Gun violence is pervasive[1] and claims victims of all ages and walks of life.[2] No longer can anyone worship, go to work, attend school, visit a doctor's office, stop by the bank, shop at a mall, buy groceries, go to a movie, attend a concert, enjoy an outdoor festival, gather with friends and family in a park, go dancing, meet-up at a public establishment, or unite to celebrate the birth of a nation of a free people without experiencing the unsettling awareness that mass shootings have occurred in each of these settings.[3]

Municipalities across the nation have tried to combat this carnage by passing gun regulations but the Roberts Court keeps striking them down. In *District of Columbia v Heller* the Roberts Court struck down Washington's regulations concerning the ownership and handling of firearms. After 200 years of reading the Second Amendment as referring to a collective right[4] "to bear arms for the common defense,"[5] Justice Antonin Scalia stated that the amendment protected "an individual right to possess a firearm unconnected with service in a militia, and to use that arm for…self-defense within the home."[6] Two years later the Roberts Court struck down Chicago's own legislative attempt to keep the public safe from gun violence. In *McDonald v City of Chicago*, the Roberts Court reinforced its legislative restrictions on municipalities concluding, "The Fourteenth Amendment makes the Second Amendment right to keep and bear arms fully applicable to the States."[7] In *Caetano v Massachusetts*, the Roberts Court turned its attention to the weapons stating "the Second Amendment…extends…to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding."[8] And the same year parents learned they can no longer assume they will be able to visually identify their

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[1] **"Firearm injuries are a serious public health problem.** In 2020, there were 45,222 firearm-related deaths in the United States—that's about 124 people dying from a firearm-related injury each day, More than half of firearm-related deaths were suicides and more than 4 out of 10 were firearm homicides. **More people suffer nonfatal firearm-related injuries than die.** More than seven out of every 10 medically treated firearm injuries are from firearm-related assaults. Nearly 2 out of every 10 are from unintentional firearm injuries." Fast Facts: Firearm Violence Prevention, Centers for Disease Control and Prevention, https://www.cdc.gov/violenceprevention/firearms/fastfacts.html

[2] See Addendum I, page 27

[3] See Addendum II, page 29

[4] "By the turn of the century [21st], most U.S. Courts of Appeals to have considered the matter interpreted the Second Amendment as speaking of a collective right tied to military or militia use of firearms." Amdt2.3 Early Second Amendment Jurisprudence, *Constitution Annotated*, Library of Congress, https://constitution.congress.gov/browse/essay/amdt2-3/ALDE_00013263/

[5] Jill Lepore, *These Truths: A History of the United States,* (New York: W. W. Norton & Company, 2018) 673

[6] *District of Columbia et al. v Heller*, 554 U.S. 570 (2008) at 570

[7] *McDonald et al. v City of Chicago, Illinois, et al.*, 561 U.S. 742 (2010) at 744

[8] *Caetano v Massachusetts* 577 U.S.____(2016), Justia, US Supreme Court Center, https://supreme.justia.com/cases/federal/us/577/14-10078/

children should a shooting with a high-velocity weapon occur at school,[9] the Roberts Court in *New York State Rifle & Pistol Association v Bruen* extended the right to carry a firearm for self defense outside of the home.[10] It also threw out means-testing for evaluating firearms regulations stating the only test is "that the regulation is consistent with this Nation's historical tradition of firearms regulation."[11],[12],[13]

Taken together the rulings in *Heller, McDonald, Caetano* and *Bruen* make it impossible to enact the type of legislation that is necessary to address the scourge of gun violence. The proof of this is demonstrated by the response to our state ban on higher-powered firearms and large-capacity ammunition magazines. The law was immediately challenged resulting in U.S. District Judge Stephen McGlynn issuing an injunction blocking its enforcement stating "a constitutional right is at stake." He "found the plaintiffs in the case showed the law caused an 'irreparable harm' by denying them the ability to 'purchase their firearm of choice'[14] and 'exercise their right to self-defense in the manner they choose.'"[15] This prioritizes having one's choice of weapon to shoot someone with over providing for public safety. That is because the Roberts Court ruled the

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[9] Caitlin O'Kane, "Frantic parents wait for hours to be reunited with kids as DNA tests used to confirm victims," *CBS News*, May 25, 2022, https://www.cbsnews.com/news/texas-school-shooting-uvalde-parents-kids-dna-test-reunite/

[10] *New York Rifle & Pistol Association, Inc., et al., Pettitioners v Kevin P. Bruen, In His Official Capacity As Superintendent of New York State Police, et al.,* 597 U.S. ____(2022) at 1

[11] Ibid. at 8

[12] This ruling ignores the fact that persons not allowed to bear arms at the nation's founding included "Native Americans, slaves, indentured servants, vagrants, non-Protestants, those who refused to swear and oath of loyalty to the government, felons, and foreigners." (Robert J. Spitzer, "Gun Laws Are as Old as Gun Ownership" *American Constitution Society,* May 18, 2015, https://acslaw.org/book/gun-lass-are-as-old-as-gun-ownership/…%20gun.foreigners%20and%20numerous%recreational%20restrictions.) Only males between certain ages were required to participate in militia service which would also leave women out of this equation. According to *McDonald,* the Fourteenth Amendment prohibits States from preventing these people to bear arms but according to *Bruen* we would have to follow this historical practice. Which is it? Is the Fourteenth Amendment in effect or not?

[13] Rights conferred by historical practice would be those referenced in the Ninth Amendment: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people," and therefore not constitutionally protected. Ninth Amendment, *Constitution Annotated: Analysis and Interpretation of the U.S. Constitution,* Congress.gov, Library of Congress, https://constitution.congress.gov/constitution/amendment-5/

[14] "AR-15 style rifles accounted for an estimated 61 percent of all US civilian rifle sales in 2016. The National Rifle Association reports that Americans own more than 15 million AR-15s today." *How AR-15 became the most popular rifle in America,* CNN, https://www.cnn.com/2017/12/14/health/ar15-rifle-history-trnd/index.html.

[15] Dan Petrella and Jeremy Gorner, "Downstate judge blocks gun ban: Pritzker's office confident state's new law on high-powered weapons will be upheld," *Chicago Tribune*, April 29, 2023, https://digitaledition.chicagotribune.com/html5/desktop/production/de…ps.medianewsgroup.com/newsletters/eedition/page.php?site=chicagotribune

Second Amendment gives private individuals the right to carry firearms and to shoot other human beings in self defense.

Our Illinois ban on assault weapons has so far withstood two appeals, most recently by the 7th U.S. District Court of Appeals. Two members of the three-judge panel upheld the law while the third member, Judge Michael Brennan, wrote in his dissent the municipalities involved "failed to meet their burden to show that their bans are part of the history and tradition" of firearms regulation.[16] This is the test imposed by *Bruen.* Challenges to the law continue in both the state and federal courts.

In response to the 7th District Court of Appeals ruling, attorney for the Illinois State Rifle Association David Sigale stated, "We're looking at our available legal remedies, one of which is petitioning the Supreme Court for review."[17] The record shows that with each new case the Roberts Court has continued to expand constitutional protections to the possession and use of lethal weapons which means high-velocity firearms could soon be included. These are firearms that create so much energy that each bullet causes "extensive damage surrounding the area" where it enters the body.[18] According to experts in pediatric trauma these assault rifles are especially catastrophic to children because in a small child, that energy creates an injury pattern that affects many more organs.[19]

The Roberts Court's rulings create the conditions for unstable individuals to legally access weapons of war and terrorize the public. They permit the unchecked use of deadly force in a nation that is supposed to be ruled by law. They promote vigilantism violating the people's rights and subverting the system of due process. We send our children to school hoping they will be safe knowing that isn't always true.[20] We are told we must harden our schools and that taking away guns isn't permitted. That is a corruption of the concept of liberty that cannot be abided.

