Special Series from 1A

While the Declaration of Independence, which was signed in 1776, did not mention the right to bear arms, it certainly laid the groundwork for the Second Amendment, which was ultimately ratified by Congress in 1791.

"He has kept among us, in times of peace, standing armies without the consent of our legislatures," the Declaration said of the King of Great Britain. It was the fear of "standing armies" that ultimately led to the creation of the Second Amendment.

Before the Revolutionary War, colonies relied upon militias for defense, groups of part-time civilian soldiers whose training and commitment varies from militia to militia.

Realizing that unorganized bands of militias could not be used to wage war against the British, the Continental Congress created the Continental Army, which gathered local militias under the command of George Washington.

After the war, Washington proposed keeping the Continental Army as a standing army, with arsenals and a military academy. However, Congress rejected the idea.

The reasons are too multiple to be mentioned here without getting into the debates of the Federalists and Anti-Federalists, but a simple explanation would be that the Founders felt that any society with a federal standing army could never be truly free. A continually maintained standing army could overthrow the government, or crack down on the states' own militias, thus taking away the rights of a citizenry.

Instead, the country needed to protect itself with decentralized militias in each state that would only be organized in case of imminent invasion or insurrection.

To ensure the rights of those militias, the Second Amendment was passed: "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 (sic)."

However, as time passed, the fears of the Founding Fathers have been realized. A standing army has been created with several branches, and it has, objectively, grown powerful enough that it could overwhelm militias.

Because of this, Justice John Paul Stevens argued in a March 2018 op-ed in the New York Times that the Second Amendment should be repealed, a relic of a bygone era.

But some argue that the term "free state" could include communities, as were the initial reasons for militias. Or homes. Or even individual citizens — the very basis of a free state.

The underpinnings of this argument can be found in the 2008 Supreme Court decision on District of Columbia V. Heller, which challenged the constitutionality of a Washington D.C. law regarding handguns. The District of Columbia generally prohibited the possession of handguns. It was a crime to carry an unregistered firearm, and the registration of handguns was prohibited.

Wholly apart from that prohibition, no person could carry a handgun without a license, but the chief of police could issue licenses for one-year periods. District of Columbia law also required residents to keep their lawfully owned firearms, such as registered long guns, "unloaded and dissembled or bound by a trigger lock or similar device" unless they were located in a place of business or were being used for lawful recreational activities.

The law was struck down by a 5-4 opinion from the Supreme Court, with a detailed opinion written by Judge Antonin Scalia that reviewed each clause of the Second Amendment. In one section, he argued that the term "well regulated" implied "nothing more than the imposition of proper discipline and training."

Considering that all white men of age were required to be in the militia in the 1790s, it could be argued that the Second Amendment was a requirement for all men to be trained in owning a weapon.

As for the term "militia," Scalia wrote that "the Militia comprised all males physically capable of acting in concert for the common defense." It did not necessarily mean a governmental entity.

Regarding "common defense," Scalia wrote, "Once again, if one gives narrow meaning to the phrase 'common defense' this can be thought to limit the right to the bearing of arms in a state-organized military force … 19th-century courts never read 'common defense' to limit the use of weapons to militia service.

"The Second Amendment protects an individual's right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home."

Stevens wrote the dissenting opinion, stating that the opinion was strained and unpersuasive, overturning long-standing legal precedent. He also argued against Scalia's interpretation of the phrase "well-regulated militia," believing the phrase only applied to state militias.

No matter what side of this debate one comes down on, both sides agreed to two portions of the opinion.

The first portion has to do with gun control. Scalia specifically stated that Second Amendment rights are not unlimited.

"It is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose," Scalia wrote. "For example, concealed weapons prohibitions have been upheld under the Amendment or state analogues. The Court's opinion should not be taken to cast doubt on long-standing prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms."

And while the opinion openly focused on handguns, Scalia also opened the door to banning certain types of weapons, which he deemed "dangerous and unusual." A handgun, which is overwhelmingly chosen for the purpose of self-defense, would not be considered that. But he also stated that an M-16 rifle, the military adaptation of the AR-15, could be banned.

When someone states that "each and every gun control law is by nature unconstitutional," they are going against an opinion that most gun rights advocates hold up as the bellwether of Second Amendment freedom.

For those who believe that the gun debate is best left unsaid, and that the issue was decided in 1776, Scalia also gave guidance:

"Since this case represents this Court's first in-depth examination of the Second Amendment, one should not expect it to clarify the entire field. ... If all that was required to overcome the right to keep and bear arms was a rational basis, the Second Amendment would be redundant with the separate constitutional prohibitions on irrational laws and would have no effect."

Therefore, District of Columbia V Heller is not the final decision in the gun debate but rather the opening salvo of an ongoing discussion that the Supreme Court, and every citizen of America, needs to continue.

However, the current debate isn't just about the Second Amendment. It's a search for a solution on a whole variety of issues that become evident when looking at the statistics of gun violence in the nation.

"No one really knows"

Homicide rates are used frequently in the gun debate to prove or disprove one's point of view regarding gun laws. But in reality, the statistics are all over the map. Gun reformers often point to the three states with the most homicide per rates per capita — Louisiana, Mississippi and Alabama — as states where loose gun restrictions cause havoc. Those states, which have fewer gun control laws, have homicide rates of 14.3, 12.1 and 11.8 per 100,000, according to a 2016 analysis by the CDC. It should be noted that the CDC did not differentiate the cause of homicide, whether it be by gun or by other means.

See **SPECIAL SERIES** *8A*