



2A Incrementalism vs All or Nothing: Restoring Second Amendment Rights

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U.S.A. —(AmmoLand.com)- This correspondent has been involved in the struggle to restore Second Amendment rights for more than 50 years. For much of that period, many of those who wanted the Second Amendment to be honored in the United States asked a simple question:

Why doesn't the NRA[or any other pro 2A group] bring a case to the Supreme Court?

- The assumption was the Supreme Court would rule in favor of the clear “*shall not be infringed*” words of the Second Amendment, and all those unconstitutional infringements would go away.
- The assumption was Supreme Court justices were honorable men and women who would do their job to uphold the Constitution.

The assumption was wrong.

So our example group, the NRA, would not bring a case, because the courts had made clear they would not enforce the Constitution. The courts routinely chipped away at Constitutional checks and balances, including the Second Amendment, for decades after the revolution in the courts brought about by Progressives.

The Heller case was not brought by the NRA. It was brought by Robert A. Levy of the Cato Institute, a Libertarian think-tank. They believed the time was finally ripe for a case.

Let me be clear: The policies promoted by “Progressives” were and still are actually regressive. They worked to return us to a period where the government has unlimited power, and a small, powerful, wealthy group rules over everyone else. Still, they call themselves “Progressives”. In a way, it is fitting, as much of their policy is based on the ability to deceive.

The Progressive revolution in the courts was greatly accelerated by the Franklin Delano Roosevelt (FDR) administration. The revolution in the courts was underway in 1932, but the FDR administration made the courts a center of Progressive power. Progressives have been a majority on the Supreme Court for decades. Progressive ideology holds the Constitution has no fixed meaning.

Progressives hold that limitations on government power are bad policy. Progressive ideology holds the ruling elite must shape public opinion to what Progressives want public policy to be.

President Reagan was able to place Justice Scalia, an originalist, to the Supreme Court in 1986, and wishy-washy Kennedy in 1988. President G.W. Bush appointed the stalwart Thomas in 1991. Chief Justice Roberts, who claims to be an originalist, was appointed in 2005. Justice Alito, an originalist, was appointed in 2006. Those five were just enough to overturn the ban on the ownership of handguns in the District of Columbia in *D.C. vs Heller* in 2008. The decision was severely restricted by the insistence of including limitations on the Second Amendment, to obtain the vote of Justice Kennedy, as engineered by Justice Stevens.

From the abajournal.com:

Stevens previously has called for repeal of the Second Amendment or a clarification saying it applies only to people serving in militias.

In the book, Stevens said he had hoped to persuade Justices Anthony M. Kennedy and Clarence Thomas to agree with him that the amendment was intended to prevent the disarmament of state militias. He circulated his dissent emphasizing historical texts supporting his view in hopes it would prove persuasive.

*His only success, he said, was in getting Kennedy to persuade Justice Antonin Scalia to include language limiting the reach of his majority decision in *Heller*.*

Here is the limiting language Justice Stevens claims to have been influential in having inserted, in trade for Justice Kennedy's vote:

Like most rights, the Second Amendment right is not unlimited. It is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose: For example, concealed weapons prohibitions have been upheld under the Amendment or state analogues. The Court's opinion should not be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.

Reliance on the courts to uphold the Second Amendment was futile from 1939 until at least 2006. Even then, the *Heller* Decision barely squeaked past the activist Progressive justices.

Unable to restore Second Amendment rights in the Courts before 2006, Second Amendment supporters turned to the legislative branch. At the Federal level, it was primarily a defensive fight. At the state level, Second Amendment supporters started passing significant legislation in the 1980's.

2A Incrementalism

A major point of disagreement among Second Amendment supporters was how to approach the problem.

One group claimed anything but full and complete recognition of Second Amendment rights was futile and counter-productive. The argument was: any lesser legislation, moving incrementally toward full Second Amendment rights, would only legitimize infringements on those rights. They were/are the “All or Nothing” group. Some called/call themselves “principled”.

The other group of Second Amendment supporters argued Second Amendment rights could be restored bit by bit. Pass legislation first, for a permit system. Keep reforming and improving the permit system. Reduce requirements, reduce fees, reduce “gun-free zones”. Keep on incrementally improving the law, until Second Amendment rights were fully restored. They were/are the “Incrementalists”. In the middle 1990’s it was not clear if either approach would be effective.

