

NRA, onetime ally feud over next big guns case to go before Supreme Court

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The National Rifle Association was on the outside looking in when the Supreme Court handed gun rights activists a landmark victory in 2008.

After the court ruled that the Second Amendment protects an individual right to gun ownership and that the District's handgun ban was unconstitutional, it was an upstart band of [libertarian](#) lawyers that celebrated on the marble steps and received the glory for the breakthrough decision.

The NRA, the nation's premier and most powerful gun rights group, has worked hard not to be in that position again. And because of an unusual intervention recently by the justices, its attorney will be in the mix when the court considers the next big guns case next month.

The case is *McDonald v. Chicago*, a challenge of gun laws in Chicago and its suburbs that are strikingly similar to the Washington handgun ban. It asks the court to decide something left unsettled in its landmark ruling in *Heller v. District of Columbia*: whether the Second Amendment offers protection against actions by state and local governments, not just the federal government and its enclaves.

The attorney for those challenging the laws is Alan Gura, an Alexandria lawyer who successfully argued the *Heller* case. But the court, without explanation, granted the NRA's request to give its attorney time at the podium as well; the court sliced Gura's time by a third and gave it to the NRA and its recently hired attorney, Paul D. Clement, who was solicitor general in the [George W. Bush](#) administration.

The decision has brought howls of complaint from those who support Gura and underscores the bad blood between the erstwhile Second Amendment allies.

Ilya Shapiro, a Supreme Court scholar at the libertarian Cato Institute, where Gura has ties, wrote, "NRA prefers to seek glory for itself rather than presenting the strongest case for its purported constituency of gun owners." He said in an interview that the NRA's decision to seek time at oral arguments March 2 was "about fundraising, not lawyering."

NRA spokesman Andrew Arulanandam responded: "Our client is the Second Amendment. We wanted to make sure that all avenues were addressed and all bases covered" in convincing the court that the amendment applies to state and local governments.

To anyone who is not a constitutional scholar, the idea that the Bill of Rights applies only to actions of the federal government might seem illogical. But the court has decided that each amendment must be applied, or "incorporated," to the states through specific decisions. The court has done that with most of the amendments -- but not the Second -- relying on the "due-process clause" of the 14th Amendment.

Gura says that using that path would be fine but that the best way to make the decision is through another clause of the 14th Amendment, one that forbids states from passing laws that would dilute the "privileges or immunities" that come with U.S. citizenship.

In a way, Shapiro said, the differing approaches distinguish "gun nuts," whose sole interest is a protection of Second Amendment rights, from "constitution nuts," who think the case offers a chance to reassert the importance of the privileges-or-immunities argument.

In arguing to the court that it needed to hear from him, Clement said that only seven pages of Gura's 73-page brief dealt with the due process clause. Because that is the most "straightforward route" to deciding the case -- the other would require the court to overturn three of its precedents, he said -- Clement wrote to the court, "it would be particularly unfortunate if that argument were not adequately presented at oral argument."

Gura bristles at "the suggestion that I wouldn't be prepared to make that argument." He added: "They're not bringing anything substantive to the argument. The NRA is principally interested in taking credit and fundraising." The NRA and Gura's group petitioned the court to hear the review of the Chicago law, and the court picked Gura's argument.

The NRA's fourth-quarter decision to bring in Clement adds another interesting element to the case. He is a widely admired practitioner and seems to be a favorite of the court. "I think the only reason they granted the NRA's petition is because Paul Clement's name was on it," Shapiro said.

But Clement has not always been popular with gun owners. As solicitor general during the *Heller* arguments, he took the position that the lower court's reasoning in striking down the District's gun law was so broad that it could threaten federal restrictions, such as on the sale of machine guns. He advised the justices to send the case back. Conservatives were outraged that was the official position of the Bush administration, even though Clement also agreed that the Second Amendment conveyed an individual right.

Bygones, the NRA's Arulanandam says now. As solicitor general, Clement had to protect the government's interest. "We're pleased we have him on our side," he said.

Robert Barnes will write about the Supreme Court every other week while the court is in session.

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