
The Right to Keep and Bear Arms: The Second and the Fourteenth Amendments

By Curtis Coleman
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Freedom – the essence of the American dream and culture. As has been often but well said, freedom is not free. It is the beneficent award to future generations from those who are prepared and willing to pay its price.

It was to guarantee our freedom that the Second Amendment to the U.S. Constitution was drafted and ratified by those who understood its cost: *“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.”* The right to keep and bear arms is the surest pledge of our liberty. But as Ronald Reagan reminded us, “Freedom is never more than one generation away from extinction.”

To sustain its existence, freedom demands that, as its recipients, ordinary citizens are able to defend themselves from violent criminals, and that they are prepared to ably stand as the last line of defense from an oppressive government – the essence and intent of the Second Amendment.

Whether Arkansans choose to have guns for sport or because they hunt, or if they choose to bear arms for the protection of their persons, families, and properties, this constitutional right must never be abridged.

The greatest peril to this fundamental guarantee comes not from frontal assaults. It is from flanking attacks designed to erode its essence and render it impotent, such as:

- The Clinton Gun Ban of 1994 (and more recent attempts to revive it)
- The attempt to legislatively exclude certain types of guns, such as “semi-automatic” firearms and handguns, from the protection of the Second Amendment
- Bureaucratic oversight and restrictive regulation of gun shows

Perhaps the greatest threat to the guarantees of the Second Amendment is its historical but inexplicable exclusion from the commandment of the Fourteenth Amendment, which states in part, *“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; nor deny to any person within its jurisdiction the equal protection of the laws.”

The Second Amendment is the only part of the Bill of Rights that the Supreme Court has not specifically extended to the states through a process known as incorporation, which involves interpreting the Fourteenth Amendment to read that no state can deprive its citizens of federally guaranteed rights.

On April 21, 2009 the U.S. Court of Appeals for the Ninth Circuit marked a milestone in Second Amendment history by ruling that the Second Amendment limits state and local government infringements on our right to keep and bear arms through the due process clause of the Fourteenth Amendment. But in January 2009 in *Maloney v. Cuomo*, Supreme Court nominee Sonia Sotomayor signed an opinion of the U.S. Court of Appeals for the Second Circuit that states do not have to obey the Second Amendment’s commandment that the right to keep and bear arms shall not be infringed. In effect, she opined that the Second Amendment does not protect individuals from having their right to keep and bear arms restricted by *state* governments.

Because the Supreme Court may soon be called upon to determine if the Fourteenth Amendment prevents state and local governments from infringing the guarantees of the Second Amendment, we must be ever vigilant to make certain that those who may one day rule on this critical issue will be faithful to ensure that the liberties guaranteed by the Second Amendment are never lost nor lessened.

I am a member of the National Rifle Association (NRA). Senator Blanche Lincoln’s most recently available rating by the NRA is a D+.

