POST-*HELLER* LITIGATION SUMMARY
Updated September 1, 2012

I. Introduction and Overview

The Law Center to Prevent Gun Violence is tracking litigation involving Second Amendment challenges to federal, state and local gun laws asserted in the aftermath of the United States Supreme Court's landmark decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008). The Law Center has examined over 500 federal and state post-*Heller* decisions discussing the Second Amendment in the preparation of this analysis and has a wide variety of Second Amendment resources available on our web site.

A. *Heller* and *McDonald*

In *District of Columbia v. Heller*, the Supreme Court held for the first time that the Second Amendment protects a responsible, law-abiding citizen's right to possess an operable handgun in the home for self-defense. In a 5-4 ruling, 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.

In *Heller*, the Supreme Court cautioned that the Second Amendment should not be understood as conferring a "right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose," and identified a non-exhaustive list of "presumptively lawful regulatory measures," including "longstanding prohibitions" on firearm possession by felons and the mentally ill, as well as laws forbidding firearm possession in sensitive places such as schools and government buildings, and imposing conditions on the commercial sale of firearms. The Court also noted that the Second Amendment is also consistent with laws banning "dangerous and unusual weapons" not in common use at the time, such as M-16 rifles and other firearms that are most useful in military service. 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."

In 2010, the United States Supreme Court held in a 5-4 ruling that the Second Amendment applies to state and local governments in addition to the federal government in *McDonald v. City of Chicago*. As it had remarked in *Heller*, the Court reiterated in *McDonald* that the Second Amendment only protects a right to possess a firearm in the home for self-defense, and that a broad spectrum of gun laws remains constitutionally permissible.

B. Lawsuits After *Heller* and *McDonald*

Since *Heller*, federal and state courts have rejected Second Amendment challenges to a wide variety of firearms laws nationwide. As discussed in Section IV below, the majority of Second Amendment challenges have been raised in criminal cases. These challenges have been largely

unsuccessful, as courts have found that the Second Amendment is consistent with numerous federal and state criminal laws.

Additionally, plaintiffs have initiated a flood of civil lawsuits since *Heller*, including nearly fifty significant ongoing suits against state and local governments and the District of Columbia, and eight significant ongoing suits against the federal government. As discussed in Section III, while most civil plaintiffs' Second Amendment claims have been as unsuccessful as those raised by criminal defendants, many of these ongoing suits seek to broadly expand the Amendment beyond the right articulated in *Heller* and *McDonald*.

Significant questions about the scope and application of the Second Amendment remain unresolved following *Heller* and *McDonald*, questions which post-*Heller* courts continue to confront. For more on these issues, see Section V below.

II. Recent Developments in Second Amendment Litigation

The following significant developments have occurred in Second Amendment litigation since August 1, 2012.

A. *United States v. Henry* (9th Cir.): Ninth Circuit publishes opinion holding that machine guns are not protected by the Second Amendment

On August 9th, the U.S. Court of Appeals for the Ninth Circuit published its first opinion upholding federal statutes that prohibit the possession of machine guns and parts used to convert firearms into machine guns against a Second Amendment challenge.[i] The court concluded that, based on *Heller*, machine guns are not protected by the Second Amendment because they qualify as "dangerous and unusual weapons." The Ninth Circuit also noted that every circuit court to address a Second Amendment challenge to these statutes post-*Heller* has held that there is no Second Amendment right to possess a machine gun.

B. *United States v. Spring* (D. Me.): Defendant acquitted because his involuntary commitment did not disqualify him from possessing firearms

On August 9th, the U.S. District Court for the District of Maine acquitted an individual following his conviction for violating federal law by making a false statement in connection with the acquisition of a firearm and for lying on an ATF firearm purchase form.[ii] While attempting to purchase a firearm, the defendant had failed to disclose that he had been temporarily involuntarily committed to a mental institution pursuant to Maine law, which prohibited him from possessing a firearm under federal law. Between the time of the defendant's conviction and sentencing, however the First Circuit decided *United States v. Rehlander*, in which it held that post-*Heller* the Maine law under which Spring had been involuntarily committed could no longer serve as a basis for the federal firearm prohibition related to mental illness. The First Circuit had explained, "Although the right established in *Heller* is a qualified right…the right to possess arms (among those not properly disqualified) is no longer something that can be

withdrawn by government on a permanent and irrevocable basis without due process." Thus, the *Spring* court determined that because *Rehlander* "flowed from" the Supreme Court's new rule in *Heller*, it required acquittal in *Spring.*

C. *Raulinaitis v. Los Angeles Sheriff's Department* (C.D. Cal.): Court upholds Los Angeles's policy interpreting "good cause" for concealed carry

