The following information is a brief overview of some case law regarding the second amendment. Here was the opinion of many people prior to 2008 on the second amendment and the right to bear arms.

The Supreme Judicial Court of Massachusetts has held that Mass. Const. art. XVII does not guarantee individual ownership or possession of weapons. In Commonwealth v. Depina, the court rejected defendant's challenge to a statute prohibiting carrying of a firearm in public without a license. In Commonwealth v. Davis, the court rejected defendant's challenge to a state law prohibiting the possession of a short-barreled shotgun. In both cases, the court reasoned that a Mass. Const. art. XVII was intended to provide for the common defense and does not guarantee an individual right to keep and bear arms. According to the court, each statute was "part of a large regulatory scheme to promote the public safety, and there is nothing to suggest that, even in early times, due regulation of possession or carrying of firearms, short of some sweeping prohibition, would have been thought to be an improper curtailment of individual liberty or to undercut the militia system."

In Chief of Police of Shelburne v. Moyer, the Massachusetts Court of Appeals concluded, consistent with Davis, that a statute requiring a person to have a license in order to carry a firearm did not violate Mass. Const. art. XVII because "[t]here is no right under art. 17…for a private citizen to keep and bear arms and thus to require that a citizen have a license to do so is not unconstitutional."…

Here is Article XVII of the Constitution of the Commonwealth of Massachusetts: *The people have a right to keep and to bear arms for the common defence.*

It, like the second amendment, literally states that it is the right of the people. Yet, clearly the courts disagreed and were wrong. It is also ridiculous to state that, since the state and federal constitution did not guarantee an individual right to bear arms, it was acceptable to license said right. But now, post 2008, that logic is clearly error and has / had no standing. Which leads one to ask, so what are they basing their licenses on now?

You will read that the second amendment, according to the supreme court, is no different from any other amendment protecting the peoples right. Which raises the question, then why is it

licensed unlike every other right. Such as the right to free speech, you don't need a license for that, nor to vote, nor to the right to due process, nor to the exercise of your right to trial by jury.

I in no way disagree with the laws which require the passing of back ground checks and the regulation of arms being carried in sensitive places within common sense reasoning. But there is a line between regulation and infringement. That line has been and continues to be crossed. The blame is ultimately on an uninformed public who is swayed by emotional outburst and demagoguism.

The supreme court ruled in 2008 that the second amendment has always been an individual right. Now think about how many thousands of people were sent to prison under the unconstitutional reasoning that it was not an individual right. Likewise, a right can not be licensed. Consider the fact that there are states with 'constitutional carry' or permit-less carry laws. Those laws are entirely based on the fact that the second amendment already guarantees the right. Therefore, no one needs permission, which a license is permission, to exercise said right.

The supreme court also ruled that the plain text and history of the second amendment must be considered when deciding if a statute infringes on the second amendment. You will see in Young v Hawaii, that the history of the 2nd amendment is that of the general publics right to bear arms without a license. And that only the regulation of going about armed AND terrorizing the people was a crime. Other than that, the licensing of arms only applied to black slaves and white abolitionists, not the general public. But even this was an unconstitutional act. Following the coup d'état in 1861 and the establishment of the Democratic party, with the aid of the Ku Klux Klan breaking up republican meetings and murdering blacks. Therein emerges the establishment of unconstitutional infringements on the second amendment. Keep in mind, the Democratic party in essence, infiltrated the republican party. This is discussed in great detail in the book titled **The New Jim Crow: Mass Incarceration in the Age of Colorblindness** by Michelle Alexander.

See also:

https://www.americanthinker.com/articles/2021/04/us_supreme_court_gun_licensing_fees_are_unconstitutional.html

April 12, 2021

US Supreme Court: Gun Licensing Fees Are Unconstitutional

By Civis Americanus

While I am not an attorney and cannot give formal legal advice, a 1943 U.S. Supreme Court decision, Murdock v. Pennsylvania, may give Second Amendment–supporters an overwhelming legal weapon with which to destroy every single firearm ownership (although not necessarily concealed carry) licensing scheme in the country. This includes those that require licenses to own or purchase firearms.

License to own: IL, MA, NY

License to purchase: CT, HI, IA, MD, MI, NE, NJ, NC, RI

The executive summary of the ruling in Murdock v. Pennsylvania (1943) was that it is unconstitutional for a state to levy a tax on people who want to sell religious merchandise. "A municipal ordinance which, as construed and applied, requires religious colporteurs to pay a license tax as a condition to the pursuit of their activities, is invalid under the Federal Constitution as a denial of freedom of speech, press and religion. The mere fact that the religious literature is 'sold', rather than 'donated' does not transform the activities of the colporteur into a commercial enterprise."

What does this have to do with fees to obtain a license to own or purchase a firearm? The USSC also found, "A State may not impose a charge for the enjoyment of a right granted by the Federal Constitution." This means the entire Bill of Rights as opposed to just the First Amendment.

It is similarly unconstitutional to charge a fee to exercise the right to vote, AKA a poll tax. This could well be the reason why states with voter ID laws must provide free identification cards to qualified residents who do not have driver's licenses, as shown by Crawford v. Marion County Election Board. "The law's universally applicable requirements are eminently reasonable because the burden of acquiring, possessing, and showing a free photo identification is not a significant increase over the usual voting burdens, and the State's stated interests are sufficient to sustain that minimal burden." States can charge fees for driver's licenses because driving is a privilege, but voting is a right.

Gun Licensing Fees Are Racist

The racist nature of many gun licensing schemes is meanwhile underscored by an amicus curiae brief filed by the African-American Gun Association (AAGA) against California. "African Americans have been the target of some of the oldest and most odious attempts at forced disarmament[.] ... NAAGA has a strong interest in this case because taxes and fees imposed on the right to keep and bear arms disproportionately affect African Americans,

due to the average lower income and higher rate of poverty in the African-American community." White supremacists once argued openly that this was their intention, and I recall that the complete quote, while it did not use the N-word, did refer to the "son of Ham."

It is a matter of common knowledge that in this state and in several others, the more especially in the Southern states where the negro population is so large, that this cowardly practice of "toting" guns has always been one of the most fruitful sources of crime[.] ... There would be a very decided falling off of killings "in the heat of passion" if a prohibitive tax were laid on the privilege of handling and disposing of revolvers and other small arms, or else that every person purchasing such deadly weapons should be required to register[.] ... Let a negro board a railroad train with a quart of mean whiskey and a pistol in his grip and the chances are that there will be a murder, or at least a row, before he alights.

The same went for a Virginia poll tax on the right to vote.

Discrimination! Why, that is precisely what we propose; that, exactly, is what this Convention was elected for — to discriminate to the very extremity of permissible action under the limitations of the Federal Constitution, with a view to the elimination of every negro voter who can be gotten rid of, legally, without materially impairing the numerical strength of the white electorate.

The same applies to laws that require gun-owners to buy expensive liability insurance that might be affordable by people of the middle and upper classes, but not by low-paid workers among whom are many black Americans. While these laws cannot discriminate openly against black people (just as Jim Crow gun taxes and prohibitions on inexpensive firearms known as N-word Saturday Night Specials did not specify any race), they can and do exploit the economic disparity that unfortunately prevails between Caucasians and black people to disarm the latter. Perhaps

certain elements of the Democratic Party have hidden the same sheets and hoods they wore openly 70 or 80 years ago instead of getting rid of them entirely.

An Illinois Court Questioned the FOID Card Requirement

More to the point, however, is the brief's citation of Murdock v. Pennsylvania and the phrase "[a]cross constitutional rights, the courts have consistently forbidden the use of special fees and taxes on constitutionally protected conduct to generate general revenue."

Even Illinois's own courts appear to be finding issues with the Firearm Owner Identification Card per Illinois v. Brown. "The circuit court was correct that the FOID card requirement impermissibly infringes on law- abiding persons' rights to bear long arms-in their own homes for self-defense." The court filing also argues that the FOID card fee violates not just the U.S. Constitution, but also Illinois's own laws: "a person cannot be compelled 'to purchase, through a license fee or a license tax, the privilege freely granted by the constitution. Thus, Brown, who was merely exercising her right to keep a long gun in her own home for self-defense, cannot be made to purchase a card or obtain a license to exercise this fundamental right guaranteed by the Constitution." I do not know the outcome of this case but the bottom line is that an Illinois court had problems with the FOID law.

This article has hopefully provided Second Amendment–supporters with a valuable legal tool with which to attack all state laws that require people to pay for licenses to own or purchase firearms, and potential jurors (i.e., every citizen in the country) with information to use if called to serve in cases that involve these laws.

Civis Americanus is the pen name of a contributor who remembers the lessons of history and wants to ensure that our country never needs to learn those lessons again the hard way. The author is remaining anonymous due to the likely prospect of being subjected to "cancel culture" for exposing the Big Lie behind Black Lives Matter.

District of Columbia v. Heller, 554 U.S. 570 (2008)

The Second Amendment provides: “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.” In

interpreting this text, we are guided by the principle that "[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." *United States* v. *Sprague*, 282 U. S. 716, 731 (1931); see also *Gibbons* v. *Ogden*, 9 Wheat. 1, 188 (1824). Normal meaning may of course include an idiomatic meaning, but it excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation.

The Second Amendment is naturally divided into two parts: its prefatory clause and its operative clause. The former does not limit the latter grammatically, but rather announces a purpose. The Amendment could be rephrased, "Because a well regulated Militia is necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed." See J. Tiffany, A Treatise on Government and Constitutional Law §585, p. 394 (1867); Brief for Professors of Linguistics and English as Amici Curiae 3 (hereinafter Linguists' Brief). Although this structure of the Second Amendment is unique in our Constitution, other legal documents of the founding era, particularly individual-rights provisions of state constitutions, commonly included a prefatory statement of purpose. See generally Volokh, The Commonplace Second Amendment, 73 N. Y. U. L. Rev. 793, 814–821 (1998).

Logic demands that there be a link between the stated purpose and the command. The Second Amendment would be nonsensical if it read, "A well regulated Militia, being necessary to the security of a free State, the right of the people to petition for redress of grievances shall not be infringed." That requirement of logical connection may cause a prefatory clause to resolve an ambiguity in the operative clause ("The separation of church and state being an important objective, the teachings of canons shall have no place in our jurisprudence." The preface makes clear that the operative clause refers not to canons of interpretation but to clergymen.) But apart from that clarifying function, a prefatory clause does not limit or expand the scope of the operative clause. See F. Dwarris, A General Treatise on Statutes 268–269 (P. Potter ed. 1871) (hereinafter Dwarris); T. Sedgwick, The Interpretation and Construction of Statutory and Constitutional Law 42–45 (2d ed. 1874).[Footnote 3] " 'It is nothing unusual in acts … for the enacting part to go beyond the preamble; the remedy often extends beyond the particular act or mischief which first suggested the necessity of the law.' " J. Bishop, Commentaries on Written Laws and Their Interpretation §51, p. 49 (1882) (quoting Rex v. Marks, 3 East, 157, 165 (K. B. 1802)). Therefore,

while we will begin our textual analysis with the operative clause, we will return to the prefatory clause to ensure that our reading of the operative clause is consistent with the announced purpose.

