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The Second Amendment: The Right to Bear Arms *By Kerri Nicley, Junior, Pre-Early Childhood Education*

The controversy surrounding the Second Amendment is rooted in its very wording. The Second Amendment states, "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." According to Justice Antonin Scalia, the "most natural reading of 'keep Arms' in the Second Amendment is to 'have weapons,'" against which few people would argue. Where the controversy lies is with the first clause, "A well regulated Militia."

The United States at one time had a militia, or a citizen army. The Second Amendment was likely a response to the concerns of the people about a strong central government, which colonists staunchly opposed and which could have forced the states to disarm their militias. Without a militia, the government could have grown too large, and it would have been extremely difficult to overthrow. The Second Amendment ensured that the people would have a way to protect themselves from a too-powerful government. Citizens not only were permitted to own "arms" but were encouraged to own them. The government did not necessarily have a storehouse of arms if there were an invasion or if the government were overthrown, which meant in many cases it was the responsibility of individuals to have their own weapons with which to fight. Eventually, however, a professional army was created, eliminating the need for a militia. The professional army of today provides weapons to its soldiers and does have storehouses of arms. This leads those who believe in the collective right to bear arms to think that the Second Amendment protects the rights of the army to keep weapons, not the individual.

The Supreme Court rarely hears cases involving the Second Amendment. In 2008, the court rendered an opinion in *District of Columbia v. Heller*. Prior to the *Heller* case, the last Second Amendment case to be heard was in 1939 in *United States v. Miller*. There, Jack Miller felt that there was a conflict between the National Firearms Act (NFA) and the Second Amendment when he and Frank Layton were accused of transporting a firearm between Oklahoma and Arkansas.

According to the NFA, the firearm was to be registered. Miller's firearm was not. Miller argued that the NFA was not a revenue measure but an attempt to "usurp police power reserved to the States, and is therefore unconstitutional." The firearm in question was a "double barrel 12-gauge Stevens shotgun having a barrel less than 18 inches in length," which the court decided was not "part of the ordinary military equipment or that its use could contribute to the common defense." In his opinion for the Court, Justice James McReynolds made clear that "in the absence of any evidence tending to show that the possession or use of a 'shotgun having a barrel of less than eighteen inches in length' at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument." Therefore, the Supreme Court found in a unanimous decision that the NFA was not in violation the Second Amendment. As a result, it seemed regulating firearms was constitutional.

Both gun-rights and gun-control advocates claim that *Miller* supports their positions. Gun-rights advocates believe *Miller* protects the individual right to keep and bear arms that have some "reasonable relationship to the preservation or efficiency of a well regulated militia." In other words, in their opinion, individuals have the right to keep arms that may be considered ordinary military weapons. Gun-control advocates feel that the Supreme Court permitted gun-control and possibly gun bans by stating that the 12-gauge shotgun carried by Miller was not necessarily protected by the Second Amendment. Unfortunately, says legal expert Andrew McClung, "it is an ambiguous decision that failed to unequivocally adopt either a collective right or an individual interpretation of the Second Amendment."

As a result of *Miller*, many states began instituting gun-control laws, prohibiting certain people from having access to weapons and limiting which weapons could be legally owned. In 1976, the District of Columbia enacted a law banning handgun possession by "making it a crime to carry an unregistered firearm and prohibiting the registration of handguns" (*Heller*).

The law also required residents to "keep lawfully owned firearms unloaded and disassembled or bound by a trigger lock or similar device," rendering them nonfunctional. Dick Heller, a Washington, D.C., special police officer, applied to register a handgun he wished to keep for his personal purposes, but the District refused to grant the application. Heller, claiming his Second Amendment rights were violated, filed suit claiming the D.C. gun ban law as unconstitutional. The federal district court dismissed the suit, but the U.S. Circuit Court of Appeals for the District of Columbia reversed. The Circuit Court held that the Second Amendment protected Heller and all individuals' right to possess firearms and that the total gun ban was unconstitutional. The District of Columbia appealed to the Supreme Court where by a decision of 5-4, the Court of Appeal's judgment was affirmed.

