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June 16, 2016: How Heller Resolves the Gun Issue

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Title: How Heller Resolves the Gun Issue

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6/16/2016--I have never been able to convince my fellow gun-control progressives, but *DC v. Heller*, the case that, in 2008, held that Americans have a constitutional right to have a gun, and *McDonald v. Chicago*, which extended *Heller* to the States, helpfully resolves the gun issue. The reason it does so is that it removes the possibility of confiscation of guns from any conversation about gun control. So, in theory, *Heller* should make it easier to enact sensible gun restrictions. To see how this might work in practice, consider the issue of the no-fly list. After the horrible tragedy in Orlando, gun control advocates have renewed calls for suspension of gun purchase rights by persons on the government's no-fly, anti-terrorist watch list. Yesterday, Donald Trump agreed with this position. In the past, this proposal has foundered on the ground that there are mistakes on the no-fly list, which are difficult to get removed. So, many innocent people are on that list and cannot seem to get off. The NRA and its allies do not want that problem exacerbated by adding guns to the list. But now consider the impact of *Heller*. Courts are understandably reluctant to second guess the government about people on the no-fly list. This reluctance cannot be extended to the loss of the right to buy a gun, however, because that is a constitutional right. So, courts will have to grant hearings and put the burden on the government to justify the loss of the right to purchase guns. The net effect will be a list without obvious errors. Progressives have not made this argument because they are afraid that it would entrench *Heller*. Well, guess what? *Heller* is entrenched. It is not a broad right--it allows a ban on concealed carry, for example--but it is robust where it applies. It will not be overruled. And it can be used to expand gun control if one knows how to use it.