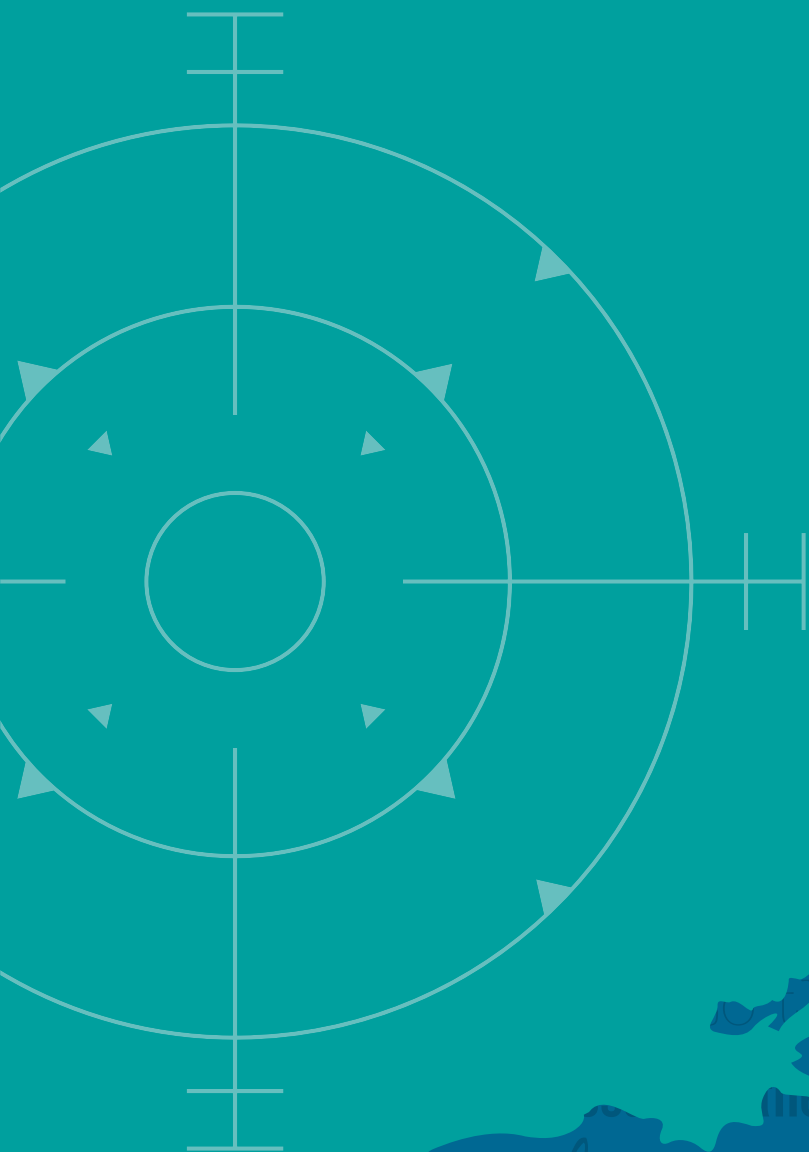


To Keep & Bear Arms

An Individual or Collective Right?



To Keep & Bear Arms: An Individual or Collective Right?

A Second Amendment Symposium

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.
- Second Amendment to the United States Constitution

Critical Engagement Question:

Is the right to keep and bear arms in the United States an individual or a collective right?

Overview:

The Second Amendment states that the “right of the people to keep and bear Arms shall not be infringed.” This seemingly unequivocal declaration, however, is rendered ambiguous by the reference to a “well regulated Militia” which precedes it. The confusing construction of this amendment has spawned an enduring debate over whether the Second Amendment guarantees an individual or a collective right. In June 2008, the U.S. Supreme Court considered this issue in *District of Columbia v. Heller*. The decision landed decisively on the side of individual rights, and opened the door for further legal challenges to state and local laws that regulate gun ownership and possession.

