

The second amendment essay sample

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



The Second Amendment or Amendment II of the Constitution of the United States of America is the part of the Bill of Rights that protects and recognizes the right to keep and bear arms from violation by the federal government. This is also considered as one of the most contentious right of American people enshrined in the Bill of Rights. The United States Supreme Court has held that a total ban by the federal government on possession of firearm breaches the Second Amendment.

Historical Background

The second Amendment text is very clear to most of us, “ *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*” (Second Amendment to the U. S. Constitution). When the Declaration of Independence was written by Thomas Jefferson, he recognized ‘ *unalienable rights*’, which included life as well as liberty. These two rights are as well called natural rights, and are believed to have been given to man by nature or God and these rights can not be lawfully denied (Gottlieb, 72). During the month in which the Declaration of Independence was written, Thomas Jefferson had written a model constitution for the state of Virginia which stipulated that “ *no free man shall be denied the use of firearms*” (Gollieb, 68). The American founding fathers had personal experienced the pain of being occupied by the British troops and they understood how it felt to be occupied by foreign forces. In addition, they understood the essence of having prepared citizens to challenge the power of a suppressing government or an attacking army. Without the armed citizen, victory and success of Americans in the

revolutionary war fought to liberate the country would possibly have not been achievable.

After the revolution war and victory to the Americans, the founding fathers were faced with a new challenge; this challenge was establishing a constructive government for the new independent nation. Among the freedoms which were not to be interfered by the government were speech, religion and press. But, the founding fathers of the nation were also firm in their conviction that firearms were legitimate, valuable and essential component of a free nation. Richard Henry Lee wrote that, to protect and maintain liberty, it was necessary that the entire mass of people always should possess arms and more so, they should be taught particularly when they are young on how to use these arms (Gottlieb, 74).

Militia

Another present day argument opposing the right of an individual to own and carry firearms arises from defining the term " militia". At the moment when the word ' militia' is used, many people think of National Guards or other government forces which are trained and armed such as the army. However, hundred years ago when the amendment was being written this word did not have the same meaning as today.

Long ago, in 1792, the Militia Act described militia as encompassing nearly every single male who was mature or an adult in America. Such men were obligated to have arms together with rounds of ammunition. Thus, the

traditional use of the word ' militia' at that time when the Bill of Rights was being written used to imply the entire male populace (Skousen, 663)

During the 18th century, the word militia entailed all citizens in country who qualify to offer military services, and this meant nearly all adult males. Even today, this definition had continued to be included in the Bill of Rights. Thus, it can be safely conclude that the use of the word *militia* does not refer to organized military units. (LaPierre, 15).

Miller vs. U. S, 1939

In a case of Miller vs. US, 1939, that was decided by the Supreme Court of the United States, the court upheld an earlier ruling by the lower court, it declared the 1934 National Firearm Act as being unconstitutional when it properly interpreted the ' *original intent of the Second Amendment*' . In the case at bar, Jack Miller and Frank Layton were accused of violation of National Firearms Act of 1934, because of transporting a particular shotgun from Oklahoma to Arkansas. The barrel of the shotgun was below eighteen inches, this technically violated the Firearms Act. The lower court ruling was in favor of the defendant; however, the government later appealed the case to this Court. It is worthwhile to state that Miler did not file any brief about the case neither did he argue in any way before the Supreme Court, the prosecutor is the one who made the arguments (Gottlieb, 57).

The Supreme Court in its ruling ruled in favor of the government, outlining that the shotgun failed to prove whether it is a weapon that in ordinary circumstances it can be used as a military weapon and thus could not assist

in the common defense. However, this ruling clearly fails in two aspects. One, any given weapon which can be used for the defense of one's self, can also be used as a military weapon, or as a militia weapon. What is required is only passing the test of being destructive. Two, during a debate on the Second Amendment by the first Senate, it refused to include the term “ *for the common defense* ” subsequent to the phrase “ *bear arm,*” thus, stressing that the aim of the Second Amendment was not essentially to offer common defense, but, it was to safeguard a person's right to own and carry firearms for his individual defense (Gardiner, 79).

Presser v. Illinois, 1889.

This is a landmark decision of the United States Supreme Court that upheld that the United States Constitution's Second Amendment limits only the power of the Congress and the federal government to be in control of firearms, and does not cover the State's legislative power.

Herman Presser led a shooting group and was detained for heading a march in the streets of Chicago, of more than 400 men, drilling and training with firearms, and declared their intent to fight. State authorities arrested Presser for violating an Illinois law that prohibits parading and drilling in public in armed approach sans a permit from the Governor.

Presser defended his act that Illinois State authorities infringed his rights codified in the Second Amendment of the Bill of Rights. The Supreme Court reaffirmed its earlier decision in *United States v. Cruikshank*, that the Second Amendment of the Constitution does not cover State and only confines the

power of the Congress. The decision upheld that states authority can control the militia and the people had no inalienable right to organize their own militia group or to possess firearms for semi-military intentions.

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