



POST-HELLER LITIGATION SUMMARY Updated January 3, 2012

I. Introduction and Overview

Legal Community Against Violence (LCAV) is tracking litigation involving Second Amendment challenges to federal, state and local gun laws asserted in the aftermath of the United States Supreme Court's landmark decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008). LCAV has examined over 400 federal and state post-*Heller* decisions discussing the Second Amendment in the preparation of this analysis and has a wide variety of [Second Amendment resources](#) available on our web site, including [summaries of federal post-*Heller* Second Amendment decisions](#).

A. *Heller* and *McDonald*

In [*District of Columbia v. Heller*](#), the Supreme Court held for the first time that the Second Amendment protects a responsible, law-abiding citizen's right to possess an operable handgun in the home for self-defense. In a 5-4 ruling, the Court struck down Washington, D.C. laws prohibiting handgun possession and requiring that firearms in the home be stored unloaded and disassembled or locked.

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

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

B. Lawsuits After *Heller* and *McDonald*

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

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

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

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

II. Recent Developments in Second Amendment Litigation

The following significant developments have occurred in Second Amendment litigation since December 2, 2011.

A. *United States v. Laurent* (E.D.N.Y.): District court upholds federal law prohibiting individuals under felony indictment from shipping, transporting, or receiving firearms

On December 2, the U.S. District Court for the Eastern District of New York upheld the federal law that prohibits individuals under felony indictment from shipping, transporting, or receiving firearms.ⁱ Because the law could prohibit an individual who has not yet been convicted of a crime from acquiring a handgun for possession in the home, the court stated, the law “arguably falls within the core” Second Amendment right and warranted heightened scrutiny review. Nonetheless, the court said, “To place gun rights on the same high protected level as speech rights seems an odd view of American democratic values. While intermediate scrutiny seems excessive, the majority of courts have applied it, and it is satisfied by the instant facts and statute.” The court found that the government interest in protecting the public from those who have a propensity for violence was substantially related to the statute, which only affects a small minority of gun owners during the temporary period of indictment.

B. *United States v. Staten* (4th Cir.): Circuit court rejects Second Amendment challenge to federal law prohibiting domestic violence misdemeanants from possessing firearms

On December 5, the U.S. Court of Appeals for the Fourth Circuit affirmed a West Virginia district court decision rejecting a defendant's as-applied challenge to the federal law that prohibits domestic violence misdemeanants from possessing firearms.ⁱⁱ The circuit court held that it did not need to decide whether domestic violence misdemeanants are protected by the Second Amendment because the statute satisfies intermediate scrutiny. The opinion is particularly significant because the Fourth Circuit had previously been unable to conclude that the statute met intermediate scrutiny in *U.S. v. Chester*.

C. *Tribble v. State Bd. Of Educ.* (Dist. Ct. Idaho): Idaho trial court upholds university policy prohibiting guns in university-owned housing

On December 7, an Idaho trial judge granted the defendants’ motion for summary judgment, upholding a University of Idaho policy prohibiting firearms in University-owned housing.ⁱⁱⁱ The judge determined that intermediate scrutiny was the appropriate level of constitutional review to apply, because the policy did not substantially burden the plaintiff’s “core constitutional right to possess a firearm in his *home* [italics in original].” University housing, the court concluded, did not fall within the meaning of “home” as discussed in *Heller*. The court determined that the firearms prohibition was substantially related to the university’s interest in guaranteeing campus safety.

D. *People v. Williams* (Ill. App. Ct.): Illinois appellate court applies rational basis review to uphold the state’s prohibition on carrying guns in public

On December 15, an Illinois appellate court upheld the constitutionality of the state law prohibiting the carrying of guns in public.^{iv} The court reasoned that when the U.S. Supreme Court said in *Heller* and *McDonald* that rational basis review was inappropriate for Second Amendment challenges, it was referring to challenges to the “core” Second Amendment right of a law-abiding citizen to possess a handgun in the home for self-defense. The court reasoned that because the statute at issue does not affect that core right, rational basis review is the appropriate standard for assessing its constitutionality.

