HJR

7 (FILE 1)

1C (7)

(5)

HOUSE COMMITTEE REPORT

2/10

Date Referred: January 9, 1989

FURTHER REFERRALS: (JUDICIARY)

added 2/10 - Finance

HJR 7

Date of Committee Action: ________

The STATE AFFAIRS Committee recommends that:

HOUSE JOINT RESOLUTION NO. 7 [RIGHT TO KEEP AND BEAR ARMS]
Proposing an amendment to the Constitution of the State of Alaska relating to individual right to keep and bear arms.

[X] be replaced with CS HJR 7 (SA) ________ [X] the same title [ ] a new title

[ ] have attached amendment(s)

- [X] do pass
- [ ] do not pass
- [ ] no recommendation
- [ ] individual recommendations
- [ ] additional referral to the ________ Committee

ADOPTS: ________ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- [X] fiscal impact Elections
- [ ] zero fiscal note
- [ ] zero with analysis

APPROVES PREVIOUS:

- [ ] fiscal note(s) published: ________
- [ ] zero fiscal notes(s) published: ________

SIGNING DO PASS:

[signature] DONLEY

[signature] MENARD

DO PASS

Jim (Allows Alaskans ZAWACKI
Zawacki to express their opinion and vote for their personal right)

[signature] BOUTTER

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

[signature] do not pass without amendment HANLEY

[signature] Do not pass without amendment SCHOHNHOLZ

Eileen P MacLean Do not pass without amendment MACLEAN

[signature]

Chairman's signature

BRISTOL BAY BOROUGH POLICE DEPARTMENT

FLOYD E. STEELE
CHIEF OF POLICE

P.O. BOX 189
NAKNEK, ALASKA 99633
(907) 246-4222

APRIL 30, 1990

HOUSE OF REPRESENTATIVES

IF I MAY TAKE A MOMENT OF YOUR TIME TO EXPRESS A CONCERN OF MINE AS A LAW ENFORCEMENT OFFICER IN OUR GREAT STATE OF ALASKA.

ON FRIDAY EVENING, APRIL 27, 1990 I RECEIVED WORD THAT SENATE JOINT RESOLUTION (4) PASSED THE SENATE ON A VOTE OF 18 TO 2. IF ADOPTED BY THE HOUSE, SJR4 WOULD BE PLACED ON THE BALLOT IN NOVEMBER A PROPOSAL TO AMEND THE STATE CONSTITUTION TO SAY THAT THE RIGHT TO KEEP AND BEAR ARMS IS AN INDIVIDUAL RIGHT (RATHER THAN A "COLLECTIVE" RIGHT RELATED TO A CITIZEN MILITIA).

SJR4 AND IT'S COMPANION IN THE HOUSE HJR7 WOULD MAKE THIS RIGHT ABSOLUTE, WITH NO LIMITING OR QUALIFYING LANGUAGE.

IT IS EXPECTED THAT SJR4 WILL BE HEARD IN THE HOUSE JUDICIARY COMMITTEE ON MAY 3RD. I WOULD ASK THAT YOU SUPPORT THE LANGUAGE THAT THE INDIVIDUAL RIGHT TO KEEP AND BEAR ARMS "MAY BE REASONABLY REGULATED BY LAW".

YOUR CONSIDERATION AND TIME IN SUPPORTING THIS LANGUAGE CHANGE WILL BE APPRECIATED BY MOST ALL LAW ENFORCEMENT OFFICERS IN THIS STATE.

SINCERELY,

Floyd E. Steele

FLOYD E. STEELE
CHIEF, BRISTOL BAY BOROUGH
P.O. BOX 189, NAKNEK, AK. 99633
PHONE 246-4222
FAX 246-4451

MEMO

NO OF PAGES 1

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSHJR 7
PUBLISH DATE: 2/10/89

FISCAL NOTE

REQUEST:

Revision Date: 12/8/89
Title: Const. Amend. Right to keep and Bear Arms.
Sponsor: Donley
Requestor: Donley

Agency Affected: Office of the Governor
BRU: Division of Elections
Components: II Elections Primary & General Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	2.2*	-0-	-0-	-0-	-0-	-0-
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2.2*	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	2.2*	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	2.2*	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

* Costs included cover 2 to 3 pages in each Official Elections Pamphlet, for printing and typesetting, and costs estimated to cover computer programming requirements for vote counting purposes. (Continued)

Prepared by: Linda Edgeworth
Phone: 465-4611
Division: Divison of Elections
Date: 12/8/89

Approved by Commissioner: [signature] (Acting)
Date: 12.11.89
Agency: Division of Elections

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHJR 7

However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per ballot x approximately 320,000 voters. The total cost of printing the additional ballot card would be $51.2

Under these circumstances the fiscal note would be:

City of Ketchikan
Police Department

334 Front Street
Ketchikan, Alaska 99901
907-225-31[illegible]

May 1, 1990

House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Dear Committee Members:

As a member of the Executive Board of the Alaska Association of Chiefs of Police, a vice president of the Alaska F.B.I. National Academy Association, and Chief of Police in Ketchikan, I share the concerns of my law enforcement colleagues regarding the passage of SJR4 and HJR7. Our present constitutional clause has placed no unreasonable constraints upon the abil.ty of responsible citizens to keep and bear arms. Please don't endanger the citizens of Alaska by attempting to fix a problem which doesn't exist, particularly since the fix may create real problems.

Thank you for your consideration.

Sincerely,

D. A. Anslinger, III
Chief of Police

DAA:mp

REP. DONLEY'S LATEST DRAFT

WORK DRAFT WORK DRAFT WORK DRAFT

6-0341D
Bradley
12/6/89

Original sponsor(s): REP. DONLEY, Boucher, Menard, Gruenberg, Leman

IN THE HOUSE

CS FOR HOUSE JOINT RESOLUTION NO. 7 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

Proposing an amendment to the Constitution of the State of Alaska relating to the individual right to keep and bear arms.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. Article I, sec. 19, Constitution of the State of Alaska, is amended to read:

SECTION 19. RIGHT TO KEEP AND BEAR ARMS. The individual [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 denied or infringed by the State or a political subdivision of the State. Except as provided in this section, no law shall impose limits on the ownership or possession of arms or require licensure, registration, or special taxation on the ownership or possession of arms. The legislature may regulate the carrying of concealed weapons and the use or possession of arms by individuals convicted of a crime. The exercise of the right to bear arms may be regulated by the legislature when there is a compelling public safety interest in the regulation.

* Sec. 2. The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

NATIONAL RIFLE ASSOCIATION OF AMERICA
INCORPORATED 1871
1600 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20036

RUPE ANDREWS
FIELD REPRESENTATIVE
ALASKA

9416 LONGRUN DRIVE
JUNEAU AK 99801
907/789-7422

MEMORANDUM

TO: Senator Pat Rodey
Representative Dave Donley

DATE: November 28, 1989

SUBJECT: SJR-4, HJR-7 Amendments

FROM: Rupe Andrews
NRA Field Representative

Attached is a proposed amendment to SJR-4 and HJR-7. This amendment was discussed recently between Laurie Otto, Assistant AG, Criminal Division, and myself. As you are aware, Laurie Otto is de facto the liaison between the law enforcement groups, APOA and Alaska Chiefs of Police Association, and the administration. An agreement between yourselves and Laurie Otto is tantamount to non-objection from the administration and state law enforcement organizations re the constitutional amendment.

There are several points to consider in the amended proposal. First, the amendment provides a pre-emption of local firearm ordinances regarding individual ownership. Cities retain an exception as to discharge. Secondly, it provides a constitutional guarantee that the State will not impose any special registration, licensure or taxes. These are positive points to consider.

The amendment provides for "reasonable" regulation of firearm ownership, purchase, bearing and use under state statute. NRA has always supported reasonable regulation of firearms. NRA is just as concerned as every citizen should be that criminals, juveniles, alcoholics or those persons adjudged mentally incompetent not be able to purchase or possess firearms. The original position of NRA counsel is that reasonable regulation of firearms is understood in the introduced versions of SJR-4 and HJR-7. This was challenged by the Attorney General's office, the Department of Public Safety, and law enforcement organizations. Laurie Otto has advised that the proposed amendment will satisfy the concerns expressed by the foregoing.

If you agree to this amendment we can get the constitutional amendment on a fast track and through this session, providing no further problems arise. The amendment does take care of the major concerns expressed earlier by law enforcement while clearly protecting the right of the individual to own, possess and lawfully use firearms.

DRAFT: November 21, 1989

IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 7 (State Affairs)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

Proposing an amendment to the Constitution of the State of Alaska relating to the individual right to keep and bear arms.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. Article I, sec. 19, Constitution of the State of Alaska, is amended to read:

SECTION 19. RIGHT TO <u>KEEP AND</u> BEAR ARMS. <u>The individual</u> [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 <u>denied or</u> infringed <u>by the state or a political subdivision of the state except that the exercise of this right may be reasonably regulated by law. No law shall impose licensure, registration or special taxation on the ownership or possession of firearms.</u>

* Sec. 2. The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

OPINION OF THE SUPREME COURT OF NEBRASKA

Case Title

State of Nebraska, Appellant,
v.
Charles A. Comeau, Appellee.

State of Nebraska, Appellant,
v.
Larry L. Rush, Appellee.

Case Caption

State v. Comeau

Filed December 1, 1989. Nos. 89-186, 89-187.

Appeals from the District Court for Lincoln County: John P. Murphy and Donald E. Rowlands II, Judges. Exceptions sustained, and causes remanded for further proceedings.

Robert M. Spire, Attorney General, and William L. Howland, and Kent D. Turnbull, Lincoln County Attorney, and John H. Marsh for appellant.

Kent E. Florom, Lincoln County Public Defender, for appellees.

Robert I. Eberly and Robert Dowlut for amici curiae National Rifle Association of America and Nebraska Rifle and Pistol Association.

Jerry Soucie for amicus curiae Nebraska Criminal Defense Attorneys Association.

STATE V. COMEAU

NOS. 89-186, 89-187 - filed December 1, 1989.

1. Constitutional Law: Statutes: Presumptions: Proof. A statute is presumed to be constitutional, and the burden of establishing unconstitutionality is on the party attacking its validity.

2. Constitutional Law: Statutes: Proof. Unconstitutionality must be clearly established before a statute will be declared void.

3. Constitutional Law: States: Statutes. The police power is an attribute of state sovereignty, and, within the limitations of state and federal Constitutions, the state may, in its exercise, enact laws for the promotion of public safety, health, morals, and generally for the public welfare.

4. Constitutional Law. The constitutional right to keep and bear arms is not absolute.

5. Constitutional Law: Statutes. The constitutional right to keep and bear arms is subject to reasonable regulation by statute if the statute does not frustrate the guarantee of the constitutional provision.

6. ____: ____. Neb. Rev. Stat. § 28-1206 (Reissue 1985) is held not to be invalid as in conflict with article I, § 1, of the Constitution of Nebraska.

7. ____: ____. Neb. Rev. Stat. § 28-1207 (Reissue 1985) is held not to be invalid as in conflict with article I, § 1, of the Constitution of Nebraska.

Hastings, C.J., Boslaugh, White, Caporale, Shanahan, Grant, and Fahrnbruch, JJ.

BOSLAUGH, J.

These cases involve an interpretation and application of the "Right to Bear Arms" amendment to the Nebraska Constitution, which was proposed by the initiative process and adopted at the general election on November 8, 1988. Article I, § 1, of the Constitution of Nebraska, as amended, now provides as follows:

> All persons are by nature free and independent, and have certain inherent and inalienable rights; among these are life, liberty, the pursuit of happiness, and the right to keep and bear arms for security or defense of self, family, home, and others, and for lawful common defense, hunting, recreational use, and all other lawful purposes, and such rights shall not be denied or infringed by the state or any subdivision thereof. To secure these rights, and the protection of property, governments are instituted among people, deriving their just powers from the consent of the governed.

In case No. 89-186, the defendant, Charles A. Comeau, was charged with possessing a firearm from which the manufacturer's identification marks or serial numbers had been removed, defaced, altered, or destroyed. The defendant filed a "demurrer" which alleged that the information failed to state a crime because Neb. Rev. Stat. § 28-1207 (Reissue 1985), under which the defendant was being prosecuted, was now unconstitutional. Treating the demurrer as a motion to dismiss, the trial court sustained it and dismissed the information.

In case No. 89-187, the defendant, Larry L. Rush, was charged, as a habitual criminal, with being a felon in possession of a [illegible] having a barrel less than 18 inches in length. The

defendant filed a "demurrer" which alleged that the information failed to state a crime because Neb. Rev. Stat. § 28-1206 (Reissue 1985), under which the defendant was being prosecuted, was now unconstitutional. Treating the demurrer as a motion to dismiss, the trial court sustained it and dismissed the information.

The State then commenced proceedings under Neb. Rev. Stat. § 29-2315.01 (Reissue 1985) to review the orders dismissing the informations. In this court the cases have been consolidated for briefing and argument.

It is fundamental that a statute is presumed to be constitutional, and the burden of establishing unconstitutionality is on the party attacking its validity. In re Guardianship and Conservatorship of Sim, 225 Neb. 181, 403 N.W.2d 721 (1987). Unconstitutionality must be clearly established before a statute will be declared void. State v. Copple, 224 Neb. 672, 401 N.W.2d 141 (1987).

Essentially, the question presented by these appeals is whether the amendment prevents the Legislature from passing any laws regulating the possession of firearms.

The defendants contend that the amendment must be read literally and that the language which states that the right to keep and bear arms is "inalienable" and shall not be "infringed" by state statute or local ordinance prevents any regulation by the Legislature of the right to possess arms. The defendants concede that the use of weapons may be regulated, but argue that mere possession may not be.

The State contends that the plain meaning of the amendment is that the right to keep and bear arms is limited to "lawful

purposes." Lawful purposes are not defined in the amendment except as "for security or defense of self, family, home, and others, and for lawful common defense, hunting, recreational use, and all other lawful purposes . . . ." The State argues that in the exercise of the police power, the Legislature may define what purposes are lawful purposes.

The police power is an attribute of state sovereignty, and, within the limitations of state and federal Constitutions, the state may, in its exercise, enact laws for the promotion of public safety, health, morals, and generally for the public welfare. Finocchiaro, Inc. v. Nebraska Liq. Cont. Comm., 217 Neb. 487, 351 N.W.2d 701 (1984).

There are very few rights which are absolute, and this is of necessity. In every phase of everyday experience, there are extremes beyond which some restraint or regulation is necessary for the common good.

Even in those cases where statutes have been held to be invalid because in conflict with a constitutional provision concerning the right to keep and bear arms, many courts have recognized that the right is not absolute. In City of Princeton v. Buckner, 377 S.E.2d 139 (W. Va. 1988), in which the Supreme Court of Appeals of West Virginia held a statute requiring a license to carry certain weapons invalid, the court said:

> The question remains whether the State may reasonably regulate the right of a person to keep and bear arms in this State.
>
> We stress that our holding above in no way means that the right of a person to bear arms is absolute. See cases cited infra at p. 146. Other jurisdictions concluding that state statutes or municipal ordinances have violated constitutional

provisions guaranteeing a right to bear arms for defensive purposes, though not specific in what ways this is to be done, have recognized that a government may regulate the exercise of the right, provided the regulations or restrictions do not frustrate the guarantees of the constitutional provision. See, e.g., In Re Brickey, 8 Idaho 597, 599, 70 P. 609, 609 (1902); City of Las Vegas v. Moberg, 82 N.M. 626, 627, 485 P.2d 737, 738 (Ct.App.1971). Particularly, on three occasions, the Supreme Court of Oregon, in striking statutes as violative of the state's constitutional right to bear arms, has repeatedly stressed that the court's holdings should not be construed to mean that an individual has an "unfettered right" to possess or use constitutionally protected arms in any way he chooses. The Oregon court has consistently emphasized that the legislature may regulate such possession and use. State v. Delgado, 298 Or. at 403, 692 P.2d at 614; State v. Blocker, 291 Or. at 259, 630 P.2d at 826; State v. Kessler, 289 Or. at 370; 614 P.2d at 99.

. . . .

Our research has revealed that courts throughout the country have recognized that the constitutional right to keep and bear arms is not absolute, and these courts have uniformly upheld the police power of the state through its legislature to impose reasonable regulatory control over the state constitutional right to bear arms in order to promote the safety and welfare of its citizens. See, e.g., Bristow v. State, 418 So.2d 927, 930 (Ala.Crim.App.), cert. denied (Ala.1982); People v. Blue, 190 Colo. 95, 102-03, 544 P.2d 385, 390-91 (1975); State v. Rupp, 282 N.W.2d 125, 130 (Iowa 1979); In re Atkinson, 291 N.W.2d 396, 399 (Minn.1980); State v. Angelo, 3 N.J.Misc. 1014, 1015, 130 A. 458, 459 (1925); State v. Dees, 100 N.M. 252, 254-55, 668 P.2d 261, 263-64 (Ct.App.1983); Commonwealth v. Ray, 218 Pa.Super. 72, 79, 272 A.2d 275, 279 (1970); Carfield v. State, 649 P.2d 865, 871 (Wyo.1982). We stress, however, that the legitimate governmental purpose in regulating the right to bear arms

. . . . . while the exercise

of this right where the governmental purpose can be more narrowly achieved. City of Lakewood, supra.

At least forty-two jurisdictions have constitutional provisions guaranteeing a right to bear arms; however, most are distinguishable from art. III, § 22 either in their failure to specifically recognize the right to self-defense, or in their express recognition that the constitutional provision is subject to legislative regulation. See R. Dowlut & J. Knoop, State Constitutions and the Right to Keep and Bear Arms, 7 Okla. City U.L.Rev. 177, 236-240 (1982). The State, in the appendix to its brief, cites thirteen states which, like art. III, § 22, grant a rather broad, unrestrictive right to bear arms for the defense of self and the state. With the exception of Vermont, which imposes no significant regulation, the remaining jurisdictions regulate the ownership and use of arms in general, particularly handguns.

Again excluding Vermont, certain statutory regulations are common to most of the jurisdictions having constitutional provisions comparable to West Virginia's. For instance, the prohibition against the possession or ownership of handguns by persons previously convicted of a felony or other specified crime is widely accepted. Four states prohibit the open or concealed carrying of handguns without a license or permit; several others specifically prohibit carrying a concealed handgun without a license, while at least one of these jurisdictions, namely, Arizona, further prohibits carrying a handgun in public establishments or certain specified public places.

. . . .

Based upon the foregoing, we conclude that the right to keep and bear arms guaranteed by W.Va. Const. Art. III, § 22 is not unlimited. The individual's right to keep and bear arms and the State's duty, under it [sic] police power, to make reasonable regulations for the purpose of protecting the health, safety and welfare of its citizens must be balanced. See People v. Blue, 190 Colo. 95, 102-03, 544 P.2d 383, 390-91 (1975). Accordingly, the West Virginia legislature may,

> through the valid exercise of its police power, reasonably regulate the right of a person to keep and bear arms in order to promote the health, safety and welfare of all citizens of this State, provided that the restrictions or regulations imposed do not frustrate the constitutional freedoms guaranteed by article III, section 22 of the West Virginia Constitution, known as the "Right to Keep and Bear Arms Amendment."

(Emphasis supplied.) 377 S.E.2d at 145-49.

If the use of arms is subject to regulation, then regulation of the right to possession may be the only practical way to make an effectual regulation of the use. For example, if the use of arms by persons of unsound mind is to be prohibited, probably the only effectual way to prevent their use is to prohibit the possession of arms by such persons.

/ POSSESSION

It is well known that the identification and tracing of a weapon is an important factor in solving crimes involving the use of a weapon. It is for that reason that identifying marks are sometimes removed from weapons. It would be of little use to prohibit the use of weapons from which identifying marks have been removed if the possession of such weapons is lawful. The most effective way to prevent the use of such weapons is to prohibit their possession. Similarly, the most effective way to prevent the use of handguns by felons is to prohibit the possession of handguns by felons.

We think the better view is that reasonable regulation of the possession of arms is not prohibited by the amendment.

In People v. Blue, 190 Colo. 95, 544 P.2d 385 (1975), the Supreme Court of Colorado held that a statute prohibiting

possession of guns by persons convicted of a felony was not invalid under a constitutional provision guaranteeing the right to bear arms. The Colorado constitutional provision was as follows:

> The right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called in question; but nothing herein contained shall be construed to justify the practice of carrying concealed weapons.

Colo. Const. art. II, § 13.

The Colorado court said:

> It is argued that the statute, which prohibits possession, use, and carrying of a weapon, is a blanket proscription that cannot be reconciled with the literal constitutional language. A felon is a "person" within the meaning of Article II, Section 13, the argument runs, and once he has served his term he is reinstated to the full rights of citizenship, Colo. Const. Art. VII, Sec. 10, including the absolute right to bear arms.
>
> However, not all constitutional rights are absolute. Mosgrove v. Town of Federal Heights, 190 Colo. 1, 543 P.2d 715; Stapleton, Jr. v. Dist. Ct., 179 Colo. 187, 499 P.2d 310; Anderson v. People, 176 Colo. 224, 490 P.2d 47, cert. denied, 405 U.S. 1042, 92 S.Ct. 1316, 31 L.Ed.2d 583; United States v. Akeson, 290 F. Supp. 212 (D. Colo. 1968); Sigma Chi Fraternity v. Regents of the University of Colorado, 258 F. Supp. 515 (D. Colo. 1966). When rights come into conflict, one must of necessity yield. The conflicting rights involved here are the individual's right to bear arms and the state's right, indeed its duty under its inherent police power, to make reasonable regulations for the purpose of protecting the health, safety, and welfare of the people. Cottrell v. Teets, 139 Colo. 558, 342 P.2d 1016; Denver v. Denver & Rio Grande Co., 63 Colo. 574, 167 P. 969, aff'd 250 U.S. 241, 39 S.Ct. 450, 63 L.Ed. 958; The People v. Hupp, 53 Colo. 80, 123 P. 651.

We do not read the Colorado Constitution as granting an absolute right to bear arms under all situations. It has limiting language dealing with defense of home, person, and property. These limitations have been recognized by the General Assembly in the enactment of section 18-12-105, C.R.S. 1973, which restricts the right to bear arms in certain circumstances, while permitting in other circumstances the carrying of a concealed weapon in defense of home, person, and property, and also when specifically authorized by written permit.

In our view, the statute here is a legitimate exercise of the police power.

"* * * To limit the possession of firearms by those who, by their past conduct, have demonstrated an unfitness to be entrusted with such dangerous instrumentalities, is clearly in the interest of the public health, safety, and welfare and within the scope of the Legislature's police power." People v. Trujillo, 178 Colo. 147, 497 P.2d 1.

See also People v. Trujillo, 184 Colo. 387, 524 P.2d 1379. To be sure, the state legislature cannot, in the name of the police power, enact laws which render nugatory our Bill of Rights and other constitutional protections. Lakewood v. Pillow, supra; People v. Hinderlider, 98 Colo. 505, 57 P.2d 894; Platte Etc., C. & M. Co. v. Dowell, 17 Colo. 376, 30 P. 68, appeal dismissed, 154 U.S. 512, 14 S.Ct. 1150, 38 L.Ed. 1079. But we do not read this statute as an attempt to subvert the intent of Article II, Section 13. The statute simply limits the possession of guns and other weapons by persons who are likely to abuse such possession.

190 Colo. at 102-03, 544 P.2d at 390-91.

In State v. Ricehill, 415 N.W.2d 481 (N.D. 1987), the Supreme Court of North Dakota held that a statute prohibiting possession of firearms by convicted felons did not violate that state's constitutional guarantee of the right to keep and bear arms.

The constitutional provision was as follows:

> All individuals are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; pursuing and obtaining safety and happiness; and to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreational, and other lawful purposes, which shall not be infringed.

N.D. Const. art. I, § 3.

The North Dakota court stated:

> Ricehill argues that the right to bear arms is absolute. He argues that the language of the provision states that the right to bear arms "shall not be infringed," and that this means that the Legislature may place no limits on the possession of arms. We disagree with such a broad reading of the provision. Instead, we believe our Constitution's protection of the right to keep and bear arms is not absolute; although it prevents the negation of the right to keep and bear arms, that right nevertheless remains subject to reasonable regulation under the State's police power. As the Michigan Supreme Court stated in construing that State's right to bear arms, "regardless of the basis of the right to bear arms, the State, nevertheless, has the police power to reasonably regulate it." People v. Brown, 253 Mich. 537, 235 N.W. 245, 246 (1931).
>
> In this case the Legislature prohibited the possession of firearms by persons who have previously committed serious crimes. It is patently reasonable for the Legislature to conclude that it is protecting the public welfare by enacting legislation that keeps firearms out of the hands of people who have shown a disposition to harm others. The Louisiana Supreme Court stated, in rejecting a State constitutional right-to-bear-arms challenge to its prohibition against possession of a firearm by a felon under a police-power rationale:

"It is beyond question that the statute challenged in the instant case was passed in the interest of the public and as an exercise of the police power vested in the legislature. Its purpose is to limit the possession of firearms by persons who, by their past commission of certain specified serious felonies, have demonstrated a dangerous disregard for the law and present a potential threat of further or future criminal activity." State v. Amos, 343 So.2d 166, 168 (La.1977).

