

It is the least that Congress and the Department of Defense can do.

I hope my colleagues here will see that and join me in protecting the great men and women of the United States Military.

UNION CITY CELEBRATES 40TH ANNIVERSARY AND DESIGNATION AS AN ALL-AMERICAN CITY

**HON. FORTNEY PETE STARK**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, July 16, 1999*

Mr. STARK. Mr. Speaker, on July 31, 1999, Union City, California will celebrate its 40th Anniversary and its recent designation by the National Civic League as an All-American City, one of only ten in the United States for 1999. Although the City of Union City will be celebrating its 40th Anniversary in 1999, the year 1850 marks the date that settlers John and William Horner visited an oasis by the Bay and laid out a small settlement town eight square blocks which they called "Union City." It is said that the name originates from the Horners' Sacramento River steamer call "The Union."

In the early 1850's, Union City had a total population of just three families. This is in stark contrast to the nearly 64,000 residents who inhabit the City today. Many of Union City's early settlers were disappointed gold miners who found that growing potatoes, fruits, and vegetables could also be quite profitable and rewarding. Most of the vegetables grown in California were shipped from Union City as this area was considered to be the most fertile agricultural land in the state.

By 1852, Union City had developed into a town that had several hotels, numerous boarding houses, livery stables, general stores, a blacksmith shop, and a men's furnishing store among others. The coming years saw major industries start to settle in the area, such as Pacific Coast Sugar Company and Gold Medal Flower.

Much of the area that is now Union City was spared with little damage during the earthquake of 1906. However, Union City faced a new challenge in the 1950's when several adjacent cities targeted Union City for possible annexation. To prevent this from happening, Union City residents decided to successfully incorporate the city in 1959.

Present day Union City is known as the Gateway to the Silicon Valley. With a diverse population of almost every imaginable ethnicity, Union City exemplifies the true American spirit. Civic-minded communities continue to work tirelessly for safe neighborhoods, quality housing and exemplary schools.

I am proud to represent Union City in my 13th Congressional District, and I ask my colleagues to join me in congratulating this outstanding city on its 40th birthday and designation as All-American City for 1999.

DEPARTMENT OF THE INTERIOR  
AND RELATED AGENCIES APPROPRIATIONS ACT, 2000

SPEECH OF

**HON. PATRICK J. KENNEDY**

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, July 14, 1999*

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 2466) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2000, and for other purposes:

Mr. KENNEDY of Rhode Island. Mr. Chairman, I rise in strong opposition to the amendment offered by Congressmen WELDON and BARR.

This amendment would accomplish two goals.

First, it would undermine the Constitutional responsibility that our government has towards Native American Tribes.

Second, it would serve to stop so much of the positive work that is being accomplished in Indian Country.

What my colleagues need to understand is that Tribal Gaming is not a private interest initiative. The proceeds from Tribal Gaming can only be used for governmental programs like education, health care and housing.

Some Tribes that are looking to take lands into trust for the purposes of gaming currently have unemployment rates in excess of 50 percent. Native Americans are simply looking for a way out of what is clearly third world poverty.

This amendment would prohibit the Secretary of the Interior from promulgating Class III gaming procedures.

The reason that the Department of Interior has published regulations on Class III gaming is because Congress, by enacting the Indian Gaming Regulatory Act, directed the Secretary to develop procedures for Class III gaming compacts.

And lets be clear, Interior's regulations will apply in cases where tribes and states could not reach a Class III agreement but the state already allows Class III gaming activities, and when a state raises immunity as a defense from suit.

Moreover, states could still protect themselves from Class III gaming if they choose by outlawing any kind of Class III gaming in the state. In this regard Tribes could not game under Class III. Examples of States that have no gaming include Utah and Hawaii.

This rule is the result of an extensive public process that began more than three years ago and speaks to the fact that the vast majority of states and tribes have bargained in good faith with each other. In fact, in the ten years since the enactment of the Indian Gaming Regulatory Act, over 200 compacts have been signed in 24 states.

Tribes deserve a fair opportunity. In many cases they have been denied that chance.

I understand that the National Gambling Impact Study Commission has called for a "pause" in gaming but this amendment does nothing but unfairly discriminate against the only people that use gaming revenues for altruistic purposes.

Moreover, it goes to the very heart of our nation's failure to defend what Tribal Govern-

ments are entitled to by virtue of their status as domestic dependent nations.

Why is there no amendment to limit the growth of gaming in Atlantic City? How about state governments that use lotteries everyday?

The reason is because you all feel that Indians are an easy target. Gaming opponents feel as though they need a quick fix to satisfy their agendas. Consequently the Tribes must bear the burden of the political expediency that is being demonstrated by this amendment.

My colleagues, this amendment is not so much about gaming as it is about not respecting the trust responsibility that our government has towards the first Americans.

Mr. Chairman, I find this particularly disturbing that we are considering this amendment offered by Republican members on a day that Speaker Hastert and the Republican leadership are meeting with several tribal leaders in support of Tribal sovereignty.

