

Hollow Victory?



Gun Laws Survive Three Years After District of Columbia v. Heller, Yet Criminals and the Gun Lobby Continue Their Legal Assault

Brady Center to Prevent Gun Violence

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The Brady Center to Prevent Gun Violence is a national non-profit organization working to reduce the tragic toll of gun violence in America through education, research, and legal advocacy. The programs of the Brady Center complement the legislative and grassroots mobilization efforts of its sister organization, the Brady Campaign to Prevent Gun Violence and its network of Million Mom March Chapters.

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Hollow Victory?

Gun Laws Survive Three Years After District of Columbia v. Heller, Yet Criminals and the Gun Lobby Continue Their Legal Assault

Three years ago, the U.S. Supreme Court handed down its 5-4 decision in *District of Columbia v. Heller*, ruling for the first time that the Second Amendment protects a limited right to possess handguns in the home for self-defense.¹ Last June, in *McDonald v. City of Chicago*, the Court held that the Second Amendment was “incorporated,” extending *Heller* to apply to state and local laws nationwide, while again cautioning that the right to keep and bear arms was limited.²

Since the *Heller* ruling, **criminals and the gun lobby have brought more than 400 challenges to gun laws, an average of more than two legal challenges every week over the last three years.** Yet, the courts have overwhelmingly rejected those cases.

The Second Amendment is “not unlimited” and is “not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose”
U.S. Supreme Court, *District of Columbia v. Heller*



The Brady Center to Prevent Gun Violence’s Legal Action Project has helped defend against many of these challenges, assisting local attorneys and filing briefs in many cases to successfully defend gun laws in the courts.

Although Wayne LaPierre, Executive Vice President of the NRA, claimed that *Heller* would be “the opening salvo in a step-by-step process” to strike down common-sense gun laws,³ the reality has been a disappointment to the gun lobby.

The NRA claimed the Supreme Court’s Heller ruling would be “the opening salvo in a step-by-step process” to overturn gun laws, but courts overwhelmingly have rejected post-Heller gun law challenges

Justice Scalia’s majority decision in *Heller* rejected the NRA’s view that the Second Amendment provided a broad right to carry virtually any gun anywhere. Instead, Justice Scalia and the Court went out of their way to caution that the Second Amendment “is not unlimited” and “not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”⁴

The Court listed a host of “presumptively lawful” gun laws, including gun sales regulations, bans on public carrying of guns, bans on gun possession by felons and the mentally ill, and bans on particularly dangerous guns such as assault weapons.⁵

The Court stressed the limited right of “law-abiding, responsible citizens to use arms in defense of hearth and home.”⁶

In rejecting subsequent challenges to gun laws brought by the gun lobby and gun criminals, courts have held that:

- There is no right to carry hidden, loaded firearms in public
- There is no right to military-style assault weapons and assault clips
- Felons and domestic abusers have no right to possess firearms
- Gun owners may be required to safely store guns in homes
- Gun owners may be required to register their guns

Despite these strong rulings by courts that common-sense gun laws are wholly constitutional, criminals and the gun lobby continue to flood the courts, trying to extend the Second Amendment far beyond the limited rulings in *Heller* and *McDonald*. These lawsuits **threaten common-sense gun laws** and if successful, could constrain the ability of Congress and local and state governments to enact reasonable gun laws in the future. In some of the ongoing legal challenges, the gun lobby or gun criminals seek a ruling that:

- The Second Amendment grants a right to take up arms and venture out with firearms into riots or during states of emergency
- Teenagers have a right to carry loaded, hidden firearms in public
- The Second Amendment grants a right to carry loaded semi-automatic weapons on the streets of the nation's capital
- Law enforcement should have no discretion to decide whether dangerous people can carry firearms on streets and in playgrounds

Although challenges to gun laws have almost all failed in the first three years since *Heller*, that string of defeats has not stanching the resources of the gun lobby or the creativity of the criminal defense bar, who continue to launch new challenges. So long as those challenges continue – and the Supreme Court has not definitively resolved all of the unsettled issues arising from *Heller* and *McDonald* – the risk remains that an aberrant decision by a trial judge or appellate court will place life-saving gun laws at risk.

As the United States Court of Appeals for the Fourth Circuit recently recognized in cautioning courts against striking down common-sense laws, “This is serious business. We do not wish to be even minutely responsible for some unspeakably tragic act of mayhem because in the peace of our judicial chambers we miscalculated as to Second Amendment rights.”⁷

It is crucial that **courts continue to protect our communities from gun violence by rejecting lawsuits brought by gun criminals and the gun lobby** seeking to strike down common-sense gun laws that protect public safety and stop gun violence, and that for the gun lobby, *Heller* remains nothing more than a hollow victory.

