

# A Question of Constitutionality: Do Private Residential Lease Provisions Banning Firearm Possession Violate the Second Amendment?

Mitchell Perez\*

## ABSTRACT

In *District of Columbia v. Heller*, the Supreme Court held that people in the United States have the constitutional right to keep and bear arms in their homes. After *Heller*, the Supreme Court held in *McDonald v. City of Chicago* that the right to keep firearms in the home applies to both the federal government and the states. Most recently, the Supreme Court held that the right to keep and bear arms also applies to public spaces in *New York State Rifle & Pistol Association Inc. v. Bruen*. Nevertheless, the Court has not yet addressed whether Second Amendment rights apply to renters and homeowners equally.

In fact, most states are silent on the issue. In these states, landlords receive wide discretion to prohibit tenants from keeping and storing firearms anywhere on their rental properties. In the residential leasing context, this practice raises significant constitutional concerns. For most renters, who increasingly represent a larger percentage of the adult population in this country, their rental property is their home. Thus, a landlord's ability to unilaterally deny renters the same right to keep and bear arms that homeowners enjoy appears blatantly unconstitutional.

Governments typically argue that private agreements between individuals are not subject to constitutional analysis. But courts have repeatedly found ways to apply constitutional protections to private actions. Furthermore, given the unique nature of residential renting, the relatively weaker economic position of renters, and the cost of homeownership, the states and the federal government have a responsibility to treat residential leases banning firearms with the utmost constitutional scrutiny at their disposal.

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\* J.D. Candidate, The Pennsylvania State University School of Law, 2025. I would like to thank my loving wife and best friend for putting up with all my grievances throughout this process.

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## I. INTRODUCTION

In 2008, the United States Supreme Court ruled in *District of Columbia v. Heller* that the Second Amendment provided American citizens with the right to keep and bear arms in their homes.<sup>1</sup> Two years later, the Court rendered its decision in *McDonald v. City of Chicago*, in which it held that the *Heller* ruling, and all Second Amendment protections, apply to the individual states too.<sup>2</sup> Finally, the Court decided *New York State Rifle & Pistol Association Inc. v. Bruen*, which extended an individual's right to keep and bear arms outside the home.<sup>3</sup> These three cases have dramatically expanded gun rights for citizens across the country, leading courts to apply Second Amendment analyses to new areas of American life.<sup>4</sup>

One such area is that of private residential properties. Currently, at least six states in the United States have laws governing the ability of private landlords to prohibit firearms in residential leases.<sup>5</sup> Conversely, the other forty-four states remain silent on this particular issue, and courts have often allowed landlords to decide whether they will permit guns on their properties.<sup>6</sup> However, permitting private landlords who lease residential properties to prohibit tenants from keeping and storing firearms poses significant constitutional questions.<sup>7</sup>

This argument has not been seriously addressed partially because the Second Amendment does not ordinarily apply to private individuals like landlords.<sup>8</sup> Nevertheless, in *Shelley v. Kraemer*, the Supreme Court held that state courts could declare a racially restrictive lease provision for an apartment complex unconstitutional under the Fourteenth Amendment's Equal Protection Clause if the court had the power to review such a case.<sup>9</sup>

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1. See *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008).

2. See *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010).

3. See *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 32-33 (2022).

4. See *infra* Section II.A.1.

5. See Gavin Donnelly, *Firearms in Rental Property: Can Landlords Prevent You From Having a Weapon?*, HONEYCOMB (Aug. 4, 2022), <https://perma.cc/BH8M-WD63> (noting that Virginia, Tennessee, Minnesota, Wisconsin and Texas all have specific laws about guns and rental agreements); see also Maurie Backman, *Can Your Landlord Ban Guns?*, U.S. NEWS (Oct. 5, 2022, 12:51 PM), <https://perma.cc/8MXD-KYCP> (noting that Tennessee, Ohio, Minnesota, Virginia, and Texas have specific laws regarding gun ownership and apartments).

6. See Donnelly, *supra* note 5.

7. See *infra* Sections III.A.1–2.

8. See *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 620 (1991).

9. See *Shelley v. Kraemer*, 334 U.S. 1, 16–17 (1948).

Thus, if a private lease has a provision banning guns that a state court may review, that provision may be subject to constitutional analysis.<sup>10</sup>

Consequently, this Comment seeks to engage in this constitutional analysis. Part II first provides background on the history and holdings of *Heller*, *Bruen*, and *McDonald*, and how the cases have shaped Second Amendment jurisprudence in the United States.<sup>11</sup> Then, Part II discusses the modern-day standard regarding the validity of lease provisions banning guns in most states.<sup>12</sup> Next, Part II discusses the scope of Second Amendment protections and traces the historical application of constitutional rights to private conduct.<sup>13</sup> Finally, Part II describes the statistical and demographic makeup of renters in America and details the increasing cost of buying a home.<sup>14</sup>

Subsequently, Part III addresses the constitutional issues that arise when state laws permit landlords to ban firearms from their rental properties.<sup>15</sup> Part III then argues that, under *Shelley*, any lease provision that carries the threat of eviction for possessing a firearm on the property is subject to constitutional analysis. As such, evictions must be ruled on by state courts that follow the Second Amendment after *McDonald*.<sup>16</sup> Finally, Part III argues that allowing landlords to prohibit firearms on rental properties restricts the Second Amendment protections of renters as opposed to homeowners, and should be struck down by both state and federal courts in accordance with Second Amendment jurisprudence.<sup>17</sup>

## II. BACKGROUND

Three principal authorities describe the evolution of Second Amendment protections over the past two decades: (1) *Heller*; (2) *McDonald*; and (3) *Bruen*.<sup>18</sup>

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10. *See id.* (holding that a private agreement is subject to constitutional analysis when it has been ruled on by a state court).

11. *See infra* Section II.A.1.

12. *See infra* Section II.B.1.

13. *See infra* Sections II.C.1–2, II.D.1–2.

14. *See infra* Sections II.E.1–2.

15. *See infra* Sections III.A.1–2.

16. *See infra* Section III.B.1.

17. *See infra* Sections III.C.1–2.

18. *See generally*, *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008) (holding that the Second Amendment gave people a right to keep and bear arms in the home); *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010) (holding that the Second Amendment applied to the states); *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 32–33 (2022) (holding that the Second Amendment gave people a right to keep and bear arms in public spaces).

A. *The Evolution of Second Amendment Jurisprudence*

In *Heller*, the Supreme Court held that the Second Amendment provides individuals a right to keep and bear arms in the home for self-defense—a right that the federal government could not unduly restrict.<sup>19</sup> The Court reasoned that a person had the right to store and possess firearms in the home and that the government could not put arbitrary prohibitions in place to prevent them from doing so.<sup>20</sup> The Court even noted that laws that merely regulate the way firearms are stored in one's home may violate the Second Amendment if the laws would render the firearm inoperable when needed at a moment's notice.<sup>21</sup> However, the Court did limit its interpretation of the Second Amendment, stating that lawmakers could constitutionally restrict the right to bear arms under certain circumstances, like restrictions for convicted felons or people suffering from mental illness.<sup>22</sup>

The Supreme Court reaffirmed its stance in *McDonald*. In *McDonald*, the Court held that the Second Amendment and *Heller*'s reasoning applied to both the federal government and the states.<sup>23</sup> The Court reasoned that because the right to keep and bear arms counted “among those fundamental rights necessary to our system of ordered liberty,” the Fourteenth Amendment allowed courts to incorporate the right to the states.<sup>24</sup> Consequently, states, like the federal government, could no longer unduly restrict a person's right to keep readily accessible firearms within the home.<sup>25</sup>

Finally, in one of the Supreme Court's more recent Second Amendment decisions, the Court held that the right to keep and bear arms extended to places outside the home.<sup>26</sup> *Bruen* considered the constitutionality of may-issue concealed carry laws.<sup>27</sup> These laws gave local authorities the discretion to deny a person's concealed carry application if they did not find their required reason for requesting the license satisfactory.<sup>28</sup> The Court held that these laws represented an undue

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19. See *Heller*, 554 U.S. at 635.

20. See *id.*

21. See *id.*; see also *In re Application of Blasko*, No. A-3848-10T2, 2012 N.J. Super. Unpub. LEXIS 1466, at \*13–17 (N.J. Super. Ct. App. Div. June 22, 2012) (holding that a New Jersey law criminalizing leaving firearms out in the open in one's apartment is unconstitutional); *Parker v. District of Columbia*, 478 F.3d 370, 401 (D.C. Cir. 2007) (holding a state law requiring trigger locks unconstitutional as it barred a gun owner from having his weapon in an accessible state while in his home).

22. See *Heller*, 554 U.S. at 626.

23. See *McDonald*, 561 U.S. at 750.

24. *Id.* at 778.

