

No. 20-843

---

---

In The  
**Supreme Court of the United States**

---

---

NEW YORK STATE RIFLE & PISTOL  
ASSOCIATION, INC., ET AL., PETITIONERS

*v.*

KEVIN P. BRUEN, IN HIS OFFICIAL  
CAPACITY AS SUPERINTENDENT OF  
NEW YORK STATE POLICE, ET AL.

---

---

*ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT*

---

---

**BRIEF FOR CORPUS LINGUISTICS  
PROFESSORS AND EXPERTS AS AMICI  
CURIAE SUPPORTING RESPONDENTS**

---

---

JAMIE A. LEVITT  
JANIE C. BUCKLEY  
MORRISON & FOERSTER LLP  
250 W 55th St.  
New York, NY 10019

BRIAN R. MATSUI  
*Counsel of Record*  
SETH W. LLOYD  
MORRISON & FOERSTER LLP  
2100 L St., NW, Ste. 900  
Washington, DC 20037  
(202) 887-8784  
BMatsui@mofocom

*Counsel for Amici Curiae*

SEPTEMBER 21, 2021

TABLE OF CONTENTS

INTEREST OF AMICI CURIAE .....	1
INTRODUCTION AND SUMMARY OF ARGUMENT .....	3
ARGUMENT .....	4
A. Corpus Linguistics Provides Previously Unavailable Guidance On The Meaning Of The Second Amendment .....	4
1. Far more Founding-era texts are more readily available today than when the Court decided <i>Heller</i> .....	4
2. Corpus linguistics permits greater research into historical texts.....	5
3. Corpus linguistics researchers use databases that are vast, diverse, and neutral .....	8
B. Ordinary Use Of “Keep” And “Bear” Arms At The Founding Confirms That Any Right To Bear Arms Was Highly Regulated .....	13
1. Bear arms was frequently used in the military context, with little reference to individual rights.....	13
2. Keep arms often suggested military context and the limited individual uses support that carrying firearms was often subject to restrictions.....	21
CONCLUSION.....	24

## TABLE OF AUTHORITIES

## CASES

<i>Caesars Ent. Corp. v. Int’l Union of Operating Engineers Local 68 Pension Fund</i> , 932 F.3d 91 (3d Cir. 2019) .....	7, 9, 12
<i>Carpenter v. United States</i> , 138 S. Ct. 2206 (2018) .....	12
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008) .....	3, 4, 5, 13, 21
<i>Fire Ins. Exch. v. Oltmanns</i> , 416 P.3d 1148 (Utah 2018).....	13
<i>Lucia v. SEC</i> , 138 S. Ct. 2044 (2018) .....	12
<i>McDonald v. City of Chicago</i> , 561 U.S. 742 (2010) .....	3
<i>Muscarello v. United States</i> , 524 U.S. 125 (1998) .....	9
<i>People v. Harris</i> , 885 N.W.2d 832 (Mich. 2016) .....	12
<i>Wilson v. Safelite Grp., Inc.</i> , 930 F.3d 429 (6th Cir. 2019).....	13

## CONSTITUTIONAL PROVISIONS

U.S. Const. amend. II.....	1, 3, 4, 5, 13, 14, 23
----------------------------	------------------------

## TABLE OF AUTHORITIES

## OTHER AUTHORITIES

Randy E. Barnett, <i>New Evidence of the Original Meaning of the Commerce Clause</i> , 55 ARK. L. REV. 847 (2003).....	11, 12
Dennis Baron, <i>Corpus Evidence Illuminates the Meaning of Bear Arms</i> , 46 HASTINGS CONST. L.Q. 509 (2019).....	5, 13, 14, 15, 16, 17, 21, 22, 23
Dennis Baron, <i>Corpus linguistics, public meaning, and the Second Amendment</i> , <i>The Web of Language</i> (July 20, 2021).....	19
Douglas Biber et al., <i>Corpus Linguistics: Investigating Language Structure and Use</i> (1998).....	8
Douglas Biber, <i>Corpus-Based and Corpus-Driven Analyses of Language Variation and Use</i> , in <i>THE OXFORD HANDBOOK OF LINGUISTIC ANALYSIS</i> (Bernd Heine & Heiko Narrog eds., 2d ed. 2015) .....	6
Josh Blackman & James C. Phillips, <i>Corpus Linguistics and the Second Amendment</i> , <i>Harv. L. Rev. Blog</i> (Aug. 7, 2018) .....	5, 12, 21, 23
Jonathan Carver, <i>The New Universal Traveler</i> (1779).....	18
Google, <i>Library Partners—Google Books</i> , Google, <a href="https://www.google.com/googlebooks/library/partners.html">https://www.google.com/googlebooks/library/partners.html</a> .....	10, 12, 17
Stefan Th. Gries, <i>Dispersions and Adjusted Frequencies in Corpora</i> , 13 INT’L J. CORPUS LINGUISTICS 403 (2008).....	6

