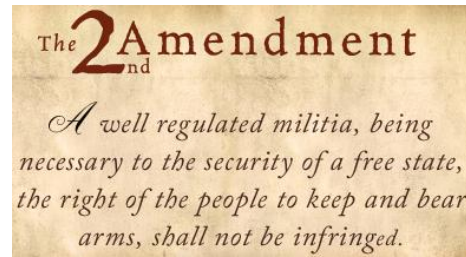


## THE 2<sup>nd</sup> AMENDMENT and GUN CONTROL

### - Were the Founders actually thinking about gun control?

Stephen L. Bakke  February 7, 2013



*One of my main objections about liberals is that their reactions are often very emotional and their actions impetuous. This results in incomplete analysis, quick decisions and usually bad policies and legislation. If we could determine the root causes of mass violence, there are very few that wouldn't sign on to the program! But this administration and Congress are making futile "stabs in the dark." Moral grandstanding of this sort moves us farther away from a real and permanent solution to the problem.* – Stephano Bakkovich, obscure but very wise political pundit, and a willing purveyor of opinions on just about everything.

Last week you received my first report on this topic. Here's a recap of what I've concluded so far about the 2<sup>nd</sup> Amendment and gun control (refer to the prior report dated February 1, 2013): *Obama prefers quick reaction over careful study of the problem of mass violence; the Founders were reacting primarily to the threat of British tyranny and its intention to disarm the American Colonies; the Founders were also very sensitive to the right of general self defense; the term "militia" does not refer uniquely to the formation of a standing army; there can be, in fact, modern applications for establishing a "militia"(e.g. school security); and recreational hunting can't be stretched into a modern interpretation of the intent of the 2<sup>nd</sup> Amendment.*

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** Does the fact that the 2<sup>nd</sup> Amendment is in the Bill of Rights differentiate this issue from the original articles in the Constitution?**

*The 2<sup>nd</sup> Amendment sets out one of the "Unalienable Rights" which are "endowed by our Creator" – i.e. they exist because a person exists. They are NOT granted or provided by the government. They can't be "bought and sold." To equate a true right to a product or service is to cheapen the intentions of our Founders as it relates to individual liberty. They are not things that you can "run out of"! The government can't take these rights away, but it CAN cause them to be hindered. The government, via the Constitution, exists primarily to assure the free exercise of these rights.* – Stephano Bakkovich, obscure but very wise political pundit, and a willing purveyor of opinions on just about everything.

Given the observations of that "expert," it seems that any attempt to actually rescind the Amendment via legislation, or further amendment, would set up a constitutional battle the likes of which we have never seen. It would require a denial of the entire concept of rights "endowed by our creator." That would never happen I am quite sure!

Does "gun control" constitute a hindrance of the right granted by the 2<sup>nd</sup> Amendment, or is it simply sound and wise implementation of that right. Denying or hindering a right is one question. I wonder what the Founders had in mind relative to regulating "arms." Let's try to take a look.

## **What did the Founders think about having some form of “gun control”?**

The first words in the Amendment are “a well regulated militia.” At first glance, and in my opinion, this certainly implies some level of competence and some sort of measurement of that competence. Training could certainly be a part of accomplishing competency. This line of reasoning pushes me in the direction of believing that some controls and regulations can be inferred from the Amendment. Check this out!

*To preserve liberty, it is essential that the whole body of people always possess arms, and be taught alike especially when young, how to use them.* – Richard Lee, Senator, 1788

Does that statement bear any relationship to what Alexander Hamilton wrote in Federalist 29?

*A tolerable expertness in military movements is a business that requires time and practice ..... If a well regulated militia be the most natural defense of a free country, it ought certainly to be under the regulation and at the disposal of that body which is constituted the guardian of the national security ..... confiding the regulation of the militia to the direction of the national authority ..... reserving to the states ..... the authority of training the militia.*

A lot about individual, local and state’s rights, and even a reference to the Federal role in all of this! The feds had been given the responsibility of arming and coordinating a national force as would be necessary for the common defense, but the states were given the right to choose officers and train the “militia.” Once again the discussions do seem to embrace some sort of control and regulation, through having the right to discipline the “militia,” assuring their competence, and coordinating their activities.

I should add here that many at the time feared the power given to the federal government by granting it the responsibility to arm and to a certain extent control a standing army. But the emphasis on individuals and the local militias was reinforced by Noah Webster:

*Before a standing army can rule the people must be disarmed ..... The supreme power in America cannot enforce unjust laws by the sword; because the whole body of the people are armed, and constitute a force superior to any band of regular troops that can be, on any pretence, raised in the United States.*

It’s easy to see why this issue is confusing. “Militia” seems to refer to individuals bearing arms for general security and self defense, to local or state groups forming defensive mechanisms, and to the rights of the federal government to provide for national defense. Yet embedded in it all seems to be a presumption of order and competence, achieved through rules, regulations, and limited controls.

## **U.S. Supreme Court Justice Antonin Scalia Has Had Some Things to Say About Gun Control**

Scalia commented on “individual rights” in the case of *District of Columbia v. Heller*:

*Nowhere else in the Constitution does a “right” attributed “the people” refer to anything other than an individual right ..... This contrasts markedly with the phrase “the militia” in the prefatory clause ..... the “militia” in colonial America consisted of a subset of “the*

*people” – those who were male, able bodied, and within a certain age range. Reading the 2<sup>nd</sup> Amendment as protecting only the right to “keep and bear Arms” in an organized militia therefore fits poorly with the operative clause’s description of the holder of that right as “the people.”*

Justice Scalia has, in my opinion, left open the door to certain gun control legislation being constitutional. He stated in an interview that the majority opinion in the 2008 Heller decision stated that the extent of gun ownership “will have to be decided in future cases.” This was said in the face of obvious impending gun control legislation.

I inferred from another Scalia interview, which I watched that, while he wasn’t specific, the message he was leaving was that he doesn’t see the Constitution prohibiting all forms of arms regulation.

As an aside, “celebrity judge” and influential commentator Judge Andrew Napolitano has added the following to the debate:

*..... the states delegated only 16 unique, discrete powers to the new federal government, and all of those powers concern nationhood. The Constitution authorizes the feds to regulate in areas of national defense, foreign affairs, keeping interstate commerce regular, establishing a post office, protecting patents and artistic creations, and keeping the nation free. The areas of health, safety, welfare and morality were not delegated to the feds and were retained by the states ..... The Constitution expressly prohibits all governments from infringing upon the right of the people to keep and bear arms. This permits us to defend ourselves when the police can’t or won’t, and it permits a residue of firepower in the hands of the people with which to stop any tyrant who might try to infringe upon our natural rights .....*

Modern day commentary by informed people emphasizes the rights enumerated by the 2<sup>nd</sup> Amendment, but I don’t find that they preclude all forms of training, control, and regulation.

** *Are the Liberals Really Threatening the Right to Keep and Bear Arms – Other Than Suggesting a Modest Level of Control?***

Senator Feinstein and Mayor Bloomberg, two extremely influential “movers and shakers” in the battle for increased gun control have very specifically telegraphed their preference for total elimination of guns in private hands and/or gathering guns house to house. Obviously they understood the futility of these hopes and their comments were expressed in the context of a “if I could have my way” discussion.

So, YES, some level of concern or “paranoia” about how far this could go does have some legitimacy. I must admit I have no such “paranoia” that this could ever happen. But they said it!

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**I find nothing which, for me, should preclude all forms of training, control, and regulation as it relates to applications of the 2<sup>nd</sup> Amendment.**

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**Soon, more on research into guns and gun control!**