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POST-*HELLER* LITIGATION SUMMARY

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 jurisprudence 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 smartgunlaws.org/post-heller-litigation-summary. We also have a wide variety of [Second Amendment resources](#) available on our website.

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.”¹ 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.² 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.³ 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.”⁴

¹ *Heller*, 554 U.S. at 626.

² *Id.* 626-27.

³ *Id.* at 627.

⁴ *Id.* at 632.

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

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. The vast majority 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 or carrying firearms in public
- Regulating gun dealers, including requiring dealers to obtain a permit and not operate within 500 feet away of sensitive locations, such as residential areas or schools
- Regulating firing ranges, including zoning, construction, and operation requirements
- Requiring that handguns sold within a state meet certain safety requirements, including the incorporation of chamber loaded indicators and microstamping technology
- Imposing fees on the commercial sale of handguns to fund firearm safety regulations

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 laws to reduce gun violence are not prohibited by the Second Amendment.

⁵ *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.”).

As described below, the Supreme Court has declined to grant review (“certiorari”) of a Second Amendment case since *McDonald* was decided in 2010. As a result, lower court decisions upholding gun laws, such as those listed above, have been left undisturbed.

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 imposes a burden on conduct falling within the scope of the Second Amendment, and, second, if it does, whether the law satisfies the applicable level of scrutiny.⁶ As is discussed in detail below, the level of scrutiny is determined by looking at how severely the law in question burdens Second Amendment rights.⁷

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.”⁸ This question generally turns on “whether the regulation is one of the ‘presumptively lawful regulatory measures’ identified in *Heller*, or whether the record includes persuasive historical evidence establishing that the regulation at issue imposes prohibitions” that fall outside the scope of the Second Amendment.”⁹

The Supreme Court provided little guidance in *Heller* or *McDonald* on these issues, but did identify a non-exhaustive list of “presumptively lawful” regulatory measures. As noted above, those laws include “longstanding prohibitions on the possession of firearms by felons and the mentally ill, [and] laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, [and] laws imposing conditions and qualifications on the commercial sale of arms.”¹⁰ Arguably, such “presumptively lawful” regulations fall entirely outside the scope of the Second Amendment,¹¹ and most courts have had little trouble upholding laws falling into the categories identified in *Heller*.¹² The *Heller* Court also noted that powerful, military-style weapons that are not in “common use,” such as M-16’s, also fall outside the scope of

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

⁷ 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).

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

⁹ *Jackson v. City & County of San Francisco*, 746 F.3d 953, 960 (9th Cir. 2014).

¹⁰ *Heller*, 554 U.S. at 626-27.

¹¹ See *United States v. Marzzarella*, 614 F.3d 85, 91 (3d Cir. 2010) (“we think the better reading, based on the text and the structure of *Heller*,...[is that] the identified restrictions are presumptively lawful because they regulate conduct outside the scope of the Second Amendment.”).

¹² 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); *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); *Peña v. Lindley*, 2015 U.S. Dist. LEXIS 23575 (E.D. Cal. Feb. 26, 2015) (“[California’s Unsafe Handgun Act] is one of the presumptively lawful regulatory measures identified in *Heller* and, as such, falls outside the historical scope of the Second Amendment”) (quotations omitted); *Bauer v. Harris*, 2015 U.S. Dist. LEXIS 25757 (E.D. Cal. Mar. 2, 2015) (“the DROS fee is a condition on the sale of firearms...[t]he DROS fee, therefore, is a presumptively lawful regulatory measure...[and] is constitutional because it falls outside the historical scope of the Second Amendment.”).

the Second Amendment and lower courts have used this rationale to uphold laws banning particularly “dangerous and unusual” weapons.¹³

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 number of courts have concluded that the Second Amendment only protects conduct within the home.¹⁴ However, the U.S. Courts of Appeals for the Second and Seventh¹⁵ Circuits have determined that the Second Amendment applies, or likely applies, outside the home.¹⁶ 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.¹⁷ 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.¹⁸ Even the 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.¹⁹ Only those laws completely prohibiting any form of public carry have been struck down consistently, with Illinois and Washington D.C. becoming the last areas of the country to allow some form of public carry in light of recent court decisions.²⁰

¹³ *United States v. Zaleski*, 489 Fed. Appx. 474 (2d Cir. 2012) (upholding defendant’s conviction for possession of a machine gun 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.”).

