



SENATE II

The Right to Bear Arms

By Haley Bowen

Introduction

As Al Capone, the famous American gangster, once said, “you can get much farther with a kind word and a gun than you can with a kind word alone.” He may have been right, or at least the owners of the nearly 250 million guns in the United States seem to think so. According to the 2007 Small Arms Survey, the United States is the most heavily armed country in the world, with 90 guns in circulation for every 100 American citizens. Guns pervade American culture: they not only occupy a prime position on the evening news but have been the companions of some of the most iconic American stars, from Clint Eastwood (“Go ahead, make my day”) to Homer Simpson (“I don't have to be careful, I've got a gun!”). Hunting and target shooting are valued pastimes in many parts of the country, and many families cherish rifles and other weapons that have been passed on from previous generations. The cultural impact of guns is countered by the existence of violent crime and accidental firearm death, which pose serious challenges for advocates of gun control.

For many citizens, the right to own handguns and other weapons is an important privilege of being American and a crucial method of self-defense against those who wish to do them harm. The National Rifle Association (NRA), the most vocal supporter of gun use in the United States, asserts that the majority of Americans use their weapons responsibly, and that private ownership of weapons actually diminishes the level of crime within a community. Regardless of whether this latter claim is accurate or not, it is clear that other countries have had much more success than the United States in limiting the negative consequences of legal gun use. Switzerland, for example, has one of the lowest crime rates in the world despite also having one of the highest rates of gun ownership. Violence and misuse of weaponry does not therefore necessarily stem from the greater proliferation of guns but is instead tied more closely to gun control legislation.

Explanation of the Problem

History of the Problem

The right to bear arms was originally affirmed in the Bill of Rights, a series of ten constitutional amendments whose main purpose was to protect the **civil liberties** of American citizens. The amend-

civil liberties—rights and freedoms that provide an individual specific rights such as the right to life, the right to privacy, freedom of assembly and association, etc..



ments, modeled on the earlier 1689 English Bill of Rights, uphold freedom of speech, religion, and press, protect citizens from “unreasonable searches and seizures,” guarantee all citizens the right to a just trial under the law, and ensure other individual freedoms and protections. The Second Amendment to the Constitution, ratified on December 15, 1791, deals directly with the right to bear arms. The 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.” Though the exact meaning of the text remains contested among constitutional scholars, most Americans citizens believe that the Second Amendment gives all individuals the right to carry weapons and to use them within legal restrictions against violent crime.

At the time of the Constitution's ratification, the United States federal government was not equipped with a large standing army like it is today. Instead, state militias, whose members were drawn from every walk of life, acted as the dominant military force within the nation. The Second Amendment guaranteed that the same ordinary citizens who had defeated the British in the **Revolutionary War** would own weapons and be prepared to serve in the militia if the United States was ever drawn into another conflict. This historical interpretation surrounding the Second Amendment has been a source of much contention over the years. Opponents of gun use now argue that the amendment only concerns military personnel like the members of the National Guard, who for all intents and purposes form the United States militia in modern times. Without the justification of maintaining national defense, they claim, ordinary citizens should not be able to keep and bear arms.

In modern times, the right to keep and bear arms is restricted by federal and state law. Federal law currently prohibits individuals from owning machine guns and strictly regulates the transportation of weapons across state lines. Any weapon purchased out-of-state, for example, must be delivered directly to an in-state gun seller who must conduct a background check on the buyer before the sale can be completed. Felons, those with domestic violence misdemeanors, drug users, illegal aliens, and those below the age of 18 are barred from carrying weapons, and following the creation of the Brady Law (detailed below) background checks are required for all those who wish to purchase a firearm. Most guns regulations vary rather widely by state, however, and there are still several loopholes in federal law. For instance, the Brady Law requires background checks to be conducted in licensed gun stores, but neglects to mention gun shows, where no background check is currently required to purchase a gun. According to a recent estimate by the Second Amendment Association, 1 gun in every 6500 is used in a homicide, a clear indication that weapons are reaching irresponsible hands. In 2004 alone, about 30,000 people were killed by firearms in the United States, while another 65,000 were injured.

Revolutionary War—
*the war from 1775-1783
that resulted in the
United States of America
winning its independence
from Great Britain.*

Recent Developments

Virginia Tech Shooting

In an attack reminiscent of the infamous **Columbine** shootings, a Virginia Tech student by the name of Seung-Hui Cho shot and killed 32 students on his college campus on April 16th 2007. The massacre was the largest ever carried out in the United States by a single gunman, and it raised many questions about the current state of gun control. Two years before the shooting, a judge had deemed Cho "an imminent danger to himself because of mental illness" and ordered him to get professional help. Yet because Cho was never involuntarily committed to a mental health facility, he was still able to buy a gun under Virginia law. When Cho purchased his gun the state police ran a quick background check that failed to turn up any sign of his mental health disorder, and because Virginia does not require a waiting period after purchase, Cho was able to take home his gun the same day. Critics of the current state of gun control have pointed to this incident as a horrific example of the loopholes in weapons control legislation at both the state and the federal level. They assert that reform is needed when people who have a history of mental instability are legally able to acquire weapons.