Being in the possession of a firearm presumes the intent and potential to use deadly force. By saying the Second Amendment grants individuals the right to carry a firearm for self-defense, the Roberts Court is saying the Constitution gives individuals the right to kill. That would mean a person could kill another person violating that person's Fifth Amendment rights with impunity. It

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[16] Jeremy Gorner, Dan Petrella, "Federal appeals court upholds sweeping Illinois gun ban," *Chicago Tribune,* Section 1, p 3, Nov. 5, 2023

[17] Ibid

[18] Rachael Krause, "CDC: Guns are now the leading cause of death in kids, teens," April 7, 2023, 11:50 PM EDT, *WTHR.com*, https://www.wthr.com/article/news/crime/cdc-guns-are-now-the-leadin...th-in-kids-children-teens/531-1d8aa373-c5e4-434b-ad41-7150354c9140

[19] Ibid

[20] "There have been 386 school shootings since Columbine. More than 336,000 students have experienced gun violence at school since Columbine," *Washington Post,* https://www.washingtonpost.com/education/interative/school-shooting-database/

is saying that a person may be killed without a warrant being produced. It is saying that the accused does not have the right of trial by an impartial jury. It says cruel and unusual punishments may be inflicted. It is saying we are not all equal under the law. It says that we are not a nation of laws. It denies the sanctity of human life. And if we deny the sanctity of one person's life we deny the sanctity of everyone's life because it defies the political and moral philosophy upon which our government is based. The Constitution was written by people who held:

> "these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness…."[21]

Saying individuals have a right to kill directly contradicts these principles.[22]

It would seem evident that anyone with even a minimal familiarity with the Constitution would realize it does not give individuals the right to shoot each other. One may have a natural right to self-defense but the Constitution does not give people the right to kill. It is against the law to intentionally cause bodily harm or the death of another person. The claim of self-defense may be a mitigating factor for a jury deciding a case but killing or maiming someone in self-defense is still a crime. If one kills another person while trying to defend oneself, leniency may be shown at trial but a homicide has still been committed. A person who had the same rights under the law is dead. A measure of forgiveness can be shown but no one may be given blanket permission to commit the act of homicide.

Yet the Roberts Court expects us to believe that we can just set aside the rule of law, due process, the principle of equality under the law and violate the moral basis for these rights. The belief that human life is sacred. The Roberts Court has ruled time and again that the Second Amendment ignores all that and gives individuals the right to bear arms and on their own authority decide which person is a threat and in that moment shoot that person and then walk away facing no consequences whatsoever. That right is not in the Constitution. That scenario only exists in the state of lawlessness.

To take back our public spaces we must be able to enact the kind of gun legislation that will provide meaningful protection for our children. To do that we must determine if the Second Amendment does, in fact, protect the right of a private individual to possess and use a firearm to

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[21] "The Declaration of Independence: A Transcription," *National Archives,* https://www.archives.gov/founding-docs/declaration-transcript

[22] Because *The Declaration of Independence* states, "Nature's God" created humans and endowed them with the "unalienable rights" of "Life, Liberty and the pursuit of Happiness," the political and moral philosophy our nation was founded on views human life as the product of a sacred act and under the protection of rights bestowed by that same Creator making human life sacred. One person shooting another violates that sacrality.

shoot another human being as Justice Antonin Scalia opined in *District of Columbia v Heller.* The full text of the Second Amendment is:

> *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.*[23]

The amendment is one sentence broken into four parts by commas. The words Militia, State, and Arms are all capitalized. This tells us the amendment contains four clauses and that 'Militia,' 'State,' and 'Arms' are important concepts. Because 'Militia,' 'State' and 'the people' are all terms referring to a collective of individuals and not single human beings, the plain language of the Second Amendment does not confer an individual right to bear arms. The simple meaning of the text is the people of a free State, as a collective body, are being given the right to arm a militia, as long as it is well regulated and employed to maintain the security of that polity.

The first ten amendments to the Constitution are known as the Bill of Rights. The Ninth and Tenth Amendments give us important information about the relationship between the articles of the Constitution and the Bill of Rights. The Ninth Amendment states, "The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people." This means the Constitution is only one source of rights. Only those rights conveyed by the Constitution are constitutionally protected rights.

The Tenth Amendment says, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." This tells us the Constitution is a power sharing agreement. The power to govern is divided among the federal government, the state governments, and the people who have the power to establish smaller bodies of government. The articles of the Constitution are focused on establishing the powers and the institutions of the federal government which is "the supreme Law of the Land."[24] This means states and the people of smaller polities also have the power to govern but the manner in which this is done cannot contradict the Constitution.

The Roberts Court characterizes the Second Amendment as unique among the Bill of Rights. Does it make any sense that after saying in the First Amendment people have freedom of religion, the freedom to exchange and debate ideas, and the freedom to peaceably assemble "and petition the government for a redress of grievances" and before it spends five amendments establishing the justice system, it would stop to grant individual weapons possession so a person can shoot another person? It seems highly unlikely that the Bill of Rights would codify a right of

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[23] Second Amendment, U.S. Constitution, *Constitution Annotated*, congress.gov

[24] "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Article VI, The Constitution of the United States: A Transcription," *National Archives,* https://www.archives.gov/founding-docs/consitution-transcript

an individual to use arms for self-defense in the Second Amendment and then contradict that in the Fifth Amendment commanding "No person shall…be deprived of life, liberty, or property without due process of law"[25] because shooting someone, even in self-defense, would deprive that person of life and liberty without due process of law. The Second Amendment is enumerating a right the people of states and smaller polities have to exercise a power of governance. That power is to raise and arm a militia for the common defense.

Neither the plain language of the text nor the Second Amendment's position within the Bill of Rights suggests it conveys an individual right to bear arms. Precedent is also against Justice Scalia. In *United States v Miller* the Supreme Court concluded "The purpose of the Second Amendment was to maintain effective state militias."[26] The Supreme Court held in *Miller* that the Second Amendment does not protect an individual's right to bear arms that do not have "some reasonable relationship to the preservation or efficiency of a well regulated militia."[27]

In his opinion in *District of Columbia v Heller* Justice Scalia insisted the Second Amendment conferred an individual right to bear arms because it "codified a right 'inherited from our English ancestors.'"[28] This right was discussed in depth by the Supreme Court in *United States v Miller*. In examining the "signification attributed to the term Militia"[29] the Court in *Miller* found their sources showed "the Militia comprised all males physically capable of acting in concert for the common defense. 'A body of citizens enrolled for military discipline.'"[30] The Court traced this practice to "the principle of assize of arms."[31] The principle dates back to 1181 when Henry II "made an assize of Arms" which "bound all freemen of England to swear an oath that they would possess and bear arms in the service of king and realm."[32] The assize is viewed as reviving "the old Anglo-Saxon fyrd duty" which was "the duty to serve in a militia."[33] The Court stated in Miller the assize was "the general obligation of all adult male inhabitants to possess arms, and…

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[25] Fifth Amendment, U.S. Constitution, *Constitution Annotated*, congress.gov

[26] *United States v Miller,* Oyez, www.oyez.org/cases/1900-1940/307us174

[27] *United States v Miller et al.,* Supreme Court, US Law, Legal Information Institute, www.cornell.edu/supremecourt/text/307/174

[28] *Heller,* 554 U.S. 570 (2008) at 599

[29] As the term appeared in "debates in the Convention, the history and legislation of Colonies and States, and the writings of approved commentators," *United States v Miller et al.,* Supreme Court, US Law, Legal Information Institute, www.law.cornell.edu/supremecourt/text/307/174 8

[30] Ibid at 8

[31] Ibid at12

[32] Arms, Assize, encylcopedia.com

[33] Fyrd, encyclopedia.com

to cooperate in the work of defence."[34] That means the 'ancient right' was a king's to compel men to be armed and participate in defending the realm.

We can see how that would translate to state constitutions. The state issues the equivalent of an assize of arms in the form of a provision in the state constitution that specific citizens be armed and make themselves available for service to protect the state. It is the duty of the people of the state to perform such service. If the Second Amendment "codified a right 'inherited from our English ancestors,'"[35] as Scalia asserted, it was not a right of individuals to keep and bear arms for individual defense. It was the right of the polity to require its citizens to participate in the duty of defending the community. The assize of arms is the precursor to the draft for military service.

Citing "the history and legislation of Colonies and States" passed between 1632 and 1786, the Court in *Miller* found "that ordinarily 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."[36] A 1649 Massachusetts law specified "all who were subject to military service" not only had to appear but "should be armed with a pike, corselet, head-piece, sword, and knapsack." There were additional requirements for musketeers. Fines would be imposed "for delinquency, whether of towns or individuals."[37] Bearing arms was an important part of meeting one's obligation to join in the defense of the polity. This shows participating in the common defense was not only an obligation of individuals but also a responsibility of smaller polities to the larger polity.

Sources cited in *Miller*, reveal this obligation did not end with the possession of a firearm. "The possession of arms also implied the possession of ammunition, and the authorities paid quite as much attention to the latter as the former." The Court also cited a 1632 Massachusetts law that prevented men from avoiding service by failing to possess a weapon: "it was ordered that any single man who had not furnished himself with arms might be put out to service, and this became a permanent part of the legislation of the colony."[38] This shows that one could not avoid the duty to contribute to the common defense by failing to possess a weapon. The arms were a means to an end. The end was the security of the polity.

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[34] *United States v Miller et al.,* Supreme Court, US Law, Legal Information Institute, 12, www.law.cornell.edu/supremecourt/text/307/174

[35] *Heller* at 599

[36] *United States v Miller et al.,* Supreme Court, US Law, Legal Information Institute, 8, www.law.cornell.edu/supremecourt/text/307/174.

