

No. 18-280

---

---

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

---

---

NEW YORK STATE RIFLE & PISTOL ASSOCIATION,  
INC., ROMOLO COLANTONE, EFRAIN ALVAREZ,  
AND JOSE ANTHONY IRIZARRY, PETITIONERS,

v.

THE CITY OF NEW YORK AND THE NEW YORK CITY  
POLICE DEPARTMENT-LICENSE DIVISION

---

---

*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  
MONICA CHAN  
MORRISON & FOERSTER LLP  
250 West 55th St.  
New York, NY 10019

BRIAN R. MATSUI  
*Counsel of Record*  
MORRISON & FOERSTER LLP  
2000 Pennsylvania Ave., NW  
Washington, D.C. 20006  
(202) 887-8784  
BMatsui@mofocom

*Counsel for Amici Curiae*

AUGUST 12, 2019

## TABLE OF CONTENTS

	Page
INTEREST OF AMICI CURIAE .....	1
INTRODUCTION AND SUMMARY OF ARGUMENT .....	3
ARGUMENT .....	5
I. TO THE EXTENT THE CASE IS NOT MOOT, THE COURT SHOULD ADDRESS ONLY THE PREMISES-LICENSE RULE ...	5
II. CORPUS LINGUISTICS SHOWS THAT THE PREMISES-LICENSE RULE COMPORTS WITH THE SECOND AMENDMENT'S ORIGINAL MEANING.....	7
A. Corpus Linguistics Offers Empirical Analyses Of The Second Amendment's Original Meaning That Were Unavailable When The Court Decided <i>Heller</i> ...	7
1. Corpus linguistics relies on databases that are vast, diverse, and neutral .....	9
2. Corpus linguistics uses objective, empirical methodologies to determine the meaning of words and phrases.....	14
B. Recent Corpus Linguistics Research Indicates That The Original Common Meaning Of "Bear Arms" And "Keep Arms" Was Collective And Militaristic....	17
1. "Bear arms" does not denote individual possession of firearms by civilians.....	17

TABLE OF CONTENTS – Continued

	Page
2. “Keep arms” does not denote individual possession of firearms by civilians.....	25
CONCLUSION.....	27

## TABLE OF AUTHORITIES

	Page
CASES	
<i>Caesars Entm't Corp. v. Int'l Union of Operating Engineers Local 68 Pension Fund</i> , ___ F.3d ___, No. 18-2465, 2019 WL 3484247 (3d Cir. Aug. 1, 2019).....	10, 14, 15
<i>Carpenter v. United States</i> , 138 S. Ct. 2206 (2018) .....	13
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008) .....	3, 6, 7, 8, 17, 25, 27
<i>English v. State</i> , 35 Tex. 473 (1871) .....	6
<i>Fire Ins. Exch. v. Oltmanns</i> , 416 P.3d 1148 (Utah 2018).....	14
<i>Lucia v. SEC</i> , 138 S. Ct. 2044 (2018) .....	14
<i>McDonald v. City of Chicago</i> , 561 U.S. 742 (2010) .....	3, 6
<i>Muscarello v. United States</i> , 524 U.S. 125 (1998) .....	9
<i>People v. Harris</i> , 885 N.W.2d 832 (Mich. 2016) .....	14
<i>United States Dep't of Justice v. Provenzano</i> , 469 U.S. 14 (1984) .....	5
<i>Wilson v. Safelite Grp., Inc.</i> , 930 F.3d 429 (6th Cir. 2019).....	14

