___ S.Ct. ___

Supreme Court of the United States

City and County of San Francisco.,

Petitioners,

v.

Richard Joseph SMITH.

No. __-___.

Argued March 18, 2016. Decided June __, 2016

KENNEDY, J., delivered the opinion of the Court, in which GINSBURG, and KAGAN, and SOTOMOYOR, and BREYER, JJ., joined.

At issue in this case is a San Francisco statute that the Respondent claims would severely restrict an individual's right to possess firearms. We disagree. Although we do not overturn our precedent in *Heller v. District of Columbia*, we do believe it is limited to its specific facts and does not answer the questions presented by the instant statute.

San Francisco's ordinance, among other things, prohibits (1) the ownership of any firearm without registering it with the City, (2) the ownership of any "military-styled" weapons, which includes, but is not specifically limited to, automatic weapons, shoulder-fire stinger missiles, rocket propelled grenade launchers (RPG), improvised explosive devices (IEDs), and converted handguns. It is a crime to possess or sell an unregistered firearm or weapon. San Francisco also requires residents to keep their lawfully owned firearms, such as registered long guns, "unloaded and dissembled or bound by a trigger lock or similar device" unless they are located in a place of business or are being used for lawful recreational activities.

Respondent, Richard Joseph Smith, sold to an undercover agent two shoulder-fire stinger missiles, a rocket propelled grenade (RPG), in addition to two handguns that had been converted to fire in semiautomatic and fully automatic mode. Because of the conversion of the handguns, the rifles are "machineguns" for purposes of the laws prohibiting the possession and transfer of certain firearms. Respondent was indicted on five counts of possessing and transferring a machinegun and weaponry, in violation of the statute. All of these weapons were unregistered, in violation of the local statute. Respondent filed a motion to dismiss, arguing that the statute as applied violated his Second Amendment rights, and the district court denied this motion. Respondent then entered a conditional guilty plea to the charges, reserving his right to appeal the district court's denial of his motion to dismiss. The district court sentenced Respondent to seventy months' imprisonment on each count, with the sentences to run concurrently, followed by three years of supervised release. Respondent appealed the conviction, which was overturned on appeal. We now reinstate that conviction and remand with instructions.

Respondent appeals his conviction on the basis that the statute, as applied to him, violates his right to keep and bear arms under the Second Amendment of the Constitution. Respondent contends that the Second Amendment confers an individual right on him, as a member of an unorganized militia, to possess a firearm of a type that has a reasonable military use. He relies primarily on *United States v. Miller,* 307 U.S. 174, 59 S.Ct. 816, 83 L.Ed. 1206 (1939). In *Miller,* this Court upheld the constitutionality of a law that outlawed interstate transport of an unregistered firearm, where the defendant convicted under the statute had not shown that the type of firearm at issue "ha[d] some reasonable relationship to the preservation or efficiency of a well-regulated militia." *Id.* at 178, 59 S.Ct. 816. At the hearing on the motion to dismiss, an expert testified that the machineguns, the RPG, and shoulder-fire stinger missiles have reasonable military uses and are in fact used by the military.

Respondent argues that he is part of an unorganized militia by virtue of 10 U.S.C. § 311, which defines the "militia of the United States" as consisting of "all able-bodied male[ ]" citizens 17 to 45 years old. Respondent asserts that the Second Amendment makes no distinction between an organized and an unorganized militia, and equally protects military-styled weapons for both. Moreover, he argues, the original intent of the founders to guarantee the right to keep and bear arms was to, primarily, protect against federal tyranny. Thus, especially together with *Heller's* injunction protecting the individual right to self-defense, the Constitution's guarantee extends to the individual the right to arm himself against federal tyranny through an unorganized militia.

Today, we must decide whether the San Francisco statute that prohibits the possession of machineguns, RPGs and shoulder-fire missiles in the home violates the Second Amendment. The Court holds that this statute does not violate that Amendment. In so holding, we have rethought some of the basic principles decided in past cases and believe that the Court went too far in finding that gun possession is a basic right.

The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia. It was a response to concerns raised during the ratification of the Constitution that the power of Congress to disarm the state militias and create a 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. 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.

Respondent's basic theory of the case is as follows. Since *Heller* defined the right of self-defense as a pre-existing basic right protected under the Second Amendment, and the Amendment protects on its face the right to military-styled weapons that would be necessary to a well-regulated militia, *Heller* necessarily requires this Court to find that the Second Amendment guarantees the right of individual citizens to military-styled weapons that, presumably, could be used either in defense of home or against the tyranny of the government. While we find this logic tortured, at best, we agree that the holding of *Heller* would cast doubt on several aspects of the San Francisco statute, particularly including the registration requirements. For this reason, and in order to clarify this area of the law, the following sections make clear that *Heller's* discussion of a claimed pre-existing right is inconsistent with the basic understanding of the Second Amendment, notwithstanding anything in *Heller* to the contrary.

The text of the Second Amendment is brief. It provides: "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."

Three portions of that text merit special focus: the introductory language defining the Amendment's purpose, the class of persons encompassed within its reach, and the unitary nature of the right that it protects.

"*A well regulated Militia, being necessary to the security of a free State*"

The preamble to the Second Amendment makes three important points. It identifies the preservation of the militia as the Amendment's purpose; it explains that the militia is necessary to the security of a free State; and it recognizes that the militia must be "well regulated." In all three respects it is comparable to provisions in several State Declarations of Rights that were

adopted roughly contemporaneously with the Declaration of Independence.

