



## OTHER WRITINGS

My *Popular Mechanics* columns are [here](#).

My *USA Today* columns are [here](#).

My *New York Post* columns are [here](#).

My *Washington Examiner* columns are [here](#).

My TCSDaily / TechCentralStation columns are archived [here](#).

My old MSNBC blog is [here](#).

Previous columns written for FoxNews.com (I stopped in 2002) can be found [here](#).

A (partial) list of my law review articles can be found [here](#). It's not usually up to date, but it's the best I can do.

Also, downloadable copies of many of my law review articles can be found [here](#), through SSRN.

Contributions to *The Guardian* are (mostly) rounded up [here](#).

You may find my [discussion of the state of the blogosphere with Cass Sunstein](#) on the University of Chicago Faculty Blog interesting. Scroll forward from that link for the whole thing.

Some other items are listed below:

- \* **Degrees of Value: Making College Pay Off**, in the *Wall Street Journal*, January 5, 2014.
- \* **Don't track me, bro! The perils of tax by GPS**, in *Road & Track*, November 4, 2013.
- \* **What's Really Immoral About Student Loans**, in the *Wall Street Journal*, June 28, 2013.
- \* **The Hollywood Tax Story They Won't Tell at the Oscars**, in *The Wall Street Journal*, February 23, 2013.
- \* **AI Gore Dreams of Electric Jeeps**, in the *Wall Street Journal*, January 30, 2013. Reviewing AI Gore's *The Future: Six Drivers of Global Change*.
- \* **Romney Goes Back To Basics With Ryan**, in *USA Today*, August 12, 2013.
- \* **A Syllabus For The Occupy Movement**, in the *Wall Street Journal*, February 17, 2012.
- \* **Obama's Flawed Fix for the College Crisis**, in the *New York Post*, February 7, 2012.
- \* **Record Check an Ineffective Nuisance**, in the *Nashville Tennessean*, January 29, 2012.
- \* **Government Inflated The College Bubble, But Obama Isn't Fixing It**, in the *New York Post*, October 30, 2011.
- \* **Apple Turns Big Brother: Will It Police iPhone Cameras?** in the *New York Post*, June 20, 2011.
- \* **The Federalist Society: Proof of the Power of Persuasion**, in the *New York Post*, April 26, 2011.
- \* **Old Enough To Fight, Old Enough To Drink**, in the *Wall Street Journal*, April 13, 2011.
- \* **Let's Hope The Robots Are Nice**, a review of Michio Kaku's *Physics Of The Future: How Science Will Shape Human Destiny and Our Daily Lives by the Year 2100*, in the *Wall Street Journal*, March 23, 2011.
- \* **The Arizona Tragedy and the Politics of Blood Libel**, in *The Wall Street Journal*, January 10, 2011.
- \* **The Unexpected Return of 'Duck and Cover'**, in *The Atlantic Monthly*, January 4, 2011.
- \* **Columbia University vs. The Little Guy**, in *The New York Post*, December 17, 2010.
- \* **Star Performer: Keeping the age of exploration alive at the outer reaches of the solar system**, in the *Wall Street Journal*, July 19, 2010, reviewing Stephen J. Pyne's *Voyager: Seeking Newer Worlds In The Third Great Age Of Discovery*.
- \* **Tinker, Tailor, Soldier, Hacker**, in the *Wall Street Journal*, April 21, 2010, reviewing Richard Clarke and Robert Knake's *Cyber War: The Next Threat To National Security And What To Do About It*.
- \* **Jacques Cousteau: Tech Pioneer** in the *Wall Street Journal*, June 21, 2010.
