



# NRA-ILA

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## The Supreme Court and the DC Gun Ban - Setting the Record Straight

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Now that the Supreme Court has agreed to review the decision of the U.S. Court of Appeals for the District of Columbia Circuit, in *District of Columbia v. Heller* (formerly *Parker v. District of Columbia*), which struck down three D.C. gun bans as unconstitutional, many newspapers are publishing editorials, opinion pieces, and letters to the editor that read suspiciously like the anti-*Parker* “essays” that the Brady Campaign has been posting on its website for the last few months.

Here are the main points to use when refuting the Brady Campaign’s erroneous claims:

**1. The Supreme Court’s decision in *Heller* may be limited.** The Supreme Court has said that its review of the Court of Appeals decision will be “limited to the following question: Whether [Washington, D.C.’s bans on handguns, on having guns in operable condition in the home, and on carrying guns within the home] 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 case doesn’t deal with carrying a gun away from home, doesn’t seek to overturn D.C.’s firearm registration law, and doesn’t seek to overturn other laws in D.C. or anywhere else.

**2. In *U.S. v. Miller* (1939), the Supreme Court recognized that the Right To Keep And Bear Arms is a right of private individuals.** It did not, as the District of Columbia claims, consider the Second Amendment to protect only a right to be armed while serving in a militia, or a “collective right” of a state to maintain a militia. As the Court of Appeals noted in *Parker*, the Supreme Court said in *Miller* that the militia consists of “civilians primarily, soldiers on occasion . . . bearing arms *supplied by themselves*.” (Emphasis added.)

**3. Under the Supreme Court’s decision in *U.S. v. Miller*, the District of Columbia’s ban on handguns is clearly unconstitutional.** As the Court of Appeals ruled, “the District’s claim runs afoul of *Miller*’s discussion of ‘Arms.’ The *Miller* Court concluded . . . that militiamen were expected to bring their private arms with them when called up for service. Those weapons would be ‘of the kind in common use at the time.’ There can be no question that most handguns (those in common use) fit that description then and now.”

**4. The Right To Keep And Bear Arms is clearly a right of individuals, because it existed prior to the Constitution.** Gun control supporters talk in terms of whether the amendment “creates,” “grants,” “establishes,” or “confers” a right, because to acknowledge that the amendment protects a right that existed before the government did, would amount to admitting that the right belongs not to government,

or those on duty in a government's militia, but instead belongs to private individuals. But, the amendment does not say, "the people *shall have* a right to keep and bear arms." It says, "*the* right of the people to keep and bear arms shall not be infringed." (Emphasis added.) As the Supreme Court said in *U.S. v. Cruikshank* (1876), "This is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The second amendment declares that it shall not be infringed."

**5. The Second Amendment protects The Right To Keep Arms, as well as the Right To Bear Arms.**

Brady claims that "the right to keep and bear arms" means only "the right to *bear* arms" (when on active duty in a militia), but that the Supreme Court should ignore the word "keep." But the Court of Appeals rejected the idea that "keep" has no meaning, saying "we do not take it seriously," and saying that it "mocks usage, syntax, and common sense," adding, "Such outlandish views are likely advanced because the plain meaning of 'keep' strikes a mortal blow to the collective right theory. . . .We think 'keep' is a straightforward term that implies ownership or possession of a functioning weapon by an individual for private use." Of course, to "keep" means "at home," precisely what is at issue in *Heller*.

**6. When the Second Amendment was written, it was universally considered to protect a private Right To Keep And Bear Arms.** The idea that the amendment protects a right to arms only when serving in a militia, or a so-called "right" of a state to have a militia, were first invented by activist lower courts in 1905 and 1943, respectively. Interestingly, the Brady Campaign adheres to both of the bogus theories, though they contradict one another.

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