Objectives:

- To teach historic arguments that have been made in support of the individual and collective rights interpretations of the Second Amendment.
- To promote an understanding of the contemporary gun control debate by analyzing relevant primary source documents.
- To explore the balance between individual and collective rights by examining gun control policies across the nation.
- To draw parallels between modern and historic debates.
- To enable students to craft their own gun control policies that demonstrate comprehension of the Second Amendment, as well as the historic and contemporary debates surrounding its interpretation.

Standards:

NCHS: Era 3, Standard 3B; Era 10, Standard 2E

NCSS: Strands 2, 6 and 10

Illinois: Goal 14, Learning Standard A, B, D and F; Goal 16, Learning Standard A, B and D

Student Materials:

Item A: *Second Amendment Concept Formation Worksheet*

Item B: *United States v. Miller (1939): Majority Opinion & Key Terms*

Item C: *District of Columbia v. Heller (2008): Majority Opinion & Key Terms*

Item D: *District of Columbia v. Heller (2008): Dissenting Opinion & Key Terms*

Item E: *Symposium Worksheet*

Teacher Materials:

Gun Control Policies by State Poster

Additional resources, including background information for this lesson, links to several helpful and relevant Web sites, and downloadable worksheets can be accessed at FreedomMuseum.US/Lessons/ToKeepAndBearArms.

Time and Grade Level:

One 90-minute or two 45-minute high school class periods with post-activity homework.

Warm-Up:

1. Distribute copies of Item A. Ask students to complete these individually or work in groups.
2. Lead a discussion of student responses. In the process, distinguish between the collective and individual rights interpretations of the Second Amendment. The collective rights interpretation views gun ownership as a constitutional right only in so far as it facilitates participation in a state militia. State and federal restrictions on gun ownership are therefore permissible, and perhaps even advisable. The individual rights interpretation is more expansive in scope, allowing for individual gun ownership for purposes of self-defense in addition to militia duties. It calls for strict scrutiny of any local, state and federal laws affecting gun ownership.
3. Provide an overview of the lesson that follows, referencing the Second Amendment and two Supreme Court cases that address its parameters: *United States v. Miller* (1939) and *District of Columbia v. Heller* (2008). Discuss how these landmark cases relate to the contemporary debate.

Activity:

1. Distribute one copy of the *Symposium Worksheet* (Item E) to each student. This worksheet will facilitate the balance of the lesson.
2. Divide the class into study groups of three. Each group will examine the majority opinion in *U.S. v. Miller* (1939), as well as the majority and dissenting opinions in *District of Columbia v. Heller* (2008).
3. Distribute sets of the three primary source documents to each study group (Items B, C and D). Assign one document to each group member.
4. Ask students to first work independently in reviewing their assigned document and completing the corresponding section of the graphic organizer included in the *Symposium Worksheet*. Upon completing this task, students should share individual findings with their study group, so that each member completes the graphic organizer in its entirety.
5. Next, instruct students to work as a team in evaluating the strengths and weaknesses of each opinion. A graphic organizer is included in the *Symposium Worksheet* for this purpose. Encourage students to consider whether the arguments presented are consistent and/or use history to support key points.
6. Finally, ask groups to speculate on how the majority opinion in *District of Columbia v. Heller* will impact state and local gun laws. Direct them to the “limitations” section of Justice Scalia’s opinion. Reference the enclosed *Gun Control Policies by State* poster, and highlight variances by state and region. Discuss how the *Heller* decision may impact state and local gun laws through legal challenges and lawmaking, therefore changing the complexion of this map.

Homework:

As a culminating activity, students are to explore the current gun laws in a given state or the nation as a whole. You may decide to assign the entire class to a single state (perhaps their own) or the nation, divide states amongst the class or allow them to choose one on their own. Encourage them to examine perspectives on each side of the gun control debate. The Brady Campaign to Prevent Gun Violence (bradycampaign.org) and the National Rifle Association (nra.org/home.aspx) are the most prominent sources. To explore national regulations on firearms ownership, consult the Bureau of Alcohol, Tobacco and Firearms (atf.gov). Then, students should draft a 1.5-2 page position paper that a) details existing state gun laws, b) assesses how they will be impacted by the *Heller* decision and c) the policy changes, if any, they recommend as a result.

