

What Can Congress Do: The Second Amendment versus the Commerce and Equal Protection Clauses

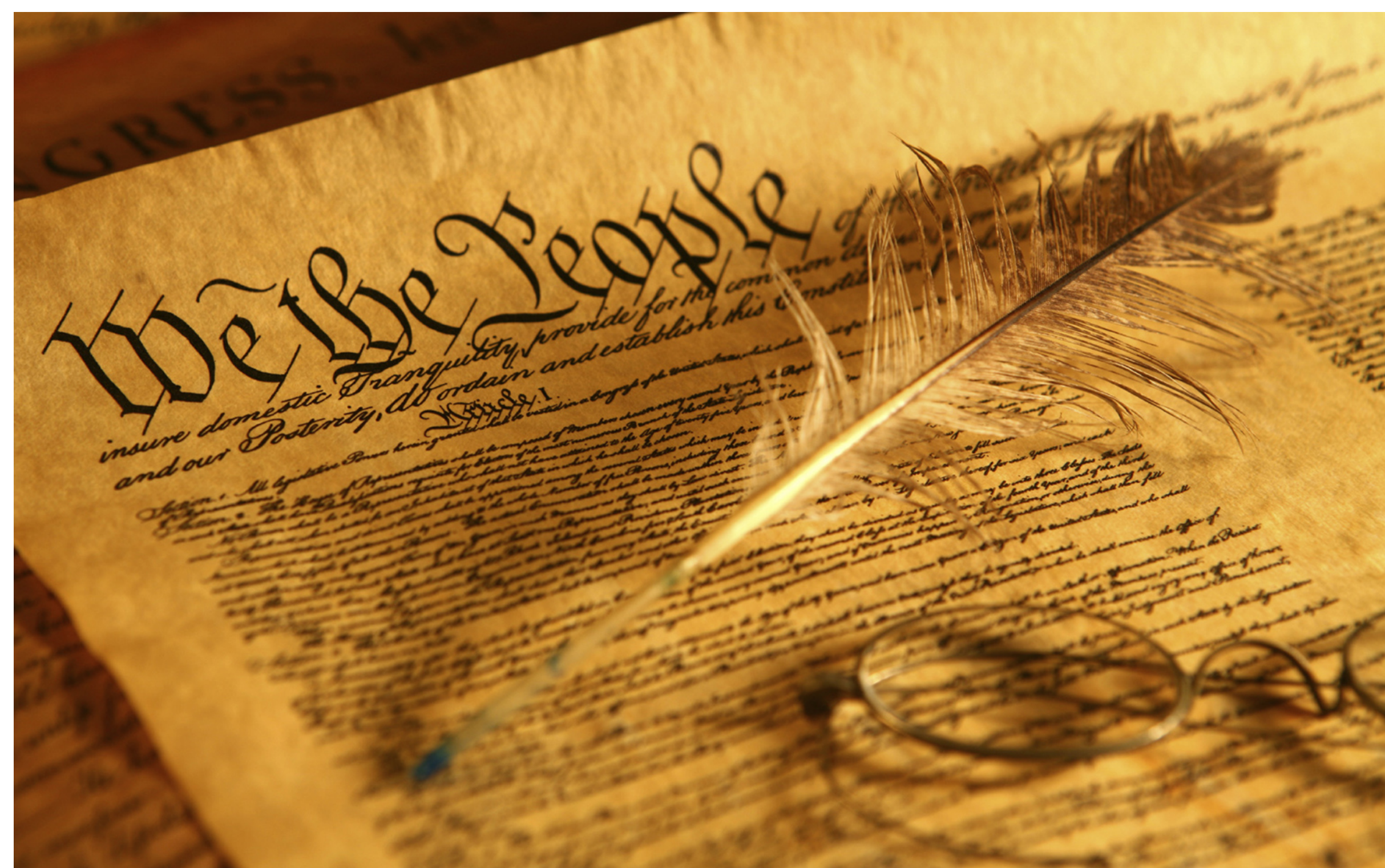


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Abstract

This research project explores the Second Amendment debate through the lens of Congress's power to enact legislation. It evaluates whether or not Congress has power through the Commerce Clause and/or Equal Protection Clause to create gun control legislation, placing these rights and powers in conversation with Second Amendment rights. This paper provides a legal groundwork for gun control, using case briefs, law reviews, and Supreme Court rulings. It analyzes the implications of precedent on the legal response to potential future legislation regarding gun control. With this framework, a response to case history will provide a legal argument for why Congress can, and should, pursue reasonable gun control regulations. My thesis statement is that Congress, by powers enumerated in Article I, Section 8 of the Constitution (the Commerce Clause), and to protect rights laid out to citizens in the Equal Protection Clause of the Fourteenth Amendment, can constitutionally enact federal gun control legislation in America. This project is significant because it provides a specific and actionable legal outline for federal gun control.

