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THE SECOND AMENDMENT -- AN INALIENABLE RIGHT

"The sacred rights of mankind are not to be rummaged for, among old parchments, or musty records. They are written, as with a sun beam, in the whole volume of human nature, by the hand of the divinity itself; and can never be erased or obscured by mortal power." --Alexander Hamilton

As of this writing, Barack Hussein Obama's objective of "fundamentally transforming the United States of America," has obligated taxpayers for an admitted $7 trillion in current and future debt for his so-called "economic recovery" act. Heaping insult upon near-fatal injury, Congress is now considering an additional $2 trillion in proposed tax increases for BO's CO2 folly, over $1 trillion for his nationalized healthcare experiment and untold trillions for another round of "economic recovery" programs. Furthermore, TARP Inspector General Neil Barofsky announced this week that total Federal exposure for all TARP "spending" had been leveraged to $23.7 trillion, equal to approximately one and one half times GDP.

All of this tax obligation comes amid the worst economic decline in decades, and is sure to test the limits of "Trickle-Up Poverty."

Of course, none of the aforementioned Obama initiatives, or the collection and redistribution of wealth to fund them, is authorized by our Constitution (unless of course you subscribe to the so-called "Living Constitution" as amended by judicial diktat).

Therefore, if these schemes are not authorized by our Constitution, then we have an outlaw government, and if we have an outlaw government, then by what authority does that government assess and collect taxes?

That question will be the subject of an upcoming essay, but I raise it here in order to highlight an expenditure that our Constitution *does* authorize Congress to enact -- defense appropriations.

The National Defense Authorization Act for 2010 (H.R. 2647) passed the House by a vote of 389 Ayes, 22 Nays (2 Republican) and 22 Present/Not Voting. It contained 69 amendments, mostly related to defense expenditures.

The Senate version of the NDAA (S.1390) with its 216 amendments is now being debated.

One of those amendments, a liberal effort to expand so-called "hate crimes" legislation, resulted in heated discourse on the Senate floor, including this scolding by John McCain (R-AZ) toward Harry Reid (D-NV): "The majority leader has made it clear that their highest priority ... is a hate crimes bill that has nothing to do whatsoever with defending this nation. While we have young Americans fighting and dying in two wars, we're going to take up the hate crimes bill because the majority leader thinks that's more important ... than legislation concerning the defense of this nation."

Indeed, McCain has this one exactly right.

However, I draw your attention to another amendment, this one added by Sen. John Thune (R-SD), authorizing interstate reciprocity of concealed-carry permit holders cross state lines with their weapons. Thune's amendment was stripped from the legislation even after mustering 58 votes for and 39 votes against.

Yes, that is a strong majority in favor, but still two votes short of the 60-vote threshold needed to block a promised filibuster by Chuck Schumer (D-NY). (In

today's milquetoast Senate, just the threat of a filibuster is treated as an actual filibuster.)

Deplorably, two Republican senators voted against Thune's measure: Richard Lugar of Indiana and George Voinovich of neighboring Ohio.

For the record, I am not suggesting this measure would have passed had Lugar and Voinovich changed their votes -- the Democrats were not going to let this one through. These votes always come down to who cut the best backroom wink-and-nod deals on some other piece of legislation in return for a aye or nay on this one. But I do wonder what Lugar and Voinovich got in return...

Schumer protested, "This amendment is a bridge too far, and could endanger the safety of millions of Americans. Each state has carefully crafted its concealed-carry laws in the way that makes the most sense to protect its citizens. Clearly, large, urban areas merit a different standard than rural areas. To gut the ability of local police and sheriffs to determine who should be able to carry a concealed weapon makes no sense. It could reverse the dramatic success we've had in reducing crime in most all parts of America. Whether you are pro-gun or pro-gun control, this measure deserves to be defeated. We will do everything we can to stop this poisonous amendment from being enacted."

There was a concerted effort by the Left to paint Thune's reciprocity amendment as having nothing to do with national defense -- a tit-for-tat in response to McCain's complaint about Reid's "hate crimes" amendment.

However, I subscribe to the notion that "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." That would be directly from the Second Amendment in our Constitution's Bill of Rights.

Sidebar: For those who don't know enough about American history to comprehend that "a well regulated Militia" refers to "the People," stop reading this essay and take Civics 101 at any accredited institution. Oh, wait, they don't teach Civics 101 any longer, which not only perpetuates but, in fact, institutionalizes ignorance of our Constitution. See the Virginia Declaration of Rights (June 12, 1776) Article XIII, which clearly defines "a well regulated militia" as "the body of the people," because our Founders believed "that standing armies, in time of peace, should be avoided as dangerous to liberty..."

The Second Amendment's assurance of the right, nay, *the responsibility* to own and carry firearms, with the attendant proscription against government infringement of that right, is our most essential reassurance of self defense, national defense and defense of our Constitution from "enemies, domestic and abroad."