On August 13th, the U.S. District Court for the Central District of California granted the defendant's motion for summary judgment in a challenge to the Los Angeles Sheriff's Department ("LASD") policy interpreting California's "good cause" requirement for issuing concealed carry ("CCW") permits.[iii] According to the LASD policy, a CCW permit applicant only has "good cause" if he shows "convincing evidence of a clear and present danger…which cannot be reasonably avoided…." Rejecting the plaintiffs' argument that "generalized fears" or self-defense should be sufficient cause for carrying a concealed weapon, the court upheld the policy on its face under intermediate scrutiny. The court explained that intermediate scrutiny was the applicable standard of review because the LASD policy does not affect home handgun possession or effectuate a complete ban on CCW. Additionally, the court concluded that the policy withstands that level of scrutiny, explaining that the Second Amendment does not require unlimited CCW and that California law provides numerous exceptions that enable individuals to carry firearms without a CCW permit. Finally, the court determined that the policy did not violate the Second Amendment as applied to the plaintiffs – who had stated in their CCW applications that they needed to carry concealed weapons for self-defense – since LASD consistently denies permits to applicants who cite self-defense as their reason for needing a CCW permit.

D. *United States v. Smoot* (4th Cir.): Fourth Circuit rejects as-applied challenge to federal law prohibiting felons from possessing firearms

On August 13th, the U.S. Court of Appeals for the Fourth Circuit rejected the defendant's as-applied Second Amendment challenge to the federal law that prohibits felons from possessing firearms.[iv] Although the court explained that the law qualifies as a "presumptively lawful regulatory measure" under *Heller*, it explained that the Fourth Circuit has said that a felon may be able to rebut the presumptive lawfulness of the statute if he can "show that his factual circumstances remove his challenge from the realm of ordinary challenges." In this case, however, the Fourth Circuit concluded that the defendant, who had been convicted sixteen times for committing various crimes, was not the type of individual who could rebut the presumptive lawfulness of the statute. Notably, the court also "summarily" rejected the defendant's contention that *Heller* added an additional element to the challenged law, requiring the government to prove that the defendant did not merely possess a firearm for self-defense in his home.

E. *Jackson v. City and County of San Francisco* (N.D. Cal.): Court denies plaintiffs' motion for partial judgment on the pleadings in a challenge to San Francisco firearms ordinances

On August 17th, the U.S. District Court for the Northern District of California denied the plaintiffs' motion for partial judgment on the pleadings in their Second Amendment challenge to San Francisco ordinances requiring the safe storage of handguns in the home and prohibiting the sale of unsafe ammunition.[v] The court concluded that the safe storage requirement "permits individuals the very right the plaintiff in *Heller* was seeking: 'to render a firearm operable and carry it about his home in that condition….'" The court was even less persuaded by the plaintiffs' argument that the ammunition sales ordinance violates the Second Amendment, since that ordinance does not affect the possession of handguns in the home for self-defense.

F. *Hightower v. City of Boston* (1st Cir.): First Circuit rejects facial and as-applied challenges to Massachusetts' concealed carry licensing scheme

On August 30th, the U.S. Court of Appeals for the First Circuit rejected the plaintiff's facial and as-applied challenges to the requirement under Massachusetts law that an applicant for a concealed carry ("CCW") permit qualify as a "suitable person."[vi] The court explained that "the government may regulate the carrying of concealed weapons outside of the home" because CCW licensing is a presumptively lawful regulatory measure pursuant to *Heller*. Moreover, the court held that the use of the suitability standard in Hightower's case did not violate her Second Amendment rights because the basis of her unsuitability – that she had provided material misinformation on her license renewal form – was objective and did not endow the licensing body with too much discretion. The court declined to say what level of scrutiny would apply in this case but said, "[h]er claim fails whatever standard of scrutiny is used, even assuming there is some Second Amendment interest in carrying the concealed weapons at issue."

The court also rejected Hightower's facial challenge to the suitability requirement. It explained that Hightower failed to show that the suitability requirement "lacks any plainly legitimate sweep" since the requirement was constitutional as applied to her. Finally, the court rejected Hightower's arguments under the prior restraint and overbreadth doctrines, finding that those First Amendment principles were "a poor analogy for purposes of facial challenges under the Second Amendment."

G. *Nordyke v. King* (U.S.): Plaintiffs-appellants appeal gun show ruling to the nation's highest court

On August 30, 2012, the plaintiffs-appellants in *Nordyke v. King* filed a petition for writ of certiorari in the U.S. Supreme Court. Sitting en banc, the Ninth Circuit's rejected a Second Amendment challenge to an Alameda County, California ordinance regulating gun shows on County property.[vii]

III. Civil Litigation Raising Second Amendment Claims After *Heller*

A. Significant Pending Lawsuits

State and local governments – including New York City, Chicago, San Francisco, Boston, Los Angeles, Sacramento, San Diego, Westchester County (New York), Denver, and the states of California, Colorado, Delaware, Georgia, Hawaii, Maryland, New Jersey, New York, North Carolina, Nevada, Texas, and Virginia – and the District of Columbia presently face fifty significant lawsuits challenging various firearms laws under the Second Amendment. Nearly half of these suits involve challenges to laws regulating the carrying of weapons in public, while others challenge registration laws, bans on unsafe handguns and assault weapons, and safe storage laws. Additionally, eight significant suits raising Second Amendment claims have been initiated against the federal government. For more information about all of the pending cases, please refer to the *Post*-Heller *Litigation Summary Appendix* at http://smartgunlaws.org/post-heller-litigation-summary/.