Justice Scalia delivered the opinion of the Court. He ruled that the Second Amendment "protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home." He argued that the "Second Amendment right is exercised individually and belongs to all Americans." The Court also reiterated that the *Miller* case did not "limit the right to keep and bear arms to militia purposes, but rather [limited] the type of weapon to which the right applies to those used by the militia, i.e., those in common use for lawful purposes."

Justice Scalia then went on to clarify that the “right secured by the Second Amendment is not unlimited,” and nothing in the Court’s opinion “should be taken to cast doubt on longstanding 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.” In his conclusion, Justice Scalia admitted there is a problem with handgun violence in our country, but prohibiting handguns was not constitutional. He reiterated that the District of Columbia may regulate handguns but not ban them altogether. Finally, he made clear that he does not think it is the role of the court to deem the Second Amendment extinct.

The decision of the Court in *Heller* held that gun-ban laws are unconstitutional. Fortunately, Justice Scalia and those who joined him in his opinion, Chief Justice John Roberts, Justices Clarence Thomas, Samuel Alito, and Anthony Kennedy, do not oppose the regulation of handguns. It is vitally important that handgun regulations limit who may possess weapons and which weapons may be possessed. As Justice Scalia stated, prohibitions on the possession of firearms by felons and the mentally ill are not to be doubted. For obvious reasons, felons should not have access to deadly weapons, especially those convicted of violent crimes such as armed burglary, rape, or murder.

It would not only be unwise but also extremely irresponsible to place a weapon back into the hands of someone who has already shown violent tendencies and who will likely commit another crime. Of course, it is still possible for those who wish to possess a weapon to gain access to a deadly weapon. It is also possible, however, that by providing regulations, specifically those prohibiting the sale or registration of firearms to felons, that the ability to acquire such a weapon will be hindered or halted.

We should also not allow those who are mentally ill to have access to handguns or other deadly weapons. Those who are mentally ill may attempt suicide or some other form of self-harm. It is also a distinct possibility that those who are mentally ill are unaware of what is right and wrong and of the consequences of poor decisions. Without a moral compass, those who are mentally ill may become violent and dangerous. It is for society’s best interests as well as the mentally ill individual’s best interests to prohibit the sale or registration of a handgun to such a person.

It is also important that we regulate where weapons may be taken. It is universally accepted that weapons are not allowed on school property. Schools are supposed to be places for learning where all students feel safe. How can students concentrate on their studies if they are in constant fear of a fellow student bringing a weapon to school? Simply, they cannot. Students must feel safe and secure in order to focus on school work. Prohibiting weapons ensures that all students can learn in an environment where they feel secure. Barring weapons in government buildings, especially court houses, is also a wise decision. If having a weapon in court was allowed, those upset with the outcome of a trial could shoot the accused, the accuser, the judge, jury, or any witnesses in the courthouse. It would be unsafe for everyone present.

Finally, not every weapon is created equally. Some weapons are far more dangerous than others. The AK-47 is widely regarded as one of the most dangerous weapons available. It is fully

automatic and can shoot 600 rounds per minute. A single bullet can travel through a car, through a bullet-proof vest, through the body in the vest, and through the other side of the car. The AK-47 is widely used in the Middle East and can be bought on the black market in the United States. Clearly, a weapon like the AK-47 should not be available to the general public.

As *Heller* demonstrates, outright gun bans are unconstitutional. Conversely, the regulation of handguns is not only constitutional but wise. Felons, especially those convicted of violent crimes, should in no way have easy access to firearms that would enable them to commit a similar or more dangerous crime than the one for which they were convicted. Those who are mentally ill may not recognize the consequences of their behavior and inflict self-harm or become dangerous to those around them; giving the mentally ill access to a weapon is potentially very unsafe. Weapons should not be permitted in schools or other places where they may interfere with the daily routines. Certain weapons should not be owned by anyone except, perhaps, the government. The regulations set forth by cities and states are not, in most cases, there to withhold Second Amendment rights but are for the protection of the people, against which no one can argue.

