

Supreme Court May Have the Chance to Affirm Individuals' Rights to Bear Arms

By Amy E. Wong



Although the Constitution says that U.S. citizens have certain “fundamental rights,” how far should the judicial system go to uphold these rights? After all, what was practical 200 years ago may seem very impractical today. Case in point: gun ownership.

Back in the day, our founding fathers stated in the Second Amendment, “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.” However, since weapons can be used both to destroy and protect, Second Amendment rights must be evaluated on a case-by-case basis.

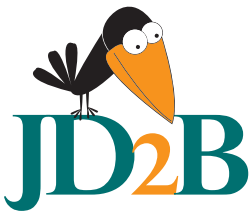
Today, the Supreme Court upholds a “reasonableness review” regarding gun owners. Evaluating individual gun owners is imperative when distributing firearms. After all, angry felons and minors should not have the same rights to bear arms as military and government officials.

We should be thankful that this “fundamental” right is not absolute and unchanging. Already, lax enforcement of the “reasonableness review” has led to many social catastrophes, such as the Columbine shooting and, on Monday, April 16, the deaths at [Virginia Tech](#). It's clear that there is a problem with the Second Amendment, but the remedy is not easily accessible.

In March, the U.S. Court of Appeals for the DC Circuit struck down a gun ban in a 2-to-1 vote, supporting an individual's right to bear arms over the collective right to bear arms. (Collective rights only apply to individuals in the military. In other words, they entail no individual rights.)

Many expect that the decision will be upheld in the Supreme Court. [Stephen Smith](#), professor at University of Virginia School of Law and guest speaker at a recent Federalist Society symposium, said that the case would be an “ideal vehicle” for the Bush administration to address the Second Amendment case in the Supreme Court.

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The major debate would concern whether the right to bear arms applies to individuals or to members of a militia. Some interpret the Second Amendment's first clause, "a well regulated Militia," as a limitation on an individual's right to bear arms. Others claim that "a well regulated Militia" is merely an introductory remark that explains an individual's right to bear arms.

Smith voiced strong doubts regarding a ban on firearms, saying at the April 5 conference, "The facts are just very, very strong in favor of recognizing at least a basic individual right to keep and bear arms." He continued, "I think the votes are there to recognize an individual right to keep and bear arms."

Thus far, the Supreme Court has not taken a position as to which view, collective or individual, is right. Smith predicted that when the Supreme Court hears the DC case, it will uphold the individual right to bear arms and that its ruling will have little effect on current laws unless the Court favors strict scrutiny of our current reasonableness review.

Requiring strict scrutiny, I think, would probably be the appropriate path to take, especially in light of the massacres we've seen. I do not think we should apply the Equal Protection Clause, because all men are not created equal. We should discriminate when we decide who gets to wield deadly weapons. We should exercise suspect classification.

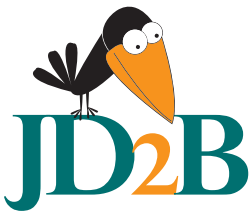
As I mentioned earlier, criminals, minors, and mentally unstable citizens should not have access to deadly weapons.

Those purchasing guns should be screened. They should have their guns registered. They should be checked up on.

I know the National Rifle Association (NRA) is going to throw a hissy fit over the idea of more restrictions. Necessitated registration would probably be an infringement on the fundamental right to bear arms, but I'm just thinking that this would be a reasonable precautionary measure toward ensuring public safety. People can own weapons if they prove that they are responsible.

Individuals should have the right to defend themselves and bear firearms. However, we should have strong national restrictions on criminals' rights in order to defend the public.

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I hope the DC case gets appealed in the Supreme Court. We've been skirting this issue for too long and ignoring important issues we should have addressed long ago. This is the Bush administration's opportunity to directly tackle the Second Amendment. I sure hope they take advantage of it.

The Supreme Court's ruling will have major repercussions for public safety. For more on this topic, please visit www.law.virginia.edu/html/news/2007_spr/smith.htm?type=feed.