IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

BRIDGEVILLE RIFLE & PISTOL CLUB, LTD.; MARK HESTER; JOHN R. SYLVESTER; MARSHALL KENNETH WATKINS; BARBARA BOYCE, DHSc, RDN; ROGER T. BOYCE, SR.; and the DELAWARE STATE SPORTSMEN'S ASSOCIATION,

Plaintiffs,

v.

DAVID SMALL, SECRETARY OF THE DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL; DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL; ED KEE, SECRETARY OF DELAWARE DEPARTMENT OF AGRICULTURE; and DELAWARE DEPARTMENT OF AGRICULTURE,

Defendants.

C.A. No. 11832-VCG

COMPENDIUM OF AUTHORITIES CITED IN PLAINTIFFS' COMBINED OPENING BRIEF IN SUPPORT OF THEIR CROSS-MOTION FOR JUDGMENT ON THE PLEADINGS AND ANSWERING BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

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Dated: March 3, 2016

Compendium Table

Tab No.

Tab 1

11 Del.C. § 1441

§ 1441. License to carry concealed deadly weapons

Effective: February 3, 2010

Currentness

(a) A person of full age and good moral character desiring to be licensed to carry a concealed deadly weapon for personal protection or the protection of the person's property may be licensed to do so when the following conditions have been strictly complied with:

(1) The person shall make application therefor in writing and file the same with the Prothonotary of the proper county, at least 15 days before the then next term of the Superior Court, clearly stating that the person is of full age and that the person is desirous of being licensed to carry a concealed deadly weapon for personal protection or protection of the person's property, or both, and also stating the person's residence and occupation. The person shall submit together with such application all information necessary to conduct a criminal history background check. The Superior Court may conduct a criminal history background check pursuant to the procedures set forth in Chapter 85 of Title 11 for the purposes of licensing any person pursuant to this section.

(2) At the same time the person shall file, with the Prothonotary, a certificate of 5 respectable citizens of the county in which the applicant resides at the time of filing the application. The certificate shall clearly state that the applicant is a person of full age, sobriety and good moral character, that the applicant bears a good reputation for peace and good order in the community in which the applicant resides, and that the carrying of a concealed deadly weapon by the applicant is necessary for the protection of the applicant or the applicant's property, or both. The certificate shall be signed with the proper signatures and in the proper handwriting of each such respectable citizen.

(3) Every such applicant shall file in the office of the Prothonotary of the proper county the application verified by oath or affirmation in writing taken before an officer authorized by the laws of this State to administer the same, and shall under such verification state that the applicant's certificate and recommendation were read to or by the signers thereof and that the signatures thereto are in the proper and genuine handwriting of each. Prior to the issuance of an initial license the person shall also file with the Prothonotary a notarized certificate signed by an instructor or authorized representative of a sponsoring agency, school, organization or institution certifying that the applicant: (i) has completed a firearms training course which contains at least the below-described minimum elements; and (ii) is sponsored by a federal, state, county or municipal law enforcement agency, a college, a nationally recognized organization that customarily offers firearms training, or a firearms training school with instructors certified by a nationally recognized organization that customarily offers firearms training. The firearms training course shall include the following elements:

a. Instruction regarding knowledge and safe handling of firearms;

b. Instruction regarding safe storage of firearms and child safety;

c. Instruction regarding knowledge and safe handling of ammunition;

d. Instruction regarding safe storage of ammunition and child safety;

e. Instruction regarding safe firearms shooting fundamentals;

f. Live fire shooting exercises conducted on a range, including the expenditure of a minimum of 100 rounds of ammunition;

g. Identification of ways to develop and maintain firearm shooting skills;

h. Instruction regarding federal and state laws pertaining to the lawful purchase, ownership, transportation, use and possession of firearms;

i. Instruction regarding the laws of this State pertaining to the use of deadly force for self-defense; and

j. Instruction regarding techniques for avoiding a criminal attack and how to manage a violent confrontation, including conflict resolution.

(4) At the time the application is filed, the applicant shall pay a fee of $65 to the Prothonotary issuing the same.

(5) The license issued upon initial application shall be valid for 3 years. On or before the date of expiration of such initial license, the licensee, without further application, may renew the same for the further period of 5 years upon payment to the Prothonotary of a fee of $65, and upon filing with said Prothonotary an affidavit setting forth that the carrying of a concealed deadly weapon by the licensee is necessary for personal protection or protection of the person's property, or both, and that the person possesses all the requirements for the issuance of a license and may make like renewal every 5 years thereafter; provided, however, that the Superior Court, upon good cause presented to it, may inquire into the renewal

request and deny the same for good cause shown. No requirements in addition to those specified in this paragraph may be imposed for the renewal of a license.

(b) The Prothonotary of the county in which any applicant for a license files the same shall cause notice of every such application to be published once, at least 10 days before the next term of the Superior Court. The publication shall be made in a newspaper of general circulation published in the county. In making such publication it shall be sufficient for the Prothonotary to do the same as a list in alphabetical form stating therein simply the name and residence of each applicant respectively.

(c) The Prothonotary of the county in which the application for license is made shall lay before the Superior Court, at its then next term, all applications for licenses, together with the certificate and recommendation accompanying the same, filed in the Prothonotary's office, on the first day of such application.

(d) The Court may or may not, in its discretion, approve any application, and in order to satisfy the Judges thereof fully in regard to the propriety of approving the same, may receive remonstrances and hear evidence and arguments for and against the same, and establish general rules for that purpose.

(e) If any application is approved, as provided in this section, the Court shall endorse the word "approved" thereon and sign the same with the date of approval. If not approved, the Court shall endorse the words "not approved" and sign the same. The Prothonotary, immediately after any such application has been so approved, shall notify the applicant of such approval, and following receipt of the notarized certification of satisfactory completion of the firearms training course requirement as set forth in paragraph (a)(3) of this section above shall issue a proper license, signed as other state licenses are, to the applicant for the purposes provided in this section and for a term to expire on June 1 next succeeding the date of such approval.

(f) The Secretary of State shall prepare blank forms of license to carry out the purposes of this section, and shall issue the same as required to the several Prothonotaries of the counties in this State. The Prothonotaries of all the counties shall affix to the license, before lamination, a photographic representation of the licensee.

(g) The provisions of this section do not apply to the carrying of the usual weapon by the police or other peace officers.

(h) Notwithstanding any provision to the contrary, anyone retired as a police officer, as "police officer" is defined by § 1911 of this title, who is retired after having served at least 20 years in any law-enforcement agency within this State, or who is retired and remains currently eligible for a duty-connected disability pension, may be licensed to carry a concealed deadly weapon for the protection of that retired police officer's person or property after that retired police officer's retirement, if the following conditions are strictly complied with:

(1) If that retired police officer applies for the license within 90 days of the date of that retired police officer's retirement, the retired police officer shall pay a fee of $65 to the Prothonotary in the county where that retired police officer resides and present to the Prothonotary both:

a. A certification from the Attorney General's office, in a form prescribed by the Attorney General's office, verifying that the retired officer is in good standing with the law-enforcement agency from which the retired police officer is retired; and

b. A letter from the chief of the retired officer's agency verifying that the retired officer is in good standing with the law-enforcement agency from which the retired police officer is retired; or

(2) If that retired police officer applies for the license more than 90 days, but within 20 years, of the date of that retired police officer's retirement, the retired police officer shall pay a fee of $65 to the Prothonotary in the county where the retired police officer resides and present to the Prothonotary certification forms from the Attorney General's office, or in a form prescribed by the Attorney General's office, that:

a. The retired officer is in good standing with the law-enforcement agency from which that retired police officer is retired;

b. The retired officer's criminal record has been reviewed and that the retired police officer has not been convicted of any crime greater than a violation since the date of the retired police officer's retirement; and

c. The retired officer has not been committed to a psychiatric facility since the date of the retired police officer's retirement.

(i) Notwithstanding anything contained in this section to the contrary, an adult person who, as a successful petitioner seeking relief pursuant to Part D, subchapter III of Chapter 9 of Title 10, has caused a protection from abuse order containing a firearms prohibition authorized by § 1045(a)(8) of Title 10 or a firearms prohibition pursuant to § 1448(a)(6) of this title to be entered against a person for alleged acts of domestic violence as defined in § 1041 of Title 10, shall be deemed to have shown the necessity for a license to carry a deadly weapon concealed for protection of themselves pursuant to this section. In such cases, all other requirements of subsection (a) of this section must still be satisfied.

(j) Notwithstanding any other provision of this Code to the contrary, the State of Delaware shall give full faith and credit and shall otherwise honor and give full force and effect to all licenses/permits issued to the citizens of other states where those issuing states also give full faith and credit and otherwise honor the licenses issued by the State of Delaware pursuant to this section and where those licenses/permits are issued by authority pursuant to state law and which afford a reasonably similar degree of protection as is provided by licensure in Delaware. For the purpose of this subsection "reasonably similar" does not preclude alternative or differing provisions nor a different source and process by which eligibility is determined. Notwithstanding the forgoing, if there is evidence of a pattern of issuing licenses/permits to convicted felons in another state, the Attorney General shall not include that state under the exception contained in this subsection even if the law of that state is determined to be "reasonably similar." The Attorney General shall communicate the provisions of this section to the Attorneys General of the several states and shall determine those states whose licensing/permit systems qualify for recognition under this section. The Attorney General shall publish on January 15 of each year a list of all States which have qualified for reciprocity under this subsection. Such list shall be valid for one year and any removal of a State from the list

shall not occur without 1 year's notice of such impending removal. Such list shall be made readily available to all State and local law-enforcement agencies within the State as well as to all then-current holders of licenses issued by the State of Delaware pursuant to this section.

(k) The Attorney General shall have the discretion to issue, on a limited basis, a temporary license to carry concealed a deadly weapon to any individual who is not a resident of this State and whom the Attorney General determines has a short-term need to carry such a weapon within this State in conjunction with that individual's employment for the protection of person or property. Said temporary license shall automatically expire 30 days from the date of issuance and shall not be subject to renewal, and must be carried at all times while within the State. However, nothing contained herein shall prohibit the issuance of a second or subsequent temporary license. The Attorney General shall have the authority to promulgate and enforce such regulations as may be necessary for the administration of such temporary licenses. No individual shall be issued more than 3 temporary licenses.

(l) All applications for a temporary license to carry a concealed deadly weapon made pursuant to subsection (k) of this section shall be in writing and shall bear a notice stating that false statements therein are punishable by law.

(m) Notwithstanding any other law or regulation to the contrary, any license issued pursuant to this section shall be void, and is automatically repealed by operation of law, if the licensee is or becomes prohibited from owning, possessing or controlling a deadly weapon as specified in § 1448 of this title.

Credits

58 Laws 1972, ch. 497, § 1; 60 Laws 1976, ch. 419, §§ 1-3; 67 Laws 1989, ch. 41, § 1; 67 Laws 1990, ch. 260, § 1; 68 Laws 1991, ch. 9, §§ 1, 2; 68 Laws 1992, ch. 410, §§ 1-3; 69 Laws 1994, ch. 299, § 1; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995; 70 Laws 1996, ch. 343, § 1, eff. May 23, 1996; 71 Laws 1998, ch. 246, § 1, eff. Feb. 10, 1998; 71 Laws 1998, ch. 252, § 1, eff. May 13, 1998; 72 Laws 1999, ch. 61, § 6, eff. June 24, 1999; 73 Laws 2001, ch. 7, § 1, eff. Feb. 7, 2001; 73 Laws 2002, ch. 252, § 7, eff. May 9, 2002; 74 Laws 2003, ch. 140, §§ 1-3, eff. July 11, 2003; 77 Laws 2010, ch. 230, §§ 1-4, eff. Feb. 3, 2010.

Codifications: 11 Del.C. 1953, § 1441

Notes of Decisions (11)

11 Del.C. § 1441, DE ST TI 11 § 1441
The statutes and constitution are current through 80 Laws 2015, ch. 194. and technical revisions from the Delaware Code Revisors for 2015 Acts.

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Tab 2

36 C.F.R. § 2.4

§ 2.4 Weapons, traps and nets.

Effective: June 25, 2015

Currentness

(a) None of the provisions in this section or any regulation in this chapter may be enforced to prohibit an individual from possessing a firearm, including an assembled or functional firearm, in any National Park System unit if:

(1) The individual is not otherwise prohibited by law from possessing the firearm; and

(2) The possession of the firearm is in compliance with the law of the State in which the National Park System unit is located.

(b)(1) Except as otherwise provided in this section and parts 7 (special regulations) and 13 (Alaska regulations), the following are prohibited:

(i) Possessing a weapon, trap or net

(ii) Carrying a weapon, trap or net

(iii) Using a weapon, trap or net

(2) Weapons, traps or nets may be carried, possessed or used:

(i) At designated times and locations in park areas where:

(A) The taking of wildlife is authorized by law in accordance with § 2.2 of this chapter;

(B) The taking of fish is authorized by law in accordance with § 2.3 of this part.

(ii) When used for target practice at designated times and at facilities or locations designed and constructed specifically for this purpose and designated pursuant to special regulations.

(iii) Within a residential dwelling. For purposes of this subparagraph only, the term “residential dwelling” means a fixed housing structure which is either the principal residence of its occupants, or is occupied on a regular and recurring basis by its occupants as an alternate residence or vacation home.

(3) Traps, nets and unloaded weapons may be possessed within a temporary lodging or mechanical mode of conveyance when such implements are rendered temporarily inoperable or are packed, cased or stored in a manner that will prevent their ready use.

(c) Carrying or possessing a loaded weapon in a motor vehicle, vessel or other mode of transportation is prohibited, except that carrying or possessing a loaded weapon in a vessel is allowed when such vessel is not being propelled by machinery and is used as a shooting platform in accordance with Federal and State law.

(d) The use of a weapon, trap or net in a manner that endangers persons or property is prohibited.

(e) The superintendent may issue a permit to carry or possess a weapon, trap or net under the following circumstances:

(1) When necessary to support research activities conducted in accordance with § 2.5.

(2) To carry firearms for persons in charge of pack trains or saddle horses for emergency use.

(3) For employees, agents or cooperating officials in the performance of their official duties.

(4) To provide access to otherwise inaccessible lands or waters contiguous to a park area when other means of access are

otherwise impracticable or impossible.

Violation of the terms and conditions of a permit issued pursuant to this paragraph is prohibited and may result in the suspension or revocation of the permit.

(f) Authorized Federal, State and local law enforcement officers may carry firearms in the performance of their official duties.

(g) The carrying or possessing of a weapon, trap or net in violation of applicable Federal and State laws is prohibited.

(h) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

Credits

[49 FR 18450, April 30, 1984; 52 FR 35240, Sept. 18, 1987; 73 FR 74971, Dec. 10, 2008; 80 FR 36476, June 25, 2015]

SOURCE: 31 FR 16651, Dec. 29, 1966, as amended at 48 FR 30282, June 30, 1983; 48 FR 43174, Sept. 22, 1983; 48 FR 54977, Dec. 8, 1983; 49 FR 7124, Feb. 27, 1984; 51 FR 33264, Sept. 19, 1986; 52 FR 10683, April 2, 1987; 80 FR 36476, June 25, 2015, unless otherwise noted.

AUTHORITY: 54 U.S.C. 100101, 100751, 320102.

Notes of Decisions (9)

Current through Feb. 25, 2016; 81 FR 9362.

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Tab 3

West's Delaware Code Annotated
Constitution of the State of Delaware
Article I. Bill of Rights

Del.C.Ann. Const., Art. 1, § 20

§ 20. Right to keep and bear arms

Effective: November 17, 2010

Currentness

Section 20. A person has the right to keep and bear arms for the defense of self, family, home and State, and for hunting and recreational use.

Notes of Decisions (13)

Del.C.Ann. Const., Art. 1, § 20, DE CONST, Art. 1, § 20
The statutes and constitution are current through 80 Laws 2015, ch. 194. and technical revisions from the Delaware Code Revisors for 2015 Acts.

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Tab 4

LEXSEE

Caution
As of: Feb 25, 2016

DISTRICT OF COLUMBIA, et al., Petitioners v. DICK ANTHONY HELLER

No. 07-290

SUPREME COURT OF THE UNITED STATES

554 U.S. 570; 128 S. Ct. 2783; 171 L. Ed. 2d 637; 2008 U.S. LEXIS 5268; 76 U.S.L.W. 4631; 21 Fla. L. Weekly Fed. S 497

March 18, 2008, Argued
June 26, 2008, Decided

NOTICE:

The LEXIS pagination of this document is subject to change pending release of the final published version.

SUBSEQUENT HISTORY: Related proceeding at Heller v. District of Columbia, 698 F. Supp. 2d 179, 2010 U.S. Dist. LEXIS 29063 (D.D.C., Mar. 26, 2010)

PRIOR HISTORY:

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Parker v. District of Columbia, 478 F.3d 370, 375 U.S. App. D.C. 140, 2007 U.S. App. LEXIS 5519 (2007)

DISPOSITION: Affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Petitioner District of Columbia sought certiorari review of a judgment from the United States Court of Appeals for the District of Columbia Circuit which held that the Second Amendment protected an individual's right to possess firearms and that the total ban on handguns under D.C. Code §§ 7-2501.01(12), 7-2502.01(a), 7-2502.02(a)(4), as well as the requirement under D.C. Code § 7-2507.02 that firearms be kept nonfunctional, violated that right.

OVERVIEW: Respondent, a special policeman, filed the instant action after the District refused his application to register a handgun. The Court held that the District's ban on handgun possession in the home and its prohibition against rendering any lawful firearm in the home operable for the purposes of immediate self-defense violated the Second Amendment. The Court held that the Second Amendment protected an individual right to possess a firearm unconnected with service in a militia and to use that firearm for traditionally lawful purposes, such as self-defense within the home. The Court determined that the Second Amendment's prefatory clause announced a purpose but did not limit or expand the scope of the operative clause. The operative clause's text and history demonstrated that it connoted an individual right to keep and bear arms, and the Court's reading of the operative clause was consistent with the announced purpose of the prefatory clause. None of the Court's precedents foreclosed its conclusions. The Court held that the Second Amendment right was not unlimited, and it noted that its opinion should not be taken to cast doubt on certain long-standing prohibitions related to firearms.

OUTCOME: The Court affirmed the judgment of the Court of Appeals. Assuming respondent was not disqualified from exercising Second Amendment rights, the Court held that the District must permit respondent to register his handgun and must issue him a license to carry

it in his home. 5-4 Decision; 2 Dissents.

CORE TERMS: militia, arm, bear arms, firearm, handgun, weapon, gun, military, self-defense, ban, urban, carrying, amici, preamble, standing army, lawful, individual right, declaration, regulated, founding, colonial, well-regulated, violence, times, ratification, prefatory, infringed, loaded, armed, bearing arms

LexisNexis(R) Headnotes

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms

[HN1]The Second Amendment 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. In interpreting this text, the United States Supreme Court is guided by the principle that the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning. Normal meaning may of course include an idiomatic meaning, but it excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation.

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms

[HN2]The Second Amendment is naturally divided into two parts: its prefatory clause and its operative clause. The former does not limit the latter grammatically, but rather announces a purpose. The Second Amendment could be rephrased: 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. Although this structure of the Second Amendment is unique in the United States Constitution, other legal documents of the founding era, particularly individual-rights provisions of state constitutions, commonly included a prefatory statement of purpose. Logic demands that there be a link between the stated purpose and the command. That requirement of logical connection may cause a prefatory clause to resolve an ambiguity in the operative clause. But apart from that clarifying function, a prefatory clause does not limit or expand the scope of the operative clause. It is nothing unusual in acts for the enacting part to go beyond the preamble; the remedy often extends beyond the particular act or mischief which first suggested the necessity of the law.

Governments > Legislation > Interpretation

[HN3]In America the settled principle of law is that the preamble cannot control the enacting part of the statute in cases where the enacting part is expressed in clear, unambiguous terms.

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms
Evidence > Inferences & Presumptions > Presumptions > General Overview

[HN4]"The people" seems to have been a term of art employed in select parts of the Constitution. Its uses suggest that "the people" protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with the United States to be considered part of that community. This contrasts markedly with the phrase "the militia" in the prefatory clause of the Second Amendment. The "militia" in colonial America consisted of a subset of "the people"--those who were male, able bodied, and within a certain age range. Reading the Second Amendment as protecting only the right to "keep and bear Arms" in an organized militia therefore fits poorly with the operative clause's description of the holder of that right as "the people." The United States Supreme Court starts therefore with a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans.

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms

[HN5]The 18th-century meaning of "Arms" is no different from the meaning today. The 1773 edition of Samuel Johnson's dictionary defined "arms" as weapons of offence, or armour of defence. Timothy Cunningham's important 1771 legal dictionary defined "arms" as any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another. The term was applied, then as now, to weapons that were not specifically designed for military use and were not employed in a military capacity.

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms

[HN6]In regard to the argument that only those arms in existence in the 18th century are protected by the Second Amendment, the United States Supreme Court does not interpret constitutional rights that way. Just as the First Amendment protects modern forms of communications and the Fourth Amendment applies to modern forms of search, the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms

[HN7]The most natural reading of "keep Arms" in the Second Amendment is to "have weapons."

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms

[HN8]At the time of the founding, as now, to "bear" meant to "carry." When used with "arms," however, the term has a meaning that refers to carrying for a particular purpose--confrontation. In Muscarello v. United States, in the course of analyzing the meaning of "carries a firearm" in a federal criminal statute, Justice Ginsburg wrote that surely a most familiar meaning is, as the Constitution's Second Amendment indicates: 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. The United States Supreme Court thinks that Justice Ginsburg accurately captured the natural meaning of "bear arms." Although the phrase implies that the carrying of the weapon is for the purpose of offensive or defensive action, it in no way connotes participation in a structured military organization. From a review of founding-era sources, the United States Supreme Court concludes that this natural meaning was also the meaning that "bear arms" had in the 18th century. In numerous instances, "bear arms" was unambiguously used to refer to the carrying of weapons outside of an organized militia.

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms

[HN9]The phrase "bear Arms" had at the time of the founding an idiomatic meaning that was significantly different from its natural meaning: to serve as a soldier, do military service, fight, or to wage war. But it unequivocally bore that idiomatic meaning only when followed by the preposition "against," which was in turn followed by the target of the hostilities.

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms

[HN10]Putting all of the textual elements of the operative clause of the Second Amendment together, the United States Supreme Court finds that they guarantee the individual right to possess and carry weapons in case of confrontation. This meaning is strongly confirmed by the historical background of the Second Amendment. The Supreme Court looks to this because it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right. The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it "shall not be infringed." As the Supreme Court said in United States v. Cruikshank, this is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The Second Amendment declares that it shall not be infringed.

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms

[HN11]There seems to the United States Supreme Court no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms. Of course the right was not unlimited, just as the First Amendment's right of free speech was not. Thus, the Supreme Court does not read the Second Amendment to protect the right of citizens to carry arms for "any sort" of confrontation, just as it does not read the First Amendment to protect the right of citizens to speak for "any purpose."

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms

[HN12]In United States v. Miller, the United States Supreme Court explained that the Militia comprised all males physically capable of acting in concert for the common defense. That definition comports with founding-era sources.

Constitutional Law > Congressional Duties & Powers >

General Overview
Military & Veterans Law > Defense Powers > U.S. Congress
[HN13]Unlike armies and navies, which Congress is given the power to create under U.S. Const. art. I, § 8, cls. 12-13, the militia is assumed by U.S. Const. art. I already to be in existence. Congress is given the power to provide for calling forth the militia, U.S. Const. art. I, § 8, cl. 15, and the power not to create, but to organize it--and not to organize "a" militia, which is what one would expect if the militia were to be a federal creation, but to organize "the" militia, connoting a body already in existence, U.S. Const. art. I, § 8, cl. 16. This is fully consistent with the ordinary definition of the militia as all able-bodied men. From that pool, Congress has plenary power to organize the units that will make up an effective fighting force. To be sure, Congress need not conscript every able-bodied man into the militia, because nothing in U.S. Const. art. I suggests that in exercising its power to organize, discipline, and arm the militia, Congress must focus upon the entire body. Although the militia consists of all able-bodied men, the federally organized militia may consist of a subset of them.

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms
[HN14]The adjective "well-regulated" in the Second Amendment implies nothing more than the imposition of proper discipline and training.

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms
[HN15]The phrase "security of a free state" in the Second Amendment means "security of a free polity," not security of each of the several States. The word "state" is used in various senses in the United States Constitution and in its most enlarged sense it means the people composing a particular nation or community. In reference to the Second Amendment's prefatory clause, the militia is the natural defence of a free country. It is true that the term "State" elsewhere in the Constitution refers to individual States, but the phrase "security of a free state" and close variations seem to have been terms of art in 18th-century political discourse, meaning a "free country" or "free polity." Moreover, the other instances of "state" in the Constitution are typically accompanied by modifiers making clear that the reference is to the several States--"each state," "several states," "any state," "that state," "particular states," "one state," "no state." And the presence of the term "foreign state" in U.S. Const. arts. I and III shows that the word "state" did not have a single meaning in the Constitution.

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms
[HN16]The preface fits perfectly with an operative clause that creates an individual right to keep and bear arms under the Second Amendment.

Governments > Courts > Judicial Precedents
Governments > Legislation > Interpretation
[HN17]"Legislative history" refers to the pre-enactment statements of those who drafted or voted for a law; it is considered persuasive by some, not because they reflect the general understanding of the disputed terms, but because the legislators who heard or read those statements presumably voted with that understanding. "Postenactment legislative history," a deprecatory contradiction in terms, refers to statements of those who drafted or voted for the law that are made after its enactment and hence could have had no effect on the congressional vote. It most certainly does not refer to the examination of a variety of legal and other sources to determine the public understanding of a legal text in the period after its enactment or ratification. That sort of inquiry is a critical tool of constitutional interpretation.

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms
[HN18]In United States v. Cruikshank, the United States Supreme Court held that the Second Amendment does not by its own force apply to anyone other than the Federal Government. The opinion explained that the right is not a right granted by the Constitution or in any manner dependent upon that instrument for its existence. The Second Amendment means no more than that it shall not be infringed by Congress. States, the Supreme Court said, were free to restrict or protect the right under their police powers. The limited discussion of the Second Amendment in Cruikshank supports, if anything, the individual-rights interpretation. Cruikshank described the right protected by the Second Amendment as bearing arms for a lawful purpose and said that the people must look for their protection against any violation by their fellow-citizens of the rights it recognizes to the States' police power. That discussion makes little sense if it is only a right to bear arms in a state militia.

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms

[HN19]In considering what types of weapons the United States Supreme Court's decision in United States v. Miller permits, Miller's "ordinary military equipment" language must be read in tandem with what comes after: Ordinarily when called for militia service able-bodied men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time. The traditional militia was formed from a pool of men bringing arms in common use at the time for lawful purposes like self-defense. In the colonial and revolutionary war era, small-arms weapons used by militiamen and weapons used in defense of person and home were one and the same. Indeed, that is precisely the way in which the Second Amendment's operative clause furthers the purpose announced in its preface. The United States Supreme Court therefore reads 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. That accords with the historical understanding of the scope of the right.

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms

Evidence > Inferences & Presumptions > Presumptions > General Overview

[HN20]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. 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. Although the United States Supreme Court does not undertake an exhaustive historical analysis of the full scope of the Second Amendment, nothing in its Heller opinion should be taken to cast doubt on long-standing 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. The Supreme Court identifies these presumptively lawful regulatory measures only as examples; the list does not purport to be exhaustive.

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms

[HN21]The United States Supreme Court recognizes an important limitation on the right to keep and carry arms under the Second Amendment. Miller said that the sorts of weapons protected were those "in common use at the time." The Supreme Court thinks that limitation is fairly supported by the historical tradition of prohibiting the carrying of dangerous and unusual weapons. 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 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 under the Second Amendment cannot change the Supreme Court's interpretation of the right.

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms

[HN22]The inherent right of self-defense has been central to the Second Amendment right. The handgun ban under D.C. Code §§ 7-2501.01(12), 7-2502.01(a), 7-2502.02(a)(4) (2001) 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 the United States Supreme Court has 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 would fail constitutional muster.

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms

[HN23]Rational-basis scrutiny is a mode of analysis the United States Supreme Court has used when evaluating laws under constitutional commands that are themselves prohibitions on irrational laws. In those cases, "rational

basis" is not just the standard of scrutiny, but the very substance of the constitutional guarantee. Obviously, the same test can not be used to evaluate the extent to which a legislature may regulate a specific, enumerated right, be it the freedom of speech, the guarantee against double jeopardy, the right to counsel, or the right to keep and bear arms. If all that was required to overcome the right to keep and bear arms was a rational basis, the Second Amendment would be redundant with the separate constitutional prohibitions on irrational laws, and would have no effect.

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms

[HN24]Handguns are the most popular weapon chosen by Americans for self-defense in the home, and a complete prohibition of their use is invalid.

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms

[HN25]The District of Columbia's requirement under D.C. Code § 7-2507.02 (2001) that firearms in the home be rendered and kept inoperable at all times makes it impossible for citizens to use them for the core lawful purpose of self-defense and is hence unconstitutional under the Second Amendment.

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms

[HN26]The Constitution leaves a variety of tools for combating the problem of handgun violence, including some measures regulating handguns. But the enshrinement of constitutional rights necessarily takes certain policy choices off the table. These include the absolute prohibition of handguns held and used for self-defense in the home.

DECISION:

[***637] Federal Constitution's Second Amendment held violated by District of Columbia's general (1) ban on handgun possession in home, and (2) prohibition against rendering any lawful firearm in home operable for purpose of immediate self-defense.

SUMMARY:

Procedural posture: Petitioner District of Columbia sought certiorari review of a judgment from the United States Court of Appeals for the District of Columbia Circuit which held that the Second Amendment protected an individual's right to possess firearms and that the total ban on handguns under D.C. Code §§ 7-2501.01(12), 7-2502.01(a), 7-2502.02(a)(4), as well as the requirement under D.C. Code § 7-2507.02 that firearms be kept nonfunctional, violated that right.

Overview: Respondent, a special policeman, filed the instant action after the District refused his application to register a handgun. The Court held that the District's ban on handgun possession in the home and its prohibition against rendering any lawful firearm in the home operable for the purposes of immediate self-defense violated the Second Amendment. The Court held that the Second Amendment protected an individual right to possess a firearm unconnected with service in a militia and to use that firearm for traditionally lawful purposes, such as self-defense within the home. The Court determined that the Second Amendment's prefatory clause announced a purpose but did not limit or expand the scope of the operative clause. The operative clause's text and history demonstrated that it connoted an individual right to keep and bear arms, and the Court's reading of the operative clause was consistent with the announced purpose of the prefatory clause. None of the Court's precedents foreclosed its conclusions. The Court held that the Second Amendment right [***638] was not unlimited, and it noted that its opinion should not be taken to cast doubt on certain long-standing prohibitions related to firearms.

Outcome: The Court affirmed the judgment of the Court of Appeals. Assuming respondent was not disqualified from exercising Second Amendment rights, the Court held that the District must permit respondent to register his handgun and must issue him a license to carry it in his home. 5-4 Decision; 2 Dissents.

LAWYERS' EDITION HEADNOTES:

WEAPONS AND FIREARMS §1

SECOND AMENDMENT -- INTERPRETATION

Headnote:[1]

The Second Amendment 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. In interpreting this text, the United States Supreme Court is guided by the principle that the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning. Normal meaning may of course include an idiomatic meaning, but it excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

WEAPONS AND FIREARMS §1

SECOND AMENDMENT -- INTERPRETATION

Headnote:[2]

The Second Amendment is naturally divided into two parts: its prefatory clause and its operative clause. The former does not limit the latter grammatically, but rather announces a purpose. The Second Amendment could be rephrased: 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. Although this structure of the Second Amendment is unique in the United States Constitution, other legal documents of the founding era, particularly individual-rights provisions of state constitutions, commonly included a prefatory statement of purpose. Logic demands that there be a link between the stated purpose and the command. That requirement of logical connection may cause a prefatory clause to resolve an ambiguity in the operative clause. But apart from that clarifying function, a prefatory clause does not limit or expand the scope of the operative clause. It is nothing unusual in acts for the enacting part to go beyond the preamble; the remedy often extends beyond the particular act or mischief which first suggested the necessity of the law. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

STATUTES §119

PREAMBLE -- LIMITS

Headnote:[3]

In America the settled principle of law is that the preamble cannot control the enacting part of the statute in cases where the enacting part is expressed in clear, unambiguous terms. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

[***639]

CONSTITUTIONAL LAW §27WEAPONS AND FIREARMS §1

SECOND AMENDMENT -- PEOPLE -- REPEATED TERM

Headnote:[4]

"The people" seems to have been a term of art employed in select parts of the Constitution. Its uses suggest that "the people" protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with the United States to be considered part of that community. This contrasts markedly with the phrase "the militia" in the prefatory clause of the Second Amendment. The "militia" in colonial America consisted of a subset of "the people"--those who were male, able bodied, and within a certain age range. Reading the Second Amendment as protecting only the right to "keep and bear Arms" in an organized militia therefore fits poorly with the operative clause's description of the holder of that right as "the people." The United States Supreme Court starts therefore with a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

WEAPONS AND FIREARMS §1

ARMS -- MEANING

Headnote:[5]

The 18th-century meaning of "Arms" is no different from the meaning today. The 1773 edition of Samuel Johnson's dictionary defined "arms" as weapons of offence, or armour of defence. Timothy Cunningham's important 1771 legal dictionary defined "arms" as any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another. The term was applied, then as now, to weapons that were not specifically designed for military use and were not

employed in a military capacity. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

CONSTITUTIONAL LAW §925SEARCH AND SEIZURE §5WEAPONS AND FIREARMS §1

MODERN FORMS

Headnote:[6]

In regard to the argument that only those arms in existence in the 18th century are protected by the Second Amendment, the United States Supreme Court does not interpret constitutional rights that way. Just as the First Amendment protects modern forms of communications and the Fourth Amendment applies to modern forms of search, the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

WEAPONS AND FIREARMS §1

KEEP ARMS -- MEANING

Headnote:[7]

The most natural reading of "keep Arms" in the Second Amendment is to "have weapons." (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

[***640]

WEAPONS AND FIREARMS §1

BEAR ARMS -- MEANING

Headnote:[8]

At the time of the founding, as now, to "bear" meant to "carry." When used with "arms," however, the term has a meaning that refers to carrying for a particular purpose--confrontation. In Muscarello v. United States, in the course of analyzing the meaning of "carries a firearm" in a federal criminal statute, Justice Ginsburg wrote that surely a most familiar meaning is, as the Constitution's Second Amendment indicates: 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. The United States Supreme Court thinks that Justice Ginsburg accurately captured the natural meaning of "bear arms." Although the phrase implies that the carrying of the weapon is for the purpose of offensive or defensive action, it in no way connotes participation in a structured military organization. From a review of founding-era sources, the United States Supreme Court concludes that this natural meaning was also the meaning that "bear arms" had in the 18th century. In numerous instances, "bear arms" was unambiguously used to refer to the carrying of weapons outside of an organized militia. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

WEAPONS AND FIREARMS §1

BEAR ARMS -- MEANING

Headnote:[9]

The phrase "bear Arms" had at the time of the founding an idiomatic meaning that was significantly different from its natural meaning: to serve as a soldier, do military service, fight, or to wage war. But it unequivocally bore that idiomatic meaning only when followed by the preposition "against," which was in turn followed by the target of the hostilities. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

CONSTITUTIONAL LAW §925SEARCH AND SEIZURE §5WEAPONS AND FIREARMS §1

INDIVIDUAL RIGHT -- PRE-EXISTENCE

Headnote:[10]

Putting all of the textual elements of the operative clause of the Second Amendment together, the United States Supreme Court finds that they guarantee the individual right to possess and carry weapons in case of confrontation. This meaning is strongly confirmed by the historical background of the Second Amendment. The Supreme Court looks to this because it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right. The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it "shall not be infringed." As the Supreme Court said in United States v. Cruikshank, this is not a

right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The Second Amendment declares that it shall not be infringed. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

CONSTITUTIONAL LAW §927WEAPONS AND FIREARMS §1

INDIVIDUAL RIGHT -- LIMIT

Headnote:[11]

There seems to the United States Supreme Court no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms. Of course the right was not unlimited, just as the First Amendment's right of free speech was not. Thus, the Supreme Court does not read the Second Amendment to protect the right of citizens to carry arms for "any sort" of confrontation, just as it does not read the First Amendment to protect the right of citizens to speak for "any purpose." (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

[***641]

MILITIA §1

DEFINITION

Headnote:[12]

In United States v. Miller, the United States Supreme Court explained that the Militia comprised all males physically capable of acting in concert for the common defense. That definition comports with founding-era sources. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

MILITIA §1 MILITIA §2 MILITIA §3

DEFINITION -- ORGANIZATION -- CALLING FORTH

Headnote:[13]

Unlike armies and navies, which Congress is given the power to create under U.S. Const. art. I, § 8, cls. 12-13, the militia is assumed by U.S. Const. art. I already to be in existence. Congress is given the power to provide for calling forth the militia, U.S. Const. art. I, § 8, cl. 15, and the power not to create, but to organize it--and not to organize "a" militia, which is what one would expect if the militia were to be a federal creation, but to organize "the" militia, connoting a body already in existence, U.S. Const. art. I, § 8, cl. 16. This is fully consistent with the ordinary definition of the militia as all able-bodied men. From that pool, Congress has plenary power to organize the units that will make up an effective fighting force. To be sure, Congress need not conscript every able-bodied man into the militia, because nothing in U.S. Const. art. I suggests that in exercising its power to organize, discipline, and arm the militia, Congress must focus upon the entire body. Although the militia consists of all able-bodied men, the federally organized militia may consist of a subset of them. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

WEAPONS AND FIREARMS §1

SECOND AMENDMENT -- IMPLICATION

Headnote:[14]

The adjective "well-regulated" in the Second Amendment implies nothing more than the imposition of proper discipline and training. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

CONSTITUTIONAL LAW §27MILITIA §1

SECOND AMENDMENT -- MEANING -- REPEATED TERM

Headnote:[15]

The phrase "security of a free state" in the Second Amendment means "security of a free polity," not security of each of the several States. The word "state" is used in various senses in the United States Constitution and in its most enlarged sense it means the people composing a particular nation or community. In reference to the Second Amendment's prefatory clause, the militia is the natural defence of a free country. It is true that the term "State" elsewhere in the Constitution refers to individual States, but the phrase "security of a free state" and close variations seem to have been terms of art in 18th-century political discourse, meaning a "free country" or "free polity." Moreover, the other instances of "state" in the Constitution are typically accompanied

by modifiers making clear that the reference is to the several States--"each state," "several states," "any state," "that state," "particular states," "one state," "no state." And the presence of the term "foreign state" in U.S. Const. arts. I and III shows that the word "state" did not have a single meaning in the Constitution. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

[***642]

WEAPONS AND FIREARMS §1

SECOND AMENDMENT -- INTERPRETATION

Headnote:[16]

The preface fits perfectly with an operative clause that creates an individual right to keep and bear arms under the Second Amendment. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

CONSTITUTIONAL LAW §15STATUTES §143 STATUTES §151.5

LEGISLATIVE HISTORY -- PUBLIC UNDERSTANDING

Headnote:[17]

"Legislative history" refers to the pre-enactment statements of those who drafted or voted for a law; it is considered persuasive by some, not because they reflect the general understanding of the disputed terms, but because the legislators who heard or read those statements presumably voted with that understanding. "Postenactment legislative history," a deprecatory contradiction in terms, refers to statements of those who drafted or voted for the law that are made after its enactment and hence could have had no effect on the congressional vote. It most certainly does not refer to the examination of a variety of legal and other sources to determine the public understanding of a legal text in the period after its enactment or ratification. That sort of inquiry is a critical tool of constitutional interpretation. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

WEAPONS AND FIREARMS §1

SECOND AMENDMENT -- INTERPRETATION

Headnote:[18]

In United States v. Cruikshank, the United States Supreme Court held that the Second Amendment does not by its own force apply to anyone other than the Federal Government. The opinion explained that the right is not a right granted by the Constitution or in any manner dependent upon that instrument for its existence. The Second Amendment means no more than that it shall not be infringed by Congress. States, the Supreme Court said, were free to restrict or protect the right under their police powers. The limited discussion of the Second Amendment in Cruikshank supports, if anything, the individual-rights interpretation. Cruikshank described the right protected by the Second Amendment as bearing arms for a lawful purpose and said that the people must look for their protection against any violation by their fellow-citizens of the rights it recognizes to the States' police power. That discussion makes little sense if it is only a right to bear arms in a state militia. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

[***643]

WEAPONS AND FIREARMS §1

SECOND AMENDMENT -- TYPES OF WEAPONS

Headnote:[19]

In considering what types of weapons the United States Supreme Court's decision in United States v. Miller permits, Miller's "ordinary military equipment" language must be read in tandem with what comes after: Ordinarily when called for militia service able-bodied men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time. The traditional militia was formed from a pool of men bringing arms in common use at the time for lawful purposes like self-defense. In the colonial and revolutionary war era, small-arms weapons used by militiamen and weapons used in defense of person and home were one and the same. Indeed, that is precisely the way in which the Second Amendment's operative clause furthers the purpose announced in its preface. The United States Supreme Court therefore reads 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. That accords with the historical understanding of the scope of the right. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

WEAPONS AND FIREARMS §1

SECOND AMENDMENT -- LIMITS ON RIGHT

Headnote:[20]

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. 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. Although the United States Supreme Court does not undertake an exhaustive historical analysis of the full scope of the Second Amendment, nothing in its Heller opinion should be taken to cast doubt on long-standing 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. The Supreme Court identifies these presumptively lawful regulatory measures only as examples; the list does not purport to be exhaustive. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

WEAPONS AND FIREARMS §1

SECOND AMENDMENT -- TYPES OF WEAPONS

Headnote:[21]

The United States Supreme Court recognizes an important limitation on the right to keep and carry arms under the Second Amendment. Miller said that the sorts of weapons protected were those "in common use at the time." The Supreme Court thinks that limitation is fairly supported by the historical tradition of prohibiting the carrying of dangerous and unusual weapons. 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 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 under the Second Amendment cannot change the Supreme Court's interpretation of the right. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

[***644]

WEAPONS AND FIREARMS §1

SECOND AMENDMENT -- SELF-DEFENSE -- HANDGUN BAN

Headnote:[22]

The inherent right of self-defense has been central to the Second Amendment right. The handgun ban under D.C. Code §§ 7-2501.01(12), 7-2502.01(a), 7-2502.02(a)(4) (2001) 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 the United States Supreme Court has 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 would fail constitutional muster. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

CONSTITUTIONAL LAW §316.2 CONSTITUTIONAL LAW §927CRIMINAL LAW §22 CRIMINAL LAW §46.3WEAPONS AND FIREARMS §1

RATIONAL-BASIS SCRUTINY -- WHEN USED

Headnote:[23]

Rational-basis scrutiny is a mode of analysis the United States Supreme Court has used when evaluating laws under constitutional commands that are themselves prohibitions on irrational laws. In those cases, "rational basis" is not just the standard of scrutiny, but the very substance of the constitutional guarantee. Obviously, the same test can not be used to evaluate the extent to which a legislature may regulate a specific, enumerated right, be it the freedom of speech, the guarantee against double jeopardy, the right to counsel, or the right to keep and bear arms. If all that was required to overcome the right to keep and bear arms was a rational basis, the Second Amendment would be redundant with the separate constitutional prohibitions on irrational laws, and would have no effect. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

WEAPONS AND FIREARMS §1

HANDGUNS -- PROHIBITION

Headnote:[24]

Handguns are the most popular weapon chosen by Americans for self-defense in the home, and a complete prohibition of their use is invalid. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

WEAPONS AND FIREARMS §1

SECOND AMENDMENT -- INOPERABLE FIREARMS

Headnote:[25]

The District of Columbia's requirement under D.C. Code § 7-2507.02 (2001) that firearms in the home be rendered and kept inoperable at all times makes it impossible for citizens to use them for the core lawful purpose of self-defense and is hence unconstitutional under the Second Amendment. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

[***645]

WEAPONS AND FIREARMS §1

HANDGUNS -- REGULATION

Headnote:[26]

The Constitution leaves a variety of tools for combating the problem of handgun violence, including some measures regulating handguns. But the enshrinement of constitutional rights necessarily takes certain policy choices off the table. These include the absolute prohibition of handguns held and used for self-defense in the home. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Thomas, and Alito, JJ.)

SYLLABUS

District of Columbia law bans handgun possession by making it a crime to carry an unregistered firearm and prohibiting the registration of handguns; provides separately that no person may carry an unlicensed handgun, but authorizes the police chief to issue 1-year licenses; and requires residents to keep lawfully owned firearms unloaded and dissembled or bound by a trigger lock or similar device. Respondent Heller, a D. C. special policeman, applied to register a handgun he wished to keep at home, but the District refused. He filed this suit seeking, on Second Amendment [***646] grounds, to enjoin the city from enforcing the bar on handgun registration, the licensing requirement insofar as it prohibits carrying an unlicensed firearm in the home, and the trigger-lock requirement insofar as it prohibits the use of functional firearms in the home. The District Court dismissed the suit, but the D. C. Circuit reversed, holding that the Second Amendment protects an individual's right to possess firearms and that the city's total ban on handguns, as well as its requirement that firearms in the home be kept nonfunctional even when necessary for self-defense, violated that right.

Held:

1. The Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home. Pp. 576-626.

(a) The Amendment's prefatory clause announces a purpose, but does not limit or expand the scope of the second part, the operative clause. The operative clause's text and history demonstrate that it connotes an individual right to keep and bear arms. Pp. 576-595.

(b) The prefatory clause comports with the Court's

interpretation of the operative clause. The "militia" comprised all males physically capable of acting in concert for the common defense. The Antifederalists feared that the Federal Government would disarm the people in order to disable this citizens' militia, enabling a politicized standing army or a select militia to rule. The response was to deny Congress power to abridge the ancient right of individuals to keep and bear arms, so that the ideal of a citizens' militia would be preserved. Pp. 595-600.

(c) The Court's interpretation is confirmed by analogous arms-bearing rights in state constitutions that preceded and immediately followed the Second Amendment. Pp. 600-603.

(d) The Second Amendment's drafting history, while of dubious interpretive worth, reveals three state Second Amendment proposals that unequivocally referred to an individual right to bear arms. Pp. 603-605.

(e) Interpretation of the Second Amendment by scholars, courts, and legislators, from immediately after its ratification through the late 19th century, also supports the Court's conclusion. Pp. 605-619.

(f) None of the Court's precedents forecloses the Court's interpretation. Neither *United States v. Cruikshank*, 92 U.S. 542, 553, 23 L. Ed. 588, nor *Presser v. Illinois*, 116 U.S. 252, 264-265, 6 S. Ct. 580, 29 L. Ed. 615, refutes the individual-rights interpretation. *United States v. Miller*, 307 U.S. 174, 59 S. Ct. 816, 83 L. Ed. 1206, 1939-1 C.B. 373, does not limit the right to keep and bear arms to militia purposes, but rather limits the type of weapon to which the right applies to those used by the militia, *i.e.*, those in common use for lawful purposes. Pp. 619-626.

2. Like most rights, the Second Amendment right is not unlimited. It is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose: For example, concealed weapons prohibitions have been upheld under the Amendment or state analogues. The Court's opinion should not 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. *Miller*'s holding that the sorts [***647] of weapons protected are those "in common use at the time" finds support in the historical tradition of prohibiting the carrying of dangerous and unusual weapons. Pp. 626-628.

3. The handgun ban and the trigger-lock requirement (as applied to self-defense) violate the Second Amendment. The District's total ban on handgun possession in the home amounts to a prohibition on an entire class of "arms" that Americans overwhelmingly choose for the lawful purpose of self-defense. Under any of the standards of scrutiny the Court has applied to enumerated constitutional rights, this prohibition--in the place where the importance of the lawful defense of self, family, and property is most acute--would fail constitutional muster. Similarly, the requirement that any lawful firearm in the home be disassembled or bound by a trigger lock makes it impossible for citizens to use arms for the core lawful purpose of self-defense and is hence unconstitutional. Because Heller conceded at oral argument that the D. C. licensing law is permissible if it is not enforced arbitrarily and capriciously, the Court assumes that a license will satisfy his prayer for relief and does not address the licensing requirement. Assuming he is not disqualified from exercising Second Amendment rights, the District must permit Heller to register his handgun and must issue him a license to carry it in the home. Pp. 628-636.

375 U.S. App. D.C. 140, 478 F.3d 370, affirmed.

COUNSEL: Walter Dellinger argued the cause for petitioners.

Paul D. Clement argued the cause for the United States, as amicus curiae, by special leave of the court.

Alan Gura argued the cause for respondent

JUDGES: Scalia, J., delivered the opinion of the Court, in which Roberts, C. J., and Kennedy, Thomas, and Alito, JJ., joined. Stevens, J., filed a dissenting opinion, in which Souter, Ginsburg, and Breyer, JJ., joined, *post*, p. 636. Breyer, J., filed a dissenting opinion, in which Stevens, Souter, and Ginsburg, JJ., joined, *post*, p. 681.

OPINION BY: SCALIA

OPINION

[*573] [**2787] Justice **Scalia** delivered the opinion of the Court.

We consider whether a District of Columbia prohibition on the possession of [**2788] usable handguns in the home violates the Second Amendment to the Constitution.

[*574] I

The District of Columbia generally prohibits the possession of handguns. It is a crime to carry an unregistered [*575] firearm, and the registration of handguns is prohibited. See D. C. Code §§ 7-2501.01(12), 7-2502.01(a), 7-2502.02(a)(4) (2001). Wholly apart from that prohibition, no person may carry a handgun without a license, but the chief of police may issue licenses for 1-year periods. See §§ 22-4504(a), 22-4506. District of Columbia law 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. See § 7-2507.02.[1]

1 There are minor exceptions to all of these prohibitions, none of which is relevant here.

Respondent Dick Heller is a D. C. special police officer authorized to carry a handgun while on duty at the Thurgood Marshall Judiciary Building. He applied for a registration certificate for a handgun that he wished to keep at home, but the District refused. He thereafter filed a lawsuit in the Federal District Court for the District of [***648] Columbia seeking, [*576] on Second Amendment grounds, to enjoin the city from enforcing the bar on the registration of handguns, the licensing requirement insofar as it prohibits the carrying of a firearm in the home without a license, and the trigger-lock requirement insofar as it prohibits the use of "functional firearms within the home." App. 59a. The District Court dismissed respondent's complaint, see *Parker* v. *District of Columbia*, 311 F. Supp. 2d 103, 109 (2004). The Court of Appeals for the District of Columbia Circuit, construing his complaint as seeking the right to render a firearm operable and carry it about his home in that condition only when necessary for self-defense,[2] reversed, see *Parker* v. *District of Columbia*, 375 U.S. App. D.C. 140, 478 F.3d 370, 401 (2007). It held that the Second Amendment protects an individual right to possess firearms and that the city's total ban on handguns, as well as its requirement that firearms in the home be kept nonfunctional even when necessary for self-defense, violated that right. See *id.*, at 395, 399-401. The Court of Appeals directed the District Court to enter summary judgment for respondent.

2 That construction has not been challenged here.

We granted certiorari. 552 U.S. 1035, 128 S. Ct. 645, 169 L. Ed. 2d 417 (2007).

II

We turn first to the meaning of the Second Amendment.

A

[HN1] [***LEdHR1] [1] The Second Amendment 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." In interpreting this text, we are guided by the principle that "[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." *United States* v. *Sprague*, 282 U.S. 716, 731, 51 S. Ct. 220, 75 L. Ed. 640 (1931); see also *Gibbons* v. *Ogden*, 22 U.S. 1, 9 Wheat. 1, 188, 6 L. Ed. 23 (1824). Normal meaning may of [*577] course include an idiomatic meaning, but it excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation.

[**2789] The two sides in this case have set out very different interpretations of the Amendment. Petitioners and today's dissenting Justices believe that it protects only the right to possess and carry a firearm in connection with militia service. See Brief for Petitioners 11-12; *post*, at 636-637, 171 L. Ed. 2d, at 684 (Stevens, J., dissenting). Respondent argues that it protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home. See Brief for Respondent 2-4.

[HN2] [***LEdHR2] [2] The Second Amendment is naturally divided into two parts: its prefatory clause and its operative clause. The former does not limit the latter grammatically, but rather announces a purpose. The Amendment could be rephrased, "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." See J. Tiffany, A Treatise on Government and Constitutional Law § 585, p 394 (1867); Brief for Professors of Linguistics and English as *Amici Curiae* 3 (hereinafter Linguists' [***649] Brief). Although this structure of the Second Amendment is unique in our Constitution, other legal documents of the founding era, particularly individual-rights provisions of state constitutions, commonly included a prefatory statement of purpose. See generally Volokh, The Commonplace Second Amendment, 73 N. Y. U. L. Rev. 793, 814-821 (1998).

Logic demands that there be a link between the stated purpose and the command. The Second Amendment would be nonsensical if it read, "A well regulated Militia, being necessary to the security of a free State, the right of the people to petition for redress of grievances shall not be infringed." That requirement of logical connection may cause a prefatory clause to resolve an ambiguity in the operative clause. ("The [*578] separation of church and state being an important objective, the teachings of canons shall have no place in our jurisprudence." The preface makes clear that the operative clause refers not to canons of interpretation but to clergymen.) But apart from that clarifying function, a prefatory clause does not limit or expand the scope of the operative clause. See F. Dwarris, A General Treatise on Statutes 268-269 (P. Potter ed. 1871); T. Sedgwick, The Interpretation and Construction of Statutory and Constitutional Law 42-45 (2d ed. 1874).[3] "'It is nothing unusual in acts . . . for the enacting part to go beyond the preamble; the remedy often extends beyond the particular act or mischief which first suggested the necessity of the law.'" J. Bishop, Commentaries on Written Laws and Their Interpretation § 51, p 49 (1882) (quoting *Rex* v. *Marks*, 3 East 157, 165, 102 Eng. Rep. 557, 560 (K. B. 1802)). Therefore, while we will begin [**2790] 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.[4]

3 As Sutherland explains, the key 18th-century English case on the effect of preambles, *Copeman* v. *Gallant*, 1 P. Wms. 314, 24 Eng. Rep. 404 (1716), stated that "the preamble could not be used to restrict the effect of the words of the purview." 2A N. Singer, Sutherland on Statutory Construction §47.04, pp. 145-146 (rev. 5th ed. 1992). This rule was modified in England in an 1826 case to give more importance to the preamble, but [HN3] [***LEdHR3] [3] in America "the settled principle of law is that the preamble cannot control the enacting part of the statute in cases where the enacting part is expressed in clear, unambiguous terms." *Id.*, at 146.

Justice Stevens says that we violate the general rule that every clause in a statute must have effect. *Post*, at 643, 171 L. Ed. 2d, at 688. But where the text of a clause itself indicates that it does not have operative effect, such as "whereas" clauses in federal legislation or the Constitution's preamble, a court has no license to make it do what it was not designed to do. Or to put the point differently, operative provisions should be given effect as operative provisions, and prologues as prologues.

4 Justice Stevens criticizes us for discussing the prologue last. *Ibid.* But if a prologue can be used only to clarify an ambiguous operative provision, surely the first step must be to determine whether the operative provision is ambiguous. It might be argued, we suppose, that the prologue itself should be one of the factors that go into the determination of whether the operative provision is ambiguous--but that would cause the prologue to be used to produce ambiguity rather than just to resolve it. In any event, even if we considered the prologue *along with* the operative provision we would reach the same result we do today, since (as we explain) our interpretation of "the right of the people to keep and bear arms" furthers the purpose of an effective militia no less than (indeed, more than) the dissent's interpretation. See *infra*, at 599-600, 171 L. Ed. 2d, at 662.

[*579] **1. Operative Clause.**

a. "Right of the People." The first salient feature of the operative clause is that it codifies a "right of the [***650] people." The unamended Constitution and the Bill of Rights use the phrase "right of the people" two other times, in the First Amendment's Assembly-and-Petition Clause and in the Fourth Amendment's Search-and-Seizure Clause. The Ninth Amendment uses very similar terminology ("The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by

the people"). All three of these instances unambiguously refer to individual rights, not "collective" rights, or rights that may be exercised only through participation in some corporate body.[5]

> 5 Justice Stevens is of course correct, *post*, at 645, 171 L. Ed. 2d, at 689, that the right to assemble cannot be exercised alone, but it is still an individual right, and not one conditioned upon membership in some defined "assembly," as he contends the right to bear arms is conditioned upon membership in a defined militia. And Justice Stevens is dead wrong to think that the right to petition is "primarily collective in nature." *Ibid*. See *McDonald* v. *Smith*, 472 U.S. 479, 482-484, 105 S. Ct. 2787, 86 L. Ed. 2d 384 (1985) (describing historical origins of right to petition).

Three provisions of the Constitution refer to "the people" in a context other than "rights"--the famous preamble ("We the people"), § 2 of Article I (providing that "the people" will choose members of the House), and the Tenth Amendment (providing that those powers not given the Federal Government remain with "the States" or "the people"). Those provisions arguably refer to "the people" acting collectively--but [*580] they deal with the exercise or reservation of powers, not rights. Nowhere else in the Constitution does a "right" attributed to "the people" refer to anything other than an individual right.[6]

> 6 If we look to other founding-era documents, we find that some state constitutions used the term "the people" to refer to the people collectively, in contrast to "citizen," which was used to invoke individual rights. See Heyman, Natural Rights and the Second Amendment, in The Second Amendment in Law and History 179, 193-195 (C. Bogus ed. 2000) (hereinafter Bogus). But that usage was not remotely uniform. See, *e.g.*, N. C. Declaration of Rights § XIV (1776), in 5 The Federal and State Constitutions, Colonial Charters, and Other Organic Laws 2787, 2788 (F. Thorpe ed. 1909) (hereinafter Thorpe) (jury trial); Md. Declaration of Rights § XVIII (1776), in 3 *id.*, at 1686, 1688 (vicinage requirement); Vt. Declaration of Rights, ch. 1, § XI (1777), in 6 *id.*, at 3737, 3741 (searches and seizures); Pa. Declaration of Rights § XII (1776), in 5 *id.*, at 3082, 3083 (free speech). And, most importantly, it was clearly not the terminology used in the Federal Constitution, given the First, Fourth, and Ninth Amendments.

What is more, in all six other provisions of the Constitution that mention "the people," the term unambiguously refers to all members of the political community, not [**2791] an unspecified subset. As we said in *United States* v. *Verdugo-Urquidez*, 494 U.S. 259, 265, 110 S. Ct. 1056, 108 L. Ed. 2d 222 (1990):

> [HN4] [***LEdHR4] [4] "'[T]he people' seems to have been a term of art employed in select parts of the Constitution. . . . [Its uses] sugges[t] that 'the people' protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community."

This contrasts markedly with the phrase "the militia" in the prefatory clause. As we will describe below, the "militia" in colonial America consisted of a subset of "the people"--those who were male, able bodied, and within a [***651] certain age range. Reading the Second Amendment as protecting only the right [*581] to "keep and bear Arms" in an organized militia therefore fits poorly with the operative clause's description of the holder of that right as "the people."

We start therefore with a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans.

b. "Keep and Bear Arms." We move now from the holder of the right--"the people"--to the substance of the right: "to keep and bear Arms."

Before addressing the verbs "keep" and "bear," we interpret their object: "Arms." [HN5] [***LEdHR5] [5] The 18th-century meaning is no different from the meaning today. The 1773 edition of Samuel Johnson's dictionary defined "arms" as "[w]eapons of offence, or armour of defence." 1 Dictionary of the English

Language 106 (4th ed.) (reprinted 1978) (hereinafter Johnson). Timothy Cunningham's important 1771 legal dictionary defined "arms" as "any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another." 1 A New and Complete Law Dictionary; see also N. Webster, American Dictionary of the English Language (1828) (reprinted 1989) (hereinafter Webster) (similar).

The term was applied, then as now, to weapons that were not specifically designed for military use and were not employed in a military capacity. For instance, Cunningham's legal dictionary gave as an example of usage: "Servants and labourers shall use bows and arrows on *Sundays*, &c. and not bear other arms." See also, *e.g.*, An Act for the trial of Negroes, 1797 Del. Laws ch. XLIII, § 6, in 1 First Laws of the State of Delaware 102, 104 (J. Cushing ed. 1981 (pt. 1)); see generally *State* v. *Duke*, 42 Tex. 455, 458 (1874) (citing decisions of state courts construing "arms"). Although one founding-era thesaurus limited "arms" (as opposed to "weapons") to "instruments of offence *generally* made use of in war," even that source stated that all firearms constituted "arms." 1 J. Trusler, The Distinction Between Words Esteemed [*582] Synonymous in the English Language 37 (3d ed. 1794) (emphasis added).

Some have made the argument, bordering on the frivolous, [HN6] [***LEdHR6] [6] that only those arms in existence in the 18th century are protected by the Second Amendment. We do not interpret constitutional rights that way. Just as the First Amendment protects modern forms of communications, *e.g.*, *Reno v. ACLU*, 521 U.S. 844, 849, 117 S. Ct. 2329, 138 L. Ed. 2d 874 (1997), and the Fourth Amendment applies to modern forms of search, *e.g.*, *Kyllo* v. *United States*, 533 U.S. 27, 35-36, 121 S. Ct. 2038, 150 L. Ed. 2d 94 (2001), the Second Amendment extends, [**2792] prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.

We turn to the phrases "keep arms" and "bear arms." Johnson defined "keep" as, most relevantly, "[t]o retain; not to lose," and "[t]o have in custody." Johnson 1095. Webster defined it as "[t]o hold; to retain in one's power or possession." No party has apprised us of an idiomatic meaning of "keep Arms." Thus, [HN7] [***LEdHR7] [7] the most natural reading of "keep Arms" in the Second Amendment is to "have weapons."

The phrase "keep arms" was not prevalent in the written documents of [***652] the founding period that we have found, but there are a few examples, all of which favor viewing the right to "keep Arms" as an individual right unconnected with militia service. William Blackstone, for example, wrote that Catholics convicted of not attending service in the Church of England suffered certain penalties, one of which was that they were not permitted to "keep arms in their houses." 4 Commentaries on the Laws of England 55 (1769) (hereinafter Blackstone); see also 1 W. & M., ch. 15, § 4, in 3 Eng. Stat. at Large 422 (1689) ("[N]o Papist . . . shall or may have or keep in his House . . . any Arms . . ."); 1 W. Hawkins, Treatise on the Pleas of the Crown 26 (1771) (similar). Petitioners point to militia laws of the founding period that required militia members to "keep" arms in connection with [*583] militia service, and they conclude from this that the phrase "keep Arms" has a militia-related connotation. See Brief for Petitioners 16-17 (citing laws of Delaware, New Jersey, and Virginia). This is rather like saying that, since there are many statutes that authorize aggrieved employees to "file complaints" with federal agencies, the phrase "file complaints" has an employment-related connotation. "Keep arms" was simply a common way of referring to possessing arms, for militiamen *and everyone else.*[7]

7 See, *e.g.*, 3 A Compleat Collection of State-Tryals 185 (1719) ("Hath not every Subject power to keep Arms, as well as Servants in his House for defence of his Person?"); T. Wood, A New Institute of the Imperial or Civil Law 282 (4th ed. corrected 1730) ("Those are guilty of *publick* Force, who keep Arms in their Houses, and make use of them otherwise than upon Journeys or Hunting, or for Sale . . ."); A Collection of All the Acts of Assembly, Now in Force, in the Colony of Virginia 596 (1733) ("Free Negros, Mulattos, or Indians, and Owners of Slaves, seated at Frontier Plantations, may obtain Licence from a Justice of Peace, for keeping Arms, &*c*."); J. Ayliffe, A New Pandect of *Roman* Civil Law 195 (1734) ("Yet a Person might keep Arms in his House, or on his Estate, on the Account of Hunting, Navigation, Travelling, and on the Score of Selling them in the way of Trade or Commerce, or such Arms as accrued to him by way of Inheritance"); J. Trusler, A Concise View of the Common Law and Statute Law of England 270 (1781) ("[I]f [papists] keep arms in their houses, such arms

may be seized by a justice of the peace"); Some Considerations on the Game Laws 54 (1796) ("Who has been deprived by [the law] of keeping arms for his own defence? What law forbids the veriest pauper, if he can raise a sum sufficient for the purchase of it, from mounting his Gun on his Chimney Piece . . .?"); 3 B. Wilson, The Works of the Honourable James Wilson 84 (1804) (with reference to state constitutional right: "This is one of our many renewals of the Saxon regulations. 'They were bound,' says Mr. Selden, 'to keep arms for the preservation of the kingdom, and of their own persons'"); W. Duer, Outlines of the Constitutional Jurisprudence of the United States 31-32 (1833) (with reference to colonists' English rights: "The right of every individual to keep arms for his defence, suitable to his condition and degree; which was the public allowance, under due restrictions of the natural right of resistance and self-preservation"); 3 R. Burn, Justice of the Peace and Parish Officer 88 (29th ed. 1845) ("It is, however, laid down by Serjeant *Hawkins*, . . . that if a lessee, after the end of the term, keep arms in his house to oppose the entry of the lessor, . . ."); *State* v. *Dempsey*, 31 N. C. 384, 385 (1849) (citing 1840 state law making it a misdemeanor for a member of certain racial groups "to carry about his person or keep in his house any shot gun or other arms").

[*584] [***LEdHR8] [8] [**2793] [HN8]At the time of the founding, as now, to "bear" meant to "carry." See Johnson 161; Webster; T. Sheridan, A Complete Dictionary of the English Language (1796); 2 Oxford English Dictionary 20 (2d ed. 1989) (hereinafter Oxford). When used with "arms," however, the term has a meaning that refers to carrying for a particular purpose--confrontation. In *Muscarello* v. *United States*, 524 U.S. 125, 118 S. Ct. 1911, 141 L. Ed. 2d 111 (1998), in the course of analyzing the meaning of "carries a firearm" in a federal criminal statute, Justice Ginsburg [***653] wrote that "[s]urely a most familiar meaning is, as the Constitution's Second Amendment . . . indicate[s]: '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.'" *Id.*, at 143, 118 S. Ct. 1911, 141 L. Ed. 2d 111 (dissenting opinion) (quoting Black's Law Dictionary 214 (6th ed. 1990)). We think that Justice Ginsburg accurately captured the natural meaning of "bear arms." Although the phrase implies that the carrying of the weapon is for the purpose of "offensive or defensive action," it in no way connotes participation in a structured military organization.

From our review of founding-era sources, we conclude that this natural meaning was also the meaning that "bear arms" had in the 18th century. In numerous instances, "bear arms" was unambiguously used to refer to the carrying of weapons outside of an organized militia. The most prominent examples are those most relevant to the Second Amendment: 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 themselves and the state" or "bear arms in defense of himself and [*585] the state."[8] It is clear from those formulations that "bear arms" did not refer only to carrying a weapon in an organized military unit. Justice James Wilson interpreted the Pennsylvania Constitution's arms-bearing right, for example, as a recognition of the natural right of defense "of one's person or house"--what he called the law of "self preservation." 2 Collected Works of James Wilson 1142, and n x (K. Hall & M. Hall eds. 2007) (citing Pa. Const., Art. IX, § 21 (1790)); see also T. Walker, Introduction to American Law 198 (1837) [**2794] ("Thus the right of self-defence [is] guaranteed by the [Ohio] constitution"); see also *id.*, at 157 (equating Second Amendment with that provision of the Ohio Constitution). That was also the interpretation of those state constitutional provisions adopted by pre-Civil War state courts.[9] These provisions [*586] demonstrate--again, in the most analogous linguistic context--that "bear arms" [***654] was not limited to the carrying of arms in a militia.

8 See Pa. Declaration of Rights § XIII, in 5 Thorpe 3083 ("That the people have a right to bear arms for the defence of themselves and the state . . ."); Vt. Declaration of Rights, Ch. 1, § XV, in 6 *id.*, at 3741 ("That the people have a right to bear arms for the defence of themselves and the State . . ."); Ky. Const., Art. XII, § 23 (1792), in 3 *id.*, at 1264, 1275 ("That the right of the citizens to bear arms in defence of themselves and the State shall not be questioned"); Ohio Const., Art. VIII, § 20 (1802), in 5 *id.*, at 2901, 2911 ("That the people have a right to bear arms for the defence of themselves and the State . . ."); Ind. Const., Art. I, § 20 (1816), in 2 *id.*, at 1057,

1059 ("That the people have a right to bear arms for the defense of themselves and the State . . ."); Miss. Const., Art. I, § 23 (1817), in 4 *id.*, at 2032, 2034 ("Every citizen has a right to bear arms, in defence of himself and the State"); Conn. Const., Art. First, § 17 (1818), in 1 *id.*, at 536, 538 ("Every citizen has a right to bear arms in defense of himself and the state"); Ala. Const., Art. I, § 23 (1819), in *id.*, at 96, 98 ("Every citizen has a right to bear arms in defence of himself and the State"); Mo. Const., Art. XIII, § 3 (1820), in 4 *id.*, at 2150, 2163 ("[T]hat their right to bear arms in defence of themselves and of the State cannot be questioned"). See generally Volokh, State Constitutional Rights to Keep and Bear Arms, 11 Tex. Rev. L. & Politics 191 (2006).

9 See *Bliss* v. *Commonwealth*, 12 Ky. 90, 2 Litt. 90, 91-92 (Ky. 1822); *State* v. *Reid*, 1 Ala. 612, 616-617 (1840); *State* v. *Schoultz*, 25 Mo. 128, 155 (1857); see also *Simpson* v. *State*, 13 Tenn. 356, 5 Yer. 356, 360 (Tenn. 1833) (interpreting similar provision with "'common defence'" purpose); *State* v. *Huntly*, 25 N. C. 418, 422-423 (1843) (same); cf. *Nunn* v. *State*, 1 Ga. 243, 250-251 (1846) (construing Second Amendment); *State* v. *Chandler*, 5 La. Ann. 489, 489-490 (1850) (same).

[HN9] [***LEdHR9] [9] The phrase "bear Arms" also had at the time of the founding an idiomatic meaning that was significantly different from its natural meaning: "to serve as a soldier, do military service, fight" or "to wage war." See Linguists' Brief 18; *post*, at 646, 171 L. Ed. 2d, at 690 (Stevens, J., dissenting). But it *unequivocally* bore that idiomatic meaning only when followed by the preposition "against," which was in turn followed by the target of the hostilities. See 2 Oxford 21. (That is how, for example, our Declaration of Independence P 28 used the phrase: "He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country . . . .") Every example given by petitioners' *amici* for the idiomatic meaning of "bear arms" from the founding period either includes the preposition "against" or is not clearly idiomatic. See Linguists' Brief 18-23. Without the preposition, "bear arms" normally meant (as it continues to mean today) what Justice Ginsburg's opinion in *Muscarello* said.

In any event, the meaning of "bear arms" that petitioners and Justice Stevens propose is *not even* the (sometimes) idiomatic meaning. Rather, they manufacture a hybrid definition, whereby "bear arms" connotes the actual carrying of arms (and therefore is not really an idiom) but only in the service of an organized militia. No dictionary has ever adopted that definition, and we have been apprised of no source that indicates that it carried that meaning at the time of the founding. But it is easy to see why petitioners and the dissent are driven to the hybrid definition. Giving "bear Arms" its idiomatic meaning would cause the protected right to consist of the right to be a soldier or to wage war--an absurdity that no commentator has ever endorsed. See L. Levy, Origins of the Bill of Rights 135 (1999). Worse still, [*587] the phrase "keep and bear Arms" would be incoherent. The word "Arms" would have two different meanings at once: "weapons" (as the object of "keep") and (as the object of "bear") one-half of an idiom. It would be rather like saying "He filled and kicked the bucket" to mean "He filled the bucket and died." Grotesque.

Petitioners justify their limitation of "bear arms" to the military context by pointing out the unremarkable fact that it was often used in that context--the same mistake they made with respect to "keep arms." It is especially unremarkable that the phrase was often used in a military context in the federal legal sources (such as records of congressional debate) that have been the focus of petitioners' inquiry. Those sources would have had little occasion to use it *except* in discussions about the standing army and the militia. And the phrases used primarily in those military discussions include not only "bear arms" but also "carry arms," "possess arms," and "have arms"--though no one [**2795] thinks that those *other* phrases also had special military meanings. See Barnett, Was the Right to Keep and Bear Arms Conditioned on Service in an Organized Militia? 83 Texas L. Rev. 237, 261 (2004). The common references to those "fit to bear arms" in congressional discussions about the militia are matched by use of the same phrase in the few nonmilitary federal contexts where the concept would be relevant. See, *e.g.*, 30 Journals of Continental Congress 349-351 (J. Fitzpatrick [***655] ed. 1934). Other legal sources frequently used "bear arms" in nonmilitary contexts.[10] Cunningham's legal dictionary, cited [*588] above, gave as an example of its usage a sentence unrelated to military affairs ("Servants and labourers shall use bows and arrows on *Sundays*, &c. and not bear other arms"). And if one looks beyond legal sources, "bear arms" was frequently used in nonmilitary contexts. See Cramer &

Olson, What Did "Bear Arms" Mean in the Second Amendment? 6 Georgetown J. L. & Pub. Pol'y 511 (2008) (identifying numerous nonmilitary uses of "bear arms" from the founding period).

> 10 See J. Brydall, Privilegia Magnatud apud Anglos 14 (1704) (Privilege XXXIII) ("In the 21st Year of King Edward the Third, a Proclamation Issued, that no Person should bear any Arms within London, and the Suburbs"); J. Bond, A Compleat Guide to Justices of the Peace 43 (3d ed. 1707) ("Sheriffs, and all other Officers in executing their Offices, and all other persons pursuing Hu[e] and Cry may lawfully bear Arms"); 1 An Abridgment of the Public Statutes in Force and Use Relative to Scotland (1755) (entry for "Arms": "And if any person above described shall have in his custody, use, or bear arms, being thereof convicted before one justice of peace, or other judge competent, summarily, he shall for the first offense forfeit all such arms" (citing 1 Geo., ch. 54, § 1, in 5 Eng. Stat. at Large 90 (1668))); Statute Law of Scotland Abridged 132-133 (2d ed. 1769) ("Acts for disarming the highlands" but "exempting those who have particular licenses to bear arms"); E. de Vattel, The Law of Nations, or, Principles of the Law of Nature 144 (1792) ("Since custom has allowed persons of rank and gentlemen of the army to bear arms in time of peace, strict care should be taken that none but these should be allowed to wear swords"); E. Roche, Proceedings of a Court-Martial, Held at the Council-Chamber, in the City of Cork 3 (1798) (charge VI: "With having held traitorous conferences, and with having conspired, with the like intent, for the purpose of attacking and despoiling of the arms of several of the King's subjects, qualified by law to bear arms"); C. Humphreys, A Compendium of the Common Law in Force in Kentucky 482 (1822) ("[I]n this country the constitution guarranties to all persons the right to bear arms; then it can only be a crime to exercise this right in such a manner, as to terrify people unnecessarily").

Justice Stevens points to a study by *amici* supposedly showing that the phrase "bear arms" was most frequently used in the military context. See *post*, at 647-648, n. 9, 171 L. Ed. 2d, at 691; Linguists' Brief 24. Of course, as we have said, the fact that the phrase was commonly used in a particular context does not show that it is limited to that context, and, in any event, we have given many sources where the phrase was used in nonmilitary contexts. Moreover, the study's collection appears to include (who knows how many times) the idiomatic phrase "bear arms against," which is irrelevant. The *amici* also dismiss examples such as "'bear arms . . . for the purpose of killing game'" because those uses are "expressly [*589] qualified." Linguists' Brief 24. (Justice Stevens uses the same excuse for dismissing the state constitutional provisions analogous to the Second Amendment that identify private-use purposes for which the individual right can be asserted. See *post*, at 647, 171 L. Ed. 2d, at 690-691.) That analysis is faulty. A purposive qualifying phrase that contradicts the word or phrase it modifies is unknown this side of the looking glass [**2796] (except, apparently, in some courses on linguistics). If "bear arms" means, as we think, simply the carrying of arms, a modifier can limit the purpose of the carriage ("for the purpose of self-defense" or "to make war against the King"). But if "bear arms" means, as the petitioners and the dissent think, the carrying of arms only for military purposes, one simply cannot add "for [***656] the purpose of killing game." The right "to carry arms in the militia for the purpose of killing game" is worthy of the Mad Hatter. Thus, these purposive qualifying phrases positively establish that "to bear arms" is not limited to military use.[11]

> 11 Justice Stevens contends, *post*, at 650, 171 L. Ed. 2d, at 692, that since we assert that adding "against" to "bear arms" gives it a military meaning we must concede that adding a purposive qualifying phrase to "bear arms" can alter its meaning. But the difference is that we do not maintain that "against" *alters* the meaning of "bear arms" but merely that it *clarifies* which of various meanings (one of which is military) is intended. Justice Stevens, however, argues that "[t]he 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.'" *Post*, at 646, 171 L. Ed. 2d, at 690. He therefore must establish that adding a contradictory purposive phrase can *alter* a word's meaning.

Justice Stevens places great weight on James Madison's inclusion of a conscientious-objector clause in

his original draft of the Second Amendment: "but no person religiously scrupulous of bearing arms, shall be compelled to render military service in person." Creating the Bill of Rights 12 (H. Veit, K. Bowling, & C. Bickford eds. 1991) (hereinafter Veit). He argues that this clause establishes that the drafters of the Second Amendment intended "bear Arms" to refer only [*590] to military service. See *post*, at 660-661, 171 L. Ed. 2d, at 698. It is always perilous to derive the meaning of an adopted provision from another provision deleted in the drafting process.[12] In any case, what Justice Stevens would conclude from the deleted provision does not follow. It was not meant to exempt from military service those who objected to going to war but had no scruples about personal gunfights. Quakers opposed the use of arms not just for militia service, but for any violent purpose whatsoever--so much so that Quaker frontiersmen were forbidden to use arms to defend their families, even though "[i]n such circumstances the temptation to seize a hunting rifle or knife in self-defense . . . must sometimes have been almost overwhelming." P. Brock, Pacifism in the United States 359 (1968); see M. Hirst, The Quakers in Peace and War 336-339 (1923); 3 T. Clarkson, Portraiture of Quakerism 103-104 (3d ed. 1807). The Pennsylvania Militia Act of 1757 exempted from service those *"scrupling the use of arms*"--a phrase that no one contends had an idiomatic meaning. See 5 Stat. at Large of Pa. 613 (J. Mitchell & H. Flanders Comm'r. 1898) (emphasis in original). Thus, the most natural interpretation of Madison's deleted text is that those opposed to carrying weapons for potential violent confrontation would not be "compelled to render military service," in which such carrying would be required. [13]

12 Justice Stevens finds support for his legislative history inference from the recorded views of one Antifederalist member of the House. *Post*, at 660, n. 25, 171 L. Ed. 2d, at 698. "The claim that the best or most representative reading of the [language of the] amendments would conform to the understanding and concerns of [the Antifederalists] is . . . highly problematic." Rakove, The Second Amendment: The Highest Stage of Originalism, in Bogus 74, 81.

13 The same applies to the conscientious-objector amendments proposed by Virginia and North Carolina, which said: "That any person religiously scrupulous of bearing arms ought to be exempted upon payment of an equivalent to employ another to bear arms in his stead." See Veit 19; 4 J. Eliot, The Debates in the Several State Constitutions on the Adoption of the Federal Constitution 243, 244 (2d ed. 1836) (reprinted 1941). Certainly their second use of the phrase ("bear arms in his stead") refers, by reason of context, to compulsory bearing of arms for military duty. But their first use of the phrase ("any person religiously scrupulous of bearing arms") assuredly did not refer to people whose God allowed them to bear arms for defense of themselves but not for defense of their country.

[*591] [***657] [**2797] Finally, Justice Stevens suggests that "keep and bear Arms" was some sort of term of art, presumably akin to "hue and cry" or "cease and desist." (This suggestion usefully evades the problem that there is no evidence whatsoever to support a military reading of "keep arms.") Justice Stevens believes that the unitary meaning of "keep and bear Arms" is established by the Second Amendment's calling it a "right" (singular) rather than "rights" (plural). See *post*, at 651, 171 L. Ed. 2d, at 692-693. There is nothing to this. State constitutions of the founding period routinely grouped multiple (related) guarantees under a singular "right," and the First Amendment protects the "right [singular] of the people peaceably to assemble, and to petition the Government for a redress of grievances." See, *e.g.*, Pa. Declaration of Rights §§ IX, XII, XVI, in 5 Thorpe 3083-3084; Ohio Const., Art. VIII, §§ 11, 19 (1802), in *id.*, at 2910-2911.[14] And even if "keep and bear Arms" were a unitary phrase, we find no evidence that it bore a military meaning. Although the phrase was not at all common (which would be unusual for a term of art), we have found instances of its use with a clearly nonmilitary connotation. In a 1780 debate in the House of Lords, for example, Lord Richmond described an order to disarm private [*592] citizens (not militia members) as "a violation of the constitutional right of Protestant subjects to keep and bear arms for their own defence." 49 The London Magazine or Gentleman's Monthly Intelligencer 467 (1780). In response, another member of Parliament referred to "the right of bearing arms for personal defence," making clear that no special military meaning for "keep and bear arms" was intended in the discussion. *Id.*, at 467-468. [15]

14 Faced with this clear historical usage, Justice Stevens resorts to the bizarre argument that because the word "to" is not included before "bear" (whereas it is included before "petition" in

the First Amendment), the unitary meaning of "'to keep and bear'" is established. *Post*, at 651, n. 13, 171 L. Ed. 2d, at 693. We have never heard of the proposition that omitting repetition of the "to" causes two verbs with different meanings to become one. A promise "to support and to defend the Constitution of the United States" is not a whit different from a promise "to support and defend the Constitution of the United States."

15 Cf. 21 Geo. II, ch. 34, § 3, in 7 Eng. Stat. at Large 126 (1748) ("That the Prohibition contained . . . in this Act, of having, keeping, bearing, or wearing any Arms or Warlike Weapons . . . shall not extend . . . to any Officers or their Assistants, employed in the Execution of Justice . . .").

c. Meaning of the Operative Clause. Putting all of these textual elements together, [HN10] [***LEdHR10] [10] we find that they guarantee the individual right to possess and carry weapons in case of confrontation. This meaning is strongly confirmed by the historical background of the Second Amendment. We look to this because it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right. The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it "shall not be infringed." As we said in *United States v. Cruikshank*, 92 U.S. 542, 553, 23 L. Ed. 588 (1876), "[t]his is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The [**2798] second amendment declares [***658] that it shall not be infringed . . . ."[16]

16 Contrary to Justice Stevens' wholly unsupported assertion, *post*, at 636, 652, 171 L. Ed. 2d, at 684, 693, there was no pre-existing right in English law "to use weapons for certain military purposes" or to use arms in an organized militia.

Between the Restoration and the Glorious Revolution, the Stuart Kings Charles II and James II succeeded in using select militias loyal to them to suppress political dissidents, in part by disarming their opponents. See J. Malcolm, To Keep and Bear Arms 31-53 (1994) (hereinafter Malcolm); L. Schwoerer, The Declaration of Rights, 1689, p 76 (1981). [*593] Under the auspices of the 1671 Game Act, for example, the Catholic Charles II had ordered general disarmaments of regions home to his Protestant enemies. See Malcolm 103-106. These experiences caused Englishmen to be extremely wary of concentrated military forces run by the state and to be jealous of their arms. They accordingly obtained an assurance from William and Mary, in the Declaration of Rights (which was codified as the English Bill of Rights), that Protestants would never be disarmed: "That the Subjects which are Protestants, may have Arms for their Defence suitable to their Conditions, and as allowed by Law." 1 W. & M., ch. 2, § 7, in 3 Eng. Stat. at Large 441. This right has long been understood to be the predecessor to our Second Amendment. See E. Dumbauld, The Bill of Rights and What It Means Today 51 (1957); W. Rawle, A View of the Constitution of the United States of America 122 (1825) (hereinafter Rawle). It was clearly an individual right, having nothing whatever to do with service in a militia. To be sure, it was an individual right not available to the whole population, given that it was restricted to Protestants, and like all written English rights it was held only against the Crown, not Parliament. See Schwoerer, To Hold and Bear Arms: The English Perspective, in Bogus 207, 218; but see 3 J. Story, Commentaries on the Constitution of the United States § 1858 (1833) (hereinafter Story) (contending that the "right to bear arms" is a "limitatio[n] upon the power of parliament" as well). But it was secured to them as individuals, according to "libertarian political principles," not as members of a fighting force. Schwoerer, Declaration of Rights, at 283; see also *id.*, at 78; G. Jellinek, The Declaration of the Rights of Man and of Citizens 49, and n 7 (1901) (reprinted 1979).

By the time of the founding, the right to have arms had become fundamental for English subjects. See Malcolm 122-134. Blackstone, whose works, we have said, "constituted the preeminent authority on English law for the founding [*594] generation," *Alden v. Maine*, 527 U.S. 706, 715, 119 S. Ct. 2240, 144 L. Ed. 2d 636 (1999), cited the arms provision of the Bill of Rights as one of the fundamental rights of Englishmen. See 1 Blackstone 136, 139-140 (1765). His description of it cannot possibly be thought to tie it to militia or military service. It was, he said, "the natural right of resistance and self-preservation," *id.*, at 139, and "the right of having and using arms for self-preservation and defence," *id.*, at 140; see also 3 *id.*, at 2-4 (1768). Other contemporary authorities concurred. See G. Sharp, Tracts, Concerning the Ancient and Only True Legal Means of National Defence, by a Free Militia 17-18, 27 (3d ed. 1782); 2 J. de Lolme, The Rise and Progress of

the English Constitution 886-887 (1784) (A. [***659] Stephens ed. 1838); W. Blizard, Desultory Reflections on Police 59-60 (1785). 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 [**2799] right protecting against both public and private violence.

And, of course, what the Stuarts had tried to do to their political enemies, George III had tried to do to the colonists. In the tumultuous decades of the 1760's and 1770's, the Crown began to disarm the inhabitants of the most rebellious areas. That provoked polemical reactions by Americans invoking their rights as Englishmen to keep arms. A New York article of April 1769 said that "[i]t is a natural right which the people have reserved to themselves, confirmed by the Bill of Rights, to keep arms for their own defence." A Journal of the Times: Mar. 17, New York Journal, Supp. 1, Apr. 13, 1769, in Boston Under Military Rule 79 (O. Dickerson ed. 1936) (reprinted 1970); see also, *e.g.*, Shippen, Boston Gazette, Jan. 30, 1769, in 1 The Writings of Samuel Adams 299 (H. Cushing ed. 1904) (reprinted 1968). They understood the right to enable individuals to defend themselves. As the most important early American edition of Blackstone's Commentaries (by the law professor and former Antifederalist St. George Tucker) made clear in the notes to the [*595] description of the arms right, Americans understood the "right of self-preservation" as permitting a citizen to "repe[l] force by force" when "the intervention of society in his behalf, may be too late to prevent an injury." 1 Blackstone's Commentaries 145-146, n 42 (1803) (hereinafter Tucker's Blackstone). See also W. Duer, Outlines of the Constitutional Jurisprudence of the United States 31-32 (1833).

[HN11] [***LEdHR11] [11] 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. Of course the right was not unlimited, just as the First Amendment's right of free speech was not, see, *e.g.*, *United States* v. *Williams*, 553 U.S. 285, 128 S. Ct. 1830, 170 L. Ed. 2d 650 (2008). Thus, we do not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for *any purpose.* Before turning to limitations upon the individual right, however, we must determine whether the prefatory clause of the Second Amendment comports with our interpretation of the operative clause.

2. Prefatory Clause.

The prefatory clause reads: "A well regulated Militia, being necessary to the security of a free State . . . ."

a. "Well-Regulated Militia." [HN12] [***LEdHR12] [12] In *United States* v. *Miller*, 307 U.S. 174, 179, 59 S. Ct. 816, 83 L. Ed. 1206, 1939-1 C.B. 373 (1939), we explained that "the Militia comprised all males physically capable of acting in concert for the common defense." That definition comports with founding-era sources. See, *e.g.*, Webster ("The militia of a country are the able bodied men organized into companies, regiments and brigades . . . and required by law to attend military exercises on certain days only, but at other times left to pursue their usual occupations"); The Federalist No. 46, pp 329, 334 (B. Wright ed. 1961) (J. Madison) ("near half a million of citizens with arms in their hands"); Letter to Destutt de Tracy (Jan. 26, 1811), in The Portable Thomas [*596] Jefferson 520, 524 (M. Peterson ed. 1975) ("the militia of the [***660] State, that is to say, of every man in it able to bear arms").

Petitioners take a seemingly narrower view of the militia, stating that "[m]ilitias are the state- and congressionally-regulated military forces described in the Militia Clauses (art. I, § 8, cls. 15-16)." Brief for Petitioners 12. Although we agree with petitioners' interpretive assumption that "militia" means the same thing in Article I [**2800] and the Second Amendment, we believe that petitioners identify the wrong thing, namely, the organized militia. [HN13] [***LEdHR13] [13] Unlike armies and navies, which Congress is given the power to create ("to raise . . . Armies"; "to provide . . . a Navy," Art. I, § 8, cls. 12-13), the militia is assumed by Article I already to be *in existence.* Congress is given the power to "provide for calling forth the Militia," § 8, cl. 15; and the power not to create, but to "organiz[e]" it--and not to organize "a" militia, which is what one would expect if the militia were to be a federal creation, but to organize "the" militia, connoting a body already in existence, *ibid.*, cl. 16. This is fully consistent with the ordinary definition of the militia as all able-bodied men. From that pool, Congress has plenary power to organize the units that will make up an effective fighting force. That is what Congress did in the first Militia Act, which specified that "each and every free able-bodied white male citizen of the respective states, resident therein, who is or shall be of the age of eighteen years, and under the

age of forty-five years (except as is herein after excepted) shall severally and respectively be enrolled in the militia." Act of May 8, 1792, 1 Stat. 271. To be sure, Congress need not conscript every able-bodied man into the militia, because nothing in Article I suggests that in exercising its power to organize, discipline, and arm the militia, Congress must focus upon the entire body. Although the militia consists of all able-bodied men, the federally organized militia may consist of a subset of them.

[*597] Finally, [HN14] [***LEdHR14] [14] the adjective "well-regulated" implies nothing more than the imposition of proper discipline and training. See Johnson 1619 ("Regulate": "To adjust by rule or method"); Rawle 121-122; cf. Va. Declaration of Rights § 13 (1776), in 7 Thorpe 3812, 3814 (referring to "a well-regulated militia, composed of the body of the people, trained to arms").

b. "Security of a Free State."[HN15] [***LEdHR15] [15] The phrase "security of a free State" meant "security of a free polity," not security of each of the several States as the dissent below argued, see 478 F.3d at 405, and n 10. Joseph Story wrote in his treatise on the Constitution that "the word 'state' is used in various senses [and in] its most enlarged sense it means the people composing a particular nation or community." 1 Story § 208; see also 3 *id.*, § 1890 (in reference to the Second Amendment's prefatory clause: "The militia is the natural defence of a free country"). It is true that the term "State" elsewhere in the Constitution refers to individual States, but the phrase "security of a free State" and close variations seem to have been terms of art in 18th-century political discourse, meaning a "'free country'" or free polity. See Volokh, "Necessary to the Security of a Free State," 83 Notre Dame L. Rev. 1, 5 (2007); see, *e.g.*, 4 Blackstone 151 (1769); Brutus Essay III (Nov. 15, 1787), in The Essential Antifederalist 251, 253 (W. Allen & G. Lloyd eds., 2d ed. 2002). Moreover, the other instances of [***661] "state" in the Constitution are typically accompanied by modifiers making clear that the reference is to the several States--"each state," "several states," "any state," "that state," "particular states," "one state," "no state." And the presence of the term "foreign state" in Article I and Article III shows that the word "state" did not have a single meaning in the Constitution.

There are many reasons why the militia was thought to be "necessary to the security of a free State." See 3 Story § 1890. First, of course, it is useful in repelling invasions and suppressing insurrections. Second, it renders large [*598] standing armies unnecessary--an argument that Alexander Hamilton made in favor of federal control [**2801] over the militia. The Federalist No. 29, pp 226, 227 (B. Wright ed. 1961). Third, when the able-bodied men of a nation are trained in arms and organized, they are better able to resist tyranny.

3. Relationship Between Prefatory Clause and Operative Clause.

We reach the question, then: [HN16] [***LEdHR16] [16] Does the preface fit with an operative clause that creates an individual right to keep and bear arms? It fits perfectly, once one knows the history that the founding generation knew and that we have described above. That history showed that the way tyrants had eliminated a militia consisting of all the able-bodied men was not by banning the militia but simply by taking away the people's arms, enabling a select militia or standing army to suppress political opponents. This is what had occurred in England that prompted codification of the right to have arms in the English Bill of Rights.

The debate with respect to the right to keep and bear arms, as with other guarantees in the Bill of Rights, was not over whether it was desirable (all agreed that it was) but over whether it needed to be codified in the Constitution. During the 1788 ratification debates, the fear that the Federal Government would disarm the people in order to impose rule through a standing army or select militia was pervasive in Antifederalist rhetoric. See, *e.g.*, Letters from The Federal Farmer III (Oct. 10, 1787), in 2 The Complete Anti-Federalist 234, 242 (H. Storing ed. 1981). John Smilie, for example, worried not only that Congress's "command of the militia" could be used to create a "select militia," or to have "no militia at all," but also, as a separate concern, that "[w]hen a select militia is formed; the people in general may be disarmed." 2 Documentary History of the Ratification of the Constitution 508-509 (M. Jensen ed. 1976) (hereinafter [*599] Documentary Hist.). Federalists responded that because Congress was given no power to abridge the ancient right of individuals to keep and bear arms, such a force could never oppress the people. See, *e.g.*, A Pennsylvanian III (Feb. 20, 1788), in The Origin of the Second Amendment 275, 276 (D. Young ed., 2d ed. 2001) (hereinafter Young); White, To the Citizens of

Virginia (Feb. 22, 1788), in *id.*, at 280, 281; A Citizen of America (Oct. 10, 1787), in *id.*, at 38, 40; Foreign Spectator Remarks on the Amendments to the Federal Constitution, Nov. 7, 1788, in *id.*, at 556. 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.

It is therefore entirely sensible that [***662] the Second Amendment's prefatory clause announces the purpose for which the right was codified: to prevent elimination of the militia. The prefatory clause does not suggest that preserving the militia was the only reason Americans valued the ancient right; most undoubtedly thought it even more important for self-defense and hunting. But the threat that the new Federal Government would destroy the citizens' militia by taking away their arms was the reason that right--unlike some other English rights--was codified in a written Constitution. Justice Breyer's assertion that individual self-defense is merely a "subsidiary interest" of the right to keep and bear arms, see *post*, at 714, 171 L. Ed. 2d, at 731(dissenting opinion), is profoundly mistaken. He bases that assertion solely upon the prologue--but that can only show that self-defense had little to do with the right's *codification;* it was the *central component* of the right itself.

Besides ignoring the historical reality that the Second Amendment was not intended to lay down a "novel principl[e]" [**2802] but rather codified a right "inherited from our English ancestors," *Robertson v. Baldwin*, 165 U.S. 275, 281, 17 S. Ct. 326, 41 L. Ed. 715 (1897), petitioners' interpretation does not even achieve the narrower [*600] purpose that prompted codification of the right. If, as they believe, the Second Amendment right is no more than the right to keep and use weapons as a member of an organized militia, see Brief for Petitioners 8--if, that is, 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. For Congress retains plenary authority to organize the militia, which must include the authority to say who will belong to the organized force.[17] That is why the first Militia Act's requirement that only whites enroll caused States to amend their militia laws to exclude free blacks. See Siegel, The Federal Government's Power to Enact Color-Conscious Laws, 92 Nw. U. L. Rev. 477, 521-525 (1998). Thus, 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.

17 Article I, § 8, cl. 16, of the Constitution gives Congress the power "[t]o provide for organizing, arming, and disciplining, 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."

It could not be clearer that Congress's "organizing" power, unlike its "governing" power, can be invoked even for that part of the militia not "employed in the Service of the United States." Justice Stevens provides no support whatever for his contrary view, see *post*, at 654, n. 20, 171 L. Ed. 2d, at 695. Both the Federalists and Anti-federalists read the provision as it was written, to permit the creation of a "select" militia. See The Federalist No. 29, pp 226, 227 (B. Wright ed. 1961); Centinel, Revived, No. XXIX, Philadelphia Independent Gazetteer, Sept. 9, 1789, in Young 711, 712.

B

Our interpretation is confirmed by analogous arms-bearing rights in state constitutions that preceded and immediately [*601] followed adoption of the Second Amendment. Four States adopted analogues to the Federal Second Amendment in the period between [***663] independence and the ratification of the Bill of Rights. Two of them--Pennsylvania and Vermont--clearly adopted individual rights unconnected to militia service. Pennsylvania's Declaration of Rights of 1776 said: "That the people have a right to bear arms *for the defence of themselves* and the state . . . ." § XIII, in 5 Thorpe 3082, 3083 (emphasis added). In 1777, Vermont adopted the identical provision, except for inconsequential differences in punctuation and capitalization. See Vt. Const., ch. 1, § XV, in 6 *id.*, at 3741.

North Carolina also codified a right to bear arms in 1776: "That the people have a right to bear arms, for the

defence of the State . . . ." Declaration of Rights § XVII, in 5 *id.*, at 2787, 2788. This could plausibly be read to support only a right to bear arms in a militia--but that is a peculiar way to make the point in a constitution that elsewhere repeatedly mentions the militia explicitly. See N. C. Const., §§ XIV, XVIII, XXXV, in *id.*, at 2789, 2791, 2793. Many colonial statutes required individual arms bearing for public-safety reasons--such as the 1770 Georgia law that "for the security and *defence of this province* from internal dangers and insurrections" required those men who qualified for militia duty individually "to carry fire arms" "to places of [**2803] public worship." 19 Colonial Records of the State of Georgia 137-139 (A. Candler ed. 1911 (pt. 1)) (emphasis added). That broad public-safety understanding was the connotation given to the North Carolina right by that State's Supreme Court in 1843. See *State* v. *Huntly*, 25 N.C. 418, 422-423.

The 1780 Massachusetts Constitution presented another variation on the theme: "The people have a right to keep and to bear arms for the common defence. . . ." Pt. First, Art. XVII, in 3 Thorpe 1888, 1892. Once again, if one gives narrow meaning to the phrase "common defence" this can be thought to limit the right to the bearing of arms in a [*602] state-organized military force. But once again the State's highest court thought otherwise. Writing for the court in an 1825 libel case, Chief Justice Parker wrote: "The liberty of the press was to be unrestrained, but he who used it was to be responsible in cases of its abuse; like the right to keep fire arms, which does not protect him who uses them for annoyance or destruction." *Commonwealth* v. *Blanding*, 20 Mass. 304, 313-314, 3 Pick. 304The analogy makes no sense if firearms could not be used for any individual purpose at all. See also Kates, Handgun Prohibition and the Original Meaning of the Second Amendment, 82 Mich. L. Rev. 204, 244 (1983) (19th-century courts never read "common defence" to limit the use of weapons to militia service).

We therefore believe that the most likely reading of all four of these pre-Second Amendment state constitutional provisions is that they secured an individual right to bear arms for defensive purposes. Other States did not include rights to bear arms in their pre-1789 constitutions-- although in Virginia a Second Amendment analogue was proposed (unsuccessfully) by Thomas Jefferson. (It read: "No freeman shall ever be debarred the use of arms [within his own lands or tenements]."[18] 1 The Papers of Thomas Jefferson 344 (J. Boyd ed. 1950).)

> 18 Justice Stevens says that the drafters of the Virginia Declaration of Rights rejected this proposal and adopted "instead" a provision written by George Mason stressing the importance of the militia. See *post*, at 659, and n. 24, 171 L. Ed. 2d, at 697. There is no evidence that the drafters regarded the Mason proposal as a substitute for the Jefferson proposal.

[***664] Between 1789 and 1820, nine States adopted Second Amendment analogues. Four of them--Kentucky, Ohio, Indiana, and Missouri-- referred to the right of the people to "bear arms in defence of themselves and the State." See n. 8, *supra* Another three States--Mississippi, Connecticut, and Alabama--used the even more individualistic phrasing that each citizen has the "right to bear arms in defence of himself and the State." See *ibid.* Finally, two States--Tennessee and Maine--used the "common defence" language [*603] of Massachusetts. See Tenn. Const., Art. XI, § 26 (1796), in 6 Thorpe 3414, 3424; Me. Const., Art. I, § 16 (1819), in 3 *id.*, at 1646, 1648. That of the nine state constitutional protections for the right to bear arms enacted immediately after 1789 at least seven unequivocally protected an individual citizen's right to self-defense is strong evidence that that is how the founding generation conceived of the right. And with one possible exception that we discuss in Part II-D-2, 19th-century courts and commentators interpreted these state constitutional provisions to protect an individual right to use arms for self-defense. See n. 9, *supra; Simpson* v. *State*, 13 Tenn. 356, 5 Yer. 356, 360 (Tenn. 1833).

The historical narrative that petitioners must endorse would thus treat the Federal Second Amendment as an odd outlier, protecting a right unknown in state constitutions or at English common law, based on [**2804] little more than an overreading of the prefatory clause.

C

Justice Stevens relies on the drafting history of the Second Amendment--the various proposals in the state conventions and the debates in Congress. It is dubious to rely on such history to interpret a text that was widely understood to codify a pre-existing right, rather than to fashion a new one. But even assuming that this

legislative history is relevant, Justice Stevens flatly misreads the historical record.

It is true, as Justice Stevens says, that there was concern that the Federal Government would abolish the institution of the state militia. See *post*, at 655, 171 L. Ed. 2d, at 695. That concern found expression, however, *not* in the various Second Amendment precursors proposed in the state conventions, but in separate structural provisions that would have given the States concurrent and seemingly non-pre-emptible authority to organize, discipline, and arm the militia when the Federal Government failed to do so. See Veit 17, 20 (Virginia proposal); 4 J. Eliot, The Debates in the Several State [*604] Conventions on the Adoption of the Federal Constitution 244, 245 (2d ed. 1836) (reprinted 1941) (North Carolina proposal); see also 2 Documentary Hist. 624 (Pennsylvania minority's proposal). The Second Amendment precursors, by contrast, referred to the individual English right already codified in two (and probably four) state constitutions. The Federalist-dominated first Congress chose to reject virtually all major structural revisions favored by the Antifederalists, including the proposed militia amendments. Rather, it adopted primarily the popular and uncontroversial (though, in the Federalists' view, unnecessary) individual-rights amendments. The Second Amendment right, [***665] protecting only individuals' liberty to keep and carry arms, did nothing to assuage Antifederalists' concerns about federal control of the militia. See, *e.g.*, Centinel, Revived, No. XXIX, Philadelphia Independent Gazetteer, Sept. 9, 1789, in Young 711, 712.

Justice Stevens thinks it significant that the Virginia, New York, and North Carolina Second Amendment proposals were "embedded . . . within a group of principles that are distinctly military in meaning," such as statements about the danger of standing armies. *Post*, at 657, 171 L. Ed. 2d, at 696. But so was the highly influential minority proposal in Pennsylvania, yet that proposal, with its reference to hunting, plainly referred to an individual right. See 2 Documentary Hist. 624. Other than that erroneous point, Justice Stevens has brought forward absolutely no evidence that those proposals conferred only a right to carry arms in a militia. By contrast, New Hampshire's proposal, the Pennsylvania minority's proposal, and Samuel Adams' proposal in Massachusetts unequivocally referred to individual rights, as did two state constitutional provisions at the time. See Veit 16, 17 (New Hampshire proposal); 6 Documentary Hist. 1452, 1453 (J. Kaminski & G. Saladino eds. 2000) (Samuel Adams' proposal). Justice Stevens' view thus relies on the proposition, unsupported by any evidence, that different people of the founding period [*605] had vastly different conceptions of the right to keep and bear arms. That simply does not comport with our longstanding view that the Bill of Rights codified venerable, widely understood liberties.

D

We now address how the Second Amendment was interpreted from immediately after its ratification through the end of the 19th century. Before proceeding, [**2805] however, we take issue with Justice Stevens' equating of these sources with postenactment legislative history, a comparison that betrays a fundamental misunderstanding of a court's interpretive task. See *post*, at 662, n. 28, 171 L. Ed. 2d, at 699. [HN17] [***LEdHR17] [17] "'[L]egislative history,'" of course, refers to the preenactment statements of those who drafted or voted for a law; it is considered persuasive by some, not because they reflect the general understanding of the disputed terms, but because the legislators who heard or read those statements presumably voted with that understanding. *Ibid.* "[P]ostenactment legislative history," *ibid.*, a deprecatory contradiction in terms, refers to statements of those who drafted or voted for the law that are made after its enactment and hence could have had no effect on the congressional vote. It most certainly does not refer to the examination of a variety of legal and other sources to determine *the public understanding* of a legal text in the period after its enactment or ratification. That sort of inquiry is a critical tool of constitutional interpretation. As we will show, virtually all interpreters of the Second Amendment in the century after its enactment interpreted the Amendment as we do.

1. Postratification Commentary.

Three important founding-era legal scholars interpreted the Second Amendment in published writings. All three understood it to protect an individual right unconnected with militia service.

[*606] St. George Tucker's version of [***666] Blackstone's Commentaries, as we explained above, conceived of the Blackstonian arms right as necessary for self-defense. He equated that right, absent the religious and class-based restrictions, with the Second Amendment

. See 2 Tucker's Blackstone 143. In Note D, entitled, "View of the Constitution of the United States," Tucker elaborated on the Second Amendment: "This may be considered as the true palladium of liberty . . . . The right to self defence is the first law of nature: in most governments it has been the study of rulers to confine the right within the narrowest limits possible. Wherever standing armies are kept up, and the right of the people to keep and bear arms is, under any colour or pretext whatsoever, prohibited, liberty, if not already annihilated, is on the brink of destruction." 1 *id.*, at App. 300 (ellipsis in original). He believed that the English game laws had abridged the right by prohibiting "keeping a gun or other engine for the destruction of game." *Ibid.*; see also 2 *id.*, at 143, and nn 40 and 41. He later grouped the right with some of the individual rights included in the First Amendment and said that if "a law be passed by congress, prohibiting" any of those rights, it would "be the province of the judiciary to pronounce whether any such act were constitutional, or not; and if not, to acquit the accused . . . ." 1 *id.*, at App. 357. It is unlikely that Tucker was referring to a person's being "accused" of violating a law making it a crime to bear arms in a state militia.[19]

> 19 Justice Stevens quotes some of Tucker's unpublished notes, which he claims show that Tucker had ambiguous views about the Second Amendment. See *post*, at 666, and n. 32, 171 L. Ed. 2d, at 701. But it is clear from the notes that Tucker located the power of States to arm their militias in the *Tenth* Amendment, and that he cited the Second Amendment for the proposition that such armament could not run afoul of any power of the Federal Government (since the Amendment prohibits Congress from ordering disarmament). Nothing in the passage implies that the Second Amendment pertains only to the carrying of arms in the organized militia.

[*607] In 1825, William Rawle, a prominent lawyer who had been a member of the Pennsylvania Assembly that ratified the [**2806] Bill of Rights, published an influential treatise, which analyzed the Second Amendment as follows:

> "The first [principle] is a declaration that a well regulated militia is necessary to the security of a free state; a proposition from which few will dissent. . . .
>
> "The corollary, from the first position is, that the right of the people to keep and bear arms shall not be infringed.
>
> "The prohibition is general. No clause in the constitution could by any rule of construction be conceived to give to congress a power to disarm the people. Such a flagitious attempt could only be made under some general pretence by a state legislature. But if in any blind pursuit of inordinate power, either should attempt it, this amendment may be appealed to as a restraint on both." Rawle 121-122.[20]

Like Tucker, Rawle regarded the English game laws as violating the right codified in the Second Amendment. See *id.*, 122-123. Rawle clearly differentiated [***667] between the people's right to bear arms and their service in a militia: "In a people permitted and accustomed to bear arms, we have the rudiments of a militia, which properly consists of armed citizens, divided into military bands, and instructed at least in part, in the use of arms for the purposes of war." *Id.*, at 140. Rawle further said that the Second Amendment right ought not "be abused to the disturbance of the public peace," such as by assembling with other armed individuals "for an [*608] unlawful purpose"--statements that make no sense if the right does not extend to *any* individual purpose. *Id.*, at 123.

> 20 Rawle, writing before our decision in *Barron ex rel. Tiernan* v. *Mayor of Baltimore*, 32 U.S. 243, 7 Pet. 243, 8 L. Ed. 672 (1833), believed that the Second Amendment could be applied against the States. Such a belief would of course be nonsensical on petitioners' view that it protected only a right to possess and carry arms when conscripted by the State itself into militia service.

Joseph Story published his famous Commentaries on the Constitution of the United States in 1833. Justice Stevens suggests that "[t]here is not so much as a whisper" in Story's explanation of the Second Amendment that favors the individual-rights view. *Post*, at 668, 171 L. Ed. 2d, at 703. That is wrong. Story explained that the English Bill of Rights had also included a "right to bear arms," a right that, as we have discussed, had nothing to do with militia service. 3 Story

§ 1858. He then equated the English right with the Second Amendment:

> "§ 1891. A similar provision [to the Second Amendment] in favour of protestants (for to them it is confined) is to be found in the bill of rights of 1688, it being declared, 'that the subjects, which are protestants, may have arms for their defence suitable to their condition, and as allowed by law.' But under various pretences the effect of this provision has been greatly narrowed; and it is at present in England more nominal than real, as a defensive privilege." (Footnotes omitted.)

This comparison to the Declaration of Right would not make sense if the Second Amendment right was the right to use a gun in a militia, which was plainly not what the English right protected. As the Tennessee Supreme Court recognized 38 years after Story wrote his Commentaries, "[t]he passage from Story, shows clearly that this right was intended . . . and was guaranteed to, and to be exercised and enjoyed by the citizen as such, and not by him as a soldier, or in defense solely of his political rights." *Andrews v. State*, 50 Tenn. 165, 183-184 (1871). Story's Commentaries also cite as support Tucker and Rawle, both of whom clearly viewed the right as unconnected [**2807] to militia service. See 3 Story § 1890, n 2, § 1891, n 3. In addition, in a shorter 1840 work Story wrote: "One of the ordinary modes, by which [*609] tyrants accomplish their purposes without resistance, is, by disarming the people, and making it an offence to keep arms, and by substituting a regular army in the stead of a resort to the militia." A Familiar Exposition of the Constitution of the United States § 450 (reprinted 1986).

Antislavery advocates routinely invoked the right to bear arms for self-defense. Joel Tiffany, for example, citing Blackstone's description of the right, wrote that "the right to keep and bear arms, also implies the right to use them if necessary in self defence; without this right to use the guaranty would have hardly been worth the paper it consumed." A Treatise on the Unconstitutionality of American Slavery 117-118 (1849); see also L. Spooner, The Unconstitutionality of Slavery 116 (1845) (right enables "personal defence"). In his famous Senate speech about the 1856 [***668] "Bleeding Kansas" conflict, Charles Sumner proclaimed:

> "The rifle has ever been the companion of the pioneer and, under God, his tutelary protector against the red man and the beast of the forest. Never was this efficient weapon more needed in just self-defense, than now in Kansas, and at least one article in our National Constitution must be blotted out, before the complete right to it can in any way be impeached. And yet such is the madness of the hour, that, in defiance of the solemn guarantee, embodied in the Amendments to the Constitution, that 'the right of the people to keep and bear arms shall not be infringed,' the people of Kansas have been arraigned for keeping and bearing them, and the Senator from South Carolina has had the face to say openly, on this floor, that they should be disarmed--of course, that the fanatics of Slavery, his allies and constituents, may meet no impediment." The Crime Against Kansas, May 19-20, 1856, in American Speeches: Political Oratory From the Revolution to the Civil War 553, 606-607 (T. Widmer ed. 2006).

[*610] We have found only one early-19th century commentator who clearly conditioned the right to keep and bear arms upon service in the militia--and he recognized that the prevailing view was to the contrary. "The provision of the constitution, declaring the right of the people to keep and bear arms, &c. was probably intended to apply to the right of the people to bear arms for such [militia-related] purposes only, and not to prevent congress or the legislatures of the different states from enacting laws to prevent the citizens from always going armed. A different construction however has been given to it." B. Oliver, The Rights of an American Citizen 177 (1832).

2. Pre-Civil War Case Law.

The 19th-century cases that interpreted the Second Amendment universally support an individual right unconnected to militia service. In *Houston v. Moore*, 18 U.S. 1, 5 Wheat. 1, 24, 5 L. Ed. 19 (1820), this Court held that States have concurrent power over the militia, at

least where not pre-empted by Congress. Agreeing in dissent that States could "organize, arm, and discipline" the militia in the absence of conflicting federal regulation, Justice Story said that the Second Amendment "may not, perhaps, be thought to have any important bearing on this point. If it have, it confirms and illustrates, rather than impugns the reasoning already suggested." *Id.*, at 51-53, 5 Wheat. 1, 24, 5 L. Ed. 19. Of course, if the Amendment simply "protect[ed] the right of the people of each of the several States to maintain a well-regulated militia," *post*, at 637, 171 L. Ed. 2d, at 684 (Stevens, J., dissenting), it would have enormous [**2808] and obvious bearing on the point. But the Court and Story derived the States' power over the militia from the nonexclusive nature of federal power, not from the Second Amendment, whose preamble merely "confirms and illustrates" the importance of the militia. Even clearer was Justice Baldwin. In the famous fugitive-slave case of *Johnson* v. *Tompkins*, 13 F. Cas. 840, 850, 852, [*611] F. Cas. No. 7416 (CC Pa. 1833), Baldwin, sitting as a Circuit Judge, cited both the Second Amendment and the Pennsylvania analogue for his conclusion that a citizen has "a right to carry arms in defence of his property or person, and to use them, if either were assailed with such force, numbers or violence [***669] as made it necessary for the protection or safety of either."

Many early-19th century state cases indicated that the Second Amendment right to bear arms was an individual right unconnected to militia service, though subject to certain restrictions. A Virginia case in 1824 holding that the Constitution did not extend to free blacks explained: "[n]umerous restrictions imposed on [blacks] in our Statute Book, many of which are inconsistent with the letter and spirit of the Constitution, both of this State and of the United States as respects the free whites, demonstrate, that, here, those instruments have not been considered to extend equally to both classes of our population. We will only instance the restriction upon the migration of free blacks into this State, and upon their right to bear arms." *Aldridge* v. *Commonwealth*, 4 Va. 447, 2 Va. Cas. 447, 449 (Gen. Ct.). The claim was obviously not that blacks were prevented from carrying guns in the militia.[21] See also *Waters* v. *State*, 1 Gill 302, 309 (Md. [*612] 1843) (because free blacks were treated as a "dangerous population," "laws have been passed to prevent their migration into this State; to make it unlawful for them to bear arms; to guard even their religious assemblages with peculiar watchfulness"). An 1829 decision by the Supreme Court of Michigan said: "The constitution of the United States also grants to the citizen the right to keep and bear arms. But the grant of this privilege cannot be construed into the right in him who keeps a gun to destroy his neighbor. No rights are intended to be granted by the constitution for an unlawful or unjustifiable purpose." *United States* v. *Sheldon*, in 5 Transactions of the Supreme Court of the Territory of Michigan 337, 346 (W. Blume ed. 1940) (hereinafter Blume). It is not possible to read this as discussing anything other than an individual right unconnected to militia service. If it did have to do with militia service, the limitation upon it would not be any "unlawful or unjustifiable purpose," but any nonmilitary purpose whatsoever.

> 21 Justice Stevens suggests that this is not obvious because free blacks in Virginia had been required to muster without arms. See *post*, at 663, n. 29,171 L. Ed. 2d, at 700 (citing Siegel, The Federal Government's Power to Enact Color-Conscious Laws, 92 Nw. U. L. Rev. 477, 497 (1998)). But that could not have been the type of law referred to in *Aldridge*, because that practice had stopped 30 years earlier when blacks were excluded entirely from the militia by the first Militia Act. See Siegel, *supra*, at 498, n. 120. Justice Stevens further suggests that laws barring blacks from militia service could have been said to violate the "right to bear arms." But under Justice Stevens' reading of the Second Amendment (we think), the protected right is the right to carry arms to the extent one is enrolled in the militia, not the right *to be in the militia.* Perhaps Justice Stevens really does adopt the full-blown idiomatic meaning of "bear arms," in which case every man and woman in this country has a right "to be a soldier" or even "to wage war." In any case, it is clear to us that *Aldridge*'s allusion to the existing Virginia "restriction" upon the right of free blacks "to bear arms" could only have referred to "laws prohibiting free blacks from keeping weapons," Siegel, *supra*, at 497-498.

[**2809] In *Nunn* v. *State*, 1 Ga. 243, 251 (1846), the Georgia Supreme Court construed the Second Amendment as protecting the "*natural* right of self-defence" and therefore struck down a ban on carrying pistols openly. Its opinion perfectly captured the

way in which the operative clause of the Second Amendment furthers the purpose announced in the prefatory clause, in continuity with the English right:

> "The right of the whole people, old and young, men, women and boys, and not militia only, to keep and [***670] bear *arms* of every description, and not *such* merely as are used by the *militia*, shall not be *infringed*, curtailed, or broken in upon, in the smallest degree; and all this for the important end to be attained: the rearing up and qualifying a well-regulated militia, so vitally necessary [*613] to the security of a free State. Our opinion is, that any law, State or Federal, is repugnant to the Constitution, and void, which contravenes this *right*, originally belonging to our forefathers, trampled under foot by Charles I. and his two wicked sons and successors, re-established by the revolution of 1688, conveyed to this land of liberty by the colonists, and finally incorporated conspicuously in our own *Magna Charta*!" *Ibid*.

Likewise, in *State* v. *Chandler*, 5 La. Ann. 489, 490 (1850), the Louisiana Supreme Court held that citizens had a right to carry arms openly: "This is the right guaranteed by the Constitution of the United States, and which is calculated to incite men to a manly and noble defence of themselves, if necessary, and of their country, without any tendency to secret advantages and unmanly assassinations."

Those who believe that the Second Amendment preserves only a militia-centered right place great reliance on the Tennessee Supreme Court's 1840 decision in *Aymette* v. *State*, 21 Tenn. 154. The case does not stand for that broad proposition; in fact, the case does not mention the word "militia" at all, except in its quoting of the Second Amendment. *Aymette* held that the state constitutional guarantee of the right to "bear" arms did not prohibit the banning of concealed weapons. The opinion first recognized that both the state right and the federal right were descendents of the 1689 English right, but (erroneously, and contrary to virtually all other authorities) read that right to refer only to "protect[ion of] the public liberty" and "keep[ing] in awe those who are in power," *id.*, at 158. The court then adopted a sort of middle position, whereby citizens were permitted to carry arms openly, unconnected with any service in a formal militia, but were given the right to use them only for the military purpose of banding together to oppose tyranny. This odd reading of the right is, to be sure, not the one we adopt--but it is not petitioners' reading either. More importantly, seven years earlier the Tennessee Supreme Court [*614] had treated the state constitutional provision as conferring a right "to all the free citizens of the State to keep and bear arms for their defence," *Simpson*, 5 Yer., at 360; and 21 years later the court held that the "keep" portion of the state constitutional right included the right to personal self-defense: "[T]he right to keep arms involves, necessarily, the right to use such arms for all the ordinary purposes, and in all the ordinary modes usual in the country, and to which arms are adapted, limited by the duties of a good citizen in times of peace." *Andrews*, 50 Tenn., at 178-179; see also *ibid.* (equating state provision with Second Amendment).

3. Post-Civil War Legislation.

In the aftermath of the Civil War, there was an outpouring of discussion of the Second Amendment in Congress and in public discourse, as people debated whether [**2810] and how to secure constitutional rights for newly free slaves. See generally S. Halbrook, Freedmen, the Fourteenth Amendment, and the Right to Bear Arms, 1866-1876 (1998) (hereinafter Halbrook); Brief for Institute for Justice [***671] as *Amicus Curiae*. Since those discussions took place 75 years after the ratification of the Second Amendment, they do not provide as much insight into its original meaning as earlier sources. Yet those born and educated in the early 19th century faced a widespread effort to limit arms ownership by a large number of citizens; their understanding of the origins and continuing significance of the Amendment is instructive.

Blacks were routinely disarmed by Southern States after the Civil War. Those who opposed these injustices frequently stated that they infringed blacks' constitutional right to keep and bear arms. Needless to say, the claim was not that blacks were being prohibited from carrying arms in an organized state militia. A Report of the Commission of the Freedmen's Bureau in 1866 stated plainly: "[T]he civil law [of Kentucky] prohibits the colored man from bearing arms. . . . Their arms are taken from them by the civil [*615] authorities. . . . Thus, the

right of the people to keep and bear arms as provided in the Constitution is *infringed*." H. R. Exec. Doc. No. 70, 39th Cong., 1st Sess., 233, 236. A joint congressional Report decried:

> "[I]n some parts of [South Carolina,] armed parties are, without proper authority, engaged in seizing all fire-arms found in the hands of the freedmen. Such conduct is in plain and direct violation of their personal rights as guaranteed by the Constitution of the United States, which declares that 'the right of the people to keep and bear arms shall not be infringed.' The freedmen of South Carolina have shown by their peaceful and orderly conduct that they can safely be trusted with fire-arms, and they need them to kill game for subsistence, and to protect their crops from destruction by birds and animals." Joint Comm. on Reconstruction, H. R. Rep. No. 30, 39th Cong., 1st Sess., pt. 2, p 229 (1866) (Proposed Circular of Brigadier General R. Saxton).

The view expressed in these statements was widely reported and was apparently widely held. For example, an editorial in The Loyal Georgian (Augusta) on February 3, 1866, assured blacks that "[a]ll men, without distinction of color, have the right to keep and bear arms to defend their homes, families or themselves." Halbrook 19.

Congress enacted the Freedmen's Bureau Act on July 16, 1866. Section 14 stated:

> "[T]he right . . . to have full and equal benefit of all laws and proceedings concerning personal liberty, personal security, and the acquisition, enjoyment, and disposition of estate, real and personal, including the constitutional right to bear arms, shall be secured to and enjoyed by all the citizens . . . without respect to race or color, or previous condition of slavery. . . ." 14 Stat. 176-177.

The understanding that the Second Amendment gave freed blacks the right to keep and bear arms was reflected in congressional [*616] discussion of the bill, with even an opponent of it saying that the founding generation "were for every man bearing his arms about him and keeping them in his house, his castle, for his own defense." Cong. Globe, 39th Cong., 1st Sess., 362, 371 (1866) (Sen. Davis).

Similar discussion attended the passage of the Civil Rights Act of 1871 and the Fourteenth Amendment. For [***672] example, Representative Butler said of the Act: "Section eight is intended to enforce the well-known constitutional provision guaranteeing [**2811] the right of the citizen to 'keep and bear arms,' and provides that whoever shall take away, by force or violence, or by threats and intimidation, the arms and weapons which any person may have for his defense, shall be deemed guilty of larceny of the same." H. R. Rep. No. 37, 41st Cong., 3d Sess., 7-8 (1871). With respect to the proposed Amendment, Senator Pomeroy described as one of the three "indispensable" "safeguards of liberty . . . under the Constitution" a man's "right to bear arms for the defense of himself and family and his homestead." Cong. Globe, 39th Cong., 1st Sess., 1182 (1866). Representative Nye thought the Fourteenth Amendment unnecessary because "[a]s citizens of the United States [blacks] have equal right to protection, and to keep and bear arms for self-defense." *Id.*, at 1073.

It was plainly the understanding in the post-Civil War Congress that the Second Amendment protected an individual right to use arms for self-defense.

4. Post-Civil War Commentators.

Every late-19th century legal scholar that we have read interpreted the Second Amendment to secure an individual right unconnected with militia service. The most famous was the judge and professor Thomas Cooley, who wrote a massively popular 1868 Treatise on Constitutional Limitations. Concerning the Second Amendment it said:

> "Among the other defences to personal liberty should be mentioned the right of the people to keep and bear [*617] arms. . . . The alternative to a standing army is 'a well-regulated militia,' but this cannot exist unless the people are trained to bearing arms. How far it is in the power

> of the legislature to regulate this right, we shall not undertake to say, as happily there has been very little occasion to discuss that subject by the courts." *Id.*, at 350.

That Cooley understood the right not as connected to militia service, but as securing the militia by ensuring a populace familiar with arms, is made even clearer in his 1880 work, General Principles of Constitutional Law. The Second Amendment, he said, "was adopted with some modification and enlargement from the English Bill of Rights of 1688, where it stood as a protest against arbitrary action of the overturned dynasty in disarming the people." *Id.*, at 270. In a section entitled "The Right in General," he continued:

> "It might be supposed from the phraseology of this provision that the right to keep and bear arms was only guaranteed to the militia; but this would be an interpretation not warranted by the intent. The militia, as has been elsewhere explained, consists of those persons who, under the law, are liable to the performance of military duty, and are officered and enrolled for service when called upon. But the law may make provision for the enrolment of all who are fit to perform military duty, or of a small number only, or it may wholly omit to make any provision at all; and if the right were limited to those enrolled, the purpose of this guaranty might be defeated altogether by the action or neglect to act of the government it was meant to hold in check. The meaning of the provision undoubtedly [***673] is, that the people, from whom the militia must be taken, shall have the right to keep and bear arms; and they need no permission or regulation of law for the purpose. But this enables government to have a well-regulated militia; for to bear arms implies something more than the mere keeping; it [*618] implies the learning to handle and use them in a way that makes those who keep them ready for their [**2812] efficient use; in other words, it implies the right to meet for voluntary discipline in arms, observing in doing so the laws of public order." *Id.*, at 271.

All other post-Civil War 19th-century sources we have found concurred with Cooley. One example from each decade will convey the general flavor:

> "[The purpose of the Second Amendment is] to secure a well-armed militia. . . . But a militia would be useless unless the citizens were enabled to exercise themselves in the use of warlike weapons. To preserve this privilege, and to secure to the people the ability to oppose themselves in military force against the usurpations of government, as well as against enemies from without, that government is forbidden by any law or proceeding to invade or destroy the right to keep and bear arms. . . . The clause is analogous to the one securing the freedom of speech and of the press. Freedom, not license, is secured; the fair use, not the libellous abuse, is protected." J. Pomeroy, An Introduction to the Constitutional Law of the United States §239, pp. 152-153 (1868) (hereinafter Pomeroy).
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> "As the Constitution of the United States, and the constitutions of several of the states, in terms more or less comprehensive, declare the right of the people to keep and bear arms, it has been a subject of grave discussion, in some of the state courts, whether a statute prohibiting persons, when not on a journey, or as travellers, from *wearing or carrying concealed weapons*, be constitutional. There has been a great difference of opinion on the question." 2 J. Kent, Commentaries on American Law *340, n 2 (O. Holmes ed., 12th ed. 1873) (hereinafter Kent).
>
> [*619] "Some general knowledge of firearms is important to the public welfare; because it would be impossible, in case of war, to organize promptly an efficient force of volunteers unless the people had

> some familiarity with weapons of war. The Constitution secures the right of the people to keep and bear arms. No doubt, a citizen who keeps a gun or pistol under judicious precautions, practises in safe places the use of it, and in due time teaches his sons to do the same, exercises his individual right. No doubt, a person whose residence or duties involve peculiar peril may keep a pistol for prudent self-defence." B. Abbott, Judge and Jury: A Popular Explanation of the Leading Topics in the Law of the Land 333 (1880) (hereinafter Abbott).
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> "The right to bear arms has always been the distinctive privilege of freemen. Aside from any necessity of self-protection to the person, it represents among all nations power coupled with the exercise of a certain jurisdiction. . . . [I]t was not necessary that the right to bear [***674] arms should be granted in the Constitution, for it had always existed." J. Ordronaux, Constitutional Legislation in the United States 241-242 (1891).

E

We now ask whether any of our precedents forecloses the conclusions we have reached about the meaning of the Second Amendment.

[HN18] [***LEdHR18] [18]*United States v. Cruikshank*, 92 U.S. 542, 23 L. Ed. 588, in the course of vacating the convictions of members of a white mob for depriving blacks of their right to keep and bear arms, held that the Second Amendment does not by its own force apply to anyone other than the Federal Government. The opinion explained that the right "is not a right granted by the Constitution [or] in any manner dependent upon that instrument for its existence. [**2813] The second amendment . . . means no more [*620] than that it shall not be infringed by Congress." *Id.* at 553, 23 L. Ed. 588. States, we said, were free to restrict or protect the right under their police powers. The limited discussion of the Second Amendment in *Cruikshank* supports, if anything, the individual-rights interpretation. There was no claim in *Cruikshank* that the victims had been deprived of their right to carry arms in a militia; indeed, the Governor had disbanded the local militia unit the year before the mob's attack, see C. Lane, The Day Freedom Died 62 (2008). We described the right protected by the Second Amendment as "'bearing arms for a lawful purpose'" [22] and said that "the people [must] look for their protection against any violation by their fellow-citizens of the rights it recognizes" to the States' police power. 92 U.S., at 553, 23 L. Ed. 588. That discussion makes little sense if it is only a right to bear arms in a state militia.[23]

> 22 Justice Stevens' accusation that this is "not accurate," *post*, at 673, 171 L. Ed. 2d, at 706, is wrong. It is true it was the indictment that described the right as "bearing arms for a lawful purpose." But, in explicit reference to the right described in the indictment, the Court stated that "[t]he second amendment declares that it [*i.e.*, the right of bearing arms for a lawful purpose] shall not be infringed." 92 U.S., at 553, 23 L. Ed. 588.
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> 23 With respect to *Cruikshank*'s continuing validity on incorporation, a question not presented by this case, we note that *Cruikshank* also said that the First Amendment did not apply against the States and did not engage in the sort of Fourteenth Amendment inquiry required by our later cases. Our later decisions in *Presser v. Illinois*, 116 U.S. 252, 265, 6 S. Ct. 580, 29 L. Ed. 615 (1886), and *Miller v. Texas*, 153 U.S. 535, 538, 14 S. Ct. 874, 38 L. Ed. 812 (1894), reaffirmed that the Second Amendment applies only to the Federal Government.

Presser v. Illinois, 116 U.S. 252, 6 S. Ct. 580, 29 L. Ed. 615 (1886), held that the right to keep and bear arms was not violated by a law that forbade "bodies of men to associate together as military organizations, or to drill or parade with arms in cities and towns unless authorized by law." *Id.*, at 264-265, 6 S. Ct. 580, 29 L. Ed. 615. This does not refute the individual-rights interpretation of the Amendment; no one supporting that interpretation has contended that States may not ban such groups. Justice Stevens [*621] presses *Presser* into service to support his view that the right to bear arms is limited to service in the militia by joining *Presser*'s brief discussion of the Second Amendment with a later portion of the opinion making the seemingly relevant (to the Second Amendment) point that the plaintiff was not a member of the state militia. Unfortunately for Justice Stevens' argument, that later portion deals with the *Fourteenth Amendment*; it was [***675] the *Fourteenth Amendment*

to which the plaintiff's nonmembership in the militia was relevant. Thus, Justice Stevens' statement that *Presser* "suggested that. . . nothing in the Constitution protected the use of arms outside the context of a militia," *post*, at 674-675, 171 L. Ed. 2d, at 707, is simply wrong. *Presser* said nothing about the Second Amendment's meaning or scope, beyond the fact that it does not prevent the prohibition of private paramilitary organizations.

Justice Stevens places overwhelming reliance upon this Court's decision in *Miller*, 307 U.S. 174, 59 S. Ct. 816, 83 L. Ed. 1206, 1939-1 C.B. 373. "[H]undreds of judges," we are told, "have relied on the view of the Amendment we endorsed there," *post*, at 638, 171 L. Ed. 2d, at 685, and "[e]ven if the textual and historical arguments on both sides of the issue were evenly balanced, respect for the well-settled views of all of our predecessors on this Court, and for the rule of law itself . . . would prevent most [**2814] jurists from endorsing such a dramatic upheaval in the law," *post*, at 639, 171 L. Ed. 2d, at 686. And what is, according to Justice Stevens, the holding of *Miller* that demands such obeisance? 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." *Post*, at 637, 171 L. Ed. 2d, at 685.

Nothing so clearly demonstrates the weakness of Justice Stevens' case. *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 indictment for transporting an unregistered short-barreled [*622] 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 *not* that the defendants were "bear[ing] arms" not "for . . . military purposes" but for "nonmilitary use," *post*, at 637, 171 L. Ed. 2d, at 685. Rather, it 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, 59 S. Ct. 816, 83 L. Ed. 1206 (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.* Beyond that, the opinion provided no explanation of the content of the right.

This holding is not only consistent with, but 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"). Had 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. Justice Stevens can say again and again that *Miller* did not "turn on the difference between muskets and sawed-off shotguns; it [***676] turned, rather, on the basic difference between the military and nonmilitary use and possession of guns," *post*, at 677, 171 L. Ed. 2d, at 708, but the words of the opinion prove otherwise. The most Justice Stevens can plausibly claim for *Miller* is that it declined to decide the nature of the Second Amendment right, despite the Solicitor General's argument (made in the alternative) that the right was collective, see Brief for United States, O. T. 1938, [*623] No. 696, pp 4-5. *Miller* stands only for the proposition that the Second Amendment right, whatever its nature, extends only to certain types of weapons.

It is particularly wrongheaded to read *Miller* for more than what it said, because the case did not even purport to be a thorough examination of the Second Amendment. Justice Stevens claims, *post*, at 676-677, 171 L. Ed. 2d, at 708, that the opinion reached its conclusion "[a]fter reviewing many of the same sources that are discussed at greater length by the Court today." Not many, which was not entirely the Court's fault. The defendants made no appearance in the case, neither filing a brief nor appearing at oral argument; the Court heard from no one but the Government (reason enough, one would think, not to make that case the beginning and the end of this Court's consideration of the Second Amendment). See Frye, The Peculiar Story of *United States* v. *Miller*, 3 N. Y. U. J. L. & Liberty 48, 65-68 (2008). The Government's [**2815] brief spent two pages discussing English legal sources, concluding "that at least the carrying of weapons without lawful occasion or excuse was always a crime" and that (because of the class-based restrictions and the prohibition on terrorizing people with dangerous or unusual weapons) "the early English law did not guarantee an unrestricted right to

bear arms." Brief for United States, O. T. 1938, No. 696, at 9-11. It then went on to rely primarily on the discussion of the English right to bear arms in *Aymette* v. *State*, 21 Tenn. 154, for the proposition that the only uses of arms protected by the Second Amendment are those that relate to the militia, not self-defense. See Brief for United States, O. T. 1938, No. 696, at 12-18. The final section of the brief recognized that "some courts have said that the right to bear arms includes the right of the individual to have them for the protection of his person and property," and launched an alternative argument that "weapons which are commonly used by criminals," such as sawed-off shotguns, are not protected. See *id.*, at 18-21. The Government's *Miller* brief thus provided [*624] scant discussion of the history of the Second Amendment--and the Court was presented with no counterdiscussion. As for the text of the Court's opinion itself, that discusses *none* of the history of the Second Amendment. It assumes from the prologue that the Amendment was designed to preserve the militia, 307 U.S., at 178, 59 S. Ct. 816, 83 L. Ed. 1206 (which we do not dispute), and then reviews some historical materials dealing with the nature of the militia, and in particular with the nature of the arms their members were expected to possess, *id.*, at 178-182, 59 S. Ct. 816, 83 L. Ed. 1206. Not a word *(not a word)* about the history of the Second Amendment. This is the [***677] mighty rock upon which the dissent rests its case. [24]

> 24 As for the "hundreds of judges," *post*, at 638, 171 L. Ed. 2d, at 685, who have relied on the view of the Second Amendment Justice Stevens claims we endorsed in *Miller:* If so, they overread *Miller*. And their erroneous reliance upon an uncontested and virtually unreasoned case cannot nullify the reliance of millions of Americans (as our historical analysis has shown) upon the true meaning of the right to keep and bear arms. In any event, it should not be thought that the cases decided by these judges would necessarily have come out differently under a proper interpretation of the right.

We may as well consider at this point (for we will have to consider eventually) *what* types of weapons *Miller* permits. Read in isolation, *Miller*'s phrase "part of ordinary military equipment" could mean that only those weapons useful in warfare are protected. That would be a startling reading of the opinion, since it would mean that the National Firearms Act's restrictions on machineguns (not challenged in *Miller*) might be unconstitutional, machineguns being useful in warfare in 1939. [HN19] [***LEdHR19] [19] We think that *Miller*'s "ordinary military equipment" language must be read in tandem with what comes after: "[O]rdinarily when called for [militia] service [able-bodied] men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time." 307 U.S., at 179, 59 S. Ct. 816, 83 L. Ed. 1206. The traditional militia was formed from a pool of men bringing arms "in common use at the time" for lawful purposes like self-defense. "In the colonial [*625] and revolutionary war era, [small-arms] weapons used by militiamen and weapons used in defense of person and home were one and the same." *State* v. *Kessler*, 289 Ore. 359, 368, 614 P.2d 94, 98 (1980) (citing G. Neumann, Swords and Blades of the American Revolution 6-15, 252-254 (1973)). Indeed, that is precisely the way in which the Second Amendment's operative clause furthers the purpose announced in its preface. We therefore read *Miller* to say only that the Second Amendment [**2816] does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns. That accords with the historical understanding of the scope of the right, see Part III, *infra*[25]

> 25 *Miller* was briefly mentioned in our decision in *Lewis* v. *United States*, 445 U.S. 55, 100 S. Ct. 915, 63 L. Ed. 2d 198 (1980), an appeal from a conviction for being a felon in possession of a firearm. The challenge was based on the contention that the prior felony conviction had been unconstitutional. No Second Amendment claim was raised or briefed by any party. In the course of rejecting the asserted challenge, the Court commented gratuitously, in a footnote, that "[t]hese legislative restrictions on the use of firearms are neither based upon constitutionally suspect criteria, nor do they trench upon any constitutionally protected liberties. See *United States* v. *Miller* . . . (the Second Amendment guarantees no right to keep and bear a firearm that does not have 'some reasonable relationship to the preservation or efficiency of a well regulated militia')." *Id.*, at 65-66, n 8, 100 S. Ct. 915, 63 L. Ed. 2d 198. The footnote then cites several Court of Appeals cases to the same effect. It is inconceivable that we would rest our interpretation of the basic meaning of any

guarantee of the Bill of Rights upon such a footnoted dictum in a case where the point was not at issue and was not argued.

We conclude that nothing in our precedents forecloses our adoption of the original understanding of the Second Amendment. It should be unsurprising that such a significant matter has been for so long judicially unresolved. For most of our history, the Bill of Rights was not thought applicable to the States, and the Federal Government did not significantly regulate the possession of firearms by law-abiding citizens. Other provisions of the Bill of Rights have similarly [***678] remained unilluminated for lengthy periods. This Court first [*626] held a law to violate the First Amendment's guarantee of freedom of speech in 1931, almost 150 years after the Amendment was ratified, see *Near* v. *Minnesota ex rel. Olson*, 283 U.S. 697, 51 S. Ct. 625, 75 L. Ed. 1357 (1931), and it was not until after World War II that we held a law invalid under the Establishment Clause, see *Illinois ex rel. McCollum v. Bd. of Educ.*, 333 U.S. 203, 68 S. Ct. 461, 92 L. Ed. 649 (1948). Even a question as basic as the scope of proscribable libel was not addressed by this Court until 1964, nearly two centuries after the founding. See *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964). It is demonstrably not true that, as Justice Stevens claims, *post*, at 676, 171 L. Ed. 2d, at 707, "for most of our history, the invalidity of Second-Amendment-based objections to firearms regulations has been well settled and uncontroversial." For most of our history the question did not present itself.

III

[HN20] [***LEdHR20] [20] 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 2 Kent *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 [**2817] 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 [*627] conditions and qualifications on the commercial sale of arms.[26]

26 We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive.

[***LEdHR21] [21] [HN21]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, 59 S. Ct. 816, 83 L. Ed. 1206. 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 Kentucky 482 (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*, [***679] 10 N. C. 381, 383-384 (1824); *O'Neill* v. *State*, 16 Ala. 65, 67 (1849); *English* 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

[*628] and the protected right cannot change our interpretation of the right.

IV

We turn finally to the law at issue here. As we have said, the law totally bans handgun possession in the home. It also requires that any lawful firearm in the home be disassembled or bound by a trigger lock at all times, rendering it inoperable.

As the quotations earlier in this opinion demonstrate, [HN22] [***LEdHR22] [22] 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, [27] banning from the home [**2818] "the most preferred firearm in the nation to 'keep' and use for [*629] protection of one's home and family," 478 F.3d at 400, would fail constitutional muster.

> 27 Justice Breyer correctly notes that this law, like almost all laws, would pass rational-basis scrutiny. *Post*, at 687-688, 171 L. Ed. 2d, at 714. [HN23] [***LEdHR23] [23] But rational-basis scrutiny is a mode of analysis we have used when evaluating laws under constitutional commands that are themselves prohibitions on irrational laws. See, *e.g.*, *Engquist v. Or. Dep't of Agric.*, 553 U.S. 591, 602, 128 S. Ct. 2146, 170 L. Ed. 2d 975 (2008). In those cases, "rational basis" is not just the standard of scrutiny, but the very substance of the constitutional guarantee. Obviously, the same test could not be used to evaluate the extent to which a legislature may regulate a specific, enumerated right, be it the freedom of speech, the guarantee against double jeopardy, the right to counsel, or the right to keep and bear arms. See *United States v. Carolene Products Co.*, 304 U.S. 144, 152, n 4, 58 S. Ct. 778, 82 L. Ed. 1234 (1938) ("There may be narrower scope for operation of the presumption of constitutionality [*i.e.*, narrower than that provided by rational-basis review] when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments. . ."). If all that was required to overcome the right to keep and bear arms was a rational basis, the Second Amendment would be redundant with the separate constitutional prohibitions on irrational laws, and would have no effect.

Few laws in the history of our Nation have come close to the severe restriction of the District's handgun ban. And some of those few have been struck down. In *Nunn* v. *State*, the Georgia Supreme Court struck down a prohibition on carrying pistols openly (even though it upheld a prohibition on carrying concealed weapons). See 1 Ga., at 251. In *Andrews* v. *State*, the Tennessee Supreme Court likewise held that a statute that forbade openly carrying a pistol "publicly [***680] or privately, without regard to time or place, or circumstances," 50 Tenn., at 187, violated the state constitutional provision (which the court equated with the Second Amendment). That was so even though the statute did not restrict the carrying of long guns. *Ibid.* See also *State v. Reid*, 1 Ala. 612, 616-617 (1840) ("A statute which, under the pretence of regulating, amounts to a destruction of the right, or which requires arms to be so borne as to render them wholly useless for the purpose of defence, would be clearly unconstitutional").

It is no answer to say, as petitioners do, that it is permissible to ban the possession of handguns so long as the possession of other firearms (*i.e.*, long guns) is allowed. It is enough to note, as we have observed, that the American people have considered the handgun to be the quintessential self-defense weapon. There are many reasons that a citizen may prefer a handgun for home defense: It is easier to store in a location that is readily accessible in an emergency; it cannot easily be redirected or wrestled away by an attacker; it is easier to use for those without the upper-body strength to lift and aim a long gun; it can be pointed at a burglar with one hand while the other hand dials the police. Whatever the reason, [HN24] [***LEdHR24] [24] handguns are the most popular weapon chosen by Americans for self-defense in the home, and a complete prohibition of their use is invalid.

[*630] We must also address [HN25] [***LEdHR25] [25] the District's requirement (as applied to respondent's handgun) that firearms in the home be rendered and kept inoperable at all times. This makes it impossible for citizens to use them for the core lawful

purpose of self-defense and is hence unconstitutional. The District argues that we should interpret this element of the statute to contain an exception for self-defense. See Brief for Petitioners 56-57. But we think that is precluded by the unequivocal text, and by the presence of certain other enumerated exceptions: "Except for law enforcement personnel . . ., each registrant shall keep any firearm in his possession unloaded and disassembled or bound by a trigger lock or similar device unless such firearm is kept at his place of business, or while being used for lawful recreational purposes within the District of Columbia." D. C. Code § 7-2507.02. The nonexistence of a self-defense exception is also suggested by the D. C. Court of Appeals' statement that the statute forbids residents to use firearms to [**2819] stop intruders, see *McIntosh* v. *Washington*, 395 A.2d 744, 755-756 (1978). [28]

> 28 *McIntosh* upheld the law against a claim that it violated the Equal Protection Clause by arbitrarily distinguishing between residences and businesses. See 395 A. 2d, at 755. One of the rational bases listed for that distinction was the legislative finding "that for each intruder stopped by a firearm there are four gun-related accidents within the home." *Ibid.* That tradeoff would not bear mention if the statute did not prevent stopping intruders by firearms.

Apart from his challenge to the handgun ban and the trigger-lock requirement respondent asked the District Court to enjoin petitioners from enforcing the separate licensing requirement "in such a manner as to forbid the carrying of a firearm within one's home or possessed land without a license." App. 59a. The Court of Appeals did not invalidate the licensing requirement, but held only that the District "may not prevent [a handgun] from being moved throughout one's house." 478 F.3d at 400. It then ordered the District Court to enter summary judgment "consistent [*631] with [***681] [respondent's] prayer for relief." *Id.*, at 401. Before this Court petitioners have stated that "if the handgun ban is struck down and respondent registers a handgun, he could obtain a license, assuming he is not otherwise disqualified," by which they apparently mean if he is not a felon and is not insane. Brief for Petitioners 58. Respondent 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." Tr. of Oral Arg. 74-75. 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 has devoted most of his separate dissent to the handgun ban. He says that, even assuming the Second Amendment is a personal guarantee of the right to bear arms, the District's prohibition is valid. He first tries to establish this by founding-era historical precedent, pointing to various restrictive laws in the colonial period. These demonstrate, in his view, that the District's law "imposes a burden upon gun owners that seems proportionately no greater than restrictions in existence at the time the Second Amendment was adopted." *Post*, at 682, 171 L. Ed. 2d, at 711. Of the laws he cites, only one offers even marginal support for his assertion. A 1783 Massachusetts law forbade the residents of Boston to "take into" or "receive into" "any Dwelling-House, Stable, Barn, Out-house, Ware-house, Store, Shop or other Building" loaded firearms, and permitted the seizure of any loaded firearms that "shall be found" there. Act of Mar. 1, 1783, ch. XIII, 1783 Mass. Acts p 218. That statute's text and its prologue, which makes clear that the purpose of the prohibition was to eliminate the danger to firefighters posed by the "depositing of loaded Arms" in buildings, give reason to doubt that colonial Boston authorities would have enforced that general prohibition against someone who temporarily loaded a firearm to confront an intruder (despite the law's [*632] application in that case). In any case, we would not stake our interpretation of the Second Amendment upon a single law, in effect in a single city, that contradicts the overwhelming weight of other evidence regarding the right to keep and bear arms for defense of the home. The other laws Justice Breyer cites are gunpowder-storage laws that he concedes did not clearly prohibit loaded weapons, but required only that excess gunpowder be kept in a special container or on the top floor of the home. *Post*, at 686, 171 L. Ed. 2d, at 713. Nothing about those fire-safety laws undermines [**2820] our analysis; they do not remotely burden the right of self-defense as much as an absolute ban on handguns. Nor, correspondingly, does our analysis suggest the invalidity of laws regulating the storage of firearms to prevent accidents.

Justice Breyer points to other founding-era laws that he says "restricted the firing of guns within the city limits to at least some degree" in Boston, Philadelphia, and New York. *Post*, at 683, 171 L. Ed. 2d, at 712 (citing

Churchill, Gun Regulation, the Police Power, and the Right to Keep Arms in Early America, 25 Law & Hist. Rev. 139, 162 (2007)). Those laws provide no support for the severe restriction in the present case. The New York law levied a fine of 20 shillings on anyone who fired a gun in certain places (including houses) on [***682] New Year's Eve and the first two days of January, and was aimed at preventing the "great Damages . . . frequently done on [those days] by persons going House to House, with Guns and other Fire Arms and being often intoxicated with Liquor." Ch. 1501, 5 Colonial Laws of New York 244-246 (1894). It is inconceivable that this law would have been enforced against a person exercising his right to self-defense on New Year's Day against such drunken hooligans. The Pennsylvania law to which Justice Breyer refers levied a fine of five shillings on one who fired a gun or set off fireworks in Philadelphia without first obtaining a license from the Governor. See Act of Aug. 26, 1721, ch. CCXLV, §IV, in 3 Stat. at Large of Pa. 253-254 (1896). Given Justice Wilson's explanation [*633] that the right to self-defense with arms was protected by the Pennsylvania Constitution, it is unlikely that this law (which in any event amounted to at most a licensing regime) would have been enforced against a person who used firearms for self-defense. Justice Breyer cites a Rhode Island law that simply levied a five-shilling fine on those who fired guns in *streets* and *taverns*, a law obviously inapplicable to this case. See An Act for preventing Mischief being done in the town of *Newport*, or in any other Town in this Government, 1731 Rhode Island Session Laws pp. 240-241. Finally, Justice Breyer points to a Massachusetts law similar to the Pennsylvania law, prohibiting "discharg[ing] any Gun or Pistol charged with Shot or Ball in the Town of *Boston*." Act of May 28, 1746, ch. X, Acts and Laws of Mass. Bay p. 208. It is again implausible that this would have been enforced against a citizen acting in self-defense, particularly given its preambulatory reference to "the *indiscreet* firing of Guns." *Ibid.* (preamble) (emphasis added).

A broader point about the laws that Justice Breyer cites: All of them punished the discharge (or loading) of guns with a small fine and forfeiture of the weapon (or in a few cases a very brief stay in the local jail), not with significant criminal penalties.[29] They are akin to modern penalties for minor public-safety infractions like speeding or jaywalking. And although such public-safety laws may not contain exceptions for self-defense, it is inconceivable that the threat of a jaywalking ticket would deter someone from disregarding a "Do Not Walk" sign in order to flee an attacker, or that the government would enforce those laws under such circumstances. Likewise, we do not think that a law imposing a [*634] 5-shilling fine and forfeiture of the gun would have prevented a person in the founding era from using a [**2821] gun to protect himself or his family from violence, or that if he did so the law would be enforced against him. The District law, by contrast, far from imposing a minor fine, threatens citizens with a year in prison (five years for a second violation) for even obtaining a gun in the first place. See D. C. Code § 7-2507.06.

> 29 The Supreme Court of Pennsylvania described the amount of five shillings in a contract matter in 1792 as "nominal consideration." *Morris's Lessee* v. *Smith*, 4 U.S. 119, 4 Dall. 119, 120, 1 L. Ed. 766 (Pa. 1792). Many of the laws cited punished violation with fine in a similar amount; the 1783 Massachusetts gunpowder-storage law carried a somewhat larger fine of 10 (200 shillings) and forfeiture of the weapon.

Justice Breyer moves on to make a broad jurisprudential point: He criticizes us for declining to establish a level of scrutiny for evaluating Second Amendment restrictions. He proposes, explicitly at least, none of the traditionally expressed levels (strict [***683] scrutiny, intermediate scrutiny, rational basis), but rather a judge-empowering "interest-balancing inquiry" that "asks whether the statute burdens a protected interest in a way or to an extent that is out of proportion to the statute's salutary effects upon other important governmental interests." *Post*, at 689-690, 171 L. Ed. 2d, at 716. After an exhaustive discussion of the arguments for and against gun control, Justice Breyer arrives at his interest-balanced answer: Because handgun violence is a problem, because the law is limited to an urban area, and because there were somewhat similar restrictions in the founding period (a false proposition that we have already discussed), the interest-balancing inquiry results in the constitutionality of the handgun ban. QED.

We know of no other enumerated constitutional right whose core protection has been subjected to a freestanding "interest-balancing" approach. The very enumeration of the right takes out of the hands of government--even the Third Branch of Government--the power to decide on a case-by-case basis whether the right

is *really worth* insisting upon. A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all. Constitutional rights are enshrined with the scope they were understood to have when the people adopted [*635] them, whether or not future legislatures or (yes) even future judges think that scope too broad. We would not apply an "interest-balancing" approach to the prohibition of a peaceful neo-Nazi march through Skokie. See *National Socialist Party of America* v. *Skokie*, 432 U.S. 43, 97 S. Ct. 2205, 53 L. Ed. 2d 96 (1977) *(per curiam).* The First Amendment contains the freedom-of-speech guarantee that the people ratified, which included exceptions for obscenity, libel, and disclosure of state secrets, but not for the expression of extremely unpopular and wrong headed views. The Second Amendment is no different. Like the First, it is the very *product* of an interest balancing by the people--which Justice Breyer would now conduct for them anew. And whatever else it leaves to future evaluation, it surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.

Justice Breyer chides us for leaving so many applications of the right to keep and bear arms in doubt, and for not providing extensive historical justification for those regulations of the right that we describe as permissible. See *post*, at 720-721, 171 L. Ed. 2d, at 735. But since this case represents this Court's first in-depth examination of the Second Amendment, one should not expect it to clarify the entire field, any more than *Reynolds* v. *United States*, 98 U.S. 145, 25 L. Ed. 244 (1879), our first in-depth Free Exercise Clause case, left that area in a state of utter certainty. And there will be time enough to expound upon the historical justifications for the exceptions we have mentioned if and when those exceptions come before us.

In sum, we hold that the District's ban on handgun possession in the home violates the Second Amendment, as [**2822] does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense. Assuming that Heller is not disqualified from the exercise of Second Amendment rights, the District must permit him to register [***684] his handgun and must issue him a license to carry it in the home.

* * *

[*636] We are aware of the problem of handgun violence in this country, and we take seriously the concerns raised by the many *amici* who believe that prohibition of handgun ownership is a solution. [HN26] [***LEdHR26] [26] The Constitution leaves the District of Columbia a variety of tools for combating that problem, including some measures regulating handguns, see *supra*, at 626-627, and n. 26, 171 L. Ed. 2d, at 678. But the enshrinement of constitutional rights necessarily takes certain policy choices off the table. These include the absolute prohibition of handguns held and used for self-defense in the home. Undoubtedly some think that the Second Amendment is outmoded in a society where our standing army is the pride of our Nation, where well-trained police forces provide personal security, and where gun violence is a serious problem. That is perhaps debatable, but what is not debatable is that it is not the role of this Court to pronounce the Second Amendment extinct.

We affirm the judgment of the Court of Appeals.

It is so ordered.

DISSENT BY: STEVENS; BREYER

DISSENT

Justice **Stevens,** with whom Justice **Souter,** Justice **Ginsburg,** and Justice **Breyer** join, dissenting.

The question presented by this case is not whether the Second Amendment protects a "collective right" or an "individual right." Surely it protects a right that can be enforced by individuals. But a conclusion that the Second Amendment protects an individual right does not tell us anything about the scope of that right.

Guns are used to hunt, for self-defense, to commit crimes, for sporting activities, and to perform military duties. The Second Amendment plainly does not protect the right to use a gun to rob a bank; it is equally clear that it *does* encompass the right to use weapons for certain military purposes. Whether it also protects the right to possess and use guns for nonmilitary purposes like hunting and personal self-defense [*637] is the question presented by this case. The text of the Amendment, its history, and our decision in *United States* v. *Miller*, 307 U.S. 174, 59 S. Ct. 816, 83 L. Ed. 1206, 1939-1 C.B. 373 (1939), provide a clear answer to that question.

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. 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 [***685] federal firearms law.[1] Sustaining an indictment under [**2823] the 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, 59 S. Ct. 816, 83 L. Ed. 1206. 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 [*638] the most natural reading of the Amendment's text and the interpretation most faithful to the history of its adoption.

1 There was some limited congressional activity earlier: A 10% federal excise tax on firearms was passed as part of the Revenue Act of 1918, 40 Stat. 1057, and in 1927 a statute was enacted prohibiting the shipment of handguns, revolvers, and other concealable weapons through the United States mails. Ch. 75, 44 Stat. 1059-1060 (hereinafter 1927 Act).

Since our decision in *Miller*, hundreds of judges have relied on the view of the Amendment we endorsed there;[2] we ourselves affirmed it in 1980. See *Lewis* v. *United States*, 445 U.S. 55, 65-66, n 8, 100 S. Ct. 915, 63 L. Ed. 2d 198 (1980).[3] No new evidence has surfaced since 1980 supporting the view that the Amendment was intended to curtail the power of Congress to regulate [*639] civilian use or misuse of weapons. Indeed, a review of the drafting history of the Amendment demonstrates that its Framers *rejected* proposals that would have broadened its coverage to include such uses.

2 Until the Fifth Circuit's decision in *United States* v. *Emerson*, 270 F.3d 203 (2001), every Court of Appeals to consider the question had understood *Miller* to hold that the Second Amendment does not protect the right to possess and use guns for purely private, civilian purposes. See, *e.g.*, *United States* v. *Haney*, 264 F.3d 1161, 1164-1166 (CA10 2001); *United States* v. *Napier*, 233 F.3d 394, 402-404 (CA6 2000); *Gillespie* v. *Indianapolis*, 185 F.3d 693, 710-711 (CA7 1999); *United States* v. *Scanio*, 165 F.3d 15, 1998 WL 802060, *2 (CA2 1998) (unpublished opinion); *United States* v. *Wright*, 117 F.3d 1265, 1271-1274 (CA11 1997); *United States* v. *Rybar*, 103 F.3d 273, 285-286 (CA3 1996); *Hickman* v. *Block*, 81 F.3d 98, 100-103 (CA9 1996); *United States* v. *Hale*, 978 F.2d 1016, 1018-1020 (CA8 1992); *Thomas* v. *City Council of Portland*, 730 F.2d 41, 42 (CA1 1984) *(per curiam)*; *United States* v. *Johnson*, 497 F.2d 548, 550 (CA4 1974) *(per curiam)*; *United States* v. *Johnson*, 441 F.2d 1134, 1136 (CA5 1971); see also *Sandidge* v. *United States*, 520 A.2d 1057, 1058-1059 (DC App. 1987). And a number of courts have remained firm in their prior positions, even after considering *Emerson*. See, *e.g.*, *United States* v. *Lippman*, 369 F.3d 1039, 1043-1045 (CA8 2004); *United States* v. *Parker*, 362 F.3d 1279, 1282-1284 (CA10 2004); *United States* v. *Jackubowski*, 63 Fed. Appx. 959, 961 (CA7 2003) (unpublished opinion); *Silveira* v. *Lockyer*, 312 F.3d 1052, 1060-1066 (CA9 2002); *United States* v. *Milheron*, 231 F. Supp. 2d 376, 378 (Me. 2002); *Bach* v. *Pataki*, 289 F. Supp. 2d 217, 224-226 (NDNY 2003); *United States* v. *Smith*, 56 M. J. 711, 716 (Air Force Ct. Crim. App. 2001).

3 Our discussion in *Lewis* was brief but significant. Upholding a conviction for receipt of a firearm by a felon, we wrote: "These legislative restrictions on the use of firearms are neither based upon constitutionally suspect criteria, nor do they trench upon any constitutionally protected liberties. See *United States* v. *Miller*, 307 U.S. 174, 178, 59 S. Ct. 816, 83 L. Ed. 1206, 1939-1 C.B. 373 (1939) (the Second Amendment guarantees no right to keep and bear a firearm that

does not have 'some reasonable relationship to the preservation or efficiency of a well regulated militia')." 445 U.S., at 65-66, n 8, 100 S. Ct. 915, 63 L. Ed. 2d 198.

The opinion the Court announces today fails to identify any new evidence supporting the view that the [***686] Amendment was intended to limit the power of Congress to regulate civilian uses of weapons. Unable to point to any such evidence, the Court stakes its holding on a strained and unpersuasive reading of the Amendment's text; significantly different provisions in the [**2824] 1689 English Bill of Rights, and in various 19th-century State Constitutions; postenactment commentary that was available to the Court when it decided *Miller;* and, ultimately, a feeble attempt to distinguish *Miller* that places more emphasis on the Court's decisional process than on the reasoning in the opinion itself.

Even if the textual and historical arguments on both sides of the issue were evenly balanced, respect for the well-settled views of all of our predecessors on this Court, and for the rule of law itself, see *Mitchell* v. *W. T. Grant Co.*, 416 U.S. 600, 636, 94 S. Ct. 1895, 40 L. Ed. 2d 406 (1974) (Stewart, J., dissenting), would prevent most jurists from endorsing such a dramatic upheaval in the law.[4] As Justice Cardozo observed years ago, the "labor of [*640] judges would be increased almost to the breaking point if every past decision could be reopened in every case, and one could not lay one's own course of bricks on the secure foundation of the courses laid by others who had gone before him." The Nature of the Judicial Process 149 (1921).

4 See *Vasquez* v. *Hillery*, 474 U.S. 254, 265-266, 106 S. Ct. 617, 88 L. Ed. 2d 598 (1986) ("*[Stare decisis]* permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact. While *stare decisis* is not an inexorable command, the careful observer will discern that any detours from the straight path of *stare decisis* in our past have occurred for articulable reasons, and only when the Court has felt obliged 'to bring its opinions into agreement with experience and with facts newly ascertained.' *Burnet* v. *Coronado Oil & Gas Co.*, 285 U.S. 393, 412, 52 S. Ct. 443, 76 L. Ed. 815, 1932 C.B. 265, 1932-1 C.B. 265 (1932) (Brandeis, J., dissenting)"); *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U.S. 429, 652, 15 S. Ct. 673, 39 L. Ed. 759 (1895) (White, J., dissenting) ("The fundamental conception of a judicial body is that of one hedged about by precedents which are binding on the court without regard to the personality of its members. Break down this belief in judicial continuity and let it be felt that on great constitutional questions this court is to depart from the settled conclusions of its predecessors, and to determine them all according to the mere opinion of those who temporarily fill its bench, and our Constitution will, in my judgment, be bereft of value and become a most dangerous instrument to the rights and liberties of the people").

In this dissent I shall first explain why our decision in *Miller* was faithful to the text of the Second Amendment and the purposes revealed in its drafting history. I shall then comment on the postratification history of the Amendment, which makes abundantly clear that the Amendment should not be interpreted as limiting the authority of Congress to regulate the use or possession of firearms for purely civilian purposes.

I

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 [***687] 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 [*641] of Rights

that were adopted roughly contemporaneously [**2825] with the Declaration of Independence.[5] 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.[6] While [*642] 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.

5 The Virginia Declaration of Rights P13 (1776) provided: "That a well-regulated Militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free State; that Standing Armies, in time of peace, should be avoided, as dangerous to liberty; and that, in all cases, the military should be under strict subordination to, and governed by, the civil power." 1 B. Schwartz, The Bill of Rights 235 (1971) (hereinafter Schwartz).

Maryland's Declaration of Rights, Arts. XXV-XXVII (1776), provided: "That a well-regulated militia is the proper and natural defence of a free government"; "That standing armies are dangerous to liberty, and ought not to be raised or kept up, without consent of the Legislature"; "That in all cases, and at all times, the military ought to be under strict subordination to and control of the civil power." 1 Schwartz 282.

Delaware's Declaration of Rights §§ 18-20 (1776) provided: "That a well regulated militia is the proper, natural, and safe defence of a free government"; "That standing armies are dangerous to liberty, and ought not to be raised or kept up without the consent of the Legislature"; "That in all cases and at all times the military ought to be under strict subordination to and governed by the civil power." 1 Schwartz 278.

Finally, New Hampshire's Bill of Rights, Arts. XXIV-XXVI (1783), read: "A well regulated militia is the proper, natural, and sure defence of a state"; "Standing armies are dangerous to liberty, and ought not to be raised or kept up without consent of the legislature"; "In all cases, and at all times, the military ought to be under strict subordination to, and governed by the civil power." 1 Schwartz 378. It elsewhere provided: "No person who is conscientiously scrupulous about the lawfulness of bearing arms, shall be compelled thereto, provided he will pay an equivalent." Id., at 377 (Art. XIII).

6 The language of the Amendment's preamble also closely tracks the language of a number of contemporaneous state militia statutes, many of which began with nearly identical statements. Georgia's 1778 militia statute, for example, began, "[w]hereas a well ordered and disciplined Militia, is essentially necessary, to the Safety, peace and prosperity, of this State." Act of Nov. 15, 1778, 19 Colonial Records of the State of Georgia 103 (Candler ed. 1911 (pt. 2)). North Carolina's 1777 militia statute started with this language: "[w]hereas a well regulated Militia is absolutely necessary for the defending and securing the Liberties of a free State." N. C. Sess. Laws ch. 1, § I, p 1. And Connecticut's 1782 "Acts and Laws Regulating the Militia" began, "[w]hereas the Defence and Security of all free States depends (under God) upon the Exertions of a well regulated Militia, and the Laws heretofore enacted have proved inadequate to the End designed." Conn. Acts and Laws p 585 (hereinafter 1782 Conn. Acts).

These state militia statutes give content to the notion of a "well-regulated militia." They identify those persons who compose the State's militia; they create regiments, brigades, and divisions; they set forth command structures and provide for the appointment of officers; they describe how the militia will be assembled when necessary and provide for training; and they prescribe penalties for nonappearance, delinquency, and failure to keep the required weapons, ammunition, and other necessary equipment. The obligation of militia members to "keep" certain specified arms is detailed further, n. 12, *infra*, and accompanying text.

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 [***688] 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 [**2826] 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). [*643] 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*, 5 U.S. 137, 1 Cranch 137, 174, 2 L. Ed. 60 (1803).

The Court today tries to denigrate the importance of this clause of 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." *Ante*, at 578, 171 L. Ed. 2d, at 649. 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. While the Court makes the novel suggestion that it need only find some "logical connection" between the preamble and the operative provision, it does acknowledge that a prefatory clause may resolve an ambiguity in the text. *Ante*, at 577, 171 L. Ed. 2d, at 649.[7] Without [*644] 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.

7 The sources the Court cites simply do not support the proposition that some "logical connection" between the two clauses is all that is required. The Dwarris treatise, for example, merely explains that "[t]he general purview of a statute is not . . . *necessarily* to be restrained by any words introductory to the enacting clauses." F. Dwarris, A General Treatise on Statutes 268 (P. Potter ed. 1871) (emphasis added). The treatise proceeds to caution that "the preamble cannot control the enacting part of a statute, which is expressed in clear and unambiguous terms, yet, if any doubt arise on the words of the enacting part, the preamble may be resorted to, to explain it." *Id.*, at 269. Sutherland makes the same point. Explaining that "[i]n the United States preambles are not as important as they are in England," the treatise notes that in the United States "the settled principle of law is that the preamble cannot control the enacting part of the statute *in cases where the enacting part is expressed in clear, unambiguous terms.*" 2A N. Singer, Sutherland on Statutory Construction § 47.04, p 146 (rev. 5th ed. 1992) (emphasis added). Surely not even the Court believes that the Amendment's operative provision, which, though only 14 words in length, takes the Court the better part of 18 pages to parse, is perfectly "clear and unambiguous."

[***689] *"[T]he right of the people"*

The centerpiece of the Court's textual argument is its insistence that the words "the people" as used in the Second Amendment must have the same meaning, and protect the same class of individuals, as when they are used in the First and Fourth Amendments. According to the Court, in all three provisions--as well as [**2827] the Constitution's preamble, § 2 of Article I, and the Tenth Amendment--"the term unambiguously refers to all members of the political community, not an unspecified subset." *Ante*, at 580, 171 L. Ed. 2d, at 650. But the Court *itself* reads the Second Amendment to protect a "subset" significantly narrower than the class of persons protected by the First and Fourth Amendments; when it finally drills down on the substantive meaning of the Second Amendment, the Court limits the protected class to "law-abiding, responsible citizens," *ante*, at 635, 171 L. Ed. 2d, at 683. But the class of persons protected by the First and Fourth Amendments is *not* so limited; for even felons (and presumably irresponsible citizens as well) may invoke the protections of those constitutional

provisions. The Court offers no way to harmonize its conflicting pronouncements.

[*645] The Court also overlooks 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 [*646] are the same in referring [***690] 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"

Although the Court's discussion of these words 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.

[**2828] As a threshold matter, it is worth pausing to note an oddity in the Court's interpretation of "to keep and bear Arms." Unlike the Court of Appeals, the Court does not read that phrase to create a right to possess arms for "lawful, private purposes." *Parker v. District of Columbia*, 375 U.S. App. D.C. 140, 478 F.3d 370, 382 (CADC 2007). Instead, the Court limits the Amendment's protection to the right "to possess and carry weapons in case of confrontation." *Ante*, at 592, 171 L. Ed. 2d, at 657. No party or *amicus* urged this interpretation; the Court appears to have fashioned it out of whole cloth. But although this novel limitation lacks support in the text of the Amendment, the Amendment's text *does* justify a different limitation: The "right to keep and bear Arms" protects only a right to possess and use firearms in connection with service in a state-organized militia.

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 [*647] 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).[8] 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 [***691] arms," by contrast, refers most naturally to a military purpose, as evidenced by its use in literally dozens of contemporary texts.[9] The absence [*648] of any reference [**2829] to civilian uses of weapons tailors the text of the Amendment to the purpose identified in its preamble. [10] But when discussing these words, the Court simply ignores the preamble.

8 The Court's repeated citation to the dissenting opinion in *Muscarello* v. *United States*, 524 U.S. 125, 118 S. Ct. 1911, 141 L. Ed. 2d 111 (1998), *ante*, at 584, 586, 171 L. Ed. 2d, at 652, 654, as illuminating the meaning of "bear arms," borders on the risible. At issue in *Muscarello* was the proper construction of the word "carries" in 18 U.S.C. § 924(c) (1994 ed.); the dissent in that case made passing reference to the Second Amendment only in the course of observing that both the Constitution and Black's Law Dictionary suggested that something more active than placement of a gun in a glove compartment might be meant by the phrase "'carries a firearm.'" 524 U.S., at 143, 118 S. Ct. 1911, 141 L. Ed. 2d 111.

9 *Amici* professors of linguistics and English reviewed uses of the term "bear arms" in a compilation of books, pamphlets, and other sources disseminated in the period between the Declaration of Independence and the adoption of the Second Amendment. See Brief for Professors of Linguistics and English as *Amici Curiae* 23-25. *Amici* determined that of 115 texts that employed the term, all but five usages were in a clearly military context, and in four of the remaining five instances, further qualifying language conveyed a different meaning.

The Court allows that the phrase "bear Arms" did have as an idiomatic meaning, "'to serve as a soldier, do military service, fight,'" *ante*, at 586, 171 L. Ed. 2d, at 654, but asserts that it "unequivocally bore that idiomatic meaning only when followed by the preposition 'against,' which was in turn followed by the target of the hostilities," *ibid*. But contemporary sources make clear that the phrase "bear arms" was often used to convey a military meaning without those additional words. See, e.g., To the Printer, Providence Gazette (May 27, 1775) ("By the common estimate of three millions of people in America, allowing one in five to bear arms, there will be found 600,000 fighting men"); Letter of Henry Laurens to the Mass. Council (Jan. 21, 1778), in Letters of Delegates to Congress 1774-1789, p 622 (P. Smith ed. 1981) ("Congress were yesterday informed . . . that those Canadians who returned from Saratoga . . . had been compelled by Sir Guy Carleton to bear Arms"); Of the Manner of Making War Among the Indians of North-America, Connecticut Courant (May 23, 1785) ("The Indians begin to bear arms at the age of fifteen, and lay them aside when they arrive at the age of sixty. Some nations to the southward, I have been informed, do not continue their military exercises after they are fifty"); 28 Journals of the Continental Congress 1030 (G. Hunt ed. 1910) ("That hostages be mutually given as a security that the Convention troops and those received in exchange for them do not bear arms prior to the first day of May next"); H. R. J., 9th Cong., 1st Sess., 217 (Feb. 12, 1806) ("Whereas the commanders of British armed vessels have impressed many American seamen, and compelled them to bear arms on board said vessels, and assist in fighting their battles with nations in amity and peace with the United States"); H. R. J., 15th Cong., 2d Sess., 182-183 (Jan. 14, 1819) ("[The petitioners] state that they were residing in the British province of Canada, at the commencement of the late war, and that owing to their attachment to the United States, they refused to bear arms, when called upon by the British authorities . . .").

10 *Aymette* v. *State*, 21 Tenn. 154, 156 (1840), a case we cited in *Miller*, further confirms this reading of the phrase. In *Aymette*, the Tennessee Supreme Court construed the guarantee in Tennessee's 1834 Constitution that "'the free white men of this State, have a right to keep and bear arms for their common defence.'" Explaining that the provision was adopted with the same goals as the Federal Constitution's Second Amendment, the court wrote: "The words 'bear arms' . . . have reference to their military use, and were not employed to mean wearing them about the person as part of the dress. As the

> object for which the right to keep and bear arms is secured, is of general and public nature, to be exercised by the people in a body, for their *common defence*, so the *arms*, the right to keep which is secured, are such as are usually employed in civilized warfare, and that constitute the ordinary military equipment." 21 Tenn., at 158. The court elaborated: "[W]e may remark, that the phrase, *'bear arms,'* is used in the Kentucky Constitution as well as our own, and implies, as has already been suggested, their military use. . . . A man in the pursuit of deer, elk, and buffaloes, might carry his rifle every day, for forty years, and, yet, it would never be said of him, that he had *borne arms*, much less could it be said, that a private citizen *bears arms*, because he has a dirk or pistol concealed under his clothes, or a spear in a cane." *Id.*, at 161.

[*649] The Court argues that a "qualifying phrase that contradicts the word or phrase it modifies is unknown this side of the looking glass." *Ante*, at 589, 171 L. Ed. 2d, at 655. But this fundamentally fails to grasp the point. The stand-alone phrase "bear arms" most naturally conveys a military meaning *unless* the addition of a qualifying phrase signals that a different meaning is intended. When, as in this case, there is no such qualifier, [***692] 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.[11] The Court's [**2830] objection is particularly puzzling in light of its own contention that the addition of the modifier "against" changes the meaning of "bear arms." Compare [*650] *ante*, at 584, 171 L. Ed. 2d, at 652 (defining "bear arms" to mean "carrying [a weapon] for a particular purpose--confrontation"), with *ante*, at 586, 171 L. Ed. 2d, at 654 ("The phrase 'bear Arms' also had at the time of the founding an idiomatic meaning that was significantly different from its natural meaning: to serve as a soldier, do military service, fight or to wage war. But it unequivocally bore that idiomatic meaning only when followed by the preposition 'against'" (emphasis deleted; citations and some internal quotation marks omitted)).

> 11 As lucidly explained in the context of a statute mandating a sentencing enhancement for any person who "uses" a firearm during a crime of violence or drug trafficking crime:
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> > "To use an instrumentality ordinarily means to use it for its intended purpose. When someone asks, 'Do you use a cane?,' he is not inquiring whether you have your grandfather's silver-handled walking stick on display in the hall; he wants to know whether you walk with a cane. Similarly, to speak of 'using a firearm' is to speak of using it for its distinctive purpose, i.e., as a weapon. To be sure, one can use a firearm in a number of ways, including as an article of exchange, just as one can 'use' a cane as a hall decoration--but that is not the ordinary meaning of 'using' the one or the other. The Court does not appear to grasp the distinction between how a word can be used and how it ordinarily is used." *Smith v. United States*, 508 U.S. 223, 242, 113 S. Ct. 2050, 124 L. Ed. 2d 138 (1993) (Scalia, J., dissenting) (some internal quotation marks, footnotes, and citations omitted).

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 [*651] describes the responsibilities of a framing-era militia member.

