No. 04-7041

In the United States Court of Appeals for the District of Columbia Circuit

SHELLY PARKER, DICK ANTHONY HELLER, TOM G. PALMER, GILLIAN ST. LAWRENCE, TRACEY AMBEAU, and GEORGE LYON,
Appellants,

v.

DISTRICT OF COLUMBIA and ANTHONY WILLIAMS,
Appellees.

On Appeal from the United States District Court for the District of Columbia (No. CIV. A. 03-0213-EGS)

BRIEF OF THE STATES OF TEXAS, ALABAMA, ARKANSAS, COLORADO, FLORIDA, GEORGIA, MICHIGAN, MINNESOTA, NEBRASKA, NORTH DAKOTA, OHIO, UTAH, AND WYOMING AS AMICI CURIAE IN SUPPORT OF APPELLANTS

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Parties and *Amici*

All parties, intervenors, and *amici* appearing in the district court and in this Court are listed in Appellants' Brief except for the following *amici* States: Alabama, Arkansas, Colorado, Florida, Georgia, Michigan, Minnesota, Nebraska, North Dakota, Ohio, Utah, and Wyoming.

Circuit Rule 26.1 is inapplicable because *amici* are governmental entities.

Rulings Under Review

The rulings under review are contained within the district court's Memorandum Opinion and Order issued March 31, 2004, per the Honorable Emmet G. Sullivan, granting defendants' Motion to Dismiss, denying as moot plaintiffs' Motion for Summary Judgment, and directing that judgment be entered for defendants. The district court's opinion is published at *Parker v. District of Columbia*, 311 F.Supp.2d 103 (D.D.C. 2004).

Related Cases

The case on review has not previously been before this or any other court apart from the original proceeding in the United States District Court. Counsel is not aware of any related cases now pending before this or any other court.

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Cases v. United States,
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Griswold v. Connecticut,
381 U.S. 479 (1965) 9

Johnson v. Eisentrager,
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Konigsberg v. State Bar of Cal.,
366 U.S. 36 (1961) 20

Loving v. United States,
517 U.S. 748 (1996) 25

Minnesota v. Carter,
525 U.S. 83 (1998) 9

Moore v. City of East Cleveland,
431 U.S. 494 (1977) 21

Muscarello v. United States,
524 U.S. 125 (1998) 13

Neder v. United States,
527 U.S. 1 (1999) 26

New York v. United States,
505 U.S. 144 (1992) 9

Parker v. District of Columbia,
311 F.Supp.2d 103 (D.D.C. 2004) . . . . iii, 2, 4, 6, 9, 14, 16

Planned Parenthood v. Casey,
505 U.S. 833 (1992) 20, 21

Poe v. Ullman,
367 U.S. 497 (1961) 21

Pollock v. Farmers' Loan & Trust Co.,
158 U.S. 601 (1895) 7

Printz v. United States,
521 U.S. 898 (1997) 21

Richfield Oil Corp. v. State Bd. of Equalization,
329 U.S. 69 (1946) 12

Robertson v. Baldwin,
165 U.S. 275 (1897) 26

Seegars v. Ashcroft,
297 F.Supp.2d 201 (D.D.C. 2004) 9

Silveira v. Lockyer, 312 F.3d 1052 (9th Cir. 2002),
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Thornhill v. Alabama,
310 U.S. 88 (1940) 8

United States v. Emerson,
270 F.3d 203, 260 (5th Cir. 2001),
cert. denied, 536 U.S. 907 (2002) 1, 8, 12, 28

United States v. Miller,
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United States v. Parker,
362 F.3d 1279 (10th Cir. 2004) 1

United States v. Verdugo-Urquidez,
494 U.S. 259 (1990) 8

Rules, Statutes and Constitutional Provisions

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U.S. CONST. art. I, §8, cl. 8 15

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Other Authorities

1 LAURENCE H. TRIBE,
AMERICAN CONSTITUTIONAL LAW 902 (3d ed. 2000) 22

1 S. Tucker, ed.,
BLACKSTONE'S COMMENTARIES 300 (Philadelphia, 1803) 23, 24

1 W. & M., 2d sess., c, 2, Dec. 16, 1689 26

1 WILLIAM BLACKSTONE, COMMENTARIES ON
THE LAWS OF ENGLAND 136
(Legal Classics Library 1983) (1765) 27

2 THE PAPERS OF THOMAS JEFFERSON 443
(J.P. Boyd, ed.1950) 13

3 J. ELLIOTT, DEBATES IN THE GENERAL STATE
CONVENTIONS 425 (3d ed. 1937)
(statement of George Mason, June 14, 1788) 16

5 THE FOUNDERS CONSTITUTION
210 (Philip B. Kurland & Ralph Lerner, eds.,
Liberty Fund 1987) 26

Akhil R. Amar, *The Bill of Rights and the Fourteenth Amendment*,
101 YALE L.J. (1992) 21

Br. In Opp. to Pet. for Writ of Cert., *United States v. Emerson*,
No. 01-8780, at 19-20 n.3 & App. A, *available at*
http://www.usdoj.gov/osg/briefs/2001/0responses/2001-
8780.resp.pdf 22

Don B. Kates, Jr., Second Amendment,
ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION 1639
(L. Levy, et al. eds., 1986) 11

Eugene Volokh, *The Commonplace Second Amendment*,
73 N.Y.U. L. REV. 793 (1998) 14, 15, 25

FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE,
UNIFORM CRIME REPORTS: CRIME IN THE UNITED STATES
(for each year 1999-2003), at tbl. 5,
http://www.fbi.gov/ucr/99cius.htm,
http://www.fbi.gov/ucr/00cius.htm,
http://www.fbi.gov/ucr/01cius.htm,
http://www.fbi.gov/ucr/02cius.htm,
http://www.fbi.gov/ucr/03cius.htm,
and for the year 2004, at tbl. 4,
http://www.fbi.gov/ucr/cius_04/offenses_reported/
offense_tabulations/table_04.html (last visited June 15, 2006) 30

