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All students are invited to attend a “mock law-school class” focused on the meaning and scope of the Second Amendment. For those who wish to prepare for the “class,” please read the followih2J0 Tcp.adol handguns. It is a crime to carr

ndguns is prohibited. Wholly apart from that
ut a license, but the chief of police may issue
w also requires residents to keep their lawfully
loaded and dissembled or bound by a trigger
place of business or are being used for lawful

officer authorized to carry a handgun while on
handgun at home. He filed a lawsuit in District
nd Amendment. The District Court dismissed
directed the District Court to enter summary

ulated Militia, being necessary to the security
ear Arms, shall not be infringed." *** The two
pretations of the Amendment. Petitioners and
ly the right to possess and carry a firearm in
that it protects an individual right to possess a
use that arm for traditionally lawful purposes,

into two parts: its prefatory clause and its
e a link between the stated purpose and the
n may cause a prefatory clause to resolve an
om that, clarifying a prefatory clause does not
Therefore, while we will begin our textual

analysis with the operative clause, we will return to the prefatory clause to ensure that our reading of the operative clause is consistent with the announced purpose.

Operative Clause

"Right of the People." The first salient feature of the operative clause is that it codifies a "right of the people." The unamended Constitution and the Bill of Rights use the phrase "right of the people" two other times, in the First Amendment Assembly-and-Petition Clause and in the Fourth Amendment Search-and-Seizure Clause. The Ninth Amendment uses very similar terminology -

By the time of the founding, the right to have arms had become fundamental for English subjects. Blackstone [cited] the arms provision of the Bill of Rights as one of the fundamental rights of Englishmen, [describing it as] "the natural right of resistance and self-preservation" *** Thus, the right secured in 1689 as a result of the Stuarts' abuses was by the time of the founding understood to be an individual right protecting against both public and private violence. And, of course, what the Stuarts had tried to do to their political enemies, George Ill had tried to do to the colonists.

There seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms. [We now determine] whether the prefatory clause of the Second Amendment comports with our interpretation of the operative clause. ***

Relationship between Prefatory Clause and Operative Clause

*** The debate with respect to the right to keep and bear arms, as with other guarantees in the

[But] Miller did not hold that and cannot possibly be read to have held that. The judgment in the case upheld against a Second Amendment challenge two men's federal convictions for transporting an unregistered short-barreled shotgun in interstate commerce, in violation of the National Firearms Act, 48 Stat. 1236. It is entirely clear that the Court's basis for saying that the Second Amendment did not apply was [that] the type of weapon at issue was not eligible for Second Amendment protection: In the absence of any evidence tending to show that the possession or use of a [short-barreled shotgun] at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument." 307 U.S. at 178 (emphasis added). "Certainly," the Court continued, "it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense." Ibid. [H]ad the Court believed that the Second Amendment protects only those serving in the militia, it would have been odd to examine the character of the weapon rather than simply note that the two crooks were not militiamen. *** We therefore read Miller to say only that the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns.

Like most rights, the right secured by the Second Amendment is not unlimited. Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of army *** We also recognize another important limitation on the right to keep and carry arms. Miller said, as we have explained, that the sorts of weapons protected were those "in common use at the time." 307 U.S. at 179. We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of "dangerous and unusual weapons."

We turn finally to the law at issue here. [As we have demonstrated,] the inherent right of self-defense has been central to the Second Amendment right. The handgun ban amounts to a prohibition of an entire class of "arms" that is overwhelmingly chosen by American society for that lawful purpose. The prohibition extends, moreover, to the home, where the need for defense of self, family, and property is most acute. Under any of the standards of scrutiny that we have applied to enumerated constitutional rights, banning from the home. “the most preferred firearm in the nation to 'keep' and use for protection of one’s home and family," 478 F3d, at 400, would fail constitutional muster. *** Whatever the reason, handguns are the most popular weapon chosen by Americans for self-defense in the home, and a complete prohibition of their use is invalid.

conceded at oral argument that he does not "have a problem [with] licensing" and that the District's law is permissible so long as it is "not enforced in an arbitrary and capricious manner." We therefore assume that petitioners' issuance of a license will satisfy respondent's prayer for relief and do not address the licensing requirement.

Justice BREYER [criticizes] us for declining to establish a level of scrutiny for evaluating

national standing army posed an intolerable threat to the sovereignty of the several States. Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature's authority to regulate private civilian uses of firearms. Specifically, there is no indication that the Framers of the Amendment intended to enshrine the common-law right of self-defense in the Constitution.

In 1934, Congress enacted the National Firearms Act, the first major federal firearms law. Upholding a conviction under that Act, this Court held that, "[i]n the absence of any evidence tending to show that possession or use of a 'shotgun having a barrel of less than eighteen inches in length' at this time has some reasonable relationship to the preservation or efficiency of a well-regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument." Miller, 307 U.S. at 178. The view of the Amendment we took in Miller—that it protects the right to keep and bear arms for certain military purposes, but that it does not curtail the Legislature's power to regulate the nonmilitary use and ownership of weapons—is both the most natural reading of the Amendment's text and the interpretation most faithful to the history of its adoption.

