

rejected a Second Amendment challenge to a federal law banning a number of weapons such as sawed-off shotguns and machine guns. The Court seemed to say that the Second Amendment was a state's rights provision intended to prevent Congress from abolishing the state militias, and was not intended to establish an individual right to bear arms. The Court stated: "With obvious purpose to assure the continuation and render possible the effectiveness of such forces, the declaration and guarantee of the Second Amendment were made. It must be interpreted and applied with that end in view," and concluded that, "[i]n 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." 307 U.S. at 178. The Supreme Court has not had a case dealing with the meaning of the Second Amendment since *Miller*, except to cite *Miller* for the proposition that federal restrictions on the use of firearms by individuals do not "trench upon any constitutionally protected liberties." *Lewis v. United States*, 445 U.S. 55, 65, n.8 (1980).

Because lower federal courts are bound by United States Supreme Court decisions unless and until they are overruled by the Supreme Court itself, the federal courts of appeal have unanimously held, as the Sixth Circuit has put it, that, "[i]t is clear that the Second Amendment guarantees a collective rather than an individual right." *United States v. Warin*, 530 F.2d 103, 1106 (6th Cir. 1976) (upholding ban on possession of sub-machine guns). Recent cases holding that the Second Amendment does not establish an individual right to bear arms include *Hickman v. Block*, 81 F.3d 98 (9th Cir. 1996) (person denied a concealed weapon permit has no standing to claim that denial violates his Second Amendment rights); *Love v. Pepersack*, 47 F. 3d 120 (4th Cir. 1995) (denial of application to purchase handgun cannot be challenged as violative of Second Amendment).²

The Supreme Court's decision in *Miller* sets forth the current state of the law, which is why the lower federal courts must reject any claim that the Second Amendment establishes a constitutionally-protected individual right to bear arms. The Supreme Court may change its mind, but unless and until it does, the federal courts cannot properly use the Second Amendment to declare any gun control law unconstitutional.

Let us assume, however, that the Supreme Court does change its mind and holds that the Second Amendment does protect the individual right to bear arms. This would not have any effect at all on existing and proposed federal gun control laws, such as the ban on assault weapons, the ban on possession of a gun by a convicted felon, a requirement that guns contain safety locks and be kept out of the reach of children, or a background check waiting period. Constitutional rights are not absolute, and are subject to reasonable regulation in the public interest.

Guidance on this point can be obtained from the decisions of state courts upholding gun control laws as a reasonable regulation of the right to bear arms. In upholding a ban on dangerous weapons over 60 years ago, for example, the Michigan Supreme Court stated as follows: "Some weapons are adapted and recognized by the common opinion of good citizens as proper for the private defense of person and property. Other are the peculiar tools of the criminal. The police power of the state to preserve public safety and peace and to regulate the bearing of arms may take account of the character and ordinary use of weapons and interdict those whose customary employment of individuals is to violate the law." *People v. Brown*, 253 Mich. 537, 539, 235 N.W. 245, 246 (1931).

Moreover, since constitutional rights are not absolute, any regulation of a right—even a fundamental one, such as a woman's right to abortion—is not subject to constitutional challenge unless it imposes an undue burden on the exercise of that right. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). Thus, a 24 hour waiting period before a woman can have an abortion was held in *Casey* to be constitutional because it does not prevent the women from having an abortion. By the same token, a three day waiting period for the sale of a gun at a gun show so that a background check can be run on the purchaser does not impose an undue burden on the right to bear arms, since it does not prevent a qualified purchaser from obtaining the gun. Nor does a requirement that guns be equipped with safety locks impose any burden at all on a person's ability to obtain and use guns. Nor could it possibly be suggested that the Constitution stands as an obstacle to denying a gun to a convicted felon or a mentally unstable person. Likewise, a ban on carrying a concealed weapon would be constitutionally permissible because of the clear danger to public safety that can result from people pulling out guns and engaging in a shootout in the public streets.

A constitutionally protected right to bear arms would include the right to have a rifle for hunting and for defense of the home. It might also include the right to have a handgun for defense of the home, although this is debatable. A ban on private ownership of handguns would serve the public interest in crime prevention, since so many crimes are committed by the use of handguns. This aside, most assuredly, the right to bear arms would not include the right to have a sub-machine gun or a sawed-off shotgun or an assault weapon, or to carry concealed weapons, or to brandish a gun in the public streets. And again, any right to gun ownership would be subject to reasonable regulation in the public interest.

In summary, under the current state of the law, the Second Amendment does not establish an individual right to bear arms. But even if the Supreme Court were to subsequently hold that it did, all the present and proposed federal gun control laws would be upheld as constitutional, because they are reasonable and do not impose an undue burden on the right to bear arms.

TRIBUTE TO LINNEAUS C. DORMAN

HON. DAVE CAMP

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, July 16, 1999

Mr. CAMP. Mr. Speaker, I rise to pay tribute to Dr. Linneaus C. Dorman of Midland, Michigan, who recently received the 1999 Percy L. Julian Award, the highest award presented by the National Organization for the Professional Advancement of Black Chemists and Chemical Engineers. Dr. Dorman earned this award for his pure and applied research in engineering and science.

I would like to congratulate Dr. Dorman and draw attention of my colleagues in the U.S. House of Representatives and my constituents in the 4th Congressional District to Dr. Dorman's distinguished career.

Dr. Dorman's fascination with science began in his childhood, with a friend and a chemistry set. Since then he has made remarkable contributions to his field. He earned his bachelor of science in chemistry from Bradley University and a Ph.D. in organic chemistry from Indiana University in 1961.

After receiving his Ph.D., Dr. Dorman went to Midland to work for The Dow Chemical Company, where he worked in research and development with a primary focus on the chemistry of carbon compounds, found in living things. His work in agricultural chemical synthesis, automated protein synthesis, ceramics, and polymers have earned him high praise from his peers.

Today he continues to be involved with science and shares his love of it with young people in the community, while remaining a member of the National Organization for the Advancement of Black Chemists and Chemical Engineers.

Dr. Dorman's contribution to science and the community make him an outstanding role model and a respected professional in his field. I am honored today to recognize Dr. Dorman, his professional accomplishments, and his willingness to share his knowledge.

THE INTRODUCTION OF THE NUCLEAR DISARMAMENT AND ECONOMIC CONVERSION ACT

HON. ELEANOR HOLMES NORTON

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 16, 1999

Ms. NORTON. Mr. Speaker, long after the end of the Cold War and the breakup of the Soviet Union, the threat of nuclear weapons remains. Today, the United States continues to possess around 7,300 operational nuclear warheads, and the other declared nuclear powers—Russia, Great Britain, France, and China—are estimated to possess over 10,000 operational warheads. Furthermore, the proliferation of nuclear weapons, especially in countries in unstable regions, is now one of the leading military threats to the national security of the United States and its allies.

The United States, as the sole remaining superpower and the leading power in the

²In view of this unbroken line of federal appellate decisions, the very recent decision of a federal judge in Texas holding that the Second Amendment establishes an individual right to bear arms and renders unconstitutional a federal law prohibiting possession of a firearm while under a court restraining order, *United States v. Emerson*, 1999 U.S. Dist. LEXIS 4700, U.S. Dist. Ct. N.D. Tex., 4/7/99, is puzzling and is likely to be reversed on appeal.