

# KEEPING AND BEARING ARMS

When rights are reserved to “the people,” what does that mean? And furthermore, who gets to make the call?

The Supreme Court has long acted as the authoritative interpreter of the Constitution, and of the boundaries of individual rights. Its rulings have generally been respected by government actors, who have set policy based on their decisions.

If courts can act to grant or to deny rights, then what happens to rights that are expressly set out in the Constitution, but are denied by court actions? In practice, this can create a legal limbo that stretches out for decades. The Second Amendment presents a case study of how court rulings can swallow an individual right whole.

The text of 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.”**

Elsewhere in the Bill of Rights, the phrase “the people” has been held to reflect individual rights: rights to assemble, and rights to be free from unreasonable searches, among others. However, for over seventy years, federal appellate courts failed to interpret “the right of the people to keep and bear arms” in the same way. That right, according to the courts, was a “collective right” held by the governments of the individuals’ state, rather than by individual citizens.

Some municipalities, such as Washington D.C., acted on this interpretation, and passed prohibitive laws that essentially banned the ownership of working firearms. The legal framework put in place by federal courts lasted for many decades, and no substantive challenges to the law emerged. Many groups interested in the issue did not wish to bring lawsuits for fear that the Supreme Court would side with the lower courts, and rule against individual gun rights even more broadly. For years, an uneven national landscape existed regarding firearms rights.

In 2003, Washington D.C.’s strict gun regulations were finally challenged, forcing a legal battle that eventually reached the Supreme Court. In 2008, the challengers won, and the Court ruled in favor of an individual’s right to own firearms in a case known as *District of Columbia v. Heller*. This episode has bigger ramifications that reach every other part of the Bill of Rights. Any civil liberty is only as real as it is to those who believe in it, and enforce it.

**“There are many, many people out there who are hostile to individual rights, either all of them or specifically some of them. And we simply cannot go down the path of reading rights out of the Constitution because somebody disagrees with it.”**

– Alan Gura, lead attorney in *District of Columbia v. Heller*



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