¹⁴ 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).

¹⁵ The split Ninth Circuit panel opinion dealing with this issue, *Peruta v. County of San Diego*, 742 F.3d 1144 (9th Cir. 2014), was recently vacated when the court granted a motion for *en banc* review on March 26, 2015. Oral argument before the Ninth Circuit is currently scheduled for the week of June 15, 2015.

¹⁶ See *Kachalsky v. County of Westchester*, 701 F.3d 81, 89 (2d Cir. 2012) (explaining that “[a]lthough 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, 935-36 (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*, 708 F.3d 901, 902 (7th Cir. 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*].”).

¹⁷ *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).

¹⁸ *Woollard*, 712 F.3d at 876-83.

¹⁹ *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).

²⁰ See *Palmer v. D.C.*, 2014 U.S. Dist. LEXIS 101945 at *25 (D.D.C. July 26, 2014) (“the Court finds that the District of Columbia’s complete ban on the carrying of handguns in public is unconstitutional.”); *Moore v. Madigan*, 702 F.3d at 940 (striking down Illinois

b. The Applicable Level of Scrutiny

If the first step of the two-pronged inquiry reveals that the challenged law does, in fact, burden conduct protected by the Second Amendment, the second step requires “applying an appropriate form of means-end scrutiny.”²¹ The issue of 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 handguns kept in the home for self-defense. The 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 the more rigorous “strict scrutiny” standard, which asks whether a law is narrowly tailored to achieve a compelling government interest.

Most federal courts of appeal that have explicitly adopted a level of scrutiny, including the Third, Fourth, Fifth, Tenth and D.C. Circuits, have applied intermediate scrutiny to Second Amendment challenges.²² 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.²³ However, a few courts have reviewed Second Amendment challenges under strict scrutiny, primarily in cases involving as-applied challenges to lifetime firearm prohibitions under federal law.²⁴ When an as-applied challenge is sustained, the law is left intact and only its application to a particular individual is overturned. Successful facial challenges to a statute under strict scrutiny have been extremely rare thus far.²⁵ Alternative standards have also been applied, in one case involving a ban on shooting ranges in the City of Chicago, for example, the Seventh Circuit applied “a more rigorous [standard than intermediate scrutiny], if not quite ‘strict scrutiny.’”²⁶

complete prohibition on the public carrying of firearms and noting that “Illinois is the only state that maintains a flat ban on carrying ready-to-use guns outside the home, though many states used to ban carrying concealed guns outside the home.”). Note that *Palmer* is currently on appeal in the D.C. Circuit (Case No. 14-7180).

²¹ *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2013). 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.

²² *NRA v. McCraw*, 719 F.3d 338 (5th Cir. 2013); *United States v. Marzzarella*, 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).

²³ 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).

²⁴ See *Tyler v. Hillsdale County Sheriff’s Dep’t*, 2014 U.S. App. LEXIS 23929 (6th Cir. Dec. 18, 2014) (applying strict scrutiny when sustaining as-applied challenge to federal firearm prohibition for persons involuntarily committed to a mental institution); *Binderup v. Holder*, 2014 U.S. Dist. LEXIS 135110 (E.D. Penn., Sept. 25, 2014) (sustaining as-applied challenge to the federal felon-in-possession statute, 18 U.S.C. § 922(g)(1)); see also *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. Engstrom*, 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).

²⁵ See *Mance v. Holder*, 2015 U.S. Dist. LEXIS 16679 (N.D. Tex. Feb. 11, 2015) (applying strict scrutiny when striking down federal statutes requiring out-of-state handgun purchases to be processed in-state by a federally licensed dealer).

²⁶ See *Ezell v. City of Chicago*, 651 F.3d 684, 708 (7th Cir. 2011).

