

Second Amendment: Individual v. Collective Right

The purpose of the Second Amendment of the United States Constitution was to ensure and protect the right of the American people to keep and bear arms. This right is an individual right, which includes a right to defend oneself, defend one's home, and defend one's state. It is not, as many argue, solely a right to enable states to maintain a Militia, or a right held only by individuals actively serving in the Militia, called the collective right view.

I will discuss whether or not the right to keep and bear arms is an individual right of the people or specific to the purpose of maintaining a Militia, by examining the phrase that sets the forth the right in the United States Constitution's Second Amendment that is the subject of such controversy, as follows, "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."¹ This article will not touch on the limitations set by individual State Constitutions on keeping and bearing arms and whether or not those limitations are constitutional.

The phrase, "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,"¹ can be dissected into two clauses according to the Court in District of Columbia v. Heller. First is the Operating Clause, "The right of the people to keep and bear arms." Second is the Prefatory Clause, "A well regulated Militia, being necessary to the security of a free State."² I will begin by examining the words that make up the Operating Clause.

¹ U.S. Const. amend. II; http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html

² District of Columbia v. Heller, 128 S. Ct. 2783 (2008), at 2789;
http://scholar.google.com/scholar_case?case=2739870581644084946&q=US+v+Miller+second+amend&hl=en&as_sdt=2,5

The term “the right” refers to a pre-existing right which was present at the time the Second Amendment was ratified. When we look to the citizens who lived during the 18th century, we find that they maintained a right to possess arms for the purpose of self-defense. This right was established by the Declaration of Right, referred to as the English Bill of Rights, before the Second Amendment was ever even conceived. It began in 1760, when the English government brought on a campaign to disarm its citizens in order to suppress them and their ability to uprising against the government. The English Bill of Rights provided: “That the subjects which are Protestants may have arms for their defense suitable to their conditions and as allowed by law.”³ This is the root of our reaction as Americans to uphold our individual rights as Englishmen under the English Bill of Rights. Those with the collective right view would steer you in the direction that “the right” is reserved for the members of an organized Militia. They rely on the Court’s holding in Stevens v. United States, “Since the Second Amendment right ‘to keep and bear Arms’ applies only to the right of the State to maintain a Militia and not to the individual’s right to bear arms, there can be no serious claim to any express constitutional right of an individual to possess a firearm.”⁴ This view, however, does not lie in conjunction with the Constitution. United States v. Emerson stated, “As used throughout the Constitution, ‘the people’ have ‘rights’ and ‘powers’, but federal and state governments only have ‘powers’ or ‘authority’, never ‘rights.’”⁵ Militia’s are an organization of the government, and therefore do not have rights. Only the America people have rights.

So what does the term “the people” refer to in the Operative Clause? United States v. Emerson stated, “It appears clear that ‘the people,’ as used in the Constitution, including the Second Amendment, refers to individual Americans.”⁶ When used in other clauses of the Constitution, “the

³ 1 W. & M., c. 2. § 7, in 3 Eng. Stat. at Large 441 (1689); http://constitution.org/bor/eng_bor.htm

⁴ Stevens v. United States, 440 F. 2d 144 (6th Cir. 1971), at 149;
http://scholar.google.com/scholar_case?case=5709687819970574957&q=Stevens+v+United+States&hl=en&as_sdt=2,5

⁵ US v. Emerson, 270 F.3d 203, (5th Cir. 2001), at 228;
http://scholar.google.com/scholar_case?case=14262752073118297274&q=Second+Amendment+right+to+keep+and+bear+arms+militia&hl=en&as_sdt=2003

⁶ US v. Emerson, 270 F.3d 203 (5th Cir. 2001), at 229;
http://scholar.google.com/scholar_case?case=14262752073118297274&q=Second+Amendment+right+to+keep+and+bear+arms+militia&hl=en&as_sdt=2003

people” refers to individual rights. The First Amendment gives the people individual rights to “assembly” and the “freedom of speech.” The Fourth Amendment gives the people individual rights to “privacy.” Our collective right viewers would have you believe the term is meant only for the people whom are members of a Militia. However, this is not consistent with the phrase elsewhere in the Constitution. Parker v. District of Columbia stated that the collective right views, “Strained interpretations of ‘the people’ simply cannot be squared with the uniform construction of our other Bill of Rights provisions.”⁷