## TABLE OF AUTHORITIES—Continued

	Page
OTHER AUTHORITIES	
Alison L. LaCroix, <i>Historical Semantics and the Meaning of the Second Amendment</i> , <i>The Panorama</i> (August 3, 2018).....	8, 10, 17, 21, 22, 23, 24
Alison L. LaCroix & Jason Merchant, <i>Beyond Intuitions, Algorithms, and Dictionaries: Historical Semantics and Legal Interpretation</i> , Neubauer Collegium Workshop on Historical Semantics & Legal Interpretation, University of Chicago (May 22, 2017).....	23
<i>America’s Historical Newspapers</i> , Readex, <a href="https://www.readex.com/content/americas-historical-newspapers">https://www.readex.com/content/americas-historical-newspapers</a> .....	12
<i>A Philosophical and Political History of the British Settlements and Trade in North America</i> 38 (1776).....	22
COEME, <a href="https://lawnc1.byu.edu/coeme/">https://lawnc1.byu.edu/coeme/</a> .....	19, 25
COFEA, <a href="https://lawnc1.byu.edu/cofea/">https://lawnc1.byu.edu/cofea/</a> .....	19, 25, 26
Dennis Baron, <i>Corpus Evidence Illuminates the Meaning of Bear Arms</i> , 46 <i>Hastings Const. L. Q.</i> 522 (2019) .....	8, 17, 18, 19, 21, 25, 26, 27
Douglas Biber, <i>Corpus-Based and Corpus-Driven Analyses of Language Variation and Use</i> , in <i>The Oxford Handbook of Linguistic Analysis 193-95</i> (Bernd Heine & Heiko Narrog eds., 2015).....	9
Douglas Biber, <i>et al.</i> , <i>Corpus Linguistics: Investigating Language Structure and Use</i> 26 (1998) .....	16

## TABLE OF AUTHORITIES—Continued

	Page
James C. Phillips, Daniel M. Ortner, & Thomas R. Lee, <i>Corpus Linguistics &amp; Original Public Meaning: A New Tool To Make Originalism More Empirical</i> , 126 Yale L.J. Forum 21 (2016).....	9, 10, 13
Jeffrey P. Kaplan, <i>Unfaithful to Textualism</i> , 10 Geo. J.L. Pub. Pol’y 385 (2012).....	18
Jennifer L. Mascott, <i>Who Are “Officers of the United States?”</i> , 70 Stan. L. Rev. 443 (2018) ....	13, 16
Jonathan Carver, <i>The New Universal Traveler</i> (1779).....	22
Josh Blackman & James C. Phillips, <i>Corpus Linguistics and the Second Amendment</i> , Harvard L. Rev. Blog (August 7, 2018).....	8, 25
Lawrence M. Solan & Tammy Gales, <i>Corpus Linguistics as a Tool in Legal Interpretation</i> , 2017 B.Y.U. L. Rev. 1311 (2017) .....	10, 11
Lawrence M. Solan, <i>Can Corpus Linguistics Help Make Originalism Scientific?</i> , 126 Yale L.J. Forum 57 (2016).....	10
<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> .....	11
Stefan Th. Gries, <i>Dispersions and Adjusted Frequencies in Corpora</i> , 13 Int’l J. Corpus Linguistics 403 (2008) .....	14, 15

## TABLE OF AUTHORITIES—Continued

	Page
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).....	13
Susan Hunston, <i>Corpora in Applied Linguistics</i> 68 (2002).....	15
Thomas Paine, <i>Common Sense</i> (1776) .....	22
Thomas R. Lee & Stephen C. Mouritsen, <i>Judging Ordinary Meaning</i> , 127 Yale L.J. 788 (2018).....	11, 14, 15, 16
Tony McEnery & Andrew Wilson, <i>Corpus Linguistics: An Introduction</i> 1 (2d ed. 2001).....	9

**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.

---

<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 respondent granted blanket consent for the filing of amici curiae briefs.



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 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

The Court should approach this case with great caution. The question presented and the New York City premises-license rule under review afford no opportunity to stretch the Second Amendment beyond its textual and historical confines to cover a civilian “public carry” right.

To begin with, the case is moot. Under state and local law, petitioners can now do precisely what they sought to do: lawfully transport their guns to second homes and shooting ranges outside New York City. But even if not moot, the case should be decided on the actual grounds that petitioners argued below, that the lower courts addressed, and that petitioners raised in their question presented to this Court. Those grounds do not involve the issue of carrying a loaded firearm for self-defense or otherwise transporting loaded weapons. Petitioners’ Second Amendment claim has always challenged only the limitations on their “premises licenses”—that is, that those licenses do not authorize transportation of guns to other homes or ranges outside New York City. Should the Court reach that claim, it should decide only that issue. And it should avoid wading into the murky, uncharted waters of “public carry” rights.

Such caution is particularly warranted in light of recent findings in the field of corpus linguistics, none of which existed when the Court decided *District of Columbia v. Heller*, 554 U.S. 570 (2008), or *McDonald*

*v. City of Chicago*, 561 U.S. 742 (2010). 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). In the last few years, 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 over the past decade showing that the phrase “keep and bear arms” overwhelmingly had a collective, militaristic meaning at the Founding.