This amendment has no place in this debate and I urge all who care for the sovereign rights of native Americans to oppose its passage.

RISE IN HUMAN RIGHTS ABUSES  
IN THE UIGHUR AUTONOMOUS  
REGION OF XINJIANG, CHINA

**HON. JOHN EDWARD PORTER**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Friday, July 16, 1999*

Mr. PORTER. Mr. Speaker, I rise to bring attention to one of the forgotten areas of the world, where human rights abuses are at an all time high and the degree of these abuses is inhuman and completely unimaginable to most of us—the Uighur Autonomous region of Xinjiang, China (XUAR). I have spoken before this Congress many times to discuss the horrendous way the government of the People's Republic of China treats its people, but, according to the experts, the situation the Uighurs are facing is far worse than in any other region of the country.

Amnesty International released a report in April documenting the conditions and abuses in Xinjiang, and yesterday the Congressional Human Rights Caucus held a briefing on the Uighurs. We heard from five Uighurs as well as human rights advocates who all describe the same abominable situation.

Xinjiang has long been inhabited by a mixture of different Muslim peoples including Kazakhs, Kyrgyz and Tajiks, as well as the majority Uighurs. The region enjoyed independent statehood until 1759, when it was conquered by China's Manchu dynasty. In subsequent years, there were numerous attempts to shake Chinese rule lasting well into the twentieth century. The most significant of these was in 1945, when local forces took advantage of the looming civil war between Communist and Nationalist Chinese to revive the independent republic of East Turkestan, which survived until 1949 when it was crushed by divisions of the People's Liberation Army (PLA). Han Chinese migration and settlement into Xinjiang greatly increased with the onset of the economic reforms of the early 1980s, to the point where there are now almost as many Han as Uighurs living in Xinjiang. The two main ethnic groups live in virtual segregation,

racial discrimination is widely reported and unemployment among Uighurs is high.

Since the early 1990s, the growing strength of the Islamic cultural and religious movement in Xinjiang, combined with the end of Soviet political domination in Central Asia, has led the central government once again to impose increasingly tight restrictions on religious worship and practice in the region. The number of schools and mosques forced to close is rapidly increasing, displaying the strong similarities between the PRC's treatment of this region and Tibet.

Amnesty International reports that torture of political prisoners in XUAR is systematic and that new and particularly cruel methods of torture are used that are not known to be used elsewhere in China. The XUAR is the only region in China where political prisoners are known to be executed. They have been executed for offenses related to opposition activities, street protests or clashes with security forces. As true in other parts of the PRC, the death penalty is also applicable for a wide range of offenses, including non violent ones such as economic and drug related crimes. There are two reasons why this abuse is so much worse than in other areas of China. First, its history of independence and proximity to free countries, and second is the fact that the rest of the world seems to have forgotten them.

Amnesty International is calling on the Chinese government to establish a special commission to investigate human rights violations and economic, social, and cultural needs of the region. I want to join in this call, and demand that the Chinese government stop treating its citizens this way. The international community must be made aware of these atrocities and it is time for us to stand up and let the Uighurs know that the world has not forgotten them, and the Chinese government can not continue with this type of behavior.

#### THE SECOND AMENDMENT AND GUN CONTROL LEGISLATION

**HON. JOHN CONYERS, JR.**

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, July 16, 1999

Mr. CONYERS. Mr. Speaker, today I am pleased to offer for the record a memorandum on the Second Amendment and Gun Control Legislation that was written by Professor Robert A. Sedler, an outstanding constitutional law professor who has taught at the University of Kentucky Law School and now teaches at Wayne State University School of Law. Professor Sedler previously worked with my Judicial Committee staff on constitutional matters during the recent impeachment proceedings. Given the current national debate on gun control and gun control legislation, his memorandum is particularly enlightening.

#### THE SECOND AMENDMENT AND GUN CONTROL LEGISLATION

(By Robert A. Sedler, Professor of Constitutional Law, Wayne State University School of Law)

Opponents of gun control legislation, such as the NRA, frequently invoke the Second Amendment to argue that gun control legislation is unconstitutional. Such an argument is completely misplaced for two rea-

sons. First, under current constitutional doctrine, as propounded by the United States Supreme Court, the Second Amendment does not establish an individual right to bear arms. The Second Amendment is a state's rights provision, guaranteeing a collective rather than an individual right. Second, even if the Supreme Court were to hold in the future that the Second Amendment does create an individual right to bear arms, that right, like other constitutional rights, would not be absolute, and would be subject to reasonable regulation that did not impose an "undue burden" on that right.

The Second Amendment starts out by referring to state militias, which were the forerunner of the present National Guard: "A well-regulated Militia being necessary to the security of a free State," and goes on with the more familiar: "The right of the people to keep and bear arms shall not be infringed." At the time of the Constitution every state had a militia, consisting of all able-bodied men. When there was a call to arms to defend the state, each able-bodied man was supposed to show up with his own rifle. Every man had a rifle, which he used for hunting and for the legitimate self-defense of his family and his home. The Constitution gave the federal government a lot of power over the state militias. Congress could call them into federal service (Art. I, sec. 8, cl. 15), as units of the Michigan National Guard have been called up for service in Bosnia and Kosovo. When the militias were called into federal service, they were subject to the control of the President as Commander-in-Chief (Art. II, sec. 2, cl. 1). Congress was also given the power to govern the organization and training of the state militias (Art. I, sec. 8, cl. 16), just as today Congress regulates the state National Guard.

