

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

No. 07–290

DISTRICT OF COLUMBIA, ET AL., PETITIONERS *v.*
DICK ANTHONY HELLER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June 26, 2008]

JUSTICE SCALIA delivered the opinion of the Court.

We consider whether a District of Columbia prohibition on the possession of usable handguns in the home violates the Second Amendment to the Constitution.

I

The District of Columbia generally prohibits the possession of handguns. It is a crime to carry an unregistered firearm, and the registration of handguns is prohibited. See D. C. Code §§7–2501.01(12), 7–2502.01(a), 7–2502.02(a)(4) (2001). Wholly apart from that prohibition, no person may carry a handgun without a license, but the chief of police may issue licenses for 1-year periods. See §§22–4504(a), 22–4506. District of Columbia law also requires residents to keep their lawfully owned firearms, such as registered long guns, “unloaded and disassembled or bound by a trigger lock or similar device” unless they are located in a place of business or are being used for lawful recreational activities. See §7–2507.02.¹

¹There are minor exceptions to all of these prohibitions, none of which is relevant here.

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Respondent Dick Heller is a D. C. special police officer authorized to carry a handgun while on duty at the Federal Judicial Center. He applied for a registration certificate for a handgun that he wished to keep at home, but the District refused. He thereafter filed a lawsuit in the Federal District Court for the District of Columbia seeking, on Second Amendment grounds, to enjoin the city from enforcing the bar on the registration of handguns, the licensing requirement insofar as it prohibits the carrying of a firearm in the home without a license, and the trigger-lock requirement insofar as it prohibits the use of “functional firearms within the home.” App. 59a. The District Court dismissed respondent’s complaint, see *Parker v. District of Columbia*, 311 F. Supp. 2d 103, 109 (2004). The Court of Appeals for the District of Columbia Circuit, construing his complaint as seeking the right to render a firearm operable and carry it about his home in that condition only when necessary for self-defense,² reversed, see *Parker v. District of Columbia*, 478 F. 3d 370, 401 (2007). It held that the Second Amendment protects an individual right to possess firearms and that the city’s total ban on handguns, as well as its requirement that firearms in the home be kept nonfunctional even when necessary for self-defense, violated that right. See *id.*, at 395, 399–401. The Court of Appeals directed the District Court to enter summary judgment for respondent.

We granted certiorari. 552 U. S. ____ (2007).

II

We turn first to the meaning of the Second Amendment.

A

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

²That construction has not been challenged here.

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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 two sides in this case have set out very different interpretations of the Amendment. Petitioners and today’s dissenting Justices believe that it protects only the right to possess and carry a firearm in connection with militia service. See Brief for Petitioners 11–12; *post*, at 1 (STEVENS, J., dissenting). Respondent argues that it protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home. See Brief for Respondent 2–4.

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

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(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).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,

³As Sutherland explains, the key 18th-century English case on the effect of preambles, *Copeman v. Gallant*, 1 P. Wms. 314, 24 Eng. Rep. 404 (1716), stated that "the preamble could not be used to restrict the effect of the words of the purview." J. Sutherland, *Statutes and Statutory Construction*, 47.04 (N. Singer ed. 5th ed. 1992). This rule was modified in England in an 1826 case to give more importance to the preamble, but in America "the settled principle of law is that the preamble cannot control the enacting part of the statute in cases where the enacting part is expressed in clear, unambiguous terms." *Ibid.*

JUSTICE STEVENS says that we violate the general rule that every clause in a statute must have effect. *Post*, at 8. But 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. Or to put the point differently, operative provisions should be given effect as operative provisions, and prologues as prologues.

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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.⁴

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.⁵

⁴JUSTICE STEVENS criticizes us for discussing the prologue last. *Post*, at 8. But if a prologue can be used only to clarify an ambiguous operative provision, surely the first step must be to determine whether the operative provision is ambiguous. It might be argued, we suppose, that the prologue itself should be one of the factors that go into the determination of whether the operative provision is ambiguous—but that would cause the prologue to be used to produce ambiguity rather than just to resolve it. In any event, even if we considered the prologue *along with* the operative provision we would reach the same result we do today, since (as we explain) our interpretation of “the right of the people to keep and bear arms” furthers the purpose of an effective militia no less than (indeed, more than) the dissent’s interpretation. See *infra*, at 26–27.