This new historical evidence undermines petitioners’ unreviewed and untested theory that the Second Amendment entitles citizens to brandish loaded firearms in public during peacetime for use against their fellow citizens in the event of a “confrontation.” Pet. Br. 41-42. The evidence likewise suggests that this Court should adhere to time-honored principles of judicial restraint in limiting any constitutional ruling in this case to the facts and issues squarely presented—namely, petitioners’ challenge to their premises licenses.

**ARGUMENT****I. TO THE EXTENT THE CASE IS NOT MOOT, THE COURT SHOULD ADDRESS ONLY THE PREMISES-LICENSE RULE**

For all the reasons respondents explain, this case is now moot and the decision below should be vacated. The laws of both New York State and New York City now allow premises-license holders like petitioners to transport their handguns to homes and ranges outside the City. Resp. Br. 8-9, 13-16. Because petitioners now have everything they purported to seek in this lawsuit, no case or controversy remains. *United States Dep't of Justice v. Provenzano*, 469 U.S. 14, 15-16 (1984) (per curiam) (dismissing case as moot and vacating judgments below based on intervening statutory law because claims for injunctive relief must be “judged under the law presently in effect”).

Even if not moot, the Court should resolve only the Second Amendment issue in this case and limit its review to petitioners' claims vis-à-vis their premises licenses. The Court should not expand the case to address any broader assertion of a putative “right” to carry loaded firearms in public. As petitioners acknowledged at the certiorari stage, they have sought in this case only “the modest ability to transport their licensed firearms, unloaded and locked away separate from ammunition, to a shooting range or second home outside city limits.” Cert. Reply 1. Petitioners in fact never applied for a carry license and previously conceded that they were “neither claiming an entitlement to a concealed carry license nor seeking the functional

equivalent of one.” Pet. S.J. Mot., D. Ct. Dkt. No. 44 at 6. They instead argued that their premises licenses violate the Second Amendment because those licenses do not, by themselves, authorize petitioners to transport their guns to other homes or shooting ranges outside New York City. Pet. App. 12; *see* Pet. i (challenging only the rule on transporting a “handgun to a home or shooting range outside city limits”).

The Court should thus limit its decision to the specific relief petitioners have sought in this case (and, in fact, have already obtained due to intervening changes in the law). The Court should not entertain petitioners’ newly expanded theory, raised for the first time in their merits brief to this Court, that the Second Amendment entitles them “to carry loaded firearms upon their persons as they [go] about their daily lives.” Pet. Br. 22-23. After all, this Court has made clear that the Second Amendment does not protect an “unlimited” “right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Heller*, 554 U.S. at 626; *McDonald*, 561 U.S. at 786 (plurality op.) (same). Far from it. History confirms “that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues.” *Heller*, 554 U.S. at 626; *see English v. State*, 35 Tex. 473, 478-79 (1871) (finding it “little short of ridiculous, that any one should claim the right to carry upon his person any of the mischievous devices inhibited by the statute”—*e.g.*, “pistols”—given that “almost, if not every one of the states of this Union have a similar law”). The Court should not reexamine these

historical prohibitions until presented with a case that, unlike this one, squarely involves such issues on a fully developed record.

## **II. CORPUS LINGUISTICS SHOWS THAT THE PREMISES-LICENSE RULE COM- PORTS WITH THE SECOND AMEND- MENT'S ORIGINAL MEANING**

The need for caution before expanding the scope of this case is all the more imperative given recent advancements in corpus linguistics. New research, which did not exist at the time of *Heller*, now indicates that a civilian “public carry” right would not reflect the most common, natural meaning of “keep and bear arms” at the time of the Founding.

### **A. Corpus Linguistics Offers Empirical Analyses Of The Second Amendment's Original Meaning That Were Unavaila- ble When The Court Decided *Heller***

This Court has made clear that the Second Amendment's phrase “keep and bear arms” must be given the meaning it would have had to ordinary voters when it was ratified. *Heller*, 554 U.S. at 576-77. Yet in *Heller*, the Court could find “few examples” from “the founding period” to shed light on the meaning of “keep arms.” *Id.* at 582. And although “bear arms” “was often used in a military context in the federal legal sources (such as records of congressional debate),” the Court observed that “[n]o dictionary has ever adopted that definition, and we have been

apprised of no source that indicates that it carried that meaning at the time of the founding.” *Id.* at 586-88.

