

**THE SECOND AMENDMENT AS A  
CONSTITUTIONAL RIGHT IN THE U.S****Legal Studies**

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**Abstract**

The purpose of this article is to elaborate the Second Amendment of the U.S Constitution. In general, the study focuses on the creation of the Second Amendment, crucial federal acts that were passed by the U.S Congress during the 20th century for the regulation of firearms, gun-pro associations that support the existence of this amendment, gun ownership and the privileges that this amendment grants to the U.S citizens. The Second Amendment is a constitutional right in the U.S that was included in The Bill of Rights and this article will introduce to the reader, the man who proposed this amendment and some of the ways that a U.S citizen can practice this amendment. The study includes gun-pro organizations that have contributed to the existence, protection and promotion of The Second Amendment. Included in this study is also the gun ownership along with the general number of existing firearms in the United States and also the number of registered firearms in 2019. This article is descriptive and informative towards the reader, including the theory, definitions and statistics. The study is expected to be helpful for prospective students or experts that are interested in American Studies or in The Constitution of the United States.

**1. Introduction**

The Second Amendment is one of the first components that were integrated in the U.S constitution. It is considered as a privilege among U.S citizens, granted by the Constitution of the United States and often represented through gun possession. In a word, The Second Amendment represents the regulation of the firearm possession within the U.S territory. Due to its strong endorsement by the U.S citizens, this amendment has become a point of focus for gun-pro associations. The Second Amendment can be considered as a representation of the gun tradition that is practiced in the United States. As it is known in general, the replacement of this amendment or gun control laws that are often considered as a solution by organizations that oppose the possession of firearms, constantly would fall in contradiction with gun-pro associations because of putting efforts in the removal or prohibition of this amendment can be considered as a breach of rights that are granted by the U.S constitution. In order to regulate the firearm laws, the U.S Congress has passed many acts, respectively Federal Acts. In the sequence of this research paper, one will be able to read about the fore-mentioned acts. The study focuses on the creation of The Second Amendment, crucial federal acts, gun-pro associations that support the existence of this amendment, gun ownership and the privileges that this amendment grants to the U.S citizens.

**1.1 The U.S Constitution**

The U.S Constitution was compiled on September 17, 1787 and it was presented 11 days later on September 28. The Ratification of the Constitution took place on June 21, 1788 and it came into force on March 4, 1789. It includes 27 amendments in total, regulating the rights of citizens and state and federal jurisdiction. As mentioned in (Maier 2010, p. 35), the Constitution of

the United States is the supreme law of the United States of America. The U.S Constitution features the quotation:

*We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.*<sup>1</sup>

Notable/key figures among many representatives, who signed the U.S Constitution on September 17, 1787 at the Independence Hall in Philadelphia, were George Washington and Benjamin Franklin.

## **1.2 What is an Amendment?**

An amendment represents a change or correction of an existing law. Definitions of the term amendment according to the Merriam – Webster Dictionary:

- the process of altering or amending a law or document (such as a constitution) by parliamentary or constitutional procedure, e.g.: *rights that were granted by amendment of the Constitution.*

- an alteration proposed or effected by this process, e.g.: *a constitutional amendment*

2: the act of amending something: *CORRECTION*

## **1.3 Proposal of the Second Amendment in the Bill of Rights**

The leading figure for the creation, implementation and the Ratification of the Bill of Rights in 1791 including here the proposal of the Second Amendment, was James Madison. The Second Amendment, one of the ten amendments comprising the Bill of Rights, states:

*“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.”*<sup>2</sup>

One of the principal points of contention between the Federalists and Anti-Federalists was the lack of an enumeration of basic civil rights in the Constitution. Many Federalists argued, as in Federalist No. 84, that the people surrendered no rights in adopting the Constitution. In several states, however, the ratification debate in some states hinged on the adoption of a bill of rights. The solution was known as the Massachusetts Compromise, in which four states ratified the

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<sup>1</sup> National Archives, The Constitution of the United States: A Transcription.