- \* **What I Saw At The Tea Party Convention**, in the *Wall Street Journal*, February 13, 2010.
- \* **Caught In The Web**, a review of Jaron Lanier's *You Are Not A Gadget*, in the *Wall Street Journal*, January 12, 2010.
- \* **Media Criticism: Chicago Style**, in the *Wall Street Journal*, November 4, 2009.
- \* **The Hidden Cost of National Healthcare**, in *The Washington Examiner*, July 12, 2009.
- \* **Tax Audits Are No Laughing Matter: A President Shouldn't Even Joke About The Power of the IRS**, in the *Wall Street Journal*, May 18, 2009.
- \* **Tax Day Becomes Protest Day**, in the *Wall Street Journal*, April 15, 2009.
- \* **The Longevity Dividend**, in *Forbes*, March 30, 2009.
- \* **Why Guns Are Better Than Butter**, in *Forbes.com*, November 21, 2008.
- \* **Where Does the Vice President Belong?** in *The New York Times*, October 27, 2008.
- \* **Multiple Voting, Insecure Machines**, in *Forbes.com*, November 6, 2008.
- \* **Whoever Wins, Chill A Bit**, in *Forbes.com*, November 4, 2008.
- \* **Bring Your Own Camera**, in the *New York Post*, September 13, 2008.
- \* **The Geek Shall Inherit the Earth**, *New York Post*, September 7, 2008. (Reviewing Neal Stephenson's *Anathem*.)
- \* **We Can See Clearly Now**, in the *Wall Street Journal*, June 16, 2008. (Reviewing Robert Zimmerman's *The Universe in a Mirror*.)
- \* **Not Your Father's Space Program**, in *The Atlantic Monthly*, June 5, 2008.
- \* **Who Owns the Moon: The Case for Lunar Property Rights**, in *Popular Mechanics*, June, 2008.
- \* **Green and Smart: Earth-Saving Done Right**, in the *New York Post*, April 22, 2008.
- \* **Spare Air is Reverse Parachute of Scuba: Test Dive**, on *PopularMechanics.com*, March 2009.
- \* **No Freedom to Keep Secrets**, in *USA Today*, March 9, 2008.
- \* **The End of Aging?** in *Popular Mechanics*, March 2009.
- \* **Mr. Friedman Explains Mr. Big**, the *New York Post*, January 27, 2008. (Reviewing Tim Harford's *The Logic of Life*.)
- \* **Watching the Watchers: Why Surveillance is a Two-Way Street**, in *Popular Mechanics*, January, 2008.
- \* **Lawyers, Guns, and Washington**, in the *New York Post*, November 21, 2007 (on the *Heller* Second Amendment case).
- \* **You say you want a new Constitution? Well . . .** in the *Philadelphia Inquirer*, October 7, 2007. (Reviewing Larry Sabato's *A More Perfect Constitution*.)
- \* **In Age of High-Tech, Are Americans Losing Touch with DIY Skills?** in *Popular Mechanics*, October, 2007.
- \* **Rise of the Office Romancers**, in the *NY Post*, September 30, 2007. (Reviewing Mark Penn's *Microtrends*.)
- \* **Starship Enterprise: How Private Investment Has Launched a New Space Race**, *Opinionjournal.com*, July 29, 2007, originally published in the *Wall Street Journal*, July 28, 2007.
- \* **How Private Rocketeers Got Real**, in *Popular Mechanics*, July, 2007.
- \* **A Wistful Look Back at Big Media's Day**, in the *Philadelphia Inquirer*, June 10, 2007.
- \* **Open Source War Fare: John Robb's Chilling Brief on Postmodern Terrorism**, in the *City Journal*, May 22, 2007.
- \* **Bring Back Our Knobs: Analog v. Digital**, *Popular Mechanics*, May, 2007.
- \* **Dust-up: Media Blitzed**, A dialogue with Prof. Robert McChesney in the *Los Angeles Times*, May, 2007.
- \* **People Don't Stop Killers; People With Guns Do**, *New York Daily News*, April 18, 2007.

