

## Ban on Assault Weapons, Large Magazines Held Constitutional

Assault weapons and large-capacity magazines are akin to weapons of war unprotected by the Second Amendment, the U.S. Court of Appeals for the Fourth Circuit held Feb. 21 (*Kolbe v. Hogan*, 2017 BL 51971, 4th Cir. en banc, No. 14-1945, 2/21/17).

A Maryland law banning such weapons is therefore constitutional, Judge Robert B. King wrote for the en banc court. The decision noted the large number of mass shootings perpetrated by such "military-style" weapons.

The panel opinion in this case had created a circuit split in requiring strict scrutiny for restrictions on the Second Amendment's right to bear arms.

But the full court held that intermediate scrutiny was the correct analysis. The restrictions therefore must be reasonably adapted to a substantial government interest, instead of being narrowly tailored to achieve a compelling government interest.

**Where Did That Come From?** The opinion "restricts the ability of citizens to possess a gun in common use," James B. Astrachan, Astrachan Gunst & Thomas PC, Baltimore, who represented a number of amici supporting the plaintiffs, told Bloomberg BNA.

Astrachan also noted that the Fourth Circuit held that the AR-15 isn't protected by the Second Amendment, because it's "M16 like." But all the other courts that have addressed the issue "have ruled that these guns are protected but that the challenges to the constitutionality of the bans do not survive intermediate scrutiny," he said.

But amici supporting Maryland have long argued that guns like the AR-15 rifle "aren't within the ambit of the Second Amendment," their counsel Jonathan Klee Baum of Katten Muchin & Rosenman LLP, Chicago, told Bloomberg BNA.

**Heller Controls.** The U.S. Supreme Court recognized an individual right for citizens to bear arms for protection in their homes, in *District of Columbia v. Heller*, 554 U.S. 570 (2008). But "weapons that are most useful in military service" are outside the scope of that Second Amendment right, it said.

Maryland's ban on AR-15 rifles and detachable large-capacity magazines fell under *Heller's* exception, the Fourth Circuit held.

The court has "no power to extend Second Amendment protection to the weapons of war that the *Heller* decision explicitly excluded from such coverage."

If such weapons are entitled to Second Amendment protection, however, the ban would be constitutional under an intermediate scrutiny analysis, the court said.

**Reasonable Restrictions Allowed.** *Heller* is often misread to say that the government can't restrict gun possession, but it actually makes clear that reasonable restrictions are allowed, Baum said. The Fourth Circuit's opinion is consistent with *Heller*, he added.

Astrachan disagreed. Instead, he said the opinion is "so far out in front of the pack as to be lost from sight." No other court has held that the guns at issue aren't protected by the Second Amendment because they "are like machine guns, or military rifles," he said. They have generally said that assault weapons are protected by the Second Amendment but don't withstand intermediate scrutiny, he said.

In any case, Baum said that bans like Maryland's pass intermediate scrutiny because they are a reasonable fit for protecting public safety.

**Right to Bear Arms 'Eviscerated.'** Dissenting Judge William B. Traxler Jr., joined by Judges Paul V. Niemeyer, Dennis W. Shedd and G. Steven Agee, complained that the majority "eviscerate[d] the constitutionally guaranteed right to keep and bear arms."

He also contended that Maryland's ban be analyzed using strict scrutiny standard. He wrote the original panel opinion, and was joined in part by Agee.

Bradley Arant Boult Cummings LLP represented the plaintiffs. Maryland Attorney General's Office represented the state.

By BERNIE PAZANOWSKI

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Full text at <http://src.bna.com/mm4>.

**Gun law upheld:** A federal appeals court upheld Maryland's ban on assault rifles, concluding that the powerful military-style guns outlawed by the measure are not entitled to protection under the Second Amendment. The 10-4 ruling, issued by the entire Fourth Circuit Court of Appeals in Richmond, Va., reverses a decision by a smaller panel of judges from the court last year that called the law's constitutionality into question. The bill was passed in 2013 in the wake of the deadly shooting at Sandy Hook Elementary School in Connecticut.

