# The Gospel Of Gun Rights™

# The Gospel of Gun Rights™

By

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# Dedication

*The happy union of these States is a wonder: their Constitution a miracle: their example the hope of Liberty throughout the World.*

**James Madison**

Father of the United States Constitution

4th President of the United States of America

I would like to dedicate this work to Chief Justice John Roberts and the other Supreme Court Justices. In doing so, I would hope that the Court would see the wisdom of James Madison and his contribution to the Constitution and the Bill of Rights.

I would like to offer a special thanks to Dr. Michael Alan Weiner, *a.k.a.*, Michael Savage, for his lectures on *Schechter Poultry Co.* vs. *U.S.* during the summer of 2012. His lectures launched the research that produced this book.

**In the beginning was the Word, and the Word was with God and the Word was God.**

*The Gospel According to John 1:1*

# Chapter 1

## Guns & Militias

As Americans, we have an unalienable right to defend our rights, our lives and our nation. The Second Amendment was passed to codify this right in the Bill of Rights and to ensure that it could not be violated by Congress or the States.

### The Second Amendment

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 Supreme Court, *i.e.*, the Court, held in *District of Columbia* v. *Heller* that the individual right to own a gun is a pre-existing right.

*"In 1825, William Rawle, a prominent lawyer who had been a member of the Pennsylvania Assembly that ratified the Bill of Rights, published an influential treatise, which analyzed the Second Amendment as follows:*

*'The first [principle] is a declaration that a well regulated militia is necessary to the security of a free state; a proposition from which few will dissent...'*

*'The corollary, from the first position is, that the right of the people to keep and bear arms shall not be infringed.'*

*'The prohibition is general. No clause in the constitution could by any rule of construction be conceived to give to congress a power to disarm the people. Such a flagitious attempt could only be made under some general pretence by a state legislature. But if in any blind pursuit of inordinate power, either should attempt it, this amendment may be appealed to as a restraint on both.'"*(1)

*"Nowhere else in the Constitution does a 'right' attributed to 'the people' refer to anything other than an individual right."*(2)

*"We look to this because it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right. The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it 'shall not be infringed.' As we said in United States v. Cruikshank, '[t]his is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The Second amendment declares that it 'shall not be infringed'...."*(3)

*"Besides ignoring the historical reality that the Second Amendment was not intended to*

*lay down a 'novel principl[e]' but rather codified a right 'inherited from our English ancestors'…"*[4]

Self defense is a pre-existing right, and it is the central component of the Second Amendment.

*"Self-defense is a basic right, recognized by many legal systems from ancient times to the present, and the Heller Court held that individual self-defense is 'the central component' of the Second Amendment right."*[5]

*"By the 1850's, the fear that the National Government would disarm the universal militia had largely faded, but the right to keep and bear arms was highly valued for self-defense."*[6]

*"Thus, the right secured in 1689 as a result of the Stuarts' abuses was by the time of the founding understood to be an individual right protecting against both public and private violence."*[7]

The *Heller* Court said that the Second Amendment is divided into two types of clauses: *prefatory* and *operative*. The prefatory clause is "a well regulated militia, being necessary to the security of a free state." The operative clause is "the right of the people to keep and bear Arms."

*"The Second Amendment is naturally divided into two parts: its prefatory clause and its operative clause. The former does not limit the latter grammatically, but rather announces a purpose. The Amendment could be rephrased, 'Because a well regulated Militia is necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed.'"*[8]

*"The prefatory clause reads: 'A well regulated Militia, being necessary to the security of a free State'…"*[9]

*"The first salient feature of the operative clause is that it codifies a 'right of the people.'"*[10]

*"…a prefatory clause does not limit or expand the scope of the operative clause."*[11]

*"We move now from the holder of the right—'the people'—to the substance of the right: 'to keep and bear Arms.'"*[12]

The right to keep and bear arms is not limited to military use.

*"The most prominent examples are those most relevant to the Second Amendment: Nine state constitutional provisions written in the 18th century or the first two decades of the 19th, which enshrined a right of citizens to 'bear arms in defense of themselves and the state' or 'bear arms in defense of himself and the state.'—It is clear from those formulations that 'bear arms' did not refer only to carrying a weapon in an organized military unit. Justice James Wilson interpreted the Pennsylvania Constitution's arms-bearing right, for example, as a recognition of the natural right of defense 'of one's person or house'—what he called the law of 'self preservation.' That was also the interpretation of those state constitutional provisions adopted by pre-Civil War state courts.—These provisions demonstrate—again, in the most analogous linguistic context—that 'bear arms' was not limited to the carrying of arms in a militia."*[13]

*"The amici also dismiss examples such as 'bear arms...for the purpose of killing game' because those uses are 'expressly qualified.' That analysis is faulty. A purposive qualifying*

*phrase that contradicts the word or phrase it modifies is unknown this side of the looking glass (except, apparently, in some courses on Linguistics). If 'bear arms' means, as we think, simply the carrying of arms, a modifier can limit the purpose of the carriage ('for the purpose of self-defense' or 'to make war against the King'). But if 'bear arms' means, as the petitioners and the dissent think, the carrying of arms only for military purposes, one simply cannot add 'for the purpose of killing game.' The right 'to carry arms in the militia for the purpose of killing game' is worthy of the mad hatter. Thus, these purposive qualifying phrases positively establish that 'to bear arms' is not limited to military use."*(14)

A militia is the body of citizens in a state, enrolled for discipline as a military force, but not engaged in actual service except in emergencies, as distinguished from regular troops or a standing army.(15)

There would not be a United States of America if militias did not exist during colonial America, because Americans volunteered to serve in militias during the Revolutionary War. This is why the Founding Fathers viewed the citizen militia as a vital part of national defense. The Militia Clauses grant Congress the authority to organize a militia for national defense. They state the following,

## Article 1 Section 8 Clause 15

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

## Article 1 Section 8 Clause 16

To provide for organizing, arming and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the states respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

*"Although we agree with petitioners' interpretive assumption that 'militia' means the same thing in Article I and the Second Amendment, we believe that petitioners identify the wrong thing, namely, the organized militia. Unlike armies and navies, which Congress is given the power to create ('to raise...Armies'; 'to provide...a Navy,' Art. I, §8, cls. 12-13), the militia is assumed by Article I already to be in existence. Congress is given the power to 'provide for calling forth the militia,' §8, cl. 15; and the power not to create, but to 'organiz[e]' it—and not to organize 'a' militia, which is what one would expect if the militia were to be a federal creation, but to organize 'the' militia, connoting a body already in existence. This is fully consistent with the ordinary definition of the militia as all able-bodied men. From that pool, Congress has plenary power to organize the units that will make up an effective fighting force. That is what Congress did in the first militia Act, which specified that 'each and every free able-bodied white male citizen of the respective states, resident therein, who is or shall be of the age of eighteen years, and under the age of forty-five years (except as is herein after excepted) shall severally and respectively be enrolled in the militia.' Act of May 8, 1792, 1 Stat. 271.' To be sure, Congress need not conscript every able-bodied man into the militia, because nothing in Article I suggests that in exercising its power to organize, discipline, and arm the militia, Congress must focus upon the entire body. Although the militia consists of all able-bodied men,*

*the federally organized militia may consist of a subset of them."*[16]

*"In United States v. Miller, we explained that 'the Militia comprised all males physically capable of acting in concert for the common defense.'"*[17]

The *Heller* Court said that the right to form a civilian militia is a pre-existing right.

*"But the threat that the new Federal Government would destroy the citizens' militia by taking away their arms was the reason that right—unlike some other English rights—was codified in a written Constitution."*[18]

*"It is therefore entirely sensible that the Second Amendment's prefatory clause announces the purpose for which the right was codified: to prevent elimination of the militia."*[19]

Congress can provide discipline and training for militias under the authority of regulation. Regulation is rule of order prescribed by superior or competent authority relating to action of those under its control.[20]

*"Finally, the adjective 'well-regulated' implies nothing more than the imposition of proper discipline and training."*[21]

In its largest sense, a "state" is a body politic or a society of men. A state is a body of people occupying a definite territory and politically organized under one government.[22]

*"It is true that the term 'State' elsewhere in the Constitution refers to individual States, but the phrase 'security of a free state' and close variations seem to have been terms of art in 18th-century political discourse, meaning a 'free country' or free polity."*[23]

The *Heller* Court explained why a militia is necessary for securing a free state.

*"There are many reasons why the militia was thought to be 'necessary to the security of a free state.' First, of course, it is useful in repelling invasions and suppressing insurrections. Second, it renders large standing armies unnecessary—an argument that Alexander Hamilton made in favor of federal control over the militia. Third, when the able-bodied men of a nation are trained in arms and organized, they are better able to resist tyranny."*[24]

*"It was understood across the political spectrum that the right helped to secure the ideal of a citizen militia, which might be necessary to oppose an oppressive military force if the constitutional order broke down."*[25]

*"We reach the question, then: Does the preface fit with an operative clause that creates an individual right to keep and bear arms? It fits perfectly, once one knows the history that the founding generation knew and that we have described above. That history showed that the way tyrants had eliminated a militia consisting of all the able-bodied men was not by banning the militia but simply by taking away the people's arms, enabling a select militia or standing army to suppress political opponents. This is what had occurred in England that prompted codification of the right to have arms in the English Bill of Rights."*[26]

A militia can be used at the state level by the governor or it can be used at the county level by the sheriff. A sheriff is a constitutionally elected officer having responsibilities of law

enforcement and administration of sheriff's department. A sheriff is the chief executive and administrative officer of a county, being chosen by popular election. The principle duties of a sheriff are in aid of the criminal courts and civil courts of record; such as serving process, summoning juries, executing judgments, holding judicial sales and the like. The sheriff is also the chief conservator of the peace within the territorial jurisdiction. When used in statutes, the term may include a deputy sheriff. The sheriff is in general charge of the county jail in most states.(27)

A deputy sheriff is one appointed to act in the place and stead of the sheriff in the official business of the latter's office. A general deputy (sometimes called "undersheriff") is one who, by virtue of his appointment, has authority to execute all the ordinary duties of the office of sheriff, and who executes process without any special authority from a principal.(28)

Posse comitatus is the power or force of the county. A sheriff may summon the entire population of a county above the age of fifteen to assist in certain cases, as to aid in keeping the peace, in pursuing and arresting felons, etc.(29)

*Mack and Printz* v. *U.S.* held that the sheriff is the chief law enforcement officer of a county, and the sheriff has the authority to officer a militia.

*"The executive authority of the several states may be often called upon to exert Powers or allow Rights given by the Constitution, as in filling vacancies in the Senate during the recess of the legislature; in issuing writs of election to fill vacancies in the house of representatives; in officering the militia, and giving effect to laws for calling them; and in the surrender of fugitives from justice."*(30)

The Second Amendment does not give Americans the right to use a gun if the use is unlawful.

*"Thus, we do not read the Second Amendment to protect the right of citizens to carry arms for any sort of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for any purpose."*(31)

A civilian militia cannot commit an unlawful act against the Constitution. In 1794, President George Washington used militias from Virginia, Maryland, New Jersey and Pennsylvania to suppress the Whiskey Rebellion. The Whiskey Rebellion was backed by a civilian militia, and it attempted to prevent Congress enforcing the whiskey tax of 1791. The rebel militia was unlawful, because Congress had the authority to impose the whiskey tax.

The right to own a gun and the right to form a militia are inseparable. Americans have a right to defend the Constitution by organizing a civilian militia, and this is why both Congress and the States should consider civilian militias as a supplemental tool for defense.

*"We cannot continue to rely only on our military in order to achieve the national security objectives that we've set. We've got to have a civilian national security force that is just as powerful, just as strong, just as well-funded."*(32)

Americans have a right to serve in a militia, and Congress has the authority to register all arms that are used in a federally organized militia. It is vital for commanding officers to know the number and type of arms that are used, because this information is necessary for assessing

the strength of the militia. The purpose of the registration is to only list guns that are used in service, and of course, this excludes all guns that are used for self defense, hunting, sport, decoration, etc.

The Founding Fathers intended for all Americans to have the right to own a gun. Although this right is explicitly protected by the Second Amendment, its protection is not limited to the Second Amendment.

# Chapter 2

## Guns & Regulation

Commerce is generally defined as anything that is sold in the free market, and all commerce falls into two classes. The first class is commerce that requires the sale of labor, and the second class is commerce that does not require the sale of labor. Goods and services fall into the first class, and licenses fall into the second class.

The regulation of commerce involves regulating its creation and distribution. Congress has the authority to regulate the sale of a gun, because it has the authority to regulate commerce. All laws that regulate commerce must be necessary and proper. Article 1 Section 8 Clause 3, *a.k.a.*, the Commerce Clause, and Article 1, Section 8, Clause 18, *a.k.a.*, the Necessary and Proper Clause, permit Congress to regulate commerce.

### Article 1 Section 8 Clause 3

The Congress shall have Power To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes

### Article 1 Section 8 Clause 18

The Congress shall have Power…To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Congress can regulate the sale of commerce. To regulate is to fix, establish, or control; to adjust by rule, method or established mode; to direct by rule or restriction; to subject to governing principles or laws. The power of Congress to regulate commerce is the power to exact all appropriate legislation for its protection or advancement. To regulate commerce is to adopt measures to promote growth and insure its safety.(33)

*"The Constitution grants Congress the power to 'regulate Commerce.' The power to regulate commerce presupposes the existence of commercial activity to be regulated."*(34)

The Patient Protection and Affordable Care Act of 2010 compelled Americans to buy health insurance as an act of regulation. *National Federation of Independent Business* v. *Sebelius* was heard to determine if the individual health insurance mandate was constitutional, and the Court ruled that Congress could not enforce the mandate under the Commerce Clause and Necessary and Proper Clause.

*"The Framers gave Congress the power to regulate commerce, not to compel it, and for over 200 years both our decision and Congress's actions have reflected this understanding. There is no reason to depart from that understanding now."*(35)

*"The individual mandate forces individuals into commerce precisely because they elected to refrain from commercial activity. Such a law cannot be sustained under a clause authorizing Congress to 'regulate Commerce.'"*(36)

*"Just as the individual mandate cannot be sustained as a law regulating the substantial effects of the failure to purchase health insurance, neither can it be upheld as a 'necessary and proper' component of the insurance reforms. The commerce power thus does not authorize the mandate."*(37)

*"No longer would Congress be limited to regulating under the Commerce Clause those who by some preexisting activity bring themselves within the sphere of regulation. Instead, Congress could reach beyond the natural limit of its authority and draw within its regulatory scope those who otherwise would be outside of it. Even if the individual mandate is 'necessary' to the Act's insurance reforms, such an expansion of federal power is not a 'proper' means for making those reforms effective."*(38)

*"But we have also carried out our responsibility to declare unconstitutional those laws that undermine the structure of government established by the Constitution. Such laws, which are not 'consistent with the letter and spirit of the constitution,' are not 'proper [means] for carrying into Execution' Congress's enumerated powers. Rather, they are, 'in the words of The Federalist, 'merely acts of usurpation' which 'deserve to be treated as such'.'"*(39)

There are four reasons why denying the sale of a gun is not an act of regulation.

First, to remove a right is not regulation, but instead, it is penalization. Regulation and penalization are entirely different acts, because regulation allows a lawful act to be performed while penalization does not allow an unlawful act to be performed.

Congress cannot use the guise of regulation to deny the sale of a gun out of concern that an individual might commit a gun crime. A gun crime cannot be regulated like a sale, because a gun crime is not a sale. Gun crimes are penalized as unlawful acts while gun sales are regulated as lawful acts, and therefore, to deny the sale of a gun is penalization for committing a lawful act. No American can be penalized for committing a lawful act.

Second, to deny a sale is not an act of regulation, because there is no act to regulate. Regulation can only occur when a sale is completed.

*"…'[t]he language of the Constitution reflects the natural understanding that the power to regulate assumes that there is already something to be regulated.'"*(40)

Third, the Court held that Congress can only regulate classes of activities and not classes of individuals. This also means that Congress cannot penalize any class of individuals as an act of regulation. For example, felons cannot be denied the right to buy a gun, because they would be penalized as a class of individuals.

*"Our precedents recognize Congress's power to regulate 'class[es] of activities,' not classes of individuals, apart from any activity in which they are engaged."*(41)

Fourth, Congress cannot regulate or penalize an individual based on a predicted event. No individual can lose the right to buy a gun based on a prediction that a gun crime might be committed.