1. Operative Clause.

a. "Right of the People." The first salient feature of the operative clause is that it codifies a "right of the people." The unamended Constitution and the Bill of Rights use the phrase "right of the people" two other times, in the First Amendment's Assembly-and-Petition Clause and in the Fourth Amendment's Search-and-Seizure Clause. The Ninth Amendment uses very similar terminology ("The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people"). All three of these instances unambiguously refer to individual rights, not "collective" rights, or rights that may be exercised only through participation in some corporate body.

" '[T]he people' seems to have been a term of art employed in select parts of the Constitution… . [Its uses] sugges[t] that 'the people' protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community."

This contrasts markedly with the phrase "the militia" in the prefatory clause. As we will describe below, the "militia" in colonial America consisted of a subset of "the people"—those who were male, able bodied, and within a certain age range. Reading the Second Amendment as protecting only the right to "keep and bear Arms" in an organized militia therefore fits poorly with the operative clause's description of the holder of that right as "the people."

We start therefore with a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans.

b. "Keep and bear Arms." We move now from the holder of the right—"the people"—to the substance of the right: "to keep and bear Arms."

Before addressing the verbs "keep" and "bear," we interpret their object: "Arms." The 18th-century meaning is no different from the meaning today. The 1773 edition of Samuel Johnson's dictionary defined "arms" as "weapons of offence, or armour of defence." 1 Dictionary of the English Language 107 (4th ed.) (hereinafter Johnson). Timothy Cunningham's important 1771 legal dictionary defined "arms" as "any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another." 1 A New and Complete Law Dictionary (1771); see also N. Webster, American Dictionary of the English Language (1828) (reprinted 1989) (hereinafter Webster) (similar).

The term was applied, then as now, to weapons that were not specifically designed for military use and were not employed in a military capacity. For instance, Cunningham's legal dictionary gave as an example of usage: "Servants and labourers shall use bows and arrows on Sundays, &c. and not bear other arms." See also, e.g., An Act for the trial of Negroes, 1797 Del. Laws ch. XLIII, §6, p. 104, in 1 First Laws of the State of Delaware 102, 104 (J. Cushing ed. 1981 (pt. 1)); see generally State v. Duke, 42 Tex. 455, 458 (1874) (citing decisions of state courts construing "arms"). Although one founding-era thesaurus limited "arms" (as opposed to "weapons") to "instruments of offence generally made use of in war," even that source stated that all firearms constituted "arms." 1 J. Trusler, The Distinction Between Words Esteemed Synonymous in the English Language 37 (1794) (emphasis added).

Some have made the argument, bordering on the frivolous, that only those arms in existence in the 18th century are protected by the Second Amendment. We do not interpret constitutional rights that way. Just as the First Amendment protects modern forms of communications, e.g., Reno v. American Civil Liberties Union, 521 U. S. 844, 849 (1997), and the Fourth Amendment applies to modern forms of search, e.g., Kyllo v. United States, 533 U. S. 27, 35–36 (2001), the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.

We turn to the phrases "keep arms" and "bear arms." Johnson defined "keep" as, most relevantly, "[t]o retain; not to lose," and "[t]o have in custody." Johnson 1095. Webster defined it as "[t]o hold; to retain in one's power or possession." No party has apprised us of an idiomatic meaning of "keep Arms." Thus, the most natural reading of "keep Arms" in the Second Amendment is to "have weapons."

The phrase "keep arms" was not prevalent in the written documents of the founding period that we have found, but there are a few examples, all of which favor viewing the right to "keep Arms" as an individual right unconnected with militia service. William Blackstone, for example, wrote that Catholics convicted of not attending service in the Church of England suffered certain penalties, one of which was that they were not permitted to "keep arms in their houses." 4 Commentaries on the Laws of England 55 (1769) (hereinafter Blackstone); see also 1 W. & M., c. 15, §4, in 3 Eng. Stat. at Large 422 (1689) ("[N]o Papist … shall or may have or keep in his House … any Arms … "); 1 Hawkins, Treatise on the Pleas of the Crown 26 (1771) (similar). Petitioners point to militia laws of the founding period that required militia members to "keep" arms in connection with militia service, and they conclude from this that the phrase "keep Arms" has a militia-related connotation. See Brief for Petitioners 16–17 (citing laws of Delaware, New Jersey, and Virginia). This is rather like saying that, since there are many statutes that authorize aggrieved employees to "file complaints" with federal agencies, the phrase "file complaints" has an employment-related connotation. "Keep arms" was simply a common way of referring to possessing arms, for militiamen and everyone else.[Footnote 7]

At the time of the founding, as now, to "bear" meant to "carry." See Johnson 161; Webster; T. Sheridan, A Complete Dictionary of the English Language (1796); 2 Oxford English Dictionary 20 (2d ed. 1989) (hereinafter Oxford). When used with "arms," however, the term has a meaning that refers to carrying for a particular purpose—confrontation. In Muscarello v. United States, 524 U. S. 125 (1998), in the course of analyzing the meaning of "carries a firearm" in a federal criminal statute, Justice Ginsburg wrote that "[s]urely a most familiar meaning is, as the Constitution's Second Amendment … indicate[s]: 'wear, bear, or carry … upon the person or in the clothing or in a pocket, for the purpose … of being armed and ready for offensive or defensive action in a case of conflict with another person.' " Id., at 143 (dissenting opinion) (quoting Black's Law Dictionary 214 (6th ed. 1998)). We think that Justice Ginsburg accurately captured the natural meaning of "bear arms." Although the phrase implies that the carrying of the weapon is for the purpose of "offensive or defensive action," it in no way connotes participation in a structured military organization.

From our review of founding-era sources, we conclude that this natural meaning was also the meaning that "bear arms" had in the 18th century. In numerous instances, "bear arms" was unambiguously used to refer to the carrying of weapons outside of an organized militia. The most prominent examples are those most relevant to the Second Amendment: Nine state constitutional provisions written in the 18th century or the first two decades of the 19th, which enshrined a right of citizens to "bear arms in defense of themselves and the state" or "bear arms in defense of himself and the state." [Footnote 8] It is clear from those formulations that "bear arms" did not refer only to carrying a weapon in an organized military unit. Justice James Wilson interpreted the Pennsylvania Constitution's arms-bearing right, for example, as a recognition of the natural right of defense "of one's person or house"—what he called the law of "self preservation." 2 Collected Works of James Wilson 1142, and n. x (K. Hall & M. Hall eds. 2007) (citing Pa. Const., Art. IX, §21 (1790)); see also T. Walker, Introduction to American Law 198 (1837) ("Thus the right of self-defence [is] guaranteed by the [Ohio] constitution"); see also id., at 157 (equating Second Amendment with that provision of the Ohio Constitution). That was also the interpretation of those state constitutional provisions adopted by pre-Civil War state courts.[Footnote 9] These provisions demonstrate—again, in the most analogous linguistic context—that "bear arms" was not limited to the carrying of arms in a militia.

c. Meaning of the Operative Clause. Putting all of these textual elements together, we find that they guarantee the individual right to possess and carry weapons in case of confrontation. This meaning is strongly confirmed by the historical background of the Second Amendment. We look to this because it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right. The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it "shall not be infringed." As we said in United States v. Cruikshank, 92 U. S. 542, 553 (1876), "[t]his is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The Second amendment declares that it shall not be infringed

By the time of the founding, the right to have arms had become fundamental for English subjects. See Malcolm 122–134. Blackstone, whose works, we have said, "constituted the preeminent authority on English law for the founding generation," Alden v. Maine, 527 U. S. 706, 715 (1999), cited the arms provision of the Bill of Rights as one of the fundamental rights of

Englishmen. See 1 Blackstone 136, 139–140 (1765). His description of it cannot possibly be thought to tie it to militia or military service. It was, he said, "the natural right of resistance and self-preservation," id., at 139, and "the right of having and using arms for self-preservation and defence," id., at 140; see also 3 id., at 2–4 (1768). Other contemporary authorities concurred. See G. Sharp, Tracts, Concerning the Ancient and Only True Legal Means of National Defence, by a Free Militia 17–18, 27 (3d ed. 1782); 2 J. de Lolme, The Rise and Progress of the English Constitution 886–887 (1784) (A. Stephens ed. 1838); W. Blizard, Desultory Reflections on Police 59–60 (1785). Thus, the right secured in 1689 as a result of the Stuarts' abuses was by the time of the founding understood to be an individual right protecting against both public and private violence.

New York State Rifle & Pistol Association, Inc. v. Bruen, 597 U.S. ___ (2022). New York is not alone in requiring a permit to carry a handgun in public. But the vast majority of States—43 by our count—are "shall issue" jurisdictions, where authorities must issue concealed-carry licenses whenever applicants satisfy certain threshold requirements, without granting licensing officials discretion to deny licenses based on a perceived lack of need or suitability.[1] Meanwhile, only six States and the District of Columbia have "may issue" licensing laws, under which authorities have discretion to deny concealed-carry licenses even when the applicant satisfies the statutory criteria, usually because the applicant has not demonstrated cause or suitability for the relevant license. Aside from New York, then, only California, the District of Columbia, Hawaii, Maryland, Massachusetts, and New Jersey have analogues to the "proper cause" standard.[2] All of these "proper cause" analogues have been upheld by the Courts of Appeals, save for the District of Columbia's, which has been permanently enjoined since 2017. Compare Gould v. Morgan, 907 F.3d 659, 677 (CA1 2018); Kachalsky v. County of Westchester, 701 F.3d 81, 101 (CA2 2012); Drake v. Filko, 724 F.3d 426, 440 (CA3 2013); United States v. Masciandaro, 638 F.3d 458, 460 (CA4 2011); Young v. Hawaii, 992 F.3d 765, 773 (CA9 2021) (en banc), with Wrenn v. District of Columbia, 864 F.3d 650, 668 (CADC 2017).

Today, we decline to adopt that two-part approach. In keeping with Heller, we hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that

the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command." Konigsberg v. State Bar of Cal., 366 U.S. 36, 50, n. 10 (1961).[3]

In Heller, we began with a "textual analysis" focused on the " 'normal and ordinary' " meaning of the Second Amendment's language. 554 U. S., at 576–577, 578. That analysis suggested that the Amendment's operative clause—"the right of the people to keep and bear Arms shall not be infringed"—"guarantee[s] the individual right to possess and carry weapons in case of confrontation" that does not depend on service in the militia. Id., at 592.