⁵JUSTICE STEVENS is of course correct, *post*, at 10, that the right to assemble cannot be exercised alone, but it is still an individual right, and not one conditioned upon membership in some defined “assembly,” as he contends the right to bear arms is conditioned upon membership

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Three provisions of the Constitution refer to “the people” in a context other than “rights”—the famous preamble (“We the people”), §2 of Article I (providing that “the people” will choose members of the House), and the Tenth Amendment (providing that those powers not given the Federal Government remain with “the States” or “the people”). Those provisions arguably refer to “the people” acting collectively—but they deal with the exercise or reservation of powers, not rights. Nowhere else in the Constitution does a “right” attributed to “the people” refer to anything other than an individual right.⁶

What is more, in all six other provisions of the Constitution that mention “the people,” the term unambiguously refers to all members of the political community, not an unspecified subset. As we said in *United States v. Verdugo-Urquidez*, 494 U. S. 259, 265 (1990):

“‘[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

in a defined militia. And JUSTICE STEVENS is dead wrong to think that the right to petition is “primarily collective in nature.” *Ibid.* See *McDonald v. Smith*, 472 U. S. 479, 482–484 (1985) (describing historical origins of right to petition).

⁶If we look to other founding-era documents, we find that some state constitutions used the term “the people” to refer to the people collectively, in contrast to “citizen,” which was used to invoke individual rights. See Heyman, *Natural Rights and the Second Amendment*, in *The Second Amendment in Law and History* 179, 193–195 (C. Bogus ed. 2000) (hereinafter *Bogus*). But that usage was not remotely uniform. See, e.g., N. C. Declaration of Rights §XIV (1776), in 5 *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws* 2787, 2788 (F. Thorpe ed. 1909) (hereinafter *Thorpe*) (jury trial); Md. Declaration of Rights §XVIII (1776), in 3 *id.*, at 1686, 1688 (vicinage requirement); Vt. Declaration of Rights ch. 1, §XI (1777), in 6 *id.*, at 3737, 3741 (searches and seizures); Pa. Declaration of Rights §XII (1776), in 5 *id.*, at 3081, 3083 (free speech). And, most importantly, it was clearly not the terminology used in the Federal Constitution, given the First, Fourth, and Ninth Amendments.

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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).

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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."

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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*.⁷

⁷See, e.g., 3 A Compleat Collection of State-Tryals 185 (1719) (“Hath not every Subject power to keep Arms, as well as Servants in his House for defence of his Person?”); T. Wood, A New Institute of the Imperial or Civil Law 282 (1730) (“Those are guilty of *publick* Force, who keep Arms in their Houses, and make use of them otherwise than upon Journeys or Hunting, or for Sale . . .”); A Collection of All the Acts of Assembly, Now in Force, in the Colony of Virginia 596 (1733) (“Free Negros, Mulattos, or Indians, and Owners of Slaves, seated at Frontier Plantations, may obtain Licence from a Justice of Peace, for keeping Arms, &c.”); J. Ayliffe, A New Pandect of *Roman* Civil Law 195 (1734) (“Yet a Person might keep Arms in his House, or on his Estate, on the Account of Hunting, Navigation, Travelling, and on the Score of Selling

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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)

them in the way of Trade or Commerce, or such Arms as accrued to him by way of Inheritance”); J. Trusler, *A Concise View of the Common Law and Statute Law of England* 270 (1781) (“if [papists] keep arms in their houses, such arms may be seized by a justice of the peace”); *Some Considerations on the Game Laws* 54 (1796) (“Who has been deprived by [the law] of keeping arms for his own defence? What law forbids the veriest pauper, if he can raise a sum sufficient for the purchase of it, from mounting his Gun on his Chimney Piece . . . ?”); 3 B. Wilson, *The Works of the Honourable James Wilson* 84 (1804) (with reference to state constitutional right: “This is one of our many renewals of the Saxon regulations. ‘They were bound,’ says Mr. Selden, ‘to keep arms for the preservation of the kingdom, and of their own person’”); W. Duer, *Outlines of the Constitutional Jurisprudence of the United States* 31–32 (1833) (with reference to colonists’ English rights: “The right of every individual to keep arms for his defence, suitable to his condition and degree; which was the public allowance, under due restrictions of the natural right of resistance and self-preservation”); 3 R. Burn, *Justice of the Peace and the Parish Officer* 88 (1815) (“It is, however, laid down by Serjeant Hawkins, . . . that if a lessee, after the end of the term, keep arms in his house to oppose the entry of the lessor, . . .”); *State v. Dempsey*, 31 N. C. 384, 385 (1849) (citing 1840 state law making it a misdemeanor for a member of certain racial groups “to carry about his person or keep in his house any shot gun or other arms”).

