
A Historical Overview and Critique of the Second Amendment

History of the Second Amendment

The second amendment of the USA Constitution was mainly executed in order to protect the right of people to keep or bear arms. The Supreme Court bestows this right to individuals but not a group of militias. However, the ruling is clear by limiting and prohibiting various ownerships of both firearms and related devices. The implementation of the amendment was adopted in 1791, and it was among the first ten amendments that comprised of the bill of rights. The amendment was partly borrowed from the UK's version of the same relating to arm's ownership and use. In this case, it was described as an auxiliary right aimed at supporting the natural self-defense rights, oppression resistance and the role of citizens in general. The purpose of this article is to analyze this second amendment by addressing various questions.

The second amendment has provisions where the government can manage the emergence of militias who may abuse he right to own guns. However, the existence of such provisions serves to ensure that citizens' right of citizens to own arms are protected. The writers of the amendment had various reasons to make the amendment. They affirmed that there was the need to have a disciplined and regulated citizenry bearing arms. However, in order to establish such an act, there was the need enact certain regulations governing the countries defense. Moreover, the writers affirmed that though there was extensive legislative action with respect to the regulation, ownership as well as the transportation of firearms. However, before the amendment there was no definitive resolution by the courts of the right that the amendment possessed. The theories that opposed amendment had oversimplified the term "individual rights." In this case, the aim of the writers was to address the protection of ownership, possession, and transportation of arms.

It is worth mentioning that the writers understood the need to protect the states' in terms of their authority to maintain a formal and organized militia. The amendment aims at baring the federal action, but not extending to the federal state. The Supreme Court gave the effect to the dependent clause of the amendment. However, it is only significant if it has tested a congressional ratification against the constitutional restriction. Well-regulated militias have the right to bear and keep arms, and they should not be given to the organized groups. In this case, the writers of the amendment understood that it would allow only those in the official militia to own firarms. Besides, they believed that the national command could not abolish the state militias.

Need help with the assignment?

Our professionals are ready to assist with any writing!

GET HELP

The pioneer court case concerning the second amendment was made in 1876 during the case of U.S vs. Cruikshank. It involved members of a certain group denying the standard freedoms to black citizens. Some of these rights included the right to assembly as well as right to bear arms. As a ruling part, the court affirmed that the right of each to bear arms was not under the constitution. However, it was until ten years later that the court asserted the ruling in the case Presser v. Illinois. In this case, the ruling held that the national government could prohibit the ownership of guns but not the states. Besides, the issue was reviewed again in 1894 in Miller v. Texas. In this case, the Miller had sued the Texas state government arguing that he was allowed to possess a weapon under the second amendment protection. However, the court nullified the argument asserting that the amendment excludes state law, like Texas' restrictions on carrying concealed and dangerous weapons. From the three cases; the writers of the amendment cemented their understanding concerning this clause in the bill of rights. Therefore, the amendment does not bar the local governments from making their rules on gun ownership.

There was no any actual verdict on the second amendment until recently in the case of U.S v. Miller. In the case, Miller and Layton carried unregistered short guns across different state boundaries and had to be arrested. These were prohibited since the enacting of the National firearms Act half-a-decade earlier. According to the defendant, the act violated the rights stated under the second amendment. The court denied the notion asserting that in the lack of specific evidence aimed at showing that possession of a short gun at this period has concrete relationship to the efficiency of properly regulated militia.

Besides, in 2008, the court reviewed the issue again under the case Columbia V. Heller. The case revolved around Dick Heller, who was a Washington, D.C licensed officer. In this case, he challenged the nation's capital handgun ban. It marked the first time that the Supreme Court made a ruling that despite the state laws, individuals, not in the state militia can own guns as they so wish. Ideally, the amendment promoted citizens' discretion in owning and bearing arms as long as they would not use it as militias. Moreover, it also entails the implementation of that arm for traditional founded lawful purposes including self-protections within one's home.

Therefore, the second amendment protects the citizens' to owning firearms so long as they are no linked to any militia activities. The prefatory section of the amendment announces the purpose of the amendment. However, it does not either limit or expand the boundaries of the second part involving the operative clause. In this clause, an individual is empowered o owning and using an arm diligently. There is a certain corporation between the prefatory clause and the court's interpretation of the clause.

The war as to who is supposed to own or bear arms has aroused a series of cases in America for over a hundred years now. Common defense has been interpreted to be a scapegoat employed by some people to hide under after committing atrocities and manslaughter. To

Need help with the assignment?

Our professionals are ready to assist with any writing!

GET HELP

critics, the bill has been nothing but what they term as “a lack of value for human life”. However, for this long and heated debate about the second amendment to end, people in support of the amendment and critics must come to one common understanding. Both parties antagonize over two key things that prove that the two parties are right[9].

Critics' main concern is the welfare of every individual in society. On the other hand, individuals in favor of the second amendment pass the idea that it ensures the welfare of citizens by making sure everyone is entitled to protect himself or herself. Looking at the amendment in these two angles, a deduction that might help end the debate may be achieved. Efforts in both parties considering opinions of one another is the only way forward on the matter since no one can be termed to be entirely wrong.