*"The proposition that Congress may dictate the conduct of an individual today because of prophesied future activity finds no support in our precedent. Congress can anticipate the effects on commerce of an economic activity. But we have never permitted Congress to anticipate that activity itself in order to regulate individuals not currently engaged in commerce."*(42)

The last sentence in the quote above allows all free Americans to buy a gun. The phrase "*to anticipate that activity itself*" could be replaced with "*to anticipate a gun crime*" since a gun crime is the anticipated activity. The phrase "*not currently engaged in commerce*" could be replaced with "*not currently bought a gun*", and the phrase "*to regulate individuals*" could be replaced with "*to deny individuals from buying a gun*." In this context, the last sentence could be interpreted to say,

*"But we have never permitted Congress to anticipate a gun crime in order to deny individuals from buying a gun that have not currently bought a gun."*

To deny the sale of a gun completely controls an economic act just as forcing Americans to buy a product completely controls an economic act. The *Sebelius* Court said that Congress would have an unlimited authority to control Americans under the guise of regulation if it had the authority to force them to buy health insurance. Like the health insurance mandate, the authority to deny the sale of a gun allows Congress to completely control Americans under the guise of regulation.

*"Congress already enjoys vast power to regulate much of what we do. Accepting the Government's theory would give Congress the same license to regulate what we do not do, fundamentally changing the relation between the citizen and the Federal Government."*(43)

*"Construing the Commerce Clause to permit Congress to regulate individuals precisely because they are doing nothing would open a new and potentially vast domain to congressional authority. Every day individuals do not do an infinite number of things. In some cases they decide not to do something; in others they simply fail to do it. Allowing Congress to justify federal regulation by pointing to the effect of inaction on commerce would bring countless decisions an individual could potentially make within the scope of federal regulation, and under the Government's theory, empower Congress to make those decisions for him."*(44)

A debt is a sum of money that is due by certain and expressed agreement. It is a specified sum of money owing to one person from another, including not only an obligation of a debtor to pay but the right of a creditor to receive and enforce payment.(45) A debt is paid with income, and income is earned or gained from the use of capital, the sale of labor or both. The Court defined earned income in *Bowers* v. *Kerbaugh-Empire Co*.

*"'Income' has been taken to mean the same thing as used in the Corporation Excise Tax*

*Act of 1909, in the Sixteenth Amendment, and in the various revenue acts subsequently passed. After full consideration, this Court declared that income may be defined as gain derived from capital, from labor, or from both combined, including profit gained through sale or conversion of capital. And that definition has been adhered to and applied repeatedly. In determining what constitutes income, substance rather than form is to be given controlling weight."*(46)

Income is also referred to as revenue, money, earnings and legal tender. Article 1 Section 8 Clause 5 grants Congress the power to make legal tender.

## Article 1 Section 8 Clause 5

The Congress shall have Power To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

Legal Tender is all coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations), regardless of when coined or issued, are legal tender for all debts, public and private, public charges, taxes, duties and dues.(47)

Legal tender can be directly or indirectly transferred from one party to another. The direct transfer of legal tender involves two parties while the indirect transfer of legal tender involves three or more parties. The direct transfer of legal tender involves one party transferring legal tender to a second party, and the indirect transfer of legal tender involves one party using a second party to transfer legal tender to a third party.

A sale is the exchange of a product, service or license for legal tender. A sale is a contract between two parties, called respectively, the "seller" and the "buyer", by which the former, in consideration of the payment or promise of payment of a certain price in money, transfers to the latter the title and possession of property.(48)

The completion of a sale always produces a contract of sale, and a contract of sale is also referred to as a sales receipt or a Bill of Sale. The contract of "sale" is distinguished from "barter" (which applies only to goods) and "exchange" (which is used of both land and goods), in that both the latter terms denote a commutation of property for property; *i.e.*, the price or consideration is always paid in money if the transaction is a sale, but if it is a barter or exchange, then it is paid in specific property susceptible of valuation.(49)

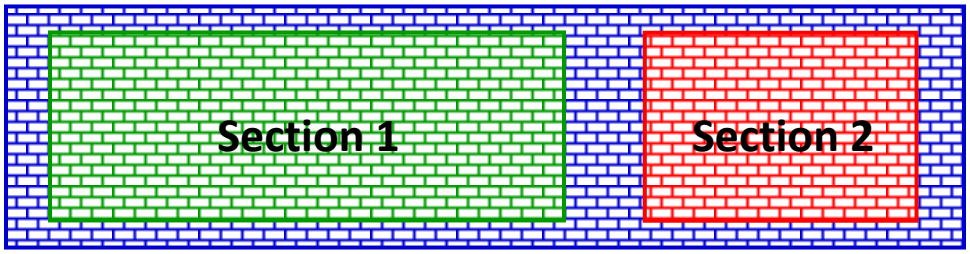
A receipt is a written acknowledgement of the receipt of money, or delivery of a thing of value, without containing any affirmative obligation upon either party to it. It is a writing which acknowledges taking or receiving either money or goods which have been paid or have been delivered. It is an act of receiving, and also, the fact of receiving or being received or that which is received. It requires delivery or change of possession from seller to buyer, and it can only be accomplished by affirmative assent and conduct of seller without any tortuous appropriation.(50)

A contract of sale is a contract that is purchased with the sale of commerce, and it always lists the product, sales tax and all other terms that are included in the agreement. These terms

generally include warranties, coupons and rebates. The debt of a contract of sale is the cost of the product plus the sales tax.

**Figure 1** uses a brick wall to show how a sale, sales tax and contract of sale function together as a trinity. The wall of bricks represents the entire contract of sale. This includes the sale (Section 1: Green Bricks), the sales tax (Section 2: Red Bricks) and all additional terms in the contract of sale (Blue Bricks). Section 1 is larger than Section 2, because the sale of a product is the dominant financial term in a contract of sale. Section 1 and Section 2 are distinctly separate from each other within the entire wall just as buying a product and paying a sales tax are separate acts within the whole act of buying a contract of sale.

**Figure 1.**




A contract of sale is regulated just as a health insurance contract is regulated, and Congress has the authority to regulate the sale of health insurance contracts or any other kind contract that is sold.

*"We do not doubt that the buying and selling of health insurance contracts is commerce generally subject to federal regulation."*(51)

There are three contractual agreements that must be completed in order to purchase a contract of sale. The three parties that are involved in the purchase of a contract of sale are the buyer, the seller and the government.

The first contract is between the buyer and the seller, and this is a direct contractual agreement. A sale is a direct contractual agreement, because legal tender is directly transferred from the buyer to the seller. The amount that is transferred from the buyer to the seller is the cost of the product.

The second contract is between the buyer and the government. This is an indirect contractual agreement, because the buyer indirectly transfers income to the government. In order to purchase a contract of sale, a buyer must agree to transfer legal tender to the government for the sales tax, and this amount of legal tender is transferred by the seller to the government.

The third contract is the tax return, and this is a direct contractual agreement. A tax return is a compulsory contract between the seller and the government, and the seller uses it to transfer the buyer's income to the government.

A contract of sale can only be regulated by Congress. There are numerous methods that Congress can use to regulate commerce, and the most common method is taxation. Taxation is an act of regulation, and the right to buy a gun is protected by the right to pay a tax.

# Chapter 3

## Guns & Taxes

All Americans have the right to pay a tax, and this includes the Firearms and Ammunition Excise Tax (FAET). The FAET is a federal sales tax on all guns and ammunition, and prosecuting an individual for purchasing a gun is indistinguishable from prosecuting an individual for paying the FAET. No individual can be prosecuted for paying the FAET, because paying a tax is a lawful act.

An act is either lawful or unlawful. Lawful is defined as legal; warranted or authorized by the law; having the qualifications prescribed by law; not contrary to nor forbidden by the law; not illegal.(52) An individual has a lawful choice to buy a product if it has been taxed by the government, and there can be no punishment if a tax is paid in accordance with the law.

*"We do not make light of the severe burden that taxation-especially taxation motivated by a regulatory purpose-can impose. But imposition of a tax nonetheless leaves an individual with a lawful choice to do or not do a certain act, so long as he is willing to pay a tax levied on that choice."*(53)

*"We have nonetheless maintained that 'there comes a time in the extension of the penalizing features of the so-called tax when the penalizing features of the so-called tax…loses its character as such and becomes a mere penalty with the characteristics of regulation and punishment.'"*(54)

*"…Congress's authority under the taxing power is limited to requiring an individual to pay money into the Federal Treasury, no more. If a tax is properly paid, the Government has no power to compel or punish individuals subject to it."*(55)

Congress and the States cannot forbid the sale of a gun, because federal and state sales taxes are imposed on guns. The sale of a gun is taxed, because it cannot be controlled by being authorized (compelled) or forbidden.

*"The Federal Government may enact a tax on an activity that it cannot authorize, forbid, or otherwise control."*(56)

A government uses penalties and taxes to seize legal tender. A penalty or fine is a sum of money which the law exacts payment of by way of punishment for doing some act which is prohibited or for not doing some act which is required to be done.(57) A tax is any contribution imposed by government upon individuals, for the use and service of the state, whether under the name of toll, tribute, tallage, gabel, impost, duty, custom, excise, subsidy, aid, supply, or other name. Neither a penalty nor a tax is a debt between two private parties.(58)

A lawful economic act is a lawful sale, and an unlawful economic act is an unlawful sale. A penalty is a financially punitive measure that is used to seize legal tender for an unlawful

economic act, and a tax is a financially regulatory measure that is used to seize legal tender for a lawful economic act. A tax cannot be imposed on an unlawful economic act, because this would allow the act to be lawful and regulated. Likewise, a penalty cannot be imposed on a lawful economic act, because this would make the act unlawful.

*"In distinguishing penalties from taxes, this Court has explained that 'if the concept of penalty means anything, it means punishment for an unlawful act or omission.'"*(59)

Americans can only be penalized if they are found guilty of breaking the law. In other words, only the federal and state courts can impose fines and seize property if an act is found to be unlawful. No federal or state law enforcement agent can impose a fine, because a law enforcement agent does not have the authority to administer due process. Fines can only be imposed through due process, and due process can only be administered by the courts. Law enforcement agents can cite an infraction and arrest an individual, but they cannot impose a fine.

Under *Sebelius*, no federal or state law enforcement agency can impose a fine. For example, the EPA created a regulation that allowed agents to fine Alaskans for burning wood, and this regulation was created to be enforced like a federal law.(60) This fine is unconstitutional for two reasons.

First, a law enforcement agency does not have the authority to impose a fine for an activity under the guise of a regulation. An EPA regulation cannot be enforced like a federal law, because a regulation that is created by a law enforcement agency is not a federal law. Alaskans could only be fined for burning wood if burning wood is prohibited by federal law, and the fine must be imposed by a federal court.

Second, this would give state law enforcement agencies the authority to collect fines and seize property without due process. The sheriff and state law enforcement agencies could simply create regulations and enforce them as laws like the EPA. No state law enforcement agent can impose a fine, because only the state courts can impose a fine.

There are only two ways that income can be seized through taxation. It can be seized directly or it can be seized indirectly. **Figure 2** shows how direct and indirect taxation work. With direct taxation, tax revenue is directly transferred to the government, and with indirect taxation, tax revenue is indirectly transferred to the government through a merchandiser.

**Figure 2**.

Direct Taxation

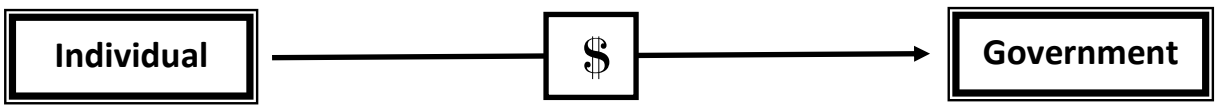


**Figure 2. Continued.**

Indirect Taxation


The Founding Fathers struggled to define direct taxation at the Constitutional Convention.

*"What are 'direct taxes,' within the meaning of the constitution? In the convention of 1787, Rufus King asked what was the precise meaning of 'direct' taxation, and no one answered. The debates of that famous body do not show that any delegate attempted to give a clear, succinct definition of what, in his opinion, was a direct tax. Indeed, the report of those debates, upon the question now before us, is very meager and unsatisfactory."*(61)

Direct taxation can be clearly defined, because all direct taxes share two common features. First, a direct tax is a tax that is imposed by command, and its payment compels an individual or business to submit a tax return to the government. Second, it is always imposed upon something that is owned. With direct taxation, a government commands that a tax be paid, and as a result, those who are subject to the tax are compelled to pay the tax. There is no choice to pay the tax once the command has been issued, and it cannot be avoided in any way.

The Direct Tax Clauses were created to limit Congress's ability to directly tax Americans. The Direct Tax Clauses require that all capitations and other direct taxes be apportioned. Section 2 of the Fourteenth Amendment changed Article 1 Section 2 Clause 3 by eliminating the three fifths requirement.

## Article 1 Section 2 Clause 3

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.

## Article 1 Section 9 Clause 4

No Capitation or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

## Fourteenth Amendment

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.

*"The constitution ordains affirmatively that representatives and direct taxes shall be apportioned among the several states according to numbers, and negatively that no direct tax shall be laid unless in proportion to the enumeration."*(62)

The *Hylton* Court explained why the Direct Tax Clauses were included in the Constitution, and the *Pollock* Court explained how the Founding Fathers viewed the purpose of direct taxation.

*"The provision was made in favor of the southern States. They possessed a large number of slaves; they had extensive tracts of territory, thinly settled, and not very productive. A majority of the states had but few slaves, and several of them a limited territory, well settled, and in a high state of cultivation. The southern states, if no provision had been introduced in the Constitution, would have been wholly at the mercy of the other states. Congress in such case, might tax slaves, at discretion or arbitrarily, and land in every part of the Union after the same rate or measure: so much a head in the first instance, and so much an acre in the second. To guard them against imposition in these particulars, was the reason of introducing the clause in the Constitution, which directs that representatives and direct taxes shall be apportioned among the states, according to their respective numbers."*(63)

*"The founders anticipated that the expenditures of the states, their counties, cities, and towns, would chiefly be met by direct taxation on accumulated property, while they expected that those of the federal government would be for the most part met by indirect taxes. And in order that the power of direct taxation by the general government should not be exercised except on necessity, and, when the necessity arose, should be so exercised as to leave the states at liberty to discharge their respective obligations, and should not be so exercised unfairly and discriminatingly, as to particular states or otherwise, by a mere majority vote, possibly of those whose constituents were intentionally not subjected to any part of the burden, the qualified grant was made. Those who made it knew that the power to tax involved the power to destroy, and that, in the language of Chief Justice Marshall, 'the only security against the abuse of this power is found in the structure of the government itself.'"*(64)

A capitation or poll tax is the quintessential direct tax, and it is a tax or imposition upon the person.(65) Capitation is derived from the word *capitatim*, and *capitatim* is defined as by the head or by the poll.(66)

*"First, and most importantly, it is abundantly clear the Constitution does not guarantee that individuals may avoid taxation through inactivity. A capitation, after all, is a tax that everyone must pay for existing, and capitations are expressly contemplated by the Constitution."*(67)

*"Capitations are taxes paid by every person, 'without regard to property, profession, or any other circumstance.'"*(68)

By definition, a capitation is not an apportioned tax, but in a Constitutional sense, it is an apportioned tax. In other words, direct taxation with apportionment means to impose a capitation with apportionment, and direct taxation without apportionment means to impose a capitation without apportionment.

The apportionment of a tax is dependent on both the number of members the states have in the House of Representatives and their population. **Table 1** shows what the citizens of California, Texas, Florida, Vermont, Wyoming and Alaska would pay if Congress collected a one billion dollar capitation tax through apportionment. The tax debt for all of the states is calculated by multiplying the percentage of their membership in the House of Representatives by one billion, and the individual tax is calculated by dividing each state tax debt by its population.

**Table 1.**

| STATE | REPS. | REP. % | STATE TAX DEBT | POPULATION | INDIVIDUAL TAX |
|---|---|---|---|---|---|
| California | 53 | 12.2% | $122,000,000 | 38,800,000 | **$3.09** |
| Texas | 36 | 8.3% | $83,000,000 | 26,900,000 | **$3.09** |
| Florida | 27 | 6.2% | $62,000,000 | 19,800,000 | **$3.13** |
| Alaska | 1 | 0.23% | $2,300,000 | 730,000 | **$3.15** |
| Vermont | 1 | 0.23% | $2,300,000 | 620,000 | **$3.71** |
| Wyoming | 1 | 0.23% | $2,300,000 | 580,000 | **$3.97** |

In addition to capitations, taxes on real estate and personal property are also direct taxes in the sense of the Constitution.