E. *Schrader v. Holder* (D.D.C.): District court dismisses challenge to federal felon-in-possession statute

On December 23, a trial judge in the U.S. District Court for the District of Columbia dismissed a suit filed by the Second Amendment Foundation and an individual plaintiff, Jefferson Schrader. The suit challenged the federal government’s assessment that Schrader’s misdemeanor assault and battery conviction qualified as a crime that prohibited him from possessing firearms under the federal “felon-in-possession” statute.^v The judge rejected the plaintiffs’ Second Amendment challenge to the statute, stating that the Second Amendment is not unlimited and likening the law to the “presumptively lawful regulatory measures” described in *Heller*.

F. *Silvester (a.k.a., “Sylvester”) v. Harris* (E.D. Cal.): New lawsuit challenges California law requiring a 10-day waiting period prior to the sale of a firearm

On December 23, the Calguns Foundation and the Second Amendment Foundation filed a suit in the U.S. District Court for the Eastern District of California challenging a California law that requires a ten-day waiting period before a purchaser can receive a newly-acquired firearm.^{vi} The complaint alleges that the law violates the Second Amendment.

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

A. Significant Pending Lawsuits

State and local governments – including New York City, Chicago, San Francisco, Boston, Los Angeles, Sacramento, San Diego, Westchester County (New York), Denver, Omaha and the states of California, Colorado, Georgia, New York, North Carolina, Texas, Delaware, and Hawaii – and the District of Columbia presently face forty-four significant lawsuits challenging various firearms laws under the Second Amendment. More than fifteen of these suits involve challenges to laws regulating the carrying of concealed weapons, while others challenge registration laws, bans on unsafe handguns and assault weapons, and safe storage laws. Additionally, six significant suits raising Second Amendment claims have been initiated against the federal government. For more information about all of the pending cases, please refer to the *Post-Heller Litigation Summary Appendix* at http://www.lcav.org/content/post-heller_appendix.pdf.

B. Civil Suits Have Been Largely Unsuccessful

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

Federal and state courts have also upheld laws requiring the registration of all firearms,^{viii} requiring an applicant for a license to carry a concealed weapon to show “good cause” or “proper cause” or qualify as a “suitable person,”^{ix} requiring an applicant for a handgun possession license to be a state resident,^x prohibiting the sale of firearms and ammunition to individuals younger than twenty-one-years-old,^{xi} and prohibiting the possession of firearms in places of worship^{xii} and within college campus facilities and at campus events.^{xiii} A Pennsylvania court also recently upheld a state Department of Labor and Industry regulation prohibiting firearms on property owned or leased by the Department, including in vehicles parked on Department property.^{xiv}

In contrast to the majority of courts that have considered challenges to similar laws, a North Carolina trial court recently struck down a state law prohibiting felons from possessing firearms.^{xv} Additionally, several courts have cited *Heller* in expressing concern about state action that would limit an individual’s right to possess a firearm where that person is not prohibited by law from doing so.^{xvi} A federal district court refused to dismiss a plaintiff’s suit alleging that Illinois’ licensing law violated the Second Amendment by preventing her from being able to possess a firearm for self-defense while she stayed in an Illinois friend’s home.^{xvii} Additionally, the Seventh Circuit enjoined enforcement of a Chicago ordinance banning firing ranges within city limits where range training was a condition of lawful handgun ownership.^{xviii}

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

A. Federal Firearms Statutes

Courts have almost uniformly rejected criminal defendants' Second Amendment challenges to federal firearms laws, including challenges to the laws prohibiting the possession of a firearm by a convicted felon,^{xxix} possession during the commission of a crime,^{xxx} possession of an illegal weapon (e.g., a machine gun, a sawed-off shotgun, or other prohibited weapon),^{xxxi} possession in violation of a court order,^{xxxii} possession by an illegal alien,^{xxxiii} and possession in a prohibited place.^{xxxiv}

