

INDIVIDUAL SOVEREIGNTY

AND THE RIGHT TO BEAR ARMS



BY MARILYN FISHER

*“Now they’re tryin’ to take my guns away,
And that would be just fine,
If you take ‘em away from the criminals first,
I’ll gladly give ya mine...”*

Charlie Daniels, musician and patriot

The Liberty Tree thrives in the fertile soil of American individualism and the sovereign right of each individual. This doesn't mean the "common good" or the "collective" consensus, and especially not the power of the federal government, but the right of the individual citizen unburdened by government regulation. As we Americans have come to find out, the government just cannot regulate enough. And, with the Second Amendment right to own and bear firearms "under fire," our individual sovereignty is in jeopardy.

Looking around at the rest of the world, it's clear to see the importance of protecting our constitutional rights at all costs. Our Liberty was planted from seed and gathered in through the brilliance of the Framers of the Constitution. Many of our leaders have not been diligent in defending our constitutional rights and today our freedoms are under threat from the government – the same force that is supposed to be protecting our Constitution. Our American freedom is unique to the world and our leaders have forgotten the fundamental principle that was essential to the Founding Fathers – that government derives its powers from the *consent* of the governed, and not the other way around. Law-abiding citizens keep firearms knowing that they are protected by the Second Amendment against federal government overreach into their private lives. Many Americans forget that the government has no powers – any powers it exercises must be granted to the government by the people. There is no Staples "Easy Button" for protecting our constitutional rights. When our leaders fail to protect our constitutional rights, then it's left to us individually to hold them accountable.

Lately our leaders have been making noises that we should follow the world order and give up our individual rights for the "common good." If we go there, then as past world history has shown, our guns and other rights will slowly be taken from us. The government is trimming the Liberty Tree branch by branch – the same tree that was planted with the blood of patriots – aware that, by denying us our rights, it can gradually weaken the will of the individual.

At the birth of this great nation, it took some hard-scrabble patriots who craved freedom from oppressive British rule to literally risk all and sign proof of their break with Britain – the Declaration of Independence. It was a solemn act requiring firm patriotism in those who had the courage to sign it. The fact is – it was outright treason against the home government of Great Britain *but* it represented perfect allegiance to what was *right*. They knew there'd be a fight. But, among those early patriots, there was plenty of conviction – not one of those men who periled life, fortune and honor in the cause of freedom ever paused long enough to rethink their actions, paving the way for the ratification of the U.S. Constitution in 1788.

When the argument came up whether to have an armed citizen militia or a standing army of professional troops there was a stalemate. Some were naturally wary of the idea of having standing armies during peacetime since it posed a threat to their individual freedoms and right to privacy. Framer James Madison pointed out that the difference between the European government and the newly formed American government was that American citizens were armed and would be almost impossible to subdue through government military force. It's still an advantage we Americans possess over the people of almost every other nation. Madison also noted that, "In those military establishments in the several kingdoms of Europe, which are carried as far as the public resources will bear, the governments are afraid to trust **the people** with arms." The Framers knew from experience that central governments like those in Europe are likely to use armies to oppress their people so they decided to permit the government to keep a paid professional army to fight *foreign* threats. Full-time forces would be needed for national protection but the problem was that it could easily lead to federal tyranny. How did the Framers strike a balance between public protection and private liberty? Through compromise, the Constitutional Convention of 1787 decided to *presume* that a militia would exist and gave Congress the authority to regulate the state militia, while the new federal government was given control of the army and navy for national defense.

In this modern political climate, many people are wondering what the government will do next to regulate us. There's a big difference in how the present administration is interpreting our constitutional rights compared to just a few decades ago when President Reagan remarked at an annual meeting of the National Rifle Association, "Our constitutional liberties are just as important today as 200 years ago. And, by the way, the Constitution does not say Government shall decree the right to keep and bear arms. The Constitution says, 'the right of the people to keep and bear arms shall not be infringed.'" A firearms owner himself and a longtime supporter of the National Rifle Association, he respected this basic right and it led him to sign the Firearms Owner's Protection Act in 1986.

Today we're faced with leaders who hold different views towards our Second Amendment rights. With renewed efforts from federal and state government to regulate firearms, we could be headed for a European style of government where firearms ownership is non-existent. With the appointment of Eric Holder as Attorney General, it's a sure sign that our gun rights are squarely "in the sights" of federal government regulation. In contrast, Holder is a very different Attorney General than, say, President Reagan's Attorney General Meese, who is clearly a constitutional originalist. General Holder seeks to reinstate the assault weapons ban that expired in 2004 despite the distorted



media definition of what an assault weapon is. This sort of hysteria could easily turn public opinion against firearms ownership and lead to a ban against semi-automatic rifles. To clarify where Holder stands on the Second Amendment, look at the statement he issued at the beginning of *District of Columbia v. Heller* in 2008 where he argued that the Second Amendment protects not the individual right to keep and bear arms but instead it protects the “collective” right. Wait a minute – can this man be trusted to protect our constitutional rights?

A recent U.S. Supreme Court case decision supported gun owners nationwide and sent a constitutional shockwave through the courts. In *District of Columbia v. Dick Anthony Heller*, the Court ruled to protect the right of the individual to possess a firearm for private use. It re-ignited the gun control issue of whether the right to keep firearms is the right of the individual or only a collective right of the state regulated militias. In short, the Court ruled that District of Columbia’s handgun ban requiring owners in the D.C. area to secure their handguns with trigger locks, or keep them unloaded and disassembled within the home, was unconstitutional since it restricted the right to self-defense – the main purpose of the Second Amendment. Constitutional justice prevailed and the Court majority ruled by a narrow margin in favor of the constitutional right of self-defense, directing the District to allow Heller to register his handgun and issue him a license to carry.