> 12 See also Act for the regulating, training, and

arraying of the Militia, . . . of the State, 1781 N. J. Laws, ch. XIII, § 12, p 43 ("And be it Enacted, That each Person enrolled as aforesaid, shall also *keep* at his Place of Abode one Pound of good merchantable Gunpowder and three Pounds of Ball sized to his Musket or Rifle" (emphasis added)); An Act for establishing a Militia, 1785 Del. Laws § 7, p 59 ("*And be it enacted*, That every person between the ages of eighteen and fifty . . . shall at his own expence, provide himself . . . with a musket or firelock, with a bayonet, a cartouch box to contain twenty three cartridges, a priming wire, a brush and six flints, all in good order, on or before the first day of April next, under the penalty of forty shillings, and shall *keep* the same by him at all times, ready and fit for service, under the penalty of two shillings and six pence for each neglect or default thereof on every muster day" (second emphasis added)); 1782 Conn. Acts p. 590 ("And it shall be the duty of the Regional Quarter-Master to provide and *keep* a sufficient quantity of Ammunition and warlike stores for the use of their respective Regiments, to be *kept* in such Place or Places as shall be ordered by the Field Officers" (emphasis added)).

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 [***693] 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. [13] 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.

13 The Court notes that the First Amendment protects two separate rights with the phrase "the 'right [singular] of the people peaceably to assemble, and to petition the Government for a redress of grievances.'" *Ante*, at 591, 171 L. Ed. 2d, at 657. But this only proves the point: In contrast to the language quoted by the Court, the Second Amendment does not protect a "right to keep *and to* bear Arms," but rather a "right to keep and bear arms." The State Constitutions cited by the Court are distinguishable on the same ground.

* [**2831] * *

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 and embraced by [*652] the Court falls far short of sustaining that heavy burden.[14] And the Court's emphatic reliance on the claim "that the Second Amendment . . . codified a *pre-existing* right," *ante*, at 592, 171 L. Ed. 2d, at 657, 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.

14 The Court's atomistic, word-by-word approach to construing the Amendment calls to mind the parable of the six blind men and the elephant, famously set in verse by John Godfrey Saxe. The Poems of John Godfrey Saxe 135-136 (1873). In the parable, each blind man approaches a single elephant; touching a different part of the elephant's body in isolation, each concludes that he has learned its true nature. One touches the animal's leg, and concludes that the elephant is like a tree; another touches the trunk and decides that the elephant is like a snake; and so on. Each of them, of course, has fundamentally failed to grasp the nature of the creature.

Indeed, not a word in the constitutional text even arguably supports the Court'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." *Ante*, at 635, 171 L. Ed. 2d, at 683.

II

The proper allocation of military power in the new Nation was an issue of central concern for the Framers.

The compromises they ultimately reached, reflected in Article I's Militia Clauses and the Second Amendment, represent quintessential examples of the Framers' "split[ting] the atom of sovereignty."[15]

> 15 By "'split[ting] the atom of sovereignty,'" the Framers created "'two political capacities, one state and one federal, each protected from incursion by the other. The resulting Constitution created a legal system unprecedented in form and design, establishing two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it.'" *Saenz v. Roe*, 526 U.S. 489, 504, n 17, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999) (quoting *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 838, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995) (Kennedy, J., concurring)).

[*653] Two themes relevant to our current interpretive task ran through the debates on the original Constitution. [***694] "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, 110 S. Ct. 2418, 110 L. Ed. 2d 312 (1990).[16] Governor Edmund Randolph, reporting on the Constitutional Convention to the Virginia Ratification Convention, explained: "With respect to a standing army, I believe there was not a member in the federal Convention, who did not feel indignation at such an institution." 3 J. Elliot, [**2832] Debates in the Several State Conventions on the Adoption of the Federal Constitution 401 (2d ed. 1863) (hereinafter Elliot). 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, 110 S. Ct. 2418, 110 L. Ed. 2d 312; during the Revolutionary War, "[t]his force, though armed, was largely untrained, and its deficiencies were the subject of bitter complaint." Wiener, The Militia Clause of the Constitution, 54 Harv. L. Rev. 181, 182 (1940).[17] [*654] In order to respond to those twin concerns, a compromise was reached: Congress would be authorized to raise and support a national Army[18] and Navy, and also to organize, arm, discipline, and provide for the calling forth of "the Militia." U.S. Const., Art. I, § 8, cls. 12-16. The President, at the same time, was empowered as the "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." Art. II, § 2. But, with respect to the militia, a significant reservation was made to the States: Although Congress would have the power to call forth,[19] organize, arm, and discipline the militia, as well as to govern "such Part of them as may be employed in the Service of the United States," the States respectively would retain the right to appoint the officers and to train the [***695] militia in accordance with the discipline prescribed by Congress. Art. I, § 8, cl. 16.[20]

> 16 Indeed, this was one of the grievances voiced by the colonists: Paragraph 13 of the Declaration of Independence charged of King George, "He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures."
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> 17 George Washington, writing to Congress on September 24, 1776, warned that for Congress "[t]o place any dependance upon Militia, is, assuredly, resting upon a broken staff." 6 Writings of George Washington 106, 110 (J. Fitzpatrick ed. 1932). Several years later he reiterated this view in another letter to Congress: "Regular Troops alone are equal to the exigencies of modern war, as well for defence as offence . . . . *No Militia* will ever acquire the habits necessary to resist a regular force. . . . The firmness requisite for the real business of fighting is only to be attained by a constant course of discipline and service." 20 *id.*, at 49, 49-50 (Sept. 15, 1780). And Alexander Hamilton argued this view in many debates. In 1787, he wrote:
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> > "Here I expect we shall be told that the militia of the country is its natural bulwark, and would be at all times equal to the national defense. This doctrine, in substance, had like to have lost us our independence. . . . War, like most other things, is a science to be acquired and perfected by diligence, by perseverance, by time, and by practice." The Federalist No. 25, p 166 (C. Rossiter ed. 1961).

18 "[B]ut no Appropriation of Money to that Use [raising and supporting Armies] shall be for a longer Term than two Years." U.S. Const., Art. I, § 8, cl. 12

19 This "calling forth" power was only permitted in order for the militia "to execute the Laws of the Union, suppress Insurrections and repel Invasions." Art. I, § 8, cl. 15.

20 The Court assumes--incorrectly, in my view--that even when a state militia was not called into service, Congress would have had the power to exclude individuals from enlistment in that state militia. See *ante*, at 600, 171 L. Ed. 2d, at 662. That assumption is not supported by the text of the Militia Clauses of the original Constitution, which confer upon Congress the power to "organiz[e], ar[m], and disciplin[e], the Militia," Art. I, § 8, cl. 16, but not the power to say who will be members of a state militia. It is also flatly inconsistent with the Second Amendment. The States' power to create their own militias provides an easy answer to the Court's complaint that the right as I have described it is empty because it merely guarantees "citizens' right to use a gun in an organization from which Congress has plenary authority to exclude them." *Ante*, at 600, 171 L. Ed. 2d, at 662.

[*655] But the original Constitution's retention of the militia and its creation of divided authority over that body did not prove sufficient to allay fears about the dangers posed by a standing army. For it was perceived by some that Article I contained a significant gap: While it empowered [**2833] Congress to organize, arm, and discipline the militia, it did not prevent Congress from providing for the militia's *dis*armament. As George Mason argued during the debates in Virginia on the ratification of the original Constitution:

> "The militia may be here destroyed by that method which has been practised in other parts of the world before; that is, by rendering them useless--by disarming them. Under various pretences, Congress may neglect to provide for arming and disciplining the militia; and the state governments cannot do it, for Congress has the exclusive right to arm them." 3 Elliot 379.

This sentiment was echoed at a number of state ratification conventions; indeed, it was one of the primary objections to the original Constitution voiced by its opponents. The Antifederalists were ultimately unsuccessful in persuading state ratification conventions to condition their approval of the Constitution upon the eventual inclusion of any particular amendment. But a number of States did propose to the first Federal Congress amendments reflecting a desire to ensure that the institution of the militia would remain protected under the new Government. The proposed amendments sent by the States of Virginia, North Carolina, and New York focused on the importance of preserving the state militias and reiterated the dangers posed by standing armies. New Hampshire sent a proposal that differed significantly from the others; while also invoking the dangers of a standing army, it suggested that the Constitution should more broadly protect the use and possession of weapons, without tying such a guarantee expressly to the maintenance of the militia. The States of Maryland, Pennsylvania, and [*656] Massachusetts sent no relevant proposed amendments to Congress, but in each of those States a minority of the delegates advocated related amendments. While the Maryland minority proposals were exclusively concerned with standing armies and conscientious objectors, the unsuccessful proposals in both Massachusetts and Pennsylvania would have protected a more broadly worded right, less clearly tied to service in a state militia. Faced with all of these options, it is telling that James Madison chose to craft the Second Amendment as he did.

The relevant proposals sent by the [***696] Virginia Ratifying Convention read as follows:

> "17th. That the people have a right to keep and bear arms; that a well-regulated militia, composed of the body of the people trained to arms, is the proper, natural, and safe defence of a free state; that standing armies in time of peace, are dangerous to liberty, and therefore ought to be avoided, as far as the circumstances and protection of the community will admit; and that, in all cases, the military should be under strict subordination to, and be governed by the civil power." *Id.*,

at Elliot 659.

> "19th. That any person religiously scrupulous of bearing arms ought to be exempted, upon payment of an equivalent to employ another to bear arms in his stead." *Ibid.*

North Carolina adopted Virginia's proposals and sent them to Congress as its own, although it did not actually ratify the original Constitution until Congress had sent the proposed Bill of Rights to the States for ratification. 2 Schwartz 932-933; see The Complete Bill of Rights 182-183 (N. Cogan ed. 1997) (hereinafter Cogan).

New York produced a proposal with nearly identical language. It read:

> [*657] "That the people have a right to keep and bear Arms; that a well regulated Militia, including the body of the People capable of bearing Arms, is the proper, [**2834] natural and safe defence of a free State. . . . That standing Armies, in time of Peace, are dangerous to Liberty, and ought not to be kept up, except in Cases of necessity; and that at all times, the Military should be kept under strict Subordination to the civil Power." 2 Schwartz 912.

Notably, each of these proposals used the phrase "keep and bear arms," which was eventually adopted by Madison. And each proposal embedded the phrase within a group of principles that are distinctly military in meaning.[21]

> 21 In addition to the cautionary references to standing armies and to the importance of civil authority over the military, each of the proposals contained a guarantee that closely resembled the language of what later became the Third Amendment. The 18th proposal from Virginia and North Carolina read: "That no soldier in time of peace ought to be quartered in any house without the consent of the owner, and in time of war in such manner only as the law directs." 3 Elliot 659. And New York's language read: "That in time of Peace no Soldier ought to be quartered in any House without the consent of the Owner, and in time of War only by the Civil Magistrate in such manner as the Laws may direct." 2 Schwartz 912.

By contrast, New Hampshire's proposal, although it followed another proposed amendment that echoed the familiar concern about standing armies, [22] described the protection involved in more clearly personal terms. Its proposal read:

> 22 *"Tenth,* That no standing Army shall be Kept up in time of Peace unless with the consent of three fourths of the Members of each branch of Congress, nor shall Soldiers in Time of Peace be quartered upon private Houses with out the consent of the Owners." *Id.*, at 761.

> *"Twelfth,* Congress shall never disarm any Citizen unless such as are or have been in Actual Rebellion." *Id.*, at 758, 761.

The proposals considered in the other three States, although ultimately rejected by their respective ratification [*658] conventions, are also relevant to our historical inquiry. First, the Maryland proposal, endorsed by a minority of the delegates and later circulated in pamphlet form, read:

> [***697] "4. That no standing army shall be kept up in time of peace, unless with the consent of two thirds of the members present of each branch of Congress.
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> . . . . .
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> "10. That no person conscientiously scrupulous of bearing arms, in any case, shall be compelled personally to serve as a soldier." *Id.*, at 729, 735.

The rejected Pennsylvania proposal, which was later incorporated into a critique of the Constitution titled "The Address and Reasons of Dissent of the Minority of the Convention of the State of Pennsylvania to Their

Constituents, 1787," signed by a minority of the State's delegates (those who had voted against ratification of the Constitution), *id.*, at 628, 662, read:

> "7. That the people have a right to bear arms for the defense of themselves and their own State, or the United States, or for the purpose of killing game; and no law shall be passed for disarming the people or any of them unless for crimes committed, or real danger of public injury from individuals; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up; and that the military shall be kept under strict subordination to, and be governed by the civil powers." *Id.*, at 665.

Finally, after the delegates at the Massachusetts Ratification Convention had compiled a list of proposed amendments and alterations, a motion was made to add to the list the following language: "that [**2835] the said Constitution be never construed to authorize Congress to . . . prevent the people of the United States, who are peaceable citizens, from keeping their own arms." Cogan 181. This motion, however, failed to achieve the necessary support, and the proposal was excluded [*659] from the list of amendments the State sent to Congress. 2 Schwartz 674-675.

Madison, charged with the task of assembling the proposals for amendments sent by the ratifying States, was the principal draftsman of the Second Amendment.[23] He had before him, or at the very least would have been aware of, all of these proposed formulations. In addition, Madison had been a member, some years earlier, of the committee tasked with drafting the Virginia Declaration of Rights. That committee considered a proposal by Thomas Jefferson that would have included within the Virginia Declaration the following language: "No freeman shall ever be debarred the use of arms [within his own lands or tenements]." 1 Papers of Thomas Jefferson 363 (J. Boyd ed. 1950). But the committee rejected that language, adopting instead the provision drafted by George Mason.[24]

> 23 Madison explained in a letter to Richard Peters, Aug. 19, 1789, the paramount importance of preparing a list of amendments to placate those States that had ratified the Constitution in reliance on a commitment that amendments would follow: "In many States the [Constitution] was adopted under a tacit compact in [favor] of some subsequent provisions on this head. In [Virginia]. It would have been *certainly* rejected, had no assurances been given by its advocates that such provisions would be pursued. As an honest man *I feel* my self bound by this consideration." Creating the Bill of Rights 281, 282 (H. Veit, K. Bowling, & C. Bickford eds. 1991) (hereinafter Veit).
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> 24 The adopted language, Virginia Declaration of Rights P13 (1776), read as follows: "That a well-regulated Militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free State; that Standing Armies, in time of peace, should be avoided as dangerous to liberty; and that, in all cases, the military should be under strict subordination to, and governed by, the civil power." 1 Schwartz 235.

With all of these sources upon [***698] which to draw, it is strikingly significant that Madison's first draft omitted any mention of nonmilitary use or possession of weapons. Rather, his original draft repeated the essence of the two proposed amendments sent by Virginia, combining the substance of the two provisions succinctly into one, which read: "The [*660] right of the people to keep and bear arms shall not be infringed; a well armed, and well regulated militia being the best security of a free country; but no person religiously scrupulous of bearing arms, shall be compelled to render military service in person." Cogan 169.

Madison's decision to model the Second Amendment on the distinctly military Virginia proposal is therefore revealing, since it is clear that he considered and rejected formulations that would have unambiguously protected civilian uses of firearms. When Madison prepared his first draft, and when that draft was debated and modified, it is reasonable to assume that all participants in the drafting process were fully aware of the other formulations that would have protected civilian use and possession of weapons and that their choice to craft the Amendment as they did represented a rejection of those alternative formulations.

Madison's initial inclusion of an exemption for

conscientious objectors sheds revelatory light on the purpose of the Amendment. It confirms an intent to describe a duty as well as a right, and it unequivocally identifies the military character of both. The objections voiced to the conscientious-objector clause only confirm the central [**2836] meaning of the text. Although records of the debate in the Senate, which is where the conscientious-objector clause was removed, do not survive, the arguments raised in the House illuminate the perceived problems with the clause: Specifically, there was concern that Congress "can declare who are those religiously scrupulous, and prevent them from bearing arms."[25] The ultimate removal of the clause, therefore, only serves to confirm the purpose of the Amendment--to protect [*661] against congressional disarmament, by whatever means, of the States' militias.

> 25 Veit 182. This was the objection voiced by Elbridge Gerry, who went on to remark, in the next breath: "What, sir, is the use of a militia? It is to prevent the establishment of a standing army, the bane of liberty. . . . Whenever government mean to invade the rights and liberties of the people, they always attempt to destroy the militia, in order to raise an army upon their ruins." *Ibid.*

The Court also contends that because "Quakers opposed the use of arms not just for militia service, but for any violent purpose whatsoever," *ante*, at 590, 171 L. Ed. 2d, at 656, the inclusion of a conscientious-objector clause in the original draft of the Amendment does not support the conclusion that the phrase "bear Arms" was military in meaning. But that claim cannot be squared with the record. In the proposals cited *supra*, at 656, 171 L. Ed. 2d, at 696, both Virginia and North Carolina included the following language: "That any person religiously scrupulous of bearing arms ought to be exempted, upon payment of an equivalent *to employ another to bear* [***699] *arms in his stead*" (emphasis added).[26] There is no plausible argument that the use of "bear arms" in those provisions was not unequivocally and exclusively military: The State simply does not compel its citizens to carry arms for the purpose of private "confrontation," *ante*, at 584, 171 L. Ed. 2d, at 652, or for self-defense.

> 26 The failed Maryland proposals contained similar language. See *supra*, at 656, 171 L. Ed. 2d, at 696.

The history of the adoption of the Amendment thus describes an overriding concern about the potential threat to state sovereignty that a federal standing army would pose, and a desire to protect the States' militias as the means by which to guard against that danger. But state militias could not effectively check the prospect of a federal standing army so long as Congress retained the power to disarm them, and so a guarantee against such disarmament was needed.[27] As we explained in *Miller:* "With obvious purpose to assure the continuation and render possible the effectiveness of such [*662] forces the declaration and guarantee of the Second Amendment were made. It must be interpreted and applied with that end in view." 307 U.S., at 178, 59 S. Ct. 816, 83 L. Ed. 1206. The evidence plainly refutes the claim that the Amendment was motivated by the Framers' fears that Congress might act to regulate any civilian uses of weapons. And even if the historical record were genuinely ambiguous, the burden would remain on the parties advocating a change in the law to introduce facts or arguments "'newly ascertained,'" *Vasquez*, 474 U.S., at 266, 106 S. Ct. 617, 88 L. Ed. 2d 598; the Court is unable to identify any such facts or arguments.

> 27 The Court suggests that this historical analysis casts the Second Amendment as an "odd outlier," *ante*, at 603, 171 L. Ed. 2d, at 664; if by "outlier," the Court means that the Second Amendment was enacted in a unique and novel context, and responded to the particular challenges presented by the Framers' federalism experiment, I have no quarrel with the Court's characterization.

III

Although it gives short shrift to the drafting history of the Second Amendment, [**2837] the Court dwells at length on four other sources: the 17th-century English Bill of Rights; Blackstone's Commentaries on the Laws of England; postenactment commentary on the Second Amendment; and post-Civil War legislative history.[28] All of these sources shed only indirect light on the question before us, and in any [***700] event offer little support for the Court's conclusion. [29]

> 28 The Court's fixation on the last two types of sources is particularly puzzling, since both have the same characteristics as postenactment legislative history, which is generally viewed as the least reliable source of authority for ascertaining the intent of any provision's drafters.

As has been explained:

> "The legislative history of a statute is the history of its consideration and enactment. 'Subsequent legislative history'--which presumably means the post-enactment history of a statute's consideration and enactment--is a contradiction in terms. The phrase is used to smuggle into judicial consideration legislators' expression not of what a bill currently under consideration means (which, the theory goes, reflects what their colleagues understood they were voting for), but of what a law previously enacted means. . . . In my opinion, the views of a legislator concerning a statute already enacted are entitled to no more weight than the views of a judge concerning a statute not yet passed." *Sullivan v. Finkelstein*, 496 U.S. 617, 631-632, 110 S. Ct. 2658, 110 L. Ed. 2d 563 (1990) (Scalia, J., concurring in part).

29 The Court stretches to derive additional support from scattered state-court cases primarily concerned with state constitutional provisions. See *ante*, at 611-614, 171 L. Ed. 2d, at 669-670. To the extent that those state courts assumed that the Second Amendment was coterminous with their differently worded state constitutional arms provisions, their discussions were of course dicta. Moreover, the cases on which the Court relies were decided between 30 and 60 years after the ratification of the Second Amendment, and there is no indication that any of them engaged in a careful textual or historical analysis of the federal constitutional provision. Finally, the interpretation of the Second Amendment advanced in those cases is not as clear as the Court apparently believes. In *Aldridge v. Commonwealth*, 4 Va. 447, 2 Va. Cas. 447 (Gen. Ct. 1824), for example, a Virginia court pointed to the restriction on free blacks' "right to bear arms" as evidence that the protections of the State and Federal Constitutions did not extend to free blacks. The Court asserts that "[t]he claim was obviously not that blacks were prevented from carrying guns in the militia." *Ante*, at 611, 171 L. Ed. 2d, at 669. But it is not obvious at all. For in many States, including Virginia, free blacks during the colonial period were prohibited from carrying guns in the militia, instead being required to "muste[r] without arms"; they were later barred from serving in the militia altogether. See Siegel, The Federal Government's Power to Enact Color-Conscious Laws: An Originalist Inquiry, 92 Nw. U. L. Rev. 477, 497-498, and n 120 (1998). But my point is not that the *Aldridge* court endorsed my view of the Amendment--plainly it did not, as the premise of the relevant passage was that the Second Amendment applied to the States. Rather, my point is simply that the court could have understood the Second Amendment to protect a militia-focused right, and thus that its passing mention of the right to bear arms provides scant support for the Court's position.

[*663] *The English Bill of Rights*

The Court's reliance on Article VII of the 1689 English Bill of Rights--which, like most of the evidence offered by the Court today, was considered in *Miller*[30] -- [**2838] is misguided [*664] both because Article VII was enacted in response to different concerns from those that motivated the Framers of the Second Amendment, and because the guarantees of the two provisions were by no means coextensive. Moreover, the English text contained no preamble or other provision identifying a narrow, militia-related purpose.

30 The Government argued in its brief:

> "[I]t would seem that the early English law did not guarantee an unrestricted right to bear arms. Such recognition as existed of a right in the people to keep and bear arms appears to have resulted from oppression by rulers who disarmed their political opponents and who organized large standing armies which were obnoxious and

> burdensome to the people. This right, however, it is clear, gave sanction only to the arming of the people as a body to defend their rights against tyrannical and unprincipled rulers. It did not permit the keeping of arms for purposes of private defense." Brief for United States in United States v. Miller, O. T. 1938, No. 696, pp 11-12 (citations omitted). The Government then cited at length the Tennessee Supreme Court's opinion in *Aymette*, 21 Tenn. 154, which further situated the English Bill of Rights in its historical context. See n 10, *supra*.

The English Bill of Rights responded to abuses by the Stuart monarchs; among the grievances set forth in the Bill of Rights was that the King had violated the law "[b]y causing several good Subjects being Protestants to be disarmed at the same time when Papists were both armed and Employed contrary to Law." L. Schwoerer, The Declaration of Rights, 1689, App. 1, p. 295 (1981). Article VII of the Bill of Rights was a response to that selective disarmament; it guaranteed that "the Subjects which are Protestants may have Armes for their defence Suitable to their condition and as allowed by Law." *Id.*, at 297. This grant did not establish a general right of all persons, or even of all Protestants, to possess weapons. Rather, the right was qualified in two distinct ways: First, it was restricted [***701] to those of adequate social and economic status ("suitable to their Condition"); second, it was only available subject to regulation by Parliament ("as allowed by Law"). [31]

> 31 Moreover, it was the Crown, not Parliament, that was bound by the English provision; indeed, according to some prominent historians, Article VII is best understood not as announcing any individual right to unregulated firearm ownership (after all, such a reading would fly in the face of the text), but as an assertion of the concept of parliamentary supremacy. See Brief for Jack N. Rakove et al. as *Amici Curiae* 6-9.

The Court may well be correct that the English Bill of Rights protected the right of *some* English subjects to use *some* arms for personal self-defense free from restrictions by the Crown (but not Parliament). But that right--adopted [*665] in a different historical and political context and framed in markedly different language--tells us little about the meaning of the Second Amendment.

Blackstone's Commentaries

The Court's reliance on Blackstone's Commentaries on the Laws of England is unpersuasive for the same reason as its reliance on the English Bill of Rights. Blackstone's invocation of "'the natural right of resistance and self-preservation,'" *ante*, at 594, 171 L. Ed. 2d, at 658, and "'the right of having and using arms for self-preservation and defence,'" *ibid.*, referred specifically to Article VII in the English Bill of Rights. The excerpt from Blackstone offered by the Court, therefore, is, like Article VII itself, of limited use in interpreting the very differently worded, and differently historically situated, Second Amendment.

What *is* important about Blackstone is the instruction he provided on reading the sort of text before us today. Blackstone described an interpretive approach that gave far more weight to preambles than the Court allows. Counseling that "[t]he fairest and most rational method to interpret the will of the legislator, is by exploring his intentions at the time when the law was made, by *signs* the most natural and probable," Blackstone explained: "[I]f words happen to be still dubious, we may establish their meaning from the context; with which it may be of singular use to compare a word, or a sentence, whenever they are ambiguous, equivocal, or intricate. Thus, the proeme, or preamble, is often called in to help the construction of an act of parliament." 1 Commentaries on the Laws of England 59-60 (1765). In light of the Court's invocation of Blackstone as "'the preeminent authority on English law for the founding [**2839] generation,'" *ante*, at 593-594, 171 L. Ed. 2d, at 658 (quoting *Alden* v. *Maine*, 527 U.S. 706, 715, 119 S. Ct. 2240, 144 L. Ed. 2d 636 (1999)), its disregard for his guidance on matters of interpretation is striking.

[*666] *Postenactment Commentary*

The Court also excerpts, without any real analysis, commentary by a number of additional scholars, some near in time to the framing and others postdating it by close to a century. Those scholars are for the most part of limited relevance in construing the guarantee of the

Second Amendment: Their views are not altogether clear,[32] they tended to collapse the Second Amendment with Article VII of the [***702] English [*667] Bill of Rights, and they appear to have been unfamiliar with the drafting history of the Second Amendment.[33]

> 32 For example, St. George Tucker, on whom the Court relies heavily, did not consistently adhere to the position that the Amendment was designed to protect the "Blackstonian" self-defense right, *ante*, at 606, 171 L. Ed. 2d, at 666. In a series of unpublished lectures, Tucker suggested that the Amendment should be understood in the context of the compromise over military power represented by the original Constitution and the Second and Tenth Amendments:
>
> > "If a State chooses to incur the expense of putting arms into the Hands of its own Citizens for their defense, it would require no small ingenuity to prove that they have no right to do it, or that it could by any means contravene the Authority of the federal Govt. It may be alleged indeed that this might be done for the purpose of resisting the laws of the federal Government, or of shaking off the Union: to which the plainest answer seems to be, that whenever the States think proper to adopt either of these measures, they will not be with-held by the fear of infringing any of the powers of the federal Government. But to contend that such a power would be dangerous for the reasons above mentioned, would be subversive of every principle of Freedom in our Government; of which the first Congress appears to have been sensible by proposing an Amendment to the Constitution, which has since been ratified and has become part of it, viz., 'That a well regulated militia being necessary to the Security of a free State, the right of the people to keep & bear arms shall not be infringed.' To this we may add that this power of arming the militia, is not one of those prohibited to the States by the Constitution, and, consequently, is reserved to them under the twelfth Article of the ratified aments." 4 S. Tucker, Ten Notebooks of Law Lectures, 1790s, pp. 127-128, in Tucker-Coleman Papers (College of William and Mary).
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> See also Cornell, St. George Tucker and the Second Amendment: Original Understandings and Modern Misunderstandings, 47 Wm. & Mary L. Rev. 1123 (2006).
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> 33 The Court does acknowledge that at least one early commentator described the Second Amendment as creating a right conditioned upon service in a state militia. See *ante*, at 610, 171 L. Ed. 2d, at 668-669 (citing B. Oliver, The Rights of an American Citizen (1832)). Apart from the fact that Oliver is the *only* commentator in the Court's exhaustive survey who appears to have inquired into the intent of the drafters of the Amendment, what is striking about the Court's discussion is its failure to refute Oliver's description of the meaning of the Amendment or the intent of its drafters; rather, the Court adverts to simple nosecounting to dismiss his view.

The most significant of these commentators was Joseph Story. Contrary to the Court's assertions, however, Story actually supports the view that the Amendment was designed to protect the right of each of the States to maintain a well-regulated militia. When Story used the term "palladium" in discussions of the Second Amendment, he merely echoed the concerns that animated the Framers of the Amendment and led to its adoption. An excerpt from his 1833 Commentaries on the Constitution of the United States--the same passage cited by the Court in *Miller*[34]--merits reproducing at some length:

> "The importance of [the Second Amendment] will scarcely be doubted by

> any persons who have duly reflected upon the subject. The militia is the natural [**2840] defence of a free country against sudden foreign invasions, domestic insurrections, and domestic usurpations of power by rulers. It is against sound policy for a free people to keep up large military establishments and standing armies in time of peace, both from the enormous expenses with which they are attended and the facile means which they afford to ambitious and unprincipled rulers to subvert the government, or trample upon the rights of the people. The right of the citizens to keep and bear arms has justly been considered as the [*668] palladium of the liberties of a republic, since it offers a strong moral check against the usurpation and arbitrary power of rulers, and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them. And yet, [***703] though this truth would seem so clear, and the importance of a well-regulated militia would seem so undeniable, it cannot be disguised that, among the American people, there is a growing indifference to any system of militia discipline, and a strong disposition, from a sense of its burdens, to be rid of all regulations. How it is practicable to keep the people duly armed without some organization, it is difficult to see. There is certainly no small danger that indifference may lead to disgust, and disgust to contempt; and thus gradually undermine all the protection intended by the clause of our national bill of rights." 2 J. Story, Commentaries on the Constitution of the United States § 1897, pp 620-621 (4th ed. 1873) (footnote omitted).

34 *Miller*, 307 U.S., at 182, n 3, 59 S. Ct. 816, 83 L. Ed. 1206.

Story thus began by tying the significance of the Amendment directly to the paramount importance of the militia. He then invoked the fear that drove the Framers of the Second Amendment --specifically, the threat to liberty posed by a standing army. An important check on that danger, he suggested, was a "well-regulated militia," *id.*, at 621, for which he assumed that arms would have to be kept and, when necessary, borne. There is not so much as a whisper in the passage above that Story believed that the right secured by the Amendment bore any relation to private use or possession of weapons for activities like hunting or personal self-defense.

After extolling the virtues of the militia as a bulwark against tyranny, Story went on to decry the "growing indifference to any system of militia discipline." *Ibid.* When he wrote, "[h]ow it is practicable to keep the people duly armed without some organization it is difficult to see," *ibid.*, he underscored [*669] the degree to which he viewed the arming of the people and the militia as indissolubly linked. Story warned that the "growing indifference" he perceived would "gradually undermine all the protection intended by this clause of our national bill of rights," *ibid.* In his view, the importance of the Amendment was directly related to the continuing vitality of an institution in the process of apparently becoming obsolete.

In an attempt to downplay the absence of any reference to nonmilitary uses of weapons in Story's commentary, the Court relies on the fact that Story characterized Article VII of the English Declaration of Rights as a "'similar provision,'" *ante*, at 608, 171 L. Ed. 2d, at 667. The two provisions were indeed similar, in that both protected some uses of firearms. But Story's characterization in no way suggests that he believed that the provisions had the same scope. To the contrary, Story's exclusive focus on the militia in his discussion of the Second Amendment confirms his understanding of the right protected by the Second Amendment as limited to military uses of arms.

[**2841] Story's writings as a Justice of this Court, to the extent that they shed light on this question, only confirm that Justice Story did not view the Amendment as conferring upon individuals any "self-defense" right disconnected from service in a state militia. Justice Story dissented from the Court's decision in *Houston* v. *Moore*, 18 U.S. 1, 5 Wheat. 1, 24, 5 L. Ed. 19 (1820), which held that a state court "had a concurrent jurisdiction" with the federal courts "to try a militia man who had disobeyed the call of the President, and to enforce the laws of Congress against such delinquent." *Id.*, at 32, 5 L. Ed. 19

. Justice Story believed [***704] that Congress' power to provide for the organizing, arming, and disciplining of the militia was, when Congress acted, plenary; but he explained that in the absence of congressional action, "I am certainly not prepared to deny the legitimacy of such an exercise of [state] authority." *Id.*, at 52, 5 L. Ed. 19. As to the Second Amendment, he wrote that it "may [*670] not, perhaps, be thought to have any important bearing on this point. If it have, it confirms and illustrates, rather than impugns the reasoning already suggested." *Id.*, at 52-53, 5 L. Ed. 19. The Court contends that had Justice Story understood the Amendment to have a militia purpose, the Amendment would have had "enormous and obvious bearing on the point." *Ante*, at 610, 171 L. Ed. 2d, at 668. But the Court has it quite backwards: If Story had believed that the purpose of the Amendment was to permit civilians to keep firearms for activities like personal self-defense, what "confirm[ation] and illustrat[ion]," *Houston*, 5 Wheat., at 53, 5 L. Ed. 19, could the Amendment possibly have provided for the point that States retained the power to organize, arm, and discipline their own militias?

Post-Civil War Legislative History

The Court suggests that by the post-Civil War period, the Second Amendment was understood to secure a right to firearm use and ownership for purely private purposes like personal self-defense. While it is true that some of the legislative history on which the Court relies supports that contention, see *ante*, at 614-616, 171 L. Ed. 2d, at 670-672, such sources are entitled to limited, if any, weight. All of the statements the Court cites were made long after the framing of the Amendment and cannot possibly supply any insight into the intent of the Framers; and all were made during pitched political debates, so that they are better characterized as advocacy than good-faith attempts at constitutional interpretation.

What is more, much of the evidence the Court offers is decidedly less clear than its discussion allows. The Court notes: "[B]lacks were routinely disarmed by Southern States after the Civil War. Those who opposed these injustices frequently stated that they infringed blacks' constitutional right to keep and bear arms." *Ante*, at 614, 171 L. Ed. 2d, at 671. The Court hastily concludes that "[n]eedless to say, the claim was not that blacks were being prohibited from carrying arms in an organized state militia," *ibid.* But some of the claims of the [*671] sort the Court cites may have been just that. In some Southern States, Reconstruction-era Republican governments created state militias in which both blacks and whites were permitted to serve. Because "[t]he decision to allow blacks to serve alongside whites meant that most southerners refused to join the new militia," the bodies were dubbed "'Negro militia[s].'" S. Cornell, A Well-Regulated Militia 177 (2006). The "arming of the Negro militias met with especially fierce resistance in South Carolina. . . . The sight of organized, armed freedmen incensed opponents of Reconstruction and led to an intensified campaign of Klan terror. Leading members of the Negro militia were beaten or lynched and their weapons stolen." *Id.*, at 176-177.

[**2842] One particularly chilling account of Reconstruction-era Klan violence directed at a black militia member is recounted in the memoir of Louis F. Post, A "Carpetbagger" in South [***705] Carolina, 10 Journal of Negro History 10 (1925). Post describes the murder by local Klan members of Jim Williams, the captain of a "Negro militia company," *id.*, at 59, this way:

> "[A] cavalcade of sixty cowardly white men, completely disguised with face masks and body gowns, rode up one night in March, 1871, to the house of Captain Williams . . . in the wood [they] hanged [and shot] him . . . [and on his body they] then pinned a slip of paper inscribed, as I remember it, with these grim words: 'Jim Williams gone to his last muster.'" *Id.*, at 61.

In light of this evidence, it is quite possible that at least some of the statements on which the Court relies actually did mean to refer to the disarmament of black militia members.

IV

The brilliance of the debates that resulted in the Second Amendment faded into oblivion during the ensuing years, for the concerns about Article I's Militia Clauses that generated such pitched debate during the ratification process and led to the adoption of the Second Amendment were short lived.

[*672] In 1792, the year after the Amendment was ratified, Congress passed a statute that purported to

establish "an Uniform Militia throughout the United States." 1 Stat. 271. The statute commanded every able-bodied white male citizen between the ages of 18 and 45 to be enrolled therein and to "provide himself with a good musket or firelock" and other specified weaponry. [35]*Ibid.* The statute is significant, for it confirmed the way those in the founding generation viewed firearm ownership: as a duty linked to military service. The statute they enacted, however, "was virtually ignored for more than a century," and was finally repealed in 1901. See *Perpich*, 496 U.S., at 341, 110 S. Ct. 2418, 110 L. Ed. 2d 312.

> 35 The additional specified weaponry included: "a sufficient bayonet and belt, two spare flints, and a knapsack, a pouch with a box therein to contain not less than twenty-four cartridges, suited to the bore of his musket or firelock, each cartridge to contain a proper quantity of powder and ball: or with a good rifle, knapsack, shot-pouch and powder-horn, twenty balls suited to the bore of his rifle and a quarter of a pound of powder." 1 Stat. 271.

The postratification history of the Second Amendment is strikingly similar. The Amendment played little role in any legislative debate about the civilian use of firearms for most of the 19th century, and it made few appearances in the decisions of this Court. Two 19th-century cases, however, bear mentioning.

In *United States* v. *Cruikshank*, 92 U.S. 542, 23 L. Ed. 588 (1876), the Court sustained a challenge to respondents' convictions under the Enforcement Act of 1870 for conspiring to deprive any individual of "'any right or privilege granted or secured to him by the constitution or laws of the United States.'" *Id.*, at 548, 23 L. Ed. 588. The Court wrote, as to counts 2 and 10 of respondents' indictment:

> "The right there specified is that of 'bearing arms for a lawful purpose.' This is not a right granted by the Constitution. Neither is it in any manner dependent on [*673] that instrument for its existence. The second amendment declares that it shall not be infringed; but this, as has been seen, means no more than that it shall not be infringed by Congress. This is one of the amendments that has no other effect than [***706] to restrict the powers of the national government." *Id.*, at 553, 23 L. Ed. 588.

[**2843] The majority's assertion that the Court in *Cruikshank* "described the right protected by the Second Amendment as "'bearing arms for a lawful purpose,'"" *ante*, at 620,171 L. Ed. 2d, at 674 (quoting *Cruikshank*, 92 U.S., at 553, 23 L. Ed. 588), is not accurate. The *Cruikshank* Court explained that the defective *indictment* contained such language, but the Court did not itself describe the right, or endorse the indictment's description of the right.

Moreover, it is entirely possible that the basis for the indictment's counts 2 and 10, which charged respondents with depriving the victims of rights secured by the Second Amendment, was the prosecutor's belief that the victims--members of a group of citizens, mostly black but also white, who were rounded up by the sheriff, sworn in as a posse to defend the local courthouse, and attacked by a white mob--bore sufficient resemblance to members of a state militia that they were brought within the reach of the Second Amendment. See generally C. Lane, The Day Freedom Died: The Colfax Massacre, The Supreme Court, and the Betrayal of Reconstruction (2008).

Only one other 19th-century case in this Court, *Presser* v. *Illinois*, 116 U.S. 252, 6 S. Ct. 580, 29 L. Ed. 615 (1886), engaged in any significant discussion of the Second Amendment. The petitioner in *Presser* was convicted of violating a state statute that prohibited organizations other than the Illinois National Guard from associating together as military companies or parading with arms. Presser challenged his conviction, asserting, as relevant, that the statute violated both the Second and [*674] the Fourteenth Amendments. With respect to the Second Amendment, the Court wrote:

> "We think it clear that the sections under consideration, which only forbid bodies of men to associate together as military organizations, or to drill or parade with arms in cities and towns unless authorized by law, do not infringe the right of the people to keep and bear arms. But a conclusive answer to the contention that this amendment prohibits the legislation in question lies in the fact that the

> amendment is a limitation only upon the power of Congress and the National government, and not upon that of the States." *Id.*, at 264-265, 6 S. Ct. 580, 29 L. Ed. 615.

And in discussing the Fourteenth Amendment, the Court explained:

> "The plaintiff in error was not a member of the organized volunteer militia of the State of Illinois, nor did he belong to the troops of the United States or to any organization under the militia law of the United States. On the contrary, the fact that he did not belong to the organized militia or the troops of the United States was an ingredient in the offence for which he was convicted and sentenced. The question is, therefore, had he a right as a citizen of the United States, in disobedience of the State law, to associate with others as a military company, and to drill and parade with arms in the towns and cities of the State? If the plaintiff in error has any such privilege he must be able to point to the provision of the Constitution or statutes of the United States by which it is conferred." [***707] *Id.*, at 266, 6 S. Ct. 580, 29 L. Ed. 615.

Presser, therefore, both affirmed *Cruikshank*'s holding that the Second Amendment posed no obstacle to regulation by state governments, and suggested that in any event nothing in the Constitution protected the use of arms outside the [*675] context of a militia "authorized by law" and organized by the State or Federal Government.[36]

> 36 In another case the Court endorsed, albeit indirectly, the reading of *Miller* that has been well settled until today. In *Burton* v. *Sills*, 394 U.S. 812, 89 S. Ct. 1486, 22 L. Ed. 2d 748 (1969)*(per curiam)*, the Court dismissed for want of a substantial federal question an appeal from a decision of the New Jersey Supreme Court upholding, against a Second Amendment challenge, New Jersey's gun-control law. Although much of the analysis in the New Jersey court's opinion turned on the inapplicability of the Second Amendment as a constraint on the States, the court also quite correctly read *Miller* to hold that "Congress, though admittedly governed by the second amendment, may regulate interstate firearms so long as the regulation does not impair the maintenance of the active, organized militia of the states." *Burton* v. *Sills*, 53 N. J. 86, 99, 248 A.2d 521, 527 (1968).

[**2844] In 1901, the President revitalized the militia by creating "'the National Guard of the several States,'" *Perpich*, 496 U.S., at 341, 110 S. Ct. 2418, 110 L. Ed. 2d 312, and nn 9-10; meanwhile, the dominant understanding of the Second Amendment's inapplicability to private gun ownership continued well into the 20th century. The first two federal laws directly restricting civilian use and possession of firearms--the 1927 Act prohibiting mail delivery of "pistols, revolvers, and other firearms capable of being concealed on the person," ch. 75, 44 Stat. 1059, and the 1934 Act prohibiting the possession of sawed-off shotguns and machineguns--were enacted over minor Second Amendment objections dismissed by the vast majority of the legislators who participated in the debates.[37] Members of Congress clashed over the wisdom and efficacy of such laws as crime-control measures. But since the statutes did not infringe [*676] upon the military use or possession of weapons, for most legislators they did not even raise the specter of possible conflict with the Second Amendment.

> 37 The 1927 Act was enacted with no mention of the Second Amendment as a potential obstacle, although an earlier version of the bill had generated some limited objections on Second Amendment grounds, see 66 Cong. Rec. 725-735 (1924). And the 1934 Act featured just one colloquy, during the course of lengthy Committee debates, on whether the Second Amendment constrained Congress' ability to legislate in this sphere, see Hearings on H. R. 9006, before the House Committee on Ways and Means, 73d Cong., 2d Sess., 19 (1934).

Thus, for most of our history, the invalidity of Second-Amendment-based objections to firearms regulations has been well settled and uncontroversial.[38] Indeed, the Second Amendment was not even mentioned

[**2845] [***708] in either full House of Congress during the legislative proceedings that led to the passage of the 1934 Act. Yet enforcement of that law produced the judicial decision that confirmed the status of the Amendment as limited in reach to military usage. After reviewing many of the same sources that are discussed at [*677] greater length by the Court today, the *Miller* Court unanimously concluded that the Second Amendment did not apply to the possession of a firearm that did not have "some reasonable relationship to the preservation or efficiency of a well regulated militia." 307 U.S., at 178, 59 S. Ct. 816, 83 L. Ed. 1206.

> 38 The majority appears to suggest that even if the meaning of the Second Amendment has been considered settled by courts and legislatures for over two centuries, that settled meaning is overcome by the "reliance of millions of Americans" "upon the true meaning of the right to keep and bear arms." *Ante*, at 624, n. 24, 171 L. Ed. 2d, at 677. Presumably by this the Court means that many Americans own guns for self-defense, recreation, and other lawful purposes, and object to government interference with their gun ownership. I do not dispute the correctness of this observation. But it is hard to see how Americans have "relied," in the usual sense of the word, on the existence of a constitutional right that, until 2001, had been rejected by every federal court to take up the question. Rather, gun owners have "relied" on the laws passed by democratically elected legislatures, which have generally adopted only limited gun-control measures.
>
> Indeed, reliance interests surely cut the other way: Even apart from the reliance of judges and legislators who properly believed, until today, that the Second Amendment did not reach possession of firearms for purely private activities, "millions of Americans" have relied on the power of government to protect their safety and well-being, and that of their families. With respect to the case before us, the legislature of the District of Columbia has relied on its ability to act to "reduce the potentiality for gun-related crimes and gun-related deaths from occurring within the District of Columbia," Firearm Control Regulations Act of 1975 (Council Act No. 1-142), Hearing and Disposition before the House Committee on the District of Columbia, 94th Congr., 2d Sess., on H. Con. Res. 694, Ser. No. 94-24, p. 25 (1976); see *post*, at 693-696, 171 L. Ed. 2d, at 718 (Breyer, J., dissenting); so, too, have the residents of the District.

The key to that decision did not, as the Court belatedly suggests, *ante*, at 622-625, 171 L. Ed. 2d, at 675-676, turn on the difference between muskets and sawed-off shotguns; it turned, rather, on the basic difference between the military and nonmilitary use and possession of guns. Indeed, if the Second Amendment were not limited in its coverage to military uses of weapons, why should the Court in *Miller* have suggested that some weapons but not others were eligible for Second Amendment protection? If use for self-defense were the relevant standard, why did the Court not inquire into the suitability of a particular weapon for self-defense purposes?

Perhaps in recognition of the weakness of its attempt to distinguish *Miller*, the Court argues in the alternative that *Miller* should be discounted because of its decisional history. It is true that the appellees in *Miller* did not file a brief or make an appearance, although the court below had held that the relevant provision of the National Firearms Act violated the Second Amendment (albeit without any reasoned opinion). But, as our decision in *Marbury* v. *Madison*, 5 U.S. 137, 1 Cranch 137, 2 L. Ed. 60, in which only one side appeared and presented arguments, demonstrates, the absence of adversarial presentation alone is not a basis for refusing to accord *stare decisis* effect to a decision of this Court. See Bloch, *Marbury* Redux, in Arguing *Marbury* v. *Madison* 59, 63 (M. Tushnet ed. 2005). Of course, if it can be demonstrated that new evidence or arguments were genuinely not available to an earlier Court, that fact should be given special weight as we consider whether to overrule a prior case. But the Court does not make that claim, because it cannot. Although it is true that the drafting history of the Amendment was not [*678] discussed in the Government's brief, see *ante*, at 623-624, 171 L. Ed. 2d, at 676, it is certainly not the drafting history that the Court's decision today turns on. And those sources upon which the Court today relies most heavily *were* available to the *Miller* Court. The Government cited the English Bill of Rights and quoted a lengthy passage from *Aymette* v. *State*, 21 Tenn. 154 (1840), detailing the history leading to the English guarantee, Brief for United States in *United States* v.

Miller, O. T. 1938, No. 696, pp 12-13; it also cited Blackstone, *id.*, at 9, n 2, Cooley, *id.*, at 12, 15, and Story, *id.*, at 15. The Court is reduced to critiquing the number of *pages* the Government devoted to exploring [***709] the English legal sources. Only two (in a brief 21 pages in length)! Would the Court be satisfied with four? Ten?

The Court is simply wrong when it intones that *Miller* contained "*not a word*" about the Amendment's history. *Ante*, at 624, 171 L. Ed. 2d, at 676. The Court plainly looked to history to construe the term "Militia," and, on the best reading of *Miller*, the entire guarantee of the Second Amendment. After noting the original Constitution's grant of power to Congress and to the States over the militia, the Court explained:

> "With obvious purpose to assure the continuation and render possible the effectiveness of such forces the declaration and guarantee of the Second Amendment [**2846] were made. It must be interpreted and applied with that end in view.
>
> "The Militia which the States were expected to maintain and train is set in contrast with Troops which they were forbidden to keep without the consent of Congress. The sentiment of the time strongly disfavored standing armies; the common view was that adequate defense of country and laws could be secured through the Militia --civilians primarily, soldiers on occasion.
>
> "The signification attributed to the term Militia appears from the debates in the Convention, the history [*679] and legislation of Colonies and States, and the writings of approved commentators." *Miller*, 307 U.S., at 178-179, 59 S. Ct. 816, 83 L. Ed. 1206.

The majority cannot seriously believe that the *Miller* Court did not consider any relevant evidence; the majority simply does not approve of the conclusion the *Miller* Court reached on that evidence. Standing alone, that is insufficient reason to disregard a unanimous opinion of this Court, upon which substantial reliance has been placed by legislators and citizens for nearly 70 years.

V

The Court concludes its opinion by declaring that it is not the proper role of this Court to change the meaning of rights "enshrine[d]" in the Constitution. *Ante*, at 636, 171 L. Ed. 2d, at 684. But the right the Court announces was not "enshrined" in the Second Amendment by the Framers; it is the product of today's law-changing decision. The majority's exegesis has utterly failed to establish that as a matter of text or history, "the right of law-abiding, responsible citizens to use arms in defense of hearth and home" is "elevate[d] above all other interests" by the Second Amendment. *Ante*, at 635, 171 L. Ed. 2d, at 684.

Until today, it has been 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. The Court's announcement of a new constitutional right to own and use firearms for private purposes upsets that settled understanding, but leaves for future cases the formidable task of defining the scope of permissible regulations. Today judicial craftsmen have confidently asserted that a policy choice that denies a "law-abiding, responsible citize[n]" the right to keep and use weapons in the home for self-defense is "off the table." *Ante*, at 636, 171 L. Ed. 2d, at 684. Given the presumption that most citizens are law abiding, and the [***710] reality that the need to defend oneself may suddenly arise in a host of locations outside the home, [*680] I fear that the District's policy choice may well be just the first of an unknown number of dominoes to be knocked off the table.[39]

> 39 It was just a few years after the decision in *Miller* that Justice Frankfurter (by any measure a true judicial conservative) warned of the perils that would attend this Court's entry into the "political thicket" of legislative districting. *Colegrove* v. *Green*, 328 U.S. 549, 556, 66 S. Ct. 1198, 90 L. Ed. 1432 (1946) (plurality opinion). The equally controversial political thicket that the Court has decided to enter today is qualitatively different from the one that concerned Justice Frankfurter: While our entry into that thicket was justified because the political process was manifestly unable to solve the problem of unequal districts, no one has suggested that the political process is not working exactly as it should in

> mediating the debate between the advocates and opponents of gun control. What impact the Court's unjustified entry into *this* thicket will have on that ongoing debate--or indeed on the Court itself--is a matter that future historians will no doubt discuss at length. It is, however, clear to me that adherence to a policy of judicial restraint would be far wiser than the bold decision announced today.

I do not know whether today's decision will increase the labor of federal judges to [**2847] the "breaking point" envisioned by Justice Cardozo, but it will surely give rise to a far more active judicial role in making vitally important national policy decisions than was envisioned at any time in the 18th, 19th, or 20th centuries.

The Court properly disclaims any interest in evaluating the wisdom of the specific policy choice challenged in this case, but it fails to pay heed to a far more important policy choice--the choice made by the Framers themselves. The 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, I could not possibly conclude that the Framers made such a choice.

For these reasons, I respectfully dissent.

[*681] Justice **Breyer,** with whom Justice **Stevens,** Justice **Souter,** and Justice **Ginsburg** join, dissenting.

We must decide whether a District of Columbia law that prohibits the possession of handguns in the home violates the Second Amendment. The Court, relying upon its view that the Second Amendment seeks to protect a right of personal self-defense, holds that this law violates that Amendment. In my view, it does not.

I

The majority's conclusion is wrong for two independent reasons. The first reason is that set forth by Justice Stevens--namely, that the Second Amendment protects militia-related, not self-defense-related, interests. These two interests are sometimes intertwined. To assure 18th-century citizens that they could keep arms for militia purposes would necessarily have allowed them to keep arms that they could have used for self-defense as well. But self-defense alone, detached from any militia-related objective, is not the Amendment's concern.

The second independent reason is that the protection the Amendment provides is not absolute. The Amendment permits government to regulate [***711] the interests that it serves. Thus, irrespective of what those interests are--whether they do or do not include an independent interest in self-defense--the majority's view cannot be correct unless it can show that the District's regulation is unreasonable or inappropriate in Second Amendment terms. This the majority cannot do.

In respect to the first independent reason, I agree with Justice Stevens, and I join his opinion. In this opinion I shall focus upon the second reason. I shall show that the District's law is consistent with the Second Amendment even if that Amendment is interpreted as protecting a wholly separate interest in individual self-defense. That is so because the District's regulation, which focuses upon the presence of handguns in high-crime urban areas, represents a [*682] permissible legislative response to a serious, indeed life-threatening, problem.

Thus I here assume that one objective (but, as the majority concedes, *ante*, at 599, 171 L. Ed. 2d, at 661-662, not the *primary* objective) of those who wrote the Second Amendment was to help assure citizens that they would have arms available for purposes of self-defense. Even so, a legislature could reasonably conclude that the law will advance goals of great public importance, namely, saving lives, preventing injury, and reducing crime. The law is tailored to the urban crime problem in that it is local in scope [**2848] and thus affects only a geographic area both limited in size and entirely urban; the law concerns handguns, which are specially linked to urban gun deaths and injuries, and which are the overwhelmingly favorite weapon of armed criminals; and at the same time, the law imposes a burden upon gun owners that seems proportionately no greater than restrictions in existence at the time the Second Amendment was adopted. In these circumstances, the District's law falls within the zone that the Second Amendment leaves open to regulation by legislatures.

II

The Second Amendment says: "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." In interpreting and applying this Amendment, I take as a starting point the following four propositions, based on our precedent and today's opinions, to which I believe the entire Court subscribes:

(1) The Amendment protects an "individual" right--*i.e.*, one that is separately possessed, and may be separately enforced, by each person on whom it is conferred. See, *e.g.*, *ante*, at 595, 171 L. Ed. 2d, at 659 (opinion of the Court); *ante*, at 636, 171 L. Ed. 2d, at 684 (Stevens, J., dissenting).

(2) As evidenced by its preamble, the Amendment was adopted "[w]ith obvious purpose to assure the continuation [*683] and render possible the effectiveness of [militia] forces." *United States* v. *Miller*, 307 U.S. 174, 178, 59 S. Ct. 816, 83 L. Ed. 1206, 1939-1 C.B. 373 (1939); see *ante*, at 599, 171 L. Ed. 2d, at 661 (opinion of the Court); *ante*, at 599, 171 L. Ed. 2d, at 684 (Stevens, J., dissenting).

(3) The Amendment "must be interpreted and applied with that end in view." *Miller*, *supra*, at 178, 59 S. Ct. 816, 83 L. Ed. 1206, 1939-1 C.B. 373

(4) The right protected by the Second Amendment is not absolute, but instead is subject to government regulation. [***712] See *Robertson* v. *Baldwin*, 165 U.S. 275, 281-282, 17 S. Ct. 326, 41 L. Ed. 715 (1897); *ante*, at 595, 626-627, 171 L. Ed. 2d, at 659, 678 (opinion of the Court).

My approach to this case, while involving the first three points, primarily concerns the fourth. I shall, as I said, assume with the majority that the Amendment, in addition to furthering a militia-related purpose, also furthers an interest in possessing guns for purposes of self-defense, at least to some degree. And I shall then ask whether the Amendment nevertheless permits the District handgun restriction at issue here.

Although I adopt for present purposes the majority's position that the Second Amendment embodies a general concern about self-defense, I shall not assume that the Amendment contains a specific untouchable right to keep guns in the house to shoot burglars. The majority, which presents evidence in favor of the former proposition, does not, because it cannot, convincingly show that the Second Amendment seeks to maintain the latter in pristine, unregulated form.

To the contrary, colonial history itself offers important examples of the kinds of gun regulation that citizens would then have thought compatible with the "right to keep and bear arms," whether embodied in Federal or State Constitutions, or the background common law. And those examples include substantial regulation of firearms in urban areas, including regulations that imposed obstacles to the use of firearms for the protection of the home.

Boston, Philadelphia, and New York City, the three largest cities in America during that period, all restricted the firing of guns within city limits to at least some degree. See [*684] Churchill, Gun Regulation, the Police Power, and the Right To Keep [**2849] Arms in Early America, 25 Law & Hist. Rev. 139, 162 (2007); Dept. of Commerce, Bureau of Census, C. Gibson, Population of the 100 Largest Cities and Other Urban Places in the United States: 1790 to 1990 (1998) (Table 2), online at http://www.census.gov/population/documentation/twps0027/tab02.txt (all Internet materials as visited June 19, 2008, and available in Clerk of Court's case file). Boston in 1746 had a law prohibiting the "discharge" of "any Gun or Pistol charged with Shot or Ball in the Town" on penalty of 40 shillings, a law that was later revived in 1778. See Act of May 28, 1746, ch. X, Acts and Laws of Mass. Bay, p. 208; An Act for Reviving and Continuing Sundry Laws that are Expired, and Near Expiring, 1778 Mass. Sess., Laws, ch. V, pp 193, 194. Philadelphia prohibited, on penalty of five shillings (or two days in jail if the fine were not paid), firing a gun or setting off fireworks in Philadelphia without a "governor's special license." See Act of Aug. 26, 1721, § IV, in 3 Stat. at Large of Pa. 253-254 (J. Mitchell & H. Flanders Comm'rs. 1896). And New York City banned, on penalty of a 20-shilling fine, the firing of guns (even in houses) for the three days surrounding New Year's Day. 5 Colonial Laws of New York, ch. 1501, pp 244-246 (1894); see also An Act to Suppress the Disorderly Practice of Firing Guns, & c., on the Times Therein Mentioned (1774), in 8 Stat. at Large of Pa. 410-412 (1902) (similar law for all "inhabited parts" of Pennsylvania). See also An Act for preventing Mischief being done in the Town of *Newport*, or in any other Town in this Government, 1731 Rhode Island Session Laws [***713] pp. 240-241 (prohibiting, on penalty of five shillings for a first offense and more for subsequent

offenses, the firing of "any Gun or Pistol . . . in the Streets of any of the Towns of this Government, or in any Tavern of the same, after dark, on any Night whatsoever").

Furthermore, several towns and cities (including Philadelphia, New York, and Boston) regulated, for fire-safety reasons, [*685] the storage of gunpowder, a necessary component of an operational firearm. See Cornell & DeDino, A Well Regulated Right, 73 Ford. L. Rev. 487, 510-512 (2004). Boston's law in particular impacted the use of firearms in the home very much as the District's law does today. Boston's gunpowder law imposed a £10 fine upon "any Person" who "shall take into any Dwelling-House, Stable, Barn, Out-house, Ware-house, Store, Shop, or other Building, within the Town of *Boston*, any . . . Fire-Arm, loaded with, or having Gun-Powder." An Act in Addition to the several Acts already made for the prudent Storage of Gun-Powder within the Town of *Boston*, ch. XIII, 1783 Mass. Acts pp. 218-219; see also 1 S. Johnson, A Dictionary of the English Language 751 (4th ed. 1773) (defining "firearms" as "[a]rms which owe their efficacy to fire; guns"). Even assuming, as the majority does, see *ante*, at 631-632, 171 L. Ed. 2d, at 681, that this law included an implicit self-defense exception, it would nevertheless have prevented a homeowner from keeping in his home a gun that he could immediately pick up and use against an intruder. Rather, the homeowner would have had to get the gunpowder and load it into the gun, an operation that would have taken a fair amount of time to perform. See Hicks, United States Military Shoulder Arms, 1795-1935, 1 Journal of Am. Military Hist. Foundation 23, 30 (1937) (experienced soldier could, with specially prepared cartridges as opposed to plain gunpowder and ball, load and fire musket 3-to-4 times per minute); *id.*, at 26-30 (describing the loading process); see also Grancsay, The Craft of the Early American Gunsmith, 6 Metropolitan Museum of Art Bulletin 54, 60 (1947) (noting that rifles were slower to load and fire than muskets).

[**2850] Moreover, the law would, as a practical matter, have prohibited the carrying of loaded firearms anywhere in the city, unless the carrier had no plans to enter any building or was willing to unload or discard his weapons before going inside. And Massachusetts residents must have believed this kind of law compatible with the provision in the Massachusetts [*686] Constitution that granted "[t]he people . . . a right to keep and to bear arms for the common defence"--a provision that the majority says was interpreted as "secur[ing] an individual right to bear arms for defensive purposes." Art. XVII (1780), in 3 The Federal and State Constitutions, Colonial Charters, and Other Organic Laws 1888, 1892 (F. Thorpe ed. 1909) (hereinafter Thorpe); *ante*, at 602, 171 L. Ed. 2d, at 663 (opinion of the Court).

The New York City law, which required that gunpowder in the home be stored in certain sorts of containers, and laws in certain Pennsylvania towns, which required that gunpowder be stored on the highest story of the home, could well have presented similar obstacles to in-home use of firearms. See Act of Apr. 13, 1784, ch. 28, 1784 N. Y. Laws p 627; An Act for Erecting the Town of Carlisle, in the County of Cumberland, into a Borough, ch. XIV, § XLII, 1782 Pa. Laws p 49; An Act for Erecting the Town of [***714] Reading, in the County of Berks, into a Borough, ch. LXXVI, § XLII, 1783 Pa. Laws p 211. Although it is unclear whether these laws, like the Boston law, would have prohibited the storage of gunpowder inside a firearm, they would at the very least have made it difficult to reload the gun to fire a second shot unless the homeowner happened to be in the portion of the house where the extra gunpowder was required to be kept. See 7 United States Encyclopedia of History 1297 (P. Oehser ed. 1967) ("Until 1835 all small arms [were] single-shot weapons, requiring reloading by hand after every shot"). And Pennsylvania, like Massachusetts, had at the time one of the self-defense-guaranteeing state constitutional provisions on which the majority relies. See *ante*, at 601, 171 L. Ed. 2d, at 663 (citing Pa. Declaration of Rights, § XIII (1776), in 5 Thorpe 3083).

The majority criticizes my citation of these colonial laws. See *ante*, at 631-634, 171 L. Ed. 2d, at 681-682. But, as much as it tries, it cannot ignore their existence. I suppose it is possible that, as the majority suggests, see *ante*, at 631-633, 171 L. Ed. 2d, at 681-682, they all in practice contained self-defense exceptions. But none of them expressly provided [*687] one, and the majority's assumption that such exceptions existed relies largely on the preambles to these acts--an interpretive methodology that it elsewhere roundly derides. Compare *ante*, at 631-632, 171 L. Ed. 2d, at 681-682. (interpreting 18th-century statutes in light of their preambles), with *ante*, at 578, and n. 3, 171 L. Ed. 2d, at 649 (contending that the operative language of an 18th-century enactment

may extend beyond its preamble). And in any event, as I have shown, the gunpowder-storage laws would have *burdened* armed self-defense, even if they did not completely *prohibit* it.

This historical evidence demonstrates that a self-defense assumption is the *beginning*, rather than the *end*, of any constitutional inquiry. That the District law impacts self-defense merely raises *questions* about the law's constitutionality. But to answer the questions that are raised (that is, to see whether the statute is unconstitutional) requires us to focus on practicalities, the statute's rationale, the problems that called it into being, its relation to those objectives--in a word, the details. There are no purely logical or conceptual answers to such questions. All of which to say that to raise a self-defense question is not to answer it.

III

I therefore begin by asking a process-based question: How is a court to determine [**2851] whether a particular firearm regulation (here, the District's restriction on handguns) is consistent with the Second Amendment? What kind of constitutional standard should the court use? How high a protective hurdle does the Amendment erect?

The question matters. The majority is wrong when it says that the District's law is unconstitutional "[u]nder any of the standards of scrutiny that we have applied to enumerated constitutional rights." *Ante*, at 628, 171 L. Ed. 2d, at 679. How could that be? It certainly would not be unconstitutional under, for example, a "rational-basis" standard, which requires a court to uphold regulation so long as it bears a "rational relationship" [*688] to a "legitimate governmental purpose." *Heller* v. *Doe*, 509 U.S. 312, 320, 113 S. Ct. 2637, 125 L. Ed. 2d 257 (1993). [***715] The law at issue here, which in part seeks to prevent gun-related accidents, at least bears a "rational relationship" to that "legitimate" life-saving objective. And nothing in the three 19th-century state cases to which the majority turns for support mandates the conclusion that the present District law must fall. See *Andrews* v. *State*, 50 Tenn. 165, 177, 186-187, 192 (1871) (striking down, as violating a *state* constitutional provision adopted in 1870, a *statewide* ban on carrying a broad class of weapons, insofar as it applied to revolvers); *Nunn* v. *State*, 1 Ga. 243, 246, 250-251 (1846) (striking down similarly broad ban on openly carrying weapons, based on erroneous view that the Federal Second Amendment applied to the States); *State* v. *Reid*, 1 Ala. 612, 614-615, 622 (1840) (*upholding* a concealed-weapon ban against a *state* constitutional challenge). These cases were decided well (80, 55, and 49 years, respectively) after the framing; they neither claim nor provide any special insight into the intent of the Framers; they involve laws much less narrowly tailored than the one before us; and state cases in any event are not determinative of federal constitutional questions, see, *e.g.*, *Garcia* v. *San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 549, 105 S. Ct. 1005, 83 L. Ed. 2d 1016 (1985) (citing *Martin* v. *Hunter's Lessee*, 14 U.S. 304, 1 Wheat. 304, 4 L. Ed. 97 (1816)).

Respondent proposes that the Court adopt a "strict scrutiny" test, which would require reviewing with care each gun law to determine whether it is "narrowly tailored to achieve a compelling governmental interest." *Abrams* v. *Johnson*, 521 U.S. 74, 82, 117 S. Ct. 1925, 138 L. Ed. 2d 285 (1997); see Brief for Respondent 54-62. But the majority implicitly, and appropriately, rejects that suggestion by broadly approving a set of laws--prohibitions on concealed weapons, forfeiture by criminals of the Second Amendment right, prohibitions on firearms in certain locales, and governmental regulation of commercial firearm sales--whose constitutionality under a strict scrutiny standard would be far from clear. See *ante*, at 626-627, 171 L. Ed. 2d, at 678.

[*689] Indeed, adoption of a true strict-scrutiny standard for evaluating gun regulations would be impossible. That is because almost every gun-control regulation will seek to advance (as the one here does) a "primary concern of every government--a concern for the safety and indeed the lives of its citizens." *United States* v. *Salerno*, 481 U.S. 739, 755, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987). The Court has deemed that interest, as well as "the Government's general interest in preventing crime," to be "compelling," see *id.*, at 750, 754, 107 S. Ct. 2095, 95 L. Ed. 2d 697, and the Court has in a wide variety of constitutional contexts found such public-safety concerns sufficiently forceful to justify restrictions on individual liberties, see, *e.g.*, *Brandenburg* v. *Ohio*, 395 U.S. 444, 447, 89 S. Ct. 1827, 23 L. Ed. 2d 430 (1969) *(per curiam)* (First Amendment [**2852] free speech rights); *Sherbert* v. *Verner*, 374 U.S. 398, 403, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963) (First Amendment religious rights); *Brigham City* v. *Stuart*, 547

U.S. 398, 403-404, 126 S. Ct. 1943, 164 L. Ed. 2d 650 (2006) (Fourth Amendment protection of the home); *New York* v. *Quarles*, 467 U.S. 649, 655, 104 S. Ct. 2626, 81 L. Ed. 2d 550 (1984) (Fifth Amendment rights under *Miranda* v. *Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)); *Salerno*, *supra*, at 755, 107 S. [***716] Ct. 2095, 95 L. Ed. 2d 697 (Eighth Amendment bail rights). Thus, any attempt *in theory* to apply strict scrutiny to gun regulations will *in practice* turn into an interest-balancing inquiry, with the interests protected by the Second Amendment on one side and the governmental public-safety concerns on the other, the only question being whether the regulation at issue impermissibly burdens the former in the course of advancing the latter.

I would simply adopt such an interest-balancing inquiry explicitly. The fact that important interests lie on both sides of the constitutional equation suggests that review of gun-control regulation is not a context in which a court should effectively presume either constitutionality (as in rational-basis review) or unconstitutionality (as in strict scrutiny). Rather, "where a law significantly implicates competing constitutionally protected interests in complex ways," the Court generally asks whether the statute burdens a protected interest in a way or to an extent that is out of [*690] proportion to the statute's salutary effects upon other important governmental interests. See *Nixon* v. *Shrink Missouri Government PAC*, 528 U.S. 377, 402, 120 S. Ct. 897, 145 L. Ed. 2d 886 (2000) (Breyer, J., concurring). Any answer would take account both of the statute's effects upon the competing interests and the existence of any clearly superior less restrictive alternative. See *ibid.* Contrary to the majority's unsupported suggestion that this sort of "proportionality" approach is unprecedented, see *ante*, at 634, 171 L. Ed. 2d, at 682, the Court has applied it in various constitutional contexts, including election-law cases, speech cases, and due process cases. See 528 U.S., at 403, 120 S. Ct. 897, 145 L. Ed. 2d 886 (citing examples where the Court has taken such an approach); see also, *e.g.*, *Thompson* v. *Western States Medical Center*, 535 U.S. 357, 388, 122 S. Ct. 1497, 152 L. Ed. 2d 563 (2002) (Breyer, J., dissenting) (commercial speech); *Burdick* v. *Takushi*, 504 U.S. 428, 433, 112 S. Ct. 2059, 119 L. Ed. 2d 245 (1992) (election regulation); *Mathews* v. *Eldridge*, 424 U.S. 319, 339-349, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976) (procedural due process); *Pickering* v. *Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U.S. 563, 568, 88 S. Ct. 1731, 20 L. Ed. 2d 811 (1968) (government employee speech).

In applying this kind of standard the Court normally defers to a legislature's empirical judgment in matters where a legislature is likely to have greater expertise and greater institutional factfinding capacity. See *Turner Broadcasting System, Inc.* v. *FCC*, 520 U.S. 180, 195-196, 117 S. Ct. 1174, 137 L. Ed. 2d 369 (1997); see also *Nixon*, *supra*, at 403, 120 S. Ct. 897, 145 L. Ed. 2d 886 (Breyer, J., concurring). Nonetheless, a court, not a legislature, must make the ultimate constitutional conclusion, exercising its "independent judicial judgment" in light of the whole record to determine whether a law exceeds constitutional boundaries. *Randall* v. *Sorrell*, 548 U.S. 230, 249, 126 S. Ct. 2479, 165 L. Ed. 2d 482 (2006) (opinion of Breyer, J.) (citing *Bose Corp.* v. *Consumers Union of United States, Inc.*, 466 U.S. 485, 499, 104 S. Ct. 1949, 80 L. Ed. 2d 502 (1984)).

The above-described approach seems preferable to a more rigid approach here for a further reason. Experience as much as logic has led the Court to decide that in one area of constitutional law or another [**2853] the interests [***717] are likely to prove [*691] stronger on one side of a typical constitutional case than on the other. See, *e.g.*, *United States* v. *Virginia*, 518 U.S. 515, 531-534, 116 S. Ct. 2264, 135 L. Ed. 2d 735 (1996) (applying heightened scrutiny to gender-based classifications, based upon experience with prior cases); *Williamson* v. *Lee Optical of Okla., Inc.*, 348 U.S. 483, 488, 75 S. Ct. 461, 99 L. Ed. 563 (1955) (applying rational-basis scrutiny to economic legislation, based upon experience with prior cases). Here, we have little prior experience. Courts that *do* have experience in these matters have uniformly taken an approach that treats empirically based legislative judgment with a degree of deference. See Winkler, Scrutinizing the Second Amendment, 105 Mich. L. Rev. 683, 687, 716-718 (2007) (describing hundreds of gun-law decisions issued in the last half century by Supreme Courts in 42 States, which courts with "surprisingly little variation" have adopted a standard more deferential than strict scrutiny). While these state cases obviously are not controlling, they are instructive. Cf., *e.g.*, *Bartkus* v. *Illinois*, 359 U.S. 121, 134, 79 S. Ct. 676, 3 L. Ed. 2d 684 (1959) (looking to the "experience of state courts" as informative of a constitutional question). And they thus provide some comfort regarding the practical wisdom of following the approach that I believe our constitutional

precedent would in any event suggest.

IV

The present suit involves challenges to three separate District firearm restrictions. The first requires a license from the District's chief of police in order to carry a "pistol," *i.e.*, a handgun, anywhere in the District. See D. C. Code § 22-4504(a) (2001); see also §§ 22-4501(a), 22-4506. Because the District assures us that respondent could obtain such a license so long as he meets the statutory eligibility criteria, and because respondent concedes that those criteria are facially constitutional, I, like the majority, see no need to address the constitutionality of the licensing requirement. See *ante*, at 630-631, 171 L. Ed. 2d, at 680-681.

[*692] The second District restriction requires that the lawful owner of a firearm keep his weapon "unloaded and disassembled or bound by a trigger lock or similar device" unless it is kept at his place of business or being used for lawful recreational purposes. See § 7-2507.02. The only dispute regarding this provision appears to be whether the Constitution requires an exception that would allow someone to render a firearm operational when necessary for self-defense (*i.e.*, that the firearm may be operated under circumstances where the common law would normally permit a self-defense justification in defense against a criminal charge). See *Parker* v. *District of Columbia*, 375 U.S. App. D.C. 140, 478 F.3d 370, 401 (2007) (case below); *ante*, at 630, 171 L. Ed. 2d, at 680 (opinion of the Court); Brief for Respondent 52-54. The District concedes that such an exception exists. See Brief for Petitioners 56-57. This Court has final authority (albeit not often used) to definitively interpret District law, which is, after all, simply a species of federal law. See, *e.g.*, *Whalen* v. *United States*, 445 U.S. 684, 687-688, 100 S. Ct. 1432, 63 L. Ed. 2d 715 (1980); see also *Griffin* v. *United States*, 336 U.S. 704, 716-718, 69 S. Ct. 814, 93 L. Ed. 993 (1949). And because I see nothing in the District law that would *preclude* the [***718] existence of a background common-law self-defense exception, I would avoid the constitutional question by interpreting the statute to include it. See *Ashwander* v. *TVA*, 297 U.S. 288, 348, 56 S. Ct. 466, 80 L. Ed. 688 (1936) (Brandeis, J., concurring).

I am puzzled by the majority's unwillingness to adopt a similar approach. It readily reads unspoken self-defense exceptions into every colonial law, but it refuses [**2854] to accept the District's concession that this law has one. Compare *ante*, at 631-633, 171 L. Ed. 2d, at 681-682, with *ante*, at 630, 171 L. Ed. 2d, at 680. The one District case it cites to support that refusal, *McIntosh* v. *Washington*, 395 A.2d 744, 755-756 (1978), merely concludes that the District Legislature had a rational basis for applying the trigger-lock law in homes but not in places of business. Nowhere does that case say that the statute precludes a self-defense exception of the sort that I have just described. And even if it did, [*693] we are not bound by a lower court's interpretation of federal law.

The third District restriction prohibits (in most cases) the registration of a handgun within the District. See § 7-2502.02(a)(4). Because registration is a prerequisite to firearm possession, see § 7-2502.01(a), the effect of this provision is generally to prevent people in the District from possessing handguns. In determining whether this regulation violates the Second Amendment, I shall ask how the statute seeks to further the governmental interests that it serves, how the statute burdens the interests that the Second Amendment seeks to protect, and whether there are practical less burdensome ways of furthering those interests. The ultimate question is whether the statute imposes burdens that, when viewed in light of the statute's legitimate objectives, are disproportionate. See *Nixon*, 528 U.S., at 402, 120 S. Ct. 897, 145 L. Ed. 2d 886 (Breyer, J., concurring).

A

No one doubts the constitutional importance of the statute's basic objective, saving lives. See, *e.g.*, *Salerno*, 481 U.S., at 755, 107 S. Ct. 2095, 95 L. Ed. 2d 697. But there is considerable debate about whether the District's statute helps to achieve that objective. I begin by reviewing the statute's tendency to secure that objective from the perspective of (1) the legislature (namely, the Council of the District of Columbia (hereinafter Council)) that enacted the statute in 1976, and (2) a court that seeks to evaluate the Council's decision today.

1

First, consider the facts as the legislature saw them when it adopted the District statute. As stated by the local council committee that recommended its adoption, the major substantive goal of the District's handgun restriction is "to reduce the potentiality for gun-related crimes and gun-related deaths from occurring within the District of Columbia." Firearm Control Regulations Act

of 1975 (Council Act No. [*694] 1-142), Hearing and Disposition before the House Committee on the District of Columbia, 94th Cong., 2d Sess., on H. Con. Res. 694, Ser. No. 94-24, p. 25 (1976) (hereinafter DC Rep.) (reproducing, *inter alia*, the Council Committee Report). The Committee concluded, on the basis of "extensive public hearings" and "lengthy research," that "[t]he easy availability of firearms in the United States has been a major factor contributing to the drastic increase in gun-related violence and crime over the past 40 [***719] years." *Id.*, at 24, 25. It reported to the Council "startling statistics," *id.*, at 26, regarding gun-related crime, accidents, and deaths, focusing particularly on the relation between handguns and crime and the proliferation of handguns within the District. See *id.*, at 25-26.

The Committee informed the Council that guns were "responsible for 69 deaths in this country each day," for a total of "[a]pproximately 25,000 gun-deaths . . . each year," along with an additional 200,000 gun-related injuries. *Id.*, at 25. Three thousand of these deaths, the report stated, were accidental. *Ibid.* A quarter of the victims in those accidental deaths were children under the age of 14. *Ibid.* And according to the Committee, "[f]or every [**2855] intruder stopped by a homeowner with a firearm, there are 4 gun-related accidents within the home." *Ibid.*

In respect to local crime, the Committee observed that there were 285 murders in the District during 1974--a record number. *Id.*, at 26. The Committee also stated that, "[c]ontrary to popular opinion on the subject, firearms are more frequently involved in deaths and violence among relatives and friends than in premeditated criminal activities." *Ibid.* Citing an article from the American Journal of Psychiatry, the Committee reported that "[m]ost murders are committed by previously law-abiding citizens, in situations where spontaneous violence is generated by anger, passion or intoxication, and where the killer and victim are acquainted." *Ibid.* "Twenty-five percent of these murders," [*695] the Committee informed the Council, "occur within families." *Ibid.*

The Committee Report furthermore presented statistics strongly correlating handguns with crime. Of the 285 murders in the District in 1974, 155 were committed with handguns. *Ibid.* This did not appear to be an aberration, as the report revealed that "handguns [had been] used in roughly 54% of all murders" (and 87% of murders of law enforcement officers) nationwide over the preceding several years. *Ibid.* Nor were handguns only linked to murders, as statistics showed that they were used in roughly 60% of robberies and 26% of assaults. *Ibid.* "A crime committed with a pistol," the Committee reported, "is 7 times more likely to be lethal than a crime committed with any other weapon." *Id.*, at 25. The Committee furthermore presented statistics regarding the availability of handguns in the United States, *ibid.*, and noted that they had "become easy for juveniles to obtain," even despite then-current District laws prohibiting juveniles from possessing them, *id.*, at 26.

In the Committee's view, the current District firearms laws were unable "to reduce the potentiality for gun-related violence," or to "cope with the problems of gun control in the District" more generally. *Ibid.* In the absence of adequate federal gun legislation, the Committee concluded, it "becomes necessary for local governments to act to protect their citizens, and certainly the District of Columbia as the only totally urban statelike jurisdiction should be strong in its approach." *Id.*, at 27. It recommended that the Council adopt a restriction on handgun registration to reflect "a legislative decision that, at this point in time and due to the gun-control tragedies and horrors enumerated previously" in the Committee Report, "pistols . . . are no longer justified in this [***720] jurisdiction." *Id.*, at 31; see also *ibid.* (handgun restriction "denotes a policy decision that handguns . . . have no legitimate use in the purely urban environment of the District").

[*696] The District's special focus on handguns thus reflects the fact that the Committee Report found them to have a particularly strong link to undesirable activities in the District's exclusively urban environment. See *id.*, at 25-26. The District did not seek to prohibit possession of other sorts of weapons deemed more suitable for an "urban area." See *id.*, at 25. Indeed, an original draft of the bill, and the original Committee recommendations, had sought to prohibit registration of shotguns as well as handguns, but the Council as a whole decided to narrow the prohibition. Compare *id.*, at 30 (describing early version of the bill), with D. C. Code § 7-2502.02).

2

Next, consider the facts as a court must consider

them looking at the matter as of today. See, *e.g.*, *Turner*, 520 U.S., at 195, 117 S. Ct. 1174, 137 L. Ed. 2d 369 (discussing role of court as [**2856] factfinder in a constitutional case). Petitioners, and their *amici*, have presented us with more recent statistics that tell much the same story that the Committee Report told 30 years ago. At the least, they present nothing that would permit us to second-guess the Council in respect to the numbers of gun crimes, injuries, and deaths, or the role of handguns.

From 1993 to 1997, there were 180,533 firearm-related deaths in the United States, an average of over 36,000 per year. Dept. of Justice, Bureau of Justice Statistics, M. Zawitz & K. Strom, Firearm Injury and Death From Crime, 1993-97, p 2 (Oct. 2000), online at http://www.ojp.usdoj.gov/bjs/pub/pdf/fid c9397.pdf (hereinafter Firearm Injury and Death From Crime). Fifty-one percent were suicides, 44% were homicides, 1% were legal interventions, 3% were unintentional accidents, and 1% were of undetermined causes. See *ibid.* Over that same period there were an additional 411,800 nonfatal firearm-related injuries treated in U. S. hospitals, an average of over 82,000 per year. *Ibid.* Of these, 62% resulted from assaults, 17% were unintentional, 6% [*697] were suicide attempts, 1% were legal interventions, and 13% were of unknown causes. *Ibid.*

The statistics are particularly striking in respect to children and adolescents. In over one in every eight firearm-related deaths in 1997, the victim was someone under the age of 20. American Academy of Pediatrics, Firearm-Related Injuries Affecting the Pediatric Population, 105 Pediatrics 888 (2000) (hereinafter Firearm-Related Injuries). Firearm-related deaths account for 22.5% of all injury deaths between the ages of 1 and 19. *Ibid.* More male teenagers die from firearms than from all natural causes combined. Dresang, Gun Deaths in Rural and Urban Settings, 14 J. Am. Bd. Family Practice 107 (2001). Persons under 25 accounted for 47% of hospital-treated firearm injuries between June 1, 1992, and May 31, 1993. Firearm-Related Injuries 891.

Handguns are involved in a majority of firearm deaths and injuries in the United States. *Id.*, at 888. From 1993 to 1997, 81% of firearm-homicide victims were killed by handgun. Firearm Injury and Death From Crime 4; see also Dept. of Justice, Bureau of Justice Statistics, C. Perkins, Weapon Use and Violent Crime 8 (Sept. 2003) (Table 10), http://www.ojp.usdoj.gov/bjs/pub/pdf/wuv c01.pdf [***721] (hereinafter Weapon Use and Violent Crime) (statistics indicating roughly the same rate for 1993-2001). In the same period, for the 41% of firearm injuries for which the weapon type is known, 82% of them were from handguns. Firearm Injury and Death from Crime 4. And among children under the age of 20, handguns account for approximately 70% of all unintentional firearm-related injuries and deaths. Firearm-Related Injuries 890. In particular, 70% of all firearm-related teenage suicides in 1996 involved a handgun. *Id.*, at 889; see also Zwerling, Lynch, Burmeister, & Goertz, The Choice of Weapons in Firearm Suicides in Iowa, 83 Am. J. Pub. Health 1630, 1631 (1993) (Table 1) (handguns used in 36.6% of all firearm suicides in Iowa from 1980-1984 and 43.8% from 1990-1991).

[*698] Handguns also appear to be a very popular weapon among criminals. In a 1997 survey of inmates who were armed during the crime for which they were incarcerated, 83.2% of state inmates and 86.7% of federal inmates said that they were armed with a handgun. See Dept. of Justice, Bureau of Justice Statistics, C. Harlow, Firearm Use by Offenders 3 (Nov. 2001), online at http://www.ojp.usdoj.gov/bjs/pub/pdf/fuo .pdf; see also Weapon Use and Violent Crime 2 (Table 2) (statistics indicating that handguns were used in over [**2857] 84% of nonlethal violent crimes involving firearms from 1993 to 2001). And handguns are not only popular tools for crime, but popular objects of it as well: the Federal Bureau of Investigation received on average over 274,000 reports of stolen guns for each year between 1985 and 1994, and almost 60% of stolen guns are handguns. Dept. of Justice, Bureau of Justice Statistics, M. Zawitz, Guns Used in Crime 3 (July 1995), online at http://www.ojp.usdoj.gov/bjs/pub/pdf/gui c.pdf. Department of Justice studies have concluded that stolen handguns in particular are an important source of weapons for both adult and juvenile offenders. *Ibid.*

Statistics further suggest that urban areas, such as the District, have different experiences with gun-related death, injury, and crime than do less densely populated rural areas. A disproportionate amount of violent and property crimes occur in urban areas, and urban criminals are more likely than other offenders to use a firearm during the commission of a violent crime. See Dept. of Justice, Bureau of Justice Statistics, D. Duhart, Urban,

Suburban, and Rural Victimization, 1993-98, pp 1, 9 (Oct. 2000), online at http://www.ojp.usdoj.gov/bjs/pub/pdf/usr v98.pdf. Homicide appears to be a much greater issue in urban areas; from 1985 to 1993, for example, "half of all homicides occurred in 63 cities with 16% of the nation's population." Wintemute, The Future of Firearm Violence Prevention, 282 JAMA 475 (1999). One study concluded that although the overall rate of gun death between 1989 and 1999 was roughly the same in urban and [*699] rural areas, the urban homicide rate was three times as high; even after adjusting for other variables, it was still twice as high. Branas, Nance, Elliott, Richmond, & Schwab, Urban-Rural Shifts in Intentional Firearm Death, 94 Am. J. Pub. Health 1750, 1752 (2004); see also *ibid.* (noting that rural areas appear to have a higher rate of firearm suicide). And a study of firearm injuries to children and adolescents in Pennsylvania between 1987 and 2000 showed an injury rate in urban counties 10 times higher than in nonurban [***722] counties. Nance et al., The Rural-Urban Continuum, 156 Archives of Pediatrics & Adolescent Medicine 781, 782 (2002).

Finally, the linkage of handguns to firearms deaths and injuries appears to be much stronger in urban than in rural areas. "[S]tudies to date generally support the hypothesis that the greater number of rural gun deaths are from rifles or shotguns, whereas the greater number of urban gun deaths are from handguns." Dresang, *supra*, at 108. And the Pennsylvania study reached a similar conclusion with respect to firearm injuries--they are much more likely to be caused by handguns in urban areas than in rural areas. See Nance et al., *supra*, at 784.

3

Respondent and his many *amici* for the most part do not disagree about the *figures* set forth in the preceding subsection, but they do disagree strongly with the District's *predictive judgment* that a ban on handguns will help solve the crime and accident problems that those figures disclose. In particular, they disagree with the District Council's assessment that "freezing the pistol . . . population within the District," DC Rep., at 26, will reduce crime, accidents, and deaths related to guns. And they provide facts and figures designed to show that it has not done so in the past, and hence will not do so in the future.

First, they point out that, since the ban took effect, violent crime in the District has increased, not decreased. See [*700] Brief for Criminologists et al. as *Amici Curiae* 4-8, 3a (hereinafter Criminologists' Brief); Brief for Congress of Racial Equality as [**2858] *Amicus Curiae* 35-36; Brief for National Rifle Association et al. as *Amici Curiae* 28-30 (hereinafter NRA Brief). Indeed, a comparison with 49 other major cities reveals that the District's homicide rate is actually substantially *higher* relative to these other cities than it was before the handgun restriction went into effect. See Brief for Academics et al. as *Amici Curiae* 7-10 (hereinafter Academics' Brief); see also Criminologists' Brief 6-9, 3a-4a, 7a. Respondent's *amici* report similar results in comparing the District's homicide rates during that period to that of the neighboring States of Maryland and Virginia (neither of which restricts handguns to the same degree), and to the homicide rate of the Nation as a whole. See Academics' Brief 11-17; Criminologists' Brief 6a, 8a.

Second, respondent's *amici* point to a statistical analysis that regresses murder rates against the presence or absence of strict gun laws in 20 European nations. See Criminologists' Brief 23 (citing Kates & Mauser, Would Banning Firearms Reduce Murder and Suicide? 30 Harv. J. L. & Pub. Pol'y 649, 651-694 (2007)). That analysis concludes that strict gun laws are correlated with *more* murders, not fewer. See Criminologists' Brief 23; see also *id.*, at 25-28. They also cite domestic studies, based on data from various cities, States, and the Nation as a whole, suggesting that a reduction in the number of guns does not lead to a reduction in the amount of violent crime. See *id.*, at 17-20. They further argue that handgun bans do not reduce suicide rates, see *id.*, at 28-31, 9a, or rates of accidents, even those involving children, see Brief for International Law Enforcement Educators and Trainers Association et al. as *Amici Curiae* App. 7-15 (hereinafter ILEETA Brief).

[***723] Third, they point to evidence indicating that firearm ownership does have a beneficial self-defense effect. Based on a 1993 survey, the authors of one study estimated that there [*701] were 2.2-to-2.5 million defensive uses of guns (mostly brandishing, about a quarter involving the actual firing of a gun) annually. See Kleck & Gertz, Armed Resistance to Crime, 86 J. Crim. L. & C. 150, 164 (1995); see also ILEETA Brief App. 1-6 (summarizing studies regarding defensive uses of guns). Another study estimated that for a period of 12 months ending in 1994, there were 503,481 incidents in which a burglar found himself confronted by an armed

homeowner, and that in 497,646 (98.8%) of them, the intruder was successfully scared away. See Ikeda, Dahlberg, Sacks, Mercy, & Powell, Estimating Intruder-Related Firearms Retrievals in U. S. Households, 12 Violence & Victims 363 (1997). A third study suggests that gun-armed victims are substantially less likely than non-gun-armed victims to be injured in resisting robbery or assault. Barnett & Kates, Under Fire, 45 Emory L. J. 1139, 1243-1244, n 478 (1996). And additional evidence suggests that criminals are likely to be deterred from burglary and other crimes if they know the victim is likely to have a gun. See Kleck, Crime Control Through the Private Use of Armed Force, 35 Social Problems 1, 15 (1988) (reporting a substantial drop in the burglary rate in an Atlanta suburb that required heads of households to own guns); see also ILEETA Brief 17-18 (describing decrease in sexual assaults in Orlando when women were trained in the use of guns).

Fourth, respondent's *amici* argue that laws criminalizing gun possession are self-defeating, as evidence suggests that they will have the effect only of restricting law-abiding citizens, but not criminals, from acquiring guns. See, *e.g.*, Brief for President *Pro Tempore* of Senate of Pennsylvania as *Amicus Curiae* 35, 36, and n 15. That effect, they argue, will be especially pronounced in the District, whose proximity [**2859] to Virginia and Maryland will provide criminals with a steady supply of guns. See Brief for Heartland Institute as *Amicus Curiae* 20.

In the view of respondent's *amici*, this evidence shows that other remedies--such as *less* restriction on gun ownership, [*702] or liberal authorization of law-abiding citizens to carry concealed weapons--better fit the problem. See, *e.g.*, Criminologists' Brief 35-37 (advocating easily obtainable gun licenses); Brief for Southeastern Legal Foundation, Inc., et al. as *Amici Curiae* 15 (hereinafter SLF Brief) (advocating "widespread gun ownership" as a deterrent to crime); see also J. Lott, More Guns, Less Crime (2d ed. 2000). They further suggest that at a minimum the District fails to show that its *remedy*, the gun ban, bears a reasonable relation to the crime and accident *problems* that the District seeks to solve. See, *e.g.*, Brief for Respondent 59-61.

These empirically based arguments may have proved strong enough to convince many legislatures, as a matter of legislative policy, not to adopt total handgun bans. But the question here is whether they are strong enough to destroy judicial confidence in the reasonableness of a legislature that rejects them. And that they are not. For one thing, they can lead us more deeply into the uncertainties that surround any effort to reduce crime, but they cannot prove either that handgun possession diminishes [***724] crime or that handgun bans are ineffective. The statistics do show a soaring District crime rate. And the District's crime rate went up after the District adopted its handgun ban. But, as students of elementary logic know, *after it* does not mean *because of it.* What would the District's crime rate have looked like without the ban? Higher? Lower? The same? Experts differ; and we, as judges, cannot say.

What about the fact that foreign nations with strict gun laws have higher crime rates? Which is the cause and which the effect? The proposition that strict gun laws *cause* crime is harder to accept than the proposition that strict gun laws in part grow out of the fact that a nation already has a higher crime rate. And we are then left with the same question as before: What would have happened to crime without the gun laws--a question that respondent and his *amici* do not convincingly answer.

[*703] Further, suppose that respondent's *amici* are right when they say that householders' possession of loaded handguns help to frighten away intruders. On that assumption, one must still ask whether that benefit is worth the potential death-related cost. And that is a question without a directly provable answer.

Finally, consider the claim of respondent's *amici* that handgun bans *cannot* work; there are simply too many illegal guns already in existence for a ban on legal guns to make a difference. In a word, they claim that, given the urban sea of pre-existing legal guns, criminals can readily find arms regardless. Nonetheless, a legislature might respond, we want to make an effort to try to dry up that urban sea, drop by drop. And none of the studies can show that effort is not worthwhile.

In a word, the studies to which respondent's *amici* point raise policy-related questions. They succeed in proving that the District's predictive judgments are controversial. But they do not by themselves show that those judgments are incorrect; nor do they demonstrate a consensus, academic or otherwise, supporting that conclusion.

Thus, it is not surprising that the District and its *amici* support the District's [**2860] handgun restriction with studies of their own. One in particular suggests that, statistically speaking, the District's law has indeed had positive life-saving effects. See Loftin, McDowall, Wiersema, & Cottey, Effects of Restrictive Licensing of Handguns on Homicide and Suicide in the District of Columbia, 325 New England J. Med. 1615 (1991) (hereinafter Loftin study). Others suggest that firearm restrictions as a general matter reduce homicides, suicides, and accidents in the home. See, *e.g.*, Duggan, More Guns, More Crime, 109 J. Pol. Econ. 1086 (2001); Kellermann, Somes, Rivara, Lee, & Banton, Injuries and Deaths Due to Firearms in the Home, 45 J. Trauma: Injury, Infection & Critical Care 263 (1998); Miller, Azrael, & Hemenway, Household Firearm Ownership and Suicide Rates in [*704] the United States, 13 Epidemiology 517 (2002). Still others suggest that the defensive uses of handguns are not as great in number as respondent's *amici* claim. See, *e.g.*, Brief for American Public Health Association et al. as *Amici Curiae* 17-19 (hereinafter APHA Brief) (citing studies).

Respondent and his *amici* reply to these responses; and in doing so, they seek to discredit as methodologically flawed the studies and evidence relied upon by the District. See, *e.g.*, Criminologists' Brief 9-17, 20-24; Brief for [***725] Association of American Physicians and Surgeons, Inc., as *Amicus Curiae* 12-18; SLF Brief 17-22; Britt, Kleck, & Bordua, A Reassessment of the D.C. Gun Law, 30 Law & Soc'y Rev. 361 (1996) (criticizing the Loftin study). And, of course, the District's *amici* produce counterrejoinders, referring to articles that defend their studies. See, *e.g.*, APHA Brief 23, n 5 (citing McDowall, Loftin, & Wiersema, Using Quasi-Experiments To Evaluate Firearm Laws, 30 Law & Soc'y Rev. 381 (1996)).

The upshot is a set of studies and counterstudies that, at most, could leave a judge uncertain about the proper policy conclusion. But from respondent's perspective any such uncertainty is not good enough. That is because legislators, not judges, have primary responsibility for drawing policy conclusions from empirical fact. And, given that constitutional allocation of decisionmaking responsibility, the empirical evidence presented here is sufficient to allow a judge to reach a firm *legal* conclusion.

In particular this Court, in First Amendment cases applying intermediate scrutiny, has said that our "sole obligation" in reviewing a legislature's "predictive judgments" is "to assure that, in formulating its judgments," the legislature "has drawn reasonable inferences based on substantial evidence." *Turner*, 520 U.S., at 195, 117 S. Ct. 1174, 137 L. Ed. 2d 369 (internal quotation marks omitted). And judges, looking at the evidence before us, should agree that the District Legislature's predictive judgments satisfy that legal standard. That is to say, the [*705] District's judgment, while open to question, is nevertheless supported by "substantial evidence."

There is no cause here to depart from the standard set forth in *Turner*, for the District's decision represents the kind of empirically based judgment that legislatures, not courts, are best suited to make. See *Nixon*, 528 U.S., at 402, 120 S. Ct. 897, 145 L. Ed. 2d 886 (Breyer, J., concurring). In fact, deference to legislative judgment seems particularly appropriate here, where the judgment has been made by a local legislature, with particular knowledge of local problems and insight into appropriate local solutions. See *Los Angeles* v. *Alameda Books, Inc.*, 535 U.S. 425, 440, 122 S. Ct. 1728, 152 L. Ed. 2d 670 (2002) (plurality opinion) ("[W]e must acknowledge that the Los Angeles City Council is in a better [**2861] position than the Judiciary to gather and evaluate data on local problems"); cf. DC Rep., at 67 (statement of Rep. Gude) (describing District's law as "a decision made on the local level after extensive debate and deliberations"). Different localities may seek to solve similar problems in different ways, and a "city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems." *Renton* v. *Playtime Theatres, Inc.*, 475 U.S. 41, 52, 106 S. Ct. 925, 89 L. Ed. 2d 29 (1986) (internal quotation marks omitted). "The Framers recognized that the most effective democracy occurs at local levels of government, where people with firsthand knowledge of local problems have more ready access to public officials responsible for dealing with them." *Garcia* v. *San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 575, n 8, 105 S. Ct. 1005, 83 L. Ed. 2d 1016 (1985) (Powell, J., dissenting) (citing The Federalist No. 17, p 107 (J. Cooke ed. 1961) (A. Hamilton)). We owe that democratic process some substantial weight in the constitutional calculus.

[***726] For these reasons, I conclude that the District's statute properly seeks to further the sort of life-preserving and public-safety interests that the Court

has called "compelling." *Salerno*, 481 U.S., at 750, 754, 107 S. Ct. 2095, 95 L. Ed. 2d 697.

[*706] B

I next assess the extent to which the District's law burdens the interests that the Second Amendment seeks to protect. Respondent and his *amici*, as well as the majority, suggest that those interests include: (1) the preservation of a "well regulated Militia"; (2) safeguarding the use of firearms for sporting purposes, *e.g.*, hunting and marksmanship; and (3) assuring the use of firearms for self-defense. For argument's sake, I shall consider all three of those interests here.

1

The District's statute burdens the Amendment's first and primary objective hardly at all. As previously noted, there is general agreement among the Members of the Court that the principal (if not the only) purpose of the Second Amendment is found in the Amendment's text: the preservation of a "well regulated Militia." See *supra*, at 682-683, 171 L. Ed. 2d, at 711. What scant Court precedent there is on the Second Amendment teaches that the Amendment was adopted "[w]ith obvious purpose to assure the continuation and render possible the effectiveness of [militia] forces" and "must be interpreted and applied with that end in view." *Miller*, 307 U.S., at 178, 59 S. Ct. 816, 83 L. Ed. 1206. Where that end is implicated only minimally (or not at all), there is substantially less reason for constitutional concern. Compare *ibid.* ("In 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").

To begin with, the present case has nothing to do with *actual* military service. The question presented presumes that respondent is "*not* affiliated with any state-regulated militia." 552 U.S. 1035, 128 S. Ct. 645, 169 L. Ed. 2d 417 (2007) (emphasis added). I am aware of no indication that the District either now or in the [*707] recent past has called up its citizenry to serve in a militia, that it has any inkling of doing so anytime in the foreseeable future, or that this law must be construed to prevent the use of handguns during legitimate militia activities. Moreover, even if [**2862] the District were to call up its militia, respondent would not be among the citizens whose service would be requested. The District does not consider him, at 66 years of age, to be a member of its militia. See D. C. Code § 49-401 (2001) (militia includes only male residents ages 18 to 45); App. to Pet. for Cert. 120a (indicating respondent's date of birth).

Nonetheless, as some *amici* claim, the statute might interfere with training in the use of weapons, training useful for military purposes. The 19th-century constitutional scholar, Thomas Cooley, wrote that the Second Amendment protects "learning to handle and use [arms] in a way that makes those who keep them ready for their efficient use" during militia service. General Principles of Constitutional Law 271 (1880); *ante*, at 618, [***727] 171 L. Ed. 2d, at 673 (opinion of the Court); see also *ante*, at 618-619, 171 L. Ed. 2d, at 673-674 (citing other scholars agreeing with Cooley on that point). And former military officers tell us that "private ownership of firearms makes for a more effective fighting force" because "[m]ilitary recruits with previous firearms experience and training are generally better marksmen, and accordingly, better soldiers." Brief for Retired Military Officers as *Amici Curiae* 1-2 (hereinafter Military Officers' Brief). An *amicus* brief filed by retired Army generals adds that a "well-regulated militia--whether *ad hoc* or as part of our organized military --depends on recruits who have familiarity and training with firearms --rifles, pistols, and shotguns." Brief for Major General John D. Altenburg, Jr., et al. as *Amici Curiae* 4 (hereinafter Generals' Brief). Both briefs point out the importance of handgun training. Military Officers' Brief 26-28; Generals' Brief 4. Handguns are used in military service, see Military Officers' Brief 26, and "civilians who are familiar with handgun marksmanship [*708] and safety are much more likely to be able to safely and accurately fire a rifle or other firearm with minimal training upon entering military service," *id.*, at 28.

Regardless, to consider the military-training objective a modern counterpart to a similar militia-related colonial objective and to treat that objective as falling within the Amendment's primary purposes makes no difference here. That is because the District's law does not seriously affect military-training interests. The law permits residents to engage in activities that will increase their familiarity with firearms. They may register (and thus possess in their homes) weapons other than handguns, such as rifles and shotguns. See D. C. Code

§§ 7-2502.01, 7-2502.02(a) (only weapons that cannot be registered are sawed-off shotguns, machineguns, short-barreled rifles, and pistols not registered before 1976); compare Generals' Brief 4 (listing "*rifles*, pistols, and *shotguns*" as useful military weapons (emphasis added). And they may operate those weapons within the District "for lawful recreational purposes." § 7-2507.02; see also § 7-2502.01(b)(3) (nonresidents "participating in any lawful recreational firearm-related activity in the District, or on his way to or from such activity in another jurisdiction," may carry even weapons not registered in the District). These permissible recreations plainly include actually using and firing the weapons, as evidenced by a specific D. C. Code provision contemplating the existence of local firing ranges. See § 7-2507.03.

And while the District law prevents citizens from training with handguns *within the District*, the District consists of only 61.4 square miles of urban area. See Dept. of Commerce, Bureau of Census, United States: 2000 (pt. 1), p 11 (2002) (Table 8). The adjacent States do permit the use of handguns for target practice, and those States are only a brief subway ride away. See Md. Crim. Law Code Ann. § 4-203(b)(4) [**2863] (Lexis Supp. 2007) (general handgun restriction does not apply to "the wearing, carrying, or transporting by [*709] a person of a handgun used in connection with," *inter alia*, "a target shoot, formal or informal target practice, sport shooting event, hunting, [or] a Department of Natural Resources-sponsored firearms and hunter safety class"); Va. Code Ann. § 18.2-287.4 (Lexis Supp. 2007) (general [***728] restriction on carrying certain loaded pistols in certain public areas does not apply "to any person actually engaged in lawful hunting or lawful recreational shooting activities at an established shooting range or shooting contest"); Washington Metropolitan Area Transit Authority, Metrorail System Map, online at http://www.wmata.com/metrorail/systemmap .cfm.

Of course, a subway rider must buy a ticket, and the ride takes time. It also costs money to store a pistol, say, at a target range, outside the District. But given the costs already associated with gun ownership and firearms training, I cannot say that a subway ticket and a short subway ride (and storage costs) create more than a minimal burden. Cf. *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 238-239, 128 S. Ct. 1610, 170 L. Ed. 2d 574, 613 (2008) (Breyer, J., dissenting) (acknowledging travel burdens on indigent persons in the context of voting where public transportation options were limited). Indeed, respondent and two of his coplaintiffs below may well use handguns outside the District on a regular basis, as their declarations indicate that they keep such weapons stored there. See App. to Pet. for Cert. 77a (respondent); see also *id.*, at 78a, 84a (coplaintiffs). I conclude that the District's law burdens the Second Amendment's primary objective little, or not at all.

2

The majority briefly suggests that the "right to keep and bear Arms" might encompass an interest in hunting. See, *e.g.*, *ante*, at 599, 171 L. Ed. 2d, at 662. But in enacting the present provisions, the District sought to "take nothing away from sportsmen." DC Rep., at 33. And any inability of District residents to hunt near where they live has much to do with the jurisdiction's exclusively urban character and little to do with the [*710] District's firearm laws. For reasons similar to those I discussed in the preceding subsection--that the District's law does not prohibit possession of rifles or shotguns, and the presence of opportunities for sporting activities in nearby States--I reach a similar conclusion, namely, that the District's law burdens any sports-related or hunting-related objectives that the Amendment may protect little, or not at all.

3

The District's law does prevent a resident from keeping a loaded handgun in his home. And it consequently makes it more difficult for the householder to use the handgun for self-defense in the home against intruders, such as burglars. As the Court of Appeals noted, statistics suggest that handguns are the most popular weapon for self-defense. See 478 F.3d at 400 (citing Kleck & Gertz, 86 J. Crim. L. & C., at 182-183). And there are some legitimate reasons why that would be the case: *Amici* suggest (with some empirical support) that handguns are easier to hold and control (particularly for persons with physical infirmities), easier to carry, easier to maneuver in enclosed spaces, and that a person using one will still have a hand free to dial 911. See ILEETA Brief 37-39; NRA Brief 32-33; see also *ante*, at 629, 171 L. Ed. 2d, at 679. But see Brief for Petitioners 54-55 (citing sources preferring shotguns and rifles to handguns for purposes of self-defense). To that extent the law burdens to some [**2864] degree an interest in self-defense that for present purposes I have assumed the

Amendment seeks to further.

[***729] C

In weighing needs and burdens, we must take account of the possibility that there are reasonable, but less restrictive, alternatives. Are there *other* potential measures that might similarly promote the same goals while imposing lesser restrictions? See *Nixon*, 528 U.S., at 402, 120 S. Ct. 897, 145 L. Ed. 2d 886 (Breyer, J., concurring) ("existence of a clearly superior, less restrictive alternative" [*711] can be a factor in determining whether a law is constitutionally proportionate). Here I see none.

The reason there is no clearly superior, less restrictive alternative to the District's handgun ban is that the ban's very objective is to reduce significantly the number of handguns in the District, say, for example, by allowing a law enforcement officer immediately to assume that *any* handgun he sees is an *illegal* handgun. And there is no plausible way to achieve that objective other than to ban the guns.

It does not help respondent's case to describe the District's objective more generally as an "effort to diminish the dangers associated with guns." That is because the very attributes that make handguns particularly useful for self-defense are also what make them particularly dangerous. That they are easy to hold and control means that they are easier for children to use. See Brief for American Academy of Pediatrics et al. as *Amici Curiae* 19 ("[C]hildren as young as three are able to pull the trigger of most handguns"). That they are maneuverable and permit a free hand likely contributes to the fact that they are by far the firearm of choice for crimes such as rape and robbery. See Weapon Use and Violent Crime 2 (Table 2). That they are small and light makes them easy to steal, see *supra*, at 698, 171 L. Ed. 2d, at 721, and concealable, cf. *ante*, at 626, 171 L. Ed. 2d, at 679 (opinion of the Court) (suggesting that concealed-weapon bans are constitutional).

This symmetry suggests that any measure less restrictive in respect to the use of handguns for self-defense will, to that same extent, prove less effective in preventing the use of handguns for illicit purposes. If a resident has a handgun in the home that he can use for self-defense, then he has a handgun in the home that he can use to commit suicide or engage in acts of domestic violence. See *supra*, at 697, 171 L. Ed. 2d, at 721 (handguns prevalent in suicides); Brief for National Network to End Domestic Violence et al. as *Amici Curiae* 27 (handguns prevalent in domestic violence). If it is indeed the case, as the District believes, that the number of guns contributes to [*712] the number of gun-related crimes, accidents, and deaths, then, although there may be less restrictive, *less effective* substitutes for an outright ban, there is no less restrictive *equivalent* of an outright ban.

Licensing restrictions would not similarly reduce the handgun population, and the District may reasonably fear that even if guns are initially restricted to law-abiding citizens, they might be stolen and thereby placed in the hands of criminals. See *supra*, at 698, 171 L. Ed. 2d, at 721. Permitting certain types of handguns, but not others, would affect the commercial market for handguns, but not their availability. And requiring safety devices such as trigger locks, or imposing safe-storage requirements would interfere with any self-defense interest while simultaneously leaving [***730] operable weapons in the hands of owners (or others capable of acquiring the weapon and disabling the safety device) who might use them for domestic violence or other crimes.

The absence of equally effective alternatives to a complete prohibition finds support in the empirical fact that other States [**2865] and urban centers prohibit particular types of weapons. Chicago has a law very similar to the District's, and many of its suburbs also ban handgun possession under most circumstances. See Chicago, Ill., Municipal Code §§ 8-20-030(k), 8-20-40, 8-20-50(c) (2008); Evanston, Ill., City Code § 9-8-2 (2007); Morton Grove, Ill., Village Code § 6-2-3(C) (2007); Oak Park, Ill., Village Code § 27-2-1 (2007); Winnetka, Ill., Village Ordinance § 9.12.020(B) (2008), online at http:// www.amlegal.com/library/il/winnetka.shtml; Wilmette, Ill., Ordinance § 12-24(b) (2008), online at http:// www.amlegal.com/library/il/wilmette.shtml. Toledo bans certain types of handguns. Toledo, Ohio, Municipal Code, § 549.25 (2008). And San Francisco in 2005 enacted by popular referendum a ban on most handgun possession by city residents; it has been precluded from enforcing that prohibition, however, by state-court decisions deeming it pre-empted by state law. See *Fiscal v. City and County of San Francisco*, 158 Cal. App. 4th 895, 900-902, [*713] 70 Cal.Rptr. 3d 324, 326-328 (2008). (Indeed, the fact that as many as 41 States may pre-empt local gun regulation suggests that

the absence of more regulation like the District's may perhaps have more to do with state law than with a lack of locally perceived need for them. See Legal Community Against Violence, Regulating Guns in America 14 (2006), http://www.lcav.org/Library/reports_analyses/National_Audit_Total_8.16.06.pdf.

In addition, at least six States and Puerto Rico impose general bans on certain types of weapons, in particular assault weapons or semiautomatic weapons. See Cal. Penal Code Ann. § 12280(b) (West Supp. 2008); Conn. Gen. Stat. § 53-202c (2007); Haw. Rev. Stat. § 134-8 (1993); Md. Crim. Law Code Ann. § 4-303(a) (Lexis 2002); Mass. Gen. Laws, ch. 140, § 131M (West 2006); N. Y. Penal Law Ann. § 265.02(7) (West Supp. 2008); 25 P.R. Laws Ann. § 456m (Supp. 2006); see also 18 U.S.C. § 922(o) (federal machinegun ban). And at least 14 municipalities do the same. See Albany, N. Y., Municipal Code § 193-16(A) (2005); Aurora, Ill., Ordinance § 29-49(a) (2007); Buffalo, N. Y., City Code § 180-1(F) (2000); Chicago, Ill., Municipal Code §§ 8-24-025(a), 8-20-030(h); Cincinnati, Ohio, Municipal Code § 708-37(a) (Supp. 2008); Cleveland, Ohio, Ordinance § 628.03(a) (2007); Columbus, Ohio, City Code § 2323.31 (2008); Denver, Colo., Revised Municipal Code § 38-130(e) (2008); Morton Grove, Ill., Village Code § 6-2-3(B) (2007); N.Y. City Admin. Code § 10-303.1 (1996 and Supp. 2007); Oak Park, Ill., Village Code § 27-2-1 (2007); Rochester, N. Y., Code § 47-5(f) (2008), online at http:// www.ci. rochester.ny. us/index.cfm? id=112; South Bend, Ind., Ordinance §§ 13-97(b), 13-98 (2008) online at http://library2. municode.cumm// default/DocView 13974/i/2; Toledo, Ohio, Municipal Code § 549.23(a). These bans, too, suggest that there may be no substitute to an outright prohibition in cases where a governmental body has deemed a particular type of weapon especially dangerous.

[*714] D

The upshot is that the District's objectives are compelling; its predictive judgments as to its law's tendency to achieve those objectives are adequately supported; the law does impose a burden upon any self-defense interest that the Amendment seeks to secure; and there is no clear [***731] less restrictive alternative. I turn now to the final portion of the "permissible regulation" question: Does the District's law *disproportionately* burden Amendment-protected interests? Several considerations, taken together, convince me that it does not.

First, the District law is tailored to the life-threatening problems it attempts to address. The law concerns one class of weapons, handguns, leaving residents free to possess shotguns and rifles, along with ammunition. The area that falls within its scope is totally urban. Cf. *Lorillard Tobacco Co.* v. *Reilly*, 533 U.S. 525, 563, 121 S. Ct. 2404, 150 L. Ed. 2d 532 (2001) (varied [**2866] effect of statewide speech restriction in "rural, urban, or suburban" locales "demonstrates a lack of narrow tailoring"). That urban area suffers from a serious handgun-fatality problem. The District's law directly aims at that compelling problem. And there is no less restrictive way to achieve the problem-related benefits that it seeks.

Second, the self-defense interest in maintaining loaded handguns in the home to shoot intruders is not the *primary* interest, but at most a subsidiary interest, that the Second Amendment seeks to serve. The Second Amendment's language, while speaking of a "Militia," says nothing of "self-defense." As Justice Stevens points out, the Second Amendment's drafting history shows that the language reflects the Framers' primary, if not exclusive, objective. See *ante*, at 652-662, 171 L. Ed. 2d, at 693-700 (dissenting opinion). And the majority itself says that "the threat that the new Federal Government would destroy the citizens' militia by taking away their arms was *the* reason that right . . . was codified in a written Constitution." [*715] *Ante*, at 599, 171 L. Ed. 2d, at 662 (emphasis added). The *way* in which the Amendment's operative clause seeks to promote that interest--by protecting a right "to keep and bear Arms"--may *in fact* help further an interest in self-defense. But a factual connection falls far short of a primary objective. The Amendment itself tells us that militia preservation was first and foremost in the Framers' minds. See *Miller*, 307 U.S., at 178, 59 S. Ct. 816, 83 L. Ed. 1206 ("With obvious purpose to assure the continuation and render possible the effectiveness of [militia] forces the declaration and guarantee of the Second Amendment were made," and the Amendment "must be interpreted and applied with that end in view").

Further, any self-defense interest at the time of the framing could not have focused exclusively upon urban-crime-related dangers. Two hundred years ago, most Americans, many living on the frontier, would

likely have thought of self-defense primarily in terms of outbreaks of fighting with Indian tribes, rebellions such as Shays' Rebellion, marauders, and crime-related dangers to travelers on the roads, on footpaths, or along waterways. See Dept. of Commerce, Bureau of Census, Population: 1790 to 1990 (1998) (Table 4), online at http://www.census.gov/population/censusdata/table-4.pdf (of the 3,929,214 Americans in 1790, only 201,655--about 5%--lived in urban areas). Insofar as the Framers focused at all on the tiny fraction of the population living in large cities, they would have been aware that these city dwellers were subject to firearm restrictions that their rural counterparts were not. See *supra*, at 683-686, 171 L. Ed. 2d, at 712-713. They are unlikely then to [***732] have thought of a right to keep loaded handguns in homes to confront intruders in urban settings as *central.* And the subsequent development of modern urban police departments, by diminishing the need to keep loaded guns nearby in case of intruders, would have moved any such right even further away from the heart of the Amendment's more basic protective ends. See, *e.g.*, Sklansky, The Private [*716] Police, 46 UCLA L. Rev. 1165, 1206-1207 (1999) (professional urban police departments did not develop until roughly the mid-19th century).

Nor, for that matter, am I aware of any evidence that *handguns* in particular were central to the Framers' conception of the Second Amendment. The lists of militia-related weapons in the late-18th-century state statutes appear primarily to refer to other sorts of weapons, muskets in particular. See *Miller*, *supra*, at 180-182, 59 S. Ct. 816, 83 L. Ed. 1206 (reproducing colonial militia laws). Respondent points out in his brief that the Federal Government and two States at the time of the founding had [**2867] enacted statutes that listed handguns as "acceptable" militia weapons. Brief for Respondent 47. But these statutes apparently found them "acceptable" only for certain special militiamen (generally, certain soldiers on horseback), while requiring muskets or rifles for the general infantry. See Act of May 8, 1792, ch. XXXIII, 1 Stat. 271; Laws of the State of North Carolina 592 (1791); First Laws of the State of Connecticut 150 (J. Cushing ed. 1982); see also 25 Journals of the Continental Congress, 1774-1789, pp. 741-742 (G. Hunt ed. 1922).

Third, irrespective of what the Framers *could have thought*, we know what they *did think.* Samuel Adams, who lived in Boston, advocated a constitutional amendment that would have precluded the Constitution from ever being "'construed'" to "'prevent the people of the United States, who are peaceable citizens, from keeping their own arms.'" 6 Documentary History of the Ratification of the Constitution 1453 (J. Kaminski & G. Saladino eds. 2000). Samuel Adams doubtless knew that the Massachusetts Constitution contained somewhat similar protection. And he doubtless knew that Massachusetts law prohibited Bostonians from keeping loaded guns in the house. So how could Samuel Adams have advocated such protection *unless* he thought that the protection was *consistent* with local regulation that seriously impeded urban residents from using their arms [*717] against intruders? It seems unlikely that he meant to deprive the Federal Government of power (to enact Boston-type weapons regulation) that he knew Boston had and (as far as we know) he would have thought constitutional under the Massachusetts Constitution. Indeed, since the District of Columbia (the subject of the Seat of Government Clause, U.S. Const., Art. I, § 8, cl. 17) was the only *urban* area under direct federal control, it seems unlikely that the Framers thought about *urban* gun control at all. Cf. *Palmore* v. *United States*, 411 U.S. 389, 398, 93 S. Ct. 1670, 36 L. Ed. 2d 342 (1973) (Congress can "legislate for the District in a manner with respect to subjects that would exceed its powers, or at least would be very unusual, in the context of national legislation enacted under other powers delegated to it").

Of course the District's law and the colonial Boston law are not identical. But the Boston law disabled an even wider class of weapons (indeed, all firearms). And its existence shows at the least that local legislatures could [***733] impose (as here) serious restrictions on the right to use firearms. Moreover, as I have said, Boston's law, though highly analogous to the District's, was not the *only* colonial law that could have impeded a homeowner's ability to shoot a burglar. Pennsylvania's and New York's laws could well have had a similar effect. See *supra*, at 686, 171 L. Ed. 2d, at 713. And the Massachusetts and Pennsylvania laws were not only thought consistent with an *unwritten* common-law gun-possession right, but also consistent with *written* state constitutional provisions providing protections similar to those provided by the Federal Second Amendment. See *supra*, at 685-686, 171 L. Ed. 2d, at 713. I cannot agree with the majority that these laws are largely uninformative because the penalty for violating them was civil, rather than criminal. *Ante*, at 633-634, 171 L. Ed. 2d, at 682. The Court has long recognized

that the exercise of a constitutional right can be burdened by penalties far short of jail time. See, *e.g.*, *Murdock* v. *Pennsylvania*, 319 U.S. 105, 63 S. Ct. 870, 87 L. Ed. 1292 (1943) (invalidating $7 per week solicitation fee as applied to religious group); [*718] see also *Forsyth County* v. *Nationalist Movement*, 505 U.S. 123, 136, 112 S. Ct. 2395, 120 L. Ed. 2d 101 (1992) ("A tax based on the content of speech does not become more constitutional because it is a small tax").

[**2868] Regardless, why would the majority require a precise colonial regulatory analogue in order to save a modern gun regulation from constitutional challenge? After all, insofar as we look to history to discover how we can constitutionally regulate a right to self-defense, we must look, not to what 18th-century legislatures actually *did* enact, but to what they would have thought they *could* enact. There are innumerable policy-related reasons why a legislature might not act on a particular matter, despite having the power to do so. This Court has "frequently cautioned that it is at best treacherous to find in congressional silence alone the adoption of a controlling rule of law." *United States* v. *Wells*, 519 U.S. 482, 496, 117 S. Ct. 921, 137 L. Ed. 2d 107 (1997) (internal quotation marks and brackets omitted). It is similarly "treacherous" to reason from the fact that colonial legislatures *did not* enact certain kinds of legislation to a conclusion that a modern legislature *cannot* do so. The question should not be whether a modern restriction on a right to self-defense *duplicates* a past one, but whether that restriction, when compared with restrictions originally thought possible, enjoys a similarly strong justification. At a minimum that similarly strong justification is what the District's modern law, compared with Boston's colonial law, reveals.

Fourth, a contrary view, as embodied in today's decision, will have unfortunate consequences. The decision will encourage legal challenges to gun regulation throughout the Nation. Because it says little about the standards used to evaluate regulatory decisions, it will leave the Nation without clear standards for resolving those challenges. See *ante*, at 626-627, and n. 26, 171 L. Ed. 2d, at 678. And litigation over the course of many years, or the mere specter of such litigation, threatens to leave cities without effective protection against gun violence and accidents during that time.

[*719] As important, the majority's decision threatens severely to limit the ability of more knowledgeable, democratically [***734] elected officials to deal with gun-related problems. The majority says that it leaves the District "a variety of tools for combating" such problems. *Ante*, at 636, 171 L. Ed. 2d, at 684. It fails to list even one seemingly adequate replacement for the law it strikes down. I can understand how reasonable individuals can disagree about the merits of strict gun control as a crime-control measure, even in a totally urbanized area. But I cannot understand how one can take from the elected branches of government the right to decide whether to insist upon a handgun-free urban populace in a city now facing a serious crime problem and which, in the future, could well face environmental or other emergencies that threaten the breakdown of law and order.

V

The majority derides my approach as "judge-empowering." *Ante*, at 634, 171 L. Ed. 2d, at 683. I take this criticism seriously, but I do not think it accurate. As I have previously explained, this is an approach that the Court has taken in other areas of constitutional law. See *supra*, at 690, 171 L. Ed. 2d, at 716. Application of such an approach, of course, requires judgment, but the very nature of the approach --requiring careful identification of the relevant interests and evaluating the law's effect upon them--limits the judge's choices; and the method's necessary transparency lays bare the judge's reasoning for all to see and to criticize.

The majority's methodology is, in my view, substantially less transparent than mine. At a minimum, I find it difficult to understand the reasoning that seems to underlie certain conclusions that it reaches.

[**2869] The majority spends the first 54 pages of its opinion attempting to rebut Justice Stevens' evidence that the Amendment was enacted with a purely militia-related purpose. In the majority's view, the Amendment also protects [*720] an interest in armed personal self-defense, at least to some degree. But the majority does not tell us precisely what that interest is. "Putting all of [the Second Amendment's] textual elements together," the majority says, "we find that they guarantee the individual right to possess and carry weapons in case of confrontation." *Ante*, at 592, 171 L. Ed. 2d, at 657. Then, three pages later, it says that "we do not read the Second Amendment to permit citizens to carry arms for *any sort* of confrontation." *Ante*, at 595, 171 L. Ed. 2d, at 659. Yet, with one critical exception, it

does not explain which confrontations count. It simply leaves that question unanswered.

The majority does, however, point to one type of confrontation that counts, for it describes the Amendment as "elevat[ing] above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Ante*, at 635, 171 L. Ed. 2d, at 683. What is its basis for finding that to be the core of the Second Amendment right? The only historical sources identified by the majority that even appear to touch upon that specific matter consist of an 1866 newspaper editorial discussing the Freedmen's Bureau Act, see *ante*, at 615, 171 L. Ed. 2d, at 671, two quotations from that 1866 Act's legislative history, see *ante*, at 615-616, 171 L. Ed. 2d, at 671-672, and a 1980 state-court opinion saying that in colonial times the same were used to defend the home as to maintain the militia, see [***735] *ante*, at 624-625, 171 L. Ed. 2d, at 677. How can citations such as these support the far-reaching proposition that the Second Amendment's primary concern is not its stated concern about the militia, but rather a right to keep loaded weapons at one's bedside to shoot intruders?

Nor is it at all clear to me how the majority decides *which* loaded "arms" a homeowner may keep. The majority says that that Amendment protects those weapons "typically possessed by law-abiding citizens for lawful purposes." *Ante*, at 625, 171 L. Ed. 2d, at 677. This definition conveniently excludes machineguns, but permits handguns, which the majority describes as "the most popular weapon chosen by Americans for self-defense [*721] in the home." *Ante*, at 629, 171 L. Ed. 2d, at 680; see also *ante*, at 626-627, 171 L. Ed. 2d, at 677-678. But what sense does this approach make? According to the majority's reasoning, if Congress and the States lift restrictions on the possession and use of machineguns, and people buy machineguns to protect their homes, the Court will have to reverse course and find that the Second Amendment *does*, in fact, protect the individual self-defense-related right to possess a machinegun. On the majority's reasoning, if tomorrow someone invents a particularly useful, highly dangerous self-defense weapon, Congress and the States had better ban it immediately, for once it becomes popular Congress will no longer possess the constitutional authority to do so. In essence, the majority determines what regulations are permissible by looking to see what existing regulations permit. There is no basis for believing that the Framers intended such circular reasoning.

I am similarly puzzled by the majority's list, in Part III of its opinion, of provisions that in its view would survive Second Amendment scrutiny. These consist of (1) "prohibitions on carrying concealed weapons"; (2) "prohibitions on the possession of firearms by felons"; (3) "prohibitions on the possession of firearms by . . . the mentally ill"; (4) "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings"; and (5) government "conditions and qualifications" attached to "the commercial sale of arms." *Ibid.* . Why these? Is it [**2870] that similar restrictions existed in the late-18th century? The majority fails to cite any colonial analogues. And even were it possible to find analogous colonial laws in respect to all these restrictions, why should these colonial laws count, while the Boston loaded-gun restriction (along with the other laws I have identified) apparently does not count? See *supra*, at 685, 717-718, 171 L. Ed. 2d, at 713, 732-733.

At the same time the majority ignores a more important question: Given the purposes for which the Framers enacted [*722] the Second Amendment, how should it be applied to modern-day circumstances that they could not have anticipated? Assume, for argument's sake, that the Framers did intend the Amendment to offer a degree of self-defense protection. Does that mean that the Framers also intended to guarantee a right to possess a loaded gun near swimming pools, parks, and playgrounds? That they would not have cared about the children who might pick up a loaded gun on their parents' bedside table? That they (who certainly showed concern for the risk of fire, see *supra*, at 684-686, 171 L. Ed. 2d, at [***736] 713) would have lacked concern for the risk of accidental deaths or suicides that readily accessible loaded handguns in urban areas might bring? Unless we believe that they intended future generations to ignore such matters, answering questions such as the questions in this case requires judgment--judicial judgment exercised within a framework for constitutional analysis that guides that judgment and which makes its exercise transparent. One cannot answer those questions by combining inconclusive historical research with judicial *ipse dixit*.

The argument about method, however, is by far the less important argument surrounding today's decision. Far more important are the unfortunate consequences that

today's decision is likely to spawn. Not least of these, as I have said, is the fact that the decision threatens to throw into doubt the constitutionality of gun laws throughout the United States. I can find no sound legal basis for launching the courts on so formidable and potentially dangerous a mission. In my view, there simply is no untouchable constitutional right guaranteed by the Second Amendment to keep loaded handguns in the house in crime-ridden urban areas.

VI

For these reasons, I conclude that the District's measure is a proportionate, not a disproportionate, response to the compelling concerns that led the District to adopt it. And, [*723] for these reasons as well as the independently sufficient reasons set forth by Justice Stevens, I would find the District's measure consistent with the Second Amendment's demands.

With respect, I dissent.

REFERENCES

U.S.C.S., Constitution, Amendment 2

2 Antieau on Local Government Law § 29.24 (Matthew Bender 2d ed.)

L Ed Digest, Weapons and Firearms § 1

L Ed Index, Weapons and Firearms

Supreme Court's construction and application of Federal Constitution's militia clauses (Art. I, § 8, cl. 15 and 16), allocating power over militia between Congress and states. 110 L. Ed. 2d 738.

Supreme Court's views on weight to be accorded to pronouncements of legislature, or members of legislature, respecting meaning or intent of previously enacted statute. 56 L. Ed. 2d 918.

Supreme Court's views of Fifth Amendment's double jeopardy clause pertinent to or applied in federal criminal cases. 50 L. Ed. 2d 830.

The Supreme Court and the right of free speech and press. 93 L. Ed. 1151, 2 L. Ed. 2d 1706, 11 L. Ed. 2d 1116, 16 L. Ed. 2d 1053, 21 L. Ed. 2d 976.

Accused's right to counsel under the Federal Constitution--Supreme Court cases. 93 L. Ed. 137, 2 L. Ed. 2d 1644, 9 L. Ed. 2d 1260, 18 L. Ed. 2d 1420.

Tab 5

Doe, et al. v. Coupe

Civil Action No. 10983-VCP

COURT OF CHANCERY OF DELAWARE, NEW CASTLE

2015 Del. Ch. LEXIS 187

July 9, 2015, Submitted
July 14, 2015, Decided

NOTICE:

THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

CASE SUMMARY:

OVERVIEW: HOLDINGS: [1]-The court had subject matter jurisdiction over an action where plaintiffs sought an order enjoining defendant from requiring that they wear GPS monitor ankle bracelets, as the relief plaintiffs sought, having the bracelets removed from their ankles, was equitable relief not available elsewhere, the Declaratory Judgment Act, Del. Code Ann. tit. 10, § 6501, did not deprive the court of jurisdiction over a case in which plaintiffs truly sought equitable relief, and plaintiffs' status as parolees or probationers did not convert the civil action into a criminal matter.

OUTCOME: Defendant's motion to dismiss denied.

CORE TERMS: matter jurisdiction, declaratory judgment, monitoring, bracelet, ankle, declaratory judgment, injunctive relief, wear, adequate remedy, injunction, convicted, equitable relief, declaration, equitable, monitor, legal remedy, incarcerated, conceivably, sex offender, declaratory, adjudicate, probation, divested, prayed, government agency, equitable jurisdiction, equitable right, equitable remedy, legal relations, citations omitted

LexisNexis(R) Headnotes

Civil Procedure > Equity > General Overview
Evidence > Procedural Considerations > Burdens of Proof > Allocation
Civil Procedure > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions > Limited Jurisdiction
[HN1]The court of chancery is a court of limited jurisdiction. It does not have jurisdiction to determine any matter wherein sufficient remedy may be had by common law, or statute, before any other court or jurisdiction of the state of Delaware. Absent a statutory delegation of subject matter jurisdiction, the court can acquire subject matter jurisdiction over a case only if a plaintiff: (1) invokes an equitable right; or (2) requests an equitable remedy when there is no adequate remedy at law. The plaintiff bears the burden of establishing that the court has subject matter jurisdiction. In making its determination as to subject matter jurisdiction, the court must review the allegations of the complaint as a whole to determine the true nature of the claim. Determining whether a plaintiff truly seeks equitable relief is a context-specific inquiry.

Civil Procedure > Equity > General Overview
Civil Procedure > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview
[HN2]It has been frequently said that the court of chancery, in determining jurisdiction, will go behind the "facade of prayers" to determine the true reason for which the plaintiff has brought suit. By this it is meant that a judge in equity will take a practical view of the complaint, and will not permit a suit to be brought in chancery where a complete legal remedy otherwise exists but where the plaintiff has prayed for some type of traditional equitable relief as a kind of formulaic "open sesame" to the court of chancery. A practical analysis of the adequacy of any legal remedy, then, must be the point of departure for each matter which comes before the court.

Civil Procedure > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview
Civil Procedure > Equity > General Overview
[HN3]Equitable jurisdiction must be determined from the face of the complaint as of the time of filing, with all material factual allegations viewed as true.

Civil Procedure > Declaratory Judgment Actions > State Judgments > General Overview
[HN4]See Del. Code Ann. tit. 10, § 6501.

Civil Procedure > Declaratory Judgment Actions > State Judgments > General Overview
Civil Procedure > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview
[HN5]The Declaratory Judgment Act operates to ensure that if a court would have subject matter jurisdiction over a certain lawsuit, no party to that suit can preclude the court from hearing the case ("declar[ing] rights, status and other legal relations") merely because no further relief is or could be claimed. In other words, a party cannot object that its opponent merely seeks a "declaratory judgment."

Civil Procedure > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview
Civil Procedure > Declaratory Judgment Actions > State Judgments > General Overview
Civil Procedure > Equity > General Overview
[HN6]The basic purpose of the Declaratory Judgment Act is to enable the courts to adjudicate a controversy prior to the time when a remedy is traditionally available and, thus, to advance to a stage at which a matter is traditionally justiciable. Critically, however, the Declaratory Judgment Act cannot and does not divest the court of chancery or any court of subject matter jurisdiction as to a particular case, if such jurisdiction would be proper according to the traditional principles for determining that issue. Delaware law does not support a defendant's attempt to use the Declaratory Judgment Act as a means to deprive the court of subject matter jurisdiction over a case in which the plaintiff truly seeks equitable relief.

Civil Procedure > Declaratory Judgment Actions > State Judgments > General Overview
Civil Procedure > Justiciability > Case or Controversy Requirements > Actual Disputes
[HN7]Even though 10 Del. C. § 6501 enables courts to render declaratory judgments, it does not obviate the need for a real case or controversy.

Civil Procedure > Equity > General Overview
Civil Procedure > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview
[HN8]In deciding whether or not equitable jurisdiction exists, the court must look beyond the remedies nominally being sought, and focus upon the allegations of the complaint in light of what the plaintiff really seeks to gain by bringing his or her claim.

Civil Procedure > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview
Civil Procedure > Equity > General Overview
Civil Procedure > Declaratory Judgment Actions > State Judgments > General Overview
[HN9]The preliminary showing that a plaintiff must make is that subject matter jurisdiction is proper in the court of chancery based on: (1) a statutory grant of jurisdiction; (2) the invocation by a plaintiff of an equitable right; or (3) a request for an equitable remedy to redress a harm for which there is no adequate remedy at

law. If the court finds that one or more of those criteria are met in the case at hand, it does not follow that an action for declaratory judgment in the superior court necessarily would be barred. What follows is simply that the action also may proceed in the court of chancery.

COUNSEL: [*1] Joseph C. Handlon, Esq., Roopa Sabesan, Esq., Meredith Stewart Tweedie, Esq., Delaware Department of Justice, Wilmington, DE.

Richard H. Morse, Esq., American Civil Liberties Union, Foundation of Delaware, Wilmington, DE.

JUDGES: Donald F. Parsons, Jr., Vice Chancellor.

OPINION BY: Donald F. Parsons, Jr.

OPINION

The plaintiffs bring this action against the Commissioner of the Delaware Department of Correction, seeking an order preliminarily and permanently enjoining the defendant from continuing to require that the plaintiffs wear GPS monitor ankle bracelets, and declaring that the statute pursuant to which the defendant enforces the GPS monitoring requirement is unconstitutional. The defendant moved under Court of Chancery Rule 12(b)(1) to dismiss the complaint for lack of subject matter jurisdiction. For the reasons set forth herein, I deny the motion.

I. BACKGROUND

Plaintiffs, Mary Doe, John Doe 1, and John Doe 2,[1] are citizens and residents of Delaware. They previously were convicted and incarcerated for sex crimes, and each now is on either probation or parole. As a result of their criminal records, each Plaintiff has been assigned to "Risk Assessment Tier III" of the sex offender registry administered by the Delaware State Bureau of Investigation [*2] pursuant to 11 *Del. C.* § 4121. In 2007, that statute was amended to require that, "Notwithstanding any provision of this section or title to the contrary, any Tier III sex offender being monitored at Level IV, III, II or I, shall as a condition of their probation, wear a GPS locator ankle bracelet paid for by the probationer."[2] In the case of each Plaintiff, the GPS monitor requirement was enacted after he or she was convicted of the offenses that have resulted in his or her status as a registered sex offender.[3] Plaintiffs aver that no government agency has made a finding that any of them poses a continuing danger such that requiring them to wear the GPS monitor bracelets would increase public safety.[4]

1 The Court signed an order on April 30, 2015, granting Plaintiffs' motion to file and proceed using pseudonyms. Docket Item No. 2.

2 11 *Del. C.* §4121(u) [hereinafter the "GPS Monitoring Statute"]; *see* 76 Del. Laws, ch. 123, § 1 (2007).

3 Mary Doe was convicted in New York in 1992 and incarcerated there from 1991 to 2010. Compl. ¶ 9. John Doe 1 was convicted in Delaware in 1979 and incarcerated here until 2009. *Id.* ¶ 24. John Doe 2 was convicted in 2001 and incarcerated until 2009. *Id.* ¶ 35.

4 *E.g.*, *id.* ¶ 2.

Plaintiffs commenced [*3] this action against Defendant, Robert M. Coupe, the Commissioner of the Delaware Department of Correction, on May 4, 2015. The Probation and Parole section of the Department of Correction administers the GPS Monitoring Statute. By this action, Plaintiffs seek an order of this Court "preliminarily and permanently enjoining [D]efendant from requiring them to continue wearing the GPS devices. Plaintiffs also seek a declaration that 11 *Del. C.* § 4121(u) on its face and as applied by [D]efendant violates the Fourth Amendment to the United States Constitution,"[5] or that the application of the GPS Monitoring Statute to individuals, such as Plaintiffs, convicted of sex offenses before the statute's effective date, July 12, 2007, violates the Ex Post Facto clause of the U.S. Constitution. Plaintiffs also challenge the statute facially and as applied under Article I, § 6 of the Delaware Constitution.

5 *Id.* ¶ 6.

Defendant moved to dismiss the Complaint under Rule 12(b)(1) for lack of subject matter jurisdiction. Defendant contends that Plaintiffs have an adequate remedy at law because they have the ability to obtain a declaration from the Superior Court that the GPS Monitoring Statute is unconstitutional, either facially or as applied to Plaintiffs. Defendant contends, moreover, that should such a declaratory judgment issue, it would be "self-executing," requiring no further injunctive [*4] relief to enforce it. Plaintiffs counter by arguing that the core relief they seek is equitable in nature--*i.e.*, an injunction requiring Defendant to stop forcing Plaintiffs

to wear the GPS-monitoring ankle bracelets. Thus, Plaintiffs assert that, notwithstanding that the Superior Court conceivably could adjudicate the constitutionality of the GPS Monitoring Statute and render a declaratory judgment in that regard, subject matter jurisdiction is proper in the Court of Chancery because the ultimate relief Plaintiffs seek is equitable in nature.

II. ANALYSIS

A. Legal Standard

[HN1]The Court of Chancery is a court of limited jurisdiction. It does "not have jurisdiction to determine any matter wherein sufficient remedy may be had by common law, or statute, before any other court or jurisdiction of this State."[6] Absent a statutory delegation of subject matter jurisdiction, this Court can acquire subject matter jurisdiction over a case only if a plaintiff: (1) invokes an equitable right; or (2) requests an equitable remedy when there is no adequate remedy at law.[7] The plaintiff bears the burden of establishing that this Court has subject matter jurisdiction.[8] In making its determination as to subject [*5] matter jurisdiction, the court must review the allegations of the complaint as a whole to determine the true nature of the claim.[9] Determining whether a plaintiff truly seeks equitable relief is a context-specific inquiry. As stated by then-Vice Chancellor Chandler:

> [HN2]It has been frequently said that this Court, in determining jurisdiction, will go behind the "facade of prayers" to determine the "true reason" for which the plaintiff has brought suit. By this it is meant that a judge in equity will take a practical view of the complaint, and will not permit a suit to be brought in Chancery where a complete legal remedy otherwise exists but where the plaintiff has prayed for some type of traditional equitable relief as a kind of formulaic "open sesame" to the Court of Chancery. A practical analysis of the adequacy of any legal remedy, then, must be the point of departure for each matter which comes before this Court.[10]

6 10 *Del. C.* § 342.

7 *Israel Disc. Bank of N.Y. v. First State Depository Co.*, 2012 Del. Ch. LEXIS 226, 2012 WL 4459802, at *4 (Del. Ch. Sept. 27, 2012), *aff'd*, 86 A.3d 1118 (Del. 2014).

8 *Charlotte Broad., LLC v. Davis Broad. of Atlanta LLC*, 2013 Del. Ch. LEXIS 82, 2013 WL 1405509, at *3 (Del. Ch. Apr. 2, 2013). [HN3]"Equitable jurisdiction must be determined from the face of the complaint as of the time of filing, with all material factual allegations viewed as true." *Int'l Bus. Machines Corp. v. Comdisco, Inc.*, 602 A.2d 74, 78 (Del. Ch. 1991) (citing *Diebold Computer Leasing, Inc. v. Commercial Credit Corp.*, 267 A.2d 586 (Del. 1970)).

9 *Charlotte Broad., LLC*, 2013 Del. Ch. LEXIS 82, 2013 WL 1405509, at *3.

10 *Comdisco, Inc.*, 602 A.2d at 78 (citations omitted).

B. This Court Has Subject Matter Jurisdiction over Plaintiffs' Claims [*6]

With the foregoing principles in mind, I conclude that this Court does have subject matter jurisdiction over Plaintiffs' claims, because those claims truly seek equitable relief and it is not clear that Plaintiffs could obtain an adequate remedy at law. The principal relief sought in the Complaint is an order requiring that the Department of Correction stop forcing Plaintiffs to wear the GPS-monitoring ankle bracelets. Plaintiffs have shown that the harms the GPS monitors allegedly inflict upon them probably cannot be cured by a legal remedy such as damages.[11] For example, Plaintiff Mary Doe alleges that her ankle bracelet, which weighs five pounds, causes soreness and abrasions, and makes it difficult to bathe or sleep.[12] She further avers that because of the public questioning that results from the ankle bracelet, she must wear long pants at all times, and has been unable to swim on family vacations with her fiancé and children.[13]

11 Compl. ¶¶ 19-22, 31-33.

12 *Id.* ¶ 19.

13 *Id.* ¶¶ 20, 14.

It ultimately may be the case that all of Plaintiffs' allegations in this regard are unfounded, or that their grievances, while legitimate, are insufficient to merit injunctive relief, assuming the GPS Monitoring Statute [*7] is determined to be unconstitutional. I express no opinion on the merits of the constitutional issues here or

as to whether Plaintiffs otherwise satisfy the requirements for injunctive relief, except to find that their claims for such relief are at least colorable. Taking those allegations as true for purposes of this motion to dismiss, however, I am convinced that, going beyond "the "facade of prayers" to determine the "true reason" for which the plaintiff has brought suit,"[14] as our case law instructs me to do, the nature of the relief sought by Plaintiffs is equitable. Plaintiffs primarily seek to have the GPS monitor bracelets removed from their ankles; no legal remedy would be adequate to redress that grievance. For that reason, I find this case distinguishable from several cases cited by Defendant in which the plaintiffs truly were seeking legal remedies but "prayed for some type of traditional equitable relief as a kind of formulaic 'open sesame' to the Court of Chancery."[15] Plaintiffs' claims here genuinely seek injunctive relief not available elsewhere; therefore, this Court has jurisdiction over such claims.

14 *Comdisco, Inc.*, 602 A.2d at 78.

15 *Id.*

In arguing for a contrary conclusion, Defendant urges me to dismiss [*8] the Complaint on the grounds that Plaintiffs do not really "need" injunctive relief because they could file in Superior Court for a declaratory judgment as to the GPS Monitoring Statute, and that such a judgment would be "final" and would obviate the need for any further injunction (assuming Defendant abides by the judgment). I do not question the premises of this argument: Plaintiffs conceivably could obtain a declaratory judgment in Superior Court as to the Statute's constitutionality, and I consider it reasonable to assume that the Department of Correction would not continue enforcing the GPS Monitoring Statute if it were judged unconstitutional. Defendant's conclusion, however, does not follow.

One problem with Defendant's argument is its misplaced reliance on 10 *Del. C.* § 6501, the "Declaratory Judgment Act." Section 6501 states that:

> [HN4]Except where the Constitution of this State provides otherwise, courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration [*9] may be either affirmative or negative in form and effect, and such declaration shall have the force and effect of a final judgment or decree.[16]

[HN5]The Declaratory Judgment Act operates to ensure that, if a court would have subject matter jurisdiction over a certain lawsuit, no party to that suit can preclude the court from hearing the case ("declar[ing] rights, status and other legal relations") merely because "no further relief is or could be claimed." In other words, a party cannot object that its opponent merely seeks a "declaratory judgment."

16 10 *Del. C.* § 6501.

As the Delaware Supreme Court stated in *Diebold Computer Leasing, Inc. v. Commercial Credit Corp.*, [HN6]"The basic purpose of the Declaratory Judgment Act is to enable the courts to adjudicate a controversy prior to the time when a remedy is traditionally available and, thus, to advance to [a] stage at which a matter is traditionally justiciable."[17] Critically, however, the Declaratory Judgment Act cannot and does not divest this Court or any court of subject matter jurisdiction as to a particular case, if such jurisdiction would be proper according to the traditional principles for determining that issue.[18] Our law does not support Defendant's attempt to use [*10] the Declaratory Judgment Act as a means to deprive this Court of subject matter jurisdiction over a case in which Plaintiffs truly seek equitable relief.[19]

17 267 A.2d 586, 591-92 (Del. 1970).

18 *Id.* at 591 ("We conclude, therefore, that subject-matter jurisdiction in Chancery appeared in this cause in the form of the traditional jurisdiction of equity over threatened breach of contract. . . . That jurisdiction was not divested by our Declaratory Judgment Act, 10 *Del. C.* § 6501. While it is conceivable that, under § 6501, [Plaintiff] may have brought a declaratory judgment action in the Superior Court for a construction of the Loan Agreement, and that, for practical purposes, such action may have furnished an adequate remedy, it does not follow that the creation of such remedy by § 6501 divested the Chancery Court of the traditional

> jurisdiction we have found it possessed in this case. It is settled that Chancery jurisdiction remains, notwithstanding the statutory creation of jurisdiction of the subject matter in another court and a remedy elsewhere that may be adequate, *unless the new remedy is equivalent and is expressly made exclusive in the other tribunal*. . . . Obviously, the Declaratory Judgment Act does not fulfill the tests required for the ouster [*11] of equity jurisdiction.") (footnotes omitted) (emphasis added) (citing *DuPont v. DuPont*, 32 Del. Ch. 413, 85 A.2d 724, 729-30 (Del. 1951)).
>
> 19 I note that the Delaware Supreme Court has continued to cite the 1970 *Diebold* opinion and employ the same test for determining the Court of Chancery's subject matter jurisdiction. *See Candlewood Timber Gp., LLC v. Pan Am. Energy, LLC*, 859 A.2d 989, 997 (Del. 2004) ("In deciding whether or not equitable jurisdiction exists, the Court must look beyond the remedies nominally being sought, and focus upon the allegations of the complaint in light of what the plaintiff really seeks to gain by bringing his or her claim.") (citing *Diebold Computer Leasing, Inc.*, 267 A.2d 586); *see also, e.g.*, *Nelson v. Russo*, 844 A.2d 301, 302 (Del. 2004) (same); *Shearin v. Mother AUMP Church*, 755 A.2d 390 (Del. 2000) (same).

In the circumstances of this case, Plaintiffs seek both preliminary and permanent injunctive relief barring Defendant from continuing to require them to wear GPS-monitoring ankle bracelets. As previously discussed, a declaratory judgment in Superior Court that the GPS Monitoring Statute is unconstitutional, coupled with Defendant's presumed adherence to such a ruling, might provide an adequate remedy at law in comparison to a permanent injunction.[20] I know of no basis to conclude, however, that the Superior Court could provide the equivalent of a preliminary injunction. In that regard, Plaintiffs would face a difficult challenge in trying [*12] to meet the requirements for a preliminary injunction in this case. Nevertheless, they have stated at least a colorable claim for such relief. Thus, I am not persuaded there is an adequate and equivalent remedy at law here.

> 20 It also might not be true that Plaintiffs would be able to proceed in that manner. [HN7]Even though 10 *Del. C.* § 6501 enables courts to render declaratory judgments, it does not obviate the need for a real case or controversy. *See Stroud v. Milliken Enters., Inc.*, 552 A.2d 476, 479 (Del. 1989) ("While the Declaratory Judgment statute . . . may be employed as a procedural device to advance the stage at which a matter is traditionally justiciable, the statute is not to be used as a means of eliciting advisory opinions from the courts.") (internal quotation marks and citations omitted). For example, Plaintiffs conceivably might have to base a claim for declaratory relief in the Superior Court on a damages claim against Defendant. Such a claim likely would be subject to a defense of qualified immunity, which, if successful, might mean that the Court would not reach the constitutional issue underlying Plaintiffs' claim here for injunctive relief.

Reed v. Brady,[21] on which Defendant relies, also supports my conclusion. In that case, the plaintiff sought [*13] declaratory and injunctive relief against the Delaware Attorney General. After examining the nature of the plaintiff's claims in *Reed*, in accordance with *Comdisco* and other cases I have relied on here, the Court concluded that each of the bases for the plaintiff's complaint was "nothing more than a legal claim dressed in equitable clothing."[22] It was on that basis--not because of the Declaratory Judgment Act and the purportedly "self-executing" nature of declaratory judgments rendered by our courts of law--that the Court found no basis for subject matter jurisdiction in the Court of Chancery in the *Reed* case. The same was true in *Christiana Town Center, LLC v. New Castle County*, which Defendant also cites in this regard.[23]

> 21 2002 Del. Ch. LEXIS 83, 2002 WL 1402238, at *3 (Del. Ch. June 21, 2002), *aff'd*, 818 A.2d 150 (Del. 2003).
>
> 22 2002 Del. Ch. LEXIS 83, [WL] at *3-6. One of the four purported claims was dismissed under Rule 12(b)(6), rather than for lack of subject matter jurisdiction under 12(b)(1). 2002 Del. Ch. LEXIS 83, [WL] at *3.
>
> 23 *Christiana Town Ctr., LLC v. New Castle Cty.*, 2003 Del. Ch. LEXIS 60, WL 21314499, at *4 (Del. Ch. June 6, 2003) ("[A] plain reading [of the complaint] shows that all [the plaintiff] realistically seeks is a declaratory judgment as to the meaning and scope of the UDC Clean Hands Provision."), *aff'd*, 841 A.2d 307 (Del. 2004).

Neither *Christiana Town Center* nor *Reed* stands for the proposition that Defendant seems to be urging in this case, which appears to be that, in any [*14] case where the defendant is a government agency and the plaintiff conceivably could obtain a declaratory judgment as to a legal issue against that defendant in Superior Court, the Court of Chancery is divested of subject matter jurisdiction regardless of the true nature of the relief being sought. Such a proposition is contrary to *Diebold* and numerous later decisions of the Delaware Supreme Court. In my opinion, *Reed*, *Christiana Town Center*, *Diebold*, and every other case the parties cite here follow the same rule: [HN8]"In deciding whether or not equitable jurisdiction exists, the Court must look beyond the remedies nominally being sought, and focus upon the allegations of the complaint in light of what the plaintiff really seeks to gain by bringing his or her claim."[24]

24 *Candlewood Timber Gp., LLC*, 859 A.2d at 997.

As discussed above, when I apply that rule to the particular circumstances of this case, I come to a different conclusion as to the true nature of Plaintiff's claims here than did the Court in *Reed* or *Christiana Town Center*. Nor do I dispute that in this case and others like it, subject matter jurisdiction also might be proper in Superior Court. For that reason, I disagree with Defendant's assertion that, "Plaintiff's argument, [*15] taken to its logical conclusion, would bar any declaratory judgment action in Superior Court because a party would simply argue that, because the Superior Court cannot issue injunctions, it cannot enforce a declaration."[25] [HN9]The preliminary showing that a plaintiff must make is that subject matter jurisdiction is proper in this Court based on: (1) a statutory grant of jurisdiction; (2) the invocation by a plaintiff of an equitable right; or (3) a request for an equitable remedy to redress a harm for which there is no adequate remedy at law. If this Court finds that one or more of those criteria are met in the case at hand, it does not follow, as Defendant suggests, that an action for declaratory judgment in Superior Court necessarily would be barred. What follows is simply that the action also *may* proceed in this Court. Plaintiff has made the requisite preliminary showing that subject matter jurisdiction exists in the Court of Chancery. Thus, Defendant has not shown he is entitled to a dismissal for lack of jurisdiction.

25 Def.'s Reply Br. 3.

A related objection raised by Defendants is that, if this case is allowed to proceed in the Court of Chancery, it will amount to a usurpation of the [*16] Superior Court's authority to adjudicate and enforce Delaware's criminal statutes, and would open the floodgates to similar claims by criminal defendants who seek some relief from the Department of Correction or other law enforcement bodies. Understandably, this Court historically has been careful not to interject itself into the law enforcement functions that properly fall within the jurisdiction of Delaware's courts of law. This case does not threaten to disrupt that balance. It is not a criminal action. Plaintiffs here do not challenge any aspect of their criminal sentences; indeed at least one of those sentences are for convictions rendered outside of Delaware, and all of them pre-date the enactment of the GPS Monitoring Statute. Plaintiffs here challenge the requirement that they must wear GPS ankle bracelets, which requirement the Department of Correction administers in a ministerial capacity. The fact of Plaintiffs' current status as parolees or probationers is one that may or may not impact the analysis of the merits of this case. That fact, however, does not convert this civil action in which Plaintiffs seek equitable relief into an "active criminal matter," as Defendant seems [*17] to argue.

III. CONCLUSION

For the foregoing reasons, Defendant's motion to dismiss is denied.

IT IS SO ORDERED.

Sincerely,

/s/ Donald F. Parsons, Jr.

Donald F. Parsons, Jr.

Vice Chancellor

Tab 6

88 A.3d 654
Supreme Court of Delaware.

Jane DOE and Charles Boone,
Plaintiffs Below–Appellants,
v.
WILMINGTON HOUSING AUTHORITY and Frederick S. Purnell, Sr., in his capacity as Executive Director of the Wilmington Housing Authority, Defendants Below–Appellees.

No. 403, 2013.
|
Submitted: Dec. 18, 2013.
|
Decided: March 18, 2014.

Synopsis

Background: Public housing authority residents filed suit against housing authority, challenging constitutionality of rules governing possession of firearm in common areas and which subjected residents to eviction for violation of rules. Upon removal, the United States District Court for the District of Delaware, 880 F.Supp.2d 513, found no violations of either Second Amendment or Delaware Constitution. Residents appealed. The Court of Appeals certified questions.

Holdings: The Supreme Court, Ridgely, J., held that:

[1] Delaware courts were not bound by Second Amendment jurisprudence in interpreting state constitutional right to keep and bear arms;

[2] public housing authority's rules relating to possession of firearm in common areas and which subjected resident to eviction for violations of rules were subject to intermediate, rather than strict scrutiny;

[3] rules prohibiting possession of firearm in common areas and which subjected resident to eviction for violation of rules, violated resident's state constitutional right "to keep and bear arms for defense of self, family, home, and State"; and

[4] rule requiring residents to produce for inspection upon request permit, license, or other documentation authorizing possession of firearm if there was reason to believe that resident was violating rules governing possession of firearm in common areas was not severable from rules violating right to keep and bear arms.

Certified questions answered.

West Headnotes (14)

[1] Federal Courts
Withholding Decision; Certifying Questions

Supreme Court reviews a certified question in the context in which it arises, and the Court has the discretion to reformulate or rephrase the question of law certified. West's Del.C.Ann. Const. Art. 4, § 11; Sup.Ct.Rules, Rule 41.

1 Cases that cite this headnote

[2] Appeal and Error
Cases Triable in Appellate Court

Questions of law and constitutional claims are decided de novo.

Cases that cite this headnote

[3] Constitutional Law
Judicial Authority and Duty in General

Constitutional Law
Bill of Rights or Declaration of Rights

The Declaration of Rights in the Delaware Constitution is not a mirror image of the federal Bill of Rights; consequently, Delaware judges cannot faithfully discharge the responsibilities of their office by simply holding that the Declaration of Rights is necessarily in "lock step" with the United States Supreme Court's construction of the federal Bill of Rights.

1 Cases that cite this headnote

[4] Constitutional Law

Relation to Constitutions of Other Jurisdictions

To determine whether a state constitutional provision is substantively identical to an analogous provision of United States Constitution, the court considers a list of seven nonexclusive factors under *State v. Hunt* which provide a framework to determine whether a state constitutional provision affords an independent basis to reach a different result than what could be obtained under federal law, and which are illustrative rather than exhaustive: (1) the state constitution's textual language; (2) legislative history that might reveal an intention that would support a reading of the provision independently of federal law; (3) preexisting state law; (4) structural differences between the state and federal constitution; (5) matters of particular state interest or local concern; (6) the state's history and traditions; and (7) the public attitudes of state's citizenry.

2 Cases that cite this headnote

[5] **Courts**

Construction of federal Constitution, statutes, and treaties

Weapons

Right to bear arms in general

Right under Delaware Constitution "to keep and bear arms for defense of self, family, home, and State, and for hunting and recreational use" was not mirror image Second Amendment, and thus, Delaware courts were not bound by Second Amendment law as interpreted by United States Supreme Court in interpreting state constitutional right; language of state constitutional right was distinct and structurally different from that of Second Amendment, legislative history demonstrated General Assembly's intent to provide right to keep and bear arms independent of federal right, and public attitudes and state's long tradition of allowing responsible, law-abiding citizens to keep and bear arms outside home favored recognition of independent state constitutional right. U.S.C.A. Const.Amend. 2; West's Del.C.Ann. Const. Art. 1, § 20.

3 Cases that cite this headnote

[6] **Constitutional Law**

Strict or heightened scrutiny; compelling interest

Where government action infringes a fundamental constitutional right, Delaware courts will apply a heightened scrutiny analysis.

1 Cases that cite this headnote

[7] **Constitutional Law**

Particular Issues and Applications

Where heightened scrutiny applies to a challenge to state action that infringes on a fundamental right, the State has the burden of showing that the state action is constitutional.

Cases that cite this headnote

[8] **Weapons**

Violation of right to bear arms

Although state constitutional right to keep and bear arms was fundamental right, it was not absolute right, and thus, public housing authority's rules relating to resident's carrying and possession of firearm in common areas and requiring residents and guests to have available for inspection permit or license to carry firearm if housing authority had reasonable cause to believe violation of rule, and which subjected resident to eviction for violations of rules, were subject to intermediate, rather than strict scrutiny, in residents' challenge to rules as violative of right, where General Assembly had enacted various statutes affecting right. West's Del.C.Ann. Const. Art. 1, § 20.

1 Cases that cite this headnote

[9] **Constitutional Law**

Strict or heightened scrutiny; compelling interest

A governmental action affecting a fundamental constitutional right survives strict scrutiny only where the state demonstrates that the test is

narrowly tailored to advance a compelling government interest.

Cases that cite this headnote

[10] **Constitutional Law**
Intermediate scrutiny

Intermediate scrutiny of a governmental action that infringes on a constitutional right requires more than a rational basis for the action, but less than strict scrutiny.

Cases that cite this headnote

[11] **Constitutional Law**
Intermediate scrutiny

To survive intermediate scrutiny, governmental action that infringes on a constitutional right must serve important governmental objectives and must be substantially related to the achievement of those objectives; the action cannot burden the right more than is reasonably necessary to ensure that the asserted governmental objective is met.

Cases that cite this headnote

[12] **Weapons**
Violation of right to bear arms

Public housing authority rule prohibiting residents, household members, and guests from displaying or carrying firearm in common areas, except when firearm was being transported to or from housing unit or was being used in self-defense, and which subjected resident to eviction for violation of rules, violated resident's state constitutional right "to keep and bear arms for defense of self, family, home, and State"; rule effectively disarmed law-abiding residents, leaving them unable to repel intruder by force in any common living area, and rules did not serve State's interest in protecting health, safety, and welfare of residents based on housing authority's general concerns over unsafe use of firearm in common areas, when use of firearm was no less of concern within apartment walls where housing authority could not restrict possession. West's Del.C.Ann. Const. Art. 1, § 20.

2 Cases that cite this headnote

[13] **Weapons**
Violation of right to bear arms

Public housing authority's rule requiring residents to produce for inspection upon request permit, license, or other documentation authorizing possession of firearm if there was reason to believe that resident was violating rules governing possession of firearm in common areas was not severable from rules governing possession that violated residents' state constitutional right to "keep and bear arms for defense of self, family, home, and State," thus requiring invalidation of entire rule, where "reasonable cause" rule was implemented for sole purpose of enforcing unconstitutional rules governing possession. West's Del.C.Ann. Const. Art. 1, § 20.

Cases that cite this headnote

[14] **Administrative Law and Procedure**
Validity

Statutes
Effect of Partial Invalidity; Severability

Where a statute, regulation, or state action faces a constitutional challenge, a court may preserve its valid portions if the offending language can lawfully be severed; but where it is evident that the remaining provisions would not have been enacted without the unconstitutional provision, a court should invalidate the entire provision.

Cases that cite this headnote

***657** Certification of a Question of Law from the United States Court of Appeals for the Third Circuit, No. 12–3433. Upon Certified Questions of Law from the United States Court of Appeals for the Third Circuit. **QUESTIONS ANSWERED.**

Attorneys and Law Firms

Francis G.X. Pileggi, Esquire (argued) and Jill Agro, Esquire, of Eckert Seamans Cherin & Mellott, LLC, Wilmington, Delaware for appellants.

Barry M. Willoughby, Esquire (argued) and Lauren E.M. Russell, Esquire, of Young Conaway Stargatt & Taylor, LLP, Wilmington, Delaware for appellee.

Before HOLLAND, BERGER, JACOBS, and RIDGELY, Justices and COOCH, Resident Judge, * constituting the Court en Banc.

Opinion

RIDGELY, Justice:

In this certified question proceeding, we address whether lease provisions for apartments of a Delaware public housing authority that restrict when residents, their household members, and their guests may carry and possess firearms in the common areas violate the right to keep and bear arms guaranteed by Article I, Section 20 of the Delaware Constitution. We accepted two questions of state law from the United States Court of Appeals for the Third Circuit ("Third Circuit"). Pending before the Third Circuit is an appeal from a judgment of the United States District Court for the District of Delaware in *Doe. v. Wilmington Housing Authority.* [1] The District Court found no violation of the Second Amendment or the Delaware Constitution. The certified questions are:

1. Whether, under Article I, § 20 of the Delaware Constitution, a public housing agency such as the WHA may adopt a policy prohibiting its residents, household members, and guests from displaying or carrying a firearm or other weapon in a common area, except when the firearm ***658** or other weapon is being transported to or from a resident's housing unit or is being used in self-defense.

2. Whether, under Article I, § 20 of the Delaware Constitution, a public housing agency such as the WHA may require its residents, household members, and guests to have available for inspection a copy of any permit, license, or other documentation required by state, local, or federal law for the ownership, possession, or transportation of any firearm or other weapon, including a license to carry a concealed weapon, as required by Del.Code Ann. tit. 11, § 1441, on request, when there is reasonable cause to believe that the law or policies have been violated. [2]

We answer both certified questions in the negative.

Facts and Procedural History [3]

Appellants Jane Doe and Charles Boone ("Residents") filed suit in the Delaware Court of Chancery against the Wilmington Housing Authority (WHA), a nonprofit agency of the State of Delaware that provides housing to low-income individuals and families, and against WHA's Executive Director, Frederick Purnell. Jane Doe lived in the Park View, a privately owned housing facility managed by the WHA. Doe's lease required her to follow the "House Rules." The original version of House Rule 24, in effect when the suit was filed, stated, "Tenant is not permitted to display or use any firearms, BB guns, pellet guns, slingshots, or other weapons on the premises." Charles Boone lived in the Southbridge Apartments, a public housing facility owned and operated by the WHA. Boone's lease stated that residents are "not to display, use, or possess ... any firearms, (operable or inoperable) or other dangerous instruments or deadly weapons as defined by the laws of the State of Delaware anywhere on the property of the Authority." Residents were subject to eviction if they, their household members, or their guests violated the lease provisions and rules.

Doe and Boone alleged that the restrictions on gun use and possession violated their right to bear arms as provided in the Second Amendment to the United States Constitution and in Article I, Section 20 of the Delaware Constitution. They also alleged that the WHA firearms rules and policies were preempted by Delaware law and that the WHA exceeded its statutory authority by enacting them.

The defendants removed the case to the United States District Court for the District of Delaware on June 1, 2010. On June 28, 2010, the Supreme Court of the United States decided *McDonald v. City of Chicago,* [4] holding that the Second Amendment applies to the states through the Due Process Clause of the Fourteenth Amendment. The defendants informed the District Court that they were reevaluating the constitutionality of the WHA firearm rules and policies in light of *McDonald.*

On October 25, 2010, the WHA adopted a new firearms policy (the "Revised Policy") for its public housing units, including Southbridge. The Revised Policy provides, in full:

***659** Lease Modification (Replaces Lease Part I § DC.P.):

> Ownership, possession, transportation, display, and use of firearms and weapons is governed by the Wilmington Housing Authority Firearms and Weapons Policy which is incorporated into and made a part of this lease.
>
> Wilmington Housing Authority Firearms and Weapons Policy:
>
> WHA recognizes the importance of protecting its residents' health, welfare, and safety, while simultaneously protecting the rights of its residents to keep and bear arms as established by the federal and state constitutions. WHA therefore adopts the following Firearms and Weapons Policy. Residents, members of a resident's household, and guests:
>
> 1. Shall comply with all local, state, and federal legal requirements applicable to the ownership, possession, transportation, and use of firearms or other weapons. The term "firearm" includes any weapon from which a shot, projectile or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether operable or inoperable, loaded or unloaded, and any weapon or destructive device as defined by law.
>
> 2. Shall not discharge or use any firearm or other weapons on WHA property except when done in self-defense.
>
> 3. Shall not display or carry a firearm or other weapon in any common area, except where the firearm or other weapon is being transported to or from the resident's unit, or is being used in self-defense.
>
> 4. Shall have available for inspection a copy of any permit, license, or other documentation required by state, local, or federal law for the ownership, possession, or transportation of any firearm or other weapon, including a license to carry a concealed weapon as required by 11 Del C. § 1441, upon request, when there is reasonable cause to believe that the law or this Policy has been violated.
>
> 5. Shall exercise reasonable care in the storage of loaded or unloaded firearms and ammunition, or other weapons.
>
> 6. Shall not allow a minor under 16 years of age to have possession of a firearm, B.B. gun, air gun, or spear gun unless under the direct supervision of an adult.
>
> 7. Shall not give or otherwise transfer to a minor under 18 years of age a firearm or ammunition for a firearm, unless the person is that child's parent or guardian, or unless the person first receives the permission of the minor's parent or guardian.
>
> Violation of this Policy by any resident or member of the resident's household shall be grounds for immediate Lease termination and eviction. In addition, a resident or member of the resident's household who knowingly permits a guest to violate this Policy shall be subject to immediate Lease termination and eviction. [5]

On December 13, 2010, the WHA replaced the Park View's House Rule 24 with amended Rule 24, which was substantively identical to the Revised Policy.

Residents filed an amended complaint challenging only paragraph 3, the Common ***660** Area Provision, and paragraph 4, the Reasonable Cause Provision, of the Revised Policy. The parties filed cross-motions for summary judgment.

The District Court granted the summary judgment motion filed by the WHA and denied the motion filed by Residents. The District Court found no Second Amendment violation, and no appeal was taken from that ruling. The District Court applied the same analysis to the challenge under Article I, Section 20 of the Delaware Constitution ("Section 20") and found no violation. The District Court found no legal merit to the preemption and scope-of-authority challenges. The questions on which the Third Circuit seeks guidance concern the Section 20 analysis.

In addressing the Section 20 claims, the District Court noted that "[t]here is scant judicial authority interpreting Delaware's constitutional right to bear arms, and none is directly relevant to the issue now before this Court." [6] The District Court granted summary judgment on the Section 20 claims for the

same reasons it granted summary judgment on the Second Amendment claims. [7]

The District Court analyzed the Second Amendment issues under recent Supreme Court decisions, including *District of Columbia v. Heller,* [8] and *McDonald.* [9] The District Court also examined the circuit court cases applying *Heller* and *McDonald,* including the Third Circuit's opinion in *United States v. Marzzarella.* [10] The District Court noted that all had adopted a form of intermediate rather than strict scrutiny to analyze laws and policies that restrict firearm possession in public spaces as opposed to in the home. [11]

The District Court followed *United States v. Marzzarella,* examining:

> whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantee. If it does not, our inquiry is complete. If it does, we evaluate the law under some form of means-end scrutiny. If the law passes muster under that standard, it is constitutional. If it fails, it is invalid. [12]

Applying this analysis, the District Court first assumed that the Revised Policies fell within the Second Amendment's scope, [13] then applied intermediate scrutiny to assess the constitutionality of paragraphs 3 ***661** and 4 of the Revised Policy. [14] The District Court applied intermediate scrutiny on the basis that those policies do not prohibit residents from possessing firearms in their homes, but rather regulate "the manner in which Plaintiffs may lawfully exercise their Second Amendment rights." [15] The District Court concluded that the two challenged paragraphs of the Revised Policies were reasonably related to important government interests in promoting and protecting the safety of public housing residents, guests, and employees. [16] The District Court also found a reasonable fit between the Common Area Provision and the promotion of safety in shared areas of public housing complexes. [17] The District Court further found a reasonable fit between the Reasonable Cause Provision and the promotion of safety because obtaining a concealed-weapon permit requires training in gun safety and is a "reasonable mechanism for assisting with enforcement of the Common Area Provision." [18] Doe and Boone did not appeal the District Court's ruling dismissing their Second Amendment claims. Therefore, the Second Amendment analysis remains the law of the case.

The District Court dismissed the claims under the Delaware Constitution, Article I, Section 20 for the same reasons it dismissed the Second Amendment claim after applying the same analysis. Doe and Boone timely appealed the District Court's rulings on their state constitutional claims to the Third Circuit, which thereafter certified the two questions now before us.

Discussion

[1] **[2]** The acceptance of certified questions of law under Article IV, Section 11 of the Delaware Constitution and Supreme Court Rule 41 is entirely within the discretion of this Court. [19] We review a certified question in the context in which it arises. [20] We have the discretion to reformulate or rephrase the question of law certified. [21] Questions of law and constitutional claims are decided *de novo.* [22]

[3] We begin by noting that the Declaration of Rights in the Delaware Constitution has not always been interpreted identically to the counterpart provisions in the federal Bill of Rights. [23] As we have previously explained:

> ***662** The Declaration of Rights in the Delaware Constitution is not a mirror image of the federal Bill of Rights. Consequently, Delaware judges cannot faithfully discharge the responsibilities of their office by simply holding that the Declaration of Rights in Article I of the Delaware Constitution is necessarily in "lock step" with the United States Supreme Court's construction of the federal Bill of Rights. [24]

[4] To determine whether a state constitutional provision is substantively identical to an analogous provision of United States Constitution, this Court considers the list of nonexclusive factors originally articulated in the concurring opinion of Justice Handler of the New Jersey Supreme Court in *State v. Hunt.* [25] The *Hunt* factors provide a framework to determine whether a state constitutional provision affords an independent basis to reach a different result than what could be obtained under federal law. The seven factors include:

(1) Textual Language—A state constitution's language may itself provide a basis for reaching a result different from that which could be obtained under federal law. Textual language can be relevant in either of two contexts. First, distinctive provisions of our State charter may recognize rights not identified in the federal constitution.... Second, the phrasing of a particular provision in our charter may be so significantly different from the language used to address the same subject in the federal Constitution that we can feel free to interpret our provision on an independent basis....

(2) Legislative History—Whether or not the textual language of a given provision is different from that found in the federal Constitution, legislative history may reveal an intention that will support reading the provision independently of federal law....

(3) Preexisting State Law—Previously established bodies of state law may also suggest distinctive state constitutional rights. State law is often responsive to concerns long before they are addressed by constitutional claims. Such preexisting law can help to define the scope of the constitutional right later established.

(4) Structural Differences—Differences in structure between the federal and state constitutions might also provide a basis for rejecting the constraints of federal doctrine at the state level. The United States Constitution is a grant of enumerated powers to the federal government. Our State Constitution, on the other hand, serves only to limit the sovereign power which inheres directly in the people and indirectly in their elected representatives. Hence, the explicit affirmation of fundamental rights in our Constitution can be seen as a guarantee of those rights and not as a restriction upon them.

***663** (5) Matters of Particular State Interest or Local Concern—A state constitution may also be employed to address matters of peculiar state interest or local concern. When particular questions are local in character and do not appear to require a uniform national policy, they are ripe for decision under state law. Moreover, some matters are uniquely appropriate for independent state action....

(6) State Traditions—A state's history and traditions may also provide a basis for the independent application of its constitution....

(7) Public Attitudes—Distinctive attitudes of a state's citizenry may also furnish grounds to expand constitutional rights under state charters. While we have never cited this criterion in our decisions, courts in other jurisdictions have pointed to public attitudes as a relevant factor in their deliberations. [26]

"The[se] enumerated criteria, which are synthesized from a burgeoning body of authority, are essentially illustrative, rather than exhaustive." [27] But those criteria do "share a common thread—that distinctive and identifiable attributes of a state government, its laws and its people justify recourse to the state constitution as an independent source for recognizing and protecting individual rights." [28]

This case concerns the right to keep and bear arms under Article I, Section 20 of the Delaware Constitution. Although Section 20 was not enacted until 1987, Delaware has a long history, dating back to the Revolution, of allowing responsible citizens to lawfully carry and use firearms in our state. The parties agree, as does this Court, that Delaware is an "open carry" state. Like the citizens of our sister states at the founding, Delaware citizens understood that the "right of self-preservation" permitted a citizen to "repe [l] force by force" when "the intervention of society in his behalf, may be too late to prevent an injury." [29] An individual's right to bear arms was "understood to be an individual right protecting against both public and private violence." [30] The right to keep and bear arms was also understood to exist for membership in the militia and for hunting. [31]

In 1791, Delaware delegates to the state constitutional convention were unable to agree on the specific language that would codify in our Declaration of Rights the right to keep and bear arms in Delaware. [32] After several attempts, the effort was abandoned. [33] Concerns over groups of armed men stood in the way of an agreement even though there was an apparent consensus among the delegates on an individual's right to bear arms in self-defense. [34]

Not until almost 200 years later did the Delaware General Assembly agree on the language to be used. Article I, Section 20 provides: "A person has the right to keep and bear arms for the defense of self, ***664** family, home and State, and

for hunting and recreational use."[35] The General Assembly's stated purpose in enacting the constitutional amendment was to "explicitly protect[ ] the traditional right to keep and bear arms," which it defined in the text of the amendment.[36] By including the right to keep and bear arms in the Delaware Constitution, the General Assembly has recognized this right as fundamental.[37]

Contentions of the Parties

Residents argue that we should answer both questions in the negative. The WHA argues for an affirmative answer to both. Residents contend that Article I, Section 20 is not a mirror image of the Second Amendment, that the protections it provides are not limited to the home, and that the WHA Revised Policy cannot withstand strict scrutiny, intermediate scrutiny, or the *Hamdan* test that we utilized in *Griffin v. State.*[38] WHA replies that: (1) the rights protected by Section 20 are coextensive with those protected by the Second Amendment because hunting and recreational use are not in issue, (2) intermediate scrutiny applies, (3) as a landlord WHA may adopt reasonable policies for the protection of residents, and (4) its Revised Policy is narrowly tailored to advance the compelling interest in assuring the safety of its tenants.

