



**POST-HELLER LITIGATION SUMMARY**  
**Updated November 21, 2014**

**I. Introduction and Overview**

The Law Center to Prevent Gun Violence tracks all litigation involving Second Amendment challenges to federal, state, and local gun laws asserted in the aftermath of the United States Supreme Court's controversial, landmark decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008). This document summarizes the state of Second Amendment law after *Heller* and examines its implications for many different laws designed to reduce gun violence. To date, we have examined over 900 federal and state post-*Heller* Second Amendment decisions in the preparation of this analysis.

Our summary of the most recent and important Second Amendment lawsuits and decisions can be found at <http://smartgunlaws.org/post-heller-litigation-summary/>. We also have a wide variety of [Second Amendment resources](#) available on our web site.

**A. *Heller* and *McDonald***

In a 5-4 ruling in *Heller*, the Supreme Court held for the first time that the Second Amendment protects an individual right to possess an operable handgun in the home for self-defense. Accordingly, the Court struck down Washington, D.C. laws prohibiting handgun possession and requiring that firearms in the home be stored unloaded and disassembled or locked at all times.

However, the Supreme Court cautioned that the Second Amendment right is “not unlimited,” and should not be understood as conferring a “right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”<sup>1</sup> The Court identified a non-exhaustive list of “presumptively lawful regulatory measures,” including “longstanding prohibitions” on firearm possession by felons and the mentally ill, laws forbidding guns in sensitive places like schools and government buildings, and conditions on the commercial sale of firearms.<sup>2</sup> The Court also noted that the Second Amendment is consistent with laws banning “dangerous and unusual weapons” not in common use, such as M-16 rifles and other firearms that are most useful in military service.<sup>3</sup> In addition, the Court declared that its analysis should not be read to suggest “the invalidity of laws regulating the storage of firearms to prevent accidents.”<sup>4</sup>

In 2010, in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Supreme Court held in another 5-4 ruling that the Second Amendment is a “fundamental right” that applies to state and local governments in addition to the federal government. The Court invalidated a Chicago law entirely

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<sup>1</sup> *Heller*, 554 U.S. at 626.

<sup>2</sup> *Id.* 626-27.

<sup>3</sup> *Id.* at 627.

<sup>4</sup> *Id.* at 632.

prohibiting the possession of handguns, but reiterated in that a broad spectrum of gun laws remain constitutionally permissible.<sup>5</sup>

## **B. The Post-*Heller* Landscape: A Flood Of Overwhelmingly Unsuccessful Challenges to Federal, State, and Local Gun Laws**

Since *Heller* and *McDonald*, courts have been inundated with civil lawsuits claiming that various federal, state, and local laws regulating firearms violate the Second Amendment. Nearly all of these lawsuits have been unsuccessful. Moreover, criminal defendants now routinely claim that criminal statutes violate the Second Amendment. Like the civil lawsuits, those claims have been met with nearly uniform rejection by the courts.

As discussed below, courts—including several federal courts of appeal and state supreme courts—have upheld numerous common sense gun laws against Second Amendment challenges including those:

- Requiring “good cause” for the issuance of a permit to carry a concealed firearm
- Prohibiting the possession of assault weapons and large capacity ammunition magazines
- Requiring that firearms be stored in a locked container or other secure manner when not in the possession of the owner
- Forbidding convicted felons from owning firearms
- Forbidding persons convicted of certain classes of misdemeanors such as domestic violence-related crimes from owning firearms
- Requiring background checks to be conducted on all private sales of firearms
- Requiring the registration of all firearms
- Forbidding persons who have been involuntarily committed to a mental institution from owning firearms
- Forbidding persons under 21 years of age from owning firearms
- Regulating gun dealers and firing ranges, including preventing such businesses from operating within 500 feet of residential areas or schools

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<sup>5</sup> *McDonald*, 561 U.S. at 785-86 (restating the “presumptively valid” categories of laws identified in *Heller* and noting that “[s]tate and local experimentation with reasonable firearms regulations will continue under the Second Amendment.”).

By contrast, courts have only struck down gun laws in a handful of cases, and even in those cases, the courts have been careful to note that most gun safety laws are not prohibited by the Second Amendment.

As described below, the Supreme Court has declined to grant review (“certiorari”) in a new Second Amendment case since *McDonald* was decided. As a result, the lower court decisions upholding gun laws such as those listed above have been left undisturbed. The Supreme Court is most likely to next address the issue of whether and to what extent the Second Amendment applies outside of the home.

## **II. Post-*Heller* Second Amendment Doctrine**

The *Heller* and *McDonald* decisions left many questions unanswered about how courts should interpret and apply the new individual right recognized in those cases. For example, the Court did not decide in either case whether the Second Amendment extends outside the home or what level of constitutional review should be applied to Second Amendment claims.

Although lower courts have articulated a few different ways of handling Second Amendment claims, the most common framework is a two-pronged inquiry that first asks whether a challenged law falls within the scope of the Second Amendment, and, second, if it does, whether the law satisfies the applicable level of scrutiny.<sup>6</sup> As it discussed in detail below, the level of scrutiny is determined by looking at how severely the law in question burdens Second Amendment rights.<sup>7</sup>

### **A. The Scope of the Second Amendment**

The first step of the two-pronged inquiry is an analysis of whether the challenged law “imposes a burden on conduct falling within the Second Amendment’s guarantee.”<sup>8</sup> This question frequently turns on a historical analysis of whether “the conduct at issue was understood to be within the scope of the right at the time of ratification.”<sup>9</sup>

The Supreme Court provided little guidance in *Heller* or *McDonald* on this issue but did identify some categories of “presumptively lawful” regulatory measures that presumably fall outside the scope of the Second Amendment. As noted above, those laws include “prohibitions on the possession of firearms by felons and the mentally ill, [and] laws forbidding the carrying of firearms

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<sup>6</sup> See, e.g., *Woollard v. Gallagher*, 712 F.3d 865, 874-75 (4th Cir. 2013) (collecting cases applying the two-pronged approach).

<sup>7</sup> See *United States v. Chovan*, 735 F.3d 1127, 1138 (9th Cir. 2013) (“the level of scrutiny should depend on (1) how close the law comes to the core of the Second Amendment right, and (2) the severity of the law’s burden on the right.”) (quotations omitted).

<sup>8</sup> See, e.g., *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010).

<sup>9</sup> *Id.*

in sensitive places such as schools and government buildings, [and] laws imposing conditions and qualifications on the commercial sale of arms.”<sup>10</sup> Subsequently, most courts have had little trouble upholding these types of “presumptively valid” laws.<sup>11</sup> The Court also noted that powerful, military-style weapons such as M-16’s that are not in “common use” fall outside the scope of the Second Amendment and lower courts have used this rationale to uphold laws banning particularly “dangerous and unusual” weapons.<sup>12</sup>

One of the most hotly litigated questions in Second Amendment jurisprudence is whether, and to what extent, the Second Amendment should apply outside the home. This issue has come up most often in the context of litigation over laws regulating or banning the concealed or open carrying of firearms in public, which is discussed in greater detail below).

