



Wyoming AG backs Fredon man's quest to carry a handgun

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In an amicus brief supporting a Fredon man's quest to be able to carry his handgun outside his home, the Wyoming attorney general — on behalf of [Wyoming and 18 other states](#) — argues that the United States is singular, not plural, and that federal law and the Constitution of the land should be enforced over individual state laws.

“The supremacy clause dictates that federal law is the supreme law of the land and that any state law that conflicts with federal law must give way,” says the brief filed by the Wyoming attorney general. “Because of that clause, the federal government sets the minimum protections offered under the United States Constitution, but states may afford their citizens greater or different protections where the federal government has not otherwise preempted the field. The supremacy clause provides that the Constitution and the laws of the United States shall be the supreme law of the land; and the judges in every state shall be bound thereby.”

Amicus briefs have been rolling in to support John Drake's appeal to the U.S. Supreme Court.

The briefs, seven of which have been acquired by The New Jersey Herald, use several arguments as to why the case should be heard, including that the 14th Amendment provides that federal law should be enforced over state law, and that all residents of America should be granted rights and not just a select few.

The 14th Amendment states: “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.”

All of the briefs the New Jersey Herald acquired reference *Heller v. District of Columbia* and *McDonald v. Chicago*, two cases that are considered landmark for their effect on gun rights and both of which were fought and won by Drake's lawyer Alan Gura, who is based in Alexandria, Va.

In 2008, Washington, D.C., resident and special police officer Dick Heller filed a lawsuit challenging the city's laws that he not be allowed to register a handgun that he wished to use for personal protection inside his home.

At the time the city had a law prohibiting the possession of a handgun by making it a crime to carry an unregistered firearm (even while in one's home), while simultaneously prohibiting the registration of handguns.

Four months after hearing Heller's argument, the U.S. Supreme Court decided 5-4 that the Second Amendment protects an individual's right to possess firearms and that the city's total ban on handguns and its requirement that all firearms be kept nonfunctional, even when necessary for self-defense, violated that right, thus allowing D.C. residents the right to possess handguns in their homes for self-defense.

Two years later, in Chicago, a group led by Otis McDonald challenged similar laws that made it illegal to possess a handgun within the Chicago city limits. The U.S. Supreme Court of Appeals once again voted 5-4 that the law was in violation of not only the Second Amendment and but the 14th Amendment as well.

"It is clear that the framers and ratifiers of the 14th Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty," Supreme Court Justice Samuel Alito said in the ruling on behalf of the court. "The 14th Amendment makes the Second Amendment right to keep and bear arms fully applicable to the states."

"Heller provided much-needed guidance on the basic nature of the right to bear arms, while McDonald cemented it as a fundamental right against state infringement," the CATO Institute said of the two rulings in the amicus brief it filed.

The United States Justice Foundation, in its brief, argues the Heller decision affords "the right to keep and bear arms belongs to all Americans, all members of the political community, not an unspecified subset. As applied to the states through the 14th Amendment, the right to keep and bear arms belongs to all citizens of New Jersey, not just a privileged few selected by the state."

Drake is the current namesake for a 2010 lawsuit titled *Drake v. Jerejian*, challenging the New Jersey law that those who want concealed-carry permits must show "justifiable need."

Drake has said his justifiable need is that he runs a business that owns and services ATMs requiring him to carry large sums of cash.

In its brief, the CATO Institute — who according to its website is a Washington, D.C.-based public policy research organization "dedicated to the principles of individual liberty, limited government, free markets and peace" — argued that the state's "justifiable need" requirement violates citizen's fundamental rights granted by the Constitution.

"It is inconceivable that other fundamental rights would be subjected to such a regime," the amicus brief states. "For example, a law that conditioned a parade permit on a state official's

decision that a particular organization or cause ‘needs’ such a parade would be unquestionably unconstitutional.”

The lawsuit also includes three other New Jersey residents and two organizations.

The brief filed by the Wyoming attorney general argues that only 1,195 people in New Jersey held valid handgun permits in 2011 equaling .018 percent of the state’s population ages 21 and older.

By filing the brief, the Wyoming attorney general is acting as the lawyer for 18 other states: Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Kansas, Kentucky, Louisiana, Michigan, Missouri, Nebraska, New Mexico, Ohio, Oklahoma, South Carolina, South Dakota and West Virginia.

In addition to the states and the [National Rifle Association](#), which announced that they would file a brief in the case on Monday, numerous other organizations have filed briefs as well as 34 members of Congress, including New Jersey Congressman Leonard Lance (R-7), filed a brief as a group.

The federal lawsuit was filed in 2010 by Frankford resident and Newton business owner Jeffery Muller, Drake, the New Jersey Second Amendment Foundation, the Association of New Jersey Rifle & Pistol Clubs and others.

In January of that year, Muller was tased, beaten and driven to Missouri, where he escaped. His captors had intended to kidnap someone else.

Though the kidnappers were apprehended, Muller feared that their associates might try to harm him and applied for a handgun carry permit, but was denied.

Muller and others filed a federal lawsuit asking that their needs be considered “justifiable needs” and that certain parts of the New Jersey code be invalidated.

In 2011, Muller was granted a carry permit by Superior Court Judge David Ironson in Morristown after two other judges denied his appeal. Muller was subsequently removed from the suit, but Drake and the others continued with it.

When the lawsuit was filed in November 2010, it was titled Muller v. Maenza. Philip Maenza was the Superior Court judge in Morristown who denied Muller his permit.

After Muller received his permit and was dropped from the suit, it was renamed Piszczatoski v. Filko. Rudolph Filko is the Superior Court judge in Passaic County who denied a permit to Daniel Piszczatoski, another member of the lawsuit.

Piszczatoski was a member of the Coast Guard when he joined the lawsuit in 2010. In September 2012, Piszczatoski retired from the Coast Guard, and two months later, applied for a retired law enforcement carry license, which does not have a justifiable need requirement. He was issued a

permit shortly after and removed himself from the lawsuit, once again changing the name to the next in line, Drake v. Edward A. Jerejian, the Superior Court judge in Bergen County who denied a permit to Drake.

The respondents in the case are Jerejian, Superior Court Judge Thomas D. Manahan, State Police Superintendent Col. Joseph R. Fuentes, Hammonton Chief of Police Robert Jones, Montville Chief of Police Richard Cook and New Jersey Attorney General John Jay Hoffman.

In January, the group filed a petition to have their suit heard in the United States Supreme Court.

Drake said in an email to the New Jersey Herald that the briefs that have already been filed show “the quality of support for our cause.”

In an email to his clients, Gura said that the state must file its opposition to the case being heard in the Supreme Court by March 14.

Drake hopes the case will be heard by the fall, he told the New Jersey Herald last week.