



The U. S. Constitution Series  
In Partnership with the National Constitution Center

# AP<sup>®</sup> U.S. Government and Politics

Social Order and Civil Liberties:  
Examining the Second and Fourth Amendments



# **Social Order and Civil Liberties: Examining the Second and Fourth Amendments**

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For further information, visit [www.collegeboard.org](http://www.collegeboard.org).

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## About the National Constitution Center

The National Constitution Center was established by Congress to “disseminate information about the United States Constitution on a non-partisan basis in order to increase the awareness and understanding of the Constitution among the American people.” The Center hosts interactive exhibitions, constitutional debates, and other activities to increase awareness and understanding of the United States Constitution.

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## National Constitution Center & the College Board

In partnership with the National Constitution Center, the College Board has developed a series of classroom lessons and materials related to the U.S. Constitution. This series includes resources to support instruction in AP US Government and Politics, AP Comparative Government and Politics, AP US History, and AP English Language and Composition. These lessons and resources are available to AP teachers via the course homepages at AP Central and to all teachers through the National Constitution Center's website.

## Acknowledgements

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# Social Order and Civil Liberties: Examining the Second and Fourth Amendments

## Plan

The purpose of this lesson module is to investigate how the Second and Fourth Amendments have been understood, especially as they pertain to the desire to preserve civil rights and liberties and the need to ensure the safety and security of citizens. Using the National Constitution Center's "Interactive Constitution" site, students will study the historical roots and current understandings described by two experts in their "common interpretation" of each Amendment. Following this introduction, students will analyze the distinct arguments regarding each scholar's interpretations of the amendments and how they have been applied in various situations.

This lesson module offers strategies to help students integrate analytical reading and writing skills with knowledge of constitutional protections to draw conclusions about how the Second and Fourth Amendments have been understood and applied. Relevant connections to the AP U.S. Government and Politics course include the concept of limited government and popular sovereignty, which is connected to the Constitutional Underpinnings of U.S. Government section of the course description, and the role of the Supreme Court, covered in the Civil Rights and Civil Liberties section of the course description.

## Using the National Constitution Center Resources: Interactive Constitution

The National Constitution Center, in partnership with the American Constitution Society, the Federalist Society, and the John Templeton Foundation, developed the Interactive Constitution to promote discussion about and understanding of the Constitution and its meaning today. On the site, constitutional scholars interact to explore the Constitution's history and its place in our society. For each Article and Amendment of the Constitution, scholars from across the ideological spectrum discuss what they agree upon and what they disagree about. For more information about the Interactive Constitution, visit <http://constitutioncenter.org/interactive-constitution>

## Learning Goals

Enduring Understandings	Learning Objectives
<b>Students will understand that...</b>	<b>Students will be able to...</b>
Provisions of the Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals.	Explain the extent to which the Supreme Court's interpretation of the Second Amendment reflects a commitment to individual liberty.
	Explain to what degree the Fourth Amendment provides constitutional protection of the rights of the accused.

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## Enduring Understandings

## Learning Objectives

Analyze the tension between claims of individual freedom and laws that promote public order and safety.

The design of the judicial branch protects the court's independence as a coequal branch of government, and the emergence and use of judicial review remains a powerful judicial practice.

Explain the principle of judicial review and how it checks the power of other institutions and state governments.

### **Key Takeaways**

- ▶ Debates exist regarding how to interpret and apply the Second and Fourth Amendments.
- ▶ These debates often involve different perspectives about civil liberties and individual safety and security.
- ▶ These debates impact policies that are enacted by Congress and/or enforced by the President.
- ▶ The Supreme Court often determines how to interpret these Amendments in order to balance their original intent with their application to the changing needs and technologies of U.S. society.

### **Skills and Practices**

- ▶ Explain how political behavior and policies can demonstrate tension or collaboration between civil liberties and public order
- ▶ Read, analyze, and interpret primary and secondary sources

### **Materials**

- ▶ Student handouts
- ▶ National Constitution Center's Interactive Constitution (<http://constitutioncenter.org/interactive-constitution>)

### **Essential Questions**

- ▶ How are values such as the protection of civil liberties and public safety and order incorporated into the Second and Fourth Amendments?
- ▶ What debates exist regarding the application of these values to public policies?
- ▶ What does the Supreme Court consider when interpreting the scope of the Second and Fourth Amendments?

### Examining the Second and Fourth Amendments

The purpose of this lesson module is to investigate how the Second and Fourth Amendments have been understood, especially as they pertain to tensions between the desire to preserve civil rights and liberties and the need to ensure the safety and security of citizens. Using the National Constitution Center's Interactive Constitution (<http://constitutioncenter.org/interactive-constitution>), you will study the historical roots and current perspectives described by two experts in their "common interpretation" of each Amendment. Following this introduction, you will analyze distinct arguments regarding the scholars' interpretations of the amendments and how they have been applied in various situations.

#### Essential Questions

How are values such as civil liberties and public safety and order incorporated into the Second and Fourth Amendments?

When are these values in tension and when do they work together?

What values does the Supreme Court consider when interpreting the scope of the Second and Fourth Amendments?

#### Directions

Listen to the scenario as it is read to you. Then, respond to the questions.

