



Written by [Jack Kenny](#) on February 12, 2015

Federal Judge Rules Interstate Handgun Transfer Ban Unconstitutional

A federal judge Wednesday ruled unconstitutional a collection of federal restrictions on the interstate transfer of handguns. Referring to the statutes and regulations collectively as [the federal interstate handgun transfer ban](#), Judge Reed O'Connor in the U.S. District Court for the Northern District of Texas, Fort Worth Division, ruled the restrictions exceed a legitimate government interest and unduly burden the exercise of a constitutional right.



“The federal interstate handgun transfer ban is unique compared to other firearms restrictions because it does not target certain people (such as felons or the mentally ill), conduct (such as carrying firearms into government buildings or schools), or distinctions among certain classes of firearms (such as fully automatic weapons or magazine capacity),” O'Connor wrote in the case of *Mance v. Holder*. Instead, the judge wrote, the ban “targets the entire national market of handgun sales and directly burdens law-abiding, responsible citizens who seek to complete otherwise lawful transactions for handguns.”

The suit was brought by Frederic Russell Mance, Jr., a federally licensed firearms dealer in Texas, and District of Columbia residents Andrew and Tracey Hanson. All are members of the Citizens Committee for the Right to Keep and Bear Arms, which was also a plaintiff. The Hansons purchased a pair of handguns from Mance, who was prevented by provisions of federal law, adopted under the 1968 Gun Control Act, from delivering firearms (not including rifles and shotguns) to any location outside his own state. In the Hansons' case, he would have had to ship the handguns to a federally licensed dealer in the District of Columbia, who would then complete the sale for an additional fee of \$125 per gun, plus shipping costs. The Hansons decided to cancel the purchase and joined with Mance and the Citizens Committee in filing suit in the Texas court in July of last year.

The plaintiffs claimed the restriction limits their choices as consumers, harms competition in the market, raises prices, and infringes on a fundamental right guaranteed by the Constitution. Judge O'Connor cited the 2008 U.S. Supreme Court decision in *District of Columbia v. Heller*, striking down as unconstitutional a D.C. law that forbade the private possession of handguns. In a 5-4 ruling, the Court in *Heller* found the Second Amendment “right of the people to keep and bear arms” belongs to individual persons and not exclusively to a “well regulated militia,” mentioned in the amendment's prefatory clause. O'Connor quoted from Justice Antonin Scalia's opinion of the court as it pertained to the interpretation of a constitutional right.

“Constitutional rights are enshrined with the scope they were understood to have when the people adopted them,” Scalia wrote, “whether or not future legislatures or (yes) even future judges think that scope too broad.” The *Heller* opinion left open the questions of what restrictions on the sale or possession of firearms might be permitted and what level of scrutiny (strict scrutiny, intermediate



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scrutiny or rational basis) courts should apply to claims of a compelling government interest in such restrictions.

“Under any of the standards of scrutiny that we have applied to enumerated constitutional rights” wrote Scalia, “banning from the home ‘the most preferred firearm in the nation ... for protection of one’s home and family,’ would fail constitutional muster.”

Judge O’Connor Wednesday went a step further, invoking the strict scrutiny requirement that a government limitation of a constitutional right must be by the least restrictive means necessary. The government in *Mance* had “not shown that the federal interstate handgun transfer ban is narrowly tailored to be the least restrictive means of achieving the Government’s goals under current law,” O’Connor wrote. “The federal interstate handgun transfer ban is therefore unconstitutional on its face.” The judge noted that federal Supreme Court rulings have applied strict scrutiny to state laws.

“Here, the *federal* law not only creates a discriminatory regime based on residency, but it also involves access to the constitutional guarantee to keep and bear arms,” he wrote. “Based on the strict scrutiny analysis above, the Court finds that the federal interstate handgun transfer ban also violates the Due Process Clause of the Fifth Amendment to the United States Constitution.”

Though the Bill of Rights was adopted by the states as a barrier to federal encroachments on liberty, the Supreme Court has frequently invoked its provisions to overturn state laws, while generally showing great deference to federal intrusions on enumerated rights, including the right to keep and bear arms. While Damon Root at Reason.com hailed Wednesday’s ruling as “a major victory today for Second Amendment advocates,” the battle is not over, as indicated by a statement issued by William Mateja, an attorney for the plaintiffs. “While we expect the government to appeal, we are confident that the 5th U.S. Circuit Court of Appeals will agree with Judge O’Connor’s sound ruling,” said Mateja.



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