Article I, Section 20 of the Delaware Constitution Is an Independent Source for Recognizing and Protecting the Right to Keep and Bear Arms

[5] This Court has previously addressed the application of Article I, Section 20 of the Delaware Constitution on four occasions. In *Short v. State,* we held that 11 *Del. C.* § 1448, which prohibits felons from possessing a deadly weapon, does not violate Section 20.[39] In *Smith v. State,* we held that Section 20, when enacted, did not alter the then-existing law pertaining to the crime of carrying a concealed deadly weapon without a license and the statutory privilege to carry a concealed deadly weapon with a license.[40] In *Dickerson v. State,* we affirmed a conviction for carrying a concealed weapon without a license outside of the home.[41] And most recently in *Griffin v. State,* we considered an as-applied challenge to a conviction for carrying a concealed deadly weapon without a license in the home.[42] In *Griffin,* we explained that although the right to bear arms "is not absolute," "Griffin's constitutional right to bear arms authorized ***665** his carrying a concealed knife in his home."[43] That did not end the inquiry, because after the police arrived "the balance between [Griffin's] interest in carrying a concealed weapon in his home and the State's interest in public safety shifted in favor of the State."[44]

In all of these cases but one, no federal Second Amendment jurisprudence was cited.[45] Although both Section 20 and the Second Amendment share a similar historical context that informs our analysis,[46] the interpretation of Section 20 is not dependent upon federal interpretations of the Second Amendment. The text of Section 20, enacted in 1987, and the Second Amendment, effective beginning in 1791, is not the same. On its face, the Delaware provision is intentionally broader than the Second Amendment and protects the right to bear arms outside the home, including for hunting and recreation. Section 20 specifically provides for the defense of self and family *in addition to* the home. Accordingly, our interpretation of Section 20 is not constrained by the federal precedent relied upon by the WHA, which explains that at the core of the Second Amendment is the right of lawabiding, responsible citizens to use arms in defense of "hearth and home."[47] We agree with Residents that Article I, Section 20 is not a mirror image of the Second Amendment and that the scope of the protections it provides are not limited to the home.

Our conclusion that the interpretation of Article I, Section 20 is a source, independent from the Second Amendment, for recognizing and protecting individual rights, is supported by the *Hunt* factors. The distinctive language of Section 20 and the legislative history demonstrates the General Assembly's intent to provide a right to keep and bear arms independent of the federal right. Moreover, public attitudes, as reflected in the laws passed by the General Assembly, and Delaware's long tradition of allowing responsible, law-abiding citizens to keep and bear arms outside of the home, favor recognizing an independent right under the Delaware Constitution. Two *Hunt* factors—the structural differences in constitutional provisions and matters of particular state interest—do not require that Section 20 be interpreted coextensively with the Second Amendment. In summary, Article I, Section 20 of the Delaware Constitution is an independent source for recognizing and protecting the right to keep and bear arms.

Intermediate Scrutiny Applies

In *Griffin v. State,* this Court applied the three-part analysis adopted from the Wisconsin Supreme Court's decision in *State v. Hamdan,* in deciding whether an ***666** individual has a right to carry a concealed deadly weapon in the home. [48] We held that:

> First, the court must compare the strength of the state's interest in public safety with the individual's interest in carrying a concealed weapon. Second, if the individual interest outweighs the state interest, the court must determine, "whether an individual could have exercised the right in a reasonable, alternative manner that did not violate the statute." Third, the individual must be carrying the concealed weapon for a lawful purpose. [49]

Our analysis employed heightened scrutiny in the context of a prosecution for carrying a concealed deadly weapon.

[6] **[7]** **[8]** Where government action infringes a fundamental right, Delaware courts will apply a heightened scrutiny analysis. [50] The parties have not argued otherwise here. Where heightened scrutiny applies, the State has the burden of showing that the state action is constitutional. [51] Here, the parties differ on the appropriate heightened scrutiny analysis, Residents argue for strict scrutiny and the WHA argues for intermediate scrutiny. Both sides also argue that under strict scrutiny, intermediate scrutiny, or the *Hamdan* test, the result is in their favor. For the reasons which follow, we conclude that intermediate scrutiny is the proper level of constitutional review.

[9] **[10]** **[11]** "A governmental action survives strict scrutiny only where the state demonstrates that the test is narrowly tailored to advance a compelling government interest." [52] "[S]trict scrutiny is a tool to determine whether there is a cost-benefit justification for governmental action that burdens interests for which the Constitution demands unusually high protection." [53] In contrast, intermediate scrutiny requires more than a rational basis for the action, but less than strict scrutiny. [54] Intermediate scrutiny seeks to balance potential burdens on fundamental rights against the valid interests of government. [55] To survive intermediate scrutiny, governmental action must "serve important governmental objectives and [must be] substantially related to [the] achievement of those objectives." [56] The governmental action cannot burden the right more than is reasonably necessary to ensure that the asserted ***667** governmental objective is met. [57]

Although the right to bear arms under the Delaware Declaration of Rights is a fundamental right, we have already held that it is not absolute. [58] The General Assembly that enacted Article I, Section 20 left in place a series of statutes affecting the right to keep and bear arms in Delaware. [59] Our prior cases so recognized and found no legislative intent (for example) to invalidate laws prohibiting felons from possessing deadly weapons or prohibiting (with certain exceptions) the carrying of a concealed deadly weapon outside the home without a license. [60] The General Assembly's careful and nuanced approach supports an intermediate scrutiny analysis that allows a court to consider public safety and other important governmental interests. Accordingly, we agree with the WHA that paragraphs 3 and 4 of the Revised Policy should be subject to intermediate scrutiny.

Under Intermediate Scrutiny the Common Area Provision Is Overbroad

It is undisputed that Residents are subject to eviction under the WHA lease provision and rules if they, their household members, or their guests violate the Common Area Provision that restricts the possession of firearms in the common areas of the WHA properties where the Residents and their household members live. That restriction infringes the fundamental right of responsible, law-abiding citizens to keep and bear arms for the defense of self, family, and home. WHA therefore has the burden to demonstrate that its governmental action passes intermediate scrutiny.

[12] To satisfy its burden, WHA argues that it has an important governmental interest in protecting the health, welfare, and safety of all WHA residents, staff, and guests who enter onto WHA property. WHA argues that an accidental discharge of a firearm may have serious fatal consequences and that dangers inhere in the increased presence of firearms. But these same concerns would also apply to the area within any apartment—interior locations where the WHA concedes it cannot restrict the possession of firearms for self-defense. The Revised Policy does more than proscribe the unsafe *use* of a firearm. It also prohibits

possession in the public housing common areas except where the firearm is being transported to or from an apartment. In this context, WHA must show more than a general safety concern and it has not done so.

In *Griffin v. State* we explained that an individual's interest in the right to keep and bear arms is strongest when "the weapon is in one's home or business and is ***668** being used for security." [61] Residents have a possessory interest in both their apartments and the common areas. And although Residents cannot exclude other residents or the public from the common areas, their need for security in those areas is just as high for purposes of Section 20 as it would be inside their apartment or business. The common areas are effectively part of the residences. The laundry rooms and TV rooms are similar to those typically found in private residences; and the Residents, their families, and their guests will occupy them as part of their living space.

With the Common Area Provision in force under penalty of eviction, reasonable, law-abiding adults become disarmed and unable to repel an intruder by force in any common living areas when the intervention of society on their behalf may be too late to prevent an injury. Even active and retired police officers who are residents, household members, or guests are disarmed by the Common Area Provision. They are restricted in possessing firearms in the public housing common areas of the apartment buildings despite their exemption by the General Assembly from concealed-carry license requirements. [62]

Nor is the Common Area Provision sustainable under intermediate scrutiny because the WHA owns the property and is a landlord. WHA contends that it is acting as a landlord and not as a sovereign. We recognize that where the government is a proprietor or employer, it has a legitimate interest in controlling unsafe or disruptive behavior on its property. But WHA has conceded that after *McDonald,* as a landlord it may not adopt a total ban of firearms. Thus, occupying the status of government landlord, alone and without more, does not control. How the property is used must also be considered. Public housing is "a home as well as a government building." [63] The WHA is different from other public agencies in that it essentially replicates for low-income families services similar to those provided by a private landlord. The individual's need for defense of self, family, and home in an apartment building is the same whether the property is owned privately or by the government.

Unlike a state office building, courthouse, school, college, or university, the services provided by the WHA in the common areas are not the services typically provided to the public on government property. They are limited to supplying adequate housing for low-income families and individuals and to maintaining the grounds and buildings for the residents. Some regulation of possessing firearms on WHA property could pass intermediate scrutiny, for example prohibiting possession in offices where state employees work and state business is being done. Here, however, the restrictions of the Common Area Provision are overbroad and burden the right to bear arms more than is reasonably necessary. Indeed, the Common Area Provision severely burdens the right by functionally disallowing armed self-defense ***669** in areas that Residents, their families, and guests may occupy as part of their living space. Section 20 of the Delaware Constitution precludes the WHA from adopting such a policy.

Accordingly, we answer the first certified question in the negative. [64]

The Reasonable Cause Provision Is Overbroad

[13] The record before us shows that the Revised Policy was adopted by the WHA during the litigation before the District Court and after the United States Supreme Court decision in *McDonald v. City of Chicago.* The WHA "suspended, reviewed, and replaced" its original policies banning all firearms on its property pursuant to "the HUD-mandated procedure for doing so ... in view of the Supreme Court's holding in *McDonald.*" [65] The Reasonable Cause Provision of the Revised Policy requires the production upon request by a resident, household member, or guest of

> a copy of any permit, license, or other documentation required by state, local, or federal law for the ownership, possession, or transportation of any firearm or other weapon, including a license to carry a concealed weapon as required by 11 *Del. C.* § 1441, upon request, when there is reasonable cause to believe that the law *or this Policy* has been violated. [66]

By it terms, the Reasonable Cause Provision exists, as least in part, to enforce compliance with the Common Area Provision, which we have found to be overbroad and unconstitutional.

[14] Where a statute, regulation, or state action faces a constitutional challenge, "a Court may preserve its

valid portions if the offending language can lawfully be severed."[67] But where it is evident that the remaining provisions would not have been enacted without the unconstitutional provision, a court should invalidate the entire provision.[68] The Reasonable Cause Provision was enacted, together with the Common Area Provision, by the WHA in response to *McDonald*. Because the unconstitutional Common Area Provision is not severable as a matter of Delaware law, the Reasonable Cause Provision which enforces it is unconstitutional and overbroad as well. For that reason, we answer the second certified question in the negative.

*670 *Conclusion*

We answer both certified questions in the negative. The Clerk is directed to transmit this opinion to the Third Circuit.

All Citations

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Footnotes

* Sitting by designation pursuant to art. IV, § 12 of the Delaware Constitution and Supreme Court Rules 2 and 4(a) to fill up the quorum as required.

1 880 F.Supp.2d 513 (D.Del.2012).

2 *Doe v. Wilmington Housing Auth.,* No. 403, 2013, 1–2 (Del. July 30, 2013).

3 The facts are drawn from the Certification of Questions of Law submitted by the Third Circuit. *See* Certification of Questions of Law, *Doe v. Wilmington Housing Auth.,* No. 12–3433 (3d Cir. May 23, 2013) [hereinafter Certification].

4 561 U.S. 742, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010).

5 *Doe,* 880 F.Supp.2d at 519–20.

6 *Id.* at 538.

7 *Id.* at 539.

8 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008).

9 *See Doe,* 880 F.Supp.2d at 525–26.

10 614 F.3d 85, 97 (3d Cir.2010), *cert. denied,* —— U.S. ——, 131 S.Ct. 958, 178 L.Ed.2d 790 (2011).

11 *Doe,* 880 F.Supp.2d at 533–35 (citing *United States v. Masciandaro,* 638 F.3d 458, 470 (4th Cir.2011), *cert. denied,* —— U.S. ——, 132 S.Ct. 756, 181 L.Ed.2d 482 (2011); *Marzzarella,* 614 F.3d at 97; *United States v. Skoien,* 587 F.3d 803, 814 (7th Cir.2009), *rev'd en banc,* 614 F.3d 638 (7th Cir.2010), *cert. denied,* —— U.S. ——, 131 S.Ct. 1674, 179 L.Ed.2d 645 (2011)); *see also Kachalsky v. Cnty. of Westchester,* 701 F.3d 81, 96–97 (2d Cir.2012), *cert. denied,* —— U.S. ——, 133 S.Ct. 1806, 185 L.Ed.2d 812 (decided after *Doe* and applying intermediate scrutiny to a state law restricting an individual's ability to carry firearms in public); *cf. Moore v. Madigan,* 702 F.3d 933, 941–42 (7th Cir.2012) (holding that the Second Amendment protects the right to bear arms outside the home, without deciding the appropriate level of scrutiny to apply to a law that burdens that right).

12 *Doe,* 880 F.Supp.2d at 526–27 (quoting *Marzzarella,* 614 F.3d at 89).

13 *Id.* at 528–30.

14 *Id.* at 533.

15 *Id.* at 533 (citing *Masciandaro,* 638 F.3d at 470–71). *See also Masciandaro,* 638 F.3d at 470–71 ("[T]his longstanding out-of-the-home/in-the-home distinction bears directly on the level of scrutiny applicable.... [A] lesser showing is necessary with respect to laws that burden the right to keep and bear arms outside of the home.").

16 *Doe,* 880 F.Supp.2d at 535.

17 *Id.* at 536.

18 *Id.* at 538.

19 Del. Const. art. IV, § 11; Del.Supr. Ct. R. 41; *Randolph v. Wilmington Hous. Auth.,* 139 A.2d 476, 490 (Del.1958).

20 *Riblet Products Corp. v. Nagy,* 683 A.2d 37, 39 (Del.1996) (citing *Rales v. Blasband,* 634 A.2d 927, 931 (Del.1993)).

21 *See generally* Eric C. Surette, *Construction and Application of Uniform Certification of Questions of Law Act,* 69 A.L.R.6th 415, § 43 (2011).

22 *Sheehan v. Oblates of St. Francis de Sales,* 15 A.3d 1247, 1258 (Del.2011), *reargument denied* (Apr. 19, 2011); *Lambrecht v. O'Neal,* 3 A.3d 277, 281 (Del.2010).

23 *See, e.g., E. Lake Methodist Episcopal Church, Inc. v. Trs. of Peninsula–Delaware Annual Conference of United Methodist Church, Inc.,* 731 A.2d 798, 807 n. 2 (Del.1999) ("Although the controlling standards of judicial deference to religious disputes have evolved primarily from interpretations of the First Amendment to the United States Constitution, art. I, § 1 of the Delaware Constitution, enjoining 'any magistrate ... in any case' from interfering with the free exercise of religious worship is of equal force." (omission in original) (quoting *Trs. of Pencader Presbyterian Church in Pencader Hundred v. Gibson,* 22 A.2d 782, 790 (Del.1941))); *Bryan v. State,* 571 A.2d 170, 177 (Del.1990) (deciding the rights of an defendant to see his attorney on independent state grounds under the Delaware Constitution); *Hammond v. State,* 569 A.2d 81, 87 (Del.1989) (requiring a higher standard for the preservation of evidence than Federal Constitution); *see also State v. Holden,* 54 A.3d 1123, 1128 n. 14 (Del.Super.Ct.2010) (noting that the Delaware Constitution provides greater criminal procedure protection than the U.S. Constitution).

24 *Dorsey v. State,* 761 A.2d 807, 814 (Del.2000) (footnote omitted) (citing *Claudio v. State,* 585 A.2d 1278, 1289 (Del.1991)).

25 *Jones v. State,* 745 A.2d 856, 864 (Del.1999).

26 *Id.* at 864–65 (omissions in original) (quoting *State v. Hunt,* 91 N.J. 338, 450 A.2d 952, 962 (1982) (Handler, J., concurring)).

27 *Id.* at 865 (quoting *Hunt,* 450 A.2d at 967).

28 *Id.* (quoting *Hunt,* 450 A.2d at 967).

29 *Heller,* 554 U.S. at 595, 128 S.Ct. 2783 (alteration in original) (quoting 1 *Blackstone's Commentaries* 145–46 n. 42 (1803)).

30 *Id.* at 594, 128 S.Ct. 2783.

31 *Id.* at 598–99, 128 S.Ct. 2783.

32 *See* Dan M. Peterson & Stephen P. Halbrook, *A Revolution in Second Amendment Law,* Del. Law., Winter 2011/2012, at 12, 15.

33 *Id.*

34 *Id.*

35 Del. Const. art. I, § 20.

36 H.B. 30, 134th Gen. Assembly (Del.1987), *passed* Jan. 20, 1987.

37 A fundamental right has been defined as a right that is guaranteed either explicitly or implicitly by the constitution. *San Antonio Independent School Dist. v. Rodriguez,* 411 U.S. 1, 33–34, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973).

38 *Griffin v. State,* 47 A.3d 487, 489–90 (Del.2012). Residents also have argued before the federal courts and this Court that under state law the WHA is preempted from adopting the Revised Policy based upon Delaware statutes that prohibit county and municipal governments from enacting laws, regulations, or ordinances governing firearms. *See* 9 *Del. C.* § 330(c); 22 *Del. C.* § 111. The Third Circuit expressly stated in its certification that these preemption and scope-of-authority challenges "do not form part of this certification request." Certification at 5 n. 1. So we do not reach those challenges.

39 *Short v. State,* 586 A.2d 1203, 1991 WL 12101, at *1 (Del.1991).

40 *Smith v. State,* 882 A.2d 762, 2005 WL 2149410, *3 (Del.2005).

41 *Dickerson v. State,* 975 A.2d 791, 795–96 (Del.2009).

42 *Griffin,* 47 A.3d at 489–90.

43 *Id.* at 488, 491.

44 *Id.* at 491.

45 In *Short v. State,* a reference was included to *United States v. Johnson,* 497 F.2d 548 (4th Cir.1974).

46 Hence, our reference to the historical context recited in *District of Columbia v. Heller,* 554 U.S. at 594–600, 128 S.Ct. 2783.

47 *Heller,* 554 U.S. at 635, 128 S.Ct. 2783. We recognize as the Third Circuit has explained that "Second Amendment doctrine remains in its nascency." *Marzzarella,* 614 F.3d at 101. And like the District Court, we decline to determine whether Second Amendment rights extend outside of the home. *Doe,* 880 F.Supp.2d at 529–30. We further acknowledge that there are federal courts which have. *See Peruta v. Cnty. of San Diego,* 742 F.3d 1144, 1171–72 (9th Cir.2014) (holding that broad limits on both open and concealed carry of loaded guns impermissibly infringes on the Second Amendment right to bear arms); *Moore,* 702 F.3d at 936 (holding that the "right to bear arms thus implies a right to carry a loaded gun outside the home").

48 *Griffin,* 47 A.3d at 487 (citing *State v. Hamdan,* 264 Wis.2d 433, 665 N.W.2d 785 (2003)).

49 *Id.* at 490–91 (footnote omitted) (quoting *Hamdan,* 665 N.W.2d at 808).

50 *See Jones v. Milford Sch. Dist.,* 2010 WL 1838961, at *3 n. 17 (Del.Ch. Apr. 29, 2010) ("If the state action, however, creates a suspect classification or infringes upon a fundamental right, the state must prove the constitutionality of its conduct under either intermediate or strict scrutiny judicial review.").

51 *Id.*

52 *Turnbull v. Fink,* 668 A.2d 1370, 1379 (Del.1995).

53 Stephen A. Siegel, *The Origin of the Compelling State Interest Test and Strict Scrutiny,* 48 Am. J. Legal Hist. 355, 394 (2006) (emphasis added).

54 *Turnbull,* 668 A.2d at 1379.

55 *See* Kathleen M. Sullivan, *The Justices of Rules and Standards,* 106 Harv. L.Rev. 22, 61 (1992) (explaining that intermediate scrutiny involves the balancing and comparison of "rights or structural provisions, modes of infringement, and government interests" in a way where "[t]he outcome ... is not foreordained").

56 *Turnbull,* 668 A.2d at 1379 (first alteration in original) (quoting *Orr v. Orr,* 440 U.S. 268, 279, 99 S.Ct. 1102, 59 L.Ed.2d 306 (1979)).

57 *Marzzarella,* 614 F.3d at 98 (citing *U.S. v. O'Brien,* 391 U.S. 367, 377, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968)); *see also* Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self–Defense: An Analytical Framework and A Research Agenda,* 56 UCLA L.Rev. 1443, 1470 (2009) (explaining that "intermediate scrutiny allows restrictions that serve merely important and not compelling government interests" and "restrictions that are merely substantially related to the government interest rather than narrowly tailored to it").

58 *Griffin,* 47 A.3d at 488.

59 *See, e.g.,* 11 *Del. C.* § 1444 (prohibiting the possession of "a bomb, bombshell, firearm silencer, sawed-off shotgun, machine gun or any other firearm or weapon which is adaptable for use as a machine gun"); *id.* § 1446A (prohibiting the possession of undetectable knives); *id.* § 1448 (prohibiting the possession and purchase of deadly weapons by persons prohibited); *id.* § 1459 (prohibiting the possession of a weapon with an obliterated serial number).

60 *E.g., Smith,* 2005 WL 2149410, *3; *Short,* 1991 WL 12101, at *1.

61 *Griffin,* 47 A.3d at 491.

62 Delaware law places special trust in active and retired police officers to carry concealed weapons. Active police and peace officers are exempted from the concealed-carry license requirements and may carry a firearm while on or off duty. 11 *Del. C.* § 1441(g). Further, retired police officers may be specially licensed to carry a concealed weapon following their retirement. *Id.* § 1441(h). Delaware has also implemented the federal Law Enforcement Officers Safety Act, allowing qualified active and retired officers to carry concealed weapons within or outside of their home jurisdiction. *Id.* § 1441A.

63 Volokh, *supra,* at 1533.

64 Nor would the Common Area Provision withstand the scrutiny under the *Hamdan* analysis we applied in *Griffin.* The Residents have a possessory interest as tenants in the common areas where they live and their own apartments. Thus, the need for "security" in each is acute for purposes of Article I, Section 20. Further, there is no realistic alternative way that the Residents and their guests can exercise their right to bear arms in the common areas with the ban in place. It is also undisputed that Residents are not attempting to exercise their right to bear arms for an unlawful purpose. As a result, the Common Area Provision would likewise fail under a *Hamdan* analysis.

65 *Doe,* 880 F.Supp.2d at 524.

66 *Id.* at 520 (emphasis added).

67 *Farmers for Fairness v. Kent Cnty.,* 940 A.2d 947, 962 (Del.Ch.2008) (quoting *Newark Landlord Ass'n v. City of Newark,* 2003 WL 22724663, at *1 (Del.Ch. Nov. 17, 2003)).

68 *Cf. id.* ("The standard for severability has been articulated in the following two part test: i) 'Is the unobjectionable part, standing alone, capable of enforcement?' and ii) 'Did the legislature intend the [un]objectionable part to stand alone in case the other part should fall?' " (alternation in original) (quoting *Newark Landlord Ass'n,* 2003 WL 22724663, at *1)).

Tab 7

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12-3433

JANE DOE; CHARLES BOONE,
Appellants

v.

WILMINGTON HOUSING AUTHORITY; FREDERICK S. PURNELL, SR., in his official capacity as executive director of the Wilmington Housing Authority

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On Appeal from the United States District Court
for the District of Delaware
(D.C. Civ. Action No. 1:10-cv-00473)
District Judge: The Honorable Leonard P. Stark

Argued May 23, 2013

Before: RENDELL and GREENAWAY, JR., *Circuit Judges*,
and ROSENTHAL*, *District Judge*

Francis G.X. Pileggi, Esq. [ARGUED]
Penelope B. O'Connell, Esq.
Jill K. Agro, Esq.
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Wilmington, DE 19801

Counsel for Appellants

Barry M. Willoughby, Esq. [ARGUED]

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*The Honorable Lee H. Rosenthal, United States District Judge for the Southern District of Texas, sitting by designation.

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CERTIFICATION OF QUESTIONS OF LAW

This is an appeal to the United States Court of Appeals for the Third Circuit from a final order entered by the United States District Court for the District of Delaware. We believe that this appeal raises unresolved questions about how Article I, § 20 of the Delaware Constitution limits restrictions that may be placed on the right to bear arms. We submit these questions to the Supreme Court of Delaware through the certification procedure outlined in Third Circuit Local Appellate Rule 110 and Third Circuit Internal Operating Procedure 10.9. We respectfully request that your Court accept this certification under Rule 41 of the Rules of the Supreme Court of the State of Delaware

and provide us guidance in resolving these questions under Article I, § 20 of the Delaware Constitution.

I. Factual and Procedural Background

This appeal concerns provisions in leases for apartments that a public housing authority owns or manages. The lease provisions restrict when residents, their household members, and their guests may carry and possess firearms in the common areas of the apartment buildings.

Appellants Jane Doe and Charles Boone filed this suit in the Delaware Court of Chancery against the Wilmington Housing Authority (WHA), a nonprofit agency of the State of Delaware that provides housing to low-income individuals and families, and against its Executive Director, Frederick Purnell. Jane Doe lived in the Park View, a privately owned housing facility managed by the WHA. Doe's lease required her to follow the "House Rules." The original version of House Rule 24, in effect when the suit was filed, stated, "Tenant is not permitted to display or use any firearms, BB guns, pellet guns, slingshots, or other weapons on the premises." Charles Boone lived in the Southbridge Apartments, a public housing facility owned and operated by the WHA. Boone's lease stated that residents are "[n]ot to display, use, or possess . . . any firearms, (operable or inoperable) or other dangerous instruments or deadly weapons as defined by the laws of the State of Delaware anywhere on the property of the Authority." Residents

were subject to eviction if they, their household members, or their guests violated the lease provisions and rules.

Doe and Boone alleged that the restrictions on gun use and possession violated their right to bear arms as provided in the Second Amendment to the United States Constitution and in Article I, § 20 of the Delaware Constitution. They also alleged that the WHA firearms rules and policies were preempted by Delaware law and that the WHA exceeded its statutory authority by enacting them.

The defendants removed the suit to the United States District Court for the District of Delaware on June 1, 2010. On June 28, 2010, the Supreme Court of the United States decided *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), holding that the Second Amendment applies to the states through the Due Process Clause of the Fourteenth Amendment. The defendants informed the District Court that they were reevaluating the constitutionality of the WHA firearm rules and policies in light of *McDonald.*

On October 25, 2010, the WHA adopted a new firearms policy for its public housing units, including Southbridge. The Revised Policy provides in relevant part that residents, household members, and guests:

> 3. Shall not display or carry a firearm or other weapon in any common area, except where the firearm or other weapon is being transported to or from the resident's unit, or is being used in self-defense.
>
> 4. Shall have available for inspection a copy of any permit, license, or other documentation required by state, local, or federal law for the ownership, possession, or transportation of any firearm or other weapon, including a license to carry a concealed weapon as required by 11 Del. C. § 1441, upon

> request, when there is reasonable cause to believe that the law or this Policy has been violated.

On December 13, 2010, the WHA replaced the Park View's House Rule 24 with amended Rule 24, which was substantively identical to the Revised Policy.

Doe and Boone filed an amended complaint challenging paragraph 3, the Common Area Provision, and paragraph 4, the Reasonable Cause Provision. The parties filed cross-motions for summary judgment.

The District Court granted the summary judgment motion filed by the WHA and denied the motion filed by Doe and Boone. *Doe v. Wilmington Hous. Auth.*, 880 F. Supp. 2d 513 (D. Del. 2012). The District Court found no Second Amendment violation, and there is no appeal from that ruling. The District Court applied the same analysis to the challenge under § 20 of the Delaware Constitution and found no violation. The District Court found no legal merit to the preemption and scope-of-authority challenges.[1] The questions on which this panel seeks guidance from your Court concern the § 20 analysis.

In addressing the § 20 claims, the District Court noted that "[t]here is scant judicial authority interpreting Delaware's constitutional right to bear arms, and none is directly relevant to the issue now before this Court." *Id.* at 538. The District Court granted summary judgment on the § 20 claims for the same reasons it granted summary judgment on the Second Amendment claims. *Id.* at 539.

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[1] Doe and Boone timely appealed the District Court's denial of the preemption and scope-of-authority challenges. However, those issues do not form part of this certification request.

II. The Second Amendment

The District Court analyzed the Second Amendment issues under recent Supreme Court decisions, including *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald*, 130 S. Ct. 3020. *See Doe*, 880 F. Supp. 2d at 525–26. The District Court also examined the circuit court cases applying *Heller* and *McDonald*, including our opinion in *United States v. Marzzarella*, 614 F.3d 85, 97 (3d Cir. 2010), *cert. denied*, 131 S. Ct. 958 (2011). The District Court noted that all had adopted a form of intermediate rather than strict scrutiny to analyze laws and policies that restrict firearm possession in public spaces as opposed to in the home. *Doe*, 880 F. Supp. 2d at 533–35 (citing *United States v. Masciandaro*, 638 F.3d 458, 470 (4th Cir. 2011), *cert. denied*, 132 S. Ct. 756; *Marzzarella*, 614 F.3d at 97; *United States v. Skoien*, 587 F.3d 803, 814 (7th Cir. 2009), *rev'd en banc*, 614 F.3d 638 (7th Cir. 2010), *cert. denied*, 131 S. Ct. 1674 (2011)); *see also Kachalsky v. Cnty. of Westchester*, 701 F.3d 81, 96–97 (2d Cir. 2012), *cert. denied*, 133 S. Ct. 1806 (decided after *Doe* and applying intermediate scrutiny to a state law restricting an individual's ability to carry firearms in public); *cf. Moore v. Madigan*, 702 F.3d 933, 941–42 (7th Cir. 2012) (holding that the Second Amendment protects the right to bear arms outside the home, without deciding the appropriate level of scrutiny to apply to a law that burdens that right).

The District Court followed *United States v. Marzzarella*, examining:

> whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantee. If it does not, our inquiry is

> complete. If it does, we evaluate the law under some form of means-end scrutiny. If the law passes muster under that standard, it is constitutional. If it fails, it is invalid.

Doe, 880 F. Supp. 2d at 526–27 (quoting *Marzzarella*, 614 F.3d at 89). Applying this analysis, the District Court first assumed that the Revised Policies fell within the Second Amendment's scope, *Doe*, 880 F. Supp. 2d at 528–30, then applied intermediate scrutiny, *id.* at 533. The District Court applied intermediate scrutiny to assess the constitutionality of the Revised Policies on the basis that those policies do not prohibit residents from possessing firearms in their homes, but rather regulate "the manner in which Plaintiffs may lawfully exercise their Second Amendment rights." *Id.* at 533–34 (citing *Masciandaro*, 638 F.3d at 470–71 ("[T]his longstanding out-of-the-home/in-the-home distinction bears directly on the level of scrutiny applicable. . . . [A] lesser showing is necessary with respect to laws that burden the right to keep and bear arms outside of the home.")). The District Court concluded that the two challenged paragraphs of the Revised Policies were reasonably related to important government interests in promoting and protecting the safety of public housing residents, guests, and employees. *Id.* at 535. The District Court found a reasonable fit between the Common Area Provision and the promotion of safety in shared areas of public housing complexes. *Id.* at 536. The District Court also found a reasonable fit between the Reasonable Cause Provision and the promotion of safety because obtaining a concealed-weapon permit requires training in gun safety and is a "reasonable mechanism for assisting with enforcement of the

Common Area Provision." *Id.* at 538. Doe and Boone did not appeal the District Court's ruling dismissing their Second Amendment claims, so this analysis remains the law of the case.

III. Section 20 of the Delaware Constitution

The District Court dismissed the § 20 claims for the same reasons it dismissed the Second Amendment claim, applying the same analysis. Doe and Boone timely appealed the District Court's rulings on their state constitutional claims.

In 1987, before the Supreme Court of the United States decided *Heller* and *McDonald*, Delaware enacted Article I, § 20 of the Delaware Constitution. Section 20 provides that "[a] person has the right to keep and bear arms for the defense of self, family, home and State, and for hunting and recreational use." Delaware courts have considered § 20 on only a few occasions, most recently in *Griffin v. State*, 47 A.3d 487, 488–89 (Del. 2012). That case involved an as-applied challenge to a conviction for carrying a concealed deadly weapon without a license in the home. The defendant had been using a knife to open a box when police arrived in response to a domestic-disturbance call. The *Griffin* opinion noted that the right to bear arms "is not absolute." *Id.* at 488. *Griffin* applied a three-part test borrowed from the Wisconsin Supreme Court to decide whether § 20 protected the individual's right to carry a deadly concealed weapon in the home, so as to make the conviction unconstitutional:

> First, the court must compare the strength of the state's interest in public safety with the individual's interest in carrying a concealed weapon.

> Second, if the individual interest outweighs the state interest, the court must determine, "whether an individual could have exercised the right in a reasonable, alternative manner that did not violate the statute." Third, the individual must be carrying the concealed weapon for a lawful purpose.

Id. at 490–91 (citing *State v. Hamdan*, 665 N.W.2d 785, 808 (Wis. 2003)). Under the first part of that test, the defendant's interest before he was arrested outweighed the State's interest because "[h]e was in his home, using a knife to carry out the everyday household activity of opening a box." *Griffin*, 47 A.3d at 491. The defendant's interest outweighed the State's interest under the second part of the test because "it would be unreasonable to 'restrict the manner in which one could carry a legal weapon from room to room within one's home. . . .'" *Id.* (ellipses in original) (quoting *State v. Stevens*, 833 P.2d 318, 319 (Or. Ct. App. 1992)). The third part of the test was satisfied because opening a box was a lawful purpose. *Griffin*, 47 A.3d at 491. The opinion stated that "Griffin's constitutional right to bear arms authorized his carrying a concealed knife in his home," but "that does not end the inquiry." *Id.* After the police arrived, "the balance between [the defendant's] interest in carrying a concealed weapon in his home and the State's interest in public safety shifted in favor of the State." *Id.* "Griffin was no longer using the knife for household purposes, and his failure to reveal that he was carrying a weapon could have represented a serious threat to both the police and his girlfriend." *Id.* Your Court reversed the conviction and remanded the case for a new trial. Although your Court decided *Griffin* after the Supreme Court's decisions in *Heller* and *McDonald* and

our decision in *Marzzarella*, the opinion does not consider federal Second Amendment decisions in the § 20 analysis.

The few other § 20 cases that your Court has decided involved circumstances and issues far different from this case. *See Dickerson v. State*, 975 A.2d 791, 796 (Del. 2009) (affirming a conviction for carrying a concealed weapon without a license outside of the home); *Smith v. State*, 882 A.2d 762 (Del. 2005) (table cite) (concluding that § 20's passage did not alter the constitutionality of Delaware's license requirement for carrying concealed weapons); *Short v. State*, 586 A.2d 1203 (Del. 1991) (table cite) (holding that the right to bear arms "may be subject to reasonable restrictions for the public safety, including limitations on possession by persons with criminal records"). None of these cases analyzed the issues raised by the Common Area Provision and the Reasonable Cause Provision in the Revised Policies, including whether a "home" extends to a multi-family residential building's common areas; whether § 20 guarantees individuals a right to carry firearms outside the home or the scope of that right; whether and how the levels of scrutiny used in federal constitutional analysis apply in analyzing the balance of state and individual interests; and whether Delaware's authority to restrict constitutional rights such as the right to bear arms is different when it acts as a landlord rather than as a sovereign.[2]

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[2]On the last issue, federal courts have recognized a difference when the government acts as a landlord in certain contexts. *See, e.g., Int'l Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678–79 (1992) (holding that the government

It is unclear from Delaware Supreme Court precedents whether, as the District Court assumed, your Court would follow federal Second Amendment jurisprudence in evaluating the challenges to the Revised Policies under § 20. On some occasions, your Court has interpreted provisions of the Delaware Constitution consistently with the federal analogs. *See, e.g.*, *Sanders v. State*, 585 A.2d 117, 144 (Del. 1990) (holding that the Eighth Amendment and Delaware's state constitutional counterpart both "demand[] that a death sentence be proportionate to a defendant's culpability and that it accomplish some legitimate penological end"). But your Court's decisions have also stated that the Declaration of Rights in the Delaware Constitution cannot always be interpreted identically to similar provisions in the federal Bill of Rights:

> The Declaration of Rights in the Delaware Constitution is not a mirror image of the federal Bill of Rights. Consequently, Delaware judges cannot faithfully discharge the responsibilities of their office by simply holding that the Declaration of Rights in Article I of the Delaware Constitution is necessarily in "lock step" with the United States Supreme Court's construction of the federal Bill of Rights.

Dorsey v. State, 761 A.2d 807, 814 (Del. 2000) (footnote omitted).[3] So we seek your guidance.

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may impose reasonable content-based speech restrictions in nonpublic forum property, as long as those restrictions are viewpoint-neutral); *see also* Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense*, 56 U.C.L.A. L. Rev. 1443, 1475 (2009) ("[T]here is both precedent and reason for allowing the government acting as proprietor extra power to restrict the exercise of many constitutional rights on its property.").

[3] *See also Jones v. State*, 745 A.2d 856, 864–65 (Del. 1999) (identifying nonexhaustive criteria for determining whether a federal constitutional provision has an

IV. Reasons for Certification

Under Rule 41 of the Rules of the Supreme Court of Delaware, this Court may certify questions of law to the Supreme Court of Delaware "if there is an important and urgent reason for an immediate determination of such questions by [the Supreme Court] and the certifying court or entity has not decided the question or questions in the matter." Del. Supr. Ct. Rule 41(a)(ii). We request certification because this case involves an original question of Delaware law, relating to the construction and interpretation of the Delaware Constitution. *See* Del. Supr. Ct. Rule 41(b).

The panel has examined the decisions of the Delaware state courts but has found none addressing whether Article I, § 20 of the Delaware Constitution protects a tenant's right to bear firearms in a public housing facility's common areas. Nor has this panel found Delaware court decisions providing guidance on the scope of protection under Article I, § 20 for an individual's right openly to carry a deadly weapon, either inside or outside the home. The cases do not give us clear guidance on what analysis Delaware courts would use when determining the constitutionality of policies and regulations that

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identical meaning to a state counterpart, including: text, legislative history, preexisting state law, structural differences, matters of local concern, state traditions, and public attitudes); *Sanders*, 585 A.2d at 145 ("Delaware . . . remains a sovereign State, governed by its own laws and shaped by its own unique heritage. An examination of those laws and that heritage may, from time to time, lead to the conclusion that Delaware's citizens enjoy more rights, more constitutional protections, than the Federal Constitution extends to them. If we were to hold that our Constitution is simply a mirror image of the Federal Constitution, we would be relinquishing an important incident of this State's sovereignty.").

potentially infringe on an individual's rights under Article I, § 20. The answers to these questions determine the outcome of the present case.

The panel recognizes that if your Court does not grant this Petition, the panel may decide this appeal based on its best estimate of how the Delaware courts would interpret the state's Constitution. That decision would bind only the parties in the instant case. Because the panel's decision would not bind the Delaware courts, questions about the scope of Article I, § 20 and its application to other similarly situated tenants would remain undecided. In addition, principles of federalism and comity make this Court hesitant to opine on a matter of first impression of Delaware constitutional law.

The panel unanimously agreed to certify questions about whether the Revised Policies issued by the WHA are permissible under Article I, § 20 of the Delaware Constitution. The panel therefore respectfully requests that the Supreme Court of Delaware grant this petition.

V. Conclusion

The following questions of law are certified to your Court for disposition:

(1) Whether, under Article I, § 20 of the Delaware Constitution, a public housing agency such as the WHA may adopt a policy prohibiting its residents, household members, and guests from displaying or carrying a firearm or other weapon in a common area, except when the firearm or other weapon is being transported to or from a resident's housing unit or is being used in self-defense.

(2) Whether, under Article I, § 20 of the Delaware Constitution, a public housing agency such as the WHA may require its residents, household members, and guests to have available for inspection a copy of any permit, license, or other documentation required by state, local, or federal law for the ownership,

possession, or transportation of any firearm or other weapon, including a license to carry a concealed weapon, as required by 11 Del. C. § 1441, on request, when there is reasonable cause to believe that the law or policies have been violated.

This court will retain jurisdiction of the appeal pending resolution of this certification.

By the Court,

/s/ Marjorie O. Rendell
Circuit Judge

Dated: July 18, 2013

cc: Jill K. Argo, Esq.
Penelope B. O'Connell, Esq.
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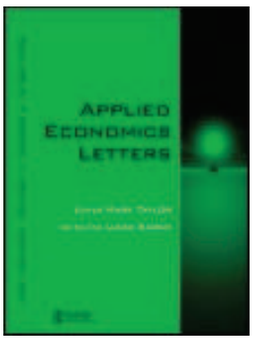
Tab 8



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An examination of the effects of concealed weapons laws and assault weapons bans on state-level murder rates

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An examination of the effects of concealed weapons laws and assault weapons bans on state-level murder rates

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The purpose of the present study is to determine the effects of state-level assault weapons bans and concealed weapons laws on state-level murder rates. Using data for the period 1980 to 2009 and controlling for state and year fixed effects, the results of the present study suggest that states with restrictions on the carrying of concealed weapons had higher gun-related murder rates than other states. It was also found that assault weapons bans did not significantly affect murder rates at the state level. These results suggest that restrictive concealed weapons laws may cause an increase in gun-related murders at the state level. The results of this study are consistent with some prior research in this area, most notably Lott and Mustard (1997).

Keywords: gun control; assault weapons; concealed weapons

JEL Classification: K14

I. Introduction

On 14 December 2012, a young man carrying a Bushmaster XM15-E2S (Bushmaster Firearms, Madison, NC, USA) semi-automatic rifle shot his way into an elementary school in Newtown, Connecticut, killing 26 people, 20 of whom were children. Since a semi-automatic weapon was used in the commission of this crime, there have been debates both in Congress and in various state legislatures regarding the potential enactment of assault weapons bans. One of the measures that were considered at the Federal level was a revival of the 1994 Federal assault weapons ban, which expired in 2004. This firearms ban was part of the Violent Crime Control and Law Enforcement Act of 1994, and this act outlawed semi-automatic weapons and prohibited large capacity magazines that held more than 10 rounds of ammunition.

Regarding state-level bans, no state had an assault weapons ban before 1989. Then, in that year, California enacted the first state-level ban on assault weapons. Several states followed suit, and shortly thereafter Connecticut, Hawaii and New Jersey enacted their own bans. In 1994, the Federal ban was enacted, thus rendering state laws moot. After the Federal ban expired in 2004, several states enacted their own bans once again.

Of course, there are many other types of gun control measures, both at the state and Federal level. One state-level gun control measure that was very common years ago but, in recent years, has become much less prevalent is the restrictive concealed carry weapons (CCW) law. These laws concern how permits are issued to individuals who want to carry concealed weapons, primarily handguns. There are four broad types of CCW laws. The first is unrestricted; individuals in these states do not need a permit to carry a concealed handgun. For years, the only state that had no CCW restrictions was Vermont. The next type of CCW law is a 'shall issue' law. In a 'shall issue' state, a permit is required to carry a concealed weapon, but state and local

authorities must issue a permit to any qualified applicant who requests one. This type of CCW law is not very restrictive. The third type of law is 'may issue'. In a 'may issue' state, local and state authorities can deny requests for concealed carry permits, even requests are from qualified applicants. This type of CCW law is considered restrictive. Finally, there some states that do not allow private citizens to carry concealed weapons. These states are known as 'no issue' or prohibited states. It is important to note that these four categories of CCW laws are rather broad, and not all states within a given category are equally restrictive. These laws vary in restrictiveness depending upon how states interpret and enforce their CCW statutes. In addition, some cities and counties have more restrictive concealed weapons laws than their home states.

In the present study, panel data controlling for both state and year fixed effects will be used to determine if state-level CCW laws and assault weapons bans had any effects on gun-related murder rates. Given that these laws are well-defined at the state level, and given that many states have altered these laws over the past 30 years, an analysis of the effects of CCW laws and assault weapons bans would be much more informative than an analysis of other types of gun control measures that few states have ever enacted and laws for which there has been little change over the past 30 years.

II. Literature Review

Although there have been numerous studies on the topic of gun control (Kwon *et al*., 1997; Kleck and Hogan, 1999; Miller *et al.*, 2002; Moorhouse and Wanner, 2006), research on assault weapons bans and CCW laws have been more limited. One of the few studies that examined assault weapons bans was Koper and Roth (2001). Using state-level data from 1970 to 1995, the authors found that the Federal ban had little to no effect on homicide rates associated with firearms and on gunshot wounds per victim.

Regarding CCW laws, Lott and Mustard (1997) found that states with 'shall issue' concealed weapons laws had lower crime rates than states with more restrictive gun laws. They found that 'shall issue' laws resulted in a 7.65% drop in murders and a 5% drop in rapes. Their research suggests that individuals would be less likely to commit crimes if they knew that many others may be carrying concealed weapons.

Other research on CCW laws have yielded mixed results. Three papers that corroborated the findings of Lott and Mustard (1997) were Bronars and Lott (1998), Bartley and Cohen (1998) and Moody (2001). Studies that contradicted the findings of Lott of Mustard include Ludwig (1998), Dezhbakhsh and Rubin (1998) and Donohue (2003).

The present study differs from this prior research in several ways. First, data for the period 1980 to 2009 is examined; this is one of the longest time periods examined in any research on assault weapons bans or CCW laws. Second, the gun-related murder rate is used as the dependent variable. The use of this crime rate is important because most other studies looked at violent crime rates or homicide rates. Violent crime rate data is not disaggregated into gun-related violent crime and non gun violent crime, and homicides include justifiable killings and state-sanctioned killings; hence, an analysis using these types of crime rates may result in spurious conclusions.

III. Empirical Technique and Data

In order to determine if concealed weapons laws and assault weapons bans had statistically-significant effects on gun-related murder rates, a fixed effects model that controls for both state-level and year effects is used. The dependent variable used was the state-level gun-related murder rate. The gun-related murder rate is the crime rate most affected by gun control measures, and hence is the most appropriate crime rate to use in an analysis of the effectiveness of gun control measures.

Regarding the explanatory variables, dummy variables for assault weapons bans and restrictive CCW laws were included in the regression model. For the CCW dummy variable, if a state prohibits concealed weapons or if it is 'may issue', then it is assumed to be restrictive and is denoted by a value of one. For the assault weapons dummy variable, if a state has an assault weapons law, then it is denoted by a one. Although the contents of these statutes may differ quite substantially between states, for the purposes of this study, it is assumed that states with these laws restrict firearm possession in some way. Finally, a dummy variable that equals one for the period 1994 to 2004 is included in order to control for the Federal assault weapons ban.

In addition to the gun control measures, it is assumed that murder rates are dependent upon state demographics and various other state-level socioeconomic factors. These control variables were selected based on their use in prior research.

State-level data on gun-related murder rates were obtained from the *Supplementary Homicide Reports* which are compiled by the United States Department of Justice. The murder rate is in terms of murders per 100 000 persons. Information on state-level assault weapons bans and CCW laws were obtained from Ludwig and Cook (2003), the Legal Community Against Violence, the National Rifle Association and the United States Bureau of Alcohol, Tobacco, Firearms and Explosives. All other state-level data were obtained from relevant Census Bureau reports.

IV. Results and Concluding Remarks

Results are presented on Table 1. The CCW dummy variable is significant and positive, but the assault weapons ban is insignificant. Given that the average gun-related murder rate over the period in question was 3.44, the results of the present study indicate that states with more restrictive CCW laws had gun-related murder rates that were 10% higher. In addition, the Federal assault weapons ban is significant and positive, indicating that murder rates were 19.3% higher when the Federal ban was in effect. These results corroborate the findings of Lott and Mustard (1997). These results suggest that, even after controlling for unobservable state and year fixed effects, limiting the ability to carry concealed weapons may cause murder rates to increase. There may, however, be other explanations for these results. Laws may be ineffective due to loopholes and exemptions. The most violent states may also have the toughest gun control measures. Further research is warranted in this area.

Table 1. Fixed effects regression gun-related murder rate

Constant	−3.02
	(–3.20)***
Assault weapons ban	−0.29
	(–1.57)
Federal assault weapons ban	0.66
	(2.42)**
Restrictive concealed carry laws	0.365
	(3.74)***
Proportion of population that is white	0.172
	(1.76)*
Proportion of population that is rural	1.93
	(3.97)***
Real per capita median income	0.00021
	(6.03)***
Proportion of population with college degree	−1.367
	(–1.20)
Unemployment rate	3.397
	(1.34)
Proportion of population >18 and <25	11.45
	(2.27)**
Proportion of population >24 and <35	−2.876
	(–0.91)
Per capita alcohol consumption	0.688
	(4.05)***

Notes: $R^2 = 0.797$.
Test statistics in parentheses.
* 5% < p-value < 10%; ** 1% < p-value < 5%; *** p-value < 1%.

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Tab 9

130 S.Ct. 3020
Supreme Court of the United States

Otis McDONALD, et al., Petitioners,
v.
CITY OF CHICAGO, ILLINOIS, et al.

No. 08–1521. | Argued March 2, 2010. | Decided June 28, 2010.

Synopsis
Background: Petitioners filed federal suit against city, which was consolidated with two related actions, seeking a declaration that two Illinois cities' handgun ban and several related city ordinances violated the Second and Fourteenth Amendments. The United States District Court for the Northern District of Illinois, Milton I. Shadur, J., 617 F.Supp.2d 752, dismissed the suits. Petitioners appealed. The United States Court of Appeals for the Seventh Circuit, Easterbrook, Chief Judge, 567 F.3d 856, affirmed. Certiorari was granted.

Holding: The Supreme Court, Justice Alito, held that Second Amendment right to keep and bear arms is fully applicable to the States by virtue of Fourteenth Amendment.

Reversed and remanded.

Justice Scalia, filed concurring opinion.

Justice Thomas, filed opinion concurring in part and concurring in the judgment.

Justice Stevens, filed dissenting opinion.

Justice Breyer, filed dissenting opinion in which Justice Ginsburg and Justice Sotomayor joined.

West Headnotes (1)

[1] Constitutional Law
Fourteenth Amendment in general
Weapons
Constitutional, Statutory, and Regulatory Provisions

Second Amendment right to keep and bear arms is fully applicable to the States by virtue of Fourteenth Amendment. U.S.C.A. Const.Amends. 2, 14.

667 Cases that cite this headnote

****3021 *Syllabus* [*]**

***742** Two years ago, in *District of Columbia v. Heller,* 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637, this Court held that the Second Amendment protects the right to keep and bear arms for the purpose of self-defense and struck down a District of Columbia law that banned the possession of handguns in the home. Chicago (hereinafter City) and the village of Oak Park, a Chicago suburb, have laws effectively banning handgun possession by almost all private citizens. After *Heller,* petitioners filed this federal suit against the City, which was consolidated with two related actions, alleging that the City's handgun ban has left them vulnerable to criminals. They sought a declaration that the ban and several related City ordinances violate the Second and Fourteenth Amendments. Rejecting petitioners' argument that the ordinances are unconstitutional, the court noted that the Seventh Circuit previously had upheld the constitutionality of a handgun ban, that *Heller* had explicitly refrained from opining on whether the Second Amendment applied to the States, and that the court had a duty to follow established Circuit precedent. The Seventh Circuit affirmed, relying on three 19th-century cases—*United States v. Cruikshank,* 92 U.S. 542, 23 L.Ed. 588, *Presser v. Illinois,* 116 U.S. 252, 6 S.Ct. 580, 29 L.Ed. 615, and *Miller v. Texas,* 153 U.S. 535, 14 S.Ct. 874, 38 L.Ed. 812—which were decided in the wake of this Court's interpretation of the Fourteenth Amendment's Privileges or Immunities Clause in the *Slaughter–House Cases,* 16 Wall. 36, 21 L.Ed. 394.

Held: The judgment is reversed, and the case is remanded.

567 F.3d 856, reversed and remanded.

Justice ALITO delivered the opinion of the Court with respect to Parts I, II–A, II–B, II–D, III–A, and III–B, concluding that the Fourteenth Amendment incorporates the Second Amendment right, recognized in *Heller,* to keep and bear arms for the purpose of self-defense. Pp. 3028 –3030, 3031 – 3036, 3036 – 3044.

(a) Petitioners base their case on two submissions. Primarily, they argue that the right to keep and bear arms is protected by the Privileges or Immunities Clause of the Fourteenth Amendment and that the *Slaughter–House Cases'* narrow interpretation of the Clause should now be rejected. As a secondary argument, they contend that the Fourteenth Amendment's Due Process Clause incorporates the Second ***743** Amendment right. Chicago and Oak Park (municipal respondents) maintain that a right set out in the Bill of Rights applies to the States only when it is an indispensable attribute of *any* " 'civilized' " legal system. If it is possible to imagine a civilized country that does not recognize the right, municipal respondents assert, that right is not protected by due process. And since there are civilized countries that ban or strictly regulate the private possession of handguns, they maintain that due process does not preclude such measures. Pp. 3027 – 3028.

(b) The Bill of Rights, including the Second Amendment, originally applied only to the Federal Government, not to the States, see, *e.g., Barron ex rel. Tiernan v. Mayor of Baltimore,* 7 Pet. 243, 247, 8 L.Ed. 672, but the constitutional Amendments adopted in the Civil War's aftermath fundamentally altered the federal system. Four years after the adoption of the Fourteenth Amendment, this Court ****3022** held in the *Slaughter–House Cases,* that the Privileges or Immunities Clause protects only those rights "which owe their existence to the Federal government, its National character, its Constitution, or its laws," 16 Wall., at 79, 21 L.Ed. 394, and that the fundamental rights predating the creation of the Federal Government were not protected by the Clause, *id.,* at 76. Under this narrow reading, the Court held that the Privileges or Immunities Clause protects only very limited rights. *Id.,* at 79–80. Subsequently, the Court held that the Second Amendment applies only to the Federal Government in *Cruikshank,* 92 U.S. 542, 23 L.Ed. 588, *Presser,* 116 U.S. 252, 6 S.Ct. 580, 29 L.Ed. 615, and *Miller,* 153 U.S. 535, 14 S.Ct. 874, 38 L.Ed. 812, the decisions on which the Seventh Circuit relied in this case. Pp. 3028 – 3030.

(c) Whether the Second Amendment right to keep and bear arms applies to the States is considered in light of the Court's precedents applying the Bill of Rights' protections to the States. Pp. 3031 – 3036.

(1) In the late 19th century, the Court began to hold that the Due Process Clause prohibits the States from infringing Bill of Rights protections. See, *e.g., Hurtado v. California,* 110 U.S. 516, 4 S.Ct. 111, 28 L.Ed. 232. Five features of the approach taken during the ensuing era are noted. First, the Court viewed the due process question as entirely separate from the question whether a right was a privilege or immunity of national citizenship. See *Twining v. New Jersey,* 211 U.S. 78, 99, 29 S.Ct. 14, 53 L.Ed. 97. Second, the Court explained that the only rights due process protected against state infringement were those "of such a nature that they are included in the conception of due process of law." *Ibid.* Third, some cases during this era "can be seen as having asked ... if a civilized system could be imagined that would not accord the particular protection" asserted therein. *Duncan v. Louisiana,* 391 U.S. 145, 149, n. 14, 88 S.Ct. 1444, 20 L.Ed.2d 491. Fourth, the Court did not hesitate to hold that a Bill of Rights guarantee failed to meet the test for Due Process Clause protection, finding, *e.g.,* that freedom of speech and press qualified, ***744** *Gitlow v. New York,* 268 U.S. 652, 666, 45 S.Ct. 625, 69 L.Ed. 1138; *Near v. Minnesota ex rel. Olson,* 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357, but the grand jury indictment requirement did not, *Hurtado, supra.* Finally, even when such a right was held to fall within the conception of due process, the protection or remedies afforded against state infringement sometimes differed from those provided against abridgment by the Federal Government. Pp. 3031 – 3032.

(2) Justice Black championed the alternative theory that § 1 of the Fourteenth Amendment totally incorporated all of the Bill of Rights' provisions, see, *e.g., Adamson v. California,* 332 U.S. 46, 71–72, 67 S.Ct. 1672, 91 L.Ed. 1903 (Black, J., dissenting), but the Court never has embraced that theory. Pp. 3032 – 3033.

(3) The Court eventually moved in the direction advocated by Justice Black, by adopting a theory of selective incorporation by which the Due Process Clause incorporates particular rights contained in the first eight Amendments. See, *e.g., Gideon v. Wainwright,* 372 U.S. 335, 341, 83 S.Ct. 792, 9 L.Ed.2d 799. These decisions abandoned three of the characteristics of the earlier period. The Court clarified that the governing standard is whether a particular Bill of Rights protection is fundamental to our Nation's particular scheme of

ordered liberty and system of justice. *Duncan, supra,* at 149, n. 14, 88 S.Ct. 1444. The Court eventually held that almost all of the Bill of Rights' guarantees met the requirements for protection under the Due Process Clause. The Court also held that Bill of Rights protections ****3023** must "all ... be enforced against the States under the Fourteenth Amendment according to the same standards that protect those personal rights against federal encroachment." *Malloy v. Hogan,* 378 U.S. 1, 10, 84 S.Ct. 1489, 12 L.Ed.2d 653. Under this approach, the Court overruled earlier decisions holding that particular Bill of Rights guarantees or remedies did not apply to the States. See, *e.g., Gideon, supra,* which overruled *Betts v. Brady,* 316 U.S. 455, 62 S.Ct. 1252, 86 L.Ed. 1595. Pp. 3034 – 3036.

(d) The Fourteenth Amendment makes the Second Amendment right to keep and bear arms fully applicable to the States. Pp. 3036 – 3044.

(1) The Court must decide whether that right is fundamental to the Nation's scheme of ordered liberty, *Duncan v. Louisiana,* 391 U.S. 145, 149, 88 S.Ct. 1444, 20 L.Ed.2d 491, or, as the Court has said in a related context, whether it is "deeply rooted in this Nation's history and tradition," *Washington v. Glucksberg,* 521 U.S. 702, 721, 117 S.Ct. 2302, 138 L.Ed.2d 772. *Heller* points unmistakably to the answer. Self-defense is a basic right, recognized by many legal systems from ancient times to the present, and the *Heller* Court held that individual self-defense is "the central component" of the Second Amendment right. 554 U.S., at ——, ——, 128 S.Ct. 2783, 171 L.Ed.2d 637. Explaining that "the need for defense of self, family, and property is most acute" in the home, *ibid*., the Court found that this right applies to handguns because they are "the most preferred firearm in the nation to 'keep' and use for protection of one's home and family," *id*., at 2783, —— – ——, 128 S.Ct. 2783. ***745** It thus concluded that citizens must be permitted "to use [handguns] for the core lawful purpose of self-defense." *Id*., at 2783, 128 S.Ct. 2783. *Heller* also clarifies that this right is "deeply rooted in this Nation's history and traditions," *Glucksberg, supra,* at 721, 117 S.Ct. 2302. *Heller* explored the right's origins in English law and noted the esteem with which the right was regarded during the colonial era and at the time of the ratification of the Bill of Rights. This is powerful evidence that the right was regarded as fundamental in the sense relevant here. That understanding persisted in the years immediately following the Bill of Rights' ratification and is confirmed by the state constitutions of that era, which protected the right to keep and bear arms. Pp. 3036 – 3038.

(2) A survey of the contemporaneous history also demonstrates clearly that the Fourteenth Amendment's Framers and ratifiers counted the right to keep and bear arms among those fundamental rights necessary to the Nation's system of ordered liberty. Pp. 3038 – 3044.

(i) By the 1850's, the fear that the National Government would disarm the universal militia had largely faded, but the right to keep and bear arms was highly valued for self-defense. Abolitionist authors wrote in support of the right, and attempts to disarm "Free–Soilers" in "Bloody Kansas," met with outrage that the constitutional right to keep and bear arms had been taken from the people. After the Civil War, the Southern States engaged in systematic efforts to disarm and injure African-Americans, see *Heller, supra,* at ——, 128 S.Ct. 2783. These injustices prompted the 39th Congress to pass the Freedmen's Bureau Act of 1866 and the Civil Rights Act of 1866 to protect the right to keep and bear arms. Congress, however, ultimately deemed these legislative remedies insufficient, and approved the Fourteenth Amendment. Today, it is generally accepted that that Amendment was understood to provide a constitutional basis for protecting the rights set out in the Civil Rights Act. See ****3024** *General Building Contractors Assn., Inc. v. Pennsylvania,* 458 U.S. 375, 389, 102 S.Ct. 3141, 73 L.Ed.2d 835. In Congressional debates on the proposed Amendment, its legislative proponents in the 39th Congress referred to the right to keep and bear arms as a fundamental right deserving of protection. Evidence from the period immediately following the Amendment's ratification confirms that that right was considered fundamental. Pp. 3038 – 3042.

(ii) Despite all this evidence, municipal respondents argue that Members of Congress overwhelmingly viewed § 1 of the Fourteenth Amendment as purely an antidiscrimination rule. But while § 1 does contain an antidiscrimination rule, *i.e.,* the Equal Protection Clause, it can hardly be said that the section does no more than prohibit discrimination. If what municipal respondents mean is that the Second Amendment should be singled out for special—and specially unfavorable —treatment, ***746** the Court rejects the suggestion. The righT to keep and bear arms must be regarded as a substantive guarantee, not a prohibition that could be ignored so long as the States legislated in an evenhanded manner. Pp. 3042 – 3044.

Justice ALITO, joined by THE CHIEF JUSTICE, Justice SCALIA, and Justice KENNEDY, concluded, in Parts II–C, IV, and V, that the Fourteenth Amendment's Due Process Clause incorporates the Second Amendment right recognized in *Heller*. Pp. 3030 – 3031, 3044 – 3048.

(a) Petitioners argue that that the Second Amendment right is one of the "privileges or immunities of citizens of the United States." There is no need to reconsider the Court's interpretation of the Privileges or Immunities Clause in the *Slaughter–House Cases* because, for many decades, the Court has analyzed the question whether particular rights are protected against state infringement under the Fourteenth Amendment's Due Process Clause. Pp. 3030 – 3031.

(b) Municipal respondents' remaining arguments are rejected because they are at war with *Heller* 's central holding. In effect, they ask the Court to hold the right to keep and bear arms as subject to a different body of rules for incorporation than the other Bill of Rights guarantees. Pp. 3044 – 3048.

(c) The dissents' objections are addressed and rejected. Pp. 3048 – 3050.

Justice THOMAS agreed that the Fourteenth Amendment makes the Second Amendment right to keep and bear arms that was recognized in *District of Columbia v. Heller,* 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637, fully applicable to the States. However, he asserted, there is a path to this conclusion that is more straightforward and more faithful to the Second Amendment's text and history. The Court is correct in describing the Second Amendment right as "fundamental" to the American scheme of ordered liberty, *Duncan v. Louisiana,* 391 U.S. 145, 149, 88 S.Ct. 1444, 20 L.Ed.2d 491, and "deeply rooted in this Nation's history and traditions," *Washington v. Glucksberg,* 521 U.S. 702, 721, 117 S.Ct. 2302, 138 L.Ed.2d 772. But the Fourteenth Amendment's Due Process Clause, which speaks only to "process," cannot impose the type of substantive restraint on state legislation that the Court asserts. Rather, the right to keep and bear arms is enforceable against the States because it is a privilege of American citizenship recognized by § 1 of the Fourteenth Amendment, which provides, *inter alia:* "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." In interpreting this language, it is important to recall that constitutional provisions are " 'written to be understood by the voters.' " ****3025** *Heller,* 554 U.S., at ——, 128 S.Ct. 2783. The objective of this inquiry is to discern what "ordinary citizens" at the time of the Fourteenth Amendment's ratification would have understood that Amendment's Privileges or Immunities Clause to mean. *Ibid.* A survey of contemporary legal ***747** authorities plainly shows that, at that time, the ratifying public understood the Clause to protect constitutionally enumerated rights, including the right to keep and bear arms. Pp. 3026 – 3044.

ALITO, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II–A, II–B, II–D, and III, in which ROBERTS, C. J., and SCALIA, KENNEDY, and THOMAS, JJ., joined, and an opinion with respect to Parts II–C, IV, and V, in which ROBERTS, C. J., and SCALIA and KENNEDY, JJ., join. SCALIA, J., filed a concurring opinion. THOMAS, J., filed an opinion concurring in part and concurring in the judgment. STEVENS, J., filed a dissenting opinion. BREYER, J., filed a dissenting opinion, in which GINSBURG and SOTOMAYOR, JJ., joined.

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Opinion

***748** ****3026** Justice ALITO announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II–A, II–B, II–D, III–A, and III–B, in which THE CHIEF JUSTICE, Justice ***749** SCALIA, Justice KENNEDY, and Justice THOMAS join, and an opinion with respect to Parts II–C, IV, and V, in which THE CHIEF JUSTICE, Justice SCALIA, and Justice KENNEDY join.

Two years ago, in *District of Columbia v. Heller,* 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008), we held that the Second Amendment protects the ***750** right to keep and bear arms for the purpose of self-defense, and we struck down a District of Columbia law that banned the possession of handguns in the home. The city of Chicago (City) and the village of Oak Park, a Chicago suburb, have laws that are similar to the District of Columbia's, but Chicago and Oak Park argue that their laws are constitutional because the Second Amendment has no application to the States. We have previously held that most of the provisions of the Bill of Rights apply with full force to both the Federal Government and the States. Applying the standard that is well established in our case law, we hold that the Second Amendment right is fully applicable to the States.

I

Otis McDonald, Adam Orlov, Colleen Lawson, and David Lawson (Chicago petitioners) are Chicago residents who would like to keep handguns in their homes for self-defense but are prohibited from doing so by Chicago's firearms laws. A City ordinance provides that "[n]o person shall ... possess ... any firearm unless such person is the holder of a valid registration certificate for such firearm." Chicago, Ill., Municipal Code § 8–20–040(a) (2009). The Code then prohibits registration of most handguns, thus effectively banning handgun possession by almost all private citizens who reside in the City. § 8–20–050(c). Like Chicago, Oak Park makes it "unlawful for any person to possess ... any firearm," a term that includes "pistols, revolvers, guns and small arms ... commonly known as handguns." Oak Park, Ill., Village Code §§ 27–2–1 (2007), 27–1–1 (2009).

Chicago enacted its handgun ban to protect its residents "from the loss of property and injury or death from firearms." ***751** See Chicago, Ill., Journal of Proceedings of the City Council, p. 10049 (Mar. 19, 1982). The Chicago petitioners and their *amici,* however, argue that the handgun ban has left them vulnerable to criminals. Chicago Police Department statistics, we are told, reveal that the City's handgun murder rate has actually increased since the ban was enacted [1] and that Chicago residents now face one of the highest murder rates in the country and rates of other violent crimes that exceed the average in comparable cities. [2]

Several of the Chicago petitioners have been the targets of threats and violence. For instance, Otis McDonald, who is in his ****3027** late seventies, lives in a high-crime neighborhood. He is a community activist involved with alternative policing strategies, and his efforts to improve his neighborhood have subjected him to violent threats from drug dealers. App. 16–17; Brief for State Firearm Associations as *Amici Curiae* 20–21; Brief for State of Texas et al. as *Amici Curiae* 7–8. Colleen Lawson is a Chicago resident whose home has been targeted by burglars. "In Mrs. Lawson's judgment, possessing a handgun in Chicago would decrease her chances of suffering serious injury or death should she ever be threatened again in her home." [3] McDonald, Lawson, and the other Chicago petitioners own handguns that they store outside of the city limits, but they would like to keep their handguns in their homes for protection. See App. 16–19, 43–44 (McDonald), 20–24 (C. Lawson), 19, 36 (Orlov), 20–21, 40 (D.Lawson).

***752** After our decision in *Heller,* the Chicago petitioners and two groups [4] filed suit against the City in the United States District Court for the Northern District of Illinois. They sought a declaration that the handgun ban and several

related Chicago ordinances violate the Second and Fourteenth Amendments to the United States Constitution. Another action challenging the Oak Park law was filed in the same District Court by the National Rifle Association (NRA) and two Oak Park residents. In addition, the NRA and others filed a third action challenging the Chicago ordinances. All three cases were assigned to the same District Judge.

The District Court rejected plaintiffs' argument that the Chicago and Oak Park laws are unconstitutional. See App. 83–84; *NRA, Inc. v. Oak Park,* 617 F.Supp.2d 752, 754 (N.D.Ill.2008). The court noted that the Seventh Circuit had "squarely upheld the constitutionality of a ban on handguns a quarter century ago," *id*., at 753 (citing *Quilici v. Morton Grove,* 695 F.2d 261 (C.A.7 1982)), and that *Heller* had explicitly refrained from "opin[ing] on the subject of incorporation vel non of the Second Amendment," *NRA,* 617 F.Supp.2d, at 754. The court observed that a district judge has a "duty to follow established precedent in the Court of Appeals to which he or she is beholden, even though the logic of more recent caselaw may point in a different direction." *Id.,* at 753.

The Seventh Circuit affirmed, relying on three 19th-century cases—*United States v. Cruikshank,* 92 U.S. 542, 23 L.Ed. 588 (1876), *Presser v. Illinois,* 116 U.S. 252, 6 S.Ct. 580, 29 L.Ed. 615 (1886), and *Miller v. Texas,* 153 U.S. 535, 14 S.Ct. 874, 38 L.Ed. 812 (1894)—that were decided in the wake of this Court's interpretation of the Privileges or Immunities Clause of the Fourteenth Amendment in the *Slaughter–House Cases,* 16 Wall. 36, 21 L.Ed. 394 (1873). The Seventh Circuit described the rationale of those cases as "defunct" and recognized that they did not consider the question whether the ***753** Fourteenth Amendment's Due Process Clause incorporates the Second Amendment right to keep and bear arms. *NRA, Inc. v. Chicago,* 567 F.3d 856, 857, 858 (2009). Nevertheless, the Seventh Circuit observed that it was obligated to follow Supreme Court precedents that have "direct application," and it declined to predict how the Second Amendment would fare under this Court's modern "selective incorporation" approach. *Id.,* at 857–858 (internal quotation marks omitted).

****3028** We granted certiorari. 557 U.S. 965, 130 S.Ct. 48, 174 L.Ed.2d 632 (2009).

II

A

Petitioners argue that the Chicago and Oak Park laws violate the right to keep and bear arms for two reasons. Petitioners' primary submission is that this right is among the "privileges or immunities of citizens of the United States" and that the narrow interpretation of the Privileges or Immunities Clause adopted in the *Slaughter–House Cases, supra,* should now be rejected. As a secondary argument, petitioners contend that the Fourteenth Amendment's Due Process Clause "incorporates" the Second Amendment right.

Chicago and Oak Park (municipal respondents) maintain that a right set out in the Bill of Rights applies to the States only if that right is an indispensable attribute of *any* " 'civilized' " legal system. Brief for Municipal Respondents 9. If it is possible to imagine a civilized country that does not recognize the right, the municipal respondents tell us, then that right is not protected by due process. *Ibid.* And since there are civilized countries that ban or strictly regulate the private possession of handguns, the municipal respondents maintain that due process does not preclude such measures. *Id.,* at 21–23. In light of the parties' far-reaching arguments, we begin by recounting this Court's analysis over the years of the relationship between the provisions of the Bill of Rights and the States.

***754** B

The Bill of Rights, including the Second Amendment, originally applied only to the Federal Government. In *Barron ex rel. Tiernan v. Mayor of Baltimore,* 7 Pet. 243, 8 L.Ed. 672 (1833), the Court, in an opinion by Chief Justice Marshall, explained that this question was "of great importance" but "not of much difficulty." *Id*., at 247. In less than four pages, the Court firmly rejected the proposition that the first eight Amendments operate as limitations on the States, holding that they apply only to the Federal Government. See also *Lessee of Livingston v. Moore,* 7 Pet. 469, 551–552, 8 L.Ed. 751 (1833) ("[I]t is now settled that those amendments [in the Bill of Rights] do not extend to the states").

The constitutional Amendments adopted in the aftermath of the Civil War fundamentally altered our country's federal system. The provision at issue in this case, § 1 of the Fourteenth Amendment, provides, among other things, that a State may not abridge "the privileges or immunities of

citizens of the United States" or deprive "any person of life, liberty, or property, without due process of law."

Four years after the adoption of the Fourteenth Amendment, this Court was asked to interpret the Amendment's reference to "the privileges or immunities of citizens of the United States." The *Slaughter–House Cases, supra,* involved challenges to a Louisiana law permitting the creation of a state-sanctioned monopoly on the butchering of animals within the city of New Orleans. Justice Samuel Miller's opinion for the Court concluded that the Privileges or Immunities Clause protects only those rights "which owe their existence to the Federal government, its National character, its Constitution, or its laws." *Id.,* at 79. The Court held that other fundamental rights—rights that predated the creation of the Federal Government and that "the State governments were created to establish and secure"—were not protected by the Clause. *Id.,* at 76.

***755** In drawing a sharp distinction between the rights of federal and state citizenship, ****3029** the Court relied on two principal arguments. First, the Court emphasized that the Fourteenth Amendment's Privileges or Immunities Clause spoke of "the privileges or immunities of *citizens of the United States,*" and the Court contrasted this phrasing with the wording in the first sentence of the Fourteenth Amendment and in the Privileges and Immunities Clause of Article IV, both of which refer to *state* citizenship.[5] (Emphasis added.) Second, the Court stated that a contrary reading would "radically chang[e] the whole theory of the relations of the State and Federal governments to each other and of both these governments to the people," and the Court refused to conclude that such a change had been made "in the absence of language which expresses such a purpose too clearly to admit of doubt." *Id.,* at 78. Finding the phrase "privileges or immunities of citizens of the United States" lacking by this high standard, the Court reasoned that the phrase must mean something more limited.

Under the Court's narrow reading, the Privileges or Immunities Clause protects such things as the right

> "to come to the seat of government to assert any claim [a citizen] may have upon that government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions ... [and to] become a citizen of any State of the Union by a *bonafide* residence therein, with the same rights as other citizens of that State." *Id.,* at 79–80 (internal quotation marks omitted).

***756** Finding no constitutional protection against state intrusion of the kind envisioned by the Louisiana statute, the Court upheld the statute. Four Justices dissented. Justice Field, joined by Chief Justice Chase and Justices Swayne and Bradley, criticized the majority for reducing the Fourteenth Amendment's Privileges or Immunities Clause to "a vain and idle enactment, which accomplished nothing, and most unnecessarily excited Congress and the people on its passage." *Id.,* at 96; see also *id.,* at 104. Justice Field opined that the Privileges or Immunities Clause protects rights that are "in their nature ... fundamental," including the right of every man to pursue his profession without the imposition of unequal or discriminatory restrictions. *Id.,* at 96–97. Justice Bradley's dissent observed that "we are not bound to resort to implication ... to find an authoritative declaration of some of the most important privileges and immunities of citizens of the United States. It is in the Constitution itself." *Id.*, at 118. Justice Bradley would have construed the Privileges or Immunities Clause to include those rights enumerated in the Constitution as well as some unenumerated rights. *Id.,* at 119. Justice Swayne described the majority's narrow reading of the Privileges or Immunities Clause as "turn[ing] ... what was meant for bread into a stone." *Id.*, at 129 (dissenting opinion).

Today, many legal scholars dispute the correctness of the narrow *Slaughter–House* interpretation. See, *e.g., Saenz v. Roe,* 526 U.S. 489, 522, n. 1, 527, 119 S.Ct. 1518, 143 L.Ed.2d 689 (1999) (THOMAS, J., dissenting) (scholars of the Fourteenth Amendment agree "that the Clause does not mean what the Court said it meant in 1873"); Amar, ****3030** Substance and Method in the Year 2000, 28 Pepperdine L.Rev. 601, 631, n. 178 (2001) ("Virtually no serious modern scholar—left, right, and center—thinks that this [interpretation] is a plausible reading of the Amendment"); Brief for Constitutional Law Professors as *Amici Curiae* 33 (claiming an "overwhelming consensus among leading constitutional ***757** scholars" that the opinion is "egregiously wrong"); C. Black, A New Birth of Freedom 74–75 (1997).

Three years after the decision in the *Slaughter–House Cases,* the Court decided *Cruikshank,* the first of the three 19th-century cases on which the Seventh Circuit relied. 92 U.S. 542, 23 L.Ed. 588. In that case, the Court reviewed convictions stemming from the infamous Colfax Massacre in Louisiana on Easter Sunday 1873. Dozens of blacks,

many unarmed, were slaughtered by a rival band of armed white men. [6] Cruikshank himself allegedly marched unarmed African–American prisoners through the streets and then had them summarily executed. [7] Ninety-seven men were indicted for participating in the massacre, but only nine went to trial. Six of the nine were acquitted of all charges; the remaining three were acquitted of murder but convicted under the Enforcement Act of 1870, 16 Stat. 140, for banding and conspiring together to deprive their victims of various constitutional rights, including the right to bear arms. [8]

The Court reversed all of the convictions, including those relating to the deprivation of the victims' right to bear arms. *Cruikshank,* 92 U.S., at 553, 559. The Court wrote that the right of bearing arms for a lawful purpose "is not a right granted by the Constitution" and is not "in any manner dependent upon that instrument for its existence." *Id.,* at 553. "The second amendment," the Court continued, "declares that it shall not be infringed; but this ... means no more than that it shall not be infringed by Congress." *Ibid.* "Our later decisions in ***758** *Presser v. Illinois,* 116 U.S. 252, 265[, 6 S.Ct. 580, 29 L.Ed. 615] (1886), and *Miller v. Texas,* 153 U.S. 535, 538[, 14 S.Ct. 874, 38 L.Ed. 812] (1894), reaffirmed that the Second Amendment applies only to the Federal Government." *Heller,* 554 U.S., at ——, n. 23, 128 S.Ct., at 2813 n. 23.

C

As previously noted, the Seventh Circuit concluded that *Cruikshank, Presser,* and *Miller* doomed petitioners' claims at the Court of Appeals level. Petitioners argue, however, that we should overrule those decisions and hold that the right to keep and bear arms is one of the "privileges or immunities of citizens of the United States." In petitioners' view, the Privileges or Immunities Clause protects all of the rights set out in the Bill of Rights, as well as some others, see Brief for Petitioners 10, 14, 15–21, but petitioners are unable to identify the Clause's full scope, Tr. of Oral Arg. 5–6, 8–11. Nor is there any consensus on that question among the scholars who agree that the *Slaughter–House Cases'* interpretation is flawed. See *Saenz, supra,* at 522, n. 1, 119 S.Ct. 1518 (THOMAS, J., dissenting).

We see no need to reconsider that interpretation here. For many decades, the question of the rights protected by the ****3031** Fourteenth Amendment against state infringement has been analyzed under the Due Process Clause of that Amendment and not under the Privileges or Immunities Clause. We therefore decline to disturb the *Slaughter–House* holding.

At the same time, however, this Court's decisions in *Cruikshank, Presser,* and *Miller* do not preclude us from considering whether the Due Process Clause of the Fourteenth Amendment makes the Second Amendment right binding on the States. See *Heller,* 554 U.S., at ——, n. 23, 128 S.Ct., at 2813 n. 23. None of those cases "engage[d] in the sort of Fourteenth Amendment inquiry required by our later cases." *Ibid*. As explained more fully below, *Cruikshank, Presser,* and *Miller* all preceded the era in which the Court began the process of "selective incorporation" under the Due Process Clause, and we have never previously addressed the question whether the ***759** right to keep and bear arms applies to the States under that theory.

Indeed, *Cruikshank* has not prevented us from holding that other rights that were at issue in that case are binding on the States through the Due Process Clause. In *Cruikshank,* the Court held that the general "right of the people peaceably to assemble for lawful purposes," which is protected by the First Amendment, applied only against the Federal Government and not against the States. See 92 U.S., at 551–552. Nonetheless, over 60 years later the Court held that the right of peaceful assembly was a "fundamental righ[t] ... safeguarded by the due process clause of the Fourteenth Amendment." *De Jonge v. Oregon,* 299 U.S. 353, 364, 57 S.Ct. 255, 81 L.Ed. 278 (1937). We follow the same path here and thus consider whether the right to keep and bear arms applies to the States under the Due Process Clause.

D

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In the late 19th century, the Court began to consider whether the Due Process Clause prohibits the States from infringing rights set out in the Bill of Rights. See *Hurtado v. California,* 110 U.S. 516, 4 S.Ct. 111, 28 L.Ed. 232 (1884) (due process does not require grand jury indictment); *Chicago, B. & Q.R. Co. v. Chicago,* 166 U.S. 226, 17 S.Ct. 581, 41 L.Ed. 979 (1897) (due process prohibits States from taking of private property for public use without just compensation). Five features of the approach taken during the ensuing era should be noted.

First, the Court viewed the due process question as entirely separate from the question whether a right was a privilege or immunity of national citizenship. See *Twining v. New Jersey,* 211 U.S. 78, 99, 29 S.Ct. 14, 53 L.Ed. 97 (1908).

Second, the Court explained that the only rights protected against state infringement by the Due Process Clause were those rights "of such a nature that they are included in the conception of due process of law." *Ibid*. See also, ***760** *e.g., Adamson v. California,* 332 U.S. 46, 67 S.Ct. 1672, 91 L.Ed. 1903 (1947); *Betts v. Brady,* 316 U.S. 455, 62 S.Ct. 1252, 86 L.Ed. 1595 (1942); *Palko v. Connecticut,* 302 U.S. 319, 58 S.Ct. 149, 82 L.Ed. 288 (1937); *Grosjean v. American Press Co.,* 297 U.S. 233, 56 S.Ct. 444, 80 L.Ed. 660 (1936); *Powell v. Alabama,* 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932). While it was "possible that some of the personal rights safeguarded by the first eight Amendments against National action [might] also be safeguarded against state action," the Court stated, this was "not because those rights are enumerated in the first eight Amendments." *Twining, supra,* at 99, 29 S.Ct. 14.

****3032** The Court used different formulations in describing the boundaries of due process. For example, in *Twining,* the Court referred to "immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard." 211 U.S., at 102, 29 S.Ct. 14 (internal quotation marks omitted). In *Snyder v. Massachusetts,* 291 U.S. 97, 105, 54 S.Ct. 330, 78 L.Ed. 674 (1934), the Court spoke of rights that are "so rooted in the traditions and conscience of our people as to be ranked as fundamental." And in *Palko,* the Court famously said that due process protects those rights that are "the very essence of a scheme of ordered liberty" and essential to "a fair and enlightened system of justice." 302 U.S., at 325, 58 S.Ct. 149.

Third, in some cases decided during this era the Court "can be seen as having asked, when inquiring into whether some particular procedural safeguard was required of a State, if a civilized system could be imagined that would not accord the particular protection." *Duncan v. Louisiana,* 391 U.S. 145, 149, n. 14, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968). Thus, in holding that due process prohibits a State from taking private property without just compensation, the Court described the right as "a principle of natural equity, recognized by all temperate and civilized governments, from a deep and universal sense of its justice." *Chicago, B. & Q.R. Co., supra,* at 238, 17 S.Ct. 581. Similarly, the Court found that due process did not provide a right against compelled incrimination in part because this right "has no place in the jurisprudence of civilized and free ***761** countries outside the domain of the common law." *Twining, supra,* at 113, 29 S.Ct. 14.

Fourth, the Court during this era was not hesitant to hold that a right set out in the Bill of Rights failed to meet the test for inclusion within the protection of the Due Process Clause. The Court found that some such rights qualified. See, *e.g., Gitlow v. New York,* 268 U.S. 652, 666, 45 S.Ct. 625, 69 L.Ed. 1138 (1925) (freedom of speech and press); *Near v. Minnesota ex rel. Olson,* 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357 (1931) (same); *Powell, supra* (assistance of counsel in capital cases); *De Jonge, supra* (freedom of assembly); *Cantwell v. Connecticut,* 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940) (free exercise of religion). But others did not. See, *e.g., Hurtado, supra* (grand jury indictment requirement); *Twining, supra* (privilege against self-incrimination).

Finally, even when a right set out in the Bill of Rights was held to fall within the conception of due process, the protection or remedies afforded against state infringement sometimes differed from the protection or remedies provided against abridgment by the Federal Government. To give one example, in *Betts* the Court held that, although the Sixth Amendment required the appointment of counsel in all federal criminal cases in which the defendant was unable to retain an attorney, the Due Process Clause required appointment of counsel in state criminal proceedings only where "want of counsel in [the] particular case ... result[ed] in a conviction lacking in ... fundamental fairness." 316 U.S., at 473, 62 S.Ct. 1252. Similarly, in *Wolf v. Colorado,* 338 U.S. 25, 69 S.Ct. 1359, 93 L.Ed. 1782 (1949), the Court held that the "core of the Fourth Amendment" was implicit in the concept of ordered liberty and thus "enforceable against the States through the Due Process Clause" but that the exclusionary rule, which applied in federal cases, did not apply to the States. *Id*., at 27–28, 33, 69 S.Ct. 1359.

2

An alternative theory regarding the relationship between the Bill of Rights and ****3033** § 1 of the Fourteenth Amendment was ***762** championed by Justice Black. This theory held that § 1 of the Fourteenth Amendment totally incorporated all of the provisions of the Bill of Rights. See, *e.g., Adamson, supra,* at 71–72, 67 S.Ct. 1672 (Black, J.,

dissenting); *Duncan, supra,* at 166, 88 S.Ct. 1444 (Black, J., concurring). As Justice Black noted, the chief congressional proponents of the Fourteenth Amendment espoused the view that the Amendment made the Bill of Rights applicable to the States and, in so doing, overruled this Court's decision in *Barron*.[9] *adamson,* 332 u.s., AT 72, 67 S.CT. 1672 (dissENTIng opinion).[10] Nonetheless, ***763** the Court never has embraced Justice Black's "total incorporation" theory.

****3034 3**

While Justice Black's theory was never adopted, the Court eventually moved in that direction by initiating what has been called a process of "selective incorporation," *i.e.*, the Court began to hold that the Due Process Clause fully incorporates particular rights contained in the first eight Amendments. See, *e.g., Gideon v. Wainwright,* 372 U.S. 335, 341, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963); *Malloy v. Hogan,* 378 U.S. 1, 5–6, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964); *Pointer v. Texas,* 380 U.S. 400, 403–404, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965); *Washington v. Texas,* 388 U.S. 14, 18, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967); *Duncan,* 391 U.S., at 147–148, 88 S.Ct. 1444; *Benton v. Maryland,* 395 U.S. 784, 794, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969).

***764** The decisions during this time abandoned three of the previously noted characteristics of the earlier period.[11] The Court made it clear that the governing standard is not whether *any* "civilized system [can] be imagined that would not accord the particular protection." *Duncan,* 391 U.S., at 149, n. 14, 88 S.Ct. 1444. Instead, the Court inquired whether a particular Bill of Rights guarantee is fundamental to *our* scheme of ordered liberty and system of justice. *Id.*, at 149, and n. 14, 88 S.Ct. 1444; see also *id.,* at 148, 88 S.Ct. 1444 (referring to those "fundamental principles of liberty and justice which lie at the base of all *our* civil and political institutions" (emphasis added; internal quotation marks omitted)).

The Court also shed any reluctance to hold that rights guaranteed by the Bill of Rights met the requirements for protection under the Due Process Clause. The Court eventually incorporated almost all of the provisions of the Bill of Rights.[12] ***765** Only ****3035** a handful of the Bill of Rights protections remain unincorporated.[13]

Finally, the Court abandoned "the notion that the Fourteenth Amendment applies to the States only a watered-down, subjective version of the individual guarantees of the Bill of Rights," stating that it would be "incongruous" to apply different standards "depending on whether the claim was asserted in a state or federal court." *Malloy,* 378 U.S., at 10–11, 84 S.Ct. 1489 (internal quotation marks omitted). Instead, the Court decisively held that incorporated Bill of Rights protections "are all to be enforced against the States under the Fourteenth Amendment according to the same standards that protect those personal rights against federal encroachment." *Id.*, at 10, 84 S.Ct. 1489; see also *Mapp v. Ohio,* 367 U.S. 643, 655–656, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961); *Ker v. California,* 374 U.S. 23, 33–34, 83 S.Ct. 1623, 10 L.Ed.2d 726 (1963); ***766** *Aguilar v. Texas,* 378 U.S. 108, 110, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964); *Pointer,* 380 U.S., at 406, 85 S.Ct. 1065; *Duncan, supra,* at 149, 157–158, 88 S.Ct. 1444; *Benton,* 395 U.S., at 794–795, 89 S.Ct. 2056; *Wallace v. Jaffree,* 472 U.S. 38, 48–49, 105 S.Ct. 2479, 86 L.Ed.2d 29 (1985).[14]

****3036** Employing this approach, the Court overruled earlier decisions in which it had held that particular Bill of Rights guarantees or remedies did not apply to the States. See, *e.g., Mapp, supra* (overruling in part *Wolf,* 338 U.S. 25, 69 S.Ct. 1359, 93 L.Ed. 1782); *Gideon,* 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (overruling *Betts,* 316 U.S. 455, 62 S.Ct. 1252, 86 L.Ed. 1595); *Malloy, supra* (overruling *Adamson,* 332 U.S. 46, 67 S.Ct. 1672, 91 L.Ed. 1903, and *Twining,* 211 U.S. 78, 29 S.Ct. 14, 53 L.Ed. 97); *Benton, supra,* at 794, 89 S.Ct. 2056 (overruling *Palko,* 302 U.S. 319, 58 S.Ct. 149, 82 L.Ed. 288).

***767 III**

With this framework in mind, we now turn directly to the question whether the Second Amendment right to keep and bear arms is incorporated in the concept of due process. In answering that question, as just explained, we must decide whether the right to keep and bear arms is fundamental to *our* scheme of ordered liberty, *Duncan,* 391 U.S., at 149, 88 S.Ct. 1444, or as we have said in a related context, whether this right is "deeply rooted in this Nation's history and tradition," *Washington v. Glucksberg,* 521 U.S. 702, 721, 117 S.Ct. 2302, 138 L.Ed.2d 772 (1997) (internal quotation marks omitted).

A

Our decision in *Heller* points unmistakably to the answer. Self-defense is a basic right, recognized by many legal systems from ancient times to the present day, [15] and in *Heller,* we held that individual self-defense is "the *central component* " of the Second Amendment right. 554 U.S., at ——, 128 S.Ct., at 2801–2802; see also *id*., at ——, 128 S.Ct., at 2817 (stating that the "inherent right of self-defense has been central to the Second Amendment right"). Explaining that "the need for defense of self, family, and property is most acute" in the home, *ibid*., we found that this right applies to handguns because they are "the most preferred firearm in the nation to 'keep' and use for protection of one's home and family," *id*., at ——, 128 S.Ct., at 2818 (some internal quotation marks omitted); see also *id*., at ——, 128 S.Ct., at 2817 (noting that handguns are "overwhelmingly chosen by American society for [the] lawful purpose" of self-defense); *id*., at ——, 128 S.Ct., at 2818 ("[T]he American people have considered the handgun to be the quintessential self-defense weapon"). Thus, we concluded, ***768** citizens must be permitted "to use [handguns] for the core lawful purpose of self-defense." *Id*., at ——, 128 S.Ct., at 2818.

Heller makes it clear that this right is "deeply rooted in this Nation's history and tradition." *Glucksberg, supra,* at 721, 117 S.Ct. 2302 (internal quotation marks omitted). *Heller* explored the right's origins, noting that the 1689 English Bill of Rights explicitly protected a right to keep arms for self-defense, 554 U.S., at —— – ——, 128 S.Ct., at 2797–2798, and that by 1765, Blackstone was able to assert that the right to keep and bear arms was "one of the fundamental rights of Englishmen," *id*., at ——, 128 S.Ct., at 2798.

****3037** Blackstone's assessment was shared by the American colonists. As we noted in *Heller,* King George III's attempt to disarm the colonists in the 1760's and 1770's "provoked polemical reactions by Americans invoking their rights as Englishmen to keep arms." [16] *Id*., at ——, 128 S.Ct., at 2799; see also L. Levy, Origins of the Bill of Rights 137–143 (1999) (hereinafter Levy).

The right to keep and bear arms was considered no less fundamental by those who drafted and ratified the Bill of Rights. "During the 1788 ratification debates, the fear that the federal government would disarm the people in order to impose rule through a standing army or select militia was pervasive in Antifederalist rhetoric." *Heller, supra,* at ——, 128 S.Ct., at 2801 (citing Letters from the Federal Farmer III (Oct. 10, 1787), in 2 The Complete Anti–Federalist 234, 242 (H. Storing ed.1981)); see also Federal Farmer: An Additional Number of Letters to the Republican, Letter XVIII (Jan. 25, 1788), in 17 Documentary History of the Ratification of the Constitution 360, 362–363 (J. Kaminski & G. Saladino eds.1995); S. Halbrook, The Founders' Second Amendment 171–278 ***769** (2008). Federalists responded, not by arguing that the right was insufficiently important to warrant protection but by contending that the right was adequately protected by the Constitution's assignment of only limited powers to the Federal Government. *Heller, supra,* at ——, 128 S.Ct., at 2801–2802; cf. The Federalist No. 46, p. 296 (C. Rossiter ed. 1961) (J. Madison). Thus, Antifederalists and Federalists alike agreed that the right to bear arms was fundamental to the newly formed system of government. See Levy 143–149; J. Malcolm, To Keep and Bear Arms: The Origins of an Anglo–American Right 155–164 (1994). But those who were fearful that the new Federal Government would infringe traditional rights such as the right to keep and bear arms insisted on the adoption of the Bill of Rights as a condition for ratification of the Constitution. See 1 J. Elliot, The Debates in the Several State Conventions on the Adoption of the Federal Constitution 327–331 (2d ed. 1854); 3 *id.,* at 657–661; 4 *id.,* at 242–246, 248–249; see also Levy 26–34; A. Kelly & W. Harbison, The American Constitution: Its Origins and Development 110, 118 (7th ed.1991). This is surely powerful evidence that the right was regarded as fundamental in the sense relevant here.

This understanding persisted in the years immediately following the ratification of the Bill of Rights. In addition to the four States that had adopted Second Amendment analogues before ratification, nine more States adopted state constitutional provisions protecting an individual right to keep and bear arms between 1789 and 1820. *Heller, supra,* at ——, 128 S.Ct., at 2802–2804. Founding-era legal commentators confirmed the importance of the right to early Americans. St. George Tucker, for example, described the right to keep and bear arms as "the true palladium of liberty" and explained that prohibitions on the right would place liberty "on the brink of destruction." 1 Blackstone's Commentaries, Editor's App. 300 (S. Tucker ed. 1803); see also W. Rawle, A View of the Constitution of the United States of America, 125–126 (2d ed. 1829) (reprint ****3038** 2009); 3 J. Story, Commentaries on the ***770** Constitution of the United States § 1890, p. 746 (1833) ("The right of the citizens to keep and bear arms has justly been considered, as the palladium of the liberties of a republic; since it offers a

strong moral check against the usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them").

B

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By the 1850's, the perceived threat that had prompted the inclusion of the Second Amendment in the Bill of Rights—the fear that the National Government would disarm the universal militia—had largely faded as a popular concern, but the right to keep and bear arms was highly valued for purposes of self-defense. See M. Doubler, Civilian in Peace, Soldier in War 87–90 (2003); Amar, Bill of Rights 258–259. Abolitionist authors wrote in support of the right. See L. Spooner, The Unconstitutionality of Slavery 66 (1860) (reprint 1965); J. Tiffany, A Treatise on the Unconstitutionality of American Slavery 117–118 (1849) (reprint 1969). And when attempts were made to disarm "Free–Soilers" in "Bloody Kansas," Senator Charles Sumner, who later played a leading role in the adoption of the Fourteenth Amendment, proclaimed that "[n]ever was [the rifle] more needed in just self-defense than now in Kansas." The Crime Against Kansas: The Apologies for the Crime: The True Remedy, Speech of Hon. Charles Sumner in the Senate of the United States 64–65 (1856). Indeed, the 1856 Republican Party Platform protested that in Kansas the constitutional rights of the people had been "fraudulently and violently taken from them" and the "right of the people to keep and bear arms" had been "infringed." National Party Platforms 1840–1972, p. 27 (5th ed.1973). [17]

***771** After the Civil War, many of the over 180,000 African Americans who served in the Union Army returned to the States of the old Confederacy, where systematic efforts were made to disarm them and other blacks. See *Heller,* 554 U.S., at ——, 128 S.Ct., at 2810; E. Foner, Reconstruction: America's Unfinished Revolution 1863–1877, p. 8 (1988) (hereinafter Foner). The laws of some States formally prohibited African-Americans from possessing firearms. For example, a Mississippi law provided that "no freedman, free negro or mulatto, not in the military service of the United States government, and not licensed so to do by the board of police of his or her county, shall keep or carry fire-arms of any kind, or any ammunition, dirk or bowie knife." Certain Offenses of Freedmen, 1865 Miss. Laws p. 165, § 1, in 1 Documentary History of Reconstruction 289 (W. Fleming ed.1950); see also Regulations for Freedmen in Louisiana, in *id*., at 279–280; H.R. Exec. Doc. No. 70, 39th Cong., 1st Sess., 233, 236 (1866) (describing a Kentucky law); E. McPherson, The Political History of the United States of America During the Period of Reconstruction 40 (1871) (describing a Florida law); *id*., at 33 (describing an Alabama law). [18]

****3039** ***772** Throughout the South, armed parties, often consisting of ex-Confederate soldiers serving in the state militias, forcibly took firearms from newly freed slaves. In the first session of the 39th Congress, Senator Henry Wilson told his colleagues: "In Mississippi rebel State forces, men who were in the rebel armies, are traversing the State, visiting the freedmen, disarming them, perpetrating murders and outrages upon them; and the same things are done in other sections of the country." 39th Cong. Globe 40 (1865). The Report of the Joint Committee on Reconstruction—which was widely reprinted in the press and distributed by Members of the 39th Congress to their constituents shortly after Congress approved the Fourteenth Amendment [19]—CONTAINED NUMEROUS Examples of such abuses. see, *e.g.,* joint Committee on Reconstruction, H.R.Rep. No. 30, 39th Cong., 1st Sess., pt. 2, pp. 219, 229, 272, pt. 3, pp. 46, 140, pt. 4, pp. 49–50 (1866); see also S. Exec. Doc. No. 2, 39th Cong., 1st Sess., 23–24, 26, 36 (1865). In one town, the "marshal [took] all arms from returned colored soldiers, and [was] very prompt in shooting the blacks whenever an opportunity occur[red]." H.R. Exec. Doc. No. 70, at 238 (internal quotation marks omitted). As Senator Wilson put it during the debate on a failed proposal to disband Southern militias: "There is one unbroken chain of testimony from all people that are loyal to this country, that the greatest outrages are perpetrated by armed men who go up and down the country searching houses, disarming people, committing outrages of every kind and description." 39th Cong. Globe 915 (1866). [20]

***773** Union Army commanders took steps to secure the right of all citizens to keep and bear arms, [21] but the 39th Congress concluded ****3040** that legislative action was necessary. Its efforts to safeguard the right to keep and bear arms demonstrate that the right was still recognized to be fundamental.

The most explicit evidence of Congress' aim appears in § 14 of the Freedmen's Bureau Act of 1866, which provided that "the right ... to have full and equal benefit of all laws and

proceedings concerning personal liberty, personal security, and the acquisition, enjoyment, and disposition of estate, real and personal, *including the constitutional right to bear arms,* shall be secured to and enjoyed by all the citizens ... without respect to race or color, or previous condition of slavery." 14 Stat. 176–177 (emphasis added). [22] Section 14 thus explicitly guaranteed that "all the citizens," black and white, would have "the constitutional right to bear arms."

***774** The Civil Rights Act of 1866, 14 Stat. 27, which was considered at the same time as the Freedmen's Bureau Act, similarly sought to protect the right of all citizens to keep and bear arms. [23] Section 1 of the Civil Rights Act guaranteed the "full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens." *Ibid*. This language was virtually identical to language in § 14 of the Freedmen's Bureau Act, 14 Stat. 176–177 ("the right ... to have full and equal benefit of all laws and proceedings concerning personal liberty, personal security, and the acquisition, enjoyment, and disposition of estate, real and personal"). And as noted, the latter provision went on to explain that one of the "laws and proceedings concerning personal liberty, personal security, and the acquisition, enjoyment, and disposition of estate, real and personal" was "the constitutional right to bear arms." *Ibid.* Representative Bingham believed that the Civil Rights Act protected the same rights as enumerated in the Freedmen's Bureau bill, which of course explicitly mentioned the right to keep ***775** and bear arms. 39th Cong. Globe 1292. The unavoidable conclusion is that the Civil Rights Act, like the Freedmen's Bureau Act, aimed to protect " the constitutional ****3041** right to bear arms" and not simply to prohibit discrimination. See also Amar, Bill of Rights 264–265 (noting that one of the "core purposes of the Civil Rights Act of 1866 and of the Fourteenth Amendment was to redress the grievances" of freedmen who had been stripped of their arms and to "affirm the full and equal right of every citizen to self-defense").

Congress, however, ultimately deemed these legislative remedies insufficient. Southern resistance, Presidential vetoes, and this Court's pre-Civil-War precedent persuaded Congress that a constitutional amendment was necessary to provide full protection for the rights of blacks. [24] Today, it is generally accepted that the Fourteenth Amendment was understood to provide a constitutional basis for protecting the rights set out in the Civil Rights Act of 1866. See *General Building Contractors Assn., Inc. v. Pennsylvania,* 458 U.S. 375, 389, 102 S.Ct. 3141, 73 L.Ed.2d 835 (1982); see also Amar, Bill of Rights 187; Calabresi, Two Cheers for Professor Balkin's Originalism, 103 Nw. U.L.Rev. 663, 669–670 (2009).

In debating the Fourteenth Amendment, the 39th Congress referred to the right to keep and bear arms as a fundamental right deserving of protection. Senator Samuel Pomeroy described three "indispensable" "safeguards of liberty under our form of Government." 39th Cong. Globe 1182. One of these, he said, was the right to keep and bear arms:

> "Every man ... should have the right to bear arms for the defense of himself and family and his homestead. And if the cabin door of the freedman is broken open ***776** and the intruder enters for purposes as vile as were known to slavery, then should a well-loaded musket be in the hand of the occupant to send the polluted wretch to another world, where his wretchedness will forever remain complete." *Ibid*.

Even those who thought the Fourteenth Amendment unnecessary believed that blacks, as citizens, "have equal right to protection, and to keep and bear arms for self-defense." *Id*., at 1073 (Sen. James Nye); see also Foner 258–259. [25]

Evidence from the period immediately following the ratification of the Fourteenth Amendment only confirms that the right to keep and bear arms was considered fundamental. In an 1868 speech addressing the disarmament of freedmen, Representative Stevens emphasized the necessity of the right: "Disarm a community and you rob them of the means of defending life. Take away their weapons of defense and you take away the inalienable right of defending liberty." "The fourteenth amendment, now so happily adopted, settles the whole question." Cong. Globe, 40th Cong., 2d Sess., 1967. And in debating the Civil Rights Act of 1871, Congress routinely ****3042** referred to the right to keep and bear arms and decried the continued disarmament of blacks in the South. See Halbrook, Freedmen 120–131. Finally, legal commentators from the period emphasized the fundamental nature of the right. See, *e.g.,* T. Farrar, Manual of the Constitution of the United States of America § 118, p. 145 (1867) (reprint 1993); ***777** J. Pomeroy, An Introduction to the Constitutional Law of the United States § 239, pp. 152–153 (3d ed. 1875).

The right to keep and bear arms was also widely protected by state constitutions at the time when the Fourteenth Amendment was ratified. In 1868, 22 of the 37 States

in the Union had state constitutional provisions explicitly protecting the right to keep and bear arms. See Calabresi & Agudo, Individual Rights Under State Constitutions when the Fourteenth Amendment was Ratified in 1868: What Rights Are Deeply Rooted in American History and Tradition? 87 Texas L.Rev. 7, 50 (2008). [26] Quite a few of these state constitutional guarantees, moreover, explicitly protected the right to keep and bear arms as an individual right to self-defense. See Ala. Const., Art. I, § 28 (1868); Conn. Const., Art. I, § 17 (1818); Ky. Const., Art. XIII, § 25 (1850); Mich. Const., Art. XVIII, § 7 (1850); Miss. Const., Art. I, § 15 (1868); Mo. Const., Art. I, § 8 (1865); Tex. Const., Art. I, § 13 (1869); see also Mont. Const., Art. III, § 13 (1889); Wash. Const., Art. I, § 24 (1889); Wyo. Const., Art. I, § 24 (1889); see also *State v. McAdams,* 714 P.2d 1236, 1238 (Wyo.1986). What is more, state constitutions adopted during the Reconstruction era by former Confederate States included a right to keep and bear arms. See, *e.g.,* Ark. Const., Art. I, § 5 (1868); Miss. Const., Art. I, § 15 (1868); Tex. Const., Art. I, § 13 (1869). A clear majority of the States in 1868, therefore, recognized the right to keep and bear arms as being among the foundational rights necessary to our system of Government. [27]

***778** In sum, it is clear that the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty.

2

Despite all this evidence, municipal respondents contend that Congress, in the years immediately following the Civil War, merely sought to outlaw "discriminatory measures taken against freedmen, which it addressed by adopting a non-discrimination principle" and that even an outright ban on the possession of firearms was regarded as acceptable, "so long as it was not done in a discriminatory manner." Brief for Municipal Respondents 7. They argue that Members of Congress overwhelmingly viewed § 1 of the Fourteenth Amendment "as an antidiscrimination rule," and they cite statements to the effect ****3043** that the section would outlaw discriminatory measures. *Id*., at 64. This argument is implausible.

First, while § 1 of the Fourteenth Amendment contains "an antidiscrimination rule," namely, the Equal Protection Clause, municipal respondents can hardly mean that § 1 does no more than prohibit discrimination. If that were so, then the First Amendment, as applied to the States, would not prohibit nondiscriminatory abridgments of the rights to freedom of speech or freedom of religion; the Fourth Amendment, as applied to the States, would not prohibit all unreasonable searches and seizures but only discriminatory searches and seizures—and so on. We assume that this is not municipal respondents' view, so what they must mean is that the Second Amendment should be singled out for ***779** special—and specially unfavorable—treatment. We reject that suggestion.

Second, municipal respondents' argument ignores the clear terms of the Freedmen's Bureau Act of 1866, which acknowledged the existence of the right to bear arms. If that law had used language such as "the equal benefit of laws concerning the bearing of arms," it would be possible to interpret it as simply a prohibition of racial discrimination. But § 14 speaks of and protects "the constitutional right to bear arms," an unmistakable reference to the right protected by the Second Amendment. And it protects the "full and equal benefit" of this right in the States. 14 Stat. 176–177. It would have been nonsensical for Congress to guarantee the full and equal benefit of a constitutional right that does not exist.

Third, if the 39th Congress had outlawed only those laws that discriminate on the basis of race or previous condition of servitude, African-Americans in the South would likely have remained vulnerable to attack by many of their worst abusers: the state militia and state peace officers. In the years immediately following the Civil War, a law banning the possession of guns by all private citizens would have been nondiscriminatory only in the formal sense. Any such law—like the Chicago and Oak Park ordinances challenged here—presumably would have permitted the possession of guns by those acting under the authority of the State and would thus have left firearms in the hands of the militia and local peace officers. And as the Report of the Joint Committee on Reconstruction revealed, see *supra,* at 3039, those groups were widely involved in harassing blacks in the South.

Fourth, municipal respondents' purely antidiscrimination theory of the Fourteenth Amendment disregards the plight of whites in the South who opposed the Black Codes. If the 39th Congress and the ratifying public had simply prohibited racial discrimination with respect to the bearing of arms, opponents of the Black Codes would have been left without ***780** the means of self-defense—as had abolitionists in Kansas in the 1850's.

Fifth, the 39th Congress' response to proposals to disband and disarm the Southern militias is instructive. Despite recognizing and deploring the abuses of these militias, the 39th Congress balked at a proposal to disarm them. See 39th Cong. Globe 914; Halbrook, Freedmen, *supra,* 20–21. Disarmament, it was argued, would violate the members' right to bear arms, and it was ultimately decided to disband the militias but not to disarm their members. See Act of Mar. 2, 1867, § 6, 14 Stat. 485, 487; Halbrook, Freedmen 68–69; Cramer 858–861. It cannot be doubted that the right to bear arms was regarded as a substantive guarantee, not a prohibition that could be ignored so long as the ****3044** States legislated in an evenhanded manner.

IV

Municipal respondents' remaining arguments are at war with our central holding in *Heller* : that the Second Amendment protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home. Municipal respondents, in effect, ask us to treat the right recognized in *Heller* as a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees that we have held to be incorporated into the Due Process Clause.

Municipal respondents' main argument is nothing less than a plea to disregard 50 years of incorporation precedent and return (presumably for this case only) to a bygone era. Municipal respondents submit that the Due Process Clause protects only those rights " 'recognized by all temperate and civilized governments, from a deep and universal sense of [their] justice.' " Brief for Municipal Respondents 9 (quoting *Chicago, B. & Q.R. Co.,* 166 U.S., at 238, 17 S.Ct. 581). According to municipal respondents, if it is possible to imagine *any* civilized legal system that does not recognize a particular right, then the Due Process Clause does not make that right binding ***781** on the States. Brief for Municipal Respondents 9. Therefore, the municipal respondents continue, because such countries as England, Canada, Australia, Japan, Denmark, Finland, Luxembourg, and New Zealand either ban or severely limit handgun ownership, it must follow that no right to possess such weapons is protected by the Fourteenth Amendment. *Id*., at 21–23.

This line of argument is, of course, inconsistent with the long-established standard we apply in incorporation cases. See *Duncan,* 391 U.S., at 149, and n. 14, 88 S.Ct. 1444. And the present-day implications of municipal respondents' argument are stunning. For example, many of the rights that our Bill of Rights provides for persons accused of criminal offenses are virtually unique to this country.[28] If *our* understanding of the right to a jury trial, the right against self-incrimination, ***782** and the right to counsel were necessary attributes of *any* civilized country, it would follow that the United States is the only civilized Nation in the world.

****3045** Municipal respondents attempt to salvage their position by suggesting that their argument applies only to substantive as opposed to procedural rights. Brief for Municipal Respondents 10, n. 3. But even in this trimmed form, municipal respondents' argument flies in the face of more than a half century of precedent. For example, in *Everson v. Board of Ed. of Ewing,* 330 U.S. 1, 8, 67 S.Ct. 504, 91 L.Ed. 711 (1947), the Court held that the Fourteenth Amendment incorporates the Establishment Clause of the First Amendment. Yet several of the countries that municipal respondents recognize as civilized have established state churches.[29] If we were to adopt municipal respondents' theory, all of this Court's Establishment Clause precedents involving actions taken by state and local governments would go by the boards.

Municipal respondents maintain that the Second Amendment differs from all of the other provisions of the Bill of Rights because it concerns the right to possess a deadly implement and thus has implications for public safety. Brief for Municipal Respondents 11. And they note that there is intense disagreement on the question whether the private ***783** possession of guns in the home increases or decreases gun deaths and injuries. *Id*., at 11, 13–17.

The right to keep and bear arms, however, is not the only constitutional right that has controversial public safety implications. All of the constitutional provisions that impose restrictions on law enforcement and on the prosecution of crimes fall into the same category. See, *e.g.*, *Hudson v. Michigan,* 547 U.S. 586, 591, 126 S.Ct. 2159, 165 L.Ed.2d 56 (2006) ("The exclusionary rule generates 'substantial social costs,' *United States v. Leon,* 468 U.S. 897, 907, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), which sometimes include setting the guilty free and the dangerous at large"); *Barker v. Wingo,* 407 U.S. 514, 522, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972) (reflecting on the serious consequences of dismissal for a speedy trial violation, which means "a defendant who may be guilty of a serious crime will go free"); *Miranda*

v. Arizona, 384 U.S. 436, 517, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) (Harlan, J., dissenting); *id.,* at 542, 86 S.Ct. 1602 (White, J., dissenting) (objecting that the Court's rule "[i]n some unknown number of cases ... will return a killer, a rapist or other criminal to the streets ... to repeat his crime"); *Mapp,* 367 U.S., at 659, 81 S.Ct. 1684. Municipal respondents cite no case in which we have refrained from holding that a provision of the Bill of Rights is binding on the States on the ground that the right at issue has disputed public safety implications.

We likewise reject municipal respondents' argument that we should depart from our established incorporation methodology on the ground that making the ****3046** Second Amendment binding on the States and their subdivisions is inconsistent with principles of federalism and will stifle experimentation. Municipal respondents point out—quite correctly—that conditions and problems differ from locality to locality and that citizens in different jurisdictions have divergent views on the issue of gun control. Municipal respondents therefore urge us to allow state and local governments to enact any gun control law that they deem to be reasonable, including a complete ban on the possession of handguns in the home for self-defense. Brief for Municipal Respondents 18–20, 23.

***784** There is nothing new in the argument that, in order to respect federalism and allow useful state experimentation, a federal constitutional right should not be fully binding on the States. This argument was made repeatedly and eloquently by Members of this Court who rejected the concept of incorporation and urged retention of the two-track approach to incorporation. Throughout the era of "selective incorporation," Justice Harlan in particular, invoking the values of federalism and state experimentation, fought a determined rearguard action to preserve the two-track approach. See, *e.g., Roth v. United States,* 354 U.S. 476, 500–503, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957) (Harlan, J., concurring in result in part and dissenting in part); *Mapp, supra,* at 678–680, 81 S.Ct. 1684 (Harlan, J., dissenting); *Gideon,* 372 U.S., at 352, 83 S.Ct. 792 (Harlan, J., concurring); *Malloy,* 378 U.S., at 14–33, 84 S.Ct. 1489 (Harlan, J., dissenting); *Pointer,* 380 U.S., at 408–409, 85 S.Ct. 1065 (Harlan, J., concurring in result); *Washington,* 388 U.S., at 23–24, 87 S.Ct. 1920 (Harlan, J., concurring in result); *Duncan,* 391 U.S., at 171–193, 88 S.Ct. 1444 (Harlan, J., dissenting); *Benton,* 395 U.S., at 808–809, 89 S.Ct. 2056 (Harlan, J., dissenting); *Williams v. Florida,* 399 U.S. 78, 117, 90 S.Ct. 1893, 26 L.Ed.2d 446 (1970) (Harlan, J., dissenting in part and concurring in result in part).

Time and again, however, those pleas failed. Unless we turn back the clock or adopt a special incorporation test applicable only to the Second Amendment, municipal respondents' argument must be rejected. Under our precedents, if a Bill of Rights guarantee is fundamental from an American perspective, then, unless *stare decisis* counsels otherwise, [30] ***785** that guarantee is fully binding on the states and thus *limits* (but by no means eliminates) their ability to devise solutions to social problems that suit local needs and values. As noted by the 38 States that have appeared in this case as *amici* supporting petitioners, "[s]tate and local experimentation with reasonable firearms regulations will continue under the Second Amendment." Brief for State of Texas et al. as *Amici Curiae* 23.

****3047** Municipal respondents and their *amici* complain that incorporation of the Second Amendment right will lead to extensive and costly litigation, but this argument applies with even greater force to constitutional rights and remedies that have already been held to be binding on the States. Consider the exclusionary rule. Although the exclusionary rule "is not an individual right," *Herring v. United States,* 555 U.S. 135, 129 S.Ct. 695, 700, 172 L.Ed.2d 496 (2009), but a "judicially created rule," *id.*, at ——, 128 S.Ct., at 2789, this Court made the rule applicable to the States. See *Mapp, supra,* at 660, 81 S.Ct. 1684. The exclusionary rule is said to result in "tens of thousands of contested suppression motions each year." Stuntz, The Virtues and Vices of the Exclusionary Rule, 20 Harv. J. Law & Pub. Pol'y, 443, 444 (1997).

Municipal respondents assert that, although most state constitutions protect firearms rights, state courts have held that these rights are subject to "interest-balancing" and have sustained a variety of restrictions. Brief for Municipal Respondents 23–31. In *Heller,* however, we expressly rejected the argument that the scope of the Second Amendment right should be determined by judicial interest balancing, 554 U.S., at —— – ——, 128 S.Ct., at 2820–2821, and this Court decades ago ***786** abandoned "the notion that the Fourteenth Amendment applies to the States only a watered-down, subjective version of the individual guarantees of the Bill of Rights," *Malloy, supra,* at 10–11, 84 S.Ct. 1489 (internal quotation marks omitted).

As evidence that the Fourteenth Amendment has not historically been understood to restrict the authority of the States to regulate firearms, municipal respondents and supporting *amici* cite a variety of state and local firearms

laws that courts have upheld. But what is most striking about their research is the paucity of precedent sustaining bans comparable to those at issue here and in *Heller*. Municipal respondents cite precisely one case (from the late 20th century) in which such a ban was sustained. See Brief for Municipal Respondents 26–27 (citing *Kalodimos v. Morton Grove,* 103 Ill.2d 483, 83 Ill.Dec. 308, 470 N.E.2d 266 (1984)); see also Reply Brief for Respondents NRA et al. 23, n. 7 (asserting that no other court has ever upheld a complete ban on the possession of handguns). It is important to keep in mind that *Heller,* while striking down a law that prohibited the possession of handguns in the home, recognized that the right to keep and bear arms is not "a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." 554 U.S., at ——, 128 S.Ct., at 2816. We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as "prohibitions on the possession of firearms by felons and the mentally ill," "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." *Id*., at —— – ——, 128 S.Ct., at 2816–2817. We repeat those assurances here. Despite municipal respondents' doomsday proclamations, incorporation does not imperil every law regulating firearms.

Municipal respondents argue, finally, that the right to keep and bear arms is unique among the rights set out in the first eight Amendments "because the reason for codifying the Second Amendment (to protect the militia) differs from the ***787** purpose (primarily, to use firearms to engage in self-defense) that is claimed to make the right implicit in the concept of ordered liberty." Brief for Municipal Respondents 36–37. Municipal respondents suggest that the Second Amendment right differs ****3048** from the rights heretofore incorporated because the latter were "valued for [their] own sake." *Id*., at 33. But we have never previously suggested that incorporation of a right turns on whether it has intrinsic as opposed to instrumental value, and quite a few of the rights previously held to be incorporated—for example the right to counsel and the right to confront and subpoena witnesses—are clearly instrumental by any measure. Moreover, this contention repackages one of the chief arguments that we rejected in *Heller, i.e.,* that the scope of the Second Amendment right is defined by the immediate threat that led to the inclusion of that right in the Bill of Rights. In *Heller,* we recognized that the codification of this right was prompted by fear that the Federal Government would disarm and thus disable the militias, but we rejected the suggestion that the right was valued only as a means of preserving the militias. 554 U.S., at ——, 128 S.Ct., at 2801–2802. On the contrary, we stressed that the right was also valued because the possession of firearms was thought to be essential for self-defense. As we put it, self-defense was " the *central component* of the right itself." *Ibid*.

V

A

We turn, finally, to the two dissenting opinions. Justice STEVENS' eloquent opinion covers ground already addressed, and therefore little need be added in response. Justice STEVENS would " 'ground the prohibitions against state action squarely on due process, without intermediate reliance on any of the first eight Amendments.' " *Post,* at 3092 (quoting *Malloy,* 378 U.S., at 24, 84 S.Ct. 1489 (Harlan, J., dissenting)). The question presented in this case, in his view, "is whether the particular ***788** right asserted by petitioners applies to the States because of the Fourteenth Amendment itself, standing on its own bottom." *Post,* at 3103. He would hold that "[t]he rights protected against state infringement by the Fourteenth Amendment's Due Process Clause need not be identical in shape or scope to the rights protected against Federal Government infringement by the various provisions of the Bill of Rights." *Post,* at 3093.

As we have explained, the Court, for the past half century, has moved away from the two-track approach. If we were now to accept Justice STEVENS' theory across the board, decades of decisions would be undermined. We assume that this is not what is proposed. What is urged instead, it appears, is that this theory be revived solely for the individual right that *Heller* recognized, over vigorous dissents.

The relationship between the Bill of Rights' guarantees and the States must be governed by a single, neutral principle. It is far too late to exhume what Justice Brennan, writing for the Court 46 years ago, derided as "the notion that the Fourteenth Amendment applies to the States only a watered-down, subjective version of the individual guarantees of the Bill of Rights." *Malloy, supra,* at 10–11, 84 S.Ct. 1489 (internal quotation marks omitted).

B

Justice BREYER's dissent makes several points to which we briefly respond. To begin, while there is certainly room for disagreement about *Heller* 's analysis of the history of the right to keep and bear arms, nothing written since *Heller* persuades us to reopen the question there decided. Few other questions of original meaning have been as thoroughly explored.

Justice BREYER's conclusion that the Fourteenth Amendment does not incorporate ****3049** the right to keep and bear arms appears to rest primarily on four factors: First, "there is no popular consensus" that the right is fundamental, *post,* at ***789** 3124; second, the right does not protect minorities or persons neglected by those holding political power, *post,* at 3125; third, incorporation of the Second Amendment right would "amount to a significant incursion on a traditional and important area of state concern, altering the constitutional relationship between the States and the Federal Government" and preventing local variations, *post,* at 3125; and fourth, determining the scope of the Second Amendment right in cases involving state and local laws will force judges to answer difficult empirical questions regarding matters that are outside their area of expertise, *post,* at 3126 – 3128. Even if we believed that these factors were relevant to the incorporation inquiry, none of these factors undermines the case for incorporation of the right to keep and bear arms for self-defense.

First, we have never held that a provision of the Bill of Rights applies to the States only if there is a "popular consensus" that the right is fundamental, and we see no basis for such a rule. But in this case, as it turns out, there is evidence of such a consensus. An *amicus* brief submitted by 58 Members of the Senate and 251 Members of the House of Representatives urges us to hold that the right to keep and bear arms is fundamental. See Brief for Senator Kay Bailey Hutchison et al. as *Amici Curiae* 4. Another brief submitted by 38 States takes the same position. Brief for State of Texas et al. as *Amici Curiae* 6.

Second, petitioners and many others who live in high-crime areas dispute the proposition that the Second Amendment right does not protect minorities and those lacking political clout. The plight of Chicagoans living in high-crime areas was recently highlighted when two Illinois legislators representing Chicago districts called on the Governor to deploy the Illinois National Guard to patrol the City's streets.[31] The legislators noted that the number of Chicago homicide victims during the current year equaled the number of ***790** American soldiers killed during that same period in Afghanistan and Iraq and that 80% of the Chicago victims were black.[32] *AMICI* SUPPORTIng incorporation of the right to keep and bear arms contend that the right is especially important for women and members of other groups that may be especially vulnerable to violent crime.[33] If, as petitioners believe, their safety and the safety of other law-abiding members of the community would be enhanced by the possession of handguns in the home for self-defense, then the Second Amendment right protects the rights of minorities and other residents of high-crime areas whose needs are not being met by elected public officials.

****3050** Third, Justice BREYER is correct that incorporation of the Second Amendment right will to some extent limit the legislative freedom of the States, but this is always true when a Bill of Rights provision is incorporated. Incorporation always restricts experimentation and local variations, but that has not stopped the Court from incorporating virtually every other provision of the Bill of Rights. "[T]he enshrinement of constitutional rights necessarily takes certain policy choices off the table." *Heller,* 554 U.S., at ——, 128 S.Ct., at 2822. This conclusion is no more remarkable with respect to the Second Amendment than it is with respect to all the other limitations on state power found in the Constitution.

Finally, Justice BREYER is incorrect that incorporation will require judges to assess the costs and benefits of firearms ***791** restrictions and thus to make difficult empirical judgments in an area in which they lack expertise. As we have noted, while his opinion in *Heller* recommended an interest-balancing test, the Court specifically rejected that suggestion. See *supra,* at 3046 – 3047. "The very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is *really worth* insisting upon." *Heller, supra,* at ——, 128 S.Ct., at 2821.

* * *

In *Heller,* we held that the Second Amendment protects the right to possess a handgun in the home for the purpose of self-defense. Unless considerations of *stare decisis* counsel otherwise, a provision of the Bill of Rights that protects

a right that is fundamental from an American perspective applies equally to the Federal Government and the States. See *Duncan,* 391 U.S., at 149, and n. 14, 88 S.Ct. 1444. We therefore hold that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings.

It is so ordered.

Justice SCALIA, concurring.

I join the Court's opinion. Despite my misgivings about Substantive Due Process as an original matter, I have acquiesced in the Court's incorporation of certain guarantees in the Bill of Rights "because it is both long established and narrowly limited." *Albright v. Oliver,* 510 U.S. 266, 275, 114 S.Ct. 807, 127 L.Ed.2d 114 (1994) (SCALIA, J., concurring). This case does not require me to reconsider that view, since straightforward application of settled doctrine suffices to decide it.

I write separately only to respond to some aspects of Justice STEVENS' dissent. Not that aspect which disagrees with the majority's application of our precedents to this case, ***792** which is fully covered by the Court's opinion. But much of what Justice STEVENS writes is a broad condemnation of the theory of interpretation which underlies the Court's opinion, a theory that makes the traditions of our people paramount. He proposes a different theory, which he claims is more "cautiou[s]" and respectful of proper limits on the judicial role. *Post,* at 3119 – 3120. It is that claim I wish to address.

I

A

After stressing the substantive dimension of what he has renamed the "liberty ****3051** clause," *post,* at 3090 – 3091, [1] Justice STEVENS proceeds to urge readoption of the theory of incorporation articulated in *Palko v. Connecticut,* 302 U.S. 319, 325, 58 S.Ct. 149, 82 L.Ed. 288 (1937), see *post,* at 3096 – 3099. But in fact he does not favor application of that theory at all. For whether *Palko* requires only that "a fair and enlightened system of justice would be impossible without" the right sought to be incorporated, 302 U.S., at 325, 58 S.Ct. 149, or requires in addition that the right be rooted in the "traditions and conscience of our people," *ibid.* (internal quotation marks omitted), many of the rights Justice STEVENS thinks are incorporated could not past muster under either test: abortion, *post,* at 3091–3092 (citing *Planned Parenthood of Southeastern Pa. v. Casey,* 505 U.S. 833, 847, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992)); homosexual sodomy, *post,* at 3097 (citing *Lawrence v. Texas,* 539 U.S. 558, 572, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003)); the right to have excluded from criminal trials evidence obtained in violation of the Fourth Amendment, *post,* at 3098 (citing *Mapp v. Ohio,* 367 U.S. 643, 650, 655–657, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961)); and the right to teach one's ***793** children foreign languages, *post,* at 3091 (citing *Meyer v. Nebraska,* 262 U.S. 390, 399–403, 43 S.Ct. 625, 67 L.Ed. 1042 (1923)), among others.

That Justice STEVENS is not applying any version of *Palko* is clear from comparing, on the one hand, the rights he believes *are* covered, with, on the other hand, his conclusion that the right to keep and bear arms is *not* covered. Rights that pass his test include not just those "relating to marriage, procreation, contraception, family relationships, and child rearing and education," but also rights against "[g]overnment action that shocks the conscience, pointlessly infringes settled expectations, trespasses into sensitive private realms or life choices without adequate justification, [or] perpetrates gross injustice." *Post,* at 3101 (internal quotation marks omitted). Not *all* such rights are in, however, since only "*some* fundamental aspects of personhood, dignity, and the like" are protected, *post,* at —— (emphasis added). Exactly what is covered is not clear. But whatever else is in, he *knows* that the right to keep and bear arms is out, despite its being as "deeply rooted in this Nation's history and tradition," *Washington v. Glucksberg,* 521 U.S. 702, 721, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997) (internal quotation marks omitted), as a right can be, see *District of Columbia v. Heller,* 554 U.S. 570, —— – ——, —— – 128, —— – ——, 128 S.Ct. 2783, 2798–2799, 2801–2804, 2809–2812, 171 L.Ed.2d 637 (2008). I can find no other explanation for such certitude except that Justice STEVENS, despite his forswearing of "personal and private notions," *post,* at 3100 (internal quotation marks omitted), deeply believes it should be out.

The subjective nature of Justice STEVENS' standard is also apparent from his claim that it is the courts' prerogative —indeed their *duty*—to update the Due Process Clause so that it encompasses new freedoms the Framers were too narrow-minded to imagine, *post,* at 3098 – 3099, and n. 21.

Courts, he proclaims, must "do justice to [the Clause's] urgent call and its open texture" by exercising the "interpretive discretion the latter embodies." *Post,* ****3052** at 3099 – 3100. (Why the *people* are not up to the task of deciding what new rights to ***794** protect, even though it is *they* who are authorized to make changes, see U.S. Const., Art. V, is never explained.[2]) AND IT WOULD BE "judicial abdication" for a judge to "tur[n] his back" on *his* task of determining what the Fourteenth Amendment covers by "outsourc[ing]" the job to "historical sentiment," *post,* at 3099—that is, by being guided by what the American people throughout our history have thought. It is only we judges, exercising our "own reasoned judgment," *post,* at 3096, who can be entrusted with deciding the Due Process Clause's scope—which rights serve the Amendment's "central values," *post,* at 3101—which basically means picking the rights we want to protect and discarding those we do not.

B

Justice STEVENS resists this description, insisting that his approach provides plenty of "guideposts" and "constraints" to keep courts from "injecting excessive subjectivity" into the process.[3] *Post,* at 3099 – 3100. Plenty indeed—and ***795** that alone is a problem. The ability of omnidirectional guideposts to constrain is inversely proportional to their number. But even individually, each lodestar or limitation he lists either is incapable of restraining judicial whimsy or cannot be squared with the precedents he seeks to preserve.

He begins with a brief nod to history, *post,* at 3099 – 3100, but as he has just made clear, he thinks historical inquiry unavailing, *post,* at 3098 – 3099. Moreover, trusting the meaning of the Due Process Clause to what has historically been protected is circular, see *post,* at 3098 – 3099, since that would mean no *new* rights could get in.

Justice STEVENS moves on to the "most basic" constraint on subjectivity his theory offers: that he would "esche[w] attempts to provide any all-purpose, top-down, totalizing theory of 'liberty.' " *Post,* at 3100. The notion that the absence of a coherent theory of the Due Process Clause will somehow *curtail* judicial caprice is at war with reason. Indeterminacy means opportunity for courts to impose whatever rule they like; it is the problem, not the solution. The idea that interpretive pluralism would *reduce* courts' ability to impose their will on the ignorant masses is not merely naive, but absurd. If there are no right answers, there are no wrong answers either.

Justice STEVENS also argues that requiring courts to show "respect for the ****3053** democratic process" should serve as a constraint. *Post,* at 3101. That is true, but Justice STEVENS would have them show respect in an extraordinary manner. In his view, if a right "is already being given careful consideration in, and subjected to ongoing calibration by, the States, judicial enforcement may not be appropriate." *Ibid.* In other words, a right, such as the right to keep and bear arms, that has long been recognized but on which the States are considering restrictions, apparently deserves *less* protection, while a privilege the political branches (instruments of the democratic process) have withheld entirely and continue to withhold, deserves *more*. That topsy-turvy approach ***796** conveniently accomplishes the objective of ensuring that the rights this Court held protected in *Casey, Lawrence,* and other such cases fit the theory—but at the cost of insulting rather than respecting the democratic process.

The next constraint Justice STEVENS suggests is harder to evaluate. He describes as "an important tool for guiding judicial discretion" "sensitivity to the interaction between the intrinsic aspects of liberty and the practical realities of contemporary society." *Post,* at 3101. I cannot say whether that sensitivity will really guide judges because I have no idea what it is. Is it some sixth sense instilled in judges when they ascend to the bench? Or does it mean judges are more constrained when they agonize about the cosmic conflict between liberty and its potentially harmful consequences? Attempting to give the concept more precision, Justice STEVENS explains that "sensitivity is an aspect of a deeper principle: the need to approach our work with humility and caution." *Ibid.* Both traits are undeniably admirable, though what relation they bear to sensitivity is a mystery. But it makes no difference, for the first case Justice STEVENS cites in support, see *ibid., Casey,* 505 U.S., at 849, 112 S.Ct. 2791, dispels any illusion that he has a meaningful form of judicial modesty in mind.

Justice STEVENS offers no examples to illustrate the next constraint: *stare decisis, post,* at 3102. But his view of it is surely not very confining, since he holds out as a "canonical" exemplar of the proper approach, see *post,* at 3097, 3118, *Lawrence,* which overruled a case decided a mere 17 years earlier, *Bowers v. Hardwick,* 478 U.S. 186, 106 S.Ct. 2841, 92 L.Ed.2d 140 (1986), see 539 U.S., at 578, 123 S.Ct. 2472 (it "was not correct when it was decided, and it is

not correct today"). Moreover, Justice STEVENS would apply that constraint unevenly: He apparently approves those Warren Court cases that adopted jot-for-jot incorporation of procedural protections for criminal defendants, *post,* at 3094, but would abandon those Warren Court rulings that undercut his ***797** approach to substantive rights, on the basis that we have "cut back" on cases from that era before, *post,* at 3094 – 3095.

Justice STEVENS also relies on the requirement of a "careful description of the asserted fundamental liberty interest" to limit judicial discretion. *Post,* at 3102 (internal quotation marks omitted). I certainly agree with that requirement, see *Reno v. Flores,* 507 U.S. 292, 302, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993), though some cases Justice STEVENS approves have not applied it seriously, see, *e.g., Lawrence, supra,* at 562, 123 S.Ct. 2472 ("The instant case involves liberty of the person both in its spatial and in its more transcendent dimensions"). But if the "careful description" requirement is used in the manner we have hitherto employed, then the enterprise of determining the Due Process Clause's "conceptual core," *post,* at 3101, is a waste of time. In the cases he cites we sought a careful, specific description of the right at issue in order to determine *whether that right, thus narrowly defined, was* ****3054** *fundamental*. See, *e.g., Glucksberg,* 521 U.S., at 722–728, 117 S.Ct. 2258; *Reno, supra,* at 302–306, 113 S.Ct. 1439; *Collins v. Harker Heights,* 503 U.S. 115, 125–129, 112 S.Ct. 1061, 117 L.Ed.2d 261 (1992); *Cruzan v. Director, Mo. Dept. of Health,* 497 U.S. 261, 269–279, 110 S.Ct. 2841, 111 L.Ed.2d 224 (1990); see also *Vacco v. Quill,* 521 U.S. 793, 801–808, 117 S.Ct. 2293, 138 L.Ed.2d 834 (1997). The threshold step of defining the asserted right with precision is entirely unnecessary, however, if (as Justice STEVENS maintains) the "conceptual core" of the "liberty clause," *post,* at 3101, includes a number of capacious, hazily defined categories. There is no need to define the right with much precision in order to conclude that it pertains to the plaintiff's "ability independently to define [his] identity," his "right to make certain unusually important decisions that will affect his own, or his family's, destiny," or some aspect of his "[s]elf-determination, bodily integrity, freedom of conscience, intimate relationships, political equality, dignity [or] respect." *Ibid.* (internal quotation marks omitted). Justice STEVENS must therefore have in mind some other use for the careful-description ***798** requirement—perhaps just as a means of ensuring that courts "procee[d] slowly and incrementally," *post,* at 3102. But that could be achieved just as well by having them draft their opinions in longhand. [4]

II

If Justice STEVENS' account of the constraints of his approach did not demonstrate that they do not exist, his application of that approach to the case before us leaves no doubt. He offers several reasons for concluding that the Second Amendment right to keep and bear arms is not fundamental enough to be applied against the States. [5] None is persuasive, but more pertinent to my purpose, each is either intrinsically indeterminate, would preclude incorporation of rights we have already held incorporated, or both. His approach ***799** therefore does nothing to stop a judge from arriving at any conclusion he sets out to reach.

Justice STEVENS begins with the odd assertion that "firearms have a fundamentally ambivalent relationship to liberty," since sometimes they are used to cause (or sometimes accidentally produce) injury to others. *Post,* at 3107. The source of the ****3055** rule that only nonambivalent liberties deserve Due Process protection is never explained—proof that judges applying Justice STEVENS' approach can add new elements to the test as they see fit. The criterion, moreover, is inherently manipulable. Surely Justice STEVENS does not mean that the Clause covers only rights that have *zero* harmful effect on *anyone*. Otherwise even the First Amendment is out. Maybe what he means is that the right to keep and bear arms imposes *too great* a risk to others' physical well-being. But as the plurality explains, *ante,* at 3045, other rights we have already held incorporated pose similarly substantial risks to public safety. In all events, Justice STEVENS supplies neither a standard for how severe the impairment on others' liberty must be for a right to be disqualified, nor (of course) any method of measuring the severity.

Justice STEVENS next suggests that the Second Amendment right is not fundamental because it is "different in kind" from other rights we have recognized. *Post,* at 3108 – 3109. In one respect, of course, the right to keep and bear arms *is* different from some other rights we have held the Clause protects and he would recognize: It is deeply grounded in our nation's history and tradition. But Justice STEVENS has a different distinction in mind: Even though he does "not doubt for a moment that many Americans ... see [firearms] as critical to their way of life as well as to their security," he pronounces that owning a handgun is not "critical to leading a life of autonomy, dignity, or political equality." [6] *Post,*

at 3109. ***800** Who says? Deciding what is essential to an enlightened, liberty-filled life is an inherently political, moral judgment—the antithesis of an objective approach that reaches conclusions by applying neutral rules to verifiable evidence. [7]

No determination of what rights the Constitution of the United States covers would be complete, of course, without a survey of what *other* countries do. *Post,* at 3110 – 3111. When it comes to guns, Justice STEVENS explains, our Nation is *already* an outlier among "advanced democracies"; not even our "oldest allies" protect as robust a right as we do, and we should not widen the gap. *Ibid.* Never mind that he explains neither which countries ****3056** qualify as "advanced democracies" nor why others are irrelevant. For there is an even clearer indication that this criterion lets judges pick which rights States must respect and those they can ignore: As the plurality shows, *ante,* at 3044 – 3045, and nn. 28–29, this follow-the-foreign-crowd requirement would foreclose rights ***801** that we have held (and Justice STEVENS accepts) are incorporated, but that other "advanced" nations do not recognize—from the exclusionary rule to the Establishment Clause. A judge applying Justice STEVENS' approach must either throw all of those rights overboard or, as cases Justice STEVENS approves have done in considering unenumerated rights, simply ignore foreign law when it undermines the desired conclusion, see, *e.g., Casey,* 505 U.S. 833, 112 S.Ct. 2791, 120 L.Ed.2d 674 (making no mention of foreign law).

Justice STEVENS also argues that since the right to keep and bear arms was *codified* for the purpose of "prevent[ing] elimination of the militia," it should be viewed as " 'a federalism provision' " logically incapable of incorporation. *Post,* at 3111 (quoting *Elk Grove Unified School Dist. v. Newdow,* 542 U.S. 1, 45, 124 S.Ct. 2301, 159 L.Ed.2d 98 (2004) (THOMAS, J., concurring in judgment); some internal quotation marks omitted). This criterion, too, evidently applies only when judges want it to. The opinion Justice STEVENS quotes for the "federalism provision" principle, Justice THOMAS's concurrence in *Newdow,* argued that incorporation of the Establishment Clause "makes little sense" because that Clause was originally understood as a limit on congressional interference with state establishments of religion. *Id.,* at 49–51, 124 S.Ct. 2301. Justice STEVENS, of course, has no problem with applying the Establishment Clause to the States. See, *e.g., id.,* at 8, n. 4, 124 S.Ct. 2301 (opinion for the Court by STEVENS, J.) (acknowledging that the Establishment Clause "appl[ies] to the States by incorporation into the Fourteenth Amendment"). While he insists *that* Clause is not a "federalism provision," *post,* at 3111, n. 40, he does not explain why *it* is not, but the right to keep and bear arms *is* (even though only the latter refers to a "right of the people"). The "federalism" argument prevents the incorporation of only *certain* rights.

Justice STEVENS next argues that even if the right to keep and bear arms is "deeply rooted in some important senses," the roots of States' efforts to regulate guns run just as deep. *Post,* at 3112 – 3113 (internal quotation marks omitted). ***802** But this too is true of other rights we have held incorporated. No fundamental right—not even the First Amendment—is absolute. The traditional restrictions go to show the scope of the right, not its lack of fundamental character. At least that is what they show (Justice STEVENS would agree) for *other* rights. Once again, principles are applied selectively.

Justice STEVENS' final reason for rejecting incorporation of the Second Amendment reveals, more clearly than any of the others, the game that is afoot. Assuming that there is a "plausible constitutional basis" for holding that the right to keep and bear arms is incorporated, he asserts that we ought not to do so *for prudential reasons*. *Post,* at 3114. Even if we had the authority to withhold rights that are within the Constitution's command (and we assuredly do not), two of the reasons Justice STEVENS gives for abstention show just how much power he would hand to judges. The States' "right to experiment" with solutions to the problem of gun violence, he says, is at its apex here because "the best solution is far from clear." *Post,* at 3114 (internal quotation marks omitted). That is true of most serious ****3057** social problems—whether, for example, "the best solution" for rampant crime is to admit confessions unless they are affirmatively shown to have been coerced, but see *Miranda v. Arizona,* 384 U.S. 436, 444–445, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), or to permit jurors to impose the death penalty without a requirement that they be free to consider "any relevant mitigating factor," see *Eddings v. Oklahoma,* 455 U.S. 104, 112, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982), which in turn leads to the conclusion that defense counsel has provided inadequate defense if he has not conducted a "reasonable investigation" into potentially mitigating factors, see, *e.g., Wiggins v. Smith,* 539 U.S. 510, 534, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003), inquiry into which question tends to destroy any prospect of prompt justice, see, *e.g., Wong v. Belmontes,* 558 U.S. 15, 130 S.Ct. 383, 175 L.Ed.2d 328 (2009) *(per curiam)* (reversing grant of habeas relief for sentencing on a crime committed in 1981). The obviousness of the optimal answer is ***803** in the eye

of the beholder. The implication of Justice STEVENS' call for abstention is that if We The Court conclude that They The People's answers to a problem are silly, we are free to "interven[e]," *post,* at 3114, but if we too are uncertain of the right answer, or merely think the States may be on to something, we can loosen the leash.

A second reason Justice STEVENS says we should abstain is that the States have shown they are "capable" of protecting the right at issue, and if anything have protected it too much. *Post,* at 3115. That reflects an assumption that judges can distinguish between a *proper* democratic decision to leave things alone (which we should honor), and a case of democratic market failure (which we should step in to correct). I would not—and no judge should—presume to have that sort of omniscience, which seems to me far more "arrogant," *post,* at 3111, than confining courts' focus to our own national heritage.

III

Justice STEVENS' response to this concurrence, *post,* at 3116 – 3119, makes the usual rejoinder of "living Constitution" advocates to the criticism that it empowers judges to eliminate or expand what the people have prescribed: The traditional, historically focused method, he says, reposes discretion in judges as well.[8] Historical analysis can be difficult; it sometimes requires resolving threshold questions, and making nuanced ***804** judgments about which evidence to consult and how to interpret it.

I will stipulate to that.[9] But the question to be decided is not whether the historically focused method is a *perfect* ****3058** *means* of restraining aristocratic judicial Constitution-writing; but whether it is the *best means available* in an imperfect world. Or indeed, even more narrowly than that: whether it is demonstrably much better than what Justice STEVENS proposes. I think it beyond all serious dispute that it is much less subjective, and intrudes much less upon the democratic process. It is less subjective because it depends upon a body of evidence susceptible of reasoned analysis rather than a variety of vague ethico-political First Principles whose combined conclusion can be found to point in any direction the judges favor. In the most controversial matters brought before this Court—for example, the constitutionality of prohibiting abortion, assisted suicide, or homosexual sodomy, or the constitutionality of the death penalty—*any* historical methodology, under *any* plausible standard of proof, would lead to the same conclusion.[10] Moreover, the methodological differences that divide historians, and the varying interpretive assumptions they bring to their work, *post,* at 3117 – 3118, are nothing compared to the differences among the American people (though perhaps not among graduates of prestigious law schools) with regard to the moral judgments Justice STEVENS would have courts pronounce. And whether or not special expertise is needed ***805** to answer historical questions, judges most certainly have no "comparative ... advantage," *post,* at 3101 – 3102 (internal quotation marks omitted), in resolving moral disputes. What is more, his approach would not eliminate, but multiply, the hard questions courts must confront, since he would not *replace* history with moral philosophy, but would have courts consider *both*.

And the Court's approach intrudes less upon the democratic process because the rights it acknowledges are those established by a constitutional history formed by democratic decisions; and the rights it fails to acknowledge are left to be democratically adopted or rejected by the people, with the assurance that their decision is not subject to judicial revision. Justice STEVENS' approach, on the other hand, deprives the people of that power, since whatever the Constitution and laws may say, the list of protected rights will be whatever courts wish it to be. After all, he notes, the people have been wrong before, *post,* at 3119, and courts may conclude they are wrong in the future. Justice STEVENS abhors a system in which "majorities or powerful interest groups always get their way," *post,* at 3119, but replaces it with a system in which unelected and life-tenured judges always get their way. That such usurpation is effected unabashedly, see *post,* at 3117 – 3118—with "the judge's cards ... laid on the table," *ibid.*—makes it even worse. In a vibrant democracy, usurpation should have to be accomplished in the dark. It is Justice STEVENS' approach, not the Court's, that puts democracy in peril.

Justice THOMAS, concurring in part and concurring in the judgment.

I agree with the Court that the Fourteenth Amendment makes the right to keep and bear arms set forth in the Second Amendment "fully applicable to the States." *Ante,* at 3026. I write separately because I believe there is a more straightforward path to this conclusion, one that is ****3059** more ***806** faithful to the Fourteenth Amendment's text and history. I therefore do not join Parts II-C, IV, and V of the principal opinion.

Applying what is now a well-settled test, the Court concludes that the right to keep and bear arms applies to the States through the Fourteenth Amendment's Due Process Clause because it is "fundamental" to the American "scheme of ordered liberty," *ante,* at 3036 (citing *Duncan v. Louisiana,* 391 U.S. 145, 149, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968)), and " 'deeply rooted in this Nation's history and tradition,' " *ante,* at 3036 (quoting *Washington v. Glucksberg,* 521 U.S. 702, 721, 117 S.Ct. 2302, 138 L.Ed.2d 772 (1997)). I agree with that description of the right. But I cannot agree that it is enforceable against the States through a clause that speaks only to "process." Instead, the right to keep and bear arms is a privilege of American citizenship that applies to the States through the Fourteenth Amendment's Privileges or Immunities Clause.

I

In *District of Columbia v. Heller,* 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008), this Court held that the Second Amendment protects an individual right to keep and bear arms for the purpose of self-defense, striking down a District of Columbia ordinance that banned the possession of handguns in the home. *Id.,* at ——, 128 S.Ct., at 2821–2822. The question in this case is whether the Constitution protects that right against abridgment by the States.

As the Court explains, if this case were litigated before the Fourteenth Amendment's adoption in 1868, the answer to that question would be simple. In *Barron ex rel. Tiernan v. Mayor of Baltimore,* 7 Pet. 243, 8 L.Ed. 672 (1833), this Court held that the Bill of Rights applied only to the Federal Government. Writing for the Court, Chief Justice Marshall recalled that the founding generation added the first eight Amendments to the Constitution in response to Antifederalist concerns regarding the extent of federal—not state—power, and held that if "the framers of these amendments [had] intended them to be limitations on the powers of the state governments," ***807** "they would have declared this purpose in plain and intelligible language." *Id.,* at 250. Finding no such language in the Bill of Rights, Chief Justice Marshall held that it did not in any way restrict state authority. *Id.,* at 248–250; see *Lessee of Livingston v. Moore,* 7 Pet. 469, 551–552, 8 L.Ed. 751 (1833) (reaffirming *Barron* 's holding); *Permoli v. Municipality No. 1 of New Orleans,* 3 How. 589, 609–610, 11 L.Ed. 739 (1845) (same).

Nearly three decades after *Barron,* the Nation was splintered by a civil war fought principally over the question of slavery. As was evident to many throughout our Nation's early history, slavery, and the measures designed to protect it, were irreconcilable with the principles of equality, government by consent, and inalienable rights proclaimed by the Declaration of Independence and embedded in our constitutional structure. See, *e.g.,* 3 Records of the Federal Convention of 1787, p. 212 (M. Farrand ed.1911) (remarks of Luther Martin) ("[S]lavery is inconsistent with the genius of republicanism, and has a tendency to destroy those principles on which it is supported, as it lessens the sense of the equal rights of mankind" (emphasis deleted)); A. Lincoln, Speech at Peoria, Ill. (Oct. 16, 1854), reprinted in 2 The Collected Works of Abraham Lincoln 266 (R. Basler ed. 1953) ("[N]o man is good enough to govern another man, *without that other's consent*. I say this is the leading principle —the sheet anchor of American republicanism.... Now the relation ****3060** of masters and slaves is, *pro tanto,* a total violation of this principle").

After the war, a series of constitutional amendments were adopted to repair the Nation from the damage slavery had caused. The provision at issue here, § 1 of the Fourteenth Amendment, significantly altered our system of government. The first sentence of that section provides that "[a]ll persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." This unambiguously overruled this Court's contrary holding in *Dred Scott v. Sandford,* ***808** 19 How. 393, 15 L.Ed. 691 (1857), that the Constitution did not recognize black Americans as citizens of the United States or their own State. *Id.,* at 405–406.

The meaning of § 1's next sentence has divided this Court for many years. That sentence begins with the command that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." On its face, this appears to grant the persons just made United States citizens a certain collection of rights—*i.e.,* privileges or immunities—attributable to that status.

This Court's precedents accept that point, but define the relevant collection of rights quite narrowly. In the *Slaughter–House Cases,* 16 Wall. 36, 21 L.Ed. 394 (1873), decided just five years after the Fourteenth Amendment's adoption, the Court interpreted this text, now known as the Privileges or Immunities Clause, for the first time. In a closely divided decision, the Court drew a sharp distinction between the

privileges and immunities of state citizenship and those of federal citizenship, and held that the Privileges or Immunities Clause protected only the latter category of rights from state abridgment. *Id.,* at 78. The Court defined that category to include only those rights "which owe their existence to the Federal government, its National character, its Constitution, or its laws." *Id.,* at 79. This arguably left open the possibility that certain individual rights enumerated in the Constitution could be considered privileges or immunities of federal citizenship. See *ibid.* (listing "[t]he right to peaceably assemble" and "the privilege of the writ of *habeas corpus* " as rights potentially protected by the Privileges or Immunities Clause). But the Court soon rejected that proposition, interpreting the Privileges or Immunities Clause even more narrowly in its later cases.

Chief among those cases is *United States v. Cruikshank,* 92 U.S. 542, 23 L.Ed. 588 (1876). There, the Court held that members of a white militia who had brutally murdered as many as 165 black Louisianians congregating outside a courthouse had ***809** not deprived the victims of their privileges as American citizens to peaceably assemble or to keep and bear arms. *Ibid.;* see L. Keith, The Colfax Massacre 109 (2008). According to the Court, the right to peaceably assemble codified in the First Amendment was not a privilege of United States citizenship because "[t]he right ... existed long *before* the adoption of the Constitution." 92 U.S., at 551 (emphasis added). Similarly, the Court held that the right to keep and bear arms was not a privilege of United States citizenship because it was not "in any manner dependent upon that instrument for its existence." *Id.,* at 553. In other words, the reason the Framers codified the right to bear arms in the Second Amendment—its nature as an inalienable right that pre-existed the Constitution's adoption—was the very reason citizens could not enforce it against States through the Fourteenth.

That circular reasoning effectively has been the Court's last word on the Privileges ****3061** or Immunities Clause.[1] In the intervening years, the Court has held that the Clause prevents state abridgment of only a handful of rights, such as the right to travel, see *Saenz v. Roe,* 526 U.S. 489, 503, 119 S.Ct. 1518, 143 L.Ed.2d 689 (1999), that are not readily described as essential to liberty.

As a consequence of this Court's marginalization of the Clause, litigants seeking federal protection of fundamental rights turned to the remainder of § 1 in search of an alternative fount of such rights. They found one in a most curious place —that section's command that every State guarantee "due process" to any person before depriving him of "life, liberty, or property." At first, litigants argued that this Due Process Clause "incorporated" certain procedural rights codified in the Bill of Rights against the States. The Court ***810** generally rejected those claims, however, on the theory that the rights in question were not sufficiently "fundamental" to warrant such treatment. See, *e.g., Hurtado v. California,* 110 U.S. 516, 4 S.Ct. 111, 28 L.Ed. 232 (1884) (grand jury indictment requirement); *Maxwell v. Dow,* 176 U.S. 581, 20 S.Ct. 448, 44 L.Ed. 597 (1900) (12–person jury requirement); *Twining v. New Jersey,* 211 U.S. 78, 29 S.Ct. 14, 53 L.Ed. 97 (1908) (privilege against self-incrimination).

That changed with time. The Court came to conclude that certain Bill of Rights guarantees *were* sufficiently fundamental to fall within § 1's guarantee of "due process." These included not only procedural protections listed in the first eight Amendments, see, *e.g., Benton v. Maryland,* 395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969) (protection against double jeopardy), but substantive rights as well, see, *e.g., Gitlow v. New York,* 268 U.S. 652, 666, 45 S.Ct. 625, 69 L.Ed. 1138 (1925) (right to free speech); *Near v. Minnesota ex rel. Olson,* 283 U.S. 697, 707, 51 S.Ct. 625, 75 L.Ed. 1357 (1931) (same). In the process of incorporating these rights against the States, the Court often applied them differently against the States than against the Federal Government on the theory that only those "fundamental" aspects of the right required Due Process Clause protection. See, *e.g., Betts v. Brady,* 316 U.S. 455, 473, 62 S.Ct. 1252, 86 L.Ed. 1595 (1942) (holding that the Sixth Amendment required the appointment of counsel in all federal criminal cases in which the defendant was unable to retain an attorney, but that the Due Process Clause required appointment of counsel in state criminal cases only where "want of counsel ... result[ed] in a conviction lacking in ... fundamental fairness"). In more recent years, this Court has "abandoned the notion" that the guarantees in the Bill of Rights apply differently when incorporated against the States than they do when applied to the Federal Government. *Ante,* at 3035 (opinion of the Court) (internal quotation marks omitted). But our cases continue to adhere to the view that a right is incorporated through the Due Process Clause only if it is sufficiently "fundamental," *ante,* at 3046, 3048 – 3050 (plurality opinion)—a term the Court has long struggled to define.

***811** While this Court has at times concluded that a right gains " fundamental" status only if it is essential to the American "scheme of ordered liberty" or " 'deeply rooted

in this Nation's history and tradition,' **3062 " *ante,* at 3036 (plurality opinion) (quoting *Glucksberg,* 521 U.S., at 721, 117 S.Ct. 2302), the Court has just as often held that a right warrants Due Process Clause protection if it satisfies a far less measurable range of criteria, see *Lawrence v. Texas,* 539 U.S. 558, 562, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003) (concluding that the Due Process Clause protects "liberty of the person both in its spatial and in its more transcendent dimensions"). Using the latter approach, the Court has determined that the Due Process Clause applies rights against the States that are not mentioned in the Constitution at all, even without seriously arguing that the Clause was originally understood to protect such rights. See, *e.g., Lochner v. New York,* 198 U.S. 45, 25 S.Ct. 539, 49 L.Ed. 937 (1905); *Roe v. Wade,* 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973); *Lawrence, supra*.

All of this is a legal fiction. The notion that a constitutional provision that guarantees only "process" before a person is deprived of life, liberty, or property could define the substance of those rights strains credulity for even the most casual user of words. Moreover, this fiction is a particularly dangerous one. The one theme that links the Court's substantive due process precedents together is their lack of a guiding principle to distinguish "fundamental" rights that warrant protection from nonfundamental rights that do not. Today's decision illustrates the point. Replaying a debate that has endured from the inception of the Court's substantive due process jurisprudence, the dissents laud the "flexibility" in this Court's substantive due process doctrine, *post,* at 3096 (STEVENS, J., dissenting); see *post,* at 3122 – 3123 (BREYER, J., dissenting), while the plurality makes yet another effort to impose principled restraints on its exercise, see *ante,* at 3044 – 3048. But neither side argues that the meaning they attribute to the Due Process Clause was consistent with public understanding at the time of its ratification.

*812 To be sure, the plurality's effort to cabin the exercise of judicial discretion under the Due Process Clause by focusing its inquiry on those rights deeply rooted in American history and tradition invites less opportunity for abuse than the alternatives. See *post,* at 3123 (BREYER, J., dissenting) (arguing that rights should be incorporated against the States through the Due Process Clause if they are "well suited to the carrying out of ... constitutional promises"); *post,* at 3100 (STEVENS, J., dissenting) (warning that there is no "all-purpose, top-down, totalizing theory of 'liberty' " protected by the Due Process Clause). But any serious argument over the scope of the Due Process Clause must acknowledge that neither its text nor its history suggests that it protects the many substantive rights this Court's cases now claim it does.

I cannot accept a theory of constitutional interpretation that rests on such tenuous footing. This Court's substantive due process framework fails to account for both the text of the Fourteenth Amendment and the history that led to its adoption, filling that gap with a jurisprudence devoid of a guiding principle. I believe the original meaning of the Fourteenth Amendment offers a superior alternative, and that a return to that meaning would allow this Court to enforce the rights the Fourteenth Amendment is designed to protect with greater clarity and predictability than the substantive due process framework has so far managed.

I acknowledge the volume of precedents that have been built upon the substantive due process framework, and I further acknowledge the importance of *stare decisis* to the stability of our Nation's legal system. **3063 But *stare decisis* is only an "adjunct" of our duty as judges to decide by our best lights what the Constitution means. *Planned Parenthood of Southeastern Pa. v. Casey,* 505 U.S. 833, 963, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992) (Rehnquist, C. J., concurring in judgment in part and dissenting in part). It is not "an inexorable command." *Lawrence, supra,* at 577, 123 S.Ct. 2472. Moreover, as judges, we interpret the Constitution *813 one case or controversy at a time. The question presented in this case is not whether our entire Fourteenth Amendment jurisprudence must be preserved or revised, but only whether, and to what extent, a particular clause in the Constitution protects the particular right at issue here. With the inquiry appropriately narrowed, I believe this case presents an opportunity to reexamine, and begin the process of restoring, the meaning of the Fourteenth Amendment agreed upon by those who ratified it.

II

"It 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) (Marshall, C. J.). Because the Court's Privileges or Immunities Clause precedents have presumed just that, I set them aside for the moment and begin with the text.

The Privileges or Immunities Clause of the Fourteenth Amendment declares that "[n]o State ... shall abridge the

privileges or immunities of citizens of the United States." In interpreting this language, it is important to recall that constitutional provisions are " 'written to be understood by the voters.' " *Heller,* 554 U.S., at ——, 128 S.Ct., at 2788 (quoting *United States v. Sprague,* 282 U.S. 716, 731, 51 S.Ct. 220, 75 L.Ed. 640 (1931)). Thus, the objective of this inquiry is to discern what "ordinary citizens" at the time of ratification would have understood the Privileges or Immunities Clause to mean. 554 U.S., at ——, 128 S.Ct., at 2788.

A

1

At the time of Reconstruction, the terms "privileges" and "immunities" had an established meaning as synonyms for "rights." The two words, standing alone or paired together, were used interchangeably with the words "rights," "liberties," and "freedoms," and had been since the time of Blackstone. See 1 W. Blackstone, Commentaries *129 (describing ***814** the "rights and liberties" of Englishmen as "private immunities" and "civil privileges"). A number of antebellum judicial decisions used the terms in this manner. See, *e.g., Magill v. Brown,* 16 F. Cas. 408, 428 (No. 8,952) (CC ED Pa. 1833) (Baldwin, J.) ("The words 'privileges and immunities' relate to the rights of persons, place or property; a privilege is a peculiar right, a private law, conceded to particular persons or places"). In addition, dictionary definitions confirm that the public shared this understanding. See, *e.g.,* N. Webster, An American Dictionary of the English Language 1039 (C. Goodrich & N. Porter rev. 1865) (defining "privilege" as "a right or immunity not enjoyed by others or by all" and listing among its synonyms the words "immunity," "franchise," "right," and "liberty"); *id.,* at 661 (defining "immunity" as "[f]reedom from an obligation" or "particular privilege"); *id.,* at 1140 (defining "right" as "[p]rivilege or immunity granted by authority"). [2]

The fact that a particular interest was designated as a "privilege" or "immunity," ****3064** rather than a "right," "liberty," or "freedom," revealed little about its substance. Blackstone, for example, used the terms "privileges" and "immunities" to describe both the inalienable rights of individuals and the positive-law rights of corporations. See 1 Commentaries, at *129 (describing "private immunities" as a "*residuum* of natural liberty," and "civil privileges" as those "which society hath engaged to provide, in lieu of the natural liberties so given up by individuals" (footnote omitted)); *id.,* at *468 (stating that a corporate charter enables a corporation to "establish ***815** rules and orders" that serve as "the privileges and immunities ... of the corporation"). Writers in this country at the time of Reconstruction followed a similar practice. See, *e.g., Racine & Mississippi R. Co. v. Farmers' Loan & Trust Co.,* 49 Ill. 331, 334 (1868) (describing agreement between two railroad companies in which they agreed " 'to fully merge and consolidate the[ir] capital stock, powers, privileges, immunities and franchises' "); *Hathorn v. Calef,* 53 Me. 471, 483–484 (1866) (concluding that a statute did not "modify any power, privileges, or immunity, pertaining to the franchise of any corporation"). The nature of a privilege or immunity thus varied depending on the person, group, or entity to whom those rights were assigned. See Lash, The Origins of the Privileges or Immunities Clause, Part I: "Privileges and Immunities" as an Antebellum Term of Art, 98 Geo. L.J. 1241, 1256–1257 (2010) (surveying antebellum usages of these terms).

2

The group of rights-bearers to whom the Privileges or Immunities Clause applies is, of course, "citizens." By the time of Reconstruction, it had long been established that both the States and the Federal Government existed to preserve their citizens' inalienable rights, and that these rights were considered "privileges" or "immunities" of citizenship.

This tradition begins with our country's English roots. Parliament declared the basic liberties of English citizens in a series of documents ranging from the Magna Carta to the Petition of Right and the English Bill of Rights. See 1 B. Schwartz, The Bill of Rights: A Documentary History 8–16, 19–21, 41–46 (1971) (hereinafter Schwartz). These fundamental rights, according to the English tradition, belonged to all people but became legally enforceable only when recognized in legal texts, including acts of Parliament and the decisions of common-law judges. See B. Bailyn, The Ideological Origins of the American Revolution 77–79 (1967). These rights included many that later would be set forth in our ***816** Federal Bill of Rights, such as the right to petition for redress of grievances, the right to a jury trial, and the right of " Protestants" to "have arms for their defence." English Bill of Rights (1689), reprinted in 1 Schwartz 41, 43.

As English subjects, the colonists considered themselves to be vested with the same fundamental rights as other Englishmen.

They consistently claimed the rights of English citizenship in their founding documents, repeatedly referring to these rights as "privileges" and "immunities." For example, a Maryland law provided:

> ****3065** "[A]ll the Inhabitants of this Province being Christians (Slaves excepted) Shall have and enjoy all such *rights liberties immunities priviledges and free customs* within this Province as any natural born subject of England hath or ought to have or enjoy in the Realm of England...." Md. Act for the Liberties of the People (1639), in *id.,* at 68 (emphasis added). [3]

***817** As tensions between England and the Colonies increased, the colonists adopted protest resolutions reasserting their claim to the inalienable rights of Englishmen. Again, they used the terms "privileges" and "immunities" to describe these rights. As the Massachusetts Resolves declared:

> "*Resolved,* That there are certain essential Rights of the *British* Constitution of Government, which are founded in the Law of God and Nature, and are the common Rights of Mankind—Therefore.....
>
> "*Resolved,* That no Man can justly take the Property of another without his Consent: And that upon this *original* Principle the Right of Representation ... is evidently founded.
>
> "*Resolved,* That this *inherent* Right, together with all other, essential *Rights, Liberties, Privileges and Immunities* of the People of *Great Britain,* have been fully confirmed to them by *Magna Charta*." The Massachusetts Resolves (Oct. 29, 1765), reprinted in Prologue to Revolution: Sources and Documents on the Stamp Act Crisis, 1764–1766, p. 56 (E. Morgan ed.1959) (some emphasis added). [4]

****3066** ***818** In keeping with this practice, the First Continental Congress declared in 1774 that the King had wrongfully denied the colonists " the rights, liberties, and immunities of free and natural-born subjects ... within the realm of England." 1 Journals of the Continental Congress 1774–1789, p. 68 (1904). In an address delivered to the inhabitants of Quebec that same year, the Congress described those rights as including the "great" "right [s]" of "trial by jury," "Habeas Corpus," and "freedom of the press." Address of the Continental Congress to the Inhabitants of Quebec (1774), reprinted in 1 Schwartz 221–223.

After declaring their independence, the newly formed States replaced their colonial charters with constitutions and state bills of rights, almost all of which guaranteed the same fundamental rights that the former colonists previously had claimed by virtue of their English heritage. See, *e. g.,* Pa. Declaration of Rights (1776), reprinted in 5 Thorpe 3081–3084 (declaring that "all men are born equally free and independent, and have certain natural, inherent and inalienable rights," including the "right to worship Almighty God according to the dictates of their own consciences" and the "right to bear arms for the defence of themselves and the state"). [5]

Several years later, the Founders amended the Constitution to expressly protect many of the same fundamental rights against interference by the Federal Government. Consistent with their English heritage, the founding generation generally did not consider many of the rights identified in these amendments as new entitlements, but as inalienable rights of all men, given legal effect by their codification in the Constitution's text. See, *e.g.,* 1 Annals of Cong. 431–432, 436–437, 440–442 (1789) (statement of Rep. Madison) ***819** (proposing Bill of Rights in the first Congress); The Federalist No. 84, pp. 531–533 (B. Wright ed. 1961) (A.Hamilton); see also *Heller,* 554 U.S., at ——, 128 S.Ct., at 2797 ("[I]t has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right"). The Court's subsequent decision in *Barron,* however, made plain that the codification of these rights in the Bill made them legally enforceable only against the Federal Government, not the States. See 7 Pet., at 247.

3

Even though the Bill of Rights did not apply to the States, other provisions of the Constitution did limit state interference with individual rights. Article IV, § 2, cl. 1 provides that "[t]he Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." The text of this provision resembles the Privileges or Immunities Clause, and it can be assumed that the public's understanding of the latter was informed by its understanding of the former.

Article IV, § 2 was derived from a similar clause in the Articles of Confederation, and reflects the dual citizenship the Constitution provided to all Americans after replacing

that "league" of separate sovereign States. *Gibbons v. Ogden,* 9 Wheat. 1, 187, 6 L.Ed. 23 (1824); see 3 J. Story, Commentaries on the Constitution of the United States § 1800, p. 675 (1833). By virtue of a person's citizenship in a particular State, he was guaranteed whatever rights and liberties that State's constitution ****3067** and laws made available. Article IV, § 2 vested citizens of each State with an additional right: the assurance that they would be afforded the "privileges and immunities" of citizenship in any of the several States in the Union to which they might travel.

What were the "Privileges and Immunities of Citizens in the several States"? That question was answered perhaps most famously by Justice Bushrod Washington sitting as Circuit ***820** Justice in *Corfield v. Coryell,* 6 F. Cas. 546, 551–552 (No. 3,230) (CC ED Pa. 1825). In that case, a Pennsylvania citizen claimed that a New Jersey law prohibiting nonresidents from harvesting oysters from the State's waters violated Article IV, § 2 because it deprived him, as an out-of-state citizen, of a right New Jersey availed to its own citizens. *Id.,* at 550. Justice Washington rejected that argument, refusing to "accede to the proposition" that Article IV, § 2 entitled "citizens of the several states ... to participate in *all* the rights which belong exclusively to the citizens of any other particular state." *Id.,* at 552 (emphasis added). In his view, Article IV, § 2 did not guarantee equal access to all public benefits a State might choose to make available to its citizens. See *id.,* at 552. Instead, it applied only to those rights "which are, in their nature, *fundamental* ; which belong, of right, to the citizens of all free governments." *Id.,* at 551 (emphasis added). Other courts generally agreed with this principle. See, *e.g., Abbot v. Bayley,* 23 Mass. 89, 92–93 (1827) (noting that the "privileges and immunities" of citizens in the several States protected by Article IV, § 2 are "qualified and not absolute" because they do not grant a traveling citizen the right of "suffrage or of eligibility to office" in the State to which he travels).

When describing those "fundamental" rights, Justice Washington thought it "would perhaps be more tedious than difficult to enumerate" them all, but suggested that they could "be all comprehended under" a broad list of "general heads," such as "[p]rotection by the government," "the enjoyment of life and liberty, with the right to acquire and possess property of every kind," "the benefit of the writ of habeas corpus," and the right of access to "the courts of the state," among others. [6] *Corfield, supra,* at 551–552.

***821** Notably, Justice Washington did not indicate whether Article IV, § 2 *required* States to recognize these fundamental rights in their own citizens and thus in sojourning citizens alike, or whether the Clause simply prohibited the States from discriminating against sojourning citizens with respect to whatever fundamental rights state law happened to recognize. On this question, the weight of legal authorities at the time of Reconstruction indicated ****3068** that Article IV, § 2 prohibited States from discriminating against sojourning citizens when recognizing fundamental rights, but did not require States to recognize those rights and did not prescribe their content. The highest courts of several States adopted this view, see, *e.g., Livingston v. Van Ingen,* 9 Johns. 507, 561 (N.Y.Sup.Ct.1812) (Yates, J.); *id.,* at 577 (Kent, J.); *Campbell v. Morris,* 3 H. & McH. 535, 553–554 (Md.Gen.Ct.1797) (Chase, J.), as did several influential treatise-writers, see T. Cooley, A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the State of the American Union 15–16, and n. 3 (1868) (reprint 1972) (describing Article IV, § 2 as designed "to prevent discrimination by the several States against the citizens and public proceedings of other States"); 2 J. Kent, Commentaries on American Law 35 (11th ed. 1867) (stating that Article IV, § 2 entitles sojourning citizens "to the privileges that persons of the same description are entitled to in the state to which the removal is made, and to none other"). This Court adopted the same conclusion in a unanimous opinion ***822** just one year after the Fourteenth Amendment was ratified. See *Paul v. Virginia,* 8 Wall. 168, 180, 19 L.Ed. 357 (1869).

* * *

The text examined so far demonstrates three points about the meaning of the Privileges or Immunities Clause in § 1. First, "privileges" and "immunities" were synonyms for "rights." Second, both the States and the Federal Government had long recognized the inalienable rights of their citizens. Third, Article IV, § 2 of the Constitution protected traveling citizens against state discrimination with respect to the fundamental rights of state citizenship.

Two questions still remain, both provoked by the textual similarity between § 1's Privileges or Immunities Clause and Article IV, § 2. The first involves the nature of the rights at stake: Are the privileges or immunities of "citizens of the United States" recognized by § 1 the same as the privileges and immunities of "citizens in the several States" to which Article IV, § 2 refers? The second involves the

restriction imposed on the States: Does § 1, like Article IV, § 2, prohibit only discrimination with respect to certain rights *if* the State chooses to recognize them, or does it require States to recognize those rights? I address each question in turn.

B

I start with the nature of the rights that § 1's Privileges or Immunities Clause protects. Section 1 overruled *Dred Scott* 's holding that blacks were not citizens of either the United States or their own State and, thus, did not enjoy "the privileges and immunities of citizens" embodied in the Constitution. 19 How., at 417. The Court in *Dred Scott* did not distinguish between privileges and immunities of citizens of the United States and citizens in the several States, instead referring to the rights of citizens generally. It did, however, give examples of what the rights of citizens were— ***823** the constitutionally enumerated rights of "the full liberty of speech" and the right "to keep and carry arms." *Ibid.*

Section 1 protects the rights of citizens "of the United States" specifically. The evidence overwhelmingly demonstrates that the privileges and immunities of such citizens included individual rights enumerated in the Constitution, including the right to keep and bear arms.

1

Nineteenth-century treaties through which the United States acquired territory from other sovereigns routinely promised inhabitants of the newly acquired territories ****3069** that they would enjoy all of the "rights," "privileges," and "immunities" of United States citizens. See, *e.g.,* Treaty of Amity, Settlement, and Limits, Art. 6, Feb. 22, 1819, 8 Stat. 256–258, T.S. No. 327 (entered into force Feb. 19, 1821) (cession of Florida) ("The inhabitants of the territories which his Catholic Majesty cedes to the United States, by this Treaty, shall be incorporated in the Union of the United States, as soon as may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of *all the privileges, rights, and immunities, of the citizens of the United States* " (emphasis added)). [7]

***824** Commentators of the time explained that the rights and immunities of " citizens of the United States" recognized in these treaties "undoubtedly mean [t] those privileges that are common to all citizens of this republic." Marcus, An Examination of the Expediency and Constitutionality of Prohibiting Slavery in the State of Missouri 17 (1819). It is therefore altogether unsurprising that several of these treaties identify liberties enumerated in the Constitution as privileges and immunities common to all United States citizens.

For example, the Louisiana Cession Act of 1803, which codified a treaty between the United States and France culminating in the Louisiana Purchase, provided:

> "The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal constitution, to the enjoyment of *all the rights, advantages and immunities of citizens of the United States;* and in the mean time they shall be maintained and protected in *the free enjoyment of their liberty, property and the religion which they profess*." Treaty Between the United States of America and the French Republic, Art. III, Apr. 30, 1803, 8 Stat. 202, T.S. No. 86 (emphasis added). [8]

****3070** ***825** The Louisiana Cession Act reveals even more about the privileges and immunities of United States citizenship because it provoked an extensive public debate on the meaning of that term. In 1820, when the Missouri Territory (which the United States acquired through the Cession Act) sought to enter the Union as a new State, a debate ensued over whether to prohibit slavery within Missouri as a condition of its admission. Some congressmen argued that prohibiting slavery in Missouri would deprive its inhabitants of the "privileges and immunities" they had been promised by the Cession Act. See, *e.g.,* 35 Annals of Cong. 1083 (1820) (remarks of Kentucky Rep. Hardin). But those who opposed slavery in Missouri argued that the right to hold slaves was merely a matter of state property law, not one of the privileges and immunities of United States citizenship guaranteed by the Act. [9]

Daniel Webster was among the leading proponents of the antislavery position. In his "Memorial to Congress," Webster argued that "[t]he rights, advantages and immunities here spoken of [in the Cession Act] must ... be such as are recognized or communicated by the Constitution of the United States," not the "rights, advantages and immunities, derived exclusively from the *State* governments...." D. ***826** Webster, A Memorial to the Congress of the United States on the Subject of Restraining the Increase of Slavery in New States to be Admitted into the Union 15 (Dec. 15, 1819) (emphasis added). "The obvious meaning" of the Act,

in Webster's view, was that "*the rights derived under the federal Constitution* shall be enjoyed by the inhabitants of [the territory]." *Id.,* at 15–16 (emphasis added). In other words, Webster articulated a distinction between the rights of United States citizenship and the rights of state citizenship, and argued that the former included those rights "recognized or communicated by the Constitution." Since the right to hold slaves was not mentioned in the Constitution, it was not a right of federal citizenship.

Webster and his allies ultimately lost the debate over slavery in Missouri and the territory was admitted as a slave State as part of the now-famous Missouri Compromise. Missouri Enabling Act of March 6, 1820, ch. 22, § 8, 3 Stat. 548. But their arguments continued to inform public understanding of the privileges and immunities of United States citizenship. In 1854, Webster's Memorial was republished in a pamphlet discussing the Nation's next major debate on slavery—the proposed repeal of the Missouri Compromise through the Kansas–Nebraska Act, see The Nebraska Question: Comprising Speeches in the United States Senate: Together with the History of the Missouri Compromise 9–12 (1854). It was published again in 1857 in a collection of famous American speeches. See The Political Text–Book, or Encyclopedia: Containing Everything Necessary for the Reference of the Politicians and Statesmen of the United States 601–604 (M. Cluskey ed. 1857); see also Lash, 98 Geo. L. J., at 1294–1296 (describing Webster's arguments and their influence).

****3071 2**

Evidence from the political branches in the years leading to the Fourteenth Amendment's adoption demonstrates broad public understanding that the privileges and immunities ***827** of United States citizenship included rights set forth in the Constitution, just as Webster and his allies had argued. In 1868, President Andrew Johnson issued a proclamation granting amnesty to former Confederates, guaranteeing "to all and to every person who directly or indirectly participated in the late insurrection or rebellion, a full pardon and amnesty for the offence of treason ... with restoration of *all rights, privileges, and immunities under the Constitution* and the laws which have been made in pursuance thereof." 15 Stat. 712.

