

# Second Amendment

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(1791)

## WHAT IT SAYS

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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 CONTROVERSY OVER GUN-FREE SCHOOL ZONES

The problem of gun violence at schools gained national attention from several tragic incidents when students and teachers were wounded or killed. School safety has traditionally been the responsibility of state and local government, but these violent acts caused Congress to consider what role the federal government could play. In 1990, the U.S. Congress passed the Gun-Free School Zones Act, making it a federal offense “for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone.” A San Antonio high school student named Alfonso Lopez confronted this law when he brought a concealed handgun to school in his backpack full of books. Tipped off, school authorities found the weapon and charged Lopez with violating the law. A federal district court found Lopez guilty because he had been caught with the concealed weapon inside the school. Under the commerce clause of the Constitution, Congress has passed numerous laws regulating interstate commerce, that is, business that happens across state lines. Congress has used this provision to pass laws that govern the making and selling of guns bought in more than one state. Yet, Lopez said that his possession of a gun near a school had nothing to do with interstate business and therefore was a matter that only his home state could control. As Texas had no law about guns in schools, he argued that the matter should be dropped because the federal law was unconstitutional. The case went to the U.S. Supreme Court, which by a 5-to-4 ruling in *United States v. Lopez* (1995), found that Congress could not use its commerce clause power to enact laws prohibiting guns in school zones. Decisions about school safety, the justices concluded, must be left to the general police power of each state’s government.

## WHAT IT MEANS

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The principal debate surrounding the Second Amendment concerns whether the right to bear arms applies to individuals or only to a militia. The proliferation of firearms, their use in crimes, and a high rate of deliberate and accidental shootings in the United States has caused many Americans to advocate tighter gun controls. They argue that the Second Amendment applies essentially to militias. Hunters, those who own weapons for self-protection, and other gun enthusiasts insist the Second Amendment prohibits any restrictions on their right to bear arms. Rather than limit the sale of guns, they argue, the government should enact stiffer penalties for those caught using a gun while committing a crime. The courts have held that the right does apply to individuals, but have also recognized certain limits on that right. Recent questions about the Second Amendment have centered around such issues as restrictions on concealed weapons, bans on assault weapons, and mandatory background checks and waiting periods before weapons can be purchased. Both gun rights advocacy groups, such as the National Rifle Association and gun control advocacy groups, such as Handgun Control, Inc., have vigorously lobbied the government to decide these issues.

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*“To suppose arms in the hands of citizens, to be used at individual discretion, except in private self-defense, or by partial orders of towns, countries or districts of a state, is to demolish every constitution, and lay the laws prostrate, so that liberty can be enjoyed by no man . . .”*

—John Adams, *Defence of the Constitutions of Government of the United States of America* (1787)

✦—————✦

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## Automatic firearms are regulated

1934

Following an attempt on the life of President-elect Franklin D. Roosevelt with a handgun in 1933, Congress passes the National Firearms Act of 1934. The nation's first federal gun control law taxes the manufacture, sale, and transfer of fully automatic firearms and "gangster-type weapons," including machine guns and sawed-off shotguns. It also requires FBI background checks and local law enforcement notification for people who wish to purchase these weapons.

## Federal regulation of gun sales begins

1938

The Federal Firearms Act of 1938 requires gun sellers to obtain a license from the Internal Revenue Service to sell guns and to maintain a record of purchases. The act also prohibits convicted felons from purchasing firearms or ammunition. However, the law makes no provision for criminals who provide false information when they purchase weapons.

## Mandatory registration of shotguns is approved

1939

In *United States v. Miller*, the U.S. Supreme Court upholds the mandatory registration of sawed-off shotguns under the National Firearms Act as constitutional. Rejecting a challenge that cites the Second Amendment, the Court rules that these types of guns are not part of any ordinary military equipment, that their use cannot contribute to the common defense, and that their possession does not have any relationship to the preservation of a militia.

## Government seeks to make school zones gun-free

1990

The Gun-Free School Zones Act makes it a federal crime to knowingly bring a gun within a thousand feet of a school, or to fire a gun within that zone. However, in *United States v. Lopez* (1995), the U.S. Supreme Court rules that Congress overstepped its constitutional authority under the commerce clause when it passed this act. The Court finds that the punishment of gun possession and gun use near schools is a matter for each state to regulate on its own.

## The Brady Law requires background checks

1994

The Brady Law is named for former Presidential press secretary James Brady, who was seriously wounded during the 1981 assassination attempt on President Ronald Reagan. The law requires federally licensed firearm dealers to perform background checks with law enforcement officials before selling a firearm. During the background check, officials confirm whether the buyer falls within a category of individuals prohibited from owning or possessing a firearm by state law or the 1968 Gun Control Act. In *Printz v. United States* (1997) the U.S. Supreme Court holds that the Brady Law's waiting-period requirement is constitutional, but finds that the mandatory background checks required of local authorities are unconstitutional.

## Semiautomatic weapons are banned

1994

The Violent Crime Control and Law Enforcement Act of 1994 bans nineteen types of semiautomatic weapons and ammunition clips holding more than ten rounds (except for military or police use). It also bans handgun possession by anyone under age eighteen and increases the requirements for federal gun dealer licenses.

# TIMELINE

## **Congress enacts expanded gun regulations**

→ 1968

In 1927, Congress had passed legislation that banned mailing such concealable weapons as cane guns and pen guns, but until 1968 there is no law that regulates the mailing of rifles, shotguns, or handguns. Following the assassination of President John F. Kennedy in 1963 and the handgun-related assassinations of Reverend Martin Luther King Jr. and Senator Robert Kennedy in 1968, Congress enacts the Gun Control Act. The act regulates imported guns, expands licensing and record keeping requirements, bans mail-order sales of guns and ammunition, raises the age at which one can legally buy a gun, and prevents convicted felons, mentally ill people, and illegal drug users from buying guns.

## **The Bureau of Alcohol, Tobacco, and Firearms is created**

→ 1968

Displeased with the lack of vigorous enforcement of federal gun control laws, Congress separates the Bureau of Alcohol, Tobacco, and Firearms (ATF) (since renamed the Bureau of Alcohol, Tobacco, Firearms, and Explosives) from the Internal Revenue Service and forms it as a separate law enforcement organization within the U.S. Department of Justice.

## **The Firearm Owner's Protection Act is passed**

→ 1987

Congress responds to complaints from gun owners by repealing some federal restrictions on the purchase of out-of-state rifles and shotguns with the Firearm Owner's Protection Act. Proponents of the act argue that the laws did little to reduce crime. The act also permits citizens to transport "unloaded and inaccessible" guns from one state to another, regardless of local laws.

## **Domestic violence offender gun ban is enacted**

→ 1996

Despite increasing opposition in Congress to gun control laws, advocates manage to amend an omnibus spending bill to prohibit anyone convicted of a domestic violence offense from owning or possessing a gun.

## **Smith & Wesson reaches a settlement**

→ 2000

In the first settlement of its kind, the gun manufacturer Smith & Wesson reaches a settlement in many of the lawsuits brought against it by municipalities around the country, including Atlanta; Berkeley, California; Bridgeport, Connecticut; Camden, New Jersey; Detroit; Gary, Indiana; Englewood, New Jersey; Los Angeles, Miami-Dade; San Francisco; St. Louis; and Washington, D.C. The settlement binds Smith & Wesson to change the way it designs and distributes its guns. The company is required to install safety mechanisms including child safety locks and "smart gun" technology and sell only to authorized dealers who can prove that the guns they sell are not disproportionately used in crimes.