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By Chuck Klein 05/04/2019

Understanding Our Second Amendment

It seems gun rights will always be a heatedly debated topic. And the Second Amendment will always be at the center. With references from both the anti-gunners and the pro-2Aers, it's important to thoroughly understand what this amendment says.

AMENDMENT II

Militia and Right to Keep and Bear Arms. Ratified, 1791



The Second Amendment to the U.S. Constitution serves five functions:

1. It acknowledges that the individual right to keep and bear arms is a preexisting right (a right that was in effect before the Constitution was written). Because this right is contained in the Bill of Rights and not under Articles I or IV, this amendment is not a state right but an individual right of the people (as noted in the Act of Congress, March 4, 1789).
2. The amendment operates to forbid the government from “infringing” (tampering, usurping, violating) this intrinsic and inherent right. The government can set limits and define who is eligible for a license. The federal government also plays a part because of its database requirements for licensed firearms dealers.
3. It acts as a reminder — an obligation — that the militia must be ever vigilant and prepared. It is obvious the framers believed it was desirable to have a militia available and ready to heed the call of need.
4. It acts as an implied warning to the people to rely upon themselves, rather than the government, for protection and security.
5. This amendment confirms the ability to enforce or secure the rights to life, liberty and the pursuit of happiness.

Now that we know what it does, let's break down what it says.

Militia and Right to Keep and Bear Arms. Ratified, 1791



A well-regulated Militia,

A trained and disciplined body of able-bodied men subject to call into military service. This was only a wish because, under the Constitution (Article I, Section 8), the government is powerless to maintain a standing army. Therefore, and in order to be sure that the “militia” is available should it be necessary to raise an army, it would be better for everyone if the “militia” were not only armed but carried their arms with them. In those early days, the people feared attack from foreign powers or criminals. Today, though we are not under threat of foreign invasion, per se, we are subject to assault by terrorists and criminals.

being necessary to the security of a free State,

Because the Constitution (Article I, Section 10) forbade the national government from maintaining a standing army, each state, if it believed it had the need, could have its own regulated militia on call (i.e., the National Guard).



the right of the people to keep and bear Arms,

It doesn't say, "the right of the *state* to keep and bear Arms." It says, "the right of the *people* to keep and bear Arms." The Bill of Rights is about people's (individual) rights, not about states' rights — which are outlined in Articles I, III and IV. If the framers had intended the right to arms to be a state's right, the Second Amendment would have read something like, "The right of the state to arm its militia shall not ..."



- ✓ **Keep refers to possession.**
- ✓ **Bear means to transport (carry).**

Keeping arms without being able to carry them totally defeats and undermines the purpose and utility of the arms.

- ✓ **"Arms" expresses and implies weapons.**
- ✓ **The types of weapons are not specified.**

shall not be infringed.

- ✓ **Shall means MANDATORY, ESSENTIAL, REQUIRED, BINDING or VITAL.** It does not mean maybe or at someone's discretion.
- ✓ **Infringement means to encroach upon or violate the rights of another.** This clause is a mandate upon the government not to violate the people's right to own and carry arms.
- ✓ **Other than protection from invasion (foreign army), nowhere in the Constitution or its amendments is it guaranteed, pledged or warranted that the individual has the right to expect the government to protect him or her.**
- ✓ **Self-protection is left up to each citizen by maintaining what arms are deemed best for that purpose.**



The Right of the People

The Second Amendment clause, "**The right of the people,**" indicates that the framers were acknowledging a right rather than granting a right. Therefore, this right "**to keep and bear arms**" is an **inherent and intrinsic right that predates the Constitution. A preexisting right cannot ever be malum prohibitum — wrong because legislatures, courts or political correctness says it's wrong.**



Regardless of recent Supreme Court of the United States decisions supporting this **Constitutional and legal fact**, our detractors have continued to work to disparage our right. Their next assault might be to the effect that, though the **right to keep and bear arms (RKBA)** is an individual right, it is not absolute. They will contend that even a Supreme Court mandate is not absolute and thus is subject to restrictions.

Contrary to what some overzealous pro-gunners want to believe, the anti-gunners are correct since the RKBA is not an absolute. If it were, we would have to allow little children and prison inmates to keep and bear arms. Therefore, some limits must be acceptable. But limits do not mean anything the legislature/courts want it to be. Bearing arms is not an absolute right under all conditions any more than free speech allows one to yell, "Fire!" in a crowded building when there is no fire. **The constitutional right to bear arms does have limits, but these confines are only limited to two factors: citizenship and others' rights.**

"The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding." – Justice Louis Brandeis, 1927.

