

BusinessWeek

New Jersey Gun-Carrying Limit Left Intact by U.S. High Court (1)

By Greg Stohr

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The U.S. Supreme Court left intact a New Jersey law that requires a “justifiable need” to carry a handgun in public, sidestepping a dispute over the scope of the Constitution’s gun-rights protections.

The justices today turned away an appeal by four New Jersey residents and two organizations, which said the Second Amendment guarantees the right to carry a weapon for self-defense. A federal appeals court upheld the New Jersey measure.

The high court hasn’t taken up a gun-rights case since 2010, repeatedly rejecting appeals centering on the Second Amendment’s reach outside the home.

“The Supreme Court has shown no interest in returning to the Second Amendment over the past few years,” said Adam Winkler, a professor at the University of California at Los Angeles School of Law and the author of a book on the history of the gun-rights battle. The justices may be indicating “a reluctance to expand Second Amendment rights in the wake of recent mass shootings,” he said.

New Jersey is one of seven states that require an applicant to show a special need to get a permit to carry a handgun. That group includes California, whose rules are now before a federal appeals court, and New York, whose law the justices left intact a year ago.

‘Self-Defense, Period’

“The Second Amendment guarantees the right to carry weapons for the purpose of self-defense -- not just for self-defense within the home but for self-defense, period,” the National Rifle Association argued in a brief backing the appeal.

Many states have relaxed their public-possession restrictions in recent years. In 1981, just three - - Maine, Washington and Vermont -- let ordinary residents carry firearms in public without giving a reason.

In upholding the New Jersey law on a 2-1 vote, the Philadelphia-based 3rd U.S. Circuit Court of Appeals said the measure was valid even if the Second Amendment applies outside the home. The appeals court pointed to a passage in a 2008 Supreme Court decision that said some “longstanding” gun restrictions were “presumptively lawful.”

The panel said New Jersey has had the “justifiable need” standard in some form since 1924.

Public Safety

“New Jersey’s legislature, long ago, made the predictive judgment that widespread carrying of handguns in public would not be consistent with public safety because of the inherent danger it poses,” New Jersey officials, led by Acting Attorney General John Hoffman, argued in court papers that urged the court to reject the appeal.

The Second Amendment Foundation and the Association of New Jersey Rifle & Pistol Clubs joined the four residents in challenging the measure. The residents were led by John Drake, who says he was denied a permit even though he operates a business that stocks ATM machines and often must carry large amounts of cash.

Lower courts are divided on laws that restrict public possession. Another federal appeals court ruled in February that California’s San Diego County was violating the Constitution by refusing gun-carrying permits to people who couldn’t document specific threats against them.

The high court’s refusal to get involved has left some gun-rights advocates frustrated. Ilya Shapiro, a senior fellow at the Cato Institute in Washington, said in an online post that the court “wasn’t serious about the Second Amendment.”

Individual Right

“It’s as if the Supreme Court announced that the First Amendment protects an individual right to blog about politics from your home computer, but then some lower courts allowed states to ban political blogging from your local Starbucks,” Shapiro wrote.

The Supreme Court ruled for the first time in 2008 that the Constitution protects individual gun rights, even if a person isn’t affiliated with a state-run militia. The ruling, which divided the court 5-4 along ideological lines, struck down the District of Columbia’s handgun ban.

Another 5-4 decision in 2010 said states and cities are bound by the Second Amendment, as well as the federal government. Both cases involved handgun possession in the home, not in public.

The case is *Drake v. Jerejian*, 13-827.

To contact the reporter on this story: Greg Stohr in Washington at gstohr@bloomberg.net

To contact the editors responsible for this story: Patrick Oster at poster@bloomberg.net Laurie Asseo, Mark McQuillan