Retrieved from: <https://www.archives.gov/founding-docs/constitution-transcript>

<sup>2</sup> The Library of Congress, United States: Gun Ownership and the Supreme Court

Retrieved from: <https://www.loc.gov/law/help/usconlaw/second-amendment.php#over>

Constitution but at the same time sent recommendations for amendments to the Congress. James Madison introduced 12 amendments to the First Congress in 1789. Ten of these would go on to become what we now consider to be the Bill of Rights.<sup>3</sup>

## 2. Crucial Federal Acts for the regulation of firearms during the 20<sup>th</sup> century

The U.S Congress has passed numerous Federal Acts that concern with the firearm regulation during the 20<sup>th</sup> century. Each act was designated to treat /define an issue related to firearm possession, sales and transfer. Below, you will be able to read and understand some of the approved acts related to the firearms:

### 2.1 National Firearms Act (1934)

The NFA was originally enacted in 1934. Similar to the current NFA, the original Act imposed a tax on the making and transfer of firearms defined by the Act, as well as a special (occupational) tax on persons and entities engaged in the business of importing, manufacturing, and dealing in NFA firearms. The law also required the registration of all NFA firearms with the Secretary of the Treasury. Firearms subject to the 1934 Act included shotguns and rifles having barrels less than 18 inches in length, certain firearms described as “any other weapons,” machineguns, and firearm mufflers and silencers. While the NFA was enacted by Congress as an exercise of its authority to tax, the NFA had an underlying purpose unrelated to revenue collection. As the legislative history of the law discloses, its underlying purpose was to curtail, if not prohibit, transactions in NFA firearms. Congress found these firearms to pose a significant crime problem because of their frequent use in crime, particularly the gangland crimes of that era such as the St. Valentine’s Day Massacre. The \$200 making and transfer taxes on most NFA firearms were considered quite severe and adequate to carry out Congress’ purpose to discourage or eliminate transactions in these firearms. The \$200 tax has not changed since 1934. As structured in 1934, the NFA imposed a duty on persons transferring NFA firearms, as well as mere possessors of unregistered firearms, to register them with the Secretary of the Treasury. If the possessor of an unregistered firearm applied to register the firearm as required by the NFA, the Treasury Department could supply information to State authorities about the registrant’s possession of the firearm. State authorities could then use the information to prosecute the person whose possession violated State laws. For these reasons, the Supreme Court in 1968 held in the *Haynes* case that a person prosecuted for possessing an unregistered NFA firearm had a valid defense to the prosecution — the registration requirement imposed on the possessor of an unregistered firearm violated the possessor’s privilege from self-incrimination under the Fifth Amendment of the U.S. Constitution. The *Haynes* decision made the 1934 Act virtually unenforceable.<sup>4</sup>

<sup>3</sup>The Constitution, retrieved from: <https://www.whitehouse.gov/about-the-white-house/the-constitution/>

<sup>4</sup>The Bureau of Alcohol, Tobacco, Firearms and Explosives, National Firearms Act Retrieved from: <https://www.atf.gov/rules-and-regulations/national-firearms-act>

## **2.2 The Federal Firearms Act of 1938 (“FFA”)**

Imposed a federal license requirement on gun manufacturers, importers, and those persons in the business of selling firearms. The term federal firearms licensee (“FFL”) is commonly used today to refer to the members of the gun industry on whom this license requirement is imposed. In addition to the licensing component of the FFA, the Act required licensees to maintain customer records and made illegal the transfer of firearms to certain classes of persons, such as convicted felons. These classes of persons are commonly referred to as “prohibited purchasers.” The circumstances resulting in the prohibition (such as a felony conviction) are often referred to as “disabilities.” The FFA was repealed by the Gun Control Act of 1968. However, many of its provisions were reenacted as part of the subsequent act.

## **2.3 The Gun Control Act of 1968 (“GCA”)**

Revised the NFA and the FFA, reenacting and expanding upon provisions of the prior acts, and repealing the FFA. The GCA also enacted prohibitions on the importation of firearms “with no sporting purpose.” However, neither the GCA nor any other federal law regulates the domestic manufacture or sale of firearms which would not pass the federal criteria for determining whether a firearm has “a sporting purpose.” Among the other major provisions of the GCA were the establishment of minimum age for firearms purchasers, the requirement that all firearms (domestic and imported) be affixed with a serial number, and the expansion of the categories of prohibited persons.

