Born of Tyranny

The Second Amendment in its own words — what the founding generation had just survived, why they wrote "shall not be infringed," and what it means for the states today.

A HISTORY-FIRST CASE FOR THE RIGHT TO KEEP AND BEAR ARMS

CONTENTS

To read the Second Amendment as the founders read it, you must first forget the modern debate entirely and stand where they stood: in the smoke of a war they had just barely won against the most powerful military on earth. The men who drafted "the right of the people to keep and bear Arms, shall not be infringed" were not philosophers idly weighing competing goods. They were survivors. They had watched a distant central government try to disarm a population it intended to rule, and they had picked up their own muskets to stop it. The amendment is not a policy preference dressed in eighteenth-century language. It is a scar — the deliberate, hard-won lesson of people who had learned, at the cost of blood, what happens when a government holds a monopoly on force.

This brief argues that the historical context is not background to the Second Amendment; it *is* the Second Amendment. And it argues something the modern courts have come to agree with: that this history is not merely inspiring but legally decisive. Since the Supreme Court's 2022 decision in *New York State Rifle & Pistol Association v. Bruen*, the constitutionality of a gun law turns on whether it fits the nation's historical tradition of firearms regulation as understood at the founding. The history, in other words, is now the test. So we begin where the founders began — not with abstractions, but with what had just happened to them.

I – THE WOUND THAT MADE THE WORDS

A government that feared an armed people

By the early 1770s, relations between Britain and her American colonies had curdled from grievance into something closer to occupation. After the Boston Tea Party of December 1773, Parliament answered with the Coercive Acts — the "Intolerable Acts," as the colonists called them. The port of Boston was closed. The Massachusetts charter was effectively revoked, bringing the colony under direct military government. General Thomas Gage, commander of British forces in North America, was installed as military governor. To Americans steeped in English history and the writings of the radical Whigs, the pattern was unmistakable and terrifying: a standing army, quartered among a civilian population, answering to a distant executive rather than to the people's own legislature.

The fear of standing armies was perhaps the single most powerful political conviction of the founding generation, and it is impossible to understand the Second Amendment without it. A professional army loyal to the central power was, in their reading of history, the universal instrument of tyranny — the tool by which Caesar, the Stuarts, and Cromwell alike had crushed liberty. The Declaration of Independence would soon catalog exactly this grievance against King George: that he

had “kept among us, in times of peace, Standing Armies without the Consent of our legislatures,” and had “affected to render the Military independent of and superior to the Civil Power.” The counterweight to a standing army, in the whole tradition the founders inherited, was a citizenry that kept and knew how to use its own arms — the militia, meaning not a select corps but, as they repeatedly insisted, the whole body of the people.

There was a deeper memory still, reaching back across the Atlantic. The founders knew that in 1688, the Catholic King James II had tried to disarm his Protestant subjects, and that the English Bill of Rights of 1689 had answered with a guarantee that Protestants “may have Arms for their Defence suitable to their Conditions, and as allowed by Law.” They knew their Blackstone, whose *Commentaries* — the law book of the age — described the right to arms as one of the “auxiliary rights” of the subject, a safeguard for the natural rights of self-defense and resistance “when the sanctions of society and laws are found insufficient to restrain the violence of oppression.” Disarmament, in this tradition, was not an inconvenience. It was the prelude to enslavement. To take a people’s arms was to announce an intention to rule them by force.

II – A DECADE OF DISARMAMENT

The British gun-control program that started a war

This is the part of the story most thoroughly erased from the modern conversation, and it is the most important. The American Revolution did not merely involve disarmament as one grievance among many. It was, in its opening act, a war *about* disarmament — a direct armed response to a sustained British campaign to seize the colonists’ weapons and gunpowder.

The campaign began in earnest on September 1, 1774. Acting on General Gage's orders, roughly 250 British regulars rowed up the Mystic River before dawn and marched to the powder magazine at Quarry Hill in Charlestown, Massachusetts, where they seized the colony's store of gunpowder — some 250 half-barrels — and carted it back to Boston, a detachment also taking two field cannon from nearby Cambridge. The action was, in effect, a gun-control measure: a deliberate move to limit the colonists' capacity to arm themselves. Word of it tore through the countryside, embellished by rumor into reports that the British had opened fire and killed civilians. Within a day, thousands of armed militiamen — by some accounts as many as twenty thousand — were on the roads marching toward Boston. They turned back only when they learned no shooting had occurred. The episode became known as the **Powder Alarm**, and its lesson was seared into both sides: any attempt to seize American arms or powder would be met with armed force.

