

There Is No Second Amendment Right to a Gun

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I wrote this article in 2013 in the wake of the Washington, DC Navy Yard shooting in which twelve people died. The Newsletter has reprinted it several times after subsequent major shootings. Mass shootings now occur weekly, with [160 so far this year](#). After each shooting, we hear the Second Amendment cited many times in opposition to even the most moderate gun control legislation. It is long past time for Democrats to stand up and proclaim that there is not, and has never been, a Second Amendment right to individual gun ownership.

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Every discussion of gun control starts with our side saying, “Of course I support the Second Amendment but, ...” Having given away the argument right at the start, we then ask, “But must there be quite so many bullets in the magazine?” We saw something like this just recently in an [April 19th CNN debate](#) between Democratic Congressman Jamaal Bowman and Republican Byron Donalds. After Donalds cited the Second Amendment, Bowman, in an otherwise excellent argument, responded with “So, first of all, the Second Amendment also reads well-regulated. Right now, the guns, in this country, are not well-regulated... We need to deal with the well-regulated part of the

Second Amendment, as well as the rest of it.” Of course, what the Amendment says is “A well regulated militia,” not well-regulated guns. Once again, after we acknowledge the validity of the Second Amendment, we have no place to go. It is time to take the strongest position. There is no individual right to own a gun. The Second Amendment guaranteed the right to have state militias. The gun ownership clause was there to make the militia possible. There have been no state militias since 1903, and there is no constitutional right to gun ownership. It doesn't exist!

The Congressional debate over the Second Amendment is most instructive. The overall context was this: The Constitution (1787) had created two institutions new to the United States, a standing army and a President who was also Commander in Chief. In this combination, many feared European despotism. What if the President made himself a king and used the army against the people? The answer was close at hand. The Governors of the states would call out the militia to restore democracy. But in those days, every militiaman was required to bring his own gun. The states didn't have any to give them. But, what if the President first took away all the guns? Well, the sentiment in many states was that the Constitution would have to say that he can't, hence the Second Amendment.

For example, on September 17, 1788, New York State called a convention in Poughkeepsie to ratify the new Constitution. Noting the absence of a bill of rights, the delegates [drafted one](#) which they sent to Congress, asking to have it included as future constitutional amendments. It said, "That the People have a right to keep and bear Arms;

that a well regulated Militia, including the body of the People capable of bearing Arms, is the proper, natural and safe defense of a free State; ... That standing Armies in time of Peace are dangerous to Liberty, and ought not to be kept up, except in Cases of necessity; and that at all times, the Military should be under strict Subordination to the civil Power.” Several other states sent similar messages.

As always, nothing is simple. The Federalists (Hamilton) wanted a strong national standing army and hoped that by guaranteeing the state militias, they could overcome popular objection. Many among the Jeffersonian Republicans didn't even trust the militia and wanted to guarantee individual gun ownership without reference to militia service.¹ Both sides saw that the main perceived threat to democracy, from either point of view, was the Army of the United States, and the debate was over how citizens could best defeat the Army.

Here is Madison's first draft of what became the Second Amendment.

“The right of the people to keep and bear arms shall not be infringed; a well armed and well regulated² militia being the best security of a free country but no person religiously scrupulous of bearing arms shall be compelled to render military service in person.”

To get his provision through Congress, Madison had linked together both concepts – armed citizens and militia service. Note that because of that linkage, his amendment

¹ Strictly speaking, the terms Federalist and Republican weren't organized parties until 1795, at this time (1789) they were less formal points of view in Congress, and were known as the pro and anti-Administration factions.

² Well regulated meant well drilled and disciplined, not just anyone with a gun.

ended with a contentious objector clause for Quakers, Moravians and others. The Bill was sent to committee and came back with an interesting addition:

“A well regulated militia, composed of the body of the people, being the best security of a free State, the right of the people to keep and bear arms shall not be infringed; but no person religiously scrupulous shall be compelled to bear arms.”

The phrase “composed of the body of the people” (which in 1789 meant free White men*) reflected another debate of that era. Some thought that militia service should be a universal requirement. This language paralleled existing militia laws in many states, and was in keeping with colonial tradition that had required all able-bodied men to serve and to bring their own guns. Alexander Hamilton had argued against this view in [Federalist Paper 29](#), saying that so large a body could not possibly be “well regulated,” meaning well-drilled and disciplined. Federalists tended to support a smaller “select” militia. These two views were reflected in the congressional debate between Federalists and anti-Federalists over this clause.

The bill went back and forth between the two houses of Congress. The Federalist Senate took out the universal service clause along with conscientious objection. In those days it was well remembered that England had publicized colonial (state) conscientious objection provisions to reduce compulsory participation in militias. Fear was expressed in Congress that conscientious objection would be tantamount to dissolving the militias. During the debate, the anti-Federalists

* * Free as distinct from indentured servants.

attempted to add amendments abolishing a peace-time standing army, but these were defeated. The final version read:

“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.”

Clearly, the right to bear arms was connected to militia service. Although Pennsylvania had submitted its own [draft bill of rights](#), which did include individual gun ownership, there were not the votes in either house to pass a stand-alone right to gun ownership.

The year after ratification, Congress passed the Militia Acts of 1792. We need not go into the wicked purposes to which the militia was put under federal direction. For the sake of this argument it is sufficient to note that once again the idea of universal gun ownership was linked to universal military service. Under the Second Militia Act, all (free White) men of military age were conscripted into the militia, and every such man was required, at his own expense, to go out and buy a gun along with prescribed quantities of shot, powder a bayonet and other equipment.

In asserting the link between the right to bear arms and military service, we should not be distracted by the 2008 Supreme Court decision (*District of Columbia v. Heller*) that discounted the militia clause of the Second Amendment. The five justices who voted for it were all Reagan and George Bush appointees, and the decision is no more worthy of respect than such repudiated decisions as those declaring African Americans ineligible for citizenship, upholding the Japanese Internment Act or repealing *Roe*.

The lesson of this history is clear. The Second Amendment was rooted in the then living memory of the militia-fought battles of Concord, Lexington and Bunker Hill, as well as fear of the standing army. We need to start saying loudly and strongly that if you want a military weapon, go join the National Guard - they have one for you to use. Otherwise, government at all levels has the right to limit guns just as it does drugs, tobacco, alcohol, tainted meat, vaping and host of other evils. There is no Second Amendment right to a gun.