

Supreme Court Will Hear Second Amendment Case for First Time in a Decade

Sarah Baldwin*

On January 22, 2019, the United States Supreme Court granted certiorari to hear its first Second Amendment case in nearly a decade.¹ Prior to this decision to grant cert, the Supreme Court last heard cases relating to an individual's right to own a firearm in 2010 and 2008, choosing to leave many firearm issues to the states.² In the 2008 decision, *District of Columbia v. Heller*, the Court held the District of Columbia's prohibition on the possession of handguns in the home violated the Second Amendment because the Amendment guarantees the right to possess and carry firearms for the purpose of self-defense.³ In the 2010 decision, *McDonald v. City of Chicago*, the Court incorporated the Second Amendment right to bear arms for the purpose of self-defense into the Due Process Clause of the Fourteenth Amendment, making the Second Amendment applicable to the states.⁴

The case set for the Court's review, *New York State Rifle & Pistol Association v. City of New York*⁵, concerns Title 38, Chapter Five, Section 23 of the Rules of the City of New York.⁶ This New York statutory provision prohibits handgun owners from removing their weapon from the address specified on their license except for a purpose allowed under the statute, such as transporting the gun to an approved shooting range.⁷ The petitioners seek to remove their handguns from their specified addresses for other purposes: one petitioner wishes to go to a shooting range outside New York City limits, while another wants to take his handgun to his second home in upstate New

* Candidate for *Juris Doctor*, May 2020, Cumberland School of Law at Samford University; *Cumberland Law Review*, Volume 49 Junior Editor; *Bachelor of Arts* English Literature, May 2017, University of Alabama at Birmingham.

¹ Richard Wolf, *Supreme Court Agrees to Hear Gun Rights Case After Nearly a Decade of Inaction on Second Amendment*, USA TODAY, (Jan. 22, 2019), <https://www.usatoday.com/story/news/politics/2019/01/22/supreme-court-will-hear-gun-rights-case/2482910002/>; The Second Amendment states “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. CONST. amend. II.

² Wolf, *supra* note 1.

³ 554 U.S. 570, 635 (2008).

⁴ 561 U.S. 742, 791 (2010).

⁵ No. 18-280, 2019 WL 271961, (Jan. 22, 2019).

⁶ *N.Y. State Rifle & Pistol Ass'n v. Cuomo (N.Y. State Rifle II)*, 883 F.3d 43, 51–52 (2d Cir. 2018) (citing 38 RCNY § 5-23(a)(1), (3) (2001)).

⁷ *Id.*

York.⁸

The petitioners originally filed suit in the Southern District of New York, seeking a declaration that the statute was unconstitutional and an injunction against its enforcement.⁹ The district court granted summary judgment in favor of the City, holding the statute “regulates rather than restricts the right to possess a firearm in the home” and thus does not violate the Second Amendment.¹⁰ The petitioners then appealed to the Second Circuit.¹¹

On appeal, the petitioners again argued the New York statute violated the Second Amendment.¹² Using *Heller* as a guide, the Second Circuit began by using the two-step inquiry designed for determining the constitutionality of firearm restrictions.¹³ Under this inquiry, a court first determines if the challenged statute impinges upon conduct the Second Amendment protects.¹⁴ If the court affirmatively answers the first question, it must then determine the appropriate level of scrutiny to apply to the statute.¹⁵

The Second Circuit proceeded under the assumption that the statute restricts conduct that the Second Amendment protects, but concluded the statute does not trigger strict scrutiny.¹⁶ In so doing, the court reasoned that the statute neither implicates the core protections of the Second Amendment nor substantially burdens the exercise of the core protections of the amendment.¹⁷ Following *Heller*, the court explained the core protection of the Second Amendment is protection of the home, “where the need for defense of self, family, and property is most acute.”¹⁸ Therefore, according to the Second Circuit, heightened scrutiny is only triggered by statutes that constrain the ability to use a firearm in the home for self-defense.¹⁹

Applying *Heller* to the case before it, the Second Circuit determined the petitioners’ complaints imposed “at most trivial limitations on the ability

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 52.

