

Research Article

The Formula "Well Regulated" in the Second Amendment to the US Constitution Cannot Be Ignored

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Abstract

The article argues that the formula “well regulated” is an integral part of the 2nd Amendment to the US Constitution; the “well regulated” requirement (like the entire 2nd Amendment) completely applies to firearms and cannot be ignored under any interpretation or expansion of the Second Amendment. Failure to comply with the constitutional formula “well regulated” by all branches of US power has led to an unprecedentedly high “gun death” rate in the US, as well as the widespread use of American firearms by Mexican drug cartels. About 21,000 murders (including more than 2500 children) and 26,000 suicides in the US using firearms for one year 2021 cannot be considered as “well regulated” – i.e., not all requirements of the 2nd Amendment are obeyed. Obviously, ever since persons plotting a crime have been able to legally purchase, semi-automatic multi-charge firearms like the AR-15 with a rate of fire of over 100 rounds per minute, this inevitably led to numerous victims of civilian Americans. The concept of “originalism” as well as the concept “textualism” are incompatible with ignoring the constitutional formula “well regulated.”

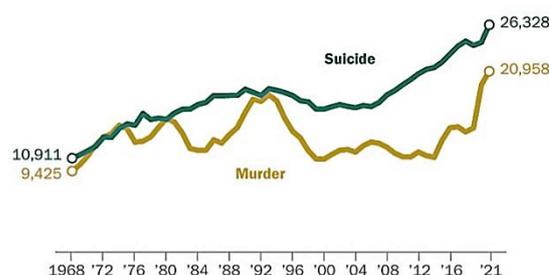
Keywords

Second Amendment, Well Regulated, Gun Deaths, Gun Control, Originalism, Textualism

1. Introduction

The US population (335 million) has approximately 400 million legitimate firearms in its possession; about 40% of the US households own firearms [1]. Therefore, laws regulating the circulation of firearms are extremely important for the USA. The Founding Fathers of the USA understood this well, for which they created the 2nd Amendment to the US Constitution and included the formula “well regulated” there.

Unfortunately, about 47 thousand gun deaths happened in the USA in 2021: about 21 thousand murders and 26 thousand suicides – Figure 1 [2]. The same terrible picture for children and teenagers (this is scary to write!): in 2021, there were 2,590 gun deaths among U.S. children and teens under the age of 18 [3].



(Source: Pew Research Center) [2]

Figure 1. Number of gun murders and gun suicides in the US.

For comparison, data from Table 1 show the number of gun

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homicides per 100,000 residents occurring in G7 countries from 2013 to 2019.

Table 1. Number of gun homicides per 100,000 residents occurring in G7 countries from 2013 to 2019 [4].

| No. | Country | Gun death rate per 100k |
|-----|---------|-------------------------|
| 1 | USA | 4.38 |
| 2 | Canada | 0.67 |
| 3 | France | 0.40 |
| 4 | Italy | 0.18 |
| 5 | Germany | 0.10 |
| 6 | UK | 0.05 |
| 7 | Japan | 0.01 |

As can be seen from Table 1, the gun death rate in the USA is tens and hundreds of times higher than this indicator for the other G7 countries, and this is only because there is no free and uncontrolled sale of firearms in these countries. At the same time, freedom and democracy in these countries are as pervasive as in the USA. It turns out that in order to preserve freedom and democracy it is not necessary to arm the country's population to the teeth.

In addition, 26,000 gunshot suicides are about half of all suicides in the United States, which is about 50,000 per year [5]. The author [5] Dr. Paul Nestadt, a suicide researcher at Johns Hopkins University believes: "If you are a gun owner, that brief moment where the suicidal thoughts exceed the desire to be alive for tomorrow, that's all it takes" (i.e., to grab a gun and shoot oneself). His study found that most attempt suicide survivors (usually this is an attempt at suicide without the use of firearms) do not try again suicide.

2. Discussion

The 2nd Amendment to the US Constitution says: "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 US Supreme Court, in the famous case "District of Columbia vs. Heller" (2008), has decided: "The Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home." However, the mention of "well regulated" has disappeared there. That is, for "militiamen" the requirement "well regulated" is present, but for "individuals" the constitutional requirement "well regulated" is not mentioned. Yes, the words "well regulated" are near the word "Militia", but the 2nd Amendment is not about Militia, it's about GUNS (for example, "well regulated individuals with firearms" - why not?!). And about 21,000 murders (including more than 2500 children) and 26,000 suicides in the US using firearms for one year 2021 cannot be considered as "well regulated" – i.e., not all requirements of the 2nd Amendment are obeyed.

