**

Is the “right to bear arms” just a subgroup of the proprietary rights? Should it be understood as a social custom? Can we successfully limit this fundamental right? Do the “gun control laws” really have the expected results? Can the upcoming Supreme Court ruling answer all these questions? The author does not try to answer these questions, but

by giving the reader many quotes and ideas of prominent law professors, he provides to the reader a magnificent survey of all kinds of approaches to that issue.

The final part deals with the most prominent American politicians and their different kinds of approaches to the “right to keep and bear arms”. Which presidential candidate is the most tolerant to the Second Amendment’s rights? Who can we expect to criticize the “gun control laws” and who will be supportive to these regulations?

The author also highlights the different viewpoints of some American and European politicians’ thoughts on the issue. Although there are supporters of the “right to keep and bear arms” in Europe too, and opponents of these rights in USA, the general approach of Europeans and Americans to armed citizens can be shown on couple of quotes, that can serve as an example:

*“That the People have a right to keep and bear Arms; that a well regulated Militia, composed of the Body of the People, trained to arms, is the proper, natural, and safe Defense of a free state.”*

George Mason, American Statesman, One of the “Fathers of the Bill of Rights”

*“We in Europe have a different culture than in the United States and we do not consider the freedom to buy weapons a human right.”*

Gisela Kallenbach, Member of the European Parliament

*“No free man shall ever be debarred the use of arms.”*

Thomas Jefferson, Principal Author of the Declaration of Independence, 3<sup>rd</sup> President

*“Europe does not want to follow the route of U.S., where it is too easy for guns to fall into the wrong hands.”*

Alexander Alvaro, Member of the European Parliament

Generally, the aim of this article is to provide a reader with relevant and objective information regarding the Second Amendment’s rights, and to describe possible **bedrocks, which might serve the Supreme Court when they decide whether or not an individual has the right to “keep and bear arms”**.