When All *Heller* Breaks Loose: Gun Regulation Considerations for Zoning and Planning Officials Under the New Second Amendment

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IN *DISTRICT OF COLUMBIA V. HELLER*, the United States Supreme Court recognized for the first time that there is a fundamental right to have a handgun in the home for self-defense.[1] Lower courts are now establishing a framework to apply *Heller* and its sister case, *McDonald v. City of Chicago*,[2] to all forms of local regulation, including land use controls. This article will discuss recent developments in Second Amendment jurisprudence, the methods that courts may use to evaluate gun regulations, and offer suggestions for zoning and planning officials to consider in regulating gun-related land uses.

I. The Second Amendment

A. *Militia Right or Individual Right?*

The Second Amendment states that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."[3] For nearly seventy years before the *Heller* decision, the prevailing view on the Second Amendment was articulated by the Supreme Court's holding in *U.S. v. Miller*.[4] In *Miller*, two men challenged a federal law prohibiting the transport of an unregistered short-barreled shotgun in interstate

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1. Dist. of Columbia v. Heller, 554 U.S. 570, 636 (2008).
2. McDonald v. City of Chicago, 130 S. Ct. 3020, 3027, 3050 (2010).
3. U.S. CONST. amend. II.
4. Amy Hetzner, Comment, *Where Angels Tread: Gun-Free School Zone Laws and an Individual Right to Bear Arms*, 95 MARQ. L. REV. 359, 365 (2011).

commerce, claiming it was unconstitutional under the Second Amendment.[5] The Supreme Court held:

> In the absence of any evidence tending to show that possession or use of a [short-barreled shotgun] at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense.[6]

The Supreme Court further remarked that the "obvious purpose" of the Second Amendment guarantee was to ensure the effectiveness of state militias.[7] Following *Miller*, state and federal courts followed this "collectivist approach" to rights under the Second Amendment, and generally no gun regulation would be invalid so long as it did not interfere with the state's ability to maintain well regulated militias.[8] Courts used the rational basis test to measure the validity of local gun regulations, and short of absolute bans on gun possession, the regulations would almost always prevail.[9]

B. Heller *and* McDonald: *Fundamental Right to Possess a Handgun for Self Defense, Especially in the Home*

In 2008, the U.S. Supreme Court finally defined the "core" Second Amendment right: an individual right to possess a handgun for self defense, especially in one's home.[10] In *District of Columbia v. Heller*, the Court addressed the constitutionality of Washington D.C.'s complete ban of handguns within its limits.[11] The *Heller* Court began with a seeming departure from the view articulated in *U.S. v. Miller*—the Second Amendment right is an individual right, not a militia right.[12] The Court admonished the "hundreds of judges" that "overread *Miller*" to assume the Second Amendment applied only to militias,[13] and emphasized that "*Miller* stands only for the proposition

5. United States v. Miller, 307 U.S. 174, 175 (1939).
6. *Id.* at 178.
7. *Id.*
8. Stephen Kiehl, Comment, *In Search of A Standard: Gun Regulations After Heller and McDonald*, 70 MD. L. REV. 1131, 1134 (2011).
9. *See id.* at 1136-37.
10. *Heller*, 554 U.S. 570, 595, 628–30 (2008).
11. *Id.*
12. *Id.* at 595.
13. *Id.* at 624 n.24.

that the Second Amendment right, whatever its nature, extends only to certain types of weapons."[14] The *Heller* majority maintained that the individual right discussed therein was entirely consistent with the view in *Miller*, including its focus on the type of the weapon involved.[15]

In recognizing an individual right to bear arms, the *Heller* Court identified clear limits. The Court held that the Second Amendment protects "an individual right to keep and bear arms," but not a right "to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose."[16] The Court specifically held that "the inherent right of self-defense [is] central to the Second Amendment right," especially in the home.[17] Because the District's ban targeted handgun possession in the home, and prohibited residents from "rendering any lawful firearm in the home operable for the purpose of immediate self-defense," it was unconstitutional.[18]

In *Heller*, the Court recognizes that there are certain types of firearms regulations that do not govern conduct within the scope of the Amendment. To identify which local regulations cross the line, the Court analogized to the framework developed under the First Amendment.[19] In doing so, *Heller* recognizes that certain "longstanding" regulations (*e.g.* assault weapons and protecting sensitive places) are "presumptively lawful" or constitutional, even without case-by-case justification.[20] Specifically, the Court carved out key exceptions to the Second Amendment's individual right:

> [N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the

14. *Id.* at 623.