Most courts have rejected challenges to the federal crime of possessing a firearm following a conviction for a misdemeanor crime of domestic violence either by finding that the statute is analogous to the "longstanding prohibition" on firearm possession by felons that was deemed "presumptively lawful" in *Heller* (despite the fact that the misdemeanor prohibition law was only enacted in 1996), or by concluding that the statute is sufficiently tailored to the goal of preventing gun violence.^{xxxv} The Fourth Circuit, however, remanded a Second Amendment challenge to this statute to the district court for determination of whether the statute met an intermediate scrutiny review.^{xxxvi}

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

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

B. State and Local Firearms Laws

Most courts that have heard criminal defendants' Second Amendment challenges to state and local laws have upheld the statutes at issue.^{xxx} State courts have published decisions affirming state laws prohibiting the unlicensed carrying of handguns outside of the home,^{xxxi} prohibiting convicted felons from possessing firearms,^{xxxii} authorizing the seizure of firearms in cases of domestic violence,^{xxxiii} prohibiting the possession of assault weapons and 50-caliber rifles,^{xxxiv} and requiring that an individual possess a license to own a handgun.^{xxxv}

Notably, however, a Wisconsin trial court dismissed an indictment under the state's law prohibiting the carrying of concealed weapons as violating the Second Amendment.^{xxxvi}

Although the defendant was prosecuted for possessing a concealed knife while in an apartment, the court ignored relevant precedent that exempted possession in the home from Wisconsin's concealed weapons prohibition. Additionally, an Ohio trial court dismissed, on Second Amendment grounds, an indictment against a defendant for possession of a firearm following a conviction for a drug crime.^{xxxvii}

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

V. Emerging Issues

A. How Strictly Courts Should Scrutinize Second Amendment Challenges

While the *Heller* Court established that a law completely prohibiting a responsible, law-abiding citizen from possessing an operable handgun in the home for self-defense would violate the Second Amendment, and further held that certain other types of laws are "presumptively lawful" against Second Amendment challenges, the Court did not explain how lower courts should evaluate Second Amendment challenges going forward. The Court did, however, suggest that evaluation using the "rational basis" test – holding that a law is constitutional if it is rationally related to a legitimate government interest – was not appropriate.

Courts have summarily dismissed numerous Second Amendment challenges, concluding that the laws at-issue are "presumptively lawful regulatory measures" explicitly protected in *Heller*. In challenges after *Heller* that have considered how firearms laws should be evaluated, courts have typically chosen between two levels of heightened scrutiny often applied to constitutional rights: "intermediate scrutiny," which examines whether there is a reasonable fit between the law and an important or significant government interest, and "strict scrutiny," which examines whether a law is narrowly tailored to achieve a compelling government interest.

Most appellate and district courts that have explicitly adopted a level of scrutiny, including Third, Fourth, Tenth, and D.C. Circuit panels, have applied intermediate scrutiny to Second Amendment challenges.^{xi} Courts have arrived at intermediate scrutiny using differing approaches, but the clear trend suggests that laws that do not prevent a law-abiding, responsible citizen to possess an operable handgun in the home for self-defense should face, and survive, an intermediate scrutiny review.^{xii} At the same time, a few courts have reviewed Second Amendment challenges under strict scrutiny.^{xiii} Additionally, a Seventh Circuit decision held that the level of applicable scrutiny should be determined by "how close the law comes to the core of the Second Amendment right and the severity of the law's burden on the right."^{xliii}