1. In the scenario you just heard, what public values and individual rights appear to be in danger? Is there a conflict between the two? Explain your answer.

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2. What additional information would you need to know in order to determine which individual freedoms are in jeopardy and/or how the safety of others might be in danger?

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## Teach

### Focus

Read any combination of the following scenarios and ask students to identify and describe the values at stake in each of these scenarios, such as an individual's rights and the safety and order of society. Are individual rights being infringed? If so, how? Is there a tradeoff between public safety and order and individual liberty? If so, what is that tradeoff? In each case ask students what further information they might want to know in order to determine which individual freedoms are in jeopardy and/or how the safety of others might be in danger.

1. To reduce accidental shootings an 18-year-old in Colorado has invented a "smart gun" that only operates when it detects the fingerprints of its owner. State legislators are debating whether to require this technology to be added to all firearms being sold in the state.
2. A U.S. citizen responds to an online ISIS recruitment site by calling a phone number to speak with someone about the movement. Based on metadata surveillance allowed under the USA Freedom Act, the National Security Administration (NSA) obtains a search warrant to access the phone conversation and later detains the woman before she boards a flight to Istanbul.
3. A paranoid schizophrenic patient tells his psychiatrist he has purchased an AK-47 rifle because voices are telling him he needs to protect himself from evil men around his apartment. He lives in a high-crime neighborhood and does not have the money to leave. The doctor is concerned enough to notify local authorities who arrest the man and confiscate the rifle. The man is not on any criminal or mental health background list at the state or federal level.

Explain that the class will look at two Constitutional amendments to discuss what the Constitution says about civil liberties and social order and security and how the Supreme Court has interpreted constitutional provisions regarding these ideas.

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## Acquire

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### Building Your Understanding

Before asking students to read and analyze the Common Interpretations of each Amendment on the Interactive Constitution site, take time to have them practice navigating the site and accessing different Amendments.

1. Navigate your internet browser to the Interactive Constitution website: (<http://constitutioncenter.org/interactive-constitution>).
2. Click on the “Explore It” link near the bottom of the page to go to the main page of the Interactive.
3. The page includes links with the numbers and titles of the Amendments.
4. Click on the Second Amendment.
5. The link takes you to the main page for the Amendment. Included on this page is the text of the Amendment, as well as the Common Interpretation, which was written by two scholars who are experts in the interpretation and application of the Amendment. There are also links to the two Matters of Debate articles; each scholar has written one of these articles.
6. Read the text of the Second Amendment and ask students to share what they know about the Amendment.
7. Click on the “Menu” link in the bottom left-hand corner of the page to return to the list of Amendments. You can also use the “Home” link (which looks like a house) in the bottom right-hand corner of the page to return to the front page of the Interactive Constitution.
8. Click on the Fourth Amendment. Read the text of the Amendment and ask students to share what they know about the Amendment.

#### The National Constitution Center’s Interactive Constitution

In this activity, we will use the National Constitution Center’s Interactive Constitution to investigate how the government protects civil liberties while also promoting social order. In particular, we will investigate the Second and Fourth Amendments and the Supreme Court case *DC v. Heller*.

First, let’s explore the Interactive Constitution.

- ▶ Navigate your internet browser to the Interactive Constitution website: (<http://constitutioncenter.org/interactive-constitution>).
- ▶ Click on the “Explore It” link near the bottom of the page to go to the main page of the Interactive.
- ▶ The page includes links with the numbers and titles of the Amendments.
- ▶ Click on the Second Amendment.
- ▶ The link takes you to the main page for the Amendment. Included on this page is the text of the Amendment, as well as the Common Interpretation, which was written by two scholars who are experts in the interpretation and application of the Amendment. There are also links to the two Matters of Debate articles; each scholar has written one of these articles.
- ▶ Read the text of the Second Amendment. What do you know about the Amendment?
- ▶ Click on the “Menu” link in the bottom left-hand corner of the page to return to the list of Amendments. You can also use the “Home” link (which looks like a house) in the bottom right-hand corner of the page to return to the front page of the Interactive Constitution.
- ▶ Click on the Fourth Amendment. Read the text of the Amendment. What do you know about the Amendment?

**Applying Your Understanding**

Now you will use what you know about the Second and Fourth Amendments to analyze political cartoons. Use the table to assist you in your analysis.

	Cartoon #1	Cartoon #2	Cartoon #3	Cartoon #4
<b>What do you see?</b>	The Statue of Liberty with "Freedom" written on her gown. She has a holster around her waist and the Constitution in the holster. She says that she has it for self-defense, while in the corner is a news item that the Supreme Court struck down the Chicago gun ban.	Two men talking over a fence. One stands next to a pickup truck, which has a rifle and a missile in it. There are two bumper stickers - one says, "I support the 2nd Amendment," and the other looks like an NRA sticker.	There are two panels. In the first panel, a man with headphones on his ears and electronic equipment around him says that he hears a foreign tongue. In the second panel, is a baby holding a phone. The baby is making noises into the phone.	There are two panels. In the first one, a judge is criticizing an "indiscriminate and arbitrary" system of collecting personal data. In the second panel, "Santa Claus" stands before the judge, explaining that it is just his "naughty and nice" list.
<b>What do the various parts of the cartoon represent? How do you know?</b>	The Statue represents freedom, the country, and the American people. The holster and Constitution represent the authority that protects her.	The missile represents unconventional firearms, and the man with the truck represents individuals who believe that the Second Amendment protects against limitations on the ownership of weapons.	The man represents the government's electronic surveillance program. The baby is meant to convey the overreach of the program.	The judge represents the courts and critics of electronic surveillance programs. Santa Clause in some ways is meant to represent the program, although in this case it is done ironically.