Florenz Plassman & John Whitley,
Confirming "More Guns, Less Crime,"
55 STAN L. REV. 1313 (2003) 31

JOHN LOTT, MORE GUNS, LESS CRIME (1998) 31

JOSEPH STORY, COMMENTARIES ON THE
CONSTITUTION OF THE UNITED STATES 708
(Carolina Academic Press 1987) (1833) 24

JOYCE L. MALCOLM, TO KEEP AND BEAR ARMS: THE ORIGINS
OF AN ANGLO-AMERICAN RIGHT (1994) 21, 22

Memorandum from the Attorney General to All United States Attorneys, Re: United States v. Emerson, available at
http://www.usdoj.gov/osg/ briefs/2001/0responses/2001-8780.resp.pdf (Nov. 9, 2001) 23

Nelson Lund, *The Past and Future of the Individual's Right to Arms*,
31 GA. L. REV. 1 (1996) 25

Nelson Lund, *The Second Amendment, Political Liberty, and the Right to Self-Preservation*,
39 ALA. L. REV. (1987) 22

RATIFICATIONS AND RESOLUTIONS OF SEVEN
STATE CONVENTIONS (1788), *reprinted in*
2 DEBATE ON THE CONSTITUTION 561 (Lib. of Am. 1993) 17

SAMUEL JOHNSON, A DICTIONARY OF THE
ENGLISH LANGUAGE (4th ed. 1770) 12

Sanford Levinson, *The Embarrassing Second Amendment*,
99 YALE L.J. 637 (1989) 21

Stephen G. Bronars & John R. Lott, Jr.,
Criminal Deterrence, Geographic Spillovers, and Right-to-Carry Laws, AM. ECON. REV., May 1998 31

STEPHEN HALBROOK, THAT EVERY MAN BE ARMED, THE EVOLUTION OF A CONSTITUTIONAL RIGHT (1984) 21

THE ADDRESS & REASONS OF DISSENT OF THE MINORITY OF THE CONVENTION OF THE STATE OF PENNSYLVANIA TO THEIR CONSTITUENTS, PENNSYLVANIA PACKET (Dec. 18, 1787), *reprinted in* 1 DEBATE ON THE CONSTITUTION 526 (Lib. of Am. 1993) 16

THE FEDERALIST NO. 29 (Alexander Hamilton) (G. Carey, J. McClellan eds., 1990) 27

THE FEDERALIST NO. 46 (James Madison) (Clinton Rossiter ed., 1961) 17

THOMAS M. COOLEY, THE GENERAL PRINCIPLES OF CONSTITUTIONAL LAW IN THE UNITED STATES OF AMERICA 270 (Rothman & Co. 1981) (1880) 24

WEBSTER'S DICTIONARY (1828) 12

Whether the Second Amendment Secures an Individual Right, at 1 (Aug. 24, 2004), available at http://www.usdoj.gov/olc/secondamendment2.pdf (last visited June 15, 2006) 23

William Alan Bartley & Mark A. Cohen,
The Effect of Concealed Weapons Laws: An Extreme Bound Analysis, 36 ECON. INQUIRY 258 (1998) 31

William Van Alstyne, *The Second Amendment and the Personal Right to Arms*, 43 DUKE L. J. (1994) 21

STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici, the States of Texas, Alabama, Arkansas, Colorado, Florida, Georgia, Michigan, Minnesota, Nebraska, North Dakota, Ohio, Utah, and Wyoming, have an interest in this case because of its potential impact on the constitutional rights of their citizens. The individual right to keep and bear arms is protected by the United States Constitution and the constitutions of forty-four States.[1] Given the significance of this fundamental right, the States have an interest in ensuring that the Second Amendment is accorded its proper scope in neighboring jurisdictions.

The federal appellate courts are divided on whether the Second Amendment protects an individual right to keep and bear arms,[2] a "collective" right of the States to arm members of their "state militias,"[3] or a "quasi-collective right" afforded only to select persons to keep and bear arms in connection with their service in an organized state militia.[4] The district court in this case "reject[ed] the notion that there

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1. *Amici* States have attached an Appendix outlining the laws and constitutional provisions of the States and the District of Columbia concerning firearms.

2. *See, e.g.*, *United States v. Emerson*, 270 F.3d 203, 260 (5th Cir. 2001), *cert. denied*, 536 U.S. 907 (2002).

3. *See, e.g.*, *Silveira v. Lockyer*, 312 F.3d 1052, 1060-61 (9th Cir. 2002), *cert. denied*, 540 U.S. 1046 (2003).

4. *See, e.g.*, *United States v. Parker*, 362 F.3d 1279, 1283 (10th Cir. 2004); *Cases v. United States*, 131 F.2d 916, 923 (1st Cir. 1942).

is an individual right to bear arms separate and apart from service in the Militia." *Parker*, 311 F.Supp.2d at 109-10.

The *amici* States believe that the decision of the district court misconstrues the Second Amendment and runs counter to the intent and purpose of the Framers of the Constitution. Moreover, the District's gun ban is out of step with the judgment of the legislatures of all fifty States, all of which protect the right of private citizens to own handguns. The individual right to keep and bear arms contained in the Second Amendment and in the vast majority of state constitutions is threatened by the precedent that may be set by the decision in this case. Finally, *amici* States have an interest in ensuring that their citizens who choose to travel to other jurisdictions while carrying properly-licensed weapons remain free from unconstitutional arrest and prosecution in the District of Columbia.

Question Presented

Does the District of Columbia's total ban on the possession of handguns acquired after 1976 and the possession of functional long guns in the home violate citizens' right to "keep and bear arms" under the Second Amendment to the United States Constitution?

Constitution, Statutes, and Regulations

All applicable statutes and regulations are contained in Appellants' Brief.