After holding that the Second Amendment protected an individual right to armed self-defense, we also relied on the historical understanding of the Amendment to demark the limits on the exercise of that right. We noted that, "[l]ike most rights, the right secured by the Second Amendment is not unlimited." Id., at 626. "From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." Ibid. For example, we found it "fairly supported by the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons' " that the Second Amendment protects the possession and use of weapons that are " 'in common use at the time.' " Id., at 627 (first citing 4 W. Blackstone, Commentaries on the Laws of England 148–149 (1769); then quoting United States v. Miller, 307 U.S. 174, 179 (1939)). That said, we cautioned that we were not "undertak[ing] an exhaustive historical analysis today of the full scope of the Second Amendment" and moved on to considering the constitutionality of the District of Columbia's handgun ban. 554 U. S., at 627.

Moreover, Heller and McDonald expressly rejected the application of any "judge-empowering 'interest-balancing inquiry' that 'asks whether the statute burdens a protected interest in a way or to an extent that is out of proportion to the statute's salutary effects upon other important governmental interests.' " Heller, 554 U. S., at 634 (quoting id., at 689–690 (Breyer, J., dissenting)); see also McDonald, 561 U. S., at 790–791 (plurality opinion) (the Second Amendment does not permit—let alone require—"judges to assess the costs and benefits of firearms restrictions" under means-end scrutiny). We declined to engage in means-end scrutiny because "[t]he very enumeration of the right takes out of the hands of government—even the Third

Branch of Government—the power to decide on a case-by-case basis whether the right is really worth insisting upon." Heller, 554 U. S., at 634. We then concluded: "A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all." Ibid.

This Second Amendment standard accords with how we protect other constitutional rights. Take, for instance, the freedom of speech in the First Amendment, to which Heller repeatedly compared the right to keep and bear arms. 554 U. S., at 582, 595, 606, 618, 634–635. In that context, "[w]hen the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions." United States v. Playboy Entertainment Group, Inc., 529 U.S. 803, 816 (2000); see also Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767, 777 (1986). In some cases, that burden includes showing whether the expressive conduct falls outside of the category of protected speech. See Illinois ex rel. Madigan v. Telemarketing Associates, Inc., 538 U.S. 600, 620, n. 9 (2003). And to carry that burden, the government must generally point to historical evidence about the reach of the First Amendment's protections. See, e.g., United States v. Stevens, 559 U.S. 460, 468–471 (2010) (placing the burden on the government to show that a type of speech belongs to a "historic and traditional categor[y]" of constitutionally unprotected speech "long familiar to the bar" (internal quotation marks omitted)).

And beyond the freedom of speech, our focus on history also comports with how we assess many other constitutional claims. If a litigant asserts the right in court to "be confronted with the witnesses against him," U. S. Const., Amdt. 6, we require courts to consult history to determine the scope of that right. See, e.g., Giles v. California, 554 U.S. 353, 358 (2008) ("admitting only those exceptions [to the Confrontation Clause] established at the time of the founding" (internal quotation marks omitted)). Similarly, when a litigant claims a violation of his rights under the Establishment Clause, Members of this Court "loo[k] to history for guidance." American Legion v. American Humanist Assn., 588 U. S. ___, ___ (2019) (plurality opinion) (slip op., at 25). We adopt a similar approach here.

Although we have no occasion to comprehensively define "sensitive places" in this case, we do think respondents err in their attempt to characterize New York's proper-cause requirement as a "sensitive-place" law. In their view, "sensitive places" where the government may lawfully disarm law-abiding citizens include all "places where people typically congregate and where law-enforcement and other public-safety professionals are presumptively available." Brief for

Respondents 34. It is true that people sometimes congregate in "sensitive places," and it is likewise true that law enforcement professionals are usually presumptively available in those locations. But expanding the category of "sensitive places" simply to all places of public congregation that are not isolated from law enforcement defines the category of "sensitive places" far too broadly. Respondents' argument would in effect exempt cities from the Second Amendment and would eviscerate the general right to publicly carry arms for self-defense that we discuss in detail below. See Part III–B, infra. Put simply, there is no historical basis for New York to effectively declare the island of Manhattan a "sensitive place" simply because it is crowded and protected generally by the New York City Police Department.

This definition of "bear" naturally encompasses public carry. Most gun owners do not wear a holstered pistol at their hip in their bedroom or while sitting at the dinner table. Although individuals often "keep" firearms in their home, at the ready for self-defense, most do not "bear" (i.e., carry) them in the home beyond moments of actual confrontation. To confine the right to "bear" arms to the home would nullify half of the Second Amendment's operative protections.

Moreover, confining the right to "bear" arms to the home would make little sense given that self-defense is "the central component of the [Second Amendment] right itself." Heller, 554 U. S., at 599; see also McDonald, 561 U. S., at 767. After all, the Second Amendment guarantees an "individual right to possess and carry weapons in case of confrontation," Heller, 554 U. S., at 592, and confrontation can surely take place outside the home.

Although we remarked in Heller that the need for armed self-defense is perhaps "most acute" in the home, id., at 628, we did not suggest that the need was insignificant elsewhere. Many Americans hazard greater danger outside the home than in it. See Moore v. Madigan, 702 F.3d 933, 937 (CA7 2012) ("[A] Chicagoan is a good deal more likely to be attacked on a sidewalk in a rough neighborhood than in his apartment on the 35th floor of the Park Tower"). The text of the Second Amendment reflects that reality.

The constitutional right to bear arms in public for self-defense is not "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." McDonald, 561 U. S., at 780 (plurality opinion). We know of no other constitutional right that an individual may exercise only after demonstrating to government officers some special need. That is not how the First Amendment works when it comes to unpopular speech or the free exercise of religion. It

is not how the Sixth Amendment works when it comes to a defendant's right to confront the witnesses against him. And it is not how the Second Amendment works when it comes to public carry for self-defense.

New York's proper-cause requirement violates the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms. We therefore reverse the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Additionally, some "shall issue" jurisdictions have so-called "constitutional carry" protections that allow certain individuals to carry handguns in public within the State without any permit whatsoever. See, e.g., A. Sherman, More States Remove Permit Requirement To Carry a Concealed Gun, PolitiFact (Apr. 12, 2022), https://www.politifact.com/article/2022/apr/12/more-states-remove-permit-requirement-carry-concea/ ("Twenty-five states now have permitless concealed carry laws . . . The states that have approved permitless carry laws are: Alabama, Alaska, Arizona, Arkansas, Idaho, Indiana, Iowa, Georgia, Kansas, Kentucky, Maine, Mississippi, Missouri, Montana, New Hampshire, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia, and Wyoming").

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. YOUNG v. STATE OF HAWAII. No. 12-17808. D.C. No. 1:12-cv-00336-HG-BMK

OPINION

Appeal from the United States District Court

for the District of Hawaii

Helen W. Gillmor, Senior District Judge, Presiding

We begin with Bliss v. Commonwealth, 12 Ky. (2 Litt.) 90 (1822), cited in Heller, 554 U.S. at 585 n. 9, a decision "especially significant both because it is nearest in time to the founding era and because the state court assumed (just as [Heller] does) that the constitutional provision at issue codified a preexisting right." Nelson Lund, The Second Amendment, Heller, and Originalist Jurisprudence, 56 UCLA L. Rev. 1343, 1360 (2009). Interpreting Kentucky's Second Amendment

analogue—providing that "the right of the citizens to bear arms in defense of themselves and the state, shall not be questioned"—the state's highest court had no doubt that any law restricting the public carry of firearms would "import a restraint on the right of the citizens to bear arms." Bliss, 12 Ky. at 90–92. The court then invalidated a restriction on the concealed carry of weapons, despite the availability of open carry, reasoning that "whatever restrains the full and complete exercise of [the right to bear arms], though not an entire destruction of it, is forbidden by the explicit language of the constitution." See id. The Bliss court's strict approach to restraints on the concealed carry of firearms was an outlier in the Nineteenth Century, see Peruta II, 824 F.3d at 935– 36, and Kentucky did later amend its constitution to allow the legislature to "pass laws to prevent persons from carrying concealed arms," Ky. Const. art. XIII, § 25. Nonetheless, the Kentucky constitutional convention left untouched the premise in Bliss that the right to bear arms protects open carry.

In Tennessee, the state's highest court offered its interpretation of the right to bear arms eleven years after Bliss. See Simpson v. State, 13 Tenn. (5 Yer.) 356 (1833), cited in Heller, 554 U.S. at 585 n.9. After he was convicted of disturbing the peace by appearing armed in public, Simpson faulted the indictment for failing clearly to require proof of actual violence. Id. at 357–58. The high court agreed, because—even assuming that colonial law did not require proof of actual violence to punish colonists for walking with weapons—the Tennessee "constitution ha[d] completely abrogated it." Id. at 360. No such prohibition could survive the state constitution's grant of "an express power . . . secured to all the free citizens of the state to keep and bear arms for their defence, without any qualification whatever as to their kind or nature." Id. Absent an act of violence, then, Simpson's indictment for merely carrying firearms could allege no crime tolerable to the constitution of Tennessee. See id. at 360–62.

The Alabama Supreme Court joined the chorus seven years later. See State v. Reid, 1 Ala. 612 (1840), cited in Heller, 554 U.S. at 629. Interpreting the Alabama "right to bear arms, in defense of []self and the State," the high court declared that an Alabamian must be permitted some means of carrying a weapon in public for self-defense. Id. at 615– 16. The court ultimately upheld a restriction on "the evil practice of carrying weapons secretly," citing the legislature's power "to enact laws in regard to the manner in which arms shall be borne. . . . as may be dictated by the

safety of the people and the advancement of public morals." Id. at 616. But the court made clear where that power of the legislature ran dry:

> We do not desire to be understood as maintaining, that in regulating the manner of bearing arms, the authority of the Legislature has no other limit than its own discretion. A statute which, under the pretence of regulating, amounts to a destruction of the right, or which requires arms to be so borne as to render them wholly useless for the purpose of defence, would be clearly unconstitutional.

See id. at 616–17.