*"I am inclined to think, but of this I do not give a judicial opinion, that the direct taxes contemplated by the Constitution, are only two, to wit, a capitation, or poll tax, simply, without regard to property, profession, or any other circumstance; and a tax on LAND. I doubt whether a tax, by a general assessment of personal property, within the United States, is included within the term direct tax."*(69)

*"The Court was unanimous, and those Justices who wrote opinions either directly asserted or strongly suggested that only two forms of taxation were direct: capitations and land taxes. That narrow view of what a direct tax might be persisted for a century. In 1880, for*

*example, we explained that 'direct taxes, within the meaning of the Constitution, are only capitation taxes, as expressed in that instrument, and taxes on real estate.' In 1895, we expanded our interpretation to include taxes on personal property and income from personal property, in the course of striking down aspects of the federal income tax. That result was overturned by the Sixteenth Amendment, although we continued to consider taxes on personal property to be direct taxes."*(70)

A land tax is a direct tax, because it is imposed as a command on owning land. Land is unique from all other kinds of personal property, because it is permanently affixed to a state and the nation. Congress and the States are charged with the responsibility of governing and protecting land, and this is why they have the natural authority to directly tax the ownership of land.

The carriage tax of 1794 was the first federal direct tax, and it was imposed on all carriages. *Hylton* v. *United States* described how the carriage tax would have been imposed through apportionment.

"*Suppose 10 dollars contemplated as a tax on each chariot, or post chaise, in the United States, and the number of both in all the United States be computed at 105, the number of Representatives in Congress. This would produce in the whole - - - 1050. The share of Virginia being 19-105 parts, would be - - - Dollars 190. The share of Connecticut being 7-105 parts, would be - - - 70. Then suppose Virginia had 50 carriages, Connecticut - - 2. The share of Virginia being 190 dollars, this must of course be collected from the owners of carriages, and there would therefore be collected from each carriage - - - 3.80. The share of Connecticut being 70 dollars, each carriage would pay - - - 35. If any state had no carriages, there could be no apportionment at all.*"(71)

**Table 2** shows how the carriage tax would have been imposed on carriage owners in Virginia and Connecticut as described by the *Hylton* Court.

**Table 2.**

| STATE | REPS | TAX DEBT | CARRIAGES | INDIVIDUAL TAX |
|---|---|---|---|---|
| Virginia | 19 | $190 | 50 | **$3.80** |
| Connecticut | 7 | $70 | 2 | **$35.00** |

The *Hylton* Court said that the carriage tax would not be fair if it was imposed through apportionment.

*"If it is proposed to tax any specific article by the rule of apportionment, and it would evidently create great inequality and injustice, it is unreasonable to say, that the Constitution intended such tax should be laid by that rule. It appears to me, that a tax on carriages cannot be laid by the rule of apportionment, without very great inequality and injustice. For example: Suppose two States, equal in census, to pay 80,000 dollars each, by a tax on carriages, of 8*

*dollars on every carriage; and in one State there are 100 carriages, and in the other 1000. The owners of carriages in one State, would pay ten times the tax of owners in the other. A. in one State, would pay for his carriage 8 dollars, but B. in the other state, would pay for his carriage, 80 dollars."*(72)

A sales tax is a state or local-level tax on the retail sale of specified property or services. It can be imposed on the retail cost as either a percentage or a specified sum of money. Generally, the purchaser pays the tax, but the seller collects it, as an agent for the government.(73) A sales tax is a contract tax, because it is a tax on the purchase of a contract of sale.

A sales tax is an indirect tax, because it is indirectly paid to the government by a consumer. Indirect taxation is a choice, because an individual has a right to choose or not choose to buy a product.

The *Hylton* Court used Adam Smith's *The Wealth of Nations* to describe indirect taxes.

*"All taxes on expenses and consumption are indirect taxes…Indirect taxes are circuitous modes of reaching the revenue of individuals where the individual may be said to tax himself. I shall close the discourse with reading a passage or two from Smith's Wealth of Nations.*

*'The impossibility of taxing people in proportion to their revenue, by any capitation, seems to have given occasion to the invention of taxes upon consumable commodities; the state not knowing how to tax directly and proportionably the revenue of its subjects, endeavours to tax it indirectly by taxing their expense, which it is supposed in most cases will be neatly in proportion to their revenue. Their expense is taxed by taxing the consumable commodities upon which it is laid out. 3 Vol. page 331.'*

*'Consumable commodities, whether necessaries or luxuries, may be taxed in two different ways; the consumer may either pay an annual sum on account of his using or consuming goods of a certain kind, or the goods may be taxed while they remain in the hands of the dealer, and before they are delivered to the consumer. The consumable goods, which last a considerable time before they are consumed altogether, are most properly taxed in the one way; those of which the consumption is immediate, or more speedy, in the other: the coach tax and plate tax are examples of the former method of imposing; the greater part of the other duties of excise and customs of the latter.' 3 Vol. page 341."*(74)

Congress has the power to impose a sales tax on commerce. Article 1 Section 8 Clause 1, *a.k.a.*, the Taxing and Spending Clause, grants Congress the authority to impose sales taxes.

## Article 1 Section 8 Clause 1

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

*"Congress may also 'lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States.' U. S. Const.,*

*Art. I, §8, cl. 1. Put simply, Congress may tax and spend. This grant gives the Federal Government considerable influence even in areas where it cannot directly regulate."*[75]

To "lay" means "to place on something".[76] To lay is also to impose or place a tax, penalty, etc., *on* or *upon*.[77] To "lay a tax" means to impose a tax onto the cost of commerce, and "to collect a tax" means to collect a tax on commerce when it is sold.

The term *uniform* generally means that the tax is the same for all of the states; however, this meaning was slightly modified by the Court in *Nicol* v. *Ames*. The Court expanded the definition of uniformity to include all taxpayers that fall within the subject matter of the tax.

*"Whether the word 'uniform' is to be understood in what has been termed its 'geographical' sense, or as meaning uniformity as to all the taxpayers similarly situated with regard to the subject-matter of the tax, we think this tax is valid, within either meaning of the term."*[78]

The history of duties, imposts and excises can be traced back to Europe. Duties were created to fund the Nine Years' War during the reign of William and Mary, and excises were created during the English Civil War. The term *impost* is a general term for a tax or tribute, and it derives its origin from the Medieval Latin term *impostus*. The *Pollock* Court described duties, imposts and excises.

*"…the word 'duty' ordinarily 'means an indirect tax, imposed on the importation, exportation, or consumption of goods'; having 'a broader meaning than 'custom,' which is a duty imposed on imports or exports; that the term 'impost' also signifies any tax, tribute, or duty, but it is seldom applied to any but the indirect taxes. An 'excise' duty is an inland impost, levied upon articles of manufacture or sale, and also upon licenses to pursue certain trades or to deal in certain commodities. In the constitution, the words 'duties, imposts, and excises' are put in antithesis to direct taxes."*[79]

A sales tax regulates a sale by making a product or service more expensive. A sales tax is always added to the retail cost of goods and services, and a high tax rate exerts a significant influence on a sale while a low tax rate exerts little or no influence.

*"Congress's use of the Taxing Clause to encourage buying something is, by contrast, not new."*[80]

*"But taxes that seek to influence conduct are nothing new. Some of our earliest federal taxes sought to deter the purchase of imported manufactured goods in order to foster growth of domestic industry. Today, federal and state taxes can compose more than half the retail price of cigarettes, not just to raise more money, but to encourage people to quit smoking. And we have upheld such obviously regulatory measures as taxes on selling marijuana and sawed-off shotguns. Indeed, '[e]very tax is in some measure regulatory. To some extent it interposes an economic impediment to the activity taxed as compared with others not taxed.'"*[81]

Congress is allowed to impose a sales tax, but there are limits. The financial burden of a sales tax on guns and ammunition must be reasonable and not unreasonably excessive. For example, a one thousand percent sales tax on guns and ammunition could be ruled

unconstitutional.

*"…Congress's ability to use its taxing power to influence conduct is not without limits."*(82)

The plenary authority to tax is the absolute power to tax, and it does not give an individual a choice to pay a tax.

*"The term 'taxes', is generical, and was made use of vest in Congress a plenary authority in all cases of taxes."*(83)

Congress does not have a plenary authority to tax Americans, because this would allow it to completely control the decision to pay a tax. The plenary authority to tax allows Congress to seize legal tender in any way possible and prevent legal tender from being seized in any way possible.

The plenary authority to tax could be compared to a coin. One side of the coin is denied taxation, and there is no choice to pay a tax. With denied taxation, an individual is denied from paying a tax, and a criminal penalty could be imposed if the tax is paid. On the other side of the coin is direct taxation, and like denied taxation, there is no choice to pay a tax. With direct taxation, an individual is mandated to pay a tax, and a criminal penalty could be imposed if the tax is not paid. The difference between denied taxation and direct taxation is denied taxation is wholly unconstitutional while direct taxation is constitutional only through apportionment. Either way, Congress is limited in its ability to tax Americans.

The *Hylton* Court ruled that the carriage tax could be imposed no matter its classification, and the *Pollock* Court finally decided that it was an excise.

*"In behalf of the Plaintiff in error, it has been urged, that a tax on carriages does not come within the description of a duty, impost, or excise, and therefore is a direct tax. It has, on the other hand, been contended, that as a tax on carriages is not a direct tax; it must fall within one of the classifications just enumerated, and particularly must be a duty or excise. The argument on both sides turns in a circle; it is not a duty, impost, or excise, and therefore must be a direct tax; it is not tax, and therefore must be a duty or excise. What is the natural and common, or technical and appropriate, meaning of the words, duty and excise, it is not easy to ascertain. They present no clear and precise idea to the mind. Different persons will annex different significations to the terms. It was, however, obviously the intention of the framers of the Constitution, that Congress should possess full power over every species of taxable property, except exports...The general division of taxes is into direct and indirect. Although the latter term is not to be found in the Constitution, yet the former necessarily implies it. Indirect stands opposed to direct. There may, perhaps, be an indirect tax on a particular article, that cannot be comprehended within the description of duties, or imposts, or excises; in such case it will be comprised under the general denomination of taxes."*(84)

*"I think, an annual tax on carriages for the conveyance of persons, may be considered as within the power granted to Congress to lay duties. The term duty, is the most comprehensive next to the generical term tax; and practically in Great Britain, (whence we take our general ideas of taxes, duties, imposts, excises, customs, etc.) embraces taxes on stamps, tolls for*

*passage, etc. etc. and is not confined to taxes on importation only. It seems to me, that a tax on expence is an indirect tax; and I think, an annual tax on a carriage for the conveyance of persons, is of that kind; because a carriage is a consumeable commodity; and such annual tax on it, is on the expence of the owner."*(85)

*"The deliberate decision of the National Legislature, (who did not consider a tax on carriages a direct tax, but thought it was within the description of a duty)…"*(86)

*"In Massachusetts, this tax had been long known, and there it was called an excise."*(87)

*"Where did Mr. Hamilton stand? At that time he was secretary of the treasury, and it may therefore be assumed, without proof, that he favored the legislation. But upon what ground? He must, of course, have come to the conclusion that it was not a direct tax. Did he agree with Fisher Ames, his personal and political friend, that the tax was an excise? The evidence is overwhelming that he did."*(88)

*"After saying that we shall seek in vain for any legal meaning of the respective terms 'direct and indirect taxes,' and after forcibly stating the impossibility of collecting the tax if it is to be considered as a direct tax, he says, doubtingly: 'The following are presumed to be the only direct taxes: Capitation or poll taxes; taxes on lands and buildings; general assessments, whether on the whole property of individuals, or on their whole real or personal estate. All else must, of necessity, be considered as indirect taxes.' 'Duties,' 'imposts,' and 'excises' appear to be contradistinguished from 'taxes.' 'If the meaning of the word 'excise' is to be sought in the British statutes, it will be found to include the duty on carriages, which is there considered as an excise.' 'Where so important a distinction in the constitution is to be realized, it is fair to seek the meaning of terms in the statutory language of that country from which our jurisprudence is derived.' Mr. Hamilton therefore clearly supported the law which Mr. Madison opposed, for the same reason that his friend Fisher Ames did, because it was an excise, and such was specifically comprehended by the Constitution."*(89)

*"What was decided in the Hylton case, was, then, that a tax on carriages was an excise, and therefore an indirect tax."*(90)

The receipt for the carriage tax was a license to use a carriage, and the *Hylton* Court used *The Wealth of Nations* to compare the carriage tax to a license plate tax (See (74) p. 17).

A license is the permission by competent authority to do an act which, without such permission, would be illegal, a trespass, a tort, or otherwise not allowable. It is not a standard contract between the state and the licensee, but instead, it is a mere personal permit. It is neither property nor a property right.(91)

A government license is granted for the pursuit of activities and occupations while a private license is generally granted for the use of intellectual property. Intellectual property includes patents, trademarks and copyrights.

A fee is a charge fixed by law for services of public officers or for use of a privilege under control of government. It is a recompense for an official or professional service or a charge or emolument or compensation for a particular act or service. A license fee is a charge

made primarily for regulation, with the fee to cover the cost and expenses of supervision or regulation.(92)

The sale of a license is the sale of permission, and this is why a license tax is an excise. A license fee or license tax is a charge imposed by a governmental body for the granting of a privilege. A license tax is a charge or fee imposed primarily for the discouragement of dangerous employments, the protection of the safety of the public, or the regulation of relative rights, privileges or duties as between individuals, and it is the price that is paid to a governmental or municipal authority for a license to engage in and pursue a particular calling or occupation. It is a tax on privilege of exercising corporate franchise. The term *license tax* includes both charge imposed under police power for privilege of obtaining license to conduct particular business and to impose upon business for sole purpose of raising revenue. A license tax is defined as the sum exacted for privilege of carrying on particular occupation where a fee is exacted and something is required or permitted in addition to the payment of the sum, either be done by the licensee, or by some regulation or restriction, then the fee is a "license fee".(93)

The *Sebelius* Court said that a new type of federal power could be constitutional, but the lack of a historical precedent could also indicate that it might be unconstitutional. In this case, the new federal power was the ability to compel the sale of health insurance.

*"Legislative novelty is not necessarily fatal; there is a first time for everything. But sometimes 'the most telling indication of [a] severe constitutional problem…is the lack of historical precedent' for Congress's action. At the very least, we should 'pause to consider the implications of the Government's arguments' when confronted with such new conceptions of federal power."*(94)

The *Sebelius* Court never realized that Congress had already been given the authority to compel a sale. *Hylton* was the first challenge to Congress's authority to compel commerce, and *Sebelius* was the second. *Hylton* allowed Congress to compel the sale of a license.

The carriage tax was the first federal tax to be both a direct tax and an excise. It was a license tax imposed as a direct tax, and the *Hylton* Court failed to understand its true nature.

*"As I do not think the tax on carriages is a direct tax..."*(95)

Duties, Imposts and Excises cannot be apportioned for two reasons. First, the debt of a sales tax is only determined by the cost of a product, service or license, and second, it is not proportionally divided before it is imposed. For example, the excise stamp that is affixed to a pack of cigarettes is a predetermined tax debt, and its amount is determined by the product that is sold (cigarettes). As with all license taxes, the carriage tax could not be apportioned.

*"And the license tax is fixed in amount…It is in no way apportioned."*(96)

Direct taxation without apportionment means to impose a sales tax as a direct tax just as it means to impose a capitation, land tax or personal property tax without apportionment.

As previously mentioned, capitations, land taxes and taxes on personal property are direct taxes that are directly collected. A direct sales tax is different from other direct taxes, because it

indirectly collected even though it is directly imposed. This is how a direct sales tax is both a direct tax and an indirect tax.

A direct tax is a tax on the ownership of anything including the human body, and it is imposed by command. Duties, imposts and excises are taxes on the ownership of a contract of sale, and they are not imposed by command. If duties, imposts and excises were imposed as a direct tax, then the ownership of a contract of sale would be commanded. This command would compel a sale.

Consider what would happen if the Health Insurance Tax (HIT), FAET and cigarette excise were imposed as direct taxes. The HIT is an excise on all premium health insurance policies, and it was created by the Patient Protection and Affordable Care Act. The HIT would compel the sale of a premium health insurance policy, and the FAET would compel the sale of a gun or ammunition. The excise stamp on cigarettes would compel the sale of cigarettes.

The difference between compelling commerce and regulating commerce is that the contract between the buyer and the government would be compelled instead of being voluntary. The contractual agreement would be a direct contractual agreement, because the buyer would be required to file a tax return in order to show that the tax had been paid. The buyer would be required to submit a sales receipt with the tax return, and in fact, this is how the individual health insurance mandate would have been implemented as a command.

The Court has never understood that the power to impose a tax that is both direct and indirect is the power to compel commerce.