TO THE HONORABLE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT:

The district court's holding that the Second Amendment does not protect an individual right to keep and bear arms denies American citizens a fundamental right guaranteed by the Constitution. Because the decision below strips Americans of a critical protection afforded by the Bill of Rights, the district court's judgment should be reversed.

Summary of the Argument

The Second Amendment guarantees all Americans the right to keep and bear arms. The district court's holding that the Second Amendment does not confer "an individual right to keep and bear arms separate and apart from service in the Militia," *Parker*, 311 F.Supp.2d at 109, eviscerates the Second Amendment for all practical purposes. The court's ruling also contradicts the plain text of the Amendment, the Supreme Court's construction of the Amendment, the history and purpose of the Amendment, and the majority of scholarly commentary interpreting its meaning.

Because the text of the Second Amendment recognizes a "right," not a "power," and guarantees that right to "the people" and not "the States," it confers an individual right to keep and bear arms. The First, Fourth, Ninth, and Tenth Amendments likewise confer "rights" to "the people," and it is black-letter law that

those Amendments confer individual rights. And the Supreme Court has made clear that "the people" has the same meaning throughout the Bill of Rights.

The district court's decision is based in large part upon its misconstruction of the meaning and effect of the prefatory clause in the Amendment. Although the preamble states that keeping a well-regulated militia is one purpose of that right, nothing in that statement contradicts the operative language of the Amendment. The district court's interpretation of that prefatory language as limiting the Amendment only to organized state militias is directly contrary to the understanding (and statutory definition) at the time of the Founding, that all able-bodied males armed with their own private weapons comprised the "Militia."

The district court's ruling is also inconsistent with the Supreme Court's decision in *United States v. Miller*, 307 U.S. 174 (1939), which strongly implied that the right to possess ordinary military equipment in order to provide for the common defense was an individual right. That view is further buttressed by an unbroken line of commentary and understanding from the Framers to nineteenth-century scholars to the bulk of the modern scholarship.

Reasonable minds can differ about the scope of the protections of the Second Amendment—*i.e.*, about which government regulations do and do not extend beyond the permissible sphere. But the district court's holding in this case—that the Second

Amendment protects no individual rights at all, but in effect only the State's power to establish and maintain an armed and organized militia—abrogates those protections completely. This Court, as did the Fifth Circuit in *Emerson*, should recognize the Second Amendment's guarantee of a personal and individual right to keep and bear arms and reverse the incorrect judgment of the district court.

Finally, although the individual right to keep and bear arms protected by the Second Amendment is not an absolute right immune from any restrictions whatsoever, the categorical nature of the D.C. Code provisions at issue here, which essentially impose blanket prohibitions on handgun ownership and possession of functional long guns in the home, are fundamentally inconsistent with the Second Amendment right of Americans to keep and bear arms. As such, they are unconstitutional on their face.

ARGUMENT

I. THE DISTRICT COURT ERRED IN HOLDING THAT THE SECOND AMENDMENT DOES NOT GUARANTEE AN INDIVIDUAL RIGHT TO BEAR ARMS.

The district court expressly rejected the "notion that there is an individual right to bear arms separate and apart from service in the Militia." *Parker*, 311 F.Supp.2d at 109. This holding misconstrues the plain language of the Second Amendment and frustrates the stated intent of the Framers of the Constitution. The court's

construction of the Amendment is also inconsistent with Supreme Court precedent, the history surrounding the adoption of the Amendment, and the great weight of scholarly commentary on the scope of the Amendment.

A. The Text of the Second Amendment Guarantees an Individual's Right to Bear Arms.

The Second Amendment to the Constitution provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. CONST. amend. II. The Supreme Court has long emphasized the importance of the Constitution's specific text: "[T]he enlightened patriots who framed our Constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they said." *Pollock v. Farmers' Loan & Trust Co.*, 158 U.S. 601, 618-19 (1895) (internal quotation omitted). In interpreting the Second Amendment, the Court should apply standard rules of statutory and constitutional construction, including the rule that all words must ordinarily be given force.

1. The "right of the people" is an individual right.

The operative words of the Second Amendment protect the right of "the people," not the "militia" or the "States," to keep and bear arms. The meaning to be given to the words "the people" as used in the Second Amendment phrase "the right

of the people" should be the same meaning attributed to the same phrase in the contemporaneously submitted and ratified First and Fourth Amendments. *Emerson*, 270 F.3d at 227. As described below, all three amendments describe personal, individual rights.

In *United States v. Verdugo-Urquidez*, the Supreme Court concluded:

> "'*[T]he people' seems to have been a term of art* employed in select parts of the Constitution. . . . *The Second Amendment* protects 'the right of the people to keep and bear Arms,' and the Ninth and Tenth Amendments provide that certain rights and powers are retained by and reserved to 'the people.' See also U.S. Const. Amdt. 1 . . . ; Art. I, § 2, cl. 1 . . . . While this textual exegesis is by no means conclusive, it suggests that *'the people' protected by the Fourth Amendment, and by the First and Second Amendments,* and to whom rights and powers are reserved in the *Ninth and Tenth Amendments,* refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community."

494 U.S. 259, 265 (1990) (original emphasis omitted; italics added).

The Supreme Court thus concluded that the "term of art" "the people" had the same meaning in the First, Second, Fourth, Ninth, and Tenth Amendments. And it is beyond peradventure that the right of "the people" in the First and Fourth Amendments is an individual, personal right rather than a "collective" right or a right protected only in connection with service to the government. *See, e.g., Thornhill v. Alabama*, 310 U.S. 88, 95 (1940) ("The freedom of speech . . . which [is] secured by

the First Amendment against abridgment by the United States, [is] among the fundamental personal rights and liberties which are secured to all persons by the Fourteenth Amendment against abridgment by a state."); *Minnesota v. Carter*, 525 U.S. 83, 90 (1998) (holding that the Fourth Amendment is a personal right that must be invoked by an individual).[5]

The district court's conclusion that the Second Amendment's right of "the people" to keep and bear arms was not adopted to confer an individual right, but rather to ensure a collective right "to protect the vitality of state militias,"[6] is fundamentally inconsistent with the rest of the Bill of Rights. If the phrase "the people" is interpreted consistently—as the Supreme Court instructs—the district court's construction of the phrase results in a demonstrably implausible framework for our constitutional rights. For example, the First Amendment preserves "the right of the people peaceably to assemble." U.S. CONST. amend. I. The district court's construction implies that no individual can sue in court for an abridgment of his or her right to assemble, because that right is reserved only to "the people" acting

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5. *See also Griswold v. Connecticut*, 381 U.S. 479 (1965) (Ninth Amendment); *New York v. United States*, 505 U.S. 144 (1992) (Tenth Amendment).

