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FIREARM REGISTRATION

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You asked if federal law prohibits states from requiring gun owners to register their firearms.

SUMMARY

Federal statutes do not prohibit states from requiring gun owners to register their firearms. (But they place some restrictions on federal government use of certain federal firearm databases.) Hawaii, for example, has a very comprehensive registration system, requiring all firearms, with minor exceptions, to be registered. The District of Columbia (D.C.) also requires firearm registration. And Connecticut is among a few states that have partial gun registration schemes. Connecticut requires assault weapons and machine guns to be registered with the Department of Public Safety (DPS).

Even though federal statutes do not prohibit states from requiring gun registration, registration is among several gun control measures that are being challenged on 2nd Amendment grounds in the wake of two U.S. Supreme Court rulings that the 2nd Amendment protects an individual's right to possess firearms for lawful use, such as self-defense, in the home (*District of Columbia v. Heller* (128 S. Ct. 2783 (2008) and *McDonald v. Chicago* (130 S. Ct. 3020 (U.S. 2010))). Both *Heller* and *McDonald* stated that (1) the 2nd Amendment right to possess firearms does not confer a right to possess any firearm, anywhere, and for any purpose and (2) some gun regulation is "presumptively lawful." But the decisions left it to future courts to determine the constitutionality of gun control measures not specifically cited in the decisions as presumptively lawful. This includes firearm registration.

We have found no post-*McDonald* court case that has considered registration requirements. But post-*Heller* courts have upheld such requirements. For example, a federal appeals court in Chicago ruled that mandatory firearm registration is constitutional (*Justice v. Cicero*, 577 F.3d 768 (7th Cir. 2009)). According to the court, even if *Heller* applied to the states and local governments, the town's mandatory registration requirement would still be constitutional because, unlike the law struck down in *Heller*, the Cicero ordinance merely regulates, but does not prohibit, gun possession. And in 2010 a federal district court upheld the District's registration requirements, concluding that "there is at least a substantial nexus between the registration requirements and the important governmental interest underlying those requirements (*Heller v. District of Columbia*, 698 F. Supp. 2d 179, 193 (D.D.C. 2010)). We found no court case that has considered Connecticut's machine gun or assault weapon registration provisions.

A few states prohibit firearm registration. They include Delaware, Georgia, Idaho, South Dakota, and Vermont.

FEDERAL LAW

Federal law does not prohibit states from mandating firearm registration. But it places some restrictions on federal agencies. According to federal law, the National Instant Criminal Background Check System (NICS):

including the NICS Audit Log, may not be used by any Department, agency, officer, or employee of the United States to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited from receiving a firearm by 18 USC 922(g) or by state law (28 CFR § 25.9(b)(3)).

NICS is the federal database used in determining if prospective gun buyers are disqualified from acquiring or possessing firearms under state or federal law.

Since 1934, Congress has strictly regulated the manufacture, transfer, and possession of certain classes of firearms. The firearms are regulated by the 1934 National Firearms Act (NFA) (26 USC § 5801 *et seq.*) and the 1968 Gun Control Act, as amended by the 1986 Firearms Owners' Protection Act (18 USC § 921 *et seq.*). With limited exceptions, NFA firearms, including machine guns, short-barreled shotguns, and short-barreled rifles, must be registered with the U.S. Treasury (26 USC § 5841).

The Firearms Owners' Protection Act specifically prohibits using information collected on firearms under the act in any registration system. The act states as follows:

No such rule or regulation prescribed after the date of the enactment of the Firearms Owners' Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established (18 USC § 926(a)).

HAWAII REGISTRATION REQUIREMENTS

With few exceptions (not at issue here), Hawaii requires firearm owners to register their firearms with the police chief of the county in which they reside within five days of acquiring them (Haw. Rev. Stat. Ann. § 134-3(b)). The registration must include the:

1. names of the firearm manufacturer and importer;
2. model, type of action, caliber, or gauge, and serial number of the firearm; and
3. source from which the firearm was obtained, including the previous registrant's name and address.