25. See *id.* at 791.

26. See *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 32–33 (2022).

27. See *id.* at 13–15.

28. See *id.*

restriction on a person's right to keep and bear arms for self-defense.<sup>29</sup> In reaching this holding, the Court stated that no principal distinction existed between the right to keep and bear arms in the home and the right to keep and bear arms while in public spaces.<sup>30</sup> Thus, neither the federal government nor the states could require a person to provide a "special need" to legally possess a firearm in public any longer.<sup>31</sup>

### 1. Expansion of Second Amendment Protections

Lower court decisions rendered in the wake of *Heller*, *McDonald*, and *Bruen* illustrate the progression of Second Amendment protections following these key Supreme Court decisions. For example, five years after *Heller* and three years after *McDonald*, the Massachusetts District Court in *Pineiro v. Gemme* held that a police chief could deny the plaintiff an unrestricted license to carry.<sup>32</sup> The court reasoned that because *Heller* and *McDonald* did not definitively rule on a person's right to carry outside of the home, the police chief did not breach any constitutionally established protections.<sup>33</sup> This case shows both that the Second Amendment applies at the state level, and that the Supreme Court would need to fill the gaps in reasoning left open by *Heller* and *McDonald* regarding a public right carry later established in *Bruen*.<sup>34</sup>

One year after *Pineiro*, the Connecticut Supreme Court, in *State v. Deciccio*, held that *Heller*'s reasoning extended the Second Amendment to weapons other than firearms, including batons and knives.<sup>35</sup> The court further held that a state statute barring the transportation of a "dirk knife" and police baton between a tenant's multiple residences violated the Second Amendment.<sup>36</sup> Once again, this case shows not only the expansion of Second Amendment rights to new forms of weaponry, but also that courts began recognizing the right to transport and carry weapons outside of the home long before the *Bruen* decision.<sup>37</sup>

Two years after *Deciccio*, the Ninth Circuit Court of Appeals in *Young v. Hawaii* held that the Second Amendment encompassed a right to

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29. *See id.*

30. *See id.* at 32-33 ("Moreover, confining the right to 'bear' arms to the home would make little sense given that self-defense is 'the central component of the [Second Amendment] right itself.'") (quoting *McDonald*, 561 U.S. at 767).

31. *Id.* at 38.

32. *See Pineiro v. Gemme*, 937 F. Supp. 2d 161, 171-73 (Mass. Dist. Ct. 2013).

33. *See id.*

34. *See id.*; *see also Bruen*, 561 U.S. at 32-33.

35. *See State v. Deciccio*, 105 A.3d 165, 193 (Conn. 2014); *see also Caetano v. Massachusetts*, 577 U.S. 411, 412 (2016) (holding that the Second Amendment applied to non-lethal weapons, such as tasers, when striking down a Massachusetts law prohibiting possession of them).

36. *Deciccio*, 105 A.3d at 208.

37. *See id.*

carry firearms openly in public for self-defense.<sup>38</sup> The Ninth Circuit based its decision on the fact that the term “bear”—as in “the right . . . to keep and bear arms”—implied the right to carry in public, including in the state of Hawaii.<sup>39</sup> Similarly, the dissent in *Rogers v. Grewal* essentially argued for a constitutional right to carry in public for self-defense based on *Heller* and *McDonald*.<sup>40</sup> This dissent shows the reasoning that the majority of the Supreme Court would eventually adopt in its *Bruen* decision two years later.<sup>41</sup>

Finally, a year after the *Bruen* decision came down, the Third Circuit Court of Appeals in *Range v. Attorney General of the United States* held that a federal law preventing convicted felons from possessing firearms or ammunition violated the Second Amendment because “law-abiding, responsible citizens” are not the only ones counted among “the people” protected by the Second Amendment after *Heller*.<sup>42</sup> This case represents the culmination of the expansion of the Second Amendment rights from *Heller* to *Bruen*.<sup>43</sup>

### B. The Current State of Firearm Prohibitions in Residential Leases

While Second Amendment protections have fared well in the Supreme Court, these rights still face several obstacles employed by the states and private actors.<sup>44</sup> The largest hurdle stems from the ability of landlords, often empowered by state statutes, to control the access and storage of tenants’ guns on their properties.<sup>45</sup>

#### 1. State Level Regulations and Lease Examples

Most states across the country are either silent on the issue of residential lease provisions banning firearms on the property, subsequently leaving the decision up to the individual landlords, or implicitly sanction such practices.<sup>46</sup>

Tennessee, for example, allows landlords to prohibit firearms on their property through lease agreements. Tennessee law states that “the landlord and tenant may include . . . terms and conditions not prohibited by . . . [the] rule of law including rent, term of the agreement, and other

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38. See *Young v. Hawaii*, 896 F.3d 1044, 1074 (9th Cir. 2018).

39. *Id.* (quoting U.S. CONST. amend. II) (emphasis added).

40. See *Rogers v. Grewal*, 140 S. Ct. 1865, 1872 (2020) (Thomas, J., dissenting).

41. See *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 561 U.S. 1, 32-33 (2022).

42. *Range v. AG United States*, 69 F.4d 96, 100–03 (3d Cir. 2023), *vacated*, 144 S. Ct. 2706 (2024).

43. See *id.*

44. See *infra* Section II.B.1.

45. See *infra* Section II.B.1.

46. See Backman, *supra* note 5.

provisions governing the rights and obligations of parties.”<sup>47</sup> Furthermore, a landlord may also “adopt rules or regulations, however described, concerning the tenant’s use and occupancy of the premises.”<sup>48</sup> Although the statute lays out some requirements these “rules” must satisfy to be valid, none of the requirements prohibit a landlord from banning guns on his or her property.<sup>49</sup> Finally, Tennessee law provides that a tenant can agree to give up certain rights, including those provided by the Second Amendment, if doing so is not considered unconscionable or violative of other state provisions.<sup>50</sup> Thus, because lease provisions banning firearms are neither considered unconscionable nor *per se* illegal in Tennessee, the state has given landlords discretion on the matter.<sup>51</sup>

Similarly, Pennsylvania implicitly allows landlords to ban firearms on their properties. For instance, in *Dombroski v. Dallas Township Zoning Hearing Board*, the Pennsylvania Commonwealth Court briefly discusses a residential lease that included “prohibitions on loud parties, firearms, and swimming in the pond located on the property.”<sup>52</sup> While the case does not specifically discuss the lease provisions, the Commonwealth Court did not invalidate them and instead assumed their legality.<sup>53</sup> Furthermore, in Wisconsin, a landlord can prohibit the concealed carry of firearms by tenants on their property if they post a sign saying as much.<sup>54</sup> And while it is less clear whether landlords can prohibit tenants from keeping firearms in their individual units, at least one commentator has noted that a landlord likely may do so if they put the prohibition in a lease provision.<sup>55</sup>

Conversely, some states explicitly prohibit landlords from banning guns anywhere on their rental properties. For example, Texas prohibits residential landlords from banning a “tenant or a tenant’s guest from lawfully possessing, carrying, transporting, or storing a firearm” on the property.<sup>56</sup> Similarly, under Minnesota law, “[a] landlord may not restrict

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47. TENN. CODE ANN. § 66–28–201(a) (2023).

48. *Id.* § 66–28–402(a).

49. *See id.* § 66–28–402(a)(1)–(6).

50. *See id.* § 66–28–204; *see also* Freeman v. Thompson, 600 S.W.2d 234, 236 (Tenn. Ct. App. 1979) (holding that a contract that is “impliedly” forbidden by state law is unenforceable).

51. *See generally* Firearms, Vehicle Towing, Guests, and Security Deposits on Leased Property, Tenn. Op. Att’y Gen. No. 09–170 (Oct. 26, 2009) (discussing how Tennessee statutes and case law implicitly allow landlords to ban weapons on their properties, even for state-licensed concealed carry holders).

52. *Dombroski v. Dall. Twp. Zoning Hearing Bd.*, No. 1050 C.D., 2019 Pa. Commw. Unpub. LEXIS 294, at \*5, (Pa. Commw. Ct. 2019).

53. *See id.*

54. *See* WIS. STAT. § 943.13(1m)(c)(1)–(2), (2)(bm)(1)–(2) (2023).

55. *See* Tristan R. Pettit, *Landlords & Wisconsin’s New CCW Law*, PETRIE PETTIT (Jan. 30, 2012), <https://perma.cc/NYC7-4S6A>.

56. TEX. PROP. CODE § 94.257(1)–(3) (2023).



the lawful carry or possession of firearms by tenants or their guests.”<sup>57</sup> Virginia law follows a similar pattern, prohibiting any lease provision that restricts the “lawful possession of a firearm within individual dwelling units”.<sup>58</sup> Even Wisconsin, which allows landlords to prohibit individuals from carrying firearms onto their property, does not allow landlords to prohibit tenants from keeping firearms in cars parked in the landlord’s designated parking lots.<sup>59</sup> Nevertheless, the majority rule presently allows landlords to prohibit tenants from possessing firearms on their properties.<sup>60</sup>

Landlords do attempt to prohibit firearms in their leases.<sup>61</sup> Online sample contractual provisions provide landlords examples of how to properly word a firearms prohibition provision in their residential leases.<sup>62</sup> Further, legal websites offer entire standard lease templates for landlords wanting to ban firearms on their properties.<sup>63</sup> One such template has a provision stating that a, “[l]icensee may not possess any . . . firearms, ammunition, . . . dangerous weapons or any other material or instrument which, . . . pose an unreasonable risk of damage or injury.”<sup>64</sup> Thus, there exists some level of demand for ways to ban firearms on residential properties.<sup>65</sup>

### C. *The Extent of New Second Amendment Protections*

Second Amendment protections include the right to bear arms in the home and public spaces.<sup>66</sup> This begs the question: What is a “home” for the purpose of Second Amendment considerations?<sup>67</sup> Additionally, one must also consider the ramifications of practices that severely limit peoples’ constitutional rights without stripping Second Amendment rights

57. MINN. STAT. ANN. § 624.714 (Subd. 17.)(f) (West 2023).

58. VA. CODE ANN. § 55.1–1208(A)(6) (West 2023).

59. See WIS. STAT. § 943.13(1m)(c)(1)–(2) (2023).

60. See Donnelly, *supra* note 5.

61. See Tenant Lease Agreement, (Oct. 30, 2018) (on file with author). For instance, the author’s own residential lease from a prior living arrangement explicitly banned the possession of both firearms and ammunition anywhere on the property. See *id.*; see also Donnelly, *supra* note 5 (noting that in all but two states landlords are allowed, either implicitly or explicitly, to include no-gun clauses in lease agreements).

