

In the case of *District of Columbia v. Heller* (2008), the Supreme Court of the United States held for the first time ever that “the Second Amendment confers an individual right to keep and bear arms;” the Court also embraced “the right of law-abiding, responsible citizens to use arms [including handguns] in defense of hearth and home.” (The two bracketed words were added but refer to an actual finding in the case.) In *McDonald v. City of Chicago* (2010), the Court further concluded that the “Fourteenth Amendment makes the Second Amendment...fully applicable to the States,” meaning that in all fifty states “citizens must be permitted ‘to use [handguns] for the core lawful purpose of self-defense.’” (The bracketed word was already present and belongs to the Court.) These two decisions in favor of gun rights, while controversial, are judgments of the U.S. Supreme Court and as such are now the law of the land, but where does this leave us with respect to gun control?

In the *Heller* decision (and reaffirmed in the *McDonald* decision), the Court stated:

Like most rights, the right secured by the Second Amendment is not unlimited. ...the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. ...For example, the majority of 19th century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues. ...Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms. ...We also recognize another important limitation on the right to keep and carry arms. ...the sorts of weapons protected were those ‘in common use at the time.’ ...We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons.’

The Opinion of the Court in the *Heller* case provided a historical analysis of how the Second Amendment was interpreted through to the end of the 19th century. The primary sources below cover the same range.

Gun Rights and Gun Control through the 19th Century

That the subjects which are Protestants may have arms for their defence suitable to their conditions and as allowed by law. –English Bill of Rights, 1689

That a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free State. –Constitution of Virginia, 1776

That the people have a right to bear arms for the defence of themselves and the state. –Constitution of Pennsylvania, 1776

That the people have a right to bear arms, for the defence of the State. –Constitution of North Carolina, 1776

The people have a right to keep and to bear arms for the common defence. –Constitution of Massachusetts, 1780

The depositing of loaded arms in the houses of the town of Boston is dangerous... That if any person shall take into any dwelling-house, stable, barn, out-house, ware-house, store, shop or other building, within the Town of Boston, any cannon, swivel, mortar, howitzer, or cohorn, or fire-arm, loaded with, or having gun-powder in the same, ...such person shall forfeit [the item] and pay the sum of ten pounds. –An Act [of Massachusetts] in Addition to the Several Acts Already Made for the Prudent Storage of Gun-Powder Within the Town of Boston, 1783

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. –2nd Amendment to the United States Constitution, 1791

That the rights of the citizens to bear arms in defense of themselves and the State shall not be questioned; but the General Assembly may pass laws to prevent persons from carrying concealed arms. –Constitution of Kentucky, 1850

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law. –14th Amendment to the United States Constitution, 1868

That the citizens of this state have a right to keep and to bear arms for their common defense; but the Legislature shall have power, by law, to regulate the wearing of arms with a view to prevent crime. –Constitution of Tennessee, 1870

Sec. 1. Be it enacted by the Legislature of the State of Texas, That any person carrying on or about his person, saddle, or in his saddle bags, any pistol, dirk, dagger, slung-shot, sword-cane, spear, brass-knuckles, bowie-knife, or any other kind of knife manufactured or sold for the purposes of offense or defense, unless he had reasonable grounds for fearing an unlawful attack on his person, and that such ground of attack shall be immediate and pressing; or unless having or carrying the same on or about his person for the lawful defense of the State, as a militiaman in actual service, or as a peace officer or policeman, shall be guilty of a misdemeanor...; provided, that this section shall not be so construed as to prohibit any person from keeping or bearing arms on his or her own premises, or at his or her own place of business, nor to prohibit sheriffs or other revenue officers, and other civil officers, from keeping or bearing arms while engaged in the discharge of their official duties, nor to prohibit persons traveling in the State from keeping or carrying arms with their baggage; provided further, that members of the Legislature shall not be included under the term “civil officers” as used in this act. Sec. 2. Any person charged under the first section of this act, who may offer to prove, by way of defense, that he was in danger of an attack on his person, or unlawful interference with his property, shall be required to show that such danger was immediate and pressing, and was of such a nature as to alarm a

person of ordinary courage; and that the weapon so carried was borne openly and not concealed beneath the clothing; and if it shall appear that this danger had its origin in a difficulty first commenced by the accused, it shall not be considered as a legal defense. Sec. 3. If any person shall go into any church or religious assembly, any school room, or other place where persons are assembled for amusement or for educational or scientific purposes, or into any circus, show, or public exhibition of any kind, or into a ball room, social party, or social gathering, or to any election precinct on the day or days of any election, where any portion of the people of this State are collected to vote at any election, or to any other place where people may be assembled to muster, or to perform any other public duty, (except as may be required or permitted by law,) or to any other public assembly, and shall have or carry about his person a pistol or other firearm, dirk, dagger, slung shot, sword cane, spear, brass-knuckles, bowie-knife, or any other kind of knife manufactured and sold for the purposes of offense and defense, unless an officer of the peace, he shall be guilty of a misdemeanor... Sec. 4. This act shall not apply to, nor be enforced in any county of the State, which may be designated, in a proclamation of the Governor, as a frontier county, and liable to incursions of hostile Indians. –An Act [of Texas] to Keep and Regulate the Bearing of Deadly Weapons, 1871

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... Nothing herein contained shall justify the practice of carrying concealed weapons, or prevent the Legislature from enacting penal statutes against said practice. –Constitution of North Carolina, 1875

That the right of no citizen to keep and bear arms in defense of his home, person and property, or in aid of the civil power, when thereto legally summoned, shall be called into question; but nothing herein contained is intended to justify the practice of wearing concealed weapons. –Constitution of Missouri, 1875

Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime. –Constitution of Texas, 1876

The right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called in question; but nothing herein contained shall be construed to justify the practice of carrying concealed weapons. –Constitution of Colorado, 1876

The right to bear arms is not granted by the [United States] Constitution; neither is it in any manner dependent upon that instrument for its existence. The second amendment means no more than that it shall not be infringed by Congress, and has no other effect than to restrict the powers of the national government. –Syllabus of the U.S. Supreme Court in *United States v. Cruikshank*, 1876

The right of the people to keep and bear arms shall not be infringed, but the General Assembly shall have power to prescribe the manner in which arms may be borne. –Constitution of Georgia, 1877

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 abridged. This shall not prevent the passage of laws to punish those who carry weapons concealed. –Constitution of Louisiana, 1879

The right of the people to bear arms in defence of themselves and the lawful authority of the State, shall not be infringed, but the Legislature may prescribe the manner in which they may be borne. –Constitution of Florida, 1885

...the [Second] amendment [to the U.S. Constitution] is a limitation only upon the power of Congress and the National government, and not upon that of the States. It was so held by the court in the case of *United States v. Cruikshank*, ...in which the Chief Justice, in delivering the judgment of the court, said, that the right of the people to keep and bear arms “is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence.” The Second Amendment declares that it shall not be infringed, but this, as has been seen, means no more than that it shall not be infringed by Congress. This is one of the amendments that has no other effect than to restrict the powers of the National government... –U.S. Supreme Court in *Presser v. Illinois*, 1886

The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons. –Constitution of Montana, 1889

The people have the right to bear arms for their security and defense; but the Legislature shall regulate the exercise of this right by law. –Constitution of Idaho, 1889

The right of every citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but the legislature may regulate or forbid carrying concealed weapons. – Constitution of Mississippi, 1890

Sec. 1. It shall be unlawful for any person in the Territory of Oklahoma to carry concealed on or about his person, saddle, or saddle bags, any pistol, revolver, bowie knife, dirk, dagger, slung-shot, sword cane, spear, metal knuckles, or any other kind of knife or instrument manufactured or sold for the purpose of defense except as in this article provided. Sec. 2. It shall be unlawful for any person in the Territory of Oklahoma, to carry upon or about his person any pistol, revolver, bowie knife, dirk knife, loaded cane, billy, metal knuckles, or any other offensive or defensive weapon, except as in this article provided. Sec. 3. It shall be unlawful for any person within this Territory, to sell or give to any minor any of the arms or weapons designated in sections one and two of this article. Sec. 4. Public officers while in the discharge of their duties or while going from their homes to their place of duty, or returning therefrom, shall be permitted to carry arms, but at no other time and under to other circumstances: Provided, however, That if any public officer be found carrying such arms while under the influence of intoxicating drinks, he shall be deemed guilty of a violation of this article as though he were a private person. Sec. 5. Persons shall be permitted to carry shot-guns or rifles for the purpose of hunting, having

them repaired, or for killing animals, or for the purpose of using the same in public muster or military drills, or while traveling or removing from one place to another, and not otherwise. Sec. 7. It shall be unlawful for any person, except a peace officer, to carry into any church or religious assembly, any school room or other place where persons are assembled for public worship, for amusement, or for educational or scientific purposes, or into any circus, show or public exhibition of any kind, or into any ball room, or to any social party or social gathering, or to any election, or to any place where intoxicating liquors are sold, or to any political convention, or to any other public assembly, any of the weapons designated in sections one and two of this article. Sec. 8. It shall be unlawful for any person in this Territory to carry or wear any deadly weapons or dangerous instrument whatsoever, openly or secretly, with the intent or for the avowed purpose of injuring his fellow man. Sec. 9. It shall be unlawful for any person to point any pistol or any other deadly weapon whether loaded or not, at any other person or persons either in anger or otherwise. –Territory of Oklahoma Law, 1890

Sec. 1. That in each and every county of this State, it shall be unlawful to carry or own a Winchester or other repeating rifle or without first taking out a license from the County Commissioner of the respective counties, before such persons shall be at liberty to carry around with him on his person and in his manual possession such Winchester rifle or other repeating rifle. Sec. 2. The County Commissioners of the respective counties in this State may grant such licenses at any regular or special meeting. Sec. 3. The person taking out such license shall give a bond running to the Governor of the State in the sum of one hundred dollars, conditioned on the proper and legitimate use of the gun with sureties to be approved by the County Commissioners, and at the same time there shall be kept by the County Commissioners granting the same a record of the name of the person taking out such license, the name of the maker of the firearm so licensed to be carried and the caliber and number of the same. Sec. 4. All persons violating the provisions of Section 1 of this Act shall be guilty of a misdemeanor... –An Act [of Florida] to Regulate the Carrying of Firearms, 1893

...defendant claimed that the law of the State of Texas forbidding the carrying of weapons, and authorizing the arrest without warrant of any person violating such law, under which certain questions arose upon the trial of the case, was in conflict with the Second and Fourth Amendments to the Constitution of the United States, one of which provides that the right of the people to keep and bear arms shall not be infringed, and the other of which protects the people against unreasonable searches and seizures. We have examined the record in vain, however, to find where the defendant was denied the benefit of any of these provisions, and even if he were, it is well settled that the restrictions of these amendments operate only upon the Federal power, and have no reference whatever to proceedings in state courts. –U.S. Supreme Court in *Miller v. Texas*, 1894

The people have the right to bear arms for their security and defense, but the legislature may regulate the exercise of this right by law. –Constitution of Utah, 1896