

Why I Will Not Obey California's Gun Registration Edict

By Brian Puckett, November 12, 1999

(Sent directly to the California Governor)

A BRIEF SUMMARY OF THE SITUATION

The Democrat-controlled government of California has recently issued two edicts, one that bans ownership of SKS rifles with detachable magazines and requires their surrender to the state, and one that bans buying, selling, or lending of so-called "assault weapons" and that requires present owners of such arms to register them. The edicts take effect January 1, 2000. For all those who have in the past stated that, "When the state starts confiscating guns, then I'll know it's time to fight back," that time in California will be January 1, 2000.

Many people oppose registration because it precedes confiscation. Indeed it does, as those who were foolish enough to register their SKS's are now discovering. However, that is a practical reason to oppose registration, not a legal reason. And while avoiding confiscation is tangentially a moral reason to oppose registration, neither is it a legal reason. Refusing to obey a law because of what might happen or what has happened in other cases will not stand up in court. But there is a reason not to register or turn in any firearm that is practical, moral, and legal.

TWO QUESTIONS TO ANSWER

As regards the Second Amendment, determining the constitutionality of the California edicts mentioned above forces the examination of two basic questions. One, which arms are protected by the Second Amendment? And two, is registration an "infringement" of the Second Amendment's right to keep and bear arms? Fortunately, answering these questions is not a difficult or mysterious task. But they should be answered thoroughly.

WHAT IS THE BILL OF RIGHTS?

The Bill of Rights is not separate from the Constitution but is an integral part of it, as are all the other amendments. However, the Bill of Rights is special in that-like sections of the Declaration of Independence-it contains many of the core philosophical underpinnings of our government (especially Amendments 1, 2, 9, and 10). Therefore, it is easily the most important part of the U.S. Constitution. The rest of the Constitution, along with most of the remaining Amendments, deals primarily with the mechanics of putting this philosophy into effect in the form of a republic.

In the original document that we call the Bill of Rights, the Bill's ten enumerated items are listed as "articles". Those familiar with the history of the Constitution are aware that these articles were not afterthoughts, but were crucial elements whose written inclusion in the Constitution was insisted upon before certain

states would agree to ratification of the preceding text. Because of this, a powerful case can be made that none of these first ten articles may be modified or revoked, because that would alter the fundamental philosophy underlying the Constitution and would violate the original agreement among the states.

THE PURPOSE AND MEANING OF THE SECOND AMENDMENT

The laws of the pre-U.S. colonies and the writings of the Founders clearly reveal that they, like all civilized humans, embraced the personal, common-law right of self-defense and property defense. The Founders' writings, such as the Federalist Papers, also clearly reveal their belief that self-defense includes defending oneself against a government gone bad. In fact the evidence shows that this latter item is a primary reason they included the Second Amendment in the Bill of Rights, and the reason for the Second Amendment's reference to the militia-the "army of citizens" (as opposed to the regular army).

The Second Amendment specifies the right of the people to keep and bear arms. If the people are to keep and bear them this must include, at the very minimum, personal arms-that is, arms that a single individual may carry and employ. For hundreds of years prior to the writing of the Constitution, the Western world's most advanced and cherished personal arm had been the firearm. Furthermore, the firearm is the sole arm continually singled out in the Founders' writings. Owning firearms was a right exercised in North America long before the existence of the United States.

TO MEAN ANYTHING, RIGHTS MUST INCLUDE ASSOCIATED NECESSITIES.

For any given right, it is meaningless to affirm that right if the tools or necessities of effecting that right are prohibited. Consider our Bill of Rights:

It is meaningless to affirm the First Amendment's right to free exercise of religion if people are prohibited to own Bibles, Korans, or Torahs.

It is meaningless to affirm the First Amendment's "freedom of the press" if people are prohibited to own printing presses (or today's electronic methods of mass communication).

It is meaningless to affirm the Third Amendment's right to refuse to lodge a soldier in one's home, or the Fourth Amendment's right to be secure in one's home, if people are prohibited from owning their own home.

It is meaningless to affirm the Sixth Amendment's right to defense counsel if people are prohibited to use their own or public money to pay for an attorney's services.

And it is beyond meaningless-it is absolutely absurd-to affirm the Second Amendment's right to keep and bear arms if people are prohibited from owning arms. Applying the above-mentioned general principle of rights to the Second

Amendment, it would be correct to state that it is meaningless to affirm the right to self-defense if people are prohibited from owning the tools or necessities of self-defense.