**TEACHER TIP**

If you do not have access to enough computers for all of your students to use at the same time, students can be paired or placed into small groups. The Common Interpretation and the Matters of Debate articles can be printed and distributed to students.

**Applying Your Understanding**

Once you and your students are comfortable navigating the Interactive Constitution, have your students analyze a few political cartoons related to the Second and Fourth Amendments. Share a set of cartoons and the graphic organizer with students. Some cartoons you can use include:

- ▶ [http://img.scoop.it/5R4Hk\\_1bqRoKZI7pgSs\\_Az172eJkfbmt4t8yenImKBVvK0kTmF0xjctABnaLJIm9](http://img.scoop.it/5R4Hk_1bqRoKZI7pgSs_Az172eJkfbmt4t8yenImKBVvK0kTmF0xjctABnaLJIm9)
- ▶ <http://jeffrehill.typepad.com/.a/6a00d8341d417153ef0147e1ddf7c9970b-popup>
- ▶ [http://media.cagle.com/30/2007/10/16/42871\\_600.jpg](http://media.cagle.com/30/2007/10/16/42871_600.jpg)
- ▶ [http://media.cagle.com/29/2013/12/17/141962\\_600.jpg](http://media.cagle.com/29/2013/12/17/141962_600.jpg)

Working in pairs or small groups, have students complete the chart for each of the cartoons. Then, discuss students' responses. Also, ask students how the artists' interpretations of the Amendments match their own understandings of what the Amendments mean.



To further set the stage for student engagement with the online reading assignments, introduce the following before reading questions to establish historical, social, and political context. Ask students to think about how they might answer them as they read through the Amendment commentaries on the Interactive Constitution website (<http://constitutioncenter.org/interactive-constitution>):

1. If the ideas of limited government and popular sovereignty were so important to the drafters of the U.S. Constitution, why did state delegations who signed the original document believe a bill of rights was unnecessary?
2. What threats to U.S. citizens related to the Second and Fourth Amendments have emerged in the 21st century that the drafters of the U.S. Constitution could not have foreseen?
3. Identify different justifications for the individual rights protected by the Second and Fourth Amendments. Identify some justifications for limiting these rights in some circumstances. How should these values be balanced in different situations, as for example, carrying a concealed weapon in public, owning a gun within the home, or allowing the federal government access to data voluntarily disclosed online?

You may want to refer to these questions again before the final assessment of this lesson.

	Cartoon #1	Cartoon #2	Cartoon #3	Cartoon #4
<b>What is the artist's claim about the Amendment to which it refers?</b>	The artist is making a statement that the Constitution protects the American people and their freedoms. As part of the Constitution the Second Amendment supports the right of Americans to protect themselves.	The artist appears to be criticizing the notion that there cannot be limits on the right to bear arms. The man with the weapons states that the Constitution does not specifically state what type of arms one may own. The artist demonstrates how such an interpretation might be taken to the extreme of owning a nuclear missile.	The artist criticizes the government's surveillance program. The individual confuses the baby for a threat, making the individual look bad. The artist likely believes that the Fourth Amendment protects against such surveillance.	The artist appears to criticize reactions of people and the courts to electronic surveillance programs, as Santa with his "naughty and nice" list seems to highlight how overblown such concern is that Fourth Amendment protections are being violated.

**Common Interpretations of the Second and Fourth Amendments**

Before we read the Common Interpretations for the Second and Fourth Amendments, consider the following questions that will help us understand the historical, social, and political context for the adoption and current application of the Second and Fourth Amendments. We will return to these questions after you have worked with parts of the Interactive Constitution.

**Before Reading**

If the ideas of limited government and popular sovereignty were important to the drafters of the U.S. Constitution, why did state delegations who signed the original document believe a bill of rights was unnecessary?

*Few, if any, of the drafters at the convention thought a bill of rights was necessary, as formal powers of the national government were intended to be specific and limited, with the rest residing with the states and the people.*

What threats to U.S. citizens related to the Second and Fourth Amendments have emerged in the 21st century that the drafters of the U.S. Constitution could not have foreseen?

*Some people argue that military technology has made citizen militias obsolete and the appropriateness of military-style firearms and ammunition in the hands of civilians remains a debatable question. Widespread availability of personal electronic data and the new types of global terroristic threats present difficult social problems that were not foreseen 200 years ago.*

Identify different justifications for the individual rights protected by the Second and Fourth Amendments. Identify some justifications for limiting these rights in some circumstances. How should the values involved be balanced in different situations, as for example, carrying a concealed weapon in public, owning a gun within the home, or allowing the federal government access to data voluntarily disclosed online?

