

## THE SECOND AMENDMENT RIGHT TO KEEP AND BEAR ARMS EMBRACES A PROPERTY INTEREST IN FIREARMS

The **Second Amendment** is the cornerstone of America's rights and liberties. This, we know. But, tucked away in **the Second Amendment right to keep and bear arms** is another right. It is the right to own property. Its place in and impact on **the Second Amendment** are rarely, if ever, mentioned.

State laws that deny your right to keep and bear arms also deny your ownership right and interest in your firearms. Let's look at a couple of examples.

Many States utilize licensing schemes to control and restrict civilian access to firearms. Government licensing of firearms is incompatible with the right to keep and bear arms because licensing of firearms is a **condition precedent** to possession. That means a **license to keep and bear arms is nothing more than a privilege to keep and bear arms** since possession of firearms is contingent on the government's willingness to grant a license at all. **The right is forsaken through licensing. But more is lost.**

Once a government revokes the license to possess firearms, as it can since it granted the license in the first place, the owner loses his property. You may have spent thousands of dollars on your firearms. No matter. Your dollar investment is forfeited, along with your firearms. So, a government's **abrogation of the Second Amendment** guarantee entails the **denigration of your private property right and interest in your firearms. If you lose your license, you lose your firearms.** Two basic rights are lost, then, not one. The two go hand-in-hand.

States that utilize firearms licensing schemes employ firearms' transfer schemes too. Suppose you, as a law-abiding citizen, lawfully acquired your firearms: through bequest, gift, or commercial transaction. **The firearms belong to you. You have full and complete title to and control over them, and exclusive and absolute right in them.** That's what it means to have a private property interest in your firearms.

Now, suppose you wish to bequeath your firearms to your son, or daughter. **Laws that interfere with your ability to transfer your firearms as you wish inhibit your enjoyment of them because you are unable to exercise complete dominion over them.** This amounts to an unconstitutional taking of them without due process.

So, the right to keep and bear arms and the right to acquire, own, and hold them perpetually, or transfer them, operate in tandem. Moreover, **they are both natural rights.** **The Second Amendment** merely codifies a preexisting right. Since government cannot

rationality bestow a right that already exists within you, government cannot lawfully take that right from you.

The preexisting right to acquire, own, and hold property isn't codified in the **Second Amendment**, but it is codified in the **Due Process Clause** and in the **Takings Clause** of the **Fifth Amendment** to the U.S. Constitution.

The **Fifth Amendment** says in critical part: "No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." The **private property interest** is, arguably, also one of the unenumerated rights of the catchall **Ninth Amendment**. It is intrinsic to the **Fourth Amendment** and it even implicates the **Third Amendment**, as well as the **Second Amendment**.

The **Due Process Clause** and **Takings Clause** of the **Fifth Amendment** operate as constraints on the federal government. The **Due Process Clause** of the **Fifth Amendment** is mirrored in the **Due Process Clause** of the **Fourteenth Amendment** and applies to the States. The **Takings Clause** of the **Fifth Amendment** has no correlate in the **Fourteenth Amendment** but it applies to the States through operation of law as does the **Second Amendment**.

Your **right to keep and bear arms** means precisely that you have the inalienable right to acquire and own and hold indefinitely, or transfer without government interference, those arms you bear and keep. The **private property right and interest** in your firearms must, then, be regarded as a tacit part of the **Second Amendment's** guarantee. This surely is as the Founders of the Republic intended. The firearms you have a right to bear and keep are your private property, not the State's. You have full and complete title to them, absolute control over them, and exclusive rights in them. To denigrate a person's ownership interest in his firearms is to abrogate the **Second Amendment** right to bear and keep them.

So, in defending our **Second Amendment right to keep and bear arms** we must never lose sight of the equally important **private property interest** inherent in and coextensive with that **Second Amendment** right.