Lecture Notes

# Chapter 9: The Right to Keep and Bear Arms

## Annotated Chapter Outline

1. Initial Interpretations
   1. ***United States v. Miller (1939)***
      1. The constitutionality of the National Firearms Act of 1934 was at issue.
      2. The facts surrounding *Miller* suggest that it may have been a federally orchestrated test case.
      3. The federal district judge who heard the case, Heartsill Ragon, was a former member of Congress and a strong proponent of gun regulation.
      4. Ragon surprisingly used the case to strike down the NFA for violating the Second Amendment.
      5. When the appeal reached the Court, only the federal government’s position was presented.
      6. The justices unanimously voted in favor of the government, holding that the NFA did not violate the Constitution.
2. The Second Amendment Revisited
   1. Earlier generations of scholars generally sided with the position that the Second Amendment guarantees only the collective right to keep and bear arms.
   2. Analyzing additional historical records, however, led some contemporary scholars to conclude that pro-gun groups may have a stronger legal argument than previously thought.
   3. *District of Columbia v. Heller (2008)*
      1. The Court finally addressed the varying approaches to the Second Amendment.
      2. The justices attempted to use historical analyses to establish what was understood to be the meaning of the amendment at the time it was proposed and ratified.
      3. The majority rejected the collective right interpretation of the Second Amendment and held that the Constitution guarantees an individual right to keep and bear arms.
      4. Scalia’s majority opinion clearly stated that the personal right to possess weapons is not unlimited.
3. *Heller* and the States
   1. *Heller* dealt only with the very restrictive gun control ordinance in Washington, D.C., which is not a state.
   2. Because D.C. is not a state, *Heller* had no direct effect on the authority of the states to regulate firearms as they saw fit.
   3. At the time the Court issued *Heller*, the Second Amendment was one of the few provisions of the Bill of Rights that had not been incorporated.
   4. ***McDonald v. City of Chicago (2010)***
      1. The justices heard a challenge to laws enacted by the city of Chicago and the village of Oak Park, Illinois, that effectively banned handgun possession by almost all private citizens.
      2. Samuel Alito wrote: “Applying the standard that is well established in our case law, we hold that the Second Amendment right is fully applicable to the States.”
4. In the Aftermath of *Heller* and *McDonald*
   1. Some states and cities passed new ordinances curtailing gun ownership.
   2. Because Heller and McDonald did not articulate a clear standard to assess these regulations, it was left to the lower federal courts to devise their own approach.
   3. *New York State Pistol & Rifle Association, Inc. v. Bruen (2022)*
      1. In his majority opinion, Justice Thomas stated that his “text-and-history” standard to assess gun regulations derived from *Heller*.
      2. Those who disagree claim that the history part of Thomas’s approach is not just a departure from *Heller* but from all other approaches to determine whether a burden on liberties violates the Constitution.
      3. Justice Breyer complained that such an approach amounted to turning judges into historians.