## TABLE OF AUTHORITIES—Continued

Robert Henry, <i>The History of Great Britain</i> (2d ed. 1788) .....	17
Susan Hunston, <i>Corpora in Applied Linguistics</i> (2002) .....	7
Samuel Johnson, <i>The Works of English Poets</i> (1779) .....	18
Jeffrey P. Kaplan, <i>Unfaithful to Textualism</i> , 10 GEO. J.L. PUB. POL'Y 385 (2012) .....	14
Alison L. LaCroix & Jason Merchant, <i>Beyond intuitions, algorithms, and dictionaries: historical semantics and legal interpretation</i> , Univ. of Chicago, Neubauer Collegium Workshop on Historical Semantics & Legal Interpretation (May 22-23, 2017) .....	19, 20
Alison L. LaCroix, <i>Historical Semantics and the Meaning of the Second Amendment</i> , The Panorama (Aug. 3, 2018) .....	5, 9, 13, 14, 17, 18, 19, 20
Thomas R. Lee & Stephen C. Mouritsen, <i>Judging Ordinary Meaning</i> , 127 YALE L.J. 788 (2018) .....	6, 7, 8, 10
Jennifer L. Mascott, <i>Who Are “Officers of the United States”?</i> , 70 STAN. L. REV. 443 (2018) .....	8, 12
Tony McEnery & Andrew Wilson, <i>Corpus Linguistics: An Introduction</i> (2d ed. 2001) .....	5
Darrell A.H. Miller, <i>Second Amendment Equilibria</i> , 116 NW U. L. REV. 239 (2021) .....	21

## TABLE OF AUTHORITIES—Continued

Stephen C. Mouritsen, <i>Hard Cases and Hard Data: Assessing Corpus Linguistics as an Empirical Path to Plain Meaning</i> , 13 COLUM. SCI. & TECH. L. REV. 156 (2011).....	12
Thomas Paine, <i>Common Sense</i> (1776) .....	17
James C. Phillips et al., <i>Corpus Linguistics &amp; Original Public Meaning: A New Tool To Make Originalism More Empirical</i> , 126 YALE L.J. FORUM 21 (2016).....	8, 9, 11, 12, 21
Guillaume Thomas François Raynal, <i>A Philosophical and Political History of the British Settlements and Trade in North America</i> (2d ed. 1779).....	18
Readex, <i>America's Historical Newspapers</i> , <a href="https://www.readex.com/sites/default/files/productflyers/AHN-readex-flyer.pdf">https://www.readex.com/sites/default/files/productflyers/AHN-readex-flyer.pdf</a> .....	11, 12, 19
Lawrence M. Solan, <i>Can Corpus Linguistics Help Make Originalism Scientific?</i> , 126 YALE L.J. FORUM 57 (2016).....	9
Lawrence M. Solan & Tammy Gales, <i>Corpus Linguistics as a Tool in Legal Interpretation</i> , 2017 B.Y.U. L. REV. 1311 (2017) .....	9, 10

**BRIEF FOR CORPUS LINGUISTICS  
PROFESSORS AND EXPERTS  
SUPPORTING RESPONDENTS**

Dennis E. Baron, Alison L. LaCroix, Stefan Th. Gries, and Jason Merchant respectfully submit this brief as amici curiae in support of respondents.<sup>1</sup>

**INTEREST OF AMICI CURIAE**

Amici curiae are professors and experts in the fields of linguistics, law, and legal history. They file this brief on behalf of themselves as individuals, not as representatives of any institution.

Dennis E. Baron, Ph.D., is a Professor of English and Linguistics, emeritus, at the University of Illinois. Professor Baron has written extensively about language and grammar, and he is an expert in the areas of English language history and structure, the technologies of communication, and language and law. Professor Baron's recent work has focused on the use of corpus linguistics to understand the meaning of the Second Amendment.

Alison L. LaCroix, J.D., Ph.D., is the Robert Newton Reid Professor of Law at the University of Chicago Law School, and an Associate Member of the University of Chicago Department of History. Professor

---

<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no person other than Amici or their counsel made a monetary contribution to its preparation or submission. Petitioners and respondents granted blanket consent for the filing of amicus curiae briefs.

LaCroix is a scholar of American legal history, specializing in constitutional law, federalism, and eighteenth- and nineteenth-century legal thought. Professor LaCroix has also written about corpus linguistics and the study of Founding-era texts.

Stefan Th. Gries, Ph.D., is a Professor of Linguistics in the Department of Linguistics at the University of California, Santa Barbara, and Chair of English Linguistics at the Justus-Liebig-Universität Giessen. Between 2013 and 2017, he was a Visiting Chair of the Centre for Corpus Approaches to Social Science at Lancaster University, and between 2007 and 2019, he was a Visiting Professor at five Linguistic Society of America Linguistic Institutes. Professor Gries publishes widely in quantitative corpus linguistics and has been involved in research and briefs on the ordinary meaning of words and phrases in legal texts.

