RELATED CASE No. 12-5305 ARGUED SEPTEMBER 19, 2013

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

TOM G. PALMER, et al.,	)	No. 14-7180
	)	
Plaintiffs-Appellees,	)	
	)	
v.	)	
	)	
DISTRICT OF COLUMBIA, et al.,	)	
	)	
Defendants-Appellants.	)	
_____	)	

APPELLEES' MOTION FOR SUMMARY AFFIRMANCE

Come now Appellees Tom G. Palmer, Amy McVey, George Lyon, Edward Raymond, and Second Amendment Foundation, Inc., and move this Court for entry of an order summarily affirming the decision below.

INTRODUCTION

The Second Amendment's instruction that "the right of the people to keep and bear arms, shall not be infringed," foments many legitimately difficult disputes. This case is not among them. While federal appellate courts have split on the question of how far the right to bear arms might be regulated, nearly all the circuits presented with the issue

have opted to follow the Supreme Court's controlling precedent on this one salient point: the right, of whatever dimension, and however applied in any particular case, exists.

Because the right exists, it cannot be effectively prohibited. The District of Columbia's City Council cannot repeal an enumerated constitutional right—not as a general matter, and not owing to the city's role as our Nation's capital. The Bill of Rights contains a right to bear arms, and it applies here. The opinion below, enjoining the practical prohibition of a constitutional right, is unassailable. "[N]o benefit will be gained from further briefing and argument of the issues presented." *Taxpayers Watchdog, Inc.* v. *Stanley*, 819 F.2d 294, 298 (D.C. Cir. 1987) (per curiam).

STATEMENT OF FACTS

The facts below were not contested.

1. The Relevant Regulatory Regime

At this lawsuit's outset, D.C. Code § 22-4504(a) (2008)[1] provided that

> [n]o person shall carry within the District of Columbia either openly or concealed on or about their person, a pistol, without a license

[1]All further statutory references are to the District of Columbia Code.

> issued pursuant to District of Columbia law, or any deadly or dangerous weapon capable of being so concealed.

In theory, handgun carry licenses had once been available for "good" or "proper" reasons under § 22-4506(a) (2008). But "[i]t [was] common knowledge . . . that with very rare exceptions licenses to carry pistols ha[d] not been issued in the District of Columbia for many years and [were] virtually unobtainable." *Bsharah* v. *United States*, 646 A.2d 993, 996 n.12 (D.C. 1994).[2]

In any event, Section 22-4506 was repealed effective May 20, 2009. See Inoperable Pistol Amendment Act of 2008, D.C. Act 17-690, 56 D.C. Reg. 1162, 1165 (Jan. 16, 2009). An amendment effective September 26, 2012, struck the reference to a handgun carry license from Section 22-4504(a), conforming its language to Section 22-4506's repeal. See D.C. Act 19-366, 59 D.C. Reg. 5691, 5697 (May 25, 2012).

Separately, Section 7-2502.01(a) mandated (and still mandates) handgun registration. At the time this lawsuit was filed, Section 7-2502.02(a)(4) (2008) provided that individuals who were not retired

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[2]When this provision was first enacted, licenses were only required to carry concealed handguns; the licensing requirement was not extended to the open carrying of handguns until 1943. See *Cooke* v. *United States*, 275 F.2d 887, 889 n.3 (D.C. Cir. 1960).

police officers could only register a handgun "for use in self-defense within that person's home." Accordingly, handgun registration applicants were required to provide a "brief statement of your intended use of the firearm and where the firearm will be kept." See Dist. Ct. Dkts. 5-9, 5-10, 5-11. Moreover, Defendants-Appellants District of Columbia and its Police Chief, Cathy Lanier, refused to consider registration applications absent proof of District residence.

2. The Law's Application Against Plaintiffs.

Defendants denied Plaintiffs-Appellees Tom Palmer, Amy McVey and George Lyon's handgun registration applications when each Plaintiff averred the he or she would carry their handguns in public for the purpose of self-defense. See Dist. Ct. Dkts. 5-9, 5-10, 5-11. Plaintiff Edward Raymond, who had previously been arrested and prosecuted for unlicensed handgun carrying in his car, was denied a handgun registration application on account of his residence outside the District. See Raymond Decl., Dist. Ct. Dkt. 5-6, ¶ 8.

3. The Litigation Below

On August 6, 2009—after Section 22-4506 had been repealed, but years before Section 22-4504 would lose its reference to a handgun

carry license—Plaintiffs brought this lawsuit. Palmer, McVey, Lyon, and Raymond, joined by the Second Amendment Foundation (of which they are members), challenged the handgun carry prohibition as well as the residency requirement for handgun registration and, by extension, handgun carrying. Plaintiffs asserted their Second and Fifth Amendment (right to travel, equal protection) rights. Defendants contended that the Second Amendment does not secure any rights outside the home, and that in any event, the District should not be forced to acknowledge that right owing to its character as the national capital. They also disputed Plaintiffs' Fifth Amendment claims.

The parties filed cross-motions for summary judgment, which stood fully briefed on October 6, 2009. Nonetheless, the case languished undecided for years, despite Plaintiffs' repeated efforts to accelerate a decision. See *In re Palmer*, No. 13-5317. On July 26, 2014, the District Court granted Plaintiffs' motion and denied Defendants' motion. The District Court entered a final judgment for Plaintiffs on July 29, 2014.

"The [Supreme] Court explained that self-defense, recognized since ancient times as a 'basic right,' was the 'central component' of the Second Amendment guarantee." Memorandum Decision & Order, Dist.

Dkt. 51, at 9 (quoting *McDonald* v. *City of Chicago*, 130 S. Ct. 3020, 3036 (2010)). Accordingly, the District Court was required to "to decide whether the restricted activity" in which Plaintiffs would engage, "a restriction on a responsible, law-abiding citizen's ability to carry a gun outside the home for self-defense falls within the Second Amendment right to keep and bear arms for the purpose of self defense." *Id.* at 10.

"[A]s the Supreme Court explained . . . 'at the time of the founding, as now, to 'bear' meant to 'carry.'" *Id.* at 11 (quoting *District of Columbia* v. *Heller*, 554 U.S. 570, 584 (2008)) (internal punctuation omitted).

> According to the *Heller* majority, the "natural meaning of 'bear arms'" was the one that Justice Ginsburg provided in her dissent in *Muscarello v. United States*, 524 U.S. 125 (1998), that is "'wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person.'"*Heller*, 554 U.S. at 584 (quoting *Muscarello*, 524 U.S. at 143, 118 S. Ct. 1911) (Ginsburg, J., dissenting) (quoting Black's Law Dictionary 214 (6th ed. 1998)).

Id. at 11-12.

The District Court then explained that "the very risk occasioning such carriage, 'confrontation,' is 'not limited to the home.'" *Id.* at 12 (quoting *Peruta* v. *Cnty. of San Diego*, 742 F.3d 1144, 1152 (9th Cir.

2014)); *Moore* v. *Madigan*, 702 F.3d 933, 936 (7th Cir. 2012).

> [I]t is beyond dispute that "the prospect of conflict—at least, the sort of conflict for which one would wish to be 'armed and ready'—is just as menacing (and likely more so) beyond the front porch as it is in the living room."