Courts Have Rejected Lawsuits Claiming a Right to Carry Loaded, Hidden Guns in Public

Since June 2008, the gun lobby has attempted to vastly expand the decision in *Heller* to invalidate sensible state and local gun laws that restrict the carrying of hidden, loaded firearms in public.

Although the *Heller* Court stressed that its ruling was limited to “defense of hearth and home,”⁸ and the *McDonald* Court cautioned that “reasonable firearms regulations”⁹ remain permissible, gun criminals and gun lobby groups such as the National Rifle Association and the Second Amendment Foundation have filed legal challenges against laws regulating the carrying of guns in public. **The courts have overwhelmingly rejected those challenges.**

In *Heller*, the Court’s 5-4 majority decision recognizing a Second Amendment right to have a gun in the home was controversial but narrow; the Court made clear that the Second Amendment does not include the “right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”¹⁰

Indeed, the Supreme Court specifically noted that “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.”¹¹ Two years later, the Court in *McDonald* “repeat[ed] those assurances” that it had “made [] clear” in *Heller* about the continued validity of “longstanding prohibitions on the possession of firearms.”¹²

As early as 1897, the Supreme Court itself held that “the right of the public to bear arms (article 2) is not infringed by laws prohibiting the carrying of concealed weapons.”¹³



“The Supreme Court has never held that the Second Amendment protects the carrying of guns outside the home.”
Wisconsin Federal District Court

Gun criminals and the gun lobby have tried to push other courts to ignore this language in *Heller* and find a constitutional right to carry loaded guns in public. Yet courts have followed the Supreme Court’s directives and rejected these challenges.

In March 2011, for example, the United States Court of Appeals for the Fourth Circuit explicitly declined to extend the Second Amendment right beyond the home, refusing to “push *Heller* beyond its undisputed core holding.” In *United States v. Masciandaro*,¹⁴ the court rejected a claim that there is a constitutional right to possess a loaded handgun in a car in a national park. The court held, “This is serious business. We do not wish to be even minutely responsible for some unspeakably tragic act of mayhem because in the peace of our judicial chambers we miscalculated as to Second Amendment rights.”¹⁵

The Fourth Circuit cautioned further that the danger posed by guns “would rise exponentially as one moved the right from the

home to the public square. If ever there was an occasion for restraint, this would seem to be it. There is much to be said for a course of simple caution.”¹⁶

In another case, the gun lobby challenged a California law that requires applicants who wish to carry concealed firearms in public to be of good moral character, be a resident of or spend substantial time in the county in which they apply, demonstrate good cause, and take a firearms course in order to be issued a concealed carry permit. ¹⁷ “Good cause” is defined as “a set of circumstances that distinguishes the applicant from other members of the general public and causes him or her to be placed in harm's way.”¹⁸

The court upheld California’s restrictions on carrying concealed weapons, ruling that the government had an “important and substantial interest in public safety and in reducing the rate of gun use in crime. In particular, the government has an important interest in reducing the number of concealed weapons in public in order to reduce the risks to other members of the public who use the streets and go to public accommodations.”¹⁹ The court also cited the government’s “important interest in **reducing the number of concealed handguns in public because of their disproportionate involvement in life-threatening crimes of violence**, particularly in streets and other public places.”²⁰

Numerous other courts have similarly held that the right found in *Heller* is limited to the home, and does not include a right to carry firearms in public:

- “*Heller* specifically limited its ruling to interpreting the amendment’s protection of the right to possess handguns in the home, not the right to possess handguns outside of the home in case of confrontation.” – Illinois Court of Appeals²¹
- “*Heller* does not hold, nor even suggest, that concealed weapons laws are unconstitutional.” – Massachusetts federal district court ²²
- “[T]he United States Supreme Court has not held or even implied that the Second Amendment prohibits laws that restrict carrying of concealed weapons.” – New Jersey Appeals Court ²³
- “The Supreme Court has never held that the Second Amendment protects the carrying of guns outside the home.” – Wisconsin federal district court ²⁴
- “*Heller* refers to outright ‘prohibition on carrying concealed weapons’ as ‘presumptively lawful...’” – New Hampshire federal district court ²⁵
- “[P]ossession of a firearm outside of the home or for purposes other than self-defense in the home are not within the ‘core’ of the Second Amendment right as defined by *Heller*.” – West Virginia federal district court ²⁶
- “It is clear that the [*Heller*] Court was drawing a narrow line regarding the violations related solely to use of a handgun in the home for self-defense purposes.” – Kansas Appeals Court ²⁷

Courts Have Rejected Arguments That There Is a Second Amendment Right to Dangerous Military-Style Assault Weapons and Assault Clips

Following the Supreme Court's ruling in *Heller*, the plaintiff who filed the case, Dick Heller, was able to register a firearm in Washington, D.C. for use in his home. Soon after, he filed another lawsuit, this time claiming that he had a constitutional right to possess semi-automatic assault weapons and high-capacity assault clips.

