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Appeals court: No Second Amendment right to carry concealed firearms in public





Guns line a wall of the firearms reference collection at the D.C. police headquarters. A federal appeals court has put on hold a lower court ruling that cast doubt on the constitutionality of the District's gun-control law. (Jacquelyn Martin/AP)

By Ann E. Marimow
Local
June 9, 2016 □

A federal appeals court has temporarily suspended a lower court ruling that cast doubt on the constitutionality of a key provision of the District's gun-control law.

A three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit said this week that the court would move quickly to review the law that requires residents to show "good reason" to obtain a license to carry a firearm on the streets of the nation's capital.

The D.C. law is similar to those in Maryland, New Jersey and New York that federal appeals courts have said are constitutional. On Thursday, a

federal appeals court in California upheld a similar policy in San Diego.

In a split decision, the U.S. Court of Appeals for the 9th Circuit said that there “is no Second Amendment right for members of the general public to carry concealed firearms in public.”

The San Diego policy states that “simply fearing for one’s personal safety alone is not considered good cause” for the purposes of obtaining a license.

The majority opinion, written by Judge William A. Fletcher, made a distinction between concealed carry and open carry, and did not try to answer whether the Second Amendment protects “some ability to carry firearms in public, such as open carry.”

The Supreme Court in 2008 used a D.C. case to declare an individual right to bear arms, but it has not yet ruled on whether firearms regulations for carrying in public, such as those in San Diego and the District, are constitutional.

In the District, resident Matthew Grace and the gun rights group Pink Pistols said the local law violates their rights to carry in public for self-protection, including against nonspecific or unexpected threats.

The D.C. Circuit order — issued by Judges Thomas B. Griffith, Sri Srinivasan and Patricia A. Millett — put on hold a decision by U.S. District Court Judge Richard J. Leon. In May, Leon found that the city’s gun regulation is probably unconstitutional because it infringes on the Second Amendment’s “core right of self-defense.”

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Leon's ruling is directly at odds with another judge's decision on the same court in a similar case that is also pending in the D.C. Circuit.

[Judge strikes down D.C. gun law as probably unconstitutional]

D.C. Attorney General Karl A. Racine said Thursday that the panel's order will allow the city to fully enforce its gun laws while it appeals Leon's decision.

"The District's gun laws are constitutional, reasonable, and in line with laws in other states that three other federal appellate courts have upheld," he said in a statement.

[Read more from the D.C. Circuit's order here]

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Ann covers legal affairs in the District and Maryland for the Washington Post. Ann previously covered state government and politics in California, New Hampshire and Maryland. She joined the Post in 2005. Follow @amarimow

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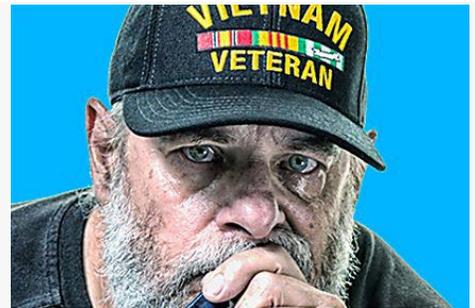
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sosueme1

6/11/2016 9:38 AM EDT

Any ruling from the the Sixth *Circus* should be immediately uploaded to Saturday Night Live for ridicule, scorn and contempt.

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k85756

6/10/2016 11:57 PM EDT

This has already been decided. In 2008 the Supreme Court held that the right to bear arms means carrying them in public. Since California has banned open carry, then it must allow concealed carry as a right. This gets fixed when prison terms are given out to people who violate the law.

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Brooksville69

6/10/2016 8:10 PM EDT

If anyone cares about the facts, they will find that over 95% of mass shootings occur in "gun free zones" designated by Liberals. Terrorists and killers might be a little crazy, but they are not stupid. Liberals either refuse to admit that the reason these shooting are occurring at schools, movie theaters, airports and museums and areas known to have been designated gun free zones or they want mass murders to take place so that they have a better argument for taking our guns. They don't care about people being murdered, they want all your guns so that you have no way of protecting your family from a corrupt and out of control government. We are in a battle for our country and our lives. Today, all Democrats are Socialists or Communists and if they are not, they just sit down a take orders from those who are. These anti-American, anti-God disgusting excuses for human beings are taking our country while freedom loving Americans sit and do nothing. Wake up, people.