B. Civil Suits Have Been Largely Unsuccessful

Generally, Second Amendment challenges by civil plaintiffs have been unsuccessful. In the wake of the *Heller* decision, for example, the District of Columbia adopted comprehensive firearms laws. In September 2011, the U.S. Court of Appeals for the D.C. Circuit affirmed in part and remanded in part the federal district court's decision rejecting a Second Amendment challenge to many of those laws, including D.C.'s firearms registration system, ban on assault weapons and large capacity ammunition magazines, one-handgun-a-month law, and law requiring the reporting of lost or stolen firearms.[viii]

Federal and state courts have also upheld laws requiring the registration of all firearms,[ix] requiring an applicant for a license to carry a concealed weapon to show "good cause," "proper cause," or "need," or qualify as a "suitable person," [x] requiring an applicant for a handgun possession license to be a state resident[xi] or pay an administrative fee,[xii] requiring an applicant for a concealed carry license to be at least twenty-one-years-old,[xiii] prohibiting the sale of firearms and ammunition to individuals younger than twenty-one-years-old,[xiv] prohibiting domestic violence misdemeanants from possessing firearms,[xv] and prohibiting the possession of firearms in places of worship, [xvi] in common areas of public housing units,[xvii] and within college campus facilities and at campus events, [xviii] and regulating gun shows held on public property.[xix] A Pennsylvania court also recently upheld a state Department of Labor and Industry regulation prohibiting firearms on property owned or leased by the Department, including in vehicles parked on Department property.[xx]

In contrast to the majority of courts that have considered challenges to similar laws, a federal district court in Maryland recently struck down a requirement in state 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.[xxi] Additional outliers include a North Carolina trial court decision striking down a state law that prohibits felons from possessing firearms, [xxii] 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, [xxiii] a Massachusetts federal district court decision finding that a U.S. citizenship requirement for possessing and carrying firearms violated the plaintiffs' Second Amendment rights,[xxiv] and an Illinois federal district court decision striking down a provision of Chicago law that prohibits the possession of firearms by anyone who has been convicted in any jurisdiction of the unlawful use of a weapon.[xxv]

Additionally, several courts have cited *Heller* in expressing concern about state action that would limit an individual's right to possess a firearm where that person is not prohibited by law from doing so.[xxvi] For example, a federal district court refused to dismiss a plaintiff's suit alleging that Illinois' licensing law violated the Second Amendment by preventing her from being able to possess a firearm for self-defense while she stayed in an Illinois friend's home.[xxvii] Additionally, the Seventh Circuit enjoined enforcement of a Chicago ordinance banning firing ranges within city limits where range training was a condition of lawful handgun ownership.[xxviii]

IV. Post-*Heller* Second Amendment Challenges by Criminal Defendants

A. Federal Firearms Statutes

Courts have almost uniformly rejected criminal defendants' Second Amendment challenges to federal firearms laws, including challenges to laws prohibiting the possession of a firearm by a convicted felon[xxix] or by anyone "employed for" a convicted felon (such as a bodyguard),[xxx] possession of an illegal weapon (e.g., a machine gun, a sawed-off shotgun, a weapon with an obliterated serial number, or other prohibited weapon),[xxxi] possession in violation of a court order,[xxxii] possession by an illegal alien,[xxxiii] possession in a prohibited place,[xxxiv] possession by an individual who is under indictment for a felony, [xxxv] possession by an unlawful user of a controlled substance,[xxxvi] and possession by a domestic violence misdemeanant. [xxxvii] Courts have also rejected challenges to sentence enhancements for convicted criminals who possessed firearms while engaging in illegal activity.[xxxviii]

Notably, a few courts have cited *Heller* in decisions curtailing the federal government's ability to penalize or prohibit otherwise lawful possession of a firearm during criminal proceedings.[xxxix] Most notably, one federal district court in New York declared unconstitutional a federal law imposing a pretrial bail condition that would have prohibited the defendant from possessing firearms, although a Ninth Circuit panel directed a lower court to impose the same prohibition.[xl]

