

LIMITS ON THE FEDERAL POWER TO REGULATE FIREARMS

by Regina McClendon

Abstract

This paper discusses the power of the federal government to enact firearms regulations and concludes that the federal government has broad authority to pass gun control legislation. First, the Second Amendment poses virtually no restriction on firearms regulation since the "right to bear arms" is interpreted by courts according to its purpose of ensuring the states a well-regulated militia. Second, the Supreme Court's broad interpretation of the commerce clause affords Congress much power to legislate, particularly where Congress has explicitly stated that the regulated activity implicates interstate commerce. Third, the Tenth Amendment only prohibits the federal commandeering of states to carry out congressional legislation. Fourth, current federal gun control legislation does not interfere with a state's traditional police power. Finally, the takings clause of the Fifth Amendment would not be violated if Congress passed a law prohibiting all sales of guns.