**Incorporation and the 2nd Amendment**

The 2nd Amendment 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.” Confusion over what the amendment means rests in the de-coupling of its dependent and independent clauses. A number of citizens and citizen interest groups, like the National Rifle Association (NRA), read only the independent clause and assume that the right to bear arms is an individual right like others found in the first eight amendments. The passage of federal gun regulations like those found in the 1993 Brady Law, which calls for a national five-day waiting period before allowing the purchase of certain weapons, has drawn protest from the NRA and other groups, as an infringement of the citizen’s constitutional rights. But most constitutional interpreters, including the justices of the Supreme Court, have consistently read the Second Amendment as preventing Congress from disarming state militias. It does not confer even a limited individual right to keep and bear arms against government intervention or regulation.

The Supreme Court has confirmed this opinion about the limited nature of the right conferred in the 2nd Amendment on a number of occasions. In *United States v. Miller* (1939), the justices upheld a federal law making it illegal to ship sawed-off shotguns in interstate commerce, saying that such weapons had no relationship “to the preservation or efficiency of a well-regulated militia.” And in *Lewis v. United States* (1980), the Court plainly stated,

The 2nd Amendment guarantees no right to keep and bear a firearm that does not have ‘some reasonable relationship’ to the preservation or efficiency of a well-regulated militia.

Even applied to the federal government, then, the 2nd Amendment allows for the regulation of private ownership or use of firearms. And given its specific relationship to the prohibition on congressional disbanding of state militias, the amendment has never been incorporated to apply to state regulations of firearms, and probably never will be incorporated. Justice Douglas’ opinion in *Adams v. Williams* (1972), provides the final word thus far:

A powerful lobby dins into the ears of our citizenry that gun……purchases are constitutional rights protected by the Second Amendment…….There is under our decision no reason why stiff state laws governing the purchase and possession of pistols may not be enacted. There is no reason why pistols may not be barred from anyone with a police record. There is no reason why a State may not require a purchaser of a pistol to pass a psychiatric test. There is no reason why all pistols should not be barred to everyone except the police.

Still, the presence of widespread popular opinion that the 2nd Amendment protects an individual citizen’s “right to keep and bear arms” indicates that a tension may exist between a Supreme Court that is constitutionally authorized to interpret the Constitution and a democratic citizenry that believes itself empowered to read the Constitution for itself.

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