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Troy Scott

6/10/2016 7:55 PM EDT

In 2002 Stockton had 36 murders and a murder rate of 14.2. 13 years later after passing 73 different state gun laws, in 2014 they had 49 at a rate of 16.4. Stockton is not the only city with this story. There is a long list. I am glad to see CA passing these laws. They give us hard evidence that we can say "look it has not worked for them" keep up the good work guys!

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lux-et-veritas

6/10/2016 8:48 PM EDT [Edited]

Stockton, seriously? Stockton's one of the 10 most dangerous cities in the U.S.. It filed for bankruptcy. Thanks to tough policing their overall crime rates down. You really think law abiding citizens being able to defend themselves in Stockton or across the state is THE PROBLEM. You don't like the 2nd amendment, amend the Constitution and stop legislating from the bench. It's no wonder the SCOTUS overturns 80% of the 9th Circuits decisions. This one's cosmically stupid.

Like



troydonscott

6/10/2016 11:42 PM EDT

No just saying. Stockton, Irvine, Compton, Los Angeles as a whole, and a whole list of cities. Crime is not down. They would like you to believe that but. If you think crime is down there there is a list of things you can look up for yourself. FBI table 8 is a good one to start with. You can download to Excel and analyze the data yourself. Most people will not go to this trouble

but rather take the gun control group's figures as fact. When MOMS gives a statistic you should look it up for yourself before you just believe it. Trust me it has some "qualifiers" involved. Some other good ones are FBI table 20, go back year by year. (gun murder/all murder) You have to ask year per year why gun murder percentage has increased. A person would think that with strong gun control laws the percentage of gun murders would go down. Don't use CDC data. Congress busted them out a few years ago for "manipulating data" like they classify children as up to 24 years old so they can gather in more gang shootings. Do the research for yourself!

Like



lux-et-veritas

6/11/2016 9:01 AM EDT

@Troy: Thanks, on first reading it seems to me you were taking an anti second position. After reading your clarification I was wrong. I do read the statistics as well as the propoganda Everytown/Bloomberg puts out. And I don't use Johns Hopkins data, et.al., since its Public Policy school is owned by Bloomberg.

As for the 9th Circuit's decision, I thought it bizarre even for them. By ignoring Ca's current ban on both concealed and open carry they appear to face certain reversal even in the current SCOTUS. Seems to me Ca's problem has less to do with law abiding citizens carrying firearms and more with lax, hamstrung law enforcement. Thanks

Like



Howleyesque

6/10/2016 6:17 PM EDT

As the "state" of the People's Republik of Californication once again prove that their "educational system" is SOO bad that even the MORONS it has for "judge's" are incapable enough in the way of reading comprehension to grasp the meaning of the simple English words (MAYBE THAT'S THE PROBLEM... the Founding Fathers didn't write it in SPANISH for them!) "... right to BEAR (as in CARRY ON ONE'S PERSON) ...arms, SHALL NOT BE INFRINGED!"

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luridone

6/10/2016 7:24 PM EDT

Perhaps it's you who lacks reading comprehension skills - you missed the part about a "well-regulated militia." Before impugning the intelligence of others, make sure you're not being a moron yourself.

OOOOOPS, in your case, it's too late.

Like



lux-et-veritas

6/10/2016 8:17 PM EDT [Edited]

@Luri: "well regulated militia" has nothing to do with military unit under Government Control. The "militia" means the People and well regulated means that they train themselves in the use of their arms. Here's a link to the definitive SCOTUS case which dissects the 2nd amendment and interprets it in the manner intended by the Founders:

<https://supreme.justia.com/cases/federal/us/554/57...>

I think you'll find it interesting reading, Scalia could really craft an opinion. This decision will likely be overturned by SCOTUS as are 80% of the 9th Circuits decisions.

