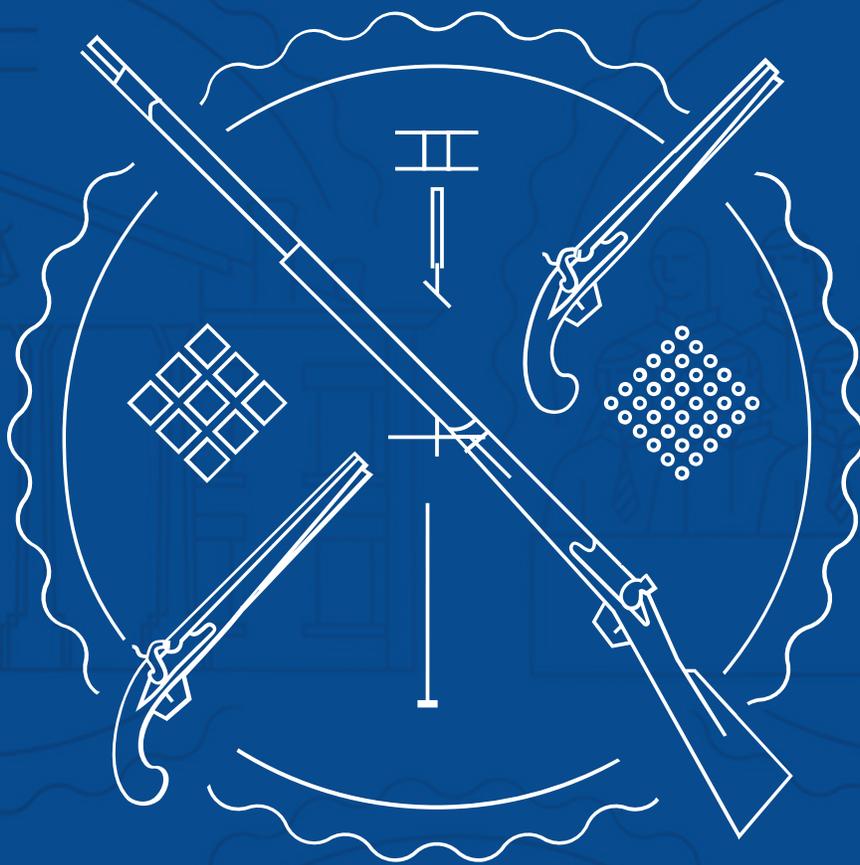




INTERACTIVE *Constitution*



2ND AMENDMENT: THE RIGHT TO BEAR ARMS HIGH SCHOOL LEVEL LESSON PLAN

NATIONAL CONSTITUTION CENTER



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NATIONAL CONSTITUTION CENTER

LESSON PLAN

Grade Levels: 12th

Number of class periods: 1 (approximately 45-minutes)

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ABOUT THIS LESSON

This lesson introduces students to different viewpoints and debates surrounding the 2nd Amendment by using the National Constitution Center's *Interactive Constitution*. Students will build understanding of the resources and methods used by justices on the Supreme Court and Constitutional scholars when analyzing and forming opinions about articles, sections, and clauses of the Constitution. Using graphic organizers, students will identify key points from the essays of constitutional scholars Nelson Lund and Adam Winkler. Students will be able to trace the historic development of the 2nd Amendment with help from the Common Interpretation and matters of debate essays, and use evidence from the readings to explore modern interpretation of the 2nd Amendment.

For students studying the Constitution and the Bill of Rights, this lesson helps clarify the role of the Supreme Court and constitutional scholars in interpreting and applying the Constitution today.



COMMON CORE STANDARDS**KEY IDEAS AND DETAILS****CCSS.ELA-Literacy.RH.11-12.1**

Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

CCSS.ELA-Literacy.RH.11-12.2

Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.

CCSS.ELA-Literacy.RH.11-12.6

Evaluate authors' differing points of view on the same historical event or issue by assessing the authors' claims, reasoning, and evidence.