Extensions:

1. **Seen & Heard Contest Entry:** Encourage high school students to make their voices heard on this subject by entering the Freedom Museum’s annual *Seen & Heard National Student Expression Contest*. Visit FreedomMuseum.US/SeenAndHeard to learn more.
2. **Class Presentation:** Encourage students to explore the root causes of gun violence and present their findings to the class. Variables to consider include gun control policies, unemployment, poverty, school quality, neighborhood policing and, on a broader level, civic health. Data on crime trends frequently associated with gun violence can be found on the Department of Justice Web site at ojp.usdoj.gov/bjs.
3. **Civic Engagement Project:** Ask students to evaluate the effectiveness of gun violence prevention programs in their own community and/or school. After assessing perceived strengths and weaknesses, encourage students to craft a proposal for a civic engagement project designed to reduce gun violence. Consider the potential for partnering with a community organization to establish a sustainable service learning opportunity.
4. **Letter Writing Campaign:** Instruct students to exercise their influence with public officials who shape gun-related policies through a coordinated letter writing campaign. Letters-to-the-editor, articles in student newspapers and blog entries are alternate vehicles for communicating beyond the classroom.

Second Amendment Concept Formation Worksheet

Name

Introduction:

On September 25, 1789, Congress approved twelve amendments to the U.S. Constitution for state approval. A little more than two years later, on December 15, 1791, the requisite number of states ratified ten of the twelve amendments. Renumbered one through ten, they collectively came to be known as the Bill of Rights.

The Second Amendment, the focus of this lesson, reads as follows: “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.”

Directions:

In order to better understand the meaning and significance of the Second Amendment, we will analyze its key terms. Please answer each of the questions that follow.

1. What does it mean to *keep and bear Arms*?
2. What does it mean to *infringe* upon a right to keep and bear arms? What would be an example of infringement in this context?
3. Who are the *people* that have this Second Amendment right?
4. What is a *Militia*? What is the definition of a *well regulated Militia*?
5. Do militias exist in the U.S. today? If so, provide an example.
6. Does a *free State* mean an individual state, such as Illinois, or the nation as a whole?
7. Why would the framers of the Constitution believe that a *well regulated Militia* was necessary to the security of a *free State*?
8. In your opinion, does the Second Amendment guarantee the right for members of the general public to own guns, or only for members of a militia? Explain.

United States v. Miller

Majority Opinion & Key Terms

Name

United States v. Miller 207 U.S. 174 (1939), Justice McReynolds delivered the opinion of the Court (Collective Right).

Case Synopsis:

An indictment in the District Court Western District Arkansas, charged that Jack Miller and Frank Layton did unlawfully, knowingly, willfully, and feloniously transport in interstate commerce from the town of Claremore in the State of Oklahoma to the town of Siloam Springs in the State of Arkansas a certain firearm, to-wit, a double barrel 12-gauge Stevens shotgun having a barrel less than 18 inches in length...said defendants, at the time of so transporting said firearm in interstate commerce as aforesaid, not having registered said firearm as required (by law),...not having in their possession a stamp-affixed written order,...and the regulations issued under authority of the said Act of Congress known as the 'National Firearms Act' approved June 26, 1934.

(The defendant) alleged: "The National Firearms Act is not a revenue measure but an attempt to usurp police power reserved to the States, and is therefore unconstitutional. Also, it offends the inhibition of the Second Amendment to the Constitution..." The District Court held that (a provision) of the Act violates the Second Amendment. It accordingly sustained the (defendant) and quashed the indictment.

Note: The National Firearms Act imposed a tax on the manufacture and transfer of certain firearms, including machine guns, short-barreled rifles and shotguns, and destructive devices like grenades and bombs. The Act also required that these weapons be registered.

Key Terms Addressed (Second Amendment provisions italicized):

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. Certainly 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.