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 Amendment's 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," 1 Schwartz 266 (emphasis added); § 43 of the Declaration ensured that "[t]he 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," *id.*, at 274. 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." *Id.*, at 324 (emphasis added). 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. Such text should not be treated as mere surplusage, for "[i]t cannot be presumed that any clause in the constitution is intended to be without effect." *Marbury v. Madison,* 1 Cranch 137, 174, 2 L.Ed. 60 (1803).

"[T]he right of the people"

The Court must look to the significance of the way the Framers used the phrase "the people" in these constitutional provisions. In the First Amendment, no words define the class of individuals entitled to speak, to publish, or to worship; in that Amendment it is only the right peaceably to assemble, and to petition the Government for a redress of grievances, that is described as a right of "the people." These rights contemplate collective action. While the right peaceably to assemble protects the individual rights of those persons participating in the assembly, its concern is with action engaged in by members of a group, rather than any single individual. Likewise, although the act of petitioning the Government is a right that can be exercised by individuals, it is primarily collective in nature. For if they are to be effective, petitions must involve groups of individuals acting in concert.

Similarly, the 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.

As used in the Fourth Amendment, "the people" describes the class of persons protected from unreasonable searches and seizures by Government officials. It is true that the Fourth Amendment describes a right that need not be exercised in any collective sense. But that observation does not settle the meaning of the phrase "the people" when used in the Second Amendment. For, as we have seen, the phrase means something quite different in the Petition and Assembly Clauses

of the First Amendment. Although the abstract definition of the phrase "the people" could carry the same meaning in the Second Amendment as in the Fourth Amendment, the preamble of the Second Amendment suggests that the uses of the phrase in the First and Second Amendments are the same in referring to a collective activity. By way of contrast, the Fourth Amendment describes a right *against* governmental interference rather than an affirmative right *to* engage in protected conduct, and so refers to a right to protect a purely individual interest. As used in the Second Amendment, the words "the people" do not enlarge the right to keep and bear arms to encompass use or ownership of weapons outside the context of service in a well-regulated militia.

"[T]o keep and bear Arms"

The Court cannot treat these words 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]*." Brief for Professors of Linguistics and English as *Amici Curiae* 19. One 18th-century dictionary defined "arms" as "[w]eapons of offence, or armour of defence," 1 S. Johnson, A Dictionary of the English Language (1755), and another contemporaneous source explained that "[b]y *arms,* we understand those instruments of offence generally made use of in war; such as firearms, swords, &c. By *weapons,* we more particularly mean instruments of other kinds (exclusive of fire-arms), made use of as offensive, on special occasions." 1 J. Trusler, The Distinction Between Words Esteemed Synonymous in the English Language 37 (3d ed. 1794). 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. The absence of any reference to civilian uses of weapons tailors the text of the Amendment to the purpose identified in its preamble.

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 preamble. To the contrary, a number of state militia laws in effect at the time of the Second Amendment's drafting used the term "keep" to describe the requirement that militia members store their arms at their homes, ready to be used for service when necessary. The Virginia military law, for example, ordered that "every one of the said officers, non-commissioned officers, and privates, shall constantly *keep* the aforesaid arms, accoutrements, and ammunition, ready to be produced whenever called for by his commanding officer." Act ... for Regulating and Disciplining the Militia, 1785 Va. Acts ch. 1, § III, p. 2 (emphasis added).[12] "[K]eep and bear arms" thus perfectly describes the responsibilities of a framing-era militia member.

This reading is confirmed by the fact that the clause protects only one right, rather than two. It does not describe a right "to keep ... Arms" and a separate right "to bear ... Arms." Rather, the single right that it does describe is both a duty and a right to have arms available and ready for military service, and to use them for military purposes when necessary. Different language surely would have been used to protect nonmilitary use and possession of weapons from regulation if such an intent had played any role in the drafting of the Amendment.

When each word in the text is given full effect, the Amendment is most naturally read to secure to the people a right to use and possess arms in conjunction with service in a well-regulated militia. So far as appears, no more than that was contemplated by its drafters or is encompassed within its terms. Even if the meaning of the text were genuinely susceptible to more than one interpretation, the burden would remain on those advocating a departure from the purpose identified in the preamble and from settled law to come forward with persuasive new arguments or evidence. The textual analysis offered by respondent falls far short of sustaining that heavy burden. And the Respondent's emphatic reliance on the claim "that the Second Amendment ... codified a *pre-existing* right," is of course beside the point because the right to keep and bear arms for service in a state militia was also a pre-existing right.

Indeed, not a word in the constitutional text even arguably supports Respondent's overwrought and novel description of the Second Amendment as "elevat [ing] above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home."

Until this Court's opinion in *Heller*, it was understood that legislatures may regulate the civilian use and misuse of firearms so long as they do not interfere with the preservation of a well-regulated militia. In *Heller*, the Court's announcement of a new constitutional right to own and use firearms for private purposes upset that settled understanding, and left for future cases the formidable task of defining the scope of permissible regulations. Today, we overrule the basic principles of *Heller* and pay heed to a far more important policy choice—the choice made by the Framers themselves. The *Heller* Court would have us believe that over 200 years ago, the Framers made a choice to limit the tools available to elected officials wishing to regulate civilian uses of weapons, and to authorize this Court to use the common-law process of case-by-case judicial lawmaking to define the contours of acceptable gun-control policy. Absent compelling evidence that is nowhere to be found in the Court's opinion in *Heller*, we rule that the statute is constitutional.

SO ORDERED