6. *See Parker*, 311 F.Supp.2d at 105 (incorporating by reference sections III(2)(A) and III(2)(B) of Judge Reggie Walton's opinion in *Seegars v. Ashcroft*, 297 F.Supp.2d 201 (D.D.C. 2004) (amended January 29, 2004)).

collectively. Likewise, The Fourth Amendment preserves "the right of the people" to be secure from unreasonable searches and seizures. U.S. CONST. amend. IV. The district court's construction implies that no individual has a right enforceable in court to be free from unreasonable search and seizure, only "the people" as a collective may enforce such rights. That, of course, is not the law.

Alternatively, if the district court's "collective" construction of "the people" is to be somehow cabined only to the Second Amendment, the Court must conclude that when Congress sent the Bill of Rights to the States, Congress first listed four individual rights (in the First Amendment), then created a State's "right" (in the Second Amendment), and then reverted to a litany of individual rights (in Amendments Three through Eight). The Court must further conclude that, while Congress used "the people" to refer to individual rights in the First, Fourth, and Ninth Amendments, Congress used "the people" to mean "state governments" in the Second Amendment. Finally, for the Court to find that Congress used "the people" in the Second Amendment to mean "the States," the Court would have to somehow reconcile that with the language of the Tenth Amendment, where Congress explicitly distinguished "the people" from "the States," reserving powers "to the States respectively, or to the people."

Such a tortured construction of the words "the people" as used throughout the Bill of Rights cannot withstand scrutiny.[7] Rather, the plain text of the Second Amendment means what it says: that the individual rights of the people to keep and bear arms cannot be infringed.

2. The district court misinterpreted the meaning of "keep" and "bear arms."

The district court's interpretation of the Second Amendment necessarily, and mistakenly, requires that the words "bear arms" have only a military connotation, and that the words "keep" and "bear" arms in the Second Amendment must be construed together as a unitary phrase relating only to the maintenance of arms for military service. This construction of the Amendment is not supported by its text or history.

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7. Additional support for the "individual right" interpretation of the Second Amendment is provided by James Madison's original plan for the Bill of Rights. Rather than appending the Bill of Rights to the end of the Constitution, Madison originally intended to insert each provision into the appropriate section of the original document. Notably, Madison did not propose to insert the protection for the right to keep and bear arms into article I, section 8 or article I, section 10, where the military and militia clauses are located; instead, Madison planned to insert it (along with the provisions that became the First Amendment) into article I, section 9, which is the principal "individual rights" section of the original Constitution, addressing bills of attainder, ex post facto laws, and the writ of habeas corpus. *See* Don B. Kates, Jr., Second Amendment, *in* ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION 1639, 1639 (L. Levy, et al. eds., 1986).

The first problem with the district court's interpretation of "keep and bear arms" is that it effectively ignores the word "keep" in favor of focusing only on the meaning of the phrase "bear arms." But it is well established that courts cannot ignore words or phrases in the Constitution. "In expounding the Constitution of the United States, every word must have its due force, and appropriate meaning; for it is evident from the whole instrument, that no word was unnecessarily used, or needlessly added." *Richfield Oil Corp. v. State Bd. of Equalization*, 329 U.S. 69, 77-78 (1946) (internal quotation omitted). And to "keep" arms is to possess or own arms, as is demonstrated by the contemporary dictionary definition of "keep":

> **1.** To hold; to retain in one's power or possession; not to lose or part with; as, to keep a house or a farm; to keep any thing in the memory, mind or heart; **2.** To have in custody for security or preservation.

WEBSTER'S DICTIONARY (1828) (emphasis added); *see also* SAMUEL JOHNSON, A DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 1770). The Court should give effect, as did the Fifth Circuit in *Emerson*, to each word of the Amendment. "The plain meaning of the right of the people to keep arms is that it is 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." *Emerson*, 270 F.3d at 232.

The district court's conclusion that "bear arms" refers only to militia service is likewise misguided because, although this phrase may be used to describe the

carrying or wearing of arms by a soldier or member of the militia, it is not used exclusively to refer to the military. Indeed, the Framers understood "bearing" arms to include the carrying of weapons generally—as may be seen directly in a bill drafted by Thomas Jefferson and proposed to the Virginia Legislature by James Madison (the author of the Second Amendment) on October 31, 1785. Madison's bill would have imposed penalties upon one who violated hunting laws if he were to "*bear* a gun out of his [the violator's] inclosed ground, unless while performing military duty." 2 THE PAPERS OF THOMAS JEFFERSON 443-44 (J.P. Boyd, ed.1950) (emphasis added). In fact, as Judge Kleinfeld noted in his dissenting opinion in *Silveira*, "the primary meaning of 'bear' is 'to carry,' as when we arrive at our host's home 'bearing gifts' and arrive at the airport 'bearing burdens.'" *Silveira*, 328 F.3d at 572-73(Kleinfeld, J., dissenting) (citation omitted).

