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CONSTITUTIONAL LAW - NATIONAL FIREARMS ACT - USURPATION OF POLICE POWER OF STATES - CONSTITUTIONAL RIGHT TO BEAR ARMS

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CONSTITUTIONAL LAW — NATIONAL FIREARMS ACT — USURPATION OF POLICE POWER OF STATES — CONSTITUTIONAL RIGHT TO BEAR ARMS — Defendants were indicted for violating section 11 of the National Firearms Act [1] by transporting a firearm in interstate commerce without having registered it, and without having in their possession a stamp-affixed written order for the firearm. Their demurrer alleged that the act was unconstitutional because it was not a revenue measure but an attempt to usurp police power reserved to the states, and because it infringed the constitutional right to bear arms. The district court sustained the demurrer on the ground that this section of the act violated the constitutional right to bear arms. *Held*, on appeal, that the National Firearms Act does not usurp police power reserved to the states nor infringe the constitutional right to bear arms. *United States v. Miller*, 307 U. S. 174, 59 S. Ct. 816 (1939).

Congress has no general police power.[2] Therefore, it strikes at crime indirectly through enforcement of laws based upon its delegated powers. The National Firearms Act is an attempt by Congress through its taxing power to regulate the traffic in criminal weapons such as sub-machine guns and sawed-off shotguns. This act was preceded by the Harrison Narcotic Drug Act,[3] which used this same power to suppress the illegal drug traffic. Its revenue provisions were enforced by stringent regulation of the production and transfer of opium or its derivatives. The Court upheld this as a constitutional use of the power to tax which did not usurp the police power of the states.[4] The National Firearms Act is patterned [5] after the Harrison Act, and in similar manner its regulatory features are substantially related to enforcement of its revenue measures. It also has the psychological advantage of regulating a thing malum in se, as contrasted with the abortive attempt to regulate legitimate business through the taxing power in order to prevent child labor.[6] Therefore, the Court might well hold that it purports on its face to be a taxing measure and will not be declared otherwise because it has a regulatory effect and tends to restrict or suppress the thing taxed.[7] In *Sonzinsky v. United States*,[8] the Court upheld section 2, which requires the registration of all dealers, manufacturers, and importers of firearms and levies an annual tax of from $200 to $500 on each. But in so doing, it declared that section 2 embodied no offensive regulations and was productive of some revenue. This left uncertainty as to whether the Court would be willing to find that sections 3 and 4 purported to be taxing measures. Section 3 places a tax of $200 on each transfer of a firearm and is certainly more prohibitive. Section 4 is even more regulatory in forbidding

[1] 48 Stat. L. 1236 (1934), 26 U. S. C. (1934), §§ 1132-1132q.

[2] United States v. Cruikshank, 92 U. S. 542 (1875); 12 C. J. 910 (1917).

[3] 38 Stat. L. 785 (1914), 44 Stat. L. 97 (1926), 26 U. S. C. (1934), § 1040.

[4] United States v. Doremus, 249 U. S. 86, 39 S. Ct. 214 (1919); Linder v. United States, 268 U. S. 5, 45 S. Ct. 446, 39 A. L. R. 229 (1925); Nigro v. United States, 276 U. S. 332, 48 S. Ct. 388 (1928).

[5] United States v. Adams, (D. C. Fla. 1935) 11 F. Supp. 216.

[6] Bailey v. Drexel Furniture Co., 259 U. S. 20, 42 S. Ct. 449 (1922).

[7] Veazie Bank v. Fenno, 8 Wall. (75 U. S.) 533 (1869); McCray v. United States, 195 U. S. 27, 24 S. Ct. 769 (1904).

[8] 300 U. S. 506, 57 S. Ct. 554 (1937).

transfer of a firearm except in pursuance of a written order from the purchaser filled out upon a special form to be issued. Furthermore, if the applicant is an individual, he must forward his fingerprints and his photograph for identification, and any purchaser who accepts transfer of a firearm without obtaining possession of the required stamp-affixed written order violates the law. The question before the Court in the principal case was whether the demurrer was properly sustained over the objection that the act infringes the right to bear arms. But in its opening sentence the Court denounced as untenable the demurrer's other objection that the act usurps police power reserved to the states. In support of this were cited *Sonzinsky v. United States* and the Harrison Act with the various cases upholding it. Such a voluntary assertion seems a rather broad and summary disposition of this objection to the act. However, it removes the reason for its being invalid as a revenue measure and would seem to establish sections 3 and 4 as valid taxing provisions. The Court, in assuming that the constitutional right to bear arms includes firearms, had little difficulty in finding that the act does not infringe this right. The Constitution guarantees this right as a necessity to the existence of a well regulated militia [9] and it should be construed accordingly. During colonial times the weapons of the citizens provided an arsenal for the local militia. Today the state supplies the weapons and this necessity for the citizen bearing arms no longer exists. Therefore, the right is subject to such reasonable limitations as the National Firearms Act imposes. Moreover, the Court decided that the constitutional right to bear arms does not include a sawed-off shotgun, since it is not a necessary piece of equipment to the member of a well regulated militia. This same reasoning would aptly apply to the sub-machine gun used by criminals.

[9] U. S. Const., Amend. II: "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."