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Massachusetts Gun Storage Law Heading to State's Highest Court

If Charleton Heston had lived in Massachusetts, then his rousing warning regarding his right to gun ownership would have read: "You can have my gun when you pry it from my cold, dead lockbox!" A case challenging the law in Massachusetts requiring that "stored firearms be secured in a locked container or equipped with a tamper-resistant safety device" will be heard next week by the state's highest court.

According to an article in the Lowell (Massachusetts) *Sun*, the law was enacted to "ensure that irresponsible people do not gain access to firearms to minimize the risk of accidental discharge." It would seem then in Massachusetts "irresponsible people," anxious to fire a weapon for some nefarious purpose, would only look for guns in appropriately and legally locked safes. Whew!

The particular case up for review concerns a challenge filed by Middlesex District Attorney General Gerard Leone to a Lowell (Massachusetts) District Court judge's ruling dismissing a suit against Richard Runyan accusing him of violating the state storage law described above by having kept an unlocked semiautomatic hunting rifle under his bed where it was "accessible by his teenage son." The Supreme Judicial Court will hear opening statements on Thursday. Attorney General Leone is appealing a decision of a Lowell District Court trial judge that held that the statue, as enforced, unjustifiably frustrated Runyan's right to keep a gun in his home for self-defense. It should be here noted that the District Court judge's decision was correct in the sense that Runyan's rights were abrogated by the terms of the law he was accused of breaking; his ruling went awry, however, in its indifference to the fact that Runyan and all Americans have an uninfringeable right not only to possess a gun for self-defense, but for any reason they see fit. The Second Amendment anticipates no circumscription of the right it protects.

Massachusetts' gun storage law has already come under the scrutiny of the United States Supreme Court. In May 2008, the Court ruled in *District of Columbia v. Heller* that Washington, D.C.'s ordinance outlawing possession of handguns and mandating the placement of trigger-locks on other weapons lawfully stored in the home for self-defense violated the Second Amendment right to keep and bear arms. Justice Scalia, writing for the majority, explicitly held that laws rendering "lawful firearm in the home inoperable for the purpose of immediate self-defense" was onerous and an unconstitutional restriction on the people's preexisting right to possess firearms for self-defense. Massachusetts's law, then, even if upheld by the state supreme court, seems destined to fail constitutional muster on the federal level.

For his part, Leone avers that the *Heller* ruling does not apply to the Massachusetts law because the state law in controversy does not ban ownership outright; rather it simply requires proper storage of guns in the home. Despite Leone's obvious zeal, there seems to be little basis to legally distinguish the onerous dictates of the Massachusetts law from similar laws formerly in effect in Washington, D.C., which were struck down by the Supreme Court for making it "impossible for citizens to use arms for the core lawful purpose of self-defense." Reason seems to be on the side of Runyan, for the injunction that a gun in a home that is legally owned for the purpose of self-defense be "secured in a locked container" equally prevents that weapon from being employed in a necessary moment for its legally protected purpose.

Predictably, Massachusetts' attempt to weigh down the Second Amendment with sandbags of legislated "ifs," "ands," and "buts" has received reams of amicus briefs in support from the Brady Center to Prevent Gun Violence, the International Brotherhood of Police Officers, the Legal Community Against Violence (is there a Legal Community In Favor of Violence?), Stop Handgun Violence, and other like-minded liberal groups bent on the absolute repeal of the Second Amendment's prohibition of government infringement of the "right of the people to keep and bear Arms." In a brief, these organizations call the law in question a "life-saving gun-safety law that protects children and others from gun deaths and injuries while still allowing a gun owner or authorized user to use the firearm in self defense." There is so much wrong with that statement it is hard to know where to begin. Let's take a shot at it anyway.

First, there is not a single scientifically sound study proving with any degree of statistical significance that gun laws save lives. The most persuasive evidence, albeit anecdotal, is the fact that the city with the most oppressive gun laws, Washington, D.C., was notorious as the murder capital of the United States. Absolute prohibition on the ownership of handguns and the requirement that other weapons kept at home be stored unassembled did little to curtail crime and increase the peace.

Second, is the issue of "gun safety." Guns are inanimate and incapable of being unsafe per se. While it is undeniably true that guns may become unsafe instruments when held in the hands of those determined to do ill, one need only read the front page of any newspaper in England to realize that although gun ownership is nearly wholly proscribed in that country, knives are just as useful as murder weapons.

Next, laws genuinely enacted to protect children and others from accidental death or injury carried to their logical conclusion would necessitate the confinement of *every citizen* in a padded cell or strapped motionless to a bed. Legislatures, no matter how well intentioned, cannot protect their citizens from accidental harm, especially by asking for the surrender of basic rights in the bargain. There is wisdom in Benjamin Franklin's often-misquoted warning to the Pennsylvania Assembly that "they who can give up essential liberty to obtain a little temporary safety, deserve neither liberty nor safety." The most effective check on danger, whether accidental or intentional, is the unfettered freedom to face it and remove it as one sees fit.

Finally, there is the inexcusable hubris behind phrases such as "allowing a gun owner" and "authorizing a user [of a gun]." No state, no matter how permissibly meddlesome, may lawfully contravene the constitutional guarantee of the right to keep and bear arms, or any other such right, for that matter. On this point Article VI of the United States Constitution is clear and unimpeachable: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Massachusetts, by the passage and enforcement of its gun storage law, has unconstitutionally acted contrariwise to the "supreme law of the land."