In evaluating challenges related to conduct outside the home, a significant number of courts have concluded that the Second Amendment only protects conduct within the home.<sup>13</sup> However, the U.S. Courts of Appeals for the Second, Seventh, and Ninth<sup>14</sup> Circuits have determined that the Second Amendment applies, or likely applies, outside the home.<sup>15</sup> Other courts have deferred the

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<sup>10</sup> *Heller*, 554 U.S. at 626-27.

<sup>11</sup> *See, e.g., United States v. Pruess*, 703 F.3d 242 (4th Cir. 2012) (felon in possession statute is “presumptively lawful” and does not violate Second Amendment); *Tyler v. Holder*, 2013 U.S. Dist. LEXIS 11511 (W.D. Mich. Jan. 29, 2013) (upholding firearm prohibition for individual who had been involuntarily committed and noting that prohibitions on the possession of firearms by the mentally ill are “presumptively valid” under *Heller*); *United States v. Mendez*, 2014 U.S. App. LEXIS 16478 (9th Cir. Aug. 26, 2014) (“Section 922(g)(1) is a presumptively lawful regulatory measure and does not unconstitutionally burden whatever Second Amendment rights”) (quotations omitted); *Teixeira v. County of Alameda*, 2013 U.S. Dist. LEXIS 128435 (N.D. Cal. Sep. 9 2013) (regulation of gun dealers is “presumptively lawful” condition on the commercial sale of firearms).

<sup>12</sup> *United States v. Zaleski*, 489 Fed. Appx. 474 (2d Cir. 2012) (upholding defendant’s conviction for possession of a machinegun and noting the Supreme Court’s statement from *Heller* that ‘the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns.’”).

<sup>13</sup> *See Jennings v. McCraw*, No. 10-00141 (N.D. Tex. Jan. 19, 2012) (unpublished); *In re Patano*, 60 A.3d 507 (N.J. Super. Ct. App. Div. 2013); *New Jersey v. Robinson*, 2011 N.J. Super. Unpub. LEXIS 2274 (App. Div. Aug. 23, 2011); *Richards v. County of Yolo*, 2011 U.S. Dist. LEXIS 51906 (E.D. Cal. May 16, 2011); *Williams v. Maryland*, 10 A.3d 1167, 1178 (Md. 2011); *People v. Dawson*, 934 N.E.2d 598 (Ill. App. Ct. 2010), *cert. denied by Dawson v. Illinois*, 131 S. Ct. 2880 (2011); *People v. Yarbrough*, 86 Cal. Rptr. 3d 674 (Cal. Ct. App. 2008), *review denied by People v. Yarbrough (Ronnie)*, 2009 Cal. LEXIS 2948 (Cal. Mar. 18, 2009); *People v. Davis*, 214 Cal. App. 1322 (2013); *People v. Williams*, 962 N.E.2d 1148 (Ill. App. Ct. 2011); *In re Matter of Kelly*, 2012 N.Y. Misc. LEXIS 369 (N.Y. App. Div. June 13, 2012); *see also Peterson v. Martinez*, 707 F.3d 1197 (10th Cir. 2013) (finding that the Second Amendment does not confer a “right to carry a concealed weapon); *Plastino v. Koster*, 2013 U.S. Dist. LEXIS 58544 (E.D. Mo. Apr. 24, 2013) (same).

<sup>14</sup> The Ninth Circuit case dealing with this issue, *Peruta v. County of San Diego*, 742 F.3d 1144, 1166 (9th Cir. 2014), may still be reviewed en banc.

<sup>15</sup> *Peruta*, 742 F.3d at 1166 (9th Cir. 2014) (“[T]he carrying of an operable handgun outside the home for the lawful purpose of self-defense, though subject to traditional restrictions, constitutes ‘bear[ing] arms’ within the meaning of the Second Amendment.”); *Kachalsky v. County of Westchester*, 701 F.3d 81 (2d Cir. 2012)(explaining that “[a]lthough

question of whether the Second Amendment applies outside the home, but have ultimately upheld restrictions on firearm possession in public places.<sup>16</sup> For example, the Fourth Circuit has declined to explicitly extend the Second Amendment outside the home without further guidance from the Supreme Court, but has upheld Maryland’s concealed carry permit law even assuming that there is some application of the Second Amendment outside the home.<sup>17</sup> Even the few courts that have suggested that some form of Second Amendment protection ought to extend outside the home have generally upheld laws restricting firearm possession in public places.<sup>18</sup>

## B. The Applicable Level of Scrutiny

If the first step reveals that the challenged law does in fact burden conduct protected by the Second Amendment, the second step<sup>19</sup> requires “applying an appropriate form of means-end scrutiny.”<sup>20</sup> What constitutes an “appropriate” form of scrutiny in this context is being widely litigated. The Court in *Heller* suggested that evaluation using the “rational basis” test—holding that a law is constitutional if it is rationally related to a legitimate government interest—was not appropriate, at least in the context of ordinary handguns kept in the home for self-defense. The

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the Supreme Court’s cases applying the Second Amendment have arisen only in connection with prohibitions on the possession of firearms in the home, the Court’s analysis suggests...that the Amendment must have some application in the very different context of the public possession of firearms.”); *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012)(explaining that “*Heller* repeatedly invokes a broader Second Amendment right than the right to have a gun in one’s home”). *But see Moore v. Madigan*, 2013 U.S. App. LEXIS 3691 (7th Cir. Feb. 22, 2013) (Hamilton, J. dissenting from denial of rehearing en banc) (“The Supreme Court has not yet decided whether the post-*Heller* individual right to keep and bear arms at home under the Second Amendment extends beyond the home. The panel’s split decision in these cases goes farther than the Supreme Court has gone and is the first decision by a federal court of appeals striking down legislation restricting the carrying of arms in public...[E]xtending the right to bear arms outside the home and into the public sphere presents issues very different from those involved in the home itself, which is all that the Supreme Court decided in [*Heller* and *McDonald*].”).

<sup>16</sup> *Drake v. Filko*, 724 F.3d 426, 430-32 (3d Cir. 2013); *Woollard v. Gallagher*, 712 F.3d 865 (4th Cir. 2013); *United States v. Masciandaro*, 638 F.3d 458 (4th Cir. 2011); *Young v. Hawaii*, 911 F. Supp. 2d 972 (D. Haw. 2012).