62. See *Weapons and Firearms Sample Clauses*, L. INSIDER (2023), <https://perma.cc/AP6K-48RB> (providing sample clauses for banning firearms in on-campus apartments at universities).

63. See 3 ILL. FORMS LEGAL & BUS. § 5:28 (6)(C) (West 2023).

64. *Id.*

65. See, e.g., *Weapons and Firearms Sample Clauses*, *supra* note 62.

66. See *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008); see also *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 32–33 (2022).

67. See *infra* Section II.C.1.

from them outright.<sup>68</sup> These two questions will be explored in the sections below.<sup>69</sup>

# 1. Fourth Amendment Jurisprudence and Conceptions of the “Home”

Black’s Law Dictionary defines a “home” as “[a] dwelling place.”<sup>70</sup> This definition is incredibly broad, and the dictionary does not offer much additional insight into its meaning.<sup>71</sup> Vaguely and somewhat circularly, Black’s Law Dictionary defines a “dwelling-house” as “[t]he house or other structure in which one or more people live; a residence or abode.”<sup>72</sup> Finally, and most generally, the dictionary defines “residence” as “[t]he act or fact of living in a given place for some time.”<sup>73</sup> Thus, legal scholars have not created a clear definition for what is and is not considered a home.<sup>74</sup> However, this lack of clarity has not stopped courts from creating particular protections around what they conclude is a home.

For example, in *Payton v. New York*, the Supreme Court held that the Fourth and Fourteenth Amendments prohibited police officers from entering a person’s house to make an arrest without a warrant.<sup>75</sup> The Court reasoned that because such an arrest invaded the sanctity of the home, officers could not proceed without a warrant even if they had probable cause.<sup>76</sup> The Court found it particularly important that the plaintiff in this case lived in an apartment at the time of his arrest.<sup>77</sup> Thus, the Court apparently makes no principal distinction between owned property and rental property for what it considers to be a person’s home.<sup>78</sup>

Additionally, the Supreme Court in *Minnesota v. Olson* expanded its reasoning in *Payton* by holding that the warrant requirement applies to overnight guests too.<sup>79</sup> This decision again shows that a person need not own the property in question to receive constitutional protections.<sup>80</sup> Furthermore, the court in *United States v. Conner* held that *Payton’s*

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68. See *infra* Section II.C.2.

69. See *infra* Sections II.C.1–2.

70. *Home*, BLACK’S LAW DICTIONARY (11th ed. 2019).

71. See *id.*

72. *Dwelling-house*, BLACK’S LAW DICTIONARY (11th ed. 2019).

73. *Residence*, BLACK’S LAW DICTIONARY (11th ed. 2019).

74. See *Home*, *supra* note 70; see also *Dwelling-house*, *supra* note 72; *Residence*, *supra* note 73.

75. See *Payton v. New York*, 445 U.S. 573, 576 (1980).

76. See *id.* at 586–88.

77. See *id.* at 576–78.

78. See *id.*

79. See *Minnesota v. Olson*, 495 U.S. 91, 99–101 (1990).

80. See *id.*

holding “extends to a person’s privacy in temporary dwelling places such as hotel or motel rooms.”<sup>81</sup>

Finally, in *Katz v. United States*, the Supreme Court held that the Fourth Amendment protects a person from unreasonable searches and seizures when they have a reasonable expectation of privacy.<sup>82</sup> In so holding, the Court stated that “the Fourth Amendment protects people, not places.”<sup>83</sup> Thus, Fourth Amendment jurisprudence demonstrates that courts can apply constitutional protections flexibly, focusing primarily on the individuals affected and the purpose of the intrusion, rather than the specific location of the infringement.<sup>84</sup>

## 2. The Right to Carry in Public

The Supreme Court has held that people have the right to keep and bear arms in public for self-defense.<sup>85</sup> However, some additional case law may establish how far this right extends and what actions may violate it.<sup>86</sup> For instance, in *State v. Reid*, the Alabama Supreme Court addressed a concealed carry case in which the defendant was convicted of carrying a concealed weapon in violation of state law at the time.<sup>87</sup> The court reiterated that “a statute which, under the pretense of regulating, amounts to a destruction of the right, or which requires arms to be so borne as to render them wholly useless for the purpose of defense, would be clearly unconstitutional.”<sup>88</sup>

Similarly, in *Nunn v. State*, also dealing with the legality of concealed carry, the Georgia Supreme Court laid out the standard that:

[T]o be in conflict with the Constitution, it is not essential that the act should contain a prohibition against bearing arms, in every possible form. It is the right to bear arms, that is secured by the Constitution, and whatever restrains the full and complete exercise of that right,

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81. *United States v. Conner*, 127 F.3d 663, 666 (8th Cir. 1997); *see also* *United States v. Morales*, 737 F.2d 761, 763–64 (8th Cir. 1990) (holding that the Fourth Amendment applies to a hotel or motel room during the rental period).

82. *See* *Katz v. United States*, 389 U.S. 347, 353 (1967).

83. *Id.* at 351.

84. *See id.*; *see also* *Payton v. New York*, 445 U.S. 573, 576–78 (1980); *Olson*, 495 U.S. at 99–101.

85. *See* *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 32–33 (2022); *see also* *Moore v. Madigan*, 702 F.3d 933, 936 (7th Cir. 2012) (holding an Illinois law that imposed a near-categorical prohibition on the carrying of guns in public as invalid under the Constitution).

86. *State v. Reid*, 1 Ala. 612, 616–17 (1840).

87. *See id.*

88. *Id.*

though not an entire destruction of it, is forbidden by the explicit language of the Constitution.<sup>89</sup>

More recently, the Ninth Circuit in *Young* held that restricting open carry to those protecting life and property effectively nullified the core Second Amendment right to self-defense, making it unconstitutional by barring law-abiding citizens in Hawaii from bearing arms.<sup>90</sup>

Therefore, courts have suggested that allowing landlords to prohibit tenants from storing or carrying firearms on their property restricts the public carry right recognized in *Bruen*.<sup>91</sup> In other words, these storage prohibitions prevent residents from accessing their weapons in public, at least for the time required to retrieve them from an offsite location.<sup>92</sup>

Finally, in a dissenting opinion that would be the prelude to *Bruen*, Justice Thomas once again promoted the standard that any law or action that acts as a pretense to render someone's valid Second Amendment rights "useless" should be declared unconstitutional, even if those laws or acts do not strip the protections outright.<sup>93</sup> The Supreme Court would later adopt this same reasoning in *Bruen*, which sets the modern standard for analyzing Second Amendment protections.<sup>94</sup> Therefore, modern Second Amendment jurisprudence favors rendering acts or laws designed to restrict a person's full enjoyment of the right to keep and bear arms in public as unconstitutional.<sup>95</sup>

#### D. Constitutional Challenges and Private Action

Courts have historically faced difficulty in applying constitutional protections against private individuals' actions.<sup>96</sup> Thus, while the states and the federal government must conform their actions to comply with the Constitution, individuals likely need not.<sup>97</sup> However, courts have still leveraged the Constitution against private parties regardless.<sup>98</sup>

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89. *Nunn v. State*, 1 Ga. 243, 248 (1846); *see also* *Jackson v. City & County of San Francisco*, 746 F.3d 953, 960 (9th Cir. 2014) (reiterating the same standards regarding constitutional interpretation).

90. *See* *Young v. Hawaii*, 896 F.3d 1044, 1068-71 (9th Cir. 2018).

91. *See, e.g., Reid*, 1 Ala. at 616-17; *Nunn*, 1 Ga. at 248; *Young*, 896 F.3d at 1068-71; *see also* *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 32-33 (2022).

92. *See* *Bruen*, 597 U.S. at 32-33 (holding that people have a continuous right to carry firearms so long as they are in a public place).

93. *See* *Rogers v. Grewal*, 140 S. Ct. 1865, 1872 (2020) (Thomas, J., dissenting).

94. *See id.*; *see also* *Bruen*, 597 U.S. at 32-33.

95. *See supra* Section II.C.2.

96. *See* *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 620 (1991).

97. *See id.* (holding that most private actions are not susceptible to Constitutional challenges).