Now let’s discuss what to “keep” arms means. The dictionary which is periodic to the time of the Second Amendment is the “1773 edition of Samuel Johnson’s dictionary, which defines “keep” as “[t]o retain; not to lose” and “[t]o have custody.” District of Columbia v. Heller⁸ Webster’s dictionary defines it as “[t]o hold; to retain in one’s power or possession.” Therefore, the basic reading of “keep arms” is to “have weapons.” It’s been argued that because Militia laws during the time the Second Amendment was ratified contained the language requiring Militia members to “keep arms,” that the meaning is only in connection with the Militia. District of Columbia v. Heller states, “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.”⁹ Collective right viewers assert the case of United States v. Miller, *infra* wherein many believe it was suggested that the Second Amendment only guaranteed the use of weapons that are suitable for a Militia, and the right to possess them as a Militia member. United States v. Miller, *infra* states in regards to the possession of a sawed off shotgun, “...has some reasonable relationship to the preservation or efficiency of a well regulated Militia, we cannot say that the

⁷ Parker v. District of Columbia, 478 F.3d 370 (2007), at 381;
http://scholar.google.com/scholar_case?case=11156910755936011541&q=Second+Amendment+right+to+keep+and+bear+arms+militia&hl=en&as_sdt=2,5&as_ylo=2001&as_yhi=2012

⁸ District of Columbia v. Heller, 554 U.S. 570 (2008), at 2792;
http://scholar.google.com/scholar_case?case=2739870581644084946&q=US+v+Miller+second+amend&hl=en&as_sdt=2,5

⁹ District of Columbia v. Heller, 554 U.S. 570 (2008), at 2792;
http://scholar.google.com/scholar_case?case=2739870581644084946&q=US+v+Miller+second+amend&hl=en&as_sdt=2,5

Second Amendment guarantees the right to keep and bear such an instrument”¹⁰ However, United States v. Emerson denies the suggested view of Miller, stating, “The plain meaning of the right of the people to keep arms is that of an individual, rather than a collective, right and is not limited to keeping arms while engaged in active military service or as a member of a select Militia such as the National Guard.”¹¹ Therefore, to keep, refers to the possession of arms generally, not the possession of arms by the Militia.

What about to “bear” then? The Webster and Johnson dictionaries both define “bear” as “carry.” It has been historically used in connection with “arms” as referring to carrying with a particular purpose such as confrontation. District of Columbia v. Heller states that “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 state’ or ‘bear arms in defense of himself and the state.’”¹² McDonald v. City of Chicago, Ill “Quite a few of these state constitutional guarantees, moreover, explicitly protected the right to keep and bear arms as an individual right to self-defense.” The collective right argument is that to bear arms is meant to “to serve as a soldier, do military service, fight.”¹³ However, this is only correct when using the term “bear” arms in conjunction with “against,” as stated in District of Columbia v. Heller, to bear arms only “bore that idiomatic meaning only when followed by the preposition ‘against,’ which was in

¹⁰ United States v. Miller, 307 U.S. 174 (1939), at 178;
http://scholar.google.com/scholar_case?case=17128640835628801970&q=US+v+Miller+second+amend&hl=en&as_sdt=2,5

¹¹ US v. Emerson, 270 F.3d 203 (5th Cir. 2001), at 232;
http://scholar.google.com/scholar_case?case=14262752073118297274&q=Second+Amendment+right+to+keep+and+bear+arms+militia&hl=en&as_sdt=2003

¹² District of Columbia v. Heller, 128 S. Ct. 2783 (2008), at 2793;
http://scholar.google.com/scholar_case?case=2739870581644084946&q=US+v+Miller+second+amend&hl=en&as_sdt=2,5

¹³ McDonald v. City of Chicago, Ill., 130 S. Ct. 3020 (2010), at 3042;
http://scholar.google.com/scholar_case?case=5141154246897960488&q=Second+Amendment+%22right+to+keep+and+bear+arms%22&hl=en&as_sdt=4,60

turn followed by the target of the hostilities.”¹⁴ As this is not the case in the Second Amendment, as “to bear arms” is followed by “shall not be infringed,” the meaning of bear arms is to carry weapons with a particular purpose.

