No. 07-290

In The
Supreme Court of the United States

DISTRICT OF COLUMBIA, ET AL.,

Petitioners,

v.

DICK ANTHONY HELLER,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

BRIEF OF THE PARAGON FOUNDATION, INC. AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

PAUL M. KIENZLE III
Counsel of Record
SCOTT & KIENZLE, P.A.
Post Office Box 587
Albuquerque, NM 87103-0587
(505) 246-8600

Counsel for
The Paragon Foundation, Inc.

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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INTEREST OF AMICUS CURIAE

The Paragon Foundation, Inc. is a New Mexico 501(c)(3) non-profit organization created to support and advance the fundamental principles set forth in the Declaration of Independence and Constitution of the United States of America.[1] The Paragon Foundation, Inc. advocates for individual freedom, private property rights, and limited government controlled by the consent of people. The Paragon Foundation, Inc. provides for education, research and the exchange of ideas in an effort to promote and support Constitutional principles, individual freedoms, private property rights and the continuation of rural customs and culture, all with the intent of celebrating and continuing the Founding Fathers' vision for America. The Paragon Foundation, Inc. has several thousand current or former members nationwide; its constituents include ranchers and rural landowners. Consistent with its mission, Amicus is well positioned to bring to the Court's attention relevant material that will assist in the disposition of this case.

[1] This brief is submitted and filed with the consent of the parties pursuant to S. Ct. R. 37.3(a) with written notice having gone to counsel for petitioners and respondent more than seven days prior to the filing of this brief. Pursuant to S. Ct. R. 37.6, Amicus affirms that no party or their counsel authored, or paid for, this brief in whole or in part.

SUMMARY OF ARGUMENT

The court of appeals' judgment should be affirmed. The court of appeals correctly applied the Second Amendment in declaring unconstitutional various District of Columbia statutory prohibitions, bans, and requirements concerning firearms. In reaching its decision, the court of appeals properly found an individual right to keep and bear arms under the Second Amendment independent of militia service. That right flows from pre-existing natural rights and is grounded in the historical and textual contexts from which it arose. To hold otherwise – that the Second Amendment does not confer an individual right to keep and bear arms – would be inconsistent with the Founding Fathers' vision of the Bill of Rights.

ARGUMENT

I. "THE RIGHT OF THE PEOPLE" TO KEEP AND BEAR ARMS EXISTED BEFORE THE FORMATION OF ANY GOVERNMENT AND EXISTS NOT BECAUSE OF GOVERNMENT BUT IS PRESERVED BY IT.

The Declaration of Independence, stating that "[w]e hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness," is the finest example of natural rights theory applied to public policy. Every individual has "unalienable

Rights" that exist not because of government but spring wholly from the human condition itself. It is our humanity that is the fountainhead of those natural rights.

The Declaration identifies three such rights – Life, Liberty, and the pursuit of Happiness. The Declaration suggests only that those three rights are "among" the "unalienable Rights" we all share, not that they are exclusive. As the Founders of this country moved from the Declaration of Independence to other formal organizing documents, numerous natural rights were carried forward and enshrined in the Bill of Rights.

At a speech given on June 8, 1789, James Madison proposed certain amendments to the Constitution that would later become the Bill of Rights.[2] His speech and notes from that speech reflect that the proposed amendments preserved and protected certain natural rights and retained the same for individuals.[3] Among those natural rights was a right to keep and bear arms that is substantively similar to the present Second Amendment.[4]

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[2] House of Representatives, Debates, June 8, 1789, reprinted in David E. Young, The Origin of the Second Amendment: A Documentary History of the Bill of Rights 1787-1792 at 651-663, 654 (2nd Ed. 2001).

[3] *Id.*; http://www.loc.gov/exhibits/madison/images/vc11.jpg.

[4] *Supra* at n. 2.