98. *See* *Heart of Atlanta Motel v. United States*, 379 U.S. 241, 261-62 (1964) (holding that Congress could prohibit racially restrictive policies implemented by private hotel chains so long as these hotels impacted interstate commerce); *see also* *Katzenbach*

### 1. The History of Applying Constitutional Protections to Private Actors

In *United States v. Stanley*, the Supreme Court held that private actors cannot violate the Constitution unless they are operating under the authority of the state.<sup>99</sup> Similarly, in *Edmonson*, the Supreme Court stated that “the conduct of private parties lies beyond the Constitution’s scope in most instances.”<sup>100</sup> Private businesses enjoy a similar immunity from constitutional protections.<sup>101</sup> For example, in *Moore v. Madigan*, the Seventh Circuit Court of Appeals stated that the Constitution would not prevent “[p]rivately owned bars, nightclubs, and restaurants” from imposing bans on carrying firearms in or around the business.<sup>102</sup> This shows that private businesses can limit the Constitution’s protections, including those protections provided by the Second Amendment, more than the states or the federal government can limit them.<sup>103</sup>

Nevertheless, courts have creatively overcome these structural hurdles. For instance, in *Heart of Atlanta Motel v. United States*, the Supreme Court held that Congress may enact regulations under the Commerce Clause that prevent racially discriminatory policies in hotel accommodations because those policies negatively affect interstate commerce.<sup>104</sup> Likewise, in *Katzenbach v. McClung*, the Court held that Congress could regulate privately owned restaurants under the Constitution if some link to interstate commerce existed.<sup>105</sup> Thus, some precedent supports the notion that courts may apply the Constitution to private parties.<sup>106</sup>

Regarding leases specifically, courts treat private residential agreements differently than commercial leases. For example, in *Miller v. Christian*, the Third Circuit Court of Appeals reiterated that landlords of leased residential properties must keep their properties in a condition that meets the requirements of governing health, safety, and housing codes.<sup>107</sup> The court emphasized that this principle applies especially in the

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v. McClung, 379 U.S. 294, 303–05 (1964) (holding that Congress could prohibit racially restrictive policies implemented by private restaurants so long as these restaurants impacted interstate commerce).

99. See *United States v. Stanley*, 109 U.S. 3, 17 (1883).

100. *Edmonson*, 500 U.S. at 620.

101. See *Moore v. Madigan*, 708 F.3d 901, 904 (7th Cir. 2013).

102. *Id.*

103. See *id.*

104. See *Heart of Atlanta Motel v. United States*, 379 U.S. 241, 261 (1964).

105. See *Katzenbach v. McClung*, 379 U.S. 294, 303–05 (1964).

106. See, e.g., *id.*

107. See *Miller v. Christian*, 958 F.2d 1234, 1237–38 (3d Cir. 1992).

residential leasing context.<sup>108</sup> Additionally, the Third Circuit stated that an implied warranty of habitability exists, under which the landlord must keep the premises safe, sanitary, and fit for habitation.<sup>109</sup>

On the state level, at least one court has similarly held that “in the rental of any residential dwelling unit an implied warranty exists in the lease, whether oral or written, that the landlord will deliver over and maintain, throughout . . . the tenancy, premises that are safe, clean and fit for human habitation.”<sup>110</sup> Finally, some secondary support exists for the notion that residential lease agreements, while private sector creations, are unique even in this context.<sup>111</sup> For instance, under New York law, commercial tenants receive far fewer protections than tenants in residential leasing transactions,<sup>112</sup> suggesting different treatment than other areas of the private sector.<sup>113</sup>

## 2. Applying Constitutional Protections to Private Residential Lease Provisions

In *Shelley v. Kramer*, the defendants, a black family, attempted to move into a small St. Louis community in 1945.<sup>114</sup> In 1911, property owners in the community signed and recorded a restrictive covenant, which provided that only members of the Caucasian race could live in the area.<sup>115</sup> Over 30 years later, and unaware of the covenant, the defendants bought and moved into a home located on one of the restricted parcels of land.<sup>116</sup> As a result, a group of white property owners living in the community sued in circuit court to prevent the defendants from moving in.<sup>117</sup> The circuit court sided in favor of the defendants but the Missouri

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108. *See id.*

109. *See id.*

110. *Hilder v. St. Peter*, 478 A.2d 202, 208 (Vt. 1984).

111. *See Landlord and Tenant Rights and Remedies After Default (Commercial Lease) (NY)*, LEXISNEXIS (May 30, 2023), <https://perma.cc/ZKH4-TW3H>.

112. *See id.*; *see also Landlord and Tenant Rights and Remedies After Default (Commercial Leases) (PA)*, LEXISNEXIS (Feb. 24, 2023), <https://perma.cc/H6F2-3KXT> (“Commercial tenants in Pennsylvania do not have extreme remedies such as confession of judgment or special protections afforded residential tenants in Pennsylvania.”); *Landlord and Tenant Rights and Remedies After Default (Commercial Leases) (NJ)*, LEXISNEXIS (Mar. 8, 2023), <https://perma.cc/BX9Q-FJHY> (“A commercial tenant in New Jersey does not have the benefit of the limitations placed on the landlord’s remedies and other special protections afforded residential tenants.”); *Landlord and Tenant Rights and Remedies After Default (Commercial Leases) (MN)*, LEXISNEXIS (Feb. 7, 2023), <https://perma.cc/TUU6-GT7H> (“The common-law defense of retaliation is only available to residential tenants.”).

113. *See supra* Section II.D.1.

114. *See Shelley v. Kraemer*, 334 U.S. 1, 4–8 (1948).

115. *See id.*

116. *See id.*

117. *See id.*

Supreme Court reversed.<sup>118</sup> On appeal, the United States Supreme Court held that by upholding the racially restrictive covenant, the Missouri Supreme Court violated the defendant's right under the Fourteenth Amendment and declared the restrictive covenant unconstitutional.<sup>119</sup>

Although the covenant created an agreement among private individuals, the Supreme Court reasoned that because a state court had to rule on the covenant's validity, the ruling constituted a state action. Subsequently, as states must follow the Fourteenth Amendment of the Constitution, the ruling on the private agreement warranted constitutional analysis.<sup>120</sup>

Furthermore, in *Moose Lodge No. 107 v. Irvis*, the Supreme Court reiterated the notion that private agreements could face constitutional scrutiny by stating that the key to applying constitutional protections to private agreements lies in state approval of the agreements, whether that approval comes from the courts or some other state authority.<sup>121</sup>

When it comes to state court-sanctioned agreements, residential leases are no exception. Nearly every state in the country requires some kind of judicial oversight to determine the validity of residential tenant evictions.<sup>122</sup> In most instances, states require an aggrieved landlord to use the court system to effectuate an eviction because self-help remedies are typically unavailable.<sup>123</sup> However, even if self-help is available, the remedy is usually limited, and states still require landlords to go to the courts to receive full relief for a tenant's breach of the lease in most circumstances.<sup>124</sup>

Under Pennsylvania law, a landlord who wishes to repossess his property from a tenant must duly notify a tenant in writing to remove themselves and their belongings from the property by a date specified in the notice.<sup>125</sup> Furthermore, if a tenant does not voluntarily quit the premises within the period listed in the notice, the landlord still cannot evict the tenant.<sup>126</sup> Instead, the landlord must file an action in court to obtain an eviction.<sup>127</sup> This formal procedure exists largely because a landlord seeking repossession of their property may not undertake self-

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118. *See id.*

119. *See id.* at 16–17.

120. *See id.*

121. *See* *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 172–73 (1972).

122. *See Eviction Laws and Forms: 50-State Survey*, JUSTIA (Feb. 2023), <https://perma.cc/2YK6-FFPA>.

123. *See id.*; *see also Landlord-Tenant Law*, JUSTIA, <https://perma.cc/PK82-W4VZ> (last visited Mar. 4, 2025) (providing examples of self-help evictions, such as forcibly removing the tenant, changing the locks, or removing the tenant's possessions).

124. *See Eviction Laws and Forms: 50-State Survey*, *supra* note 122.

125. *See* 68 PA. CONS. STAT. § 250.501(a) (2023).

126. *See id.* § 250.502.

127. *See id.*

help in evicting their tenant.<sup>128</sup> Instead, a landlord must bring an action in state court under the Landlord and Tenant Act of 1951.<sup>129</sup>

Under Wisconsin law, a landlord may evict a tenant by serving the tenant with notice to vacate the property if the landlord first receives approval from a law enforcement agency or the district attorney's office.<sup>130</sup> Furthermore, in Wisconsin, landlords must commence an eviction action in small claims court.<sup>131</sup> Although Wisconsin landlords may evict a tenant by whatever means are legally available to them, the means do not typically include acts of self-help, like removing utilities to the property in question.<sup>132</sup>

Similarly, under Tennessee law, "if a tenant remains in possession without the landlord's consent after the expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession, back rent and reasonable attorney's fees as well as any other damages provided for in the lease."<sup>133</sup> Such an action includes seeking a writ for forcible or unlawful entry or detainer from a local state court.<sup>134</sup> However, even if a landlord secures an unlawful detainer order, a tenant can dispute the landlord's repossession of the property, which prevents the landlord from turning to self-help remedies to enforce the order.<sup>135</sup>

Thus, any measure or provision that carries the threat of eviction will almost certainly face state court oversight, and consequently the measure must follow the federal Constitution as well.<sup>136</sup>

#### *E. The Prevalence of Renting and the Expense of Home Ownership*

Understanding the living situation of most people in the United States sheds light on the issue surrounding firearms and residential leases. If most Americans owned property, the issue would pose little relevance. However, as will be discussed below, fewer Americans own homes than one might expect.<sup>137</sup>

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128. *See* *Lenair v. Campbell*, 31 Pa. D. & C.3d 237, 239 (Pa. Com. Pl. 1984).

129. *See id.*

130. *See* WIS. STAT. ANN. § 704.17 (3)(a) (LexisNexis 2023).

131. *See id.* § 799.01 (1)(a); *see also* *Highland Mannor Assocs. v. Bast*, 665 N.W.2d 388, 389 (Wis. Ct. App. 2003).

