

Case # 6 - Craig v. California

Question: Do assault weapon bans violate an individual's 2nd amendment rights (14th applied to States)?

Law: The State of California has a law that prohibits possession of assault weapons. **California prohibits residents from owning or buying assault weapons or .50 browning machine gun (BMG) rifles, unless they were acquired before 1989.** (See 2nd page for details of the law)

Background: Craig, who lives in California, owned several assault rifles and one .50 browning machine gun which he brought to California when he moved there in 1991. No registration of the guns appear. They guns were retrieved from him with probable cause and a search warrant. Craig was allowed to keep his guns that did not violate the California laws. He wants to own these items again, along with other California Rifle Members.

Circuit Court RULING:

In a 2-to-1 decision, a panel of the 9th U.S. Circuit Court of Appeals in California concluded the State of California's ban does not violate the Second Amendment, saying that States ought to have leeway in deciding how to regulate firearms.

"If a ban on semi-automatic guns in a State reduces the perceived risk from a mass shooting, and makes the public feel safer as a result, that's a substantial benefit," the 12-page majority opinion says.

The decision sets precedent not just for California but for other states in the judicial circuit.

U.S Supreme Court agreed to hear the case:

Craig: Argue that the 2nd and 14th protects an individual's right to own an assault weapon(s). You may also argue that prohibiting an entire class of weapons — **in this case, assault weapons** — **went too far.** Use cases: *Heller and McDonald* – *right to bear arms/ protection of home.*

California: Argue that the 2nd and 14th amendments are not violated. In a past case, *McDonald v California (2010)*, the Supreme Court recognized that the Second Amendment protects individual rights. **But maintain that the Supreme Court did not set forth the parameters of the amendment in past cases.** Both *Heller* and *McDonald* did "*not foreclose all possibility of experimentation*" by State and/or local governments.

California also prohibits any person from manufacturing, distributing, transporting, importing, keeping for sale, offering for sale, giving, or lending any assault weapon within the state.² However, DOJ may, upon a finding of good cause, issue permits for the manufacture, sale, or possession of assault weapons to certain law enforcement agencies and officers and to approved individuals over the age of 18.³ DOJ must conduct a yearly inspection – or every five years if the person to be inspected has fewer than five permitted devices – of every person to whom a permit is issued, for security and safe storage practices, and to reconcile the inventory of assault weapons.⁴ Generally, no lawfully possessed assault weapon may be sold **or transferred** to anyone within California other than to a licensed gun dealer or to a police or sheriff's department.⁵

California law lists certain firearms that have been deemed assault weapons, including all AK series and Colt AR-15 series.⁶ California's Attorney General is required to promulgate a **list specifying all such firearms**.⁷ **However, a firearm that meets any of the following descriptions is also an "assault weapon":**⁸

- A semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and any one of the following: 1) a pistol grip that protrudes conspicuously beneath the action of the weapon; 2) a thumbhole stock; 3) a folding or telescoping stock; 4) a grenade or flare launcher; 5) a flash suppressor; or 6) a forward pistol grip;⁹
- A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than ten rounds;
- A semiautomatic, centerfire rifle that has an overall length of less than 30 inches;
- A semiautomatic pistol that has the capacity to accept a detachable magazine and any one of the following: 1) a threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer; 2) a second handgrip; 3) a shroud that is attached to, or partially or completely encircles, the barrel allowing the bearer to fire the weapon without burning his or her hand, except a slide that encloses the barrel; or 4) the capacity to accept a detachable magazine at some location outside of the pistol grip;
- A semiautomatic pistol with a fixed magazine that has the capacity to accept more than ten rounds;
- A semiautomatic shotgun that has both a folding or telescoping stock, and a pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip;
- A semiautomatic shotgun that has the ability to accept a detachable magazine; or
- A shotgun with a revolving cylinder.
- Antique firearms (i.e., firearms manufactured prior to 1899)¹⁰, and certain pistols that are designed expressly for use in Olympic target shooting events, are exempt from these provisions.¹¹
- California **does not ban kits** that allow a person to convert a lawful firearm into an assault weapon.
- Any person owning a lawfully registered assault weapon may possess the firearm only under limited conditions, unless he or she obtains a permit for additional uses from DOJ.¹² Those conditions include:
 - At the person's residence, place of business, or other property owned by that person, or on property owned by another with the owner's express permission;
 - While on certain target ranges and shooting clubs;
 - While on publicly owned land if specifically permitted by the managing agency of the land; or
 - While properly transporting the firearm between any of the places mentioned above, or to any licensed gun dealer for servicing and repair.¹³

California law includes a statement of the dangers posed by assault weapons:

*The Legislature hereby finds and declares that the proliferation and use of assault weapons poses a threat to the health, safety, and security of all citizens of this state. The Legislature has restricted the assault weapons specified in Section 30510 based upon finding that each firearm has such a high rate of fire and capacity for firepower that its function as a legitimate sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings.*¹⁴

<http://lawcenter.giffords.org/assault-weapons-in-california/>