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- \* [David vs. Goliath U.](#), in *The New York Post*, April 1, 2007.
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- \* [Can Blogging Derail Your Career?](#) in the *Chronicle of Higher Education*, July 28, 2006.
- \* [An Instinct for the Capillary: Luckily for the Bush Administration, Its Media Opponents Can't Shoot Straight](#), in *The Guardian*, February 20, 2006.
- \* [Watch Out, Hollywood](#), in *Popular Mechanics*, October, 2005.
- \* [Unwise Counsel: Why was the White House so unprepared for the Miers flak?](#) in the *Wall Street Journal*, republished at [OpinionJournal.com](#).
- \* [Here it Comes: Technology's progress will soon accelerate — exponentially. You have no idea how much. Ray Kurzweil does.](#) (Review of Ray Kurzweil's *The Singularity is Near: When Humans Transcend Biology*) in the *Wall Street Journal*, October 1, 2005.
- \* [Judge Bork's Inkblot](#), in *The New York Times*, September 12, 2005.
- \* [No 'Journalistic Privilege'](#), in *USA Today*, June 28, 2005.
- \* [News Without Newspapers](#), originally in the *Wall St. Journal*, May 31, 2005.
- \* [The Vision Thing](#), in *The Wall Street Journal*, May 3, 2005.
- \* [Will the GOP Need Life Support?](#) [Salon.com](#), March 31, 2005.
- \* [The Next Bubba? Tennessee's Gov. Phil Bredesen may be presidential material—unless fellow Democrats stop him.](#) *Wall Street Journal*, Feb. 13, 2005. Don't blame me for the title, as I didn't write it — Bredesen's no Bubba, as everyone who knows him realizes!
- \* [Back to the Baroque](#), *The Weekly Standard*, December 6, 2004.
- \* [Time for a Kofi Break](#), [OpinionJournal.com](#) (originally published in the *Wall Street Journal*) December 5, 2004.
- \* [Pressed Into Place](#), *The Guardian*, November 3, 2004.
- \* [For a Decisive Victory](#), *The Guardian*, November 2, 2004.
- \* [Explaining the "Anglosphere,"](#) *The Guardian*, October 28, 2004.
- \* [George W. Kerry?](#) *The Guardian*, October 21, 2004.
- \* [God Forbid, A Success Story](#), *The Guardian*, October 14, 2004.
- \* [Loose Definitions](#), *The Guardian*, October 7, 2004.
- \* [Songs About the Southland](#), *The Guardian*, Sept. 30, 2004.
- \* [Godzilla vs. the Blogosphere](#), [OpinionJournal.com](#) (originally published in the *Wall Street Journal*) Sept. 4, 2004.
- \* [The Science of the Small](#), *Legal Affairs*, July-Aug. 2003.
- \* [Gun by Gun](#), *Legal Affairs*, May-June 2002.
- \* [Keeping Ms. Leggett Quiet: The Book the Justice Department Doesn't Want You to Read](#), [OpinionJournal.com](#) (originally published in the *Wall Street Journal*) April 25, 2002.
- \* [Community by the Book](#), *Wall Street Journal*, December 28, 2001.
- \* [Whose Right on Bearing Arms? Second Amendment Means What It Says](#) *Boston Globe*, November 25, 2001. (A colloquy with Jack Rakove of Stanford; read his piece [here](#)). (These links probably won't last — *Globe* links tend to be temporary — so this piece is also below).
- \* [Opening Argument](#) (Review of Larry Lessig's *The Future of Ideas: The Fate of the Commons in a Connected World*), *Washington Post*, November 18, 2001.
- \* [A Right of the People: The Meaning of the Emerson Decision](#), *National Review Online*, October 25, 2001 (with Dave Kopel).
- \* [Up With the People](#), *National Review Online*, October 10-11, 2001 (with Dave Kopel) (reviewing NBC's miniseries *Uprising*, about the Warsaw Ghetto revolt).
- \* [Gun Control Book Based on Faulty Data](#), *FoxNews.Com*, October 10, 2001.
- \* [Don't Sacrifice Freedom](#), *FoxNews.Com*, September 15, 2001.
- \* [Another Bad Treaty](#), *National Review Online*, September 6, 2001 (with Dave Kopel).
- \* [Political Science](#), *National Review Online*, August 29, 2001 (with Dave Kopel).
- \* [Persecuting Jenna, and Ourselves](#), *National Review Online*, June 5, 2001 (with Dave Kopel).
- \* [One Trigger-happy Attorney](#), *National Review Online*, April 30, 2001 (with Dave Kopel).
- \* [Should Cloning be Legal? It's Not a Federal Question](#), *National Review Online*, April 16, 2001 (with Dave Kopel).
- \* [Techno Worries Miss the Target](#), *IntellectualCapital.Com*, June 8, 2000.
- \* [Satellite Pics Are Free Speech](#), *Space.Com*, March 27, 2000.

