

# The Rule of Law and the Gun Control Debate

Pamela Pitman Brown (Corresponding author)

Social Sciences, Albany State University

504 College Drive, Albany, GA 31705 USA

E-mail: [pamela.brown@asurams.edu](mailto:pamela.brown@asurams.edu)

## Abstract

This paper examines the intersection of constitutional principles and public policy within the gun control debate through the lens of the rule of law. By analyzing the foundational elements of the rule of law—publicly promulgated laws, equal enforcement, independent adjudication, and consistency with human rights principles—this research establishes a framework for evaluating Second Amendment jurisprudence. The study traces the evolution of gun rights through landmark Supreme Court decisions, including *District of Columbia v. Heller* (2008), *McDonald v. City of Chicago* (2010), and *New York State Rifle & Pistol Association v. Bruen* (2022), which collectively establish an individual right to bear arms while acknowledging certain regulatory boundaries. The research explores how democratic participation shapes firearms legislation through electoral engagement, lobbying efforts, public advocacy, and legal challenges. By examining competing perspectives on gun regulation without advocating for specific policies, this paper illuminates the complex balance between constitutional rights and public safety concerns, demonstrating how the rule of law provides a structured framework for addressing one of America's most polarizing debates.

**Keywords:** Second Amendment, gun control, rule of law, constitutional rights, Supreme Court, democratic participation

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## 1. Introduction

The debate over gun control represents one of the most polarizing and emotionally charged issues in American politics. It directly engages fundamental questions about constitutional interpretation, individual rights, and the proper scope of government regulation. This controversy revolves around competing interpretations of the Second Amendment's twenty-seven words and how they should be applied in contemporary society. The intensity of this debate reflects not merely policy disagreements but profound differences in how Americans understand their relationship with government and the meaning of liberty itself.

This paper examines the gun control debate through the framework of the rule of law, a foundational principle that establishes how societies balance individual freedoms with collective governance. By analyzing how the rule of law shapes and constrains both gun rights and regulatory efforts, this research seeks to move beyond partisan rhetoric to explore the constitutional, legal, and democratic dimensions of this complex issue. Through examination of landmark Supreme Court decisions, assessment of citizen legislative participation mechanisms, and analysis of competing perspectives, this study illuminates how the rule of law provides a structured means for addressing societal conflicts even on issues where consensus remains elusive.

## 2. The Rule of Law

According to the U.S. Courts (n.d.), the Rule of Law is a fundamental principle where all individuals, organizations, and the government itself are accountable to laws that are:

- Publicly promulgated
- Equally enforced
- Independently adjudicated
- Consistent with international human rights principles.

*Publicly promulgated rule of law* means the public must know the laws to understand their rights and obligations. To promulgate means that the government must declare or announce publicly that the law or regulation is in

place (Cornell Law School, n.d.). Often, the promulgation of a new law is announced in writing as a formal statement declaring that there is a new law after it is finally approved. *Equally enforced* indicates that everyone, regardless of status, socioeconomic position, race, or gender, is subjected to the same laws and legal processes. The equally enforce concept also includes government officials or those in positions of power, including law enforcement, judges, and Congress (Stein, 2019). As the former American Bar Association President Chesterfield Smith stated in 1973 during Watergate, “No person is above the law” (Stein, 2019).

*Independently adjudicated by an independent judiciary* means that the judiciary is independent of outside influence to be able to "render impartial decisions in individual cases" cal branches (American Bar Association [ABA], 2002, p. 3). It allows the judiciary to be independent of the legislature and executive branch to "check over-concentrations of power in political branches (American Bar Association [ABA], 2002, p. 3). Checks and balances within the three branches of government are Hamilton's best argument for Article III's provision for separation of powers (Collins, 2004). *Consistent with international human rights principles* means that there are limits to how the state or the government treats people and their rights because they exist as human beings. Hernandez-Truyol (2004) states that "observance, protection, and enforcement of human rights are the most basic components of the rule of law," understanding that this concept emanates from Nuremberg (p. 187). He further states that the connection to human rights means all persons have equality and that we live in a society that is "gendered, multiethnic, racially and religiously diverse...[and] these diversities must be taken into account" (Hernandez-Truyol, 2004, p. 187).

