

Heavy hitters support SAF motion to Supreme Court on carry case

Dave Workman February 14, 2013

The Bellevue-based Second Amendment Foundation is getting some heavyweight support in its petition to the Supreme Court for a Writ of Certiorari in a case challenging the gun permitting statute in the State of New York; a case that will have national impact because it could affect every concealed carry statute in the nation.

Supporting the motion are 20 state attorneys general, and gun owners in the other 30 states are wondering why their attorney general has not signed on. Washington's new Democrat Attorney General Bob Ferguson's name is not on the list.

Attorneys general who have signed onto an amicus were led by Virginia Attorney General Kenneth Cuccinelli. They represent Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Kansas, Michigan, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Carolina, South Dakota, Texas, Utah and West Virginia.

In addition, supporting amicus briefs have also been filed by the Center for Constitutional Jurisprudence represented by former Attorney General Edwin Meese III, the National Rifle Association represented by former Solicitor General Paul D. Clement, plus the American Civil Rights Union, Academics for the Second Amendment, Cato Institute, the Second Amendment Preservation Association, New Jersey Second Amendment Society and Commonwealth Second Amendment, Inc.

The case is *Kachalsky v. Cacace*, filed by SAF and five private citizens in the Empire State who are challenging New York's arbitrary and capricious permitting system. They are represented by Alan Gura, the attorney who won both the *Heller* and *McDonald* cases before the Supreme Court in 2008 and 2010, respectively. The *McDonald* case was also filed by SAF.

There is much at stake, noted SAF founder and Executive Vice President Alan Gottlieb. This case, if it is heard by the high court and gets a favorable ruling, will solidify the notion that the right to bear arms

extends beyond the confines of one's home. With some 8.5 million American citizens already licensed to carry for personal protection away from home, and many more involved in the open carry movement, Supreme Court affirmation of their right to bear arms may seem superfluous. Quite the opposite is the truth, actually.

Because New York, New Jersey, Maryland and other states currently enforce a "may issue" type of carry permit system, government bureaucrats can now simply deny someone a license or permit. In the Kachalsky challenge, the issue revolves around a requirement that permit applicants prove a "special need" to exercise a constitutional right.

"Our case is about equal protection and the arbitrary authority of government officials to essentially decide on a whim whether average citizens can have the means of self-defense outside the confines of their home," Gottlieb said in a press release. "Most crimes happen away from the home, and it is in public places and on public streets where a citizen is most likely to encounter a life-threatening situation where he or she might have to defend themselves."

Last year, SAF won a similar case against the State of Maryland – a case now on appeal – when a federal district judge ruled that Maryland's law is unconstitutional.

Gun prohibitionists – the same people who are now trying to ban so-called "military style assault weapons" – have maintained that the Second Amendment applies only to guns kept in the home for personal protection. Judge Benson Everett Legg summed up that philosophy thusly: "A citizen may not be required to offer a 'good and substantial reason' why he should be permitted to exercise his rights. The right's existence is all the reason he needs."

Getting Supreme Court review of Kachalsky is the first step. Winning the case then becomes the challenge, and Gura has a proven track record.

Once legal carry outside the home is affirmed as protected by the Second Amendment, the remaining big issue will be semiautomatic rifles, and that could be the toughest nut to crack.