



## Understanding the Second Amendment through Primary Sources: Assessing the Supreme Court's Opinion in *D.C. v. Heller*

### **Purpose of this Lesson:**

In this lesson, students will examine the scope, origins and development of the Second Amendment to the United States Constitution. Students will assess and evaluate the Supreme Court's decision in *District of Columbia v. Heller* (2008) by assuming the role of Supreme Court justice and engaging directly with the historical source materials used by the Court. Students will then work together as a class to decide on the scope and meaning of the Second Amendment.

### **Critical Engagement Questions:**

1. What is the scope and meaning of the Second Amendment based on an analysis of its history? Has this historical understanding changed in light of new circumstances?
2. Do you agree with the outcome of the Supreme Court's decision in *DC v. Heller*? Does the opinion accurately interpret the history of the Second Amendment?

### **Overview of the Lesson:**

Over two class periods, students will: (1) outline and understand the role of the Supreme Court in constitutional decision making; (2) understand how the Supreme Court uses legal history when constructing an opinion – with particular emphasis on the importance of evidence and well-structured arguments; (3) debate, discuss and analyze the history, scope, and meaning of the Second Amendment to the United States Constitution.

In the first class period, the students will build on their basic knowledge of the Supreme Court's role with a miniature case study of *District of Columbia v. Heller*. Students will then use the majority of the first class period to familiarize themselves with the history of the Second Amendment.

In the second class period, the students will debate the merits of *Heller* and then compare their conclusions to that of the U.S. Supreme Court. Students will compare the structure and evidence used in their own arguments to those used by the Court.

### **Objectives:**

1. Students will enhance their knowledge of the Supreme Court by outlining its role in constitutional decision-making.

2. Students will understand the Supreme Court's application of legal history in constructing its opinions.
3. Students will critically examine the Second Amendment through an analysis of its scope, history and meaning.

## Standards

### Common Core State Standards:

[CCSS.ELA-Literacy.RH.11-12.1](#) Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

[CCSS.ELA-Literacy.RH.11-12.4](#) Determine the meaning of words and phrases as they are used in a text, including analyzing how an author uses and refines the meaning of a key term over the course of a text (e.g., how Madison defines *faction* in *Federalist* No. 10).

[CCSS.ELA-Literacy.RH.11-12.8](#) Evaluate an author's premises, claims, and evidence by corroborating or challenging them with other information.

### College, Career and Civic Life (C3 Framework):

D2.His.1.9-12. Evaluate how historical events and developments were shaped by unique circumstances of time and place as well as broader historical contexts.

D2.His.3.9-12. Use questions generated about individuals and groups to assess how the significance of their actions changes over time and is shaped by the historical context

D2.His.7.9-12. Explain how the perspectives of people in the present shape interpretations of the past

D2.His.11.9-12. Critique the usefulness of historical sources for a specific historical inquiry based on their maker, date, place of origin, intended audience, and purpose

## Materials:

### You will need:

- A board on which to display the vocabulary terms listed below.
- A projector with which to display an electronic copy of the Court's ruling.
- Printed copies of all handouts

**Students will need:**

- Copies of the Background Handout, found in **Appendix B**.
- Writing utensils and paper.

**Vocabulary:**

Opinion: A legal document, usually written by a judge of justice, stating the reasons for a particular judicial decision.

Interpret: To explain the meaning of something/to understand something, based on evidence.

Militia: a military force that is raised by the civilian (non-military) population, which typically supports or supplements the regular army.

Bear Arms: Carry firearms, which include, a rifle, pistol, or other portable gun. The meaning of the term “arms” is one of several unsettled aspects of the Second Amendment’s meaning.