Also, people bringing firearms into Hawaii must register them with the police chief in the county where they have a business, live, or plan to stay within three days after they or the firearms arrive, whichever is later (Haw. Rev. Stat. Ann. § 134-3(a)).

Registration information that identifies a registrant is disclosable only for law enforcement use or pursuant to court order.

D.C. REGISTRATION REQUIREMENTS

D.C. law mandates firearm registration. As part of the registration procedures, an applicant must, among other things, (1) complete an appropriate firearm training course, (2) specify the intended use of the firearm and where it will be kept, and (3) submit to a background check once every six years to demonstrate that he or she meets registration standards. The registration is valid for three years (D.C. Code Ann. §§ 7-2502.01, 7-2502.02, 7-2502.03(b), 7-2502.06(a), 7-2502.07, & 7-2502.08).

CONNECTICUT REGISTRATION LAWS AND PENDING LEGISLATION

Connecticut is among a few states and localities that have a registration scheme for certain firearms. These other states include:

1. California (pre-ban assault weapons, Cal Penal Code §§ 12280 & 12285(a));
2. New Jersey (pre-ban assault weapons, N.J. Stat. Ann. § 2C:58-12);
3. Chicago (all firearms, Chicago, Ill., Code §§ 8-20-040 *et seq.*);
4. Cleveland (handguns, Cleveland, Ohio, Code §§ 674.02 & 674.05); and
5. Omaha (concealable firearms, Omaha, Neb., Code §§ 20-251, 20-253, & 254).

ASSAULT WEAPONS

With minor exceptions (not included here), it is illegal, under Connecticut law, to possess assault weapons unless the owner possessed it before October 1, 1993 and obtained a DPS certificate of possession within the deadlines specified in law ([CGS §§ 53-202d\(a\)](#) and [53-202m](#)).

Although the statute requiring the certificate does not use the term “registration,” the features of the law are comparable to the machine gun registration statutes. The certificate of possession must contain a description of the firearm that identifies it uniquely, including all identification marks. It must also include the owner’s full name, address, date of birth, thumbprint, and any other information DPS deems appropriate ([CGS § 53-202d](#)).

Machine Guns

Under Connecticut law, private citizens may own machine guns, provided they register them pursuant to federal law and with DPS. Failure to register a machine gun with DPS is presumed possession for an offensive or aggressive purpose. Possession of a machine gun for an offensive or aggressive purpose is punishable by a fine of up to \$1,000, imprisonment for five to 10 years, or both ([CGS § 53-202\(h\)](#)) and [53-202k](#).

Pending Bill

Proposed Bill ([HB 5800](#)) currently before the Public Safety Committee, would, among other things, require anyone who (1) buys a firearm to register it with DPS within 10 days of purchase and (2) currently owns a firearm to register it within 10 days of the bill's effective date.

CASE LAW

Heller and McDonald

In *Heller*, the U.S. Supreme Court held that the 2nd Amendment protects an individual right to possess firearms for lawful use, such as self-defense, in the home. Accordingly, it struck down as unconstitutional provisions of a D.C. law that (1) effectively banned possession of handguns by non-law enforcement officials and (2) required lawfully owned firearms to be kept unloaded, disassembled, or locked when not located at a business place or being used for lawful recreational activities.

Because D.C. is under federal jurisdiction, the *Heller* decision was considered a federal measure that applied only in federal jurisdictions. Faced with a similar Chicago gun ban in *McDonald*, the Court did not rule on the constitutionality of the ban, deciding instead to reverse and remand the case for additional proceedings. But the Court's decision on the 2nd Amendment made it clear that such bans are unconstitutional when imposed by states and cities, not just federal jurisdictions.