*"Even when the Direct Tax Clause was written it was unclear what else, other than a capitation (also known as a 'head tax' or a 'poll tax') might be a direct tax."*(97)

*"For the term tax is the genus, and includes, 1. Direct taxes. 2. Duties, imposts, and excises. 3. All other classes of an indirect kind, and not within any of the classifications enumerated under the preceding heads."*(98)

*"The Constitution evidently contemplated no taxes as direct taxes, but only such as Congress could lay in proportion to the census. The rule of apportionment is only to be adopted in such cases where it can reasonably apply; and the subject taxed, must ever determine the application of the rule."*(99)

*"I believe some taxes may be both direct and indirect at the same time. If so, would Congress be prohibited from laying such a tax, because it is partly a direct tax?"*(100)

*"But I am inclined to think, that a tax on carriages is not a direct tax, within the letter, or meaning, of the Constitution. The great object of the Constitution was, to give Congress a power to lay taxes, adequate to the exigencies of government; but they were to observe two rules in imposing them, namely, the rule of uniformity, when they laid duties, imposts, or excises; and the rule of apportionment, according to the census, when they laid any direct tax."*(101)

*"If the framers of the Constitution did not contemplate other taxes than direct taxes, and duties, imposts, and excises, there is great inaccuracy in their language. If these four species of*

*taxes were all that were meditated, the general power to lay taxes was unnecessary. If it was intended, that Congress should have authority to lay only one of the four above enumerated, to wit, direct taxes, by the rule of apportionment, and the other three by the rule of uniformity, the expressions would have run thus: 'Congress shall have power to lay and collect direct taxes, and duties, imposts, and excises; the first shall be laid according to the census; and the three last shall be uniform throughout the United States.' The power, in the eighth section of the first article, to lay and collect taxes, included a power to lay direct taxes, (whether capitation, or any other) and also duties, imposts, and excises; and every other species or kind of tax whatsoever, and called by any other name. Duties, imposts, and excises, were enumerated, after the general term taxes, only for the purpose of declaring, that they were to be laid by the rule of uniformity. I consider the Constitution to stand in this manner. A general power is given to Congress, to lay and collect taxes, of every kind or nature, without any restraint, except only on exports; but two rules are prescribed for their government, namely, uniformity and apportionment: Three kinds of taxes, to wit, duties, imposts, and excises by the first rule, and capitation, or other direct taxes, by the second rule."*(102)

*"Whether the tax is to be classified as an 'excise' is in truth not of critical importance. If not that, it is an 'impost', or a 'duty'. A capitation or other 'direct' tax it certainly is not. 'Although there have been, from time to time, intimations that there might be some tax which was not a direct tax, nor included under the words 'duties, imposts, and excises,' such a tax, for more than one hundred years of national existence, has as yet remained undiscovered, notwithstanding the stress of particular circumstances has invited thorough investigation into sources of powers.' There is no departure from that thought in later cases, but rather a new emphasis of it."*(103)

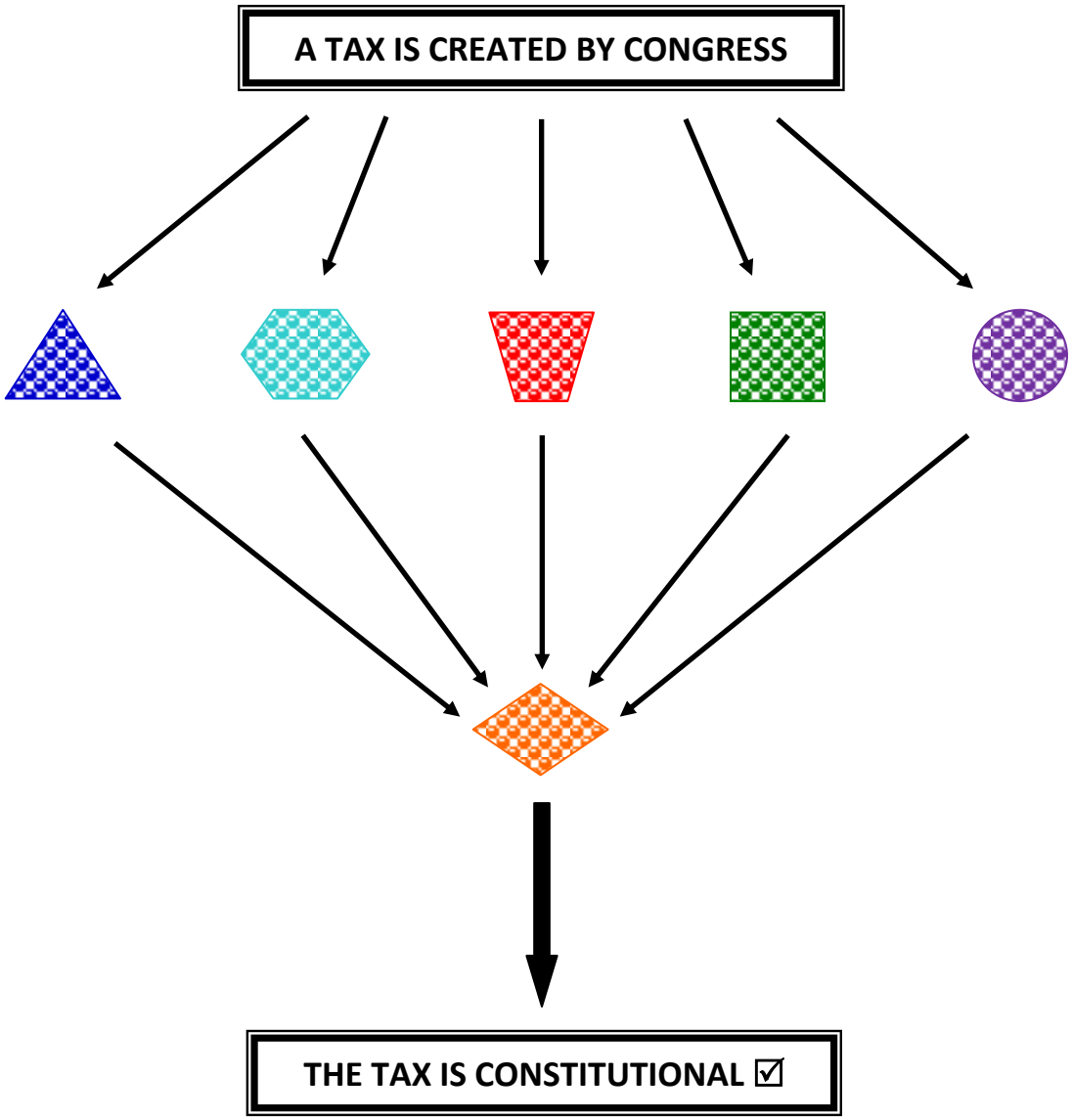
The *Hylton* Court referenced *The Wealth of Nations* to describe direct and indirect taxes. *The Wealth of Nations* does not mention the use of a sales tax as a direct tax for two reasons. First, no such tax existed when it was written, and second, the idea of using a tax to violate the fundamental principle of Laissez Faire economics would have seemed repulsive to Adam Smith. The Court has never understood that the power to impose a tax that is both direct and indirect is the power to compel commerce, and likewise, the power to compel commerce is the power to directly tax without apportionment.

The Taxing Clause prohibits a duty, an impost and an excise from being used as a direct tax. The Direct Tax Clauses, the Commerce Clause, the Contract Clause and the Necessary and Proper Clause enforce the Taxing Clause.

*"Congress may not, for example, expand its power under the Taxing Clause..."*(104)

James Madison unknowingly created a legal trap for Congress in the original Constitution. A federal tax must be constitutional under the Taxing Clause, Direct Tax Clauses, Commerce Clause and Contract Clause. The Necessary and Proper Clause serves as a final test for each clause to ensure that a tax is necessary and proper. **Figure 3** shows how Madison's tax trap works as a decision tree to test the constitutionality of a federal tax.

**Figure 3.**




**Direct Tax Clause 1**

**Direct Tax Clause 2**

**Taxing Clause**

**Commerce Clause**

**Contract Clause**

**Necessary and Proper Clause**

# Chapter 4

## Guns & Insurance

In *Sebelius*, the Department of Justice proposed two ways that the Court could have preserved the individual mandate to buy health insurance.

*"The Government advances two theories for the proposition that Congress had constitutional authority to enact the individual mandate. First, the Government argues that Congress had the power to enact the mandate under the Commerce Clause. Under that theory, Congress may order individuals to buy health insurance because the failure to do so affects interstate commerce, and could undercut the Affordable Care Act's other reforms. Second, the Government argues that if the commerce power does not support the mandate, we should nonetheless uphold it as an exercise of Congress's power to tax. According to the Government, even if Congress lacks the power to direct individuals to buy insurance, the only effect of the individual mandate is to raise taxes on those who do not do so, and thus the law may be upheld as a tax."*(105)

The health insurance mandate required individuals to buy health insurance or pay a penalty. The Court held that the mandate was unconstitutional as a command, but it could be imposed as a tax. This tax is called the healthcare tax.

*"Our precedent demonstrates that Congress had the power to impose the exaction in §5000A need to be read to do more than impose a tax. That is sufficient to sustain it."*(106)

*"The Federal Government does not have the power to order people to buy health insurance. Section 5000A would therefore be unconstitutional if read as a command. The Federal Government does have the power to impose a tax on those without health insurance. Section 5000A is therefore constitutional, because it can reasonably be read as a tax."*(107)

The power to impose a tax for not buying a product is unconstitutional for ten reasons.

The first reason is Americans cannot be taxed for exercising a right guaranteed by the Bill of Rights, and this includes the right to not own a gun. The Court unknowingly gave Congress the authority to tax Americans for not buying a gun or gun insurance. Gun ownership is a free choice, and Congress does not have the authority to tax Americans for not buying a gun or gun insurance.

The Court failed to understand the relationship between health insurance and all other kinds of insurance. Health insurance is unique from any other kind of insurance, because the human body is not sold in the free market. Many kinds of property, including a gun, are sold in the free market, and they can be insured. If Congress could tax Americans for not having their bodies insured, then it could tax them for not having a gun or gun insurance.

The second reason is that the order against compelling commerce struck the individual mandate down as a tax, because a direct sales tax on health insurance would have enforced the mandate as both a command and a tax. Congress could have compelled the sale of health insurance by creating a universal sales tax on all health insurance policies and mandating that Americans pay the sales tax. The Court failed to understand that the command to buy health insurance was also a command to pay a sales tax.

*"But the statute reads more naturally as a command to buy insurance than as a tax, and I would uphold it as a command if the Constitution allowed it. It is only because the Commerce Clause does not authorize such a command that it is necessary to reach the taxing power question."*(108)

As a new kind of direct tax, the healthcare tax has no classification other than being a tax imposed by command for not completing a sale. The *Sebelius* Court did not consider it to be a direct tax in the sense of the Constitution even though it would be imposed directly on Americans.

*"A tax on going without health insurance does not fall within any recognized category of direct tax. It is not a capitation."*(109)

*"The payment is also plainly not a tax on the ownership of land or personal property."*(110)

The Court did not understand that if Congress could impose a tax on Americans for doing nothing, then a sales tax could have been imposed for doing nothing. Like the healthcare tax, a sales tax on health insurance could have been imposed on Americans for not purchasing health insurance, and in fact, mandating the sale health insurance with a tax on the sale of health insurance would have naturally upheld the act that Congress attempted to mandate: the sale of health insurance.

The third reason is that the *Sebelius* Court held that the Commerce Clause does not give Congress the power to regulate inactivity.

*"The Court today holds that our Constitution protects us from federal regulation under the Commerce Clause so long as we abstain from the regulated activity."*(111)

Congress cannot tax inactivity, because it cannot regulate inactivity. The same reason that the Court found the individual health insurance mandate unconstitutional under the Commerce Clause also makes the healthcare tax unconstitutional. The Court viewed the authority to regulate inactivity only in terms of compelling the sale of health insurance, and this is why it failed to understand that the power to regulate inactivity is the power to tax inactivity.

A sales tax is used to regulate a consumer's conduct, and economic conduct exists only when a sale is made. If Congress cannot regulate the absence of economic conduct, then it cannot tax the absence of economic conduct. This is why Congress cannot tax Americans for not buying health insurance. The *Sebelius* Court failed to understand that the Commerce Clause and the Taxing Clause only allow Congress to tax economic conduct.

*"Upholding the individual mandate under the Taxing Clause thus does not recognize any new federal power. It determines that Congress has used an existing one."*(112)

*"The Affordable Care Act's requirement that certain individuals pay a financial penalty for not obtaining health insurance may reasonably be characterized as a tax. Because the Constitution permits such a tax, it is not our role to forbid it, or to pass upon its wisdom or fairness."*(113)

Chapter 5 and Chapter 6 explain the other reasons why the power to enforce the healthcare tax is unconstitutional.

# Chapter 5

## Guns & Labor

Guns and labor are sold in the free market, and under *Sebelius*, both have to be taxed the same way. Labor is work; toil; service; mental or physical exertion.[114] Labor is a skill that is owned and sold by an individual, and an employer buys labor from an employee. In 1913, Congress passed the Sixteenth Amendment so that it could directly tax income earned from the sale of labor.

### Sixteenth Amendment

Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

The Court has always viewed an income tax to be a direct tax. In 1894, Congress passed the Wilson-Gorman Tariff Act, and it imposed the first peacetime income tax. The Wilson-Gorman Tariff Act reduced tariffs from the McKinley Tariff Act of 1890, and the income tax was implemented to make up for the lost revenue. The lost revenue was to be recovered by imposing a 2% tax on incomes greater than $4,000 per year. The *Pollock* Court ruled that the tax was unconstitutional since it was not apportioned, and this decision became an obstacle in Congress's quest to directly tax earned income.

*"Admitting that this act taxes the income of property irrespective of its source, still we cannot doubt that such a tax is necessarily a direct tax in the meaning of the Constitution.*

*In England, we do not understand that an income tax has ever been regarded as other than a direct tax. In Dowell's History of Taxation and Taxes in England, admitted to be the leading authority, the evolution of taxation in that country is given, and an income tax is invariably classified as a direct tax. The author refers to the grant of a fifteenth and tenth and a graduated income tax in 1435, and to many subsequent comparatively ancient statutes as income tax laws. It is objected that the taxes imposed by these acts were not, scientifically speaking, income taxes at all, and that, although there was a partial income tax in 1758, there was no general income tax until Pitt's of 1799. Nevertheless, the income taxes levied by these modern acts, Pitt's, Addington's, Petty's, Peel's, and by existing laws are all classified as direct taxes; and, so far as the income tax we are considering is concerned, that view is concurred in by the cyclopaedists, the lexicographers, and the political economists, and generally by the classification of European governments wherever an income tax obtains."*[115]

*"The power to tax real and personal property and the income from both, there being an apportionment, is conceded; that such a tax is a direct tax in the meaning of the Constitution has not been, and, in our judgment, cannot be, successfully denied…"*[116]

*"Our conclusions may, therefore, be summed up as follows:*

*First. We adhere to the opinion already announced, that, taxes on real estate being indisputably direct taxes, taxes on the rents or income of real estate are equally direct taxes.*

*Second. We are of opinion that taxes on personal property, or on the income of personal property, are likewise direct taxes.*

*Third. The tax imposed by sections twenty-seven to thirty-seven, inclusive, of the act of 1894, so far as it falls on the income of real estate and of personal property, being a direct tax within the meaning of the Constitution, and therefore unconstitutional and void because not apportioned according to representation, all those sections, constituting one entire scheme of taxation, are necessarily invalid."*(117)

Congress passed the Sixteenth Amendment to give itself the authority to directly tax income without apportionment. The Sixteenth Amendment allowed Congress to freely collect a direct tax on income gained from any source, and the first income tax was created by the Revenue Act of 1913.

*"The Sixteenth Amendment declares that Congress shall have power to levy and collect taxes on income, 'from whatever source derived,' without apportionment among the several states and without regard to any census or enumeration. It was not the purpose or effect of that amendment to bring any new subject within the taxing power. Congress already had power to tax all incomes. But taxes on incomes from some sources had been held to be 'direct taxes' within the meaning of the constitutional requirement as to apportionment. The Amendment relieved from that requirement, and obliterated the distinction in that respect between taxes on income that are direct taxes and those that are not, and so put on the same basis all incomes 'from whatever source derived.'"*(118)

The income tax was classified as an excise, because it was considered to be a tax on a receipt for the sale of labor. A receipt for the sale of labor is a paycheck receipt. The *Pollock* Court said that an income tax is both a direct tax and an excise, and it is not a direct tax on property. The *Brushaber* Court agreed with the *Pollock* Court's classification of an income tax.

*"We have considered the act only in respect of the tax on income derived from real estate, and from invested personal property, and have not commented on so much of it as bears on gains or profits from businesses, privileges, or employments has assumed the guise of an excise tax and has sustained as such."*(119)

*"Moreover, in addition, the conclusion reached in the Pollock case did not in any degree involve holding that income taxes generically and necessarily come within the class of direct taxes on property, but, on the contrary, recognized the fact that taxation on income was in its nature an excise…"*(120)

The *Pollock* Court and *Brushaber* Court are incorrect, because an income tax is only a direct tax and not an excise (See Appendix). The Court made four errors when it classified the income tax as an excise.