Writers' Understanding about the Right to own Firearms

The idea of owning a gun was taken in by society at the time that the amendment was passed as a law. The reason as to this was the increment of cases of crime that were being witnessed in the late 18th century and at the beginning of the 19th century. However, over time, the second amendment that approves an individual bearing a firearm for self-defense has largely been criticized by many voices with contrary opinions. Among these many voices, several writers have substantially addressed the issue with most of them being critics.

According to a recent article published in the Godfather politics website, the writer claims and puts across the idea that with a gun in a person's hands, then criminals are very reasonable people. The writer adds that the second amendment is likely to protect lawbreakers more than it protects civilians. He argues out the second amendment gives guns to the lawbreakers instead of ensuring that they do not land in the wrong hands in the first place.

In the article, the writer mentions the opinions of former NYPD detective, Wallace Zeins, all that someone need in case of an attack are car key and wasp spray. Better yet, he highlights that there are even better choices one can make in order to improve one's security. For instance, the state of the art alarm system, which is safer than having a gun around the house environment. Even though there are cases that wasp spray did not work, but there are better choices than the advocating of bearing of arms according to the article.

In another article printed recently on the New York Times, the second amendment may also end up causing civil problems in future. The war on racism has been a pertinent issue in the American history for a long time. However, according to the New York Times article, the right to bear arms advocated by the second amendment could have caused critical issues on the situation of racism in the country. In the last four years, there have been many reported cases of white people shooting black people and vice versa then claiming it was an act of self-defense.

Need help with the assignment?

Our professionals are ready to assist with any writing!

GET HELP

According to Waldman, the president of the Brennan Center of Justice at the New York University has made two important discoveries. He did so after going back to the original statement of the amendment. One of his findings was particularly very surprising. The assumption made by the founders when the second amendment became a law was that all men were always to serve as militias as they did in those days. Therefore, this shows that the initiators of the law had no intention whatsoever in guns ending up in the hands of ordinary civilians who can end up hurting themselves or others. The second aspect Waldman depicts that the second part of the second amendment "right of people to keep and bear firearms" was in reference to military defense and not in defense of a fellow citizen.

In an article written about Helen Keller in the New York Times, there is clear articulation that when she was alive human rights were necessary. The judge in charge of her case depicted that every life is valuable no matter how useless and individual may seem to be. The case of Helen Keller proved to society that every human life is valuable. The article also stipulates that every human have a right to live which is something that bearing of arms does not promise.

Examples of when and where The Principle was used

People have the right to possess arms in the USA. The second amendment to the constitution protects this right. However, the right is not unlimited but regulated. The state and local governments are regulated to the similar lines as the federal government. The second amendment was passed on December 15, 1791. It was based on the right to own arms. It supports the rights of self-defense and resistance to oppression. Besides, it enhances the civic duty to defend the state. The amendment was part of the Bill of Rights.

The purpose of this article is to show the cases involving the amendment. One of the cases was the United States versus Cruikshank that was in 1876. The case arose during the Reconstruction era because of the gubernatorial election. It is worth mentioning that the election was greatly opposed causing a lot of social tension. For example, in 1873 an armed militia of white democrats attacked black republican freedmen. Some of the black people were armed and attempted to protect themselves. The freedmen had gathered to resist an attempt of democratic capture. One hundred black people were killed in the massacre.

There were also cases filed against members of the white mob under the Enforcement Act of 1870. This act restrained two or more people from denying anyone their constitutional right. Further charges included the avoidance of the freedmen to gather and keep their arms freely. The Supreme Court ruled that the Due process Clause and the Equal protection Clause applies only to the state. It therefore declined the reasons of the European –American men. Prior to this ruling, the court declared that the right to assembly was not to lessen the powers of the state to its citizens. Furthermore, the constitution does not offer the right to own firearms. The Supreme

Need help with the assignment?

Our professionals are ready to assist with any writing!

GET HELP

Court further exclaimed that citizens were entitled to both governments including the national government and the state. In 1877, the federal troops were withdrawn from the south. This resulted to faulty and violent elections because white people struggled to restrain black people from voting.

Another case that involved the second amendment was the United States versus the Miller. In 1939 (NFA), under the National Firearms Act the case arose as a criminal prosecution. An indictment opposed the possession of a double barrel 12-gauge shotgun that is unregistered. The defendants were Jack Miller and Frank Layton who were transporting the firearm. A demurrer alleged that the National Firearms Act is a way of usurping the police power reserved to the states and hence unconstitutional. It further offended the inhibition of the Amendment to the constitution. The court squashed the indictment and sustained the demurrer.

The court failed to take judicial notice that the described short gun had solid relation to the efficiency of a well-organized militia. Therefore, the court could not establish that the constitution empowered the citizens to possess such a weapon. Miller was a bank robber. He could not hire a lawyer to appeal at the Supreme Court but rather disappear. The governments appeal that immediately took place ensured he won because he would not even show up. On March 30, 1939, the Government appealed the court's decision. It argued that the NFA was a measure of collecting revenue. Hence, it lied within the authority of the Treasury Department. The Government further claimed that the defendants had used the gun in interstate commerce. It also argued that this constitutional provision protects possession of military-grade weapons that are used in planned militia. The last defense was that the weapon was never used in any militia network. Additionally, the Supreme Court on May 15, 1939 ruled that transportation of an unregistered shotgun was constitutional. Moreover, the court declared that it did not violate the second amendment.

