

Supreme Court Gun Case Could Affect Knife Laws

By Daniel C. Lawson

Some time this summer, the Supreme Court will issue its decision in the case of Heller v. District of Columbia. The basic question is whether a District of Columbia law that prohibits persons who are not actively affiliated with an organized militia from possessing "hand guns and firearms" is permissible under the U.S. Constitution. Words such as "arms" and

"firearms" will probably appear throughout the text of the written decision. But that decision will likely have profound implications for those of us who use and carry knives.

While knives are tools, it is the classification of knives as "arms" that affords us some protection from our government.

A quick review of how we arrived at

this point is in order. Context is necessary if we are to understand the Constitution and the concept of our individual rights.

The 13 colony root stock of this country declared independence from the kingdom of Great Britain on July 4, 1776. Armed conflicts between colonial and British military forces, which had been festering for some time, escalated into what we call the Revolutionary War. These hostilities ended in the fall of 1781, when British forces surrendered at Yorktown. An actual agreement or treaty with Great Britain recognizing the United States as an independent nation was not concluded until two years later. In the meantime, beginning in 1777, the 13 colonies operated a central government under the Articles of Confederation. Within a span of several years, it became evident that the Confederation government was unworkable. In some respects, it was too weak.

In the spring of 1787, people (delegates) from the various states convened in Philadelphia with the goal of forming a more perfect union. As the design and operation of what would become the new Federal Government began to take shape, a number of those involved were becoming concerned that the resulting government would become too strong.

Recall that the basic philosophy of the founders of this country was that people formed governments and that a government derives its just power from the consent of the governed. Accordingly, a number of specific "amendments" to the Constitution were proposed by the designers to make explicitly clear what the people had not consented to.

The basic Constitution was ratified in 1789, and the first ten amendments there-to were ratified in 1791.

The first ten amendments to the U.S. Constitution are often referred to as the Bill of Rights, which was a label applied to a provision of law which had existed for some time in Great Britain. However,

CA Attorney General: Assisted-Openers Legal

In a letter dated May 7, 2004 (which has not been superseded by any other opinion), a spokesperson for Bill Lockyer, California Attorney General, clearly identifies the characteristics of one-hand-opening knives and further states that assisted-opening knives do not meet the state's criteria and thereby cannot be declared switchblade knives.

AKTI obtained a copy of the original letter from Kershaw Knives. It was addressed to Mark A Ralphs, a Deputy Public Defender in California's El Dorado County. The entire body of the letter follows:

Dear Mr. Ralphs:

This letter is in response to your March 3, 2004, request for an opinion from the California Attorney General regarding the possession of Kershaw "Ken Onion" series knives in California. Specifically, your letter targeted the "Leek" and "Scallion" and similar model knives that utilize the "Speed-Safe" assisted-opening system.

As you may already be aware California Penal Code section 653k provides that a "switchblade knife" is defined as a knife having the appearance of a pocketknife, and includes a spring-blade knife, snap-blade knife, gravity knife or any similar type knife, the blade or blades of which are two or more inches in length and which can be released automatically by a flick of a button, pressure on the handle, flip of the wrist or other mechanical device, or is released

by the weight of the blade or by any type of mechanism whatsoever. Additionally the term, "switchblade knife" does not include a knife that opens with one hand utilizing thumb pressure applied solely to the blade of the knife or a thumb stud attached to the blade, provided that the knife has a detent or other mechanism that provides resistance that must be overcome in opening the blade, or that biases the blade back toward its closed position.

Upon review of the information provided on the manufacturer's website, it is the opinion of the California Attorney General that Kershaw "Ken Onion" series knives such as the "Leek" and "Scallion" and other similar models that utilize the "Speed-Safe" assisted-opening system do not meet the criteria used to define "switchblade knives" in California Penal Code section 653k. According to Kershaw, "Speed-Safe blades do not deploy with the push of a button in the handle or by gravity alone" and "the user must manually overcome the torsion bar's resistance - using the thumb stud or Index-Open protrusion on the blade itself - in order to engage the Speed-Safe system."

If you have further questions or concerns please do not hesitate to contact me at (916) 263-4887.

Sincerely, (signed)

Nate Barrell, Analyst, Firearms Division

For Bill Lockyer, Attorney General

Supreme Court Case continued

it is important to recognize that these amendments did not give or provide rights. For instance, the First Amendment does not create or provide a right of free speech. Rather, the First Amendment states that the government has no authority to abridge the existing inalienable right of the people to, among other things, speak freely in criticism of the government.

It seems more likely that the Supreme Court will “find” that the Second Amendment was intended to identify an individual right retained by the people.

The Second Amendment to the U.S. Constitution states:

“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.”

The Second Amendment does not give us the right to keep and bear arms. Rather, it states that the Federal Government cannot infringe that existing inalienable right. The debate involving the U.S. Constitution took place in Philadelphia, Pennsylvania during the summer of 1787. The Pennsylvania State Constitution, adopted ten years earlier in 1777, provides in the very first section:

*“§ 1. Inherent rights of mankind
All men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.”*

Further, section 21 of the Pennsylvania State Constitution of 1777 (and still in existence today) provides:

*“§ 21. Right to bear arms
The right of the citizens to bear arms in defence of themselves and the State shall not be questioned.”*

It is absurd to suggest that authors of the first ten amendments to the U.S. Constitution intended to declare with ref-

erence to arms - the Federal Government we are now establishing cannot infringe the right to keep and bear arms but the state governments may do so.

Yet, this essential argument is being urged on the U.S. Supreme Court by anti-arms (anti-gun) advocates as this article is written.