415 N.W.2d at 483. The North Dakota court also cited People v. Blue, 190 Colo. 95, 544 P.2d 385 (1975), with approval.

We conclude that the statutes in question are reasonable regulations of the right to keep and bear arms and the judgments dismissing the informations were erroneous. Since the defendants have not been placed in jeopardy, the cause in each case is remanded for further proceedings.

EXCEPTIONS SUSTAINED, AND CAUSES REMANDED FOR FURTHER PROCEEDINGS.

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE NAVARRE

NAME: BILL LUND
TITLE: 376-5149 WK
DRESS: POB 870366
CITY: WASILLA ZIP: 99687
PHONE: 376-6533
LL NO:
BJECT: LOCAL AUTONOMY-ILLEGALIZE HOME BREWING???
SSAGE: DEAR SIRS
PLEASE WORK TO REPEAL OR AMEND THE LAW WHICH MAKES HOME BREWING ILLEGAL IN THE STATE. I REALIZE AFTER TALKING TO MISTER LARSON'S OFFICE, THAT THE INTENT WAS NOT TO ILLEGALIZE IN THIS AREA AND WAS ADVISED THAT I COULD PROBABLY CONTINUE. BUT THIS IS A HOBBY OF MINE THAT I LIKE TO BRAG ABOUT AND I LIKE TO BE LEGAL. WOULD APPRECIATE A REPLY.

POMID: 14112057
DATE: 01/17/89
TIME: 11:20:57
ONAME: MAT-SU LIO

OPIES:

REPRESENTATIVES	REPRESENTATIVES	SENATORS
LARSON	MENARD	KERTTULA
BARNES	BOUCHER	SZYMANSKI
BOYER	CATO	BINKLEY
COLLINS	COTTEN	FAHRENKAMP
DAVIS, M.	DONLEY	FAIKS
ELLIS	FOSTER	HALFORD
FURNACE	GOLL	JONES
HANLEY	HOFFMAN	PEARCE
KOPONEN	MARTIN	STURGULEWSKI
MILLER	PETTYJOHN	UEHLING
PHILLIPS	SHARP	ZHAROFF
SHULTZ	SHACKHAMMER	
TAYLOR	ULMER	
ZAWACKI		

PUBLIC OPINION MESSAGE

1360

DEAR: REPRESENTATIVE NAVARRE

NAME: RICHARD ROSS
TITLE: CHIEF OF POLICE
ADDRESS: 107 S. WILLOW ST
CITY: KENAI, ALASKA ZIP: 99611
PHONE: 283-7879
BILL NO: HJR 7
SUBJECT: RIGHT TO KEEP AND BEAR ARMS
MESSAGE: REQUEST THAT YOUR COMMITTEE NOT MOVE THIS RESOLUTION UNTIL IT HAS BE CEIVED THOROUGH LEGAL REVIEW. THE CONCERN BEING THAT THE MINIMAL STATUATORY R ULATION CURRENTLY PLACED ON FIREARMS POSSESSION (IE FELON IN POSSESSION;POSSES ION ON LICENSED PREMISES; WHILE INTOXICATED; OF ILLEGAL WEAPONS; CONCEALED WEA PONS) MAY BE JUDICALLY NULLIFIED IF ADOPTED.

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REPRESENTATIVE	SENATOR
SHACKHAMMER	FISCHER

Copy Rep. Go!

Hopkins
feb 2

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 13, 1983
Redated 7/1/83 for printing purposes

The Honorable Pat Rodey
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

The Honorable Charlie Bussell
Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Handgun Ban
Our file No.: 366-444-83

Dear Senator Rodey and Representative Bussell:

You have asked this office whether a landlord, through a leasehold agreement, may prohibit a tenant from possessing handguns. We conclude that in certain circumstances a landlord may restrict or prohibit the use and/or possession of handguns on property which is leased to another individual.

Our initial inquiry regarding this matter commenced with a review of relevant Alaskan Constitutional provisions. The Alaska Constitution directly addresses a citizens ability to bear arms at Article I, Section 19 which 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 language embodied in Alaska's Constitution pertaining to arms is virtually identical, save for two changes in punctuation, to language found in Article II of the United States Constitution. Article II of the United States Constitution was proposed by the Congress on September 25, 1789 and became the law of the United States on December 15, 1791. During the one hundred and ninety two years since adoption of the Second Amendment to the United States Constitution and the twenty-four years since the Alaska Constitution has been in effect, numerous court cases have interpreted the constitutional language which establishes the right to bear arms.

CELH

We note the period since the adoption of the Second Amendment has witnessed an ever increasing issuance of opinions from the judiciary of the various states and the federal courts which place limits on an individual's ability to bear arms. Some commentators have theorized that the legislative and judicial limitations increased significantly with the availability of inexpensive surplus weapons following the American Civil War. 1/ According to this theory, the increase in restrictive gun control measures and corresponding judicial interpretations was associated with increasing acquisition of firearms by recently emancipated Black Americans and immigrants coupled with the increased availability of firearms in the post Civil War industrial America. The right of 'bearing arms' is not a right granted by the Constitution nor is it in any manner dependant upon that instrument for its existence. U.S. v. Cruikshank, 92 U.S. 553 (D.C.La. 1875).

While offering no judgment on the propriety or effectiveness of the restrictive legislative and judicial measures, we observe that the current state of the law pertaining to the constitutional language holds that:

> [The] purpose of this amendment, guaranteeing that the right of the people to keep and bear arms, was to preserve the effectiveness and assure the continuation of the state militia. U.S. v. Oakes, 564 F.2d, cert. denied 98 S.Ct. 1493 (C.A. Kan. 1977).

The modern judicial view has increasingly found that the guaranteed right to keep and bear arms is not an individually protected right, but rather a collective right which allows the people of the various states to serve in a militia. The contemporary judicial view in the great majority of states interprets the constitutional language as posing no limitations on the legislature's power to regulate the ownership or control of firearms. Whatever the scope of any common-law or constitutional right to bear arms, it is not absolute and does not guarantee to individuals the right to carry weapons abroad at all times and in all circumstances. Application of Atkinson, 291 N.W.2d 396 (Minn. 1980). By analogy then, a landlord, too, could restrict

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1/ Kates, Don B. Restricting Handguns, North River Press, pages 7-30 (1979)

the possession of handguns on property he or she owns and leases. If the State can restrict arms without running afoul of constitutional provisions, an individual almost certainly has similar abilities.

It is conceivable that a landlord's ban on handgun ownership could be challenged under constitutional doctrines which afford a right of privacy. The United States Constitution, while not containing an express provision guaranteeing privacy has been interpreted to afford an individual certain protections, Cf. Griswold v. Connecticut, 381 U.S. 479 (1965). "The Constitution extends special safeguards to the privacy of the home, including activities which might be prohibited in other contexts." Cf. U.S. v. Orito, 413 U.S. 137, 142 (1973).

While it is unlikely that a court would find that an individuals right to possess arms (for example a gun collection) is protected by the privacy shield of the U.S. Constitution, the argument could be maintained. We are unaware of this argument being successfully asserted in any anglo-american jurisdiction.

A more likely source of protection under the right to privacy doctrine may be afforded by the Alaska Constitution at Article I, Section 22 which states that:

> The right of the people to privacy shall not be infringed. The legislature shall implement this section.

The Alaska Supreme Court has explicitly stated that the right of privacy guaranteed to Alaskans is broader in scope than that guaranteed by the federal constitution. Woods & Rohde, Inc., v. State, 565 P.2d 138 (1977). Even so, the meaning of privacy or necessity must vary depending on the factual context and the often compelling interests of society and the individual. State v. Glass, 583 P.2d 879 (1978). The test for what interests are protected under Alaska's constitutional right to privacy are, first, whether a person has exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as "reasonable". Hilbers v. Municipality of Anchorage, 611 P.2d 31 (1980).

The question of handgun ownership in Alaska and whether such ownership is "reasonable" in the context of a landlord tenant relationship is open ended. Probably the "expectation" and reasonableness of gun ownership in Alaska is different than the reasonableness of gun ownership in many other jurisdictions where actual firearm ownership and use is reduced. In any event,

absent specific language under the Alaska Uniform Residential Landlord and Tenant Act, AS 34.03.010 et seq., or other relevant Alaska law, prohibiting inclusion of provisions in a leasehold agreement, we believe a landlord can properly restrict the terms of the tenancy. 2/ In all probability, under existing Alaska law, a landlord can restrict possession of handguns for tenants in a manner not unlike a landlord's ability to prohibit tenants from possessing dogs, operating businesses in a residential leasehold or operating obnoxious stereo equipment.

While a landlord will probably be able to impose a restriction prohibiting future tenants from possessing handguns, an across-the-board ban applicable to tenants with existing leasehold agreements may be invalid. Under classic contract principles, neither party to an agreement may superimpose an additional term on a valid contract without the consent of each party to the contract. Consequently, a landlord may not prohibit handgun possession among tenants during the pendency of an existing lease. Conversely, where a landlord and tenant agree to a lease agreement which contains a restriction banning handguns, remedial legislative action interpreting Alaska's right to privacy law to permit such possession probably would not invalidate existing prohibitions.

Finally, concern was expressed regarding the state's liability with respect to landlord/tenant agreements which prohibit handgun ownership in buildings located on property owned by the State. This last point is conceivably problematic if the land on which the Panoramic View Apartments are located is conveyed to the state as a result of the current Alaska Railroad transfer negotiations. Attached is a copy of a memorandum by Assistant Attorney General Jack McGee which deals with this subject.

2/ In passing, we note that a landlord concerned with unjustified gun play need not necessarily prohibit gun ownership. Other remedies exist for controlling individual tenants with a propensity to abuse gun ownership. Cf. Osness v. Dimond Estates, Inc., 615 P.2d 605 (1980), where the landlord obtained a Forcible Entry and Detainer (F.E.D.) thereby removing a tenant that proved incapable of properly handling firearms.

Redated 7/1/83 for printing purposes

We trust this response answers your inquiry. If you have any additional questions, please let me know.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Joseph W. Geldhof
Assistant Attorney General

JWG:vrb

cc: Norman C. Gorsuch
Attorney General

Ronald W. Lorensen
Deputy Attorney General

ANALYSIS OF PROPOSED ALASKA CONSTITUTIONAL GUARANTEE TO KEEP AND BEAR ARMS

"The individual right to keep and bear arms shall not be denied or infringed by the state or any subdivision thereof."

This proposal protects the traditional lawful rights that gun owners assumed were guaranteed in Alaska.

The Individual Right

The proposed amendment guarantees an individual right. Nevertheless, a person in a high-risk category would not enjoy this right. That, e.g., felons, minors, and the mentally infirm are treated differently has gained such universal acceptance that commentators mention only in passing that such persons do not enjoy the full benefits of this right. Dowlut & Knoop, State Constitutions and the Right to Keep and Bear Arms, 7 Okl. City Univ. L. Rev. 177, 191 & n. 71 (1982). See also Richardson v. Ramirez, 418 U.S. 24 (1974) (felons have no right to vote).

The constitutions of 42 states contain a right to bear arms. These guarantees have not been an obstacle to reasonable regulation. Statutes prohibiting possession of firearms, e.g., by convicted felons have been consistently upheld. Examples of such decisions include State v. Ricehill, 415 N.W.2d 481 (N.D. 1987); Carfield v. State, 649 P.2d 865 (Wyo. 1982); State v. Fant, 53 Oh. App.2d 87, 371 N.E.2d 588 (1977); State v. Amos, 343 So. 2d 166 (La. 1977); State v. Cartwright, 246 Ore. 121, 418 P.2d 822 (1966). Over a century ago a court upheld a conviction under a statute forbidding selling, giving, or lending weapons to minors. Coleman v. State, 32 Ala. 581 (1858).

Keep and Bear Arms

The term "arms" refers only to such arms as are commonly kept by the people. Constitutionally protected arms would include the rifle, shotgun, and pistol. State v. Kessler, 289 Ore. 359, 614 P.2d 94 (1980); Taylor v. McNeal, 523 S.W.2d 148, 150 (Mo.App. 1975); Rinzler v. Carson, 262 So.2d 661, 666 (Fla. 1972); State v. Shelby, 90 Mo. 302, 2 S.W. 468 (1886); State v. Duke, 42 Tex. 455, 458-59 (1875); State v. Andrews, 50 Tenn. 165, 8 Am. Rep. 8 (1871); Nunn v. State, 1 Ga. (1 Kel.) 243 (1846).

Bombs, cannon, poison gas and other arms of mass destruction or which are exclusively used by the organized military do not come under the protection of the constitutional umbrella. State v. Kessler, Rinzler v. Carson, State v. Kerner, State v. Shelby, supra.

A person may only keep or bear constitutionally protected arms. The right to keep arms includes the following:

> What, then, is involved in this right of keeping arms? It necessarily involves the right to purchase and use them in such a way as is usual, or to keep them for the ordinary purposes to which they are adapted ... The right to keep arms, necessarily involves the right to purchase them, to keep in a state of efficiency for use, and to purchase and provide ammunition suitable for such arms, and to keep them in repair. Andrews v. State, 50 Tenn. 165, 178, 8 Am. Rep. 8, 13 (1871).

The bearing of constitutionally protected arms may be regulated. Concealed carrying statutes, e.g., are routinely upheld. State v. McAdams, 714 P.2d 1236 (Wy. 1986); State v. Kessler, 289 Ore. 359, 614 P.2d 94, 99 (1980); Holland v. Commonwealth, 294 S.W.2d 83, 85 (Ky. 1956). Even open carrying for an unlawful purpose may be prohibited. State v. Dawson, 272 N.C. 535, 159 S.E.2d 1 (1968). A license may be required to carry a pistol concealed. Schubert v. DeBard, 73 Ind. Dec. 510, 398 N.E.2d 1339 (Ind. App. 1980). Carrying a gun while drunk is outside the protected boundaries of the right to bear arms. People v. Garcia, 197 Colo. 550, 595 P.2d 228 (1979) (en banc). One may not be armed in court, church, at elections or concerts. Hill v. State, 53 Ga. 473, 476 (1874). Unauthorized parading with arms may be prohibited. Commonwealth v. Murphy, 166 Mass. 171, 44 N.E. 138 (1896). Discharging a firearm without justification within the city limits is not constitutionally protected conduct. State v. Johnson, 76 S.C. 39, 56 S.E. 544 (1907).

The traditional lawful defense of self, family, and home has ancient roots. Halbrook, The Jurisprudence of the Second and Fourteenth Amendment, 4 Geo. Mason L. Rev. 1, 5 (1981); Caplan, The Right of the Individual to Bear Arms: A Recent Judicial Trend, 1982 Detroit Col. L. Rev. 789, 794; Dowlut & Knoop, State Constitutions and the Right to Keep and Bear Arms, 7 Okl. City Univ. L. Rev. 177, 183 (1982); Malcolm, The Right of the People to Keep and Bear Arms: The Common Law Tradition, 10 Hastings Const. L. Q. 285 (1983).

There is no social interest in preserving the lives and wellbeing of criminal aggressors at the cost of their victims. The only defensible policy society can adopt is one that will operate as a sanction against unlawful aggression. The police have no duty to protect the individual. Warren v. District of Columbia, 444 A.2d 1 (D.C. App. 1981) (en banc). One court reduced this principle of law to the succinct comment that "there is no constitutional right to be protected by the state against being murdered by criminals or madmen." Bowers v. DeVito, 686 F.2d 616, 618 (7th Cir. 1982).

The proposed guarantee is a victims' rights measure. It will guarantee that a person may exercise the choice to have arms to lawfully and effectively resist violent criminal aggression against self, family or home.

Conclusion

This legislative history indicates that the legislature is left with the power to deal effectively with criminal misconduct. On the other hand, it would prevent the decent people of this state from being disarmed. State v. Kessler, 289 Ore. 359, 614 P.2d 94 (1980); City of Lakewood v. Pillow, 180 Colo. 20, 501 P.2d 744 (1972); City of Las Vegas v. Moberg, 82 N.M. 626, 485 P.2d 737 (Ct. App. 1971); Glasscock v. City of Chattanooga, 157 Tenn. 518, 11 S.W.2d 678 (1928); People v. Zerillo, 219 Mich. 635, 189 N.W. 927 (1922); State v. Kerner, 181 N.C. 574, 107 S.E. 222 (1921); In re Brickey, 8 Idaho 597, 70 P. 609 (1902).

Robert Dowlut

Robert Dowlut
Attorney at Law
12 Feb. 1988

NATIONAL RIFLE ASSOCIATION OF AMERICA
INCORPORATED 1871
1600 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20036

RUPE ANDREWS
FIELD REPRESENTATIVE
ALASKA

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WHY DOES ALASKA NEED A FIREARMS PRE-EMPTION LAW?

The right to keep and bear arms is at the forefront of the various emotional issues that currently confront our society. Legislators, judges and bureaucrats at all levels of government — federal, state and local — are being called upon by citizens who wish to see this right expanded or restricted.

One underlying question is at what level should such legislation occur. The National Rifle Association has traditionally believed that the government most representative of the people is best. The explosion over the past few years of local ordinances that are more restrictive than current state law has, however, created the need for the states to pre-empt these local actions. Such legislation will prevent a hodgepodge of varying gun laws within a state, and thereby protect the law-abiding citizen not only from unwitting violation of the law, but also from arbitrary infringements of his or her rights. Indeed, in enacting pre-emption legislation, thereby expressly preventing local governments from infringing the rights of citizens and effectively eliminating the need for citizens to undertake costly litigation to protect their rights, state legislators fulfill their constitutional duty to protect the rights of citizens.

A state firearms pre-emption law will guarantee to the citizens of your state their right to own and use firearms for legitimate purposes based on state statutes and federal law.

Federal Law

Many people do not realize the full extent of federal law. Under the Gun Control Act of 1968 and as amended by the McClure-Volkmer Amendments (May 19, 1986), anyone convicted of a felony, adjudicated mentally defective, or addicted to drugs is prohibited from owning, purchasing or receiving or transporting any firearms or ammunition. The Gun Control Act also bans mail order sales of firearms by other than federally licensed dealers and requires that the sale of handguns is restricted to residents of the same state of the purchaser and seller.

Federal law also requires persons engaged in the business of dealing in firearms to be federally licensed. Dealers must

require from all firearms purchasers proof of identity and residence, and buyers must sign, under penalty of perjury, a statement certifying eligibility to purchase. Dealers are required to keep records of all firearms sales and are forbidden from selling handguns to persons under 21 or rifles and shotguns to persons under 18. Additionally, dealers are prohibited from making any sale of firearms or ammunition which would place the buyer in violation of state or local law.

The History of Firearms Pre-Emption Legislation

The first pre-emption firearms law was passed in the late 1960s, when, in response to the assassinations and urban rioting of that time, a number of localities passed "gun control" measures. Recognizing that these ordinances were based on emotional response rather than logical efforts to control crime, citizens of California and Pennsylvania led the way in enacting firearms pre-emption statutes. Today, some 15 states have firearms pre-emption either by statute or by legal precedent including: Alabama, Arizona, California, Indiana, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Dakota, Pennsylvania, South Dakota, Virginia, Washington and West Virginia.

The Problem Behind Local Firearms Laws

The renewed popularity in passing local ordinances effecting gun ownership has triggered a great debate over the benefits of local rule on this issue. Clearly, all legislation — whether federal, state, or local — must be designed to ensure uniform and nondiscriminatory access to the rights and privileges of the citizenry as guaranteed by the U.S. and State Constitutions. Yet, a close look at the passage of the Morton Grove, Illinois, handgun ban, the most infamous of these local ordinances, proves beyond doubt that local firearms legislation does not guarantee this. In passing their ban, the Morton Grove Village Trustees were acting in defiance of a majority of the village citizenry as the opponents of the measure greatly outnumbered supporters at all public hearings on the ban. Morton Grove was acting not to control crime, which was minimal in the village, but rather to gain the attention of national media and to create a situation of harassment for individual firearms owners. Their gimmick worked! Today, Morton Grove is almost a household word and it is estimated that close to a thousand formerly law-abiding citizens are now technically "criminals" for exercising a right guaranteed by both the U.S. and the Illinois Constitutions.

The local intent to harass gun owners and sportsmen, rather than control crime, is even more apparent in the recent actions of the Friendship Heights (Maryland) Township. This tiny

community on the outskirts of Washington, D.C., originally attempted to ban possession of all handguns. The Montgomery County Council refused, however, to consider the proposal because it was a clear violation of the Maryland State Firearms Pre-Emption Statute. Friendship Heights then attempted to subvert state law by passing a complete ban on possession of all ammunition. Possession of ammunition for self-defense would have been outlawed, and anyone passing through Friendship Heights with a single bullet could have been subject to arrest and conviction — a $500 fine for the first offense and up to six months in jail for the second offense.

The attempted F.H. bullet ban was defeated by the county council; Montgomery County, nonetheless, ultimately passed an ordinance which will prohibit the purchase of ammunition unless a firearm registration certificate is produced, although registration is not required in Maryland. While Councilman David Scull claims it is a symbolic step toward gun control at the state and federal level, in reality, this ordinance "is an abysmal waste of governmental energy and corrodes the respect without which law is a husk." (*The Washington Times*, June 20, 1983)

In response to this ban and other similar restrictive ordinances, a number of local jurisdictions have gone in the opposite direction and required all individuals or household heads to own a firearm. The NRA does not condone these mandatory ownership ordinances because we believe it is an individual's choice whether or not to possess a firearm.

How Can Pre-Emption Help?

Local firearms legislation serves only to create a crazy quilt of laws, resulting in gun owners running the risk of arrest, prosecution and confiscation of personal property for unwitting violation of local law by transporting a gun for sporting or other legitimate purposes across city or county lines. Such legislation clearly interferes with the "uniform application of laws" as citizens from one city are treated differently from citizens of another. Such legislation also puts an undue burden on the nation's 28 million hunters and 7 million competitive shooters who would be required to know the firearms laws of each various city and county they may pass through on their way to hunting areas or shooting matches.

We are greatly concerned by this eruption of hostile camps of "pro-gun" and "anti-gun" localities in states who do not have firearms pre-emption legislation. A state firearms pre-emption law will curtail this movement and ensure that state law will be enforced uniformly through the state on an equal basis.

ANALYSIS OF SJR 15

Claim: SJR 15 not needed: Second Amendment provides protection to gun owners.

Consider the opinion handed down in State v. Friel, 508 A.2d 123 (Me. 1986):

> "The Second Amendment is inapplicable to this case; it operates as a restraint solely upon the power of the national government and does not restrict the power of the states to regulate firearms."

Other cases culminating with the same decision:

Miller v. Texas, 153 U.S. 535 (1894)
Presser v. Illinois, 116 U.S. 252 (1886)
Quilici v. Village of Morton Grove, 695 F.2d 261 (1983)
U.S. v. Kozerski, 740 F.2d 952 (1st Cir. 1984)
State v. Sanne, 116 N.H. 583 (1976)
State v. Skinner, 189 Neb.57 (1973)

Additionally, in State v. Skinner, the Nebraska Supreme Court ruled that the Second Amendment to the U.S. Constitution guarantees the right to keep and bear arms to an organized militia not individuals.

This aspect of the Skinner decision is quite similar to the April 13, 1983, opinion of Alaska Attorney General Norman C. Gorsuch on the meaning of Article I, Section 19, of the Alaska Constitution, stating: "The modern judicial view has increasingly found that the guaranteed right to keep and bear arms is not an individually protected right, but rather a collective right which allows the people of the various states to serve in a militia."

Claim: Individual language in SJR 15 will allow felons to own/possess firearms.

Courts in states with "individual" constitutional guarantees have consistently rejected challenges to state statutes restricting or denying the possession of firearms by convicted felons:

(State: Citation; Constitutional Language; Proscription By Felons.)

North Dakota: State v. Ricehill, 415 N.W.2d 481 (1987); "All individuals....": ownership or possession of firearms.

Maine: State v. Friel, 508 A.2d 123 (1986); "Every citizen....": possession of firearm.

Kentucky: Eary v. Commonwealth, 659 S.W.2d 198 (1983); "All men....": possession of handgun.

Alabama: Bristow v. State, 418 So.2d 927 (1982); "Every citizen....": possession of pistol.

Wyoming: Carfield v. State, 649 P.2d 865 (1982); "The right of citizens....": possession of any firearm.

Texas: Shepperd v. State, 586 S.W.2d 500 (1979); "Every citizen....": possession of firearm away from residence.