In accord with the natural rights theory, the Court in *Robertson v. Baldwin,* 165 U.S. 275, 281-82 (1897) stated that:

> The law is perfectly well settled that the first 10 amendments to the constitution, commonly known as the 'Bill of Rights,' were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we had inherited from our English ancestors, and which had, from time immemorial, been subject to certain well-recognized exceptions, arising from the necessities of the case. In incorporating these principles into the fundamental law, there was no intention of disregarding the exceptions, which continued to be recognized as if they had been formally expressed. Thus, the freedom of speech and of the press (article 1) does not permit the publication of libels, blasphemous or indecent articles, or other publications injurious to public morals or private reputation; the right of the people to keep and bear arms (article 2) is not infringed by laws prohibiting the carrying of concealed weapons; the provision that no person shall be twice put in jeopardy (article 5) does not prevent a second trial, if upon the first trial the jury failed to agree, or if the verdict was set aside upon the defendant's motion. . . .

The Court pointed out that the Second Amendment is among those individual rights that Americans "inherited from our English ancestors" and that the

Bill of Rights is not a collection of "novel principles of government" but something personal and individual.

In *United States v. Verdugo-Urquidez,* 494 U.S. 259, 265 (1990) (considering the Fourth Amendment), the Court addressed the use of the term "people" in the Constitution and Bill of Rights:

> "[T]he people" seems to have been a term of art employed in select parts of the Constitution. The Preamble declares that the Constitution is ordained and established by "the People of the United States." The Second Amendment protects "the right of the people to keep and bear Arms," and the Ninth and Tenth Amendments provide that certain rights and powers are retained by and reserved to "the people." *See also* U.S. CONST., amdt. 1; Art. I, § 2, cl. 1. While this textual exegesis is by no means conclusive, it suggests that "the people" protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.

"The people" has the same consistent meaning throughout the Constitution and the Bill of Rights and the Second Amendment is no exception. *Id.* A textual analysis of the Bill of Rights as a whole compels only one conclusion: "the people" in the

Second Amendment refers to individual Americans and not state governments or other collective bodies.

The Second Amendment does not lay down the right of the people to keep and bear arms as a matter of positive law but reflects that the right is more fundamental. The Second Amendment functions as a means to preserve the fundamental, individual right to keep and bear arms.

II. THE SECOND AMENDMENT MUST BE INTERPRETED IN CONJUNCTION WITH THE HISTORICAL USE OF ARMS BY INDIVIDUALS FOR SELF-DEFENSE, HUNTING, AND OTHER PRACTICAL PURPOSES.

In the time of the Founding Fathers, arms were used for self-defense and hunting. *United States v. Emerson*, 270 F.3d 203, 251-55 (5th Cir. 2001). As the court of appeals below pointed out, the right of self-defense and self-preservation includes "the right to defend oneself against attacks by lawless individuals, or, if absolutely necessary, to resist and throw off a tyrannical government." *Parker v. District of Columbia,* 478 F.3d 370, 383 (D.C. Cir. 2007). It would be incongruous for the Founding Fathers to have lived in a time when individuals regularly used arms for those purposes but not to have envisioned an individual, private right to keep and bear arms.

III. AN INDIVIDUAL RIGHT TO KEEP AND BEAR ARMS IS GOOD PUBLIC POLICY.

Then as now, ranchers and rural landowners routinely use arms for lawful practical purposes. They use arms to protect their cattle and livestock from predators and provide fresh game for their tables. Ranchers and rural landowners use arms to provide for their self-defense in the vastness of the West where timely assistance from law enforcement is impossible.

In 1955, Louis L'Amour penned a Western classic, *Heller With a Gun* (Bantam Reissue, May 2005).[5] In the novel, set in the time of the Old West in Wyoming and Montana, Dodie Saxon, a youngster in her teens, comments that:

> Out here a gun is a tool. Men use them when they have to . . . Where there's no law, all the strength can't be left in the hands of the lawless, so good men use guns, too.

Id. at 100. Mr. L'Amour neatly sums up the public policy behind the Second Amendment. It is the individual right to keep and bear arms that allows individuals to use arms for lawful practical purposes and to protect themselves. That right, understood from the beginning of this Republic to be an individual

[5] Any similarity between the title of Mr. L'Amour's classic novel and Respondent's last name in this case is coincidental but nonetheless interesting if not prophetic.

right, must be respected and given the full protection it deserves.

CONCLUSION

The Court should affirm the judgment of the court of appeals.

Respectfully submitted.

PAUL M. KIENZLE III
Counsel of Record
SCOTT & KIENZLE, P.A.
Post Office Box 587
Albuquerque, NM 87103-0587
(505) 246-8600

Counsel for
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