**First Class Session:**

**Activity:**

1. Open discussion with a quick examination of what the Second Amendment means to the students. Read the Amendment’s text, and write it in on the board in its entirety. Ask the students what they think the text means, and encourage them to begin considering why the right to bear arms is important. **(5 Minutes)**.
2. Begin class with a warm-up discussion of the Supreme Court’s role in our system of government. **(5 Minutes)**.
  - a. **Note:** If students should have a difficult time recounting the Court’s role, **Appendix A contains a useful “Supreme Court Cheat Sheet.”**
3. Review the history of the Right to Bear Arms as well as the basic facts of *Heller*; a model lecture outline is included in **Appendix B**. **(20 Minutes)**
4. Divide students into groups of 3-5 and distribute the **Tools for Analyzing Primary Sources** worksheet, located in **Appendix C**. Students should work through the handout in their groups; circulate through the class, answering any questions. **(20 Minutes)**
5. Distribute the **Founding Voices** documentary collection, found in **Appendix D**. Wrap up the first class session by introducing the homework assignment, in which students will be writing their own opinions. Emphasize that the instructions for the assignment require students to make an argument, with pieces of evidence drawn from the documents, rather than simply stating their point (a helpful opinion guide is contained in **Appendix E**). Inform students that they will be reviewing their opinions next class.

## **Homework:**

**How Would You Decide?** In a 1-3 page essay, write your own opinion in *Heller*, addressing the following question: **Does the text and history of the Second Amendment support an individual or a collective right to bear arms?**

## **Second Class Session:**

### **Activity:**

1. Open the second class session with a review of the previous day's topics; Students should outline the historical background of the Amendment, interpretations of its scope and meaning at the time of its composition and implementation, and how the arguments of the parties in *Heller* matched up with the Second Amendment's history. **(15 Minutes)**
2. Divide the students again into groups of 3-5, and distribute copies of the handout, contained in **Appendix F**, relating the Court's decision and Majority Opinion in *Heller*. Inform students that they are to discuss the Court's Opinion, and instruct students to compare the structure, logic, and evidence used in the Majority Opinion to their own opinions, with a specific focus on:
  - a. The use of the **Second Amendment's history** in the Majority's interpretation, and how the Majority defended this historical interpretation;
  - b. The degree to which the Majority accurately interpreted the Second Amendment's text and history.
  - c. The strengths and weaknesses of the Majority's argument as represented in the Opinion. **(30 Minutes)**
3. Close by introducing the students' homework, and answering any remaining questions.

### **Homework:**

**Reflection:** In a 2-page essay, reflect on the decision in *Heller*. How does the Majority's conclusion comport with the opinion reached in your group work, or your own individual opinion? Additionally, historical document(s) did the Court find most persuasive? Do you agree or disagree with the Court's interpretation of the history?

## Appendix A.

### Supreme Court Cheat Sheet

#### What is the Supreme Court's Role in Our Government?

The Supreme Court heads the judicial branch of the United States. All other courts in the United States must follow the decisions made by the Supreme Court. The Constitution also gives the Supreme Court the power to judge whether federal, state, and local governments and government actors are acting in accordance with the law and Constitution.

#### How does the Supreme Court Make its Rulings?

The Supreme Court considers a wide variety of materials when it makes its decisions. For example, the Court reviews both sides' written arguments, also known as **briefs**, and hears each side's oral argument, as well.

The Court often **bases its decisions on the history of the laws or parts of the Constitution in question**, and it builds its opinion on this history through an extensive reading of available historical documents. *District of Columbia v. Heller*, the case we are analyzing, is an example of this process.

## **Appendix B.**

### The Right to Bear Arms: A Brief History

#### **D.C. v. Heller**

The meaning of the Second Amendment has been debated for quite a long time. Some judges and legal scholars have argued that the right to bear arms is a collective right based on membership in an organized militia, while others have argued that it is an individual right.

The Supreme Court's decision in *District of Columbia v. Heller* (2008) settled the debate for the moment over the Second Amendment's meaning and scope. Here, the Court decided that the Second Amendment was designed to protect an individual right to bear arms for self-defense.

#### **British Origins:**

As former British citizens, the Drafters of the Constitution shared in a long-held **distrust of standing armies**. Throughout British history, **Kings had used standing armies as a tool to enforce unfair policies on the people**; of the several Kings to do this, **King James II was considered to be the worst offender**.