Jason Merchant, Ph.D., is Vice Provost and the Lorna P. Straus Professor, Department of Linguistics and the College at the University of Chicago. Professor Merchant's primary research area is syntax and its interfaces with morphology and with semantics. Professor Merchant has researched corpus linguistics applied to historical semantics and legal interpretation.



## INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioners ask this Court to stretch the Second Amendment well beyond its textual and historical confines. They claim that the Second Amendment secures an essentially inviolable right to carry concealed weapons outside the home for “self defense.” They base that claim on this Court’s decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and on Founding-era legal treatises and nineteenth-century judicial interpretations of the right to bear arms.

Overwhelming historical evidence about the meaning of the Second Amendment’s text to ordinary Founding-era voters contradicts that claim. That evidence comes from recent findings in the field of corpus linguistics—none of which existed when this Court decided *Heller* and *McDonald* more than a decade ago. Corpus linguistics is an empirical approach to researching the use and meaning of language by surveying large collections of written or spoken texts, known as a corpus (singular) or corpora (plural). Recently, historians have assembled several voluminous new corpora containing American and English historical sources, which have allowed researchers for the first time to search for specific terms and phrases in hundreds of thousands of Founding-era texts. Using this new technology, corpus linguistics researchers have unearthed a wealth of new evidence demonstrating that the phrase “keep and bear arms” provides no support for any broad, unfettered right to carry arms.

Rather, the evidence demonstrates that the phrase possessed a collective, militaristic meaning at the Founding. And consistent with that collective, militaristic meaning, the corpora confirm that ordinary Founding-era voters would have understood that the right to keep and bear arms was subject to regulation.

This new historical evidence undermines petitioners' theory that the Second Amendment entitles citizens to carry concealed firearms in public without any government oversight. It cautions against expanding the right recognized in *Heller*. And it shows that New York's regulation of firearms comports with the Second Amendment's original meaning.

## ARGUMENT

### A. Corpus Linguistics Provides Previously Unavailable Guidance On The Meaning Of The Second Amendment

#### 1. *Far more Founding-era texts are more readily available today than when the Court decided Heller*

In the decade since this Court decided *Heller*, the readily available historical resources about the meaning and usage of the Second Amendment's phrase "keep and bear arms" have expanded dramatically. *Heller* made clear that the Second Amendment must be given the meaning it had to ordinary voters when it was ratified. 554 U.S. at 576-77. Yet when this Court decided *Heller*, it could find "few examples" from "the founding period" to shed light on the meaning of

“keep arms.” *Id.* at 582-83; *id.* at 586-88 (similar for “bear arms”).

Today, scholars can examine a far more extensive historical record in ways that were “technologically *impossible* in 2008 when *Heller* was decided.” Josh Blackman & James C. Phillips, *Corpus Linguistics and the Second Amendment*, Harv. L. Rev. Blog (Aug. 7, 2018).<sup>2</sup> Indeed, new research has enhanced the historical and linguistic understanding of the Second Amendment’s text by allowing researchers to analyze vast quantities of newly digitized historical texts from the Founding era. *Ibid.* Those texts contain copious examples of “keep arms” and “bear arms” in everyday written speech from when the Second Amendment was ratified. Dennis Baron, *Corpus Evidence Illuminates the Meaning of Bear Arms*, 46 HASTINGS CONST. L.Q. 509, 510-13 (2019); Alison L. LaCroix, *Historical Semantics and the Meaning of the Second Amendment*, The Panorama (Aug. 3, 2018).<sup>3</sup>

## ***2. Corpus linguistics permits greater research into historical texts***

Much of the relevant research has come in the field of corpus linguistics. Corpus linguistics is “the study of language based on examples of ‘real life’ language use.” Tony McEnery & Andrew Wilson, *Corpus Linguistics: An Introduction* 1 (2d ed. 2001).

---

<sup>2</sup> <https://blog.harvardlawreview.org/corpus-linguistics-and-the-second-amendment>.

<sup>3</sup> <http://thepanorama.shear.org/2018/08/03/historical-semantics-and-the-meaning-of-the-second-amendment>.

“[D]eveloped over the past several decades to support empirical investigations of language variation and use,” corpus linguistics uses “both quantitative and qualitative analytical techniques” to study “a large and principled collection of natural texts, known as a ‘corpus.’” Douglas Biber, *Corpus-Based and Corpus-Driven Analyses of Language Variation and Use*, in *THE OXFORD HANDBOOK OF LINGUISTIC ANALYSIS* 193-95 (Bernd Heine & Heiko Narrog eds., 2d ed. 2015).

Corpus linguistics uses a variety of objective, empirical methods to perform “tasks that cannot be performed by human linguistic intuition alone.” Thomas R. Lee & Stephen C. Mouritsen, *Judging Ordinary Meaning*, 127 *YALE L.J.* 788, 831-32 (2018). Chief among these are *frequency*, *collocation*, and *key-words in context*. Applying these methods produces “research findings that have much greater generalizability and validity than would otherwise be feasible.” *Id.* at 828 n.170 (citation omitted).

