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In early November, the U.S. Supreme Court heard oral argument in what is shaping up to be the most significant Second Amendment case since *D.C. v. Heller* and *McDonald v. Chicago* were decided in 2008 and 2010, respectively.


New York generally prohibits carrying a firearm in public—both openly and concealed. An individual can only carry a firearm concealed if they apply for and receive a license issued by the state. Yet, in New York, a concealed carry license is incredibly difficult to get.

To start, a state licensing officer will only issue a concealed carry permit if you meet a lengthy list of criteria. But New York is also what’s known as a “may issue” state—meaning the state adds an additional barrier to acquiring a permit.

In New York, a licensing officer will only issue a concealed carry license to an applicant “when proper cause exists for the issuance thereof.” Contrast this to “shall issue” states. In “shall issue” states, licensing officers are required to issue a concealed carry license to any applicant who is not specifically prohibited from having one.

As you can imagine, New York’s discretionary consideration makes it all but impossible for law-abiding citizens to receive a permit to carry a concealed firearm in the state. The state places an unfair burden on an applicant. Namely, to “demonstrate a special need for self-protection distinguishable from that of the general community or of persons engaged in the same profession.”

And, unsurprisingly, New York officials interpret this arbitrary standard to exclude almost everyone—including those legitimately concerned for their personal safety.

Worse, New York is far from alone in this unconstitutional infringement on gun rights. Seven other states apply this same arbitrary distinction—effectively denying the right to bear arms for all but a privileged few in states across our nation.

Two individuals joined with New York State Rifle & Pistol Association to bring this challenge to New York’s unconstitutional carry ban. One of them is Robert Nash, who applied for a concealed carry license after a string of robberies in his neighborhood. He even completed an advanced safety course before applying.
Meanwhile, Brendan Koch applied for a concealed carry license for the general purpose of self-defense, citing his broad experience and training in gun safety. Both were denied for supposedly lacking “proper cause.”

So, at a base level, this case presents the Supreme Court with a great opportunity. The Justices have the chance to firmly establish that a city or state’s arbitrary definition of “special need” cannot overrule a law-abiding citizen’s right to carry a firearm in public.

But this case means so much more for gun rights across the nation.

This case presents the Supreme Court with the historic opportunity to firmly establish the appropriate test for lower courts to evaluate Second Amendment challenges.

In 2008, when the Supreme Court decided the landmark case of D.C. v. Heller, it set forth a new standard for reviewing Second Amendment cases. It was a standard based on the Constitution’s original public meaning (also known as the text, history, and tradition test). The Supreme Court reiterated that test in McDonald v. Chicago just two years later.

But since then, nearly every circuit court in the nation has failed to appropriately apply the test the Supreme Court established in Heller and McDonald.

Instead, the circuits take a deeply flawed, two-step approach to determine whether the challenged law implicates a “core” Second Amendment-protected right. And then, if it does, to balance that right against the state's or city’s “interests.”

The Supreme Court refuted that approach in Heller, but circuit courts across the country have consistently ignored the Supreme Court’s charge.

Key Facts

Case: New York State Rifle & Pistol Association v. Bruen

Court: The Supreme Court of the United States

Who's Fighting for You?

Cody Wisniewski, Director of Mountain States Legal Foundation’s Center to Keep and Bear Arms, is the author of our amicus brief in this case.

What's at Stake:
This case challenges New York state’s effective ban on the right of individuals to possess and carry firearms in public. A win would help secure the right to keep and bear arms across the nation.

And now, the Supreme Court has the opportunity to address this issue.

Oral argument uncovered two key points in how this case will likely be decided.

First, not a single party before the Court argued that there was not a protected right to bear arms outside the home. This is a point that the Supreme Court implied in Heller but has not explicitly stated. Many anti-gun advocates have argued that the right doesn’t truly exist in public, and yet the parties seemed to concede that point here.

Second, the Court (and indeed the advocates) were heavily focused on the text, history, and tradition test. While they did not all agree on how to apply that test, it was clear that Originalism, and the original public meaning of the Second Amendment, were at the forefront of the Court’s inquiry.

The outcome remains to be seen. In major cases like this, the Court usually waits until the end of the term to issue an opinion—meaning we may have to wait until May or June 2022 to know what the Court thinks in this case.