132. *See* WIS. STAT. ANN. § 704.23 (LexisNexis 2023); *see also* *Helgesen v. City of Fort Atkinson*, 291 N.W.2d 660, 660 (Wis. Ct. App. 1980) ("Attempts to repossess leased real property without legal process; *i.e.*, self-help reentry, are not favored in Wisconsin.").

133. TENN. CODE ANN. § 66-28-512(c) (2023).

134. *See id.* § 29-18-104.

135. *See In re Talley*, 69 B.R. 219, 224 (Bankr. M.D. Tenn. 1986).

136. *See supra* Section II.D.2.

137. *See infra* Sections II.E.1-2.



### 1. The Rise of the Renting Class

In 2019, renters comprised “36% of the nation’s 122.8 million households.”<sup>138</sup> Of these renters, most are racial and ethnic minorities, younger, and in lower income brackets.<sup>139</sup> These demographic groups are also affected by eviction proceedings the most.<sup>140</sup>

Roughly three in ten Americans currently own guns. And about half of the individuals who do not own guns could see themselves buying guns in the future.<sup>141</sup> Thus, far more than the 64% of Americans fortunate enough to own property either have firearms or are interested in having firearms in the future.<sup>142</sup> Furthermore, about 32% of Black Americans and 21% of Hispanic Americans reported that they either personally own a gun or that someone in their household owns one.<sup>143</sup> Because minorities make up a significant share of renting households in the United States, minority communities are most vulnerable to potential restrictions on keeping firearms in residential apartments.<sup>144</sup>

### 2. The Increasing Cost of Home Ownership

The price trend of home ownership only contributes to the growing number of renters that currently exists across the country.<sup>145</sup>

Since the beginning of the 2019 COVID-19 pandemic, the number of home sales has spiked, and prices have yet to come down.<sup>146</sup> Given the low inventory of houses currently available, 60% of homes sold above their listing price in early 2021.<sup>147</sup> Although the market has since cooled

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138. Drew Desilver, *As National Eviction Ban Expires, a Look at Who Rents and Who Owns in the U.S.*, PEW RSCH. CTR. (Aug. 2, 2021), <https://perma.cc/5897-M6B5>.

139. *See id.* More specifically, “about 58% of households headed by Black or African American adults rent their homes, as do nearly 52% of Hispanic— or Latino— led households.” *Id.*

140. *See id.*

141. *See* Kim Parker et al., *The Demographics of Gun Ownership*, PEW RSCH. CTR. (June 22, 2017), <https://perma.cc/3SJP-WUFV>.

142. *See id.*; *see also* Desilver, *supra* note 138.

143. *See* Parker, *supra* note 141.

144. *See* Desilver, *supra* note 138; *see also* 2922 Sherman Ave. Tenants’ Ass’n v. District of Columbia, 444 F.3d 673, 683–85 (D.C. Cir. 2006) (holding that a D.C. municipal health code for buildings represented disparate treatment, rather than disparate impact, for Hispanic people living in the areas affected because they were predominantly impacted by the code’s enforcement); 42 U.S.C.A. § 3604(b) (LexisNexis 2007). This statute, otherwise known as the Fair Housing Act, prohibits discrimination “against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.” *Id.*

145. *See U.S. Housing Market – Statistics & Facts*, STATISTA (Aug. 30, 2023), <https://perma.cc/T344-LDVU>.

146. *See id.*

147. *See id.*

somewhat, persistently low inventory and increasing construction costs have done little to lower the price of housing.<sup>148</sup>

More specifically, 26% of homes sold in 2021 “fell between \$200,000 and \$299,999,” a 26% increase from pre-pandemic levels.<sup>149</sup> The average home price in the United States reached \$348,079, a “record high” spurred by increased demand and the damage caused by the pandemic.<sup>150</sup> Extrapolated over the last decade, the U.S. housing market has seen an 88% increase in cost.<sup>151</sup> This dramatic rise in prices has left many Americans, particularly those much younger and less affluent, with renting as their only realistic option.<sup>152</sup>

Thus, renting seemingly appears to no longer be a choice, but rather a reality of life for many Americans.<sup>153</sup> This lack of choice only heightens the need to protect this demographic from potential violations of constitutional rights as compared to their more financially and socially secure home-owning counterparts.

### III. ANALYSIS

The Supreme Court held in *Heller* that the Second Amendment provides a right to keep and bear arms in one’s home.<sup>154</sup> This right eventually extended to state courts after the Supreme Court’s decision in *McDonald*, which applied the Second Amendment, and *Heller*’s reasoning, to the states themselves.<sup>155</sup> Finally, in *Bruen*, the Supreme Court combined the holdings of *Heller* and *McDonald* by stating that people have a right under the Second Amendment to keep and bear arms in public spaces, free of overbearing state or federal restrictions.<sup>156</sup> Thus, when it comes to owned property, the jurisprudence seems apparent: Neither state nor federal governments can prohibit a person’s right to keep and bear arms on their property.<sup>157</sup>

However, the Court has not fully addressed whether this right also extends to rental properties.<sup>158</sup> This Comment argues that such a right

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148. See *id.*; see generally *The Impact of Today’s Higher Interest Rates on the Housing Market*, U.S. BANK (Oct. 25, 2023), <https://perma.cc/E4UG-62Y3> (discussing the rapidly increasing mortgage rates over the last few years).

149. Susan Meyer, *Average Home Price in the U.S. is Rising: \$348K in 2022*, ZEBRA (Jan. 11, 2024), <https://perma.cc/8PMT-L94N>.

150. *Id.*

151. See *id.*

152. See Tony Mariotti, *Renting Statistics: Trends & Demographics* (2023), RUBYHOME (Aug. 6, 2022, 10:48 AM), <https://perma.cc/BUA8-P3TS>.

153. See *supra* Sections II.E.1–2.

154. See *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008).

155. See *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010).

156. See *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 32–33 (2022).

157. See *supra* Section II.A.1.

158. See *supra* Section II.B.1.

applies to rental properties, and, as such, any lease provision barring tenants from keeping firearms in individual units or on the property as a whole is unconstitutional.<sup>159</sup> Furthermore, this Comment will explore other constitutional violations posed by anti-firearm provisions in lease agreements in relation to keeping and bearing arms outside the home as well.<sup>160</sup> Finally, this Comment seeks to show that, in addition to being potentially unconstitutional, prohibiting firearms in residential lease agreements violates public policy and the Supreme Court's Second Amendment jurisprudence.<sup>161</sup>

*A. Lease Provisions Banning Firearms on Private Residential Rental Properties Violate Tenants' Second Amendment Rights*

If rental property is considered a person's home in the same way owned property is for homeowners, then prohibiting a tenant from keeping firearms in his or her unit appears to directly violate *Heller*.<sup>162</sup> Additionally, while such lease restrictions do not violate the right to carry in public *per se*, the lease provisions banning firearms from being anywhere on a landlord's property likely unduly restrict the right to publicly carry because the provision will force an unarmed individual to travel to a second location to retrieve their weapon.<sup>163</sup>

*1. The Unconstitutionality of Lease Provisions Prohibiting Tenants from Keeping Firearms in Their Rental Units*

Under *Heller*, people have a right to keep and bear arms in their homes for self-defense.<sup>164</sup> In fact, *Heller* further states that people have the right to keep guns in a readily accessible state, meaning that the federal and state governments cannot put requirements on firearm storage that render the firearms inoperable at a moment's notice.<sup>165</sup> However, *Heller* does not deeply analyze what is meant by the term "home."<sup>166</sup> Nevertheless, no principal reason explains why the term should not include rental properties, and in fact, considerable Supreme Court jurisprudence suggests that courts should treat rental properties like any other residential property when undertaking constitutional analysis.<sup>167</sup>

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159. See *infra* Sections III.A.1, III.B.1.

160. See *infra* Sections III.A.2, III.B.1.

161. See *infra* Sections III.C.1–2.

162. See *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008).

163. See *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 41 (2022).

164. See *Heller*, 554 U.S. at 635.

165. See *id.* at 630.

166. See *id.* at 574–636.

167. See *Payton v. New York*, 445 U.S. 573, 586 (1980); see also *United States v. Morales*, 737 F.2d 761, 763–64 (8th Cir. 1990); *United States v. Conner*, 127 F.3d 663, 666 (8th Cir. 1997).

According to Black's Law Dictionary, a "home" is defined as "a dwelling place."<sup>168</sup> Furthermore, Black's Law Dictionary defines a "dwelling-house" as "[t]he house or other structure in which one or more people live; a residence or abode."<sup>169</sup> Finally, the same dictionary defines "residence" as "[t]he act of living in a given place for some time."<sup>170</sup> Thus, a residential rental property necessarily meets all three definitions if the inhabitants live in the property for some period.<sup>171</sup> In fact, Webster's Dictionary defines an apartment, a form of rented property, as "a room or set of rooms fitted especially with housekeeping facilities and usually leased as a dwelling."<sup>172</sup>

In addition to dictionary definitions, Fourth Amendment jurisprudence similarly treats rental residential properties no differently than owned property regarding the application of rights dependent on the specific location of the potential constitutional infraction.<sup>173</sup> For instance, in *Payton*, the Supreme Court sided in favor of the defendant in a constitutional search and seizure challenge, holding that the Fourth and Fourteenth Amendments prohibited the police from making a warrantless and nonconsensual entry into the defendant's home to make a routine felony arrest.<sup>174</sup> However, the unique part about this case is that the "home" in question was the defendant's apartment, not personally owned property.<sup>175</sup> Nonetheless, the Court did not change the application of Fourth Amendment constitutional rights between owned and rental property.<sup>176</sup>

*Morales* further illustrated this sentiment. In the case, decided following *Payton*, the Eighth Circuit Court of Appeals extended *Payton*'s protections to rented hotels and motel rooms during the rental period, so long as the renter in question maintains rightful possession of the room.<sup>177</sup> Finally, in *Conner*, the Eighth Circuit stated that the protections against unreasonable searches and seizures outlined in *Payton* and *Morales* apply to a person's temporary dwelling place, whatever form that may take.<sup>178</sup>

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168. *Home*, *supra* note 70.