Regards

Lux

Like



lux-et-veritas

6/10/2016 3:16 PM EDT [Edited]

THIS CASE IS NOT WHAT IT SEEMS TO BE. The anti 2nd zealots are in store for a surprise. If these points have already been made I apologize.

This case made it to the 9th Circuit from a lower court. At the time of the lower Court's decision California PERMITTED limited open carry, but DISALLOWED concealed carry. However, by the time the case reached the 9th circuit, California had disallowed any open carry. Thus, what faced the 9th was a case dealing solely with concealed carry at a time when California does not permit either concealed or open carry. The 9th admits in their ruling that this presented a problem vis a vis Heller. California had effectively rendered the 2nd amendment meaningless.

The 9th sidestepped the issue by limiting its decision to the only issue before it, Concealed Carry, and left the question of Open Carry for another day. California will likely be taken to Court to restore the right to open carry.

As for the predictable SCOTUS appeal on this case (concealed carry), notwithstanding an evenly divided court, there's a fair chance this decision will be overturned or remanded for two reasons.

First, California's currently disallows BOTH concealed and open carry. Clearly this renders the 2nd amendment meaningless.

Second, the 9th Circuit is the most overruled Circuit in the Country. 80% of all 9th's

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Howleyesque

6/10/2016 6:20 PM EDT

Perhaps you FOOLS are incapable of comprehending "right to BEAR ARMS... SHALL NOT BE INFRINGED!" IN SHORT, you're as much of a blithering idiot as those SO CALLED judge's if you think for even ONE SECOND that said ruling was IN ANYWAY Constitutional!

Like



lux-et-veritas

6/10/2016 6:28 PM EDT

@How: What part of what I wrote don't you understand? I merely provided you with the reasons why the Ruling would fall because it is unconstitutional. No need to beat up people who agree with you is there?

2 ·  Like

Troy Scott

6/10/2016 8:10 PM EDT

California does not outlaw concealed carry. Concealed carry is heavily scrutinized. When one person gets to decide who carries it comes down to rich, popular, and/or Democrat. Just like Australia or the UK.

Like



lux-et-veritas

6/10/2016 8:26 PM EDT [Edited]

@Troy: California limits concealed carry to a small group of professionals. For all intents and purposes they will not license the public which was what motivated this case. As for Australia, they have a Confiscation law where citizens are forced to turn their firearms over for whatever the Govt's. willing to pay. I'm told that many firearms owners didn't comply and secretly held onto their firearms. California can't have it both ways. They can't refuse to license the law abiding public for both concealed AND open carry. That effectively negates the 2nd. One or both will fall.

Here's a link to the 9th decision:

<http://cdn.ca9.uscourts.gov/datastore/general/2016...>

Like



cashisking884

6/10/2016 10:54 AM EDT

Almost every single state constitution modeled after the Second Amendment, added "concealed carry" prohibitions to the state constitution. Basically, states said, "We like that Second Amendment. We want to give our citizens the same arms rights as it relates to our state government, that they have as it relates to the federal government. EXCEPT we want to be able to prohibit concealed carry."

This of course destroys the idea that the Second Amendment was understood to be a "militia" right, as the military never has, and never will "conceal carry." Concealed carry is strictly a private, individual act. So for states to want to be able to ban concealed carry, means they were operating under the assumption that the Second Amendment was a private, individual right.

But this also shows that the Second Amendment protected concealed carry. If states were copy and pasting the Second Amendment, they wouldn't have added the ability to prohibit concealed carry, UNLESS they were all operating under the assumption that the Second Amendment protected concealed carry. States wanted to transfer all protections that the Second Amendment gave you, EXCEPT concealed carry. So they explicitly took that out of the "protection basket."

And now the 9th Circuit is using the history of states granting themselves the right to ban concealed carry because the Second Amendment didn't, as evidence that the Second Amendment didn't protect concealed carry. It's actually funny if you can get over how dishonest a legal argument it is.

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daver20121

6/10/2016 10:46 AM EDT

Sorry NRA and their sycophants, now that two federal courts have ruled against you means that a tied Supreme Court allows their decisions to stand. Get over it.