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(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."⁸ It is clear from those formulations that "bear arms" did not refer only to carry-

⁸See Pa. Declaration of Rights §XIII, in 5 Thorpe 3083 ("That the people have a right to bear arms for the defence of themselves and the state. . ."); Vt. Declaration of Rights §XV, in 6 *id.*, at 3741 ("That the people have a right to bear arms for the defence of themselves and the State. . ."); Ky. Const., Art. XII, cl. 23 (1792), in 3 *id.*, at 1264, 1275 ("That the right of the citizens to bear arms in defence of themselves and the State shall not be questioned"); Ohio Const., Art. VIII, §20 (1802), in 5 *id.*, at 2901, 2911 ("That the people have a right to bear arms for the defence of themselves and the State. . ."); Ind. Const., Art. I, §20 (1816), in 2 *id.*, at 1057, 1059 ("That the people have a right to bear arms for the defense of themselves and the State. . ."); Miss. Const., Art. I, §23 (1817), in 4 *id.*, at 2032, 2034 ("Every citizen has a right to bear arms, in defence of himself and the State"); Conn. Const., Art. I, §17 (1818), in 1 *id.*, at 536, 538 ("Every citizen has a right to bear arms in defence of himself and the state"); Ala. Const., Art. I, §23 (1819), in 1 *id.*, at 96, 98 ("Every citizen has a right to bear arms in defence of himself and the State"); Mo. Const., Art. XIII, §3 (1820), in 4 *id.*, at 2150, 2163 ("[T]hat their right to bear arms in defence of themselves and of the State cannot be questioned"). See generally Volokh, State Constitutional Rights to Keep and Bear Arms, 11 Tex. Rev. L. & Politics 191 (2006).

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ing 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.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.

The phrase "bear Arms" also had at the time of the founding an idiomatic meaning that was significantly different from its natural meaning: "to serve as a soldier, do military service, fight" or "to wage war." See Linguists' Brief 18; *post*, at 11 (STEVENS, J., dissenting). But it *unequivocally* bore that idiomatic meaning only when followed by the preposition "against," which was in turn followed by the target of the hostilities. See 2 Oxford 21. (That is how, for example, our Declaration of Independence ¶28, used the phrase: "He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country . . .") Every example given by petitioners' *amici* for the idiomatic meaning of "bear arms"

⁹See *Bliss v. Commonwealth*, 2 Litt. 90, 91–92 (Ky. 1822); *State v. Reid*, 1 Ala. 612, 616–617 (1840); *State v. Schoultz*, 25 Mo. 128, 155 (1857); see also *Simpson v. State*, 5 Yer. 356, 360 (Tenn. 1833) (interpreting similar provision with "common defence" purpose); *State v. Huntly*, 25 N. C. 418, 422–423 (1843) (same); cf. *Nunn v. State*, 1 Ga. 243, 250–251 (1846) (construing Second Amendment); *State v. Chandler*, 5 La. Ann. 489, 489–490 (1850) (same).

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from the founding period either includes the preposition “against” or is not clearly idiomatic. See Linguists’ Brief 18–23. Without the preposition, “bear arms” normally meant (as it continues to mean today) what JUSTICE GINSBURG’s opinion in *Muscarello* said.