*The New York Sun*, April 16, 2002

### Whizzer's Legacy

Glenn Harlan Reynolds

☞The milk of human kindness. ☞a well-known federal judge once remarked to me, ☞does not flow through Whizzer's veins. ☞He meant this (mostly) as a compliment.

Byron ☞Whizzer☞ White served as an Associate Justice of the United States Supreme Court at a time when compassion, as personified by judges like his colleague William J. Brennan, Jr. and federal appeals judges like J. Skelly Wright, was regarded as the cardinal virtue of the bench. But, as befitted a man who was once the highest-paid professional football player in the nation, White favored a more strenuous approach.

Like his colleague John Marshall Harlan, White was a kind of liberal, but he was a liberal of a species now nearly extinct, a species for whom compassion was only one ☞ and not necessarily the foremost one ☞ among many values. With Harlan, White voted to strike down the Connecticut anti-birth-control law in *Griswold v. Connecticut*. But, also like Harlan, he wrote separately to express a more modest rationale for the decision. For White, unlike the majority, the biggest problem with the law was not that it infringed a fundamental right of privacy ☞ it was that it did not make sense. The State of Connecticut claimed that its law against birth control was intended to prevent premarital and extramarital sex, but the statute, and its enforcement, did something else entirely.

☞I wholly fail to see, ☞he wrote, ☞how the ban on the use of contraceptives by married couples in any way reinforces the State's ban on illicit sexual relationships. . . . [The statute] has been quite obviously ineffective, and [its] most serious use has been against birth-control clinics rendering advice to married, rather than unmarried, persons. ☞ In short, White found, the law violated something as important as privacy ☞ the right to expect a law (and the arguments made in court supporting the law) to make sense. If the State of Connecticut had a legitimate government purpose for enacting the birth-control statute, then it had done a particularly bad job because the law simply didn't serve the purposes it was claimed to.

Though critics of the majority opinion in *Griswold* often call the right of privacy it recognized radical, White was in fact calling for something far more radical than a new individual right. White's hardheadedness made him hard to pigeonhole: he voted with the liberals on (most) civil rights matters, and with the conservatives on (most) criminal matters.

But his approach was in many ways a foreshadowing of what was to come. In the 1996 case of *Romer v. Evans*, for example, the Supreme Court struck down an anti-gay-rights provision adopted in a Colorado referendum. The majority's reasoning was that the provision ☞ which barred localities from adopting gay-rights ordinances ☞ failed ☞rational basis☞ review because the Court could identify no legitimate governmental purpose behind it. Instead, the Court held, the provision was motivated by a ☞bare desire to harm an unpopular group.☞

Although ☞rational basis☞ analysis was long taught in law schools as being synonymous with ☞the law will be upheld,☞ White was long a champion of a more rigorous approach. The *Romer* decision is a fitting example of White's legacy for another reason, too: it was criticized from both left and right. The left didn't like it because it contained no ringing affirmation of gay rights. The right didn't like it because it was insufficiently deferential to the state.

It may seem odd to link White's legacy to a gay-rights case, given that his most unpopular opinion was probably the majority opinion he authored in the 1986 case of *Bowers v. Hardwick*. The *Bowers* case involved the constitutionality of a Georgia law making homosexual (and, actually, heterosexual) sodomy a felony punishable by up to twenty years imprisonment. White's majority opinion upheld the law, finding no ☞fundamental right☞ of homosexuals to engage in sodomy.

White's opinion was, in my own opinion, wrong. Under the logic of *Griswold* and *Romer*, the Georgia law is irrational though since, despite the disingenuous claims of Georgia's counsel at oral argument, it applied to heterosexuals and homosexuals alike, it was at least nondiscriminatory.

But though White may have been unable to bring himself to follow his own lead in *Bowers*, the courts of many states including Georgia have since struck down their sodomy laws on precisely the ground that they are irrational, and fail to advance a legitimate governmental purpose. In court after court, judges have examined the various justifications offered for laws banning homosexual sodomy (for example, that homosexual relationships can't lead to children) and concluded that they didn't make sense (after all, we allow heterosexuals who are sterile, or too old to reproduce, to have sex). White's methodology, it turns out, may have had more impact than the opinion he authored.

What's more, this principle is spilling over from traditionally liberal subjects like gay rights to those generally regarded as conservative. We see even economic regulations once almost immune from judicial scrutiny being examined in terms of rational basis and governmental legitimacy today. Just recently, for example, the *Institute for Justice* persuaded a court in my home state of Tennessee to strike down a law banning the sale of caskets by anyone other than a licensed funeral director, even though independent sellers could offer the same caskets at a fraction of the price. The state's asserted justifications, it was found, were irrational: no one ever protected a consumer by keeping markups at four hundred to six hundred percent.

