

MAR 09 2018

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## SENATE RESOLUTION

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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  
8

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

31 WHEREAS, these two interpretations of the Second Amendment  
32 have been considered and adopted by the United States Supreme  
33 Court; and  
34



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  
6

7 WHEREAS, the court in *United States v. Miller* determined  
8 the evidence did not suggest that the shotgun had a reasonable  
9 relationship to the preservation or efficiency of a well  
10 regulated militia; and  
11

12 WHEREAS, the court further held that the framers of the  
13 United States Constitution included the Second Amendment to  
14 ensure the effectiveness of the military; and  
15

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

21 WHEREAS, the plaintiff in *District of Columbia v. Heller*  
22 challenged the constitutionality of the Washington D.C. handgun  
23 ban, which is a statute that stood for thirty-two years; and  
24

25 WHEREAS, the court in *District of Columbia v. Heller* held  
26 that the Second Amendment established an individual right for  
27 United States citizens to possess firearms and struck down the  
28 Washington D.C. handgun ban as a violation of that right; and  
29

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  
34

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  
38

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,



1  
2 BE IT RESOLVED by the Senate of the Twenty-ninth  
3 Legislature of the State of Hawaii, Regular Session of 2018,  
4 that the United States Congress is urged to propose and pass a  
5 proposed amendment to the United States Constitution pursuant to  
6 article 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's congressional  
19 delegation, and the Governor.  
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21  
22

OFFERED BY:

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