The nation's capital and other states have banned civilian possession of semi-automatic assault weapons based on the severe danger they pose.²⁸ Although assault weapons have made up less than 1% of guns in circulation in the United States, they have long been recognized as particularly dangerous and unusual weapons.²⁹

Law enforcement reports show that semi-automatic assault weapons with high capacity ammunition magazines have a "distinctively military configuration" and are "designed for killing and disabling the enemy," which has "distinguished the[se] rifles from traditional sporting rifles."³⁰

In *Heller v. District of Columbia* ("*Heller II*"),³¹ a federal district court rejected Mr. Heller's new lawsuit that sought to strike down a host of new firearms ordinances enacted in the wake of



Heller, including rejecting his claim to a constitutional right to arm himself with military-style assault weaponry. The court ruled that the U.S. Supreme Court's decision in *Heller* was a limited ruling, and only applied to "those weapons 'in common use' and 'typically possessed by law-abiding citizens for lawful purposes,' ... as opposed to weapons considered 'dangerous and unusual.'"³² The decision has been appealed to the U.S. Court of Appeals for the District of Columbia, and a decision is expected soon.

The *Heller II* court noted that the nation's capital chose to ban semi-automatic assault weapons and high-capacity assault clips "after concluding that they are 'military-style weapons of war, made for offensive military use.'"³³ The court further noted that these **assault weapons are particularly dangerous because they "place law enforcement officers at a particularly grave risk** due to their high firepower."³⁴

Thus, the *Heller II* court held, "it is beyond dispute that public safety is an important—indeed, a compelling-governmental interest," and "there is at least a substantial fit between that goal and the bans on assault weapons" and assault clips.³⁵

Similarly, other courts have also rejected challenges to assault weapon bans. In *People v. James*,³⁶ a California man subject to a restraining order was convicted of possessing numerous assault weapons, including a blowgun, a .50 caliber BMG rifle, and a

12-gauge shotgun. In holding that possession of assault weapons is not protected under the Second Amendment as construed by *Heller*, the California Court of Appeal noted that the assault weapons prohibited under California law are “not the types of weapons that are typically possessed by law-abiding citizens for lawful purposes, such as sport-hunting or self-defense; rather, these are weapons of war.”³⁷

Likewise, in *People v. Millon*,³⁸ a man was convicted of possessing two unregistered assault rifles following a domestic violence incident. The California Court of Appeal held that assault weapons are not “a class of arms that is overwhelmingly chosen by the American people for the lawful purpose of self-defense,”³⁹ and so California’s ban on possession of assault weapons does not infringe activity protected by the Second Amendment.

Courts Have Rejected Gun Law Challenges By Dangerous Felons and Domestic Abusers

Numerous Second Amendment challenges in the wake of the *Heller* ruling have been brought by individuals claiming they have a constitutional right to possess a firearm even though they have been convicted of a felony and found illegally in possession of a firearm. Possession of a firearm after having been convicted of a felony is prohibited by the federal Gun Control Act of 1968.⁴⁰ Courts have rejected all of these challenges.

Additionally, noting that *Heller*’s list of numerous “presumptively lawful” gun laws “does not purport to be exhaustive,” courts have consistently upheld prohibitions on possession of firearms by persons who have committed misdemeanor crimes of domestic violence or who are subject to domestic violence restraining orders – even though *Heller* did not specifically approve of the ban on possession by domestic abusers.

Courts Have Rejected Felons’ Gun Law Challenges

In upholding felon in possession convictions, courts have relied on the language in *Heller* which stated, “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.”⁴¹

Since *Heller*, courts have upheld prosecutions of felons charged with violating “felon in possession of firearms” laws **in over 30 federal circuit court cases, over 60 federal district court cases, and over 20 state court cases.**⁴²

“[F]irearms are deadly in domestic strife; and persons convicted of domestic violence are likely to offend again, so that keeping the most lethal weapon out of their hands is vital to the safety of their relatives.”