### FRIENDS OF LIBERTY IN MARYLAND

THIS IS VERY DISHEARTENING. HERE IS ANOTHER EXAMPLE OF WHAT I HAVE BEEN SAYING FOR A WHILE. THE STATE LEGISLATED AWAY ITS CITIZEN'S SECOND AMENDMENT RIGHTS AND THE COURTS GO AND UPHOLD IT. IT SEEMS THERE IS A COLLUSION BETWEEN THE LEGISLATIVE AND JUDICIAL BRANCHES OF THE STATE GOVERNMENTS AND MAYBE A COLLUSION BETWEEN THE STATE GOVERNMENT AND THE FEDERAL GOVERNMENT. "COLLUSION" IS DEFINED IN BLACKS LAW DICTIONARY 10th EDITION AS: AN AGREEMENT TO DEFRAUD OR TO DO SOMETHING FORBIDDEN BY LAW. MAYBE THERE WASN'T A HANDSHAKE AGREEMENT BETWEEN THE BRANCHES, BUT JUST A PROVERBIAL NOD TO THE LEGISLATURE THAT "i got your back on this" WHEN THE CASE COMES TO MY COURT. 2ND AMENDMENT SAYS SHALL NOT BE INFRINGED - TO THE GOVERNMENT - SO TO BAN CERTAIN GUNS IS TO DO WHAT IS FORBIDDEN BY THE LAW, THE SUPREME LAW. HOW MANY LICKS TO THE CENTER OF THE LOLLIPOP? MARYLAND, WHY DO YOU LET YOUR LEGISLATURE TAKE YOUR LOLLIPOP???

*The Winter Soldier*

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## FRIENDS TO THE REPUBLIC AND LIBERTY

THIS IS VERY DISHEARTENING. HERE IS ANOTHER BLATENT DISREGARD FOR OUR INDIVIDUAL LIBERTY AND OUR BILL OF RIGHTS. HERE IS ANOTHER EXAMPLE OF THE TYRANNY OF THE COURTS. OUR OLD FRIENDS OF THE OLD REPUBLIC FEARED THE NEW EXECUTIVE BRANCH OF THE NEWLY FORMED NATIONAL GOVERNMENT BECAUSE THE PRESIDENT, IN CHARGE OF THE MILITARY, COULD TAKE OVER AS A NEW MONARCH, REPLACING THE BRITISH TYRANNY FOR AN AMERICAN TYRANNY. WELL, THOSE FEARS HAVE NEVER REALLY MANIFESTED. THERE IS A WORSE ENEMY TO LIBERTY- THE JUDICIAL BRANCH. THEY ARE NOT ELECTED LIKE OUR OTHER PUBLIC MASTERS(servants) AND NOT ACCOUNTABLE TO CONSTITUENTS, LEAVING THEM ABLE TO BE UNBIASED, UNCORRUPTABLE BY CAMPAIGN FINANCING, OR CORPORATE LOBBYING. BUT AT THE SAME TIME, THEY ARE LEFT TO THEIR OWN DEVICES, TO TAKE AWAY OUR RIGHTS BY JUDICIAL DECISION ONE BITE OUT OF THE LIBERTY COOKIE AT A TIME. IN A REPUBLIC, RIGHTS ARE NEVER UP FOR A VOTE. IN A REPUBLIC, RIGHTS CAN NEVER BE SACRIFICED FOR PUBLIC SAFETY, OR THIS INFAMOUS "COMPELLING" OR "SUBSTANTIAL GOVERNMENT INTEREST".

THE COURT SAID IT HAS NO POWER TO EXTEND SECOND AMENDMENT PROTECTION TO THE WEAPONS OF WAR THAT THE HELLER DECISION EXPLICITLY EXCLUDED FROM SUCH COVERAGE, BUT SOMEHOW THE SUPREME COURT IN HELLER HAS THE POWER TO SAY WHAT THE SECOND AMENDMENT DOESN'T PROTECT? HMM, THAT'S INTERESTING CAUSE I DON'T SEE THAT POWER LISTED IN ARTICLE III OF THE CONSTITUTION. HMM, I'M PRETTY SURE THE FRAMERS SAID THOSE RIGHTS WERE UNALIENABLE.

THE 4TH CIRCUIT HAS NOW SAID SECOND AMENDMENT DOESN'T PROTECT OUR AR-15'S, OTHER COURTS WILL FOLLOW. STATE COURTS WILL FOLLOW. THEN IT'LL BE ALL "ASSAULT WEAPONS". THEN WHAT? ALL SEMI-AUTO FIREARMS? THE COURTS ARE RENDERING THE MILITIA-ALL ABLE BODIED CITIZENS- COMPLETELY INEFFECTIVE BECAUSE THE COURTS ARE DETERMINING THAT OUR MOST EFFECTIVE WEAPONS ARE NOT PROTECTED. HOW ARE WE SUPPOSED TO DEFEND LIBERTY? HOW MANY BITES OF THE LIBERTY COOKIE ARE LEFT?

*The Winter Soldier*