Eventually, during the **Glorious Revolution of 1688**, the British decided that they had had enough, **and overthrew the King**. Following the Revolution, the British codified several rights in the English Bill of Rights (1689), **which included a right to keep and bear arms**. **This meant that from that point on that the British government could not make laws that prevented people from owning weapons to defend themselves**.

#### **American Developments:**

Many Americans of the Founding generation **renewed their belief that a standing army was a tool of tyranny because of their experience during The Revolutionary War**. The era thus saw a rise in the popular use **of militias, civilian-raised military units, to defend the states from the British army**.

This preference was also reflected in the states' constitutions and declarations of rights. These documents not only reserved the people the right to assemble in a militia to defend themselves, but also affirmed the importance of militias.

#### **Drafting the Constitution:**

However, **during the Constitutional Convention in the summer of 1787**, the Drafters recognized that **militias were fragile because of their ineffectiveness in battle and because their members were not committed to defending the country as well as their state in the**

**long term. Therefore, the Drafters gave the Federal Government the broad power to “raise and support armies” (Art I Section 8 clause 12).**

**But, the Convention delegates presumed state militias would exist even though a professional army would too. The only unclear issue was how a militia would be administered.** The individual states could control the militia, which would likely make it weak or the federal government could control it, which could potentially devolve into tyranny.

**The Drafters gave Congress the authority to provide for the “organizing, arming and disciplining of the militia...reserving to the States respectively, the Appointment of the Officers...” (Article I Section 8 clause 16) This left unanswered the question of the administration of the militia.** The Drafters then sent the text to the states for intense analysis and ratification.

### **The Second Amendment:**

However, during the ratification process, the Constitution’s opponents (known as Anti-Federalists) vehemently argued against the Constitution because the document did not do enough to protect individual rights, **including the right to bear arms. Without this right being protected, the Anti-Federalists argued, the militia could not do its job, allowing for the Federal Government to potentially become tyrannical.**

Because of these objections, the Federalists (supporters of the Constitution) conceded the necessity of amending the Constitution to reflect a more positive statement of individuals’ rights. Thus, Congress began developing changes the Constitution. Several states submitted proposed amendments to the Congress, and these states’ assertions of the right to bear arms would prove quite influential in the Federal amending process.

**After a long, deliberative process, Congress adopted the Bill of Rights in 1791. The Bill of Rights included the Second Amendment, which addressed the right to bear arms.**

**However, the wording of the Amendment has been the subject of debate about its meaning throughout our country’s history, and this debate has mostly been focused on gun ownership.**

The debate has been between people following two opposing viewpoints: **those who argue that the Second Amendment defends individuals’ rights to own guns for their personal protection, and those who believe that the Amendment protects a collective right based on membership in a militia.**

### **References:**

Malcolm, Joyce Lee. *To Keep and Bear Arms: The Origins of an Anglo-American Right*. Cambridge: Harvard University Press, 1996

## Appendix C.

### Tools for Analyzing Primary Sources

#### **What *are* Primary Sources, and why are they important?**

When we study history, we use a variety of sources to recount and analyze what occurred during a particular historical event or period in history. **Primary Sources** are the documents (personal accounts, official documents and records) that come from the time period or event that is being studied.

Simply put, **primary sources are themselves a part of the history that we study, and they give us a unique perspective that cannot be reproduced by Secondary Sources (for example, textbooks).**

#### **How are Primary Sources used in studying history?**

To get the best use out of these documents to understand the history under consideration, scholars must **analyze the sources.**

Analyzing primary sources requires asking basic questions about the source:

- Who created the source?
- When was the source created?
- What information does the source tell you about the historical event/period?
- How does the information contained in the source compare to what you already knew about the historical event/period?
- How does the background of the source potentially bring into question its reliability?
- Are there other sources, primary or secondary, that might disagree with the source? Why?

#### **Check for Understanding: Document Comparison**

Below you will find two primary source documents addressing the threat posed by creating an American standing army, an important issue in the debate over the right to bear arms. Apply your primary source analysis tools, and record your observations below each document.