Louisiana: State v. Amos, 343 So.2d 166 (1977); "Each citizen....": possession of firearms.

Colorado: People v. Blue, 544 P.2d 385 (1975); "The right of no person to keep and bear arms...."; possession of firearms.

Washington: State v. Tully, 89 P.2d 517 (1939); "The individual citizen....": possession of pistol.

In addition to the cases cited above, courts in Georgia, Oregon, and Arizona have also rejected challenges based on state constitutional keep-and-bear-arms provisions to statutes making illegal a felon's possessing a firearm.

Claim: SJR 15 will invalidate reasonable laws currently on the books

Specifically mentioned have been laws regulating the carrying of concealed weapons and proscribing possession of firearms by intoxicated persons. As above, numerous citations can be offered indicating that courts regularly and routinely rule that the right to bear arms is subject to reasonable regulation:

(State: Citation: Decision.)

Wyoming: State v. McAdams, 71 P.2d 1236 (1986); concealed carrying of arms subject to regulation.

Oregon: State v. Delgado, 692 P.2d 610 (1984); legislature may regulate possession and use of arms.

Indiana: Schubert v. DeBard, 398 N.E.2d 1339 (1980); license may be required to carry a pistol concealed.

Oregon: State v. Kessler, 614 P.2d 94 (1980); concealed weapon carrying regulations permissible.

Colorado: People v. Garcia, 595 P.2d 228 (1979); carrying a gun while drunk is outside the protected boundaries of the right to bear arms.

North Carolina: State v. Dawson, 159 S.E.2d 1 (1968); open carrying for unlawful purposes may be prohibited.

Kentucky: Holland v. Commonwealth, 294 S.W.2d 83 (1956); limits carrying of concealed weapons.

Idaho: State v. Hart, 157 P.2d 72 (1945); upholds statutes prohibiting the carrying of concealed weapons.

West Virginia Opinion

COPY

NO. CC972

FILED

JUL 1 1988

STATE OF WEST VIRGINIA
EX REL. CITY OF PRINCETON

V.

HAROLD L. BUCKNER, MAGISTRATE
OF MERCER COUNTY

Mercer County

Certified questions answered.

McHugh, Chief Justice

1. "Where a provision of a constitution is clear in its terms and of plain interpretation to any ordinary and reasonable mind, it should be applied and not construed." Syl. pt. 3, State ex rel. Smith v. Gore, 150 W. Va. 71, 143 S.E.2d 791 (1965).

2. W. Va. Code, 61-7-1 [1975], the statutory proscription against carrying a dangerous or deadly weapon, is overbroad and violative of article III, section 22 of the West Virginia Constitution, known as the "Right to Keep and Bear Arms Amendment." It infringes upon the right of a person to bear arms for defensive purposes, specifically, defense of self, family, home and state, insofar as it prohibits the carrying of a dangerous or deadly weapon for any purpose without a license or other statutory authorization.

3. "The police power is the power of the state, inherent in every sovereignty, to enact laws, within constitutional limits, to promote the welfare of its citizens. The police power is difficult to define precisely, because it is extensive, elastic and constantly evolving to meet new and increasing demands for its exercise for the benefit of society and to promote the general welfare. It embraces the power of the state to preserve and to promote the general welfare and it is concerned with whatever affects the peace, security, safety, morals, health and general welfare of the community. It cannot be circumscribed within narrow limits nor can it be confined to precedents resting alone on conditions of the past. As society becomes increasingly complex and as advancements are made, the police power must of necessity evolve, develop and expand, in the public interest, to meet such conditions." Syl. pt. 5, State ex rel. Appalachian Power Co. v. Gainer, 149 W. Va. 740, 143 S.E.2d 351 (1965).

4. The West Virginia legislature may, through the valid exercise of its police power, reasonably regulate the right of a person to keep and bear arms in order to promote the health, safety and welfare of all citizens of this State, provided that the restrictions or regulations imposed do not frustrate the constitutional freedoms guaranteed by article III, section 22 of the West Virginia Constitution, known as the "Right to Keep and Bear Arms Amendment."

McHugh, Chief Justice:

This action is before this Court upon two certified questions from the Circuit Court of Mercer County. This action concerns the constitutionality of W. Va. Code, 61-7-1 [1975], relating to the carrying of certain types of dangerous or deadly weapons without a license, in light of the adoption of article III, section 22 of the West Virginia Constitution, commonly referred to as "The Right to Keep And Bear Arms Amendment," and whether the legislature may reasonably regulate the right of a person to keep and bear arms in West Virginia. This Court has before it the petition for appeal, all matters of record and the briefs and argument of counsel.[1]

I

The facts in this case are uncontroverted. On March 10, 1987, a municipal police officer in the City of Princeton, in Mercer County, stopped a vehicle and arrested the driver for driving under the influence of alcohol. After searching the driver, the policeman discovered a .22 caliber automatic pistol inside the driver's jacket pocket. The driver was then asked to produce a license allowing him to carry such a weapon, and he subsequently advised the police officer that he did not have such a license.

The police officer presented these facts to a duly elected magistrate of Mercer County, and sought a warrant for the driver's arrest for the DUI offense. The respondent

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[1]This Court also has before it the brief of amicus curiae filed by the National Rifle Association of America.

advised the officer that he would not issue a warrant for carrying a dangerous and deadly weapon against the driver, based upon the magistrate's conclusion that W. Va. Code, 61-7-1 [1975] violated article III, section 22 of the West Virginia Constitution.

The prosecuting attorney then filed a writ of mandamus in the Circuit Court of Mercer County requesting the court to compel the magistrate to issue a warrant against the driver for carrying a dangerous or deadly weapon without a license in violation of W. Va. Code, 61-7-1 [1975].

After a hearing on the matter, the circuit court concluded that when comparing W. Va. Code, 61-7-1 [1975] and W. Va. Const. art. III, § 22, the statute was in conflict with the subsequently adopted constitutional provision. The court further concluded that article III, section 22 of the State Constitution voided that part of W. Va. Code, 61-7-1 [1975] dealing with the carrying of firearms without a license. The court concluded that the legislature may, in some fashion, regulate the right to keep and bear arms so as not to conflict with W. Va. Const. art. III, § 22.

The court then certified the matter to this Court. The following questions were certified:

> 1. Is W. Va. Code Chapter 61, Article 7, Section 1 constitutional in light of the subsequent adoption of Article 3, Section 22 of the Constitution of West Virginia?
>
> 2. May the Legislature of the State of West Virginia by proper legislation regulate the right of a person to keep and bear arms in the State of West Virginia?

II

This case involves the interpretation of article III, section 22 of the West Virginia Constitution and its effect on the constitutionality of the state's weapons statute, W. Va. Code, 61-7-1 [1975], which prohibits the carrying of a dangerous or deadly weapon without a license.[2] Because both of the questions certified to this Court are so closely associated, we choose to discuss them together.

Article III, section 22 of the West Virginia Constitution was approved by the voters of this State on November 4, 1986, and succinctly states: "A person has the right to keep and bear arms for the defense of self, family, home and state, and for lawful hunting and recreational use."

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[2]W. Va. Code, 61-7-1 [1975] provides in pertinent part:

> If any person, without a state license therefor or except as provided elsewhere in this article and other provisions of this Code, carry about his person any revolver or pistol, dirk, bowie knife, slung shot, razor, billy, metallic or other false knuckles, or other dangerous or deadly weapon of like kind or character, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail not less than six nor more than twelve months for the first offense; but upon the conviction of the same person for the second offense in this State, he shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than five years, and, in either case, shall be fined not less than fifty dollars nor more than two hundred dollars[.]

The State of West Virginia has had a long history of statutory provisions regulating the use of weapons. See generally McNeely, The Right of Who to Bear What, When, and Where-- West Virginia Firearms Law v. The Right-to-Bear-Arms Amendment, 89 W. Va. L. Rev. 1125, 1127-41 (1987).[3] An 1882 statute is actually the first statutory provision which is similar to the statute now before us, W. Va. Code, 61-7-1 [1975]. 1882 W. Va. Acts ch. 135, § 7.[4]

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[3]A comprehensive discussion of the statutory, common law and general historic backdrop surrounding this amendment, as well as its possible impact on existing weapons statutes is detailed in this law review article.

[4]The 1882 statute, found in chapter 135, section 7 of the acts of the West Virginia Legislature provided as follows:

> If a person carry about his person any revolver or other pistol, dirk, bowie knife, razor, slung shot, billy, metalic or other false knuckles, or any other dangerous or deadly weapon of like kind or character, he shall be guilty of a misdemeanor, and fined not less than twenty-five nor more than two hundred dollars, and may, at the discretion of the court, be confined in jail not less than one, nor more than twelve months; and if any person shall sell or furnish any such weapon as is hereinbefore mentioned to a person whom he knows, or has reason, from his appearance or otherwise, to believe to be under the age of twenty-one years, he shall be punished as hereinbefore provided; but nothing herein contained shall be so construed as to prevent any person from keeping or carrying about his dwelling house or premises any such revolver or other pistol, or from carrying the same from the place of purchase to his dwelling house, or from his dwelling house to any place where repairing is done, to have it repaired, and back again. And if upon the trial of an indictment for carrying any such pistol, dirk, razor or bowie knife, the

(Footnote Continued)

The 1882 statutory provision was interpreted by this Court in State v. Workman, 35 W. Va. 367, 14 S.E. 9 (1891). The Court in Workman considered several issues regarding the right to bear arms, including the constitutional right to self-defense, the constitutionality, under the due process clause, of the weapons statute in effect in West Virginia at that time and the definition of the term "arms" in the context of the second amendment to the United States Constitution.[5]

(Footnote Continued)

> defendant shall prove to the satisfaction of the jury that he is a quiet and peaceable citizen, of good character and standing in the community in which he lives, and at the time he was found with such pistol, dirk, razor or bowie knife, as charged in the indictment, he had good cause to believe and did believe that he was in danger of death or great bodily harm at the hands of another person, and that he was, in good faith, carrying such weapon for self defense and for no other purpose, the jury shall find him not guilty. But nothing in this section contained shall be so construed as to prevent any officer charged with the execution of the laws of the state from carrying a revolver or other pistol, dirk or bowie knife.

(emphasis added) We need not address the implications of the impermissible burden shifting to the defendant regarding the possession of arms for self-defense purposes. See syl. pt. 4, State v. Kirtley, 162 W. Va. 249, 252 S.E.2d 374 (1978) (once there is sufficient evidence to create a reasonable doubt that the killing resulted from the defendant acting in self-defense, the prosecution must prove beyond a reasonable doubt that the defendant did not act in self-defense); see also Bowman v. Leverette, 169 W. Va. 589, 595, 289 S.E.2d 435, 439 (1982).

[5]The second amendment to the United States Constitution provides: "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."

Despite language embodied in § 7 of the 1882 weapons statute which on its face appeared to grant the right of self-defense only to persons of "good character," see note 4, supra, the Court in Workman found that there was a constitutional right to self-defense guaranteed to all persons under both the due process clause of the fourteenth amendment to the United States Constitution and article III, section 1 of the West Virginia Constitution. 35 W. Va. at 370-71, 14 S.E. at 10-11.

After recognizing a constitutional right to self-defense, the Court addressed the general intent of the second amendment to the United States Constitution and determined that it involved the protection of keeping and bearing arms as a popular or collective right.[6] 35 W. Va. at 372-73, 14 S.E. at 11. The Court concluded that "to regulate a conceded [constitutional] right is not necessarily to infringe the same." Id at 372, 14 S.E. at 11. In so holding, the Court compared a state's regulation of the right to keep and bear arms to the regulation of the freedoms guaranteed under the first amendment to the United States Constitution. Thus, the Court implied that a

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[6]We note that the Court in Workman interpreted the second amendment as though it was a restriction upon state as well as federal legislation. Id. at 372, 14 S.E. at 11. Of course, since our Court's holding in Workman, the Supreme Court of the United States has determined that the second amendment operates as a restraint solely upon the power of the national government and does not restrict the power of the states to regulate firearms. Miller v. Texas, 153 U.S. 535, 538, 14 S. Ct. 874, 875, 38 L. Ed. 812, 813 (1894). "Workman does not stand for the proposition that the second amendment extends to the states, but is rather a decision assuming, but not holding, that the second amendment did apply to the states." McNeely, supra at 1130 n. 29.

constitutional guarantee or right to keep and bear arms would subject laws regulating protected arms to the same standard of scrutiny given laws regulating first amendment freedoms. McNeely, supra at 1130.

Significantly, the Court in Workman defined the term "arms" in a second amendment context as follows:

> [I]n regard to the kind of arms referred to in the [second] amendment, it must be held to refer to the weapons of warfare to be used by the militia, such as swords, guns, rifles, and muskets--arms to be used in defending the State and civil liberty--and not to pistols, bowie-knives, brass knuckles, billies, and other weapons as are usually employed in brawls, street fights, duels and affrays, and are only habitually carried by bullies, blackguards, and desperadoes, to the terror of the community and the injury of the State.

35 W. Va. at 373, 14 S.E. at 11. Clearly, with this definition, the Court refused to include pistols as a constitutionally protected weapon pursuant to its second amendment analysis.

However, it is important to note that the definition of "arms" presented in Workman focuses on the "well regulated militia" language of the second amendment. No parallel language appears in our state constitutional amendment. Because the second amendment does not operate as a restraint upon the power of states to regulate firearms, supra note 6, the definition of "arms" set forth in Workman is not particularly helpful in the case now before us. Moreover, the broad language embodied in our current Right to Keep and Bear Arms Amendment makes any further reexamination of the Workman definition unnecessary.

In several cases where courts have considered the constitutionality of statutes and ordinances in light of constitutional provisions guaranteeing a right to bear arms for defensive purposes, proscriptive laws infringing on that constitutionally protected right have been voided. See, e.g., City of Lakewood v. Pillow, 180 Colo. 20, 23, 501 P.2d 744, 745-46 (1972) (ordinance prohibiting possession of dangerous or deadly weapon unconstitutionally overbroad where it prohibited activities which under police power could not be reasonably classified as unlawful); In Re Brickey, 8 Idaho 597, 599, 70 P. 609, 609 (1902) (statute prohibiting carrying of weapons in any manner in cities, towns or villages was unconstitutional); People v. Zerillo, 219 Mich. 635, 642, 189 N.W. 927, 929 (1922) (statute prohibiting possession of pistol by unnaturalized foreign born resident unconstitutional because of broad term "person" in the constitutional provision); State v. Delgado, 298 Or. 395, 403-04, 692 P.2d 610, 614 (1984) (constitutional right to bear arms violated by statute prohibiting mere possession and mere carrying of a switchblade knife); State v. Blocker, 291 Or. 255, 261-62, 630 P.2d 824, 827 (1981) (statute prohibiting possession of billy club in public unconstitutional infringement of right to bear arms); State v. Kessler, 289 Or. 359, 372, 614 P.2d 94, 100 (1980) (statute prohibiting possession of billy club in home unconstitutional infringement of right to bear arms); State v. Rosenthal, 75 Vt. 295, 299, 55 A. 610, 611 (1903) (ordinance prohibiting carrying dangerous concealed weapon without written permission of mayor or police chief unconstitutional).

The language embodied in art. III, § 22 of our State Constitution is sweeping, and we look to the well established rules of constitutional construction in order to ascertain its meaning.

At the outset we note that "'[t]he fundamental principle in constitutional construction is that effect must be given to the intent of the framers of [the constitutional amendment] and of the people who ratified and adopted it." State ex rel. Brotherton v. Blankenship, 157 W. Va. 100, 108, 207 S.E.2d 421, 427 (1973); see also syl. pt. 4, State ex rel. Smith v. Kelly, 149 W. Va. 381, 141 S.E.2d 142 (1965); syl. pt. 4, State ex rel. Morgan v. O'Brien, 134 W. Va. 1, 60 S.E.2d 722 (1948). Unfortunately, no real statement of legislative intent is before us.

Questions of constitutional construction are governed by the same general rules as those applied in statutory construction. State ex rel. Brotherton v. Blankenship, 157 W. Va. 100, 108, 207 S.E.2d 421, 427 (1973). It is a well established principle of constitutional construction that "[w]here a provision of a constitution is clear in its terms and of plain interpretation to any ordinary and reasonable mind, it should be applied and not construed." Syl. pt. 3, State ex rel. Smith v. Gore, 150 W. Va. 71, 143 S.E.2d 791 (1965). See also Ray v. McCoy, ___ W. Va. ___, ___, 321 S.E.2d 90, 92 (1984).

Moreover, a cardinal rule of statutory construction, which of course applies to the construction of constitutional provisions as well, is that a statute, or in this case a constitutional amendment, must be considered in its entirety, with effect given, if possible, to every word

or phrase within the provision. Diamond v. Parkersburg-Aetna Corp., 146 W. Va. 543, 553-54, 122 S.E.2d 436, 443 (1961). A constitutional amendment will supersede any inconsistent portions of antecedent constitutional or statutory provisions, as "'the latest expression of the will of the people.'" State ex rel. Kanawha County Building Commission v. Paterno, 160 W. Va. 195, 203, 233 S.E.2d 332, 337 (1977). (citation omitted)

Because the constitutional provision in the case before us is clear and unambiguous, this Court must apply the amendment rather than construe it. See discussion supra. Thus, the meaning of a phrase or terms would generally be sought in the plain and ordinary meaning of the words themselves. State ex rel. Dunbar v. Stone, 159 W. Va. 331, 334-35, 221 S.E.2d 791, 793 (1976) (and cases cited therein).

W. Va. Code, 61-7-1 [1975] is written as a total proscription of the carrying of a dangerous or deadly weapon without a license or other authorization. W. Va. Code, 61-7-1 [1975] thus prohibits the carrying of weapons for defense of self, family, home and state without a license or statutory authorization. Article III, section 22 of the West Virginia Constitution, however, guarantees that a person has the right to bear arms for those defensive purposes. Thus, the statute operates to impermissibly infringe upon this constitutionally protected right to bear arms for defensive purposes. See City of Lakewood v. Pillow, 180 Colo. at 23, 501 P.2d at 745. We discuss infra the legislature's power to reasonably regulate the exercise of the right to bear arms; however, W. Va. Code, 61-7-1

[1975] prohibits the exercise of this right by infringing upon the constitutional right to bear arms for the defensive purposes guaranteed in the amendment. See In Re Brickey, 8 Idaho at 599, 70 P. at 609.

In considering the constitutionality of a particular statutory proscription against the possession of a certain weapon in public in light of the right to bear arms amendment of the state, the Supreme Court of Oregon determined that the statute was overbroad and therefore unconstitutional. State v. Blocker, 291 Or. 255, 261, 630 P.2d 824, 827 (1981). The court's insightful discussion of the overbreadth doctrine is applicable in this case:

> An 'overbroad' law, as that term has been developed by the United States Supreme Court, is not vague, or need not be. Its vice is not failure to communicate. Its vice may be clarity. For a law is overbroad to the extent that it announces a prohibition that reaches conduct which may not be prohibited. A legislature can make a law as 'broad' and inclusive as it chooses unless it reaches into constitutionally protected ground. The clearer an 'overbroad' statute is, the harder it is to confine it by interpretation within its constitutionally permissible reach.

Id.

Based upon the foregoing, we conclude that the language embodied in W. Va. Code, 61-7-1 [1975] sweeps so broadly as to infringe a right that it cannot permissibly reach, in this case, the constitutional right of a person to keep and bear arms in defense of self, family, home and state, guaranteed by art. III, § 22. Accordingly, W. Va. Code, 61-7-1 [1975], the statutory proscription against carrying a dangerous or deadly weapon, is overbroad and violative of article III, section 22 of the West Virginia

Constitution, known as the "Right to Keep and Bear Arms Amendment." It infringes upon the right of a person to bear arms for defensive purposes, specifically, defense of self, family, home and state, insofar as it prohibits the carrying of a dangerous or deadly weapon for any purpose without a license or other statutory authorization.

The question remains whether the State may reasonably regulate the right of a person to keep and bear arms in this State.[7]

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[7]The principal statute involved in this portion of our discussion is W. Va. Code, 61-7-2 [1988], which delineates the procedures to obtain a license. W. Va. Code, 61-7-2 [1988] provides in pertinent part:

> (a) Any person desiring to obtain a state license to carry any such weapon as is mentioned in the first section of this article, within one or more counties in this state, shall first publish a notice setting forth his name, residence and occupation, and that on a certain day he will apply to the circuit court of his county for such state license. Such notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such person resides. Such notice shall be published at least ten days before such application is made. After the publication of such notice and at the time stated in such notice, upon application to such court, it may grant such license to such person, in the following manner, to wit:
>
> (b) The applicant shall file with such court his application in writing, duly verified, which application shall show, as basic qualifications, as follows:
>
> (1) That such applicant is a

(Footnote Continued)

We stress that our holding above in no way means

(Footnote Continued)
citizen of the United States of America;

(2) That the applicant has been a bona fide resident of this state for at least one year next prior to the date of such application, and of the county sixty days next prior thereto;

(3) That the applicant is over eighteen years of age; that he is a person of good moral character, of temperate habits, not addicted to intoxication, not addicted to the use of any controlled substance, and has not been convicted of a felony or of any offense involving the use on his part of such weapon in an unlawful manner, and shall prove to the satisfaction of the court that he is gainfully employed in a lawful occupation and has been so engaged for a period of five years next preceding the date of his application;

(4) The purpose or purposes for which the applicant desires to carry such weapon, the necessity therefor, and the county or counties in which such license is desired to be effective; and

(5) That the applicant has qualified under minimum requirements for handling and firing such firearms. These minimum requirements are those promulgated by the department of natural resources and attained under the auspices of the department of natural resources: Provided, That the court may waive this requirement in the case of a renewal applicant who has previously qualified.

(c) Upon the hearing of such application the court shall hear evidence upon all matters stated in such application and upon any other matter deemed pertinent by the court, and if such court be satisfied from the proof that there is good reason and cause for such person to carry such weapon, and all of the other conditions of this article be complied with, the court, or

(Footnote Continued)

that the right of a person to bear arms is absolute. See cases cited infra at pp. 15-16. Other jurisdictions concluding that state statutes or municipal ordinances have violated constitutional provisions guaranteeing a right to bear arms for defensive purposes, though not specific in what ways this is to be done, have recognized that a government may regulate the exercise of the right, provided the regulations or restrictions do not frustrate the guarantees of the constitutional provision. See, e.g., In Re Brickey, 8 Idaho 597, 599, 70 P. 609, 609 (1902); City of Las Vegas v. Moberg, 82 N.M. 626, 627, 485 P.2d 737, 738 (Ct. App. 1971). Particularly, on three occasions, the Supreme Court of Oregon, in striking statutes as violative of the state's constitutional right to bear arms, has repeatedly stressed

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> the judge thereof in vacation, may grant such license for such purposes, and no other, as such court, or the judge in vacation, may set out in the license (and the word 'court' as used in this article shall include the circuit judge thereof, acting either in term or vacation); but, before such license shall be effective such person shall pay to the sheriff, and the court shall so certify in its order granting the license, the sum of fifty dollars, and shall also file a bond with the clerk of such court, in the penalty of five thousand dollars, with good security, signed by a responsible person or persons, or by some surety company, authorized to do business in this state, conditioned that such applicant will not carry such weapon except in accordance with his application and as authorized by the court, and that he will pay all costs and damages accruing to any person by the accidental discharge or improper, negligent or illegal use of such weapon or weapons.

that the court's holdings should not be construed to mean that an individual has an "unfettered right" to possess or use constitutionally protected arms in any way they choose. The Oregon court has consistently emphasized that the legislature may regulate such possession and use. State v. Delgado, 298 Or. at 403, 692 P.2d at 614; State v. Blocker, 291 Or. at 259, 630 P.2d at 826; State v. Kessler, 289 Or. at 370; 614 P.2d at 99.

The State, through exercise of its police power, is vested with the authority to enact laws, within constitutional limits, to promote the general welfare of its citizenry. See generally State ex rel. Appalachian Power Co. v. Gainer, 149 W. Va. 740, 143 S.E.2d 351 (1965); syl. pt. 5, Farley v. Graney, 146 W. Va. 22, 119 S.E.2d 833 (1960). In syllabus point 5 of Gainer, this Court defines the State's police power as follows:

> The police power is the power of the state, inherent in every sovereignty, to enact laws, within constitutional limits, to promote the welfare of its citizens. The police power is difficult to define precisely, because it is extensive, elastic and constantly evolving to meet new and increasing demands for its exercise for the benefit of society and to promote the general welfare. It embraces the power of the state to preserve and to promote the general welfare and it is concerned with whatever affects the peace, security, morals, health and general welfare of the community. It cannot be circumscribed within narrow limits nor can it be confined to precedents resting alone on conditions of the past. As civilization becomes increasingly complex and as advancements are made, the police power must of necessity evolve, develop and expand, in the public interest, to meet such conditions.