The principle that laws should make sense is, in fact, a radical one. While it has a long way to go before it has occupied the field, it has made great strides since Justice White began championing it. Like White himself, it will produce decisions that sometimes look conservative and sometimes look liberal. But it is really a species of muscular skepticism that like White himself is not made for ideological pigeonholes.

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Wall Street Journal, December 28, 2001

### **Of Capitalism and Third Places**

Glenn Harlan Reynolds

Senators have hideaway offices, and so do I. There are scattered in various nooks and crannies around the Capitol. Mine is at the local Borders. There are more prestigious, but mine has better coffee.

I have an office with a nice computer, and I have a study at home with a nicer computer. But I often pack up my laptop, or a book that I'm reading, or student papers to grade, and relocate to this third place: somewhere more congenial than the office, less isolated than home.

Others must feel the same way, because when I'm there I find myself surrounded by people of all sorts. On a typical day there will be two or three with laptops intently writing, well, something. There will be tables full of high-school or college students, alternately studying and flirting, a home-schooling parent drilling a child on Babylonian history, one or two road-warrior salespeople catching up on scheduling and messages, a clique of bible-studiers arguing about Job, and a leather-clad cyberpunk-looking youth sitting with his more conventional mother. By now, I know all the regulars by sight, and many by name. We keep up on each other's lives in a casual sort of way.

This third place, of course, is the Third Place that sociologist Ray Oldenburg called essential to civilization in his 1989 book, *The Great Good Place*. The third place had several characteristics: it had to be free or inexpensive, offer food and drink, be accessible, draw enough people to feel social, and foster easy conversation. Another characteristic that Oldenburg identified was that such places were disappearing.

In 1989, they were. In 2001, they're not and you can thank the much-maligned chain book superstores for this. Certainly when I moved to my upscale Knoxville suburb in 1989, there weren't many such places. Nor had there been many in Washington, D.C., where I came from: the *Afterwords* cafe at *Kramerbooks* was the closest thing, but it didn't really fill the bill. When I lived in New Haven, the famous *Atticus* books was like a poor man's Borders without public restrooms. (They've since added them, in the face of competition from the palatial *Barnes & Noble*—operated Yale Co-op down the street).

Now, within about a mile of each other, are three big bookstore/cafe complexes: *Borders*, *Barnes & Noble*, and *Books-a-Million*. All seem to be doing well.

They're doing well because they've identified a need, and they're meeting it. You'd think that this would make a lot of people happy and of course, it does, as I can tell just by looking around. But you'd think it would make more than just the customers happy; you'd think that it would please the people who are always worrying about America's need for community.

In that, however, you would mostly be mistaken. While hostility toward book superstores has receded from its late-90s peak, it is still very real. Independent bookstores, we are told, are genuine; chain bookstores are all about marketing. Chain bookstores are bad for small presses, bad for communities, and as Carol Anne Douglas writes in *Off Our Backs* bad for feminists, whose books apparently can only be bought at feminist bookstores.

I don't know about the feminists, but small press sales appear to be up thanks to chain bookstores' larger selection of titles. Communities are surely benefitting from the introduction of pleasant third places where such didn't exist before. And what's more, with the exception of a handful of independents, chain bookstores are better at being third places.

That's because independent bookstores have traditionally been run by people who like books. Those people generally aren't interested in offering the other amenities that Oldenburg calls important and that superstores offer, like coffee shops, comfy chairs, and live music performances. At many independent bookstores, they like books better than people, and want you to know it—the bookish version of the music geeks in the movie *High Fidelity*. The chains, however, aren't in business for personal gratification. They just want to keep customers coming back. Want coffee? Got it! Want a triple mocha latte, and handmade fresh salads from the *Tomato Head* restaurant downtown? Got it! And, interestingly, the extra traffic that these amenities produce means that chain stores typically can afford a better selection of books than the independents, too, which is why small presses are benefitting right along with latte-lovers.

Well, no surprise there. That's what capitalism is all about. Funny that it's a dirty word to some people.

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The Boston Globe, November 25, 2001

### **Ashcroft and the Second Amendment**

Glenn Harlan Reynolds

The Attorney General was asked a question at a Congressional hearing: "What in your opinion would be the constitutionality of a provision added to this bill which would require registration [of firearms]?" His answer: "I am afraid it would be unconstitutional."

