

GUEST OPINION FOR DAILY CAMERA

As the Colorado legislature moves forward with several gun safety measures, it is helpful to be aware of the history of gun safety jurisprudence under both the United States and the Colorado Constitutions.

One common misperception is that regulation of gun rights automatically infringes on a constitutional right and that Americans have a right “to unlimited use of weapons with unlimited firepower.” In fact, the United States Supreme Court and the Colorado Supreme Court have made it quite clear that reasonable gun regulation can be an appropriate exercise of governmental power and, that no American has unfettered rights to possess firearms.

There are essentially three United States Supreme Court cases on the 2nd Amendment that are relevant to the current debates. In 1939, the U.S. Supreme Court unanimously decided U.S. v. Miller. Miller, a constitutional challenge, to the 1933 National Firearms Act which limited possession or use of a “shotgun having a barrel of less than 18 inches in length,” also known as a “sawed off” shot gun common among organized crime figures in the 1920’s and 1930’s. The Supreme Court unanimously ruled that a Federal law prohibiting possession or use of such a firearm was constitutional and did not violate the 2nd Amendment. The Court’s opinion analyzed the 2nd Amendment within its historical context of assuring a “well-regulated militia, necessary to protect a free state.”

Nearly 70 years passed before the United States Supreme Court next significantly addressed the 2nd Amendment. In 2008 in DC v. Heller, the Court, in a 5 to 4 decision, ruled that a statute banning handgun possession in the home and requiring residents to keep their firearms unloaded and disassembled and bound by a trigger lock was unconstitutional. For the first time in Heller, the Supreme Court found that there is an individual right to bear arms (as opposed to a right tied to forming a militia) and went on to hold that the DC law at issue was too much of an intrusion into the right to protect oneself in one’s home and thus could not be constitutional. However, the Court noted in passing that many traditional regulations of firearms were constitutional.

Finally, in McDonald v. City of Chicago, in 2010, the U.S. Supreme Court held that the 2nd Amendment applies to State law through the 14th Amendment.

The Colorado Constitution, adopted nearly 140 years ago, states the following regarding the right to bear arms:

Article 2, Section 13

The right of no person to keep and bear arms in defense of his home, person and property or in aid of the civil power when thereto legally summoned shall be called in question; but nothing herein contained shall be construed to justify the practice of carrying concealed weapons. (emphasis added.)

The Colorado Supreme Court has addressed this provision a handful of times and has found that reasonable regulations of firearms are appropriate. In the context of the current gun debate, where some folks loudly proclaim that they have a “right” to be free of any gun regulation, it is interesting that the 19th century founders of our State, many of whom had experience in Colorado’s rough frontier culture, were not supporters of the right to carry a concealed weapon and did not believe such to be worthy of constitutional protection. Indeed, Colorado’s founders recognized implicitly the state’s right to promulgate certain gun regulations.

So what does this teach us as our legislators, both on the State level and in the U.S. Congress, consider background checks and new legislation to control deadly gun violence? That constitutional rights must be protected, but that our legislators should not be dissuaded from passing reasonable regulation by those who claim overly broad interpretations of the United States and Colorado Constitutions. The legislature should focus on what is the best policy to control gun violence and if the legislature, in its wisdom, determines that gun safety legislation should be adopted, the courts will likely find it to be constitutional.