

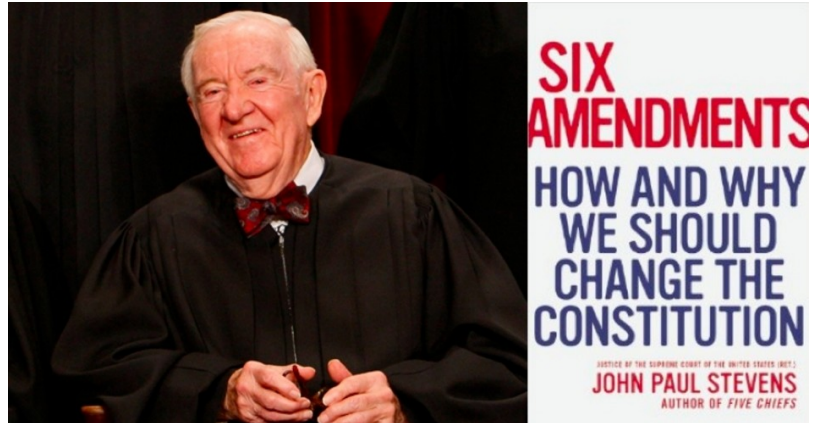


Written by [Joe Wolverton, II, J.D.](#) on March 1, 2014

Former Sup. Ct. Justice Stevens Wants to Clarify Second Amendment

Former Supreme Court Justice John Paul Stevens believes the Second Amendment should be amended.

In order to clear up what one commentator calls the “exquisitely awkward 18th century syntax,” Stevens proposes adding five words to the present version of the Second Amendment. Stevens’ revised Second Amendment would read:



A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms when serving in the militia shall not be infringed.

In his newest book, *Six Amendments: How and Why We Should Change the Constitution*, Stevens offers the following defense of his proposed change:

Emotional claims that the right to possess deadly weapons is so important that it is protected by the federal Constitution distort intelligent debate about the wisdom of particular aspects of proposed legislation designed to minimize the slaughter caused by the prevalence of guns in private hands.

Slaughter caused by the prevalence of guns in private hands? The fact is that it is governments, not civilians, that have been responsible for the killing of over 300 million people in the 20th century alone. Stevens’ proposal not only would allow regimes to retain access to their weapons, but would leave private citizens powerless to oppose future slaughters.

An irrefutable fact of armed violence unaddressed by the former Supreme Court justice in his haste to confiscate our arms is that all the murders committed by all the private individuals in history don’t amount to a fraction of the brutal killings committed by “legitimate governments” using the very weapons over which they alone would exercise absolute control under Stevens’ version of the Second Amendment.

So, not only would Stevens’ new Second Amendment substitute a a privilege granted by government for a right given by God, but it would substitute his wisdom for that of our Founding Fathers. Sounds like a risky exchange.

Stevens makes another mistake in his draft of a new Second Amendment: that of underestimating the role and nature of the “state militia” as understood by our Founding Fathers at the time the Second Amendment was ratified.

George Washington understood better than any of his contemporaries that a well-trained but otherwise ad hoc army composed of state militias could prove itself powerful enough to defeat the invading forces



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of a mighty empire. General Washington recognized the urgent need for a disciplined, organized, and independent state militia.

As the continental commander-in-chief, Washington knew very well that training an army of citizen soldiers — many of whom used their muskets for little more than hunting — was crucial to restoring the freedom of America. In fact, it was the need for a more well-regulated force that compelled Washington to hire the Prussian officer Friedrich von Steuben to drill the soldiers of the Continental Army. Washington's experience in the War for Independence likely inspired this quote, as well:

A free people ought not only to be armed and disciplined, but they should have sufficient arms and ammunition to maintain a status of independence from any who might attempt to abuse them, which would include their own government.

Most states have forgotten the historical role of state militias in the defense of freedom. They have failed to maintain an armed and disciplined militia capable of maintaining (or regaining) independence from tyrants.

There is something else unconstitutional about Stevens' offering that offends the Constitution, as well: Congress is under a positive, constitutional obligation to organize, arm, and discipline these state armed forces.

In his book [The Sword and Sovereignty](#), historian and constitutional attorney Dr. Edwin Vieira explains with a preponderance of historical evidence that Congress has a duty to make sure that each state has a militia capable of defending the rights that "we, the people" possess. This obligation extends to "Members of Congress as individuals, and Congress as an institution." All of whom "must labor under the correlative 'duty' to see to it that a 'well regulated Militia' — properly 'organiz[ed], arm[ed], and disciplin[ed]' — shall actually exist at all times in every State."

Vieira explains that "the term '[a] well regulated Militia,' which the Second Amendment declares to be 'necessary to the security of a free State,' must have had a most definite meaning known to all among WE THE PEOPLE at the time the Bill of Rights was ratified — and a meaning which THE PEOPLE expected could not change absent an Amendment of the Constitution." (Emphasis in original.)

Undoubtedly much to John Paul Stevens' chagrin, the definition of a constitutionally qualifying militia would all but gut the powerful disarmament of civilians he intended it to be.

Dr. Vieira provides these historical and legal references:

Even before the idea of the Constitution entered anyone's head, "the Militia of the several States" (or, earlier, the Militia of the several American Colonies, with the partial, peculiar, and in any event not permanent exception of Pennsylvania²⁶²) were established and maintained pursuant to statutes enacted throughout the 1600s and 1700s. In those Colonies and then all of the independent States, operations aimed at organizing, arming, and disciplining these Militia were conducted pursuant to these statutes. In those Colonies and States, the vast majority of the able-bodied adult free male inhabitants (other than conscientious objectors) personally possessed firearms, because those statutes imposed upon them a duty to keep and bear arms. And as a consequence of all this, throughout America in the pre-constitutional era existed "well regulated Militia"—the products of statutes which Americans had believed were so effective in achieving their ends that they had enacted them and reenacted them and reenacted them yet again, in form and substance, decade after decade and generation after generation.



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With this historical perspective in mind, Stevens' Second Amendment would still allow most men to own weapons, a loophole he surely would want closed.

Our Founding Fathers knew, from sad personal experience with the oppression of tyrants, that the right to keep and bear arms was the right that protects all the other rights.

Founding-era jurist St. George Tucker wrote:

This may be considered as the true palladium of liberty.... The right of self defence [sic] is the first law of nature: in most governments it has been the study of rulers to confine this right within the narrowest limits possible. Wherever standing armies are kept up, and the right of the people to keep and bear arms is, under any colour [sic] or pretext whatsoever, prohibited, liberty, if not already annihilated, is on the brink of destruction.

Later, in commenting on the Constitution in 1833, Joseph Story wrote:

The right of the citizens to keep and bear arms has justly been considered, as the palladium of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them.

One [commentator](#) noted that regardless of how right or wrong his ideas are, Stevens has a hard row to hoe in order to disarm Americans:

As a practical matter, the Stevens amendment of the Second Amendment is DOA in any discussion of gun policy in the foreseeable future. He must know that. He also must know that just as constitutional interpretations evolve, so do political and cultural ideas. For better or worse, guns have acquired a symbolic meaning in modern American society to which Stevens, for all his erudition, gives short shrift.

John Paul Stevens' rewriting of the Second Amendment is another attempt by those who have held and do hold office in the federal government to impose new and increasingly dictatorial restrictions on the right that protects the enjoyment of all the other fundamental God-given rights that were once the inheritance of all Americans.

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Photo of Justice John Paul Stevens: AP Images



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