In any event, the meaning of “bear arms” that petitioners and JUSTICE STEVENS propose is *not even* the (sometimes) idiomatic meaning. Rather, they manufacture a hybrid definition, whereby “bear arms” connotes the actual carrying of arms (and therefore is not really an idiom) but only in the service of an organized militia. No dictionary has ever adopted that definition, and we have been apprised of no source that indicates that it carried that meaning at the time of the founding. But it is easy to see why petitioners and the dissent are driven to the hybrid definition. Giving “bear Arms” its idiomatic meaning would cause the protected right to consist of the right to be a soldier or to wage war—an absurdity that no commentator has ever endorsed. See L. Levy, *Origins of the Bill of Rights* 135 (1999). Worse still, the phrase “keep and bear Arms” would be incoherent. The word “Arms” would have two different meanings at once: “weapons” (as the object of “keep”) and (as the object of “bear”) one-half of an idiom. It would be rather like saying “He filled and kicked the bucket” to mean “He filled the bucket and died.” Grotesque.

Petitioners justify their limitation of “bear arms” to the military context by pointing out the unremarkable fact that it was often used in that context—the same mistake they made with respect to “keep arms.” It is especially unremarkable that the phrase was often used in a military context in the federal legal sources (such as records of congressional debate) that have been the focus of petitioners’ inquiry. Those sources would have had little occasion to use it *except* in discussions about the standing army and the militia. And the phrases used primarily in those

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military discussions include not only “bear arms” but also “carry arms,” “possess arms,” and “have arms”—though no one thinks that those *other* phrases also had special military meanings. See Barnett, Was the Right to Keep and Bear Arms Conditioned on Service in an Organized Militia?, 83 Tex. L. Rev. 237, 261 (2004). The common references to those “fit to bear arms” in congressional discussions about the militia are matched by use of the same phrase in the few nonmilitary federal contexts where the concept would be relevant. See, e.g., 30 Journals of Continental Congress 349–351 (J. Fitzpatrick ed. 1934). Other legal sources frequently used “bear arms” in nonmilitary contexts.¹⁰ Cunningham’s legal dictionary, cited above,

¹⁰See J. Brydall, Privilegia Magnatud apud Anglos 14 (1704) (Privilege XXXIII) (“In the 21st Year of King Edward the Third, a Proclamation Issued, that no Person should bear any Arms within London, and the Suburbs”); J. Bond, A Compleat Guide to Justices of the Peace 43 (1707) (“Sheriffs, and all other Officers in executing their Offices, and all other persons pursuing Hu[e] and Cry may lawfully bear arms”); 1 An Abridgment of the Public Statutes in Force and Use Relative to Scotland (1755) (entry for “Arms”: “And if any person above described shall have in his custody, use, or bear arms, being thereof convicted before one justice of peace, or other judge competent, summarily, he shall for the first offense forfeit all such arms” (quoting 1 Geo. 1, c. 54, §1)); Statute Law of Scotland Abridged 132–133 (2d ed. 1769) (“Acts for disarming the highlands” but “exempting those who have particular licenses to bear arms”); E. de Vattel, The Law of Nations, or, Principles of the Law of Nature 144 (1792) (“Since custom has allowed persons of rank and gentlemen of the army to bear arms in time of peace, strict care should be taken that none but these should be allowed to wear swords”); E. Roche, Proceedings of a Court-Martial, Held at the Council-Chamber, in the City of Cork 3 (1798) (charge VI: “With having held traitorous conferences, and with having conspired, with the like intent, for the purpose of attacking and despoiling of the arms of several of the King’s subjects, qualified by law to bear arms”); C. Humphreys, A Compendium of the Common Law in force in Kentucky 482 (1822) (“[I]n this country the constitution guaranties to all persons the right to bear arms; then it can only be a crime to exercise this right in such a manner, as to terrify people unnecessarily”).

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gave as an example of its usage a sentence unrelated to military affairs ("Servants and labourers shall use bows and arrows on *Sundays*, &c. and not bear other arms"). And if one looks beyond legal sources, "bear arms" was frequently used in nonmilitary contexts. See Cramer & Olson, What Did "Bear Arms" Mean in the Second Amendment?, 6 Georgetown J. L. & Pub. Pol'y (forthcoming Sept. 2008), online at <http://papers.ssrn.com/abstract=1086176> (as visited June 24, 2008, and available in Clerk of Court's case file) (identifying numerous nonmilitary uses of "bear arms" from the founding period).