Id. (quoting *Peruta*, 742 F.3d at 1152). The District Court then noted that per the Supreme Court, the Second Amendment right is "most acute" in the home, and secured "most notably" for home self-defense, terms that exclude the possibility that the right is limited to the home. *Id.* (citations omitted). "[B]oth *Heller* and *McDonald* identif[ied] the 'core component' of the right as self-defense, which necessarily 'take[s] place wherever [a] person happens to be,' whether in a back alley or on the back deck." *Id.* at 12-13 (quoting *Peruta*, 742 F.3d at 1153) (citations omitted). "[T]he Second Amendment right could not rationally have been limited to the home." *Id.* at 13 (quotation omitted).

> [H]aving concluded that carrying a handgun outside the home for self-defense comes within the meaning of "bear[ing] Arms" under the Second Amendment, the Court must now ask whether the District of Columbia's total ban on the carrying of handguns within the District "infringes" that right. This question is not difficult to answer.

Id. at 15.

> In light of *Heller*, *McDonald*, and their progeny, there is no longer any basis on which this Court can conclude that the District of

> Columbia's total ban on the public carrying of ready-to-use handguns outside the home is constitutional under any level of scrutiny.

Id. at 16. The District Court thus enjoined Section 7-2502.02(a)(4)'s home limitations, and Section 22-4504(a)'s carrying prohibition "unless and until such time as the District of Columbia adopts a licensing mechanism consistent with constitutional standards enabling people to exercise their Second Amendment right to bear arms." *Id.* The injunction covered non-residents, *id.*, and the Court thus found that Plaintiffs' equal protection and right to travel claims were co-extensive with the Second Amendment claim, or not ripe. *Id.* at 16-17.

With Plaintiffs' consent, the District Court stayed its judgment for 90 days, through October 22, 2014, to allow the District of Columbia to enact constitutionally-adequate remedial legislation. Dist. Ct. Dkt. 53. The District Court denied Defendants' motion for a 180 day stay, but allowed Defendants the opportunity to seek another stay by October 3, 2014, "setting forth in detail what, if any, progress they have made to comply with the Court's decision." Dist. Ct. Dkt. 66. October 3 came and went without a motion, and the stay expired October 22, 2014.

Meanwhile, on September 23, 2014, the City Council had unanimously passed emergency legislation, valid for 90 days upon the Mayor's signature, restoring Section 22-4504(a)'s pre-September, 2012 reference to a handgun carry license. Aside from omitting reference to non-concealable weapons, that provision now reads exactly as it did on the day this lawsuit was filed.[3]

The legislation also revived, nearly verbatim, the previous Section 22-4506(a). The only differences between the new and immediately preceding versions of this section are: (1) "The Chief of Police of the District of Columbia" is shortened to "the Chief;" (2) the licenses authorize not "carry" but "carry concealed;" and (3) licenses are valid for two years, not one. Critically, the legislation restores—word for word—the old "standard" guiding the issuance of licenses. The police chief "may" issue a license "if it appears that the applicant has good reason to fear injury to his or her person or property or has any other proper reason for carrying a pistol, and that he or she is a suitable

[3]By deleting language that would have exempted non-concealable weapons from the section's weapons-carrying ban, the law now apparently extends to rifles, shotguns, swords, etc., which are not at-issue in this litigation.

person to be so licensed." There is no question that Defendants' intent was to "reinstate the test for carrying a firearm that was in place for many years after [the] 1931 [sic] law . . . ."[4]

Defendants take the position that the revived Section 22-4506 complies with the District Court's order. Notwithstanding the stay's expiration, they continue enforcing the enjoined Section 22-4504 without having obtained the District Court's opinion as to their compliance. Defendants did move for reconsideration of the District Court's decision, which motion was denied in open court on October 17, 2014, and confirmed by a later opinion. See Dist. Ct. Dkt. 75.

On October 2, 2014, Plaintiffs moved to enforce the judgment, as Section 22-4506's near-blanket exclusion of the entire population (including Plaintiffs) from licensure does not satisfy the District Court's judgment.[5] Defendants noticed an appeal November 14. On November 18, Plaintiffs moved for an order holding Defendants in contempt.

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[4]See *Mayor Gray, Chairman Mendelson and Councilmember Wells Propose Emergency Firearm Legislation*, available at http://mayor.dc.gov/release/mayor-gray-chairman-mendelson-and-councilmember-wells-propose-emergency-firearm-legislation (last visited Nov. 18, 2014).

[5]Owing to Section 22-4504's technical alterations, this essentially enforcement motion is styled as one seeking an injunction.

ARGUMENT

To read the District Court's opinion is to affirm. There is no need to fully recount the overwhelming, conclusive support for its decision. And notwithstanding the permanent controversy surrounding the right to bear arms, the District Court's holding is legally unremarkable. The Supreme Court, after all, has held that the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation," *Heller*, 554 U.S. at 592, and "[c]onfrontations are not limited to the home." *Moore*, 702 F.3d at 936.

The term "bear" cannot be read as superfluous to "keep." See *Myers* v. *United States*, 272 U.S. 52, 151 (1926) ("[T]he usual canon of [constitutional] interpretation . . . requires that real effect should be given to all the words it uses") (citations omitted). Nor, for the numerous reasons provided in *Heller* and recited by the District Court, as recited above, is there any way to limit the Second Amendment right, as a matter of text, original meaning, or common sense, to the home. See generally Appellants' Supp. Br., *Dearth* v. *Holder*, No. 12-5305, Feb. 10, 2014, at 10-30. Briefing and argument here will not amend the Constitution.

Nor will briefing and argument here overrule *Heller*. As Judge Posner wrote for the Seventh Circuit, in striking down the Nation's only other blanket handgun carry prohibition, lower courts cannot "repudiate the [Supreme] Court's historical analysis." *Moore*, 702 F.3d at 935. History might be important, but on this score, it is also settled by controlling authority. "[W]e are bound by the Supreme Court's historical analysis because it was central to the Court's holding in *Heller*." *Id.* at 937.

> We are disinclined to engage in another round of historical analysis to determine whether eighteenth-century America understood the Second Amendment to include a right to bear guns outside the home. The Supreme Court has decided that the amendment confers a right to bear arms for self-defense, which is as important outside the home as inside.

Id. at 942.

Whatever else the District might do to regulate the carrying of handguns—an issue not raised in the instant appeal—it cannot destroy the exercise of this fundamental constitutional right.

> We are aware of the problem of handgun violence in this country . . . . Undoubtedly some think that the Second Amendment is outmoded . . . . That is perhaps debatable, but what is not debatable is that it is not the role of this Court to pronounce the Second Amendment extinct.

Heller, 554 U.S. at 636.

Indeed, federal appellate courts are deeply divided over the extent to which the right to bear arms might be regulated, but broad consensus holds that the right exists. See *Peruta*, supra, 744 F.3d 1144; *Moore*, supra, 702 F.3d 933; *Nat'l Rifle Ass'n of Am., Inc.* v. *McCraw*, 719 F.3d 338 (5th Cir. 2013) (upholding restrictions on right to carry by adults under age 21 after apparently assuming right exists); *Woollard* v. *Gallagher*, 712 F.3d 865, 876 (4th Cir. 2013); *Kachalsky* v. *Cnty. of Westchester*, 701 F.3d 81, 93 (2d. Cir. 2012); see also *id.* at 89 & n.10.