For example, consider elderly people, women, the physically handicapped, small-statured men, or anyone who is not a master of unarmed combat being faced with a large, or muscular, or armed assailant, or multiple assailants. It happens every day in this country. It is absurd, illogical, illegal, and inhumane to uphold their right to self-defense while prohibiting them from owning the most portable, easy to use, proven, and inexpensive of instantly effective self-defense tools-guns.

WHICH ARMS ARE PROTECTED BY THE SECOND AMENDMENT?

Along with "the people", the Second Amendment specifically mentions the militia, consisting of armed citizens not enlisted in any regular military corps-the "citizen army". The militia's purpose is, as its name implies, a military one. The militia was-and still may be-pitted against other military forces. That was true in pre-U.S. North America, it was true during the Revolutionary War, and it is true today.

If the militia may be pitted against regular soldiers, whether of a foreign invader or of a tyrannical domestic government, then it follows automatically that at a minimum the citizens comprising the militia must possess personal arms (as opposed to large or crew-served arms like cannon) equal to those of the opposing soldiers. Equal personal arms means, of course, those that include all design features, capabilities, and ergonomics that make a military firearm suitable for modern battle. If this is not the case then there is no point in having a militia, as it will not pose an effective fighting force. For example, the extreme inadequacy of bolt action rifles in combat against semiautomatic arms is well known. But the Founders' firm insistence upon having an effective militia is absolutely clear from their numerous writings on the subject and from the existence of the Second Amendment itself.

That being so, military-pattern firearms are obviously protected by the Second Amendment. Therefore any restrictive legislation on military-pattern firearms, or on military design elements of other firearms, is completely contrary to the word and spirit of the Second Amendment and is therefore flatly unconstitutional. [U.S. v. Miller, 307 U.S. 174 (1939) completely supports this.]

REGISTRATION IS INCOMPATIBLE WITH RIGHTS

Consider the situation if a state declared that it was perfectly legal to own a Bible-or a copy of the Koran or the Talmud- but that you had to register it in order to keep and use it. Now, what if you did not register it-would you lose the right to own and read it? Of course not. The very idea is absurd. Under the laws of this nation you have the right to worship as you please. As we have seen, that right automatically includes articles necessary or associated with the right, such as books, crucifixes, stars of David, yarmulkes, and so forth.

In exactly the same way, if the state suddenly required registration of printing presses, would the owner of a press lose his right to own or use it by not filling out a registration form? Of course not. The right would still exist. No piece of paper affects it.

In exactly the same way, one does not have to register one's vocal cords, bullhorn, typewriter, pens, pencils, computers, movie cameras, etc, to exercise the right of free speech (or stated in modern terms, the right of uncensored communication). Under the Constitution, if a state issued an edict demanding registration of such things that rule would be invalid as law. Your right to use them would still exist, completely unaffected.

In exactly the same way, prior registration of one's body, home, address, papers, possessions, etc, is not necessary in order to enjoy the Constitutional right to protection from unreasonable searches and seizures of one's person, house, papers, and effects. These various physical things are automatically included, automatically protected by the right.

In exactly the same way, one does not have to register anything or fill out any forms in order to have the Constitutional right to a speedy public trial. It is automatic.

Now consider the situation if you do not register a gun. Is the Second Amendment somehow instantly suspended? Did it vanish? Do you somehow lose the right to keep and bear arms? Certainly not.

If you can lose a "right" by not filling out a piece of paper, then it is not a right. It is a privilege granted by the government, which is a different thing altogether. In the area of government, a privilege is a special permission or immunity granted by a government, it is generally related to the use of some public facility (such as driving on the streets, or using the public library) and it may be suspended or revoked even for minor infractions or misdemeanors.

In sum: Rights do not require government registration, certification, or approval, and are not subject to any form of taxation-otherwise they are not rights, they are privileges granted at the discretion of the government, controlled by the government, and revocable by the government.

REGISTRATION IS MORE THAN AN INFRINGEMENT

The Second Amendment reads. "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." The question may be asked, "Is registration of a particular gun truly such a burden that it can be called an infringement of the right to keep and bear arms?"

To begin with, if we were speaking of registering religious items or communications devices, none but socialists would dare ask such a question. Yet

the Second Amendment directly follows the amendment concerned with the free exercise of religion and freedom of the press. The Second Amendment holds a place of priority in the Bill of Rights, which is primarily a list of inalienable personal rights.

