Supreme Court Sidesteps AR-15 Review—A Call for Reassessment of Landmark Second Amendment Decision

Robert W. Ludwig challenges the foundation of today's gun debate in "Court Pauses Joyriding with AR-15s, as Reality Catches Up to Coherent Nonsense"

WASHINGTON, DC, UNITED STATES, August 19, 2025 /EINPresswire.com/ -- With the Supreme Court in June declining review of the constitutionality of assault-style rifles, in Snope v. Brown, 145 S. Ct. 1534 (2025)—awaiting further rulings below—a new legal article calls for a reassessment of jurisprudence interpreting the Second Amendment, particularly the precedent set by District of Columbia v. Heller (2008) that recognized an individual's right to possess firearms for self-defense.

> "We add to the ever-growing chorus of courts that have implored the High Court to … reconsider its path entirely. Our Nation is gripped by deadly gun violence our founders never could have conceived."
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> *Barris v. Stroud Twp. (Pa. Supreme Ct. 2024)*

The article discusses how increasingly fraught issues are forcing a reckoning with Heller, seen as a watershed but whose foundational reasoning has been criticized even by pro-gun scholars, especially as to military-style weapons.

A subsequent mass shooting in Manhattan, where a man with an assault rifle walked into a Manhattan office building, killing four over a personal grievance, highlights the urgency. Echoing Justice Stephen Breyer's concern over the implications for public safety of everyone joyriding with handguns, at oral argument in NYSRPA v. Bruen (2022), the article describes how close the Court now stands to permitting AR-15s on every street corner in New York and nationwide.

With the Court poised to extend Heller to AR-15s—recognized as America's "most popular rifle" in another decision this June—under Heller's "common use" test (that "Justice Scalia invented," one pro-gun scholar asserts, to avoid its extension to machine guns), Ludwig suggests a course correction, not just by the Court, but both sides of the gun debate.

Recent developments suggest growing tensions in the legal framework, including Justice Amy Coney Barrett's own pointed inquiry in Bruen—"Do you think Heller was rightly decided?"—and her critique in a 2024 gun case of the tendency to substitute "history and tradition" for legal principles in resolving constitutional questions.

The article shows how that tendency resulted in Heller. Citing Scalia's dictum that uncovering ancient meanings may be better suited to historians, it shows how the Court and lawyers in Heller deferred to historical speculation rather than apply legal rules of construction. The result, Ludwig suggests, has been endless historical debate and futility in resolving the mystery of the Second Amendment, with everyone "missing the legal forest for the historical trees."

To illustrate, the article focuses on Heller's key reasoning that the amendment's predecessor was the arms provision in the 1689 English Bill of Rights—another mystery—that Heller assumed was "clearly an individual right" having "nothing to do with" militia, adopting historian Joyce Malcolm's conjecture. Malcolm, conceding arms possession was a duty from "time out of mind" to bear arms for the state, speculated that the phrase—"Protestants may have arms"—"seems to have" created a right of self-defense, though it "seems empty rhetoric" and is "no longer a right of Englishmen, so gently teased from use." Opposing historians, cited by Breyer in McDonald v. Chicago (2010) in suggesting Heller "misunderstood a key historical point," offered their own conjecture: a newly-minted right "to possess arms to take part in defending the realm."

Three centuries later, Ludwig explains, the meaning of the English declaration "has never been clearly and finally established because no scholar or court ever applied rules of construction to unlock its mystery." Applying ordinary construction for the first time, Ludwig shows the core grievance was about war powers, not personal defense: Catholics were being deployed—"armed and employed"—unlawfully by the Crown. The remedy—reaffirming Protestants may "have arms suitable to their condition and as allowed by law"—restored Parliament's authority over militia. Each of these terms of art, Ludwig reveals, found in 17th-century militia statutes typical of the thousand-year Anglo-American militia system, were missed by historians and the Court.

Construing the Second Amendment, Ludwig identifies similar overlooked terms of art, found throughout the founding record. The amendment, likewise born of a war powers dispute, secured the States' right to arm their militia, as uniformly held during the 20th-century but never proven. Heller departed from this understanding, Ludwig shows, by focusing on individual rights, never addressing the amendment's real origins, purpose, and meaning. Substituting historical conjecture for construction, Heller transformed a centuries-old state protection into an unregulatable personal license.

The article concludes with a sweeping indictment: Heller, as Chief Justice John Roberts said of another historic blunder, "'was gravely wrong the day it was decided.'" As difficult AR-15 cases reach the Court next term, Ludwig urges a reconsideration and comprehensive rebriefing—not just of the illusory individual rights presented by both sides, but of the overlooked state right the amendment was designed to protect. Properly supported and argued, he writes, it should result in a shift back to the original constitutional meaning: a public right long associated with militia.

Read the full article here.

For further information, visit www.AmericanEnlightenmentProject.org.

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