[37] Ibid at 13.

[38] Ibid at 12.

The Court in *Miller* thus determined the "purpose of the Second Amendment was to maintain effective state militias."[39] The danger that was being fended off with those weapons was an opposing military force. Members of the militia were fulfilling a duty not enjoying a right. They did this as a collective body because one man acting alone cannot provide much defense against an opposing army. Individuals could not escape this duty by failing to possess a weapon.

For us today, when compulsory military service no longer exists, the significance of this historical legislation is that it demonstrates state legislative bodies had the power to regulate the possession of firearms, to require those bearing arms be trained, that body armor and ammunition were included in this legislation, and that these regulations provided for security of those states. This also shows that towns were included in the legislation which indicates towns also assumed the right to pass ordinances regulating the possession and use of arms including ammunition, training, and body armor.[40]

In order to deliver the opinion the Second Amendment not only "protects an individual right to possess a firearm" but additionally, that right is unconnected to service in a militia, and that it further permits the use of that weapon for "self-defense,"[41] Justice Scalia had to get over several hurdles. He had to find a way to read the terms, "Militia," "State," and "the people" as terms referring to individual human beings and not collectives of people. He then had to decouple the right to bear arms from the two conditions imposed by the Amendment; that these arms be used by a well regulated militia for the sole purpose of the security of a free State. Finally, he had to introduce the idea of using these weapons for self-defense while providing some thread connecting but not limiting the use of arms to a militia so as not to appear to overturn *Miller*. Scalia does this through an intellectual sleight of hand.

Justice Scalia begins his deconstruction of the Second Amendment by inserting a word and removing two commas:

> "Because a well regulated Militia is necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed."[42]

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[39] *United States v Miller,* Oyez, www.oyez.org/cases/1900-1940/307us174

[40]The development in *Miller* of how the assize of arms relates to the Second Amendment provides the basis for not only states but all democratic polities joined under the Constitution, to enact gun regulations in conjunction with public safety ordinances or laws. Legislation concerning gun regulation can occur on the national level because the Constitution specifically gives Congress broad powers over defense forces including the power of arming the militia. All of these polities have the power to determine the defense needs of their communities and to meet those needs "in such form, as to them shall seem most likely to effect their Safety and Happiness." (Declaration of Independence: A Transcription, National Archives)

[41] *Heller* at 570

[42] Ibid at 577

Scalia asserts the amendment is "naturally divided" into "a prefatory clause and its operative clause."[43] This shifts the focus of the amendment from "a well regulated militia" to the "the right of the people." Says Scalia, "the prefatory clause announces a purpose, but does not limit or expand the scope of the second part, the operative clause."[44] This move negates the relationship between the purpose, "the security of a free State," and the right being granted, "to keep and bear Arms." This peculiar rule of grammar that Justice Scalia cites does not exist. If the prefatory clause announces a purpose that is the focus of the amendment and does in fact limit the scope of the right to keep and bear Arms.

Having reoriented the amendment, Justice Scalia begins with the operative clause declaring "The…salient feature of the operative clause is that it codifies a 'right of the people.'" Although Scalia acknowledges that in six places in the Constitution the term 'the people' "unambiguously refers to all members of the political community,"[45] he argues the term "the people" in the Second Amendment refers to an "individual" right stating, "The unamended Constitution and the Bill of Rights use the phrase 'right of the people' two other times," in the First Amendment[46] and in the Fourth Amendment.[47]. He notes, "The Ninth Amendment[48] uses very similar terminology." Proclaims Scalia, "All three of these instances unambiguously refer to individual rights, not…

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[43] *Heller* at 577

[44] Ibid at 570

[45] This was the finding in *United States v Verdugo-Urquidez,* quoted by Scalia in *Heller* at 580.

[46] The First Amendment begins "Congress shall make no law respecting…." Three clauses follow. The "right of the people" only appears in the third: "or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." Assembling and petitioning are joined by the conjunction "and" rather than "or" indicating this is a collective right the people of the "political community" of the United States are being granted which in is line with the finding in *Verdugo-Urquidez.*

[47] Fourth Amendment: "The right of the people to be secure in their persons…shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and…describing the place to be searched and the persons or things to be seized." It is the use of the term "persons" which distinguishes this as a right that applies to every individual within the political community of the United States when interacting with the justice system. The Second Amendment specifies the people of "a free State" which refers collectively to the members of the "political community" of that particular polity. All free States within the United States are being treated equally in the Second Amendment.

[48] Ninth Amendment: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Rights that are enumerated in the Constitution are constitutionally protected rights. This amendment alludes to other rights which are not constitutionally protected. These other rights come from other "corporate entities" individuals belong to. For example, the right to receive sacraments would come from belonging to a particular faith. While the right to vote is a federal right, qualifications for voting and where one is allowed to vote is largely dependent on one's residence in a particular jurisdiction. Other rights are claimed under common law (as reference in the Seventh Amendment). In absence of a federal ban, the right to possess a weapon would fall under the Ninth Amendment because local jurisdictions issue hunting licenses and landowners can ban hunting on their property while the federal government can ban hunting on federal land.

rights that may be exercised only through some corporate body."[49] So let's take a look at the First Amendment.

The words, "Congress shall make no law" clearly indicates the First Amendment is about curtailing the powers of Congress. The focus is on Congress and what it is not allowed to do. The things Congress is not allowed to do are establish a religion or prohibit the free exercise thereof. This section is separated from the rest of the amendment by a semicolon so these two thoughts are linked. Next listed is Congress shall not abridge the freedom of speech or of the press linking these two things together. Finally, Congress shall not prohibit "the right of the people peaceably to assemble and to petition the Government for a redress of grievances."[50] These last two are linked by the conjunction "and" rather than "or" as the first two pair were indicating assembling and petitioning are both part of a piece.[51] All three of these things: freedom of religion, the free exchange of ideas, and freedom to peaceably assemble and petition the government for redress of grievances are all linked.

The First Amendment is defining what it means to be a free people. They are allowed free-will and self-determination. Under the Constitution, the people are free to worship in the manner they choose and to exchange and debate ideas. The freedom to worship as they please and explore and interrogate ideas is a permission to engage in the pursuit of happiness. The people are free of government restrictions in these matters conferring upon the them privacy in areas of their lives which are outside of the reach of legislation. The third right, to peaceably assemble and petition the government for redress of grievances demonstrates that the people have a say in how they are governed. None of these things happen without "participation in a corporate body" that is the United States of America because the First Amendment is restricting Congress in these matters. Therefore, Scalia's assertion that the Second Amendment is about a right of individuals because the First Amendment also grants individual rights "not…rights that may be exercised only through participation in some corporate body,"[52] has no foundation.

Moving on to the phrase "to keep and bear Arms," Justice Scalia consults multiple dictionaries and historical texts for the use of "to keep" and "bear arms." Justice Scalia determined, "In numerous instances, 'bear Arms' was unambiguously used to refer to the carrying of weapons

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[49] *Heller* at 579.

[50] This is the direct reference Scalia makes to the phrase "the right of the people." Because this right is about the people assembling to petition the government for redress of grievances, it is clear that this is not a right granted to single individuals rather it is granted to people acting in concert to address a grievance they have with government. It is a statement about the relationship between the governed and the government. It says we are a democracy and the people have a say in how they are governed.

[51] "First Amendment," *U.S. Constitution, Constitution Annotated*, Library of Congress, congress.gov, https://constitution.congress.gov/constitution/amendment-1/

[52] *Heller* at 579

outside of an organized militia."[53] He further notes "the most natural reading of 'keep Arms' in the Second Amendment is 'to have weapons.'"[54] Scalia cites a 1771 definition of 'arms' given in a legal dictionary: "any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another"[55] which emphasized the individual nature of bearing arms. Using these examples to advance his argument that the Second Amendment was really about the right of individuals to keep and bear arms[56] Scalia declares, "No dictionary has ever adopted" the definition of arms "only in service of an organized militia" and that no source "indicates that it carried that meaning at the time of the founding."[57] Scalia concludes, "Putting all of these textual elements together, we find that they guarantee the individual right to possess and carry weapons in case of confrontation."[58]

It is not surprising or unexpected that dictionaries did not mention the militia in relation to defining the meaning of "Arms." We know firearms can be used in other contexts. A dictionary would list the definition that stated the common denominator of the use of 'arms' in all contexts. However, none of these other scenarios are present in the Second Amendment. The restriction on the use of Arms comes from the Amendment not from the generalized meaning of the word 'Arms.' Therefore none of these other uses is Constitutionally protected. The only purpose for which 'Arms' are being discussed in the Second Amendment is in terms of their use in a militia.

