All for One or One for All? The Lawsuit that Reshaped Modern Gun Rights

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There exists a saying as old as time — lead and metal may break my bones, but the words of the Supreme Court will never not affect me. Nowhere is that truer than in *D.C. v. Heller*, where the Court struck down the District of Columbia's handgun ban and held that the Second Amendment protected an individual's right to possess firearms.[2] The opinion's reasoning relied heavily on a linguistic balance that might have tipped differently had the words been rearranged.[3] What if the same twenty-seven words were written differently? Suppose the framers had said: "To maintain a well-regulated militia, being necessary to the security of free states, the right to keep and bear arms shall not be infringed." That simple grammatical shift — emphasizing the Militia and pluralizing "states" — could alter the entire constitutional landscape. This paper argues that the *Heller* Court's interpretation was text-dependent. A product not just of the Second Amendment's words, but also of their order.[4] In constitutional law, syntax is substance.[5]

I) Second Amendment

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."[6] In *Heller,* Justice Scalia's majority opinion separated the prefatory clause ("A well-regulated Militia…") from the operative clause ("the right of the people…"), finding that the prefatory clause announced a purpose but did not limit the individual right itself.[7]

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[2] 554 U.S. 570 (2008).
[3] *Id.* at 578-81.
[4] *Id*.
[5] Benjamin Eidelson & Matthew C. Stephenson, *The Incompatibility of Substantive Canons and Textualism*, 137 HARV. L. REV. 515, 517 (2023) (discussing the role of grammar in constitutional law).
[6] U.S. CONST. amend. II.
[7] *Heller*, 554 U.S. at 577.

II) *D.C. v. Heller*

Before *Heller*, the Supreme Court's precedent leaned toward the collective-right interpretation that the Amendment protected the states' ability to maintain militias rather than guaranteeing an individual's right to gun ownership.[8] In *United States v. Miller*, the Court upheld a federal restriction on sawed-off shotguns, reasoning that the Second Amendment protected weapons with a "reasonable relationship to the preservation or efficiency of a well-regulated militia."[9] This created a militia-centric logic, allowing for the sustainment of firearm regulations so long as they did not interfere with organized military readiness.[10]

That understanding shifted dramatically in *Heller*.[11] The Court struck down provisions of the D.C. code that effectively banned handguns and required firearms to be kept inoperable within the home.[12] The majority opinion grounded the decision in textualism — dividing the Second Amendment into its prefatory and operative clauses.[13] The majority held that the operative clause conferred an individual right. Scalia reasoned that similar phrasing in the First and Fourth Amendments ("the right of the people to peaceably assemble," and "the right of the people to be secure…") had been interpreted to protect individuals rather than states.[14] By contrast, the prefatory clause was read as expressing purpose, not limitation.[15] The majority reasoned that the Framers assumed an individual right existed first, and that an armed citizenry would naturally produce a well-regulated militia when called upon.[16]

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[8] 307 U.S. 174, 180-83 (1939).
[9] *Id.* at 178.
[10] *Id*.
[11] *Heller*, 554 U.S. at 635-36.
[12] *Id.* at 630.
[13] *Id.* at 577.
[14] *Heller*, 554 U.S. at 579.
[15] *Id.* at 580.
[16] *Heller*, 554 U.S. at 616-17.

The Court relied heavily on history in reaching this conclusion.[17] It cited English and colonial sources establishing that the right to bear arms predated the Constitution, noting that old English laws had allowed Protestant citizens to possess weapons for self-defense against royal oppression.[18] The Court found that early American state constitutions adopted similar protections, confirming that "the right of the people" referred to individuals, not the states collectively.[19] Ultimately, *Heller* transformed the meaning of the Second Amendment: what had long been interpreted as collective protection for militia readiness became an individual constitutional guarantee.[20]

III) Reconstructing the 2nd Amendment Analysis

If the Second Amendment were written as, "To maintain a well-regulated militia, being necessary to the security of free states, the right to keep and bear arms shall not be infringed," its grammatical structure would fundamentally alter the constitutional analysis.[21] The majority's reasoning depended on its ability to treat the prefatory clause as distinct, and lesser in impact, than the operative clause.[22] Justice Scalia characterized the militia reference as explanatory rather than conditional, allowing him to root the right in individual ownership rather than collective defense.[23]

Under the restructured version, "to maintain a well-regulated militia," a clear purpose is stated. It grammatically precedes and justifies the right that follows, making the militia the driving force of the provision. The operative clause would no longer stand alone; instead, the

[17] *Id.* at 580-90.
[18] *Id.* at 592.
[19] *Id.* at 579.
[20] *Id*. at 581-82.
[21] *See* Eidelson & Stephenson*, supra* note 4, at 517.
[22] *Heller*, 554 U.S. at 577-78.
[23] *Id.*

right to keep and bear arms would exist for the purpose of maintaining a militia. That syntactic dependency would dramatically narrow the scope of the right.[24]

Pluralizing "states" would also have an effect. Where the current text refers to "a free State," the reworded version emphasizes "free states," invoking federalism and the sovereignty of individual states rather than the collective nation.[25] That plural shift transforms the Amendment from a declaration of individual liberty into a structural guarantee — protecting the states' capacity to organize and arm their militias against federal interference. The emphasis moves away from personal self-defense and toward constitutional balance between national and state power.

Such wording would have affected *Miller's* interpretation, which held that the Second Amendment protected weapons with "some reasonable relationship to the preservation or efficiency of a well-regulated militia." [26] The revised text would make that relationship explicit rather than inferred. *Heller's* analysis of "the right of the people" in the First, Fourth, and Ninth Amendments would lose force, because the prefatory clause would no longer be dismissible as an explanatory clause.[27] The right would serve a civic purpose, not a standalone individual entitlement.

In *N.Y. State Rifle & Pistol Ass'n v. Bruen,* the court rejected any balancing tests and confined Second Amendment challenges to "text, history, and tradition."[28] That restructuring would also reshape the modern analytical framework."[29] With the restructured language, history would point the other way.[30] The textual purpose — "to maintain a well-regulated militia" — would likely

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[24] *See* Eidelson & Stephenson*, supra* note 4, at 517.
[25] U.S. CONST. amend. II.
[26] *Miller*, 307 U.S. at 180-83.
[27] *Heller,* 554 U.S. at 576-78.
[28] 597 U.S. 1, 26 (2022).
[29] *Id.*
[30] *See* Eidelson & Stephenson*, supra* note 4, at 517.

survive constitutional scrutiny so long as it did not affect the states' ability to field effective militias.

In practical effect, the restructured amendment would reverse the constitutional trajectory set in *Heller* and *Bruen*. Instead of an individual right incidentally supporting collective defense, it would shift the phrasing, emphasizing a collective duty that incidentally involves individuals. Courts would analyze gun regulation under principles of state readiness rather than personal liberty. The constitutional question itself would change from "What may an individual own?" to "What must the states preserve?"

Rearranging the Second Amendment's syntax would not merely clarify meaning; it would transform doctrine.[31] Under *Heller*, words created a revolution in constitutional rights. Under the restructured version, that revolution would never have happened.[32] The right to bear arms would remain anchored in civic responsibility, not personal autonomy. This is proof that in constitutional law, grammar governs power.[33]

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[31] *See* Eidelson & Stephenson*, supra* note 4, at 517.
[32] *Heller,* 554 U.S. 570.
[33] *See* Eidelson & Stephenson*, supra* note 4, at 517.