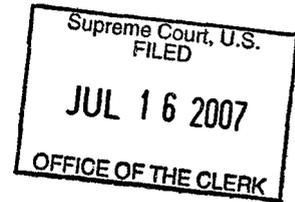


App. No. 07A51



In the
Supreme Court of the United States

District of Columbia and Mayor Adrian M. Fenty,
Petitioners,

v.

Dick Heller, et al.

ON APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A
WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

PETITIONERS' APPLICATION TO EXTEND TIME TO
FILE A PETITION FOR A WRIT OF CERTIORARI

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July 16, 2007

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To the Honorable John G. Roberts, Jr., as Circuit Justice for the United States Court of Appeals for the District of Columbia Circuit:

Petitioners District of Columbia and Mayor Adrian M. Fenty respectfully request that the time to file a Petition for a Writ of Certiorari in this matter be extended for thirty days to and including September 5, 2007. The Court of Appeals issued its opinion on March 9, 2007 (see App. A, *infra*). On May 8, 2007, the Court of Appeals issued an order and a corrected order (see App. B, *infra*) in which it denied a petition for rehearing *en banc*. Absent an extension of time, the Petition would therefore be due on August 6, 2007. Petitioner is filing this Application at least ten days before that date. See S. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. § 1254(1).

Background

The District of Columbia (“the District”) has several longstanding laws regulating weapons possession. The central one at issue in this litigation is a law permitting the registration and possession of an unlimited number of rifles and shotguns but generally prohibiting the registration, and therefore possession, of pistols unless registered to the owner before September 24, 1976. D.C. Code §§ 7-2502.01(a), -2502.02(a) (2001 ed.). Another law requires persons carrying pistols or other weapons capable of concealment to obtain licenses. D.C. Code § 22-4504(a). A third requires all firearms kept at home to be kept “unloaded and disassembled or bound by a trigger lock or similar device.” D.C. Code § 7-2507.02.

Six residents of the District brought facial challenges to these provisions under the Second Amendment and 42 U.S.C. § 1983. Court of Appeals Joint Appendix (J.A.) 1–10. Asserting a desire for functional firearms including handguns for self-defense in their homes, they sought declaratory relief and an order permanently enjoining the District from enforcing the laws described above. J.A. 9.

The District Court granted the District’s motion to dismiss the complaint for failure to state a cause of action and denied plaintiffs’ motion for summary judgment as moot. J.A. 46–62; *Parker v. District of Columbia*, 311 F. Supp. 2d 103 (D.D.C. 2004).

A divided Court of Appeals reversed. App. A; *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007). The panel majority held that a single plaintiff, Dick Heller, had standing. App. A, maj. op. at 5–12. On the merits, the majority concluded that “the Second Amendment protects an individual right to keep and bear arms” that “was

premised on the private use of arms for activities such as hunting and self-defense,” and that “the activities it protects are not limited to militia service, nor is an individual’s enjoyment of the right contingent upon his or her continued or intermittent enrollment in the militia.” App. A, maj. op. at 46. The majority further held that the Second Amendment limits the District’s ability to regulate firearms. *Id.* at 46–50. Finally, although the majority accepted the proposition that the Second Amendment permits “reasonable restrictions” on firearm use and possession (*id.* at 53), it held that the challenged laws are unreasonable. *Id.* at 55–58. The majority remanded the case with an instruction to grant Heller summary judgment consistent with the complaint’s prayer for relief. *Id.* at 58.

Judge Henderson dissented. She stated that, under this Court’s interpretation of the Second Amendment in *United States v. Miller*, 307 U.S. 174 (1939), “the right of the people to keep and bear arms relates to those Militia whose continued vitality is required to safeguard the individual States.” App. A, diss. op. at 5–6 (footnote omitted).

The Court of Appeals denied rehearing *en banc*. App. B. Four of the ten active judges voted to rehear the case. *Id.*

REASONS FOR GRANTING AN EXTENSION OF TIME

The time to file a Petition for a Writ of Certiorari should be extended for thirty days for these reasons:

1. The chief executive of the District, Mayor Adrian M. Fenty, made a final decision that the District would file a Petition for Certiorari only within the past ten days and announced it today. Additional time is warranted to allow preparation of a Petition

because the decision whether to file itself warranted substantial time. Seeking this Court's review in any case is a serious decision, and governments in particular should think carefully before filing a Petition for Certiorari. Moreover, this case is uniquely important and complex. The Mayor appropriately required in-depth discussion with and analysis by the Attorney General for the District and other officials before making the decision.

2. This case presents extraordinarily important issues warranting a carefully prepared Petition. The decision marks the first time in the Nation's history that any appellate court has struck down a law as unconstitutional under the Second Amendment. The issues involve fundamental questions of how the Second Amendment should be interpreted and applied to the District's longstanding legislative judgment on how best to protect District citizens from firearm-related death and injury. In recognition of the seriousness of these issues, the Court of Appeals stayed its mandate and four judges on the Court of Appeals would have granted rehearing *en banc*.

3. There is at minimum a substantial prospect that this Court will grant certiorari and, indeed, a substantial prospect of reversal. In addition to involving extraordinarily important issues, the decision of the Court of Appeals is in admitted conflict with the majority of other federal Courts of Appeals and with many State courts of last resort. App. A, maj. op. at 16–17 & nn.4, 6, diss. op. at 4 n.4. The decision also conflicts squarely with decisions of the District of Columbia Court of Appeals, thereby subjecting the District to conflicting judgments on the constitutionality of important safety laws. App. A, maj. op. at 17 n.6.

4. Petitioners have recently retained outside counsel with Supreme Court expertise to assist in this case. Additional time is necessary and warranted for that counsel, *inter alia*, to become familiar with the record below, relevant legal precedents and historical materials, and the issues involved in this matter.

5. No meaningful prejudice would arise from the extension, as this Court would hear oral argument and issue its opinion in the October 2007 Term regardless of whether an extension is granted.

CONCLUSION

For the foregoing reasons, the time to file a Petition for a Writ of Certiorari in this matter should be extended thirty days to and including September 5, 2007.

Respectfully submitted,

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