<sup>17</sup> *Woollard*, 712 F.3d at 876-83.

<sup>18</sup> *Kachalsky*, 701 F.3d at 101 (“Our review of the history and tradition of firearm regulation does not ‘clearly demonstrate[.]’ that limiting handgun possession in public to those who show a special need for self-protection is inconsistent with the Second Amendment...we decline Plaintiffs’ invitation to...call into question the state’s traditional authority to extensively regulate handgun possession in public.”); *Hall v. Garcia*, 2011 U.S. Dist. LEXIS 34081 at \*13 (N.D. Cal. Mar. 17, 2011) (“Under any of the potentially applicable levels of scrutiny...the Gun-Free School Zone Act constitutes a constitutionally permissible regulation of firearms in public areas in or near schools.”); *but see Nevada v. Schultz*, No. 10-CM-138 (Clark Cty. Cir. Ct. Oct. 12, 2010) (Nevada trial court dismissing an indictment under the state’s law prohibiting the carrying of concealed weapons as violating the Second Amendment).

<sup>19</sup> In *Peruta*, the Ninth Circuit found that “rare” laws that “destro[y] (rather than merely burde[n]) a right central to the Second Amendment must be struck down” without applying any form of means-end scrutiny. *Peruta*, 742 F.3d at 1167.

<sup>20</sup> *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2013).

Court provided no further guidance, however, on the proper level of scrutiny to be applied in Second Amendment challenges.

Courts have typically chosen between two levels of heightened scrutiny often applied to constitutional rights: “intermediate scrutiny,” which examines whether a law is reasonably related to an important or significant governmental interest, and “strict scrutiny,” which asks whether a law is narrowly tailored to achieve a compelling government interest.

Most appellate and district courts that have explicitly adopted a level of scrutiny, including the Third, Fourth, Fifth, and D.C. Circuits, have applied intermediate scrutiny to most Second Amendment challenges.<sup>21</sup> Courts have arrived at intermediate scrutiny using differing approaches, but the clear trend suggests that laws which do not prevent law-abiding citizens from possessing an operable handgun in the home for self-defense should face, and survive, intermediate scrutiny review.<sup>22</sup> However, a few lower courts have reviewed Second Amendment challenges under strict scrutiny,<sup>23</sup> and in one case involving a ban on shooting ranges in the City of Chicago, the Seventh Circuit applied “a more rigorous [standard than intermediate scrutiny], if not quite ‘strict scrutiny.’”<sup>24</sup>

Most courts’ stated tests suggest that the appropriate level of scrutiny depends on the severity of the challenged law’s burden on Second Amendment rights.<sup>25</sup> The Second Circuit, for example, has

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<sup>21</sup> *NRA v. McCraw*, 719 F.3d 338 (5th Cir. 2013); *United States v. Marzarella*, 614 F.3d 85 (3d Cir. 2010); *United States v. Masciandaro*, 638 F.3d 458 (4th Cir. 2011); *United States v. Williams*, 616 F.3d 685 (7th Cir. 2010); *United States v. Skoien*, 614 F.3d 638 (7th Cir. 2010); *United States v. Reese*, 627 F.3d 792 (10th Cir. 2010); *Heller v. District of Columbia (“Heller II”)*, 670 F.3d 1244 (D.C. Cir. 2011) (applying intermediate scrutiny to prohibition on assault weapons and large capacity ammunition magazines); *see also Woollard v. Gallagher*, 712 F.3d 865 (4th Cir. 2013) (applying intermediate scrutiny to laws concerning weapons outside of the home but noting that strict scrutiny may apply to restrictions on the “core right of self-defense in the home”) (quotations and citation omitted).

<sup>22</sup> *See, e.g., Heller v. District of Columbia (“Heller III”)*, 2014 U.S. Dist. LEXIS 66569 (D.D.C., 2014) (upholding all aspects of the District’s firearm registration laws under intermediate scrutiny review); *Colo. Outfitters Ass’n v. Hickenlooper*, 2014 U.S. Dist. LEXIS 87021 (D. Colo. June 26, 2014) (upholding Colorado’s requirement that background checks be conducted on certain private transfers of firearms and prohibition on large capacity ammunition magazines under intermediate scrutiny review); *Jackson v. City & County of San Francisco*, 746 F.3d 953 (9th Cir. 2014) (upholding safe storage ordinance and prohibition on hollow-point bullets under intermediate scrutiny review).

<sup>23</sup> *See Bateman v. Perdue*, 881 F. Supp. 2d 709 (E.D.N.C. 2012); *Taylor v. City of Baton Rouge*, 2014 U.S. Dist. LEXIS 117919 (M.D. La., Aug. 25, 2014); *United States v. Bay*, 2009 U.S. Dist. LEXIS 106874 (D. Utah Nov. 13, 2009); *United States v. Engstrum*, 2009 U.S. Dist. LEXIS 33072 (D. Utah Apr. 17, 2009); *but see In re United States*, 578 F.3d 1195 (10th Cir. 2009); *United States v. Luedtke*, 589 F. Supp. 2d 1018 (E.D. Wis. Nov. 18, 2008); *United States v. Erwin*, 2008 U.S. Dist. LEXIS 78148 (N.D.N.Y. Oct. 6, 2008).

<sup>24</sup> *See Ezell v. City of Chicago*, 651 F.3d 684, 708 (7th Cir. 2011).

<sup>25</sup> *Ezell*, 651 F.3d at 703 (explaining that the level of applicable scrutiny should be determined by “how close the law comes to the core of the Second Amendment right and the severity of the law’s burden on the right”); *Gowder v. City*

only applied intermediate scrutiny where the challenged law *substantially* burdens conduct protected by the Second Amendment.<sup>26</sup> The Fourth, Fifth, and Ninth and Circuits have said that “the level of scrutiny in the Second Amendment context should depend on the nature of the conduct being regulated and the degree to which the challenged law burdens the right.”<sup>27</sup>

While intermediate scrutiny is most commonly used in Second Amendment cases, courts have applied rational basis review—or something else lower than intermediate scrutiny—in several cases not directly implicating the right to a handgun in the home. For example, the Massachusetts Supreme Court applied rational basis review to uphold a law requiring firearms to be secured in a locked container when not in the owner’s control.<sup>28</sup> The court reasoned that rational basis review was appropriate because safe storage laws are similar to laws that regulate the commercial sale of firearms in that “[b]oth types of laws are designed to keep firearms out of the hands of those not authorized by law to possess a firearm.” Similarly, the Eastern District of California concluded that rational basis was the appropriate standard for reviewing a National Park Service regulation prohibiting firearms in national parks where they are prohibited by state law because the regulation did not substantially burden Second Amendment rights.<sup>29</sup> Appellate courts in Illinois and Wisconsin have also applied rational basis review to other laws regulating guns outside of the home.<sup>30</sup>

Regardless of the level of scrutiny that has been applied, nearly all of these cases have one thing in common: the Second Amendment challenge has been rejected and the statute at issue has been upheld. Of the more than 900 cases tracked by the Law Center, 96% have rejected the Second Amendment challenge.