JUSTICE STEVENS points to a study by *amici* supposedly showing that the phrase "bear arms" was most frequently used in the military context. See *post*, at 12–13, n. 9; Linguists' Brief 24. Of course, as we have said, the fact that the phrase was commonly used in a particular context does not show that it is limited to that context, and, in any event, we have given many sources where the phrase was used in nonmilitary contexts. Moreover, the study's collection appears to include (who knows how many times) the idiomatic phrase "bear arms against," which is irrelevant. The *amici* also dismiss examples such as "bear arms . . . for the purpose of killing game" because those uses are "expressly qualified." Linguists' Brief 24. (JUSTICE STEVENS uses the same excuse for dismissing the state constitutional provisions analogous to the Second Amendment that identify private-use purposes for which the individual right can be asserted. See *post*, at 12.) That analysis is faulty. A purposive qualifying phrase that contradicts the word or phrase it modifies is unknown this side of the looking glass (except, apparently, in some courses on Linguistics). If "bear arms" means, as we think, simply the carrying of arms, a modifier can limit the purpose of the carriage ("for the purpose of self-defense" or "to make war against the King"). But if "bear arms" means, as the petitioners and the dissent think, the

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carrying of arms only for military purposes, one simply cannot add “for the purpose of killing game.” The right “to carry arms in the militia for the purpose of killing game” is worthy of the mad hatter. Thus, these purposive qualifying phrases positively establish that “to bear arms” is not limited to military use.¹¹

JUSTICE STEVENS places great weight on James Madison’s inclusion of a conscientious-objector clause in his original draft of the Second Amendment: “but no person religiously scrupulous of bearing arms, shall be compelled to render military service in person.” Creating the Bill of Rights 12 (H. Veit, K. Bowling, & C. Bickford eds. 1991) (hereinafter Veit). He argues that this clause establishes that the drafters of the Second Amendment intended “bear Arms” to refer only to military service. See *post*, at 26. It is always perilous to derive the meaning of an adopted provision from another provision deleted in the drafting process.¹² In any case, what JUSTICE STEVENS would conclude from the deleted provision does not follow. It was not meant to exempt from military service those who

¹¹JUSTICE STEVENS contends, *post*, at 15, that since we assert that adding “against” to “bear arms” gives it a military meaning we must concede that adding a purposive qualifying phrase to “bear arms” can alter its meaning. But the difference is that we do not maintain that “against” *alters* the meaning of “bear arms” but merely that it *clarifies* which of various meanings (one of which is military) is intended. JUSTICE STEVENS, however, argues that “[t]he term ‘bear arms’ is a familiar idiom; when used unadorned by any additional words, its meaning is ‘to serve as a soldier, do military service, fight.’” *Post*, at 11. He therefore must establish that adding a contradictory purposive phrase can *alter* a word’s meaning.

¹²JUSTICE STEVENS finds support for his legislative history inference from the recorded views of one Antifederalist member of the House. *Post*, at 26 n. 25. “The claim that the best or most representative reading of the [language of the] amendments would conform to the understanding and concerns of [the Antifederalists] is . . . highly problematic.” Rakove, *The Second Amendment: The Highest Stage of Originalism*, *Bogus* 74, 81.

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objected to going to war but had no scruples about personal gunfights. Quakers opposed the use of arms not just for militia service, but for any violent purpose whatsoever—so much so that Quaker frontiersmen were forbidden to use arms to defend their families, even though “[i]n such circumstances the temptation to seize a hunting rifle or knife in self-defense . . . must sometimes have been almost overwhelming.” P. Brock, *Pacifism in the United States* 359 (1968); see M. Hirst, *The Quakers in Peace and War* 336–339 (1923); 3 T. Clarkson, *Portraiture of Quakerism* 103–104 (3d ed. 1807). The Pennsylvania Militia Act of 1757 exempted from service those “*scrupling the use of arms*”—a phrase that no one contends had an idiomatic meaning. See 5 Stat. at Large of Pa. 613 (J. Mitchell & H. Flanders eds. 1898) (emphasis added). Thus, the most natural interpretation of Madison’s deleted text is that those opposed to carrying weapons for potential violent confrontation would not be “compelled to render military service,” in which such carrying would be required.¹³

