

Legal Sidebar

No Second Amendment Cases for the Supreme Court's 2014-2015 Term...Yet

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As the Supreme Court begins its 2014-2015 Term, it appears that there will be no cases involving the Second Amendment on its docket. Commentators have observed that the Court appears to have become "[gun shy](#)" regarding this issue, given that it has not taken up a Second Amendment case since its landmark rulings in *District of Columbia v. Heller* in 2008 and *McDonald v. City of Chicago* in 2010. During the summer, the Court denied review in at least two cases challenging state firearms laws. [One](#) would have questioned whether it is permissible under the Second Amendment for New York City to require residents to pay \$340 for a three-year residential handgun license, which they are required to have under state law in order to lawfully possess a handgun. The [second](#) would have questioned whether it is permissible under the Second Amendment for New Jersey to require applicants wishing to obtain a license to carry a concealed handgun to show a "justifiable need."

Had the Court granted review in either of these cases, it would have further fine-tuned the scope of the Second Amendment, which thus far protects an individual right to possess a firearm and the use of that firearm "in defense of hearth and home." Despite the lack of guidance from the Supreme Court, there has been much activity in the lower courts, with several notable decisions issued this summer.

Recently, for example, a [federal district court](#) declared that the District of Columbia's ban on carrying a gun in public violates the Second Amendment because it found that the right extends outside the home. In response to the *Palmer v. District of Columbia* ruling, the [DC government passed legislation](#) that will establish a regulatory structure by which individuals may apply to the DC Police Department for a permit to carry a concealed firearm. Critics, however, believe that the legislation "plainly fails to comply with the court's ruling" and is "something of a joke," as drafters of the legislation indicated that "very few applicants might end up qualifying for permits." The District's new legislation appears to be similar to other states, such as Maryland and New Jersey, that have restrictive laws on granting concealed carry permits. Thus far, these states' laws have withstood [constitutional scrutiny](#). However, the District's new legislation comes on the heels of another federal appellate court [decision](#), which ruled unconstitutional a county's policy that required permit applicants to demonstrate *more* than a generalized concern for personal safety in order to satisfy the State of California's requirement that an applicant show "good cause." The application of this policy had the effect of severely limiting the number of individuals who could qualify for a concealed carry permit. Thus, the District's new firearms law could be subject to a future Second Amendment challenge depending on how it implements its new permitting scheme for carrying firearms in public.

Another notable firearms ruling from the summer is a federal district court [order](#) declaring that the State of California's 10-day waiting period burdens the Second Amendment right to keep and bear arms as applied to certain individuals. These include individuals who pass a background check at the time of purchase, *and* either 1) already lawfully possess a firearm as confirmed by the State of California, or 2) possess a valid concealed carry weapons permit issued by the State of California, or 3) possess a valid "certificate of eligibility" issued by the State of California and a firearm as confirmed by the state. As the court found, "[o]ne cannot exercise the right to keep and bear arms without actually possessing a firearm." The court provided California 180-days to update its laws and regulations to allow such individuals to immediately possess a firearm upon passing a background check. Even though only a [handful of states](#) impose a waiting period before transferring a firearm, this type of provision could be the next area ripe for future Second Amendment litigation.

[Since Heller](#), several courts have upheld the constitutionality of state laws that prohibit the possession of

certain types of firearms or firearm accessories. This summer, the State of Colorado's laws prohibiting the possession of large capacity magazines of more than 15 rounds were the latest to pass muster under a Second Amendment analysis. The federal court reviewing this provision, however, also [ruled](#) on a separate firearms provision that requires a background check on an individual who is temporarily transferred (*i.e.*, loaned) a firearm for more than 72 hours from another private individual. The court declared this provision constitutionally permissible, stating "[n]othing in the Second Amendment can be read to suggest that a permissible burden on commercial sales of firearms cannot similarly be extended to apply to those acquiring firearms by loan." While the court was not asked to decide the larger question of whether background checks for private transfers burdens the Second Amendment right, this question could be an issue on the horizon, as Congress and other states contemplate legislation that would impose such a requirement.

These decisions provide a sense of the numerous Second Amendment challenges that continue to bubble up through the lower courts. As fissures begin to surface across different jurisdictions, particularly with respect to carrying firearms outside the home, the Court may find itself with another Second Amendment case sooner rather than later. Though perhaps reluctant to broach the Second Amendment again, it is worth noting that the Court decided a few firearms-related cases [last Term](#); and for this Term, the Court granted review in at least one firearms-related case, [Johnson v. United States](#). The issues in these cases, however, present matters of statutory rather than constitutional interpretation.

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