See also Security National Bank & Trust Co. v. First W. Va. Bancorp., Inc., 166 W. Va. 775, 780, 277 S.E.2d 613, 616 (1981).

Our research has revealed that courts throughout the country have recognized that the constitutional right to keep and bear arms is not absolute, and these courts have uniformly upheld the police power of the state through its legislature to impose reasonable regulatory control over the state constitutional right to bear arms in order to promote the safety and welfare of its citizens. See, e.g., Bristow v. State, 418 So. 2d 927, 930 (Ala. Crim. App.), cert. denied (Ala. 1982); People v. Blue, 190 Colo. 95, 102-03, 544 P.2d 385, 390-91 (1975); State v. Rupp, 282 N.W.2d 125, 130 (Iowa 1979); In re Atkinson, 291 N.W.2d 396, 399 (Minn. 1980); State v. Angelo, 3 N.J. Misc. 1014, 1015, 130 A. 458, 459 (1925); State v. Dees, 100 N.M. 252, 254-55, 669 P.2d 261, 263-64 (Ct. App. 1983); Commonwealth v. Ray, 218 Pa. Super. 72, ___, 272 A.2d 275, 279 (1970); Carfield v. State, 649 P.2d 865, 871 (Wyo. 1982). We stress, however, that the legitimate governmental purpose in regulating the right to bear arms cannot be pursued by means that broadly stifle the exercise of this right where the governmental purpose can be more narrowly achieved. City of Lakewood, supra.

At least forty-two jurisdictions have constitutional provisions guaranteeing a right to bear arms; however, most are distinguishable from art. III, § 22 either in their failure to specifically recognize the right to self-defense, or in their express recognition that the constitutional provision is subject to legislative regulation. See R. Dowlut & J. Knoop, State Constitutions and

the Right to Keep and Bear Arms, 7 Okla. City U.L. Rev. 177, 236-240 (1982). The State, in the appendix to its brief, cites thirteen states which, like art. III, § 22, grant a rather broad, unrestrictive right to bear arms for the defense of self and the state.[8] With the exception of

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[8]The following is a list of the jurisdictions with constitutional provisions, quoted below, guaranteeing a right to bear arms, which are worded similarly to West Virginia's amendment. Of particular note is the Delaware constitutional provision which is nearly identical to West Virginia's constitutional guarantee, except for the insertion of the word "lawful" before the word "hunting" in the West Virginia amendment.

> Alabama: "That every citizen has a right to bear arms in defense of himself and the state." Ala. Const. art. I, § 26.
>
> Arizona: "The right of the individual citizen to bear arms in defense of himself or the State shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain, or employ an armed body of men." Ariz. Const. art. II, § 26.
>
> Connecticut: "Every citizen has a right to bear arms in defense of himself and the state." Conn. Const. art. I, § 15.
>
> Delaware: "A person has the right to keep and bear arms for the defense of self, family, home and State, and for hunting and recreational use." Del. Const. art. I, § 20.
>
> Indiana: "The people shall have a right to bear arms, for the defense of themselves and the State." Ind. Const. art. I, § 32.
>
> Michigan: "Every person has a right to keep and bear arms for the defense of himself and the state." Mich. Const. art. I, § 6.

(Footnote Continued)

Vermont, which imposes no significant regulation, the

(Footnote Continued)

New Hampshire: "All persons have the right to keep and bear arms in defense of themselves, their families, their property and the state." N.H. Const. pt. 1, art. 2-a.

Oregon: "The people shall have the right to bear arms for the defence [sic] of themselves, and the State, but the Military shall be kept in strict subordination to the civil power[.]" Or. Const. art. I, § 27.

Pennsylvania: "The right of the citizens to bear arms in defence [sic] of themselves and the State shall not be questioned." Pa. Const. art. I, § 21.

South Dakota: "The right of the citizens to bear arms in defense of themselves and the state shall not be denied." S.D. Const. art. VI, § 24.

Utah: "The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; nothing herein shall prevent the legislature from defining the lawful use of arms." Utah Const. art. I, § 6.

Vermont: "That the people have a right to bear arms for the defence [sic] of themselves and the State--and as standing armies in time of peace are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to and governed by the civil power." Vt. Const. ch. 1, art. 16.

Washington: "The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed

(Footnote Continued)

remaining jurisdictions regulate the ownership and use of arms in general, particularly handguns.[9]

Again excluding Vermont, certain statutory regulations are common to most of the jurisdictions having constitutional provisions comparable to West Virginia's. For instance, the prohibition against the possession or ownership of handguns by persons previously convicted of a felony or other specified crime is widely accepted.[10] Four states prohibit the open or concealed carrying of handguns without a license or permit; several others specifically prohibit carrying a concealed handgun without a license, while at least one of these jurisdictions, namely, Arizona, further prohibits carrying a handgun in public establishments or certain specified public places.[11]

(Footnote Continued)
body of men." Wash. Const. art. I, § 24.

Wyoming: "The right of citizens to bear arms in defense of themselves and of the state shall not be denied." Wyo. Const. art. I, § 24.

[9]Although Vermont imposes no significant restriction on the carrying of handguns, it nevertheless has regulations prohibiting the possession or carrying of handguns and other deadly weapons with intent to injure another person. Vt. Stat. Ann. tit. 13, § 4003 (1974).

[10]Ala. Code § 13A-11-72 (1982); Conn. Gen. Stat. Ann. § 29-29 (West 1975); Ind. Code Ann. § 35-47-2-3 (Burns 1985); Mich. Comp. Laws Ann. § 28.422 (West Supp. 1988); N.H. Rev. Stat. Ann. § 159:3 (1981); Or. Rev. Stat. § 166.270 (1987); Pa. Stat. Ann. tit. 18, § 6105 (Purdon 1983); S.D. Codified Laws Ann. § 23-7-7.1 (Supp. 1987); Utah Code Ann. § 76-10-513 (Supp. 1987); Wash. Rev. Code Ann. § 9.41.040 (West 1988); Wyo. Stat. § 6-8-104 (1977, 1986).

[11]See, e.g., Ala. Code § 13A-11-52, 13A-11-73 (1982); Ariz. Rev. Stat. Ann. § 13-3102 (Supp. 1987); Conn. (Footnote Continued)

West Virginia does not regulate the carrying of a weapon on one's own premises nor prohibit the carrying of such weapon to and from places where they may be lawfully used, i.e., target-shooting clubs and hunting grounds. W. Va. Code, 61-7-3 [1987].[12] Pursuant to W. Va. Code,

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(Footnote Continued)
Gen. Stat. Ann. § 29-35 (West Supp. 1988); Ind. Code Ann. § 35-47-2-1 (Burns Supp. 1988); Mich. Comp. Laws Ann. § 28.422, § 750.227 (West Supp. 1988); N.H. Rev. Stat. Ann. § 159:4 (1977); Or. Rev. Stat. § 166.250 (1987); Pa. Stat. Ann. tit. 18, § 6106 (Purdon 1983 and Supp. 1988); S.D. Codified Laws Ann. § 22-14-9 (Supp. 1987); Utah Code Ann. § 76-10-513 (Supp. 1987); Wash. Rev. Code Ann. § 9.41.050 (1988); Wyo. Stat. § 6-8-104 (1977, 1986).

Alabama, Connecticut, Indiana and Michigan are the four jurisdictions which prohibit the unconcealed (or open) or concealed carrying of handguns without a license or permit.

[12] W. Va. Code, 61-7-3 [1987] provides in pertinent part:

> Nothing in this article shall prevent any person from carrying any such weapon as is mentioned in the first section of this article, in good faith and not having felonious purposes, upon his own premises; nor shall anything herein prevent a person from carrying any such weapon, unloaded, from the place of purchase to his home or residence, or to a place of repair and back to his home or residence; . . . nor shall anything herein prevent any member of a properly organized target-shooting club authorized by law to obtain firearms by purchase or requisition from this state, or from the United States for the purpose of target practice, from carrying any revolver or pistol mentioned in this article, unloaded, from his home or place of residence to a place of target practice, and from any such place of target practice back to his home or residence, for using any such weapon at such place of target practice in training and improving his skill in the use of such weapons[.]

61-7-2 [1988], any person desiring to obtain a license to carry a weapon must meet the following requirements: (1) is a citizen of the United States: (2) has been a resident of West Virginia for at least one year next prior to the date of application; (3) is an adult of good moral character and temperate habits; (4) has not been convicted of any felony or handgun offense; (5) has been employed for five years; (6) is qualified to handle handguns; (7) has "good reason and cause" to carry such weapon, and (8) must post a $5000 surety bond.

The regulatory requirements, embodied in W. Va. Code, 61-7-2 [1988], rather than being unique, are for the most part found in the fourteen states with similar constitutional provisions.[13] Of the three states whose constitutional provisions most closely resemble our own, Connecticut, Indiana, and Michigan, two require the licenses to be a United States citizen and resident of the state;[14] all three require that the licensee be of good character or a "suitable person;"[15] two require that the licensee be an

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[13] See, e.g., Ala. Code §§ 13A-11-72 to -75, as amended; Conn. Gen. Stat. Ann. §§ 29-28,-29,-33, as amended; Ind. Code Ann. §§ 35-47-2-3, 35-47-1-7, as amended; Mich. Comp. Laws Ann. §§ 28.422,-.426, as amended; N.H. Rev. Stat. Ann. §§ 159:3,-:6, as amended, Or. Rev. Stat. §§ 166.270,-290, as amended; Pa. Stat. Ann. tit. 18, §§ 6105, 6109, as amended; S.D. Codified Laws Ann. § 23-7-7.1 (Supp. 1987); Utah Code Ann. § 76-10-513 (Supp. 1987); Wash. Rev. Code Ann. § 9.41.070 (1988) Wyo. Stat. § 6-8-104 (1977, 1986).

[14] See Conn. Gen. Stat. Ann. §§ 29-33 and -28, as amended, respectively, and Mich. Comp. Laws Ann. § 28.422 (West Supp. 1988).

[15] Conn. Gen. Stat. Ann. § 29-28 (West 1975); Ind. (Footnote Continued)

adult;[16] all three prohibit possession by persons convicted of a felony;[17] two require that the licensee demonstrate good cause or proper reason to carry a weapon;[18] and one requires that a licensee not be addicted to drugs or alcohol.[19]

It is important to note that the state of Delaware recently adopted a constitutional amendment strikingly similar to our West Virginia provision, see Del. Const. art. I, § 20, quoted in note 8, supra. The Delaware weapons statute, Del. Code Ann. tit. 11, § 1441 (1987) is analogous to our weapons regulations in that it requires an applicant to obtain a license in order to carry a concealed weapon. Similar to W. Va. Code, 61-7-2 [1988], the statute further provides that an applicant be of "full age, sobriety and good moral character" as well as demonstrate that the carrying of such a weapon is necessary for the protection of the applicant himself, his property or both in order to be so licensed.

(Footnote Continued)
Code Ann. § 35-47-2-3 (Burns 1985); Mich. Comp. Laws Ann. § 28.426 (West Supp. 1988).

[16] Ind. Code Ann. § 35-47-2-3 (Burns 1985); Mich. Comp. Laws Ann. 28.422 (West Supp. 1988).

[17] See note 10, supra.

[18] Ind. Code Ann. § 35-47-2-3 (Burns 1985); Mich. Comp. Laws Ann. § 28.426 (West Supp. 1988).

[19] Ind. Code Ann. § 35-47-1-7 (Burns 1985).

We further note that Utah, like West Virginia, requires applicants for a weapon license to have an employment history. Utah Code Ann. § 76-10-513 (Supp. 1987).

Thus, our research reveals that the only requirement unique to West Virginia is that the licensee post a $5000 surety bond.

Based upon the foregoing, we conclude that the right to keep and bear arms guaranteed by W. Va. Const. art. III, § 22 is not unlimited. The individual's right to keep and bear arms and the State's duty, under it police power, to make reasonable regulations for the purpose of protecting the health, safety and welfare of its citizens must be balanced. See People v. Blue, 190 Colo. 95, 102-03, 544 P.2d 385, 390-91 (1975). Accordingly, the West Virginia legislature may, through the valid exercise of its police power, reasonably regulate the right of a person to keep and bear arms in order to promote the health, safety and welfare of all citizens of this State, provided that the restrictions or regulations imposed do not frustrate the constitutional freedoms guaranteed by article III, section 22 of the West Virginia Constitution, known as the "Right to Keep and Bear Arms Amendment." However, a governmental purpose to control or prohibit certain activities, which may be constitutionally subject to state regulation under the police power, may not be achieved by means which sweep unnecessarily broadly and thereby invade the realm of protected freedoms, such as the right to keep and bear arms guaranteed in our State Constitution. See City of Lakewood v. Pillow, 180 Colo. 20, 23, 501 P.2d 744, 745 (1972).

For the foregoing reasons, we answer the first certified question in the negative and the second in the affirmative and remand this action to the Circuit Court of Mercer County for further proceedings consistent with this opinion.

Having answered the certified questions, this case is dismissed from the docket of this Court.

Certified questions answered.

Attorney General Grace Berg Schaible, left, and UAA official Lee Gerlach met in Kenai last week.

Group eyes gun control for Alaska

There may be a need for a cool-down period in the purchase of guns in Alaska, but members of the state's Criminal Justice Operations Group are afraid that the National Rifle Association and grassroots sentiment against gun control in Alaska make such legislation unlikely.

The members of the group held their monthly meeting last week at Kenai City Hall.

Clipped to their agendas for the meeting was a newspaper report of the Anchorage shooting case in which William O'Shea, who was under a court domestic order to leave Renee Vega alone, stands accused of killing her with a handgun he bought a short while before the shooting occurred at a local store.

Many people see this as a case where a "cooling-off period" might have helped, said Larry Weeks, head of the Department of Law's Criminal Division. But, he said, "that's a big step in this state to sort of take a position on something like this."

Some states have laws that require gun buyers to wait a few days after purchase to pick up the weapon.

Art English, commissioner of the Department of Safety, said that "the NRA has already put me on notice" regarding gun legislation. He said the NRA's national lobby will probably aim for legislation in the next Alaska Legislature to seek banning restrictions on firearms.

English said he agreed with Weeks that a cool-down period might have helped in a case like the Vega killing, but "it's going to be darn tough" to achieve. He added later that he was also unconvinced that it would work.

Myra Munson, commissioner of Health and Social Services, suggested that it might be possible to deal with NRA pressures in the context of a "horror story" like the Vega case. She said the state should consider introducing legislation so that it would be on the pro end of a resulting public debate, rather than let the NRA initiate proposals and place the state in the negative position of attacking the bills.

Dana Fabe, head of the Public Defender Agency, said legislation might achieve two protections: postponing the effects of immediate anger and allowing time for a routine check of an individual's record before giving that person possession of a gun.

Weeks seemed to agree, saying that the best defense might be a good offense. "They can tell me I'm wrong all day, but they're not going to convince me," he said. "I can get shot at by those people all day."

He added that O'Shea had a record of two felony convictions and "at least half a dozen misdemeanors" when he bought the gun.

However, Weeks went on to suggest that the group consider nothing more than exploration of the idea at this time. "Before we take a position for the administration, we better make sure the administration is involved in all this," he said.

John Havelock, an ex-attorney general who is the group's coordinator, and English expressed strong reservations about any such legislation having a chance of becoming law in Alaska. English said that the opposition, including the NRA, makes politicians afraid of gun control.

Attorney General Grace Berg Schaible was more optimistic, saying, "There is an increasing body of people who are concerned about the Saturday night specials (small handguns)."

Fabe said, "You need 'Mothers Against Saturday Night Specials'," or some such strong grassroots support.

Duane Udland, outgoing Soldotna chief of police, agreed about the strength of the opposition. "I think the NRA is going to flood this state... They've got a lot of arguments about these things with a lot of common sense about why these things don't work," he said.

The group took no action on the matter. English said, "The stands we take, we want to make darn sure we want to take."

The Criminal Justice Operations Group is more of an administration inter-communications and brainstorming group than an action group, but Havelock, after the meeting, said its discussions often lead to consensus or action later on.

The group did go on record last year, he said, in unanimous opposition to an NRA proposal for a constitutional amendment against gun control.

Taking a last look back at the O'Shea case as Monday's group meeting ended, Munson said that the nature of the case meant that "somebody's got to be blamed." But she said the NRA would make certain the public debate is not framed around the idea that there is a need for a cooling-off period in gun sales.

No representatives of the NRA spoke at the meeting.

Idaho HJR-7

§ 10. Right of assembly. — The people shall have the right to assemble in a peaceable manner, to consult for their common good; to instruct their representatives, and to petition the legislature for the redress of grievances.

Comp. provisions: Cal. Art. 1, § 3.
Mont. Art. 2, § 26.
Ore. Art. 1, § 26.
Wyo. Art. 1, § 21.

ANALYSIS

Deprivation of right.
Newspaper report of assembly.

Deprivation of Right.

Labor union was not deprived of right of assembly, contrary to this section, where it was enjoined from picketing and displaying sign which announced that plaintiff's store was unfair to labor union where the employees of the store did not belong to the union, did not participate in picket line, and were not involved in any labor dispute with the plaintiff. J. J. Newberry Co. v. Retail Clerks Int'l Ass'n, 78 Idaho 85, 298 P.2d 375 (1956), rev'd, 352 U.S. 987, 77 S. Ct. 386, 1 L. Ed. 2d 367 (1957).

The assembly of defendants for the purpose of threatening other persons with assault and battery after an automobile chase of such persons by defendants across a state line and through the city streets was not an assembly in a peaceable manner within the protection of this section. Lewiston v. Frary, 91 Idaho 322, 420 P.2d 805 (1966).

Newspaper Report of Assembly.

Newspapers had a conditional privilege to publish with accuracy the proceedings of a public gathering called for the purpose of inducing a district judge to call a grand jury. Borg v. Boas, 231 F.2d 768 (9th Cir. 1956).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 281; Vol. II, p. 1595.

16A Am. Jur. 2d, Constitutional Law, §§ 526-532.

16 C.J.S. Constitutional Law, § 214.

Constitutional questions involved in conviction based on failure or refusal to obey police officer's order to move on, on street. 65 A.L.R.2d 1152.

Participation of student in demonstration on or near campus as warranting imposition of criminal liability for breach of peace, disorderly conduct, trespass, unlawful assembly, or similar offense. 32 A.L.R.3d 551.

Peaceful picketing of private residence. 42 A.L.R.3d 1353.

§ 11. Right to keep and bear arms. — The people have the right to keep and bear arms, which right shall not be abridged; but this provision shall not prevent the passage of laws to govern the carrying of weapons concealed on the person nor prevent passage of legislation providing minimum sentences for crimes committed while in possession of a firearm, nor prevent the passage of legislation providing penalties for the possession of firearms by a convicted felon, nor prevent the passage of any legislation punishing the use of a firearm. No law shall impose licensure, registration or special taxation on the ownership or possession of firearms or ammunition. Nor shall any law permit the confiscation of firearms, except those actually used in the commission of a felony.

Compiler's notes. As originally adopted, this section read as follows:

"§ 11. Right to bear arms. — The people have the right to bear arms for their security and defense; but the legislature shall regulate the exercise of this right by law." This section was amended as proposed by S.J.R. No. 116 (S.L. 1978, p. 1031) and ratified at the general election on November 7, 1978, to read as it now appears.

Cross ref. Fish and game law, restrictions on carrying uncased shotguns and rifles, § 36-401.

Comp. provisions: Mont. Art. 2, § 12.
Ore. Art. 1, § 27.
Utah. Art. 1, § 6.
Wyo. Art. 1, § 24.

Cited in: Fall Creek Sheep Co. v. Walton, 24 Idaho 760, 136 P. 438, 1915C Ann. Cas., 1252 (1913).

ANALYSIS

Legislative regulation.
Municipal regulations.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO: CCR4

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February 12, 1989

Commissioner William G. Demmert
Department of Education
P.O. Box F
Juneau, Alaska 99811

Dear Commissioner Demmert:

You have asked whether school districts will be able to prohibit the possession of weapons on school property if the Alaska constitution is amended as set out SJR 4. It is our opinion that the proposed amendment could present a constitutional impediment to adoption of laws that infringe on the right to keep or bear arms, including regulation of weapons on school grounds.

As set out more fully in the attached letter to Senator Jan Faiks, to support a finding of constitutionality in the face of a challenge based on the proposed amendment, each law infringing on the right to keep and bear arms must be based on a compelling state interest. Although we believe that a compelling state interest can be shown for prohibiting young children from having weapons, we are concerned that the new amendment could limit the prohibiting of adults, or older students, from having weapons on school property.

We must emphasize that the legal effects of the proposed constitutional amendment can not be predicted with any degree of certainty. However, based on the broad reading the Alaska court gives to the provisions of our constitution, and the lack of any language in the amendment giving the legislature the authority to regulate the exercise of the constitutional right, it is much more likely than at present that laws regulating firearms will be declared unconstitutional.

The constitutional hurdle could easily be avoided if the legislature amends the language of SJR 4 to specifically reserve the right to reasonably regulate arms. Language that would accomplish this result is set out at page 37 of the attached

letter, as well as in the attached document entitled "Alternative Methods of Reserving the Right of the Legislature to Reasonably Regulate Arms in SJR 4."

Please let us know if you have any remaining questions about this important issue.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: _____
Laurie H. Otto
Assistant Attorney General

Attachments: Letter to Senator Faiks, January 29, 1989
"Alternative Methods of Reserving the Right of the Legislature to Reasonably Regulate Arms in SJR4"

ALTERNATIVE METHODS OF RESERVING THE RIGHT OF THE LEGISLATURE TO REASONABLY REGULATE ARMS IN SJR 4

The individual right to keep and bear arms shall not be denied or infringed by the state or a political subdivision of the state,

1. ... except that the state or a political subdivision of the state may regulate the manner in which arms may be kept, borne, or used.

2. ... except that the state or a political subdivision of the state may reasonably regulate the manner in which arms may be kept, borne, or used.

3. ... except that the exercise of this right may be regulated by law.

4. ... except that the exercise of this right may be reasonably regulated by law.

5. ... except that the state or a political subdivision of the state may regulate the manner in which arms may be kept, borne, or used. No law shall impose licensure, registration or special taxation on the ownership or possession of firearms.

6. ... except that the state or a political subdivision of the state may reasonably regulate the manner in which arms may be kept, borne, or used. No law shall impose licensure, registration or special taxation on the ownership or possession of firearms.

7. ... except that the exercise of this right may be regulated by law. No law shall impose licensure, registration or special taxation on the ownership or possession of firearms.

8. ... except that the exercise of this right may be reasonably regulated by law. No law shall impose licensure, registration or special taxation on the ownership or possession of firearms.

ANALYSIS OF PROPOSED ALASKA CONSTITUTIONAL GUARANTEE TO KEEP AND BEAR ARMS

"The individual right to keep and bear arms shall not be denied or infringed by the state or any subdivision thereof."

This proposal protects the traditional lawful rights that gun owners assumed were guaranteed in Alaska.

The Individual Right

The proposed amendment guarantees an individual right. Nevertheless, a person in a high-risk category would not enjoy this right. That, e.g., felons, minors, and the mentally infirm are treated differently has gained such universal acceptance that commentators mention only in passing that such persons do not enjoy the full benefits of this right. Dowlut & Knoop, State Constitutions and the Right to Keep and Bear Arms, 7 Okl. City Univ. L. Rev. 177, 191 & n. 71 (1982). See also Richardson v. Ramirez, 418 U.S. 24 (1974) (felons have no right to vote).

The constitutions of 42 states contain a right to bear arms. These guarantees have not been an obstacle to reasonable regulation. Statutes prohibiting possession of firearms, e.g., by convicted felons have been consistently upheld. Examples of such decisions include State v. Ricehill, 415 N.W.2d 481 (N.D. 1987); Carfield v. State, 649 P.2d 865 (Wyo. 1982); State v. Fant, 53 Oh. App.2d 87, 371 N.E.2d 588 (1977); State v. Amos, 343 So. 2d 166 (La. 1977); State v. Cartwright, 246 Ore. 121, 418 P.2d 822 (1966). Over a century ago a court upheld a conviction under a statute forbidding selling, giving, or lending weapons to minors. Coleman v. State, 32 Ala. 581 (1858).

Keep and Bear Arms

The term "arms" refers only to such arms as are commonly kept by the people. Constitutionally protected arms would include the rifle, shotgun, and pistol. State v. Kessler, 289 Ore. 359, 614 P.2d 94 (1980); Taylor v. McNeal, 523 S.W.2d 148, 150 (Mo.App. 1975); Rinzler v. Carson, 262 So.2d 661, 666 (Fla. 1972); State v. Shelby, 90 Mo. 302, 2 S.W. 468 (1886); State v. Duke, 42 Tex. 455, 458-59 (1875); State v. Andrews, 50 Tenn. 165, 8 Am. Rep. 8 (1871); Nunn v. State, 1 Ga. (1 Kel.) 243 (1846).

