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**Sacramento California, July 20, 2021:** Americans Against Gun Violence denounces the ruling by a 2-1 majority of a panel of the Fourth Circuit Court of Appeals that the federal law prohibiting the sale of handguns to persons under the age of 21 by federally licensed firearm dealers (FFL's) violates the Second Amendment.

In 1968, in response to a growing epidemic of gun violence in the United States, with the majority of shootings being committed with handguns,<sup>1</sup> Congress passed the Gun Control Act of 1968, which included a provision banning the sale of handguns by FFL's to persons under the age of 21. Since 1968, the annual number of gun related deaths in the United States has risen from approximately 24,000 per year<sup>2</sup> to over 40,000 per year.<sup>3</sup> Handguns continue to be used in the vast majority of gun related deaths.<sup>4</sup> Firearm related homicides and suicides are the second and third leading causes of death, respectively, for American youth under the age of 20,<sup>5</sup> and the rate of gun homicide for high school age American youth is 82 times higher than the average rate in the other high income democratic countries of the world.<sup>6</sup>

It is against this backdrop that two Fourth Circuit Court of Appeals judges, Trump appointee Julius N. Richardson and George W. Bush appointee G. Steven Agee,<sup>7</sup> ruled on July 13, 2021 in the case of *Marshall v. ATF*, that the federal law banning sales of handguns by FFL's to persons under the age of 21 violates the Second Amendment.<sup>8</sup>

The plaintiff in this case, Natalia Marshall, who first sought to acquire a handgun at age 18, claimed that she needed the gun to protect herself against an ex-boyfriend who was subject to a restraining order and who had been arrested for illegally possessing a firearm.\* In their majority opinion, Judges Richardson and Agee ignored the overwhelming evidence that guns are far more likely to be used to kill or injure law-abiding people than to protect them. For example, studies have shown that a gun in the home is 43 times more likely to be used to kill a household member than to kill an intruder;<sup>9</sup> that someone who is carrying a gun at the time of an assault is four times more likely to be fatally shot than someone who is not carrying a gun;<sup>10</sup> and that for every one time a woman uses a handgun to kill an intimate acquaintance in self defense, 83 women are murdered with a handgun by an intimate acquaintance.<sup>11</sup>

In their ruling, Judges Richardson and Agee make 65 references to the Supreme Court's rogue 2008 *Heller* decision<sup>12</sup> in which a narrow 5-4 majority of the Court reversed over two centuries of legal precedent, including four prior Supreme Court opinions,<sup>13</sup> in ruling that the District of Columbia's partial handgun ban violated the Second Amendment. Prior to *Heller*, there was no constitutional right, Second Amendment or otherwise, for anyone

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\* Another plaintiff, Tanner Hirschfeld, was ruled by the Appeals Court to have no standing in the case as he had already turned 21 years of age.

in the United States to own any kind of a gun unrelated to service in a “well regulated militia.”<sup>14</sup> In *Heller*, by ruling that the “well regulated militia” clause of the Second Amendment was irrelevant to the proper interpretation of second half of the Amendment concerning “the right of the people to keep and bear arms,” the narrow five member majority of Supreme Court justices allowed the gun lobby to effectively rewrite the Second Amendment.<sup>15</sup>

The *Heller* majority opinion has been appropriately described by respected authorities as “gun rights propaganda passing as scholarship”<sup>16</sup> and as “evidence of the ability of well-staffed courts to produce snow jobs.”<sup>17</sup> The late Supreme Court Justice John Paul Stevens, who authored a dissenting opinion in *Heller*, described the majority opinion as “unquestionably the most clearly incorrect decision that the Court announced during my [35 year] tenure on the bench.”<sup>18</sup> Justice Stevens noted that in the *Heller* decision, the majority endorsed an interpretation of the Second Amendment that the late Supreme Court Chief Justice Warren Burger had called “one of the greatest pieces of fraud, I repeat the word ‘fraud,’ on the American public by special interest groups that I have ever seen in my lifetime.”<sup>19</sup> In their ruling in *Marshall v. ATF*, Judges Richardson and Agee join the *Heller* majority and a growing number of other federal judges<sup>20</sup> in taking this fraud to new lows.

The *Heller* decision and its progeny, including *Marshall v. ATF*, are worse, however, than “gun rights propaganda;” worse than “snow jobs;” worse even than a “fraud on the American public.” In creating a constitutional obstacle, where none previously existed, to the adoption of stringent gun control laws in the United States comparable to the laws in other high income democratic countries – countries in which the rate of firearm related deaths is, on average, one tenth the rate in the United States<sup>21</sup> – the *Heller* decision and its progeny are literally a death sentence for tens of thousands of Americans annually, including thousands of American children and youth.

Americans Against Gun Violence is the only national U.S. organization that openly advocates overturning the *Heller* decision and adopting stringent gun control laws in the United States comparable to the laws in other high income democratic countries, including a complete ban on civilian ownership of handguns. We are the only organization to file an *amicus* (friend of the court) brief in a Supreme Court case calling on the Court to reverse *Heller*,<sup>22</sup> and the only organization to file an *amicus* brief in an appeals court case<sup>23</sup> calling on lower courts to interpret *Heller* as narrowly as possible until it is overturned. We urge Attorney General Merrick Garland to appeal the split ruling by the three judge panel in *Marshall v. ATF* to the full Fourth Circuit Court of Appeals, and we urge other public health and gun violence prevention organizations to join us in calling for overturning *Heller* and adopting stringent gun control laws in the United States comparable to the laws in the other high income democratic countries of the world.

