

No. 20-843

In The
Supreme Court of the United States

NEW YORK STATE RIFLE & PISTOL ASSOCIATION, INC.,
ROBERT NASH, BRANDON KOCH,
Petitioners,

-v-

KEVIN P. BRUEN, in His Official Capacity as Acting
Superintendent of New York State Police, RICHARD J.
MCNALLY, JR., in His Official Capacity as Justice of the
New York Supreme Court, Third Judicial District, and
Licensing Officer for Rensselaer County,
Respondents.

**On Writ of Certiorari to the United States Court of
Appeals for the Second Circuit**

**BRIEF OF ASSOCIATION OF NEW JERSEY
RIFLE & PISTOL CLUBS, INC. AS AMICUS
CURIAE IN SUPPORT OF PETITIONERS**

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INTEREST OF AMICUS CURIAE¹

Association of New Jersey Rifle & Pistol Clubs, Inc. (“ANJRPC”) is a not-for-profit membership corporation, incorporated in the State of New Jersey in 1936 and represents its members, including tens of thousands of members who reside in New Jersey. ANJRPC represents the interests of target shooters, hunters, competitors, outdoors people, and other law abiding firearms owners. Among ANJRPC’s purposes is aiding such persons in every way within its power and supporting and defending the people’s right to keep and bear arms, including the right of its members and the public to purchase, possess, and carry firearms. New Jersey imposes restrictions on the public carrying of firearms at least as restrictive and unconstitutional as the ones at issue in this case. Such unconstitutional restrictions are a direct affront to ANJRPC’s central mission.

¹ This brief is filed with the written consent of all parties. No counsel for a party authored this brief in whole or in part, nor did any person or entity, other than amici or their counsel, make a monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

New Jersey is the proverbial poster child for abuse of the fundamental constitutional right to keep and bear arms guaranteed by the Second Amendment. While the suppression of this most basic right in famously bad jurisdictions such as California and, of course, Petitioners' state, New York, can often vary by zip code, New Jersey is an equal opportunity oppressor, depriving everyone but the most "well-positioned" the right to protect themselves and their loved ones from becoming victims of violent crime outside their homes.

New Jersey law requires an applicant for a handgun carry permit to demonstrate, among other things, what is referred to as "justifiable need," that is, "the 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."

This standard is largely impossible to meet, and a finding of "justifiable need" is rarely ever made, even in extreme cases.

For example, New Jersey denied a handgun carry permit to a business man who operates ATMs in high crime areas of New Jersey, prompting a blistering dissent from the denial of certiorari by

Justice Thomas in *Rogers v. Grewal*, 140 S. Ct. 1865 (2020) (Thomas, J., dissenting from denial of certiorari).

New Jersey denied a permit to a physician who was chased down the streets of Newark, New Jersey by armed gang members and who subsequently found strange men in his parking lot waiting for him at night and calling the office to see when he was leaving.

New Jersey denied a permit to a residential property manager who collects rent in the inner city and was told by one tenant that either he or his “boys” would “put a bullet in [his] head.”

Also denied was a synagogue congregant who wanted only to ensure that he and his fellow worshippers were protected while praying at temple after the violent acts directed at Jewish congregations in Pittsburgh, Boston, and Poway, California.

These are but a few examples of what is a pervasive and overwhelming pattern of organized, institutional denial of the right to bear arms by the Garden State.

In fact, New Jersey is proud of its record of rights suppression. New Jersey courts prominently cite to New Jersey’s stated goal to limit the use of firearms as much as possible. See *infra* pp. 14-15.

And New Jersey has been ably assisted in this effort by the United States Court of Appeals for the Third Circuit. The Third Circuit has simply stepped out of the way to allow New Jersey to trample the constitutional rights of its citizens. It has done so by utterly ignoring this Court's rulings in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. Chicago*, 561 U.S. 742 (2010).

The Third Circuit has labelled New Jersey's "justifiable need" law as "longstanding" and therefore entitled to deference without any tether to the history of the Second Amendment or the right to keep and bear arms.

Further, the Third Circuit has simply ignored this Court's prohibition on rational basis review under the Second Amendment and has repeatedly applied that very thing in its permissive review of New Jersey's firearm laws.

