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**Handgun Madness at the U.S. Supreme Court  
Color of Law  
By David A. Love, JD  
BlackCommentator.com Editorial Board**

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*"I loves my gun! Loves my gun!"*

*-"A Brief History of the United States of America," Bowling For Columbine (2002)*

Recently, in [District of Columbia v. Heller](#), the U.S. Supreme Court showed how extreme it can really get by overturning as unconstitutional the District of Columbia's gun control law.

But the high court went even further by declaring for the first time that the Second Amendment right to bear arms is an individual right and not merely a collective right.

The D.C. law banned handgun possession by making it unlawful to carry an unregistered firearm, and prohibiting the registration of handguns. The law also authorized the police chief to issue 1-year licenses, and required residents to keep lawfully owned firearms unloaded and disassembled or trigger locked.

The Second Amendment to the U.S. Constitution states that "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." Perhaps to some, it reads as a vague and anachronistic eighteenth century pronouncement that does not address the problems of twenty-first century America.

In the court's intellectually deficient majority opinion, Justice Antonin Scalia demonstrated that if you want a particular outcome in a case, all you have to do is make up the reasons for coming to that conclusion out of thin air, or out of any other location of your choosing. Scalia decided to ignore the introductory portion of the amendment regarding "A well regulated Militia," or at the very least deny its importance, and conclude that "bear arms" applies to everyone, not just military purposes. "We start therefore with a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans," Scalia wrote.

For all of the talk from conservatives decrying liberal activist judges who legislate from the bench, Scalia's decision is a prime example of rightwing activism of an unreasonable variety.

In his dissenting opinion, Justice Stevens, joined by Justices Souter, Ginsburg and Breyer, took note of the court's longstanding position in *United States v. Miller*, 307 U.S. 174 (1939), that the Second Amendment "protects the right to keep and bear arms for certain military purposes, but that it does not curtail the Legislature's power to regulate the nonmilitary use and ownership of weapons." Stevens added that Scalia's opinion failed to present any evidence that the amendment was intended to limit the power of Congress to regulate civilian use of guns:

The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia. It was a response to concerns raised during the ratification of the Constitution that the power of Congress to disarm the state militias and create a national standing army posed an intolerable threat to the sovereignty of the several States. Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature's authority to regulate private civilian uses of firearms. Specifically, there is no indication that the Framers of the Amendment intended to enshrine the common-law right of self-defense in the Constitution.

*-Justice Stevens' dissent, pp. 1-2.*

In his dissent, Justice Breyer noted that the D.C. law did not violate the Second Amendment, but rather protected an important interest - dealing with the life-threatening presence of firearms in our cities. He invoked the sobering statistics on handgun-related crimes, deaths and accidents in the District and in the nation as a whole, statistics which the D.C. council took into consideration when they enacted the law. (Once the law was enacted, according to one public health study, the city witnessed a decrease in gun-related deaths.) Breyer feared that this decision would open make gun control laws throughout the nation susceptible to constitutional challenges:

At the same time the majority ignores a more important question: Given the purposes for which the Framers enacted the Second Amendment, how should it be applied to modern-day circumstances that they could not have anticipated? Assume, for argument's sake, that the Framers did intend the Amendment to offer a degree of self-defense protection. Does that mean that the Framers also intended to guarantee a right to possess a loaded gun near swimming pools, parks, and playgrounds? That they would not have cared

about the children who might pick up a loaded gun on their parents' bedside table? That they (who certainly showed concern for the risk of fire...) would have lacked concern for the risk of accidental deaths or suicides that readily accessible loaded handguns in urban areas might bring? Unless we believe that they intended future generations to ignore such matters, answering questions such as the questions in this case requires judgment - judicial judgment exercised within a framework for constitutional analysis that guides that judgment and which makes its exercise transparent.

...Far more important are the unfortunate consequences that today's decision is likely to spawn. Not least of these, as I have said, is the fact that the 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. In my view, there simply is no untouchable constitutional right guaranteed by the Second Amendment to keep loaded handguns in the house in crime-ridden urban areas.

*-Justice Breyer's dissent, pp. 43-44.*

Gun violence is a serious American problem. In previous Color of Law commentaries, I have discussed this country's longstanding love affair with the gun (see ["Those Who Live By The Gun..."](#), April 26, 2007), with particular attention paid to my city of Philadelphia, where handgun violence has taken a heavy toll in terms of loss of life (see ["Black Men are Dying in Philly,"](#) September 6, 2007, and ["Philly's 10,000 Men Must Join a Broader Movement for Social Justice,"](#) October 25, 2007). Common sense and decency dictate that the level of gun violence in the U.S. is incompatible with a stable, safe and healthy society. And certainly America's gun proliferation flies in the face of international human rights standards.