First, it allowed the rate of an excise to be determined by an income bracket instead of a type of labor that is sold. The rate of an excise should vary for different types of jobs instead of different types of income brackets, because an excise can only be imposed on something that is sold. Simply put, income is not exchanged for income when labor is sold, but rather, income is

exchanged for labor when labor is sold. Therefore, the rate of an excise on the sale of labor can only determined by the type of skill that is sold, and it cannot be determined by a particular amount of income, *i.e.*, an income bracket.

Second, it failed to understand that the payment of an income tax does not produce a contract of sale. The payment of an excise on the sale of labor should always produce a contract of sale for labor since it is a tax on a contract of sale for labor.

The income tax is not a regulatory tax on the sale of labor, because it targets the seller's, *i.e.*, the employee's, income instead of the buyer's, *i.e.*, the employer's income. This is why an income tax reduces the amount of a paycheck. An excise on the sale of labor can only regulate the sale of labor by increasing the value of a paycheck receipt, and this is why a paycheck receipt with withholding taxes is not a true sales receipt for labor. An excise on labor should be paid by the employer in addition to the employee's income, and under this method of taxation, either the employer or the employee could transfer the tax to the government.

Third, it failed to understand that a direct excise on labor would compel the sale of labor. If an excise on labor was imposed as a direct tax, *i.e.*, a command, then it would compel the sale of labor. The last reason is explained later in the chapter.

There are four rules that apply to all excises on labor when they are imposed as a percentage.

First, if the rate of an excise is zero percent, then there is no tax.

1) Sales Tax Rate = 0% → **No Sales Tax**

Second, if the rate of an excise is less than one hundred percent, then the tax is less than the cost of labor.

2) Sales Tax Rate < 100% → **Sales Tax < Cost of Product**

Third, if the rate of an excise equals one hundred percent, then the tax is equal to the cost of labor.

3) Sales Tax Rate = 100% → **Sales Tax = Cost of Product**

Fourth, if the rate of an excise exceeds one hundred percent, then the tax is greater than the cost of labor.

4) Sales Tax Rate > 100% → **Sales Tax > Cost of Product**

These four rules are demonstrated in **Figure 4** and **Figure 5**. This example compares the sales tax to the income tax when they are imposed on the sale of labor at rates of 0%, 25%, 50%, 75%, 100% and 125%. For this example, the cost of labor is $40,000. **Table 3** lists the values for **Figure 4** and **Table 4** lists the values for **Figure 5**.

**Figure 4** shows that the paycheck receipt increases while **Figure 5** shows that the paycheck receipt decreases. **Figure 4** shows that the cost of labor is unchanged at all tax rates while **Figure 5** shows that the cost of labor is non-existent at 100% and 125%. **Figure 5** shows

that labor is not sold when an income tax is paid, because the income tax decreases the value of the paycheck. In fact, the sale of labor produces a debt for the seller when the income tax is applied at 125%. In order for labor to be sold, its cost must remain intact, and this is why an income tax is not an excise on the sale of labor.

**Figure 4.**

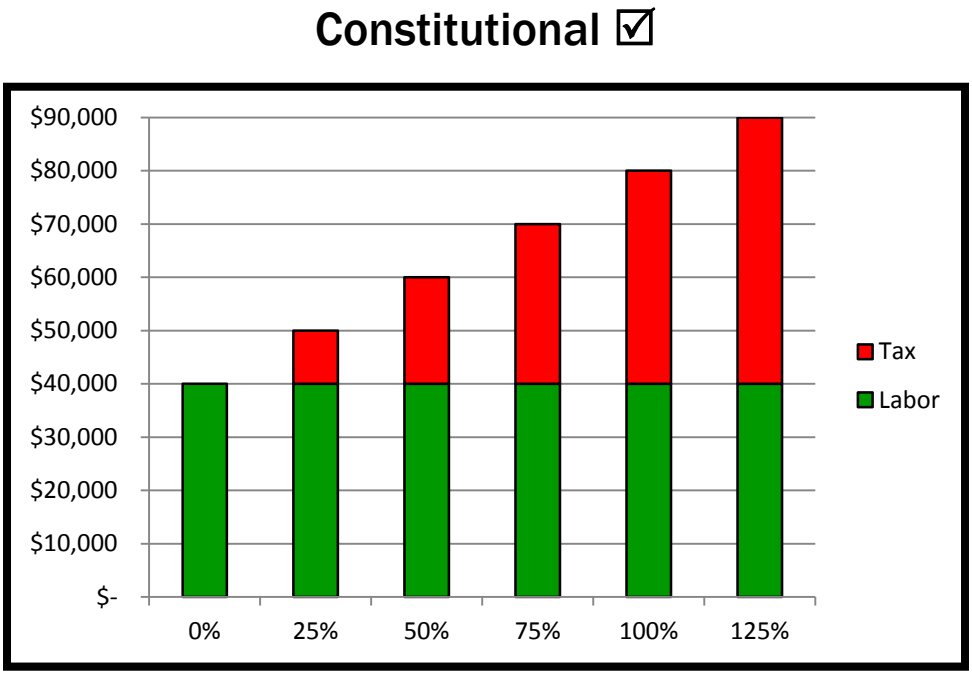



**Table 3.**

| Cost of Labor | Tax Rate | Sales Tax | Paycheck Total |
|---|---|---|---|
| $40,000 | 0% | $0 | **$40,000** |
| $40,000 | 25% | $10,000 | **$50,000** |
| $40,000 | 50% | $20,000 | **$60,000** |
| $40,000 | 75% | $30,000 | **$70,000** |
| $40,000 | 100% | $40,000 | **$80,000** |
| $40,000 | 125% | $50,000 | **$90,000** |

**Figure 5.**

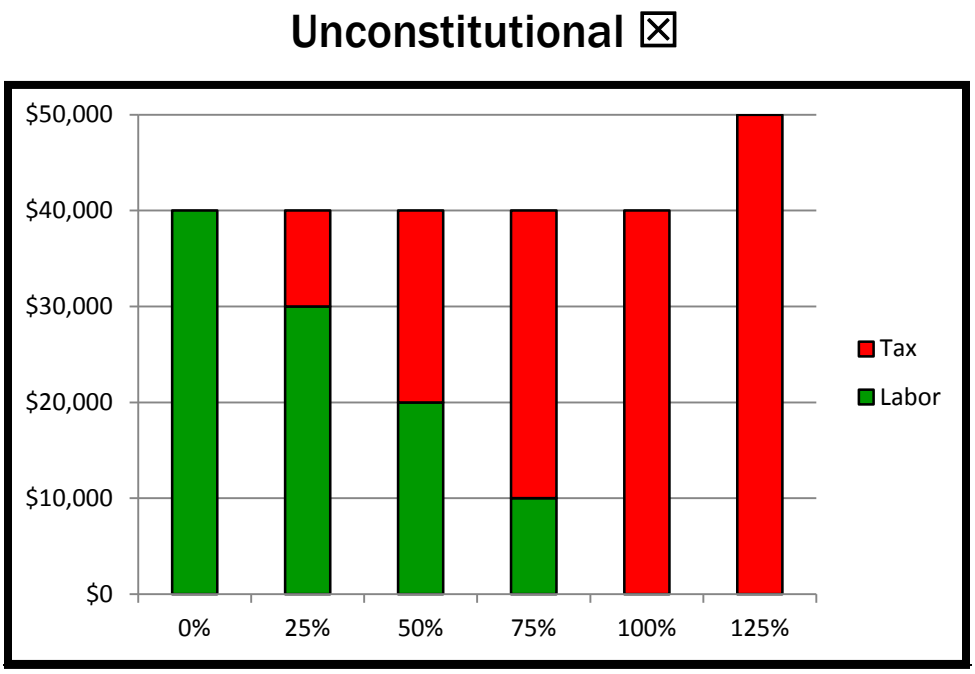



**Table 4.**

| Cost of Labor | Tax Rate | Income Tax | Paycheck Total |
|---|---|---|---|
| $40,000 | 0% | $0 | **$40,000** |
| $30,000 | 25% | $10,000 | **$30,000** |
| $20,000 | 50% | $20,000 | **$20,000** |
| $10,000 | 75% | $30,000 | **$10,000** |
| $0 | 100% | $40,000 | **$0** |
| $0 | 125% | $50,000 | **-$10,000** |

**Table 5** shows an example of how an excise on labor would be imposed on a variety of jobs in the United States. The tax rate is determined by the type of job and not by an income bracket.

**Table 5.**

| JOB | SALARY | TAX RATE | TAX TOTAL | ANNUAL INCOME |
|---|---|---|---|---|
| Cashier | $21,820 | 4.5% | $981.90 | **$22,801.90** |
| Teacher | $43,500 | 10.6% | $4,611.00 | **$48,111.00** |
| Nurse | $71,250 | 14.0% | $9,975.00 | **$81,225.00** |
| Mechanic | $36,680 | 8.6% | $3,154.48 | **$39,834.48** |
| HAZMAT Driver | $66,790 | 13.7% | $9,150.23 | **$75,940.23** |
| Paralegal | $51,850 | 11.9% | $6,170.15 | **$58,020.15** |
| Plumber | $54,630 | 12.3% | $6,719.49 | **$61,349.49** |
| Welder | $37,110 | 5.8% | $2,152.38 | **$39,262.38** |
| Waiter | $21,640 | 4.5% | $973.80 | **$22,613.80** |
| Carpenter | $42,990 | 10.7% | $4,599.93 | **$47,589.93** |
| Police Officer | $60,270 | 10.0% | $6,027.00 | **$66,297.00** |
| Firefighter | $46,870 | 10.0% | $4,687.00 | **$51,557.00** |
| Paramedic | $31,980 | 8.0% | $2,558.40 | **$34,538.40** |
| Electrician | $51,880 | 11% | $5,706.80 | **$57,586.80** |
| Construction | $30,890 | 5.5% | $1,698.95 | **$32,588.95** |
| Sanitation | $23,440 | 5.0% | $1,172.00 | **$24,612.00** |

The purpose of an excise on labor is to influence its sale. For example, let's say that all of the excises in **Table 5** were raised by 10%. This might force the employer to offer less money for the job, and if so, then the employee would have to accept less money or refuse the job. This is how an excise could influence the sale of labor.

There is a precedent for taxing the sale of labor. A tithable was a member of the potentially productive labor force in colonial America. The noun *tithable* when it appears in the seventeenth and eighteenth century records of Virginia refers to a person who paid, or for whom someone else is paid, one of the taxes that the General Assembly imposed for the support of the civil government in the colony.[(121)] The excise on tithables was added to the cost of labor, and this method was described by the Court in *Steward Machine Co.* v. *Davis*.

*"But in truth other excises were known, and known since early times. Thus in 1695, Parliament passed an act which granted 'to His Majesty certain Rates and Duties upon Marriages, Births and Burials,' all for the purpose of 'carrying on the War against France with*

*Vigor.'...In 1777, before our Constitutional Convention, Parliament laid upon employers an annual 'duty' of 21 shillings for 'every male Servant' employed in stated forms of work. The point is made as a distinction that a tax upon the use of male servants was thought of as a tax upon a luxury. It did not touch employments in husbandry or business. This is to throw over the argument that historically an excise is a tax upon the enjoyment of commodities. But the attempted distinction, whatever may be thought of its validity, is inapplicable to a statute of Virginia passed in 1780. There was a tax of 3 pounds, 6 shillings, and 8 pence was to be paid for every male tithable above the age of twenty-one years (with stated exceptions), and a like tax for 'every white servant whatsoever, except apprentices under the age of twenty one year.' Our colonial forbears knew more about ways of taxing than some of their descendants seem to be willing to concede."*(122)

The tax on tithables was added to the cost of the labor, because it was "laid *upon* employers." It was paid by the employer, and it did not reduce the income that was earned by the employee. This is why it was a regulatory tax on the sale of labor and not a direct tax. As a direct tax, the tax on tithables would have compelled the sale of labor since the employer would have been forced to hire a tithable in order to pay the tax.

There is only one difference between the tax on tithables and a modern sales tax on labor. The tax on tithables was transferred to the government by the buyer, *i.e.*, the employer, instead of the seller, *i.e.*, the employee. This precedent allows a seller's tax return to be either directly sent to the government or indirectly sent to the government, and this is why an employer could be permitted to pay an employee's income tax directly to the IRS.

Congress can regulate the sale of foreign labor just as it can regulate the sale of domestic labor, and this could be accomplished by imposing taxes on foreign work visas. The cost of labor can be increased by taxation, and an increase in the cost of labor would likely force businesses to only hire domestic labor.

The *Sebelius* Court unknowingly prohibited Congress and the States from collecting taxes on the sale of illegal labor. Duties, imposts and excises can only be used to regulate lawful economic acts, and this includes the sale of labor. The *Sebelius* Court clearly distinguished taxes from penalties when it said that taxes are imposed on lawful economic acts while penalties are imposed on unlawful acts. Therefore, no tax can be imposed upon an unlawful economic act. To collect a tax on the sale of illegal labor is to regulate the sale of illegal labor, and no unlawful economic act can be regulated under the *Sebelius* Court's definition of regulation.

Under *Sebelius*, neither Congress nor the States are permitted to collect a tax on labor that is illegally sold, and there are two ways that labor can be classified as illegal. The first way is when a job is illegal, and the second way is when illegal labor used to do a legal job.

The fourth error that the Court committed when it classified an income tax as an excise was it failed to realize that the Sixteenth Amendment and the Taxing Clause mirror each other, and neither grants Congress the power to impose direct taxes without apportionment. The Sixteenth Amendment only gives Congress the authority to impose duties, imposts and excises.

Black's Law Dictionary provides a list of many names for the general term *tax*. The Constitution lists only three of these names, and the Court has used these three names to define

the term *tax* in a Constitutional sense.

*Duties, Imposts* and *Excises* are mentioned twice in Article 1 Section 8 Clause 1. In the first instance, they are listed with the term *Taxes*, and in the second, they are not listed. The second instance proves that they are separate items under the general category *Taxes*, and this is why a semicolon should be used to separate *Taxes* from *Duties, Imposts* and *Excises*. A semicolon is used to separate, announce, introduce or direct attention to items on a list when they are separated by a comma.

The following passage defines Congress's taxing power by combining the Sixteenth Amendment, Taxing Clause and Direct Tax Clauses. A semicolon is used to separate *Taxes* from *Duties, Imposts* and *Excises*.

Congress shall have the power to lay and collect Taxes; Duties, Imposts and Excises, on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration, but all Duties, Imposts and Excises shall be uniform throughout the United States. No Capitation or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken; direct Taxes shall be apportioned among the several States.

*The Wealth of Nations* stated that indirect taxes are taxes on revenue (income), and thus, they are indirect income taxes. Consider the following quotes from Chapter 3.

*"Indirect taxes are circuitous modes of reaching the revenue of individuals where the individual may be said to tax himself."*

*"The impossibility of taxing people in proportion to their revenue, by any capitation, seems to have given occasion to the invention of taxes upon consumable commodities; the state not knowing how to tax directly and proportionably the revenue of its subjects, endeavours to tax it indirectly by taxing their expense, which it is supposed in most cases will be neatly in proportion to their revenue."*

The Sixteenth Amendment and the Taxing Clause perfectly dovetail since taxation without apportionment means to impose duties, imposts and excises. The categories *Duties, Imposts* and *Excises* in the Taxing Clause are indistinguishable from the category *Taxes* in the Taxing Clause and Sixteenth Amendment, because to lay and collect a tax on a source of income without apportionment is to lay and collect a sales tax.

Revenue can come from many different sources. These sources include labor, gifts, royalties, investments, gambling and inheritance. Income from these sources is used to purchase commerce, and commerce can only be taxed with sales taxes. The architects of the Sixteenth Amendment failed to understand that taxation without apportionment only means to impose a sales tax, and the sole purpose of a sales tax is to collect revenue from these sources when they are used to purchase commerce.

Article 1 Section 8 Clause 1 grants Congress the authority to "lay and collect Taxes, Duties, Imposts, Excises." For over two centuries, the Court has only understood the phrase "lay and collect" to mean that Congress could lay and collect a direct tax without apportionment so long as it was not a capitation, land tax or a tax on personal property. This error was compounded when it also said that a direct tax could be called a duty, impost or excise.

If Congress could lay and collect a direct tax and call it a duty, impost or excise, then it would naturally possess the authority to lay and collect a duty, impost or excise as a direct tax. This method of taxation would be Congress's primary power, because the payment of the tax would produce a contract of sale. The payment of a duty, impost or excise always produces a contract of sale, because they are taxes on a contract of sale. The former method of taxation would naturally be Congress's secondary power, because the payment of a pure direct tax on earned and unearned income does not produce a contract of sale. As a general rule, if Congress cannot exercise its primary taxing power, then it cannot exercise its secondary taxing power. Furthermore, a direct tax cannot be a duty, impost or excise, because a direct tax is only paid *after* a contract of sale is sold while a sales tax is only paid *when* a contract of sale is sold.

