

TCAA Summer Conference
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Municipal Regulation of Firearms

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Federal Law Limitations

- *District of Columbia v. Heller*
 - Handgun ban
 - Disassembly requirement
 - = *unconstitutional*
- *Mc Donald v. City of Chicago*
 - Handgun ban
 - = *unconstitutional*
 - 2nd amendment applied to states



Federal Law Limitations

Important Cases after Heller & McDonald

- *United States v. Bogle*
 - Felons owning firearms
- *Illinois Ass'n of Firearms Retailers v. City of Chicago*
 - Banned virtually all sales and transfers
- *New York Rifle & Pistol Ass'n v. Cuomo*
 - Assault weapon ban and limit on high capacity magazines

Federal Law Limitations

Important Cases after Heller & McDonald

- *Drake v. Filko (3rd Cir.)- upheld*
 - “justifiable need” requirement for concealed carry permit
 - *Woollard v. Gallagher (4th Cir.)- upheld*
 - “good and substantial reason” requirement for carry permit
 - *Peruta v. County of San Diego (9th Cir.)-struck down*
 - “good cause” requirement to obtain concealed carry permit
- =Split in the Circuits

5th Circuit after Heller & McDonald

- *NRA of America v. Bureau of Alcohol*
 - Fed regs prohibiting the sale of handguns to persons under 21 challenged. Upheld.
- *NRA of America, Inc. v. McCraw*
 - Challenge to a part of Texas concealed handgun licensing statutory scheme. Upheld.
 - Prohibited persons aged 18-20 from obtaining CHL



Take Aways



- **Supreme court** - handgun bans and disassembly requirements = unconstitutional
- **5th Circuit** - “effect” of banning handguns = unconstitutional
- Felons cannot possess firearms
- 2 step inquiry
 - Impinge on 2nd amendment?
 - What level of scrutiny?

Take Aways



- Scrutiny depends on nature of conduct being regulated
- Longstanding, presumptively lawful regulatory measure likely to be upheld
- Courts reluctant to base ruling off of first step (does it impinge 2nd amendment?)
- Law must be adapted to achieve an important government interest

Texas Local Government Code § 229.001

No regulations relating to:

- Transfer
- Private ownership
- Keeping
- Transportation
- Licensing or registration
- Discharge at a shooting range



Texas Local Government Code § 229.001

Has authority to:

- Require residents or public employees to be armed
- Regulate
 - Discharge of firearm in city limits
 - Use of firearms during riot, insurrection, or natural disaster
 - Storage or transportation of explosives
 - Carrying of a firearm by a person without a CHL
 - Hours of operation of a shooting range



Texas Local Government Code § 229.002

Can't regulate discharge of weapon in ETJ if it is

- A shotgun, air rifle or pistol, BB gun or bow and arrow
 - On 10 acres or more
 - More than 150 feet from residence
 - Not expected to cross the tract



Texas Local Government Code § 229.002

Can't regulate discharge of weapon in extraterritorial jurisdiction if it is


- A center fire or rim fire rifle or pistol of any caliber
 - On 50 acres or more
 - More than 300 feet from residence
 - Not expected to cross the tract





Texas Agriculture Code § 251.005

City requirements do not apply to certain agricultural operation unless reasonably necessary to protect persons who reside nearby from:

- Explosion
- Flooding
- Vermin
- Insects
- Physical injury
- Contagious disease
- Radiation
- Storage of toxic materials
- Traffic hazards
- Removal of lateral or subjacent support
- Contamination of water supplies
- Discharge of weapons (but still subject to Texas Local Government Code § 229.002 though)



Texas Local Government Code § 250.001



- “Gun Range Protection Act”
- Official cannot seek criminal or civil penalty based on noise regulation if:
 - Shooting range is in compliance with ordinance
 - No applicable noise ordinance exists

CHL Limitations



Penal Code 30.06(e)

Property owned or leased by a governmental entity - cannot prohibit CHL holder unless

- During a meeting
- Polling place
- Court



Texas Government Code § 411.203

- Can restrict employees from carrying a handgun on premises
- Premises excludes
 - Public or private driveway
 - Street
 - Sidewalk
 - Parking lot
 - Parking garage