Citizenship

At the time of the Constitution's inception, the framers, "all men in a man's world," clearly gave little thought to anyone other than the man as the defender of family, property or country (whereas in 18th century England, only the landowning rich were empowered to defend honor and country). ***This concept of all men being full citizens and having the right, empowerment and obligation to self-preservation was unique to America.***



A citizen, circa 1785, was considered to be any white American male over the age of 21 who was not a felon. The idea of civilian gun controls was unconscionable. It was also inconceivable that a Thomas Jefferson or a James Madison would refuse to take a musket away from a drunk, a child or someone conspicuously deranged. Had one been able to ask these learned, most-sacred-document framers of the conflict of such a restrictive action, they most likely would have replied with words to the effect that the drunk or mental incompetent were, at least temporarily, not citizens. A child was, of course, not a man, and a felon had forsaken his citizenship.

The controversy of the Second Amendment exists because, erroneously, some have insisted that the right to keep and bear arms is a state (as in Ohio, Texas, Florida) right and not an individual right. However, it is clear that the first clause — ***"A well-regulated Militia, being necessary to the security of a free State"*** — ***means a free America.*** The word "State" also means nation/country. In other words, the nation can best form a well-regulated militia (army/navy) if its militia (originally, men between the ages of 18 and 45) are free to keep and bear arms.

With the ratification of the 13th, 14th and 19th Amendments, all of-age Americans were recognized as full, ruling-class citizens. ***Arms possession was — and still is — the signature of being a citizen, not a subject to some monarchy and most assuredly not mentally inept, a child, a felon or a substance abuser.***

Others' Rights:

Violating the rights of others is cause to restrict gun rights. Allowing certain persons, such as children, felons or drunks, to possess firearms most assuredly creates a substantial risk of loss of someone's life or liberty. ***However, restricting the right of a law-abiding, bona fide citizen from carrying a firearm that is concealed from public view where it cannot induce panic or be available to a snatch-and-grab thief does not present a substantial risk of damage to anyone. Likewise, machine guns, modern sporting rifles or short-barreled shotguns, while in the possession of law-abiding citizens, are of no danger to others.***



Constitutional rights are only such when they don't infringe on the constitutional rights of others. ***One's right to swing his fist ends where the other person's nose begins. Of course, if one keeps his fist concealed in his pocket, he is violating no one's rights. On the same token, if a law-abiding citizen goes about his legal business with a firearm concealed in his pocket, he is no more infringing on the rights of any other person than the theatergoer who keeps the word "fire" concealed in his mouth.***



Some citizens might wish to exercise their right to the "pursuit of happiness" by not wanting to be in the presence of guns. On their own property, not accessible to the public, they can do as they please. However, where public property is involved, such as court houses, police stations and legislatures, guns can be restricted by instituting the use of metal detectors and storage boxes in which the carrier can store his or her gun until he or she leaves that secure area.



But, what about the reasonableness factor? Other "rights," such as those found in the Third, Fourth and Eighth Amendments, are subject to this doctrine of reasonableness. Why not the Second? Anti-gunners might argue that, under the reasonableness doctrine, it is reasonable to ban certain types of arms or exclude bearing of arms in specified locations without incorporating metal detectors/lock boxes.



Unlike other articles and amendments, there is no such provision for "reasonableness" in the Second Amendment. Discretion is not part of the right to bear arms. In other portions of our Constitution, we see the following discretionary wording:



The 2nd Amendment

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.



Article I, Section 4: *"Each house may determine the rules..."*



Amendment III: *"...but in a manner prescribed by law."*



Amendment IV: *"...right against unreasonable searches and seizure... upon probable cause."*



Amendment V: *"... right against Self-Incrimination and to remain silent ."*

Amendment VI: *"the right to council..."*

Amendment VIII: *"excessive bail ... nor excessive fines ... nor unusual punishments..."*

If the framers of the Constitution had intended for the bearing of arms to be anything other than what it says, they would have included subjective words or terms, such as "reasonable," "excessive," "prescribed-by-law," "upon-probable cause," "unusual" or "may" in the Second Amendment.

Reading discretionary or reasonableness provisions into the Second Amendment of our Bill of Rights is no different from reading the First Amendment to say, "Congress shall make no unreasonable law respecting an establishment of religion..." If the legislature or the courts are permitted to insert reasonableness into the Second Amendment, what's to prevent them from saying a national church or attending church only on Tuesdays is not unreasonable? Not in America — not yet anyway!