District of Columbia versus Heller is another case bore in the second amendment to the United States constitution. The District of Columbia bans possession of an unlicensed firearm. It further restricts the registration of handguns. However, it allows the police chief to issue 1-year licenses. The residents are required to have legal and unloaded guns. Heller, a D.C police officer, applied to register a handgun. However, the District declined. He filed a complaint on second amendment grounds to oppose the restrictions on the handgun possession at home. He argued that the clause protects a person's right to own firearms. Therefore insisting that the ban on handguns and the requirement to keep them nonfunctional violated that right.

The D.C further held that the operative clauses of the amendment allow individuals to keep firearms. He clarified that the handgun ban and the trigger-lock requirement restricted an entire group of arms that people choose for self-defense. Moreover, the prefatory clause comports with the court's elucidation of the operative clause. The militia comprised of men who were

Need help with the assignment?

Our professionals are ready to assist with any writing!

GET HELP

physically able of acting for the defense. The response was to deny congress power to reduce the historical right of people to possess arms for preservation of the ideal militia. The Supreme Court canceled notions of the Firearms Control Regulation as unconstitutional. Dick Heller, who was a licensed police officer, did not have permission to carry a gun to his home. He had approached the National Rifle Association to foresee the disbarment of the gun ban. The NRA refused, and he decided to appeal. The court of appeal declared that he had standing to sue for relief. The court determined that guns would not be banned in the District of Columbia.

The Supreme Court made a decision in McDonald v. Chicago where individual states were determined as having the right to own guns as deeming by the provisions of the second amendment. The decision gave a completion to the District versus Heller verdict that had been unclear. Court of appeals first upheld the ban on handguns and other regulations affecting shotguns. However, oral arguments took place on March 2, 2010 and June 28, 2010; the Supreme Court declined the Seventh Circuits decision. The arguments claimed that the second amendment was included in the fourteenth amendment. It thus protected the right to possess firearms by individuals. In McDonald versus Chicago, a resident called McDonald claimed that his home had been broken into five times. He feared that gangs and drug dealers operated in his neighborhood and opted to buy a gun for personal protection.

However due to the requirements of owning a gun and the handgun ban, he was unable to own one. He therefore colluded with three other Chicago residents to file a complaint that became the McDonald versus Chicago. He challenged the law because it curtailed his prospects of owning a gun since he could not register his handgun. This affected a wide handgun ban. He further challenged the requirement to register guns and re-registered annually. It was important to apply the provisions of this against the state via selective incorporation. He requested the court to throw away the slaughterhouse cases. Slaughterhouse indicated that the 14th changes privileges clause was not applicable to the bill of rights to the states. The Supreme Court declared that the constitutional clause protects rights to possess arms. Moreover, it initiated that personal self-defense was the “central component” of the right to own a gun.

The Helen Keller and McDonald’s court decisions did not institute gun freedom. The case acknowledged the powers of the amendment in safeguarding the citizens rights in owning firearms as long as it was within the use for traditionally lawful purposes. The McDonalds case (2010) showed that the court did not proof that there was any existence of gun laws. The justice concluded there were limits to the right to bear arms The second amendment had no exceptions. People’s constitutional right to own firearms shall not be violated. It however does not state that the right to keep firearms should not be violated except when considering powerful weapons such as automated artillery and those that were not invented on the second amendment.

Need help with the assignment?

Our professionals are ready to assist with any writing!

GET HELP

The second amendment recognizes natural rights that already exist. The amendment grants no rights. The bill of rights main agenda was to protect the Americans' from insecurity by the new powerful central government under the constitution. The non-existence of the second amendment would not have prevented the Americans from keeping firearms for any purpose. Though the second amendment applied in the state's ability to maintain a militia, it would not affect the Americans' right to possess arms. In article one, section eight of the constitution it is clearly articulated that no power is given to the federal government to establish any gun possession laws.

The right to own firearms is a private property issue. The government has allowed business premises to allow carrying of guns; whether concealed or openly. Since the amendment gives Americans the right to carry firearms, every person should ensure that the gun they own is in their custody. The existence of the ATF (Alcohol Tobacco or explosives) is not an admirable thing that the government should approve. The bureau of Alcohol, Tobacco, or Explosives has no constitutional authority and none of its employees should be employed, and none of its annual budget should be spent. Taxing the ATF should not be the federal government's business concern. Thus, the government should not adopt the idea of taxation of firearms as a reason to support the second amendment. In a free society, there would be gun freedom; the guns would be all over in televisions and in retail shops and sold like any other product. No government restrictions on guns shows, sales, manufacturing, or dealers. Moreover, there would be no special taxes on guns or ammunition.

Need help with the assignment?

Our professionals are ready to assist with any writing!

[GET HELP](#)