A federal court also dismissed an indictment for aiding and abetting the possession of a firearm by a convicted felon.[xli] In that case, the defendant, who was not prohibited by law from possessing guns, owned and kept a rifle in her home even though her boyfriend was a convicted felon. Because the government's case was based on the defendant's possession of the firearm within her home, the court concluded, to allow the indictment to proceed "would be countenancing the total elimination of the right of a sane, non-felonious citizen to possess a

firearm…in her home." A federal appellate court recently overturned the dismissal and remanded the case for further review.[xlii]

B. State and Local Firearms Laws

Most courts that have heard criminal defendants' Second Amendment challenges to state and local laws have upheld the statutes at issue.[xliii] State courts have published decisions affirming state laws prohibiting the unlicensed carrying of handguns outside of the home,[xliv] prohibiting convicted felons from possessing firearms,[xlv] authorizing the seizure of firearms in cases of domestic violence,[xlvi] prohibiting the possession of assault weapons and 50-caliber rifles,[xlvii] and requiring that an individual possess a license to own a handgun.[xlviii]

Notably, however, a Wisconsin trial court dismissed an indictment under the state's former law that prohibited the carrying of concealed weapons because it found that the law violated the Second Amendment.[xlix] Although the defendant was prosecuted for possessing a concealed knife while in an apartment, the court ignored relevant precedent that exempted possession in the home from Wisconsin's concealed weapons prohibition. More recently, however, Wisconsin appellate courts have upheld the state's former law prohibiting the carrying of concealed weapons in two separate decisions.[l] Additionally, 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.[li] Moreover, a Michigan appellate court struck down a former state law prohibiting the possession of tasers and stun guns, concluding that the Second Amendment protects the possession and open carrying of these devices.[lii]

Additionally, the District of Columbia Court of Appeals reversed a defendant's conviction for unlawful possession of handgun ammunition, holding that the Second Amendment required the government to prove both that the defendant possessed the ammunition and that he did not possess a registration certificate for a weapon of the same caliber (where, under prior case law, proof of registration was only an affirmative defense available to defendants).[liii] Separately, the D.C. Court of Appeals heard a Second Amendment challenge brought by an individual convicted of unlawful firearm possession prior to *Heller*. The appellant had been prosecuted for the possession of an unregistered firearm in his home, and the court remanded the case for a hearing to determine whether the appellant had, as he claimed, been in possession of the firearm for the constitutionally-protected purpose of self-defense.[liv]

V. Emerging Issues

A. How Strictly Courts Should Scrutinize Second Amendment Challenges

While the *Heller* Court established that a law completely prohibiting a responsible, law-abiding citizen from possessing an operable handgun in the home for self-defense would violate the Second Amendment, and further held that certain other types of laws are "presumptively lawful" against Second Amendment challenges, the Court did not explain how lower courts should evaluate Second Amendment challenges going forward. The Court did, however,

suggest 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.

Courts have summarily dismissed numerous Second Amendment challenges, concluding that the laws at issue are "presumptively lawful regulatory measures" explicitly protected in *Heller.*[lv] In challenges after *Heller* that have considered how firearms laws should be evaluated, courts have typically chosen between two levels of heightened scrutiny often applied to constitutional rights: "intermediate scrutiny," which examines whether there is a reasonable fit between the law and an important or significant government interest, and "strict scrutiny," which examines 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 Third, Fourth, Tenth, and D.C. Circuit panels, have applied intermediate scrutiny to Second Amendment challenges.[lvi] Courts have arrived at intermediate scrutiny using differing approaches, but the clear trend suggests that laws that do not prevent a law-abiding, responsible citizen from possessing an operable handgun in the home for self-defense should face, and survive, an intermediate scrutiny review.

At the same time, a few courts have reviewed Second Amendment challenges under strict scrutiny.[lvii] Additionally, a Seventh Circuit decision held 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."[lviii]

Several courts have held that heightened scrutiny only applies where the challenged law burdens conduct protected by the Second Amendment. Most recently, a Second Circuit decision did not identify which level of scrutiny ought to apply to Second Amendment challenges, but did hold that heightened scrutiny is only warranted if the challenged law substantially burdens the Second Amendment.[lix] A Ninth Circuit decision also adopted a substantial burden framework for reviewing Second Amendment challenges; while that decision was subsequently vacated en banc, at least one lower court has found that it remains persuasive authority.[lx] Additionally, a New York district court that rejected a Second Amendment challenge to the state's discretionary concealed carrying licensing scheme determined that the law did not burden the Second Amendment because it did not "substantially overlap with the core Second Amendment right articulated in *Heller* – namely the right to use arms for the purpose of self-defense in the home." [lxi]

While intermediate scrutiny is most commonly used in Second Amendment cases, an Illinois appellate court recently applied rational basis review to uphold a state law prohibiting the carrying of guns in public.[lxii] The court reasoned that when the U.S. Supreme Court said in *Heller* and *McDonald* that rational basis review was inappropriate for Second Amendment challenges, it was referring only to challenges to the "core" Second Amendment right of a law-abiding citizen to possess a handgun in the home for self-defense. Similarly, a federal district court expressed hesitation about applying intermediate scrutiny in evaluating a Second Amendment challenge, stating that "intermediate scrutiny seems excessive."[lxiii] The court

explained, "To place gun rights on the same high protected level as speech rights seems an odd view of American democratic values." Finally, a Wisconsin appellate court recently applied a reasonableness test to uphold the constitutionality of Wisconsin's now repealed law prohibiting concealed carry.[lxiv]

In almost every case, however, regardless of the test or level of scrutiny that has been applied, the Second Amendment challenge has been rejected and the statute at issue has been upheld. Still, the scrutiny issue remains a central component of much ongoing Second Amendment litigation.