While the Court made it clear that an outright handgun ban is unconstitutional, it said that some firearm regulation is constitutionally permissible because the 2nd Amendment does not confer a right to possess any firearm, anywhere, and for any purpose. The *Heller* Court provided a list of "presumptively lawful" regulations. The list did not include registration, but the Court noted that the list is not exhaustive. And neither *Heller* nor *McDonald* set criteria for determining what laws would meet this standard. Thus, the Supreme Court left it to future courts to decide what laws not included in the list of presumptively legal regulations would be constitutional. This includes firearm registration.

For a more complete discussion of (1) *Heller*, see OLR Report [2008-R-0578](#) and (2) *McDonald*, see [2010-R-0314](#).

Justice v. Cicero

Justice v. Cicero involved a 2nd Amendment challenge to the Chicago-area town of Cicero's ordinance that (with some exceptions, not at issue here) requires firearm owners to register their firearms every two years. The case was decided after *Heller* but before *McDonald*.

During a police raid on property controlled by Justice, the police discovered six unregistered handguns. Justice claimed that the registration ordinance violated his 2nd Amendment rights to possess firearms, as stated in *Heller*.

The relevant portion of the ordinance reads as follows:

All firearms in the town shall be registered in accordance with this division. It shall be the duty of a person owning or possessing a firearm to cause such firearm to be registered. No person shall within the town possess, harbor, have under his control, transfer, offer for sale, sell, give, deliver, or accept any firearm unless such person is the holder of a valid registration certificate for such firearm. No person shall, within the town, possess, harbor, have under his control, transfer, offer for sale, sell, give, deliver, or accept any firearm which is unregistereable under this division (Cicero, Ill. Code of Ordinances § 62-620).

The federal appeals court found that the ordinance did not violate Justice's constitutional rights because the 2nd Amendment does not regulate the activities of a state or its subdivisions. But the court added that "even if we are wrong" and the 2nd Amendment applies:

there is a critical distinction between the D.C. ordinance struck down in *Heller* and the Cicero ordinance. Cicero has not prohibited gun possession in the town. Instead, it has merely regulated gun possession under § 62-260 of its ordinance. Nor does *Heller* purport to invalidate any and every regulation on gun use; to the contrary, the Court in *Heller* disclaims any such intent. . . (577 F 3d 768, 774).

Heller v. District of Columbia

After the *Heller* decision, D.C. passed the 2008 Firearms Registration Amendment Act “to cure the constitutional deficits that the Supreme Court had identified in *Heller*.” Dick Heller, *et al*, challenged three provisions of the D.C. Firearms Registration Act on 2nd Amendment grounds: (1) the firearm registration procedures, (2) the ban on assault weapons, and (3) the ban on large capacity ammunition feeding devices. (*Heller v. District of Columbia*, 698 F. Supp. 2d 179 (D.D.C. 2010). With regard to the registration requirements (D.C. Code §§ 7-2501.01 *et seq.*), the plaintiffs claimed that “these registration requirements both individually and in the aggregate, are so unduly burdensome that they cannot withstand heightened scrutiny” (*Id* 189).

The court noted that the Supreme Court has yet to “squarely address” the constitutionality of firearm registration, but that it had suggested in *Heller* that such a requirement is not unconstitutional. The court also noted that several other courts had upheld registration and licensing requirements in the wake of *Heller*, concluding that “because registration requirements only regulate, rather than prohibit, the possession of firearms, they do not infringe the Second Amendment right” (*Id* 190).

The court noted that intermediate scrutiny was the most appropriate standard of review to apply to the challenged laws. To pass intermediate scrutiny, a law must be substantially related to serving an important government interest. The court concluded that the registration laws passed the test and denied the motion for summary judgment. According to the court:

Because the Council provided ample evidence of the ways in which the registration requirements will effectuate the goal of promoting public safety, and because public safety is a quintessential matter of public regulation, the court concludes that there is at least a substantial nexus between the registration requirements and the important governmental interest underlying those requirements (*Id* 192, 193).

The case is on appeal.

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