It is also not surprising nor unexpected that in all of these scenarios individuals would be 'bearing arms.' Of course individuals carry and operate firearms. How else would firearms be operated? That is where the term 'Army' comes from. It is a group of individuals bearing arms for the purpose of engaging in confrontation against a common enemy. Again, the only purpose for which arms are being born in the Second Amendment is for the security of a free State. The manner in which arms are operated nor dictionary definitions convey a Constitutional right to do anything. Only the Constitution conveys a Constitutional right. Therefore, the citations Scalia provides are not evidence that the Second Amendment "protects an individual right to possess a firearm unconnected with service in a militia."

Justice Scalia ends his discussion of the meaning of 'to keep and bear Arms,' referencing "a 1780 debate in the House of Lords."[59] Focusing on one response in which a "member of Parliament referred to 'the right of bearing arms for personal defense,'" Scalia says this was, "making clear

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[53] *Heller* at 584.

[54] Ibid at 582.

[55] Ibid at 581.

[56] Ibid at 599.

[57] Ibid at 586.

[58] Ibid *at* 592.

[59] Ibid at 591.

that no special military meaning for "to keep and bear arms" was intended in the discussion."[60] It is totally irrelevant that during a discussion in Parliament in 1780 one member talked about bearing weapons for self-defense.[61] Parliament does not write law that applies to the United States. One member of Parliament stating that individuals have the right to bear arms for personal defense does not mean that is the intent of the Second Amendment. It is not even clear whether or not this opinion held sway in Parliament. The only thing that is relevant is what is stated in the text of the Constitution itself. All this citation does is allow Justice Scalia to introduce the concept of using arms for self-defense.

After erroneously asserting his analysis of "both text and history," demonstrates "the Second Amendment confers an individual right to keep and bear arms,"[62] Scalia turns his attention to the meaning of the prefatory clause. Scalia diminishes the conditions contained in the prefatory clause stating, "the adjective 'well-regulated' implies nothing more than the imposition of proper discipline and training"[63] as if these things were of no importance. Quoting from *Miller*, Scalia defines the militia by its composition, "all males physically capable of acting in concert for the common defense,"[64] but not its purpose. Using only this part of the definition given in *Miller* directs our attention to the concept of militiamen as individuals instead of "A body of citizens enrolled for military discipline"[65] which would make them members of an organized defense force. Justice Scalia argues that there has to be a logical link between the purpose stated in the prefatory clause and the command given in the operative clause.[66] Because he asserts "the right of the people" refers to an individual right he concludes "an organized militia therefore fits poorly with the operative clause's description of the holder of that right as 'the people.'"[67] This is not how textual analysis is done. The text isn't wrong because it does not fit Scalia's interpretation. Scalia's interpretation is wrong because it does not fit the text.

As to the "security of a free State," Scalia notes the phrase "and close variations seem to have been terms of art in 18th-century political discourse, meaning a 'free country' or free polity,"[68]

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[60] *Heller* at 592

[61] Neither of the references Scalia cites, *The London Magazine* nor *Gentleman's Monthly Intelligencer,* (*Heller* at 592) are approved commentators on Constitutional matters.

[62] *Heller at* 595

[63] Ibid at 597

[64] Ibid at 595

[65] *United States v Miller et al.,* Supreme Court, US Law, Legal Information Institute, 8, www.law.cornell.edu/supremecourt/text/307/174

[66] *Heller* at 577

[67] Ibid at 581

[68] Ibid at 597

but dispenses with that explaining, "the word 'state' did not have a single meaning in the Constitution." This leaves the deconstructed militia without a clear purpose.

Scalia's analysis reduces the militia to an unorganized group of "males physically capable of acting in concert for the common defense" and dispenses with the concept of a free State entirely. All that is left is an individual "right to possess and carry weapons in case of confrontation."[69] This opinion is in direct conflict with the decision in *Miller* which states the Second Amendment does not protect an individual's right to bear arms that do not have "some reasonable relationship to the preservation or efficiency of a well regulated militia."[70]

Unlike the Court in *Miller,* Scalia does not acknowledge an ancient duty to participate in the common defense. Citing Blackstone, Scalia insists the ancient right to bear arms is a right of individuals stating, "as one of the fundamental rights of Englishmen…His description of it cannot possibly be thought to tie it to militia or military service. It was, he says, 'the natural right of resistance and self-preservation."[71] Yet Scalia concludes his argument stating "It is…entirely sensible that the Second Amendment's prefatory clause announces the purpose for which the right was codified: to prevent the elimination of the militia."[72] How does he get there?

Scalia lists three reasons "the militia was thought to be 'necessary.'" He begins "it is useful in repelling invasions and suppressing insurrections," omitting the first purpose for calling forth the militia stated in the Constitution: "to execute the Laws of the Union."[73] Second, Scalia states "it renders large standing armies unnecessary" and third, "when the able-bodied men of a nation are trained in arms and organized, they are better able to resist tyranny."[74],[75]

Scalia's argument focuses on the importance of a militia to oppose tyranny to the exclusion of the other reasons he cites and ignores the militia's role in law enforcement entirely. Those militias would have to be organized militias. He asserts without evidence the militia referred to

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[69] *Heller at* 592

[70] *United States v Miller et al.,* Supreme Court, US Law, Legal Information Institute, www.cornell.edu/supremecourt/text/307/174

[71] *Heller at* 594

[72] Ibid at 599

[73] "To provide for calling forth the Militia to execute the Laws of the Union, suppress insurrections and repel invasions…." Article 1, Section 8, *The Constitution of the United States: A Transcription*, National Archives, archives.gov

[74] *Heller at* 597-598

[75] Tyranny is "the usurpation of power by a single individual or group, or the circumvention of law by rulers for their own benefit." Timothy Snyder, *On Tyranny,* Crown, New York , 2017 p 10

in the Second Amendment is a "citizen's militia" not an organized or government militia.[76] He writes, if the Second Amendment were read as "no more than the right to keep and use weapons as a member of an organized militia…the *organized* militia is the sole institutional beneficiary of the Second Amendment's guarantee—it does not assure the existence of a 'citizens' militia' as a safeguard against tyranny."[77] Scalia refutes the idea of the militia preserving the security of the polity arguing:

> "if petitioners are correct, the Second Amendment protects citizens' right to use a gun in an organization from which Congress has plenary authority to exclude them. It guarantees a select militia of the sort the Stuart kings found useful, but not the people's militia that was the concern of the founding generation."[78]

Scalia poses the question: "Does the preface fit with an operative clause that creates an individual right to keep and bear arms?"[79] Scalia answers that it 'fit perfectly' because "It was understood across the political spectrum that the right helped to secure the ideal of a citizen militia, which might be necessary to oppose an oppressive military force if the constitutional order broke down."[80] By invoking the example of the Stuart kings,[81] stating "like all English rights it was held only against the Crown,"[82] ignoring its law enforcement function, and insisting it was not an organized or government militia it is clear Scalia is arguing the founders enshrined a right of insurrection.

It is inconceivable that the founders would codify a right to overthrow the government they worked so hard to establish. Article I shows that the writers of the Constitution saw nonacceptance of the laws of the Union, insurrections, and invasions[83] as threats to the security

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[76] "Although we agree with petitioners' interpretive assumption that 'militia' means the same thing in Article I and the Second Amendment we believe that petitioners identify the wrong thing, namely, the organized militia." *Heller* at 596

[77] *Heller* at 600

[78] Ibid at 600

[79] Ibid at 598

[80] Ibid at 599

[81] Ibid at 592-593

[82] Ibid at 593

[83] "The Congress shall have Power…To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;" Article I Section 8, The Constitution of the United States: A Transcription, National Archives, archives.gov/founding-docs.

of the United States.[84] In the event Constitutional order breaks down a constitutional right to do anything is meaningless.

To give his argument a facade of legitimacy, Scalia pointed to but did not quote a passage in Blackstone's Commentaries referencing "the natural right of resistance and self-preservation."[85] The actual quote referenced a natural and auxiliary right to "[s]elf-pre[s]ervation, when the '[s]anctions of [s]ociety and laws are found in[s]ufficient to re[s]train the violence of oppre[ss]ion."[86] This is in contrast to being within the "sanctions of society and laws." Blackstone stated: "municipal law is a rule of civil conduct, commanding what is right, and prohibiting what is wrong."[87] He explains:

> "natural liberty consists…in a power of acting as one thinks fit, without any restraint or control…But every man, when he enters into society, gives up a part of his natural liberty, as the price of so valuable a purchase; and…obliges himself to conform to those laws, which the community has thought proper to establish. And this species of legal obedience and conformity is infinitely more desirable than that wild and savage liberty… For no man…would wish to retain the absolute and uncontrolled power of doing whatever he pleases: the consequence of which is, that every other man would also have the same power, and then there would be no security to individuals in any of the enjoyments of life."[88]

Therefore, Blackstone refutes the idea that society would give individuals the right to kill in self-defense because that would create a savage world in which every person would have the right to kill every other person. That is what Justice Scalia's argument in *Heller* does. It says we do not have to abide by the most basic tenant of human society: thou shalt not kill. If, as Scalia contends, the Second Amendment gives individuals the right to shoot each other, how can we put our trust in either the Constitution or our fellow citizens? If individuals are legally allowed to kill us in circumstances of their own determination the Second Amendment invalidates the rule of

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[84] Sanctioning insurrection is especially surprising and counter to the Constitution considering the First Amendment ends with the clause barring Congress from passing any law that infringes on the freedom "peaceably to assemble, and to petition the Government for a redress of grievances." Along with the right to vote, representative government, limited terms for elected government officials, and rights codified in the Bill of Rights, these measures all provide citizens means of 'resisting tyranny' without armed confrontation or bloodshed. This is a democracy not the rule of a tyrannical king they had fought against.