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BojanglesTwo

6/10/2016 10:38 AM EDT [Edited]

"The District's gun laws are constitutional, reasonable, and in line with laws in other states that three other federal appellate courts have upheld,"

No it's not -- DC only approves a mere 20% of concealed carry permits for law abiding citizens. That's not even close to being a "reasonable" number in a city with a violent crime

rate that is a clear public safety crisis. Violent crime has increased in every category including murder -- up 59% in 2015 alone. DC crime is the highest it's been since 2008.

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Watcher2018

6/10/2016 9:32 AM EDT

Courts back on track to disavow Second Amendment.

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daver20121

6/10/2016 10:48 AM EDT

Sad, I see you also retired from your senses.

3 ·  Like



luridone

6/10/2016 7:25 PM EDT

Perhaps reinserting the phrase, "a well-regulated militia" is too much for you.

Like

Robert Miller

6/11/2016 9:39 AM EDT

We can reinsert "a well-regulated militia" as long as you are willing to reinsert the Article 1, Section 8, Clause 16 obligation on Congress to arm and discipline the militia. And you are willing to reinsert the Ninth Amendment into the equation that extends the right of the people to keep and bear arms to all other exercise of our rightful liberty.

Like



gwsjr425

6/10/2016 8:59 AM EDT

"The protection of the Second Amendment — whatever the scope of that protection may be — simply does not extend to the carrying of concealed firearms in public by members of the general public."

Umm, if you ask "whatever that scope may be" then how can you possibly follow it up with a definitive statement that limits that very scope you questioned?

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moronmoron

6/10/2016 8:56 AM EDT

Show me the Second Amendment language that allows government to prohibit bearing arms.

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Watcher2018

6/10/2016 9:32 AM EDT

Second Amendment says purpose was for Militia (now National Guard.) Federal and State military and law enforcement no longer use privately owned guns (at least legally) for protecting the nation. Lack of prohibition against sanctions government to prohibit bearing arms.

1 ·  Like



moronmoron

6/10/2016 9:46 AM EDT

SCOTUS, Heller, "militia" is not material - this is an individual right.

3 ·  Like



DrDavid2

6/10/2016 10:35 AM EDT

National Guard is not a militia, it is a Reserve Component of the United States Army and Air Force.

5 ·  Like



cashisking884

6/10/2016 10:36 AM EDT

But then you're just ignoring Heller. The problem with this ruling is it follows how it thinks Heller SHOULD have been decided, not how Heller was decided. And I guess if you want lower Courts just ignoring the Supreme Court, that's fine. But that isn't much of a legal argument, more of a "moral" argument.

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hallofrecord

6/10/2016 8:48 AM EDT

You have rights?

This court now interprets the 2nd Amendment as the "right to bare arms". You also have the right to free speech as long as government-supported institutions don't classify it as hate speech. You have the right to be secure in your home and not subject to unreasonable

search and seizure unless the government considers you a threat under the Patriot Act. You have a right to a speedy trial which the government can define as any length of time ... years, in fact (just search "years wait for trial"). No bail shall be construed as "not excessive" at the discretion of a judge.

In other words, the Bill of Rights is not worth the paper on which it is printed.

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Robert Miller

6/10/2016 11:49 AM EDT

If it is indeed a dead letter then it could be argued our government has fulfilled the requirement of a long train of abuses while evincing a design to place us under absolute despotism that triggers the right and duty of the people to provide for their future security.

2 .  Like



bemho

6/10/2016 6:11 AM EDT

As usual, gun control advocates and anti-gun politicians seek to infringe upon the rights of law-abiding citizens rather than focus on criminal gun use. Makes crystal clear the real agenda behind gun control, at least, and puts the lie to the disingenuous rhetoric of gun control advocates.

And while the manner may be proscribed, the combination of laws cannot ban all manner of carrying, or bearing, arms for self defense. The court erred in not considering jointly all laws restricting the carrying firearms. Either open or concealed must be allowed under the Constitution, yet both are now banned in CA.

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BeBe Gaspard

6/10/2016 5:08 AM EDT

California, Is anyone surprise here.

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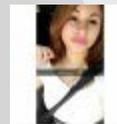
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