

Republican Perspective

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by John Littig

Let's Repeal the Second Amendment

Retired Supreme Court Justice John Paul Stevens recently wrote an essay for the New York Times in which he advocated for the repeal of the Second Amendment to the U.S. Constitution. For those whose time is spent following the latest news about the Kardashians, the Second Amendment protects “the right of the people to keep and bear arms.”

Despite the Second Amendment saying this right “shall not be infringed,” there has been plenty of infringing going on. Here's a list of Federal firearms control laws: National Firearms Act (1934); Federal Firearms Act (1938); Omnibus Crime Control and Safe Streets Act (1968); Gun Control Act (1968); Firearms Owners Protection Act (1986); Undetectable Firearms Act (1988); Gun-Free School Zones Act (1990); Brady Handgun Violence Prevention Act (1993); Federal Assault Weapons Ban (1994). There may be others, but you get the drift.

This is not to say whether these laws are good or bad, effective or not. Clearly, we don't want people running around with bazookas or worse, so prohibiting that is a good thing. Also clearly, the gun-free zone concept has backfired with tragic consequences.

Besides these Federal laws, States and local jurisdictions also have enacted laws to make gun sale or ownership difficult or, in some locations, downright illegal. In addition, local jurisdictions have passed prohibitions, restrictions, or permit requirements for the carrying of guns openly or concealed. So that gun owners can “bear” arms but only with great difficulty.

So various jurisdictions have, in effect, infringed the heck out of the right to keep and bear arms no matter what the Second Amendment has to say. And the Judicial Branch has gone along with some but not all of it. There was a precursor to retired Justice Stevens. In 1991, retired Chief Justice Warren Burger was interviewed on the MacNeil/Lehrer NewsHour. He voiced the view that there should be *no* Second Amendment---no “right of the people to keep and bear arms.”

Currently, there are various groups who advocate for repeal. For example, MoveOn.org is sponsoring an on-line petition which they plan to deliver to the President, the Senate, and the House of Representatives. This is a symbolic gesture. Neither the President, nor the Senate, nor the House can repeal a Constitutional amendment. In fact, even if *all three* were agreed on repeal they could not do it.

What would be required to rescind the Second Amendment? You got it---another amendment! And The Founding Dads wisely made amending the U.S. Constitution difficult. Not impossible, but difficult. Thus any amendment which passed would have to reflect a broad consensus within the country. Here is what’s required.

The “easy part”: The Congress by a two-thirds majority in both the Senate and the House, can *propose* an amendment. Alternatively, upon request of two-thirds of the States, the Congress can call a Constitutional Convention, which in turn can *propose* an amendment.

And the hard part: In order to take effect, the proposed amendment must be ratified by the legislatures of three-fourths of the States. (It’s slightly more complicated, but that’s the gist of it.)

It’s not impossible. The Constitution has been amended 27 times. Almost all of the 27 amendments were ratified without any States voting against. Of the amendments which were ratified but not unanimously, only one had more than two states voting against. (Four States opposed the Sixteenth Amendment.)

So what are the chances for ratification of an amendment repealing the Second Amendment?

Let's make a couple of assumptions. Let's stipulate that the Democratic Party is generally for more gun control while the Republican Party is generally not. Republicans control both houses of the legislatures in 31 States; let's assume those 31 States would oppose repealing the Second Amendment. Democrats control both houses of the legislatures in 14 States; let's assume those 14 States would all support repeal. There are also four split States, where one house is controlled by Republicans and the other by Democrats; just for the sake of this illustration, let's put all four split States in the repeal column. The one remaining State (Nebraska) has an officially nonpartisan legislature, but the State went heavily (60%) Republican in 2016 so it goes in the opposed column.

So, under these generous assumptions, as many as 18 States might vote to ratify a hypothetical amendment to repeal the Second Amendment--- while 32 States would not. But in order to be ratified, three-fourths of the States would have had to vote in the affirmative---that's 38 States! Where would the forces for repeal make up the deficit of 20 States? Given the polarizing nature of this issue, that's an impossible task.

Bottom line: No matter how much Stevens, Burger, MoveOn, and others might wish it to evaporate, the Second Amendment is almost certainly here to stay.