Bombs, cannon, poison gas and other arms of mass destruction or which are exclusively used by the organized military do not come under the protection of the constitutional umbrella. State v. Kessler, Rinzler v. Carson, State v. Kerner, State v. Shelby, supra.

A person may only keep or bear constitutionally protected arms. The right to keep arms includes the following:

> What, then, is involved in this right of keeping arms? It necessarily involves the right to purchase and use them in such a way as is usual, or to keep them for the ordinary purposes to which they are adapted ... The right to keep arms, necessarily involves the right to purchase them, to keep in a state of efficiency for use, and to purchase and provide ammunition suitable for such arms, and to keep them in repair. Andrews v. State, 50 Tenn. 165, 178, 8 Am. Rep. 8, 13 (1871).

The bearing of constitutionally protected arms may be regulated. Concealed carrying statutes, e.g., are routinely upheld. State v. McAdams, 714 P.2d 1236 (Wy. 1986); State v. Kessler, 289 Ore. 359, 614 P.2d 94, 99 (1980); Holland v. Commonwealth, 294 S.W.2d 83, 85 (Ky. 1956). Even open carrying for an unlawful purpose may be prohibited. State v. Dawson, 272 N.C. 535, 159 S.E.2d 1 (1968). A license may be required to carry a pistol concealed. Schubert v. DeBard, 73 Ind. Dec. 510, 398 N.E.2d 1339 (Ind. App. 1980). Carrying a gun while drunk is outside the protected boundaries of the right to bear arms. People v. Garcia, 197 Colo. 550, 595 P.2d 228 (1979) (en banc). One may not be armed in court, church, at elections or concerts. Hill v. State, 53 Ga. 473, 476 (1874). Unauthorized parading with arms may be prohibited. Commonwealth v. Murphy, 166 Mass. 171, 44 N.E. 138 (1896). Discharging a firearm without justification within the city limits is not constitutionally protected conduct. State v. Johnson, 76 S.C. 39, 56 S.E. 544 (1907).

The traditional lawful defense of self, family, and home has ancient roots. Halbrook, The Jurisprudence of the Second and Fourteenth Amendment, 4 Geo. Mason L. Rev. 1, 5 (1981); Caplan, The Right of the Individual to Bear Arms: A Recent Judicial Trend, 1982 Detroit Col. L. Rev. 789, 794; Dowlut & Knoop, State Constitutions and the Right to Keep and Bear Arms, 7 Okl. City Univ. L. Rev. 177, 183 (1982); Malcolm, The Right of the People to Keep and Bear Arms: The Common Law Tradition, 10 Hastings Const. L. Q. 285 (1983).

There is no social interest in preserving the lives and wellbeing of criminal aggressors at the cost of their victims. The only defensible policy society can adopt is one that will operate as a sanction against unlawful aggression. The police have no duty to protect the individual. Warren v. District of Columbia, 444 A.2d 1 (D.C. App. 1981) (en banc). One court reduced this principle of law to the succinct comment that "there is no constitutional right to be protected by the state against being murdered by criminals or madmen." Bowers v. DeVito, 686 F.2d 616, 618 (7th Cir. 1982).

The proposed guarantee is a victims' rights measure. It will guarantee that a person may exercise the choice to have arms to lawfully and effectively resist violent criminal aggression against self, family or home.

Conclusion

This legislative history indicates that the legislature is left with the power to deal effectively with criminal misconduct. On the other hand, it would prevent the decent people of this state from being disarmed. State v. Kessler, 289 Ore. 359, 614 P.2d 94 (1980); City of Lakewood v. Pillow, 180 Colo. 20, 501 P.2d 744 (1972); City of Las Vegas v. Moberg, 82 N.M. 626, 485 P.2d 737 (Ct. App. 1971); Glasscock v. City of Chattanooga, 157 Tenn. 518, 11 S.W.2d 678 (1928); People v. Zerillo, 219 Mich. 635, 189 N.W. 927 (1922); State v. Kerner, 181 N.C. 574, 107 S.E. 222 (1921); In re Brickey, 8 Idaho 597, 70 P. 609 (1902).

Robert Dowlut

Robert Dowlut
Attorney at Law
12 Feb. 1988

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WHY DOES ALASKA NEED A FIREARMS PRE-EMPTION LAW?

The right to keep and bear arms is at the forefront of the various emotional issues that currently confront our society. Legislators, judges and bureaucrats at all levels of government — federal, state and local — are being called upon by citizens who wish to see this right expanded or restricted.

One underlying question is at what level should such legislation occur. The National Rifle Association has traditionally believed that the government most representative of the people is best. The explosion over the past few years of local ordinances that are more restrictive than current state law has, however, created the need for the states to pre-empt these local actions. Such legislation will prevent a hodgepodge of varying gun laws within a state, and thereby protect the law-abiding citizen not only from unwitting violation of the law, but also from arbitrary infringements of his or her rights. Indeed, in enacting pre-emption legislation, thereby expressly preventing local governments from infringing the rights of citizens and effectively eliminating the need for citizens to undertake costly litigation to protect their rights, state legislators fulfill their constitutional duty to protect the rights of citizens.

A state firearms pre-emption law will guarantee to the citizens of your state their right to own and use firearms for legitimate purposes based on state statutes and federal law.

Federal Law

Many people do not realize the full extent of federal law. Under the Gun Control Act of 1968 and as amended by the McClure-Volkmer Amendments (May 19, 1986), anyone convicted of a felony, adjudicated mentally defective, or addicted to drugs is prohibited from owning, purchasing or receiving or transporting any firearms or ammunition. The Gun Control Act also bans mail order sales of firearms by other than federally licensed dealers and requires that the sale of handguns is restricted to residents of the same state of the purchaser and seller.

Federal law also requires persons engaged in the business of dealing in firearms to be federally licensed. Dealers must

require from all firearms purchasers proof of identity and residence, and buyers must sign, under penalty of perjury, a statement certifying eligibility to purchase. Dealers are required to keep records of all firearms sales and are forbidden from selling handguns to persons under 21 or rifles and shotguns to persons under 18. Additionally, dealers are prohibited from making any sale of firearms or ammunition which would place the buyer in violation of state or local law.

The History of Firearms Pre-Emption Legislation

The first pre-emption firearms law was passed in the late 1960s, when, in response to the assassinations and urban rioting of that time, a number of localities passed "gun control" measures. Recognizing that these ordinances were based on emotional response rather than logical efforts to control crime, citizens of California and Pennsylvania led the way in enacting firearms pre-emption statutes. Today, some 15 states have firearms pre-emption either by statute or by legal precedent including: Alabama, Arizona, California, Indiana, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Dakota, Pennsylvania, South Dakota, Virginia, Washington and West Virginia.

The Problem Behind Local Firearms Laws

The renewed popularity in passing local ordinances effecting gun ownership has triggered a great debate over the benefits of local rule on this issue. Clearly, all legislation — whether federal, state, or local — must be designed to ensure uniform and nondiscriminatory access to the rights and privileges of the citizenry as guaranteed by the U.S. and State Constitutions. Yet, a close look at the passage of the Morton Grove, Illinois, handgun ban, the most infamous of these local ordinances, proves beyond doubt that local firearms legislation does not guarantee this. In passing their ban, the Morton Grove Village Trustees were acting in defiance of a majority of the village citizenry as the opponents of the measure greatly outnumbered supporters at all public hearings on the ban. Morton Grove was acting not to control crime, which was minimal in the village, but rather to gain the attention of national media and to create a situation of harassment for individual firearms owners. Their gimmick worked! Today, Morton Grove is almost a household word and it is estimated that close to a thousand formerly law-abiding citizens are now technically "criminals" for exercising a right guaranteed by both the U.S. and the Illinois Constitutions.

The local intent to harass gun owners and sportsmen, rather than control crime, is even more apparent in the recent actions of the Friendship Heights (Maryland) Township. This tiny

community on the outskirts of Washington, D.C., originally attempted to ban possession of all handguns. The Montgomery County Council refused, however, to consider the proposal because it was a clear violation of the Maryland State Firearms Pre-Emption Statute. Friendship Heights then attempted to subvert state law by passing a complete ban on possession of all ammunition. Possession of ammunition for self-defense would have been outlawed, and anyone passing through Friendship Heights with a single bullet could have been subject to arrest and conviction — a $500 fine for the first offense and up to six months in jail for the second offense.

The attempted F.H. bullet ban was defeated by the county council; Montgomery County, nonetheless, ultimately passed an ordinance which will prohibit the purchase of ammunition unless a firearm registration certificate is produced, although registration is not required in Maryland. While Councilman David Scull claims it is a symbolic step toward gun control at the state and federal level, in reality, this ordinance "is an abysmal waste of governmental energy and corrodes the respect without which law is a husk." (*The Washington Times*, June 20, 1983)

In response to this ban and other similar restrictive ordinances, a number of local jurisdictions have gone in the opposite direction and required all individuals or household heads to own a firearm. The NRA does not condone these mandatory ownership ordinances because we believe it is an individual's choice whether or not to possess a firearm.

How Can Pre-Emption Help?

Local firearms legislation serves only to create a crazy quilt of laws, resulting in gun owners running the risk of arrest, prosecution and confiscation of personal property for unwitting violation of local law by transporting a gun for sporting or other legitimate purposes across city or county lines. Such legislation clearly interferes with the "uniform application of laws" as citizens from one city are treated differently from citizens of another. Such legislation also puts an undue burden on the nation's 28 million hunters and 7 million competitive shooters who would be required to know the firearms laws of each various city and county they may pass through on their way to hunting areas or shooting matches.

We are greatly concerned by this eruption of hostile camps of "pro-gun" and "anti-gun" localities in states who do not have firearms pre-emption legislation. A state firearms pre-emption law will curtail this movement and ensure that state law will be enforced uniformly through the state on an equal basis.

HJR 4 packet

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

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January 29, 1989

The Honorable Jan Faiks
Alaska State Senator
P.O. Box V
Juneau, Alaska 99811

Right to Bear Arms amendment

Dear Senator Faiks:

Thank you for the opportunity to review SJR 4, relating to a proposed amendment to the constitutional right to bear arms in Alaska. After considerable research regarding the law in Alaska and other states on this issue, it is our opinion that the existing constitutional provision protecting the right to bear arms should not be, nor does it need to be, amended.

In summary, our analysis is:

1. In Alaska, the right of the people to bear arms for legitimate purposes has never been infringed. In the absence of a specific need to amend the constitution, it may be wise to follow the adage "If it ain't broke, don't fix it."

2. In a wide variety of contexts, the Alaska Supreme Court has interpreted individual rights under the state constitution more broadly than the federal constitution, and there is no reason to believe the court would not interpret the existing right to bear arms provision in an equally broad manner.

3. The legal effects of the proposed constitutional amendment can not be predicted with any degree of certainty. The recent experiences of West Virginia illustrate the unreliability of political statements made by proponents of this type of amendment.

4. The only effect of the amendment that can be stated with certainty is that it transfers power currently in the hands of the legislature to the judiciary. A similar and well-known example of such a power transfer occurred when the constitution was amended to specifically mention the right of privacy. The legislature is still struggling with the resulting supreme court opinion which recognized a constitutional right to use marijuana.

5. Based on the broad reading the Alaska court gives to the provisions of our constitution, and the lack of any language in the amendment giving the legislature the authority to regulate the exercise of the constitutional right, it is more likely that portions of Alaska's statutes regulating firearms will be declared unconstitutional. Case authority exists as legal precedent for invalidating, or seriously weakening, both the state statute prohibiting all felons from having firearms, and the Anchorage municipal ordinance against carrying concealed weapons in automobiles.

6. If the Legislature decides to approve a constitutional amendment modifying the right to bear arms in Alaska, the language of the amendment should affirmatively state

that the legislature continues to have the authority to reasonably regulate firearms by law.

1. The Right to Keep and Bear Arms in Alaska

The Alaska Constitution addresses the right of the people to keep and bear arms at Article I, Section 19. It provides: "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." Although this section of the constitution has never been interpreted by the Alaska Supreme Court, existing law grants Alaskans broad and relatively unrestricted rights to keep and bear arms.

Alaska's right to bear arms provision is virtually identical to language found in the Second Amendment to the United States Constitution. However, as noted by Legislative Counsel Tamara Brandt Cook in her memorandum to Senator Rodey dated April 14, 1983, "the [United States] Supreme Court has never directly considered whether the Second Amendment provides any protection to the private ownership of arms for lawful purposes." There is ample legal authority for the proposition that protection of the individual right to bear arms is provided by the language of both the Second Amendment and Section 19 of the Alaska Constitution.

For example, in one scholarly article,[1] the author demonstrated that the amendments guarantee the individual right to keep and bear arms for the following purposes: (1) to enable the individual to perform militia duties; (2) to deter governmental oppression; (3) to maintain public order; and (4) to enable the individual to exercise the right to self-defense. The author concluded his analysis by clearly stating that, under language identical to the Alaska Constitution, common and traditional users of private firearms are protected and that it would be unconstitutional to enact

> (1) any law that infringes the right of the people (excepting those people who fall into a traditional high-risk category, such as felons, the mentally deficient, and infants) to keep any arms commonly used for personal protection or any of the modern equivalent of arms that were fairly commonly possessed by the people at the adoption of the Constitution, or (2) any law that infringes the right to bear those arms for traditional lawful purposes.[2]

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[1]Dowlut, "The Right to Arms: Does the Constitution or the Predilection of Judges Reign?," 36 Oklahoma Law Review 65 (1983).

[2]Id. at 101. The following articles have been cited as authority for the proposition that the Second Amendment guarantees an individual right to bear arms: S.P. Halbrook, That Every Man Be Armed: The Evolution of a Constitutional Right (Univ. of N. Mex. Press 1984); Dowlut, "The Current Relevancy of Keeping and Bearing Arms," 15 U. Balt. L. F. 32 (1984); Kates, "Handgun Prohibition and the Original Meaning of the Second Amendment," 82 Mich. L. Rev. 204 (1983); Malcolm, "The Right of the People to Keep and Bear Arms: The Common Law Tradition, 10 Hastings Const. L. Q. 285 (1983); Caplan, "The Right of the Individual to Bear Arms: A Recent Judicial Trend," 1982 Detroit Col. L. Rev. 789; Shalhope, "The Ideological Origins of the Second Amendment," 69 J. Am. History 599 (1982); Halbrook, "To Keep and Bear Their Private Arms: The Adoption of the Second Amendment, 1787-1791," 10 N. Ky. L. Rev. 13 (1982); Gardiner, "To Preserve Liberty--A Look at The Right to Keep and Bear Arms," 10 N. Ky. L. Rev. 63 (1982); Halbrook, "The

An analysis of the constitutional right to bear arms in Alaska must of necessity consider the history of gun regulation in the state.[3] The right of the people to bear arms for legitimate purposes is widely recognized in Alaska, and has never been

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Jurisprudence of the Second and Fourteenth Amendments," 4 Geo. Mason U.L. Rev. 1 (1981); Cantrell, "The Right to Bear Arms," 53 Wis. Bar Bull. 21 (Oct. 1980); Caplan, "Handgun Control: Constitutional or Unconstitutional?," 10 N.C. Central L. J. 53 (1978); Caplan, "Restoring The Balance: The Second Amendment Revisited," 5 Fordham Urban L.J. 31 (1976); Whisker, "Historical Development and Subsequent Erosion of the Right to Keep and Bear Arms," 78 W. Va. L. Rev. 171 (1976); Weiss, "A Reply to Advocates of Gun Control Law," 52 Jour. Urban Law 577 (1974); Hardy & Stompoly, "Of Arms and the Law," 51 Chi.-Kent L. Rev. 62 (1974); McClure, "Firearms and Federalism," 7 Idaho L. Rev. 197 (1970); Levine & Saxe, "The Second Amendment: The Right to Bear Arms," 7 Houston L. Rev. 1 (1969); Olds, "The Second Amendment and The Right to Keep and Bear Arms," 46 Mich. St. Bar. J. 15 (Oct. 1967); Comment, "The Right to Keep and Bear Arms: A Necessary Constitutional Guarantee or an Outmoded Provision of the Bill of Rights?," 31 Albany L. Rev. 74 (1967); Sprecher, "The Lost Amendment," 51 Am. Bar Assn. J. 554 and 665 (1965); and Hays, "The Right to Bear Arms: A Study in Judicial Misinterpretation," 2 Wm. & Mary L. Rev. 381 (1960).

[3]See, e.g., Hootch v. Alaska State-Operated School System, 536 P.2d 793, 800 (Alaska 1975): "In determining the scope of a constitutional right, the focus of the court's inquiry is not, however, on the question of whether there is a burden on the exercise of that right. We must look to the intent of the framers of the constitution concerning the nature of the right itself, the problems which they were addressing and the remedies they sought. While prior practice and the framers' purposes are not necessarily conclusive, an historical perspective is essential to an enlightened contemporary interpretation of our constitution."

infringed.[4] Alaska and Vermont share the distinction of having the least restrictive firearms laws in United States.[5]

Proponents of the amendment indicate it is not proposed to rectify a current injustice nor to overturn existing guns laws or regulations, but to protect the rights of individuals to keep and bear arms against the caprice of an irresponsible legislature. We believe the protection of the existing constitution and the respect and restraint historically shown by the Alaska legislature and courts for the people's right to bear arms renders the proposed amendment unnecessary, and worse, the amendment interjects the uncertainty of judicial interpretation into a new and uncharted area.

2. Constitutional Interpretation in Alaska

It is often difficult to predict how a court will interpret the scope and effect of a new constitutional amendment, and how the power of the legislature will thereafter be limited. This unpredictability is very familiar to Alaskans. In 1972, the

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[4]In previous years, a 1983 informal Attorney General's opinion has been cited as proof of the need for a constitutional amendment. The opinion addressed whether a landlord could prohibit a tenant from having firearms. This analysis of the right to bear arms, rendered in the context of a contractual relationship between private parties, did not comprehensively address the issue of governmental regulation of arms.

[5]Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, State Laws and Published Ordinances: Firearms (18th Ed. 1988).

people explicitly recognized the right to privacy in Alaska by approving a constitutional amendment. In the first major case interpreting the privacy amendment, the Alaska Supreme Court in Ravin v. State,[6] struck down the law that criminalized possession of marijuana in the home for personal use. The legislature has been struggling for many years to deal with this unique interpretation of our constitution.[7]

Ravin is only one example of the propensity of the state supreme court to interpret the Alaska constitution as giving broader protection to individual rights than similar constitutional provisions in other jurisdictions. As a result, the judicial decisions of other states interpreting individual rights cannot be

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[6]537 P.2d 494 (Alaska 1975).

[7]Although other states, including Arizona, California, Florida, Hawaii, Louisiana, Montana, South Carolina, and Washington, have adopted similar constitutional provisions recognizing the right to privacy, the Alaska court stands alone in its conclusion that the right to privacy protects the right to possess marijuana in the home.

heavily relied upon in predicting what will happen when the Alaska courts are asked to analyze identical issues.[8]

With respect to the actions of individual citizens, Alaska court decisions frequently rely on the privacy amendment to justify constitutional interpretations that are significantly broader than those reached by other courts. Our court has repeatedly determined that the effect of the right of privacy is to amplify the protections afforded by other constitutional rights. The complexity of anticipating the court's interpretation of a right to bear arms is compounded by the potentially augmenting effect of the explicit right to privacy.

For example, the Alaska constitutional guarantee against unreasonable searches and seizures is held to be broader in scope than identical guarantees under the federal constitution, in part because of the right to privacy.[9] Despite considerable authority

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[8]In addition to the cases discussed below, the Alaska Supreme Court has held that the Alaska Constitution provides greater protection in areas ranging from the free exercise of one's religious beliefs, Frank v. State, 604 P.2d 1068 (Alaska 1979) (defendant entitled to exemption from fish and game regulations on account of his religious beliefs even though the charges against defendant would have been upheld under the federal constitution) to the right to counsel, Resek v. State, 706 P.2d 288 (Alaska 1985) ("the right to counsel under the Alaska Constitution is more expansive than the corresponding right under the sixth amendment to the United States Constitution.").

[9]Reeves v. State, 599 P.2d 727, 734 (Alaska 1979). In this case, the court reversed a conviction for possession of heroin. The defendant had been arrested for driving while intoxicated, and a correctional officer discovered the heroin inside a balloon in

to the contrary in other jurisdictions, the Alaska court has held that the state constitution prohibits warrantless administrative inspections of private business premises.[10] The warrantless monitoring of private conversations with the consent of one participant, acceptable under federal constitutional standards, is held in Alaska to be an unreasonable search and seizure in light of the combined effect of the Alaska constitutional prohibition against unreasonable searches and seizures, and the Alaska constitutional right of privacy.[11]

The Alaska court has also forged new legal ground in interpreting the equal protection clause of the state constitution. This amendment provides additional protection for the exercise of constitutional rights such as the right to bear arms because it is used by the court in evaluating whether legislation is

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the defendant's pocket. Although it was permissible for the officer to take the balloon away from the defendant before he was booked into the jail, the court held that the defendant's right to privacy and right to be free from unreasonable searches and seizures was violated when the officer looked inside the balloon.

[10]Woods & Rohde, Inc. v. State, 565 P.2d 138 (Alaska 1977).

[11]In the cases of Coffey v. State, 585 P.2d 514 (Alaska 1978) (court reversed conviction of marijuana dealer); Aldridge v. State, 584 P.2d 1105 (Alaska 1978) (court reversed conviction of heroin dealer); State v. Glass, 583 P.2d 872 (Alaska 1978) (court agreed charges against heroin dealer should be dismissed), the decisions were based on the court's broad interpretation of Alaska's constitutional rights to privacy and to be free from unreasonable searches and seizures. Federal courts faced with the same issues have interpreted similar federal constitutional guarantees relating to searches and seizures differently, and would have upheld the convictions.

constitutional. In developing its own equal protection analysis, our court rejected the deferential test applied by the United States Supreme Court, holding instead that the Alaska Constitution requires social and economic legislation to pass a more rigorous test.[12]

In Herrick's Aero-Auto-Aqua Repair v. DOT, 754 P.2d 1111 (1988), the court explained its expansive equal protection analysis as follows:

> In reviewing equal protection claims under the Alaska constitution ... the minimum burden that the state must meet when defending legislation challenged on equal protection grounds under the Alaska constitution is greater than that required under the United States Constitution. The burden on the state increases in proportion to the primacy of the interest involved. Eventually this burden reaches the functional equivalent of the federal compelling state interest test in those cases where fundamental rights and suspect categories are at issue.[13]

Another liberal interpretation of Alaska's constitution was set out in Vogler v. Miller, 651 P.2d 1 (Alaska 1982). In this case the court invalidated statutes relating to ballot access by

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[12]Isakson v. Rickey, 550 P.2d 359 (Alaska 1976).

[13]754 P.2d at 1114. The court in Herrick also pointed to an additional burden placed on the state in defending against an equal protection challenge. "[T]he rational basis test articulated by the Supreme Court allows a court to 'hypothesize' facts. Under that test, a party challenging legislation on equal protection grounds, cannot prevail so long as 'it is evident from all the considerations presented to [the legislature], and those of which we may take judicial notice, that the question is at least debatable." Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 464 (1981). In Alaska, the court will not hypothesize facts.

candidates of small parties. The court relied on the free speech and equal protection provisions of the Alaska constitution, and acknowledged that the statutes would have been upheld under the interpretation the federal courts have given to identical provisions of the United States constitution. The court declared that Alaska restrictions on the right to associate in pursuit of political beliefs are permissible only where the government is able to show that the restrictions are justified by compelling governmental interests. Further, the restrictions must be no broader than needed to accomplish the governmental interests which justify them.[14]

Thus, any effort to predict the interpretation of any amendment relating to an individual right in the Alaska court must be mindful of the court's tendency to interpret individual rights broadly, in often unexpected contexts, and the court's frequent insistence that regulatory schemes satisfy a compelling state interest test.

3. The West Virginia Experience

Despite Alaska's unique constitution and the willingness of our court to adopt novel legal interpretations, we have also considered the experience of other states with right to bear arms amendments. For example, based on its newly-enacted right to bear

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[14]651 P.2d at 5.

arms amendment, the West Virginia Supreme Court recently struck down a statute that prohibited carrying dangerous or deadly weapons without a license.

Proponents of the amendment had argued during legislative hearings that existing laws would not be affected by the amendment, but when an existing law was challenged, the proponents switched positions and argued for the unconstitutionality of the West Virginia law. This case shows the dangers that arise when a legislature approves a constitutional amendment that does not spell out in plain language its precise intent. A detailed description of what happened in West Virginia is therefore important because many of the same issues are currently being discussed in the context of your consideration of SJR4.

a. Legislative History

In 1986, West Virginia amended its constitution to expand the right to keep and bear arms. The new constitutional provision stated, "A person has the right to keep and bear arms for the defense of self, family, home and state, and for lawful hunting and recreation use."