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If the Court recognizes that individual constitutional right, then the Court must then determine what level of modification or restriction on that right can be tolerated.

Historically, the U.S. Supreme Court has maintained that state statutes which would interfere with or impair a constitutionally recognized right must be subjected to a rigorous and strict examination by the Court. This is the so-called “strict scrutiny standard.” State laws which do not impair a constitutional right, for the most part, must pass only a “minimum rationality” test.

An intermediate scrutiny standard has developed more recently. Courts are not above some novel approach, and often find (or rather create) new rules.

The Heller decision will offer re-examination and perhaps reconsideration of not only various state anti-knife laws, but the 800-lb. gorilla of all knife legislation, the Federal Switchblade Act.

It is not unlikely that the standard of review or level of scrutiny to be applied will be the most difficult or contentious issue in the Heller case.

The last occasion on which the U.S. Supreme Court considered a case involving the Second Amendment was in 1939 in the matter of United States v. Miller, which involved the National Firearms Act of 1934. That Act, which was passed in response to the lawlessness of the “Roaring ‘20s” and the prohibition-era

gangster activity, outlawed, among other things, sawed-off shotguns.

The Supreme Court upheld the constitutionality of the 1934 National Firearms Act reasoning that sawed-off shotguns were not typically utilized by members of the military or the militia. However, neither Mr. Miller nor his lawyers appeared at the Supreme Court for argument. Accordingly, the adversarial system of American justice may not have operated effectively.

With respect to knives, the constitutionality of the Federal Switchblade Act has been upheld by various intermediate Federal Appeals Courts on similar grounds - their opinions have been that switchblade knives are for street brawls and not for defending a state or civil liberties. Crowley Cutlery Company v. United States.

However, the Federal Switchblade Act contains exceptions for the military and National Guard units. Many of the state laws that prohibit switchblades or automatics have specific exceptions for members of the National Guard, police, state emergency workers, and people with only one arm.

While laws passed by the federal and state governments prohibit switchblades on the basis that they are utilized only by criminals, those same laws recognize the utility of such knives for persons in the military and National Guard. In other words, a double standard seems to exist.

It may be that the Heller decision will offer an opportunity for a re-examination and perhaps reconsideration of the propriety of not only various state anti-knife laws, but the 800-lb. gorilla of all knife legislation, the Federal Switchblade Act.

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AKTI South Carolina Bill Passes Senate - Moves to House

“The key to our success so far in South Carolina is that Senate members, at least, have recognized the tremendous impact of hunters, fishermen and recreational knife users on the state's economy,” David Kowalski says. According to the communications coordinator for AKTI, “our estimate is that 99 percent of hunters and fishermen carry a knife with a blade longer than two inches.”

AKTI's bill S 968, introduced in January 2008, would repeal the state's weapons violation for carrying a knife with a blade longer than two inches, currently the most restrictive length-related knife statute in the country. The bill has already passed unanimously through Senate committee and a vote of the full Senate at the end of March. Now it must get through the House committee process, a full House vote, and signature by the governor by the first week of June, when the 2008 legislative session ends.

In a letter sent to key Senate and House members, Kowalski points out that ...

“More than 95 percent of the knives used by sportsmen, gardeners, recreational users and the construction industry have blades longer than two inches. Virtually every hunter and fisherman carries a knife and it would be rare to find one that has a blade less than two inches.

Recent studies by the Congressional Sportsmen's Foundation, the National Shooting Sports Foundation and the U.S. Fish and Wildlife Service's 2006 National Survey of Fishing, Hunting and Wildlife-Associated Recreation show that hunters and fishermen provide a huge impact on the South Carolina economy.”

1) An estimated 595,000 hunters and fishermen spend more than \$1.8 billion per year in your state.

2) They support 32,700 state jobs that produce a payroll of \$839,000 million.

3) Outdoor activities generate \$182 million in state and local taxes annually.

“Your current knife law makes virtually every hunter and fisherman subject to arrest for knife carry. South Carolina should welcome these law-abiding people into your state. And we should not make de-facto criminals of the estimated 2,000,000 state residents and other visitors who carry knives for their jobs or a broad range of recreational purposes.”

The above studies document South

Carolina is 10th in the nation for attracting hunting and fishing dollars. “Quite frankly,” Kowalski concludes, “this new

New economic data on the impact of hunting and fishing will be a powerful tool when it comes to protecting the knife rights of law-abiding knife owners.

economic data on the impact of hunting and fishing will be a powerful tool when it comes to protecting the knife rights of law-abiding knife owners in several states. Most recently, AKTI's February 2007 repeal of the Arkansas knife statute was driven by major support from the state's Department of Natural Resources. If any state wants hunting, fishing and recreational dollars, as well as the support of the construction industry, lawmakers must recognize the widespread knife carry and use in these groups.”

Please go to www.akti.org to get an update on the status of this South Carolina bill.

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- 1) **Fight for your knife rights...as we did in Arkansas, California, Boston, Florida, wherever AKTI is needed!**
- 2) **Communicate regularly with knife users and the editors of more than 50 outdoor publications!**
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Note: Since the American Knife and Tool Institute, Inc. has filed as a 501(c)(6) not for profit tax status, dues may be deductible as a business expense, but not as a charitable contribution.



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As an AKTI Grassroots Supporter, you will receive ...

- 1) Regular electronic updates on knife rights issues across the country.
- 2) Requests, when needed, asking you to communicate with lawmakers on knife issues important to knife owners in various states and at the federal level.
- 3) Emails sent to you will be clearly marked as AKTI Updates so you can quickly spot them, route them through your spam filters, save them and act on them.