After the Constitution was ratified, there was concern in the states that Congress would use its power over the state militias simply to abolish them. This concern was addressed by the Second Amendment. The language and historical context of the Second Amendment indicates that it was to be a states rights provision, it was intended to prevent Congress from abolishing the state militias. Under this view of the Second Amendment, it would not be the source of an individual right to bear arms, and federal gun control laws could not be challenged as violative of the Second Amendment.<sup>1</sup>

The contrary view focuses on the fact that the time of the Second Amendment, all the able-bodied men that made up the state militia were expected to have their own rifles to bring with them whenever there was a call to arms. Under this view, the Second Amendment would be the source of an individual right to bear arms, just as the First Amendment is the source of an individual right to free speech, and federal gun control laws could be challenged as violative of the Second Amendment. Many state constitutions do expressly establish an individual right to bear arms. The Michigan Constitution, Art. I, sec 6, for example, provides that: "Every person has a right to bear arms for the defense of himself and the state." There is much debate today among law professors and others over whether or not the Second Amendment should be seen as establishing an individual right to bear arms.

Of course, only the United States Supreme Court can say authoritatively what the Second Amendment means. The only Supreme Court case to expressly deal with that subject is the older case of *United States v. Miller*, 307 U.S. 174 (1939). In that case, the Court rejected a Second Amendment challenge to a

federal law banning a number of weapons such as sawed-off shotguns and machine guns. The Court seemed to say that the Second Amendment was a state's rights provision intended to prevent Congress from abolishing the state militias, and was not intended to establish an individual right to bear arms. The Court stated: "With obvious purpose to assure the continuation and render possible the effectiveness of such forces, the declaration and guarantee of the Second Amendment were made. It must be interpreted and applied with that end in view," and concluded that, "[i]n the absence of any evidence tending to show that the possession or use of a 'shotgun having a barrel of less than eighteen inches in length' at this time has some reasonable relationship to the preservation or efficiency of a well-regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument." 307 U.S. at 178. The Supreme Court has not had a case dealing with the meaning of the Second Amendment since *Miller*, except to cite *Miller* for the proposition that federal restrictions on the use of firearms by individuals do not "trench upon any constitutionally protected liberties." *Lewis v. United States*, 445 U.S. 55, 65, n.8 (1980).

Because lower federal courts are bound by United States Supreme Court decisions unless and until they are overruled by the Supreme Court itself, the federal courts of appeal have unanimously held, as the Sixth Circuit has put it, that, "[i]t is clear that the Second Amendment guarantees a collective rather than an individual right." *United States v. Warin*, 530 F.2d 103, 1106 (6th Cir. 1976) (upholding ban on possession of sub-machine guns). Recent cases holding that the Second Amendment does not establish an individual right to bear arms include *Hickman v. Block*, 81 F.3d 98 (9th Cir. 1996) (person denied a concealed weapon permit has no standing to claim that denial violates his Second Amendment rights); *Love v. Peppersack*, 47 F. 3d 120 (4th Cir. 1995) (denial of application to purchase handgun cannot be challenged as violative of Second Amendment).<sup>2</sup>

The Supreme Court's decision in *Miller* sets forth the current state of the law, which is why the lower federal courts must reject any claim that the Second Amendment establishes a constitutionally-protected individual right to bear arms. The Supreme Court may change its mind, but unless and until it does, the federal courts cannot properly use the Second Amendment to declare any gun control law unconstitutional.

Let us assume, however, that the Supreme Court does change its mind and holds that the Second Amendment does protect the individual right to bear arms. This would not have any effect at all on existing and proposed federal gun control laws, such as the ban on assault weapons, the ban on possession of a gun by a convicted felon, a requirement that guns contain safety locks and be kept out of the reach of children, or a background check waiting period. Constitutional rights are not absolute, and are subject to reasonable regulation in the public interest. Guidance on this point can be obtained from the decisions of state courts upholding gun control laws as a reasonable regulation of the right to bear arms. In upholding a ban on

<sup>1</sup> The Supreme Court long ago held that the Second Amendment does not apply to the states. *Presser v. Illinois*, 116 U.S. 252 (1886).

<sup>2</sup> In view of this unbroken line of federal appellate decisions, the very recent decision of a federal judge in Texas holding that the Second Amendment establishes an individual right to bear arms and renders unconstitutional a federal law prohibiting possession of a firearm while under a court restraining order, *United States v. Emerson*, 1999 U.S. Dist. LEXIS 4700, U.S. Dist. Ct. N.D. Tex., 4/7/99, is puzzling and is likely to be reversed on appeal.