The Rule of Law principle ensures that no one is above the law and provides a framework for resolving societal disputes through established legal channels rather than through force or arbitrary decisions. The courts are instrumental in upholding the rule of law. Equality before the law is engrained within our Constitution so much that if a majority, whether intentionally or not, infringes on the rights of a minority, the Court may intervene and hear the complaint (U.S. Courts, n.d.). The rule of law ensures people can live predictably without arbitrary government interference, recognizing individual autonomy and community membership while honoring human dignity and inherent rights (Hernandez-Truyol, 2004, p. 194).

### *2.1 Democracy and the Rule of Law*

In researching the rule of law for this paper, the author noted that democracy cannot exist without the rule of law, which is closely linked; as Gardner (2021) states, democracy and the rule of law are not separate or intersecting but are codependent on each other. A democratic state (nation) is where citizens elect their leaders and where the law binds the citizens and the law binds the government. Gardner also writes that the rule of law dictates who should be able to hold public office and that those elected must also respect the limits on their actions toward the rights of the citizens (2021) based on legislation and then be subject to that legislation themselves. “In a stable, self-perpetuating institution, all conflicts are solved according to the institutional rules, and therefore, the Rule of Law stabilizes the democratic society” (Gardner, 2021).

## **3. Citizen Influence on Legislation**

In functioning democratic systems, the power to shape the laws does not reside solely with the elected officials. Citizens have multiple pathways to influence the legislative process, ranging from traditional electoral participation to other forms of engagement. Numerous mechanisms allow citizens to influence legislation in our U.S. democracy.

### *3.1 Electoral Participation*

The most fundamental way we citizens can influence legislation is to vote and ensure citizens are registered to vote. If citizens are not registered and do not vote, others make decisions for them, their family, or their community. Voting is powerful. Voters can then elect representatives who align with their policy preferences and priorities (Center for Civic Education, 1998). The citizens must do their research on the candidates' policies as well as their voting records if they are incumbents. It is also important for citizens to not just vote on election day but to show up and vote in the primary elections to influence the party nominee (Center for Civic Education, 1998). Citizens can also support their chosen candidates through financial donations, volunteering, phone banking, or advocacy. If citizens are unhappy with their representatives, they can vote them out, or the citizens can enter politics by becoming a candidate, which, if elected, allows them to directly propose and vote on legislation (Center for Civic Education, 1998). Anyone can participate at any level with these suggestions. It is also important to remember that we, the people, elect and pay them to do their jobs, which means they work for us (Center for Civic Education, 1998).

### 3.2 Lobbying of Legislators

Another way of influencing lawmakers (legislators) is through direct lobbying. Direct lobbying is about helping lawmakers understand the law's impact on their constituents (Bloomberg Government, 2024). Direct lobbying involves connecting personally with legislators and officials who write public policy, usually focusing on specific legislation (Bloomberg Government, 2024). Direct lobbying activities can be as simple as calling legislators or writing letters expressing a viewpoint (Bloomberg Government, 2024). Citizens can also request in-person meetings at their national, state, or local office (Bloomberg Government, 2024).

### 3.3 Public advocacy and awareness campaigns

Grassroots lobbying is a little different in that a group or a collective of ordinary citizens work to influence the lawmakers using petitions and collecting signatures on the petition to show support for the legislation that the group is for or against (Bloomberg Government, 2024). Grassroots groups are made up of voters or constituents and may carry more weight with elected officials (Bloomberg Government, 2024). Grassroots lobbying also organizes letter-writing and social media campaigns, attends public hearings, and participates in door-to-door canvassing (Bloomberg Government, 2024). Grassroots organizations may also help spur public demonstrations and protests, drawing attention to the significant issues that are up for legislation (Goldschmidt, 2022).

### 3.4 Legal Challenges

As noted in the upcoming section on the Second Amendment, it is important that citizens can significantly influence legislation through legal challenges that test the constitutionality, interpretation, and application of laws (Brannon, 2023). By bringing strategic cases to the Court, individuals and organizations can establish important precedents that reshape how existing laws are understood and enforced (Brannon, 2023). Class action lawsuits enable groups of affected citizens to collectively address systemic issues, potentially forcing legislative responses to judicial rulings (Adkins, 2024). Citizens and civic groups can also submit amicus curiae briefs in significant cases, providing judges with specialized knowledge and alternative perspectives that might influence judicial decisions (Collins, 2004). These legal pathways allow citizens to engage with the legislative process even after laws are on the books, serving as a critical check on legislative power and ensuring that laws remain consistent with constitutional principles and evolving societal values.

