



Second Amendment: What it says about guns, and how Trump and Clinton interpret it

By Nancy Benac

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If there's one thing Republicans and Democrats can agree on when it comes to guns, it's their proclaimed respect for the Second Amendment.

Ah, but then there's the trickier matter of what they think those 27 words mean.

Lawyers, scholars, judges, politicians and ordinary Americans have been puzzling over that question for much of two centuries.

And so it is that Donald Trump and Hillary Clinton can both pledge fealty to the same sentence in the Constitution's Bill of Rights yet still be sharply at odds on gun control.

With the debate over guns flaring yet again after the Orlando shooting, here's a closer look at what the Second Amendment means, where it came from and what the presidential candidates have to say about it.

TWENTY-SEVEN WORDS

The Second Amendment states: "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." It was adopted in 1791.

DEFINITION, PLEASE

You think it's that simple?

"When people say 'Second Amendment rights,' they could mean anything," says Adam Winkler, a UCLA law professor whose scholarship on the Second Amendment has been cited in Supreme Court cases.

The high court has offered at least some help: In a 2008 ruling, it declared for the first time that

Americans have the right to own a handgun for self-defense at home. But Justice Antonin Scalia wrote in the majority opinion that the Second Amendment doesn't allow citizens "to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." That leaves a lot of open questions. What about being armed in public? What about concealed weapons? What about assault-style weapons? What about buying, selling and making guns? What about government regulation of gun ownership?

"People are confused," says Winkler.

THE CANDIDATES' VIEWS

A sampling of the debate between Trump and Clinton since the mass shooting in Orlando:

--Clinton: "We may have our disagreements about gun safety regulations, but we should all be able to agree on a few essential things: If the FBI is watching you for a suspected terrorist link, you shouldn't be able to just go buy a gun with no questions asked. And you shouldn't be able to exploit loopholes and evade criminal background checks by buying online or at a gun show. And yes, if you're too dangerous to get on a plane, you are too dangerous to buy a gun in America.

"Now, I know some will say that assault weapons and background checks are totally separate issues having nothing to do with terrorism. Well, in Orlando and San Bernardino, terrorists used assault weapons, the AR-15. And they used it to kill Americans. That was the same assault weapon used to kill those little children in Sandy Hook. We have to make it harder for people who should not have those weapons of war."

--Trump: Clinton "says the solution is to ban guns. ... Her plan is to disarm law-abiding Americans, abolishing the Second Amendment, and leaving only the bad guys and terrorists with guns. ... She wants to take away American's guns and then admit the very people who want to slaughter us. Let them come into the country, we don't have guns. Let them come in, let them have all the fun they want. I will be meeting with the NRA, which has given me their earliest endorsement in a presidential race, to discuss how to ensure Americans have the means to protect themselves in this age of terror. I will be always defending the Second Amendment."

--Clinton, responding to Trump's criticism: "He said I'll abolish the Second Amendment. Well, that's wrong."

--Trump, a day after Clinton: "By the way, I'm going to save your Second Amendment."

COMMON GROUND

While the Second Amendment remains subject to varying interpretations, there's been an overall shift toward broader acknowledgment it protects an individual right to bear arms.

"If we'd been having this same kind of discussion in 1976, you would have had presidential candidates like Ronald Reagan, saying, 'Yeah, the Second Amendment's a regular individual American right' to bear arms while some Democrats would have been arguing it provided only "a collective right" to bear arms such as in the National Guard, says David Kopel, an associate policy analyst at the libertarian Cato Institute and an adjunct law professor at Denver University.

At the country's founding, there was little thought of using firearms for self-defense, says UCLA's Winkler. Back then, he says, guns just weren't very useful for self-defense because people had to reload after every round.

BIG DIVIDE

The public remains split over what limitations on gun ownership are appropriate. An AP-GfK poll in December found that 50 percent of Americans think that laws limiting gun ownership don't infringe on the public's right to bear arms under the Second Amendment and 46 percent think they do.

At the same time, 58 percent of Americans would favor stricter gun laws, 25 percent want no change and 14 percent say the laws should be looser. Proposals for stronger laws on background checks before people can purchase a gun draw large majority support. But with the NRA opposed to the idea and flexing extraordinary muscle on Capitol Hill, it has been a no-go in Congress.

The 2016 campaign offers an opportunity for voters to consider where the U.S. should place itself on the spectrum of a wide open vs. a constricted reading of the Second Amendment.

On one end there's Clinton, offering herself as the candidate willing to stand up to the gun lobby and arguing that the Orlando shooting shows the need for stronger restrictions on guns. On the other, there's Trump, playing up his NRA endorsement and arguing that if people in the Orlando nightclub had been armed, "you wouldn't have had the tragedy that you had."

Still, there was evidence Wednesday of a potential spot of common ground between the two candidates, with Trump tweeting that he'll be meeting with the NRA to discuss "not allowing people on the terrorist watch list, or the no-fly list, to buy guns."

THE UPSHOT

How will all of this sound and fury affect public opinion -- and understanding -- of the Second Amendment?

Harvard Law scholar Laurence Tribe says it's time for partisans to stop oversimplifying. Supporters of strong gun regulation act as if Supreme Court rulings affirming the right to bear arms were "just aberrations," he says, and opponents act like any regulation is a slippery slope to the day when "Big Brother will be breaking down our doors and taking away all our guns."