ESSENTIAL QUESTIONS:

- ★ What are the tools and resources used by the Supreme Court and experts who study the Constitution?
- ★ How are parts of the Constitution understood at different points of history?
- ★ How do the Supreme Court and experts who study the Constitution understand and apply the 2nd Amendment?

MATERIALS:

- ★ Excerpts from Nelson Lund's and Adam Winkler's "Matters of Debate" essays from the *Interactive Constitution* (attached)
Full essays available here:
["Not a Second Class Right: The Second Amendment Today"](#) (Lund)
["The Reasonable Right to Bear Arms"](#) (Winkler)
- ★ Sticky notes
- ★ 2nd Amendment graphic organizer (attached)
- ★ Key points from the Common Interpretation (attached)
- ★ Excerpt of the Common Interpretation (attached)

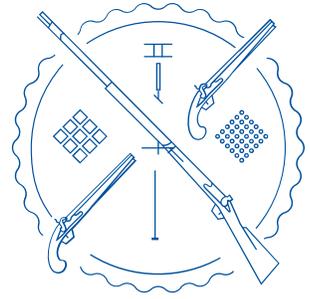
OBJECTIVES:

- ★ Trace the development of understanding and application of the 2nd Amendment throughout history.
- ★ Analyze the methods and tools used by scholars to interpret the Constitution.
- ★ Assess the strength of an argument based on the evidence.



PROCEDURE:**1. THINK AND WRITE: Preview / Hook Activity / Do Now (2-3 minutes):**

As the students walk into the class, they will see the symbol for the 2nd Amendment from the *Interactive Constitution*. Have the students describe the details of the symbol and identify what they think they will discuss during the lesson.



2. INTRO: Use the student observations about the symbol to start a broader discussion about the 2nd Amendment, what the students will be doing, and why they are going to be doing it. Use the following questions to guide the discussion.

- ★ Where are specific rights of American citizens protected? (Students will say the Constitution or Bill of Rights)
- ★ Who interprets, or answers legal questions about, the Constitution? (The students might say the government, the President, but they will likely say the Supreme Court.)
- ★ How might the justices on the Supreme Court form their opinions? (Students might say personal experience, history, etc. The Justices actually form their opinions based on the work of constitutional experts. They also form ideas working with their clerks, staff who help look at history and modern debates.)
- ★ Where do clerks get their information? (They get their information from constitutional scholars, too.)
- ★ “So, today, we will investigate opinions from top constitutional scholars—just like clerks and Justices at the Supreme Court to better understand debates about the 2nd Amendment.”

This may be a good point to emphasize that Supreme Court Justices use more than their personal opinions and beliefs to interpret the Constitution when making rulings. The students will not use their personal political opinions during this lesson, either. They will look at the arguments put forth by the constitutional scholars and decide who makes the better argument.

3. SHORT LECTURE (5-10 minutes): Common Interpretation: The Common Interpretation essay on the 2nd Amendment was written by Nelson Lund (University Professor, Antonin Scalia School of Law, George Mason University) and Adam Winkler (Professor of Law, UCLA School of Law)—leading conservative and liberal scholars on the 2nd Amendment. It includes information and interpretations on which the two scholars **agree**. It provides a foundation of *common* ground before students consider opposing viewpoints about how we might interpret the Amendment in the future.

Break students into groups of 3 or 4. Each group will read the excerpt of the Common Interpretation or they can use the Interactive Constitution App or website to read through it. The groups should spend about 5 to 10 minutes tracing the historical development and application of the 2nd Amendment. After the groups are done reading, the teacher should

lead a quick review of the Common Interpretation and its key points to insure that all of the groups have a similar understanding of the Common Interpretation.