## 4. The Gun Control Debate

**Amendment II:** *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.* This brief text has been subject to extensive interpretation and debate of law. While the original purpose was to allow citizens to protect themselves and to take up arms against invaders (militia), the current debates on the rights from a current-day perspective are less clear. Some individuals argue that the right to own and use guns is not personal, but it is a right that is for the states to establish and arm militias. Others argue that it is a personal right for every individual to be able to protect themselves and their property.

### 4.1 Key Supreme Court Rulings

Three landmark Supreme Court decisions, *District of Columbia v. Heller* (2008), *McDonald v. City of Chicago* (2010), and *New York State Rifle & Pistol Association v. Bruen* (2022), have significantly shaped the modern interpretation of Second Amendment rights.

*District of Columbia v. Heller* (2008) marked a watershed moment in Second Amendment jurisprudence. In a 5-4 decision authored by Justice Antonin Scalia, the Court held for the first time that the Second Amendment protects an individual's right to possess firearms independent of service in a well-regulated militia and to use arms for traditionally lawful purposes, including self-defense within the home. This ruling struck down the District of Columbia's handgun ban and requirement that lawfully owned rifles and shotguns be kept unloaded and unworkable.

*McDonald v. City of Chicago* (2010) built upon *Heller* by addressing whether the Second Amendment applies to the states. In another 5-4 decision, the Court incorporated the Second Amendment right recognized in *Heller* to the states through the Fourteenth Amendment's Due Process Clause. This ruling invalidated Chicago's handgun ban and established that state and local governments, not just the federal government, must abide by the Second Amendment.

*New York State Rifle & Pistol Association v. Bruen* (2022) significantly expanded Second Amendment protections by striking down New York's restrictive "proper cause" requirement for obtaining a concealed carry

license. In this 6-3 decision, Justice Clarence Thomas introduced a new test for evaluating gun regulations, requiring that they be consistent with the nation's historical tradition of firearm regulation rather than subject to interest-balancing tests. This ruling has triggered challenges to numerous gun control measures nationwide and fundamentally altering how courts evaluate Second Amendment cases.

#### 4.1.1 *District of Columbia v. Heller, 554 U.S. 570 (2008)*

This case is the first to establish that the Second Amendment protects an individual's right to possess firearms independent of militia service but also noted that this right is not unlimited (*District of Columbia v. Heller, 554 U.S. 570, 2008*). *The District of Columbia enacted the Firearms Control Regulations Act in 1975*, which barred individual handgun ownership in most cases, apart from those held by current or former law enforcement officers (*District of Columbia v. Heller, 554 U.S. 570, 2008*). The Court was answering whether Heller, a District of Columbia special police and resident, could keep his weapon at home. The district's code stated that he could not keep a "functional" firearm in his home. Heller argued that the district's code violated his Second Amendment right to keep a "functional" firearm in his home for self-defense in that the "non-functional" requirement violated that proper (*District of Columbia v. Heller, 554 U.S. 570, 2008*). The District of Columbia also refused to allow Heller to have a license for the handgun he wanted to keep at home (*District of Columbia v. Heller, 2008*). The federal district court dismissed Heller's case. However, the U.S. Court of Appeals for the DC Circuit reversed the decision, noting that the Second Amendment does protect the right to keep a firearm for self-defense at home and that the DC code requirement violated that right, "even when there is no relationship to a local militia" (*District of Columbia v. Heller, 554 U.S. 570, 2008*). The United States Supreme Court took up the case on November 20, 2007.

