

In proposing this title, Senator Long of Louisiana stated he was desirous of avoiding the problems of proof attendant upon establishing the intent of persons who crossed State lines. He illustrated his point with the antiriot legislation before the Congress. As a result of his concern, title X is drafted so that the offender need not cross State lines at all to violate its prohibitions. If he teaches or demonstrates the use or making of a firearm, explosive, incendiary device or technique capable of causing injury or death, he will be in violation of the prohibition if he knows or intends that the weapon or technique will be unlawfully used in a riot which would adversely affect commerce or the conduct of a federally protected function.

Mr. Chairman, this title should in no way be considered as a substitute for essential gun legislation for the following reasons:

1. It is limited to riot situations;
2. It operates after fact rather than before;
3. It in no way deals with the every day, general distribution of guns either by mail order or over the counter;
4. It does not afford the Treasury Department necessary discretion in licensing manufacturers, dealers or importers of firearms; and
5. It does not protect the integrity of the borders of the States so that the States may enact and enforce their own firearms laws as they deem appropriate.

Mr. Chairman, I further understand that it has been charged that title X is incompatible with the second amendment to the Constitution. The second amendment provides:

"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."

I believe that an examination of the relevant Federal and State cases, commentaries on constitutional law, as well as the legislative history of existing Federal firearms enactments, emphatically establish the inapplicability of the second amendment to this legislation. I do not intend to take the committee's time to explore this matter in great detail, however, the citation of one historic decision will make this conclusion clear.

The Supreme Court has held (*United States v. Miller*, 307 U.S. 174 (1939)) that the purpose of the second amendment was to assure the continuation and render possible the effectiveness of the militia subject to call and organization by Congress under article 1, section 8, clauses 15 and 16 of the Constitution. The Court recognized that at the time the Constitution was drafted the militia was considered to be a "body of citizens enrolled for military discipline" and that "ordinarily when called for service these men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time." The Supreme Court upheld the conviction of two men who transported in interstate commerce a shotgun which came within the definition of a firearm under the National Firearms Act and was not registered in accordance with that act. The Court found that the second amendment did not guarantee the right to keep and bear any weapon not having a "reasonable relationship to the preservation or efficiency of a well regulated militia."

Mr. Chairman, the modern tendency among judges and legal scholars is to regard the right to bear arms as existing in narrowly limited circumstances. The present state of the law concedes at the most that