

MAR 05 2019

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# SENATE CONCURRENT 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  
5

6           WHEREAS, this language has created considerable debate  
7 regarding the constitutional provision's intended scope; and  
8

9           WHEREAS, some believe that this constitutional provision  
10 creates an individual constitutional right for citizens of the  
11 United States; and  
12

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  
18

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  
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



## S.C.R. NO. 42

1           WHEREAS, these two interpretations of the Second Amendment  
2 have been considered and adopted by the United States Supreme  
3 Court; and  
4

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  
10

11           WHEREAS, the *Miller* Court determined the evidence did not  
12 suggest that the shotgun had a reasonable relationship to the  
13 preservation or efficiency of a well-regulated militia; and  
14

15           WHEREAS, the Court further held that the framers of the  
16 United States Constitution included the Second Amendment to  
17 ensure the effectiveness of the military; and  
18

19           WHEREAS, the precedent established under *United States v.*  
20 *Miller* stood for nearly seventy years until the United States  
21 Supreme Court revisited the issue in 2008 under *District of*  
22 *Columbia v. Heller*, 554 U.S. 570 (2008); and  
23

24           WHEREAS, the plaintiff in *District of Columbia v. Heller*  
25 challenged the constitutionality of the District of Columbia  
26 handgun ban, which is a statute that stood for thirty-two years;  
27 and  
28

29           WHEREAS, the *Heller* Court held that the Second Amendment  
30 established an individual right for United States citizens to  
31 possess firearms and struck down the District of Columbia  
32 handgun ban as a violation of that right; and  
33

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  
38

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. 42

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,

5  
 6           BE IT RESOLVED by the Senate of the Thirtieth Legislature  
 7 of the State of Hawaii, Regular Session of 2019, the House of  
 8 Representatives concurring, that the United States Congress is  
 9 urged to propose and adopt a proposed amendment to the United  
 10 States Constitution pursuant to article V of the United States  
 11 Constitution to clarify the constitutional right to bear arms;  
 12 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  
 24 congressional delegation, and the Governor.

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OFFERED BY:

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