**Document #1:**

**Edmund Randolph, Governor of Virginia, (June 14, 1788)**

Governor *Randolph*. . . . With respect to a standing army, I believe there was not a member in the federal convention who did not feel indignation at such an institution. What remedy then could be provided? — Leave the country defenceless? In order to provide for our defence, and exclude the dangers of a standing army, the general defence is left to those who are the objects of defence. It is left to the militia who will suffer if they become the instruments of tyranny. The general government must have power to call them forth when the general defence requires it. In order to produce greater security, the state governments are to appoint the officers. The president, who commands them when in the actual service of the union, is appointed secondarily by the people. — This is a further security. It is not incredible that men who are interested in the happiness of their country, whose friends, relations, and connections, must be involved in the fate of their country, should turn against their country? I appeal to every man, whether, if any of our own officers were called upon to destroy the liberty of their country, he believes they would assent to such an act of suicide? The state governments having the power of appointing them, may elect men who are the most remarkable for their virtue & attachment to their country. . . .

1. **Who** created the source?
  
  
  
  
  
  
  
  
  
  
2. **When** was the source created?
  
  
  
  
  
  
  
  
  
  
3. **What** information does the source tell you about the historical event/period?

4. **How** does the information contained in the source compare to what you already knew about the historical event/period?

5. **How** does the background of the source potentially bring into question its reliability?

6. Are there other sources, primary or secondary, that might disagree with the source? **Why?**

**Document #2:**

**The Federalist No. 4 (John Jay), November 7, 1787**

One Government can collect and avail itself of the talents and experience of the ablest men, in whatever part of the Union they may be found. It can move on uniform principles of policy-It can harmonize, assimilate, and protect the several parts and members, and extend the benefit of its foresight and precautions to each . . . It can apply the resources and power of the whole to the defence of any particular part, and that more easily and expeditiously than State Governments, or separate confederacies can possibly do, for want of concert and unity of system- It can place the militia under one plan of discipline, and by putting their officers in a proper line of subordination to the Chief Magistrate, will as it were consolidate them into one corps, and thereby render them more efficient than if divided into thirteen or into three or four distinct independent bodies.

What would the militia of Britain be, if the English militia obeyed the Government of England, if the Scotch militia obeyed the Government of Scotland, and if the Welch militia obeyed the Government of Wales! Suppose an invasion-would those three Governments (if they agreed at all) be able with all their respective forces, to operate against the enemy so effectually the single Government of Great Britain would?

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6. Are there other sources, primary or secondary, that might disagree with the source? **Why?**

**Appendix D.**

**Founding Voices:  
Additional Perspectives from the English Bill of Rights and the Drafting Era  
on the Development of an American Right to Bear Arms**

**The English Bill of Rights (February 13, 1689), Articles XVI-XVII:**

That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law;

That the subjects which are Protestants may have arms for their defence suitable to their conditions and as allowed by law;

**Virginia State Constitution, June 29, 1776: Section 13**

SEC. 13. That a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free State; that standing armies, in time of peace, should be avoided, as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

**Pennsylvania State Constitution (September 28, 1776), Article XIII and Section 43:**

XIII. That the people have a right to bear arms for the defence of themselves and the state; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up; And that the military should be kept under strict subordination to, and governed by, the civil power.

SECT. 43. The inhabitants of this state shall have liberty to fowl and hunt in seasonable times on the lands they hold, and on all other lands therein not inclosed

**North Carolina State Constitution, December 18, 1776: Article XVII:**

XVII. That the people have a right to bear arms, for the defence of the State; and, as standing armies, in time of peace, are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by, the civil power.

**Georgia State Constitution, February 5, 1777: Article XXXV**

ART. XXXV. Every county in this State that has, or hereafter may have, two hundred and fifty men, and upwards, liable to bear arms, shall be formed into a battalion; and when they become too numerous for one battalion, they shall be formed into more, by bill of the legislature; and those counties that have a less number than two hundred and fifty shall be formed into independent companies.

**Vermont State Constitution (July 8, 1777): Article XV**

XV. That the people have a right to bear arms for the defence of themselves and the State; and, as standing armies, in the time of peace, are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by, the civil power.

