Written by **Bob Adelmann** on March 14, 2024

Appeals Court Ruling Poses Danger of Confiscation of All Firearms

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An Obama-appointed judge in Rhode Island authored an exceedingly dangerous opinion last week, rejecting arguments that the state's ban on magazines holding more than 10 rounds was unconstitutional. Instead, Judge William Kayatta, a graduate of Harvard Law School, built the case cleverly, declaring that LCMs (large capacity magazines) weren't protected under the Second Amendment and, by implication, neither are the firearms they feed.

At issue was the law passed in 2022 — HB 6614 — banning the possession of LCMs, with violations being declared a felony and violators facing five years in jail upon conviction. In other words, law-abiding citizens would lose not only their firearms, but their freedoms as well.

Lawsuits brought by pro-Second Amendment advocates were rejected at the district level and, when appealed, the lower court's decision was affirmed. But Judge Kayatta went further — much further — to build a case that anti-gunners around the country will likely seek to emulate.

The plaintiffs, Ocean State Tactical, doing business in the state as Bear Hunting and Fishing Supply, and four individual gun owners, complained that Rhode Island's law violated their Second Amendment rights, the Fifth Amendment's Takings Clause, and the Fourteenth Amendment's Due Process Clause.

In reviewing and affirming the lower court's decision denying their complaints, Kayatta wrote that the plaintiffs "failed to prove that LCMs are 'Arms' within the meaning of the Second Amendment," that the Takings Clause in the Fifth Amendment ("No person shall be … deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation") was not violated by the state law, and that it further "posed no problems under the Fourteenth Amendment."

There were several pieces of the puzzle Kayatta put together to avoid the demands of *Bruen*, namely that the state had to provide historical analogues to the infringements in order for them to stand.

Instead,

> Given the lack of evidence that LCMs are used in self-defense, it reasonably follows that banning them imposes no meaningful burden on the ability of Rhode Island's residents to defend themselves.

After discussing the history of states restricting possession of sawed-off shotguns and Bowie knives, he

wrote:

> In each instance, it seems reasonably clear that our historical tradition of regulating arms used for self-defense has tolerated burdens on the right that are certainly no less than the (at most) negligible burden of having to use more than one magazine to fire more than ten shots.

He then used what he called an "apt analogy" to support the state's ban: rules on the private accumulation of gun powder. Without mentioning the fact that those state rules were driven by concerns over accidental fires, he wrote:

> Founding-era society faced no risk that one person with a gun could, in minutes, murder several dozen individuals. But founding-era communities did face risks posed by the aggregation of large quantities of gunpowder, which could kill many people at once if ignited.
>
> In response to this concern, some governments at the time limited the quantity of gunpowder that a person could possess, and/or limited the amount that could be stored in a single container.…
>
> It requires no fancy to conclude that those same founding-era communities may well have responded to today's unprecedented concern about LCM use just as the Rhode Island General Assembly did: by limiting the number of bullets that could be held in a single magazine.
>
> Indeed, HB 6614 is more modest than founding-era limits on the size of gun-powder containers in that it imposes no limits on the total amount of ammunition that gun owners may possess.

And then he completed the "workaround" he created in order to circumvent *Bruen's* demands:

> In sum, the burden on self-defense imposed by HB 6614 is no greater than the burdens of longstanding, permissible arms regulations, and its justification compares favorably with the justification for prior bans on other arms found to pose growing threats to public safety.
>
> Applying Bruen's metrics, our analogical reasoning very likely places LCMs well within the realm of devices that have historically been prohibited once their danger became manifest.

He executed his coup d'etat:

> Common sense points in the same direction. It is fair to assume that our founders were, by and large, rational. To conclude that the Second Amendment allows banning sawed-off shotguns, Bowie knives, and M-16s — but not LCMs used repeatedly to facilitate the murder of dozens of men, women, and children in minutes — would belie that assumption.
>
> Accordingly, it should not be surprising that Bruen's guidance in this case leads us to conclude that HB 6614 is likely both consistent with our relevant tradition of gun regulation and permissible under the Second Amendment.

If this ruling isn't appealed and overturned, the implication remains: If semi-automatic rifles are similar, if not identical, to military grade M-16s, and the LCMs that feed them can be confiscated and their owners jailed, then it's a short step to declaring semi-automatic firearms themselves (both rifles and pistols) as contraband, and subject to the same penalties.