This common-sense view of the phrase "bear arms" is also reflected in the dissenting opinion of Justice Ginsburg, joined by Chief Justice Rehnquist and Justices Scalia and Souter, in *Muscarello v. United States*, 524 U.S. 125, 143 (1998):

> Surely a most familiar meaning [of carrying a firearm] is, as the Constitution's Second Amendment ("keep and *bear* Arms") (emphasis added) and Black's Law Dictionary, at 214, indicate: "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."

Nothing in the text of the Second Amendment limits the words "bear arms" to an exclusively military connotation; instead it affords an individual right to "the people" to "wear, bear, or carry" arms, whether or not engaged in active military service or military activity connected specifically with a state militia.

3. The introductory clause of the Second Amendment does not convert an individual right into a "collective" or "quasi-collective" right.

The district court's decision was driven largely by its conclusion that the operative clause of the Second Amendment, conferring the right to "keep and bear arms," is defined and narrowed by the introductory clause of the Amendment referencing a "well regulated Militia." *Parker*, 311 F.Supp.2d at 108-09. However, while a preamble may inform, influence, or shape the operational clause, it cannot compel a result contrary to its meaning. *See* Eugene Volokh, *The Commonplace Second Amendment*, 73 N.Y.U. L. REV. 793, 807 (1998). And, in any event, the Second Amendment's preamble is entirely consistent with the individual right mandated by the operational clause.

To be sure, the introductory clause implies one purpose of the right to bear arms is to promote the existence and effectiveness of that "well-regulated Militia," but nothing compels the conclusion that this is the Amendment's sole purpose.

Indeed, with respect to other rights recognized by the Constitution, the Supreme Court has already held that similar preambulatory purposes do not limit the effect of the clauses' operational language.

For example, in *Eldred v. Ashcroft*, 537 U.S. 186 (2003), the Supreme Court addressed a similar proposed construction of the preambulatory language in the Copyright Clause, which reads "The Congress shall have the power . . . [t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." U.S. CONST. art. I, §8, cl. 8. The Court concluded that Congress's power to secure exclusive rights to authors and inventors is not limited by the prefatory purpose to "promote the progress of science and useful arts." *Eldred*, 537 U.S. at 210-211. Although promoting science and the arts may have been the Framers' chief purpose in conveying sweeping copyright powers to Congress, other purposes existed as well. *Id.* at 212.

If the preamble of the Copyright Clause, which expressly conditions its operational language through use of the phrase "by securing," imposes no limitation on the Clause's scope, then neither does the preamble of the Second Amendment, which is not so expressly limited. Volokh, *supra*, at 807-13. Rather, the right to keep and bear arms should be understood in light of the many reasons that the founding

generation of Americans valued that right, including hunting and self-defense. *See, e.g.*, THE ADDRESS & REASONS OF DISSENT OF THE MINORITY OF THE CONVENTION OF THE STATE OF PENNSYLVANIA TO THEIR CONSTITUENTS, PENNSYLVANIA PACKET (Dec. 18, 1787), *reprinted in* 1 DEBATE ON THE CONSTITUTION 526, 532 (Lib. of Am. 1993).

And, even if the district court were correct that the prefatory clause of the Second Amendment defined the scope of the right conferred in the operational clause, the court's conclusion—that the words "a well-regulated Militia, being necessary to the security of a free State" means the Amendment was adopted for the sole purpose of ensuring the effectiveness of state militias—is erroneous. *See Parker*, 311 F.Supp.2d at 108-09. The text and history of the Amendment contradict the court's narrow reading of "militia."

The Framers' understanding of "militia" is reflected in a question asked by George Mason, one of the Virginians who refused to sign the Constitution because of its lack of a Bill of Rights: "Who are the Militia? They consist now of the whole people." 3 J. ELLIOTT, DEBATES IN THE GENERAL STATE CONVENTIONS 425 (3d ed. 1937) (statement of George Mason, June 14, 1788). This understanding, contrary to the conclusion of the district court, is also reflected in the language of both the Virginia and North Carolina ratifying conventions—which spoke of "a well regulated

militia composed of the body of the people." RATIFICATIONS AND RESOLUTIONS OF SEVEN STATE CONVENTIONS (1788), *reprinted in* 2 DEBATE ON THE CONSTITUTION 561, 568 (Lib. of Am. 1993). James Madison articulated the same view of the term "militia" in his Federalist No. 46, wherein he argued that the power of Congress under the proposed Constitution "[t]o raise and support armies" (art. 1, §8, cl. 12) posed no threat to liberty because any such army, if misused, "would be opposed [by] a militia amounting to near half a million citizens with arms in their hands." THE FEDERALIST NO. 46, at 299 (James Madison) (Clinton Rossiter ed., 1961).

The district court's narrow interpretation of "militia" to include only some select body of permanent soldiers is also belied by the provisions of the Militia Act, enacted by the Second Congress the year after ratification of the Second Amendment. The Militia Act expressly defined the militia as "each and every free able-bodied white male citizen of the respective states, resident therein, who is or shall be of the age of eighteen years, and under the age of forty-five years." Militia Act, 1 Stat. 271 (1792).[8] Thus, contrary to the court's conclusion, the "militia" contemplated by the Framers was not limited to those who are enrolled in some type of state or local

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8. Indeed, the Militia Act not only permitted gun ownership by every able-bodied man, it *required* it—obliging by law each man to "*provide himself* with a good musket or firelock . . . or with a good rifle." Ch. XXXIII, 1 Stat. 271 (1792) (emphasis added).

militia organization. Under clear statutory definition and contemporary understanding, the militia was all able-bodied male citizens from eighteen to forty-five, whether they were organized into a state fighting force or not. *See Silveira*, 328 F.3d at 578-80 (Kleinfeld, J., dissenting).

The Framers were justifiably wary of standing armies and the powers of potentially oppressive government. Therefore, the individual right to bear arms ensures an able "militia" consisting of each and every able-bodied male between the ages of eighteen to forty-five. And, the introductory clause, properly understood, confirms the primary benefit of the operational clause—a citizenry capable of defending their rights by force, when all other means have failed, against any future oppression.