U.S. Court of Appeals for the 7th Circuit

Courts have noted that such prohibitions on felons possessing firearms are “to keep guns out of the hands of those who have demonstrated that they may not be trusted to possess a firearm without becoming a threat to society.”⁴³

In one typical case, James Francis Barton, Jr. had already been convicted for possession of cocaine with intent to distribute and possession of a stolen firearm, both felonies, when he sold a revolver and ammunition to an undercover police officer on April 20, 2007.⁴⁴ A search of Mr. Barton's home revealed an additional seven pistols, five rifles, three shotguns, and various types of ammunition.⁴⁵ The Court found *Heller's* language that certain gun laws were "presumptively lawful" to be outcome-determinative rather than mere dicta. As such, the Court rejected Barton's facial challenge to the law.⁴⁶

Courts Have Rejected Domestic Violence Abusers' Gun Law Challenges

Numerous challenges have been brought against prohibitions on gun possession by those convicted of misdemeanor domestic violence. Although domestic abusers have claimed that they retained their Second Amendment rights because they had not been convicted of a felony (or, in some cases concerning restraining orders, of any crime), these challenges have consistently failed.

Since *Heller*, **courts have rejected more than two dozen claims by abusers** that they have a constitutional right to possess firearms.

In a frequently cited case, the United States Court of Appeals for the Seventh Circuit ruled that although appellants bringing these challenges do not have felony convictions, the prohibitions are still lawful. *See United States v. Skoien*.⁴⁷ The Court in *Skoien* reasoned that "domestic abusers often commit acts that would be charged as felonies if the victim were a stranger, but that are charged as misdemeanors because the victim is a relative (implying that the perpetrators are as dangerous as felons); firearms are deadly in domestic strife; and persons convicted of domestic violence are likely to offend again, so that keeping the most lethal weapon out of their hands is vital to the safety of their relatives."⁴⁸

Likewise, courts have held that bans on persons subject to domestic violence restraining orders are lawful. Courts have noted that in some respects this ban is not as restrictive as other "presumptively lawful" regulations, such as prohibitions on possession by felons, because the prohibition lasts only as long as the underlying court order is in effect.⁴⁹

Spotlight on Domestic Violence: Courts Uphold Gun Bans for Abusers Convicted of Misdemeanors

Many domestic violence abusers have argued that they have a right to be armed because they have only been convicted of misdemeanors, while *Heller* spoke directly only of "presumptively lawful" bans on felon gun possession.

Courts have rejected these claims, realizing that abusers are particularly dangerous and that prosecutors face many obstacles in prosecuting cases of domestic violence as felonies.

Felony abuse cases are difficult to prosecute because some family members are willing to forgive aggressors to restore harmonious relations, while others are so terrified that they doubt the ability of the police to protect their safety.

In light of the dangers posed by abusers, courts have recognized that *Heller's* intent is to still allow the government to ban gun possession by dangerous abusers, even if they are only convicted for misdemeanors.

Gun Owners May Be Required to Safely Store Guns in Homes

In addition to cautioning that the Second Amendment right “is not unlimited,” the *Heller* Court stressed that the Second Amendment still allows regulation of guns even when they are possessed in the home, emphasizing that its ruling in *Heller* should not “suggest the invalidity of laws regulating the storage of firearms to prevent accidents.”⁵⁰

The Supreme Court concluded that safe storage laws “do not remotely burden the right of self-defense” and are still permissible after *Heller*.⁵¹

Despite the Court’s clear ruling allowing safe storage laws, **the gun lobby and gun criminals have argued that the Second Amendment grants a constitutional right to store gun unlocked and loaded near children.** Courts have rejected these claims.

In a lawsuit in Massachusetts, a man who was charged with **allowing his teenage son access to unsecured weapons** claimed that he had a constitutional right to do so under the Second Amendment. The case involved a police call to the home of Richard Runyan for a report of a BB gun shot through a neighbor’s window. Police found Runyan’s 18-year-old son, who has Down syndrome, shooting a BB gun out the window at a neighbor. Runyan’s son was home alone and showed police his father’s bedroom where a 12-gauge shotgun and a semi-automatic rifle were stored under the bed. Runyan was charged with improperly storing a firearm.⁵²

Massachusetts law allows self-defense gun use in the home but requires that firearms be secured when not carried by or under the control of an owner or authorized user.⁵³



The law is crucial for child safety, as studies have found a direct correlation between improper gun storage and accidental shooting deaths. Indeed, unintentional shooting deaths among children have been reduced by twenty-three percent in states with safe storage laws.⁵⁴

After a trial judge ruled that Mr. Runyan’s prosecution violated the Second Amendment, the Massachusetts Supreme Judicial Court reversed and found that the safe storage law “does not make it impossible for those persons licensed to possess firearms to rely on them for lawful self-defense” and upheld the law.⁵⁵ Although the ruling was issued before *Heller* was made applicable to state gun laws by the *McDonald* ruling, the Court later rejected an attempt by Mr. Runyan to reopen the case after the ruling in *McDonald*.

