



Legislative Bulletin.....September 16, 2008

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H.R. 6842—National Capital Security and Safety Act

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Order of Business: The bill is scheduled to be considered on Tuesday, September 16th, likely subject to a modified closed rule allowing for the consideration of one amendment in the nature of a substitute (summarized below). The RSC will summarize any additional amendments made under the rule in a separate document.

Background: On June 26, 2008, the Supreme Court of the United States affirmed, in a 5-4 decision, the ruling of the U.S. Court of Appeals for the D.C. Circuit in *Parker v. District of Columbia* (re-cast as *District of Columbia v. Heller* before the Supreme Court), that the U.S. Constitution’s Second Amendment protects a private, individually-held right to keep and bear arms, unconnected with a person’s relationship to a militia. The Supreme Court held that the Second Amendment does not protect a right to possess arms *only* while in service in a militia or a “state’s right” to maintain a militia.

Thus, the Court, in the *Heller* case found that DC’s handgun ban and unloaded/trigger-lock requirement (as applied to self-defense) violate the Constitution. The *Heller* decision states: “The District’s total ban on handgun possession in the home amounts to a prohibition on an entire class of ‘arms’ that Americans overwhelmingly choose for the lawful purpose of self-defense. Under any of the standards of scrutiny the Court has applied to enumerated constitutional rights, this prohibition—in the place where the importance of the lawful defense of self, family, and property is most acute—would fail constitutional muster. Similarly, the requirement that any lawful firearm in the home be disassembled or bound by a trigger lock makes it impossible for citizens to use arms for the core lawful purpose of self-defense and is hence unconstitutional.”

The decision also provides this background on the case:

The District of Columbia generally prohibits the possession of handguns. It is a crime to carry an unregistered firearm, and the registration of handguns is prohibited. See D. C. Code §§7–2501.01(12), 7–2502.01(a), 7–2502.02(a)(4) (2001). Wholly apart from that prohibition, no person may carry a handgun without a license, but the chief of police may issue licenses for 1-year periods. See §§22–4504(a), 22–4506. District of Columbia law also requires residents to

keep their lawfully owned firearms, such as registered long guns, “unloaded and disassembled or bound by a trigger lock or similar device” unless they are located in a place of business or are being used for lawful recreational activities. See §7–2507.02.

Respondent Dick Heller is a D.C. special police officer authorized to carry a handgun while on duty at the Federal Judicial Center. He applied for a registration certificate for a handgun that he wished to keep at home, but the District refused. He thereafter filed a lawsuit in the Federal District Court for the District of Columbia seeking, on [Second Amendment](#) grounds, to enjoin the city from enforcing the bar on the registration of handguns, the licensing requirement insofar as it prohibits the carrying of a firearm in the home without a license, and the trigger-lock requirement insofar as it prohibits the use of “functional firearms within the home.”

To read National Rifle Association highlights from the *Heller* decision, go [here](#).

To read the *Heller* decision itself (as well as the dissent), go [here](#).

The District of Columbia Home Rule Act, enacted in 1973, delegated certain legislative powers from the federal government to the DC government, authorized the election of certain local officials by DC residents, granted DC the powers of local self-government, reorganized the structure of the DC government, and “relieve[d] Congress of the burden of legislating upon essentially local District matters.” The Home Rule Act explicitly retained for Congress “the ultimate legislative authority over the nation’s capital” granted by Article I, Section 8 of the Constitution. For more information on the Home Rule Act, go [here](#).

Note: Article I, Section 8, Clause 17 of the U.S. Constitution, in reference to the District of Columbia, gives Congress the authority “to exercise exclusive Legislation in all Cases whatsoever, over such District....” Some conservatives have questioned the constitutionality of Congress delegating some of this legislative authority, since a simple law cannot change the Constitution.

Summary: H.R. 6842 would require the Mayor and City Council of the District of Columbia (DC), within 180 days of this bill’s enactment, to revise DC’s laws and regulations that govern the use and possession of firearms, as necessary to comply with the requirements of the U.S. Supreme Court decision in *District of Columbia v. Heller*.

The bill also includes several findings about the importance of the Metropolitan Police Department’s collaboration with federal agencies in preventing terrorist and other attacks on people and infrastructure in the DC metro region, about DC’s dual role as a local jurisdiction and the federal city, about the role of handguns in the city’s and the nation’s most “frequent” and “dangerous” attacks, and the importance of still regulating firearms in DC.

The findings also note that, “Congress should allow the District of Columbia the opportunity to enact statutes and promulgate regulations, while preserving the Federal right to intervene under the District of Columbia Home Rule Act if federally protected individuals or the Federal presence are exposed to risk.”