Editor's note: The Supreme Court will soon decide the constitutionality of a state and local law concerning the Second Amendment in the case of *McDonald v. Chicago*.

Students Attending School with Other Students They Do Not Like ***By Bree Graber, Sophomore, Law and American Civilization***

In 2007, the Supreme Court of the United States ruled that Seattle and Louisville can no longer use race as a deciding factor to assign students to school districts. The plan was designed to protect schools so that one district was not 98 percent white while the neighboring district was 98 percent African American. The Court's decision goes along with *Brown v. Board of Education*, because *Brown* declared segregation in public schools unconstitutional. For the most part, segregation slimmed down by the year 2007. However, by placing students in certain districts, with regard to only the color of their skin, we bring back what all the monumental cases, like *Brown*, worked to achieve. Students should not be segregated by their race.

Race should absolutely not be a determining factor as to whether students belong in District A or District B. Schools should accept them based on which school they live closer to or which is easiest for them to routinely get to, not by their race. It strikes me as extremely silly that two districts cannot agree, especially with today's societal norms, to accept students under reasonable standards. I cannot believe or comprehend that some public schools were segregated by color of one's skin as recently as 2007. We thought we were still heading down the right track. It is beyond me how schools got away with this for so long and how the Supreme Court, as powerful and influential as it is, had to get involved for a change to be made. I blame this on the parents of the students and the school board.

Students should be forced to attend school with people they may not like, because these students are young, vulnerable, and most likely, heavily influenced by their parents and elders. The problem would cease to exist if the parents in all of these cases let the kids actually experience different types of people. The children would be much more accepting than any of

these parents who are stuck in the past and not letting new court and societal decisions become part of their lives. I also do not feel that the students in the Seattle case, or any case for that matter, are technically forced to go to school. Students are only brutal if they are given a reason to be. For example, their parents or guardians may trash talk these other races which, in turn, lead the child to think that they may too.

The mistreatment of just about every race at one point or another did occur, and we should not forget that. With that said, we need to let history remain in the past, and we must work together toward letting society and civilization grow into an equal opportunity structure. In Seattle, they came up with new tie-breakers other than race to decide who should be admitted into the district. According to the web site Helvidius, a Pachyderm, "The first tie-breaker is to students who have a sibling in the chosen school; the second is to students who would help put the chosen school within 10 percentage points of the district's overall racial demographics; and the last tie-breaker is the student's geographic proximity to the chosen school." These tie-breakers are obviously much more sensible and reasonable. The schools will now look beyond race to determine admission, because they have these three standards to determine whether a student rightfully belongs in the school or not - rightfully being the key word here.

Re-segregation is not a thing of the past. After *Brown* was decided, re-segregation was a huge problem, because the general public had such a difficult time adjusting to these new rules and regulations. This difficulty still has not gone away. In Little Rock, Arkansas, where the monumental *Brown* case had enormous influence, growing numbers of white students are beginning to leave public schools and are enrolling in private schools instead. This is leading the school's records to become imbalanced, and it is showing that there are many more African Americans than whites, which is what we have been trying to stop since 1954. For observer Kevin Drew, "The result, social activists say, is that the Little Rock School District is in danger of moving back to a climate of separation."

This is upsetting, because all the work and effort that people have put into desegregation and equality between the races in education is going down the drain. The assumption that races cannot be educated together must stop immediately. We had court cases addressing race in education issues in the 1950s, and we still are seeing these court cases come about in the 2000s. How long will it take society to realize that if we want equality, we have to be more accepting?

Children can be molded when they are at such a young age, so they need a neutral, understanding parental figure in their life. Children can be forced to attend school with students that they do not like, because chances are that they would not oppose other races once they saw how much fun they could have with other students and how much they could learn in that type of environment. Here, I feel that parents are the ones really being forced to accept that their children will be surrounded by different races, whether the adults in the matter like it or not. Sure, they can take their children out of that specific school or area, but these kids may grow up to have negative attitudes and unwilling to change or fight for equality, just like their ruthless parents.