[85] *Heller* at 594

[86] Blackstone's Commentaries on the Laws of England, Book of the First, Chapter the First: Of the Absolute Rights of Individuals, avalon.law.yale.edu p 139 The Rights of Persons 5

[87] Sir William Blackstone, Blackstone on the Absolute Rights of Individuals (1753), Online Library of Liberty, oll.libertyfund.org 122

[88] Ibid at 125

law. It makes our rights meaningless because those who possess weapons are empowered to act out any natural inclinations they have.

Justice Scalia failed to show the Second Amendment confers an individual right to bear arms for self defense. The term "the people" does not confer an individual right. The Supreme Court in *United States v Verdugo-Urquidez* found it "refers to all members of the political community."[89] Raising a militia is like voting. Something that is achieved by collective action. The fact that a gun requires a person to fire it does not convey a right to use it or to shoot someone with it. Dictionary definitions and historical texts and practices do not convey Constitutionally protected rights. Only the Constitution does that. The assize of arms was not an individual right but a duty of compulsory service in the common defense. Scalia misrepresented Blackstone's discussion of "the natural right of resistance and self-preservation."[90] Blackstone was talking about a right held when one is outside of the protections of society. Scalia did not establish a causal link between a member of Parliament stating in 1780 that there is a right to self-defense and the ratification of the Bill of Rights in 1791. Individual self-defense cannot be a substitute for the "security of a free State" because individuals and states are different orders of things. The Second Amendment begins, "A well regulated Militia, being necessary to the security of a free State…." You cannot just dismiss these conditions that are placed on the right to bear arms in the Second Amendment. Having failed to support his argument with any valid evidence means Scalia's opinion that there is a Constitutional right for individuals to possess weapons is invalid. The concept of a right to bear arms for self-defense is a fiction created by Justice Scalia. Because the rulings in *McDonald, Caetano and Bruen* are based on *Heller*, they are also invalid.

To take back our right to life and liberty and re-establish the order of civil society shattered by Scalia's fiction the right the Second Amendment is granting must be affirmatively stated. That requires a proper textual analysis of the Second Amendment starting with how the Constitution defines a militia.

The Militia is mentioned in Article I Section 8 of the Constitution. This section gives Congress broad powers over the "land and naval forces" and specific powers regarding the Militia.[91] This tells us the army, navy, and militia are all defense forces and therefore have the power to exert deadly force. The army and navy are given that power when Congress declares war. It follows

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[89] Justice Scalia cited in *Heller* at 580.

[90] Blackstone's Commentaries on the Laws of England, Book of the First, Chapter the First: Of Absolute Rights of Individuals, Avalon Project, avalon.law.yale.edu

[91] "The Congress shall have Power…To declare War, grant letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water; To raise and support Armies…; To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections, and repel Invasions; To provide for organizing, arming, and discipling the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States, respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress." Article I, Section 8, Paragraphs 11-16, *Constitution of the United States of America: A Transcription*, National Archives, https://www.archives.gov/founding-docs/constitution-transcript

the militia gets its authorization to use lethal force when Congress calls it forth. That the militia is mentioned separately from the army and navy tells us the members of the militia are not considered to be part of the military which would make them civilians.

It does not appear members of the militia were expected to bear their own arms, which was the basis for Scalia's argument that the Second Amendment granted individuals the right to bear arms. The Article specifically states Congress is responsible for arming the militia.[92]

Article II Section 2 says the President of the United States "shall be commander in Chief…of the Militia of the several States, when called into the actual Service of the United States." This suggests the militia is an auxiliary defense force only called when needed.[93] The militia "when in actual Service" is operating under the authority of and regulations established by Congress and is under the command of the President of the United States. A militia may be composed of "all males physically capable of acting in concert for the common defense," as Scalia asserted in *Heller*, but when they are called to service of the United States each is a member of a group organized, trained, armed and disciplined by the legislative branch and under the command of the executive branch.[94] They are "A body of citizens enrolled for military discipline" as stated by

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[92] That Congress would not leave this important work to be done by men carrying their personal weapons can be understood when looking at the state of weaponry during the Colonial period. According to Michael Olmert: "in the late sixteenth century, every town had its complement of armorers…Armies with broken guns and swords and bayonets are fairly toothless. In the fog of war, it was not uncommon for soldiers to fire their muskets without first removing the ramrod from the barrel. Hence, a large demand for replacement ramrods, and more work for the armorer." Olmert goes on to say, "By the eighteenth century, armories were so important to the arts of war that armorers and their portable forges travelled with armies…." Michael Olmert, "Of Arms, Armorers & Armories," *CW Journal*, research.colonialwilliamsburg.org, Autumn 2012

[93] The president is only commander in chief of the Militia when it is "called into actual Service of the United States." That only happens when the Congress calls it forth. Article I also tells us that Congress is only responsible for "governing such Part of them as may be employed in the Service of the United States." The phrase "such Part of them" suggests two things. The use of the plural "them" points to the existence of multiple militias. The phrase "such Part" connotes a whole made up of separable parts. What seems to be happening is individual state militias are being joined under the Constitution just as the states are. Although Congress has the power to organize, arm, and discipline the militia, the respective states have the authority to appoint officers and train the militia "according to the discipline prescribed by Congress." The Union is not taking over the state militias. It is making the necessary steps of providing uniform organization, arms, and discipline to the various state militias to ensure these men are able to act in concert when called into service of the Union.

[94] Scalia failed to recognize the state militias are being joined under uniform discipline just as the states are accepting the Constitution as the "supreme Law of the Land." None give up their autonomy. They gain in strength by joining together. He argues "Unlike armies and navies, which Congress is given the power to create…the militia is assumed by Article I already to be *in existence.* Congress is given the power to 'provide for calling forth the Militia'…and not to organize 'a' militia, which is what one would expect if the militia were to be a federal creation…." *Heller* at 596

the Court in *United States v Miller.*[95] They are engaged in the common defense in their official role[96] of militiamen.

The militia is also mentioned in the Fifth Amendment:

> "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger."

What the Fifth Amendment is saying is that we are a nation of laws and rights. The law applies to everyone equally. Everyone has rights even those accused of capital or infamous crimes. The one exception is neither the land or naval forces nor the Militia "when in actual service" has to present an indictment from a grand jury. This requirement is waived in these instances because Congress has the power to declare war and call forth the Militia.

The amendment continues:

> "nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

These provisions come after the one exception which means these provisions have no exceptions.

Why does the Second Amendment specify a "well regulated" militia? If the United States is to be a nation of laws, the militia must abide by rules that uphold the law. The permission to use lethal force cannot be license to pillage, rape, kidnap or murder. Individual militiamen have been duly authorized and trained within a discipline to exert deadly force and are under the direction of a commander in chief to provide for the 'common defense.' Lethal force is expected to be exerted in a manner that respects people's rights. The militia can only exert deadly force when Congress calls it forth to "execute the Laws of the Union, suppress Insurrections and repel Invasions." In other words only for the security of a free State.[97]

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[95] *United States v Miller et al.,* Supreme Court, US Law, Legal Information Institute, www.law.cornell.edu/supremecourt/text/307/174 8

[96] The Militia referred to in Article I still exists and is today known as the National Guard. The National Guard's official government website lists its birthday as December 13, 1636. That is when Massachusetts organized the first militia regiments. So Scalia was correct in *Heller* when he stated the Militia in Article I already existed. The fact the National Guard is a state-based defense force gives credence to the theory that Article I is unifying state militias under the discipline of Congress.

[97] Therefore, the militia in Article I is an organized militia not the ad hoc militia Scalia described in *Heller.*

As to the purpose of the militia "being necessary to the security of a free State,"[98] the word "State" is capitalized but "free" is not. The modification of the term "State" by the word "free" suggests that the Constitution is not talking about the several states but using the term in a broader sense as in, "an autonomous democratic polity."[99] That would make sense because the term militia is also being used in a broader sense and is not referring to the militia described in Article I. There is no point in establishing an auxiliary defense force for the purpose of the common defense of the nation as a whole in the Bill of Rights if it has already been provided for in Article I with much more specificity.[100] The militia provided for in the Second Amendment must be one to be established and authorized to use lethal force by a legislature other than the Congress of the United States and would be under the command of a chief executive other than the President of the United States.

