



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

AP[®] 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

Workshop Handbook

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Acknowledgements

AP U.S. Government and Politics Curriculum, Instruction, and Assessment Team

John R. Williamson, Vice President, AP Curriculum, Instruction, and Assessment

Bill Tinkler, Director, AP Curriculum, Instruction, and Assessment, Social Sciences

Christopher Budano, Director, AP Instructional Design, Social Sciences

National Constitution Center Team

Jeffrey Rosen, President and CEO

Kerry Sautner, Vice President of Visitor Experience and Education

Danieli Evans, Senior Fellow in Constitutional Studies

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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.

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?

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
What do you see?				
What do the various parts of the cartoon represent? How do you know?				

	Cartoon #1	Cartoon #2	Cartoon #3	Cartoon #4
<p>What is the artist's claim about the Amendment to which it refers?</p>				

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?

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:

Fourth Amendment:

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.

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:

Fourth Amendment (continuation of question 3):

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?

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?

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”

Adam Winkler: “The Reasonable Right to Bear Arms”

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?

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?

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, the Second Amendment is more like the Fourth Amendment than the First Amendment. Why is this so?

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*.

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.

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.

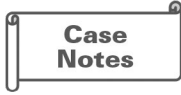
You should also be able to address the appropriate question for your assigned scholar:

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:

Year:

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

LAW, AMENDMENT, or CONSTITUTIONAL TEXT in question:

MAJORITY OPINION

AUTHOR:

Key Claim(s):

DISSENTING OPINION

AUTHOR:

Key Claim(s):

Case:	Year:
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.]

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.

Handwriting lines for response.

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.