The Constitution (in Article I, Section 8, Clause 16) as originally adopted granted to the Congress power—"To provide for calling forth the *Militia* to execute the Laws of the Union, suppress Insurrections and repel Invasions; To 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." With obvious purpose to assure the continuation and render possible the effectiveness of such forces the declaration and guarantee of the Second Amendment 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 and legislation of Colonies and States, and the writings of approved commentators. These show plainly enough that the *Militia* comprised all males physically capable of acting in concert for the common defense. "A body of citizens enrolled for military discipline." And further, that ordinarily when called for service these men were expected to appear *bearing arms* supplied by themselves and of the kind in common use at the time.

Most if not all of the States have adopted provisions touching the *right to keep and bear arms*. Differences in the language employed in these have naturally led to somewhat variant conclusions concerning the scope of the right guaranteed. But none of them seem to afford any material support for the challenged ruling of the court.

District of Columbia v. Heller

Majority Opinion & Key Terms

Name _____

District of Columbia v. Heller 07 U.S. 290 (2008), Justice Scalia delivered the opinion of the Court (Individual Right).

Case Synopsis:

The District of Columbia generally prohibits the possession of handguns. It is a crime to carry an unregistered firearm, and the registration of handguns is prohibited. 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. District of Columbia law also requires residents 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.

Respondent Dick Heller is a D.C. special police officer authorized to carry a handgun while on duty at the Federal Judicial Center. 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 Columbia seeking, 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.”

Key Terms Addressed (Second Amendment provisions italicized):

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.

1. Operative Clause:

- a. *Right of the people*. Reading the Second Amendment as protecting only the *right to keep and bear Arms* in an organized militia...fits poorly with the operative clause’s description of the holder of that right as *the people*.
- b. *Keep and bear arms*. Before addressing the verbs *keep and bear*, we interpret their object: *Arms*. The 18th-century meaning is no different from the meaning today.

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.

Keep arms was simply a common way of referring to possessing arms, for militiamen and everyone else.

At the time of the founding, as now, to *bear* meant to “carry.”

- c. *Meaning of the operative clause*: Putting all of these textual elements together, we find that they guarantee the individual right to possess and carry weapons in case of confrontation.

2. Prefatory Clause:

- a. *Well regulated Militia*. The ordinary definition of the *militia* as all able-bodied men.

The adjective well-regulated implies nothing more than the imposition of proper discipline and training.

- b. *Security of a Free State*. The phrase *security of a free state* meant “security of a free polity,” not security of each of the several States as the dissent argued.

3. *Relationship Between Prefatory and Operative Clause*: It is entirely sensible that 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 was codified in a written Constitution.

4. *Relationship to United States v. Miller (1939)*: *Miller* stands only for the proposition that the Second Amendment right, whatever its nature, extends only to certain types of weapons.

5. *Limitations*: Like most rights, the right secured by the Second Amendment is not unlimited. Nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms. 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.” We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of “dangerous and unusual weapons.”

6. *Conclusion*: We are aware of the problem of handgun violence in this country, and we take seriously the concerns raised by (those) who believe that prohibition of handgun ownership is a solution. The Constitution leaves the District of Columbia a variety of tools for combating that problem, 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. 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.

District of Columbia v. Heller

Dissenting Opinion & Key Terms

Name _____

District of Columbia v. Heller 07 U.S. 290 (2008), Justice Stevens, dissenting (Collective Right).

Introduction:

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 is the question presented by this case. The text of the Amendment, its history, and our decision in *United States v. Miller* (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.

The opinion the Court announces today fails to identify any new evidence supporting the view that the 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.

Key Terms Addressed (Second Amendment provisions italicized):

1. *Prefatory Clause*: The preamble to the Second Amendment makes three important points. It identifies the preservation of the *militia* as the Amendment's purpose; it explains that the *militia* is necessary to the security of a free State; and it recognizes that the *militia* must be *well regulated*.

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 (majority) 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." 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.

2. Operative Clause:

a. *Right of the people*. 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.

b. *Keep and bear arms*. Although the (majority'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.

The single right that it does describe is both a duty and a right to have *arms* available and ready for military service, and to use them for military purposes when necessary.

Different language surely would have been used to protect nonmilitary use and possession of weapons from regulation if such an intent had played any role in the drafting of the Amendment.

3. *Relationship between prefatory and operative clause*: 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*.