The Second Amendment makes it a constitutional right for the people of individual states, counties, cities and towns to form militia[101] to "execute the Laws…suppress Insurrections, and repel Invasions"[102] of that polity. The law enforcement powers given to the militia is what allows us to have state troopers, county sheriffs, and local police departments. Each must be well regulated, respect citizens' rights and be answerable to the people.

If these democratic polities have the right to form militias for their security, it follows that the Constitutional right to bear arms is only in conjunction with militia activity. This reading is in agreement with *Miller* that the Second Amendment does not protect an individual's right to bear arms that do not have "some reasonable relationship to the preservation or efficiency of a well regulated militia."[103] That means the only persons who have a Second Amendment right to bear

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[98] Scalia notes the phrase "and close variations seem to have been terms of art in 18th-century political discourse, meaning a 'free country' or free polity," *Heller* at 597.

[99] "The phrase 'security of a free State' meant 'security of a free polity,' not security of each of the several States…." *Heller* at 597.

[100] Scalia argued that the militia in Article I and the Second Amendment are the same: "we agree with petitioners' interpretive assumption that 'militia' means the same thing in Article I and the Second Amendment" but insisted it meant a citizen's militia not a government militia in both. *Heller* at 596

[101] People did not just live in states. In 1775 the population of Philadelphia, the city where the Constitution was written, was approximately 43,000. ("The Largest Cities in the American Colonies in 1775," History in Charts, historyincharts.com) That is almost one-and-a-half times the limit set for a single member to the House of Representatives. ["The number of representatives shall not exceed one for every thirty thousand…." Article I, Section 2, *Constitution of the United States* (1776)] Philadelphia would certainly qualify as an autonomous democratic polity suggesting "a free State" refers to all smaller polities existing within the Union including states, counties, cities, and towns.

[102] Article I Section 8 Paragraph 15, The Constitution of the United States: A Transcription, National Archives, founding-docs/constitutional=transcript

[103] *United States v Miller et al.,* Supreme Court, US Law, Legal Information Institute, <www.cornell.edu/supremecourt/text/307/174>

arms are state troopers, county sheriffs and members of local police departments or other members of officially sanctioned law enforcement agencies[104] when on duty.

"The right of the people"[105] is a collective right because the very first words of the Constitution are "We the people of the United States." In the Preamble the people "do ordain and establish this Constitution for the United States." The people do this to "form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to" themselves and their "Posterity."[106] The articles of the Constitution design the institutions of a government that will secure these rights for the people. Because the Constitution that formed this government was established by the people, it shows the people have the power to create governmental institutions, including those with the purpose of providing for the "common defense" such as a militia.[107] As with the writing of the Constitution itself, when forming a militia the people do this through their elected representatives. Therefore, the people are not exercising this power as individuals but through collective action.

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[104] Scalia concedes this point when he writes, if the Second Amendment were read as "no more than the right to keep and use weapons as a member of an organized militia…the *organized* militia is the sole institutional beneficiary of the Second Amendment's guarantee…." *Heller* at 600

[105] The singular of 'people' is 'person' and the Founders used both in the Bill of Rights. The use of the singular "soldier," "house" and "Owner" shows the Third Amendment is conveying upon every member of the "political community" of the United States the right of privacy within their homes. The Fourth Amendment is the first of the five amendments that establish the rights our system of justice must respect. It uses the terms 'the people,' 'persons' and 'person.' The 'right of the people' here means "every member of the political community." The phrase "to be secure in our persons, houses, papers, and effects" extends the right of domestic privacy granted in the Third Amendment and establishes a right of ownership. The phrases "secure in their persons" and "persons or things to be seized" includes ownership of one's body. The Fourth Amendment is not only recognizing the right to domestic privacy it is also introducing the concept of the right of bodily autonomy. The Fifth Amendment uses the phrase "No person shall" reinforcing the idea that our system of justice is intended to treat everyone equally. The Fifth Amendment edict "no person shall…be deprived of life, liberty, or property without due process of law" shows the founders viewed life and liberty as something free people had the right of ownership over and that these rights could not be taken away except through due process of law. The Sixth, Seventh and Eighth Amendments round out the rights the justice system must afford every member of the "political community."

[106] Preamble, "The Constitution of the United States: A Transcription," *National Archives*, archives.gov

[107] The Constitution explains how this works. The first issue taken up in Article I is the creation of a bicameral legislature. The House of Representatives ensures representation proportional to the population of each state.[The Number of Representatives shall not exceed one for every thirty Thousand…." To ensure proper representation, the Constitution mandates a census every ten years. Article I Section 2 Paragraph 2, *The Constitution of the United States:*] That is why it is called, "The People's House." The states are given equal representation in the Senate. This establishes the United States as a nation of laws and institutionalizes the philosophical concept of equality. This legislative body, to use Blackstone's words, creates the rules "of civil conduct, commanding what is right, and prohibiting what is wrong." The people of every jurisdiction joined under the Constitution have the right to exercise this power of self governance and in every jurisdiction it has been determined that to knowingly cause the death of or great bodily harm to a person is wrong.

The Tenth[108] Amendment gives us important information about the relationship between the articles of the Constitution and the Bill of Rights. The amendment tells us is that the Constitution is a power sharing agreement. Under this contract, the Constitution is "the supreme Law of the Land." The articles of the Constitution are focused on establishing the powers and the institutions of the federal government. The states and the people, who form smaller units of government, also have the power to govern. The Second Amendment makes it a constitutional right for the people of individual states, counties, cities and towns to form militias to "execute the Laws…suppress Insurrections, and repel Invasions" of those polities.[109] The law enforcement powers given to the militia is what allows us to have state troopers, county sheriffs, and local police departments. Each must be well regulated, respect citizens' rights and be answerable to the people.

If these polities have the right to form militias for their security, it follows that the Constitutional right to bear arms is only in conjunction with militia activity. This reading is in agreement with *Miller* that the Second Amendment does not protect an individual's right to bear arms that do not have "some reasonable relationship to the preservation or efficiency of a well regulated militia." That means the only persons who have a Second Amendment right to bear arms are state troopers, county sheriffs, members of local police departments or other officially sanctioned law enforcement personnel when on duty.[110]

The emphasis in the Fifth Amendment that, "No person shall…be deprived of life, liberty or property, without due process of law;"[111] the reiteration of this statement in the Fourteenth Amendment along with the admonishment that no person shall be denied "equal protection of the

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[108] "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

[109] Article I Section 8 gives the Congress of the United States authority over "the land and naval forces and of the Militia;" Article 1 Section 10 mandates "No State shall…grant Letters of Marque and Reprisal…." and "No State shall…keep Troops, or Ships of War in time of Peace…or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay;" Article II Section 2 makes the president "Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States when called into the actual Service of the United States;" and Article IV Section 4 promises "The United States shall guarantee to every. State in the Union a Republican Form of Government, and shall protect each of them against invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence." Given these provisions it would be necessary to clarify that states and smaller polities also had the right to arm themselves by raising a militia to provide for their common defense needs.

[110] Scalia concedes this point when he writes, if the Second Amendment were read as "no more than the right to keep and use weapons as a member of an organized militia…the *organized* militia is the sole institutional beneficiary of the Second Amendment's guarantee…." *Heller* at 600

[111] Fifth Amendment, Constitution of the United States, Constitution Annotated, Library of Congress, congress.gov

laws"[112] are directly linked to the *Declaration of Independence* assertion that "all men are created equal" and that among the rights each of us is granted "are Life, Liberty, and the pursuit of Happiness."[113] That the right to life and liberty is repeated again and again in the Constitution shows these are the most basic rights we have as citizens of the United States. It is the duty of the government to secure these rights for us because the Union pledged that it would in Article IV Section 4.[114] It is the duly elected representatives of the people who enact the laws that protect the people's right to life and liberty. It is the duty of the people to obey these laws so that the rights are, in fact, secured. It is the responsibility of government, at every level, to protect the people within their jurisdictions from those who seek to do them harm.

In the second part of the third clause, "to keep and bear Arms," Arms is capitalized because Arms is the important idea in this clause. Justice Scalia conceded "The 18th-century meaning is no different from the meaning today."[115] Using a weapon to exert fighting force is commonly understood to mean exerting deadly force. If we are talking about weapons in relation to a militia and the security of a free State then we know what Arms means. It means to exert deadly force against other human beings in defense of the polity.