Unless this Court reverses the judgment below, every American risks the shredding of constitutional rights that has taken place in New Jersey. For these reasons the judgment below should be reversed.

ARGUMENT

I. New Jersey's Extreme Suppression of the Constitutional Right to Lawfully Carry Handguns Demonstrates How Egregious Abuses of the Type at Issue in this Case Can Become.

New Jersey is legendary in its abuse of the fundamental constitutional right to keep and bear arms guaranteed by the Second Amendment. While even in Petitioners' state, New York, such rights violations can vary from place to place, New Jersey's long history of suppression is uniform, pervasive, elitist, and, in fact, celebrated by the powers that be. As a result, New Jerseyans are purposefully and systematically denied the right to protect themselves and their loved ones from becoming victims of violent crime outside their homes.

New Jersey's version of the good reason requirement being challenged in the within matter is referred to as "justifiable need." Unfortunately, there are almost no examples of "need" that New Jersey will consider "justifiable." Indeed, New Jersey "effectively ban[s] most citizens from exercising their fundamental right to bear arms . . .," *Rogers*, 140 S. Ct. at 1875 (Thomas, J., dissenting from denial of certiorari).

A. New Jersey's "Justifiable Need" Requirement

Under New Jersey law, an ordinary member of the general public who wishes to carry a handgun outside the home must first obtain a permit to do so (a "Handgun Carry Permit"). N.J. STAT. ANN. §§ 2C:39-5(b), 2C:58-4. A person seeking such a permit must first apply to the Chief Police Officer of the municipality where he or she resides. *Id.* § 2C:58-4(c). If the officer concludes, after investigation, that the applicant meets all statutory requirements and approves the application, it is then presented to the Superior Court of the county. *Id.* § 2C:58-4(d). If the application is denied, the applicant may also appeal that denial to the Superior Court. *Id.* § 2C:58-4(e). In either case, if the Superior Court independently determines that the applicant has satisfied all statutory requirements, it may then issue a Handgun Carry Permit, and even if the Chief of Police approves the application, the Superior Court can still deny the application. *Id.* In reviewing applications and issuing permits, the Superior Court acts as an "issuing authority" and performs "essentially an executive function" that is "clearly non-judicial in nature." *In re Preis*, 573 A.2d 148, 151, 154 (N.J. 1990).

New Jersey also imposes some objective restrictions on eligibility for a Handgun Carry Permit. For example, an applicant must not have been convicted of any crime or offense involving an

act of domestic violence; must not be addicted to controlled substances, mentally infirm, or an alcoholic; must not be subject to certain restraining orders; and must not be listed on the FBI's Terrorist Watchlist. N.J. STAT. ANN. §§ 2C:58-4(c), 2C:58-3(c). An applicant must also pass criminal and mental health background checks, *id.* § 2C:58-4(c), and must have satisfied extensive firearms safety training requirements, N.J. ADMIN. CODE § 13:54-2.4(b).

But, in addition to these objective eligibility requirements, New Jersey also imposes an extreme, subjective requirement on the availability of Handgun Carry Permits: an applicant must demonstrate "that he has a justifiable need to carry a handgun." N.J. STAT. ANN. § 2C:58-4 (c).

For an ordinary "private citizen," this hurdle is overcome only if the applicant can "*specify in detail the 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.*" *Id.* "*Where possible, the applicant shall corroborate the existence of any specific threats or previous attacks by reference to reports of the incidents to the appropriate law enforcement agencies.*" *Id.* "*Generalized fears for personal safety are inadequate, and a need to protect property alone does not suffice.*" *Preis*, 573 A.2d at 152.

Accordingly, typical law-abiding citizens of New Jersey—the vast majority of responsible citizens who cannot “demonstrate a special danger to [their] life,” N.J. STAT. ANN. § 2C:58-4(c)—effectively remain subject to a ban on carrying handguns outside the home for self-defense.

The net result of New Jersey’s egregiously onerous standard is that virtually no one can qualify for a permit to carry a handgun for the protection of themselves and their loved ones outside their home. The rule is, without question, a functional ban.

