

## **Exhibit 1**

### **Citations and References**

#### **A. Freedmen’s Bureau Act of 1866 [Act of July 16, 1866, 14 Stat. 173 (1866)]**

During Reconstruction, Southern States enacted “black codes,” which made it illegal for blacks to exercise their fundamental rights, including the right to own, purchase or carry firearms. The Thirty–Ninth Congress responded by passing the Freedman’s Bureau Act by a two–thirds majority overriding President Johnson’s veto:

the right . . . to have full and equal benefit of all laws and proceedings concerning personal liberty, personal security, and the acquisition, enjoyment, and disposition of estate, real and personal, including *the constitutional right to bear arms*, shall be secured to and enjoyed by all the citizens of such State or district without respect to race or color or previous condition of slavery. 14 Stat. 176-77 (1866) (emphasis added).

#### **B. Fourteenth Amendment [U.S. Const., Amend. XIV, § 1]**

Congress enacted the Freedman’s Bureau Act through a veto override of more than two-thirds. This same two-thirds also adopted the Fourteenth Amendment, which provides:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . . .”

Senator Jacob Howard (R., Mich.), when introducing the Amendment, explained that its purpose was to protect “the personal rights guaranteed and secured by the first eight amendments of the Constitution; such as freedom of speech and of the press; . . . [and] the right to keep and bear arms,” from State infringement. Cong. Globe, 39th Cong., 1st Sess. 2764-65 (1866). Thus, eighty years after the ratification of the Second Amendment, more than two-thirds of Congress believed with certainty that the Second Amendment enumerated an individual right; enough to include it in both an Act and an Amendment designed to protect the civil rights of individuals formerly held as slaves.

#### **C. National Firearms Act of 1934 [48 Stat. 1236 (1934)]**

Almost seventy years later, Congress began to consider what became the National Firearms Act (NFA). The NFA, through a system of taxation and registration, severely restricted machineguns, short-barreled shotguns and rifles.

Before passage of the NFA, there was detailed discussion between the Attorney General and lawmakers as to how to pass the law without violating the Second Amendment. These discussions illustrate that lawmakers considered the Second Amendment an individual right.

During one pivotal hearing discussion, Congressman David J. Lewis inquired about reconciling the bill with the individual right to keep and bear arms:

MR. LEWIS: Lawyer though I am, I have never quite understood how the laws of the various States have been reconciled with the provision in our Constitution denying the privilege to the legislature to take away the right to carry arms. Concealed-weapon laws, of course, are familiar in the various States; there is a legal theory upon which we prohibit the carrying of weapons--the smaller weapons.

ATTORNEY GENERAL CUMMINGS: Do you have any doubt as to the power of the Government to deal with machine guns as they are transported in interstate commerce?

MR. LEWIS: I hope the courts will find no doubt on a subject like this, General; but I was curious to know how we escaped that provision in the Constitution.

ATTORNEY GENERAL CUMMINGS: Oh, we do not attempt to escape it. We are dealing with another power, namely, the power of taxation, and of regulation under the interstate commerce clause. You see, if we made a statute absolutely forbidding any human being to have a machine gun, you might say there is some constitutional question involved. But when you say, "we will tax the machine gun," and when you say that "the absence of a license showing payment of the tax has been made indicates that a crime has been perpetrated," you are easily within the law.

MR. LEWIS: In other words, it does not amount to prohibition, but allows of regulation.

ATTORNEY GENERAL CUMMINGS: That is the idea. We have studied that very carefully.

Throughout the debates, it is clear that there was a careful respect for the Second Amendment and concern about having the NFA written to include any unconstitutional infringement upon the individual right to keep and bear arms.

#### **D. Federal Firearms Act of 1938 [Ch. 850, 52 Stat. 1250 (1938)]**

In 1938, Congress again undertook firearms issues by passing the Federal Firearms Act (FFA), which regulated interstate commerce in firearms and prohibited possession of firearms by felons where an interstate nexus could be demonstrated. The FFA raised concerns over the infringement of rights guaranteed by the Second Amendment as well as highlighted Congressional support for individual gun ownership. In the early discussions on Second Amendment limitations, Senator William King stated to Senator Copeland, the chief sponsor, that "we have a constitutional provision that right of the people to keep and bear arms shall

not be infringed ... [and he] was wondering if this bill was not in contravention of the constitutional provision.”