Key Points from the Common Interpretation:

- ★ Modern debates: Does the 2nd Amendment give the private right of individuals to keep and bear arms, or right that can be exercised only through militia organizations like the National Guard?
- ★ Founding Era: The Federal government should not have the power to take the right of the people to keep and bear arms, like freedom of speech and religion. States regulated guns. Until recently, the Supreme Court treated the 2nd Amendment this way.
- ★ Gun laws today are more complex and controversial.
- ★ In *D.C. v. Heller* (2008), the Supreme Court struck down a federal law banning civilians from having handguns in the D.C. According to the Supreme Court decision, the language and history of 2nd Amendment show it protects private right of individuals to have guns for defense.
- ★ Technically ruled government may not ban the handguns for civilians in their homes. *Heller* suggested a list of “lawful” regulations, including bans on possession of firearms by felons and people with mental illness, bans on firearms in “sensitive places” such as schools and government buildings, and others.

4. **GROUP ACTIVITY (12-14 minutes):** Each group will then read the excerpts from the “Matters of Debate” essays by Nelson Lund and Adam Winkler. In these essays the same scholars who wrote the Common Interpretation write individual essays about how they believe the Amendment should be interpreted moving forward.

As the students are reading, they should identify the thesis or “main point” of each scholar by highlighting, circling, or underlining the thesis of each essay and filling in each side of the graphic organizer. This will help the students focus on the argument the scholar is trying to make. After finding the thesis for each scholar, students should write at least one question they have for the scholars.

- ★ “If the scholars were in the room with us, today, what is something you would want to ask them about their opinion? What would need to have clarified to understand their argument?”
- ★ While students complete these the teacher should post the names “Nelson Lund” and “Adam Winkler” on opposite sides of the classroom.
- ★ Teacher will circulate through the room to support students, as needed, with isolating the thesis, understanding new vocabulary, etc.

Once they identify the theses and develop questions, each group should, then, write each thesis and two of their questions on separate sticky notes (four, total, for each group). Students should place their sticky notes—with the theses and questions—on the wall under the corresponding scholars’ names.



- ★ Having the students use sticky notes to report their findings and question at the front of the room allows the teacher to quickly assess the answers from all the groups at once rather than going around the room group by group. The anonymity also removes the pressure of students being “put on the spot” when reporting out the theses or asking their questions.

5. **SHARE (6-8 minutes):** Once every group has posted their theses and questions, use their findings and questions to facilitate discussion about Lund’s essay and Winkler’s essay. This can help as a quick assessment to make sure each group knows what each scholar is trying to say. The teacher will be able to clarify any questions the students may have and highlight the key arguments of each scholar.

Teacher will remind the students, as needed, that they are analyzing the scholars’ constitutional arguments—not having a political debate.

NOTE: The teacher will answer the “Questions for Lund” and “Questions for Winkler” based on the scholars’ essay. So she/he will need to be familiar with the full text of those essays before using this lesson.

- ★ **Full essays available here:**
[“Not a Second Class Right: The Second Amendment Today”](#) (Lund)
[“The Reasonable Right to Bear Arms”](#) (Winkler)

6. **LINE-UP (6-8 minutes):** After the students have gathered information from the common interpretation and the essays, ask the students to use the understandings they developed from the readings and discussion (not their political opinions) to stand on the side of room near the name of the scholar they think does **a better job of providing an understanding of how the Amendment should be applied**. Explain to the students that they can stand somewhere in the middle if they do not fully agree with one side or the other, if they have more questions, or if they need more information. Once the students have picked a place to stand, lead a discussion asking some students why they stood where they did reminding the student that they should relate their answer back to the history, common interpretation, and scholar essays. (It is important to remind students throughout that they are considering the arguments are presented in the lecture, essay excerpts, and whole class discussion—they are NOT debating political/personal opinions.)

- ★ Ask a student standing near Lund to explain why they think Lund offers the stronger argument.
- ★ Ask a student standing near Winkler to explain why they think Winkler offers the stronger argument.
- ★ Ask a student in the middle why they are standing in the middle.



- ★ Ask a student standing near Lund to explain why they think someone else might think Winkler offers the stronger argument (get the students to consider the other side of the argument)
- ★ Ask a student standing near Winkler to explain why they think someone else might think Lund offers the stronger argument.