In a similar challenge, **a man claimed a constitutional right to store unsecured guns near children** after police responded to a 911 call to his home and found “a scared and crying five year old girl” near “her mother, who appeared shaken and nervous.” Police found a gun holster on the floor when the man entered the room, at which point the girl said, “He pushed Mommy into the wall. He had a gun.” Near the children, police found a Smith & Wesson .38 caliber handgun that “did not have a trigger lock and was not secured in a locked container” along with “hollow point .38 caliber ammunition.”⁵⁶

The court rejected the man’s claim and upheld the law, ruling, “The statute’s storage requirements placed no meaningful restraint on the defendant’s ability to use the gun in lawful self-defense” and so do not violate the Second Amendment.⁵⁷

Gun Owners May Be Required to Register Their Guns

In *Heller*, the Supreme Court specifically allowed the registration of firearms, ruling that the District of Columbia “the District must permit [Mr. Heller] to register his handgun...”⁵⁸

Since that ruling, gun criminals and the gun lobby have challenged laws requiring gun registration more than a dozen times, and the courts have rejected those challenges.

Gun registration laws help police solve crimes by allowing them to determine the last known owner of a firearm that has been trafficked or used in crime.

Studies have shown that comprehensive state gun laws, such as registering guns and licensing gun owners, are associated with substantially lower levels of gun availability to criminals.⁵⁹

The courts have recognized the importance of gun registration laws to public safety and rejected claims that these laws violate the Second Amendment. For example, in *Justice v. Town of Cicero*,⁶⁰ the United States Court of Appeals for the Seventh Circuit upheld a law requiring the registration of firearms because it “leaves law-abiding citizens free to possess guns” as long as they register them, and so it does not violate the Second Amendment.



Gun Criminals and the Gun Lobby Continue to Challenge Common-Sense Gun Laws

Despite the overwhelming response by the courts since *Heller* rejecting claims by gun criminals and the gun lobby challenging common-sense gun laws, new lawsuits continue to be filed against state and federal gun laws. The Brady Center to Prevent Gun Violence's Legal Action Project has filed *amicus* briefs in these pending cases, urging the courts to protect public safety and uphold the challenged laws.

Gun Lobby Lawsuit Argues Right to Carry Firearms into Riots and During States of Emergency

Arguing that the Second Amendment grants the ultimate vigilante right to take up arms and venture out with firearms into riots or during states of emergency, the gun lobby is challenging a longstanding North Carolina law that restricts gun carrying during riots and emergencies. This challenge has yet to be ruled upon by the district court.

In order to protect public order and allow the delivery of emergency relief during a riot or state of emergency, North Carolina enacted legislation allowing for a temporary freeze on carrying firearms in the vicinity of a riot or in public areas of an emergency.⁶¹ This law is in keeping with the Supreme Court ruling in *Heller*, which limited the right to bear arms to the home and said that "laws forbidding the carrying of firearms in sensitive places" are "presumptively lawful."⁶²

Indeed, courts have been particularly deferential to authorities seeking to contain riots, deliver relief supplies and restore order during emergencies. In analyzing the North Carolina law, the United States Court of Appeals for the Fourth Circuit previously held that "[d]ealing with ... an emergency situation requires an immediacy of action that is not possible for judges," and so courts are extremely reluctant even after-the-fact to second-guess government decisions to suspend constitutional rights during a state of emergency.⁶³



The Fourth Circuit further held that the prospect of a court pre-emptively enjoining the government from restricting armed persons congregating in public during a riot, terrorist attack, or other state of emergency "would destroy the 'broad discretion' necessary for the executive to deal with an emergency situation" and strike at the most fundamental state police power to "[c]ontrol ... civil disorders that may threaten the very existence of the State...." Indeed, armed citizens creating the threat of "[p]rivate force and violence are no less destructive of free debate than government oppression."⁶⁴

The NRA Argues That Teenagers Have a Right to Carry Loaded, Hidden Guns in Public

The National Rifle Association filed a lawsuit claiming that teens and young persons ages 18-20 have a constitutional right to carry loaded, concealed weapons in public. The pending suit challenges a Texas law that generally bars teenagers and young persons under 21 from carrying concealed weapons.⁶⁵ The Texas Constitution specifically notes the dangers of concealed weapons, stating, “the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.”⁶⁶

The Student Government and Graduate Student Assembly of the University of Texas at Austin, on behalf of the 62,000 students, joined the Brady Center to Prevent Gun Violence in a brief supporting the Texas law.



The NRA’s initial lead plaintiff in the lawsuit, 18-year-old James D’Cruz (pictured at left), filled his Facebook page with violent postings and a picture of himself in a black suit and hat reminiscent of John Dillinger, posing with what appears to be a machine gun or assault weapon.