169. *Dwelling-house*, *supra* note 72.

170. *Residence*, *supra* note 73.

171. *See Home*, *supra* note 70; *see also Dwelling-house*, *supra* note 72; *Residence*, *supra* note 73.

172. *Apartment*, MERRIAM-WEBSTER DICTIONARY, <https://perma.cc/DB5P-MW6E> (last visited Feb. 25, 2025).

173. *See Payton v. New York*, 445 U.S. 573, 586 (1980).

174. *See id.*

175. *See id.*

176. *See id.*

177. *See United States v. Morales*, 737 F.2d 761, 763–64 (8th Cir. 1990).

178. *See United States v. Conner*, 127 F.3d 663, 666 (8th Cir. 1997); *see also Minnesota v. Olson*, 495 U.S. 91, 95 (1990) (holding that *Payton*'s protection against warrantless searches and seizures in one's home extended to overnight guests as well).

Although these cases extend Fourth Amendment protection to rental properties, the same logic applies to Second Amendment protections as well, especially considering that the Second Amendment, like the Fourth, incorporates onto the states because of the *McDonald* decision.<sup>179</sup> If courts equate rental and owned property in applying constitutional protections, then any lease banning or severely restricting firearms in rental units blatantly violates the Constitution under *Heller*, which explicitly forbids such practices.<sup>180</sup>

While the “home” in question in *Heller* consisted of the plaintiff’s owned property and not an apartment, the Court made no distinction between the two.<sup>181</sup> The *Heller* Court ruled that because the plaintiff attempted to keep firearms in his home, the federal government could not prohibit him from doing so under the Second Amendment.<sup>182</sup> If constitutional law recognizes no difference between an apartment and a fully owned house, then any firearm restrictions deemed unconstitutional regarding owned homes should also be unconstitutional for rented apartments.<sup>183</sup> Nevertheless, these types of provisions still find their way into everyday lease agreements and have rarely faced challenges.<sup>184</sup>

## 2. The Unconstitutionality of Lease Provisions Prohibiting Tenants from Keeping Firearms Anywhere on the Property

Beyond potentially violating the *Heller* decision, residential lease agreements banning firearms on the property pose another constitutional issue. In *Bruen*, the Supreme Court held that people have a right to carry firearms in public spaces by striking down a may-issue state carry law.<sup>185</sup> State governments attempt to use may-issue laws to force residents to provide a compelling reason for carrying a weapon in public before issuing

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179. See *Payton*, 445 U.S. at 586 (1980); see also *Morales*, 737 F.2d at 76–64; *Conner*, 127 F.3d at 666 (8th Cir. 1997); *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010).

180. See *District of Columbia v. Heller*, 554 U.S. 570, 630, 635 (2008); see also *In re Application of Blasko*, No. A-3848-10T2, 2012 N.J. Super. Unpub. LEXIS 1466, at \*13–17 (N.J. Super. Ct. App. Div. June 22, 2012) (holding a New Jersey law criminalizing leaving firearms out in the open in one’s apartment unconstitutional); *Parker v. District of Columbia*, 478 F.3d 370, 401 (D.C. Cir. 2007) (holding a state law requiring trigger locks unconstitutional as it barred a gun owner from having his weapon in an accessible state while in his home).

181. See *Heller*, 554 U.S. at 635.

182. See *id.* at 630–635.

183. See *supra* Section III.A.1.

184. See generally *Dombroski v. Dall. Twp. Zoning Hearing Bd.*, 212 A.3d 149 (Pa. Commw. Ct. 2018) (failing to hold a lease provision explicitly banning firearms from being kept on the rental property as unconstitutional); see also *Weapons and Firearms Sample Clauses*, *supra* note 62 (providing examples of lease provision both banning firearms as well as regulating their storage if allowed on the property).

185. See *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 32–33 (2022).

a concealed carry license at their discretion.<sup>186</sup> By striking down such a law, the Court did not say that states cannot limit public carry or that they could not require a concealed carry license.<sup>187</sup> Rather, the Court reasoned that if a citizen meets the criteria for Second Amendment protections, then the state may not circumvent this right by hindering a person's ability to carry in public through discretionary licenses.<sup>188</sup>

Lease provisions banning firearms on the entire property do just that. *Bruen* created a sweeping right to carry firearms outside the home.<sup>189</sup> If an individual is not a criminal nor attempting to carry firearms in a particularly sensitive area, such as in a school or federal building, they are free to carry in public the entire time they are there.<sup>190</sup> Thus, not allowing tenants to keep firearms in their units or anywhere else on the property inherently interrupts this continuous right to carry in public spaces.<sup>191</sup>

Furthermore, if a tenant cannot keep firearms in their unit or a common area on the property, they will have to store their firearm elsewhere if they wish to have one at all. Unless this second location directly adjoins the rental property in question, a tenant will inevitably have to travel some distance to retrieve their weapon, a journey during which they will be unarmed. Although this may seem like a mundane concern in theory, it is rather severe in practice. Suppose a tenant lives in a high-crime area and does not have a vehicle for transportation. Not allowing the tenant to store weapons on the rental property will require him to risk his safety and forgo the protection he sought in purchasing the firearm in the first place by forcing him to walk unarmed through this area to retrieve the firearm. The restriction essentially renders the tenant's right to carry in public useless, as one of the primary purposes of the right is to provide individuals with a means of self-defense at a moment's notice.<sup>192</sup>

Moreover, *Bruen* specifically did not qualify the right to carry in public by demonstrating a need, and in fact, did away with any requirement for an individual to demonstrate need.<sup>193</sup> Thus, while still persuasive, it should not matter if a walk in a public space endangers some

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186. *See id.* at 17.

187. *See id.* at 41.

188. *See id.*

189. *See id.*

190. *See id.* at 36.

191. *See id.*; *see also* WIS. STAT. § 175.60(21)(b) (LexisNexis 2023); *see also Weapons and Firearms Sample Clauses*, *supra* note 62 (providing sample lease provisions banning firearms anywhere on the property).

192. *See Young v. Hawaii*, 896 F.3d 1044, 1052 (9th Cir. 2018) (“[R]estricting the right to carry a firearm openly to those engaged in the protection of life and property, amounted to a destruction of the core Second Amendment right to carry a firearm openly for self-defense, and was thus unconstitutional under any level of scrutiny . . .”).

193. *See N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 32-33 (2022).

people more than others, as the Supreme Court held that people have the right to carry weapons in public spaces for as long as they are there.<sup>194</sup>

More importantly, not having the option to store weapons close at hand will detrimentally affect gun ownership generally by discouraging tenants from exercising a right they should have full access to.<sup>195</sup> Specifically, lease restrictions deter gun ownership because buying and storing a firearm at a second location, if one can find a storage option that allows for gun storage, costs far more than it does to simply never buy the firearm in the first place.<sup>196</sup> Therefore, when faced with a choice between this cumbersome storage option or not owning a gun at all, many people will likely choose the latter even if they strongly prefer to own a gun. Consequently, private landlords could essentially chill their tenant's Second Amendment right to own firearms and carry them in public even though they do not explicitly ban the practice.<sup>197</sup> An act that causes such a detrimental effect on the full exercise of constitutionally protected rights is inherently unconstitutional,<sup>198</sup> even if the landlords in question are private individuals.<sup>199</sup>

*B. Private Residential Lease Provisions Banning the Possession of Firearms are Subject to the Second Amendment*

The biggest hurdle tenants face when challenging the constitutionality of anti-firearm lease provisions is that these leases are typically agreements made between private individuals. In most cases, the conduct of private parties does not fall within the scope of constitutional analysis.<sup>200</sup> In other words, constitutional protections often do not apply to actions that are solely private in nature, the right to bear arms included, in the same way they apply to state or federal government actions.<sup>201</sup> In fact, this same principle even extends to private businesses. Privately owned bars, nightclubs, and restaurants have historically barred patrons from

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194. *See id.*

195. *See id.*; *see also* District of Columbia v. Heller, 554 U.S. 570, 635 (2008).

196. *See Storage Options, WORRIED ABOUT A VETERAN*, <https://perma.cc/725R-4HJK> (last visited Mar. 13, 2025) (noting that self-storage facilities for firearms can range anywhere from \$20-\$75 a month depending on the size of the unit and number of firearms being stored).

197. *See* State v. Reid, 1 Ala. 612, 616–17 (1840) (holding that actions which, “under the pretense of regulating, amounts to a destruction of the right, or which requires arms to be so borne as to render them wholly useless for the purpose of defense,” are unconstitutional); *see also* Nunn v. State, 1 Ga. 243, 248 (1846) (holding that an action need not entirely destroy or prohibit a constitutional right to be declared unconstitutional, but need only limit the full exercise of said right to be considered invalid).

198. *See Reid*, 1 Ala. at 616–17; *see also Nunn*, 1 Ga. at 248.

199. *See infra* Section III.B.1.

200. *See Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 620 (1991).

