After that decision, Congress placed greater limitations on the receipt, possession, and transportation of firearms,[8] and proposals for national registration or prohibition of firearms altogether have been made.[9] *Miller*, however, shed little light on the validity of such proposals. Pointing out that interest in the "character of the Second Amendment right has recently burgeoned," Justice Thomas, concurring in the Court's invalidation (on other grounds) of the Brady Handgun Violence Prevention Act, questioned whether the Second Amendment bars federal regulation of gun sales, and suggested that the Court might determine "at some future date . . . whether Justice Story was correct . . . that the right to bear arms has justly been considered, as the palladium of the liberties of a republic.'" [10]

It was not until 2008 that the Supreme Court definitively came down on the side of an "individual rights" theory. Relying on new scholarship regarding the origins of the Amendment,[11] the Court in *District of Columbia v. Heller* [12] confirmed what had been a growing consensus of legal scholars—that the rights of the Second Amendment adhered to individuals. The Court reached this conclusion after a textual analysis of the Amendment,[13] an examination of the historical use of prefatory phrases in statutes, and a detailed exploration of the 18th century meaning of phrases found in the Amendment. Although accepting that the historical and contemporaneous use of the phrase "keep and bear Arms" often arose in connection

(11th Cir.), *cert. denied*, 522 U.S. 1007 (1997) (member of Georgia unorganized militia unable to establish that his possession of machine guns and pipe bombs bore any connection to the preservation or efficiency of a well regulated militia).

[8] Enacted measures include the Gun Control Act of 1968. 82 Stat. 226, 18 U.S.C. §§ 921–928. The Supreme Court's dealings with these laws have all arisen in the context of prosecutions of persons purchasing or obtaining firearms in violation of prohibitions against such conduct by convicted felons. Lewis v. United States, 445 U.S. 55 (1980); Barrett v. United States, 423 U.S. 212 (1976); Scarborough v. United States, 431 U.S. 563 (1977); United States v. Bass, 404 U.S. 336 (1971).

[9] *E.g.*, National Commission on Reform of Federal Criminal Laws, Working Papers 1031–1058 (1970), and Final Report 246–247 (1971).

[10] Printz v. United States, 521 U.S. 898, 937–39 (1997) (quoting 3 Commentaries § 1890, p. 746 (1833)). Justice Scalia, in extra-judicial writing, has sided with the individual rights interpretation of the Amendment. *See* Antonin Scalia, A Matter of Interpretation, Federal Courts and the Law, 136–37 n.13 (A. Gutmann, ed., 1997) (responding to Professor Tribe's critique of "my interpretation of the Second Amendment as a guarantee that the Federal Government will not interfere with the individual's right to bear arms for self-defense").

[11] E. Volokh, *The Commonplace Second Amendment*, 73 N. Y.U. L. Rev. 793 (1998); R. Barnett, *Was the Right to Keep and Bear Arms Conditioned on Service in an Organized Militia?*, 83 Tex. L. Rev. 237 (2004); E. Volokh, *"Necessary to the Security of a Free State,"* 83 Notre Dame L. Rev. 1 (2007); *What Did "Bear Arms" Mean in the Second Amendment?*, 6 Georgetown J. L. & Pub. Policy (2008).

[12] 128 S. Ct. 2783 (2008).

[13] The "right of the people," for instance, was found in other places in the Constitution to speak to individual rights, not to collective rights (those that can only be exercised by participation in a corporate body). 128 S. Ct. at 2790–91.