Denying that the FFA infringed upon the Second Amendment, Copeland argued that “[t]he part relating to militia is important ... [as the] first part of the constitutional provision.”

Senator McKellar responded saying that “while [the Second Amendment] refers to the militia, the provision is all-inclusive and provides that the right of the people to keep and bear arms shall remain inviolate.” 79 Cong. Rec. 11973 (1935).

Since the FFA related to regulation of Interstate Commerce, not individual gun ownership, little more mention to the individual right to keep and bear arms under Second Amendment protection was discussed. In support of individual gun ownership, the Senate Committee explained that the FFA was designed to impact criminals, not law-abiding citizens:

The bill under consideration...is designed to regulate the manufacture of and the shipment through interstate commerce of all firearms.... It is believed that the bill above referred to will go far in the direction we are seeking and will eliminate the gun from the crooks' hands, while interfering as little as possible with the law-abiding citizen from whom protests have been received against any attempt to take from him his means of protection from the outlaws who have rendered living conditions unbearable in the past decade. S. Rep. No. 82, 75th Cong., 1st Sess. 1-2 (1937).

#### **E. Property Requisition Act of 1941 [Ch. 445, 55 Stat. 742 (1941)]**

Congress asserted the Second Amendment as an individual right by exempting privately-owned firearms from the Property Requisition Act (PRA). Less than two months before Pearl Harbor, Congress passed legislation authorizing Presidential requisition of many properties with military uses from the private sector upon payment of fair compensation. Protections for Second Amendment rights were included in the PRA:

That whenever the President, during the national emergency declared by the President on May 27, 1941, but not later than June 30, 1943, determines that (1) the use of any military or naval equipment, supplies, or munitions, or component parts thereof, or machinery, tools, or materials necessary for the manufacture, servicing, or operation of such equipment, supplies, or munitions is needed for the defense of the United States; (2) such need is immediate and impending and such as will not admit of delay or resort to any other source of supply; and (3) all other means of obtaining the use of such property for the defense of the United States upon fair and reasonable terms have been exhausted, he is authorized to requisition such property for the defense of the United States upon the payment of fair and just compensation for such property to be determined as hereinafter provided, and to dispose of such property in

such manner as he may determine is necessary for the defense of the United States.... Nothing contained in this Act shall be construed—

(1) to authorize the requisitioning or require the registration of any firearms possessed by any individual for his personal protection or sport (and the possession of which is not prohibited or the registration of which is not required by existing law),

(2) *to impair or infringe in any manner the right of any individual to keep and bear arms, or*

(3) to authorize the requisitioning of any machinery or equipment which is in actual use in connection with any operating factory or business and which is necessary to the operation of such factory or business. PRA, ch. 445, 55 Stat. 742 (1941) (emphasis added).

Originally, the bill did not include language protecting the individual right to keep and bear arms, but the House Military Affairs Committee added these provisions, noting:

It is not contemplated or even inferred that the President, or any executive board, agency, or officer, would trespass upon the right of the people in this respect. There appears to be no occasion for the requisition of firearms owned and maintained by the people for sport and recreation, nor is there any desire or intention on the part of the Congress or the President to impair or infringe the right of the people under section 2 of the Constitution of the United States, which reads, in part, as follows: “the right of the people to keep and bear arms shall not be infringed.” However, in view of the fact that certain totalitarian and dictatorial nations are now engaged in the willful and wholesale destruction of personal rights and liberties, *your committee deem[s] it appropriate for the Congress to expressly state that the proposed legislation shall not be construed to impair or infringe the constitutional right of the people to bear arms.* In so doing, it will be manifest that, although the Congress deems it expedient to grant certain extraordinary powers to the Executive in furtherance of the common defense during critical times, there is no disposition on the part of this Government to depart from the concepts and principles of personal rights and liberties expressed in our Constitution. H.R. Rep. No. 1120, 77th Cong., 1st Sess. 2 (1941) (emphasis added).