Twenty years later, it was clear. Second Amendment Incrementalism worked.

One of the all or nothing group was talented author Claire Wolfe, who made a splash with her book “101 Things to do ‘Til the Revolution” #ad, published in 1999. In 2016, She wrote:

Do I now approve of the “shall issue” permits that laid the groundwork for this? Nope. No way. But even I have to admit that the grassroots “shall issue” ccw movement gave birth to the constitutional carry movement. And constitutional carry is an unreservedly good thing.

Back in the day — those dark old days of seemingly unstoppable federal overreach — I thought we’d have to fight (real “blood in the streets”) to restore our gun rights. Of course, we may yet have to fight to preserve our freedom.

But thanks to the new and expanded gun culture across the land — a culture in part built and normalized by the very activists I doubted — We the People are becoming an ever more formidable power.

Every one of the states which restored Constitutional Carry first adopted a shall-issue concealed carry permit law.

The “principled” or “all or nothing” group has the end goal correctly identified. It is important to keep the goal in mind. It is important to understand the progress which has been made, and how it was made.

It was made incrementally. Part of the incrementalism was to expand the number of people who own guns, who have real potential to become part of the gun culture. Part of the process was/is to teach about the Second Amendment, and what reform should be aiming for.

When this correspondent taught his own concealed carry course in Arizona (*before the law was changed to mandate a standard state lesson plan*), the lesson plan made clear the permit was an infringement on the rights guaranteed by both the U.S. and Arizona Constitutions.

The goal of Constitutional Carry was always in mind and explained in the classroom. The permit was a lesser infringement than the complete ban on concealed carry.

The Second Amendment is a beautiful lodestone to detect which politicians take the Constitution and Bill of Rights seriously, and which do not.

Politicians tend to be accomplished liars. You have to study what they do, not just what they say.

Even voting records can be deliberately misleading. Politicians routinely cite votes which had no real effect, or which were rigged specifically for them to be able to claim to their constituents they had voted the “correct” way, in order to be re-elected.

Most politicians are not particularly interested in principles. They are interested in perks and power and being re-elected. Thus, they can be swayed and persuaded to vote, incrementally, by interested and engaged voters. There are far more interested and engaged Second Amendment supporters than there are those who wish for an unarmed population.

It is important to realize 2A incrementalism, while valuable in itself, has a goal: Full recognition and practical application of the Second Amendment, so that people in the United States can be practically and legally armed as they go about their daily lives; and they can be practically and legally armed so as to prevent tyranny by the governments they have created.

When Alaska became the first state to restore Constitutional Carry in 2003, a Democrat legislator in the state explained how it happened. He said carry legislation kept coming up, year after year. He was sick of it. It was popular. He did not want to deal with it anymore. *Just pass Constitutional Carry, and be done with it.*

Those who insist on the full implementation of Second Amendment rights, immediately, have made valuable contributions. As a practical effect, they show 2A incrementalists to be practical “moderates“.

Those who have had the most practical effect are those who insisted on the ultimate goal, while accepting incremental movement toward the goal.

When Claire Wolf made her statement praising the work of the incrementalists who had restored Constitutional Carry in 2016, eight states had restored Constitutional Carry.

Today there are eighteen states with Constitutional Carry!

Idaho moved from Constitutional Carry for residents only (a dubious Constitutional provision), to Constitutional Carry for all who can legally own guns, a year ago.

Utah and Montana became the latest members of the Constitutional Carry club early in 2021.

It is very likely one or more states will join the club before the end of 2021.

The disagreement between those who preach “all or nothing” and those who practice incrementalism to achieve the goal, will never end. It is regularly seen in reader comments on this correspondent’s articles here on AmmoLand News.

The practical effect is no longer in doubt. 2A Incrementalism works. It has worked wonders in the states. Virtually no one in 1990 would have predicted the almost miraculous results we have seen in restoring Second Amendment rights by 2021.

There are numerous Second Amendment cases in the pipeline to the Supreme Court. Today, there is hope a majority of justices will uphold their oaths of office and honor the Second Amendment.

Every victory in the states for Constitutional Carry improves the odds. Those justices read the papers. They know the state of the law in the States. If they don’t, the amicus briefs on the cases will make sure they do.

Upholding the Second Amendment may no longer seem miraculous.