B. Whether the Second Amendment Right Extends Beyond the Home

Another of the key questions presently being litigated in post-*Heller* suits is whether or to what extent the Second Amendment should apply outside of the home. In *Heller*, the Supreme Court held that the Amendment protects a right to possess a firearm within the home, "where the need for defense of self, family, and property is most acute." The Court emphasized that the right protected is "not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues." The Court also declared that laws prohibiting firearm possession in sensitive places (including schools and government buildings) were presumptively lawful.

In evaluating Second Amendment challenges related to conduct outside the home, a significant number of courts have concluded that the Amendment only protects conduct within the home.[lxv] However, three federal district courts in the Fourth Circuit have extended the Second Amendment's protection beyond the home.[lxvi] Other courts have deferred the question of whether the Second Amendment applies outside the home, but have ultimately upheld restrictions on firearm possession in public places.[lxvii] 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.[lxviii]

VI. 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, despite the fact that most, if not all, federal, state and local firearms laws do not prevent a responsible, law-abiding citizen from possessing an operable handgun in the home for self-defense, and thus, would satisfy the Supreme Court's holdings. 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.

[i] *United States v. Henry*, 2012 U.S. App. LEXIS 16615 (9th Cir. Aug. 9, 2012).
[ii] *United States v. Spring,* 2012 U.S. Dist. LEXIS 112081 (D. Me. Aug. 9, 2012).
[iii] *Raulinaitis v. Los Angeles Sheriff's Department*, No. 11-08026 (C.D. Cal. Aug. 13, 2012).
[iv] *United States v. Smoot*, 2012 U.S. App. LEXIS 16860 (4th Cir. Aug. 13, 2012).
[v] *Jackson v. San Francisco*, 2012 U.S. Dist. LEXIS 116732 (N.D. Cal. Aug. 17, 2012).
[vi] *Hightower v. Boston*, 2012 U.S. App. LEXIS 18445 (1st Cir. Aug. 30, 2012).
[vii] *Nordyke v. King*, 2012 U.S. App. LEXIS 11076 (9th Cir. June 1, 2012) (en banc).
[viii] *Heller v. District of Columbia, 670 F.3d 1244* (D.C. Cir. 2011); *See also Wilson v. Cook County*, 943 N.E.2d 768 (Ill. App. Ct. 2011) (upholding Cook County, Illinois ordinance prohibiting the possession of assault weapons and large capacity ammunition magazines), *reh'g granted by 949 N.E.2d 1104* (Ill. 2011).
[ix] *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).
