



Iowa Firearms Coalition

Defending your Second Amendment rights in Iowa

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On Objections to the Strict Scrutiny Provision of The Freedom Amendment – Hypocrisy Writ Large

Freedom is on the ballot in Iowa! On November 8, Iowa voters will have the chance to make history by correcting an unfortunate oversight. Iowa is one of only six states that do not have protections of the right to keep and bear arms in their state constitutions. But almost twelve years after the first version was introduced in the Iowa House, and after approval by three separately elected General Assemblies, Ballot Measure 1 proposes to amend Iowa's Constitution to provide strong protections of that fundamental right. Iowa Firearms Coalition has dubbed this the Freedom Amendment.

Of course, the Second Amendment to the U.S. Constitution was intended to protect those rights from encroachment by the federal government – and in 2010, the U.S. Supreme Court determined that it also restricts the states. Unfortunately, for well over a century, those who wish to seriously limit the free exercise of those rights have tried to either ignore or reinterpret the plain language of the Second Amendment. They have been pretty successful, as evidenced by the vast number of highly restrictive “gun control” laws on the books in many areas of the country.

Iowa legislators recognized this fact, so when they drafted the amendment to place protections of the right to keep and bear into Iowa's Constitution, they added a provision that would be difficult for future legislators, executives, and judges to ignore. They included a requirement that any restrictions of this fundamental, individual right, must be subject to “strict scrutiny”, the highest level of three in a long-established framework for judicial review.

For almost twelve years, opponents of this amendment have sought to strike the strict scrutiny provision, obviously fearing that it will foil their dreams of bringing New York/California style gun control laws to Iowa. And that is no idle claim, as many of

those fighting against the amendment are organized and funded by the notoriously anti-gun, anti-liberty New York billionaire, Michael Bloomberg. These critics seldom admit their antipathy to Americans' Second Amendment rights. Instead, they typically profess that they "believe in the Second Amendment, but..." They argue that if only language of the amendment was changed to the exact text of the Second Amendment, they might be willing to support its adoption. Of course, they are laying a trap, as we have already noted their success in getting around that language in legislatures and – until recently – the courts.

In truth, the "strict scrutiny" standard of judicial review should not be controversial. It is the appropriate standard to be used in considering regulations that affect a fundamental right. So said the Iowa Supreme Court as recently as 2018 in its *Planned Parenthood of the Heartland* decision. How can the critics of including the strict scrutiny standard in this amendment be taken seriously when so many of them supported its use by the Court in that case? Their attacks on the amendment reek of hypocrisy. We wonder, which other of their fundamental rights would they wish to have protected by a lower standard?

The real problem seems to be that many of those working to defeat the amendment simply refuse to accept the fact that the right to keep and bear arms is a fundamental right. The Iowa Supreme Court, in that same *Planned Parenthood* case, stated this about fundamental rights: "Generally, only those 'rights and liberties which are 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty' qualify as fundamental." Given that description and their placement as the second item in the Bill of Rights, how could Second Amendment rights be considered anything other than fundamental? In fact, the U.S. Supreme Court settled that question with finality in its landmark *Heller* decision, which included this paragraph: "*By the time of the founding, the right to have arms had become fundamental for English subjects. ... Blackstone, whose works, we have said, 'constituted the preeminent authority on English law for the founding generation,' ... cited the arms provision of the Bill of Rights as one of the fundamental rights of Englishmen.*"

In any event, the U.S. Supreme Court's recent *Bruen* decision has directed lower courts to use an even more rigid test in Second Amendment cases. As long as that decision stands, the matter of strict scrutiny for cases brought in Iowa should be essentially moot. It will, however, provide a backup of protection to that of the Second Amendment.

Neither the Bruen directives, nor the imposition of a strict scrutiny standard, should be reasonably expected to call into question such existing laws as prohibiting violent felons and those adjudicated mentally defective from possessing firearms. There is an ancient tradition of denying such persons the full and free expression of their rights. That will not change - and has not in the three states that have imposed strict scrutiny for a decade or so.

Both Bruen and "strict scrutiny" will make it difficult or impossible for honest legislators and executives to erect the kind of strict limitations on the possession and use of weapons envisioned in the fever dreams of so-called "progressives". And thankfully so...

IFC is confident that Iowans will FLIP their ballots and vote YES for FREEDOM on Nov. 8!

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