

"Writing the truth
as I see it;
trying not to
offend
those who will
disagree."

The truth as I see it™

Idaho Common Sense™



Craig L. Bosley, MD

"The right to keep and bear arms"

July 7, 2008

The Second Amendment reads, "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."

As most of us now know, the Supreme Court, in a 5-4 decision, ruled that the Second Amendment right of an individual to "keep and bear Arms" was separate from, and in addition to, the rights of state militias to "keep and bear Arms." Justice Stevens suggested the majority was "making new law." Those who disagree with the ruling should read the majority justices' reasoning of what the founding fathers were trying to safeguard with the Second Amendment. They should read about our founding fathers' beliefs, the countries of their origin, and their fears of the very government they were creating.

Is this ruling "making new law" or is it a sensible, reasoned understanding of the Second Amendment? The justices reaffirmed the founding fathers' intent that both individuals and state militias have the right to possess firearms. Moreover, they stated that common sense restrictions on gun ownership are permissible if they do not unduly interfere with that ownership. This seems to be a reasonable interpretation, as opposed to the radical interpretations of the past which tried to ban any individual right to gun ownership.

This ruling has also been characterized as conservative. What does that mean? The ruling is neither conservative nor liberal; it is simply affirming a constitutionally guaranteed right. If conservative means protection of individual rights from government intrusion and liberal means abdicating our individual rights to the government, then I am a conservative. Our founding fathers feared a federal government as we also should. They saw firsthand the abusive powers of the British monarchy, witnessing the disarming of the English

people. The founding fathers understood the final defense against government abuse was both state militias and individual citizens.

Some, including the Supreme Court in 1939, interpret the Second Amendment to mean there are no individual rights of gun ownership – only those in state militias have a constitutional right to own a gun. But, when the founding fathers referenced militias, they meant militias composed of citizens, not government soldiers. The 1939 Court and others erroneously concluded the National Guard is the militia referenced in the Second Amendment. But it cannot be; Guard's oath is to both the federal government and their state government. The National Guard is not a state militia. The National Guard is not a people's militia. It is a government militia. Our country went to war with the British Empire, securing our freedom in the process. Why would the founding fathers turnaround and create the same cruel government powers in their new country? Why would they limit gun ownership to only those in a government military as the British Empire had done? Why would they write the Second Amendment outlining the antithesis of their beliefs? Common sense dictates they would not.

The current Supreme Court studied the entirety of the Second Amendment, understanding what the 1939 court and most federal courts since have failed to understand. The statement is simple: "The right of the people to keep and bear Arms shall not be infringed." Grammatically, this part of the Second Amendment does not suggest "the people" are only those in a state militia; rather, "the people" refers to all citizens.

Suggestions are surfacing that the Second Amendment needs to be modified, preventing individual gun ownership because the founding fathers did not foresee how different our world

would be today. The endpoint of this flawed logic would be that none of our inalienable rights would be safe. We could simply dismiss any we choose, based on our "enlightened" understanding. The Chicago Tribune offered another solution to what they see as an erroneous ruling in favor of individual rights; repeal the Second Amendment. I wonder how the Tribune would respond if people felt the Tribune was abusing "the right of a free press" and the First Amendment should be repealed.

Washington, D.C., one of the litigants in this case, has been a gun crime capital of the United States for the 32 years of their handgun ban. Chicago, with a 26 year handgun ban, saw its murder rate increase 13% so far this year. For some reason these cities refuse to allow factual information to interfere with their decision making process.

Those disappointed with the Supreme Court's ruling, affirming an individual's right to gun ownership, should honor that ruling. Those pleased with the ruling should honor the Supreme Court's opinion that the Second Amendment allows some reasonable restrictions on gun ownership. This would allow advocates of federal rights and advocates of individual rights to reach a compromise without violating the Second Amendment. I am not a federalist. I will nearly always side with individual rights, as I believe the founders intended.

Dr. Craig Bosley is an emergency physician practicing in Pocatello, Idaho. His column appears in the Idaho State Journal each Monday. If you would like to contact him directly, you can email him at craig@craigbosley.com or visit his Website, www.craigbosley.com where all of his columns are available.

© copyright, Craig L. Bosley, MD, 2008