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FREEDOM RISING

U.S. Supreme Court Urged to Consider NYC Second Amendment Lawsuit

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Lawsuit challenges New York City ordinance restricting firearms transportation

Attorneys General from 15 states and two governors signed a legal brief asking the U.S. Supreme Court to hear arguments in a federal lawsuit challenging a New York City ordinance restricting the transportation of firearms in the city.

A New York City ordinance enacted in 2001 requires anyone who wants to take their government-licensed firearm out of their home to obtain a separate “carry” license, in addition to having permission to keep the firearm in the residence.

The New York State Rifle & Pistol Association, a Second Amendment advocacy group, filed a federal lawsuit against the city in the U.S. District Court Southern District of New York in 2013 on behalf of Romolo Colantone, a New York City resident and licensed firearm owner affected by the ordinance.

Federal Judge Robert Sweet, appointed by President Jimmy Carter, heard the case, *New York State Rifle & Pistol Association, Inc., et al. v City of New York, New York, et. al.*, and ruled against Colantone in 2013. Lawyers representing Colantone appealed the case to the U.S. Court of Appeals for the Second Circuit in 2015, which upheld the ruling in 2018.

Louisiana Attorney General Jeff Landry filed an amicus brief on October 9, 2018 calling on the U.S. Supreme Court to consider the case. Attorneys General from Alabama, Arizona, Arkansas, Georgia, Idaho, Kansas, Michigan, Montana, Oklahoma, South Carolina, Texas, Utah, West Virginia, and Wisconsin cosigned the brief, as did the governors of Mississippi and Kentucky.

***Heller* Case Affirmed Rights**

The Supreme Court’s 2008 decision in *District of Columbia v. Heller* negates the New York City ordinance, says Joyce Lee Malcolm, a law professor at George Mason University’s Antonin Scalia Law School.

“In *Heller*, the justices made clear that there was an individual right to keep and bear arms—not just to keep, but also to bear,” Malcolm said. “In *Heller*, apart from clarifying the right was an individual right to keep and bear, the Court said that people had the right to keep and bear those

weapons in common use for self-defense. Obviously, keeping people from taking their handguns out of their homes or having them ready to protect themselves is in violation of the Supreme Court's clear interpretation of the law. The ban apparently was in place before *Heller* in 2008, and the *Heller* case overturned the Washington, DC ban on residents having handguns in their homes."

Defying the Court

Malcolm says there is a pattern of city and state elected officials, and federal justices, ignoring Supreme Court rulings on Second Amendment issues.

"There have been many cases within different circuits, particularly circuits that have very strict gun laws, to ignore *Heller*," Malcolm said. "That's happened in Illinois, it's happened in California, and now in New York."

"I'm really disturbed by the fact that the Second Circuit and some of these other jurisdictions have basically allowed tremendous inroads into what the Supreme Court mandated with *Heller* and *McDonald v. City of Chicago*," Malcolm said. "It's blatantly violating it."

'A Fundamental Human Right'

The restriction and criminalization of the right to self-defense are effectively inhumane, says David Kopel, research director of the Independence Institute and an associate policy analyst with the Cato Institute.

"Self-defense is a fundamental human right, which is inherent in human nature and natural law and which no government can legitimately forbid," Kopel said. "In many situations, a firearm is the necessary tool to effectuate the right of self-defense. For example, when a small woman is being attacked by three large males, a firearm allows the victim to defend herself at a distance."

Malcolm says the liberty enumerated by the Second Amendment protects all other rights.

"The Founders were aware of the danger you would have with partial barriers: You could have a whole list of rights, but unless you had a way of enforcing them, it would be pretty meaningless," Malcolm said. "This auxiliary right helps to protect all the others. If the government tried to seize power and suppress all your other rights, you have some means of protecting yourself and regaining those rights."

Court Action Urged

Malcolm says a swift decision by the Supreme Court to consider the *New York State Rifle & Pistol Association, Inc.* case is critical to protecting the freedoms of all Americans.

"I certainly do hope that the Supreme Court will accept this case," Malcolm said. "The longer they deny this overreaching and suppression of the Second Amendment, the more it emboldens these circuits and cities and towns to pass laws that violate and curb the right of individuals."

Not Just Militias

The right to bear firearms extends to all citizens, not just militias as gun rights opponents argue, says Kopel.

“The Second Amendment ‘right of the people’ is not limited to only the people who are in the militia,” Kopel said. “Instead, the Second Amendment ‘right of the people’ belongs to all Americans.”

If the authors of the Bill of Rights intended for firearms ownership to be restricted to members of a militia, they would have said so, says Malcolm.

“They could have said ‘the right of the militia to keep and bear arms,’” Malcolm said. “They didn’t.”