

## LAW OFFICE OF | MARK COHEN, P.C.



***"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 State Constitution.**

This is the second in my series of newsletters that explores our bill of rights. As explained in previous issues, I am engaging in this process of re-acquainting people with our constitutional freedoms so that we become more sensitive to both their virtues and values. In this way, we are less likely to tolerate the abridgment of our freedoms by politicians, judges, and private sector leaders who seek to do so.

I must confess that I have not worked a lot with the 2nd amendment. On the other hand, I, like most Americans have become all too accustomed to gun rights advocates arguing for the sanctification of the right to bear arms and gun control advocates arguing for, well, gun control in the name of public safety. But hey, I'm a lawyer. I'm trained to figure out legal stuff. So that's what I did. Let me tell you what I learned about the 2nd amendment.

First, I learned that there are many misconceptions about the 2nd amendment. Let's take a close look:

*"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."*

Now at first blush it seems that this amendment deals with "a well regulated Militia," I mean, that's what it says, doesn't it? But then we get this statement about "the right of the people to keep and bear Arms, shall not be infringed." Call me simple, but I read the right to bear arms as integrally related to a well regulated militia being necessary to the security of a free state. After all, that's what it says! And that's what the Supreme Court first said in *United States v. Miller* ((1939) 307 U.S. 174. End of story? Of course not. Read on.

Now here's what really surprised me. Even though the 2nd amendment has been on the books since 1791, it was not until 2008 when the Supreme Court in *District of Columbia v. Heller* (2008) 554 U.S. 570, first declared that we have a constitutional right to bear arms for defensive purposes and this right has little to do with a well regulated militia. So much for my plain reading of the 2nd amendment.

But like all constitutional amendments, even the *Heller* court acknowledged the 2nd amendment has its limitations. Specifically, the 2nd amendment does not preclude barring felons and the mentally ill from possessing guns. And forbidding the carrying of guns on school grounds or government buildings is proper, as is imposing conditions and qualifications on the commercial sale of guns.

Now remember, in my last two newsletters I argued that we must safeguard *all* our civil liberties, not just a select few. We must judge politicians, judges, and private sector leaders by how much they advocate for all of our civil liberties because the watering down of our freedoms only leads to an authoritarian or fascist state. That's what history tells us. It's not just my opinion. In a future newsletter I will be arguing for strict enforcement of our 4th amendment right to be free from unreasonable searches and seizures and the exclusion at trial of evidence illegally taken by the police who have violated the 4th amendment. Our freedoms depend on such strict scrutiny of government (and that means the police), even when acting to protect us. Remember, it's the police that have the guns and the power on behalf of government. If we allow the police to trample on our right to be free of unreasonable searches and seizures we end up with a police state.

My point therefore, is that if I argue for the protection of our constitutional rights, an especially our 4th amendment rights, then to be consistent I must also argue for the protection of our 2nd amendment right to bear arms. We as Americans must insist that *all* of our civil liberties be protected, not just a select few. That's how we assure a free society. The 2nd amendment presents a great opportunity for gun rights advocates to join with civil libertarians in demanding that our politicians, judges, and private sector leaders strictly adhere to our constitutional protections. Wouldn't it be nice to see members of the American Civil Liberties Union joining hands with members of the National Rifle Association? Now that would be a scene to behold!

The American tradition is one of independence, speaking one's mind, being free of unreasonable government intrusions, and yes, the right to defend one's self. *All* of these rights are important. The 2nd and 4th amendments should serve as a basis for liberals and conservatives to come together in the name of protecting and preserving *all* of our constitutional freedoms.

PERSONAL  
INJURY



AREAS OF PRACTICE

ADMINISTRATIVE  
LAW



AREAS OF PRACTICE

LAND USE  
& ZONING



AREAS OF PRACTICE

CRIMINAL  
DEFENSE



AREAS OF PRACTICE

**In the next issue: The Third Amendment: "No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law."**

***You got questions? Got an idea for a topic? Let me know. I will see if I can write an article about it. "***



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**Quotes of the Month:**

*"A free people ought not only to be armed, but disciplined; to which end a uniform and well-digested plan is requisite; and their safety and interest require that they should promote such manufactories as tend to render them independent of others for essential, particularly military, supplies."*

— [George Washington](#)

***"Foolish liberals who are trying to read the Second Amendment out of the Constitution by claiming it's not an individual right or that it's too much of a public safety hazard, don't see the danger in the big picture. They're courting disaster by encouraging others to use the same means to eliminate portions of the Constitution they don't like."***

— [Alan M. Dershowitz](#) ”

*"It would be refreshing to have a politician try to defend guns without any reference to the Second Amendment, but on the merits of guns."*

---*Jonathan Safran Foer*

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