Many of D’Cruz’s postings reflect his fascination with gangsters and outlaws, often quoting them, and include violent, threatening messages, such as these: “Death is but a doorway,” “in this field of hundreds begging for their lives, we shall spare none,” “After hunting men, nothing can compare,” and “There is no redemption, There is no forgiveness. I will stare into your eyes as I pull the trigger and laugh as you hit the ground with your last, pathetic breath.” (After D’Cruz’s photos and

writings were publicized, he withdrew as a named plaintiff in the case, stating that he had moved out of the state.)⁶⁷

The Brady Center’s brief highlighted the dangers of teen gun possession, citing statistics showing that arrests for murder, non-negligent homicides and other violent crimes peak from ages 18 to 20.⁶⁸ Even though 18-20 year-olds make up only 5 percent of the population they account for about 20 percent of homicide and manslaughter arrests.⁶⁹ Studies show that young persons under 21 often lack the same ability as adults to govern impulsivity, judgment, planning for the future, and foresight of consequences.⁷⁰

Lawsuit Claims a Right to Carry Loaded Semi-Automatic Weapons on the Streets of the Nation’s Capital

Particularly in light of the recent mass shooting and assassination attempt of Rep. Gabrielle Giffords in Tucson, a pending lawsuit challenging Washington, D.C.’s ban on carrying loaded weapons in public has raised serious concerns from law enforcement

about the threat posed by loaded guns near elected representatives, government officials, foreign dignitaries, and tourists.

Despite the *Heller* Court's ruling that the right is confined to the home and that "laws forbidding the carrying of firearms in sensitive places" are "presumptively lawful," a federal court in Washington, D.C. is considering a lawsuit that would allow loaded guns to be carried on the streets of the capital.⁷¹

Over the past thirty years, firearms have been tightly regulated in our nation's capital, allowing law enforcement to detain and investigate anyone seen carrying a gun.

Yet, if this lawsuit were to succeed, the fact that someone was carrying a loaded assault rifle near a Senator, Representative, government official, aide, diplomat, or other high-profile target would provide law enforcement no legal grounds to stop them.

Even if anti-government protesters were gathering near federal buildings or motorcade routes armed with firearms, law enforcement would have no legal basis to stop them unless they showed an intent to do harm – which would probably be too late.



Gun Lobby-Backed Lawsuits Argue That Law Enforcement Should Have No Discretion to Decide Whether Dangerous People Can Carry Firearms on Streets and In Playgrounds

Gun lobby-backed legal challenges and appeals are currently pending in states across the country, including in California, Maryland, New Jersey, and New York, challenging laws that give police the discretion to permit the carrying of firearms in public only for good cause.



These states restrict the carrying of concealed, loaded guns everywhere from our streets to our playgrounds because guns in public places expose all members of society to great risks. Guns are used "far more often to kill and wound innocent victims than to kill and wound criminals ... [and] guns are also used far more often to intimidate and threaten than they are used to thwart crimes."⁷² In the last four years, concealed handgun permit holders have shot and killed at least 11 law enforcement officers and 298 private citizens.⁷³

In contrast, most states that enact laws broadly allowing concealed carrying of firearms in public appear to “experience increases in violent crime, murder, and robbery when [those] laws are adopted.”⁷⁴ Laws broadly allowing concealed carrying of weapons “have resulted, if anything, in an *increase* in adult homicide rates.”⁷⁵ Likewise, “firearms homicides increased in the aftermath of [enactment of these] laws,” and may “raise levels of firearms murders” and “increase the frequency of homicide.”⁷⁶

The Brady Center has filed briefs defending these laws giving police some discretion to permit concealed carrying in public, arguing that courts must follow the Supreme Court’s holding that the Second Amendment only protects a limited right of law-abiding, responsible people to possess a gun *in the home* for self-defense.

An extension of the Second Amendment to deny licensing officials the authority to determine who has a “good and substantial reason” to carry guns in public would run counter to the “assurances” of *Heller* and *McDonald* that “reasonable firearms regulations” will remain permissible. It would also run counter to the Supreme Court’s longstanding recognition that the exercise of protected activity must be balanced against legitimate public interests, chief among which is public safety.

CONCLUSION

The gun lobby hoped – and many others feared – that the Supreme Court’s ruling in *Heller* would lead courts to strike down common-sense gun laws enacted by democratically-elected officials in cities and states across the country, and to mandate the NRA’s vision of an America in which “any gun, any person, anywhere” was the rule.

Three years and more than 400 legal challenges later, courts – so far – have held that the Supreme Court’s ruling in *Heller* was narrow and limited, and that the Second Amendment does not interfere with the people’s right to enact legislation protecting families and communities from gun violence.

Yet gun criminals and the gun lobby continue filing new legal challenges at a rate of more than two new cases every week, hoping to convince a court to extend *Heller* far beyond the Supreme Court’s rulings. To protect our families and communities from gun violence, it is crucial that courts continue to reject these challenges and ensure that, for the gun lobby, *Heller* is nothing more than a hollow victory.