But that was then, and this is now. In the decade since *Heller* was decided, the resources available to the field of corpus linguistics have expanded dramatically. 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*, Harvard L. Rev. Blog (August 7, 2018).<sup>2</sup> Indeed, corpus linguistics 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 when the Second Amendment was ratified—nearly all of which involve collective, military-based uses of arms. Dennis Baron, *Corpus Evidence Illuminates the Meaning of Bear Arms*, 46 Hastings Const. L. Q. 522, 510-13 (2019); Alison L. LaCroix, *Historical Semantics and the Meaning of the Second Amendment*, The Panorama (August 3, 2018).<sup>3</sup>

---

<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/>.

**1. *Corpus linguistics relies on databases that are vast, diverse, and neutral***

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). Having been “developed 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., 2015). Applying those methods to a corpus or corpora produces “research findings that have much greater generalizability and validity than would otherwise be feasible.” *Ibid.*

“A corpus, in linguistic terms, is merely a searchable body of texts used to determine meaning through language usage.” James C. Phillips, Daniel M. Ortner, & Thomas R. Lee, *Corpus Linguistics & Original Public Meaning: A New Tool To Make Originalism More Empirical*, 126 *Yale L.J. Forum* 21, 24 (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, Ortner, & Lee, *Corpus Linguistics & Original Public Meaning*, at 24.

Even more importantly, “the corpus 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 recently explained for the Third Circuit, 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 Entm’t Corp. v. Int’l Union of Operating Engineers Local 68 Pension Fund*, \_\_\_ F.3d \_\_\_, No. 18-2465, 2019 WL 3484247, at \*2 n.1 (3d Cir. Aug. 1, 2019) (using corpus linguistics in statutory interpretation). 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, *Historical Semantics*.

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 Thomas R. Lee & Stephen C. Mouritsen, *Judging Ordinary Meaning*, 127 Yale L.J. 788, 830 (2018) (“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, *Corpus Linguistics*, at 1337; see Lee & Mouritsen, *Judging Ordinary Meaning*, at 830-31 & n.180 (explaining that special corpora are often “limited to a particular genre, register, or dialect,” e.g., “a corpus of recorded Egyptian Arabic telephone calls”).

Contemporary corpus linguistics relies on a variety of 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, Oxford University, Princeton University, Stanford University, the University of Virginia, the University of Texas at Austin, the University of Wisconsin at Madison, and the University of Michigan.<sup>4</sup> The same is true of Readex, a corpus of early American newspapers dating back to 1690 that was curated by a

---

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

“distinguished academic advisory board” in “partnerships with the American Antiquarian Society, 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 3,000 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

---

<sup>5</sup> *America’s Historical Newspapers*, Readex, <https://www.readex.com/content/americas-historical-newspapers>.

corpus-based originalism.” Phillips, Ortner, & Lee, *Corpus Linguistics & Original Public Meaning*, at 27 (citing Randy E. Barnett, *New Evidence of the Original Meaning of the Commerce Clause*, 55 Ark. L. Rev. 847, 856-62 (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, 162 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. See Jennifer L. Mascott, *Who Are “Officers of the United States?”*, 70 Stan. L. Rev. 443, 466-67 (2018) (“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, Ortner, & Lee, *Corpus Linguistics & Original Public Meaning*, at 24. Corpus linguistics thus provides a potentially indispensable tool for understanding the Constitution’s original meaning. See *Carpenter v. United States*, 138 S. Ct. 2206, 2238-39 (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, “*Officers*,” *supra*).<sup>6</sup>

**2. *Corpus linguistics uses objective, empirical methodologies to determine the meaning of words and phrases***

Corpus linguistics uses a variety of objective, empirical methods to perform “tasks that cannot be performed by human linguistic intuition alone.” Lee & Mouritsen, *Judging Ordinary Meaning*, at 831-32. Chief among these are *frequency*, *collocation*, and *key-words in context*.

*a. Frequency.* Measuring the frequency of a word or phrase in a particular context is perhaps the 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

---

<sup>6</sup> See, e.g., *Caesars*, 2019 WL 3484247, at \*2 n.1 (Hardiman, J.) (“Corpus linguistics describes language empirically.”); *People v. Harris*, 885 N.W.2d 832, 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. Safelite Grp., Inc.*, 930 F.3d 429 (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.”).

Linguistics 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, *Judging Ordinary Meaning*, at 831-32. Hence, corpus linguistics can shed considerable light on whether the phrase “keep and bear arms” was most commonly understood at the Founding to confer an individual right by studying the frequency with which its terms are used and in what contexts.

