The Washington Post

# Antonin Scalia was wrong about the meaning of ‘bear arms’

**By Dennis Baron | 21 May 2018**

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For most of its history, the Second Amendment protected a collective right to gun ownership connected to service in the militia. This is fairly clear from the text, which 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.”

But in 2008, the Supreme Court found in *District of Columbia v. Heller* that the amendment instead supports an individual right to own a gun for any lawful purpose, a right that has nothing to do with military service.

Does the second amendment protect an individual’s right to own a gun at all times, or does it only protect that right if you’re in a militia? We looked at the second amendment in the context it was written and how the Supreme Court has interpreted it since. (Daron Taylor,joyce koh/The Washington Post)

In his opinion in *Heller*, Justice Antonin Scalia, who said that we must understand the Constitution’s words exactly as the framers understood them, disconnected the right to keep and bear arms from the need for a well-regulated militia, in part because he concluded that the phrase “bear arms” did not refer to military contexts in the founding era.

By Scalia’s logic, the natural meaning of “bear arms” is simply to carry a weapon and has nothing to do with armies. He explained in his opinion: “Although [bear arms] 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.”

But Scalia was wrong. Two new databases of English writing from the founding era confirm that “bear arms” is a military term. Non-military uses of “bear arms” are not just rare — they’re almost nonexistent.

A search of Brigham Young University’s new online Corpus of Founding Era American English, with more than 95,000 texts and 138 million words, yields 281 instances of the phrase “bear arms.” BYU’s Corpus of Early Modern English, with 40,000 texts and close

to 1.3 billion words, shows 1,572 instances of the phrase. Subtracting about 350 duplicate matches, that leaves about 1,500 separate occurrences of “bear arms” in the 17th and 18th centuries, and only a handful don’t refer to war, soldiering or organized, armed action. These databases confirm that the natural meaning of “bear arms” in the framers’ day was military.

But we shouldn’t need big data to tell us this. “Bear arms” has never worked comfortably with the language of personal self-defense, hunting or target practice. Writing about the Second Amendment in 1995, historian Garry Wills put it succinctly: “One does not bear arms against a rabbit.”

And in 1840, in an early right-to-bear-arms case, Tennessee Supreme Court Judge Nathan Green wrote: “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.”

Then there’s this exchange during oral arguments in *Heller*. Solicitor General Paul D. Clement said that “bear arms” meant to carry them outside the home. Justice David Souter asked him, “But wait a minute. You’re not saying that if somebody goes hunting deer he is bearing arms, or are you?” Clement replied, “I would say that and so would [James] Madison and so would [Thomas] Jefferson.”

But Souter wasn’t convinced: “In the 18th century, someone going out to hunt a deer would have thought of themselves as bearing arms? I mean, is that the way they talk?” Clement finally conceded that no, that was not the way they talked: “Well, I will grant you this, that ‘bear arms’ in its unmodified form is most naturally understood to have a military context.” Souter did not need to point out the obvious: “Bear arms” appears in its unmodified form in the Second Amendment.

Still, the Supreme Court based its interpretation of the Second Amendment on more than an incorrect definition of “bear arms.” According to Scalia, the framers “undoubtedly thought” the amendment protected the universal right of self-defense, even though nowhere does the Constitution mention self-defense. It doesn’t mention hunting, either.

The Supreme Court’s reasoning may be flawed, but its decision — at least for now — is binding: The Second Amendment protects everyone’s right to tote a gun. But no court can dictate the natural meaning of “bear arms.” Even after *Heller*, we still can’t bear arms against a rabbit, or a mugger, or a tin can on a tree stump in the yard. That is just not how we talk.