But to answer the above question-Yes. Registration is absolutely an infringement, on at least three grounds. In fact, we will see that the rights versus privileges issue makes registration far more than a mere infringement.

Information. Registration of a firearm gives the government information that can be used (and has been used, and is being used right now) to confiscate that firearm or to pinpoint its owner for weapon seizure, fining, incarceration, or execution. Having the government in possession of this information is directly contrary to the Second Amendment's intent to ensure that citizens always possess the means to overthrow the government should it become corrupt or tyrannical.

Government control. Allowing the government to seize a citizen's firearm, or to suspend, revoke, or diminish a citizen's ability to defend life, family, property, and country for paperwork omissions or errors, for regulatory violations, for minor infractions of the law, for misdemeanors, or arguably for anything less than conviction for a major crime of violence is also directly contrary to the intent of the Second Amendment. This is because virtually all citizens have committed, or will commit, one or more of the listed non-violent errors listed above, whereas the entire point of the Second Amendment is to place this same citizenry's right to keep and bear arms (and therefore the right of self-defense) out of the government's grasp.

RIGHT VERSUS PRIVILEGE

Critically relevant to all our rights, is that any edict that attempts to convert a right into a state-granted privilege by imposing prior requirements-such as registration-before it may be exercised goes far beyond mere "infringement" of that right; it becomes an attempt at outright abrogation of the right.

Therefore the state's demand to comply with the requirements of such an edict-no matter how physically easy compliance is-imposes not some mere inconvenience on the individual. It imposes the enormous moral, ethical, intellectual, and spiritual burden of denying the existence of the right.

It does not matter if the state demands that one simply tap one's nose five times in succession in order to be able to keep and bear a particular gun. This would still be a state-mandated prior requirement. Compliance would indicate tacit denial of the validity of the Second Amendment, and denial of the right it protects. Compliance would encompass an implicit acceptance of the right as a mere privilege, which is directly contrary to both the letter and spirit of the Second Amendment.

APPLYING THESE CONCEPTS TO CALIFORNIA'S EDICT

The argument against registration of, and restrictions on, military-style firearms may be approached by two logical paths that reach the same conclusions:

1. If the supreme law of the nation protects a personal right to keep and bear arms (which it does) then the failure to comply with a state mandate to fill out some registration form cannot revoke this, or any other, right. If the right to keep and bear arms cannot be revoked (and it can not be), then the right to keep and bear militia arms, which are the very arms implicitly referred to in the Founders' writings and in the Second Amendment itself, cannot be revoked. If the right to keep and bear militia arms cannot be revoked (and it can not be) then we may own and use any military-pattern individually portable firearm, all of which are practical militia arms. If that is the case (and it is), then any restrictive legislation based on militarily useful design elements of such firearms is flatly unconstitutional.

2. If the supreme law of the nation protects the personal right to keep and bear arms (which it does), then the right to keep and bear militia arms, which are the very arms implicitly referred to in the Founders' writings and in the Second Amendment itself, certainly exists. If that is the case (and it is), then we may own and use any military-pattern individually portable firearm, because all are practical militia arms. If that is the case (and it is), any restrictive legislation based on the militarily useful design elements of such firearms is flatly unconstitutional. If that is the case (and it is), then the failure to comply with a state mandate to fill out some registration form cannot revoke this right.

Again, the same situation prevails with all the personal rights in the Bill of Rights. That is, no state mandate requiring registration-either of oneself or of things directly associated with a right-can be a prerequisite or condition of exercising a right, nor can it affect that right in any way. If it does, then the right has been unconstitutionally declared a state-controlled privilege.

SUMMARY

As we see from the above, no American can be legally compelled to register any militarily useful individual arm. That includes pistols, revolvers, carbines, semi-autos, military-style guns, hunting guns, self-defense guns, pump guns, lever guns, bolt guns, black powder guns, scoped guns, .50 caliber guns, .338 caliber guns, .30 caliber guns, .223 caliber guns, etc. All have been used, or are being used, as individual military arms, and therefore are implicitly referred to by the Second Amendment's militia clause.

Moreover, no American can be legally compelled to register any firearm of common design or function because the Second Amendment does not protect only guns that are useful in military affairs; it protects all guns. The militia reference is clearly meant as one important reason for protecting the right which follows: the right of the people to keep and bear arms.