***Frequency.*** Measuring the frequency of a word or phrase in a particular context is perhaps the most common tool for analyzing the meaning of language in corpus linguistics. Stefan Th. Gries, *Dispersions and Adjusted Frequencies in Corpora*, 13 *INT’L J. CORPUS LINGUISTICS* 403, 403 (2008). Frequency can show, among other things, “the importance of particular words/grammatical patterns” and “the degree of cognitive entrenchment of particular words/grammatical patterns.” *Ibid.* That is, by measuring “the statistical *frequency* of words and word senses in a given speech community and over a given time period,” researchers

can “determine empirically” whether “the ordinary meaning of a given word” is merely “*possible, common*, or the *most common* sense of that word in a given context.” Lee & Mouritsen, *supra*, at 831-32. Hence, corpus linguistics can shed considerable light on how the phrase “keep and bear arms” was most commonly understood at the Founding by studying the frequency with which its terms are used and in what contexts.

**Collocation.** This method is used to study “the tendency of words to be biased in the way they co-occur.” Susan Hunston, *Corpora in Applied Linguistics* 68 (2002). Collocation analyzes the statistical frequencies of the appearance of two or more words together in a particular context (e.g., “keep arms” or “bear arms” in the context of military service). It thus reveals “the possible range of linguistic contexts in which a word typically appears and can provide useful information about the range of possible meanings and sense divisions.” Lee & Mouritsen, *supra*, at 832; see *Caesars Ent. Corp. v. Int’l Union of Operating Engineers Local 68 Pension Fund*, 932 F.3d 91, 95 (3d Cir. 2019) (using “collocates” method to find “the words that most often co-occurred with ‘previously’”).

**Keywords in context.** Often referred to as “KWIC,” this tool “allows a corpus user to evaluate words in context systematically” by reviewing “a particular word or phrase in hundreds of contexts, all on the same page of running text.” Lee & Mouritsen, *supra*, at 832. “The core idea underlying KWIC analysis is to examine the context surrounding uses of the term or phrase under review as the term was actually

employed in spoken or written English during the relevant time period.” Jennifer L. Mascott, *Who Are “Officers of the United States”?*, 70 STAN. L. REV. 443, 467 (2018) (describing KWIC as a “corpus linguistics technique” that is “particularly relevant to statutory and constitutional interpretation”). So, for example, analysts can use the KWIC function to learn how the terms “keep” and “bear” were used in the context of firearms and other weapons at the time of the Founding. In doing so, KWIC analysis illuminates “the occurrences of a chosen word with its surrounding context.” Douglas Biber et al., *Corpus Linguistics: Investigating Language Structure and Use* 26 (1998).

Using these objective, empirical tools, corpus linguistics enables systematic analyses of language in historical texts. This provides “meaningful and quantifiable insight about the range of possible uses of a word and the frequency of its different senses.” Lee & Mouritsen, *supra*, at 832.

### ***3. Corpus linguistics researchers use databases that are vast, diverse, and neutral***

Corpus linguistics researchers apply the methods of frequency, collocation, and keywords in context to a corpus. “A corpus, in linguistic terms, is merely a searchable body of texts used to determine meaning through language usage.” James C. Phillips et al., *Corpus Linguistics & Original Public Meaning: A New Tool To Make Originalism More Empirical*, 126 YALE L.J. FORUM 21, 23 (2016). “Lawyers use

corpora on a daily basis. In a sense, Google and Westlaw or Lexis are corpora.” *Ibid.*; see *Muscarello v. United States*, 524 U.S. 125, 129 (1998) (“[W]e have surveyed modern press usage, albeit crudely, by searching computerized newspaper databases.”). “But a linguist-designed corpus is more than just a big database. Because linguist-designed general corpora have a balance of different genres of texts, one can obtain a more representative slice of language usage and meaning.” Phillips et al., *supra*, at 23.

Importantly, a corpus of historical texts “is neutral in the sense that those whose writing contributes to it had no agenda with respect to the constitutional debates that occur now, some 250 years after the texts were written.” Lawrence M. Solan, *Can Corpus Linguistics Help Make Originalism Scientific?*, 126 YALE L.J. FORUM 57, 59 (2016). As Judge Hardiman explained, courts “can use corpora to perform analyses unavailable in standard sources like dictionaries. These analyses include measuring, in a given speech community over a given time, the statistical frequency of a word and the linguistic contexts in which it appears.” *Caesars*, 932 F.3d at 95 n.1. Indeed, by analyzing the use of a word or phrase in these corpora, courts and researchers can gather objective, empirical information about “which meanings were possible at a given time, and what their relative distribution and frequency were.” LaCroix, *supra*.

