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Updated Evidence and Policy Developments on Reducing Gun Violence in America

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The Second Amendment

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In 2013, the U.S. Supreme Court declined to take any Second Amendment cases, leaving both the scope of the right to keep and bear arms and the appropriate methodology for deciding Second Amendment cases uncertain. Decisions in the lower courts, both federal and state, continued to reflect a pattern of upholding firearms laws unless they impose what are regarded as very severe burdens on the right to keep and bear arms.

In recent decisions upholding challenged firearms regulations, some courts have reasoned that regulations that fall within the categories branded presumptively lawful in *District of Columbia v. Heller* should be sustained.¹ Others have reasoned that longstanding regulations are entitled to deference.² The clearest trend, however, is the continuing embrace by the courts of the two-step test detailed in our contribution to *Reducing Gun Violence in America*. That test asks whether a regulation falls within the framing-era conception of the right to keep and bear arms and, if so, whether the law satisfies means-ends scrutiny.³ On the second prong, courts uniformly reject the claim that all regulations that limit the ability to keep and bear arms in common civilian use are necessarily subject to strict judicial scrutiny.⁴ Most commonly, intermediate scrutiny is

applied.⁵ Still, the Illinois Supreme Court followed an earlier federal appellate decision invalidating a statute that imposed a complete prohibition on carrying firearms in public.⁶ There has also been speculation that the Second Amendment might limit the ability of police to stop and frisk individuals whom they believe to be armed.⁷ Less complete prohibitions that require individuals to obtain a permit and demonstrate particularized need to carry a firearm for self-defense, however, have been upheld.⁸

NOTES

1. 554 U.S. 570 (2008). *See, e.g.*, *Peterson v. Martinez*, 707 F.3d 1197, 1210–12 (10th Cir. 2013) (concealed carry); *People v. Zondorak*, 163 Cal. Rptr. 3d 491 (Cal. Ct. App. 2013) (upholding ban on specified assault rifles as dangerous and unusual weapons); *City of San Diego v. Boggess*, 157 Cal. Rptr. 3d 644, 652–53 (Cal. Ct. App. 2013) (mentally ill); *State v. Craig*, 826 N.W.2d 789, 793–98 (Minn. 2013) (convicted felons); *Caba v. Weaknecht*, 64 A.3d 39, 51–53 (Pa. Cmmw. Ct. App. 2013) (concealed carry); *Perry v. St. Civ. Serv. Comm'n*, 38 A.3d 942, 955 (Pa. Cmmw. Ct. App. 2011) (sensitive places); *Di-Giacinto v. Rectors & Visitors of Geo. Mason Univ.*, 704 S.E.2d 365, 369–70 (Va. 2011) (sensitive places).

2. *See, e.g.*, *Drake v. Filko*, 724 F.3d 426, 431–34 (3d Cir. 2013).

3. *United States v. Chovan*, __ F.3d __, __, 2013 WL 6050914 (9th Cir. Nov. 18, 2013); *Woollard v. Gallagher*, 712 F.3d 865, 874–75 (4th Cir. 2013); *Peterson v. Martinez*, 707 F.3d 1197, 1208 (10th Cir. 2013); *Hertz v. Bennett*, __ S.E.2d __, __, 2013 WL 5878264 * 3–4 (Ga. 2013); *People v. Deroche*, 819 N.W.2d 891, 896 (Mich. Ct. App. 2013) (per curiam); *State v. Christian*, 307 P.3d 429, 442–43 (Or. 2013).

4. *See, e.g.*, *Schrader v. Holder*, 704 F.3d 980, 989 (D.C. Cir. 2013).

5. *See, e.g.*, *United States v. Chovan*, __ F.3d __, __, 2013 WL 6050914 (9th Cir. Nov. 18, 2013) (upholding statute prohibiting possession of firearms by individuals convicted of misdemeanor domestic violence); *Drake v. Filko*, 724 F.3d 426, 435–40 (3d Cir. 2013) (upholding discretionary permit system to carry firearms requiring that applicant demonstrate particularized need); *Woollard v. Gallagher*, 712 F.3d 865, 876–83 (4th Cir. 2013) (same); *Schrader v. Holder*, 704 F.3d 980, 989 (D.C. Cir. 2013) (upholding prohibition on common-law misdemeanor possessing firearms); *Hertz v. Bennett*, __ S.E.2d __, __, 2013 WL 5878264 * 4–5 (Ga. 2013) (upholding statute requiring license to carry firearms in public and disqualifying limited classes including convicted felons); *State v. Christian*, 307 P.3d 429, 444 (Or. 2013) (upholding ordinance prohibiting carrying loaded firearms in public without permit); *State v. Jorgenson*, __ P.3d __, 2013 WL 6115026 * 7–8 (Wash. 2013) (upholding prohibition on possessing firearms by persons charged with serious crimes).

6. *People v. Aguilar*, 2013 WL 5080118, __ N.E.2d __, __ (Ill. 2013).

7. *See United States v. Williams*, 731 F.3d 678, 690–94 (7th Cir. 2013) (Hamilton, J., concurring in part and concurring in the judgment).

8. *See, e.g.*, Drake v. Filko, 724 F.3d 426, 435–40 (3d Cir. 2013); Woollard v. Gallagher, 712 F.3d 865, 876–83 (3d Cir. 2013); In re Pantano, 60 A.3d 507, 511–14 (N.J. Super. App. Div. 2013).