**New York State Constitution, April 20, 1777: Article XL**

XL. And whereas it is of the utmost importance to the safety of every State that it should always be in a condition of defence; and it is the duty of every man who enjoys the protection of society to be prepared and willing to defend it; this convention therefore, in the name and by the authority of the good people of this State, doth ordain, determine, and declare that the militia of this State, at all times hereafter, as well in peace as in war, shall be armed and disciplined, and in readiness for service. That all such of the inhabitants of this State being of the people called Quakers as, from scruples of conscience, may be averse to the bearing of arms, be therefrom excused by the legislature; and do pay to the State such sums of money, in lieu of their personal service, as the same; may, in the judgment of the legislature, be worth.(12) And that a proper magazine of warlike stores, proportionate to the number of inhabitants, be, forever hereafter, at the expense of this State, and by acts of the legislature, established, maintained, and continued in every county in this State.

**Edmund Randolph, Governor of Virginia, (June 14, 1788):**

Governor *Randolph*. . . . With respect to a standing army, I believe there was not a member in the federal convention who did not feel indignation at such an institution. What remedy then could be provided? — Leave the country defenceless? In order to provide for our defence, and exclude the dangers of a standing army, the general defence is left to those who are the objects of defence. It is left to the militia who will suffer if they become the instruments of tyranny. The general government must have power to call them forth when the general defence requires it. In order to produce greater security, the state governments are to appoint the officers. The president, who commands them when in the actual service of the union, is appointed secondarily by the people. — This is a further security.<sup>6</sup> It is not incredible that men who are interested in the happiness of their country, whose friends, relations, and connections, must be involved in the fate of their country, should turn against their country? I appeal to every man, whether, if any of our own officers were called upon to destroy the liberty of their country, he believes they would assent to such an act of suicide? The state governments having the power of appointing them, may elect men who are the most remarkable for their virtue & attachment to their country. . . .

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What would the militia of Britain be, if the English militia obeyed the Government of England, if the Scotch militia obeyed the Government of Scotland, and if the Welch militia obeyed the Government of Wales! Suppose an invasion-would those three Governments (if they agreed at all) be able with all their respective forces, to operate against the enemy so effectually the single Government of Great Britain would?

**John Smilie, from James Wilson's Notes of the Pennsylvania Ratification Convention, December 6, 1787:**

I object to the power of Congress over the militia and to keep a standing army. What I mean by a consolidating government is one that will transfer the sovereignty from the state governments to the general government . . . In a free government there never will be need of standing armies; for it depends on the confidence of the people. If it does not so depend, it is not free. The Convention, in framing this government, knew it was not a free one; otherwise they would not have asked the power of the purse and the sword. The last resource of a free people is taken away; for Congress are to have the command of the militia. The laws of Pennsylvania have hitherto been executed without the aid of the militia. The governor of each state will be only the drill sergeant of Congress. The militia officers will be obliged by oath to support the general government against that of their own state. Congress may give us a select militia which will, in fact, be a standing army or—Congress, afraid of a general militia, may say there shall be no militia at all. When a select militia is formed; the people in general may be disarmed. Will the states give up to Congress their last resource—the command of the militia? Will the militia laws be as mild under the general government as under the state governments? Militia men may be punished with whipping or death. They may be dragged from one state to any other. "Congress guarantees to each State a Republican Form of Government." Is this a security for a free government? Can even the shadow of state governments be continued if Congress pleases to take it away? The Senate and President may dismiss the Representatives, when once a standing army is established with funds; and there this government will terminate.

**Dissent of the Minority of the Pennsylvania Ratification Convention, Pennsylvania Packet (December 18, 1787):**

7. That the people have a right to bear arms for the defence of themselves and their own state, or the United States, or for the purpose of killing game; and no law shall be passed for disarming the people or any of them, unless for crimes committed, or real danger of public injury from individuals; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up: and that the military shall be kept under strict subordination to and be governed by the civil powers.

**James Madison's Resolution for Amendments to the Constitution (June 8, 1789):**

. . . The right of the people to keep and bear arms shall not be infringed; a well armed, and well regulated militia being the best security of a free country: but no person religiously scrupulous of bearing arms, shall be compelled to render military service in person.



