



Written by [Joe Wolverton, II, J.D.](#) on January 25, 2010

Tennessee Guardsman Challenges Supreme Court on 2nd Amendment

Richard A. Hamblen has lost his family and his fortune because he believes in the Second Amendment. In April of 2004, Mr. Hamblen, a former commander in the Tennessee National Guard, was arrested by agents of the Federal Bureau of Investigation (FBI) and the Bureau of Alcohol, Tobacco, and Firearms (BATF). Hamblen, who told the author that he's never had so much as a traffic violation, was taken from his place of business and charged with the unlawful possession of nine unregistered machine guns.



Hamblen was found guilty by a trial court and sentenced to 13 months in federal prison. He served his time at the Federal Correctional Institution in Beckley, West Virginia. Upon his release, Hamblen and his attorney, Jeffrey Fensley, appealed his conviction to the Sixth Circuit Court of Appeals in Cincinnati, Ohio. On December 30, 2009, that court affirmed the lower court's ruling and held that, "Whatever the individual right to keep and bear arms might entail, it does not authorize an unlicensed individual to possess unregistered machine guns for personal use."

Hamblen disagrees with the Sixth Circuit's interpretation of the Second Amendment's guarantee of the right to keep and bear arms. "There are no qualifiers on the Second Amendment," Hamblen told the author. "There are qualifiers on the Fourth Amendment, so if the Founders had intended to restrict the right to keep and bear arms they knew how to do it," he continued.

At trial and at the circuit court appeal, Mr. Hamblen averred that he and the soldiers under his command qualified as a militia and thus were authorized to own military grade automatic weapons. According to figures given to the author, Hamblen claims that there are only 21 such weapons in the arsenal meant to equip over 3,000 National Guard troops. Worried that such a woeful stock would hamstring the efforts of his unit were they deployed to Iraq or Afghanistan, Hamblen ordered kits that would convert the semi-automatic weapons into fully automatic ones. According to the government, this was a violation of federal law.

During an interview with the author, Mr. Hamblen demonstrated a cogent and convincing knowledge of the intricacies and inconsistencies of federal firearms laws and Supreme Court decisions interpreting these laws. It is upon two of these high court decisions that Hamblen's arguments rest.

First is the case of *United States v. Miller* in 1939. In this case interpreting the National Firearms Act of 1934, the Supreme Court held that there is a right to keep and bear arms that have a "reasonable relationship to the preservation or efficiency of a well regulated militia."

As for the crucial definition of "militia," the Court additionally held that "the signification attributed to the term Militia appears from the debates in the Convention, the history and legislation of Colonies and States, and the writings of approved commentators. These show plainly enough that the Militia



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comprised all males physically capable of acting in concert for the common defense. 'A body of citizens enrolled for military discipline.' And further, that ordinarily when called for service these men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time."

Hamblen and his attorney believe that the Miller case applies to his case in that the weapon he was convicted of illegally possessing was a "militarily useful weapon" and one being used by a member of a "well regulated militia," in this case, the Tennessee National Guard.

The second prong of Hamblen's defense is found in a more recent and controversial case in the genealogy of gun control decisions. In the case of *District of Columbia v. Heller*, Justice Scalia — writing for the majority — held that "like most rights, the Second Amendment is not unlimited. It is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." Furthermore, the Court explained that the Heller decision "should not be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms."

Believing that Justice Scalia misinterpreted the Second Amendment and earlier Supreme Court rulings, Rich Hamblen has appealed the ruling of the Sixth Circuit court of Appeals to the Supreme Court. Despite his defense of the Constitution and its protection of the right to keep and bear arms, Hamblen reports that he has received no support from conservative or gun rights groups such as the National Rifle Association. "My lawyer contacted the NRA and they refused to help," lamented Hamblen. He expressed belief that the NRA would be "put out of business" if the Court ever correctly interpreted the Second Amendment and ruled that the right to bear arms was purposefully left unqualified by the Founding Fathers.

"If you have to ask permission to exercise a right, then it isn't a right," Hamblen said. He has filed his appeal to the Supreme Court in order to re-establish the intent of the Founders to hold such a right inviolable and not to attach the restrictions of "reasonableness" to the exercise thereof.

Hamblen holds little hope that the Supreme Court will approve his writ of certiorari and hear his appeal. Regardless, he intends to exhaust every legal remedy in what he sees as the defense of the Constitution. "If no one ever challenges the unconstitutionality of federal laws, then nothing will ever happen," Hamblen explained.

Hamblen, the owner of a small business in Nashville, Tennessee, has spent over \$50,000 in legal fees and was dishonorably discharged from the Tennessee National Guard. He fervently stands behind his decision to assert his Second Amendment rights to the highest authority in the land. "Does the Constitution have any meaning if those charged with interpreting and applying it are conspiring to suppress the rights guaranteed by it?" Hamblen asks. He boldly and fearlessly answers in the negative. Rich Hamblen has given all in his defense of this right and whether or not the Supreme Court agrees to hear his case, he will have done all in his power to raise his voice and stand steadfastly in support of the sacred and ostensibly inviolable rights protected by our Constitution.



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