

Shots Fired: 2nd Amendment, Restoration Rights, & Gun Trusts

The Second Amendment Generally

1. Generally
 - a. II Amendment, US Constitution: "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."

 - b. Ohio Constitutions Section 1.04: "The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power."

2. Development of Case law
 - a. History of II Amendment
 - i. Original Amendment stated: "Right of the People Not to be Infringed"
 - ii. Ratification Process of the II Amendment
 - iii. Madison's Involvement

 - b. Individual Rights Incorporation
 - i. District of Columbia v. Heller 554 U.S. 570 (2008):
 1. II Amendment is an Individual Right
 2. II Amendment applies to federal enclaves and protects individual's right to possess a firearm for traditionally lawful purposes.

 - ii. McDonald v. Chicago 561 U.S. 3025 (2010)
 1. The II Amendments is incorporated by the Due Process Clause of the Fourteenth Amendment and applies to the states.

 - c. Ohio's fundamental right
 - i. Preemption
 1. Original passed in 2007
 2. Revised Code 9.68
 3. Preemption compared to knife laws

 - ii. Klein vs. Leis, 99 Ohio St.3d 537, 2003-Ohio-4779

3. Living in a Post – Heller world
 - a. Gun Control Act
 - i. Regulation of Firearm industry and owners.
 - ii. Prohibition of interstate firearm transfers
 1. Exceptions – Licensed manufactures, dealers, importers
- b. Ohio Law and Ohio Weapons Control Act
 - i. Duty to Retreat – Rare in State of Ohio
 1. In Ohio duty to retreat except in home or in their car
 2. Stand Your Ground Implications
 - ii. Ohio Self Defense Law
 1. Rebuttable
- c. Straw Purchase Implications because of Heller
 - i. Intermediate Scrutiny Standard
 - ii. Intention of Straw Purchasers

RESTORATION OF RIGHTS

1. Legal Disability – Cannot have a firearm because of some triggering event.
2. Restoration under 18 USC 922(g)
 - a. 18 USC 925 not funded – case law establishing this is not unconstitutional
 - i. 18 USC 921 “Unless” clause (Jurisdiction where the proceedings arose)
 - ii. the disabilities (9 Under Federal Level)
 1. Conviction of possible imprisonment of one year. (Don’t even need to spend one day in jail)
 2. Fugitives from justice
 3. Addicted to controlled substances or unlawful user
 4. Mental Defectives
 5. Undocumented Citizens (Illegal Aliens)
 6. Dishonorable discharge in the Military
 7. Renounced their citizenship
 8. Protection Orders
 9. Convicted of crime of domestic violence
 - iii. The mechanisms for restorations (Federal Law)

1. Pardon
 - a. Very difficult
 2. Set Aside
 - a. Difficult
 - b. Manifest of Justice
 3. Expungement
 - a. Must be True Expungement
 - b. Ohio Does not do true expungement
 - c. Expungement v. sealment
 - i. Expungment – no record can be find
 - ii. Sealment – cannot find it ONLY in certain situations
 4. Rights Restoration
 - iv. Ohio Restoration
 1. Sealment
 2. 2923.14
 - a. Most typically used way to restore rights in Ohio
 - b. Standard
 - i. Fully discharged
 - ii. Lead law abiding life and is likely to do so.
 - iii. Otherwise allowed to carry a firearm
 3. Automatic Restoration
 - b. Federal Case law analysis
 - i. Cassidy – Look at three rights to restore gun rights
 1. Hold Office
 2. Serve Jury
 3. Vote
 - ii. Caron
 - iii. Logan
 - iv. Misc.
3. Ohio Restoration R.C. 2923
 - a. Case law development
 - b. 2923.14 and 2923.13

GUN TRUSTS

1. Estate Planning for Firearms

- a. History
 - i. NFA – National Firearm act (1934). Part of the IRC.
 - ii. Imposes a tax on buying firearms and tax on selling firearm
 - iii. \$200 making and transfer tax
 - iv. \$500 selling tax
 - v. History of ATF

- b. Gun Trust v. NFA Trust

- c. Uniform Trust Code in Ohio

- d. Normal types of “Gun Trusts”

- e. National Firearms Act issues