*Justifications for individual rights protected by the Second and Fourth Amendments include the right to protect oneself from home invasions and criminal assaults, the right to privacy, and the right not to have personal information from various media platforms used against us by government authorities. It is difficult to define a permanent balance involving these Amendments because the dangers to our lives and our liberties keep changing, and even the way we define the dangers varies depending on political orientation. Many people advocate for more background checks and controls for buying and owning guns, while many others oppose such restrictions. Many people believe the government can keep us safer by monitoring electronic data, while many others do not want the government to have access to these data without probable cause.*

## Practice

### Guided Practice

Assign students to small groups to read and discuss the Common Interpretation passages for both amendments based on the five reading questions. Each member in the group should write out answers to the questions based on input from other group members in order to be ready to discuss them with the whole class. Alternatively, you could ask students to read the passages for homework, compose responses, and share them in small group discussions during the next class meeting.

Debrief with the entire class after each group has had the opportunity to read the Common Interpretations and respond to the questions. Check for student understanding and correct any misunderstandings.

Now, working in small groups, you will read the Common Interpretations for both the Second and Fourth Amendments. As you read, keep these Reading Questions in mind and be prepared to discuss them. After you have read both Common Interpretations, write answers to the questions below.

#### During Reading

1. Paraphrase the key provisions of each amendment.

Second Amendment:

*The federal government does not have the authority to prevent citizens from owning guns to ensure their freedom and security; the use of such weapons in the context of a citizen militia could be regulated.*

Fourth Amendment:

*Searches and seizures must be reasonable and must include a warrant that is based on probable cause, oath/affirmation, and a description of the place to be searched and persons or things to be seized.*

2. Describe three trends or actions in the past five years that have brought both the Second and Fourth Amendments to the forefront of debate over social order and individual liberties.

*Mass shootings by armed individuals at schools, movie theaters, and college campuses have become common place; aggressive use of "stop and frisk" and highly-publicized police-citizen encounters are increasingly being reported in which police have used force against civilians; bulk collection of Americans' telephone data and Internet browsing histories continue as part of the War on Terror; use of aerial and satellite surveillance has also increased.*

3. Explain how differences in state militia and policing between that in the 18th - 19th centuries and today might impact how the Second and Fourth Amendment are understood and applied.

Second Amendment:

*Professional soldiers have replaced the citizen militia; state militia have been incorporated into the federal military structure, the nation's military establishment is far more powerful than 18th century armies, and no one thinks armed civilians could defeat such forces in battle; though many believe weapons at home are necessary to defend against common criminals, modern military weapons are not considered appropriate for civilian use.*

**Fourth Amendment (continuation of question 3):**

Policing was largely a responsibility of citizens or a loose collection of sheriffs and constables in the 18th and 19th century; they lacked the tools of a modern police force, making the search and seizure of personal property and residences much less prevalent than they are today.

4. Why do some people believe the Supreme Court's ruling in *DC v. Heller* was a "win" for each end of the political spectrum on the gun control issue, and what legal issues remain today?

Though the Court's decision in *Heller* technically prevented the government from banning possession of handguns by civilians in their homes, there are a list of "presumptively lawful" regulations that the Supreme Court would support (e.g., bans on possession of firearms by felons and the mentally ill, bans on carrying firearms in "sensitive places" such as schools and government buildings, laws restricting the commercial sale of arms, and bans on weapons "not typically possessed by law-abiding citizens for lawful purposes"). However, issues remain about how absolute this right is beyond the defense of home (e.g., "public carry" rights). The court did not give any guidance on individuals carrying concealed firearms.

5. What search-and-seizure practices in 18th century England and the colonies were of concern at that time? Which governmental search practices remain a concern today?

General warrants and writs of assistance gave power by authority of the English Crown to search for anyone and anything with little or no restrictions. Today there are many governmental searches that sidestep the "probable cause" requirement in order to protect the public from extreme forms of violence (e.g., airport security searches), but individual freedom is sometimes sacrificed in the process, especially when mistakes are made. Also, the whole definition of a "search" has become elusive when considering digital network and social media property rights.

Explain to the class that two experts with different perspectives about the Second Amendment have written short articles on the interactive site. One is entitled, “Not a Second Class Right: The Second Amendment Today” by Nelson Lund, and the other is “The Reasonable Right to Bear Arms” by Adam Winkler. Ask students to reflect solely on the titles of each article and speculate about the position each author takes regarding the right for citizens to own and carry guns. Encourage the class to set aside their own beliefs about guns in U.S. society so as to consider the arguments of each writer.

Then, assign students to groups of five and give each group member one of the following questions to help focus their reading.

1. Consider the following passage from Lund: “Government suppression of speech can usually be thought to serve some reasonable purpose, such as reducing social discord or promoting healthy morals. Similarly, most gun control laws can be viewed as efforts to save lives and prevent crime, which are perfectly reasonable goals. If that’s enough to justify infringements on individual liberty, neither constitutional guarantee means much of anything.” How does Lund support his argument that gun ownership is an individual right that should not be taken away easily?
2. Consider the following statement Lund makes in reference to the Supreme Court’s decision in *DC v. Heller*: “Abundant historical evidence indicates that the Second Amendment was meant to leave citizens with the ability to defend themselves against unlawful violence.” According to Lund, who are the greatest beneficiaries of this interpretation, and why is it significant to future Supreme Court rulings?

