

[Sign In](#) | [Register now](#)

[Home Delivery](#)

The Boston Globe

boston.com

[Local Search](#) [Site Search](#)

GO

[HOME](#) [TODAY'S GLOBE](#) [NEWS](#) [BUSINESS](#) [SPORTS](#) [LIFESTYLE](#) [A&E](#) [THINGS TO DO](#) [TRAVEL](#) [CARS](#) [JOBS](#) [HOMES](#)

[City & Region](#) [Nation](#) [World](#) [Globe Business](#) [Globe Sports](#) [Living/Arts](#) **[Opinion](#)** [Obituaries](#) [Regional editions](#) [Ideas](#) [Magazine](#)

[HOME](#) / [GLOBE](#) / [OPINION](#) / [OP-ED](#)
CASS SUNSTEIN

America's 21st-century gun right

The Boston Globe

[Email](#) | [Print](#) | [Single Page](#) | [Text size](#) - +

By Cass Sunstein
June 27, 2008

FOR THE FIRST time in the nation's history, the US Supreme Court has ruled that the Second Amendment creates an individual right to possess guns for nonmilitary purposes.

This is a stunning development - and a dramatic departure from how the Constitution has long been understood. Despite the court's emphasis on constitutional text and history, its 5-4 decision yesterday in the District of Columbia gun control case reveals a much broader point: Constitutional change often comes from the efforts of energetic political movements, of which the movement for gun rights is merely one example.

As recently as 1992, then Chief Justice Warren Burger, a conservative, publicly declared that "the Second Amendment doesn't guarantee the right to have firearms at all." And until 2007, not a single federal court had invoked the Second Amendment to strike down a restriction on gun ownership.

To be sure, everyone should agree that the Second Amendment creates some kind of individual right. But what kind? The text is unclear: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed."

Yesterday's opinion, written by Justice Antonin Scalia, finds an individual right to possess guns for traditionally lawful purposes, including hunting and self-defense. In an opinion by Justice John Paul Stevens, the dissenters respond that the Second Amendment right is limited to the use of weapons for military purposes and does not extend to hunting and personal defense.

The 157 pages produced by the justices delve deep into the Constitution's text and history - with references to William Blackstone, James Madison, Alexander Hamilton, and many others. On the history, reasonable people can disagree about which side is right. But what happened yesterday cannot be adequately understood by reading what the justices wrote. The court's decision would have been exceedingly unlikely without the efforts of many citizens over the last two decades to establish the existence of an individual right to bear arms for purposes of hunting and self-defense.

In this way, the court's ruling is akin to decisions that initially seem cut from a very different cloth. In 1954, the court established, for the first time, that racial segregation was unconstitutional. In the process, it inaugurated a series of rulings defining the nature of the right to be free from racial segregation. In 1971, the court struck down, for the first time, a law discriminating on the basis of sex. In the process, it inaugurated a series of rulings establishing the scope of the right to be free from sex discrimination. In 1996, the court struck down, for the first time, a law discriminating on the basis of sexual orientation. Courts are continuing to elaborate the nature of the right to be free from discrimination on that basis.

In each case, the court responded to successful social movements and massive changes in national understandings.

Of course the Second Amendment debate has a distinctive feature. Historians generally reject the view that, when ratified, any provision of the Constitution banned racial segregation or discrimination on the basis of sex or sexual orientation. But many historians think that when ratified, the Second Amendment did protect the right to bear arms for self-defense.

Nonetheless, the court lacks a time machine, and it would be preposterous to

INSIDE BOSTON.COM

NOTABLE DEATHS OF 2009



[Famous figures to leave us this year](#)

PAYING RESPECTS TO KENNEDY



[See who attended the funeral](#)

BILL BRETT'S PHOTOS



[Jacoby Ellsbury on the town, and more](#)

BEST-LOOKING QB'S



[Brady is number 8, according to the Wall Street Journal. Agree?](#)

PLUS...

[Blogs](#) | [Games](#) | [Podcasts](#)
[Puzzles](#) | [Personals](#) | [Movie listings](#) | [Classifieds](#) | [Globe Magazine](#)

MOST E-MAILED

- [BU dorm offers a study in luxury](#)
- [Boston University's new high-rise dorm](#)
- [Senate hopeful of the day: Curt Schilling](#)
- [Pressure-cooker kindergarten](#)
- [Nancy Talbot, co-founder of Talbots, dies at 89](#)
- [JetBlue launches \\$19 sale to Baltimore](#)
- [The NFL's most handsome quarterbacks](#)

RECOMMENDED SEARCHES

- [EEE](#)
- [Food](#)
- [Obituaries](#)
- [Crossword puzzle](#)
- [Green building](#)
- [Allergist](#)

[ABOUT THIS LIST](#)

[Home](#) | [Today's Globe](#) | [News](#) | [Business](#) | [Sports](#) | [Lifestyle](#) | [A&E](#) | [Things to Do](#) | [Travel](#) | [Cars](#) | [Jobs](#) | [Homes](#) | [Local Search](#)

[CONTACT BOSTON.COM](#) | [Help](#) | [Advertise](#) | [Work here](#) | [Privacy Policy](#) | [Mobile](#) | [RSS feeds](#) | [Make Boston.com your homepage](#)

[CONTACT THE BOSTON GLOBE](#) | [Subscribe](#) | [Manage your subscription](#) | [Advertise](#) | [The Boston Globe Extras](#) | [The Boston Globe Store](#) | © 2009 NY Times Co.