Columbine—a high school in Colorado that served as the site of a school shooting in 1999 in which 12 students and 1 teacher were murdered by two armed students.

District of Columbia vs. Heller (2008):

In 1975, the city council of Washington, D.C. passed the Firearms Control Regulation Act (FCRA). The law was created in response to the high level of violent crime occurring in the city at that time, and effectively banned D.C. residents from owning and carrying handguns and other **automatic weapons**. The law also required that citizens carry a license when wearing a pistol, and that all lawful weapons be unloaded and disassembled or trigger locked. This law was challenged in a federal trial court where a judge upheld the FCRA, ruling that the right to carry weapons was only granted to members of militias, not ordinary citizens, under the Second Amendment. The case went all the way to the Supreme Court, where, in a landmark case on gun control law, the Washington handgun ban was overturned. The Supreme Court ruled in a 5-4 decision that the FCRA was unconstitutional, determining that the Second Amendment grants all citizens the ability to own weapons regardless of whether or not they are part of the modern 'militia' or not. Any law limiting the use of firearms, like the FCRA, would therefore be contrary to the principles laid out in the Bill of Rights.

automatic weapon—a firearm that loads another round mechanically after the first round has been fired.

Arizona Shooting

One of the most public shootings in recent history took place on January 8th, 2011 outside of a supermarket in Tucson, Arizona. United States Representative Gabrielle Giffords (D-AZ), accompanied by mem-

bers of her staff, was meeting with the public when a man named Jared Loughner shot her in the forehead with a 9-millimeter pistol and then turned on the crowd. Six people were killed and thirteen were wounded. The incident sparked an enormous public outcry as Congress hurried to respond with gun safety legislation. Although Rep. Giffords survived the shooting, she suffered severe brain damage and is still undergoing treatment; public attention also focused on Christina Green, a 9-year-old girl killed in the massacre, whose funeral was broadcast live by the Associated Press. Most of the initial efforts in Congress have been aimed at possibly banning weapons with expanded **magazines**, like the one Loughner used, from public consumption; the sale of such semiautomatic pistols is already restricted in six states and the District of Columbia, but new legislation would create a federal ban against their use. Loughner was recently deemed mentally unfit for trial, which has inspired comparisons to Seung-Hui Cho and has increased calls to define dangerous mental health conditions and report them in the National Instant Criminal Background Check System database. Finally, it is important to note that the Arizona Arms Association reported that gun sales went up immediately following the incident. Several gun advocacy groups have argued that the shooting could have been prevented, if one of the witnesses was also carrying a weapon and had been able to use it against Loughner.

magazine—a chamber for holding a supply of cartridges to be fed automatically to the breech of a gun.

Congressional Action

The Federal Gun Free School Zone Act of 1995

This act responded to a surge in gun-related violence around school districts during the early 1990s, and the accompanying failure of the states and school systems to handle this violence on a local level. The law necessitates the ownership of a license when carrying a weapon within 1,000 feet of a school, and prohibits any weapons on school property. Some schools have subsequently used this legislation as justification for the installation of metal detectors and police officers at the entrance of high schools to detect concealed weapons that might enter the premises.

Brady Handgun Violence Prevention Act

The Brady Act established the first national instant criminal background database for licensed gun sellers and ordinary citizens to use when selling firearms. Databases were created by the states with federal funding. Following the enactment of the Brady Act, it became illegal to transfer or sell a firearm to anyone not cleared on the database. The law also mandates a five-day waiting period after the request to purchase a gun, during which time the seller is required to contact a local police official and ask for the clearance to sell to the prospective buyer.

The five-day waiting period may be skipped only if the buyer can demonstrate that he or she requires a handgun because of a threat to a family member, or if state law imposes an alternate system to confirm non-criminal status. The Brady law also attempts to reduce illegal **gun trafficking** by requiring that all packages containing weapons passing state lines be unmarked.

gun trafficking—*the illegal smuggling of illegally-owned weapons or ammunition.*

Violent Crime Control and Law Enforcement Act of 1994

The Violent Crime Control and Law Enforcement Act (VCCLE) was a sweeping bipartisan bill that reformed many aspects of the United States police force and prison systems and covered such topics as immigration, gangs, domestic violence, and fraud. The VCCLE strengthened federal licensing standards for weapons dealers and increased penalties for the use of semiautomatic weapons and the theft of firearms; \$100 million was also given to states to increase compliance with the earlier Brady Act. The Act included the Federal Assault Weapons Ban (AWB), a ten-year ban on the manufacture of nineteen military-style assault weapons and their black market “copy cat” counterparts, as well as high-capacity ammunition magazines of more than ten rounds. The AWB expired in 2004, at a time when the Bush administration had begun to demonstrate increasing support for the right of individual citizens to bear arms. H.R. 6257, a bill that was introduced in 2008 to renew the ban for another ten years and expand it to include semiautomatic weapons, was defeated in committee without ever making it to the House floor.