### Second Amendment: Matters of Debate

In addition to the Common Interpretation of the Second Amendment, there are aspects and applications of the amendment about which scholars continue to debate. The Interactive Constitution includes the perspectives of two scholars – Nelson Lund and Adam Winkler.

In the space below, reflect on the titles of the two perspectives offered by Lund and Winkler. Set aside your own beliefs about guns in the U.S., and instead focus on what the titles tell you about what each scholar likely believes.

Nelson Lund: “Not a Second Class Right: The Second Amendment Today”

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Adam Winkler: “The Reasonable Right to Bear Arms”

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Next, work in small groups to read the articles by Lund and Winkler. You will focus on one of the questions below and be responsible for sharing your response with the other members of your group. You will also need to write down and understand the answers to the questions assigned to the other members of your group.

**After Reading**

1. Consider the following passage from Lund: "Government suppression of speech can usually be thought to serve some reasonable purpose, such as reducing social discord or promoting healthy morals. Similarly, most gun control laws can be viewed as efforts to save lives and prevent crime, which are perfectly reasonable goals. If that's enough to justify infringements on individual liberty, neither constitutional guarantee means much of anything." How does Lund support his argument that gun ownership is an individual right that should not be taken away easily?

*Lund is saying that under the First Amendment the state must have a compelling interest to justify restricting speech, not simply a reasonable purpose, as in promoting public morals. In the same way, states should not be able to restrict gun rights for what he argues are just "reasonable purposes" as well. In effect, he is equating the Second Amendment with the First Amendment in which individual freedom is generally protected only if the burden is put on the government to make a strong case to place any limits on it, as interpreted from Supreme Court rulings in recent Second Amendment cases (e.g., DC v. Heller and McDonald v. Chicago).*

2. Consider the following statement Lund makes in reference to the Supreme Court's decision in *DC v. Heller*: "Abundant historical evidence indicates that the Second Amendment was meant to leave citizens with the ability to defend themselves against unlawful violence." According to Lund, who are the greatest beneficiaries of this interpretation, and why is it significant to future Supreme Court rulings?

*Women, elderly and those living in high crime areas will benefit if they are allowed to own and carry guns for their own protection; protecting one's own life and possessions from criminal violence appeals to the argument of popular sovereignty and individual autonomy.*

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3. Consider the following passage in Winkler's remarks: "Although Americans today often think that gun control is a modern invention, the Founding era had laws regulating the armed citizenry." What point does Winkler make about gun control that is significant to modern day interpretations of the Second Amendment?

4. According to Winkler, what phrase in the Second Amendment sets it apart from the First Amendment, supporting the argument that it is subject to reasonable regulations framed in the Fourth Amendment?

5. Winkler's parting observation on the remaining question in the *Heller* case ruling is whether the Second Amendment protects a right to carry guns in public. Summarize the arguments Lund and Winkler make with respect to whether states are permitted to regulate public carry under the Second Amendment and *Heller*.

After allowing students time to read on their own, pair up members from different groups having the same question so they can confer on their answers before reporting back to their original "home" groups.

Once all groups have finished discussing the articles, debrief the articles as a whole class. Take some time to discuss questions that students might raise concerning the *Heller* case or the issue of "public carry." Call on several groups to collect responses to the articles and probe their understanding of the support each author gives for his position. Insist that students cite evidence for positions taken in each article, or for their own critique of the role of government regarding gun ownership.

3. Consider the following passage in Winkler's remarks: "Although Americans today often think that gun control is a modern invention, the Founding era had laws regulating the armed citizenry." What point does Winkler make about gun control that is significant to modern day interpretations of the Second Amendment?

*There has always been a precedent for gun regulation in this country, and it is as much a part of the Second Amendment as the "right to keep and bear arms."*

4. According to Winkler, the Second Amendment is more like the Fourth Amendment than the First Amendment. Why is this so?

*Winkler's perspective is that the Second Amendment is more similar to the Fourth Amendment because both involve qualified, not absolute rights, while First Amendment rights are phrased in absolute terms. Both the Second and Fourth Amendments protect rights (to own guns or to be free from searches and seizures), but these rights are not absolute. They are expressly qualified by the government's authority to regulate in appropriate circumstances. The phrase "well regulated" in the Second is similar to the word "unreasonable" in the Fourth that would support warrantless searches/seizures in circumstances where it is "reasonable." On the other hand, the First Amendment does not have any qualification that would allow for regulation in some circumstances.*

5. Winkler's parting observation on one remaining question after the *Heller* case ruling is whether the Second Amendment protects a right to carry guns in public. Summarize the arguments Lund and Winkler make with respect to whether states are permitted to regulate public carry under the Second Amendment and *Heller*. *Winkler argues that the decision in Heller did not reject all governmental regulation of individual gun ownership, or the reasonableness principle in practice—the decision specifically allows “presumptively lawful” exceptions, including bans on concealed carry. These exceptions on modern-day gun laws unheard of during the Founding era demonstrate that lawmakers are not limited to the types of gun control in place at the time the Second Amendment was added to the Constitution. On the other hand, Lund argues that abundant historical evidence indicates that the Second Amendment was meant to leave citizens with the ability to defend against unlawful violence, whether it occurs through a home invasion or on the public streets. The government should not be allowed to create burdensome bureaucratic obstacles designed to frustrate the exercise of Second Amendment rights, as exemplified by the way the courts have been vigilant in preventing the government's imposing regulations making free speech difficult to exercise.*

#### Comparing Perspectives on the Second Amendment

Now that you have read both Lund's and Winkler's perspectives on the Second Amendment, you need to decide which scholar has the more persuasive argument. Note that the more persuasive argument does not mean the argument with which you agree. It is the argument that you believe makes the most sense and is best supported by the evidence.