At the federal appellate level, only the Third Circuit has departed from this view. That court "recognize[d] that the Second Amendment's individual right to bear arms *may* have some application beyond the home." *Drake* v. *Filko*, 724 F.3d 426, 434 (3d Cir. 2013). But it offered that the enactment of state laws in 1913 and 1924, incompatible with a right to carry handguns, are "longstanding" evidence that the right does not encompass carrying handguns. *Id.* at 734.

Under this theory, *everything* is constitutional—if a law's enactment proves that no right was understood to be infringed, every legislative act is self-constitutionalizing. More to the point, the behavior of early

twentieth century state legislatures is irrelevant. "Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures . . . think that scope too broad." *Heller*, 554 U.S. at 634-35. And at the time the laws *Drake* cited were enacted, the Bill of Rights generally, and the Second Amendment in particular, were held inapplicable as against the states. *United States* v. *Cruikshank*, 92 U.S. 542 (1876), *overruled*, *McDonald* v. *City of Chicago*, 130 S. Ct. 3020 (2010). No lawyer sitting in those legislatures could have understood those enactments as commentary on the scope of a right binding only the federal government.

The District Court correctly concluded that the Second Amendment's textual guarantee of a right to carry guns for self-defense precludes a city from simply banning all defensive handgun carriage.

Undaunted, the Defendants claimed on reconsideration that the District Court erred by not applying a two-step, means-ends scrutiny analysis under *Heller* v. *District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011) ("*Heller II*"). But *Heller II* did not overrule *Heller I*, or, for that matter, this Court's opinion that the Supreme Court there affirmed, *Parker* v. *District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007), both of

which made exceedingly clear the fact that means-ends scrutiny is not universally required in *all* Second Amendment cases. See *Parker*, 478 F.3d at 400 ("Once it is determined—as we have done—that handguns are 'Arms' referred to in the Second Amendment, it is not open to the District to ban them"); *id.* at 401 ("Section 7-2507.02, like the bar on carrying a pistol within the home, amounts to a complete prohibition on the lawful use of handguns for self-defense. As such, we hold it unconstitutional"); *Heller*, 554 U.S. at 628-29 ("Under any of the standards of scrutiny that we have applied to enumerated constitutional rights, banning from the home 'the most preferred firearm in the nation to 'keep' and use for protection of one's home and family' would fail constitutional muster") (quoting *Parker*, 478 F.3d at 400) (footnote omitted); *id.* at 630 ("The functional firearms ban "makes it impossible for citizens to use [guns] for the core lawful purpose of self-defense and is hence unconstitutional.").

After all, what is there to balance? The District cannot have an interest in prohibiting the exercise of a fundamental right, upon deciding, contrary to the Framers' considered judgment, that the right itself is a social evil. When a law flatly contradicts a constitutional

provision, there is no room for balancing. Policy arguments might easily be concocted to advance an established state church, or the denial of counsel to the accused, but courts have struck down such unconstitutional practices without resort to means-ends scrutiny. Courts often employ means-ends scrutiny because laws blatantly contradicting the Bill of Rights' commands are thankfully rare. But then, the law here is very unusual, in keeping with Defendants' persistent denials that the right even exists.

The only interest advanced by Defendants in prohibiting the exercise of Second Amendment rights, apart from their generalized belief that the right is socially harmful, is the familiar refrain about the District's unique role as our Nation's capital. The argument is specious. If the suspension of fundamental rights is required to secure the capital, why not also suspend the Fourth Amendment, and allow police an unfettered hand in disrupting plots against national security? In any event, this Court has heard—and rejected—the same exact claim with respect to the Second Amendment. "[T]he Supreme Court has unambiguously held that the Constitution and Bill of Rights are in effect in the District." *Parker*, 478 F.3d at 395 (citing *O'Donoghue* v.

United States, 289 U.S. 516, 539-41 (1933); *Downes* v. *Bidwell*, 182 U.S. 244, 260-61 (1901)).

Of course, Defendants may prohibit the carrying of handguns in "government buildings" and other "sensitive places," *Heller*, 554 U.S. at 626, but that does not mean that they might prohibit carrying guns in a *city* containing government buildings. None of the District's allegedly unique features justify erasing the Second Amendment wholesale throughout the entire city. Government facilities, visiting Presidents, historically important sites, and various foreign consulates and missions may be found throughout the United States. So is the right to bear arms, exercised peacefully by millions of law-abiding, responsible Americans every day.

Indeed, the District is not the only city whose urban uniqueness argument for a Second Amendment exemption failed. "Municipal respondents point out—quite correctly—that conditions and problems differ from locality to locality and that citizens in different jurisdictions have divergent views on the issue of gun control." *McDonald*, 130 S. Ct. at 3046. But that was not a reason to avoid insisting that the Second Amendment apply in full throughout the United States. Defendants

might "experiment" with regulations fitting local conditions, within constitutional limitations. Complete repudiation of an enumerated guarantee cannot be sustained, and it is not worth consuming any additional court resources debating a subject better suited, if at all, to a constitutional convention.

CONCLUSION

Plaintiffs-Appellees respectfully request that the District Court's judgment be summarily affirmed.

Dated: November 19, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 19th day of November, 2014, I filed the foregoing electronically with the Clerk of the Court using the CM/ECF System. I further certify that I will submit any required paper copies to the Court. I further certify that counsel for Defendants-Appellants is a registered CM/ECF user and will be served via the CM/ECF system.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 19th day of November, 2014.

/s/ Alan Gura
Alan Gura

Counsel for Plaintiffs-Appellees

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

TOM G. PALMER, GEORGE LYON, EDWARD RAYMOND, AMY MCVEY, and SECOND AMENDMENT FOUNDATION, INC.,

Plaintiffs,

v. **1:09-CV-1482 (FJS)**

DISTRICT OF COLUMBIA and CATHY LANIER,

Defendants.

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SCULLIN, Senior Judge

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

Currently before the Court are Plaintiffs' motion for summary judgment and Defendants' cross-motion for summary judgment.

II. BACKGROUND

In their complaint, Plaintiffs assert two claims for relief. In their first claim, Plaintiffs allege that, "[b]y requiring a permit to carry a handgun in public, yet refusing to issue such permits and refusing to allow the possession of any handgun that would be carried in public, Defendants maintain a complete ban on the carrying of handguns in public by almost all individuals." *See* Dkt. No. 1, Complaint at ¶ 39. Plaintiffs also contend that "Defendants' laws, customs, practices and policies generally banning the carrying of handguns in public violate the Second Amendment to the United States Constitution, facially and as applied against the individual plaintiffs in this action, damaging plaintiffs in violation of 42 U.S.C. § 1983." *See id.* at ¶ 40.

In their second claim for relief, Plaintiffs allege that "Defendants' laws, customs, practices and policies generally refusing the registration of firearms by individuals who live outside the District of Columbia violate the rights to travel and equal protection secured by the Due Process Clause of the Fifth Amendment to the United States Constitution, facially and as applied against the individual plaintiffs in this action, damaging plaintiffs in violation of 42 U.S.C. § 1983." *See id.* at ¶ 42.

