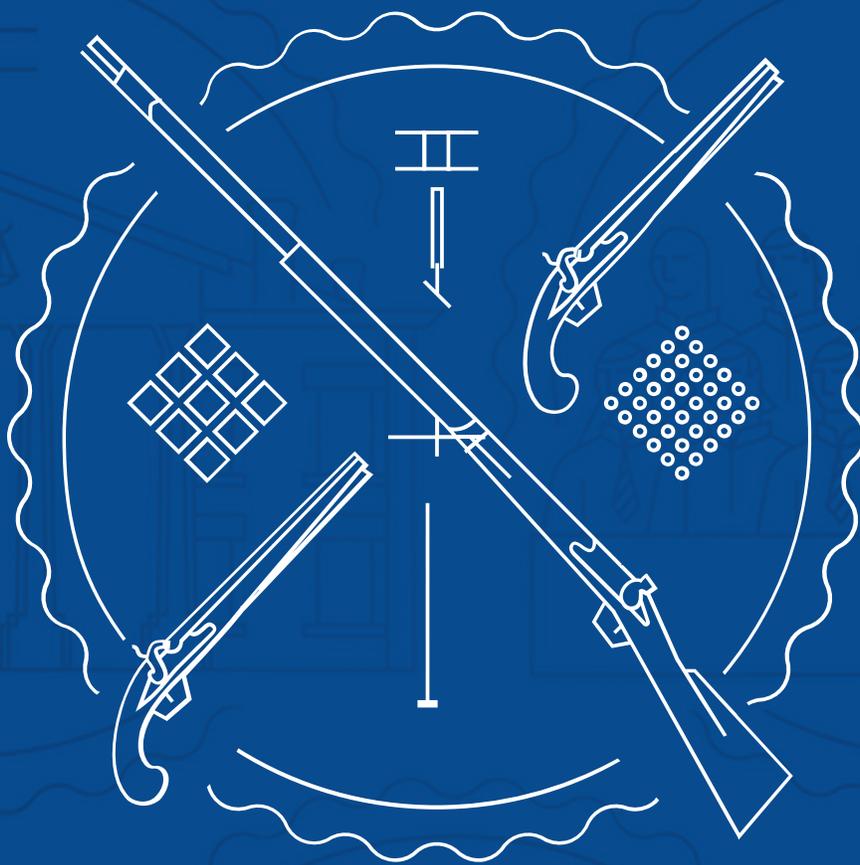




INTERACTIVE *Constitution*



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

NATIONAL CONSTITUTION CENTER



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NATIONAL CONSTITUTION CENTER

LESSON PLAN

Grade Levels: 8th

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.6- 8.1**

Cite specific textual evidence to support analysis of primary and secondary sources.

CCSS.ELA-Literacy.RH.6-8.6

Identify aspects of a text that reveal an author’s point of view or purpose (e.g., loaded language, inclusion or avoidance of particular facts).

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)

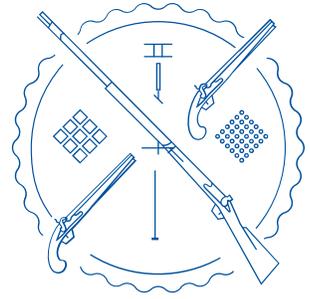
OBJECTIVES:

- ★ Students will develop understandings of the tools and resources used by the Supreme Court and constitutional scholars for interpretation and application of the Constitution.
- ★ Understand the historical origins, evolution, and modern debates of interpretations of the 2nd Amendment.
- ★ Identify and compare arguments of constitutional scholars on the 2nd Amendment.



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 (4-6 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.

Building on student observations, the teacher will explain the Common Interpretation of the 2nd Amendment, providing the “big points” from the common interpretation and the historical context of the amendment. Students should write notes in the space for the common interpretation on the graphic organizer.

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):** Break students into groups of 3 or 4. Each group will 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 on 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:

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. 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.

WINKLER’S KEY POINT:

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* (2008), 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. 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 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?)



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 “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.

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.

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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.