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.²⁷ The Second Circuit, for example, has stated that heightened scrutiny is only appropriate where the challenged law *substantially* burdens conduct protected by the Second Amendment.²⁸ The Fourth, Fifth, and Ninth 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."²⁹

While intermediate scrutiny is most commonly used in Second Amendment cases, courts have applied rational basis review—or something else less rigorous 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.³⁰ 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.³¹ Appellate courts in Illinois and Wisconsin have also applied rational basis review to other laws regulating guns outside of the home.³²

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.

c. Gun Regulations Have Survived Largely Unscathed after *Heller*

i. 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 groups and individual plaintiffs have frequently challenged laws regulating the ability of people to carry weapons outside of the home.³³ Nearly all of those challenges have failed. Courts have upheld laws requiring a license to carry a gun outside the home.³⁴ Courts have also upheld numerous conditions being placed on such licenses including:

²⁷ *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 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).

²⁸ *Kachalsky v. County of Westchester*, 701 F.3d 81 (2d Cir. 2012); *United States v. Decastro*, 682 F.3d 160 (2d Cir. 2012).

²⁹ *Chester*, 628 F.3d at 682; *Chovan*, 735 F.3d at 1138; *NRA v. McCraw*, 719 F.3d 338 (5th Cir. 2013).

³⁰ *Commonwealth v. McGowan*, 982 N.E. 2d 495 (Mass. 2013).

³¹ *United States v. Parker*, 919 F. Supp. 2d 1072 (E.D. Cal. Jan. 22, 2013).

³² *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.").

³³ These laws generally allow some form of concealed carry, open carry, or both. In 2014, in light of the *Palmer* decision, Washington D.C. became the last jurisdiction in the country to change its laws to allow for concealed carry. See *Palmer v. D.C.*, 2014 U.S. Dist. LEXIS 101945 (D.D.C. July 26, 2014). The decision is currently on appeal in the D.C. Circuit.

³⁴ *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).

- Requiring an applicant for a license to carry a concealed weapon to show “good cause,” “proper cause,” “need,” or to qualify as a “suitable person”³⁵
- Requiring an applicant to submit affidavits evidencing good character³⁶
- Prohibiting the issuance of a concealed carry permit based on a misdemeanor assault conviction³⁷
- Requiring an applicant to be a state resident³⁸
- Requiring an applicant for a concealed carry license to be at least twenty-one years old³⁹
- Allowing the revocation of the permit if law enforcement determines that the permit holder poses a material likelihood of harm⁴⁰

Most notably, out of six federal courts of appeal that have directly reviewed challenges to regulations on concealed or open carry, five have upheld the laws at issue in their entirety.⁴¹ For example, the Second Circuit in *Kachalsky v. County of Westchester* 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.”⁴² Although the court assumed that the Second Amendment had “some” application outside of the home, it found that the law satisfied intermediate scrutiny 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.”⁴³ 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 are “longstanding” regulations under *Heller*, and therefore presumptively valid.⁴⁴ The Tenth Circuit went even

³⁵ *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); *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).

³⁶ *Williams v. Puerto Rico*, 910 F. Supp. 2d 386 (D.P.R. 2012).

³⁷ *Kelly v. Riley*, 733 S.E.2d 194 (N.C. Ct. App. Nov. 6, 2012).

³⁸ *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).

³⁹ *NRA v. McCraw*, 719 F.3d 338 (5th Cir. 2013); see also *Powell v. Tompkins*, 926 F. Supp. 2d 367 (D. Mass. 2013).

⁴⁰ *Embodry v. Cooper*, 2013 Tenn. App. LEXIS 343 (May 22, 2013).

⁴¹ *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); *Kachalsky v. County of Westchester*, 701 F.3d 81 (2d Cir. 2012); *Hightower v. Boston*, 693 F.3d 61 (1st Cir. 2012).

⁴² *Kachalsky*, 701 F.3d at 86 (quotations and citations omitted).

⁴³ *Id.* at 89, 98-99.

