Supreme Court Upends New York's Gun Law, Confirms Right to Carry in Public


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The Supreme Court decision in *New York State Rifle & Pistol Association, Inc. v. Bruen* — aka *Bruen* — released on Thursday gave Second Amendment supporters more than they hoped for. The high court not only tossed New York's requirement that a citizen applying for a concealed-carry permit show "proper cause," it also made crystal clear that citizens may not only "keep" firearms at home but may also "bear" them in public.

Supreme Court Justice Clarence Thomas, writing for the six-justice majority, ruled that New York's demand that an applicant show "proper cause" in order to obtain permission to carry a concealed firearm is unconstitutional:

> New York's proper-cause requirement violates the Fourteenth Amendment by preventing law-abiding citizens with ordinary self-defense needs from exercising their Second Amendment right to keep and bear arms in public for self-defense.

He referred back to two previous key Second Amendment decisions that didn't answer the question about carrying in public. In *District of Columbia v. Heller* — aka *Heller* — the high court held that "the Second Amendment protects an individual right to possess a firearm … to use that arm for traditionally lawful purposes, such as self-defense within the home."

In *McDonald v. City of Chicago* — aka *McDonald* — the high court held that "the right to keep and bear arms for self defense in one's home is protected under the Second Amendment."

These rulings left open the obvious question: What about outside the home? Thursday's ruling in *Bruen* answered that question. But in explaining, Thomas also changed significantly the reasoning lower courts must now use in ruling on future Second Amendment lawsuits:

> In *District of Columbia v. Heller*, and *McDonald v. Chicago*, the Court held that the Second and Fourteenth Amendments protect an individual right to keep and bear arms for self-defense.
>
> Under *Heller*, when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct, and to justify a firearm regulation the government must demonstrate that the regulation is consistent with the Nation's historical tradition of firearm regulation.

In other words, from this time forward, lower courts must use the Founders' original intent in judging Second Amendment cases.

That, in a nutshell, is the impact that "originalist thinking" by a majority of the Supreme Court justices is having on issues coming before the court.

It is also reflected in the decision announced today in *Dobbs v. Jackson Women's Health Organization* — aka *Dobbs* — that overturned *Roe v. Wade*.

For decades abortion was considered to be murder, with sanctions appropriately applied to those performing them. But the high court erred in 1973 in many ways, including ignoring that past history in "granting" a right for a mother to kill her unborn child.

In *Bruen*, Thomas reiterates the importance of past history and tradition in determining whether a particular law can pass Constitutional muster:

> After reviewing the Anglo-American history of public carry, the Court concludes that respondents [the state of New York] have not met their burden to identify an American tradition justifying New York's proper-cause requirement.
>
> Apart from a few late-19th-century outlier jurisdictions, American governments simply have not broadly prohibited the public carry of commonly used firearms for personal defense.
>
> Nor have they generally required law-abiding, responsible citizens to "demonstrate a special need for self-protection distinguishable from that of the general community" [New York state's license requirement] to carry arms in public.

Thomas recognizes that this decision raises the Second Amendment from a "second-class right" — one that could only be exercised with government permission — to a preeminent one:

> The constitutional right to bear arms in public for self-defense is not "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees."
>
> The exercise of other constitutional rights does not require individuals to demonstrate to government officers some special need. The Second Amendment right to carry arms in public for self-defense is no different.
>
> New York's proper-cause requirement violates the Fourteenth Amendment by preventing law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms in public.

Lest readers become excessively ebullient over the high court's ruling in *Bruen*, Justice Brett Kavanaugh noted that the decision only tossed New York's requirement that "proper cause" be proven before an applicant can be granted a license to carry. He wrote in a concurring opinion that 43 states use licensing "schemes" that pass constitutional muster, including background checks, firearms training, a check of mental-health records, and fingerprinting.

Nevertheless, the ruling is a major victory for gun-rights advocates, and impacts not only New York but other states that have similar restrictions. Seven states — California, Connecticut, Delaware, Hawaii, Maryland, Massachusetts, and New Jersey — each have "may issue" laws which give government officials discretion to deny permits to applicants. Each of them is now scrambling to come up with other

ways to prohibit or limit the private ownership and public possession of firearms.

So, while a major battle has been won, the war continues.

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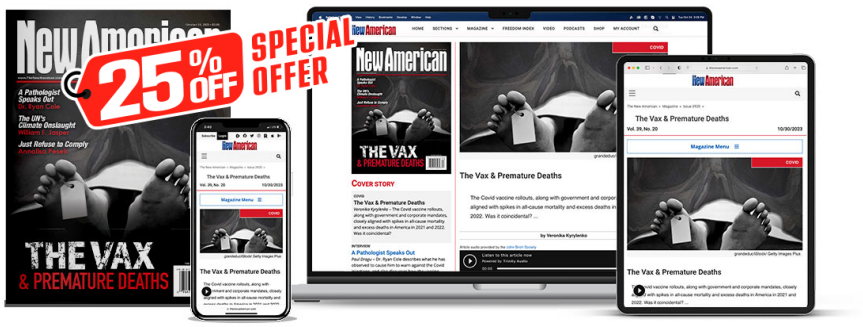

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