In the narrow 5-4 decision, Justices Roberts, Scalia, Thomas, Alito and Kennedy found in favor of Heller and halted the District government’s attempt to restrict Second Amendment rights to state regulated militias only. Chief Justice Roberts posed the question, “If it is limited to the State militias, why would they say ‘the right of **the people**?’ Why wouldn’t they say, ‘State militias have the right to keep arms?’”

Justice Scalia, who clearly understands the original intent of the Constitution, wrote the majority opinion for the case saying that the Individual right to bear arms as written in the Second Amendment is naturally bound up with the right to self-defense. The “individual” has this right and it is not reserved only to the collective state militia. He held that the Constitution was written to be understood by the voters without any confusing technical or secret meanings about what a “militia” means. By original meaning, it is any citizen of a state who has a firearm at home and can bring it along to defend the homeland.

The dissenting Justices Breyer, Ginsburg, Souter and

Stevens delivered the argument that the Second Amendment applies only to those who serve in regulated state militias. In his opinion Justice Breyer argued the public safety aspect of gun control by adding that “guns were responsible for 69 deaths in this country each day ... there simply is no ... constitutional right guaranteed by the Second Amendment to keep loaded handguns in the house in crime-ridden urban areas.” The reality check here is if the gun rights of lawful citizens are heavily restricted, only criminals will have guns, and crime rates will soar. Those urban crime areas are where the right to self-defense is most critical. What good is it to keep firearms for self-defense if they aren’t readily accessible?

Justice Stevens added, “The Court would have us believe that over 200 years ago, the Framers made a choice to limit the tools available to elected officials wishing to regulate civilian use of weapons... I could not possibly conclude that the Framers made such a choice.” Notice the reference to regulating civilian use of weapons. The Framers would be up in arms over that statement.

After the *Heller* ruling, GB Oliver, Executive Vice President of the Paragon Foundation, commented on the dissenting opinion of Supreme Court Justice Stevens by saying, “... let’s see if we’ve got this right, **the people** can create a more perfect union, **the people** can elect their own leaders, **the people** can be secure in their persons ... and the Constitution could not be construed to deny or disparage any of the rights of **the people**, but the people don’t have a right to keep and bear arms.” Oliver went on to say, “Thankfully the majority of the Court found that the people DO have the right to keep and bear arms, while the four dissenting Justices believe that only those in the military have a right to carry arms. Hitler would certainly have appreciated Justices Stevens, Ginsburg, Souter and Breyer’s interpretation of the Second Amendment.”

Court cases that find in favor of gun owner rights are triumphs of the original intent. Our nation was founded as a republic and, in a republican form of government, the power rests with the people who exercise their individual rights by voting for representatives who will protect their rights. Since government derives its powers from the consent of the people then without arms there is no means by which the consent of the people can be withdrawn. It is our duty to defend our individual sovereignty. And it’s the job of the judiciary to remind the executive and legislative branches when they get “out of sync” with the original intent of our Constitution.



Writer Marilyn Fisher –
at home on the shooting range.

Freedom is never free.

How does state sovereignty come into play regarding our constitutional rights? It is important for the states to be sovereign nations to counterbalance the tyrannical tendencies of the federal government, or as Framers James Madison wrote in 1788, “The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.”

The State of Montana understands its sovereign nature when it comes to supporting the rights of their constituent gun owners. Earlier this year, the news of a shortage of used military brass casings for sale to private ammunition manufacturers sent a drum beat through the sector of those citizens who purchase the brass for reloading purposes. The Department of Defense had planned to destroy its cartridge brass. This would have impacted an already stressed ammunition market by removing brass available to the manufacturers for public purchase. Senators Jon Tester and Max Baucus penned a letter to the DoD arguing that prohibiting the sale of fired military brass casings would reduce the supply of ammunition and prevent individual gun owners from fully exercising their Second Amendment rights. The action of these senators who paid attention to their constituents got results. Soon thereafter, the Defense Logistics Agency reviewed the situation and decided that it would release the spent brass for sale after all.

Each state as a sovereign nation is unique in gun owner issues. Between anti-gun and pro-gun legislation there's a lot going on. No doubt as you read this, there are new court cases in the works that will impact the Second Amendment freedoms of our fellow Americans.

The passion of the early patriots was to defend liberty at all costs. Honor them and defend yourselves – never give up your individual sovereignty for that of popular opinion, or the “common good” – and never give in. Hold your elected official's feet to the fire on this and other constitutional issues such as individual property rights and remind them that they work for you. The enemy to our freedoms is the elected leader who does not listen to the will of the people.

One last thought. An unregulated militia of sovereign individuals *cannot* be ordered by the government to lay down their arms – or to retreat – and they can never be ordered to *surrender*. Make it clear that you don't want the oppression of the European model of firearms restriction, but instead the liberty to exercise your constitutional rights. Contact your representatives and tell them you want less firearms regulation, because less regulation means more freedom. This is America where the ballot box can be as powerful as the cartridge box when it comes to preserving our rights, especially those that secure the blessings of freedom to us, our homes and our families. Let our forefathers' passion for liberty burn on in your hearts and your actions in defense of these precious freedoms.



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every day,
for every American.*

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