



Office of the Attorney General

Washington, D.C. 20530

May 17, 2001

Mr. James Jay Baker
Executive Director
National Rifle Association
Institute for Legislative Action
11250 Waples Mill Road
Fairfax, VA 22030

Dear Mr. Baker,

Thank you for your letter of April 10, 2001 regarding my views on the Second Amendment. While I cannot comment on any pending litigation, let me state unequivocally my view that the text and the original intent of the Second Amendment clearly protect the right of individuals to keep and bear firearms.

While some have argued that the Second Amendment guarantees only a “collective” right of the States to maintain militias, I believe the Amendment’s plain meaning and original intent prove otherwise. Like the First and Fourth Amendments, the Second Amendment protects the rights of “the people” which the Supreme Court has noted is a term of art that should be interpreted consistently throughout the Bill of Rights. *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990) (plurality opinion). Just as the First and Fourth Amendment secure individual rights of speech and security respectively, the Second Amendment protects an individuals right to keep and bear arms. This view of the text comports with the all but unanimous understanding of the Founding Fathers. *See, e.g.* Federalist No. 45 (Madison); Federalist No. 29 (Hamilton); *see also*, Thomas Jefferson, Proposed Virginia Constitution, 1764 (“No free man shall ever be debarred the use of arms.”). George Mason at Virginia’s U.S. Constitution ratification convention 1788 (“I ask, sir, what is the militia? It is the whole people . . . To Disarm the people is the best and most effectual way to enslave them.”)

This is not a novel position. In early decisions, The United States Supreme Court routinely indicated that the right protected by the Second Amendment applied to individuals. *See, e.g. Logan v. United States*, 144 U.S. 263, 276 (1892); *Miller v. Texas*, 153 U.S. 535, 538 (1893); *Robertson v. Baldwin*, 165 U.S. 275, 281-82 (1897); *Maxwell v. Dow*, 176 U.S. 581, 597 (1900). Justice Story embraced the same view in his influential *Commentaries on the Constitution*. *See* (3) J. Story, *Commentaries on the Constitution* §1890, p. 746 (1833). It is the view that was adopted by United States Attorney General Homer Cummings before Congress in testifying about the constitutionality of the first federal gun control statute, the National Firearms Act of 1934. *See* The National Firearms Act of 1934: Hearings on H.R. 9066 Before the House Comm. On Ways and Means, 73rd Cong.6,13,19 (1934). As recently as 1986, the United States Congress and President Ronald Reagan

explicitly adopted this view in the Firearms Owners Protection Act. *See* Pub. L. No. 99308, §1 (b) (1986). Significantly, the individuals rights view is embraced by the preponderance of legal scholarship on the subject, which, I note, includes articles by academics on both ends of the political spectrum. *See, e.g.* William Van Alstyne, *The Second Amendment and the Personal Right to Arms*, 43 Duke L.J. 1236 (1994); Akhil Reed Amar, *The Bill of Rights and the Fourteenth Amendment* 101 Yale L. J. 1193 (1992); Sanford Levinson, *The Embarrassing Second Amendment*, 99 Yale L.J. 637 (1989); Don Kates, *Handgun Prohibition and the Original Meaning of the Second Amendment*, 82 Mich. L. Rev. 204 (1983).

In light of this vast body of evidence, I believe it is clear that the Constitution protects the private ownership of firearms for lawful purposes. As I was reminded during my confirmation hearing, some hold a different view and would, in effect, read the Second Amendment out of the Constitution. I must respectfully disagree with this view, for when I was sworn in as Attorney General of the United States, I took an oath to uphold and defend the Constitution. That responsibility applies to all parts of the constitution, including the Second Amendment.

Thank you for your interest in this matter.

Sincerely,



John Ashcroft
Attorney General

¹Of course, the individual rights view of the Second Amendment does not prohibit Congress from enacting laws restricting firearms ownership for compelling state interests, such as prohibiting firearms ownership by convicted felons, just as the First Amendment does not prohibit shouting “fire” in a crowded movie theater. As Samuel Adams explained at the Massachusetts ratifying convention, the proposed Constitution should “never [be] construed . . . to prevent the people of the United States who are peaceable citizens, from keeping their own arms.” Reprinted in 2 B Schwartz, *The Bill of Rights: A Documentary History*, 675 (1971) (emphasis added).