B. Supreme Court Precedent Supports the Principle That the Second Amendment Guarantees an Individual Right.

The Supreme Court's decision in *Miller* buttresses the principle that the text and history of the Second Amendment establish its protection of the rights of individuals to keep and bear arms. In *Miller*, the Court considered the merits of a Second Amendment constitutional challenge as applied to a sawed-off shotgun:

> In the absence of any evidence tending to show that possession or use of a "shotgun having a barrel of less than eighteen inches in length" at this time has some reasonable relationship to the preservation or

> efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense.

Id. at 178. If the Second Amendment protected only the right to bear arms in a militia, the Court could easily have disposed of the case merely by observing that Miller was not a member of any state militia. Rather, the Court based its ruling on the lack of judicial notice that a short-barreled shotgun, a weapon typically used by gangsters in the 1930s and therefore associated with criminal activity, was the type of weapon that would contribute to "the common defense." The Court's decision implicitly acknowledged that the possession by individual Americans of weapons that could be part of the "ordinary military equipment" contributing to the common defense—as opposed to criminal activity—is protected by the Second Amendment.

The *Miller* Court's conclusions also suggest an understanding that the Framers envisioned a militia composed of the entire people—possessed of their individually owned arms—as necessary for the protection of a free State. The Court expressly observed that, in the Framers' time, the militia "comprised all males physically capable of acting in concert for the common defense . . . [O]rdinarily when called for

service *these men were expected to appear bearing arms supplied by themselves* and of a kind in common use at the time." 307 U.S. at 179 (emphasis added).

Later Supreme Court opinions also support the individual-right view, albeit in *dicta*. In *Johnson v. Eisentrager*, 339 U.S. 763 (1950), the Court rejected a claim that the Fifth Amendment's criminal-procedure protections applied to nonresident enemy aliens by explaining that a contrary view would, *inter alia*, require the application of "companion civil-rights Amendments" in the Bill of Rights, including the Second Amendment. *Id.* at 784 ("[D]uring military occupation irreconcilable enemy elements, guerrilla fighters, and 'were-wolves' could require the American Judiciary to assure them freedoms of speech, press, and assembly as in the First Amendment, *right to bear arms as in the Second*, security against 'unreasonable searches and seizures as in the Fourth, as well as rights to jury trial as in the Fifth and Sixth Amendments.") (emphasis added).

In *Konigsberg v. State Bar of Cal.*, 366 U.S. 36 (1961), the Court, citing *Miller*, again equated the Second Amendment right with rights secured by the First Amendment. *Id.* at 49 n.10. As noted in Appellants' Brief, more recent cases have also assumed an individual right in *dicta* by listing the Second Amendment right among the personal rights composing the "liberty" that the Constitution's due-process provisions protect. *See* App. Br. at 28; *see also Planned Parenthood v. Casey*, 505

U.S. 833, 847 (1992); *Moore v. City of East Cleveland*, 431 U.S. 494, 502 (1977) (plurality op.) (quoting *Poe v. Ullman*, 367 U.S. 497, 542-43 (1961) (Harlan, J., dissenting)); *id.* at 542 (White, J., dissenting) (same as plurality). Thus, the limited guidance provided by the Supreme Court in *Miller* and other decisions supports the conclusion that the Second Amendment protects an individual right to keep and bear arms.

C. The Great Weight of Scholarly Commentary Also Supports the Conclusion That the Second Amendment Confers an Individual Right to Keep and Bear Arms.

As Justice Thomas has written, "a growing body of scholarly commentary indicates that the 'right to keep and bear arms' is, as the Amendment's text suggests, a personal right."[9] The unmistakable trend among constitutional scholars is towards recognizing that the Second Amendment confers a personal, individual right. For example, although arguing for a narrow construction of the Amendment, Professor Laurence Tribe has squarely concluded that the Second Amendment provides a "right

9. *Printz v. United States*, 521 U.S. 898, 938 n.2 (1997) (Thomas, J., concurring) (citing, *inter alia*, JOYCE L. MALCOLM, TO KEEP AND BEAR ARMS: THE ORIGINS OF AN ANGLO-AMERICAN RIGHT 162 (1994); STEPHEN HALBROOK, THAT EVERY MAN BE ARMED, THE EVOLUTION OF A CONSTITUTIONAL RIGHT (1984); William Van Alstyne, *The Second Amendment and the Personal Right to Arms*, 43 DUKE L. J. 1236 (1994); Akhil R. Amar, *The Bill of Rights and the Fourteenth Amendment*, 101 YALE L.J. 1193 (1992); Sanford Levinson, *The Embarrassing Second Amendment*, 99 YALE L.J. 637 (1989)).

(admittedly of uncertain scope) on the part of individuals to possess and use firearms in the defense of themselves and their homes." 1 LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW 902 n.221 (3d ed. 2000). Professors Sanford Levinson and Akhil Amar in large part agree.[10] Professor Nelson Lund maintains that the Amendment confers an individual right to keep and bear arms, and thereby helps to protect "the most fundamental individual right, the right of self-defense." Nelson Lund, *The Second Amendment, Political Liberty, and the Right to Self-Preservation*, 39 ALA. L. REV. 103, 130 (1987). Professor Joyce Lee Malcolm has found that the historical lineage of the Amendment favors the interpretation that it guarantees an individual right to arms. *See, generally*, MALCOLM, *supra*. These are merely representative examples of the trend in scholarly writing, noted by Justice Thomas, acknowledging the Second Amendment's protection of each American's right to keep and bear arms.

The individual-rights view is now also the position of the United States. *See Br. In Opp. to Pet. for Writ of Cert.*, *United States v. Emerson*, No. 01-8780, at 19-20 n.3 & App. A, *available at* http://www.usdoj.gov/osg/briefs/2001/0responses/2001-

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10. *See* Amar, *supra*; Levinson, *supra*.