This provision was essential for the preservation of the individual right to keep and bear arms because if private guns were registered, the government could confiscate them. Compare the retention of private guns with the plight of the organized portion of the militia. The War Department began taking back all the rifles it had previously issued to them. If the entire militia is only the “select” militia (the National Guard), then the Second Amendment is the first guarantee of the Bill of Rights to cease to exist.

## **F. The Militia Law of 1956 [10 U.S.C., Chap. 13]**

Sec. 311. Militia: composition and classes

(a) The militia of the United States consists of all able-bodied males at least 17 years of age and, except as provided in section 313 of title 32, under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States and of female citizens of the United States who are members of the National Guard.

(b) The classes of the militia are –

(1) the organized militia, which consists of the National Guard and the Naval Militia; and

(2) the unorganized militia, which consists of the members of the militia who are not members of the National Guard or the Naval Militia.

## **G. Gun Control Act of 1968 [Pub. L. 90–618, 82 Stat. 1213 (1968)]**

The Gun Control Act of 1968 (GCA) was the most comprehensive legislation on the subject to have passed. Title I of the GCA, which revised the Federal Firearms Act of 1938, was based on the interstate commerce power. Title II was based on the taxing power and amended the National Firearms Act of 1934. The GCA was later amended by the Firearms Owners' Protection Act of 1986 (codified at 18 U.S.C. §926 (1986), which carefully avoided any prohibition on possession of a firearm per se, and included no registration requirements for ordinary rifles, pistols, or shotguns.

## **H. Consumer Product Safety Improvement Act of 1976 [Pub. L. 94-284, Sec. 3(e), May 11, 1976, 90 Stat. 504]**

When Congress authorized broad, sweeping powers to the Consumer Product Safety Commission, there was a concern that over-regulation would impact individual gun ownership. Thus, an exemption from the law was created for the manufacture and sale of firearms or firearms ammunition under the Consumer Product Safety Improvement Act of 1976 (CPSIA). Pub. L. 94-284, Sec. 3(e) provided that:

The Consumer Product Safety Commission shall make no ruling or order that restricts the manufacture or sale of firearms, firearms ammunition, or components of firearms ammunition, including black powder or gunpowder for firearms.

This amendment was adopted specifically to protect individual gun owners from intrusive and overbearing government bureaucracy and the restrictions that could occur. Although the CPSIA does not specifically invoke the Second Amendment, it does reflect Congress's strong desire to protect individual gun ownership.

**I. The Right To Keep And Bear Arms, Report of The Subcommittee on The Constitution, Senate Judiciary Comm., S. Rep. No. 522-3, 97th Cong., 2d Sess. (1982)**

In this Report, Congress clarified the meaning of the Second Amendment after careful study of prevailing Supreme Court caselaw and historical references known at the time. Although many additional scholarly materials supporting the Subcommittee's conclusions have been recovered since the Report was issued, it is noteworthy that the Subcommittee expressed its findings in a unanimous, bipartisan and strongly-worded report supporting the individual right to keep and bear arms.

In his opening remarks, Subcommittee Chairman, Senator Orrin Hatch wrote:

What the Subcommittee on the Constitution uncovered was clear--and long-lost--proof that the second amendment to our Constitution was intended as an individual right of the American citizen to keep and carry arms in a peaceful manner, for protection of himself, his family, and his freedoms.

Quoting Thomas Jefferson and Samuel Adams, democratic Senator Dennis Deconcini echoed respect for the Second Amendment by noting that:

The right to bear arms is a tradition with deep roots in American society... I have personally been disappointed that so important an issue should have generally been so thinly researched and so minimally debated both in Congress and the courts.

The report then quoted the Framers of our Constitution, Legal Commentators of the time, and various court cases. The concluding paragraphs unequivocally discredit the notion that the "militia" is the National Guard of today and reaffirm the Second Amendment as an individual right:

That the National Guard is not the "Militia" referred to in the second amendment is even clearer today. Congress has organized the National Guard under its power to "raise and support armies" and not its power to "Provide for organizing, arming and disciplining the Militia." H.R. Report No. 141, 73d Cong., 1st sess. at 2-5 (1933). This Congress chose to do in the interests of organizing reserve military units which were not limited in deployment by the strictures of our power over the constitutional militia, which can be called forth only "to execute the laws of the Union, suppress insurrections and repel invasions." The modern National Guard was specifically intended to avoid status as the constitutional militia, a distinction recognized by 10 U.S.C. Sec 311(a).