#### 4.1.2 Majority Opinion

Justice Antonin Scalia wrote the Majority's opinion, including Justices Roberts, Kennedy, Thomas, and Alito (*District of Columbia v. Heller, 2008*). Scalia noted that some weapons may have limitations within the right to bear arms, meaning that dangerous or "unusual" weapons were not constitutionally protected (*District of Columbia v. Heller, 554 U.S. 570, 2008*). Scalia ruled the law unconstitutional on dual grounds: it restricted access to standard weapons and hindered one's self-defense rights. While the District of Columbia licensing requirements remain constitutional, individuals must be permitted to register firearms for home protection (*District of Columbia v. Heller, 554 U.S. 570, 2008*). The Majority agreed that the Second Amendment's militia clause (*A well-regulated militia*) is prefatory and does not restrict the right to bear arms (*District of Columbia v. Heller, 554 U.S. 570, 2008*). "Militia" historically included all non-disabled men, not just military personnel; interpreting it narrowly would enable the state-sponsored oppression the Amendment was designed to prevent (*District of Columbia v. Heller, n.d.*). Reading the text as it was understood when written establishes an individual right to possess weapons for confrontation, consistent with period legal writing and scholarship (*District of Columbia v. Heller, n.d.*). Therefore, banning handguns, which are commonly used for protection, and requiring home firearms to be non-functional violates the Second Amendment by restricting self-defense in the place most needing more protection.

#### 4.1.3 Dissent

In writing for the dissent, Justice John Paul Stevens argued that the Second Amendment does not establish an unlimited right to gun possession for self-defense (*District of Columbia v. Heller, 554 U.S. 570, 2008*). Justice Stevens maintained that the Amendment's natural reading protects firearm possession for specific military purposes while preserving legislative authority to regulate civilian weapon use (*District of Columbia v. Heller, n.d.*). Stevens emphasized that the Amendment explicitly mentions state militias but omits self-defense, which is significant given contemporaneous state provisions that specifically included self-defense rights. He further contended that "the people" do not extend protection beyond militia service contexts (*District of Columbia v. Heller, 554 U.S. 570, 2008*). Justices Souter, Ginsburg, and Breyer joined Stevens in the dissent (*District of Columbia v. Heller, n.d.*), with Justice Breyer writing a separate dissent. Breyer's dissent argued that the Second Amendment protects militia interests rather than self-defense rights and does not prevent government regulation, citing colonial-era laws that controlled home firearm storage and used this as historical evidence (*District of Columbia v. Heller, 554 U.S. 570, 2008*). Breyer proposed an interest-balancing test to evaluate when government interests justify regulations, maintaining that since this analysis is better suited to legislative rather than judicial judgment, the Court should defer to lawmakers and uphold the restrictions (*District of Columbia v. Heller, n.d.*).

#### 4.2.1 *McDonald v. City of Chicago*, 561 U.S. 742 (2010)

This case concerns a similar 1982 handgun ban law in Chicago. McDonald argued for a new approach: using the Fourteenth Amendment's Privileges or Immunities Clause to apply the Bill of Rights to state and local governments, which would overturn the 1873 *Slaughter-House* Case Ruling (*McDonald v. City of Chicago*, n.d.). This legal strategy would have enabled the direct application of the Bill of Rights to non-federal authorities without requiring incorporation and potentially affected other unincorporated constitutional rights (*McDonald v. City of Chicago*, n.d.). The district court dismissed the suits. On appeal, the U.S. Court of Appeals for the Seventh Circuit affirmed. The United States Supreme Court took up the case on September 30, 2009 (*McDonald v. City of Chicago*, n.d.). The Supreme Court reversed the decision of the Seventh Circuit, maintaining that the Fourteenth Amendment makes the Second Amendment right to keep and bear arms for self-defense applicable to the states (*McDonald v. City of Chicago*, n.d.).

#### 4.2.2 Majority Opinion

Justice Samuel Alito wrote for the Majority, which included Justices Roberts, Scalia, Kennedy, and Thomas. Alito determined that rights "fundamental to the Nation's scheme of ordered liberty" or "deeply rooted in this Nation's history and tradition" should apply to states through the Fourteenth Amendment (*McDonald v. City of Chicago*, 561 U.S. 742,

2010). Based on *Heller's* recognition of self-defense as such a fundamental right, the Court applied the Second Amendment to states and remanded the case for the Seventh Circuit to evaluate Chicago's handgun ban (*McDonald v. City of Chicago*, 561 U.S. 742,