7. REFLECTION/EXIT SLIP (2 minutes): Students will then go back to their seats and write a brief reflection on how their understandings of the scholars' viewpoint affected their understanding of the amendment. This, along with the work from the rest of the activity, will be on their 2nd Amendment graphic organizer and can be collected to assess class participation and learning outcomes.

NAME:

2ND AMENDMENT

Notes on the “Common Interpretation”. What are the things on which the scholars agree?

LUND’S KEY POINT:

WINKLER’S KEY POINT:

QUESTION FOR LUND:

QUESTION FOR WINKLER:

How do you understand current debates about this Amendment based on the “Common Interpretation” and what Lund and Winkler say? (Why did you stand where you did when everyone lined up and why did you not stand somewhere else?)



TEACHER KEY

2ND AMENDMENT

Notes on the “Common Interpretation”. What are the things on which the scholars agree?

- ★ Modern debates: does the 2nd Amendment give the private right of individuals to keep and bear arms, or right that can be exercised only through militia organizations like the National Guard.
- ★ Founding Era: The Federal government should not have the power to take the right of the people to keep and bear arms, like freedom of speech and religion. States regulated guns. Until recently, the Supreme Court treated the 2nd Amendment this way.
- ★ Gun laws today are more complex and controversial.
- ★ In *D.C. v. Heller* (2008), the Supreme Court struck down a federal law banning civilians from having handguns in the D.C. According to the Supreme Court decision, the language and history of 2nd Amendment show it protects private right of individuals to have guns for defense.
- ★ Technically ruled government may not ban the handguns for civilians in their homes. *Heller* suggested a list of “lawful” regulations, including bans on possession of firearms by felons and people with mental illness, bans on firearms in “sensitive places” such as schools and government buildings, and others.

LUND’S KEY POINT:

The text of the Constitution expressly guarantees the right to bear arms, not just the right to keep them. The courts should invalidate regulations that prevent law-abiding citizens from carrying weapons in public, where the vast majority of violent crimes occur.

WINKLER’S KEY POINT:

The Second Amendment unambiguously recognizes that the armed citizens must be regulated—and regulated “well.”

QUESTION FOR LUND:

QUESTION FOR WINKLER:

How do you understand current debates about this Amendment based on the “Common Interpretation” and what Lund and Winkler say? (Why did you stand where you did when everyone lined up and why did you not stand somewhere else?)



SECOND AMENDMENT, FROM THE *INTERACTIVE CONSTITUTION*

RIGHT TO BEAR ARMS

Passed by Congress September 25, 1789. Ratified December 15, 1791. The first 10 amendments form the Bill of Rights

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.

COMMON INTERPRETATION: NELSON LUND & ADAM WINKLER

Modern debates about the Second Amendment have focused on whether it protects a private right of individuals to keep and bear arms, or a right that can be exercised only through militia organizations like the National Guard. This question, however, was not even raised until long after the Bill of Rights was adopted.

Many in the Founding generation believed that governments are prone to use soldiers to oppress the people. English history suggested that this risk could be controlled by permitting the government to raise armies (consisting of full-time paid troops) only when needed to fight foreign adversaries. For other purposes, such as responding to sudden invasions or other emergencies, the government could rely on a militia that consisted of ordinary civilians who supplied their own weapons and received some part-time, unpaid military training.

The onset of war does not always allow time to raise and train an army, and the Revolutionary War showed that militia forces could not be relied on for national defense. The Constitutional Convention therefore decided that the federal government should have almost unfettered authority to establish peacetime standing armies and to regulate the militia.

This massive shift of power from the states to the federal government generated one of the chief objections to the proposed Constitution. Anti-Federalists argued that the proposed Constitution would take from the states their principal means of defense against federal usurpation. The Federalists responded that fears of federal oppression were overblown, in part because the American people were armed and would be almost impossible to subdue through military force.