## **2.4 The Firearms Owners’ Protection Act of 1986 (“FOPA”)**

Also known as the McClure-Volkmer Act, significantly amended the GCA and effectively liberalized many of the restrictions on sellers of firearms. Among other things, the FOPA enacted provisions that legalized sales by licensed dealers away from the location shown on the dealer license if at a “gun show” within the same state; limited the number of inspections of dealers’ premises which could be conducted by the Bureau of Alcohol, Tobacco and Firearms (“ATF”) without a search warrant; prevented the federal government from maintaining a central database of firearms dealer records; and loosened the requirement for what constitutes “engaging in the business” of firearms sales for purposes of a federal license.<sup>5</sup>The FOPA also repealed several key public safety provisions originally enacted by the GCA, eliminating the requirements that dealers keep sales records of ammunition transfers (except armor-piercing ammunition transfers) and that sellers of ammunition be licensed, and lifting the ban on interstate transfers of ammunition to unlicensed purchasers.

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<sup>5</sup>Giffords Law Center, Key Federal Acts Regulating Firearms  
Retrieved from:<https://lawcenter.giffords.org/gun-laws/federal-law/other-laws/key-federal-acts-regulating-firearms/>

## 2.5 The Brady Handgun Violence Prevention Act of 1993 (“Brady Act”)

Effectuated amendments to the GCA, originally imposing a five-day waiting period for law enforcement to review the background of a prospective handgun purchaser before a licensed dealer was entitled to complete the sale of a handgun to that person. The purpose of the check is to allow law enforcement to confirm that the prospective buyer is not a prohibited purchaser (see discussion of “prohibited purchaser” in connection with the FFA, above, and the posts on Background Checks and Prohibited Purchasers Generally) before the sale is consummated. The five-day waiting period has now been replaced with an instant check system, which can be extended to three days when the results of the check are not clear. Persons who have a federal firearms license or a state-issued permit to possess or acquire a firearm (such as a state-issued concealed carry permit that is valid for not more than five years) are not subject to the waiting period requirement. As more states enact “shall issue” concealed carry permit laws, this category of persons exempt from the Brady Act increases. In 1998, the Act became applicable to shotguns and rifles. The Brady Act is codified at 18 U.S.C. § 921 et seq.

## 2.6 The Federal Assault Weapons Ban, or Public Safety and Recreational Firearms Use Protection Act

(Title XI, Subtitle A of the Violent Crime Control and Law Enforcement Act of 1994) (“AWB”) was a subtitle of the Violent Crime Control and Law Enforcement Act of 1994, enacted on September 13, 1994. Formerly codified at 18 U.S.C. § 921 et seq., the AWB prohibited: 1) the manufacture, transfer and possession of semi-automatic assault weapons; and 2) the transfer and possession of large capacity ammunition feeding devices (i.e., devices capable of holding more than 10 rounds of ammunition). The law banned 19 types, models and series of assault weapons by name (and copies or duplicates of those weapons), and any semi-automatic firearm with at least two specified military features coupled with the ability to accept a detachable magazine (this last criterion did not apply to shotguns). The law only banned the transfer and possession of assault weapons and large capacity feeding devices manufactured after the date of the ban’s enactment. The AWB contained a sunset provision declaring that it would expire ten years from enactment. Congress allowed the ban to expire on September 13, 2004.<sup>6</sup>

## 3. Gun-pro associations in the U.S

The Second Amendment has been a major topic of discussion in the latest century within the U.S. There are number of organizations and associations that contribute to the enforcement and preservation of this amendment. However, the Second Amendment and the gun law in the U.S is also being attacked by rival organizations, which oppose the gun law in the U.S and are lobbying

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<sup>6</sup>Giffords Law Center, Key Federal Acts Regulating Firearms  
Retrieved from:<https://lawcenter.giffords.org/gun-laws/federal-law/other-laws/key-federal-acts-regulating-firearms/>

for the restriction and possible gun prohibition laws. Gun possession and the Second Amendment come along with the American traditional lifestyle and taking down this amendment might be impossible. It is a constitutional right and the attempt to remove it from the hands of the citizens means breach of the Constitution of the U.S, for this motivating the citizens to “fight” for the continuity and protection of this amendment. Some of the pro-gun organizations include:

### **3.1 National Rifle Association of America (NRA)**

A leading gun rights organization in the United States. The National Rifle Association of America (NRA) was founded in 1871 as a governing body for the sport of shooting with rifles and pistols. By the early 21st century it claimed a membership of nearly five million target shooters, hunters, gun collectors, gunsmiths, police, and other gun enthusiasts.<sup>7</sup>

### **3.2 The National Association for Gun Rights (NAGR)**

Claims 4.5 million grassroots activists. Its mission is “to halt the radical anti-gun agenda across the nation.” NAGR activists don’t simply fight against the encroachments on gun rights; they work to advance the constitutional rights of citizens to bear arms.

Their agenda is explained clearly in the statement from their site:

*Constitutional Carry is the simple idea that law-abiding people shouldn't be forced to get a government permission slip to exercise their right to self-defense. No one should be treated like a criminal simply for wishing to carry a firearm in defense of themselves or their family. NAGR strongly believes that Constitutional Carry is the way our founders intended for citizens to exercise their constitutionally protected right to bear arms. NAGR has helped propose Constitutional Carry legislation in dozens of states, and was instrumental in passing Constitutional Carry in both Kansas and Maine in 2015.<sup>8</sup>*

The National Association for Gun Rights was founded by Dudley Brown, on March 29, 2000.

### **3.3 Gun Owners of America (GOA)**

It was founded in 1975 by Sen. H.L. (Bill) Richardson (now retired). The GOA Board of Directors brings over 100 years of combined knowledge and experience on guns, legislation and politics. GOA’s Board is not satisfied with the “status quo.” Americans have lost some of our precious gun rights and we want them back! This is why GOA is considered the “no compromise”

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<sup>7</sup>The Editors of Encyclopedia Britannica , National Rifle Association of America  
Retrieved from:<https://www.britannica.com/topic/National-Rifle-Association-of-America>

<sup>8</sup>The Libertarian Republic, Top 5 Gun Rights Organizations Better than the NRA ,  
Retrieved from:<https://thelibertarianrepublic.com/top-5-gun-rights-organizations-nra/4>

gun lobby. From state legislatures and city councils to the United States Congress and the White House, GOA represents the views of gun owners whenever their rights are threatened. Over the last 30 years, GOA has built a nationwide network of attorneys to help fight court battles in almost every state in the nation to protect gun owner rights. GOA staff and attorneys have also worked with members of Congress, state legislators and local citizens to protect gun ranges and local gun clubs from closure by overzealous government anti-gun bureaucrats. As an example, GOA fought for and won the right of gun owners to sue and recover damages from the federal Bureau of Alcohol, Tobacco and Firearms (BATF) for harassment and unlawful seizure of firearms.<sup>9</sup>

### 3.4 The Second Amendment Foundation (SAF)

(SAF) is a United States nonprofit organization that supports gun rights. Founded in 1974 by Alan Gottlieb and headquartered in Bellevue, Washington, SAF publishes gun rights magazines and public education materials, funds conferences, provides media contacts, and has assumed a central role in sponsoring lawsuits.<sup>10</sup> The motto of the SAF is displayed on their website, as follows:

*We are dedicated to promoting a better understanding about our Constitutional heritage to privately own and possess firearms. To that end, we carry on many educational and legal action programs designed to better inform the public about the gun control debate.*<sup>11</sup>

## 4. Gun Ownership in U.S

As mentioned in the research, the Second Amendment regulates all issues related to the firearms. The population of the U.S is well-known for massive gun possession that can be referred also as gun ownership. In an article published on Washington Post, journalist Christopher Ingraham mentioned that there are more than **393 million civilian-owned firearms** in the United States, or enough for every man, woman and child to own one and still have 67 million guns left over. Gun ownership in the U.S. is protected by the 2nd Amendment of the Constitution, which allows citizens to own firearms and form a militia if necessary. Outside of the 2nd Amendment, gun laws in the U.S. vary from state to state, and gun owners are subject to the laws of the state they are currently in, not necessarily the state they live in. For example, if concealed carry is allowed in a gun owner's state of residence, but not in the state they are travelling in, the owner is subject to the law of the state they are travelling in. According to a survey that was published online and conducted by the Statista Research Department, the number of registered weapons in the U.S. in 2019, is in total: 6,058,390. Texas is the state with the highest number of registered

<sup>9</sup>Gun Owners of America, The GOA story , retrieved from: <https://gunowners.org/about-go/>

<sup>10</sup>Godwin, Marcia L. (p. 736, 2012). "Second Amendment Foundation". In Carter, Gregg Lee (ed.). *Guns in American Society: A - L*. Guns in American Society. Santa Barbara, California: ABC-CLIO. ISBN 9781576072684.