**Amendments Proposed by the New Hampshire Convention, June 21, 1789:**

TWELFTH

Congress shall never disarm any Citizen unless such as are or have been in Actual Rebellion.

**Amendments Proposed by the Virginia Ratification Convention, June 27, 1789:**

SEVENTEENTH, That the people have a right to keep and bear arms; that a well regulated Militia composed of the body of the people trained to arms is the proper, natural and safe defence of a free State. That standing armies in time of peace are dangerous to liberty, and therefore ought to be avoided, as far as the circumstances and protection of the Community will admit; and that in all cases the military should be under strict subordination to and governed by the Civil power . . .

NINETEENTH, That any person religiously scrupulous of bearing arms ought to be exempted upon payment of an equivalent to employ another to bear arms in his stead.

**Centinel IX (Anti-Federalist Tract), July 22, 1789:**

The more I consider the manoeuvres that are practising, the more am I alarmed—foreseeing that the juggle cannot long be concealed, and that the spirit of the people will not brook the imposition, they have guarded as they suppose against any danger arising from the opposition of the people, and rendered their struggles for liberty impotent and ridiculous. What otherwise is the meaning of disarming the militia, for the purpose as it is said, of repairing their musquets at such a particular period? Does not the timing of the measure determine the intention? I was ever jealous of the select militia, consisting of infantry and troops of horse, instituted in this city and in some of the counties, without the sanction of law, and officered principally by the devoted instruments of the well born, although the illustrious patriotism of one of them, has not corresponded with the intention of appointing him. Are not these corps provided to suppress the first efforts of freedom, and to check the spirit of the people until a regular and sufficiently powerful military force shall be embodied to rivet the chains of slavery on a deluded nation. What confirms these apprehensions is the declaration of a certain Major, an active instrument in this business, and the echo of the principal conspirators, who has said, he should deem the cutting off of five thousand men, as a small sacrifice, a cheap purchase for the establishment of the new constitutions.

**James Madison to Richard Peters, August 19, 1789:**

The papers inclosed will shew that the nauseous project of amendments has not yet been either dismissed or despatched. We are so deep in them now, that right or wrong some thing must be done. I say this not by way of apology, for to be sincere I think no apology requisite. 1. because a constitutional provision in favr. of essential rights is a thing not improper in itself and was always viewed in that light by myself. It may be less necessary in a republic, than a Monarchy & in a fedl. Govt. than the former, but it is in some degree rational in every Govt., since in every Govt. power may oppress, and declarations on paper, tho' not an effectual restraint, are not without some influence. 2. In many States the Constn. was adopted under a tacit compact in favr. of some subsequent provisions on this head. In Virg[ini]a. It would have been certainly rejected, had no assurances been given by its advocates that such provisions would be pursued. As an honest man I feel myself bound by this consideration . . . 5. It will kill the opposition every where, and by putting an end to the disaffection to the Govt. itself, enable the administration to venture on measures not otherwise safe. Those who hate the Govt. will always join the party disaffected to measures of the administration, and such a party will be created by every important measure. 6. If no amendts. be proposed the language of antifedl. leaders to the people will be, we advised you not to adopt the Constn. witht. previous amendts. you listened to those who told you that subsequent securities for your rights would be most easily obtained—we urged you to insist on a Convention as the only effectual mode of obtaing. these—You yielded to the assurances of those who told you that a Convention was unnecessary, that Congs. wd. be the proper channel for getting what was wanted, &c. &c. Here are fine texts for popular declaimers who wish to revive the antifedl. cause, and at the fall session of the Legisla[tu]res. to blow the Trumpet for a second Convention. In Virga. a majority of the Legislature last elected, is bitterly opposed to the govt. and will be joined, if no amendts. be proposed, by great nos. of the other side who will complain of being deceived. 7. Some amendts. are necssy. for N. Carol[in]a. I am so informed by the best authorities in that State.

**Text of the Second Amendment as adopted by Congress, December 15, 1791:**

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.

