



## Gun license 'tramples' the Constitution? Give us a break

By: Dan Rodricks – February 6, 2013

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**T**he state of Maryland requires me to get a license to go fishing in the Patapsco River or crabbing off Booby Point or hunting at Elk Neck.

To drive a car, I am required to have a license — and the first time, I needed to pass a test to get one.

I must register with my local board of elections to vote.

But requiring me to get a license to purchase a gun is asking too much?

Requiring me to undergo a background check, provide my fingerprints and take a gun-safety course would "trample on" my Second Amendment rights?

Give me a break, Mike Miller.

The president of the Maryland Senate, a Democrat more in name than in ideology, has served in the General Assembly since 1971, and has been Senate president since 1987, longer than any of his predecessors.

When you become an elder of the political class, it's possible to lose touch with whatever idealism motivated you to serve in the first place. You wind up just watching the clock and negotiating votes based on some two-bit political realism.

Or maybe you just say and do stuff because it keeps your name in the papers as much as the governor's.

The governor, a fellow Democrat two decades Miller's junior, has big ideas about actually doing something to get guns under control. Sickened by the killings in Newtown, Conn., Martin O'Malley proposed an array of new regulations on firearms, one of which would require people who want to buy a gun to get a license.

Miller's reaction? Can't do that. It would "trample on" our Second Amendment right to bear arms. And he used the word "confiscation" when speaking to a reporter recently, suggesting that

O'Malley's proposals would seize guns from law-abiding Marylanders. Miller knows there's nothing like that in the works.

In fact, just the opposite — the idea is to keep guns out of the hands of people who shouldn't have them under the laws already in place.

Nonetheless, there's apparently a split among Democrats in Annapolis over O'Malley's license proposal, and Miller, who has a tendency to find himself on the wrong side of history — he voted against same-sex marriage and lost that battle — also finds himself on the wrong side of the constitution.

Doug Gansler, the attorney general, already has provided an opinion on O'Malley's gun proposals, saying they're most likely constitutional.

Despite what gun-rights advocates say about the Second Amendment and the right to bear arms, nothing about it is absolute — that is, unlimited.

"There is no right in the Constitution, not one, that is absolute and immune to regulation," says Garrett Epps, constitutional scholar and author who teaches at the University of Baltimore School of Law. "Those who contend otherwise are gravely misreading or, worse, misrepresenting the historical record.

"There's no evidence in the historical materials or the cases that licensing, if not arbitrary, is a violation of the Second Amendment."

Epps points to *District of Columbia v. Heller*, the important 2008 Supreme Court decision that upheld the right of an individual to keep a loaded handgun in the home for self-defense. *Heller* was a big victory for gun-rights advocates, the Cato Institute and the National Rifle Association. The ruling struck down the District's ban on handguns.

But the case did not challenge the District's license requirement. The real issue was the local government's authority to keep Dick Heller, a security guard, from getting a handgun.

"The Court explicitly said that its opinion did not address a challenge to licensing laws per se, but instead the challenge to the denial of a license," Epps explains. "The result of the case was an order to the District to issue a license."

One of the gun lobby's favorite Supreme Court justices, Antonin Scalia, wrote the majority opinion in *Heller*. "Like most rights," Scalia declared, "the right secured by the Second Amendment is not unlimited."

The right of citizens to vote is mentioned four times in the Constitution, Epps says. And his peer across town — Mark Graber, associate dean and professor in constitutional law at the University of Maryland School of Law — points out that even that right is regulated.

"In some states, if you're a felon you can't vote," Graber says. "No one has the right to vote more than once. You have to register to vote ..."

And guns are special; they are lethal weapons. It's in the public interest to regulate them so that the "constitutionally ineligible" — criminals and people with histories of mental illness, for

instance — do not get them. It's also important to know who owns them so they can be tracked if lost or stolen, Graber says.

Do guns, therefore, warrant licensing? "It's an easy [constitutional] problem to solve," he says.

Epps, of course, concurs.

So maybe, instead of wasting our time with hackneyed blabber about Second Amendment infringements, Mike Miller could get a quick refresher in the Constitution. He got his law degree from Maryland 45 years ago. I'm sure they'd take care of him over there.