To assist in your evaluation, you are to create an outline or diagram to identify:

- ▶ Each scholar's main claim or thesis
- ▶ Whether and to what degree the Second Amendment allows restrictions on individual gun ownership
- ▶ The author's reasoning and at least two pieces of evidence that each scholar uses to support his claim or thesis.

Then, write a thesis statement for an essay in which you would argue that one scholar has the more persuasive argument. Outline the evidence you would use to support your thesis.

Once you finish your outline/diagram and thesis statement, exchange papers with a partner. Discuss your thesis and how you would support it in an essay.

## CHECK FOR UNDERSTANDING

Direct students to create a pre-writing diagram or outline that summarizes each perspective on the meaning and application of the Second Amendment based on the two commentaries.

A diagram is included at the end of this lesson plan for students to use if needed.

Next, ask them to write a thesis statement that takes a position on which commentary is more persuasive and outline reasoning and evidence to support their thesis.

Ask students to exchange diagrams/ outlines in order to engage in peer review and discussion. Then, ask for a few volunteers to share their ideas with the whole class. Address issues of misunderstanding in terms of the commentaries and evidence students cite from each author in their argumentation essay. This should be used to diagnose student understanding and not to assess student performance.



## Independent Practice

Access the Fourth Amendment on the “Interactive Constitution” site, divide students into groups of three, and assign each group one of the commentaries – either Friedman or Kerr. Students should read the assigned commentary and prepare a three-minute speech supporting the perspective of the assigned author.

In their speeches, students must:

- ▶ Summarize the author’s perspective about the state of the amendment today
- ▶ List and explain the evidence the author gives to support his argument
- ▶ Provide at least two “real world” examples or applications beyond those in the article.

The following questions can serve as guides for each group’s preparation:

- ▶ **Friedman:** What are the two basic principles Friedman advocates to “fix” the Fourth Amendment, and what are his four supporting recommendations or interpretations to accomplish that?
- ▶ **Kerr:** What does Kerr mean when he talks about “translating the traditional protections of the Fourth Amendment from the physical world to the networked world,” and what is he talking about in reference to expanding “good faith exceptions” to the exclusionary rule?

Small groups assigned to read the same author may collaborate for a short period of time before being called on to give their speech. Make it clear that all three group members must prepare to give the whole speech. Move from group to group listening and offering suggestions for their speech.

After 20-30 minutes, call on a member of one triad to begin their speech. After 30 seconds or so, ask another member of the same group to continue the speech. Next, call on a group preparing a speech on the other expert and follow the same procedure. When you think the major points of each commentary have been shared with the whole class, lead a general discussion of essential knowledge from the commentaries and ask students which of the authors presented a more persuasive argument and why.

### Fourth Amendment: Matters of Debate

#### Directions

Working in groups of three, read the commentary of your assigned scholar and prepare a three-minute speech in which you explain the scholar’s perspective on the Fourth Amendment. Each member of your group should be prepared to give the entire speech and answer questions about the scholar’s perspective.

In your speech, you must:

- ▶ Summarize the author’s perspective about the state of the amendment today
- ▶ List and explain the evidence the author gives to support his argument
- ▶ Provide at least two “real world” examples or applications beyond those in the article.

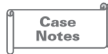
You should also be able to address the appropriate question for your assigned scholar:

**Friedman:** What are the two basic principles Friedman advocates to “fix” the Fourth Amendment, and what are his four supporting recommendations or interpretations to accomplish that?

**Kerr:** What does Kerr mean when he talks about “translating the traditional protections of the Fourth Amendment from the physical world to the networked world,” and what is he talking about in reference to expanding “good faith exceptions” to the exclusionary rule?

**Pre-Assessment**

In order to assist you with responding to the assessment question, we will read about and discuss the Supreme Court case of *DC v. Heller*. First, read the information about the case provided to you; then complete the chart.



Case: *D.C. v. Heller*

Year: 2008

**CASE BACKGROUND (include relevant events, legislation, or rulings):**

Important points:

- a) DC ordinance prohibited the possession of handguns, and no person could legally carry a handgun without a license.
- b) Residents could be granted licenses for 1-yr periods, but the firearms must be kept unloaded and disassembled or with other trigger-lock mechanisms
- c) Heller was denied a registration to keep a handgun in his home (the fact that he was a police officer authorized to carry a handgun while on duty did not seem to be relevant to the case).
- d) Heller filed suit in a Federal District Court to stop the city from preventing the registration of handguns, as the licensing requirements violated his Second Amendment rights. The case was dismissed in the Federal District Court, but that decision was reversed by the U.S. Court of Appeals. The District of Columbia then appealed to the Supreme Court.

**LAW, AMENDMENT, or CONSTITUTIONAL TEXT in question:**

Does the DC prohibition on the possession of handguns in the home violate the 2nd Amendment?

