

The History of the Second Amendment in the Supreme Court:

And the truly tragic delusion of the American people

"The concept of a citizen's right to bear arms, has been the subject of one of the greatest pieces of fraud - I repeat the word 'fraud' - on the American public by special interest groups that I have seen in my lifetime." - Warren Burger, 1991

The Second Amendment, in general has been a hot topic for the general public for the majority of United States history. Oddly enough, there have been few Supreme Court cases regarding the Second Amendment itself. Issues that have been addressed by Congress and the various arguments that society discusses on a daily basis are mainly developed by the phrasing of the amendment and deal with collective rights versus individual rights. Collective rights advocates place an emphasis on tighter gun control whereas individual rights enthusiasts encourage immense freedom for citizens. These two sides are simply different interpretations of the Second Amendment, but the Supreme Court has made its own decisions that gives the Second Amendment its interpretation today. In the following, the Supreme Court cases that have shaped how the Second Amendment is implemented throughout the United States will be discussed, as well as a series of critiques by scholars.

The Second Amendment, as Thomas Jefferson coined it, "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", has had a long history of striking fear in the eyes of the public on both sides. Society is almost split into two completely directions as to how they feel it was meant to secure citizens. One of the many reasons behind the continuous debate among citizens is because it is the only amendment that actually seems to state a purpose ("... being necessary to the security of a free State"). Still, the chief players in provoking questions about gun control are the countless lobbyists and the NRA. "Tragically, the legal reality has meant little to the gun policy debate. While the Second Amendment amounts to very little constitutionally, it is an amazing device for obscuring inconvenient truths. For the gun industry, the Second Amendment is a public relations wonder. The gun industry-which is to gun deaths as the tobacco industry is to smoking deaths- has been able to stay in the background while using the NRA (with its Second Amendment mantra) as a politically potent front-group to starve off meaningful public opinion(490, Henigan)."

In most recent news, President Barack Obama desired to place stricter gun control following the Sandy Hook tragedy in mid December of 2012. It included a wide range of policies in regards to mental health, the amount of rounds and other issues that could provide safety for citizens, as well as what is perceived as restrictions for gun advocates. After months of deliberation, every aspect of the bill was shot down by Congress. This issue stirred the public into a frenzy. Some, believing they would lose their rights altogether and others struggling to limit rounds and invest money into mental health and other issues. Tragedies like Sandy Hook have the ability to terrify people, not only for their own safety and the people around them, but also the fear that they may lose their freedoms handed down from the Founding Fathers of this

nation. As Robert E. Shalhope stated in 1982 (which is still prevalent today), "opponents of restrictive measures emphasize the free individual's rights and privileges and adamantly contend that the "right to bear arms" phrase constitutes the essence of the amendment. Their bumper stickers-modern day cockades-declare: "When guns are outlawed only outlaws will have guns," or "Hitler got his start registering guns(1)." These beliefs are often argued on a daily basis in society. Probably the most widely used phrase heard by the public is "gun don't kill people, people kill people", which tends to send a powerful message towards the listener.

Again, this is the typical debate heard throughout American society which rarely is dealt with in the great scheme of things. The Second Amendment is powerfully protected by the Judicial Branch and as the cases are described and the deliberation is expressed, the purpose is to illustrate the facts dealing with court cases and nullify the hearsay, for although the freedom of speech is protected by the First Amendment; the facts are prudent.

There have been seven Supreme Court cases in regards to the Second Amendment. These cases made an impact on the interpretation of the Second Amendment in one way or another that provides insight into how the Supreme Court perceives the Second Amendment itself. Overall, "since its ratification in 1791 the Second Amendment has remained in relative obscurity. Virtually ignored by the Supreme Court, the amendment has been termed "obsolete" "defunct" and an "unused provision" with no meaning for the twentieth century by scholars dealing with the Bill of Rights(Shalhope, 1)." There still have been instances where in cases brought issues regarding the Second Amendment to the Supreme Court. The first court case that dealt with the Second Amendment did not come into nearly one hundred years after the Bill of Rights was written.

United States v. Cruikshank (1875) was one of the smaller, but first cases dealing with the Second Amendment. The ruling regarding the Second Amendment plays a pivotal role in how the Supreme Court perceives the amendment today. This case also dealt with several other issues, but in the ruling the Supreme Court held that the Second Amendment has no other effect than to restrict the powers of the national government. As stated on LexisNexis Academic:

- The Second Amendment declares that the right to keep and bear arms shall not be infringed; but this means no more than that it shall not be infringed by Congress. This is one of the amendments that has no other effect than to restrict the powers of the national government, leaving the people to look for their protection against any violation by their fellow-citizens of the rights it recognizes to local legislation(1).

This section of the overall ruling set a powerful precedent for cases to come as the Supreme Court made it clear that the rights of the citizens to keep and bear arms could not be devalued by the government itself.

