

MAR 05 2019

SENATE RESOLUTION

URGING THE UNITED STATES CONGRESS TO PROPOSE AND ADOPT 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
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6 WHEREAS, this language has created considerable debate
7 regarding the constitutional provision's intended scope; and
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9 WHEREAS, some believe that this constitutional provision
10 creates an individual constitutional right for citizens of the
11 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, others 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
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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
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31 WHEREAS, these two interpretations of the Second Amendment
32 have been considered and adopted by the United States Supreme
33 Court; and
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1 WHEREAS, in 1939, the United States Supreme Court adopted a
2 collective rights approach under *United States v. Miller*, 307
3 U.S. 174 (1939) by determining that the United States Congress
4 could regulate a sawed-off shotgun that had moved in interstate
5 commerce under the National Firearms Act of 1934; and

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7 WHEREAS, the *Miller* Court determined the evidence did not
8 suggest that the shotgun had a reasonable relationship to the
9 preservation or efficiency of a well-regulated militia; and

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11 WHEREAS, the Court further held that the framers of the
12 United States Constitution included the Second Amendment to
13 ensure the effectiveness of the military; and

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15 WHEREAS, the precedent established under *United States v.*
16 *Miller* stood for nearly seventy years until the United States
17 Supreme Court revisited the issue in 2008 under *District of*
18 *Columbia v. Heller*, 554 U.S. 570 (2008); and

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20 WHEREAS, the plaintiff in *District of Columbia v. Heller*
21 challenged the constitutionality of the District of Columbia
22 handgun ban, which is a statute that stood for thirty-two years;
23 and

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25 WHEREAS, the *Heller* Court held that the Second Amendment
26 established an individual right for United States citizens to
27 possess firearms and struck down the District of Columbia
28 handgun ban as a violation of that right; and

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30 WHEREAS, the majority in *Heller* carved out *Miller* as an
31 exception to the general rule that United States citizens may
32 possess firearms by claiming that law abiding citizens cannot
33 use sawed-off shotguns for any law abiding purpose; and

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35 WHEREAS, thus, the United States Supreme Court has
36 revitalized the discussion of whether the Second Amendment is a
37 collective or individual constitutional right; and

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



S.R. NO. 29


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 2 BE IT RESOLVED by the Senate of the Thirtieth Legislature
 3 of the State of Hawaii, Regular Session of 2019, that the United
 4 States Congress is urged to propose and adopt a proposed
 5 amendment to the United States Constitution pursuant to article
 6 V of the United States Constitution to clarify the
 7 constitutional right to bear arms; and

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


14
 15 BE IT FURTHER RESOLVED that certified copies of this
 16 Resolution be transmitted to the President Pro Tempore of the
 17 United States Senate, Speaker of the United States House of
 18 Representatives, Members of the Hawaii congressional delegation,
 19 and the Governor.

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OFFERED BY:



Kal Rhoard


 Rosaly El Beer