Records from the 39th Congress further support this understanding.

a

After the Civil War, Congress established the Joint Committee on Reconstruction to investigate circumstances in the Southern States and to determine whether, and on what conditions, those States should be readmitted to the Union. See Cong. Globe, 39th Cong., 1st Sess., 6, 30 (1865) (hereinafter 39th Cong. Globe); M. Curtis, No State Shall Abridge: The Fourteenth Amendment and the Bill of Rights 57 (1986) (hereinafter Curtis). That Committee would ultimately recommend the adoption of the Fourteenth Amendment, justifying its recommendation by submitting a report to Congress that extensively catalogued the abuses of civil rights in the former slave States and argued that "adequate security for future peace and safety ... can only be found in such changes of the organic law as shall determine the civil rights and privileges of all citizens in all parts of the republic." See Report of the Joint Committee on Reconstruction, S.Rep. No. 112, 39th Cong., 1st Sess., p. 15 (1866); H. R. Rep. No. 30, 39th Cong., 1st Sess., p. XXI (1866).

As the Court notes, the Committee's Report "was widely reprinted in the press and distributed by members of the 39th Congress to their constituents." *Ante,* at 3039; B. Kendrick, Journal of the Joint Committee of Fifteen on Reconstruction 264–265 (1914) (noting that 150,000 copies of the ***828** Report were printed and that it was widely distributed as a campaign document in the election of 1866). In addition, newspaper coverage suggests that the wider public was aware of the Committee's work even before the Report was issued. For example, the Fort Wayne Daily Democrat (which appears to have been unsupportive of the Committee's work) paraphrased a motion instructing the Committee to

> "enquire into [the] expediency of amending the Constitution of the United States so as to declare with greater certainty the power of Congress to enforce and determine by appropriate legislation all the guarantees contained in *that instrument*." The Nigger Congress!, Fort Wayne Daily Democrat, Feb. 1, 1866, p. 4 (emphasis added).

b

Statements made by Members of Congress leading up to, and during, the debates on the Fourteenth Amendment point in the same direction. The record of these debates has been combed before. See *Adamson v. California,* 332 U.S. 46, 92–110, 67 S.Ct. 1672, 91 L.Ed. 1903 (1947) (Appendix to dissenting opinion of Black, J.) (concluding that the debates support the conclusion that § 1 was understood to incorporate the Bill of Rights against the States); *ante,* at 3033, n. 9, 3040, n. 23, (opinion of the Court) (counting the debates among other evidence that § 1 applies the Second Amendment against the States). Before considering that record ****3072** here, it is important to clarify its relevance. When interpreting constitutional text, the goal is to discern the most likely public understanding of a particular provision at the time it was adopted. Statements by legislators can assist in this process to the extent they demonstrate the manner in which the public used or understood a particular word or phrase. They can further assist to the extent there is evidence that these statements were disseminated to the public. In other words, this evidence is useful not because ***829** it demonstrates what the draftsmen of the text may have been thinking, but only insofar as it illuminates what the public understood the words chosen by the draftsmen to mean.

(1)

Three speeches stand out as particularly significant. Representative John Bingham, the principal draftsman of § 1, delivered a speech on the floor of the House in February 1866 introducing his first draft of the provision. Bingham began by discussing *Barron* and its holding that the Bill of Rights did not apply to the States. He then argued that a constitutional amendment was necessary to provide "an express grant of power in Congress to enforce by penal enactment these great canons of the supreme law, securing to all the citizens in every State all the privileges and immunities of citizens, and to all the people all the sacred rights of person." 39th Cong. Globe 1089–1090 (1866). Bingham emphasized that § 1 was designed "to arm the Congress of the United States, by the consent of the people of the United States, with the power to enforce the bill of rights as it stands in the Constitution today. It 'hath that extent—no more.' " *Id.*, at 1088.

Bingham's speech was printed in pamphlet form and broadly distributed in 1866 under the title, "One Country, One Constitution, and One People," and the subtitle, "In Support of the Proposed Amendment to Enforce the Bill of Rights." [10] Newspapers also reported his proposal, with the New York Times providing particularly extensive coverage, ***830** including a full reproduction of Bingham's first draft of § 1 and his remarks that a constitutional amendment to "enforc[e]" the "immortal bill of rights" was " absolutely essential to American nationality." N.Y. Times, Feb. 27, 1866, p. 8.

Bingham's first draft of § 1 was different from the version ultimately adopted. Of particular importance, the first draft granted Congress the "power to make all laws ... necessary and proper to secure" the "citizens of each State all privileges and immunities of citizens in the several States," rather than restricting state power to "abridge" the privileges or immunities of citizens of the United States. [11] 39th Cong. Globe 1088.

That draft was met with objections, which the Times covered extensively. A ****3073** front-page article hailed the "Clear and Forcible Speech" by Representative Robert Hale against the draft, explaining—and endorsing—Hale's view that Bingham's proposal would "confer upon Congress all the rights and power of legislation now reserved to the States" and would "in effect utterly obliterate State rights and State authority over their own internal affairs." [12] N.Y. Times, Feb. 28, 1866, p. 1.

***831** Critically, Hale did *not* object to the draft insofar as it purported to protect constitutional liberties against state interference. Indeed, Hale stated that he believed (incorrectly in light of *Barron*) that individual rights enumerated in the Constitution were already enforceable against the States. See 39th Cong. Globe 1064 ("I have, somehow or other, gone along with the impression that there is that sort of protection thrown over us in some way, whether with or without the sanction of a judicial decision that we are so protected"); see N.Y. Times, Feb. 28, 1866, at 1. Hale's misperception was not uncommon among members of the Reconstruction generation. See *infra,* at 3047 – 3048. But that is secondary to the point that the Times' coverage of this debate over § 1's meaning suggests public awareness of its main contours —*i.e.,* that § 1 would, at a minimum, enforce constitutionally enumerated rights of United States citizens against the States.

Bingham's draft was tabled for several months. In the interim, he delivered a second well-publicized speech, again arguing that a constitutional amendment was required to give Congress the power to enforce the Bill of Rights against the States. That speech was printed in pamphlet form, see Speech of Hon. John A. Bingham, of Ohio, on the Civil

Rights Bill, Mar. 9, 1866 (Cong.Globe); see 39th Cong. Globe 1837 (remarks of Rep. Lawrence) (noting that the speech was "extensively published"), and the New York Times covered the speech on its front page. Thirty–Ninth Congress, N.Y. Times, Mar. 10, 1866, p. 1.

By the time the debates on the Fourteenth Amendment resumed, Bingham had amended his draft of § 1 to include the text of the Privileges or Immunities Clause that was ultimately adopted. Senator Jacob Howard introduced the new draft on the floor of the Senate in the third speech relevant here. Howard explained that the Constitution recognized "a mass of privileges, immunities, and rights, some of them secured by the second section of the fourth article of the ***832** Constitution, ... some by the first eight amendments of the Constitution," and that "there is no power given in the Constitution to enforce and to carry out any of these guarantees" against the States. 39th Cong. Globe 2765. Howard then stated that "the great object" of § 1 was to "restrain the power of the States and compel them at all times to respect these great fundamental guarantees." *Id.,* at 2766. Section 1, he indicated, imposed "a general prohibition upon all the States, as such, from abridging the privileges and immunities of the citizens of the United States." *Id.,* at 2765.

In describing these rights, Howard explained that they included "the privileges ****3074** and immunities spoken of" in Article IV, § 2. *Id.,* at 2765. Although he did not catalogue the precise "nature" or "extent" of those rights, he thought "Corfield v. Coryell" provided a useful description. Howard then submitted that

> "[t]o these privileges and immunities, whatever they may be—... should be added *the personal rights guarantied and secured by the first eight amendments of the Constitution* ; such as the freedom of speech and of the press; the right of the people peaceably to assemble and petition the Government for a redress of grievances, [and] ... *the right to keep and to bear arms*." *Ibid.* (emphasis added).

News of Howard's speech was carried in major newspapers across the country, including the New York Herald, see N.Y. Herald, May 24, 1866, p. 1, which was the best-selling paper in the Nation at that time, see A. Amar, The Bill of Rights: Creation and Reconstruction 187 (1998) (hereinafter Amar). [13] The New York Times carried the speech as well, ***833** reprinting a lengthy excerpt of Howard's remarks, including the statements quoted above. N.Y. Times, May 24, 1866, p. 1. The following day's Times editorialized on Howard's speech, predicting that "[t]o this, the first section of the amendment, the Union party throughout the country will yield a ready acquiescence, and the South could offer no justifiable resistance," suggesting that Bingham's narrower second draft had not been met with the same objections that Hale had raised against the first. N.Y. Times, May 25, 1866, p. 4.

As a whole, these well-circulated speeches indicate that § 1 was understood to enforce constitutionally declared rights against the States, and they provide no suggestion that any language in the section other than the Privileges or Immunities Clause would accomplish that task.

(2)

When read against this backdrop, the civil rights legislation adopted by the 39th Congress in 1866 further supports this view. Between passing the Thirteenth Amendment—which outlawed slavery alone—and the Fourteenth Amendment, Congress passed two significant pieces of legislation. The first was the Civil Rights Act of 1866, which provided that "all persons born in the United States" were "citizens of the United States" and that "such citizens, of every race and color, ... shall have the same right" to, among other things, "full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens." Ch. 31, § 1, 14 Stat. 27.

Both proponents and opponents of this Act described it as providing the "privileges" of citizenship to freedmen, and defined those privileges to include constitutional rights, such as the right to keep and bear arms. See 39th Cong. Globe 474 (remarks of Sen. Trumbull) (stating that the "the late slaveholding ***834** States" had enacted laws "depriving persons of African descent of privileges which are essential to freemen," including "prohibit[ing] any negro or mulatto from having fire-arms" and stating that "[t]he purpose of the bill under consideration is to destroy all these discriminations"); *id.,* at 1266–1267 (remarks ****3075** of Rep. Raymond) (opposing the Act, but recognizing that to "[m]ake a colored man a citizen of the United States" would guarantee to him, *inter alia,* "a defined *status* ... a right to defend himself and his wife and children; a right to bear arms").

Three months later, Congress passed the Freedmen's Bureau Act, which also entitled all citizens to the "full and equal benefit of all laws and proceedings concerning personal

liberty" and "personal security." Act of July 16, 1866, ch. 200, § 14, 14 Stat. 176. The Act stated expressly that the rights of personal liberty and security protected by the Act "includ[ed] the constitutional right to bear arms." *Ibid.*

(3)

There is much else in the legislative record. Many statements by Members of Congress corroborate the view that the Privileges or Immunities Clause enforced constitutionally enumerated rights against the States. See Curtis 112 (collecting examples). I am not aware of any statement that directly refutes that proposition. That said, the record of the debates—like most legislative history—is less than crystal clear. In particular, much ambiguity derives from the fact that at least several Members described § 1 as protecting the privileges and immunities of citizens "in the several States," harkening back to Article IV, § 2. See *supra,* at 3041 (describing Sen. Howard's speech). These statements can be read to support the view that the Privileges or Immunities Clause protects some or all the fundamental rights of "citizens" described in *Corfield*. They can also be read to support the view that the Privileges or Immunities Clause, like Article IV, § 2, prohibits only state discrimination with ***835** respect to those rights it covers, but does not deprive States of the power to deny those rights to all citizens equally.

I examine the rest of the historical record with this understanding. But for purposes of discerning what the public most likely thought the Privileges or Immunities Clause to mean, it is significant that the most widely publicized statements by the legislators who voted on § 1 —Bingham, Howard, and even Hale—point unambiguously toward the conclusion that the Privileges or Immunities Clause enforces at least those fundamental rights enumerated in the Constitution against the States, including the Second Amendment right to keep and bear arms.

3

Interpretations of the Fourteenth Amendment in the period immediately following its ratification help to establish the public understanding of the text at the time of its adoption.

Some of these interpretations come from Members of Congress. During an 1871 debate on a bill to enforce the Fourteenth Amendment, Representative Henry Dawes listed the Constitution's first eight Amendments, including "the right to keep and bear arms," before explaining that after the Civil War, the country "gave the most grand of all these rights, privileges, and immunities, by one single amendment to the Constitution, to four millions of American citizens" who formerly were slaves. Cong. Globe, 42d Cong., 1st Sess., 475–476 (1871). "It is all these," Dawes explained, "which are comprehended in the words 'American citizen.' " *Ibid.;* see also *id.,* at 334 (remarks of Rep. Hoar) (stating that the Privileges or Immunities Clause referred to those rights "declared to belong to the citizen by the Constitution itself"). Even opponents of Fourteenth Amendment enforcement legislation acknowledged that the Privileges or Immunities ****3076** Clause protected constitutionally enumerated individual rights. See 2 Cong. Rec. 384–385 (1874) (remarks ***836** of Rep. Mills) (opposing enforcement law, but acknowledging, in referring to the Bill of Rights, that "[t]hese first amendments and some provisions of the Constitution of like import embrace the 'privileges and immunities' of citizenship as set forth in article 4, section 2 of the Constitution *and in the fourteenth amendment* " (emphasis added)); sEe curtis 166–170 (collecting examples).

Legislation passed in furtherance of the Fourteenth Amendment demonstrates even more clearly this understanding. For example, Congress enacted the Civil Rights Act of 1871, 17 Stat. 13, which was titled in pertinent part "An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States," and which is codified in the still-existing 42 U.S.C. § 1983. That statute prohibits state officials from depriving citizens of "any rights, privileges, or immunities *secured by the Constitution*." Rev. Stat.1979, 42 U.S.C. § 1983 (emphasis added). Although the Judiciary ignored this provision for decades after its enactment, this Court has come to interpret the statute, unremarkably in light of its text, as protecting constitutionally enumerated rights. *Monroe v. Pape,* 365 U.S. 167, 171, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961).

A Federal Court of Appeals decision written by a future Justice of this Court adopted the same understanding of the Privileges or Immunities Clause. See, *e.g., United States v. Hall,* 26 F. Cas. 79, 82 (No. 15,282) (CC SD Ala. 1871) (Woods, J.) ("We think, therefore, that the ... rights enumerated in the first eight articles of amendment to the constitution of the United States, are the privileges and immunities of citizens of the United States"). In addition, two of the era's major constitutional treatises reflected

the understanding that § 1 would protect constitutionally enumerated rights from state abridgment.[14] A third such treatise unambiguously ***837** indicates that the Privileges or Immunities Clause accomplished this task. G. Paschal, The Constitution of the United States 290 (1868) (explaining that the rights listed in § 1 had "already been guarantied" by Article IV and the Bill of Rights, but that "[t]he new feature declared" by § 1 was that these rights, "which had been construed to apply only to the national government, are thus imposed upon the States").

Another example of public understanding comes from United States Attorney Daniel Corbin's statement in an 1871 Ku Klux Klan prosecution. Corbin cited *Barron* and declared:

> "[T]he fourteenth amendment changes all that theory, and lays the same restriction upon the States that before lay upon the Congress of the United States—that, as Congress heretofore could not interfere with the right of the citizen to keep and bear arms, now, after the adoption of the fourteenth amendment, the State cannot interfere with the right of the citizen to keep and bear arms. The right to keep and bear arms is included in the fourteenth amendment, ****3077** under 'privileges and immunities.' " Proceedings in the Ku Klux Trials at Columbia, S. C., in the United States Circuit Court, November Term, 1871, p. 147 (1872).

* * *

This evidence plainly shows that the ratifying public understood the Privileges or Immunities Clause to protect constitutionally enumerated rights, including the right to keep ***838** and bear arms. As the Court demonstrates, there can be no doubt that § 1 was understood to enforce the Second Amendment against the States. See *ante,* at 3038 – 3044. In my view, this is because the right to keep and bear arms was understood to be a privilege of American citizenship guaranteed by the Privileges or Immunities Clause.

C

The next question is whether the Privileges or Immunities Clause merely prohibits States from discriminating among citizens if they recognize the Second Amendment's right to keep and bear arms, or whether the Clause requires States to recognize the right. The municipal respondents, Chicago and Oak Park, argue for the former interpretation. They contend that the Second Amendment, as applied to the States through the Fourteenth, authorizes a State to impose an outright ban on handgun possession such as the ones at issue here so long as a State applies it to all citizens equally.[15] The Court explains why this antidiscrimination-only reading of § 1 as a whole is "implausible." *Ante,* at 3042 – 3043 (citing Brief for Municipal Respondents 64). I agree, but because I think it is the Privileges or Immunities Clause that applies this right to the States, I must explain why this Clause in particular protects against more than just state discrimination, and in fact establishes a minimum baseline of rights for all American citizens.

***839** **1**

I begin, again, with the text. The Privileges or Immunities Clause opens with the command that "*No State shall* " abridge the privileges or immunities of citizens of the United States. Amdt. 14, § 1 (emphasis added). The very same phrase opens Article I, § 10 of the Constitution, which prohibits the States from "pass[ing] any Bill of Attainder" or "ex post facto Law," among other things. Article I, § 10 is one of the few constitutional provisions that limits state authority. In *Barron,* when Chief Justice Marshall interpreted the Bill of Rights as lacking "plain and intelligible language" restricting state power to infringe upon individual liberties, he pointed to Article I, § 10 as an example of text that would have accomplished that task. 7 Pet., at 250. Indeed, Chief Justice Marshall would later describe Article I, § 10 as "a bill of rights for the people of each state." *Fletcher v. Peck,* 6 Cranch 87, 138, 3 L.Ed. 162 (1810). Thus, the fact that the Privileges or Immunities Clause uses the command "[n]o State shall"—which ****3078** Article IV, § 2 does not—strongly suggests that the former imposes a greater restriction on state power than the latter.

This interpretation is strengthened when one considers that the Privileges or Immunities Clause uses the verb "abridge," rather than "discriminate," to describe the limit it imposes on state authority. The Webster's dictionary in use at the time of Reconstruction defines the word "abridge" to mean "[t]o deprive; to cut off; ... as, to *abridge* one of his rights." Webster, An American Dictionary of the English Language, at 6. The Clause is thus best understood to impose a limitation on state power to infringe upon pre-existing substantive rights. It raises no indication that the Framers of the Clause used the word "abridge" to prohibit only discrimination.

This most natural textual reading is underscored by a well-publicized revision to the Fourteenth Amendment that the Reconstruction Congress rejected. After several ***840** Southern States refused to ratify the Amendment, President Johnson met with their Governors to draft a compromise. N.Y. Times, Feb. 5, 1867, p. 5. Their proposal eliminated Congress' power to enforce the Amendment (granted in § 5), and replaced the Privileges or Immunities Clause in § 1 with the following:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the States in which they reside, and the Citizens of each State shall be entitled to all *the privileges and immunities of citizens in the several States*." Draft reprinted in 1 Documentary History of Reconstruction 240 (W. Fleming ed.1950) (hereinafter Fleming).

Significantly, this proposal removed the "[n]o State shall" directive and the verb "abridge" from § 1, and also changed the class of rights to be protected from those belonging to "citizens of the United States" to those of the "citizens in the several States." This phrasing is materially indistinguishable from Article IV, § 2, which generally was understood as an antidiscrimination provision alone. See *supra,* at 3066 – 3068. The proposal thus strongly indicates that at least the President of the United States and several southern Governors thought that the Privileges or Immunities Clause, which they unsuccessfully tried to revise, prohibited more than just state-sponsored discrimination.

2

The argument that the Privileges or Immunities Clause prohibits no more than discrimination often is followed by a claim that public discussion of the Clause, and of § 1 generally, was not extensive. Because of this, the argument goes, § 1 must not have been understood to accomplish such a significant task as subjecting States to federal enforcement of a minimum baseline of rights. That argument overlooks ***841** critical aspects of the Nation's history that underscored the need for, and wide agreement upon, federal enforcement of constitutionally enumerated rights against the States, including the right to keep and bear arms.

a

I turn first to public debate at the time of ratification. It is true that the congressional debates over § 1 were relatively brief. It is also true that there is little evidence of extensive debate in the States. Many state legislatures did not keep records of their debates, and the few records that do exist reveal only modest discussion. See Curtis 145. These facts are not surprising.

First, however consequential we consider the question today, the nationalization of constitutional rights was not the most ****3079** controversial aspect of the Fourteenth Amendment at the time of its ratification. The Nation had just endured a tumultuous civil war, and §§ 2, 3, and 4—which reduced the representation of States that denied voting rights to blacks, deprived most former Confederate officers of the power to hold elective office, and required States to disavow Confederate war debts—were far more polarizing and consumed far more political attention. See Wildenthal 1600; Hardy, Original Popular Understanding of the Fourteenth Amendment as Reflected in the Print Media of 1866–1868, 30 Whittier L.Rev. 695, 699 (2009).

Second, the congressional debates on the Fourteenth Amendment reveal that many representatives, and probably many citizens, believed that the Thirteenth Amendment, the 1866 Civil Rights legislation, or some combination of the two, had already enforced constitutional rights against the States. Justice Black's dissent in *Adamson* chronicles this point in detail. 332 U.S., at 107–108, 67 S.Ct. 1672 (Appendix to dissenting opinion). Regardless of whether that understanding was accurate as a matter of constitutional law, it helps to explain why ***842** Congressmen had little to say during the debates about § 1. See *ibid.*

Third, while *Barron* made plain that the Bill of Rights was not legally enforceable against the States, see *supra,* at 3059, the significance of that holding should not be overstated. Like the Framers, see *supra,* at 3066, many 19th-century Americans understood the Bill of Rights to declare inalienable rights that pre-existed all government. Thus, even though the Bill of Rights technically applied only to the Federal Government, many believed that it declared rights that no legitimate government could abridge.

Chief Justice Henry Lumpkin's decision for the Georgia Supreme Court in *Nunn v. State,* 1 Ga. 243 (1846), illustrates this view. In assessing state power to regulate firearm possession, Lumpkin wrote that he was "aware that it has been decided, that [the Second Amendment], like other

amendments adopted at the same time, is a restriction upon the government of the United States, and does not extend to the individual States." *Id.,* at 250. But he still considered the right to keep and bear arms as "an unalienable right, which lies at the bottom of every free government," and thus found the States bound to honor it. *Ibid.* Other state courts adopted similar positions with respect to the right to keep and bear arms and other enumerated rights. [16] Some courts even suggested that the protections in the Bill of Rights were legally enforceable against the States, *Barron* notwithstanding. [17] A prominent treatise of the era took the same position. W. Rawle, A View of the ***843** Constitution of the United States of America 124–125 (2d ed. 1829) (reprint 2009) (arguing that certain of the first eight Amendments " appl [y] to the state legislatures" because those Amendments "form parts of the declared rights of the people, of which neither the state powers nor those of the Union can ever deprive them"); *id.,* at 125–126 (describing the Second Amendment "right of the people to keep and bear arms" as "a restraint on both" Congress and the States); see also ****3080** *Heller,* 554 U.S., at ——, 128 S.Ct., at 2805–2806 (describing Rawle's treatise as "influential"). Certain abolitionist leaders adhered to this view as well. Lysander Spooner championed the popular abolitionist argument that slavery was inconsistent with constitutional principles, citing as evidence the fact that it deprived black Americans of the "natural right of all men 'to keep and bear arms' for their personal defence," which he believed the Constitution "prohibit[ed] both Congress and the State governments from infringing." L. Spooner, The Unconstitutionality of Slavery 98 (1860).

In sum, some appear to have believed that the Bill of Rights *did* apply to the States, even though this Court had squarely rejected that theory. See, *e.g., supra,* at 3072 – 3073 (recounting Rep. Hale's argument to this effect). Many others believed that the liberties codified in the Bill of Rights were ones that no State *should* abridge, even though they understood that the Bill technically did not apply to States. These beliefs, combined with the fact that most state constitutions recognized many, if not all, of the individual rights enumerated in the Bill of Rights, made the need for federal enforcement of constitutional liberties against the States an afterthought. See *ante,* at —— (opinion of the Court) (noting that, "[i]n 1868, 22 of the 37 States in the Union had state constitutional provisions explicitly protecting the right to keep and bear arms"). That changed with the national conflict over slavery.

b

In the contentious years leading up to the Civil War, those who sought to retain the institution of slavery found that to ***844** do so, it was necessary to eliminate more and more of the basic liberties of slaves, free blacks, and white abolitionists. Congressman Tobias Plants explained that slaveholders "could not hold [slaves] safely where dissent was permitted," so they decided that "all dissent must be suppressed by the strong hand of power." 39th Cong. Globe 1013. The measures they used were ruthless, repressed virtually every right recognized in the Constitution, and demonstrated that preventing only discriminatory state firearms restrictions would have been a hollow assurance for liberty. Public reaction indicates that the American people understood this point.

The overarching goal of pro-slavery forces was to repress the spread of abolitionist thought and the concomitant risk of a slave rebellion. Indeed, it is difficult to overstate the extent to which fear of a slave uprising gripped slaveholders and dictated the acts of Southern legislatures. Slaves and free blacks represented a substantial percentage of the population and posed a severe threat to Southern order if they were not kept in their place. According to the 1860 Census, slaves represented one quarter or more of the population in 11 of the 15 slave States, nearly half the population in Alabama, Florida, Georgia, and Louisiana, and *more* than 50% of the population in Mississippi and South Carolina. Statistics of the United States (Including Mortality, Property, &c.,) in 1860, The Eighth Census 336–350 (1866).

The Southern fear of slave rebellion was not unfounded. Although there were others, two particularly notable slave uprisings heavily influenced slaveholders in the South. In 1822, a group of free blacks and slaves led by Denmark Vesey planned a rebellion in which they would slay their masters and flee to Haiti. H. Aptheker, American Negro Slave Revolts 268–270 (1983). The plan was foiled, leading to the swift arrest of 130 blacks, and the execution of 37, including Vesey. *Id.,* at 271. Still, slaveowners took notice—it was reportedly feared that as many as 6,600 to 9,000 slaves and ***845** free blacks were involved in the plot. *Id.,* at 272. A few years later, ****3081** the fear of rebellion was realized. An uprising led by Nat Turner took the lives of at least 57 whites before it was suppressed. *Id.,* at 300–302.

The fear generated by these and other rebellions led Southern legislatures to take particularly vicious aim at the rights of free blacks and slaves to speak or to keep and bear arms for their defense. Teaching slaves to read (even the Bible) was a criminal offense punished severely in some States. See K. Stampp, The Peculiar Institution: Slavery in the Ante-bellum South 208, 211 (1956). Virginia made it a crime for a member of an "abolition" society to enter the State and argue "that the owners of slaves have no property in the same, or advocate or advise the abolition of slavery." 1835–1836 Va. Acts ch. 66, p. 44. Other States prohibited the circulation of literature denying a master's right to property in his slaves and passed laws requiring postmasters to inspect the mails in search of such material. C. Eaton, The Freedom–of–Thought Struggle in the Old South 118–143, 199–200 (1964).

Many legislatures amended their laws prohibiting slaves from carrying firearms [18] to apply the prohibition to free blacks as well. See, *e.g.,* Act of Dec. 23, 1833, § 7, 1833 Ga. Acts pp. 226, 228 (declaring that "it shall not be lawful for any free person of colour in this state, to own, use, or carry fire arms of any description whatever"); H. Aptheker, Nat Turner's Slave Rebellion 74–76, 83–94 (1966) (discussing similar Maryland and Virginia statutes); see also Act of Mar. 15, ***846** 1852, ch. 206, 1852 Miss. Laws p. 328 (repealing laws allowing free blacks to obtain firearms licenses); Act of Jan. 31, 1831, 1831 Fla. Acts p. 30 (same). Florida made it the "duty" of white citizen "patrol[s] to search negro houses or other suspected places, for fire arms." Act of Feb. 17, 1833, ch. 671, 1833 Fla. Acts pp. 26, 30. If they found any firearms, the patrols were to take the offending slave or free black "to the nearest justice of the peace," whereupon he would be "severely punished" by "whipping on the bare back, not exceeding thirty-nine lashes," unless he could give a "plain and satisfactory" explanation of how he came to possess the gun. *Ibid.*

Southern blacks were not alone in facing threats to their personal liberty and security during the antebellum era. Mob violence in many Northern cities presented dangers as well. Cottrol & Diamond, The Second Amendment: Toward an Afro–Americanist Reconsideration, 80 Geo. L.J. 309, 340 (1991) (hereinafter Cottrol) (recounting a July 1834 mob attack against "churches, homes, and businesses of white abolitionists and blacks" in New York that involved "upwards of twenty thousand people and required the intervention of the militia to suppress"); *ibid.* (noting an uprising in Boston nine years later in which a confrontation between a group of white sailors and four blacks led "a mob of several hundred whites" to "attac[k] and severely beat every black they could find").

c

After the Civil War, Southern anxiety about an uprising among the newly freed slaves peaked. As Representative Thaddeus Stevens is reported to have said, "[w]hen it was first proposed to free the slaves, and arm the blacks, did not half the nation tremble? The prim conservatives, ****3082** the snobs, and the male waiting-maids in Congress, were in hysterics." K. Stampp, The Era of Reconstruction, 1865–1877, p. 104 (1965) (hereinafter Era of Reconstruction).

***847** As the Court explains, this fear led to "systematic efforts" in the " old Confederacy" to disarm the more than 180,000 freedmen who had served in the Union Army, as well as other free blacks. See *ante,* at 3038. Some States formally prohibited blacks from possessing firearms. *Ante,* at 3038 – 3039 (quoting 1865 Miss. Laws p. 165, § 1, reprinted in 1 Fleming 289). Others enacted legislation prohibiting blacks from carrying firearms without a license, a restriction not imposed on whites. See, *e.g.,* La. Statute of 1865, reprinted in *id.,* at 280. Additionally, "[t]hroughout the South, armed parties, often consisting of ex-Confederate soldiers serving in the state militias, forcibly took firearms from newly freed slaves." *Ante,* at 3039.

As the Court makes crystal clear, if the Fourteenth Amendment "had outlawed only those laws that discriminate on the basis of race or previous condition of servitude, African–Americans in the South would likely have remained vulnerable to attack by many of their worst abusers: the state militia and state peace officers." *Ante,* at 3043. In the years following the Civil War, a law banning firearm possession outright "would have been nondiscriminatory only in the formal sense," for it would have "left firearms in the hands of the militia and local peace officers." *Ibid.*

Evidence suggests that the public understood this at the time the Fourteenth Amendment was ratified. The publicly circulated Report of the Joint Committee on Reconstruction extensively detailed these abuses, see *ante,* at 3038 – 3039 (collecting examples), and statements by citizens indicate that they looked to the Committee to provide a federal solution to this problem, see, *e.g.,* 39th Cong. Globe 337 (remarks of Rep. Sumner) (introducing "a memorial from the colored citizens of the State of South Carolina" asking for, *inter alia,*

"constitutional protection in keeping arms, in holding public assemblies, and in complete liberty of speech and of the press").

One way in which the Federal Government responded was to issue military orders countermanding Southern arms legislation. ***848** See, *e.g.,*Jan. 17, 1866, order from Major General D.E. Sickles, reprinted in E. McPherson, The Political History of the United States of America During the Period of Reconstruction 37 (1871) ("The constitutional rights of all loyal and well-disposed inhabitants to bear arms will not be infringed"). The significance of these steps was not lost on those they were designed to protect. After one such order was issued, The Christian Recorder, published by the African Methodist Episcopal Church, published the following editorial:

> " 'We have several times alluded to the fact that the Constitution of the United States, guaranties to every citizen the right to keep and bear arms.... All men, without the distinction of color, have the right to keep arms to defend their homes, families, or themselves.'
>
> "We are glad to learn that [the] Commissioner for this State ... has given freedmen to understand that they have as good a right to keep fire arms as any other citizens. The Constitution of the United States is the supreme law of the land, and we will be governed by that at present." Right to Bear Arms, Christian Recorder (Phila.), Feb. 24, 1866, pp. 29–30.

The same month, The Loyal Georgian carried a letter to the editor asking "Have colored persons a right to own and carry ****3083** fire arms?—A Colored Citizen." The editors responded as follows:

> "Almost every day, we are asked questions similar to the above. We answer *certainly* you have the *same* right to own and carry fire arms that *other* citizens have. You are not only free but citizens of the United States and, as such, entitled to the same privileges granted to other citizens by the Constitution of the United States.
>
> . . . . .
>
> "... Article II, of the amendments to the Constitution of the United States, gives the people the right to bear ***849** arms and states that this right shall not be infringed.... All men, without distinction of color, have the right to keep arms to defend their homes, families or themselves." Letter to the Editor, Loyal Georgian (Augusta), Feb. 3, 1866, p. 3.

These statements are consistent with the arguments of abolitionists during the antebellum era that slavery, and the slave States' efforts to retain it, violated the constitutional rights of individuals—rights the abolitionists described as among the privileges and immunities of citizenship. See, *e.g.,* J. Tiffany, Treatise on the Unconstitutionality of American Slavery 56 (1849) (reprint 1969) ("pledg[ing] ... to see that all the rights, privileges, and immunities, granted by the constitution of the United States, are extended to all"); *id.,* at 99 (describing the "right to keep and bear arms" as one of those rights secured by "the constitution of the United States"). The problem abolitionists sought to remedy was that, under *Dred Scott,* blacks were not entitled to the privileges and immunities of citizens under the Federal Constitution and that, in many States, whatever inalienable rights state law recognized did not apply to blacks. See, *e.g., Cooper v. Savannah,* 4 Ga. 68, 72 (1848) (deciding, just two years after Chief Justice Lumpkin's opinion in *Nunn* recognizing the right to keep and bear arms, see *supra,* at 3079 – 3080, that "[f]ree persons of color have never been recognized here as citizens; they are not entitled to bear arms").

Section 1 guaranteed the rights of citizenship in the United States and in the several States without regard to race. But it was understood that liberty would be assured little protection if § 1 left each State to decide which privileges or immunities of United States citizenship it would protect. As Frederick Douglass explained before § 1's adoption, "the Legislatures of the South can take from him the right to keep and bear arms, as they can—they would not allow a negro to walk with a cane where I came from, they would not allow five of them to assemble together." In ***850** What New Skin Will the Old Snake Come Forth? An Address Delivered in New York, New York, May 10, 1865, reprinted in 4 The Frederick Douglass Papers 79, 83–84 (J. Blassingame & J. McKivigan eds., 1991) (footnote omitted). "Notwithstanding the provision in the Constitution of the United States, that the right to keep and bear arms shall not be abridged," Douglass explained that "the black man has never had the right either to keep or bear arms." *Id*., at 84. Absent a constitutional amendment to enforce that right against the States, he insisted that "the work of the Abolitionists [wa]s not finished." *Ibid.*

This history confirms what the text of the Privileges or Immunities Clause most naturally suggests: Consistent with its command that "[n]o State shall ... abridge" the rights of

United States citizens, the Clause establishes a minimum baseline of federal rights, and the constitutional right to keep and bear arms plainly was among them. [19]

**3084 III

My conclusion is contrary to this Court's precedents, which hold that the Second Amendment right to keep and bear arms is not a privilege of United States citizenship. See *Cruikshank,* 92 U.S., at 548–549, 551–553. I must, therefore, consider whether *stare decisis* requires retention of those precedents. As mentioned at the outset, my inquiry is limited to the right at issue here. Thus, I do not endeavor to decide in this case whether, or to what extent, the Privileges or Immunities Clause applies any other rights enumerated ***851** in the Constitution against the States. [20] Nor do I suggest that the *stare decisis* considerations surrounding the application of the right to keep and bear arms against the States would be the same as those surrounding another right protected by the Privileges or Immunities Clause. I consider *stare decisis* only as it applies to the question presented here.

A

This inquiry begins with the *Slaughter–House Cases*. There, this Court upheld a Louisiana statute granting a monopoly on livestock butchering in and around the city of New Orleans to a newly incorporated company. 16 Wall. 36, 21 L.Ed. 394. Butchers excluded by the monopoly sued, claiming that the statute violated the Privileges or Immunities Clause because it interfered with their right to pursue and "exercise their trade." *Id.,* at 60. This Court rejected the butchers' claim, holding that their asserted right was not a privilege or immunity of American citizenship, but one governed by the States alone. The Court held that the Privileges or Immunities Clause protected only rights of *federal* citizenship—those "which owe their existence to the Federal government, its National character, its Constitution, or its laws," *id.,* at 79—and did not protect *any* of the rights of state citizenship, ***852** *id.,* at 74. In other words, the Court defined the two sets of rights as mutually exclusive.

After separating these two sets of rights, the Court defined the rights of state citizenship as "embrac[ing] nearly every civil right for the establishment and protection of which organized government is instituted"—that is, all those rights listed in *Corfield.* 16 Wall., at 76 (referring to "those rights" that "Judge Washington" described). That left very few rights of ****3085** federal citizenship for the Privileges or Immunities Clause to protect. The Court suggested a handful of possibilities, such as the "right of free access to [federal] seaports," protection of the Federal Government while traveling "on the high seas," and even two rights listed in the Constitution. *Id.,* at 79 (noting "[t]he right to peaceably assemble" and "the privilege of the writ of *habeas corpus* "); see *supra,* at 3060. But its decision to interpret the rights of state and federal citizenship as mutually exclusive led the Court in future cases to conclude that constitutionally enumerated rights were excluded from the Privileges or Immunities Clause's scope. See *Cruikshank, supra*.

I reject that understanding. There was no reason to interpret the Privileges or Immunities Clause as putting the Court to the extreme choice of interpreting the "privileges and immunities" of federal citizenship to mean either all those rights listed in *Corfield,* or almost no rights at all. 16 Wall., at 76. The record is scant that the public understood the Clause to make the Federal Government "a perpetual censor upon all legislation of the States" as the *Slaughter–House* majority feared. *Id.,* at 78. For one thing, *Corfield* listed the "elective franchise" as one of the privileges and immunities of "citizens of the several states," 6 F. Cas., at 552, yet Congress and the States still found it necessary to adopt the Fifteenth Amendment—which protects "[t]he right of citizens of the United States to vote"—two years after the Fourteenth Amendment's passage. If the Privileges or Immunities Clause were understood to protect every ***853** conceivable civil right from state abridgment, the Fifteenth Amendment would have been redundant.

The better view, in light of the States and Federal Government's shared history of recognizing certain inalienable rights in their citizens, is that the privileges and immunities of state and federal citizenship overlap. This is not to say that the privileges and immunities of state and federal citizenship are the same. At the time of the Fourteenth Amendment's ratification, States performed many more functions than the Federal Government, and it is unlikely that, simply by referring to "privileges or immunities," the Framers of § 1 meant to transfer every right mentioned in *Corfield* to congressional oversight. As discussed, "privileges" and "immunities" were understood only as synonyms for "rights." See *supra,* at 3063 – 3064. It was their attachment to a particular group that gave them content, and the text and history recounted here indicate

that the rights of United States citizens were not perfectly identical to the rights of citizens "in the several States." Justice Swayne, one of the dissenters in *Slaughter–House,* made the point clear:

> "The citizen of a State has the *same* fundamental rights as a citizen of the United States, *and also certain others,* local in their character, arising from his relation to the State, and in addition, those which belong to the citizen of the United States, he being in that relation also. There may thus be a double citizenship, each having some rights peculiar to itself. It is only over those which belong to the citizen of the United States that the category here in question throws the shield of its protection." 16 Wall., at 126 (emphasis added).

Because the privileges and immunities of American citizenship include rights enumerated in the Constitution, they overlap to at least some extent with the privileges and immunities traditionally recognized in citizens in the several States.

***854** A separate question is whether the privileges and immunities of American citizenship include any rights besides those enumerated in the Constitution. The four ****3086** dissenting Justices in *Slaughter–House* would have held that the Privileges or Immunities Clause protected the unenumerated right that the butchers in that case asserted. See *id.,* at 83 (Field, J., dissenting); *id.,* at 111 (Bradley, J., dissenting); *id.,* at 124 (Swayne, J., dissenting). Because this case does not involve an unenumerated right, it is not necessary to resolve the question whether the Clause protects such rights, or whether the Court's judgment in *Slaughter–House* was correct.

Still, it is argued that the mere possibility that the Privileges or Immunities Clause may enforce unenumerated rights against the States creates " 'special hazards' " that should prevent this Court from returning to the original meaning of the Clause. [21] *Post,* at 3089 – 3090 (STEVENS, J., dissenting). Ironically, the same objection applies to the Court's substantive due process jurisprudence, which illustrates the risks of granting judges broad discretion to recognize individual constitutional rights in the absence of textual or historical guideposts. But I see no reason to assume that such hazards apply to the Privileges or Immunities Clause. The mere fact that the Clause does not expressly list the rights it protects does not render it incapable of principled judicial application. The Constitution contains many provisions that require an examination of more than just constitutional text to determine whether a particular act is within Congress' power or is otherwise prohibited. See, *e.g.,* Art. I, § 8, cl. 18 (Necessary and Proper Clause); Amdt. 8 (Cruel and ***855** Unusual Punishments Clause). When the inquiry focuses on what the ratifying era understood the Privileges or Immunities Clause to mean, interpreting it should be no more "hazardous" than interpreting these other constitutional provisions by using the same approach. To be sure, interpreting the Privileges or Immunities Clause may produce hard questions. But they will have the advantage of being questions the Constitution asks us to answer. I believe those questions are more worthy of this Court's attention—and far more likely to yield discernable answers—than the substantive due process questions the Court has for years created on its own, with neither textual nor historical support.

Finding these impediments to returning to the original meaning overstated, I reject *Slaughter–House* insofar as it precludes any overlap between the privileges and immunities of state and federal citizenship. I next proceed to the *stare decisis* considerations surrounding the precedent that expressly controls the question presented here.

B

Three years after *Slaughter–House,* the Court in *Cruikshank* squarely held that the right to keep and bear arms was not a privilege of American citizenship, thereby overturning the convictions of militia members responsible for the brutal Colfax Massacre. See *supra,* at 3027 – 3028. *Cruikshank* is not a precedent entitled to any respect. The flaws in its interpretation of the Privileges or Immunities Clause are made evident by the preceding evidence of its original meaning, and I would reject the holding on that basis alone. But, the consequences of *Cruikshank* warrant mention as well.

****3087** *Cruikshank* 's holding that blacks could look only to state governments for protection of their right to keep and bear arms enabled private forces, often with the assistance of local governments, to subjugate the newly freed slaves and their descendants through a wave of private violence designed to drive blacks from the voting booth and force them ***856** into peonage, an effective return to slavery. Without federal enforcement of the inalienable right to keep and bear arms, these militias and mobs were tragically successful in waging a campaign of terror against the very people the Fourteenth Amendment had just made citizens.

Take, for example, the Hamburg Massacre of 1876. There, a white citizen militia sought out and murdered a troop of black militiamen for no other reason than that they had dared to conduct a celebratory Fourth of July parade through their mostly black town. The white militia commander, "Pitchfork" Ben Tillman, later described this massacre with pride: "[T]he leading white men of Edgefield" had decided "to seize the first opportunity that the negroes might offer them to provoke a riot and teach the negroes a lesson by having the whites demonstrate their superiority by killing as many of them as was justifiable." S. Kantrowitz, Ben Tillman & the Reconstruction of White Supremacy 67 (2000) (ellipsis, brackets, and internal quotation marks omitted). None of the perpetrators of the Hamburg murders was ever brought to justice. [22]

Organized terrorism like that perpetuated by Tillman and his cohorts proliferated in the absence of federal enforcement of constitutional rights. Militias such as the Ku Klux Klan, the Knights of the White Camellia, the White Brotherhood, the Pale Faces, and the '76 Association spread terror among blacks and white Republicans by breaking up Republican meetings, threatening political leaders, and whipping black militiamen. Era of Reconstruction, 199–200; Curtis ***857** 156. These groups raped, murdered, lynched, and robbed as a means of intimidating, and instilling pervasive fear in, those whom they despised. A. Trelease, White Terror: The Ku Klux Klan Conspiracy and Southern Reconstruction 28–46 (1995).

Although Congress enacted legislation to suppress these activities, [23] Klan tactics remained a constant presence in the lives of Southern blacks for decades. Between 1882 and 1968, there were at least 3,446 reported lynchings of blacks in the South. Cottrol 351–352. They were tortured and killed for a wide array of alleged crimes, without even the slightest hint of due process. Emmit Till, for example, was killed in 1955 for allegedly whistling at a white woman. S. Whitfield, A Death in the Delta: The Story of Emmett Till 15–31 (1988). The fates of other targets of mob violence were equally depraved. See, *e.g.,* Lynched Negro and Wife Were First Mutilated, Vicksburg (Miss.) Evening Post, Feb. 8, 1904, reprinted in R. Ginzburg, 100 Years ****3088** of Lynchings 63 (1988); Negro Shot Dead for Kissing His White Girlfriend, Chi. Defender, Feb. 31, 1915, in *id.,* at 95 (reporting incident in Florida); La. Negro Is Burned Alive Screaming "I Didn't Do It," Cleveland Gazette, Dec. 13, 1914, in *id.,* at 93 (reporting incident in Louisiana).

The use of firearms for self-defense was often the only way black citizens could protect themselves from mob violence. As Eli Cooper, one target of such violence, is said to have explained, " '[t]he Negro has been run over for fifty years, but it must stop now, and pistols and shotguns are the only weapons to stop a mob.' " Church Burnings Follow Negro Agitator's Lynching, Chicago Defender, Sept. 6, 1919, in *id.,* at 124. Sometimes, as in Cooper's case, self-defense did not succeed. He was dragged from his home by a mob and ***858** killed as his wife looked on. *Ibid.* But at other times, the use of firearms allowed targets of mob violence to survive. One man recalled the night during his childhood when his father stood armed at a jail until morning to ward off lynchers. See Cottrol, 354. The experience left him with a sense, "not 'of powerlessness, but of the "possibilities of salvation" ' " that came from standing up to intimidation. *Ibid.*

In my view, the record makes plain that the Framers of the Privileges or Immunities Clause and the ratifying-era public understood—just as the Framers of the Second Amendment did—that the right to keep and bear arms was essential to the preservation of liberty. The record makes equally plain that they deemed this right necessary to include in the minimum baseline of federal rights that the Privileges or Immunities Clause established in the wake of the War over slavery. There is nothing about *Cruikshank* 's contrary holding that warrants its retention.

* * *

I agree with the Court that the Second Amendment is fully applicable to the States. I do so because the right to keep and bear arms is guaranteed by the Fourteenth Amendment as a privilege of American citizenship.

Justice STEVENS, dissenting.

In *District of Columbia v. Heller,* 554 U.S. 570, ——, 128 S.Ct. 2783, 2788, 171 L.Ed.2d 637 (2008), the Court answered the question whether a federal enclave's "prohibition on the possession of usable handguns in the home violates the Second Amendment to the Constitution." The question we should be answering in this case is whether the Constitution "guarantees individuals a fundamental right," enforceable against the States, "to possess a functional, personal firearm, including a handgun, within the home." Complaint ¶ 34, App. 23. That is a different—and more difficult—inquiry than asking if the Fourteenth Amendment

"incorporates" the Second Amendment. The ***859** so-called incorporation question was squarely and, in my view, correctly resolved in the late 19th century. [1]

Before the District Court, petitioners focused their pleadings on the special considerations raised by domestic possession, which they identified as the core of their asserted right. In support of their claim that the city of Chicago's handgun ban violates the Constitution, they now rely primarily on the Privileges or Immunities Clause of the Fourteenth Amendment. See Brief for Petitioners 9–65. They rely ****3089** secondarily on the Due Process Clause of that Amendment. See *id.,* at 66–72. Neither submission requires the Court to express an opinion on whether the Fourteenth Amendment places any limit on the power of States to regulate possession, use, or carriage of firearms outside the home.

I agree with the plurality's refusal to accept petitioners' primary submission. *Ante,* at 3030 – 3031. Their briefs marshal an impressive amount of historical evidence for their argument that the Court interpreted the Privileges or Immunities Clause too narrowly in the *Slaughter–House Cases,* 16 Wall. 36, 21 L.Ed. 394 (1873). But the original meaning of the Clause is not as clear as they suggest [2] — and not nearly as clear as it would ***860** need to be to dislodge 137 years of precedent. The burden is severe for those who seek radical change in such an established body of constitutional doctrine. [3] Moreover, the suggestion that invigorating the Privileges or Immunities Clause will reduce judicial discretion, see Reply Brief for Petitioners 22, n. 8, 26; Tr. of Oral Arg. 64–65, strikes me as implausible, if not exactly backwards. "For the very reason that it has so long remained a clean slate, a revitalized Privileges or Immunities Clause holds special hazards for judges who are mindful that their proper task is not to write their personal views of appropriate public policy into the Constitution." [4]

I further agree with the plurality that there are weighty arguments supporting petitioners' second submission, insofar as ****3090** it concerns the possession of firearms for lawful self-defense in the home. But these arguments are less compelling than the plurality suggests; they are much less ***861** compelling when applied outside the home; and their validity does not depend on the Court's holding in *Heller.* For that holding sheds no light on the meaning of the Due Process Clause of the Fourteenth Amendment. Our decisions construing that Clause to render various procedural guarantees in the Bill of Rights enforceable against the States likewise tell us little about the meaning of the word "liberty" in the Clause or about the scope of its protection of nonprocedural rights.

This is a substantive due process case.

I

Section 1 of the Fourteenth Amendment decrees that no State shall "deprive any person of life, liberty, or property, without due process of law." The Court has filled thousands of pages expounding that spare text. As I read the vast corpus of substantive due process opinions, they confirm several important principles that ought to guide our resolution of this case. The principal opinion's lengthy summary of our "incorporation" doctrine, see *ante,* at 3028 – 3030, 3031 – 3036 (majority opinion), 3030 – 3031 (plurality opinion), and its implicit (and untenable) effort to wall off that doctrine from the rest of our substantive due process jurisprudence, invite a fresh survey of this old terrain.

Substantive Content

The first, and most basic, principle established by our cases is that the rights protected by the Due Process Clause are not merely procedural in nature. At first glance, this proposition might seem surprising, given that the Clause refers to "process." But substance and procedure are often deeply entwined. Upon closer inspection, the text can be read to "impos[e] nothing less than an obligation to give substantive content to the words 'liberty' and 'due process of law,' " *Washington v. Glucksberg,* 521 U.S. 702, 764, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997) (Souter, J., concurring in judgment), lest superficially fair procedures be permitted to "destroy the enjoyment" of life, liberty, and ***862** property, *Poe v. Ullman,* 367 U.S. 497, 541, 81 S.Ct. 1752, 6 L.Ed.2d 989 (1961) (Harlan, J., dissenting), and the Clause's prepositional modifier be permitted to swallow its primary command. Procedural guarantees are hollow unless linked to substantive interests; and no amount of process can legitimize some deprivations.

I have yet to see a persuasive argument that the Framers of the Fourteenth Amendment thought otherwise. To the contrary, the historical evidence suggests that, at least by the time of the Civil War if not much earlier, the phrase "due process of law" had acquired substantive content as a term

of art within the legal community.[5] This understanding is ***863** consonant ****3091** with the venerable "notion that governmental authority has implied limits which preserve private autonomy,"[6] a notion which predates the founding and which finds reinforcement in the Constitution's Ninth Amendment, see *Griswold v. Connecticut,* 381 U.S. 479, 486–493, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965) (Goldberg, J., concurring).[7] The Due Process Clause cannot claim to be the source of our basic freedoms—no legal document ever could, see *Meachum v. Fano,* 427 U.S. 215, 230, 96 S.Ct. 2532, 49 L.Ed.2d 451 (1976) (STEVENS, J., dissenting)—but it stands as one of their foundational guarantors in our law.

If text and history are inconclusive on this point, our precedent leaves no doubt: It has been "settled" for well over a century that the Due Process Clause "applies to matters of substantive law as well as to matters of procedure." *Whitney v. California,* 274 U.S. 357, 373, 47 S.Ct. 641, 71 L.Ed. 1095 (1927) (Brandeis, J., concurring). Time and again, we have recognized that in the Fourteenth Amendment as well as the Fifth, the "Due Process Clause guarantees more than fair process, and the 'liberty' it protects includes more than the absence of physical restraint." *Glucksberg,* 521 U.S., at 719, 117 S.Ct. 2258. "The Clause also includes a substantive component that 'provides heightened protection against government interference with certain fundamental rights and liberty interests.' " *Troxel v. Granville,* 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000) (opinion of O'Connor, J., joined by Rehnquist, C.J., and GINSBURG and BREYER, JJ.) (quoting *Glucksberg,* 521 U.S., at 720, 117 S.Ct. 2258). Some of our most enduring precedents, accepted today by virtually everyone, were substantive due process decisions. See, *e.g., Loving v. Virginia,* 388 U.S. 1, 12, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967) (recognizing due-processas well as equal-protection-based right to marry person of another race); *Bolling v. Sharpe,* 347 U.S. 497, 499–500, 74 S.Ct. 693, 98 L.Ed. 884 (1954) (outlawing racial segregation in District of Columbia ***864** public schools); *Pierce v. Society of Sisters,* 268 U.S. 510, 534–535, 45 S.Ct. 571, 69 L.Ed. 1070 (1925) (vindicating right of parents to direct upbringing and education of their children); *Meyer v. Nebraska,* 262 U.S. 390, 399–403, 43 S.Ct. 625, 67 L.Ed. 1042 (1923) (striking down prohibition on teaching of foreign languages).

Liberty

The second principle woven through our cases is that substantive due process is fundamentally a matter of personal liberty. For it is the liberty clause of the Fourteenth ****3092** Amendment that grounds our most important holdings in this field. It is the liberty clause that enacts the Constitution's "promise" that a measure of dignity and self-rule will be afforded to all persons. *Planned Parenthood of Southeastern Pa. v. Casey,* 505 U.S. 833, 847, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992). It is the liberty clause that reflects and renews "the origins of the American heritage of freedom [and] the abiding interest in individual liberty that makes certain state intrusions on the citizen's right to decide how he will live his own life intolerable." *Fitzgerald v. Porter Memorial Hospital,* 523 F.2d 716, 720 (C.A.7 1975) (Stevens, J.). Our substantive due process cases have episodically invoked values such as privacy and equality as well, values that in certain contexts may intersect with or complement a subject's liberty interests in profound ways. But as I have observed on numerous occasions, "most of the significant [20th-century] cases raising Bill of Rights issues have, in the final analysis, actually interpreted the word 'liberty' in the Fourteenth Amendment."[8]

It follows that the term "incorporation," like the term "unenumerated rights," is something of a misnomer. Whether an asserted substantive due process interest is explicitly ***865** named in one of the first eight Amendments to the Constitution or is not mentioned, the underlying inquiry is the same: We must ask whether the interest is "comprised within the term liberty." *Whitney,* 274 U.S., at 373, 47 S.Ct. 641 (Brandeis, J., concurring). As the second Justice Harlan has shown, ever since the Court began considering the applicability of the Bill of Rights to the States, "the Court's usual approach has been to ground the prohibitions against state action squarely on due process, without intermediate reliance on any of the first eight Amendments." *Malloy v. Hogan,* 378 U.S. 1, 24, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964) (dissenting opinion); see also Frankfurter, Memorandum on "Incorporation" of the Bill of Rights into the Due Process Clause of the Fourteenth Amendment, 78 Harv. L.Rev. 746, 747–750 (1965). In the pathmarking case of *Gitlow v. New York,* 268 U.S. 652, 666, 45 S.Ct. 625, 69 L.Ed. 1138 (1925), for example, both the majority and dissent evaluated petitioner's free speech claim not under the First Amendment but as an aspect of "the fundamental personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the States."[9]

**3093 *866 In his own classic opinion in *Griswold,* 381 U.S., at 500, 85 S.Ct. 1678 (concurring in judgment), Justice Harlan memorably distilled these precedents' lesson: "While the relevant inquiry may be aided by resort to one or more of the provisions of the Bill of Rights, it is not dependent on them or any of their radiations. The Due Process Clause of the Fourteenth Amendment stands ... on its own bottom."[10] Inclusion in the Bill of Rights is neither necessary nor sufficient for an interest to be judicially enforceable under the Fourteenth Amendment. This Court's " 'selective incorporation' " doctrine, *ante,* at 3034, is not simply "related" to substantive due process, *ante,* at 3036; it is a subset thereof.

Federal/State Divergence

The third precept to emerge from our case law flows from the second: The rights protected against state infringement by the Fourteenth Amendment's Due Process Clause need not be identical in shape or scope to the rights protected against Federal Government infringement by the various provisions of the Bill of Rights. As drafted, the Bill of Rights directly constrained only the Federal Government. See *Barron ex rel. Tiernan v. Mayor of Baltimore,* 7 Pet. 243, 8 L.Ed. 672 (1833). Although the enactment of the Fourteenth *867 Amendment profoundly altered our legal order, it "did not unstitch the basic federalist pattern woven into our constitutional fabric." *Williams v. Florida,* 399 U.S. 78, 133, 90 S.Ct. 1893, 26 L.Ed.2d 446 (1970) (Harlan, J., concurring in result). Nor, for that matter, did it expressly alter the Bill of Rights. The Constitution still envisions a system of divided sovereignty, still "establishes a federal republic where local differences are to be cherished as elements of liberty" in the vast run of cases, *National Rifle Assn. of Am. Inc. v. Chicago,* 567 F.3d 856, 860 (C.A.7 2009) (Easterbrook, C. J.), still allocates a general "police power ... to the States and the States alone," *United States v. Comstock,* 560 U.S. 126, ——, 130 S.Ct. 1949, 1967, 176 L.Ed.2d 878 (2010) (KENNEDY, J., concurring in judgment). Elementary considerations of constitutional text and structure suggest there may be legitimate reasons to hold state governments to different standards than the Federal Government in certain areas.[11]

It is true, as the Court emphasizes, *ante,* at 3034 – 3036, that we have made numerous provisions of the Bill of Rights fully applicable to the States. It is settled, for **3094 instance, that the Governor of Alabama has no more power than the President of the United States to authorize unreasonable searches and seizures. *Ker v. California,* 374 U.S. 23, 83 S.Ct. 1623, 10 L.Ed.2d 726 (1963). But we have never accepted a "total incorporation" theory of the Fourteenth Amendment, whereby the Amendment is deemed to subsume the provisions of the Bill of Rights en masse. See *ante,* at 3034. And we have declined to apply several provisions to the States in any measure. See, *e.g., Minneapolis & St. Louis R. Co. v. Bombolis,* 241 U.S. 211, 36 S.Ct. 595, 60 L.Ed. 961 (1916) (Seventh Amendment); *Hurtado v. California,* 110 U.S. 516, 4 S.Ct. 111, 28 L.Ed. 232 (1884) (Grand Jury Clause). We have, moreover, resisted a uniform approach to the Sixth Amendment's criminal jury guarantee, demanding 12–member panels and unanimous *868 verdicts in federal trials, yet not in state trials. See *Apodaca v. Oregon,* 406 U.S. 404, 92 S.Ct. 1628, 32 L.Ed.2d 184 (1972) (plurality opinion); *Williams,* 399 U.S. 78, 90 S.Ct. 1893, 26 L.Ed.2d 446. In recent years, the Court has repeatedly declined to grant certiorari to review that disparity.[12] While those denials have no precedential significance, they confirm the proposition that the "incorporation" of a provision of the Bill of Rights into the Fourteenth Amendment does not, in itself, mean the provision must have precisely the same meaning in both contexts.

It is true, as well, that during the 1960's the Court decided a number of cases involving procedural rights in which it treated the Due Process Clause as if it transplanted language from the Bill of Rights into the Fourteenth Amendment. See, *e.g., Benton v. Maryland,* 395 U.S. 784, 795, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969) (Double Jeopardy Clause); *Pointer v. Texas,* 380 U.S. 400, 406, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965) (Confrontation Clause). "Jot-for-jot" incorporation was the norm in this expansionary era. Yet at least one subsequent opinion suggests that these precedents require perfect state/federal congruence only on matters " 'at the core' " of the relevant constitutional guarantee. *Crist v. Bretz,* 437 U.S. 28, 37, 98 S.Ct. 2156, 57 L.Ed.2d 24 (1978); see also *id.,* at 52–53, 98 S.Ct. 2156 (Powell, J., dissenting). In my judgment, this line of cases is best understood as having concluded that, to ensure a criminal trial satisfies essential standards of fairness, some procedures should be the same in state and federal courts: The need for certainty and uniformity is more pressing, and the margin for error slimmer, when criminal justice is at issue. That principle has little relevance to the question whether a *non* procedural rule set forth in the Bill of Rights qualifies *869 as an aspect of the liberty protected by the Fourteenth Amendment.

Notwithstanding some overheated dicta in *Malloy,* 378 U.S., at 10–11, 84 S.Ct. 1489, it is therefore an overstatement to say that the Court has "abandoned," *ante,* at 3034, 3035 (majority opinion), 3047 (plurality opinion), a "two-track approach to incorporation," *ante,* at 3046 (plurality opinion). The Court moved away from that approach in the area of criminal procedure. But the Second Amendment differs in fundamental respects from its neighboring provisions in the Bill of Rights, as I shall explain in Part V, *infra;* ****3095** and if some 1960's opinions purported to establish a general method of incorporation, that hardly binds us in this case. The Court has not hesitated to cut back on perceived Warren Court excesses in more areas than I can count.

I do not mean to deny that there can be significant practical, as well as esthetic, benefits from treating rights symmetrically with regard to the State and Federal Governments. Jot-for-jot incorporation of a provision may entail greater protection of the right at issue and therefore greater freedom for those who hold it; jot-for-jot incorporation may also yield greater clarity about the contours of the legal rule. See *Johnson v. Louisiana,* 406 U.S. 356, 364–368, 92 S.Ct. 1620, 32 L.Ed.2d 152 (1972) (Douglas, J., dissenting); *Pointer,* 380 U.S., at 413–414, 85 S.Ct. 1065 (Goldberg, J., concurring). In a federalist system such as ours, however, this approach can carry substantial costs. When a federal court insists that state and local authorities follow its dictates on a matter not critical to personal liberty or procedural justice, the latter may be prevented from engaging in the kind of beneficent "experimentation in things social and economic" that ultimately redounds to the benefit of all Americans. *New State Ice Co. v. Liebmann,* 285 U.S. 262, 311, 52 S.Ct. 371, 76 L.Ed. 747 (1932) (Brandeis, J., dissenting). The costs of federal courts' imposing a uniform national standard may be especially high when the relevant regulatory interests vary ***870** significantly across localities, and when the ruling implicates the States' core police powers.

Furthermore, there is a real risk that, by demanding the provisions of the Bill of Rights apply identically to the States, federal courts will cause those provisions to "be watered down in the needless pursuit of uniformity." *Duncan v. Louisiana,* 391 U.S. 145, 182, n. 21, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968) (Harlan, J., dissenting). When one legal standard must prevail across dozens of jurisdictions with disparate needs and customs, courts will often settle on a relaxed standard. This watering-down risk is particularly acute when we move beyond the narrow realm of criminal procedure and into the relatively vast domain of substantive rights. So long as the requirements of fundamental fairness are always and everywhere respected, it is not clear that greater liberty results from the jot-for-jot application of a provision of the Bill of Rights to the States. Indeed, it is far from clear that proponents of an individual right to keep and bear arms ought to celebrate today's decision. [13]

***871 **3096 II**

So far, I have explained that substantive due process analysis generally requires us to consider the term "liberty" in the Fourteenth Amendment, and that this inquiry may be informed by but does not depend upon the content of the Bill of Rights. How should a court go about the analysis, then? Our precedents have established, not an exact methodology, but rather a framework for decisionmaking. In this respect, too, the Court's narrative fails to capture the continuity and flexibility in our doctrine.

The basic inquiry was described by Justice Cardozo more than 70 years ago. When confronted with a substantive due process claim, we must ask whether the allegedly unlawful practice violates values "implicit in the concept of ordered liberty." *Palko v. Connecticut,* 302 U.S. 319, 325, 58 S.Ct. 149, 82 L.Ed. 288 (1937). [14] If the practice in question lacks any "oppressive and arbitrary" character, if judicial enforcement of the asserted right would not materially contribute to "a fair and enlightened system of justice," then the claim is unsuitable for substantive due process protection. *Id.,* at 327, 325, 58 S.Ct. 149. Implicit in Justice Cardozo's test is a recognition that the postulates of liberty have a universal character. Liberty claims that are inseparable from the customs that prevail in a certain region, the idiosyncratic expectations of a certain group, or the personal preferences of their champions, may be valid claims in some sense; but they are not of constitutional stature. ***872** Whether conceptualized as a "rational continuum" of legal precepts, *Poe,* 367 U.S., at 543, 81 S.Ct. 1752 (Harlan, J., dissenting), or a seamless web of moral commitments, the rights embraced by the liberty clause transcend the local and the particular.

Justice Cardozo's test undeniably requires judges to apply their own reasoned judgment, but that does not mean it involves an exercise in abstract philosophy. In addition to other constraints I will soon discuss, see Part III, *infra,* historical and empirical data of various kinds ground the analysis. Textual commitments laid down elsewhere in the Constitution, judicial precedents, English common

law, legislative and social facts, scientific and professional developments, practices of other civilized societies, [15] and, above all else, the " 'traditions and conscience of our people,' " *Palko,* 302 U.S., at 325, 58 S.Ct. 149 (quoting *Snyder v. Massachusetts,* 291 U.S. 97, 105, 54 S.Ct. 330, 78 L.Ed. 674 (1934)), are critical variables. They can provide evidence about which rights really are vital to ordered liberty, as well as a spur to judicial action.

The Court errs both in its interpretation of *Palko* and in its suggestion that later cases rendered *Palko* 's methodology defunct. Echoing *Duncan,* the Court advises that Justice Cardozo's test will not be satisfied " 'if a civilized system could be imagined that would not accord the particular ****3097** protection.' " *Ante,* at 3032 (quoting 391 U.S., at 149, n. 14, 88 S.Ct. 1444). *Palko* does contain some language that could be read to set an inordinate bar to substantive due process recognition, reserving it for practices without which "neither liberty nor justice would exist." 302 U.S., at 326, 58 S.Ct. 149. But in view of Justice Cardozo's broader analysis, as well as the numerous cases that have upheld liberty claims under the *Palko* standard, such readings are plainly overreadings. We have never applied *Palko* in such a draconian manner.

***873** Nor, as the Court intimates, see *ante,* at 3034, did *Duncan* mark an irreparable break from *Palko,* swapping out liberty for history. *Duncan* limited its discussion to "particular procedural safeguard [s]" in the Bill of Rights relating to "criminal processes," 391 U.S., at 149, n. 14, 88 S.Ct. 1444; it did not purport to set a standard for other types of liberty interests. Even with regard to procedural safeguards, *Duncan* did not jettison the *Palko* test so much as refine it: The judge is still tasked with evaluating whether a practice "is fundamental ... to ordered liberty," within the context of the "Anglo–American" system. *Duncan,* 391 U.S., at 149–150, n. 14, 88 S.Ct. 1444. Several of our most important recent decisions confirm the proposition that substantive due process analysis—from which, once again, "incorporation" analysis derives—must not be wholly backward looking. See, *e.g., Lawrence v. Texas,* 539 U.S. 558, 572, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003) ("[H]istory and tradition are the starting point but not in all cases the ending point of the substantive due process inquiry" (internal quotation marks omitted)); *Michael H. v. Gerald D.,* 491 U.S. 110, 127–128, n. 6, 109 S.Ct. 2333, 105 L.Ed.2d 91 (1989) (garnering only two votes for history-driven methodology that "consult [s] the most specific tradition available"); see also *post,* at 3122 – 3123 (BREYER, J., dissenting) (explaining that post-*Duncan* "incorporation" cases continued to rely on more than history). [16]

The Court's flight from *Palko* leaves its analysis, careful and scholarly though it is, much too narrow to provide a satisfying answer to this case. The Court hinges its entire decision on one mode of intellectual history, culling selected pronouncements and enactments from the 18th and 19th centuries to ascertain what Americans thought about firearms. ***874** Relying on *Duncan* and *Glucksberg,* the plurality suggests that only interests that have proved "fundamental from an American perspective," *ante,* at 3046, 3050, or " 'deeply rooted in this Nation's history and tradition,' " *ante,* at 3036 (quoting *Glucksberg,* 521 U.S., at 721, 117 S.Ct. 2258), to the Court's satisfaction, may qualify for incorporation into the Fourteenth Amendment. To the extent the Court's opinion could be read to imply that the historical pedigree of a right is the exclusive or dispositive determinant of its status under the Due Process Clause, the opinion is seriously mistaken.

A rigid historical test is inappropriate in this case, most basically, because our substantive due process doctrine has never evaluated substantive rights in purely, or even predominantly, historical terms. When the Court applied many of the *procedural* guarantees in the Bill of Rights to the States in the 1960's, it often asked whether the guarantee in question was "fundamental in the context of the criminal ****3098** processes maintained by the American States." [17] *Duncan,* 391 U.S., at 150, n. 14, 88 S.Ct. 1444. That inquiry could extend back through time, but it was focused not so much on historical conceptions of the guarantee as on its functional significance within the States' regimes. This contextualized approach made sense, as the choice to employ any given trial-type procedure means little in the abstract. It is only by inquiring into how that procedure intermeshes with other procedures and practices in a criminal justice system that its relationship to "liberty" and "due process" can be determined.

Yet when the Court has used the Due Process Clause to recognize rights distinct from the trial context—rights relating to the primary conduct of free individuals—Justice Cardozo's test has been our guide. The right to free speech, for ***875** instance, has been safeguarded from state infringement not because the States have always honored it, but because it is "essential to free government" and "to the maintenance of democratic institutions"—that is, because the right to free speech is implicit in the concept of ordered liberty. *Thornhill v. Alabama,* 310 U.S. 88, 95, 96, 60 S.Ct. 736, 84

L.Ed. 1093 (1940); see also, *e.g., Loving,* 388 U.S., at 12, 87 S.Ct. 1817 (discussing right to marry person of another race); *Mapp v. Ohio,* 367 U.S. 643, 650, 655–657, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961) (discussing right to be free from arbitrary intrusion by police); *Schneider v. State (Town of Irvington),* 308 U.S. 147, 161, 60 S.Ct. 146, 84 L.Ed. 155 (1939) (discussing right to distribute printed matter). [18] While the verbal formula has varied, the Court has largely been consistent in its liberty-based approach to substantive interests outside of the adjudicatory system. As the question before us indisputably concerns such an interest, the answer cannot be found in a granular inspection of state constitutions or congressional debates.

More fundamentally, a rigid historical methodology is unfaithful to the Constitution's command. For if it were really the case that the Fourteenth Amendment's guarantee of liberty embraces only those rights "so rooted in our history, tradition, and practice as to require special protection," *Glucksberg,* 521 U.S., at 721, n. 17, 117 S.Ct. 2258, then the guarantee would serve little function, save to ratify those rights that state actors have *already* been according the most extensive protection. [19] Cf. *Duncan,* 391 U.S., at 183, 88 S.Ct. 1444 (Harlan, J., dissenting) (critiquing "circular [ity]" of historicized test for incorporation). ***876** That approach is unfaithful to the expansive principle Americans laid down when they ratified the Fourteenth Amendment and to the level of generality they chose when they crafted its language; it promises an objectivity it cannot deliver and masks the value judgments that pervade ****3099** any analysis of what customs, defined in what manner, are sufficiently " 'rooted' "; it countenances the most revolting injustices in the name of continuity, [20] for we must never forget that not only slavery but also the subjugation of women and other rank forms of discrimination are part of our history; and it effaces this Court's distinctive role in saying what the law is, leaving the development and safekeeping of liberty to majoritarian political processes. It is judicial abdication in the guise of judicial modesty.

No, the liberty safeguarded by the Fourteenth Amendment is not merely preservative in nature but rather is a "dynamic concept." Stevens, The Bill of Rights: A Century of Progress, 59 U. Chi. L.Rev. 13, 38 (1972). Its dynamism provides a central means through which the Framers enabled the Constitution to "endure for ages to come," *McCulloch v. Maryland,* 4 Wheat. 316, 415, 4 L.Ed. 579 (1819), a central example of how they "wisely spoke in general language and left to succeeding generations the task of applying that language to the unceasingly changing environment in which they would live," Rehnquist, The Notion of a Living Constitution, 54 Tex. L.Rev. 693, 694 (1976). "The task of giving concrete meaning to the term 'liberty,' " I have elsewhere explained at some length, "was a part of the work assigned to future generations." Stevens, ***877** The Third Branch of Liberty, 41 U. Miami L.Rev. 277, 291 (1986). [21] The judge who would outsource the interpretation of "liberty" to historical sentiment has turned his back on a task the Constitution assigned to him and drained the document of its intended vitality. [22]

III

At this point a difficult question arises. In considering such a majestic term as "liberty" and applying it to present circumstances, how are we to do justice to its urgent call and its open texture—and to the grant of interpretive discretion the ****3100** latter embodies—without injecting excessive subjectivity or unduly restricting the States' "broad latitude in experimenting with possible solutions to problems of vital local concern," *Whalen v. Roe,* 429 U.S. 589, 597, 97 S.Ct. 869, 51 L.Ed.2d 64 (1977)? One part of the answer, already discussed, is that we must ground the analysis in historical experience and reasoned ***878** judgment, and never on "merely personal and private notions." *Rochin v. California,* 342 U.S. 165, 170, 72 S.Ct. 205, 96 L.Ed. 183 (1952). Our precedents place a number of additional constraints on the decisional process. Although "guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended," *Collins v. Harker Heights,* 503 U.S. 115, 125, 112 S.Ct. 1061, 117 L.Ed.2d 261 (1992), significant guideposts do exist. [23]

The most basic is that we have eschewed attempts to provide any all-purpose, top-down, totalizing theory of "liberty." [24] That project is bound to end in failure or worse. The Framers did not express a clear understanding of the term to guide us, and the now-repudiated *Lochner* line of cases attests to the dangers of judicial overconfidence in using substantive due process to advance a broad theory of the right or the good. See, *e.g., Lochner v. New York,* 198 U.S. 45, 25 S.Ct. 539, 49 L.Ed. 937 (1905). In its most durable precedents, the Court ***879** "has not attempted to define with exactness the liberty ... guaranteed" by the Fourteenth Amendment. *Meyer,* 262 U.S., at 399, 43 S.Ct. 625; see also, *e.g., Bolling,* 347 U.S., at 499, 74 S.Ct. 693. By its very nature, the meaning of

liberty cannot be "reduced to any formula; its content cannot be determined by reference to any code." *Poe,* 367 U.S., at 542, 81 S.Ct. 1752 (Harlan, J., dissenting).

Yet while "the 'liberty' specially protected by the Fourteenth Amendment" is "perhaps not capable of being fully clarified," *Glucksberg,* 521 U.S., at 722, 117 S.Ct. 2258, it is capable of being refined and delimited. We have insisted that only certain types of especially significant personal interests may qualify for especially heightened protection. Ever since "the deviant economic due process cases [were] repudiated," *id.,* at 761, 117 S.Ct. 2258 (Souter, J., concurring in judgment), our doctrine has steered away from "laws that touch economic problems, business affairs, ****3101** or social conditions," *Griswold,* 381 U.S., at 482, 85 S.Ct. 1678, and has instead centered on "matters relating to marriage, procreation, contraception, family relationships, and child rearing and education," *Paul v. Davis,* 424 U.S. 693, 713, 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976). These categories are not exclusive. Government action that shocks the conscience, pointlessly infringes settled expectations, trespasses into sensitive private realms or life choices without adequate justification, perpetrates gross injustice, or simply lacks a rational basis will always be vulnerable to judicial invalidation. Nor does the fact that an asserted right falls within one of these categories end the inquiry. More fundamental rights may receive more robust judicial protection, but the strength of the individual's liberty interests and the State's regulatory interests must always be assessed and compared. No right is absolute.

Rather than seek a categorical understanding of the liberty clause, our precedents have thus elucidated a conceptual core. The clause safeguards, most basically, "the ability independently to define one's identity," *Roberts v. United States Jaycees,* 468 U.S. 609, 619, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984), "the individual's right to make certain unusually important decisions that will ***880** affect his own, or his family's, destiny," *Fitzgerald,* 523 F.2d, at 719, and the right to be respected as a human being. Self-determination, bodily integrity, freedom of conscience, intimate relationships, political equality, dignity and respect—these are the central values we have found implicit in the concept of ordered liberty.

Another key constraint on substantive due process analysis is respect for the democratic process. If a particular liberty interest is already being given careful consideration in, and subjected to ongoing calibration by, the States, judicial enforcement may not be appropriate. When the Court declined to establish a general right to physician-assisted suicide, for example, it did so in part because "the States [were] currently engaged in serious, thoughtful examinations of physician-assisted suicide and other similar issues," rendering judicial intervention both less necessary and potentially more disruptive. *Glucksberg,* 521 U.S., at 719, 735, 117 S.Ct. 2258. Conversely, we have long appreciated that more "searching" judicial review may be justified when the rights of "discrete and insular minorities"—groups that may face systematic barriers in the political system—are at stake. *United States v. Carolene Products Co.,* 304 U.S. 144, 153, n. 4, 58 S.Ct. 778, 82 L.Ed. 1234 (1938). Courts have a "comparative ... advantage" over the elected branches on a limited, but significant, range of legal matters. *Post,* at 3124.

Recognizing a new liberty right is a momentous step. It takes that right, to a considerable extent, "outside the arena of public debate and legislative action." *Glucksberg,* 521 U.S., at 720, 117 S.Ct. 2258. Sometimes that momentous step must be taken; some fundamental aspects of personhood, dignity, and the like do not vary from State to State, and demand a baseline level of protection. But sensitivity to the interaction between the intrinsic aspects of liberty and the practical realities of contemporary society provides an important tool for guiding judicial discretion.

***881** This sensitivity is an aspect of a deeper principle: the need to approach our work with humility and caution. Because the relevant constitutional language is so "spacious," *Duncan,* 391 U.S., at 148, 88 S.Ct. 1444, I have emphasized that "[t]he doctrine of judicial self-restraint requires us to exercise the utmost care whenever we ****3102** are asked to break new ground in this field." *Collins,* 503 U.S., at 125, 112 S.Ct. 1061. Many of my colleagues and predecessors have stressed the same point, some with great eloquence. See, *e.g., Casey,* 505 U.S., at 849, 112 S.Ct. 2791; *Moore v. East Cleveland,* 431 U.S. 494, 502–503, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977) (plurality opinion); *Poe,* 367 U.S., at 542–545, 81 S.Ct. 1752 (Harlan, J., dissenting); *Adamson v. California,* 332 U.S. 46, 68, 67 S.Ct. 1672, 91 L.Ed. 1903 (1947) (Frankfurter, J., concurring). Historical study may discipline as well as enrich the analysis. But the inescapable reality is that no serious theory of Section 1 of the Fourteenth Amendment yields clear answers in every case, and "[n]o formula could serve as a substitute, in this area, for judgment and restraint." *Poe,* 367 U.S., at 542, 81 S.Ct. 1752 (Harlan, J., dissenting).

Several rules of the judicial process help enforce such restraint. In the substantive due process field as in others, the Court has applied both the doctrine of *stare decisis*—adhering to precedents, respecting reliance interests, prizing stability and order in the law—and the common-law method—taking cases and controversies as they present themselves, proceeding slowly and incrementally, building on what came before. This restrained methodology was evident even in the heyday of "incorporation" during the 1960's. Although it would have been much easier for the Court simply to declare certain Amendments in the Bill of Rights applicable to the States *in toto,* the Court took care to parse each Amendment into its component guarantees, evaluating them one by one. This piecemeal approach allowed the Court to scrutinize more closely the right at issue in any given dispute, reducing both the risk and the cost of error.

***882** Relatedly, rather than evaluate liberty claims on an abstract plane, the Court has "required in substantive-due-process cases a 'careful description' of the asserted fundamental liberty interest." *Glucksberg,* 521 U.S., at 721, 117 S.Ct. 2258 (quoting *Reno v. Flores,* 507 U.S. 292, 302, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993); *Collins,* 503 U.S., at 125, 112 S.Ct. 1061; *Cruzan v. Director, Mo. Dept. of Health,* 497 U.S. 261, 277–278, 110 S.Ct. 2841, 111 L.Ed.2d 224 (1990)). And just as we have required such careful description from the litigants, we have required of ourselves that we "focus on the allegations in the complaint to determine how petitioner describes the constitutional right at stake." *Collins,* 503 U.S., at 125, 112 S.Ct. 1061; see also Stevens, Judicial Restraint, 22 San Diego L.Rev. 437, 446–448 (1985). This does not mean that we must define the asserted right at the most specific level, thereby sapping it of a universal valence and a moral force it might otherwise have.[25] It means, simply, that we must pay close attention to the precise liberty interest the litigants have asked us to vindicate.

****3103** Our holdings should be similarly tailored. Even if the most expansive formulation of a claim does not qualify for substantive due process recognition, particular components of the claim might. Just because there may not be a categorical ***883** right to physician-assisted suicide, for example, does not " 'foreclose the possibility that an individual plaintiff seeking to hasten her death, or a doctor whose assistance was sought, could prevail in a more particularized challenge.' " *Glucksberg,* 521 U.S., at 735, n. 24, 117 S.Ct. 2258 (quoting *id.,* at 750, 117 S.Ct. 2258 (STEVENS, J., concurring in judgments)); see also *Vacco v. Quill,* 521 U.S. 793, 809, n. 13, 117 S.Ct. 2293, 138 L.Ed.2d 834 (1997) (leaving open " 'the possibility that some applications of the [New York prohibition on assisted suicide] may impose an intolerable intrusion on the patient's freedom' "). Even if a State's interest in regulating a certain matter must be permitted, in the general course, to trump the individual's countervailing liberty interest, there may still be situations in which the latter "is entitled to constitutional protection." *Glucksberg,* 521 U.S., at 742, 117 S.Ct. 2302 (STEVENS, J., concurring in judgments).

As this discussion reflects, to acknowledge that the task of construing the liberty clause requires judgment is not to say that it is a license for unbridled judicial lawmaking. To the contrary, only an honest reckoning with our discretion allows for honest argumentation and meaningful accountability.

IV

The question in this case, then, is not whether the Second Amendment right to keep and bear arms (whatever that right's precise contours) applies to the States because the Amendment has been incorporated into the Fourteenth Amendment. It has not been. The question, rather, is whether the particular right asserted by petitioners applies to the States because of the Fourteenth Amendment itself, standing on its own bottom. And to answer that question, we need to determine, first, the nature of the right that has been asserted and, second, whether that right is an aspect of Fourteenth Amendment "liberty." Even accepting the Court's holding in *Heller,* it remains entirely possible that the right to keep and bear arms identified in that opinion ***884** is not judicially enforceable against the States, or that only part of the right is so enforceable.[26] It is likewise possible for the Court to find in this case that some part of the *Heller* right applies to the States, and then to find in later cases that other parts of the right also apply, or apply on different terms.

As noted at the outset, the liberty interest petitioners have asserted is the "right to possess a functional, personal firearm, including a handgun, within the home." Complaint ¶ 34, App. 23. The city of Chicago allows residents to keep functional firearms, so long as they are registered, but it generally prohibits the possession of handguns, sawed-off shotguns, machine guns, and short-barreled rifles. See Chicago, Ill., Municipal Code § 8–20–050 ****3104** (2009).[27] Petitioners' complaint centered on their desire to keep a handgun at their domicile—it references the "home" in nearly every paragraph, see Complaint ¶¶ 3–4, 11–30, 32, 34, 37, 42, 44,

46, App. 17, 19–26—as did their supporting declarations, see, *e.g.,* App. 34, 36, 40, 43, 49–52, 54–56. Petitioners now frame the question that confronts us as "[w]hether the Second Amendment right to keep and bear arms is incorporated as against the States by the Fourteenth Amendment's Privileges ***885** or Immunities or Due Process Clauses." Brief for Petitioners, p. i. But it is our duty "to focus on the allegations in the complaint to determine how petitioner describes the constitutional right at stake," *Collins,* 503 U.S., at 125, 112 S.Ct. 1061, and the gravamen of this complaint is plainly an appeal to keep a handgun or other firearm of one's choosing in the home.

Petitioners' framing of their complaint tracks the Court's ruling in *Heller.* The majority opinion contained some dicta suggesting the possibility of a more expansive arms-bearing right, one that would travel with the individual to an extent into public places, as "in case of confrontation." 554 U.S., at ——, 128 S.Ct., at 2797–2798. But the *Heller* plaintiff sought only dispensation to keep an operable firearm in his home for lawful self-defense, see *id.,* at ——, 128 S.Ct., at 2788, and n. 2), and the Court's opinion was bookended by reminders that its holding was limited to that one issue, *id.,* at ——, ——, 128 S.Ct., at 2788, 2821–2822; accord, *ante,* at 3050 (plurality opinion). The distinction between the liberty right these petitioners have asserted and the Second Amendment right identified in *Heller* is therefore evanescent. Both are rooted to the home. Moreover, even if both rights have the logical potential to extend further, upon "future evaluation," *Heller,* 554 U.S., at ——, 128 S.Ct., at 2821, it is incumbent upon us, as federal judges contemplating a novel rule that would bind all 50 States, to proceed cautiously and to decide only what must be decided.

Understood as a plea to keep their preferred type of firearm in the home, petitioners' argument has real force.[28] The decision to keep a loaded handgun in the house is often motivated by the desire to protect life, liberty, and property. It is comparable, in some ways, to decisions about the education and upbringing of one's children. For it is the kind of ***886** decision that may have profound consequences for every member of the family, and for the world beyond. In considering whether to keep a handgun, heads of households must ask themselves whether the desired safety benefits outweigh the risks of deliberate or accidental misuse that may result in death or serious injury, not only to residents of the home but to others as well. Millions of Americans have answered this question in the affirmative, not infrequently because they believe they have an inalienable right to do so —because they consider it an aspect of "the supreme human dignity of being master of one's fate rather than a ward of the State," ****3105** *Indiana v. Edwards,* 554 U.S. 164, 186, 128 S.Ct. 2379, 171 L.Ed.2d 345 (2008) (SCALIA, J., dissenting). Many such decisions have been based, in part, on family traditions and deeply held beliefs that are an aspect of individual autonomy the government may not control.[29]

Bolstering petitioners' claim, our law has long recognized that the home provides a kind of special sanctuary in modern life. See, *e.g.,* U.S. Const., Amdts. 3, 4; *Lawrence,* 539 U.S., at 562, 567, 123 S.Ct. 2472; *Payton v. New York,* 445 U.S. 573, 585–590, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980); *Stanley v. Georgia,* 394 U.S. 557, 565–568, 89 S.Ct. 1243, 22 L.Ed.2d 542 (1969); *Griswold,* 381 U.S., at 484–485, 85 S.Ct. 1678. Consequently, we have long accorded special deference to the privacy of the home, whether a humble cottage or a magnificent manse. This veneration of the domestic harkens back to the common law. William Blackstone recognized a "right of habitation," 4 Commentaries *223, and opined that "every man's house is looked upon by the law to be his castle of defence and asylum," 3 *id.,* at *288. *Heller* carried forward this legacy, observing that "the need for defense of self, family, and property is most acute" in one's abode, and celebrating "the right of law-abiding, responsible citizens to use arms in defense of hearth and home." 554 U.S., at ——, ——, 128 S.Ct., at 2817, 2821.

While the individual's interest in firearm possession is thus heightened in the home, the State's corresponding interest ***887** in regulation is somewhat weaker. The State generally has a lesser basis for regulating private as compared to public acts, and firearms kept inside the home generally pose a lesser threat to public welfare as compared to firearms taken outside. The historical case for regulation is likewise stronger outside the home, as many States have for many years imposed stricter, and less controversial, restrictions on the carriage of arms than on their domestic possession. See, *e.g., id.,* at ——, 128 S.Ct., at 2816–2817 (noting that "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"); *English v. State,* 35 Tex. 473, 478–479 (1871) (observing that "almost, if not every one of the States of this Union have [a prohibition on the carrying of deadly weapons] upon their statute books," and lambasting claims of a right to carry such weapons as "little short of ridiculous"); Miller, Guns as Smut: Defending the Home–Bound Second Amendment, 109 Colum. L.Rev. 1278, 1321–1336 (2009).

It is significant, as well, that a rule limiting the federal constitutional right to keep and bear arms to the home would be less intrusive on state prerogatives and easier to administer. Having unleashed in *Heller* a tsunami of legal uncertainty, and thus litigation,[30] and now on the cusp of imposing a national rule on the States in this area for the first time in United States history, the Court could at least moderate the confusion, upheaval, and burden on the States by adopting a rule that is clearly and tightly bounded in scope.

**3106 In their briefs to this Court, several *amici* have sought to bolster petitioners' claim still further by invoking a right to *888 individual self-defense.[31] As petitioners note, the *Heller* majority discussed this subject extensively and remarked that "[t]he inherent right of self-defense has been central to the Second Amendment right." 554 U.S., at ——, 128 S.Ct., at 2817. And it is true that if a State were to try to deprive its residents of any reasonable means of defending themselves from imminent physical threats, or to deny persons any ability to assert self-defense in response to criminal prosecution, that might pose a significant constitutional problem. The argument that there is a substantive due process right to be spared such untenable dilemmas is a serious one.[32]

*889 But that is not the case before us. Petitioners have not asked that we establish a constitutional right to individual self-defense; neither their pleadings in the District Court nor their filings in this Court make any such request. Nor do petitioners contend that the city of Chicago—which, recall, allows its residents to keep most rifles and shotguns, and to keep them loaded—has unduly burdened any such right. What petitioners have asked is that **3107 we "incorporate" the Second Amendment and thereby establish a constitutional entitlement, enforceable against the States, to keep a handgun in the home.

Of course, owning a handgun may be useful for practicing self-defense. But the right to take a certain type of action is analytically distinct from the right to acquire and utilize specific instrumentalities in furtherance of that action. And while some might favor handguns, it is not clear that they are a superior weapon for lawful self-defense, and nothing in petitioners' argument turns on that being the case. The notion that a right of self-defense *implies* an auxiliary right to own a certain type of firearm presupposes not only controversial judgments about the strength and scope of the (posited) self-defense right, but also controversial assumptions *890 about the likely effects of making that type of firearm more broadly available. It is a very long way from the proposition that the Fourteenth Amendment protects a basic individual right of self-defense to the conclusion that a city may not ban handguns.[33]

In short, while the utility of firearms, and handguns in particular, to the defense of hearth and home is certainly relevant to an assessment of petitioners' asserted right, there is no freestanding self-defense claim in this case. The question we must decide is whether the interest in keeping in the home a firearm of one's choosing—a handgun, for petitioners—is one that is "comprised within the term liberty" in the Fourteenth Amendment. *Whitney,* 274 U.S., at 373, 47 S.Ct. 641 (Brandeis, J., concurring).

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While I agree with the Court that our substantive due process cases offer a principled basis for holding that petitioners have a constitutional right to possess a usable firearm in the home, I am ultimately persuaded that a better reading of our case law supports the city of Chicago. I would not foreclose the possibility that a particular plaintiff—say, an elderly widow who lives in a dangerous neighborhood and does not have the strength to operate a long gun—may have *891 a cognizable liberty interest in possessing a handgun. But I cannot accept petitioners' broader submission. A number of factors, taken together, lead me to this conclusion.

First, firearms have a fundamentally ambivalent relationship to liberty. Just as they can help homeowners defend their families and property from intruders, they can help thugs and insurrectionists murder innocent victims. The threat that firearms will be misused is far from hypothetical, for gun crime has devastated many of our communities. *Amici* calculate that approximately one million Americans have been wounded or killed by gunfire in the last decade.[34] Urban areas such as Chicago **3108 suffer disproportionately from this epidemic of violence. Handguns contribute disproportionately to it. Just as some homeowners may prefer handguns because of their small size, light weight, and ease of operation, some criminals will value them for the same reasons. See *Heller,* 554 U.S., at ——, 128 S.Ct., at 2864–2865 (BREYER, J., dissenting). In recent years, handguns were reportedly used in more than four-

fifths of firearm murders and more than half of all murders nationwide. [35]

Hence, in evaluating an asserted right to be free from particular gun-control regulations, liberty is on both sides of the equation. Guns may be useful for self-defense, as well as for hunting and sport, but they also have a unique potential to facilitate death and destruction and thereby to destabilize ordered liberty. *Your* interest in keeping and bearing a certain firearm may diminish *my* interest in being and feeling safe from armed violence. And while granting you the right ***892** to own a handgun might make you safer on any given day—assuming the handgun's marginal contribution to self-defense outweighs its marginal contribution to the risk of accident, suicide, and criminal mischief—it may make you and the community you live in less safe overall, owing to the increased number of handguns in circulation. It is at least reasonable for a democratically elected legislature to take such concerns into account in considering what sorts of regulations would best serve the public welfare.

The practical impact of various gun-control measures may be highly controversial, but this basic insight should not be. The idea that deadly weapons pose a distinctive threat to the social order—and that reasonable restrictions on their usage therefore impose an acceptable burden on one's personal liberty—is as old as the Republic. As THE CHIEF JUSTICE observed just the other day, it is a foundational premise of modern government that the State holds a monopoly on legitimate violence: "A basic step in organizing a civilized society is to take [the] sword out of private hands and turn it over to an organized government, acting on behalf of all the people." *Robertson v. United States ex rel. Watson,* 560 U.S. 272, ——, 130 S.Ct. 2184, 176L.Ed.2d 1024 (dissenting opinion). The same holds true for the handgun. The power a man has in the state of nature "of doing whatsoever he thought fit for the preservation of himself and the rest of mankind, he gives up," to a significant extent, "to be regulated by laws made by the society." J. Locke, Second Treatise of Civil Government § 129, p. 64 (J. Gough ed.1947).

Limiting the federal constitutional right to keep and bear arms to the home complicates the analysis but does not dislodge this conclusion. Even though the Court has long afforded special solicitude for the privacy of the home, we have never understood that principle to "infring[e] upon" the authority of the States to proscribe certain inherently dangerous items, for "[i]n such cases, compelling reasons may exist for overriding the right of the individual to possess those ***893** materials." *Stanley,* 394 U.S., at 568, n. 11, 89 S.Ct. 1243. ****3109** And, of course, guns that start out in the home may not stay in the home. Even if the government has a weaker basis for restricting domestic possession of firearms as compared to public carriage—and even if a blanket, statewide prohibition on domestic possession might therefore be unconstitutional—the line between the two is a porous one. A state or local legislature may determine that a prophylactic ban on an especially portable weapon is necessary to police that line.

Second, the right to possess a firearm of one's choosing is different in kind from the liberty interests we have recognized under the Due Process Clause. Despite the plethora of substantive due process cases that have been decided in the post-*Lochner* century, I have found none that holds, states, or even suggests that the term "liberty" encompasses either the common-law right of self-defense or a right to keep and bear arms. I do not doubt for a moment that many Americans feel deeply passionate about firearms, and see them as critical to their way of life as well as to their security. Nevertheless, it does not appear to be the case that the ability to own a handgun, or any particular type of firearm, is critical to leading a life of autonomy, dignity, or political equality: The marketplace offers many tools for self-defense, even if they are imperfect substitutes, and neither petitioners nor their *amici* make such a contention. Petitioners' claim is not the kind of substantive interest, accordingly, on which a uniform, judicially enforced national standard is presumptively appropriate. [36]

***894** Indeed, in some respects the substantive right at issue may be better viewed as a property right. Petitioners wish to *acquire* certain types of firearms, or to *keep* certain firearms they have previously acquired. Interests in the possession of chattels have traditionally been viewed as property interests subject to definition and regulation by the States. Cf. *Stop the Beach Renourishment, Inc. v. Florida Dept. of Environmental Protection,* 560 U.S. 702, ——, 130 S.Ct. 2592, 177 L.Ed.2d 184 (2010) (opinion of SCALIA, J.) ("Generally speaking, state law defines property interests"). Under that tradition, Chicago's ordinance is unexceptional. [37]

****3110** The liberty interest asserted by petitioners is also dissimilar from those we have recognized in its capacity to undermine the security of others. To be sure, some of the Bill of Rights' procedural guarantees may place "restrictions on ***895** law enforcement" that have "controversial public safety implications." *Ante,* at 3045 (plurality opinion); see also *ante,* at 3055 (opinion of SCALIA, J.). But those

implications are generally quite attenuated. A defendant's invocation of his right to remain silent, to confront a witness, or to exclude certain evidence cannot directly cause any threat. The defendant's liberty interest is constrained by (and is itself a constraint on) the adjudicatory process. The link between handgun ownership and public safety is much tighter. The handgun is itself a tool for crime; the handgun's bullets *are* the violence.

Similarly, it is undeniable that some may take profound offense at a remark made by the soapbox speaker, the practices of another religion, or a gay couple's choice to have intimate relations. But that offense is moral, psychological, or theological in nature; the actions taken by the rights-bearers do not actually threaten the physical safety of any other person.[38] Firearms may be used to kill another person. If a legislature's response to dangerous weapons ends up impinging upon the liberty of any individuals in pursuit of the greater good, it invariably does so on the basis of more than the majority's " 'own moral code,' " *Lawrence,* 539 U.S., at 571, 123 S.Ct. 2472 (quoting *Casey,* 505 U.S., at 850, 112 S.Ct. 2791). While specific policies may of course be misguided, gun control is an area in which it "is quite wrong ... to assume that regulation and liberty occupy mutually exclusive zones—that as one expands, the other must contract." Stevens, 41 U. Miami L.Rev., at 280.

Third, the experience of other advanced democracies, including those that share our British heritage, undercuts the notion that an expansive right to keep and bear arms is intrinsic to ordered liberty. Many of these countries place restrictions on the possession, use, and carriage of firearms far more onerous than the restrictions found in this Nation. ***896** See Municipal Respondents' Brief 21–23 (discussing laws of England, Canada, Australia, Japan, Denmark, Finland, Luxembourg, and New Zealand). That the United States is an international outlier in the permissiveness of its approach to guns does not suggest that our laws are bad laws. It does suggest that this Court may not need to assume responsibility for making our laws still more permissive.

Admittedly, these other countries differ from ours in many relevant respects, including their problems with violent crime and the traditional role that firearms have played in their societies. But they are not so different from the United States that we ought to dismiss their experience entirely. Cf. *ante,* at 3044 – 3045 (plurality opinion); *ante,* at 3055 – 3056 (opinion of SCALIA, J.). The fact that our oldest allies have almost uniformly found it appropriate to regulate firearms extensively ****3111** tends to weaken petitioners' submission that the right to possess a gun of one's choosing is fundamental to a life of liberty. While the "American perspective" must always be our focus, *ante,* at 3046, 3050 (plurality opinion), it is silly—indeed, arrogant—to think we have nothing to learn about liberty from the billions of people beyond our borders.

Fourth, the Second Amendment differs in kind from the Amendments that surround it, with the consequence that its inclusion in the Bill of Rights is not merely unhelpful but positively harmful to petitioners' claim. Generally, the inclusion of a liberty interest in the Bill of Rights points toward the conclusion that it is of fundamental significance and ought to be enforceable against the States. But the Second Amendment plays a peculiar role within the Bill, as announced by its peculiar opening clause.[39] Even accepting the *Heller* Court's view that the Amendment protects an individual right to keep and bear arms disconnected from militia service, it remains undeniable that "the purpose for which ***897** the right was codified" was "to prevent elimination of the militia." *Heller,* 554 U.S., at ——, 128 S.Ct., at 2801; see also *United States v. Miller,* 307 U.S. 174, 178, 59 S.Ct. 816, 83 L.Ed. 1206 (1939) (Second Amendment was enacted "[w]ith obvious purpose to assure the continuation and render possible the effectiveness of [militia] forces"). It was the States, not private persons, on whose immediate behalf the Second Amendment was adopted. Notwithstanding the *Heller* Court's efforts to write the Second Amendment's preamble out of the Constitution, the Amendment still serves the structural function of protecting the States from encroachment by an overreaching Federal Government.

The Second Amendment, in other words, "is a federalism provision," *Elk Grove Unified School Dist. v. Newdow,* 542 U.S. 1, 45, 124 S.Ct. 2301, 159 L.Ed.2d 98 (2004) (THOMAS, J., concurring in judgment). It is directed at preserving the autonomy of the sovereign States, and its logic therefore "resists" incorporation by a federal court *against* the States. *Ibid.* No one suggests that the Tenth Amendment, which provides that powers not given to the Federal Government remain with "the States," applies to the States; such a reading would border on incoherent, given that the Tenth Amendment exists (in significant part) to safeguard the vitality of state governance. The Second Amendment is no different.[40]

The Court is surely correct that Americans' conceptions of the Second Amendment right evolved over time in a more

individualistic direction; that Members of the Reconstruction Congress were urgently concerned about the safety of the newly freed slaves; and that some Members believed that, ***898** following ratification of the Fourteenth Amendment, the Second Amendment would apply to the States. But it is a giant leap from these data points to the conclusion that the Fourteenth ****3112** Amendment " incorporated" the Second Amendment as a matter of original meaning or postenactment interpretation. Consider, for example, that the text of the Fourteenth Amendment says nothing about the Second Amendment or firearms; that there is substantial evidence to suggest that, when the Reconstruction Congress enacted measures to ensure newly freed slaves and Union sympathizers in the South enjoyed the right to possess firearms, it was motivated by antidiscrimination and equality concerns rather than arms-bearing concerns *per se;* [41] that many contemporaneous courts and commentators did not understand the Fourteenth Amendment to have had an "incorporating" effect; and that the States heavily regulated the right to keep and bear arms both before and after the Amendment's passage. The Court's narrative largely elides these facts. The complications they raise show why even the most dogged historical inquiry into the "fundamentality" of the Second Amendment right (or any other) necessarily entails judicial judgment—and therefore judicial discretion—every step of the way.

I accept that the evolution in Americans' understanding of the Second Amendment may help shed light on the question whether a right to keep and bear arms is comprised ***899** within Fourteenth Amendment "liberty." But the reasons that motivated the Framers to protect the ability of militiamen to keep muskets available for military use when our Nation was in its infancy, or that motivated the Reconstruction Congress to extend full citizenship to the freedmen in the wake of the Civil War, have only a limited bearing on the question that confronts the homeowner in a crime-infested metropolis today. The many episodes of brutal violence against African–Americans that blight our Nation's history, see *ante,* at 3038 – 3042 (majority opinion); *ante,* at 3080 – 3082, 3086 – 3088 (THOMAS, J., concurring in part and concurring in judgment), do not suggest that every American must be allowed to own whatever type of firearm he or she desires—just that no group of Americans should be systematically and discriminatorily disarmed and left to the mercy of racial terrorists. And the fact that some Americans may have thought or hoped that the Fourteenth Amendment would nationalize the Second Amendment hardly suffices to justify the conclusion that it did.

Fifth, although it may be true that Americans' interest in firearm possession and state-law recognition of that interest are "deeply rooted" in some important senses, *ante,* at 3036 (internal quotation marks omitted), it is equally true that the States have a long and unbroken history of regulating firearms. The idea that States may place substantial restrictions on the right to keep and bear arms short of complete disarmament is, in fact, far more entrenched than the notion that the Federal Constitution protects any such right. Federalism is a far "older and more deeply rooted tradition than is a right to carry," or to own, "any particular kind of weapon." ****3113** 567 F.3d 856, 860 (C.A.7 2009) (Easterbrook, C. J.).

From the early days of the Republic, through the Reconstruction era, to the present day, States and municipalities have placed extensive licensing requirements on firearm acquisition, restricted the public carriage of weapons, and banned altogether the possession of especially dangerous ***900** weapons, including handguns. See *Heller,* 554 U.S., at ——, 128 S.Ct., at 2848–2850 (BREYER, J., dissenting) (reviewing colonial laws); Cornell & DeDino, A Well Regulated Right: The Early American Origins of Gun Control, 73 Fordham L.Rev. 487, 502–516 (2004) (reviewing pre-Civil War laws); Brief for 34 Professional Historians and Legal Historians as *Amici Curiae* 4–22 (reviewing Reconstruction-era laws); Winkler, Scrutinizing the Second Amendment, 105 Mich. L.Rev. 683, 711–712, 716–726 (2007) (reviewing 20th-century laws); see generally *post,* at 3131 – 3136. [42] After the 1860's just as before, the state courts almost uniformly upheld these measures: Apart from making clear that all regulations had to be constructed and applied in a nondiscriminatory manner, the Fourteenth Amendment hardly made a dent. And let us not forget that this Court did not recognize *any* non-militia-related interests under the Second Amendment until two Terms ago, in *Heller*. Petitioners do not dispute the city of Chicago's observation that "[n]o other substantive Bill of Rights protection has been regulated nearly as intrusively" as the right to keep and bear arms. Municipal Respondents' Brief 25. [43]

This history of intrusive regulation is not surprising given that the very text of the Second Amendment calls out for ***901** regulation, [44] and the ability to respond to the social ills associated with dangerous weapons ****3114** goes to the very core of the States' police powers. Our precedent is crystal-clear on this latter point. See, *e.g., Gonzales v. Oregon,* 546 U.S. 243, 270, 126 S.Ct. 904, 163 L.Ed.2d 748 (2006) ("[T]he

structure and limitations of federalism ... allow the States great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons" (internal quotation marks omitted)); *United States v. Morrison,* 529 U.S. 598, 618, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000) ("[W]e can think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims"); *Kelley v. Johnson,* 425 U.S. 238, 247, 96 S.Ct. 1440, 47 L.Ed.2d 708 (1976) ("The promotion of safety of persons and property is unquestionably at the core of the State's police power"); *Automobile Workers v. Wisconsin Employment Relations Bd.,* 351 U.S. 266, 274, 76 S.Ct. 794, 100 L.Ed. 1162 (1956) ("The dominant interest of the State in preventing violence and property damage cannot be questioned. It is a matter of genuine local concern"). Compared with today's ruling, most if not all of ***902** this Court's decisions requiring the States to comply with other provisions in the Bill of Rights did not exact nearly so heavy a toll in terms of state sovereignty.

Finally, even apart from the States' long history of firearms regulation and its location at the core of their police powers, this is a quintessential area in which federalism ought to be allowed to flourish without this Court's meddling. Whether or not we *can* assert a plausible constitutional basis for intervening, there are powerful reasons why we *should not* do so.

Across the Nation, States and localities vary significantly in the patterns and problems of gun violence they face, as well as in the traditions and cultures of lawful gun use they claim. Cf. *post,* at 3128 – 3129. The city of Chicago, for example, faces a pressing challenge in combating criminal street gangs. Most rural areas do not. The city of Chicago has a high population density, which increases the potential for a gunman to inflict mass terror and casualties. Most rural areas do not.[45] The city of Chicago offers little in the way of hunting opportunities. Residents of rural communities are, one presumes, much more likely to stock the dinner table with game they have personally felled.

Given that relevant background conditions diverge so much across jurisdictions, the Court ought to pay particular heed to state and local legislatures' "right to experiment." *New State Ice,* 285 U.S., at 311, 52 S.Ct. 371 (Brandeis, J., dissenting). So long as the regulatory measures they have chosen are not "arbitrary, capricious, or unreasonable," we should be allowing them to "try novel social and economic" policies. *Ibid.* It "is more in keeping ... with our status as a court in a federal system," under these circumstances, "to avoid imposing ***903** a single solution ... from the top down." *Smith v. Robbins,* 528 U.S. 259, 275, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000).

It is all the more unwise for this Court to limit experimentation in an area "where the best solution is far from clear." *United States v. Lopez,* 514 U.S. 549, 581, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995) (KENNEDY, J., concurring). Few issues of public policy are subject to such intensive ****3115** and rapidly developing empirical controversy as gun control. See *Heller,* 554 U.S., at ——, 128 S.Ct., at 2857–2860 (BREYER, J., dissenting). Chicago's handgun ban, in itself, has divided researchers. Compare Brief for Professors of Criminal Justice as *Amici Curiae* (arguing that ordinance has been effective at reducing gun violence), with Brief for International Law Enforcement Educators and Trainers Association et al. as *Amici Curiae* 17–26 (arguing that ordinance has been a failure).[46] Of course, on some matters the Constitution requires that we ignore such pragmatic considerations. But the Constitution's text, history, and structure are not so clear on the matter before us—as evidenced by the groundbreaking nature of today's fractured decision—and this Court lacks both the technical capacity and the localized expertise to assess "the wisdom, need, and propriety" of most gun-control measures. *Griswold,* 381 U.S., at 482, 85 S.Ct. 1678.[47]

***904** Nor will the Court's intervention bring any clarity to this enormously complex area of law. Quite to the contrary, today's decision invites an avalanche of litigation that could mire the federal courts in fine-grained determinations about which state and local regulations comport with the *Heller* right—the precise contours of which are far from pellucid —under a standard of review we have not even established. See *post,* at 3126 – 3128. The plurality's "assuranc[e]" that "incorporation does not imperil every law regulating firearms," *ante,* at 3047, provides only modest comfort. For it is also an admission of just how many different types of regulations are potentially implicated by today's ruling, and of just how ad hoc the Court's initial attempt to draw distinctions among them was in *Heller*. The practical significance of the proposition that "the Second Amendment right is fully applicable to the States," *ante,* at 3026 (majority opinion), remains to be worked out by this Court over many, many years.

Furthermore, and critically, the Court's imposition of a national standard is still more unwise because the elected branches have shown themselves to be perfectly capable of safeguarding the interest in keeping and bearing arms. The strength of a liberty claim must be assessed in connection with its status in the democratic process. And in this case, no one disputes "that opponents of [gun] control have considerable political power and do not seem ****3116** to be at a systematic disadvantage in the democratic process," or that "the widespread commitment to an individual right to own guns ... operates as a safeguard against excessive or unjustified gun ***905** control laws."[48] Sunstein, Second Amendment Minimalism: *Heller* as *Griswold,* 122 Harv. L.Rev. 246, 260 (2008). Indeed, there is a good deal of evidence to suggest that, if anything, American lawmakers tend to *under* regulate guns, relative to the policy views expressed by majorities in opinion polls. See K. Goss, Disarmed: The Missing Movement for Gun Control in America 6 (2006). If a particular State or locality has enacted some "improvident" gun-control measures, as petitioners believe Chicago has done, there is no apparent reason to infer that the mistake will not "eventually be rectified by the democratic process." *Vance v. Bradley,* 440 U.S. 93, 97, 99 S.Ct. 939, 59 L.Ed.2d 171 (1979).

This is not a case, then, that involves a "special condition" that "may call for a correspondingly more searching judicial inquiry." *Carolene Products,* 304 U.S., at 153, n. 4, 58 S.Ct. 778. Neither petitioners nor those most zealously committed to their views represent a group or a claim that is liable to receive unfair treatment at the hands of the majority. On the contrary, petitioners' views are supported by powerful participants in the legislative process. Petitioners have given us no reason to believe that the interest in keeping and bearing arms entails any special need for judicial lawmaking, or that federal judges are more qualified to craft appropriate rules than the people's elected representatives. Having failed to show why their asserted interest is intrinsic to the concept of ordered liberty or vulnerable to maltreatment in the political arena, they have failed to show why "the word liberty in the Fourteenth Amendment" should be "held to prevent the natural outcome of a dominant opinion" about how to deal with the problem of handgun violence in the city of Chicago. *Lochner,* 198 U.S., at 76, 25 S.Ct. 539 (Holmes, J., dissenting).

***906 VI**

The preceding sections have already addressed many of the points made by Justice SCALIA in his concurrence. But in light of that opinion's fixation on this one, it is appropriate to say a few words about Justice SCALIA's broader claim: that his preferred method of substantive due process analysis, a method "that makes the traditions of our people paramount," *ante,* at 3050, is both more restrained and more facilitative of democracy than the method I have outlined. Colorful as it is, Justice SCALIA's critique does not have nearly as much force as does his rhetoric. His theory of substantive due process, moreover, comes with its own profound difficulties.

Although Justice SCALIA aspires to an "objective," "neutral" method of substantive due process analysis, *ante,* at 3055 – 3056, his actual method is nothing of the sort. Under the "historically focused" approach he advocates, *ante,* at 3057, numerous threshold questions arise before one ever gets to the history. At what level of generality should one frame the liberty interest in question? See n. 25, *supra*. What does it mean for a right to be " 'deeply rooted in this Nation's history and tradition,' " *ante,* at 3026 – 3027 (quoting *Glucksberg,* 521 U.S., at 721, 117 S.Ct. 2302)? By what standard will that proposition be tested? Which types of sources will count, and how will those sources be ****3117** weighed and aggregated? There is no objective, neutral answer to these questions. There is not even a theory—at least, Justice SCALIA provides none—of how to go about answering them.

Nor is there any escaping *Palko,* it seems. To qualify for substantive due process protection, Justice SCALIA has stated, an asserted liberty right must be not only deeply rooted in American tradition, "but it must *also* be implicit in the concept of ordered liberty." *Lawrence,* 539 U.S., at 593, n. 3, 123 S.Ct. 2472 (dissenting opinion) (internal quotation marks omitted). Applying the latter, *Palko*-derived half of that test requires ***907** precisely the sort of reasoned judgment—the same multifaceted evaluation of the right's contours and consequences—that Justice SCALIA mocks in his concurrence today.

So does applying the first half. It is hardly a novel insight that history is not an objective science, and that its use can therefore "point in any direction the judges favor," *ante,* at 3058 (opinion of SCALIA, J.). Yet 21 years after the point was brought to his attention by Justice Brennan, Justice SCALIA remains "oblivious to the fact that [the concept of 'tradition'] can be as malleable and elusive as 'liberty' itself." *Michael H.,* 491 U.S., at 137, 109 S.Ct. 2333 (dissenting opinion). Even when historical analysis is focused on a

discrete proposition, such as the original public meaning of the Second Amendment, the evidence often points in different directions. The historian must choose which pieces to credit and which to discount, and then must try to assemble them into a coherent whole. In *Heller,* Justice SCALIA preferred to rely on sources created much earlier and later in time than the Second Amendment itself, see, *e.g.,* 554 U.S., at ——, 128 S.Ct., at 2789–2790 (consulting late 19th-century treatises to ascertain how Americans would have read the Amendment's preamble in 1791); I focused more closely on sources contemporaneous with the Amendment's drafting and ratification.[49] No mechanical yardstick can measure which of us was correct, either with respect to the materials we chose to privilege or the insights we gleaned from them.

The malleability and elusiveness of history increase exponentially when we move from a pure question of original meaning, as in *Heller,* to Justice SCALIA's theory of substantive ***908** due process. At least with the former sort of question, the judge can focus on a single legal provision; the temporal scope of the inquiry is (or should be) relatively bounded; and there is substantial agreement on what sorts of authorities merit consideration. With Justice SCALIA's approach to substantive due process, these guideposts all fall away. The judge must canvas the entire landscape of American law as it has evolved through time, and perhaps older laws as well, see, *e.g., Lawrence,* 539 U.S., at 596, 123 S.Ct. 2472 (SCALIA, J., dissenting) (discussing " 'ancient roots' " of proscriptions against sodomy (quoting *Bowers v. Hardwick,* 478 U.S. 186, 192, 106 S.Ct. 2841, 92 L.Ed.2d 140 (1986)), pursuant to a standard (deeply rootedness) that has never been defined. In conducting this rudderless, panoramic tour of American legal history, the judge has more than ample opportunity to "look over the heads of the crowd and pick out [his] friends," ****3118** *Roper v. Simmons,* 543 U.S. 551, 617, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (SCALIA, J., dissenting).

My point is not to criticize judges' use of history in general or to suggest that it always generates indeterminate answers; I have already emphasized that historical study can discipline as well as enrich substantive due process analysis. My point is simply that Justice SCALIA's defense of his method, which holds out objectivity and restraint as its cardinal—and, it seems, only—virtues, is unsatisfying on its own terms. For a limitless number of subjective judgments may be smuggled into his historical analysis. Worse, they may be *buried* in the analysis. At least with my approach, the judge's cards are laid on the table for all to see, and to critique. The judge must exercise judgment, to be sure. When answering a constitutional question to which the text provides no clear answer, there is always some amount of discretion; our constitutional system has always depended on judges' filling in the document's vast open spaces.[50] But there is also transparency.

***909** Justice SCALIA's approach is even less restrained in another sense: It would effect a major break from our case law outside of the "incorporation" area. Justice SCALIA does not seem troubled by the fact that his method is largely inconsistent with the Court's canonical substantive due process decisions, ranging from *Meyer,* 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042, and *Pierce,* 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070, in the 1920's, to *Griswold,* 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510, in the 1960's, to *Lawrence,* 539 U.S. 558, 123 S.Ct. 2472, 156 L.Ed.2d 508, in the 2000's. To the contrary, he seems to embrace this dissonance. My method seeks to synthesize dozens of cases on which the American people have relied for decades. Justice SCALIA's method seeks to vaporize them. So I am left to wonder, which of us is more faithful to this Nation's constitutional history? And which of us is more faithful to the values and commitments of the American people, as they stand today? In 1967, when the Court held in *Loving,* 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed.2d 1010, that adults have a liberty-based as well as equality-based right to wed persons of another race, interracial marriage was hardly "deeply rooted" in American tradition. Racial segregation and subordination were deeply rooted. The Court's substantive due process holding was nonetheless correct—and we should be wary of any interpretive theory that implies, emphatically, that it was not.

Which leads me to the final set of points I wish to make: Justice SCALIA's method invites not only bad history, but also bad constitutional law. As I have already explained, in evaluating a claimed liberty interest (or any constitutional claim for that matter), it makes perfect sense to give history significant weight: Justice SCALIA's position is closer to my own than he apparently feels comfortable acknowledging. But it makes little sense to give history dispositive weight in every case. And it makes *especially* little sense to answer questions like whether the right to bear arms is "fundamental" by focusing only on the past, given that both the practical significance and the public understandings of such a right often change as society changes. What if the evidence had ***910** shown that, whereas at one time firearm possession contributed substantially to personal liberty and safety,

nowadays it contributes nothing, or even tends to undermine them? Would it still have been reasonable to constitutionalize the right?

**3119 The concern runs still deeper. Not only can historical views be less than completely clear or informative, but they can also be wrong. Some notions that many Americans deeply believed to be true, at one time, turned out not to be true. Some practices that many Americans believed to be consistent with the Constitution's guarantees of liberty and equality, at one time, turned out to be inconsistent with them. The fact that we have a written Constitution does not consign this Nation to a static legal existence. Although we should always "pa[y] a decent regard to the opinions of former times," it "is not the glory of the people of America" to have "suffered a blind veneration for antiquity." The Federalist No. 14, p. 99, 104 (C. Rossiter ed. 1961) (J. Madison). It is not the role of federal judges to be amateur historians. And it is not fidelity to the Constitution to ignore its use of deliberately capacious language, in an effort to transform foundational legal commitments into narrow rules of decision.

As for "the democratic process," *ante,* at 3057 – 3058, a method that looks exclusively to history can easily do more harm than good. Just consider this case. The net result of Justice SCALIA's supposedly objective analysis is to vest federal judges—ultimately a majority of the judges on this Court—with unprecedented lawmaking powers in an area in which they have no special qualifications, and in which the give-and-take of the political process has functioned effectively for decades. Why this "intrudes much less upon the democratic process," *ante,* at 3058, than an approach that would defer to the democratic process on the regulation of firearms is, to say the least, not self-evident. I cannot even tell what, under Justice SCALIA's view, constitutes an "intrusion."

*911 It is worth pondering, furthermore, the vision of democracy that underlies Justice SCALIA's critique. Because very few of us would welcome a system in which majorities or powerful interest groups always get their way. Under our constitutional scheme, I would have thought that a judicial approach to liberty claims such as the one I have outlined—an approach that investigates both the intrinsic nature of the claimed interest and the practical significance of its judicial enforcement, that is transparent in its reasoning and sincere in its effort to incorporate constraints, that is guided by history but not beholden to it, and that is willing to protect some rights even if they have not already received uniform protection from the elected branches—has the capacity to improve, rather than "[im]peril," *ante,* at 3058, our democracy. It all depends on judges' exercising careful, reasoned judgment. As it always has, and as it always will.

VII

The fact that the right to keep and bear arms appears in the Constitution should not obscure the novelty of the Court's decision to enforce that right against the States. By its terms, the Second Amendment does not apply to the States; read properly, it does not even apply to individuals outside of the militia context. The Second Amendment was adopted to protect the *States* from federal encroachment. And the Fourteenth Amendment has never been understood by the Court to have "incorporated" the entire Bill of Rights. There was nothing foreordained about today's outcome.

Although the Court's decision in this case might be seen as a mere adjunct to its decision in *Heller,* the consequences could prove far more destructive—quite literally—to our Nation's communities and to our constitutional structure. Thankfully, the Second Amendment right identified in *Heller* and its newly minted Fourteenth **3120 Amendment analogue are limited, at least for now, to the home. But neither the "assurances" provided by the plurality, *ante,* at 3047 – 3048, nor the *912 many historical sources cited in its opinion should obscure the reality that today's ruling marks a dramatic change in our law—or that the Justices who have joined it have brought to bear an awesome amount of discretion in resolving the legal question presented by this case.

I would proceed more cautiously. For the reasons set out at length above, I cannot accept either the methodology the Court employs or the conclusions it draws. Although impressively argued, the majority's decision to overturn more than a century of Supreme Court precedent and to unsettle a much longer tradition of state practice is not, in my judgment, built "upon respect for the teachings of history, solid recognition of the basic values that underlie our society, and wise appreciation of the great roles that the doctrines of federalism and separation of powers have played in establishing and preserving American freedoms." *Griswold,* 381 U.S., at 501, 85 S.Ct. 1678 (Harlan, J., concurring in judgment).

Accordingly, I respectfully dissent.

Justice BREYER, with whom Justice GINSBURG and Justice SOTOMAYOR join, dissenting.

In my view, Justice STEVENS has demonstrated that the Fourteenth Amendment's guarantee of "substantive due process" does not include a general right to keep and bear firearms for purposes of private self-defense. As he argues, the Framers did not write the Second Amendment with this objective in view. See *ante,* at 3111 – 3112 (dissenting opinion). Unlike other forms of substantive liberty, the carrying of arms for that purpose often puts others' lives at risk. See *ante,* at 3107 – 3109. And the use of arms for private self-defense does not warrant federal constitutional protection from state regulation. See *ante,* at 3112 – 3116.

The Court, however, does not expressly rest its opinion upon "substantive due process" concerns. Rather, it directs its attention to this Court's "incorporation" precedents and asks whether the Second Amendment right to private self- ***913** defense is "fundamental" so that it applies to the States through the Fourteenth Amendment. See *ante,* at 3031 – 3036.

I shall therefore separately consider the question of "incorporation." I can find nothing in the Second Amendment's text, history, or underlying rationale that could warrant characterizing it as "fundamental" insofar as it seeks to protect the keeping and bearing of arms for private self-defense purposes. Nor can I find any justification for interpreting the Constitution as transferring ultimate regulatory authority over the private uses of firearms from democratically elected legislatures to courts or from the States to the Federal Government. I therefore conclude that the Fourteenth Amendment does not "incorporate" the Second Amendment's right "to keep and bear Arms." And I consequently dissent.

I

The Second Amendment says: "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." Two years ago, in *District of Columbia v. Heller,* 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008), the Court rejected the pre-existing judicial consensus that the Second Amendment was primarily concerned with the need to maintain a "well regulated Militia." See *id.,* at ——, 128 S.Ct., at 2823 and n. 2, 2842–2846 (STEVENS, J., dissenting) ; ****3121** *United States v. Miller,* 307 U.S. 174, 178, 59 S.Ct. 816, 83 L.Ed. 1206 (1939). Although the Court acknowledged that "the threat that the new Federal Government would destroy the citizens' militia by taking away their arms *was the reason* that right ... was codified in a written Constitution," the Court asserted that "individual self defense ... was the *central component* of the right itself." *Heller, supra,* at ——, 128 S.Ct., at 2801 (first emphasis added). The Court went on to hold that the Second Amendment restricted Congress' power to regulate handguns used for self-defense, and the Court found unconstitutional the District of Columbia's ban on the possession of handguns in the home. *Id.,* at ——, 128 S.Ct., at 2821–2822.

***914** The Court based its conclusions almost exclusively upon its reading of history. But the relevant history in *Heller*was far from clear: Four dissenting Justices disagreed with the majority's historical analysis. And subsequent scholarly writing reveals why disputed history provides treacherous ground on which to build decisions written by judges who are not expert at history.

Since *Heller,* historians, scholars, and judges have continued to express the view that the Court's historical account was flawed. See, *e.g.,* Konig, Why the Second Amendment Has a Preamble: Original Public Meaning and the Political Culture of Written Constitutions in Revolutionary America, 56 UCLA L.Rev. 1295 (2009); Finkelman, It Really Was About a Well Regulated Militia, 59 Syracuse L.Rev. 267 (2008); P. Charles, The Second Amendment: The Intent and Its Interpretation by the States and the Supreme Court (2009); Merkel, *The District of Columbia* v. *Heller* and Antonin Scalia's Perverse Sense of Originalism, 13 Lewis & Clark L.Rev. 349 (2009); Kozuskanich, Originalism in a Digital Age: An Inquiry into the Right to Bear Arms, 29 J. Early Republic 585 (2009); Cornell, St. George Tucker's Lecture Notes, the Second Amendment, and Originalist Methodology, 103 Nw. U.L.Rev. 1541 (2009); Posner, In Defense of Looseness: The Supreme Court and Gun Control, New Republic, Aug. 27, 2008, pp. 32–35; see also Epstein, A Structural Interpretation of the Second Amendment: Why *Heller* is (Probably) Wrong on Originalist Grounds, 59 Syracuse L.Rev. 171 (2008).

Consider as an example of these critiques an *amici* brief filed in this case by historians who specialize in the study of the English Civil Wars. They tell us that *Heller* misunderstood a key historical point. See Brief for English/Early American Historians as *Amici Curiae* (hereinafter English Historians' Brief) (filed by 21 professors at leading universities in the

United States, United Kingdom, and Australia). *Heller* 's conclusion that "individual self-defense" was "the ***915** *central component* " of the Second Amendment's right "to keep and bear Arms" rested upon its view that the Amendment "codified a *pre-existing* right" that had "nothing whatever to do with service in a militia." 554 U.S., at ——, 128 S.Ct., at 2797, 2801–2802. That view in turn rested in significant part upon Blackstone having described the right as " 'the right of having and using arms for self-preservation and defence,' " which reflected the provision in the English Declaration of Right of 1689 that gave the King's Protestant " 'subjects' " the right to " 'have Arms for their defence suitable to their Conditions, and as allowed by law.' " *Id.,* at ——, 128 S.Ct., at 2798 (quoting 1 W. Blackstone, Commentaries on the Laws of England 140 (1765) (hereinafter Blackstone) and 1 W. & M., c. 2, § 7, in 3 Eng. Stat. at Large 441 (1689)). The Framers, said the majority, understood that right "as permitting a citizen to ****3122** 'repe [l] force by force' when 'the intervention of society in his behalf, may be too late to prevent an injury.' " 554 U.S., at ——, 128 S.Ct., at 2799 (quoting St. George Tucker, 1 Blackstone's Commentaries 145–146, n. 42 (1803)).

The historians now tell us, however, that the right to which Blackstone referred had, not *nothing,* but *everything,* to do with the militia. As properly understood at the time of the English Civil Wars, the historians claim, the right to bear arms "ensured that *Parliament* had the power" to arm the citizenry: "to defend the realm" in the case of a foreign enemy, and to "secure the right of 'self-preservation,' " or "self-defense," should "*the sovereign* usurp the English Constitution." English Historians' Brief 3, 8–13, 23–24 (emphasis added). Thus, the Declaration of Right says that private persons can possess guns only "as allowed by law." See *id.,* at 20–24. Moreover, when Blackstone referred to " 'the right of having and using arms for self-preservation and defence,' " he was referring to the right of the people "*to take part in the militia* to defend their political liberties," and *to the right of Parliament* (which represented the people) to *raise a militia* even when the King sought to deny it ***916** that power. *Id.,* at 4, 24–27 (emphasis added) (quoting 1 Blackstone 140). Nor can the historians find any convincing reason to believe that the Framers had something different in mind than what Blackstone himself meant. Compare *Heller, supra,* at ——, 128 S.Ct., at 2798–2799 with English Historians' Brief 28–40. The historians concede that at least one historian takes a different position, see *id.,* at 7, but the Court, they imply, would lose a poll taken among professional historians of this period, say, by a vote of 8 to 1.

If history, and history alone, is what matters, why would the Court not now reconsider *Heller* in light of these more recently published historical views? See *Leegin Creative Leather Products, Inc. v. PSKS, Inc.,* 551 U.S. 877, 923–924, 127 S.Ct. 2705, 168 L.Ed.2d 623 (2007) (BREYER, J., dissenting) (noting that *stare decisis* interests are at their lowest with respect to recent and erroneous constitutional decisions that create unworkable legal regimes); *Citizens United v. Federal Election Comm'n,* 558 U.S. 310, ——, 130 S.Ct. 876, 955–956, 175 L.Ed.2d 753 (2010) (listing similar factors); see also *Wallace v. Jaffree,* 472 U.S. 38, 99, 105 S.Ct. 2479, 86 L.Ed.2d 29 (1985) (REHNQUIST, J., dissenting) ("*[S]tare decisis* may bind courts as to matters of law, but it cannot bind them as to matters of history"). At the least, where *Heller* 's historical foundations are so uncertain, why extend its applicability?

My aim in referring to this history is to illustrate the reefs and shoals that lie in wait for those nonexpert judges who place virtually determinative weight upon historical considerations. In my own view, the Court should not look to history alone but to other factors as well—above all, in cases where the history is so unclear that the experts themselves strongly disagree. It should, for example, consider the basic values that underlie a constitutional provision and their contemporary significance. And it should examine as well the relevant consequences and practical justifications that might, or might not, warrant removing an important question from the democratic decisionmaking process. See *ante,* at 3097 – 3099 ***917** (STEVENS, J., dissenting) (discussing shortcomings of an exclusively historical approach).

II

A

In my view, taking *Heller* as a given, the Fourteenth Amendment does not incorporate the Second Amendment right to keep ****3123** and bear arms for purposes of private self-defense. Under this Court's precedents, to incorporate the private self-defense right the majority must show that the right is, *e.g.,* "fundamental to the American scheme of justice," *Duncan v. Louisiana,* 391 U.S. 145, 149, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968); see *ibid.,* n. 14; see also *ante,* at 3050 (plurality opinion) (finding that the right is "fundamental" and therefore incorporated). And this it fails to do.

The majority here, like that in *Heller,* relies almost exclusively upon history to make the necessary showing. *Ante,* at 3036 – 3044. But to do so for incorporation purposes is both wrong and dangerous. As Justice STEVENS points out, our society has historically made mistakes—for example, when considering certain 18th- and 19th-century property rights to be fundamental. *Ante,* at 3098 – 3099 (dissenting opinion). And in the incorporation context, as elsewhere, history often is unclear about the answers. See Part I, *supra;* Part III, *infra.*

Accordingly, this Court, in considering an incorporation question, has never stated that the historical status of a right is the only relevant consideration. Rather, the Court has either explicitly or implicitly made clear in its opinions that the right in question has remained fundamental over time. See, *e.g., Apodaca v. Oregon,* 406 U.S. 404, 410, 92 S.Ct. 1628, 32 L.Ed.2d 184 (1972) (plurality opinion) (stating that the incorporation "inquiry must focus upon the function served" by the right in question in "*contemporary society* " (emphasis added)); *Duncan v. Louisiana,* 391 U.S. 145, 154, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968) (noting that the right in question "continues to receive strong support"); ***918** *Klopfer v. North Carolina,* 386 U.S. 213, 226, 87 S.Ct. 988, 18 L.Ed.2d 1 (1967) (same). And, indeed, neither of the parties before us in this case has asked us to employ the majority's history-constrained approach. See Brief for Petitioners 67–69 (arguing for incorporation based on trends in contemporary support for the right); Brief for Respondents City of Chicago et al. 23–31 (hereinafter Municipal Respondents) (looking to current state practices with respect to the right).

I thus think it proper, above all where history provides no clear answer, to look to other factors in considering whether a right is sufficiently "fundamental" to remove it from the political process in every State. I would include among those factors the nature of the right; any contemporary disagreement about whether the right is fundamental; the extent to which incorporation will further other, perhaps more basic, constitutional aims; and the extent to which incorporation will advance or hinder the Constitution's structural aims, including its division of powers among different governmental institutions (and the people as well). Is incorporation needed, for example, to further the Constitution's effort to ensure that the government treats each individual with equal respect? Will it help maintain the democratic form of government that the Constitution foresees? In a word, will incorporation prove consistent, or inconsistent, with the Constitution's efforts to create governmental institutions well suited to the carrying out of its constitutional promises?

Finally, I would take account of the Framers' basic reason for believing the Court ought to have the power of judicial review. Alexander Hamilton feared granting that power to Congress alone, for he feared that Congress, acting as judges, would not overturn as unconstitutional a popular statute that it had recently enacted, as legislators. The Federalist No. 78, p. 405 (G. Carey & J. McClellan eds. ****3124** 2001) (A.Hamilton) ("This independence of the judges is equally requisite to guard the constitution and the rights of individuals from the ***919** effects of those ill humours, which" can, at times, lead to " serious oppressions of the minor part in the community"). Judges, he thought, may find it easier to resist popular pressure to suppress the basic rights of an unpopular minority. See *United States v. Carolene Products Co.,* 304 U.S. 144, 152, n. 4, 58 S.Ct. 778, 82 L.Ed. 1234 (1938). That being so, it makes sense to ask whether that particular comparative judicial advantage is relevant to the case at hand. See, *e.g.,* J. Ely, Democracy and Distrust (1980).

B

How do these considerations apply here? For one thing, I would apply them only to the private self-defense right directly at issue. After all, the Amendment's militia-related purpose is primarily to protect *States* from *federal* regulation, not to protect individuals from militia-related regulation. *Heller,* 554 U.S., at ——, 128 S.Ct., at 2801–2802; see also *Miller,* 307 U.S., at 178, 59 S.Ct. 816. Moreover, the Civil War Amendments, the electoral process, the courts, and numerous other institutions today help to safeguard the States and the people from any serious threat of federal tyranny. How are state militias additionally necessary? It is difficult to see how a right that, as the majority concedes, has "largely faded as a popular concern" could possibly be so fundamental that it would warrant incorporation through the Fourteenth Amendment. *Ante,* at 3037 – 3038. Hence, the incorporation of the Second Amendment cannot be based on the militia-related aspect of what *Heller* found to be more extensive Second Amendment rights.

For another thing, as *Heller* concedes, the private self-defense right that the Court would incorporate has nothing to do with "the *reason* " the Framers "codified" the right to keep and bear arms "in a written Constitution." 554 U.S., at ——, 128 S.Ct., at 2801–2802 (emphasis added). *Heller*

immediately adds that the self-defense right was nonetheless "the *central component* of the right." *Ibid.* In my view, this is the historical equivalent of a claim that water runs uphill. See Part I, *supra*. But, taking it as valid, the Framers' basic *reasons* for including ***920** language in the Constitution would nonetheless seem more pertinent (in deciding about the contemporary *importance* of a right) than the particular *scope* 17th- or 18th-century listeners would have then assigned to the words they used. And examination of the Framers' motivation tells us they did not think the private armed self-defense right was of paramount importance. See Amar, The Bill of Rights as a Constitution, 100 Yale L.J. 1131, 1164 (1991) ("[T]o see the [Second] Amendment as primarily concerned with an individual right to hunt, or protect one's home," would be "like viewing the heart of the speech and assembly clauses as the right of persons to meet to play bridge"); see also, *e.g.,* Rakove, The Second Amendment: The Highest Stage of Originalism, 76 Chi.-Kent L.Rev. 103, 127–128 (2000); Brief for Historians on Early American Legal, Constitutional, and Pennsylvania History as *Amici Curiae* 22–33.

Further, there is no popular consensus that the private self-defense right described in *Heller* is fundamental. The plurality suggests that two *amici* briefs filed in the case show such a consensus, see *ante,* at 3048 – 3049, but, of course, numerous *amici* briefs have been filed opposing incorporation as well. Moreover, every State regulates firearms extensively, and public opinion is sharply divided on the appropriate level of regulation. Much of ****3125** this disagreement rests upon empirical considerations. One side believes the right essential to protect the lives of those attacked in the home; the other side believes it essential to regulate the right in order to protect the lives of others attacked with guns. It seems unlikely that definitive evidence will develop one way or the other. And the appropriate level of firearm regulation has thus long been, and continues to be, a hotly contested matter of political debate. See, *e.g.,* Siegel, Dead or Alive: Originalism as Popular Constitutionalism in *Heller,* 122 Harv. L.Rev. 191, 201–246 (2008). (Numerous sources supporting arguments and data in Part II–B can be found in the Appendix, *infra.*)

***921** Moreover, there is no reason here to believe that incorporation of the private self-defense right will further any other or broader constitutional objective. We are aware of no argument that gun-control regulations target or are passed with the purpose of targeting "discrete and insular minorities." *Carolene Products Co., supra,* at 153, n. 4, 58 S.Ct. 778; see, *e.g., ante,* at 3115 – 3116 (STEVENS, J., dissenting). Nor will incorporation help to assure equal respect for individuals. Unlike the First Amendment's rights of free speech, free press, assembly, and petition, the private self-defense right does not constitute a necessary part of the democratic process that the Constitution seeks to establish. See, *e.g., Whitney v. California,* 274 U.S. 357, 377, 47 S.Ct. 641, 71 L.Ed. 1095 (1927) (Brandeis, J., concurring). Unlike the First Amendment's religious protections, the Fourth Amendment's protection against unreasonable searches and seizures, the Fifth and Sixth Amendments' insistence upon fair criminal procedure, and the Eighth Amendment's protection against cruel and unusual punishments, the private self-defense right does not significantly seek to protect individuals who might otherwise suffer unfair or inhumane treatment at the hands of a majority. Unlike the protections offered by many of these same Amendments, it does not involve matters as to which judges possess a comparative expertise, by virtue of their close familiarity with the justice system and its operation. And, unlike the Fifth Amendment's insistence on just compensation, it does not involve a matter where a majority might unfairly seize for itself property belonging to a minority.

Finally, incorporation of the right *will* work a significant disruption in the constitutional allocation of decisionmaking authority, thereby interfering with the Constitution's ability to further its objectives.

First, on any reasonable accounting, the incorporation of the right recognized in *Heller* would amount to a significant incursion on a traditional and important area of state concern, altering the constitutional relationship between the ***922** States and the Federal Government. Private gun regulation is the quintessential exercise of a State's "police power"—*i.e.,* the power to "protec [t] ... the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the State," by enacting "all kinds of restraints and burdens" on both "persons and property." *Slaughter–House Cases,* 16 Wall. 36, 62, 21 L.Ed. 394 (1873) (internal quotation marks omitted). The Court has long recognized that the Constitution grants the States special authority to enact laws pursuant to this power. See, *e.g., Medtronic, Inc. v. Lohr,* 518 U.S. 470, 475, 116 S.Ct. 2240, 135 L.Ed.2d 700 (1996) (noting that States have "great latitude" to use their police powers (internal quotation marks omitted)); *Metropolitan Life Ins. Co. v. Massachusetts,* 471 U.S. 724, 756, 105 S.Ct. 2380, 85 L.Ed.2d 728 (1985). A decade ago, we wrote that there is "no better example of the police power" than "the ****3126** suppression of violent crime." *United States v.*

Morrison, 529 U.S. 598, 618, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000). And examples in which the Court has deferred to state legislative judgments in respect to the exercise of the police power are legion. See, *e.g., Gonzales v. Oregon,* 546 U.S. 243, 270, 126 S.Ct. 904, 163 L.Ed.2d 748 (2006) (assisted suicide); *Washington v. Glucksberg,* 521 U.S. 702, 721, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997) (same); *Berman v. Parker,* 348 U.S. 26, 32, 75 S.Ct. 98, 99 L.Ed. 27 (1954) ("We deal, in other words, with what traditionally has been known as the police power. An attempt to define its reach or trace its outer limits is fruitless ...").

Second, determining the constitutionality of a particular state gun law requires finding answers to complex empirically based questions of a kind that legislatures are better able than courts to make. See, *e.g., Los Angeles v. Alameda Books, Inc.,* 535 U.S. 425, 440, 122 S.Ct. 1728, 152 L.Ed.2d 670 (2002) (plurality opinion); *Turner Broadcasting System, Inc. v. FCC,* 520 U.S. 180, 195–196, 117 S.Ct. 1174, 137 L.Ed.2d 369 (1997). And it may require this kind of analysis in virtually every case.

Government regulation of the right to bear arms normally embodies a judgment that the regulation will help save lives. The determination whether a gun regulation is constitutional would thus almost always require the weighing of the constitutional ***923** right to bear arms against the "primary concern of every government—a concern for the safety and indeed the lives of its citizens." *United States v. Salerno,* 481 U.S. 739, 755, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987). With respect to other incorporated rights, this sort of inquiry is *sometimes* present. See, *e.g., Brandenburg v. Ohio,* 395 U.S. 444, 447, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969) *(per curiam)* (free speech); *Sherbert v. Verner,* 374 U.S. 398, 403, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963) (religion); *Brigham City v. Stuart,* 547 U.S. 398, 403–404, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006) (Fourth Amendment); *New York v. Quarles,* 467 U.S. 649, 655, 104 S.Ct. 2626, 81 L.Ed.2d 550 (1984) (Fifth Amendment); *Salerno, supra,* at 755, 107 S.Ct. 2095 (bail). But here, this inquiry—calling for the fine tuning of protective rules—is likely to be part of a daily judicial diet.

Given the competing interests, courts will have to try to answer empirical questions of a particularly difficult kind. Suppose, for example, that after a gun regulation's adoption the murder rate went up. Without the gun regulation would the murder rate have risen even faster? How is this conclusion affected by the local recession which has left numerous people unemployed? What about budget cuts that led to a downsizing of the police force? How effective was that police force to begin with? And did the regulation simply take guns from those who use them for lawful purposes without affecting their possession by criminals?

Consider too that countless gun regulations of many shapes and sizes are in place in every State and in many local communities. Does the right to possess weapons for self-defense extend outside the home? To the car? To work? What sort of guns are necessary for self-defense? Handguns? Rifles? Semiautomatic weapons? When is a gun semi-automatic? Where are different kinds of weapons likely needed? Does time of day matter? Does the presence of a child in the house matter? Does the presence of a convicted felon in the house matter? Do police need special rules permitting patdowns designed to find guns? When do registration requirements become severe to the point that they amount to an unconstitutional ban? Who can possess guns and of what kind? ****3127** Aliens? Prior drug offenders? ***924** Prior alcohol abusers? How would the right interact with a state or local government's ability to take special measures during, say, national security emergencies? As the questions suggest, state and local gun regulation can become highly complex, and these " are only a few uncertainties that quickly come to mind." *Caperton v. A.T. Massey Coal Co.,* 556 U.S. 868, ——, 129 S.Ct. 2252, 2261, 173 L.Ed.2d 1208 (2009) (ROBERTS, C. J., dissenting).

The difficulty of finding answers to these questions is exceeded only by the importance of doing so. Firearms cause well over 60,000 deaths and injuries in the United States each year. Those who live in urban areas, police officers, women, and children, all may be particularly at risk. And gun regulation may save their lives. Some experts have calculated, for example, that Chicago's handgun ban has saved several hundred lives, perhaps close to 1,000, since it was enacted in 1983. Other experts argue that stringent gun regulations "can help protect police officers operating on the front lines against gun violence," have reduced homicide rates in Washington, D. C., and Baltimore, and have helped to lower New York's crime and homicide rates.

At the same time, the opponents of regulation cast doubt on these studies. And who is right? Finding out may require interpreting studies that are only indirectly related to a particular regulatory statute, say one banning handguns in the home. Suppose studies find more accidents and suicides where there is a handgun in the home than where there is a long gun in the home or no gun at all? To what extent do such

studies justify a ban? What if opponents of the ban put forth counter studies?

In answering such questions judges cannot simply refer to judicial homilies, such as Blackstone's 18th-century perception that a man's home is his castle. See 4 Blackstone 223. Nor can the plurality so simply reject, by mere assertion, the fact that "incorporation will require judges to assess the ***925** costs and benefits of firearms restrictions." *Ante,* at 3050. How can the Court assess the strength of the government's regulatory interests without addressing issues of empirical fact? How can the Court determine if a regulation is appropriately tailored without considering its impact? And how can the Court determine if there are less restrictive alternatives without considering what will happen if those alternatives are implemented?

Perhaps the Court could lessen the difficulty of the mission it has created for itself by adopting a jurisprudential approach similar to the many state courts that administer a state constitutional right to bear arms. See *infra,* at 3130 – 3131 (describing state approaches). But the Court has not yet done so. Cf. *Heller,* 544 U.S., at ——, 128 S.Ct., at 2818–2822 (rejecting an " 'interest-balancing' approach" similar to that employed by the States); *ante,* at 3050 (plurality opinion). Rather, the Court has haphazardly created a few simple rules, such as that it will not touch "prohibitions on the possession of firearms by felons and the mentally ill," "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." *Heller,* 544 U.S., at ——, 128 S.Ct., at 2817; *Ante,* at 3047 (plurality opinion). But why these rules and not others? Does the Court know that these regulations are justified by some special gun-related risk of death? In fact, the Court does not know. It has simply invented rules that sound sensible without being able to explain why or how Chicago's handgun ban is different.

****3128** The fact is that judges do not know the answers to the kinds of empirically based questions that will often determine the need for particular forms of gun regulation. Nor do they have readily available "tools" for finding and evaluating the technical material submitted by others. *District Attorney's Office for Third Judicial Dist. v. Osborne,* 557 U.S. 52, ——, 129 S.Ct. 2308, 174 L.Ed.2d 38 (2009); see also *Turner Broadcasting,* 520 U.S., at 195–196, 117 S.Ct. 1174. Judges cannot easily make empirically based predictions; ***926** they have no way to gather and evaluate the data required to see if such predictions are accurate; and the nature of litigation and concerns about *stare decisis* further make it difficult for judges to change course if predictions prove inaccurate. Nor can judges rely upon local community views and values when reaching judgments in circumstances where prediction is difficult because the basic facts are unclear or unknown.

At the same time, there is no institutional need to send judges off on this "mission-almost-impossible." Legislators are able to "amass the stuff of actual experience and cull conclusions from it." *United States v. Gainey,* 380 U.S. 63, 67, 85 S.Ct. 754, 13 L.Ed.2d 658 (1965). They are far better suited than judges to uncover facts and to understand their relevance. And legislators, unlike Article III judges, can be held democratically responsible for their empirically based and value-laden conclusions. We have thus repeatedly affirmed our preference for "legislative not judicial solutions" to this kind of problem, see, *e.g., Patsy v. Board of Regents of Fla.,* 457 U.S. 496, 513, 102 S.Ct. 2557, 73 L.Ed.2d 172 (1982), just as we have repeatedly affirmed the Constitution's preference for democratic solutions legislated by those whom the people elect.

In *New State Ice Co. v. Liebmann,* 285 U.S. 262, 310–311, 52 S.Ct. 371, 76 L.Ed. 747 (1932), Justice Brandeis stated in dissent:

> "Some people assert that our present plight is due, in part, to the limitations set by courts upon experimentation in the fields of social and economic science; and to the discouragement to which proposals for betterment there have been subjected otherwise. There must be power in the States and the Nation to remould, through experimentation, our economic practices and institutions to meet changing social and economic needs. I cannot believe that the framers of the Fourteenth Amendment, or the States which ratified it, intended to deprive us of the power to correct [the social problems we face]."

***927** There are 50 state legislatures. The fact that this Court may already have refused to take this wise advice with respect to Congress in *Heller* is no reason to make matters worse here.

Third, the ability of States to reflect local preferences and conditions—both key virtues of federalism—here has particular importance. The incidence of gun ownership varies substantially as between crowded cities and uncongested rural communities, as well as among the different geographic regions of the country. Thus, approximately 60% of adults who live in the relatively sparsely populated Western States of Alaska, Montana, and Wyoming report that their household keeps a gun, while fewer than 15% of adults in the densely populated Eastern States of Rhode Island, New Jersey, and Massachusetts say the same.

The nature of gun violence also varies as between rural communities and cities. Urban centers face significantly greater levels of firearm crime and homicide, while rural communities have proportionately ****3129** greater problems with nonhomicide gun deaths, such as suicides and accidents. And idiosyncratic local factors can lead to two cities finding themselves in dramatically different circumstances: For example, in 2008, the murder rate was 40 times higher in New Orleans than it was in Lincoln, Nebraska.

It is thus unsurprising that States and local communities have historically differed about the need for gun regulation as well as about its proper level. Nor is it surprising that "primarily, and historically," the law has treated the exercise of police powers, including gun control, as "matter[s] of local concern." *Medtronic,* 518 U.S., at 475, 116 S.Ct. 2240 (internal quotation marks omitted).

Fourth, although incorporation of any right removes decisions from the democratic process, the incorporation of this particular right does so without strong offsetting justification—as the example of Oak Park's handgun ban helps to show. See Oak Park, Ill., Village Code § 27–2–1 (2007). ***928** Oak Park decided to ban handguns in 1983, after a local attorney was shot to death with a handgun that his assailant had smuggled into a courtroom in a blanket. Brief for Oak Park Citizens Committee for Handgun Control as *Amicus Curiae* 1, 21 (hereinafter Oak Park Brief). A citizens committee spent months gathering information about handguns. *Id.,* at 21. It secured 6,000 signatures from community residents in support of a ban. *Id.,* at 21–22. And the village board enacted a ban into law. *Id.,* at 22.

Subsequently, at the urging of ban opponents the Board held a community referendum on the matter. *Ibid.* The citizens committee argued strongly in favor of the ban. *Id.,* at 22–23. It pointed out that most guns owned in Oak Park were handguns and that handguns were misused more often than citizens used them in self-defense. *Id.,* at 23. The ban opponents argued just as strongly to the contrary. *Ibid*. The public decided to keep the ban by a vote of 8,031 to 6,368. *Ibid.* And since that time, Oak Park now tells us, crime has decreased and the community has seen no accidental handgun deaths. *Id.,* at 2.

Given the empirical and local value-laden nature of the questions that lie at the heart of the issue, why, in a Nation whose Constitution foresees democratic decisionmaking, is it so *fundamental* a matter as to require taking that power from the people? What is it here that the people did not know? What is it that a judge knows better?

* * *

In sum, the police power, the superiority of legislative decisionmaking, the need for local decisionmaking, the comparative desirability of democratic decisionmaking, the lack of a manageable judicial standard, and the life-threatening harm that may flow from striking down regulations all argue against incorporation. Where the incorporation of other rights has been at issue, *some* of these problems have arisen. But in this instance *all* these problems are present, *all* at ***929** the same time, and *all* are likely to be present in most, perhaps nearly all, of the cases in which the constitutionality of a gun regulation is at issue. At the same time, the important factors that favor incorporation in other instances—*e.g.,* the protection of broader constitutional objectives—are not present here. The upshot is that all factors militate against incorporation—with the possible exception of historical factors.

III

I must, then, return to history. The plurality, in seeking to justify incorporation, asks whether the interests the Second ****3130** Amendment protects are " 'deeply rooted in this Nation's history and tradition.' " *Ante,* at 3036 (quoting *Glucksberg,* 521 U.S., at 721, 117 S.Ct. 2258; internal quotation marks omitted). It looks to selected portions of the Nation's history for the answer. And it finds an affirmative reply.

As I have made clear, I do not believe history is the only pertinent consideration. Nor would I read history as broadly as the majority does. In particular, since we here

are evaluating a more particular right—namely, the right to bear arms for purposes of private self-defense—general historical references to the "right to keep and bear arms" are not always helpful. Depending upon context, early historical sources may mean to refer to a militia-based right —a matter of considerable importance 200 years ago—which has, as the majority points out, "largely faded as a popular concern." *Ante,* at ——. There is no reason to believe that matters of such little contemporary importance should play a significant role in answering the incorporation question. See *Apodaca,* 406 U.S., at 410, 92 S.Ct. 1628 (incorporation "inquiry must focus upon the function served" by the right in question in "contemporary society"); *Wolf v. Colorado,* 338 U.S. 25, 27, 69 S.Ct. 1359, 93 L.Ed. 1782 (1949) (incorporation must take into account "the movements of a free society" and "the gradual and empiric process of inclusion and exclusion" (internal quotation marks omitted)); cf. U.S. Const., Art. I, § 910 (prohibiting ***930** federal officeholders from accepting a "Title, of any kind whatever, from [a] foreign State"—presumably a matter of considerable importance 200 years ago).

That said, I can find much in the historical record that shows that some Americans in some places at certain times thought it important to keep and bear arms for private self-defense. For instance, the reader will see that many States have constitutional provisions protecting gun possession. But, as far as I can tell, those provisions typically do no more than guarantee that a gun regulation will be a *reasonable* police power regulation. See Winkler, Scrutinizing the Second Amendment, 105 Mich. L.Rev. 683, 686, 716–717 (2007) (the "courts of every state to consider the question apply a deferential 'reasonable regulation' standard") (hereinafter Winkler, Scrutinizing); see also *id.,* at 716–717 (explaining the difference between that standard and ordinary rational-basis review). It is thus altogether unclear whether such provisions would prohibit cities such as Chicago from enacting laws, such as the law before us, banning handguns. See *id.,* at 723. The majority, however, would incorporate a right that is likely *inconsistent* with Chicago's law; and the majority would almost certainly *strike down* that law. Cf. *Heller,* 554 U.S., at ——, 128 S.Ct., at 2818–2822 (striking down the District of Columbia's handgun ban).

Thus, the specific question before us is not whether there are references to the right to bear arms for self-defense throughout this Nation's history—of course there are—or even whether the Court should incorporate a simple constitutional requirement that firearms regulations not unreasonably burden the right to keep and bear arms, but rather whether there is a consensus that *so substantial* a private self-defense right as the one described in *Heller* applies to the States. See, *e.g., Glucksberg,* supra, at 721, 117 S.Ct. 2258 (requiring "a careful description" of the right at issue when deciding whether it is "deeply rooted in this Nation's history and tradition" (internal quotation marks omitted)). On this question, ***931** the reader will have to make up his or her own mind about the historical record that I describe in part below. In my view, that ****3131** record is insufficient to say that the right to bear arms for private self-defense, as explicated by *Heller,* is fundamental in the sense relevant to the incorporation inquiry. As the evidence below shows, States and localities have consistently enacted firearms regulations, including regulations similar to those at issue here, throughout our Nation's history. Courts have repeatedly upheld such regulations. And it is, at the very least, possible, and perhaps likely, that incorporation will impose on every, or nearly every, State a different right to bear arms than they currently recognize—a right that threatens to destabilize settled state legal principles. Cf. 554 U.S., at ——, 128 S.Ct., at 2818–2822 (rejecting an " 'interest-balancing' approach" similar to that employed by the States).

I thus cannot find a historical consensus with respect to whether the right described by *Heller* is "fundamental" as our incorporation cases use that term. Nor can I find sufficient historical support for the majority's conclusion that that right is "deeply rooted in this Nation's history and tradition." Instead, I find no more than ambiguity and uncertainty that perhaps even expert historians would find difficult to penetrate. And a historical record that is so ambiguous cannot itself provide an adequate basis for incorporating a private right of self-defense and applying it against the States.

The Eighteenth Century

The opinions in *Heller* collect much of the relevant 18th-century evidence. See 554 U.S., at ——, 128 S.Ct., at 2790–2805; *id.,* at ——, 128 S.Ct., at 2824–2838 (STEVENS, J., dissenting); *id.,* at ——, 128 S.Ct., at 2848–2850 (BREYER, J., dissenting). In respect to the relevant question —the "deeply rooted nature" of a right to keep and bear arms for purposes of private self-defense—that evidence is inconclusive, particularly when augmented as follows:

***932** *First,* as I have noted earlier in this opinion, and Justice STEVENS argued in dissent, the history discussed in *Heller* shows that the Second Amendment was enacted primarily for

the purpose of protecting militia-related rights. See *supra,* at 3122; *Heller, supra,* at 2783, 128 S.Ct., at 2790–2805. Many of the scholars and historians who have written on the subject apparently agree. See *supra,* at 3120 – 3122.

Second, historians now tell us that the right to which Blackstone referred, an important link in the *Heller* majority's historical argument, concerned the right of Parliament (representing the people) to form a militia to oppose a tyrant (the King) threatening to deprive the people of their traditional liberties (which did not include an unregulated right to possess guns). Thus, 18th-century language referring to a "right to keep and bear arms" does not *ipso facto* refer to a private right of self-defense—certainly not unambiguously so. See English Historians' Brief 3–27; see also *supra,* at 3120 – 3122.

Third, scholarly articles indicate that firearms were heavily regulated at the time of the framing—perhaps more heavily regulated than the Court in *Heller* believed. For example, one scholar writes that "[h]undreds of individual statutes regulated the possession and use of guns in colonial and early national America." Churchill, Gun Regulation, the Police Power, and the Right to Keep Arms, 25 Law & Hist. Rev. 139, 143 (2007). Among these statutes was a ban on the private firing of weapons in Boston, as well as comprehensive restrictions on similar conduct in Philadelphia and New York. See Acts and Laws of Massachusetts, p. 208 (1746); 5 J. Mitchell, & H. Flanders, Statutes at Large of Pennsylvania From 1682 to 1801, pp. ****3132** 108–109 (1898); 4 Colonial Laws of New York ch. 1233, p. 748 (1894); see also Churchill, *supra,* at 162–163 (discussing bans on the shooting of guns in Pennsylvania and New York).

Fourth, after the Constitution was adopted, several States continued to regulate firearms possession by, for example, ***933** adopting rules that would have prevented the carrying of loaded firearms in the city, *Heller,* 554 U.S., at ——, 128 S.Ct., at 2848–2850 (BREYER, J., dissenting); see also *id.,* at ——, 128 S.Ct., at 2819–2820. Scholars have thus concluded that the primary Revolutionary era limitation on a State's police power to regulate guns appears to be only that regulations were "aimed at a legitimate public purpose" and "consistent with reason." Cornell, Early American Gun Regulation and the Second Amendment, 25 Law & Hist. Rev. 197, 198 (2007).

The Pre–Civil War Nineteenth Century

I would also augment the majority's account of this period as follows:

First, additional States began to regulate the discharge of firearms in public places. See, *e.g.,* Act of Feb. 17, 1831, § 6, reprinted in 3 Statutes of Ohio and the Northwestern Territory 1740 (S. Chase ed. 1835); Act of Dec. 3, 1825, ch. CCXCII, § 3, 1825 Tenn. Priv. Acts 306.

Second, States began to regulate the possession of concealed weapons, which were both popular and dangerous. See, *e.g.,* C. Cramer, Concealed Weapon Laws of the Early Republic 143–152 (1999) (collecting examples); see also 1837–1838 Tenn. Pub. Acts ch. 137, pp. 200–201 (banning the wearing, sale, or giving of Bowie knives); 1847 Va. Acts ch. 7, § 8, p. 110, ("Any free person who shall habitually carry about his person, hidden from common observation, any pistol, dirk, bowie knife, or weapon of the like kind, from the use of which the death of any person might probably ensue, shall for every offense be punished by [a] fine not exceed fifty dollars").

State courts repeatedly upheld the validity of such laws, finding that, even when the state constitution granted a right to bear arms, the legislature was permitted to, *e.g.,* "abolish" these small, inexpensive, "most dangerous weapons entirely from use," even in self-defense. *Day v. State,* 37 Tenn. 496, 500 (1857); see also, *e.g., State v. Jumel,* 13 La. Ann. 399, 400 (1858) (upholding concealed weapon ban because it "prohibited ***934** only a *particular mode* of bearing arms which is found dangerous to the peace of society"); *State v. Chandler,* 5 La. Ann. 489, 489–490 (1850) (upholding concealed weapon ban and describing the law as "absolutely necessary to counteract a vicious state of society, growing out of the habit of carrying concealed weapons"); *State v. Reid,* 1 Ala. 612, 616–617 (1840).

The Post–Civil War Nineteenth Century

It is important to read the majority's account with the following considerations in mind:

First, the Court today properly declines to revisit our interpretation of the Privileges or Immunities Clause. See *ante,* at 3030 – 3031. The Court's case for incorporation must thus rest on the conclusion that the right to bear arms is "fundamental." But the very evidence that it advances in support of the conclusion that Reconstruction-era Americans strongly supported a private self-defense right shows with equal force that Americans wanted African–

American citizens to have the *same* rights to possess guns as did white citizens. *Ante,* at 3038 – 3044. Here, for example is what Congress said when it enacted a Fourteenth Amendment predecessor, the Second Freedman's Bureau Act. It wrote that the statute, in order to secure "the constitutional right to ****3133** bear arms ... for all citizens," would assure that each citizen:

> "shall have ... *full and equal benefit* of all laws and proceedings concerning personal liberty, personal security, and the acquisition, enjoyment, and disposition of estate, real and personal, including the constitutional right to bear arms, [by securing] ... to ... all the citizens of [every] ... State or district without *respect to race or color, or previous condition of slavery."* § 14, 14 Stat. 176–177 (emphasis added).

This sounds like an *antidiscrimination* provision. See Rosenthal, ***935** The New Originalism Meets the Fourteenth Amendment: Original Public Meaning and the Problem of Incorporation, 18 J. Contemp. Legal Issues 361, 383–384 (2009) (discussing evidence that the Freedmen's Bureau was focused on discrimination).

Another Fourteenth Amendment predecessor, the Civil Rights Act of 1866, also took aim at *discrimination.* See § 1, 14 Stat. 27 (citizens of "every race and color, without regard to any previous condition of slavery or involuntary servitude ... shall have the same right [to engage in various activities] and to full and equal benefit of all laws ... as is enjoyed by white citizens"). And, of course, the Fourteenth Amendment itself insists that all States guarantee their citizens the "equal protection of the laws."

There is thus every reason to believe that the *fundamental* concern of the Reconstruction Congress was the eradication of discrimination, not the provision of a new substantive right to bear arms free from reasonable state police power regulation. See, *e.g.,* Brief for Municipal Respondents 62–69 (discussing congressional record evidence that Reconstruction Congress was concerned about discrimination). Indeed, why would those who wrote the Fourteenth Amendment have wanted to give such a right to Southerners who had so recently waged war against the North, and who continued to disarm and oppress recently freed African–American citizens? Cf. Act of Mar. 2, 1867, § 6, 14 Stat. 487 (disbanding Southern militias because they were, *inter alia,* disarming the freedmen).

Second, firearms regulation in the later part of the 19th century was common. The majority is correct that the Freedmen's Bureau points to a right to bear arms, and it stands to reason, as the majority points out, that "[i]t would have been nonsensical for Congress to guarantee the ... equal benefit of a ... right that does not exist." *Ante,* at 3043. But the majority points to no evidence that there existed during this period a fundamental right to bear arms for private self-defense immune to the reasonable exercise of the ***936** state police power. See Emberton, The Limits of Incorporation: Violence, Gun Rights, and Gun Regulation in the Reconstruction South, 17 Stan. L. & Pol'y Rev. 615, 621–622 (2006) (noting that history shows that " nineteenth-century Americans" were "not opposed to the idea that the state should be able to control the use of firearms").

To the contrary, in the latter half of the 19th century, a number of state constitutions adopted or amended after the Civil War explicitly recognized the legislature's general ability to limit the right to bear arms. See Tex. Const., Art. I, § 13 (1869) (protecting "the right to keep and bear arms," "under such regulations as the legislature may prescribe"); Idaho Const., Art. I, § 11 (1889) ("The people have the right to bear arms ...; but the Legislature shall regulate the exercise of this right by law"); Utah Const., Art. I, § 6 (1896) (same). And numerous other state constitutional provisions adopted during this period explicitly granted the legislature various types of regulatory power over firearms. See Brief for Thirty–Four Professional Historians et al. as *Amici Curiae* ****3134** 14–15 (hereinafter Legal Historians' Brief).

Moreover, four States largely banned the possession of all nonmilitary handguns during this period. See 1879 Tenn. Pub. Acts ch. 186, § 1 (prohibiting citizens from carrying "publicly or privately, any ... belt or pocket pistol, revolver, or any kind of pistol, except the army or navy pistol, usually used in warfare, which shall be carried openly in the hand"); 1876 Wyo. Comp. Laws ch. 52, § 1 (forbidding "concealed or ope[n]" bearing of "any fire arm or other deadly weapon, within the limits of any city, town or village"); Ark. Act of Apr. 1, 1881, ch. 96, § 1 (prohibiting the "wear[ing] or carry[ng]" of "any pistol ... except such pistols as are used in the army or navy," except while traveling or at home); Tex. Act of Apr. 12, 1871, ch. 34 (prohibiting the carrying of pistols unless there are "immediate and pressing" reasonable grounds to fear "immediate and pressing" attack or for militia service). Fifteen States ***937** banned the concealed carry of pistols and other deadly weapons. See Legal Historians' Brief 16, n. 14. And individual municipalities enacted stringent

gun controls, often in response to local conditions—Dodge City, Kansas, for example, joined many western cattle towns in banning the carrying of pistols and other dangerous weapons in response to violence accompanying western cattle drives. See Brief for Municipal Respondents 30 (citing Dodge City, Kan., Ordinance No. 16, § XI (Sept. 22, 1876)); D. Courtwright, The Cowboy Subculture, in Guns in America: A Reader 96 (J. Dizard et al. eds.1999) (discussing how Western cattle towns required cowboys to "check" their guns upon entering town).

Further, much as they had during the period before the Civil War, state courts routinely upheld such restrictions. See, *e.g., English v. State,* 35 Tex. 473 (1871); *Hill v. State,* 53 Ga. 472, 475 (1874); *Fife v. State,* 31 Ark. 455, 461 (1876); *State v. Workman,* 35 W.Va. 367, 373, 14 S.E. 9 (1891). The Tennessee Supreme Court, in upholding a ban on possession of nonmilitary handguns and certain other weapons, summarized the Reconstruction understanding of the states' police power to regulate firearms:

> "Admitting the right of self-defense in its broadest sense, still on sound principle every good citizen is bound to yield his preference as to the means to be used, to the demands of the public good; *and where certain weapons are forbidden to be kept or used by the law of the land,* in order to the prevention of *[sic]* crime—a great public end —*no man can be permitted to disregard this general end, and demand of the community the right, in order to gratify his whim or willful desire to use a particular weapon in his particular self-defense*. The law allows ample means of self-defense, without the use of the weapons which we have held may be rightfully prescribed by this statute. The object being to banish these weapons from the community by an absolute prohibition ***938** for the prevention of crime, no man's particular safety, if such case could exist, ought to be allowed to defeat this end." *Andrews v. State,* 50 Tenn. 165, 188–189 (1871) (emphasis added).

The Twentieth and Twenty–First Centuries

Although the majority does not discuss 20th- or 21st-century evidence concerning the Second Amendment at any length, I think that it is essential to consider the recent history of the right to bear arms for private self-defense when considering whether the right is "fundamental." To that end, many States now provide state constitutional protection for an individual's right to keep and bear arms. See Volokh, ****3135** State Constitutional Rights to Keep and Bear Arms, 11 Tex. Rev. L. & Pol. 191, 205 (2006) (identifying over 40 States). In determining the importance of this fact, we should keep the following considerations in mind:

First, by the end of the 20th century, in every State and many local communities, highly detailed and complicated regulatory schemes governed (and continue to govern) nearly every aspect of firearm ownership: Who may sell guns and how they must be sold; who may purchase guns and what type of guns may be purchased; how firearms must be stored and where they may be used; and so on. See generally Legal Community Against Violence, Regulating Guns In America (2008), available at http:// www.lcav.org/publications-briefs/ regulating _ guns. asp (all Internet materials as visited June 24, 2010, and available in Clerk of Court's case file) (detailing various arms regulations in every State).

Of particular relevance here, some municipalities ban handguns, even in States that constitutionally protect the right to bear arms. See Chicago, Ill., Municipal Code, § 8–20–050(c) (2009); Oak Park, Ill., Municipal Code, §§ 27–2–1, 27–1–1 (1995); Toledo, Ohio, Municipal Code, ch. 549.25 (2010). Moreover, at least seven States and Puerto Rico ban ***939** assault weapons or semiautomatic weapons. See Cal.Penal Code Ann. § 12280(b) (West Supp. 2009); Conn. Gen.Stat. Ann. § 53–202c (2007); Haw.Rev.Stat. § 134–8 (1993); Md.Crim. Law Code Ann. § 4–303(a) (Lexis 2002); Mass. Gen. Laws, ch. 140, § 131M (West 2006); N.J. Stat. Ann. § 2C:39–5 (West Supp. 2010); N.Y. Penal Law Ann. § 265.02(7) (West Supp.2008); 25 Laws P.R. Ann. § 456m (Supp.2006); see also 18 U.S.C. § 922*(o)* (federal machinegun ban).

Thirteen municipalities do the same. See Albany, N. Y., City Code § 193–16(A) (2005); Aurora, Ill., Code of Ordinances § 29–49(a) (2009); Buffalo, N. Y., City Code § 180–1(F) (2000); Chicago, Ill., Municipal Code § 8–24–025(a) (2010); Cincinnati, Ohio, Municipal Code § 708–37(a) (2008); Cleveland, Ohio, Codified Ordinances § 628.03(a) (2008); Columbus, Ohio, City Code § 2323.31 (2007); Denver, Colo., Municipal Code § 38–130(e) (2008); Morton Grove, Ill., Village Code § 6–2–3(A); N.Y.C. Admin. Code § 10–303.1 (2009); Oak Park, Ill., Village Code § 27–2–1 (2009); Rochester, N. Y., City Code § 47–5(F) (2008); Toledo, Ohio, Municipal Code § 549.23(a). And two States, Maryland and Hawaii, ban assault pistols. See Haw.Rev.Stat. Ann. § 134–8; Md.Crim. Law Code Ann. § 4–303 (Lexis 2002).

Second, as I stated earlier, state courts in States with constitutions that provide gun rights have almost uniformly interpreted those rights as providing protection only against *unreasonable* regulation of guns. See, *e.g.,* Winkler, Scrutinizing 686 (the "courts of every state to consider" a gun regulation apply the " 'reasonable regulation' " approach); *State v. McAdams,* 714 P.2d 1236, 1238 (Wyo.1986); *Robertson v. City & County of Denver,* 874 P.2d 325, 328 (Colo.1994).

When determining reasonableness those courts have normally adopted a highly deferential attitude towards legislative determinations. See Winkler, Scrutinizing 723 (identifying only six cases in the 60 years before the article's publication striking down gun control laws: three that banned "the transportation of any firearms for any purpose ***940** whatsoever," a single "permitting law," and two as-applied challenges in "unusual circumstances"). Hence, as evidenced by the breadth of existing regulations, States and local governments maintain substantial flexibility to regulate firearms—much as they seemingly have throughout the Nation's history— ****3136** even in those States with an arms right in their constitutions.

Although one scholar implies that state courts are less willing to permit total gun prohibitions, see Volokh, Implementing the Right to Keep and Bear Arms for Self–Defense: An Analytical Framework and a Research Agenda, 56 UCLA L.Rev. 1443, 1458 (2009), I am aware of no instances in the past 50 years in which a state court has struck down as unconstitutional a law banning a particular class of firearms, see Winkler, Scrutinizing 723.

Indeed, state courts have specifically upheld as constitutional (under their state constitutions) firearms regulations that have included handgun bans. See *Kalodimos v. Village of Morton Grove,* 103 Ill.2d 483, 499, 83 Ill.Dec. 308, 470 N.E.2d 266, 273 (1984) (upholding a handgun ban because the arms right is merely a right "to possess some form of weapon suitable for self-defense or recreation"); *Cleveland v. Turner,* No. 36126, 1977 WL 201393, *5 (Ohio Ct.App., Aug. 4, 1977) (handgun ban "does not absolutely interfere with the right of the people to bear arms, but rather proscribes possession of a specifically defined category of handguns"); *State v. Bolin* 378 S.C. 96, 99, 662 S.E.2d 38, 39 (2008) (ban on handgun possession by persons under 21 did not infringe arms right because they can "posses[s] other types of guns"). Thus, the majority's decision to incorporate the private self-defense right recognized in *Heller* threatens to alter state regulatory regimes, at least as they pertain to handguns.

Third, the plurality correctly points out that *only a few* state courts, a "paucity" of state courts, have specifically upheld handgun bans. *Ante,* at 3047. But which state courts have struck them down? The absence of supporting information ***941** does not help the majority find support. Cf. *United States v. Wells,* 519 U.S. 482, 496, 117 S.Ct. 921, 137 L.Ed.2d 107 (1997) (noting that it is "treacherous to find in congressional silence alone the adoption of a controlling rule of law" (internal quotation marks omitted)). Silence does not show or tend to show a consensus that a private self-defense right (strong enough to strike down a handgun ban) is "deeply rooted in this Nation's history and tradition."

* * *

In sum, the Framers did not write the Second Amendment in order to protect a private right of armed self-defense. There has been, and is, no consensus that the right is, or was, "fundamental." No broader constitutional interest or principle supports legal treatment of that right as fundamental. To the contrary, broader constitutional concerns of an institutional nature argue strongly against that treatment.

Moreover, nothing in 18th-, 19th-, 20th-, or 21st-century history shows a consensus that the right to private armed self-defense, as described in *Heller,* is "deeply rooted in this Nation's history or tradition" or is otherwise "fundamental." Indeed, incorporating the right recognized in *Heller* may change the law in many of the 50 States. Read in the majority's favor, the historical evidence is at most ambiguous. And, in the absence of any other support for its conclusion, ambiguous history cannot show that the Fourteenth Amendment incorporates a private right of self-defense against the States.

With respect, I dissent.

APPENDIX

Sources Supporting Data in Part II–B

Popular Consensus

Please see the following sources to support the paragraph on popular opinion on pages 9–10:

**3137 *942 • Briefs filed in this case that argue against incorporation include: Brief for United States Conference of Mayors as *Amicus Curiae* 1, 17–33 (organization representing "all United States cities with populations of 30,000 or more"); Brief for American Cities et al. as *Amici Curiae* 1–3 (brief filed on behalf of many cities, *e.g.,* Philadelphia, Seattle, San Francisco, Oakland, Cleveland); Brief for Representative Carolyn McCarthy et al. as *Amici Curiae* 5–10; Brief for State of Illinois et al. as *Amici Curiae* 7–35.

• Wilkinson, Of Guns, Abortions, and the Unraveling Rule of Law, 95 Va. L.Rev. 253, 301 (2009) (discussing divided public opinion over the correct level of gun control).

Data on Gun Violence

Please see the following sources to support the sentences concerning gun violence on page 13:

• Dept. of Justice, Bureau of Justice Statistics, M. Zawitz & K. Strom, Firearm Injury and Death from Crime, 1993–1997, p. 2 (Oct.2000) (over 60,000 deaths and injuries caused by firearms each year).

• Campbell, et al., Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study, 93 Am. J. of Pub. Health 1089, 1092 (2003) (noting that an abusive partner's access to a firearm increases the risk of homicide eightfold for women in physically abusive relationship).

• American Academy of Pediatrics, Firearm–Related Injuries Affecting the Pediatric Population, 105 Pediatrics 888 (2000) (noting that in 1997 "firearm-related deaths accounted for 22.5% of all injury deaths" for individuals between 1 and 19).

• Dept. of Justice, Federal Bureau of Investigation, Law Enforcement Officers Killed & Assaulted, 2006, (Table) 27 (noting that firearms killed 93% of the 562 law enforcement *943 officers feloniously killed in the line of duty between 1997 and 2006), online at http://www.fbi.gov/ucr/killed/2006/ table27. html.

• Dept. of Justice, Bureau of Justice Statistics, D. Duhart, Urban, Suburban, and Rural Victimization, 1993–1998, pp. 1, 9 (Oct.2000) (those who live in urban areas particularly at risk of firearm violence).

• Wintemute, The Future of Firearm Violence Prevention, 281 JAMA 475 (1999) ("half of all homicides occurred in 63 cities with 16% of the nation's population").

Data on the Effectiveness of Regulation

Please see the following sources to support the sentences concerning the effectiveness of regulation on page 13:

• See Brief for Professors of Criminal Justice as *Amici Curiae* 13 (noting that Chicago's handgun ban saved several hundred lives, perhaps close to 1,000, since it was enacted in 1983).

• Brief for Association of Prosecuting Attorneys et al. as *Amici Curiae* 13–16, 20 (arguing that stringent gun regulations "can help protect police officers operating on the front lines against gun violence," and have reduced homicide rates in Washington, D. C., and Baltimore).