Plaintiffs seek relief in the form of an Order permanently enjoining Defendants, "their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing D.C. Code § 7-2502.02(a)(4) to ban registration of handguns to be carried for self-defense by law-abiding citizens[.]" *See id.* at WHEREFORE Clause. Furthermore, Plaintiffs seek an Order permanently enjoining Defendants, "their officers, agents, servants, employees, and all persons in active concert or

participation with them who receive actual notice of the injunction, from enforcing D.C. Code § 22-4504(a), OR, in the alternative, ordering [D]efendants to issue licenses to carry handguns to all individuals who desire such licenses and who have satisfied the existing requirements, aside from residence requirements, for the registration of a handgun[.]" *See id.* Finally, Plaintiffs seek an Order permanently enjoining Defendants, "their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from denying firearm registration and handgun carry permit applications made by otherwise qualified individuals on account of lack of residence within the District of Columbia[.]" *See id.*[1]

The parties do not dispute the basic facts that underlie this action. D.C. Code § 7-2502.01(a) provides that "no persons or organization in the District shall possess or control any firearm, unless the persons or organization holds a valid registration certificate for the firearm." D.C. Code § 7-2502.02(a)(4) provides that individuals who are not retired police officers may only register a handgun "for use in self-defense within that person's home." Pursuant to this statutory limitation, Defendants distribute handgun registration application forms requiring applicants to "give a brief statement of your intended use of the firearm and where the firearm will be kept."

Defendants maintain a custom, practice and policy of refusing to entertain gun registration applications by individuals who do not reside in the District of Columbia. Defendants require gun registration applicants to submit "[p]roof of residency in the District of Columbia (e.g., a valid DC operator's permit, DC vehicle registration card, lease agreement for a

[1] Plaintiffs also seek costs of the suit, including attorney fees and costs under 42 U.S.C. § 1988 and declaratory relief consistent with the injunction. *See* Complaint at WHEREFORE Clause

residence in the District, the deed to your home or other legal document showing DC residency." A first violation of the District of Columbia's ban on the ownership or possession of unregistered handguns is punishable as a misdemeanor by a fine of up to $1,000, imprisonment of up to five years, or both. *See* D. C. Code § 7-2507.06.

D.C. Code § 22-4504(a) provides that "[n]o person shall carry within the District of Columbia either openly or concealed on or about their person, a pistol, without a license issued pursuant to District of Columbia law, or any deadly or dangerous weapon capable of being so concealed." The first violation of this section by a non-felon is punishable by a fine up to $5,000 and imprisonment of up to five years.

Former D.C. Code § 22-4506 empowered the District of Columbia's police chief to issue licenses to carry handguns to individuals, including to individuals not residing in the District of Columbia. However, it was Defendant District of Columbia's policy for many years not to issue such licenses. On December 16, 2008, the District of Columbia's City Council and Mayor repealed the Police Chief's authority to issue handgun carry licenses. Accordingly, the District of Columbia lacks any mechanism to issue handgun carry licenses to individuals.

Plaintiff Palmer, a resident of the District, would carry a functional handgun in public for self-defense but refrains from doing so because he fears arrest, prosecution, fine, and imprisonment as he does not possess a license to carry a handgun. Plaintiff Palmer sought to register a handgun in the District of Columbia so that he might carry it for self-defense. On or about May 12, 2009, Defendant Lanier denied Plaintiff Palmer's application to register a handgun for the following reason:

> The intended use of the firearm as stated on your firearms

> registration application, "I intend to carry this firearm, loaded, in public, for self-defense, when not kept in my home" is unacceptable per the "Firearms Registration Emergency Amendment Act of 2008," which states that pistols may only be registered by D.C. residents for protection within the home.

Defendant Lanier subsequently approved Plaintiff Palmer's application to register the handgun for home self-defense.

Plaintiff George Lyon, a resident of the District, would carry a functional handgun in public for self-defense but refrains from doing so because he fears arrest, prosecution, fine, and imprisonment as he does not possess a license to carry a handgun in Washington, D.C. Plaintiff Lyon is licensed to carry handguns in the states of Virginia, Utah, and Florida. He has approximately 240 hours of firearms training, of which approximately 140 hours relate specifically to handguns. Plaintiff Lyon sought to register a handgun in the District of Columbia so that he might carry it for self-defense. On or about April 8, 2009, Defendant Lanier denied Plaintiff Lyon's application to register a handgun for the following reason:

> The intended storage and use of the firearm as stated on your firearms registration application, "carrying personal protection, keep at home or office" is unacceptable per the "Firearms Registration Emergency Amendment Act of 2008," which states that pistols may only be registered by D.C. residents for protection within the home.

Defendant Lanier subsequently approved Plaintiff Lyon's application to register the handgun for home self-defense.

At the time Plaintiffs filed this action, Plaintiff Raymond was not a resident of the District, was enrolled as a student in the Franklin Pierce Law Center in New Hampshire, was employed as a Patent Examiner and owned a home in Waldorf, Maryland. Plaintiff Raymond

holds a Master of Business Administration degree as well as a Master of Science degree in Electrical Engineering. He has started various successful businesses and is an honorably discharged Navy veteran.

On April 6, 2007, District of Columbia Police stopped Plaintiff Raymond for allegedly speeding. At that time, Plaintiff Raymond held valid permits to carry a handgun issued by the states of Maryland and Florida and still holds those permits. Although Plaintiff Raymond was never charged with a traffic violation, he was charged with carrying a pistol without a license because his loaded handgun was located in his car's center console. Plaintiff Raymond subsequently pled guilty to misdemeanor possession of an unregistered firearm and unregistered ammunition. He successfully completed a sentence of probation.

Plaintiff Raymond would carry a functional handgun in public for self-defense while visiting and traveling through the District of Columbia but refrains from doing so because he fears another arrest and prosecution as well as fine and imprisonment as he does not possess a license to carry a handgun in the District of Columbia. On June 26, 2009, Plaintiff Raymond sought to register a handgun in the District of Columbia, but he was refused an application form because of his lack of residence in the District.

Plaintiff Amy McVey, a resident of the District, would carry a functional handgun in public for self-defense but refrains from doing so because she fears arrest, prosecution, fine, and imprisonment as she does not possess a license to carry a handgun in the District of Columbia. Plaintiff McVey is licensed by the state of Virginia to publicly carry a handgun.

Plaintiff McVey sought to register a handgun in the District of Columbia so that she could carry it for self-defense. On July 7, 2009, Defendant Lanier denied her application to register a

handgun for the following reason:

> The intended storage and use of the firearm as stated on your firearms registration application, "I intend to carry the loaded firearm in public for self-defense when not stored in my home" is unacceptable per the "Firearms Registration Emergency Amendment Act of 2008," which states that pistols may only be registered by D.C. residents for protection within the home.

Plaintiff Second Amendment Foundation, Inc. ("SAF") is a non-profit membership organization incorporated under the laws of Washington with its principal place of business in Bellevue, Washington. SAF has more than 650,000 members and supporters nationwide, including in the District of Columbia. The purposes of SAF include education, research, publishing and legal action focusing on the Constitutional right to privately own and possess firearms and the consequences of gun control. SAF expends its resources encouraging the exercise of the right to bear arms and advising and educating its members, supporters, and the general public about the law with respect to carrying handguns in the District of Columbia. The issues raised by, and consequences of, Defendants' policies are of great interest to SAF's constituency. Defendants' policies regularly cause SAF to expend resources as people turn to it for advice and information. Defendants' policies bar the members and supporters of SAF from obtaining permits to carry handguns.

