# Stunning Victory Against Judicial Supremacy

by Phyllis Schlafly May 21, 2008

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The media have been telling us to watch the gun-control case now before the U.S. Supreme Court, where we await a decision about Americans' Second Amendment rights. But the Second Circuit Court of Appeals just handed down an equally important gun decision that has additional implications against judicial supremacy.

The Second Circuit, which convenes in New York City, shot down the liberals' longtime dream of achieving gun control by suing gun manufacturers for crimes committed by firearms. In a remarkable decision, this federal appellate court dismissed City of New York v. Beretta U.S.A. Corp. (pdf) and protected gun corporations against frivolous lawsuits in state and federal courts.

The lawsuit was brought by the City of New York in order to seek control over gun suppliers. At stake was not merely money but also whether the liberals would obtain from judicial activists the gun control which the liberals could not get from legislatures.

This decision provides a roadmap for how Congress should withdraw jurisdiction from judicial supremacists in other fields, too. The Second Circuit decision is a sweeping affirmation of Congress's power to stop future and pending lawsuits in federal and state courts.

This ruling broke an alarming trend of judicial supremacy and stopped outrageous lawsuits that tried to impede the sale of guns because of illegal acts committed by New York City residents and others. Billionaire Mayor Michael Bloomberg was left empty-handed in his attempt to sue businesses concerning crimes committed by residents of his city.

The lawsuit cited the harm from gun sales while ignoring evidence that the benefits far outweigh the harm. The trial court sided with Bloomberg, but the appellate court said "no" and put an end to the nonsense.

Congress had legislated the basis for this decision by passing the Protection of Lawful Commerce in Arms Act (PLCAA) in 2005. The PLCAA protects against a "qualified civil liability action," defined broadly to include almost any lawsuit brought against a gun manufacturer or seller based on "the criminal or unlawful misuse" of a firearm distributed in interstate commerce. On the day it was signed into law by President Bush, gun manufacturers moved to dismiss this case, and the Second Circuit has now enforced the law.

The appellate court rejected an argument that this law denied access to the courts. New York City can and does sue all the time, but Congress properly rejected the ridiculous notion that the city could sue businesses over a typically beneficial product that was later used illegally.

Should General Motors and Ford be held liable for crimes committed by drunk drivers, or baseball bat suppliers be sued for criminal beatings inflicted with their products? Of course not, and it was an outrage that courts even entertained such actions against gun manufacturers and suppliers.

If Congress had not effectively withdrawn jurisdiction, gun manufacturers would be reluctant to produce guns and many might go out of business. This intimidation would deter the lawful sale of guns.

That's exactly what the gun-control advocates have long wanted: legislation from the bench that they could not persuade real legislatures to pass. A majority of legislators, who are elected, see the absurdity of gun control and recognize the valuable self-defense function of guns.

The role of judges should be (as Chief Justice Roberts repeated in his confirmation hearings) like that of baseball umpires: calling the balls and strikes, but not changing how many strikes constitute a strike-out. Judges should interpret ambiguous laws fairly but not legislate from the bench.

Gun control has become so unpopular that not even the Democratic presidential candidates dare brag about their views. Instead the anti-gun crowd hopes to get what it wants from supremacist judges.

The misuse of the courts to obtain a result contrary to the will of the American people should not be allowed on other vital issues. Congress should also take away from judges issues such as the Pledge of Allegiance, the Ten Commandments, the Boy Scouts, and the definition of marriage.

Take another example. Federal courts should not entertain lawsuits by illegal aliens against local ordinances that enforce our immigration laws.

This refreshing gun decision by the Second Circuit signals the way for Congress to return the judiciary to its proper place in our constitutional separation of powers system. In the previous Congress, the House did pass bills to curb court mischief about the Pledge of Allegiance and the definition of marriage, and now it's time for the Senate to step up to the plate and take action against judicial supremacists.