• Brief for United States Conference of Mayors as *Amici Curiae* 4–13 (arguing that gun regulations have helped to lower New York's crime and homicide rates).

3138 ***Data on Handguns in the Home*

Please see the following sources referenced in the sentences discussing studies concerning handguns *in the home* on pages 13–14:

• Brief for Organizations Committed to Protecting the Public's Health, Safety, and Well–Being as *Amici Curiae* in Support of Respondents 13–16 (discussing studies that show handgun ownership in the home is associated with increased risk of homicide).

*944 • Wiebe, Firearms in U.S. Homes as a Risk Factor for Unintentional Gunshot Fatality, 35 Accident Analysis and Prevention 711, 713–714 (2003) (showing that those who die in firearms accidents are nearly four times more likely than average to have a gun in their home).

• Kellerman et al., Suicide in the Home in Relation to Gun Ownership, 327 New England J. Medicine 467, 470 (1992) (demonstrating that "homes with one or more handguns were associated with a risk of suicide almost

twice as high as that in homes containing only long guns").

Data on Regional Views and Conditions

Please see the following sources referenced in the section on the diversity of regional views and conditions on page 16:

- Okoro, et al., Prevalence of Household Firearms and Firearm–Storage Practices in the 50 States and the District of Columbia: Findings From the Behavioral Risk Factor Surveillance System, 2002, 116 Pediatrics 370, 372 (2005) (presenting data on firearm ownership by State).
- *Heller,* 554 U.S., at ——, 128 S.Ct., at 2856–2857 (BREYER, J., dissenting) (discussing various sources showing that gun violence varies by state, including Wintemute, The Future of Firearm Violence Prevention, 281 JAMA 475 (1999)).
- *Heller, supra*, at ——, 128 S.Ct., at 2856–2857 (BREYER, J., dissenting) (citing Branas, Nance, Elliott, Richmond, & Schwab, Urban–Rural Shifts in Intentional Firearm Death, 94 Am. J. Public Health 1750, 1752 (2004)) (discussing the fact that urban centers face significantly greater levels of firearm crime and homicide, while rural communities have proportionately greater problems with nonhomicide gun deaths, such as suicides and accidents).
- Dept. of Justice, Federal Bureau of Investigation, 2008 Crime in the United States, tbl. 6 (noting that murder rate is 40 times higher in New Orleans than it is in Lincoln, Nebraska).

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Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

1 See Brief for Heartland Institute as *Amicus Curiae* 6–7 (noting that handgun murder rate was 9.65 in 1983 and 13.88 in 2008).

2 Brief for Buckeye Firearms Foundation, Inc., et al. as *Amici Curiae* 8–9 ("In 2002 and again in 2008, Chicago had more murders than any other city in the U.S., including the much larger Los Angeles and New York" (internal quotation marks omitted)); see also Brief for International Law Enforcement Educators and Trainers Association et al. as *Amici Curiae* 17–21, and App. A (providing comparisons of Chicago's rates of assault, murder, and robbery to average crime rates in 24 other large cities).

3 Brief for Women State Legislators et al. as *Amici Curiae* 2.

4 The Illinois State Rifle Association and the Second Amendment Foundation, Inc.

5 The first sentence of the Fourteenth Amendment makes "[a]ll persons born or naturalized in the United States and subject to the jurisdiction thereof ... citizens of the United States *and of the State wherein they reside*." (Emphasis added.) The Privileges and Immunities Clause of Article IV provides that "[t]he Citizens of each State shall be entitled to all Privileges and Immunities of *Citizens in the several States*." (Emphasis added.)

6 See C. Lane, The Day Freedom Died 265–266 (2008); see also Brief for NAACP Legal Defense & Education Fund, Inc., as *Amicus Curiae* 3, and n. 2.

7 See Lane, *supra,* at 106.

8 *United States v. Cruikshank,* 92 U.S. 542, 544–545, 23 L.Ed. 588 (statement of the case), 548, 553 (opinion of the Court) (1875); Lawrence, Civil Rights and Criminal Wrongs: The Mens Rea of Federal Civil Rights Crimes, 67 Tulane L.Rev. 2113, 2153 (1993).

9 Senator Jacob Howard, who spoke on behalf of the Joint Committee on Reconstruction and sponsored the Amendment in the Senate, stated that the Amendment protected all of "the personal rights guarantied and secured by the first eight amendments of the Constitution." Cong. Globe, 39th Cong., 1st Sess., 2765 (1866) (hereinafter 39th Cong. Globe). Representative John Bingham, the principal author of the text of § 1, said that the Amendment would "arm the Congress ... with the power to enforce the bill of rights as it stands in the Constitution today." *Id*., at 1088; see also *id.,* at 1089–1090; A. Amar, The Bill of Rights: Creation and Reconstruction 183 (1998) (hereinafter Amar, Bill of Rights). After ratification

of the Amendment, Bingham maintained the view that the rights guaranteed by § 1 of the Fourteenth Amendment "are chiefly defined in the first eight amendments to the Constitution of the United States." Cong. Globe, 42d Cong., 1st Sess., App. 84 (1871). Finally, Representative Thaddeus Stevens, the political leader of the House and acting chairman of the Joint Committee on Reconstruction, stated during the debates on the Amendment that "the Constitution limits only the action of Congress, and is not a limitation on the States. This amendment supplies that defect, and allows Congress to correct the unjust legislation of the States." 39th Cong. Globe 2459; see also M. Curtis, No State Shall Abridge: The Fourteenth Amendment and the Bill of Rights 112 (1986) (counting at least 30 statements during the debates in Congress interpreting § 1 to incorporate the Bill of Rights); Brief for Constitutional Law Professors as *Amici Curiae* 20 (collecting authorities and stating that "[n]ot a single senator or representative disputed [the incorporationist] understanding" of the Fourteenth Amendment).

10 The municipal respondents and some of their *amici* dispute the significance of these statements. They contend that the phrase "privileges or immunities" is not naturally read to mean the rights set out in the first eight Amendments, see Brief for Historians et al. as *Amici Curiae* 13–16, and that "there is 'support in the legislative history for no fewer than four interpretations of the ... Privileges or Immunities Clause.' " Brief for Municipal Respondents 69 (quoting Currie, The Reconstruction Congress, 75 U. Chi. L.Rev. 383, 406 (2008); brackets omitted). They question whether there is sound evidence of " 'any strong public awareness of nationalizing the *entire* Bill of Rights.' " Brief for Municipal Respondents 69 (quoting Wildenthal, Nationalizing the Bill of Rights: Revisiting the Original Understanding of the Fourteenth Amendment in 1866–67, 68 Ohio St. L.J. 1509, 1600 (2007)). Scholars have also disputed the total incorporation theory. See, *e.g.*, Fairman, Does the Fourteenth Amendment Incorporate the Bill of Rights? 2 Stan. L.Rev. 5 (1949); Berger, Incorporation of the Bill of Rights in the Fourteenth Amendment: A Nine–Lived Cat, 42 Ohio St. L.J. 435 (1981).

Proponents of the view that § 1 of the Fourteenth Amendment makes all of the provisions of the Bill of Rights applicable to the States respond that the terms privileges, immunities, and rights were used interchangeably at the time, see, *e.g.,* Curtis, *supra,* at 64–65, and that the position taken by the leading congressional proponents of the Amendment was widely publicized and understood, see, *e.g.*, Wildenthal, *supra,* at 1564–1565, 1590; Hardy, Original Popular Understanding of the Fourteenth Amendment as Reflected in the Print Media of 1866–1868, 30 Whittier L.Rev. 695 (2009). A number of scholars have found support for the total incorporation of the Bill of Rights. See Curtis, *supra,* at 57–130; Aynes, On Misreading John Bingham and the Fourteenth Amendment, 103 Yale L.J. 57, 61 (1993); see also Amar, Bill of Rights 181–230. We take no position with respect to this academic debate.

11 By contrast, the Court has never retreated from the proposition that the Privileges or Immunities Clause and the Due Process Clause present different questions. And in recent cases addressing unenumerated rights, we have required that a right also be "implicit in the concept of ordered liberty." See, *e.g.*, *Washington v. Glucksberg,* 521 U.S. 702, 721, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997) (internal quotation marks omitted).

12 With respect to the First Amendment, see *Everson v. Board of Ed. of Ewing,* 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711 (1947) (Establishment Clause); *Cantwell v. Connecticut,* 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940) (Free Exercise Clause); *De Jonge v. Oregon,* 299 U.S. 353, 57 S.Ct. 255, 81 L.Ed. 278 (1937) (freedom of assembly); *Gitlow v. New York,* 268 U.S. 652, 45 S.Ct. 625, 69 L.Ed. 1138 (1925) (free speech); *Near v. Minnesota ex rel. Olson,* 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357 (1931) (freedom of the press).

With respect to the Fourth Amendment, see *Aguilar v. Texas,* 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964) (warrant requirement); *Mapp v. Ohio,* 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961) (exclusionary rule); *Wolf v. Colorado,* 338 U.S. 25, 69 S.Ct. 1359, 93 L.Ed. 1782 (1949) (freedom from unreasonable searches and seizures).

With respect to the Fifth Amendment, see *Benton v. Maryland,* 395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969) (Double Jeopardy Clause); *Malloy v. Hogan,* 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964) (privilege against self-incrimination); *Chicago, B. & Q.R. Co. v. Chicago,* 166 U.S. 226, 17 S.Ct. 581, 41 L.Ed. 979 (1897) (Just Compensation Clause).

With respect to the Sixth Amendment, see *Duncan v. Louisiana,* 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968) (trial by jury in criminal cases); *Washington v. Texas,* 388 U.S. 14, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967) (compulsory process); *Klopfer v. North Carolina,* 386 U.S. 213, 87 S.Ct. 988, 18 L.Ed.2d 1 (1967) (speedy trial); *Pointer v. Texas,* 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965) (right to confront adverse witness); *Gideon v. Wainwright,* 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963) (assistance of counsel); *In re Oliver,* 333 U.S. 257, 68 S.Ct. 499, 92 L.Ed. 682 (1948) (right to a public trial).

With respect to the Eighth Amendment, see *Robinson v. California,* 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962) (cruel and unusual punishment); *Schilb v. Kuebel,* 404 U.S. 357, 92 S.Ct. 479, 30 L.Ed.2d 502 (1971) (prohibition against excessive bail).

13 In addition to the right to keep and bear arms (and the Sixth Amendment right to a unanimous jury verdict, see n. 14, *infra*), the only rights not fully incorporated are (1) the Third Amendment's protection against quartering of soldiers; (2) the Fifth Amendment's grand jury indictment requirement; (3) the Seventh Amendment right to a jury trial in civil cases; and (4) the Eighth Amendment's prohibition on excessive fines.

We never have decided whether the Third Amendment or the Eighth Amendment's prohibition of excessive fines applies to the States through the Due Process Clause. See *Browning–Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.,* 492 U.S. 257, 276, n. 22, 109 S.Ct. 2909, 106 L.Ed.2d 219 (1989) (declining to decide whether the excessive-fines protection applies to the States); see also *Engblom v. Carey,* 677 F.2d 957, 961 (C.A.2 1982) (holding as a matter of first impression that the "Third Amendment is incorporated into the Fourteenth Amendment for application to the states").

Our governing decisions regarding the Grand Jury Clause of the Fifth Amendment and the Seventh Amendment's civil jury requirement long predate the era of selective incorporation.

14 There is one exception to this general rule. The Court has held that although the Sixth Amendment right to trial by jury requires a unanimous jury verdict in federal criminal trials, it does not require a unanimous jury verdict in state criminal trials. See *Apodaca v. Oregon,* 406 U.S. 404, 92 S.Ct. 1628, 32 L.Ed.2d 184 (1972); see also *Johnson v. Louisiana,* 406 U.S. 356, 92 S.Ct. 1620, 32 L.Ed.2d 152 (1972) (holding that the Due Process Clause does not require unanimous jury verdicts in state criminal trials). But that ruling was the result of an unusual division among the Justices, not an endorsement of the two-track approach to incorporation. In *Apodaca,* eight Justices agreed that the Sixth Amendment applies identically to both the Federal Government and the States. See *Johnson,supra,* at 395, 92 S.Ct. 1620 (Brennan, J., dissenting). Nonetheless, among those eight, four Justices took the view that the Sixth Amendment does not require unanimous jury verdicts in either federal or state criminal trials, *Apodaca,* 406 U.S., at 406, 92 S.Ct. 1628 (plurality opinion), and four other Justices took the view that the Sixth Amendment requires unanimous jury verdicts in federal and state criminal trials, *id*., at 414–415, 92 S.Ct. 1628 (Stewart, J., dissenting); *Johnson, supra,* at 381–382, 92 S.Ct. 1620 (Douglas, J., dissenting). Justice Powell's concurrence in the judgment broke the tie, and he concluded that the Sixth Amendment requires juror unanimity in federal, but not state, cases. *Apodaca,* therefore, does not undermine the well-established rule that incorporated Bill of Rights protections apply identically to the States and the Federal Government. See *Johnson, supra,* at 395–396, 92 S.Ct. 1620 (Brennan, J., dissenting) (footnote omitted) ("In any event, the affirmance must not obscure that the majority of the Court remains of the view that, as in the case of every specific of the Bill of Rights that extends to the States, the Sixth Amendment's jury trial guarantee, however it is to be construed, has identical application against both State and Federal Governments").

15 Citing Jewish, Greek, and Roman law, Blackstone wrote that if a person killed an attacker, "the slayer is in no kind of fault whatsoever, not even in the minutest degree; and is therefore to be totally acquitted and discharged, with commendation rather than blame." 4 W. Blackstone, Commentaries on the Laws of England 182 (reprint 1992).

16 For example, an article in the Boston Evening Post stated: "For it is certainly beyond human art and sophistry, to prove the British subjects, to whom the privilege of possessing arms is expressly recognized by the Bill of Rights, and, who live in a province where the law requires them to be equip'd with arms, & c. are guilty of an illegal act, in calling upon one another to be provided with them, as the law directs." Boston Evening Post, Feb. 6, 1769, in Boston Under Military Rule 1768–1769, p. 61 (1936) (emphasis deleted).

17 Abolitionists and Republicans were not alone in believing that the right to keep and bear arms was a fundamental right. The 1864 Democratic Party Platform complained that the confiscation of firearms by Union troops occupying parts of the South constituted "the interference with and denial of the right of the people to bear arms in their defense." National Party Platforms 1840–1972, at 34.

18 In South Carolina, prominent black citizens held a convention to address the State's black code. They drafted a memorial to Congress, in which they included a plea for protection of their constitutional right to keep and bear arms: " 'We ask that, inasmuch as the Constitution of the United States explicitly declares that the right to keep and bear arms shall not be infringed ... that the late efforts of the Legislature of this State to pass an act to deprive us [of] arms be forbidden, as a plain violation of the Constitution.' " S. Halbrook, Freedmen, The Fourteenth Amendment, and The Right to Bear Arms, 1866–1876, p. 9 (1998) (hereinafter Halbrook, Freedmen) (quoting 2 Proceedings of the Black State Conventions, 1840–1865, p. 302 (P. Foner & G. Walker eds.1980)). Senator Charles Sumner relayed the memorial to the Senate and described the memorial as a request that black citizens "have the constitutional protection in keeping arms." 39th Cong. Globe 337.

19 See B. Kendrick, Journal of the Joint Committee of Fifteen on Reconstruction 265–266 (1914); *Adamson v. California,* 332 U.S. 46, 108–109, 67 S.Ct. 1672, 91 L.Ed. 1903 (1947) (appendix to dissenting opinion of Black, J.).

20 Disarmament by bands of former Confederate soldiers eventually gave way to attacks by the Ku Klux Klan. In debates over the later enacted Enforcement Act of 1870, Senator John Pool observed that the Klan would "order the colored men

to give up their arms; saying that everybody would be Kukluxed in whose house fire-arms were found." Cong. Globe, 41st Cong., 2d Sess., 2719 (1870); see also H.R. Exec. Doc. No. 268, 42d Cong., 2d Sess., 2 (1872).

21 For example, the occupying Union commander in South Carolina issued an order stating that "[t]he constitutional rights of all loyal and well disposed inhabitants to bear arms, will not be infringed." General Order No. 1, Department of South Carolina, January 1, 1866, in 1 Documentary History of Reconstruction 208 (W. Fleming ed.1950). Union officials in Georgia issued a similar order, declaring that " '[a]ll men, without the distinction of color, have the right to keep arms to defend their homes, families or themselves.' " Cramer, "This Right is Not Allowed by Governments That Are Afraid of The People": The Public Meaning of the Second Amendment When the Fourteenth Amendment was Ratified, 17 Geo. Mason L.Rev. 823, 854 (2010) (hereinafter Cramer) (quoting Right to Bear Arms, Christian Recorder, Feb. 24, 1866, pp. 1–2). In addition, when made aware of attempts by armed parties to disarm blacks, the head of the Freedmen's Bureau in Alabama "made public [his] determination to maintain the right of the negro to keep and to bear arms, and [his] disposition to send an armed force into any neighborhood in which that right should be systematically interfered with." Joint Committee on Reconstruction, H.R.Rep. No. 30, 39th Cong., 1st Sess., pt. 3, p. 140 (1866).

22 The Freedmen's Bureau bill was amended to include an express reference to the right to keep and bear arms, see 39th Cong. Globe 654 (Rep. Thomas Eliot), even though at least some Members believed that the unamended version alone would have protected the right, see *id*., at 743 (Sen. Lyman Trumbull).

23 There can be no doubt that the principal proponents of the Civil Rights Act of 1866 meant to end the disarmament of African-Americans in the South. In introducing the bill, Senator Trumbull described its purpose as securing to blacks the "privileges which are essential to freemen." *Id*., at 474. He then pointed to the previously described Mississippi law that "prohibit[ed] any negro or mulatto from having fire-arms" and explained that the bill would "destroy" such laws. *Ibid*. Similarly, Representative Sidney Clarke cited disarmament of freedmen in Alabama and Mississippi as a reason to support the Civil Rights Act and to continue to deny Alabama and Mississippi representation in Congress: "I regret, sir, that justice compels me to say, to the disgrace of the Federal Government, that the 'reconstructed' State authorities of Mississippi were allowed to rob and disarm our veteran soldiers and arm the rebels fresh from the field of treasonable strife. Sir, the disarmed loyalists of Alabama, Mississippi, and Louisiana are powerless to-day, and oppressed by the pardoned and encouraged rebels of those States. They appeal to the American Congress for protection. In response to this appeal I shall vote for every just measure of protection, for I do not intend to be among the treacherous violators of the solemn pledge of the nation." *Id*., at 1838–1839.

24 For example, at least one southern court had held the Civil Rights Act to be unconstitutional. That court did so, moreover, in the course of upholding the conviction of an African–American man for violating Mississippi's law against firearm possession by freedmen. See Decision of Chief Justice Handy, Declaring the Civil Rights Bill Unconstitutional, N.Y. Times, Oct. 26, 1866, p. 2, col. 3.

25 Other Members of the 39th Congress stressed the importance of the right to keep and bear arms in discussing other measures. In speaking generally on reconstruction, Representative Roswell Hart listed the " 'right of the people to keep and bear arms' " as among those rights necessary to a "republican form of government." 39th Cong. Globe 1629. Similarly, in objecting to a bill designed to disarm southern militias, Senator Willard Saulsbury argued that such a measure would violate the Second Amendment. *Id*., at 914–915. Indeed, the bill "ultimately passed in a form that disbanded militias but maintained the right of individuals to their private firearms." Cramer 858.

26 More generally worded provisions in the constitutions of seven other States may also have encompassed a right to bear arms. See Calabresi & Agudo, 87 Texas L.Rev., at 52.

27 These state constitutional protections often reflected a lack of law enforcement in many sections of the country. In the frontier towns that did not have an effective police force, law enforcement often could not pursue criminals beyond the town borders. See Brief for Rocky Mountain Gun Owners et al. as *Amici Curiae* 15. Settlers in the West and elsewhere, therefore, were left to "repe[l] force by force when the intervention of society ... [was] too late to prevent an injury." *District of Columbia v. Heller,* 554 U.S. 570, ——, 128 S.Ct. 2783, 2799, 171 L.Ed.2d 637 (2008) (internal quotation marks omitted). The settlers' dependence on game for food and economic livelihood, moreover, undoubtedly undergirded these state constitutional guarantees. See *id*., at ——, ——, ——, 128 S.Ct., at 2801–2802, 2807, 2810.

28 For example, the United States affords criminal jury trials far more broadly than other countries. See, *e.g.,* Van Kessel, Adversary Excesses in the American Criminal Trial, 67 Notre Dame L.Rev. 403 (1992); Leib, A Comparison of Criminal Jury Decision Rules in Democratic Countries, 5 Ohio St. J.Crim. L. 629, 630 (2008); Henderson, The Wrongs of Victim's Rights, 37 Stan. L.Rev. 937, 1003, n. 296 (1985); see also *Roper v. Simmons,* 543 U.S. 551, 624, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (SCALIA, J., dissenting) ("In many significant respects the laws of most other countries differ from our law—including ... such explicit provisions of our Constitution as the right to jury trial"). Similarly, our rules governing

pretrial interrogation differ from those in countries sharing a similar legal heritage. See Dept. of Justice, Office of Legal Policy, Report to the Attorney General on the Law of Pretrial Interrogation: Truth in Criminal Justice Report No. 1 (Feb. 12, 1986), reprinted in 22 U. Mich. J.L. Ref. 437, 534–542 (1989) (comparing the system envisioned by *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), with rights afforded by England, Scotland, Canada, India, France, and Germany). And the "Court-pronounced exclusionary rule ... is distinctively American." *Roper, supra,* at 624, 125 S.Ct. 1183 (SCALIA, J., dissenting) (citing *Bivens v. Six Unknown Fed. Narcotics Agents,* 403 U.S. 388, 415, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971) (Burger, C. J., dissenting) (noting that exclusionary rule was "unique to American jurisprudence" (internal quotation marks omitted))); see also Sklansky, Anti–Inquisitorialism, 122 Harv. L.Rev. 1634, 1648–1656, 1689–1693 (2009) (discussing the differences between American and European confrontation rules).

29 England and Denmark have state churches. See Torke, The English Religious Establishment, 12 J. of Law & Religion 399, 417–427 (1995–1996) (describing legal status of Church of England); Constitutional Act of Denmark, pt. I, § 4 (1953) ("The Evangelical Lutheran Church shall be the Established Church of Denmark"). The Evangelical Lutheran Church of Finland has attributes of a state church. See Christensen, Is the Lutheran Church Still the State Church? An Analysis of Church–State Relations in Finland, 1995 B.Y.U.L.Rev. 585, 596–600 (describing status of church under Finnish law). The Web site of the Evangelical Lutheran Church of Finland states that the church may be usefully described as both a "state church" and a "folk church." See J. Seppo, The Current Condition of Church–State Relations in Finland, online at http://evl.fi/EVLen. nsf/Documents/838DDBEF 4A28712AC225730F001F7C67?OpenDocument & lang=EN (all Internet materials as visited June 23, 2010, and available in Clerk of Court's case file).

30 As noted above, see n. 13, *supra,* cases that predate the era of selective incorporation held that the Grand Jury Clause of the Fifth Amendment and the Seventh Amendment's civil jury requirement do not apply to the States. See *Hurtado v. California,* 110 U.S. 516, 4 S.Ct. 111, 28 L.Ed. 232 (1884) (indictment); *Minneapolis & St. Louis R. Co. v. Bombolis,* 241 U.S. 211, 36 S.Ct. 595, 60 L.Ed. 961 (1916) (civil jury).

As a result of *Hurtado,* most States do not require a grand jury indictment in all felony cases, and many have no grand juries. See Dept. of Justice, Office of Justice Programs, Bureau of Justice Statistics, State Court Organization 2004, pp. 213, 215–217 (2006) (Table 38), online at http://bjs.ojp.usdoj.gov/content/pub/pdf/sco04.pdf.

As a result of *Bombolis,* cases that would otherwise fall within the Seventh Amendment are now tried without a jury in state small claims courts. See, *e.g., Cheung v. Eighth Judicial Dist. Court,* 121 Nev. 867, 124 P.3d 550 (2005) (no right to jury trial in small claims court under Nevada Constitution).

31 See Mack & Burnette, 2 Lawmakers to Quinn: Send the Guard to Chicago, Chicago Tribune, Apr. 26, 2010, p. 6.

32 Janssen & Knowles, Send in Troops? Chicago Sun–Times, Apr. 26, 2010, p. 2; see also Brief for NAACP Legal Defense & Education Fund, Inc., as *Amicus Curiae* 5, n. 4 (stating that in 2008, almost three out of every four homicide victims in Chicago were African Americans); *id.,* at 5–6 (noting that "each year [in Chicago], many times more African Americans are murdered by assailants wielding guns than were killed during the Colfax massacre" (footnote omitted)).

33 See Brief for Women State Legislators et al. as *Amici Curiae* 9–10, 14–15; Brief for Jews for the Preservation of Firearms Ownership as *Amicus Curiae* 3–4; see also Brief for Pink Pistols et al. as *Amici Curiae* in *District of Columbia v. Heller,* O.T.2007, No. 07–290, pp. 5–11.

1 I do not entirely understand Justice STEVENS' renaming of the Due Process Clause. What we call it, of course, does not change what the Clause says, but shorthand should not obscure what it says. Accepting for argument's sake the shift in emphasis—from avoiding certain deprivations without that "process" which is "due," to avoiding the deprivations themselves—the Clause applies not just to deprivations of "liberty," but also to deprivations of "life" and even "property."

2 Justice STEVENS insists that he would not make courts the *sole* interpreters of the "liberty clause"; he graciously invites "[a]ll Americans" to ponder what the Clause means to them today. *Post,* at 3099, n. 22. The problem is that in his approach the people's ponderings do not matter, since whatever the people decide, courts have the last word.

3 Justice BREYER is not worried by that prospect. His interpretive approach applied to incorporation of the Second Amendment includes consideration of such factors as "the extent to which incorporation will further other, perhaps more basic, constitutional aims; and the extent to which incorporation will advance or hinder the Constitution's structural aims"; whether recognizing a particular right will "further the Constitution's effort to ensure that the government treats each individual with equal respect" or will "help maintain the democratic form of government"; whether it is "inconsistent ... with the Constitution's efforts to create governmental institutions well suited to the carrying out of its constitutional promises"; whether it fits with "the Framers' basic reason for believing the Court ought to have the power of judicial review"; courts' comparative advantage in answering empirical questions that may be involved in applying the right; and whether there is a "strong offsetting justification" for removing a decision from the democratic process. *Post,* at 3123 – 3124, 3125 – 3129 (dissenting opinion).

4 After defending the careful-description criterion, Justice STEVENS quickly retreats and cautions courts not to apply it too stringently. *Post,* at 3102 – 3103. Describing a right *too* specifically risks robbing it of its "universal valence and a moral force it might otherwise have," *ibid.,* and "loads the dice against its recognition," *post,* at 3102, n. 25 (internal quotation marks omitted). *That* must be avoided, since it endangers rights Justice STEVENS *does* like. See *ibid.* (discussing *Lawrence v. Texas,* 539 U.S. 558, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003)). To make sure *those* rights get in, we must leave leeway in our description, so that a right that has not itself been recognized as fundamental can ride the coattails of one that has been.

5 Justice STEVENS claims that I mischaracterize his argument by referring to the Second Amendment right to keep and bear arms, instead of "the interest in keeping a firearm of one's choosing in the home," the right he says petitioners assert. *Post,* at 3109, n. 36. But it is precisely the "Second Amendment right to keep and bear arms" that petitioners argue is incorporated by the Due Process Clause. See, *e.g.,* Pet. for Cert. i. Under Justice STEVENS' own approach, that should end the matter. See *post,* at 3102 ("[W]e must pay close attention to the precise liberty interest the litigants have asked us to vindicate"). In any event, the demise of watered-down incorporation, see *ante,* at 3067 – 3068, means that we no longer subdivide Bill of Rights guarantees into their theoretical components, only some of which apply to the States. The First Amendment freedom of speech is incorporated—not the freedom to speak on Fridays, or to speak about philosophy.

6 Justice STEVENS goes a step farther still, suggesting that the right to keep and bear arms is not protected by the "liberty clause" because it is not really a liberty at all, but a "property right." *Post,* at 3109. Never mind that the right to bear arms sounds mighty like a liberty; and never mind that the "liberty clause" is really a Due Process Clause which explicitly protects "property," see *United States v. Carlton,* 512 U.S. 26, 41–42, 114 S.Ct. 2018, 129 L.Ed.2d 22 (1994) (SCALIA, J., concurring in judgment). Justice STEVENS' theory cannot explain why the Takings Clause, which unquestionably protects property, has been incorporated, see *Chicago, B. & Q.R. Co. v. Chicago,* 166 U.S. 226, 241, 17 S.Ct. 581, 41 L.Ed. 979 (1897), in a decision he appears to accept, *post,* at 3096, n. 14.

7 As Justice STEVENS notes, see *post,* at 3116 – 3117, I accept as a matter of *stare decisis* the requirement that to be fundamental for purposes of the Due Process Clause, a right must be "implicit in the concept of ordered liberty," *Lawrence,supra,* at 593, n. 3, 123 S.Ct. 2472 (SCALIA, J., dissenting) (internal quotation marks omitted). But that inquiry provides infinitely less scope for judicial invention when conducted under the Court's approach, since the field of candidates is *immensely* narrowed by the prior requirement that a right be rooted in this country's traditions. Justice STEVENS, on the other hand, is free to scan the universe for rights that he thinks "implicit in the concept, etc." The point Justice STEVENS makes here is merely one example of his demand that an historical approach to the Constitution prove itself, not merely much better than his in restraining judicial invention, but utterly perfect in doing so. See Part III, *infra.*

8 Justice STEVENS also asserts that his approach is "more faithful to this Nation's constitutional history" and to "the values and commitments of the American people, as they stand today," *post,* at 3118. But what he asserts to be the proof of this is that his approach aligns (no surprise) with those cases he approves (and dubs "canonical," *ibid.*). Cases he disfavors are discarded as "hardly bind[ing]" "excesses," *post,* at 3094 – 3095, or less "enduring," *post,* at 3096, n. 16. Not proven. Moreover, whatever relevance Justice STEVENS ascribes to current "values and commitments of the American people" (and that is unclear, see *post,* at 3115, n. 47), it is hard to see how it shows fidelity to them that he disapproves a different subset of old cases than the Court does.

9 That is not to say that every historical question on which there is room for debate is indeterminate, or that every question on which historians disagree is equally balanced. Cf. *post,* at 3117 – 3118. For example, the historical analysis of the principal dissent in *Heller* is as valid as the Court's only in a two-dimensional world that conflates length and depth.

10 By the way, Justice STEVENS greatly magnifies the difficulty of an historical approach by suggesting that it was *my* burden in *Lawrence* to show the "ancient roots of proscriptions against sodomy," *post,* at 3117 – 3118 (internal quotation marks omitted). *Au contraire,* it was *his* burden (in the opinion he joined) to show the ancient roots of the right of sodomy.

1 In the two decades after *United States v. Cruikshank,* 92 U.S. 542, 23 L.Ed. 588 (1876), was decided, this Court twice reaffirmed its holding that the Privileges or Immunities Clause does not apply the Second Amendment to the States. *Presser v. Illinois,* 116 U.S. 252, 266–267, 6 S.Ct. 580, 29 L.Ed. 615 (1886); *Miller v. Texas,* 153 U.S. 535, 14 S.Ct. 874, 38 L.Ed. 812 (1894).

2 See also 2 C. Richardson, A New Dictionary of the English Language 1512 (1839) (defining "privilege" as "an appropriate or peculiar law or rule or right; a peculiar immunity, liberty, or franchise"); 1 *id.,* at 1056 (defining "immunity" as "[f]reedom or exemption, (from duties,) liberty, privilege"); The Philadelphia School Dictionary; or Expositor of the English Language 152 (3d ed. 1812) (defining "privilege" as a "peculiar advantage"); *id.,* at 105 (defining "immunity" as "privilege, exemption"); Royal Standard English Dictionary 411 (1788) (defining "privilege" as "public right; peculiar advantage").

3 See also, *e.g.,* Charter of Va. (1606), reprinted in 7 First Federal and State Constitutions, Colonial Charters, and Other Organic Laws 3783, 3788 (F. Thorpe ed.1909) (hereinafter Thorpe) ("DECLAR[ING]" that "all and every the Persons being our Subjects, ... shall HAVE and enjoy all Liberties, Franchises, and Immunities ... as if they had been abiding and born, within this our Realm of *England* " (emphasis in original)); Charter of New England (1620), in 3 *id.,* at 1827, 1839 ("[A]ll and every the Persons, beinge our Subjects, ... shall have and enjoy all Liberties, and ffranchizes, and Immunities of free Denizens and naturall subjects ... as if they had been abidinge and born within this our Kingdome of England"); Charter of Mass. Bay (1629), in *id.* at 1846, 1856–1857 (guaranteeing that "all and every the Subjects of Us, ... shall have and enjoy all liberties and Immunities of free and naturall Subjects ... as yf they and everie of them were borne within the Realme of England"); Grant of the Province of Me. (1639), in *id.,* at 1625, 1635 (guaranteeing "Liberties Francheses and Immunityes of or belonging to any the naturall borne subjects of this our Kingdome of England"); Charter of Carolina (1663), in 5 *id.,* at 2743, 2747 (guaranteeing to all subjects "all liberties franchises and priviledges of this our kingdom of England"); Charter of R.I. and Providence Plantations (1663), in 6 *id.,* at 3211, 3220 ("[A]ll and every the subjects of us ... shall have and enjoye all libertyes and immunityes of ffree and naturall subjects within any the dominions of us, our heires, or successours, ... as if they, and every of them, were borne within the realme of England"); Charter of Ga. (1732), in 2 *id.,* at 765, 773 ("[A]ll and every the persons which shall happen to be born within the said province ... shall have and enjoy all liberties, franchises and immunities of free denizens and natural born subjects, within any of our dominions, to all intents and purposes, as if abiding and born within this our kingdom of Great–Britain").

4 See also, *e.g.,* A. Howard, The Road from Runnymede: Magna Carta and Constitutionalism in America 174 (1968) (quoting 1774 Georgia resolution declaring that the colony's inhabitants were entitled to " 'the same rights, privileges, and immunities with their fellow-subjects in *Great Britain* ' " (emphasis in original)); The Virginia Resolves, The Resolutions as Printed in the Journal of the House of Burgesses, reprinted in Prologue to Revolution: Sources and Documents on the Stamp Act Crisis, 1764–1766, at 46, 48 ("[T]he Colonists aforesaid are declared entitled to all Liberties, Privileges, and Immunities of Denizens and natural Subjects, to all Intents and Purposes, as if they had been abiding and born within the Realm of *England* " (emphasis in original)).

5 See also Va. Declaration of Rights (1776), reprinted in 1 Schwartz 234–236; Pa. Declaration of Rights (1776), in *id*., at 263–275; Del. Declaration of Rights (1776), in *id*., at 276–278; Md. Declaration of Rights (1776), in *id*., at 280–285; N.C. Declaration of Rights (1776), in *id*., 286–288.

6 Justice Washington's complete list was as follows:

> "Protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole. The right of a citizen of one state to pass through, or to reside in any other state, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus; to institute and maintain actions of any kind in the courts of the state; to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the state; may be mentioned as some of the particular privileges and immunities of citizens, which are clearly embraced by the general description of privileges deemed to be fundamental: to which may be added, the elective franchise, as regulated and established by the laws or constitution of the state in which it is to be exercised." 6 Fed. Cas., at 551–552.

7 See also Treaty Between the United States of America and the Ottawa Indians of Blanchard's Fork and Roche De Boeuf, June 24, 1862, 12 Stat. 1237 ("The Ottawa Indians of the United Bands of Blanchard's Fork and of Roche de Boeuf, having become sufficiently advanced in civilization, and being desirous of becoming citizens of the United States ... [after five years from the ratification of this treaty] shall be deemed and declared to be citizens of the United States, to all intents and purposes, and shall be entitled to all the *rights, privileges, and immunities of such citizens* " (emphasis added)); Treaty Between the United States of America and Different Tribes of Sioux Indians, Art. VI, April 29, 1868, 15 Stat. 637 ("[A]ny Indian or Indians receiving a patent for land under the foregoing provisions, shall thereby and from thenceforth become and be a citizen of the United States, and be entitled to all the *privileges and immunities of such citizens* " (emphasis added)).

8 Subsequent treaties contained similar guarantees that the inhabitants of the newly acquired territories would enjoy the freedom to exercise certain constitutional rights. See Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico, Art. IX, Feb. 2, 1848, 9 Stat. 930, T.S. No. 207 (cession of Texas) (declaring that inhabitants of the Territory were entitled "to the enjoyment of all the rights of citizens of the United States, according to the principles of the constitution; and in the mean time shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction"); Treaty concerning the Cession of the

Russian Possessions in North America by his Majesty the Emperor of all the Russians to the United States of America, Art. III, Mar. 30, 1867, 15 Stat. 542, T.S. No. 301 (June 20, 1867) (cession of Alaska) ("The inhabitants of the ceded territory, ... if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion").

9 See, *e.g.,* Speech of Mr. Joseph Hemphill (Pa.) on the Missouri Question in the House of the Representatives 16 (1820), as published in pamphlet form and reprinted in 22 Moore Pamphlets, p. 16 ("If the right to hold slaves is a federal right and attached merely to citizenship of the United States, [then slavery] could maintain itself against state authority, and on this principle the owner might take his slaves into any state he pleased, in defiance of the state laws, but this would be contrary to the constitution"); see also Lash, The Origins of the Privileges or Immunities Clause, Part I: "Privileges and Immunities" as an Antebellum Term of Art, 98 Geo. L.J. 1241, 1288–1290 (2010) (collecting other examples).

10 One Country, One Constitution, and One People: Speech of Hon. John A. Bingham, of Ohio, In the House of Representatives, February 28, 1866, In Support of the Proposed Amendment to Enforce the Bill of Rights (Cong.Globe). The pamphlet was published by the official reporter of congressional debates, and was distributed presumably pursuant to the congressional franking privilege. See B. Wildenthal, Nationalizing the Bill of Rights: Revisiting the Original Understanding of the Fourteenth Amendment in 1866–67, 68 Ohio St. L.J. 1509, 1558, n. 167 (2007) (hereinafter Wildenthal).

11 The full text of Bingham's first draft of § 1 provided as follows:

"The Congress shall have power to make all laws which shall be necessary and proper to secure to the citizens of each State all privileges and immunities of citizens in the several States, and to all persons in the several States equal protection in the rights of life, liberty, and property." 39th Cong. Globe 1088.

12 In a separate front-page article on the same day, the paper expounded upon Hale's arguments in even further detail, while omitting Bingham's chief rebuttals. N.Y. Times, Feb. 28, 1866, p. 1. The unbalanced nature of The New York Times' coverage is unsurprising. As scholars have noted, "[m]ost papers" during the time of Reconstruction "had a frank partisan slant ... and the *Times* was no exception." Wildenthal 1559. In 1866, the paper "was still defending" President Johnson's resistance to Republican reform measures, as exemplified by the fact that it "supported Johnson's veto of the Civil Rights Act of 1866." *Ibid.*

13 Other papers that covered Howard's speech include the following: Baltimore Gazette, May 24, 1866, p. 4; Boston Daily Journal, May 24, 1866, p. 4; Boston Daily Advertiser, May 24, 1866, p. 1; Daily National Intelligencer, May 24, 1866, p. 3. Springfield Daily Republican, May 24, 1866, p. 3; Charleston Daily Courier, May 28, 1866, p. 4; Charleston Daily Courier, May 29, 1866, p. 1; Chicago Tribune, May 29, 1866, p. 2; Philadelphia Inquirer, May 24, 1866, p. 8.

14 See J. Pomeroy, An Introduction to the Constitutional Law of the United States 155–156 (E. Bennett ed. 1886) (describing § 1, which the country was then still considering, as a "needed" "remedy" for *Barron ex rel. Tiernan v. Mayor of Baltimore,* 7 Pet. 243, 8 L.Ed. 672 (1833), which held that the Bill of Rights was not enforceable against the States); T. Farrar, Manual of the Constitution of the United States of America 58–59, 145–146, 395–397 (1867) (reprint 1993); *id.,* at 546 (3d ed. 1872) (describing the Fourteenth Amendment as having "swept away" the "decisions of many courts" that "the popular rights guaranteed by the Constitution are secured only against [the federal] government").

15 The municipal respondents and Justice BREYER's dissent raise a most unusual argument that § 1 prohibits discriminatory laws affecting only the right to keep and bear arms, but offers substantive protection to other rights enumerated in the Constitution, such as the freedom of speech. See *post,* at 3032 – 3033. Others, however, have made the more comprehensive—and internally consistent—argument that § 1 bars discrimination alone and does not afford protection to any substantive rights. See, *e.g.,* R. Berger, Government By Judiciary: The Transformation of the Fourteenth Amendment (1997). I address the coverage of the Privileges or Immunities Clause only as it applies to the Second Amendment right presented here, but I do so with the understanding that my conclusion may have implications for the broader argument.

16 See, *e.g., Raleigh & Gaston R. Co. v. Davis,* 19 N.C. 451, 458–462 (1837) (right to just compensation for government taking of property); *Rohan v. Sawin,* 59 Mass. 281, 285 (1850) (right to be secure from unreasonable government searches and seizures); *State v. Buzzard,* 4 Ark. 18, 28 (1842) (right to keep and bear arms); *State v. Jumel,* 13 La. Ann. 399, 400 (1858) (same); *Cockrum v. State,* 24 Tex. 394, 401–404 (1859) (same).

17 See, *e.g., People v. Goodwin,* 18 Johns. Cas. 187, 201 (N.Y.Sup.Ct.1820); *Rhinehart v. Schuyler,* 7 Ill. 473, 522 (1845).

18 See, *e.g.,* Black Code, ch. 33, § 19, 1806 La. Acts pp. 160, 162 (prohibiting slaves from using firearms unless they were authorized by their master to hunt within the boundaries of his plantation); Act of Dec. 18, 1819, 1819 S.C. Acts pp. 29, 31 (same); An Act Concerning Slaves, § 6, 1840 Tex. Laws pp. 42–43 (making it unlawful for "any slave to own firearms of any description").

19 I conclude that the right to keep and bear arms applies to the States through the Privileges or Immunities Clause, which recognizes the rights of United States "citizens." The plurality concludes that the right applies to the States through the Due Process Clause, which covers all "person[s]." Because this case does not involve a claim brought by a noncitizen, I express no view on the difference, if any, between my conclusion and the plurality's with respect to the extent to which the States may regulate firearm possession by noncitizens.

20 I note, however, that I see no reason to assume that the constitutionally enumerated rights protected by the Privileges or Immunities Clause should consist of all the rights recognized in the Bill of Rights and no others. Constitutional provisions outside the Bill of Rights protect individual rights, see, *e.g.,* Art. I, § 9, cl. 2 (granting the "Privilege of the Writ of Habeas Corpus"), and there is no obvious evidence that the Framers of the Privileges or Immunities Clause meant to exclude them. In addition, certain Bill of Rights provisions prevent federal interference in state affairs and are not readily construed as protecting rights that belong to individuals. The Ninth and Tenth Amendments are obvious examples, as is the First Amendment's Establishment Clause, which "does not purport to protect individual rights." *Elk Grove Unified School Dist. v. Newdow,* 542 U.S. 1, 50, 124 S.Ct. 2301, 159 L.Ed.2d 98 (2004) (THOMAS, J., concurring in judgment); see Amar 179–180.

21 To the extent Justice STEVENS is concerned that reliance on the Privileges or Immunities Clause may invite judges to "write their personal views of appropriate public policy into the Constitution," *post,* at 3089 – 3090 (internal quotation marks omitted), his celebration of the alternative—the "flexibility," "transcend[ence]," and "dynamism" of substantive due process—speaks for itself, *post,* at 3096, 3099.

22 Tillman went on to a long career as South Carolina's Governor and, later, United States Senator. Tillman's contributions to campaign finance law have been discussed in our recent cases on that subject. See *Citizens United v. Federal Election Comm'n,* 558 U.S. 310, ——, ——, ——, 130, ——, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010) (STEVENS, J., dissenting) (discussing at length the Tillman Act of 1907, 34 Stat. 864). His contributions to the culture of terrorism that grew in the wake of *Cruikshank* had an even more dramatic and tragic effect.

23 In an effort to enforce the Fourteenth Amendment and halt this violence, Congress enacted a series of civil rights statutes, including the Force Acts, see Act of May 31, 1870, 16 Stat. 140; Act of Feb. 28, 1871, 16 Stat. 433, and the Ku Klux Klan Act, see Act of Apr. 20, 1871, 17 Stat. 13.

1 See *United States v. Cruikshank,* 92 U.S. 542, 553, 23 L.Ed. 588 (1876); *Presser v. Illinois,* 116 U.S. 252, 265, 6 S.Ct. 580, 29 L.Ed. 615 (1886); *Miller v. Texas,* 153 U.S. 535, 538, 14 S.Ct. 874, 38 L.Ed. 812 (1894). This is not to say that I agree with all other aspects of these decisions.

2 Cf., *e.g.,* Currie, The Reconstruction Congress, 75 U. Chi. L.Rev. 383, 406 (2008) (finding "some support in the legislative history for no fewer than four interpretations" of the Privileges or Immunities Clause, two of which contradict petitioners' submission); Green, The Original Sense of the (Equal) Protection Clause: Subsequent Interpretation and Application, 19 Geo. Mason U. Civ. Rights L.J. 219, 255–277 (2009) (providing evidence that the Clause was originally conceived of as an antidiscrimination measure, guaranteeing equal rights for black citizens); Rosenthal, The New Originalism Meets the Fourteenth Amendment: Original Public Meaning and the Problem of Incorporation, 18 J. Contemporary Legal Issues 361 (2009) (detailing reasons to doubt that the Clause was originally understood to apply the Bill of Rights to the States); Hamburger, Privileges or Immunities, 105 Nw. U.L.Rev. 61 (2011) (arguing that the Clause was meant to ensure freed slaves were afforded "the Privileges and Immunities" specified in Article IV, § 2, cl. 1 of the Constitution). Although he urges its elevation in our doctrine, Justice THOMAS has acknowledged that, in seeking to ascertain the original meaning of the Privileges or Immunities Clause, "[l]egal scholars agree on little beyond the conclusion that the Clause does not mean what the Court said it meant in 1873." *Saenz v. Roe,* 526 U.S. 489, 522, n. 1, 119 S.Ct. 1518, 143 L.Ed.2d 689 (1999) (dissenting opinion); accord, *ante,* at 3030 – 3031 (plurality opinion).

3 It is no secret that the desire to "displace" major "portions of our equal protection and substantive due process jurisprudence" animates some of the passion that attends this interpretive issue. *Saenz,* 526 U.S., at 528, 119 S.Ct. 1518 (THOMAS, J., dissenting).

4 Wilkinson, The Fourteenth Amendment Privileges or Immunities Clause, 12 Harv. J.L. & Pub. Pol'y 43, 52 (1989). Judge Wilkinson's point is broader than the privileges or immunities debate. As he observes, "there may be more structure imposed by provisions subject to generations of elaboration and refinement than by a provision in its pristine state. The fortuities of uneven constitutional development must be respected, not cast aside in the illusion of reordering the landscape anew." *Id.,* at 51–52; see also *Washington v. Glucksberg,* 521 U.S. 702, 759, n. 6, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997) (Souter, J., concurring in judgment) (acknowledging that, "[t]o a degree," the *Slaughter–House* "decision may have led the Court to look to the Due Process Clause as a source of substantive rights").

5 See, *e.g.,* Ely, The Oxymoron Reconsidered: Myth and Reality in the Origins of Substantive Due Process, 16 Const. Commentary 315, 326–327 (1999) (concluding that founding-era "American statesmen accustomed to viewing due process through the lens of [Sir Edward] Coke and [William] Blackstone could [not] have failed to understand due process as encompassing substantive as well as procedural terms"); Gedicks, An Originalist Defense of Substantive Due Process: Magna Carta, Higher–Law Constitutionalism, and the Fifth Amendment, 58 Emory L.J. 585, 594 (2009) (arguing "that one widely shared understanding of the Due Process Clause of the Fifth Amendment in the late eighteenth century encompassed judicial recognition and enforcement of unenumerated substantive rights"); Maltz, Fourteenth Amendment Concepts in the Antebellum Era, 32 Am. J. Legal Hist. 305, 317–318 (1988) (explaining that in the antebellum era a "substantial number of states," as well as antislavery advocates, "imbued their [constitutions'] respective due process clauses with a substantive content"); Tribe, Taking Text and Structure Seriously: Reflections on Free–Form Method in Constitutional Interpretation, 108 Harv. L.Rev. 1221, 1297, n. 247 (1995) ("[T]he *historical* evidence points strongly toward the conclusion that, at least by 1868 even if not in 1791, any state legislature voting to ratify a constitutional rule banning government deprivations of 'life, liberty, or property, without due process of law' would have understood that ban as having substantive as well as procedural content, given that era's premise that, to qualify as 'law,' an enactment would have to meet substantive requirements of rationality, non-oppressiveness, and evenhandedness"); see also Stevens, The Third Branch of Liberty, 41 U. Miami L.Rev. 277, 290 (1986) ("In view of the number of cases that have given substantive content to the term liberty, the burden of demonstrating that this consistent course of decision was unfaithful to the intent of the Framers is surely a heavy one").

6 1 L. Tribe, American Constitutional Law § 8–1, p. 1335 (3d ed.2000).

7 The Ninth Amendment provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

8 Stevens, The Bill of Rights: A Century of Progress, 59 U. Chi. L.Rev. 13, 20 (1992); see *Fitzgerald,* 523 F.2d, at 719–720; Stevens, 41 U. Miami L.Rev., at 286–289; see also Greene, The So–Called Right to Privacy, 43 U.C.D.L.Rev. 715, 725–731 (2010).

9 See also *Gitlow,* 268 U.S., at 672, 45 S.Ct. 625 (Holmes, J., dissenting) ("The general principle of free speech, it seems to me, must be taken to be included in the Fourteenth Amendment, in view of the scope that has been given to the word 'liberty' as there used, although perhaps it may be accepted with a somewhat larger latitude of interpretation than is allowed to Congress by the sweeping language that governs or ought to govern the laws of the United States"). Subsequent decisions repeatedly reaffirmed that persons hold free speech rights against the States on account of the Fourteenth Amendment's liberty clause, not the First Amendment *per se*. See, *e.g., NAACP v. Alabama ex rel. Patterson,* 357 U.S. 449, 460, 466, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958); *Cantwell v. Connecticut,* 310 U.S. 296, 303, 60 S.Ct. 900, 84 L.Ed. 1213 (1940); *Thornhill v. Alabama,* 310 U.S. 88, 95, and n. 7, 60 S.Ct. 736, 84 L.Ed. 1093 (1940); see also *McIntyre v. Ohio Elections Comm'n,* 514 U.S. 334, 336, n. 1, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995) ("The term 'liberty' in the Fourteenth Amendment to the Constitution makes the First Amendment applicable to the States"). Classic opinions written by Justice Cardozo and Justice Frankfurter endorsed the same basic approach to "incorporation," with the Fourteenth Amendment taken as a distinct source of rights independent from the first eight Amendments. *Palko v. Connecticut,* 302 U.S. 319, 322–328, 58 S.Ct. 149, 82 L.Ed. 288 (1937) (opinion for the Court by Cardozo, J.); *Adamson v. California,* 332 U.S. 46, 59–68, 67 S.Ct. 1672, 91 L.Ed. 1903 (1947) (Frankfurter, J., concurring).

10 See also *Wolf v. Colorado,* 338 U.S. 25, 26, 69 S.Ct. 1359, 93 L.Ed. 1782 (1949) ("The notion that the 'due process of law' guaranteed by the Fourteenth Amendment is shorthand for the first eight amendments of the Constitution ... has been rejected by this Court again and again, after impressive consideration. ... The issue is closed"). *Wolf* 's holding on the exclusionary rule was overruled by *Mapp v. Ohio,* 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961), but the principle just quoted has never been disturbed. It is notable that *Mapp,* the case that launched the modern "doctrine of *ad hoc,*" " 'jot-for-jot' " incorporation, *Williams v. Florida,* 399 U.S. 78, 100–101, 90 S.Ct. 1893, 26 L.Ed.2d 446 (1970) (Harlan, J., concurring in result), expressly held "that the exclusionary rule is an essential part of both the Fourth *and Fourteenth* Amendments." 367 U.S., at 657, 81 S.Ct. 1684 (emphasis added).

11 I can hardly improve upon the many passionate defenses of this position that Justice Harlan penned during his tenure on the Court. See *Williams,* 399 U.S., at 131, n. 14, 90 S.Ct. 1914 (opinion concurring in result) (cataloguing opinions).

12 See, *e.g.,* Pet. for Cert. in *Bowen v. Oregon,* O.T.2009, No. 08–1117, p. i, cert. denied, 558 U.S. 815, 130 S.Ct. 52, 175 L.Ed.2d 21 (2009) (request to overrule *Apodaca*); Pet. for Cert. in *Lee v. Louisiana,* O.T.2008, No. 07–1523, p. i, cert. denied, 555 U.S. 824, 129 S.Ct. 143, 172 L.Ed.2d 39 (2008) (same); Pet. for Cert. in *Logan v. Florida,* O.T.2007, No. 07–7264, pp. 14–19, cert. denied, 552 U.S. 1189, 128 S.Ct. 1222, 170 L.Ed.2d 76 (2008) (request to overrule *Williams*).

13 The vast majority of States already recognize a right to keep and bear arms in their own constitutions, see Volokh, State Constitutional Rights to Keep and Bear Arms, 11 Tex. Rev. L. & Pol. 191 (2006) (cataloguing provisions); Brief for Petitioners 69 (observing that "[t]hese Second Amendment analogs are effective and consequential"), but the States vary widely in their regulatory schemes, their traditions and cultures of firearm use, and their problems relating to gun violence. If federal and state courts must harmonize their review of gun-control laws under the Second Amendment, the resulting jurisprudence may prove significantly more deferential to those laws than the *status quo ante*. Once it has been established that a single legal standard must govern nationwide, federal courts will face a profound pressure to reconcile that standard with the diverse interests of the States and their long history of regulating in this sensitive area. Cf. *Williams,* 399 U.S., at 129–130, 90 S.Ct. 1914 (Harlan, J., concurring in result) (noting " 'backlash' " potential of jot-for-jot incorporation); Grant, Felix Frankfurter: A Dissenting Opinion, 12 UCLA L.Rev. 1013, 1038 (1965) ("If the Court will not reduce the requirements of the fourteenth amendment below the federal gloss that now overlays the Bill of Rights, then it will have to reduce that gloss to the point where the states can live with it"). *Amici* argue persuasively that, post-"incorporation," federal courts will have little choice but to fix a highly flexible standard of review if they are to avoid leaving federalism and the separation of powers—not to mention gun policy—in shambles. See Brief for Brady Center to Prevent Gun Violence et al. as *Amici Curiae* (hereinafter Brady Center Brief).

14 Justice Cardozo's test itself built upon an older line of decisions. See, *e.g., Chicago, B. & Q.R. Co. v. Chicago,* 166 U.S. 226, 237, 17 S.Ct. 581, 41 L.Ed. 979 (1897) (discussing "limitations on [state] power, which grow out of the essential nature of all free governments [and] implied reservations of individual rights, ... and which are respected by all governments entitled to the name" (internal quotation marks omitted)).

15 See *Palko,* 302 U.S., at 326, n. 3, 58 S.Ct. 149; see also, *e.g., Lawrence v. Texas,* 539 U.S. 558, 572–573, 576–577, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003); *Glucksberg,* 521 U.S., at 710–711, and n. 8, 117 S.Ct. 2258.

16 I acknowledge that some have read the Court's opinion in *Glucksberg* as an attempt to move substantive due process analysis, for all purposes, toward an exclusively historical methodology—and thereby to debilitate the doctrine. If that were ever *Glucksberg* 's aspiration, *Lawrence* plainly renounced it. As between *Glucksberg* and *Lawrence,* I have little doubt which will prove the more enduring precedent.

17 The Court almost never asked whether the guarantee in question was deeply rooted in founding-era practice. See Brief for Respondent City of Chicago et al. 31, n. 17 (hereinafter Municipal Respondents' Brief) (noting that only two opinions extensively discussed such history).

18 Cf. *Robinson v. California,* 370 U.S. 660, 666–668, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962) (invalidating state statute criminalizing narcotics addiction as "cruel and unusual punishment in violation of the Fourteenth Amendment" based on nature of the alleged " 'crime,' " without historical analysis); Brief for Respondent National Rifle Association of America, Inc., et al. 29 (noting that "lynchpin" of incorporation test has always been "the importance of the right in question to ... 'liberty' " and to our "system of government").

19 I do not mean to denigrate this function, or to imply that only "*new* rights"—whatever one takes that term to mean—ought to "get in" the substantive due process door. *Ante,* at 3052 – 3053 (SCALIA, J., concurring).

20 See *Bowers v. Hardwick,* 478 U.S. 186, 199, 106 S.Ct. 2841, 92 L.Ed.2d 140 (1986) (Blackmun, J., dissenting) ("Like Justice Holmes, I believe that '[i]t is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past' " (quoting Holmes, The Path of the Law, 10 Harv. L.Rev. 457, 469 (1897))).

21 Justice KENNEDY has made the point movingly:

> "Had those who drew and ratified the Due Process Clauses of the Fifth Amendment or the Fourteenth Amendment known the components of liberty in its manifold possibilities, they might have been more specific. They did not presume to have this insight. They knew times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress. As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom." *Lawrence,* 539 U.S., at 578–579, 123 S.Ct. 2472.

22 Contrary to Justice SCALIA's suggestion, I emphatically do not believe that "only we judges" can interpret the Fourteenth Amendment, *ante,* at 3052, or any other constitutional provision. All Americans can; all Americans should. I emphatically do believe that we judges must exercise—indeed, cannot help but exercise—our own reasoned judgment in so doing. Justice SCALIA and I are on common ground in maintaining that courts should be "guided by what the American people throughout our history have thought." *Ibid.* Where we part ways is in his view that courts should be guided *only* by historical considerations.

> There is, moreover, a tension between Justice SCALIA's concern that "courts have the last word" on constitutional questions, *ante,* at 3052, n. 2, on the one hand, and his touting of the Constitution's Article V amendment process,

ante, at 3051 – 3052, on the other. The American people can of course reverse this Court's rulings through that same process.

23 In assessing concerns about the "open-ended[ness]" of this area of law, *Collins,* 503 U.S., at 125, 112 S.Ct. 1061, one does well to keep in view the malleability not only of the Court's "deeply rooted"/ fundamentality standard but also of substantive due process' constitutional cousin, "equal protection" analysis. Substantive due process is sometimes accused of entailing an insufficiently "restrained methodology." *Glucksberg,* 521 U.S., at 721, 117 S.Ct. 2258. Yet "the word 'liberty' in the Due Process Clause seems to provide at least as much meaningful guidance as does the word 'equal' in the Equal Protection Clause." Post, The Supreme Court 2002 Term—Foreword: Fashioning the Legal Constitution: Culture, Courts, and Law, 117 Harv. L.Rev. 4, 94, n. 440 (2003). And "[i]f the objection is that the text of the [Due Process] Clause warrants providing only protections of process rather than protections of substance," "it is striking that even those Justices who are most theoretically opposed to substantive due process, like Scalia and Rehnquist, are also nonetheless enthusiastic about applying the equal protection component of the Due Process Clause of the Fifth Amendment to the federal government." *Ibid.* (citing *Adarand Constructors, Inc. v. Peña,* 515 U.S. 200, 213–231, 115 S.Ct. 2097, 132 L.Ed.2d 158 (1995)).

24 That one eschews a comprehensive theory of liberty does not, *pace* Justice SCALIA, mean that one lacks "a coherent theory of the Due Process Clause," *ante,* at 3052. It means that one lacks the hubris to adopt a rigid, context-independent definition of a constitutional guarantee that was deliberately framed in open-ended terms.

25 The notion that we should define liberty claims at the most specific level available is one of Justice SCALIA's signal contributions to the theory of substantive due process. See, *e.g., Michael H. v. Gerald D.,* 491 U.S. 110, 127–128, n. 6, 109 S.Ct. 2333, 105 L.Ed.2d 91 (1989) (opinion of SCALIA, J.); *ante,* at 3053 – 3054 (opinion of SCALIA, J.). By so narrowing the asserted right, this approach "loads the dice" against its recognition, Roosevelt, Forget the Fundamentals: Fixing Substantive Due Process, 8 U. Pa. J. Const. L. 983, 1002, n. 73 (2006): When one defines the liberty interest at issue in *Lawrence* as the freedom to perform specific sex acts, *ante,* at 3051, the interest starts to look less compelling. The Court today does not follow Justice SCALIA's "particularizing" method, *Katzenbach v. Morgan,* 384 U.S. 641, 649, 86 S.Ct. 1717, 16 L.Ed.2d 828 (1966), as it relies on general historical references to keeping and bearing arms, without any close study of the States' practice of regulating especially dangerous weapons.

26 In *District of Columbia v. Heller,* 554 U.S. 570, ——, 128 S.Ct. 2783, 2799, 171 L.Ed.2d 637, the Court concluded, over my dissent, that the Second Amendment confers "an individual right to keep and bear arms" disconnected from militia service. If that conclusion were wrong, then petitioners' "incorporation" claim clearly would fail, as they would hold no right against the Federal Government to be free from regulations such as the ones they challenge. Cf. *post,* at 3124. I do not understand petitioners or any of their *amici* to dispute this point. Yet even if *Heller* had never been decided—indeed, even if the Second Amendment did not exist—we would still have an obligation to address petitioners' Fourteenth Amendment claim.

27 The village of Oak Park imposes more stringent restrictions that may raise additional complications. See *ante,* at 3026 (majority opinion) (quoting Oak Park, Ill., Municipal Code §§ 27–2–1 (2007), 27–1–1 (2009)). The Court, however, declined to grant certiorari on the National Rifle Association's challenge to the Oak Park restrictions. Chicago is the only defendant in this case.

28 To the extent that petitioners contend the city of Chicago's registration requirements for firearm possessors also, and separately, violate the Constitution, that claim borders on the frivolous. Petitioners make no effort to demonstrate that the requirements are unreasonable or that they impose a severe burden on the underlying right they have asserted.

29 Members of my generation, at least, will recall the many passionate statements of this view made by the distinguished actor, Charlton Heston.

30 See Municipal Respondents' Brief 20, n. 11 (stating that at least 156 Second Amendment challenges were brought in time between *Heller* 's issuance and brief's filing); Brady Center Brief 3 (stating that over 190 Second Amendment challenges were brought in first 18 months since *Heller*); Brief for Villages of Winnetka and Skokie, Illinois, et al. as *Amici Curiae* 15 (stating that, in wake of *Heller,* municipalities have "repealed longstanding handgun laws to avoid costly litigation").

31 See, *e.g.,* Brief for Professors of Philosophy, Criminology, Law, and Other Fields as *Amici Curiae;* Brief for International Law Enforcement Educators and Trainers Association et al. as *Amici Curiae* 29–45; Brief for 34 California District Attorneys et al. as *Amici Curiae* 12–31.

32 The argument that this Court should establish any such right, however, faces steep hurdles. All 50 States already recognize self-defense as a defense to criminal prosecution, see 2 P. Robinson, Criminal Law Defenses § 132, p. 96 (1984 and Supp.2009), so this is hardly an interest to which the democratic process has been insensitive. And the States have always diverged on how exactly to implement this interest, so there is wide variety across the Nation in the types

and amounts of force that may be used, the necessity of retreat, the rights of aggressors, the availability of the "castle doctrine," and so forth. See Brief for Oak Park Citizens Committee for Handgun Control as *Amicus Curiae* 9–21; Brief for American Cities et al. as *Amici Curiae* 17–19; 2 W. LaFave, Substantive Criminal Law § 10.4, pp. 142–160 (2d ed.2003). Such variation is presumed to be a healthy part of our federalist system, as the States and localities select different rules in light of different priorities, customs, and conditions.

As a historical and theoretical matter, moreover, the legal status of self-defense is far more complicated than it might first appear. We have generally understood Fourteenth Amendment "liberty" as something one holds against direct state interference, whereas a personal right of self-defense runs primarily against other individuals; absent government tyranny, it is only when the state has *failed* to interfere with (violent) private conduct that self-help becomes potentially necessary. Moreover, it was a basic tenet of founding-era political philosophy that, in entering civil society and gaining "the advantages of mutual commerce" and the protections of the rule of law, one had to relinquish, to a significant degree, "that wild and savage liberty" one possessed in the state of nature. 1 W. Blackstone, Commentaries *125; see also, *e.g.,* J. Locke, Second Treatise of Civil Government § 128, pp. 63–64 (J. Gough ed.1947) (in state of nature man has power "to do whatever he thinks fit for the preservation of himself and others," but this "he gives up when he joins in a ... particular political society"); *Green v. Biddle,* 8 Wheat. 1, 63, 5 L.Ed. 547 (1823) ("It is a trite maxim, that man gives up a part of his natural liberty when he enters into civil society, as the price of the blessings of that state: and it may be said, with truth, that this liberty is well exchanged for the advantages which flow from law and justice"). Some strains of founding-era thought took a very narrow view of the right to armed self-defense. See, *e.g.,* Brief of Historians on Early American Legal, Constitutional, and Pennsylvania History as *Amici Curiae* 6–13 (discussing Whig and Quaker theories). Just because there may be a natural or common-law right to some measure of self-defense, it hardly follows that States may not place substantial restrictions on its exercise or that this Court should recognize a constitutional right to the same.

33 The Second Amendment right identified in *Heller* is likewise clearly distinct from a right to protect oneself. In my view, the Court badly misconstrued the Second Amendment in linking it to the value of personal self-defense above and beyond the functioning of the state militias; as enacted, the Second Amendment was concerned with tyrants and invaders, and paradigmatically with the federal military, not with criminals and intruders. But even still, the Court made clear that self-defense plays a limited role in determining the scope and substance of the Amendment's guarantee. The Court struck down the District of Columbia's handgun ban not because of the *utility* of handguns for lawful self-defense, but rather because of their *popularity* for that purpose. See 554 U.S., at ——, 128 S.Ct., at 2818–2819. And the Court's common-use gloss on the Second Amendment right, see *id.,* at ——, 128 S.Ct., at 2817, as well as its discussion of permissible limitations on the right, *id.,* at ——, 128 S.Ct., at 2816–2817, had little to do with self-defense.

34 Brady Center Brief 11 (extrapolating from Government statistics); see also Brief for American Public Health Association et al. as *Amici Curiae* 6–7 (reporting estimated social cost of firearm-related violence of $100 billion per year).

35 Bogus, Gun Control and America's Cities: Public Policy and Politics, 1 Albany Govt. L.Rev. 440, 447 (2008) (drawing on FBI data); see also *Heller,* 554 U.S., at ——, 128 S.Ct., at 2797–2798 (BREYER, J., dissenting) (providing additional statistics on handgun violence); Municipal Respondents' Brief 13–14 (same).

36 Justice SCALIA worries that there is no "objective" way to decide what is essential to a "liberty-filled" existence: Better, then, to ignore such messy considerations as how an interest actually affects people's lives. *Ante,* at 3055. Both the constitutional text and our cases use the term "liberty," however, and liberty is not a purely objective concept. Substantive due process analysis does not require any "political" judgment, *ibid.* It does require some amount of practical and normative judgment. The only way to assess what is essential to fulfilling the Constitution's guarantee of "liberty," in the present day, is to provide reasons that apply to the present day. I have provided many; Justice SCALIA and the Court have provided virtually none.

Justice SCALIA also misstates my argument when he refers to "the right to keep and bear arms," without qualification. *Ante,* at 3055. That is what the Second Amendment protects against Federal Government infringement. I have taken pains to show why the Fourteenth Amendment liberty interest asserted by petitioners—the interest in keeping a firearm of one's choosing in the home—is not necessarily coextensive with the Second Amendment right.

37 It has not escaped my attention that the Due Process Clause refers to "property" as well as "liberty." Cf. *ante,* at 3051, n. 1, 3055, n. 6 (opinion of SCALIA, J.). Indeed, in *Moore v. East Cleveland,* 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977) (plurality opinion), I alone viewed "the critical question" as "whether East Cleveland's housing ordinance [was] a permissible restriction on appellant's right to use her own property as she sees fit," *id.,* at 513, 97 S.Ct. 1932 (opinion concurring in judgment). In that case, unlike in this case, the asserted property right was coextensive with a right to organize one's family life, and I could find "no precedent" for the ordinance at issue, which "exclude [d] any of an owner's

relatives from the group of persons who may occupy his residence on a permanent basis." *Id.,* at 520, 97 S.Ct. 1932. I am open to property claims under the Fourteenth Amendment. This case just involves a weak one. And ever since the Court "incorporated" the more specific property protections of the Takings Clause in 1897, see *Chicago, B. & Q.R. Co.,* 166 U.S. 226, 17 S.Ct. 581, 41 L.Ed. 979, substantive due process doctrine has focused on liberty.

38 Cf. *Planned Parenthood of Southeastern Pa. v. Casey,* 505 U.S. 833, 913–914, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992) (STEVENS, J., concurring in part and dissenting in part).

39 The Second Amendment 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."

40 Contrary to Justice SCALIA's suggestion, this point is perfectly compatible with my opinion for the Court in *Elk Grove Unified School Dist. v. Newdow,* 542 U.S. 1, 124 S.Ct. 2301, 159 L.Ed.2d 98 (2004). Cf. *ante,* at 3056. Like the Court itself, I have never agreed with Justice THOMAS' view that the Establishment Clause is a federalism provision. But I agree with his underlying logic: If a clause in the Bill of Rights exists to safeguard federalism interests, then it makes little sense to "incorporate" it. Justice SCALIA's further suggestion that I ought to have revisited the Establishment Clause debate in this opinion, *ibid.,* is simply bizarre.

41 See *post,* at 3132 – 3133; Municipal Respondents' Brief 62–69; Brief for 34 Professional Historians and Legal Historians as *Amici Curiae* 22–26; Rosenthal, Second Amendment Plumbing After *Heller:* Of Standards of Scrutiny, Incorporation, Well–Regulated Militias, and Criminal Street Gangs, 41 Urb. Law. 1, 73–75 (2009). The plurality insists that the Reconstruction-era evidence shows the right to bear arms was regarded as "a substantive guarantee, not a prohibition that could be ignored so long as the States legislated in an evenhanded manner." *Ante,* at 3043 – 3044. That may be so, but it does not resolve the question whether the Fourteenth Amendment's Due Process Clause was originally understood to encompass a right to keep and bear arms, or whether it ought to be so construed now.

42 I am unclear what the plurality means when it refers to "the paucity of precedent sustaining bans comparable to those at issue here." *Ante,* at 3047. There is only one ban at issue here—the city of Chicago's handgun prohibition—and the municipal respondents cite far more than "one case," *ibid.,* from the post-Reconstruction period. See Municipal Respondents' Brief 24–30. The evidence adduced by respondents and their *amici* easily establishes their contentions that the "consensus in States that recognize a firearms right is that arms possession, even in the home, is ... subject to interest-balancing," *id.,* at 24; and that the practice of "[b]anning weapons routinely used for self-defense," when deemed "necessary for the public welfare," "has ample historical pedigree," *id.,* at 28. Petitioners do not even try to challenge these contentions.

43 I agree with Justice SCALIA that a history of regulation hardly proves a right is not "of fundamental character." *Ante,* at 3056 – 3057. An unbroken history of extremely intensive, carefully considered regulation does, however, tend to suggest that it is not.

44 The *Heller* majority asserted that "the adjective 'well-regulated' " in the Second Amendment's preamble "implies nothing more than the imposition of proper discipline and training." 554 U.S., at ——, 128 S.Ct., at 2800. It is far from clear that this assertion is correct. See, *e.g.,* U.S. Const., Art. 1, § 4, cl. 1; § 8, cls. 3, 5, 14; § 9, cl. 6; Art. 3, § 2, cl. 2; Art. 4, § 2, cl. 3; § 3, cl. 2 (using "regulate" or "Regulation" in manner suggestive of broad, discretionary governmental authority); Art. 1, § 8, cl. 16 (invoking powers of "disciplining" and "training" Militia in manner suggestive of narrower authority); *Heller,* 554 U.S., at ——, 128 S.Ct., at 2790–2791 (investigating Constitution's separate references to "people" as clue to term's meaning in Second Amendment); cf. Cornell & DeDino, A Well Regulated Right: The Early American Origins of Gun Control, 73 Fordham L.Rev. 487, 504 (2004) ("The authors of this curious interpretation of the Second Amendment have constructed a fantasy world where words mean their opposite, and regulation is really anti-regulation"). But even if the assertion were correct, the point would remain that the preamble envisions an active state role in overseeing how the right to keep and bear arms is utilized, and in ensuring that it is channeled toward productive ends.

45 Cf. *Heller,* 554 U.S., at ——, 128 S.Ct., at 2856–2857 (BREYER, J., dissenting) (detailing evidence showing that a "disproportionate amount of violent and property crimes occur in urban areas, and urban criminals are more likely than other offenders to use a firearm during the commission of a violent crime").

46 The fact that Chicago's handgun murder rate may have "actually increased since the ban was enacted," *ante,* at 3026 (majority opinion), means virtually nothing in itself. Countless factors unrelated to the policy may have contributed to that trend. Without a sophisticated regression analysis, we cannot even begin to speculate as to the efficacy or effects of the handgun ban. Even with such an analysis, we could never be certain as to the determinants of the city's murder rate.

47 In some sense, it is no doubt true that the "best" solution is elusive for many "serious social problems." *Ante,* at 3056 – 3057 (opinion of SCALIA, J.). Yet few social problems have raised such heated empirical controversy as the problem of

gun violence. And few, if any, of the liberty interests we have recognized under the Due Process Clause have raised as many complications for judicial oversight as the interest that is recognized today. See *post,* at 3125 – 3128.

I agree with the plurality that for a right to be eligible for substantive due process recognition, there need not be "a 'popular consensus' that the right is fundamental." *Ante,* at 3048 – 3049. In our remarkably diverse, pluralistic society, there will almost never be such uniformity of opinion. But to the extent that popular consensus is relevant, I do not agree with the Court that the *amicus* brief filed in this case by numerous state attorneys general constitutes evidence thereof. *Ante,* at 3048 – 3049. It is puzzling that so many state lawmakers have asked us to limit their *option* to regulate a dangerous item. Cf. *post,* at 3124 – 3125.

48 Likewise, no one contends that those interested in personal self-defense—every American, presumably—face any particular disadvantage in the political process. All 50 States recognize self-defense as a defense to criminal prosecution. See n. 32, *supra*.

49 See *Heller,* 554 U.S., at ——, 128 S.Ct., at 2836–2837 (STEVENS, J., dissenting) ("Although it gives short shrift to the drafting history of the Second Amendment, the Court dwells at length on four other sources: the 17th-century English Bill of Rights; Blackstone's Commentaries on the Laws of England; postenactment commentary on the Second Amendment; and post-Civil War legislative history"); see also *post,* at 3120 – 3122 (discussing professional historians' criticisms of *Heller*).

50 Indeed, this is truly one of our most deeply rooted legal traditions.

Tab 10

LEXSEE

Caution
As of: Feb 25, 2016

MICHAEL MOORE, et al., and MARY E. SHEPARD, et al., Plaintiffs-Appellants, v. LISA MADIGAN, ATTORNEY GENERAL OF ILLINOIS, et al., Defendants-Appellees.

Nos. 12-1269, 12-1788

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

702 F.3d 933; 2012 U.S. App. LEXIS 25264

June 8, 2012, Argued
December 11, 2012, Decided

SUBSEQUENT HISTORY: Rehearing denied by, Rehearing, en banc, denied by Moore v. Madigan, 708 F.3d 901, 2013 U.S. App. LEXIS 3691 (7th Cir. Ill., 2013)
Dismissed by, Motion denied by, As moot, Motion dismissed by Shepard v. Madigan, 958 F. Supp. 2d 996, 2013 U.S. Dist. LEXIS 104796 (S.D. Ill., 2013)
On remand at, Motion denied by Moore v. Madigan, 2013 U.S. Dist. LEXIS 146304 (C.D. Ill., Oct. 9, 2013)
Motion granted by, Motion granted by, in part, Costs and fees proceeding at Shepard v. Madigan, 2014 U.S. Dist. LEXIS 137245 (S.D. Ill., Sept. 29, 2014)
Costs and fees proceeding at, Motion granted by, in part, Motion denied by, in part, Sanctions disallowed by, Motion granted by, Dismissed by, As moot Moore v. Madigan, 2014 U.S. Dist. LEXIS 164647 (C.D. Ill., Nov. 24, 2014)

PRIOR HISTORY: [**1]

Appeals from the United States District Courts for the Central District of Illinois and the Southern District of Illinois. Nos. 3:11-cv-3134-SEM-BGC and 3:11-cv-405-WDS-PMF--Sue E. Myerscough and William D. Stiehl, Judges.
Shepard v. Madigan, 863 F. Supp. 2d 774, 2012 U.S. Dist. LEXIS 44828 (S.D. Ill., 2012)
Moore v. Madigan, 842 F. Supp. 2d 1092, 2012 U.S. Dist. LEXIS 12967 (C.D. Ill., 2012)

DISPOSITION: REVERSED AND REMANDED, WITH DIRECTIONS; BUT MANDATE STAYED FOR 180 DAYS.

CASE SUMMARY:

PROCEDURAL POSTURE: In consolidated appeals, appellants, gun owners, challenged the dismissals by the U.S. District Courts for the Central District of Illinois and the Southern District of Illinois of their complaints in which they contended that the gun-carrying laws under Illinois law violated the Second Amendment as interpreted by the U.S. Supreme Court in District of Columbia v. Heller and held applicable to the states in McDonald v. City of Chicago.

OVERVIEW: The U.S. Supreme Court had not yet addressed the question whether the Second Amendment created a right of self-defense outside the home. The district courts ruled that it did not, and so dismissed appellants' suits. Appellees asked the court to repudiate the Supreme Court's historical analysis. That the court could not do. Nor could it ignore the implication of the analysis that the constitutional right of armed self-defense was broader than the right to have a gun in one's home. Both Heller and McDonald said that the need for defense of self, family, and property was most acute in the home,

but that did not mean it was not acute outside the home. A right to bear arms implied a right to carry a loaded gun outside the home. To confine the right to be armed to the home was to divorce the Second Amendment from the right of self-defense described in Heller and McDonald. Illinois had to provide more than merely a rational basis for believing that its uniquely sweeping ban was justified by an increase in public safety. It failed to meet that burden. The Supreme Court's interpretation of the Second Amendment therefore compelled declarations of unconstitutionality.

OUTCOME: The court reversed the decisions of the district courts and remanded to the respective district courts for the entry of declarations of unconstitutionality and permanent injunctions.

CORE TERMS: gun, self-defense, firearm, carrying, armed, ban, concealed, weapon, handgun, arms, bear arms, violence, ready-to-use, ownership, assault, street, inside, carriage, public safety, shooting, militia, arrest, gun laws, loaded gun, constable, forbid, pdf, dangerous weapons, crime rates, law-abiding

LexisNexis(R) Headnotes

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms
[HN1]The Second Amendment states in its entirety that 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.

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms
[HN2]To confine the right to be armed to the home is to divorce the Second Amendment from the right of self-defense described in Heller and McDonald.

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms
[HN3]The government had to make a strong showing that a gun ban is vital to public safety--it is not enough that the ban is rational.

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms
[HN4]A blanket prohibition on carrying gun in public prevents a person from defending himself anywhere except inside his home; and so substantial a curtailment of the right of armed self-defense requires a greater showing of justification than merely that the public might benefit on balance from such a curtailment, though there is no proof it would. In contrast, when a state bans guns merely in particular places, such as public schools, a person can preserve an undiminished right of self-defense by not entering those places; since that is a lesser burden, the state does not need to prove so strong a need. Similarly, the state can prevail with less evidence when, as in Skoien, guns are forbidden to a class of persons who present a higher than average risk of misusing a gun.

Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms
[HN5]The interest in self-protection is as great outside as inside the home.

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JUDGES: Before POSNER, FLAUM, and WILLIAMS, Circuit Judges. WILLIAMS, [**4] Circuit Judge, dissenting.

OPINION BY: POSNER

OPINION

[*934] Posner, *Circuit Judge*. These two appeals, consolidated for oral argument, challenge denials of declaratory and injunctive relief sought in materially identical suits under the Second Amendment. An Illinois law forbids a person, with exceptions mainly for police and other security personnel, hunters, and members of target shooting clubs, 720 ILCS 5/24-2, to carry a gun ready to use (loaded, immediately accessible--that is, easy to reach--and uncased). There are exceptions for a person on his own property (owned or rented), or in his home (but if it's an apartment, only there and not in the apartment building's common areas), or in his fixed place of business, or on the property of someone who has permitted him to be there with a ready-to-use gun. 720 ILCS 5/24-1(a)(4), (10), -1.6(a); see *People v. Diggins*, 235 Ill. 2d 48, 919 N.E.2d 327, 332, 335 Ill. Dec. 608 (Ill. 2009); *People v. Laubscher*, 183 Ill. 2d 330, 701 N.E.2d 489, 490-92, 233 Ill. Dec. 639 (Ill. 1998); *People v. Smith*, 71 Ill. 2d 95, 374 N.E.2d 472, 475, 15 Ill. Dec. 864 (Ill. 1978); *People v. Pulley*, 345 Ill. App. 3d 916, 803 N.E.2d 953, 957-58, 961, 281 Ill. Dec. 332 (Ill. App. 2004). Even carrying an unloaded gun in public, if it's uncased and immediately accessible, is prohibited, other than to police and other excepted persons, [**5] unless carried openly outside a vehicle in an unincorporated area and ammunition for the gun is not immediately accessible. 720 ILCS 5/24-1(a)(4)(iii), (10)(iii), -1.6(a)(3)(B).

The appellants contend that the Illinois law violates the Second Amendment as interpreted in *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 [*935] L. Ed. 2d 637 (2008), and held applicable to the states in *McDonald v. City of Chicago*, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010). *Heller* held that the Second Amendment protects "the right of law-abiding, responsible citizens to use arms in defense of hearth and home." 554 U.S. at 635. But the Supreme Court has not yet addressed the question whether the Second Amendment creates a right of self-defense outside the home. The district courts ruled that it does not, and so dismissed the two suits for failure to state a claim.

The parties and the amici curiae have treated us to hundreds of pages of argument, in nine briefs. The main focus of these submissions is history. The supporters of the Illinois law present historical evidence that there was no generally recognized private right to carry arms in public in 1791, the year the Second Amendment was ratified--the critical year for determining the amendment's historical [**6] meaning, according to *McDonald v. City of Chicago*, *supra*, 130 S. Ct. at 3035 and n. 14. Similar evidence against the existence of an eighteenth-century right to have weapons in the home for purposes of self-defense rather than just militia duty had of course been presented to the Supreme Court in the *Heller* case. See, e.g., Saul Cornell, *A Well-Regulated Militia* 2-4, 58-65 (2006); Lois G. Schwoerer, "To Hold and Bear Arms: The English Perspective," 76 *Chi.-Kent L. Rev.* 27, 34-38 (2000); Don Higginbotham, "The Second Amendment in Historical Context," 16 Constitutional Commentary 263, 265 (1999). The District of Columbia had argued that "the original understanding of the Second Amendment was neither an individual right of self-defense nor a collective right of the states, but rather a civic right that guaranteed that citizens would be able to keep and bear those arms needed to meet their legal obligation to participate in a well-regulated militia." Cornell, *supra*, at 2; see also Paul Finkelman, "'A Well Regulated Militia': The Second Amendment in Historical Perspective," 76 *Chi.-Kent L. Rev.* 195, 213-14 (2000); Don Higginbotham, "The Federalized Militia Debate: A Neglected Aspect of Second Amendment [**7] Scholarship," 55 *William & Mary Q.* 39, 47-50 (1998); Roy G. Weatherup, "Standing Armies and Armed Citizens: An Historical Analysis of the Second Amendment," 2 *Hastings Constitutional L.Q.* 961, 994-95 (1975).

The Supreme Court rejected the argument. The appellees ask us to repudiate the Court's historical analysis. That we can't do. Nor can we ignore the implication of the analysis that the constitutional right of armed self-defense is broader than the right to have a gun in one's home. The first sentence of the *McDonald* opinion states that "two years ago, in *District of Columbia v. Heller*, we held that the Second Amendment protects the right to keep and bear arms for the purpose of self-defense," *McDonald v. City of Chicago*, *supra*, 130 S. Ct. at 3026, and later in the opinion we read that "*Heller* explored the right's origins, noting that the 1689 English Bill of Rights explicitly protected a right to keep arms for self-defense, 554 U.S. at 593, and that by 1765, Blackstone was able to assert that the right to keep and bear arms was 'one of the fundamental rights of Englishmen,' *id.* at 594." 130 S. Ct. at 3037. And immediately the Court adds that "Blackstone's assessment was shared by [**8] the American colonists." *Id.*

Both *Heller* and *McDonald* do say that "the need for defense of self, family, and property is *most* acute" in the home, *id.* at 3036 (emphasis added); 554 U.S. at 628, but that doesn't mean it is not acute outside the home. *Heller* repeatedly invokes a broader Second Amendment right than the right to have a [*936] gun in one's home, as when it says that the amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation." 554 U.S. at 592. Confrontations are not limited to the home.

[HN1]The Second Amendment states in its entirety that "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" (emphasis added). The right to "bear" as distinct from the right to "keep" arms is unlikely to refer to the home. To speak of "bearing" arms within one's home would at all times have been an awkward usage. A right to bear arms thus implies a right to carry a loaded gun outside the home.

And one doesn't have to be a historian to realize that a right to keep and bear arms for personal self-defense in the eighteenth century could not rationally have been limited to the [**9] home. Suppose one lived in what was then the wild west--the Ohio Valley for example (for until the Louisiana Purchase the Mississippi River was the western boundary of the United States), where there were hostile Indians. One would need from time to time to leave one's home to obtain supplies from the nearest

trading post, and en route one would be as much (probably more) at risk if unarmed as one would be in one's home unarmed.

The situation in England was different--there was no wilderness and there were no hostile Indians and the right to hunt was largely limited to landowners, Schwoerer, *supra*, at 34-35, who were few. Defenders of the Illinois law reach back to the fourteenth-century Statute of Northampton, which provided that unless on King's business no man could "go nor ride armed by night nor by day, in Fairs, markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere." 2 Edw. III, c. 3 (1328). Chief Justice Coke interpreted the statute to allow a person to possess weapons inside the home but not to "assemble force, though he be extremely threatened, to go with him to church, or market, or any other place." Edward Coke, *Institutes of the Laws of* [**10] *England* 162 (1797). But the statute enumerated the locations at which going armed was thought dangerous to public safety (such as in fairs or in the presence of judges), and Coke's reference to "assemble force" suggests that the statutory limitation of the right of self-defense was based on a concern with armed gangs, thieves, and assassins rather than with indoors versus outdoors as such.

In similar vein *Sir John Knight's Case*, 87 Eng. Rep. 75, 76 (K.B. 1686), interpreted the statute as punishing "people who go armed to terrify the King's subjects." Some weapons do not terrify the public (such as well-concealed weapons), and so if the statute was (as it may have been) intended to protect the public from being frightened or intimidated by the brandishing of weapons, it could not have applied to all weapons or all carriage of weapons. Blackstone's summary of the statute is similar: "the offence of riding or going armed, with *dangerous* or *unusual* weapons, is a crime against the public peace, by terrifying the good people of the land." 4 *Commentaries on the Law of England* 148-49 (1769) (emphasis added). *Heller* treated Blackstone's reference to "dangerous or unusual weapons" as evidence [**11] that the ownership of *some* types of firearms is not protected by the Second Amendment, 554 U.S. at 627, but the Court cannot have thought *all* guns are "dangerous or unusual" and can be banned, as otherwise there would be no right to keep a handgun in one's home for self-defense. And while another English source, Robert Gardiner, *The Compleat Constable* 18-19 (3d ed. 1707), says that constables "may seize and take away" [*937] loaded guns worn or carried by persons not doing the King's business, it does not specify the circumstances that would make the exercise of such authority proper, let alone would warrant a prosecution.

Blackstone described the right of armed self-preservation as a fundamental natural right of Englishmen, on a par with seeking redress in the courts or petitioning the government. 1 Blackstone, *supra*, at 136, 139-40. The Court in *Heller* inferred from this that eighteenth-century English law recognized a right to possess guns for resistance, self-preservation, self-defense, and protection against both public and private violence. 554 U.S. at 594. The Court said that American law was the same. *Id.* at 594-95. And in contrast to the situation in England, in less peaceable America [**12] a distinction between keeping arms for self-defense in the home and carrying them outside the home would, as we said, have been irrational. All this is debatable of course, but we are bound by the Supreme Court's historical analysis because it was central to the Court's holding in *Heller*.

Twenty-first century Illinois has no hostile Indians. But a Chicagoan is a good deal more likely to be attacked on a sidewalk in a rough neighborhood than in his apartment on the 35th floor of the Park Tower. A woman who is being stalked or has obtained a protective order against a violent ex-husband is more vulnerable to being attacked while walking to or from her home than when inside. She has a stronger self-defense claim to be allowed to carry a gun in public than the resident of a fancy apartment building (complete with doorman) has a claim to sleep with a loaded gun under her mattress. But Illinois wants to deny the former claim, while compelled by *McDonald* to honor the latter. That creates an arbitrary difference. [HN2]To confine the right to be armed to the home is to divorce the Second Amendment from the right of self-defense described in *Heller* and *McDonald*. It is not a property right--a right [**13] to kill a houseguest who in a fit of aesthetic fury tries to slash your copy of Norman Rockwell's painting *Santa with Elves*. That is not self-defense, and this case like *Heller* and *McDonald* is just about self-defense.

A gun is a potential danger to more people if carried in public than just kept in the home. But the other side of this coin is that knowing that many law-abiding citizens are walking the streets armed may make criminals timid. Given that in Chicago, at least, most murders occur

outside the home, Chicago Police Dep't, *Crime at a Glance*: *District 1* 13 (Jan.--June 2010), the net effect on crime rates in general and murder rates in particular of allowing the carriage of guns in public is uncertain both as a matter of theory and empirically. "Based on findings from national law assessments, cross-national comparisons, and index studies, evidence is insufficient to determine whether the degree or intensity of firearms regulation is associated with decreased (or increased) violence." Robert A. Hahn et al., "Firearms Laws and the Reduction of Violence: A Systematic Review," 28 *Am. J. Preventive Med*. 40, 59 (2005); cf. John J. Donohue, "The Impact of Concealed-Carry Laws," in *Evaluating* [**14] *Gun Policy Effects on Crime and Violence* 287, 314-21 (2003). "Whether the net effect of relaxing concealed-carry laws is to increase or reduce the burden of crime, there is good reason to believe that the net is not large.... [T]he change in gun carrying appears to be concentrated in rural and suburban areas where crime rates are already relatively low, among people who are at relatively low risk of victimization--white, middle-aged, middle-class males. The available data about permit holders also imply that they are at fairly low risk of misusing guns, consistent with the relatively low arrest rates observed [*938] to date for permit holders. Based on available empirical data, therefore, we expect relatively little public safety impact if courts invalidate laws that prohibit gun carrying outside the home, assuming that some sort of permit system for public carry is allowed to stand." Philip J. Cook, Jens Ludwig & Adam M. Samaha, "Gun Control After Heller: Threats and Sideshows from a Social Welfare Perspective," 56 *UCLA L. Rev.* 1041, 1082 (2009); see also H. Sterling Burnett, "Texas Concealed Handgun Carriers; Law-Abiding Public Benefactors," www.ncpa.org/pdfs/ba324.pdf (visited Oct. 29, [**15] 2012). But we note with disapproval that the opening brief for the plaintiffs in appeal no. 12-1788, in quoting the last sentence above from the article by Cook and his colleagues, deleted without ellipses the last clause--"assuming that some sort of permit system for public carry is allowed to stand."

If guns cannot be carried outside the home, an officer who has reasonable suspicion to stop and frisk a person and finds a concealed gun on him can arrest him, as in *United States v. Mayo*, 361 F.3d 802, 804-08 (4th Cir. 2004), and thus take the gun off the street before a shooting occurs; and this is argued to support the ban on carrying guns outside the home. But it is a weak argument. Often the officer will have no suspicion (the gun is concealed, after all). And a state may be able to require "open carry"--that is, require persons who carry a gun in public to carry it in plain view rather than concealed. See *District of Columbia v. Heller*, *supra*, 554 U.S. at 626; James Bishop, Note, "Hidden or on the Hip: The Right(s) to Carry After *Heller*," 97 *Cornell L. Rev.* 907, 920-21 (2012). Many criminals would continue to conceal the guns they carried, in order to preserve the element of surprise [**16] and avoid the price of a gun permit; so the police would have the same opportunities (limited as they are, if the concealment is effective and the concealer does not behave suspiciously) that they do today to take concealed guns off the street.

Some studies have found that an increase in gun *ownership* causes an increase in homicide rates. Mark Duggan's study, reported in his article "More Guns, More Crime," 109 *J. Pol. Econ.* 1086, 1112 (2001), is exemplary; and see also Philip J. Cook & Jens Ludwig, "The Social Costs of Gun Ownership," 90 *J. Pub. Econ.* 379, 387 (2006). But the issue in this case isn't ownership; it's carrying guns in public. Duggan's study finds that even the concealed carrying of guns, which many states allow, doesn't lead to an increase in gun ownership. 109 *J. Pol. Econ.* at 1106-07. Moreover, violent crime in the United States has been falling for many years and so has gun ownership, Patrick Egan, "The Declining Culture of Guns and Violence in the United States," www.themonkeycage.org/blog/2012/07/21/the-declining-culture-of-guns-and-violence-in-the-united-states (visited Oct. 29, 2012); see also Tom W. Smith, "Public Attitudes Towards the Regulation of Firearms" [**17] 10 (University of Chicago Nat'l Opinion Research Center, Mar. 2007), http://icpgv.org/pdf/NORCPoll.pdf (visited Oct. 29, 2012)--in the same period in which gun laws have become more permissive.

A few studies find that states that allow concealed carriage of guns outside the home and impose minimal restrictions on obtaining a gun permit have experienced increases in assault rates, though not in homicide rates. See Ian Ayres & John J. Donohue III, "More Guns, Less Crime Fails Again: The Latest Evidence From 1977-2006," 6 *Econ. J. Watch* 218, 224 (2009). But it has not been shown that those increases persist. Of another, similar paper by Ayres and Donohue, "Shooting Down the 'More Guns, Less Crime' Hypothesis," 55 *Stan. L. Rev*

. 1193, 1270-85 [*939] (2003), it has been said that if they "had extended their analysis by one more year, they would have concluded that these laws [laws allowing concealed handguns to be carried in public] reduce crime." Carlisle E. Moody & Thomas B. Marvell, "The Debate on Shall-Issue Laws," 5 *Econ. J. Watch* 269, 291 (2008). Ayres and Donohue disagree that such laws reduce crime, but they admit that data and modeling problems prevent a strong claim that they *increase crime*. [**18] 55 *Stan. L. Rev.* at 1281-82, 1286-87; 6 *Econ. J. Watch* at 230-31.

Concealed carriage of guns might increase the death rate from assaults rather than increase the number of assaults. But the studies don't find that laws that allow concealed carriage increase the death rate from shootings, and this in turn casts doubt on the finding of an increased crime rate when concealed carriage is allowed; for if there were more confrontations with an armed criminal, one would expect more shootings. Moreover, there is no reason to expect Illinois to impose *minimal* permit restrictions on carriage of guns outside the home, for obviously this is not a state that has a strong pro-gun culture, unlike the states that began allowing concealed carriage before *Heller* and *MacDonald* enlarged the scope of Second Amendment rights.

Charles C. Branas et al., "Investigating the Link Between Gun Possession and Gun Assault," 99 *Am. J. of Pub. Health* 2034, 2037 (2009), finds that assault victims are more likely to be armed than the rest of the population is, which might be thought evidence that going armed is not effective self-defense. But that finding does not illuminate the deterrent effect of knowing that potential [**19] victims may be armed. David Hemenway & Deborah Azrael, "The Relative Frequency of Offensive and Defensive Gun Uses: Results from a National Survey," 15 *Violence & Victims* 257, 271 (2000), finds that a person carrying a gun is more likely to use it to commit a crime than to defend himself from criminals. But that is like saying that soldiers are more likely to be armed than civilians. And because fewer than 3 percent of gun-related deaths are from accidents, Hahn et al., *supra*, at 40, and because Illinois allows the use of guns in hunting and target shooting, the law cannot plausibly be defended on the ground that it reduces the accidental death rate, unless it could be shown that allowing guns to be carried in public causes gun ownership to increase, and we have seen that there is no evidence of that.

In sum, the empirical literature on the effects of allowing the carriage of guns in public fails to establish a pragmatic defense of the Illinois law. Bishop, *supra*, at 922-23; Mark V. Tushnet, *Out of Range*: *Why the Constitution Can't End the Battle over Guns* 110-11 (2007). Anyway the Supreme Court made clear in *Heller* that it wasn't going to make the right to bear arms depend on casualty [**20] counts. 554 U.S. at 636. If the mere possibility that allowing guns to be carried in public would increase the crime or death rates sufficed to justify a ban, *Heller* would have been decided the other way, for that possibility was as great in the District of Columbia as it is in Illinois.

And a ban as broad as Illinois's can't be upheld merely on the ground that it's not irrational. *Ezell v. City of Chicago*, 651 F.3d 684, 701 (7th Cir. 2011); *United States v. Yancey*, 621 F.3d 681, 683 (7th Cir. 2010) (per curiam); see also *Heller v. District of Columbia*, *supra*, 554 U.S. at 628 n. 27; *United States v. Chester*, 628 F.3d 673, 679-80 (4th Cir. 2010). Otherwise this court wouldn't have needed, in *United States v. Skoien*, 614 F.3d 638, 643-44 (7th Cir. 2010) (en banc), to marshal extensive empirical evidence to justify the less restrictive federal law that forbids a [*940] person "who has been convicted in any court of a misdemeanor crime of domestic violence" to possess a firearm in or affecting interstate commerce. 18 U.S.C. § 922(g)(9). In *Skoien* we said that [HN3]the government had to make a "strong showing" that a gun ban was vital to public safety--it was not enough that the ban was "rational." 614 F.3d at 641. [**21] Illinois has not made that strong showing--and it would have to make a stronger showing in this case than the government did in *Skoien*, because the curtailment of gun rights was much narrower: there the gun rights of persons convicted of domestic violence, here the gun rights of the entire law-abiding adult population of Illinois.

[HN4]A blanket prohibition on carrying gun in public prevents a person from defending himself anywhere except inside his home; and so substantial a curtailment of the right of armed self-defense requires a greater showing of justification than merely that the public *might* benefit on balance from such a curtailment, though there is no proof it would. In contrast, when a state bans guns merely in particular places, such as public schools, a person can preserve an undiminished right of self-defense by not entering those places; since that's a lesser burden, the state doesn't need to prove so strong a

need. Similarly, the state can prevail with less evidence when, as in *Skoien*, guns are forbidden to a class of persons who present a higher than average risk of misusing a gun. See also *Ezell v. City of Chicago, supra*, 651 F.3d at 708. And empirical evidence of a public [**22] safety concern can be dispensed with altogether when the ban is limited to obviously dangerous persons such as felons and the mentally ill. *Heller v. District of Columbia, supra*, 554 U.S. at 626. Illinois has lots of options for protecting its people from being shot without having to eliminate all possibility of armed self-defense in public.

Remarkably, Illinois is the *only* state that maintains a flat ban on carrying ready-to-use guns outside the home, though many states used to ban carrying concealed guns outside the home, Bishop, *supra*, at 910; David B. Kopel, "The Second Amendment in the Nineteenth Century," 1998 *BYU L. Rev.* 1359, 1432-33 (1998)--a more limited prohibition than Illinois's, however. Not even Massachusetts has so flat a ban as Illinois, though the District of Columbia does, see D.C. Code §§ 22-4504 to -4504.02, and a few states did during the nineteenth century, *Kachalsky v. County of Westchester*, Nos. 11-3642, -3962, 701 F.3d 81, 2012 U.S. App. LEXIS 24363, 2012 WL 5907502, at *6 (2d Cir. Nov. 27, 2012)--but no longer.

It is not that all states but Illinois are indifferent to the dangers that widespread public carrying of guns may pose. Some may be. But others have decided that a proper balance between the [**23] interest in self-defense and the dangers created by carrying guns in public is to limit the right to carry a gun to responsible persons rather than to ban public carriage altogether, as Illinois with its meager exceptions comes close to doing. Even jurisdictions like New York State, where officials have broad discretion to deny applications for gun permits, recognize that the interest in self-defense extends outside the home. There is no suggestion that some unique characteristic of criminal activity in Illinois justifies the state's taking a different approach from the other 49 states. If the Illinois approach were demonstrably superior, one would expect at least one or two other states to have emulated it.

Apart from the usual prohibitions of gun ownership by children, felons, illegal aliens, lunatics, and in sensitive places such as public schools, the propriety of which was not questioned in *Heller* ("nothing in this opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the [*941] mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings," 554 U.S. at 626), some states sensibly [**24] require that an applicant for a handgun permit establish his competence in handling firearms. A person who carries a gun in public but is not well trained in the use of firearms is a menace to himself and others. See Massad Ayoob, "The Subtleties of Safe Firearms Handling," *Backwoods Home Magazine*, Jan./Feb. 2007, p. 30; Debra L. Karch, Linda L. Dahlberg & Nimesh Patel, "Surveillance for Violent Deaths--National Violent Death Reporting System, 16 States, 2007," *Morbidity and Mortality Weekly Report*, p. 11, www.cdc.gov/mmwr/pdf/ss/ss5904.pdf (visited Oct. 29, 2012). States also permit private businesses and other private institutions (such as churches) to ban guns from their premises. If enough private institutions decided to do that, the right to carry a gun in public would have much less value and might rarely be exercised--in which event the invalidation of the Illinois law might have little effect, which opponents of gun rights would welcome.

Recently the Second Circuit upheld a New York state law that requires an applicant for a permit to carry a concealed handgun in public to demonstrate "proper cause" to obtain a license. *Kachalsky v. County of Westchester, supra.* This is the inverse [**25] of laws that forbid dangerous persons to have handguns; New York places the burden on the applicant to show that he needs a handgun to ward off dangerous persons. As the court explained, 2012 U.S. App. LEXIS 24363, 2012 WL 5907502, at *13, New York "decided not to ban handgun possession, but to limit it to those individuals who have an actual reason ('proper cause') to carry the weapon. In this vein, licensing is orient ed to the Second Amendment's protections.... [I]nstead of forbidding anyone from carrying a handgun in public, New York took a more moderate approach to fulfilling its important objective and reasonably concluded that only individuals having a bona fide reason to possess handguns should be allowed to introduce them into the public sphere."

The New York gun law upheld in *Kachalsky*, although one of the nation's most restrictive such laws (under the law's "proper cause" standard, an applicant for a gun permit must demonstrate a need for self-defense greater than that of the general public, such as being the target of personal threats, 2012 U.S. App. LEXIS 24363,

at *3, *8), is less restrictive than Illinois's law. Our principal reservation about the Second Circuit 's analys is (apart from disagreement, unnecessary to bore [**26] the reader with, with some of the historical analysis in the opinion--we regard the historical issues as settled by *Heller*) is its suggestion that the Second Amendment should have much greater scope inside the home than outside simply because other provisions of the Constitution have been held to make that distinction. For example, the opinion states that "in *Lawrence v. Texas*, the [Supreme] Court emphasized that the state's efforts to regulate private sexual conduct between consenting adults is especially suspect when it intrudes into the home." 2012 U.S. App. LEXIS 24363, 2012 WL 5907502, at *9. Well of course--the interest in having sex inside one's home is much greater than the interest in having sex on the sidewalk in front of one's home. But [HN5]the interest in self-protection is as great outside as inside the home. In any event the court in *Kachalsky* used the distinction between self-protection inside and outside the home mainly to suggest that a standard less demanding than "strict scrutiny" should govern the constitutionality of laws limiting the carrying of guns outside the home; our analysis is not based on degrees of scrutiny, but on Illinois's failure to justify the most restrictive gun law of any of the [**27] 50 states.

[*942] Judge Wilkinson expressed concern in *United States v. Masciandaro*, 638 F.3d 458, 475 (4th Cir. 2011), that "there may or may not be a Second Amendment right in some places beyond the home, but we have no idea what those places are, what the criteria for selecting them should be, what sliding scales of scrutiny might apply to them, or any one of a number of other questions. It is not clear in what places public authorities may ban firearms altogether without shouldering the burdens of litigation. The notion that 'self-defense has to take place wherever [a] person happens to be,' appears to us to portend all sorts of litigation over schools, airports, parks, public thoroughfares, and various additional government facilities.... The whole matter strikes us as a vast *terra incognita* that courts should enter only upon necessity and only then by small degree" (citation omitted). Fair enough; but that "vast *terra incognita*" has been opened to judicial exploration by *Heller* and *McDonald*. There is no turning back by the lower federal courts, though we need not speculate on the limits that Illinois may in the interest of public safety constitutionally impose on the carrying of guns [**28] in public; it is enough that the limits it *has* imposed go too far.

The usual consequence of reversing the dismissal of a suit (here a pair of suits) is to remand the case for evidentiary proceedings preparatory to the filing of motions for summary judgment and if those motions fail to an eventual trial. But there are no evidentiary issues in these two cases. The constitutionality of the challenged statutory provisions does not present factual questions for determination in a trial. The evidence marshaled in the *Skoien* case was evidence of "legislative facts," which is to say facts that bear on the justification for legislation, as distinct from facts concerning the conduct of parties in a particular case ("adjudicative facts"). See Fed. R. Evid. 201(a); Advisory Committee Note to Subdivision (a) of 1972 Proposed Rule [of Evidence] 201. Only adjudicative facts are determined in trials, and only legislative facts are relevant to the constitutionality of the Illinois gun law. The key legislative facts in this case are the effects of the Illinois law; the state has failed to show that those effects are positive.

We are disinclined to engage in another round of historical analysis to determine [**29] whether eighteenth-century America understood the Second Amendment to include a right to bear guns outside the home. The Supreme Court has decided that the amendment confers a right to bear arms for self-defense, which is as important outside the home as inside. The theoretical and empirical evidence (which overall is inconclusive) is consistent with concluding that a right to carry firearms in public may promote self-defense. Illinois had to provide us with more than merely a rational basis for believing that its uniquely sweeping ban is justified by an increase in public safety. It has failed to meet this burden. The Supreme Court's interpretation of the Second Amendment therefore compels us to reverse the decisions in the two cases before us and remand them to their respective district courts for the entry of declarations of unconstitutionality and permanent injunctions. Nevertheless we order our mandate stayed for 180 days to allow the Illinois legislature to craft a new gun law that will impose reasonable limitations, consistent with the public safety and the Second Amendment as interpreted in this opinion, on the carrying of guns in public.

Reversed and Remanded, with Directions; [**30] *But Mandate Stayed for 180 Days*.

DISSENT BY: WILLIAMS

DISSENT

[*943] Williams, *Circuit Judge*, dissenting. The Supreme Court's decisions in *Heller* and *McDonald* made clear that persons in the state of Illinois (unless otherwise disqualified) must be allowed to have handguns in their homes for self-defense. But those cases did not resolve the question in this case--whether the Second Amendment also requires a state to allow persons to carry ready-to-use firearms in public for potential self-defense. The majority opinion presents one reading of *Heller* and *McDonald* in light of the question presented here, and its reading is not unreasonable. But I think the issue presented is closer than the majority makes it out to be. Whether the Second Amendment protects a right to carry ready-to-use firearms in public for potential self-defense requires a different analysis from that conducted by the Court in *Heller* and *McDonald*. Ultimately, I would find the result here different as well and would affirm the judgments of the district courts.

Heller's approach suggests that judges are to examine the historical evidence and then make a determination as to whether the asserted right, here the right to carry ready-to-use arms in public [**31] (in places other than those permitted by the Illinois statute) for potential self-defense, is within the scope of the Second Amendment. (*Heller* has been criticized for reasons including that judges are not historians.) In making this historical inquiry, and in assessing whether the right was a generally recognized one, I agree with the majority that the relevant date is 1791, the date of the Second Amendment's ratification. *See* Maj. Op. at 3. But I do not agree that the Supreme Court in *Heller* rejected the argument that the State makes here, nor do I think the State's argument effectively asks us to repudiate *Heller's* historical analysis.

The historical inquiry here is a very different one. *Heller* did not assess whether there was a pre-existing right to carry guns in public for self-defense. By asking us to make that assessment, the State is not asking us to reject the Court's historical analysis in *Heller*; rather, it is being true to it. As I see it, the State embraces *Heller's* method of analysis and asks us to conduct it for the different right that is being asserted. I am not the only one to think that *Heller* did not settle the historical issues. The Second Circuit's recent unanimous [**32] decision upholding New York's "proper cause" prerequisite to obtaining a license to carry a handgun in public recognized and discussed the different historical inquiry that occurs when the asserted right is to possess a handgun in public. *See* *Kachalsky v. County of Westchester*, 701 F.3d 81, 2012 U.S. App. LEXIS 24363, 2012 WL 5907502, at *6-7, *10-11 (2d Cir. Nov. 27, 2012). (Under the New York law that the Second Circuit upheld, "[a] generalized desire to carry a concealed weapon to protect one's person and property does not constitute 'proper cause,'" and "[g]ood moral character plus a simple desire to carry a weapon is not enough." 2012 U.S. App. LEXIS 24363, [WL] at *3 (internal citations and quotations omitted)).

Heller tells us that "the Second Amendment was not intended to lay down a novel principle but rather codified a right inherited from our English ancestors." *Heller*, 554 U.S. at 599 (internal quotations omitted). For our English ancestors a man's home was his castle, and so he had broad powers to defend himself there. *See* 4 William Blackstone, *Commentaries on the Laws of England* 223 (1769). The focus of *Heller's* historical examination was on whether the Second Amendment included an individual right to bear arms or whether that right was limited [**33] to militia service. Once the *Heller* majority found that the Second Amendment was personal, the conclusion that one could possess ready-to-use firearms in the [*944] home for self-defense there makes sense in light of the home-as-castle history.

It is less clear to me, however, that a widely understood right to carry ready-to-use arms in public for potential self-defense existed at the time of the founding. *Cf.* *Heller*, 554 U.S. at 605 (rejecting argument by dissenters and stating, "That simply does not comport with our longstanding view that the Bill of Rights codified venerable, widely understood liberties."). In contrast to inside the home, where one could largely do what he wished, there was a long history of regulating arms in public. The 1328 Statute of Northampton, quoted by the majority on page 6, provided in relevant part that no man could "go nor ride armed by night nor by day, in Fairs, markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere." 2 Edw. III, c. 3 (1328). If the words of a statute are supreme, the words of the Statute of Northampton expressly prohibit going or riding while "armed," whether at night or in the day, whether the arms are [**34] visible or hidden. And the

statute contains no intent requirement. So the Statute of Northampton, by its terms, prohibited going armed in public.

This matters because the Statute of Northampton and its principles did not disappear after its enactment in 1328. The leading scholars relied upon at the time of our country's founding also turned to the Statute of Northampton as they discussed criminal offenses. Massachusetts, North Carolina, and Virginia incorporated the Statute of Northampton in the years immediately after the Constitution's adoption. *See* Patrick J. Charles, *The Faces of the Second Amendment Outside the Home: Historical Versus Ahistorical Standards of Review*, 60 Clev. St. L. Rev. 1, 31-32 (2012). Although the plaintiffs suggest that later generations did not view the Statute of Northampton to mean what its terms said, whether that is true is not obvious. William Blackstone, cited frequently by the *Heller* majority, for example, summarized the Statute of Northampton as he explained public wrongs. He wrote, "[t]he offense of riding or going armed with dangerous or unusual weapons, is a crime against the public peace, by terrifying the good people of the land; and is particularly [**35] prohibited by the Statute of Northampton, upon pain of forfeiture of the arms, and imprisonment during the king's pleasure: in like manner as, by the laws of Solon, every Athenian was finable who walked about the city in armour." 4 Blackstone, *supra*, 148-49 (internal citation omitted); *see also* Eugene Volokh, *The First and Second Amendments*, 109 Colum. L. Rev. Sidebar 97, 101 (2009) (recognizing that Blackstone summarized the Statute of Northampton in this passage).

Some, like the plaintiffs, read Blackstone to mean that the Statute of Northampton was understood to cover only those circumstances where the carrying of arms was unusual and therefore terrifying. But that seems to be a strained reading of Blackstone's words. The more natural reading is that Blackstone states that riding or going armed with dangerous weapons is an offense and is a crime against the public peace. He then explains why the offense of riding or going armed with dangerous weapons is a crime against the public peace--because doing so makes people terrified or nervous. Notably, Blackstone compares going armed with dangerous weapons to the mere act of walking around a city in armor, which was prohibited in ancient [**36] Greece. The comparison suggests that just as seeing a person walking around a city in armor would cause other citizens to be nervous, regardless of any affirmative action, so would the reaction be to seeing another carrying dangerous weapons in a populated area.

[*945] It is true as the majority states that *Sir John Knight's Case*, 87 Eng. Rep. 75 (K.B. 1686), stated that the meaning of the Statute of Northampton "was to punish people who go armed to terrify the King's subjects." But it immediately followed that statement by saying that "[i]t is likewise a great offence at the common law, as if the King were not able or willing to protect his subjects; and therefore this Act is but an affirmance of that law." The case is consistent with the idea that going armed in the public arena with dangerous weapons without government permission, by its nature, terrifies the people, whether the arms can be seen or not. *See* Charles, *supra*, at 28 (examining background and implications of case and explaining that persons who were the "King's Officers and Ministers in doing their Office" were exempt from punishment under the Statute, which explains Sir Knight's acquittal).

Robert Gardiner's *The* [**37] *Compleat Constable*, written for seventeenth- and eighteenth-century British constables, comports with the understanding that the Statute of Northampton's intent was to prohibit the carrying of any weapon that might "endanger society among the concourse of the people," Charles, *supra*, at 23, and that it was an affirmation of governmental police authority, as well as that "dangerous weapons" included guns, *id.* at 23-24. *The Compleat Constable* stated, with a specific reference to "guns," that a British constable could arrest upon seeing any person ride or go armed offensively, "in Fairs or Markets or elsewhere, by Day or by Night, in affray of Her Majesties Subjects, and Breach of the Peace; or wear or carry any Daggers, Guns, or Pistols Charged." Robert Gardiner, *The Compleat Constable* 18-19 (3d ed. 1707). The only exceptions were for persons serving Her Majesty, sheriffs and their officers, and those "pursuing Hue and Cry, in Case of Felony, and other Offences against the Peace." *Id.* at 19.

Sir Edward Coke also discussed the Statute of Northampton, and he interpreted it to allow persons to keep weapons inside the home, explaining that a man's home was his castle. As the majority notes, [**38] Coke also stated that one could not assemble force to go out in public. But that does not necessarily mean that persons were free to carry arms for potential personal self-defense. Indeed, in Coke's explanation of the Statute,

he recounted the case of Sir Thomas Figett, who was arrested after he "went armed under his garments, as well as in the palace, as before the justice of the kings bench." Edward Coke, *Institutes of the Laws of England* 161-62 (1797). In his defense, Figett said there "had been debate" between him and another earlier in the week, "and therefore for doubt of danger, and safeguard of his life, he went so armed." *Id*. at 162. Nonetheless, he was ordered to forfeit his arms and suffer imprisonment at the king's pleasure. *Id*.

I also note that in examining the contours of the proposed right, the majority looks to the perspective of an Ohio frontiersman. But it seems that when evaluating the rights originally embodied in the Second Amendment, looking to the margins should not be the inquiry. *Cf* *Heller*, 554 U.S. at 605. We have already observed that there were a number of laws in our country around the time of the founding that limited the discharge of firearms in public [**39] cities. *See* *Ezell v. City of Chicago*, 651 F.3d 684, 705 (7th Cir. 2011) ("The City points to a number of founding-era, antebellum, and Reconstruction state and local laws that limited discharge of firearms in urban environments."); *id.* at 705-06 & nn.13-14; *id.* at 713-14 (Rovner, J., concurring) (observing that "none of the 18th and 19th century jurisdictions cited by the City . . . were apparently concerned that banning or limiting the discharge of firearms within [*946] city limits would seriously impinge the rights of gun owners" and that some of the early laws' concern with fire suppression reflected that "public safety was a paramount value to our ancestors" that sometimes trumped a right to discharge a firearm in a particular place). So while there are a variety of other sources and authorities, the ones I have discussed suggest that there was not a clear historical consensus that persons could carry guns in public for self-defense. *See also* *Kachalsky*, 2012 U.S. App. LEXIS 24363, 2012 WL 5907502, at *6 (stating that unlike the ban on handguns in the home at issue in *Heller*, "[h]istory and tradition do not speak with one voice" regarding scope of right to bear arms in public and that "[w]hat history demonstrates [**40] is that states often disagreed as to the scope of the right to bear arms [in public]").

I will pause here to state that I am not convinced that the implication of the *Heller* and *McDonald* decisions is that the Second Amendment right to have ready-to-use firearms for potential self-defense extends beyond the home. That the Second Amendment speaks of the "right of the people to keep *and bear* arms" (emphasis added) does not to me imply a right to carry a loaded gun outside the home. *Heller* itself demonstrates this. The Court interpreted "bear" to mean to "carry" or to "wear, bear, or carry," upon one's person, for the purpose of being armed and ready in case of conflict. *Heller*, 554 U.S. at 584. And we know that *Heller* contemplated that a gun might only be carried in the home because it ordered the District of Columbia to permit Heller to do precisely that: it directed that unless Heller was otherwise disqualified, the District must allow him "to register his handgun and must issue him a license *to carry it in the home*." *Id.* at 635 (emphasis added). Mr. Heller did not want simply "to keep" a gun in his closet. He wanted to be able "to bear" it in case of self-defense, and the Supreme Court [**41] said he could.

We have warned against "treat[ing] *Heller* as containing broader holdings than the Court set out to establish: that the Second Amendment creates individual rights, one of which is keeping operable handguns at home for self-defense. . . . Judicial opinions must not be confused with statutes, and general expressions must be read in light of the subject under consideration." *See* *United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) (en banc). The Supreme Court made clear in *Heller* and *McDonald* that its holdings only applied to handguns in the home for self-defense. *See, e.g., id.*; *Heller*, 554 U.S. at 635 ("And whatever else it leaves to future evaluation, it surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home."). The Court's language must be read in that light. The plaintiffs point, for example, to *Heller's* statement that the operative clause of the Second Amendment guarantees "the individual right to possess and carry weapons in case of confrontation." 554 U.S. at 592. But *Heller* makes this statement in the portion of its opinion supporting the conclusion that the Second Amendment included [**42] a personal right, as compared to one solely related to the militia. *See* *id.* at 592-95. The plaintiffs also point out that *Heller* stated that the need for self-defense is "most acute" in the home, which they argue implies that there is a Second Amendment right to possess ready-to-use firearms in places outside the home. *See* *id.* at 628. But the Court made this comment in the context of its conclusion that the District of Columbia handgun ban applied in the home; the fact that the need was acute in the home emphasized that the fatal flaw in the handgun ban was [*947] that it applied in the home. *See* *id.* at 628-30.

By all this I do not mean to suggest that historical evidence definitively demonstrates there was not a right to carry arms in public for self-defense at the time of the founding. The plaintiffs point to other authorities that they maintain reveal the opposite. At best, the history might be ambiguous as to whether there is a right to carry loaded firearms for potential self-defense outside the home. But if that is the case, then it does not seem there was "a venerable, widely understood" right to do so. That may well mean that the right the plaintiffs seek here is outside the scope [**43] of the Second Amendment. Perhaps under *Heller's* rationale that the Second Amendment codified a preexisting right, with history not seeming to clearly support a generally recognized right, the analysis ends right here.

II.

We said in *Ezell* that "if the historical evidence is inconclusive or suggests that the regulated activity is *not* categorically unprotected--then there must be a second inquiry into the strength of the government's justification for restricting or regulating the exercise of Second Amendment rights." 651 F.3d at 703. In doing so, we stated that "the rigor of this judicial review will depend on how close the law comes to the core of the Second Amendment right and the severity of the law's burden on the right." *Id*. Any right to carry firearms in public for potential self-defense, if there is one, is not at the "core" of the Second Amendment. *See Kachalsky*, 2012 U.S. App. LEXIS 24363, 2012 WL 5907502, at *9; *United States v. Marzzarella*, 614 F.3d 85, 92 (3d Cir. 2010).

The Supreme Court made clear in *Heller* that "nothing in [its] 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 [**44] in sensitive places such as schools and government buildings . . . ." 554 U.S. at 626. *McDonald* made sure to "repeat those assurances." *McDonald*, 130 S. Ct. at 3047. That a legislature can forbid the carrying of firearms in schools and government buildings means that any right to possess a gun for self-defense outside the home is not absolute, and it is not absolute by the Supreme Court's own terms.

Indeed, the Supreme Court would deem it presumptively permissible to outright forbid the carrying of firearms in certain public places, but that does not mean that a self-defense need never arises in those places. The teacher being stalked by her ex-husband is susceptible at work, and in her school parking lot, and on the school playground, to someone intent on harming her. So why would the Supreme Court reassure us that a legislature can ban guns in certain places? It must be out of a common-sense recognition of the risks that arise when guns are around.

Any right to carry loaded firearms outside the home for self-defense is, under *Heller's* own terms, susceptible to a legislative determination that firearms should not be allowed in certain public places. The Supreme Court tells us that a [**45] state can forbid guns in schools. That probably means it can forbid guns not just inside the school building, but also in the playground and parking lot and grassy area on its property too. And if a state can ban guns on school property, perhaps it can ban them within a certain distance of a school too. *Cf.* 18 U.S.C. § 922(q)(2)(A). The Supreme Court also tells us that a state can ban guns in government buildings. The list of such buildings would seem to include post offices, courthouses, libraries, Department of Motor Vehicle facilities, city halls, and more. And the legislature can ban firearms in other "sensitive places" too. So maybe in a place of worship. *See GeorgiaCarry.Org v. Georgia*, [*948] 687 F.3d 1244 (11th Cir. 2012) (upholding ban on firearms in places of worship). Maybe too on the grounds of a public university. *See DiGiacinto v. Rector & Visitors of George Mason Univ.*, 281 Va. 127, 704 S.E.2d 365 (Va. 2011) (upholding regulation prohibiting possession of guns in university facilities and at campus events). Or in an airport, or near a polling place, or in a bar. And if the latter is true then perhaps a legislature could ban loaded firearms any place where alcohol is sold, so in restaurants [**46] and convenience stores as well. The resulting patchwork of places where loaded guns could and could not be carried is not only odd but also could not guarantee meaningful self-defense, which suggests that the constitutional right to carry ready-to-use firearms in public for self-defense may well not exist.

It is difficult to make sense of what *Heller* means for carrying guns in public for another notable reason. Immediately before the sentence giving a presumption of lawfulness to bans on guns for felons and the like, *Heller* states: "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. *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." 554 U.S. at 626 (emphasis added and internal citations omitted). The implication of the Supreme Court's statement would seem to be that concealed carry is not within the scope of [**47] the Second Amendment (or at the least that that is the presumption). *See, e.g.*, Nelson Lund, *The Second Amendment*, Heller, *and Originalist Jurisprudence*, 56 UCLA L. Rev. 1343, 1359 (2009) ("This appears to be an endorsement of yet another exception to the constitutional right."); *Hightower v. City of Boston*, 693 F.3d 61, 73 (1st Cir. 2012) (interpreting this language to mean that laws prohibiting the carrying of concealed weapons are an example of presumptively lawful restrictions); Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense*: *An Analytical Framework and a Research Agenda*, 56 UCLA L. Rev. 1443, 1523-24 (2009). That would not be the first time the Supreme Court had made such a statement. *See Robertson v. Baldwin*, 165 U.S. 275, 281-82, 17 S. Ct. 326, 41 L. Ed. 715 (1897) (stating in dicta that Second Amendment right "is not infringed by laws prohibiting the carrying of concealed weapons").

If carrying concealed weapons is outside the scope of the Second Amendment, the consequence would be significant. "'In the nineteenth century, concealed carry was often considered outside the scope of the right to bear arms. Today, it is the most common way in which people exercise their right to [**48] bear arms.'" Joseph Blocher, *The Right Not to Keep or Bear Arms*, 64 Stan. L. Rev. 1, 45 (2012) (quoting David B. Kopel, *The Right to Arms in the Living Constitution*, 2010 Cardozo L. Rev. 99, 136 (2010)). And, as the *Moore* plaintiffs acknowledge in their brief, "today, openly carrying handguns may alarm individuals unaccustomed to firearms." The implication, as explained by Nelson Lund (author of the Second Amendment Foundation's *amicus curiae* brief in *Heller* in support of Mr. Heller): "In some American jurisdictions today, for example, openly carrying a firearm might plausibly be thought to violate the ancient common law prohibition against 'terrifying the good people of the land' by going about with dangerous and unusual weapons. If courts were to conclude that open carry violates this common law prohibition (and thus is not within the preexisting right protected [*949] by the Second Amendment), after *Heller* has decreed that bans on concealed carry are per se valid, the constitutional right to bear arms would effectively cease to exist." Lund, *supra*, at 1361-62. (To be clear, if there is a Second Amendment right to carry arms outside the home for potential self-defense in Illinois as my [**49] colleagues have found, I am not suggesting that Illinois should not implement concealed carry laws.)

If there is any right to carry ready-to-use firearms among the public for potential self-defense, the plaintiffs contend the Illinois statutes must be unconstitutional because their ban is far-reaching. But I see the question as somewhat more nuanced. Protecting the safety of its citizens is unquestionably a significant state interest. *United States v. Salerno*, 481 U.S. 739, 748, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987); *Kelley v. Johnson*, 425 U.S. 238, 247, 96 S. Ct. 1440, 47 L. Ed. 2d 708 (1976). Illinois chose to enact the statutes here out of concern for the safety of its citizens. *See People v. Marin*, 342 Ill. App. 3d 716, 795 N.E.2d 953, 959-62, 277 Ill. Dec. 285 (Ill. App. Ct. 2003).

Given the State's obvious interest in regulating the safety of its citizens, the question is who determines the contours of any right to carry ready-to-use firearms for self-defense in public when they are unsettled as a matter of both original history and pol icy. The *Heller* majority concluded that "enshrinement of constitutional rights necessarily takes certain policy choices off the table . . . includ[ing] the absolute prohibition of handguns held and used for self-defense in the home." 554 U.S. at 636. [**50] But "as we move outside the home, firearm rights have always been more limited, because public safety interests often outweigh individual interests in self-defense." *United States v. Masciandaro*, 638 F.3d 458, 470 (4th Cir. 2011).

The Supreme Court has told us that we must "accord substantial deference to the predictive judgments of [the legislature]." *Turner Broad. Sys., Inc. v. F.C.C.*, 520 U.S. 180, 195, 117 S. Ct. 1174, 137 L. Ed. 2d 369 (1997). "In the context of firearm regulation, the legislature is 'far better equipped than the judiciary' to make sensitive policy judgments (within constitutional limits) concerning the dangers in carrying firearms and the manner to combat those risks." *Kachalsky*, 2012 U.S. App. LEXIS 24363, 2012 WL 5907502, at *12. The legislature knows the statistics and is in a far better position than we are to weigh their import. Illinois reasonably wants to try to reduce the incidence of death

and injury by firearms, both those which come from affirmative acts of violence and also the many deaths and injuries that occur accidentally, and doing so by taking them off the streets is a legislative judgment substantially related to its important governmental objective of reducing injury and death by firearms.[1]

> 1 State courts [**51] that have addressed a state constitutional right to bear arms have used a "reasonable regulation" standard, a test that is more deferential than intermediate scrutiny but that, unlike the interest-balancing test proposed in Justice Breyer's *Heller* dissent, does not permit states to prohibit all firearm ownership. *See, e.g.*, *State v. Hamdan*, 2003 WI 113, 264 Wis. 2d 433, 665 N.W.2d 785, 798-801 (Wis. 2003); Adam Winkler, *Scrutinizing the Second Amendment*, 105 Mich. L. Rev. 683, 686-87 (2007) (discussing "hundreds" of state court opinions using this test).

It is common sense, as the majority recognizes, that a gun is dangerous to more people when carried outside the home. *See* Maj. Op. at 8. When firearms are carried outside of the home, the safety of a broader range of citizens is at issue. The risk of being injured or kil led now extends to strangers, law enforcement personnel, and other private citizens who happen to be in the area. *Cf.* David Hemenway [*950] & Deborah Azrael, *The Relative Frequency of Offensive and Defensive Gun Uses*: *Results from a National Survey*, 15 Violence & Victims 257, 271 (2000) (finding that guns are used "far more often to kill and wound innocent victims than to kill and wound criminals"). Indeed, [**52] the Illinois legislature was not just concerned with "crime rates" and "murder rates" when it passed the law. *Cf.* Maj. Op. at 8. It also sought to "prevent situations where no criminal intent existed, but criminal conduct resulted despite the lack of intent, e.g., accidents with loaded guns on public streets or the escalation of minor public altercations into gun battles or . . . the danger of a police officer stopping a car with a loaded weapon on the passenger seat." *See Marin*, 795 N.E.2d at 962. The danger of such situations increases if guns may be carried outside the home.

That the percentage of reported accidental gun-related deaths is lower as compared to suicide (which accounts for the majority of firearms-related deaths) and murder, *see* Robert A. Hahn et al., *Firearms Laws and the Reduction of Violence*: *A Systematic Review*, 28 Am. J. Preventive Med. 40, 40 (2005), does not make the Illinois law invalid. First, in those statistics, "[u]nintentional firearm-related deaths appear to be substantially undercounted (i.e., misclassified as due to another cause)," *id.* at 47, and in any event the State has a significant interest in reducing the risk of accidental firearms-related deaths [**53] as well as accidental injuries. The majority says the law cannot be justified on the ground that it reduces the accidental death rate unless it could be shown that allowing guns to be carried in public causes gun ownership to increase. See Maj. Op. at 13. But whether gun ownership increases is not the question. *See id.* at 10-11. It is not the number of guns owned that matters but where the guns are carried. Illinois already allows people to own and have guns in their homes; however, they cannot carry them in public. The Illinois legislature reasonably concluded that if people are allowed to carry guns in public, the number of guns carried in public will increase, and the risk of firearms-related injury or death in public will increase as well. *Cf. Marin*, 795 N.E.2d at 959-62.

And it is also common sense that the danger is a great one; firearms are lethal. *Cf. Skoien*, 614 F.3d at 642 ("guns are about five times more deadly than knives, given that an attack with some kind of weapon has occurred") (citing Franklin E. Zimring, *Firearms, Violence, and the Potential Impact of Firearms Control*, 32 J. L. Med. & Ethics 34 (2004)). For that reason too the focus simply on crime rates misses the [**54] mark. As Philip J. Cook, a Duke University professor cited twice by the majority, put it: "My research over 35 years demonstrates that the effect of gun availability is not to increase the crime rate but to intensify the crime that exists and convert assaults into murders." Ethan Bronner, *Other States, and Other Times, Would Have Posed Obstacles for Gunman*, N.Y. Times, July 25, 2012, at A12.

The majority's response to the fact that guns are a potential lethal danger to more people when carried in public seems to be to say that knowing potential victims could be armed may have a deterrent effect or make criminals timid. *See* Maj. Op. at 8, 13. Yet even an article relied upon by the majority cautions that the effect on criminals may well be *more* gun use: "Two-thirds of prisoners incarcerated for gun offenses reported that the chance of running into an armed victim was very or somewhat important in their own choice to use a gun. Currently, criminals use guns in only about 25 percent of noncommercial robberies and 5 percent of assaults. If

[*951] increased gun carrying among potential victims causes criminals to carry guns more often themselves, or become quicker to use guns to avert armed self-defense, [**55] the end result could be that street crime becomes more lethal." Philip J. Cook, Jens Ludwig & Adam M. Samaha, *Gun Control After* Heller: *Threats and Sideshows from a Social Welfare Perspective*, 56 UCLA L. Rev. 1041, 1081 (2009).

On the other side of the lethal danger to the State's citizens is the asserted interest in carrying guns for self-defense, yet even the majority does not contend that carrying guns in public has been shown to be an effective form of self-defense. For example, as the majority acknowledges, University of Pennsylvania researchers found that assault victims are more likely to be armed than the rest of the population. *See* Maj. Op. at 12-13 (citing Charles C. Branas et al., *Investigating the Link Between Gun Possession and Gun Assault*, 99 Am. J. of Pub. Health 2034, 2037 (2009)). The researchers examined shootings in Philadelphia and concluded that "gun possession by urban adults was associated with a significantly increased risk of being shot in an assault," *id*., which suggests, if anything, that carrying a gun is not effective self-defense. The researchers posited that possible reasons for their findings included that a gun may falsely empower its possessor to overreact, [**56] that persons with guns may increase the risk of harm by entering dangerous environments that they normally would have avoided, and that persons bringing guns to an otherwise gun-free conflict may have those guns wrested away and turned on them. *Id*. at 2037-38.

Other studies have found that in states with broad concealed-carry laws there is an increased chance that one will be a victim of violent crime. Yale Law School Professors Ian Ayres and John J. Donohue III concluded that "the evidence is most supportive of the claim that [right-to-carry] laws *increase* aggravated assault." *More Guns, Less Crime Fails Again*: *The Latest Evidence from 1977-2006*, 6 Econ. J. Watch 218, 220 (May 2009).[2] (Donohue is now at Stanford.) Similarly, another study showed that "an increase in gun prevalence causes an *intensification* of criminal violence--a shift toward a greater lethality, and hence greater harm to a community." Philip J. Cook & Jens Ludwig, *The Social Costs of Gun Ownership*, 90 J. Pub. Econ. 379, 387 (2006). Other researchers have concluded that guns are "used far more often to intimidate and threaten than they are used to thwart crimes." Hemenway & Azrael, *supra*, at 271.

> 2 The majority cites [**57] Moody and Marvell's 2008 paper suggesting that Ayres and Donohue should have extended their 2003 analysis by one more year. But extending their data is just what Ayres and Donohue did in their May 2009 piece, *More Guns, Less Crime Fails Again*: *The Latest Evidence from 1977-2006*. And after extending their state panel data by six additional years, they again concluded that "the best evidence to date suggests that [right-to-carry] laws at the very least *increase* aggravated assault." *Id.* at 231. They also thoroughly responded to Moody and Marvell's criticism that their initial 2003 analysis evaluated the trend for five years rather than six, explaining in part: "We would have thought, though, that one would want to be very cautious in evaluating trends beyond five years when 14 of the 24 states have no post-passage data beyond *three* years." *Id.* at 218-19. They also criticized Moody and Marvell's conclusions and demonstrated that the two had incorrectly graphed the estimates from Donohue's table and misinterpreted the estimates. *Id.* at 219.

The ban on firearms in public is also an important mechanism for law enforcement to protect the public. With guns banned in public an officer with reasonable [**58] suspicion to stop and frisk a person can, upon finding a gun, take the gun off the street [*952] before a shooting occurs. The majority says that a state may be able to require "open carry," where persons who carry guns in public must carry them in plain view. Maj. Op. at 10. Living with the open carrying of loaded guns on the streets of Chicago and elsewhere would certainly be a big change to the daily lives of Illinois citizens. Even the plaintiffs do not seem to want Illinois to take that drastic a step, recognizing that "openly carrying handguns may alarm individuals unaccustomed to firearms" and that *Heller* "does not force states to allow the carrying of handguns in a manner that may cause needless public alarm." *Moore* Br. at 35.

The majority also suggests that with open carry the police could still arrest persons who carry concealed guns. This is true but seems contradictory to its statement two sentences earlier that in its view, under the current law police will often lack reasonable suspicion to stop a person with a concealed gun since it is concealed. *See*

Maj. Op. at 10. To the latter, guns are not allowed now, so theoretically persons are attempting to conceal them. Nonetheless, [**59] Chicago's Police Department made over 4,000 arrests on weapons violations in 2009, though some of these arrests could have been made in conjunction with other crimes as well.[3] More importantly, "concealed" does not mean "invisible." An officer who reasonably suspects he sees a gun in a car when he pulls someone over, or notices what he reasonably suspects to be a gun bulging out of someone's clothes, can under the law as it currently stands arrest that person and take the gun off the street.

> 3 Chicago Police Dep't Annual Report 2010, at 34, *available at* https://portal.chicagopolice.org/portal/page/portal/ClearPath/News/Statistical%20Reports/Annual%20Reports/10AR.pdf.

Allowing open (or concealed) carry does not address the fundamental point about law enforcement's ability to protect the public: if guns are not generally legal to have in public, officers can remove them from the streets before a shooting occurs whenever they come across a gun. Under a law like the Illinois law, an officer with some reasonable belief that a person is carrying a firearm can stop that person and remove the gun from the street because the officer has a reasonable belief that a crime is taking place. The ability [**60] to use stops and arrests upon reasonably suspecting a gun as a law enforcement tactic to ultimately protect more citizens does not work if guns can be freely carried.

To the extent the majority opinion's studies draw different conclusions, the Supreme Court has made clear that "the possibility of drawing two inconsistent conclusions from the evidence" does not prevent a finding from being supported by substantial evidence. *Turner Broad.*, 520 U.S. at 211; *see also Kachalsky*, 2012 U.S. App. LEXIS 24363, 2012 WL 5907502, at *13 (recognizing different studies concerning relationship between handgun access and violent crime, and handgun access and safety and character of public places, and stating, "It is the legislature's job, not ours, to weigh conflicting evidence and make policy judgments."). Moreover, it is not necessary for "the statute's benefits" to be "first established by admissible evidence" or by "proof, satisfactory to a court." *Skoien*, 614 F.3d at 641. Nor would the State need to make a stronger showing here than in *Skoien*. *Skoien* concerned the prohibition on firearm possession by misdemeanants with domestic violence convictions, a ban that also applies to the core Second Amendment right of gun possession [**61] in the home. As such, the "strong showing" the government acknowledged it needed to demonstrate there made sense. *See id*.

[*953] I would note too that the 2005 paper "Firearms Laws and the Reduction of Violence: A Systematic Review," quoted by the majority for its statement that based on its review, evidence was insufficient to determine whether the degree of firearms regulation is associated with decreased or increased violence, Maj. Op. at 9, did not limit that conclusion to the degree of firearms regulation. The paper found the evidence available from identified studies "insufficient to determine" the effectiveness of *any* of the laws it reviewed, even including acquisition restrictions (e.g., felony convictions and personal histories including persons adjudicated as "mental defective"), and firearms registration and licensing--propositions that even the plaintiffs seem to favor. And, the paper cautioned that "[a] finding that evidence is insufficient to determine effectiveness means that we do not yet know what effect, if any, the law has on an outcome--not that the law has no effect on the outcome." Hahn et al., *supra*, at 40.

The Illinois statutes safeguard the core right to bear arms for [**62] self-defense in the home, as well as the carry of ready-to-use firearms on other private property when permitted by the owner, along with the corollary right to transport weapons from place to place. *See* 720 Ill. Comp. Stat. 5/24-2; 720 Ill. Comp. Stat. 5/24-1.6(a)(1). Guns in public expose all nearby to risk, and the risk of accidental discharge or bad aim has lethal consequences. Allowing public carry of ready-to-use guns means that risk is borne by all in Illinois, including the vast majority of its citizens who choose not to have guns. The State of Illinois has a significant interest in maintaining the safety of its citizens and police officers. The legislature acted within its authority when it concluded that its interest in reducing gun-related deaths and injuries would not be as effectively served through a licensing system. For one, every criminal was once a law-abiding citizen, so strategies for preventing gun violence that bar prior criminals from having firearms do not do enough. *See* Philip J. Cook, et al., *Criminal Records of Homicide Offenders*, 294 J. Am. Med. Ass'n 598, 600 (2005) (homicide prevention strategies targeted

toward prior offenders "leave a large portion of [**63] the problem untouched"). Nor could the State ensure that guns in public are discharged only, accurately, and reasonably in instances of self-defense. *See* *People v. Mimes*, 953 N.E.2d 55, 77, 352 Ill. Dec. 119, 2011 IL App (1st) 082747, 2011 IL App (1st) 82747 (Ill. App. Ct. 2011) ("The extensive training law enforcement officers undergo concerning the use of firearms attests to the degree of difficulty and level of skill necessary to competently assess potential threats in public situations and moderate the use of force.").

The Supreme Court has "long recognized the role of the States as laboratories for devising solutions to difficult legal problems," and courts "should not diminish that role absent impelling reason to do so." *Oregon v. Ice*, 555 U.S. 160, 171, 129 S. Ct. 711, 172 L. Ed. 2d 517 (2009). Indeed, "[i]t is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311, 52 S. Ct. 371, 76 L. Ed. 747 (1932) (Brandeis, J., dissenting). (And to the extent it matters, Illinois is not the only place that has and enforces strict gun laws. New York City, for example, has gun laws that are in effect like those [**64] of Illinois; while technically a "may issue" location where the city may issue permits for handgun carry outside the home, New York City rarely does so and so has been characterized as maintaining a virtual ban on handguns. *See* Lawrence Rosenthal, *Second Amendment Plumbing after* Heller: *Of Standards of Scrutiny, Incorporation, Well-Regulated Militias, and* [*954] *Criminal Street Gangs*, 41 Urb. Lawyer 1, 39 (2009)). Reasonable people can differ on how guns should be regulated. Illinois has chosen to prohibit most forms of public carry of ready-to-use guns. It reaffirmed that just last year, when its legislature considered and rejected a measure to permit persons to carry concealed weapons in Illinois. *See* Dave McKinney, *Concealed-Carry Measure: Shot Down in Springfield*, Chicago Sun-Times, 2011 WLNR 9215695 (May 6, 2011). In the absence of clearer indication that the Second Amendment codified a generally recognized right to carry arms in public for self-defense, I would leave this judgment in the hands of the State of Illinois.

Tab 11

Crime in Delaware
2003 – 2008

April 2010

Prepared by the
Office of Management and Budget
Statistical Analysis Center
John P. O'Connell, Director
In Conjunction with the
State Bureau of Identification

Crime in Delaware

2003 - 2008

An Analysis of Delaware Crime

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State of Delaware Document number 10-0208 100302

Please visit our website @ http://sac.omb.delaware.gov/publications/crime.shtml

NIBRS Data Collection in Delaware

NIBRS *(National Incident-Based Reporting System)* is a second-generation national incident-based crime reporting system that collects data on each single incident and arrest within 22 Offense Categories. These categories consist of 46 specific crimes and are called "Group A Offenses". In addition to the "Group A Offenses", there are 11 "Group B Offense" categories for which only summary complaint and arrest data are reported.

For each crime incident that is reported to law enforcement, a variety of data are collected. These data include the nature and types of specific offenses in the incident, characteristics of the victim(s) and offender(s), types and value of property stolen and recovered, and characteristics of persons arrested in connection with a crime incident. NIBRS goes into much greater detail than the summary-based UCR system that was formerly used as the data collection process.

Since its inception in Delaware in 2000, 100 percent of the 53 Delaware law enforcement agencies have reported NIBRS data to the statewide repository. NIBRS offers law enforcement agencies and policy makers more comprehensive data than ever before available for management, training, planning and research. FBI pilot testing has begun of a third-generation crime reporting system, which aims to extend the scope of NIBRS into the realm of information sharing. The NIBRS data are designed to be generated as a by-product of local, state and federal automated record systems. This new system promises to provide law enforcement agencies with current, secure, investigative information that has strategic, operational, and tactical intelligence value.

The FBI was able to accept NIBRS data as of January 1989, and as of to date, 31 states have been certified for NIBRS participation.

Please note: The reported data for 2006 was from an SBI report dated 06/01/2007, the 2007 numbers are from 01/23/2009, and the 2008 numbers are from 05/12/2009.
http://www.fbi.gov/ucr/downloadables/nibrs_general_2008.pdf

The Definition of Crime Changes

NIBRS Replaces UCR

Uniform Crime Reporting (UCR), which is promulgated by the Federal Bureau of Investigation in conjunction with the police chiefs and sheriffs across the United States has been the national crime reporting method since the 1930s. "Crime in the United States" is the most recognizable UCR product and is the official national summary of crime and arrests. Starting in 1989, the FBI started accepting the new NIBRS crime data from approved states. Because only eight states submit all of their crime data via NIBRS, Crime in the United States is still published in the UCR format, with the FBI translating NIBRS state's data to the UCR format for the national report.

National Incident Based Crime Reporting System (NIBRS) eliminates the UCR "hierarchical rule" where only the most serious charge in a crime is counted. NIBRS now provides a complete count of each serious charge within a criminal event. Under UCR, "*reported crimes*" was the broadest measurement of crime. Under UCR detailed crime information was only provided for the eight violent and serious property crimes. Under NIBRS detailed information is provided for 22 crimes with specific counts of all serious charges and is referred to as "*offenses received.*" These changes in counting result in a fundamental change in the measurement of crime and as such the comparison to the UCR Crime in Delaware series which began in 1977 and ended in 2002 is only roughly comparable to the new and expanded NIBRS crime reporting.
To provide a viable history for comparison, the State Bureau of Identification in the Delaware State Police provided a 2000 to 2005 summary for the detailed NIBRS crime information.

UCR Part I Crime versus NIBRS Group A Crime

UCR Part I Crimes: Murder, Rape, Robbery, Aggravated Assault, Burglary, Larceny, Motor Vehicle Theft and Arson.

NIBRS Group A Crimes: Homicide, Kidnapping, Forcible and non-forcible, Sex Offenses, Robbery, Assaults (all), Arson, Extortion/Blackmail, Burglary, Larceny/Theft, Motor Vehicle Theft, Counterfeiting/Forgery, Fraud, Embezzlement, Stolen Property, Property Destruction/Vandalism, Drug/Narcotic Offenses, Other Sex Offenses, Bribery, Pornography/Obscene Material, Gambling, Prostitution, and Weapon Law Violations.

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Crime in Delaware 2003 – 2008

Crime in Delaware 2003 – 2008; Tables and Figures:

Figures

Delaware Statewide Crime Summary 2003 – 2008

Table 1

Offenses Received 2003 - 2008						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Violent Crimes	27,129	26,309	27,263	28,951	29,577	29,294
Serious Property Crimes	29,884	29,202	28,112	31,227	30,793	32,750
Drug Crimes	8,535	8,341	9,876	10,810	10,959	10,634
Other Property & Social Crimes	28,471	27,422	27,566	30,454	30,077	29,426
Total Offenses Received	**94,019**	**91,274**	**92,817**	**101,442**	**101,406**	**102,104**
Crime Rates for Offenses Received per 1,000 Population						
Delaware Population	**817,831**	**830,082**	**843,540**	**854,977**	**865,438**	**875,301**
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Violent Crimes	33.2	31.8	32.3	31.8	34.2	33.5
Serious Property Crimes	36.5	35.2	33.3	36.5	35.5	37.4
Drug Crimes	10.4	10.0	11.7	12.6	12.7	12.1
Other Property & Social Crimes	34.8	33.0	32.6	35.6	34.8	33.6
Total Offenses Received	**115.0**	**110.0**	**110.0**	**118.6**	**117.2**	**116.7**
Percentage Change in Offenses Received						
	03-04	**04-05**	**05-06**	**06-07**	**07-08**	**03 -08**
Violent Crimes	-3.0%	3.60%	6.19%	2.16%	-0.96%	7.98%
Serious Property Crimes	-2.3%	-3.7%	11.1%	-1.4%	6.4%	9.6%
Drug Crimes	-2.3%	18.4%	9.5%	1.4%	-2.9%	24.6%
Other Property & Social Crimes	-3.7%	0.5%	10.5%	-1.2%	-2.2%	3.4%
Total Offenses Received	**-2.9%**	**1.7%**	**9.3%**	**-4.0%**	**0.7%**	**8.6%**

Offenses Received pertains to the number of reported crimes using NIBRS protocol.
Violent Crimes; Criminal Homicide, Kidnapping/Abduction, Forcible sex offenses, Robbery, Assault and Weapons law violations.
Serious Property Crimes; Arson, Extortion/blackmail, Burglary, Larceny/Theft and Motor vehicle theft.
Drug Offenses: Group A Drug/Narcotic Violations, Group A Drug Equipment Violations
Other Property & Social Crimes; Counterfeiting/Forgery, Fraud, Stolen Property, Embezzlement, Property Destruction/Vandalism, non-forcible Sex Offenses, Pornography/ Obscene Material, Gambling Offenses, Prostitution and Bribery .

READERS NOTES

Crime rates are calculated from multiple tables throughout the report and put into the text portion of the publication. Therefore, the reader will not necessarily see a table that reflects that calculation. Crime Rates are calculated using the most current Center for Applied Demography and Survey Research (CADSR) project Data. http://www.cadsr.udel.edu

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2003 – 2008 Crime in Delaware Summary and Highlights

- **Total Reported Group A Crime Slightly Increase.** Between the years 2007 and 2008, there was less than one percent increase (.69 percent) in Group A Offenses Received. Between 2003 and 2008, there was an 8.6 percent increase in Total Offenses received.

- **Crime Rate Decreased**. Because of the increase in the state's population, the overall crime rate per 1,000 persons decreased in 2008 to 116.7, compared to the recent high of 118.6 in 2006.

- **Homicides Increased dramatically.** Between 2003 and 2008, there was a 111.1 percent increase in homicides statewide. New Castle County had a 168.8 percent increase, Kent County had a 14.3 percent increase, and Sussex County had a 50 percent increase.

- **Violent Crime Decreases.** Between 2007 and 2008, Violent Crimes decreased about one percent (.96 percent). Between 2003 and 2008, Violent Crimes increased 8 percent.

- **Assaults accounted for 78.3 percent of all violent crimes.** Robbery accounted for 7.4 percent, forcible sex offenses 2.7 percent, and murder, .2 percent.

- **Serious Property Crimes Increased.** Between 2007 and 2008, Serious Property Crimes increased 6.4 percent. Between 2003 and 2008, they increased 9.6 percent.

- **Drug Crimes Decrease.** There was about a 3 percent decrease in Drug Crimes between 2007 and 2008, but between 2003 and 2008 there was a 24.6 percent increase.

- **Other Property and Social Crimes Decrease.** Between 2007 and 2008, there was a 2.2 percent decrease in other property and social crimes, and a 3.4 percent increase between 2003 and 2008.

- **Total statewide Group A Arrests have decreased.** Between 2007 and 2008, there was a .3 percent decrease in overall arrests. The most obvious was the -4.4 percent drop in juvenile males, followed by a -1.01 percent drop in juvenile female arrests, and a -.16 percent decrease in adult male arrests. The only area that saw an increase was in female adults, of 1.06percent. Between 2003 and 2008, there was a 17 percent increase in overall arrests for Group A Crimes.

- **Adult arrests had a slight increase.** There was a .4 percent increase in adult arrests from 2007 to 2008, and as described above, this increase is solely related to the increase in arrests for females. There was an 11.5 percent increase in arrests since the year 2003**.**

Delaware Statewide Crime by Offenses Received

Although Group A Offenses Received peaked in 2008, the crime rate per 1,000 actually decreased compared to earlier years because the state's population increased faster than crimes.

In 2008, Drug Offenses accounted for 10.4 percent of crimes received, down from 11 percent in 2005. Violent Crimes account for 28.7 percent of crimes received, while serious property crimes comprise 32 percent and other property and social crimes each accounts for 29 percent of all crimes received.

The term "Offenses Received" pertains to the number of reported crimes using the NIBRS protocol. Overall Group A Offenses Received increased between 2003 and 2008. In 2003, there were 94,019 Group A offenses received in Delaware and had increased to 102,104 in 2008. Delaware crime had decreased in 2004 and 2005 before it reached a high of 101,442 in 2006.

Table 2

Group A Offenses Received per 1,000					
2003	**2004**	**2005**	**2006**	**2007**	**2008**
115.0	110.0	110.0	118.6	117.2	116.7

Delaware Offenses Received, Crimes by Type

Figure 1

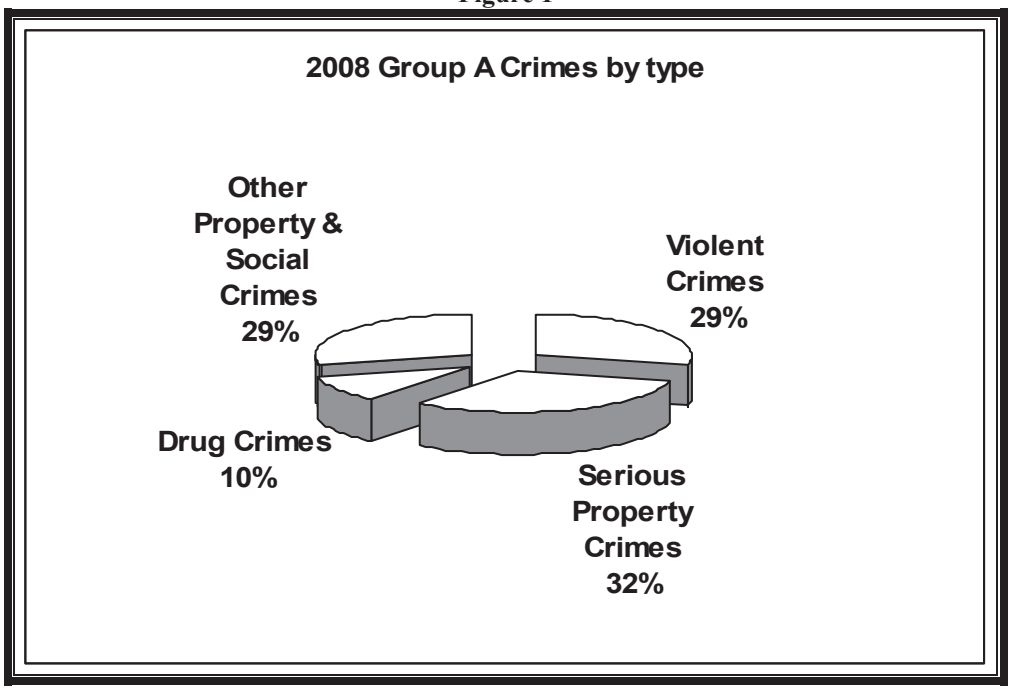
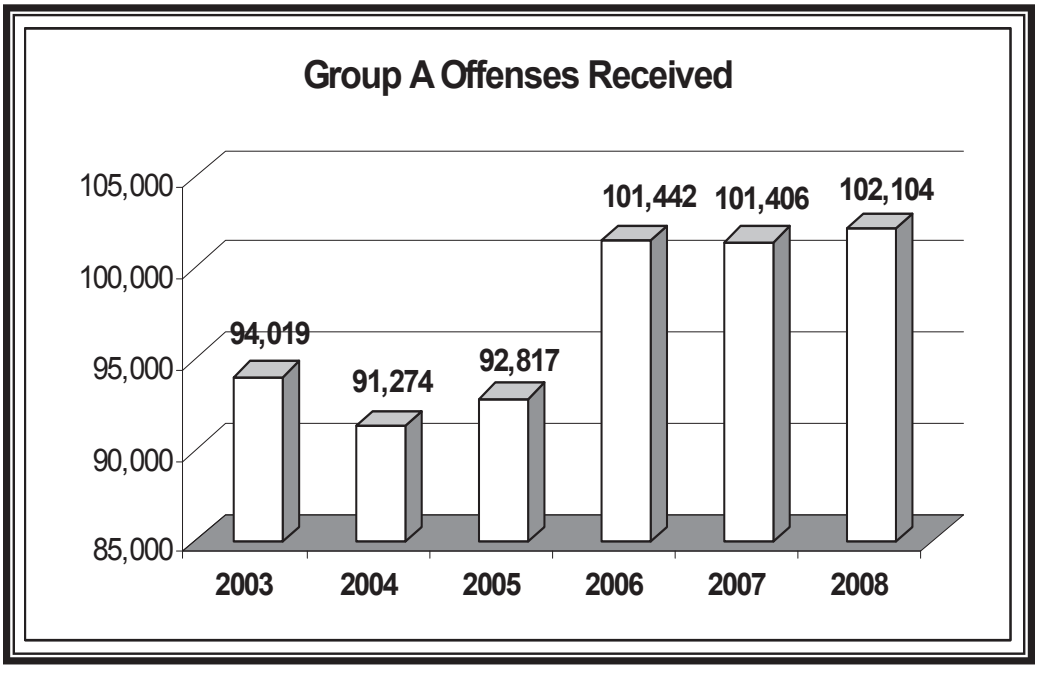


Figure 2



Delaware Statewide Crime Detail
Group A Offenses Received 2003 – 2008

Table 3

Group A Offenses Received	2003	2004	2005	2006	2007	2008
Criminal Homicide	27	28	48	45	41	57
Kidnapping/Abduction	431	418	382	451	445	387
Sex Offenses, Forcible	465	465	842*	850	743	805
Robbery	1,764	1,580	1,538	2,023	2,032	2,171
Assaults	22,108	21,549	21,886	22,731	23,462	22,950
Arson	368	376	384	378	312	353
Extortion/Blackmail	7	13	18	14	15	21
Burglary	6,275	5,884	6,055	6,420	6,556	6,846
Larceny/Theft	20,039	20,446	19,187	21,442	21,425	22,901
Motor Vehicle Theft	3,195	2,483	2,468	2,973	2,485	2,629
Counterfeiting/Forgery	1,128	1,180	1,231	1,225	1,215	1,169
Fraud	5,339	5,063	5,533	5,885	6,064	6,049
Embezzlement	397	361	422	419	494	455
Stolen Property	683	699	590	637	652	656
Property Destruction/Vandalism	20,572	19,744	19,448	22,014	21,270	20,754
Drug/Narcotic Offenses	8,535	8,341	9,876	10,810	10,959	10,634
Sex Offenses	83	77	67	51	76	62
Pornography/ Obscene Material	38	70	57	57	102	133
Gambling Offenses	12	12	31	21	5	6
Prostitution	215	213	183	140	191	140
Bribery	4	3	4	5	8	2
Weapons Law Violations	2,334	2,269	2,567	2,851	2,854	2,924
Total Group A Offenses	**94,019**	**91,274**	**92,817**	**101,442**	**101,406**	**102,104**

* In the year 2005, the crimes of Fondling and Unlawful Sexual Contact were moved from a miscellaneous heading to "Sex Offenses". This explains the marked increase in "Forcible Sex Offenses" between the years 2004 and 2005.

Delaware Statewide Crime Detail
Group A Offenses Received Percentage Change by Year

Table 4

Percent Change in Reported Criminal Offenses 2003 – 2008					
Percent Change	**03 to 04**	**04 to 05**	**05 to 06**	**06 to 07**	**07 to 08**
Criminal Homicide	3.7%	71.4%	-6.25%	-8.90%	39.02%
Kidnapping/Abduction	-3.0%	-8.6%	18.10%	-1.33%	-13.03%
Sex Offenses, Forcible	0.0%	81.1%*	0.95%	-12.60%	8.34%
Robbery	-10.4%	-2.7%	31.53%	0.46%	6.84%
Assaults	-2.5%	1.6%	3.86%	3.21%	-2.18%
Arson	2.2%	2.1%	-1.60%	-17.50%	13.14%
Extortion/Blackmail	85.7%	38.5%	-22.22%	7.14%	40.00%
Burglary	-6.2%	2.9%	6.03%	2.12%	4.42%
Larceny/Theft	2.0%	-6.2%	11.75%	-0.80%	6.90%
Motor Vehicle Theft	-22.3%	-0.6%	20.50%	-16.41%	5.80%
Counterfeiting/Forgery	4.6%	4.3%	-0.50%	-0.82%	-3.80%
Fraud	-5.2%	9.3%	6.36%	3.04%	-0.25%
Embezzlement	-9.1%	16.9%	-0.71%	17.90%	-7.90%
Stolen Property	2.3%	-15.6%	7.96%	2.40%	0.61%
Property Destruction/ Vandalism	-4.0%	-1.5%	13.20%	-3.40%	-2.43%
Drug/Narcotic Offenses	-2.3%	18.4%	9.46%	1.40%	-2.90%
Non-Forcible Sex Offenses	-7.2%	-13.0%	-23.90%	49.02%	18.42%
Pornography/Obscene Material	84.2%	-18.6%	0.00%	78.95%	30.39%
Gambling Offenses	0.0%	158.3%	-32.26%	-76.20%	20.00%
Prostitution	-0.9%	-14.1%	-23.50%	36.43%	-27.70%
Bribery	-25.0%	33.3%	25.00%	60.00%	-75.00%
Weapons Law Violations	-2.8%	13.1%	11.06%	0.11%	2.45%
Total Percent Change in Offenses	**-2.9%**	**1.7%**	**9.30%**	**-0.40%**	**0.69%**

* In the year 2005, the crimes of Fondling and Unlawful Sexual Contact were moved from a miscellaneous heading to "Sex Offenses". This explains the marked increase in "Forcible Sex Offenses" between the years 2004 and 2005.

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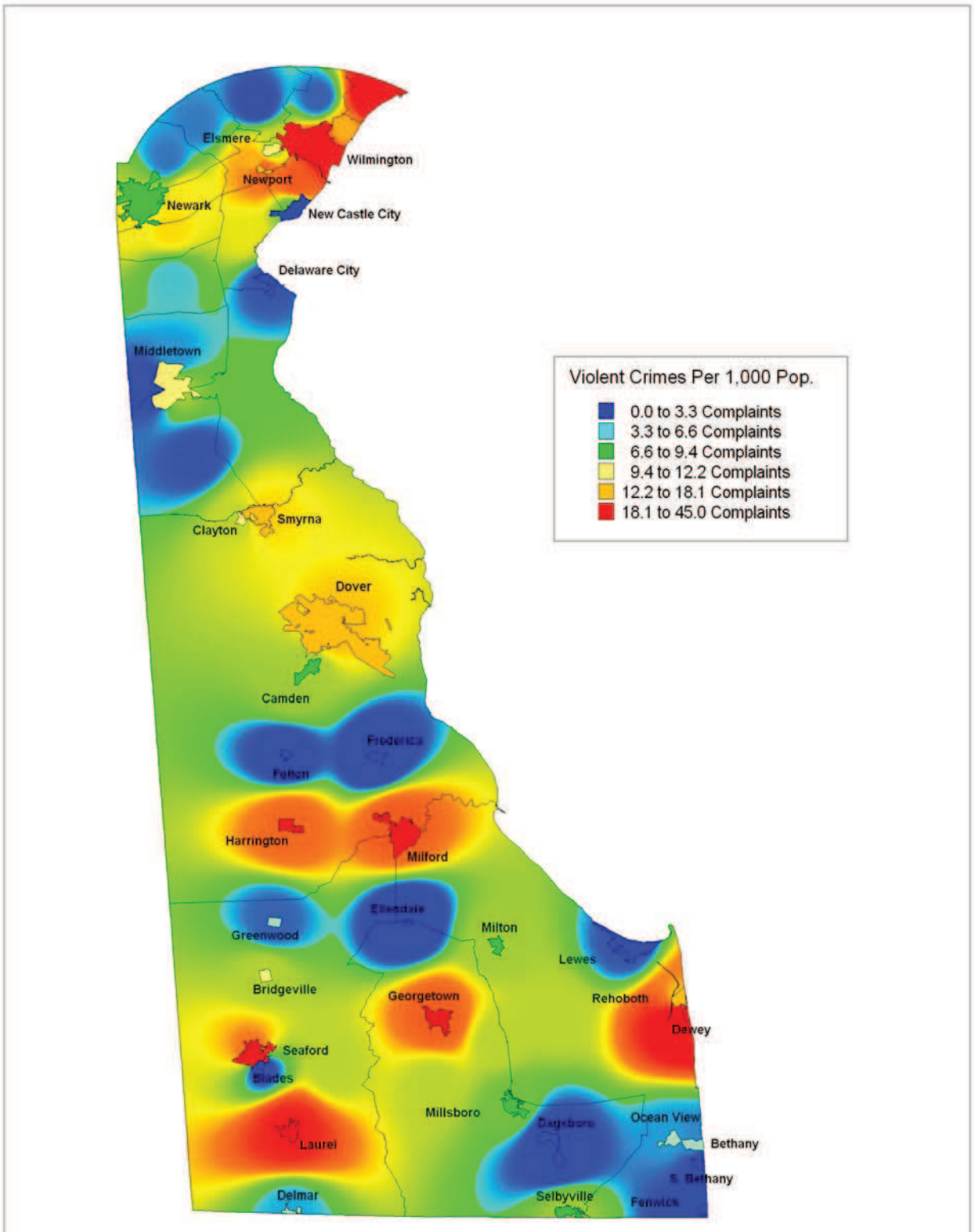
Delaware Crime Maps

The following maps show the distribution of NIBRS 2008 violent and property crime complaints per 1,000 population for cities, towns, New Castle County PD Sectors and Delaware State Police Troops. Crime density is displayed on a ranked sextile scale where dark blue represents areas with the least crime and red represents areas where crime is the most prevalent.

The first map shows NIBRS Group A Violent Crime Complaints Per 1,000 Population. This includes Homicide, Robbery, Forcible Sex Offenses and Aggravated Assault. Crime density is ranked form a low of 0 to 3.3 complaints per 1,000 population (shown as dark blue) to a high of 18.1 to 45 complaints per 1,000 population (shown as red).

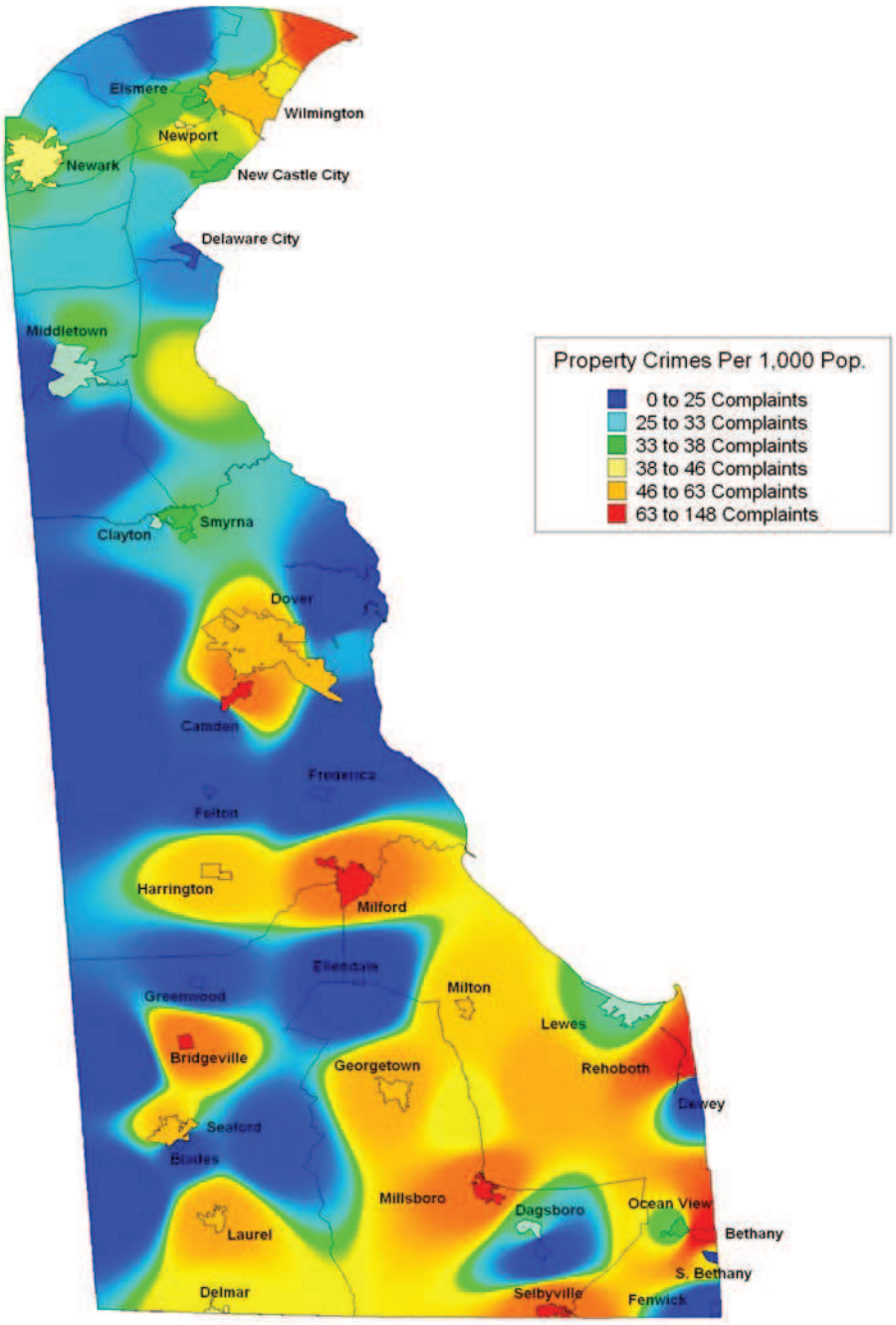
The second map shows NIBRS Group A Property Crime Complaints Per 1,000 Population. This map includes Burglary, Larceny, and Motor Vehicle theft. Crime density ranges from a low of 0 to 25 complaints (shown as dark blue) to a high of 63 to 148 complaints (shown as red).



2008 NIBRS Group A Violent Complaints Per 1,000 Population

Group A Violent Crimes include Homicide, Aggravated Assault, Rape, and Robbery

Statewide Average = 8.35 Complaints Per 1,000 Population



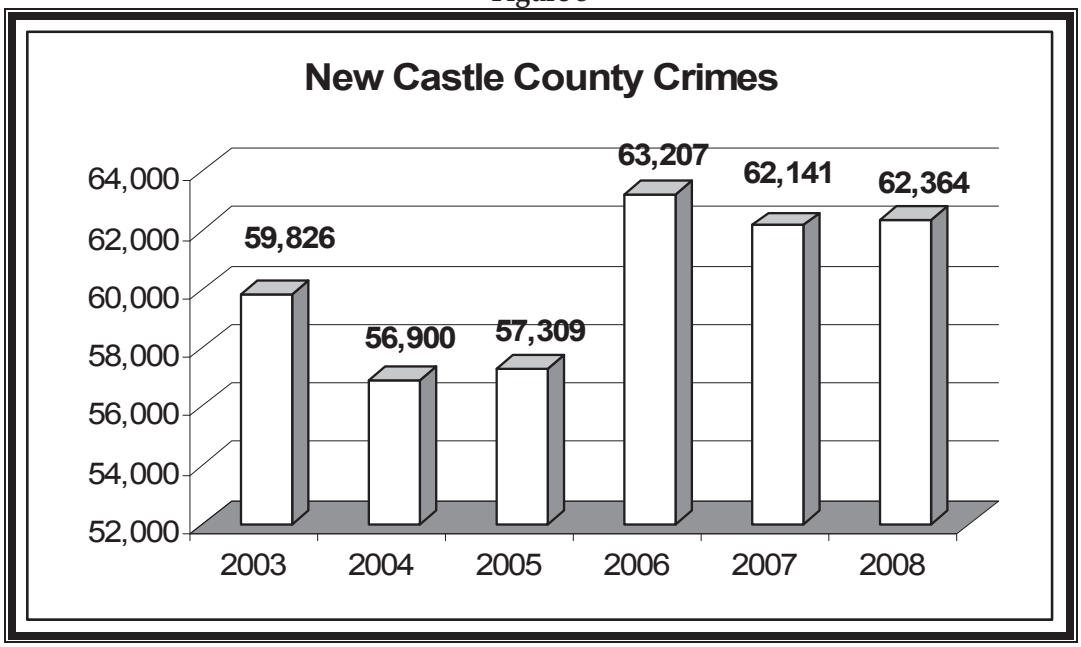
2008 NIBRS Group A Property Complaints Per 1,000 Population

Group A Property Crimes include Burglary, Larceny, and Motor Vehicle Theft

Statewide Average = 32.6 Complaints Per 1,000 Population

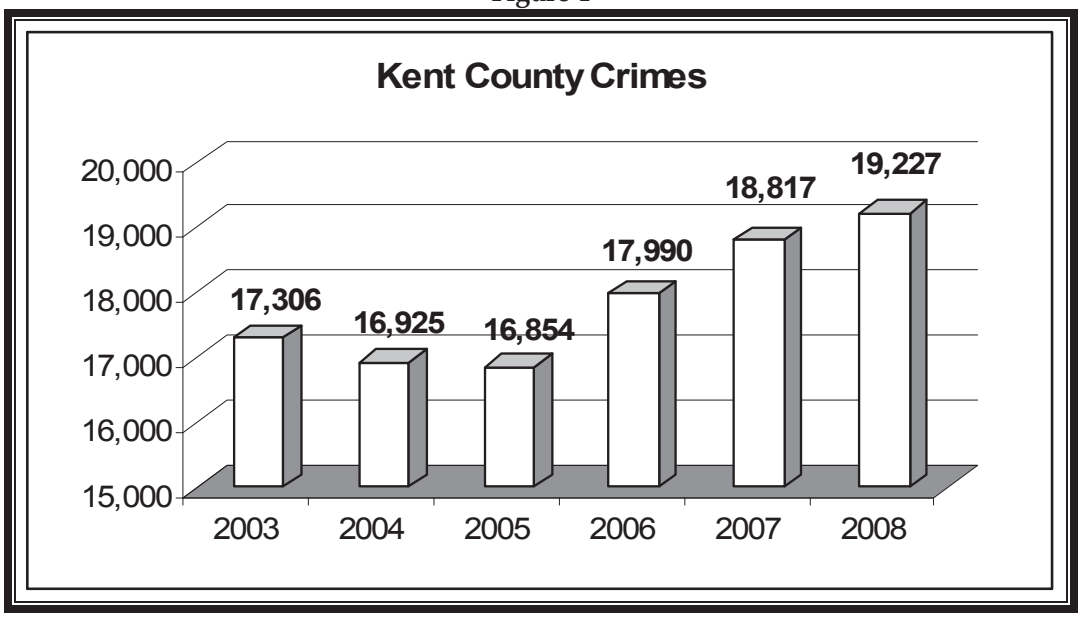
Group A Crimes by County

Figure 3



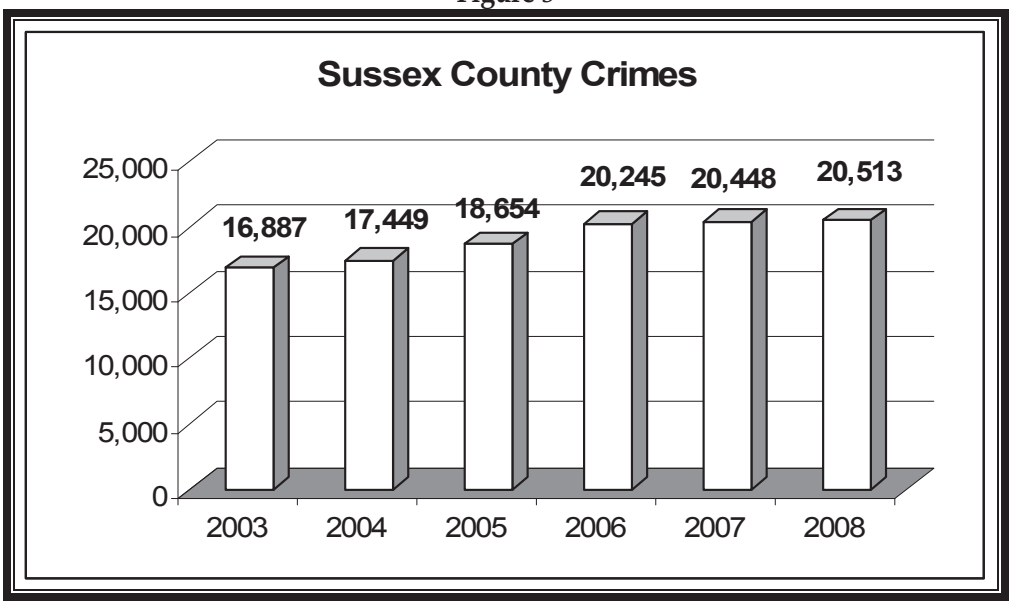
There has been a 4.2 percent increase in Group A crimes in New Castle County between 2003 and 2008, and only a .4 percent increase from 2007 to 2008.

