

DOES THE SECOND AMENDMENT APPLY TO STATE AND LOCAL GUN LAWS?

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Most Americans are familiar with the Second Amendment's right "to bear arms." Some believe it means that American citizens have the right to own, carry, and use a firearm when and where they choose. However, recent court opinions at the Supreme Court and Federal Appellate levels have prompted a reevaluation of this provision.

In June 2008, the United States Supreme Court decided the case of District of Columbia v. Heller, which reviewed the constitutionality of a District of Columbia law banning the possession of handguns by making it a crime to carry an unregistered firearm and prohibiting the registration of handguns within the District limits. The Court justices found the District of Columbia's ban on handguns, as well as a trigger-lock requirement for legally-registered guns kept in the privacy of one's home, violated the Second Amendment's right to bear arms. The majority opinion found that the law amounted to a "prohibition on an entire class of 'arms' that Americans overwhelmingly choose for the lawful purpose of self-defense." The majority also found the requirement that a lawful firearm must be disassembled or bound by a trigger-lock defeated the purpose of maintaining the handgun in a home for self-defense.

The Court did note that a Second Amendment right to bear arms is not an unlimited right or authorization for individuals to keep and carry any weapon, when and where they choose. For example, the Supreme Court has upheld laws prohibiting: the carrying of concealed weapons; the possession of firearms by felons or the mentally infirm; and the carrying of firearms in certain places such as airplanes, schools or government buildings. The Supreme Court concluded that, assuming the owner of the handgun is not disqualified from exercising Second Amendment rights under previously upheld laws, the District of Columbia must permit owners to register their handguns and issue licenses for them to be carried within the home.

In light of Heller, many states and municipalities are unsure whether they may impose laws limiting and restricting a resident's "right to keep and bear arms." This uncertainty has led to a recent push by gun-rights advocates to file lawsuits challenging the constitutionality of state and municipal gun ordinances.

Federal Courts of Appeals are divided on application of Heller and the Second Amendment to state and municipal gun laws. Thus far, two have held that the Second Amendment applies only to limitations imposed by the federal government, not those imposed by states. Thus, in January 2009, the Second Circuit Court of Appeals, which includes New York, held that the Second Amendment's "right to keep and bear arms" did not overturn a New York law banning the possession by private citizens of a device known as "chukka sticks." Similarly on June 2, 2009, the Seventh Circuit Court of Appeals (Illinois) ruled in two cases that were combined for argument – National Rifle Association v. Chicago and McDonald v. Chicago – that the Second Amendment did not apply to the state laws, noting that the right of the states to make their own decisions on matters of gun control is "an older and more deeply rooted tradition than is a right to carry any particular kind of weapon."

On the other hand, in April 2009, the Ninth Circuit Court of Appeals in California held, in Nordyke v. King that the Second Amendment could be applied to state law. Nevertheless, the Court upheld a ban on possession of firearms on County property.

While all of the action appears to be taking place far away from Pennsylvania and Berks County, it may have a significant effect right here at home. New challenges filed in light of Heller are prompting Pennsylvania courts to hear cases regarding the interpretation of the Pennsylvania Constitution and the Pennsylvania Uniform Firearms Act (“UFA”). The UFA states that “[n]o county, municipality, or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.” 18 Pa. C.S. § 6120(a).

Eight municipalities in Pennsylvania, including Reading, Allentown, Pottsville, Philadelphia, and most recently, Lancaster, that have enacted gun-control ordinances to regulate crime. Municipalities justify these ordinances because they seek to regulate the “unlawful” use, ownership and possession of firearms, which is not explicitly preempted by the Uniform Firearms Act, as compared to the “lawful” use, ownership, and possession, which only the Commonwealth may regulate under the Uniform Firearms Act.

Reading’s ordinance prohibits the discharge of a firearm within the City, except in certain situations including self-defense. It also criminalizes a gun owner’s failure to report lost or stolen guns to the City of Reading Police within 24 hours of the discovery of loss or theft.

The continued viability of this ordinance as well as ordinances in other municipalities may be in jeopardy. On June 18, 2009, the Pennsylvania Commonwealth Court held in National Rifle Association v. City of Philadelphia that two of Philadelphia’s gun-control ordinances were explicitly preempted by the Pennsylvania Constitution and Uniform Firearms Act. Specifically, Philadelphia’s prohibition on the possession, sale and transfer of “offensive” weapons including assault weapons, and its ordinance banning any person who purchased a handgun from acting as a straw purchaser for a person who otherwise would not be allowed to acquire a handgun were both shot down by the Commonwealth Court. While Philadelphia, like Reading, also has a city ordinance requiring a gun owner to report a lost or stolen gun to police, that ordinance was not addressed in National Rifle Association v. City of Philadelphia.

As you can see, this is a developing area of the law that may directly affect you and your rights. We will continue to update you on these laws.