



IS GUN OWNERSHIP A RIGHT?

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Does an American citizen have a Constitutional right to own a gun?

Here's what the Second Amendment says: "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."

Now, it once seemed to me like that language only protected state militias and not individuals. Indeed, this is the view held by the four dissenting Supreme Court justices in the 2008 case of District of Columbia versus Heller, a landmark case dealing with gun ownership.

But the more research I did, the more I came to realize that my initial view was mistaken and that the Founders were, in fact, securing an individual right. The five justices who voted to affirm the right to own a gun in DC versus Heller had, indeed, made the correct decision.

Let's look at the amendment one more time.

"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."

We first need to focus on the phrase "the right of the people." Note that the people are the only ones whose right is secured here, not the militia or a state government. This phrase "the right of the people" comes up a few times in the Constitution. For example, the First Amendment refers to "The right of the people peaceably to assemble, and to petition the Government." And the Fourth Amendment secures "The right of the people to be secure... against unreasonable searches and seizures."

Why, then, if the authors of the Constitution felt so strongly about "the right of the people" to own guns, did they include language about "a well-regulated militia"?

These opening words of the amendment might be called a "justification clause." Such clauses are used to help explain why a right is being secured. But it's the operative clause that explains what right is being secured. In this case, the right of the people to keep and bear arms.

And what was the word 'militia' understood to mean at the time?

Well, the Militia Act of 1792 defined "militia" to mean all white males 18 to 45. Today, of course, "militia" would include women and people of all races, but it was clearly not a reference to a small, National Guard-type group.

And what about the part of the amendment that says a militia is necessary “to the security of a free State”? What, the opponents of personal gun ownership ask, does a personal right of gun ownership have to do with that?

Again, historical context is key. In the 1790s, the phrase “free State” wasn’t used to mean an individual state like New York or Rhode Island. Rather, it meant what we’d call today a “free country”—a nation free of despotism. A “free State” is what the Framers wanted America to be. They saw an armed citizenry as, in part, a hedge against tyranny. Citizens who own weapons can protect themselves, prevent tyrants from seizing power, and protect the nation from foreign enemies.

This does not mean, though, that this right is unlimited. Free speech, for example, has long been subject to some narrow and reasonable regulations. But severe restrictions on owning a gun, like severe restrictions on free speech, would violate the Second Amendment as the Founders understood it.

Maybe you think this understanding of the Second Amendment is outdated today, that the Constitution needs to change as public attitudes change. The Founders included a provision for doing just that: if the public attitude really has changed, the Constitution can be amended to reflect that change. But, ironically, even if we focus on current public attitudes, the case for individual gun ownership is as strong as ever. Polls consistently show that over two-thirds of Americans believe that the Second Amendment secures the right of citizens to own a gun. And Congress and state governments have repeatedly reaffirmed this view, including in recent decades.

So, does the Second Amendment secure an individual right to bear arms?

It did when it was written. It has throughout American history. And it does today.

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