

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 8: The New Deal/Great Society Era – Individual Rights/Guns

United States v. Miller, 307 U.S. 174 (1939)

Jack Miller and Frank Layton were indicted after they transported from Claremore, Oklahoma, to Siloam Springs, Arkansas, a double barrel 12-gauge Stevens shotgun which was not registered consistent with the provisions in the Firearms Act of 1934. Miller and Layton insisted that those registration provisions violated the Second Amendment. When a lower federal court agreed that the indictment was constitutionally infirm, the United States appealed to the Supreme Court.

The Supreme Court in United States v. Miller unanimously reversed the decision invalidated the indictment. Justice McReynolds, the most conservative justice on the Court during the 1930s, maintained that the shotgun in question had no relationship to a weapon used in the militia and, hence, could be regulated by government officials. As you read the two paragraphs below, consider why no difference existed between liberals and conservatives on this issue. Were gun rights constitutionally different from the numerous other issues on which McReynolds and other pre-New Deal conservatives disagreed with the emerging liberal majority on the Supreme Court? Or is this case unique to sawed-off shotguns, which are easier to conceal than other weapons?

JUSTICE McREYNOLDS delivered the opinion of the Court.

...
In the absence of any evidence tending to show that possession or use of a 'shotgun having a barrel of less than eighteen inches in length' at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. . . .

The Constitution as originally adopted granted to the Congress power—'To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions; To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.' U.S.C.A.Const. art. 1, 8. With obvious purpose to assure the continuation and render possible the effectiveness of such forces the declaration and guarantee of the Second Amendment were made. It must be interpreted and applied with that end in view.

JUSTICE DOUGLAS took no part in the consideration or decision of this cause.