⁴⁴ *Drake v. Filko*, 724 F.3d 426 (3d Cir. 2013), cert. denied, 134 S. Ct. 2134 (May 5, 2014). Notably, 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 were enacted, which *Heller* referred to as “longstanding.” See *Drake*, 724 F.3d at 434 n.11 (“the current versions of these bans are of mid-20th century vintage.”); *United States v. Skoien*, 614 F.3d 638, 640-41 (the ban on receipt of firearms by all felons “was not enacted until 1961” and was not expanded to cover actual possession until 1968, when the law took “its current form.”); *Heller v. District of Columbia* (“*Heller II*”), 670 F.3d 1244, 1253-54 & n.* (D.C. Cir. 2011) (“[t]he Court in *Heller* considered ‘prohibitions on the possession of firearms by felons’ to be ‘longstanding’ although states did not start to enact them until the early 20th century.”); *Nat’l Rifle Ass’n of Am. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 700 F.3d 185, 196 (5th Cir. 2012) (“a regulation can be deemed ‘longstanding’ even if it cannot boast a precise founding-era analogue.”); cf. *Mance v. Holder*, 2015 U.S. Dist. LEXIS 16679 (N.D. Tex. Feb. 11, 2015) (“Defendants list the earliest known state residency restrictions on the purchase or possession of firearms, with the earliest of these restrictions occurring in 1909...these early twentieth century state residency restrictions do not date back quite far enough to be considered longstanding.”); *Silvester v. Harris*, 2014 U.S. Dist. LEXIS 118284 (E.D. Cal., Aug. 22, 2014) (finding California waiting period law, which traced origin to 1920s, did not qualify as “longstanding.”). *Silvester* is currently on appeal in the Ninth Circuit.

further in *Peterson v. Martinez*, holding flatly that “the Second Amendment does not confer a right to carry concealed weapons.”⁴⁵

In 2012, the U.S. Court of Appeals for the Seventh Circuit struck down an Illinois law that completely banned the carrying of loaded and accessible firearms in public, calling the law “the most restrictive gun law of any of the 50 states.”⁴⁶ However, even in striking down that law, the court was careful to note that states, including Illinois, have many policy options available to them to regulate the carrying of firearms in public, including the use discretionary public carry permitting, requiring public carry permit applicants to receive firearms training, and allowing private institutions to ban guns from their premises.⁴⁷

ii. 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 felons⁴⁸
- Possession of firearms by domestic violence misdemeanants⁴⁹
- Possession of firearms during the scope of employment by anyone working for a convicted felon (such as a bodyguard)⁵⁰
- Providing a firearm to a fugitive felon⁵¹
- Possession of firearms by an individual who is under indictment for a felony⁵²

⁴⁵ *Peterson*, 707 F.3d at 1211.

⁴⁶ *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012) (noting that “Illinois has lots of options for protecting its people from being shot without having to eliminate all possibility of armed self-defense in public” and suggesting that Illinois could adopt a discretionary concealed carry licensing scheme to replace its prohibition on public carry); 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). *Palmer* is currently on appeal in the D.C. Circuit. 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).

⁴⁷ *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).

⁴⁸ 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); *Pohlman 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).

⁴⁹ 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).

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

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

- Possession of firearms by an unlawful user of a controlled substance⁵³
- Possession of firearms during the commission of a crime⁵⁴

Courts have also rejected challenges to sentence enhancements for convicted criminals who possessed firearms while engaging in illegal activity.⁵⁵ The courts have mostly explained these decisions by citing the statements in *Heller* and *McDonald* that “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons” and that such prohibitions are “presumptively lawful.”⁵⁶

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.⁵⁷ 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.⁵⁸ 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.”⁵⁹ Recently, a small number of other courts have also sustained as-applied challenges to the felon-in-possession statute.⁶⁰ 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.

iii. Other Regulations

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

⁵² *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).

⁵³ 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*, 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).

⁵⁴ *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).

⁵⁵ 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).

⁵⁶ *Heller*, 554 U.S. at 626–27 & n.26; see also, 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 felon-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).