The Georgia Supreme Court embraced precisely that position six years later, making explicit what Reid intimated. See Nunn v. State, 1 Ga. 243 (1846), cited in Heller, 554 U.S. at 612, 626, 629. There, the Georgia high court considered a Second Amendment challenge to a statute creating a misdemeanor for carrying a pistol, either openly or concealed. Id. at 246. Starting off with a clear statement of the constitutional guarantee, the court explained: "The right of the whole people, old and young, men, women and boys, and not militia only, to keep and bear arms of every description, and not such merely as are used by the militia, shall not be infringed, curtailed, or broken in upon, in the smallest degree . . . ." Id. at 251 (emphasis omitted). And with those Second Amendment lines properly set, the court held that Georgia's statute went too far:

> We are of the opinion, then, that so far as the act of 1837 seeks to suppress the practice of carrying certain weapons secretly, that it is valid, inasmuch as it does not deprive the citizen of his natural right of self-defence, or of his constitutional right to keep and bear arms. But that so much of it, as contains a prohibition against bearing arms openly, is in conflict with the Constitution, and void . . .

Id. (emphasis added). Critically, we must afford Nunn's understanding of the Second Amendment a good deal of weight, because, as Heller explains, "[i]ts opinion perfectly captured the way in which the operative clause of the Second Amendment furthers the purpose announced in the prefatory clause." 554 U.S. at 612; see also O'Shea, supra, at 627 ("No case, historic or recent, is discussed more prominently or positively in Heller than the Georgia Supreme Court's 1846 decision in Nunn v. State.").

The Louisiana Supreme Court soon followed the course set by Alabama and Georgia. See State v. Chandler, 5 La. Ann. 489 (1850), cited in Heller, 554 U.S. at 613, 626. The high court first rejected Chandler's Second Amendment challenge to a Louisiana law prohibiting concealed carry, reasoning that the law was "absolutely necessary to counteract a vicious state of society, growing out of the habit of carrying concealed weapons, and to prevent bloodshed and assassinations committed upon unsuspecting persons." Id. at 489–90. But, in precisely the same manner as the Nunn and Reid courts, the Chandler court drew the line which the legislature could not cross. As the court explained: "[The prohibition on concealed carry] interfered with no man's right to carry arms . . . 'in full open view,' which places men upon an equality. This is the right guaranteed by the Constitution of the United States . . . ." Id. at 490; see also Heller, 554 U.S. at 613 (citing favorably Chandler's holding that "citizens had a right to carry arms openly").

Thus, each of these nineteenth century cases found instructive by Heller when settling the Second Amendment as an individual right to self-defense is just as instructive when evaluating the application of that right outside the home. While nineteenth century legislatures enjoyed latitude to regulate the "manner in which arms shall be borne," no legislature in these states could, "under the pretence of regulating," destroy the right to carry firearms in public altogether. See Reid, 1 Ala. at 616–17. Accordingly, even though our court has read these cases to exclude concealed carry from the Second Amendment's protections, see Peruta II, 824 F.3d at 933–36, the same cases command that the Second Amendment must encompass a right to open carry.

We are well aware that there were judicial proponents of a more limited right to bear arms during the nineteenth century.

Most prominent is the Arkansas Supreme Court's 1842 interpretation of the right in State v. Buzzard, 4 Ark. 18 (1842). There, a divided court upheld an Arkansas prohibition on the concealed carry of "any pistol, dirk, butcher or large knife, or a sword in a cane," but each judge in the splintered majority appeared poised to go much further. Chief Justice Ringo advocated his view that the Second Amendment served as no bar to the Arkansas legislature's authority to restrict any carrying of firearms: "[N]o enactment on this subject, which neither directly nor indirectly so operates as to impair or render inefficient the means provided by the Constitution for the defense of the State, can be adjudged invalid on the ground that it is repugnant to the Constitution." Id. at 27. But Justice Dickinson went even further, writing that the Second Amendment was nothing "but

an assertion of that general right of sovereignty belonging to independent nations to regulate their military force," thus finding no individual right within its guarantee. Id. at 32; but see id. at 34–35 (Lacy, J., dissenting) (viewing the Second Amendment as an individual right to self-defense).

Several nineteenth century courts hewed to Buzzard's approach and upheld restrictions on the public carry of weapons without emphasizing, as did courts in Nunn's camp, the limits of legislative authority. See Hill v. State, 53 Ga. 472, 474–75 (1874) (upholding prohibition on carrying weapons "to any court of justice . . . or any place of public worship, or any other public gathering . . . except militia muster grounds"); English v. State, 35 Tex. 473, 474 (1871) (upholding prohibition on carrying "pistols, dirks, daggers, slungshots, swordcanes, spears, brass-knuckles and bowie knives"); State v. Workman, 14 S.E. 9, 10–12 (W. Va. 1891) (upholding presumption of criminality "when a man is found going around with a revolver, razor, billy, or brass knuckles upon his person").

Yet, with Heller on the books, cases in Buzzard's flock furnish us with little instructive value. That's because Heller made clear that the Second Amendment is, and always has been, an individual right centered on self-defense; it has never been a right only to be exercised in connection with a militia. See, e.g., 554 U.S. at 592, 599, 616, 628. And bound as the inferior court that we are, we may only assess whether the right to bear arms extends outside the home on the understanding that the right is an individual one centered on self-defense. Thus, Heller knocks out the load-bearing bricks in the foundation of cases like Buzzard, for those courts only approved broad limitations on the public carry of weapons because such limitations in no way detracted from the common defense of the state. See, e.g., Buzzard, 4 Ark. at 27 (opinion of Ringo, C.J.) ("The act in question does not, in my judgment, detract anything from the power of the people to defend their free state and the established institutions of the country."); Hill, 53 Ga. at 475 ("In what manner the right to keep and bear these pests of society [dirks, bowie knives, and the like], can encourage or secure the existence of a militia, and especially of a well regulated militia, I am not able to divine."); English, 35 Tex. at 477 ("The terms dirks, daggers, slungshots, sword-canes, brassknuckles and bowie knives, belong to no military vocabulary."); Workman, 14 S.E. at 11 ("So, also, in regard to the kind of arms referred to in the amendment, it must be held to refer to the weapons of warfare to be used by the militia . . . ."); see also Wrenn, 864 F.3d at 658 (reasoning

that such cases are "sapped of authority by Heller"); Moore, 702 F.3d at 941 (regarding "the historical issues as settled by Heller"); O'Shea, supra, at 653 (same).

Finally, as did the Court in Heller, we turn to the legislative scene following the Civil War. See 554 U.S. at 614–16. While considering materials that post-date the Bill of Rights by at least 75 years might stretch the term "original public meaning," Heller explains that, "[i]n the aftermath of the Civil War, there was an outpouring of discussion of the Second Amendment in Congress and in public discourse, as people debated whether and how to secure constitutional rights for newly free slaves." Id. at 614. So, although such evidence "do[es] not provide as much insight into [the Second Amendment's] original meaning as earlier sources," we nevertheless consider such evidence somewhat instructive on its meaning.12 See id.

Particularly relevant in this period are the efforts of many Southern states to disarm free blacks after the Civil War by adopting Black Codes, because "[t]hose who opposed these injustices frequently stated that they infringed blacks' constitutional right to keep and bear arms." Heller, 554 U.S. at 614–16; see also Clayton E. Cramer, The Racist Roots of Gun Control, 4 Kan. J.L. & Pub. Pol'y 17, 20 (1995) ("The various Black Codes adopted after the Civil War required blacks to obtain a license before carrying or possessing firearms or bowie knives . . . . These restrictive gun laws played a part in provoking Republican efforts to get the Fourteenth Amendment passed.").

The Supreme Court's infamous decision in Dred Scott v. Sanford, 60 U.S. 393 (1857), rendered four years before the first shots were fired at Fort Sumter, would pave the way for such Black Codes to proliferate after the war. See McDonald, 561 U.S. at 807–08, 822, 849 (Thomas, J., concurring in part and concurring in the judgment) (looking to Dred Scott as necessary context in Civil War era historical analysis). Writing for the Court, Chief Justice Taney— disgracefully— dismissed Dred Scott's suit for freedom after concluding that blacks had never been a part of the sovereign "people" of the United States and therefore could find no recourse in an Article III court. See 60 U.S. at 407. To hold otherwise, Chief Justice Taney wrote, would have "entitled [blacks] to the privileges and immunities of citizens" and thus granted them the rights he felt only whites could enjoy:

"[I]t would give them the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went." Id. at 416– 17

Perhaps emboldened by Chief Justice Taney's opinion, "those who sought to retain the institution of slavery . . . [began] to eliminate more and more of the basic liberties of slaves, free blacks, and white abolitionists." See McDonald, 561 U.S. at 843–44 (Thomas, J., concurring in part and concurring in the judgment). And the pervasive fear of slave rebellions "led Southern legislatures to take particularly vicious aim at the rights of free blacks and slaves to speak or to keep and bear arms for their defense." Id. at 845; see also Act of Dec. 23, 1833, § 7, 1833 Ga. Acts 226, 228 ("[I]t shall not be lawful for any free person of colour in this state, to own, use, or carry fire arms of any description whatever.").

The subsequent Civil War was far from a perfect fix to these problems. Those freedmen who had fought for the Union Army during the war frequently returned home "to the States of the old Confederacy, where systematic efforts were made to disarm them and other blacks." McDonald, 561 U.S. at 771; see also The Freedmen's Bureau Bill, N.Y. Evening Post, May 30, 1866, at 2 ("In South Carolina and Florida the freedmen are forbidden to wear or keep arms."). Emblematic of these efforts was an 1865 law in Mississippi that declared "no freedman, free negro or mulatto . . . shall keep or carry fire-arms of any kind, or any ammunition, dirk or bowie knife." McDonald, 561 U.S. at 771 (quoting Certain Offenses of Freedmen, 1865 Miss. Laws p. 165, § 1, in 1 Documentary History of Reconstruction 289 (W. Fleming ed. 1950)). The law was vigorously enforced. As an 1866 letter from Rodney, Mississippi to the Harper's Weekly magazine lamented, "[t]he militia of this county have seized every gun and pistol found in the hands of the (so called) freedmen. . . . They claim that the statute laws of Mississippi do not recognize the negro as having any right to carry arms." The Labor Question at the South, Harper's Weekly, Jan. 13, 1866, at 19. Seeking help from outside of the state, the letter emphasized that such Mississippi laws did "not protect, but insist[ed] upon infringing on their liberties." Id. Worse still, "[w]ithout federal enforcement of the inalienable right to keep and bear arms, . . . militias and mobs were tragically successful in waging a campaign of terror against [newly free slaves]." McDonald, 561 U.S. at 856 (Thomas, J., concurring in part and concurring in the judgment).