Do the Deaf have Religious Restrictions?

By Jacqueline Brock, Senior, English

James Zobrest was deaf since birth. He attended a school for the deaf until the sixth grade. From grades sixth through eighth, James attended a public school located within the Catalina Foothills School District, during which time the school district provided him with a sign-language interpreter. After James completed eighth grade, his parents decided "for religious reasons" to enroll him in Salpointe Catholic High School, a secular Roman Catholic school. James's parents requested that the Catalina School District still provide their child with a sign-language interpreter. The school district refused to do so, claiming that providing a sign-language interpreter for a private-school student would constitute excessive entanglement, and would therefore violate the Establishment Clause of the First Amendment. Moreover, the Zobrests asserted that "the Free Exercise Clause of the First Amendment required [the Catalina School District] to provide James with an interpreter at Salpointe, and that the Establishment Clause does not bar such relief."

The Zobrests also claimed that denial of a sign-language interpreter violated the Individuals with Disabilities Education Act (IDEA), known in the United States Code as U.S.C. 20 (1400). The law states that the purpose of the act is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." Opponents may argue that the act clearly states "a free appropriate *public* education," and thus refusing to provide a sign-language interpreter to a child who attends private school does not violate IDEA. However, one must closely examine the definition of "free appropriate education." According to U.S.C. 20 (1401), "a 'free appropriate public education' means special education and related services that have been provided at public expense, under public supervision and direction, and without charge." According to this definition, a "public education" does not necessarily mean the child must attend public school. Rather, the public must pay for the "related services," such as sign-language interpreters, to ensure that the educational needs of the disabled child are met. Moreover, sign-language interpreters would be a government employee, so they would still be under public supervision and direction.

The Catalina Foothills school district rejected this completely rational argument, claiming that IDEA "does not require [the school district] to furnish Zobrest with an interpreter at any private school so long as special education services are made available at a public school." Moreover, the district stated that "IDEA itself does not establish an individual entitlement to services for students placed in private schools at their parents' option." Along with the four dissenters in this case, the district completely disregarded the stated purposes of IDEA and the Zobrests' First Amendment Rights.

The second documented purpose of IDEA is "to ensure that the rights of children with disabilities and parents of such children are protected." Refusing a sign-language interpreter and thus forcing a child to attend a public school clearly did not protect the rights of the child or parents. For the Zobrests, religious freedom does not exist. While they desired to have their child educated within a secular environment, the school district's denial of a sign-language interpreter

left them with only one option, namely to send their child to a public school, an institution devoid of the religious atmosphere in which they wish to raise their son. This clearly violated the First Amendment's Free Exercise Clause.

In the case, Chief Justice William Rehnquist ruled that the Court had "consistently held that government programs that neutrally provide benefits to a broad class of citizens defined without reference to religion are not readily subject to an Establishment Clause challenge." These cases include *Mueller v. Allen* and *Witters v. Washington Dept. of Services for the Blind*.

In *Mueller*, the Court upheld a Minnesota law, allowing for tax deductions for education expenses for parents of both sectarian and nonsectarian schools. In *Witters*, an Establishment Clause challenge was made against Washington State's vocational assistance program, which provided financial aid to the student who then transferred the funds to the school. The Court ruled in favor of Washington's program, allowing students to attend sectarian as well as nonsectarian schools under this program.

The *Zobrest* case most closely reflected *Everson v. Board of Education*, which in 1947 questioned whether parents of private school students qualified for transportation subsidies. The Court's decision supported transportation subsidies for these parents, holding that transportation was one of the "general government services" provided to the entire public, such as fire and police protection. For the well-being of the children, the New Jersey law was upheld. Education is undoubtedly an important aspect in the overall well-being of a child.