⁵⁷ *Gowder v. City of Chicago*, 923 F. Supp. 2d 1110, 1117 (N.D. Ill. 2012) (“the Chicago Firearm Ordinance basically provides that anyone convicted of a nonviolent misdemeanor offense relating to a firearm is forever barred from exercising his constitutional right to possess a firearm in his own home for self-defense...[d]ue to the significant lack of evidence indicating that a non-violent misdemeanor, like Gowder, poses a risk to society analogous to that of a felon or a violent misdemeanor...the Chicago Firearm Ordinance violates Gowder’s constitutional rights under the Second Amendment.”).

⁵⁸ *United States v. Arzberger*, 592 F. Supp. 2d 590 (S.D.N.Y. 2008) (“the Adam Walsh Amendments violate due process by requiring that, as a condition of release on bail, an accused person be required to surrender his Second Amendment right to possess a firearm without giving that person an opportunity to contest whether such a condition is reasonably necessary in his case to secure the safety of the community. Because the Amendments do not permit an individualized determination, they are unconstitutional on their face.”); *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).

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

⁶⁰ *Suarez v. Holder*, 2015 U.S. Dist. LEXIS 19378 (M.D. Penn. Feb. 18, 2015) (sustaining as-applied challenge to federal felon-in-possession statute by plaintiff convicted of carrying a firearm without a license); *Binderup v. Holder*, 2014 U.S. Dist. LEXIS 135110 (E.D. Penn., Sept. 25, 2014) (granting as-applied challenge to the federal felon-in-possession statute, 18 U.S.C. § 922(g)(1)).

- **Firearm Ownership**
 - Requiring the registration of all firearms⁶¹
 - Requiring background checks for private firearm transfers⁶²
 - Requiring an individual to possess a license to own a handgun⁶³
 - Requiring handgun permit applicants to pay a \$ 340 fee every three years⁶⁴
 - Prohibiting the sale of firearms to individuals who do not reside in any U.S. state⁶⁵
- **Firearm Safety**
 - Requiring the safe storage of handguns in the home⁶⁶
 - Prohibiting the possession of a firearm while intoxicated⁶⁷
- **Particularly Dangerous Weapons and Accessories**
 - Forbidding the possession, sale, and manufacture of assault weapons and large capacity ammunition magazines⁶⁸
 - Prohibiting the sale of “particularly dangerous ammunition” that has no sporting purpose⁶⁹
 - Prohibiting the carrying of a concealed dirk or dagger outside of the home⁷⁰
- **Firearm Possession by Particularly Dangerous Individuals**
 - Prohibiting the possession of firearms by individuals who have been involuntarily committed to a mental institution⁷¹

⁶¹ *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).

⁶² *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).

⁶³ *People v. Perkins*, 880 N.Y.S.2d 209 (N.Y. App. Div. 2009).

⁶⁴ *Kwong v. Bloomberg*, 723 F.3d 160 (2d Cir. 2013).

⁶⁵ *Dearth v. Holder*, 893 F. Supp. 2d 59 (D.D.C. 2012).

⁶⁶ *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).

⁶⁷ *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); *cf. 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 where his possession was only constructive).

⁶⁸ *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); *Kamper v. Cuomo*, 993 F. Supp. 2d 188, 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*, 994 F. Supp. 2d 234 (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*, 2015 U.S. App. LEXIS 3471 (9th Cir. Mar. 4, 2015); *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).

⁶⁹ *Jackson v. City & County of San Francisco*, 746 F.3d 953 (9th Cir. 2014).

⁷⁰ *People v. Mitchell*, 209 Cal. App. 4th 1364 (2012).

⁷¹ *In re Keyes*, 2013 PA Super 326 (Pa. Super. Ct. 2013) (rejecting challenge to a federal law prohibiting persons who have been involuntarily committed to a mental institution from possessing firearms and finding that such laws were outside the scope of the Second Amendment and, even if they were not, that they would still satisfy intermediate scrutiny); *cf. Tyler v. Hillsdale County Sheriff’s Dep’t*, 2014 U.S. App. LEXIS 23929 (6th Cir. Dec. 18, 2014) (applying strict scrutiny in sustaining as-applied challenge to federal firearm prohibition for persons involuntarily committed to a mental institution).