201. *See id.*

bringing firearms into the establishment, even when it would be unconstitutional for government actors to do so.<sup>202</sup> Thus, as residential leases are usually private agreements, tenants will face difficulty persuading courts to apply Second Amendment protections to these agreements.<sup>203</sup>

However, this hurdle has not prevented courts from applying the Constitution to private actions and businesses in the past.<sup>204</sup> Additionally, commercial leasing and private residential leasing differ enough that constitutional analysis is more appropriate in the case of the latter than in the case of the former.<sup>205</sup>

### 1. Applying the Second Amendment to Private Residential Landlords

Although private businesses have historically prohibited firearms from being located on their premises,<sup>206</sup> a business that merely sells commercial goods and one that offers residential living arrangements are not the same.<sup>207</sup> For example, residential landlords owe their tenants more protections and face greater limitations than commercial landlords.<sup>208</sup> These limitations include the residential tenant's right to the common-law defense of retaliation and limitations on residential landlord remedies in cases of breach, to name a few.<sup>209</sup> Additionally, unlike commercial landlords, residential landlords typically must maintain their leased property to meet the requirements of governing health, safety, and housing codes.<sup>210</sup> Finally, in most states, any residential dwelling unit has an implied warranty that the landlord will deliver over and maintain premises that are safe, clean, and fit for human habitation throughout the tenancy.<sup>211</sup> Thus, considering residential tenants have far greater protections and rights than most customers of other private businesses, these tenants should similarly have greater constitutional protections than other

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202. See *Moore v. Madigan*, 708 F.3d 901, 904 (7th Cir. 2013).

203. See *id.*

204. See *Shelley v. Kraemer*, 334 U.S. 1, 16–17 (1948); see also *Heart of Atlanta Motel v. United States*, 379 U.S. 241, 261–62 (1964); *Katzenbach v. McClung*, 379 U.S. 294, 303–05 (1964).

205. See *supra* Section II.D.1.

206. See *Moore*, 708 F.3d at 904.

207. See *supra* Section II.D.1.

208. See *Miller v. Christian*, 958 F.2d 1234, 1237–38 (3d Cir. 1992); see also *Hilder v. St. Peter*, 478 A.2d 202, 208 (Vt. 1984).

209. See *Landlord and Tenant Rights and Remedies After Default (Commercial Leases) (MN)*, *supra* note 112; see also *Landlord and Tenant Rights and Remedies After Default (Commercial Leases) (PA)*, *supra* note 112.

210. See *Miller*, 958 F.2d at 1237–38.

211. See *Hilder*, 478 A.2d at 208.



customers, including those protections guaranteed by the Second Amendment.<sup>212</sup>

The Supreme Court did apply the Constitution to a private residential business in *Heart of Atlanta Motel*.<sup>213</sup> There, the Court held that the federal government could bar a private hotel's policy denying African Americans rooms, as the policy unreasonably interfered with the flow of interstate commerce by discouraging African Americans from bringing their business to the area.<sup>214</sup> The Court went a step further by applying this same logic to a wholly commercial business in *Katzenbach*, holding that Congress could prohibit racial segregation by privately owned restaurants under the Constitution as long as some link to interstate commerce exists.<sup>215</sup> Although these cases used the Commerce Clause and not the Second Amendment as the basis for their holdings, lease provisions that prohibit firearms could prevent potential gun owners from living in and bringing business to the local area, and these provisions could subsequently be voided for their detrimental effect on interstate commerce.<sup>216</sup> Thus, courts could enforce Second Amendment protections on private lease agreements without actually invoking the Second Amendment itself.<sup>217</sup>

Even if this argument fails, a tenant may still bring a constitutional challenge against his landlord for prohibiting firearms on the rental property.<sup>218</sup> In *Shelley*, the Supreme Court held that courts may strike down a racially restrictive covenant by a homeowner's association on the basis of the Fourteenth Amendment.<sup>219</sup> In so holding, the Court reasoned that it could apply the Constitution to the private agreement because a state court's initial ruling on the validity of the covenant constituted a state action subject to federal overview.<sup>220</sup> This ruling made sense as the Fourteenth Amendment applied to the states rather than the federal government alone, and thus any Fourteenth Amendment issues taken up by the states could be ruled on by federal courts applying the

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212. See *Landlord and Tenant Rights and Remedies After Default (Commercial Lease)* (NY), *supra* note 111; see also *Miller*, 958 F.2d at 1237–38; *Hilder*, 478 A.2d at 208.

213. See *Heart of Atlanta Motel v. United States*, 379 U.S. 241, 261–62 (1964).

214. See *id.*

215. See *Katzenbach v. McClung*, 379 U.S. 294, 303–05 (1964).

216. See *Heart of Atlanta Motel*, 379 U.S. at 261–62; see also *Katzenbach*, 379 U.S. at 303–05.

217. See *Heart of Atlanta Motel*, 379 U.S. at 261–62; see also *Katzenbach*, 379 U.S. at 303–05.

218. See *Shelley v. Kraemer*, 334 U.S. 1, 16–17 (1948).

219. See *id.*

220. See *id.*

Constitution.<sup>221</sup> This same reasoning applies to residential leases too, so long as they are reviewable by state courts, as is often the case.<sup>222</sup>

For example, because state law usually bars self-help remedies, a landlord attempting to evict a tenant for breaching a lease provision, such as improperly storing or keeping firearms on the property, must pursue the eviction through the state court system.<sup>223</sup> Subsequently, a court overseeing such a proceeding would not only have to review the eviction clause itself but also the provision on which the eviction is based.<sup>224</sup> Therefore, if a tenant faces eviction for violating an anti-firearm provision, this provision would receive state court review too.<sup>225</sup> Furthermore, after the *McDonald* decision, state courts must now follow Second Amendment protections in most of the decisions they make.<sup>226</sup> Thus, a lease provision banning firearms, if presented to a state court during an eviction proceeding, triggers Second Amendment analysis and allows federal courts to review the provision under the Constitution.<sup>227</sup> Consequently, at the state or federal level, courts would likely hold such a provision unconstitutional under *Heller* because that case granted the right to keep and bear arms in one's home.<sup>228</sup>

*C. Not Extending Second Amendment Protections to Renters  
Contradicts Public Policy and Supreme Court Jurisprudence*

In addition to the constitutional argument, several other reasons support the conclusion that allowing private landlords to put firearm prohibitions in their residential lease agreements is a bad idea. Foremost, given the number of renters that currently exist in the country, landlords essentially have the ability to limit Second Amendment rights for a large swath of people.<sup>229</sup> Furthermore, given the demographic makeup of many of these same renters and the increasing cost of owning a home, privately imposed Second Amendment restrictions disproportionately harm young,

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221. *See id.*

222. *See Eviction Laws and Forms: 50-State Survey*, *supra* note 122. This source gives examples from every state in the country on how tenants can have their leases reviewed by state courts in the case of an eviction action. *See id.*

223. *See supra* Sections II.B.1., II.D.2.

224. *See Shelley*, 334 U.S. at 16–17; *see also* *Lenair v. Campbell*, 31 Pa. D. & C.3d 237, 239 (Pa. Com. Pl. 1984); *Helgesen v. City of Fort Atkinson*, 291 N.W.2d 660, 660 (Wis. Ct. App. 1980); WIS. STAT. ANN. § 799.01 (1)(a) (LexisNexis 2023).

225. *See Shelley*, 334 U.S. at 16–17; *see also Lenair*, 31 Pa. D. & C.3d at 239; *see also Helgesen*, 291 N.W.2d at 660; WIS. STAT. ANN. § 799.01 (1)(a) (LexisNexis 2023).

226. *See Shelley*, 334 at 16–17; *see also McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010).

227. *See Shelley*, 334 at 16–17; *see also McDonald*, 561 U.S. at 750.

228. *See* *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008); *see also supra* Section III.A.1 (discussing the concept of the “home”).

229. *See* *Desilver*, *supra* note 138.

minority, and low-income Americans.<sup>230</sup> Not only does this disparity potentially violate federal civil rights law,<sup>231</sup> but limiting constitutional rights also opposes the general arc of the Supreme Court's Second Amendment jurisprudence, which has increased personal rights for gun owners over the past several decades.<sup>232</sup>

### 1. The Prevalence of Renting in America

Renting is quickly becoming a necessary phenomenon in American life.<sup>233</sup> Thanks to dramatically rising home prices, due largely to a lack of supply, high interest rates, and steep construction costs, renting represents the only realistic option for many Americans.<sup>234</sup> This renting phenomenon is illustrated by the types of people who typically rent a living space rather than personally owning one.<sup>235</sup> For instance, most renters in the United States, making up roughly 36% of the total adult population, are usually young and have lower incomes.<sup>236</sup> Additionally, a significant portion of these same renters are of minority status.<sup>237</sup>

While seemingly benign on the surface, these trends reveal a serious issue concerning the prevalence of gun ownership in this country.<sup>238</sup> Specifically, roughly three in ten Americans currently own guns, and about half of those who do not could see themselves owning one in the future.<sup>239</sup> Furthermore, about 32% of Black Americans and 21% of Hispanic Americans reported that they either personally own guns or that someone in their household owns one.<sup>240</sup> Given the high rates of both gun ownership and residential renting in this country, a substantial portion of American renters are likely either current gun owners or seriously thinking about becoming one in the future.<sup>241</sup>

If landlords can ban all firearms from their properties, they not only may disenfranchise a significant amount of renting gun owners from exercising their right to keep and bear arms in their homes, but they also

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230. *See id.*; *see also* Mariotti, *supra* note 152; *see also* Meyer, *supra* note 149.