FIGURE 1 · THE ROAD TO "SHALL NOT BE INFRINGED"

From the first powder seizure to ratification — a generation's experience, in order

Only seventeen years separate the first British powder seizure from the ratification of the Second Amendment. The men who voted to ratify in 1791 were, in many cases, the same men who had marched in 1774 and 1775. The text was written by people for whom government disarmament was living memory.

The Powder Alarm was a rehearsal; the real performance came eight months later. By the spring of 1775, London had made its strategy explicit. The Crown instructed colonial governors to take "the most effectual Measures for arresting, detaining and securing any Gunpowder, or any Sort of Arms or Ammunition" bound for the colonies — an order published in the Virginia Gazette in January 1775, putting every colonist on notice that the government intended to choke off their supply of the means of self-defense. A scramble for powder erupted along the Atlantic seaboard. In December 1774, four hundred New Hampshire patriots had already pre-empted the

British by storming Fort William and Mary and carrying off its powder themselves. The contest was now openly about who would control the guns.

On the night of April 18, 1775, Gage sent his soldiers to Concord to seize the militia's stockpiled arms and powder. Forewarned by riders — among them Paul Revere — the colonists hid the stores and assembled on the Lexington green. The first shots of the American Revolution were fired in defense of the colonists' arms against a government expedition sent to take them. This is not interpretation; it is chronology. **The war for American independence began as armed resistance to gun confiscation.** Whatever else the Second Amendment means, it was written by the winners of that fight, and they wrote it to make sure no future government — including their own — could ever do to the American people what Gage had tried to do at Concord.

III – THE FOUNDERS, IN THEIR OWN WORDS

What they said the right was for

We are not left to guess at their intentions. The founding generation wrote prolifically and plainly about why the people must remain armed, and their words leave little room for the cramped readings that came later. Their concern was overwhelmingly structural and political: an armed populace as the ultimate check against a government turned tyrannical, and the militia — understood as the people themselves — as the alternative to the standing army they so feared.

> *To disarm the people… was the best and most effectual way to enslave them.*
>
> GEORGE MASON, VIRGINIA RATIFYING CONVENTION, JUNE 1788

> *Who are the militia? Are they not ourselves?… The unlimited power of the sword is not in the hands of either the federal or state governments, but… in the hands of the people.*

TENCH COXE, "A PENNSYLVANIAN," 1788

[The advantage of] being armed, which the Americans possess over the people of almost every other nation... the governments [of Europe] are afraid to trust the people with arms.

JAMES MADISON, FEDERALIST NO. 46, 1788

Whenever governments mean to invade the rights and liberties of the people, they always attempt to destroy the militia, in order to raise an army upon their ruins.

REP. ELBRIDGE GERRY, HOUSE DEBATE ON THE AMENDMENT, AUG. 1789

Notice what these voices share. George Mason — the principal author of the Virginia Declaration of Rights and a man who refused to sign the Constitution partly because it lacked a bill of rights — framed disarmament explicitly as the road to enslavement, and reminded his fellow delegates that the militia "consists now of the whole people, except a few public officers." Tench Coxe, writing to explain the proposed amendments to a ratifying public, located the "power of the sword" not in any government but in the people themselves, and called the citizen's arms the "birthright of an American." James Madison — the man who actually drafted the Bill of Rights — argued in Federalist No. 46 that a federal standing army could never overawe a free people, because it would face a vast body of armed citizens attached to their state governments, a barrier he thought no European tyrant could dream of overcoming. And Elbridge Gerry, on the floor of the very Congress that wrote the amendment, stated its purpose with brutal clarity: governments bent on tyranny first destroy the militia.

This is the consistent, mainstream voice of the founding — not a fringe. It is also, crucially, the kind of evidence the modern Supreme Court treats as authoritative. In *District of Columbia v. Heller* (2008) and again in *Bruen* (2022), the Court mined exactly these sources — Blackstone, the English Bill of Rights, the ratification debates,

Coxe, the founding-era dictionaries — to establish the original public meaning of the right. When a state today builds its argument on this record, it is not waxing nostalgic. It is assembling the precise body of evidence the Court has said controls the question.