*b. 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, *Judging Ordinary Meaning*, at 832; see *Caesars*, 2019 WL 3484247, at \*2 (Hardiman, J.) (using “collocates” method to find “the words that most often co-occurred with ‘previously’”).

c. *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, *Judging Ordinary Meaning*, 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.” Mascott, “*Officers*,” at 467 (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).

In sum, by enabling systematic analyses of language in historical texts, corpus linguistics provides “meaningful and quantifiable insight about the range of possible uses of a word and the frequency of its different senses.” Lee & Mouritsen, *Judging Ordinary Meaning*, at 832.

**B. Recent Corpus Linguistics Research Indicates That The Original Common Meaning Of “Bear Arms” And “Keep Arms” Was Collective And Militaristic**

Newly available corpus linguistics evidence cautions against expanding the Second Amendment to entitle civilians to carry loaded guns in public places whenever they so choose.

**1. “Bear arms” does not denote individual possession of firearms by civilians**

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, *Corpus Evidence* at 513; LaCroix, *Historical Semantics*. This Court read the phrase differently in *Heller*, but it did so largely based on the paucity of the extant historical record. *See* 554 U.S. at 586-88 (“[W]e have been apprised of no source that indicates that it carried that meaning at the time of the founding.”).

Since *Heller* was decided, however, corpus linguistics researchers have discovered a voluminous body of evidence reinforcing the collective, militaristic meaning of “bear arms.” Baron, *Corpus Evidence* at 513; LaCroix, *Historical Semantics*. This research suggests, at the very least, that greater emphasis should be afforded the Second Amendment’s “prefatory” language—“A well regulated Militia, being necessary to the security of a free State”—since the principal basis



for subordinating that clause in *Heller* was the purportedly unambiguous individual connotation of “keep and bear arms.” See Jeffrey P. Kaplan, *Unfaithful to Textualism*, 10 Geo. J.L. Pub. Pol’y 385, 414, 426 (2012) (explaining that, linguistically, the prefatory clause or “absolute provides the basis for the guarantee of the main clause”).

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, *Corpus Evidence*, 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>

By contrast, only a handful of results from those corpora “were either ambiguous or carried no military connotation.” *Id.* at 510-11. In fact, “bear arms” was used only *once* in a clearly non-military context—an English *translation* of the French term “*porter armes*,” used to describe orangutans in 1780: “[A]n ape who knows how to *bear arms*, to attack his enemies with stones, and to defend himself with clubs.” *Id.* at 512. Otherwise, the remaining examples “are at best ambiguous, as they appear in contexts suggesting a military or quasi-military sense of bearing arms.” *Ibid.* Those examples include—

---

<sup>7</sup> COFEA (<https://lawncf.byu.edu/cofea/>); COEME (<https://lawncf.byu.edu/coeme/>).

- “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].
- “[The 1689 Bill of Rights] asserted the freedom of election to parliament, the freedom of speech in parliament, and the right of the subject to *bear arms*, and to petition his sovereign.” [1771].
- “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 (Appendix) (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”).

All of this is to say that “[n]on-military uses of *bear arms* in reference to hunting or personal self-defense are not just rare, they are almost nonexistent.” *Id.* at 510. This evidence thus confirms “that the plain, ordinary, natural, and original meaning of *bear arms* in the eighteenth century was ‘carrying weapons in war,’ or in other forms of group offense, defense, or rebellion.” *Ibid.*

Nearly identical evidence is found in other corpora. Publications from 1760 to 1795 in Google Books revealed that “bear arms” was used 67.4 percent of the time in a collective rather than an individual sense. LaCroix, *Historical Semantics*. 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 hobby-horse of your religion, convince the word thereof, by proclaiming your doctrine to our enemies, for they likewise *bear arms*.” Thomas Paine, *Common Sense* (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* (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 declared incapable and unworthy to *bear arms*. Are our militias and armies formed in this manner?” *A Philosophical and Political History of the British Settlements and Trade in North America* 38 (1776).

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, *Historical Semantics* (quoting Samuel Johnson, *The Works of English Poets* (1779)).