8780.resp.pdf; *Memorandum from the Attorney General to All United States Attorneys, Re: United States v. Emerson, available at* http://www.usdoj.gov/osg/briefs/2001/0responses/2001-8780.resp.pdf (Nov. 9, 2001). Indeed, the Office of Legal Counsel recently issued an exhaustive opinion for the Attorney General concluding that "[t]he Second Amendment secures a right of individuals generally, not a right of States or a right restricted to persons serving in militias." Memorandum Opinion for the Attorney General: *Whether the Second Amendment Secures an Individual Right*, at 1 (Aug. 24, 2004), available at http://www.usdoj.gov/olc/secondamendment2.pdf (last visited June 15, 2006).

Contemporaries of the first Congress and constitutional scholars of the nineteenth century, also agreed that the Second Amendment confers an individual right. When St. George Tucker published a five-volume edition of Blackstone's Commentaries in 1803, he commented that "whenever standing armies are kept up, and the right of the people to keep and bear arms is, under any color or pretext whatsoever, prohibited, liberty, if not already annihilated, is on the brink of destruction." 1 S. Tucker, ed., BLACKSTONE'S COMMENTARIES 300 (Philadelphia, 1803). He further pointedly criticized the English Bill of Rights for limiting its guarantee of arms ownership to Protestants, while the American right was "without

any qualification as to their condition or degree, as is the case in the British government." *Id.* at 143.

Thomas Cooley directly addressed the issue of the scope of the Amendment's guarantee: "It might be supposed from the phraseology of [the Second Amendment] that the right to keep and bear arms was only guaranteed to the militia; but this would be an interpretation not warranted by the intent . . . . [T]he meaning of the [amendment] undoubtedly is, that the people, from whom the militia must be taken, shall have the right to keep and bear arms; and they need no permission or regulation of law for the purpose." THOMAS M. COOLEY, THE GENERAL PRINCIPLES OF CONSTITUTIONAL LAW IN THE UNITED STATES OF AMERICA 270-72 (Rothman & Co. 1981) (1880). Justice Joseph Story similarly concluded that the "right of the citizens to keep, and bear arms has justly been considered, as the palladium of the liberties of the republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance, enable the people to resist, and triumph over them." JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 708-09 (Carolina Academic Press 1987) (1833).

These contemporary scholars understood that the Second Amendment guaranteed the right of each American to "have" arms as the foundation of the militia

that would provide security for a "free" State. If the people were disarmed there could be no militia (well-regulated or otherwise) as understood by the Framers. Thus, properly interpreted, the Second Amendment guarantees an individual right to keep and bear arms as the best security for a free nation.

D. The History of the Second Amendment Demonstrates That It Guarantees an Individual Right to Arms.

The historical context of the Second Amendment also supports the conclusion that it guarantees an individual right to arms. When the Amendment was adopted, the drafters undoubtedly looked to the provisions in many of the state constitutions as models. Volokh, *supra*, at 814 *et seq.* At that time, almost half of the States with bills of rights included provisions recognizing that right, and many States affirmatively protected the right. *See* Nelson Lund, *The Past and Future of the Individual's Right to Arms*, 31 GA. L. REV. 1, 54 (1996).

The Framers were also guided by the evolution of individual rights in England. As the Supreme Court has stated, "The historical necessities and events of the English constitutional experience . . . were familiar to" the Framers and should "inform our understanding of the purpose and meaning of constitutional provisions." *Loving v. United States*, 517 U.S. 748, 766 (1996). This interpretive rule applies with particular force to the Second Amendment because "[t]he law is perfectly well settled that the

first ten amendments to the Constitution, commonly known as the Bill of Rights, were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we had inherited from our English ancestors." *Robertson v. Baldwin*, 165 U.S. 275, 281 (1897).

The English Declaration of Rights (or Bill of Rights) of 1689 came approximately a century before our own. It provided that "the subjects which are protestants, may have arms for their defence suitable to their conditions, and as allowed by law." 1 W. & M., 2d sess., c, 2, Dec. 16, 1689 (quoted in 5 THE FOUNDERS CONSTITUTION 210 (Philip B. Kurland & Ralph Lerner, eds., Liberty Fund 1987)). The right of the English Monarch's "subjects" to have arms is by its terms an individual one, albeit limited to citizens of the Protestant faith. And it was so understood by William Blackstone, who provided the standard reference work for Colonial and early American lawyers. Blackstone's works "constituted the preeminent authority on English law for the founding generation," *Alden v. Maine*, 527 U.S. 706, 715 (1999), and he was "the Framers' accepted authority on English law and the English Constitution." *Neder v. United States*, 527 U.S. 1, 30 (1999) (Scalia, J., concurring in part and dissenting in part).

Blackstone explained that the right of "having" arms is among the five basic rights of every Englishman, those rights which secured the "primary rights" of each

individual. 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 136, 139 (Legal Classics Library 1983) (1765). Blackstone saw the right to bear arms as a natural right because it arose from the natural right of self-preservation, and the right of "resistance . . . to the violence of oppression." *Id.* at 139. Blackstone's context of the individual right to bear arms as protection against oppression would have been particularly relevant to the Framers, who had themselves just taken part in a bloody struggle against the oppression of the English crown.

Thus, the Framers' own experience and historical tradition informed their understanding of the "right of the people to keep and bear arms," and the fundamental relationship of this right to "the security of a free State." The Framers recognized that the best security against an oppressive regime was a free citizenry capable of defending its rights. Alexander Hamilton articulated this understanding in his Federalist No. 29:

> [I]f circumstances should at any time oblige the government to form an army of any magnitude that army can never be formidable to the liberties of the people, while there is a large body of citizens little if at all inferior to them in discipline and the use of arms, who stand ready to defend their own rights and those of their fellow citizens.

THE FEDERALIST NO. 29, at 145 (Alexander Hamilton) (G. Carey, J. McClellan eds., 1990).