Figure 4



There was an 11. 0 percent increase in Kent County crimes between 2003 and 2008, with only a 2.2 percent increase between 2007 and 2008.

Figure 5



There was a 21.5 percent increase in crimes in Sussex county between 2003 and 2008.

Table 5

Crime Rate per 1,000 by County for Offenses Received						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Statewide Total	**115.0**	**110.0**	**110.0**	**118.6**	**117.2**	**116.7**
Sussex County	100.3	101.3	105.7	112.3	111.3	109.5
Kent County	128.5	121.7	117.1	121.8	124.9	125.7
New Castle County	116.2	109.7	109.6	119.9	117	116.6

Figures 6 through 8 show that since 2003, Kent and Sussex counties population growth has exceeded New Castle counties population growth, resulting in the gradual shift of the state's population to the southern two counties.

Along with its growth in population, Sussex county has also experienced an increase in the crime rates (number of crimes per 1,000 persons). In 2003, the crime rate in Sussex County was 100.3 per 1,000 population and by 2008, was 109.5.

Kent County has had the highest crime rates among the counties. In 2003, it was 128.5 per 1,000 persons, and in 2008 it was 125.7.

Figure 6

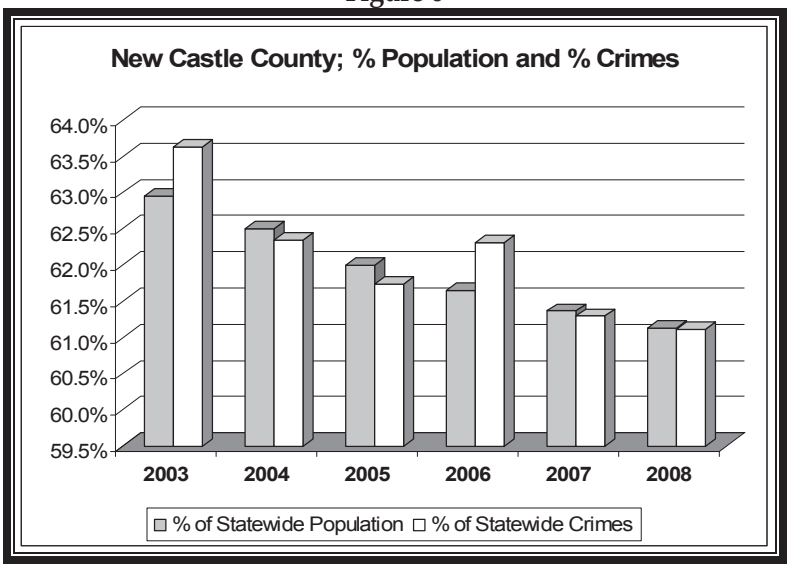


Figure 7

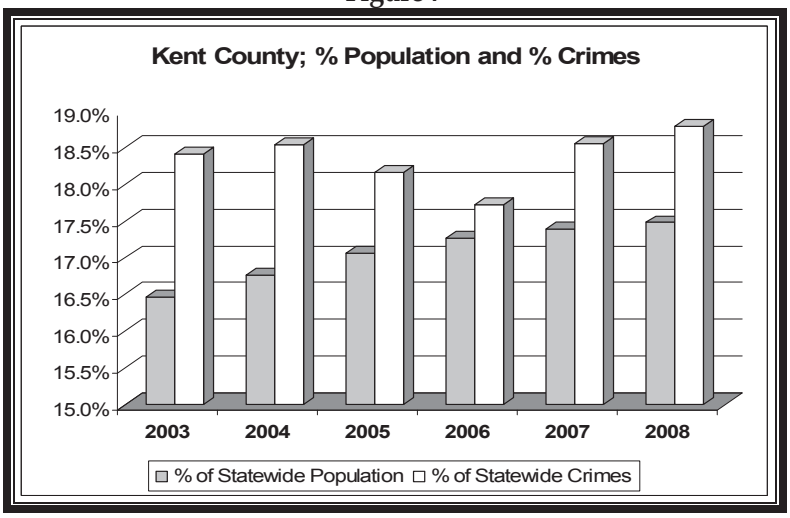


Figure 8

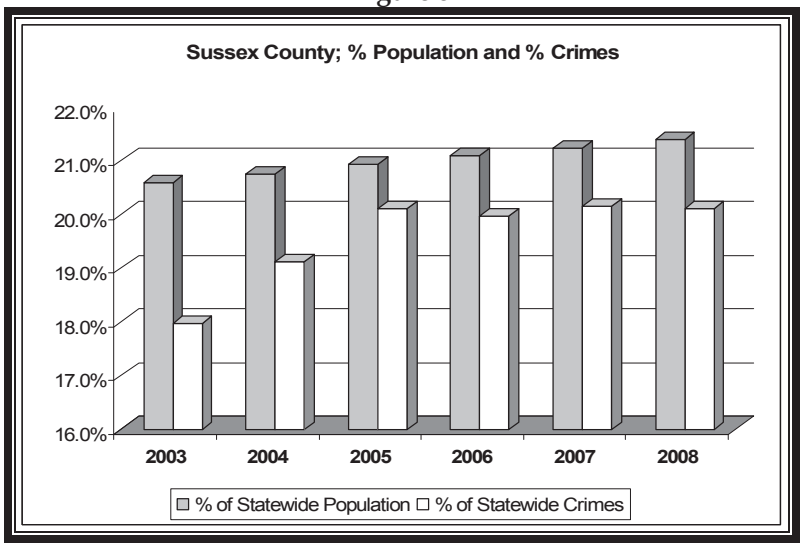


Figure 9

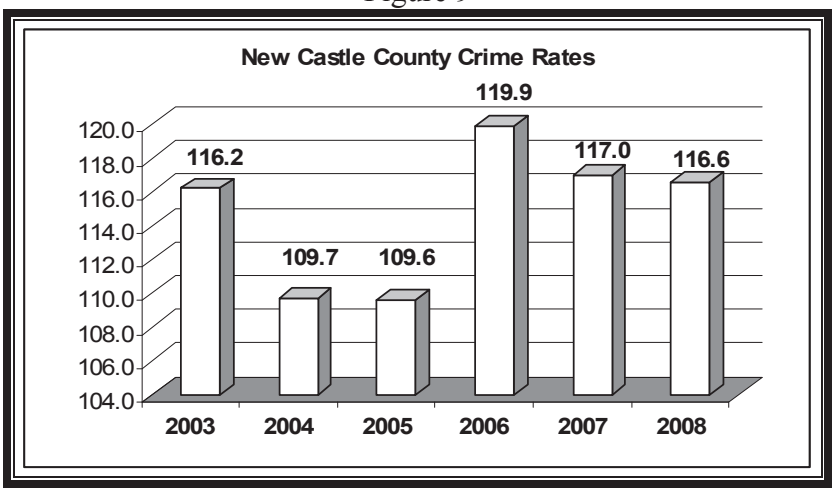


Figure 10

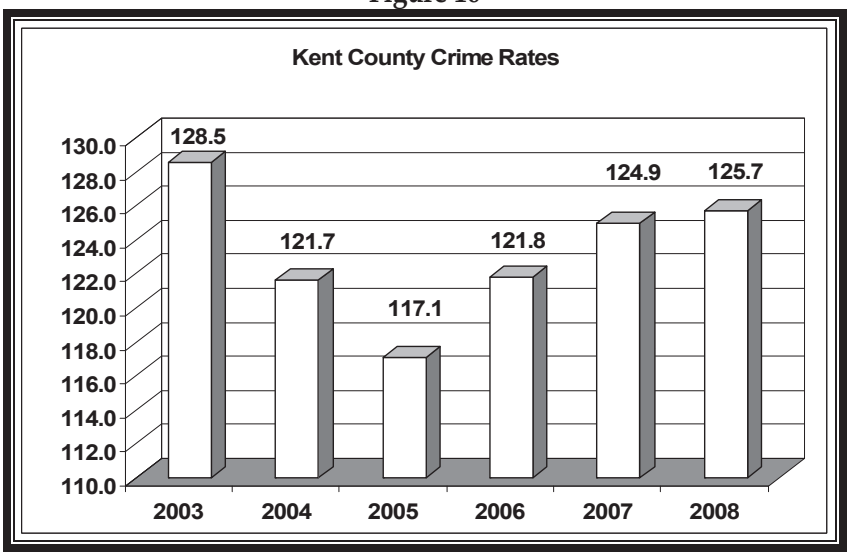
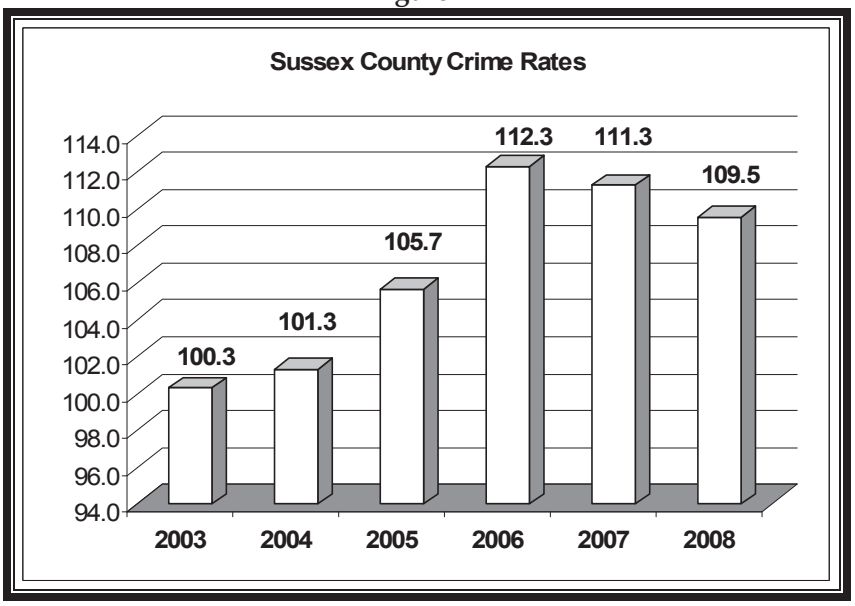


Figure 11



Detail Group A Crime Report by County 2003 – 2008

Table 6

	2003				2004				2005			
	NCC	**KC**	**SC**	**Total**	**NCC**	**KC**	**SC**	**Total**	**NCC**	**KC**	**SC**	**Total**
Criminal Homicide	16	7	4	**27**	24	4	0	**28**	32	6	10	**48**
Kidnapping/Abduction	243	103	85	**431**	235	98	85	**418**	234	70	78	**382**
Sex Offenses, Forcible	252	111	102	**465**	250	101	114	**465**	431	210	201	**842**
Robbery	1,486	135	143	**1,764**	1,270	148	162	**1,580**	1,292	106	140	**1,538**
Assault	13,759	4,017	4,332	**22,108**	13,237	4,152	4,160	**21,549**	13,212	4,063	4,611	**21,886**
Arson	232	65	71	**368**	221	106	49	**376**	256	66	62	**384**
Extortion/Blackmail	5	1	1	**7**	9	0	4	**13**	11	2	5	**18**
Burglary	3,958	923	1,394	**6,275**	3,476	923	1,485	**5,884**	3,868	803	1,384	**6,055**
Larceny/Theft	12,916	3,686	3,437	**20,039**	13,311	3,570	3,565	**20,446**	12,197	3,308	3,682	**19,187**
Motor Vehicle Theft	2,633	310	252	**3,195**	1,875	335	273	**2,483**	1,886	317	265	**2,468**
Counterfeiting/Forgery	573	286	269	**555**	631	258	291	**1,180**	534	380	317	**1,231**
Fraud	2,932	1,354	1,053	**5,339**	2,781	1,202	1,080	**5,063**	2,776	1,420	1,337	**5,533**
Embezzlement	215	105	77	**397**	188	87	86	**361**	228	77	117	**422**
Stolen Property	510	83	90	**683**	499	89	111	**699**	407	91	92	**590**
Property Destruction/Damage	13,638	3,596	3,338	**20,572**	12,649	3,493	3,602	**19,744**	12,575	3,095	3,778	**19,448**
Drug/Narcotic Offenses	4,683	2,048	1,804	**8,535**	4,597	1,809	1,935	**8,341**	5,538	2,257	2,081	**9,876**
Sex Offenses	8	27	48	**83**	31	17	29	**77**	28	23	16	**67**
Pornography/ Obscene Material	16	12	10	**38**	22	34	14	**70**	22	23	12	**57**
Gambling Offenses	12		0	**12**	11	1	0	**12**	14	6	11	**31**
Prostitution	174	27	14	**215**	174	28	11	**213**	140	30	13	**183**
Bribery	1	1	2	**4**	0	2	1	**3**	3	0	1	**4**
Weapons Law Violations	1,564	409	361	**2,334**	1,409	468	392	**2,269**	1,625	501	441	**2,567**
Total Part A Offenses	**59,826**	**17,306**	**16,887**	**94,019**	**56,900**	**16,925**	**17,449**	**91,274**	**57,309**	**16,854**	**18,654**	**92,817**

	2006				2007				2008			
	NCC	**KC**	**SC**	**Total**	**NCC**	**KC**	**SC**	**Total**	**NCC**	**KC**	**SC**	**Total**
Criminal Homicide	35	8	2	**45**	30	6	5	**41**	43	8	6	**57**
Kidnapping/Abduction	233	99	119	**451**	267	87	91	**445**	185	89	113	**387**
Sex Offenses, Forcible	424	213	213	**850**	369	194	180	**743**	363	217	225	**805**
Robbery	1,700	161	162	**2,023**	1,639	167	226	**2,032**	1,676	249	246	**2,171**
Assault	13,584	4,258	4,889	**22,731**	13,762	4,616	5,084	**23,462**	13,494	4,517	4,939	**22,950**
Arson	209	100	69	**378**	169	90	53	**312**	186	93	74	**353**
Extortion/Blackmail	4	4	6	**14**	6	6	3	**15**	2	7	12	**21**
Burglary	3,913	914	1,593	**6,420**	3,986	909	1,661	**6,556**	3,921	1,163	1,762	**6,846**
Larceny/Theft	13,964	3,438	4,040	**21,442**	13,834	3,684	3,907	**21,425**	14,501	4,078	4,322	**22,901**
Motor Vehicle Theft	2,315	352	306	**2,973**	1,867	324	294	**2,485**	1,867	406	356	**2,629**
Counterfeiting/Forgery	707	279	239	**1,225**	732	252	231	**1,215**	672	239	258	**1,169**
Fraud	3,072	1,432	1,381	**5,885**	3,063	1,595	1,406	**6,064**	3,008	1,501	1,540	**6,049**
Embezzlement	229	103	87	**419**	279	97	118	**494**	252	99	104	**455**
Stolen Property	431	97	109	**637**	478	84	90	**652**	460	103	93	**656**
Property Destruction/Damage	14,409	3,614	3,991	**22,014**	13,785	3,487	3,998	**21,270**	13,608	3,459	3,687	**20,754**
Drug/Narcotic Offenses	5,911	2,384	2,515	**10,810**	5,769	2,681	2,509	**10,959**	5,907	2,457	2,270	**10,634**
Sex Offenses	21	13	17	**51**	25	28	23	**76**	27	16	19	**62**
Pornography/ Obscene Material	20	19	18	**57**	34	43	25	**102**	63	39	31	**133**
Gambling Offenses	8	6	7	**21**	4	1	0	**5**	5	0	1	**6**
Prostitution	112	15	13	**140**	131	18	42	**191**	115	13	12	**140**
Bribery	3	1	1	**5**	5	1	2	**8**	2	0	0	**2**
Weapons Law Violations	1,903	480	468	**2,851**	1,907	447	500	**2,854**	2,007	474	443	**2,924**
Total Part A Offenses	**63,207**	**17,990**	**20,245**	**101,442**	**62,141**	**18,817**	**20,448**	**101,406**	**62,364**	**19,227**	**20,513**	**102,104**

Violent Crime: Total Offenses Received

Violent Crimes include criminal homicide, kidnapping/abduction, forcible sex offenses, robbery, assault and weapon law violations

Table 7

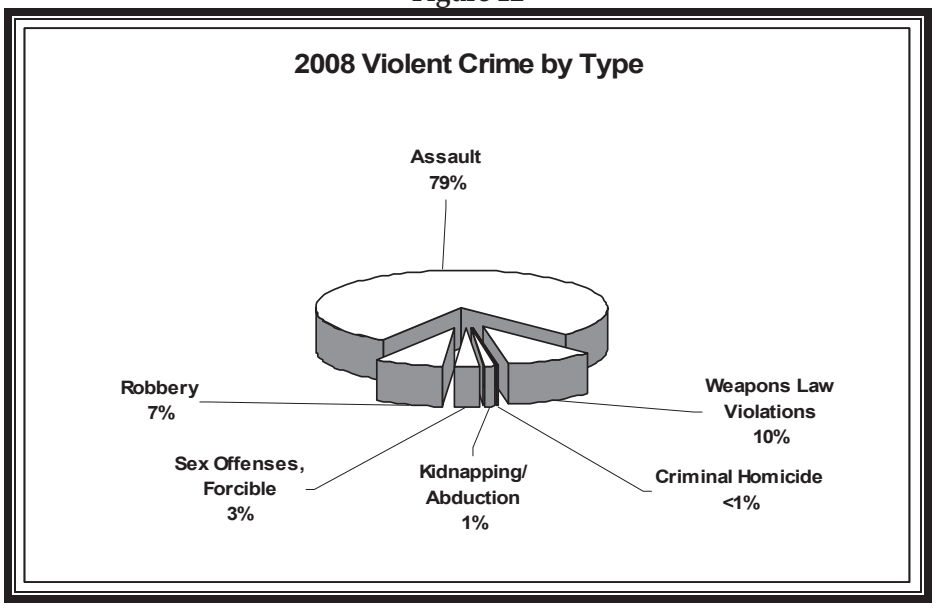
	2003	2004	2005	2006	2007	2008
Total Violent Crimes	**27,129**	**26,309**	**27,263**	**28,951**	**29,577**	**29,294**
Criminal Homicide	27	28	48	45	41	57
Kidnapping/Abduction	431	418	382	451	445	387
Sex Offenses, Forcible	465	465	842*	850	743	805
Robbery	1,764	1,580	1,538	2,023	2,032	2,171
Assault	22,108	21,549	21,886	22,731	23,462	22,950
Weapons Law Violations	2,334	2,269	2,567	2,851	2,854	2,924

Table 8

Statewide Violent Crime rate per 1,000						
	2003	2004	2005	2006	2007	2008
Total Violent Crimes	**33.17**	**31.69**	**32.32**	**33.86**	**34.18**	**33.46**
Criminal Homicide	0.03	0.03	0.06	0.05	0.05	0.06
Kidnapping/Abduction	0.53	0.5	0.45	0.52	0.51	0.44
Sex Offenses, Forcible	0.57	0.56	1*	0.99	0.85	0.91
Robbery	2.16	1.9	1.82	26.6	27.1	26.2
Assault	27.03	25.96	25.95	26.58	27.11	26.22
Weapons Law Violations	2.85	2.73	3.04	3.33	3.29	3.34

**In the year 2005, the crimes of Fondling and Unlawful Sexual Contact were moved from a miscellaneous heading to "Sex Offenses". This explains the marked increase in "Sex Crimes" between the years 2004 and 2005.*

Figure 12



Violent Crimes by County

Table 9

Violent Crimes by County						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Total Violent Crimes	**27,129**	**26,309**	**27,263**	**28,951**	**29,577**	**29,294**
Sussex County	5,027	4,913	5,481	5,853	6,086	5,972
Kent County	4,782	4,971	4,956	5,219	5,517	5,554
New Castle County	17,320	16,425	16,826	17,879	17,974	17,768

Table 10

Violent Crime Percentage Change by County					
	% Change	% Change	% Change	% Change	% Change
	03 - 04	**04 - 05**	**05 - 06**	**06 - 07**	**07 - 08**
Total Violent Crimes	**-3.00%**	**3.60%**	**6.19%**	**2.16%**	**-0.96%**
Sussex County	-2.30%	11.60%	6.79%	3.98%	-1.87%
Kent County	4.00%	-0.30%	5.31%	5.71%	0.67%
New Castle County	-5.20%	2.40%	6.26%	0.53%	1.15%

Violent Crime Detail by County

Table 11

	2003				**2004**				**2005**			
	NCC	**KC**	**SC**	**Total**	**NCC**	**KC**	**SC**	**Total**	**NCC**	**KC**	**SC**	**Total**
Criminal Homicide	16	7	4	27	24	4	0	28	32	6	10	48
Kidnapping/Abduction	243	103	85	431	235	98	85	418	234	70	78	382
Sex Offenses, Forcible	252	111	102	465	250	101	114	465	431	210	201	842
Robbery	1,486	135	143	1,764	1,270	148	162	1,580	1,292	106	140	1,538
Assault	13,759	4,017	4,332	22,108	13,237	4,152	4,160	21,549	13,212	4,063	4,611	21,886
Weapons Law Violations	1,564	409	361	2,334	1,409	468	392	2,269	1,625	501	441	2,567
Total Violent Offenses	**17,320**	**4,782**	**5,027**	**27,129**	**16,425**	**4,971**	**4,913**	**26,309**	**16,826**	**4,956**	**5,481**	**27,263**
	2006				**2007**				**2008**			
	NCC	**KC**	**SC**	**Total**	**NCC**	**KC**	**SC**	**Total**	**NCC**	**KC**	**SC**	**Total**
Criminal Homicide	35	8	2	45	32	6	5	43	43	8	6	57
Kidnapping/Abduction	233	99	119	451	267	87	91	445	185	89	113	387
Sex Offenses, Forcible	424	213	213	850	369	194	180	743	363	217	225	805
Robbery	1,700	161	162	2,023	1,639	167	226	2,032	1,676	249	246	2,171
Assault	13,584	4,258	4,889	22,731	13,762	4616	5,084	23,462	13,494	4,517	4,939	22,950
Weapons Law Violations	1,903	480	468	2,851	1,907	447	500	2,854	2,007	474	443	2,924
Total Violent Offenses	**17,879**	**5,219**	**5,853**	**28,951**	**17,974**	**5,517**	**6,086**	**29,577**	**17,768**	**5,554**	**5,972**	**29,294**

Violent Crime: Homicides
Offenses Received

Figure 13

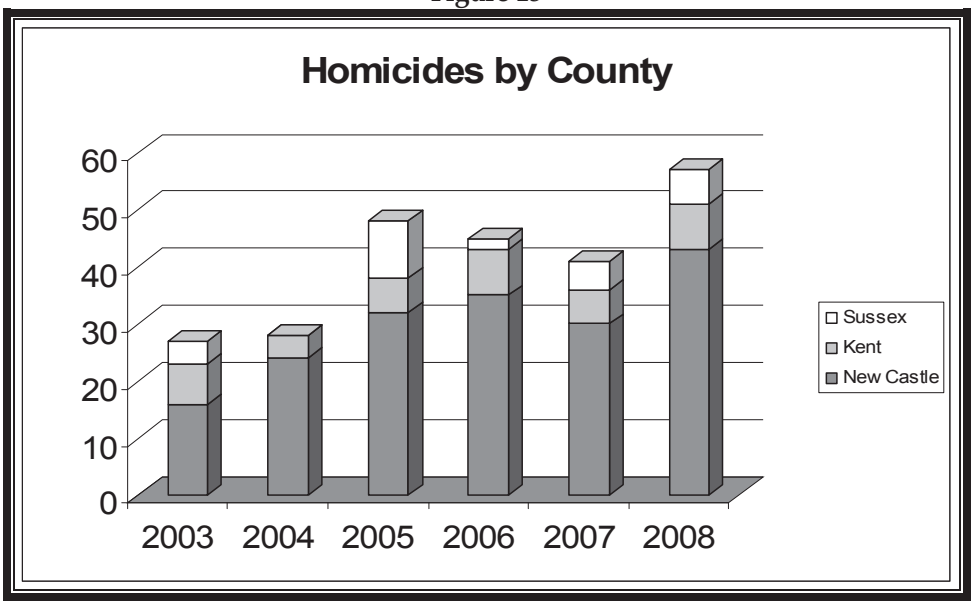


Table 12

Homicides by County						
Homicides	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**
Statewide	**27**	**28**	**48**	**45**	**43**	**57**
Sussex	4	0	10	2	5	6
Kent	7	4	6	8	6	8
New Castle	16	24	32	35	32	43

Table 13

Criminal Homicide Details						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Total	**27**	**28**	**48**	**45**	**43**	**57**
Murder/Nonnegligent Manslaughter	23	28	44	42	40	57
Negligent Manslaughter	4	0	4	3	3	0

Between 2003 and 2008, there was a 111.1 percent increase in homicides statewide. New Castle County had a 168.8 percent increase, Kent County had a 14.3 percent increase, and Sussex County had a 50 percent increase.

Homicide Victim and Offender Demographics

Table 14

Victim and Offender Demographics for Delaware Homicides: 2003 - 2008												
	2003		**2004**		**2005**		**2006**		**2007**		**2008**	
	Juv	Adult	Juv	Adult	Juv	Adult	Juv	Adult	Juv	Adult	Juv	Adult
VICTIMS												
MALE TOTAL	**2**	**17**	**3**	**13**	**5**	**28**	**3**	**38**	**3**	**27**	**1**	**48**
Black	2	12	3	10	2	17	2	27	2	17	1	35
White	0	5	0	3	1	9	1	9	1	7	0	8
Hispanic	0	0	0	0	2	2	0	2	0	3	0	5
Other	0	0	0	0	0	0	0	0	0	0	0	0
FEMALE TOTAL	**1**	**2**	**2**	**5**	**4**	**11**	**0**	**6**	**2**	**8**	**1**	**7**
Black	0	1	0	3	2	4	0	2	1	6	0	3
White	1	1	2	2	0	7	0	4	1	2	1	3
Hispanic	0	0	0	0	1	0	0	0	0	0	0	1
Other	0	0	0	0	**1**	0	0	0	**0**	0	0	0
TOTAL VICTIMS	**3**	**19**	**5**	**18**	**9**	**39**	**3**	**41**	**5**	**35**	**2**	**55**
OFFENDERS												
MALE TOTAL	**0**	**30**	**3**	**21**	**4**	**44**	**9**	**55**	**5**	**39**	**5**	**58**
Black	0	21	1	16	3	24	4	29	5	26	5	46
White	0	9	2	2	1	14	5	26	0	9	0	10
Hispanic	0	0	0	0	0	0	0	0	0	4	0	2
Other	0	0	0	3	0	6	0	0	0	0	0	0
FEMALE TOTAL	**0**	**0**	**0**	**4**	**1**	**7**	**0**	**2**	**1**	**4**	**0**	**0**
Black	0	0	0	1	1	5	0	2	1	3	0	0
White	0	0	0	3	0	2	0	0	0	1	0	0
Hispanic	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Unknown	**0**	**3**	**0**	**1**	0	0	0	14	0	7	0	15
TOTAL OFFENDERS	**0**	**33**	**3**	**26**	**5**	**51**	**9**	**71**	**6**	**50**	**5**	**73**

The victim is the person who is killed by another person or persons.
The offender is the person that commits the offense.

Between 2003 and 2008, there were 246 homicide victims. 17 (6.9 percent) were juvenile males, 10 (4 percent) were juvenile females, 179 (72.8 percent) were adult males, and 40 (16.3 percent) were adult females.

Victim to Offender Demographics 2008

Table 15

Victim	Crime													
	Totals	Homicide	Kidnapping	Forcible Sex Offense	Robbery	Agvtd Assault	Other Assault	Arson	Burglary	Larceny	Motor V Theft	Cntrft/ Forgery	Fraud	Property Destructn
Acquaintance	**7,741**	14	33	226	204	862	4,068	10	361	955	64	62	323	559
Boy/Girl Friend	**4,777**	4	160	31	13	424	3,587	6	38	152	8	10	25	319
Child of Boy/Girl friend	**182**	0	3	25	0	27	118	0	1	4	1	0	0	3
Friend	**1,041**	0	7	38	16	95	573	1	28	166	6	9	30	72
Homosexual Relation	**154**	0	1	1	0	17	120	0	1	3	0	1	2	8
Neighbor	**986**	0	2	14	1	111	527	6	86	90	4	0	0	145
Baby-Sittee (Child)	**23**	0	0	13	0	1	8	0	0	0	0	0	1	0
Victim was Offender	**2,958**	0	7	1	10	190	2,643	1	2	27	3	1	9	64
Total Non-Family	**17,862**	18	213	349	244	1,727	11,644	24	517	1,397	86	83	390	1,170
Child	**937**	0	19	49	1	196	618	0	3	14	0	3	14	20
Common Law Spouse	**12**	0	0	0	0	3	8	1	0	0	0	0	0	0
Ex-Spouse	**320**	0	5	3	1	19	219	0	8	21	0	8	12	24
Grand-Child	**64**	0	1	14	0	7	40	0	0	1	1	0	0	0
Grand-Parent	**208**	0	0	0	1	12	86	1	12	59	2	6	10	19
In-Law	**201**	0	0	0	1	15	151	0	4	12	0	2	5	11
Other Family Member	**744**	0	7	80	1	91	422	0	18	60	3	7	24	31
Parent (Mother/Father)	**1,661**	0	6	0	2	111	1,005	8	32	210	3	16	45	223
Sibling (Brother/Sister)	**971**	0	5	35	0	113	650	0	11	76	3	10	37	31
Spouse	**1,740**	2	36	7	1	163	1,440	2	11	10	1	12	9	46
Step-Child	**171**	0	4	28	0	14	115	0	2	4	0	1	1	2
Step-Parent	**178**	0	0	0	0	20	117	1	2	18	0	2	2	16
Step-Sibling	**66**	0	1	16	0	7	37	0	0	1	0	0	2	2
Total Family	**7,273**	2	84	232	8	771	4,908	13	103	486	13	67	161	425
Employee	**81**	0	0	5	0	3	26	0	10	20	0	3	8	6
Employer	**417**	0	0	1	0	0	42	1	50	110	2	25	168	18
Total Work Related	**498**	0	0	6	0	3	68	1	60	130	2	28	176	24
***Total Unknown**	**67,359**	61	207	236	4,041	3,021	8,643	326	7,095	25,185	2,147	816	3,257	12,324
Victim-Less	**2,329**	0	0	0	2	0	18	5	1	9	2	394	1,894	4

*Total Unknown is “Otherwise Unknown”, “Relationship Undetermined” and “Stranger”.

The category "Victim was Offender" is used in cases where all of the participants in the incidents were victims and offenders of the same offense such as domestic disputes where both husband and wife are charged with assault; double murders (i.e., two people kill each other); or barroom brawls where many participants are arrested.

The term “Victimless Crime” refers to infractions of criminal law without any identifiable evidence of an individual that has suffered damage in the infraction. Typically included are traffic citations and violations of laws concerning public decency, and include public drunkenness, illicit drug use, vagrancy, speeding and public nudity. These laws (concerning public decency) are based on the Offense principle, as opposed to laws based on the Harm principle.

Figure 14

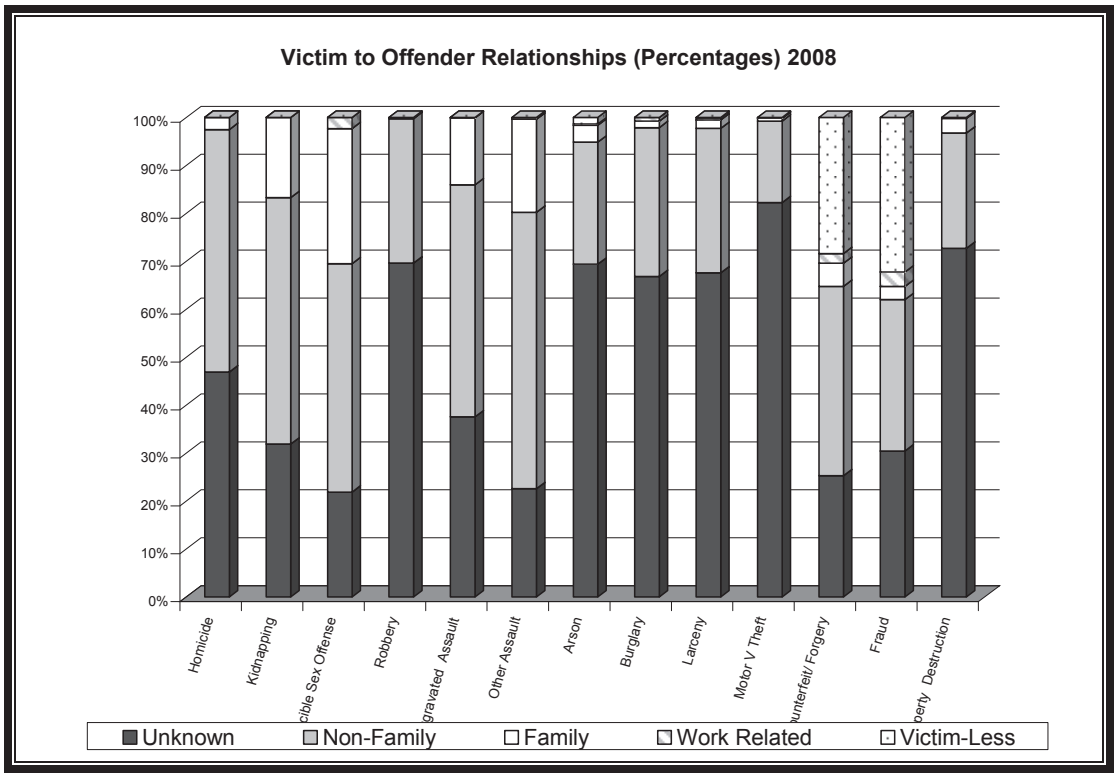
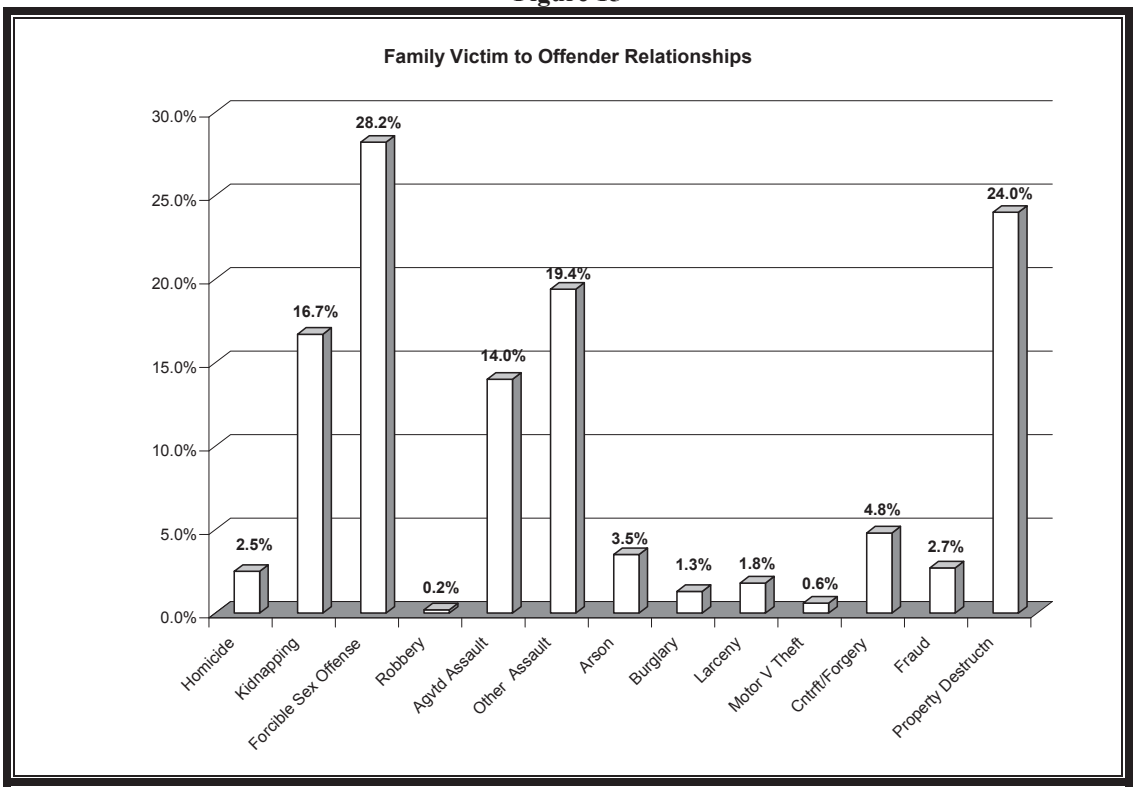


Figure 15



Violent Crime: Kidnapping/Abduction Offenses Received

Figure 16

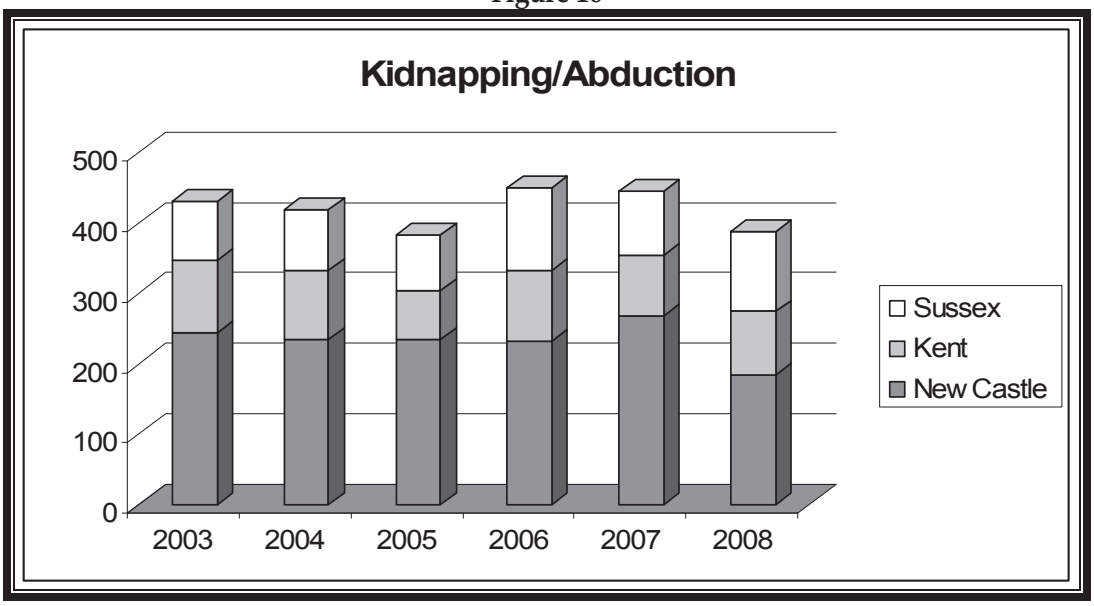


Table 16

Kidnapping/Abduction						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Statewide	**431**	**418**	**382**	**451**	**445**	**387**
Sussex	85	85	78	119	91	113
Kent	103	98	70	99	87	89
New Castle	243	235	234	233	267	185

Between 2003 and 2008, there was a 10.2 percent statewide decrease in Kidnapping / Abduction. New Castle County had a 23.9 percent decrease, Kent County had a 13.6 percent decrease, however Sussex County had a 32.9 percent increase.

Violent Crime: Forcible Sex Offenses
Offenses Received

Figure 17

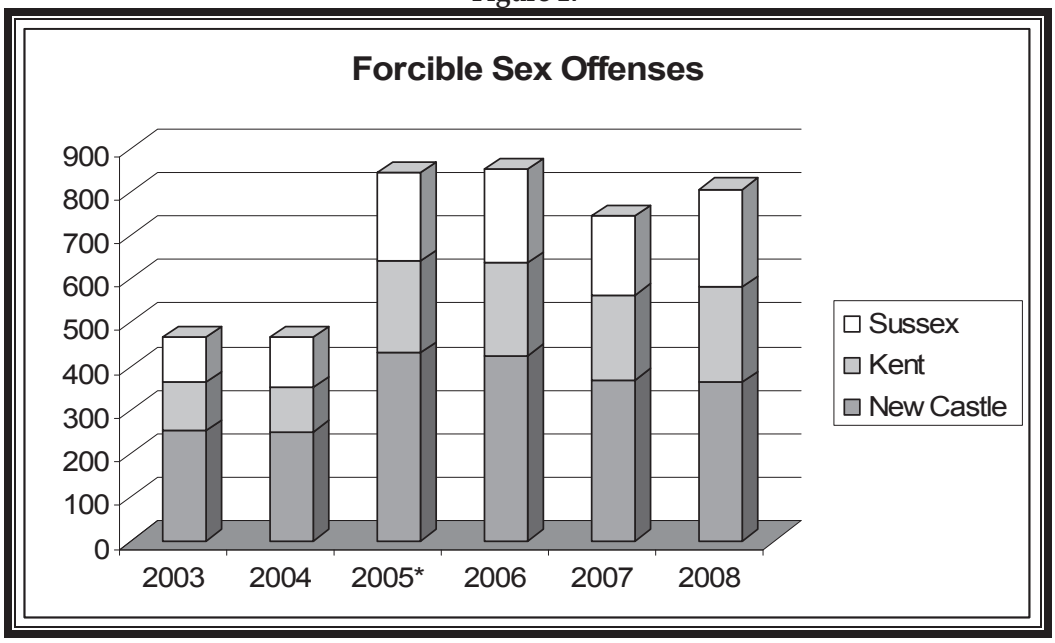


Table 17

Forcible Sex Offenses						
	2003	**2004**	**2005***	**2006**	**2007**	**2008**
Statewide	**465**	**465**	**842**	**850**	**743**	**805**
Sussex	102	114	201	213	180	225
Kent	111	101	210	213	194	217
New Castle	252	250	431	424	369	363

Table 18

Forcible Sex Offense Crime Detail	2003	2004	2005*	2006	2007	2008
Statewide	**465**	**465**	**842**	**850**	**743**	**805**
Forcible Rape	426	409	428	440	345	408
Forcible Fondling	16	39	383	380	371	369
Rape by Force - Attempted	23	16	21	24	25	23
Forcible Fondling- Attempted	0	1	10	6	2	5

*In the year 2005, the crimes of Fondling and Unlawful Sexual Contact were moved from a miscellaneous heading to “Forcible Sex Offenses”. Also, the definition of rape has been expanded to include male victims. Sex attacks against males are to be classified as either assaults or "other sex offenses", depending on the nature of the crime and the extent of the injury. This explains the marked increase in “Forcible Sex Crimes” between the years 2004 and 2005.

Figure 18

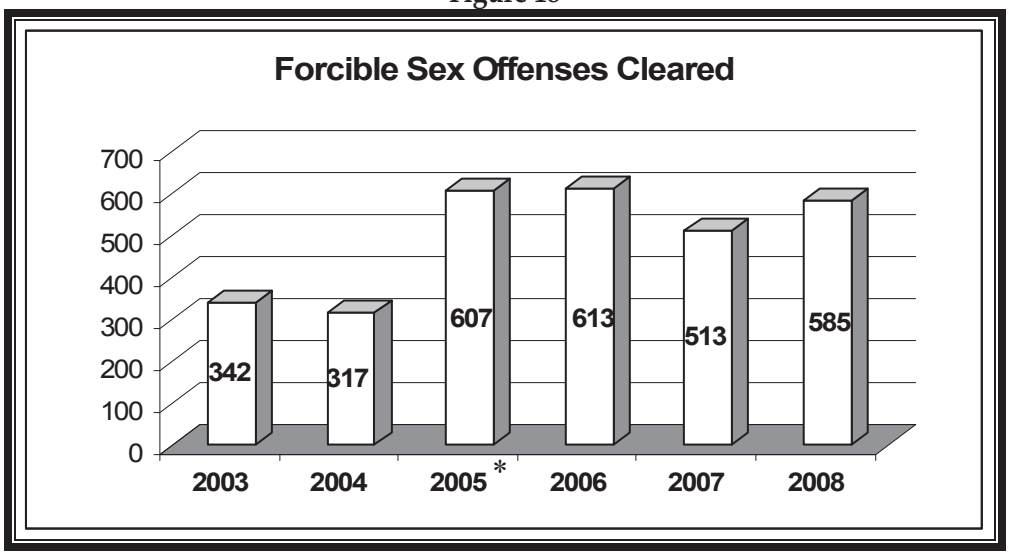
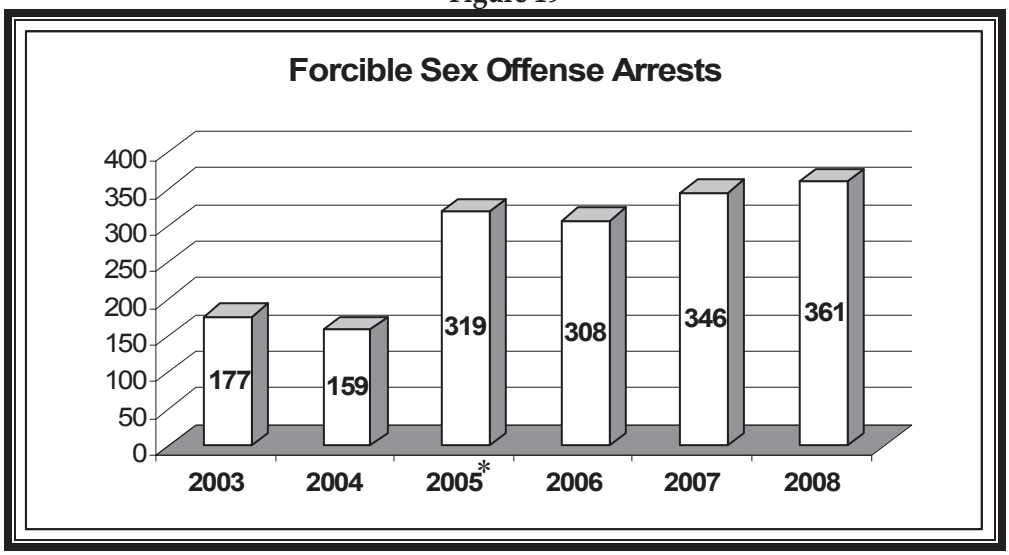


Figure 19



Between the years 2005 and 2008, statewide there was a 4.4 percent decrease in Forcible Sex Offenses. There was a 15.8 percent decrease in New Castle County, a 3.3 percent increase in Kent County, and an 11.9 percent increase in Sussex County. There was a 3.6 percent decrease in Clearances on forcible sex offenses, although there was a 13.2 percent increase in arrests for Forcible Sex Offenses.

Violent Crime: Robbery
Offenses Received

Figure 20

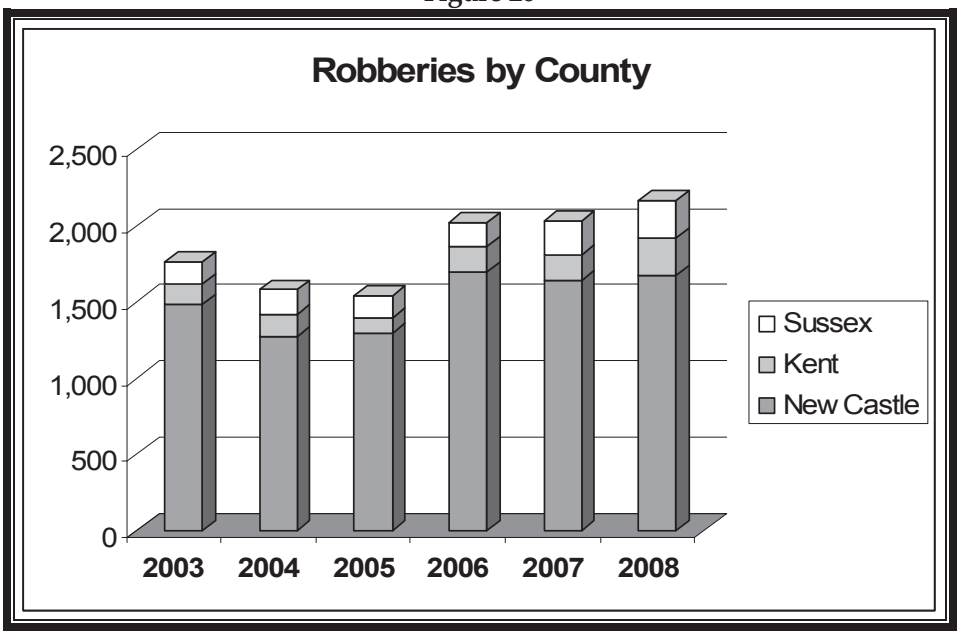


Table 19

Robberies by County						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Statewide	**1,764**	**1,580**	**1,538**	**2,023**	**2,032**	**2,171**
Sussex	143	162	140	162	226	246
Kent	135	148	106	161	167	249
New Castle	1,486	1,270	1,292	1,700	1,639	1,676

Table 20

Robbery; Detail						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Robbery	**1,764**	**1,580**	**1,538**	**2,023**	**2,032**	**2,171**
Firearm	870	737	701	920	931	1,103
Knife or Cutting Instrument	134	118	116	168	132	127
Other Dangerous Weapon	138	113	124	172	148	140
Strong-Arm (Hands, Fists, Feet)	622	612	597	763	821	801

Between 2003 and 2008, statewide there was a 23 percent increase in Robberies. New Castle County had a 12.8 percent increase, Kent County had an 84.4 percent increase, and Sussex County had a 72 percent increase.

Between 2003 and 2008, strong-arm robberies had the highest increase of 28.8 percent. Robberies with a firearm had a 26.8 percent increase, robberies with a knife or cutting instrument had a 5.2 percent decrease, and robberies with other dangerous weapons had a 1.4 percent increase.

Violent Crime: Assault Offenses Received

Figure 21

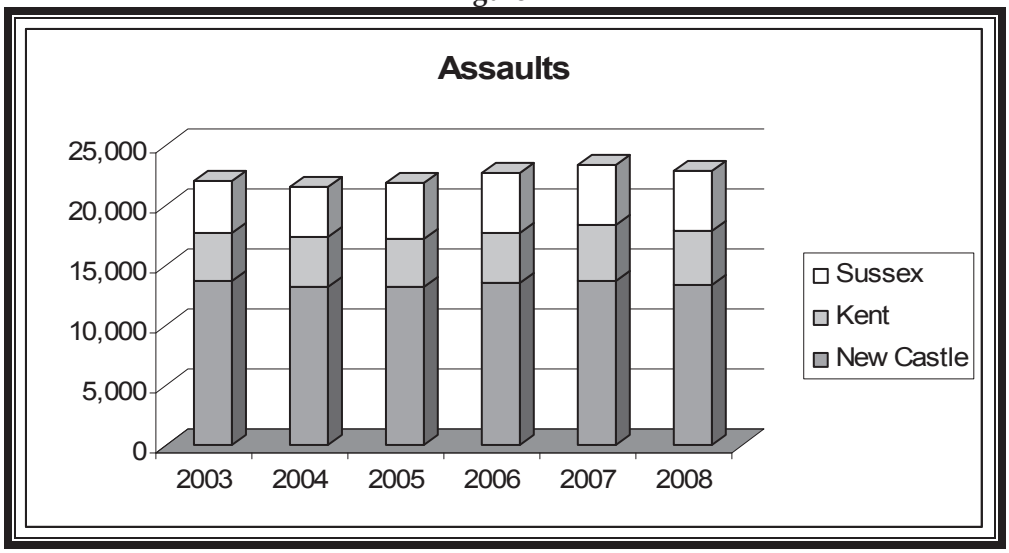


Table 21

Assaults						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Statewide	**22,108**	**21,549**	**21,886**	**22,731**	**23,462**	**22,950**
Sussex	4,332	4,160	4,611	4,889	5,084	4,939
Kent	4,017	4,152	4,063	4,258	4,616	4,517
New Castle	13,759	13,237	13,212	13,584	13,762	13,494

Table 22

Assault Detail						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Aggravated Assault	**3,939**	**3,646**	**3,866**	**3,868**	**4,091**	**3,976**
Firearm	755	704	835	908	930	1,044
Knife or Cutting Instrument	854	750	847	**806**	829	840
Other Dangerous Weapons	1,890	1,909	1,870	1,770	1,909	1,674
Hands/Fist/Feet/Agg.Injury	440	283	314	384	423	418
Other Assaults	**18,169**	**17,903**	**18,020**	**18,863**	**19,371**	**18,974**
Simple/Harassment	13,232	13,281	13,225	13,864	14,339	13,890
Intimidation	4,937	4,622	4,795	4,999	5,032	5,084
Total Assaults:	**22,108**	**21,549**	**21,886**	**22,731**	**23,462**	**22,950**

Between 2003 and 2008, there was a 1.9 percent decrease in Assault Offenses Received in New Castle County, a 12.4 percent increase in Kent County and a 14 percent increase in Sussex County. Statewide, there was a 3.8 percent increase between 2003 and 2008 in Assaults.

Violent Crime: Weapon Law Violations
Offenses Received

Figure 22

Table 23

Weapon Law Violations						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Statewide	**2,334**	**2,269**	**2,567**	**2,851**	**2,854**	**2,843**
Sussex	361	392	441	468	500	429
Kent	409	468	501	480	447	461
New Castle	1,564	1,409	1,625	1,903	1,907	1,953

Between 2003 and 2008, there was a 21.8 percent increase in statewide weapons law violations. New Castle County had a 24.9 percent increase, Kent County had a 12.7 percent increase, and Sussex County had an 18.8 percent increase.

Weapons Law violations under NIBRS are the violation of laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, concealment, or use of firearms, cutting instruments, explosives, incendiary devices, or other deadly weapons. This includes violations such as the manufacture, sale, or possession of deadly weapons; carrying deadly weapons, concealed or openly; using, manufacturing, etc. silencers; and furnishing deadly weapons to minors.

Drug and Narcotic Offenses; Offenses Received

Figure 23

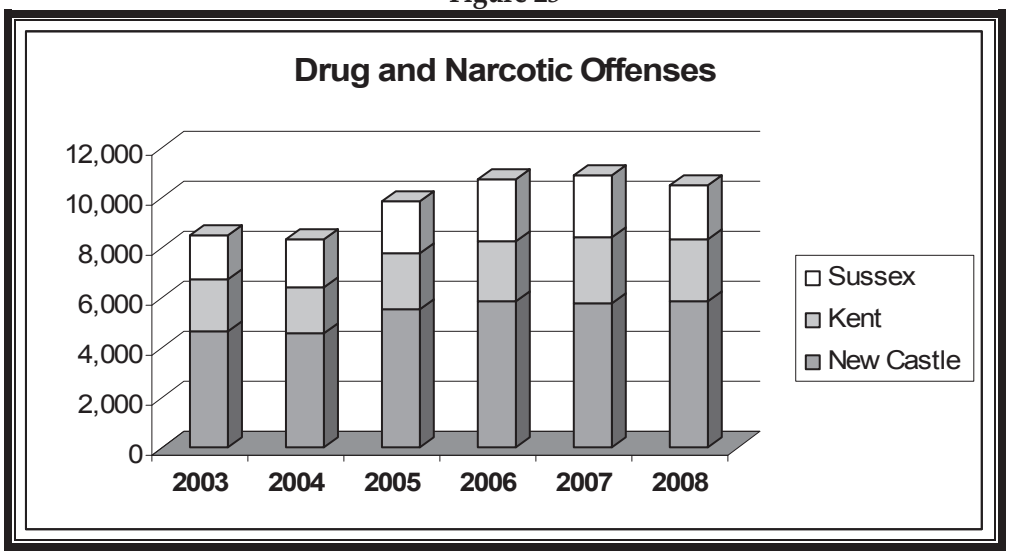


Table 24

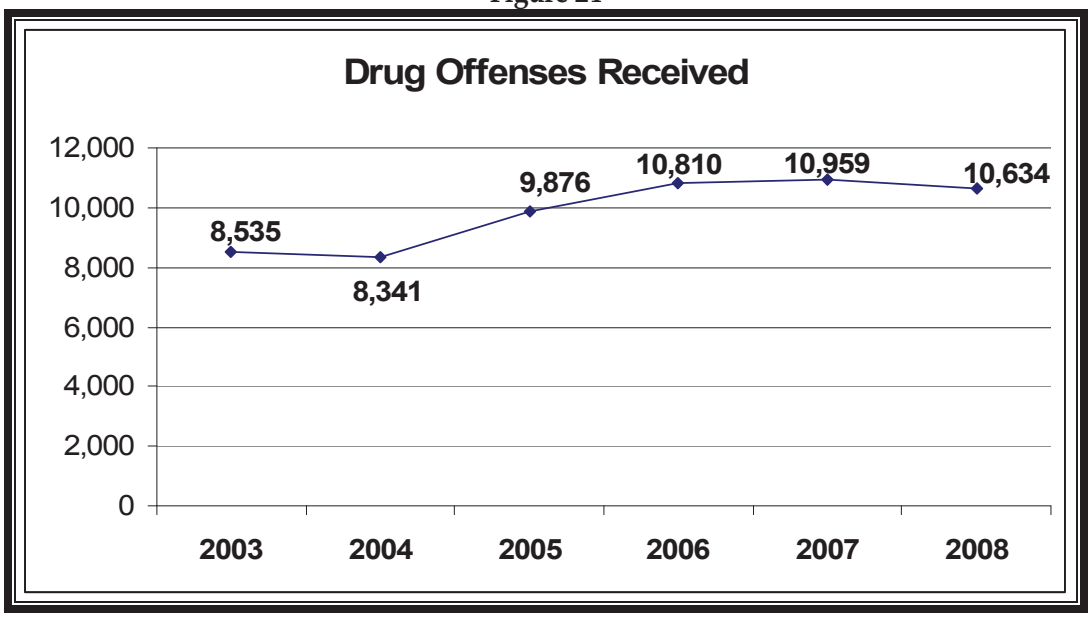
Drug and Narcotic Offenses						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Statewide	**8,535**	**8,341**	**9,876**	**10,810**	**10,959**	**10,634**
Sussex	1,804	1,935	2,081	2,515	2,509	2,227
Kent	2,048	1,809	2,257	2,384	2,681	2,422
New Castle	4,683	4,597	5,538	5,911	5,769	5,907

Table 25

Drug and Narcotic Offenses Detail						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Drug/Narcotic Offenses	**8,535**	**8,341**	**9,876**	**10,810**	**10,959**	**10,634**
Drug/Narcotic	5,146	4,914	5,816	6,187	6,259	6,136
Drug Equipment	3,389	3,427	4,060	4,623	4,700	4,498

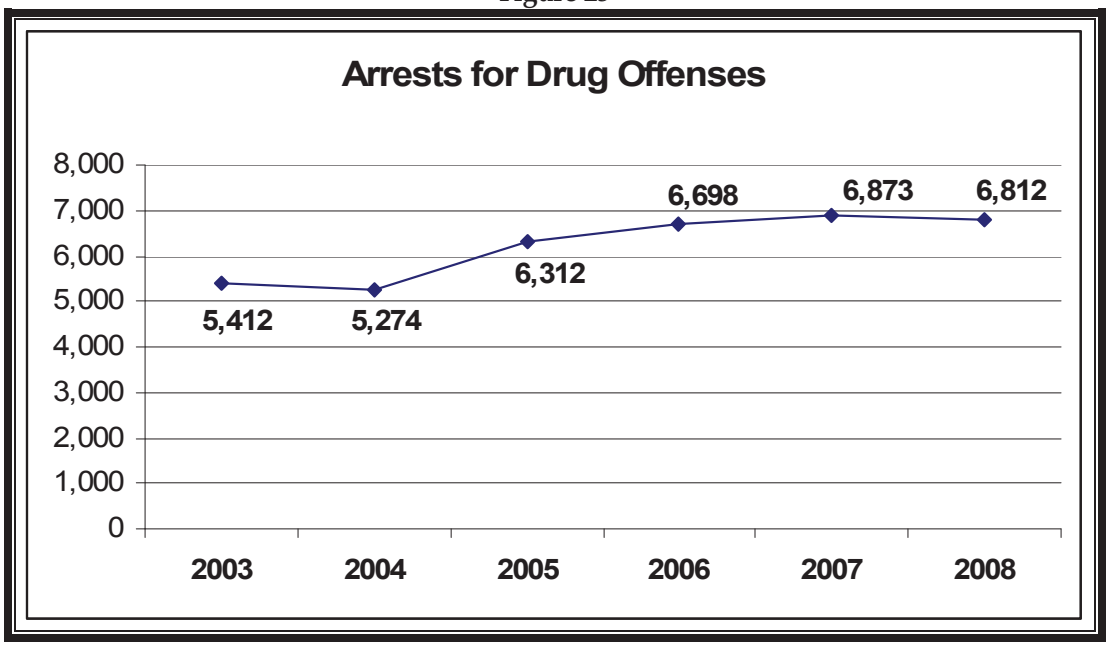
Statewide, Drug/Narcotic and Drug Equipment offenses combined have risen 24.6 percent between 2003 and 2008. Drug/Narcotic offenses received have risen 19.2 percent, while Drug equipment offenses have risen 32.7 percent in that same timeframe. Between 2003 and 2008, New Castle County experienced a 26.1 percent increase, Kent County had an 18.3percent increase, and Sussex county had a 23.4 percent increase in combined Drug/ Narcotic and Drug Equipment Offenses.

Figure 24



There was a 24.6 percent increase in Reported Drug Offenses received between 2003 and 2008, but a .89 percent decrease between 2007 and 2008.

Figure 25



There was a 25.9 percent increase between 2003 and 2008 in arrests for Drug Offenses.

Serious Property Crimes; Offenses Received

Serious Property Crimes include Arson, Extortion/Blackmail, burglary, larceny, theft, and motor vehicle theft.

Figure 26

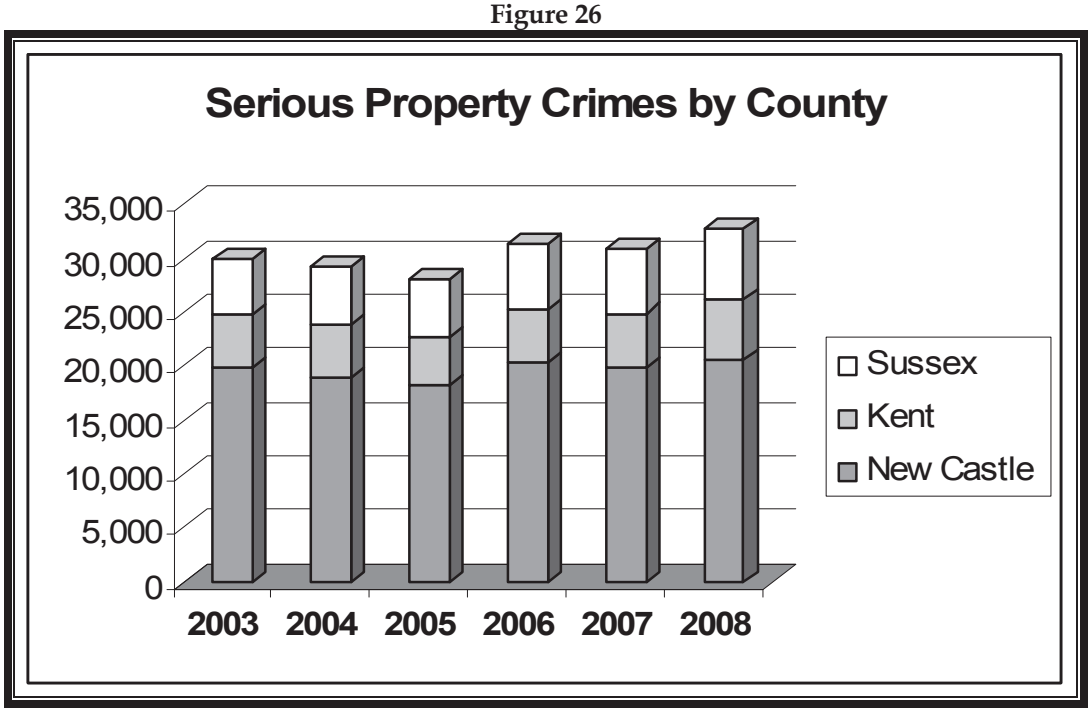


Table 26

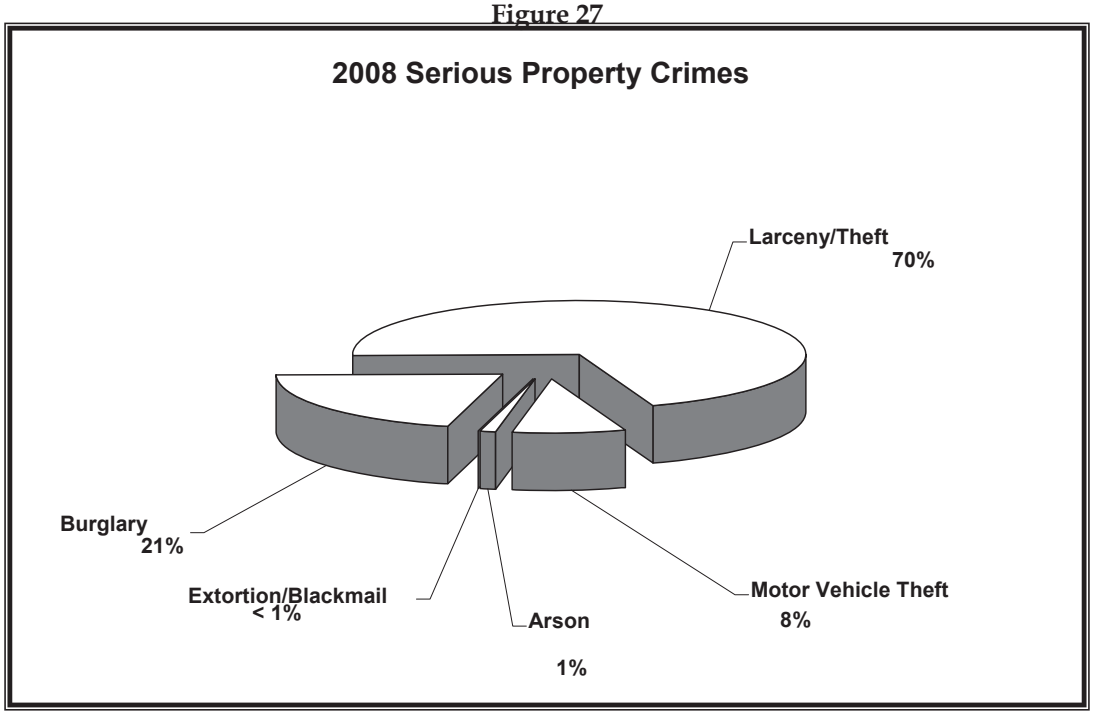
Serious Property Crimes by County						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Statewide	**29,884**	**29,202**	**28,112**	**31,227**	**30,793**	**32,750**
Sussex	5,155	5,376	5,398	6,014	5,918	6,526
Kent	4,985	4,934	4,496	4,808	5,013	5,747
New Castle	19,744	18,892	18,218	20,405	19,862	20,477

Statewide between 2003 and 2008, there was a 9.6 percent increase in Serious Property Crimes. New Castle County had a 3.7 percent increase, Kent County had a 15.3 percent increase, and Sussex County had a 26.6 percent increase. In 2008, New Castle County Serious Property Crimes make up 62.5 percent of the statewide, Kent County 17.5 percent and Sussex County, 19.9 percent.

Table 27

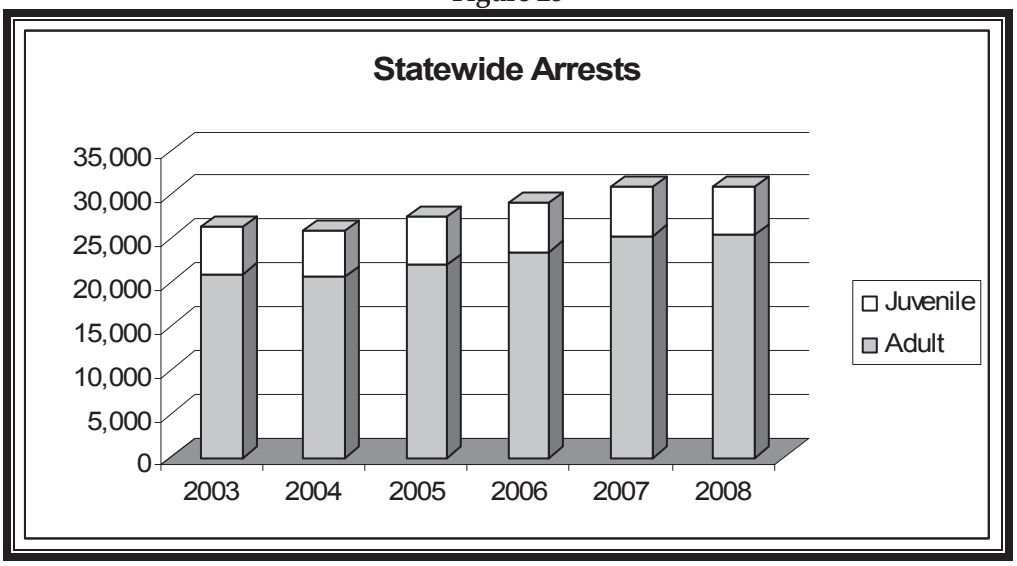
Detail; Serious Property Crimes						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Arson Total	**368**	**376**	**384**	**378**	**312**	**353**
Structure	172	159	168	181	129	167
Mobile	66	85	68	87	59	80
Other	130	132	148	110	124	106
Extortion/Blackmail	**7**	**13**	**18**	**14**	**15**	**21**
Burglary Total	**6,275**	**5,884**	**6,055**	**6,420**	**6,556**	**6,846**
Forcible Entry	3,291	2,918	3,167	3,186	3,401	3,237
Unlawful Entry - No force	2,276	2,318	2,227	2,535	2,472	2,860
Attempted Forcible Entry	708	648	661	699	683	749
Larceny/Theft Total	**20,039**	**20,446**	**19,187**	**21,442**	**21,425**	**22,901**
Pocket Picking	96	36	37	51	54	40
Purse Snatching	51	29	23	30	19	28
Shoplifting	3,519	3,833	3,453	3,674	4,059	4,461
Theft from Building	5,521	5,522	5,811	5,961	5,775	5,957
From coin Operated Machine or Device	119	130	145	124	106	100
Theft from Motor Vehicle	4,038	3,886	3,790	5,072	5,263	5,788
Theft of Motor Vehicle Parts/Accessories	3,421	3,615	2,673	3,025	2,612	2,573
Other	3,274	3,395	3,255	3,505	3,537	3,954
Motor Vehicle Theft Total	**3,195**	**2,483**	**2,468**	**2,973**	**2,485**	**2,629**
Autos	2,366	1,774	1,736	2,186	1,829	1,865
Trucks and Buses	344	269	301	294	226	268
Other Vehicles	485	440	431	493	430	496

Figure 27



Statewide Arrests; Group A Offenses

Figure 28



Statewide arrests for Group A Offenses increased 16.9 percent between 2003 and 2008. Adult arrests increased 21 percent, while Juvenile arrests increased .86 percent.

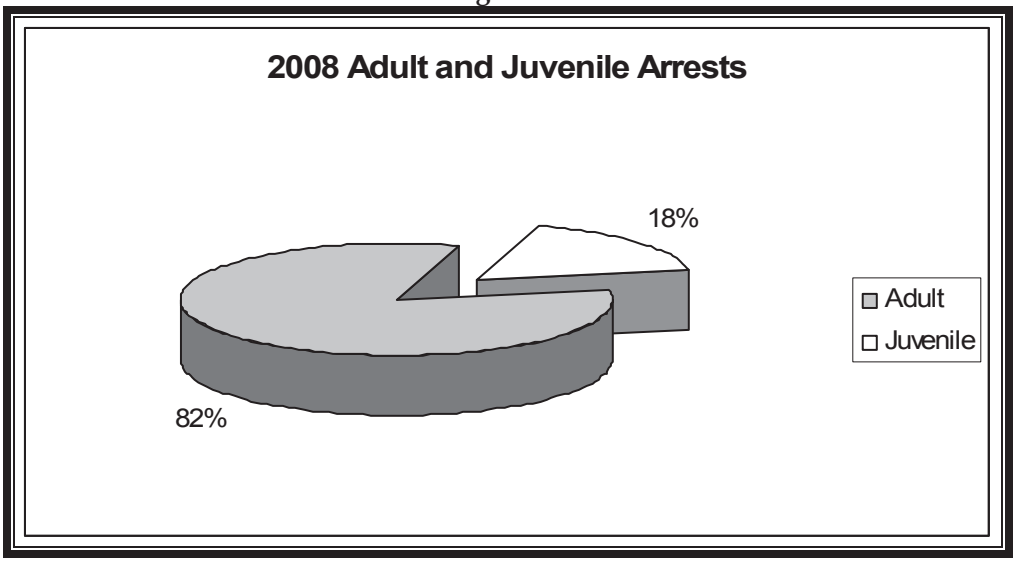
Table 28

Statewide Group A Offense Arrests						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Totals	**26,291**	**25,867**	**27,407**	**28,942**	**30,833**	**30,743**
Adult	20,948	20,578	21,917	23,403	25,253	25,354
Juvenile	5,343	5,289	5,490	5,539	5,580	5,389

Table 29

Percent Change in Statewide Group A Arrests 2004 – 2008						
	03-04	**04-05**	**05-06**	**06-07**	**07-08**	**03 -08**
Total Arrests	**-1.60%**	**5.90%**	**5.60%**	**6.53%**	**-0.29%**	**16.93%**
Adult Arrests	-1.80%	5.60%	6.78%	7.91%	0.40%	21.03%
Juvenile Arrests	-1.00%	3.80%	.89%	0.74%	-3.42%	.86%

Figure 29



Statewide Total Arrests: Group A

Table 30

	2003	2004	2005	2006	2007	2008
Violent Crimes						
Criminal Homicide	21	22	27	25	30	32
Kidnapping/Abduction	285	262	274	307	300	272
Sex Offenses, Forcible	177	159	319*	308	270	294
Robbery	557	436	518	589	696	719
Assault	9,605	9,500	9,756	10,111	10,974	10,606
Weapons Law Violations	394	403	417	481	446	476
Totals	11,039	10,782	11,311	11,821	12,716	12,399
Drug/Narcotic Offenses						
Drug/Narcotic Offenses	5,412	5,274	6,312	6,698	6,873	6,812
Serious Property Crimes						
Arson	62	61	86	92	66	69
Extortion/Blackmail	2	6	7	4	2	8
Burglary	987	1,047	1,008	1,143	1,075	1,110
Larceny/Theft	4,053	4,093	3,970	4,228	4,960	5,373
Motor Vehicle Theft	203	172	175	182	159	178
Totals	5,307	5,379	5,246	5,649	6,262	6,738
Other Property and Social Crimes						
Counterfeiting/Forgery	578	585	509	631	663	602
Fraud	1,952	1,868	2,036	2,070	2,053	1,979
Embezzlement	205	188	247	228	289	272
Stolen Property	536	531	439	494	482	529
Property Destruction/Vandalism	1,030	1,067	1,082	1,187	1,221	1,182
Sex Offenses	47	31	39	23	42	43
Pornography/ Obscene Material	12	20	15	16	30	49
Gambling Offenses	9	16	12	13	4	6
Prostitution	162	126	158	107	191	130
Bribery	2	0	1	5	6	2
Totals	4,533	4,432	4,538	4,774	4,981	4,794
Totals of all Group A Arrests	**26,291**	**25,867**	**27,407**	**28,942**	**30,832**	**30,743**

** In the year 2005, the crimes of Fondling and Unlawful Sexual Contact were moved from a miscellaneous heading to "Sex Offenses". This explains the marked increase in "Forcible Sex Offenses" between the years 2004 and 2005.*

Total Statewide Arrest Detail

Table 31

Statewide Arrests - Group A						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Violent Crimes						
Criminal Homicide	21	22	27	25	30	32
Murder and Nonnegligent Manslaughter	16	22	23	24	27	32
Negligent Manslaughter	5	0	4	1	3	0
Kidnapping/Abduction	285	262	274	307	300	272
Sex Offenses, Forcible	177	136	319*	308	270	294
Forcible Rape	158	137	173	161	140	157
Forcible Fondling	14	15	134	137	118	128
Rape by Force - Attempted	5	6	9	8	11	8
Forcible Fondling- Attempted	0	1	3	2	1	1
Robbery	557	436	518	589	696	719
Firearm	215	135	179	198	246	303
Knife or Cutting Instrument	47	35	45	37	43	39
Other Dangerous Weapon	41	36	42	54	66	55
Strong-Arm (Hands, Fists, Feet)	254	230	252	300	341	322
Assault	9,605	9,500	9,756	10,111	10,974	10,606
Aggravated	2,017	1,853	1,914	1,950	2,162	2,072
Firearm	230	193	200	221	263	286
Knife or Cutting Instrument	512	481	508	502	520	547
Other Dangerous Weapons	963	987	995	974	1104	961
Hands, Fists, Feet, Aggravated .Injury	312	192	211	253	275	278
Other Assaults	7,588	7,647	7,842	8,161	8,812	8,534
Simple/Harassment	6,082	6,134	6,210	6,392	6,938	6,706
Intimidation	1,506	1,513	1,632	1,769	1,874	1,828
Weapons Law Violations	394	403	417	481	446	476
Drug and Narcotic Offenses						
Drug/Narcotic Offenses	5,412	5,274	6,312	6,698	6,873	6,812
Drug/Narcotic	4,753	4,494	5,486	5,678	5,944	5,879
Drug Equipment	659	780	826	1020	929	933
Serious Property Crimes						
Arson	62	61	86	92	66	69
Structure	35	26	49	42	27	34
Mobile	10	13	11	19	16	12
Other	17	22	26	31	23	23
Extortion/Blackmail	2	6	7	4	2	8
Burglary	987	1,047	1,008	1,143	1,075	1,110
Forcible Entry	563	525	505	606	566	526
Unlawful Entry - No force	379	468	459	481	445	514
Attempted Forcible Entry	45	54	44	56	64	70

Total Statewide Arrest Detail continued						
Larceny/Theft	4,053	4,093	3,970	4,228	4,960	5,372
Pocket Picking	7	3	4	3	3	5
Purse Snatching	4	7	2	5	1	0
Shoplifting	2,666	2,800	2,595	2,733	3,395	3,731
Theft from Building	838	723	838	892	963	949
From coin Operated Machine or Device	12	8	11	7	7	13
Theft from Motor Vehicle	178	187	224	232	201	218
Theft of Motor Vehicle Parts/Accessories	113	111	69	70	81	79
Other	235	254	227	286	309	377
Motor Vehicle Theft	203	172	175	182	159	178
Autos	147	122	125	143	104	120
Trucks and Buses	25	19	25	22	20	31
Other Vehicles	31	31	25	17	35	27
Other Property and Social Crimes						
Counterfeiting/Forgery	578	585	509	631	663	602
Fraud	1,952	1,868	2,036	2,070	2,053	1979
False Pretenses/Swindle/Con Games	593	669	740	777	775	745
Credit Card/Automatic Teller Machine	26	30	40	52	63	47
Impersonation	1,333	1,169	1,256	1,241	1,215	1187
Welfare Fraud	0	0	0	0	0	0
Wire Fraud	0	0	0	0	0	0
Embezzlement	205	188	247	228	289	272
Stolen Property	536	753	439	494	482	529
Property Destruction/Vandalism	1,030	1,067	1,082	1,187	1,221	1,182
Sex Offenses	47	31	39	23	42	43
Incest	0	0	0	2	1	0
Statutory Rape	47	31	39	21	41	43
Pornography/ Obscene Material	12	20	15	16	30	49
Gambling Offenses	9	16	12	13	4	6
Prostitution	162	126	158	107	191	130
Prostitution	64	69	72	44	120	84
Promoting Prostitution	98	57	86	63	71	46
Bribery	2	0	1	5	7	2
Total Arrests for Group A Offenses	**26,291**	**25,867**	**27,407**	**28,942**	**30,833**	**30,743**

Statewide Adult Arrests: Group A Offenses

Adult; A person 18 years of age or older.

Table 32

Statewide Adult Arrests - NIBRS Group A						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Violent Crimes						
Criminal Homicide	21	19	22	20	27	28
Kidnapping/Abduction	256	245	253	285	273	256
Sex Offenses, Forcible	130	119	230	224	194	227
Robbery	388	316	343	378	472	522
Assault	7,664	7,458	7,651	8,065	8,972	8,660
Weapons Law Violations	249	248	272	317	309	323
Totals	**8,708**	**8,405**	**8,771**	**9,289**	**10,247**	**10,016**
Drug and Narcotic Offenses						
Drug/Narcotic Offenses	**4,586**	**4,514**	**5,432**	**5,825**	**6,031**	**6,064**
Serious Property Crimes						
Arson	30	28	27	27	32	32
Extortion/Blackmail	2	4	5	4	2	8
Burglary	667	690	694	787	757	804
Larceny/Theft	2,947	3,022	2,942	3,249	3,771	4,130
Motor Vehicle Theft	104	92	115	132	110	141
Totals	**3,750**	**3,836**	**3,783**	**4,199**	**4,672**	**5,115**
Other Property and Social Crimes						
Counterfeiting/Forgery	568	567	493	622	644	594
Fraud	1,825	1,761	1,938	1,956	1,936	1,849
Embezzlement	185	175	219	207	269	259
Stolen Property	367	411	332	364	364	380
Property Destruction/Vandalism	734	725	734	784	822	853
Sex Offenses	42	28	32	21	40	40
Pornography/ Obscene Material	11	19	15	13	28	49
Gambling Offenses	8	12	9	11	3	5
Prostitution	162	125	158	107	191	128
Bribery	2	0	1	5	6	2
Totals	**3,904**	**3,823**	**3,931**	**4,090**	**4,303**	**4,159**
Totals of all Adult Arrests	**20,948**	**20,578**	**21,917**	**23,403**	**25,253**	**25,354**

Statewide Adult Arrest Detail

Table 33

Statewide Adult Arrests - NIBRS Group A						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Violent Crimes						
Criminal Homicide	**21**	**19**	**22**	**20**	**27**	**28**
Murder and Nonnegligent Manslaughter	16	19	18	20	24	28
Negligent Manslaughter	5	0	4	0	3	0
Kidnapping/Abduction	**256**	**245**	**253**	**285**	**273**	**256**
Sex Offenses, Forcible	**130**	**119**	**230**	**224**	**194**	**227**
Forcible Rape	112	103	130	120	99	122
Forcible Fondling	14	11	90	95	87	103
Rape by Force - Attempted	4	5	7	7	7	2
Forcible Fondling- Attempted	0	0	3	2	1	0
Robbery	**388**	**316**	**343**	**378**	**472**	**522**
Firearm	159	113	129	125	171	250
Knife or Cutting Instrument	37	28	30	31	30	36
Other Dangerous Weapon	26	24	31	37	42	44
Strong-Arm (Hands, Fists, Feet)	166	151	153	185	229	192
Assault	**7,664**	**7,458**	**7,651**	**8,065**	**8,972**	**8,660**
Aggravated	**1,621**	**1,480**	**1,559**	**1,585**	**1,842**	**1,723**
Firearm	197	154	173	187	226	245
Knife or Cutting Instrument	394	367	398	384	428	420
Other Dangerous Weapons	776	803	817	827	958	837
Hands, Fists, Feet, Agg.Injury	254	156	171	187	230	221
Other Assaults	**6,043**	**5,978**	**6,092**	**6,480**	**7,130**	**6,937**
Simple/Harassment	4,806	4,786	4,772	5,035	5,545	5,399
Intimidation	1,237	1,192	1,320	1,445	1,585	1,538
Weapons Law Violations	**249**	**248**	**272**	**317**	**309**	**323**
Drug/Narcotic Offenses						
Drug/Narcotic Offenses	**4,586**	**4,514**	**5,432**	**5,825**	**6,031**	**6,064**
Drug/Narcotic	3,975	3,803	4,677	4,853	5,156	5,184
Drug Equipment	611	711	755	972	875	880
Serious Property Crimes						
Arson	**30**	**28**	**27**	**27**	**21**	**32**
Structure	10	10	16	10	14	12
Mobile	7	8	8	9	13	11
Other	13	10	3	8	5	9
Extortion/Blackmail	**2**	**4**	**5**	**4**	**2**	**8**
Burglary	**667**	**690**	**694**	**787**	**757**	**804**
Forcible Entry	400	336	358	398	395	390
Unlawful Entry - No force	237	314	308	349	326	365
Attempted Forcible Entry	30	40	28	40	36	49
Larceny/Theft	**2,947**	**3,022**	**2,942**	**3,249**	**3,771**	**4,129**
Pocket Picking	6	1	3	2	2	4

Adult Arrests continued

Purse Snatching	2	6	1	4	0	0
Shoplifting	1,874	2,030	1,904	2,060	2,526	2,800
Theft from Building	656	583	644	730	772	759
From coin Operated Machine or Device	8	5	9	7	7	11
Theft from Motor Vehicle	124	132	170	172	160	177
Theft of Motor Vehicle Parts/Accessories	100	78	51	47	71	69
Other	177	187	160	227	233	309
Motor Vehicle Theft	**104**	**92**	**115**	**132**	**110**	**141**
Autos	81	69	79	103	72	93
Trucks and Buses	17	11	20	18	17	28
Other Vehicles	6	12	16	11	21	20
Other Property and Social Crimes						
Counterfeiting/Forgery	**568**	**567**	**493**	**622**	**644**	**594**
Fraud	**1,825**	**1,761**	**1,938**	**1,956**	**1,936**	**1,849**
False Pretenses/Swindle/Con Games	568	642	707	741	751	715
Credit Card/Automatic Teller Machine	21	26	36	44	58	44
Impersonation	1,236	1,093	1,195	1,171	1,127	1,090
Welfare Fraud	0	0	0	0	0	0
Wire Fraud	0	0	0	0	0	0
Embezzlement	**185**	**175**	**219**	**207**	**269**	**259**
Stolen Property	**367**	**411**	**332**	**364**	**364**	**380**
Property Destruction/Vandalism	**734**	**725**	**734**	**784**	**822**	**853**
Sex Offenses	**42**	**28**	**32**	**21**	**40**	**40**
Incest	0	0	0	2	1	0
Statutory Rape	42	28	32	19	39	40
Pornography/ Obscene Material	**11**	**19**	**15**	**13**	**28**	**49**
Gambling Offenses	**8**	**12**	**9**	**11**	**3**	**5**
Prostitution	**162**	**125**	**158**	**107**	**191**	**128**
Prostitution	64	68	72	44	120	83
Promoting Prostitution	98	57	86	63	71	45
Bribery	**2**	**0**	**1**	**5**	**6**	**2**
Total Adult Arrests for Group A Offenses	**20,948**	**20,578**	**21,917**	**23,403**	**25,253**	**25,354**

Figure 30

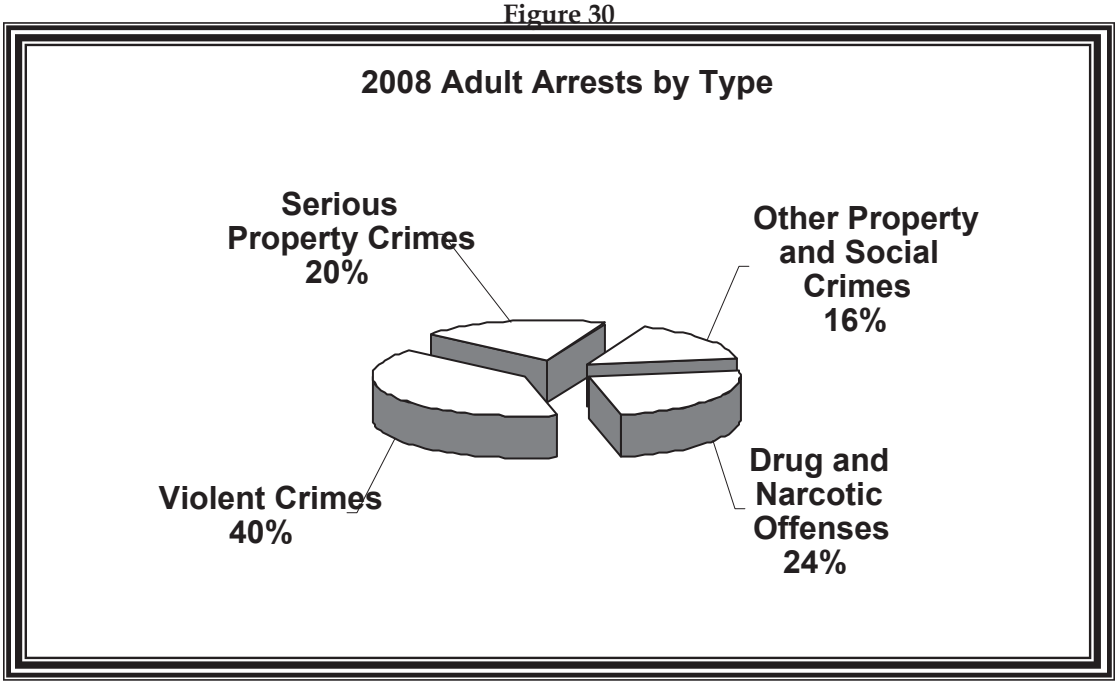


Table 34

Adult Arrest Rates for Group A Offenses Received per 1,000 Population						
Adult Population	618,769	629,448	640,829	651,122	660,624	669,955
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Violent Crimes	14.1	13.4	13.7	14.3	15.5	14.9
Drug and Narcotic Offenses	7.4	7.2	8.5	8.9	9.1	9.1
Serious Property Crimes	6.1	6.1	5.9	6.5	7.1	7.6
Other Property/Social Crimes	6.3	6.1	6.1	6.3	6.5	6.2
Total Arrest Rates	**33.9**	**32.7**	**34.2**	**35.9**	**38.2**	**37.8**

Figure 31

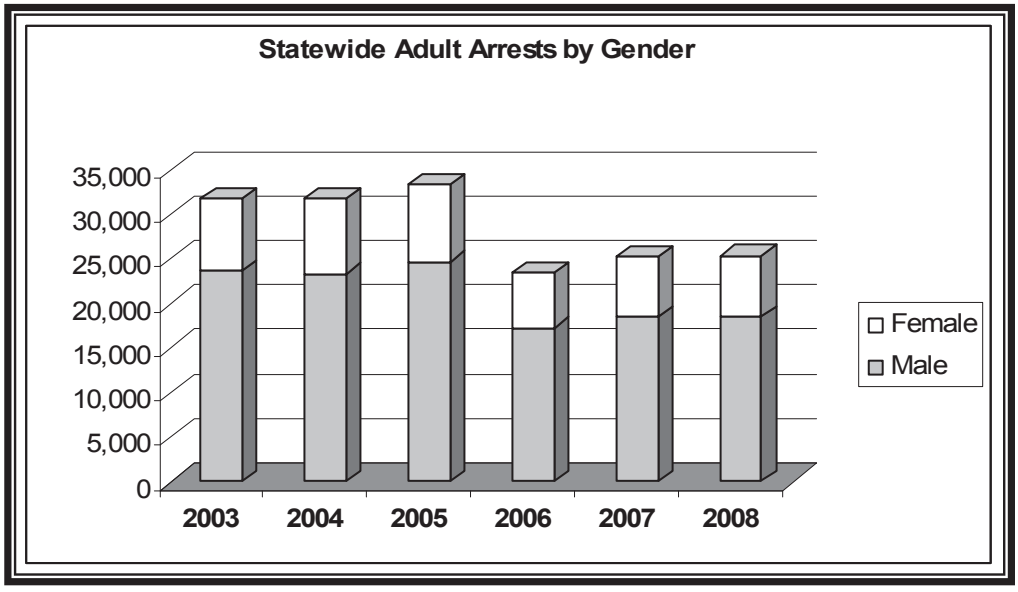


Figure 32

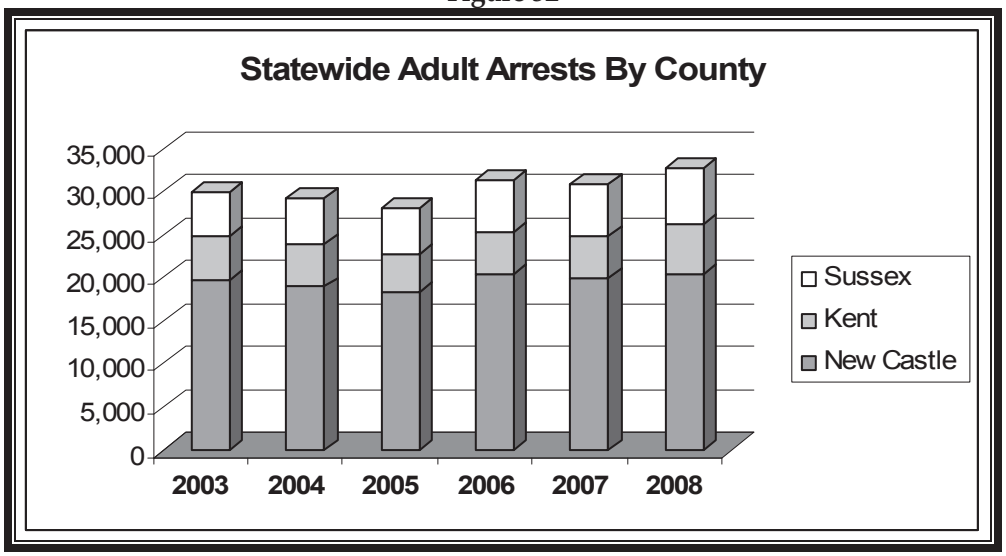


Figure 33

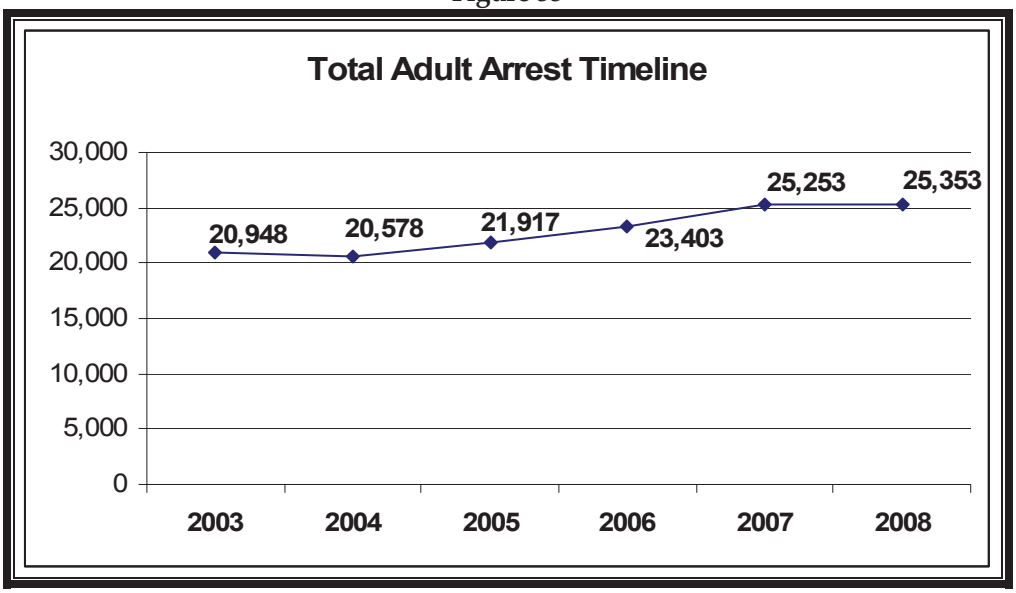
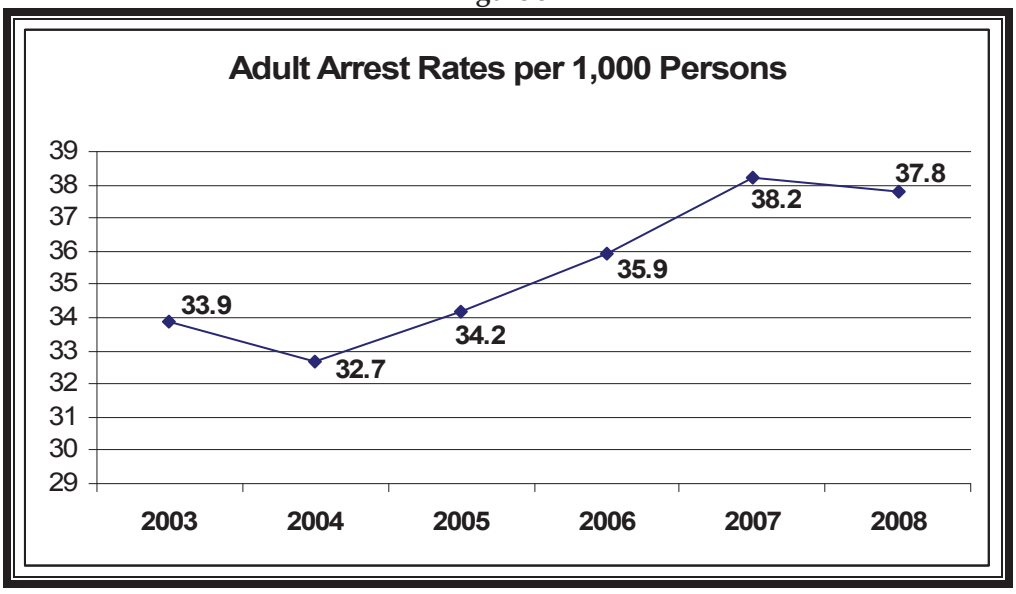


Figure 34



Adult Arrests by Gender

Table 35

	Sex	2003	2004	2005	2006	2007	2008
Violent Crimes							
Homicide	M	21	14	17	19	25	28
	F	0	5	4	1	2	0
Kidnapping	M	238	228	241	260	255	235
	F	17	17	12	25	18	21
Forcible Sex Offenses	M	129	119	227	217	188	219
	F	1	0	3	7	6	8
Robbery	M	350	283	308	336	416	433
	F	40	33	35	42	56	89
Aggravated Assault	M	1,158	1,073	1,084	1,141	1,318	1,229
	F	460	407	476	424	524	494
Other Assault	M	4,404	4,379	4,485	4,734	5,232	5,024
	F	1,630	1,596	1,607	1,746	1,898	1,913
Weapon Law Violations	M	231	232	253	297	293	299
	F	16	16	19	20	16	24
Drug/Narcotic Offenses	M	3,365	3,182	3,916	4,018	4,257	4,337
	F	596	621	761	835	899	847
Drug Equipment Violations	M	437	485	550	669	593	587
	F	168	226	205	303	282	293
Serious Property Crimes							
Arson	M	20	22	21	24	27	27
	F	10	6	6	3	5	5
Extortion/Blackmail	M	1	4	5	3	1	5
	F	1	0	0	1	1	3
Burglary	M	581	596	614	692	679	698
	F	88	94	80	95	78	106
Larceny	M	1,826	1,813	1,749	1,915	2,207	2,364
	F	1,118	1,209	1,193	1,334	1,564	1,766
Motor Vehicle Theft	M	86	79	94	107	89	122
	F	19	13	21	25	21	19
Other Property and Social Crimes							
Counterfeiting/Forgery	M	335	333	290	360	376	350
	F	234	234	203	262	268	244
Fraud	M	1,278	1,245	1,365	1,370	1,311	1,284
	F	551	516	573	586	625	565
Embezzlement	M	99	87	100	104	127	139
	F	85	88	119	103	142	120
Stolen Property	M	304	342	278	300	294	312
	F	64	69	54	64	70	68
Property Destruction	M	568	550	524	587	619	645
	F	165	175	210	197	203	208
Sex Offenses, Nonforcible	M	40	28	32	20	38	38
	F	2	0	0	1	2	2
Pornography	M	11	17	14	13	28	49
	F	0	2	1	0	0	0
Gambling Offenses	M	8	12	8	11	3	5
	F	0	0	1	0	0	0
Prostitution Offenses	M	99	59	85	65	69	49
	F	63	66	73	42	122	79
Bribery	M	2	0	1	5	5	1
	F	0	0	0	0	1	1
Grand Totals	M	**23,742**	**23,376**	**24,685**	**17,287**	**18,450**	**18,479**
	F	**8,113**	**8,379**	**8,726**	**6,116**	**6,803**	**6,875**

Statewide Juvenile Arrests: Group A

Juvenile; A person under 18 years of age.

Table 36

Statewide Juvenile Arrests - NIBRS Group A						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Violent Crimes						
Criminal Homicide	0	3	5	5	3	4
Kidnapping/Abduction	29	17	21	22	27	16
Sex Offenses, Forcible	47	40	89	84	76	67
Robbery	169	120	175	211	224	197
Assault	1,941	2042	2,105	2,046	2,002	1,946
Weapons Law Violations	145	155	145	164	137	153
Totals	**2,331**	**2,377**	**2,540**	**2,532**	**2,469**	**2,383**
Drug and Narcotic Offenses						
Drug/Narcotic Offenses	**826**	**760**	**880**	**873**	**842**	**748**
Serious Property Crimes						
Arson	32	33	59	65	34	37
Extortion/Blackmail	0	2	2	0	0	0
Burglary	320	357	314	356	318	306
Larceny/Theft	1,106	1,071	1,028	979	1,189	1,243
Motor Vehicle Theft	99	80	60	50	49	37
Totals	**1,557**	**1,543**	**1,463**	**1,450**	**1,590**	**1,623**
Other Property and Social Crimes						
Counterfeiting/Forgery	10	18	16	9	19	8
Fraud	127	107	98	114	117	130
Embezzlement	20	13	28	21	20	13
Stolen Property	169	120	107	130	118	149
Property Destruction/Vandalism	296	342	348	403	399	329
Sex Offenses	5	3	7	2	2	3
Pornography/ Obscene Material	1	1	0	3	2	0
Gambling Offenses	1	4	3	2	1	1
Prostitution	0	1	0	0	0	2
Bribery	0	0	0	0	1	0
Totals	**629**	**609**	**607**	**684**	**679**	**635**
Totals of all Juvenile Arrests	**5,343**	**5,289**	**5,490**	**5,539**	**5,580**	**5,389**

Juvenile Arrest Detail

Table 37

Statewide Juvenile Arrests - NIBRS Group A						
	2003	2004	2005	2006	2007	2008
Violent Crimes						
Criminal Homicide	0	3	5	5	3	4
Murder and Nonnegligent Manslaughter	0	3	5	4	3	4
Negligent Manslaughter	0	0	0	1	0	0
Kidnapping/Abduction	29	17	21	22	27	16
Sex Offenses, Forcible	47	17	89	84	76	67
Forcible Rape	46	34	43	41	41	35
Forcible Fondling	0	4	44	42	31	25
Rape by Force - Attempted	1	1	2	1	4	6
Forcible Fondling- Attempted	0	1	0	0	0	1
Robbery	169	120	175	211	224	197
Firearm	56	22	50	73	75	53
Knife or Cutting Instrument	10	7	15	6	13	3
Other Dangerous Weapon	15	12	11	17	24	11
Strong-Arm (Hands, Fists, Feet)	88	79	99	115	112	30
Assault	1,941	2,042	2,105	2,046	2,002	1,946
Aggravated	396	373	355	365	320	349
Firearm	33	39	27	34	37	41
Knife or Cutting Instrument	118	114	110	118	92	127
Other Dangerous Weapons	187	184	178	147	146	124
Hands, Fists, Feet, Aggravated .Injury	58	36	40	66	45	57
Other Assaults	1,545	1,669	1,750	1,681	1,682	1,597
Simple/Harassment	1,276	1,348	1,438	1,357	1,393	1,307
Intimidation	269	321	312	324	289	290
Weapons Law Violations	145	155	145	164	137	153
Drug and Narcotic Offenses						
Drug/Narcotic Offenses	826	760	880	873	842	748
Drug/Narcotic	778	691	809	825	788	695
Drug Equipment	48	69	71	48	54	53
Serious Property Crimes						
Arson	32	33	59	65	34	37
Structure	25	16	33	32	13	22
Mobile	3	5	3	10	3	1
Other	4	12	23	23	18	14
Extortion/Blackmail	0	2	2	0	0	0
Burglary	320	357	314	356	318	306
Forcible Entry	163	189	147	208	171	136
Unlawful Entry - No force	142	154	151	132	119	149
Attempted Forcible Entry	15	14	16	16	28	21
Larceny/Theft	1,106	1,071	1,028	979	1,189	1,243
Pocket Picking	1	2	1	1	1	1
Purse Snatching	2	1	1	1	1	0

Juvenile Arrest Detail Continued

Shoplifting	792	770	691	673	869	931
Theft from Building	182	140	194	162	191	190
From coin Operated Machine or Device	4	3	2	0	0	2
Theft from Motor Vehicle	54	55	54	60	41	41
Theft of Motor Vehicle Parts/Accessories	13	33	18	23	10	10
Other	58	67	67	59	76	68
Motor Vehicle Theft	99	80	60	50	49	37
Autos	66	53	46	40	32	27
Trucks and Buses	8	8	5	4	3	3
Other Vehicles	25	19	9	6	14	7
Counterfeiting/Forgery	10	18	16	9	19	8
Fraud	127	107	98	114	117	130
False Pretenses/Swindle/Con Games	25	27	33	36	24	30
Credit Card/Automatic Teller Machine	5	4	4	8	5	3
Impersonation	97	76	61	70	88	97
Welfare Fraud	0	0	0	0	0	0
Wire Fraud	0	0	0	0	0	0
Embezzlement	20	13	28	21	20	13
Stolen Property	169	120	107	130	118	149
Property Destruction/Vandalism	296	342	348	403	399	329
Sex Offenses	5	3	7	2	2	3
Incest	0	0	0	0	0	0
Statutory Rape	5	3	7	2	2	3
Pornography/ Obscene Material	1	1	0	3	2	0
Gambling Offenses	1	4	3	2	1	1
Prostitution	0	1	0	0	0	2
Prostitution	0	1	0	0	0	1
Promoting Prostitution	0	0	0	0	0	1
Bribery	0	0	0	0	1	0
Total Arrests for Group A Offenses	**5,343**	**5,289**	**5,490**	**5,539**	**5,580**	**5,389**

Figure 35

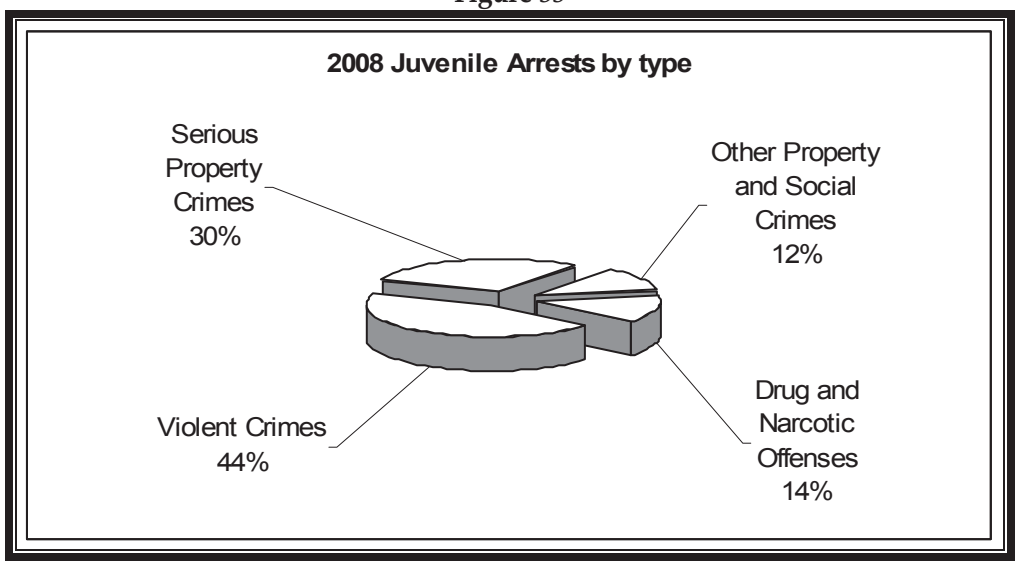


Table 38

Juvenile Arrest Rates for Group A Offenses Received per 1,000 Population						
Juvenile Population	199,062	200,634	202,711	203,855	204,814	205,346
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Violent Crimes	11.7	11.8	12.5	12.5	12.1	11.6
Drug and Narcotic Offenses	4.1	3.8	4.3	4.3	4.1	3.6
Serious Property Crimes	7.8	7.7	7.2	7.1	7.8	7.9
Other Property/Social Crimes	3.2	3	3	3.4	3.3	3.1
Total Arrest Rates	**26.8**	**26.4**	**27.1**	**27.2**	**27.2**	**26.2**

Figure 36

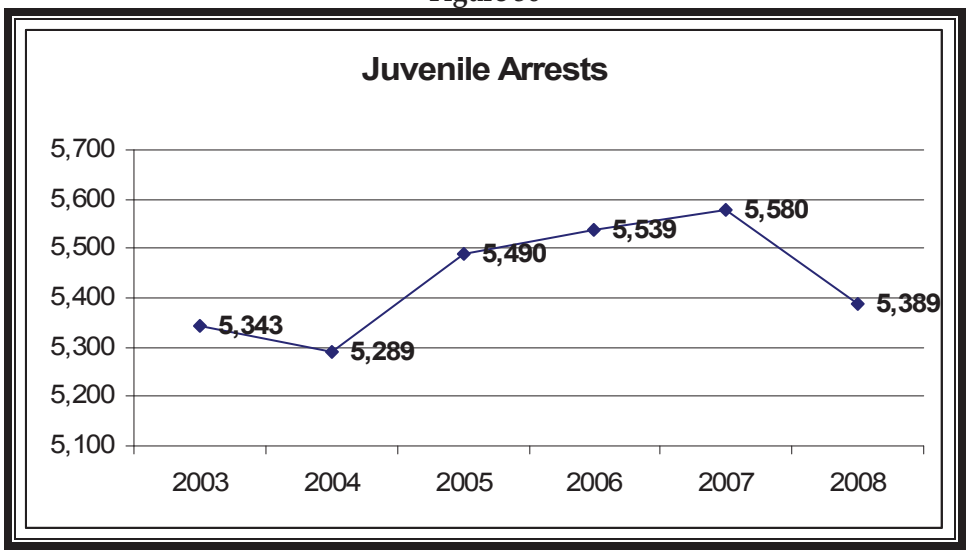


Figure 37

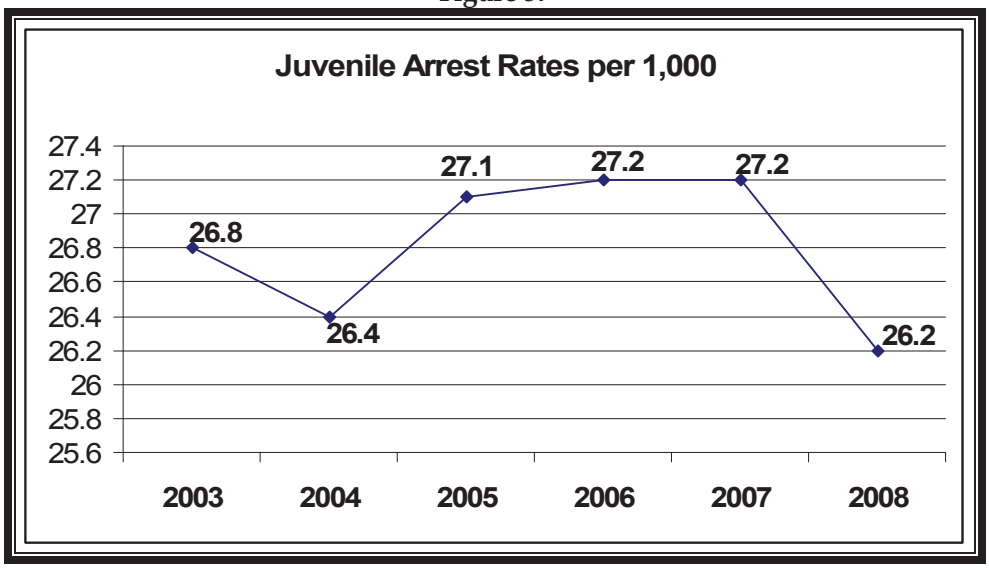


Table 39

Juvenile Arrest Percent Change					
% Change	% Change	% Change	% Change	% Change	% Change
2003 - 2008	**2003 - 2004**	**2004 - 2005**	**2005-2006**	**2006-2007**	**2007-2008**
0.86%	**-1.01%**	**3.80%**	**0.89%**	**0.74%**	**-3.42%**

Figure 38

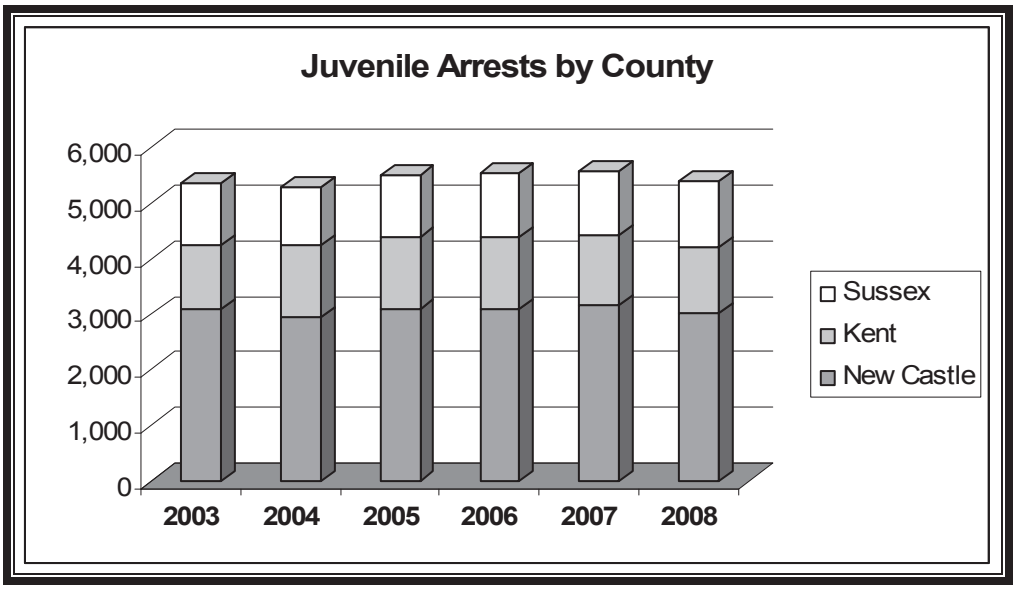


Table 40

Juvenile arrests by County						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Statewide	**5,347**	**5,289**	**5,490**	**5,539**	**5,580**	**5,389**
Sussex	1,116	1,057	1,110	1,166	1,152	1,174
Kent	1,135	1,290	1,299	1,284	1,252	1,208
New Castle	3,096	2,942	3,081	3,089	3,176	3,007

Figure 39

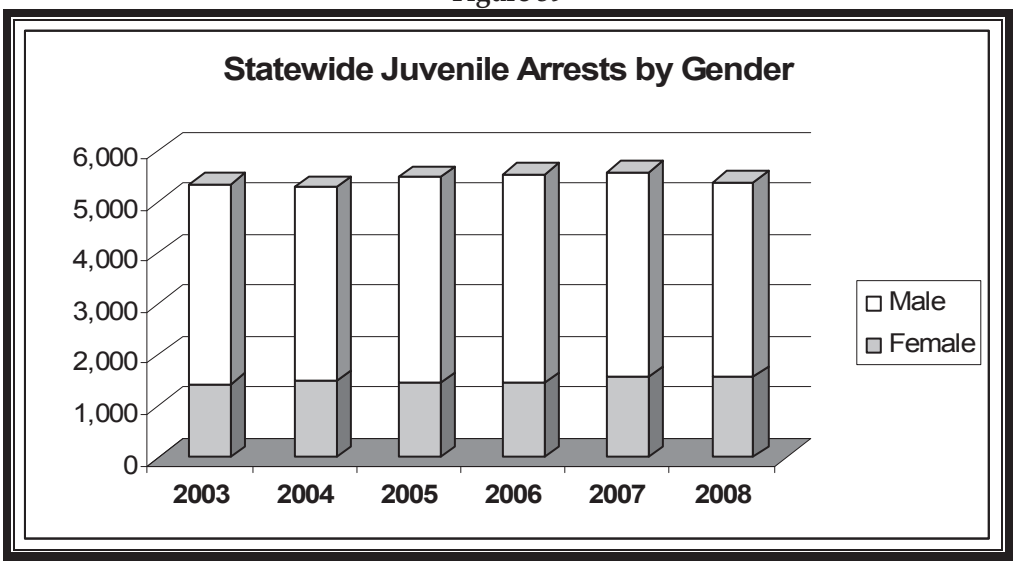


Figure 40

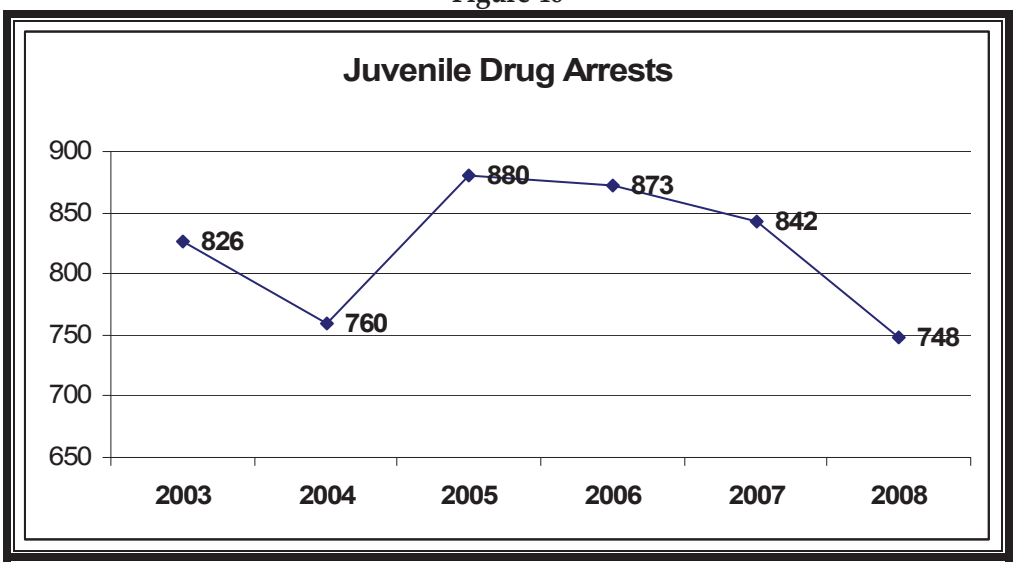
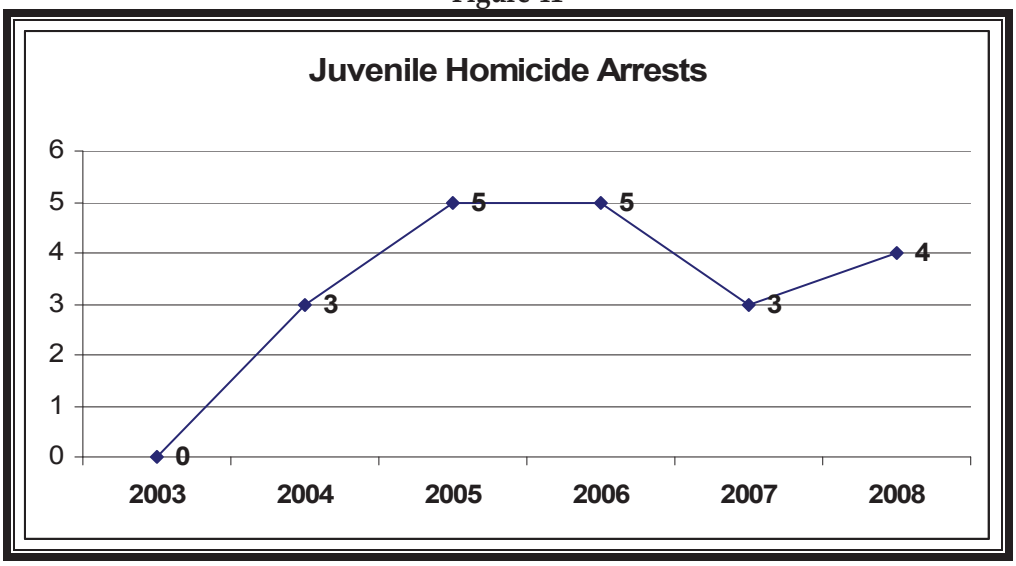


Table 41

Juvenile Drug Arrest Percent Change			
% Change	% Change	% Change	% Change
2005 - 2006	2006 - 2007	2007 - 2008	2003 - 2008
-0.8%	**-3.6%**	**-11.2%**	**-9.4%**

Figure 41



Juvenile Arrests by Gender

Table 42	Sex	2003	2004	2005	2006	2007	2008
Violent Crimes							
Homicide	M	0	3	3	5	3	4
	F	0	0	2	0	0	0
Kidnapping	M	26	14	17	19	22	16
	F	3	3	4	3	5	0
Forcible Sex Offenses	M	46	39	86	78	74	65
	F	2	1	3	6	2	2
Robbery	M	151	110	165	199	211	183
	F	18	10	10	12	13	14
Aggravated Assault	M	310	273	252	280	244	256
	F	87	100	103	85	76	93
Other Assault	M	998	1,062	1,182	1,086	1097	1073
	F	549	607	568	595	585	524
Weapon Law Violations	M	117	126	121	151	118	139
	F	27	29	24	13	19	14
Drug and Narcotic Offenses							
Drug/Narcotic Offenses	M	693	604	701	713	670	588
	F	86	87	108	112	118	107
Drug Equipment Violations	M	38	56	61	43	41	42
	F	10	13	10	5	13	11
Serious Property Crimes							
Arson	M	29	31	53	62	31	29
	F	3	2	6	3	3	8
Extortion/Blackmail	M	0	2	2	0	0	0
	F	0	0	0	0	0	0
Burglary	M	294	314	291	336	291	289
	F	27	43	23	20	27	17
Larceny	M	633	591	571	512	593	590
	F	472	480	457	467	596	653
Motor Vehicle Theft	M	82	71	53	48	46	32
	F	17	9	7	2	3	5
Other Property and Social Crimes							
Counterfeiting/Forgery	M	8	9	10	4	12	6
	F	2	9	6	5	7	2
Fraud	M	97	78	72	83	85	91
	F	31	29	26	31	32	39
Embezzlement	M	9	10	10	8	14	6
	F	11	3	18	13	6	7
Stolen Property	M	143	108	93	107	106	126
	F	28	12	14	23	12	23
Property Destruction	M	231	283	291	343	335	284
	F	62	59	57	60	64	45
Nonforcible Sex Offenses	M	5	3	7	2	2	3
	F	0	0	0	0	0	0
Pornography	M	1	0	0	2	2	0
	F	0	1	0	0	0	0
Gambling Offenses	M	1	4	3	1	1	1
	F	0	0	0	1	0	0
Prostitution Offenses	M	0	0	0	0	0	1
	F	0	1	0	0	0	1
Bribery	M	0	0	0	0	1	0
	F	0	0	0	0	0	0
Group A Violations	M	3,912	3,791	4,044	4,082	3,999	3,824
	F	1,435	1,498	1,446	1,456	1,581	1,565
Totals		**5,347**	**5,289**	**5,490**	**5,538**	**5,580**	**5,389**

Adult and Juvenile Arrests by Race and Ethnic Origin: Group A

Table 43

2008 Arrests by Race and Ethnic Origin									
		Race					Ethnic Origin		
		White	Black	Indian	Asian	Unknown	Hispanic	Non Hispanic	Unknown
Adult	M	9,862	8,553	9	40	15	1,025	17,402	52
	F	3,822	3,016	5	21	11	246	6,593	36
Juvenile	M	1,689	2,116	1	12	6	237	3,565	22
	F	707	840	0	11	7	75	1,483	7
Totals	M	11,551	10,669	10	52	21	1,262	20,967	74
	F	4,529	3,856	5	32	18	321	8,076	43

Figure 42

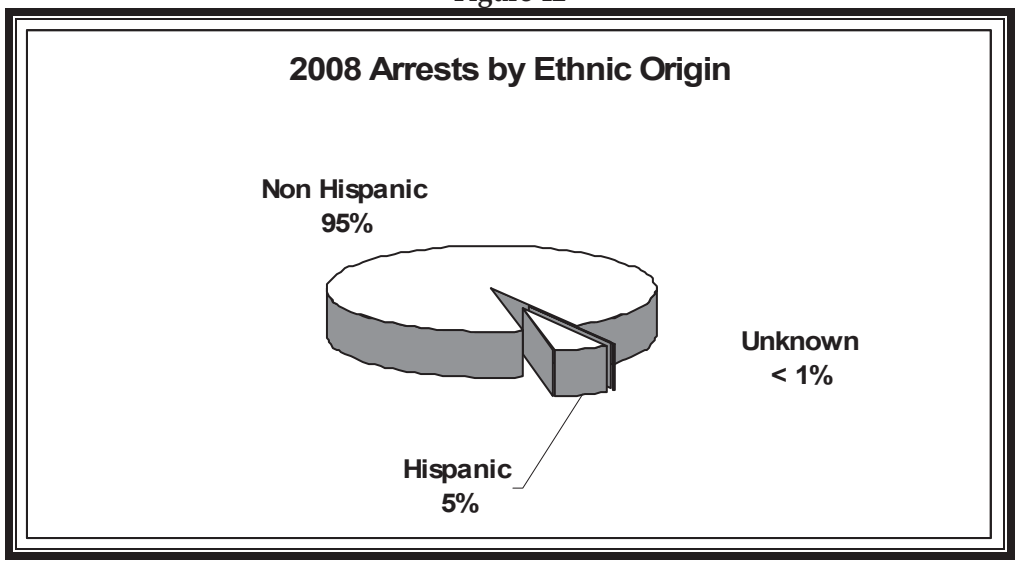


Figure 43

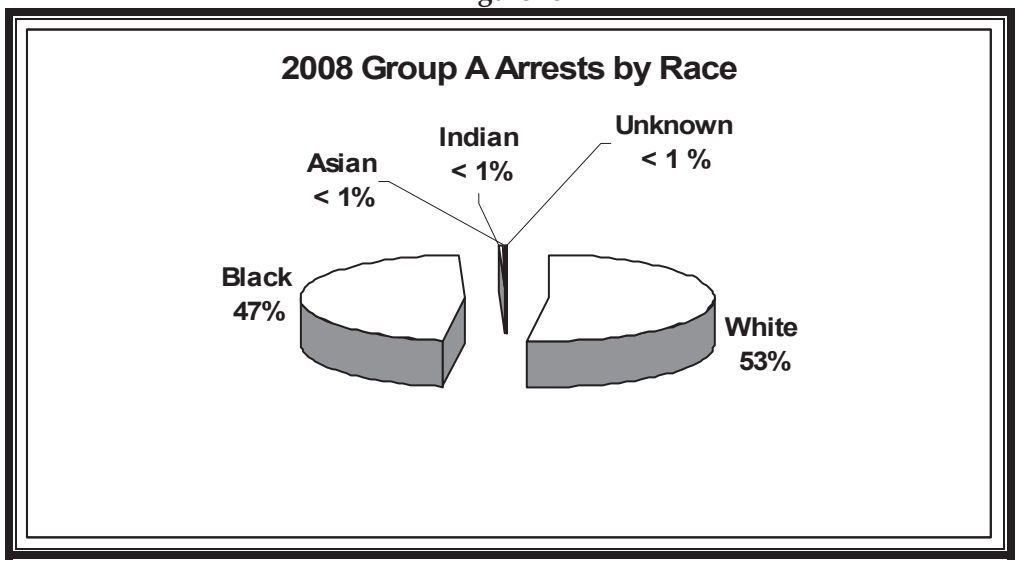


Table 44

2008 Arrests by Sex/Age				
	Sex	**Adult**	**Juvenile**	**Total**
Violent Crimes				
Homicide	M	28	4	32
	F	0	0	0
Kidnapping	M	235	16	251
	F	21	0	21
Forcible Sex Offenses	M	219	65	284
	F	8	2	10
Robbery	M	433	183	616
	F	89	14	103
Aggravated Assault	M	1,229	256	1,485
	F	494	93	587
Other Assault	M	5,024	1,073	6,097
	F	1,913	524	2,437
Weapon Law Violations	M	299	139	438
	F	24	14	38
Drug/Narcotic Offenses				
Drug/Narcotic Offenses	M	4,337	588	4,925
	F	847	107	954
Drug Equipment Violations	M	587	42	629
	F	293	11	304
Serious Property Crimes				
Arson	M	27	29	56
	F	5	8	13
Extortion/Blackmail	M	5	0	5
	F	3	0	3
Burglary	M	698	289	987
	F	106	17	123
Larceny	M	2,364	590	2,954
	F	1,766	653	2,419
Motor Vehicle Theft	M	122	32	154
	F	19	5	24
Other Property and Social Crimes				
Counterfeiting/Forgery	M	350	6	356
	F	244	2	246
Fraud	M	1,284	91	1,375
	F	565	39	604
Embezzlement	M	139	6	145
	F	120	7	127
Stolen Property	M	312	126	438
	F	68	23	91
Property Destruction	M	645	284	929
	F	208	45	253
Nonforcible Sex Offenses	M	38	3	41
	F	2	0	2
Pornography	M	49	0	49
	F	0	0	0
Gambling Offenses	M	5	1	6
	F	0	0	0
Prostitution Offenses	M	49	1	50
	F	79	1	80
Bribery	M	1	0	1
	F	1	0	1
Group A Violations	M	**18,479**	**3,824**	**22,303**
	F	**6,875**	**1,565**	**8,440**

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Clearance Rates

Clearance rates in crime analysis is the number or percentage of offenses received that are solved by the police. An offense is 'cleared by arrest' or solved for crime reporting purposes when at least one person is arrested, charged with the commission of the offenses and turned over to the court for prosecution. An offense is also counted as cleared by arrest if any of the following "exceptional" conditions pertain: suicide of the offender; double murder; deathbed confession; offender killed by police or citizen; confession by offender already in custody or serving a sentence; an offender prosecuted in another jurisdiction for a different offense and that jurisdiction does not release offender to first jurisdiction; extradition denied; victim refuses to cooperate in prosecution; warrant is outstanding for felon but before arrest the offender dies of natural causes or as a result of an accident, or is killed in the commission of another offense; or, handling of a juvenile offender either orally or by written notice to parents in instances involving minor offenses where no referral to juvenile court is made as a matter of publicly accepted police policy. [1]

It should be noted that the arrest of one person can clear several crimes or several persons may be arrested to clear one crime. Violent crimes (murder, forcible rape, robbery and aggravated assault) often undergo a more vigorous investigative effort than crimes against property. Additionally, victims and or witnesses often identify the perpetrators. Consequently, violent crimes tend to have higher clearance rates than property crimes.

In Delaware, between 2003 and 2008, there was a 12.7 percent increase in clearances, although there was a 1 percent decrease in clearances between 2007 and 2008.

Clearance Rates: Group A

Figure 44

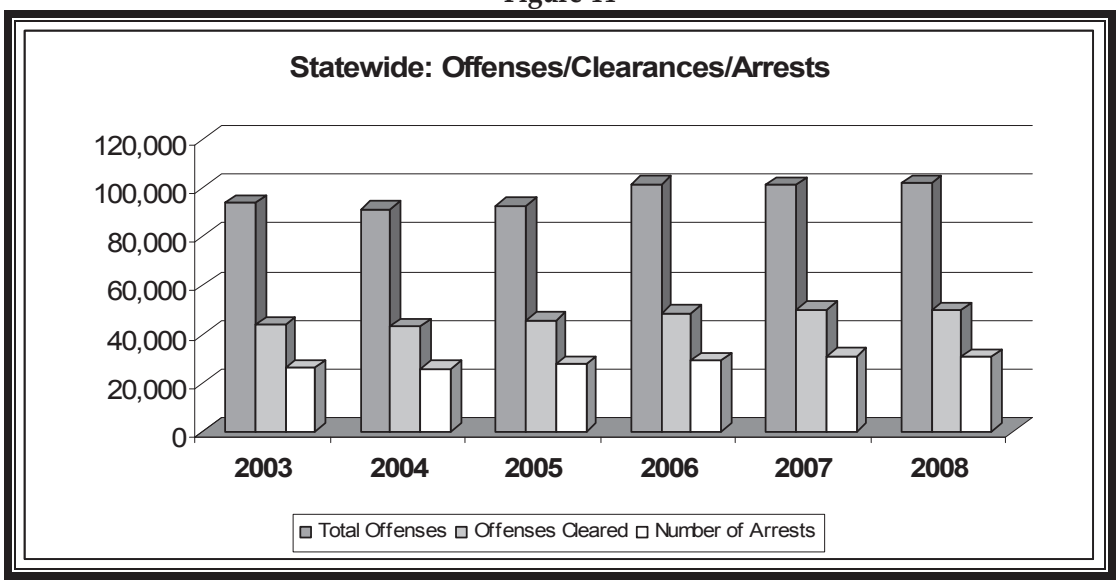
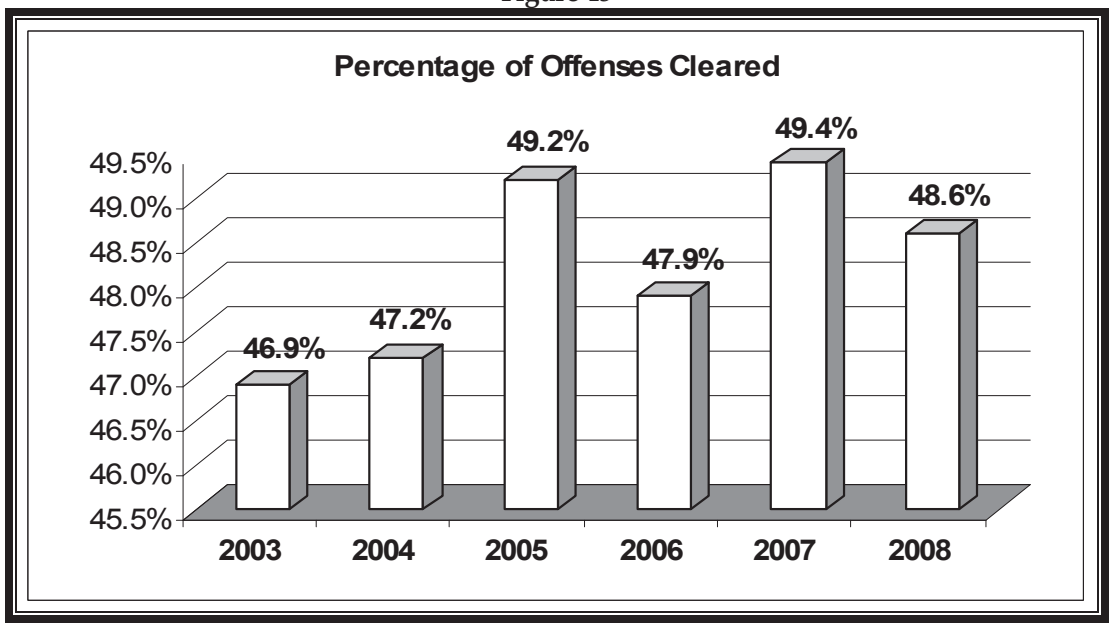


Table 45

Total Offense/Clearance/Arrest						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Total Offenses	**94,019**	**91,274**	**92,817**	**101,442**	**101,406**	**102,104**
Offenses Cleared	44,060	43,118	45,711	48,560	50,125	49,624
Number of Arrests	26,291	25,867	27,407	28,942	30,833	30,743
% Offenses Cleared	46.9	47.2	49.2	47.9	49.4	48.6

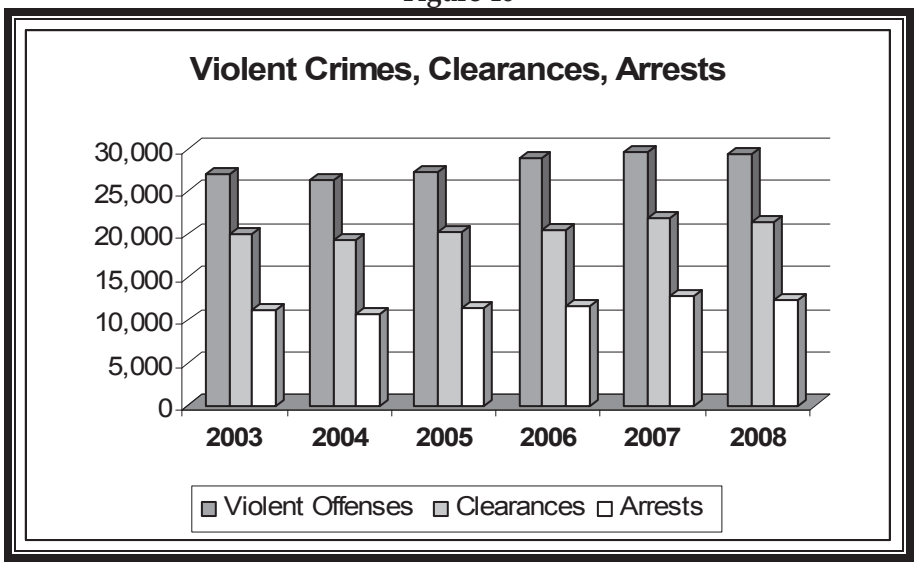
Figure 45



Clearance Rates by Major Crime Group

Violent Crime

Figure 46

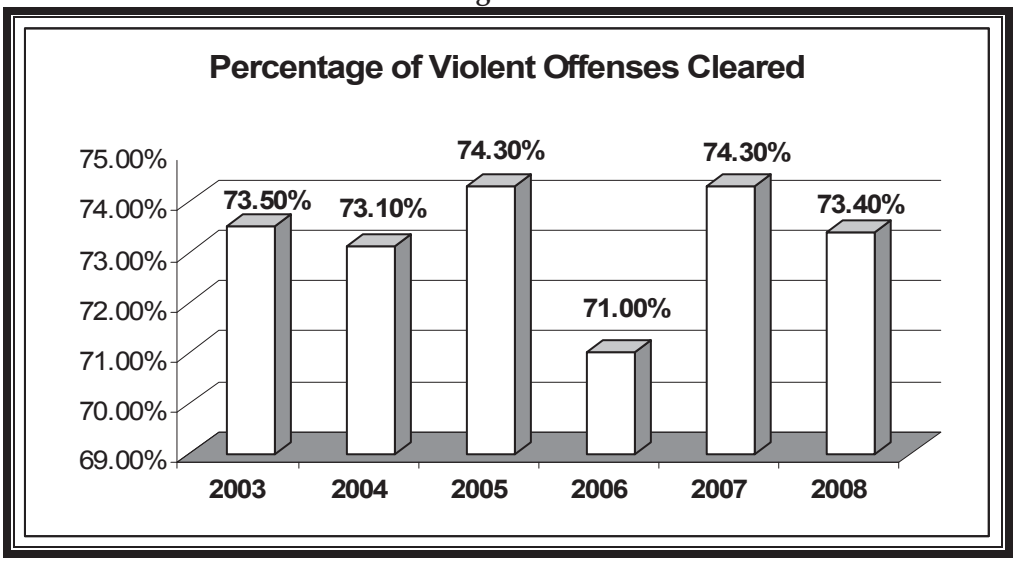


Violent Crimes, Clearances, Arrests

Table 46

	2003	2004	2005	2006	2007	2008
Violent Offenses	27,129	26,309	27,263	28,951	29,577	29,294
Violent Offenses Cleared	19,938	19,228	20,245	20,506	21,989	21,511
Violent Offense Arrests	11,039	10,759	11,311	11,513	12,716	12,399
Violent Offense % Cleared	**73.5%**	**73.1%**	**74.3%**	**71.0%**	**74.3%**	**73.4%**

Figure 47



Drug Offenses

Figure 48

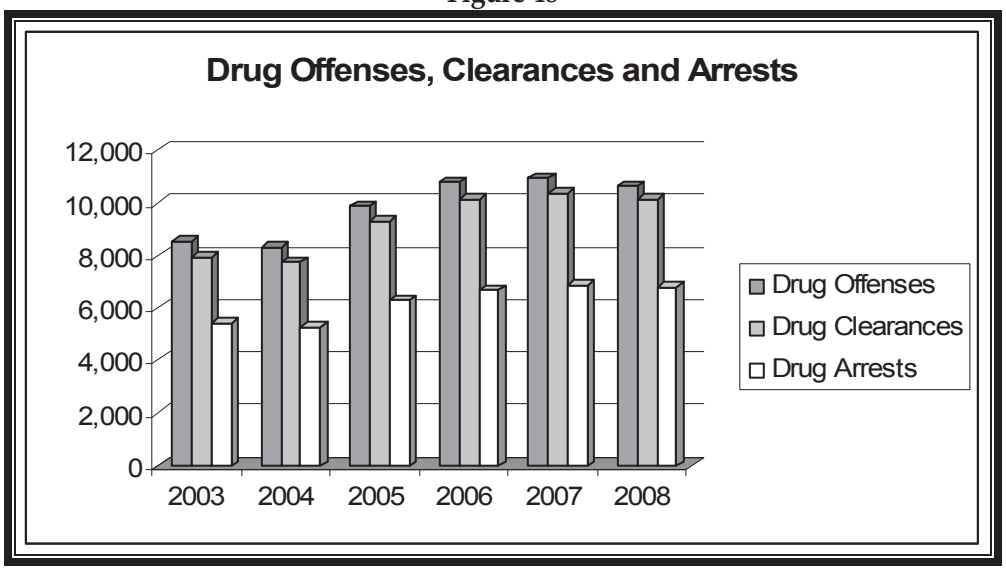
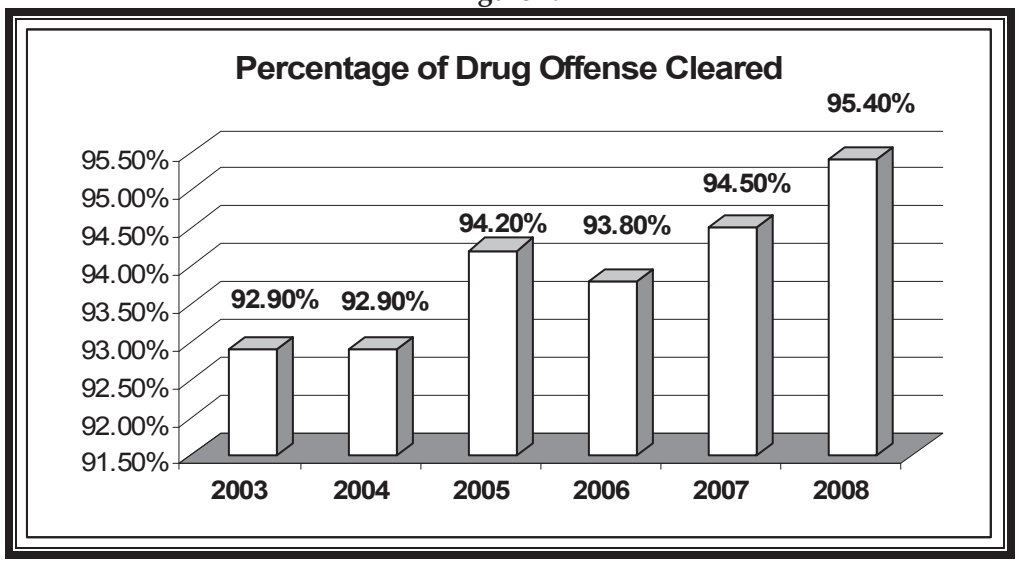


Table 47

Drug Offenses/Clearances/Arrests						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Drug Offenses	8,535	8,341	9,876	10,810	10,959	10,634
Drug Clearances	7,935	7,748	9,302	10,135	10,361	10,149
Drug Arrests	5,412	5,274	6,312	6,698	6,873	6,812
Drug Offense % Cleared	**92.9%**	**92.9%**	**94.2%**	**93.8%**	**94.5%**	**95.4%**

Figure 49



Drug Offenses Received, Cleared, and Arrests

Table 48

Drug Offenses 2003 - 2008	Offenses Rec'd	Offenses Cleared	Adult Arrest	Juvenile Arrest	Arrest Totals
2008 Drug/Narcotic Offenses	**10,634**	**10,149**	**6,064**	**748**	**6,812**
A. Drug/Narcotic	6,136	5,802	5,184	695	5,879
B. Drug Equipment	4,498	4,347	880	53	933
2007 Drug/Narcotic Offenses	**10,959**	**10,361**	**6,031**	**842**	**6,873**
A. Drug/Narcotic	6,259	5,850	5,156	788	5,944
B. Drug Equipment	4,700	4,511	875	54	929
2006 Drug/Narcotic Offenses	**10,810**	**10,135**	**5,825**	**873**	**6,698**
A. Drug/Narcotic	6,187	5,682	4,853	825	5,678
B. Drug Equipment	4,623	4,453	972	48	1020
2005 Drug/Narcotic Offenses	**9,876**	**9,302**	**5,432**	**880**	**6,312**
A. Drug/Narcotic	5,816	5,434	4,677	809	5,487
B. Drug Equipment	4,060	3,868	755	71	826
2004 Drug/Narcotic Offenses	**8,341**	**7,748**	**4,514**	**760**	**5,274**
A. Drug/Narcotic	4,914	4,487	3,803	691	4,494
B. Drug Equipment	3,427	3,261	711	69	780
2003 Drug/Narcotic Offenses	**8,549**	**7,941**	**4,566**	**827**	**5,393**
A. Drug/Narcotic	5,155	4,719	3,961	779	4,740
B. Drug Equipment	3,394	3,222	605	48	653

Serious Property Crimes

Figure 50

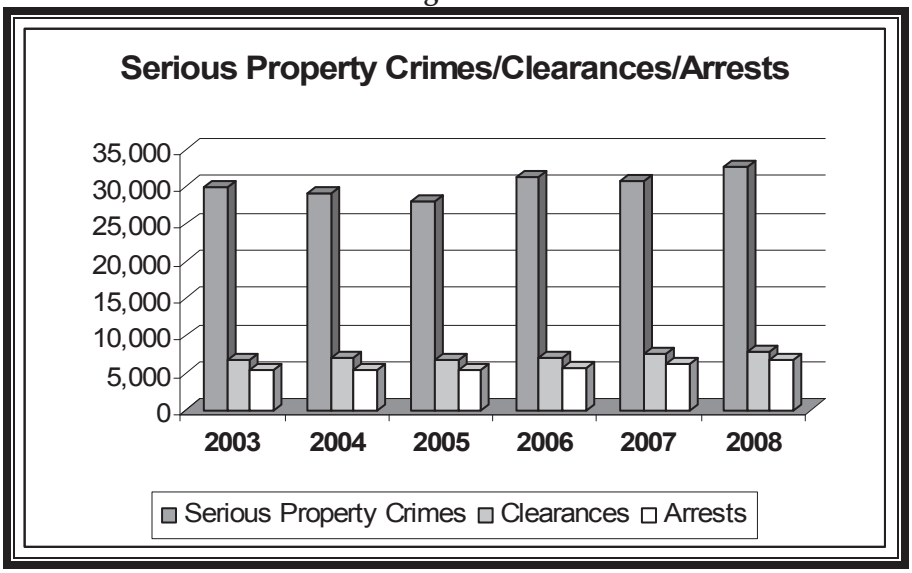
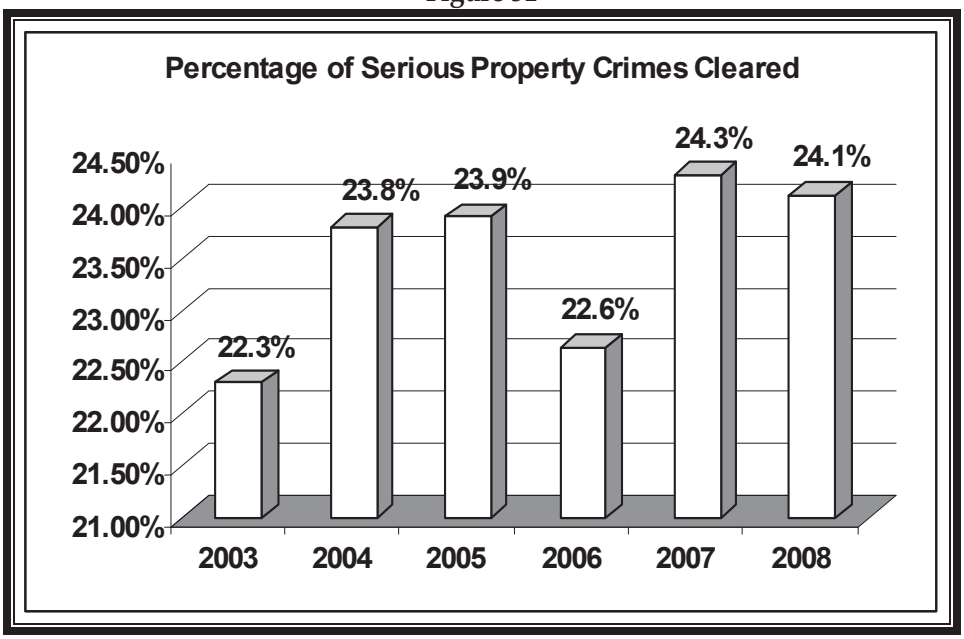


Table 49

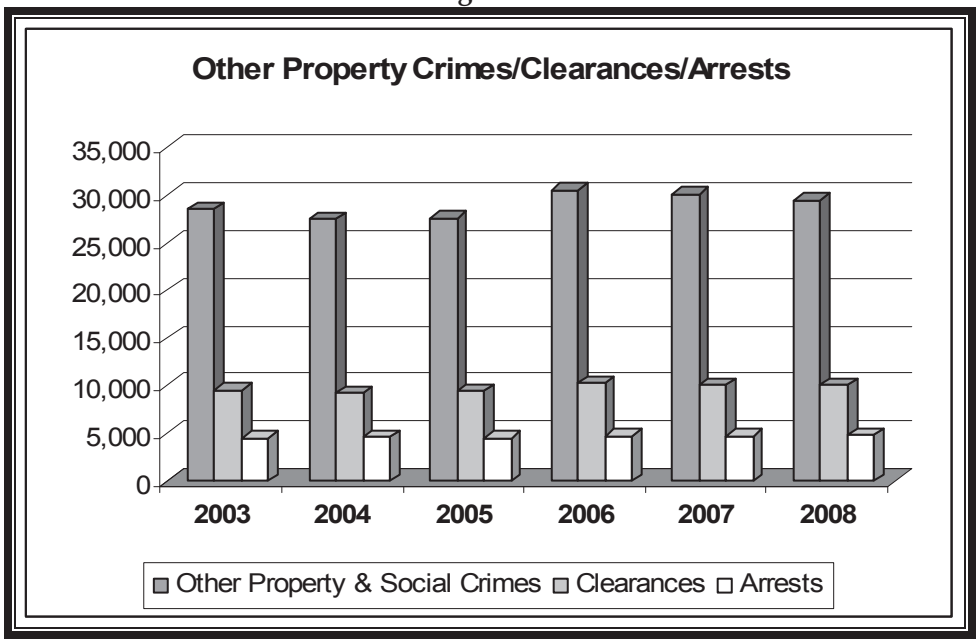
Serious Property Crimes/Clearances/Arrests						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Serious Property Crimes	29,884	29,202	28,112	31,227	30,793	32,750
Serious Property Crimes Cleared	6,674	6,942	6,719	7,069	7,476	7,896
Serious Property Crime Arrests	5,307	5,379	5,246	5,649	6,262	6,737
Serious Property Crime % Cleared	**22.3%**	**23.8%**	**23.9%**	**22.6%**	**24.3%**	**24.1%**

Figure 51



Other Property and Social Crimes

Figure 52

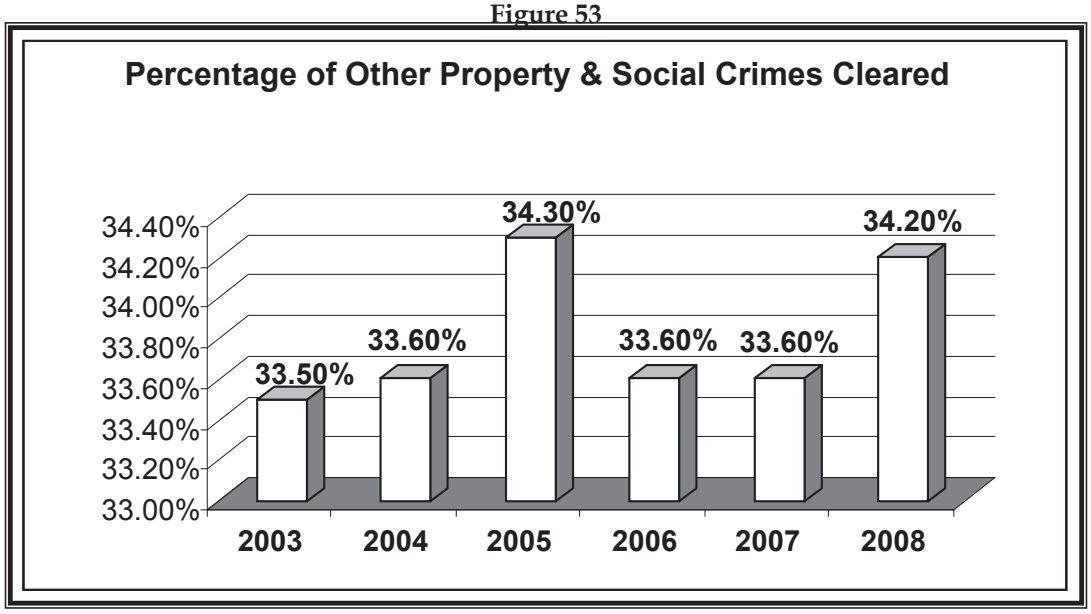


Other Property Crimes, Clearances and Arrests

Table 50

	2003	2004	2005	2006	2007	2008
Other Property & Social Crimes	28,471	27,422	27,566	30,454	30,077	29,426
Offenses Cleared	9,529	9,200	9,445	10,237	10,104	10,068
Number of Arrests	4,533	4,654	4,538	4,774	4,787	4,794
% Offenses Cleared	**33.5%**	**33.6%**	**34.3%**	**33.6%**	**33.6%**	**34.2%**

Figure 53



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Police Activity

- The number of law enforcement officers employed in Delaware State Police Departments and Agencies totaled 2,109 in 2008.

- There was a .3 percent decrease in Law Enforcement Officers between 2005 and 2008. This decrease is caused due to Firemen no longer being counted in "Fire Marshall Law Enforcement"

- There are eight Delaware State police troops situated through out the state. Troop 1 serves northern New Castle County, Troop 2 serves central New Castle County , Troop 9 serves southern New Castle County , Troop 2 serves all of New Castle County for special investigations. Troop 3 serves Kent County, Troop 5 serves western Sussex county, Troop 4 serves Central Sussex County, and Troop 7 serves eastern Sussex County.

Figure 54

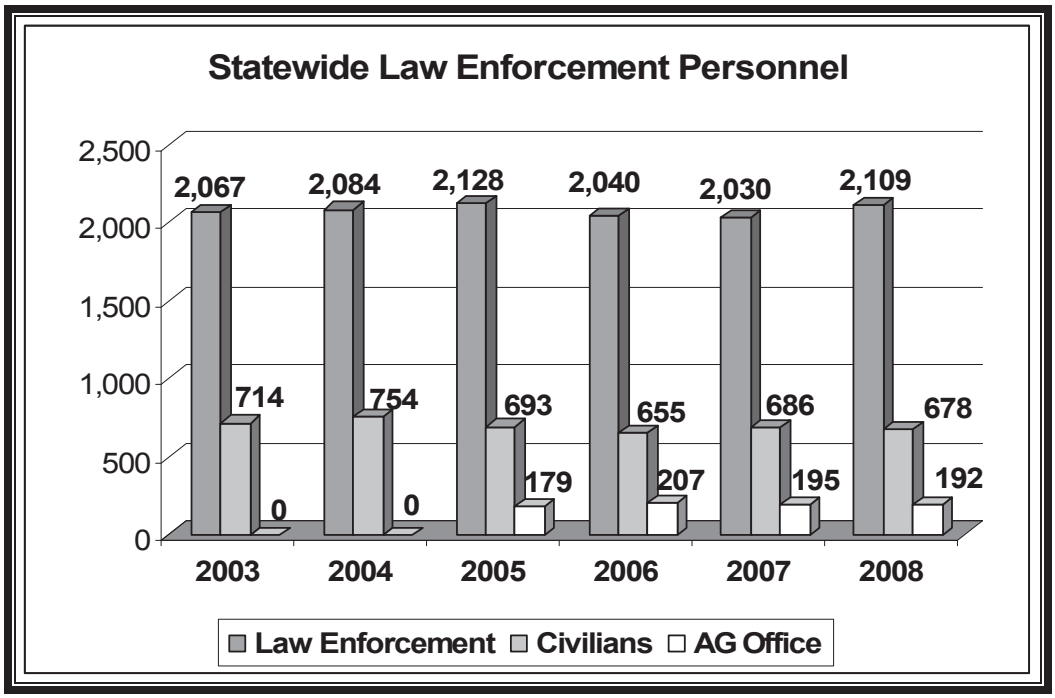

Table 51

Statewide Law Enforcement Employees						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Law Enforcement Officers	2,067	2,084	2,128	2,040	2,030	2,109
Civilians	714	754	693	655	686	678
Attorney Generals Office	0*	0*	179	207	195	192

* Not reported prior to 2005.

Law Enforcement Manpower: Full Time Law Enforcement Officers

Table 52

Full Time Law Enforcement Officers							
Agency	**County**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**
DSP/Kent	Kent	211	221	221	235	243	241
DSP/NC	New Castle	246	248	268	261	263	260
DSP/Sussex	Sussex	172	174	163	174	171	178
DSP Totals		**629**	**643**	**652**	**670**	**677**	**679**
Bethany	Sussex	11	10	9	10	9	9
Bethel	Sussex	0	0	0	0	0	0
Blades	Sussex	2	3	2	2	3	3
Bowers Beach	Kent	0	0	0	0	0	0
Bridgeville	Sussex	5	6	5	7	7	4
Camden	Kent	9	12	14	15	14	13
Cheswold	Kent	1	4	3	5	5	5
Clayton	Kent	5	5	5	8	8	8
Dagsboro	Sussex	2	2	2	2	2	2
Del.City	New Castle	3	3	3	4	2	5
Delmar	Sussex	9	9	9	12	12	11
Dewey Beach	Sussex	8	8	8	8	8	7
Dover	Kent	84	87	90	90	91	90
Ellendale	Sussex	2	2	2	2	0	0
Elsmere	New Castle	10	10	11	10	10	11
Felton	Kent	4	4	4	4	4	4
Fenwick Isl.	Sussex	5	6	6	6	5	5
Frankford	Sussex	0	0	0	0	0	0
Frederica	Kent	2	2	0	0	0	0
Georgetown	Sussex	15	15	18	18	20	18
Greenwood	Sussex	4	4	4	1	2	0
Harrington	Kent	9	9	10	10	10	10
Laurel	Sussex	11	10	12	10	15	15
Lewes	Sussex	13	13	13	13	12	13
Middletown	New Castle	0	0	0	0	0	24
Milford	Kent/Sussex	26	26	29	30	28	30
Milton	Sussex	7	7	8	9	10	10
Millsboro	Sussex	10	13	13	12	12	14
NC County	New Castle	330	325	336	364	336	356
NC City	New Castle	17	17	17	17	16	17
Newark	New Castle	59	57	59	62	65	63
Newport	New Castle	7	7	8	9	8	8
Ocean View	Sussex	8	8	7	8	6	8
Rehoboth	Sussex	19	19	18	17	19	19
Seaford	Sussex	24	24	24	23	26	27
Selbyville	Sussex	6	7	6	6	6	7
Smyrna	Kent	18	21	21	21	21	22
S.Bethany	Sussex	6	6	6	6	6	6
Wilmington	New Castle	285	278	272	285	302	302
Wyoming	Kent	3	4	4	4	3	3
City/Town Totals:		**1,039**	**1,042**	**1,058**	**1,110**	**1,103**	**1,149**

Agency	County	2003	2004	2005	2006	2007	2008
Air/Waste	K/NC/S	12	12	12	12	10	11
Alc Bev Com	K/NC/S	11	14	14	14	15	15
Amtrak	New Castle	0	0	0	0	0	12
Capitol Police	K/NC/S	35	32	37	38	38	39
Del State U.	Kent	*	*	10	12	10	18
DRBA	New Castle/Sussex	50	44	44	49	47	50
Drug Enfrcmt	New Castle	*	*	8	8	8	9
Fire Marshall	K/NC/S	17	18	20	19	19	19
Marine Police	K/NC/S	26	26	26	29	30	24
Narc/Drugs	K/NC/S	4	4	5	4	5	5
Park Rangers	K/NC/S	28	27	23	22	20	21
U of D	New Castle/Sussex	47	45	39	41	36	46
Wilm. FM	New Castle	169	177	180*	12	12	12
Totals		**399**	**399**	**418**	**260**	**250**	**281**
All Totals		**2,067**	**2,084**	**2,128**	**2,040**	**2,030**	**2,109**

*After 2005, Firemen are no longer counted in "Fire Marshall Law Enforcement"

Attorney Generals						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Kent	25	31	31	37	35	26
New Castle	113	119	119	147	136	144
Sussex	23	29	29	23	24	22
Totals	**161**	**179**	**179**	**207**	**195**	**192**

Law Enforcement's Full Time Civilian Employees

Table 53

Full Time Civilian Employees							
Agency	**County**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**
DSP/Kent	Kent	159	157	163	158	168	175
DSP/NC	New Castle	37	43	45	40	36	34
DSP/Sussex	Sussex	30	32	35	31	35	31
DSP Totals		**226**	**232**	**243**	**229**	**239**	**240**
Bethany	Sussex	1	1	2	0	1	1
Bethel	Sussex	0	0	0	0	0	0
Blades	Sussex	0	0	0	0	0	0
Bowers Beach	Kent	0	0	0	0	0	0
Bridgeville	Sussex	0	0	0	0	2	0
Camden	Kent	1	1	2	2	2	2
Cheswold	Kent	1	0	0	0	0	0
Clayton	Kent	0	0	0	0	1	1
Dagsboro	Sussex	0	0	0	0	0	0
Del.City	New Castle	0	0	0	0	1	0
Delmar	Sussex	1	1	1	1	1	1
Dewey Beach	Sussex	0	2	3	0	2	0
Dover	Kent	29	29	31	29	30	27
Ellendale	Sussex	0	0	0	0	0	0
Elsmere	New Castle	1	1	1	1	1	1
Felton	Kent	0	0	0	0	0	0
Fenwick Isl.	Sussex	0	0	0	0	1	1
Frankford	Sussex	0	0	0	0	0	0
Frederica	Kent	0	0	0	0	0	0
Georgetown	Sussex	2	2	2	1	2	2
Greenwood	Sussex	1	1	1	1	0	0
Harrington	Kent	1	1	1	1	1	1
Laurel	Sussex	1	1	1	1	1	1
Lewes	Sussex	1	1	1	1	1	1
Middletown	New Castle	0	0	0	0	0	2
Milford	Kent/Sussex	8	8	10	9	10	9
Milton	Sussex	0	0	1	1	1	1
Millsboro	Sussex	1	1	1	1	1	1
NC County	New Castle	208	242	115	116	114	108
NC City	New Castle	2	2	2	2	2	2
Newark	New Castle	17	18	16	16	16	16
Newport	New Castle	0	1	0	0	1	1
Ocean View	Sussex	1	1	1	1	1	1
Rehoboth	Sussex	10	8	8	10	11	11
Seaford	Sussex	9	7	9	9	9	11
Selbyville	Sussex	1	1	1	1	1	1
Smyrna	Kent	6	6	5	7	7	7
S.Bethany	Sussex	0	0	0	0	0	0
Wilmington	New Castle	72	71	86	79	84	86
Wyoming	Kent	0	0	1	0	0	0
City/Town Totals:		**375**	**407**	**302**	**290**	**305**	**296**

Agency	County	2003	2004	2005	2006	2007	2008
Air/Waste	K/NC/S	2	2	2	1	2	2
Alc Bev Com	K/NC/S	2	4	4	4	3	3
Amtrak	New Castle	0	0	0	0	0	0
Capitol Police	K/NC/S	19	18	23	23	23	24
Del State U.	Kent	*	*	19	19	21	20
DRBA	New Castle/Sussex	16	18	16	14	16	16
Drug Enfrcmt	New Castle	*	*	3	3	3	4
Fire Marshall	K/NC/S	32	32	34	33	37	36
Marine Police	K/NC/S	5	5	6	5	5	5
Narc/Drugs	K/NC/S	3	2	0	0	0	0
Park Rangers	K/NC/S	6	1	0	0	0	0
U of D	New Castle/Sussex	24	30	37	34	32	32
Wilm. FM	New Castle	4	3	4	0	0	0
Totals		**113**	**115**	**148**	**136**	**142**	**142**
All Totals		**714**	**754**	**693**	**655**	**686**	**683**

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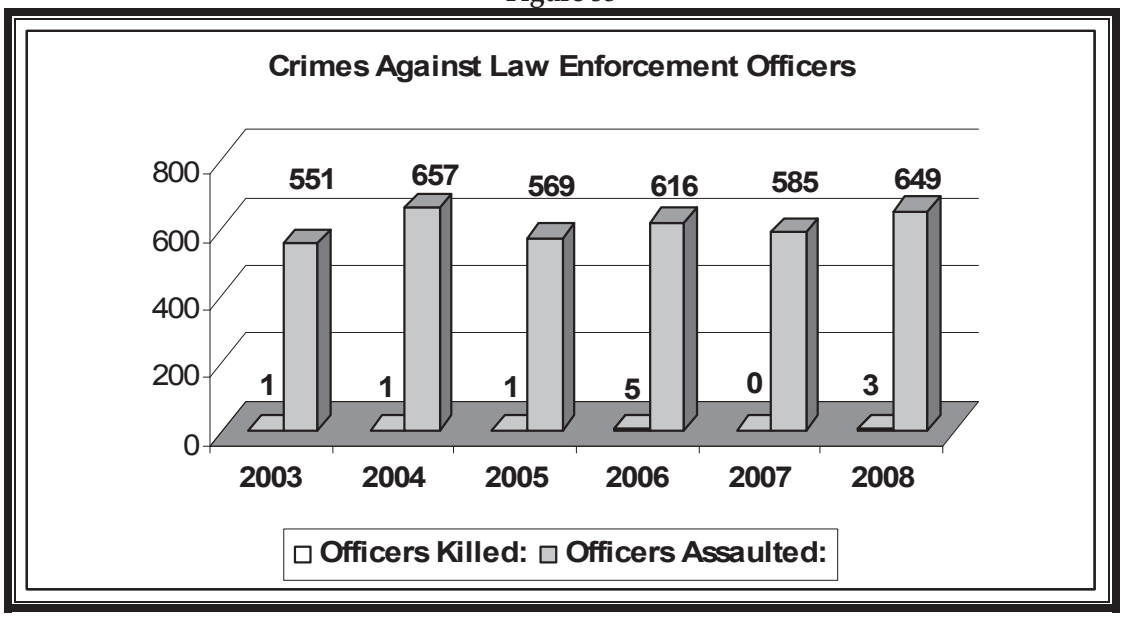
Crimes against Law Enforcement Officials 2003 -2008

- There was a 17.8 percent increase in assaults on police officers between 2003 and 2008.

Table 54

	2003	2004	2005	2006	2007	2008
Total Of Officers Killed:	1	1	1	5	0	3
Total Of Officers Assaulted:	551	657	569	616	585	649

Figure 55

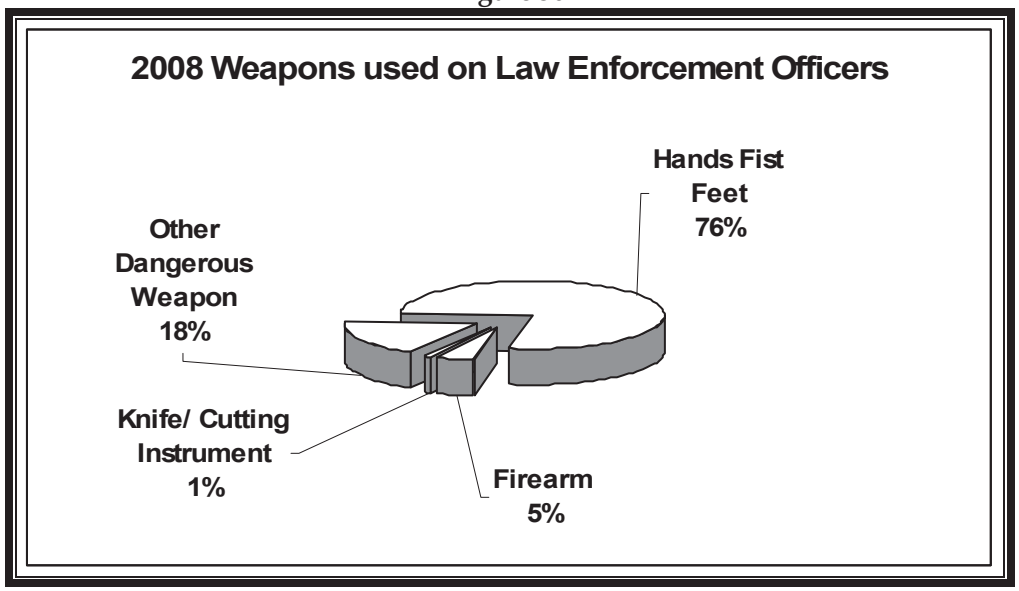


Assaults against Law Enforcement Officers by weapon type

Table 55

Assaults against Law Enforcement Officers by weapon type						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Firearm	12	14	13	9	5	30
Knife/ Cutting Instrument	12	16	15	9	5	7
Other Dangerous Weapon	94	105	107	125	122	116
Hands Fist Feet	433	523	434	477	451	499
Total Assaults by Weapon	**551**	**658**	**569**	**620**	**583**	**652**

Figure 56



Crimes against Law Enforcement Officials, Details

The following section shows by year and by county, information regarding the totals of assaults that law enforcement officers faced. This information includes the type of activities the police officers were engaged in at the time of the assaults, such as responding to a disturbance, transporting a prisoner, etc. It also includes the type of assignment the officer was involved in such as one man vehicle assisted, detective or special assignment, etc. The type of weapon used in the assault as well as time of day the assault occurred is included.