### **III. Gun Regulations Have Survived Largely Unscathed after *Heller***

#### **A. Concealed and Open Carry**

As discussed above, one of the most litigated Second Amendment issues since *Heller* has been whether the Second Amendment protects a right to carry a firearm outside of the home. Gun-lobby

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*of Chicago*, 923 F. Supp. 2d 1110 (N.D. Ill. June 19, 2012); *Nat’l Rifle Ass’n v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 700 F.3d 185 (5th Cir. 2012).

<sup>26</sup> *Kachalsky v. County of Westchester*, 701 F.3d 81 (2d Cir. 2012); *United States v. Decastro*, 682 F.3d 160 (2d Cir. 2012).

<sup>27</sup> *Chester*, 628 F.3d at 682; *Chovan*, 735 F.3d at 1138; *NRA v. McCraw*, 719 F.3d 338 (5th Cir. 2013).

<sup>28</sup> *Commonwealth v. McGowan*, 982 N.E. 2d 495 (Mass. 2013).

<sup>29</sup> *United States v. Parker*, 919 F. Supp. 2d 1072 (E.D. Cal. Jan. 22, 2013).

<sup>30</sup> *Wisconsin v. Brown*, 2012 WI App 62 (2012); *People v. Williams*, 962 N.E.2d 1148 (Ill. App. Ct. 2011); see also *United States v. Laurent*, 861 F. Supp. 2d 71 (E.D.N.Y. 2011) (observing that “intermediate scrutiny seems excessive” for reviewing all gun regulations and opining that “plac[ing] gun rights on the same high protected level as speech rights seems an odd view of American democratic values.”).

groups and individual plaintiffs have frequently challenged laws regulating the ability of people to carry weapons outside of the home (either openly or in a concealed manner). Nearly all of those challenges have failed. Courts have upheld laws requiring a license to carry a gun outside the home.<sup>31</sup> Courts have also upheld numerous conditions being placed on such licenses including:

- Requiring an applicant for a license to carry a concealed weapon to show “good cause,” “proper cause,” or “need,” qualify as a “suitable person”<sup>32</sup>
- Requiring an applicant to submit affidavits evidencing good character<sup>33</sup>
- Prohibiting the issuance of a concealed carry permit based on a misdemeanor assault conviction<sup>34</sup>
- Requiring an applicant to be a state resident<sup>35</sup>
- Requiring an applicant for a concealed carry license to be at least twenty-one years old.<sup>36</sup>
- Allowing the revocation of the permit if law enforcement determines that the permit holder poses a material likelihood of harm.<sup>37</sup>

Most notably, out of eight federal courts of appeal that have directly reviewed challenges to restrictions on concealed or open carry, six have upheld the laws at issue in their entirety.<sup>38</sup> For example, the Second Circuit in *Kachalsky v. Cacace* rejected a challenge to New York’s requirement that applicants for a concealed carry permit obtain a license by demonstrating that they have “a special need for self-protection distinguishable from that of the general community or of persons engaged in the same profession.”<sup>39</sup> Although the court assumed that the Second Amendment had “some” application outside of the home, it found that the law satisfied intermediate scrutiny

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<sup>31</sup> *State & Portland v. Christian*, 354 Ore. 22 (2013); *Ohio v. Henderson*, 2012 Ohio 1268 (Ohio Ct. App. 2012); *Williams v. Maryland*, 10 A.3d 1167, 1178 (Md. 2011).

<sup>32</sup> *Drake v. Filko*, 724 F.3d 426 (3d Cir. 2013); *Woollard v. Gallagher*, 712 F.3d 865 (4th Cir. 2013); *Kachalsky v. County of Westchester*, 701 F.3d 81 (2d Cir. 2012); *Hightower v. Boston*, 693 F.3d 61 (1st Cir. 2012); *Young v. Hawaii*, 911 F. Supp. 2d 972 (D. Haw. 2012); *Raulinaitis v. Los Angeles Sheriff’s Dept.*, No. 11-08026 (C.D. Cal. Aug. 13, 2012); *Birdt v. Beck*, No. 10-08377 (C.D. Cal. Jan. 13, 2012); *Piszczatoski v. Filko*, 840 F. Supp. 2d 813 (D. N.J. 2012); *Kuck v. Danaher*, 822 F. Supp. 2d 109 (D. Conn. 2011); *In re Patano*, 60 A.3d 507 (N.J. Super. Ct. App. Div. 2013).

<sup>33</sup> *Williams v. Puerto Rico*, 910 F. Supp. 2d 386 (D.P.R. 2012).

<sup>34</sup> *Kelly v. Riley*, 733 S.E.2d 194 (N.C. Ct. App. Nov. 6, 2012).

<sup>35</sup> *Peterson v. Martinez*, 707 F. 3d 1197 (10th Cir. 2013); *Osterweil v. Bartlett*, 819 F. Supp. 2d 72 (N.D.N.Y 2011), vacated by *Osterweil v. Bartlett*, 738 F.3d 520, (2d Cir. 2013); but see *Palmer v. D.C.*, 2014 U.S. Dist. LEXIS 101945 at \*29 n. 5 (D.D.C. July 26, 2014).

<sup>36</sup> *NRA v. McCraw*, 719 F.3d 338 (5th Cir. 2013); see also *Powell v. Tompkins*, 926 F. Supp. 2d 367 (D. Mass. 2013).

<sup>37</sup> *Embody v. Cooper*, 2013 Tenn. App. LEXIS 343 (May 22, 2013).

<sup>38</sup> *Drake v. Filko*, 724 F.3d 426 (3d Cir. 2013); *Peterson v. Martinez*, 707 F.3d 1197 (10th Cir. 2013); *Woollard v. Gallagher*, 712 F.3d 865 (4th Cir. 2013); *Moore v. Madigan*, 702 F.3d 933, 940-42 (7th Cir. 2012); *Kachalsky v. County of Westchester*, 701 F.3d 81 (2d Cir. 2012); *Hightower v. Boston*, 693 F.3d 61 (1st Cir. 2012).