As a free people "endowed by their Creator with certain unalienable rights" the rights people have under the Constitution are things that are just, good and proper.[116] The necessity of using lethal force to maintain security while also asserting the right to life is unalienable creates an ethical conundrum. The Second and the Fifth Amendments address the same ethical question from different perspectives: "Under what conditions may deadly force be exerted in a civil society where everyone has an equal right to life and liberty?" The Second Amendment answer is only when authorized for the common defense. The Fifth Amendment answer is only with due process of law. Both conditions must be met to be just, right and proper. Therefore, no individual on one's own authority has the right to shoot another person.

The final clause "shall not be infringed" refers to the Union which creates the 'political bands' that join together all smaller autonomous democratic polities that make up the United States of America. They are joined. They are not subsumed. The smaller polities retain autonomy which

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[112] Fourteenth Amendment, Constitution of the United States, Constitution Annotated, Library of Congress, congress.gov

[113] Declaration of Independence: A Transcription, National Archives, archives.gov

[114] "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and…against domestic Violence." Article IV Section 4, The Constitution of the United States: A Transcription, National Archives, https://www.archives.gov/founding-docs/constitution-transcript

[115] *Heller* at 581

[116] This comes from the use of the word 'ordain' which carries with it sense of moral authority giving the Constitution an ethical dimension. Preamble, *The Constitution of the United States: A Transcription,* National Archives, https://www.archives.gov/founding-docs/constitution-transcript

allows them self-governing powers. The Second Amendment is saying the federal government will not infringe on the autonomy of states, counties, cities and towns to defend their communities.

The Second Amendment does not give individuals the right to bear arms. The Second Amendment specifies a "well regulated militia." That means a defense force that is operating on the authority of a legislature and under the command of a chief executive. A force providing for the common defense that follows rules of conduct respecting the rights of citizens. There is no Constitutional right to use lethal force in self-defense because ours is a nation of laws and inflicting death or bodily harm is a crime in every jurisdiction in the United States. There is no Constitutional right to bear arms in self-defense because it would not only violate the Fifth Amendment but several other provisions of the Constitution as well. It cannot be a right because it is in violation of the Constitutional guarantee that the United States will protect the people from "domestic violence."[117] It cannot be a right because it violates the moral principle upon which the Constitution is founded, that human life sacred.[118] It cannot be a right because it violates the fundamental rule of every civil society, thou shalt not kill.[119] It cannot be a right because as Blackstone said: "the consequence of which is, that every other man would have the same power, and then there would be no security to individuals in any of the enjoyments of life."[120]

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[117] "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence." Article VI Section 4, *The Constitution of the United States: A Transcription,* National Archives, https://www.archives.gov/founding-docs/constitution-transcript

[118] "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." Because the founders are saying "Nature's God" created and endowed humans with life, that makes human life sacred. *Declaration of Independence: A Transcription,"* National Archives, https://www.archives.gov/founding-docs/declaration-transcript

[119] "Thou shalt not murder." Exodus 20:13, Deuteronomy 5:17, *The Hebrew Bible.* "Thou shalt not kill." Exodus 20:13; Deuteronomy 5:17, *The Holy Bible, King James Version.* "Do not kill any soul, which God has made forbidden, except in just cause." Surah 17:33, *The Quran.* "Hinduism opposes killing, violence and revenge, in line with the principle of ahimsa (non-violence)." BBC - Religions - Hinduism: Capital punishment, https://www.bbc.co.uk/religion/religions/hinduism/hinduethics; "The first of the five precepts that all Buddhists should follow is 'Avoid killing, or harming any living thing'…Nothing in Buddhist scripture gives any support to the use of violence as a way to resolve conflict." BBC - Religions -Buddhism: War, https://www.bbc.co.uk/religion/religions/buddhism/buddistethics/. "The golden rule of Confucianism is "Do not do unto others what you would not want others to do unto you." Confucianism, *National Geographic*. Web. N.d. n.p., https://education.nationalgeographic.org/resource/confuciansim/#

[120] Sir William Blackstone, "Blackstone on the Absolute Rights of Individuals (1753), 125, Online Library of Liberty, oll.libertyfund.org, https://oll.libertyfund.org/page/blackstone-on-the-absolute-rights-of-individuals-1753

The fiction of an individual right to use lethal force created and perpetuated by the Roberts Court has had devastating ramifications. The Roberts Court made its ruling in *Bruen* the same year the CDC announced a record "45,222 firearm deaths in the U.S."[121] Death by firearm was also the leading cause of mortality for children.[122] Even more shocking is the actual number of children killed by firearms that year: 4,357—almost ten percent of the total deaths. Deaths that were preventable. That is 4,204 more children dead by gun violence in the United States in one year than in eleven peer countries combined. What more guns on our streets have gotten us is 4,357 dead children in a single year versus a combined total of 153 children killed in eleven countries[123] that share many of our characteristics except for the fact they value human life.

It is a perversion of the concept of a Constitutional right to suggest the deaths of 4,357 children in a single year is just the price we pay for it. The Roberts Court has committed a grave miscarriage of justice asserting a Constitutional right to shoot people with firearms exists. It is detrimental not only to public safety but to the very foundation upon which all of our rights are based. That we each have an unalienable right to life and liberty and just governments are created to secure these rights for every person. The Roberts Court has abused its power of judicial review by creating new law. It has failed to meet appropriate standards of rigor in making its rulings. Its opinions have resulted in the deaths of thousands of children. This will forever be the legacy of the Roberts Court.

Among those 4,357 children killed by gun violence were school children who stood up in their classrooms, faced the flag, placed their right hands over their hearts and recited: "I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation, under God, indivisible, with liberty and justice for all." Where is their liberty? Where is their justice?

The Second Amendment does not condemn us to this reality. The Constitution grants you the right to provide for the common defense and give our children the protection they deserve because a nation that stands by when its children are being slaughtered cannot stand.

As the duly elected representatives of the people of the City of Chicago, you can peacefully assemble and petition the Roberts Court for redress of grievances by passing a meaningful gun violence reduction ordinance.

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[121] In 2020, the latest year for which statistics were available. Dustin Jones, "Firearms overtook auto accidents as the leading carouse of death in children in 2020." NPR, npr.org

[122] Death by firearm was leading cause of mortality children under the age of 19. Dustin Jones, "Firearms overtook auto accidents as the leading cause of death in children in 2020," NPR, npr.org

[123] Matt McGough, Krutika Amin, Nirmita Panchal, Cynthia Cox, "Child and Teen Firearm Mortality in the U.S. and Peer Countries," Kaiser Family Foundation, kff.org

In order to ban this legislation the Roberts Court will have to supply evidence that ***disproves*** beyond a reasonable doubt that state and local governments have a duty to "provide for the common defense" and "promote the general welfare" of their jurisdictions.

The Court will have to ***disprove*** that historical evidence from state constitutions shows that these polities had the power to regulate weapons including types of weapons and who could bear them, ammunition, body armor and arms training when providing for the security of those polities.

The Court will have to ***disprove*** that the "free State" in the Second Amendment refers to all autonomous democratic polities within the United States which include states, counties, cities, and towns.

The Court will have to ***disprove*** the Second Amendment only conveys a collective "right of the people" of states, counties, cities, and towns to raise and arm a well-regulated militia when providing for the common defense of those within their jurisdictions.

The Court will have to ***disprove*** the Second Amendment only protects the possession of weapons that have "some reasonable relationship to the preservation or efficiency of a well regulated militia" as held in *United States v Miller*.

The Court will have to ***disprove*** that we are a nation of laws and that to knowingly shoot someone with the intent to cause death or bodily harm is against the law in every jurisdiction in the United States.

The Court will have to ***disprove*** the Fourth Amendment guarantees everyone a right "to be secure in their persons" which "shall not be violated" without a warrant based on probable cause.

The Court will have to ***disprove*** that the Fifth Amendment decrees no person shall "be deprived of life, liberty, or property without due process of law" even "for a capital or otherwise infamous crime."

The Court will have to ***disprove*** that the Sixth Amendment guarantees the accused the "right to a speedy and public trial, by an impartial jury."

The Court will have to ***disprove*** that the Seventh Amendment states even under common law, "the right of a trial by jury shall be preserved."

The Court will have to ***disprove*** that the Eighth Amendment prohibits cruel and unusual punishments and that shooting another person is a cruel and unusual punishment because it is outside of lawful authority.

The Court will have to ***disprove*** the Fourteenth Amendment states no State shall "deprive any person of life, liberty or property, without due process of law; nor deny to any person within its

jurisdiction the equal protection of the laws" because shooting another person deprives that person of due process, equal protection of the laws, and their life and liberty.

The Court will have to ***disprove*** "the people" refers to all people of a political community as stated in *United States v. Verdugo-Urquidez.*

The Court will have to ***disprove*** that in a republican form of government the people's duly elected representatives have the power to enact legislation for their safety and well-being including gun regulations.

