



Written by [Joe Wolverton, II, J.D.](#) on May 29, 2019

Mark Cuban: Time to “Update” the Second Amendment

Billionaire basketball mogul Mark Cuban thinks it’s time we change the Second Amendment.

Celebrities calling for the repeal of the Second Amendment is nothing new, but Cuban’s suggestions break that mold.

The *Shark Tank* investor presented a three-pronged “update” to the Second Amendment. “One, every American citizen has the right to own a gun,” Cuban says. “Two, the federal government will never be allowed to ever confiscate that gun from an individual.”



Cuban made the comments to Editor-in-Chief Andy Serwer in a conversation that aired on Yahoo Finance on Thursday in an episode of *Influencers With Andy Serwer*, a weekly interview series with leaders in business, politics, and entertainment.

Next, the owner of the Dallas Mavericks mentioned the Lone Star State in his second Second Amendment, in which he praised the power of federalism to let everybody live under laws they support. “States have the right to manage the ownership — the purchase, ownership, and management — of guns owned and held within their borders,” Cuban said.

“If you live in a state like Texas, if the law in Texas is open carry, so be it,” he adds. “If you live in Pennsylvania where they are more stringent and they don’t want you to be able to have a gun other than in your own premises or under lock and key or you have to do a background check, then that’s up to them to decide.”

This sort of strong state sovereignty advocacy is admirable, but unexpected from Cuban, who openly supported Hillary Clinton’s run for presidency in 2016.

Cuban himself admitted that “people probably wouldn’t expect” his pro-gun, pro-state sovereignty attitude.

The libertarian-leaning comments might have something to do with the fact that Cuban is reportedly contemplating his own run for the White House. In an interview with the *New York Daily News* back in March, the Mavericks owner obliquely offered his services to the country as an independent candidate in 2020:

I haven’t decided anything yet. We’ll see what happens. It all comes down to how things play out. It’s not something I feel like I have to do.

There’s a lot of uncertainty with what’s going on with the Mueller report, there’s a lot of things that have to be figured out before we know how 2020 is going to play out. But [running for president is] something that if circumstances were right I would.

Of course, the road to restoring the right to keep and bear arms is long, and gun grabbers are hiding



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behind every tree. Cuban acknowledges that “it’s not easy to change an amendment.”

An entrepreneur with Mark Cuban’s demonstrable skill in building businesses doesn’t expect things to be easy, and he isn’t deterred by difficulty if the thing being done is worthwhile. “We’re trying to take a Second Amendment that has been analyzed up and down and backwards and forwards, and it’s created its own set of problems,” Cuban said. “Let’s update it.”

While Cuban’s championing of federalism and unfringed gun rights is commendable, his solution to the problem of civilian disarmament isn’t perfect and, constitutionally, the path is less perilous than he anticipates, although it is certainly not a cinch.

Rather than revise the Second Amendment, we should just insist that its restrictions on federal fiddling be respected.

First, although federal officials — presidents, congressmen, and judges — are oath-bound to uphold the Constitution, the right to keep and bear arms is safer when state lawmakers stand as sentinels, an obligation they are constitutionally required to carry out according to blackletter of Article VI.

Article VI, Clause 3 of the U.S. Constitution reads: “The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.”

Simply put, this clause puts all state legislators under a legally binding obligation (assuming they’ve taken their oath of office) to “support the Constitution.” There is no better way, it would seem, for these elected state representatives of the people to show support for the Constitution than by demanding that the officers of the federal government adhere to constitutional limits on their power.

Perhaps a greater number of these state legislators, attorneys general, and judges would be more inclined to perform their Article VI duty if the people who elected them would threaten impeachment as a way of holding them legally accountable for any failures to carry this burden.

Imagine, furthermore, the uproar in state assemblies across the country if every day the legislators were in session process servers showed up at their offices armed with lawsuits charging them with dereliction of their constitutional duty!

It’s doubtful that Mark Cuban knows the way this constitutional solution to the problem of Second Amendment could work, but if his proposal is genuine, he should be behind it.

Finally, as the Declaration of Independence (and hundreds of years of English political theory before it) declares, the only legitimate basis of government is the consent of the governed. In the United States, the extent of that consent is set forth within the four corners of the Constitution.

Cuban’s “Don’t Mess With Texas” promotion of federalism would also infer that he would sign off on state nullification of any and all federal attempts to infringe on the right to keep and bear arms.

Nullification is the most effective weapon in the war against small and large tyrannical attacks on liberty. Nullification occurs when a state, county, city, or other local entity holds as null, void, and of no legal effect any act of any government body that exceeds the boundaries of its constitutional powers.

As Alexander Hamilton explained in *The Federalist*, No. 78:

There is no position which depends on clearer principles, than that every act of a delegated



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authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

The simple and undeniable fact is that there is no constitutional authority given to the federal government to restrict purchase of firearms, ammunition, or component parts. In fact, the Second Amendment explicitly proscribes any attempt by the federal government to infringe on the people's right to keep and bear arms.

Therefore, any attempt to curtail the right of civilians to own and use weapons — of any sort — is an act of tyranny, no matter how “reasonable” the supporters try to make it sound.

Although he might be posturing for political advantage, maybe we can get this information to Mark Cuban by getting booked on *Shark Tank*!

Image of Mark Cuban/*Shark Tank* logo: [Screenshot of YouTube video by Yahoo Finance](#)



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