Several courts have held that heightened scrutiny only applies where the challenged law burdens conduct protected by the Second Amendment. A Ninth Circuit decision did not identify which level of scrutiny ought to apply to Second Amendment challenges, but did hold that heightened scrutiny is only warranted if the challenged law substantially burdens the Second Amendment; if a regulation's burden on the right is not substantial, only a rational basis level of review is warranted.^{xliv} A New York district court that analyzed a Second Amendment challenge to the state's discretionary concealed carrying licensing scheme upheld the law without applying heightened scrutiny, finding that it did not burden conduct protected by the Second Amendment.^{xlv} The court thereby avoided the need to conduct a scrutiny analysis.^{xlvi}

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

B. Whether the Second Amendment Right Extends Beyond the Home

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

In evaluating Second Amendment challenges related to conduct outside the home, a significant number of courts have concluded that the Amendment only protects conduct within the home.^{xlvii} 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.^{xlviii} Even the few courts that have suggested that some form of Second Amendment protection ought to extend outside the home have generally upheld laws restricting firearm possession in public places.^{xlix}

VI. Conclusion

Because of the Supreme Court's decisions in *Heller* and *McDonald*, the nation's lower courts are clogged with a substantial volume of Second Amendment litigation, despite the fact that most, if not all, federal, state and local firearms laws do not prevent a responsible, law-abiding citizen from possessing an operable handgun in the home for self-defense, and thus, would satisfy the Supreme Court's holdings. Going forward, the gun lobby will likely continue to employ the threat of litigation to obstruct state and local efforts to enact common sense gun violence

prevention measures. Policymakers should rest assured, however, that nothing in either *Heller* or *McDonald* prevents the adoption of many types of reasonable laws to reduce gun violence.

ⁱ *United States v. Laurent*, 2011 U.S. Dist. LEXIS 139907 (E.D.N.Y. 2011).

ⁱⁱ *United States v. Staten*, 2011 U.S. App. LEXIS 24079 (4th Cir. 2011).

ⁱⁱⁱ *Tribble v. State Bd. Of Educ.*, No. 11-0069 (Dist. Ct. Idaho December 7, 2011).

^{iv} *People v. Williams*, 2011 Ill. App. LEXIS 1264 (Ill. App. Ct. 2011).

^v *Schrader v. Holder*, 2011 U.S. Dist. LEXIS 147717 (D.D.C. 2011).

^{vi} *Silvester (“a.k.a., “Sylvester”) v. Harris*, No. 11-00818 (E.D. Cal. Filed December 23, 2011).

^{vii} *Heller v. District of Columbia*, 2011 U.S. App. LEXIS 20130 (D.C. Cir. Oct. 4, 2011); *See also Wilson v. Cook County*, 943 N.E.2d 768 (Ill. App. Ct. 2011) (upholding Cook County, Illinois ordinance prohibiting the possession of assault weapons and large capacity ammunition magazines), *reh’g granted by* 2011 Ill. LEXIS 984 (Ill. May 25, 2011).

^{viii} *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).

^{ix} *Hightower v. Boston*, 2011 U.S. Dist. LEXIS 111327 (D. Mass. 2011); *Kuck v. Danaher*, 2011 U.S. Dist. LEXIS 111793 (D. Conn. 2011); *Kachalsky v. Cacace*, 2011 U.S. Dist. LEXIS 99837 (S.D.N.Y. Sept. 2, 2011); *Richards v. County of Yolo*, 2011 U.S. Dist. LEXIS 51906 (E.D. Cal. May 13, 2011); *Peruta v. County of San Diego*, 2010 U.S. Dist. LEXIS 130878 (S.D. Cal. Dec. 10, 2010).

^x *Osterweil v. Bartlett*, 2011 U.S. Dist. LEXIS 54196 (N.D.N.Y. May 20, 2011).

^{xi} *Jennings v. ATF*, No. 10-00140 (order dated 9/29/11) (unpublished).

^{xii} *GeorgiaCarry.Org, Inc. v. Georgia*, 2011 U.S. Dist. LEXIS 6370 (M.D. Ga. Jan. 24, 2011) (concluding that “[p]rohibiting the carrying of firearms in a place of worship bears a substantial relationship to that important goal by protecting attendees from the fear or threat of intimidation or armed attack.”).