<sup>39</sup> *Kachalsky*, 701 F.3d at 86 (quotations and citations omitted).



because New York’s legislature “reasonably concluded that only individuals having a bona fide reason to possess handguns should be allowed to introduce them into the public sphere.”<sup>40</sup> The Third Circuit upheld a New Jersey law similar to the New York law upheld in *Kachalsky* by finding that such restrictions on the concealed carrying of weapons were “long-standing” regulations under *Heller* and therefore presumptively valid.<sup>41</sup> The Tenth Circuit went even further in *Peterson v. Martinez*, holding flatly that “the Second Amendment does not confer a right to carry concealed weapons.”<sup>42</sup>

In contrast to the majority of courts that have considered challenges to similar laws, the U.S. Court of Appeals for the Seventh Circuit struck down an Illinois law completely banning the carrying of loaded and accessible firearms in public, calling the law “the most restrictive gun law of any of the 50 states.”<sup>43</sup> However, even in striking down that law, the court was careful to note that states, including Illinois, had many policy options available to them to regulate the carrying of firearms in public, including prohibiting gun ownership by more dangerous individuals, requiring carry permit applicants to have firearms training, and allowing private institutions to ban guns from their premises.<sup>44</sup>

Similarly, a divided panel of the Ninth Circuit in early 2014 struck down a San Diego County policy requiring an applicant for a permit to carry a concealed firearm in public to demonstrate “good cause” to carry a firearm above and beyond a general desire for self defense.<sup>45</sup> The court reasoned that the policy amounted to a “complete destruction” of a “core right” protected by the Second

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<sup>40</sup> *Id.* at 89, 98-99.

<sup>41</sup> *Drake v. Filko*, 724 F.3d 426 (3rd Cir. 2013), *cert. denied*, 2014 U.S. LEXIS 3197 (May 5, 2014). The New Jersey law at issue had its origins in the early 20th century, roughly the same time the first prohibitions on felons possessing firearms (which *Heller* called “long-standing”) were enacted.

<sup>42</sup> *Peterson*, 707 F. 3d at 1211.

<sup>43</sup> *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012) (suggesting that Illinois could adopt a discretionary concealed carry licensing scheme); see also *Palmer v. D.C.*, 2014 U.S. Dist. LEXIS 101945 (D.D.C. July 26, 2014) (striking down the District’s policy of requiring a permit to carry a handgun in public, but refusing to issue permits). See also *Woollard v. Gallagher*, 712 F.3d 865 (4th Cir. 2013) (reversing a district court decision striking down a requirement in Maryland law that applicants for concealed carry permits show “a good and substantial reason” for carrying a firearm in order to obtain a permit to carry a firearm in public.)

<sup>44</sup> *Moore v. Madigan*, 702 F.3d 933, 940-42 (7th Cir. 2012); see also *Woollard v. Gallagher*, 712 F.3d 865 (4th Cir. 2013) (upholding a requirement in Maryland law that applicants for concealed carry permits show “a good and substantial reason” for carrying a firearm in order to obtain a permit to carry a firearm in public).

<sup>45</sup> *Peruta*, 742 F.3d at 1170, 1178-79. Several other lawsuits have been brought challenging similar policies in other jurisdictions within the Ninth Circuit, but each has been stayed pending the final outcome in *Peruta*. See *McCay v. Hutchens*, No. 12-57049 (C.D. Cal. Oct. 29, 2012); *Richards v. Prieto*, No. 11-16255 (9th Cir. March 5, 2014); *Thomson v. Torrance Police Dept.*, No. 11-06154 (C.D. Cal. July 2, 2012); *Baker v. Kealoha*, No. 12-16258 (9th Cir. March 20, 2014); and *Birdt v. Beck*, No. 12-55115 (C.D. Cal. January 13, 2012).

Amendment.<sup>46</sup> However, just like the Seventh Circuit, the court cautioned that “*regulation* of the right to bear arms is not only legitimate but quite appropriate” and that nothing in its opinion should “be taken to cast doubt on the validity of measures designed to make the carrying of firearms for self-defense as safe as possible, both to the carrier and the community.”<sup>47</sup>

## B. Possession of Firearms by Criminals

Courts have nearly uniformly upheld laws banning the possession of firearms by felons and persons convicted of certain misdemeanors, such as crimes of domestic violence. Federal and state courts have repeatedly upheld laws prohibiting:

- Possession of firearms by felons<sup>48</sup>
- Possession of firearms by domestic violence misdemeanants<sup>49</sup>
- Possession of firearms by anyone “employed for” a convicted felon (such as a bodyguard)<sup>50</sup>
- Providing a firearm to a fugitive felon<sup>51</sup>
- Possession of firearms by an individual who is under indictment for a felony<sup>52</sup>
- Possession of firearms by an unlawful user of a controlled substance<sup>53</sup>

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 1178 (emphasis in original).

<sup>48</sup> See, e.g., *United States v. Pruess*, 703 F.3d 242 (4th Cir. 2012); *United States v. Moore*, 666 F.3d 313 (4th Cir. 2012); *United States v. Torres-Rosario*, 658 F.3d 110 (1st Cir. 2011); *United States v. Williams*, 616 F.3d 685 (7th Cir. 2010); *United States v. Anderson*, 559 F.3d 348 (5th Cir. 2009); *United States v. Rhodes*, 2012 U.S. Dist. LEXIS 76363 (S.D. W. Va. June 1, 2012); *United States v. Edge*, 2012 U.S. Dist. LEXIS 15002 (W.D.N.C. Feb. 8, 2012); *United States v. Loveland*, 2011 U.S. Dist. LEXIS 119954 (W.D.N.C. 2011); *United States v. Kirkpatrick*, 2011 U.S. Dist. LEXIS 82801 (W.D.N.C. July 27, 2011); *State v. Eberhardt*, 145 So. 3d 377 (La. 2014); *State v. Craig*, 826 N.W.2d 789 (Minn. Feb. 27, 2013); *Wisconsin v. Pocian*, 2012 WI App 58 (2012); *People v. Spencer*, 2012 IL App (1st) 102094 (2012); *Pohlabel v. Nevada*, 268 P.3d 1264 (Nev. 2012); see also *Schrader v. Holder*, 704 F.3d 980 (D.C. Cir. 2013) (upholding federal prohibition on firearms ownership for persons convicted of certain common law misdemeanors without a set sentence length); *Chardin v. Police Comm’r of Boston*, 2013 Mass. LEXIS 352 (June 4, 2013) (upholding prohibition on the issuance of firearm carrying permits to persons adjudicated as juvenile delinquents for felony offenses).

<sup>49</sup> See, e.g., *Enos v. Holder*, 2014 U.S. App. LEXIS 19798 (9th Cir. Oct. 16, 2014); *United States v. Armstrong*, 706 F.3d 1 (1st Cir. 2013); *United States v. Chovan*, 735 F.3d 1127, 1139-41 (9th Cir. 2013); *United States v. Chester*, 847 F. Supp. 2d 902 (S.D. W. Va. 2012); *United States v. Staten*, 666 F.3d 154 (4th Cir. 2011); *United States v. Skoien*, 614 F.3d 638 (7th Cir. 2010); *United States v. White*, 593 F.3d 1199 (11th Cir. 2010); *United States v. Booker*, 644 F.3d 12 (1st Cir. 2011); *United States v. Holbrook*, 613 F. Supp. 2d 745 (W.D. Va. 2009); see also *In re United States*, 578 F.3d 1195 (10th Cir. 2009).