2010). In his plurality opinion, Justice Alito specified that the Fourteenth Amendment's Due Process Clause incorporates the Second Amendment right established in *Heller* (*McDonald v. City of Chicago*, n.d.). Justice Thomas concurred with the judgment that the Fourteenth Amendment incorporates the Second Amendment to apply to states but disagreed on the method, arguing that the Privileges or Immunities Clause (Comity Clause), rather than the Due Process Clause, was the proper mechanism for incorporation (*McDonald v. City of Chicago*, 561 U.S. 742, 2010). Thomas went on to state, "the record makes plain that the Framers of the Privileges or Immunities Clause and the ratifying-era public understood...that the right to keep and bear arms was essential to the preservation of liberty" (*McDonald v. City of Chicago*, 561 U.S. 742, 2010). Justice Alito rejected Justice Thomas's argument that the Privileges or Immunities Clause (Comity Clause) was more appropriate for incorporation, citing the longstanding *Slaughterhouse Cases* precedent that established the Due Process Clause as the proper mechanism for incorporating rights (*McDonald v. City of Chicago*, 561 U.S. 742, 2010). Justice Scalia concurred with the majority opinion but wrote separately to counter Justice Stevens' dissenting arguments (*McDonald v. City of Chicago*, 2010).

#### 4.2.3 Dissent

Justice Stevens dissented, rejecting that the Fourteenth Amendment incorporates the Second Amendment against states and arguing that personal firearm ownership does not constitute a "liberty" interest protected by the Due Process Clause (*McDonald v. City of Chicago*, 2010). Stevens continued with a critique of the Majority's decision, arguing that despite its persuasive reasoning, overturning long-established Supreme Court precedent and disrupting state practices fails to honor historical teachings, societal values, and the constitutional principles of federalism and separation of powers that have protected American freedoms (*McDonald v. City of Chicago*, 561 U.S. 742, 2010). Justice Breyer, joined by Justices Ginsburg and Sotomayor, dissented, contending that the Second Amendment lacks the "text, history, or underlying rationale" that would qualify it as a "fundamental right" deserving incorporation through the Fourteenth Amendment (*McDonald v. City of Chicago*, 561 U.S. 742, 2010). Breyer also wrote a similar dissent in *Heller*.

#### 4.3.1 *New York State Rifle & Pistol Association [NYSRPA] v. Bruen*, 597 U.S. 1 (2022)

Following the precedents established in *Heller* and *McDonald*, the *Bruen* case represents another significant Second Amendment ruling as it challenged New York's restrictive concealed carry licensing system, which required applicants to demonstrate "proper cause" to obtain a permit (*NYSRPA v. Bruen*, 597 U.S. 1, 2022). The Supreme Court determined that New York's proper cause requirement infringed upon citizens' Second Amendment rights as incorporated against the states through the Fourteenth Amendment.

#### 4.3.2 Majority Opinion

In the majority opinion authored by Justice Clarence Thomas and joined by Justices Alito, Barrett, Gorsuch, Kavanaugh, and Roberts, the Court reaffirmed *Heller's* recognition of "an individual right to possess and carry weapons in case of confrontation" while specifically extending this protection beyond the home (*NYSRPA v.*

Bruen, 597 U.S. 1, 2022). The Court emphasized that the text of the Second Amendment does not distinguish between home and public possession, reasoning that since confrontations requiring self-defense can occur in public spaces, the right to carry must extend beyond one's residence (NYSRPA v. Bruen, 597 U.S. 1, 2022).

#### 4.3.3 Dissent

Justices Breyer, Sotomayor, and Kagan dissented from this landmark ruling, which effectively abolished "may-issue" permitting systems that granted officials discretion in approving concealed carry applications (U.S. Conceal Carry Association, n.d.). Because of this evolving Second Amendment jurisprudence, 29 states have adopted constitutional or permitless carry laws, fundamentally transforming the landscape of firearm regulation in the United States (U.S. Conceal Carry Association, n.d.).

