

## All But The Kitchen Sink: A Second Amendment Interpretation for the Safety of Schools

December 14, 2012, should have been the day that America changed. A man carrying an assault weapon walked into Sandy Hook Elementary school, in Connecticut, and brutally murdered six teachers and twenty children between the ages of six and eight. The images of children running out of their school will forever be burned into America's national consciousness ("Grief-Stricken Newtown").

The government should have acted quickly to get all the guns capable of this mass destruction off the market and off the streets, but this never happened. A powerful gun lobby ensured that no effective gun control could be put in place because of the last four words of the Second Amendment: "shall not be infringed." As a result, countless horrific acts of violence have been visited upon this nation's schools. From Parkland to Uvalde, children have been mowed down with increasing regularity over the past thirty years without much in the way of gun control.

However, this does not need to be America's national reality. The Second Amendment can be interpreted in a way so that the only regulation upon guns that cannot be enforced is the total prohibition of firearms. Any other legislation outlawing particular types of firearms may be permitted under this interpretation. The precedent for such an interpretation can be found in previous gun control court challenges and the recent overturning of settled law would open the door for this interpretation to become law.

Since the dawn of the Republic, there have been restrictions on gun ownership. In the 1790s, the owning of a firearm often accompanied the enlistment in a militia. In fact, the Second Militia Act of 1792, mandated the conscription of all able bodied men and mandated that every man have a firearm. At the time of the writing of the Constitution, the prevailing sentiment

around weapons was that they were necessary for national defense. It is important to remember that at the time of the framing America was a nation beset upon all sides by enemies. Indigenous peoples were immediate enemies of the newly formed nation. As well, the United States' Northern border was shared with an aggressive former colonial oppressor: the British. Moreover, the British were arming the US's indigenous enemies ("Territorial Ambitions"). The right to bear arms was fundamentally tied with the protection of the country.

This reality is demonstrated by the subsequent legislation surrounding militias. America matured as a nation. The necessity for military weapons has dissipated. A need for militia control was evident as it would be dangerous to national security to have standing armed forces of civilians. State militias would be incorporated into what would become the National Guard ("How We Began"). Consequently, the mandates for arming and conscripting the able bodied male population of every state was dropped. America was no longer a nation under attack, so militias were no longer necessary. However, what did not follow from this historical development was similar restrictions to military weaponry. The weaponry of the time did not have the destructive capacity of modern assault weapons, so the necessity of gun control was not immediately evident.

In the middle of the twentieth century, America began to experience a phenomenon called mass shootings. The University of Texas at Austin was the first victim. America's government responded with the Gun Control Act of 1968 (Flaccus). This provided a basis for federal gun legislation, for it established a federal licensing program for firearms ownership. Then, a rash of shootings followed. High casualties from higher capacity magazines followed. Gun control was somewhat immediate, but so too was the backlash. However, in 1994 the Assault Weapons Ban was passed. This banned certain types of military style weapons. The ban withstood several

lower court challenges, but was never argued in the Supreme Court (Roth). This shows that legislation banning certain types of firearms is possible under the Second Amendment.

Unfortunately, the ban was not renewed, and assault weapons have been able to be used in the horrific mass shootings of the 2010s.

The prevailing modern precedent on gun control or weapons bans comes from the 2010 *MacDonald v. Chicago* ruling. This ruling formally incorporated Second Amendment rights to the state level and ensured the right for bearing arms in terms of self defense. This would hypothetically apply to all kinds of weapons used in the means of self defense. This ruling would support the Second Amendment interpretation that the "right to keep and bare arms" ' could not be violated in the absolute. As well, the precedent of the case could be used to strike down any law passed that would limit the access to firearms. However, such interpretations are far from sacrosanct. *Roe v. Wade* had been established law for fifty years until the summer of 2022. In the *Dobbs v. Jackson* majority draft decision, Justice Samuel Altio stated that the established precedent set by the *Roe* and 14th Amendment to the right of abortion in *Roe v. Wade* could be overturned because of the long historical illegality of abortion. As a result, the same judicial logic can be applied to the interpretation of the Second Amendment in cases such as *MacDonald v. Chicago* and *Caetano v. Massachusetts*.

As previously established, there is a history of prohibiting certain firearms, and because the historical need for the possession of such destructive arms cannot be proven, a Supreme Court ruling could overturn the holding of *MacDonald*. In its place, the Court could establish that pieces of gun control legislation are legitimate as long as that piece of legislation does completely prohibit the use and possession of all firearms. Technically, the right to bare arms has not been infringed upon if one can still possess a firearm, albeit of lesser destructive force. If this

interpretation became a SCOTUS ruling, it would open the door to both local and federal legislators to taking a more active role in removing the assault weapons, used in many school shootings, from the public market place. As well, this would eliminate the need for the Second Amendment to be amended to address the crisis.

The need for increased gun legislation is clear. Students are being slaughtered in the places that should educate. The history of the Second Amendment is one of a small nation's need for self defense and a desire for continental conquest. However, the two major elements of the amendment (militia and firearms) have outgrown their historical purpose. It is societally destructive to allow the average citizen the access to military hardware. However, it is in keeping with the values of the Republic to allow the maintenance of conservative firearms. In order to balance the safety of the populace and the gun culture of America, the Supreme Court must overturn *MacDonald v. Chicago* and in its place interpret the Second Amendment as only outlawing the total prohibition of firearms. The hunter keeps his shotgun, but the criminal loses his means of mechanized violence. Children could go to school without the fear of a 45mm bullet.

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