Constitutional Issues



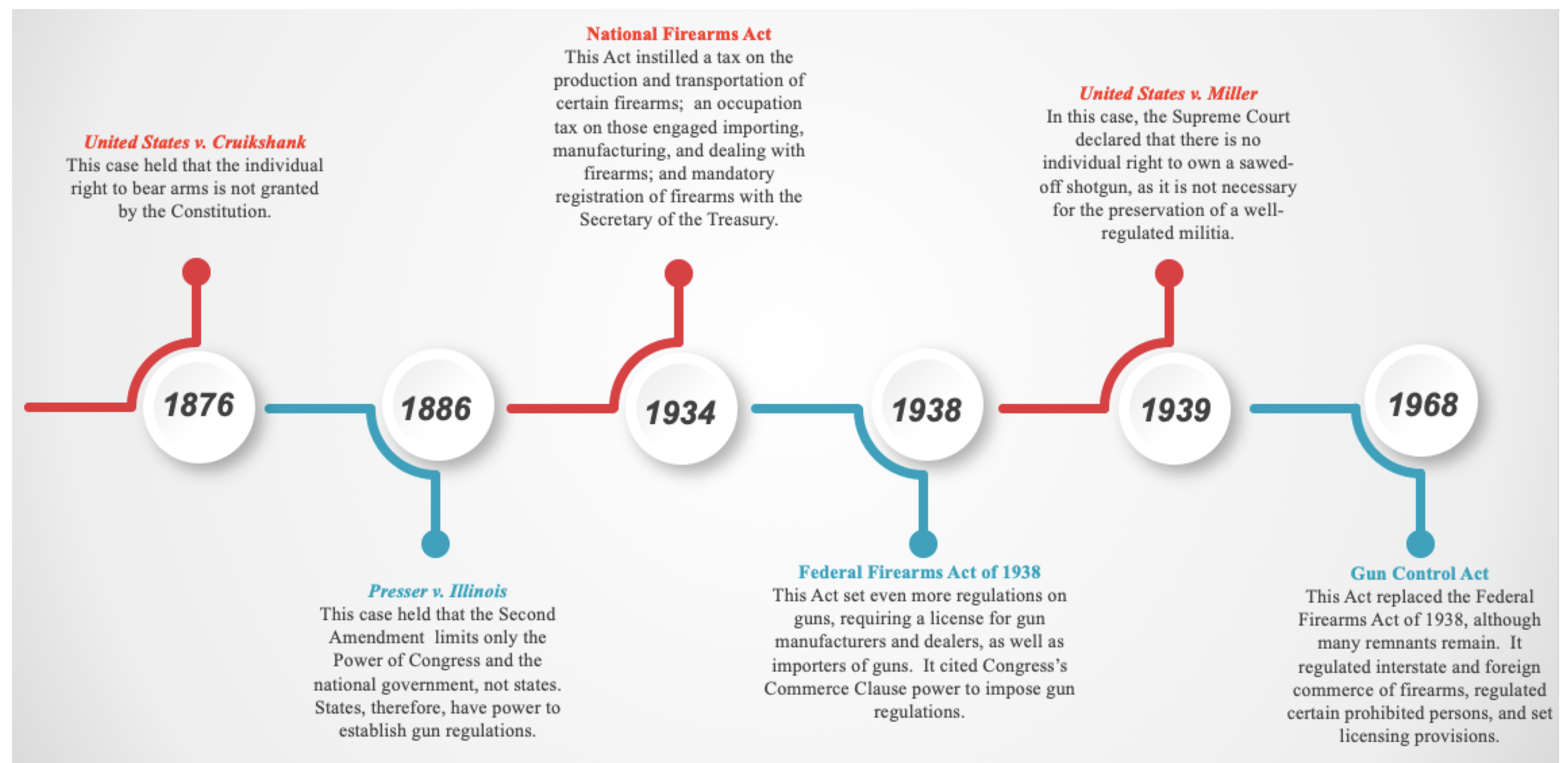
SECOND AMENDMENT:

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. (U.S. Const. amend II.)

COMMERCE CLAUSE:

Gives Congress power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." (U.S. Const. art. I, sec. 8, cl.3.)

Timeline of Gun Legislation in America



Significant Court Cases

United States v. Lopez (1993)

Gun-Free School Zones Act of 1990 is unconstitutional because it exceeds Congress's power under the Commerce Clause.

Dissent: Congress has power to regulate anything that significantly affects interstate commerce, and guns fall under this category.

District of Columbia v. Heller (2008)

A functioning firearm is allowed in the home only when necessary for self-defense. Restrictions on handgun licenses, as well as the requirement for guns in the home to be inoperable, violate the Second Amendment.

Dissent: Rights given under the Second Amendment are not unlimited. They do not extend past a state-regulated militia, and the Second Amendment does nothing to address self-defense.

Future Legislation Potential: Equal Protection

EQUAL PROTECTION CLAUSE:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (U.S. Const. amend XIV.)

Conclusion

Under the Commerce, Necessary and Proper, and Equal Protection Clauses, Congress has power to regulate guns by placing regulations on the buying and selling of guns. Congress should do this by enacting stricter regulations on licensing laws, background checks for buyers, and permits for gun dealers. Congress has broad power to regulate guns under the Commerce Clause.