<sup>11</sup> The Second Amendment Foundation (SAF) , retrieved from: <https://www.saf.org/>

weapons in the United States in 2019, with 725,368 firearms and Rhode Island, on the other hand, had 4,655 registered firearms.<sup>12</sup>

Number of registered firearms in the U.S in 2019 by state, according to the statistics displayed on the website of the Statista Research Department:

**(Generated table):**

State	Number of registered firearms
Texas	725 368
Florida	432 581
California	376 666
Virginia	356 963
Pennsylvania	271 427
Georgia	225,993
Arizona	204 817
North Carolina	181 209
Ohio	175 819
Alabama	168 265
Illinois	147 698
Wyoming	134 050
Indiana	133 594
Maryland	128 289
Tennessee	121 140
Washington	119 829
Louisiana	116 398
Colorado	112 691
Arkansas	108 801
New Mexico	105 836
South Carolina	99 283
Minnesota	98 585
Nevada	96 922
Kentucky	93 719
Utah	93 440
New Jersey	90 217
Missouri	88 270
Michigan	83 555

<sup>12</sup>Statista Research Department, Number of registered weapons in the U.S. in 2019, by state  
Retrieved from: <https://www.statista.com/statistics/215655/number-of-registered-weapons-in-the-us-by-state/>



Oklahoma	83 112
New York	82 917
Oregon	74 722

District of Columbia	59 832
New Hampshire	59 341
Idaho	58 797
Kansas	54 409
Mississippi	52 346
West Virginia	41 651
Massachusetts	39 886
Iowa	36 450
South Dakota	31 134
Nebraska	29 753
Montana	23 476
Alaska	20 520
North Dakota	19 720
Maine	17 410
Hawaii	8 665
Vermont	7 716
Delaware	5 281
Wisconsin	79 639
Connecticut	74 877
Rhode Island	4 655
Other U.S territories	866

#### 4.1 Open carry

The Second Amendment is a constitutional right in the U.S and entitled to it are the lawful citizens living within the U.S territory. It grants to the U.S citizens the right to bear arms and use them for self-defense, sports or any other purposes that are justifiable. The Second Amendment can be exercised by the U.S citizens in many forms, like gun carrying or gun possession. One needs to be aware that the gun policy differs among states. Gun carrying in the U.S is divided into open carry and concealed carry. There are defined states that require a permit or are strict for open/concealed carry of handguns. The Mid-West states usually exercise an open policy of gun carrying, mostly enabling the citizens to carry guns without a permit whether it is open or concealed carry and this policy is also known as constitutional carry.

## What is Open Carry?

Open Carry means to openly carry a gun in public where it is not hidden from common observation. Some states specify that open carry occurs when the weapon is “partially visible,” while others may require the weapon to be “fully visible” to be considered carried openly. Open Carry Laws generally fall into one of four categories: <sup>13</sup>

**Permissive Open Carry States** — allow you to openly carry a gun without a permit or license (includes Alaska, New Mexico and West Virginia).

**Licensed Open Carry States** — allow gun owners to carry firearms openly only after they are issued a permit or license (includes Connecticut, Indiana and Utah).

**Anomalous Open Carry States** — carrying a gun openly may be generally lawful under state law, but local governments may pass gun laws that are more restrictive than the state’s laws (California).

**Non-Permissive Open Carry States** — Carrying a gun openly is against state law, or is legal only in limited circumstances (e.g., while hunting) or when legally used for self-defense (includes the District of Columbia, New York and South Carolina).

