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Justice SCALIA, dissenting.

In what is now a seemingly regular occurrence, the Court has unfurled the welcome mat for the flowerchildren of San Francisco in their never-ending quest to serve as the arbiter of our constitutional rights. Using "tortured logic," the Court has condoned the City's trampling of its citizen's basic right to self-defense and breathlessly recants that very pronouncement we made just eight years ago, see *District of Columbia v. Heller*, 554 U.S. 570 (2008). And for what reason? No one knows. The Court has effectively dropped all pretenses of even attempting to apply the law, and in doing so, has rendered the Second Amendment a nullity.

To add insult to injury, the Court uses a run-of-the-mill ruffian's botched street deal to decide whether the prohibition of military-grade weapons in the home violates the Second Amendment—an issue that is not even before the Court. But even if this were the issue at bar, the Court's textual analysis of the Second Amendment is fundamentally flawed. The Court's straw man arguments teeter on the dangerous edge of delusion. I vigorously dissent.

I

The Second Amendment reads: "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." U.S.C.A. Const.Amend. 2. The Court begins its assault on the Second Amendment by attempting to decode the preamble. As I explained once before in *Heller*, the introductory language, or prefatory clause, does not limit the operative clause. Rather, the prefatory clause merely sets the stage and announces a general purpose. The Court, undeterred, relies on two states' Declaration of Rights to prove its precarious point that our Framers were laser-focused on the use of firearms in state militias, and that the preamble deliberately excluded the use of firearms for self-defense or recreation.

The Court fails to independently analyze the Second Amendment's introductory adjectives and phrases one by one. This revelatory exercise would demonstrate that the Framers intended to prevent elimination of the citizen's militia. "Well-regulated" implies the "imposition of proper discipline and training." *Heller* at 597. Nothing more and nothing less. "Militia" consists of a subset of "the people" in colonial America. This subset stretches beyond an organized militia and is comprised of "those who were male, able bodied, and within a certain age range." *Heller* at 580. "The security of a free State," meant "security of a free policy," rather than security of each of the several States. *Heller* at 597. Much to the chagrin of the Court, the word "state" is

used in a wide variety of senses, demonstrating that the word "state" did not have a single meaning in the Constitution (duh).

II

The Court next attempts to explain away its evisceration of the Second Amendment right to individual self-defense by arguing that the right enumerated is merely conferred upon a "collective activity," rather than any single individual. How so? The Court points to "the right of the people" language in the operative clause, and compares it to similar language contained in the First Amendment's right to petitioning activity. The Court assures us that the right to petition the Government is exercised by individuals, but is "primarily collective in nature." Thus, the Court reasons, the Second Amendment right must also be conditional on collective activity, such as membership in a defined militia.

The Court is painfully dead wrong on this point. We have never held that petitioning activity, nor the Fourth Amendment's right of protection from unreasonable searches and seizures, must be exercised in a collective sense before the rights become operative. And how could they be? The rights contained therein would become utterly meaningless if they were dependent on group activity. Are we to believe that the Framers hoodwinked the masses during the adoption of the Bill of Rights? Of course not.

III

Finally, in its concluding section, the Court claims that "to keep and bear arms" cannot be treated as two phrases, and thus maintains an exclusively military connotation. I disagree. Even if "to keep and bear arms" were a unitary phrase, there is not an iota of evidence supporting the military-only meaning. Justice KENNEDY's interpretation and over-reliance on one state's military law simply does not hold water. Pulling out the two phrases from "to keep and bear arms," "keep arms" most naturally means to "have weapons." *Heller* at 582. During the founding period, the favored meaning of "keep arms" is an individual right unconnected with military service. The phrase was merely a way of "referring to possessing arms, for militiamen *and everyone else*." *Heller* at 583. As Justice GINSBURG once wrote, the natural meaning of "bear arms" is to "wear, bear, or carry upon the person or in the clothing or in a pocket, for the purpose of being armed and ready for offensive or defensive action in a case of conflict with another person." *Muscarello v. United States*, 524 U.S. 125, 143 (1998).

Notably, the Court, yet again, expediently chooses to ignore history and tradition, and fixates on the Pennsylvania and Vermont Declaration of Rights and state military laws in stitching together

its Frankenstein unitary meaning of "to keep and bear arms." As I wrote before, the best examples of the nonmilitary connotation of "to keep and bear arms" referring to the carrying of weapons outside of an organized militia are found in the "nine state constitutional provisions written in the 18th century or the first two decades of the 19th, which enshrined a right of citizens to 'bear arms in defense of himself and the state' or 'bear arms in defense of himself and the state." *Heller* at 584-85. Without a shadow of a doubt, based on text and history, the Second Amendment conferred an individual right to keep and bear arms. *Id.* at 595. The Court is wrong to misinterpret the Second Amendment, misread our nation's founding texts, and distort our history in favor of a hippie's pipe dream.

I dissent.