James Zobrest's well-being proved paramount to the overblown concerns of the school district. In *Everson*, Justice Black stated that the First Amendment "requires the state to be as neutral in its relations with groups of religious believers and non-believers, it does not require the state to be their adversary. State power can no more to be used so as to handicap religions, than it is to favor them." Refusal to allow a government employed sign-language interpreter to be employed within a non-secular school is clearly an example of nonsectarian bias. The school district did not act neutrally, allowing interpreters to be utilized in all types of schools, whether they were private, parochial, or public. Finally, in *Everson*, the government did not provide financial support in any way to the private schools. In *Zobrest*, the state did not provide any direct, financial support to Salpointe Catholic High School, but rather only an interpreter, a means to further the boy's education.

Historically, the Establishment Clause has been given priority over the Free Exercise Clause. It seems as if our society and prior members of this Court have been preoccupied with unquestioningly censuring the separation of church and state. However, religion has always had roots in this country. Many of the early colonies were founded on specific religious beliefs and even definitive sects. To ignore religion would be to ignore the history of this country. It would be irrational or even naive to pretend that complete separation can exist. Religion is an important aspect in the lives of American citizens. Instead of ignoring these secular beliefs and practices, we must accommodate them. I am not suggesting that we allow religion to pervade every aspect of our society, but simply for us to gain an understanding, respect, and appropriate allowance for those who wish to incorporate religion into their lives.

What Happened to Being Judged by Content of Character?

By Jessa Coulter, Sophomore, Psychology

In 1996, a woman named Barbara Grutter applied to the prestigious University of Michigan School of Law. She had a 3.8 grade point average and scored in the ninetieth percentile on the Law School Admission Test with a score of 161. One would think that she was certain to be accepted to the public law school with such high qualifications. However, she was only put on the waitlist. Once the class filled, she was rejected. This was surprising. Her GPA was higher than the current median of 3.64, though her LSAT scores were below the current median of 169. When applying to law school, Grutter never expected her rejection would lead a Supreme Court case. Grutter filed a lawsuit against the law school, the Regents of the University of Michigan, the dean, Lee Bollinger, and his successor, Jeffrey Lehman, as well as Dennis Shields, the director of admissions. She did this on the basis that the law school discriminated against her because of her race, as she was Caucasian. She claimed her rejection from the law school violated the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964.

In her action, she argued that the law school gave members of certain minority groups a greater advantage of being accepted into the school. She looked for three distinct ways of reparation: "compensatory and punitive damages, an order requiring the school to offer her admission, and an injunction prohibiting the school from continuing to discriminate on the basis of race."

The law school claimed that the admission policies were constitutional based on the precedent of *Regents of University of California, Davis v. Bakke*, a case from 1978. Twice, the University of California, Davis, Medical School, rejected Allan Bakke, who believed that he was discriminated against because of his race and that he would have been accepted if he were not white. At UCD Medical School, sixteen of the one hundred seats open for each freshmen class were reserved for minority students. These sixteen students were self identified as "economically and/or educationally disadvantaged or members of a minority group." These students were not held to the same standards as general applicants. The Supreme Court heard the case and decided the quota system, ensuring sixteen percent of each class was made up by minority students, was unconstitutional.

Barbara Grutter also believed she was discriminated against when she applied to law school, because the school had shown preference to African-American, Native-American, and Hispanic applicants by rewarding them a "plus" in the application review process, thus giving them an advantage.

Like many law schools, the University of Michigan Law School used many factors in the application process. It considered talent, experience, and potential through the LSAT score, grade point average, personal statement, letters of recommendation and an essay. While the policy did not define diversity based only on race and ethnicity, it "reaffirmed the school's commitment to diversity with special reference to the inclusion of African-American, Hispanic, and Native-American students who otherwise might not be represented in the student body in meaningful numbers." In federal district court, the admissions director at the time stated that he

never directed staff to accept minority students to reach a quota. Rather, he advised them to consider race and ethnicity with the other factors. The court still found the use of race in admissions unlawful. The university appealed, and the Court of Appeals for the Sixth Circuit reversed the decision. Grutter then appealed to the Supreme Court, which sustained the opinion of the appellate court. In a five to four vote, the Court found that the admissions process at the University of Michigan Law School constitutional.

