

## The Second Amendment and the Political Process

In one of the worst cases ever decided by the Supreme Court, they got one thing right:

For example, no one, we presume, will contend that Congress can make any law in a Territory respecting the establishment of religion, or the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people of the Territory peaceably to assemble, and to petition the Government for the redress of grievances.

Nor can Congress deny to the people the right to keep and bear arms, nor the right to trial by jury, nor compel any one to be a witness against himself in a criminal proceeding.

*Dred Scott, Plaintiff in Error, v. John F. A. Sandford.*, 60 U.S. 393 (U.S. 1856)

The right to keep and bear arms is addressed in the Second Amendment, U.S.

Constitution:

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.

Congress cannot, merely by legislating, amend the Constitution. Amendment of the Constitution by legislative enactment is prohibited. *United Transp. Union v. ICC*, 891 F.2d 908, 915-916 (D.C. Cir. 1989).

Which is exactly what Congress did:

It shall be unlawful for any person -

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

U.S.C. 18 § 922 (g)(1)(9).

What Congress did, in effect, was to give us a new, amended, Second Amendment:

...the right of the people to keep and bear arms shall not be infringed *unless a person has a prior felony conviction*.

At least one Supreme Court Justice recognized the anomaly recently:

"The right of the people"

The centerpiece of the Court's textual argument is its insistence that the words "the people" as used in the Second Amendment must have the same meaning, and protect the same class of individuals, as when they are used in the First and Fourth Amendments. According to the Court, in all three provisions -- as well as the Constitution's preamble, section 2 of Article I, and the Tenth Amendment -- "the term unambiguously refers to all members of the political community, not an unspecified subset." Ante, at 6. But the Court itself reads the Second Amendment to protect a "subset" significantly narrower than the class of persons protected by the First and Fourth Amendments; when it finally drills down on the substantive meaning of the Second Amendment, the Court limits the protected class to "law-abiding, responsible citizens," ante, at 63. But the class of persons protected by the First and Fourth Amendments is not so limited; for even felons (and presumably irresponsible citizens as well) may invoke the protections of those constitutional provisions. The Court offers no way to harmonize its conflicting pronouncements.

*District of Columbia v. Heller*, 128 S.Ct. 2783, 171 L.Ed.2d 637 (U.S. 2008).

There are almost 300 million guns in the United States. Of the roughly 300 million people in the United States, at least a third own firearms. That's a formidable voting bloc. Anyone who ignores this issue and this voting bloc in an election does so at their peril.

The anti-guns advocates are an insignificant portion of the population. Most people who don't own guns are not "anti-gun". They just don't care.