

NATIONAL LAW REVIEW

Big Law Backs NY Gun Regulations

More than 40 amicus briefs were filed in the New York gun regulation case the justices will hear this morning—and Big Law took up positions supporting the city.

It's not surprising that the high court's first major Second Amendment case in nearly a decade would generate an outpouring of amici briefs on both sides. In fact, the same show of interest likely would follow any gun case granted at any time since the justices' 2008 landmark ruling in *District of Columbia v. Heller*.

Here's a sampling of some of the amici in today's *New York State Rifle & Pistol Association v. City of New York*:

Among New York City's supporters...

>> **Harry Sandick of Patterson Belknap Webb & Tyler represents** Citizens Crime Commission of N.Y. City: "This court should reject petitioners' invitation for the judiciary to entangle itself in sensitive, difficult policy judgments that go to the core of the police power and public safety concerns."

>> **Roberto Gonzalez of Paul, Weiss, Rifkind, Wharton & Garrison represents** former N.Y. City Police Commissioner William Bratton: "Petitioners' position would not only upend a critical part of *Heller*, but would make the Second Amendment an outlier in a constitutional regime that otherwise gives due respect for the critical role of state and local regulations to protect public safety."

>> **Brian Matsui of Morrison & Foerster represents** Corpus Linguistics Professors and experts: "Using this new technology, corpus linguistics researchers have unearthed a wealth of new evidence over the past decade showing that the phrase 'keep and bear arms' overwhelmingly had a collective, militaristic meaning at the founding."

>> **Avi Weitzman of Gibson Dunn & Crutcher represents** 139 members of the U.S. House of Representatives: "This court... should expressly hold that laws that do not substantially burden the core Second Amendment right, as delineated in *Heller*, are subject to intermediate scrutiny."

>> **Deepak Gupta of Gupta Wessler represents** Everytown for Gun Safety:
"Everytown believes it is important to make the court aware that the challengers' historical account is mistaken, misleading, and (at a minimum) contested."

Other Big Law firms that filed amicus briefs supporting New York included **McDermott Will & Emery, Sidley Austin** and **Hogan Lovells**.

... And backing the New York State Rifle & Pistol Association:

>> **David Thompson of Cooper & Kirk represents** the National Rifle Association:
"This court should reaffirm that Second Amendment challenges are governed by Heller's text- and-history standard, not the 'tiers of scrutiny' that are applied in the First Amendment and Equal Protection contexts."

>> **E.Travis Ramey, Burr & Forman represents** 120 U.S. House members: "The core right is the right of armed self-defense, and that right extends outside the home to include the right to carry and to train with weapons."

>> **William Consovoy of Consovoy McCarthy represents** Prof. Robert Leider:
"Because New York City has severely limited the ability of its residents to practice and train with their arms, it has violated this fundamental constitutional right."

>> **Alan Gura of Gura PLLC: represents** Commonwealth Second Amendment Inc.:
"The only decision this court could reach that would make the right to keep and bear arms truly operational would be the decision to review, reverse, and rebuke each act of defiance—as regularly as the lower courts resist Heller, and for as long as it takes to set things right."

>> **Ilya Shapiro of the Cato Institute:** "The lack of a clear standard of review has enabled—if not encouraged—the development of an unintelligible and wildly divergent body of law."

Several major firms filed amicus briefs in support of neither party, including: **Jones Day** for the Gifford Law Center; **Munger, Tolles & Olson** for the Second Amendment Law Professors; **Wilmer Cutler Pickering Hale and Dorr** for Brady and Team Enough; **Pillsbury Winthrop Shaw Pittman** for historian **Patrick Charles**.

'Corruption Is the Evil That Spawns Other Evils'

U.S. Sheldon Whitehouse, Democrat of Rhode Island, returned to the Supreme Court

in a new **amicus brief** urging the justices not to curtail public-corruption laws.

Weighing in on the Bridgegate case *Kelly v. United States*, Whitehouse urged the U.S. Supreme Court to leave in place a jury's conviction of two Gov. Chris Christie aides who helped orchestrate the Bridgegate scheme as political retribution to a local mayor. Our colleague Charles Toutant has **more here** at NLJ.

Whitehouse, represented by **Michael Meuti** of Cleveland's **Benesch, Friedlander, Coplan & Aronoff**, took note of the court's narrowing of the definition of political corruption in recent rulings, which he said have prevented the public from holding elected officials accountable. He said the court "should act with modesty and humility when it addresses the rules of political engagement," and urged the justices to preserve the role of jurors as "referees of corruption, consistent with the founders' vision."

