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"The NRA is engaging here in fundraising, not liberty-promotion or ethical lawyering"

Damon W. Root | January 26, 2010

As Brian Doherty reported earlier, the Supreme Court has granted the National Rifle Association's motion to divide the plaintiffs' oral argument time in the upcoming Chicago gun case, which means that plaintiffs' attorney Alan Gura will now have 20 minutes, not the full 30, and the NRA will get 10 minutes. The NRA claims it just wants to make sure that the substantive due process argument for Second Amendment incorporation against the states receives as much attention as the Privileges or Immunities Clause argument. Cato Institute legal scholar Ilya Shapiro, however, says the NRA actually has a very ugly ulterior motive:

Throughout this case, Alan has consistently and forcefully advocated for the Second Amendment's incorporation under the Due Process Clause. That didn't change when his case was taken up by the Supreme Court. The thing is that the due process arguments are not all that complex, and simply do not merit the same care and attention in the briefs as arguments based on the Constitution's actual text and history. A first-year law student who's taken constitutional law—let alone a Supreme Court clerk—could write a due process incorporation argument in her sleep! In any event, the oral argument will be driven by the justices' questions, not by any long soliloquies by counsel. Alan's—and all attorneys'—job is to be ready for anything.

If the NRA were concerned about the final outcome of the case, it would be unlikely to attack Alan's strategy or question his preparation (an odd way to be "helpful" to one's side). It is not a stretch to predict that this case will be favorably decided at least in part on due process grounds, however, so what we are seeing here is likely an attempt by the NRA to position itself as responsible for such a victory—and that Alan isn't.

Ultimately, then, the NRA is engaging here in fundraising, not liberty-promotion or ethical lawyering.

Read the whole post [here](#). *Reason's* coverage of the Chicago gun case is [here](#).