III. DISCUSSION

The Supreme Court's decisions in *Dist. of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), direct the Court's analysis of Plaintiffs' claims. In *Heller*, the plaintiffs mounted a Second Amendment challenge to a District of

Columbia law that "totally ban[ned] handgun possession in the home" and "require[d] that any lawful firearm in the home be disassembled or bound by a trigger lock[.]" *Heller*, 554 U.S. at 603, 628. The validity of the challenged measures depended, as a preliminary matter, on whether the Second Amendment codified an individual right or a collective right. *See id.* at 577. After consulting the text's original public meaning, the Court concluded that the Second Amendment codified a pre-existing, individual right to keep and bear arms and that the "central component of the right" was self-defense. *See id.* at 592, 599. Furthermore, the Court held that, because "the need for defense of self, family, and property is most acute in the home," the D.C. ban on the home use of handguns "the most preferred firearm in the nation" failed "constitutional muster" under any standard of heightened scrutiny. *Id.* at 628-29 & n.27. The same was true for the trigger-lock requirement. *See id.* at 635. The *Heller* Court concluded that it did not need to "undertake an exhaustive historical analysis . . . of the full scope of the Second Amendment" to dispose of the case. *Id.* at 626. Nor did the Court have a reason to specify, for future cases, which burdens on the Second Amendment right triggered which standards of review, or whether a tiered-scrutiny approach was even appropriate in the first place. *See id.* at 628-29. By any measure, the Court found that the District of Columbia statute overreached.

Two years later, in *McDonald*, the Court evaluated a similar handgun ban that the City of Chicago had enacted. The question presented in *McDonald*, however, was not whether the ban infringed the Chicago's residents' Second Amendment rights, but, rather, whether a state government could even be subject to the strictures of the Second Amendment. The answer to that question depended on whether the right was "'deeply rooted in this Nation's history and tradition'" and "fundamental to *our* scheme of ordered liberty[.]" *McDonald*, 130 S. Ct. at 3036.

The Court stated that its "decision in *Heller* point[ed] unmistakably to the answer." *Id.* The Court explained that self-defense, recognized since ancient times as a "basic right," was the "central component" of the Second Amendment guarantee. *Id.* Thus, the Court concluded that that right restricted not only the federal government but, under the Fourteenth Amendment, also the states. *See id.* at 3026. Having reached that conclusion, the Court remanded the case to the Seventh Circuit for an analysis of whether, in light of *Heller*, the Chicago handgun ban infringed the Second Amendment right. *See id.* at 3050.

Neither *Heller* nor *McDonald* speaks explicitly or precisely to the scope of the Second Amendment right outside the home or to what it takes to "infringe" that right. However, both opinions, at the very least, "point[] in a general direction." *Ezell v. City of Chicago*, 651 F.3d 684, 700 (7th Cir. 2011) (noting that *Heller* does not leave the court "without a framework for how to proceed"). As the Ninth Circuit recently noted in *Peruta v. Cnty. of San Diego*, 742 F.3d 1144 (9th Cir. 2014),[2] which addressed statutes very similar to the ones at issue in this case,

> [t]o resolve the challenge to the D.C. restrictions, the *Heller* majority described and applied a certain methodology: it addressed, first, whether having operable handguns in the home amounted to "keep[ing] and bear[ing] Arms" within the meaning of the Second Amendment and, next, whether the challenged laws, if they indeed

[2] The *Peruta* court addressed the issue of "whether a responsible, law-abiding citizen has a right under the Second Amendment to carry a firearm in public for self-defense." *Peruta*, 742 F.3d at 1147. As a preliminary matter, the court noted that "California generally prohibits the open or concealed carriage of a handgun, whether loaded or unloaded, in public locations." *Id.* (citations and footnote omitted). However, an individual could apply for a license to carry a concealed weapon in the city or county in which he worked or resided. *See id.* at 1148 (citations omitted). To obtain such a license, however, an applicant had to meet several requirements, including a demonstration of good moral character, completion of a specified training course, and establishing good cause. *See id.* (citations omitted). The plaintiff challenged San Diego County's procedures for obtaining a concealed-carry license, in particular its definition of the term "good cause." *See id.*

did burden constitutionally protected conduct, "infringed" the right.

Id. at 1150.[3]

In analyzing the issues in this case, the Court must apply the two-step approach that the District of Columbia Circuit set forth in *Heller v. Dist. of Columbia (Heller II)*, 670 F.3d 1244 (D.C. Cir. 2011). The first question requires this Court to decide whether the restricted activity, in this case, a restriction on a responsible, law-abiding citizen's ability to carry a gun outside the home for self-defense falls within the Second Amendment right to keep and bear arms for the purpose of self defense. *See Peruta*, 742 F.3d at 1150 (citing *Ezell*, 651 F.3d at 701; *Kachalsky v. City of Westchester*, 701 F.3d 81, 90 (2d Cir. 2012)). To determine the precise methods by which that right's scope is discerned, the Supreme Court has directed, in both *Heller* and *McDonald*, that courts must consult "both text and history." *Heller*, 554 U.S. at 595, *McDonald*, 130 S. Ct. at 3047).

As the Court noted in *Heller*, "Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad." *Heller*, 554 U.S. at 634-35. To arrive at the original understanding of the right, "we are guided by the principle that '[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning'" unless evidence suggests that the language

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[3] As the *Peruta* court noted, several other circuit courts have also applied this two-step inquiry. *See Peruta*, 742 F.3d at 1150 (citing *United States v. Chovan*, 735 F.3d 1127, 1136 (9th Cir. 2013); *Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 194 (5th Cir. 2012); *United States v. Greeno*, 679 F.3d 510, 518 (6th Cir. 2012); *Ezell*, 651 F.3d at 701-04; *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010); *United States v. Reese*, 627 F.3d 792, 800-01 (10th Cir. 2010); *United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010)).

was used idiomatically. *Id.* at 576 (quoting *United States v. Sprague*, 282 U.S. 716, 731, 51 S. Ct. 220, 75 L. Ed. 640 (1931)) (other citation omitted). "Of course, the necessity of this historical analysis presupposes what *Heller* makes explicit: the Second Amendment right is 'not unlimited.'" *Peruta*, 742 F.3d at 1151 (quoting [*Heller*, 554 U.S.] at 595, 128 S. Ct. 2783). Furthermore, "[i]t is 'not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.'" *Id.* (quoting [*Heller*, 554 U.S.] at 626, 128 S. Ct. 2783). "Rather, it is a right subject to 'traditional restrictions,' which themselves and this is a critical point tend 'to show the scope of the right.'" *Id.* (quoting *McDonald*, 130 S. Ct. at 3056 (Scalia, J., concurring)) (citing *Kachalsky*, 701 F.3d at 96; *Nat'l Rifle Ass'n of Am.*, 700 F.3d at 196 ("For now, we state that a longstanding presumptively lawful regulatory measure . . . would likely [burden conduct] outside the ambit of the Second Amendment."); *United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) (en banc) ("That some categorical limits are proper is part of the original meaning.")).

