



Physicians for Social Responsibility  
Sacramento Chapter  
10 Dumfries Court  
Sacramento, California 95831  
www.sacpsr.org • info@sacpsr.org  
916-955-6333

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Zachary Tomlin

Rio Americano High School, Sacramento, California

*Bad Decisions with Deadly Consequences: The Supreme Court Rules Against Life, Liberty, and the Pursuit of Happiness*

In 2022, the most recent year for which data are available from the CDC, 48,204 U.S. residents, including 3,526 children and youth age 18 or younger, were killed with guns.<sup>i</sup> On an average day in 2022, in other words, 132 Americans, including 10 children and youth, were killed with guns. These figures are equivalent to an almost full Boeing 727 airliner crashing with no survivors every single day. And these figures don't even include the two to three-fold higher number of gunshot victims who survive their wounds, but whose lives are forever changed.

In the 1876 case of *United States v. Cruikshank*, the Supreme Court ruled the Second Amendment did not restrict the ability of state and local governments to regulate private gun ownership,<sup>ii</sup> and the Court reaffirmed this ruling 10 years later in the case of *Presser v. Illinois*.<sup>iii</sup> In 1939, the Supreme Court clarified that the “right of the people to keep and bear arms” described in the second half of the Second Amendment was directly related to the “preservation or efficiency” of the “well regulated militia” described in the first half of the Amendment.<sup>iv</sup> The Court reiterated this point in the 1980 case of *Lewis v. United States*, in which Justice Blackmun, quoting from *Miller*, wrote in his majority opinion, “[T]he 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.”<sup>v</sup>

In the 21st century, a narrow 5-4 majority of Supreme Court justices diverted from the precedent set in the four prior Supreme Court decisions mentioned above and from scores of lower court rulings. Terms like “self-defense” and “handgun” are central in the majority opinions in *District of Columbia v. Heller* (2008)<sup>vi</sup> and *McDonald v. Chicago* (2010),<sup>vii</sup> and yet these terms are absent from the history and text of the Second

Amendment or other parts of the Constitution. In the *Heller* ruling, the majority opinion states that the first half of the Second Amendment, describing the need for a “well regulated militia,” is a “prefatory clause” and does not limit the “operative clause” in the second half of the Amendment, which describes the right to “keep and bear arms.”<sup>viii</sup>

The Second Amendment is a single sentence in length. The five justice *Heller* majority, having ignored the conventions of written English, decided in 2008 that the first half of a sentence does not pertain to the second half of the same sentence. The *Heller* majority opinion, written by the late Supreme Court Justice Antonin Scalia, who claimed to be an “originalist” and to advocate for a traditional and direct interpretation of the Constitution, manufactured protections for private gun ownership that are to the liking of “gun rights” proponents but that are not in fact codified in the writings of our Founding Fathers.

If we adhere to a strict interpretation of exactly what types of “arms” our Founders were referring to back in the 1791 when the Second Amendment was ratified, a trained rifleman could fire one shot from a musket every 30 seconds which was at best minimally accurate to 100 yards.<sup>ix</sup> Today a semi-automatic AR-15 can be fired accurately over 600 yards as fast as the shooter pulls the trigger.<sup>x</sup> Such a weapon can be used to kill over 100 times more people in a minute than an 18<sup>th</sup> century musket. The Constitution was written in candlelight. The majority of Americans wouldn’t have electricity and indoor plumbing until the 1930s. Even if we accept the false argument that the Second Amendment was intended to confer an individual right to “keep and bear arms” for personal use, we cannot extrapolate the meaning of the term, “keep and bear arms,” from a time when the majority of Americans were illiterate, when a person could own another human being, and when women couldn’t vote or own property.

Many aspects of U.S. society have adapted to changes brought about in 250 years of technological and social developments, and our government has reflected these developments in its interpretation of the Constitution with one deadly exception. Since the year I was born, 2006, firearms have been the weapons used in 77% of homicides in the United States, and that percentage rose to 86% in 2021.<sup>xi</sup> Other affluent democratic powers that have legal systems similar to our own, have already adapted to the need for stronger gun regulation. Following the massacre of 35 people in Port Arthur, Australia in 1996 and the murder of a teacher and 16 students that same year in Dunblane, Scotland, the governments of both Australia and the UK moved swiftly to drastically curtail private ownership of firearms in their nations.<sup>xii</sup> A graph of the rate of gun-related deaths comparing U.S. rates with the rates in other high income democratic countries shows a tall peak that casts an enormous shadow over our claim to be leaders of the free world. Protecting the rights of the American people – and particularly our children and youth - to “life, liberty, and the pursuit of happiness” is a fundamental American value, a value that we can no longer neglect just because of the recent bad decisions of a small majority of Supreme Court justices.

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<sup>i</sup> “WISQARS Years of Potential Life Lost (YPLL) Report, 1999 and Later - NCIPC,” accessed April 20, 2024, <http://webappa.cdc.gov/sasweb/ncipc/ypll10.html>.

<sup>ii</sup> *United States v. Cruikshank*, 92 US 542 (Supreme Court 1876).

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- <sup>iii</sup> *Presser v. Illinois*, 116 US (Supreme Court 1886).
- <sup>iv</sup> *U.S. v. Miller*, 307 U.S. 174 (1939) (n.d.).
- <sup>v</sup> *Lewis v. United States*, No. 55 (U.S. 1980) footnote 8.
- <sup>vi</sup> *District of Columbia v. Heller*, 554 US (Supreme Court 2008).
- <sup>vii</sup> *McDonald v. City of Chicago*, No. 3020 (S.Ct 2010).
- <sup>viii</sup> *Heller*, 554 US at 2786.
- <sup>ix</sup> “Meet a Musketeer | British Civil Wars,” accessed June 5, 2024, <https://britishcivilwars.ncl.ac.uk/weapons-warfare/meet-the-civil-war-soldiers/meet-a-musketeer/>.
- <sup>x</sup> “Effective Range of an AR-15: How Far Can It Shoot?,” 80 Percent Arms, accessed June 5, 2024, <https://www.80percentarms.com/blog/effective-range-of-an-ar15-how-far-can-it-shoot/>.
- <sup>xi</sup> “Homicides by Firearm in the U.S. 2021,” Statista, accessed April 20, 2024, <https://www.statista.com/statistics/249783/percentage-of-homicides-by-firearm-in-the-united-states/>.
- <sup>xii</sup> Michael J. North, “Gun Control in Great Britain after the Dunblane Shootings,” in *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis* (Baltimore: The Johns Hopkins University Press, 2013), 185–93; Joel Negin et al., “Australian Firearm Regulation at 25-Successes, Ongoing Challenges, and Lessons for the World,” *New England Journal of Medicine* 384, no. 17 (2021): 1581–83.