

# Should pardoned felons have gun rights?

## Ex-con who can own arms in Ga. sues Tenn.

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David Scott Blackwell has repaid his debt to society, by Georgia standards.

He served five years in prison for selling drugs. He successfully finished his probation. He was even granted a full pardon by the Georgia Board of Pardons and Paroles, which would allow him to possess a gun in that state.

But should Blackwell, now living in Franklin, be able to own a gun here?

Blackwell is suing the state after being denied a gun permit in Tennessee, arguing that the Georgia pardon fully restored his rights — even the right to bear arms. It's a battle being played out in other states as well, as lawmakers in places such as Alaska and Oregon have mulled over laws to loosen firearms restrictions on felons who have had some of their rights restored.



**Pardon trumps legislation, attorney David Raybin says.**

It also has brought out unusually vocal support from Second Amendment advocates, who in prior years have been hesitant to support some felons' rights to possess firearms. Among those advocates is the Tennessee Firearms Association, which downplays the fact that Blackwell is a convicted felon, instead painting it as a conflict between the constitutional powers of the pardon and Tennessee lawmakers who have written laws to restrict felons' rights.

This marks the first time in the association's 16 years that it has filed a brief in any lawsuit.

"Georgia's pardon system granted him a full pardon, and it specifically says he has the right to purchase and acquire guns," said John Harris, a Nashville attorney who serves as the volunteer executive director for the Tennessee Firearms Association. "This is a question of, can the Tennessee General Assembly pass a statute that restricts the constitutional authority of another branch of the government?"

Blackwell failed to convince a Davidson County Chancery Court judge, but has appealed. The Tennessee Court of Appeals recently heard arguments and is considering the case.

"The pardon restores constitutional rights — that's what a pardon does," said Blackwell's attorney, David Raybin. "Therefore, it restores his right to a firearm. That's it, in its simplest terms."

But the state is opposing Blackwell, saying laws passed by the Tennessee legislature prohibiting felons from possessing firearms apply to those whose rights have been restored.

“It is reasonable for the legislature to determine that felony drug offenders, even those who subsequently receive a pardon, are likely to misuse firearms in [the future](#),” wrote the Tennessee Attorney General’s Office. “This is due to the well-known connection between guns and drugs.”

## **A full pardon**

Court records show Blackwell was convicted in 1989 in Georgia on three counts of selling cocaine. He was sentenced to nine years in prison and fined \$3,000. In 2003, he applied and received a full, unconditional pardon. And that pardon spelled out what Blackwell was regaining.

“All civil and political rights, including the right to receive, possess, or transport in commerce a firearm ... are hereby restored,” the Georgia pardon reads.

In 2009, having moved to Tennessee, Blackwell sought out information on whether he could possess a firearm here, writing to state Rep. Glen Casada, R-Franklin, who in turn asked Tennessee’s attorney general for guidance.

The attorney general said Blackwell could not own a gun here.

Raybin said that legislation — like Tennessee’s prohibition on felons owning guns — is trumped by powers enshrined in a state’s constitution — like the power to pardon and restore felons’ rights. When the two conflict, the constitution should [win](#), he said.

“A man having a pardon trumps whatever legislative restrictions there might be on a convicted felon carrying a firearm,” he said.

The Tennessee Firearms Association has taken up that argument as central to its interest in the case, as opposed to any Second Amendment issues, Harris said. He said that he understands the state’s interest in blocking violent felons from obtaining firearms. But he said it makes little sense to block other felons if they’ve had their rights restored.

“If it’s a nonviolent felony, grant them their full rights of citizenship,” he said. “If you’re going to restore some guy’s right to vote, to become a legislator and make policy or to sit on a jury, then what’s the hesitation on the gun issue?”

## **State wins 2002 case**

The Tennessee Supreme Court decided a similar case in 2002, in which a violent felon who had his rights restored by the courts in Tennessee was charged with illegal possession of a firearm. It ruled in favor of the state, saying the felon couldn’t possess a handgun, even with his rights restored.

The Attorney General's Office argues that Tennessee's constitution doesn't bar the legislature from removing felons' rights and that it is well established that states can put some restrictions on gun ownership.

"The constitutional right to possess a firearm is not absolute," [attorneys](#) for the state wrote.

But Raybin is banking on a recent U.S. Supreme Court decision, called Heller, to play a bigger role. That court ruled that the Second Amendment guarantees citizens individual, constitutional rights to possess firearms. Raybin argues that a full restoration of a felon's civil rights must therefore include their Second Amendment rights.

"They constitutionalized the right to a firearm, just like a right to free speech, the right to religion," Raybin said. "It is that strong."

Raybin said the Blackwell case may be the first in Tennessee to use the Heller decision. The appeals court is expected to take several weeks before ruling on it.