The Court will have to ***disprove*** Sir William Blackstone's assertion that giving individuals the right to shoot others in self-defense would give every other individual "the same power, and then there would be no security to individuals in any of the enjoyments of life."[124]

And the Court will have to ***prove*** beyond a reasonable doubt that the term "the right of the people" refers to a right held by individuals and not the people of a polity collectively.

The Court will have to ***prove*** that the Constitution states an affirmative right for a person to shoot and cause bodily harm or the death of another person without due process of law.

The Court cannot do these things therefore, as a duly elected legislative body of an autonomous democratic polity whose residents are covered by the protections granted in the Bill of Rights, you have a constitutional right to enact gun regulations.

The people of Chicago demand something be done about gun violence. Parents have pleaded with you to end the anguish that is the loss of a child from gunfire. The voices of their murdered children cry out begging to know why their right to live was deemed less important than their killers' to carry a gun.

Aldermen, you not only have the right to enact this legislation. It is your duty to do so.

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[124] Sir William Blackstone, *Blackstone on the Absolute Rights of Individuals* (1753), Online, Library of Liberty, www.oll.libertyfund,org

Addendum I

The headlines tell the story of gun violence and its victims in Chicago.

"'My baby has been shot.' Boy, 1, critically injured in road-rage shooting near Grant Park on Lake Shore Drive, Chicago police say." Paige Fry, Chicago Tribune, April 06, 2021, https://www.chicagotribune.com/news/breaking/ct-child-shot-lake-shore-drive-20210406-4ej74pt245anja7gdb5nz6ucei-story.html;

"Boy, 6, hospitalized after being shot during family gathering." Darcel Rockett, Chicago Tribune, https://digital *edition.chicagotribune.com*

"Shooting kills 2, injures 2 others; Police: 7-year-old is in fair condition," Rebecca Johnson, Chicago Tribune, https://digitaledition.chicagotribune.com.

"Man, 51, shot and killed while walking dog on West Side." Sean Lewis, WGN Web Desk, March 16, 2021, https://wgntv.com/news/chicago/man-51-shot-and-killed-while-walking-dog-on-west-side/;

"After 73-Year-Old Man Carjacked At Gunpoint, Frustrated Logan Square Residents Say Something Must Be Done About Crime," Mina Bloom, Block Club Chicago, Dec. 7, 2021, https://blockclubchicago.org/2021/12/07/after-73-old-man-carjac…ated-logan-square-residents-say-something-must-be-done-about-crime/;

"Rogers Park crime spree renews fears for Orthodox Jewish Community." Chicago Tribune, Oct. 05, 2018, https://www.chicagotribune.com/news/breaking/ct-met-orthrodox-jewish-shooting-rogers-park-20181004-story.html;

"Pilsen business, street vendor targeted, possibly by same armed robbery crew Sunday morning," Liz Nagy, ABC7 Chicago, Jan. 16, 2023, https://abc7chicago.com/chicago-crime-armed-robbery-pilsen-tamales/12710983/;

"West Ridge liquor store owner, a refugee from Iraq, shot and killed during armed robbery attempt," Chris Tye, Megan Hickey, Asal Rezaei, CBS Chicago, Oct. 19, 2022, https://www.cbsnews.com/chicago/news/salim-khamo-west-ridge-liquor-store-owner-shooting-murder-armed-robbery-j-k-food-liquor/;

"4 injured in afternoon shooting in Uptown; no one in custody," Deans Williams-Harris, Chicago Tribune, https://digitialedition.chicagotribune.com/html5/desktop/production/de...mail&utm_term=https.//

"Eight people shot during exchange of gunfire early Sunday morning in River North, according to Chicago Police," Rebecca Johnson, https://digital edition.chicagotribune.com.

"Univision news crew in Chicago robbed while covering robbery, police say: Univision confirmed one of the victims is a reporter and the other is a photographer." Diane Pathieu, 6abc Philadelphia, August, 29, 2023, https://6abc.com/news-crew-robbed-univision-reporter-photographer-carjackings-robberies/13712384/;

"4 officers hurt in crash following shooting," Adriana Perez, Chicago Tribune, https://digitialedition.chicagotribune.com.

"4 charged with murder in killing of Chicago police Office Areanah Preston," Grace Hauck, USA TODAY, May 10, 2023, https://www.usatoday.com/story/news/nation/2023/05/10/chicago-police-officer-areanah-preston-4-charged-in-killing/70203599007/;

The murder by firearm of Hadiya Pendleton in Harsh Park, Chicago, IL, Jan. 29, 2013 captured national attention because she had preformed the week before as part of the second inaugural festivities for President Barack Obama.

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Addendum II

Worship:
First Baptist Church, Sutherland Springs Texas, Nov. 5, 2017, 26 people killed, 22 wounded;
Tree of Life Synagogue, Pittsburgh, PA, Oct. 27, 2018, 11 killed;
Emanuel African Episcopal Church, Charleston, SC, June 17, 2015, nine killed;
A Sikh temple (gurdwara), Oak Creek Wisconsin, August 5, 2012, six killed, three injured.

Go to work:
Henry Pratt Company, Aurora, IL, Feb. 15, 2019, six people killed, seven injured.
"Current or former workplaces of perpetrators were the most common sites for mass shootings. Most of the shooters had been fired." *The Violence Project,* theviolenceproject.org

Attend school:
Elementary: Sandy Hook Elementary School, Sandy Hook, Connecticut, Dec. 14, 2012, 28 killed, two injured;
Robb Elementary School, Uvalde, Texas, May 24, 2022, 22 dead, 18 injured;
Middle: Sparks Middle School, Sparks, NV, Oct. 21, 2013; two dead, two injured;
High School: Columbine High School, Columbine, Colorado, April 20, 1999, 13 killed, 23 injured;
Marjory Stoneman Douglas High School, Parkland Florida, Feb. 14, 2018, 17 dead, 17 injured;
College: Northern Illinois University, DeKalb, IL, Feb. 14, 2008, six dead, 21 injured;
Virginia Tech, Blacksburg, VA, April 16, 2007, 33 dead, 23 injured.

Visit a doctor's office:
Mercy Hospital, Chicago, IL, Nov. 19, 2018, four dead;
Saint Francis Hospital Campus, Tulsa, OK, June 1, 2022, four dead.

Stop by the bank:
Old National Bank, Louisville, KY, April 10, 2023, five dead, eight wounded.

Shop at a mall:
Allen Premium Outlet Mall, Allen, Texas, May 10, 2023, eight dead;
Westroads Mall, Omaha, NE, Dec. 5, 2007, eight killed, four wounded plus other injuries;
Lane Bryant, Tinley Park, IL, Feb. 2 2008, five killed, one injured.

Buy groceries:
Tops Friendly Market, Buffalo, NY, May 14, 2022, 10 dead, three wounded;
King Soopers, Colorado Springs, CO, March 22, 2021, 10 killed.

Go to a movie:
Century 16 Movie Theater, Aurora, Co., July 20, 2012, 12 dead, 58 wounded by gunfire, 12 others with non-gunfire injuries.

Attend a concert;
Route 91 Harvest Country Music Festival, Las Vegas, NV Oct 1, 2017, 60 killed, 887 injured at least 413 of those by gunfire;
EDM Music Festival, The Gorge Amphitheater, George, WA June 17, 2023, two killed, three injured.

Enjoy an outdoor festival:
Gilroy Garlic Festival, Gilroy, CA, June 17, 2023, three dead, 17 injured.

Gather with friends and family in a park:
Chickasaw Park, Louisville, KY, April 16, 2023, two dead, four wounded;
Garfield Park, Chicago, IL, Oct. 31, 2022, as many as 15 people injured by gunfire including a 3, 11, and 13-year-old.

Go dancing:
Pulse Nightclub, Orlando, FL, June 12, 2016, 49 killed, 53 wounded;
Monterey Park CA, Jan. 21, 2023, 11 dead, nine injured in two locations.

Meet-up at a public establishment:
Club Q, Colorado Springs, Colorado, Nov. 19, 2022, five killed, 25 injured, 19 by gunfire.
Oregon Entertainment District, Dayton, Ohio, August 4, 2019, nine dead, 17 wounded;
Luby's Cafeteria, Killeen, TX, Oct. 16, 1991, 23 killed, 27 wounded;
McDonald's, San Isidro, CA, July 18, 1984, 21 dead, 19 wounded.

Unite to celebrate the birth of a nation of free people:
4th of July Parade, Highland Park, IL, July 4, 2022, seven killed including both parents of a toddler leaving him orphaned, 48 wounded. After escaping Highland Park, the shooter traveled to Wisconsin intending to commit another mass shooting in Madison but turned back.

(End of Addenda)