## 4.2 Concealed Carry

### What is Concealed Carry?

Concealed Carry is the practice of carrying a concealed weapon on one’s person in public. Concealed firearms can be carried in a holster, a purse or through other specialized concealment accessories and garments. (No matter the carry rig, please always ensure that it covers the weapon’s trigger guard to prevent negligent discharge). Some states limit concealed carry permits to handguns whereas others allow the carry of concealed weapons which may include electronic weapons, billy clubs and knives. There is no federal law concerning the concealed carry of firearms. All 50 states have laws allowing individuals to carry certain concealed firearms in public. State laws vary from quite restrictive (Hawaii) to states that have adopted constitutional or permit-less carry (Vermont). States also vary in terms of whether CCW permits are issued at a local level or by the state. **Concealed Carry Permit/License** — Issuing states use a variety of terminology when describing concealed carry permits or licenses. <sup>14</sup>

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<sup>13</sup> Grieve, Tom, Open Carry (n.d) (United States Concealed Carry Association)  
Retrieved from: <https://www.usconcealedcarry.com/resources/terminology/carry-types/open-carry/>

<sup>14</sup> Grieve, Tom, Concealed Carry (n.d) (United States Concealed Carry Association)  
Retrieved from: <https://www.usconcealedcarry.com/resources/terminology/carry-types/concealed-carry/>

### 4.3 Constitutional Carry

Constitutional Carry is by definition the ability to carry a firearm without a restriction in place by the Government. In a Constitutional Carry State, there is no licensing or training required to legally carry a firearm. Some states with unlicensed carry have implemented certain policies that restrict the method of carry or who can carry. Some require you to be 21, others require you to be a resident of that state, and others only allow concealed or open carry. Constitutional carry used to be known as Vermont carry. Vermont as a state never restricted the carry of firearms by any adult. It was ruled by the State Supreme court that the State's constitution did not allow restrictions, including licensing schemes.<sup>15</sup>

As of November 1, 2019, Alaska, Arizona, Arkansas, Idaho (residents only), Kansas, Kentucky, Maine, Mississippi, Missouri, New Hampshire, North Dakota (residents only; concealed carry only), Oklahoma, South Dakota, Vermont, West Virginia and Wyoming (residents only) do not require a permit to carry a loaded concealed firearm for any person of age who is not prohibited from owning a firearm. Permitless carry in Idaho, North Dakota and Wyoming is applicable to residents only; nonresidents must have a permit to carry a concealed handgun in these states. All aforementioned jurisdictions do not require a permit to openly carry either except for North Dakota and certain localities in Missouri.<sup>16</sup>

### 4. Conclusion

In accordance with literature that was consulted during the research, the Second Amendment was originally proposed by James Madison, who included it in the Bill of Rights. James Madison is credited as the initiator of this amendment who believed that the U.S citizens have the right to possess firearms and create a well-regulated militia to protect their cause if necessary. This amendment results to be strongly supported by the U.S citizens taking into consideration the gun-pro associations, number of guns and passion of the citizens for the promotion and protection of this amendment. Also, each Federal Act that was passed by the Congress was designated to regulate transport, production and trade of firearms with the U.S territory.

Normally, each act made an impact to the existing firearm law and to the gun owners. According to the presented statistics in this study, the number of civilian-owned guns in the U.S exceeds the number of its citizens, meaning that there are huge gun reserves per citizen.

Regarding the privileges granted by the Second Amendment, it is practiced in many forms, such is gun possession or ownership. Guns are mostly used for self-defense, outdoor activities like target shooting or practicing and hunting in the U.S.

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<sup>15</sup>Relentless Tactical , All about Constitutional Carry

Retrieved from: <https://relentless-tactical.com/blogs/rto/constitutional-carry-explained>

<sup>16</sup>Definition of Constitutional Carry , retrieved from: [https://en.wikipedia.org/wiki/Constitutional\\_carry](https://en.wikipedia.org/wiki/Constitutional_carry)

Gun possession is totally legal in the U.S as long as it conforms to the law. U.S citizens are allowed to carry a gun by the U.S constitution, respectively the Second Amendment. One can open or conceal carry the firearm, with or without a permit/license and this is based on the firearm laws of each state. The best privilege to be considered so is Constitutional Carry that allows the citizens to carry a firearm with no restriction or requirement, promoting the Second Amendment as a constitutional right in the United States.

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