What's really at stake in the Supreme Court's new gun case

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March 6, 2019

When the Supreme Court agreed to hear N.Y. State Rifle & Pistol Assn' v. The City of New York (N.Y. Rifle & Pistol) in late January, it broke a decade-long reticence on the Second Amendment. The case, a challenge to a New York City law restricting the transportation of handguns, isn't the minor issue it may seem at first glance. Indeed, N.Y. Rifle & Pistol is much more than a case about a dumb city law—it will set the future of how all Second Amendment cases are decided in this country.

N.Y. Rifle & Pistol concerns an utterly bizarre city law that effectively bans pistol permit holders from transporting their firearms outside of New York City (the irony of which seems to be lost on the eminently anti-gun municipality, one would think they would want as many guns to leave the city as possible). Still, this absurdity offers an opportunity: The case gives the Court a chance to set Second Amendment law straight after the lower courts have spent the last decade running roughshod over the amendment.

Our nation's highest Court hasn't made a substantive development in the Second Amendment context since 2008, when it upheld an individual right to bear arms in the D.C. v. Heller case (2010's follow-up case, McDonald was a 14th Amendment case, breaking no new ground on the Second Amendment, just incorporating the law to apply to states as well). Even though coming to a conclusion on exactly how the Constitution protects Americans from overreaching gun laws was nearly impossible before Heller, nothing was really fixed afterward.

Before Heller, federal courts barely paid the Second Amendment lip service. In fact, some of the most invasive gun laws in American history were never properly scrutinized in the courts. New York's 1911 Sullivan Act heavily regulating handguns, 1934's National Firearms Act that originally sought to ban handguns, and the Federal Assault Weapons Ban of 1994 were never properly put under the magnifying glass on whether they violate the Second Amendment. In years past, Second Amendment challenges were rarely even brought to the Court—a win on those grounds was unheard of. Gun control laws emerged suddenly and at full force, giving no time for caselaw to develop. Lower courts would largely defer to the judgment of the legislature, refusing to parse out the constitutional question: Did the government take too much from the inalienable right to self-defense?

Then came Heller, a lawsuit challenging the District of Columbia's total ban on handguns. Finally, the Supreme Court stepped in and told the lower courts to recognize the fundamental right to bear arms. The problem, though, is that the nation's hivemind of federal judges struggles with simple instructions. Since Heller, very few restrictive gun laws have been overturned by

federal courts. Lawmakers have largely been left to regulate firearms as if the Second Amendment were but an inkblot on a random paper — rather than one of the most fundamental rights that our forefathers enshrined into law.

The problem with Heller was that the Supreme Court drafted their decision in broad terms, delivering it to an audience of lower court judges who expect step-by-step instructions. No definitive "test" for whether a law violates the Second Amendment was laid out. Instead, the courts were left to extract an analytical framework from Heller's 64-page obscurity on their own.

The result? Many federal judges simply give force to their political predispositions on gun control. They come to one of two conclusions: that either the Second Amendment doesn't apply in a given case—for no principled reason—or that even if it does apply, the state's use of the phrase "gun violence" is enough to justify any constitutional infringements a law may involve. The lower courts have treated the Second Amendment with such reckless abandon that some commentators have opined that Heller "may soon be regarded as mostly symbolic."

So, for the last decade, courts across the country have been taking blind stabs at trying to determine the legality of matters such as concealed carry laws, assault weapon bans, and the myriad other restrictions in our nation's expansive tapestry of federal, state, and local gun regulations. As many of these cases appealed to the Supreme Court, but then denied a hearing, it became obvious the Court had no appetite to directly decide the number of questions arising under the Second Amendment. The Court needed, it seems, a case involving a relatively insignificant law so they could articulate a more intelligible standard for deciding Second Amendment cases. That's where N.Y. Rifle & Pistol comes in.

By taking up N.Y. Rifle & Pistol, the Court avoids directly settling the more focused, divisive questions of how the Constitution protects gun rights, but still has an opportunity to benchslap the lower courts who have continued to pretend that no individual right to arms exists even after Heller.

In a nation where college speech codes are (rightly) run through a fine tooth comb for First Amendment violations, it seems anomalous that outright bans on certain firearms are given the rubber stamp when brushed against the explicit protections of the Second Amendment. It's good the Supreme Court has finally stepped in. Now, we're just left to hope the Court finally draws some clear lines protecting the right to bear arms, instead of throwing the Second Amendment into another decade of disarray.

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