IV – WHY THE TEXT IS ABSOLUTE

"Shall not be infringed" was a deliberate choice

Against this background, the language of the amendment reads exactly as it was meant to. The First Amendment says Congress "shall make no law" abridging speech. The Second says the right to keep and bear arms "shall not be infringed." This is the vocabulary of prohibition, not permission — the language of a people drawing a line around a power they refused to grant to anyone. They had just lived through what happened when a government claimed that power, and they chose words to slam the door on it.

> *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.*
>
> AMENDMENT II, RATIFIED DECEMBER 15, 1791

Much modern argument fixates on the opening clause about the militia, treating it as a limitation — as if the right belonged only to organized military units. But the founders' own usage forecloses that reading. To them the militia *was* the people: Mason's "whole people," Coxe's "ourselves." The prefatory clause states a purpose — a free state needs an armed citizenry rather than a standing army — while the operative clause secures the means: the right of *the people*, the same "people" who hold the rights of the First and Fourth Amendments, to keep and bear arms. The militia clause

explains why the right matters; it does not shrink who holds it. This is precisely the reading *Heller* adopted, and it is the reading the founding record compels.

It is worth pausing on a point the modern debate often misses entirely, because it answers a common objection in advance. Some argue that the founders could not have meant to protect anything beyond muskets, since modern firearms did not exist. But the founders did not write "the right to keep and bear muskets." They wrote "Arms" — the general category of the personal weapons by which a citizen could defend himself and resist oppression. They themselves lived through a revolution in arms; the rifle was a recent and superior technology to the smoothbore musket, and private citizens owned cannon and the most advanced weapons of the day. The right was written in deliberately general terms, by men who understood that the means of self-defense would change while the principle did not.

V – TWO SHIELDS

Jurisdiction and right, working together

With the history established, the legal architecture of the states' position comes into focus — and it is stronger than the popular version, because it does not rest on a single argument that can be knocked down. It rests on two independent shields, and an opponent must defeat both.

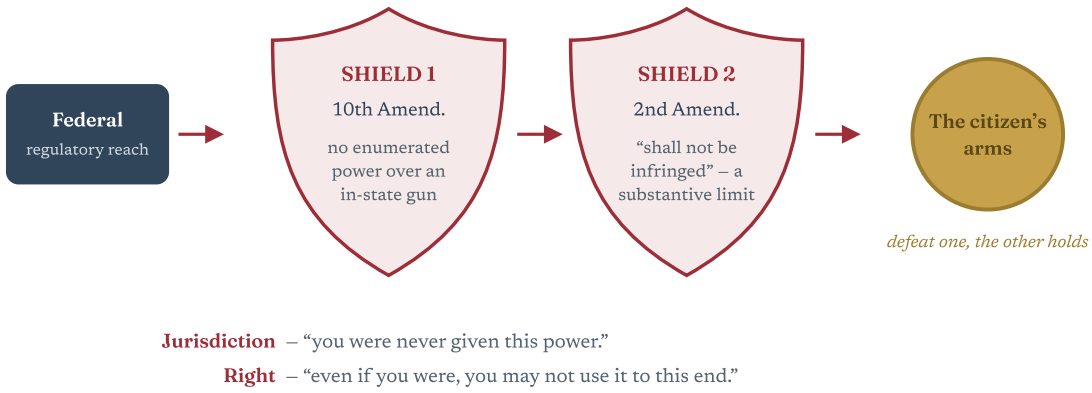
The **first shield is jurisdictional**, and it flows from the structure of the original Constitution. The federal government is one of enumerated powers; its authority to regulate firearms rests almost entirely on the Commerce Clause — the power to regulate commerce "among the several States." When a firearm is manufactured within a single state, sold to a resident of that state, and never crosses a state line, the states' argument is that no interstate commerce has occurred, that no other enumerated power reaches the transaction, and that the Tenth Amendment therefore

reserves the matter to the state and its people. This is the logic behind the Firearms Freedom Acts that Montana pioneered in 2009 and roughly eight other states — including Utah, Wyoming, Idaho, and Tennessee — adopted in the years that followed.