RSC Bonus Fact: As the National Rifle Association points out, since D.C. imposed its firearms-restrictions laws in 1976, it has earned the unfortunate distinction, “murder capital of the United States.” D.C.’s murder rate had been declining before 1976, but it increased sharply thereafter. Between 1976 and 1991, DC’s murder rate rose 200%, while the U.S. murder rate rose only 9%. (Source: *FBI and the D.C. Police, as cited by the National Rifle Association*)
<http://www.nrila.org/Issues/FactSheets/Read.aspx?id=72>

Summary of Amendment in the Nature of a Substitute Likely to Be Made in Order under the Rule: According to reports, the rule for H.R. 6842 will make in order an amendment in the nature of a substitute that is identical to the [text of H.R. 6691](#). Highlights of this substitute are as follows:

- Forbids the DC Council, the Mayor, or any governmental or regulatory authority of the District of Columbia from prohibiting, constructively prohibiting, or unduly burdening the ability of persons not prohibited from possessing firearms under federal law from acquiring, possessing in their homes or businesses, or using for sporting, self-protection, or other lawful purposes, any firearm neither prohibited by federal law nor subject to the National Firearms Act.
- Prohibits the District of Columbia from enacting laws or regulations that discourage or eliminate the private ownership or use of firearms.
- Repeal DC’s ban on semi-automatic handguns. (The National Rifle Association points out that semi-automatic handguns have been the most commonly purchased handguns in the United States over the last 20 years, and therefore a ban on those firearms is unconstitutional in the context of *Heller*.)
- Repeals the current D.C. registration system that requires multiple visits to police headquarters, ballistics testing, passing a written test on D.C. gun laws, fingerprinting, and limiting registration to one handgun per 90 days.
- Retains the illegality in DC of possessing or using sawed-off shotguns, machine guns, and short-barreled rifles.
- Repeals DC’s requirement that firearms be unloaded, disassembled, or secured with a trigger lock in the home.
- Repeals DC’s handgun ammunition ban.
- Repeals the criminal penalties for possessing an unregistered firearm and for carrying a pistol whether loaded or unloaded in one’s dwelling, place of business, or on land possessed by such person.
- Creates an exemption to the federal ban on interstate handgun sales by allowing DC residents to purchase handguns in Virginia and Maryland. (The National Rifle Association notes that currently there are no firearms dealers in DC, and the federal ban

prohibits DC residents from purchasing handguns outside of the District. Therefore, DC residents have no means of purchasing handguns.)

The substitute also includes findings that closely mirror the language in the *Heller* decision regarding the right to keep and bear arms as an individual, private right, as well as findings that indicate that DC already has laws against the possession of illegal use of firearms by violent criminals and felons and that the DC government still plans to “unduly” restrict law firearms possession and use in the District.

This amendment and H.R. 6691 are [nearly identical to H.R. 1399](#) (except that H.R. 1399 lacks the interstate gun-purchase provision). H.R. 1399, which was introduced on March 8, 2007, has [248 co-sponsors](#), while H.R. 6691, which was introduced on July 31, 2008, has [116 co-sponsors](#).

Committee Action: On September 9, 2008, H.R. 6842 was introduced and referred to the Oversight and Government Reform Committee, which, on the subsequent day, marked up and ordered the bill reported to the full House by a vote of 21-1.

On July 31, 2008, H.R. 6691 was introduced and referred to the Judiciary Committee and the Oversight and Government Reform Committee, neither of which took official action on the bill.

Administration Position: Although a Statement of Administration Policy (SAP) was not available at press time, reports indicate that a SAP supporting the likely amendment in the nature of a substitute (H.R. 6691), yet opposing the underlying text of H.R. 6842 as inadequate, is forthcoming.

Cost to Taxpayers: CBO confirms that H.R. 6842 would have no effect on the federal budget. Since H.R. 6691 (the presumed amendment in the nature of a substitute) is the same as H.R. 6842 plus the language allowing DC residents to make gun purchases in Virginia and Maryland, H.R. 6691 would also have no effect on the federal budget.

Does the Bill Expand the Size and Scope of the Federal Government?:

H.R. 6842: No.

H.R. 6691: No, the bill would reduce the scope of the federal and DC governments.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector

Mandates?: No. Article I, Section 8, Clause 17 of the U.S. Constitution, in reference to the District of Columbia, gives Congress the authority “to exercise exclusive Legislation in all Cases whatsoever, over such District....”

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited

Tariff Benefits?: An earmarks/revenue benefits statement required under House Rule XXI, Clause 9(a) was not available at press time. RSC staff review found that neither bill contains any earmarks, limited tax benefits, or limited tariff benefits.

Constitutional Authority: A committee report citing constitutional authority was not available at press time. Article I, Section 8, Clause 17 of the U.S. Constitution, in reference to the District

of Columbia, gives Congress the authority “to exercise exclusive Legislation in all Cases whatsoever, over such District....”

Outside Organizations: The National Rifle Association and Gun Owners of America both support H.R. 6691 but **oppose** the committee-reported text of H.R. 6842, regarding it as wholly inadequate and not worth passing.

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