Implicit in the debate between Federalists and Anti-Federalists were two shared assumptions. First, that the proposed new Constitution gave the federal government almost total legal authority over the army and militia. Second, that the federal government should not have any authority at all to disarm the citizenry. They disagreed only about whether an armed populace could adequately deter federal oppression.

The Second Amendment conceded nothing to the Anti-Federalists' desire to sharply curtail the military power of the federal government, which would have required substantial changes in the original Constitution. Yet the Amendment was easily accepted because of widespread agreement



that the federal government should not have the power to infringe the right of the people to keep and bear arms, any more than it should have the power to abridge the freedom of speech or prohibit the free exercise of religion.

Much has changed since 1791. The traditional militia fell into desuetude, and state-based militia organizations were eventually incorporated into the federal military structure. The nation's military establishment has become enormously more powerful than eighteenth century armies. We still hear political rhetoric about federal tyranny, but most Americans do not fear the nation's armed forces and virtually no one thinks that an armed populace could defeat those forces in battle. Furthermore, eighteenth century civilians routinely kept at home the very same weapons they would need if called to serve in the militia, while modern soldiers are equipped with weapons that differ significantly from those generally thought appropriate for civilian uses. Civilians no longer expect to use their household weapons for militia duty, although they still keep and bear arms to defend against common criminals (as well as for hunting and other forms of recreation).

The law has also changed. While states in the Founding era regulated guns—blacks were often prohibited from possessing firearms and militia weapons were frequently registered on government rolls—gun laws today are more extensive and controversial. Another important legal development was the adoption of the Fourteenth Amendment. The Second Amendment originally applied only to the federal government, leaving the states to regulate weapons as they saw fit. Although there is substantial evidence that the Privileges or Immunities Clause of the Fourteenth Amendment was meant to protect the right of individuals to keep and bear arms from infringement by the states, the Supreme Court rejected this interpretation in *United States v. Cruikshank* (1876).

Until recently, the judiciary treated the Second Amendment almost as a dead letter. In *District of Columbia v. Heller* (2008), however, the Supreme Court invalidated a federal law that forbade nearly all civilians from possessing handguns in the nation's capital. A 5-4 majority ruled that the language and history of the Second Amendment showed that it protects a private right of individuals to have arms for their own defense, not a right of the states to maintain a militia.

The dissenters disagreed. They concluded that the Second Amendment protects a nominally individual right, though one that protects only “the right of the people of each of the several States to maintain a well-regulated militia.” They also argued that even if the Second Amendment did protect an individual right to have arms for self-defense, it should be interpreted to allow the government to ban handguns in high-crime urban areas.

Two years later, in *McDonald v. City of Chicago* (2010), the Court struck down a similar handgun ban at the state level, again by a 5-4 vote. Four Justices relied on judicial precedents under the Fourteenth Amendment's Due Process Clause. Justice Thomas rejected those precedents in favor of reliance on the Privileges or Immunities Clause, but all five members of the majority concluded that the Fourteenth Amendment protects against state infringement the same individual right that is protected from federal infringement by the Second Amendment.



Notwithstanding the lengthy opinions in *Heller* and *McDonald*, they technically ruled only that government may not ban the possession of handguns by civilians in their homes. *Heller* tentatively suggested a list of “presumptively lawful” regulations, including bans on the possession of firearms by felons and the mentally ill, bans on carrying firearms in “sensitive places” such as schools and government buildings, laws restricting the commercial sale of arms, bans on the concealed carry of firearms, and bans on weapons “not typically possessed by law-abiding citizens for lawful purposes.” Many issues remain open, and the lower courts have disagreed with one another about some of them, including important questions involving restrictions on carrying weapons in public.

**NOT A SECOND CLASS RIGHT: THE SECOND AMENDMENT TODAY (NELSON LUND),
FROM THE INTERACTIVE CONSTITUTION**

The right to keep and bear arms is a lot like the right to freedom of speech. In each case, the Constitution expressly protects a liberty that needs to be insulated from the ordinary political process. Neither right, however, is absolute. The First Amendment, for example, has never protected perjury, fraud, or countless other crimes that are committed through the use of speech. Similarly, no reasonable person could believe that violent criminals should have unrestricted access to guns, or that any individual should possess a nuclear weapon.

