



IN THEIR OWN WORDS

"If you post it on social media, that's probable cause for us to come get the guns out of your house,...That's it. It's now on you to explain why you have a gun in your house and why it's on social media...posting or publishing of a picture of a firearm, BB gun, air or gas-operated gun, or device displayed to resemble a firearm to social media by minors a criminal act that will result in guns being promptly seized by a law enforcement officer and disposed of, and other penalties."

Democrat Florida State Senator Jason Pizzo proclaimed in a Facebook video three years ago.

<https://www.ammoland.com/2019/03/proposed-youth-ban-on-social-media-gun-pictures-shows-gun-control-is-total-control/#ixzz5hyOkocM6>

"Nobody needs an AR-15 to hunt. Nobody needs a semi-automatic rifle to defend their home. But mass shooters NEED these weapons in order to murder as many people as efficiently as possible. And so nobody will miss them when they are illegal – except for the killers."

**Chris Murphy (@ChrisMurphyCT)
March 16, 2019 via Twitter**

"Why, does Wells Fargo continue to put profits over people by financing companies that are making weapons that are literally killing our children and our neighbors? ... How bad does the mass shooting epidemic have to get before you will adopt common sense gun safety policies like other banks have done?"

Rep Carolyn Maloney (D-NY) questioning Wells Fargo President and CEO in a hearing about Operation Choke Point where the government tried to strong-arm banks into not financing fire arms related companies.

<https://www.ammoland.com/2019/03/yesterdays-scandal-todays-mandate-antis-embraces-operation-choke-point-as-policy>

THE FIRST GUN CONTROL LAW

THE NATIONAL FIREARMS ACT (NFA)

The NFA was originally enacted in 1934. Similar to the current NFA, the original Act imposed a tax on the making and transfer of firearms defined by the Act, as well as a special (occupational) tax on persons and entities engaged in the business of importing, manufacturing, and dealing in NFA firearms. The law also required the registration of all NFA firearms with the Secretary of the Treasury. Firearms subject to the 1934 Act included shotguns and rifles having barrels less than 18 inches in length, certain firearms described as "any other weapons," machine-guns, and firearm mufflers and silencers.

While the NFA was enacted by Congress as an exercise of its authority to tax, the NFA had an underlying purpose unrelated to revenue collection. As the legislative history of the law discloses, its underlying purpose was to curtail, if not prohibit, transactions in NFA firearms. Congress found these firearms to pose a significant crime problem because of their frequent use in crime, particularly the gangland crimes of that era such as the St. Valentine's Day Massacre. The \$200 making and transfer taxes on most NFA firearms were considered quite severe and adequate to carry out Congress' purpose to discourage or eliminate transactions in these firearms. The \$200 tax has not changed since 1934.

As structured in 1934, the NFA imposed a duty on persons transferring NFA firearms, as well as mere possessors of unregistered firearms, to register them with the Secretary of the Treasury. If the possessor of an unregistered firearm applied to register the firearm as required by the NFA, the Treasury Department could supply information to State authorities about the registrant's possession of the firearm. State authorities could then use the information to prosecute the person whose possession violated State laws. For these reasons, the Supreme Court in 1968 held in the *Haynes* case that a person prosecuted for possessing an unregistered NFA firearm had a valid defense

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to the prosecution — the registration requirement imposed on the possessor of an unregistered firearm violated the possessor's privilege from self-incrimination under the Fifth Amendment of the U.S. Constitution. The Haynes decision made the 1934 Act virtually unenforceable.

<https://www.atf.gov/rules-and-regulations/national-firearms-act>

THE HISTORY OF THE NFA

In the 1920s and '30s, the U.S. was dealing with a different kind of gun violence epidemic: a massive increase in organized crime, fueled by Prohibition. Gangsters, like Al Capone, were making big money trafficking illegal alcohol. And a key weapon in their arsenal was the machine gun.

"Those criminals from the mob took advantage of the rise of the portable machine gun, capable of firing multiple rounds of ammunition with the single pull of a trigger," says Adam Winkler, a professor at UCLA's school of law and author of *Gunfight: The Battle Over The Right to Bear Arms in America*.

Newsreels from the period chronicled the violence. In one from 1931, footage shot in New York shows walls along a city street pockmarked with bullet holes, and the children caught in the crossfire of gang warfare.

When Roosevelt became president in 1933, his fellow Democrats controlled both the House and Senate by substantial margins, and there was already momentum to do something to rein in guns. For instance, Sen. Royal Copeland, a Democrat from New York, was promoting a federal ban on the sale of fully automatic guns.

"We can never be free from the menace of promiscuous killings until the possession of firearms is everywhere restricted to persons of known character," Copeland said. "To this end I shall press my bill for passage through the United States Senate."

There was talk in Washington of an outright ban on fully automatic weapons. But Roosevelt was wary of that — not because of the Second Amendment, but because of the Interstate Commerce Clause. The Supreme Court had already imposed strict limits on the ability of Congress to regulate commerce.

Instead, Roosevelt backed a tax and registration scheme known as the National Firearms Act, which the president signed into law in 1934. It applied to short-barrel shotguns and rifles, and to fully automatic weapons like machine guns. Someone who was caught violating the National Firearms Act faced a much bigger monetary fine — \$35,000, adjusted for inflation — and jail time.

Of course there were court challenges; ultimately, at the Supreme Court, in the case of *United States v. Miller*.

That case involved the prosecution of two men with criminal records who were caught with an unregistered and untaxed short-barreled shotgun.