## References

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- <sup>1</sup> Franklin E. Zimring, "Firearms and Federal Law: The Gun Control Act of 1968," *The Journal of Legal Studies* 4, no. 1 (1975): 148.
- <sup>2</sup> Sara Farchi et al., "Deaths Resulting from Firearm-and Motor-Vehicle-Related Injuries—United States, 1968-1991," *MMWR: Morbidity and Mortality Weekly Report* 43, no. 3 (1994): 37–42 Figure 1.
- <sup>3</sup> "Past Summary Ledgers," Gun Violence Archive, accessed April 17, 2021, <https://www.gunviolencearchive.org/past-tolls>.
- <sup>4</sup> Josh Sugarmann, *Every Handgun Is Aimed at You: The Case for Banning Handguns* (New Press, 2001).
- <sup>5</sup> Rebecca M. Cunningham, Maureen A. Walton, and Patrick M. Carter, "The Major Causes of Death in Children and Adolescents in the United States," *New England Journal of Medicine* 379, no. 25 (December 20, 2018): 2468–75, <https://doi.org/10.1056/NEJMSr1804754>.
- <sup>6</sup> Ashish P. Thakrar et al., "Child Mortality In The US And 19 OECD Comparator Nations: A 50-Year Time-Trend Analysis," *Health Affairs* 37, no. 1 (January 2018): 140–49, <https://doi.org/10.1377/hlthaff.2017.0767>.
- <sup>7</sup> "Judges of the Court," accessed July 19, 2021, <https://www.ca4.uscourts.gov/judges/judges-of-the-court>.
- <sup>8</sup> *Hirschfeld v. BUREAU OF ALCOHOL* (Court of Appeals, 4th Circuit 2021).
- <sup>9</sup> Arthur L. Kellermann and Donald T. Reay, "Protection or Peril? An Analysis of Firearm-Related Deaths in the Home," *New England Journal of Medicine* 314, no. 24 (June 12, 1986): 1557–60, <https://doi.org/10.1056/NEJM198606123142406>.
- <sup>10</sup> Charles C. Branas et al., "Investigating the Link Between Gun Possession and Gun Assault," *American Journal of Public Health* 99, no. 11 (November 1, 2009): 2034–40, <https://doi.org/10.2105/AJPH.2008.143099>.
- <sup>11</sup> "VPC - A Deadly Myth: Women, Handguns, and Self-Defense," accessed July 19, 2021, <https://www.vpc.org/studies/myth.htm>.
- <sup>12</sup> *District of Columbia v. Heller*, 554 US (Supreme Court 2008).
- <sup>13</sup> *United States v. Cruikshank*, 92 US 542 (Supreme Court 1876); *Presser v. Illinois*, 116 US (Supreme Court 1886); *U.S. v. Miller*, 307 U.S. 174 (1939) (n.d.); *Lewis v. United States*, No. 55 (U.S. 1980).
- <sup>14</sup> See, for example, the Supreme Court's statement in *Lewis* that "The Second Amendment guarantees no right to keep and bear a firearm that does not have 'some reasonable relationship to the preservation or efficiency of a well regulated militia.'" *Lewis*, 445.
- <sup>15</sup> Michael Waldman, "How the NRA Rewrote the Second Amendment," *POLITICO Magazine*, May 19, 2014, <http://www.politico.com/magazine/story/2014/05/nra-guns-second-amendment-106856.html>.
- <sup>16</sup> Saul Cornell, "Originalism on Trial: The Use and Abuse of History in *District of Columbia v. Heller*," *Ohio State Law Journal* 69 (2008): 629.
- <sup>17</sup> Richard Posner, "In Defense of Looseness," *The New Republic* 239, no. 3 (August 27, 2008): 35.
- <sup>18</sup> John Paul Stevens, *The Making of a Justice: Reflections on My First 94 Years* (New York: Little, Brown, 2019), 482.
- <sup>19</sup> Stevens, 483; Warren Burger, PBS News Hour, December 16, 1991, c.
- <sup>20</sup> *George K. Young, Jr., v. State of Hawaii*, No. 12-17808 (9th Cir July 24, 2014); *Duncan v. Becerra*, 366 F. Supp. 3d 1131 (Dist. Court 2019); *Miller v. Bonta*, No. Case No. 19-cv-1537-BEN (JLB) (Dist. Court June 4, 2021).

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<sup>21</sup> Erin Grinshteyn and David Hemenway, “Violent Death Rates: The US Compared with Other High-Income OECD Countries, 2010,” *The American Journal of Medicine* 129, no. 3 (March 1, 2016): 266–73, <https://doi.org/10.1016/j.amjmed.2015.10.025>.

<sup>22</sup> “New York State Rifle & Pistol Association, Inc., et al., Petitioners v. City of New York, New York, et Al.,” Supreme Court of the United States, accessed April 30, 2019, <https://www.supremecourt.gov/rss/cases/18-280.xml>.

<sup>23</sup> *Duncan v. Becerra*, No. 19-55376 (Court of Appeals, 9th Circuit 2020).