Also, I remind you that 4 out of 9 Supreme Justices then expressed their sharp disagreement with the decision on the case "District of Columbia vs. Heller". Honorable Supreme Justice J. P. Stevens specifically stated that the court's judgment was "a strained and unpersuasive reading" and that the court had "bestowed a dramatic upheaval in the law" [6]. I.e., the most important decisions that shape the lives of Americans for decades was approved in the Supreme Court by a one-vote majority. Following the discussion in the District of Columbia vs Heller case, US courts of various levels began to permit the possession and carrying of increasingly lethal weapons without even remembering the formula "well regulated". As a result, incomplete compliance with the Second Amendment (i.e., ignoring the formula "well regulated"), in fact, has become a cause of death for many thousands of civilian Americans annually (including hundreds of children and teenagers.)

Table 2. A selective list of when a semi-automatic weapon (AR-15-style) was used in a mass shooting [7, 8].

| No. | Where | Date | Number of killed and wounded | Weapon |
|-----|--|---------------|------------------------------|------------------------------------|
| 1 | Sandy Hook Elementary School, Newtown, Connecticut | Dec. 14, 2012 | 27 (wounded 2) | Bushmaster XM15-E2S |
| 2 | Regional Center, San Bernardino, California | Dec. 2, 2015 | 14 (wounded 24) | AR-15 |
| 3 | Pulse nightclub, Orlando, Florida | June 12, 2016 | 49 (wounded 53) | SIG MCX |
| 4 | Las Vegas slaughter | Oct. 1, 2017 | 60 (wounded 413*) | AR-15, AR-10 (total - 24 units) |
| 5 | First Baptist Church, Sutherland Springs, Texas | Nov. 5, 2017 | 25 (wounded 22) | AR-556 |
| 6 | Parkland High School, Florida | Feb. 14, 2018 | 17 (wounded 17) | M&P15 |

| No. | Where | Date | Number of killed and wounded | Weapon |
|-----|---------------------------------------|---------------|------------------------------|------------------|
| 7 | Walmart store, El Paso, Texas | Aug. 3, 2019 | 23 (wounded 22) | WASR-10 |
| 8 | Ned Peppers Bar, Dayton, Ohio | Aug. 4, 2019 | 9 (wounded 17) | AR-15 |
| 9 | Robb Elementary School, Uvalde, Texas | May 24, 2022 | 21 (wounded 18) | DDM4 V7 |
| 10 | Schemengees Bar, Lewiston, Maine | Oct. 25, 2023 | 18 (wounded 13) | SFAR308 M&P40 |

*) The ensuing panic brought the total number of injured to approximately 867

As can be seen in Table 2, exactly the use of semi-automatic firearms results in a large number of dead and even more wounded. Why? - Connor Betts, who killed 9 and wounded 27 people in 2019 in Dayton (Ohio) used an AR-15 with 100-round magazines. Now attention: Betts during the first 30 seconds of his attack fired 41 rounds [9]. No one policeman, all the more no one armed civilian has no any chance of protecting the first few dozen victims from rapid-fire multi-charged semi-automatic firearms. This is why we shouldn't unfoundedly spread the 2nd Amendment on all modern firearms!

Las Vegas shooter Stephen Paddock, who killed 58 people and wounded 413, kept 23 units firearms in his hotel room and another 24 - in his house, and also he bought some thousands of cartridges [10]. Honorable ladies and gentlemen Legislators, wake up! 58 killed and 413 wounded with the use of firearms - this is not an incident from peaceful life, such a mass death of people from bullets only happens in a civil war! Yes, Stephen Paddock was the bloody killer. But he had an accomplice - the one who allowed him uncontrollably to buy 47 firearms and several thousand rounds of ammunition without asking him why he needed so many weapons. And this happened exactly because the US Legislators in unison do not recognize "well regulated" as a constitutional formula for firearms.

Incomplete compliance with the Second Amendment (i.e., non-compliance with the formula "well regulated") in the US creates huge problems in neighboring Mexico. About 70 percent of the firearms in the arsenal of Mexican drug cartels (and this is tens of thousands of units) are of American origin; an AR-15 and a caliber .50 rifle are especially popular with Mexican transnational criminal groups [11]. So it's not surprising that, for example, in 2020, Mexico recorded 28,328 murders, an average of 78 murders per day [12]. Recently, US Congressman Joaquin Castro with colleagues introduced an Act that would strengthen firearms regulations and prohibit the sale of certain assault rifles (such as 0.50 caliber) to prevent further violence and bloodshed around the world [13]. Mr. Castro said: "When I speak to leaders in Latin America and the Caribbean, their number-one request is for Congress to stop American weapons of war from falling into the hands of the gangs that are destabilizing their countries. Especially

in Mexico, access to .50 caliber rifles has fundamentally altered the balance of power between criminal organizations and the government and allowed cartels to become virtually untouchable."