## **Appendix E.**

### Writing Guidelines: Forming Your Own Judicial Opinion

#### **Outline of Today's Assignment:**

*For today's activity you will be writing your own version of a Supreme Court Opinion.* As you've seen from our examination of both the history of the Second Amendment as well as the background of *District of Columbia v. Heller*, there are a variety of complicated and long-tenured historical issues at play.

Furthermore, *Heller* addressed an additional, even more important issue: how does the Constitution, written over 200 years ago, address conflicts we have over our rights today? **Constitutional interpretation is at the heart of any opinion delivered by the Supreme Court**, because as you know, the Constitution provides the framework on which our rights are supported and laws concerning those rights are made.

Thus the essential issues at play in *Heller* are Constitutional, and you will be modeling the Supreme Court's role in interpreting how the Constitution addresses these issues, both at the level of its meaning and its structure.

**To that end, in a short, argumentative essay, you will defend your own interpretation of the Second Amendment of the United States Constitution, with the body of your argument balancing both the history of the Amendment as discussed in last night's reading AND an evaluation of the structure and meaning of the Amendment's text.**

#### **Crafting your Argument:**

When writing, **take note of the two clauses of the Second Amendment, the first, "prefatory," or introductory, clause addressing militias, and the following clause that asserts the right to keep and bear arms. It will be worthwhile to examine how the division of the clauses by a comma creates a point of ambiguity and therefore, ground for potentially different interpretations.**

**Additionally,** take note of the historical context as discussed in our text as well as last night's reading.

Finally, in closing your essay, concisely and persuasively restate your argument.

## Appendix F.

Majority Opinion and Court Decision in  
*District of Columbia v. Heller*  
June 26, 2008  
(In Summary/Excerpted Form)

The Supreme Court held in *Heller*:

- That the Second Amendment allows individuals to possess a firearm, for self-defense purposes (especially in the home), independent of militia service;
- That **“the Militia”** referred to in the Constitution was composed of all male citizens able to serve, and that the Second Amendment had been proposed as a way to keep the Federal **Government from taking away citizens’** weapons in the same way the King had done.
- The District of Columbia law banning handguns is therefore **unconstitutional, because since a handgun qualifies as an “arm,”** banning the possession of handguns keeps citizens from exercising their Constitutional rights.

**Additionally, the Court’s opinion focused heavily on the historical foundations of the Amendment:**

1. “The term [arms] was applied, **then as now**, to weapons that were **not specifically designed for military use and were not employed in a military capacity.**” Pp. 8.
2. “There seems to us no doubt, **on the basis of both text and history**, that the Second Amendment conferred an **individual right** to keep and bear arms. Of course the right was not unlimited, just as the First Amendment’s right of free speech was not[.]” Pp. 22.
3. “The prefatory [introductory] clause **does not suggest that preserving the militia was the only reason Americans valued the ancient right; most undoubtedly thought it was even more important for self-defense and hunting.**” Pp. 26
4. “Our **interpretation is confirmed by analogous arms bearing rights in state constitutions that preceded and immediately followed adoption of the Second Amendment.**” Pp. 27
5. “It is dubious to rely on [the drafting] history to interpret a text that was widely understood to codify a pre-existing right, rather than to fashion a new one.” Pp. 30
6. “. . . **The “militia” comprised all males physically capable of acting in concert for the common defense.** The Antifederalists feared that the Federal Government would disarm the people in order to disable this citizens’ militia, enabling a politicized standing army or

a select militia to rule. **The response was to deny Congress power to abridge the ancient right of individuals to keep and bear arms, so that the ideal of a citizens' militia would be preserved.**" Pp. 22–28.

7. "That history showed that the way tyrants had eliminated a militia consisting of all the able-bodied men was not by banning the militia but simply by taking away the people's arms, enabling a select militia or standing army to suppress political opponents . . . **During the 1788 ratification debates, the fear that the federal government would disarm the people in order to impose rule through a standing army or select militia was pervasive in Anti-federalist rhetoric.**" Pp. 25

You can access the Court's full opinion [here](#).