Written by **Joe Wolverton, II, J.D.** on December 26, 2015

Illinois Resolution Seeks Seizure of Privately Owned Weapons

A resolution recently introduced in the Illinois state legislature threatens the natural and fundamental right of citizens of that state to keep and bear arms.

The non-binding measure — House Resolution 855 — would urge "the courts, especially the U.S. Supreme Court, to adhere to the clear wording of the Second Amendment being a right afforded to state sponsored militias and not individuals."

The text of the proposal recites a section of the dissent by Justice John Paul Stevens to the *District of Columbia v. Heller* ruling handed down by the Supreme Court in 2008:

> The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia. It was a response to concerns raised during ratification of the Constitution that the power of Congress to disarm the state militias and create a national standing army posed an intolerable threat to the sovereignty of the several States.
>
> Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature's authority to regulate private civilian uses of firearms. Specifically, there is no indication that the Framers of the Amendment intended to enshrine the common-law right of self-defense in the Constitution.

The author of the Illinois resolution has built his measure on the weakest foundation: a misstatement of the Founders' intent regarding the Second Amendment, its application to individuals, its support of self-defense, and the role of the militia.

First, with regard to the enshrinement of the right of self-defense in the text of the Second Amendment, Justice Stevens must not have read much of the writings of the leading men of the Founding Era.

Take these few examples:

In his commentary on the works of the influential jurist Blackstone, Founding-era legal scholar St. George Tucker wrote:

> This may be considered as the true palladium of liberty.... The right of self defence 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 or pretext whatsoever, prohibited, liberty, if not already annihilated, is on the brink of destruction.

Writing in *The Federalist*, Alexander Hamilton explained:

> If the representatives of the people betray their constituents, there is then no resource left but in the exertion of that original right of self-defense which is paramount to all positive forms of government, and which against the usurpations of the national rulers, may be exerted with

> infinitely better prospect of success than against those of the rulers of an individual state.

And finally, this from the Declaration of Rights included in the Pennsylvania state constitution of 1776:

"That the people have a right to bear arms for the defence of themselves and the state…."

In light of the foregoing, it is irresponsible for a sitting justice on the U.S. Supreme Court to ignore the clear and convincing evidence that the men of the Founding Era considered the natural right of self-defense to be one of the primary purposes, if not the primary one, of the protections included in the Second Amendment's guarantee of the right to keep and bear arms.

Next, the author of the Illinois resolution assumes (incorrectly) that the word "militia" as used in the text of the Second Amendment applies to the National Guard and the Reserves. There is no evidence to support this assumption.

In fact, the words of the Founders once again prove that the proposition soon to be considered in Illinois with regard to the Second Amendment's use of the word "militia" is full of historical flaws and unsupported suppositions.

In his book *The Sword and Sovereignty*, Dr. Edwin 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.]

What, then, is a constitutionally qualifying militia?

Vieira provides historical and legal references that clear up any remaining controversy on the subject:

> 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 Pennsylvania) 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.

T.J. Martinell echoed Vieira's explanations in an article penned on December 22 for the Second Amendment advocacy group, ShallNot.org:

> "Well regulated" had nothing to do with government regulations of what weapons they could use. Zacharia Johnson, a delegate to the Virginia Ratifying Convention, declared that "The people are not to be disarmed of their weapons. They are left in full possession of them." And then there's George Mason, considered the father of the first ten amendments to the Constitution, who defined the militia as "the whole people, except for a few public officials."

"The whole people," not people in a militia that is "state sponsored" as required by the proposed Illinois

resolution.

The third significant flaw in the Illinois disarmament resolution is the assumption that the Second Amendment allows any restriction on the right of anyone to keep or bear a firearm.

As readers are aware, the Second Amendment imposes on the federal government an unqualified proscription on constriction of the right to keep and bear arms. The Second Amendment reads: "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."

The phrase that pays: *shall not be infringed*. That means "shall not," not "shall not unless a gun is used in a high-profile crime," or "shall not unless the president issues an executive order infringing upon it," or "shall not unless the weapon is made out of plastic."

Despite what many pundits, journalists, and activists — even those considered "conservative" — would have Americans believe, there is no "reasonable" exception to the "shall not be infringed" phrase. Our Founding Fathers understood this very well. They 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*.

Finally, while it is true that our Founders never intended for the Second Amendment to apply to the states, the state constitution of Illinois contains language similar to that of the Second Amendment and provides a legal barricade high enough to block enforcement of the proposed resolution.

Section 22 of the Illinois state constitution mandates, "Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed."

Citizens of Illinois and her sister states are encouraged to check the progress of those who would see control of all weapons consolidated in the hands of the federal government and the state and national armed forces it controls.

This is most easily and effectively accomplished by promoting state legislation specifically and explicitly protecting the God-given right of all men to own and use weapons in the defense of themselves and their liberty.