Despite the popularity of the right to keep and bear arms amendment in the West Virginia legislature, the legislative process "failed to give the amendment's language any real definition beyond

a general sense that passage of the amendment would leave undisturbed current law and constitutionalize existing state law prohibiting municipal governments from banning the ownership of weapons or ammunition. The very popularity of the concept seemed to insulate the proposed amendment from the 'hard look' analysis appropriate for amendments to a constitution."[15]

No significant statement of legislative intent was prepared by any of the committees that considered the proposal, nor was any substantive research done by the legislative committees that recommended the measure for passage. As a result, there was little in the legislative history to assist the court in fixing any specific meaning to the words, phrases, or the intent of the amendment. In researching the legislative history, McNeely concluded, "All that can be said without question was that legislative proponents consistently took the position that the amendment, if adopted, would not change existing laws, and that legislative opponents consistently attempted, with no ultimate success, to amend the measure to assure that the state would retain its ability to maintain the existing state of the law."[16]

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[15]McNeely, "The Right of Who to Bear What, When, and Where - West Virginia's Firearms Law v. The Right-To-Bear-Arms Amendment," 89 West Virginia Law Review 1125 (1987) at 1160.

[16]McNeely at 1152.

In an analysis provided to the West Virginia legislature by the National Rifle Association, the proponents argued that under the amendment the bearing of constitutionally-protected arms "may be regulated." The analysis described the various statutes that the NRA believed would be upheld if the proposed amendment were adopted, and specifically stated that "a license may be required to carry a pistol away from one's home, place of business, or land."[17]

In attempting to predict the effect the court would give to the amendment, McNeely predicted that,

> Given the legislature's failure to provide clear legislative intent in any formal sense, it shall be up to the judicial branch of the state to interpret the amendment consistent with its language and demonstrated intent. With that interpretation, the court may continue the state's traditional legal attitude toward firearms by finding the amendment consistent with state law, or it may embark the state on an uncharted course of repeal and revision of long-standing statutes and case law ... It is, perhaps, ironic that such a lack of legislative research and formal legislative findings, coupled with the broad, unqualified

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[17]The National Rifle Association "Analysis of Proposed West Virginia Constitutional Guarantee to Keep and Bear Arms" is set out as Appendix H to the McNeely article at 1176-78. It is virtually identical to the "Analysis of Proposed Alaska Constitutional Guarantee to Keep and Bear Arms" contained in the Senate Judiciary file for SJR4.

In addition, at least one advertisement by the NRA for the amendment in West Virginia contained "a prominent statement that no existing federal or state law would be repealed by passage, with the statement reading 'Amendment 1 keeps Federal and State firearms laws the law.'" McNeely at 1148.

> language of Amendment No. 1, have combined to place the future of firearms regulation, heretofore primarily a legislative activity, in the hands of the judicial branch of state government.[18]

b. Princeton v. Buckner

The case of Princeton v. Buckner[19] began when a police officer searched a drunk driver who had been placed under arrest, and found a .22 caliber automatic pistol concealed in the driver's pocket. Under existing West Virginia law, a license was required to carry a concealed weapon. Although the drunk driver did not have a license, the magistrate refused to issue charges for illegally carrying a firearm because he concluded that the licensing law was unconstitutional under the newly-enacted right to bear arms amendment to the West Virginia Constitution.

Despite the assertions during the legislative and public debates that existing West Virginia firearms laws would not be affected, the challengers to the law in Buckner lost little time in proving the non-binding nature of such statements.[20] In their analysis of legislative intent, the challengers pointed to the

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[18]McNeely at 1162.

[19]Case No. CC972, West Virginia Supreme Court of Appeals, July 1, 1988, reconsideration denied December 20, 1988.

[20]The National Rifle Association filed an amicus brief in the Buckner case on behalf of its West Virginia members, which concluded: "... the licensing statute is unconstitutional because it frustrates rather than regulates the right to bear arms."

legislature's refusal to modify the amendment to specifically state that the legislature retained the power to regulate firearms.

For example, in his brief to the Supreme Court, Buckner argued as follows:

> The State, in its brief, concludes that "it is clear that the Right to Keep and Bear [Arms] Amendment to the West Virginia Constitution was not meant to nullify existing laws." This conclusion is without factual support or logic. Had the efforts of Delegate McNeely to add the word "lawful" and had the efforts of Delegate Knight to make the amendment subject to the "police power" of the State, or either of these efforts, been successful, then the argument of the State might bear some logic. The fact that both of these efforts were specifically turned down by the Legislature indicates clearly that the Legislature had no such intent as stated by the State. Had that been the clear intent of the Legislature in passing the resolution, it could have simply added language to that effect, or adopted on of the amendments referred to. (emphasis added) Brief of Respondent Buckner at 4.

> The basis of the argument of the State is that the proponents took the position that the right to bear arms amendment did not change existing laws. The fact of the matter is that the opponents of the amendment took the position that it would, in fact, change existing law and the Legislature refused, although given opportunity to do so, to word the amendment in such a fashion so as to deal with that question. (emphasis added) Brief of Respondent Buckner at 5.

In addition to pointing out that the legislature refused to address the extent to which it retained the power to pass firearms legislation, the challengers concluded that the

legislature and the people must have wanted to place restraints on the legislature. At page 6 of his brief, Buckner argued that if the constitutional amendment "means anything, it has to mean that the people of the State wanted to change the law in existence at the time, and place restraints upon the Legislature. Any other conclusion is illogical and would render the act of the Legislature and the people in adopting the constitutional provision an exercise in futility." In other words, it doesn't matter what the supporters of the bill said; it only mattered what the legislature itself said in the language of the amendment.

The West Virginia Supreme Court accepted the arguments presented by the challengers, and held that a "constitutional amendment will supersede any inconsistent portions of antecedent constitutional or statutory provisions, as 'the latest expression of the will of the people.'"[21] The court rejected the position taken by the state that "West Virginia's licensing statute evinces an intent to control, but not prohibit, carrying weapons, such as handguns, which are both easily concealable and deadly."[22]

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[21] Princeton v. Buckner, at page 10.

[22] Brief of Petitioner State of West Virginia, at 15.
On December 20, 1988, the West Virginia Supreme Court reaffirmed its holding that the statute was unconstitutional. The opinion did not isolate the specific provisions of this statute, or the related licensing requirements, which rendered the statute violative of the right to keep and bear arms amendment. Instead, the court declared that the prohibition against carrying a dangerous or deadly weapon for defensive purposes without a license or other statutory authorization was overly broad.

c. Current Status of West Virginia Gun Law

Similar to the current situation in Alaska where the legislature is trying to pass a constitutional statute prohibiting people from possessing marijuana in their homes, the West Virginia legislature is now working on developing a constitutional statute relating to the carrying of deadly and dangerous weapons.[23] In the meantime, unless a person commits a separate criminal offense with a firearm, West Virginia law enforcement authorities are prohibited from arresting persons for, or protecting persons from, carrying concealed weapons, regardless of whether the offender is carrying the weapon for defensive or other purposes. (Source--West Virginia Department of Public Safety)[24]

Although the court acknowledged that the legislature "may, through the valid exercise of its police power, reasonably regulate the right of a person to keep and bear arms in order to promote the health, safety and welfare of all citizens of this State, provided that the restrictions or regulations imposed do not frustrate the constitutional freedoms guaranteed by...the Right to Keep and Bear Arms Amendment," the court recognized that each statute regulating firearms would need to be evaluated in light of the new constitutional provisions. The court cautioned that "a governmental purpose to control or prohibit certain activities, which may be constitutionally subject to state regulation under the police power, may not be achieved by means which sweep unnecessarily broadly and thereby invade the realm of protected freedoms, such as the right to keep and bear arms guaranteed by our State Constitution." (emphasis added)

[23]Telephone conversation, Steve Hernden, West Virginia Assistant Attorney General.

[24]Petition for Reconsideration of Remedy filed by the State of West Virginia at pages 1-2.

4. The Proposed Alaska Amendment

The proposed amendment to the Alaska constitution states that "The individual right to keep and bear arms shall not be denied or infringed by the state or a political subdivision of the state."

The first and most significant effect of the constitutional amendment proposed in SJR4 is to limit the legislative authority to regulate the right to bear arms. The amendment takes authority away from the people's elected representatives as to what policies the state will follow concerning the right to keep and bear arms and, shifts to the courts the ultimate authority to decide state policy through the uncertain course of constitutional interpretation.

The sweeping but ambiguous language of the proposed amendment means that, if passed, it can be expected to trigger a great deal of litigation in a number of different contexts. If the courts were to construe the amendment in a fashion that the Legislature felt was harmful to the public interest, the only way that the law could be changed, without inducing the court to change its own position, would be through another constitutional amendment. Thus, the amendment would give the courts a much greater role in interpreting the regulatory authority of the Legislature than it has at present.

As discussed above, relying on legal precedents from the courts of other states to predict what the Alaska court may decide under the proposed amendment is fraught with difficulty. Although proponents of amending Alaska's constitution argue that at least 42 states have constitutional provisions guaranteeing a right to bear arms, and that all firearms laws have been upheld in every state, this assertion is incorrect and misleading, as discussed below.

Most constitutional provisions enacted by other states differ from SJR4 because they either define the circumstances in which the constitutional right applies, or they expressly recognize that the constitutional provision is subject to legislative regulation.[25] Only Rhode Island has a constitutional provision, like SJR4, that grants an apparently unfettered right to keep and bear arms.[26]

Each of the 50 state supreme courts interpret its own constitutional provisions consistent with the legal precedents of that state. Decisions made by courts of sister states may be

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[25]See R. Dowlut & J. Knoop, "State Constitutions and the Right to Keep and Bear Arms," 7 Okla. City U.L. Rev. 177, 236-240 (1982).

[26]We have been unable to find any cases in which the Rhode Island Supreme Court has directly interpreted this constitutional provision.

informative, yet are not persuasive or conclusive authority from which one can predict the result in a different jurisdiction. For example, the West Virginia court struck down its licensing statute after considering and rejecting an Indiana Supreme Court decision that reached the opposition conclusion.[27] In the Indiana decision, the dissent noted that "The decisions from other jurisdictions are not uniform on the right to keep and bear arms any more than the constitutional provisions are stated in the same language."

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[27]An Indiana statute which imposed licensing requirements on handguns similar to those of West Virginia was addressed in Matthews v State, 148 N.E. 2d 334 (1958). As in West Virginia, the Indiana statute placed no restrictions on possessing or carrying a weapon on one's own premises, but to carry a gun elsewhere required a license conditioned on a showing that, among other things, "the applicant has a proper reason for carrying a pistol and is of good character and reputation and a suitable person to be so licensed." 148 N.E.2d at 336. The Indiana constitution provided that "the people shall have a right to bear arms, for the defense of themselves and the State." The Matthews court affirmed the statute and held that the licensing statute was a legitimate exercise of the legislative power to provide for the public safety and welfare.

In a subsequent case, Schubert v. DeBard, 398 N.E.2d 1339 (Indiana App. 1980), the Indiana court relied on the constitutional right to bear arms provision in reversing the denial of a license to carry a handgun made by an applicant who claimed he needed a gun for self-defense. The authorities had denied the license after reviewing evidence showing that the applicant "was a 'chronic liar' suffering from a 'gigantic police complex.'" Evidence also showed that when the applicant had previously held a license, he "had carried and displayed his pistol at inappropriate times." Other witnesses testified that the applicant had "mental problems."

The Schubert court reiterated that establishing a licensing procedure for handguns is not violative of the constitution. However, the court ruled that once a person makes the claim that a gun is needed for self-defense, the constitutional right to bear arms provision prohibits authorities from withholding the license, or even making a factual determination as to whether the person actually needs a gun.

Since the analysis of each case turns on the precise wording of each constitutional provision, it is difficult to use the cases for purposes of comparison. For example, the court's reasons for upholding a challenged statute in State v. Grob, 690 P.2d 951 (Idaho App. 1984) are illustrative of the limited precedential value out-of-state decisions would have in Alaska. In this case, the defendant argued that a statute providing a mandatory sentence for using a firearm while engaged in kidnapping or aggravated battery violated his constitutional right to bear arms. Since Idaho's constitutional right to bear arms provision was amended in 1978, the court looked to the language of both the pre-1978 and post-1978 constitutions. The court found that the statute was constitutional under the pre-1978 language because the provision specifically stated "the legislature shall regulate the exercise of this right by law." Similarly, the statute was found to be constitutional under the post-1978 language based on the specific authorization given the legislature to prescribe "minimum sentences for crimes committed while in possession of a firearm" and to punish the unlawful "use of a firearm."[28]

5. The Risk to Specific Alaska Statutes

a. Constitutionality of Concealed Weapons Statutes

Despite the assertions of supporters of this amendment, it is by no means certain that a new right to bear arms amendment

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[28]State v. Grob, 690 P.2d 951, 953-54 (Idaho App. 1984)

would leave current Alaska statutes prohibiting the carrying of concealed weapons untouched. If the Alaska courts interpreted the amendment to permit the carrying of concealed weapons, AS 11.61.220(a)(1) would be unconstitutional. On the other hand, it cannot be said that the Alaska Supreme Court would hold that this was an area beyond legislative regulation. The matter is simply uncertain.

An article published by Robert Dowlut, General Counsel for the National Rifle Association,[29] gives rise to concern about the constitutionality of an Anchorage municipal ordinance, if the proposed amendment to the Alaska constitution were approved. Dowlut asserts that the right to keep and bear arms includes the right to carry weapons in private vehicles,[30] something which is now prohibited by Anchorage Municipal Code 8.05.070(A), as interpreted in Municipality of Anchorage v. Lloyd, 679 P.2d 486 (Alaska App. 1984).[31]

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[29]Dowlut & Knoop, "State Constitutions and the Right to Keep and Bear Arms," 7 Oklahoma City University Law Review 177 (1982).

[30]Id. at 220.

[31]Support for amending Alaska's constitutional right to bear arms provision has been predicated on an unwarranted assumption that the amendment will not have an effect on existing state or municipal laws. For example, Resolution No. AR 87-238, dated September 29, 1987 and passed by the Anchorage Assembly, included the bald assertion that the amendment "will not invalidate existing municipal public safety measures regulating the use and possession of firearms."

In the document entitled "Analysis of Proposed Alaska Constitutional Guarantee to Keep and Bear Arms," which was written by Dowlut and provided to members of the Senate Judiciary Committee, the assertion is made that "concealed carrying statutes ... are routinely upheld." A review of the cases cited in support of this proposition highlights the problems involved in relying on judicial decisions in jurisdictions outside the state of Alaska to predict how our court would interpret the proposed constitutional amendment.

For example, Dowlut cites Holland v. Commonwealth, 294 S.W.2d 83 (Ky. 1956) as standing for the proposition that concealed weapons statutes are constitutional despite the broadly drafted language of SJR4. However, a review of the case shows that the Kentucky constitution explicitly declares that the right to bear arms is "subject to the power of the General Assembly to enact laws to prevent persons from carrying concealed weapons," a phrase not included SJR4. The court upheld the concealed weapons statute because it found that "the meaning of the constitutional provision is plain and the legislature has exercised the power granted to it by enacting [the concealed weapons statute]." Id. at 85.

Similarly, Dowlut claims that State v. Kessler, 614 P.2d 94, 99 (Oregon 1980) is another case in which a concealed weapons statute was "routinely upheld." In fact, the court in Kessler

struck down a statute that prohibited possessing billy clubs. Despite Dowlut's claim, the court did not address the constitutionality of concealed weapons laws, although it noted in passing that the court in State v. Hart, 157 P.2d 72 (Idaho 1945) upheld a concealed weapons statute.

In Hart the Idaho court specifically based its decision to uphold the ordinance on the language of Idaho's constitutional right to bear arms provision. At the time Hart was decided, the Idaho constitution stated "The people have the right to bear arms for their security and defense; but the legislature shall regulate the exercise of this right by law."

The final case cited by Dowlut to support his claim that Alaska's courts will uphold concealed weapons statutes is State v. McAdams, 714 P.2d 1236 (Wyo. 1986). However, once again, the constitutional provision that was analyzed in McAdams is significantly narrower than the proposed amendment contained in SJR4. The Wyoming constitution provides, "The right of citizens to bear arms in defense of themselves and of the state shall not be denied." The court upheld the concealed weapons statute because it did not believe that the law placed unnecessary restraints on the right to possess arms for self defense: "We are cognizant of the fact that our concealed deadly weapons statute imposes some limitation on a person's right to bear arms in defense of himself;

but, when balanced against the object of the statute, we do not find the limitation unreasonable." Id. at 1238.

b. Constitutionality of Felon in Possession Statutes

It is also by no means certain that the Alaska Supreme Court would uphold current laws controlling or prohibiting convicted felons from owning or possessing weapons if SJR4 were adopted. Felons convicted of bootlegging or drug dealing would be allowed to possess firearms with impunity if the opinion expressed by the General Counsel of the National Rifle Association, and discussed below, were adopted in this state. Moreover, the Colorado Supreme Court has interpreted its constitutional right to bear arms as providing a defense to the charge of felon in possession. If the Alaska courts reached a similar interpretation, the ability to prosecute felons for possessing firearms would certainly be impaired.

The supporters of SJR4 have provided you with the "Analysis of Proposed Alaska Constitutional Guarantee to Keep and Bear Arms" which implies that Alaska's felon in possession statute would withstand constitutional scrutiny. However, Robert Dowlut, General Counsel for the National Rifle Association, has previously published contrary statements. In a law review article, he stated, "To prevent the people from being disarmed by the expedient of classifying regulatory offenses as felonies, the disqualification

for felons should be restricted to common law felonies and their modern equivalents and to offenses requiring some state of mind above strict liability which are inherently inimical to life and property."[32] (emphasis added). Thus, under Dowlut's view, felons charged with drug dealing and bootlegging, which are not "common law felonies," could legally carry weapons.

Under current AS 11.61.200, all persons convicted of any felony are prohibited from possessing a firearm capable of being concealed on the person, and this law applies to persons convicted of regulatory offenses such as bootlegging and drug dealing, as well as the common law felonies such as murder, assault or kidnapping. If Dowlut's interpretation were adopted, Alaska's statute would be over broad, and struck down as unconstitutional.

A conviction for being a felon in possession of a firearm was reversed by the Colorado Supreme Court in People v. Ford, 568 P.2d 26 (Colorado 1977), based on the "right to bear arms" provision of the Colorado Constitution. The court held that the constitutional protection extends to a defendant "who presents competent evidence showing that his purpose in possessing weapons was the defense of his home, person, and property" and that this type of evidence provides a complete defense to a felon-in-

[32]Dowlut & Knoop at 192.

possession charge.[33] Once the defendant has raised the issue as a defense, the prosecution must prove, beyond a reasonable doubt, that the defendant's purpose in possessing firearms was not for defense. Thus, unless the felon is committing a crime with the gun, it is virtually impossible to prove that the weapon was not for "defense." As a practical matter, the teeth have been taken out of the law because of the problems of proving that a felon in possession of a gun at the felon's home, on the felon's person, or on the felon's property is using it other than for defense.

As with the concealed weapons statutes, there are problems in relying on the judicial decisions of other states in reaching the conclusion that Alaska's statute would withstand constitutional scrutiny. For example, in the North Dakota case distributed to the Senate Judiciary Committee, State v. Ricehill[34], the statute only prohibited persons "convicted anywhere for a felony involving violence or intimidation" from owning firearms. Unlike current Alaska law, North Dakota's narrower felon in possession statute would fall within the category of felon in possession statutes that Dowlut considers to be constitutional, in

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[33]The court noted at page 28 that this affirmative defense is available in cases involving the charge of carrying a concealed weapon.

[34]415 N.W.2d 481 (N.D. 1987).

that it only prohibits felons convicted of common law felonies from having firearms.[35]

Other state courts have upheld felon in possession statutes based on express constitutional language that preserved the right of the legislature to regulate arms. In Landers v. State, 299 S.E 2d 707 (Ga. 1983), the court affirmed the conviction of a felon charged with possessing a firearm, and held "Where a State constitution in terms provides, in connection with the right to bear arms, that the State may regulate this right, or may regulate the manner of bearing arms, these words expressly

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[35]See also, Dickerson v. State, 517 So.2d 625 (Ala. Cr. App. 1986), Bristow v. State, 418 So.2d 927 (Ala. Cr. App. 1982) and Mason v. State, 103 So.2d 337 (Ala.App. (1956), aff'd 103 So.2d 341 (1958)(Statute prohibited "a person who has been convicted of a crime of violence from owning or possessing a pistol); State v. Krantz, 164 P.2d 453 (Wash. 1945) and State v. Tully, 89 P.2d 517 (Wash. 1939) (Statute prohibited possession of a firearm after having been convicted of a crime of violence); Carfield v. State, 649 P.2d 865 (Wyo. 1982) (Statute prohibited persons convicted of "murder, voluntary manslaughter, assault to commit murder, aggravated assault, robbery, burglary or sexual assault in the first or second degree, or mayhem" to possess any firearms.); State v. Noel, 414 P.2d 162 (Ariz. 1966) and State v. Rascon, 519 P.2d 37 (Ariz. 1974) (Statute prohibited any person convicted of a crime of violence from possessing a pistol); Sheppard v. State, 586 S.W.2d 500 (Tex. Crim. App. 1979), McGuire v. State, 537 S.W.2d 26 (Tex. Cr. App. 1976) and Webb v. State, 439 S.W.2d 342 (Tex. Cr. App. 1969) (Statute prohibited persons convicted of "a felony involving an act of violence or threatened violence to a person or property" from possessing firearms "away from the premises where he lives."); State v. Cartwright, 418 P.2d 822 (Ore. 1966) (Statute prohibited possession where convicted of "a felony against the person or property of another."

recognize the police power in direct connection with the constitutional declaration as to the right."[36]

Similarly, in Nelson v. State, 195 So. 2d 853 (Fla. 1967), the conviction for possession of a pistol by a defendant who had previously been convicted of a felony was upheld. Although the statute applied to persons convicted of all felonies, Florida's constitutional provision said "The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law."

The court in Amos v. State, 343 So.2d 166 (La. 1977) upheld charges for felon in possession of a firearm because the "purpose [of the statute] is to limit the possession of firearms by person who, by their past commission of certain specified serious felonies, have demonstrated a dangerous disregard for the law and present a potential threat of further or future criminal activity." However, two justices of the Louisiana Supreme Court dissented from the opinion, believing that the statute impermissibly infringed on the right to bear arms.

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[36]Georgia's constitution states "The right of the people to keep and bear arms shall not be infringed but the General Assembly shall have power to prescribe the manner in which arms may be borne."

The reasoning of the two dissenting justices in Amos is important, since if this position were adopted in Alaska, AS 11.61.200 would be struck down. The dissenters stated that the felon in possession statute "impermissibly limits the affirmative constitutional guarantee and as such is not a valid exercise of the police power." The dissenters looked at other state decisions upholding felon in possession laws and concluded "These states, however, have constitutional provisions different from ours. Every one of these constitutions link the right to bear arms to the need for a militia. Unlike these provisions, the Louisiana Constitution of 1974 expressly grants to each citizen the 'right to keep and bear arms,' a right which 'no law' shall abridge. This constitutional guarantee is not limited by linking it to a militia or a defense for the people as a whole. It is limited only by one state exception: the legislature has the authority to prohibit the concealment of weapons on the person. Otherwise, the legislature lacks the authority to nullify the right of Louisiana citizens to keep and bear arms."

An analysis of the effect the proposed right to bear arms amendment will have on the state's felon in possession statute must be undertaken with both the right to privacy and the Alaska Supreme Court's expansive equal protection standard in mind. Alaska law prohibits all felons, including persons convicted of non-violent felonies such as embezzlement and certain sex offenses, from

possessing firearms. If SJR4 were adopted, the court would require the state to prove that the law is based on a compelling state interest. In relation to non-violent felons, it is not unlikely that the state would be unable to meet the burden of proving it had a compelling state interest in prohibiting the possession of firearms by non-violent felons.

c. Constitutionality of Prohibited Weapons Statutes

The possession of certain classes of weapons is prohibited in Alaska.[37] Included in the category of prohibited weapons are switchblades, gravity knives, and metal knuckles. Under SJR4, this law would be unconstitutional, if the court in this state accepted the analysis of the Oregon Supreme Court in State v. Delgado, 692 P.2d 610 (Ore. 1984); State v. Blocker, 630 P.2d 824 (Ore. 1981); and State v. Kessler, 614 P.2d 94 (Ore. 1980).

In Delgado, the Oregon court held that a statute prohibiting mere possession of a switchblade was unconstitutional under the right to bear arms provision of the Oregon constitution.[38] The court first determined that the drafters of Oregon's constitution "intended that the private citizen have the

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[37]AS 11.61.200(e).

