The Supreme Court handed down a historic decision on June 26, 2008, when it decided the *DC v. Heller* case. The judges struck down the handgun ban and gun lock-up requirement that had existed in the nation’s capital for more than 30 years, and in doing so, sent shockwaves through the gun-hating legal community.

With one stroke of the pen, the Supreme Court not only vetoed the most draconian ban on guns in the country, it refuted a myriad of myths that have been peddled by the gun control crowd for so many years.

Remember hearing that no court has ever used the Second Amendment to strike down a gun control law? Or how about this one: There is no individual right to keep and bear arms apart from membership in a militia … and guns should only be used by the military and police?

The Brady Bunch has peddled all of these myths for years and years prior to the *Heller* decision. But now, groups like the Brady Campaign to Prevent Gun Violence are scrambling for new talking points. The judges effectively dismantled each one these assertions in its 64-page majority opinion.

In fact, the Court spent an entire 54 of those pages analyzing the history behind the Second Amendment … and they got it right! Much of what they said could have been written by one of GOA’s staff attorneys:

- They clearly stated that the right to keep and bear arms is an “individual right” which is not dependent upon membership in a state militia (pp. 5-7, 11-12).
- The court recognized that keeping a despotic federal government from disarming the people was a central purpose of the amendment (pp. 24-26).
- The judges said that the Second Amendment right protects modern firearms — not just eighteenth century weapons — just as the First Amendment protects electronic communications (such as radio and TV) and the Fourth Amendment guards against current methods of seizing illegal information by using computers, listening devices, etc. (p. 8).

**Supreme Court sides with many of the principles in the GOA brief**

Gun Owners of America submitted an *amicus* brief in the *Heller* case and, among other things, urged the Court not to use the *Heller* case as a springboard to resolve the constitutionality of all of the nation’s firearms laws.

Were the Court to have done this, it could have been a disas-
Supreme Court Strikes Down DC Gun Ban
Continued from page 1

Court’s holding to the case before it.

In so doing, the U.S. Supreme Court followed GOA’s request to shoot down both the DC government and the Bush Administration on one important point — the mistaken idea that the Court should set a “standard” to “balance” our liberties against the government’s interest in enforcing restrictions.

Thankfully, the Court struck down the DC gun ban, simply ruling the ban was prohibited by the text of the Amendment. The majority said that the language elevates, above all other interests, the “right of law-abiding, responsible citizens to use arms in defense of hearth and home.”

Gun control advocates were clearly distraught by much of what the Court said.

Notable gun banner, Sen. Dianne Feinstein (D-CA), was quite upset, saying she was “profoundly disappointed” in the Court decision.

Paul Helmke, President of the Brady Campaign, lamented the Court’s decision, saying that it will most likely “embolden” gun rights activists to file “new legal attacks on existing laws.”

Supreme Court Justice Stephen Breyer — in his dissent — mourned that the majority opinion “threatens to throw into doubt the constitutionality of gun laws throughout the United States.”

Anytime these three gun haters are upset, gun owners should be happy.

GOA to continue going on the offensive

The Court’s ruling opens the door to future lawsuits that take direct aim at many different kinds of gun control laws around the country:

(1) Gun bans. By stating that handgun bans are unconstitutional at the federal level, the Court has given pro-gun activists the green light to challenge the types of bans — or de facto bans — to strike down, among other things, Jim Crow (state) laws that were denying firearms to blacks after the Civil War (pp. 41-44).

(2) Lock up your safety laws. Trigger locks, and other similar laws, are another type of restriction that could fall like dominos. The Court struck down DC’s requirement that honest citizens lock up their guns, because it prevents or delays the ability of gun owners to defend themselves (p. 58).

(3) Licensure laws. The Court’s opinion effectively “punted” on this

that exist in cities like San Francisco, Chicago and New York City.

Arguably, there are different jurisdictions involved — namely, striking a gun ban in a federal enclave (such as Washington, DC) versus a ban in a state or locality.

But it is interesting to note that the Court seemed to give credence to future efforts that would use the Second Amendment to strike down gun control restrictions in the states. The Court favorably reported on the Freedmen’s Bureau Act of 1866, the Fourteenth Amendment, and the Civil Rights Act of 1871 — all of which were intended to strike down, among other things, Jim Crow (state) laws that were denying firearms to blacks after the Civil War (pp. 41-44).

