

Salt Lake Community College

# The Second Amendment: Security for Now

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By: Michael Scott Simmons

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Kurt Shirkey

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Perhaps the most publically controversial amendment to the Constitution of the United States of America reads, “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.”<sup>1</sup> The Second Amendment speaks directly of a Militia being necessary to a free State eluding the it may actually be a right of the States and not necessarily an individual right. However it continues to state that the right of the people shall not be infringed. Let us explore this state of potential contradiction and come to conclude that as a people we are the militia of our state and it is our right and perhaps our duty to keep the arms that may one day be required of us.

It is intriguing to note that since the ratification of the Bill of Rights on December 15, 1791, very little to no confusion or controversy regarding the Second Amendment existed for more than a hundred years, until recently. We have seen, in the course of a few short years, many, some highly influential, individuals whose desire it is or was to disarm the general public. Luckily, the public seems in no hurry to allow the Second Amendment to slip quietly into the night.

Let us first review the case of *U.S. v. Miller*<sup>2</sup> in which the U.S. Supreme Court states, in reference to a double barrel 12-gauge shotgun having a barrel less than 18 inches in length, or for today’s purposes a sawed-off shotgun, “In the absence of any evidence tending to show that possession or use of a "shotgun having a barrel of less than eighteen inches in length" at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument.

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<sup>1</sup> The Second Amendment of the Constitution of the United States.

<sup>2</sup> 307 U.S. 174 (1939)

Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment, or that its use could contribute to the common defense.”<sup>3</sup> Obviously there is some argument that could be made that such a weapon could prove effective against certain types of invasion, especially as several state and federal agencies currently have such weapons available to officers in given situations. More notably the conclusion of the court is that the Second Amendment protects only certain types of arms kept by the people and those types of arms are defined as “ordinary military equipment”. If fully considered, this ruling from the Supreme Court, could find it possible that previous restrictions on individual gun ownership such as those imposed by the Clinton administration were in direct conflict with this interpretation of our Second Amendment. Furthermore this decision accomplished two things simultaneously. First, it defined what the Supreme Court would consider protected by the Second Amendment and second, it reinforced the individual’s right to bear arms.

Between 1939 (*U.S. v. Miller*) and 2008, the Supreme Court did not provide any additional insight or precedents regarding the Second Amendment. However, in 2008 the Court did grant us a larger view of our right to bear arms in their decision in *Heller v. District of Columbia*<sup>4</sup>. Heller was a special police officer in D.C. and despite carrying a firearm for his employment he had applied for a license to register one for self-protection in his home. His application was denied on account of the District of Columbia’s ban on handguns and operable firearms in the home. The decision handed down a crushing blow to the gun ban calling it unconstitutional. The Justices did clarify that, while it is unconstitutional to ban gun ownership, it is still possible

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<sup>3</sup> [http://wwwlaw.cornell.edu/supct/html/historics/USSC\\_C0307\\_0174\\_ZO.html](http://wwwlaw.cornell.edu/supct/html/historics/USSC_C0307_0174_ZO.html)

<sup>4</sup> 128 S. Ct. 3020 (2010)

to place restrictions on persons obtaining firearms. Also found in this decision is that self-defense is an inherent right and central to the Second Amendment right, “ Whatever the reason, handguns are the most popular weapon chosen by Americans for self-defense in the home, and a complete prohibition of their use is invalid.”<sup>5</sup>

Moving on in our journey our next stop is with *McDonald v. Chicago*<sup>6</sup>. We find a similar issue as we did in the *Heller* case but this time it is a City and State that are effectively executing a ban on hand guns. The decision in *Heller* seems like it should have been clear enough to prevent the *McDonald* case from making it to the Supreme Court. Nevertheless it required the intervention of our highest court. We get from their opinion a slight sense that either they were surprised to be getting something they thought precedent had been set on or perhaps slightly irritated that the *Heller* opinion had neglected to clarify that the precedent set carried to all forms of government. In either case the outcome is the same, we are provided with an opinion that the *Heller* ruling should be applied equally across all governments both Federal and State. Further solidifying that, “the Second Amendment protects the right to possess a handgun in the home for the purpose of self-defense.”<sup>7</sup> The Washington Post calls the split 5-4 decision from the Court on *McDonald* “more symbolic than substantive, at least initially.”<sup>8</sup> while also noting that “it was the first time the court had said there was an individual right to gun ownership rather than one related to military service.”<sup>8</sup>