[38]Article I, section 27, of the Oregon Constitution provides: "The people shall have the right to bear arms for the defence of themselves, and the State..."

right to possess arms for the defense of person and property."[39] Next, the court reasoned tnat switchblades were arms, and as a result, possession of a switchblade is a constitutionally protected in Oregon and the statute making such possession a crime is unconstitutional.

d. Constitutionality of Game Regulations

Alaska's regulatory scheme relating to the lawful methods of taking game is potentially at risk if the proposed amendment is adopted.[40] Since each of the game regulations infringes on the right to bear a particular type of arm, in order for the regulation to withstand constitutional scrutiny, the state would need to prove that it had a compelling state interest for adopting the regulation.

For example, under 5 AAC 92.100(a)(1), it is illegal to shoot waterfowl with a rifle or pistol. The purpose of the regulation is to make hunting waterfowl less efficient, and more

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[39] Delgado at 611.

[40] 5 AAC 92.075 (the permissible weapons for taking big game are a shotgun, a muzzle-loading rifle, or a rifle or pistol using a center-firing cartridge); 5 AAC 92.080 (it is prohibited to take game with the use or aid of a machine gun, set gun, or a shotgun larger than 10 gauge); and 5 AAC 92.100 (it is prohibited to take waterfowl, snipe and cranes with a rifle or pistol, a shotgun larger than 10 gauge, or a shotgun not plugged to a three shell capacity).

sporting.[41] However, many biologists have argued that the regulation is unnecessary as it doesn't matter how a bird is killed, it only matters how many animals are shot, and whether the appropriate bag limit was exceeded.[42] In the face of this type of expert testimony, it is not unlikely that a court would strike down 5 AAC 92.100(a)(1) as an infringement of the right to bear arms.

6. The Legislature Should Affirmatively State Its Intent

The State, through exercise of its police power, is vested with the authority to enact laws, within constitutional limits, to promote the general welfare of its citizenry. The Alaska Supreme Court examined the state's police power in light of express constitutional limitations on regulatory authority in Matthews v. Quinton.[43] In this case, the court analyzed whether a statute providing for the transportation of children to nonpublic schools at public expense was in contravention of a constitutional prohibition against the appropriation of public funds for the support of private schools. Since the statute had been on the books before the constitutional provision was adopted, the court

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[41]Telephone conversation with James Sheridan, Assistant Special Agent in Charge, Law Enforcement, Alaska Region, United States Fish and Wildlife Service.

[42]Id.

[43]362 P.2d 932, app. dism., cert. den. 82 S.Ct. 530, 368 U.S. 517, 7 L.Ed.2d 522 (Alaska 1961)

considered the effect of subsequently adopted constitutional provisions on existing statutes.

The court concluded that for a constitutional provision to operate retrospectively to validate antecedent legislation in the face of claimed unconstitutionality, "the validating constitutional provision must make some reference, however slight or inferential, to the statute intended to be validated." The statute authorizing transportation of private school pupils was declared void because the newly adopted constitutional provision did "not show by the language used, either directly or by necessary implication, that it was intended to operate retrospectively so as to validate [the statute]." Id. at 939.

Whether the statute was a valid exercise of the police power of the state was also considered in Matthews. The court noted that "the police power -- broad and comprehensive though it is -- may not be exercised in contravention of plain and unambiguous constitutional inhibitions." Although the state has "inherent and reserved police power to enact laws to promote the safety, health and general welfare of society," the court emphasized that "this power must be exercised within constitutional limits." Id. at 944.

During the Fourteenth and Fifteenth Legislatures, versions of the right to bear arms amendment contained a general statement of "legislative intent" indicating that the constitutional amendment, if adopted, "should not be construed to preclude the regulation of the manner in which arms may be borne, carried, or used." We are concerned that this indirect statement of legislative intent will not be effective to preserve the present power to reasonably regulate the possession and use of weapons.

As a general rule, a statute or constitutional provision will be interpreted according to the plain meaning of the language on its face. If the intent behind the adoption of the amendment were to later become an issue, it is the intent of the voters who adopted the measure that will be relevant, rather than the intent of the legislators who drafted it. Although last session's resolution directed the Legislative Affairs Agency to consider the stated "legislative intent" when preparing its neutral summary for the election pamphlet, the intent language would not appear on the ballot itself, and might not be contained verbatim in the election pamphlet. See art. XIII, sec. 1 of the Alaska Constitution and AS 15.58.010.

Conclusion

It is our belief that the present provision of the Alaska constitution and the traditional restraint of the legislature in

regulating firearms adequately protect the right to bear arms. However, if the legislature believes this issue should be placed before the people in the form of a constitutional amendment, that amendment should be drafted to explicitly recognize the legislature's regulatory authority with regard to arms.

Both legal principles and common sense dictate that a well-drafted statute or constitutional provision should reduce uncertainty and disputes about interpretation. Statements of "legislative intent" are not an adequate substitute for clear, unambiguous language in the proposed constitutional amendment. A more precisely drafted amendment would minimize the possibility that a criminal defendant would later be able to successfully convince a court, as has been done in other that states, that a statute, regulation, or ordinance is unconstitutional.

As alternatives to SJR4, we suggest language such as:

> The individual right to keep and bear arms shall not be denied or infringed by the state or a political subdivision of the state, <u>except that the state or a political subdivision of the state may regulate the manner in which arms may be kept, borne, or used</u>.

or

> The individual right to keep and bear arms shall not be denied or infringed by the state or a political subdivision of the state, <u>except that the exercise of this right may be regulated by law</u>.

We appreciate your consideration of our comments, and trust that we can work together to accomplish your goals in a way that does not detrimentally affect our ability to prosecute activities that we all agree should be against the law.

Respectfully submitted,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: _____
Laurie H. Otto
Assistant Attorney General

cc: The Honorable Pat Rodey
The Honorable Peter Goll
The Honorable Max Gruenberg
The Honorable Dave Donley
Grace Berg Schaible
Bob Evans

Alaska Association Chiefs of Police
MICHAEL L. DAUGHERTY, PRESIDENT
4060 HEATH STREET, HOMER, ALASKA 99603

January 16, 1989

Senator Jan Faiks, Chairman
Senate Judiciary Committee
PO Box V, Mail Stop 3100
Juneau, AK 99811

RE: S.J.R. #4

Dear Senator Faiks;

The Alaska Association of Chiefs of Police is opposed to Senate Joint Resolution #4. We are concerned that shifting the existing constitutional collective right to bear arms to an undeniable, uninfringable individual right will place our existing weapon laws in jeopardy. This amendment could ultimately extend an individual constitutional guarantee to convicted felons, the mentally deranged or otherwise incompetent persons to possess firearms.

The issues of concealed weapons and prohibited weapons has not been adequately addressed. It is virtually impossible to accurately predict how the courts will interpret the intent of this amendment when these issues are raised, and we can rest assured they will be. We simply do not need more litigation in this area.

By no means is our association an anti-gun group, but we believe in and advocate responsible use, possession, and ownership of firearms. The existing law adequately protects the good citizens of Alaska.

We request that this position be made part of the record in front of your committee.

Respectfully,

Michael L. Daugherty

Michael L. Daugherty
President

MLD/dla

ALASKA CHAPTER
NATIONAL ASSOCIATION OF
SOCIAL WORKERS

8923 Tanis Drive
Juneau, Alaska 99801
(907) 789-7099

Executive Director
William Diebels, ACSW

January 31, 1989

The Honorable Jan Faiks, Chair
Senate Judiciary Committee
P. O. Box Y
Juneau, AK 99811

Re. S.J.R. 4

Dear Senator Faiks:

The Alaska Chapter of the National Association of Social Workers is opposed to Senate Joint Resolution 4. We believe that to delete the provisions in the existing constitution that give the state the right to regulate the use and possession of firearms would create serious problems in a state that already has such high rates of violent deaths and accidents which are caused by firearms.

The National Association of Social Workers represents more than 300 professional social workers throughout the state. As a group working daily with a wide range of social problems, we urge you to consider the potential negative effects of this proposed Constitutional amendment.

Our organization is not opposed to the responsible use of firearms for hunting or sport. However, we believe that it is in the best interests of all the citizens of Alaska that the state retain the power to regulate the purchase and possession of weapons. If this amendment were to pass, the state could not prohibit convicted felons and mentally deranged individuals from purchasing and possessing weapons.

We do not believe there is a need to change the existing provision in the Constitution. However, if S. J. R. 4 is adopted, we strongly urge that you add a clause to the amendment that will allow the state to continue to regulate the use of firearms, such as "except that this right may be regulated by state law or municipal ordinance".

Sincerely,

William Diebels
by mc.

Alaska Chapter
National Association of Social Workers

Nebraskans Vot For Firearm Right

A state question to amend Nebraska's constitution to include the guaranteed right to keep and bear arms gained voter approval by a margin of 65 to 35%. Nebraska is the 43rd state to adopt such a measure. Six others have done so this decade.

The week before the vote, members of Nebraska Sportsmen's Rights Committee (NSRC), headed by NRA Director Dr. James Carlson, and NRA officials toured the state, speaking to hunting and shooting clubs, along with the news media. As on previous visits, the warm reception told organizers to expect the best on election day. But they weren't sure the strong support in the western two-thirds of the state would carry over into the east, especially in Omaha.

NSRC Chairman Carlson said the question carried in all 93 counties in the state. He is not surprised by the firearms mandate from citizens.

The Nebraska vote means local ordinances, more restrictive than the state law, will be preempted. ■

Financial Supporters Of The Maryland Handgun Ban

National gun prohibition groups, Maryland businesses and political organizations put their financial muscle against Maryland firearms owners who sought to overturn the Maryland handgun ban by referendum in the November election. According to the October 1988 filing to the Maryland State Administrative Board of Elections, the "Citizens for Eliminating Saturday Night Specials," which opposed the private ownership of handguns in Maryland, listed the following businesses and groups as donors to their anti-gun campaign:

SERVICE CONTRIBUTORS:

Baltimore's Child Magazine
Baltimore ($160.00)

Ed Early Printing Co.
Baltimore ($120.00)

Farrar Network
Baltimore ($1,250.00)

National Coalition To Ban Handguns
Washington, D.C. ($4,375.00)

The Commercial Refinery
Baltimore ($78.75)

Producer's Video Corp.
Baltimore ($1,026.50)

Winston Network, Inc.
Baltimore $10,640.00)
Donation made at request of the Maryland Transit Authority)

FINANCIAL CONTRIBUTORS:

Adell Plastics, Inc.
Baltimore ($500.00)

American Ambulance & Oxygen Service
Baltimore ($5,000.00)

American Bank Stationery Co.
Baltimore ($1,000.00)

American Trading & Production Corp.
Baltimore ($5,000.00)

Americans for Democratic Action
Washington, D.C. ($100.00)

Automatic Rolls, Inc.
Baltimore ($2,500.00)

Baltimore Annual Conference United Methodist Church
Baltimore ($1,800.00)

Baltimore Equitable Society
Baltimore ($5,000.00)

Baltimore Gas & Electric
Baltimore ($15,000.00)

Barnes & Resnick, P.A. (Law Offices)
Annapolis ($9,000.00)

Briam Development Group, Inc.
Columbia ($100.00)

Broadway-Payne, Inc.
Baltimore ($1,000.00)

Chase Bank of Maryland
Baltimore ($1,000.00)

Cohen's Clothiers
Cockeysville ($25.00)

Coles Colonial Limited Partners
Baltimore ($250.00)

Concord Associates, Inc.
Baltimore [illegible]00.00)

Crown Central Petroleum
Baltimore ($10,000.00)

DeChiaro Limited Partnership
Towson ($1,000.00)

Dryden Oil Co.
Baltimore ($300.00)

Eisner Associates, Inc.
Baltimore ($50.00)

Eleanor & Franklin Roosevelt Democratic Club
Bowie ($200.00)

Environmental Elements Corp.
Baltimore $100.00)

Equitable Bank National Ass'n
Baltimore $10,000.00)

Fairbrook Park Apartments
Baltimore ($100.00)

Fidelity & Deposit Co.
Baltimore $1,000.00)

First National Bank of Maryland
Baltimore ($10,000.00)

Genstar Stone Products Co.
Hunt Valley ($5,000.00)

Group Dental Service
North Bethesda ($300.00)

Handgun Control, Inc.
Washington, D.C. ($30,000.00)

Hechinger
Landover ($3,000.00)

Hittman Materials & Medical Components, Inc.
Columbia ($250.00)

Hylton & Gonzales
Baltimore ($400.00)

H&S Bakery, Inc.
Baltimore ($2,500.00)

Inner City Realty Co. II
Baltimore ($150.00)

Jonathan Melnick Auctioneers, Inc.
Baltimore ($1,000.00)

Kamanitz, Uhlfelder & Permiso
Pikesville ($500.00)

Koren Furniture, Inc.
Baltimore ($15.00)

Lakein Jewelry Co., Inc.
Baltimore ($50.00)

Landow & Co.
Bethesda ($5,000.00)

Langenfelder & Son, Inc. Contractors
Baltimore ($500.00)

Laurel Racing Ass'n
Laurel ($10,000.00)

Laurel Sand & Gravel, Inc.
Laurel ($5,000.00)

Legum Chevrolet-Nissan
Baltimore ($1,000.00)

Levan, Schimel, Richman & Belman
Columbia ($100.00)

Louis J. Grasmick Lumber Co., Inc.
Baltimore ($1,000.00)

Loyola Federal Savings & Loan
Baltimore ($1,000.00)

Macks & Macks, Inc.
Baltimore ($1,000.00)

Manekin Corp.
Baltimore ($1,000.00)

Mars Super Markets, Inc.
Baltimore ($250.00)

Maryland Cab Ass'n
Kensington ($1,000.00)

Maryland Legislative Black Caucus
Landover ($2,000.00)

Maryland State Teachers Ass'n
Baltimore ($7,000.00)

Meridian Healthcare, Inc.
Towson ($1,250.00)

Meridian, Inc.
Towson ($3,750.00)

Micro Machining
Baltimore ($500.00)

Noxell Corp.
Hunt Valley ($20,000.00)

Number Ten Foundation, Inc.
Baltimore ($500.00)

N. Hess' Sons, Inc.
Baltimore ($500.00)

Perini Construction Inc.
Hagerstown ($1,000.00)

PHP Healthcare Corp.
Alexandria, Va. ($1,000.00)

Pioneer City Realty Co. I
Baltimore ($150.00)

Pioneer City Realty Co. 3
Baltimore ($300.00)

Piper & Marbury
Baltimore ($5,000.00)

Poor, Bowen, Bartlett, Kennedy
Baltimore ($100.00)

Prem & Oumier
Baltimore ($50.00)

Quille-Crown Parking, PMC Management MD, Inc.
Baltimore ($500.00)

Quille's Parking Co. No. 4
Baltimore ($500.00)

RCM & D
Baltimore ($250.00)

Redwood Tower Associates
Baltimore ($100.00)

Ritz Camera Centers, Inc.
Beltsville ($50.00)

Rummel, Klepper & Kahl Eng.
Baltimore ($1,000.00)

R.E. Michel Co., Inc.
Glen Burnie ($7,000.00)

Samuel Meisel & Co., Inc.
Glen Burnie ($100.00)

Schulman & Treem, PA
Baltimore ($100.00)

Stone & Associates, Inc.
Baltimore ($250.00)

Sun Furniture, Inc.
Forestville ($25.00)

The Bank of Baltimore
Baltimore ($5,000.00)

Thomas Baines, Baines Construction
Annapolis ($20.00)

Time Management Group
Baltimore $15,000.00)

T. Talbott & Ann Bond
Ruxton ($200.00)

United Methodist Mission
Baltimore $1,600.00)

White Ridgely & Associates, Inc.
Towson ($25.00)

Whiting-Turner Contracting
Baltimore $10,000.00)

Windsor House Apts. Franklin Park Apt. Co.
Baltimore ($300.00)

Woman's Suburban Democratic Club
Bethesda ($500.00)

Item 2

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL NO. HJR 7
PUBLISH DATE: 1/9/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Const. Amendment - Right To Keep and Bear Arms
Sponsor: Donley
Requestor: Donley

Agency Affected: Office of the Governor
BRU: Division of Elections
Components: 1 Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	-0-	-0-	2.2*	-0-	-0-	-0-
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	2.2*	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	2.2*	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	2.2*	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

* Costs included cover 2 to 3 pages in each Official Elections Pamphlet, for printing and typesetting, and costs estimated to cover computer program-ing requirements for vote (Continued)

Prepared by: Linda Edgeworth
Division: Elections
Phone: 465-4611
Date: 1/12/89

Approved by Commissioner: Sandra Stone
Agency: Division of Elections
Date: 1/17/89

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HJR 7

counting purposes. However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per ballot x approximately 320,000 voters. The total cost of printing the additional ballot card would be $51.2.

Under these circumstances the fiscal note would be:

53.4

Item 3

BILL NO: SJR 4

DATE: January 30, 1989

TITLE: "Proposing an amendment... relating to the right to keep and bear arms."

CONTACT: Gayle A. Horetski
Deputy Commissioner
465-4322

DEPARTMENT OF PUBLIC SAFETY

If passed by the legislature, SJR 4 would place a proposed constitutional amendment before the voters at the next general election. The resolution contains an amendment to article I, section 19 of the state constitution, relating to a citizen's right to keep and bear arms.

The stated purpose of the proposed amendment is twofold:

1) to establish that the right to keep and bear arms under the state constitution is an individual right, rather than a collective one; and

2) to preclude local regulation of the possession or use of firearms. (At present, local regulations regarding firearms may differ from state law.)

I am concerned that the present language of the amendment, if adopted by the voters at the next election, might allow later constitutional challenge to some existing state statutes. Present law, for example, prohibits a convicted felon from possessing a concealable firearm, prohibits possession of certain weapons such as bombs, hand grenades, silencers, and sawed-off shotguns, prohibits possession of a firearm while intoxicated, the discharge of a firearm from, on, or across a highway, the carrying of a concealed weapon, possession of a loaded firearm on licensed premises, or possession of a firearm by a minor without parental consent. (See AS 11.61.200-11.61.220.)

These statutes promote public safety by restricting the possession of especially dangerous weapons or weapons carried in an especially dangerous manner or place. If any of these laws were to be struck down by the courts as violative of the amended language of article I, section 19 of the constitution, the ability of the state to regulate the possession of deadly weapons could be seriously impaired. This, in turn, could present a serious threat to the safety of innocent persons.

The Department of Public Safety sees no compelling need to change the existing language in Alaska's Constitution. The Department of Public Safety therefore opposes SJR 4.

Arthur English
Commissioner

STEVE COWPER, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

P.O. BOX N
JUNEAU, ALASKA 99811-1200
PHONE (907) 465-4356

OFFICE ADDRESS 450 WHITTIER STREET

January 31, 1989

The Honorable Jan Faiks, Chair
Senate Judiciary Committee
P. O. Box V
Juneau, AK 99811

Re: Senate Joint Resolution 4

Dear Senator Faiks:

I am writing on behalf of the Council on Domestic Violence and Sexual Assault. The Council opposes Senate Joint Resolution 4. Of particular concern is the lack of any language in S.J.R. 4 which explicitly preserves the state's right to regulate firearms. We strongly believe the state must retain the right to regulate firearms. Recent incidents in Alaska and in other states demonstrate that unlimited access to firearms by everyone, including the mentally unstable and convicted felons, can lead to tragedies like the death last April of the woman in an insurance office in Anchorage, and the more recent shootings of children on a school playground in Stockton, California.

The mission of the Council is to provide for planning and coordination of services to victims of domestic violence. We believe this proposed resolution directly affects victims of domestic violence. In 1987, 51 murders occurred in Alaska. 36% of the victims in these murders were either family members or in a boyfriend/girlfriend relationship. Furthermore, firearms were used in 61% of the murders.

If this proposed amendment is approved, we urge that it be amended to add a phrase preserving the state's ability to reasonably regulate the possession and use of firearms.

Sincerely,

Barbara Miklos

Barbara Miklos
Executive Director

12-L16LH

Four young victims of the Stockton massacre are laid to rest last week

SHELLEY GAZE—BLACK STAR

● COVER STORY

The Other Arms Race

America's streets become free-fire zones as police, criminals and terrified citizens wield more and ever deadlier guns

BY GEORGE J. CHURCH

When Patrick Purdy sprayed 100 or so bullets from a rapid-fire assault rifle into a crowd of children outside a Stockton, Calif., elementary school, killing five students and wounding 29 others and one teacher before dispatching himself with a pistol he set off a national wave of horror. If tots playing innocently in a schoolyard at recess are no longer safe from heavily armed criminals and lunatics, who is? Many citizens concluded that no one is, and some on the West Coast resolved to take action. Their solution: to arm themselves for survival in a world seemingly gone mad.

And so the Stockton massacre started a new spiral in America's domestic arms race. All last week California gun shops were jammed with customers, sometimes standing three or four deep at counters, clamoring to buy an imitation AK-47 like the one Purdy used or, failing that, some other semiautomatic paramilitary weapon. (His gun was actually an AKS, a Chinese-made semiautomatic version of the fully automatic Soviet AK-47, though many gun dealers and users call both versions AK-47s.) At B & B Sales in North Hollywood, owner Bob Kahn spent much of Thursday frantically phoning suppliers to replenish his sold-out stocks. "We're in a frenzy," he said. Kahn assured customers that 50 AK-47 look-alikes would arrive on Friday, but some buyers were in no mood to wait. Jay Montoya, a Los Angeles salesman who had already visited

Dallas gunshop manager Chuck Payne shows off a formidable shotgun

three other stores in a futile attempt to buy the Chinese-made weapon, finally plunked down $341 and walked out with a Ruger Mini-14, an American semiautomatic rifle with a smaller caliber. Said he: "In case there's an earthquake, I'm going to protect my house [from looters, presumably]. I know how to use this gun, and I would."

In Castro Valley, Calif., Dick Bash, owner of a store named Combat Arms, reports that he is overwhelmed by demand, largely from gun fanciers who fear that the Purdy massacre might at last prod legislators into taking some serious steps to control the sale of guns. Says he: "There is an arms race on, all right. People are rushing to buy guns before the government takes them away."

In all probability, however, Combat Arms customers need not worry. The Stockton slaughter has indeed prompted talk in state legislatures and the halls of Congress about cracking down on gun sales, and a few actual proposals. Some would ban the high-powered paramilitary weapons that, foes say, have only one use: to kill human beings. Others would institute a federally mandated waiting period, generally 15 days, before a qualified buyer could pick up his gun. (Under the bewildering mosaic of state laws now in effect, waiting periods range from 30 days in New York to zero in Virginia and Oregon, where Purdy bought his rifle.) Such a cooling-off period is thought necessary to allow time for a thorough background check that would disclose whether the would-be buyer is a felon or mentally ill. Such proposals have picked up powerful new allies: police chiefs who once opposed gun control but fear that their patrolmen are being outgunned by crack-dealing gangs and other criminals.

Yet there is little reason to believe

A Calendar of Senseless Shootings

APRIL 23, 1987 William Bryan Cruse, 59, shoots 16, six fatally, at a shopping mall in Palm Bay, Fla. He reportedly became enraged when a teenager walked on his lawn.

Weapon: .223-cal. rifle

FEBRUARY 16, 1988 Richard Wade Farley, 39, allegedly shoots to death seven employees of ESL, a Sunnyvale, Calif., computer company. Farley was apparently avenging his dismissal.

Weapon: 12-gauge shotgun

MAY 20, 1988 Laurie Wasserman Dann, 30, a baby-sitter with a history of mental problems, kills one student and wounds five others at a Winnetka, Ill., elementary school.

Weapons: .357 Magnum pistol, .22-cal. pistol, .32-cal. pistol

SEPTEMBER 16, 1988 James William Wilson, 19, allegedly attacks an elementary school in Greenwood, S.C., killing two students and wounding eight others.

Weapon: .22-cal. pistol

that the new push for gun control will get very far. Standing in the way, as always, are two mighty forces: the stubborn belief of many Americans that they have a moral and constitutional right to own guns, and the efforts of the 3 million-member National Rifle Association to fan that belief. The N.R.A. has lost none of its ability to flood the offices of Congressmen and state legislators with angry mail against the mildest gun-control initiatives. True, it lost a highly publicized referendum last fall on a Maryland law that will in effect ban cheap handguns, but that defeat was offset by a little-noticed victory in Nebraska: voters changed the state constitution to make it more difficult for Nebraska towns and counties to enact strict gun legislation. On the federal level, N.R.A. lobbying helped kill a rather weak plan that would have imposed a seven-day waiting period on buyers of handguns.

