

Law School Professor Cited by High Court

A U.S. Supreme Court justice who dissented from last week's ruling in a Chicago gun case cited the writings of a constitutional scholar at Albany Law School who disagrees with the court's interpretation of the Second Amendment.

In an interview last week, professor Paul Finkelman said "The historical issue is this: What does the Second Amendment mean? ... The meaning of it in 1789 was clear to everybody -- a well regulated militia being necessary to the security of a free state, rather than just a ragtag group of people with guns."

The ruling in *McDonald vs. Chicago*, which dealt with a handgun ban in the city of Chicago, was a 5-4 opinion, with the majority holding that the personal right to own guns applies nationwide. Justice Samuel A. Alito, Jr., in the main opinion, "made one thing unmistakably clear to lower court judges: the right to have a gun for self-defense in the home is a 'fundamental' constitutional right," according to SCOTUSblog.com, which tracks Supreme Court rulings and other news. Finkelman said the court's rulings in the Chicago case and in a ruling two years ago called the *Heller* decision, involving the District of Columbia, show a flawed view of the Constitution.

"I think the court got it wrong in *Heller* -- *Heller* was 5-4 -- and I think they got it wrong once again," in the Chicago ruling, Finkelman said. "They insist on thinking the Second Amendment is the personal right to own a weapon, and they think it applies to the state. If you followed that logic, this would mean the framers of the Constitution believed that no government could ever regulate firearms and anyone could walk around threatening people with guns all the time, and no one at the time believed that."

In his dissent, Justice Stephen G. Breyer cited a piece Finkelman wrote for the *Syracuse Law Review* in 2008, entitled "It Really Was About a Well Regulated Militia." The professor, who has been at Albany Law for the past four years and has been cited by the U.S. Supreme Court in the past, wrote the article for a Second Amendment symposium.

"They wanted a 'well regulated Militia' to be part of the nation's defense against external enemies or against internal opponents of the government who might reject democratic change in favor of violence, lawlessness, and rebellion," Finkelman wrote. "By guaranteeing the continuation of a well regulated Militia, the Second Amendment accomplished these goals. The Framers ... did not intend to protect an individual right to own weapons, despite the claims of a majority of a highly politicized Supreme Court, who are more interested in ideology and electoral politics than the very history they claim to believe in."

"The Second Amendment was simply a promise that the national government would not abolish the state militias," Finkelman said last week. The amendment states that "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."

"Only if you're in a well-regulated militia, do the people have a right to keep and bear arms,"

he said.

Finkelman grew up in Jefferson County where "lots of people I knew were hunters. I have no problem at all with all kinds of recreational use of firearms." He shot rifles as a Boy Scout, he said.

Handgun ownership is "for only one purpose, to shoot another human being, and they need to be severely regulated," he said. "In many states, there is no requirement to go to gun safety school, pass a gun safety test, know laws about carrying guns. People are free to get a gun and misuse it. These cases are not about taking guns away from people. These are cases about whether we have reasonable and rationale regulation about things that are inherently dangerous."

In a separate citation related to Albany Law, also on the dissent side, Justice John Paul Stevens cited an article by Carl T. Bogus, entitled "Gun Control and America's Cities: Public Policy and Politics," published in the school's Albany Government Law Review, which dealt with firearms, the militia and safe cities. Bogus is a law professor at Roger Williams University School of Law in Rhode Island.

Bob Barrows, the law review's editor, said the citation demonstrates that "hard work and dedication does not go unnoticed and seeing our work cited by a justice of the Supreme Court confirms that our law review makes an impact in the legal community." Trustees

Mary Ann Cody McGinn is the first woman in the 159-year history of Albany Law School to head the board of trustees. A 1983 graduate of the school, she took over July 1, replacing attorney E. Stewart Jones.

An attorney who has focused on finance and securities for more than 20 years, Cody McGinn has served on the board since 1999. She has also served as president of Albany Law School's National Alumni Association Board of Directors and co-chairwoman of the law school's Racing and Wagering Advisory Committee.

"I plan to build on the law school's momentum that my predecessor set in motion," she said.

"During my board tenure ... I have been engaged in student initiatives and feel close to the issues -- the assets and the challenges."

She said a primary focus for her will be to lead the search for a replacement for the current president and dean, Thomas Guernsey, who will step down June 30, 2011.

Other new officers are Robert Miller, vice chairman; Donna Wardlaw, secretary; and Thomas Mullin, treasurer.