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An Unusual Argument

Orin Kerr • January 29, 2010 6:53 pm

The Petitioner's Reply Brief in *McDonald v. City of Chicago* has an interesting passage in which the Petitioners urge the Court not to rule in their favor on grounds argued by the NRA, which will be sharing argument time with the Petitioners:

NRA's novel theory, at 40, that *Cruikshank* did not bar the Second Amendment's application to the States, contradicts over a century of understanding. *See, e.g., Heller*, 128 S. Ct. at 2813 ("States, we said, were free to restrict or protect the right under their police powers"). Erroneous precedent should be overruled, not tortured further to achieve politically desirable results.

I understand that there is a lot of bad blood between the Petitioners and the NRA. And I have no opinion of the NRA's argument, not having read its brief. Still, it's rather unusual to see a passage in a legal brief asking a court not to accept an argument in its favor.

Categories: Uncategorized

117 Comments

1. **ruuffles says:**

What would have happened if the NRA didn't have a separate suit? Would the court still be able to consider incorporation, rather than P&I?

Quote

January 29, 2010, 7:09 pm

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