Gun-control advocates can expect no help from the Bush Administration. Quite the contrary: the new President, a life member of the N.R.A., has sweepingly asserted that "free men and women have the right to own a gun to protect their home." His views echo those of his predecessor, Ronald Reagan, who reiterated his opposition to gun control even after he was wounded by John W. Hinckley. Hinckley used a pistol he had acquired from a Dallas pawnshop only four days after his arrest in Nashville for attempting to board an airliner while concealing three handguns in a carry-on bag.

So the prospect is that the arms race in the streets and suburbs will continue to escalate, trapping growing numbers of innocent people in the cross fire. There were examples just last week of people endangered merely by being in the wrong place:

▸ In Watsonville, Calif., Ignacio Vasquez Segura on Tuesday walked into a packing shed on a mushroom farm where a former girlfriend worked. She was not there, so he asked for one of her friends, Raquel Guiterrez, 24, shot her dead and blasted away with a semiautomatic rifle, wounding two co-workers. Segura fled in a sports car and shot himself in the head as police were closing in.

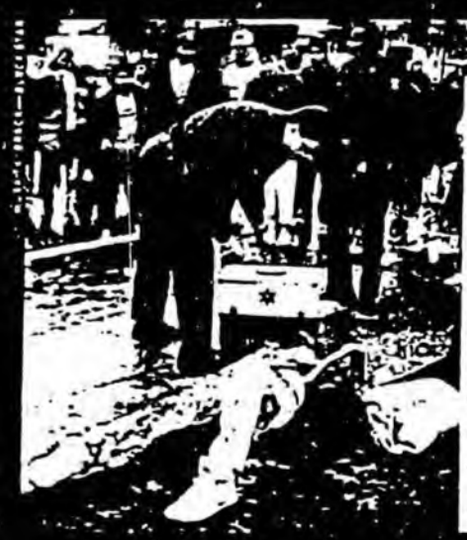
▸ In Bridgeport, Conn., the Rev. DeLen McCrae, his wife Imogene and her son Scott Bish were sleeping shortly after midnight Wednesday when a fusillade of gunfire tore through their house. They huddled on the floor in Bish's room until the firing stopped; no one was hurt, but several bullets ripped through a living-room couch on which McCrae's daughter would have slept that night had she not called off a visit. Next day an anonymous phone caller told Mrs. McCrae it had all been a mistake; the barrage was intended for a next-door neighbor.

The common element in these cases and in shootings at a high school in Washington and a car dealership in Norfolk, Va., was more than the threat to innocent bystanders. All involved the use of semiautomatic weapons. These fast-firing, powerful guns, capable of sending a bullet through a concrete wall, were once rare outside the military. But when the U.S. normalized relations with China, imports of Chinese weapons as well as other goods became legal. Purchases of the AK-47 copy soared from a mere 4,000 a year as recently as 1985-86 to more than 40,000 last year. There has also been a leap in sales of the MAC-10, a relatively cheap U.S.-manufactured semiautomatic; the AR-15, a semiautomatic copy of the U.S. military's M-16 infantry rifle; and a semiautomatic version of the Israeli-made Uzi.

A clandestine cottage industry has grown up to convert these guns into full

JANUARY 17, 1989 A policeman displays the assault rifle used by Patrick Purdy, 26, an embittered drifter seemingly obsessed with war, when he raked the yard of an elementary school in Stockton, Calif., killing five Asian-American children and wounding 30 other people before he fatally shot himself with a pistol.

Weapons: AK-47–style rifle, 9-mm pistol



LAST WEEK After an earlier argument at Washington's Woodrow Wilson High School, a gunman, possibly joined by a confederate, opens fire on 200 students leaving the school for the day. Four are wounded. Police arrest an 18-year-old suspect, Rodney Reardon.

Weapon: 9-mm semiautomatic handgun

SWAT teams move in as Willie Howard Womack Jr., 26, a discharged errand runner enraged by his boss's evaluation, wounds two employees of a Norfolk, Va., auto dealership before killing himself.

Weapons: AK-47–style rifle, .32-cal. derringer, .22-cal. pistol

automatics, which can fire long bursts with a single pull of the trigger (a semiautomatic, despite its rapid-fire capability, requires a separate squeeze of the trigger for each round). A skilled gunsmith can accomplish the conversion for almost all semiautomatics, and there is a considerable demand for that service. Since 1934 federal law has made full automatics, such as machine guns, difficult to buy for anyone except police, the military and licensed collectors. A private purchaser has to obtain both federal and state licenses and undergo a rigorous federal background check.

Semiautomatics have become the weapon of choice for drug gangs looking for more firepower to blast away any threat to their giant profits, from police or rival peddlers. Law-enforcement officials note that the rise of semiautomatic weaponry parallels almost exactly the virtual takeover of parts of big cities by crack dealers. "In considerably more than half the crack arrests we make, we also seize firearms—that is, good firearms," reports Robert Stutman, head of the Drug Enforcement Administration in New York State. "The paranoia induced by the drug, which most of the traffickers use themselves, makes them pick the best weapons available for protecting themselves, and they have the money for it."

The trigger-happy crack gangs have pointed the way for other criminals who once carried relatively crude firearms or none. "The old adage about burglars and car thieves never being armed is completely changed," says Dee Anderson, an Arlington, Texas, patrolman. He reports that an Uzi and a shotgun were recently used in stickups of a convenience store and a fast-food outlet in that north Texas city. Police also note apprehensively a tendency among all types of criminals not just to carry guns but to use them rather than submit to arrest. Says Houston Police Officer Al Baker: "Just about everybody committing a crime has a gun. Not cheap Saturday-night specials, but guns they can count on. And they're willing to shoot it out rather than go to jail."

In simple self-defense, law enforcers are also turning to heavier and more sophisticated artillery, ratcheting up the arms race another notch. "The police are definitely outgunned in this country," asserts Dewey Stokes, national president of the Fraternal Order of Police. A cop armed with the six-shot .38-cal. service revolver that has been standard for decades has little chance in a shootout with a criminal wielding, say, a converted Colt AR-15 capable of firing 900 rounds a minute: if not hit in the first fusillade, the policeman is likely to be shot while reloading. Out of that fear, police departments across the country are discarding the old .38 for semiautomatic weapons, and the DEA started a year ago to rearm its agents with the Colt SMG, a submachine gun designed by Colt Industries specifically for the agency. It is small enough to fit under a coat, yet packs quite a wallop.

The final and most dismaying turn in this cycle: responsible, law-abiding citizens—afflicted by a lack of confidence in the police, reading every morning and watching on TV every night the stories about shootouts endangering innocent bystanders—start arming themselves in case they have to join the battle. It used to be that the great majority of American gun owners bought their weapons for hunting or sport (target shooting, for instance). But recent surveys show nearly 50% mentioning self-protection as their primary reason. Says Mark Warr, a soci-

Suiting up for battle: a Los Angeles police officer dons a bulletproof vest

ologist at the University of Texas: "It's a giving up on the system. People have lost confidence in the ability of local government to control crime. There is a growing feeling that 'We must do it ourselves.' "

Strikingly, it is often Jane rather than John Q. Public who is the first-time gun buyer these days. Guns have long been viewed as a symbol of male sexual power and arrogance, an attitude captured by the Beatles' song *Happiness Is a Warm Gun*. Yet surveys by Gallup for Smith & Wesson, the gunmaker, show that the number of women purchasing firearms increased 53% between 1983 and 1986, while the number thinking of buying one quadrupled, to nearly 2 million. Many of those plans have undoubtedly turned into purchases, though no updated figures are available.

The reason is that women feel especially vulnerable to violent crime—often with good reason. Carol Kolen, a Chicago psychologist, was attacked several years ago at the University of Illinois Medical Center by two men, one carrying a gun. She fought off a rape but was severely beaten. Then, on a Saturday morning last year, she was attacked again as she approached her car parked outside a neighborhood church. "After that I said, 'That's it, no more.' I made the decision then and there that my protection was in my own hands." Kolen bought a gun and is going to indoor shooting ranges to practice because she realizes that "guns are dangerous. You need to become comfortable with a gun to use it in the right situation."

But it is not only victims who are arming themselves. For many citizens of both sexes the mere thought of crime arouses a terror great enough to overcome their onetime revulsion toward firearms. "Cathy," an executive secretary in Danvers, Mass., says she once felt "absolute

Running Guns up the Interstate

The term gunrunning brings to mind images of swift boats landing rifles on shadowy and foreign shores. But the gunrunning that plagues the U.S. these days is more a matter of illicit firearms stashed in vehicles rolling boldly up interstate highways. Federal law strictly limits the resale of weapons. However, that has not stanched a flood of firepower that travels from Southern states, where guns are quickly and easily bought, to Northern ones, where sales are more tightly regulated. Firearms bought in gun shops in Florida, Texas and Virginia—the three largest supply states—fetch top dollar when sold on the black market to drug dealers, street gangs and assorted thugs in Washington and New York City.

"With the huge profits to be made, gunrunners are flooding the market," laments federal firearms agent Phil Chojnacki in Houston. "You take off one group, and another springs up." In fact, the markup on black-market firearms is not bad. A .357-cal. magnum that sells for $250 in a Dallas gun shop will bring $700 on the streets of New York. Just $300 will buy a semiautomatic in Florida, which can be sold at the Northern end of the pipeline for $1,000 or more.

Drug dealers have been finding the gun trade a nice side business. In the past two years Jamaican drug gangs, known as "posses," that run the crack houses in Dallas have moved some 1,200 Southern firearms to other drug dealers in the North. Enterprising dope shippers can even arrange a "package deal" for their wealthy Northern buyers: a stolen luxury car that has drugs hidden in the door panels, with a cache of arms thrown in.

The driving force behind domestic arms smuggling is the discrepancy among state laws. Northern states such as New York and Massachusetts have waiting periods of several weeks on gun purchases. That gives authorities time to check buyers for a criminal record and makes it harder for miscreants to get weapons. Not so in Texas or many parts of the South, such as Florida, South Carolina and Virginia, where customers need only show a driver's license or other form of identification that certifies them as state residents.

That kind of ID is easily forged by out-of-state buyers. "People come into a gun shop with a Virginia driver's license, and the ink is barely dry," laments George N. Metcalf, Assistant U.S. Attorney in Richmond. "They buy half a dozen guns with cash, get into a car with New York license plates, and they are gone." Some gunrunners prefer to hire one or more "straw buyers," local Southerners paid as little as $100 for the use of their legitimate IDs to make the purchases. Through such means, gun smugglers often buy a dozen weapons or more at a time. Though gun dealers in some states are required to report multiple purchases, federal agents say sellers do not always cooperate.

Stopping this clandestine trade is almost impossible for agents of the Treasury Department's Bureau of Alcohol, Tobacco and Firearms. The weapons are transported by car or truck, aboard trains or stashed in the cargo hold of interstate buses and planes. Federal agents even uncovered one shipment sent by United Parcel Service and labeled "sewing-machine parts." Most of the time they move unimpeded by the kinds of inspections imposed on shipments from outside the U.S. Until more uniformity can be established among state gun laws, gun smuggling on the interstates will remain a flourishing trade.

—By Richard Lacayo

Reported by Elaine Shannon/Washington and Richard Woodbury/Dallas

fear" toward the guns her former husband kept in their house. But word went around her office building of a rape at knifepoint in the parking lot, and a greater fear took hold. "I thought about what happened, and I know I'm no match for a knife," says Cathy. "So I did a lot of thinking about whether I really wanted to carry a gun. Then I did a lot of shopping around about what kind of gun I wanted." She wound up packing a snub-nosed Smith & Wesson revolver in a shoulder holster under her business suit. "I feel safer with my gun," she says. "I feel safer walking out into the parking lot at night."

Is she actually safer? No definitive answer can be given unless someone devises a way to count crimes that are not committed because the would-be perpetrators fear that the potential victims may be armed. Some respectable authorities think the wide dispersion of guns among ordinary citizens does help deter crime. Sociologists James Wright and Peter Rossi conducted in-depth interviews over a three-year period starting in 1982 with more than 1,874 imprisoned felons. Among their findings: 56% of the cons agreed with the statement that "a criminal is not going to mess around with a victim he knows is armed with a gun," and 57% believed that "most criminals are more worried about meeting an armed victim than they are about running into the police." Fully 74% thought that "one reason burglars avoid houses when people are at home is that they fear being shot."

But the great bulk of expert opinion is that owning a gun undermines rather than increases safety: whatever deterrence of burglars or rapists might occur is more than offset by other factors. First come the suicides: in 1986, 18,153 people shot themselves to death. No one knows how many might have lived if they had been unable to pick up a gun and how many might have merely chosen other means to end their lives. But surely the presence of a loaded gun in a bureau drawer must have tempted many, particularly teens, to yield to a black depression that might have lifted had the means to carry out the dark wish not been so readily available.

Then come the accidental shootings, many by klutzes who never bother to learn how to handle their weapons. More heartbreaking are the frequent incidents of children picking up their parents' guns and finding out in the most disastrous way that they are not toys; for example, an eight-year-old boy who shot his six-year-old sister dead last week in Fairfax, Va. Then there are the quarrels between spouses, between parents and children, between neighbors and friends that suddenly turn lethal because one or both can pick up a gun. Police commonly estimate that if a household gun is ever used at all, it is six times as likely to be fired at a member of the family or a friend as at an intruder. (It is even more likely, says Dr. Carl Bell, a Chicago psychiatrist who has conducted research into crime and victimization, that the gun will be stolen: guns are prime targets for burglars because they can be easily and profitably sold to other criminals.) And finally, in the relatively rare shoot-outs between householders and burglars that do occur, it might easily be the burglar who proves more skilled in handling his gun and the householder who winds up in the morgue.

Adding all types of deaths together, James Mercy and Vernon Houk, researchers from the Atlanta-based Centers for Disease Control, point out that "during 1984 and 1985, the last two years for which data are available, the number of people who died of injuries inflicted by firearms in the United States (62,897) exceeded the number of casualties during the entire 8½-year Viet Nam conflict." Writing in the Nov. 10 issue of the *New England Journal of Medicine*, Mercy and Houk judged that "injury from firearms is a public-health problem whose toll is unacceptable." Gunfire is, in fact, the eleventh most frequent cause of death in the U.S. and sixth among people under 65. For young black men in the inner city, homicide is the leading cause of death.

In the same issue of the journal, another group of researchers presented evidence that lax U.S. gun laws might be to blame. The team, headed by emergency room surgeon John Henry Sloan, studied a pair of cities just 140 miles apart: Seattle and Vancouver. The two cities had similar unemployment rates, household incomes, law-enforcement policies and even favorite TV shows. Two differences: in Canada, handgun ownership is tightly restricted; in Washington State, guns are more easily purchased. And between 1980 and 1986 Seattle had 388 homicides, vs. 204 in Vancouver. The divergence in murder rates cannot be fully explained by different attitudes toward law-and-order. The two cities had almost identical robbery and burglary rates and even virtually the same number of killings by non-gun

STREET FAVORITES

Assault weapons available over the counter

NAME	COST	CAPACITY	MANUFACTURER	COMMENT
AK-47	$370	30-round magazine; 5, 20 and 40 available; also 75-round drums	Type 56 produced by the Chinese for U.S. import	Soviet designed, adopted by armed forces in many nations
AR-15	$750	5-round magazine; 20 and 30 available	Colt Industries, Hartford, Conn.	Civilian model of the military's M-16 used in Viet Nam
TEC-9	$325	36-round magazine	Intratec USA, Miami, Fla.	Models have threaded barrels for attachment of silencers and barrel extensions
Ruger Mini-14	$469	5- and 20-round magazines	Sturm Ruger & Co., Southport, Conn.	A light weapon often favored hunters
Uzi	$699	10- or 25-shot magazines	Israel Military Industries, imported by Action Arms, Philadelphia, Pa.	A compact version is carried by the Secret Service

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A head-on view of target practice at a Salisbury, Mass., shooting range, captured on film by a remote-controlled camera

methods, but gun homicides were five times as common in Seattle. The research team's scientifically understated conclusion: "Our results suggest that a more restrictive approach to handgun control may decrease national homicide rates."

That opinion is growing in the wake of the Stockton slaughter. In California, Governor George Deukmejian and Los Angeles Police Chief Daryl Gates, longtime foes of gun control, have lessened their opposition—at least when it comes to paramilitary weapons. Deukmejian now calls for a 15-day waiting period for the purchase of assault rifles. Gates would apply the waiting period to purchases of all kinds of guns, and has called for an outright ban on paramilitary weapons. Says he: "We have been too tolerant. There is no need for citizens to have highly sophisticated military assault rifles designed for the sole purpose of killing people on the battlefield."

But gun control still faces daunting practical and philosophical objections. Even some advocates think it is oversold. Police officers tend to equate guns with drugs; so long as the crack trade is not significantly reduced, they think, the inner-city shoot-outs will rage on and contribute to the impression (not entirely justified in light of slight overall declines in the national crime rate) of a rising tide of violent crime that has driven so many peaceful citizens to arm themselves. On the practical side, writing a definition of paramilitary weapons that would distinguish them from some types of semiautomatic hunting rifles is no easy job.

To be effective, any law regulating semiautomatic assault rifles would have to be federal. It would make no sense to ban such weapons in, say, California, if they could be legally purchased in neighboring Arizona or Oregon. But tens of millions of Americans—not to mention the Bush Administration—resist the thought of giving Washington that much power over citizens' lives.

Most important of all, affection for guns runs deep in the American psyche, as evidenced by the common estimate that 50 million to 60 million U.S. households, about half the total, own at least one gun. And many of those households are convinced that gun ownership is an inalienable right guaranteed by the Second Amendment to the Constitution, which reads, "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." Actually, the wording is ambiguous: legal scholars have been quarreling for decades over whether it guarantees the right to bear arms to citizens individually or collectively—that is, as members of a "well-regulated militia." The Supreme Court has never ruled squarely on that issue and has not even faced it indirectly since the 1930s. Then it upheld a law banning sawed-off shotguns on the ground that they would be of no use to a militia, seemingly upholding the collective interpretation. On the other hand, some writings of the Founding Fathers indicate they believed an armed citizenry to be the ultimate check against any tendency of their own government to turn into an oppressive tyranny, which would imply an individual right to bear arms.

But in a society that subjects drivers to more rigorous tests before they can operate an automobile than it does gun purchasers before they can buy a deadly firearm, such logic has its limits. It surely does not apply to semiautomatic assault rifles, which are unsuitable for either hunting or reasonable self-protection. Such steps as banning paramilitary weapons and instituting a uniform waiting period would not prevent hunters, target shooters, gun collectors or even ordinary citizens legitimately concerned with self-defense from buying weapons. They would merely make it a bit more difficult. In the process they might begin to slow, if not stop, the domestic arms race and avert the greatest danger of all—that the every-man-for-himself atmosphere of an armed camp would erode the bonds of trust that keep a society from slipping into anarchy. Gun control is no panacea, but it might help forge a better society—and if the U.S. cannot make progress in the wake of the Stockton massacre, when can it?

—Reported by Jonathan Beaty/Los Angeles, Elaine Shannon/Washington and Richard Woodbury/Dallas

What Should Be Done

1 **The Federal Government should ban outright the import or sale of paramilitary weapons to civilians.**

2 **A new federal law should replace wildly varying state and local gun statutes and should require a buyer to provide detailed background information, on pain of a felony charge for making false statements.**

3 **The law should require a two-week waiting period to allow time for checking a buyer's background.**

4 **It should also require that private transfers of guns be formalized by licensed gun dealers to maintain up-to-date records of actual ownership.**

5 **States should require licensing of all gun owners and should create data banks with information on everyone with a firearm so that his or her record can be investigated as easily as that of a licensed driver.**

Item 5

Amendment HJR 7

By Donley

line 16 after "state." add:

The use or possession of arms by individuals convicted of a crime and the carrying of weapons concealed on the person may be regulated by the legislature.

Item # 6

AMENDMENT

By Spohnholz

Suggested Language for HJR 7:

SECTION 19. RIGHT TO KEEP AND BEAR ARMS. The individual [A WELL-REGULATED MILITIA BEING NECESSARY TO THE SECURITY OF A FREE STATE, THE] right [OF THE PEOPLE] to keep and bear arms for lawful purposes shall not be denied or infringed, except that the manner of keeping and bearing arms may be regulated by law.

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF HJR 7

Right To Keep and Bear Arms

Received January 9. 1989
by Reps. Donley, Boucher, Menard, Gruenberg and Leman

Heard February 7, 1989
Heard February 8, 1989

Committee Substitute adopted February 8, 1989

Passed Out of Committee February 8, 1989
4 Do Pass
3 Do Not Pass Without Amendment

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Item 6: Amendment by Rep. Spohnholz

Official Business

COMMITTEE: HOUSE STATE AFFAIRS

DATE: 2/7/89

Subject of meeting: SCR 10, HJR 7

SIGN-IN

	NAME	ADDRESS	PHONE	REPRESENTING	If testifying, which Bill #?
	Jeff Morrison	PO Box C Juneau	465-4600	DMVA	
✓	Laurie Otto	PO Box KC	3428	Law	HJR7
✓	GAYLE HORETSKI	BOX N, JUN.	4322	DPS	HJR 7
	BARBARA MIKOS	Box N Jun	4356	ADOSA	Observe. HJR7
✓	PAUL GRANT	217 2nd # 204 Jun	6-2701	ACLU/SELF	HJK7
	Kate Tesar			Fran Ulmer	
✓	Pegge Andersen	9414 Long Run Dr., Juneau	9-7422	NRA-	HJR-7
	Tom Somerville	Juneau	4-3450	AOC	HJR 7

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^PM-Right To Arms NPT,740(
^Judge Says Right To Bear Arms Means Felons Can Have Guns(
^ss2(

NORTH PLATTE, Neb. (AP) _ The new right-to-bear-arms amendment in Nebraska's Constitution grants felons the same rights as others to possess firearms, Lincoln County District Judge Don Rowlands ruled.

Rowlands said in a legal opinion Monday the law banning felons from possessing guns is unconstitutional in light of the new amendment.

His ruling was the second in the last few days to strike down gun-possession laws in the wake of voters' passage in November of Initiative 403, which was placed on the ballot by petition.

Last week, the 13th Judicial District's other district judge, John Murphy, ruled the statute that prohibits possession of a defaced firearm also is unconstitutional because of the new language.

The rulings are the first in the state to address the implication of the amendment. Other challenges over the wording are pending in Douglas County, including one that maintains the amendment makes the death penalty unconstitutional.

The challenge that led to Rowlands' ruling was filed by attorney Kent Florom on behalf of Larry Rush, who had been charged with being a felon in possession of a firearm and being a habitual criminal.

After Rowlands dismissed the weapons charge, the habitual criminal charge also was dismissed at County Attorney Kent Turnbull's request.

Turnbull said both the Lincoln County cases will be appealed to the Nebraska Supreme Court.

The language at issue in both cases is found in Article I, Section 1 of the Constitution. As amended by the voters it now says:

''All persons are by nature free and independent, and have certain inherent and inalienable rights; among these are life, liberty, the pursuit of happiness, and the right to keep and bear arms for security or defense of self, family, home, and others, and for lawful common defense, hunting, recreational use, and all other lawful purposes, and such rights shall not be denied or infringed by the state or any subdivision thereof.''

Like his colleague Murphy, Rowlands said that courts can look only to the specific language of the Constitution in interpreting it. And like Murphy, Rowlands looked to a 1986 Nebraska Supreme Court case that upheld the validity of Initiative 300.

In that case, the state's high court wrote that courts cannot ''sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines.

''Even more so,'' the Supreme Court said, ''in a case involving the people's amendment to their Constitution, we make no attempt to judge the wisdom or the desirability in enacting such amendments.''

Based on that reasoning, then, Rowlands wrote, his opinion on the desirability of the right-to-bear-arms language is ''entirely irrelevant.

''One may argue that the voters of the state of Nebraska were duped by a special interest group from outside the state to pass an amendment to the Nebraska Constitution which was unnecessary or imprecisely drafted,'' Rowlands wrote.

''Similarly, a logical person might argue that Initiative Measure No. 403 should have permitted the state of Nebraska to exercise reasonable restrictions to prevent the possession of: semiautomatic or automatic assault rifles originally developed for combat; plastic handguns designed to evade detection at airport security stations; other types of firearms which are unreasonably dangerous and without social utility in a civilized society; or firearms by persons previously convicted of a felony.

''Whatever the relative merits or demerits of those positions might be,'' he continued, ''they must be considered matters of public policy more properly left to debate and decision by the people of the state of Nebraska and their elected representatives. ... If the voters of this state are dissatisfied with their Constitution, they may modify the language at any time in their sole and absolute discretion.''

In this specific case, Rowlands said, Rush was not charged with using the firearm for any unlawful purpose, but rather just a ''status'' offense of possession of a firearm with a barrel less than 18 inches long.

''If the Nebraska Legislature passed a law after the adoption of Initiative Measure No. 403 prohibiting the possession of handguns, but not shotguns and rifles