

State of Vermont v. Max Misch, 2021 VT 10

Defendant charged with violating Vermont's statute prohibiting possession of large capacity magazines (10 rounds of ammunition for long guns, 15 rounds for hand guns), 13 V.S.A. § 4021, which had been passed in 2018.

Challenged statute as violating Article 16 of the Vermont Constitution, which provides that "the people have a right to bear arms for the defence of themselves and the State."

We first determine that Article 16 protects a limited right to individual self-defense, and that the proper standard for Article 16 challenges is a reasonable-regulation test. Under this test, we will uphold a statute implicating the right to bear arms provided it is a reasonable exercise of the State's power to protect the public safety and welfare. Applying this standard, we conclude that § 4021 satisfies the reasonable-regulation test because the statute has a valid purpose of reducing the lethality of mass shootings, the Legislature was within its authority in concluding that the regulation promotes this purpose, and the statute leaves ample means for Vermonters to exercise their right to bear arms in self-defense. Pg. 5, para. 7.

This was first case in which Court defined the scope of the right to bear arms under Article 16, and set forth the standard to determine whether a law infringes on that right. Pg. 6, para. 8.

To do so, Court analyzes the text of the provision, its historical context, Vermont case law, the construction of similar provisions in other state constitutions, and empirical evidence if relevant. Pg. 6, para. 9.

On the basis of these factors, Court concludes that “Article 16 protects a right to bear arms in individual self-defense, subject to reasonable regulation.” Pg. 6, para. 10.

What standard of review should apply when the Court determines whether a given gun regulation is a permissible public safety regulation or an unconstitutional infringement on the right to individual self-defense?

On the basis of Article 16’s history and its previous decisions, the Court concludes that “the state reasonable regulation test is the most appropriate standard for Article 16 challenges.” Right to bear arms has historically been subject to reasonable Legislative restrictions going back to 19th century, and it is distinct from other individual rights “in the degree to which its exercise is associated with serious risks of harm to self and others.” Pg. 34, para. 60, 61.

“Under the reasonable-regulation test, the government may regulate firearms under its police power as long as its exercise of that power is reasonable. Regulation is not reasonable if it effectively abrogates Article 16.” Pg. 33, para. 58.

The test analyzes whether the statute at issue is a ‘reasonable’ limitation upon the right to bear arms and focuses on the balance of the interests at stake. Under this test, the right to bear arms may be “regulated but not prohibited.” Pg. 33,35; para. 59, 63.

This means that the government may regulate firearms as long as any enactment is a reasonable exercise of police power and there is a reasonable fit between the purpose and means of regulation. Pg. 35, para. 63. This is more deferential to state Legislatures

than standards used by Federal courts analyzing Second Amendment challenges. Pg. 29, para. 51.

“Reasonableness in the exercise of the State’s police power requires that the purpose of the enactment be in the interest of the public welfare and that the methods utilized bear a rational relationship to the intended goals. In assessing reasonableness, therefore, courts should consider the importance of the state’s goals, the reasonableness of the connection between the goals and the means chosen, and the degree to which the regulation burdens the exercise of the right to bear arms for self-defense.” Pg. 36, para. 64. The test will not tolerate a statute that effectively abrogates Article 16 and renders the right to bear arms in self-defense a nullity. Pg. 36, para. 65.

Although our inquiry looks to an actual balance of interests, rather than merely a conceivable one, it does not override our general deference to the Legislature on matters within its authority. The question for courts is not whether we would strike the same balance as the Legislature, but is whether the Legislature’s choices are anchored to a real, as opposed to hypothetical, foundation. Pg. 37, para. 66.

Although we will not uphold a law restricting the right to bear arms on the basis of hypothetical rationales for which there is no basis, or which are overwhelmingly refuted by contrary evidence, Vermont courts will not second guess the Legislature’s weighing of the facts and information supporting its enactments when its legislation is supported by adequate evidence in light of the constitutional rights potentially implicated by its legislation. Pg. 46-47, ar. 81.

Applying the test to section 4021, the Court concludes that the Legislature's purpose of reducing the potential for injury and death from mass shootings was a proper legislative purpose within the police power to protect the public welfare, and that the large capacity magazine ban had a rational relationship to that purpose because there was sufficient evidence to permit the Legislature to conclude that limiting magazine capacity could further that goal by reducing lethality and injuries in mass shootings. In addition, the burden on the right to bear arms for self-defense was minimal because other types of firearms were not prohibited. Pg. 40, para. 71, 72.

We do not address in this decision the factors to be considered in determining whether other kinds of provisions potentially impacting the right to bear arms—such as limitations on where individuals can possess firearms, regulations concerning the sale or transfer of firearms, requirements relating to securing or carrying firearms, or **limitations concerning who may possess firearms**—might constitute unreasonable exercises of the police power or effectively nullify the right to bear arms in defense of home, person, or property. Pg. 35, fn. 21.