To lay and collect an income tax on labor only means to lay and collect a sales tax on labor, and this is the only way that the sale of labor can be taxed under *Sebelius*. As a result, all direct taxes on earned income must be apportioned.

Chapter 4 provided three of the ten reasons why the power to impose the healthcare tax is unconstitutional. The fourth reason is that if an income tax cannot be collected, then the healthcare tax cannot be collected since it is collected with the income tax. In fact, the healthcare tax is an income tax.

As previously mentioned in Chapter 3, a direct tax is placed upon something that is owned by an individual. In the case of a capitation, it is the human body. In the case of land taxes, it is real estate. In the case of the carriage tax, it was a carriage. In the case of the income tax, it is income. The healthcare tax is only a direct tax on income, because it only targets income. A decision to not buy health insurance is not something that is owned.

The fifth reason is the power to impose the healthcare tax also permits Congress to compel commerce. If Congress could impose the healthcare tax, then it could directly tax with a duty, impost or excise.

Congress has been illegally taxing income since June 28, 2012. All federal personal and business income taxes are unconstitutional under *Sebelius*, and this also includes direct taxes on income from dividends, capital gains, inheritance, royalties, gambling and charitable donations. Congress can tax the sale of items that produce unearned income, and these include stocks, bonds, lottery tickets, real estate and personal property.

The Johnson Amendment was passed in 1954, and it was created to tax any religious institution that endorsed a political party or candidate. The Johnson Amendment is unconstitutional, because a direct tax cannot be imposed on any right or practice that is granted by the First Amendment.

The current economy is far more advanced and diverse than the economy when *Hylton* was decided. The United States has a commerce based economy where citizens buy nearly all of

the goods that they consume. Congress has a vast power to tax Americans, because it can tax the sale of all commerce. The Internal Revenue Code can be easily changed, and hopefully, Congress will not turn a wagon ride into a space shuttle launch.

# Chapter 6

## Guns & Rights

Rights are defined generally as powers of free action.[123] A right is a lawful act that an individual chooses to exercise or to not exercise, and it can be exercised so long as it does not cause harm or prevent others from freely exercising their rights.

The right to possess a gun is a free choice, and this choice is protected by the freedom of thought. The freedom of thought gives Americans the ability to choose or not choose to exercise a right. A legal sale does not violate the freedom of thought since it does not cause harm to anyone nor does it prevent anyone from freely exercising a right. The *Palko* Court described the freedom of thought.

*"We reach a different plane of social and moral values when we pass to the privileges and immunities that have been taken over from the earlier articles of the Federal Bill of Rights and brought within the Fourteenth Amendment by a process of absorption. These in their origin were effective against the federal government alone. If the Fourteenth Amendment has absorbed them, the process of absorption has had its source in the belief that neither liberty nor justice would exist if they were sacrificed. This is true, for illustration, of freedom of thought and speech. Of that freedom one may say that it is the matrix, the indispensable condition, of nearly every other form of freedom. With rare aberrations a pervasive recognition of that truth can be traced in our history, political and legal."*[124]

The freedom of thought produces wisdom, and wisdom is expressed through free speech. Public liberty is based on the freedom of speech.

*"Without freedom of thought there can be no such thing as wisdom and no such thing as public liberty without freedom of speech."*[125]

The right to buy and own a gun is protected by the First Amendment in the Bill of Rights.

### First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise of 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 redress of grievances.

The freedom of speech and the free exercise of religion grant Americans the right to boycott a gun. A boycott is a concerted refusal to do business with particular person or business in order to obtain concessions or to express displeasure with certain acts or practices of person or business.[126] A consumer boycott is the practice whereby consumers, *i.e.*, customers, refrain from purchasing a particular product in protest of excessive price, offensive actions of

manufacturer or producer, *etc.*, or refrain from trading with particular business for similar reasons.(127)

A primary boycott is an organized effort of a labor union and its members to discourage consumers from buying the products of a particular employer.(128) A secondary boycott is a boycott of an employer with which a union does not have a dispute that is intended to induce the employer to cease doing business with another employer with which the union does have a dispute. Secondary boycotts are often illegal under the National Labor Relations Act.(129)

The right to boycott is pre-existing right, and it was exercised by the Founding Fathers. The Continental Association of 1774 created a trade boycott against England, and it eventually led to the Boston Tea Party.

There are three reasons why the right to keep and bear arms is a First Amendment right. The third reason is explained in Chapter 8.

The first reason is the freedom of speech and the free exercise of religion grant Americans the right to buycott. The right to buy is the right to possess, and the right to buycott grants the right to buy and possess a gun. Buycotting is the opposite of a boycotting, and it is primarily used to support a business. A buycott can also be a type of protest aimed at a company or country with dubious ethical standards in which consumers buy the products of another company or country.(130)

The second reason is that to keep and bear arms is symbolic speech. Symbolic speech is a person's conduct which expresses opinions or thoughts about a subject.(131) Conduct is any positive or negative mode of action, *i.e.*, an individual's personal behavior.(132) In this case, the mode of action is keeping and bearing arms, and this action expresses the individual's thought on the Second Amendment. Thus, exercising the right and its symbolic expression are one and the same act. All Americans have a right to express symbolic speech, and this naturally includes the ability to symbolically speak a right that is written in the Constitution. Symbolic speech is protected by liberty of speech, religious liberty and liberty of conscience.

Liberty of speech is freedom accorded by the Constitution (First Amendment of the U.S. Constitution) or laws to express opinions and facts by word of mouth, uncontrolled by any censorship or restrictions of government.(133)

All Americans have the right to declare that gun ownership is a religious belief. Religious liberty is freedom, as guaranteed by the First Amendment of U.S. Constitution, from constraint, or control in matters affecting the conscience, religious beliefs and the practice of religion. It is freedom to entertain and express any or no systems of religious opinions, and to engage in or refrain from any form of religious observance or public or private religious worship, not inconsistent with the peace and good order of society and the general welfare.(134) Liberty of conscience is liberty for each individual to decide what is religious.(135)

The First Amendment allows the Second Amendment to be fully practiced. The words in the Second Amendment can be symbolically spoken just as the words in the First Amendment

can be symbolically spoken. The act of keeping and bearing arms symbolically speaks the Second Amendment, because exercising this right and its symbolic expression are indistinguishable.

The sixth reason why the power to impose the healthcare tax is unconstitutional is it allows Congress to tax Americans for conducting a consumer boycott or any other kind of boycott. No American can be taxed for boycotting a product or anything else.

The seventh reason is that it allows Congress to tax its members for boycotting a committee vote. The right to boycott is afforded to members of Congress, and in 2017, members of Congress exercised their right to boycott when they refused to attend a committee vote.(136) Members also boycotted a meeting to vote on an agency director during the same period.(137) Any tax that could be imposed on representatives for boycotting would negatively impact their ability to represent their constituents.

The *Sebelius* Court unknowingly permitted Congress to tax Americans for exercising their religious beliefs and the freedom of speech. If Congress could tax Americans for boycotting, then it could also tax Americans for exercising any right that is protected by the First Amendment. For example, Congress could impose a tax on Americans for attending a religious service or it could impose a tax for belonging or not belonging to a political party. The potential abuse of this power is nearly limitless. Any tax that is imposed on boycotting is a suppression of the First Amendment.

*"The power to tax the exercise of a privilege is the power to control or suppress its enjoyment."*(138)

The Religious Freedom and Restoration Act of 1993 states that Americans have a right to freely exercise their religious beliefs unless there is an overriding governmental interest. This does not mean that Congress's power to enforce its overriding interest is without limits. An overriding governmental interest can only be for national defense, eminent domain or to protect the public against any kind of act that is harmful or violates the rights of other citizens. Any other kind of interest is not a legitimate overriding interest.

There is only one way that Congress can tax a First Amendment right. Congress can tax a First Amendment right when it is used to buy a contract of sale. The Contract Clause, Article 1 Section 10 Clause 1, grants the right to contract.

## Article 1 Section 10 Clause 1

No State shall…pass any…Law impairing the Obligation of Contracts.

*"As Alexander Hamilton put it, 'the Constitution is itself, in every rational sense, and to every useful purpose, a bill of rights.'"*(139)

Contracts are a certainty in life just as death and taxes. Contracts govern our lives every day, and this is why the right to contract is the most important right granted by the Constitution. The Bill of Rights would be nullified if the right to contract was removed, because the right to

contract prevents involuntary servitude and slavery. The right to contract allows Americans to freely sell their labor, and it prevents Americans from being owned as property. The only difference between the Contract Clause and the Thirteenth Amendment is the Thirteenth Amendment explicitly grants the right to resist involuntary servitude and slavery.

The liberty of contract or right to contract is the ability at will, to make or abstain from making, a binding obligation enforced by the sanctions at the law. It is the right to contract about one's affairs, including the right to make contracts of employment, and to obtain the best terms one can as the result of private bargaining. It includes the corresponding right to accept a contact proposed. There is, however, no absolute freedom of contract. The government may regulate or forbid any contract that is reasonably calculated to have an injurious effect to the public. The right to contract means freedom from arbitrary or unreasonable regulation in order to safeguard public interest. It is the right to make contracts with competent persons on a plane of relative parity or freedom of choice and within the limits allowed or not forbidden by law.(140)

The individual right to commerce is the right to freely negotiate the purchase of a contract of sale. An individual has the right to freely negotiate the purchase of a contract of sale, because Congress can only regulate the purchase of a contract of sale. If Congress could compel or deny the purchase of a contract of sale, then the ability to freely negotiate would be removed. The *Sebelius* Court implicitly held that Americans have a right to buy or to not buy a contract of sale for any legal product, and this includes a gun.

Congress can regulate the terms and conditions of a contract, but it cannot compel or deny the sale of the contract itself. In simple terms, a buyer cannot be forced to buy, and a seller cannot be forced to sell. For example, Congress cannot force insurance corporations to sell an insurance policy to people with pre-existing medical conditions. Instead, Congress can mandate that Americans are not required to disclose their medical history as a condition for buying a health insurance policy, and it can mandate that a health insurance policy cannot be dropped because of a pre-existing medical condition.

The right to sell labor and the right to sell a gun are explicitly protected by the Constitution. The Thirteenth Amendment protects the former, and the Second Amendment protects the latter. Any individual or business that uses legal labor to make a legal gun is allowed to sell that gun in the regulated market. A consumer technically employs a gun manufacturer, because a gun sale is a consumer paying a gun manufacturer for making a gun. The sale reimburses the manufacturer for the cost of materials and the cost of labor.

*"…the freedom of master and employee to contract with each other in relation to their employment, and in defining the same, cannot be prohibited or interfered with without violating the Federal Constitution."*(141)

Chapter 5 explained that the income tax is not an excise, because the rate of an excise on the sale of labor can only be determined by the type of labor that is sold. The *Lochner* Court upheld this point when it said that labor is sold by an employee to an employer.

*"Of course the liberty of contract relating to labor includes both parties to it. The one has as much right to purchase as the other to sell labor."*(142)

*"…the rights of individuals, both employers and employees, to make contracts regarding labor upon such terms as they may think best, or which they may agree upon with the other parties to such contracts."*(143)

No right can be removed or restricted without due process of law. The Fifth Amendment in the Bill of Rights and Fourteenth Amendments protect the right to due process of law, and due process protects the right to manufacture and sell a gun.

## Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offfence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## Fourteenth Amendment

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;

Due process of law is law in its regular course of administration through courts of justice. Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against the person, this is not due process of law.(144) Congress cannot compel or deny the sale of a gun, because this would violate due process.

*"I agree with the Court that the Second Amendment is fully applicable to the States. I do so because the right to keep and bear arms is guaranteed by the Fourteenth Amendment as a privilege of American citizenship."*(145)

*"The Court eventually held that almost all of the Bill of Rights' guarantees met the requirements for protection under the Due Process Clause. The Court also held that Bill of Rights protections must 'all...be enforced against the States under the Fourteenth Amendment according to the same standards that protect those personal rights against federal encroachment.'"*(146)

*"The general right to make a contract in relation to his business is part of the liberty of the individual protected by the 14th Amendment of the Federal Constitution. Under that provision no state can deprive any person of life, liberty, or property without due process of law. The right to purchase or to sell labor is part of the liberty protected by this amendment, unless there are circumstances which exclude the right."*(147)

*"…other provisions of the Constitution also check Congressional overreaching. A mandate to purchase a particular product would be unconstitutional, if for example, the edict impermissibly abridged the freedom of speech, interfered with the free exercise of religion, or infringed upon a liberty interest protected by the Due Process Clause. Supplementing these legal restraints is a formidable check on Congressional power: the democratic process."*(148)

The Thirteenth Amendment protects the right to contract labor by prohibiting involuntary servitude and slavery. It explicitly states that servitude is a right, and thus, a free choice.

There are two guarantees that are offered by the Thirteenth Amendment. First, no American can be forced into servitude or denied from freely entering into servitude, and second, Americans can be forced into involuntary servitude if there is a conviction for breaking the law. It is important to note that these guarantees could be suspended if and only if Congress implemented a draft.

Involuntary servitude is the condition of one who is compelled by force, coercion, or imprisonment, and against one's will, to labor for another, whether there is payment or not. Slavery, peonage, or compulsory labor for debts; all of which are prohibited by the Thirteenth Amendment.(149) Paying a debt is servitude, because in order to pay a debt, an individual must sell labor, capital or both.

## Thirteenth Amendment

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Any mandate to buy a product would reinstate involuntary servitude, because it would force an individual to service both the debt and terms that are in a contract of sale. The power to compel a contract of sale also reinstates the power to create federal debtor's prisons, because federal tax evasion laws could be used to enforce the payment of both the tax and the cost of the product. This would allow an individual to be criminally convicted of tax evasion for not buying a product, service or license.

Worst of all, if the prohibition against involuntary servitude is allowed to be violated, then the prohibition against slavery also becomes meaningless. A compelled contract of sale could be used to force an individual to become the property of either a private or government entity. Some products, like health insurance, require the consumer to sign a contract in addition to buying a contract of sale. An additional contract could be used to make the buyer the legal property of the seller, and this is how an individual could be forced to become a slave through a sale.

The mandate to sell a health insurance policy to individuals with a pre-existing medical condition is unconstitutional, because it reinstates involuntary servitude and slavery. If Congress could mandate the sale of a health insurance policy, then Congress could also mandate the sale of labor. This would eliminate the right to freely sell labor and the right to terminate a labor contract. As previously mentioned, if Congress had the authority to reinstate involuntary servitude then it would also have the authority to reinstate slavery.

Neither Congress nor the States can compel the sale of labor for any reason. For example, let's say that a customer tries to buy a gun from Duck Commander™, and Duck Commander offers to do custom inscriptions. The customer asks Duck Commander to inscribe "There is no God-Destroy the U.S. Constitution" on the gun. In response, Duck Commander refuses to do the job, because it conflicts with religious and political beliefs.

Duck Commander cannot be forced to do the inscription, because this would violate religious, speech and labor rights. No American or business can be forced to do anything that violates the First Amendment, and no American or business can be forced to perform labor especially when it violates the First Amendment. Furthermore, Duck Commander's decision to not do the inscription does not discriminate against the customer's race, age, sex, sexual orientation, nationality or religion, because the objection is strictly based on performing labor that violates the First Amendment. As a general rule, discrimination only occurs when a merchandiser refuses to do any business with a customer solely because of the customer's race, age, sex, sexual orientation, nationality or religion.

Discrimination is, in constitutional law, the effect of a statute or established practice which confers particular privileges on a class arbitrarily selected from a large number of persons, all of whom stand in the same relation to the privileges granted and between whom and those not favored no reasonable distinction can be found. It is unfair treatment or denial of normal privileges to a person because of their age race, age, sex, sexual orientation, nationality or to persons because of their race, age, sex, sexual orientation, nationality or religion. A failure to treat all persons equally where no reasonable distinction can be found between those favored and those not favored. Federal statutes prohibit discrimination in employment on the basis of sex, sexual orientation, age, race, nationality, religion or being handicapped.(150)

There are two requirements that must be met in order to prove discrimination. First, a special preference must be given to a customer, and second, the preference must be based on sex, sexual orientation, age, race, nationality, religion or being handicapped. In this case, Duck Commander would not do the inscription for *any* customer, and therefore, there is no discrimination.

Duck Commander's refusal to do the inscription is an example of a contract negotiation, *i.e.*, a labor dispute and not discrimination, because the negotiation is over a particular term in a contract and not over the overall contract. Simply put, the contract is still offered, but not on this particular term. There are numerous terms that are negotiated in a sale and these often include price, delivery, warranties, product customization and special services. In this example, the dispute is solely over the customization of the product.

