



Written by [Bob Adelman](#) on March 11, 2014

## **NRA, 19 States, 34 Congressmen Sue New Jersey Over Gun Law**

On February 12, 2014, the National Rifle Association (NRA), 19 states, and 34 members of the House of Representatives [asked the Supreme Court](#) to review a New Jersey court's decision restricting Second Amendment rights of its citizens. Leading the requests is Attorney General of Wyoming, Peter Michael, who sees the danger in letting the decision by the 3rd District Court in New Jersey stand, as it could require that every other state with greater protections for its citizens reduce them substantially. In New Jersey, almost no one can obtain a concealed carry permit. In Wyoming, no one is required to have one.



Said Wyoming Governor Matt Mead:

If the current decision stands, states providing greater protections than New Jersey under the Second Amendment may be pre-empted by future federal action....

This decision out of New Jersey impacts the right to keep and bear arms outside the home. So I felt it was necessary to have the attorney general support a petition to the Supreme Court to hear this case.

The case is *Drake v. Jerejian* where John Drake, the lead plaintiff, operates a business in New Jersey which stocks ATMs with cash. By necessity, he stocks them at night and carries a lot of cash with him, making him a perfect target for thieves. When he applied for a concealed weapons permit, it was denied, even though he had the blessing of the chief of police in his town.

The lawsuit was originally brought by Jeffrey Muller, another New Jersey resident and business owner who was kidnapped and beaten in a bizarre case of mistaken identity. Afterwards, Muller's request for a concealed carry permit was denied because he failed to show "justifiable need" as required by the state. After filing suit, he was granted a concealed carry permit. Drake, commenting on the matter, said, "It seems unreasonable to me to have to wait until you're beaten up or shot at to get a permit!" He added that the Second Amendment is part of the Bill of Rights, and when he learned that the NRA, 19 states, 34 congressmen, and the Cato Institute had joined him in his suit against New Jersey, he was surprised and delighted:

This wide support for our United States Constitution and Bill of Rights, as compared to some state and courts who think it is the "Bill of Needs" — points out that Americans expect not only the Second Amendment to be obeyed and honored, but all of our rights to be obeyed and honored.

The case has implications far beyond whether or not John Drake can get a permit to carry. For years New Jersey has held that the Second Amendment only applies to the state militia, and consequently has



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only allowed some 1,100 permits in a state with a population of nearly nine million. Its limitations on the right to carry are draconian: A citizen desiring to carry must document a “justifiable need,” which courts have interpreted as meaning urgent immediate provable threats of violence.

In its petition requesting that the Supreme Court rule on *Drake*’s appeal, the NRA expanded on just how difficult it is for a New Jersey resident to prove such a need:

The State of New Jersey generally bars its citizens from carrying handguns in public to protect themselves unless they can first convince State officials that they have a “justifiable need” to do so.

A “justifiable need” is defined as an “urgent necessity for self-protection, as evidenced by specific threats or previous attacks which demonstrate a special danger to the applicant’s life that cannot be avoided by means other than by issuance of a permit to carry a handgun.

The simple desire to exercise the Second Amendment right to armed self-defense does not suffice.

The NRA asked the Supreme Court to rule on a simple question: Does or does not the Second Amendment apply outside the home? The Court’s ruling in *Heller* and *McDonald* left that question open to interpretation, and New Jersey’s politicians and judges have pushed the envelope to virtually prohibit private carry anywhere in the state. Wrote the NRA:

This case thus should turn on the answer to a single question: whether the Second Amendment right to carry a firearm in case of confrontation extends beyond the home.

For if it does, New Jersey cannot make its citizens prove that they have a “justifiable need” to exercise that right....

We respectfully submit that the time is ripe for this Court to confirm for these lower courts what is clear from *Heller*: that the Second Amendment’s “right to bear arms for self-defense” is “as important outside the home as inside” and that that right cannot be balanced away by judges resistant to enforcing the Second Amendment.

Wyoming’s attorney general took a different approach in trying to persuade the Supreme Court to consider *Drake*. He noted that if left standing, New Jersey’s decision could end up requiring every other state with greater freedoms to restrict them in order to come into compliance with New Jersey. Wrote Wyoming’s AG Michael:

Because this court held that the Fourteenth Amendment incorporated the Second Amendment against the states in *McDonald*, any federal court pronouncement restricting the scope of that right affects the rights of citizens in [other] states and their current regulatory schemes.

Should the Third Circuit’s analysis in *Drake* stand, states [such as Wyoming] providing greater protection for their citizens’ Second Amendment rights may be preempted by future federal action ... it could serve as advance judicial endorsement of future congressional action, which could preempt and forever change the protections state legislatures [such as Wyoming’s] have sought to guarantee to their citizens.

Cato Institute, another entity petitioning the court, was far more direct in its demand that the Supreme Court take the *Drake* case on appeal:

While *Heller* did eventually clarify that the Second Amendment secures an individual right to keep and bear arms for self-defense, the ruling left many questions about the scope of that right unanswered [while] *McDonald* merely extended the right to people living in the states, without



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further defining it...

[*Drake*] is an excellent case for the Court to take up to begin clarifying many of the unanswered questions involving the Second Amendment — such as to what extent it extends beyond the home and whether it can be conditioned on a showing of need.

The Court has been hesitant to flesh out the contours of the Second Amendment. This hesitance has caused errant rulings that leave the right to bear arms hollow. Unless the Court intends the Second Amendment to lapse back into the second-class status it had before *Heller*, it needs to set the wayward courts straight.

If the Supreme Court agrees to consider *Drake*, with all of its implications and unanswered questions, it is likely to clarify and establish permanently the Second Amendment as a bedrock principle extending from the right to life to the right to defend that life. As the lead attorney in the case, Evan Nappen, put it, “The bottom line is this is a very important if not the most important case yet on the Second Amendment and New Jersey gun laws.”

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