MAJORITY OPINION	DISSENTING OPINION
<p><b>AUTHOR:</b> Scalia</p> <p><b>Key Claim(s):</b> The DC ordinance that banned registering handguns and required guns in the home be disassembled or nonfunctioning violated the Second Amendment.</p>	<p><b>AUTHOR:</b> Stevens</p> <p><b>Key Claim(s):</b> The Second Amendment does not create an unlimited right to possess weapons. The state can regulate nonmilitary use and ownership of weapons.</p>

**Pre-Assessment**

As a prelude to the summative assessment, assign students to read a summary of *DC v. Heller* (<https://www.oyez.org/cases/2007/07-290> or <http://www.casebriefs.com/blog/law/constitutional-law/constitutional-law-keyed-to-chemerinsky/the-federal-judicial-power/district-of-columbia-v-heller/>) or the entire opinion of the case (<http://www.supremecourt.gov/opinions/07pdf/07-290.pdf>).

Read about the case together, and then think aloud as you work through the Case Notes graphic organizer. Provide students with the graphic organizer so that they can capture relevant information. Points to consider as you think aloud and discuss the case with students:

- a) what rights are protected by the Second Amendment?
- b) limiting factors in this case include the location (DC) and where firearms should be allowed (in the home).
- c) when the case eventually was heard by the Supreme Court, it changed the question to: whether the DC ordinances violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes. Notice the specific reference to “non-affiliation with state-regulated militia.” This has been a key distinction in the interpretation and application of the Second Amendment.

When considering future implications, you can prompt students by asking them to consider the following excerpt from the majority opinion:

“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 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.’ 307 U.S., at 179. We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons.’”

(<http://www.supremecourt.gov/opinions/07pdf/07-290.pdf>, pp 54-55)

Discuss what this means for other types of firearm regulations in current U.S. society.

Case: *D.C. v. Heller*

Year: 2008

**Reasoning used to justify the opinion:**

The term “militia” in the Amendment should not be read as limited only to the military, since at the time of its writing, any able-bodied man could be called to service in the militia. Also, legal writing at the time and after indicate that the operative clause of the Amendment should be read as guaranteeing an individual right to possess and carry weapons. The ordinance, which prevents individuals from possessing and carrying weapons, therefore violates the Amendment.

**Reasoning used to justify the opinion:**

The text of the Amendment indicates a protection for the right to keep and bear arms for military purposes, not necessarily for personal protection. “The people” referred to in the Amendment does not go beyond the service in a state-regulated militia.

**Implications:**

The DC ordinance was overturned, and the Court affirmed the right to bear arms as an individual right. In doing so, the Court limited the ability of the government to regulate the possession of firearms. However, the Court did not address the question of whether firearms could be carried outside the home, as it was not part of the case in question.

[Source: adapted from, *Casing History* by Rhonda Webb, Lassiter High School, Cobb County, Georgia. Used with permission.]

**Assessment**

In response to mass shootings at Sandy Hook Elementary School in 2012, at an Oregon community college in 2015, and other campuses, the mayor and city council of a large town have cooperated in passing an ordinance restricting people from carrying guns in public anywhere within the city's boundaries.

Compare the two perspectives by Lund and Winkler on how to interpret the Supreme Court's ruling in *D.C v. Heller* on individual gun ownership as it might relate to this scenario.

Explain one claim from the commentaries that would challenge the town's ban on carrying guns in public and one that would support it.

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### Assess

In order to assess students' understandings, assign students to respond to one or both of the questions.

1. In response to mass shootings at Sandy Hook Elementary School in 2012, at an Oregon community college in 2015, and other campuses, the mayor and city council of a large town have cooperated in passing an ordinance restricting people from carrying guns in public anywhere within the city's boundaries.
  - a. Compare the two perspectives by Lund and Winkler on how to interpret the Supreme Court's ruling in *D.C v. Heller* on individual gun ownership as it might relate to this scenario.
  - b. Explain one claim from the commentaries that would challenge the town's ban on carrying guns in public and one that would support it.
  
2. An extension of the Patriot Act called the USA Freedom Act became public law on June 2, 2015. While several sections of the Patriot Act were extended without alteration through 2019, Section 215 of that law was changed to stop the National Security Administration (NSA) from continuing its mass phone data collection program. Prism, as the original program was called, collected metadata for nearly all U.S. telephone calls, including the telephone number of the phones making and receiving the call, how long the call lasted (but not the content), as well as massive amounts of Internet traffic with at least one end outside the United States. Under the new law phone companies will retain the data, and the NSA can obtain information about targeted individuals with permission from a federal court.

- a. Describe how the USA Freedom Act differs from the Patriot Act regarding voluntary digital communications of U.S. citizens. Then explain whether you think the former law more closely abides by principles governing search and seizure than the NSA mass data records surveillance program did and what those principles are.
- b. Explain with two supporting examples how these acts illustrate the difficulty in translating traditional protections of the Fourth Amendment from the physical world to the networked world.

**Assessment**

Respond to the following questions using what you have learned about the Second and Fourth Amendments.