Finally, much has been made of the fact that the majority opinion only gained the ascendency on a mere 5-4 vote, suggesting that we were one just vote away from losing our Second Amendment rights.

Nothing could be further from the truth. The Supreme Court is not the final arbiter of what the Constitution means. Article VI of the U.S. Constitution stipulates three things as the “supreme law” of the land: the Constitution itself, constitutional laws passed by Congress and treaties made under the authority of the United States.

Notice, there is no mention of Supreme Court opinions in that list. So if and when the Supreme Court rules in a manner that is inconsistent with our supreme law, then as stated by former Chief Justice John Marshall (who served from 1801-1835), we can turn to the “appellate jurisdiction” in the Con-

“Supreme Court Justice Stephen Breyer mourned that the majority opinion “threatens to throw into doubt the constitutionality of gun laws throughout the United States.”

issue, simply stating that Heller’s attorney had conceded this point during oral arguments. The Court clearly said it would “not address the licensing requirement” (p. 59).

It is quite significant, however, that the Court did not lump licensing laws into the same batch of gun control laws that it thinks might pass constitutional muster in the future. This seems to indicate that the Court might, in fact, strike down a licensing law that is based on a Second Amendment challenge.

The GOA amicus brief was the only one that heavily emphasized the last four words of the Second Amendment — emphasizing that the right to keep and bear arms “shall not be infringed.”

Now that the Court has ruled the amendment protects an individual right, gun rights supporters can take the argument to the next step, stressing that this “enumerated constitutional right” (in the words of the Court) cannot be infringed without violating the constitutional text.

Remember the congressional veto

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The Washington Times
June 27, 2008

Gun ruling galvanizes groups

The NRA and Gun Owners of America both say they’re planning to use the ruling as a springboard to challenge state and local laws across the country.

“Certainly things like the Chicago handgun ban, which is very similar to what Washington, D.C., had — those are the kind of things we would want to look at,” said Erich Pratt, a spokesman for Gun Owners of America.

Mr. Pratt also noted comments by Justice Stephen G. Breyer that the decision “threatens to throw into doubt the constitutionality of gun laws throughout the United States.”

“When Justice Breyer is sad, we’re happy,” Mr. Pratt said.

— Erich Pratt, GOA Director of Communications

CQ Today Print Edition
Legal Affairs
June 26, 2008

Supreme Court Decision on Handguns Could Cause Numerous Lawsuits

The [Heller] decision also seems to leave room for challenges to other federal laws by gun rights advocates and criminal defense attorneys representing individuals charged with federal gun crimes.

For instance, said Mike Hammond, counsel for Gun Owners of America, bans on guns in schools might be acceptable, but federal statutes barring gun possession within 1,000 feet of schools or resulting enhancements in prison sentences might still be open to challenge.

“This is the beginning of the battle rather than the end,” Hammond said. “I suspect we’ll spend the next 50 years arguing over how narrow or how broad the loophole is.”

— Mike Hammond, GOA Legislative Counsel

National Public Radio
All Things Considered
June 26, 2008

Supreme Court Strikes Down D.C. Handgun Ban

“Well, that’s a distinction without a difference, to go after an ammunition ban while telling people they can still have a gun. [There is a right] to keep and bear arms, and I think we can plausibly argue that ammunition is part of having arms.”

— Larry Pratt, GOA Executive Director disputing that the Supreme Court opinion would allow for bullet bans.

OneNewsNow.com
July 18, 2008

DC defiant on 2nd Amendment ruling

Larry Pratt of Gun Owners of America is convinced that liberal, gun-hating politicians in the District have no intention of allowing law-abiding citizens to defend themselves from violent criminals.

“They’re making it so that, if you’re willing to crawl over glass and walk through concertina wire, then you might be able to get a license,” he says. “But, of course, that office will only be open between 2 and 4 on, maybe, a couple of days a week, or some such thing as that. So lots of luck.”

In addition to requiring trigger locks, in direct violation of the Supreme Court’s order, the District is conducting ballistic testing on guns submitted for licensing, in violation of a congressional ban on federal agencies creating any kind of gun owner registry. Pratt says it is time for Congress to force D.C. officials to comply with the Supreme Court’s ruling.

