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Opinion ▶

Packing Heat

Does the Second Amendment apply outside the home?

By Jacob Sullum

[write the author](#)

April 01, 2010

On March 2, the U.S. Supreme Court heard arguments addressing whether the Second Amendment applies outside of jurisdictions controlled by the federal government. The court will almost certainly say that it does, and soon it may consider a question that should be equally easy to answer: whether the Second Amendment applies outside of the home.

In 2008, the first time the Supreme Court explicitly declared that the Second Amendment protects an individual right to "keep and bear arms," it ruled that the District of Columbia's handgun ban violated that right. Since the Chicago handgun ban at issue in the case the Court heard on March 2 is virtually identical, it will be overturned if the Court concludes that the Second Amendment binds states and cities as well as the federal government. Because the Court has ruled that almost all of the other guarantees in the Bill of Rights apply to the states by way of the 14th Amendment, it would be very strange if the fundamental right to armed self-defense did not make the cut.

Assuming the Court strikes down Chicago's handgun ban, what other forms of gun control could be vulnerable? Since the Second Amendment protects the right to "bear" arms as well as the right to "keep" them, restrictions on carrying guns in public are a ripe target.

Forty-one states either do not require a permit to carry a handgun or issues one to anyone who

Opinion

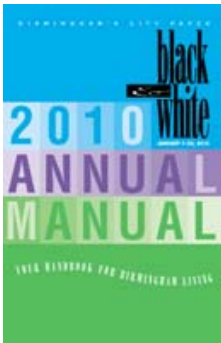
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satisfies a few objective criteria, which generally include firearms training and lack of a criminal record. Seven states let local officials decide whether to issue permits, and Illinois, Wisconsin, and Washington, D.C., do not allow even that option.

Last summer, Tom Palmer, one of the original plaintiffs in the D.C. gun-ban case, filed a federal lawsuit that challenges the district's prohibition on carrying guns in public. Palmer, a scholar at the Cato Institute, knows from personal experience that such restrictions can be deadly. He vividly recalls how brandishing a handgun on a northern California street saved him from a group of thugs who shouted antigay slurs and threats at him on a summer night in 1982.

District officials predictably warn that chaos would ensue from allowing law-abiding people to carry guns in public. But that has not happened in any of the states that allow their residents to do so.

Although the crime-reducing benefits of such policies remain controversial, the blood-soaked visions of doomsayers who imagined routine arguments regularly culminating in gunfire have not transpired in the two decades since Florida started the trend toward liberalization of its gun carry laws. In fact, data from Florida, Texas, and Arkansas indicate that permit-holders are far less likely to commit gun crimes (or other offenses) than the general population.

The experiences of these jurisdictions show that there is no safety benefit from prohibiting public carrying of guns that could possibly outweigh the Second Amendment interests at stake. Palmer and his co-plaintiffs concede that a city or state may bar guns from "sensitive places such as schools and government buildings" or regulate the manner in which they are carried—policies the Supreme Court called "presumptively lawful" in its 2008 decision. But they argue that the Second Amendment cannot reasonably be read to allow "a total ban on the exercise of the right to bear all arms, by all people, at all times, for all purposes."

The Supreme Court said a handgun ban is especially problematic when it extends to "the home, where the need for defense of self, family, and property is most acute." But in his dissent, Justice John Paul Stevens worried that the D.C. ban "may well be just the first of an unknown number of dominoes to be knocked off the table," in light of "the reality that the need to defend oneself may suddenly arise in a host of locations outside the home."

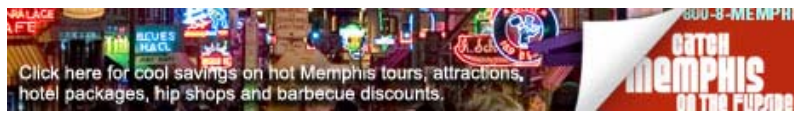
For people like Tom Palmer who are intimately familiar with that reality, the falling of those dominoes will be something to celebrate. &

Jacob Sullum is a senior editor at Reason magazine.



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