

Introduction

[Law](#), [Constitution](#)



Introduction For more than a century, the 2nd Amendment has been at the forefront of political upheaval. Great politicians and lawyers such as, Joseph Story, speaking on the preamble of the 2nd amendment, stating that the “true office” of the preamble “is to expound the nature and extent, and application of the powers actually conferred by the constitution, and to substantively create them” § 462 (F. B. Rothman 1991) (1833). What Story meant by this was that the preamble to the constitution only states a general purpose and justifies the exercise of those powers enumerated in the document as a whole. Other more recent opinions have been offered by the likes of Justices Scalia and McReynolds, who firmly hold that the second amendment simply provides the state with the means and right to form and train its own militia. Issues The issues surrounding this argument for more than a century is to whether the framers of the 2nd amendment intended for the people to have the “individual right to keep and bear arms” to avoid falling under rule of a tyrannical government, or did they intend those rights to be governed by the states and ultimately controlled by government. U. S. Const. Amend. II Argument In 2008, the U. S. Supreme Court held in *District of Columbia v. Heller* 554 U. S. ___, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008) that the Second Amendment prohibits the Federal government from passing laws prohibiting an individual's right to possess a handgun in the home and requiring any firearms in the home to be inoperable during possession. However, the Court held that the Second Amendment right is not unlimited. The Federal government may enact some restrictions on firearms possession, such as: prohibitions on carrying concealed weapons, possession by felons and the mentally ill, possession in schools or government buildings,

the conditions and qualifications on the commercial sale of arms, possession of dangerous and unusual weapons (e. g., machine guns), and that this list is not intended to be exhaustive. In 2010, the U. S. Supreme Court held in *McDonald v. Chicago* 561 U. S. (2010) that the Second Amendment through the Fourteenth Amendment also prohibits States and political subdivisions (e. g., cities) from prohibiting an individual's right to possess a hand gun in the home; but, as in the *Heller* case, State laws may restrict possession of firearms by felons, etc. Prior to these cases, Congress enacted and Presidents have signed laws regarding the possession of firearms: the National Firearms Act of 1934 and the Gun Control Act of 1968. Under federal law, an American citizen (and certain legal aliens) may possess firearms and ammunition on his person, in his home, in his business, and in his vehicle during intrastate and interstate travel, except: a. Inside or on federal property, § 930, exceptions exist. b. Inside an airliner's cabin, 49 U. S. C. § 46505. c. Before delivering a firearm or ammunition to a common or contract carrier (e. g., bus, airline) for transportation in interstate or foreign commerce to a non-licensee, the person must first notify the carrier in writing that the firearm or ammo is present. d. In or within 1, 000 feet of a school zone, 922 (q), exceptions exist. e. May not send concealable firearms through the U. S. mail, § 1715, exceptions exist. The anti-2nd amendment advocates say the Second Amendment refers to a collective body rather than an individual. This can't hold, because it would require a restrictive reading of the other amendments, such as the First and Fourth. In fact, in 1876 the Supreme Court held in *United States v. Cruikshank*, 92 U. S. 542 (1876) that a private individual who violated another's right to bear arms did not violate

the Federal Civil Rights Act because the Second Amendment does not protect against private interference. They went on to say that the First Amendment doesn't hold against private interference, either. Also, in *Presser v. Illinois*, 116 U. S. 252 (1886) they held that an armed assembly was not protected, but reaffirmed that individuals were (reaffirmed because a century earlier, in 1780, the Chief Magistrate in London ruled that the right to keep and bear arms individually is guaranteed under Common Law, but collectively it was limited by the principle of forestalling terror and alarm and treason). Additionally, the Fourth Amendment forbids unreasonable search and seizure. According to the exclusionary evidence rule, evidence obtained through unreasonable means cannot be used as evidence. An appellate court judge has ruled that the Fourth Amendment must be suspended in order to perform mass searches for firearms, or else gun control would be unenforceable. Also, forced registration of a thing lawfully to be kept in the home is unconstitutional as ruled by the Supreme Court in 1965, when they were asked to decide about registration of communist newspaper readers. And, registration of firearms goes against the constitutional guarantee of presumption of innocence (Fifth Amendment). The Court has ruled that a criminal forced to register a gun has been forced to incriminate himself, so in fact criminals do not have to register their firearms at all! The Anti-2nd Amendment advocates say we need gun control. In 1929, the Soviet Union established gun control. From 1929 to 1953, about 20 million dissidents, unable to defend themselves, were rounded up and exterminated. In 1911, Turkey established gun control. From 1915 to 1917, 1.5 million Armenians, unable to defend themselves, were rounded up and exterminated. Germany

established gun control in 1938 and from 1939 to 1945, 13 million Jews and others who were unable to defend themselves were rounded up and exterminated. China established gun control in 1935. From 1948 to 1952, 20 million political dissidents, unable to defend themselves, were rounded up and exterminated. Guatemala established gun control in 1964. From 1964 to 1981, 100, 000 Mayan Indians, unable to defend themselves, were rounded up and exterminated. Uganda established gun control in 1970. From 1971 to 1979, 300, 000 Christians, unable to defend themselves, were rounded up and exterminated. Cambodia established gun control in 1956. From 1975 to 1977, one million 'educated' people, unable to defend themselves, were rounded up and exterminated. Defenseless people rounded up and exterminated in the 20th Century because of gun control: 56 million. When the government is given the right to regulate, they're also given the right to ban. Gun control leads to gun confiscation. Gun confiscation leads to extermination. It's that simple. Conclusion `When the designers of our nation debated certain inalienable rights, one leading figure eloquently stated the following: " Firearms stand next in importance to the constitution itself. They are the American people's liberty teeth and keystone under independence ... from the hour the Pilgrims landed to the present day, events, occurrences and tendencies prove that to ensure peace, security and happiness, the rifle and pistol are equally indispensable ... the very atmosphere of firearms anywhere restrains evil interference — they deserve a place of honor with all that's good. " George Washington. Those who question the original intent of the Second Amendment and want to place an undue burden on citizens' rights to bear arms forget that criminals will always have the ability to find

weapons that can injure and kill. The Second Amendment has been part of our constitutional fabric for centuries and remains in place to protect the innocent — not the criminals. There is no question that criminals prefer victims who are defenseless and unarmed. Our system of laws should not detrimentally impact the ability of law-abiding citizens to protect themselves.