— Larry Pratt, GOA Executive Director

WorldNetDaily.com
July 18, 2008

Expert refutes 2nd government claim about automatic fire

[David Olofson] surrendered to federal authorities just a few weeks ago to begin serving his term, prompting the Gun Owners of America to issue a warning about the owner’s liability should any semi-automatic weapon ever misfire.

“A gun that malfunctions is not a machine gun,” Larry Pratt, executive director of GOA, said. “What the [federal Bureau of Alcohol, Tobacco, Firearms and Explosives] has done in the Olofson case has set a precedent that could make any of the millions of Americans that own semi-automatic firearms suddenly the owner [of] an unregistered machine gun at the moment the gun malfunctions.”

— Larry Pratt, GOA Executive Director

CNN
Lou Dobbs Tonight
July 2, 2008

Gun Owner Goes to Prison

[David Olofson] was allowed to turn himself in. He was accompanied by his father and by the executive director of the Gun Owners of America — the second largest gun lobby in America, which has taken over the legal representation of Olofson. He promised a vigorous fight on appeal.

“This issue is an enormous issue because we’re dealing with a rogue agency that’s a law unto itself and is behaving as if they are a law unto themselves,” Larry Pratt said. “And they don’t give a rip about any consequences because heretofore, they have never been held accountable for their misdeeds.”

The agency that Pratt is referring to is the Bureau of Alcohol, Tobacco, Firearms and Explosives....

— Larry Pratt, GOA Executive Director
Important Quotes from the Supreme

All quotations are from the majority opinion in DC v. Heller (2008)

An individual right

“Nowhere else in the Constitution does a ‘right’ attributed to ‘the people’ refer to anything other than an individual right…. We start therefore with a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans.” (pp. 6-7)

“Just as the First Amendment protects modern forms of communications … and the Fourth Amendment applies to modern forms of search … the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the found- ing.” (p. 8)

“The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it ‘shall not be infringed.’” (p. 19)

“Undoubtedly some think that the Second Amendment is outmoded in a society where our standing army is the pride of our Nation … [but] it is not the role of this Court to pronounce the Second Amendment extinct.” (p. 64)

DC’s gun ban is unconstitutional

“In sum, we hold that the District’s ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense.” (p. 64)

On other gun restrictions

“Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on long-standing prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” (p. 54)
Court’s Heller Decision

Second Amendment could impact state gun restrictions

“[Unfortunately], today’s decision ... threatens to throw into doubt the constitutionality of gun laws throughout the United States. I can find no sound legal basis for launching the courts on so formidable and potentially dangerous a mission.” (Stephen Breyer’s dissent, p. 44)

Anti-gun Jim Crow laws are unconstitutional

“Blacks were routinely disarmed by Southern States after the Civil War. Those who opposed these injustices frequently stated that they infringed blacks’ constitutional right to keep and bear arms.... The understanding that the Second Amendment gave freed blacks the right to keep and bear arms was reflected in congressional discussion of the [1866 Freedman’s Bureau Act].” (pp. 42-43)

Resisting tyranny

“There are many reasons why the militia was thought to be ‘necessary to the security of a free state,’ [among which is] when the able-bodied men of a nation are trained to arms and organized, they are better able to resist tyranny.” (pp. 24-25)

“The founding generation knew ... that the way tyrants had eliminated a militia consisting of all the able-bodied men was not by banning the militia but simply by taking away the people’s arms, enabling a select militia or standing army to suppress political opponents.” (p. 25)

Democrat Leadership in Both Chambers Attack Second Amendment

Continued from page 6

“They did take one amendment of mine and they eviscerated it, an amendment that dealt with Second Amendment rights, an amendment that dealt with all Second Amendment rights,” Rep. Bishop said on the House floor.

Yet, the issue at hand that is now part of the underlying bill only deals with hunting, not all Second Amendment rights.

“[I]f I’m hunting, I’m okay on this trail,” Bishop said. “If I’m trying to protect myself, I’m not. If a mugger tries to attack me, I cannot protect myself unless first I’m trying to hunt the mugger. Or if a moose is shot by me, I better shoot it in the posterior because if a moose is charging me, no longer is that hunting, that is now self-defense, and that is not allowed with the amendment that came in here....