<sup>50</sup> *United States v. Weaver*, 2012 U.S. Dist. LEXIS 29613 (S.D. W. Va. Mar. 7, 2012).

<sup>51</sup> *United States v. Stegmeier*, 701 F.3d 574 (8th Cir. 2012).

<sup>52</sup> *United States v. Laurent*, 861 F. Supp. 2d 71 (E.D.N.Y. 2011); *United States v. Call*, 874 F. Supp. 2d 969 (D. Nev. 2012).

<sup>53</sup> See, e.g., *United State v. Emond*, 2012 U.S. Dist. LEXIS 149295 (D. Me. Oct. 17, 2012); *United States v. Carter*, 669 F.3d 411 (4th Cir. 2012); *United States v. Prince*, 2009 U.S. Dist. LEXIS 54116 (D. Kan. June 26, 2009), *rev’d on other grounds*,

- Possession of firearms during the commission of a crime<sup>54</sup>

Courts have also rejected challenges to sentence enhancements for convicted criminals who possessed firearms while engaging in illegal activity.<sup>55</sup>

Courts have mostly explained these decisions by pointing to language in *Heller* and *McDonald* specifically pointing out the validity of certain “long-standing prohibitions” on ownership of weapons by particularly dangerous persons such as, but not limited to, convicted felons.<sup>56</sup>

There have been a few outliers among lower courts. A federal district court in Illinois struck down a provision of Chicago law that prohibited the possession of firearms by anyone who had been convicted in any jurisdiction of the crime of unlawful use of a weapon.<sup>57</sup> Also, a federal district court in New York found a federal law imposing a pretrial bail condition prohibiting the defendant from possessing a firearm to be unconstitutional.<sup>58</sup> Finally, an Ohio trial court dismissed, on Second Amendment grounds, an indictment against a defendant for possession of a firearm following a conviction for a drug crime, but only found the law at issue unconstitutional as applied to “a Defendant with no felony convictions . . . [who] possesses firearms in his home or business, for the limited purpose of self-defense.”<sup>59</sup> Of course, these decisions represent a small minority of courts. As discussed above, the vast majority of decisions on this issue have upheld laws limiting or banning weapons possession by persons convicted of crimes.

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593 F.3d 1178 (10th Cir. 2010); *United States v. Bumm*, 2009 U.S. Dist. LEXIS 34264 (S.D. W. Va. Apr. 17, 2009); *Piscitello v. Bragg*, 2009 U.S. Dist. LEXIS 21658 (W.D. Tex. Feb. 18, 2009).

<sup>54</sup> *United States v. Jackson*, 555 F.3d 635 (7th Cir. Feb. 18, 2009) (finding no Second Amendment right to possess a firearm during the commission of a felony), *cert denied by Jackson v. United States*, 558 U.S. 857 (2009); *United States v. Darby*, 2014 U.S. Dist. LEXIS 88392 (June 27, 2014); *Roberge v. United States*, 2013 U.S. Dist. LEXIS 113014 (E.D. Tenn. Aug. 12, 2013).

<sup>55</sup> *See, e.g., United States v. Napolitan*, 762 F.3d 297 (3rd Cir. 2014); *Garcia v. United States*, 2014 U.S. Dist. LEXIS 101409, (W.D. Mo. July 25, 2014); *United States v. Greeno*, 679 F.3d 150 (6th Cir. 2012); *United States v. Darby*, 2014 U.S. Dist. LEXIS 88392 (D.S.C. June 27, 2014); *Ohio v. Israel*, 2012 Ohio 4876 (Ohio Ct. App. 2012).

<sup>56</sup> *See, e.g., United States v. Moore*, 666 F.3d 313, 317-20 (4th Cir. 2012) (collecting cases relying on this language to uphold the federal felony in possession statute and noting the Fourth Circuit’s own reliance on it in upholding bans on firearms possession by persons convicted of domestic violence-related misdemeanors).

<sup>57</sup> *Gowder v. City of Chicago*, 923 F. Supp. 2d 1110 (N.D. Ill. 2012).

<sup>58</sup> *United States v. Arzberger*, 592 F. Supp. 2d 590 (S.D.N.Y. 2008); *but see United States v. Kennedy*, 327 Fed. Appx. 706 (9th Cir. 2009) (imposing the same condition but not directly addressing the Second Amendment issue).

<sup>59</sup> *Ohio v. Tomas*, No. 526776 (Ohio Ct. Com. Pl. Dec. 7, 2010).

### C. Other Regulations

Courts across the country have also upheld numerous other laws regulating firearms, including the following:

- Firearm Ownership
  - Requiring the registration of all firearms<sup>60</sup>
  - Requiring an individual to possess a license to own a handgun<sup>61</sup>
  - Requiring handgun permit applicants to pay a \$ 340 fee every three years<sup>62</sup>
  - Prohibiting the sale of firearms to individuals who do not reside in any U.S. state<sup>63</sup>
  - Requiring background checks for private firearm transfers<sup>64</sup>
  
- Firearm Safety
  - Requiring the safe storage of handguns in the home<sup>65</sup>
  - Prohibiting the possession of a firearm while intoxicated<sup>66</sup>

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<sup>60</sup> *Justice v. Town of Cicero*, 577 F.3d 768 (7th Cir. Ill. 2009) (finding that registration “merely regulated gun possession” rather than prohibiting it), *cert. denied*, 177 L. Ed. 2d 323 (2010); *Heller v. District of Columbia (“Heller III”)*, 2014 U.S. Dist. LEXIS 66569 (D.D.C., 2014) (upholding all aspects of the District’s firearm registration laws under intermediate scrutiny review).

<sup>61</sup> *People v. Perkins*, 880 N.Y.S.2d 209 (N.Y. App. Div. 2009).

<sup>62</sup> *Kwong v. Bloomberg*, 723 F.3d 160 (2d Cir. 2013).

<sup>63</sup> *Dearth v. Holder*, 893 F. Supp. 2d 59 (D.D.C. 2012).

<sup>64</sup> *Colo. Outfitters Ass’n v. Hickenlooper*, 2014 U.S. Dist. LEXIS 87021 (D. Colo. June 26, 2014) (upholding Colorado’s requirement that background checks be conducted on certain private transfers of firearms).

