



Second Amendment Rights "Out the Door" in D.C.

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BY: CAMERON M. ROUNTREE

Despite what might be implied by this article's title, Second Amendment rights have actually expanded in D.C. recently. Last month, in *Palmer v. District of Columbia* ___F. Supp.2d___ (2014); 2014 WL 3702854 (D.D.C. July 24, 2014), the US District Court held that the city's *de facto* prohibition on issuing licenses to carry handguns was unconstitutional. In light of high profile cases in the last several years, most notably *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the move towards expanding firearm and self-defense rights in the District is, quite literally, progressing beyond the threshold of the home and "out the door."

Palmer centers on the D.C. proscription of the open and concealed carry of handguns in public places. Specifically, D.C. Code § 72502.01(a) (the "registration statute") requires that anyone possessing a handgun in the District hold a valid registration certificate. In addition, D.C. Code § 22-4504(a) (the "carry statute") makes carrying of a pistol or deadly weapon without a license a crime punishable by up to 5 years imprisonment. While the 2008 Supreme Court decision in *Heller* cemented the right to bear arms as an individual right, with the central component as self-defense, the Court chose not to endeavor beyond the discrete issue presented in that case—whether D.C. could ban *all* handguns, including those in the home. A foreseeable offshoot, however, was the issue presented by the four plaintiffs in *Palmer*. In this most recent case, each plaintiff applied to register a handgun with Police Chief Cathy Lanier in accordance with the "registration statute." In doing so, the plaintiffs indicated that they intended to carry the handguns in public for self-defense, as well as maintain the firearms in their homes for self-defense. All four plaintiffs' applications for registration were specifically denied by the D.C. Metro Police on the grounds that the intended carriage of the firearm violated the "carry statute." Subsequently their registration applications were approved, but only on the basis of home self-defense. On July 24, 2014, the Court granted summary judgment for the plaintiffs.

Senior U.S. District Judge Frederick J. Scullin, sitting by designation, framed the issue as, "whether . . . a restriction on a responsible, law-abiding citizen's ability to carry a gun outside the home for self-defense [fell] within the Second Amendment right to keep and bear arms for the purpose of self-defense." *Palmer*, 2014 WL 3702854 at *5. In addition to relying on the plain language of the Amendment, which states that "the right of the people to keep *and* bear Arms, shall not be infringed," Judge Scullin cited the Ninth Circuit's recent opinion in *Peruta v. Cnty of San Diego*, 742 F.3d 1144 (9th Cir. 2014) in decisively holding that "carrying a handgun outside the home for self-defense comes within the meaning of 'bear[ing] Arms' under the Second Amendment." *Palmer*, 2014 WL 3702854 at *7. His reasoning referenced the *Peruta* Court's finding that the Second Amendment meant not just the right to "keep" firearms, but to "bear" them. Bearing firearms meant carrying firearms for a purpose. Most

importantly, that purpose was for self-defense. Referring to *Heller*, Judge Scullin noted that the right to bear arms was most acute within the home, but that by implication the right also extended outside the home, even though the need may not be as acute.

Judge Scullin's opinion is just one of several recently acknowledging the right to bear arms beyond one's residence. See *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012) *Drake v. Filko*, 724 F.3d 426 (3d Cir. 2013); *Woollard v. Gallagher*, 712 F.3d 865(4th Cir. 2013); *Kachalsky v. County of Westchester*, 701 F.3d 81 (2d Cir. 2012)).

While certain limitations on Second Amendment rights like prohibiting the possession and carriage of pernicious deadly weapons (machine guns), or by certain classes of individuals (e.g., illegal aliens, felons, the mentally disabled, fugitives, et al.) are likely to remain in force, the consistent recognition by federal appellate courts that open and concealed handgun carry is a core constitutional right is undeniable. Barring reversal by the Court of Appeals for the D.C. Circuit or an as-of-yet non-existent circuit split, the Second Amendment rights of D.C. residents have been greatly re-affirmed. The implications will be relevant to businesses, employers, law enforcement and local governments in and around D.C.

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- Cameron M. Rountree – 757.629.2023 – crountree@williamsmullen.com

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