Therefore, the Operative Clause of the Second Amendment “the right of the people to keep and bear arms” translates to the individual right, of the individual citizens of the United States, to possess and carry arms, for the purpose of defense of oneself, and defense of one’s home. District of Columbia v. Heller supporting “we find that they guarantee the individual right to possess and carry weapons in case of confrontation” and “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” and “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.”¹⁵

Then what is the purpose of the Prefatory Clause in relation to the Operative Clause, and what is it’s meaning? A Prefatory clause “does not limit or expand the scope of the operative clause” District of Columbia v. Heller.¹⁶ It simply announces a purpose. The Prefatory clause here is “A well regulated Militia, being necessary to the security of a free State.”

Let’s first determine the meaning of the “Militia” Webster defines “the militia of a country are the able bodied men organized into companies, regiments and brigades...” Collective right viewers define the Militia as follows: “[m]ilitias are the state-and congressionally-regulated military

¹⁴ District of Columbia v. Heller, 128 S. Ct. 2783 (2008), at 2794;
http://scholar.google.com/scholar_case?case=2739870581644084946&q=US+v+Miller+second+amend&hl=en&as_sdt=2,5

¹⁵ District of Columbia v. Heller, 128 S. Ct. 2783 (2008), at 2797 and 2799;
http://scholar.google.com/scholar_case?case=2739870581644084946&q=US+v+Miller+second+amend&hl=en&as_sdt=2,5

¹⁶ District of Columbia v. Heller, 128 S. Ct. 2783 (2008), at 2789;
http://scholar.google.com/scholar_case?case=2739870581644084946&q=US+v+Miller+second+amend&hl=en&as_sdt=2,5

forces described in the Militia Clauses (art. I, § 8, cls. 15-16).” District of Columbia v. Heller.¹⁷ This view reserves the Militia as being government organized. However, the Second Amendment is referring to a citizen’s Militia, one which is not regulated by Congress. United States v. Miller holds that the Militia is comprised of “all males physically capable of acting in concert for the common defense.”¹⁸ It does not restrict it to a government regulated Militia. For the purposes of the Prefatory Clause, “Militia” means citizen’s Militia.

So what does the “well-regulated” term of the Prefatory Clause mean? District of Columbia v. Heller states it “implies nothing more than the imposition of proper discipline and training.”¹⁹ The Court in District of Columbia v. Heller further directs us to the Johnson dictionary, defining “regulate” as “to adjust by rule or method.” It is argued that this term points to the idea that it is the government regulated Militia that is given the right to keep and bear arms. Collective right viewers again rely on Stevens v. United States wherein it states “Since the second Amendment right ‘to keep and bear Arms’ applies only to the right of the State to maintain a Militia and not to the individual’s right to bear arms, there can be no serious claim to any express constitutional right of an individual to possess a firearm.”²⁰ Instead, this term is really meant to employ a citizen’s Militia, wherein those possessing weapons and whom are trained with them, would be the members. Anti-federalists feared the government would disarm the people so they could disable the citizen’s Militia. Therefore, they sought to preserve the right of a citizen’s Militia by maintaining that they had an individual right to kept and bear arms. United States v. Emerson, citing Aymette v. State “if the citizens have these arms in their hands, they are prepared in the best possible manner to repel any encroachment upon

¹⁷ District of Columbia v. Heller, 128 S. Ct. 2783 (2008), at 2799;
http://scholar.google.com/scholar_case?case=2739870581644084946&q=US+v+Miller+second+amend&hl=en&as_sdt=2,5

¹⁸ United States v. Miller, 307 U.S. 174 (1939), at 179;
http://scholar.google.com/scholar_case?case=17128640835628801970&q=US+v+Miller+second+amend&hl=en&as_sdt=2,5

¹⁹ District of Columbia v. Heller, 128 S. Ct. 2783 (2008), at 2800;
http://scholar.google.com/scholar_case?case=2739870581644084946&q=US+v+Miller+second+amend&hl=en&as_sdt=2,5

²⁰ Stevens v. United States, 440 F.2d 144 (6th Cir. 1971), at 149;
http://scholar.google.com/scholar_case?case=5709687819970574957&q=Stevens+v+United+States&hl=en&as_sdt=2,5

their rights by those in authority.”²¹ Therefore, “well-regulated” simply refers to those individuals able to possess and properly use a weapon.