Focus of the Debate

Conservative View

Conservatives typically act in support of the Second Amendment. Many members of Congress own guns themselves, and pressure from the powerful National Rifle Association (NRA) is often enough to stymie gun control efforts. Conservatives argue that the majority of Americans use their weapons responsibly or hold them for the purposes of self-defense, and that increasing gun regulations will only create more headaches for the average consumers of weapons. However, more moderate Conservatives are open to tightening regulations based on mental health checks, especially given the recent massacres in Virginia and Arizona. Conservatives believe that the right to keep and bear arms is essentially the right to self-protection, and maintain that violent crime is diminished when ordinary citizens can carry concealed weapons. As such, the fundamental principles of the Second Amendment should be fiercely protected.

Liberal View

Until recently liberals have remained rather quiet on the issue of gun control. However, more and more representatives have voiced concern over the current level of gun violence within the US, especially those from northeastern states where carrying weapons is not as commonplace as in other parts of the U.S. They seek to remedy this problem with tighter regulations on ammunition and automatic weapons, stricter background checks, and greater federal oversight. It is generally agreed that any proposed legislation should attempt to restrict people with a history of mental instability from buying guns, as long as this condition has been officially recognized by medical professionals.

Presidential View

Two months after the shooting in Arizona, President Barack Obama released a statement to the *Arizona Daily* detailing his opinion on gun control. He criticized the “porous background checks” that allowed “a man our Army rejected as unfit for service; a man one of our colleges deemed too unstable for studies; a man apparently bent on violence” to purchase a **semi-automatic weapon** and commit a homicide. President Obama opposes the complete repeal of the Second Amendment, explaining that the majority of American citizens carry their weapons responsibly and citing that the right to bear arms is guaranteed by the Constitution. Instead, he supports increasing the enforcement of existing weapons regulations like the National Instant Criminal Background Check System (NICBS), whose purpose is to alert gun sellers to high-risk citizens like those with criminal records. President Obama has suggested creating a reward system for states that regularly update their NICBS data.

semi-automatic weapon—a firearm which performs all steps necessary to prepare the weapon to fire another round after firing; the additional round is not fired until the trigger is released and re-pressed.

Interest Group Perspectives

Heritage Foundation

As a think tank that promotes policies based on conservative values, the Heritage Foundation strongly opposes restrictions on the trade and possession of guns. After the Tucson shooting, the Foundation released a statement claiming, “gun control is not [a] proper reaction to [the] tragedy” and blaming the renewed call for stricter gun regulations on “political opportunism.” The Foundation believes that the right to purchase and carry weapons is a constitutionally mandated common right.

CATO Institute

Based in Washington, D.C., the CATO Institute is a libertarian organization whose mission is to “increase the understanding of public policies based on the principles of limited government, free markets,

[and] individual liberty.” The Institute is a fierce defendant of the right to bear arms, calling the Washington, D.C. handgun ban a “draconian” policy and applauding the Supreme Court decision in *D.C. vs. Heller*. Traditionally, libertarian organizations like CATO support government decentralization by encouraging the shift of federal power towards individual states. Here, this would mean eliminating federal firearm restrictions and letting states form their own regulations. However, the CATO Institute opposes extending all power over gun control legislation to the states, because doing so might set a **legal precedent** for states to decide on other more contentious issues, such as abortion and gay marriage. CATO believes that bearing arms should instead remain a federally protected right.

legal precedent—a principle or rule established in a legal case that a court or other judicial body may apply when deciding subsequent cases with similar issues or facts.

American Red Cross

An internationally active organization focused on disaster relief and emergency response, the American Red Cross was heavily involved with the aftermath of Virginia Tech. The Red Cross's purpose, as listed in its mission statement, is to protect life and health and to promote cooperation and peace. Ending violent crime within the United States, especially crime involving firearms, is of special concern for the organization. The Red Cross generally supports legislation that is aimed at preventing the misuse of guns and other weapons, including legislation that would ban or limit the sale of advanced combat machinery.

