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The Second Amendment states, "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." This causes a debate about gun control. Do we have the right to bear and keep any gun we choose?

Keywords

Gun Control, Constitution, Bill of Rights, 2nd Amendment, Second Amendment, Right to Bear Arms, Militia, Guns, Weapon, Self Defense, Concealed Weapon, Conceal and Carry, NRA, National Rifle Association, Interpretation, James Madison, Waiting Period, Registration, Brady Bill, Framers, Public Safety, Richard Gardiner, Dennis Henigan, Center to Prevent Handgun Violence

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NRA Representative and Gun Control Advocate Debate Second Amendment

KATIE COURIC, co-host:
This morning, more on our weeklong series commemorating the Bill of Rights, those 10 Amendments to the Constitution ratified 200 years ago this weekend. Today, the right to bear arms. The Second Amendment simply states that with, quote, '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.' It sounds simple and straightforward, but that reference to the need for militia has led to years of debate over gun control. In 1791, a musket like this one was a fixture in most households. It was used for hunting, but also was the chief military weapon of its day.
Now in 1991, another heavy weapon, the semiautomatic AK-47 is a common street weapon, carrying a 30-round magazine. It can get off 60 shots a minute. At issue is whether we the people have an unqualified right to keep and bear any gun we choose. Richard Gardiner is legislative counsel for the National Rifle Association's Institute for Legislative Action. And Dennis Henigan is Director of the Legal Action Project of the Center to Prevent Handgun Violence. Gentlemen, good morning.
Mr. RICHARD GARDINER (National Rifle Association): Good morning.
Mr. DENNIS HENIGAN (Center To Prevent Handgun Violence): Good morning.
COURIC: Let's start with sort--putting this in an historical context. You all have very different interpretations of the Second Amendment. Mr. Henigan, let's start with you. What do you think it says?
Mr. HENIGAN: Well, we agree with the unanimous interpretation of the quotes about the meaning of the Second Amendment, which is that it guarantees a right to keep and bear arms only in connection with service in a well-regulated militia. The courts have looked at the amendment and they said you've got to interpret this amendment in a way that accounts for all of its words. It's not legitimate to forget about the
militia clause.
Our friends from the National Rifle Association do that consistently. In fact, on their building in Washington they put the words of the Second Amendment up there, right by the front door, except they leave off all of the talk about the well-regulated militia and the security of a free state. That's not legitimate.

Mr. GARDINER: Well, there's no question that the whole provision has to be interpreted using all the words. But the fact that the well-regulated militia clause is there, the Supreme Court has unanimously held, only means that there's certain types of arms, which are not protected, that is arms, which don't have a militia value. And since the purpose of the militia, as spelled out in the main body of the Constitution, is to enforce the laws, suppress insurrections, repel invasions, it's very obvious that any firearm which has a law enforcement or military function is protected by the Second Amendment. But what is particularly clear is that it is the right of the people that is protected. And the Supreme Court has been unanimous in holding that the people refers to all individual American citizens and possibly some resident aliens, certainly not non-resident aliens.

COURIC: I know you use the words of James Madison to defend your argument. But let's say that we do interpret the Second Amendment as applying to individuals. Does that mean we as individuals have the unqualified right to bear arms?

Mr. GARDINER: Well, depending what you mean by unqualified. I mean I think that regulations, for example, of carrying firearms out on public streets, like we regulate First Amendment right to demonstrate on the streets, could certainly be regulated. It couldn't be eliminated, but it could be regulated.

I think that we can deny the right to bear arms to convicted felons, to mental patients. And incidentally, the majority of courts that have dealt with the right that you can bear arms issue have dealt with it in the context of, can felons, can mental patients be prohibited the right to own? And we don't disagree with any of those decisions. And we agree, in fact, with the unanimous Supreme Court opinions that say that the right is limited to militia arms. But nonetheless, it is still an individual, personal right.

COURIC: What about, Mr. Henigan, when it comes to gun control, waiting periods, registration of firearms? How has the Second Amendment, in your view, been used incorrectly?

Mr. HENIGAN: Well, the problem with the NRA's view is that it would, in fact, hold such reasonable gun control proposals as the Brady Bill seven-day waiting period for handgun purchases unconstitutional. The NRA thinks that we cannot constitutionally ban the kind of assault weapon that you've pointed to here, weapons of mass destruction. In fact, the NRA has said we can't even ban machine guns under the Second Amendment.

COURIC: It's--why do you think it is unconstitutional? I mean, after all we license and register cars, for example. Former Chief Justice Warren Burger makes that analogy. Why not firearms?

Mr. GARDINER: Well, in fact, we don't register and license people to own cars. You can buy a car without going through a police background check. You can drive it on your own property. The only thing that's licensed is to use it on the public streets. And that's exactly the kind of analogy that I was talking about.
And let me say that the firearm, the second firearm that you held up, that--that is a semiautomatic firearm that uses a technology that's been around over a century. There's tens of millions of homes in this country which have firearms that ul--that don't necessarily look like that, but function identically to that firearm. So when we're talking about a personal, individual right, it is a right that's now being exercised by half the households in this country, using that kind of firearm.

COURIC: We have time for a closing point, Mr. Henigan.

Mr. HENIGAN: Katie, the destructive power of a weapon like the AK-47 was unimaginable at the time of the framing of the Bill of Rights. We are not talking about a gun that's used for hunting or for personal protection. We are talking about weapons of mass destruction that have become the favorite guns of drug dealers and other violent criminals. I can't imagine that the framers of the Constitution intended to tie the hands of our elected representatives in addressing public safety concerns of that--of that dimension.

COURIC: You think the bill--the Second Amendment has been distorted?

Mr. HENIGAN: I think it has been systematically misused by the gun lobby to achieve a political purpose. And we think it's time to stop that distortion.

COURIC: Dennis Henigan, Richard Gardiner, I don't think you two will be agreeing on this anytime soon. But thank you for joining us this morning.

UNISON: Thank you.