4. *Relationship to United States v. Miller (1939)*: 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*." The key to that decision did not 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.

5. *Conclusion*: 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 citizen" the right to keep and use weapons in the home for self-defense is "off the table." Given the presumption that most citizens are law abiding, and the reality that the need to defend oneself may suddenly arise in a host of locations outside the home, 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.

Symposium Worksheet

To Keep & Bear Arms: An Individual or Collective Right?

Name

Directions:

After convening in your assigned study group, please follow the steps listed below. Afterward, be prepared to discuss your findings with the entire class.

1. Read your assigned Supreme Court opinion. Use the graphic organizer below to keep track of how each Justice defined the key terms listed. If one or more of the terms is not specifically addressed, write "N/A" or "not applicable."

Terms/Cases	U.S. v. Miller (Majority)	D.C. v. Heller (Majority)	D.C. v. Heller (Dissent)
<i>Well regulated</i>			
<i>Militia</i>			
<i>Free state</i>			
<i>Of the People</i>			
<i>Keep and bear</i>			
<i>Arms</i>			

2. Share your findings with the rest of your study group, and take notes in the graphic organizer above as other group members present their Supreme Court cases.

3. In your study group, consider and discuss the strengths and weaknesses of the three separate Supreme Court opinions. Use the graphic organizer below for this purpose. Pay special attention to whether or not the Justices' arguments are consistent, and whether they use history to support their positions.

Cases	Strengths	Weaknesses
U.S. v. Miller (Majority)		
D.C. v. Heller (Majority)		
D.C. v. Heller (Dissent)		

4. Given that the majority opinion in *D.C. v. Heller* is now the law of the land, how do you think this ruling will impact state and local gun laws? Answer this as a group, and pay special attention to the limitations on the ruling that Justice Scalia identified (Item D, Number 5). Write your response on the back of this worksheet.

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- Teacher seminars
- Summer institutes
- Graduate courses
- Curriculum guides
- Timely lesson plans
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- First Division Museum
- Robert R. McCormick Research Center
- Robert R. McCormick Museum

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- Sign up for *FreeSource*, our monthly e-newsletter just for educators, at FreedomMuseum.US/Signup.
- Check out the latest First Amendment and freedom-related news at FreedomMuseum.US/TakeAction/TimelyNews.
- Join an ongoing conversation about freedom on our blog at FanningtheFlames.Blogspot.com.
- Follow us at [Twitter.com/FreedomMuseum](https://twitter.com/FreedomMuseum).
- Become a Fan of the Freedom Museum on Facebook.

