AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 8: The New Deal/Great Society Era—Individual Rights/Guns

The Omnibus Crime Control and Safe Streets Act of 1968[1]

President Johnson on February 6, 1967 urged Congress to include strong gun control measures in the forthcoming crime bill. "To pass strict firearms control laws at every level of government," he concluded, "is an act of simple prudence and a measure of civilized society." Title IV of the Omnibus Crime Control and Safe Streets Act of 1968 responded to these concerns. That measure required gun importers, dealers, and manufacturers to be licensed, and sharply restricted out-of-state and mail order sales. In response to criticisms that these provisions violated the Second Amendment, the Senate report included a discussion of Second Amendment issues.

The Senate report emphasized that the proposed bill was consistent with judicial decisions on the Second Amendment. Why did the Senate defer to the courts? Did senators in 1968 believe that courts were the institution responsible for interpreting the Constitution or did this deference reflect senatorial beliefs that the courts would sustain gun control legislation? Do you detect any serious Second Amendment issues that might be raised in later years?

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A number of witnesses at the hearings have raised the question of the constitutionality of Federal firearms legislation, because it would interfere with individual rights guaranteed by the second amendment to the Constitution. The amendment provides:

> A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

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It is noteworthy that enactment of the National Firearms Act of 1934, as well as of the Federal Firearms Act, was opposed on the same grounds and that these statutes were attacked in the courts as being violative of the second amendment. The courts have uniformly ruled to the contrary, and their decisions make it plain that the amendment presents no obstacle to the enactment and enforcement of this title.

The decisions hold that the second amendment, unlike the first, was not adopted with the individual rights in mind, but is a prohibition upon Federal action which would interfere with the organization of militia by the states of the Union.

Obviously, Federal firearms legislation does not hamper the present-day militia, that is, the National Guard, and the courts have held accordingly (see *United States v. Miller* . . . [1939]; *Cases v. United States* . . . [1st Cir., 1942] . . . ; *United States v. Tot* . . . [3d Cir., 1942] . . . ; *United States v. Adams* . . . [S.D. Fla., 1935]).

It is sometimes contended that, aside from the second amendment, there is a natural right to bear arms, or a right stemming from a State constitution. However, it is well settled that there is nothing inherent in any such right that renders it absolute. The overwhelming majority of State cases hold that the legislature may prescribe regulations and limitations with regard to the carrying of weapons. It is clear, for example, that a State law prohibiting the carrying of revolvers without a license, or forbidding possession of concealed weapons, does not violate either the Federal or that State's constitution. And it is

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[1] Excerpt taken from Senate Judiciary Committee, *Omnibus Crime Control and Safe Streets Act of 1968*, 90th Cong., 2nd Sess. (1968), Senate Report 90-1097.

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clear that no body of citizens other than the organized State militia, or other military organization provided for by law, may be said to have a constitutional right to bear arms.

In summary, the decided cases, both at the Federal and State levels, reveal no constitutional barrier to the passage of this title. To the contrary, they afford ample precedent for its validity.

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