



Written by [James Heiser](#) on October 30, 2009

NJ Court Rules 2nd Amendment Does Not Apply in State

New Jersey ratified the United States Constitution on December 18, 1787 — in fact, it was the third state to do so — but an appeals court has determined that that does not necessarily mean that the state must uphold the rights guaranteed by that Constitution.

According to the CBSNews.com article "[N.J. Court Says Americans Have No Right To Buy Handguns](#)",



A New Jersey appeals court has concluded that Americans have no Second Amendment right to buy a handgun.

In a case decided last week, the superior court upheld a state law saying that nobody may possess "any handgun" without obtaining law enforcement approval and permission in advance.

That outcome might seem like something of a surprise, especially after the U.S. Supreme Court ruled last year in the *D.C. v. Heller* case that the Second Amendment guarantees "the individual right to possess and carry weapons in case of confrontation."

But New Jersey Appellate Division Judge Stephen Skillman wrote on behalf of a unanimous three-judge panel that *Heller* "has no impact upon the constitutionality of" the state law.

The U.S. Supreme Court is considering the case of [McDonald v. Chicago](#), and the ruling which the Justices render in that case will certainly have an impact on the future of Second Amendment rights in every State of the Union. The alarming fact is that the applicability of the Second Amendment to the rights of American citizens to keep and bear arms is facing a fundamental challenge in the wake of the *Heller* decision. A "right" which only exists when the government gives you permission to exercise that right is not a "right" at all.

The New Jersey case came down to the question of the powers of local law enforcement to arbitrarily deny a citizen the necessary permit to own a handgun. Again, in the words of the CBSNews.com article:

What prompted the current lawsuit was a request for a handgun purchase permit that Anthony Dubov submitted to the East Windsor Chief of Police. The police chief denied Dubov's request without giving any reason, in what the appeals court later ruled was a violation of state law. The current East Windsor police chief is William Spain.

Oddly, the trial judge upheld that denial, without asking the police chief to testify to explain himself (another violation of state law) and after taking the unusual step of contacting Dubov's previous employers to ask about his background.

Dubov's attorney, Michael Nieschmidt, argued that the state licensing scheme was unconstitutionally vague and therefore violated the Second Amendment.

Skillman concluded that while the Second Amendment doesn't apply, state law and precedent



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nevertheless required that Dubov receive more due process than he did. The appeals court wrote: "Accordingly, the trial court's affirmance of the police chief's denial of appellant's application for a firearms purchase permit is reversed, and the case is remanded for an evidentiary hearing in conformity with this opinion."

Thus the Dubov case has proven thus far to have the opposite effect of the *Heller*: *Heller* affirmed the right to keep and bear arms, but allowed for ordinances that largely functionally deprived citizens of the District of Columbia to exercise that right. Dubov's case appears to dangerously challenge the constitutional basis of the right, but then awarded Dubov the necessary bureaucratic permit giving him permission to exercise his rights.

With each strange twist and turn of in the realm of gun rights in this age of "Hope and Change," the significance of the upcoming ruling in the *McDonald v. Chicago* case would be difficult to overstate in the realm of the preservation of our liberties.



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