The year is not 2001, but 1934, and the Attorney General is not John Ashcroft, but Homer Cummings. Cummings was hardly the first to think there were constitutional barriers to gun control. Throughout the nineteenth century, leading scholars like Thomas Cooley, Joseph Story, and St. George Tucker had found the Second Amendment protected an individual right to arms against federal interference. Congress agreed: the 1866 *Freedmen's Bureau Act* provided that "the constitutional right to bear arms, shall be secured to and enjoyed by all the citizens."

Leading modern scholars of constitutional law agree. Laurence Tribe of Harvard has written that the Second Amendment protects an individual right. So have William Van Alstyne of Duke, Eugene Volokh of UCLA, Randy Barnett of Boston University, and many others. They also agree with Ashcroft's statement that this right does not bar reasonable regulations aimed at preventing crime, rather than disarming honest citizens.

The twentieth century Congress agreed with its nineteenth century counterpart: the 1986 *Firearms Owners' Protection Act* found that "the rights of citizens to keep and bear arms under the second amendment to the United States Constitution" required additional legislation for their protection. An accompanying Senate Judiciary Committee report on the Second Amendment stated that "what is protected is an individual right of a private citizen to own and carry firearms in a peaceful manner." And in several cases some quite recent the Supreme Court has,

though admittedly in dictum, lumped the right to arms together with clearly personal rights like free speech.

Despite this, Attorney General John Ashcroft's recent statement that the Second Amendment protects an individual right was treated as a lurching departure from settled law by some. Yet Ashcroft's interpretation sits rather comfortably with the mass of opinion from other branches.

The chief opposition to the individual-rights view comes from gun-control advocacy groups. I've never quite understood why gun-control groups have felt it necessary to adopt an absolutist no-right-to-bear-arms position, when it is clear that the individual right view leaves room for reasonable regulation, so long as that regulation is really about preventing criminals from getting guns, not disarming ordinary citizens. (I myself have written that gun registration wouldn't violate the Second Amendment). But such absolutism is one of the dynamics of our ongoing culture war, on the left as much as on the right.

Some critics of Ashcroft's view have claimed that it conflicts with *United States v. Miller*, the 1939 Supreme Court case that is its only opinion directly addressing a Second Amendment argument in the past hundred years. *Miller*, we are told, makes clear that the Second Amendment only protects the National Guard. There are two major problems with this argument. One is that *Miller* never mentions the National Guard. The other is that the only action actually taken in *Miller* was to remand the case back to the District Court (which had previously held the National Firearms Act unconstitutional on Second Amendment grounds) for factfinding on the issue of whether a sawed-off shotgun was the kind of weapon the Second Amendment protects. Whatever *Miller* did, it did not endorse the "National Guard" theory.

The lower federal courts are a different story. The lower courts' resistance to the individual-rights view has, at least until recently, been widespread, and those criticizing Ashcroft's position have been quick to point to these decisions as evidence that Ashcroft is somehow off the reservation. Yet on closer examination, the lower courts' opinions are less persuasive. In a recent article, Professor Brannon Denning of Southern Illinois University Law School analyzed all the lower court decisions on the Second Amendment, and concluded that, "lower courts have strayed . . . from the Court's original holding to the point of being intellectually dishonest." Many lower courts in fact have endorsed the National Guard theory. Of course, many of them also claim that *Miller* did the same, which it clearly did not, and to read these opinions in series is to see lower courts progressively and unashamedly moving the goalposts in order to ensure that regardless of the arguments offered by counsel no one could possibly succeed in a Second Amendment challenge. This line of cases is no great testament to the rule of law. The U.S. Court of Appeals for the Fifth Circuit agreed with this last month when it essentially adopted Professor Denning's criticism of other lower court decisions and held that the Second Amendment does in fact protect an individual right. In response to this decision, Michael Barone noted that "It will now be very hard for any intellectually honest judge to rule that the Second Amendment means nothing."

On analysis, therefore, it appears to be the lower federal courts (except, now, for the Fifth Circuit) who are out of the mainstream on this issue. So are the gun-control groups who so vigorously invoke the lower courts' opinions to deny any possibility that the Second Amendment (which is, after all, one-tenth of the Bill of Rights) does anything so uncouth as to create an enforceable constitutional right.

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[Print Page](#)

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