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Summary of District of Columbia v. Heller, 554 U.S. 570; 128 S. Ct. 2783 (2008)

The Second Amendment right is not absolute and a wide range of gun control laws remain "presumptively lawful," according to the Court. These include laws that (1) prohibit carrying concealed weapons, (2) prohibit gun possession by felons or the mentally retarded, (3) prohibit carrying firearms in sensitive places such as schools and government buildings, (4) impose "conditions and qualifications on the commercial sale of arms," (5) prohibit "dangerous and unusual weapons," and (6) regulate firearm storage to prevent accidents. Justice Scalia wrote the majority opinion. He was joined by Justices Alito, Kennedy, Roberts, and Thomas.

Interpretation of the Second Amendment. Scalia argues that the individual right interpretation of the Second Amendment is supported by scholars, courts, and legislators. Also, none of the Supreme Court's precedents forecloses the Court's individual right interpretation. He rejects Stevens' notion that that *Miller* (*United States v. Miller,* 307 U.S. 174 (1939)) held that the Second Amendment "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" (*Heller*, at 2814). *Miller* "did not hold that and cannot possible be read to have held that. . . It is particularly wrongheaded to read *Miller* for more than what is said, because the case did not even purport to be a thorough examination of the Second Amendment" (*Id.,* at 2814). Rather, the *Miller* holding is consistent with and "positively suggests, that the Second Amendment confers an individual right to keep and bear arms (though only arms that "have some reasonable relationship to the preservation or efficiency of a well regulated militia") (*Id.*, at 2814).

Limitations on the Right to Keep and Bear Arms

Second Amendment rights are not absolute, according to Scalia. Thus, the amendment does not grant the "right to keep and carry any weapon whatsoever in any manner whatsoever for whatever purpose" (*Heller.*, at 2816). Among "presumptively lawful" regulatory measures are laws that (1) prohibit carrying concealed weapons, (2) prohibit the possession of firearms by felons and the mentally ill, (3) forbid the carrying of firearms in sensitive places such as schools and government buildings, or (2) impose conditions and qualifications on the commercial sale of arms. He adds that he could also find "support in the historical tradition of prohibiting the carrying of dangerous and unusual weapons" (*Id.*, at 2816, 2817). In a footnote, Scalia says the list of presumptively lawful measures "does not purport to be exhaustive."

Syllabus - DISTRICT OF COLUMBIA ET AL. v. HELLER CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT No. 07–290. Argued March 18, 2008—Decided June 26, 2008

District of Columbia v. Heller, 554 U.S. 570; 128 S. Ct. 2783 (2008)

Slip Opinion: (pp 54-56.)

Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. See, e.g., Sheldon, in 5 Blume 346; Rawle 123; Pomeroy 152–153; Abbott 333. For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues. See, e.g., State v. Chandler, 5 La. Ann., at 489–490; Nunn v. State, 1 Ga., at 251; see generally 2Kent *340, n. 2; The American Students' Blackstone 84, n. 11 (G. Chase ed. 1884). 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 arms.26 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." See 4 Blackstone 148–149 (1769); 3 B. Wilson, Works of the Honourable James Wilson 79 (1804); J. Dunlap, The New-York Justice 8 (1815); C. Humphreys, A Compendium of the Common Law in Force in Kentucky482 (1822); 1 W. Russell, A Treatise on Crimes and Indictable Misdemeanors 271–272 (1831); H. Stephen, Summary of the Criminal Law 48 (1840); E. Lewis, An Abridgment of the Criminal Law of the United States 64 (1847); F. Wharton, A Treatise on the Criminal Law of the United States 726 (1852). See also State v. Langford, 10 N. C. 381, 383–384 (1824); O'Neill v. State, 16 Ala. 65, 67 (1849); English

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v. State, 35 Tex. 473, 476 (1871); State v. Lanier, 71 N. C. 288, 289 (1874).It may be objected that if weapons that are most useful in military service—M-16 rifles and the like—may be banned, then the Second Amendment right is completely detached from the prefatory clause. But as we have said, the conception of the militia at the time of the Second Amendment's ratification was the body of all citizens capable of military service, who would bring the sorts of lawful weapons that they possessed at home to militia duty. It may well be true today that a militia, to be as effective as militias in the 18th century, would require sophisticated arms that are highly unusual in society at large. Indeed, it may be true that no amount of small arms could be useful against modern-day bombers and tanks. But the fact that modern developments have limited the degree of fit between the prefatory clause and the protected right cannot change our interpretation of the right. Heller v. DC