¹¹ *Id.*

¹² *N.Y. State Rifle II*, 883 F.3d at 54. Petitioners also argued the statute violated the Dormant Commerce Clause, the First Amendment right of expressive association, and the fundamental right to travel. *Id.* The Second Circuit rejected these arguments. *Id.*

¹³ *Id.* at 55 (quoting *N.Y. State Rifle & Pistol Ass’n v. Cuomo (N.Y. State Rifle I)*, 804 F.3d 242, 254 (2d Cir. 2015)).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* (quoting *N.Y. State Rifle I*, 804 F.3d at 257).

¹⁷ *Id.* at 56–58.

¹⁸ *N.Y. State Rifle II*, 883 F.3d at 56 (quoting *Heller*, 554 U.S. at 628).

¹⁹ *Id.* (quoting *United States v. Decastro*, 682 F.3d 160, 166 (2d Cir. 2010)).

of law-abiding citizens to possess and use firearms for self-defense.”²⁰ Strict scrutiny, the court noted, does not apply (1) because the petitioner wishes to bring his handgun to his second home and (2) because, even if he could argue that his second home falls under the core protection of the Second Amendment, the petitioner has an alternative option: the petitioner simply has to get a premises license for his second home as well.²¹ Additionally, the court did not find persuasive the petitioner’s argument that the statute restricted his right to practice using a handgun for self-defense purposes by limiting which shooting ranges he could go to.²² The court reasoned that there remained seven approved shooting ranges within the city limits to which the petitioner could bring his handgun.²³ Thus, because the Second Circuit concluded the statute imposes no restriction on the right of anyone to have a handgun in their home for purposes of self-defense, the court applied only intermediate scrutiny.²⁴

Under intermediate scrutiny, a court asks whether the statute at issue is substantially related to achieving an important governmental interest.²⁵ On appeal, the City argued the statute seeks to protect public safety and prevent crime by regulating firearms in public and provided evidence that it was difficult for the City to monitor premises licenses when people were allowed to transport handguns outside of the city limits.²⁶ Based on these facts, the court concluded the City had the important governmental interest of promoting public safety and the statute was narrowly tailored to achieve that interest by limiting firearms to specific premises.²⁷ Because the statute thus passed the intermediate scrutiny test, the court held the statute did not violate the Second Amendment and affirmed the district court.²⁸

Given the recent changes to the makeup of the Court, it will be interesting to see the outcome of this case. With Justice Kennedy’s retirement and the confirmation of Justice Kavanaugh, the balance of the Court now leans more conservatively than it did the last time the Court heard

²⁰ *Id.* at 57.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 60.

²⁴ *N.Y. State Rifle II*, 883 F.3d at 62.

²⁵ *Id.* at 57 (quoting *N.Y. State Rifle I*, 804 F.3d at 261).

²⁶ *Id.* at 63.

²⁷ *Id.* at 64.

²⁸ *Id.*

a Second Amendment case.²⁹ On its own, the decision to hear this case after so many years of avoiding the topic suggests a changing attitude on the Court, and perhaps a willingness to be more protective of the Second Amendment. If the Court reverses the Second Circuit, the outcome will likely extend the reach of *Heller* to apply the core protections of the Second Amendment to public spaces as well as the home.³⁰ However, to persuade the Court, the petitioners may need to focus their argument more on the need for self-defense in public places and less on the desire to bring their handguns to other locations in the state, which the Second Circuit understandably found to be a weak argument.³¹

Whatever the outcome, the decision in this case will set an interesting tone for Chief Justice Roberts' new Court moving forward. The case is slated to be heard when the Court begins its next term in October.

²⁹ *But see* Amy Howe, *Kavanaugh and the Second Amendment*, SCOTUSBLOG (July 27, 2018, 10:51 AM), <https://www.scotusblog.com/2018/07/judge-kavanaugh-and-the-second-amendment/> (noting Justice Kennedy sided more with the conservative justices on Second Amendment issues and Justice Kavanaugh may not view the Second Amendment as creating an absolute right to carry a firearm).

³⁰ *See* Greg Stohr and Kimberly Strawbridge Robinson, *New York's Gun-Transportation Rules Draw Supreme Court Scrutiny*, BLOOMBERG (Jan. 22, 2019, 8:39 AM), <https://www.bloomberg.com/news/articles/2019-01-22/new-york-s-gun-transportation-rules-draw-supreme-court-scrutiny> (noting the case could give the justices an opportunity to expand Second Amendment protections outside the home).

³¹ *See N.Y. State Rifle II*, 883 F.3d at 57–58.