

Courts & Law

Supreme Court to hear gun-control case next term on carrying weapons outside home

By Robert Barnes

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The legal battle over gun control opened a new front Monday at the Supreme Court, as the justices announced they will consider an important National Rifle Association-backed lawsuit asserting the constitutional right to carry a weapon outside the home. The court will hear the challenge to a century-old New York law in the term that begins in October. The restriction requires those who seek a permit to carry a concealed weapon to show a special need for self-defense and is similar to laws in Maryland, Massachusetts and elsewhere that the court in the past has declined to review.

Supreme Court passes up challenges pressed by gun rights groups

It has been more than a decade since the court last issued a major opinion on gun control. A change in the court's membership is probably the reason for the about-face from last June, when the court passed up nearly a dozen gun-control challenges.

The Supreme Court in Washington. (Jonathan Ernst/Reuters)

Justice Amy Coney Barrett has filled the seat held by liberal Ruth Bader Ginsburg until her death in September and given conservatives a 6-to-3 majority. Barrett joins colleagues who have complained that the court needs to more clearly define the rights first acknowledged in 2008, when the Supreme Court ruled in *District of Columbia v. Heller* that individuals have the right to gun ownership for self-defense in their homes. The court's announcement comes at a fraught moment: The nation is reeling from a series of mass shootings. President Biden has lamented the killings and advocated new gun-control measures and a strengthening of existing regulations. The House just last month passed sweeping legislation, and the Senate is locked in contentious disagreement.

A gun rights decision provides a preview of the justice Amy Coney Barrett might be, both liberals and conservatives agree

Gun rights groups such as the NRA have said limitation on the right to carry a concealed weapon outside the home is "perhaps the single most important unresolved Second Amendment question" since the court found an individual right to gun ownership.

The New York Rifle & Pistol Association, an NRA affiliate that brought the case to the court, said in its brief that "the text, history, and tradition of the Second Amendment and this Court's binding precedents compel the conclusion that the Second Amendment does indeed secure that right."

After the court announced it was taking the case for argument next fall, the NRA said most states already conclude that the right to carry a weapon outside the home is well established.

"The [Supreme] Court rarely takes Second Amendment cases," Jason Ouimet, executive director of the NRA Institute for Legislative Action, said in a statement. "We're confident that the court will tell New York and the other states that our Second

Amendment right to defend ourselves is fundamental, and doesn't vanish when we leave our homes."

Warning or threat? Democrats ignite controversy with Supreme Court brief in gun case

New York officials had urged the court to let its law stand and were discouraged by the court's decision to review a lower court's ruling upholding it.

"New York's nation-leading gun violence prevention laws . . . have made us the safest big state in the nation," Gov. Andrew M. Cuomo (D) said in a statement, adding that the NRA suit poses a "massive threat to that security."

"Imagine someone carrying a gun through Times Square, onto the subway or to a tailgate outside of a Bills game," he said. "The streets of New York are not the O.K. Corral."

Gun-control advocates saw the timing as ominous.

"Over the past month, Americans have reckoned with a never-ending series of shootings in public places, including shootings by law enforcement," Hannah Shearer, litigation director at the Giffords Law Center, said in a statement.

"The Supreme Court's willingness to take up this case is a reckless response to our nation's grief and could take us in the completely wrong direction."

Eric Tirschwell, with the Everytown for Gun Safety Support Fund, noted an increase in gun violence during the coronavirus pandemic.

"A ruling that opened the door to weakening our gun laws could make it even harder for cities and states to grapple with this public health crisis," Tirschwell said in a statement.

"Fortunately, the courts have repeatedly backed states' authority to pass public safety laws, and while the Supreme Court's makeup has changed, the Constitution has not."

New York Attorney General Letitia James (D) told the Supreme Court that the state's law "has existed in the same essential form since 1913 and descends from a long Anglo-American tradition of regulating the carrying of firearms in public."

In urging the court to let the lower court's ruling stand, she said its decision complied with the Supreme Court's reasoning in *Heller*: "that the Second Amendment right is not unlimited and can be subject to state regulation consistent with the historical scope of the right."

The Kavanaugh court is the one conservatives have worked decades to build

The case is brought by Robert Nash and Brandon Koch. Each received a permit to carry a gun outside the home for hunting and target practice, but they were turned down on the request to carry a concealed weapon for self-defense.

New York's law "prohibits law-abiding individuals from carrying a handgun unless they first demonstrate some form of 'proper cause' that distinguishes them from the body of 'the people' protected by the Second Amendment," their petition to the Supreme Court says. "The time has come for this Court to resolve this critical constitutional impasse and reaffirm the citizens' fundamental right to carry a handgun for self-defense."

Laws similar to New York's are in place in California, Delaware, Hawaii, Maryland, Massachusetts, New Jersey and Rhode Island, according to gun rights advocates.

Federal appeals courts have generally rejected challenges to such restrictions. Last month, the U.S. Court of Appeals for the 9th Circuit upheld Hawaii's law on a 7-to-4 vote.

Judge Jay S. Bybee, a conservative appointed by President George W. Bush, concluded: “Our review of more than 700 years of English and American legal history reveals a strong theme: government has the power to regulate arms in the public square.” Some of the Supreme Court’s conservatives have bristled at the lower court decisions. In 2017, Justices Clarence Thomas and Neil M. Gorsuch said the court was treating the Second Amendment as a “disfavored right.” Justice Samuel A. Alito Jr. has been a longtime critic of the court’s reluctance to take up gun-control challenges, and last term, Justice Brett M. Kavanaugh said it was time for the court to get involved. The lone holdout among the conservatives appeared to be Chief Justice John G. Roberts Jr., who has not issued such criticism and whose vote was necessary last term to make up a majority. But that has changed with the arrival of Barrett, who as a circuit court judge had echoed Thomas’s criticism of lower courts’ Second Amendment decisions. The case the court accepted Monday is *New York State Rifle & Pistol Association v. Corlett*.