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<sup>5</sup> <http://www.law.cornell.edu/supct/html/07-290.ZO.html>

<sup>6</sup> 130 S. Ct. 3020 (2012)

<sup>7</sup> <http://www.supremecourt.gov/opinions/09pdf/08-1521.pdf>

<sup>8</sup> <http://www.washingtonpost.com/wp-dyn/content/article/2010/06/28/AR2010062802134.html?sid=ST2010070702697>

There are several sources of reporting, statistical studies, and legislative lobbying regarding the Second Amendment. Such groups include the Brady Campaign<sup>9</sup>, the National Rifle Association<sup>10</sup>, and Gun Owners of America<sup>11</sup>. An excellent source of reporting violent crime, which seems to be the main argument against the Second Amendment, can be found through the Federal Bureau of Investigation (FBI) in the form of Uniform Crime Reports (UCR)<sup>12</sup>. In reviewing the statistics available, specifically the number of violent crimes per 100,000 people by state, it should be noted that a state that has stricter gun control laws generally has a higher rate of violent crime, while a state that has a more open policy on gun control will experience a lower rate of violent crime. This statistic and the continued publication of the UCR, which illustrates this fact, frustrate the agenda of the Brady Campaign and further provide empirical data supporting the Second Amendment, thereby providing the Supreme Court with greater evidence to continue securing those rights provided for by the amendment.

Now travel back in time to 1776. The Founding Fathers of the United States obviously found the right to keep and bear arms essential. It proved itself over and over again throughout history. In reading the Declaration of Independence, there are two passages that indicate the expectation of conflict and the subsequent need for the right to bear arms. “Whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.”<sup>13</sup>

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<sup>9</sup> <http://www.bradycampaign.org/>

<sup>10</sup> <http://home.nra.org/#/home>

<sup>11</sup> <http://gunowners.org>

<sup>12</sup> <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011>

<sup>13</sup> [http://www.archives.gov/exhibits/charters/declaration\\_transcript.html](http://www.archives.gov/exhibits/charters/declaration_transcript.html)

This single passage is enough to pick a fight with any government as there is no government that would willingly let go of people within its jurisdiction. Nonetheless, the founders of our great nation coupled the above statement with this, “But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.”<sup>13</sup> To think that when things get bad enough to leave your current form of government behind and create a new one that the use of force will not be necessary is ludicrous. Surely the Revolutionary War was foreseen as these two lines alone were essentially an invitation to war. As such the right to keep and bear arms was and is inherently essential to the formation and survival of the United States as we know it.

There are several States, Counties and even individual Cities that have legal laws on their books restricting persons who may legally obtain and keep a firearm. Such restrictions may include waiting periods, background checks, mental health screenings, or firearms proficiency training and certification as well as restrictions keeping firearms out of houses of worship, schools and government buildings. On these matters the Court has found them to be Constitutional inasmuch that they do not completely prohibit or effectively ban all citizens from obtaining or keeping a firearm. Some will say that this leaves open the door for more legal conflict regarding such restrictions as they pertain to the Second Amendment, but it is better to be moderate in restrictions than completely open.

Individual gun owners can help make the rights promised in the Second Amendment more secure by being smart with their storage, maintenance, carrying and shooting, both recreational and hunting. Care should especially be taken in recreational target shooting and open carrying. These two types of behavior can cause negative publicity for the right to bear arms. In the past several years there have been many wild fires across the United States, primarily in the West, whose causes are listed as target shooting.<sup>14</sup> Recklessness while open carrying can cause undue public distress and again result in negative publicity for gun owners, increasing the call for stricter gun control.<sup>15</sup>

The above cases and arguments illustrate the change in the status of the Second Amendment from more than a hundred years of general acceptance to a controversial topic with heated debates and grand statistical studies being conducted by either side, as well as the need for gun owners and advocates across the country to be more cautious with the use and display of their weapons.

Clarified by the Supreme Court, the Second Amendment confers the right to bear arms in self-defense while still being subject to restrictions within reason. For the time being, the right to keep and bear arms as protected by the Second Amendment coupled with the Fourteenth Amendment is secure, as secure as can be while the Supreme Court has the power to change previously established legal precedent.

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<sup>14</sup> <http://www.ksl.com/?sid=22175877&nid=148&title=west-lake-fire-should-be-contained-by-monday-night>

<sup>15</sup> <http://www.ksl.com/?nid=148&sid=14047833>