

Interpreting the Second Amendment

by *Lionel_Van_Deerlin*

It has long been a bane of civic life in the District of Columbia - headquarters town for what we are pleased to call the greatest democracy on Earth - that some 570,000 residents enjoy very limited self-government. Roughly equal in population to at least a half-dozen states, folks in D.C. have no voting representation in Congress.

Worse, a "District Committee" in the House of Representatives has long exerted more power over the city of Washington than is granted locally elected officials. The district's occasional efforts to make law within its own borders often have been swatted down - as, most recently, a local ban on the ownership, sale or use of firearms. A divided federal appeals court in early March ruled 2-1 that this ordinance violates the Second Amendment to the Constitution, and may no longer be enforced.

Efforts to discourage gun use in Washington had long been an object of contempt within that most powerful of lobbies, the National Rifle Association. The organization enjoyed pointing out that although our national capital laid claim to the nation's toughest gun law, it regularly falls within a handful of U.S. cities posting the highest toll of murder by gunfire.

Very true, this - and for an obvious reason. While local law has barred gun sales within D.C.'s limits, anyone in search of a weapon need go no farther than into neighboring Maryland or Virginia, where - as in so many states - a free-spending NRA has successfully frustrated legislative efforts to halt the gun traffic.

With or without legislative clout, however, the District of Columbia could shortly play a passive role in settling a long-festering national struggle over firearms. Its lawyers have petitioned for an en banc ruling by the full U.S. District Court resolving that 2-1 Second Amendment split within its 3-member panel. The desire of Washington residents for meaningful gun control could yet require the U.S. Supreme Court to decide once and for all the intent of what is surely the most highly disputed paragraph in our entire Constitution.

So join me, won't you, in traipsing briefly through some history that could shortly come into play. With the U.S. Constitution mainly in place after the Founding Fathers' 1787 convention, Thomas Jefferson led an anti-Federalist campaign for a Bill of Rights setting certain limits on the new government. He left the actual writing of these first 10 amendments to another up-and-coming young Virginian, James Madison.

Today, more than two centuries later, it seems pretentious to fault this man's work. Madison got off to a great start. His First Amendment forever protects our freedom of speech, of religion, of press and public assembly. But the Second Amendment, dealing with gun rights, is beset with a confusing introductory clause, plus a burst of commas that allow varied meanings. Any court making its way through this legal patchwork may have embarked less on a matter of governance than an assignment in advanced English composition.

See if you don't agree. Here are the wording and the baffling punctuation of the Second Amendment with which the bewigged Madison has frustrated generations of Americans:

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."

Writing styles may differ from one generation to the next. But we seem entitled to ask - why all those commas? And doesn't the reference to "a well regulated Militia" suggest Madison intended limiting arms access to publicly supported military units such as the National Guard? That conclusion seems logical - not only to me, but to countless others who find horror in an annual toll of 30,000 or more Americans in needless gun deaths.

But what of the considerable number who favor free access to personal weaponry? They have a point, too. Strip the Second Amendment of the puzzling wordage that precedes that middle comma (leaving only "the right of the people to keep and bear Arms, shall not be infringed.") Then any household may feel free to retain Smith & Wesson's full catalog, plus a 105-mm howitzer - as backup, understand - out in the garage.

Yes, we'd still be stuck with another of Madison's maddening commas, but linguistic purity seems unlikely to stand in the way. The NRA's smart ones always have persuaded friendly legislators to overlook a dependent clause and all those commas.

Which leaves it up to the courts, maybe, to get Madison out of the sentence-parsing hole he's dug.

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