But I have high hopes! It seems very promising that the Supreme Court will vindicate the right to bear arms in public, will strike down New York’s discretionary “proper cause” test, and will firmly establish the text, history, and tradition test as the appropriate standard for evaluating Second Amendment challenges!
Sonya Johnson was just a young girl when World War II broke out. But she vividly remembers the deep unease she felt following Japan’s surprise attack on Pearl Harbor. Although a resident of Nevada, rumors of a possible invasion of the West Coast kept the local population on edge. Her young and vivid imagination made the angst even more difficult to bear.

Later, she heard something that also left a lasting impression. Japanese war planners dismissed the possibility of invading the United States, it was said, because American civilians were known to be well armed and trained in marksmanship.

Admiral Yamamoto supposedly wrote in a letter that “to invade the United States would prove most difficult because behind every blade of grass is an American with a rifle.”

Historians have had trouble verifying that quote. But to a young Sonya Johnson, it rang with a certain truth – that an armed population is a potent deterrent to foreign aggressors as well as domestic threats. America’s founders certainly saw it that way. And the Second Amendment, as Sonya knew, was their way of safeguarding our right to keep and bear arms.

“When a five- or six-year-old hears something like that, it sticks with you,” Sonya told me. “That’s why I feel so strongly about gun rights.”

As a native Nevadan, who would spend much of her adult life in ranching or farming, Sonya has long known about Mountain States Legal Foundation’s work defending grazing rights, water rights, and mineral rights – all of which are property rights, as any Westerner knows!

She therefore was no stranger to the Foundation’s work. But it was our creation of a new litigation center devoted exclusively to Second Amendment cases—MSLF’s Center to Keep and Bear Arms—that really fired up this feisty, patriotic, pistol-packing octogenarian.

Progressives won’t stop until they have eliminated private gun ownership in America.

Sonya didn’t have large personal sums to give the Center, but she did the next best thing by writing an impassioned email to dozens of friends and
Sean Paige is the Director of Communications for Mountain States Legal Foundation.

And her efforts bore fruit. It’s through this mail chain that Sonya’s support for the Center came to our attention.

On gun rights, Sonya doesn’t just talk the talk; she’s walking the walk by preparing to get her concealed carry permit early next year. To that end, she recently purchased a .380 semi-automatic, which is a slight step down from her first two choices – hand canons not exactly suited to be discreetly tucked away.

“I bought a .380 because my other pistols are a little big for me,” laughs Sonya. “One friend called one of the guns I wanted to use a ‘John Wayne gun.’ My other choice was called a ‘Dirty Harry gun,’ so I went with the .380 instead.”

Why does an 83-year-old want or need a concealed carry permit? For self-protection and peace of mind.

Years as a farmer and rancher gave Sonya a love of the wide-open spaces, of which Nevada has plenty. She still likes getting out there, when she can, to watch wildlife, hunt for ancient rock art, and collect pine nuts. Sometimes she goes alone; sometimes she takes a friend.

But you never know who or what you might come across out in the wilderness.

In Sonya’s opinion, it never hurts to be armed when you’re a long way from help.

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Fallon, Nevada, isn’t a high crime city, and Sonya rates local law enforcers as very good and generally responsive.

But she’s a typically self-reliant Westerner who wants to take personal responsibility for her own safety and knows that police response times can be many minutes even when there isn’t a second to spare.

At a more fundamental level, Sonya wants a concealed carry permit because she has a right to have one, thanks to the Constitution. And no

American needs to apologize for or explain their reasons for exercising a right, as Sonya knows. “I need to practice a little more before I can get my concealed carry permit, but it’s on the bucket list,” she told me. She plans to have that item checked off soon.

The progressives won’t stop until they have eliminated private gun ownership in America. Sonya encourages others who support the Second Amendment to do as she did—to reach out to their friends, family, and social networks, urging others to learn more about Mountain States Legal Foundation and support the work of defending our rights and liberties.

Pulling together as a community to solve problems—it’s just the Western way of doing things, as this lifelong, dyed-in-the-wool Westerner knows.

Sean Paige is the Director of Communications for Mountain States Legal Foundation.
Mountain States Legal Foundation's Center to Keep and Bear Arms launched in late 2020 with a vision to challenge progressives' relentless anti-gun agenda.

Now that the Center is one year old, we sat down with Cody Wisniewski, an attorney and the Center's founding director, to learn what's next in the battle to defend your Second Amendment-protected rights.