As the court noted in *Peruta*, "[t]he Second Amendment secures the right not only to 'keep' arms but also to '*bear*' them[,]" *Peruta*, 742 F.3d at 1151; and, as the Supreme Court explained in *Heller*, "[a]t the time of the founding, as now, to 'bear' meant to 'carry[,]'" *Heller*, 554 U.S. at 584. "Yet, not 'carry' in the ordinary sense of 'convey[ing] or transport[ing]' an object, as one might carry groceries to the check-out counter or garments to the laundromat, but 'carry for a particular purpose confrontation.'" *Peruta*, 742 F.3d at 1151-52 (quoting [*Heller*, 554 U.S. at 584]). According to the *Heller* majority, the "natural meaning of 'bear arms'" was the one that Justice Ginsburg provided in her dissent in *Muscarello v. United States*, 524 U.S. 125 (1998), that is "'wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the

purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person.'" *Heller*, 554 U.S. at 584 (quoting *Muscarello*, 524 U.S. at 143, 118 S. Ct. 1911) (Ginsburg, J., dissenting) (quoting *Black's Law Dictionary* 214 (6th ed. 1998)).

Furthermore, "'bearing a weapon inside the home' does not exhaust this definition of 'carry.' For one thing, the very risk occasioning such carriage, 'confrontation,' is 'not limited to the home.'" *Peruta*, 742 F.3d at 1152 (quoting *Moore v. Madigan*, 702 F.3d 933, 936 (7th Cir. 2012)). Moreover, it is beyond dispute that "the prospect of conflict at least, the sort of conflict for which one would wish to be 'armed and ready' is just as menacing (and likely more so) beyond the front porch as it is in the living room." *Id.* Thus, "'[t]o speak of "bearing" arms within one's home would at all times have been an awkward usage.'" *Id.* (quotation omitted). In addition, the *Heller* Court stated that the Second Amendment secures "the right to 'protect[] [oneself] against both *public* and private violence,' . . . thus extending the right in some form to wherever a person could become exposed to public or private violence." *United States v. Masciandaro*, 638 F.3d 458, 467 (4th Cir. 2011) (Niemeyer, J., specially concurring) (quoting [*Heller*, 128 S. Ct.] at 2798, 2799). Moreover, the *Heller* Court emphasized that the need for the right was "most acute" in the home, *Peruta*, 742 F.3d at 1153 (citing *Heller*, 554 U.S. at 628, 128 S. Ct. 2783), "thus implying that the right exists outside the home, though the need is not always as "'acute.'" *Id.* (citing *McDonald*, 130 S. Ct. at 3044 (2010) ("[T]he Second Amendment protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home.")). However, *Heller* also pointed out that "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings" is presumptively lawful. *Heller*, 554 U.S. at 626. Finally, "both *Heller* and *McDonald* identif[ied] the 'core component' of

the right as self-defense, which necessarily 'take[s] place wherever [a] person happens to be,' whether in a back alley or on the back deck." *Peruta*, 742 F.3d at 1153 (citing *Moore*, 702 F.3d at 937 ("To confine the right to be armed to the home is to divorce the Second Amendment from the right of self-defense described in *Heller* and *McDonald*.")) (other citation omitted).

This Court agrees with the Ninth Circuit's statement in *Peruta* that "[t]hese passages alone, though short of dispositive, strongly suggest that the Second Amendment secures a right to carry a firearm in some fashion outside the home." *Peruta*, 742 F.3d at 1153. "Reading those lines in light of the plain meaning definition of 'bear Arms' elucidated above makes matters even clearer; the Second Amendment right 'could not rationally have been limited to the home.'" *Id.* (quoting *Moore*, 702 F.3d at 936). Although "people may 'keep Arms' (or, per *Heller*'s definition, 'have weapons,' 554 U.S. at 582, 128 S. Ct. 2783), in the home for defense of self, family, and property, they are more sensibly said to 'bear Arms' (or, *Heller*'s gloss: 'carry [weapons] . . . upon the person or in the clothing or in a pocket,' *id.* at 584, 128 S. Ct. 2783) in *nondomestic* settings." *Id.* (citing *Kachalsky*, 701 F.3d at 89 n.10 ("The plain text of the Second Amendment does not limit the right to bear arms to the home."); *Drake v. Filko*, 724 F.3d 426, 444 (3d Cir. 2013) (Hardiman, J., dissenting) ("To speak of 'bearing' arms solely within one's home not only would conflate 'bearing' with 'keeping,' in derogation of the Court's holding that the verbs codified distinct rights, but also would be awkward usage given the meaning assigned the terms by the Supreme Court.")) (footnote omitted).

In addition to the textual analysis of the phrase "bear Arms," the Court in *Heller* looked to the original public understanding of the Second Amendment right as evidence of its scope and meaning, relying on the "important founding-era legal scholars." *Heller*, 554 U.S. at 600-03

(examining the public understanding of the Second Amendment in the period after its ratification because "[t]hat sort of inquiry is a critical tool of constitutional interpretation"). Based on its historical review, the Court found support for the proposition that the Second Amendment secures an individual right to carry in case of confrontation means nothing if not the general right to carry a common weapon outside the home for self-defense. Furthermore, as the court in *Peruta* correctly pointed out, "with *Heller* on the books, the Second Amendment's original meaning is now settled in at least two relevant respects." *Peruta*, 742 F.3d at 1155. "First, *Heller* clarifies that the keeping and bearing of arms is, *and has always been*, an individual right. *Id.* (citing [*Heller*], 554 U.S. at 616, 128 S. Ct. 2783). "Second, the right is, *and has always been*, oriented to the end of self-defense." *Id.* (citation omitted). After an exhaustive summary of the text and history of the Second Amendment, the Ninth Circuit in *Peruta* concluded that "the carrying of an operable handgun outside the home for the lawful purpose of self-defense, though subject to traditional restrictions, constitutes 'bear[ing] Arms' within the meaning of the Second Amendment." *Peruta*, 742 F.3d at 1166. As the Ninth Circuit noted, this conclusion is not surprising in light of the fact that other circuits have reached the same result. *See id.* (citing *Moore*, 702 F.3d at 936 ("A right to bear arms thus implies a right to carry a loaded gun outside the home."); *Drake*, 724 F.3d at 431 (recognizing that the Second Amendment right "*may* have some application beyond the home"); *Woollard v. Gallagher*, 712 F.3d 865, 876 (4th Cir. 2013) ("We . . . assume that the *Heller* right exists outside the home. . . ."); *Kachalsky*, 701 F.3d at 89 (assuming that the Second Amendment "must have *some* application in the very different context of the public possession of firearms")). This Court, joining with most of the other courts that have addressed this issue, reaches this same conclusion.

Finally, as the *Peruta* court pointed out, "[u]nderstanding the scope of the right is not just necessary, it is key to [the court's] analysis [because,] if self-defense outside the home is part of the core right to 'bear arms' and the [District of Columbia's] regulatory scheme prohibits the exercise of that right, no amount of interest-balancing under a heightened form of means-end scrutiny can justify [the District of Columbia's] policy." *Id.* at 1167 (citing *Heller*, 554 U.S. at 634, 128 S. Ct. 2783 ("The very enumeration of the right takes out of the hands of government even the Third Branch of Government the power to decide on a case-by-case basis whether the right is *really worth* insisting upon.")). Thus, having concluded that carrying a handgun outside the home for self-defense comes within the meaning of "bear[ing] Arms" under the Second Amendment, the Court must now ask whether the District of Columbia's total ban on the carrying of handguns within the District "infringes" that right.