- Prohibiting possession of firearms for individuals subject to a domestic violence restraining order⁷²
- Authorizing the seizure of firearms in cases of domestic violence⁷³
- Prohibiting the possession of handguns by juveniles⁷⁴
- **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 store⁷⁵
 - Prohibiting the sale of firearms and ammunition to individuals younger than twenty-one years old⁷⁶
 - Requiring that all new handguns sold meet certain safety requirements, including firing and drop testing, the inclusion of chamber loaded indicators, and the incorporation of microstamping technology⁷⁷
 - Imposing a fee on all firearm sales conducted with a state⁷⁸
- **Firearms in Sensitive Places**
 - Prohibiting the possession of firearms within college campus facilities and at campus events⁷⁹
 - Prohibiting the carrying of a loaded and accessible firearm in a motor vehicle⁸⁰
 - Forbidding possession of a firearm in national parks⁸¹
 - Prohibiting the possession of firearms in places of worship⁸²
 - Prohibiting the possession of firearms in common areas of public housing units⁸³
 - Prohibiting the possession of guns on county-owned property⁸⁴
- **Regulation of Firing Ranges**⁸⁵
 - Requiring firing range patrons to be at least 18 years of age
 - Zoning restrictions, such as requiring that ranges not be located within 500 feet of sensitive locations)

⁷² *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).

⁷³ *Crespo v. Crespo*, 989 A.2d 827 (N.J. 2010).

⁷⁴ *United States v. Rene E.*, 583 F.3d 8 (1st Cir. 2009).

⁷⁵ *Teixeira v. County of Alameda*, 2013 U.S. Dist. LEXIS 128435 (N.D. Cal. Sep. 9 2013); *cf. Mance v. Holder*, 2015 U.S. Dist. LEXIS 16679 (N.D. Tex. Feb. 11, 2015) (applying strict scrutiny in striking down federal statutes requiring out-of-state handgun purchases to be processed by an in-state FFL).

⁷⁶ *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).

⁷⁷ *Pena v. Lindley*, 2015 U.S. Dist. LEXIS 23575 (E.D. Cal. Feb. 27, 2015) (upholding all aspects of California's Unsafe Handgun Act.).

⁷⁸ *Bauer v. Harris*, 2015 U.S. Dist. LEXIS 25757 (Upholding California's \$19.00 Dealer Record of Sale ("DROS") fee, and stating that the "fee is a condition on the sale of firearms...[t]he DROS fee, therefore, is a presumptively lawful regulatory measure. Accordingly, the...fee is constitutional because it falls outside the historical scope of the Second Amendment.").

⁷⁹ *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).

⁸⁰ *Ohio v. Rush*, 2012 Ohio 5919 (Ohio Ct. App. 2012).

⁸¹ *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); *cf. Morris v. U.S. Army Corps of Engineers*, 2014 U.S. Dist. LEXIS 147541 (D. Idaho Oct. 13, 2014) (striking down regulations prohibiting the possession and carrying of firearms on property owned by the U.S. Army Corps of Engineers).

⁸² *GeorgiaCarry.Org, Inc. v. Georgia*, 764 F. Supp. 2d 1306 (M.D. Ga. 2011), *aff'd*, 687 F.3d 1244 (11th Cir. 2012).

⁸³ *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).

⁸⁴ *Nordyke v. King*, 681 F.3d 1041 (9th Cir. 2012) (en banc).

⁸⁵ *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).

- Construction requirements (e.g., requiring the use of ballistic-proof walls and doors, and separate ventilation systems to minimize the risk of lead exposure)
- Operation requirements (e.g., a range master must be present at all times)
- Noise limitations

Despite these victories, there are a few outliers. As discussed above, the Seventh Circuit struck down Illinois' ban on carrying concealed weapons.⁸⁶ 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.⁸⁷ 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 may operate.⁸⁸ 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.⁸⁹ As discussed above, a handful of as-applied challenges to federal prohibitions on firearm possession for various categories of persons have been sustained, including in the Sixth Circuit.⁹⁰ In addition, a federal district court, applying strict scrutiny, recently struck down a federal law requiring out-of-state purchases of handguns to be completed by an in-state FFL.⁹¹

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,⁹² a Massachusetts federal district court decision finding that a U.S. citizenship requirement for possessing and carrying firearms violated the plaintiffs' Second Amendment rights,⁹³ 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.⁹⁴

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 65 Second Amendment cases, including:

- Cases challenging laws restricting the concealed and/or open carrying of firearms in public⁹⁵

⁸⁶ 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); .