[x] *Birdt v. Beck,* No. 10-08377 (order dated 1/13/12) (unpublished); *Piszczatoski v. Filko,* 2012 U.S. Dist. LEXIS 4293 (D. N.J. Jan. 12, 2012); *Hightower v. Boston,* 2011 U.S. Dist. LEXIS 111327 (D. Mass. 2011); *Kuck v. Danaher,* 2011 U.S. Dist. LEXIS 111793 (D. Conn. 2011); *Kachalsky v. Cacace*, *817 F. Supp. 2d 235* (S.D.N.Y. 2011); *Richards v. County of Yolo*, *821 F. Supp. 2d 1169* (E.D. Cal. 2011); *Peruta v. County of San Diego*, *758 F. Supp. 2d 1106* (S.D. Cal. 2010).
[xi] *Osterweil v. Bartlett*, *819 F. Supp. 2d 72* (N.D.N.Y 2011).
[xii] *Kwong v. Bloomberg*, *2012 U.S. Dist. LEXIS 41218* (S.D.N.Y. Mar. 26, 2012).
[xiii] *Jennings v. McCraw,* No. 10-00141 (order dated 1/19/12) (unpublished).
[xiv] *Jennings v. ATF,* No. 10-00140 (order dated 9/29/11) (unpublished).
[xv] *Enos v. Holder*, 2012 U.S. Dist. LEXIS 25759 (E.D. Cal. Feb. 28, 2012).
[xvi] *GeorgiaCarry.Org, Inc. v. Georgia*, *764 F. Supp. 2d 1306* (M.D. Ga. 2011), *aff'd*, 687 F.3d 1244 (11th Cir. 2012).
[xvii] *Doe v. Wilmington Hous. Auth.,* 2012 U.S. Dist. LEXIS 104976 (D. Del. July 27, 2012).
[xviii] *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).
[xix] *Nordyke v. King*, 2012 U.S. App. LEXIS 11076 (9th Cir. June 1, 2012) (en banc).
[xx] *Perry v. State Civ. Serv. Comm'n,* 2011 Pa. Commw. Unpub. LEXIS 919 (Pa. Commw. Ct. Nov. 14, 2011).
[xxi] *Woollard v. Sheridan*, 2012 U.S. Dist. LEXIS 28498 (D. Md. March 2, 2012).
[xxii] *Johnston v. State,* No. 10-S281, slip op. (N.C. Superior Ct. October 24, 2011) (overturning a North Carolina law prohibiting felons from possessing firearms).
[xxiii] *Bateman v.* Perdue, 2012 U.S. Dist. LEXIS 47336 (E.D.N.C. Mar. 29, 2012).
[xxiv] *Fletcher v. Haas*, *2012 U.S. Dist. LEXIS 44623 (D. Mass.* Mar. 30, 2012).
[xxv] *Gowder v. City of Chicago*, 2012 U.S. Dist. LEXIS 84359 (N.D. Ill. June 19, 2012).
[xxvi] *Simmons v. Gillespie*, 2008 U.S. Dist. LEXIS 81424 (C.D. Ill. Aug. 1, 2008) (finding possible Second Amendment violation where police chief issued personnel memorandum forbidding employee from possessing firearms off-duty); *Cleveland v. Fulton*, *898 N.E.2d 983* (Ohio Ct. App. 2008) (finding due process violation in city's refusal to return firearm to person acquitted of gun crimes); *Jennings v. Mukasey*, 2008 U.S. Dist. LEXIS 82465 (M.D. Fla. Sept. 22, 2008) (finding possible Second Amendment claim in alleged government threat to prosecute individual if he lawfully pursued work in the firearms industry).
[xxvii] *Mishaga v. Monken*, *753 F. Supp. 2d 750* (C.D. Ill. 2010).
[xxviii] *Ezell v. City of Chicago*, *651 F.3d 684* (7th Cir. 2011).
[xxix] *See, e.g., 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. Moore*, 2012 U.S. App. LEXIS 1335 (4th Cir. Jan. 25, 2012); *United States v. Torres-Rosario, 658 F.3d 110* (1st Cir. 2011); *United States v. Loveland*, 2011 U.S. Dist. LEXIS 119954 (W.D.N.C. 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. Kirkpatrick*, 2011 U.S. Dist. LEXIS 82801 (W.D.N.C. July 27, 2011).