B. Examples of New Jersey’s Egregious Treatment of Law Abiding Citizens

1. Thomas Rogers

On January 11, 2017, Thomas Rogers filed an application for a Handgun Carry Permit with the Chief of Police for Wall Township, the town where he resides. Mr. Rogers does not face any special danger to his life, but he runs an ATM business that causes him to frequently work in high crime areas. Accordingly, he desires to carry a handgun with him for purposes of self-defense. *Rogers*, 140 S. Ct. at 1865 (Thomas, J., dissenting from denial of certiorari).

The Chief of Police denied Rogers’s application because he failed to establish “justifiable need.” As Justice Thomas explained in his dissent from the

denial of Mr. Rogers's Petition for Certiorari, "Petitioner [Rogers] could not satisfy this [justifiable need] standard and, as a result, his permit application was denied. With no ability to obtain a permit, petitioner is forced to operate his business in high-risk neighborhoods with no firearm for self-defense." *Id.*

2. Dr. Joseph Racanelli

Dr. Joseph A. Racanelli is a physician and maintains offices in New Jersey and New York. He is on-call for emergency trauma and responds to hospitals at various hours. On or about May 8, 2013, in Newark, New Jersey, he was walking alone on a Newark street when gunmen chased him until he threw his vehicle keys and bag to them. His vehicle was taken and, although recovered the next day, personal items he had in his bag and/or his vehicle were not recovered. The items included his identification cards, driver's license, equipment, medications, a substantial amount of cash, and his laptop, which contained personal information. *In the Matter of the Application for a Permit to Carry a Handgun Filed by Joseph A. Racanelli*, 2015 WL 3843562, *1 (N.J. Super. Ct. App. Div. 2015).

In support of his application for a permit to carry a handgun, Dr. Racanelli explained that, given the gangs in Newark and the loss of his items with his home address as a result of the 2013 robbery, he feared for his and his family's safety at home. He

noted that there had been suspicious incidents related to his Newark office and these included people entering his office who did not fit the description of patients he would expect and telephone callers asking when he would be in the office. *Id.* at *2.

Dr. Racanelli's permit application was denied. Both the Chief of Police and the Superior Court Judge that heard his appeal found that Dr. Racanelli had not shown that he had "justifiable need" to obtain a permit to carry a handgun. *Id.* at *3.

3. Israel Albert Almeida

Israel Albert Almeida owns and operates a property management business. On June 1, 2013, he began managing properties located in Newark and Irvington, which he believed were high crime areas well-known for gang and narcotic activity. His duties included rent collection. He did not require that tenants pay their rent by check or money order through the mail because he found that manner of payment extremely difficult. Instead, he went door-to-door and collected payments in cash. As a result, he carried large sums of money, which he did not deposit in the bank throughout the day because it was inconvenient. *In the Matter of the Appeal of Israel Albert Almeida from the Denial of His Application for a Permit to Carry a Handgun*, 2015 WL 6473282, *1 (N.J. Super. Ct. App. Div. 2015).

On June 11, 2013, Mr. Almeida tried to collect rent from a tenant he called “an admitted gang member” and “career criminal.” According to Mr. Almeida, after advising the tenant that he could be evicted for non-payment, the tenant threatened his life stating, “I’ll put a bullet in your head, ... as long as you live in New Jersey you’re no longer safe. And if I don’t get you, my boys will ... you will get yours eventually.” *Id.*

On other occasions, individuals approached him, asked what he was doing in the area, asked for money, and made “basic verbal threats” such as “I’m going to kick your ass.” Mr. Almeida also mentioned a shooting incident that occurred at one of the properties fifteen minutes before he arrived and described what he believed was an attempted carjacking. *Id.*

Mr. Almeida’s application for a permit to carry a handgun was denied for failure to demonstrate “justifiable need.” *Id.* at *3.

4. Richard Andrew Miller

Richard Andrew Miller is a ten-year member of a Chabad synagogue, Congregation Levi Yitzchok (Congregation), located in Morristown, New Jersey and volunteers on the Congregation's security team during its religious services. On or about June 13, 2019, he filed an application with the New Jersey State Police to obtain a concealed carry permit. *In*

the Matter of the Application of Richard Andrew Miller for a Permit to Carry a Handgun, 2021 WL 1828092, *1 (N.J. Super. Ct. App. Div. 2021).