Corpora generally come in one of two types: “general and specialized.” Lawrence M. Solan & Tammy Gales, *Corpus Linguistics as a Tool in Legal*

*Interpretation*, 2017 B.Y.U. L. REV. 1311, 1337 (2017). General corpora are usually “large (frequently millions to billions of words) and usually aim to capture a range of registers that are representative of a common language variety.” *Ibid.*; see Lee & Mouritsen, *supra*, at 830 (“A *general* corpus endeavors to represent the language used by a broad (often national) speech community.”). Specialized corpora, by contrast, “are typically smaller (frequently thousands to millions of words) and focus on a more specific or less accessible variety of language.” Solan & Gales, *supra*, at 1337; see Lee & Mouritsen, *supra*, at 830-31 & n.180 (special corpora are often “limited to a particular genre, register, or dialect,” e.g., “a corpus of recorded Egyptian Arabic telephone calls”).

Today, corpus linguistics relies on various databases comprising a multitude of different and varied sources. Important research has been performed, for example, on Google Books, a corpus containing more than 25 million sources digitized in partnership with over 40 libraries, including Columbia University, Harvard University, the New York Public Library, and Oxford University.<sup>4</sup> The same is true of Readex, a corpus of early American newspapers dating back to 1690 curated by a “distinguished academic advisory board” in “partnerships with the American Antiquarian Society,

---

<sup>4</sup> Google, *Library Partners—Google Books*, Google, <https://www.google.com/googlebooks/library/partners.html>.



the Library of Congress, the Wisconsin Historical Society and more than 90 other institutions.”<sup>5</sup>

Additionally, Brigham Young University recently unveiled two groundbreaking corpora: the Corpus of Founding-Era American English (“COFEA”) and the Corpus of Early Modern English (“COEME”). COFEA includes over 120,000 texts and 154 million words drawn from sources between 1760 and 1799, and COEME includes 40,000 texts and close to 1.3 billion words from sources dating back to 1475. Specifically, COFEA contains: (1) The National Archive Founders Online, which contains over 90,000 records, including documents from Washington, Franklin, Adams, Jefferson, Hamilton, and Madison; (2) HeinOnline, which includes federal and state statutes, executive reports, and Founding-era treatises; (3) Evans Early American Imprints, which contains over 3000 written documents from 1760 and 1799; (4) Elliot, The Debates in the State Conventions on the Adoption of the Federal Constitution; (5) Farrand, Records of the Federal Constitutional Convention of 1787; (6) United States Statutes-at-Large from the first five Congresses.

As commentators have observed, “[t]he use of a corpus-like database to do originalist research is not new. After all, combing through the debates on the federal convention or the Federalist Papers is a form of corpus-based originalism.” Phillips et al., *supra*, at 26 (citing Randy E. Barnett, *New Evidence of the Original*

---

<sup>5</sup> Readex, *America’s Historical Newspapers*, <https://www.readex.com/sites/default/files/productflyers/AHN-readex-flyer.pdf>.

*Meaning of the Commerce Clause*, 55 ARK. L. REV. 847, 856-63 (2003), which surveyed uses of the term “commerce” in the Pennsylvania Gazette from 1728 to 1800). Still, as recently as 2011, corpus-based techniques had “rarely been brought to bear on the legal question of ordinary meaning.” Stephen C. Mouritsen, *Hard Cases and Hard Data: Assessing Corpus Linguistics as an Empirical Path to Plain Meaning*, 13 COLUM. SCI. & TECH. L. REV. 156, 161-62 & n.21 (2011).

But all that has changed now that courts and researchers can analyze the use of language in hundreds of thousands of Founding-era sources. Jennifer L. Mascott, *supra*, at 466-67 (“More tools than ever before are at the disposal of originalist interpreters with the recent adaptation of corpus linguistics techniques to constitutional and statutory interpretation.”). And of particular relevance here, corpora, “usually tens or hundreds of millions of words in size, can help with the small sample sizes that have usually plagued originalist research.” Phillips et al., *supra*, at 23. Corpus linguistics thus provides a potentially indispensable tool for understanding the Constitution’s original meaning. *Carpenter v. United States*, 138 S. Ct. 2206, 2238-39 & nn.4-5 (2018) (Thomas, J., dissenting) (citing corpus linguistics research from COFEA, Google Books, and Readex); *Lucia v. SEC*, 138 S. Ct. 2044, 2056-57 (2018) (Thomas, J., concurring) (citing corpus linguistics research in Mascott, *supra*).<sup>6</sup>

---

<sup>6</sup> See, e.g., *Caesars*, 932 F.3d at 95 n.1 (“Corpus linguistics describes language empirically.”); *People v. Harris*, 885 N.W.2d 832,

**B. Ordinary Use Of “Keep” And “Bear”  
Arms At The Founding Confirms That  
Any Right To Bear Arms Was Highly  
Regulated**

In concluding that the Second Amendment protects an individual right to possess a firearm, this Court in *Heller* never suggested the right was unfettered. Rightly so. Newly available corpus-linguistics evidence shows that ordinary voters at the Founding understood the Second Amendment’s text to allow governments broad authority to regulate firearm possession.

