

Cato's Bob Levy spearheads precedent-setting lawsuit

## Supreme Court to Take up Second Amendment

Thanks to the work of Cato's Robert A. Levy and his two co-counsels Alan Gura and Clark Neily, on November 20, 2007, the Supreme Court agreed to hear *District of Columbia v. Heller*, the first time in 68 years that the Court has taken up a Second Amendment case.

The Cato Institute and Joyce Lee Malcolm, history professor at George Mason University, will be filing an amicus brief authored pro bono by C. Kevin Marshall of Jones Day. Marshall was coauthor of a comprehensive 2004 memorandum by the Office of Legal Counsel for then-attorney general John Ashcroft setting out the Executive Branch's interpretation of the Second Amendment as securing an individual right.

The Cato Institute has commissioned *Reason* editor Brian Doherty to chronicle the case in a book to be released shortly following the decision.

Directly at issue is Washington, D.C.'s, prohibition on handgun ownership, which also includes provisions against keeping functional rifles and shotguns in the home. Robert Levy, senior fellow and member of the Board of Directors at the Cato Institute, initiated the case at the dis-

trict level in February 2003 and continues to serve as co-counsel.

Writing in the *Cato Handbook on Policy*, 6th edition, Levy pointed out how despite the D.C. gun ban, the city was for many years the murder capital of the nation. He stressed how the placement of the Second

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Amendment within the Bill of Rights, as well as its explicit reference to “the right of the people,” indicates that the Second Amendment—like the First and Fourth—speaks to an individual right.

In a landmark decision in March 2007, the U.S. Court of Appeals for the D.C. Circuit declared Washington's 31-year-old gun ban unconstitutional. “We conclude that the Second Amendment protects an individual right to keep and bear arms,”

read the strongly worded 58-page majority opinion from Senior Judge Laurence H. Silberman. Washington mayor Adrian Fenty called the ruling “outrageous” and vowed to do everything in his power to overturn it.

But in appealing to the Supreme Court, Fenty opened the door for gun control laws far beyond the District to be called into question.

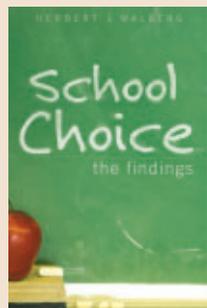
In *D.C. v. Heller*, the Court will address whether law-abiding citizens nationwide have a constitutionally protected right to keep functional firearms in their homes. While “reasonable” regulations would remain in the case of a victory, laws that effectively disarm honest citizens would be struck down.

Michael O'Shea, quoted in the 2006–2007 *Cato Supreme Court Review*, says the dearth of previous jurisprudence makes a “home run” decision likely. “It's not often that the Supreme Court takes up the core meaning of an entire Amendment of the Bill of Rights, in a context where it writes on a mostly clean slate from the standpoint of prior holdings.”

A decision will come down before the end of the current term in June 2008.

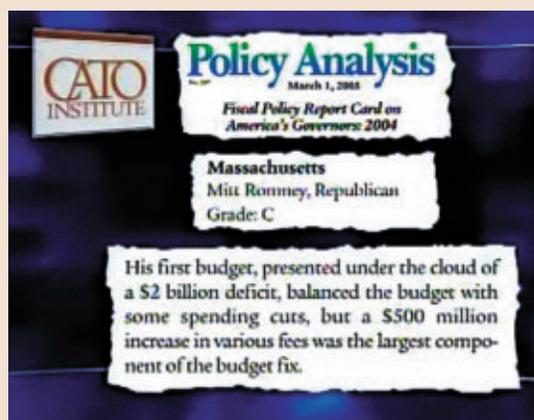
### NEWS NOTES

The Cato Institute and the HEARTLAND INSTITUTE teamed up to distribute 75,000 copies of a pocket edition of *School Choice: The Findings* by



HERBERT WALBERG as an insert in *Heartland's School Reform News*. Copies went to all private and charter school principals in the country, the school board chairman of all 14,000 U.S. school districts, members of Congress and state legislators, education reporters, and other key players in education policy. *School Choice: The Findings*, a careful review of the evidence on school choice, is available from Cato for \$14.95 in paperback.

Cato's biennial “Fiscal Policy Report Card on America's Governors” is getting a workout in the presidential primaries. Fred Thompson repeatedly declared that Mike Huckabee was “one of the highest taxing governors that we had in this country and rivaling Bill Clinton in terms of the Cato ratings.” A press release from the Rudy Giuliani campaign blared, “Just the Facts #3: Cato Institute Rated Romney 'C' in 2006 for His Tax Policy.” And Giuliani himself declared in New Hampshire: “[Romney] had one of the weaker records of any governor on economics. The Cato Institute said he was 'C' for governors.” On the December 16 broadcast of *Meet the Press*, Tim Russert challenged Mitt Romney: “As you campaign around the country, you talk about your record in Massachusetts with budgets and taxes



and so forth. The Cato Institute . . . gave you a C as governor of Massachusetts.” (*Meet the Press* visual, above) Similarly, when Huckabee appeared two weeks later, Russert challenged him: “You raised taxes, and the Cato Institute gave you a D and an F for your tenureship as governor.” The next “Fiscal Policy Report Card” will be issued this fall.