Many US constitutional judges to interpret the US Constitution adhere to the concept of "originalism" or "textualism." This is how originalism is described [14]: "There were two slightly different understandings of originalism. One is "original intent" that says we should interpret the Constitution based on what its drafters originally intended when they wrote it. The other is that we should interpret the Constitution based on the original meaning of the text - not necessarily what the Founding Fathers intended, but how the words they used would have generally been understood at the time." - Two important questions arise here:

What was the Founding Fathers' "original intent" regarding the 2nd Amendment? - Alexander Hamilton explained it as follows [15]: "Participation in military affairs takes time and practice"; "This [Militia] appears to me the only substitute that can be devised for a standing army..." This is how (by creating a voluntary militia) the Americans defended their freedom during the American War of Independence, taking power away from the existing governments of each individual state (colony) and their regular armies, which were subordinate to Britain. (Section 17 of the Bill of Rights written by James Madison, which preceded the Second Amendment, described the gun rights situation in much the same way [16].) I.e., the Founding Fathers' "original intent" for the 2nd Amendment was exactly "military affairs", and it was obligatory for gun owners to be in the voluntary militia. Moreover, exactly this requirement for gun owners to be members of the voluntary militia ("militiamen") implied that "well regulated" control over the weapons. Selling weapons to everyone in a row unorganized civilian Americans in peacetime without control, obviously, was not the Founding Fathers intention.

How the word "Arms" would (this is a term from the text of the 2nd Amendment) have generally been understood at the time of the Founding Fathers? - See Figure 2 where firearms from the time of the Founding Fathers are shown. Consequently, the concept of originalism does not allow the 2nd Amendment to be automatically extended to any modern firearms (see Figures 3 and 4) After all, soon there can be the

newest types of firearms, for example, mini-laser firearm with a fire rate of 1,000 deadly rounds per second - will US citizens be allowed to own and bear such a laser without restrictions?



Colt



Winchester

Figure 2. The US firearms for which was created the 2nd Amendment.



Source: <https://railscales.us/blog/what-makes-an-ar-15-mil-spec/>

Figure 3. Modern semi-automatic multi-shot rifle AR-15 "mil spec"



Figure 4. Modern caliber .50 rifle: it can fire accurately at targets nearly a mile away; it is capable of penetrating armored car and even shoot down police helicopter; it can ignite bulk fuel tanks from a distance of 10 football fields. What for is it an American civilian?

Source:

<https://vpc.org/publications/sitting-ducks/sitting-ducks-section-one-the-capability-of-the-50-caliber-sniper-rifle/#:~:text=The%20.,distance%20of%2010%20football%20fields>

The US Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) informs: in 1975 ATF approved only 364 Federal Firearms Licenses (Type 7 FFL). By 2022, this number had

increased up to about 18,8 thousand, this is growth about 5,000 % [17]. The Type 7 FFL allows a licensee to manufacture guns and ammunition as well as buy/sell firearms. Are gun lobby profits more important than American lives?

As for the concept of "textualism", it is described as follows [18]: "Textualism is a mode of legal interpretation that focuses on the plain meaning of a legal document's text. Textualism usually emphasizes how the terms in the Constitution would be understood by people at the time the terms were ratified, as well as the context in which those terms appear." *And here the third important question arises.* To answer this question, let me quote the US Constitution, Preamble: "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

And now the question: Which of the above proclaimed ideals of the US Constitution ("as these terms would be understood by people" in 1787) corresponds to the GUN DEATH of about 21,000 Americans (including about 2,500 children and teenagers) in one current year: Justice? Domestic Tranquility? Common Defense? General Welfare? Blessings of Liberty? Our Posterity?...

3. Conclusions

The formula "well regulated" is an integral part of the 2nd Amendment to the US Constitution and no one can ignore it.

The Supreme Court in the Heller case 2008 (and in its subsequent decisions regarding firearms) didn't take into account the constitutional formula "well regulated."

Situation with tens of thousands of murders (including hundreds of children and teens) in the United States per year using firearms cannot be considered "well regulated" - i.e., the US firearms law regulation does not entirely comply with all requirements of the 2nd Amendment.

Ever since persons plotting a crime have been able to legally purchase, semi-automatic multi-charge firearms like the AR-15 with a rate of fire of over 100 rounds per minute, this inevitably led to numerous victims of civilian Americans.

The concept of "originalism" as well as the concept "textualism" are incompatible with ignoring the constitutional formula "well regulated." The eminent Founding Fathers of the United States would never have allowed any law they wrote to cause the deaths of thousands of civilian Americans, including hundreds of children and teens, annually in peacetime.

4. Recommendations

Lawyers of social movements like Gun Control could unite and contact the US Supreme Court to clarify the formula "well regulated" regarding modern deadly firearms and also to bring

gun laws into line with constitutional formula “well regulated.”

Abbreviations

| | |
|-----|--|
| AR | Automatic (Semi-Automatic) Rifle |
| ATF | US Bureau of Alcohol, Tobacco, Firearms and Explosives |
| FFL | Federal Firearms and Explosives License |

Author Contributions

Mykhaylo Krasnyanskyy is the sole author. The author read and approved the final manuscript.

Conflicts of Interest

The author declares no conflicts of interest.

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Biography

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