Such blatant injustices did not continue unnoticed by Congress, which established the Freedmen's Bureau to aid newly freed blacks still suffering in the Reconstruction South. Working to fulfill its mandate, an 1866 report by the Bureau targeted a Kentucky law that sought to deprive freedmen of their Second Amendment rights: "[T]he civil law [of Kentucky] prohibits the colored man from bearing arms . . . . Their arms are taken from them by the civil authorities . . . . Thus, the right of the people to keep and bear arms as provided in the Constitution is infringed." Heller, 554 U.S. at 614–15 (quoting H.R. Exec. Doc. No. 70, 39th Cong., 1st Sess., 233, 236). But Kentucky was far from the only state subject to scrutiny; a joint congressional report decried a South Carolina practice of "seizing all fire-arms found in the hands of the freedmen." Id. at 615 (quoting Joint Comm. on Reconstruction, H.R. Rep. No. 30, 39th Cong., 1st Sess., pt. 2, p. 229 (1866) (Proposed Circular of Brigadier General R. Saxton)). The joint report plainly envisioned a right to bear arms outside the home, emphasizing that freedmen in South Carolina "need [firearms] to kill game for subsistence." Id

Indeed, even those congressmen who opposed federal action to protect the rights of freedmen understood the fundamental constitutional rights at stake. Senator Davis of Kentucky acknowledged, alongside the writ of habeas corpus, the right "for every man bearing his arms about him and keeping them in his house, his castle, for his own defense," but argued that congressional action on the matter would usurp the role of Kentucky in caring for its citizens. See Cong. Globe, 39th Cong., 1st Sess. 370–71 (1866) (emphasis added), cited in Heller, 554 U.S. at 616.

To summarize the history canvassed thus far: the important founding-era treatises, the probative nineteenth century case law, and the post-civil war legislative scene each reveal a single American voice. The right to bear arms must include, at the least, the right to carry a firearm openly for self-defense.

E

But wait! The dissent says we have yet to consider the impact of historical "good cause" restrictions on the scope of the Second Amendment right to carry a firearm in public. According to the dissent, many states heavily restricted the public carry of weapons absent good cause to fear

injury to person or property. Dissent at 65–67. A review of the dissent's evidence compels us to disagree.

Many states during the nineteenth century required people who carried weapons in a disruptive fashion to post a bond (or a "surety") to ensure their good behavior. See, e.g., The Revised Statutes of the Commonwealth of Massachusetts 750 § 16 (Boston, Theron Metcalf & Horace Mann 1836) (hereinafter Mass. Acts). And to enforce the surety requirement, such states commonly relied on a citizencomplaint mechanism. That is, if an arms carrier gave any observer "reasonable cause to fear an injury, or breach of the peace," the observer could complain to his local magistrate, who might then require the disruptive carrier "to find sureties for keeping the peace," generally "for a term not exceeding six months." See id. But if the disruptive carrier also had "reasonable cause to fear an assault or other injury," such person could be excused from posting sureties despite the complaint. Id. As an example of the pieces put together, Michigan's 1846 surety law provided that if any person went armed with an "offensive and dangerous weapon, without reasonable cause to fear an assault or other injury . . . he may, on complaint of any person having reasonable cause to fear an injury or breach of the peace, be required to find sureties for keeping the peace." The Revised Statutes of the State of Michigan 692 § 16 (Detroit, Sanford M. Green 1846).

The dissent erroneously characterizes surety laws as imposing a severe restriction on the public carry of weapons absent good cause to fear injury. And its analysis of the actual historical evidence is, in a word, cursory. While the dissent focuses on the exception to the surety requirement for carriers with a specialized need for self-defense, it ignores the clearly limited scope of the requirement in the first place: only upon a well-founded complaint that the carrier threatened "injury or a breach of the peace" did the good cause exception come into play, "by exempting even the accused" from the burden of paying sureties. Wrenn, 864 F.3d at 661. Thus, "[a] showing of special need did not expand carrying for the responsible; it shrank burdens on carrying by the (allegedly) reckless." Id.

Indeed, what is most troubling about the dissent's historical "analysis" is that it reliably quotes the good cause exception to the surety requirements but hardly mentions the limiting citizen-complaint mechanism present in virtually every single one of its quoted sources. See The Statutes of Oregon 220 § 17 (Oregon, Asahel Bush 1854) (complainant must possess "reasonable

cause to fear an injury, or breach of the peace"); The Revised Statutes of the Territory of Minnesota 528 § 18 (Saint Paul, James M. Goodhue 1851) (complainant must possess "reasonable cause to fear an injury or breach of the peace"); The Revised Statutes of the State of Maine 709 § 16 (Hallowell, Glazier, Masters & Smith 1847) (complainant must possess "cause to fear an injury or breach of the peace"); Statutes of the Territory of Wisconsin 381 § 16 (Albany, Packard, Van Benthuysen & Co. 1839) (complainant must possess "reasonable cause to fear an injury or breach of the peace"); 1836 Mass. Acts 750 § 16 (complainant must possess "reasonable cause to fear an injury, or breach of the peace"). The dissent might wish to set aside the requirements to complain under surety laws, but we suspect those who actually did complain under such laws would hesitate before treating the requirements so lightly. Were a complainant to bring an "unfounded, frivolous or malicious" claim that an arms carrier threatened the public peace, the magistrate would not only dismiss the complaint, but also hold the complainant "answerable to the magistrate and the officer for their fees." See, e.g., 1836 Mass. Acts 749 § 7.

In any event, even if all arms carriers without good cause had to post sureties (they did not), the laws would not add much to our analysis. Heller saw little weight in historical prohibitions that promised only "a small fine and forfeiture of the weapon (or in a few cases a very brief stay in the local jail)." 554 U.S. at 633. Certainly, an obligation to post a surety fits that mold. Like a small fine, sureties are "'akin to modern penalties for minor public-safety infractions like speeding or jaywalking,' which makes them (in the Court's view) poor evidence of limits on the [Second] Amendment's scope." Wrenn, 864 F.3d at 661 (quoting Heller, 554 U.S. at 633–34). In fact, sureties seem to us even less noteworthy than small fines, since a disruptive carrier—once he posted a surety—"could go on carrying without criminal penalty." Id. And if he refrained from breaching the peace, of course, his money posted as a surety would be returned in a matter of months.

All in all, we are unmoved by the dissent's misguided interpretation of history. While surety laws used the language "reasonable cause," they bear no resemblance to modern-day good cause requirements to carry a firearm.

F

One more historical misconception to dispel.

The County and the State, apparently seeing little room to quarrel with American history, argue that the English right to carry weapons openly was limited for centuries by the 1328 Statute of Northampton, and that we should incorporate wholesale that understanding of English rights into our Constitution's Second Amendment. Exploring fourteenth century English law books (after a thorough dusting) reveals that the statute allowed no ordinary Englishman to "bring . . . force in affray of the peace, nor to go nor ride armed by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere." Statute of Northampton 1328, 2 Edw. 3, c. 3 (Eng.).15 But the statute's effects did not remain in the fourteenth century, as it "would become the foundation for firearms regulation in England for the next several centuries." Peruta II, 824 F.3d at 930. Our court has interpreted the statute and its enforcement history as consistently prohibiting concealed carry, see id. at 932, but we have not until now considered whether it also prohibited open carry.

To the extent the Framers considered the Statute of Northampton as instructive of the pre-existing right to bear arms, they took a narrow view of its prohibitions. See Eugene Volokh, The First and Second Amendments, 109 Colum. L.Rev. Sidebar 97, 101 (2009). In that vein, Justice James Wilson, a leading drafter of the Constitution, credited Serjeant Hawkins and construed the statute to prohibit arming oneself "with dangerous and unusual weapons, in such a manner, as will naturally diffuse a terrour among the people." 2 James Wilson, Collected Works of James Wilson 654 (Kermit L. Hall & Mark D. Hall eds. 1967); see also Volokh, The First and Second Amendments, supra, at 101 ("American benchbooks for justices of the peace echoed [Wilson's observation], citing Hawkins . . . ."). William Rawle, a prominent member of the Pennsylvania Assembly that ratified the Constitution, likewise cited Hawkins and wrote that the right to bear arms would not rule out a law prohibiting "the carrying of arms abroad by a single individual, attended with circumstances giving [observers] just reason to fear that he purposes to make an unlawful use of them." Rawle, supra, at 126.

Justice Wilson and William Rawle's reading of the statute is confirmed by the various state weapons carry regulations throughout the founding era and beyond that were expressly modelled after the Statute of Northampton ("Northampton analogues"). See Eric M. Ruben & Saul Cornell, Firearm Regionalism and Public Carry: Placing Southern Antebellum Case Law in Context, 125 Yale L.J. Forum 121, 128–29 (2015) ("[S]everal early American states expressly incorporated

versions of the Statute of Northampton into their laws."). Like the surety laws relied on by the dissent, the state-enacted Northampton analogues only sought to regulate disruptive—or more specifically, terrifying—arms carrying. For example, Massachusetts in 1795 enacted a law authorizing justices of the peace to arrest "all affrayers, rioters, disturbers, or breakers of the peace, and such as shall ride or go armed offensively, to the fear or terror of the good citizens." 1795 Mass. Acts 436 (emphasis added); see also 1786 Va. Acts 33 (prohibiting going "armed by night []or by day, in fairs or markets, or in other places, in terror of the Country").

The North Carolina Supreme Court offered a definitive interpretation of its Northampton analogue in 1843, providing us with the benefit of a more thorough discussion of its elements. State v. Huntly, 25 N.C. (3 Ired.) 418 (1843). After holding that firearms fell within the reach of the crime, the court clarified:

> [I]t is to be remembered that the carrying of a gun per se constitutes no offence. For any lawful purpose—either of business or amusement—the citizen is at perfect liberty to carry his gun. It is the wicked purpose— and the mischievous result—which essentially constitute the crime. He shall not carry about this or any other weapon of death to terrify and alarm, and in such manner as naturally will terrify and alarm, a peaceful people.

Id. at 422–23. True, the court cited "business or amusement," instead of self-defense, as examples of lawful purposes, but a moment's thought refutes the notion that such a list was exhaustive; surely a North Carolinian wasn't at liberty to carry his rifle only so long as he twirled it in amusement. Rather, it was the "wicked purpose" that "constitute[d] the crime." Id. at 423.

3 We thus disagree with the dissent's view that carrying a weapon was itself sufficient to face punishment under a state-enacted Northampton analogue. Dissent at 65 n.1. As that argument goes, when the drafters of virtually every single state Northampton analogue criminalized going armed "to the terror" or "in affray" of others, the terror or affray language was just purposive; that is, "terrorizing the public was the consequence of going armed," so such language was incorporated into the statutes merely to clarify why going armed was itself unlawful. See Ruben & Cornell, supra, at 129–30; Charles, supra, at 33.