### 5. Arguments for and against Gun Control Measures

Gun control is one of the most hotly contested, emotional, and controversial issues within the United States. Our debates are structured through our understanding of our Second Amendment rights and our concern with gun violence, both in the streets and in school shootings. Proponents of stricter gun control argue that reasonable regulations can reduce mass shootings, suicides, and homicides while still respecting constitutional rights, citing statistics from countries with stricter laws. They emphasize that background checks, waiting periods, and assault weapons bans could save lives without preventing responsible ownership. Opponents counter that such measures infringe upon the Second Amendment, arguing that law-abiding citizens should not lose rights because of criminals' actions. They maintain that guns provide essential self-defense, particularly in areas with limited police presence. The enforcement of existing laws, rather than new restrictions, would better address gun violence while preserving individual liberty.

#### 5.1 Arguments for stronger gun control measures

Research on gun violence as a public health crisis has been extensively documented in publications like the American Journal of Public Health (n.d.) and through Centers for Disease Control data collection efforts (2024). However, the 1996 Dickey Amendment limited the extent of research until recent years (Betz et al., 2016). The British Medical Journal studied states with more restrictions and found that more comprehensive background checks, certain firearm restrictions or prohibitions, and more regulation of firearm storage lowers state gun violence (2024). The psychological and societal impacts of mass shootings have been analyzed in works like *Rampage: The Social Roots of School Shootings* (Newman et al., 2008) and the connection between mass violence and mental health effects, with "28% of people who have witnessed mass violence develop post-traumatic stress disorder (PTSD) and about a third develop acute stress disorder" (Perez, 2020). For balanced perspectives on how regulations might coexist with Second Amendment rights, RAND (2024) provides an evidence-based analysis of measures like universal background checks, red flag laws, and safe storage requirements. The Center for Gun Violence Solutions (n.d.) also offers peer-reviewed research examining the effectiveness of various policy approaches while acknowledging the legitimate concerns of responsible gun owners.

#### 5.2 Arguments against stronger gun control measures

Constitutional scholars such as Halbrook (2012) in *The Founders' Second Amendment* and legal analyses from Supreme Court decisions like *District of Columbia v. Heller* (2008) provide foundational arguments regarding Second Amendment protections. Research on defensive gun use can be found in criminologist Gary Kleck's studies (Kleck, 1997; Kleck & Gertz, 1995; Kleck, 1991). Lott's controversial but influential work, *More Guns, Less Crime* (2010), challenges the effectiveness of gun regulations. The Cato Institute (2022) and Reason Foundation (Carlino, 2024) have published policy papers addressing concerns about incremental restrictions leading to broader prohibitions, examining the balance between public safety goals and limits on government authority.

### 6. Conclusion

The rule of law provides an essential framework for navigating the contentious terrain of gun control debates in the United States. As demonstrated throughout this analysis, the constitutional interpretation of the Second Amendment has evolved significantly through landmark Supreme Court decisions that have established an individual right to bear arms while acknowledging that this right is not unlimited. These judicial precedents reflect the dynamic nature of constitutional interpretation and its responsiveness to changing societal conditions

and values.

The democratic mechanisms through which citizens influence firearms legislation, from electoral participation and lobbying to public advocacy and legal challenges, illustrate how the rule of law functions as a participatory framework rather than simply a set of prohibitions. These pathways for citizen engagement ensure that gun policies, whether expansive or restrictive, reflect democratic deliberation rather than arbitrary government action.

The competing arguments surrounding gun control highlight legitimate concerns on both sides of the debate. Public safety considerations must be balanced against constitutional protections, self-defense rights, and the varied needs of diverse communities across urban and rural America. The rule of law does not dictate specific policy outcomes in this debate but instead establishes the procedures and boundaries within which these contested issues can be addressed.

As American society continues to grapple with gun violence while respecting constitutional freedoms, the rule of law offers a vital mechanism for structured conflict resolution. Through transparent legislation, equal enforcement, independent judicial review, and respect for fundamental rights, the rule of law ensures that even our most divisive debates can proceed through established legal channels rather than through force or arbitrary decisions. The ongoing evolution of Second Amendment jurisprudence demonstrates that while the Constitution establishes enduring principles, their application must be continually reexamined considering contemporary challenges and values.

The gun control debate ultimately transcends simple policy preferences, engaging fundamental questions about the relationship between citizens and government, individual autonomy and collective security, and the meaning of constitutional rights in a changing society. By approaching these questions through the disciplined framework of the rule of law, Americans can continue their long tradition of adapting democratic institutions to address emerging challenges while preserving essential liberties.

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