**1. *Bear arms was frequently used in the  
military context, with little reference  
to individual rights***

Consistent with its military origins, the phrase “bear arms” has a collective connotation, typically referring to “the act of soldiering and the use of weapons in war.” Baron, *supra*, at 513; LaCroix, *supra*. Since *Heller* was decided, corpus-linguistics

---

838-39 & n.29 (Mich. 2016) (using “*corpus linguistics*” as “a tool that can aid in the discovery of ‘how particular words or phrases are actually used in written or spoken English’”); *Fire Ins. Exch. v. Oltmanns*, 416 P.3d 1148, 1163 n.9 (Utah 2018) (Durham, J., concurring in part, concurring in the result) (“In the field of corpus linguistics, scholars determine those meanings that are consistent with common usage, or the term’s ordinary or most frequent meaning based on empirical data rather than personal intuition.” (quotations and alterations omitted)); *Wilson v. Safe-lite Grp., Inc.*, 930 F.3d 429, 445 (6th Cir. 2019) (Thapar, J., concurring in part, concurring in the judgment) (“[C]orpus linguistics can help courts as they roll up their sleeves and grapple with a term’s ordinary meaning.”).

researchers have discovered a voluminous body of evidence reinforcing that collective, militaristic meaning of “bear arms.” Baron, *supra*, at 514; *LaCroix, supra*. This research suggests that some greater emphasis should be afforded the Second Amendment’s “prefatory” language—“A well regulated Militia, being necessary to the security of a free State.” Jeffrey P. Kaplan, *Unfaithful to Textualism*, 10 GEO. J.L. PUB. POL’Y 385, 414, 423, 426 (2012) (explaining that, linguistically, the prefatory clause or “absolute provides the basis for the guarantee of the main clause”). And it suggests that “bear arms” was best understood at the Founding to convey a role for local regulation of firearm possession. After all, a collective, militaristic meaning suggests the focus of the right was on the community’s interests. In other words, those at the Founding would have understood that any individual right to bear arms was subject to the control of others, consistent with the ordinary understanding of a military chain of command.

Consider, for example, COFEA and COEME. A survey of those corpora revealed that both legal and non-legal texts in the Founding-era “almost always use *bear arms* in an unambiguously military sense.” Baron, *supra*, at 510-11. Out of nearly 1,000 examined uses of “bear arms” in “seventeenth- and eighteenth-century English and American texts,” “roughly 900 separate occurrences of *bear arms* before and during the founding era refer to war, soldiering, or other forms of armed action by a group rather than an individual.” *Ibid.* Representative examples include—

- “Let us consider those that *bear ARMS* under our PRINCES, with how much Order and Submission they execute their Command.” [1748].
- “The number of the Enemies that *bear Arms*, according to the truth, was about forty thousand more or less.” [1700].
- “I may say with truth all Weymouth, Braintree, Hingham, who were able to *bear Arms*, and hundreds from other Towns within 20, 30, and 40 miles of Weymouth.” [1775].
- “[T]hat Numbers of the Inhabitants murmur at being Obliged to *bear Arms*; and the dread of a French War is very General.” [1777].
- “[A]ll male persons, from sixteen years of age to fifty, shall *bear arms*, and duly attend all musters, and military exercise of the respective troops and companies.” [1760].
- “Those who conscientiously scruple to *bear arms*, shall not be compelled to do so; but shall pay an equivalent for personal service.” [1792].

*Id.* at 511 (citing COFEA and COEME, *BYU Law & Corpus Linguistics*).<sup>7</sup> And as those representative examples illustrate, usage of “bear arms” commonly reflected control by others, coupling “bear arms” with phrases like “execute their Command,” “murmur at being Obliged,” and “duly attend all musters, and

---

<sup>7</sup> COFEA, <https://lawnc1.byu.edu/cofea>; COEME, <https://lawnc1.byu.edu/coeme>.

military exercise of the respective troops and companies.” *Ibid.*

Even examples that were “at best ambiguous” still “suggest[] a military or quasi-military sense of bearing arms.” *Id.* at 512. More importantly, these examples show that the bearing of arms was subject to regulation, including limitations on where those arms might be carried—

- “That no person shall use or *bear any Arms* within London, and the Suburbs, or in any place between the said City and Pallace of Westminster, nor in no other part of the Pallace by Land or by Water, except such of the Kings people, as he shall appoint to keep the Kings peace.” [1657].
- “A Peasant in this Country (unless in time of great Danger or Invasion) is not suffered to *bear Arms.*” [1689].
- “That every Person who will go for Ireland on these Conditions, shall out of his first share of Money, buy for himself and every Relation and Servant that he carries with him (who are able to *bear Arms,*) a good Musket, or Case of Pistols for the defence of his Family.” [1690].
- “That the People have a Right to bear Arms for the Defence of themselves and the State, and as standing Armies in the Time of Peace are dangerous to Liberty, they ought not to be kept up: And that the Military should be kept under strict Subordination to, and governed by, the Civil Power.” [1776].