The Second Amendment says simply "arms", which imposes no quantity or design limits. It says "bear", which in its narrowest sense would still include all firearms capable of being carried and used by one person. Therefore, under the supreme law of the land, the right to own one or several of any type of individually portable firearm exists permanently, inherently, automatically, without prior approval or conditions.

RELATED ISSUES

1. Indiscriminate weapons—those whose effects are difficult to direct upon, or confine to, a discrete target (such as flamethrowers, fragmentation bombs, chemical and biological weapons, mortars) etc.—are arguably excludable from the full protection of the Second Amendment as posing an unreasonable danger to friend and foe alike.

2. Individually portable machine guns are clearly allowed under the wording of the Second Amendment. However, under certain specific circumstances their employment might arguably be said to encroach into the area of indiscriminate weapons. Therefore, it is arguable that some extra care might be taken in the use of these firearms, but that any restrictions imposing an effective ban on their general ownership or general use would be unconstitutional. As this is a highly specific, highly debatable subject, it will not be, and need not be, delved into here.

Aside from the debatable exceptions of 1. and 2. above, absolutely no individually portable firearm of common design or function may be determined to be an indiscriminate weapon under any circumstances, nor to pose an unreasonable danger. This is because a ban on such a firearm could "logically" be extended to all other firearms of similar design and function (exactly what is occurring with California's edicts now), which would completely vitiate the Second Amendment. Thus, the 1994 Federal "assault weapon" ban and magazine capacity limit are both completely unconstitutional.

REGISTRATION--YOUR DECISION AFFECTS ALL RIGHTS

If a military pattern firearm, the firearm most suited to the militia mentioned in the Second Amendment, is not protected by the clear wording of the Second Amendment, then there is no meaning to the Second Amendment.

If there is no meaning to the Second Amendment, there is no reason to infer meaning in the rest of the Bill of Rights.

If converting the Second Amendment into a privilege by means of a registration edict is not the maximum "infringement" of that right, then nothing is.

If converting the Second Amendment into a privilege by means of an edict is possible, then it is possible to do so for any other right.

Therefore, regarding the Second Amendment, refusing registration affirms the right to own a militia firearm. It affirms the right to keep and bear all personal arms. It affirms the validity of the rest of the Bill of Rights. It affirms that attempting to convert the Second Amendment into a privilege is the maximum infringement of that right. It rejects a state's power to convert any right into a privilege. And lastly it affirms the validity of the Constitution, and the rule of law, not men.

DEMANDING OR COMPLYING WITH REGISTRATION IS BETRAYAL

Article VI of the Constitution designates the Constitution as the supreme law of the United States, and specifically states that it prevails over all state constitutions and statutes. Further, Article VI requires all legislative, executive, and judicial officers of the U.S. government and of the state governments to take an oath to obey the Constitution. Some of these officials may hate firearms and the power they give to the citizenry, but that is irrelevant-they must treat the Second Amendment as they would the rest of our Bill of Rights.

All state officials-judges, representatives, law enforcement officials-know these facts, but many are corrupt and ignore them. Their sworn word means nothing to them, nor does the Constitution, nor do the rights of the constituents for whom they work unless it suits their own political agenda. It is against this conscienceless species of human that decent Americans must continually fight, in California and in the rest of the United States.

If you believe you have the right to keep and bear proper militia arms in order to defend yourself, your family, your home, and your country, and if you believe this right is recognized in the Bill of Rights, then you cannot register or turn in any firearm whatsoever. You may rationalize it any way you wish, but if you register a firearm you are implicitly agreeing with the proposition that your right to own that firearm is nonexistent, and that such ownership is dependent upon permission from the government. Registration equals betrayal of yourself, your family, your ancestors, your birthright, your country, and your Constitution. Period.

A PERSONAL POSITION

Every new illegal gun control edict issued, and every day that existing illegal gun control edicts continue to be enforced, brings inexorable closer the time when firearms owners will train their guns on the politicians, judges, and other officials who have misled the rest of the public into giving up their sacred and ancient rights. A desire to avoid this terrible tragedy motivates my own actions regarding the Second Amendment and the rights it protects.

For nearly twenty years I have legally owned a militia rifle possessing the characteristics of the socialists' so-called "assault weapon". Now my right to own this arm, a right that has existed far longer than the two centuries-plus that this nation has existed, is suddenly being challenged by corrupt politicians. But I vehemently reject any infringement of my rights. I will never register this or any

other firearm. Nor will I ever turn it in, nor will I ever alter any characteristic or attachment to it.