Table 56

Percentage of Activities During which Officers are Assaulted						
Type of Activity	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**
Responding to Disturbance	27.4%	24.1%	24.1%	26.9%	22.6%	24.2%
Burglaries in Progress/Pursuing Suspects	2.7%	0.9%	0.9%	0.7%	1.4%	1.2%
Robberies in Progress/ Pursuing Suspects	0.5%	0.5%	0.5%	0.3%	0.9%	0.5%
Attempting Other Arrest	24.9%	21.8%	21.8%	24.3%	23.7%	25.0%
Civil Disorder	0.9%	3.0%	3.0%	1.7%	2.2%	2.5%
Handling/Transporting Prisoners	10.5%	10.2%	10.2%	11.6%	16.4%	13.5%
Investigating Suspicious Person	6.2%	7.6%	7.6%	5.8%	4.3%	4.0%
Ambush	0.0%	0.4%	0.4%	0.0%	0.2%	0.0%
Mentally Deranged Person	3.1%	3.5%	3.5%	2.4%	2.3%	4.9%
Traffic Pursuit and Stops	11.6%	11.1%	11.1%	12.9%	8.7%	10.7%
All Others	12.2%	17.1%	17.1%	13.4%	17.3%	13.5%
Totals	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Statewide 2006

Total of Officers Killed	**5**
Total of Officers Assaulted	**616**

Type of Activity	Type of Weapon					Type of Assignment							
	Total assaults by weapon	Firearm	Knife/ Cutting Instrument	Other Dangerous Weapon	Hands Fist Feet	Two Man Vehicle	One Man Vehicle	One man Vehicle Ass'ted	Detective or Special Assignment	Detective or Special Assignment Ass'ted	Other	Other Assisted	Assault Cleared
Responding to Disturbance	167	2	5	18	142	22	119	5	3	2	12	4	157
Burglaries in Progress or Pursuing suspects	5	0	0	0	4	1	3	0	0	0	0	0	4
Robberies in Progress or Pursuing suspects	2	0	0	1	1	0	2	0	0	0	0	0	2
Attempting other Arrest	150	6	1	30	113	33	81	8	11	7	3	7	146
Civil Disorder	11	0	0	0	11	2	6	0	0	1	2	0	10
Handling/Transporting/Custody of Prisoners	72	0	0	10	62	15	33	7	3	1	5	8	71
Investigation of Suspicious Person	36	1	2	10	23	3	23	4	1	3	1	1	36
Ambush	0	0	0	0	0	0	0	0	0	0	0	0	0
Mentally Deranged Person	15	0	1	3	11	0	6	1	0	0	1	0	15
Traffic Pursuit and Stops	80	0	0	39	41	5	8	6	8	2	2	1	75
All Others	83	0	0	14	69	9	40	8	4	7	4	12	79
Totals	**621**	**9**	**9**	**125**	**477**	**90**	**321**	**39**	**30**	**23**	**30**	**33**	**595**
Victim Was Injured	42	0	1	7	33								
Victim Was Not Injured	579	9	8	118	444								

		12:01 - 2:00	2:00 - 4:00	4:00-6:00	6:00-8:00	8:00-10:00	10:00-12:00
Time of Assaults	A.M.	130	27	15	20	33	50
	P.M.	41	34	82	67	88	33

New Castle County 2006	
Total of Officers Killed	2
Total of Officers Assaulted	374

	Type of Weapon					Type of Assignment							
Type of Activity	Total assaults by weapon	Firearm	Knife/ Cutting Instrument	Other Dangerous Weapon	Hands Fist Feet	Two Man Vehicle	One Man Vehicle	One man Vehicle Ass'ted	Detective or Special Assignment	Detective or Special Assignment Ass'ted	Other	Other Assisted	Assault Cleared
Responding to Disturbance	114	0	4	12	98	22	80	3	1	2	3	3	112
Burglaries in Progress or Pursuing suspects	1	0	0	0	1	1	0	0	0	0	0	0	1
Robberies in Progress or Pursuing suspects	1	0	0	0	1	0	1	0	0	0	0	0	1
Attempting other Arrest	89	4	1	15	69	23	43	5	9	1	1	7	87
Civil Disorder	6	0	0	0	6	2	3	0	0	0	1	0	6
Handling/Transporting/Custody of Prisoners	44	0	0	7	37	12	17	5	1	1	2	6	43
Investigation of Suspicious Person	15	0	1	0	14	3	10	0	1	0	1	0	15
Ambush	0	0	0	0	0	0	0	0	0	0	0	0	0
Mentally Deranged Person	9	0	0	3	6	0	8	1	0	0	0	0	9
Traffic Pursuit and Stops	47	0	0	20	27	1	32	4	6	1	2	1	43
All Others	50	0	0	9	41	8	22	3	4	5	2	6	46
Totals	**376**	**4**	**6**	**66**	**300**	**72**	**216**	**21**	**22**	**10**	**12**	**23**	**363**
Victim Was Injured	15	0	0	2	13								
Victim Was Not Injured	361	4	6	64	287								

		12:01 - 2:00	2:00 - 4:00	4:00-6:00	6:00-8:00	8:00-10:00	10:00-12:00
Time of Assaults	A.M.	69	19	10	16	22	31
	P.M.	26	20	46	41	57	19

Kent County 2006

Total of Officers Killed	**2**
Total of Officers Assaulted	**111**

	Type of Weapon					Type of Assignment							
Type of Activity	Total assaults by weapon	Firearm	Knife/ Cutting Instrument	Other Dangerous Weapon	Hands Fist Feet	Two Man Vehicle	One Man Vehicle	One man Vehicle Ass'ted	Detective or Special Assignment	Detective or Special Assignment Ass'ted	Other	Other Assisted	Assault Cleared
Responding to Disturbance	30	1	1	5	23	0	24	2	2	0	1	1	29
Burglaries in Progress or Pursuing suspects	1	0	0	0	1	0	1	0	0	0	0	0	1
Robberies in Progress or Pursuing suspects	0	0	0	0	0	0	0	0	0	0	0	0	0
Attempting other Arrest	28	0	0	10	18	5	12	3	2	6	0	0	27
Civil Disorder	4	0	0	0	4	0	3	0	0	1	0	0	4
Handling/Transporting/Custody of Prisoners	12	0	0	3	9	1	7	1	2	0	0	1	12
Investigation of Suspicious Person	7	0	0	4	3	0	3	0	0	3	0	1	7
Ambush	0	0	0	0	0	0	0	0	0	0	0	0	0
Mentally Deranged Person	2	0	0	0	2	0	2	0	0	0	0	0	2
Traffic Pursuit and Stops	12	0	0	9	3	2	7	0	2	1	0	0	12
All Others	17	0	0	4	13	1	7	3	0	0	0	6	16
Totals	**113**	**1**	**1**	**35**	**76**	**9**	**66**	**9**	**8**	**11**	**1**	**9**	**110**
Victim Was Injured	10	0	0	3	7								
Victim Was Not Injured	103	1	1	32	69								

		12:01 - 2:00	2:00 - 4:00	4:00-6:00	6:00-8:00	8:00-10:00	10:00-12:00
Time of Assaults	A.M.	20	5	3	2	8	12
	P.M.	3	7	19	14	13	7

Sussex County 2006	
Total of Officers Killed	1
Total of Officers Assaulted	131

		Type of Weapon					Type of Assignment							
Type of Activity	Total assaults by weapon	Firearm	Knife/ Cutting Instrument	Other Dangerous Weapon	Hands Fist Feet	Two Man Vehicle	One Man Vehicle	One man Vehicle Ass'ted	Detective or Special Assignment	Detective or Special Assignment Ass'ted	Other	Other Assisted	Assault Cleared
Responding to Disturbance	23	2	0	1	21	0	15	0	0	0	8	0	16
Burglaries in Progress or Pursuing suspects	2	0	0	0	2	0	2	0	0	0	0	0	2
Robberies in Progress or Pursuing suspects	1	0	0	1	0	0	1	0	0	0	0	0	1
Attempting other Arrest	33	2	0	5	26	5	26	0	0	0	2	0	32
Civil Disorder	1	0	0	0	1	0	0	0	0	0	1	0	0
Handling/Transporting/Custody of Prisoners	17	0	0	0	16	2	9	1	0	0	3	1	16
Investigation of Suspicious Person	14	1	1	6	6	0	10	4	0	0	0	0	14
Ambush	0	0	0	0	0	0	0	0	0	0	0	0	0
Mentally Deranged Person	4	0	1	0	3	0	3	0	0	0	1	0	4
Traffic Pursuit and Stops	21	0	0	10	11	2	17	2	0	0	0	0	20
All Others	16	0	0	1	15	0	11	2	0	2	2	0	17
Totals	**132**	**5**	**2**	**24**	**101**	**9**	**94**	**9**	**0**	**2**	**17**	**1**	**122**
Victim Was Injured	16	0	1	2	13								
Victim Was Not Injured	115	4	1	22	88								

		12:01 - 2:00	2:00 - 4:00	4:00-6:00	6:00-8:00	8:00-10:00	10:00-12:00
Time of Assaults	A.M.	41	3	2	2	3	8
	P.M.	12	7	17	12	18	7

Statewide 2007

Total of Officers Killed	**0**
Total of Officers Assaulted	**585**

	Type of Weapon					Type of Assignment							
Type of Activity	Total assaults by weapon	Firearm	Knife/ Cutting Instrument	Other Dangerous Weapon	Hands Fist Feet	Two Man Vehicle	One Man Vehicle	One man Vehicle Ass'ted	Detective or Special Assignment	Detective or Special Assignment Ass'ted	Other	Other Assisted	Assault Cleared
Responding to Disturbance	132	2	2	21	107	16	97	12	0	0	3	4	128
Burglaries in Progress or Pursuing suspects	8	1	0	2	5	2	6	0	0	0	0	0	6
Robberies in Progress or Pursuing suspects	5	0	2	1	2	0	2	0	2	1	0	0	4
Attempting other Arrest	138	0	0	22	116	23	55	27	13	10	5	5	134
Civil Disorder	13	0	0	3	10	3	6	0	0	3	1	0	13
Handling/Transporting/Custody of Prisoners	94	0	1	12	81	17	47	9	2	3	1	15	90
Investigation of Suspicious Person	25	0	0	2	23	7	12	1	2	0	0	3	22
Ambush	1	0	0	0	1	0	0	0	0	0	1	0	1
Mentally Deranged Person	15	0	0	2	13	2	10	2	0	2	0	0	13
Traffic Pursuit and Stops	51	0	0	37	14	8	22	1	17	2	1	0	50
All Others	101	2	0	20	79	20	41	5	12	2	5	17	97
Totals	**583**	**5**	**5**	**122**	**451**	**98**	**298**	**57**	**48**	**23**	**17**	**44**	**558**
Victim Was Injured	97	0	1	12	84								
Victim Was Not Injured	486	5	4	110	367								

		12:01 - 2:00	2:00 - 4:00	4:00-6:00	6:00-8:00	8:00-10:00	10:00-12:00
Time of Assaults	A.M.	118	21	13	19	31	30
	P.M.	35	52	61	81	85	39

New Castle County 2007	
Total of Officers Killed	**0**
Total of Officers Assaulted	**345**

	Type of Weapon					Type of Assignment							
Type of Activity	Total assaults by weapon	Firearm	Knife/ Cutting Instrument	Other Dangerous Weapon	Hands Fist Feet	Two Man Vehicle	One Man Vehicle	One man Vehicle Ass'ted	Detective or Special Assignment	Detective or Special Assignment Ass'ted	Other	Other Assisted	Assault Cleared
Responding to Disturbance	77	0	1	17	59	12	55	6	0	0	2	2	75
Burglaries in Progress or Pursuing suspects	4	0	0	1	3	1	3	0	0	0	0	0	3
Robberies in Progress or Pursuing suspects	4	0	2	1	1	0	1	0	2	1	0	0	3
Attempting other Arrest	74	0	0	17	57	14	31	7	11	5	3	3	72
Civil Disorder	9	0	0	0	9	3	5	0	0	0	1	0	9
Handling/Transporting/Custody of Prisoners	44	0	1	4	39	6	21	2	0	1	1	13	40
Investigation of Suspicious Person	16	0	0	2	14	5	7	0	2	0	0	2	13
Ambush	1	0	0	0	1	0	0	0	0	0	1	0	1
Mentally Deranged Person	7	0	0	1	6	2	6	0	0	0	0	0	7
Traffic Pursuit and Stops	35	0	0	24	11	5	13	0	14	2	1	0	34
All Others	72	1	0	12	59	15	29	3	7	2	4	13	69
Totals	**343**	**1**	**4**	**79**	**259**	**63**	**171**	**18**	**36**	**11**	**13**	**33**	**326**
Victim Was Injured	54	0	1	8	45								
Victim Was Not Injured	289	1	3	71	214								

		12:01 - 2:00	2:00 - 4:00	4:00-6:00	6:00-8:00	8:00-10:00	10:00-12:00
Time of Assaults	A.M.	57	13	7	8	20	21
	P.M.	23	30	41	56	50	19

Kent County 2007	
Total of Officers Killed	0
Total of Officers Assaulted	94

	Type of Weapon					Type of Assignment							
Type of Activity	Total assaults by weapon	Firearm	Knife/ Cutting Instrument	Other Dangerous Weapon	Hands Fist Feet	Two Man Vehicle	One Man Vehicle	One man Vehicle Ass'ted	Detective or Special Assignment	Detective or Special Assignment Ass'ted	Other	Other Assisted	Assault Cleared
Responding to Disturbance	27	0	1	3	23	2	22	3	0	0	0	0	27
Burglaries in Progress or Pursuing suspects	2	0	0	0	2	0	2	0	0	0	0	0	2
Robberies in Progress or Pursuing suspects	0	0	0	0	0	0	0	0	0	0	0	0	0
Attempting other Arrest	21	0	0	4	17	1	11	5	2	2	0	0	21
Civil Disorder	4	0	0	3	1	0	1	0	3	0	0	0	4
Handling/Transporting/Custody of Prisoners	24	0	0	6	18	7	11	2	2	0	0	2	24
Investigation of Suspicious Person	1	0	0	0	1	0	1	0	0	0	0	0	1
Ambush	0	0	0	0	0	0	0	0	0	0	0	0	0
Mentally Deranged Person	1	0	0	1	0	0	0	0	0	0	0	0	0
Traffic Pursuit and Stops	3	0	0	3	0	1	2	0	0	0	0	0	3
All Others	11	0	0	3	8	3	5	0	1	0	1	1	11
Totals	**94**	**0**	**1**	**23**	**70**	**14**	**55**	**10**	**8**	**2**	**1**	**3**	**93**
Victim Was Injured	16	0	0	2	14								
Victim Was Not Injured	78	0	1	21	56								

		12:01 - 2:00	2:00 - 4:00	4:00-6:00	6:00-8:00	8:00-10:00	10:00-12:00
Time of Assaults	A.M.	21	5	6	4	6	2
	P.M.	8	12	3	4	15	8

Sussex County 2007	
Total of Officers Killed	0
Total of Officers Assaulted	146

		Type of Weapon					Type of Assignment							
Type of Activity		Total assaults by weapon	Firearm	Knife/ Cutting Instrument	Other Dangerous Weapon	Hands Fist Feet	Two Man Vehicle	One Man Vehicle	One man Vehicle Ass'ted	Detective or Special Assignment	Detective or Special Assignment Ass'ted	Other	Other Assisted	Assault Cleared
Responding to Disturbance		28	2	0	1	25	2	20	3	0	0	1	2	27
Burglaries in Progress or Pursuing suspects		2	1	0	1	0	1	1	0	0	0	0	0	1
Robberies in Progress or Pursuing suspects		1	0	0	0	1	0	1	0	0	0	0	0	1
Attempting other Arrest		43	0	0	1	42	8	13	15	0	3	2	2	41
Civil Disorder		0	0	0	0	0	0	0	0	0	0	0	0	0
Handling/Transporting/Custody of Prisoners		26	0	0	2	24	4	15	5	0	2	0	0	26
Investigation of Suspicious Person		8	0	0	0	8	2	4	1	0	0	0	1	8
Ambush		0	0	0	0	0	0	0	0	0	0	0	0	0
Mentally Deranged Person		7	0	0	0	7	0	4	1	0	2	0	0	5
Traffic Pursuit and Stops		13	0	0	10	3	2	7	1	3	0	0	0	13
All Others		18	1	0	5	12	2	7	2	4	0	0	3	17
Totals		**146**	**4**	**0**	**20**	**122**	**21**	**72**	**28**	**7**	**7**	**3**	**8**	**139**
Victim Was Injured		27	0	0	2	25								
Victim Was Not Injured		119	4	0	18	97								
		12:01 - 2:00	2:00 - 4:00	4:00-6:00	6:00-8:00	8:00-10:00	10:00-12:00							
Time of Assaults	A.M.	40	3	0	7	5	7							
	P.M.	4	10	17	21	20	12							

Statewide 2008

Total of Officers Killed	**3**
Total of Officers Assaulted	**649**

	Type of Weapon					Type of Assignment							
Type of Activity	Total assaults by weapon	Firearm	Knife/ Cutting Instrument	Other Dangerous Weapon	Hands Fist Feet	Two Man Vehicle	One Man Vehicle	One man Vehicle Ass'ted	Detective or Special Assignment	Detective or Special Assignment Ass'ted	Other	Other Assisted	Assault Cleared
Responding to Disturbance	158	13	1	20	124	20	109	6	3	1	8	11	154
Burglaries in Progress or Pursuing suspects	8	1	0	5	2	0	7	1	0	0	0	0	6
Robberies in Progress or Pursuing suspects	3	3	0	0	0	0	2	0	1	0	0	0	3
Attempting other Arrest	163	2	1	21	139	21	70	25	5	5	27	10	161
Civil Disorder	16	0	0	3	13	0	7	1	0	2	2	4	15
Handling/Transporting/Custody of Prisoners	88	0	0	8	80	13	46	7	0	4	4	14	83
Investigation of Suspicious Person	26	1	0	5	20	5	16	2	2	1	0	0	26
Ambush	0	0	0	0	0	0	0	0	0	0	0	0	0
Mentally Deranged Person	32	7	4	3	18	3	16	12	0	0	0	1	26
Traffic Pursuit and Stops	70	0	1	31	38	15	37	5	7	1	2	3	66
All Others	88	3	0	20	65	5	42	13	9	7	5	7	86
Totals	**652**	**30**	**7**	**116**	**499**	**82**	**352**	**72**	**27**	**21**	**48**	**50**	**626**
Victim Was Injured	129	0	0	18	111								
Victim Was Not Injured	523	30	7	98	388								

		12:01 - 2:00	2:00 - 4:00	4:00-6:00	6:00-8:00	8:00-10:00	10:00-12:00
Time of Assaults	A.M.	194	21	12	11	24	23
	P.M.	36	41	73	88	89	40

New Castle County 2008	
Total of Officers Killed	2
Total of Officers Assaulted	379

	Type of Weapon					Type of Assignment							
Type of Activity	Total assaults by weapon	Firearm	Knife/ Cutting Instrument	Other Dangerous Weapon	Hands Fist Feet	Two Man Vehicle	One Man Vehicle	One man Vehicle Ass'ted	Detective or Special Assignment	Detective or Special Assignment Ass'ted	Other	Other Assisted	Assault Cleared
Responding to Disturbance	105	7	0	13	85	17	79	2	1	1	1	4	101
Burglaries in Progress or Pursuing suspects	7	1	0	4	2	0	6	1	0	0	0	0	5
Robberies in Progress or Pursuing suspects	3	3	0	0	0	0	2	0	1	0	0	0	3
Attempting other Arrest	63	0	0	7	56	11	40	3	2	2	4	1	62
Civil Disorder	11	0	0	3	8	0	4	0	0	2	2	3	10
Handling/Transporting/Custody of Prisoners	59	0	0	6	53	12	28	4	0	3	0	12	54
Investigation of Suspicious Person	21	1	0	5	15	4	12	2	2	1	0	0	21
Ambush	0	0	0	0	0	0	0	0	0	0	0	0	0
Mentally Deranged Person	14	1	4	2	7	2	10	1	0	0	0	1	11
Traffic Pursuit and Stops	44	0	1	19	24	14	23	2	2	1	2	0	41
All Others	54	3	0	8	43	2	30	4	9	6	1	2	54
Totals	**381**	**16**	**5**	**67**	**293**	**62**	**234**	**19**	**17**	**16**	**10**	**23**	**362**
Victim Was Injured	70	0	0	9	61								
Victim Was Not Injured	311	16	5	58	232								

		12:01 - 2:00	2:00 - 4:00	4:00-6:00	6:00-8:00	8:00-10:00	10:00-12:00
Time of Assaults	A.M.	87	10	7	8	15	13
	P.M.	23	27	56	66	48	21

Kent County 2008	
Total of Officers Killed	0
Total of Officers Assaulted	116

	Type of Weapon					Type of Assignment							
Type of Activity	Total assaults by weapon	Firearm	Knife/ Cutting Instrument	Other Dangerous Weapon	Hands Fist Feet	Two Man Vehicle	One Man Vehicle	One man Vehicle Ass'ted	Detective or Special Assignment	Detective or Special Assignment Ass'ted	Other	Other Assisted	Assault Cleared
Responding to Disturbance	29	0	1	5	23	3	21	2	2	0	0	1	29
Burglaries in Progress or Pursuing suspects	1	0	0	1	0	0	1	0	0	0	0	0	1
Robberies in Progress or Pursuing suspects	0	0	0	0	0	0	0	0	0	0	0	0	0
Attempting other Arrest	28	0	1	5	22	6	14	4	1	1	0	2	28
Civil Disorder	3	0	0	0	3	0	1	1	0	0	0	1	3
Handling/Transporting/Custody of Prisoners	13	0	0	2	11	0	10	0	0	1	0	2	13
Investigation of Suspicious Person	3	0	0	0	3	1	2	0	0	0	0	0	3
Ambush	0	0	0	0	0	0	0	0	0	0	0	0	0
Mentally Deranged Person	3	0	0	1	2	0	2	1	0	0	0	0	3
Traffic Pursuit and Stops	13	0	0	9	4	0	4	1	5	0	0	3	12
All Others	23	0	0	12	11	2	9	6	0	0	2	4	22
Totals	**116**	**0**	**2**	**35**	**79**	**12**	**64**	**15**	**8**	**2**	**2**	**13**	**114**
Victim Was Injured	18	0	0	6	12								
Victim Was Not Injured	98	0	2	29	67								

		12:01 - 2:00	2:00 - 4:00	4:00-6:00	6:00-8:00	8:00-10:00	10:00-12:00
Time of Assaults	A.M.	45	8	0	2	2	7
	P.M.	7	11	9	8	14	3

Sussex County 2008	
Total of Officers Killed	1
Total of Officers Assaulted	154

		Type of Weapon					Type of Assignment							
Type of Activity		Total assaults by weapon	Firearm	Knife/ Cutting Instrument	Other Dangerous Weapon	Hands Fist Feet	Two Man Vehicle	One Man Vehicle	One man Vehicle Ass'ted	Detective or Special Assignment	Detective or Special Assignment Ass'ted	Other	Other Assisted	Assault Cleared
Responding to Disturbance		24	6	0	2	16	0	9	2	0	0	7	6	24
Burglaries in Progress or Pursuing suspects		0	0	0	0	0	0	0	0	0	0	0	0	0
Robberies in Progress or Pursuing suspects		0	0	0	0	0	0	0	0	0	0	0	0	0
Attempting other Arrest		72	2	0	9	61	4	16	18	2	2	23	7	71
Civil Disorder		2	0	0	0	2	0	2	0	0	0	0	0	2
Handling/Transporting/Custody of Prisoners		16	0	0	0	16	1	8	3	0	0	4	0	16
Investigation of Suspicious Person		2	0	0	0	2	0	2	0	0	0	0	0	2
Ambush		0	0	0	0	0	0	0	0	0	0	0	0	0
Mentally Deranged Person		15	6	0	0	9	1	4	10	0	0	0	0	12
Traffic Pursuit and Stops		13	0	0	3	10	1	10	2	0	0	0	0	13
All Others		11	0	0	0	11	1	3	3	0	1	2	1	10
Totals		**155**	**14**	**0**	**14**	**127**	**8**	**54**	**38**	**2**	**3**	**36**	**14**	**150**
Victim Was Injured		41	0	0	3	38								
Victim Was Not Injured		114	14	0	11	89								
		12:01 - 2:00	2:00 - 4:00	4:00-6:00	6:00-8:00	8:00-10:00	10:00-12:00							
Time of Assaults	A.M.	62	3	5	1	7	3							
	P.M.	6	3	8	14	27	16							

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Crime in Delaware 2003 – 2008 by Jurisdiction

Complaint, Offense and Clearance data appear by agency in the following 'Crime in Delaware 2003 – 2008 by Jurisdiction' section.

'Complaints' are criminal offenses reported to or by the police.

'Offenses' are "offenses received" which are the primary crime statistic for NIBRS. Because serious charges in a case can be counted separately as an "offense received", these counts exceed the count of complaints. Counts of "offenses received" are provided for a select sample of crimes including homicide, kidnapping, forcible sex offenses, arson, robbery, assaults, extortion - blackmail, burglary, larceny - theft, motor vehicle theft, counterfeiting - forgery, fraud, embezzlement, stolen property, property destruction - vandalism, drug - narcotic offenses, non-forcible sex offenses, obscene material - pornography, gambling, prostitution, bribery, and weapon law violations. For each type of "offense received" the number of cleared offenses is also provided.

'Clearances' are complaints reported to the police and are considered cleared or solved once the police have identified the offender. One arrest may clear several crimes; therefore the clearance rate is often higher than the arrest rate.

The following pages provide, by Delaware agency, the numbers of total Group A and Group B complaints, which provide the summary of criminal activity by jurisdiction. The annual Complaint statistics in Crime in Delaware 2003 – 2008 are for crimes reported in each respective year. Clearance statistics for a given year show how many of that year's complaints have been solved that year. While it is recognized that more crimes will ultimately be cleared after the reporting year, clearance statistics are not updated in Crime in Delaware. This practice is consistent with that of the FBI's Crime in the United States reports; however, unlike the FBI reports, the compilation of Crime in Delaware is delayed until the reporting year statistics are complete.

It is important to note that the snapshot provided on the following pages is intended to provide a full account of a year's law enforcement activity, but there can be significant delays in conclusions and therefore, in the reporting of that activity. The SBI makes tremendous efforts to give all agencies the opportunity of have their year's activity entered into the state's information system. No agency is penalized for early, updated or late reporting – In fact, SBI does not prepare the year-end summary and the annual analysis until the last jurisdiction reports.

The percent change shown for each law enforcement agency is for the change in crime between 2007 and 2008.

The method of measuring and counting NIBRS Group B activity was changed in 2007, resulting in a lower count of Group B Crimes. See page 122 for a detailed explanation.

Crime in Delaware by Jurisdiction 2000 - 2008

		Total Group A & B	Total Group A	Total Group B	Criminal Homicide		Forcible Sexual Offenses		Robbery		Aggravated Assault	
		Complaints	Complaints	Complaints	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
Statewide	08	110,403	74,508	35,895	57	24	805	585	2,171	671	3,976	2,812
	07	129,636	73,994	55,642	41	23	743	513	2,032	628	4,091	2,965
	06	137,756	74,559	63,197	45	25	850	613	2,023	588	3,868	2,724
	05	130,758	69,182	61,576	48	29	842	607	1,538	472	3,866	2,736
	04	130,739	68,547	62,192	28	15	465	317	1,580	429	3,646	2,567
	03	132,495	70,482	62,013	28	16	470	342	1,765	573	3,949	2,911
	02	135,271	72,025	63,246	32	21	483	355	1,629	515	3,697	2,690
	01	134,551	72,401	62,150	31	24	558	410	1,479	559	3,617	2,734
	00	131,288	72,560	58,728	27	22	555	400	1,440	467	3,589	2,678
%Change 07-08		**-15%**	**1%**	**-35%**	**39%**	**4%**	**8%**	**14%**	**7%**	**7%**	**-3%**	**-5%**
County Level												
New Castle County	08	66,802	45,553	21,249	43	14	363	233	1,676	432	2,440	1,657
	07	77,538	45,610	31,928	30	15	369	228	1,639	447	2,497	1,725
	06	82,240	46,751	35,489	35	18	424	291	1,700	433	2,404	1,578
	05	77,154	43,029	34,125	32	17	431	295	1,292	345	2,300	1,517
	04	59,321	43,203	16,118	24	11	250	160	1,270	309	2,164	1,422
	03	82,737	45,478	37,259	16	9	254	170	1,487	431	2,323	1,593
	02	85,438	47,517	37,921	22	14	270	188	1,304	368	2,214	1,513
	01	87,664	48,677	38,987	26	21	299	214	1,209	431	2,153	1,533
	00	86,472	49,154	37,318	23	18	312	211	1,187	363	2,125	1,461
%Change 07-08		**-14%**	**0%**	**-33%**	**43%**	**-7%**	**-2%**	**2%**	**2%**	**-3%**	**-2%**	**-4%**
Kent County	08	19,343	13,952	5,391	8	6	217	189	249	134	731	557
	07	22,408	13,596	8,812	6	5	194	168	167	94	732	585
	06	23,720	13,026	10,694	8	5	213	173	161	87	678	527
	05	22,880	12,346	10,534	6	6	210	167	106	61	703	544
	04	23,515	12,509	11,006	4	4	101	75	148	69	737	549
	03	22,295	12,610	9,685	7	4	111	91	135	70	805	638
	02	22,451	12,289	10,162	3	1	93	66	159	74	727	558
	01	21,978	12,037	9,941	2	2	106	83	129	63	683	551
	00	21,279	11,893	9,386	1	1	89	73	128	47	690	569
%Change 07-08		**-14%**	**3%**	**-39%**	**33%**	**20%**	**12%**	**13%**	**49%**	**43%**	**0%**	**-5%**
Sussex County	08	24,258	15,003	9,255	6	4	225	163	246	105	805	598
	07	29,689	14,787	14,902	5	3	180	117	226	87	862	655
	06	31,796	14,782	17,014	2	2	213	149	162	68	786	619
	05	30,724	13,807	16,917	10	6	201	145	140	66	863	675
	04	47,903	12,835	35,068	0	0	114	82	162	51	745	596
	03	27,463	12,394	15,069	5	3	105	81	143	72	821	680
	02	27,382	12,219	15,163	7	6	120	101	166	73	756	619
	01	24,909	11,687	13,222	3	1	153	113	141	65	781	650
	00	23,537	11,513	12,024	3	3	154	116	125	57	774	648
%Change 07-08		**-18%**	**1%**	**-38%**	**20%**	**33%**	**25%**	**39%**	**9%**	**21%**	**-7%**	**-9%**

Crime in Delaware by Jurisdiction 2000 - 2008											
Arson		Burglary		Larceny/Theft		Motor Vehicle Theft		Drug/Narcotic		Weapon Law Violations	
Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
353	98	6,846	1,441	22,901	5,974	2,629	369	10,634	10,149	2,924	2,026
312	101	6,556	1,424	21,425	5,583	2,485	359	10,959	10,361	2,854	2,038
378	109	6,420	1,504	21,442	5,059	2,973	386	10,810	10,135	2,851	2,029
384	144	6,055	1,440	19,187	4,781	2,468	340	9,876	9,302	2,567	1,876
376	119	5,884	1,439	20,446	5,009	2,483	364	8,341	7,748	2,269	1,613
368	111	6,277	1,430	20,048	4,781	3,196	344	8,549	7,941	2,336	1,709
431	125	5,933	1,257	20,720	4,725	3,548	464	7,685	7,060	2,329	1,702
447	115	5,534	1,345	21,090	4,865	3,081	374	7,912	7,273	2,195	1,709
462	134	5,396	1,142	21,770	4,601	3,649	432	7,277	6,785	2,186	1,598
13%	**-3%**	**4%**	**1%**	**7%**	**7%**	**6%**	**3%**	**-3%**	**-2%**	**2%**	**-1%**
County Level											
186	56	3,921	643	14,501	3,180	1,867	175	5,907	5,659	2,007	1,277
169	42	3,986	738	13,834	3,326	1,867	193	5,769	5,435	1,907	1,271
209	55	3,913	734	13,964	2,939	2,315	213	5,911	5,539	1,903	1,229
256	87	3,868	801	12,197	2,731	1,886	211	5,538	5,223	1,625	1,070
221	66	3,476	782	13,311	2,913	1,875	209	4,597	4,230	1,409	906
232	71	3,959	821	12,925	2,704	2,634	217	4,684	4,297	1,563	1,076
288	80	3,878	733	13,679	2,722	2,974	303	4,600	4,148	1,583	1,096
315	82	3,707	861	14,385	3,052	2,571	250	4,695	4,251	1,476	1,111
310	78	3,471	678	14,993	2,809	3,096	289	4,093	3,744	1,497	1,039
10%	**33%**	**-2%**	**-13%**	**5%**	**-4%**	**0%**	**-9%**	**2%**	**4%**	**5%**	**0%**
93	25	1,163	373	4,078	1,522	406	111	2,457	2,338	474	392
90	41	909	305	3,684	1,214	324	91	2,681	2,533	447	382
100	21	914	405	3,438	1,106	352	98	2,384	2,243	480	404
66	27	803	319	3,308	1,025	317	64	2,257	2,177	501	438
106	31	923	341	3,570	1,103	335	71	1,809	1,721	468	396
65	16	924	238	3,684	1,111	310	65	2,048	1,931	409	344
82	26	841	218	3,632	1,051	292	73	1,416	1,316	359	286
77	19	802	252	3,436	1,006	262	56	1,513	1,412	351	293
90	30	824	194	3,478	979	335	73	1,772	1,677	362	288
3%	**-39%**	**28%**	**22%**	**11%**	**25%**	**25%**	**22%**	**-8%**	**-8%**	**6%**	**3%**
74	17	1,762	425	4,322	1,272	356	83	2,270	2,152	443	357
53	18	1,661	381	3,907	1,043	294	75	2,509	2,393	500	385
69	33	1,593	365	4,040	1,014	306	75	2,515	2,353	468	396
62	30	1,384	320	3,682	1,025	265	65	2,081	1,902	441	368
49	22	1,485	316	3,565	993	273	84	1,935	1,797	392	311
71	24	1,394	371	3,439	966	252	62	1,817	1,713	364	289
61	19	1,214	306	3,409	952	282	88	1,669	1,596	387	320
55	14	1,025	232	3,269	807	248	68	1,704	1,610	368	305
62	26	1,101	270	3,299	813	218	70	1,412	1,364	327	271
40%	**-6%**	**6%**	**12%**	**11%**	**22%**	**21%**	**11%**	**-10%**	**-10%**	**-11%**	**-7%**

Crime in Delaware by Jurisdiction 2000 - 2008

		Total Group A & B	Total Group A	Total Group B	Criminal Homicide		Forcible Sexual Offenses		Robbery		Aggravated Assault	
		Complaints	Complaints	Complaints	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
State Police Troops												
All DSP Troops	08	37,215	26,617	10,598	12	7	377	301	592	225	1,320	1,018
	07	42,799	26,404	16,395	13	9	337	247	520	214	1,413	1,127
	06	44,852	26,438	18,414	9	5	333	258	645	176	1,273	985
	05	42,737	24,851	17,886	13	10	339	265	465	184	1,397	1,094
	04	42,664	24,318	18,346	6	2	174	137	511	191	1,320	1,028
	03	41,361	24,110	17,251	12	8	167	135	573	209	1,463	1,147
	02	42,140	23,860	18,280	10	9	174	152	528	192	1,418	1,072
	01	41,279	23,777	17,502	6	4	214	177	522	223	1,429	1,130
	00	40,459	23,536	16,923	7	7	205	171	382	135	1,365	1,109
%Change 07-08		**-13%**	**1%**	**-35%**	**-8%**	**-22%**	**12%**	**22%**	**14%**	**5%**	**-7%**	**-10%**
DSP Troop #1	08	3,256	2,701	555	0	0	14	12	120	49	67	51
	07	3,917	2,887	1,030	3	2	12	7	93	29	105	75
	06	3,720	2,705	1,015	1	0	5	4	123	28	75	55
	05	3,320	2,445	875	1	1	11	10	104	30	73	58
	04	3,440	2,493	947	0	0	3	3	114	50	61	32
	03	3,461	2,550	911	1	1	4	3	87	27	77	45
	02	3,825	2,747	1,078	1	1	4	4	91	38	103	63
	01	4,203	2,998	1,205	0	0	4	4	140	50	112	68
	00	4,295	3,097	1,198	0	0	2	2	87	14	83	49
%Change 07-08		**-17%**	**-6%**	**-46%**	**-100%**	**-100%**	**17%**	**71%**	**29%**	**69%**	**-36%**	**-32%**
DSP Troop #2	08	4,658	3,649	1,009	0	0	27	19	138	43	123	85
	07	4,732	3,435	1,297	2	1	38	18	112	53	169	124
	06	5,375	3,873	1,502	0	0	18	7	163	39	160	102
	05	5,546	3,909	1,637	1	1	30	24	127	47	153	95
	04	5,512	3,868	1,644	2	0	7	5	144	41	174	127
	03	5,170	3,791	1,379	0	0	9	6	177	44	155	98
	02	0	0	0	0	0	0	0	0	0	0	0
	01	0	0	0	0	0	0	0	0	0	0	0
	00	0	0	0	0	0	0	0	0	0	0	0
%Change 07-08		**-2%**	**6%**	**-22%**	**-100%**	**-100%**	**-29%**	**6%**	**23%**	**-19%**	**-27%**	**-31%**
DSP Troop #3	08	8,453	5,968	2,485	4	2	138	122	92	42	372	290
	07	9,358	5,742	3,616	4	3	119	109	62	34	377	316
	06	10,063	5,540	4,523	6	4	138	114	71	38	325	257
	05	9,357	5,020	4,337	2	2	124	101	34	25	405	344
	04	10,236	5,340	4,896	1	1	65	52	53	27	435	341
	03	9,911	5,395	4,516	5	3	74	64	39	21	492	404
	02	10,119	5,165	4,954	2	1	53	47	66	27	457	355
	01	9,723	4,871	4,852	1	1	75	64	40	23	419	355
	00	9,157	4,585	4,572	1	1	59	51	38	17	393	341
%Change 07-08		**-10%**	**4%**	**-31%**	**0%**	**-33%**	**16%**	**12%**	**48%**	**24%**	**-1%**	**-8%**
DSP Troop #4	08	3,810	2,459	1,351	1	1	50	39	26	10	159	139
	07	4,468	2,339	2,129	1	1	28	18	14	4	136	95
	06	4,610	2,225	2,385	0	0	41	30	7	4	135	114
	05	4,484	2,119	2,365	4	3	34	27	10	4	149	112
	04	4,350	1,936	2,414	0	0	25	18	15	4	159	132
	03	2,865	1,084	1,781	1	1	11	7	6	2	85	66
	02	3,107	1,188	1,919	1	1	26	24	7	1	91	78
	01	2,877	1,118	1,759	0	0	30	24	28	15	84	72
	00	3,002	1,168	1,834	0	0	29	24	6	5	86	74
%Change 07-08		**-15%**	**5%**	**-37%**	**0%**	**0%**	**79%**	**117%**	**86%**	**150%**	**17%**	**46%**

Crime in Delaware by Jurisdiction 2000 - 2008											
Arson		Burglary		Larceny/Theft		Motor Vehicle Theft		Drug/Narcotic		Weapon Law Violations	
Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
State Police Troops											
14	8	2,564	602	8,777	3,019	829	163	4,214	3,999	844	694
8	5	2,354	585	8,392	2,804	767	147	4,424	4,154	857	708
9	6	2,287	642	8,413	2,424	839	152	4,623	4,346	909	732
12	9	2,297	650	7,566	2,320	773	147	4,157	3,890	898	763
14	9	2,199	580	7,990	2,503	786	178	3,468	3,230	796	653
15	8	2,248	489	7,637	2,230	873	133	3,717	3,441	799	620
15	5	1,939	434	7,739	2,302	866	188	2,989	2,740	779	621
18	13	1,853	462	7,796	2,272	847	138	2,990	2,759	696	580
14	5	1,886	426	7,891	2,239	910	161	2,777	2,669	647	529
75%	**60%**	**9%**	**3%**	**5%**	**8%**	**8%**	**11%**	**-5%**	**-4%**	**-2%**	**-2%**
2	1	136	29	1,411	610	48	3	359	351	81	64
1	0	139	26	1,414	566	86	8	349	331	73	50
1	0	108	31	1,355	434	80	7	262	245	70	50
2	1	204	55	1,097	345	92	12	250	239	65	45
2	1	116	23	1,272	473	66	7	209	204	70	52
0	0	162	17	1,207	409	94	11	290	286	58	44
2	0	158	20	1,323	404	138	23	226	220	71	53
5	3	193	43	1,402	426	126	10	235	230	70	53
1	0	198	36	1,473	395	185	20	182	177	56	37
100%	**N/A**	**-2%**	**12%**	**0%**	**8%**	**-44%**	**-63%**	**3%**	**6%**	**11%**	**28%**
2	2	195	23	1,308	436	136	16	772	734	121	86
1	0	184	31	1,244	402	139	19	730	673	137	112
0	0	198	36	1,333	352	173	15	986	954	161	115
0	0	261	60	1,429	379	192	33	732	717	147	117
3	1	241	57	1,528	388	212	44	483	466	121	83
0	0	287	43	1,490	370	245	27	442	416	145	92
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
100%	**N/A**	**6%**	**-26%**	**5%**	**8%**	**-2%**	**-16%**	**6%**	**9%**	**-12%**	**-23%**
3	2	712	209	1,386	395	209	62	1,047	977	198	169
3	2	585	203	1,097	292	158	47	1,172	1,085	185	163
1	1	597	264	1,115	285	178	59	1,027	961	239	208
1	1	514	224	1,005	251	150	31	909	896	290	270
4	3	569	206	1,108	287	176	43	808	802	247	224
3	3	584	117	1,138	284	152	32	968	960	217	193
1	0	543	124	1,155	316	124	33	487	480	180	148
5	4	485	137	1,056	258	116	27	404	399	161	146
3	0	497	114	974	251	127	32	500	495	167	146
0%	**0%**	**22%**	**3%**	**26%**	**35%**	**32%**	**32%**	**-11%**	**-10%**	**7%**	**4%**
1	1	365	105	621	182	62	17	297	271	68	65
0	0	332	64	503	116	73	20	310	302	81	67
0	0	279	51	501	118	65	14	360	333	64	57
1	1	264	53	483	123	59	14	238	230	72	65
0	0	272	52	432	108	55	21	258	253	64	58
0	0	132	43	189	52	35	9	231	227	52	46
1	1	107	39	219	70	28	7	294	294	46	41
1	1	93	25	225	38	31	8	209	206	50	42
1	1	139	36	227	53	26	8	157	157	32	30
N/A	**N/A**	**10%**	**64%**	**23%**	**57%**	**-15%**	**-15%**	**-4%**	**-10%**	**-16%**	**-3%**

Crime in Delaware by Jurisdiction 2000 - 2008

		Total Group A & B	Total Group A	Total Group B	Criminal Homicide		Forcible Sexual Offenses		Robbery		Aggravated Assault	
		Complaints	Complaints	Complaints	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
DSP Troop #5	08	5,128	3,136	1,992	4	2	59	47	47	17	237	174
	07	6,392	3,128	3,264	0	0	45	31	38	13	280	235
	06	6,540	3,024	3,516	0	0	49	40	32	12	205	176
	05	5,537	2,458	3,079	1	0	47	31	19	8	229	182
	04	5,366	2,460	2,906	0	0	42	36	26	6	179	153
	03	5,424	2,590	2,834	3	1	37	31	25	13	227	188
	02	5,397	2,308	3,089	4	4	35	31	24	12	202	166
	01	4,958	2,271	2,687	3	1	39	32	24	8	210	182
	00	4,598	2,216	2,382	1	1	43	37	18	10	210	178
%Change 07-08		**-20%**	**0%**	**-39%**	**N/A**	**N/A**	**31%**	**52%**	**24%**	**31%**	**-15%**	**-26%**
DSP Troop #6	08	4,718	3,570	1,148	2	1	23	12	113	39	133	107
	07	5,189	3,665	1,524	1	1	22	14	132	48	133	100
	06	5,250	3,704	1,546	1	0	22	18	195	37	141	98
	05	4,978	3,316	1,662	1	1	29	22	131	42	136	101
	04	5,024	3,194	1,830	3	1	6	4	116	41	111	77
	03	5,213	3,390	1,823	1	1	6	2	189	77	148	104
	02	8,161	5,425	2,736	1	1	9	6	198	60	230	147
	01	8,129	5,511	2,618	2	2	13	8	179	73	244	165
	00	8,459	5,766	2,693	0	0	25	21	134	54	238	169
%Change 07-08		**-9%**	**-3%**	**-25%**	**100%**	**0%**	**5%**	**-14%**	**-14%**	**-19%**	**0%**	**7%**
DSP Troop #7	08	5,336	3,669	1,667	1	1	50	39	46	23	182	138
	07	6,259	3,596	2,663	2	1	46	29	52	28	171	144
	06	6,727	3,669	3,058	0	0	45	35	26	15	179	141
	05	6,633	3,662	2,971	3	2	57	46	32	24	196	158
	04	6,250	3,370	2,880	0	0	18	13	35	18	169	143
	03	6,958	3,681	3,277	1	1	26	22	34	19	239	213
	02	6,589	3,476	3,113	0	0	36	31	35	21	215	179
	01	6,066	3,183	2,883	0	0	43	36	23	12	201	177
	00	5,664	2,994	2,670	2	2	33	26	25	15	213	192
%Change 07-08		**-15%**	**2%**	**-37%**	**-50%**	**0%**	**9%**	**34%**	**-12%**	**-18%**	**6%**	**-4%**
DSPTroop #8 Kent	08	20	17	3	0	0	0	0	0	0	0	0
	07	67	17	50	0	0	0	0	0	0	0	0
	06	120	35	85	0	0	0	0	0	0	0	0
	05	214	107	107	0	0	0	0	0	0	0	0
	04	186	100	86	0	0	0	0	0	0	0	0
	03	189	136	53	0	0	0	0	0	0	0	0
	02	150	99	51	0	0	0	0	0	0	0	0
	01	145	116	29	0	0	0	0	0	0	0	0
	00	181	159	22	0	0	1	1	0	0	0	0
%Change 07-08		**-70%**	**0%**	**-94%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
DSPTroop #8 New Castle	08	31	25	6	0	0	0	0	0	0	0	0
	07	23	17	6	0	0	0	0	0	0	0	0
	06	126	88	38	0	0	0	0	0	0	0	0
	05	411	287	124	0	0	0	0	0	0	5	5
	04	440	321	119	0	0	0	0	0	0	1	1
	03	401	311	90	0	0	0	0	0	0	2	2
	02	383	296	87	0	0	0	0	0	0	0	0
	01	442	325	117	0	0	0	0	0	0	0	0
	00	408	306	102	0	0	1	1	0	0	1	1
%Change 07-08		**35%**	**47%**	**0%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**

Crime in Delaware by Jurisdiction 2000 - 2008											
Arson		Burglary		Larceny/Theft		Motor Vehicle Theft		Drug/Narcotic		Weapon Law Violations	
Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
1	0	387	92	679	200	120	30	502	475	109	87
2	2	414	105	678	179	84	18	523	486	125	95
1	0	339	100	735	199	86	30	463	449	120	104
2	2	237	71	493	162	74	19	243	241	82	71
1	1	296	91	562	148	63	16	358	355	88	71
4	1	262	69	577	163	72	27	327	325	75	59
4	2	266	81	520	157	67	25	201	198	91	76
3	3	256	59	513	139	54	12	226	221	94	81
2	2	258	55	542	105	54	14	180	178	67	55
-50%	**-100%**	**-7%**	**-12%**	**0%**	**12%**	**43%**	**67%**	**-4%**	**-2%**	**-13%**	**-8%**
1	0	184	34	1,555	571	101	8	639	614	143	119
0	0	196	49	1,603	585	95	9	533	497	111	94
2	1	195	33	1,638	520	130	9	476	449	108	73
2	0	246	48	1,379	467	102	16	391	380	99	76
2	1	179	56	1,488	495	102	16	291	287	78	56
1	0	171	34	1,452	450	140	11	306	305	122	83
1	0	285	46	2,147	604	267	55	572	558	169	131
3	2	324	77	2,176	602	258	30	594	585	144	116
2	0	275	55	2,442	667	263	42	476	465	139	103
N/A	**N/A**	**-6%**	**-31%**	**-3%**	**-2%**	**6%**	**-11%**	**20%**	**24%**	**29%**	**27%**
3	1	452	97	1,193	357	110	22	451	431	99	82
0	0	408	93	1,118	304	78	21	632	617	102	87
4	4	462	105	1,077	249	75	16	566	544	90	78
2	2	454	118	1,085	298	65	17	379	376	86	72
1	1	452	76	1,018	297	68	26	370	362	79	64
6	4	570	147	1,107	274	83	15	355	346	73	57
2	1	388	93	1,068	292	87	24	315	312	92	80
1	0	290	65	948	243	79	29	338	338	68	57
4	2	351	100	864	241	65	28	272	269	70	65
N/A	**N/A**	**11%**	**4%**	**7%**	**17%**	**41%**	**5%**	**-29%**	**-30%**	**-3%**	**-6%**
0	0	0	0	2	1	0	0	0	0	0	0
0	0	0	0	1	1	0	0	0	0	0	0
0	0	0	0	3	3	0	0	32	23	2	2
0	0	0	0	0	0	0	0	150	127	6	6
0	0	0	0	5	3	0	0	124	82	6	6
0	0	0	0	5	5	0	0	176	133	4	3
0	0	0	0	6	4	0	0	146	100	5	5
0	0	0	0	1	1	0	0	151	131	2	2
0	0	0	0	3	1	1	0	274	257	8	8
N/A	**N/A**	**N/A**	**N/A**	**100%**	**0%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	1	0	0	0	2	2	0	0
0	0	0	0	0	0	0	0	99	84	5	4
0	0	0	0	5	3	0	0	316	245	15	13
1	1	0	0	7	7	2	1	325	210	21	19
0	0	2	2	4	1	1	0	299	167	18	14
0	0	0	0	8	7	2	1	275	158	12	12
0	0	0	0	2	2	7	7	298	177	8	6
0	0	0	0	4	2	2	0	256	215	15	14
N/A	**N/A**	**N/A**	**N/A**	**-100%**	**N/A**	**N/A**	**N/A**	**-100%**	**-100%**	**N/A**	**N/A**

Crime in Delaware by Jurisdiction 2000 - 2008

		Total Group A & B	Total Group A	Total Group B	Criminal Homicide		Forcible Sexual Offenses		Robbery		Aggravated Assault	
		Complaints	Complaints	Complaints	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
DSP Troop #8 Sussex	08	7	6	1	0	0	0	0	0	0	0	0
	07	7	6	1	0	0	0	0	0	0	0	0
	06	115	99	16	0	0	0	0	0	0	0	0
	05	285	249	36	0	0	0	0	0	0	0	0
	04	106	91	15	0	0	0	0	0	0	0	0
	03	154	147	7	0	0	0	0	0	0	0	0
	02	196	178	18	0	0	0	0	1	1	0	0
	01	228	206	22	0	0	0	0	0	0	0	0
	00	182	161	21	0	0	0	0	0	0	0	0
%Change 07-08		**0%**	**0%**	**0%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
DSP Troop #9	08	1,798	1,417	381	0	0	16	11	10	2	47	34
	07	2,387	1,572	815	0	0	27	21	17	5	42	38
	06	2,206	1,476	730	1	1	15	10	28	3	53	42
	05	1,972	1,279	693	0	0	7	4	8	4	51	39
	04	1,754	1,145	609	0	0	8	6	8	4	31	22
	03	1,615	1,035	580	0	0	0	0	16	6	38	27
	02	4,213	2,978	1,235	1	1	11	9	106	32	120	84
	01	4,508	3,178	1,330	0	0	10	9	88	42	159	111
	00	4,513	3,084	1,429	3	3	12	8	74	20	141	105
%Change 07-08		**-25%**	**-10%**	**-53%**	**N/A**	**N/A**	**-41%**	**-48%**	**-41%**	**-60%**	**12%**	**-11%**
DSP Kent County	08	8,473	5,985	2,488	4	2	138	122	92	42	372	290
	07	9,425	5,759	3,666	4	3	119	109	62	34	377	316
	06	10,183	5,575	4,608	6	4	138	114	71	38	325	257
	05	9,571	5,127	4,444	2	2	124	101	34	25	405	344
	04	10,422	5,440	4,982	1	1	65	52	53	27	435	341
	03	10,100	5,531	4,569	5	3	74	64	39	21	492	404
	02	10,269	5,264	5,005	2	1	53	47	66	27	457	355
	01	9,868	4,987	4,881	1	1	75	64	40	23	419	355
	00	9,338	4,744	4,594	1	1	60	52	38	17	393	341
%Change 07-08		**-10%**	**4%**	**-32%**	**0%**	**-33%**	**16%**	**12%**	**48%**	**24%**	**-1%**	**-8%**
DSP New Castle County	08	14,461	11,362	3,099	2	1	80	54	381	133	370	277
	07	16,248	11,576	4,672	6	4	99	60	354	135	449	337
	06	16,677	11,846	4,831	3	1	60	39	509	107	429	297
	05	16,227	11,236	4,991	3	3	77	60	370	123	418	298
	04	16,170	11,021	5,149	5	1	24	18	382	136	378	259
	03	15,860	11,077	4,783	2	2	19	11	469	154	420	276
	02	16,582	11,446	5,136	3	3	24	19	395	130	453	294
	01	17,282	12,012	5,270	2	2	27	21	407	165	515	344
	00	17,675	12,253	5,422	3	3	40	32	295	88	463	324
%Change 07-08		**-11%**	**-2%**	**-34%**	**-67%**	**-75%**	**-19%**	**-10%**	**8%**	**-1%**	**-18%**	**-18%**
DSP Sussex County	08	14,281	9,270	5,011	6	4	159	125	119	50	578	451
	07	17,126	9,069	8,057	3	2	119	78	104	45	587	474
	06	17,992	9,017	8,975	0	0	135	105	65	31	519	431
	05	16,939	8,488	8,451	8	5	138	104	61	36	574	452
	04	16,072	7,857	8,215	0	0	85	67	76	28	507	428
	03	15,401	7,502	7,899	5	3	74	60	65	34	551	467
	02	15,289	7,150	8,139	5	5	97	86	67	35	508	423
	01	14,129	6,778	7,351	3	1	112	92	75	35	495	431
	00	13,446	6,539	6,907	3	3	105	87	49	30	509	444
%Change 07-08		**-17%**	**2%**	**-38%**	**100%**	**100%**	**34%**	**60%**	**14%**	**11%**	**-2%**	**-5%**

Crime in Delaware by Jurisdiction 2000 - 2008											
Arson		Burglary		Larceny/Theft		Motor Vehicle Theft		Drug/Narcotic		Weapon Law Violations	
Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	154	117	4	4
0	0	0	0	0	0	0	0	389	281	15	13
0	0	0	0	0	0	0	0	139	109	3	3
0	0	0	0	0	0	0	0	231	186	10	10
0	0	0	0	0	0	0	0	270	223	12	11
0	0	0	0	1	1	0	0	358	297	14	14
0	0	0	0	2	1	0	0	285	269	9	9
N/A	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
1	1	133	13	622	267	43	5	147	146	25	22
1	1	96	14	733	359	54	5	173	161	43	40
0	0	109	22	656	264	52	2	198	187	46	37
2	2	117	21	590	292	39	5	160	158	21	15
0	0	74	19	570	297	42	4	103	100	19	17
1	0	78	17	468	222	51	1	92	90	25	19
4	1	192	31	1,293	448	153	20	203	197	101	64
0	0	212	56	1,472	562	176	15	177	175	85	63
1	0	168	30	1,360	523	187	17	195	187	84	62
0%	**0%**	**39%**	**-7%**	**-15%**	**-26%**	**-20%**	**0%**	**-15%**	**-9%**	**-42%**	**-45%**
3	2	712	209	1,388	396	209	62	1,047	977	198	169
3	2	585	203	1,098	293	158	47	1,172	1,085	185	163
1	1	597	264	1,118	288	178	59	1,059	984	241	210
1	1	514	224	1,005	251	150	31	1,059	1,023	296	276
4	3	569	206	1,113	290	176	43	932	884	253	230
3	3	584	117	1,143	289	152	32	1,144	1,093	221	196
1	0	543	124	1,161	320	124	33	633	580	185	153
5	4	485	137	1,057	259	116	27	555	530	163	148
3	0	497	114	977	252	128	32	774	752	175	154
0%	**0%**	**22%**	**3%**	**26%**	**35%**	**32%**	**32%**	**-11%**	**-10%**	**7%**	**4%**
6	4	648	99	4,896	1,884	328	32	1,917	1,845	370	291
3	1	615	120	4,995	1,912	374	41	1,787	1,664	364	296
3	1	610	122	4,982	1,570	435	33	2,021	1,919	390	279
6	3	828	184	4,500	1,486	425	66	1,849	1,739	347	266
8	4	610	155	4,865	1,660	424	72	1,411	1,267	309	227
2	0	700	113	4,621	1,452	531	50	1,429	1,264	368	252
7	1	635	97	4,771	1,463	560	99	1,276	1,133	353	260
8	5	729	176	5,052	1,592	567	62	1,304	1,167	307	238
4	0	641	121	5,279	1,587	637	79	1,109	1,044	294	216
100%	**300%**	**5%**	**-18%**	**-2%**	**-1%**	**-12%**	**-22%**	**7%**	**11%**	**2%**	**-2%**
5	2	1,204	294	2,493	739	292	69	1,250	1,177	276	234
2	2	1,154	262	2,299	599	235	59	1,465	1,405	308	249
5	4	1,080	256	2,313	566	226	60	1,543	1,443	278	243
5	5	955	242	2,061	583	198	50	1,249	1,128	255	221
2	2	1,020	219	2,012	553	186	63	1,125	1,079	234	196
10	5	964	259	1,873	489	190	51	1,144	1,084	210	172
7	4	761	213	1,807	519	182	56	1,080	1,027	241	208
5	4	639	149	1,687	421	164	49	1,131	1,062	226	194
7	5	748	191	1,635	400	145	50	894	873	178	159
150%	**0%**	**4%**	**12%**	**8%**	**23%**	**24%**	**17%**	**-15%**	**-16%**	**-10%**	**-6%**

Crime in Delaware by Jurisdiction 2000 - 2008

City, Town, or County Agencies

		Total Group A & B	Total Group A	Total Group B	Criminal Homicide		Forcible Sexual Offenses		Robbery		Aggravated Assault	
		Complaints	Complaints	Complaints	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
Bethany Beach	08	404	230	174	0	0	0	0	0	0	2	1
	07	581	243	338	0	0	1	1	0	0	3	3
	06	445	231	214	0	0	1	1	1	1	7	6
	05	581	214	367	0	0	0	0	0	0	5	4
	04	551	199	352	0	0	0	0	0	0	4	3
	03	555	173	382	0	0	0	0	0	0	4	4
	02	522	166	356	0	0	0	0	0	0	5	4
	01	446	164	282	0	0	0	0	0	0	0	0
	00	444	169	275	0	0	3	3	0	0	3	2
%Change 07-08		**-30%**	**-5%**	**-49%**	**N/A**	**N/A**	**-100%**	**-100%**	**N/A**	**N/A**	**-33%**	**-67%**
Blades	08	27	21	6	0	0	0	0	0	0	1	0
	07	22	15	7	0	0	0	0	0	0	0	0
	06	93	48	45	0	0	1	1	0	0	4	3
	05	122	60	62	0	0	1	1	0	0	4	2
	04	118	48	70	0	0	0	0	0	0	2	2
	03	74	42	32	0	0	0	0	2	0	4	3
	02	130	67	63	0	0	0	0	0	0	5	4
	01	143	74	69	0	0	1	1	0	0	6	6
	00	154	69	85	0	0	2	2	0	0	11	11
%Change 07-08		**23%**	**40%**	**-14%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
Bridgeville	08	259	219	40	0	0	2	0	3	0	9	4
	07	282	215	67	0	0	1	1	4	0	16	14
	06	294	205	89	0	0	0	0	0	0	12	7
	05	236	180	56	0	0	0	0	6	3	12	8
	04	199	147	52	0	0	3	2	0	0	14	11
	03	118	81	37	0	0	0	0	2	1	4	2
	02	116	93	23	0	0	4	3	4	3	9	6
	01	106	83	23	0	0	2	1	2	1	1	1
	00	200	159	41	0	0	1	1	7	2	16	11
%Change 07-08		**-8%**	**2%**	**-40%**	**N/A**	**N/A**	**100%**	**-100%**	**-25%**	**N/A**	**-44%**	**-71%**
Camden	08	667	437	230	0	0	5	5	3	2	8	8
	07	859	482	377	0	0	1	1	5	1	9	9
	06	621	396	225	0	0	5	5	3	1	9	9
	05	555	340	215	0	0	4	3	3	3	12	12
	04	528	343	185	0	0	1	1	3	0	6	5
	03	589	385	204	0	0	0	0	5	2	12	11
	02	406	250	156	0	0	0	0	0	0	13	12
	01	415	220	195	0	0	1	1	3	0	7	5
	00	180	127	53	0	0	3	3	0	0	12	10
%Change 07-08		**-22%**	**-9%**	**-39%**	**N/A**	**N/A**	**400%**	**400%**	**-40%**	**100%**	**-11%**	**-11%**
Cheswold	08	157	120	37	0	0	1	1	1	0	1	1
	07	111	81	30	0	0	0	0	1	1	1	1
	06	88	56	32	0	0	0	0	1	0	4	3
	05	85	48	37	0	0	2	2	0	0	3	3
	04	242	67	175	0	0	0	0	0	0	2	1
	03	40	13	27	0	0	0	0	0	0	3	2
	02	101	16	85	0	0	1	0	0	0	0	0
	01	28	19	9	0	0	0	0	0	0	1	0
	00	2	1	1	0	0	0	0	0	0	0	0
%Change 07-08		**41%**	**48%**	**23%**	**N/A**	**N/A**	**N/A**	**N/A**	**0%**	**-100%**	**0%**	**0%**

Crime in Delaware by Jurisdiction 2000 - 2008											
Arson		Burglary		Larceny/Theft		Motor Vehicle Theft		Drug/Narcotic		Weapon Law Violations	
Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
City, Town, or County Agencies											
1	0	13	1	129	27	0	0	53	53	2	2
0	0	9	0	133	24	0	0	48	45	1	1
0	0	21	3	130	19	0	0	40	40	3	3
1	0	17	1	118	18	1	0	29	26	5	5
0	0	12	1	102	19	1	0	41	39	4	4
0	0	6	1	99	17	0	0	26	26	2	1
0	0	18	1	77	15	2	0	19	19	1	1
0	0	10	2	78	15	1	1	20	20	4	4
0	0	1	0	88	18	0	0	26	26	2	2
N/A	**N/A**	**44%**	**N/A**	**-3%**	**13%**	**N/A**	**N/A**	**10%**	**18%**	**100%**	**100%**
0	0	2	0	1	0	0	0	7	7	0	0
0	0	2	0	3	0	0	0	0	0	1	1
0	0	5	2	23	5	0	0	1	1	0	0
0	0	4	3	20	5	1	0	0	0	1	0
0	0	4	1	10	2	1	0	1	1	1	0
0	0	5	3	7	2	1	0	1	1	3	2
0	0	6	1	13	2	1	0	0	0	0	0
0	0	10	0	23	3	2	0	1	1	0	0
0	0	14	7	15	9	2	0	0	0	2	2
N/A	**N/A**	**0%**	**N/A**	**-67%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**-100%**	**-100%**
1	0	22	4	81	12	3	0	20	19	2	1
0	0	13	3	52	6	1	0	65	65	6	5
0	0	15	1	49	9	1	0	58	55	3	2
0	0	7	0	37	3	2	0	39	36	4	2
0	0	6	3	29	2	1	0	21	21	4	4
0	0	11	1	20	2	1	0	4	4	3	2
1	0	9	3	25	4	2	2	0	0	6	5
1	0	6	1	26	4	3	0	9	9	3	3
0	0	7	2	45	8	10	4	3	3	7	5
N/A	**N/A**	**69%**	**33%**	**56%**	**100%**	**200%**	**N/A**	**-69%**	**-71%**	**-67%**	**-80%**
0	0	14	5	162	82	7	3	43	41	8	7
1	1	15	5	159	44	4	1	97	92	6	5
0	0	13	4	153	52	6	3	44	44	5	4
0	0	14	2	119	47	3	0	47	47	8	8
0	0	16	3	123	61	4	1	42	40	4	4
0	0	17	4	136	71	8	2	61	60	9	8
0	0	16	4	62	12	5	2	39	36	7	4
0	0	18	8	59	5	10	7	26	24	6	6
0	0	1	1	34	6	0	0	13	10	1	1
-100%	**-100%**	**-7%**	**0%**	**2%**	**86%**	**75%**	**200%**	**-56%**	**-55%**	**33%**	**40%**
0	0	9	4	18	2	2	0	73	71	2	2
0	0	5	1	15	3	1	0	28	28	0	0
0	0	2	0	23	1	1	0	5	5	0	0
0	0	7	1	12	5	0	0	8	8	1	1
0	0	7	2	16	3	1	0	2	2	1	1
0	0	2	0	4	0	0	0	0	0	0	0
0	0	2	1	4	1	1	0	1	1	0	0
0	0	1	0	5	1	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
N/A	**N/A**	**80%**	**300%**	**20%**	**-33%**	**100%**	**N/A**	**161%**	**154%**	**N/A**	**N/A**

Crime in Delaware by Jurisdiction 2000 - 2008

		Total Group A & B	Total Group A	Total Group B	Criminal Homicide		Forcible Sexual Offenses		Robbery		Aggravated Assault	
		Complaints	Complaints	Complaints	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
Clayton	08	201	135	66	0	0	4	0	1	0	5	5
	07	244	129	115	0	0	1	0	0	0	4	2
	06	227	106	121	0	0	2	1	1	0	4	2
	05	170	75	95	0	0	2	1	0	0	5	2
	04	106	55	51	0	0	0	0	0	0	3	1
	03	134	65	69	0	0	0	0	0	0	2	2
	02	132	63	69	0	0	0	0	0	0	2	0
	01	100	50	50	0	0	0	0	0	0	4	4
	00	126	62	64	0	0	1	1	0	0	4	4
%Change 07-08		**-18%**	**5%**	**-43%**	**N/A**	**N/A**	**300%**	**N/A**	**N/A**	**N/A**	**25%**	**150%**
Dagsboro	08	55	37	18	0	0	0	0	0	0	1	1
	07	59	39	20	0	0	0	0	0	0	0	0
	06	24	12	12	0	0	0	0	0	0	0	0
	05	23	9	14	0	0	0	0	0	0	0	0
	04	35	17	18	0	0	0	0	0	0	0	0
	03	0	0	0	0	0	0	0	0	0	0	0
	02	8	7	1	0	0	0	0	0	0	1	1
	01	10	7	3	0	0	0	0	0	0	2	2
	00	3	3	0	0	0	0	0	0	0	0	0
%Change 07-08		**-7%**	**-5%**	**-10%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
Delaware City	08	203	138	65	0	0	0	0	1	0	2	1
	07	226	151	75	0	0	1	0	2	0	2	1
	06	255	144	111	0	0	0	0	2	0	6	1
	05	277	152	125	0	0	1	0	0	0	7	3
	04	223	109	114	0	0	2	0	0	0	0	0
	03	64	39	25	0	0	0	0	0	0	1	0
	02	90	65	25	0	0	0	0	0	0	4	3
	01	84	63	21	0	0	0	0	0	0	0	0
	00	168	106	62	0	0	0	0	1	0	3	2
%Change 07-08		**-10%**	**-9%**	**-13%**	**N/A**	**N/A**	**-100%**	**N/A**	**-50%**	**N/A**	**0%**	**0%**
Delmar	08	135	125	10	0	0	1	0	2	1	1	1
	07	142	125	17	0	0	1	1	1	0	4	2
	06	190	153	37	0	0	5	4	1	1	5	1
	05	170	148	22	0	0	0	0	1	0	5	3
	04	172	131	41	0	0	1	1	6	0	6	0
	03	239	160	79	0	0	0	0	0	0	8	2
	02	271	164	107	0	0	0	0	5	3	4	1
	01	234	107	127	0	0	2	0	0	0	8	3
	00	183	135	48	0	0	0	0	5	3	3	3
%Change 07-08		**-5%**	**0%**	**-41%**	**N/A**	**N/A**	**0%**	**-100%**	**100%**	**N/A**	**-75%**	**-50%**
Dewey Beach	08	860	272	588	0	0	0	0	2	1	11	5
	07	669	229	440	0	0	1	0	0	0	16	9
	06	727	276	451	0	0	3	0	1	1	20	17
	05	752	224	528	0	0	5	1	5	2	10	8
	04	758	215	543	0	0	1	0	1	0	8	4
	03	333	193	140	0	0	1	0	1	1	4	4
	02	491	274	217	0	0	3	0	1	0	4	3
	01	412	252	160	0	0	3	0	2	2	9	5
	00	320	224	96	0	0	2	0	0	0	9	6
%Change 07-08		**29%**	**19%**	**34%**	**N/A**	**N/A**	**-100%**	**N/A**	**N/A**	**N/A**	**-31%**	**-44%**

Crime in Delaware by Jurisdiction 2000 - 2008											
Arson		Burglary		Larceny/Theft		Motor Vehicle Theft		Drug/Narcotic		Weapon Law Violations	
Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
0	0	6	1	33	3	4	1	54	50	5	5
0	0	6	1	27	3	2	0	41	41	1	1
0	0	7	1	15	4	0	0	50	45	4	3
0	0	8	2	13	2	1	0	16	11	1	0
0	0	6	1	12	0	1	0	17	17	1	1
0	0	6	0	12	0	1	0	13	13	0	0
1	0	4	3	21	3	2	0	6	6	3	2
0	0	1	0	13	0	0	0	10	7	1	1
0	0	7	1	16	3	4	0	2	2	1	1
N/A	**N/A**	**0%**	**0%**	**22%**	**0%**	**100%**	**N/A**	**32%**	**22%**	**400%**	**400%**
0	0	2	1	17	6	0	0	0	0	0	0
0	0	4	0	21	4	0	0	0	0	0	0
0	0	2	0	4	1	0	0	1	1	0	0
0	0	0	0	1	0	0	0	5	5	1	1
0	0	1	0	10	1	1	1	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	2	2	0	0	2	2	0	0
0	0	0	0	2	2	0	0	0	0	0	0
N/A	**N/A**	**-50%**	**N/A**	**-19%**	**50%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
0	0	10	1	20	2	6	0	32	32	1	1
0	0	21	4	37	3	5	1	11	11	3	2
0	0	12	0	21	1	2	0	17	14	5	2
1	0	7	0	30	3	1	0	19	18	5	3
0	0	13	4	27	4	4	0	5	5	0	0
0	0	4	1	8	0	1	0	3	3	2	2
0	0	5	1	8	0	1	0	7	7	3	1
0	0	4	1	18	0	0	0	12	12	5	5
1	1	8	0	15	0	0	0	25	24	4	4
N/A	**N/A**	**-52%**	**-75%**	**-46%**	**-33%**	**20%**	**-100%**	**191%**	**191%**	**-67%**	**-50%**
0	0	14	1	48	9	4	1	14	9	3	2
0	0	15	2	47	7	1	0	14	9	1	1
0	0	26	5	45	2	3	0	9	5	1	0
0	0	18	0	54	8	1	0	11	2	1	1
0	0	18	3	48	2	6	0	10	5	3	1
0	0	20	4	67	1	1	1	4	2	4	2
0	0	7	0	73	8	9	0	4	1	0	0
0	0	10	0	41	1	3	0	7	5	1	1
0	0	11	2	55	5	1	0	8	6	2	2
N/A	**N/A**	**-7%**	**-50%**	**2%**	**29%**	**300%**	**N/A**	**0%**	**0%**	**200%**	**100%**
1	0	9	0	68	6	2	0	61	60	1	1
0	0	13	3	47	6	0	0	50	44	8	5
1	1	23	3	71	7	1	0	56	54	4	4
1	1	3	0	46	8	1	0	46	44	4	4
0	0	6	0	65	5	0	0	40	38	1	1
1	0	10	0	55	4	2	0	36	33	1	1
0	0	16	1	69	10	1	0	75	75	2	2
0	0	14	4	88	9	2	1	37	37	3	3
0	0	10	1	98	4	7	0	12	12	3	3
N/A	**N/A**	**-31%**	**-100%**	**45%**	**0%**	**N/A**	**N/A**	**22%**	**36%**	**-88%**	**-80%**

Crime in Delaware by Jurisdiction 2000 - 2008

		Total Group A & B	Total Group A	Total Group B	Criminal Homicide		Forcible Sexual Offenses		Robbery		Aggravated Assault	
		Complaints	Complaints	Complaints	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
Dover	08	5,804	4,482	1,322	4	4	44	40	94	66	198	151
	07	6,817	4,487	2,330	1	1	42	39	70	45	219	165
	06	7,380	4,401	2,979	2	1	33	30	52	33	230	179
	05	7,311	4,212	3,099	4	4	51	44	44	26	156	107
	04	7,526	4,241	3,285	3	3	22	16	67	35	186	126
	03	7,175	4,448	2,727	1	0	29	22	60	35	188	139
	02	6,792	4,281	2,511	1	0	24	15	70	41	133	94
	01	6,643	4,319	2,324	1	1	19	13	63	27	128	102
	00	6,845	4,461	2,384	0	0	16	13	68	24	144	105
%Change 07-08		**-15%**	**0%**	**-43%**	**300%**	**300%**	**5%**	**3%**	**34%**	**47%**	**-10%**	**-8%**
Ellendale	08	0	0	0	0	0	0	0	0	0	0	0
	07	0	0	0	0	0	0	0	0	0	0	0
	06	60	13	47	0	0	0	0	0	0	2	2
	05	60	10	50	0	0	0	0	0	0	0	0
	04	65	17	48	0	0	0	0	0	0	0	0
	03	73	15	58	0	0	0	0	0	0	2	2
	02	106	19	87	0	0	0	0	0	0	4	4
	01	151	29	122	0	0	0	0	0	0	0	0
	00	96	23	73	0	0	1	1	0	0	0	0
%Change 07-08		**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
Elsmere	08	828	569	259	1	0	5	2	11	4	28	23
	07	1,077	560	517	1	0	3	1	13	3	39	28
	06	1,193	599	594	0	0	2	2	10	2	12	8
	05	965	531	434	0	0	2	2	8	3	34	30
	04	928	502	426	0	0	5	2	12	4	30	22
	03	854	493	361	0	0	1	1	8	2	27	13
	02	590	377	213	0	0	1	1	3	1	23	14
	01	882	536	346	0	0	5	0	18	7	26	19
	00	864	485	379	1	1	4	3	10	4	40	30
%Change 07-08		**-23%**	**2%**	**-50%**	**0%**	**N/A**	**67%**	**100%**	**-15%**	**33%**	**-28%**	**-18%**
Felton	08	51	33	18	0	0	0	0	0	0	1	0
	07	76	47	29	0	0	0	0	0	0	2	2
	06	100	59	41	0	0	1	1	0	0	1	0
	05	101	71	30	0	0	2	2	1	1	5	2
	04	118	73	45	0	0	0	0	0	0	3	3
	03	94	62	32	0	0	1	1	1	1	3	3
	02	103	60	43	0	0	0	0	0	0	1	1
	01	65	44	21	0	0	0	0	0	0	2	2
	00	57	37	20	0	0	0	0	0	0	6	4
%Change 07-08		**-33%**	**-30%**	**-38%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**-50%**	**-100%**
Fenwick Island	08	46	28	18	0	0	0	0	0	0	0	0
	07	56	28	28	0	0	0	0	0	0	1	1
	06	69	41	28	0	0	0	0	0	0	0	0
	05	98	62	36	0	0	0	0	1	0	1	1
	04	74	36	38	0	0	0	0	0	0	1	1
	03	9	7	2	0	0	0	0	0	0	0	0
	02	50	28	22	0	0	0	0	0	0	0	0
	01	109	55	54	0	0	0	0	0	0	0	0
	00	134	63	71	0	0	0	0	0	0	1	1
%Change 07-08		**-18%**	**0%**	**-36%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**-100%**	**-100%**

Crime in Delaware by Jurisdiction 2000 - 2008											
Arson		Burglary		Larceny/Theft		Motor Vehicle Theft		Drug/Narcotic		Weapon Law Violations	
Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
14	4	195	117	1,750	843	135	35	696	686	159	135
11	7	116	54	1,665	690	125	34	755	726	152	130
12	3	150	102	1,476	610	126	26	714	688	141	117
8	7	103	56	1,457	539	114	22	653	635	110	92
12	5	136	69	1,629	575	116	23	573	552	137	106
7	3	188	85	1,747	576	112	22	568	548	114	93
14	3	130	57	1,660	547	121	26	427	417	106	83
17	7	160	68	1,638	570	108	15	535	514	117	88
32	18	184	46	1,771	532	182	32	468	447	117	76
27%	**-43%**	**68%**	**117%**	**5%**	**22%**	**8%**	**3%**	**-8%**	**-6%**	**5%**	**4%**
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	1	0	5	1	0	0	0	0	1	1
1	0	2	1	5	1	0	0	0	0	1	1
1	1	1	0	10	6	0	0	0	0	0	0
0	0	1	0	8	0	0	0	0	0	0	0
0	0	2	1	5	0	4	3	1	1	0	0
0	0	3	3	8	2	1	1	1	1	0	0
1	0	2	1	6	0	2	1	2	2	0	0
N/A	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
0	0	47	5	156	22	22	2	40	38	13	8
0	0	41	9	127	21	30	5	56	56	18	11
1	0	55	8	146	10	41	4	49	46	17	11
0	0	53	8	119	17	24	2	66	63	16	13
1	0	33	9	106	18	13	2	42	39	14	10
0	0	38	7	126	19	31	6	29	27	10	7
0	0	30	3	86	4	32	0	21	18	11	9
0	0	33	5	140	8	17	0	31	27	14	11
1	0	31	2	118	5	28	4	39	37	17	12
N/A	**N/A**	**15%**	**-44%**	**23%**	**5%**	**-27%**	**-60%**	**-29%**	**-32%**	**-28%**	**-27%**
0	0	3	2	4	1	0	0	14	14	0	0
0	0	5	2	10	1	0	0	11	11	1	1
0	0	3	2	16	4	0	0	21	19	1	0
0	0	12	3	13	0	3	1	9	9	2	2
0	0	7	3	14	1	2	0	10	10	1	1
0	0	2	0	16	2	2	2	10	10	2	2
0	0	0	0	13	3	1	0	7	7	0	0
0	0	0	0	6	0	0	0	13	13	1	1
1	1	0	0	5	3	0	0	21	21	1	1
N/A	**N/A**	**-40%**	**0%**	**-60%**	**0%**	**N/A**	**N/A**	**27%**	**27%**	**-100%**	**-100%**
0	0	3	0	15	0	1	0	7	7	0	0
0	0	1	0	13	0	0	0	4	4	0	0
0	0	0	0	22	0	0	0	7	7	0	0
0	0	9	0	15	1	1	0	22	22	1	1
0	0	2	0	13	1	1	0	12	11	0	0
0	0	0	0	0	0	0	0	5	5	0	0
0	0	4	1	7	1	0	0	4	4	0	0
0	0	2	0	21	2	0	0	13	13	1	1
0	0	4	1	22	5	0	0	24	23	3	3
N/A	**N/A**	**200%**	**N/A**	**15%**	**N/A**	**N/A**	**N/A**	**75%**	**75%**	**N/A**	**N/A**

Crime in Delaware by Jurisdiction 2000 - 2008

		Total Group A & B	Total Group A	Total Group B	Criminal Homicide		Forcible Sexual Offenses		Robbery		Aggravated Assault	
		Complaints	Complaints	Complaints	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
Frankford	08	3	3	0	0	0	0	0	0	0	0	0
	07	-	-	-	-	-	-	-	-	-	-	-
	06	-	-	-	-	-	-	-	-	-	-	-
	05	-	-	-	-	-	-	-	-	-	-	-
	04	-	-	-	-	-	-	-	-	-	-	-
	03	-	-	-	-	-	-	-	-	-	-	-
	02	-	-	-	-	-	-	-	-	-	-	-
	01	-	-	-	-	-	-	-	-	-	-	-
	00	-	-	-	-	-	-	-	-	-	-	-
%Change 07-08		**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
Frederica	08	0	0	0	0	0	0	0	0	0	0	0
	07	0	0	0	0	0	0	0	0	0	0	0
	06	0	0	0	0	0	0	0	0	0	0	0
	05	6	4	2	0	0	0	0	0	0	1	1
	04	58	42	16	0	0	1	1	0	0	8	7
	03	82	43	39	0	0	1	1	2	1	5	4
	02	283	47	236	0	0	1	1	0	0	1	1
	01	232	46	186	0	0	1	1	1	0	5	3
	00	96	60	36	0	0	1	0	0	0	2	2
%Change 07-08		**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
Georgetown	08	1,041	681	360	0	0	17	11	32	17	27	19
	07	1,300	711	589	1	0	12	10	46	15	44	30
	06	1,423	765	658	0	0	24	9	31	10	54	42
	05	1,428	739	689	0	0	15	11	31	9	59	37
	04	1,257	620	637	0	0	4	1	24	1	35	23
	03	1,123	622	501	0	0	4	3	27	4	44	33
	02	1,194	661	533	0	0	7	4	33	7	33	25
	01	1,410	664	746	0	0	10	4	19	5	35	22
	00	889	607	282	0	0	12	7	25	8	50	35
%Change 07-08		**-20%**	**-4%**	**-39%**	**-100%**	**N/A**	**42%**	**10%**	**-30%**	**13%**	**-39%**	**-37%**
Greenwood	08	40	22	18	0	0	0	0	1	0	1	0
	07	170	62	108	0	0	2	0	0	0	2	1
	06	187	47	140	0	0	1	1	2	1	1	1
	05	330	79	251	0	0	1	1	0	0	0	0
	04	284	70	214	0	0	0	0	1	0	0	0
	03	313	107	206	0	0	1	1	0	0	7	7
	02	303	81	222	0	0	1	1	2	1	4	4
	01	291	82	209	0	0	0	0	0	0	3	1
	00	252	98	154	0	0	1	0	0	0	1	1
%Change 07-08		**-76%**	**-65%**	**-83%**	**N/A**	**N/A**	**-100%**	**N/A**	**N/A**	**N/A**	**-50%**	**-100%**
Harrington	08	593	477	116	0	0	6	3	8	4	33	22
	07	668	489	179	0	0	10	6	5	1	20	19
	06	633	409	224	0	0	6	2	1	0	24	22
	05	655	428	227	0	0	4	3	5	0	18	11
	04	623	349	274	0	0	5	2	4	0	12	8
	03	480	290	190	0	0	4	1	3	0	17	9
	02	538	321	217	0	0	2	1	4	1	16	11
	01	778	398	380	0	0	4	1	0	0	20	13
	00	660	455	205	0	0	1	0	1	0	20	20
%Change 07-08		**-11%**	**-2%**	**-35%**	**N/A**	**N/A**	**-40%**	**-50%**	**60%**	**300%**	**65%**	**16%**

Crime in Delaware by Jurisdiction 2000 - 2008											
Arson		Burglary		Larceny/Theft		Motor Vehicle Theft		Drug/Narcotic		Weapon Law Violations	
Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
0	0	1	0	1	0	0	0	0	0	0	0
-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-
N/A	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	1	0	0	0	0	0	0	0	1	1
1	0	1	0	9	1	0	0	0	0	2	2
0	0	6	3	14	6	2	0	1	1	3	2
0	0	4	1	10	3	2	1	2	2	1	1
0	0	3	0	11	2	1	0	15	12	1	0
0	0	5	2	10	2	0	0	22	20	1	1
N/A	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
0	0	73	14	202	86	14	4	99	88	26	18
0	0	85	21	168	73	11	2	139	123	44	30
2	0	58	17	181	74	13	1	141	131	38	30
0	0	64	11	189	82	9	3	131	120	43	30
0	0	93	17	174	58	16	7	92	86	22	14
0	0	95	25	173	58	11	2	28	25	15	9
0	0	116	19	187	62	33	12	53	48	20	11
0	0	90	12	165	49	16	7	52	40	24	15
0	0	42	9	155	40	14	2	31	23	29	20
N/A	**N/A**	**-14%**	**-33%**	**20%**	**18%**	**27%**	**100%**	**-29%**	**-28%**	**-41%**	**-40%**
0	0	1	0	7	0	0	0	0	0	1	0
0	0	7	2	12	2	0	0	7	7	1	1
0	0	2	0	20	3	0	0	0	0	1	0
0	0	5	0	30	2	6	1	2	2	3	2
0	0	4	1	31	5	5	0	2	2	1	0
0	0	13	4	44	4	2	0	0	0	3	3
1	0	15	2	29	4	2	0	0	0	1	1
0	0	10	2	31	1	1	0	0	0	1	0
0	0	6	0	32	4	1	1	0	0	0	0
N/A	**N/A**	**-86%**	**-100%**	**-42%**	**-100%**	**N/A**	**N/A**	**-100%**	**-100%**	**0%**	**-100%**
0	0	55	13	111	21	8	4	142	127	16	13
0	0	48	14	76	20	6	2	253	242	29	26
1	0	41	10	77	20	5	0	154	147	24	23
0	0	31	9	99	24	8	2	129	129	12	11
0	0	22	5	116	17	9	1	38	36	15	11
0	0	15	7	103	19	10	2	39	24	8	6
0	0	28	5	99	17	7	3	59	49	10	7
0	0	24	6	103	23	2	1	98	93	11	8
0	0	22	10	99	32	4	2	214	198	18	17
N/A	**N/A**	**15%**	**-7%**	**46%**	**5%**	**33%**	**100%**	**-44%**	**-48%**	**-45%**	**-50%**

Crime in Delaware by Jurisdiction 2000 - 2008

		Total Group A & B	Total Group A	Total Group B	Criminal Homicide		Forcible Sexual Offenses		Robbery		Aggravated Assault	
		Complaints	Complaints	Complaints	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
Laurel	08	1,320	747	573	0	0	11	4	28	6	42	27
	07	1,690	705	985	0	0	9	7	23	5	49	21
	06	1,690	776	914	0	0	10	4	13	4	57	34
	05	1,336	591	745	0	0	11	8	9	4	24	18
	04	1,229	532	697	0	0	2	2	15	6	30	19
	03	1,632	745	887	0	0	3	3	7	6	55	39
	02	1,716	753	963	0	0	1	1	15	4	45	32
	01	1,357	657	700	0	0	3	3	12	8	57	42
	00	852	440	412	0	0	9	7	9	2	25	22
%Change 07-08		**-22%**	**6%**	**-42%**	**N/A**	**N/A**	**22%**	**-43%**	**22%**	**20%**	**-14%**	**29%**
Lewes	08	340	200	140	0	0	1	1	1	1	4	3
	07	470	143	327	0	0	0	0	1	0	1	1
	06	555	205	350	0	0	1	1	0	0	2	2
	05	411	149	262	0	0	2	1	4	3	1	1
	04	267	140	127	0	0	0	0	1	0	1	1
	03	189	100	89	0	0	0	0	0	0	3	3
	02	288	145	143	0	0	0	0	0	0	3	3
	01	321	150	171	0	0	1	0	0	0	2	2
	00	334	177	157	0	0	1	1	2	0	3	3
%Change 07-08		**-28%**	**40%**	**-57%**	**N/A**	**N/A**	**N/A**	**N/A**	**0%**	**N/A**	**300%**	**200%**
Middletown	08	1,581	1,018	563	0	0	5	3	27	11	63	46
	07	322	206	116	0	0	4	2	7	4	11	9
	06	-	-	-	-	-	-	-	-	-	-	-
	05	-	-	-	-	-	-	-	-	-	-	-
	04	-	-	-	-	-	-	-	-	-	-	-
	03	-	-	-	-	-	-	-	-	-	-	-
	02	-	-	-	-	-	-	-	-	-	-	-
	01	-	-	-	-	-	-	-	-	-	-	-
	00	-	-	-	-	-	-	-	-	-	-	-
%Change 07-08		**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**25%**	**50%**	**286%**	**175%**	**473%**	**411%**
Milford	08	2,048	1,422	626	0	0	14	11	43	17	72	45
	07	2,149	1,296	853	0	0	13	9	18	6	73	45
	06	2,290	1,316	974	0	0	21	15	19	13	43	30
	05	2,263	1,361	902	0	0	15	7	12	3	99	72
	04	2,470	1,428	1,042	0	0	7	6	8	2	77	63
	03	2,220	1,289	931	0	0	7	6	22	11	65	55
	02	2,392	1,327	1,065	0	0	10	4	15	5	72	62
	01	2,299	1,281	1,018	0	0	6	3	12	7	70	53
	00	2,471	1,386	1,085	0	0	5	2	15	8	65	52
%Change 07-08		**-5%**	**10%**	**-27%**	**N/A**	**N/A**	**8%**	**22%**	**139%**	**183%**	**-1%**	**0%**
Millsboro	08	772	434	338	0	0	3	3	0	0	9	9
	07	985	377	608	0	0	0	0	1	1	23	14
	06	985	347	638	0	0	3	3	3	2	8	8
	05	933	315	618	0	0	4	4	2	1	27	27
	04	792	249	543	0	0	2	1	5	2	24	21
	03	848	264	584	0	0	2	0	3	2	19	18
	02	819	268	551	0	0	0	0	3	1	16	14
	01	733	267	466	0	0	2	1	4	2	19	16
	00	891	322	569	0	0	0	0	1	1	14	12
%Change 07-08		**-22%**	**15%**	**-44%**	**N/A**	**N/A**	**N/A**	**N/A**	**-100%**	**-100%**	**-61%**	**-36%**

Crime in Delaware by Jurisdiction 2000 - 2008											
Arson		Burglary		Larceny/Theft		Motor Vehicle Theft		Drug/Narcotic		Weapon Law Violations	
Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
1	0	51	8	164	35	10	2	201	180	30	22
1	0	26	6	141	31	10	3	119	108	25	15
1	0	46	10	157	34	18	4	130	123	27	19
0	0	54	9	125	28	5	1	91	89	26	20
1	1	26	6	116	35	8	2	137	117	15	12
0	0	40	14	175	31	16	2	174	157	22	18
0	0	35	12	207	39	21	7	125	119	30	24
0	0	46	10	205	34	20	4	40	39	17	13
0	0	20	7	135	33	7	2	23	23	13	9
0%	**N/A**	**96%**	**33%**	**16%**	**13%**	**0%**	**-33%**	**69%**	**67%**	**20%**	**47%**
0	0	28	7	73	16	1	0	27	27	2	1
0	0	25	2	37	5	0	0	30	29	2	1
0	0	43	6	66	20	2	0	26	26	5	5
0	0	18	5	54	13	3	2	25	25	2	1
0	0	13	4	55	8	0	0	31	29	2	2
0	0	4	0	40	8	1	0	22	22	0	0
0	0	19	2	60	12	0	0	11	11	0	0
0	0	19	2	60	14	3	1	6	6	3	3
0	0	23	4	84	13	1	0	8	8	3	1
N/A	**N/A**	**12%**	**250%**	**97%**	**220%**	**N/A**	**N/A**	**-10%**	**-7%**	**0%**	**0%**
2	1	83	16	302	77	21	1	85	83	26	16
0	0	15	5	64	17	3	1	9	7	7	5
-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-
N/A	**N/A**	**453%**	**220%**	**372%**	**353%**	**600%**	**0%**	**844%**	**1086%**	**271%**	**220%**
3	0	99	23	464	142	35	5	163	153	40	29
0	0	76	11	401	113	23	6	198	188	39	31
0	0	67	18	409	103	26	5	207	188	39	36
2	1	78	10	415	133	24	4	193	174	55	43
0	0	137	48	425	132	28	5	158	135	48	37
1	0	69	20	408	129	13	2	140	126	33	28
2	0	86	21	437	125	24	6	110	100	29	25
2	1	62	18	390	98	21	3	129	106	32	27
4	2	98	21	453	138	12	5	130	109	25	24
N/A	**N/A**	**30%**	**109%**	**16%**	**26%**	**52%**	**-17%**	**-18%**	**-19%**	**3%**	**-6%**
1	0	40	11	145	52	0	0	78	78	8	8
0	0	27	9	120	40	3	0	71	68	10	9
0	0	45	16	97	33	6	3	50	49	9	9
0	0	32	10	104	34	6	3	55	55	8	7
0	0	24	3	68	20	5	2	38	38	7	6
0	0	29	2	73	20	3	1	33	33	7	5
1	0	28	9	82	32	3	1	35	35	6	4
1	0	14	1	100	25	4	1	11	11	5	4
0	0	30	1	177	51	3	1	19	18	2	2
N/A	**N/A**	**48%**	**22%**	**21%**	**30%**	**-100%**	**N/A**	**10%**	**15%**	**-20%**	**-11%**

Crime in Delaware by Jurisdiction 2000 - 2008

		Total Group A & B	Total Group A	Total Group B	Criminal Homicide		Forcible Sexual Offenses		Robbery		Aggravated Assault	
		Complaints	Complaints	Complaints	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
Milton	08	447	197	250	0	0	4	4	1	0	6	6
	07	769	255	514	0	0	6	2	6	3	10	9
	06	831	235	596	0	0	3	2	3	2	10	9
	05	717	235	482	0	0	6	4	0	0	16	9
	04	705	180	525	0	0	0	0	4	0	4	3
	03	753	205	548	0	0	3	1	2	2	12	11
	02	503	148	355	0	0	0	0	0	0	5	4
	01	89	30	59	0	0	2	0	0	0	2	1
	00	162	68	94	0	0	0	0	0	0	8	6
%Change 07-08		**-42%**	**-23%**	**-51%**	**N/A**	**N/A**	**-33%**	**100%**	**-83%**	**-100%**	**-40%**	**-33%**
New Castle County PD	08	26,780	17,250	9,530	14	7	189	140	519	90	980	743
	07	33,367	17,821	15,546	10	5	150	104	442	108	1,096	840
	06	36,298	17,922	18,376	10	4	225	178	424	150	980	770
	05	33,945	16,305	17,640	13	7	227	166	311	91	1,011	791
	04	34,895	16,889	18,006	4	3	143	103	290	68	938	744
	03	35,921	17,604	18,317	5	1	153	113	363	103	981	754
	02	37,064	18,597	18,467	8	4	158	120	316	97	753	589
	01	35,841	18,047	17,794	9	8	187	142	286	108	733	604
	00	33,652	17,144	16,508	5	4	180	124	272	112	690	548
%Change 07-08		**-20%**	**-3%**	**-39%**	**40%**	**40%**	**26%**	**35%**	**17%**	**-17%**	**-11%**	**-12%**
City of New Castle	08	781	521	260	0	0	5	2	7	3	17	12
	07	1,069	618	451	0	0	1	0	5	3	18	11
	06	1,069	619	450	0	0	4	3	11	5	25	22
	05	998	586	412	0	0	7	5	16	7	24	19
	04	1,196	674	522	0	0	4	4	8	2	16	13
	03	1,127	657	470	0	0	1	0	14	11	15	12
	02	1,257	717	540	0	0	4	2	7	4	33	28
	01	966	521	445	0	0	2	2	6	3	27	22
	00	925	459	466	0	0	4	4	1	0	17	12
%Change 07-08		**-27%**	**-16%**	**-42%**	**N/A**	**N/A**	**400%**	**N/A**	**40%**	**0%**	**-6%**	**9%**
Newark	08	4,245	2,526	1,719	0	0	23	15	77	30	112	69
	07	5,185	2,512	2,673	0	0	22	15	80	27	115	77
	06	5,589	2,754	2,835	0	0	21	15	87	28	106	66
	05	5,120	2,530	2,590	1	1	31	22	52	22	98	56
	04	5,574	2,735	2,839	1	1	15	10	58	15	85	54
	03	5,410	2,679	2,731	0	0	12	4	89	22	102	60
	02	5,603	2,960	2,643	0	0	15	9	87	27	134	68
	01	5,474	2,892	2,582	0	0	9	5	52	23	117	64
	00	5,501	2,846	2,655	0	0	14	5	62	28	110	51
%Change 07-08		**-18%**	**1%**	**-36%**	**N/A**	**N/A**	**5%**	**0%**	**-4%**	**11%**	**-3%**	**-10%**
Newport	08	158	114	44	0	0	1	0	2	0	10	5
	07	159	117	42	0	0	0	0	4	1	3	1
	06	188	119	69	1	1	5	2	1	1	15	10
	05	214	142	72	0	0	2	0	2	0	4	2
	04	196	132	64	0	0	1	1	2	1	10	5
	03	252	170	82	0	0	1	0	14	3	16	9
	02	263	169	94	0	0	2	1	6	2	18	15
	01	238	160	78	0	0	3	1	4	1	12	5
	00	218	137	81	0	0	1	0	3	0	2	2
%Change 07-08		**-1%**	**-3%**	**5%**	**N/A**	**N/A**	**N/A**	**N/A**	**-50%**	**-100%**	**233%**	**400%**

Crime in Delaware by Jurisdiction 2000 - 2008											
Arson		Burglary		Larceny/Theft		Motor Vehicle Theft		Drug/Narcotic		Weapon Law Violations	
Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
0	0	44	7	43	12	1	0	25	25	6	5
0	0	40	11	59	21	3	2	49	45	10	6
1	0	46	1	62	17	1	1	35	33	4	3
1	0	35	7	56	19	2	1	16	13	6	6
0	0	21	1	43	9	1	0	24	15	11	6
0	0	20	5	65	25	1	0	29	25	9	9
1	0	24	5	32	9	3	2	13	12	3	3
0	0	8	2	5	4	1	1	1	0	1	0
0	0	3	0	16	5	1	0	11	10	4	2
N/A	**N/A**	**10%**	**-36%**	**-27%**	**-43%**	**-67%**	**-100%**	**-49%**	**-44%**	**-40%**	**-17%**
7	3	1,988	302	5,084	676	771	57	1,501	1,464	735	466
9	1	1,851	366	4,825	856	785	74	1,587	1,541	692	501
10	2	1,836	421	4,618	830	870	90	1,428	1,369	674	490
20	6	1,770	458	3,721	772	765	91	1,364	1,297	614	450
11	2	1,748	467	4,181	710	782	83	1,217	1,148	479	357
13	3	1,964	506	4,020	636	1,104	78	913	786	501	356
20	8	2,028	428	4,523	720	1,161	96	924	758	519	374
23	5	1,641	462	4,303	862	1,059	99	1,055	903	478	383
23	2	1,550	359	4,235	638	1,107	107	858	736	453	355
-22%	**200%**	**7%**	**-17%**	**5%**	**-21%**	**-2%**	**-23%**	**-5%**	**-5%**	**6%**	**-7%**
0	0	22	5	156	44	16	3	81	81	8	8
0	0	35	8	217	81	13	1	76	76	14	13
0	0	43	11	230	99	18	2	76	71	11	10
1	0	33	5	235	64	16	4	65	65	15	12
0	0	28	12	265	93	18	3	92	91	10	9
0	0	60	14	246	59	25	4	54	50	9	8
1	1	37	12	214	80	22	1	95	93	24	22
5	0	19	1	138	34	14	1	82	80	11	10
0	0	25	6	98	11	21	1	67	66	10	8
N/A	**N/A**	**-37%**	**-38%**	**-28%**	**-46%**	**23%**	**200%**	**7%**	**7%**	**-43%**	**-38%**
11	2	193	59	953	178	70	10	255	238	57	51
7	1	206	45	869	143	64	7	260	229	54	40
10	1	217	37	933	146	105	9	246	217	62	44
9	1	209	39	873	161	84	10	257	227	65	55
13	1	256	38	1,048	190	52	4	228	206	54	44
14	2	177	22	1,004	185	90	8	165	150	65	50
23	2	257	26	1,040	174	129	11	209	161	77	52
10	3	237	31	1,099	173	100	15	154	150	43	27
33	2	159	21	1,034	145	106	9	95	90	50	32
57%	**100%**	**-6%**	**31%**	**10%**	**24%**	**9%**	**43%**	**-2%**	**4%**	**6%**	**28%**
0	0	4	0	42	5	4	0	3	3	7	4
0	0	16	3	34	4	6	3	6	3	0	0
0	0	11	1	31	4	3	0	6	6	8	7
1	0	17	1	50	1	11	0	9	8	4	3
0	0	17	4	47	1	6	0	1	0	5	3
0	0	12	2	59	2	9	0	7	7	4	4
0	0	21	1	46	2	8	0	3	2	8	5
0	0	16	1	55	3	15	3	7	7	3	1
0	0	11	1	57	6	6	0	3	3	1	0
N/A	**N/A**	**-75%**	**-100%**	**24%**	**25%**	**-33%**	**-100%**	**-50%**	**0%**	**N/A**	**N/A**

Crime in Delaware by Jurisdiction 2000 - 2008

		Total Group A & B	Total Group A	Total Group B	Criminal Homicide		Forcible Sexual Offenses		Robbery		Aggravated Assault	
		Complaints	Complaints	Complaints	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
Ocean View	08	281	75	206	0	0	1	0	0	0	2	1
	07	496	79	417	0	0	3	1	0	0	2	2
	06	686	101	585	0	0	1	1	0	0	5	5
	05	715	95	620	0	0	0	0	0	0	3	3
	04	610	112	498	0	0	0	0	0	0	5	1
	03	452	79	373	0	0	0	0	0	0	1	1
	02	450	67	383	0	0	0	0	0	0	1	1
	01	305	62	243	0	0	0	0	0	0	0	0
	00	42	32	10	0	0	0	0	0	0	1	1
%Change 07-08		**-43%**	**-5%**	**-51%**	**N/A**	**N/A**	**-67%**	**-100%**	**N/A**	**N/A**	**0%**	**-50%**
Rehoboth Beach	08	608	371	237	0	0	3	2	6	2	6	4
	07	800	436	364	0	0	7	6	4	1	11	8
	06	740	425	315	0	0	4	4	1	0	9	7
	05	730	392	338	0	0	2	2	8	4	8	7
	04	810	392	418	0	0	1	0	2	2	8	8
	03	801	402	399	0	0	1	0	7	3	9	9
	02	794	424	370	0	0	0	0	6	3	13	11
	01	776	461	315	0	0	2	1	0	0	16	9
	00	972	480	492	0	0	2	0	2	0	14	10
%Change 07-08		**-24%**	**-15%**	**-35%**	**N/A**	**N/A**	**-57%**	**-67%**	**50%**	**100%**	**-45%**	**-50%**
Seaford	08	1,313	1,006	307	0	0	14	9	34	18	45	30
	07	1,813	1,174	639	1	1	10	5	29	17	50	36
	06	1,577	1,049	528	2	2	12	8	35	11	44	30
	05	1,720	962	758	2	1	11	4	9	4	53	42
	04	1,694	1,017	677	0	0	6	2	19	9	45	30
	03	1,485	917	568	0	0	10	8	20	16	35	30
	02	1,551	899	652	2	1	4	4	22	11	53	45
	01	1,815	1,057	758	0	0	9	7	22	10	76	61
	00	1,926	1,100	826	0	0	15	7	18	6	61	45
%Change 07-08		**-28%**	**-14%**	**-52%**	**-100%**	**-100%**	**40%**	**80%**	**17%**	**6%**	**-10%**	**-17%**
Selbyville	08	364	251	113	0	0	4	2	2	2	5	5
	07	421	172	249	0	0	2	2	1	0	7	5
	06	1,089	148	941	0	0	0	0	1	1	6	2
	05	1,274	123	1,151	0	0	0	0	1	0	5	4
	04	1,132	165	967	0	0	4	1	5	2	11	7
	03	1,217	139	1,078	0	0	0	0	1	0	9	3
	02	753	111	642	0	0	0	0	3	2	11	10
	01	63	42	21	0	0	1	1	2	0	1	1
	00	86	66	20	0	0	0	0	1	1	5	5
%Change 07-08		**-14%**	**46%**	**-55%**	**N/A**	**N/A**	**100%**	**0%**	**100%**	**N/A**	**-29%**	**0%**
Smyrna	08	1,268	910	358	0	0	9	8	17	6	56	42
	07	1,361	772	589	0	0	10	4	10	5	34	31
	06	1,384	766	618	0	0	14	9	13	4	34	23
	05	1,465	748	717	0	0	7	5	7	2	27	17
	04	1,238	656	582	0	0	2	2	14	6	27	22
	03	1,130	643	487	1	1	1	1	8	2	42	33
	02	1,431	811	620	0	0	4	0	8	2	41	37
	01	1,455	788	667	0	0	2	1	12	7	48	36
	00	1,457	753	704	0	0	2	2	12	2	58	42
%Change 07-08		**-7%**	**18%**	**-39%**	**N/A**	**N/A**	**-10%**	**100%**	**70%**	**20%**	**65%**	**35%**

Crime in Delaware by Jurisdiction 2000 - 2008											
Arson		Burglary		Larceny/Theft		Motor Vehicle Theft		Drug/Narcotic		Weapon Law Violations	
Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
0	0	16	8	22	4	1	0	11	11	2	1
0	0	11	1	18	4	1	1	13	13	1	1
0	0	14	2	18	1	2	0	25	25	4	4
1	0	15	2	20	4	1	1	16	16	3	3
2	0	25	1	28	5	0	0	32	31	2	2
0	0	23	4	16	1	0	0	32	32	3	3
0	0	16	1	19	1	1	0	13	13	0	0
0	0	10	2	16	4	0	0	21	21	2	2
0	0	7	2	13	1	2	1	2	2	0	0
N/A	**N/A**	**45%**	**700%**	**22%**	**0%**	**0%**	**-100%**	**-15%**	**-15%**	**100%**	**0%**
0	0	39	18	180	51	4	1	39	39	6	3
0	0	51	18	196	60	2	1	46	46	4	4
0	0	25	4	212	65	4	0	57	57	6	6
1	0	33	9	187	43	3	0	47	44	6	6
0	0	30	6	165	44	3	0	37	37	9	9
0	0	38	6	148	41	3	2	76	75	5	4
1	1	29	8	174	33	1	1	61	61	9	4
0	0	45	16	190	45	5	0	68	67	7	7
0	0	37	2	200	54	6	0	91	90	10	9
N/A	**N/A**	**-24%**	**0%**	**-8%**	**-15%**	**100%**	**0%**	**-15%**	**-15%**	**50%**	**-25%**
0	0	84	22	308	159	8	4	255	253	39	28
0	0	99	23	311	129	16	3	282	280	43	34
0	0	81	23	328	115	15	4	216	197	50	41
1	0	63	17	320	138	13	1	185	169	40	33
2	0	93	28	367	170	22	6	173	144	28	22
3	1	79	31	371	219	10	1	123	112	31	26
1	0	56	13	321	165	8	2	112	108	41	34
3	0	56	14	353	147	14	1	181	179	38	28
3	1	88	30	325	112	10	6	120	117	35	24
N/A	**N/A**	**-15%**	**-4%**	**-1%**	**23%**	**-50%**	**33%**	**-10%**	**-10%**	**-9%**	**-18%**
0	0	44	8	84	22	5	1	25	25	6	4
0	0	24	9	45	8	1	0	15	15	3	3
0	0	13	2	41	8	2	0	17	14	3	2
1	1	5	0	37	8	0	0	8	7	0	0
1	0	24	5	50	16	1	0	26	24	5	4
0	0	9	2	42	11	3	0	16	16	5	4
0	0	4	3	18	4	3	1	15	15	0	0
0	0	4	3	3	2	0	0	9	9	3	2
0	0	0	0	8	8	0	0	22	22	4	4
N/A	**N/A**	**83%**	**-11%**	**87%**	**175%**	**400%**	**N/A**	**67%**	**67%**	**100%**	**33%**
0	0	59	13	229	52	12	2	184	182	30	21
0	0	49	13	241	55	12	3	106	100	16	13
3	0	33	13	200	39	17	5	130	115	21	13
0	0	42	7	200	34	25	6	150	147	16	10
2	1	43	14	180	45	6	0	84	80	11	9
1	0	35	7	170	42	13	4	94	79	17	17
1	1	54	8	211	38	7	3	140	125	15	14
3	1	53	18	191	51	10	4	123	101	26	20
1	1	41	6	197	44	10	4	111	92	19	12
N/A	**N/A**	**20%**	**0%**	**-5%**	**-5%**	**0%**	**-33%**	**74%**	**82%**	**88%**	**62%**

Crime in Delaware by Jurisdiction 2000 - 2008

		Total Group A & B	Total Group A	Total Group B	Criminal Homicide		Forcible Sexual Offenses		Robbery		Aggravated Assault	
		Complaints	Complaints	Complaints	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
South Bethany Beach	08	57	42	15	0	0	0	0	0	0	0	0
	07	79	46	33	0	0	0	0	0	0	1	0
	06	55	31	24	0	0	0	0	0	0	0	0
	05	77	27	50	0	0	0	0	0	0	2	1
	04	55	24	31	0	0	0	0	0	0	0	0
	03	105	28	77	0	0	0	0	0	0	3	3
	02	120	40	80	0	0	0	0	0	0	1	0
	01	92	34	58	0	0	0	0	0	0	1	1
	00	115	44	71	0	0	0	0	0	0	1	1
%Change 07-08		**-28%**	**-9%**	**-55%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**-100%**	**N/A**
Wilmington	08	14,572	10,524	4,048	26	6	52	14	643	156	811	446
	07	15,071	10,526	4,545	13	6	85	43	725	165	715	393
	06	15,987	11,273	4,714	21	12	98	44	649	140	802	383
	05	14,310	9,949	4,361	15	6	80	36	521	98	667	290
	04	14,114	9,588	4,526	14	6	49	19	510	81	657	292
	03	18,642	11,188	7,454	9	6	63	39	513	131	709	439
	02	19,550	11,533	8,017	11	7	66	36	473	101	741	455
	01	21,471	12,464	9,007	15	11	57	36	432	124	685	440
	00	22,021	13,633	8,388	14	10	66	40	537	131	756	457
%Change 07-08		**-3%**	**0%**	**-11%**	**100%**	**0%**	**-39%**	**-67%**	**-11%**	**-5%**	**13%**	**13%**
Wyoming	08	57	42	15	0	0	0	0	3	2	3	0
	07	151	73	78	0	0	1	1	0	0	2	2
	06	185	97	88	0	0	2	1	1	1	5	5
	05	163	89	74	0	0	0	0	0	0	6	4
	04	151	80	71	0	0	0	0	1	0	3	1
	03	159	91	68	0	0	0	0	0	0	6	4
	02	169	92	77	0	0	1	0	1	1	3	3
	01	237	148	89	0	0	1	1	1	1	6	4
	00	194	131	63	0	0	0	0	0	0	7	6
%Change 07-08		**-62%**	**-42%**	**-81%**	**N/A**	**N/A**	**-100%**	**-100%**	**N/A**	**N/A**	**50%**	**-100%**
Other Agencies												
Alcohol Beverage Control	08	243	3	240	0	0	0	0	0	0	0	0
	07	206	3	203	0	0	0	0	0	0	0	0
	06	201	7	194	0	0	0	0	0	0	0	0
	05	406	19	387	0	0	0	0	0	0	1	1
	04	120	6	114	0	0	0	0	0	0	0	0
	03	155	3	152	0	0	0	0	0	0	0	0
	02	207	3	204	0	0	0	0	0	0	0	0
	01	223	4	219	0	0	0	0	0	0	0	0
	00	269	3	266	0	0	0	0	0	0	0	0
%Change 07-08		**18%**	**0%**	**18%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
AMTRAK	08	4	2	2	0	0	0	0	0	0	0	0
	07	8	6	2	0	0	0	0	0	0	0	0
	06	0	0	0	0	0	0	0	0	0	0	0
	05	0	0	0	0	0	0	0	0	0	0	0
	04	0	0	0	0	0	0	0	0	0	0	0
	03	11	8	3	0	0	0	0	0	0	0	0
	02	10	7	3	0	0	0	0	0	0	1	1
	01	59	47	12	0	0	0	0	0	0	1	1
	00	85	48	37	0	0	0	0	1	0	0	0
%Change 07-08		**-50%**	**-67%**	**0%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**

Crime in Delaware by Jurisdiction 2000 - 2008											
Arson		Burglary		Larceny/Theft		Motor Vehicle Theft		Drug/Narcotic		Weapon Law Violations	
Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
0	0	6	2	17	0	0	0	15	15	1	1
0	0	1	0	12	0	0	0	10	10	0	0
0	0	1	0	7	0	0	0	13	13	0	0
0	0	0	0	9	0	0	0	11	11	2	2
0	0	5	0	11	0	0	0	3	3	0	0
0	0	0	0	10	1	0	0	4	4	1	1
0	0	5	2	15	0	0	0	4	4	1	1
0	0	2	0	13	1	0	0	10	10	2	2
0	0	2	0	16	1	0	0	6	6	0	0
N/A	**N/A**	**500%**	**N/A**	**42%**	**N/A**	**N/A**	**N/A**	**50%**	**50%**	**N/A**	**N/A**
3	1	876	141	2,468	225	626	69	1,699	1,590	739	395
7	0	1,138	170	2,291	230	581	59	1,640	1,513	692	357
5	1	1,065	131	2,669	243	839	73	1,720	1,552	692	365
10	3	901	103	2,286	183	554	37	1,565	1,482	507	244
4	1	687	79	2,390	174	567	44	1,262	1,148	488	227
6	2	944	148	2,368	300	832	70	1,844	1,776	554	366
14	4	786	153	2,511	235	1,045	95	1,820	1,746	545	351
17	2	936	172	3,005	312	786	68	1,753	1,621	571	400
24	8	980	164	3,492	337	1,182	89	1,540	1,400	626	385
-57%	**N/A**	**-23%**	**-17%**	**8%**	**-2%**	**8%**	**17%**	**4%**	**5%**	**7%**	**11%**
0	0	2	0	11	1	1	0	5	5	0	0
0	0	8	3	16	1	1	0	16	16	2	2
0	0	13	2	23	6	3	1	16	16	3	3
1	0	5	2	24	1	0	0	9	9	1	1
0	0	5	2	17	5	3	1	8	8	0	0
0	0	11	5	18	2	0	0	2	0	0	0
0	0	3	1	22	6	3	0	2	2	1	1
0	0	6	4	30	8	0	0	20	19	4	4
0	0	1	0	12	3	1	0	50	50	4	3
N/A	**N/A**	**-75%**	**-100%**	**-31%**	**0%**	**0%**	**N/A**	**-69%**	**-69%**	**-100%**	**-100%**
Other Agencies											
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	2	2	0	0
0	0	0	0	0	0	0	0	9	9	0	0
0	0	0	0	0	0	0	0	16	13	1	1
0	0	0	0	0	0	0	0	5	5	1	1
0	0	0	0	0	0	0	0	3	3	0	0
0	0	0	0	0	0	0	0	4	4	0	0
0	0	0	0	0	0	0	0	2	2	0	0
0	0	0	0	0	0	0	0	3	3	0	0
N/A	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**-100%**	**-100%**	**N/A**	**N/A**
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	2	2	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	6	1	0	0	0	0	0	0
0	0	0	0	4	3	0	0	2	2	0	0
0	0	0	0	18	6	0	0	9	9	1	1
0	0	0	0	23	6	0	0	3	3	0	0
N/A	**N/A**	**N/A**	**N/A**	**-100%**	**-100%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**

Crime in Delaware by Jurisdiction 2000 - 2008

		Total Group A & B	Total Group A	Total Group B	Criminal Homicide		Forcible Sexual Offenses		Robbery		Aggravated Assault	
		Complaints	Complaints	Complaints	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
Attorney General	08	64	57	7	0	0	0	0	0	0	1	0
	07	73	72	1	0	0	0	0	0	0	0	0
	06	11	11	0	0	0	0	0	0	0	0	0
	05	24	24	0	0	0	0	0	0	0	0	0
	04	36	33	3	0	0	0	0	0	0	0	0
	03	32	31	1	0	0	0	0	0	0	0	0
	02	43	43	0	0	0	0	0	0	0	0	0
	01	35	35	0	0	0	0	0	0	0	0	0
	00	29	28	1	0	0	0	0	0	0	0	0
%Change 07-08		**-12%**	**-21%**	**600%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
Capitol Police	08	290	129	161	0	0	0	0	0	0	0	0
	07	1,992	150	1,842	0	0	0	0	0	0	3	1
	06	2,817	73	2,744	0	0	0	0	1	0	0	0
	05	2,256	139	2,117	0	0	0	0	0	0	4	4
	04	1,880	140	1,740	0	0	0	0	0	0	5	4
	03	1,687	130	1,557	0	0	0	0	1	0	3	2
	02	1,098	146	952	0	0	0	0	0	0	2	2
	01	1,713	130	1,583	0	0	0	0	0	0	3	2
	00	1,360	146	1,214	0	0	0	0	0	0	3	1
%Change 07-08		**-85%**	**-14%**	**-91%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**-100%**	**-100%**
Delaware River & Bay Authority	08	164	102	62	0	0	0	0	0	0	1	1
	07	436	133	303	0	0	0	0	1	1	3	3
	06	789	214	575	0	0	0	0	1	0	5	4
	05	458	142	316	0	0	1	1	0	0	2	1
	04	614	188	426	0	0	1	1	3	1	3	2
	03	424	145	279	0	0	0	0	2	0	1	0
	02	336	124	212	0	0	0	0	2	1	12	11
	01	403	137	266	0	0	0	0	1	0	4	4
	00	474	128	346	0	0	0	0	1	0	2	1
%Change 07-08		**-62%**	**-23%**	**-80%**	**N/A**	**N/A**	**N/A**	**N/A**	**-100%**	**-100%**	**-67%**	**-67%**
Department of Corrections	08	506	31	475	0	0	0	0	0	0	7	6
	07	604	41	563	0	0	0	0	0	0	9	7
	06	388	6	382	0	0	0	0	0	0	1	1
	05	455	27	428	0	0	0	0	0	0	8	5
	04	371	16	355	0	0	0	0	0	0	4	3
	03	326	23	303	0	0	0	0	0	0	2	2
	02	283	16	267	0	0	0	0	0	0	6	4
	01	376	38	338	0	0	0	0	0	0	5	5
	00	296	43	253	0	0	0	0	0	0	24	23
%Change 07-08		**-16%**	**-24%**	**-16%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**-22%**	**-14%**
Drug and Narcotics	08	312	305	7	0	0	0	0	0	0	0	0
	07	293	277	16	0	0	0	0	0	0	0	0
	06	244	238	6	0	0	0	0	0	0	0	0
	05	242	240	2	0	0	0	0	0	0	0	0
	04	162	153	9	0	0	0	0	0	0	0	0
	03	155	152	3	0	0	0	0	0	0	0	0
	02	75	74	1	0	0	0	0	0	0	0	0
	01	93	87	6	0	0	0	0	0	0	0	0
	00	97	92	5	0	0	0	0	0	0	0	0
%Change 07-08		**6%**	**10%**	**-56%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**

Crime in Delaware by Jurisdiction 2000 - 2008											
Arson		Burglary		Larceny/Theft		Motor Vehicle Theft		Drug/Narcotic		Weapon Law Violations	
Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
0	0	0	0	3	0	0	0	0	0	0	0
0	0	0	0	8	0	0	0	0	0	0	0
0	0	0	0	1	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	3	2	0	0
0	0	0	0	2	1	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	5	4	0	0	0	0	0	0
N/A	**N/A**	**N/A**	**N/A**	**-63%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
0	0	6	0	28	1	3	0	19	17	4	4
0	0	6	1	22	3	1	0	38	35	13	13
0	0	2	1	19	1	0	0	15	15	6	4
0	0	6	0	32	4	1	0	22	18	8	8
0	0	9	2	28	2	3	0	23	22	3	3
0	0	3	0	25	3	4	1	26	26	2	2
0	0	3	0	51	4	1	0	12	11	5	5
0	0	9	4	42	8	2	0	27	27	0	0
0	0	2	0	51	3	0	0	21	21	2	2
N/A	**N/A**	**0%**	**-100%**	**27%**	**-67%**	**200%**	**N/A**	**-50%**	**-51%**	**-69%**	**-69%**
0	0	3	0	14	2	1	0	37	37	8	8
0	0	2	1	9	2	3	0	67	66	10	10
0	0	0	0	11	2	0	0	152	151	12	11
0	0	3	0	9	1	2	1	79	77	3	3
0	0	7	3	12	3	4	0	92	92	9	7
0	0	2	0	7	1	4	1	79	78	6	6
0	0	3	1	22	5	2	0	50	50	8	8
0	0	3	0	21	2	4	2	45	45	10	10
0	0	5	0	29	5	2	0	33	33	4	4
N/A	**N/A**	**50%**	**-100%**	**56%**	**0%**	**-67%**	**N/A**	**-45%**	**-44%**	**-20%**	**-20%**
0	0	0	0	2	2	0	0	6	6	2	1
1	0	0	0	1	1	0	0	2	2	2	2
0	0	0	0	0	0	0	0	2	1	0	0
0	0	0	0	0	0	0	0	6	5	0	0
0	0	0	0	0	0	0	0	6	2	0	0
0	0	0	0	2	2	0	0	4	4	0	0
0	0	0	0	1	1	0	0	3	3	1	1
0	0	0	0	4	2	0	0	12	12	1	1
4	4	0	0	0	0	0	0	13	12	1	1
-100%	**N/A**	**N/A**	**N/A**	**100%**	**100%**	**N/A**	**N/A**	**200%**	**200%**	**0%**	**-50%**
0	0	0	0	35	15	0	0	11	6	0	0
0	0	0	0	36	13	0	0	7	4	4	3
0	0	0	0	21	4	0	0	1	1	0	0
0	0	0	0	42	13	0	0	0	0	0	0
0	0	0	0	26	9	0	0	2	1	0	0
0	0	0	0	28	6	0	0	0	0	0	0
0	0	0	0	11	4	0	0	5	5	0	0
0	0	0	0	18	4	0	0	14	7	0	0
0	0	0	0	21	1	0	0	13	7	0	0
N/A	**N/A**	**N/A**	**N/A**	**-3%**	**15%**	**N/A**	**N/A**	**57%**	**50%**	**-100%**	**-100%**

Crime in Delaware by Jurisdiction 2000 - 2008

		Total Group A & B	Total Group A	Total Group B	Criminal Homicide		Forcible Sexual Offenses		Robbery		Aggravated Assault	
		Complaints	Complaints	Complaints	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
Youth Rehab. Services	08	3	1	2	0	0	0	0	0	0	0	0
	07	1	0	1	0	0	0	0	0	0	0	0
	06	0	0	0	0	0	0	0	0	0	0	0
	05	15	3	12	0	0	0	0	0	0	0	0
	04	11	1	10	0	0	0	0	0	0	1	1
	03	16	9	7	0	0	0	0	0	0	3	2
	02	11	7	4	0	0	0	0	0	0	2	1
	01	5	2	3	0	0	0	0	0	0	0	0
	00	30	17	13	0	0	0	0	0	0	2	2
%Change 07-08		**200%**	**N/A**	**100%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
Fire Marshal	08	736	282	454	0	0	0	0	0	0	51	35
	07	794	263	531	0	0	0	0	0	0	42	24
	06	939	318	621	0	0	0	0	0	0	30	21
	05	945	309	636	0	0	0	0	0	0	22	17
	04	939	298	641	0	0	0	0	0	0	32	17
	03	918	313	605	0	0	0	0	0	0	31	19
	02	956	326	630	0	0	0	0	0	0	39	24
	01	960	331	629	0	0	0	0	0	0	27	25
	00	965	311	654	0	0	0	0	0	0	11	9
%Change 07-08		**-7%**	**7%**	**-15%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**21%**	**46%**
Fish & Wildlife	08	190	80	110	0	0	0	0	0	0	5	5
	07	196	73	123	0	0	0	0	0	0	1	0
	06	375	41	334	0	0	0	0	1	0	0	0
	05	784	65	719	0	0	0	0	0	0	6	6
	04	731	81	650	0	0	0	0	0	0	1	0
	03	731	60	671	0	0	0	0	0	0	4	3
	02	802	58	744	0	0	0	0	0	0	3	2
	01	865	56	809	0	0	0	0	0	0	2	2
	00	996	68	928	0	0	0	0	0	0	4	1
%Change 07-08		**-3%**	**10%**	**-11%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**400%**	**N/A**
Park Rangers	08	491	274	217	0	0	0	0	0	0	2	2
	07	572	288	284	0	0	2	1	0	0	4	4
	06	335	188	147	0	0	1	1	0	0	0	0
	05	412	255	157	0	0	1	1	0	0	4	4
	04	395	172	223	0	0	0	0	0	0	0	0
	03	406	187	219	0	0	0	0	0	0	8	3
	02	445	217	228	0	0	0	0	0	0	0	0
	01	420	231	189	0	0	0	0	0	0	5	5
	00	674	268	406	0	0	1	1	0	0	4	3
%Change 07-08		**-14%**	**-5%**	**-24%**	**N/A**	**N/A**	**-100%**	**-100%**	**N/A**	**N/A**	**-50%**	**-50%**
Delaware State University	08	252	193	59	0	0	1	1	2	2	4	4
	07	202	155	47	1	1	2	2	2	1	6	5
	06	167	147	20	0	0	0	0	4	0	8	2
	05	151	125	26	0	0	3	2	2	1	4	1
	04	51	42	9	0	0	3	0	1	0	2	2
	03	0	0	0	0	0	0	0	0	0	0	0
	02	0	0	0	0	0	0	0	0	0	0	0
	01	0	0	0	0	0	0	0	0	0	0	0
	00	0	0	0	0	0	0	0	0	0	0	0
%Change 07-08		**25%**	**25%**	**26%**	**-100%**	**-100%**	**-50%**	**-50%**	**0%**	**100%**	**-33%**	**-20%**

Crime in Delaware by Jurisdiction 2000 - 2008											
Arson		Burglary		Larceny/Theft		Motor Vehicle Theft		Drug/Narcotic		Weapon Law Violations	
Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
0	0	0	0	0	0	0	0	1	0	1	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	2	0	0	0	2	2	0	0
N/A	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
263	70	26	4	1	0	0	0	0	0	27	10
249	84	22	6	2	0	0	0	0	0	37	14
312	94	20	2	0	0	0	0	0	0	32	7
299	115	18	7	3	0	0	0	1	1	39	5
291	97	22	4	0	0	0	0	0	0	23	1
301	88	20	2	2	1	0	0	0	0	33	3
318	97	12	2	0	0	0	0	0	0	31	6
327	75	18	3	0	0	0	0	0	0	14	5
305	86	19	4	0	0	0	0	0	0	17	4
6%	**-17%**	**18%**	**-33%**	**-50%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**-27%**	**-29%**
0	0	0	0	18	4	0	0	39	38	26	24
0	0	4	1	17	1	1	1	26	26	20	11
0	0	0	0	12	2	0	0	17	16	11	8
0	0	1	0	28	5	0	0	27	27	8	7
0	0	5	1	18	1	0	0	18	18	36	25
0	0	0	0	10	1	0	0	16	15	31	24
0	0	2	0	14	0	0	0	16	16	19	14
0	0	4	0	19	3	0	0	7	7	16	14
1	0	0	0	11	1	0	0	13	12	33	24
N/A	**N/A**	**-100%**	**-100%**	**6%**	**300%**	**-100%**	**-100%**	**50%**	**46%**	**30%**	**118%**
2	2	15	3	79	7	0	0	179	175	14	12
0	0	12	2	72	5	1	1	200	200	12	12
0	0	2	0	39	4	1	0	143	141	11	9
0	0	6	0	61	4	0	0	168	159	7	5
1	0	4	0	32	3	1	0	137	132	4	4
0	0	2	0	46	3	0	0	101	99	11	8
0	0	7	0	74	3	1	0	123	122	5	4
0	0	1	0	36	1	1	0	171	166	12	12
1	0	3	0	54	6	0	0	231	229	10	9
N/A	**N/A**	**25%**	**50%**	**10%**	**40%**	**-100%**	**-100%**	**-11%**	**-13%**	**17%**	**0%**
0	0	40	3	38	7	0	0	51	49	9	8
0	0	17	0	41	2	1	1	28	28	6	5
0	0	14	0	56	6	1	1	18	18	3	1
0	0	11	1	35	3	0	0	14	12	4	3
1	0	4	0	11	2	1	0	1	1	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
N/A	**N/A**	**135%**	**N/A**	**-7%**	**250%**	**-100%**	**-100%**	**82%**	**75%**	**50%**	**60%**

Crime in Delaware by Jurisdiction 2000 - 2008

		Total Group A & B	Total Group A	Total Group B	Criminal Homicide		Forcible Sexual Offenses		Robbery		Aggravated Assault	
		Complaints	Complaints	Complaints	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
U. of Delaware	08	1,325	722	603	0	0	3	3	8	5	3	1
	07	1,465	683	782	0	0	3	2	6	0	6	1
	06	1,431	734	697	0	0	8	7	4	0	5	2
	05	1,534	792	742	0	0	3	3	12	1	6	6
	04	1,633	812	821	0	0	6	2	5	1	14	9
	03	1,530	869	661	0	0	4	2	15	5	14	7
	02	1,781	1,038	743	0	0	0	0	15	5	7	6
	01	1,994	1,247	747	0	0	9	7	3	0	7	6
	00	1,921	1,307	614	0	0	2	2	4	0	11	6
%Change 07-08		**-10%**	**6%**	**-23%**	**N/A**	**N/A**	**0%**	**50%**	**33%**	**N/A**	**-50%**	**0%**
Wilmington Fire Company	08	46	30	16	0	0	0	0	0	0	10	5
	07	36	20	16	0	0	0	0	0	0	1	1
	06	0	0	0	0	0	0	0	0	0	0	0
	05	23	6	17	0	0	0	0	0	0	0	0
	04	34	13	21	0	0	0	0	0	0	3	0
	03	7	4	3	0	0	0	0	0	0	3	3
	02	2	2	0	0	0	0	0	0	0	2	2
	01	6	6	0	0	0	0	0	0	0	5	5
	00	2	2	0	0	0	0	0	0	0	1	1
%Change 07-08		**28%**	**50%**	**0%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**900%**	**400%**

Crime in Delaware by Jurisdiction 2000 - 2008											
Arson		Burglary		Larceny/Theft		Motor Vehicle Theft		Drug/Narcotic		Weapon Law Violations	
Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared	Offenses	Cleared
2	1	33	9	337	44	2	1	70	68	7	6
0	0	34	4	311	45	1	0	53	53	7	5
10	1	60	3	292	30	2	2	65	64	1	0
6	0	38	1	318	30	4	0	85	83	9	7
5	0	63	8	327	47	4	1	90	87	12	10
2	1	47	4	413	40	7	0	47	43	9	7
14	1	66	10	424	32	13	1	64	51	2	2
14	2	73	7	504	53	8	0	83	80	6	6
11	1	51	3	545	58	7	0	102	98	5	5
N/A	**N/A**	**-3%**	**125%**	**8%**	**-2%**	**100%**	**N/A**	**32%**	**28%**	**0%**	**20%**
27	6	2	1	1	0	0	0	0	0	0	0
18	2	1	0	1	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
6	0	0	0	0	0	0	0	0	0	0	0
13	1	1	1	0	0	0	0	0	0	0	0
4	3	2	2	0	0	0	0	0	0	0	0
2	2	1	1	0	0	0	0	0	0	0	0
6	6	0	0	0	0	0	0	0	0	0	0
2	2	0	0	0	0	0	0	0	0	0	0
50%	**200%**	**100%**	**N/A**	**0%**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**

NIBRS "Group B" Crimes

NIBRS Group B Offenses consist of 11 lesser offenses: bad checks, curfew/ loitering/vagrancy violations, disorderly conduct, driving under the influence, drunkenness, nonviolent family offenses, liquor law violations, peeping tom, runaway, trespass and "Group B All Other Offenses". "Group B All Other Offenses" are all crimes which are not Group A offenses and not included in one of the specifically named Group B crime categories listed above. Group B offenses only have summary complaint data and limited arrestee data recorded in NIBRS. Not all details required for Group A incident reports are requested for Group B arrest reports. There has been a 4.8 percent decrease in total Group B arrests between 2007 and 2008. There has been a 14.5 percent decrease in Juvenile Group B Arrests between 2007 and 2008.

Table 57

NIBRS Group B Complaints and Arrests						
	2003	**2004**	**2005**	**2006**	**2007**	**2008**
Group B Complaints	61,996	62,192	61,576	63,197	55,642	35,895*
Arrests: Total	13,384	13,801	14,032	13,702	14,534	13,834
Adult Male	8,151	8,194	8,424	8,336	8,949	8,521
Adult Female	2,785	2,986	3,070	3,011	3,244	3,312
Adult Total	10,936	11,180	11,494	11,347	12,193	11,833
Juvenile Male	1,635	1,744	1,724	1,517	1,621	1,370
Juvenile Female	813	877	814	838	720	631
Juvenile Total	2,448	2,621	2,538	2,355	2,341	2,001
Total Male	9,786	9,938	10,148	9,853	10,570	9,891
Total Female	3,598	3,863	3,884	3,849	3,964	3,943

***Difference between 2007 and 2008 Group B complaint totals**

Prior to 2007, the quality control section approved all reports in the system which would be included in the total. Since that time the quality control sections have stopped approving some miscellaneous types of reports, and the system automatically approves the reports. Once the officer completes the report and the supervisor approves the report, it is complete and the reports are not submitted to the quality control sections. If a crime report only contains one of the below crime codes**, or another on this list, the report will be automatically approved and will not be counted on the NIBRS crime report.

***Family Verbal Dispute, Non Family Verbal Dispute,. Local Fugitive, Traffic Offenses, excluding Felony DUI, Non-Criminal, Assist other police agency, Fatal Motor Vehicle Collision, Search Warrant, Domestic Situation, Megans Law Notification, Serving Protection From Abuse Orders/PFA, PFA/Ex parte Compliance, Exposure Fire, Escorts/Banks/Stores/Etc. , Traffic Movement Control/Funerals/Parades/Processions, Restricted Parking/Signs/Barricades/ Requests /Etc., Public Service for locked vehicles/Slim Jim/Etc.*

Figure 57

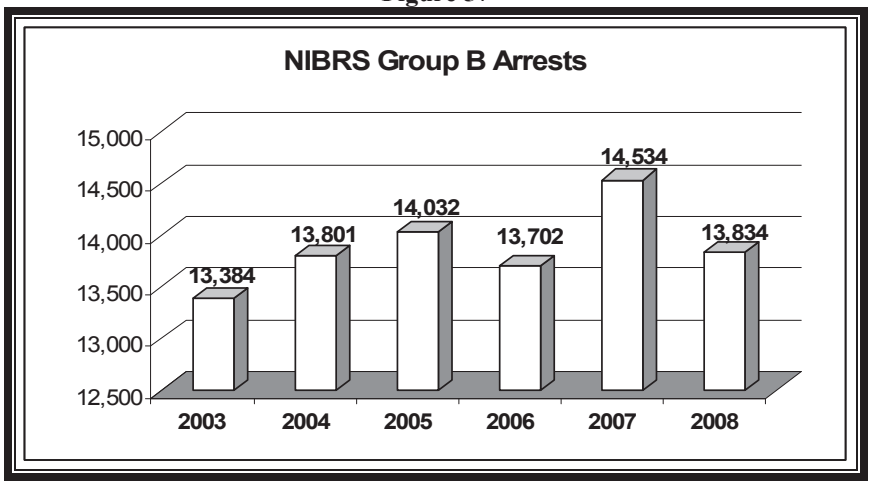


Figure 58

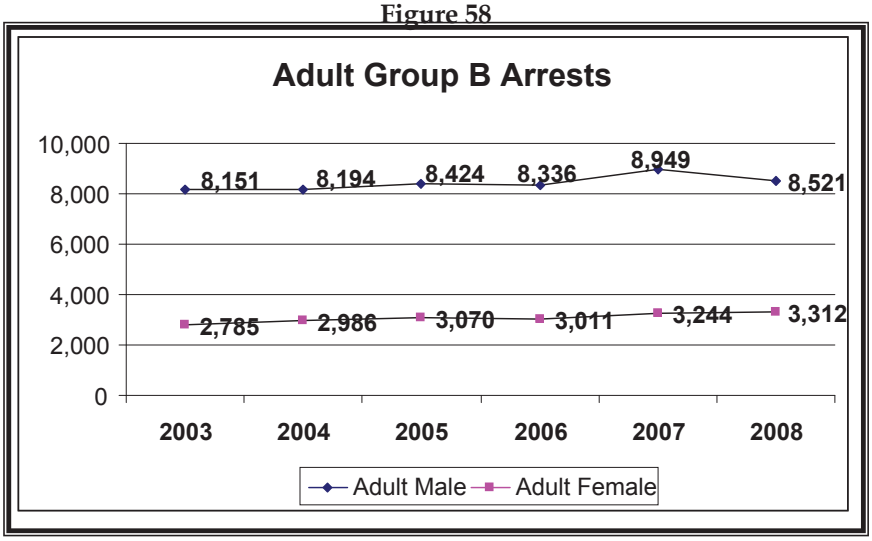
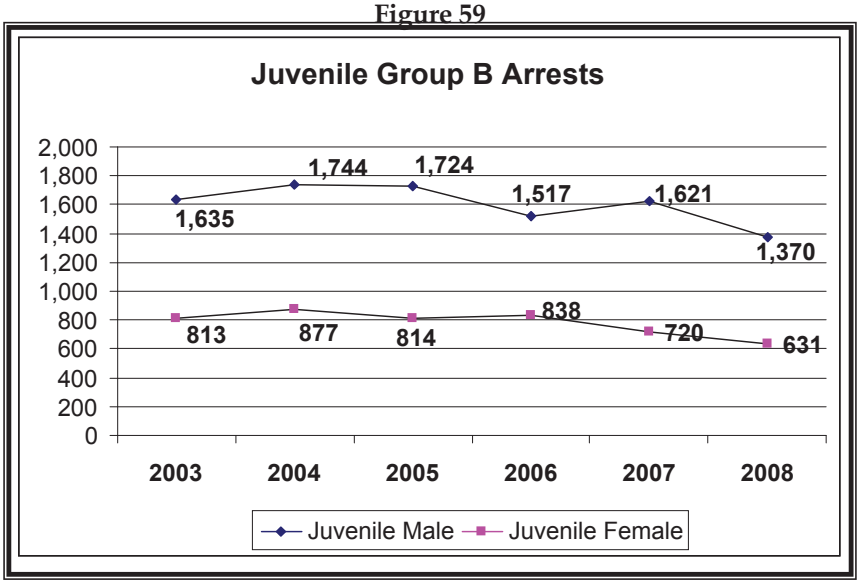


Figure 59



Delaware Population

Source: University of Delaware population consortium

Table 58

	2003	2004	2005	2006	2007	2008
New Castle County	**514,798**	**518,732**	**523,016**	**527,027**	**531,037**	**535,007**
Kent County	**134,627**	**139,122**	**143,969**	**147,675**	**150,606**	**152,980**
Sussex County	**168,406**	**172,228**	**176,555**	**180,275**	**183,795**	**187,314**
Totals	**817,831**	**830,082**	**843,540**	**854,977**	**865,438**	**875,301**

Table 59

	2003 Population		2004 Population		2005 Population	
	Male	*Female*	*Male*	*Female*	*Male*	*Female*
Juvenile	101,398	97,664	102,071	98,563	103,026	99,685
Adult	295,320	323,449	300,603	328,845	306,179	334,650
Total Per	396,718	421,113	402,674	427,408	409,205	434,335
Total	**817,831**		**830,082**		**843,540**	
	2006 Population		**2007 Population**		**2008 Population**	
	Male	*Female*	*Male*	*Female*	*Male*	*Female*
Juvenile	103,557	100,298	103,884	100,930	103,973	101,373
Adult	311,239	339,883	315,989	344,635	320,708	349,247
Total Per	414,796	440,181	419,873	445,565	424,681	450,620
Total	**854,977**		**865,438**		**875,301**	

Table 60

Delaware Population % Increase						
	2003-2004	**2004 - 2005**	**2005 - 2006**	**2006 - 2007**	**2007 - 2008**	**2003 - 2008**
Total Delaware Population	**1.50%**	**1.60%**	**1.40%**	**1.20%**	**1.10%**	**7.02%**
New Castle County	0.80%	0.80%	0.76%	0.83%	0.75%	3.90%
Kent County	3.30%	3.50%	2.60%	2%	1.60%	13.50%
Sussex County	2.30%	2.50%	2.10%	1.90%	1.90%	11.20%

Delaware Changes from Uniform Crime Reporting to National Incident Based Crime Reporting System

According to the F.B.I.'s "Crime in the United States 2008", approximately 39 percent, or 17,799 of the Nation's law enforcement agencies participating in the UCR Program submitted their data via NIBRS, and the crime data collected via NIBRS comprised approximately 26 percent of the data submitted to the FBI. The jurisdictions that reported crime data to the FBI via the NIBRS covered approximately 26 percent of the Nation's population, or 304,059,724 persons.

The NIBRS system eliminates the hierarchy rule formerly used in the UCR methodology. The UCR's hierarchy rule is used when there is more than one Part I offense; the law enforcement agency must select the most severe offense and not the other offenses. For example, if a person is arrested and charged with possession of a firearm during the commission of a felony and terroristic threatening, the UCR process would count only the most severe offense (Possession of a Firearm during the Commission of a Felony) and ignores the terroristic threatening offense. This crime reporting process applies only to the reported number of crimes for statistical purposes and does not affect the criminal justice process. For instance, the UCR hierarchy rule does not affect the number of charges for which the defendant may be indicted for in the courts.

NIBRS crime reporting is broken down into two major categories; "Group A", the more serious crimes, and "Group B", the less serious crimes. In the past, UCR reported eight "Part I" serious crimes, while NIBRS reports on twenty-four "Group A" serious crimes.

Known as IBR (*Incident-Based Reporting*), the new NIBRS strategy allows analysis of the incidence of crime for each charge within a crime. Incidents are the number of criminal charges known to police.

NIBRS "Group A" offenses consist of investigative and incident reports, which include attempts and suspected events. In Crime in Delaware, most of the NIBRS crime analysis is based on the "incidents" within a crime event. In a few areas, "Reported Crimes", that is, the number of crime events, is also reported. "Reported Crime" measurement is the same in the new NIBRS as it was in UCR. Detailed information is also reported for NIBRS arrests. There are twenty-four major Group A crime categories, with forty-four detail crime sub-categories.
"Group B" offense information is based solely on summary complaints and arrests. The NIBRS crime reporting method is ideal for strategic and tactical crime analysis at the local and regional level, and the data is robust enough to allow creation of new categories, such as Crimes against Society, or for the researcher to explore other relationships among the variables. The crimes that make up Group A and B offenses are much more detailed in the past and for the first time also include analysis of such offenses as pornography, counterfeiting, prostitution, embezzlement, bad checks, weapons violations, and Peeping Tom activity.

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Glossary of Terms

Adult	A person 18 years of age or older.
Arrest	A person physically apprehended, cited or served with a summons related to a reportable offense.
Arrest Rate	The number of arrests reported per 1,000 population.
Cleared	A complaint reported to the police is considered cleared or solved once the police have identified the offender. One arrest may clear several crimes; therefore the clearance rate is often higher than the arrest rate.
Crime Incident	One or more crimes committed by the same offender, or group of offenders at the same time and place. A reported Offense may involve more than one Crime Incident.
Complaint	A Criminal offense reported to or by the police.
Crime Rate	The number of Crimes per 1,000 populations.
Drug Offenses	The violation of laws prohibiting the production, distribution, and/or use of certain controlled substances and the equipment or devices utilized in their preparation and/or use.
Ethnicity	Indicates ethnic origin, regardless of race, as either Hispanic or not Hispanic.
Group A Offenses	22 crimes ranging from arson through assault, burglary, vandalism, drug offenses, fraud, homicides and forcible sex offenses. Group A detailed information is based on each charge in the crime incident.
Group B Offenses	11 offenses ranging from Bad Checks, drunkenness, driving under the influence to non-violent family offenses. Group B offenses only have arrestee data recorded in NIBRS. In the Group B Arrest Report, because of the different natures of Group A and B offenses, not all details required for Group A Incident Reports are requested for Group B Arrest Reports. Only arrestee data are required for Group B crimes.
Juvenile	A person under 18 years of age.
Offenses Received (Charges)	Crimes reported to or otherwise known to police. Each charge in the crime incident is counted. To be counted in Crime in Delaware, information on reported offenses must also be provided to SBI for proper classification and coding in the State's Criminal Justice Information System. If the provision of information to SBI is not complete and timely, Crime in Delaware will represent an undercounting of reported offenses.
Population data	Delaware population projection estimates are from the Delaware population Consortium.
Property Crimes	Property Crimes are based on the main criminal objective to obtain money, property, or some other benefit.
Social Crimes	Social Crimes represent certain types of criminal activity prohibited by our society.
Type of Crime	Specific Crime committed during a reportable incident.
Violent Crimes	Violent Crimes are crimes such as Homicide, Assault and Forcible sex offenses.

Reader's Notes

Uniform Crime Reports v. National Incident Based Reporting:
Comparison of Definitions

***Note**: All FBI UCR definitions were quoted directly from the Uniform Crime Reporting Handbook published by the FBI (1984) or Crime in the United States, 1997, published by the FBI (1998); all FBI NIBRS definitions were quoted directly from the Uniform Crime Reporting Handbook: NIBRS Edition published by the FBI (1992). All Title, Section, Class and NCIC Offense information taken from Delaware Criminal and Traffic Law Manual 2003- 2004*

- **Arson**

***UCR Part and Definition* - Part I Arson (200):** Any willful or malicious burning or attempt to burn, with or without the intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.
***NIBRS Group and Definition* -Group A Arson:** To unlawfully and intentionally damage, or attempt to damage, any real or personal property by fire or incendiary device. A person is guilty of arson in the third degree when the person recklessly damages a building by intentionally starting a fire or causing an explosion.
(b) In any prosecution under this section it is an affirmative defense that no person other than the accused had a possessory or proprietary interest in the building.
Arson: The willful and malicious burning of a dwelling, motor vehicle, or other personal property, with or without the intent to defraud.

Title	Section	Class	NCIC Offense
11	801	FG	Arson 3rd Degree
11	802	FD	Arson 2nd Degree
11	803	FC	Arson 1st Degree

- **Assault, Aggravated**

***UCR Part and Definition* - Part I Aggravated Assault (13A):** An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. Simple assaults are excluded.
***NIBRS Group and Definition* - Group A Aggravated Assault:** An unlawful attack by one person upon another wherein the offender uses a weapon or displays it in a threatening manner, or the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness.
Aggravated Assault: An assault classified as aggravated is determined by criteria rather than statute. The criteria pertain to the severity of the attack unless a weapon is used. Attempted Murder is an aggravated assault. Simple Assault is a Group B Crime.

Title	Section	Class	NCIC Offense
11	604	FE	Reckless Endangering 1st Degree
11	612	FD	Assault 2nd Degree
11	613	FC	Assault 1st Degree
11	1254	FB, FD	Assault in a Detention Facility
11	3532	FE	Intimidating Acts
11	3533	FD	Aggravated Intimidating Acts

• **Assault, Simple**

UCR Part and Definition **- Part II Other Assaults –Simple- (13B):** Assaults and attempted assaults where no weapon was used or which did not result in serious or aggravated injury to the victim. Examples of local jurisdiction offense titles which would be included in "other assaults" are: simple assault; minor assault; assault and battery; injury by culpable negligence; resisting or obstructing an officer; intimidation; coercion; hazing; and attempts to commit the above.

NIBRS Group and Definition **- Group A Simple Assault:** An unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness.

Simple Assault: Any of the following assaults could be aggravated, depending on the circumstances.

Title	Section	Class	NCIC Offense
11	601	M	Offensive Touching
11	602	M	Menacing
11	603	MA	Reckless Endangering 2nd Degree
11	611	MA	Assault 3rd Degree

• **Assault, Intimidation**

UCR Part and Definition: No such category in UCR.

NIBRS Group and Definition **- Group A Intimidation (13C):** To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

• **Bad Checks**

UCR Part and Definition: No such category in UCR.

NIBRS Group and Definition **- Group B Bad Checks:** Knowingly and intentionally writing and/or negotiating checks drawn against insufficient or nonexistent funds.

Issuing a bad Check; Class A Misdemeanor, Class G felony §§ 900 to 902 of Title 11.

Title	Section	Class	NCIC Offense
11	900	MA	Issuing a bad Check

• **Bribery**

UCR Part and Definition: No such category in UCR.

NIBRS Group and Definition **- Group A Bribery:** The offering, giving, receiving, or soliciting of any thing of value (i.e., a bribe, gratuity, or kickback) to sway the judgment or action of a person in a position of trust or influence.

• **Burglary/Breaking and Entering**

UCR Part and Definition **- Part I Burglary-Breaking or Entering:** The unlawful entry of a structure to commit a felony or a theft. Offenses counted on UCR forms as burglary are: unlawful entry of a structure with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny; housebreaking; safecracking; and all attempts to commit the foregoing offenses.

NIBRS Group and Definition **- Group A Burglary/Breaking and Entering -** The

unlawful entry into a building or other structure with the intent to commit a felony or a theft. **Burglary:** The unlawful entry (or attempted entry) into a building or structure to commit a crime.

Title	Section	Class	NCIC Offense
11	824	FF	Burglary 3rd Degree
11	825	FD	Burglary 2nd Degree
11	826	FC	Burglary 1st Degree

• Counterfeiting or Forgery

***UCR Part and Definition* - Part II Forgery and Counterfeiting:** Placed in this class are all offenses dealing with the making, altering, uttering, or possessing, with the intent to defraud, anything false in the semblance of that which is true. Includes: altering or forging public and other records; making, altering, forging, or counterfeiting bills, notes, drafts, tickets, checks, credit cards, etc.; forging wills, deeds, notes, bonds, seals, trademarks, etc.; counterfeiting coins, plates, banknotes, checks, etc.; possessing or uttering forged or counterfeited instruments; erasures; signing the name of another or fictitious person with intent to defraud; using forged labels; possession, manufacture, etc. of counterfeiting apparatus; selling goods with altered, forged or counterfeited trademarks; and all attempts to commit the above.

***NIBRS Group and Definition* - Group A Counterfeiting/Forgery:** The altering, copying, or imitation of something, without authority or right, with the intent to deceive or defraud by passing the copy or thing altered or imitated as that which is original or genuine; or the selling, buying or possession of an altered, copied, or imitated thing with the intent to deceive or defraud.

Title	Section	Class	NCIC Offense
11	861	FF, FG, MA	Forgery 1st, 2nd, or 3rd Degrees
11	862	FG	Possession of Forgery Devices

• Curfew, Loitering, or Vagrancy Violations

***UCR Part and Definition* – Part II Curfew and Loitering Laws (Persons under age 18):** Count all arrests for violations of local curfew or loitering ordinances where such laws exist.

Part II Vagrancy: Persons prosecuted on the charge of being a "suspicious character or person, etc." Included in this class are: vagrancy, begging, loitering (persons 18 and over); and vagabondage.

***NIBRS Group and Definition* – Group B Curfew/Loitering/Vagrancy Violations:** The violation of a court order, regulation, ordinance, or law requiring the withdrawal of persons from the streets or other specified areas; prohibiting persons from remaining in an area or place in an idle or aimless manner; or prohibiting persons from going from place to place without visible means of support.

• Destruction, Damage, or Vandalism of Property

***UCR Part and Definition* - Part II Vandalism** The willful or malicious destruction, injury, disfigurement, or defacement of any public or private property, real or personal, without consent of the owner or person having custody or control by cutting, tearing, breaking, marking, painting, drawing, covering with filth, or any other such means as

may be specified by local law. This offense covers a wide range of malicious behavior directed at property, such as: cutting auto tires, drawing obscene pictures on public restroom walls, smashing windows, destroying school records, tipping over gravestones, defacing library books, etc. Count all arrests for above, including attempts.
***NIBRS Group and Definition* - Group A Destruction/Damage/Vandalism of Property:** To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.

Title	Section	Class	NCIC Offense
11	811	FG, M	Criminal Mischief

• Disorderly Conduct
***UCR Part and Definition* - Part II Disorderly Conduct:** In this class are placed all charges of committing a breach of the peace. Include: affray; unlawful assembly; disturbing the peace; disturbing meetings; disorderly conduct at state institutions, at court, at fairs, on trains or public conveyances, etc.; blasphemy, profanity, and obscene language; desecrating the flag; refusing to assist an officer; and include all attempts to commit the above. Breach of the peace.
***NIBRS Group and Definition* - Group B Disorderly Conduct:** Any behavior that tends to disturb the public peace or decorum; scandalizes the community, or shock the public sense of morality. This offense includes: affray, breach of peace, blasphemy, profanity, obscene language, disturbing the peace, and public nuisance.

Title	Section	Class	NCIC Offense
11	1301	M	Disorderly Conduct
11	1311	M	Harassment
11	1312	MB	Aggravated Harassment

• Driving Under the Influence
***UCR Part and Definition* -Part II Driving Under the Influence:** This class is limited to the driving or operating of any vehicle or common carrier while drunk or under the influence of liquor or narcotics.
***NIBRS Group and Definition* - Group B Driving Under the Influence:** Driving or operating a motor vehicle or common carrier while mentally or physically impaired as the result of consuming an alcoholic beverage or using a drug or narcotic. This offense includes driving while intoxicated and operating a bus, train, streetcar, boat, etc., while under the influence.

• Drug/Narcotic Offenses
***UCR Part and Definition* - Part II Drug Abuse Violations:** State and/or local offenses relating to the unlawful possession, sale, use, growing, and manufacturing of narcotic drugs. The following drug categories are specified: opium or cocaine and their derivatives (morphine, heroin, codeine); marijuana; synthetic narcotics - manufactured narcotics that can cause true addiction (Demerol, methadone); and dangerous nonnarcotic drugs (barbiturate, Benzedrine). Includes all attempts to sell, manufacture, or possess any of the above. The unlawful cultivation, manufacture, distribution, sale, purchase, use, possession, transportation, or importation of any controlled drug or narcotic substance.
***NIBRS Group and Definition* - Group A General definition of Drug/Narcotic**

Violations: The violation of laws prohibiting the production, distribution, and/or use of certain controlled substances and the equipment or devices utilized in their preparation and/or use.
***UCR Part and Definition*:** No such category in UCR.
***NIBRS Group and Definition* - Group A Drug Equipment Violations:** The unlawful manufacture, sale, purchase, possession, or transportation of equipment or devices utilized in preparing and/or using drugs or narcotics.

Title	Section	Class	NCIC Offense
16	4751	FC	Possession with Intent to Deliver
16	4752	FE	Possession with Intent to Del Non- Narcotics
16	4753	M	Possession or Use of Narcotics
16	4753A	FB	Drug Trafficking
16	4754	MB	Possession or Use of Non-Narcotics 119
16	4754A	FE	Delivery of Non-Controlled Prescriptions
16	4755	FF, MA	Maintaining a Dwelling or Vehicle for the Use or Sale of Drugs
16	4756	FF	Obtain Illegal Substance
16	4757	M	Illegal Possession of Hypodermic Needle
16	4771	MA	Possession of Drug Paraphernalia

- **Drunkenness**

***UCR Part and Definition* - Part II Drunkenness:** This class includes all offenses of drunkenness or intoxication, with the exception of driving under the influence. Also includes: drunkenness; drunk and disorderly; common or habitual drunkard; intoxication.
***NIBRS Group and Definition* - Group B Drunkenness:** To drink alcoholic beverages to the extent that one's mental faculties and physical coordination are substantially impaired. Included are drunk and disorderly, common drunkard, habitual drunkard, and intoxication.

- **Embezzlement**

***UCR Part and Definition* - Part II Embezzlement:** Misappropriation or misapplication of money or property entrusted to one's care, custody, or control. Include attempts.
***NIBRS Group and Definition* - Group A Embezzlement:** The unlawful misappropriation by an offender to his/her own use or purpose of money, property, or some other thing of value entrusted to his/her care, custody, or control.

- **Extortion or Blackmail**

***UCR Part and Definition*:** No such category in UCR, included in "All Other Offenses."
***NIBRS Group and Definition* - Group A Extortion/Blackmail:** To unlawfully obtain money, property, or any other thing of value, either tangible or intangible, through the use or threat of force, misuse of authority, threat of criminal prosecution, threat of destruction of reputation or social standing, or through other coercive means.

- **Family Offenses**

***UCR Part and Definition* - Part II Offenses Against the Family and Children:** Include here all charges of non-support and neglect or abuse of family and children, such as: desertion, abandonment, or non-support of spouse or child; neglect or abuse of spouse

or child (if injury is serious, score as aggravated assault); nonpayment of alimony; and all attempts to commit the above. Do not count victims of these charges who are merely taken into custody for their own protection. Nonsupport, neglect, desertion, or abuse of family and children.

***NIBRS Group and Definition* - Group B Family Offenses, Non-Violent:** Unlawful, nonviolent acts by a family member (or legal guardian) which threaten the physical, mental or economic well-being or morals of another family member, and which are not classifiable as other offenses, such as assault, incest, statutory rape, etc. This offense includes: abandonment; desertion; neglect; non-support; nonviolent abuse and nonviolent cruelty to other family members; nonpayment of court-ordered alimony not considered as "contempt of court" within the reporting jurisdiction. Do not include victims of these offenses who are taken into custody for their own protection.

Title	Section	Class	NCIC Offense
11	1102	MA	Endangering the Welfare of a Child
11	1105	MA	Endangering the Welfare of an Incompetent Person
11	1106	MB	Unlawfully Dealing with a Child

- **Fraud Offenses**

***UCR Part and Definition* - Part II Fraud:** Fraudulent conversion and obtaining money or property by false pretenses. Includes: bad checks, except forgeries and counterfeiting; confidence games; leaving full-service gas station without paying attendant; unauthorized withdrawal of money from an automatic teller machine; and any attempts to commit the above. Included are confidence games and bad checks, except forgeries and counterfeiting.

***NIBRS Group and Definition* - Group A Fraud Offenses - General definition of Fraud Offenses:** The intentional perversion of the truth for the purpose of inducing another person, or other entity, in reliance upon it to part with some thing of value or to surrender a legal right.

***UCR Part and Definition* -** No such category in UCR.

***NIBRS Group and Definition* - Group A False Pretenses/ Swindle/ Confidence Game:** The intentional misrepresentation of existing fact or condition, or the use of some other deceptive scheme or device, to obtain money, goods, or other things of value.

***UCR Part and Definition* -** No such category in UCR.

***NIBRS Group and Definition* - Group A Credit Card/ ATM Fraud:** The unlawful use of a credit (or debit) card or automatic teller machine for fraudulent purposes. This offense does not apply to the theft of a credit/debit card but rather its fraudulent use.

***UCR Part and Definition* -** No such category in UCR.

***NIBRS Group and Definition* - Group A Impersonation:** Falsely representing one's identity or position, and acting in the character or position thus unlawfully assumed, to deceive others and thereby gain a profit or advantage, enjoy some right or privilege, or subject another person or entity to an expense, charge, or liability which would not have otherwise been incurred.

***UCR Part and Definition* -** No such category in UCR.

***NIBRS Group and Definition* - Group A Welfare Fraud:** The use of deceitful statements, practices or devices to unlawfully obtain welfare benefits.

***UCR Part and Definition* -** No such category in UCR.

***NIBRS Group and Definition* - Group A Wire Fraud:** The use of an electric or electronic

communications facility to intentionally transmit a false and/or deceptive message in furtherance of a fraudulent activity.

Title	Section	Class	NCIC Offense
11	844	FG, MA	Theft, False Promise
11	900	FG, MA	Worthless Check
11	903	FG, MA	Unlawful Use of Credit Card
11	907	MA	Criminal Impersonation

• Gambling Offenses - General Definition

***UCR Part and Definition* - Part II Gambling:** All charges which relate to promoting, permitting, or engaging in illegal gambling are included in this category. To provide a more refined collection of gambling arrests, the following breakdown should be furnished: (a) Bookmaking (horse and sport book); (b) Numbers and lottery; (c) All other. Promoting, permitting, or engaging in illegal gambling.

***NIBRS Group and Definition* - Group A:** To unlawfully bet or wager money or something else of value; assist, promote, or operate a game of chance for money or some other stake; possess or transmit wagering information; manufacture, sell, purchase, possess, or transport gambling equipment, devices, or goods; or tamper with the outcome of a sporting event or contest to gain a gambling advantage.

Title	Section	Class	NCIC Offense
11	1403	MA	Advanced Gambling 1st Degree

• Gambling Offenses – Other

***UCR Part and Definition* -** No such category in UCR.

***NIBRS Group and Definition* - Group A Betting/Wagering:** To unlawfully stake money or something else of value on the happening of an uncertain event or on the ascertainment of a fact in dispute.

***UCR Part and Definition* -** No such category in UCR.

***NIBRS Group and Definition* - Group A Operating/ Promoting/ Assisting:** To unlawfully operate, promote, or assist in the operation of a game of chance, lottery, or other gambling activity.

***UCR Part and Definition* -** No such category in UCR. 122

***NIBRS Group and Definition* - Group A Gambling Equipment Violations:** To unlawfully manufacture, sell, buy, possess, or transport equipment, devices, and/or goods used for gambling purposes. Such equipment is also known as "gambling paraphernalia".

***UCR Part and Definition* -** No such category in UCR.

***NIBRS Group and Definition* - Group A Sports Tampering:** To unlawfully alter, meddle in, or otherwise interfere with a sporting contest or event for the purpose of gaining a gambling advantage. This offense includes engaging in bribery for gambling purposes.

• Homicide Offenses

***UCR Part and Definition* - Part I Murder & Non-Negligent Manslaughter:** The willful (non-negligent) killing of one human being by another.

***NIBRS Group and Definition* - Group A Murder & Non-Negligent Manslaughter:** The willful (non-negligent) killing of one human being by another.

***UCR Part and Definition* - Part I Negligent Manslaughter:** The killing of another person through gross negligence.
***NIBRS Group and Definition* - Group A Negligent Manslaughter:** The killing of another person through negligence.
***UCR Part and Definition* - Justifiable Homicide - Unfounded:** No such category in UCR. Described as "The killing of a felon by a peace officer in the line of duty, or the killing (during the commission of a felony) of a felon by a private citizen".
***NIBRS Group and Definition - Group A Justifi*able Homicide:** The killing of a perpetrator of a serious criminal offense by a peace officer in the line of duty; or the killing, during the commission of a serious criminal offense, of the perpetrator by a private individual**.**
Criminal Homicide: This includes Murder – the willful, non-negligent killing of one human being by another – and negligent Manslaughter.

Title	Section	Class	NCIC Offense
11	631	FE	Criminally Negligent Homicide
11	632	FC	Manslaughter
11	635	FB	Murder 2nd Degree
11	636	FA	Murder 1st Degree

• Kidnapping or Abduction
***UCR Part and Definition* -** No such category in UCR.
***NIBRS Group and Definition* - Group A Kidnapping/Abduction:** The unlawful seizure, transportation, and/or detention of a person against his/her will, or of a minor without the consent of his/her custodial parent(s) or legal guardian. This offense includes not only kidnapping and abduction, but hostage situations as well. 123

Title	Section	Class	NCIC Offense
11	783	FC	Kidnapping 2nd Degree
11	783A	FB	Kidnapping 1st Degree

• Larceny-Theft Offenses
***UCR Part and Definition* - Part I Larceny-Theft:** The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another. Examples are thefts of bicycles or automobile accessories, shoplifting, pocket picking,
or the stealing of any property or article which is not taken by force and violence or by fraud. Attempted larcenies are included. Embezzlement, confidence games, forgery, worthless checks, etc., are excluded.
***NIBRS Group and Definition* - Group A Larceny/Theft Offenses:** The unlawful taking, carrying, leading, or riding away of property from the possession, or constructive possession, of another person.
***UCR Part and Definition* - Part I Larceny - Pocket-Picking:** The theft of articles from a person by stealth where the victim usually does not become immediately aware of the theft.
***NIBRS Group and Definition* - Group A Pocket-Picking:** The theft of articles from another person's physical possession by stealth where the victim usually does not become immediately aware of the theft.
***UCR Part and Definition* - Part I Larceny - Purse-Snatching:** The grabbing or snatching

of a purse, handbag, etc., from the custody of an individual.
NIBRS Group and Definition **- Group A Purse-Snatching:** The grabbing or snatching of a purse, handbag, etc., from the physical possession of another person.
UCR Part and Definition **- Part I Larceny - Shoplifting:** The theft by a person (other than an employee) of goods or merchandise exposed for sale.
NIBRS Group and Definition **- Group A Shoplifting:** The theft, by someone other than an employee of the victim, of goods or merchandise exposed for sale.
UCR Part and Definition **- Part I Larceny - Theft from Motor Vehicle - Except theft of motor vehicle parts and accessories:** The theft of articles from a motor vehicle, whether locked or unlocked.
NIBRS Group and Definition **- Group A Theft from Motor Vehicle:** The theft of articles from a motor vehicle, whether locked or unlocked.
UCR Part and Definition **- Part I Larceny - Theft of Motor Vehicle Parts and Accessories:** The theft of any part or accessory attached to the interior or exterior of a motor vehicle in a manner which would make the part an attachment to the vehicle or necessary for the operation of the vehicle.
NIBRS Group and Definition **- Group A Theft of Motor Vehicle Parts or Accessories:** The theft of any part or accessory affixed to the interior or exterior of a motor vehicle in a manner which would make the item an attachment of the vehicle or necessary for its operation.
UCR Part and Definition **- Part I Larceny - Theft of Bicycles:** The unlawful taking of any bicycle, tandem bicycle, unicycle, etc.
NIBRS Group and Definition **-** No such category in NIBRS.
UCR Part and Definition **- Part I Larceny - Theft from Building:** A theft from within a building which is open to the general public and where the offender has legal access.
NIBRS Group and Definition **- Group A Theft from Building:** A theft from within a building which is either open to the general public or where the offender has legal access.
UCR Part and Definition **- Part I Theft from a Coin-Operated Device or Machine:** A theft from a device or machine which is operated or activated by the use of a coin.
NIBRS Group and Definition **- Group A Theft from a Coin-Operated Machine or Device:** A theft from a machine or device which is operated or activated by the use of coins.
UCR Part and Definition **- Part I All Other Larceny:** All thefts which do not fit the definition of the specific categories of larceny listed above.
NIBRS Group and Definition **- Group A All other Larceny:** All thefts which do not fit any of the definitions of the specific subcategories of Larceny/Theft listed above.
Larceny: The theft (or attempted theft) of someone's property, excluding motor vehicles. Examples of larceny include pick pocketing, shoplifting, purse-snatching, theft of bicycle, livestock, farm equipment, airplane, construction equipment, motorboat, theft of item from within a motor vehicle, etc.
Delaware Criminal and Traffic Law Manual 2003- 2004
Title Section Class NCIC Offense
11 841 F Larceny-Parts From Vehicle, From Auto, From Shipment, From Coin Machine, From building, From Yards, From Mails, From Banking-Type Institution, From Interstate Shipment

• **Liquor Law Violations**

***UCR Part and Definition* - Part II Liquor Laws:** With the exception of "drunkenness" and "Driving under the Influence", liquor law violations, state or local, are placed in this class. Include: manufacture, sale, transporting, furnishing, possessing, etc. intoxicating liquor; maintaining unlawful drinking places; bootlegging; operating still; furnishing liquor to a minor or intemperate person; using a vehicle for the illegal transportation of liquor; drinking on train or public conveyance; and all attempts to commit the above. Federal violations are excluded.

***NIBRS Group and Definition* - Group B Liquor Law Violations:** The violation of laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, or use of alcoholic beverages. Driving under the influence and drunkenness violations is excluded. Included are violations of laws/ordinances prohibiting the maintenance of unlawful drinking places; bootlegging; operating a still; furnishing liquor to a minor; using a vehicle for the illegal transportation of liquor, etc.

Title	Section	Class	NCIC Offense
04	904	M	Possession or Consumption of Alcohol by a Minor

• **Motor Vehicle Theft**

***UCR Part and Definition* - Part I Motor Vehicle Theft:** The theft or attempted theft of a motor vehicle. A motor vehicle is self-propelled and runs on the surface and not on rails. Specifically excluded from this category are motorboats, construction equipment, airplanes, and farming equipment.

***NIBRS Group and Definition* - Group A Motor Vehicle Theft:** The theft of a motor vehicle. A motor vehicle is defined for UCR purposes as a self-propelled vehicle that runs on land surface and not on rails and which fits one of the following property descriptions: automobiles, buses, recreational vehicles, trucks, or other motor vehicles.

Motor Vehicle Theft: The theft (or attempted theft) of a motor vehicle by person(s) without lawful access to the vehicle.

Title	Section
21	6707

• **Peeping Tom**

***UCR Part and Definition* -** No such category in UCR.

***NIBRS Group and Definition* - Group B Peeping Tom:** To secretly look through a window, doorway, keyhole, or other aperture for the purpose of voyeurism.

Trespassing with intent to peer or peep into a window or door of another

Title	Section	Class	NCIC Offense
11	820	MB	Peeping Tom

• **Pornography/ Obscene Material**

***UCR Part and Definition* -** No such category in UCR.

***NIBRS Group and Definition* - Group A Pornography/Obscene Material:** The violation of laws or ordinances prohibiting the manufacture, publishing, sale, purchase, or possession of sexually explicit material, e.g., literature, photographs, etc.

• **Prostitution Offenses**

***UCR Part and Definition* - Part II Prostitution and Commercialized Vice Group A Prostitution Offenses:** Include in this class the sex offenses of a commercialized nature, such as: prostitution; keeping a bawdy house, disorderly house, or house of ill fame; pandering, procuring, transporting, or detaining women for immoral purposes, etc.; and all attempts to commit the above. General definition of a Prostitution Offense: To unlawfully engage in or promote sexual activities for profit.

***NIBRS Group and Definition* - Group A Prostitution Offenses:** Definition of a Prostitution Offense: To unlawfully engage in or promote sexual activities for profit.

***UCR Part and Definition* -** No such category in UCR.

***NIBRS Group and Definition* - Group A Prostitution:** To unlawfully engage in sexual relations for profit. This offense includes prostitution by both males and females.

***UCR Part and Definition* -** No such category in UCR.

***NIBRS Group and Definition* - Group A Assisting or Promoting Prostitution:** To solicit customers or transport persons for prostitution purposes; to own, manage, or operate a dwelling or other establishment for the purpose of providing a place where prostitution is performed; or to otherwise assist or promote prostitution.

Title	Section	Class	NCIC Offense
11	1342	MB	Prostitution
11	1355	MB	Permitting Prostitution

• **Robbery**

***UCR Part and Definition* - Part I Robbery:** The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

***NIBRS Group and Definition* - Group A Robbery:** The taking, or attempting to take, anything of value under confrontational circumstances from the control, custody, or care of another person by force or threat of force or violence and/or by putting the victim in fear of immediate harm.

Robbery: Feloniously taking or attempting to take anything of value from someone by force, threat of force, violence, and/or by putting the victim in fear.

Title	Section	Class	NCIC Offense
11	831	FE	Robbery 2nd Degree
11	832	FB	Robbery 1st Degree

• **Runaway**

***UCR Part and Definition* - Part II - Runaway (Persons under age 19):** Not a crime For the purposes of the UCR Program, report in this category apprehensions for protective custody as defined by local statute. Arrests for runaways from one jurisdiction by another agency should be counted by the home jurisdiction. Do not include protective custody actions with respect to runaways taken from other jurisdictions.

***NIBRS Group and Definition* - Group B Runaway:** A person under 18 years of age who has left home without the permission of his/her parent/legal guardian. While running away does not constitute a criminal offense, each "handling" of a runaway should be reported.

• **Sex Offenses, Forcible**

NIBRS General Definition of a Sex Offense: Any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent.

***UCR Part and Definition* - Part I Forcible Rape:** The carnal knowledge of a female forcibly and against her will. Included are rapes by force and attempts or assaults to rape. Statutory offenses (no force used - victim under the age of consent) are excluded.

***NIBRS Group and Definition* - Group A Forcible Rape:** The carnal knowledge of a person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth).

***UCR Part and Definition* -** No such category in UCR.

***NIBRS Group and Definition* - Group A Forcible Sodomy:** Oral or anal sexual intercourse with another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

***UCR Part and Definition* -** No such category in UCR.

***NIBRS Group and Definition* - Group A Sexual Assault with an Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will; or not forcibly or against the person's will
where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything used by the offender other than the offender's genitalia.

***UCR Part and Definition* -** No such category in UCR.

***NIBRS Group and Definition* - Group A Forcible Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of this/her youth or because of his/her temporary or permanent mental or physical incapacity.

Title	Section	Class	NCIC Offense
11	763	M	Sexual Harassment
11	765	MA	Indecent Exposure 1st Degree
11	1108	FB	Sexual Exploitation of a Child
11	1109	FD	Dealing in Child Pornography

* In the year 2001, the crimes of Fondling and Unlawful Sexual Contact were moved from a Miscellaneous heading to Sex Crimes. This explains the marked increase in “Sex Crimes” between the years 2000 and 2001

• **Sex Offenses, Non-Forcible**

***UCR Part and Definition* - Part II Sex Offenses (Except forcible rape, prostitution, and commercialized vice.):** Include offenses against chastity, common decency, morals, and the like such as: adultery and fornication; buggery; incest; indecent exposure; indecent liberties; seduction; sodomy and crime against nature; statutory rape (no force); and all attempts are included.

***NIBRS Group and Definition* -** General Definition. Unlawful, non-forcible sexual

intercourse.
UCR Part and Definition - No such category in UCR.
NIBRS Group and Definition - **Group A Incest:** Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
UCR Part and Definition - No such category in UCR.
NIBRS Group and Definition - **Group A Statutory Rape:** Non-forcible sexual intercourse with a person who is under the statutory age of consent.

- **Stolen Property Offenses**

UCR Part and Definition - **Part II Stolen Property; Buying, Receiving, Possessing:** Include in this class all offenses of buying, receiving, and possessing stolen property, as well as all attempts to commit any of these offenses.
NIBRS Group and Definition - **Group A Stolen Property Offenses:** Receiving, buying, selling, possessing, concealing, or transporting any property with the knowledge that it has been unlawfully taken, as by burglary, embezzlement, fraud, larceny, robbery, etc.

Title	Section	Class	NCIC Offense
11	851	FG, MA	Receiving Stolen Property

- **Suspicion**

UCR Part and Definition - **Part II Suspicion:** No specific offense; a suspect released without formal charges being placed.
NIBRS Group and Definition - No such category in NIBRS.

- **Trespass of Real Property**

UCR Part and Definition - No such category in UCR.
NIBRS Group and Definition - **Group B Trespass of Real Property:** To unlawfully enter land, a dwelling or other real property. All burglary offenses include the element of trespass. Trespass, however, involves entry with no intent to commit a felony or theft.

Title	Section	Class	NCIC Offense
11	823	MA	Criminal Trespass in the first degree

- **Weapons Law Violations or Dangerous Weapons**

UCR Part and Definition - **Part II Weapons; Carrying, Possessing, etc.:** This class deals with weapon offenses, regulatory in nature, such as: manufacture, sale, or possession of deadly weapons; carrying deadly weapons, concealed or openly; using, manufacturing, etc., silencers; furnishing deadly weapons to minors; aliens possessing deadly weapons; and all attempts to commit any of the above.
NIBRS Group and Definition - **Group A Weapon Law Violations:** The violation of laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, concealment, or use of firearms, cutting instruments, explosives, incendiary devices, or other deadly weapons. Include violations such as the manufacture, sale, or possession of deadly weapons; carrying deadly weapons, concealed or openly; using, manufacturing, etc. silencers; and furnishing deadly weapons to minors.

Title	Section	Class	NCIC Offense
11	1444	FE	

• **All Other Offenses**

***UCR Part and Definition* - Part II All other Offenses:** Include in this class every other state or local offense (except traffic violations) not included in offenses 1 through 25. All violations of state and/or local laws, except those listed above and traffic offenses.

***NIBRS Group and Definition* - Group B All Other Offenses:** All crime which are not Group A offenses and not included in one of the specifically named Group B crime categories listed above. Offenses of general applicability (i.e., any offense prefixed by "accessory before/after the fact", "aiding and abetting", "assault to commit", "conspiracy to commit", "facilitation of", "solicitation to commit", "threat to commit", or any other prefix identifying it as other than the substantive offense) are included in this category, if the substantive offense is within Group A. If Group B offenses are involved, classify as the substantive offense. Generally, traffic offenses are excluded from this offense category. The vehicle-related offenses of hit and run (of a person) and vehicular manslaughter are, however, included; but driving under the influence is not as it is a separate Group B offense.

OFFENSE CODES

There are a total of 57 three-digit Uniform Crime Reporting (UCR) offense codes for the Group "A" and Group "B" offenses used in NIBRS.

A. Group "A" Offense Codes

There are 22 Group "A" crime categories made up of 46 Group "A" offenses; therefore, there are 46 Group "A" Offense Codes.

The Group "A" Offense Codes were derived from the four-digit National Crime Information Center (NCIC) Uniform Offense Classification Codes in order to facilitate interrelating offense data between the NCIC and UCR Systems. This correlation was accomplished by using in the UCR Offense Codes the same first two characters as used in the NCIC coding system. The third character of the UCR Code is either a zero (0) or an alphabetical letter (A, B, etc.) referencing a subcategory of the crime category. For example, the NCIC Code for Simple Assault is 1313, whereas the UCR Code is 13B. There are two exceptions:

1. The NCIC Offense Code for Statutory Rape is 1116, whereas the UCR Code is 36B.
2. The NCIC Offense Code for Forcible Fondling (of child) is 3601, whereas the UCR Code is 11D.

These exceptions resulted from the fact that NCIC includes Statutory Rape in Sexual Assaults, whereas UCR includes it in Nonforcible Sex Offenses; and NCIC includes Child-Fondling in Sex Offenses, whereas UCR includes it in Forcible Sex Offenses.

B. Group "B" Offense Codes

A separate 900 offense code numbering series has been assigned to the 11 Group "B" crime categories. For example, the NCIC Offense Code for Bad Checks is 2606, whereas the UCR Code is 90A. The different numbering series was established to assist in distinguishing Group "B" offenses from the Group "A" offenses. The distinction is important because of the difference in reporting requirements between the two types of offenses. Incidents and arrests involving Group "A" offenses are reported using Group "A" Incident Reports, whereas only arrests involving Group "B" offenses are reported using Group "B" Arrest Reports.

• Offense Code Table

The 57 UCR Offense Codes, as well as their NCIC counterparts, are listed on the following pages under their respective Group "A" offense and Group "B" offense captions.

UCR Offense	NCIC Code	UCR Code
GROUP "A" OFFENSES:		
ARSON	2001–2009; 2099	200
ASSAULT OFFENSES		
Aggravated Assault	1301–1312; 1314–1315 1	3A
Simple Assault	1313	13B
Intimidation	1316; 5215–5216	13C
BRIBERY	5101–5113; 5199	510
BURGLARY/BREAKING & ENTERING	2201–2205; 2207; 2299	220
COUNTERFEITING/FORGERY	2501–2507; 2509; 2510; 2589; 2599	250
DESTRUCTION/DAMAGE/VANDALISM OF PROPERTY	2901–2906; 2999	290

DRUG/NARCOTIC OFFENSES		
Drug/Narcotic Violations	3501–3505; 3510–3513; 3520–3523; 3530–3533; 3540–3543; 3560–3564; 3570–3573; 3580–3583; 3599	35A
Drug Equipment Violations	3550	35B
EMBEZZLEMENT	2701–2705; 2799	270
EXTORTION/BLACKMAIL	2101–2105; 2199	210
FRAUD OFFENSES		
False Pretenses/Swindle/ Confidence Game	2601–2603; 2607; 2699	26A
Credit Card/Automatic Teller Machine Fraud	2605	26B
Impersonation	2604	26C
Welfare Fraud None		26D
Wire Fraud	2608	26E
GAMBLING OFFENSES		
Betting/Wagering	None	39A
Operating/Promoting/ Assisting Gambling	3901–3902; 3904–3905; 3907; 3915–3916; 3918; 3920–3921	39B
Gambling Equipment Violations	3908–3914	39C
Sports Tampering	3919	39D
HOMICIDE OFFENSES		
Murder and Nonnegligent Manslaughter	0901–0908; 0911–0912	09A
Negligent Manslaughter	0910	09B
Justifiable Homicide	None	09C
KIDNAPING/ABDUCTION	1001–1009; 1099	100
LARCENY/THEFT OFFENSES		
Pocket-picking	2301	23A
Purse-snatching	2302	23B
Shoplifting	2303	23C
Theft from Building	2308; 2311	23D
From Coin Operated Machine/Device	2307	23E
Theft from Motor Vehicle	2305	23F
Theft of Motor Vehicle Parts or Accessories	2304; 2407	23G
All Other Larceny	2306; 2309–2310; 2312–2316; 2410	23H
MOTOR VEHICLE THEFT	2401–2405;	240

	2408; 2412; 2499	
PORNOGRAPHY/OBSCENE MATERIAL	3700–3706; 3799	370
PROSTITUTION OFFENSES		
Prostitution	4003–4004	40A
Assisting/Promoting Prostitution	4001–4002; 4006; 4099	40B
ROBBERY	1201–1211; 1299	20
SEX OFFENSES, FORCIBLE		
Forcible Rape	1101–1103	11A
Forcible Sodomy	1104–1115	11B
Sexual Assault with an Object	None	11C
Forcible Fondling	3601 (Child)	11D
SEX OFFENSES, NONFORCIBLE		
Incest	3604; 3607	36A
Statutory Rape	1116	36B
STOLEN PROPERTY OFFENSES	2801–2805; 2899	280
WEAPON LAW VIOLATIONS	5201–5214; 5299	520

GROUP "B" OFFENSES:

BAD CHECKS	2606	90A
CURFEW/LOITERING/VAGRANCY VIOLATIONS	None	90B
DISORDERLY CONDUCT	5310–5311; 5399	90C
DRIVING UNDER THE INFLUENCE	5403–5404	90D
DRUNKENNESS	None	90E
FAMILY OFFENSES, NONVIOLENT	3801–3803; 3806–3808; 3899	90F
LIQUOR LAW VIOLATIONS	4101–4104; 4199	90G
PEEPING TOM	3611	90H
RUNAWAY	None	90I
TRESPASS OF REAL PROPERTY	5707	90J
ALL OTHER OFFENSES	Various	90Z

http://www.fbi.gov/ucr/cius_04/appendices/appendix_07.html

Tab 12

SECOND AMENDMENT LIMITATIONS

Glenn Harlan Reynolds[1]

The topic of "Second Amendment Limitations" might seem to be, in our President's frequently-used phrase, on the wrong side of history. The trend over the past couple of decades, after all, has been the expansion, not the limitation of Second Amendment rights. Nonetheless, the Second Amendment, like all provisions of the Bill of Rights, is not unlimited in its protections. Though the shape and extent of the Second Amendment's limits is still being defined by courts – and, perhaps significantly, by legislatures – I hope to offer a few thoughts here that may prove useful.

