

UNITED STATES COURT OF APPEALS  
FOR DISTRICT OF COLUMBIA CIRCUIT

SEP 24 2007

**IN THE UNITED STATES COURT OF APPEALS  
RECEIVED FOR THE DISTRICT OF COLUMBIA CIRCUIT**

SHELLY PARKER, *ET AL.*,  
*Appellants,*

v.

DISTRICT OF COLUMBIA, *ET AL.*,  
*Appellees.*

No. 04-7041

### OPPOSITION TO MOTION TO LIFT STAY OF MANDATE

On May 24 and July 26, 2007, with the agreement of counsel for Dick Anthony Heller, the only appellant in this case held to have standing, this Court properly exercised its discretion to enter orders staying issuance of the mandate pending the filing of a petition for a writ of certiorari by the District of Columbia and its Mayor, Adrian M. Fenty. On September 4, the District appellees filed a timely petition in the Supreme Court (No. 07-290).<sup>1</sup> On the same day, they filed a letter with this Court informing it of the petition pursuant to F.R.A.P. 41(d)(2)(B). Given that this rule provides that a timely petition and letter result in the continuation of a previously granted stay “until the Supreme Court’s final disposition,” a reasonable expectation arose that the status quo would remain in effect until the Supreme Court finally disposes of this case.

Contrary to that expectation and without citing a single case in which any court has altered a stay of the mandate in a case pending before the Supreme Court, Heller now urges this Court to lift its stay in part and issue a partial mandate because, he contends, the District has conceded the unconstitutionality of one particular provision of its gun-control regulatory

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<sup>1</sup>A copy of the petition, without the appendix, is attached.

scheme. His reasons for seeking such relief are unsound and his motion should therefore be denied.

1. The question presented in the petition for certiorari is: "Whether the Second Amendment forbids the District of Columbia from banning private possession of handguns while allowing possession of rifles and shotguns." Pet. i. The petition urges that the decision of this Court invalidating the District's handgun ban is wrong for three independent reasons: (1) "the text and history of the Second Amendment establish that it protects weapons possession and use only in connection with service in state-regulated militias"; (2) "even if there is a right to possess and use weapons unrelated to militia service, the Second Amendment restricts only federal interference with state-regulated militias and state-recognized gun rights"; and (3) "in any event," the District's handgun ban "does not infringe whatever right the Second Amendment could be read to protect, because it is eminently reasonable to permit private ownership of other types of weapons, including shotguns and rifles, but ban the easily concealed and uniquely dangerous modern handgun." Pet. 2. Thus, contrary to Heller's contention, the question presented in the petition substantially encompasses the arguments the District and Mayor Fenty stated they "potentially would present" in seeking a stay of the mandate in this Court. Motion to Lift Stay of Mandate 3 (quoting Appellees' Unopposed Motion for Stay of Mandate 2); see Pet. 2, 11-30.

The petition states that D.C. Code § 7-2507.02, which requires firearms kept at home to be "unloaded and disassembled or bound by a trigger lock or similar device," does "not