15. Joseph Blocher, *Categoricalism and Balancing in First and Second Amendment Analysis*, 84 N.Y.U. L. REV. 375, 418 (2009).

16. *Heller*, 554 U.S. at 626.

17. *Id.* at 628.

18. *Id.* at 635.

19. *Id.* at 595 ("Of course the right was not unlimited, just as the First Amendment's right of free speech was not. Thus, we do not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for *any purpose*." (emphasis in original) (internal citations omitted)).

20. *Heller*, 554 U.S. at 626–27 & n.26; *see McDonald*, 130 S. Ct. 3020 at 3047 (2010) (*Heller* "did not cast doubt on [certain types of] longstanding regulatory measures"); United States v. Chester, 628 F.3d 673, 679 (4th Cir. 2010) (*Heller* "acknowledged that the scope of the Second Amendment is subject to historical limitations"); United States v. Marzzarella, 614 F.3d 85, 91 (3d Cir. 2010) (*Heller* indicates "longstanding limitations are exceptions to the right to bear arms"); United States v. Rene E., 583 F.3d 8, 12 (1st Cir. 2009) (*Heller* "identified limits" of the Second Amendment based upon "various historical restrictions on possessing and carrying weapons").

> carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.[21]

The Court added that this list of presumptively lawful regulatory measures was illustrative, not exhaustive.[22] Much like obscenity, the gun rights impacted by these limits are on the "fringes" of the constitutional right and "easily justified" by the public interest.[23] A plaintiff may rebut this presumption by showing the regulation does have more than a *de minimis* effect upon his right.[24]

Soon after the Court's decision in *Heller*, the Court reviewed handgun bans in Chicago and Oak Park, Illinois to determine whether the federal right extended to the individual states. In *McDonald v. City of Chicago*, the Court formally applied *Heller's* holding to the states through the Due Process Clause of the Fourteenth Amendment.[25] In applying the constitutional standard in *Heller* to the states, the *McDonald* Court noted that "[s]tate and local experimentation with reasonable firearms regulations will continue under the Second Amendment." As with most newly defined constitutional rights, the states serve as the laboratories and factories that test and form the right to fit society.[26]

II. The New Analytical Frameworks

A. *Third, Fourth, Seventh, Tenth and D.C. Circuits*

While *Heller* and *McDonald* announced a Second Amendment right, the Court did not announce a standard for lower courts to apply in enforcing this right.[27] The Third, Fourth, Seventh, Tenth and D.C. Circuits adopted a two-part model to use when addressing gun regulations:

> First, a severe burden on the core Second Amendment right of armed self-defense will require an extremely strong public-interest justification and a close fit between the government's means and its end. Second, laws restricting activity lying closer to

21. *Heller*, 554 U.S. at 626–27; *see also McDonald*, 130 S. Ct. at 3047 (repeating *Heller*'s "assurances" about exceptions).
22. *Heller*, 554 U.S. at 626–27.
23. *Id*. at 635.
24. Heller v. Dist. of Columbia, 670 F.3d 1244, 1253 (D.C. Cir. 2011).
25. *McDonald*, 130 S.Ct. 3020 at 3027, 3050 (2010) ("[I]n *Heller*, we held that individual self-defense is 'the *central component* [ ]' of the Second Amendment right."); Ezell v. City of Chicago, 651 F.3d 684, 689 (7th Cir. 2011).
26. *McDonald*, 130 S. Ct. at 3046.
27. *Heller*, 554 U.S. at 687 ("How is a court to determine whether a particular firearm regulation (here, the District's restriction on handguns) is consistent with the Second Amendment? What kind of constitutional standard should the court use? How high a protective hurdle does the Amendment erect?" (Breyer, J., dissenting)).