"I write this brief not to address the factual underpinnings of this case," Whitehouse wrote. "I write this brief to emphasize that corruption and abuse of power can taint the whole spectrum of issues that are refereed by government. Corruption is the evil that spawns other evils. History often shows powerful interests pursuing the greater evil of corruption precisely because it allows them to accomplish their own other, lesser evils. Resisting pressure from corrupting forces is essential to the preservation of our democracy, and robust juries are watchmen essential to that resistance."

Bridget Kelly and William Baroni Jr., who have asked the Supreme Court to throw out their 2016 criminal conviction over a scheme to reallocate lanes on the George Washington Bridge as political payback to a mayor who did not endorse Christie's reelection campaign. The justices are scheduled to hear the case Jan. 14.

Sidley Austin's Michael Levy, counsel to Baroni, on Saturday **asked the court** for divided argument time. **Yaakov Roth** of **Jones Day** is counsel of record for Kelly.

*More reading: **Sen. Whitehouse: There's a 'Crisis of Credibility' at the U.S. Supreme Court***

Supreme Court Headlines: What We're Reading

- **Ads Assail Conservative Legal Group Over Trump's Court Picks.** "Sponsored by Demand Justice, the ads target a half-dozen prominent firms that sponsored the [Federalist Society] dinner, such as Kirkland & Ellis, where Kavanaugh served as a

partner, as well as Sullivan & Cromwell, WilmerHale and Consovoy McCarthy, where a senior partner was recently confirmed as a federal appellate judge. The bare-knuckle ads are a rarity in the city's genteel legal world and an example of the increasing toxicity of the political debate over Trump's judicial nominees." [[Associated Press](#)]

• **Who Made the New Drapes? It's Among High Court's Mysteries.** "The Supreme Court's role in a bitterly divided Washington and nation may be more important than ever, yet basic details about how the court operates remain obscured. The court is not subject to the federal Freedom of Information Act and the justices are not bound by most ethics rules that apply to all other federal judges." [[Associated Press](#)]

• **Northwestern Law Clinic Shapes Next Generation of Appellate Lawyers.** "Though oral arguments at the Supreme Court are considered an achievement in the legal profession, many appellate attorneys spend the bulk of their time crafting cogent arguments, filing petitions and doing legal research on decisions made in other courts. That's where School of Law's Appellate Advocacy Center comes in, giving students practical skills to hit the ground running after graduation." [[Daily Northwestern](#)]

• **Trump's 'Fifth Avenue' Lawyer on Familiar Turf at Supreme Court.** "Donald Trump's lawyer William Consovoy's (pictured above) Supreme Court quest to save the president's financial records from investigation isn't his first high court foray. The former law clerk to Justice Clarence Thomas who asserted last month that Trump couldn't be investigated while in office even if he shot someone on Fifth Avenue has already argued two Supreme Court cases and filed briefs in others, including one supporting gun rights in a Second Amendment case that the justices will hear on Dec. 2." [[Bloomberg Law](#)]

• **Supreme Court Won't Weigh Curbing U.S. Agency Powers.** "The U.S. Supreme Court refused Nov. 25 to once again consider whether Congress is disregarding a long-held legal doctrine and giving too much power to federal agencies. Last term a short-handed Supreme Court refused to reinvigorate the 'non-delegation doctrine,' which prohibits lawmakers from effectively passing off their legislative authority to another branch of government. The doctrine was used to upend New Deal legislation in the 1930s, but has been dormant since." [[Bloomberg Law](#)]

• **Conservative Hypocrisy Makes Its Case at the Supreme Court.** "In several major cases this term, conservatives are relying on arguments that both they and the court have explicitly rejected as a matter of principle over the last five decades. This hypocrisy presents the Supreme Court with a fundamental challenge. Will the court apply settled law neutrally, even if doing so leads to outcomes the conservative majority disfavors? Or will the conservative majority bend established rules to enable its preferred policy outcomes?" [[NYT](#)]

• **No-Fly Case Could Curtail Religious Freedom Suits.** "The justices accepted a government petition asking whether the Religious Freedom Restoration Act allows suits seeking damages against individual federal employees, in this case members of the FBI. A lower court said it does." [**Bloomberg Law**]

• **Can Trump Challenge His Impeachment in the Supreme Court?** "The Constitution seems to exclude the court from the impeachment process. It grants the House of Representatives the 'sole power of impeachment.' The Senate, similarly, has 'the sole power to try all impeachments.' Those are the only provisions of the Constitution that use the pointed word 'sole.'" [**NYT**]