The **second shield is the right itself.** Even where the federal government can plausibly claim some power, the Second Amendment stands as a substantive limit on how that power may be used: the right shall not be infringed. These two shields answer different objections. The jurisdictional shield says *you were never given this power*; the rights shield says *even if you were, you may not use it to this end*. A money case about wheat or a drug case about marijuana — regulated under a general federal power with no countervailing constitutional right in the way — tells us nothing about a domain the Bill of Rights specifically protects. The presence of an enumerated right changes the analysis.

FIGURE 2 · THE TWO SHIELDS

An opponent must get past both to reach the citizen's arms



Jurisdiction – "you were never given this power."
Right – "even if you were, you may not use it to this end."

The strongest state-sovereignty posture combines a jurisdictional argument (the Tenth Amendment and the limits of the Commerce Clause) with a substantive-rights argument (the Second Amendment itself). Because they are independent, an adversary who overcomes one still confronts the other.

Honesty requires noting where the jurisdictional shield stands in current doctrine. Since *Wickard v. Filburn* (1942) and especially *Gonzales v. Raich* (2005), the Supreme Court has held that Congress may reach even purely local, never-sold activity if, in the aggregate, it substantially affects an interstate market — and lower courts used that reasoning to strike down Montana's Firearms Freedom Act, with the Supreme Court declining review in 2014. The originalist rejoinder — that "commerce among the several States" plainly meant trade across state lines, and that the aggregation doctrine reads those words out of the Constitution — is powerful as a matter of first principles, and it found a partial echo in *United States v. Lopez* (1995), where the Court refused to treat mere gun possession near a school as commerce. But as settled law today, the jurisdictional shield alone is contested ground. That is exactly why it must be paired with the second shield — and why the history matters so much, because the rights shield is where the founding record does its heaviest work.

VI – THE DOBBS PRINCIPLE

If silence devolves, the enumerated deserves more

A further pillar of the states' argument comes from an unexpected direction: the Supreme Court's 2022 abortion decision, *Dobbs v. Jackson Women's Health Organization*. *Dobbs* held that because the Constitution makes no mention of abortion and the asserted right is not deeply rooted in the nation's history and tradition, there is no federal constitutional right to it — and the question therefore returns, in the Court's words, "to the people and their elected representatives." Whatever one thinks of the outcome, the structural principle is clear and powerful: **where the Constitution is silent, authority devolves to the states.**

Set that principle beside the Second Amendment and the logic becomes an argument from the greater to the lesser. If an *unenumerated* matter like abortion defaults to state authority precisely because it is absent from the constitutional text, then an *enumerated* right — one written deliberately into the Bill of Rights by men who had just fought a war over it — surely deserves at least as much protection from federal interference. The states are not asking for special treatment. They are asking for the ordinary rule that *Dobbs* reaffirmed — that the federal government's reach ends where its enumerated powers end — plus the additional, explicit protection of a right that abortion never had. The thing written into the Constitution should fare no worse than the thing left out of it.

The argument must be made with precision to be sound. *Dobbs* devolved abortion because there was no enumerated right on either side of the question; with arms there *is* one, which is the source of both the strength and the complication of the position. So the correct use of *Dobbs* is not "abortion went to the states, therefore guns go to the states the same way." It is narrower and sturdier: *Dobbs* establishes the *principle* of devolution-by-default where the Constitution is silent, and the Second Amendment then supplies a higher floor on top of that baseline — an enumerated

guarantee that no government may infringe. Devolution sets the floor; the enumerated right raises it.

VII – THE HONEST TENSION

The sword that cuts both ways

A brief built to withstand scrutiny must confront its own hardest problem rather than hide it. Here it is. The Second Amendment is the most powerful weapon in the states' argument against *federal* overreach — but because of how it now applies, it also limits the states themselves.

In *McDonald v. City of Chicago* (2010), the Supreme Court held that the Second Amendment is incorporated against the states through the Fourteenth Amendment — meaning "shall not be infringed" binds state and local governments, not just Washington. This creates a genuine tension in any argument that leans simultaneously on "the right shall not be infringed" and "the states should be free to regulate as they see fit." Pressed to its logical end, the strongest version of the rights argument is *nationalizing* — it empowers gun owners against every level of government — not devolving. A state that says "the right is absolute, and we will decide how to regulate it" risks having its own regulations struck down by the very clause it is invoking.