The Second Amendment answered the potential threat of a standing army with the guarantee that individual citizens could not be disarmed. The Framers saw that individual right as an essential bulwark of the people's liberties. This Court should as well, and reverse the district court's judgment to the contrary.

II. The District of Columbia's Restrictions Are Unconstitutional and Contrary to the Reasoned Judgements of All Fifty States.

The individual right to keep and bear arms protected by the Second Amendment, like the individual right to free speech protected by the First Amendment, is not an absolute right immune from any restrictions whatsoever. As the Fifth Circuit held in *Emerson*, the right to arms protected by the Second Amendment may be made subject to "any limited, narrowly tailored specific exceptions or restrictions for particular cases that are reasonable and not inconsistent with the right of Americans generally to individually keep and bear their private arms as historically understood in this country." 270 F.3d at 261.

The provisions of D.C. Code section 7-2502.02(a) (prohibiting registration of a pistol), section 7-2507.02 (requiring firearms to be disassembled or locked), and section 22-4504(a) (prohibiting carrying a pistol in one's home), constitute sweeping, overbroad, and unconstitutional restrictions of the individual right to arms. Specifically, the D.C. Code provisions, which prevent all citizens from keeping any

operable firearms in their homes and likewise ban all citizens from possessing handguns, are not narrowly tailored specific exceptions or restrictions for particular cases. On their face, and under the standard applied in *Emerson*, the D.C. Code restrictions, applicable to all citizens, are unconstitutional because they are not consistent with the Second Amendment right of Americans generally to individually keep and bear their private arms.

To the extent the Court looks beyond the *Emerson* standard, the unreasonable nature of the D.C. Code provisions is also evident when compared to the experience and statutory schemes of the fifty States concerning the regulation of firearms, as well as the actual effect of the provisions. Such analysis establishes two significant points: (1) the District's prohibitions run counter to the experience and regulatory schemes of the fifty States, and (2) the practical effect of the prohibitions establishes that they are not reasonable or necessary measures for the regulation of firearms.

The Legislatures of all fifty States are united in their rejection of bans on private handgun ownership. Every State in the Union permits private handgun ownership.[11] Forty-five States go further, allowing private citizens to carry concealed

11. *See* APPENDIX.

handguns for self-defense.[12] Thus, the District's sweeping firearm prohibitions are not only contrary to the Constitution, but, also contrary to the reasoned judgment of every state legislature in the Nation.

Moreover, although reasonable minds could differ as to all of the policy effects of the D.C. statutes, the objective data hardly yield confidence in their efficacy. In the years 1999–2004, for example, the District's violent crime rates were higher than every single State in the Union (often the District's crime rates were twice that of many States).[13]

This experience is underscored by the empirical data found in scholarly examinations of the impact of right-to-carry laws on crime rates. Several studies have found that States enjoy significant benefits in crime reduction from right-to-carry laws, including finding that the enactment of such laws leads to substantial reductions

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12. *See* APPENDIX.

13. *See* FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS: CRIME IN THE UNITED STATES (for each year 1999-2003), at tbl. 5, http://www.fbi.gov/ucr/99cius.htm, http://www.fbi.gov/ucr/00cius.htm, http://www.fbi.gov/ucr/01cius.htm, http://www.fbi.gov/ucr/02cius.htm, http://www.fbi.gov/ucr/03cius.htm, and for the year 2004, at tbl. 4, http://www.fbi.gov/ucr/cius_04/offenses_reported/offense_tabulations/table_04.html (last visited June 15, 2006).

in murder rates. *See, e.g.*, Florenz Plassman & John Whitley, *Confirming "More Guns, Less Crime,"* 55 STAN L. REV. 1313, 1315 (2003).

One such study, using data from all 3,054 U.S. counties between 1977 through 1992, found that (after controlling for all other factors) concealed handgun laws reduce murder by 8.5 percent, rape by 5 percent, and severe assault by 7 percent. JOHN LOTT, MORE GUNS, LESS CRIME (1998) (figure II). Another study found that: "Analyzing county-level data for the entire United States from 1977 to 2000, we find annual reductions in murder rates between 1.5 percent and 2.3 percent for each additional year that a right-to-carry law is in effect. For the first five years that such a law is in effect, the total benefit from reduced crimes usually ranges between approximately $2 billion and $3 billion per year." Plassman & Whitley, *supra*, at 1365. These examples are representative of numerous scholarly papers on the subject finding that right-to-carry laws generally have a beneficial effect on crime rates.[14]

Thus, the District's statutory abrogation of the individual right to keep and bear arms cannot survive any test of constitutional reasonableness, is contrary to the

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14. *See, e.g.*, William Alan Bartley & Mark A. Cohen, *The Effect of Concealed Weapons Laws: An Extreme Bound Analysis*, 36 ECON. INQUIRY 258, 258-65 (1998); Stephen G. Bronars & John R. Lott, Jr., *Criminal Deterrence, Geographic Spillovers, and Right-to-Carry Laws*, AM. ECON. REV., May 1998, at 475-79.

experience and consensus of all fifty States, and is unsupported by any demonstrable benefit to its citizens who have been divested of a basic constitutional right.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed.

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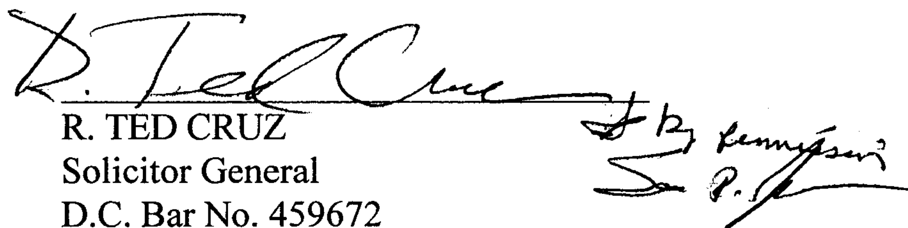

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