⁸⁷ See *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011).

⁸⁸ 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.").

⁸⁹ *Morris v. U.S. Army Corps of Engineers*, 2014 U.S. Dist. LEXIS 147541 (D. Idaho Oct. 13, 2014).

⁹⁰ *Tyler v. Hillsdale County Sheriff's Dep't*, 2014 U.S. App. LEXIS 23929 (6th Cir. Dec. 18, 2014) (applying strict scrutiny in sustaining as-applied challenge to federal firearm prohibition for persons involuntarily committed to a mental institution).

⁹¹ See *Mance v. Holder*, 2015 U.S. Dist. LEXIS 16679 (N.D. Tex. Feb. 11, 2015) (applying strict scrutiny in striking down federal statutes requiring out-of-state handgun purchases to be processed by an in-state FFL).

⁹² *Bateman v. Perdue*, 881 F. Supp. 2d 709 (E.D.N.C. 2012).

⁹³ *Fletcher v. Haas*, 851 F. Supp. 2d 287 (D. Mass. 2012).

⁹⁴ *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.

⁹⁵ *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).

- Cases challenging the constitutionality of laws prohibiting felons and/or misdemeanants from possessing firearms⁹⁶
- Cases challenging laws enhancing sentences for possessing a firearm while committing a crime⁹⁷
- Cases challenging laws restricting the possession of machine guns and other types of military-style weapons⁹⁸
- Cases challenging firearm registration requirements⁹⁹

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, see the [full report on the Law Center's website](https://smartgunlaws.org/protecting-strong-gun-laws-the-supreme-court-leaves-lower-court-victories-untouched), available at: smartgunlaws.org/protecting-strong-gun-laws-the-supreme-court-leaves-lower-court-victories-untouched.

CONCLUSION

Because of the Supreme Court's decisions in *Heller* and *McDonald*, the nation's lower courts have been inundated with a substantial volume of Second Amendment litigation. However, as described above, the vast majority of this litigation has been unsuccessful because most federal, state and local firearms laws satisfy the established standards of constitutional review. 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 a wide variety of reasonable laws to reduce gun violence.

ABOUT THE LAW CENTER TO PREVENT GUN VIOLENCE

Founded in the wake of the July 1, 1993, assault weapon massacre at 101 California Street in San Francisco that left eight dead and six wounded, the Law Center to Prevent Gun Violence is now the premier resource for legal expertise and information regarding state and federal firearms laws. We track and analyze gun laws in all 50 states, file amicus briefs in Second Amendment cases across the country, and work with lawmakers and advocates to craft and promote legislation that will reduce gun violence and save lives. We regularly partner with law firms and nonprofit organizations dedicated to combating the epidemic of gun violence in our country, and we invite you to learn more about our work by visiting our website, smartgunlaws.org.

**FOR MORE INFORMATION, VISIT OUR WEBSITE [SMARTGUNLAWS.ORG](https://smartgunlaws.org)
OR CALL OUR OFFICE AT (415) 433-2062.**

⁹⁶ See, e.g., *Booker v. United States*, 132 S. Ct. 1538 (2012); *Torres-Rosario v. United States*, 132 S. Ct. 1766 (2012).

⁹⁷ *Kearns v. United States*, 181 L. Ed. 2d 226 (2011).

⁹⁸ *Hamblen v. United States*, 130 S. Ct. 2426 (2010); *James v. Cal.*, 130 S. Ct. 1517 (2010).

⁹⁹ *Justice v. Town of Cicero*, 130 S.Ct. 3410 (2010).