Second Amendment Rights In Reality and In Court

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If the hijackers had used guns for their crimes on 9/11, we would surely now be caught up in a frenzy of demands that this "lesson" calls for tough gun-control legislation. But they didn't use any firearms, just easily purchased box-cutters.
The real lesson of 9/11 is that, if any pilot or off-duty policeman had had a gun on board, he could have averted supreme tragedy by doing what all our powerful FBI, CIA, and Armed Services could not do. That's why individuals, not government, are the ultimate protectors of a free society.

The American people understand this. The 9/11 events have led to a big increase in gun purchases and the taking of courses at shooting ranges.

Against the stunning reality of 9/11, the federal Court of Appeals for the Fifth Circuit just issued a landmark decision in United States v. Emerson , affirming the constitutional right of individuals to own a gun. The Founding Fathers understood this, and that's why they gave us the Second Amendment.

The Emerson case tackled the meaning of the right "to keep and bear arms" in the Bill of Rights. At issue was whether the Second Amendment defines an individual right, protecting defendant Emerson and all law-abiding citizens, or a collective right available only to government groups such as the National Guard.

This disagreement about the meaning of the Second Amendment has been a matter of intense debate for many years. Unfortunately, federal court decisions in several circuits over the last several decades have muddied up the issue.

The Second Amendment reads: "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." For many years, the anti- gun lobby and some lower court decisions have touted the notion that the Second Amendment is limited to firearms carried in actual military situations rather than by civilians in peaceful self-defense.

The Emerson decision thoroughly rejects that theory. The Court ruled: "The plain meaning of the right of the people to keep arms is that it is an individual, rather than a collective, right and is not limited to keeping arms while engaged in active military service or as a member of a select militia such as the National Guard."

The court concludes: "It appears clear that `the people,' as used in the Constitution, including the Second Amendment, refers to individual Americans." This is consistent with the use of the term "the people" in all the other amendments in the Bill of Rights.

As the Tenth Amendment shows, the Founders clearly understood the difference between "the states" and "the people." The Emerson decision also cites the renowned Black's Law Dictionary definition for "carry arms or weapons" as "being armed and ready for offensive or defensive action in case of conflict with another person."

At stake in the gun control debate is whether we control government and defend freedom, or government controls us. Should our defense against hijacking terrorism be limited to government fighter planes shooting down hijacked planes, killing everyone on board, or extended to allowing airplane crews and qualified passengers (such as off-duty law enforcement officials) to take defensive measures without fear of litigation or prosecution?

The Emerson decision disposed of arguments that only formal state militias have a constitutional right to keep and bear arms. As the Supreme Court explained over 60 years ago in United States v. Miller, the framers of the Constitution used the term "militia" to mean "all males physically capable of acting in concert for the common defense."

It still does mean that. Current federal law (10 U.S. Code 311) states: "The militia of the United States consists of all able-bodied males at least 17 years of age. . . . The classes of the militia are (1) the organized militia, which consists of the National Guard and the Naval Militia; and (2) the unorganized militia, which consists of the members of the militia who are not members of the National Guard or the Naval Militia."

The males on board the hijacked airplanes constituted a militia, and some courageously acted, forcing one hijacked plane down in rural Pennsylvania instead of allowing it to continue to the terrorists' target. A disarmed public cannot protect a free society against terrorists' assaults.

In Cuba, Castro first required all guns to be surrendered before he could impose his brutal dictatorship. After England banned private gun ownership, violence using guns against persons rose sharply and politics turned sharply left.

Strict gun control creates vulnerable targets for the enemies of a free society. The Fifth Circuit's upholding of the constitutional right of individuals to keep and bear arms is a welcome development in our continued defense of freedom.