*** The preamble to the Second Amendment [is] comparable to provisions in several State Declarations of Rights that were adopted roughly contemporaneously with the Declaration of Independence. [1] Those state provisions highlight the importance members of the founding generation attached to the maintenance of state militias; they also underscore the profound fear shared by many in that era of the dangers posed by standing armies. While the need for state militias has not been a matter of significant public interest for almost two centuries, that fact should not obscure the contemporary concerns that animated the Framers.

The parallels between the Second Amendment and these state declarations, and the Second Amendments omission of any statement of purpose related to the right to use firearms for hunting or personal self-defense is especially striking in light of the fact that the Declarations of Rights of Pennsylvania and Vermont did expressly protect such civilian uses at the time. Article XIII of Pennsylvania’s 1776 Declaration of Rights announced that "the people have a right to bear arms for the defence of themselves and the state"; § 43 of the Declaration assured that "the inhabitants of this state shall have the liberty to fowl and hunt in seasonable times on the lands they hold, and on all other lands therein not inclosed," And Article XV of the 1777 Vermont Declaration of Rights guaranteed "[t]hat the people have a right to bear arms for the defence of themselves and the State." The contrast between those two declarations and the Second Amendment reinforces the clear statement of purpose announced in the Amendment's preamble. It confirms that the Framers' single-minded focus in crafting the constitutional guarantee “to keep and bear arms" was on military uses of firearms, which they viewed in the context of service in state militias.

The preamble thus both sets forth the object of the Amendment and informs the meaning of the remainder of its text. *** The Court today tries to denigrate the importance of this clause of

[1] The Virginia Declaration of Rights ¶13 (1776), provided: "That a well-

the Amendment by beginning its analysis with the Amendment's operative provision and returning to the preamble merely "to ensure that our reading of the operative clause is consistent with the announced purpose." That is not how this Court ordinarily reads such texts, and it is not how the preamble would have been viewed at the time the Amendment was adopted. *** Without identifying any language in the text that even mentions civilian uses of firearms, the Court proceeds to "find" its preferred reading in what is at best an ambiguous text, and then concludes that its reading is not foreclosed by the preamble. Perhaps the Court's approach to the text is acceptable advocacy, but it is surely an unusual approach for judges to follow.

[T]he words "the people" in the Second Amendment refer back to the object announced in the Amendment's preamble. They remind us that it is the collective action of individuals having a duty to serve in the militia that the text directly protects and, perhaps more importantly, that the ultimate purpose of the Amendment was to protect the States' share of the divided sovereignty created by the Constitution.

Although the Court's discussion of [the words "to keep and bear Arms"] treats them as two "phrases" – as if they read "to keep" and "to bear" -- they describe a unitary right: to possess arms if needed for military purposes and to use them in conjunction with military activities. *** The term "bear arms" is a familiar idiom; when used unadorned by any additional words, its meaning is "to serve as a soldier, do military service, fight." 1 Oxford English Dictionary 634 (2d ed. 1989). It is derived from the Latin arma ferre, which, translated literally, means "to bear [ferre] war equipment [arma]" *** Had the Framers wished to expand the meaning of the phrase "bear arms" to encompass civilian possession and use, they could have done so by the addition of phrases such as "for the defense of themselves," as was done in the Pennsylvania and Vermont Declarations of Rights. The unmodified use of "bear arms," by contrast, refers most naturally to a military purpose, as evidenced by its use in literally dozens of contemporary texts. *** When, as in this case, there is no [qualifier], the most natural meaning is the military one; and, in the absence of any qualifier, it is all the more appropriate to look to the preamble to confirm the natural meaning of the text.

The Amendment's use of the term "keep" in no way contradicts the military meaning conveyed by the phrase "bear arms" and the Amendment's [(i)-2 (v-6 Tw -2.66)-862.45 (')Tj (r)4 (ms)-2(l)-10 (l)T]-2 [illegible]

Two themes relevant to our current interpretive task ran through the debates on the original Constitution. "On the one hand, there was a widespread fear that a national standing Army posed an intolerable threat to individual liberty and to the sovereignty of the separate States." *Perpich v. Department of Defense*, 496 U.S. 334, 340 (1990). On the other hand* the Framers recognized the dangers inherent in relying on inadequately trained militia members "as the primary means of providing for the common defense," Perpich, 496 U.S. at 340. *** In order to respond to those twin concerns, a compromise was reached: Congress would be authorized to raise and support a national Army and Navy; and also to organize, arm, discipline, and provide for the calling forth of "the Militia," U.S. Const. Art. I, § 8,, 17 (vi)-2 (dua)4 (l)M4 (l)-6 , and prh eJTT1 1 Tf9]TJ0 Tc-6 a 3 (A)2 (ra 1

1) How would you describe the “issue” before the Supreme Court? (What were the important facts, and what law was the Court called upon to interpret?)
2) What is meant by the distinction between the “operative clause” and the “prefatory clause” of the Second Amendment?
3) Can you think of any special significance of the fact that the first case the Supreme Court chose to review regarding interpretation of the Second Amendment originated in the District of Columbia rather than some other city?
4) How would you describe the key differences in interpretation described by Justice Scalia and Justice Stevens?
5) What are some of the