[xxx] *United States v. Weaver*, 2012 U.S. Dist. LEXIS 29613 (S.D. W. Va. Mar. 7, 2012).
[xxxi] *See, e.g., United States v. Zaleski*, 2012 U.S. App. LEXIS 14341 (2d Cir. July 13, 2012); *United States v. Colon-Quiles,* 2012 U.S. Dist. LEXIS 62587 (D.P.R. May 4, 2012); *United States v. Marzzarella*, 614 F.3d 85 (3d Cir. 2010) (affirming conviction for possession of a firearm with an obliterated serial number); *United States v. Fincher*, 538 F.3d 868 (8th Cir. 2008), *cert. denied*, 129 S. Ct. 1369 (2009).
[xxxii] *See, e.g., United States v. Larson*, 2012 U.S. Dist. LEXIS 19817 (W.D. Va. Feb. 16, 2012) (upholding federal law prohibiting individuals who are subject to domestic violence-related court orders from possessing firearms); *United States v. Chapman*, 2012 U.S. App. LEXIS 57 (4th Cir. Jan. 4, 2012); *United States v. Luedtke*, 589 F. Supp. 2d 1018 (E.D. Wis. 2008); *United States v. Mudlock*, 2012 U.S. App. LEXIS 12617 (4th Cir. June 19, 2012).
[xxxiii] *United States v. Huitron-Guizar*, 2012 U.S. App. LEXIS 9256 (10th Cir. May 7, 2012);*United States v. Portillo-Munoz*, *643 F.3d 437* (5th Cir. 2011).
[xxxiv] *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. Lewis*, *50 V.I. 995* (D.V.I. 2008).
[xxxv] *United States v. Laurent,* 2011 U.S. Dist. LEXIS 139907 (E.D.N.Y. 2011); *United States v. Call*, 2012 U.S. Dist. LEXIS 79080 (D. Nev. June 7, 2012).
[xxxvi] *See, e.g., United States v. Carter*, 2012 U.S. App. LEXIS 1243 (4th Cir. Jan. 23, 2012); *United States v. Prince*, 2009 U.S. Dist. LEXIS 54116 (D. Kan. June 26, 2009); *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).
[xxxvii] *See, e.g., United States v. Chester*, 2012 U.S. Dist. LEXIS 16821 (S.D. W. Va. Feb. 10, 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).
[xxxviii] *United States v. Greeno,* 2012 U.S. App. LEXIS 10147 (6th Cir. May 21, 2012).
[xxxix] *United States v. Kitsch*, 2008 U.S. Dist. LEXIS 58904 (E.D. Pa. Aug. 1, 2008) (holding that the government needed to prove that the defendant charged under the federal felon-in-possession statute had knowledge that he was a felon after he had been previously told by law enforcement that his conviction would be set aside).
[xl] *United States v. Arzberger*, 592 F. Supp. 2d 590 (S.D.N.Y. 2008); *United States v. Kennedy*, *327 Fed. Appx. 706* (9th Cir. 2009).
[xli] *United States v. Huet*, 2010 U.S. Dist. LEXIS 123597 (W.D. Pa. Nov. 22, 2010). *See also United States v. Skeens*, 589 F. Supp. 2d 757 (W.D. Va. 2008) (refusing to enhance a defendant's sentence for illegal firearm possession where a handgun found in his home was owned by the defendant's wife for self-defense).
[xlii] *United States v. Huet,* 2012 U.S. App. LEXIS 133 (4th Cir. Jan. 5, 2012).
[xliii] *See, e.g., Wilson v. State*, 207 P.3d 565 (Alaska Ct. App. 2009) (upholding statute prohibiting handgun possession by felons); *People v. Flores*, *86 Cal. Rptr. 3d 804* (Cal. App. 4th Dist. 2008) (upholding statues prohibiting possession following misdemeanor conviction, carrying of a concealed firearm, and carrying of a loaded firearm in a public place); *People v. Akins,* 2011 Ill. App. Unpub. LEXIS 1838 (Ill. App. Ct. Aug. 3, 2011) and *People v. Palmer*, 2011 Ill. App. Unpub. LEXIS 2055 (Ill. App. Ct. Aug. 26, 2011) (both upholding a state prohibition on carrying or possessing a firearm when certain aggravating circumstances are present); *People v. Thomas*, 2011 Ill. App. Unpub. LEXIS 2000 **(**Ill. App. Ct. Aug. 22, 2011) and *People v. Pinkard,* 2011 Ill. App. Unpub. LEXIS 2098 (Ill App. Ct. Sept. 2, 2011) (both upholding a statute prohibiting individuals who have been convicted of two or more enumerated offenses to receive, sell, possess, or transfer any firearm).
[xliii] *People v. Dawson*, 403 Ill. App. 3d 499, 510, 934 N.E.2d 598, 343 Ill. Dec. 274 (2010).
[xliv] *Ohio v. Henderson*, 2012 Ohio 1268, 2012 Ohio App. LEXIS 1117 (Ohio Ct. App. Mar. 26, 2012); *Oregon & Portland v. Christian*, 2012 Ore. App. LEXIS 344 (Or. Ct. App. Mar. 21, 2012); *Williams v. State*, 10 A.3d 1167, 1178 (Md. 2011); *People v. Mimes*, *953 N.E.2d 55* (Ill. App. Ct. 2011); *People v. Montyce H.,* 2011 Ill. App. LEXIS 1184 (Ill. App. Ct. 2011); *People v. Williams*, *962 N.E.2d 1148* (Ill. App. Ct. 2011).
[xlv] *Wisconsin v. Pocian,* 2012 Wisc. App. LEXIS 298 (Wis. Ct. App. Apr. 11, 2012); *People v. Spencer*, 2012 Ill. App. LEXIS 82 (Ill. App. Ct. Feb. 6, 2012); *Pohlabel v. Nevada*, 2012 Nev. LEXIS 2 (Nev. Jan. 26, 2012); *People v. Polk,* 2011 Ill. App. Unpub. LEXIS 2278 (Ill. App. Ct. Sept. 23, 2011).
[xlvi] *Crespo v. Crespo*, 989 A.2d 827 (N.J. 2010).

