United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 04-7041 **September Term, 2007**

03cv00213

Filed On: September 25, 2007

[1069215]
Shelly Parker, et al.,
Appellants

v.

District of Columbia and Anthony A. Williams, Mayor of the District of Columbia,
Appellees

BEFORE: Henderson[1] and Griffith, *Circuit Judges*, and Silberman, *Senior Circuit Judge.*

O R D E R

Upon consideration of appellants' motion to lift stay of mandate and the opposition thereto, it is

ORDERED that appellants' motion to lift (partially) our stay of mandate be denied. Appellants' contention is that appellees' petition for certiorari concedes the unconstitutionality of D.C. Code Section 7-2507.02 as it requires the disassembling of shotguns and rifles or the placement of trigger locks, making such arms practically useless for self defense.[2] Therefore, appellants argue, our mandate holding this provision unconstitutional should issue. But our opinion does not specifically address the constitutionality of that statute as it applies to shotguns and rifles because the only plaintiff we concluded had standing under our precedent was Dick Heller, who complained solely about the restrictions on ownership and use of a handgun. *Parker*, 478 F.3d 370, 373-76 (D.C. Cir. 2007). At least one other plaintiff (Gillian St. Lawrence) did address Section 7-2507.02 as it applied to shotguns but she did not have the same injury as Heller – the denial of a license. *Id*. To be sure, as our opinion suggested, the Supreme Court may well disagree with *Seegars*, 396 F.3d 1248 (D.C. Cir. 2005), and conclude that all the plaintiffs

[1] Judge Henderson concurs in the denial of the motion.

[2] Appellants' motion does not mention the other provisions we held unconstitutional with regard to handgun possession – D.C. Code Sections 22-4504 and 22-4506 – nor does the District in its opposition.

have standing.

In any event, the District's petition for certiorari makes an alternative argument not presented in our court – that the District's ban on handguns can be justified so long as rifles and shotguns can be utilized in the home for self protection. The Supreme Court, if it should reach that argument – and conclude it was constitutional to ban handguns in the home if long guns were permitted – would necessarily be obliged to consider the impact of Section 7-2507.02, since a disassembly or trigger lock requirement might render a shotgun or rifle virtually useless to face an unexpected threat.[3]

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

By:
Nancy G. Dunn
Deputy Clerk

[3] The District of Columbia Council never contemplated the specific use of a rifle or shotgun in that situation. Had the Council contemplated such, it would, perforce, have had to consider the danger posed by a rifle's range and a shotgun's pellet spread, as well as the difficulty one would have handling such long weapons in enclosed spaces – particularly by smaller individuals. Appellees' brief at 17 did suggest that any gun (including a pre-1976 legal handgun) might be used in self defense in a "true emergency," otherwise described as "genuine imminent danger." But the Code does not allow for such, nor did the District ever specify how one would define the circumstances under which one could assemble or unlock a rifle or shotgun to face a "true emergency" (professionals might well be amused at such a hypothetical). The truth is that neither the Code nor the District, in this litigation, ever suggested that a rifle or shotgun, as opposed to a handgun, could be legally employed in self defense.