Finally, JUSTICE STEVENS suggests that “keep and bear Arms” was some sort of term of art, presumably akin to “hue and cry” or “cease and desist.” (This suggestion usefully evades the problem that there is no evidence whatsoever to support a military reading of “keep arms.”) JUSTICE STEVENS believes that the unitary meaning of

¹³The same applies to the conscientious-objector amendments proposed by Virginia and North Carolina, which said: “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.” See Veit 19; 4 J. Eliot, *The Debates in the Several State Constitutions on the Adoption of the Federal Constitution* 243, 244 (2d ed. 1836) (reprinted 1941). Certainly their second use of the phrase (“bear arms in his stead”) refers, by reason of context, to compulsory bearing of arms for military duty. But their first use of the phrase (“any person religiously scrupulous of bearing arms”) assuredly did not refer to people whose God allowed them to bear arms for defense of themselves but not for defense of their country.

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"keep and bear Arms" is established by the Second Amendment's calling it a "right" (singular) rather than "rights" (plural). See *post*, at 16. There is nothing to this. State constitutions of the founding period routinely grouped multiple (related) guarantees under a singular "right," and the First Amendment protects the "right [singular] of the people peaceably to assemble, and to petition the Government for a redress of grievances." See, e.g., Pa. Declaration of Rights §§IX, XII, XVI, in 5 Thorpe 3083–3084; Ohio Const., Arts. VIII, §§11, 19 (1802), in *id.*, at 2910–2911.¹⁴ And even if "keep and bear Arms" were a unitary phrase, we find no evidence that it bore a military meaning. Although the phrase was not at all common (which would be unusual for a term of art), we have found instances of its use with a clearly nonmilitary connotation. In a 1780 debate in the House of Lords, for example, Lord Richmond described an order to disarm private citizens (not militia members) as "a violation of the constitutional right of Protestant subjects to keep and bear arms for their own defense." 49 *The London Magazine or Gentleman's Monthly Intelligencer* 467 (1780). In response, another member of Parliament referred to "the right of bearing arms for personal defence," making clear that no special military meaning for "keep and bear arms" was intended in the discussion. *Id.*, at 467–468.¹⁵

¹⁴Faced with this clear historical usage, JUSTICE STEVENS resorts to the bizarre argument that because the word "to" is not included before "bear" (whereas it is included before "petition" in the First Amendment), the unitary meaning of "to keep and bear" is established. *Post*, at 16, n. 13. We have never heard of the proposition that omitting repetition of the "to" causes two verbs with different meanings to become one. A promise "to support and to defend the Constitution of the United States" is not a whit different from a promise "to support and defend the Constitution of the United States."

¹⁵Cf. 3 Geo., 34, §3, in 7 Eng. Stat. at Large 126 (1748) ("That the Prohibition contained . . . in this Act, of having, keeping, bearing, or wearing any Arms or Warlike Weapons . . . shall not extend . . . to any

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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”¹⁶

Between the Restoration and the Glorious Revolution, the Stuart Kings Charles II and James II succeeded in using select militias loyal to them to suppress political dissidents, in part by disarming their opponents. See J. Malcolm, *To Keep and Bear Arms* 31–53 (1994) (hereinafter Malcolm); L. Schwoerer, *The Declaration of Rights, 1689*, p. 76 (1981). Under the auspices of the 1671 Game Act, for example, the Catholic James II had ordered general disarmaments of regions home to his Protestant enemies. See Malcolm 103–106. These experiences caused Englishmen to be extremely wary of concentrated military forces run by the state and to be jealous of their arms. They accordingly obtained an assurance from William and Mary, in the Declaration of Right (which was codified as the English Bill of Rights), that Protestants

Officers or their Assistants, employed in the Execution of Justice . . .”).

¹⁶ Contrary to JUSTICE STEVENS’ wholly unsupported assertion, *post*, at 17, there was no pre-existing right in English law “to use weapons for certain military purposes” or to use arms in an organized militia.

