Written by **Bob Adelmann** on June 27, 2014

Colorado Gun Laws Constitutional, Says U.S. District Judge

On Thursday, a federal judge upheld Colorado's new gun-control laws that mandate background checks for all gun sales and limit magazine capacity to 15 rounds. U.S. District Chief Judge Marcia Krieger issued her 50-page ruling on the 2013 laws after a two-week civil trial in late March and early April in Denver.

The lawsuit was originally filed by plaintiffs including sheriffs, gun shops, outfitters, and shooting ranges. Krieger ruled last year that the sheriffs could not sue the state in their official capacities but they could join the lawsuit as private citizens.

In her ruling, Judge Krieger (who was appointed to the position in 2001 by then-President George W. Bush) made clear from the beginning that she wasn't going to rule on whether or not the new laws made sense:

> A court does not act as a super-legislature to determine the wisdom or workability of legislation. Instead, it determines only whether legislation is constitutionally permissible.…
>
> The judge just only compares the public policy adopted by the legislature against the constitutional minimums that protect individual rights.…
>
> This Court will not express a qualitative opinion as to whether a law is "good" or "bad," "wise" or "unwise," "sound policy" or a "hastily-considered overreaction."

After determining that most of the plaintiffs had standing to sue, she focused her attention on the impact that limiting magazine capacities would have on both criminal shooters and law-abiding citizens:

> Plaintiffs argue that by limiting magazines to 15 rounds or less, this statute impairs an individual's Second Amendment "right of self-defense." Colorado reflexively responds that because people can still defend themselves, no Second Amendment right is impaired.

She then notes that the offending laws do not directly regulate firearms at all, but only the size of the magazines that feed them:

> Because [the magazine limit law] regulates only the number of rounds in a magazine, it does not affect whether the semiautomatic firearm can be used, or even whether it can be used in a semiautomatic mode. It only affects how often it must be reloaded.

She said the scope of the law is universal but its impact is not severe enough to render it unconstitutional:

> This ban applies to every person in Colorado, in every venue, and for every use, including self-defense inside and outside of the home.
>
> It impacts a large number of semiautomatic firearms, both handguns and rifles. Viewed in this

> light, the scope of the statute is broad, and it touches the core of an individual right guaranteed by the Second Amendment.

But because its impact on that right is so minor, the judge said, she overlooked it as any kind of impediment to the government's overriding interest in "public safety":

> Despite such broad scope, however, the statute's impact on a person's ability to keep and bear (use) firearms for the purpose of self-defense is not severe.…
>
> Thus, this statute does not prevent the people of Colorado from possessing semiautomatic weapons for self-defense, or from using those weapons as they are designed to function. The only limitation imposed is how frequently they must reload their weapons.

She decided that the "pause" (when a criminal shooter runs out of ammunition during an attack in order to reload gives his victims time to run away and hide while giving more time for armed officials to intervene) was a distinct advantage of the new law. She failed to mention that the alleged invented shooter in her scenario wasn't likely to limit himself under the new law. Instead, she concentrated on how limiting magazines to 15 rounds would scarcely impact an honest citizen's ability to defend himself: "No evidence presented here suggests that the general ability of a person to defend him or herself is seriously diminished if magazines are limited to 15 rounds."

Besides, she wrote, most "incidents" involved criminals intending mayhem are resolved without any shots being fired:

> First, the defensive purpose of firearms is often achieved without shots being fired whatsoever. Mr. [Massad] Ayoob [an expert witness called for the plaintiffs in the case] testified that, often, merely the defensive display of a firearm is sufficient to defuse the threat.…
>
> In these types of circumstances, a restriction on a magazine size in no way diminishes the ability of the firearm user to defend him or herself.

Therefore, wrote the judge, the modest infringement of a Second Amendment right is acceptable:

> The Court finds that although [the law limiting magazines to 15 rounds] burdens the operation of semiautomatic weapons, the burden is not severe because it does not materially reduce the ability of a person to use a semiautomatic firearm for self-defense, not does it reduce the effectiveness of self-defensive efforts.

One wonders if our nation's Founders would be impressed with the argument that infringements of the Second Amendment are allowed because they are modest.

Krieger made short work of another complaint, that background checks required in all private transactions are unconstitutional. She noted that the plaintiffs didn't really make that argument at all, but instead focused on temporary transfers being hampered unnecessarily:

> Plaintiffs do not argue that requiring background checks for the private sale of firearms is unconstitutional. Rather, they focus their challenge on the effect of the statute on temporary transfers [i.e., loans] when ownership of the firearm does not change.

But since the Second Amendment and other court rulings have failed to address the issue of such temporary transfers of a firearm from an owner to a borrower, therefore it doesn't count:

> It is not at all clear that the Second Amendment prevents the government from restricting the ability of persons to acquire firearms via temporary loans from others.…

> Logically, if the government can lawfully regulate the ability of persons to obtain firearms from commercial dealers, the same power to regulate should extend to non-commercial [private] transactions, lest the loophole swallow the regulatory purpose.

Upon learning of the decision,the plaintiffs had plenty to say about it. The Colorado State Shooting Association, one of the plaintiffs in the suit, called it "disappointing on many levels" and asserted that the ruling missed the whole point concerning the Second Amendment:

> The significance of the Second Amendment as a core portion of the Bill of Rights and its importance has virtually no reference in the decision. Most noteworthy was the court's focus on the important government interest at hand while ignoring the complete absence of support for [it] in the legislative record.

Weld County Sheriff John Cooke, a leader among the plaintiffs, added:

> While we respect the judge's ruling today, we believe that it is plainly wrong on the law and on the facts….
>
> [The laws] are still unenforceable. And that is borne out in that there has not been one arrest on these two laws to date.

The ruling was not without its supporters, however. State Senator Mary Hodge, a Democrat from Thornton and a sponsor of the bills, remarked:

> This is public safety. Having people have to pause to reload [during a mass shooting] saves lives. These school shooters, for the most part, did not know how to reload their weapons, so this limit on large-capacity magazines is good.

Eileen McCarron, head of the anti-gun Colorado Ceasefire Capitol Fund, said the lawsuit was a waste of time and money:

> This was a politically-motivated lawsuit that has been grasping at straws from day one. These laws are reasonable protections against gun violence that many states have adopted and have repeatedly passed the test of constitutionality.

And Colorado Attorney General John Suthers, whose office defended the laws, said he was just doing his job:

> Like Judge Krieger, the Colorado Attorney General's Office has never asserted that the laws in question are good, wise or sound policy. As it does in all cases, the AG's Office has fulfilled its responsibility to defend the constitutionality of the Colorado law[s] in question. The Attorney General's Office fully expects the case to be appealed and looks forward to final resolution of the issues as soon as possible.

If left to stand upon appeal, Judge Krieger's ruling illustrates just how our fundamental rights given by God and guaranteed by the Constitution are lost: an inch at a time. Krieger, in her ruling, failed to address the word "infringe," which could have shed more light on the rights she was allowing to be compromised. "Infringe" means to violate, transgress, encroach, or trespass. The Latin root *infringere* means "to break" or "weaken." In that light, the laws just ruled constitutional by her court remain unconstitutional after all.

One awaits the appeal with eager anticipation.

A graduate of Cornell University and a former investment advisor, Bob is a regular contributor to The New American *magazine and blogs frequently at www.LightFromTheRight.com, primarily on economics and politics.*