**LAW CLASS**

**The Second Amendment**

The Second Amendment states:

*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.*

Vocabulary

Regulated: Controlled by law

Militia: A group of non-military civilians who consider themselves a fighting force and may or may not be recognized by the government.

Infringe: To limit, undermine, violate something.

Prefatory: Serving as an introduction.

Operative: The most important or effective part.

The Second Amendment is divided into two parts:

Prefatory Clause: “A well regulated militia, being necessary to the security of a free state,”

Operative Clause: “the right of the people to keep and bear arms, shall not be infringed.”

**HISTORY OF THE AMENDMENT**

Modern debates about the Second Amendment have focused on whether it protects a private right of individuals to keep and bear arms, or a right that can be used only through militia organizations like the National Guard. This question, however, was not even raised until long after the Bill of Rights was adopted.

Many in the Founding generation believed that governments can use soldiers to oppress the people. English history suggested that this risk could be controlled by permitting the government to raise armies (consisting of full-time paid troops) only when needed to fight foreign enemies. For other purposes, such as responding to sudden invasions or other emergencies, the government could rely on a militia that consisted of ordinary civilians who supplied their own weapons and received some part-time, unpaid military training.

At the start of a war, there is not always allow time to raise and train an army, and the Revolutionary War showed that militia forces could not be relied on for national defense. The Constitutional Convention therefore decided that the federal government should have almost complete authority to establish peacetime standing armies and to regulate them.

Much has changed since 1791. The traditional militia disappeared, and state-based militia organizations were eventually brought into into the federal military structure.

The nation’s military has become enormously more powerful, but most Americans do not fear the nation’s armed forces and virtually no one thinks that an armed population could defeat those forces in battle.

Also, civilians keep at home the very same weapons they would need if called to serve in the militia, while modern soldiers are equipped with weapons that differ significantly from those generally thought appropriate for civilian uses. Civilians no longer expect to use their household weapons for militia duty, although they still keep and bear arms to defend against common criminals (as well as for hunting and other forms of recreation).

DEBATE

**Not a Second Class Right: The Second Amendment Today**

*By Nelson Lund*

The right to keep and bear arms is a lot like the right to freedom of speech. In each case, the Constitution expressly protects a liberty from the ordinary political process. Neither right, however, is without some limits. The First Amendment, for example, has never protected perjury, fraud, or countless other crimes that are committed through the use of speech. Similarly, no reasonable person could believe that violent criminals should have unrestricted access to guns, or that any individual should possess a nuclear weapon.

Inevitably, courts must draw lines, allowing government to carry out its duty to preserve an orderly society, without taking away the legitimate interests of individuals in expressing their thoughts and protecting themselves from criminal violence. This process will ever be free from controversy.

One judicial approach, however, should be completely rejected. Most gun control laws can be viewed as efforts to save lives and prevent crime, which are perfectly reasonable goals, but that should not justify taking away individual liberty.

Today, individual freedom is generally protected unless the government can make a strong case and that its regulations are tailored to that need.

**The Reasonable Right to Bear Arms**

By Adam Winkler

Gun control is as much a part of the Second Amendment as the right to keep and bear arms. The text of the amendment, which refers to a “well regulated Militia,” suggests as much.

As the Supreme Court noted in [District of Columbia v. Heller](http://www.oyez.org/cases/2000-2009/2007/2007_07_290) (2008), the militia of the founding era was the body of ordinary citizens capable of taking up arms to defend the nation. While the Founders sought to protect the citizenry from being disarmed entirely, they did not wish to prevent government from adopting reasonable regulations of guns and gun owners.

Although Americans today often think that gun control is a modern invention, the early laws in our country regulated armed citizens.

There were laws designed to ensure an effective militia, such as laws requiring armed citizens to appear at mandatory meetings where their guns would be inspected.

Governments also compiled lists of civilian-owned guns appropriate for militia service, sometimes conducting door-to-door surveys. The

The Founders had broad bans on gun possession by people deemed untrustworthy, including slaves and loyalists.

The Founders even had laws requiring people to have guns appropriate for militia service.

The wide range of Founding-era laws suggests that the Founders understood gun rights quite differently from many people today. The right to keep and bear arms was not a license for anyone to have any kind of ordinary firearm, anywhere they wanted. Nor did the Second Amendment protect a right to revolt against a government. The Second Amendment was about ensuring public safety, and nothing in its language was thought to prevent what would be seen today as quite harmful forms of regulation.

The Second Amendment recognizes that the armed citizenry must be regulated—and regulated “well.”

Questions to Consider:

1. What are “arms”?
2. What does it mean to “bear” arms?
3. Does it mean you can take “arms” anywhere?
4. Does the Second Amendment only apply to militias?
5. Do you only have a right to bear arms if you are a member of a militia?
6. What does “shall not be infringed” mean?
7. Does it mean that we aren’t allowed to limit people’s right to bear arms?
8. Which “people” have a Second Amendment right?
9. How does the prefatory clause affect the operative clause?
10. Does the order of the clauses matter or does the amendment mean the same thing no matter what?