What an odd way it would be to write a criminal statute! To interpret such language as merely purposive is to remove its operative effect, for if going armed was itself unlawful then

clarifying the consequences of going armed adds not an iota of substance to the crime. Of course, "where the text of a clause itself indicates that it does not have operative effect, such as 'whereas' clauses in federal legislation or the Constitution's preamble, a court has no license to make it do what it was not designed to do." Heller, 554 U.S. at 578 n.3. But it is entirely another endeavor to read language mixed in among operative elements in a criminal statute as merely purposive. See id. ("[O]perative provisions should be given effect as operative provisions, and prologues as prologues."); Ratzlaf v. United States, 510 U.S. 135, 140–41 (1994) (counseling "heightened" resistance before treating statutory terms as "words of no consequence . . . when the words describe an element of a criminal offense"). For instance, Maine's 1821 Northampton analogue authorized the arrest of "all affrayers, rioters, disturbers or breakers of the peace, and such as shall ride or go armed offensively, to the fear or terror of the good citizens of this State, or such others as may utter any menaces or threatening speeches." 1821 Me. Laws 285. If riding armed were itself unlawful because it terrorized the good citizens of Maine, it strains credulity to suggest that Maine drafters would have felt the need to clarify such reasoning right in the middle of the statute's operative provisions. Indeed, why only clarify the consequences of riding armed, and no other prohibited conduct?

More troubling, reading the "to the terror" language as merely purposive frequently places a Northampton analogue in conflict with its neighboring criminal provisions. Take a closer look at the Northampton analogue in chapter 97 section 13 of Delaware's 1852 Revised Statutes, which—in familiar fashion—authorized the arrest of "all who go armed offensively to the terror of the people, or are otherwise disorderly and dangerous." Revised Statutes of the State of Delaware, to the Year of Our Lord One Thousand Eight Hundred and Fifty-Two, Inclusive 333 § 13 (Dover, W.B. Keen 1852). With that provision in mind, turn to Section 30, where the Delaware Code authorized justices of the peace to "punish any slave . . . who shall, without the special permission of his master, go armed with any dangerous weapon." Id. at 336 § 30. How might one grant another permission to "go armed with any dangerous weapon" if one had no lawful authority to go armed in the first place? Or consider Tennessee's 1831 Revised Statutes, which, immediately after providing its standard-form Northampton analogue, authorized sheriffs to arrest any person "armed with the intention of committing a riot or affray." 1 The Statute Laws of the State of Tennessee, of a Public and General Nature 10 (Knoxville, John Haywood & Robert L. Cobbs

1831). Why on earth would Tennessee have so limited a sheriff's authorization to arrest if going armed was itself unlawful?

Thus, utterly confused by how we might read a Northampton analogue to prohibit all arms carry, we feel the better approach with these statutes is to take them at their word: an American, just like an Englishman, could not go armed offensively to the terror of the people. Such a reasonable restriction on public carry is perfectly consistent with a robust right peacefully to carry a firearm in public. In all, then, the various Northampton analogues found in states across the United States confirm that, "whatever Northampton banned on the shores of England," the American right to carry common weapons openly for selfdefense "was not hemmed in by longstanding bans on carrying." Wrenn, 864 F.3d at 660–61.

Concluding our analysis of text and review of history, we remain unpersuaded by the County's and the State's argument that the Second Amendment only has force within the home. Once identified as an individual right focused on self-defense, the right to bear arms must guarantee some right to self-defense in public. While the concealed carry of firearms categorically falls outside such protection, see Peruta II, 824 F.3d at 939, we are satisfied that the Second Amendment encompasses a right to carry a firearm openly in public for self-defense. Because section 134-9 restricts Young in exercising such right to carry a firearm openly, it burdens conduct protected by the Second Amendment.

United States v Peterson 483 F 2d 1222. The court stated 'The virtue of retreat… yield[s] to the urgency of self-preservation'.

Commonwealth v Lindsey 396 Mass 840 489 N.E. 2d 666: Unlicensed temporary possession of firearms in public might be lawful in spite of 269 § 10(a) in certain necessitous circumstances.

Selective Draft Law Cases, 245 U.S. 366 (1918) MR. CHIEF JUSTICE WHITE delivered the opinion of the court. "That every member of society hath a right to be protected in the enjoyment of life, liberty and property, and therefore is bound to contribute his proportion towards the expense of that protection, and yield his personal service when necessary, or an equivalent thereto."

Silveira v Lockyer 328 F 3d 567.

KLEINFELD, Circuit Judge, with whom Circuit Judges KOZINSKI, O'SCANNLAIN, and T.G. NELSON join, dissenting from denial of rehearing en banc:

I respectfully dissent from our order denying rehearing en banc. In so doing, I am expressing agreement with my colleague Judge Gould's special concurrence in Nordyke v. King, and with the Fifth Circuit's opinion in United States v. Emerson, both taking the position that the Second Amendment secures an individual, and not collective, right to keep and bear arms.

The panel opinion holds that the Second Amendment "imposes no limitation on California's [or any other state's] ability to enact legislation regulating or prohibiting the possession or use of firearms" and "does not confer an individual right to own or possess arms." The panel opinion erases the Second Amendment from our Constitution as effectively as it can, by holding that no individual even has standing to challenge any law restricting firearm possession or use. This means that an individual cannot even get a case into court to raise the question. The panel's theory is that "the Second Amendment affords only a collective right," an odd deviation from the individualist philosophy of our Founders. The panel strikes a novel blow in favor of states' rights, opining that "the amendment was not adopted to afford rights to individuals with respect to private gun ownership or possession," but was instead "adopted to ensure that effective state militias would be maintained, thus preserving the people's right to bear arms."

Much of the panel decision purports to be an attempt to figure out what the word "militia" means in the Second Amendment. But the panel's failure to cite the contemporaneous implementing statute defining the term demonstrates the tendentiousness of its analysis. The statute defining the militia, which in substance provides that the "militia" consists of all adult male citizens without regard to whether they are in any state or federal military service, has been subsequently altered to expand its coverage, but the federal militia statute remains in effect. Besides overlooking the statute, the panel somehow failed to notice that the United States Supreme Court, in United States v. Miller, held that the term "militia" in the Second Amendment meant, and means, "all males physically capable of acting in concert for the common defense." We are an inferior court, bound by this holding of the Supreme Court.

About twenty percent of the American population, those who live in the Ninth Circuit, have lost one of the ten amendments in the Bill of Rights. And, the methodology used to take away the right threatens the rest of the Constitution. The most extraordinary step taken by the panel opinion

is to read the frequently used Constitutional phrase, "the people," as conferring rights only upon collectives, not individuals. There is no logical boundary to this misreading, so it threatens all the rights the Constitution guarantees to "the people," including those having nothing to do with guns. I cannot imagine the judges on the panel similarly repealing the Fourth Amendment's protection of the right of "the people" to be secure against unreasonable searches and seizures, or the right of "the people" to freedom of assembly, but times and personnel change, so that this right and all the other rights of "the people" are jeopardized by planting this weed in our Constitutional garden.

The Constitution with its amendments is the supreme law of this land, not historical artifact, so we must read it, determine what it means, and follow it, regardless of our policy preferences. The Second Amendment to the Constitution provides: "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." To figure out what the Second Amendment means, we should apply standard and commonly accepted rules of statutory and constitutional construction, such as the rule that all the words must ordinarily be given force. The forceful language in the operative language in the Amendment, "the right of the people to keep and bear Arms, shall not be infringed," is quite clear, as will be set out below. The statement of the purpose preceding these operative words, "A well regulated Militia, being necessary to the security of a free State," makes the conclusion unavoidable, once "militia" is read seriously, that the operative words guarantee an individual right.

The panel's strongest argument (but not strong enough) is that the word "bear" in the phrase "bear Arms" "customarily relates to a military function," so that when not acting in a military capacity, "the people" have no right to bear Arms. The military meaning is certainly among the meanings of "bear," as is "large, heavily built, furry, four-legged mammal," and "investor pessimistic about the stock market." But the primary meaning of "bear" is "to carry," as when we arrive at our host's home "bearing gifts" and arrive at the airport "bearing burdens." The only way to limit "bear" to its military meaning is to misread "militia" in the preamble as though it meant regulars in a standing military service, which, as shall be shown below, it emphatically does not.

Of course one can cherry-pick dictionary definitions, just as one can carefully select from legislative and other history. The panel opinion cites a law review article citing the Oxford English Dictionary, and asserts that the OED "defines `to bear arms' as `to serve as a soldier, do military service, fight.'" This is correct as far as it goes, but it is also misleading, because the OED says

that the "main sense" of "bear" is "to carry." True, sense 6(a) of "bear" in the OED is "To carry about with one, or wear, ensigns of office, weapons of offence or defence," and the OED lists among the fourth sense of "arms," "to bear arms" — marked as figurative by the editors — defined as "to serve as a soldier, do military service, fight." Certainly the phrase has often been used this way, in judicial opinions and elsewhere. But that does not vitiate the "main sense" of "bear": to carry. The word was used the same way when Congress adopted the Second Amendment. Webster's 1828 Dictionary offers "To support" and "To carry" as the first and second meanings of "bear." If we used the panel's methodology, taking each word according a right in the Bill of Rights in the narrowest possible sense, then we would limit the freedom of "speech" protected by the First Amendment to oral declamations. The right of the people to "bear" arms means, taking the word in its ordinary sense both then and now, the right of the people to "carry" arms, subject as all constitutional rights are to reasonable regulation and restrictions.

The word "keep" poses a much more difficult problem for those who, like the panel, favor judicial repeal of the Second Amendment. While "bear" often has a military meaning, "keep" does not. For centuries, the primary meaning of "keep" has been "to retain possession of." There is only one straightforward interpretation of "keep" in the Second Amendment, and that is that "the people" have the right to retain possession of arms, subject to reasonable regulation and restrictions.

The most important phrase for determining the scope of the operative words of the Second Amendment (and the most troublesome to the panel) is "the right of the people." The operative words of the amendment syntactically protect the right of "the people," not the "militia," to keep and bear arms. Despite the panel's extensive discussion of "keep," "bear," and the preamble, it simply skips over "the right of the people" and attempts no direct analysis of the phrase. Marbury v. Madison held that "It cannot be presumed that any clause in the Constitution is intended to be without effect; and, therefore, such a construction is inadmissible, unless the words require it." Yet the panel's conclusion that the Second Amendment creates no individual rights whatsoever, only a "collective right" apparently not enforceable by anyone, requires that this clause establishing a "right of the people" be read as though it were "without effect."

The "collective rights" interpretation of the Second Amendment, that it confers a "right" only on state governments with respect to state militias, is a logical and verbal impossibility in

light of the phrase "right of the people." As our Constitution is written, governments have "powers" but no "rights." People have both "rights" and "powers." And the Bill of Rights carefully distinguishes between the powers of the states and the rights of the people, never speaking of rights of the people when it means powers of the states.