- “To protect the people against the violence of those who *bear arms* [i.e., officers and gentlemen who carry their swords in peacetime], and to punish them severely, if they shall dare to insult them, might still be, as it is at present, the business of the magistrate.” [1787].

*Id.* at 512-13; *see id.* at 518-22 (discussing these examples in greater detail “to show their ambiguity, their relation to the normal, military sense of *bear arms*, and their appearance in the context of weapons regulation”).

Nearly identical evidence is found in other corpora. Publications from 1760 to 1795 in Google Books revealed that “bear arms” was used 67.4% of the time in a collective rather than an individual sense. La-Croix, *supra*. This includes using “bear arms” in a collective sense with a plural subject (e.g., “Slaves were not permitted to *bear arms*”), as well as using the phrase in a collective sense with a singular subject (e.g., “when a slave was made free, a spear was put into his hand, and he was thenceforward permitted to *bear arms*, and subjected to military services”). *Ibid.* (quoting 4 Robert Henry, *The History of Great Britain* 142 (2d ed. 1788)). Other representative examples include—

- “Wherefore, if ye really preach from conscience, and mean not to make a political hobbyhorse of your religion convince the world thereof, by proclaiming your doctrine to our enemies, *for they likewise bear arms.*” Thomas Paine, *Common Sense* (Appendix) (1776).

- “In this town is a barrack for two companies of foot; and at the arrays in 1746, here were a thousand protestants fit to *bear arms*.” Jonathan Carver, *The New Universal Traveler* 553 (1779).
- “[H]e is exposed to the scorching heat of the sun, the intense frosts of the night, or the bloody slings of insects, he would be declare incapable and unworthy to *bear arms*. Are our militias and armies formed in this manner?” Guillaume Thomas François Raynal, *A Philosophical and Political History of the British Settlements and Trade in North America* 174-75 (2d ed. 1779).

By contrast, researchers found no evidence that similar language was used in the individual sense of “bear an arm” or “bear a weapon.” To be sure, the phrase “bear arms” was on rare occasion used in an individual sense with a singular subject (e.g., “I’ll fire his blood by telling what I did/When I was strong, and able to *bear arms*”). LaCroix, *supra* (quoting Samuel Johnson, *The Works of English Poets* (1779)). Yet no corpus evidence from the Founding era indicated that “bear” had an individualized connotation in the context of firearms generally, revealing no instances of any of the following phrases—

- “Bear a rifle”
- “Bear a musket”
- “Bear a pistol”
- “Bear a knife”



- “Bear rifles”
- “Bear muskets”
- “Bear pistols”

Contrary to the criticisms of some amici—criticisms based not on scholarship but attorney argument—these findings from corpus linguistics reflect more than the understanding of some alleged “elite.” For one, many of the books, pamphlets, and broadsides written in the Founding era and collected in COFEA and COEME were read by members of the general public, not just by “elites.” Dennis Baron, *Corpus linguistics, public meaning, and the Second Amendment*, *The Web of Language* (July 20, 2021).<sup>8</sup>

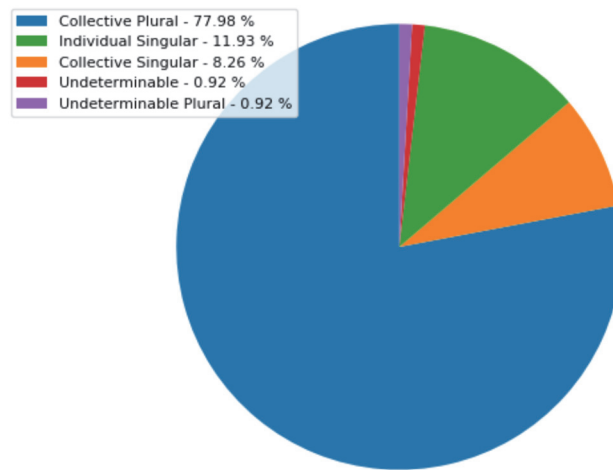
Plus, other corpora of texts aimed squarely at the general public reveal the same thing. Searching for instances of “bear arms” in newspapers from 1700-1800 in four databases—newspapers.com, Readex America’s Historical Newspapers, the British Library’s british-newspaperarchive.co.uk, and the Library of Congress’s chroniclingamerica.loc.gov—shows that “bear arms” rarely appears outside of a clearly military context. *Ibid.*

The results from Readex are particularly “dramatic.” LaCroix, *supra*. Those sources revealed that more than 86% of the uses of “bear arms” in newspapers between 1760 and 1795 were collective. Alison L. LaCroix & Jason Merchant, *Beyond intuitions algorithms, and dictionaries: historical semantics*

---

<sup>8</sup> <https://blogs.illinois.edu/view/25/1148667894>

and legal interpretation, Univ. of Chicago, Neubauer Collegium Workshop on Historical Semantics & Legal Interpretation (May 22-23, 2017).<sup>9</sup> In stark contrast, individual uses with a singular subject accounted for less than 12% of known uses of “bear arms” in those same newspapers, as shown in the chart below:



*Ibid.* “For most ordinary citizens in the founding generation, then, the phrase ‘bear arms’ referred to an activity undertaken by groups of people, not only by individuals.” LaCroix, *supra*.