“They did not defend all of the Second Amendment,” Bishop said pointedly, “only the so-called hunting rights, which is not, not the purpose of the Second Amendment.”

The dirty dealing in the House is not unlike what Senator Tom Coburn (R-OK) has experienced in the Senate. Earlier this year, Sen. Coburn entered into a so-called unanimous consent agreement with Senate Majority Leader Harry Reid to get a vote on the NPS gun ban. Sen. Reid broke his word to Coburn and blocked the vote on the gun ban repeal.

When Sen. Coburn continued to insist on getting a vote on his amendment, Sen. Reid invented the novel approach of the ‘Coburn Omnibus Bill.’ This would tie a bunch of bills together that Sen. Coburn has been holding and bring them to the floor as a package, in a transparent attempt to erode the widespread support that Sen. Coburn has from his colleagues.

Unless Sen. Coburn and others in Congress are successful in repealing the gun ban, the 600-mile Washington-Rochambeau trail will become another Second Amendment infringement zone, along with the rest of NPS-controlled land.
GOA Pushing Bill to Keep Innocent Gun Owners Out of Jail

*by Larry Pratt*

The federal government in this country is persecuting law-abiding gun owners, and David Olofson is its most recent victim.

When you read the details of the Olofson case on page 8, it becomes clear that Rep. Phil Gingrey’s “Fairness in Firearms Testing” bill is desperately needed. It will keep innocent people (like Olofson) out of jail as well as keeping the Bureau of Alcohol, Tobacco, Firearms and Explosives from putting manufacturers out of business “just because they feel like it.”

H.R. 1791 would require that an unedited video be made available during the testing of an item to determine if it is a machine gun. Namely, this would apply to cases where a gun is allegedly a machine gun, as well as to firearms and accessories submitted by manufacturers for such a determination.

If the Bureau rules that an item is not a machine gun, then it can be sold to the public. However, if it is ruled to be a machine gun, then it can only be sold to the government — assuming it was made after May 19, 1986.

Had an unedited video been made of each of the two testings of David Olofson’s rifle, there would have been no case against him. And had they tried to pull off a conviction, the tape would have caused the government’s case to blow up in its face.

Manufacturers and designers such as Historic Arms of Franklin, Georgia have experienced retaliation via absurd “testing” procedures at the Bureau, none of which are written down as agency standards.

In one case, an upper (universally considered not to be a firearm) was fastened to a desk and the bolt was tied back with a shoe string. The ATF (also known as The Gang) actually determined that the device — and the shoe string — was a machine gun.

The Bureau has also issued approval by John Velleco (Washington, D.C.) — Democrat leaders in both the House and Senate have thwarted efforts to repeal the National Park Service gun ban.

On July 10, the U.S. House of Representatives voted to designate the Washington-Rochambeau as a National Historic Trail, placing it under the jurisdiction of the Department of Interior and the National Park Service. The designation will have a significant impact on gun owners up and down the East Coast.

The Washington-Rochambeau trail stretches 600 miles from Rhode Island to Yorktown, Virginia. Gen. George Washington and French military leader Comte de Rochambeau used this route in 1781 in a march that ended with the defeat of British General Charles Corn-
**GOA Pushing Bill**
*Continued from page 6*

letters in several cases, then subsequent-
ly reversed their written opinions.
Their lack of standards has dealt serious
financial losses to manufacturers.

Gun Owners of America has seen
numerous examples of such arbitrary
“testing” procedures being used by ATF
to slam the door on innocent gun own-
ers.

For example, the Akins Accelerator
had ATF’s approval and was sold as a
non-firearm for six years. But the

Bureau later issued another letter
announcing it had been determined to
be a machine gun. The product was
called, but, of course, The Gang paid
for none of those costs.

Another manufacturer, Kristi Tool
and Ordnance, had its inventory of non-
gun parts confiscated by The Gang.
This confiscation has prevented the pur-
chase of these parts by gun owners who
— with just a little machining and
assembly — could use the parts to build
their own (legal) .45 caliber 1911 hand-
gun or AR-15 rifle. This assembly can
be done without registering such guns
with the ATF, if they are made for the
individual’s own personal use.

Well, there never have been any reg-
ulations, nor are there now, defining
when a pile of parts becomes a gun.
Nevertheless, The Gang refuses to
return the inventory, claiming that they
may still indict Rick Celata, the owner
of the company — even though it’s
been over two years now.

