

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 11 The Contemporary Era – Individual Rights/Guns

Federal and State Court Decisions on the Right to Bear Arms after *District of Columbia v. Heller* (2008)

Federal and state courts have adjudicated numerous claims about the constitutional right to bear arms in the wake of District of Columbia v. Heller (2008) (the Second Amendment protects an individual's right to bear arms) and McDonald v. City of Chicago (2010) (the Fourteenth Amendment incorporates the Second Amendment). The vast majority of lower federal and state court decisions have sustained federal and state gun control regulations. Courts have been particularly deferential toward such "longstanding" regulations as laws prohibiting felons from carrying firearms, prohibiting weapons in such public places as schools and parks, banning concealed weapons, and banning particularly dangerous weapons. Several courts have ruled that Heller grants only rights to possess firearms in one's residence. Other courts have rejected that narrow interpretation. The basic division between justices, as such cases as Moore v. Madigan (7th Cir. 2012) and Kachalsky v. County of Westchester (2nd Cir. 2012) indicate, is over the extent to which states can require that persons have special reasons to carry a handgun in public.

Many lower federal courts adopted a two-step approach when determining the constitutionality of gun control measures. As elaborated in United States v. Chester (4th Cir. 2010), Woollard v. Gallagher (4th Cir. 2013) held that states satisfy that intermediate scrutiny standard if they demonstrate that gun regulations are "reasonably adapted to a substantial governmental interest."

The first question is whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantee. This historical inquiry seeks to determine whether the conduct at issue was understood to be within the scope of the right at the time of ratification. If it was not, then the challenged law is valid. If the challenged regulation burdens conduct that was within the scope of the Second Amendment as historically understood, then we move to the second step of applying an appropriate form of means-end scrutiny.

More often than not, courts applying the Chester test have used intermediate scrutiny when undertaking Second Amendment analysis.

Moore v. Madigan, ___ F. 3d ___ (7th Cir. 2012)

Persons have a constitutional right to carry a gun outside of the home.

Kachalsky v. County of Westchester, 701 F. 2d 81 (2nd Cir. 2012)

State may require "proper cause" before giving a license to carry a concealed weapon in public.

Georgia Carry.org v. Georgia, 687 F.3d 1244 (11th Cir. 2012)

State may ban firearms in places of worship.

Woollard v. Gallagher, ___ F. 3d ___ (4th Cir. 2013)

State may require persons to demonstrate "good and substantial reason" in order to obtain a permit to carry a handgun..

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

Localities may ban firearms on county property.

Heller v. District of Columbia, 670 F.3d 1244 (D.C. Cir. 2011)

Long-standing gun registration laws are constitutional and states may ban semi-automatic rifles and large capacity magazines.

Remanded to federal district court to determine under intermediate scrutiny standard whether the Constitution permits states to require the registration of rifles, and require that gun owner appear in person, demonstrate knowledge about firearms, have background checks every six years, have good vision, training in firearms safety, register only one pistol every thirty days, and register all weapons after three years.

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

City cannot mandate firing range training for all gun owners and ban all firing ranges in the city.

U.S. v. Masciandaro, 638 F. 3d 458 (4th Cir. 2011)

Federal government may ban firearms in national parks.

Gamble v. United States, 30 A. 161 (D.C. 2011)

No right to carry a concealed weapon.

Commonwealth v. McCollum, 945 N.E. 2d 937 (Mass. App. Ct. 2011)

No right to carry ammunition outside of the house.

DiGiacinto v. Rector and Visitors of George Mason University, 281 Va. 127 (2011)

State may ban firearms on college campuses.

U.S. v. Williams, 616 F. 3d 685 (7th Cir. 2010)

States may ban felons from possessing firearms.

U.S. v. Skoien, 614 F. 3d 638 (7th Cir. 2010)

States may ban persons convicted of domestic violence from possessing firearms.

U.S. v. Marzzarella, 614 F.3d 85 (3rd Cir. 2010)

States may ban possession of a weapon with an obliterated serial number.

Hamblen v. U.S., 591 F. 3d 471 (6th Cir. 2009)

No constitutional right to possess machine guns.

U.S. v. Rene E., 583 F.3d 8 (1st Cir. 2009)

Juveniles had no right to carry a handgun.

Kodak v. Holder, 342 F. App'x 907 (4th Cir. 2009)

No constitutional right to have armor-piercing ammunition.

Britt v. State, 363 N.C. 546 (2009)

State ban on felons possessing firearms unconstitutional as applied to a person convicted thirty years ago of a drug offense.



OXFORD
UNIVERSITY PRESS