

## THE SECOND AMENDMENT – IS IT CONSTITUTIONAL?

*"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 United States Constitution, 1791

Prior to the American Revolution, the British made attempts to disarm local groups of armed citizens, known as militias. Remembering this while drafting the Bill of Rights, the Second Amendment outlawed such kinds of forceful disarming of the people in the future. Whether the amendment intended to give any other individual rights beyond stopping the government from disarming these militias, however, went unexamined by the Supreme Court for over 200 years.

In 2008, the Supreme Court finally interpreted the Second Amendment in *District of Columbia v. Heller*. The plaintiff in *Heller* was not a member of any militia (like the National Guard), but argued that he was entitled by the Second Amendment to keep a gun at the ready to defend himself in his home. In a 5–4 decision, the Court held that the amendment preserved a long-standing natural right to self-defense, in addition to prohibiting the disarming of militias. The Court therefore held unconstitutional the District of Columbia's ban on possession of handguns. However, the Supreme Court pointed out that, like the First Amendment's right of free speech, the Second Amendment's right to bear arms was not unlimited. People were entitled to use handguns for legitimate, lawful, and historical purposes such as defending their homes, but guns could still be reasonably regulated. Though they did not draw a line that made clear exactly what restrictions were permissible, the Court offered the following guidance:

- 1) **"...[W]e do not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for *any purpose*."**
- 2) **"...[T]he Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns."**
- 3) **"[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms."**
- 4) **"...[T]he sorts of weapons protected [by the Second Amendment] [are] those "in common use at the [current] time."**

Today there is a national conversation about increasing regulation of firearms in the wake of several mass shootings. The Supreme Court's decision in *Heller* sets out what the "right to bear arms" means legally, and the above quotations are currently being interpreted by lower courts addressing challenges to gun regulations.

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Below are four proposals to reduce gun violence. For each, determine whether, based on the guidance provided by the Supreme Court in *Heller* (points 1–4 on the previous page), the Court would find each proposal to be constitutional or unconstitutional and give your reasoning.

**Proposal #1 - A law that makes it illegal for handguns to be carried in public unless the gun is unloaded.**

If challenged, would the Supreme Court find this law to be constitutional? Yes \_\_\_\_\_ No \_\_\_\_\_  
What is your reasoning?

**Proposal #2 - A law to ban all high-capacity magazines (magazines that allow a gun to hold more than ten bullets at once). The government has also done a study showing that very few people use high-capacity magazines for hunting.**

If challenged, would the Supreme Court find this law to be constitutional? Yes \_\_\_\_\_ No \_\_\_\_\_  
What is your reasoning?

**Proposal #3 - A law that bans gun ownership for people who are currently living in the same house as another person who is a felon. Felons are currently banned from owning guns unless their home state restores their rights.**

If challenged, would the Supreme Court find this law to be constitutional? Yes \_\_\_\_\_ No \_\_\_\_\_  
What is your reasoning?

**Proposal #4 - A law that bans the manufacture or sale of any new weapon that can fire more than six rounds per minute.**

If challenged, would the Supreme Court find this law to be constitutional? Yes \_\_\_\_\_ No \_\_\_\_\_  
What is your reasoning?