It seems that the greatest source of limitation in coming years is likely to be the courts. And, as Brannon Denning and I have noted in the past, there was (and to some degree remains) reason to believe that lower courts might adopt a crabbed and minimalist reading of the right to arms.[2] As we talk about limitations on the right to keep and bear arms, two especially important categories come to mind. First, there are limitations on what kind of arms may be kept and borne: Handguns? Rifles? "Assault Weapons?" Shotguns? Howitzers? Weapons of Mass Destruction? Second, there are limitations on who may keep and bear arms: To whom does the right apply – and, more importantly, to whom does it not apply? In this brief Essay, I will look at some judicial efforts relating to these categories, before venturing a few more general thoughts on the keeping and bearing of arms in 21st Century America.

What kind of arms?

It is a tedious affair, so late in the Second Amendment debate, to encounter individuals who believe that they have demonstrated the absurdity of a right to arms under the Constitution by raising the possibility, as a reductio ad absurdum, of private ownership of nuclear weapons. Likewise, people raise the possibility of cannon, tanks, etc. Such argumentation, however, serves mostly to illustrate the arguer's unfamiliarity with Second Amendment scholarship.

In fact, there is surprisingly little to add to Don Kates' treatment of this topic in his seminal article, Handgun Prohibition And The Original Meaning Of The Second Amendment, in which he wrote:

> The preceding sections of this Article demonstrate that, in general, the second amendment guarantees individuals a right to "keep" weapons in the home for self defense. Several limitations on this right have already been suggested, however. First

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[1] Beauchamp Brogan Distinguished Professor of Law, University of Tennessee College of Law.

[2] Glenn Harlan Reynolds & Brannon P. Denning, Heller's Future in the Lower Courts, 102 Nw. U. L. Rev. 406 (2008); Heller, High Water(mark)? Lower Courts and the New Right to Keep and Bear Arms, 60 Hastings L.J. 1245 (2009); Five Takes on District of Columbia v. Heller, 69 Ohio St. L.J. 671 (2009).

and foremost are those implicit in *United States v. Miller*, suggesting that the amendment protects only such arms as are (1) "of the kind in common use" among law-abiding people and (2) provably "part of the ordinary military equipment" today. The analysis presented throughout this Article indicates that the "ordinary military equipment" criterion is infected by *Miller*'s conceptually flawed concentration on the amendment's militia purpose, to the exclusion of its other objectives. Decisions recognizing that concerns for individual self-protection and for law enforcement also underlie right to arms guarantees involve at once greater historical fidelity and more rigorous limitation upon the kinds of arms protected. These decisions suggest that only such arms as have utility for *all three* purposes and are lineally descended from the kinds of arms the Founders knew fall within the amendment's guarantee.

Reformulating *Miller*'s dual test in this way produces a triple test that anyone claiming the amendment's protection must satisfy as to the particular weapon he owns. That weapon must provably be (1) "of the kind in common use" among law-abiding people today; (2) useful and appropriate not just for military purposes, but also for law enforcement and individual self-defense, and (3) lineally descended from the kinds of weaponry known to the Founders.

This triple test resolves the *ad absurdum* and *ad horribilus* results (to which *Miller*'s sketchy and flawed militia-centric discussion greatly contributed) sometimes viewed as flowing from an individual right interpretation of the amendment. Handguns, for example, clearly fall within the amendment's protection. That handguns are *per se* "in common use" among law-abiding people and combine utility for civilian, police and military activities is not only provable but judicially noticeable. . . . Likewise, the amendment does not protect the possession of fully automatic weapons, grenades, rocket launchers, flame throwers, artillery pieces, tanks, nuclear devices, and so on. Although such sophisticated devices of modern warfare do have military utility, they are not also useful for law enforcement or for self-protection, nor are they commonly possessed by law-abiding individuals. Moreover, many of them may not be lineally descended from the kinds of weapons known to the Founders.

In addition to the tripartite test, two further limiting principles would tend to exclude the sophisticated military technology of mass destruction--or, indeed, anything beyond ordinary small arms--from the amendment's protection. First, since the text refers to arms that the individual can "keep *and* bear," weapons too heavy or bulky for the ordinary person to carry are apparently not contemplated. Second, according to Blackstone and Hawkins, the common-law right did not extend to "dangerous or unusual weapons" whose mere possession or exhibition "are apt to terrify the people." Naturally, it would terrify the citizenry for unauthorized individuals to possess weapons that could not realistically be used even in self-defense without endangering innocent people in adjacent areas or buildings.[3]

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[3] 82 Mich. L. Rev. 204, 258 (1983).

I apologize for this lengthy quotation, but include it to demonstrate that Kates' 1983 analysis makes clear that the "right to own an atomic bomb" objection is neither new nor well founded. One might argue that the Supreme Court's emphasis on self-defense, rather than collective protection against tyranny, supports a somewhat less militia-centric view of protected weaponry, perhaps including non-lethal weapons, but the basic outlines of Kates' analysis survive: The Second Amendment supports individual weapons of a type that is in common use among the citizenry, but not weapons that are too big to be borne by an individual, or weapons that, even when used properly, would unnecessarily endanger the surrounding community.

One somewhat novel limitation, suggested by Judge Frank Easterbrook in the Seventh Circuit's opinion in Friedman v. City of Highland Park, Illinois,[4] involves reading the above as "endanger the surrounding community's peace of mind." As evidence that Highland Park's municipal assault weapon ban furthered a substantial governmental purpose, Easterbrook wrote:

> If it has no other effect, Highland Park's ordinance may increase the public's sense of safety. Mass shootings are rare, but they are highly salient, and people tend to overestimate the likelihood of salient events. If a ban on semiautomatic guns and large-capacity magazines reduces the perceived risk from a mass shooting, and makes the public feel safter as a result, that's a substantial benefit.[5]

The notion of upholding an infringement on a constitutionally protected right because that infringement might soothe the irrational fears of some portion of the populace is a novel one. If taken seriously, it might have significant application beyond the jurisprudence of the Second Amendment. It is easy, at least, to imagine other rights whose infringement might reduce the irrational fears of some sectors of the populace, though I had thought that our abandonment of Jim Crow had put that approach behind us.

In an interesting contrast to Judge Easterbrook's treatment, the Michigan Court of Appeals, in People v. Yanna,[6] addressed the question of whether Tasers count as protected arms under the Second Amendment in a rather straightforward fashion, holding:

> Stun guns may be used bot for defense or "to cast at or strike another." Therefore MCL 750.224a does affect "arms." "[T]he Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding. The prosecution argues that Heller is strictly a gun-control case, but the broad nature of the language used in Heller's definition of "arms" clearly covers more than just firearms.[7] . . .

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4 784 F3d 406 (2015)

5 784 F3d at 412.

6 People v. Yanna 824 NW2d 241 (Mich. App. 2012).

7 824 NW2d at 244 (citations omitted).

> Hundreds of thousands of Tasers and stun guns have been sold to provate citizens, with many more in use by law enforcement officers. The prosecution fails to put forth evidence that would give the Court reason to doubt that the vast majority of Tasers and stun guns are possessed by law-abiding citizens for lawful purposes. . . .
>
> The prosecution also argues that stun guns and Tasers are so dangerous that they are not protected by the Second Amendment. However, it is difficult to see how this is so since Heller concluded that handguns are not sufficiently dangerous to be banned. Tasers and stun guns, while plainly dangerous, are substantially less dangerous than handguns. Therefore, tasers and stun guns do not constitute dangerous weapons for purposes of Second Amendment inquiries.[8]

The court also rejected a claim that Tasers and stun guns are "unusual" and thus beyond the Second Amendment, noting that they are legal in 43 states and in Michigan are routinely used by law enforcement officers. It concluded:

> Because Tasers and stun guns do not fit any of the exceptions to the Second Amendment enumerated in Heller, we find that they are protected arms.[9]

A treatment that is simple, straightforward, and short. Judge Easterbrook might profit from its example.

So might the United States Court of Appeals for the Second Circuit, where in an opinion by Judge Jose Cabranes, the court upheld most of New York and Connecticut's deeply intrusive gun laws.[10] The court held that although the banned "assault weapons" and "large capacity magazines" were in common use, and were not commonly used in crimes, that was insufficient to bring them within the protection of the Second Amendment. Only two specific provisions – New York's seven-round magazine limit, and Connecticut's specific prohibition on the Remington 7615 – were overturned. Judge Cabranes held that since the legislation is "specifically targeted to prevent mass shootings like that in Newtown," it survives intermediate scrutiny. The passage, and indeed the entire opinion, exudes a deference to legislatures that is seldom found in cases involving, say, abortion.

Even here, however, we have come a long way from the pre-Heller era, when it was mainstream legal opinion that the Second Amendment produced nothing at all in the way of enforceable individual rights. If Judges Easterbrook and Cabranes represent an extreme outlying position among the Courts of Appeals, and I believe they do, even they nonetheless acknowledge that the Second Amendment imposes *some* limits on legislation.

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[8] 824 NW2d at 245 (citations omitted).

[9] 824 NW2d at 245-46.

[10] New York State Rifle & Pistol Assoc. v. Cuomo, ___ F.3d. ___, 2015 WL 6118288 (2d Cir., October 19, 2015)

Who May Keep And Bear Arms?

The right to bear arms under the English Bill of Rights was limited to Protestants, but in the American colonies, and in America at the time of the framing, it was more general.[11] And in the Militia Act of 1792, Congress made the right to bear arms also a duty under federal law, requiring "each and every free able-bodied white male citizen of the respective States, resident therein, who is or shall be of age of eighteen years, and under the age of forty-five years" to possess "a good musket or firelock, a sufficient bayonet and belt, two spare flints, and a knapsack, a pouch, with a box therein, to contain not less than twenty four cartridges, suited to the bore of his musket or firelock, each cartridge to contain a proper quantity of powder and ball; or with a good rifle, knapsack, shot-pouch, and powder-horn, twenty balls suited to the bore of his rifle, and a quarter of a pound of powder."[12] This was a broader group than the electorate, since at the time property requirements for voting barred many white males from the franchise. Yet there is no suggestion that these were the only people allowed to possess arms, and in fact there is considerable evidence that women, and even, in many places, free blacks, had the right to bear arms.[13]

At this late date, of course, we are beyond limiting the enjoyment of constitutional rights to those of a particular race or sex, meaning that the right to arms is not limited by those characteristics. And federal law allows permanent residents who are not U.S. citizens to possess firearms, though not illegal aliens. 18 U.S.C. 922(g)(5) provides in relevant part:

> It shall be unlawful for any person . . .
> (5) who, being an alien –
> (A) is illegally or unlawfully in the United States; or
> (b) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa . . . to . . . possess in or affecting commerce, any firearm or ammunition.[14]

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[11] See generally Joyce Malcolm, To Keep and Bear Arms: The Origins of An Anglo-American Right (1994) (outlining history of right to arms in England and America); Glenn Harlan Reynolds, A Critical Guide to the Second Amendment, 62 Tenn. L. Rev. 461, 464-488(1995) (same).

[12] Militia Act of 1792, Act of May 8, 1792, ch. XXXIII, 1 Stat. 271..

[13] In my own home state of Tennessee, the right to arms extended to everyone under the Constitution of 1796; as racial tensions increased with the growth of slavery, that right was limited to "free white men" under the Constitution of 1834. See Glenn Harlan Reynolds, The Right To Keep and Bear Arms Under The Tennessee Constitution: A Case Study In Civic Republican Thought, 61 Tenn. L. Rev. 647, 659 (1994) (discussing this change in context of similar national trend.)

[14] 18 U.S.C. 922(g)(5).

In the case of United States of America v. Mariano A. Meza-Rodriguez, however, the Seventh Circuit held that Second Amendment rights can, in some circumstances, attach to aliens illegally in the United States. Though noting that "some of Heller's language does link Second Amendment rights with the notions of 'law-abiding citizens' and 'members of the political community,'" Chief Judge Wood observed that the Heller opinion made no effort to define the term "people" under the Second Amendment, and that Heller did observe that the term "people" is used elsewhere in the Bill Of Rights in ways that are not limited to citizens.

Applying United States v. Verdugo-Urquidez[15] and I.N.S. v. Lopez-Mendoza,[16] Judge Wood concluded that the right to bear arms under the Second Amendment extends to non-citizens, even aliens who are here illegally, where those aliens have "substantial connections" with the United States. Looking at Meza-Rodriguez's background, he observed:

> Meza-Rodriguez was in the United States voluntarily; there is no debate on this point. He still has extensive ties with this country, having resided here from the time he arrived over 20 years ago at the age of four or five until his removal. He attended public schools in Milwaukee, developed close relationships with family members and other acquaintances, and worked (though sporadically) at various locations. . . .
>
> We do not dispute that Meza-Rodriguez has fallen down on the job of performing as a responsible member of the community. But that is not the point. Many people, citizens and noncitizens alike, raising Fourth Amendment claims are likely to have a criminal record, but we see no hint in Verdugo-Urquidez that this is a relevant consideration. Such a test would require a case-by-case examination of the criminal history of every noncitizen (including a lawful permanent resident) who seeks to rely on her constitutional rights under the First, Second, or Fourth Amendment. . . .
>
> In the post-Heller world, where it is now clear that the Second Amendment right to bear arms is no second-class entitlement, we see no principled way to carve out the Second Amendment and say that the unauthorized (or maybe all noncitizens) are excluded. No language in the Amendment supports such a conclusion, nor, as we have said, does a broader consideration of the Bill of Rights.[17]

As the opinion admits, this conclusion puts the Seventh Circuit at odds with other courts of appeals who have held otherwise,[18] but I think the Seventh Circuit may have the better view. If the Second Amendment is viewed primarily through the lens of the militia – and seen as part of ensuring that we will have an armed citizenry capable of acting in concert to repel invasion or

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[15] 494 U.S. 259 (1990).

[16] 468 U.S. 1032 (1984).

[17] 793 F3d at 670-72.

[18] 798 F3d at 669 (citing United States v. Carpio-Leon, 701 F3d 974 (4th Cir. 2012), United States v. Flores, 663 F.3d 437 (8th Cir. 2011), and United States v. Portillo-Munoz, 643 F.3d 437 (5th Cir. 2011)).

overturn a tyrannical government – then limiting the right to arms to citizens, and perhaps legal permanent residents who are in some degree part of the polity makes sense. But although not repudiating this view, Heller and McDonald seem more focused on the Second Amendment as a guarantee of the right to individual self-defense. And while aliens who are in the country illegally may be less likely to serve the collective purposes of the Second Amendment, their lives, presumably, need and deserve defending against illicit violence just as much as anyone else's.

The Seventh Circuit managed to have its Second Amendment cake and eat it too, however, ultimately concluding that because illegal aliens live outside the law and are more likely to assume false identities, as well as having shown a willingness to violate the law by entering and remaining within the United States illegally, they may be barred from possessing weapons. Congress's interest in preventing such individuals from possessing guns, according to Judge Wood, is sufficiently substantial to override Meza-Rodriguez's Second Amendment rights.[19] Judge Flaum, in a concurring opinion, suggested that most of the majority's discussion of the Second Amendment and undocumented immigrants was unnecessary to the decision, and should have been avoided in the interest of not contributing to a split among the circuits, though as the parts he objects to are dictum it is not clear how serious a split this really represents.[20]

But what of felons and those adjudicated mentally defective? As the Supreme Court was careful to warn in this "safe harbor" passage in Heller:

> [N]othing 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.[21]

But the Heller "safe harbor" appears to be showing signs of leakage. Or, at least, it is not transforming – as it might have – into a free pass for extensive limitations on firearms ownership. Though I doubt that the felons-and-the-insane limitation on Second Amendment rights is in any danger of abandonment, it is coming in for more judicial scrutiny. For example, in the Sixth Circuit case of *Tyler v. Hillsdale County Sheriff's Department,*[22] Judge Boggs produced an opinion subjecting the federal law forbidding those involuntarily committed to a mental institution from possessing firearms to strict scrutiny, and found it unconstitutional as applied to those not currently, in Heller's phrase, "mentally ill."

18 U.S.C. 922(g)(4) provides that

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19 793 F3d at 673.

20 793 F.3d at 673-74 (Flaum, J., concurring).

21 554 U.S. at 626-27.

22 775 F.3d 308 (6th Cir. 2014).

> It shall be unlawful for any person. . . who has been adjudicated as a mental defective or who has been transmitted to a mental institution. . . to ship or transport in interstate or foreign commerce, or possess in and affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.[23]

As applied to Charles Tyler, the court found, this prohibition violates the Second Amendment. Tyler had suffered from a single episode of depression after an ugly divorce in 1985. In the almost 30 years subsequent to that episode, he had no mental problems, and no history of violence or trouble with the law. A 2012 psychological evaluation found him mentally competent and free from depression.

While keeping guns from the insane is a compelling state interest, the court found, the opinion noted a distinction between those who are "mentally defective" and those who, at some point, had been in a mental institution. Making things more complicated, Tyler would have been able to have his record cleared in many states, but a quirk of federal law meant that his state of residence would have to have its own program for doing so; Michigan had no such program, and Congress had eliminated funding for federal action to restore civil rights of those unable to possess firearms. According to the court:

> Based on Heller, a law forbidding possession of firearms by "the mentally ill" is most likely constitutional, and satisfies narrow tailoring. A law that captures only a small subset of that group, or a law that captures the entire group but also a significant number of non-mentally ill persons, would fail narrow tailoring. Section 922(g)(4)'s prohibition on gun possession by persons who have "been adjudicated as a mental defective" is so close to a prohibition on possession by "the mentally ill" that we suppose it, too, satisfies narrow tailoring. . . .
>
> At issue here is only 922(g)(4)'s prohibition on possession by persons previously committed to a mental institution. Not all previously institutionalized persons are mentally ill at a later time, so the law is, at least somewhat, overbroad. But is it *impermissibly* so?[24]

Yes, said the court, because Congress had already legislatively determined that many previously institutionalized persons could safely possess firearms, but had then adopted a scheme that made restoration of rights a question of whether such persons' states had opted in to a federally-designed program: "His right would thus turn on whether his state has taken Congress's inducement to cooperate with federal authorities in order to avoid losing anti-crime funding. An individual's right to exercise a fundamental righ[t] necessary to our system of

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[23] 18 U.S.C. 922(g)(4).

[24] 775 F.3d at 332 (citations omitted).

ordered liberty cannot turn on such a distinction. Thus 922(g)(4) lacks narrow tailoring as the law is applied to Tyler."[25]

The Sixth Circuit, unlike many other circuits, applies strict scrutiny to Second Amendment claims, but both Judge Boggs' majority opinion[26] and a concurrence by Judge Julia Gibbons[27] suggest that the result would have been the same under intermediate scrutiny. Though the Heller safe harbor protects laws designed to keep guns out of the hands of the mentally ill, there must be significant protection for those who are not mentally ill anymore.

Likewise, though Heller offers a "safe harbor" for laws barring felons from possession of firearms, federal law goes beyond felonies, just as it goes beyond the "mentally ill." This became an issue in Suarez v. Holder, a district court case from Pennsylvania.[28] Mr. Suarez had a prior conviction for carrying a handgun without a license in Maryland, a misdemeanor punishable by a sentence of not less than 30 days nor more than 3 years imprisonment. Suarez received a suspended sentence of 180 days imprisonment, a $500 fine, and one year's probation.

According to the Department of Justice, this conviction rendered Suarez ineligible to possess a firearm under 18 U.S.C. 921(g)(1) which makes it unlawful for a person to possess a firearm if that person has been convicted "of a crime punishable by imprisonment for a term exceeding one year." However, 18 U.S.C. 921(a)(20)(B) provides that a crime punishable by imprisonment for a term exceeding one year does not include State misdemeanors that are "punishable by a term of imprisonment of two years or less."

The District Court agreed with the Department of Justice's construction: Although Suarez wasn't in fact punished by imprisonment for more than one year, or more than two years, the crime of which he was convicted was "punishable" by sufficient imprisonment to trigger the statute's ineligibility provision, not withstanding that it was a misdemeanor, not a felony.

However, the court went on to find that the statute, as applied, violated Suarez's Second Amendment rights:

> [I]f a challenger can demonstrate that his circumstances are different from those historically barred from Second Amendment protections, he establishes that his possession of firearms is conduct within the Second Amendment's protections . . . Said differently in the context of 922(g)(1), if a challenger can show that his circumstances place him outside the intended scope of 922(g)(1), he establishes, as we read Barton, that he is the 'law-abiding citizen' identified in Heller. And if he is a law-abiding citizen, the possession of a firearm for protection of hearth and home is not just conduct

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[25] 775 F.3d at 334 (citations omitted).

[26] 755 F.3d at 323.

[27] 775 F.3d at 344-45.

[28] Suarez v. Holder, ___ F.3d ___, 2015 WL 685889 (M.D. Pa., 2015).

> protected by the Second Amendment, it is the core of the Second Amendment's guarantee.[29]

The court noted that since his 1990 conviction, Suarez has become a married father of three, continuously employed by a technology company, and the holder of a Secret clearance from the Department of Defense. Furthermore, he had successfully obtained a removal of firearms disability under Pennsylvania law. Finding that "the traditional justification for 922(g)(1) was the disarmament of individuals likely to commit violent acts," the court concluded that "Plaintiff's background and circumstances in the years following his conviction establish that he is no more dangerous than a typical law-abiding citizen and poses no continuing threat to society."

The court continued: "We agree with Defendants that the circumstances of Plaintiff's arrest were dangerous. But the inquiry is whether the challenger, today, not at the time of arrest, is more dangerous than a typical law-abiding citizen or poses a continuing threat." Under these circumstances, the application of 922(g)(1) to Suarez violated his Second Amendment protections.

From these cases, it seems that the Heller "safe harbor" is safe within its terms – felons and the insane can be disarmed – but to the extent that federal statutes go beyond these categories, they are subject to judicial pruning, at least on an as-applied basis. The categories that Heller laid out as safe for regulation are not, it seems subject to judicial or legislative expansion willy-nilly. Instead, all such efforts must be evaluated on their own, and with a (somewhat) critical eye.

Conclusion

The above sampling of cases, while not by any means complete, is reasonably representative of two important points. The first, which I have addressed in the past, is that the Second Amendment – once a weird, neglected, perhaps even "embarrassing"[30] corner of the Bill of Rights, afflicted with a variety of farfetched "collective rights" theories that seemed (because they were) designed chiefly to ensure that it had no actual effect[31] – is now a working part of the Constitution. It establishes rights that can be invoked by individuals, and, when individuals do invoke those rights, courts will examine legislative actions against governing precedents and,

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[29] 2015 WL 685889 at 8. Citing United States v. Marzzarella, 614 F.3d 85 (3d Cir. 2010) and United States v. Barton, 633 F.3d 168 (3d Cir. 2011).

[30] See Sanford Levinson, The Embarrassing Second Amendment, 99 Yale L.J. 637 (1989) (describing Second Amendment as "embarrassing" to the elite bar and the legal academy, because taking it seriously might constrain desired gun control policies).

[31] See Brannon P. Denning, Can The Simple Cite Be Trusted? Lower Court Interpretations of United States v. Miller and the Second Amendment, 26 Cumb. L. Rev. 961 (1996).

when they think it appropriate, overturn those actions. It is, in short, now ordinary constitutional law.[32]

This is not to say that the courts always get it right, of course. Though we might wish otherwise, "ordinary constitutional law" is not ideal constitutional law. As any legal academic can attest, the courts – even the Supreme Court itself – sometimes get things wrong. Indeed, most law professors, if asked, could provide a surprisingly lengthy list of places where the courts have gotten things wrong. Ordinary constitutional law isn't perfect constitutional law. Under present circumstances, it may not even be especially *good* constitutional law. But it *is* law, which is more than could be said for the Second Amendment until recently.

The second point is that the Heller "safe harbor" provision, which many – perhaps even including me – thought would probably be used as a tool for undermining the key holding in Heller,[33] turns out not to stretch that far. "Felons and the mentally ill" does not mean "misdemeanants and those who have had emotional problems in the past." Courts appear willing, at least to some extent, to scrutinize limitations on firearms rights with this in mind.

This may not satisfy all critics, and there is something to Dave Kopel's claim that many federal courts are "straining to under-read Heller"[34] in order to limit firearms rights – the Easterbrook and Cabranes opinions discussed above are good examples, with an emphasis there on the "straining" part. Nonetheless, from a "glass half full" perspective, the above cases also make clear that not all federal courts are as hostile to Second Amendment rights. It is likely that we will see further guidance from the Supreme Court, as the circuits divide on the extent of Second Amendment protections. That, too, is part of ordinary constitutional law.

And, of course, it is worth remembering that the judiciary is not the only branch of government entrusted with enforcing the Constitution. Second Amendment rights may also be protected by

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[32] Glenn Harlan Reynolds, The Second Amendment as Ordinary Constitutional Law, 81 Tenn. L. Rev. 409 (2014) (describing this evolution). See also Glenn Harlan Reynolds, Second Amendment Penumbras: Some Preliminary Observations, 85 S. Cal. L. Rev. 247 (2012) (discussing penumbral aspects of the Second Amendment that may be applied by courts in the future).

[33] Heller and McDonald, for example, have fared far better in the lower courts than the Supreme Courts decision in United States v. Lopez. See Brannon P. Denning & Glenn H. Reynolds, Rulings and Resistance: The New Commerce Clause Jurisprudence Encounters the Lower Courts, 55 Ark. L. Rev. 1253 (2003) (describing lower-court reluctance to apply holding in Lopez). See also, Glenn H. Reynolds & Brannon P. Denning, Lower Court Readings of Lopez, or What if the Supreme Court Held a Constitutional Revolution and Nobody Came? 2000 Wisc L. Rev. 369 (similar).

[34] David Kopel, 2nd Circuit upholds N.Y. and Conn. arms bans; contradicts Heller and McDonald, Volokh Conspiracy blog, October 21, 2015, available at https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/10/21/2nd-circuit-upholds-n-y-and-conn-arms-bans-contradicts-heller-mcdonald//

federal, and even state, legislation, and there is likely to be some movement on those fronts as well. Indeed, the Second Amendment is unusual among the provisions of the Bill of Rights in that most of the protections it has enjoyed have been legislative and political, rather than judicial. Though the courts have become somewhat more receptive to Second Amendment rights in recent years, that is unlikely to change.

There may be a useful lesson in that. Though courts and judges have their biases and foibles, and political tides can ebb and flow, over an extended period, the rights that are most protected are probably the rights that people most care about. The American people have largely stopped caring about the limitations on government power supplied by enumerated-powers doctrine; without such caring, it was easy for lower courts to eviscerate the Supreme Court's Lopez and Morrison decisions. On the other hand, many Americans care quite a lot about the rights protected by the Second Amendment, meaning that courts are less likely to engage in a successful judicial insurgency against Supreme Court doctrine – and, if they do, those judges may well find themselves overruled by popularly supported legislation.

It is unfortunate, of course, that the judiciary turns out to be less than willing, at times, to apply the constitution faithfully. But judges are human beings with human biases and failings. The lesson that civil rights supporters should take from the Second Amendment is that while judicial support for constitutional rights is a good thing, it is a far more robust thing when judicial support is backed by strong popular support. Perhaps, in the future, we will see other constitutional rights enjoy popular backing that is as strong as that enjoyed by the Second Amendment. Because, ultimately, that is what prevents unreasonable limitations from being placed on constitutional rights of any kind.

Tab 13

KeyCite Yellow Flag - Negative Treatment
Distinguished by City of Seattle v. Evans, Wash., December 31, 2015

315 Conn. 79
Supreme Court of Connecticut.

STATE of Connecticut
v.
Jason William DeCICCIO.

No. 19104.
|
Argued Oct. 23, 2013.
|
Decided Dec. 23, 2014.

Synopsis
Background: Defendant was convicted in a jury trial, the Superior Court, Judicial District of Middlesex, Abrams, J., of two counts of having a weapon in a motor vehicle. Defendant appealed.

Holdings: The Supreme Court, Palmer, J., held that:

[1] statute was not void for vagueness as applied to defendant with respect to the statutory terms "dirk knife" and "police baton";

[2] statute was not void for vagueness as applied to defendant with respect to whether statute's moving exception applied to his transport of weapons;

[3] knives and baton were "arms" within scope of Second Amendment, abrogating *State v. Campbell*, 300 Conn. 368, 13 A.3d 661;

[4] heightened judicial scrutiny of the weapons legislation was warranted;

[5] appropriate degree of means-end scrutiny was intermediate rather than strict scrutiny;

[6] statute impermissibly infringed on constitutional right to keep and bear arms as applied to defendant; and

[7] statute could not be read with a judicial gloss to withstand constitutional challenge.

Reversed and remanded for entry of judgment of acquittal.

West Headnotes (42)

[1] **Criminal Law**
Review De Novo

The determination of whether a statutory provision is unconstitutionally vague is a question of law over which the Supreme Court exercises de novo review.

Cases that cite this headnote

[2] **Constitutional Law**
Vagueness in general

A statute is not void for vagueness unless it clearly and unequivocally is unconstitutional, making every presumption in favor of its validity.

1 Cases that cite this headnote

[3] **Constitutional Law**
Vagueness on face or as applied

To demonstrate that a statute is unconstitutionally vague as applied to him, the defendant must demonstrate beyond a reasonable doubt that he had inadequate notice of what was prohibited or that he was the victim of arbitrary and discriminatory enforcement.

Cases that cite this headnote

[4] **Constitutional Law**
Statutes

The "void for vagueness doctrine" embodies two central precepts: the right to fair warning of the effect of a governing statute and the guarantee against standardless law enforcement.

Cases that cite this headnote

[5] **Constitutional Law**
Statutes in general

If the meaning of a statute can be fairly ascertained, a statute will not be void for vagueness since many statutes will have some inherent vagueness, for in most English words and phrases there lurk uncertainties.

1 Cases that cite this headnote

[6] **Constitutional Law**
Statutes in general

An ambiguous statute will be saved from unconstitutional vagueness if the core meaning of the terms at issue may be elucidated from other sources, including other statutes, published or unpublished court opinions, newspaper reports, television programs, or other public information.

1 Cases that cite this headnote

[7] **Constitutional Law**
Vagueness on face or as applied

Even though a statutory term that is susceptible to a number of differing interpretations may be impermissibly vague as applied to some situations, the term is not necessarily vague as applied in all cases; rather, whether the statute suffers from unconstitutional vagueness is a case-specific question, the resolution of which depends on the particular facts involved.

Cases that cite this headnote

[8] **Constitutional Law**
Statutes in general

A term is not void for vagueness merely because it is not expressly defined in the relevant statutory scheme.

Cases that cite this headnote

[9] **Constitutional Law**
Weapons and explosives
Weapons
Validity
Weapons
Vehicles

Statute under which defendant was convicted of having a weapon in a motor vehicle was not void for vagueness as applied to defendant with respect to the statutory term "dirk knife," as the core meaning of that term included a knife, like the knife seized from defendant's vehicle, which was designed primarily for stabbing purposes, rather than for utilitarian purposes, and which had a blade with sharpened edges and a narrowed or tapered point, as well as a handle with guards intended to facilitate the act of stabbing or thrusting. C.G.S.A. § 29-38.

Cases that cite this headnote

[10] **Constitutional Law**
Weapons and explosives
Weapons
Validity
Weapons
Vehicles

Statute under which defendant was convicted of having a weapon in a motor vehicle was not void for vagueness as applied to defendant with respect to the statutory term "police baton," as

the core meaning of that term included a baton, like the one seized from defendant's vehicle, which was approximately one and one-half feet in length and consisted of a ten-inch handle that connected to a telescoping metal rod, approximately one-half inch in diameter, which terminated with a metal bulb at the end. C.G.S.A. § 29–38(a).

Cases that cite this headnote

[11] **Statutes**
Language and intent, will, purpose, or policy
Statutes
Plain Language; Plain, Ordinary, or Common Meaning

Statutes should be construed to effectuate the Legislature's intent, consistent with the ordinary meaning of the words used, as technologies evolve.

Cases that cite this headnote

[12] **Constitutional Law**
Statutes in general

Changes in technology will not render statutes void for vagueness when the intent of the Legislature remains clear.

Cases that cite this headnote

[13] **Constitutional Law**
Weapons and explosives
Weapons
Validity
Weapons
Vehicles

Statute under which defendant was convicted of having a weapon in a motor vehicle was not void for vagueness as applied to defendant with respect to whether statute's moving exception applied to his transport of dirk knife or police baton; plain and unambiguous statutory language, coupled with recent construction in *State v. Campbell* of an identically worded provision in a related statute, gave defendant fair warning that he was not permitted to use his motor vehicle to transport a dirk knife or police baton when there was no other statutory exception that permitted him to transport those items lawfully. C.G.S.A. § 29–38.

Cases that cite this headnote

[14] **Weapons**
Right as individual or collective; militia requirement

The right to keep and bear arms guarantees an individual right to possess and carry weapons in case of confrontation. U.S.C.A. Const.Amend. 2.

Cases that cite this headnote

[15] **Constitutional Law**
Absolute nature of right
Weapons
Right to bear arms in general

The right to keep and bear arms is not unlimited, just as the right of free speech is not; thus, the right to keep and bear arms does not protect the right of citizens to carry arms for any sort of confrontation, just as the right to free speech does not protect the right of citizens to speak for any purpose. U.S.C.A. Const.Amends. 1, 2.

Cases that cite this headnote

[16] **Weapons**
What guns are allowed

The right to keep and bear arms protects the possession of weapons typically possessed by

law-abiding citizens for lawful purposes but does not protect the possession of dangerous and unusual weapons. U.S.C.A. Const.Amend. 2.

1 Cases that cite this headnote

[17] **Weapons**
What guns are allowed

Under any of the standards of scrutiny 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 would fail constitutional muster. U.S.C.A. Const.Amend. 2.

Cases that cite this headnote

[18] **Weapons**
Right to bear arms in general

Individual self defense is the central component of the right to keep and bear arms. U.S.C.A. Const.Amend. 2.

Cases that cite this headnote

[19] **Constitutional Law**
Second Amendment

The right to keep and bear arms is applicable to the states through the Fourteenth Amendment. U.S.C.A. Const.Amends. 2, 14.

Cases that cite this headnote

[20] **Weapons**
Violation of right to bear arms

Under two-pronged approach to Second Amendment challenges, a court first asks whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantee, and if it does not, the court's inquiry is complete, but if it does, the court evaluates the law under some form of means-end scrutiny, and if the law passes muster under that standard, it is constitutional, but if it fails, it is invalid. U.S.C.A. Const.Amend. 2.

2 Cases that cite this headnote

[21] **Weapons**
Violation of right to bear arms

The appropriate degree of means-end scrutiny applied to a Second Amendment challenge, generally some form of intermediate scrutiny, depends on the extent to which the challenged law burdens protected conduct. U.S.C.A. Const.Amend. 2.

1 Cases that cite this headnote

[22] **Weapons**
Violation of right to bear arms
Weapons
What guns are allowed
Weapons
Knives, swords; objects used to cut or stab
Weapons
Vehicles

Dirk knives discovered in defendant's vehicle were "arms" within scope of Second Amendment, for purposes of challenging conviction for having a weapon in a motor vehicle; knives were designed primarily for stabbing purposes, rather than for utilitarian purposes, and had a blade with sharpened edges and a narrowed or tapered point, as well as a handle with guards intended to facilitate the act of stabbing or thrusting, which the knives no more practically dangerous than what was in common use among law-abiding citizens; abrogating *State v. Campbell*, 300 Conn. 368, 13 A.3d 661. U.S.C.A. Const.Amend. 2; C.G.S.A.

§ 29-38.

Cases that cite this headnote

[23] **Weapons**
Violation of right to bear arms
Weapons
What guns are allowed
Weapons
Clubs, bats; objects used to beat
Weapons
Vehicles

Police baton discovered in defendant's vehicle was a weapon within scope of the right to keep and bear arms, for purposes of challenging conviction for having a weapon in a motor vehicle; the baton was a weapon with traditional military utility that was typically possessed by law-abiding citizens for lawful purposes, and it was neither especially dangerous nor unusual. U.S.C.A. Const.Amend. 2; C.G.S.A. § 29-38.

Cases that cite this headnote

[24] **Weapons**
Violation of right to bear arms

Statute under which defendant was convicted of having a weapon in a motor vehicle, which categorically barred the transportation of his dirk knife and police baton by motor vehicle from a former residence to a new residence, imposed a substantial burden on defendant's right to keep and bear arms in his home, such that heightened judicial scrutiny of the prohibition was warranted. U.S.C.A. Const.Amend. 2; C.G.S.A. § 29–38.

Cases that cite this headnote

[25] **Weapons**
Violation of right to bear arms

Rational basis scrutiny is inapplicable to alleged limitations on the right to keep and bear arms in view of the Second Amendment's status as an enumerated right. U.S.C.A. Const.Amend. 2.

Cases that cite this headnote

[26] **Weapons**
Violation of right to bear arms

Heightened scrutiny of alleged limitations on the right to keep and bear arms is triggered only by those restrictions that operate as a substantial burden on the ability of law-abiding citizens to possess and use a firearm for self defense or for other lawful purposes. U.S.C.A. Const.Amend. 2.

Cases that cite this headnote

[27] **Weapons**
Violation of right to bear arms

If a statutory provision restricting the use of a particular weapon does not substantially burden conduct protected by the Second Amendment, the provision meets constitutional requirements without any further inquiry; put differently, only if the challenged law imposes a substantial burden on conduct falling within the scope of the Second Amendment's guarantee does the court evaluate it under some form of means-end or heightened scrutiny. U.S.C.A. Const.Amend. 2.

1 Cases that cite this headnote

[28] **Weapons**
Violation of right to bear arms

Appropriate degree of means-end scrutiny applied to defendant's Second Amendment challenge to statutory ban on transporting dirk knives and police batons from a former

residence to a current residence was intermediate rather than strict scrutiny; the statute under which defendant was convicted provided other options for possessing protected weapons in the home, thus limiting the extent to which the challenged prohibition burdened the right to keep and bear arms. U.S.C.A. Const.Amend. 2; C.G.S.A. § 29–38.

Cases that cite this headnote

[29] **Weapons**
Violation of right to bear arms

For purposes of determining which which level of scrutiny to apply to Second Amendment challenges to weapons legislation, laws which regulate only the manner in which persons may exercise their Second Amendment rights are less burdensome than those that bar firearm or other weapon possession completely, and thus, regulations that leave open alternative channels for self defense are less likely to place a severe burden on the Second Amendment right than those that do not. U.S.C.A. Const.Amend. 4.

Cases that cite this headnote

[30] **Constitutional Law**
Particular Issues and Applications

In the context of firearm or weapon regulation, the Legislature is far better equipped than the judiciary to make sensitive public policy judgments, within constitutional limits, concerning the dangers in carrying firearms or other weapons and the manner to combat those risks; thus, the court's role is only to ensure that, in formulating its judgments, the Legislature has drawn reasonable inferences based on substantial evidence.

Cases that cite this headnote

[31] **Weapons**
Violation of right to bear arms

For purposes of conducting intermediate scrutiny review of Second Amendment challenges to weapons legislation, unlike with strict scrutiny review, the court is not required to ensure that the Legislature's chosen means are narrowly tailored or the least restrictive available means to serve the stated governmental interest. U.S.C.A. Const.Amend. 2.

Cases that cite this headnote

[32] **Weapons**
Violation of right to bear arms

To survive intermediate scrutiny when reviewing Second Amendment challenges to weapons legislation, the fit between the challenged regulation need only be substantial, not perfect. U.S.C.A. Const.Amend. 2.

Cases that cite this headnote

[33] **Weapons**
Violation of right to bear arms

For purposes of conducting intermediate scrutiny review of Second Amendment challenges to weapons legislation, to establish the requisite substantial relationship between the purpose to be served by the statutory provision and the means employed to achieve that end, the explanation that the state proffers in defense of the provision must be exceedingly persuasive. U.S.C.A. Const.Amend. 2.

Cases that cite this headnote

[34] **Weapons**
Violation of right to bear arms

To survive intermediate scrutiny when reviewing Second Amendment challenges to weapons legislation, the justification for the legislation must be genuine, not hypothesized or invented post hoc in response to litigation, and it must not rely on overbroad generalizations; the reason for this requirement is to ensure that the validity of the challenged statute is determined through reasoned analysis rather than through the mechanical application of traditional, often inaccurate, assumptions. U.S.C.A. Const.Amend. 2.

Cases that cite this headnote

[35] **Weapons**
Violation of right to bear arms

In judging the closeness of the relationship between the means chosen and the government's interest, for purposes of conducting intermediate scrutiny review of Second Amendment challenges to weapons legislation, three interrelated concepts must be considered: the factual premises that prompted the legislative enactment, the logical connection between the remedy and those factual premises, and the breadth of the remedy chosen. U.S.C.A. Const.Amend. 2.

Cases that cite this headnote

[36] **Weapons**
Right to bear arms in general

The core right to possess a protected weapon in the home for self defense necessarily entails the right, subject to reasonable regulation, to engage in activities necessary to enable possession in the home. U.S.C.A. Const.Amend. 2.

Cases that cite this headnote

[37] **Weapons**
Right to bear arms in general

The safe transportation of weapons protected by the Second Amendment is an essential corollary of the right to possess them in the home for self defense when such transportation is necessary to effectuate that right. U.S.C.A. Const.Amend. 2.

1 Cases that cite this headnote

[38] **Weapons**
Violation of right to bear arms
Weapons
Vehicles

Statute under which defendant was convicted of having a weapon in a motor vehicle, which categorically barred the transportation of his dirk knife and police baton by motor vehicle from a former residence to a new residence, impermissibly infringed on the constitutional right to keep and bear arms as applied to defendant; jury found that defendant was transporting those weapons between residences when police discovered them in his vehicle. U.S.C.A. Const.Amend. 2; C.G.S.A. § 29–38.

Cases that cite this headnote

[39] **Weapons**
Violation of right to bear arms
Weapons
Vehicles

Statute prohibiting possession of weapons in a motor vehicle could not be read and applied in a manner so as to withstand defendant's Second Amendment challenge, and thus, defendant was entitled to judgment of acquittal; defendant was discovered with weapons while transporting them during a move from one residence to the other, and application of a judicial gloss that would have supported defendant's conviction would not have been consistent with the intent of the Legislature as expressed in the clear statutory language, which categorically barred the transportation of weapons by motor vehicle.

U.S.C.A. Const.Amend. 2; C.G.S.A. § 29–38.

1 Cases that cite this headnote

[40] **Constitutional Law**
Avoidance of constitutional questions

The court has a duty to construe statutes, whenever possible, to avoid constitutional infirmities.

Cases that cite this headnote

[41] **Constitutional Law**
Presumptions and Construction as to Constitutionality

When called on to interpret a statute, courts will search for an effective and constitutional construction that reasonably accords with the Legislature's underlying intent, which principle directs courts to search for a judicial gloss that will effect the Legislature's will in a manner consistent with constitutional safeguards.

Cases that cite this headnote

[42] **Constitutional Law**
Rewriting to save from unconstitutionality

When application of a judicial gloss to a statute is not consistent with the intent of the Legislature as expressed in the clear statutory language, courts will not rewrite the statute so as to render it constitutional.

Cases that cite this headnote

Attorneys and Law Firms

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ROGERS, C.J., and PALMER, ZARELLA, EVELEIGH, McDONALD, ESPINOSA and VERTEFEUILLE, Js.

Opinion

PALMER, J.

***82** The defendant, Jason William DeCiccio, has an extensive weapons collection that includes a dirk knife and a police baton. A jury found him guilty of two counts of having a weapon in a motor vehicle, in violation of General Statutes ****171** (Rev. to 2009) § 29–38(a),[1] for using his Jeep Cherokee (Jeep) to transport ***83** those items from his former residence in Connecticut to his new residence in Massachusetts. The defendant appeals from the judgment of conviction, rendered by the trial court in accordance with the jury's verdict, contending, inter alia, that § 29–38 is unconstitutional as applied to his conduct in the present case. Specifically, he claims that § 29–38: (1) is impermissibly vague because the terms "dirk knife" and "police baton" are not defined with sufficient clarity; and (2) violates the second amendment to the United States constitution insofar as it precluded him from using a vehicle to transport those weapons for the purpose of moving from one residence to another. We conclude that § 29–38 is not unconstitutionally vague as applied to the facts of this case. We also conclude, however, first, that the possession of a dirk knife and a police baton in a person's home is protected by the second amendment and, second, that our statutory scheme, which categorically bars the transportation of those weapons by motor vehicle from a former residence to a new residence, impermissibly infringes on that constitutional ****172** right. Because the state acknowledges that the jury found that the ***84** defendant was transporting those weapons between residences when the police discovered them in his vehicle, his conviction cannot stand. Accordingly, we reverse the judgment of the trial court.

[1] General Statutes (Rev. to 2009) § 29–38 provides: "(a) Any person who knowingly has, in any vehicle owned, operated or occupied by such person, any weapon, any pistol or revolver for which a proper permit has not been issued as provided in section 29–28 or any machine gun which has not been registered as required by section 53–202, shall be fined not more than one thousand dollars or imprisoned not more than five years

or both, and the presence of any such weapon, pistol or revolver, or machine gun in any vehicle shall be prima facie evidence of a violation of this section by the owner, operator and each occupant thereof. The word 'weapon', as used in this section, means any BB. gun, any blackjack, any metal or brass knuckles, any police baton or nightstick, any dirk knife or switch knife, any knife having an automatic spring release device by which a blade is released from the handle, having a blade of over one and one-half inches in length, any stiletto, any knife the edged portion of the blade of which is four inches or over in length, any martial arts weapon or electronic defense weapon, as defined in section 53a–3, or any other dangerous or deadly weapon or instrument.

"(b) The provisions of this section shall not apply to: (1) Any officer charged with the preservation of the public peace while engaged in the pursuit of such officer's official duties; (2) any security guard having a baton or nightstick in a vehicle while engaged in the pursuit of such guard's official duties; (3) any person enrolled in and currently attending a martial arts school, with official verification of such enrollment and attendance, or any certified martial arts instructor, having any such martial arts weapon in a vehicle while traveling to or from such school or to or from an authorized event or competition; (4) any person having a BB. gun in a vehicle provided such weapon unloaded and stored in the trunk of such vehicle or in a locked container other than the glove compartment or console; and (5) any person having a knife, the edged portion of the blade of which is four inches or over in length, in a vehicle if such person is (A) any member of the armed forces of the United States, as defined in section 27–103, or any reserve component thereof, or of the armed forces of the state, as defined in section 27–2, when on duty or going to or from duty, (B) any member of any military organization when on parade or when going to or from anyplace of assembly, (C) any person while transporting such knife as merchandise or for display at an authorized gun or knife show, (D) any person while lawfully removing such person's household goods or effects from one place to another, or from one residence to another, (E) any person while actually and peaceably engaged in carrying any such knife from such person's place of abode or business to a place or person where or by whom such knife is to be repaired, or while actually and peaceably returning to such person's place of abode or business with such knife after the same has been repaired, (F) any person holding a valid hunting, fishing or trapping license issued pursuant to chapter 490 or any salt water fisherman while having such knife in a vehicle for lawful hunting, fishing or trapping activities, or (G) any person participating in an authorized historic reenactment."

All references in this opinion to § 29–38 are to the 2009 revision unless otherwise noted.

The record reveals the following facts, which the jury reasonably could have found, and procedural history. In 2010, the United States Veterans Health Administration hired the defendant, a member of the United States Army and the Army National Guard who had served overseas in numerous locations and capacities, to work as a medical claims processor at a Veterans Administration (VA) hospital in Massachusetts. On July 22, 2010, the defendant was in the process of moving his belongings from his residence at his mother's home in the town of Clinton to his new residence, a room in a private home in Bolton, Massachusetts, that he had rented. While driving on West Main Street in Clinton, at approximately 4:30 p.m., the defendant's Jeep struck another sport utility vehicle that was stopped at a traffic light, causing that vehicle to strike the vehicle in front of it. The defendant then reversed his Jeep and drove into a parking lot located across the street from the accident scene. After emergency personnel arrived, the defendant, who could not recall his own name, informed police that he had suffered a head injury, and he appeared disoriented and combative.[2] The defendant was subsequently transported by ambulance to

Yale–New Haven Hospital (hospital), where he was admitted and treated for head injuries and post-traumatic stress disorder.

[2] The defendant suffered a traumatic brain injury as the result of a mine explosion while serving overseas in Kosovo. He testified that this prior injury exacerbated any subsequent head trauma, including the trauma that he suffered as a result of the automobile accident on July 22, 2010.

While assessing the damage to the defendant's Jeep, Gregory Matakaetis, a Clinton police officer who had responded to the accident, observed two machete ***85** knives in plain view in the back seat of the Jeep. Matakaetis also discovered an expandable police baton, a belt clip holder for the baton, a sword and holder, a large knife with a brass knuckle handle that had a depiction of a dragon on it (dragon knife), and a dirk knife. Matakaetis found a military dog tag, lead weights, and a black "duty bag" in the Jeep, as well. The defendant had kept all of these items as mementos of his military service overseas in Afghanistan, Germany, and Kosovo, and was in the process of moving them to his new residence in Massachusetts when he was involved in the automobile accident.

Following his release from the hospital, the state charged the defendant in a substitute information with six counts of having a weapon in a motor vehicle in violation of § 29–38(a). Each count alleged the unlawful possession of one of the seized items, specifically, the police baton, the two machete knives, the dirk knife, the sword, and the dragon knife. The case was tried to a jury, which found the defendant guilty of unlawfully having the police baton and the dirk knife in his vehicle, and not guilty with respect to the other four counts.[3] The trial court rendered a judgment of conviction in accordance with the ****173** jury's verdict and sentenced the defendant to a total effective sentence of three years imprisonment, execution suspended after fifteen months, and three years probation with special conditions. The trial court subsequently denied the defendant's postverdict motion for a judgment of acquittal, rejecting his claims that § 29–38 is unconstitutionally ***86** vague as applied and violates the second amendment. This appeal followed.[4]

[3] The jury apparently agreed with the defendant's contention that he was transporting the two machetes, the dragon knife and the sword in accordance with the moving exception of § 29–38(b)(5)(D). See footnote 1 of this opinion. It is this finding by the jury that provides the basis for the state's concession that the defendant also was transporting the dirk knife and police baton from his former residence to his new residence.

[4] The defendant appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51–199(c) and Practice Book § 65–1.

On appeal, the defendant claims that § 29–38 is unconstitutionally vague as applied to the facts of the present case because he had inadequate notice that the weapons that formed the basis of his conviction fall within the proscription of that statutory provision. The defendant also contends that, as applied to his conduct, § 29–38 contravenes his second amendment right to bear arms because it afforded him no lawful means of transporting his dirk knife and police baton to his new residence, thereby effectively precluding him from possessing those weapons at his new residence. We reject the defendant's claim that § 29–38 is unconstitutionally vague. We agree, however, first, that the second amendment protects the defendant's right to possess the dirk knife and police baton in his home and, second, that the statute's complete ban on transporting those items between residences unduly burdens that right.[5] The defendant's conviction, therefore, must be reversed.[6]

[5] We note that the state and the defendant agree that there is no statutory prohibition against owning a dirk knife or a police baton and storing the weapon in one's home. As we explain more fully hereinafter, however; see part I B of this opinion; in *State v. Campbell*, 300 Conn. 368, 378–80, 13 A.3d 661 (2011), this court construed General Statutes § 53–206, which prohibits a person from carrying certain enumerated dangerous weapons, as prohibiting the possession of certain weapons, including dirk knives and police batons, either inside or outside the home. Moreover, § 29–38 expressly prohibits the possession of either weapon in a vehicle.

[6] The defendant also raises a claim of instructional impropriety predicated on the contention that the trial court's jury instructions were inadequate to preserve his second amendment rights. In view of our conclusion that, under the facts of this case, the defendant's conviction for transporting the dirk knife and police baton is unconstitutional under the second amendment, we need not address the defendant's instructional claim.

I

WHETHER § 29–38 IS UNCONSTITUTIONALLY VAGUE AS APPLIED

We begin with the defendant's contention that § 29–38 is unconstitutionally vague as applied, first, because ***87** the terms "dirk knife" and "police baton," which are not statutorily defined, do not otherwise have a sufficiently clear or definite meaning and, second, because § 29–38 is impermissibly ambiguous as to whether the moving exception of § 29–38(b)(5)(D), which does not expressly include within its terms dirk knives and police batons, nevertheless extends to those items. We are not persuaded by either of the defendant's vagueness arguments.

[1] [2] [3] [4] [5] [6] Before addressing the merits of the defendant's claims, we set forth the legal principles applicable to those claims. "The determination of whether a statutory provision is unconstitutionally vague is a question of law over which we exercise de novo review.... In undertaking such review, we are mindful that [a] statute is not void for vagueness unless it clearly and unequivocally is unconstitutional, making ****174** every presumption in favor of its validity.... To demonstrate that [a statute] is unconstitutionally vague as applied to him, the [defendant] therefore must ... demonstrate beyond a reasonable doubt that [he] had inadequate notice of what was prohibited or that [he was] the victim of arbitrary and discriminatory enforcement.... [T]he void for vagueness doctrine embodies two central precepts: the right to fair warning of the effect of a governing statute ... and the guarantee against standardless law enforcement.... If the meaning of a statute can be fairly ascertained a statute will not be void for vagueness since [m]any statutes will have some inherent vagueness, for [i]n most English words and phrases there lurk uncertainties." (Citation omitted; internal quotation marks omitted.) *State v. Winot*, 294 Conn. 753, 758–59, 988 A.2d 188 (2010). Moreover, an ambiguous ***88** statute will be saved from unconstitutional vagueness if the core meaning of the terms at issue may be elucidated from other sources, including other "statutes, published or unpublished court opinions in this state or from other jurisdictions, newspaper reports, television programs or other public information...." *State v. Scruggs*, 279 Conn. 698, 719, 905 A.2d 24 (2006).

[7] [8] Finally, even though a statutory term that is susceptible to a number of differing interpretations may be impermissibly vague as applied to some situations, the term is not necessarily vague as applied in all cases; rather, whether the statute suffers from unconstitutional vagueness is a case-specific question, the resolution of which depends on the particular facts involved. See, e.g., *State ex rel. Gregan v. Koczur*, 287 Conn. 145, 156–57, 947 A.2d 282 (2008). Similarly, a term is not void for vagueness merely because it is not expressly defined in the relevant statutory scheme. *State v. Jacob*, 69 Conn.App. 666, 674, 798 A.2d 974 (2002). Thus, we must analyze the language and purpose of § 29–38(a) to determine if it has a reasonably ascertainable, core meaning such that, as applied to the defendant's possession of the weapons at issue in the present case, he had fair notice that those weapons fall within the proscription of that statutory provision. See, e.g., *State v. Wilchinski*, 242 Conn. 211, 221–23, 700 A.2d 1 (1997).

A

Whether the Statutory Terms "Dirk Knife" and "Police Baton" Are Unconstitutionally Vague

We begin with the defendant's claim that § 29–38 is unconstitutionally vague because the terms "dirk knife" and "police baton" are not statutorily defined and their and "police baton" are not statutorily defined and their meaning is not otherwise sufficiently clear or definite to satisfy the requirement of fair notice. To resolve this claim, we must determine whether the process of statutory interpretation reveals a core meaning for ***89** those terms such that a person of ordinary intelligence would be able to understand what class or type of weapon the legislature intended to ban by its prohibition against having a dirk knife or a police baton in a motor vehicle. In performing this task, we first consider the language of § 29–38(a), which provides in relevant part: "Any person who knowingly has, in any vehicle owned, operated or occupied by such person, any weapon ... shall be fined not more than one thousand dollars or imprisoned not more than five years or both, and the presence of any such weapon ... in any vehicle shall be prima facie evidence of a violation of this section by the owner, operator and each occupant thereof...." For purposes of § 29–38(a), the word "weapon" includes "any police baton or nightstick" and "any dirk knife...." Because it is apparent that ****175** the language of § 29–38 provides no ready answer to the constitutional question raised by the defendant's claim, we must use other available tools of statutory construction to resolve that claim.

1

Dirk Knife

[9] We first address the defendant's contention that the term "dirk knife" is unconstitutionally vague and, as a result, § 29–38 "impermissibly delegates the resolution of the definition of [the term] to be determined by [police officers], judges and juries on [an] ad hoc and subjective basis." By way of illustration, the defendant notes that, in contrast to Connecticut's statutory scheme, which contains no definition of the term, California has enacted legislation that expressly defines the term "dirk;" Cal.Penal Code § 16470 (Deering 2012);[7] ***90** an action by the California legislature that remedied flaws identified by court decisions applying previous versions of the California statute. The defendant also maintains that there is ambiguity in the word "dirk" because, although common usage treats the terms "dirk" and "dagger" as synonyms, the technical meaning of the term, as explicated by various cutlery treatises, demonstrates that a dirk is not necessarily a dagger, but may also be a knife with a single-edged blade. In this regard, the defendant also asserts that numerous dictionary definitions of the term "dirk" do not specifically identify a dirk as a double-edged knife. The state contends that the meaning of the term "dirk knife," namely, a knife designed primarily for stabbing and featuring a sharp tapered blade, is readily accessible from numerous online and print sources, including sister state case law. See, e.g., *Summerall v. State*, 41 So.3d 729, 736–37 (Miss.App.2010); *In re Jesse QQ*, 243 App.Div.2d 788, 789–90, 662 N.Y.S.2d 851, appeal denied, 91 N.Y.2d 804, 691 N.E.2d 631, 668 N.Y.S.2d 559 (1997). We agree with the state that, as applied to the present case, § 29–38 is not void for vagueness with respect to the term "dirk knife" because the core meaning of that term includes a knife, like the knife seized from the defendant's vehicle, that is designed primarily for stabbing purposes, rather than for utilitarian purposes, and that has a blade with sharpened edges and a narrowed or tapered point, as well as a handle with guards intended to facilitate the act of stabbing or thrusting.

[7] California Penal Code § 16470 (Deering 2012) provides: "As used in this part, 'dirk' or 'dagger' means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, a folding knife that is not prohibited by Section 21510, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position." We note that the defendant cites Cal.Penal Code § 12020(c)(24) (Deering 2008), which was transferred, without substantive change, to Cal.Penal Code § 16470 in 2012.

We commence our analysis of the defendant's claim with a description of the knife at issue, which is comprised of a black handle and a metal blade. The handle ***91** is four and one-half inches long and one inch wide, and terminates with a two inch guard. The dagger like blade of the knife, both edges of which are sharpened, is approximately one and one-half inches wide and five and one-half inches long. A distinctive feature of the knife is that, two and one-half inches from the hilt, the blade forks into two distinct parallel prongs with a small space between them that taper to independent sharp points.

We turn next to the term "dirk knife." Because General Statutes § 1–1 requires us to construe statutory words and phrases ****176** "according to the commonly approved usage of the language," we look to the dictionary to determine the commonly understood meaning of the term. E.g., *Sams v. Dept. of Environmental Protection*, 308 Conn. 359, 404, 63 A.3d 953 (2013). Consistent with the definition that the defendant posits in his brief, a dictionary that this court often uses in accordance with § 1–1 defines "dirk" as "a long straight-bladed dagger...." Merriam–Webster's Collegiate Dictionary (11th Ed. 2003) p. 354. "Dagger," in turn, is defined in relevant part as "a sharp pointed knife for stabbing...." Id., at p. 313. Similarly, another oft-cited dictionary defines "dirk" as "[a] dagger;" American Heritage Dictionary of the English Language (5th Ed. 2011) p. 512; and the word "dagger" is defined in relevant part as "[a] short pointed weapon with sharp edges...." Id., at p. 456.

Because, for present purposes, these dictionary definitions of the term "dirk" are not entirely elucidating, we turn to extrinsic evidence of the intended meaning of the term. Although there is no recorded legislative history providing direct insight into the legislature's contemplation of the meaning of the term "dirk," it bears noting that the legislature added it to the statutory scheme in 1953 with the enactment of Public Acts 1953, No. 205, §§ 1 and 2, which amended the dangerous ***92** weapons statutes, now codified at § 29–38(a) and General Statutes § 53–206(a),[8] ****177** by expanding the definition ***93** of the term "weapon" to include "any dirk knife or switch knife or any knife having an automatic spring release device by which a blade is released from the handle,

having a blade of over one and a half inches in length....” The scant legislative history accompanying the enactment of that public act reflects the fact that the legislature was concerned with a proliferation of stabbings caused by dangerous knives, particularly those with long blades and switchblades. See 5 S. Proc., Pt. 3, 1953 Sess., pp. 1073–75, remarks of Senators Joseph S. Longo and Patrick J. Ward.

[8] General Statutes § 53–206 provides: “(a) Any person who carries upon his or her person any BB. gun, blackjack, metal or brass knuckles, or any dirk knife, or any switch knife, or any knife having an automatic spring release device by which a blade is released from the handle, having a blade of over one and one-half inches in length, or stiletto, or any knife the edged portion of the blade of which is four inches or more in length, any police baton or nightstick, or any martial arts weapon or electronic defense weapon, as defined in section 53a–3, or any other dangerous or deadly weapon or instrument, shall be fined not more than five hundred dollars or imprisoned not more than three years or both. Whenever any person is found guilty of a violation of this section, any weapon or other instrument within the provisions of this section, found upon the body of such person, shall be forfeited to the municipality wherein such person was apprehended, notwithstanding any failure of the judgment of conviction to expressly impose such forfeiture.

“(b) The provisions of this section shall not apply to (1) any officer charged with the preservation of the public peace while engaged in the pursuit of such officer’s official duties; (2) the carrying of a baton or nightstick by a security guard while engaged in the pursuit of such guard’s official duties; (3) the carrying of a knife, the edged portion of the blade of which is four inches or more in length, by (A) any member of the armed forces of the United States, as defined in section 27–103, or any reserve component thereof, or of the armed forces of the state, as defined in section 27–2, when on duty or going to or from duty, (B) any member of any military organization when on parade or when going to or from any place of assembly, (C) any person while transporting such knife as merchandise or for display at an authorized gun or knife show, (D) any person who is found with any such knife concealed upon one’s person while lawfully removing such person’s household goods or effects from one place to another, or from one residence to another, (E) any person while actually and peaceably engaged in carrying any such knife from such person’s place of abode or business to a place or person where or by whom such knife is to be repaired, or while actually and peaceably returning to such person’s place of abode or business with such knife after the same has been repaired, (F) any person holding a valid hunting, fishing or trapping license issued pursuant to chapter 490 or any salt water fisherman carrying such knife for lawful hunting, fishing or trapping activities, or (G) any person while participating in an authorized historic reenactment; (4) the carrying by any person enrolled in or currently attending, or an instructor at, a martial arts school of a martial arts weapon while in a class or at an authorized event or competition or while transporting such weapon to or from such class, event or competition; (5) the carrying of a BB. gun by any person taking part in a supervised event or competition of the Boy Scouts of America or the Girl Scouts of America or in any other authorized event or competition while taking part in such event or competition or while transporting such weapon to or from such event or competition; and (6) the carrying of a BB. gun by any person upon such person’s own property or the property of another person provided such other person has authorized the carrying of such weapon on such property, and the transporting of such weapon to or from such property.”

The case law of other states invariably construes the term "dirk knife" in statutes similar to § 29–38 as a knife designed or primarily intended for use as a stabbing weapon. For example, in *Summerall v. State*, supra, 41 So.3d at 729, the Mississippi Court of Appeals engaged in an extensive discussion of the meaning of the term and concluded that, "to qualify as a dirk knife, the weapon must ... be designed primarily for use as a stabbing weapon," and, to that end, it also must "have a blade with at least one sharpened edge which tapers to a point...." Id., at 737. In adopting this definition, the court in *Summerall* was persuaded by the analysis undertaken by the Appellate Division of the New York Supreme Court in *In re Jesse QQ*, supra, 243 App.Div.2d at 788, 662 N.Y.S.2d 851, which had reached the same conclusion regarding the meaning of the term "dirk." Id., at 789, 662 N.Y.S.2d 851 (explaining that "test for a dirk is whether the instrument has a blade with at least one sharpened edge [that] tapers to a point and is primarily intended for use as a stabbing weapon").

Statutory provisions and case law from other states, as well as reference treatises on cutlery, are generally consistent with *Summerall* and *In re Jesse QQ*. See, ***94** e.g., Cal.Penal Code § 16470 (Deering 2012) ("[a]s used in this part, 'dirk' or 'dagger' means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death"); *State v. Walthour*, 876 So.2d 594, 597 (Fla.App.2004) (" 'Dirk' and 'dagger' are used synonymously, and consist of any straight stabbing weapon. The test is its capacity for use [as] a stabbing weapon."); *Commonwealth v. Miller*, 22 Mass.App. 694, 697, 497 N.E.2d 29 (1986) (concluding that five inch by one and one-half inch, single-edged asymmetrical blade in folded knife was not "enough like a dirk to be proscribed" by state's dangerous weapons statute, but noting that characteristics, such as "a blade tapering to a sharpened tip, may indicate that the knife in question, though shorter than a normal dirk, was indeed designed for stabbing"); *Knight v. State*, 116 Nev. 140, 145–47, 993 P.2d 67 (2000) ("a dirk appears to be simply a type of dagger," which is "a short weapon used for thrusting and stabbing," and "[r]elevant factors to consider when determining whether a knife is a dirk or dagger include whether the knife has handguards and a blade that locks in place" [internal quotation marks omitted]); *State v. McJunkins*, 171 Or.App. 575, 579, 15 P.3d 1010 (2000) (skinning knife was not "dirk" or "dagger" under Oregon's concealed weapons statute because dirk is type of dagger, which is ****178** defined as knife that "is generally slender, straight, and coming to a point," and its "function is to stab, historically to pierce armor," and there was no evidence that skinning knife "was designed for stabbing"); see also E. Janes, The Story of Knives (1968) pp. 55, 67 (noting that original Scottish dirks had large, single-edged, straight blades but that subsequent daggers were cut down from old swords, with double-edged dirk used in early nineteenth century becoming "in fact, a short sword"); H. Peterson, American Knives: The First History and Collectors' Guide (1958) pp. 95–101 ***95** (describing "naval dirk" as "[t]he most colorful of all the naval knives" and "[a] companion to and substitute for the sword," with blade shape that evolved during nineteenth century from straight and double-edged to curved and then back to straight, and noting that dirks featured large handles separated from blade by prominent guards, or quillons).

In contrast to *Summerall* and *In re Jesse QQ*, Virginia courts have indicated that a knife does not fall within the meaning of the term "dirk" unless both edges of its blade are sharpened. See *Thompson v. Commonwealth*, 277 Va. 280, 290–91, 673 S.E.2d 469 (2009) (butterfly knife with four inch blade and one-edged blade is not weapon of "like kind" to dirk because "[w]ithout two sharp edges and a protective guard ... the butterfly knife is not designed for stabbing purposes like a dagger ... but rather for cutting purposes"); *McMillan v. Commonwealth*, 55 Va.App. 392, 399, 686 S.E.2d 525 (2009) (concluding that knife at issue "does not fit the definition of a dirk, described as any stabbing weapon having two sharp edges and a point"); *Richards v. Commonwealth*, 18 Va.App. 242, 246 n. 2, 443 S.E.2d 177 (1994) (explaining that "usual meaning" of " 'dirk' or weapon of like kind is any stabbing weapon having two sharp edges and a point, including daggers, short swords and stilettos"). For purposes of the present case, however, we need not decide whether a knife with only one sharpened edge may constitute a dirk because the knife seized from the defendant's vehicle has two sharpened edges.

We therefore conclude that § 29–38 is not void for vagueness as applied to the defendant because the core meaning of the term "dirk knife" may be ascertained from case law in other states and available print reference materials on cutlery. The authorities to which we have cited make clear that, whatever else the term "dirk" may describe, at the very least, it applies to a ***96** knife that is designed primarily for stabbing purposes, rather than utilitarian purposes, has a blade with sharpened edges that tapers to a point, and has a handle with guards intended to facilitate the act of stabbing or thrusting. See, e.g., *Knight v. State*, supra, 116 Nev. at 146, 993 P.2d 67; cf. N. Strung, An Encyclopedia of Knives (1976) p. 94.

Accordingly, although we acknowledge the possibility that the statutory reference to dirk knives might be vague as applied to some knives, we are satisfied that a person of ordinary intelligence would be on notice that a knife that has all of the foregoing characteristics falls within the statute's "unmistakable core of prohibited conduct...." (Internal quotation marks omitted.) *State ex rel. Gregan v. Koczur*, supra, 287 Conn. at 156, 947 A.2d 282; see also id., at 156–57, 947 A.2d 282 ("[a] defendant whose conduct clearly comes within a statute's unmistakable core of prohibited conduct may not challenge the statute because it is vague as applied to some hypothetical situation" [internal quotation marks omitted]). Furthermore, this definition is consistent with the general purpose of §§ 29–38 and 53–206, namely, to prohibit the carrying of knives that are primarily designed as stabbing weapons, and not for some other legitimate ****179** purpose. Because the defendant does not contend that the state failed to establish that the knife at issue in the present case had all of the characteristics that we have identified or that the evidence was otherwise insufficient, we now turn to his claim with respect to the police baton.

2

Police Baton

[10] The defendant contends that he reasonably could not have known that the metal instrument that he carried in his Jeep and for which he was prosecuted, which is approximately one and one-half feet in length and consists of a ten inch long handle that connects to a ***97** telescoping metal rod, approximately one-half inch in diameter, which terminates with a semicircle metal bulb, is an expandable police baton within the meaning of § 29–38(a). The defendant argues that the term is unconstitutionally vague because "an ordinary dictionary fails to even give a definition of a police baton."[9] The state disputes the defendant's vagueness claim, relying on images obtained from the Internet that the state characterizes as "nearly identical" to the item seized from the defendant's Jeep, as well as dictionary definitions for the terms "baton" and the related "billy club." We agree with the state that the statute's ban on having a police baton in a vehicle is not void for vagueness as applied to the defendant in the present case.

[9] By way of example, the defendant cites to the fourth edition of Webster's New World Dictionary which, he asserts, defines "baton" as "a staff serving as a symbol of office," "a slender stick used in directing music," "a metal rod twirled by a drum major," and "a short, light rod used in relay races."

Merriam–Webster's Collegiate Dictionary defines the word "baton" in relevant part as: "1. Cudgel, truncheon; specif[ically]: billy club...."[10] (Emphasis omitted.) Merriam–Webster's Collegiate Dictionary, supra, at p. 103. A "billy club" is defined as "a heavy, usu[ally] wooden club; specif [ically]: a police officer's club...." (Emphasis omitted.) Id., at p. 122; see also id., at p. 303 (defining "cudgel" as "a short heavy club"); id., at p. 1343 (defining "truncheon" as obsolete term for "club" and ***98** "bludgeon," and as "baton" or "a police officer's billy club"). We also note that the related term "nightstick," which is used in § 29–38(a) along with "police baton," is defined synonymously as "a police officer's club...." Id., at p. 837. Although the dictionary definition of "baton" indicates that the term is commonly or frequently used to refer to an instrumentality made of wood, there is nothing in that definition that excludes such an instrumentality from its purview solely because it is made of something else. We therefore turn to extra-textual sources to ascertain whether the expandable metal instrument seized from the defendant's vehicle is a police baton.

[10] Other definitions of the term "baton" are: "a staff borne as a symbol of office," "a narrow heraldic bend," "a slender rod with which a leader directs a band or orchestra," "a hollow cylinder carried by each member of a relay team and passed to the succeeding runner," and "a hollow metal rod with a weighted bulb at one or both ends that is flourished or twirled by a drum major or drum majorette...." Merriam–Webster's Collegiate Dictionary, supra, at p. 103. Although the dictionary on which the defendant relies provides only these definitions and contains no mention of a police baton; see footnote 9 of this opinion; that dictionary is a more general reference source that lacks the comprehensive coverage of dictionaries that ordinarily are more appropriate for use in accordance with § 1–1.

[11] [12] The legislative history of § 29–38 is silent as to the specific type of instruments that the legislature envisioned ****180** would fall within the definition of police baton or nightstick.[11] Statutes should be construed, however, to effectuate the legislature's intent, consistent with the ordinary meaning of the words used, as technologies evolve. See, e.g., *Rutledge v. State*, 745 So.2d 912, 916 (Ala.Crim.App.1999) (observing that "it is impossible for the [l]egislature to consider every societal and technological change that may occur and the effect those changes may have [on] the particular conduct it is seeking

to regulate"). Thus, changes in technology will not render statutes void for vagueness when the intent of ***99** the legislature remains clear. See, e.g., *State v. Weeks*, 761 A.2d 44, 46–47 (Me.2000) (statute not unconstitutionally vague as applied to computer files because statute "prohibiting the dissemination of videotapes, motion pictures, slides, and negatives depicting child pornography ... clearly reaches the dissemination of stored images as well as finished pictures"). It is significant, then, that the technology of police batons and nightsticks has evolved from wooden nightsticks to include the widespread use of expandable metal batons in law enforcement agencies nationwide. Police departments adopting the use of expandable metal batons, which are also referred to as collapsible batons, have done so because they are intermediate force devices that, when appropriately used, are unlikely to cause death or serious bodily injury, more comfortable for officers to wear and carry, and more easily accessible than conventional fixed batons. See, e.g., Federal Law Enforcement Training Center, United States Marshals Service, "The Expandable Baton (1997)" (training video), available at https://archive.org/details/gov.ntis.ava20437vnb 1 (last visited November 28, 2014); D. Young, "Where Have All the Batons Gone?" PoliceOne.com (April 1, 2005), available at http://www.policeone.com/police-products/less-lethal/batons/articles/99726/ (last visited November 28, 2014); "Los Angeles: Commission OKs Use of Expandable Batons," L.A. Times, March 30, 1995, available at http://articles.latimes.com/1995-03-30/local/me-48897_1_expandable-baton (last visited November 28, 2014).

[11] In 1999, the legislature amended General Statutes (Rev. to 1999) § 29–38 and General Statutes (Rev. to 1999) § 53–206 to include within their purview "any police baton or nightstick...." Public Acts 1999, No. 99212, §§ 12 and 14 (P.A. 99–212). The only commentary in the legislative history with respect to this portion of P.A. 99–212 was a colloquy during the debate in the House of Representatives between Representatives Ronald S. San Angelo and Michael P. Lawlor clarifying that a police officer may possess his or her nightstick or police baton at home because the statutory exception for law enforcement "also encompasses when [a police officer is] at home. [As] long as he was not using those dangerous weapons in any fashion that was inconsistent with his official duties, either on duty or off duty, that would be okay." 42 H.R. Proc., Pt. 15, 1999 Sess., p. 5454, remarks of Representative San Angelo.

Furthermore, as the state notes, readily available descriptions and images of expandable batons are strikingly similar to the baton that the defendant in the present case possessed, a fact that supports the conclusion that a person of ordinary intelligence would or reasonably should be aware that possessing such an ***100** item in a motor vehicle violates § 29–38. See, e.g., Galls: The Authority in Public Safety Equipment and Apparel (online catalog displaying numerous models of expandable batons), available at http://www.galls.com/expandable-batons (last visited November 28, 2014); see also California Dept. of Consumer Affairs, Bureau of Security and Investigative Services, "Baton Training Manual: Student Text" (March, 2006) p. 13 (describing characteristics of straight, expandable baton), available at http://www. ****181** bsis.ca.gov/forms_pubs/bat_stuman.pdf (last visited November 28, 2014). Indeed, it would be unreasonable, and incompatible with the statute's obvious public safety purpose, to conclude that § 29–38 cannot be read as encompassing expandable metal batons, particularly in view of the fact that these devices—like other weapons subject to the statute, such as dirks, stilettos, and certain martial arts weapons—may readily be reduced to an easily concealable size.

Finally, a construction of the term "police baton" as including metal expandable batons is consistent with the case law of other jurisdictions. See *Shahit v. Tosqui*, United States District Court, Docket No. 04–71538, 2005 WL 1345413 (E.D.Mich. June 1, 2005) (noting that "extendable baton fits comfortably within the dictionary definitions of" terms "billy" and "bludgeon," which are not defined by Michigan criminal statutes), aff'd, 192 Fed.Appx. 382 (6th Cir.2006); *People v. Patrick*, California Court of Appeal, Docket No. C067982 (Cal.App. July 31, 2012) (rejecting defendant's reliance on dictionary definitions indicating that "billy" is or usually is made from wood in concluding that metal expandable baton was "billy" within meaning of statute), review denied, California Supreme Court, Docket No. S205337 (Cal. November 14, 2012); *People v. Mercer*, 42 Cal.App.4th Supp. 1, 4–5, 49 Cal.Rptr.2d 728 (App.Dept.Super.1995) (concluding that possession of collapsible baton violated statute prohibiting possession of " 'any instrument or weapon of the ***101** kind commonly known as a blackjack, slungshot, billy, sandclub, sap, or sandbag' " because dictionary definition of "billy" encompasses club carried by police officer). But see *People v. Phillips*, New York County Court, Docket No. 2005–034, 2005 WL 756577 (N.Y. County April 1, 2005) (following *People v. Talbert*, 107 App.Div.2d 842, 844, 484 N.Y.S.2d 680 [(1985)], which held that "the term 'billy' must be strictly interpreted to mean a heavy wooden stick with a handle grip [that], from its appearance, is designed to be used to strike an individual and not for other lawful purposes," in

concluding that metal collapsible baton is not "billy" prohibited by New York statute proscribing criminal possession of weapon). Accordingly, we agree with the state that § 29–38 is not unconstitutionally vague as applied to expandable metal police batons.[12]

[12] The defendant testified at trial that the baton seized from his vehicle is a metal extension tube that he had used as an army medic for splinting leg fractures. Nevertheless, as with the dirk knife, whether the state established that the item at issue was a prohibited police baton gave rise to a question of fact for the jury; see, e.g., *Richards v. Commonwealth*, supra, 18 Va.App. at 246 n. 2, 443 S.E.2d 177; cf. *State v. Wilchinski*, supra, 242 Conn. at 228, 700 A.2d 1; and the defendant makes no claim that the evidence was insufficient to support the jury's finding that he had a police baton in his vehicle in violation of § 29–38(a). We also note that the mere fact that someone uses a prohibited weapon in a manner other than that for which it is manufactured would not alter the classification of the item.

B

Whether § 29–38 Is Unconstitutionally Vague with Respect to the Application of the Moving Exception in § 29–38(b)(5)(D)

[13] The defendant next claims that § 29–38 is void for vagueness in the absence of a "clarification [of] the moving exception" contained in § 29–38(b)(5)(D). The defendant, who characterizes the existing statute as "clearly susceptible to arbitrary and discriminatory enforcement," claims that we should place a judicial ***102** gloss on the moving exception of § 29–38(b)(5)(D) and extend that exception to ****182** dirk knives and police batons. In support of this contention, the defendant maintains that we should follow our interpretation of the nearly identically worded § 53–206(b)(3)(D)[13] in *State v. Campbell*, 300 Conn. 368, 13 A.3d 661 (2011), in which we read a similar exception into that statutory provision to avoid a construction of the provision that would have rendered it unworkable under certain circumstances. See id., at 379–80, 13 A.3d 661. He contends that this judicial gloss is necessary because, "when reading [§ 29–38] as a whole and considering the exceptions set forth in [sub]section (b) of the statute, a person of ordinary intelligence such as [himself], who was also a member of the armed forces of this state (Army National Guard), could not and would not reasonably conclude that he would be prohibited from ... transporting such weapons as those [at issue in the present case] while moving them from his former residence to his new residence."

[13] See footnote 8 of this opinion.

The defendant's claim is belied by the plain language of § 29–38. Subsection (a) of § 29–38 prohibits certain conduct, including, of course, the vehicular transportation of dirk knives and police batons, and subsection (b), which is comprised of numerous subdivisions and subparagraphs that operate as affirmative defenses to be pleaded and proven by the defendant,[14] contains ***103** no language that even arguably would authorize the defendant's transportation of a dirk knife or a police baton. Indeed, § 29–38(b) does provide for certain exceptions to the general prohibition against having a dirk knife or a police baton in a vehicle. For example, under § 29–38(b)(2), a security guard may have a police baton in a vehicle while engaged in the pursuit of his official duties, and § 29–38(b)(5) permits the transportation of knives, the edged portion of which is four inches or more in length, in a vehicle under certain enumerated circumstances. The defendant has identified no such exception, however, that might be construed as permitting his transportation of a dirk knife or police baton in his vehicle. Consequently, there is nothing in the statutory language to support the contention that it is unclear whether the defendant's conduct in the present case was exempt from prosecution under § 29–38(b).

[14] See *State v. Campbell*, 116 Conn.App. 440, 445 n. 3, 975 A.2d 757 (2009) ("the [trial] court [improperly] characterized the residence or place of abode exception as the second element of the crime" under § 53–206 [b] because "[t]he claim that a defendant is within his residence or place of abode while possessing the weapon is a defense to the crime of carrying a dangerous weapon, not an element"), aff'd, 300 Conn. 368, 13 A.3d 661 (2011); see also *State v. Valinski*, 254 Conn. 107, 125, 756 A.2d 1250 (2000) ("the state must disprove an exception to culpability as an element of the crime when charging the defendant under a statute in which that exception is located within the enacting or prohibiting clause ... whereas the defendant bears the burden of persuasion if the exception is not found within the enacting or prohibiting clause" [citation omitted]).

The defendant's reliance on *State v. Campbell*, supra, 300 Conn. at 368, 13 A.3d 661 in which we construed § 53–206, the related and nearly identical statute prohibiting

the carrying of dangerous weapons, is misplaced. In fact, *Campbell* undermines the defendant's claim. In *Campbell*, the defendant, Andre Campbell, was convicted under § 53–206(a) of carrying a dangerous weapon, in particular, a switchblade knife, "in connection with an incident that took place in a common hallway of the college dormitory where he resided." Id., at 370–71, 13 A.3d 661. The issue in that case was whether Campbell was entitled to a jury instruction on an "implied exception to § 53–206 if the jury found that the conduct occurred in his place of abode," ****183** and, more specifically, "[w]hether the Appellate Court properly [had] relied on *State v. Sealy*, 208 Conn. 689, 546 A.2d 271 (1988), to conclude that a residence or place of abode cannot include common corridors and areas used to access a bathroom, kitchen and other areas necessary to life...." (Internal quotation ***104** marks omitted.) *State v. Campbell*, supra, at 371, 13 A.3d 661. Following oral argument, however, we ordered supplemental briefing "on the question of whether subparagraphs (D) and (E) of § 53–206(b)(3) provide[d] an implicit exception for the carrying of a weapon in an individual's residence or place of abode for any weapon other than a knife, the edged portion of the blade of which is four inches or more in length (long knife)." Id., at 371–72, 13 A.3d 661.

We concluded that the statutory exception pertaining to the carrying of knives, namely, § 53–206(b)(3), which is identical to § 29–38(b)(5) in all material respects, does not apply to weapons other than long knives. Id., at 378, 13 A.3d 661. Observing that the pre–1999 version of § 53–206(b) had maintained a broader "exception for 'any ... weapon or implement' listed in the prohibitory clause," we "conclude[d] that the exceptions set forth in subparagraphs (D) and (E) of § 53–206(b)(3) [that is, the moving exception and the repair exception] plainly and unambiguously appl[ied] only to the carrying of long knives." Id. Although we "reaffirm[ed] our holding in *State v. Sealy*, supra, 208 Conn. at 693 [and n. 2, 546 A.2d 271],[15] that the ***105** language of what is now § 53–206(b)(3)(D) and (E) implicitly provides an exception for carrying a long knife in one's residence or abode;" (footnote added) *State v. Campbell*, supra, 300 Conn. at 378, 13 A.3d 661; we nevertheless concluded that Campbell "would not be entitled to a jury instruction under the statute even if the common hallway of the dormitory constituted his abode because he was carrying a switchblade knife, which is prohibited irrespective of location." Id. In so concluding, we rejected Campbell's argument that "limiting the exceptions set forth in subparagraphs (D) and (E) of § 53–206(b)(3) to long knives would be unworkable;" id., at 379, 13 A.3d 661; concluding that, "[t]o the extent that any exception set forth in § 53–206(b) would be unworkable if the person to whom it applied were not permitted to store the weapon in a convenient place or to transport the weapon so that it could be used for the permitted purpose ... permission ****184** to do so is implicit in the exception.... Similarly, we conclude that an exception permitting an individual to carry a specific dangerous weapon for a particular purpose implicitly permits the individual to move the weapon with his or her household goods and to transport the weapon for purposes of repair. We conclude, therefore, that the exceptions set forth in § 53–206(b) are workable without the existence of [a broad] implicit exception permitting the carrying of *any and all* dangerous weapons in one's residence or place of abode."[16] (Citations omitted; emphasis added; footnotes omitted.) Id., at 379–80, 13 A.3d 661.

15 In *State v. Sealy*, supra, 208 Conn. at 689, 546 A.2d 271, we upheld the conviction of the defendant, Anthony Sealy, of carrying a dangerous weapon in violation of General Statutes (Rev. to 1985) § 53–206(a), arising from Sealy's possession of a butcher knife with a blade that was four and one-half inches long in the common hallway of a small apartment building in which he resided. Id., at 691, 696, 546 A.2d 271. We rejected Sealy's claim, predicated on the moving exception of that provision, that the trial court improperly had instructed the jury that "[General Statutes (Rev. to 1985)] § 53–206(a) would be violated if [Sealy] had the knife outside his apartment in a common area." Id., at 692, 546 A.2d 271. Examining the statutory moving exception in General Statutes (Rev. to 1985) § 53–206(a), we observed that "[i]mplicit in this provision is an exception for carrying a weapon in an individual's residence or abode, and a recognition of the protected zone of privacy in his or her dwelling." Id., at 693, 546 A.2d 271; see also id., at 693 n. 2, 546 A.2d 271 (noting that "General Statutes [Rev. to 1985] § 53–206[a] does not expressly except from its terms the carrying of a dangerous weapon in one's dwelling or abode" but that it was "an implied exception"). The court, however, applied search and seizure privacy principles to the facts of the case and rejected Sealy's argument that "his exclusive use and control over this area rendered the landing and stairway part of his residence and, therefore, [that] his carrying a weapon in this area was exempt from the operation of [General Statutes (Rev. to 1985)] § 53–206(a)." Id., at 693, 546 A.2d 271.

16 In support of his claim that limiting the exceptions of subparagraphs (D) and (E) of § 53–206(b)(3) to long knives would be unworkable, Campbell relied on the martial arts exception set forth in § 53–206(b)(4), arguing that that exception, which "permits 'the carrying by any person enrolled in or currently attending, or an instructor at, a martial arts school of a

martial arts weapon while in a class or at an authorized event or competition or while transporting such weapon to or from such class, event or competition' ... would be meaningless if such a person could not carry a martial arts weapon at home." *State v. Campbell*, supra, 300 Conn. at 379, 13 A.3d 661. In rejecting Campbell's claim that the exceptions of subparagraphs (D) and (E) of § 53–206(b)(3) would be unworkable if applied only to long knives, we construed the exceptions set forth in § 53–206(b), including the martial arts exception, as implicitly permitting the storing and carrying of that weapon insofar as it was necessary to do so to ensure that the exception would not be rendered unworkable or meaningless. See id., at 379–80, 13 A.3d 661. Thus, by way of example, we explained that "a martial arts student who carried a martial arts weapon [on] his or her person while transporting it to and from classes or other events, but kept the weapon stored at home, would not be violating the statute." Id., at 379, 13 A.3d 661.

***106** In *Campbell*, "[w]e emphasize[d] that this does not mean that an individual would be permitted to carry all of the dangerous weapons specified in § 53–206(b) on his or her person in [his or her] residence or place of abode for other purposes.... For example, it does not follow from the fact that a martial arts student would be permitted to carry a martial arts weapon from his or her residence to a place of repair that the individual would be permitted as a general matter to carry the weapon in his or her residence. If that were the case, there would be no reason why an individual who was not a martial arts student should be prohibited from carrying a martial arts weapon in his or her residence. There is no indication, however, that the legislature was concerned with protecting a general sphere of privacy in the home, where individuals would be permitted to carry any dangerous weapon for any purpose they see fit. Rather, the clear purpose of the exceptions is to allow individuals to carry specific dangerous weapons for specific purposes and, to the extent that using the weapon for the permitted purpose requires the individual to carry it for ancillary purposes such as transportation to the place of use or repair, to permit carrying the weapon for those purposes."[17] (Citation omitted; ***107** emphasis omitted.) Id., at 380 n. 6, 13 A.3d 661. Accordingly, we concluded that, because "the statute ... recognizes no 'presumed lawful reason' for carrying a ****185** switchblade knife;" id., at 381, 13 A.3d 661; Campbell was not "entitled to a jury instruction under the statute even if the common hallway of the dormitory constituted his abode because he was carrying a switchblade knife, which is prohibited irrespective of location." Id., at 378, 13 A.3d 661.

17 It is important to note, however, that, in *Campbell*, we declined to address Campbell's claim on appeal that the implicit abode exception that we recognized in *State v. Sealy*, supra, 208 Conn. at 693, 546 A.2d 271, was constitutionally required, explaining that, "[t]o the extent that [Campbell] claims that § 53–206 is unconstitutional as applied to persons who carry dangerous weapons in their residence or place of abode, the claim was not preserved before the trial court, and [Campbell] has not sought review under *State v. Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989). Accordingly, we decline to review it." (Footnote omitted.) *State v. Campbell*, supra, 300 Conn. at 382, 13 A.3d 661.

Consistent with our construction of the moving exception of § 53–206(b)(3) in *Campbell*, we conclude that the linguistically indistinguishable moving exception of § 29–38(b)(5)(D) does not apply to the defendant's dirk knife or police baton, which, like switchblades, are items that are "prohibited [by statute] irrespective of location."[18] Id. The plain and unambiguous statutory language, coupled with our recent construction in *Campbell* of an identically worded provision in a related statute, gave the defendant fair warning that he was not permitted to use his motor vehicle to transport a dirk knife or police baton when, as in the present case, there is no other statutory exception that permits him to transport those items lawfully.[19] Accordingly, we conclude that § 29–38(a) is not void for vagueness in the absence of our clarification of the moving exception in § 29–38(b)(5)(D).

18 As we explain more fully hereinafter; see part II of this opinion; although we stated in *Campbell* that, under § 53–206, the legislature has prohibited the carrying of certain weapons even in the home; see *State v. Campbell*, supra, 300 Conn. at 378, 13 A.3d 661; that prohibition may violate the second amendment depending on the weapon at issue.

19 The defendant explains that he was an active member of the military at the time of his arrest, and that he was taking martial arts classes, as well. We agree with the state, however, that, pursuant to *Campbell*, this evidence is irrelevant to our analysis because neither of the exceptions in § 29–38(b) that are applicable to military service or to the performance of martial arts pertains to dirk knives or police batons.

***108** II

WHETHER § 29–38, AS APPLIED, VIOLATES THE SECOND AMENDMENT

We now turn to the defendant's claim, which is based on the United States Supreme Court's recent decisions in *McDonald v. Chicago*, 561 U.S. 742, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010), and *District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008), that a construction of § 29–38 in accordance with our interpretation of § 53–206 in *State v. Campbell*, supra, 300 Conn. at 378–80, 13 A.3d 661 that the moving exception is inapplicable to dirk knives and police batons, renders § 29–38 in violation of the second amendment to the United States constitution. The defendant further contends that, to save § 29–38 from constitutional infirmity, we should place a judicial gloss on § 29–38 to permit the possession of those items during the transportation of them from a former residence to a new residence.

In addressing the defendant's claims, we first must determine whether dirk knives and police batons constitute arms within the meaning of the second amendment. If we conclude that they are, we then must determine whether the statute's prohibition against transporting those weapons from one residence to another does not violate the defendant's rights under the second amendment because the state has a sufficiently strong interest in enforcing such a prohibition. We address the parties' arguments on these points in turn.

A

Background

[14] [15] [16] [17] We begin with a brief review of the scope of the second amendment, as ****186** explained by the United States Supreme Court in its landmark decision in *District of Columbia v. Heller*, supra, 554 U.S. at 570, 128 S.Ct. 2783. In *Heller*, the United States Supreme Court was called on to determine ***109** the constitutionality of District of Columbia ordinances that broadly prohibited the possession of handguns, in the home and elsewhere; see id., at 574–76, 128 S.Ct. 2783; and also required citizens to "keep their lawfully owned firearms, such as registered long guns, 'unloaded and disassembled 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." Id., at 575, 128 S.Ct. 2783. In determining whether the second amendment confers an individual right to possess arms and, if so, the scope of such a right,[20] the court conducted an extensive textual and historical analysis of the second amendment, which 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." U.S. Const., amend. II. Upon examining the prefatory and operative clauses of the second amendment; see generally *District of Columbia v. Heller*, supra, at 577–600, 128 S.Ct. 2783; the court concluded that it "guarantee[s] the individual right to possess and carry weapons in case of confrontation."[21] Id., at 592, 128 S.Ct. 2783. The court observed, however, that this right is "not unlimited, just as the ***110** [f]irst [a]mendment's right of free speech [is] not.... Thus, [the court] do[es] not read the [s]econd [a]mendment to protect the right of citizens to carry arms for any sort of confrontation, just as [the court] do[es] not read the [f]irst [a]mendment to protect the right of citizens to speak for any purpose." (Citation omitted; emphasis omitted.) Id., at 595, 128 S.Ct. 2783. After considering the parameters of the second amendment right, the court held that it does protect the possession of "weapons ... typically possessed by law-abiding citizens for lawful purposes;" id., at 625, 128 S.Ct. 2783; and does not protect "dangerous and unusual weapons." (Internal quotation marks omitted.) Id., at 627, 128 S.Ct. 2783. The court further concluded that the District of Columbia's firearms ordinances violated "the inherent right of self-defense [that] has been central to the [s]econd [a]mendment 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 ****187** 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 ... would fail constitutional muster." (Citation omitted; footnote omitted; internal quotation marks omitted.) Id., at 628–29, 128 S.Ct. 2783.

20 The court in *Heller* observed that the parties "set out very different interpretations of the [second] [a]mendment. [The] [p]etitioners ... [posited] that it protects only the right to possess and carry a firearm in connection with militia service.... [The] [r]espondent argue[d] that it protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home." (Citations omitted.) *District of Columbia v. Heller*, supra, 554 U.S. at 577, 128 S.Ct. 2783.

[21] The court emphasized that its reading of the operative clause in this manner was consistent with the prefatory clause, observing that: "It is therefore entirely sensible that the [s]econd [a]mendment's prefatory clause announces the purpose for which the right was codified: to prevent elimination of the militia. The prefatory clause does not suggest that preserving the militia was the only reason Americans valued the ancient right; most undoubtedly thought it even more important for self-defense and hunting. But the threat that the new [f]ederal [g]overnment would destroy the citizens' militia by taking away their arms was the reason that right—unlike some other English rights—was codified in a written [c]onstitution." *District of Columbia v. Heller*, supra, 554 U.S. at 599, 128 S.Ct. 2783.

[18] [19] Two years later, the United States Supreme Court considered whether the second amendment right to keep and bear arms is incorporated in the concept of due process and, therefore, applicable to the states via the fourteenth amendment. See *McDonald v. Chicago*, supra, 561 U.S. at 750, 130 S.Ct. 3020. The court in *McDonald* explained that its "decision in *Heller* points unmistakably to the answer. Self-defense is a basic right, recognized by many legal systems from ancient times to the present day, and, in *Heller*, [the court] held that individual self-defense ***111** is the central component of the [s]econd [a]mendment right." (Emphasis omitted; footnote omitted; internal quotation marks omitted.) Id., at 767, 130 S.Ct. 3020. Following a detailed historical analysis; see generally id., at 768–77, 130 S.Ct. 3020; the court concluded that the second amendment is applicable to the states because "the [f]ramers and ratifiers of the [f]ourteenth [a]mendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty." Id., at 778, 130 S.Ct. 3020.

[20] [21] *Heller* aptly has been characterized as having adopted "a two-pronged approach to [s]econd [a]mendment challenges. First, [the court] ask[s] whether the challenged law imposes a burden on conduct falling within the scope of the [s]econd [a]mendment's guarantee.... If it does not, [the] inquiry is complete. If it does, [the court] evaluate[s] the law under some form of means-end scrutiny. If the law passes muster under that standard, it is constitutional. If it fails, it is invalid." (Citation omitted; footnote omitted.) *United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir.2010), cert. denied, —— U.S. ——, 131 S.Ct. 958, 178 L.Ed.2d 790 (2011); see also *United States v. Chovan*, 735 F.3d 1127, 1136–37 (9th Cir.2013), cert. denied, —— U.S. ——, 135 S.Ct. 187, 190 L.Ed.2d 146 (2014); *Kachalsky v. Westchester*, 701 F.3d 81, 93 (2d Cir.2012), cert. denied sub nom. *Kachalsky v. Cacace*, —— U.S. ——, 133 S.Ct. 1806, 185 L.Ed.2d 812 (2013). The appropriate degree of means-end scrutiny, generally some form of intermediate scrutiny, depends on the extent to which the challenged law burdens conduct protected under the second amendment.[22] See, e.g., ***112** *Kachalsky v. Westchester*, supra, at 93; *Shew v. Malloy*, 994 F.Supp.2d 234, 246–47 (D.Conn.2014).

[22] This second amendment analysis has its origins in the United States Supreme Court's first amendment jurisprudence, pursuant to which certain speech is unprotected, and varying degrees of judicial scrutiny are applied to speech depending on the nature of the speech at issue. See, e.g., *Ezell v. Chicago*, 651 F.3d 684, 702 (7th Cir.2011); *United States v. Chester*, 628 F.3d 673, 682 (4th Cir.2010).

B

Whether Dirk Knives and Police Batons Are Protected Arms Under the Second Amendment

As we have explained, in evaluating the of the statutory proscription against the transportation of dirk knives and police batons, we first must determine whether those weapons fall within the term "[a]rms" for purposes of the second amendment.[23] See, e.g., *United States v.* ****188** *Henry*, 688 F.3d 637, 640 (9th Cir.2012) ("because we conclude that machine gun possession is not entitled to [s]econd [a]mendment protection, it is unnecessary to consider [the defendant's] argument that the [D]istrict [C]ourt applied the incorrect level of constitutional scrutiny in evaluating his claims"), cert. denied, —— U.S. ——, 133 S.Ct. 996, 184 L.Ed.2d 773 (2013); ***113** *United States v. Marzzarella*, supra, 614 F.3d at 94–95 (analyzing whether firearm with obliterated serial number is arm within meaning of second amendment). We are guided in that task by the United States Supreme Court's decision in *Heller*, which, beyond its broader holding that the second amendment protects the right of individuals to bear arms, also explains the contours of that right as it applies to the possession of particular weapons. More specifically, in determining that none of its prior precedents foreclosed a text based construction of the second amendment as an individual right,[24] the court reviewed at length its opinion in *United States v. Miller*, 307 U.S. 174, 59 S.Ct. 816, 83 L.Ed. 1206 (1939), in which the court had upheld "against a [s]econd

[a]mendment challenge [a] federal indictment for [the transportation of] an unregistered short-barreled shotgun in interstate commerce, in violation of the National Firearms Act, [Pub.L. No. 474] 48 Stat. 1236 [1934].” *District of Columbia v. Heller*, supra, 554 U.S. at 621–22, 128 S.Ct. 2783; see *United States v. Miller*, supra, at 176, 183, 59 S.Ct. 816. The court emphasized in *Heller* that *Miller* had concluded only that the short-barreled shotgun was a “type of weapon ... not eligible for [s]econd [a]mendment 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 ****189** militia, [the court could ***114** not] say that the [s]econd [a]mendment guarantees the right to keep and bear such an instrument.’ ... ‘Certainly,’ the [c]ourt [in *Miller*] 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.’ ” (Citation omitted; emphasis omitted.) *District of Columbia v. Heller*, supra, at 622, 128 S.Ct. 2783 quoting *United States v. Miller*, supra, at 178, 59 S.Ct. 816. The court emphasized that “*Miller* stands ... for the proposition that the [s]econd [a]mendment right, whatever its nature, extends only to certain types of weapons.”[25] *District of Columbia v. Heller*, supra, at 623, 128 S.Ct. 2783.

[23] Beyond certain weapons themselves, the court in *Heller* also placed outside the protection of the second amendment other “longstanding prohibitions” on firearms possession, emphasizing that “nothing in [its] 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.” *District of Columbia v. Heller*, supra, 554 U.S. at 626–27, 128 S.Ct. 2783; see also id., at 627 n. 26, 128 S.Ct. 2783 (describing such proscriptions as “presumptively lawful regulatory measures only as examples; [the] list does not purport to be exhaustive”). These prohibitions have been characterized as “exceptions to the right to bear arms.” *United States v. Marzzarella*, supra, 614 F.3d at 91; see also *United States v. Rozier*, 598 F.3d 768, 771 (11th Cir.) (concluding that felons are “disqualified from the exercise of [s]econd [a]mendment rights [under *Heller*]” [internal quotation marks omitted]), cert. denied, 560 U.S. 958, 130 S.Ct. 3399, 177 L.Ed.2d 313 (2010); *United States v. Vongxay*, 594 F.3d 1111, 1115 (9th Cir.) (person maintains right to possess firearm in home for self-defense, provided he is “not disqualified from the exercise of [s]econd [a]mendment rights” [internal quotation marks omitted]), cert. denied, —— U.S. ——, 131 S.Ct. 294, 178 L.Ed.2d 193 (2010).

[24] For example, in explaining the meaning of the word “arms,” the United States Supreme Court noted that “[t]he term was applied, then as now, to weapons that were not specifically designed for military use and were not employed in a military capacity;” *District of Columbia v. Heller*, supra, 554 U.S. at 581, 128 S.Ct. 2783; observing that, “[a]lthough one founding-era thesaurus limited ‘arms’ (as opposed to ‘weapons’) to ‘instruments of offence generally made use of in war,’ even that source stated that all firearms constituted ‘arms.’ ” Id.; see also id., at 582, 128 S.Ct. 2783 (rejecting as “bordering on the frivolous” argument “that only those arms in existence in the [eighteenth] century are protected by the [s]econd [a]mendment,” and concluding that “the [s]econd [a]mendment [on its face] extends ... to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding”).

[25] Indeed, in *Heller*, the court emphasized that *Miller’s* “holding is not only consistent with, but positively suggests, that the [s]econd [a]mendment 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’). Had the [c]ourt [in *Miller*] believed that the [s]econd [a]mendment 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.” *District of Columbia v. Heller*, supra, 554 U.S. at 622, 128 S.Ct. 2783.

Significantly, however, for purposes of the present case, the court in *Heller* then articulated “what types of weapons *Miller* permits. Read in isolation, *Miller’s* phrase ‘part of ordinary military equipment’ could mean that only those weapons useful in warfare are protected. That would be a startling reading of the opinion, since it would mean that the National Firearms Act’s restrictions on machineguns (not challenged in *Miller*) might be unconstitutional, machineguns being useful in warfare in 1939. We think that *Miller’s* ‘ordinary military equipment’ language must be read in tandem with what comes after: ‘[O]rdinarily when called for [militia] service [able-bodied] men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time.’ ... The traditional militia was formed from a pool of men bringing arms ‘in common use at the time’ for lawful purposes like self-defense. ‘In the ***115** colonial and revolutionary war era, [small-arms] weapons used by militiamen and weapons used in defense

of person and home were one and the same.' ... Indeed, that is precisely the way in which the [s]econd [a]mendment's operative clause furthers the purpose announced in its preface. We therefore read *Miller* to say only that the [s]econd [a]mendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns." (Citations omitted; emphasis omitted.) Id., at 624–25, 128 S.Ct. 2783; see also *United States v. Miller*, supra, 307 U.S. at 179–82, 59 S.Ct. 816 (discussing, inter alia, William Blackstone's *Commentaries on the Laws of England*, Adam Smith's *The Wealth of Nations*, and state statutes governing citizens' obligations to participate in militia and to supply weapons such as muskets or firelocks, ammunition, swords and bayonets).

The court further noted that this reading of *Miller's* "important limitation" on the second amendment right finds "[support in] the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.' " *District of Columbia v. Heller*, supra, 554 U.S. at 627, 128 S.Ct. 2783. The court dismissed the potential objection "that if weapons that are most useful in military service—M–16 rifles and the like—may be banned, then the [s]econd [a]mendment right is completely detached from the prefatory clause.... [T]he conception of the militia at the time of the ****190** [s]econd [a]mendment'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 [eighteenth] 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 ***116** fit between the prefatory clause and the protected right cannot change [the] interpretation of [that] right." Id., at 627–28, 128 S.Ct. 2783. Applying this analysis, the court held that the District of Columbia ordinances violated "the inherent right of self-defense [that] has been central to the [s]econd [a]mendment right," observing that the "handgun ban amounts to a prohibition of an entire class of 'arms' that is overwhelmingly chosen by American society for that lawful purpose." Id., at 628, 128 S.Ct. 2783. With this background, we now address the issue of whether the dirk knife and police baton that the defendant had in his vehicle in violation of § 29–38 are "arms" within the scope of the second amendment, that is, whether they are weapons with traditional military utility that are "typically possessed by law-abiding citizens for lawful purposes"; id., at 625, 128 S.Ct. 2783; and not "dangerous and unusual weapons." (Internal quotation marks omitted.) Id., at 627, 128 S.Ct. 2783.

1

Dirk Knives

[22] The state contends that dirk knives fall outside the scope of the second amendment because they "are not normally carried by private, law-abiding citizens for defense of hearth and home, and are not traditional military weapons." The state supports this argument with citations to a number of nineteenth century cases to which the court in *Heller* cites; see, e.g., *Aymette v. State*, 21 Tenn. (2 Hum.) 154, 158–59 (1840); *English v. State*, 35 Tex. 473, 477 (1871); *State v. Workman*, 35 W.Va. 367, 372–73, 14 S.E. 9 (1891); and several post-*Heller* cases, principally, an unpublished decision of the Massachusetts Appeals Court, *Commonwealth v. Alem A.*, Massachusetts Appeals Court, Docket No. 10P–600, 2011 WL 6016800 (Mass.App. December 5, 2011), review denied, 461 Mass. 1105, 961 N.E.2d 589 (2012), as well as *Norton v. South Portland*, 831 F.Supp.2d 340, 362 (D.Me.2011), *Mack v. United States*, 6 A.3d 1224, 1236 (D.C. 2010), ***117** and *Wooden v. United States*, 6 A.3d 833, 839–40 (D.C.2010). As we explain hereinafter, however, these authorities are either distinguishable or otherwise unpersuasive in light of *Heller;* the more persuasive authority supports the conclusion that dirk knives constitute "arms," as the court in *Heller* explicated that term.

A particularly thorough and authoritative analysis of this issue is found in *State v. Delgado*, 298 Or. 395, 692 P.2d 610 (1984), a case in which the Oregon Supreme Court considered whether an Oregon state statute that "prohibit[ed] the mere possession and mere carrying of a switchblade knife" violated the right to bear arms under the Oregon constitution.[26] Id., at 397, 692 P.2d 610. The court applied the historically based definition of the term "arms" that it previously had articulated in *State v. Kessler*, 289 Or. 359, 368, 614 P.2d 94 (1980)—a definitional approach ****191** that mirrors the model employed by the United States Supreme Court in *District of Columbia v. Heller*, supra, 554 U.S. at 624–25, 128 S.Ct. 2783 for purposes of the second amendment—observing that, "because settlers during the revolutionary era used many of the same weapons for both personal and military defense, the term 'arms,' as contemplated by the constitutional framers, was not limited to firearms but included those hand-carried weapons commonly used for personal defense.... Thus, the term 'arms' 'includes weapons commonly used for

either purpose, even if a particular weapon is unlikely to be used as a militia weapon.' "[27] ***118** Citation omitted.) *State v. Delgado*, supra, at 399, 692 P.2d 610. The court further explained: "The appropriate inquiry in the case ... is whether a kind of weapon, as modified by its modern design and function, is of the sort commonly used by individuals for personal defense during either the revolutionary and post-revolutionary era, or in 1859, when Oregon's constitution was adopted." (Footnote omitted.) Id., at 400–401, 692 P.2d 610; see also id., at 401, 692 P.2d 610 ("it must be determined whether the drafters would have intended the word 'arms' to include the [switchblade] knife as a weapon commonly used by individuals for [self-defense]").

[26] The Oregon state constitution provides in relevant part: "The people shall have the right to bear arms for the defence of themselves, and the State...." Or. Const., art. I, § 27.

[27] Consistent with the analysis of the United States Supreme Court in *Heller*, the Oregon Supreme Court in *Kessler* explained: "In the colonial and revolutionary war era, weapons used by militiamen and weapons used in defense of person and home were one and the same. A colonist usually had only one gun [that] was used for hunting, protection, and militia duty, plus a hatchet, sword, and knife.... When the revolutionary war began, the colonists came equipped with their hunting muskets or rifles, hatchets, swords, and knives. The colonists suffered a severe shortage of firearms in the early years of the war, so many soldiers had to rely primarily on swords, hatchets, knives, and pikes (long staffs with a spear head)....

"Therefore, the term 'arms' as used by the drafters of the constitutions probably was intended to include those weapons used by settlers for both personal and military defense. The term 'arms' was not limited to firearms, but included several [hand-carried] weapons commonly used for defense. The term 'arms' would not have included [a] cannon or other heavy ordnance not kept by militiamen or private citizens." (Citations omitted.) *State v. Kessler*, supra, 289 Or. at 368, 614 P.2d 94. Noting the impact of advances in technology on the development of weaponry, the court emphasized that, "[w]hen the constitutional drafters referred to an individual's 'right to bear arms,' the arms used by the militia and for personal protection were basically the same weapons. Modern weapons used exclusively by the military are not 'arms' [that] are commonly possessed by individuals for defense, [and] therefore, the term 'arms' in the [Oregon] constitution does not include such weapons." Id., at 369, 614 P.2d 94; see also id. ("advanced weapons of modern warfare have never been intended for personal possession and protection"). After observing that the state constitutional provision at issue expressly "guarantees a right to bear arms for defense of themselves, and the [s]tate;" (internal quotation marks omitted) id.; the court further emphasized that the "term 'arms' in [the Oregon] constitution therefore would include weapons commonly used for either purpose, even if a particular weapon is unlikely to be used as a militia weapon." Id. Accordingly, the court held in *Kessler* that the state was constitutionally barred from prohibiting the possession of a billy club in the home because the court's "historical analysis of [a]rticle I, [§] 27, [of the Oregon constitution] indicates that the drafters intended arms to include the hand-carried weapons commonly used by individuals for personal defense. The club is an effective, hand-carried weapon [that] cannot logically be excluded from this term." (Internal quotation marks omitted.) Id., at 372, 614 P.2d 94.

After examining the centuries long evolution of the knife as a weapon used by military forces around the ***119** world; see id., at 401–402, 692 P.2d 610; the court in *Delgado* explained that the switchblade knife was simply a technological improvement on folding knives such as military ****192** jackknives and the "constant or enduring" pocketknife. Id., at 402, 692 P.2d 610. Accordingly, the court concluded that, if the Oregon dangerous weapons statute "proscribed the possession of mere pocketknives, there can be no question but that the statute would be held to conflict directly with [a]rticle I, [§] 27 [of the Oregon constitution]. The only difference is the presence of the spring-operated mechanism that opens the knife." Id., at 403, 692 P.2d 610. The court therefore invalidated the state's absolute prohibition on the possession of switchblade knives.[28] Id., at 404, 692 P.2d 610. But see *Lacy v. State*, 903 N.E.2d 486, 491–92 (Ind.App.) (applying similar general historical analysis in post-*Heller* second amendment challenge to statutory ban on carrying switchblade knife but relying on case law and legislative history under federal law prohibiting, inter alia, interstate transportation of switchblade knives, 15 U.S.C. §§ 1241 through 1245, for proposition that "switchblades are primarily used by criminals and are not substantially similar to a regular knife or jackknife," meaning that court could not "say that switchblades are typically possessed by law-abiding citizens for [self-defense] purposes"), transfer denied, 915 N.E.2d 991 (Ind.2009).

[28] The court emphasized, however, that its "decision does not mean [that] individuals have an unfettered right to possess or use constitutionally protected arms in any way they please. The legislature may, if it chooses to do so, regulate possession and use.... [The] court

> recognizes the seriousness with which the legislature views the possession of certain weapons, especially [switchblades]. The problem here is that [Oregon's dangerous weapons statute] absolutely proscribes the mere possession or carrying of such arms. This the [Oregon] constitution does not permit." (Citations omitted; footnote omitted.) *State v. Delgado*, supra, 298 Or. at 403–404, 692 P.2d 610.

Guided by the definition of the term "arms," as articulated in *District of Columbia v. Heller*, supra, 554 U.S. at 624–25, 128 S.Ct. 2783 and the analytical approach employed in both ***120** *Heller* and *State v. Delgado*, supra, 298 Or. at 399–403, 692 P.2d 610, we examine the military origins and history of the dirk knife, starting with the fact that, as a general matter, fixed, long blade "[k]nives have long been part of American military equipment. The federal Militia Act of 1792 [c. 33, 1 Stat. 271] required all able-bodied free white men between [the ages of] eighteen and forty-five to possess, among other items, 'a sufficient bayonet.' This establishes both that knives were common and were arms for militia purposes. Colonial militia laws required that men (and sometimes all householders, regardless of sex) own not only firearms but also bayonets or swords; the laws sometimes required [the] carrying [of] swords in [nonmilitia] situations, such as when going to church. In New England, the typical choice for persons required to own a bayonet or a sword was the sword because most militiamen fulfilled their legal obligation to possess a firearm by owning a 'fowling piece' (an ancestor to the shotgun, particularly useful for bird hunting), and these firearms did not have studs [on] which to mount a bayonet.

"Well after the nation's founding, knives continued to be an important tool for many American soldiers. During World War II, American soldiers, sailors, and airmen wanted and purchased fixed blade knives, often of considerable dimensions. At least in some units, soldiers were 'authorized an M3 trench knife, but many carried a favorite hunting knife.' The Marine Corps issued the Ka–Bar fighting knife. As one World War II memoir recounts, '[t]his deadly piece of cutlery was manufactured by the company bearing its name. The knife was [one] foot long with a [seven inch ****193** long] by [one and one-half inch wide] blade.... Light for its size, the knife was beautifully balanced.' Vietnam memoirs report that Ka–Bar and similar knives were still in use, but 'not [everyone was] issued a Ka–Bar knife. There [were] not enough to go around. If you [did not] ***121** have one, you [were forced to] wait until someone [was] going home from Vietnam and [gave] his to you.' Even today, some Special Forces units regularly carry combat knives." (Emphasis omitted; footnotes omitted.) D. Kopel et al., "Knives and the Second Amendment," 47 U. Mich. J.L. Reform 167, 192–93 (2013).

The history of dirk knives in particular is consistent with the American military usage of knives in general. "A dirk is a long straight-bladed dagger or short sword usually defined by comparison [to] the ceremonial weapons carried by Scottish highlanders and naval officers in the [e]ighteenth and [n]ineteenth [c]enturies." *Commonwealth v. Miller*, supra, 22 Mass.App. at 695, 497 N.E.2d 29. In the 1700s, the Scottish brought the dirk to the Americas, where its design evolved from a knife with a handle grip overlapping a large single-edged blade, to a double-edged blade; after 1745, dirk blades "[q]uite frequently ... were made from old sword blades." H. Peterson, supra, at p. 19. As the dirk has evolved to be nearly synonymous with the dagger, the term became "appli[cable] to all the short side arms carried by naval officers," such that it came to include "true daggers and sharply curved knives almost of cutlass length." Id., at p. 2; see also id., at p. 95 (describing dirk as "[t]he most colorful of all the naval knives" and "[a] companion to and substitute for the sword"). The blade shape of dirks evolved during the nineteenth century from straight and double-edged to curved and then back to straight; all dirks featured large handles separated from the blade by prominent guards, or quillons. See id., at pp. 96–101 (collecting photographs); see also E. Janes, supra, at p. 67 (noting that dirk used in early nineteenth century had double-edged blade, becoming, "in fact, a short sword"). Indeed, as the naval dirk evolved over time to become the Ka–Bar fighting knife and other military issued combat knives—all of which look remarkably like the dirk knife at issue in the present case—the ***122** enhancements have included now common stabbing oriented features such as relatively long blades tapered to a sharp point, multiple edges, a handle with a hilt to protect the user's hand during thrusting, and thick grips. Compare H. Peterson, supra, at pp. 100–101 (photographs of nineteenth century naval dirks), with id., at pp. 108, 111 (describing and depicting Navy Mark 2 and Ka–Bar knives), and id., at p. 109 (noting that naval Mark 2 knife was "only possible weapon" for use in defending against enemy frogmen during underwater demolition work).

As to whether dirk knives are " 'dangerous and unusual weapons';" *District of Columbia v. Heller*, supra, 554 U.S. at 627, 128 S.Ct. 2783; and, therefore, not "arms" within the meaning of the second amendment, their more limited lethality relative to other weapons that, under *Heller*, fall squarely within the protection of the second amendment—e.g., handguns—provides strong support for the conclusion that dirk knives also are entitled to protected status. See D. Kopel et al., supra, 47 U. Mich.

J.L. Reform at 182–83 (citing empirical research demonstrating that, in 2010, knives or cutting instruments were used in 13.1 percent of United States murders, in comparison to firearms, which accounted for 67.5 percent, and that, in one state between 1978 and 1993, 39 percent of firearm penetrating traumas were fatal, compared to 7.1 percent of knife penetrating traumas); see also id., at 182 ("[i]f ****194** handguns may not be prohibited, in spite of the clear public safety concerns, then a category of arm that is less dangerous clearly may not be prohibited, either"); E. Volokh, "Implementing the Right to Keep and Bear Arms for Self–Defense: An Analytical Framework and a Research Agenda," 56 UCLA L.Rev. 1443, 1481–82 (2009) (suggesting that weapon is protected if it "is no more practically dangerous than what is in common use among law-abiding citizens"). This consideration, coupled with the fact that dirk knives bear a close relation to the bayonet and the sword, and have ***123** long been used for military purposes, removes them from the category of weapons that may be deemed dangerous and unusual, thereby rendering them subject to protection under the second amendment.[29] See, e.g., M. O'Shea, "The Right to Defensive Arms After *District of Columbia v. Heller*," 111 W. Va. L.Rev. 349, 377 (2009) ("after *Heller*, it appears indisputable that the 'arms' protected by the [s]econd [a]mendment include common defensive weapons other than firearms, such as knives and pepper spray"); cf. *People v. Yanna*, 297 Mich.App. 137, 145, 824 N.W.2d 241 (2012) ("*Heller* concluded that handguns are not sufficiently dangerous to be banned. Tasers and stun guns, while plainly dangerous, are substantially less dangerous than handguns.").

[29] We note that several other jurisdictions, in relatively recent cases, have addressed constitutional challenges to particular restrictions on the carrying or possession of fixed blade knives. They have done so, however, without first deciding whether the knife at issue fell within the meaning of the term "arms" for purposes of the second amendment (or its state constitutional analogue) because they assumed, either explicitly or implicitly, that it did before considering whether the scope of the restriction at issue could withstand the appropriate level of state or federal constitutional scrutiny. See *Norton v. South Portland*, supra, 831 F.Supp.2d at 362; *People v. Mitchell*, 209 Cal.App.4th 1364, 1375–76, 148 Cal.Rptr.3d 33 (2012), review denied, California Supreme Court, Docket No. S206830 (Cal. January 23, 2013); *Griffin v. State*, 47 A.3d 487, 490–91 (Del.2012); *Seattle v. Montana*, 129 Wash.2d 583, 590–95, 919 P.2d 1218 (1996).

Although the state cites to numerous authorities that, at first blush, might appear to support a contrary conclusion, a more careful review of these authorities reveals that they lack persuasive force. We turn first to its post-*Heller* authorities, most notably, *Commonwealth v. Alem A.*, supra, Massachusetts Appeals Court, Docket No. 10–P–600, which is directly on point insofar as it concluded that the second amendment, as elucidated by *Heller*, does not extend to a large, double-edged knife. Nevertheless, the Massachusetts Appeals Court designated its decision in *Alem A.* as unpublished and ***124** nonprecedential, presumably because its entire constitutional analysis consists of a single paragraph. Even that limited analysis is suspect in view of the court's reasoning that, because double-edged knives are deemed "dangerous" under the Massachusetts statute prohibiting the carrying of dangerous weapons, they are, ipso facto, " 'dangerous and unusual' " and, as a consequence, not protected under the second amendment. Id. *Alem A.* is wholly unpersuasive authority that we respectfully decline to follow.

The state's reliance on *Wooden v. United States*, supra, 6 A.3d at 833, is misplaced because that case is readily distinguishable on procedural grounds. In *Wooden*, the District of Columbia Court of Appeals rejected a second amendment challenge to a conviction of carrying a dangerous weapon, in that case, an ordinary knife that the defendant, Stacia Wooden, had brought to an altercation with her husband's ex-girlfriend. See id., at 834–35. The court in *Wooden*, however, ****195** emphasized that, because Wooden's claim was unpreserved, it would be considered only for plain error, which required her to establish that it was "clear or obvious" that she was entitled to prevail under *Heller*. Id., at 835. In the context of this heightened showing required of Wooden, the court explained that, due to *Heller's* focus on firearms, it could not "find it 'plain'—'clear' or 'obvious'—that the [court in] *Heller* ... would extend its ruling to knives carried *exclusively* for use as a dangerous weapon in self-defense. Absent the kind of historical analysis the [c]ourt applied to guns, *Heller* does not give [the court] the assurance necessary to find plain error in the ... instructions [under the carrying a dangerous weapon statute] as applied to knives.''[30] (Emphasis in original.) Id., at 839–40. ***125** This circumscribed analysis significantly diminishes *Wooden's* precedential value, especially because the court expressly declined to foreclose the possibility that, in a case in which the issue is properly preserved and briefed, it would recognize that the protections of the second amendment apply to the possession of knives. See id., at 839 (observing that, "[p]erhaps a detailed *Heller*-type analysis would result in a conclusion that some kinds of knives today—perhaps ordinary pocket knives or key chain knives, if not switchblades ... may qualify for [s]econd [a]mendment protection" [footnotes omitted]); see also *Mack v. United States*, supra, 6 A.3d at 1234–36

(following *Wooden* and rejecting plain error challenge to conviction for carrying dangerous weapon because court could not "say it [was] 'clear' or 'obvious' that the [s]econd [a]mendment secures the right of the people 'to keep and bear' ice picks," particularly outside of home).

[30] The court in *Wooden* further observed that, even if it "assume [d] ... solely for the sake of argument, that *Heller* would embrace the kind of knife that [Wooden] allegedly can prove she carried for use exclusively in self-defense," Wooden still could not establish plain error because, "[i]n finding [s]econd [a]mendment protection for possessing certain kinds of guns in the home for use in self-defense, the [United States] Supreme Court cautioned in *Heller* that it did 'not read the [s]econd [a]mendment to protect the right of citizens to carry arms for any sort of confrontation,' " and the undisputed facts of the case demonstrated that Wooden "was preparing for a confrontation anywhere, not just in defense of her home. Indeed, the fight did not occur anywhere near her home." (Footnotes omitted.) *Wooden v. United States*, supra, 6 A.3d at 840.

Finally, the most venerable authorities on which the state relies, in particular, the nineteenth century cases of *Aymette v. State*, supra, 21 Tenn. (2 Hum.) at 154, *English v. State*, supra, 35 Tex. at 473, and *State v. Workman*, supra, 35 W.Va. at 367, 14 S.E. 9, bear on the issue presented only insofar as they contributed to the general definition of protected weapon set forth in *District of Columbia v. Heller*, supra, 554 U.S. at 624–25, 128 S.Ct. 2783 and *United States v. Miller*, supra, 307 U.S. at 178, 59 S.Ct. 816.[31] Beyond their definitional ****196 *126** import, however, these state court decisions lack persuasive value because none of them acknowledges the military origins—and contemporaneous use—of the dirk knife; instead, they summarily classify the dirk knife with other weapons deemed to be particular to the criminal element, observing, inter alia, that the "terms dirks, daggers, slungshots, sword canes, brass knuckles and bowie knives, belong to no military vocabulary. Were a soldier on duty found with any of these things about his person, he would be punished for an offense against discipline." *English v. State*, supra, at 477. Finally, the fact that all three of these cases classify the pistol as a weapon *not* protected by the second amendment; see *Aymette v. State*, supra, at 159–60; *English v. State*, supra, at 474–75; *State v. Workman*, supra, at 373, 14 S.E. 9; renders them particularly anachronistic in light of *Heller's* focus on the handgun as the paradigmatic protected weapon given its status as "the most preferred firearm in the nation to keep and use for protection of one's home and family...."[32] (Citation omitted; internal quotation ***127** marks omitted.) *District of Columbia v. Heller*, supra, 554 U.S. at 628–29, 128 S.Ct. 2783; see also *Kachalsky v. Westchester*, supra, 701 F.3d at 91 n. 14 (noting that *English* and other such cases "were decided on the basis of an interpretation of the [s]econd [a]mendment—that pistols and similar weapons are not 'arms' within the meaning of the [s]econd [a]mendment or its state constitutional analogue—that conflicts with the [United States] Supreme Court's present reading of the [a]mendment").[33]

[31] See *Aymette v. State*, supra, 21 Tenn. (2 Hum.) at 158 ("[T]he arms, the right to keep which is secured, are such as are usually employed in civilized warfare, and that constitute the ordinary military equipment....They need not, for such a purpose, the use of those weapons which are usually employed in private broils, and which are efficient only in the hands of the robber and the assassin. These weapons would be useless in war." [Emphasis omitted.]); *English v. State*, supra, 35 Tex. at 475 (second amendment "protects only the right to 'keep' such 'arms' as are used for purposes of war, in distinction from those [that] are employed in quarrels and broils, and fights between maddened individuals" [internal quotation marks omitted]); *State v. Workman*, supra, 35 W.Va. at 373, 14 S.E. 9 (second amendment "must be held to refer to the weapons of warfare to be used by the militia, such as swords, guns, rifles, and muskets—arms to be used in defending the [s]tate and civil liberty—and not to pistols, bowie-knives, brass knuckles, billies, and such other weapons as are usually employed in brawls, street-fights, duels, and affrays, and are only habitually carried by bullies, blackguards, and desperadoes, to the terror of the community and the injury of the [s]tate").

[32] We note that *Aymette*, which rejected a state constitutional challenge to a statute that prohibited the carrying of a *concealed* bowie knife, or "Arkansas tooth-pick;" *Aymette v. State*, supra, 21 Tenn. (2 Hum.) at 155, 161–62; lacks persuasive value in twenty-first century jurisprudence for the additional reason that, in sharp contradiction to *Heller*, the court limited the right to "bear arms" to weapons that, by their nature, must be carried openly in the military context. See id., at 160–61 ("[The court rejects the argument that] there can be no difference between a law prohibiting the wearing [of] concealed weapons, and one prohibiting the wearing [of] them openly.... [I]f they were not allowed to bear arms openly, they could not bear them in their [defense] of the [s]tate at all. To bear arms in [defense] of the [s]tate, is to employ them in war, as arms are usually employed by civilized nations. The arms, consisting of swords, muskets, rifles, [etc.], must necessarily be borne openly ... so that a prohibition to bear them openly, would be a denial of the right altogether. And as in their constitution, the right to bear

arms in [defense] of themselves, is coupled with the right to bear them in [defense] of the [s]tate, we must understand the expressions as meaning the same thing, and as relating to public, and not private; to the common, and not the individual [defense].").

[33] Because *Heller* is so critical to the determination of whether a particular kind of knife falls within the purview of the second amendment's right to keep and bear arms—particularly *Heller's* interpretation of the second amendment as affording the right to bear arms for the purpose of self-defense in the home—other, considerably more recent cases that predated *Heller* also lack persuasive force. For example, in *United States v. Nelsen*, 859 F.2d 1318 (8th Cir.1988), the court rejected a second amendment challenge to the Switchblade Knife Act, 15 U.S.C. §§ 1241 through 1245, which prohibits, inter alia, the interstate transportation or distribution of switchblade knives. See id., at 1320. The conclusion of the court in *Nelsen*, however, followed its threshold determination that there was no merit to the claim of the defendant, Douglas John Nelsen, of "a fundamental right to keep and bear arms in that amendment," citing *United States v. Cruikshank*, 92 U.S. 542, 23 L.Ed. 588 (1876), and *United States v. Miller*, supra, 307 U.S. at 174, 59 S.Ct. 816 among other cases, for the proposition that "this has not been the law for at least 100 years." *United States v. Nelsen*, supra, at 1320; see id. ("Nelsen has made no arguments that the [Switchblade Knife] Act would impair any state militia, and [the court does] not see how such a claim could plausibly be made"); see also id., at 1319–20 (applying rational basis review in rejecting substantive due process challenge to Switchblade Knife Act and concluding that Congress had "reasonable basis" for passing act, including reducing use of switchblades for criminal purposes and use of mail order businesses to evade individual states' switchblade bans); *Crowley Cutlery Co. v. United States*, 849 F.2d 273, 278 (7th Cir.1988) ("[The defendant's] arguments do not come close to demonstrating the unconstitutionality of the Switchblade Knife Act.... Switchblade knives are more dangerous than regular knives because they are more readily concealable and hence more suitable for criminal use. So it is rational to ban them, [but] not regular knives as well. It would be absurd to suggest that the only lawful method of banning switchblade knives would be to ban all knives, including we suppose the plastic knives provided on airlines and in prison cafeterias." [Citation omitted.]). Because *Nelsen* rests on the premise that the second amendment does not confer a fundamental individual right to bear arms—a premise flatly rejected by the United States Supreme Court in *Heller* and *McDonald v. Chicago*, supra, 561 U.S. at 742, 130 S.Ct. 3020—*Nelsen* is not persuasive authority.

****197 *128** For these reasons, we agree with the defendant that, under *Heller*, the dirk knife that he was transporting to his new residence falls within the term "[a]rms" for purposes of the second amendment.[34] We therefore must decide whether the state's interest in prohibiting the defendant from possessing that weapon in his vehicle is sufficient to overcome the defendant's second amendment rights. We first consider, however, whether the defendant's possession of the police baton also is subject to protection under the second amendment.

[34] We emphasize that our conclusion is limited to knives with characteristics of the dirk knife at issue in the present case, and we do not decide whether the second amendment embraces knives generally. But cf. D. Kopel et al., supra, 47 U. Mich. J.L. Reform at 203 (asserting categorical position that all knives are subject to second amendment protection, and because they all "are less dangerous than handguns, which may legally be carried, any law that regulates the possession or carrying of knives, even the biggest and scariest knives ... is indefensible under intermediate scrutiny"). Thus, we do not consider whether the right to keep and bear arms under the second amendment extends to other types of knives, including those identified in § 29–38(a), such as switchblades and stilettos. Compare *State v. Lacy*, supra, 903 N.E.2d at 492 (switchblade knives are not protected under second amendment), with *State v. Delgado*, supra, 298 Or. at 403–404, 692 P.2d 610 (switchblade knives protected under Oregon constitution).

2

Police Baton

[23] In response to the defendant's contention that he had a second amendment right to have the police baton in his vehicle, the state contends that police batons are "dangerous and unusual" when possessed by persons not associated with law enforcement. In particular, the ***129** state points to the facts of the Rodney King case; see *Koon v. United States*, 518 U.S. 81, 86–87, 116 S.Ct. 2035, 135 L.Ed.2d 392 (1996) (describing assault of King by police with, inter alia, police batons); as illustrative of the degree of physical injury that a police baton can cause. The state also relies on *People v. Brown*, 253 Mich. 537, 538, 541–43, 235 N.W. 245 (1931), and *State v. Workman*, supra, 35 W.Va. at 373, 14 S.E. 9, for the proposition that blackjacks (*Brown*) and billies

(*Workman*)—weapons of a similar nature to police batons—are unique to the criminal element and, consequently, are not protected under the second amendment. On the basis of more contemporary authority, including ****198** *State v. Kessler*, supra, 289 Or. at 359, 614 P.2d 94, we agree with the defendant that police batons are "[a]rms" within the meaning of the second amendment because they are weapons with traditional military utility that are typically possessed by law-abiding citizens for lawful purposes, and they are neither especially dangerous nor unusual.

We begin with a brief discussion of *People v. Brown*, supra, 253 Mich. at 537, 235 N.W. 245, in which the Michigan Supreme Court considered the defendant's claim that his conviction of carrying a dangerous weapon in an automobile predicated on his possession of a blackjack violated the state constitutional right to "bear arms for the defense of himself and the [s]tate." (Internal quotation marks omitted.) Id., at 538, 235 N.W. 245, quoting Mich. Const. (1908), art. 2, § 5. After noting the restrictions on the scope of the state constitutional right to bear arms;[35] ***130** *People v. Brown*, supra, at 541, 235 N.W. 245; the court observed that Michigan's dangerous weapons statute, which did "not include ordinary guns, swords, revolvers, or other weapons usually relied [on] by good citizens for defense or pleasure;" id., at 542, 235 N.W. 245; was instead "a partial inventory of the arsenal of the 'public enemy,' the 'gangster.' It describes some of the particular weapons with which he [engages in warfare] on the [s]tate and reddens his murderous trail. The blackjack is properly included in the list of outlawed weapons. As defined in [one popular encyclopedia], it is ... 'a bludgeonlike weapon consisting of a lead slug attached to a leather thong. The more carefully constructed [blackjacks] contain a spring within the handle which serves to ease the effect of the impact [on] the wrist of the [person] who wields the weapon. The blackjack has the reputation of being a characteristic weapon of urban gangsters and rowdies.' " Id. The court therefore concluded that the statutory prohibition against blackjacks did not violate the defendant's state constitutional right to bear arms for self-defense. Id., at 542–43, 235 N.W. 245; see also *State v. Swanton*, 129 Ariz. 131, 132, 629 P.2d 98 (App.1981) (noting that then existing, pre-*Heller* case law did not extend second amendment protection to states, and concluding that defendant did not have right to possess nunchakus or nunchuks under Arizona constitution because "the term 'arms' as used [therein] means such arms as are recognized in civilized warfare and not those used by a ruffian, brawler or assassin"); *State v. Workman*, supra, 35 W.Va. at 373, 14 S.E. 9 (observing that second amendment refers only to "weapons of warfare to be used by the militia, such as ***131** swords, guns, rifles, and muskets ... and not to pistols, bowie-knives, brass ****199** knuckles, billies, and such other weapons as are usually employed in brawls, street-fights, duels and affrays").

35 The court observed that "[s]ome arms, although they have a valid use for the protection of the [s]tate by organized and instructed soldiery in times of war or riot, are too dangerous to be kept in a settled community by individuals, and, in times of peace, find their use by bands of criminals and have legitimate employment only by guards and police. Some weapons are adapted and recognized by the common opinion of good citizens as proper for private defense of person and property. Others are the peculiar tools of the criminal. The police power of the [s]tate to preserve public safety and peace and to regulate the bearing of arms cannot fairly be restricted to the mere establishment of conditions under which all sorts of weapons may be privately possessed, but it may take account of the character and ordinary use of weapons and interdict those whose customary employment by individuals is to violate the law. The power is, of course, subject to the limitation that its exercise be reasonable and it cannot constitutionally result in the prohibition of the possession of those arms [that], by the common opinion and usage of law-abiding people, are proper and legitimate to be kept [on] private premises for the protection of person and property." *People v. Brown*, supra, 253 Mich. at 541, 235 N.W. 245.

In contrast, in *State v. Kessler*, supra, 289 Or. at 359, 614 P.2d 94, the court considered the claim of the defendant, Randy Kessler, that his conviction of " 'possession of a slugging weapon,' " arising from his possession of two billy clubs in his apartment, violated his state constitutional right to bear arms. Id., at 361, 370, 614 P.2d 94. Following a comprehensive analysis of the historical underpinnings of the provision of the Oregon constitution at issue, the court held that Kessler's possession of billy clubs in his apartment was constitutionally protected.[36] Id., at 372, 614 P.2d 94. After observing that "[t]he club is considered the first personal weapon fashioned by humans;" id., at 371, 614 P.2d 94; and "is still used today as a personal weapon, commonly carried by the police." Id., at 371–72, 614 P.2d 94; see also id., at 372, 614 P.2d 94 (noting statutory exception permitting peace officers to possess and carry blackjacks and billies); the court concluded that the drafters of the Oregon constitution "intended 'arms' to include the hand-carried weapons commonly used by individuals for personal defense. The club is an effective, hand-carried weapon [that] cannot logically be excluded from this term." Id., at 372, 614 P.2d 94.

[36] The court noted that Kessler had conceded "that the [Oregon] legislature could prohibit carrying a club in a public place in a concealed manner ... but ... maintain[ed] that the legislature [could not] prohibit all persons from possessing a club in the home. [Kessler] argued that a person may prefer to keep in his home a billy club rather than a firearm to defend against intruders." *State v. Kessler*, supra, 289 Or. at 372, 614 P.2d 94.

Kessler is more persuasive than *Brown* with respect to whether police batons fall within the protection of the second amendment. Perhaps most importantly, police batons simply are not the same as blackjacks, rendering *Brown* distinguishable in that important regard.[37] See ****200 *132** *Commonwealth v. Perry*, 455 Mass. 1010, 1012, 916 N.E.2d 762 (2009) (" 'expandable baton' " not " 'blackjack' " for purpose of dangerous weapon statute). Indeed, in contrast to the blackjack, which, as we noted previously, has been characterized as a weapon used primarily for illegitimate purposes;[38] see, e.g., ***133** *People v. Brown*, supra, 253 Mich. at 542, 235 N.W. 245; expandable metal police batons, also known as collapsible batons, are instruments manufactured specifically for law enforcement use as nonlethal weapons. Furthermore, the widespread use of the baton by the police, who currently perform functions that were historically the province of the militia; see, e.g., D. Kopel, "The Second Amendment in the Nineteenth Century," 1998 BYU L.Rev. 1359, 1534; demonstrates the weapon's traditional military utility. Cf. *People v. Yanna*, supra, 297 Mich.App. at 145–46, 824 N.W.2d 241 (noting that, because 95 percent of police departments nationwide use Tasers and stun guns, there is "no reason to doubt that the majority of Tasers and stun guns are used only for lawful purposes," and sustaining defendant's second amendment challenge to statute prohibiting ownership and possession of those devices in home); M. O'Shea, supra, 111 W. Va. L.Rev. at 391–93 (suggesting examination of "[o]rdinary [p]olice [a]rms" issued to patrol officers by governments as illustrative of common use for second amendment analysis).

[37] We note that, in *People v. Davis*, 214 Cal.App.4th 1322, 155 Cal.Rptr.3d 128 (2013), review denied, California Supreme Court, Docket No. S210601 (Cal. July 17, 2013), cert. denied, —— U.S. ——, 134 S.Ct. 659, 187 L.Ed.2d 435 (2013), the California Court of Appeal determined that a jury reasonably could have found that a baseball bat, modified with "holes in its handle [that] could reasonably be seen to make it easier to grip," and "[a] strap [that] could make it easier to carry and to swing," was a "billy" under a California statute prohibiting the possession of a deadly weapon. Id., at 1328–29, 155 Cal.Rptr.3d 128. The court then rejected the defendant's second amendment claim, which was predicated in large part on *State v. Kessler*, supra, 289 Or. at 359, 614 P.2d 94. See *People v. Davis*, supra, at 1331–33, 155 Cal.Rptr.3d 128. The court declined to reach the issue of whether the modified bat fell within the meaning of the term "arms" for purposes of the second amendment on the ground that, in contrast to *Kessler* and *Heller*, "[the] defendant [in *Davis*] did not possess the modified bat in his home ... but was carrying it in his car. The constitutional right to carry weapons outside the home was not addressed in *Kessler* [or] ... *Heller*, [the latter of] which narrowly held that the District of Columbia's ban on 'possession [of lawful weapons] in the home violates the [s]econd [a]mendment....' " (Emphasis omitted.) Id., at 1332. The court in *Davis* further noted that the vehicle restriction does "not deprive persons of their ability to defend themselves or their homes, because there are alternative means to do so;" id.; citing *People v. Ellison*, 196 Cal.App.4th 1342, 1351, 128 Cal.Rptr.3d 245 (2011), for the proposition that a statute that prohibits the carrying of a concealed weapon in a vehicle "did not impair [the] ability to defend hearth or home because it did not prohibit possession of [a] loaded firearm in [the] home ... [and] it did not prohibit [the] carrying [of a] firearm for self-defense because it exempted [the] carrying [of a] concealable firearm with [a] permit and [the] carrying [of a] firearm in [a] locked container." (Internal quotation marks omitted.) *People v. Davis*, supra, at 1332, 155 Cal.Rptr.3d 128. *Davis* is distinguishable from the present case, however, because, beyond the nature of the weapon involved, it did not involve a claim that the defendant was using his motor vehicle to transport the weapon from a former residence to a new one.

[38] Cf. *People v. Liscotti*, 219 Cal.App.4th Supp. 1, 5, 162 Cal.Rptr.3d 225 (App.Dept.Super.2013) ("[A] full-size[d] modified baseball bat weighted with lead and wrapped in rope, does not appear ... to fall into the classification of a weapon that would normally be possessed by a law-abiding citizen for a lawful purpose. Instead, it appears ... to be a weapon [that], by its very nature, increases the risk of violence in any given situation, is a classic instrument of violence, and has a homemade criminal and improper purpose. Likewise, it appears to be the type of tool that a brawl fighter or a cowardly assassin would resort to using, designed for silent attacks, not a weapon that would commonly be used by a good citizen.... [The court] conclude[s] that possession of such a weapon is not protected by the [s]econd [a]mendment...." [Citation omitted.]).

This widespread acceptance of batons within the law

enforcement community also supports the conclusion that they are not so dangerous or unusual as to fall outside the purview of the second amendment. To this end, the fact that police batons are inherently less lethal, and therefore less dangerous and less intrinsically harmful, than handguns, which clearly constitute "arms" within the meaning of the second amendment, provides further reason to conclude that they are entitled to constitutional protection. Cf. *People v. Yanna*, supra, 297 Mich.App. at 145, 824 N.W.2d 241 ("[T]he prosecution also argues that Tasers and stun guns are so dangerous that they are not protected by the [s]econd [a]mendment. However, it is difficult to see how this is so since *Heller* ***134** concluded that handguns are not sufficiently dangerous to be banned. Tasers and stun guns, while plainly dangerous, are substantially less dangerous than handguns. Therefore, [T]asers and stun guns do not constitute dangerous weapons for purposes of [s]econd [a]mendment inquiries."); D. Kopel et al., supra, 47 U. Mich. J.L. Reform at 184 ("[K]nives are far less dangerous than guns. Any public safety justification for knife regulation is necessarily less persuasive than the public safety justification for firearms regulation."). Indeed, expandable batons are intermediate ****201** force devices that, when used as intended,[39] are unlikely to cause death or permanent bodily injury. For these reasons, we are persuaded that the police baton that the defendant had in his vehicle is the kind of weapon traditionally used by the state for public safety purposes and is neither so dangerous nor so unusual as to fall outside the purview of the second amendment's right to keep and bear arms.

39 Of course, the Rodney King case, on which the state relies, represents a misuse of the police baton. See *Koon v. United States*, supra, 518 U.S. at 86–87, 116 S.Ct. 2035. Virtually any instrumentality, however, even those that are not designed or intended to cause harm or injury, may be used in such an unlawful and destructive manner.

C

Means–End Scrutiny of § 29–38

Finally, we must determine whether the statutory ban on the defendant's possession of the dirk knife and police baton in his vehicle for the purpose of transporting them to his new residence survives constitutional scrutiny. Our resolution of this issue requires us to evaluate the impact of this statutory restriction on the "core" right identified in *District of Columbia v. Heller*, supra, 554 U.S. at 630, 128 S.Ct. 2783 namely, the right to possess certain arms in the home for the purpose of self-defense. ***135** 4040

40 We note that, after *Heller*, "[i]t remains unsettled whether the individual right to bear arms for the purpose of self-defense extends beyond the home." *Drake v. Filko*, 724 F.3d 426, 430 (3d Cir.2013), cert. denied sub nom. *Drake v. Jerejian*, —— U.S. ——, 134 S.Ct. 2134, 188 L.Ed.2d 1124 (2014). But see *Peruta v. San Diego*, 742 F.3d 1144, 1166 (9th Cir.2014) ("the carrying of an operable handgun outside the home for the lawful purpose of self-defense, though subject to traditional restrictions, constitutes 'bear[ing] [a]rms' within the meaning of the [s]econd [a]mendment"); *Moore v. Madigan*, 702 F.3d 933, 942 (7th Cir.2012) ("The [United States] Supreme Court has decided that the [second] amendment confers a right to bear arms for self-defense, which is as important outside the home as inside. The theoretical and empirical evidence [which overall is inconclusive] is consistent with concluding that a right to carry firearms in public may promote self-defense."). Nevertheless, those courts that have "decline[d] to definitively declare that the individual right to bear arms for the purpose of self-defense extends beyond the home, the 'core' of the right as identified by *Heller* ... do, however, recognize that the [s]econd [a]mendment's individual right to bear arms *may* have some application beyond the home." (Emphasis in original.) *Drake v. Filko*, supra, at 431; see also *Kachalsky v. Westchester*, supra, 701 F.3d at 89 ("What we know from [*Heller* and *McDonald*] is that [s]econd [a]mendment guarantees are at their zenith within the home.... What we do not know is the scope of that right beyond the home and the standards for determining when and how the right can be regulated by a government. This vast 'terra incognita' has troubled courts since *Heller* was decided.... Although the [United States] Supreme Court's cases applying the [s]econd [a]mendment have arisen only in connection with prohibitions on the possession of firearms in the home, the [c]ourt's analysis suggests ... that the [second] [a]mendment must have some application in the very different context of the public possession of firearms." [Citations omitted; emphasis omitted.]). For purposes of the present appeal, however, we need not determine the extent to which, if at all, the second amendment protects the right to carry weapons in public separate from the possession of those weapons in the home; rather, our analysis focuses solely on whether § 29–38 unduly infringes on the right to keep protected weapons in the home for self-defense by prohibiting the transportation of such weapons from one home to another.

The state contends that, even if, as we have concluded, the dirk knife and police baton seized from the

defendant's vehicle fall within the purview of the second amendment's right to keep and bear arms, heightened judicial scrutiny is inapplicable because § 29–38 does not constitute a substantial burden on rights guaranteed under the second amendment. The state argues, rather, that, because § 29–38 does not prohibit the use of a vehicle to transport certain other weapons from one residence to another, its infringement on second amendment rights is insignificant. For similar reasons, the state also asserts that, if heightened scrutiny is appropriate, intermediate, rather than strict, scrutiny should apply. The state further contends that the statute's ban on transporting "a few inherently dangerous weapons," including dirk knives and police batons—which, the state acknowledges, are illegal either to transport or to carry, without exception; see generally General Statutes §§ 29–38 and 53–206—survives intermediate scrutiny because it "employ[s] a reasonable means to meet the [substantial governmental interest in] promoting public safety on our streets" by "keeping dangerous and deadly weapons off [those] streets and out of cars." (Internal quotation marks omitted.) ***137** Although we reject the state's contention that the statutory ban on transporting dirk knives and police batons does not substantially burden the defendant's rights under the second amendment, we agree with the state that intermediate rather than strict scrutiny is the appropriate standard. We also conclude, however, that § 29–38, as applied to the facts of this case, does not survive that heightened level of constitutional review.

[24] [25] In *Heller,* the United States Supreme Court did not articulate the level of scrutiny applicable to laws that are found to restrict or burden second amendment rights, explaining that the District of Columbia's complete ban on possessing an operable firearm in the home failed constitutional muster under any standard. *District of Columbia v. Heller,* supra, 554 U.S. at 628–29, 128 S.Ct. 2783. The court did observe, however, that rational basis scrutiny would be inapplicable in view of the second amendment's status as an enumerated right. Id., at 628 n. 27, 128 S.Ct. 2783.

[26] [27] Consistent with the approach that other federal circuit courts of appeals have adopted, the Second Circuit Court of Appeals has observed that, because of "*Heller's* emphasis on the weight of the burden imposed by the [District of Columbia] gun laws, [the court does] not read [*Heller*] to mandate that any marginal, incremental or even appreciable restraint on the right to keep and bear arms be subject to heightened scrutiny. Rather, heightened scrutiny is triggered only by those restrictions that ... operate as a substantial burden on the ability of law-abiding citizens to possess and use a fire-arm for self-defense (or for other lawful purposes)." ****203** *United States v. Decastro,* 682 F.3d 160, 166 (2d Cir.2012), cert. denied, —– U.S. ——–, 133 S.Ct. 838, 184 L.Ed.2d 665 (2013); see also *Heller v. District of Columbia,* 670 F.3d 1244, 1257 (D.C.Cir.2011) ("a regulation that imposes a substantial burden [on] the core right of self-defense protected by the [s]econd [a]mendment must have a strong justification"); ***138** *Ezell v. Chicago,* 651 F.3d 684, 708 (7th Cir.2011) ("a severe burden on the core [s]econd [a]mendment right of armed self-defense will require an extremely strong public-interest justification and a close fit between the government's means and its end"); *United States v. Masciandaro,* 638 F.3d 458, 470 (4th Cir.) ("[a] severe burden on the core [s]econd [a]mendment right of armed self-defense should require strong justification" [internal quotation marks omitted]), cert. denied, —– U.S. ——–, 132 S.Ct. 756, 181 L.Ed.2d 482 (2011). Thus, if a statutory provision restricting the use of a particular weapon does not substantially burden conduct protected by the second amendment, the provision meets constitutional requirements without any further inquiry. E.g., *United States v. Decastro,* supra, at 164–65 (concluding that, because federal gun control statute at issue "only minimally affects the ability to acquire a firearm, it is not subject to any form of heightened scrutiny"). Put differently, only if the "challenged law imposes a [substantial] burden on conduct falling within the scope of the [s]econd [a]mendment's guarantee ... [does the court] evaluate [it] under some form of means-end [or heightened] scrutiny." *United States v. Marzzarella,* supra, 614 F.3d at 89. Accordingly, we first must determine whether the statutory ban on using a vehicle to transport a dirk knife and a police baton from one home to another constituted a substantial burden on the defendant's second amendment rights, thereby requiring heightened scrutiny of the regulatory scheme.[41]

[41] As we previously noted; see part I B of this opinion; in *State v. Campbell,* supra, 300 Conn. at 380 n. 6, 13 A.3d 661 this court construed the absolute prohibition in § 53–206 against carrying certain dangerous weapons, including dirk knives and police batons, as banning the carrying of those weapons in the home, even though there is no prohibition against owning them and storing them there. As we also noted, however, the court in *Campbell* did not consider whether this construction of § 53–206 comported with the dictates of the second amendment. See generally id. In light of our determination that dirk knives and police batons fall within the purview of the second amendment, the ban against carrying them in the home cannot be squared with constitutional requirements.

***139** Although neither the state nor the defendant has

identified a case that is directly on point factually with the present one, it is evident that the prohibition against transporting a dirk knife and a police baton to a new home constitutes a significant restriction on the right to possess those weapons in that new home. Indeed, aside from an outright ban on possessing those weapons, it is difficult to conceive of a greater abridgement of that right than a restriction that bars the use of a vehicle to transport either of those weapons from one home to another. Moreover, under § 29–38, it is unlawful for an ordinary citizen, like the defendant, to transport those weapons from the place of purchase to the purchaser's home.[42] As a consequence, the statute's complete proscription against using a vehicle to transport the two protected weapons deprives ****204** their owner of any realistic opportunity either to bring them home after they have been purchased or to move them from one home to another. In fact, at oral argument before this court, the state acknowledged that, in light of that statutory prohibition, there may be no lawful means of doing either.[43] In contrast to other statutory schemes that have been found not to substantially burden second amendment rights; see, e.g., *United States v. Decastro*, supra, 682 F.3d at 168 (prohibition of 18 U.S.C. § 922[a][3] on transporting into person's state of residence firearms acquired outside of state does not substantially burden second amendment rights because it neither "keep[s] someone from purchasing a firearm in [his or] her home state, which is presumptively the most convenient place ***140** to buy anything" nor "bar[s] purchases from an out-of-state supplier if the gun is first transferred to a licensed gun dealer in the purchaser's home state," and, therefore, there were "ample alternative means of acquiring firearms for self-defense purposes"); § 29–38's categorical ban on transporting dirk knives and police batons from one home to another operates as a significant infringement on the defendant's right to keep and bear arms in his home, such that heightened judicial scrutiny of that prohibition is warranted. See *Heller v. District of Columbia*, supra, 670 F.3d at 1255, 1257 (court subjected firearm registration requirements to heightened scrutiny because they made "it considerably more difficult for a person lawfully to acquire and keep a firearm, including a handgun, for the purpose of self-defense in the home"); *United States v. Booker*, 644 F.3d 12, 25 (1st Cir.2011) (statutory ban on possession of firearm by person convicted of misdemeanor crime of domestic violence implicates right to bear arms under second amendment and thereby triggers heightened scrutiny), cert. denied, —— U.S. ——, 132 S.Ct. 1538, 182 L.Ed.2d 175 (2012); *United States v. Chester*, 628 F.3d 673, 681–82 (4th Cir.2010) (same).

[42] As we explained, § 29–38(b) contains exceptions to the prohibition against transporting the weapons identified in § 29–38(a), but none of those exceptions applies to the defendant's transportation of the dirk knife and police baton in the present case, and none would apply if the defendant had been transporting those weapons to his home from their place of purchase.

[43] The state also acknowledged that the legislature did not want to "make it easy" for an owner of those weapons to possess them in the home. In fact, as we noted previously, under § 53–206, it is unlawful to carry a dirk knife or police baton under any circumstances.

[28] We also must determine, therefore, whether the statutory ban on transporting dirk knives and police batons from a former residence to a current residence satisfies the appropriate level of means-end scrutiny. As a general matter, the applicable level of scrutiny depends on "how close the law comes to the core of the [s]econd [a]mendment right and the severity of the law's burden on the right." *Ezell v. Chicago*, supra, 651 F.3d at 703; accord *Peruta v. San Diego*, 742 F.3d 1144, 1191 (9th Cir.2014) (Thomas, J., dissenting); *Peterson v. Martinez*, 707 F.3d 1197, 1218 (10th Cir.2013) (Lucero, J., concurring); see also *Heller v. District of Columbia*, supra, 670 F.3d at 1257 (level of scrutiny applicable under second amendment "depends on the nature of the conduct ***141** being regulated and the degree to which the challenged law burdens the right" [internal quotation marks omitted]); *United States v. Chester*, supra, 628 F.3d at 682 (same). "In analyzing the first prong of [this test, namely], the extent to which the law burdens the core of the [s]econd [a]mendment right, [the court relies] on *Heller's* holding that the [s]econd [a]mendment has the core lawful purpose of self-defense, [*District of Columbia v. Heller*, supra, 554 U.S. at 630, 128 S.Ct. at 2818–19], and that ... [the primary interest protected by the second amendment is] the right of law-abiding, responsible citizens to use arms in ****205** defense of hearth and home. [Id., at 635, 128 S.Ct. at 2821]....

[29] "In analyzing the second prong of [the test, namely], the extent to which a challenged prohibition burdens the [s]econd [a]mendment right ... laws which regulate only the *manner* in which persons may exercise their [s]econd [a]mendment rights are less burdensome than those [that] bar firearm [or other weapon] possession completely.... [Thus] ... regulations [that] leave open alternative channels for self-defense are less likely to place a severe burden on the [s]econd [a]mendment right than those [that] do not. Cf. [*United States v.*] *Marzzarella*, [supra, 614 F.3d at 97] (applying intermediate scrutiny to a regulation [that] leaves a person free to possess any

otherwise lawful firearm he chooses—[as] long as it bears its original serial number).” (Citations omitted; emphasis in original; internal quotation marks omitted.) *Jackson v. San Francisco*, United States Circuit Court of Appeals, Docket No. 12–17803, 746 F.3d 953 (9th Cir. March 25, 2014).

The statutory restriction in the present case strikes close to the core protection of the second amendment because it erects a virtual bar to possessing certain protected weapons, including dirk knives and police batons, in the home for the purpose of self-defense. On the other hand, this restriction on the right to have those weapons in the home does not adversely affect ***142** an individual’s ability to do the same with respect to a myriad of other weapons that fall within the purview of the second amendment. For example, under § 29–38(a), any person may transport a pistol or revolver in a motor vehicle if that person has a proper permit, and § 29–38(b)(4) permits the transportation by vehicle of an unloaded BB. gun if it is stored in the trunk or kept in a locked container other than the glove compartment or console. Similarly, under § 29–38(b)(5)(D), an individual may use a vehicle to transport a knife, the edged portion of the blade of which is four inches or more in length, for the purpose of removing one’s household goods from one place to another. Indeed, as the state concedes, the defendant was entitled to use his car to transport his machetes, sword and long dragon knife to his new home. The availability of these and other options for possessing protected weapons in the home mitigates the adverse effect of the statutory prohibition against transporting dirk knives and police batons from one home to another.

Although the defendant advocates for the application of strict scrutiny, he does not support his argument with relevant case law applying that level of review in the second amendment context. In light of the nature and extent of the restrictions at issue in the present case, we agree with the state that intermediate scrutiny represents the applicable level of constitutional review. “[A]lthough addressing varied and divergent laws, courts throughout the country have nearly universally applied some form of intermediate scrutiny in the [s]econd [a]mendment context.”[44] ***143** *New* ****206** *York State Rifle & Pistol Assn., Inc. v. Cuomo*, 990 F.Supp.2d 349, 366 (W.D.N.Y.2013).

44 See, e.g., *United States v. Chovan*, supra, 735 F.3d at 1138 (applying intermediate scrutiny to second amendment challenge to statutory ban on possession of firearms by domestic violence misdemeanant); *Drake v. Filko*, 724 F.3d 426, 428, 436 (3d Cir.2013) (intermediate scrutiny applicable to determine constitutionality of licensing scheme requiring applicant to demonstrate “ ‘justifiable need’ ” for issuance of permit to carry handgun in public), cert. denied sub nom. *Drake v. Jerejian*, ––U.S. ––––, 134 S.Ct. 2134, 188 L.Ed.2d 1124 (2014); *Woollard v. Gallagher*, 712 F.3d 865, 876 (4th Cir.) (challenge to “good-and-substantial-reason requirement” for obtaining state handgun permit for carrying handgun outside home was subject to intermediate scrutiny), cert. denied, –– U.S. ––––, 134 S.Ct. 422, 187 L.Ed.2d 281 (2013); *Kachalsky v. Westchester*, supra, 701 F.3d at 83, 96 (intermediate scrutiny appropriate for determination of whether licensing scheme requiring applicant to demonstrate “ ‘proper cause’ ” for issuance of license to carry concealed handgun in public passes muster under second amendment); *Heller v. District of Columbia*, supra, 670 F.3d at 1261 (challenge to semiautomatic rifle and large capacity magazine ban subject to intermediate scrutiny); *Heller v. District of Columbia*, supra, 670 F.3d at 1257 (constitutionality of firearm registration scheme evaluated under intermediate scrutiny); *United States v. Booker*, supra, 644 F.3d at 25 (ban on prohibition against possession of firearms by person convicted of misdemeanor crime of domestic violence must satisfy intermediate scrutiny to withstand second amendment challenge); *United States v. Masciandaro*, supra, 638 F.3d at 471 (intermediate scrutiny applicable to challenge to ban on carrying or possessing loaded handgun in motor vehicle within national park area); *United States v. Reese*, 627 F.3d 792, 802 (10th Cir.2010) (applying intermediate scrutiny to second amendment challenge to 18 U.S.C. § 922[g][8], which prohibits individual from possessing firearm while being subject to domestic protection order), cert. denied, –– U.S. ––––, 131 S.Ct. 2476, 179 L.Ed.2d 1214 (2011); *United States v. Marzzarella*, supra, 614 F.3d at 97 (ban on possession of weapon with obliterated serial number must pass intermediate scrutiny); *Shew v. Malloy*, supra, 994 F.Supp.2d at 247 (challenge to semiautomatic firearm and large capacity magazine ban reviewed under intermediate scrutiny standard); *New York State Rifle & Pistol Assn., Inc. v. Cuomo*, 990 F.Supp.2d 349, 367 (W.D.N.Y.2013) (challenge to law restricting, inter alia, availability of assault weapons and large capacity magazines reviewed under intermediate scrutiny standard).

[30] [31] [32] Accordingly, we turn to the question of whether § 29–38, as applied to the facts of the present case, survives intermediate scrutiny. To establish that it does, the state must demonstrate that the absolute ban on transporting dirk knives and police batons is “substantially related to an important government objective.” *Clark v. Jeter*, 486 U.S. 456, 461, 108 S.Ct. 1910, 100 L.Ed.2d 465 (1988); see also *Kachalsky v. Westchester*, supra, 701 F.3d at 96 (“[challenged law must be] substantially related to the achievement of an

important governmental interest"). "In making this determination, substantial deference ***144** to the predictive judgments of [the legislature] is warranted.... The [United States] Supreme Court has long granted deference to legislative findings regarding matters that are beyond the competence of courts.... In the context of firearm [or weapon] regulation, the legislature is far better equipped than the judiciary to make sensitive public policy judgments (within constitutional limits) concerning the dangers in carrying firearms [or other weapons] and the manner to combat those risks.... Thus, [the court's] role is only to [ensure] that, in formulating its judgments, [the legislature] has drawn reasonable inferences based on substantial evidence.... Unlike [with] strict scrutiny review, [the court is] not required to ensure that the legislature's chosen means [are] narrowly tailored or the least restrictive available means to serve the stated governmental interest. To survive intermediate scrutiny, the fit between the challenged regulation need only be substantial, not perfect." (Citations omitted; internal quotation marks omitted.) *Kachalsky v. Westchester*, supra, at 97; see also *Kerrigan v. Commissioner of Public Health*, 289 Conn. 135, 160–61, 957 A.2d 407 (2008).

[33] [34] [35] Nevertheless, to establish the requisite substantial relationship between the purpose to be served by the statutory provision and the means employed to achieve that end, the explanation that the state proffers in defense of the provision ****207** must be "exceedingly persuasive." (Internal quotation marks omitted.) *United States v. Virginia*, 518 U.S. 515, 533, 116 S.Ct. 2264, 135 L.Ed.2d 735 (1996). Moreover, "[t]he justification must be genuine, not hypothesized or invented post hoc in response to litigation. And it must not rely on overbroad generalizations...." Id. The reason for this requirement is to ensure "that the validity of [the challenged statute] is determined through reasoned analysis rather than through the mechanical application of traditional, ***145** often inaccurate, assumptions." (Internal quotation marks omitted.) *State v. Dyous*, 307 Conn. 299, 318, 53 A.3d 153 (2012). "[I]n judging the closeness of the relationship between the means chosen ... and the government's interest, three interrelated concepts must be considered: the factual premises [that] prompted the legislative enactment, the logical connection between the remedy and those factual premises, and the breadth of the remedy chosen." (Internal quotation marks omitted.) Id., at 327, 53 A.3d 153.

[36] [37] Post-*Heller* case law supports the commonsense conclusion that the core right to possess a protected weapon in the home for self-defense necessarily entails the right, subject to reasonable regulation, to engage in activities necessary to enable possession in the home.[45] ***146** Thus, the safe transportation of weapons protected by the second amendment is an essential corollary of the right to possess them in the home for self-defense when such transportation is necessary to effectuate that right.[46] Conversely, in rejecting second ****208** amendment challenges to measures prohibiting the possession of handguns outside the home, courts have deemed it significant that those regulatory schemes contained provisions including, in addition to the right to possess handguns in the home, limited exceptions permitting the transportation of handguns between homes, or between home and dealer or repairer.[47]

45 For example, in *Ezell v. Chicago*, supra, 651 F.3d at 684, the Seventh Circuit Court of Appeals held that the plaintiffs were very likely to prevail on their second amendment challenge to an ordinance of the defendant, the city of Chicago (city), that simultaneously mandated firing range training as a condition of lawful firearm possession and banned firing ranges in the city. Id., at 689–90. In reaching its conclusion, the court observed that "[t]he right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use; the core right [would not] mean much without the training and practice that make it effective." Id., at 704. The court described the range ban, which "prohibit[ed] the law-abiding, responsible citizens of [the city] from engaging in target practice in the controlled environment of a firing range;" (internal quotation marks omitted) id., at 708; as "a serious encroachment on the right to maintain proficiency in firearm use, an important corollary to the meaningful exercise of the core right to possess firearms for self-defense. That the [c]ity conditions gun possession on range training is an additional reason to closely scrutinize the range ban." (Emphasis omitted.) Id. Observing that the city's own witnesses had "testified to several common-sense range safety measures that could be adopted short of a complete ban;" id., at 709—measures that were designed to address the city's interest in preventing firearms accidents and the possible theft of firearms from range users by criminals; see id., at 692—the court concluded that the "the [firing range] ban [was] wholly out of proportion [with] the public interests the [c]ity claims it serves." Id., at 710. Indeed, even the concurring judge, who would have afforded more credence to the city's articulated public safety concerns, nevertheless agreed that the ordinance was unconstitutional to the extent that it barred gun owners from transporting their weapons for practice purposes. See id., at 715 (Rovner, J., concurring in the judgment) ("if the ordinance both prohibits gun owners from transporting their own weapons and prevents ranges from lending weapons for practice, then those aspects of the ordinance must be enjoined").

[46] In *Bateman v. Perdue*, 881 F.Supp.2d 709 (E.D.N.C.2012), for example, the District Court applied strict scrutiny in invalidating a North Carolina statutory scheme that made it a misdemeanor "for any person to transport or possess off his own premises *any dangerous weapon* or substance in any area in which a state of emergency has been declared;" (emphasis added; internal quotation marks omitted) id., at 711; and "authorize [d] government officials to impose further prohibitions and [restrictions on] the possession, transportation, sale, purchase, storage, and use of dangerous weapons and substances during a state of emergency." (Internal quotation marks omitted.) Id. In concluding that these statutes violated the second amendment, the court emphasized that they "burden[ed] the rights of [law-abiding] citizens;" id., at 715; and, "[m]ost significantly ... [prohibited law-abiding] citizens from purchasing and transporting to their homes firearms and ammunition needed for self-defense." Id.; see also id., at 715–16 (noting that, under challenged statutory scheme, "government officials may ... ban the possession, transportation, sale, purchase, storage or use of dangerous firearms and ammunition during a declared state of emergency—even within one's home where the need for defense of self, family, and property is most acute" [internal quotation marks omitted]).

[47] See, e.g., *Young v. Hawaii*, 911 F.Supp.2d 972, 990 (D.Haw.2012) ("[The challenged statutes] require that firearms be confined to the possessor's place of business, residence or sojourn but allow lawful transport between those places and repair shops, target ranges, licensed dealerships, firearms shows, firearms training, and police stations.... People with a license to carry ... are exempt from the provisions. [The statutes] do not violate ... [s]econd [a]mendment rights. [They] do not restrict the core protection afforded by the [s]econd [a]mendment.... They only apply to carrying a weapon in public." [Citations omitted; internal quotation marks omitted.]); *Doe v. Wilmington Housing Authority*, 880 F.Supp.2d 513, 535 (D.Del.2012) (applying intermediate scrutiny in rejecting second amendment challenge to public housing authority policy prohibiting possession of firearms in common areas of housing projects upon concluding that fit between restriction and authority's interest in safety was "reasonable" because, inter alia, "residents are permitted to lawfully possess firearms within the confines of their homes, that is, their particular assigned units," "[r]esidents ... have the right to transport lawfully owned and obtained weapons to and from their units," and, "in the course of such transportation, should the need arise, they may use their weapons for purposes of self-defense"), rev'd in part on other grounds, 568 Fed.Appx. 128 (3d Cir.2014); *Williams v. State*, 417 Md. 479, 486–87, 496–97, 10 A.3d 1167 (holding that state statute prohibiting carrying or transporting of handgun without permit did not violate second amendment when statute also provided exceptions for, inter alia, home possession, moving, repair, and travel to and from place of purchase and sale), cert. denied, —– U.S. ——, 132 S.Ct. 93, 181 L.Ed.2d 22 (2011).

[38] ***147** We conclude that the state has not provided sufficient reason for extending the ban on transporting dirk knives and police batons to a scenario, like the present one, in which the owner of those weapons uses his vehicle to move them from a former residence to a new one. Indeed, the state has proffered no such justification; it relies, rather, on the assertion that § 29–38 "substantially furthers its public safety objective by imposing a permit requirement on having pistols and revolvers in the car and by identifying a few inherently dangerous weapons, among them a dirk knife and a police baton, that are illegal to carry or transport under any circumstances." Section 29–38 contains a variety of limited exceptions, however, permitting the transportation of other weapons that the legislature also has determined to be dangerous, and some of those exceptions pertain to weapons that are significantly more lethal than dirk knives and police batons, such as handguns and long knives, including machetes and swords. This fact defeats any claim that a similarly limited exception allowing the transportation of dirk knives and police batons from one home to another would frustrate or impede the concededly compelling ****209** governmental interest of ensuring the safety of the public and police officers. See, e.g., ***148** *United States v. Marzzarella*, supra, 614 F.3d at 99 ("[i]f a regulation fails to cover a substantial amount of conduct implicating the asserted compelling interest, its underinclusiveness can be evidence that the interest is not significant enough to justify the regulation"). As those existing exceptions demonstrate, the legislature is fully capable of adopting reasonable regulatory measures, in the interest of public safety, short of a ban on transporting dirk knives and police batons from one residence to another, while also accommodating the defendant's second amendment right to keep those weapons in the home for self-defense. See, e.g., *Commonwealth v. Reyes*, 464 Mass. 245, 256–57, 982 N.E.2d 504 (2013) (rejecting second amendment challenge to statute requiring that firearm kept in motor vehicle be stored in locked container or be equipped with mechanical lock or other safety device). As written, however, § 29–38 is not substantially related to that public safety interest because its ban on transporting dirk knives and police batons extends unnecessarily to conduct that is entitled to second amendment protection.[48] The defendant has established, therefore, that ***149** his conviction under § 29–38(a) for

using his Jeep to transport a dirk knife and police baton to his new residence violated his second amendment right to keep and bear arms. Consequently, his conviction cannot stand.

[48] Compare *Griffin v. State*, 47 A.3d 487, 491 (Del.2012) (defendant had state constitutional right to carry concealed knife in his home), with *People v. Mitchell*, 209 Cal.App.4th 1364, 1375–76, 148 Cal.Rptr.3d 33 (2012) (applying intermediate scrutiny and rejecting second amendment challenge to statute proscribing carrying of concealed dirk or dagger because [1] "the statute does not apply to the open carrying of a dirk or dagger, and it excludes from its coverage an openly suspended sheathed knife, as well as nonswitchblade folding and pocketknives kept in a closed or unlocked position," [2] "the statute provides other means of carrying a dirk or dagger for self-defense," [3] "[t]he statute does not contain any express restriction on concealment of weapons on the person at home, and [4] to the extent it is capable of being applied improperly in the home context ... any overbreadth can be cured on a case-by-case basis"), review denied, California Supreme Court, Docket No. S206830 (Cal. January 23, 2013), and *Seattle v. Montana*, 129 Wash.2d 583, 595–96, 919 P.2d 1218 (1996) (rejecting state constitutional challenge to municipal ordinance that restricted carrying of dangerous knife because ordinance was "not a complete ban on the possession and carrying of knives" insofar as it permitted "possession of fixed blade knives at home or [at] a place of business," and carrying "for hunting or fishing purposes, for work, or to and from home or work").

[39] [40] [41] We turn, then, to the appellate remedy. "It is well established that this court has a duty to construe statutes, whenever possible, to avoid constitutional infirmities.... [W]hen called [on] to interpret a statute, we will search for an effective and constitutional construction that reasonably accords with the legislature's underlying intent.... This principle directs us to search for a judicial gloss ... that will effect the legislature's will in a manner consistent with constitutional safeguards." (Citations omitted; internal quotation marks omitted.) *State v. Cook*, 287 Conn. 237, 245, 947 A.2d 307, cert. denied, 555 U.S. 970, 129 S.Ct. 464, 172 L.Ed.2d 328 (2008); see also, e.g., *State v. Indrisano*, 228 Conn. 795, 805, 640 A.2d 986 (1994) ("we may also add interpretive gloss to a challenged statute in order to render it constitutional" [internal quotation marks omitted]). In the present case, however, even if we were to place a gloss on § 29–38 to save it from constitutional infirmity by excepting from its purview the transportation of protected weapons, including dirk knives and police batons, from one residence ****210** to another, the state has conceded that that is what the defendant was doing when he was found to have those weapons in his vehicle. As a result, placing such a gloss on § 29–38 would not provide the state with a lawful means of establishing that the defendant's possession of the dirk knife and police baton in his vehicle violated § 29–38.

[42] Furthermore, we already have determined that § 29–38 plainly does *not* except such conduct from its reach. See part I B of this opinion. We previously have declined to place a gloss on a statute that contradicts its plain meaning; *Keller v. Beckenstein*, 305 Conn. 523, 536–37, 46 A.3d 102 (2012); and we see no reason to do so in ***150** the present case. Indeed, following such an approach would be incompatible with the principle that it is appropriate to place a judicial gloss on a statutory provision only if that gloss comports with the legislature's underlying intent. See *State v. Cook*, supra, 287 Conn. at 245, 947 A.2d 307. When, as in the present case, however, such a gloss is not consistent with the intent of the legislature as expressed in the clear statutory language, we will not rewrite the statute so as to render it constitutional. Thus, because § 29–38 is unconstitutional as applied to the facts of this case, the defendant is entitled to a judgment of acquittal on both of the charges for which he was convicted.

Finally, we wish to emphasize that our holding is a narrow one and that the legislature is free to regulate the carrying and transportation of all weapons, including, of course, dirk knives and police batons, in the interest of public safety. Nothing in this opinion is meant to limit that broad regulatory authority, except insofar as the legislature may seek to use that authority in a manner that cannot be squared with the rights protected by the second amendment. Because the existing statutory scheme places an undue burden on the defendant's right to possess and keep his dirk knife and police baton in his home by making it impossible for him to transport those weapons there, that scheme does not pass constitutional muster as applied to the defendant's conduct in the present case.

The judgment is reversed and the case is remanded with direction to render judgment of acquittal on both counts of having a weapon in a motor vehicle.

In this opinion the other justices concurred.

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