^{xiii} *Digiacinto v. Rector & Visitors of George Mason Univ.*, 2011 Va. LEXIS 29 (Jan. 13, 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.”).

^{xiv} *Perry v. State Civ. Serv. Comm’n*, 2011 Pa. Commw. Unpub. LEXIS 919 (Pa. Commw. Ct. Nov. 14, 2011).

^{xv} *Johnston v. State*, No. 10-S281, slip op. (N.C. Superior Ct. October 24, 2011) (overturning a North Carolina law prohibiting felons from possessing firearms).

^{xvi} *Simmons v. Gillespie*, 2008 U.S. Dist. LEXIS 81424 (C.D. Ill. Aug. 1, 2008) (finding possible Second Amendment violation where police chief issued personnel memorandum forbidding employee from possessing firearms off-duty); *Cleveland v. Fulton*, 178 Ohio App. 3d 451 (Ohio Ct. App. 2008) (finding due process violation in city’s refusal to return firearm to person acquitted of gun crimes); *Jennings v. Mukasey*, 2008 U.S. Dist. LEXIS 82465 (M.D. Fla. Sept. 22, 2008) (finding possible Second Amendment claim in alleged government threat to prosecute individual if he lawfully pursued work in the firearms industry).

^{xvii} *Mishaga v. Monken*, 2010 U.S. Dist. LEXIS 123491 (C.D. Ill. Nov. 22, 2010).

^{xviii} *Ezell v. City of Chicago*, 2011 U.S. App. LEXIS 14108 (7th Cir. July 6, 2011).

^{xix} *See, e.g., United States v. Torres-Rosario*, 2011 U.S. App. LEXIS 19481 (1st Cir. 2011); *United States v. Loveland*, 2011 U.S. Dist. LEXIS 119954 (W.D.N.C. 2011); *United States v. Williams*, 616 F.3d 685 (7th Cir. 2010); *United States v. Anderson*, 559 F.3d 348 (5th Cir. 2009); *United States v. Kirkpatrick*, 2011 U.S. Dist. LEXIS 82801 (W.D.N.C. July 27, 2011).

^{xx} *See, e.g., United States v. Prince*, 2009 U.S. Dist. LEXIS 54116 (D. Kan. June 26, 2009); *United States v. Bumm*, 2009 U.S. Dist. LEXIS 34264 (S.D. W. Va. Apr. 17, 2009); *Piscitello v. Bragg*, 2009 U.S. Dist. LEXIS 21658 (W.D. Tex. Feb. 18, 2009).

^{xxi} *See, e.g., United States v. Marzzarella*, 614 F.3d 85 (3d Cir. 2010) (affirming conviction for possession of a firearm with an obliterated serial number); *United States v. Fincher*, 538 F.3d 868 (8th Cir. 2008), *cert. denied*, 129 S. Ct. 1369 (2009).

^{xxii} *See, e.g., United States v. Luedtke*, 589 F. Supp. 2d 1018 (E.D. Wis. 2008).

^{xxiii} *United States v. Portillo-Munoz*, 2011 U.S. App. LEXIS 11976 (5th Cir. June 13, 2011).

^{xxiv} See, e.g., *United States v. Masciandaro*, 638 F.3d 458 (4th Cir. Va. 2011) (affirming defendant’s conviction for possession of a loaded weapon in a motor vehicle in a national park); *United States v. Lewis*, 2008 U.S. Dist. LEXIS 103631 (D.V.I. Dec. 24, 2008).

^{xxv} See, e.g., *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*, 2011 U.S. App. LEXIS 8925 (1st Cir. May 2, 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).

^{xxvi} *United States v. Chester*, 2010 U.S. App. LEXIS 26508 (4th Cir. Dec. 30, 2010).