The resolution is to be clear about which argument is doing which work, and to let them reinforce rather than contradict each other. The honest synthesis runs like this: the Second Amendment secures an individual right of *the people* against *all* government — with the distant, central, federal government as the primary historical threat the structure was built to check, and the states, closer to the people and the original organizers of the militia, as the

> level of government the founders trusted with the everyday particulars. The federalism point and the individual-right point then point the same direction: power and arms belong as close to the people as possible, and the farther a government sits from them, the less it may be trusted to disarm them. Used this way, the two shields and the *Dobbs* principle cohere into a single posture — one that resists federal infringement on both jurisdictional and rights grounds, while honestly acknowledging that the enumerated right also sets a floor the states themselves may not breach.

VIII – WHAT IT MEANS FOR THE STATES TODAY

From argument to enforceable strategy

What, then, can a state actually do — today, under the law as it stands — to defend the right its citizens hold? The answer separates the symbolic from the effective, and the distinction matters for anyone who would rely on these measures.

The Firearms Freedom Act approach — declaring that in-state guns lie beyond federal reach — is, under current Commerce Clause doctrine, largely a constitutional protest in statutory form. It tees up the overruling of *Wickard* and *Raich* that the originalist case invites, but it does not yet provide a reliable legal defense; federal firearms law still applies, and a citizen who relies on such a statute as a shield in federal court may find it does not hold. Its value is as an argument, an organizing tool, and a marker laid down for a future Court — not as a force field.

The **anti-commandeering strategy**, by contrast, has real and tested teeth. Under *New York v. United States* (1992), *Printz v. United States* (1997), and *Murphy v. NCAA* (2018), the federal government may not compel a state to enforce a federal regulatory program or command its officials to do Washington's work. A state cannot

nullify federal gun law — but it can decline to spend a single dollar or assign a single officer to help enforce it. This is the logic of the Second Amendment Preservation Acts adopted in states such as Missouri and Idaho. Because the federal government relies heavily on state and local cooperation to enforce its measures, a state law withdrawing that cooperation can render a federal mandate largely inoperative in practice without ever claiming a power the courts deny it. The movement's most effective pivot has been from "the feds have no jurisdiction" — the claim that loses — to "the feds cannot make *us* do their enforcement" — the claim that wins.

The two tracks work best together. The historical and constitutional case — the two shields and the *Dobbs* principle — builds the argument for what the law *should* be and lays the groundwork for a Court increasingly attentive to original meaning. The anti-commandeering doctrine secures what a state can do *right now*, regardless of how the deeper questions are eventually resolved. One is the long game; the other is the immediate, enforceable defense.

17 years	**Apr 19, 1775**	**2 shields**
From the first powder seizure (1774) to ratification (1791)	A war begun in resistance to gun confiscation at Concord	Tenth Amendment jurisdiction + Second Amendment right

CONCLUSION

The lesson written in their own blood

Strip away two centuries of accumulated doctrine and the Second Amendment is not complicated. It is the considered judgment of people who had watched a government try to disarm them, who had taken up their own weapons to stop it, and who resolved that no government — theirs least of all — would ever again hold that power over a free people. They wrote "shall not be infringed" because they had seen,

firsthand, what infringement led to. They protected "the people" because they meant all of us. And they grounded the whole structure in the conviction that a citizenry which keeps its arms keeps its liberty.

The states that today defend that right stand on the firmest possible ground: not merely a clause, but the entire experience that produced it — an experience the modern Supreme Court has now made the legal test. The federal government was never granted power over a wholly intrastate firearm; the Bill of Rights forbids any government from infringing the right; and the principle that constitutional silence devolves to the states means an enumerated right deserves greater protection still, not less. The founders left a clear instruction, paid for in blood at Lexington and Concord. The states' task is simply to hold them to it.

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This brief presents the strongest history-based case for a robust, state-protective reading of the Second Amendment, as its proponents would argue it, together with a candid statement of the doctrinal tensions (notably McDonald incorporation and the current state of Commerce Clause doctrine). It is an advocacy and educational document, not legal advice; the constitutional questions discussed remain genuinely contested, and several arguments described (the Firearms Freedom Act jurisdictional theory in particular) have not prevailed in court. Anyone relying on state firearms statutes should consult a qualified attorney, as federal law may still apply. Historical quotations are drawn from the sources above; some popular paraphrases (e.g., Madison's "half a million" militia figure) have been rendered to reflect his actual text.