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Can States Restrict Concealed-Carry License due to Proper Cause?

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In *New York State Rifle and Pistol Association v. Corlett* the U.S. Supreme Court will decide whether states may prevent persons from obtaining a concealed-carry license for self-defense if they lack "proper cause."

In 2008 in *District of Columbia v. Heller*, the Supreme Court held that a "ban on handgun possession in the home violates the Second Amendment." The Supreme Court has never opined on whether and under what circumstances a person may possess a gun *outside the home*.

Per New York state law, to carry a concealed handgun for self-defense purposes a person must show "proper cause." New York case law requires an applicant to "demonstrate a special need for self-protection distinguishable from that of the general community" to satisfy the proper cause standard. The challengers in this case want to carry a concealed handgun but lack proper cause.

A federal district court ruled against the challengers based on Second Circuit precedent. In a very brief opinion, noting that same Second Circuit case, the Second Circuit affirmed.

In *Kachalsky v. County of Westchester* (2012) the Second Circuit held that "New York's handgun licensing scheme . . . requiring an applicant to demonstrate 'proper cause' to obtain a license to carry a concealed handgun in public" did not violate the Second Amendment. In *Kachalsky*, the Second Circuit applied

intermediate scrutiny and upheld New York's law stating: "New York has substantial, indeed compelling, governmental interests in public safety and crime prevention," and "the proper cause requirement is substantially related to these interests."

According to the challengers, *Kachalsky* was wrongly decided for the reasons the D.C. Circuit stated in *Wrenn v. District of Columbia* (2017). In *Wrenn,* the D.C. Circuit didn't apply intermediate scrutiny to the District of Columbia's similar "good reason" limit to obtain a concealed carry license. The D.C. Circuit held "the law-abiding citizen's right to bear common arms must enable the typical citizen to carry a gun." According to the Second Circuit, the "argument that *Kachalsky* was wrongly decided fails under this Court's precedents."

The Supreme Court agreeing to hear this case has been a long time in coming. The New York State Gun and Rifle Association petition notes a significant disagreement between the federal courts of appeals regarding the issue in this case. "The same kinds of prohibitions blessed by the First, Second, Third, and Fourth Circuits were rejected by the D.C. and Seventh Circuits."

Four Justices must want to hear a case for a petition to be granted. While the Court refused to hear 10 gun cases last June, in the last few years Justices Thomas, Alito, Gorsuch, and Kavanaugh have all indicated they would like to review a gun case.

While votes to grant petitions aren't public, Justice Barrett replacing Justice Ginsburg has probably made a difference. When Justice Barrett was on the Seventh Circuit she dissented from a case where the lower court upheld a

federal and state law ban on felons (including those convicted of non-violent offenses) possessing firearms.

In April of 2020, in *New York State Rifle & Pistol Association v. City of New York*, the Supreme Court held that a challenge to New York City's rule disallowing residents to transport firearms to a second home or shooting range outside of the city was moot. After the Court agreed to hear it "the State of New York amended its firearm licensing statute, and the City amended the rule so that [residents] may now transport firearms to a second home or shooting range outside of the city, which is the precise relief . . . requested."

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