<sup>65</sup> *Jackson v. City & County of San Francisco*, 746 F.3d 953 (9th Cir. 2014); *Commonwealth v. McGowan*, 982 N.E. 2d 495 (Mass. 2013); *Commonwealth v. Reyes*, 982 N.E. 2d 504 (Mass. 2013).

<sup>66</sup> *Ohio v. Beyer*, 2012 Ohio 4578 (Ohio Ct. App. 2012); *People v. Wilder*, 2014 Mich. App. LEXIS 2076 (Oct. 28, 2014) (finding no Second Amendment violation for defendant’s conviction under possession of firearm while intoxicated law) *but see Michigan v. DeRoche*, 299 Mich. App. 301 (2013) (holding that a state law prohibiting possession of a firearm by an intoxicated person was unconstitutional as applied to the defendant, who was in his own home and possession was only constructive).

- Particularly Dangerous Weapons
  - Forbidding the possession, sale, and manufacture of assault weapons and large capacity ammunition magazines<sup>67</sup>
  - Prohibiting the sale of “particularly dangerous ammunition” that has no sporting purpose<sup>68</sup>
  - Prohibiting the carrying of a concealed dirk or dagger outside of the home<sup>69</sup>

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<sup>67</sup> See, *Heller v. District of Columbia (“Heller II”)*, 670 F.3d 1244, 1260-64 (D.C. Cir. 2011) (upholding the District of Columbia’s ban on assault weapons and large capacity ammunition magazines after applying intermediate scrutiny); *N.Y. State Rifle & Pistol Ass’n v. Cuomo*, 2013 U.S. Dist. LEXIS 182307, at \*44-56 (W.D.N.Y. Dec. 31, 2013) (upholding New York’s assault weapon and large capacity ammunition magazine ban under the same standard); *Kampfer v. Cuomo*, 2014 U.S. Dist. LEXIS 1479, at \*17-19 & n.10 (N.D.N.Y. Jan. 7, 2014) (upholding New York’s assault weapons ban by finding it does not substantially burden Second Amendment rights); *Shew v. Malloy*, 2014 U.S. Dist. LEXIS 11339 (D. Conn. Jan. 30, 2014) (upholding prohibition on assault weapons and large capacity ammunition magazines) *Colo. Outfitters Ass’n v. Hickenlooper*, 2014 U.S. Dist. LEXIS 87021 (D. Colo. June 26, 2014) (upholding Colorado’s ban on large capacity ammunition magazines); *Kolbe v. O’Malley*, 2014 U.S. Dist. LEXIS 110976 (D. Md. Aug. 12, 2014) (upholding Maryland’s ban on assault weapons and large capacity ammunition magazines); *Friedman v. City of Highland Park*, 2014 U.S. Dist. LEXIS 131363 (N.D. Ill. Sept. 18, 2014) (upholding local ordinance prohibiting assault weapons and large capacity ammunition magazines under application of intermediate scrutiny); *Fyock v. City of Sunnyvale*, 2014 U.S. Dist. LEXIS 29722 (N.D. Cal. Mar. 5, 2014); *People v. James*, 174 Cal. App. 4th 662, 676-77 (2009) (upholding California’s ban on assault weapons and .50 caliber rifles); see also *United States v. Marzzarella*, 614 F.3d 85 (3d Cir. 2010) (affirming conviction for possession of a firearm with an obliterated serial number).

<sup>68</sup> *Jackson v. City & County of San Francisco*, 746 F.3d 953 (9th Cir. 2014).

<sup>69</sup> *People v. Mitchell*, 209 Cal. App. 4th 1364 (2012).

- Firearm Possession By Particularly Dangerous Individuals
  - Prohibiting the possession of firearms by individuals who have been involuntarily committed to a mental institution<sup>70</sup>
  - Prohibiting possession of firearms for individuals subject to a domestic violence restraining order<sup>71</sup>
  - Authorizing the seizure of firearms in cases of domestic violence<sup>72</sup>
  - Prohibiting the possession of handguns by juveniles<sup>73</sup>
  
- Conditions on the Sale of Firearms
  - Requiring a gun dealer to obtain a permit and operate its dealership greater than 500 feet from any residential area, school, or liquor store<sup>74</sup>
  - Prohibiting the sale of firearms and ammunition to individuals younger than twenty-one years old<sup>75</sup>
  
- Firearms in Sensitive Places
  - Prohibiting the possession of firearms within college campus facilities and at campus events<sup>76</sup>
  - Prohibiting the carrying of a loaded and accessible firearm in a motor vehicle<sup>77</sup>
  - Forbidding possession of a firearm in national parks<sup>78</sup>
  - Prohibiting the possession of firearms in places of worship<sup>79</sup>
  - Prohibiting the possession of firearms in common areas of public housing units<sup>80</sup>

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<sup>70</sup> *Tyler v. Holder*, 2013 U.S. Dist. LEXIS 11511 (W.D. Mich. Jan. 29, 2013).

<sup>71</sup> *United States v. Luedtke*, 2008 U.S. Dist. LEXIS 117970 (E.D. Wis. 2008) (holding that Second Amendment not violated by statute prohibiting firearm possession for those subject to a domestic violence restraining order).

<sup>72</sup> *Crespo v. Crespo*, 989 A.2d 827 (N.J. 2010).

<sup>73</sup> *United States v. Rene E.*, 583 F.3d 8 (1st Cir. 2009)

<sup>74</sup> *Teixeira v. County of Alameda*, 2013 U.S. Dist. LEXIS 128435 (N.D. Cal. Sep. 9 2013)

<sup>75</sup> *Nat'l Rifle Ass'n v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 700 F.3d 185 (5th Cir. 2012), *rehearing denied*, 714 F.3d 334 (2013); *see also L.S. v. State*, 2013 Fla. App. LEXIS 11592 (Jul. 24, 2013) (upholding a ban on minors possessing firearms).

<sup>76</sup> *Digiacinto v. Rector & Visitors of George Mason Univ.*, 704 S.E.2d 365 (Va. 2011) (noting that weapons were prohibited “only in those places where people congregate and are most vulnerable...Individuals may still carry or possess weapons on the open grounds of GMU, and in other places on campus not enumerated in the regulation.”); *Tribble v. State Bd. of Educ.*, No. 11-0069 (Dist. Ct. Idaho December 7, 2011) (upholding a University of Idaho policy prohibiting firearms in University-owned housing).

<sup>77</sup> *Ohio v. Rush*, 2012 Ohio 5919 (Ohio Ct. App. 2012).

<sup>78</sup> *See, e.g., United States v. Masciandaro*, 638 F.3d 458 (4th Cir. Va. 2011) (affirming defendant’s conviction for possession of a loaded weapon in a motor vehicle in a national park); *United States v. Parker*, 919 F. Supp. 2d 1072 (E.D. Cal. Jan. 22, 2013); *United States v. Lewis*, 50 V.I. 995 (D.V.I. 2008).