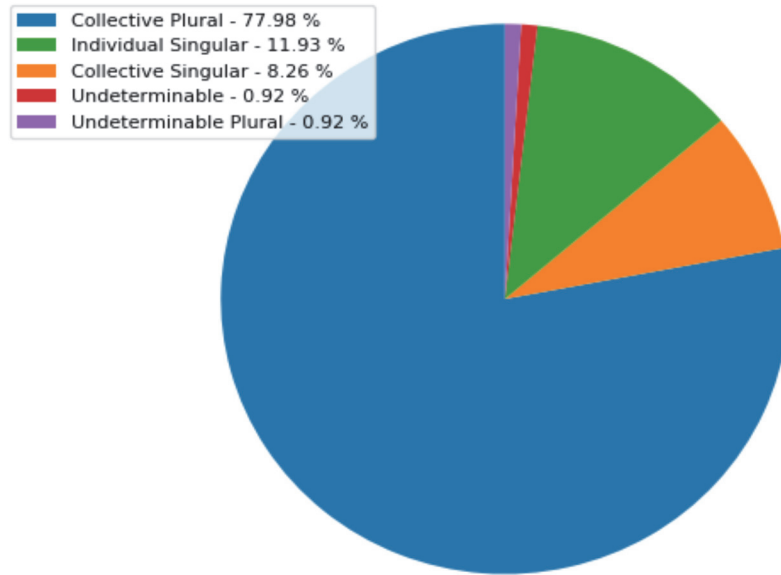
Yet no corpus evidence from the Founding era indicated that “bear” had an individualized connotation in the context of firearms generally, revealing no instances of any of the following phrases—

- “Bear a rifle”
- “Bear a musket”
- “Bear a pistol”
- “Bear a knife”
- “Bear rifles”
- “Bear muskets”
- “Bear pistols”

The results from early American newspapers in Readex “are even more dramatic.” LaCroix, *Historical Semantics*. Those sources revealed that more than 86 percent 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 and Legal Interpretation*, Neubauer Collegium Workshop on Historical Semantics & Legal Interpretation, University of Chicago (May 22, 2017).<sup>8</sup> In stark contrast, individual uses with a singular subject accounted for less than 12 percent of known uses of “bear arms” in those same newspapers, as shown in the chart below—

---

<sup>8</sup> <https://home.uchicago.edu/~merchant/pubs/NeubauerLecture.pdf>.



*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, *Historical Semantics*.

The data derived from these historical texts, both legal and non-legal, suggest that the phrase “bear arms” referred to militias rather than to the solo use of weapons for self-defense. In light of this evidence, the Court should not distort the Second Amendment’s original meaning by declaring an unbounded right for civilians to carry loaded guns in public during peacetime, especially since petitioners never claimed such a right below or at the certiorari stage.

**2. “Keep arms” does not denote individual possession of firearms by civilians**

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, *Corpus Linguistics* (recognizing that *Heller* “suffered from a lack of access to a large enough corpus to answer the linguistic questions presented,” and that 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.” Baron, *Corpus Evidence*, at 513. The phrase appeared twenty-eight times in COEME and ten times in COFEA, and after excluding duplicates and irrelevant entries (*e.g.*, where “keep” meant “prevent”), researchers found that twenty-five 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 Volunteers, 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>9</sup>

This evidence, showing that “keep arms” was used “almost exclusively in a military context” at the Founding, reinforces the Second Amendment’s military connotation. *Ibid.*

Other analysts have uncovered similar evidence. Professors Blackman and Phillips, for example, 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, *Corpus Linguistics*. After omitting irrelevant results and duplicates, Professors Blackman and Phillips found that, of the eighteen texts they reviewed, “about half

---

<sup>9</sup> Research on file with Professor Dennis E. Baron.

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 question *Heller*’s reading of “keep arms,” and at the very least it cautions against transforming a right to “keep arms” into a right to brandish firearms in public during peacetime.

### CONCLUSION

The writ of certiorari should be dismissed as moot, and the court of appeals’ decision should be vacated. Or, alternatively, if the case is not moot, the decision below should be affirmed.

Respectfully submitted,

JAMIE A. LEVITT  
MONICA CHAN  
MORRISON & FOERSTER LLP  
250 West 55th St.  
New York, NY 10019

BRIAN R. MATSUI  
*Counsel of Record*  
MORRISON & FOERSTER LLP  
2000 Pennsylvania Ave., NW  
Washington, D.C. 20006  
(202) 887-8784  
BMatsui@mofocom

*Counsel for Amici Curiae*

AUGUST 12, 2019