This question is not difficult to answer. As the Seventh Circuit stated in *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), "[a] blanket prohibition on carrying gun[s] in public prevents a person from defending himself anywhere except inside his home; and so substantial a curtailment of the right of armed self-defense requires a greater showing of justification than merely that the public *might* benefit on balance from such a curtailment, though there is no proof that it would." *Id.* at 940. This does not mean that the government cannot place some reasonable restrictions on carrying of handguns; for example, "when a state bans guns merely in particular places, such as public schools, a person can preserve an undiminished right of self-defense by not entering those places; since that's a lesser burden, the state doesn't need to prove so strong a need." *Id.* The District of Columbia appears to be the only jurisdiction that still has such a complete ban on the carrying of ready-to-use handguns outside the home. That does not mean

that other jurisdictions are indifferent to the dangers that the widespread public carrying of guns; rather, those jurisdictions "have decided that a proper balance between the interest in self-defense and the dangers created by carrying guns in public is to limit the right to carry a gun to responsible persons rather than to ban public carriage altogether[.]" *Id.* at 940. In addition, to "the usual prohibitions of gun ownership by children, felons, illegal aliens, lunatics, and in sensitive places such as public schools, the propriety of which was not questioned in *Heller* . . . some states sensibly require that an applicant for a handgun permit establish his competence in handling firearms." *Id.* at 940-41 (internal parenthetical omitted). Some states "also permit private businesses and other private institutions (such as churches) to ban guns from their premises." *Id.* at 941.

In light of *Heller, McDonald*, and their progeny, there is no longer any basis on which this Court can conclude that the District of Columbia's total ban on the public carrying of ready-to-use handguns outside the home is constitutional under any level of scrutiny. Therefore, the Court finds that the District of Columbia's complete ban on the carrying of handguns in public is unconstitutional. Accordingly, the Court grants Plaintiffs' motion for summary judgment and enjoins Defendants from enforcing the home limitations of D.C. Code § 7-2502.02(a)(4) and enforcing D.C. Code § 22-4504(a) unless and until such time as the District of Columbia adopts a licensing mechanism consistent with constitutional standards enabling people to exercise their Second Amendment right to bear arms.[4] Furthermore, this injunction prohibits the District from

[4] The Court notes that, in *Heller v. Dist. of Columbia*, 08-CV-1289, Dkt. No. 83, Judge Boasberg recently dismissed all of the plaintiffs' challenges to the constitutionality of the District's firearm laws with prejudice except for their challenge to the vision requirement for gun registration, which, because he decided that challenge based on jurisdictional grounds, he (continued...)

completely banning the carrying of handguns in public for self-defense by otherwise qualified non-residents based **solely** on the fact that they are not residents of the District.

C. Equal protection and right to travel challenges to residency requirements

Plaintiff Raymond, the only non-resident individual Plaintiff, and SAF, insofar as some of its members who are not residents of the District of Columbia who would like to carry a hand gun in the District when they are there, argue that Defendants' practice of refusing to issue a

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[4](...continued)
dismissed without prejudice. *See id.* at 62. The plaintiffs had challenged the registration requirements of the District's gun laws. The issue of the complete ban on the carrying of handguns in the District for self-defense was not at issue nor was the residency requirement at issue in that case. What were at issue, however, were the regulations pertaining to the registration of firearms, specifically the basic registration requirements as they applied to long guns and the following registration requirements that applied to all guns: (1) to register a weapon, registrants must appear in person and in possession of the firearm to be registered and must submit to being photographed and fingerprinted, *see* D.C. Code § 7-2502.04; (2) to register a weapon, registrants must complete a firearms-training and safety class and pass a test demonstrating knowledge of the District's firearms laws, *see* D. C. Code § 7-2502.03(a)(10), (13); (3) registrants are limited to registering one pistol every thirty days, *see* D.C. Code § 7-2502.03(e); (4) firearm-registration certificates automatically expire three years after the date they are issued, unless the registrant renews them, *see* D. C. Code § 7-2502.07a(a), and registrants are eligible to renew their certificates so long as they continue to meet the District's initial registration requirements, *see* D.C. Code § 7-2502.03(a), and follow any procedures the Metropolitan Police Department ("MPD") Chief establishes by rule, *see* D.C. Code § 7-2502.07a(b). In addition, the plaintiffs challenged several provisions related to the administration and enforcement of the gun-registry scheme, including (1) the requirement that gun owners keep their registration certificates with them when they are in possession of their registered firearms and be able to exhibit the certificate upon the demand of law enforcement, *see* D. C. Code § 7-2502.08(c); (2) the requirement that gun owners notify MPD in writing if their registered weapons are lost, stolen, or destroyed, if they sell or transfer their weapons, or if they change their name or address, *see* D. C. Code § 7-2502,08(a); (3) the fees associated with the registration process, *see* D.C. Code § 7-2502.05(b); and (4) the penalties for violations of the registration scheme, *see* D.C. Code § 7-2507.06. The plaintiffs in *Heller* have filed a Notice of Appeal from Judge Boasburg's May 15, 2014 Memorandum-Opinion. *See Heller*, 08-CV-1289, at Dkt. No. 84.

permit to carry a gun in the District based solely on the fact that a person is not a resident violates their right to travel and the equal protection clause of the Fourteenth Amendment.

The Court has difficulty seeing how these challenges, under the circumstances of this case, are not co-extensive with Plaintiff Raymond's Second Amendment challenges to the current District laws regarding the complete ban on carrying handguns in public. Furthermore, as things now stand, Plaintiff Raymond, and all others who are not residents of the District, are treated exactly the same as residents of the District insofar as the District has a complete ban on the carrying of handguns in public for self-defense. Thus, to the extent that Plaintiff Raymond's right to travel and equal protection claims are not co-extensive with his Second Amendment claims, the Court finds that these claims are not ripe.[5]

IV. CONCLUSION

Having reviewed the parties' submissions and the applicable law, and for the above-stated reasons, the Court hereby **GRANTS** Plaintiffs' motion for summary judgment and **DENIES** Defendants' cross-motion for summary judgment; and the Court further

ORDERS that Defendants, their officers, agents, servants, employees and all persons in active concert or participation with them who receive actual notice of this Memorandum-Decision and Order, are permanently enjoined from enforcing D.C. Code § 7-2502.02(a)(4) to ban registration of handguns to be carried in public for self-defense by law-abiding citizens; and

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[5] As stated above, with respect to Plaintiff Raymond's Second Amendment claim, the District of Columbia may not completely bar him, or any other qualified individual, from carrying a handgun in public for self-defense simply because they are not residents of the District.

the Court further

ORDERS that Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of this Memorandum-Decision and Order are permanently enjoined from enforcing D.C. Code § 22-4504(a); and the Court further

ORDERS that Defendants, their officers, agents, servants, employees, and all persons in active concert or participation from them who receive actual notice of this Memorandum-Decision and Order from enforcing D.C. Code § 7-2502.02(a)(4) and D.C. Code § 22-4504(a) against individuals based solely on the fact that they are not residents of the District of Columbia.