The *Lochner* Court made it clear that all Americans have a right to negotiate the sale of labor. Duck Commander could not be penalized for refusing to inscribe the gun, because this would give Congress and the States the power to penalize private citizens for quitting a job that violates their First Amendment rights. Any law that penalizes a business for not performing labor is unconstitutional unless a special preference is provided, and the preference must be based on sex, sexual orientation, age, race, nationality, religion or being handicapped.

The eighth reason why the power to impose the healthcare tax is unconstitutional is that it taxes the right to resist involuntary servitude. The taxation of this right also allows Congress to tax Americans for not serving time in prison or resisting slavery.

The ninth reason is it taxes the right to pay a sales tax. The *Sebelius* Court said that an individual has a lawful choice to pay a sales tax. A lawful choice is a power of free action, and a power of free action is a right. Therefore, the lawful choice to pay a sales tax is a right. All Americans have a right to accept or refuse a sale and a sales tax. The decision to pay a sales tax can only be taxed when a sale is accepted, and it cannot be taxed when a sale is refused.

The right to vote is an essential part of a free society. The Fifteenth Amendment gives Americans the right to vote.

## The Fifteenth Amendment

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

All Americans have a natural right to vote for candidates that pledge to protect the Constitution. No free American can be prevented from voting, and this includes felons.

The Fifteenth Amendment was passed shortly after the U.S. Civil War, and it states that the right to vote cannot be prohibited on account of any previous condition of servitude. This language was specifically put in place to give ex-slaves the right to vote. The Thirteenth Amendment clearly states that a prison sentence is legal involuntary servitude while illegal involuntary servitude includes slavery or any other kind of involuntary servitude. The phrase "previous condition of servitude" applies to all of types of involuntary servitude, and this includes a prison sentence. Under the Fifteenth Amendment, no kind of involuntary servitude can be used to disqualify Americans from voting.

Felons are prohibited from voting under the guise of regulation, and this is unconstitutional for two reasons. First, to remove a right is penalization and not regulation, and second, Congress does not have the authority to regulate or penalize classes of individuals.

The right to vote cannot be penalized or regulated. First, it is unconstitutional for Congress and the States to penalize a citizen for exercising the right to vote, and second, it is unconstitutional for Congress and the States to regulate a vote. If Congress and the States could regulate the act of voting, then they would be permitted to tax the act of voting. Congress and the States only have the authority to regulate the conditions for voting.

The right to vote is protected by the First Amendment. To vote or to not vote can be an expression of symbolic speech, religious belief or both, because a vote can be based on political beliefs, religious beliefs or both. Furthermore, the act of voting is symbolic speech. The act of voting is a First Amendment right, because voting symbolically speaks the Fifteenth Amendment.

The power to deny the right to vote is unconstitutional, because it also gives Congress and the States the power to force Americans to vote in an election. If the decision to vote could be removed, then the choice to vote is entirely removed, and if the choice to vote is entirely removed, then the decision to not vote could also be removed. In other words, if Congress could deny a person from engaging in a particular activity, then it could also compel a person to engage in that particular activity since the decision to engage in the activity would be entirely removed. It does not matter whether the activity is denying the sale of a gun or denying the right to vote.

The tenth reason why the power to impose the healthcare tax is unconstitutional is that it permits Congress to tax Americans for not voting. If Americans could be taxed for boycotting a product, then they could be taxed for boycotting for any reason, and this includes boycotting a candidate, political party or an election.

The same rules that apply to Congress also apply to the States. The States cannot enforce a mandate to buy product, deny the right to buy a gun or deny the right to vote, and this can be upheld by the American juries.

Americans have a responsibility to uphold the Constitution when serving on a jury. A jury can deny a conviction if it agrees beyond a reasonable doubt that a defendant is innocent. The jury in criminal cases possesses de facto power of "nullification", to acquit defendant regardless of strength of evidence that is against the defendant.(151) No court has the authority to impose a criminal sentence upon a defendant if a jury finds the defendant not guilty. Jury nullification is a pre-existing right, and it is recognized as a right by the Court.

*"It may not be amiss, here, Gentlemen, to remind you of the good old rule, that on questions of fact, it is the province of the jury, on questions of law, it is the province of the court to decide. But it must be observed that by the same law, which recognizes this reasonable distribution of jurisdiction, you have nevertheless a right to take upon yourselves to judge of both, and to determine the law as well as the fact in controversy. On this, and on every other occasion, however, we have no doubt, you will pay that respect, which is due to the opinion of the court; For, as on the one hand, it is presumed, that juries are the best judges of facts; it is, on the other hand, presumable, that the court are the best judges of the law. But still both objects are lawfully, within your power of decision."*(152)

As jurors, the American people have a right to uphold the Constitution and not enforce laws that are unconstitutional; however, a court also has rights regarding jury nullification. *Sparf* v. *U.S.* held that a trial judge has no responsibility to inform a jury of its right to nullification. *U.S.* v. *Krzyske* held that a judge can give an incorrect opinion to a jury on nullification, and this would not provide grounds to overturn the ruling.

Americans have a right to demand that their state law enforcement officers not enforce federal gun laws that are unconstitutional. The *Printz* Court held that the States are not responsible for enforcing federal laws.

*"We adhere to that principle today, and conclude categorically, as we concluded categorically in New York: 'The Federal Government may not compel the States to enact or administer a federal regulatory program.' The mandatory obligation imposed on CLEOs to perform background checks on prospective handgun purchasers plainly runs afoul of that rule."*(153)

*"When we were at last confronted squarely with a federal statute that unambiguously required the States to enact or administer a federal regulatory program, our decision should have come as no surprise. At issue in New York v. United States, were the so-called 'take title' provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985, which required States either to enact legislation providing for the disposal of radioactive waste generated within their borders, or to take title to, and possession of, the waste-effectively requiring the States either to legislate pursuant to Congress's directions, or to implement an administrative solution. We concluded that Congress could constitutionally require the States to do neither. 'The Federal Government,' we held, 'may not compel the States to enact or administer a federal regulatory program.'"*(154)

As you can see, the Constitution protects the right to own a gun in many ways, and the numerous rights that protect the right to own a gun cannot be infringed by Congress or the States. Neither has the authority to pass any law or referendum that violates the right to keep and bear arms even if the law is intended to protect public safety.

# Chapter 7

## Guns & Injury

The Gun Control Act and other gun control laws are implemented with the intention to protect public health and safety by preventing injury from the criminal use of a gun.

An injury cannot occur until an injurious act has been committed. To injure is to violate the legal right of another or inflict an actionable wrong. To injure is to do harm to; to hurt; damage; impair; to hurt or wound, as the person; to impair the soundness of, as health; to damage.(155) Public injuries are breaches and violations of rights and duties which affect the whole community as a community.(156) Private injuries are infringements of the private or civil rights belonging to individuals considered as individuals.(157)

The Gun Control Act is neither a public health law nor a public safety law.

Health is the state of being hale. It is the state of being whole in body, mind, soul and well being. It is freedom from pain or sickness; the most perfect state of animal life. It is not synonymous with "sanitation". The right to enjoyment of health is a subdivision of the right of personal security, one of the absolute rights of person.(158) To be healthy is to be free from disease, injury, or bodily ailment, or any state of the system peculiarly susceptible or liable to disease or bodily ailment.(159)

Health laws are laws, ordinance, prescribing sanitary standards and regulations, designed to promote and preserve the health of the community.(160) Public health is one of the objects of the police power of the state, the "public health" means the prevailingly health or sanitary conditions of the general body of people of the community in mass, and the absence of any general or widespread disease or cause of mortality. Public health is the wholesome sanitary condition of the community at large.(161)

The freedom to contract cannot be prevented by an invalid health law. An injury affects the health of an individual, and thus, health can only be affected if an injury has occurred. No injury or illness is caused when an individual buys a gun, and this is why the Gun Control Act is not a valid public health law.

*"It is a question of which of two powers or rights shall prevail, the power of the state to legislate or the right of the individual to liberty of person and freedom of contract. The mere assertion that the subject relates, though but in a remote degree, to the public health, does not necessarily render the enactment valid. The act must have a more direct relation, as a means to an end, and the end itself must be appropriate and legitimate, before an act can be held to be valid which interferes with the general right of an individual to be free in his person and in his power to contract in relation to his own labor."*(162)

*"It is also urged, pursuing the same line of argument, that it is to the interest of the state that its population should be strong and robust, and therefore any legislation which may be said to tend to make people healthy must be valid as health laws, enacted under the police power."*(163)

In order to protect public safety, a state may exercise its police power (derivatively, a city or town) by enacting laws for the protection of the public from injury and dangers.(164) Danger is jeopardy; exposure to loss or injury; peril.(165) Apparent danger means such overt actual demonstration, by conduct and acts, of a design to take life or do some great personal injury, as would make the killing apparently necessary to self-preservation.(166) Imminent danger, in relation to homicide in self defense, means immediate danger, such as must be instantly met, such as cannot be guarded against be calling for the assistance of others or the protection of the law. It is an appearance of threatened and impending injury as would put a reasonable and prudent person to instant defense.(167)

A gun is an inherently dangerous instrument and a dangerous weapon. Inherently dangerous is danger inhering instrumentality or condition itself at all times, so as to require special precautions to prevent injury, and it is not danger arising from mere casual or collateral negligence of others with respect thereto under particular circumstances. A dangerous instrument is an object which has in itself the potential for causing harm or destruction, against which precautions must be taken. It is dangerous, per se, without requiring human intervention to produce harmful effects; *e.g.*, explosives. A product is "inherently dangerous" where the danger of an injury arises from the product itself, and not from a defect in the product. Work is "inherently dangerous" when in the ordinary course of events its performance would probably, and not merely possibly, cause injury if proper precautions are not taken.(168) Dangerous instrumentality is anything which has the inherent capacity to place people in peril, either in itself (*e.g.*, dynamite), or by a careless use of it (*e.g.*, boat).(169) A dangerous weapon is one dangerous to life; one by the use of which a serious or fatal wound or injury may probably or possibly be inflicted. It can be any article which, in circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or other serious physical injury.(170)

The Gun Control Act does not protect individuals from injury and danger. The sale of a gun does not present an imminent or apparent danger to the public, because it does not make anyone commit an act of self defense where lethal force is necessary for self defense. The sale of a gun is not an inherently dangerous act, because it does not create an inherently dangerous condition that would require special precautions to prevent an injury. The sale of a gun does not cause a public or private injury, because it does not create a breach or violation of rights and duties of the community or any individual. A gun that is sold to a consumer is not a criminally dangerous weapon, because it must be criminally used, attempted to be criminally used or threatened to be criminally used in order for it to be considered a criminally dangerous weapon.

A contract can be denied if it is reasonably calculated to cause injury. A gun sale cannot be prevented by law, because there is no method to reasonably calculate if it is injurious. A reasonable calculation is not an exact calculation, and this is why a reasonable calculation can only be a prophesied event. As previously mentioned, Congress cannot regulate or penalize

Americans based on a prophesied event. If this was permissible, then Americans could lose their right to sell labor based on a prophesied event.

Congress has the authority to create and enforce laws, but it cannot remove the rights of an individual if a law has not been broken. The *Sebelius* Court said that Congress creates laws, and certain rights can be removed if an individual has been convicted of a crime. The *Sebelius* Court is technically correct, because some rights are removed when an individual is serving time in a correctional facility.

*"Congress may simply command individuals to do as it directs. An individual who disobeys may be subjected to criminal sanctions. Those sanctions can include not only fines and imprisonment, but all the attendant consequences of being branded a criminal: deprivation of otherwise protected civil rights such as the right to bear arms or vote in elections…"*(171)

A criminal sentence defines the debt that an individual owes to society, and all rights are restored when the sentence is completed. The whole purpose to imposing a prison sentence is to achieve reformation through punishment; however, the Gun Control Act is enforced under the belief that the reformation process is not complete when a sentence is completed. This belief is entirely incorrect, because the courts consider an individual to be reformed when a prison sentence is completed. Imprisoned or institutionalized individuals can be confined if they are shown to be a legitimate threat to society.

*"For example, we have upheld provisions permitting continued confinement of those already in federal custody when they could not be safely released..."*(172)

Criminal probation is used to deter an individual from committing an illegal act, and it is often used to temporarily suspend rights in exchange for a reduced sentence. The Court can deny the sale of a gun as condition of probation just as it can deny the sale of alcohol as a condition of probation. An individual can also be compelled to forfeit the ability to use a gun as a condition for probation, but all rights are restored after probation is completed.

No federal or state court can order Americans to forfeit their guns as a requirement for probation. For example, let's say that a person convicted of a DUI possessed an unopened whiskey bottle before the conviction. The general requirement for probation would not be to get rid of the bottle, but instead, it would be to not drink the whiskey in the bottle. If this rule can be applied to alcohol, then it can also be applied to a gun.

It is absurd to argue that a free individual can buy a crossbow and black powder, but not a gun. Like a gun, a crossbow is used to kill by launching a deadly projectile, and some modern crossbows are capable of hitting a target at a distance of eighty yards. The black powder in highly explosive fireworks could easily be used to create a deadly incendiary device. It should be noted that unlike a gun, the ability to own a crossbow and black powder is not explicitly protected by the Constitution.

*"We mention these extreme cases because the contention is extreme."*(173)

To bear is to support, sustain or carry.[174] The Second Amendment states that the "right of the people to bear arms, shall not be infringed." This right has been restricted by state and federal laws regulating the transportation, sale, use and possession of weapons.[175]

*"Marshaling an impressive array of historical evidence, a growing body of scholarly commentary indicates that the 'right to keep and bear arms' is, as the Amendment's text suggests, a personal right."*[176]

There are two reasons why Congress cannot prohibit the right to bear arms in public as an act of regulation. First, to prohibit a right is not regulation, and second, neither Congress nor the States can penalize a citizen based a prophesied event. All laws that prohibit people from carrying a gun in public are based on the assumption that a crime will be committed. Americans have a right to protect themselves in public from individual attacks and mob violence. Far too often, unarmed bystanders become victims of violence.

Although Congress and the States cannot deny an individual from carrying a gun in public, they can regulate how a gun is carried and what kind of gun is carried. Reasonable precautions must be taken to ensure that a gun does not cause harm while being carried. An individual can be required to safely secure a gun in public since this would reasonably prevent a potential injury from an accidental discharge. A gun holster solves this problem since it is specifically designed to secure a gun.

Congress and the States can ban certain types of guns from being carried in public, but they cannot ban all guns from being carried in public. For example, a gun law could require that only handguns are permitted to be carried in public.

Congress and the States have the authority to prohibit an individual from brandishing a gun in public. To brandish a gun is to shake or wave (as a weapon) menacingly, and to exhibit in an ostentatious or aggressive manner.[177] Personal behavior is ostentatious when it is marked by or fond of conspicuous or vainglorious and sometimes pretentious display.[178] In other words, showing off with a gun is ostentatious behavior. Aggressive is using forceful methods to succeed or to do something. Personal behavior is aggressive when the individual is ready and willing to fight, argue, etc. or feeling or showing aggression.[179] Brandishing a gun in an aggressive manner is no different than yelling fire in a crowded theater, because both acts can cause the public to panic.

Congress is allowed to ban the sale and ownership of certain types of guns if they are not considered to be ordinary military equipment.

*"Our most recent treatment of the Second Amendment occurred in United States v. Miller, in which we reversed the District Court's invalidation of the National Firearms Act, enacted in 1934. In Miller, we determined that the Second Amendment did not guarantee a citizen's right to possess a sawed-off shotgun because that weapon had not been shown to be 'ordinary military equipment' that could 'contribute to the common defense.' The Court did not, however, attempt to define, or otherwise construe, the substantive right protected by the Second Amendment."*[180]

A concealed weapons permit is unconstitutional, because Americans cannot be required to obtain a license for exercising any right guaranteed by the Bill of Rights. Paying a license tax for a concealed weapon permit is indistinguishable from being taxed for exercising the right to keep and bear arms and the right to exercise symbolic speech.

The City of Jeannette, Pennsylvania, once passed an ordinance that required individuals to obtain a license for soliciting religious literature. The *Murdoch* Court decided that no government at any level could require an individual to obtain a license or pay a license tax for exercising any right guaranteed by the Bill of Rights.

*"It is contended, however, that the fact that the license tax can suppress or control this activity is unimportant if it does not do so. But that is to disregard the nature of this tax. It is a license tax-a flat tax imposed on the exercise of a privilege granted by the Bill of Rights. A state may not impose a charge for the enjoyment of a right granted by the federal constitution."*(181)

*"It is a flat license tax levied and collected as a condition to the pursuit of activities whose enjoyment is guaranteed by the First Amendment. Accordingly, it restrains in advance those constitutional liberties of press and religion and inevitably tends to suppress their exercise. That is almost uniformly recognized as the inherent vice and evil of this flat license tax."*(182)

*"The power to impose a license tax on the exercise of these freedoms is indeed as potent as the power of censorship which this Court has repeatedly struck down."*(183)

*Hylton* is unconstitutional under *Murdoch* for two reasons. First, it allows Congress to impose a direct tax on a First Amendment right, and second, it allows Congress to require Americans to obtain a license for exercising a First Amendment right.