Much of the panel opinion addresses the meaning of the term "militia," yet the panel fails to acknowledge the controlling authorities that establish the meaning. The word "militia" is a term of art, and does not mean in the Constitution and laws of the United States what it means in some popular and journalistic usage — a group of ultra-right wing individuals who arm themselves as a paramilitary force. The panel defines militia as "the permanent state militia, not some amorphous body of the people as a whole." But the law establishes with the utmost clarity that the militia is precisely what the panel says it is not, an "amorphous body of the people as a whole."

The United States Supreme Court's decision in United States v. Miller establishes the definition of "militia" in the Second Amendment, a definition we, as an inferior court, must apply. Miller holds that "[t]he signification attached to the term Militia appears from the debates in the Convention, the history and legislation of Colonies and States, and the writings of approved commentators. These show plainly enough that the Militia comprised all males physically capable of acting in concert for the common defense. `A body of citizens enrolled for military discipline.'" As no intervening Supreme Court decision has altered this holding, we must proceed on the basis that a militia is a body of citizens, comprised at least of all males physically capable of acting in concert for the common defense. We shall see that "enrolled," for purposes of militia service, means something more like being registered for the draft, listed in the computer rolls for potential jury service, or enrolled by social security number for payment of taxes, than showing up at an armory for signup and training. The panel offers no explanation (and none could suffice) for failing to follow Miller's definition.

The Second Amendment was ratified in 1791. The next year, Congress enacted the Militia Act, implementing the Amendment and incorporating the general understanding of the time as to what the word meant, and establishing that the militia was indeed what the panel says it was not — an "amorphous body of the people as a whole." The Militia Act of 1792 defined the "militia" as: "each and every free able-bodied white male citizen of the respective states, resident therein, who is or shall be of the age of eighteen years, and under the age of forty-five years." Thus, contrary

to the "collective rights" notion in the panel opinion, the militia was precisely not "a state entity, a state fighting force," limited to those who are active members of such a collective organization. It was all the able-bodied white male citizens from 18 to 45, whether they were organized into a state fighting force or not.

GOULD, Circuit Judge, with whom Circuit Judge KOZINSKI joins, dissenting from denial of rehearing en banc:

The error of Hickman v. Block, 81 F.3d 98 (9th Cir. 1996), is repeated once again, thus I respectfully dissent from denial of rehearing en banc for the reasons stated in my concurring opinion in Nordyke v. King, 319 F.3d 1185, 1192-98 (9th Cir. 2003) (Gould, J., specially concurring). As I there explained, restricting the Second Amendment to a "collective rights" view and ignoring the individual right of the people to keep and bear arms is inconsistent with the Second Amendment's language, structure, and purposes, and weakens our Nation against recurrent internal and external threats that may undermine individual liberty. See also United States v. Emerson, 270 F.3d 203 (5th Cir. 2001).

David C. Williams – Civic Republicanism and the citizens militia. 101 Yale L. 551. … the unorganized militia in the 1790s included every male of arms-bearing age – and still does. The framers emphasized the importance of an unorganized militia in the constant struggle to forestall tyranny; one could not rely on the organized or “select” militia, as that body itself could become corrupt… the view that liberty depends on independent citizens, and that to be independent from government, citizens must own arms. The second amendment thus serves to check government. The ultimate checking valve in a republic polity is the ability of an armed populace to resist government tyranny… Those who support a states rights view of the militia seek to identify the amendments militia with the modern National Guard. The Guard, however, is a select body, only a fraction of the population.

Drake v Filko 724 F. 3d 426

Parker v D.C. 428 F. 3d 370

Miller v. Bonta Case No.: 19-cv-1537-BEN (JLB). 2021-06-04. ROGER T. BENITEZ, United States District Judge. Like the Swiss Army Knife, the popular AR-15 rifle is a perfect combination of home defense weapon and homeland defense equipment. Good for both home and

battle, the AR-15 is the kind of versatile gun that lies at the intersection of the kinds of firearms protected under District of Columbia v. Heller, 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008) and United States v. Miller, 307 U.S. 174, 59 S.Ct. 816, 83 L.Ed. 1206 (1939)…

The Second Amendment "elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." Heller , 554 U.S. at 635, 128 S.Ct. 2783. The Supreme Court clearly holds that the Second Amendment protects guns commonly owned by law-abiding citizens for lawful purposes. At the same time, "the Second Amendment confers an individual right to keep and bear arms...that 'have some reasonable relationship to the preservation or efficiency of a well regulated militia.' " Id. at 622, 128 S.Ct. 2783. And although the Supreme Court cautioned that the Second Amendment does not guarantee a right to keep and carry "any weapon whatsoever in any manner whatsoever and for whatever purpose," Heller , 554 U.S. at 626, 128 S.Ct. 2783, lower courts have often cited this proviso about extreme cases to justify gun laws in average contexts. There is no evidence that the Supreme Court intended that language to be a license to avoid its common sense holding in average contexts…

Pre-Heller Second Amendment Jurisprudence

In 1989, most judicial thinking about the Second Amendment was incorrect. Prior to 2008, lower court opinions did not acknowledge that the Second Amendment conferred an individual right to own firearms, or that the right applied against the states. See e.g., United States v. Hancock , 231 F.3d 557, 565–66 (9th Cir. 2000) ("[T]his court has concluded that 'the Second Amendment is a right held by the states, and does not protect the possession of a weapon by a private citizen.' ") (citation omitted). When the features-based definition was added for the year 2000, a citizen challenging AWCA in the Ninth Circuit was still (incorrectly) regarded as lacking basic Article III standing. Judicial recognition of an individual right to keep and bear arms to be respected by the states would come later with the Heller decision in 2008 and the McDonald decision in 2010. See McDonald v. City of Chicago, Ill. , 561 U.S. 742, 767, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010) ("[I]n Heller , we held that individual self-defense is 'the central component' of the Second Amendment right.").

See also United States v. Craighead , 539 F.3d 1073, 1077 (9th Cir. 2008) ("The home occupies a special place in the pantheon of constitutional rights. Under the First Amendment, the 'State has no business telling a man, sitting alone in his house, what books he may read or what

films he may watch.' The Second Amendment prohibits a federal 'ban on handgun possession in the home.' " (citing Heller)).

As an aside, the "assault weapon" epithet is a bit of a misnomer. These prohibited guns, like all guns, are dangerous weapons. However, these prohibited guns, like all guns, can be used for ill or for good. They could just as well be called "home defense rifles" or "anti-crime guns."

The Second Amendment protects modern weapons. Caetano v. Massachusetts , 577 U.S. 411, 412, 136 S.Ct. 1027, 194 L.Ed.2d 99 (2016).

Popularity Nationally

Nationally, modern rifles are ubiquitous. In 2018 alone (the most recent year with data), 1,954,000 modern rifles were manufactured or imported into the United States. Over the last three decades, 19,797,000 modern rifles have been manufactured or imported into the United States and the numbers have been steadily increasing. Pls. Exh. 4-8, NSSF Firearm Production in the United States , at 7. Almost one-half of all rifles (48%) produced in 2018 were modern rifles. Id. at 18. That is 664,360 rifles. That same year, 34% of buyers purchased a modern rifle for personal protection, while 36% purchased for target practice or informal shooting, and 29% purchased for hunting. Pls. Exh. 4-5, NSSF Survey, at 9. In contrast, only 5% of traditional rifles were bought for personal protection. For female gun buyers in 2018, after a handgun, a modern rifle was the next most popular choice. Id. at 24. The same was true of all first-time gun buyers in 2018. Id. at 25. During 2018, approximately 18,327,314 people participated nationally in target and sport shooting specifically with modern rifles. Pls. Exh. 4-6, NSSF Report on Sport Shooting Participation in the U.S. in 2018 , at ii. Nationally, 3-gun shooting is the activity with the highest mean days of participation (23.8 days), but the next highest activity is target shooting with a modern rifle (15.3 days). Id. at 32. In the West Region, target shooting with a modern rifle is the top activity. Id.

More Popular than the Ford F-150 Pickup Truck

Modern rifles are popular. Modern rifles are legal to build, buy, and own under federal law and the laws of 45 states. There are probably more modern rifles in circulation than there are Ford F-150 pickup trucks. In 2018, 909,330 Ford F-150s were sold. Twice as many modern rifles were sold the same year. Imagine, every time one passes a new Ford pickup truck, it is a reminder that

two new modern rifles have been purchased. That is a lot of modern rifles owned by Americans. Other courts agree. "Even accepting the most conservative estimates cited by the parties and by amici, the assault weapons...at issue are ‘in common use’ as that term was used in Heller ." New York State Rifle & Pistol Ass'n, Inc. v. Cuomo , 804 F.3d 242, 255 (2d Cir. 2015). "We think it clear enough in the record that semi-automatic rifles...are indeed in ‘common use.’ " Heller II , 670 F.3d at 1261.

the federal ban's history

In addition to AWCA's legislative history, the Attorney General cites the legislative history of the 1994 federal ban to justify AWCA. Specifically, he cites House Report No. 103-489 (Defs. Exh. J). Defs. Memo of Contentions of Fact and Law at 17-18. The Attorney General says that Congress found assault weapons to be the weapons of choice among drug dealers, criminal gangs, hate groups, and mentally deranged persons bent on mass murder. Id. (citing H.R. No. 103-489, at 13). Actually, this part of the House Report simply lays out some of the evidence received during five years of hearings. It does not contain findings approved by the full Congress. The Report describes other testimony along these lines, but it also describes the views of several victims to which the Attorney General does not cite. One victim testified that although she had been shot with an assault weapon, she was angry that her tragedy was being used to deny law-abiding citizens the right to the firearm of their choosing. "Enforce the laws against criminals already on the books ... You cannot ban everything in the world that could be used as a weapon because you fear it, don't understand it, or don't agree with it."

Checkpoint No. 4: news reports and police reports

News reports are normally considered inadmissible hearsay, but both sides offered into evidence news articles and magazine pieces and expert testimony relying on newspaper articles about gun-related events. News reports to which the parties made no objection are admitted into evidence. But it begs the question, "Where are the actual police reports or criminal court records?" Why are the only collections of offensive or defensive gun use maintained by biased organizations? How reliably can a news reporter after the fact, identify a firearm as an "assault weapon," or determine the size of an ammunition magazine, or count the number of rounds fired? One would expect a police report to accurately record these kinds of raw facts.

The defense of home and family by using a gun is not a hypothetical event. While there are not hard numbers, it surely happens a lot. Approximately 1,000,000 burglaries of a home while occupied take place each year, according to Department of Justice statistics.

AR-15's in Home Defense

Because firearm possession for the defense of home, self, and family is at the core of the Second Amendment right, it is important to know if there is evidence of modern rifles used for self-defense or defense of the home and family.