[xlvii] *People v. Arizmendi*, 2011 Cal. App. Unpub. LEXIS 7284 (Cal. App. Ct. Sept. 27, 2011); *People v. James*, 174 Cal. App. 4th 662 (Cal. App. 3rd Dist. 2009).
[xlviii] *People v. Perkins*, 880 N.Y.S.2d 209 (N.Y. App. Div. 2009).
[xlix] *State v. Schultz*, No. 10-CM-138 (Clark Cty. Cir. Ct. Oct. 12, 2010).
[l] *Wisconsin v. Brown*, 2012 Wisc. App. LEXIS 305 (Wis. Ct. App. Apr. 17, 2012); *Wisconsin v. Little,* 2012 Wisc. App. LEXIS 66 (Wisc. Ct. App. Jan. 26, 2012).
[li] *State v. Tomas*, No. 526776 (Ohio Ct. Com. Pl. Dec. 7, 2010) (finding that "the State has no compelling interest in prohibiting this particular defendant from possessing firearms in his place of business and home" and declaring the statute "unconstitutional when a Defendant with no felony convictions…possesses firearms in his home or business, for the limited purpose of self-defense.")
[lii] *Michigan v. Yanna*, 2012 Mich. App. LEXIS 1269 (Mich. Ct. App. June 26, 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.
[liii] *Herrington v. United States*, *6 A.3d 1237* (D.C. 2010).
[liv] *Magnus v. United States*, 2011 D.C. App. LEXIS 3 (Jan. 6, 2011).
[lv] *See, e.g., Enos v. Holder*, 2012 U.S. Dist. LEXIS 25759 (E.D. Cal. Feb. 28, 2012); *United States v. Edge,* 2012 U.S. Dist. LEXIS 15002 (W.D.N.C. Feb. 8, 2012); *Cf,. People v. Spencer,* 2012 Ill. App. LEXIS 82 (Ill. App. Ct. Feb. 6, 2012) (applying intermediate scrutiny to uphold a law because the law is presumptively valid).
[lvi] *United States v. Marzzarella*, 614 F.3d 85 (3d Cir. 2010); *United States v. Masciandaro*, 638 F.3d 458 (4th Cir. Va. 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*, 698 F. Supp. 2d 179 (D.D.C. 2010), *aff'd in part and vacated in part*, *670 F.3d 1244* (D.C. Cir. 2011).
[lvii] *See Bateman v.* Perdue, 2012 U.S. Dist. LEXIS 47336 (E.D.N.C. Mar. 29, 2012); *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).
[lviii] *Ezell, 651 F.3d 684* at 44; *Gowder v. City of Chicago*, 2012 U.S. Dist. LEXIS 84359 (N.D. Ill. June 19, 2012). *Mention text, history, and tradition approach somewhere?*
[lix] *United States v. Decastro*, 2012 U.S. App. LEXIS 11213 (2d Cir. June 1, 2012).
[lx] *Nordyke v. King*, *644 F.3d 776* (9th Cir. 2011) (adopting the substantial burden test), *vacated en banc*, 2012 U.S. App. LEXIS 11076 (9th Cir. June 1, 2012).. *See Scocca v. Smith*, 2012 U.S. Dist. LEXIS 87025 (N.D. Cal. June 22, 2012) (finding that while the *Nordyke* appellate panel decision is no longer binding precedent it remains persuasive authority).
[lxi] *Kachalsky v. Cacace*, *817 F. Supp. 2d 235* (S.D.N.Y. 2011). Notably, the court concluded that the law at issue was constitutional under intermediate scrutiny even if it did burden conduct protected by the Second Amendment.
[lxii] *People v. Williams*, *962 N.E.2d 1148* (Ill. App. Ct. 2011).
[lxiii] *United States v. Laurent,* 2011 U.S. Dist. LEXIS 139907 (E.D.N.Y. 2011).
[lxiv] *Wisconsin v. Brown*, 2012 Wisc. App. LEXIS 305 (Wis. Ct. App. Apr. 17, 2012).
[lxv] *See Jennings v. McCraw,* No. 10-00141 (order dated 1/19/12) (unpublished); *Palmer*, 2011 Ill. App. Unpub. LEXIS 2055 at 18; *Akins,* 2011 Ill. App. Unpub. LEXIS 1838 at P10; *State 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. State*, 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* (U.S. 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. 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).
[lxvi] *Woollard v. Sheridan*, 2012 U.S. Dist. LEXIS 28498 (D. Md. March 2, 2012); *United States v. Weaver*, 2012 U.S. Dist. LEXIS 29613 (S.D. W. Va. Mar. 7, 2012); *Bateman v.* Perdue, 2012 U.S. Dist. LEXIS 47336 (E.D.N.C. Mar. 29, 2012).
[lxvii] *United States v. Masciandaro*, 638 F.3d 458 (4th Cir. Va. 2011); *Peruta v. County of San Diego*, *758 F. Supp. 2d 1106* (S.D. Cal. 2010).

[lxviii] *Hall v. Garcia*. 2011 U.S. Dist. LEXIS 34081 (N.D. Cal. Mar. 17, 2011); *Mimes, 953 N.E.2d 55* (Illinois appellate court found that a law prohibiting guns in public "imposes a burden on the inherent right of self-defense" but nonetheless upheld the law under intermediate scrutiny.) *But see State v. Schultz*, No. 10-CM-138 (Clark Cty. Cir. Ct. Oct. 12, 2010) (Wisconsin trial court dismissing an indictment under the state's law prohibiting the carrying of concealed weapons as violating the Second Amendment).