The carriage tax was both a tax and a command to obtain a public license if one owned a carriage. The Founding Fathers determined that the easiest way to impose the carriage tax was to impose it on all carriages. This was done for convenience, because in eighteenth century America, there was no practical way to patrol the public roads and catch people who were unlawfully operating a carriage. The Founding Fathers simply failed to see the unconstitutionality of this method.

The *Hylton* Court gave Congress two special taxing powers. First, it allowed the direct taxation of any kind of private property that could be used in public, and second, it allowed Americans to be compelled to obtain a license for using private property in public. In addition to carriages, *Hylton* gave Congress the authority to apply this method of taxation to any kind of private property, and the *Sebelius* Court expanded this authority when it allowed Congress to tax Americans for not owning property. The obvious conflict is with the First Amendment, because Americans have a right to own religious literature and read it aloud in public.

Consider the ownership of a Bible. The free exercise of religion gives Americans the right to own and to not own a Bible, and it also gives Americans the right to read a Bible aloud in public. Under *Hylton*, if an individual chose to own a Bible, then Congress could impose a tax on the Bible and compel a license to read the Bible in public, and under *Sebelius*, if an individual chose to not own a Bible, then Congress could impose a tax for not owning a Bible, insurance on a Bible and a license to read a Bible aloud in public.

Another problem is if Americans could be taxed for not owning a public license, then they could also be taxed for not owning a private license. This means that Americans could be taxed for not buying a license to use privately copyrighted or trademarked material.

Let's say that a particular Christian religion sells their version of the Bible, and Congress mandates that all Americans purchase this particular version of the Bible or pay a tax. *Hylton* gave Congress the authority to tax all Bibles that are of this version and compel both a public and private license to use them in public. *Sebelius* gave Congress the authority to force Americans to pay a tax for not owning this version or having insurance on this version.

Background checks are unconstitutional, because no one can be denied the sale of a gun based on criminal history or any other kind of history. Also, Congress does not have the authority to deny the sale a gun even if the individual is placed on a terrorist watch list or any other kind of list. Placing people on a list creates a class of individuals, and Congress cannot selectively remove the rights of classes of individuals for any reason. Such a power would give Congress the ability to create any kind of list for any reason and remove the rights of those who are on the list without due process of law. This would also allow the States to use a list to remove rights without due process of law.

To deny American citizens the right to buy a gun is an extraordinary use of power that is beyond the original scope of the Constitution.

*"Extraordinary conditions may call for extraordinary remedies. But the argument necessarily stops short of an attempt to justify action which lies outside the sphere of constitutional authority. Extraordinary conditions do not create or enlarge constitutional power. The Constitution established a national government with powers deemed to be adequate, as they have proved to be both in war and peace, but these powers of the national government are limited by the constitutional grants. Those who act under these grants are not at liberty to transcend the imposed limits because they believe that more or different power is necessary."*(184)

*"The Constitution's express conferral of some powers makes clear that it does not grant others. And the Federal Government 'can exercise only the powers granted to it.'"*(185)

*"If no enumerated power authorizes Congress to pass a certain law, that law may not be enacted, even if it would not violate any of the express prohibitions in the Bill of Rights or elsewhere in the Constitution."*(186)

*"The Federal Government has expanded dramatically over the past two centuries, but it still must show that a constitutional grant of power authorizes each of its actions."*(187)

The right to carry a gun in public promotes and preserves public safety by protecting the safety of the individual. Any law that denies a citizen the right to openly carry a gun is disqualified from being a public safety law, because it denies the right to self defense.

Individuals can be barred from bringing a gun into a public building, because a government can set rules for entering its property. The same rule also applies to private buildings.

Minors can be prevented from carrying a gun in public, because unlike adults, minors require adult supervision under the law. Minors can be prevented from carrying a gun just as they can be prevented from voting.

The President of the United States does not have the authority to regulate commerce as an act to protect public safety. This includes regulating the manufacture and sale of firearms and ammunition through an executive order. The power to regulate commerce is only granted to Congress and not the President of the United States.

In August 2016, the State Department required under executive order that certain gunsmiths register with the Directorate of Defense Trade Controls (DDTC), and pay a registration fee of $2,500. The DDTC's letter stated that gunsmiths were to pay a fee of $2,250 if they performed a certain type of service involved with manufacturing of a firearm. All gunsmiths are required to register if their labor involves the use of any special tooling or equipment upgrading in order to improve the capability of assembled or repaired firearms, modifications to a firearm that change round capacity, production of firearm parts (including, but not limited to, barrels, stocks, cylinders, breech mechanisms, triggers, silencers, or suppressors).(188)

An executive order is an order or regulation issued by the President or some administrative authority under direction for the purpose of interpreting, implementing, or giving administrative effect to a provision of the Constitution or of some law or treaty. It is to have the effect of law, and such orders must be published in the Federal Register.(189) This particular executive order is unconstitutional, because the registration fee is a license tax. The President of the United States does not have the authority to create and impose a tax.

A business license is the registration of an individual and payment of a tax in exchange for the permission to work in a certain trade. It is a certificate or the document itself which gives permission. It is permission to do a particular thing, to exercise a certain privilege or to carry on a particular business or to pursue a certain occupation. It is a permit, granted by an appropriate governmental body, generally for a consideration, to a person, firm, or corporation to pursue some occupation or to carry on some business subject to regulation under the police power.(190)

To register is to record formally and exactly; to enroll; to enter precisely in a list or the like. To make correspond exactly one with another; to fit correctly in a relative position; to be correct alignment one with another.(191) Registration is recording; enrolling; inserting in an official register. Registration is enrollment, as registration of voters, registration for school, etc. It is the act of making a list, catalog, schedule, or register, particularly of an official character, or of making entries therein. A registration is any schedule containing a list of voters, the being upon which constitutes a prerequisite to vote. The following items are registered: bonds, checks, corporations, mail, representatives, securities, stock, tonnage, trademark, voters, bankruptcies, deeds, land offices, ships, wills and courts.(192) A true registration for gunsmiths would only enroll them on a list, and the permission to sell labor would not be a condition for registration.

In 2015, an executive order was issued that denied Social Security funds to senior citizens that were deemed mentally incompetent to own a gun, and the conditions for diagnosing mental incompetence were also included in the order.(193)

The Social Security Act of 1935 created the Social Security Administration.(194) The Social Security Administration is an agency of the Department of Health and Human Services under the direction of the Commissioner of Social Security which administers a national program of contributory social insurance whereby employees, employers, and the self-employed pay contributions which are pooled in special trust funds. Monthly cash benefits are paid to replace part of the earnings the person or family has lost when earnings stop or are reduced because the worker retires, dies, or becomes disabled. In addition to administering the various benefit programs, the Social Security Administration oversees the administrative hearing and appeals process involving benefit claims.(195)

An administrative agency is a governmental body charge with administering and implementing particular legislation.(196) Administrative authority is the power of an agency or its head to carry out the terms of the law creating the agency as well as to make regulations for the conduct of business before the agency; distinguishable from legislative authority to make laws.(197) Administrative acts are those acts which are necessary to be done to carry out legislative policies and purposes already declared by the legislative body or such as are devolved upon it by the organic law of its existence.(198) Administrative adjudication is the process by which an administrative agency issues an order, such order being affirmative, negative, injunctive or declaratory in form.(199)

Receiving Social Security income is a privilege. A privilege is a particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of other citizens. It is an exceptional or extraordinary power or exemption and a peculiar right, advantage, exemption, power, franchise, or immunity held by a person or class, not generally possessed by others.(200)

This executive order is unconstitutional, because no privilege can be revoked unless a law is broken. Furthermore, no class of citizens can have privileges removed based on a prophesied event. In this case, the class of citizens is all people that are diagnosed as being mentally incompetent, and the prophesied event is an injury from a gun.

The President does not have the authority to create conditions that could be used to diagnose citizens as mentally incompetent and remove privileges based on these conditions. If this authority was permissible, then the President could deny any privilege to any class of citizens and for exercising any right. This kind of executive order could deny citizens from obtaining a federal license or entering public property since both acts are also privileges. For example, an executive order could state that all citizens who do not belong to a political party are to be deemed mentally incompetent and must forfeit their guns. If not, then they would be denied from entering all federal property including national forests, national parks, national historic sites and all U.S. post offices. The order could also revoke all federal assistance income such as Social Security income.

The President does not have the authority to prevent military veterans from owning a gun for any reason. In 2015, an executive order was issued to prevent military veterans from owning guns if they were deemed mentally unfit.[201] This gun ban is unconstitutional for the same reasons that the Social Security gun ban is unconstitutional.

Gun manufacturers cannot be sued for product liability if an individual uses a gun to commit an injury. This is indistinguishable from suing an automobile manufacturer for injuries sustained from a crash when the driver is exclusively at fault. It is also indistinguishable from suing a knife manufacturer for a stabbing or suing a bow and arrow manufacturer for being shot by a bow and arrow.

The sale of a gun is not like the sale of tobacco, because the buyer understands that the primary purpose of a gun is to cause an injury. A gun's dangerous nature is openly advertised, and unlike tobacco products, its sale does not require a warning from the Surgeon General. There is no deception about the use of a gun from gun manufacturers, and any liability associated with the use of a gun exclusively falls upon the individual that commits the injury. The only exception would be if the flawed manufacture of a gun causes an injury.

Personal safety is necessary for public safety. If individuals are safe, then the public is also safe. Self defense is necessary for public safety, and this is why the ability to own and carry a gun is necessary for public safety. Criminals are not likely to attack those who are armed, but they are likely to attack those who are unarmed. Law abiding Americans should not be restricted from exercising their right to carry a gun for self defense, because criminals do not obey the gun control laws.

The onus is on Congress and the States to pass laws that punish those who commit gun crimes, and it is the responsibility of the courts to administer due process. The courts should exercise discretion for all cases that involve a gun crime, because this will help ensure public safety and not excessively punish Americans. For example, repeat offenders should receive harsher penalties than first time offenders. Also, a bank robbery or kidnapping with a gun should be treated differently than someone unlawfully shooting a target in the woods.

Congress and the States have the authority to protect public health and safety, but they cannot protect public safety by denying the right to buy and carry a gun for self defense.

# Chapter 8

## Our Creator & Guns

The Declaration of Independence is the first founding document of the United States, and it states the following:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

*"Our government, it its most sacred documents – the Constitution and the Declaration of Independence and all – speak of man being created, of a Creator; that we're a nation under God."*(202)

The Declaration of Independence is a contract with our Creator. The contract explicitly states that rights are only granted by our Creator, and it implies that no person or government can remove a right without due process. America's contract with its Creator was officially recognized by President Donald Trump on July 1, 2017.

*"Since the signing of the Declaration of Independence 241 years ago, America always affirmed that liberty comes from our Creator."*(203)

*"Our rights are given to us by God and no earthly force can ever take those rights away. That is why my administration is returning that power back to where it belongs – to the people."*(204)

Chapter 6 gave two of the three reasons why the right to keep and bear arms is a First Amendment right. The third reason is that the right to defend the contract with our Creator is a religious belief. This contract is sacred, because it states that our rights, including the right to self defense, are granted to us only by our Creator.

The First Amendment allows Americans to carry a gun in public for self defense, because self defense in public is a religious belief. The right to own a weapon for self defense is strongly rooted in the Judeo-Christian culture.

**And he said unto them, "When I sent you without purse, and scrip, and shoes, lacked ye anything?" And they said, "Nothing." Then said he unto them, "But now, he that hath a purse, let him take *it,* and likewise *his* scrip: and he that hath no sword, let him sell his garment, and buy one. For I say unto you, that this that is written must yet be accomplished in me, And he was reckoned among the transgressors: for the things concerning me have an end." And they said, "Lord, behold here *are* two swords." And he said unto them, "It is enough."**

*The Gospel According to Luke 22:35-38*(205)

**And behold, one of them which were with Jesus stretched out hand, and drew his sword, and struck a servant of the high priest's, and smote off his ear. Then said Jesus unto him, "Put up again thy sword into his place: for all they that take the sword shall perish with the sword."**

*The Gospel According to Matthew 26:51-52*[206]

**When they which were about him saw what would follow, they said unto him, "Lord, shall we smite with the sword?" And one of them smote the servant of the high priest, and cut off his right ear. And Jesus answered, and said, "Suffer ye thus far." And he touched his ear, and healed him.**

*The Gospel According to Luke 22:49-50*[207]

**Then Simon Peter having a sword drew it, and smote the high priest's servant, and cut off his right ear. The servant's name was Malchus. Then said Jesus unto Peter, "Put up thy sword into the sheath: the cup which my Father hath given me, shall I not drink it?"**

*The Gospel According to John 18:10*[208]

In the ancient world, a sword was used for self defense. The previous passages from the New Testament show that Jesus was aware that his followers were carrying swords for self defense, and according to tradition, Peter used a sword to cut off Malchus' ear when Jesus was arrested.

Jesus used only two ways to rebuke Peter's action. In John he revealed that the arrest was a necessary step to fulfill God's will. In Matthew, he rebuked Peter by saying that people who live by the sword will die by the sword. Jesus did not say to never use the sword again in either passage.

The act of brandishing a deadly weapon has no tradition in Judeo-Christian culture. The Judeo-Christian belief to responsibly bear arms in public can be found in Matthew and John. In both Gospels, Jesus instructed that the sword be put away, and in John, he specifically instructed that the sword be secured in its sheath. This implies that the sword was secured in its sheath before it was drawn by Peter.

As previously mentioned, religious liberty must be consistent with the good order of society and its general welfare. Religious liberty protects the right to keep and bear arms, because it protects society and its general welfare. This is why the loss of the right to keep and bear arms for self defense denies religious liberty.

In conclusion, our rights are like our lives, because once they are gone, then they are gone forever. They are interwoven, and the loss of only one would cause the others to topple like dominoes. It is our responsibility to defend our rights, our lives and our nation, and this defense is only possible with the right to own a gun.

"*In the end…no constitution can be self-enforcing. Government officials must respect their oaths to uphold the Constitution; and we the people must be vigilant in seeing that they do*."[209]

"*The truth is incontrovertible. Malice may attack it, ignorance may deride it, but in the end, there it is*."(210)

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# Appendix

An income tax is not an excise, and this can be shown through an analysis of both taxes when they are imposed upon a paycheck receipt. The value of a paycheck receipt is a function of the tax rate, and the value for both taxes is equal to the cost of the product multiplied by the rate of the tax. With a sales tax, the value of a paycheck receipt is the value of the tax *added* to the value of the product, and with an income tax, the value of a paycheck receipt is the value of the tax *subtracted* from the value of the product.

1) $F(x)_1 =$ *Value of a paycheck receipt for the sales tax.*

$F(x)_2 =$ *Value of a paycheck receipt for the income tax.*

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2) $F(x)_1 =$ *Value of the product + the sales tax.*

$F(x)_2 =$ *Value of the product - the income tax.*

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3) $F(x)_1 = n + nx$.

$F(x)_2 = n - nx$.

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The value of a paycheck receipt for the sales tax is the cost of the tax ($nx$) added to the cost of labor ($n$), and the value of a paycheck receipt for the income tax ($y_2$) is the cost of the tax ($nx$) subtracted from the cost of labor ($n$). The cost of the tax ($nx$) is the tax rate ($x$) multiplied by the cost of labor ($n$).

The following must be true in order to prove that an income tax is not an excise.

$$nx_1 \neq nx_2$$

Where $nx_1$ is a sales tax, and $nx_2$ is an income tax.

Method 1.

$$n + nx_1 = n - nx_2$$

$$n\,(1 + x) = n\,(1 - x)$$

$$n\,(1 - (1) + x) = n\,(1 - (1) - x)$$

$$n\,(0 + x) = n\,(0 - x)$$

$$n\,(x) = n\,(-x)$$

$$nx \neq -nx$$

$$nx_1 \neq nx_2$$

Method 2.

$$n + nx_1 = n - nx_2$$

$$n - (n) + nx = n - (n) - nx$$

$$0 + nx = 0 - nx$$

$$nx \neq -nx$$

$$nx_1 \neq nx_2$$

Method 3.

$$n + nx_1 = n - nx_2$$

$$n\,(1 + x) = n\,(1 - x)$$

$$\frac{n}{n} = \frac{(1 - x)}{(1 + x)}$$

$$1 \neq \frac{(1 - x)}{(1 + x)}$$

This is true except when x = 0, and thus, the income tax and the sales tax have the same effect on a paycheck receipt only when they are not imposed.

# President Donald J. Trump

## 45th President of the United States of America