Thankfully, Rep. Gingrey’s H.R.
1791 will put an end to much of the
outrageous behavior that The Gang is
inflicting upon decent, law-abiding
Americans. GOA will soon be provid-
ing postcards for its members to insist
that their representatives cosponsor this
bill. Please stay tuned. ■

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**BATFE**
*Continued from page 8*

without a trigger. If you cock this not-
so-handy device, it fires uncontrollably
until empty. Not even a stupid bank
robber would choose such a weapon.
But then, we are talking about The
Gang.

When a court-recognized firearms
expert, Len Savage of Historic Arms,
was brought in by the defense, he was
not allowed to touch or test fire the
firearm. That is, not until the Bureau’s
agent at the trial broke the gun trying to
reassemble it and asked for Savage’s
help in putting it back together.

Olympic Arms had been subject to a
recall order by the BATFE in 1986.
Why? Because many of the guns
would fire a short burst and then jam.
Then it was a malfunctioning gun, but
now it is a machine gun. More out-
come-based procedures.

Why was this information not pre-
sented to the court? Because the truth-
challenged agents of The Gang told the
court that not even the judge could see
such privileged taxpayer information.
Right. Unhappily, Olympic Arms did
not have a copy of the order because
their plant burned down in 2000.

The judge displayed extreme preju-
dice during the sentencing hearing.
Olofson had successfully defended him-
self against anti-self defense local cops
who twice charged him while he was
openly carrying a handgun — some-
thing that is legal in Wisconsin! But
the judge stated that anybody who car-
ries a gun is dangerous, and he was
adding to the severity of the decision
because of the charges against which
Olofson had prevailed!

Among the unethical and illegal
actions of the government during the
trial, three things stand out.

First, the jury was not told that the
prosecution’s key witness — informant
Robert Kiernicki (Olofson’s neighbor
who borrowed the gun) — had been
paid several times by the government.
In other words, the jury had no way to
understand that Kiernicki had every rea-
son to say whatever The Gang wanted
him to say.

Second, the jury did not know that
the rifle had been tested twice. The
first test came back with a report that
the gun was just a semi-automatic. The
next test came back with the report that
the gun was a machine gun. The jury
never knew that the government back-
dated the second test to a date before
the criminal complaint. After all, the
complaint alleged that Olofson’s gun
was a machine gun, yet the only test up
until that point had found the gun to be
a mere semi-automatic.

Third, the jury was never told of U.S.
v Staples, a 1994 decision in which a
malfunctioning gun — an AR-15 just
like Olofson’s — had been deemed by
the U.S. Supreme Court to be a mal-
fuctioning gun, and not a machine gun
as the Bureau was alleging in Olofson’s
case.

Also, never forget that the judge also
denied Olofson’s firearms expert access
to the evidence used against him.
BATFE was allowed to video tape the
“test firing” of the firearm, not Olofson.
The tape shown in court was only a few
short seconds showing a gun at such a
distance that it was not possible to tell
that it was Olofson’s gun.

Had Rep. Phil Gingrey’s H.R. 1791
been law, it is safe to say that Olofson
would not have been convicted. Gin-
grey’s “Fairness in Firearm Testing Act”
would require an unedited video of
firearms testing in criminal cases to be
made available to the defense. This
was a requirement imposed on The
Gang by the U.S. Attorney in the U.S.
v. Glover case. When the video was
reviewed by the prosecution, they
dropped the case with prejudice (legal
speak which means the case can never
be brought up again).

Not only is Gun Owners of America
representing Olofson during his appeal,
we have set up an Olofson relief fund
so that his wife and mother of their
three young children will be able to
keep making her mortgage and car pay-
ments.

Those interested in making a small
monthly donation from a charge to their
credit card can go to
www.gunowners.org/olofson.htm or call
GOA and arrange over the phone to
have this done. All funds so collected
will go toward the monthly payments,
or if possible, to prepayment of the
principal loan amounts. The automatic
donations will cease when Olofson is
out of prison or when the donor
instructs GOA to discontinue them.

It is outrageous that an innocent man
is in jail, but we are hoping to minimize
the ugly impact of that on his family. ■
The Gun Owners

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Vice-Chairman

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