^{xxvii} *United States v. Kitsch*, 2008 U.S. Dist. LEXIS 58904 (E.D. Pa. Aug. 1, 2008) (holding that the government needed to prove that the defendant charged under the federal felon-in-possession statute had knowledge that he was a felon after he had been previously told by law enforcement that his conviction would be set aside).

^{xxviii} *United States v. Arzberger*, 592 F. Supp. 2d 590 (S.D.N.Y. 2008); *United States v. Kennedy*, 2009 U.S. App. LEXIS 9881 (9th Cir. May 6, 2009) (Unpublished).

^{xxix} *United States v. Huet*, 2010 U.S. Dist. LEXIS 123597 (W.D. Pa. Nov. 22, 2010). See also *United States v. Skeens*, 589 F. Supp. 2d 757 (W.D. Va. 2008) (refusing to enhance a defendant’s sentence for illegal firearm possession where a handgun found in his home was owned by the defendant’s wife for self-defense).

^{xxx} See, e.g., *Wilson v. State*, 207 P.3d 565 (Alaska Ct. App. 2009) (upholding statute prohibiting handgun possession by felons); *People v. Flores*, 169 Cal. App. 4th 568 (Cal. App. 4th Dist. 2008) (upholding statutes prohibiting possession following misdemeanor conviction, carrying of a concealed firearm, and carrying of a loaded firearm in a public place); *People v. Akins*, 2011 Ill. App. Unpub. LEXIS 1838 (Ill. App. Ct. Aug. 3, 2011) and *People v. Palmer*, 2011 Ill. App. Unpub. LEXIS 2055 (Ill. App. Ct. Aug. 26, 2011) (both upholding a state prohibition on carrying or possessing a firearm when certain aggravating circumstances are present); *People v. Thomas*, 2011 Ill. App. Unpub. LEXIS 2000 (Ill. App. Ct. Aug. 22, 2011) and *People v. Pinkard*, 2011 Ill. App. Unpub. LEXIS 2098 (Ill. App. Ct. Sept. 2, 2011) (both upholding a statute prohibiting individuals who have been convicted of two or more enumerated offenses to receive, sell, possess, or transfer any firearm).

^{xxxi} *People v. Dawson*, 403 Ill. App. 3d 499, 510, 934 N.E.2d 598, 343 Ill. Dec. 274 (2010).

^{xxxii} *Williams v. State*, 10 A.3d 1167, 1178 (Md. 2011); *People v. Mimes*, 2011 Ill. App. LEXIS 644 (Ill. App. Ct. June 20, 2011); *People v. Montyce H.*, 2011 Ill. App. LEXIS 1184 (Ill. App. Ct. 2011).

^{xxxiii} *People v. Polk*, 2011 Ill. App. Unpub. LEXIS 2278 (Ill. App. Ct. Sept. 23, 2011).

^{xxxiiii} *Crespo v. Crespo*, 989 A.2d 827 (N.J. 2010).

^{xxxv} *People v. Arizmendi*, 2011 Cal. App. Unpub. LEXIS 7284 (Cal. App. Ct. Sept. 27, 2011); *People v. James*, 174 Cal. App. 4th 662 (Cal. App. 3rd Dist. 2009).

^{xxxvi} *People v. Perkins*, 880 N.Y.S.2d 209 (N.Y. App. Div. 2009).

^{xxxvii} *State v. Schultz*, No. 10-CM-138 (Clark Cty. Cir. Ct. Oct. 12, 2010).

^{xxxviii} *State v. Tomas*, No. 526776 (Ohio Ct. Com. Pl. Dec. 7, 2010) (finding that “the State has no compelling interest in prohibiting this particular defendant from possessing firearms in his place of business and home” and declaring the statute “unconstitutional when a Defendant with no felony convictions...possesses firearms in his home or business, for the limited purpose of self-defense.”)

^{xxxix} *Herrington v. United States*, 2010 D.C. App. LEXIS 611 (D.C. Nov. 4, 2010).