An extension of the Patriot Act called the USA Freedom Act became public law on June 2, 2015. While several sections of the Patriot Act were extended without alteration through 2019, Section 215 of that law was changed to stop the National Security Administration (NSA) from continuing its mass phone data collection program. Prism, as the original program was called, collected metadata for nearly all U.S. telephone calls, including the telephone number of the phones making and receiving the call, how long the call lasted (but not their content), as well as massive amounts of Internet traffic with at least one end outside the United States. Under the new law phone companies will retain the data, and the NSA can obtain information about targeted individuals with permission from a federal court.

- Describe how the USA Freedom Act differs from the Patriot Act regarding voluntary digital communications of U.S. citizens. Then explain whether you think the former law more closely abides by principles governing search and seizure than the NSA mass data records surveillance program did and what those principles are.
- Explain with two supporting examples how these acts illustrate the difficulty in translating traditional protections of the Fourth Amendment from the physical world to the networked world.

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Scoring Rubric – City Ordinance Gun Ban	Points
<p>▶ <b>1 pt for explaining Lund’s perspective as it relates to the <i>Heller</i> decision</b></p> <p>Lund sees the <i>Heller</i> ruling as an unqualified affirmation of the individual right to bear arms similar to the liberties protected by the First Amendment; he references the ruling’s acknowledgement of historical intention for individual gun ownership and “carrying” in the home and in public.</p> <p>▶ <b>1 pt for explaining Winkler’s perspective as it relates to the <i>Heller</i> decision</b></p> <p>Winkler sees the <i>Heller</i> decision as only prohibiting the government from banning the possession of handguns by civilians in the home; he references the “presumptively lawful” exceptions included in the decision supporting appropriate gun regulation in public.</p>	2
<p>▶ <b>1 pt for explaining the argument against the city ordinance</b></p> <p>Lund’s individual rights stance would view a local ordinance as having the consequence of preventing law-abiding citizens from defending themselves against criminals, terrorists, and other individuals who will always find ways to obtain weapons. The original intent of the Second Amendment was designed to protect individual citizens, even if it runs counter to public order.</p> <p>▶ <b>1 pt for explaining the argument for the city ordinance</b></p> <p>Winkler’s pro-regulation perspective compares the Second Amendment with that of the Fourth Amendment in this instance, recognizing that many rights are far more limited in public than they are in the home—whether it is a parade or a gun show. Even though the courts are divided on the issue of carrying a gun in public, there is adequate legal precedent and historical evidence that local communities can place limitations on public carry.</p>	2

Scoring Rubric – USA Freedom Act	Points
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► **1 pt for describing the difference between the Patriot Act and the USA Freedom Act as regards the Fourth Amendment.**

2

Under the USA Freedom Act, part of the Patriot Act was amended to stop the NSA from continuing its mass phone data collection program. Instead, phone companies will retain this data, and the NSA can obtain information on targeted individuals after obtaining a search warrant from a federal court.

► **1 pt for explaining whether the new law more closely abides by Fourth Amendment principles and their application to personal digital communications**

One principle is protection from arbitrary or unjustified intrusions, and a second principle is that no one branch of government should act alone when conducting searches and seizures of individual property. Unlike the former act, USA Freedom Act requires the Executive branch to obtain a warrant or permission from a federal court (Judicial branch) to see specified communication content from particular individuals, thus ensuring greater accountability. A counter argument might be whether there is really additional accountability, when the NSA can easily obtain search warrants on digital communications in the face of growing terroristic threats worldwide.

► **1 pt for explaining how these acts illustrate a difficulty in translating Fourth Amendment protections from the physical world to the networked world**

2

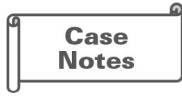
Unlike many situations involving physical artifacts and evidence, the government can quickly and easily “seize” a great deal of digitized personal information from social media sites, electronic messaging, and phone conversations; one issue both the Patriot and USA Freedom Act illustrate concerns what kind and how much evidence the government should be allowed to collect without restriction in order to investigate crimes and prevent terroristic attacks. For example, one issue involves police searches of cell phone data and how they complicate search-and-seizure protections.

► **1 pt for explaining how these acts illustrate a second difficulty in translating Fourth Amendment protections from the physical world to the networked world**

A second difficulty has to do with interpreting and applying the “exclusionary rule” when governmental authorities violate Fourth Amendment protections by intention or mistake. With electronic and social media communications identified by digital code, mistakes with ownership or attribution could happen more frequently than with physical addresses. The question then becomes how lenient courts should be with technical or “good faith” violations of digital personal property when pursuing criminal prosecutions.

<b>Author's Claim or Thesis:</b>
<b>Reasoning:</b>  <b>Evidence:</b>
<b>Reasoning:</b>  <b>Evidence:</b>
<b>Reasoning:</b>  <b>Evidence:</b>





Case:

Year:

**CASE BACKGROUND (include relevant events, legislation, or rulings):**

**LAW, AMENDMENT, or CONSTITUTIONAL TEXT in question:**

**MAJORITY OPINION**

**DISSENTING OPINION**

**AUTHOR:**

**AUTHOR:**

**Key Claim(s):**

**Key Claim(s):**

**Reasoning used to justify the opinion:**

**Reasoning used to justify the opinion:**

**Implications:**

[Source: adapted from, *Casing History* by Rhonda Webb, Lassiter High School, Cobb County, Georgia. Used with permission.]