ENDNOTES

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- ¹ *District of Columbia v. Heller*, 128 S.Ct. 2783, 2821-22 (U.S. 2008).
- ² *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3047 (U.S. 2010) (citing *Heller*, at 2816-17).
- ³ Anahad O'Connor, *Gun-Control Supporters Show Outrage*, *The New York Times*, Jun. 27, 2008.
- ⁴ *District of Columbia v. Heller*, 128 S.Ct. at 2816.
- ⁵ *Id.* at 2816-17.
- ⁶ *Id.* at 2821.
- ⁷ *U.S. v. Masciandaro*, 638 F.3d 458, 475 (4th Cir. 2011).
- ⁸ *Heller*, 128 S.Ct. at 2821.
- ⁹ *McDonald*, 130 S.Ct. at 3046.
- ¹⁰ *Id.* at 2816.
- ¹¹ *Id.*
- ¹² *McDonald*, 130 S. Ct. at 3047.
- ¹³ *Robertson v. Baldwin*, 165 U.S. 275, 281-82 (1897).
- ¹⁴ 638 F.3d 458 (4th Cir. Mar. 24, 2011).
- ¹⁵ *Id.*
- ¹⁶ *Id.*
- ¹⁷ Cal Pen Code § 12050.
- ¹⁸ *Id.*
- ¹⁹ *Peruta v. County of San Diego*, 758 F. Supp. 2d 1106 (S.D. Cal. 2010).
- ²⁰ *Id.*
- ²¹ *People v. Dawson*, 934 N.E.2d 598, 605-06 (Ill. App. Ct. 2010).
- ²² *United States v. Hart*, 725 F. Supp. 2d 56, 60 (D. Mass. 2010).
- ²³ *In re Factor*, 2010 WL 1753307, at *3 (N.J. Super. Ct. App. Div. Apr. 21, 2010).
- ²⁴ *Gonzalez v. Village of W. Milwaukee*, No. 09CV0384, 2010 WL 1904977, at *4 (E.D. Wis. May 11, 2010).
- ²⁵ *Teng v. Town of Kensington*, No. 09-cv-8-JL, 2010 WL 596526, at *5 (D.N.H. Feb. 17, 2010).
- ²⁶ *United States v. Tooley*, 717 F. Supp. 2d 580, 596 (S.D. W. Va. 2010).

²⁷ *State v. Knight*, 218 P.3d 1177, 1189 (Kan. Ct. App. 2009).

²⁸ See D.C. Code §§ 7-2502.02(a)(6), 7-2506.01(b), Cal. Penal Code §§ 12275-12290 (banning assault weapons and high-capacity ammunition magazines); Conn. Gen. Stat. §§ 53-202a-53 to -202o (prohibiting assault weapon possession); Haw. Rev. Stat. §§ 134-1, 134-4, 134-8 (criminalizing manufacture, possession and sale of assault pistols and high-capacity ammunition magazines); Md. Code Ann., Crim. Law §§ 4-301 to 4-306 (regulating sale of assault weapons and high-capacity ammunition magazines); Mass. Gen. Laws ch. 140, §§ 121, 122, 123, 131, 131M (prohibiting sale, transfer and possession of assault weapons and large capacity feeding devices); N.J. Stat. Ann. §§ 2C:39-1(w), 2C:39-5, 2C:58-5, 2C:58-12, 2C58:13 (prohibiting possession of assault firearms unless licensed and high-capacity ammunition magazines); N.Y. Penal Law §§ 265.00(22), 265.02(7), 265.10 (prohibiting manufacture, disposal, transport, possession of assault weapons and high-capacity ammunition magazines); Minn. Stat. §§ 624.712-624.7141 (regulating possession and sale of assault weapons); Va. Code Ann. §§ 18.2-287.4, 18.2-308.2:01, 18.2-308.2:2, 18.2-308.7, 18.2-308.8 (restricting possession of certain assault weapons and carrying of assault weapons in public places).

²⁹ ATF & Department of the Treasury, *Department of the Treasury Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles 1* (Apr. 1998), <http://www.atf.gov/publications/download/treas/treas-study-on-sportingsuitability-of-modified-semiautomatic-assault-rifles.pdf>.

³⁰ *Id.*

³¹ 698 F.Supp.2d 179 (D.D.C. 2010), appeal filed.

³² *Heller II*, 698 F. Supp. 2d at 184 (D.D.C. 2010) (citing *District of Columbia v. Heller*, 128 S.Ct. 2783, 2816-17).

³³ *Heller II*, 698 F. Supp. 2d at 193.

³⁴ *Id.* at 194.