> the margins of the Second Amendment right, laws that merely regulate rather than restrict, and modest burdens on the right may be more easily justified. How much more easily depends on the relative severity of the burden and its proximity to the core of the right.[28]

The two-part "means-end" justification standard is modeled after the approach in First Amendment cases.[29] Under the adopted framework, these federal circuits first "decide whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantee [i.e. possession of arms for self-defense]. . . . If it does not, [the court's] inquiry is complete."[30] Accordingly, core Second Amendment rights (possession of handgun by lawful citizen for self-defense, especially in the home),[31] like core First Amendment protections (*e.g.* political speech), will have to withstand a review that approaches strict scrutiny.[32] On the other end of the regulatory spectrum are the "presumptively lawful regulatory measures" that are not subject to such exacting review, falling in what is sometimes described as *Heller's* "safe harbor."[33]

The regulations between the core Second Amendment right and the "safe harbor" remain open questions after *Heller*. As with the First Amendment, the level of scrutiny applicable under the Second Amendment surely "depends on the nature of the conduct being regulated and the degree to which the challenged law burdens the right."[34]

28. *Ezell*, 651 F.3d at 701–04 (7th Cir. 2011); *Chester*, 628 F.3d 673, 680 (4th Cir. 2010); United States v. Reese, 627 F.3d 792, 800–01 (10th Cir. 2010); *Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010).

29. *Ezell*, 651 F.3d at 703–04 (citing *Marzzarella*, 614 F.3d at 89).

30. *Id.*

31. Some courts have held that the core Second Amendment right is not confined to a person's residence. Woollard v. Sheridan, 2012 WL 695674, No. L–10–2068 (D. Md. Mar. 2, 2012)(finding right to bear arms is not limited to the confines of a person's residence because the protected purpose of self defense must take place wherever that person happens to be). However, it seems that more courts adopt the view that the core Second Amendment right is limited to the home. Moore v. Madigan, 2012 WL 344760, No. 11–cv–03134, 19–22 (C.D. Ill. Feb. 3, 2012)(citing a dozen cases limiting Second Amendment right to the home).

32. *Ezell*, 651 F.3d at 708.

33. *Heller*, 554 U.S. at 626–27; Kiehl, *supra* note 8, at 1138.

34. *Chester*, 628 F.3d at 682; *see also* Turner Broad. Sys., Inc. v. FCC (Turner I), 512 U.S. 622, 642 (1994) ("regulations that are unrelated to the content of speech are subject to an intermediate level of scrutiny because in most cases they pose a less substantial risk of excising certain ideas or viewpoints from the public dialogue" (citation omitted)); Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio, 471 U.S. 626, 651 (1985) ("unjustified or unduly burdensome disclosure requirements might offend the First Amendment by chilling protected commercial speech," but holding "that an advertiser's rights are adequately protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers"); Nelson Lund, *The Second Amendment, Heller, and Originalist Jurispru-*

The degree to which a gun right is protected depends on the history of the gun use and how equivalent actions would be treated at the time the Second Amendment was ratified.[35] Where most modern gun regulations did not exist at the time of ratification, a court will then consider whether the regulation that imposes a substantial burden upon the core right of self defense protected by the Second Amendment. If the burden is substantial, the regulation must have a strong justification, whereas a regulation that imposes a less substantial burden should be proportionately easier to justify.[36] While the adopted two-part test is in its infancy, it provides some boundaries for the Second Amendment, and guidelines for local governments to use when forming their own limits, such as zoning for gun-related uses, and setting registration requirements.[37]

B. *Ninth Circuit: The Substantial Burden Test*

The Ninth Circuit has adopted its own framework to evaluate the validity of gun regulations. The question in *Nordyke v. King* was whether the Second Amendment prohibits a local government from banning gun shows on its property.[38] In evaluating an ordinance that generally prohibited the possession of a firearm or ammunition on county property, making no exception for gun shows, the Ninth Circuit held that only regulations that substantially burden the right to keep and to bear arms should receive heightened scrutiny.[39]

In reaching this conclusion, the Ninth Circuit noted that the *McDonald* and *Heller* decisions urged a "substantial burden" approach based on the Supreme Court's evaluation of a regulation's relationship to the

dence, 56 UCLA L. REV. 1343, 1376 (2009) ("The case law dealing with free speech and the free exercise of religion provides a particularly good analogue" for Second Amendment).