Inevitably, courts must draw lines, allowing government to carry out its duty to preserve an orderly society, without unduly infringing the legitimate interests of individuals in expressing their thoughts and protecting themselves from criminal violence. This is not a precise science or one that will ever be free from controversy.

One judicial approach, however, should be unequivocally rejected. During the nineteenth century, courts routinely refused to invalidate restrictions on free speech that struck the judges as reasonable. This meant that speech got virtually no judicial protection. Government suppression of speech can usually be thought to serve some reasonable purpose, such as reducing social discord or promoting healthy morals. Similarly, most gun control laws can be viewed as efforts to save lives and prevent crime, which are perfectly reasonable goals. If that's enough to justify infringements on individual liberty, neither constitutional guarantee means much of anything.

During the twentieth century, the Supreme Court finally started taking the First Amendment seriously. Today, individual freedom is generally protected unless the government can make a strong case that it has a real need to suppress speech or expressive conduct, and that its regulations are tailored to that need. The legal doctrines have become quite complex, and there is room for disagreement about many of the Court's specific decisions. Taken as a whole, however, this body of case law shows what the Court can do when it appreciates the value of an individual right enshrined in the Constitution.

The Second Amendment also raises issues about which reasonable people can disagree. But if the Supreme Court takes this provision of the Constitution as seriously as it now takes the First Amendment, which it should do, there will be some easy issues as well.

★ *District of Columbia v. Heller* (2008) is one example. The “right of the people” protected by the Second Amendment is an individual right, just like the “right[s] of the people” protected by the First and Fourth Amendments. The Constitution does not say that the Second Amendment protects a right of the states or a right of the militia, and nobody offered such an interpretation during the Founding era. Abundant historical evidence indicates that the Second Amendment was meant to leave citizens with the ability to defend themselves against unlawful violence. Such threats might come from usurpers of governmental power, but they might also come from criminals whom the government is unwilling or unable to control.



- ★ *McDonald v. City of Chicago* (2010) was also an easy case under the Court’s precedents. Most other provisions of the Bill of Rights had already been applied to the states because they are “deeply rooted in this Nation’s history and tradition.” The right to keep and bear arms clearly meets this test.
- ★ The text of the Constitution expressly guarantees the right to bear arms, not just the right to keep them. The courts should invalidate regulations that prevent law-abiding citizens from carrying weapons in public, where the vast majority of violent crimes occur. First Amendment rights are not confined to the home, and neither are those protected by the Second Amendment.
- ★ Nor should the government be allowed to create burdensome bureaucratic obstacles designed to frustrate the exercise of Second Amendment rights. The courts are vigilant in preventing government from evading the First Amendment through regulations that indirectly abridge free speech rights by making them difficult to exercise. Courts should exercise the same vigilance in protecting Second Amendment rights.
- ★ Some other regulations that may appear innocuous should be struck down because they are little more than political stunts. Popular bans on so-called “assault rifles,” for example, define this class of guns in terms of cosmetic features, leaving functionally identical semi-automatic rifles to circulate freely. This is unconstitutional for the same reason that it would violate the First Amendment to ban words that have a French etymology, or to require that French fries be called “freedom fries.”

In most American states, including many with large urban population centers, responsible adults have easy access to ordinary firearms, and they are permitted to carry them in public. Experience has shown that these policies do not lead to increased levels of violence. Criminals pay no more attention to gun control regulations than they do to laws against murder, rape, and robbery. Armed citizens, however, prevent countless crimes and have saved many lives. What’s more, the most vulnerable people—including women, the elderly, and those who live in high crime neighborhoods—are among the greatest beneficiaries of the Second Amendment. If the courts require the remaining jurisdictions to stop infringing on the constitutional right to keep and bear arms, their citizens will be more free and probably safer as well.



