

MAR 09 2018

SENATE CONCURRENT RESOLUTION

URGING THE UNITED STATES CONGRESS TO PROPOSE AND PASS A PROPOSED
AMENDMENT TO THE UNITED STATES CONSTITUTION PURSUANT TO
ARTICLE V OF THE UNITED STATES CONSTITUTION TO CLARIFY THE
CONSTITUTIONAL RIGHT TO BEAR ARMS.

1 WHEREAS, the Second Amendment of the United States
2 Constitution reads: "A well regulated Militia, being necessary
3 to the security of a free State, the right of the people to keep
4 and bear Arms, shall not be infringed."; and

5
6 WHEREAS, this language has created considerable debate
7 regarding the constitutional provision's intended scope; and

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9 WHEREAS, some people believe that this constitutional
10 provision creates an individual constitutional right for
11 citizens of the United States; and

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13 WHEREAS, under this "individual right theory", the United
14 States Constitution restricts legislative bodies from
15 prohibiting firearm possession, or at the very least, the Second
16 Amendment renders prohibitory and restrictive regulation
17 presumptively unconstitutional; and

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19 WHEREAS, however, other people contend that the prefatory
20 language of "a well regulated militia" indicates that the
21 framers of the United States Constitution intended only to
22 restrict the United States Congress from legislating away a
23 state's right to self-defense; and

24
25 WHEREAS, under this "collective rights theory", the Second
26 Amendment asserts that United States citizens do not have an
27 individual right to possess guns and that local, state, and
28 federal legislative bodies possess the authority to regulate
29 firearms without implicating a constitutional right; and
30



1 WHEREAS, these two interpretations of the Second Amendment
2 have been considered and adopted by the United States Supreme
3 Court; and
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5 WHEREAS, in 1939, the United States Supreme Court adopted a
6 collective rights approach under *United States v. Miller*, 307
7 U.S. 174 (1939) by determining that the United States Congress
8 could regulate a sawed-off shotgun that had moved in interstate
9 commerce under the National Firearms Act of 1934; and
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11 WHEREAS, the court in *United States v. Miller* determined
12 the evidence did not suggest that the shotgun had a reasonable
13 relationship to the preservation or efficiency of a well
14 regulated militia; and
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16 WHEREAS, the court further held that the framers of the
17 United States Constitution included the Second Amendment to
18 ensure the effectiveness of the military; and
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20 WHEREAS, the precedent established under *United States v.*
21 *Miller* stood for nearly seventy years until the United States
22 Supreme Court revisited the issue in 2008 under *District of*
23 *Columbia v. Heller*, 554 U.S. 570 (2008); and
24

25 WHEREAS, the plaintiff in *District of Columbia v. Heller*
26 challenged the constitutionality of the Washington D.C. handgun
27 ban, which is a statute that stood for thirty-two years; and
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29 WHEREAS, the court in *District of Columbia v. Heller* held
30 that the Second Amendment established an individual right for
31 United States citizens to possess firearms and struck down the
32 Washington D.C. handgun ban as a violation of that right; and
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34 WHEREAS, the majority in *Heller* carved out *Miller* as an
35 exception to the general rule that United States citizens may
36 possess firearms by claiming that law abiding citizens cannot
37 use sawed-off shotguns for any law abiding purpose; and
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39 WHEREAS, thus, the United States Supreme Court has
40 revitalized the discussion of whether the Second Amendment is a
41 collective or individual constitutional right; and
42



S.C.R. NO. 178

1 WHEREAS, in light of the numerous tragic mass shootings at
 2 schools, work places, and public events, this body believes that
 3 it is necessary to repeal or amend the Second Amendment of the
 4 United States Constitution; now, therefore,

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 6 BE IT RESOLVED by the Senate of the Twenty-ninth
 7 Legislature of the State of Hawaii, Regular Session of 2018, the
 8 House of Representatives concurring, that the United States
 9 Congress is urged to propose and pass a proposed amendment to
 10 the United States Constitution pursuant to article V of the
 11 United States Constitution to clarify the constitutional right
 12 to bear arms; and

13
 14 BE IT FURTHER RESOLVED that the United States Congress is
 15 requested to consider and discuss whether the Second Amendment
 16 of the United States Constitution should be repealed or amended
 17 to clarify that the right to bear arms is a collective, rather
 18 than individual, constitutional right; and

19
 20 BE IT FURTHER RESOLVED that certified copies of this
 21 Concurrent Resolution be transmitted to the President Pro
 22 Tempore of the United States Senate, Speaker of the United
 23 States House of Representatives, Members of the Hawaii's
 24 congressional delegation, and the Governor.

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OFFERED BY:

[Signature]

Rose E. Ak

Will Goo

Kal Rook

[Signature]

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Samuel
W. King