35. *Heller*, 554 U.S. at 625.

36. *Ezell*, 651 F.3d at 703.

37. *Ezell*, 651 F.3d at 704 (citing *Marzzarella*, 614 F.3d at 89); *see also Chester*, 628 F.3d 673 at 680 (4th Cir. 2010) (a "two-part approach to Second Amendment claims seems appropriate under *Heller*, as explained by . . . the now-vacated *Skoien* panel opinion. . . ."); *Reese*, 627 F.3d 792, 800–01 (10th Cir.2010); United States v. Barton, 633 F.3d 168, 170–71 (3d Cir.2011); United States v. Masciandaro, 638 F.3d 458, 466–69 (4th Cir. 2011); United States v. Yancey, 621 F.3d 681, 683 (7th Cir. 2010); Justice v. Town of Cicero, 577 F.3d 768, 774 (7th Cir. 2009); *Marzzarella*, 595 F. Supp. 2d at 606 (W.D. Pa. 2009) *aff'd*, 614 F.3d 85 at 95 (3d Cir. 2010) (suggesting that a ban on guns with obliterated serial numbers should be reviewed as "content-neutral time, place and manner restrictions," and upholding the ban partly because it leaves "ample opportunity for law-abiding citizens to own and possess guns").

38. Nordyke v. King, 644 F.3d 776, 780 *reh'g en banc*, No. 07-15763, 2012 WL 1959239 (9th Cir. June 1, 2012).

39. *Id*. at 782.

"core right" protected by the Second Amendment.[40] Just as courts evaluate the "undue burden" imposed by abortion regulations, and the alternate channels of communication available for content-neutral speech regulations, the "substantial burden" analysis would seemingly avoid many of the difficult empirical questions as to the effectiveness of gun regulations that would arise under a strict scrutiny test.[41]

Applying this standard the Ninth Circuit found that the county ordinance did not substantially burden the Second Amendment right because the ordinance did not make it materially more difficult to obtain firearms or create a shortage of places to purchase guns in and around the county, because it merely eliminates gun shows on government property.[42]

The substantial burden test has been criticized, however, based on its similarity to Justice Breyer's "interest-balancing" approach that was rejected by the *Heller* and *McDonald* Courts.[43] Justice Breyer's suggested standard "asks whether the statute burdens a protected interest in a way or to an extent that is out of proportion to the statute's salutary effects upon other important governmental interests."[44] The *Heller* majority rejected this standard because "no other enumerated constitutional right . . . has been subjected to a freestanding 'interest-balancing' approach."[45] During a recent *en banc* rehearing of *Nordyke*, the Ninth Circuit left the "substantial burden" test in further limbo by declining to apply any test in affirming the dismissal of the Second Amendment challenge after the county reinterpreted its ordinance to permit gun shows on county property under certain conditions.[46] Meanwhile, the majority of courts announcing a standard of review have employed the kind of intermediate scrutiny described in Section II.A, which is emerging as a clear favorite of lower courts

40. *Id.* at 783.

41. *Id.* at 785 (citing Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833 (1992) (holding that pre-viability abortion regulations are unconstitutional if they impose an "undue burden" on a women's right to terminate her pregnancy); Clark v. Cmty. for Creative Non–Violence, 468 U.S. 288, 293 (1984) (stating that content-neutral speech regulations are unconstitutional if they do not "leave open ample alternative channels for communication.").

42. *Nordyke*, 644 F.3d at 787.

43. *See* Kiehl, *supra* note 8, at 1156.

44. *Heller*, 554 U.S. at 689–90.

45. *Id.* at 634.

46. Nordyke v. King, No. 07-15763, 2012 WL 1959239 (9th Cir. June 1, 2012)("No matter how broad the scope of the Second Amendment—an issue that we leave for another day—it is clear that, as applied to Plaintiffs' gun shows and as interpreted by the County, this regulation is permissible.")

hearing Second Amendment challenges.[47] As a result, the two-step framework employed by the other circuits contains the leading guidelines for local authorities evaluating their gun regulations.

