



NRA, gun rights groups using New York City rules to seek expansion of Second Amendment in Supreme Court

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Gun rights groups are using New York City restrictions that may be repealed as a rallying cry to press the Supreme Court for a major expansion of its Second Amendment precedents.

The effort is based on the hope that the court's new, five-member conservative majority will be more sympathetic to gun rights, in much the same way that anti-abortion groups are hoping for a high court crackdown on reproductive rights.

Conservatives' efforts extend beyond guns and abortion to other pet peeves, such as affirmative action and immigrant rights. In all of those areas, activists are pushing lawsuits in the court's direction with renewed vigor.

While most of the legal action began before President Donald Trump's thus far successful effort to appoint conservative judges to federal courts – including Associate Justices Neil Gorsuch and Brett Kavanaugh to the Supreme Court – the chances for victory have vastly improved.

“People who want to have test cases and advance a certain legal agenda were definitely emboldened by Donald Trump's election and his ability to appoint two justices,” says Ilya Shapiro of the libertarian Cato Institute.

It's been more than a decade since the Supreme Court ruled that the Second Amendment protects the right of citizens to keep guns at home for self-defense. The justices later extended that right to states and localities.

But Associate Justice Antonin Scalia's most famous opinion in District of Columbia v. Heller never defined the breadth of that right. He acknowledged the ruling did not uphold “a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”

Gun rights groups, led by the National Rifle Association, have sought for years to win the next battle: a broad right to carry weapons outside the home. Forty-five states allow that to some degree, though 15 require special licenses or permits. But several large states, including California, Florida, Illinois and New York, have prohibitions.

The high court has refused for nearly a decade to jump back into the gun debate, declining at least eight opportunities in recent years. It let stand Chicago's semiautomatic weapons ban and a

variety of prohibitions against carrying guns in public, from New Jersey to California. It refused to second-guess age limits for carrying guns in Texas and rules for disabling or locking guns when not in use in San Francisco.

Now gun rights groups hope Kavanaugh's replacement of Associate Justice Anthony Kennedy, the court's swing vote, could turn the tide.

"The NRA and the challengers won't be satisfied if New York repeals its law," says Adam Winkler, a UCLA School of Law professor and author of a book on the gun rights battle. "They want the Supreme Court to step in and announce stronger protections for gun rights under the Second Amendment."

City moves to repeal rules

Already, the court has scheduled the New York City case for next fall. The city's rules generally block gun owners with possession licenses from transporting their guns outside the home, except to one of seven shooting ranges inside city limits. The guns must be unloaded and locked up, with ammunition carried separately.

Gun owners who sought to take their firearms to second homes or shooting ranges outside the city challenged the rules in federal court, but they were upheld last year by the U.S. Court of Appeals for the Second Circuit.

Sensing a losing hand at the Supreme Court, gun control groups urged the city to change its rules in hopes a quick surrender would prompt the justices to drop the case. The city's police department held a public hearing last week on proposed changes that would allow travel outside the city. A decision is expected within weeks.

But gun rights groups argued in court papers this month that the justices should not dismiss the case even if the restrictions are lifted. Instead, they urged an expansion of Second Amendment rights.

"The historical understanding of the right to keep and bear arms removes any remaining doubt that it extends outside the home," the NRA said.

"The primary need for self defense, unquestionably protected by the Second and Fourteenth Amendments, is typically not in the home but outside of the home," attorneys general from 24 Republican-led states said. They noted that only about one in five violent crimes occurs at home.

The New York State Rifle & Pistol Association, which brought the case against the city, accused it of a "nakedly transparent effort to evade this court's review" by moving to ease the restrictions. The Cato Institute warned that the rules could be changed "just long enough for the case to be dismissed."

But Winkler notes the challengers only sought an injunction to stop New York's law from being enforced. If it's repealed, he says, "the case should be moot, because the challengers will have effectively won."

Trump administration takes stand

The Trump administration also urged the court to strike down the New York City rules by following the "text, history and tradition" of the Second Amendment and gun rights and

regulations. But in a more conciliatory pose, Solicitor General Noel Francisco said challengers "do not seek a right to transport loaded handguns for self-defense in public."

Kavanaugh's addition to the court in October may have given the other conservatives the vote they need to win future cases. As a federal appeals court judge, he dissented in 2011 from a decision upholding the District of Columbia's ban on semi-automatic rifles, insisting that courts should use the "text, history and tradition" test.

Several gun control groups didn't wait for New York City's response, due at the court in August. Instead, they filed briefs this month "in support of neither party" to urge that the justices avoid a broad constitutional ruling that expands Second Amendment rights, particularly since the city is moving to change its rules.

"Our concern is that petitioners are asking the court to issue a broad ruling that would entitle people to carry loaded firearms in public to use in armed confrontation," says Jonathan Lowy, chief counsel at the Brady Campaign to Prevent Gun Violence. "That would have a broad effect on a wide array of gun laws around the country."

The Giffords Law Center to Prevent Gun Violence similarly sidestepped taking a position on New York City's law. Instead, it urged the justices to avoid "adopting a standard that would preclude sensible regulation and save lives."