Without question, there is clear evidence that AR-15 rifles are and have been used for self-defense. For example, in one case an AR-15 was used in Florida by a pregnant wife and mother to defend her family from two armed, hooded, and masked home intruders. Pls. Exh. 1-1. As soon as the armed intruders entered the back door of her home, they pistol-whipped her husband -- fracturing his eye socket and sinus cavity. Then they grabbed the 11-year-old daughter. Before they could do any more harm, the pregnant wife retrieved the family AR-15 from a bedroom and fired, killing one of the attackers while the other fled. It does not require much imagination to guess what would have happened next if the wife and mother did not have the firearm, or if she had emptied the AR-15's magazine before the attackers had fled. The quiet click would be sickening and probably with tragic results. The State contends that one does not "need" more than ten rounds. That is easy to say. Perhaps one should imagine the terror that would have gripped this wife and mother, from the sound of a "click," out of ammunition, helplessly watching her husband being murdered, her daughter being raped or murdered, and the enraged men coming for her.

In another case, an AR-15 was used by a young man in Oklahoma to defend himself from three masked and armed home invaders wearing all black. Pls. Exh. 1-7. The intruders had selected the home because the family had money and expensive belongings and the criminals had previously burglarized an apartment on the property. The three intruders broke through a rear glass door before, to their surprise, they were shot by the home defender using an AR-15.

When seven armed and masked intruders went to a home in Florida at 4:00 a.m., burst through the front door and fired a gun, the occupants of the home, one armed with an AR-15, fired over 30 rounds and stopped the attackers. Pls. Exh. 1-2.

An AR-15 was used to stop a knife attack at an apartment building in Illinois. Pls. Exh. 1-3. Dave Thomas grabbed his AR-15 explaining, "It's just a bigger gun. I think a little bit more than an intimidation factor definitely played a part in him actually stopping." No shots were fired. Thomas also said, "[t]he AR-15 is my weapon of choice for home protection...It's light, it's maneuverable."

An AR-style rifle was used by a homeowner across the street from the mass shooter in Sutherland Springs, Texas. The defender shot and injured the mass shooter, who then dropped his assault rifle and fled. Pls. Exh. 1-4.

An AR-15 was used to stop an intruder in Pennsylvania. Pls. Exh. 1-6. A criminal already awaiting trial for aggravated assault in another incident, forced his way into the couple's apartment late at night. One of the apartment-dwellers was able to retrieve an AR-15 and defend against the attacker who disregarded warnings to stop.

The national experience

Analyzing the list of 161 national events, Allen finds that 78% of mass shooting events did not involve an assault weapon.

Furthermore, perspective is important. Contrary to public misinformation, mass shooting events are rare events. In contrast, as stated previously, there were 3.7 million burglaries per year in the years 2003 to 2007, 266,560 people suffered a violent victimization, 23,310 persons, or 9% of those victims, suffered serious injury, and approximately 7,700, or 3% of those victims, were raped. During the same years, there was less than one mass shooting with an assault weapon per year. According to Allen's list, the total number of persons, killed or injured, during all mass shooting events with an assault weapon during the years of 2003 to 2007 was 38.

Had laws been in place that prevented acquisition of assault weapons during the years 2003 to 2007, 38 people may have been spared being shot with an assault weapon (although they may or may not have been shot with a non-assault weapon). In contrast, during the same five years, 7,700 women may not have been raped and 266,560 homeowners may not have suffered a violent victimization during the burglary of their homes had they been armed with an assault weapon. Imagine calculating these figures over thirty years. Of course, many victims do not choose to own a modern rifle. And though victimized once, some may still choose not to arm themselves against future home invaders. The Constitution does not force citizens to arm themselves for their own protection. But it does protect the liberty and freedom of those who choose to do so.

Today, an assault weapon ban that trenches on the rights of 266,560 citizens to protect themselves from violent assault in their homes by criminalizing acquisition and possession of a common firearm that they might deem best for their defense, balanced against possibly reducing the shooting risk to 38 people, is lopsided.

Militia Use

The concept of the citizens' militia, as protected by the Second Amendment, is an informal assembly of able-bodied, ordinary citizens acting in concert for the security of our nation. Heller , 554 U.S., at 600, 128 S.Ct. 2783 ("citizens' militia" is a safeguard against tyranny). "[T]he Militia comprised all males physically capable of acting in concert for the common defense." Heller , 554 U.S., at 595, 128 S.Ct. 2783. There are at least two reasons why the militia is thought to be necessary to the security of a free country. First, it is useful in repelling invasions. Second, "when the able-bodied men of a nation are trained in arms and organized, they are better able to resist tyranny." Heller , 554 U.S., at 597–98, 128 S.Ct. 2783. For service in the citizens' militia, one is expected to bring for action a commonly used firearm such as a gun used for self-defense at home or for hunting game. "Ordinarily when called for militia service able-bodied men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time." Miller , 307 U.S., at 179, 59 S.Ct. 816. "[W]eapons used by militiamen and weapons used in defense of person and home were one and the same." Heller , 554 U.S., at 624–25, 128 S.Ct. 2783 (citation omitted).

In this case, the evidence overwhelmingly shows that AR-15 platform rifles are ideal for use in both the citizens' militia and a state-organized militia. Quite apart from its practicality as a peacekeeping arm for home-defense, a modern rifle can also be useful for war. In fact, it is an ideal firearm for militia service. Major General D. Allen Youngman, U.S. Army (retired) testified credibly about the usefulness for militia service of rifles built on the AR-15 platform.

In addition to his regular Army service, Youngman served two years as Adjutant General for the Commonwealth of Kentucky in charge of the Kentucky National Guard. Youngman Depo. (Jan. 6, 2021) at 89:16-20.

He describes three tiers of militia service. General Youngman testified that a state may or may not have a statute authorizing a state defense force. California does have a state defense force of approximately 1,000 members. During World War II, California used a state defense force much larger than 1,000 to secure critical infrastructure. For this type of militia use, the AR-15 "would be absolutely the perfect weapon for the individual member of that force to be equipped for -- for a variety of missions to include infrastructure protection and ones like that."

Why the AR-15 Type Rifle is Ideal for Militia Readiness

The "AR-15 pattern of rifle, with its highly standardized and interchangeable component parts, is a firearm not just well-suited, but ideal for militia service." The AR-15's use of standardized ("STANAG") magazines and common ammunition, and its reliability, low cost, and light weight, serve the same purposes sought to be achieved by the drafters of our Founding Era militia acts. Furthermore, the modularity and standardization of the AR-15, its ubiquity, commonality, and widespread ownership in common ammunition sizes such as .223 and 5.56 x 45mm, and the interchangeability of parts, including magazines, makes it ideal.

"For example," says General Youngman, "AR-15 rifles can interchange trigger mechanisms, bolt and locking components, barrels, magazines, buttstocks, optical sights, bayonets, and other assorted furniture, with few specialized tools. Further, even if two AR-15s

might be set up for vastly different uses (for example, long-range versus short-range engagement), the majority of wearable components remain interchangeable." Youngman explains,

Id . at ¶ 15.

The parts interchangeability of the AR-15 platform means any militia field armorer with a short list of components could service the militia's standard rifles, as well as special purpose armament. It also means that virtually any standard rifle could be equipped by said armorer for a special purpose. It is most certainly in the best interest of the militia for militiamen to have their arms serviceable in such a consistent, economical, and efficient way as is afforded virtually uniquely by the AR-15 platform.

Id . at ¶ 16.

Moreover, for militia use the low cost is an ideal factor "because we would be asking individuals to acquire and maintain their own in the absence of being issued a weapon. The AR-15 is a very affordable system for the average citizen who might be a member of the militia." The light weight of the AR-15 also makes it ideal for militia use because "[i]t would accommodate a wide variety of physical[ly] conditioned individuals, as well as smaller stature, as well as female." The pistol grip beneath the action makes the AR-15 more useful for militia use. Without a pistol grip it would be much more difficult to train loading, unloading, and clearing malfunctions. The pistol grip also enhances accuracy because it puts the trigger finger in the proper alignment and helps to control the firearm. While a folding stock offers no advantage, according to Youngman, a telescoping stock offers "[t]he ability to properly fit the rifle or the weapon to an individual regardless of their stature, as well as the ability to accommodate body armor." A grenade launcher may have some utility for militia use because it can fire teargas cartridges or flares. A flash suppressor would be useful at night because, in Youngman's words, "you don't go blind after you fire the first round."

A detachable magazine is "absolutely essential" for militia use. Youngman explains, "[b]ecause in a militia setting...you need the ability to change magazines expeditiously rather than having to manually reload rounds into the -- into the firearm." A firearm that has an overall length of 30 inches would be useful in militia service because of its increased maneuverability particularly

for urban operations. The overall military is going in the direction of a 16-inch barrel rather than the older longer models.

Youngman's testimony is uncontroverted. Youngman is very well qualified to opine on the usefulness of an AR-15 for militia use. He has served in the regular army and the army reserves. He served as Kentucky's Adjutant General commanding the state's national guard. He is a firearms trainer and armorer. He was a member of the bar and worked as a prosecutor. His opinion that an AR-15 is an ideal firearm for use in a militia is unequivocal and uncontested. Of the prohibited features in § 30515(a), most are important for militia use.

Citizen Militias are not Irrelevant

Before the Court there is convincing and unrebutted testimony that the versatile AR-15 type of modern rifle is the perfect firearm for a citizen to bring for militia service. A law that bans the AR-15 type rifle from militia readiness is not a reasonable fit for protecting the Second Amendment right to keep and bear arms for the militia. It has been argued that citizens with nothing more than modern rifles will have no chance against an army with tanks and missiles. But someone forgot to tell Fidel Castro who with an initial force of 20 to 80 men armed with M-1 carbines, walked into power in Havana in spite of Cuba's militarized forces armed with tanks, planes and a navy. Someone forgot to tell Ho Chi Minh who said, "Those who have rifles will use their rifles. Those who have swords will use their swords. Those who have no swords will use their spades, hoes, and sticks," and eventually defeated both the French and the United States military. Someone forgot to tell the Taliban and Iraqi insurgents. Citizen militias are not irrelevant.

Caetano v. Massachusetts No. 14–10078. 03-21-2016. The Court has held that "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding," District of Columbia v. Heller, 554 U.S. 570, 582, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008), and that this "Second Amendment right is fully applicable to the States," McDonald v. Chicago, 561 U.S. 742, 750, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010)…

The lower court's ill treatment of Heller cannot stand. The reasoning of the Massachusetts court poses a grave threat to the fundamental right of self-defense.

If the fundamental right of self-defense does not protect Caetano, then the safety of all Americans is left to the mercy of state authorities who may be more concerned about disarming the people than about keeping them safe.