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would never be disarmed: "That the subjects which are Protestants may have arms for their defense suitable to their conditions and as allowed by law." 1 W. & M., c. 2, §7, in 3 Eng. Stat. at Large 441 (1689). This right has long been understood to be the predecessor to our Second Amendment. See E. Dumbauld, *The Bill of Rights and What It Means Today* 51 (1957); W. Rawle, *A View of the Constitution of the United States of America* 122 (1825) (hereinafter Rawle). It was clearly an individual right, having nothing whatever to do with service in a militia. To be sure, it was an individual right not available to the whole population, given that it was restricted to Protestants, and like all written English rights it was held only against the Crown, not Parliament. See Schwoerer, *To Hold and Bear Arms: The English Perspective*, in Bogus 207, 218; but see 3 J. Story, *Commentaries on the Constitution of the United States* §1858 (1833) (hereinafter Story) (contending that the "right to bear arms" is a "limitatio[n] upon the power of parliament" as well). But it was secured to them as individuals, according to "libertarian political principles," not as members of a fighting force. Schwoerer, *Declaration of Rights*, at 283; see also *id.*, at 78; G. Jellinek, *The Declaration of the Rights of Man and of Citizens* 49, and n. 7 (1901) (reprinted 1979).

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;

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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.

And, of course, what the Stuarts had tried to do to their political enemies, George III had tried to do to the colonists. In the tumultuous decades of the 1760’s and 1770’s, the Crown began to disarm the inhabitants of the most rebellious areas. That provoked polemical reactions by Americans invoking their rights as Englishmen to keep arms. A New York article of April 1769 said that “[i]t is a natural right which the people have reserved to themselves, confirmed by the Bill of Rights, to keep arms for their own defence.” A *Journal of the Times*: Mar. 17, New York *Journal*, Supp. 1, Apr. 13, 1769, in *Boston Under Military Rule* 79 (O. Dickerson ed. 1936); see also, *e.g.*, Shippen, *Boston Gazette*, Jan. 30, 1769, in 1 *The Writings of Samuel Adams* 299 (H. Cushing ed. 1968). They understood the right to enable individuals to defend themselves. As the most important early American edition of Blackstone’s *Commentaries* (by the law professor and former Antifederalist St. George Tucker) made clear in the notes to the description of the arms right, Americans understood the “right of self-preservation” as permitting a citizen to “repe[] force by force” when “the intervention of society in his behalf, may be too late to prevent an injury.” 1 Blackstone’s *Commentaries* 145–146, n. 42 (1803) (hereinafter *Tucker’s Blackstone*). See also W. Duer, *Outlines of the Constitutional Jurisprudence of the United States* 31–32 (1833).

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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, see, e.g., *United States v. Williams*, 553 U. S. ____ (2008). Thus, we do not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for *any purpose*. Before turning to limitations upon the individual right, however, we must determine whether the prefatory clause of the Second Amendment comports with our interpretation of the operative clause.

2. Prefatory Clause.

The prefatory clause reads: "A well regulated Militia, being necessary to the security of a free State"

a. **"Well-Regulated Militia."** In *United States v. Miller*, 307 U. S. 174, 179 (1939), we explained that "the Militia comprised all males physically capable of acting in concert for the common defense." That definition comports with founding-era sources. See, e.g., Webster ("The militia of a country are the able bodied men organized into companies, regiments and brigades . . . and required by law to attend military exercises on certain days only, but at other times left to pursue their usual occupations"); The Federalist No. 46, pp. 329, 334 (B. Wright ed. 1961) (J. Madison) ("near half a million of citizens with arms in their hands"); Letter to Destutt de Tracy (Jan. 26, 1811), in The Portable Thomas Jefferson 520, 524 (M. Peterson ed. 1975) ("[T]he militia of the State, that is to say, of every man in it able to bear arms").

Petitioners take a seemingly narrower view of the militia, stating that "[m]ilitias are the state- and congressionally-regulated military forces described in the Militia Clauses (art. I, §8, cls. 15–16)." Brief for Petitioners 12.