IT IS SO ORDERED.

Dated: July 24, 2014
Syracuse, New York

Frederick J. Scullin, Jr.
Senior United States District Court Judge

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

TOM G. PALMER, GEORGE LYON, EDWARD RAYMOND, AMY MCVEY, and SECOND AMENDMENT FOUNDATION, INC.,

Plaintiffs,

v.

1:09-CV-1482 (FJS)

DISTRICT OF COLUMBIA and CATHY LANIER,

Defendants.

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SCULLIN, Senior Judge

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

In a Memorandum-Decision and Order dated July 24, 2014, the Court granted Plaintiffs' motion for summary judgment and denied Defendants' cross-motion for summary judgment. *See* Dkt. No. 51 at 18. In so doing, the Court permanently enjoined Defendants from enforcing D.C.

Code § 7-2502.02(a)(4) to ban registration of handguns to be carried in public for self-defense by law-abiding citizens and permanently enjoined Defendants from enforcing D.C. Code § 22-4504(a). *See id.* at 18-19. Finally, the Court enjoined Defendants from enforcing D.C. Code § 7-2502.02(a)(4) and D.C. Code § 22-4504(a) against individuals based solely on the fact that they were not residents of the District of Columbia. *See id.* at 19. The Court entered judgment on July 29, 2014. *See* Dkt. No. 54.

Defendants filed a motion for reconsideration of the Court's July 24, 2014 Memorandum-Decision and Order, *see* Dkt. No. 62, which Plaintiffs opposed, *see* Dkt. No. 65. On October 17, 2014, the Court heard oral argument in support of and in opposition to that motion; and, at the conclusion of the parties' arguments, the Court issued an oral order denying the motion. *See* Minute Entry dated October 17, 2014. The Court also advised the parties that a written decision would be forthcoming. The following constitutes the Court's written disposition of Defendants' motion.

II. DISCUSSION

It is well-established that a court need not grant a motion for reconsideration under Rule 59(e) of the Federal Rules of Civil Procedure "'unless the district court finds that there is an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or to prevent manifest injustice.'" *Koch v. White*, No. 12-0301, 2014 WL 2598745, *1 (D.D.C. June 11, 2014) (quoting *Dyson v. District of Columbia*, 710 F.3d 415, 420 (D.C. Cir. 2013) (quoting *Ciralsky v. CIA*, 355 F.3d 661, 671 (D.C. Cir. 2004))). Parties may not use Rule 59(e) motions "'to raise new arguments or present evidence that could have been raised prior to

the entry of judgment.'" *Id.* (quoting *Niedermeier v. Office of Max S. Baucus*, 153 F. Supp. 2d 23, 28 (D.D.C. 2001)) (other citation omitted). Finally, in this Circuit, "'[m]otions for reconsideration are disfavored and are 'granted only when the moving party establishes extraordinary circumstances.'" *Id.* (quoting *Solomon v. Univ. of Southern California*, 255 F.R.D. 303, 305 (D.D.C. 2009) (quoting *Niedermeier v. Office of Max S. Baucus*, 153 F. Supp. 2d at 28)).

As a basis for their Rule 59(e) motion, Defendants assert that there is a need to correct clear error in the Court's July 24, 2014 Memorandum-Decision and Order. Specifically, they argue that the Court's decision contained two underlying errors: (1) the Court's finding that the right to carry firearms in public was at the core of the Second Amendment and (2) the Court's reliance only on cases that were not controlling precedent to support that conclusion. *See* Dkt. No. 63 at 4. Furthermore, Defendants contend that the Court compounded those errors by not addressing or considering their justifications for their total ban on the carrying of firearms in public. *See id.* Finally, Defendants claim that the Court erred by not engaging in an intermediate scrutiny analysis or, alternatively, that, if it did engage in such analysis and found the record wanting, the Court should have, based on the *Heller II* remand, ordered additional briefing regarding Defendants' justifications. *See id.*

As the Court noted at oral argument, it finds that Defendants' arguments in support of their motion are somewhat disingenuous. As the Court stated in its decision, the Ninth Circuit's conclusion in *Peruta* that "the carrying of an operable handgun outside the home for the lawful purpose of self-defense, though subject to traditional restrictions, constitutes 'bear[ing] Arms' within the meaning of the Second Amendment," *Peruta v. Cnty. of San Diego*, 742 F.3d 1144,

1166 (9th Cir. 2014), was not surprising in light of other circuits that had reached the same result. *See* Dkt. No. 51 at 14 (citing [*Peruta*, 742 F.3d at 1166]). In so stating, this Court made clear, as did the Ninth Circuit in *Peruta*, that those circuits had **either held or assumed** that the right to bear arms implies a right to carry outside the home. *See id.* (citing [*Peruta*, 742 F.3d at 1166] (citing *Moore*, 702 F.3d at 936 ("A right to bear arms thus implies a right to carry a loaded gun outside the home."); *Drake*, 724 F.3d at 431 (recognizing that the Second Amendment right "*may* have some application beyond the home"); *Woollard v. Gallagher*, 712 F.3d 865, 876 (4th Cir. 2013) ("We . . . assume that the *Heller* right exists outside the home. . . ."); *Kachalsky*, 701 F.3d at 89 (assuming that the Second Amendment "must have *some* application in the very different context of the public possession of firearms")).

Moreover, despite Defendants' assertion to the contrary, this Court very clearly noted that, although the core of the Second Amendment was the right to bear arms for self-defense, there was a difference between the burdens that the government could place on the exercise of that right depending on whether individuals were exercising that right at home or in public. *See* Dkt. No. 51 at 15-16.

Finally, as the Court clearly stated in its option and at oral argument, it was not necessary to determine what level of scrutiny applied in this situation because, "[i]n light of *Heller*, *McDonald*, and their progeny, there [was] no longer any basis on which this Court [could] conclude that the District of Columbia's total ban on the public carrying of ready-to-use handguns outside the home [was] constitutional under **any level of scrutiny**" be it intermediate or strict. *See* Dkt. No. 51 at 16 (emphasis added). As the Court explained at oral argument, if and when Defendants present this Court with a statute that provides some limitations on the carrying of

handguns in public, rather than a total ban on such activity, the Court will then be required to determine whether to apply strict or intermediate scrutiny to those limitations in order to decide whether they passed constitutional muster under the appropriate level of scrutiny. That, however, is not the issue now before the Court.

For all these reasons, the Court concludes that Defendants have not sustained their burden to establish that the Court's decision was based on a clear error of law. At best, Defendants' motion for reconsideration presents a disagreement with the Court's interpretation of the relevant law, which, although it may be grounds for an appeal, is not a proper basis for a motion for reconsideration.

III. CONCLUSION

After reviewing the entire file in this matter, the parties' submissions and oral arguments, and the applicable law, and for the above-stated reasons, the Court hereby

ORDERS that Defendants' motion for reconsideration of the Court's July 26, 2014 Memorandum-Decision and Order is **DENIED**.

IT IS SO ORDERED.

Dated: November 6, 2014
Syracuse, New York

Frederick J. Scullin, Jr.
Senior United States District Court Judge