In a country such as the U.S. - with its long history of the gun as a tool of violence, oppression and genocide against African Americans and Native Americans, against women as victims of domestic violence who had few rights as far as the law and their husbands were concerned, and against defenseless children at home and in unjust wars of aggression abroad - the continued fascination with and accessibility of guns is troubling. This, in a nation with entrenched deprivation and poverty, a dearth of career opportunities yet a surplus of idle time for millions of young men, and widespread cases of mental illness that go undiagnosed and untreated. Consider that [over half of the nation's 30,000 annual gun deaths are suicides](#), according to the Centers For Disease Control and Prevention. Ninety percent of gun-related suicides are successful, as opposed to 2 percent of drug overdoses. And when guns are in the home, there is a much greater likelihood that someone in the home will die of a homicide (three times, according to the New England Journal of Medicine) or suicide (five times, according to the Journal of Trauma).

Plus, according to the [Brady Campaign to Prevent Gun Violence](#), gun violence, which claims 80 lives each day and wounds another 200, costs the U.S. \$100 billion each year in medical costs, mental health treatment and rehabilitation, loss of productivity, and legal and judicial costs. Meanwhile, firearms are the second leading cause of death for young people 19 and under in America, after auto accidents. In 2005, 81 percent of murder victims between the ages of 12 and 24 years were killed with a gun. 3,027 young people were killed by firearms in the U.S.-- 1,972 were murdered, 822 committed suicide, and 173 died in unintentional shootings.

And that year, according to data from the [National Center for Injury Prevention and](#)

[Control](#), guns were responsible for 52 percent of injury deaths for Black teens, 29 percent for Latino teens, 22 percent for Native American teens, 19 percent for Asian teens, and 17 percent for White teens.

One point which the justices failed to mention is that this madness continues thanks to the undue influence of the gun lobby and the arms manufacturers in U.S. politics, most prominently represented by the National Rifle Association (NRA). And already, the gun lobby has been emboldened by this regressive Supreme Court decision. Gun advocates are suing for [the right to carry guns at Atlanta's Hartsfield-Jackson International Airport](#), the world's busiest airport with 89 million passengers annually. This comes after the city of Atlanta declared the airport a "gun-free zone", following the passage of a Georgia state law allowing licensed gun owners with background checks to carry concealed weapons on public transportation, in parks and recreation areas and restaurants that serve alcohol. To the reasonable observer, the words "gun," "alcohol" and "Georgia" in the same sentence are problematic, given the track record.


More shocking is a law passed by the Florida legislature in 2008 which [allows people with concealed weapons permits to lock their guns in their cars at work](#). Once again, reasonable minds should agree that guns at the workplace are a potentially deadly combination, particularly when those workplaces are resorts and amusement parks which thousands of families visit at a given time. Walt Disney World maintains that the law does not apply to their 60,000 employees, leading to immediate action by the NRA, which called Disney a "prime offender when it comes to firing employees for exercising Second Amendment rights." The Florida business community is challenging the state law, and they should: 77 percent of workplace homicides are gun related, as the Brady Campaign reports. Murder is the leading cause of injury-related deaths of women in the workplace, and workplaces where guns are permitted are 5 to 7 times more likely to experience workplace homicide.

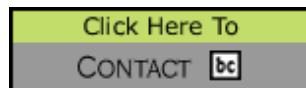
If guns don't kill people, then certainly extremist laws and court decisions do. All of this should remind us that, the corrupting influence of money in politics notwithstanding, elections do matter. We get whatever we voted or didn't vote for, and the next president has the potential to change the ideological balance of the Supreme Court.

**BlackCommentator.com** Editorial Board member, David A. Love, JD, is a lawyer and journalist based in Philadelphia, and a contributor to the [Progressive Media Project](#), [McClatchy-Tribune News Service](#), [In These Times](#) and [Philadelphia Independent Media Center](#). He contributed to the book, [States of Confinement: Policing, Detention, and Prisons](#) (St. Martin's Press, 2000). Love is a former Amnesty International UK spokesperson, organized the first national police brutality conference as a staff member with the Center for Constitutional Rights, and served as a law clerk to two Black federal judges. His blog is [davidalove.com](#). Click [here](#) to contact Mr. Love.

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