In her opinion for the Court, Justice Sandra O'Connor stated that considering race in admissions is constitutional only if it is narrowly tailored to further compelling government interests. This is the so-called strict scrutiny test, used in cases that question fundamental rights and equal protection. O'Connor believed that the admissions policy at the law school passed the strict scrutiny test, because it met both requirements of being a compelling interest of the government and it achieved the interest in a way that caused the least amount of harm possible, known as being narrowly tailored. She explained that to be narrowly tailored, the admissions program cannot have a quota, or a mandatory number of spots reserved for minorities, but it can "consider race or ethnicity only as a 'plus' in a particular applicant's file."

There are two different reasons I think the "plus" program of the Law School should not be seen as constitutional. First, how is giving a plus to a minority student any different from giving a minus to a non-minority student? This not only allows someone to be advantaged by their race or ethnicity, but more importantly, it also allows someone to be disadvantaged by their race or ethnicity. If everything was left the same and the non-minority students were all given a minus and the minority students were not given anything, would the Court still find this constitutional? My second reason further addresses the similarities of the "plus" and "bonus" system.

Let's take a hypothetical: two males apply to a law school, and every single thing about them is identical. They have the same GPA, the same LSAT scores, the same extracurricular activities, the same essay quality, and so on. There is, however, one small difference: one of them is African American and the other Caucasian. Because the African American is from a minority race, he receives a plus and is accepted into the school. On August 28, 1963, in Washington, D.C., Martin Luther King Jr. said, "I have a dream that my four children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character." However, forty years later, this case proved that the United States still finds it acceptable to use skin color to judge a person.

Why is our society obsessed with this idea of diversity? And why do we only define diversity as racial and ethnic diversity? According the 2000 Census, there are 5,314,780 more women than men in the United States. So should men be considered a minority and receive a "plus" on their application? I believe I am a diverse individual, even though by looking at me, I would come across as nothing more than a white female. I am a Jew, I am a pescatarian, I am a psychology major, I am a middle daughter, I am a volunteer, I am an Israeli folk dancer, and I am a photographer. I am many things. Why are these things not considered when I submit an application for something?

Justice O'Connor explained that "the Law School has determined . . . that a 'critical mass' of underrepresented minorities is necessary to further its compelling interest in securing the educational benefits of a diverse student body." What she did not explain was what "critical mass" meant. In his dissent, Chief Justice Rehnquist explained that "respondents and school administrators explain generally that 'critical mass' means sufficient number of underrepresented minority students to achieve several objectives." The first objective is "to ensure that these minority students do not feel isolated or like spokespersons for their race."

It is great that the school cares about the isolation of race and ethnic minorities, but what about others? I am sure there are plenty of students who feel isolated. For example, someone who identifies as homosexual or transgender may feel isolated in law school. The school should not be allowed to show preference to some students and not others.

Rehnquist argued that one would assume a "critical mass" would be the same number for all minority groups. But the enrollment history at the law school proved otherwise. Consistently, out of the minority students admitted between 1995 and 2000, there were the most African Americans, followed by Hispanics, and the fewest, Native Americans. To this day, African Americans make up six percent of the class, while Hispanics make up five percent and Native Americans make up a mere two percent. Rehnquist asked how the "critical mass" for one racial or ethnic group is not the same for all of the minority groups.

While I do not believe race and ethnicity should be factored in when determining quality of a candidate, I am an advocate for all forms of diversity. I think that it adds to the quality of a community and is very important. I do not believe, however, that diversity should be limited to race and ethnicity or that a school should show any type of preference to a person based on race. I believe that every individual is unique and diverse and should be judged on his or her abilities, not their skin color or their heritage. I think Chief Justice John Roberts said it best in the 2007 case *Parents Involved in Community Schools v. Seattle School District*, an affirmative action case in which the Court found that sending students to different schools based on their race was unconstitutional. In his opinion, Roberts said, "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race." Until we take race completely out of the picture, discrimination and injustice will continue to occur.



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