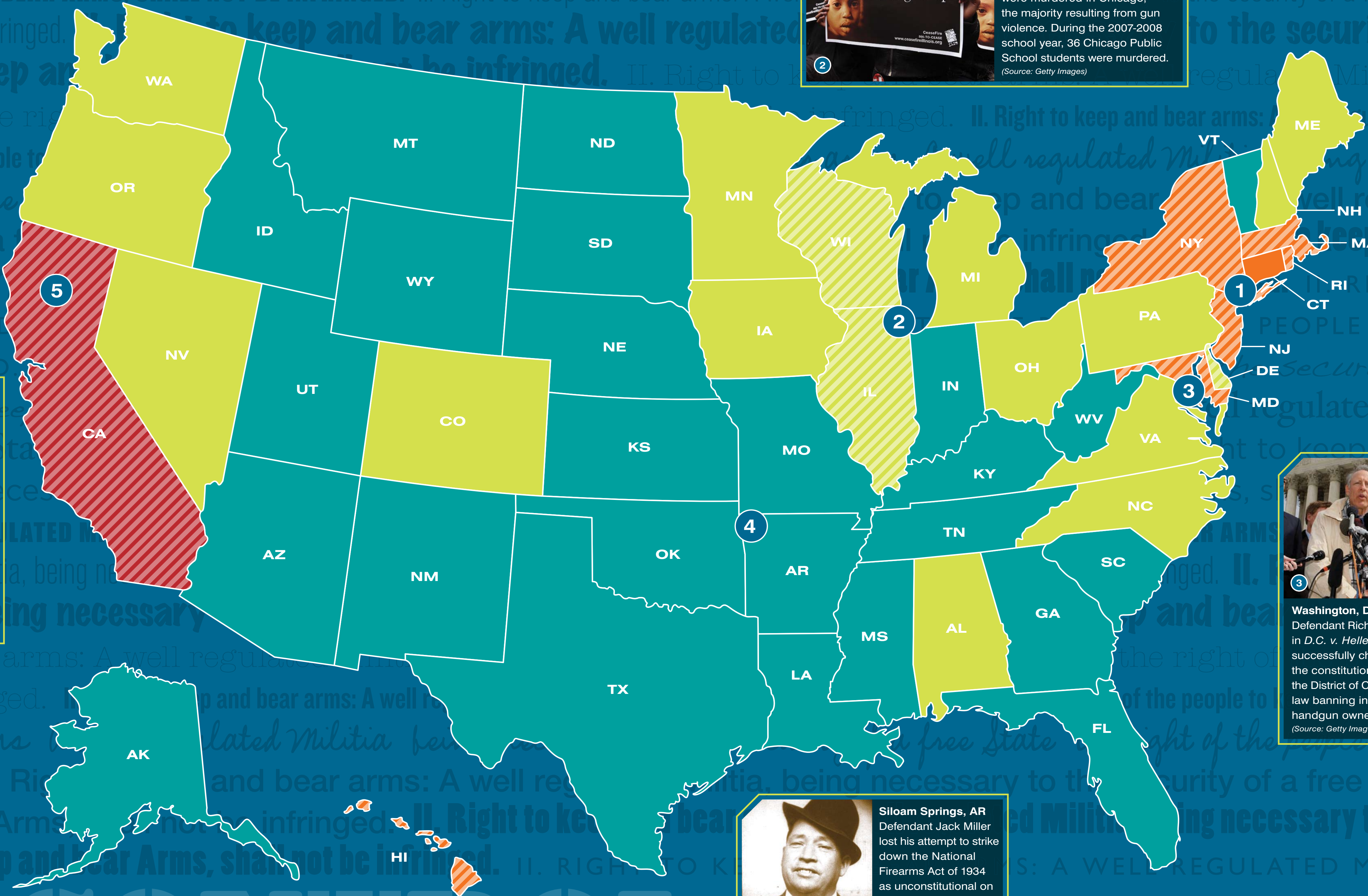
GUN CONTROL POLICIES BY STATE

Restrictiveness of Gun Control Laws*

*Brady Campaign to Prevent Gun Violence, 2008 State Scorecard

- MOST RESTRICTIVE
- MODERATELY RESTRICTIVE
- LESS RESTRICTIVE
- LEAST RESTRICTIVE
- STATES THAT PROHIBIT INDIVIDUALS FROM CARRYING A WEAPON**

**National Rifle Association, Institute for Legislative Action, 2008



California According to the Brady Campaign to Prevent Gun Violence, California is the state with the strongest gun laws. They include limitations on assault weapons ownership, concealed handgun permits and handgun sales to those under 21 years of age.



Chicago, IL Students take a stance against gun violence that has rattled their community. In 2008 alone, more than 500 were murdered in Chicago, the majority resulting from gun violence. During the 2007-2008 school year, 36 Chicago Public School students were murdered. (Source: Getty Images)



New York, NY Thirty-two female protesters wearing ribbons with the Virginia Tech University colors lie down in Times Square in New York on May 24, 2007 in commemoration of the 32 victims of the Virginia Tech shooting rampage. The women laid on the ground for a few minutes to symbolize the length of time it took for the shooter to obtain a gun in the Commonwealth of Virginia. (Source: Getty Images)



Washington, D.C. Defendant Richard Heller, in *D.C. v. Heller* (2008), successfully challenged the constitutionality of the District of Columbia's law banning individual handgun ownership. (Source: Getty Images)



Siloam Springs, AR Defendant Jack Miller lost his attempt to strike down the National Firearms Act of 1934 as unconstitutional on Second Amendment grounds in *U.S. v. Miller* (1939).