



## LEGAL POLICY LETTER

April 24, 2020

**Re: COE-2018-0008-0001**

The Corps of Engineers (“COE”) is right to point out that most federal projects defer to local law respecting the possession of firearms. Indeed, the COE have, somewhat inexplicably, held on to this Nixon-era prohibition of arms on federal property for far too long. Indeed, the change seems almost comically overdue. That said, we would like to communicate an issue with the manner in which this is being dealt with.

In the proposed regulation, the COE focuses on APA procedures, as if the previous regulation restricting individuals from the peaceable exercise of their fundamental human right to keep and bear arms had been a lawful practice to begin with.

Instead, the COE should “start with first principles. The Constitution creates a Federal Government of enumerated powers. As James Madison wrote, ‘the powers delegated by the proposed Constitution to the federal government are few and defined.’” *United States v. Lopez*, 514 U.S. 549 (1995) (cleaned up); see also U.S. CONST., Art. I, §8.

Within those few, defined enumerated powers, we could not, despite much effort, find any source of power for an administrative agency or department to control the otherwise lawful keeping or bearing of arms of peaceable American people. We checked thoroughly and concluded that the possession of arms is not a marketable commodity. *Wickard v. Filburn*, 317 U.S. 111, 128 (1942). We could find no illicit trade in the concept of carrying arms for the government to involve itself in. *Gonzales v. Raich*, 545 U.S. 1, 22 (2005). The water projects tend not to be school zones. *United States v. Lopez*, 514 U.S. 549, 551 (1995). Finally, carrying arms has little to do with the purchase of a health insurance plan. *Nat’l Fed’n of Indep. Bus. V. Sebelius*, 567 U.S. 519, 561 (2012). With that, it’s very concerning that the COE is of the position it can regulate carrying arms at all.

This lack of respect for the bedrock principles of our legal system is at the core of most, if not all, government abuses of our civil liberties. The COE should, in writing, recognize that it is not only imprudent to meddle with peaceable Americans carrying arms, but that it has no legitimate power to do so.

Sincerely,

Matthew Larosiere  
Director of Legal Policy