Although some armchair linguists try to dismiss this evidence, too, as merely reflecting what was “newsworthy,” the fact remains that *all* evidence from contemporary writings at the Founding points to the same conclusion— “[n]on-military uses of *bear arms* in reference to hunting or personal self-defense are not just

<sup>9</sup> <https://home.uchicago.edu/~merchant/pubs/NeubauerLecture.pdf>.

rare, they are almost nonexistent.” Baron, *supra*, at 510. For that reason, “[e]ven scholars sympathetic to expansive gun rights acknowledge that the text’s original public meaning is not on their side.” Darrell A.H. Miller, *Second Amendment Equilibria*, 116 NW U. L. REV. 239, 242 (2021). Instead, the evidence confirms “that the plain, ordinary, natural, and original meaning of *bear arms* in the eighteenth century was ‘carry- ing weapons in war,’ or in other forms of group offense, defense, or rebellion.” Baron, *supra*, at 510. And for all the reasons explained, that meaning reflects an ordinary understanding that any individual right to bear arms would be subject to control.

***2. Keep arms often suggested military context and the limited individual uses support that carrying firearms was often subject to restrictions***

The same is true of “keep arms.” The *Heller* Court noted that “‘keep arms’ was not prevalent in the written documents of the founding period that we have found.” 554 U.S. at 582. But corpus linguistics has greatly expanded the historical record. Blackman & Phillips, *supra* (recognizing *Heller* “suffered from a lack of access to a large enough corpus to answer the linguistic questions presented” and the Court “implicitly recognized the deficiency of studying a limited range of materials”).

Corpus evidence reveals that in Founding-era sources, “keep arms” “almost always appears in a military context,” again reflecting that the right was tied

to community interests and subject to control. Baron, *supra*, at 513. The phrase appeared 28 times in COEME and 10 times in COFEA, and after excluding duplicates and irrelevant entries (e.g., where “keep” meant “prevent”), researchers found that 25 of the remaining examples “refer to weapons for use in the military or the militia.” *Ibid.* Representative examples include:

- “It now being thought not necessary to view the arms and ammunition of those obliged to *keep arms* more than once a year.” [1776].
- “Companies being notified by their respective commanding Officers that he is about to lead them \* \* \* and in Case of the Infantry, the householders, and others by Law obliged to *keep Arms*, at least three Days before such Choice.” [1776].
- “An armory to *keep arms* for the defence of the place.” [1688].
- “[Freemen] were bound to follow their Lords to the Wars, and many were Voluntiers, yet it seems all were bound upon call under peril of Fine and were bound to *keep Arms* for the preservation of the Kingdom, their Lords, and their own persons.” [1689].
- “[Protestants] were bound to *keep Arms* and Defend themselves and their Country from the power of the Popish Natives which were then Armed against them.” [1691].<sup>10</sup>

---

<sup>10</sup> Research on file with Professor Baron.

This evidence, showing that “keep arms” was used “almost exclusively in a military context” at the Founding, reinforces the Second Amendment’s collective connotation. Baron, *supra*, at 513. And it also reinforces that the right and responsibility of keeping arms could not be exercised wholly unilaterally, but was subject to regulation, referring to those “obliged to keep arms” and follow their “commanding Officers” or “Lords.”

Other analysts have uncovered similar evidence. Professors Blackman and Phillips found “roughly 200 results” in COFEA of “the word ‘keep’ (and its variants, ‘keeping,’ ‘kept,’ etc.) within four words of ‘arm’ or ‘arms.’” Blackman & Phillips, *supra*. After omitting irrelevant results and duplicates, they found that, of the 18 texts they reviewed, “about half referred to keeping arms in the military context, roughly a quarter referred to a private sense of keeping arms, and another quarter or so were ambiguous references.” *Ibid*. This evidence likewise provides reason to preserve the ordinary, collective meaning of “keep arms,” rather than adopt a new meaning of an unbridled, individual right.

**CONCLUSION**

The judgment of the Second Circuit should be affirmed.

JAMIE A. LEVITT  
JANIE C. BUCKLEY  
MORRISON & FOERSTER LLP  
250 W 55th St.  
New York, NY 10019

Respectfully submitted,

BRIAN R. MATSUI  
*Counsel of Record*  
SETH W. LLOYD  
MORRISON & FOERSTER LLP  
2100 L St., NW, Ste. 900  
Washington, DC 20037  
(202) 887-8784  
BMatsui@mofocom

*Counsel for Amici Curiae*