

# Understanding the Second Amendment

In light of the recent mass shootings, and the apparent ignorance of the majority of the “news” media and elected officials, I am moved to write a brief primer of the 2<sup>nd</sup> Amendment in order to spread some enlightenment.

As has been born out in the writings of the founders and authors of the Constitution, their debates, and indeed the US Supreme court, the “Bill of Rights” are not now nor ever envisioned to be a grant of right to the American people. In fact the founding documents have spoken clearly that our rights come from our creator, not the government. In fact the preamble of the Bill of Rights was quite clear that the intent of adding these rights was to restrict the federal government from abuse, it states: **“THE** Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, **in order to prevent misconstruction or abuse of its powers,** that further declaratory and restrictive clauses should be added...” (Bold added)

In *US V. Cruikshank* (92 US 542) the Supreme Court ruled that the application of the First and Second Amendments *“was not intended to limit the powers of the State governments in respect to their own citizens”* and *“has no other effect than to restrict the powers of the national government,”* respectively. Again we see the intent, recognized by the founders and by law, that the Bill of Rights was only a restraint on the Federal government from acting in these areas.

The 2<sup>nd</sup> Amendment, with its statement of “shall not be infringed” means exactly that. That the federal government does not have the authority to pass laws restricting the right

of citizens in keeping and bearing arms. However, as we have witnessed in recent history (post 1939), not have authority has no longer been a deterrence to its power to pass laws.

We now have, and to be honest for some time now, we have had the call to ban military styled weapons call "assault weapons." To be factual, none of the firearms sold today are assault weapons. By definition an assault weapon has the capacity for automatic fire (which includes 3 round burst). A semi-automatic weapon is not an assault weapon. And even if it were it is not within the authority of the federal government to ban. I did not say within the power to ban as all governments rule by force and they have the military/police power to do anything, even if it is unconstitutional.

In *US V. Miller* (307 US 74), a case of a man who crossed state lines with a sawed off shotgun and was arrested. During trial the courts made the determination that the weapon was not covered by the 2<sup>nd</sup> Amendment stating: "we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon **is any part of the ordinary military equipment, or that its use could contribute to the common defense.**" So, by the courts own admission; the only weapons which are guaranteed covered by the 2<sup>nd</sup> Amendment are those weapons used by the military, which would be by definition Assault Weapons.

Now as we have seen in some states, they have restricted many areas of the 2<sup>nd</sup> Amendment; and it is their authority to do so if it falls within the power established by the states constitution. Obviously California and Massachusetts comes to mind. And as we cited above in the *Cruikshank* case, the states are not bound by the 2<sup>nd</sup> Amendment as it was originally intended.

Why did I say as *originally intended*? Because, after the

civil war the federal government did something that has allowed them to turn the Constitution on its head. This was, in my opinion, one of the most mis-appropriated amendments to the Constitution, the 14<sup>th</sup> Amendment. In particular the 1<sup>st</sup> section which states: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. 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." (Emphasis added)

What happened in this clause was to change the federal government from a construct of the many states to having the states subordinate to the federal government. It accomplished this by stating that all citizens are first citizens of the United States and secondarily to the state they reside. Prior to this a citizen was known by the state they were a citizen of and not of the central government. Historically this was done to protect the recently freed slaves and to overcome the Jim Crow laws that were put in place. And though well intentioned the effect was far reaching as politicians came to understand how much power they actually gained by this amendment.

The bottom line is that constitutionally the federal government does not have the **authority** to ban firearms but it will always maintain that it has the **power** to do so. And as we all know, power corrupts...

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