^{xl} *Magnus v. United States*, 2011 D.C. App. LEXIS 3 (Jan. 6, 2011).

^{xli} *United States v. Marzzarella*, 614 F.3d 85 (3d Cir. 2010); *United States v. Masciandaro*, 638 F.3d 458 (4th Cir. Va. 2011); *United States v. Williams*, 616 F.3d 685 (7th Cir. 2010); *United States v. Skoien*, 614 F.3d 638 (7th Cir. 2010); *United States v. Reese*, 627 F.3d 792 (10th Cir. 2010); *Heller v. District of Columbia*, 698 F. Supp. 2d 179 (D.D.C. 2010), *aff’d in part and vacated in part*, 2011 U.S. App. LEXIS 20130 (D.C. Cir. 2011).

^{xlii} *Kuck*, 2011 U.S. Dist. at *28-31; *Polk*, 2011 Ill. App. Unpub. at P69-80; *Loveland*, 2011 U.S. Dist. at *11-16 (although the court questioned whether it needed to apply any level of scrutiny to the felon possession law).

^{xliii} See *United States v. Bay*, 2009 U.S. Dist. LEXIS 106874 (D. Utah Nov. 13, 2009); *United States v. Engstrum*, 2009 U.S. Dist. LEXIS 33072 (D. Utah Apr. 17, 2009), but see *In re United States*, 578 F.3d 1195 (10th Cir. 2009); *United States v. Luedtke*, 589 F. Supp. 2d 1018 (E.D. Wis. Nov. 18, 2008); *United States v. Erwin*, 2008 U.S. Dist. LEXIS 78148 (N.D.N.Y. Oct. 6, 2008).

^{xliiii} *Ezell*, 2011 U.S. App. LEXIS 14108 at 44.

^{xliiv} *Nordyke v. King*, 2011 U.S. App. LEXIS 8906 (9th Cir. May 2, 2011).

^{xlv} *Kachalsky v. Cacace*, 2011 U.S. Dist. LEXIS 99837 (S.D.N.Y. Sept. 2, 2011).

^{xlvi} Nonetheless, the *Kachalsky* court held that the licensing scheme would be constitutional under intermediate scrutiny even if it did burden conduct protected by the Second Amendment.

^{xlvii} See *Palmer*, 2011 Ill. App. Unpub. LEXIS 2055 at 18; *Akins*, 2011 Ill. App. Unpub. LEXIS 1838 at P10; *State v. Robinson*, 2011 N.J. Super. Unpub. LEXIS 2274 (App. Div. Aug. 23, 2011); *Richards v. County of Yolo*, 2011 U.S. Dist. LEXIS 51906 (E.D. Cal. May 16, 2011); *Williams v. State*, 10 A.3d 1167, 1178 (Md. 2011); *People v. Dawson*, 934 N.E.2d 598 (Ill. App. Ct. 2010), cert. denied by *Dawson v. Illinois*, 2011 U.S. LEXIS 3381 (U.S. May 2, 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).

^{xlviii} *United States v. Masciandaro*, 638 F.3d 458 (4th Cir. Va. 2011); *Peruta v. County of San Diego*, 2010 U.S. Dist. LEXIS 130878 (S.D. Cal. Dec. 10, 2010).

^{xlix} *Hall v. Garcia*, 2011 U.S. Dist. LEXIS 34081 (N.D. Cal. Mar. 17, 2011); *Mimes*, 2011 Ill. App. LEXIS 644 (Illinois appellate court found that a law prohibiting guns in public “imposes a burden on the inherent right of self-defense” but nonetheless upheld the law under intermediate scrutiny.) *But see State v. Schultz*, No. 10-CM-138 (Clark Cty. Cir. Ct. Oct. 12, 2010) (Wisconsin trial court dismissing an indictment under the state’s law prohibiting the carrying of concealed weapons as violating the Second Amendment).