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Although we agree with petitioners' interpretive assumption that "militia" means the same thing in Article I and the Second Amendment, we believe that petitioners identify the wrong thing, namely, the organized militia. Unlike armies and navies, which Congress is given the power to create ("to raise . . . Armies"; "to provide . . . a Navy," Art. I, §8, cls. 12–13), the militia is assumed by Article I already to be *in existence*. Congress is given the power to "provide for calling forth the militia," §8, cl. 15; and the power not to create, but to "organiz[e]" it—and not to organize "a" militia, which is what one would expect if the militia were to be a federal creation, but to organize "the" militia, connoting a body already in existence, *ibid.*, cl. 16. This is fully consistent with the ordinary definition of the militia as all able-bodied men. From that pool, Congress has plenary power to organize the units that will make up an effective fighting force. That is what Congress did in the first militia Act, which specified that "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 (except as is herein after excepted) shall severally and respectively be enrolled in the militia." Act of May 8, 1792, 1 Stat. 271. To be sure, Congress need not conscript every able-bodied man into the militia, because nothing in Article I suggests that in exercising its power to organize, discipline, and arm the militia, Congress must focus upon the entire body. Although the militia consists of all able-bodied men, the federally organized militia may consist of a subset of them.

Finally, the adjective "well-regulated" implies nothing more than the imposition of proper discipline and training. See Johnson 1619 ("Regulate": "To adjust by rule or method"); Rawle 121–122; cf. Va. Declaration of Rights §13 (1776), in 7 Thorpe 3812, 3814 (referring to "a well-regulated militia, composed of the body of the people,

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trained to arms”).

b. “Security of a Free State.” The phrase “security of a free state” meant “security of a free polity,” not security of each of the several States as the dissent below argued, see 478 F. 3d, at 405, and n. 10. Joseph Story wrote in his treatise on the Constitution that “the word ‘state’ is used in various senses [and in] its most enlarged sense, it means the people composing a particular nation or community.” 1 Story §208; see also 3 *id.*, §1890 (in reference to the Second Amendment’s prefatory clause: “The militia is the natural defence of a free country”). It is true that the term “State” elsewhere in the Constitution refers to individual States, but the phrase “security of a free state” and close variations seem to have been terms of art in 18th-century political discourse, meaning a “‘free country’” or free polity. See Volokh, “Necessary to the Security of a Free State,” 83 Notre Dame L. Rev. 1, 5 (2007); see, e.g., 4 Blackstone 151 (1769); Brutus Essay III (Nov. 15, 1787), in *The Essential Antifederalist* 251, 253 (W. Allen & G. Lloyd eds., 2d ed. 2002). Moreover, the other instances of “state” in the Constitution are typically accompanied by modifiers making clear that the reference is to the several States—“each state,” “several states,” “any state,” “that state,” “particular states,” “one state,” “no state.” And the presence of the term “foreign state” in Article I and Article III shows that the word “state” did not have a single meaning in the Constitution.

There are many reasons why the militia was thought to be “necessary to the security of a free state.” See 3 Story §1890. First, of course, it is useful in repelling invasions and suppressing insurrections. Second, it renders large standing armies unnecessary—an argument that Alexander Hamilton made in favor of federal control over the militia. *The Federalist* No. 29, pp. 226, 227 (B. Wright ed. 1961) (A. Hamilton). Third, when the able-bodied men of a nation are trained in arms and organized, they are

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better able to resist tyranny.

3. Relationship between Prefatory Clause and Operative Clause

We reach the question, then: Does the preface fit with an operative clause that creates an individual right to keep and bear arms? It fits perfectly, once one knows the history that the founding generation knew and that we have described above. 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. This is what had occurred in England that prompted codification of the right to have arms in the English Bill of Rights.

The debate with respect to the right to keep and bear arms, as with other guarantees in the Bill of Rights, was not over whether it was desirable (all agreed that it was) but over whether it needed to be codified in the Constitution. 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 Antifederalist rhetoric. See, *e.g.*, Letters from The Federal Farmer III (Oct. 10, 1787), in 2 The Complete Anti-Federalist 234, 242 (H. Storing ed. 1981). John Smilie, for example, worried not only that Congress's "command of the militia" could be used to create a "select militia," or to have "no militia at all," but also, as a separate concern, that "[w]hen a select militia is formed; the people in general may be disarmed." 2 Documentary History of the Ratification of the Constitution 508–509 (M. Jensen ed. 1976) (hereinafter *Documentary Hist.*). Federalists responded that because Congress was given no power to abridge the ancient right of individuals to keep and bear arms, such a force could never oppress the people. See, *e.g.*, A Pennsylvanian III (Feb. 20, 1788), in The