Possible Solutions

Abolish the Second Amendment

Opponents of stricter gun control often point to the Second Amendment when protesting tighter weapons legislation. Since the amendment guarantees all American citizens the constitutional right to bear arms in the eyes of the current Supreme Court, any legislation that would seek to completely eliminate gun use within the United States would unavoidably contradict the amendment in the process. The United States Supreme Court would undoubtedly deem such legislation unconstitutional, and the law would be subsequently overturned. Therefore, in order to bring about significant change in gun law, any group wishing to eliminate the private use of weapons must first deal with the Second Amendment. Abolishing the Second Amendment would not automatically deprive citizens of the right to bear arms, because the Bill of Rights simply *recognizes* the natural rights of citizens and does not *establish* them. In other words, the amendment prevents the government from infringing upon the natural right of citizens to keep and bear arms. Eliminating the Second Amendment would allow the US government to strictly limit this right for the first time; essentially, abolition opens the doors to much tighter gun legislation. Any attempt to abolish

the Second Amendment should therefore be accompanied by comprehensive legislation defining how, exactly, gun control can be altered and limited within the United States.

Alter the Second Amendment

A second option also involves a reexamination of the Bill of Rights. Much debate has centered on the language of the Second Amendment, especially the meaning of the word “arms.” Some people point to the historical context of the Constitution for a definition of the word. In the time of the Constitution's ratification, they argue, “arms” referred to muskets, pistols, knives, bows and arrows, and spears. The **Founding Fathers** did not foresee the creation of precise modern weaponry, and because of this it is incorrect to extend the definition of “arms” to include such dangerous weapons as machine guns, shotguns, tear gas, flares, and grenade launchers, all of which are currently legally available to American citizens. Others prefer to treat the US Constitution as a “living document” whose exact significance changes with new social and technological developments. In creating the Second Amendment, they claim, the Founding Fathers were enforcing the basic right to self-protection. No matter what form that protection may take in modern times, it should remain legal for American citizens to defend themselves. Groups wishing to restrict gun use, or alternatively provide a solid legal precedent for the popular ownership of advanced weaponry, may therefore choose to specify the types of arms that common citizens are allowed to own in a constitutional amendment. Changes may also include establishing a national legal age at which one can buy weapons, or specifying whether the Second Amendment right only extends to members of the US military, as discussed above.

Founding Fathers—*the national founders of the United States, who were also responsible for drafting the United States Constitution.*

Gun Control Legislation

Though it is impossible to completely eliminate the use of weapons without a constitutional amendment, there are many ways in which current gun law can be refined to more adequately reflect modern technology and the use of weaponry. First, citizens could be restricted from purchasing high capacity weapons, including those with large ammunition chambers, automatic firearms, or more unusual weapons like grenade launchers and tear gas. This could be accomplished through a complete ban on the sale of these items or by requiring “checkpoints” such as mental and physical health examinations before purchase. Second, legislation could require states to update the NICBS database with greater frequency and accuracy than they do under current regulations.

Weaken Gun Control Legislation

Congress could decide to lower the barriers to gun ownership through legislative measures that reduce or eliminate background checks

and waiting periods and make automatic and assault weapons more broadly available to the public. This would please many gun owners nationally because of its **constructionist** interpretation of the Second Amendment, but would enrage many gun control activists on the grounds that it would put guns in the hands of many people who are not suited to own them.

constructionist—a legal philosophy of judicial interpretation that limits or restricts judicial interpretation to the actual text written into law; judicial conservatism.

Questions a Bill Should Address

The Second Amendment debate rests on one overarching question: how should the United States government strike a balance between the need to maintain order and prevent violent crime with the individual's constitutionally-granted right to self-protection? Should the Second Amendment only be applied as it was envisioned in the 18th century, which would exclude many modern weapons and possibly restrict the right to bear arms to a modern "militia" like the National Guard? Other questions concern more specific aspects of gun regulation. Is it necessary or wise for a US citizen to have the legal right to buy grenades, tear gas, or semiautomatic weapons? Furthermore, is it justified to restrict a citizen's ability to buy a gun on the basis of their previous mental health history? If not, how can the government take more steps to prevent weapons from falling into the wrong hands?

Summary and Conclusion

As evidenced by the fierce public debate surrounding this issue, weapons legislation is much more than an obscure constitutional argument over language. The right to bear arms is firmly entrenched in the American conception of individual liberty and the right to self-protection, and restricting the sale and use of weapons will be much more difficult than it appears at first sight. Yet in the wake of the Virginia Tech and Tucson shootings, it is clear that proper regulation of the gun market is absolutely critical in preventing tragedy. While questions about American gun law abound, it is up to the United States Congress to dictate the future of the American citizen and his ownership of firearms to ensure a reduction in violence without significantly encroaching on constitutional rights.

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