Presser v. Illinois (1886) dealt with the section of the Second Amendment regarding the formation of a militia. Presser, a militiaman marched through the streets of Chicago with a group of armed men. The Supreme Court upheld the conviction of the lower court. The Supreme Court stated since Presser did not obtain a license to do so, and the armed men were not part of the United States army it was illegal. According to LexisNexis this case held that "a state could pass laws to regulate the privileges and immunities of its own citizens, and there was no national privilege that conferred rights to form a militia, and the state had the power to enact sections 5,6." This upheld the right of the people to keep and bear arms, but forbids groups of people from marching with arms without the allowance of the state. As Patrick Charles explains:

- Individual rights scholars and many Americans equate individual exercise and possession of arms as effectuating a "well-regulated militia". Even the militia that assembled at Lexington and Concord had been drilling together for nearly a year in preparation of their common defense. Such training and discipline had been in place since the mid-seventh century. The men that assembled that day did not fall into line by themselves. Every maneuver required as many as ten, twenty, or thirty disciplined military counts, all of which were instructed by experienced officers. Placing arms in the hands of a untrained and undisciplined militia was dangerous to the community and the nation, for arms were about the militia working as one, not as individuals(92,93).

Charles gives a clear understanding that can provide the reasoning behind the ruling in Presser.

A well regulated militia is one that works towards a common goal that is given consent by the government and usually serves a purpose of benefiting the people of the nation in one way or another.

Miller v. Texas (1894) was the first case wherein the defendant brought the Fourteenth Amendment into play as well as his Second Amendment rights. In the ruling, the court stated: "And if the fourteenth amendment limited the power of the states as to such rights, as pertaining to citizens of the United States, we think it was fatal to this claim that it was not set up in the trial court." This meant that the Supreme Court would not even address the assumption that Miller's Fourteenth Amendment rights were violated because he did not bring it up during his initial trial. In addition, the Fourteenth amendment prohibits a state from depriving any person of life, liberty, or property, without due process of law, but it does not include the rights of one citizen against another citizen of the same state. As far as how this influenced the decision of the court as regards to the defendants Second Amendment rights, LexisNexis Academic summarizes, "The restrictions of the Second ... operate only upon the Federal power, and have no reference whatever to proceedings in State courts. And if the Fourteenth Amendment limits the power of

the States as to such rights, as pertaining to citizens of the United States, it is fatal to a claim on appeal to the United States Supreme Court if it was not set up in the trial court(1)."

United States v. Miller in 1939 illustrated the U.S Government's role and the Supreme Court's interpretation while dealing with interstate commerce. The case fell under Federal jurisdiction, not only because of the interstate commerce violation, but also because it was unregistered with the NFA which was also a federal matter. In this case, Miller was traveling from one state to another with what was and is today considered a unregistered shotgun. Given those two reasons, the court found that it did not in any way have a correlation to the preservation of a well regulated militia or the common defense. This case is one of the commonly used arguments for both sides of the gun control argument to date.

Lewis v. U.S. dealt with the issue of felons possessing firearms. As the American Bar Association's U.S Supreme Court page explains, "using a "rational basis" standard, the Court held that the restrictions "do not trench upon any constitutionally protected liberties(1)." This case also reaffirmed the decision that it did not in any way have a correlation to the preservation of a well regulated militia of the common defense in United States v. Miller. In District of Columbia v. Heller in 2008, the Court upheld an individual's right to possess a gun for their safety at home, but it also confirmed that limitations of particular firearms was legitimate and (as in Lewis v. U.S) felons could not possess firearms. District of Columbia v. Heller confirmed the Second Amendment extends to individual's in Washington, D.C but it did not address individual's in states. Heller left a cloud of uncertainty in regards to the power invested in the state over individuals. The final case that will be addressed in McDonald v. Chicago in 2010. Chicago had a twenty eight year old gun ban up until the final decision which struck it down. The Court ruled that the Second Amendment was incorporated by the due process clause of the

Fourteenth Amendment. Therefore individual's had a constitutional right that outweighed the individual states power to restrict it.

There are arguments as to whether the gun ban had actually reduced crime or not, but are people asking the right questions? If the Second Amendment was created in order to state a purpose to the security of a free state as well as a regulated militia, than how does crime fit into the argument? McDonald was attempting to protect himself, not commit a crime. The arguments of preventing bloodshed and reducing crime are pointless when it comes to the Second Amendment in the Supreme Court rulings. This will not be addressed because the purpose of the information and critiques is to illustrate the Second Amendment's history in the U.S Supreme Court. The significance is to illustrate the U.S Supreme Court's pragmatic approach to individual cases and how they interpret the law in order to debunk the myth of Second Amendment rights taken by the U.S government. It is imperative that there are restrictions that are realistic and on a case by case basis. As mentioned above, a felon cannot possess a firearm, if an individual travels from state to state with an unregistered firearm they are in the federal jurisdiction, and there are certain restrictions that are legitimately placed by the individual states, but the Supreme Court upheld the constitutional right of the Second Amendment over state's rights. When the system of government was founded in the United States, it was established to create a system that could not be changed or altered overnight. It is the impatience and ignorance of U.S citizens that stirs the pot. The NRA are very much aware of this and the media use it to their advantage as well. The people of this nation need to put a little more trust in the government, respect to the people that work in government positions, and educate themselves if they truly want to be part of the political process in the United States of America.

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