

No. 07-290

IN THE
Supreme Court of the United States

DISTRICT OF COLUMBIA AND ADRIAN M. FENTY,
MAYOR OF THE DISTRICT OF COLUMBIA,
Petitioners,

v.

DICK ANTHONY HELLER,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit

BRIEF FOR AMICUS CURIAE
AMERICAN LEGISLATIVE EXCHANGE
COUNCIL IN SUPPORT OF RESPONDENT

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QUESTION PRESENTED

Whether the following provisions, D.C. Code §§ 7-2502.02(a)(4), 22-4504(a), and 7-2507.02, violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes?

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Glenn H. Reynolds, <i>The Right to Keep and Bear Arms Under the Tennessee Constitution: A Case Study in Civic Republican Thought</i> , 61 Tenn. L. Rev. 647 (1994)	33
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Leonard W. Levy, ORIGINS OF THE BILL OF RIGHTS (Yale Univ. Press 1999)	6-7

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