*The conclusion is thus inescapable* that the history, concept, and wording of the second amendment to the Constitution of the United States, as well as its interpretation by every major commentator and court in the first half-century after

its ratification, indicates *that what is protected is an individual right of a private citizen to own and carry firearms in a peaceful manner. Id., Report, n. 36, pg. 11-12* (emphasis added).

**J. Firearms Owners' Protection Act of 1986 [§1(b), 100 Stat. 449 (1986) (codified at 18 U.S.C. §926 (1986))]**

Congress again supported the individual right to keep and bear arms in passing the Firearms Owners' Protection Act of 1986 (FOPA), by finding that:

(1) the rights of citizens—

(A) *to keep and bear arms under the second amendment to the United States Constitution;*

(B) to security against illegal and unreasonable searches and seizures under the fourth amendment;

(C) against uncompensated taking of property, double jeopardy, and assurance of due process of law under the Fifth Amendment; and

(D) against unconstitutional exercise of authority under the ninth and tenth amendments; require additional legislation to correct existing firearms statutes and enforcement policies; and

(2) additional legislation is required to reaffirm the intent of the Congress, as expressed in section 101 of the Gun Control Act of 1968, that “it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trap shooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes.” [Emphasis added].

The Congressional finding in the FOPA that the Second Amendment guarantees “the rights of citizens” to keep and bear arms was supported by the Senate Judiciary Committee Report in 1982. Through its substantive reforms under the FOPA, Congress implemented its recognition that the Second Amendment guarantees an individual right to keep the arms regulated by the Gun Control Act, including rifles, shotguns and pistols. The FOPA ultimately recognized “the rights of citizens to keep and bear arms under the second amendment to the United States Constitution” as a reason to deregulate substantially the purchase, sale and ownership of firearms.

In a chapter entitled *The Fourteenth Amendment and the Right to Keep and Bear Arms: The Intent of the Framers*, the Senate Judiciary Committee Report demonstrates that the Second Amendment was intended to be incorporated into the Fourteenth Amendment as a

limit on state action. As noted, the FOPA states that: “The Congress finds that (1) the rights of citizens--(A) to keep and bear arms under the second amendment to the United States Constitution . . . require additional legislation to correct existing firearms statutes . . . .” The “statutes” referred to included State statutes which Congress could preempt under the Supremacy Clause and under the enforcement clause of the Fourteenth Amendment.

The FOPA enforces the Second Amendment protection through prevention of registration of most firearms by providing:

...No such rule or regulation prescribed after the date of the enactment of the Firearms Owners’ Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established. 18 U.S.C. §926(3).

The FOPA continued the no-registration policy of the PRA. This protection even carried over to appropriation budgets of the Bureau of Alcohol, Tobacco and Firearms (BATF). Congress has included the following provision in every BATF appropriation act since 1978:

*Provided* That no funds appropriated herein shall be available for administrative expenses in connection with consolidating or centralizing within the Department of the Treasury the records of receipts and disposition of firearms maintained by Federal firearms licensees or for issuing or carrying out any provisions of the proposed rules of the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, on Firearms Regulations, as published in the Federal Register, volume 43, number 55, of March 21, 1978.... *E.g.*, 106 Stat. 1731 (1992).

#### **K. The Brady Handgun Control Law [18 U.S.C. §921 (1993)]**

The Congressional prohibition on firearm/firearm-owner registration was reaffirmed again in the Brady Law. Section 103 dealing with the National Instant Criminal Background check system reads in part:

(i) Prohibition Relating To Establishment of Registration Systems With Respect to Firearms. - No department, agency, officer, or employee of the United States may

(1) require that any record or portion thereof generated by the system established under this section be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or political subdivision thereof; or

(2) use the system established under this section to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions,

except with respect to persons, prohibited by section 922(g or (n) of title 18, United States Code, or State law, from receiving a firearm. Section 103 of Pub. L. 103-159.

This portion of Brady continues the policy from the PRA and FOIPA, both of which specifically protected the individual right to keep and bear arms under the Second Amendment.