Justice Joseph Story, appointed to the Supreme Court by James Madison (our Constitution's principal author), wrote in his "Commentaries on the Constitution of the United States" (1833), "The right of the citizens to keep and bear arms has justly been considered, as the palladium of the liberties of the republic; since it offers a strong moral check against usurpation and arbitrary power of the rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them."

On that note, let's take a closer look at Schumer's complaint in an effort to discern what the Second Amendment really provides.

"Each state," says Schumer, "has carefully crafted its concealed-carry laws in the way that makes the most sense to protect its citizens. Clearly, large, urban areas merit a different standard than rural areas."

Schumer is asserting that the Second Amendment prohibits only *federal* government infringement of the right to keep and bear arms while that prohibition is *not* incorporated to prohibit state governments from infringing on the same right.

So, would Schumer likewise argue that states have authority to regulate First Amendment rights of religious freedom, or freedom of speech, or of the press? Of course not.

Ironically, the First Amendment notes, "*Congress* [emphasis added] shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." (Our Founders chose their words with great deliberation.)

Though the First Amendment is clearly a proscription on congressional legislation, not state legislation, the Second Amendment contains no such language and declares that "the right of the people to keep and bear Arms, shall not be infringed."

However, the Left has errantly incorporated proscriptions of the First Amendment upon the states (while completely redefining "speech" to include even the most grotesque forms of expression but restricting political speech,) while arguing that the Second Amendment is a prohibition only upon the federal government.

Sidebar: When an über-leftist attempts to make an argument for federalism, beware. Though the 10th Amendment in the Bill of Rights defines federalism -- "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." -- this does not suggest that the previous amendments apply only to the federal government.

In order to consider whether there is a constitutional basis for Thune's reciprocity amendment in the first place, we must first discern our Founders' original intent.

The Bill of Rights was adopted in 1791 after great disagreement on whether the enumeration of such rights was even required. Alexander Hamilton aptly summed up the basis for this disagreement in Federalist No. 84: "I go further, and affirm that bills of rights, in the sense and to the extent in which they are contended for, are not only unnecessary in the proposed Constitution, but would even be dangerous. ... For why declare that things shall not be done which there is no power to do?"

Indeed, read in context, the Bill of Rights is an affirmation of innate individual rights, of Natural Rights as noted by Thomas Jefferson in the Declaration of Independence: "[All men] are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." The Bill of Rights, then, is a clear delineation of constraints upon the central government in regard to infringement of those rights.

Further, it is ludicrous to argue that the enumeration of those rights was a prohibition on only the federal government since, in the words of Hamilton (and echoed in the writings of many other Founders), "Why declare that things shall not be done which there is no power to do?"

These rights were enumerated, according to those who favored inclusion, in order to explicitly recount the rights of "the people," as noted in the Bill of Rights Preamble (yes, it has one): "The Conventions of a number of the States having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added..."

In other words, our Founders argued that they enumerated both "declaratory and restrictive clauses" in order to "prevent misconstruction or abuse of [central government] powers" that would infringe on the inherent rights of the people.

More than a century after the Bill of Rights was adopted, the Supreme Court (of Jefferson's "Despotic Branch") began incorporating the provisions in the Bill of Rights as applicable to the states. This, in and of itself, implied that somehow the inalienable rights

enumerated in the Bill of Rights might not already extend to all people in all jurisdictions.

The High Court construed the 14th Amendment's Section 1 as support for incorporation: "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; nor deny to any person within its jurisdiction the equal protection of the laws."

It is notable that the 14th Amendment makes direct reference to the Bill of Rights' Fifth Amendment prohibition against depriving any person of "life, liberty, or property."

In the mid-20th century, the Supreme Court increasingly used the 14th Amendment's Privileges or Immunities Clause, Due Process Clause and Equal Protection Clause to make portions of the Bill of Rights binding upon the states. The consequence of this interpretation was and remains that the inalienable rights enumerated by our Founders are now awarded at the discretion of the judiciary, not endowed by our Creator.

However, given the fact that our Founders' intent with the Bill of Rights was to enumerate certain declaratory and restrictive clauses to ensure the Declaration's "unalienable rights" of all men, one must conclude by extension that those rights are inalienable by any government jurisdiction, irrespective of the 14th Amendment.

So, in regard to Sen. Thune's reciprocity amendment, I ask, "Reciprocity for what?" Are we so steeped in the errant notion that our rights are a gift from government that we no longer subscribe to the plain language of our Constitution based on the inalienable rights of man? Has the temperature been turned up so slowly over the last eight decades, so incrementally, that when we finally feel the heat, it will be too late for us to jump, like frogs, out of the pot?

With our Constitution now in exile, I can understand why Sen. Thune would forward an amendment to provide interstate reciprocity for law-abiding concealed weapon permit holders.

However, the Second Amendment still enumerates my right to carry.

When senators such as Chuck Schumer and Dick Durbin declare, "We're able to breathe a sigh of relief," in regard to the defeat of Thune's amendment, let me suggest that you obtain a copy of our Constitution, and be prepared to educate anyone charged with enforcing the law, just what it is that they have sworn to "Support and Defend."