THE REASONABLE RIGHT TO BEAR ARMS (ADAM WINKLER), FROM THE *INTERACTIVE CONSTITUTION*

Gun control is as much a part of the Second Amendment as the right to keep and bear arms. The text of the amendment, which refers to a “well regulated Militia,” suggests as much. As the Supreme Court correctly noted in *District of Columbia v. Heller*, the militia of the founding era was the body of ordinary citizens capable of taking up arms to defend the nation. While the Founders sought to protect the citizenry from being disarmed entirely, they did not wish to prevent government from adopting reasonable regulations of guns and gun owners.

Although Americans today often think that gun control is a modern invention, the Founding era had laws regulating the armed citizenry. There were laws designed to ensure an effective militia, such as laws requiring armed citizens to appear at mandatory musters where their guns would be inspected. Governments also compiled registries of civilian-owned guns appropriate for militia service, sometimes conducting door-to-door surveys. The Founders had broad bans on gun possession by people deemed untrustworthy, including slaves and loyalists. The Founders even had laws requiring people to have guns appropriate for militia service.

The wide range of Founding-era laws suggests that the Founders understood gun rights quite differently from many people today. The right to keep and bear arms was not a libertarian license for anyone to have any kind of ordinary firearm, anywhere they wanted. Nor did the Second Amendment protect a right to revolt against a tyrannical government. The Second Amendment was about ensuring public safety, and nothing in its language was thought to prevent what would be seen today as quite burdensome forms of regulation.

The Founding-era laws indicate why the First Amendment is not a good analogy to the Second. While there have always been laws restricting perjury and fraud by the spoken word, such speech was not thought to be part of the freedom of speech. The Second Amendment, by contrast, unambiguously recognizes that the armed citizenry must be regulated—and regulated “well.” This language most closely aligns with the Fourth Amendment, which protects a right to privacy but also recognizes the authority of the government to conduct reasonable searches and seizures. The principle that reasonable regulations are consistent with the Second Amendment has been affirmed throughout American history. Ever since the first cases challenging gun controls for violating the Second Amendment or similar provisions in state constitutions, courts have repeatedly held that “reasonable” gun laws—those that don’t completely deny access to guns by law-abiding people—are constitutionally permissible. For 150 years, this was the settled law of the land—until *Heller*.

Heller, however, rejected the principle of reasonableness only in name, not in practice. The decision insisted that many types of gun control laws are presumptively lawful, including bans on possession of firearms by felons and the mentally ill, bans on concealed carry, bans on dangerous and unusual weapons, restrictions on guns in sensitive places like schools and government buildings, and commercial sale restrictions. Nearly all gun control laws today fit within these exceptions. Importantly, these exceptions for modern-day gun laws unheard of in the Founding era also show that lawmakers are not limited to the types of gun control in place at the time of the Second Amendment’s ratification.



In the years since *Heller*, the federal courts have upheld the overwhelming majority of gun control laws challenged under the Second Amendment. Bans on assault weapons have been consistently upheld, as have restrictions on gun magazines that hold more than a minimum number of rounds of ammunition. Bans on guns in national parks, post offices, bars, and college campuses also survived. These decisions make clear that lawmakers have wide leeway to restrict guns to promote public safety so long as the basic right of law-abiding people to have a gun for self-defense is preserved.

Perhaps the biggest open question after *Heller* is whether the Second Amendment protects a right to carry guns in public. While every state allows public carry, some states restrict that right to people who can show a special reason to have a gun on the street. To the extent these laws give local law enforcement unfettered discretion over who can carry, they are problematic. At the same time, however, many constitutional rights are far more limited in public than in the home. Parades can be required to have a permit, the police have broader powers to search pedestrians and motorists than private homes, and sexual intimacy in public places can be completely prohibited.

The Supreme Court may yet decide that more stringent limits on gun control are required under the Second Amendment. Such a decision, however, would be contrary to the text, history, and tradition of the right to keep and bear arms.