The court decided unanimously to uphold the law. It said that a short-barreled shotgun was not the type of weapon that someone serving in a state militia would ordinarily have.

<https://www.npr.org/2016/06/30/484215890/prohibition-era-gang-violence-spurred-congress-to-pass-first-gun-law>

THE NFA CONSTITUTIONAL CHALLENGE "THE CRIME"

Treasury agents were staking out a reported still on June 22, 1938 in the woods of rural Arkansas. The still was no longer in use but two hapless men, Jack Miller and Frank Layton, showed up to collect the sugar that had been hidden. Both men admitted being from Oklahoma. The two Treasury agents were frustrated that they could not arrest Miller and Layton for running an illegal still but one of the agents found a 16 inch shotgun in the pickup truck cab. "What we have here is the illegal possession and interstate transportation of an unregistered shotgun with a barrel less than 18 inches in length or an overall length of less than 26 inches. Registration of said weapon must be made with the U.S., Treasury and a two hundred dollar tax paid to the Treasury. After registration, subsequent sale of said weapon must first be approved by the Department of the Treasury by the seller each time the weapon changes hands. So unless either of Mr. Miller or Mr. Layton here can produce registration paper for this weapon, I'd say we've got ourselves a couple of federal criminals."

"THE TRIAL"

Since Miller and Layton were dirt poor, a public defender, Paul Gutensohn, represented the defendants in District Court, Western District of Arkansas in *UNITED STATES V. MILLER et.al.* on January 3, 1939.

"Your Honor, if it pleases the Court, my clients, Mr. Miller and Mr. Layton are guilty of no crime whatsoever. Their arrest under Section II, 48 statute 1239, is clearly in violation of their Constitutional rights for two obvious reasons. First, the so-called National Firearms Act, though presented as a revenue measure, is clearly a Federal attempt to usurp power reserved to the States. This should be obvious as the so-called 'tax' of two hundred dollars is greatly in excess of the value of the arms on which it is levied. Second the National firearms Act of 1934 is completely in conflict with the second article to

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our Constitution's Bill of rights. To wit 'A well-regulated militia, being necessary to the security of a free state, the right of the peopled to keep and bear arms shall not be infringed.'

"Inasmuch as both Mr. Miller and Mr. Layton are able-bodied and between the ages of sixteen and forty-five are clearly members of Militia of which the framers of our Constitution spoke. Further, unlike the Fourth Amendment against 'unreasonable search and seizure, the Second amendment makes no mention of 'reasonable' infringements on the people's right to keep and bear arms. The article states that this right shall not be infringed, period. There is no way to interpret our government's attempts to levy a tax of two hundred dollars on any weapon which can be used to defend oneself and one' freedoms as anything other than a gross and willful infringement on the people's right to keep and bear arms.

After arguments by the government lawyer, Judge Heartsill Ragan, told the defendants lawyer, Mr. Gutensohn "...the demurer you filed is accordingly sustained. The National Firearms Act of 1938 violates the Second Amendment to the Constitution of the United States. Case dismissed, Mr. Miller and Mr. Layton, you are free to go."

<http://rkba.org/research/miller/miller.html>

THE GOVERNMENT'S APPEAL TO THE SUPREME COURT

After the governments Notice to Appeal was received by Paul Gutensohn he tried to find Messrs Miller and Layton to no avail. And since Miller and Layton only were able pay Gutensohn a paltry sum, and Mr. Gutensohn could not afford to travel to the Supreme Court, there was no one to represent the defendant's side when the Supreme Court met on March 30, 1939.

Therefore the arguments before the Supreme Court were totally one-sided and therefore the logic that Paul Gutensohn used successfully before the District Court were buried and at best, ill-considered.

"In the absence of any evidence tending to show that possession or use of a shotgun having a barrel less than eighteen inches in length at the time has some reasonable relationship to the preservation or efficiency of a well-regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense."

<https://supreme.justia.com/cases/federal/us/307/174/>

Without opposing counsel, the Court was never told that shotguns with barrels of less than eighteen inches were used in the military (think of "trench guns"). The Court was never informed that the National Firearms Act applied to automatic weapons that were obviously military issue, which would have killed the government's own argument. Finally, no one pointed out, as had District Court Judge Ragon, that militia weapons were, by definition, the personal weapons of the private citizens, and therefore whether or not a particular weapon was issued to army troops was completely irrelevant.

Thus the National Firearms Act of 1938 remained the law of the land. It was a bad law that represented the government infringing on the Second Amendment and but for a set of circumstances outlined above could have been nullified. This law is just the first in a history of the government's attempt to abridge our Second Amendment and certainly not the last.

RICHARD STOUDE - oakridger48@msn.com

THE RIGHT TO KEEP AND BEAR ARMS

The Right to Keep and Bear Arms (RKBA) column is now available each month on the ORSAONLINE web site at (www.orsaonline.org/rkba.asp). From time to time, the RKBA column will be included in the printed version which is mailed to members' homes when space permits.

Please remember that each edition of the Rangefinder is also available online at ORSAONLINE (www.orsaonline.org/newsletters.asp) and is normally available before the edition arrives by mail.

OPERATING AND USING DRONES ON ORSA PROPERTY

At the October 3, 2018, meeting of the ORSA Board of Directors, the following policy/rule was passed by the Board and is effective immediately:

"The flying of drones as well as other Unmanned Aerial Vehicles (UAV) is prohibited on ORSA property without prior approval by the ORSA Board of Directors."

ORSA BOARD OF DIRECTORS