<sup>79</sup> *GeorgiaCarry.Org, Inc. v. Georgia*, 764 F. Supp. 2d 1306 (M.D. Ga. 2011), *aff'd*, 687 F.3d 1244 (11th Cir. 2012).

- Prohibiting the possession of guns on county-owned property<sup>81</sup>
- Regulations of Firing Ranges<sup>82</sup>
  - Requiring firing range patrons to be at least 18 years of age
  - Requiring that ranges not be located within 500 feet of sensitive locations
  - Construction requirements
  - Requiring that a range master be present at all times

Despite these victories, there are a few outliers. As discussed above, the Seventh Circuit struck down Illinois' ban on carrying concealed weapons.<sup>83</sup> That same court also enjoined enforcement of a Chicago ordinance banning firing ranges within city limits where range training was a condition of lawful handgun ownership.<sup>84</sup> A district court in the Seventh Circuit struck down a Chicago law completely banning the transfer of firearms except through inheritance, but explicitly reiterated that cities and states have broad authority to regulate the commercial sale of firearms, including limits on the locations where dealers can operate.<sup>85</sup> A district court in the Ninth Circuit, citing *Peruta*, recently struck down regulations prohibiting the possession and carrying of firearms on property owned by the U.S. Army Corps of Engineers.<sup>86</sup>

Other outliers include a North Carolina federal district court decision finding that a state law prohibiting the carrying of firearms during states of emergency violated the plaintiffs' Second Amendment rights,<sup>87</sup> a Massachusetts federal district court decision finding that a U.S. citizenship requirement for possessing and carrying firearms violated the plaintiffs' Second Amendment

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<sup>80</sup> *Doe v. Wilmington Hous. Auth.*, 880 F. Supp. 2d 513 (D. Del. 2012), *rev'd on other grounds*, 2014 U.S. App. LEXIS 10579 (3d. Cir. June 6, 2014).

<sup>81</sup> *Nordyke v. King*, 681 F.3d 1041 (9th Cir. 2012) (en banc).

<sup>82</sup> *Ezell v. City of Chicago*, 2014 U.S. Dist. LEXIS 136954 (N.D. Ill., Sept 29, 2014) (upholding all firing range regulations except requirement that ranges only be located in manufacturing districts and limit on hours of operation from 9am to 8pm).

<sup>83</sup> *See Moore v. Madigan*, 702 F. 3d 933, 942 (7th Cir. 2012); *see also Palmer v. D.C.*, 2014 U.S. Dist. LEXIS 101945 (D.D.C. July 26, 2014); .

<sup>84</sup> *See Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011).

<sup>85</sup> *See Illinois Ass'n of Firearms Retailers v. Chicago*, 961 F. Supp. 2d 928, at 939-47 (N.D. Ill. 2014) ("To address the City's concern that gun stores make ripe targets for burglary, the City can pass more targeted ordinances aimed at making gun stores more secure—for example, by requiring that stores install security systems, gun safes, or trigger locks . . . . Or the City can consider designating special zones for gun stores to limit the area that police would have to patrol to deter burglaries . . . . nothing in this opinion prevents the City from considering other regulations—short of the complete ban—on sales and transfers of firearms to minimize the access of criminals to firearms and to track the ownership of firearms.").

<sup>86</sup> *Morris v. U.S. Army Corps of Engineers*, 2014 U.S. Dist. LEXIS 147541 (D. Idaho Oct. 13, 2014).

<sup>87</sup> *Bateman v. Perdue*, 881 F. Supp. 2d 709 (E.D.N.C. 2012).

rights,<sup>88</sup> and a Michigan appellate court decision striking down a state law prohibiting the possession of tasers and stun guns, concluding that the Second Amendment protects the possession and open carrying of those devices.<sup>89</sup>

#### **IV. The Supreme Court Has Repeatedly Denied Certiorari in Cases Raising Second Amendment Challenges**

Since issuing its opinions in *Heller* and *McDonald*, the Supreme Court has repeatedly declined to hear any new cases raising Second Amendment issues. To date, the Supreme Court has denied cert in over 60 Second Amendment cases, including:

- Cases challenging laws restricting the concealed and/or open carrying of firearms in public.<sup>90</sup>
- Cases challenging the constitutionality of laws prohibiting felons and/or misdemeanants from possessing firearms.<sup>91</sup>
- Cases challenging laws enhancing sentences for possessing a firearm while committing a crime.<sup>92</sup>
- Cases challenging laws restricting the possession of machine guns and other types of military-style weapons.<sup>93</sup>
- Cases challenging firearm registration requirements.<sup>94</sup>

As a result, the numerous federal and state court decisions upholding the laws described above have been left undisturbed. To read more about the Supreme Court's pattern of denying cert in Second Amendment cases, read our [full report on our website](#).

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<sup>88</sup> *Fletcher v. Haas*, 851 F. Supp. 2d 287 (D. Mass. 2012).

<sup>89</sup> *Michigan v. Yanna*, 297 Mich. App. 137 (2012). Notably, prior to this decision, the former law at issue was replaced by a new law that allows the carrying of a taser or stun gun with a valid concealed weapon license.

<sup>90</sup> *Drake v. Jerejian*, 134 S. Ct. 2134 (2014); *Scharder v. Holder*, 134 S. Ct. 512 (2013); *Brown v. United States*, 131 S. Ct. 819 (2010); *Dawson v. Illinois*, 131 S. Ct. 2880 (2011).

<sup>91</sup> See, e.g., *Booker v. United States*, 132 S. Ct. 1538 (2012); *Torres-Rosario v. United States*, 132 S. Ct. 1766 (2012).

<sup>92</sup> *Kearns v. United States*, 181 L. Ed. 2d 226 (2011).

<sup>93</sup> *Hamblen v. United States*, 130 S. Ct. 2426 (2010); *James v. Cal.*, 130 S. Ct. 1517 (2010).

<sup>94</sup> *Justice v. Town of Cicero*, 130 S.Ct. 3410 (2010).



## V. Conclusion

Because of the Supreme Court's decisions in *Heller* and *McDonald*, the nation's lower courts are clogged with a substantial volume of Second Amendment litigation. However, as described above, the vast majority of this litigation has been unsuccessful because most, if not all, federal, state and local firearms laws easily satisfy the Supreme Court's holdings. Nevertheless, going forward, the gun lobby will likely continue to employ the threat of litigation to obstruct state and local efforts to enact common sense gun violence prevention measures. Policymakers should rest assured, however, that nothing in either *Heller* or *McDonald* prevents the adoption of many types of reasonable laws to reduce gun violence.