What is the biggest threat to gun ownership in America right now?

More and more we have seen that the real goal of the gun control movement is to end civilian gun ownership.

Gun control advocates are seeking to realize this goal through ever expanding federal and state regulation. They have also tried to accomplish this by demonizing gun owners for the past few decades—a point that will be more difficult with the recent surge in first time gun buyers.

In reality gun owners are simply everyday Americans, who recognize the importance of being able to protect themselves and their loved ones.

Would it be fair to say that the control advocates' strategy is incremental? Constantly pushing to expand regulations?

Specifically, I expect the most extreme city and state governments to continue trying to push the envelope on local gun control ordinances that they cannot get passed through state legislatures—everything from semi-automatic firearm and magazine bans to carry prohibitions.

Further, we have seen the weaponization of federal agencies under the Biden Administration. The agency rulemaking process, and the proposed redefinition of federal law, poses a huge threat to the types of arms that individuals will be able to acquire and own.

Without a concerted push back against gun control advocates—especially in the court of law—then the individual right to keep and bear arms will continue to be eroded and will eventually suffer death by a thousand cuts.

What role has the U.S. Supreme Court played in recent decades in the battle over the right to keep and bear arms?

Supreme Court precedent is, in effect, the law of the land. The manner in which the Supreme Court interprets the U.S. Constitution is then applied by every federal court in the United States.

The Supreme Court has decided two landmark Second Amendment cases in the past two decades—D.C. v. Heller in 2008 and McDonald v. Chicago in 2010. Those cases have guided Second Amendment jurisprudence since. But neither of those cases were intended to clarify the entire field of Second Amendment law.

Since 2010, we've been litigating over the bounds and implications of the Heller and McDonald decisions. Now, with New York State Rifle & Pistol Association v. Bruen being considered by the Supreme Court, we have the opportunity to receive clarification on the scope of the Second Amendment's protections outside the home as well as the appropriate test that lower courts should be applying to address Second Amendment challenges.
America Needs Your Help. Act Now to Double Your Gift!

OFFER EXPIRES DECEMBER 3

- Right now, we are engaged in multiple ongoing lawsuits to stop the Biden-Harris agenda. We are locked in a war to save our rights, as protected by the Constitution, for us and for future generations.

- Because the future of our country is at stake, several of MSLF’s major donors are committed to going the extra mile in this battle to preserve freedom.

- They are issuing a special matching gift challenge. They will match every contribution from our supporters received by December 3, 2021—up to $160,000.

Mail your gift with the form below, or give online: mslegal.org/double

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Zachary Fort
The governor of New Mexico reversed a gun store shutdown order after we filed a lawsuit on his behalf.

Leisl Carpenter
She was excluded from Biden’s debt relief program because of her race. But the Constitution requires all Americans to be treated equally.

Mountain States Legal Foundation is a non-profit, 501(c)3 organization. Please send your tax-deductible gift along with this form in the pre-addressed envelope. Thank you for defending liberty!

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UPDATE: Judge Halts Biden’s Racist Farm Loan Aid Program

What’s it going to take for the Biden-Harris Administration to comply with the Constitution? That’s the question our General Counsel, William E. Trachman, asked after Mountain States Legal Foundation scored a major court victory, preventing the Department of Agriculture from proceeding with a pandemic farm loan relief program that expressly excludes white farmers and ranchers.

Our legal team hit the Biden Administration with multiple lawsuits challenging its race-based loan relief program, including lawsuits on behalf of Tennessee farmer Rob Holman, rancher Leisl Carpenter of Wyoming, and Sara Rogers of Colorado.

Striking a major blow to the White House, U.S. District Judge S. Thomas Anderson of the Western District of Tennessee granted our request for a nationwide halt to the program pending further judicial review.

With this preliminary victory, MSLF supporters like you are standing in the way of Mr. Biden’s unconstitutional race-based financial aid and his Administration’s attempts to divide our country along racial lines.

"Now that the Biden-Harris Administration’s discriminatory farming and ranch debt relief has been enjoined by another court as a violation of the equal protection clause, the writing is on the wall," Trachman said. “It’s time to treat all of us like Americans, regardless of our skin color.”

To support MSLF’s fight to defend your constitutional rights, visit mslegal.org.