III. Considerations for the Regulation of Gun-Related Land Uses

Zoning is one of many types of government regulation that localities are considering in response to the *Heller* and *McDonald* decisions. For example, after *McDonald* struck down the gun ban in Oak Park, Illinois, residents urged the village to use zoning to distance gun-related land uses from parks, daycare centers, and schools.[48] While it is impossible to address every conceivable gun regulation, this section will offer guideposts to zoning and planning officials considering gun-related land uses in their communities, and how to remain in compliance with the current state of the law with respect to the still-developing Second Amendment.[49]

A. *Complete Ban on Possession of Handguns in the Home for Self-Defense*

Zoning officials must take great care when regulating gun possession in the home. *McDonald* and *Heller* make it clear that local zoning regulations cannot eliminate the possession of handguns in the home for self-defense. For instance, a zoning ordinance that prohibits the storage of handguns as an accessory use to a home in any zoning district would likely run afoul of *McDonald* and *Heller* because the regulation would strike at the core of the Second Amendment right. Accordingly, the highest form of scrutiny would apply to the zoning regulation, and the municipality would be hard-pressed to find a justification that satisfies this demanding standard. Unlike gun regulations affecting gun possession by domestic violence misdemeanants, which have survived

47. Kiehl, *supra* note 8, at 1145.

48. Bill Dwyer, *Gun Owners Rip Oak Park Regulation Plans*, OAK LEAVES, Mar. 3, 2012, http://oakpark.suntimes.com/news/10225316-418/gun-owners-rip-oak-park-regulation-plans.html; Anna Lothson, *Oak Park Handgun Regulation Proposals Move Forward*, WEDNESDAY JOURNAL OF OAK PARK RIVER FOREST, May 29, 2012, http://www.oakpark.com/News/Articles/05-29-2012/Oak_Park_handgun_regulation_proposals_move_forward (concern that proposal restricting location of gun dealers would "lack of evidence indicating that implementing the policies would have an impact on public safety"); Hall v. Garcia, No. C 10-03799 RS, 2011 WL 995933, at *4 (N.D. Cal. Mar. 17, 2011) ("As a starting point, restricting possession of firearms in school zones does not burden the core 'right of law-abiding, responsible citizens to use arms in defense of hearth and home.'").

49. Kiehl, *supra* note 8, at 1142 (internal citations omitted).

strict scrutiny, a categorical accessory use ban would not be narrowly tailored, and may lack a compelling state interest to support a general prohibition of handguns in the home.[50]

B. Heller's *"Safe Harbor"*

On the other end of the regulatory spectrum, gun regulations that fall within *Heller's* "safe harbor" would almost certainly survive a Second Amendment challenge.[51] This non-exhaustive list of safe harbor regulations includes:

- prohibitions on the possession of firearms by felons and the mentally ill;
- laws forbidding the carrying of firearms in sensitive places such as schools and government buildings;
- laws limiting the commercial sale of arms; and
- prohibiting the carrying of dangerous and unusual weapons.[52]

Zoning officials will be most interested to know that zoning regulations prohibiting the carrying of firearms "in sensitive places" are permissible.[53] In addition to schools and government buildings, the "sensitive places" exception has been construed to include parks,[54] motor vehicles in national parks,[55] post office parking lots,[56] and places of worship.[57] Accordingly, a land use regulation that prohibits the possession of firearms in such "sensitive places" would likely comply with the requirements of the Second Amendment under *Heller*.[58]

50. *See* United States v. Engstrum, 609 F. Supp. 2d 1227, 1228 (D. Utah 2009).
51. Kiehl, *supra* note 8, at 1138.
52. *Heller*, 554 U.S. at 626–27.
53. Hetzner, *supra* note 4, at 382-83; *see also* Baer v. City of Wauwatosa, 716 F.2d 1117, 1123 (7th Cir. 1983)("The sale of guns is fraught with both short-term and long-term danger to the public-or so at least the [municipal] authorities could rationally conclude."); Ill. Sporting Goods Ass'n v. County of Cook, 845 F. Supp. 582, 587 (N.D. Ill. 1994) (accepting County gun shop prohibition around public areas like schools and parks as reasonably related to a legitimate government interest.).
54. Warden v. Nickels, 697 F. Supp. 2d 1221, 1229 (W.D. Wash. 2010).
55. United States v. Masciandaro, 648 F. Supp. 2d 779, 790 (E.D. Va. 2009), *aff'd*, 638 F.3d 458 (4th Cir. 2011).
56. United States v. Dorosan, 350 F. App'x 874, 875 (5th Cir. 2009).
57. GeorgiaCarry.Org, Inc. v. Georgia, 764 F. Supp. 2d 1306, 1316 (M.D. Ga. 2011).
58. Hall v. Garcia, No. C 10-03799 RS, 2011 WL 995933, at *2 (N.D. Cal. Mar. 17, 2011) ("[w]here a challenged statute apparently falls into one of the categories signaled by the Supreme Court as constitutional, courts have relied on the 'presumptively lawful' language to uphold laws in relatively summary fashion.").

