



Gun Rights and Foster Care Restrictions Collide in Michigan

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WASHINGTON - Bill Johnson's grandfather taught him how to shoot when he was just 9 years old, and gave him his first gun — a Mossberg 16-gauge, bolt-action shotgun — when he turned 14. When Mr. Johnson joined the Marines at 17, he was issued an assault rifle. And he has carried a concealed handgun, with a permit, for the past decade.

But now Mr. Johnson says he has been forced to give up carrying his gun “under duress.” The reason? He wants to become a foster parent to his grandson.

In a case that could have implications for gun owners nationwide, Mr. Johnson and his wife, Jill, are suing their home state, Michigan, which bars foster parents from carrying concealed weapons. At issue is whether the state's rules amount to a “functional ban” on owning a firearm, in violation of the Constitution's Second Amendment.

“This is not a case that's outlandish or off the wall,” said Adam Winkler, a law professor at the University of California, Los Angeles, and author of a book on the gun rights movement. “Foster parents do have constitutional rights, and they don't forsake those rights just because they become foster parents.”

Most states have regulations governing gun ownership for foster parents; having guns locked and stored in safes, with ammunition locked and stored separately, is a standard requirement. The goal is to ensure the safety of children, many of them troubled, in foster care.

But around the country, some foster parents and lawmakers, as well as gun rights advocates, are pushing back, especially in states that bar concealed permit-holders from carrying their weapons if they are caring for foster children.

In 2011, Texas lawmakers passed a measure explicitly allowing foster parents to carry weapons in their cars. In Nevada, the State Legislature adopted a bill in 2015 that overturned state regulations and explicitly allowed foster parents to possess guns if they are law enforcement officers or have permits to carry concealed weapons.

“We felt that it wasn't right for them to have this ridiculous ruling, because there are so many families out there that use firearms for protection,” said Valerie Wilson, 42, who, along with her

husband, Brian, was denied a foster license in Las Vegas because Mr. Wilson carried a gun with a concealed carry permit.

The couple successfully lobbied the Legislature to change the law, but have been barred from reapplying under the new rules, Ms. Wilson said. “We didn’t get our family,” she said, “but I know we’ve helped a lot of kids and families.”

On any given day, there are roughly 428,000 children in foster care in the United States, according to Children’s Rights, a national nonprofit advocacy group. The group’s executive director, Sandy Santana, said states had a legitimate right to regulate gun ownership among foster parents, just as they had a right to require other “common sense safety measures,” like smoke detectors, emergency evacuation plans and background checks.

“Becoming a foster parent is not a right, it’s a privilege,” Mr. Santana said.

The Michigan lawsuit has set off intense debate in foster parent circles, said John DeGarmo, a consultant to foster care agencies. When he posted a news article about the case on his Facebook page, he said, “the discussion was very, very heated among foster parents, and I found that foster parents are very much in agreement that they deserve to have guns in their home.”

Irene Clements, executive director of the National Foster Parents Association, said the debate had intensified as more people around the country apply for concealed carry permits.

“Foster families have been able to have guns in the house to go hunting, that sort of thing, so long as they’re locked up and the bullets are in a separate room,” she said. “But personal carry is a whole different thing.”

The Michigan case is backed by the Second Amendment Foundation, a national advocacy group that makes aggressive use of the courts in an effort to expand gun rights. It is the third of a trio of similar cases the group has brought seeking to prod state child welfare agencies into rolling back gun safety requirements.

The first suit, against the Oklahoma Department of Human Services, was dismissed by a federal judge in May; the court deemed the case moot because the state had abandoned a requirement that foster parents sign a “weapons safety agreement.” A spokeswoman for the Oklahoma agency said the agreement, drafted by an employee, did not constitute official policy; the agency is now reviewing and updating its gun regulations.

A second case, in Illinois, is set for a court hearing next year. It is similar to the Michigan case, which argues that the state’s regulations — including a requirement that ammunition be stored separately from unloaded weapons — are tantamount to an unconstitutional ban on gun ownership for foster parents.

In its handbook for foster and adoptive parents, the Michigan Department of Health and Human Services requires that firearms be “stored in a locked metal or solid wood gun case, or trigger-locked and stored without ammunition in a locked area.” The agency also requires that all ammunition be locked up and that handguns be registered.

“This is not about coffee tables, this is not about leaving it on the nightstand,” said David Sigale, the lawyer for the Johnsons. “This is about being able to carry it on your person both in and out of the home.”

A spokesman for the Michigan agency declined to comment, citing the pending litigation.

The Johnsons' suit, filed in July in the United States District Court for the Western District of Michigan, raises "pretty significant constitutional concerns," said Clark Neily, an expert on the Second Amendment at the Cato Institute, a libertarian-leaning research organization in Washington.

For the Johnsons, who live in a rural hamlet in northwest Michigan near Lake Superior, guns are a way of life. Bill Johnson is a disabled veteran; Jill Johnson owns a fishing tackle shop. Mr. Johnson said he had fond memories of hunting with his grandfather, who hunted and fished to feed his family. He has already purchased a BB gun for his 5-year-old grandson, and hopes to teach him how to use it.

"It's a tradition," he said. "My grandfather taught me, and my grandfather's grandfather taught him."

The Johnsons say the state asked them to become foster parents to the child, who was removed from his mother's care. Mr. Johnson said he had nine weapons, which he keeps for self-defense, not only against humans, but also against the animals — coyote and bear — that roam the woods near his home. With the exception of his handgun, his practice has been to keep all the weapons locked up, he said.

In court documents and in an interview, he described heated exchanges with state officials over it.

"They told me flat out, 'You are going to have to give up some constitutional rights here if you want to keep that boy,'" he said.