Let’s turn to “Security of a Free State”. The collective right view is that the meaning of this term is to defend each State of the United States. District of Columbia v. Heller states the phrase “‘security of a free state’ meant ‘security of a free polity,’ not security of each of the several States...” The Court further declares “Joseph Story wrote in his treatise on the Constitution that the “the word ‘state’” is used in various senses [and in] its most enlarged sense, it means the people composing a particular nation or community.”²² The Constitution uses the word “State” with various meaning throughout, and when it refers to individual States it is as “each state,” “several states,” “any state,” etc. However, in the instance of State in the Prefatory Clause, it is “Free State” meaning “Free Country.”

Therefore, the Prefatory Clause “A well regulated Militia, being necessary to the security of a free State ” announces the purpose “to prevent elimination of the militia.” District of Columbia v. Heller The Court found that this clause reaffirms the individual right because it was inserted with the intent to ensure there would not be an elimination of the Militia by the government’s disarming of it’s citizens. District of Columbia v. Heller directs us to examine historical tyrants, wherein they took away people’s ability to defend themselves rather than banning Militia’s in order to suppress them.²³ An individual right perspective is necessary to keep arms in the hands of the people so that the government does not have complete control. To view otherwise would give the government the

²¹ US v. Emerson, 270 F.3d 203 (5th Cir. 2001), at 222; citing Aymette v. State [2 Humph., Tenn. 154 (1840)], at 158;
http://scholar.google.com/scholar_case?case=14262752073118297274&q=Second+Amendment+right+to+keep+and+bear+arms+militia&hl=en&as_sdt=2003

²² District of Columbia v. Heller, 128 S. Ct. 2783 (2008), at 2800;
http://scholar.google.com/scholar_case?case=2739870581644084946&q=US+v+Miller+second+amend&hl=en&as_sdt=2,5

²³ District of Columbia v. Heller, 128 S. Ct. 2783 (2008), at 2801 and 2807;
http://scholar.google.com/scholar_case?case=2739870581644084946&q=US+v+Miller+second+amend&hl=en&as_sdt=2,5

exclusive right to form a Militia, appoint its members, and control them, while leaving the people defenseless.

In conclusion, the Operative Clause and the Prefatory Clause of the Second Amendment together provide for a translation of “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.” District of Columbia v. Heller²⁴ It is therefore an individual right of the people to possess and carry weapons in defense of oneself, defense of one’s home, and defense of one’s state, not a right reserved to members of the Militia. McDonald v. City of Chicago “the right to keep and bear arms was highly valued for purposes of self-defense.”²⁵ The view that it is a collective right for the purpose of the Militia is inconsistent with the language of the Constitution and the pre-existing rights of the founding generation. The founding generation feared suppression by their government, and therefore ensured their individual right to maintain a citizen’s Militia and to defend themselves and their homes. This individual right is a right that is the core of our Country. Our founding fathers took up weapons to defend our country and ourselves against England’s tyranny, and therefore our Country is founded upon our individual right to keep and bear arms.

²⁴ District of Columbia v. Heller, 128 S. Ct. 2783 (2008), at 2789;
http://scholar.google.com/scholar_case?case=2739870581644084946&q=US+v+Miller+second+amend&hl=en&as_sdt=2,5

²⁵ McDonald v. City of Chicago, Ill., 130 S. Ct. 3020 (2010), at 3038;
http://scholar.google.com/scholar_case?case=5141154246897960488&q=Second+Amendment+%22right+to+keep+and+bear+arms%22&hl=en&as_sdt=4,60