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The Second Amendment right to firearms commerce

Last week the *Harvard Law Review* published an on-line symposium about current Second Amendment issues in the lower federal courts. [My essay addressed a question](#) on which a split is developing between the Fourth and Seventh Circuits: does the Second Amendment include the right to engage in firearms commerce, such as by operating a gun store?

Upon close examination, the answer is clearly yes: The American Revolution was caused in part by the British monarchy's efforts to eliminate firearms commerce in America.

The *Heller* decision recognizes a right to engage in firearms commerce; this right is not unlimited, and so the commercial sale of firearms can be subjected to conditions and qualifications, but there is still a right to firearms commerce.

Further, there is no dispute that book stores and book publishers have First Amendment rights, and that abortion providers have Fourteenth Amendment rights. (Whether abortion rights should exist at all is a separate question; under *Roe v. Wade* and its successor cases, the rights of abortion providers are plainly recognized.) It is true that such businesses can assert third-party rights on behalf of their customers, but the more fundamental point is that the businesses have constitutional rights of their own.

[The other three Harvard essays](#) all focus on the Ninth Circuit's *Peruta* case, which upholds the right to bear arms in California. Alan Gura (winner of the *Heller* case) lauds the *Peruta* decision, while Joseph Blocher and Darrell A.H. Miller criticize it.

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