



Americans Against Gun Violence
921 11th Street, Suite 700
Sacramento, CA 95814
(916) 668-4160
aagunv.org / info@aagunv.org

Opposition of Viewpoints

By

Mallory Doyle

St. Joseph High School, Trumbull, Connecticut

The enormity the position a Supreme Court judge carries a great deal of responsibility to its citizens to provide equal justice under the law. Their role serves not only as the protectors but the interpreters of the United States Constitution. This role should be held without bias and the decisions before them should be made on one underlying untenable understanding, those decisions should be made based on the facts, not feelings or popular opinion but most importantly that it supports and enforces the United States Constitution.

The Second Amendment states, "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." The interpretation of the Amendment as conferring a collective right of the people of the states to maintain armed militias for the common defense was untouched by the courts and unchallenged by serious historians and legal scholars for 200 years.

As the late Supreme Court Chief Justice Warren Burger alluded with his 1991 quote, there were concerns at the time that the gun lobby was fraudulently misrepresenting the Second Amendment as conferring an individual right to own guns unrelated to service in a well regulated militia. The Supreme Court had ruled in four previous cases (Cruikshank in 1876, Presser in 1886, Miller in 1939, and Lewis in 1980) that the Second Amendment did not confer such a right, and lower courts had affirmed the "collective right" interpretation of the Second Amendment in scores of other cases.

Beginning in the 1970's, the gun lobby began engaging in a long game to change the interpretation of the Second Amendment. Rather than challenge the Amendment directly through an effort to formally rewrite it, the gun lobby changed

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the way that people interpreted the amendment as it was originally written. Ultimately, in 2008, a narrow 5-4 majority of Supreme Court justices effectively rewrote the Second Amendment in the case of *District of Columbia v. Heller* in ruling that the first half of the Amendment was irrelevant to the second half and that the Amendment conferred an individual right to possess firearms independent of service in a state militia.

The gun lobby's successful campaign to change the interpretation of the Second Amendment was done in small increments over time, mostly by disseminating disinformation in the legal literature and in the popular media in support of the "individual right" interpretation of the Amendment. The gun lobby's propaganda campaign served several purposes, but mainly to lead the American public - and ultimately the Supreme Court - to ignore the "well regulated militia" part of the Second Amendment and to think of the Amendment as only "the right to bear arms."

This subtle influence made its way to the bench, and it is no surprise that the 5 justices that ruled in *District of Columbia v. Heller* were in fact nominated by Presidents that were members of the National Rifle Association, further supporting this tactic worked. It is apparent that these special interest groups had finally worn down and influenced the positions of the defenders of the Constitution.

Justice Burger was insightful and succinct in his observations, but more importantly, just as there was a change in opinions and viewpoints on the proper interpretation of the Second Amendment based on the gun lobby's disinformation campaign, the tides can just as easily change when accurate information is disseminated. The shift in the Supreme Court's interpretation of the Second Amendment based on the shift in the view of the Amendment in the court of public opinion is a dangerous precedent on the one hand, but it demonstrates an opportunity on the other hand for all of us to play a role in reversing the Court's egregious error. We all have a part in determining public opinion, and by openly discussing the true history and intent of the Second Amendment, we can all contribute to reversing what Justice Burger appropriately called "one of the greatest pieces of fraud - I repeat the word, 'fraud'- on the American public by special interest groups" that he had ever seen in his lifetime.