231. *See* 42 U.S.C.S. § 3604(b) (LexisNexis 2007); *see generally* 2922 Sherman Ave. Tenants' Ass'n v. D.C., 444 F.3d 673 (D.C. Cir. 2006) (holding that a D.C. municipal health code for buildings represented disparate treatment, rather than disparate impact, for Hispanic people living in the areas affected because they were predominantly impacted by the code's enforcement).

232. *See supra* Section II.A.1.

233. *See* Desilver, *supra* note 138.

234. *See U.S. Housing Market – Statistics & Facts*, *supra* note 145.

235. *See* Desilver, *supra* note 138.

236. *See id.*

237. *See id.*

238. *See* Parker, *supra* note 141.

239. *See id.*

240. *See id.*

241. *See id.*; *see also* Desilver, *supra* note 138.

may prevent less affluent Americans from enjoying their Second Amendment rights.<sup>242</sup> Some may argue that the question of whether renters have the same right to keep and bear arms as homeowners is irrelevant because people can move to a different apartment or buy a house. This argument should fail because moving is not always an option given its expense and the economic challenges many renters already face.<sup>243</sup> Even if a constitutional argument fails, states have a responsibility to prevent a constitutional right from applying to homeowners and not to renters.<sup>244</sup> This responsibility is especially pronounced when one group holds more economic power than the other.<sup>245</sup> Indeed, some states have already acted on this responsibility by banning restrictions on firearms in lease agreements.<sup>246</sup>

## 2. Potential Civil Rights Violations and Supreme Court Jurisprudence

Allowing landlords to ban firearms on their properties may also cause racial inequity. Many renters are minority Americans.<sup>247</sup> Of these minority Americans, roughly 32% of black Americans and 21% of Hispanic Americans reported either owning or living with someone who owns guns.<sup>248</sup> Finally, of all renters, minority Americans are the most likely to face an eviction proceeding.<sup>249</sup> Thus, landlords who prohibit tenants from keeping firearms under penalty of eviction will likely disproportionately impact the Second Amendment rights of minority gun owners compared to their non-minority counterparts.<sup>250</sup> This outcome flirts dangerously close to violating federal civil rights law because it amounts to disparate treatment, especially considering that minority Americans will experience the brunt of the curbed Second Amendment rights.<sup>251</sup>

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242. See Desilver, *supra* note 138.

243. See *id.*; see also *U.S. Housing Market – Statistics & Facts*, *supra* note 145; *The Impact of Today's Higher Interest Rates on the Housing Market*, *supra* note 148.

244. See Desilver, *supra* note 138.

245. See *id.*

246. See TEX. PROP. CODE §§ 94.257(1)–(3) (2023); see also MINN. STAT. ANN. § 62A.714(f) (West 2023); see also VA. CODE ANN. § 55.1-1208 (A)(6) (West 2023).

247. See Desilver, *supra* note 138.

248. See Parker, *supra* note 141.

249. See Desilver, *supra* note 138.

250. See Parker, *supra* note 141; see also Desilver, *supra* note 138.

251. See Desilver, *supra* note 138; see also 2922 Sherman Ave. Tenants' Ass'n v. D.C., 444 F.3d 673, 683–85 (D.C. Cir. 2006) (holding that a D.C. municipal health code for buildings represented disparate treatment, rather than disparate impact, for Hispanic people living in the areas affected because they were predominantly impacted by the code's enforcement); 42 U.S.C.A. § 3604(b) (LexisNexis 2007) (prohibiting discrimination “against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin”).

Finally, extending the Amendment's protections to renters better aligns with recent Supreme Court reasoning on the Second Amendment.<sup>252</sup> The Supreme Court has generally increased individual gun rights over time.<sup>253</sup> From *Heller*, to *McDonald*, to *Bruen*, the Supreme Court has continually expanded the places, people, and weapons that the Second Amendment covers.<sup>254</sup> Once, American jurisprudence dictated that a person only had the right to keep guns in their home; people now have the explicit right to carry guns in public.<sup>255</sup> Whereas the Second Amendment previously only applied to the federal government, it now applies to the states.<sup>256</sup> And whereas the Second Amendment used to apply only to firearms, it now applies to tasers, knives and batons.<sup>257</sup> In other words, if a tenant contests their landlord's firearm prohibition, courts applying this precedent of expanding gun rights should interpret the Second Amendment as applying to renters as well.<sup>258</sup>

Additionally, the racial disparity anti-firearm lease provisions may cause similarly conflicts with Supreme Court jurisprudence.<sup>259</sup> For instance, *Heller*, *McDonald*, and *Bruen* used the extension of gun rights to newly freed slaves, after the Civil War, as justification for the fundamental nature of the right to keep and bear arms.<sup>260</sup> Thus, a lease provision that disproportionately punishes minority renters for owning guns should not survive in front of the Supreme Court, if it ever reaches that level.<sup>261</sup> Even if such a provision has yet to be challenged, landlords should understand that precedent is not on their side when it comes to restricting a tenant's firearms on their property.<sup>262</sup>

#### IV. CONCLUSION

Lease provisions that ban tenants from keeping firearms in their units or anywhere else on the property violate the Second Amendment. Under

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252. See *supra* Section II.A.1.

253. See *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008); see also *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 32-33 (2022); see also *McDonald v. City of Chicago*, 561 U.S. 742, 743-44 (2010).

254. See *Heller*, 554 U.S. at 635; see also *Bruen*, 597 U.S. at 32-33; *McDonald*, 561 U.S. at 743-44.

255. See *Heller*, 554 U.S. at 635; see also *Bruen*, 597 U.S. at 32-33.

256. See *Heller*, 554 U.S. at 635; see also *McDonald*, 561 U.S. at 743-44.

257. See *State v. Deciccio*, 105 A.3d 165, 193 (Conn. 2014); see also *Caetano v. Massachusetts*, 577 U.S. 411, 412 (2016).

258. See *supra* Section II.A.1.

259. See *supra* Section III.C.2 (discussing potential civil rights violations).

260. See *Heller*, 554 U.S. at 615; see also *McDonald*, 561 U.S. at 743-44; *Bruen*, 597 U.S. at 73-77.

261. See *Heller*, 554 U.S. at 615; see also *McDonald*, 561 U.S. at 743-44; *Bruen*, 597 U.S. at 73-77; Desilver, *supra* note 138.

262. See *Heller*, 554 U.S. at 615; see also *McDonald*, 561 U.S. at 743-44; *Bruen*, 597 U.S. at 73-77.

*Heller*, people have the right to keep and bear arms in their homes.<sup>263</sup> Other areas of constitutional law, such as Fourth Amendment jurisprudence, treat rental property and owned property identically.<sup>264</sup> Additionally, courts make no principal distinction between the definition of rental property and owned property.<sup>265</sup> Thus, *Heller*'s protections should extend to rental residential properties because the properties are a tenant's home during their lease term.<sup>266</sup> Similarly, leases banning guns on the property altogether violate the Second Amendment because restricted tenants must then travel to a second location, unarmed, to retrieve their firearms.<sup>267</sup> Finally, depriving tenants of a place to reliably store their weapons may unduly restrict their Second Amendment right to buy a gun in the first place.<sup>268</sup>

Although private actors usually operate beyond the scope of the Constitution,<sup>269</sup> private residential landlords are unique because they are selling a place to live.<sup>270</sup> As such, lease provisions, especially those that carry the threat of eviction, are often reviewed by state courts.<sup>271</sup> Under *Shelley*, such review constitutes a state action, and thus is subject to the constitutional amendments that apply to the states.<sup>272</sup> Thanks to *McDonald*, the Second Amendment is one such amendment.<sup>273</sup> Consequently, any lease provision banning a tenant from keeping firearms under the threat of eviction in states that prohibit self-help must follow Second Amendment protections.<sup>274</sup>

This issue matters because many Americans, especially those of minority status, live in rental properties.<sup>275</sup> Therefore, allowing landlords to ban tenants from keeping firearms in their rentals essentially disenfranchises many Americans of their Second Amendment rights.<sup>276</sup> Effectively, lease restrictions on guns make it so that only homeowners may reap the benefits of the Second Amendment, a consequence that cannot benefit the states or comport with Supreme Court jurisprudence.<sup>277</sup> Subsequently, states should limit a landlord's ability to restrict firearm

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263. See *Heller*, 554 U.S. at 615.

264. See *supra* Section III.A.1.

265. See *Home*, *supra* note 70.

266. See *id.*

267. See *Bruen*, 597 U.S. at 73–77.

268. See *supra* Section III.A.2.

269. See *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 620 (1991).

270. See *Landlord and Tenant Rights and Remedies After Default (Commercial Lease)* (NY), *supra* note 111; see also *supra* Section II.D.1.

271. See *supra* Sections III.B.1, II.D.2.

272. See *Shelley v. Kraemer*, 334 U.S. 1, 16–17 (1948).

273. See *McDonald v. City of Chicago*, 561 U.S. 742, 743–44 (2010).

274. See *Shelley*, 334 U.S. at 16–17; see also *McDonald*, 561 U.S. at 743–44.

275. See *supra* Section III.C.1.

276. See *supra* Section III.C.1.

277. See *supra* Section III.C.1.

ownership in their leases, and state and federal courts have a responsibility to review such restrictions with deep constitutional scrutiny.