³⁵ *Id.* at 195.

³⁶ 174 Cal.Rptr.3d 576 (Cal. Ct. App. 2009).

³⁷ *Id.* at 586, 675.

³⁸ 2011 WL2436148 (Cal. Ct. App. 2011).

³⁹ *Id.* at 4-5 (internal citations omitted)

⁴⁰ 18 U.S.C. §922(g)(1).

⁴¹ *United States v. Grier*, 331 Fed.Appx. 871, 873 (2d Cir. 2009) (quoting *Heller*, 128 S.Ct. at 2816-17).

⁴² Tally of cases by Brady Center to Prevent Gun Violence.

⁴³ *United States v. Barton*, 633 F.3d 168, 173 (3d Cir. Pa. 2011)(quoting *Scarborough v. United States*, 431 U.S. 563, 572 (1977)).

⁴⁴ *Barton*, 633 F.3d at 170.

⁴⁵ *Id.*

⁴⁶ *Id.* at 171-72.

⁴⁷ 614 F.3d 638, 643 (7th Cir. 2010)

⁴⁸ *Id.*

⁴⁹ *United States v. Knight*, 574 F. Supp. 2d 224, 226 (D. Me. 2008).

⁵⁰ *Heller*, 554 U.S. at 632.

⁵¹ *Id.*

⁵² *Commonwealth v. Runyan*, 922 N.E.2d 794, 796 (Mass. 2010).

⁵³ *Id.*

⁵⁴ Larry Tye, Gun Laws are Linked to a Decline in Deaths, *Boston Globe*, Oct. 2, 1997, at A3.

⁵⁵ *Runyan*, 922 N.E.2d at 799.

⁵⁶ *Commonwealth v. Patterson*, 946 N.E.2d 130, 132 (Mass. App. Ct. 2011).

⁵⁷ *Id.*

⁵⁸ *Heller*, 554 U.S. at 572.

⁵⁹ Webster DW, Vernick JS, Hepburn LM, "Relationship Between Licensing, Registration, and Other State Gun Sales Laws and the Source State of Crime Guns," *Injury Prevention* 2001;7(3): 184-9.

⁶⁰ 577 F.3d 768 (7th Cir. 2009).

⁶¹ N.C. Gen. Stat. §14-288.12(b)(4).

⁶² *See Heller*, 128 S. Ct. at 2817 (sanctioning "laws forbidding the carrying of firearms in sensitive places").

⁶³ *Chalk*, 441 F.2d at 1281.

⁶⁴ *Id.* at 1280.

⁶⁵ Complaint for Declaratory Judgment and Injunctive Relief, *D'Cruz v. McCraw*, No. 10-141 (N.D.Tex. 2010).

⁶⁶ Vernon's Ann. Tex. Const., Art. 1, § 23.

⁶⁷ Brady Center to Prevent Gun Violence, Teen Supported by NRA Lawsuit Fills Facebook Page with Violent, Threatening Messages, Nov. 23, 2010, at <http://www.bradycampaign.org/media/press/view/1323/>.

⁶⁸ U.S. Department of Justice, *Crime in the United States*, Arrests, by Age, 2009, at Table 38, accessible at http://www2.fbi.gov/ucr/cius2009/data/table_38.html.

⁶⁹ *Id.*; Census Bureau, *U.S. Population Projections*, State Interim Population Projections by Age and Sex: 2004 – 2030, Annual projections by single year of age, accessible at <http://www.census.gov/population/www/projections/projectionsagesex.html>.

⁷⁰ Adam Ortiz, *Adolescence, Brain Development, and Legal Culpability*, American Bar Association, Juvenile Justice Center at 2 (January 2004).

⁷¹ Complaint for Petitioner, *Palmer v. District of Columbia*, No. 109CV01482 (D.D.C. 2009).

⁷² David Hemenway & Deborah Azrael, *The Relative Frequency of Offensive and Defensive Gun Uses: Results From a National Survey*, 15 *Violence & Victims* 257, 271 (2000).

⁷³ Violence Policy Center, *Concealed Carry Killers* (2011), available at <http://vpc.org/ccwkillers.htm>.

⁷⁴ John J. Donohue, *The Impact of Concealed-Carry Laws*, in *Evaluating Gun Policy Effects on Crime and Violence* 289, 320 (2003).

⁷⁵ Jens Ludwig, *Concealed-Gun-Carrying Laws and Violent Crime: Evidence from State Panel Data*, 18 *Int'l Rev. L. & Econ.* 239 (1998) (emphasis in original).

⁷⁶ David McDowall *et al.*, *Easing Concealed Firearms Laws: Effects on Homicide in Three States*, 86 *J. Crim. L. & Criminology* 193, 202-203 (1995).