I will never again concern myself with legislation about pistol grips, bayonet lugs, high-capacity magazines, flash suppressors, threaded barrels, folding stocks, pre-or post-ban manufacture, or any other irrelevant detail of my firearms.

I will certainly not do as the NRA Members Councils suggest on their internet site, which is to saw off the pistol grip of one's AR-style rifle to make it "legal". Understand this: in America it is already legal. I sometimes wonder whether the socialists will issue an edict requiring all firearms to have a pink ribbon tied to the barrel, just to get a belly laugh as the panicked descendants of once-proud American patriots scurry to comply.

California's current governor, attorney general, and legislators who voted for these edicts can undoubtedly find thugs as corrupt and anti-American as themselves to send to my home. I vow not to physically interfere with their illegal activities, because I wish to see this matter in court. I hope that other men and women will join me in this public declaration of civil disobedience, because it would be best to have ten thousand civil disobedience cases in court, not just mine. But I understand why, in this day and age of brutal, ethics-free "public servants"; citizens are reluctant to make themselves a target of the state. Fortunately, the citizens of California and other states demanding registration can strike a powerful blow for humanity simply by refusing to comply.

SEIZE THIS OPPORTUNITY

To those of you who whine, complain, and talk, talk, talk about your loss of freedom-I say now is the time to do something. There are few times in an average man's life when the occasion presents itself to take part in history. Here and now is such a time. This refusal to submit to tyranny is not simply about firearms. It is about human rights, it is about the rule of law, and it is about the continuance of this great nation. To what better use will you ever put you life than to stand up for these things? Will you look back on this moment and say, "I wish I had done something", or will you step forward and seize this chance?

With the government having grown so powerful and corrupt, defying it is frightening. It is especially frightening because many Americans seem fairly content right now. But the feelings of the apathetic mass are irrelevant. They have never figured in history, and never will. The apathetic mass will go along with whatever system exists. It is the freedom-loving individual who, although part of a much smaller group, has guided every free nation toward the light.

Freedom is not maintained without taking risks and making sacrifices, without fighting for it. This has always been true, throughout history. If you are afraid to take a stand against this tyrannical government, if you excuse yourself by saying you must "take care of my family first", I say thank God there were men in the past who understood the priority of freedom.

Look at your children. Is it more important that they have an uninterrupted flow of plastic toys and the soft luxuries of modern American life, or that they grow up as free men and women, with all inherent rights and responsibilities? I say any man who does nothing while even a single basic freedom he has enjoyed is stripped from his offspring-a freedom secured by the blood of others-deserves no offspring.

As I said, I will turn in no firearms, ever. I will register no firearms, ever. My right to own and use firearms predates the Constitution. It existed before the corrupt socialists in Washington and Sacramento came to office, and it will exist forever afterward. The Second Amendment simply recognizes this right. I do not know where my civil disobedience will lead, but I am certain where the slavishness and cowardice of compliance will lead. I refuse to take part in this foul business of registration. I hope that you refuse also. If we stand together we will set fires of freedom burning across America.

Mr. Puckett is a free-lance writer whose past work includes articles on U.S. foreign, domestic, and military policy for the Houston Post. His firearms and Second Amendment articles have appeared in the magazines Handguns, Combat Handguns, Guns and Ammo, SWAT, Police, and numerous other publications. He is the author of the essay "A Plan to Restore the Second Amendment", appearing in an upcoming issue of Handguns Magazine. He is a co-founder of the gun rights resource organization GunTruths (<http://www.guntruths.com>) and the gun rights media action organization Citizens Of America (<http://www.citizensofamerica.org>). Mr. Puckett believes that much of the annual slaughter of Americans by criminals can be blamed directly on those who advocate gun control, and that any politician who advocates gun control neither trusts his constituents nor cares about their lives or property. The above statement/essay is an expression of his opinions alone. He may be contacted regarding this article at guns1776@earthlink.net . Put the word RESISTER in the subject line. You can read more of Mr. Puckett's work at http://www.guntruths.com/Puckett/brian_puckett.htm

The above essay, which includes the biographical note, may be reproduced in any medium provided it is reproduced in full. A copy has been sent via email and regular mail to the governor of California. Feel free to forward it to all gun rights activists and lists.