C. *Everything in Between: Buffer Regulation for Sensitive Places*

For regulations that fall in between the direct regulation of the possession of handguns in the home for self-defense, and the "safe harbor," zoning officials will have to consider the frameworks for gun regulations discussed in Section III. For regulations that fall outside the core of the Second Amendment right—gun possession in the home for self-defense—the leading view is that zoning officials will have to demonstrate that their regulation satisfies intermediate scrutiny, bearing a substantial relationship to an important government interest.[59] To date, appellate courts have primarily reviewed registration and possession laws, not zoning and land use laws.[60] The analysis in these cases, however, will help guide a zoning and planning department's initial review.

For example, zoning officials would certainly face this inquiry when seeking to establish a buffer prohibiting gun possession around government buildings, schools, parks, and places of worship. While the Supreme Court specifically endorsed laws forbidding the possession of firearms in "sensitive places," it is not clear whether the Court intended to include areas near such sensitive places within this list.[61] As a result, zoning officials would first consider whether their proposed regulation implicates the Second Amendment right. While the zone around a "sensitive area" could easily be considered a "sensitive area" by itself, a ban on the possession of firearms within 1,000 feet of a government building, school, park, or place of worship, for example, might implicate the Second Amendment right because residences might fall within 1,000 feet of these structures. While an exception would have to be made for handgun possession in the home for self-defense, the validity of the regulation as to public places would advance to the next step of the inquiry.

The next step would require zoning officials to establish a substantial relationship between their gun regulation and an important governmental objective. Supporters of a 1,000 foot ban around "sensitive places," for example, would seek to justify their regulation in the name of

59. Kiehl, *supra* note 8, at 1145.

60. *See, e.g., Masciandaro*, 638 F.3d at 469-70 (possession); *Marzzarella*, 595 F. Supp. 2d at 606 (W.D. Pa. 2009), *aff'd*, 614 F.3d at 95 (3d Cir. 2010) (possession); United States v. White, 593 F.3d 1199, 1205-06 (11th Cir. 2010) (possession); United States v. Skoien, 614 F.3d 638, 641 (7th Cir. 2010), *cert. denied*, 131 U.S. 1674 (2011) (registration).

61. Hetzner, *supra* note 4, at 392.

preventing criminal activity, protecting the states' citizens from gun violence, promoting the education of minors, or protecting the free exercise of religion, as applicable.[62] The size and the necessity of the perimeter may be disputed, but a court is likely to defer to the government's judgment that the zone is necessary for protection and substantially related to these well-established interests.[63]

IV. Conclusion

Zoning and planning officials should consider the two-part test for regulations on gun possession and use. While there is no "one-size-fits-all" standard for zoning, appellate courts have interpreted *Heller* to allow "categorical bans" on possession and use, especially for specialized areas. Most of all, officials should be mindful that this is an evolving constitutional field. Even the Court recognized this: "[S]ince this case represents this Court's first in-depth examination of the Second Amendment, one should not expect it to clarify the entire field. . . ."[64] Just as a law-abiding gun owner would keep the safety on a firearm, zoning and planning officials should take care to observe these still-developing constitutional standards to avoid an alleged violation of the Second Amendment.

62. Hetzner, *supra* note 4, at 399.

63. Hetzner, *supra* note 4, at 399-400 (citing *Hall*, 2011 WL 995933, at *5) (finding a substantial relationship between gun free school zone and "important objective of protecting children on and near schools from exposure to firearms.")

64. *Heller*, 554 U.S. at 635.