To comply with New Jersey's requirement to show "justifiable need," Mr. Miller's application referenced deadly and violent acts directed at Jewish congregations in Pittsburgh, Boston, and Poway, CA, and stated that the Congregation wanted him to legally carry a handgun "to protect the [worshippers] of our synagogue while prayer services are under way." According to Mr. Miller, the Congregation could not afford to hire armed guards, and local police protection was limited to the occasional parking of an empty patrol car at the synagogue. Mr. Miller noted that there were regular occurrences of Jewish people walking in the area being berated with the word, "Jew." *Id.*

Mr. Miller also recounted two personal threats occurring at his home in Sussex County, New Jersey. One time, an angry neighbor came onto his property but left after being told to do so. Another time, he received phone calls from blocked numbers stating, "We're coming for you too." Mr. Miller testified he wanted a carry permit due to the "very large increase in the number of anti-Semitic actions taken to Jewish people in the [recent two] years" and that he did not "feel like being a guinea pig" while he is praying. *Id.* at *2.

The Superior Court of New Jersey, Appellate Division affirmed the denial of Mr. Miller's permit application noting: "Miller's reliance upon anti-Semitic attacks in other communities to justify his application is insufficient. He failed to show that there were specific threats indicating a special danger to the Congregation's worshippers during their services." *Id.* at *3.

5. Greg Gallagher

Greg Gallagher is a building contractor living in Hammonton, New Jersey. In 2008 Mr. Gallagher arrived at a job site just after thieves had stolen thousands of dollars in construction equipment. Investigating police officers told Mr. Gallagher that they believed that the crime was tied to organized crime, and that he was fortunate to have missed the theft because the criminals might well have killed Mr. Gallagher to eliminate him as a witness. Complaint at 11, *Muller v. Maenza*, No. 10-6110, (D.N.J. Nov. 22, 2010), ECF No. 1.

Mr. Gallagher applied for a Handgun Carry Permit and was denied by his Chief of Police because he did not have "justifiable need." *Id.*

These are but a few examples of what is a pervasive and overwhelming pattern of organized, institutional denial of the right to bear arms by the Garden State. Such treatment is the rule, rather than the exception.

C. “Justifiable Need” is Not Justifiable.

New Jersey state courts are fond of referring to New Jersey firearms law as a “careful grid of regulation.” *See, e.g., State v. Ingram*, 488 A.2d 545, 548 n.1 (1985); *Preis*, 573 A.2d at 150 (“We have repeatedly referred to New Jersey's gun-control laws as a ‘careful grid’ of regulatory provisions.”). As the examples laid out above illustrate, they are nothing of the kind. In fact, New Jersey firearms laws are a sledgehammer, pounding the life out of New Jerseyans’ fundamental constitutional rights.

These examples reveal that the very concept of “need” is an unconstitutional sham. How can states with “need” based regulatory schemes expect to be taken seriously by this Court when a business owner who carries large sums of cash through high crime areas, a physician who was chased down the streets of Newark, New Jersey by armed gang members, a property manager who is repeatedly threatened in gang-infested areas of the inner city, a congregant seeking to protect his synagogue members from being the next victims of rising religiously motivated violence and terrorism, and a building contractor at risk from organized crime figures are deemed not to have the “need” to exercise lawful armed self-defense by states like New Jersey?

And New Jersey’s open hostility to the fundamental constitutional right to keep and bear

arms is worn proudly on its sleeve. As the state courts have explained:

the overriding philosophy of our Legislature is to limit the use of guns as much as possible.

State v. Valentine, 307 A.2d 617, 619 (N.J. Super. Ct. App. Div. 1973).

Or as the *President of the New Jersey Senate* recently stated:

This is New Jersey. It's not some State that thinks everyone should be carrying a gun.... [C]oncealed weapons don't belong in New Jersey.

Steve Sweeney, President, New Jersey Senate, Remarks, N.J. Governor and Attorney General Announce Intention to Tighten Restrictions on Handgun-Carry Permits at 12:55 (Jan. 26, 2018), available at <https://goo.gl/U4iTET>.

Petitioners have presented this Court with the right vehicle to resolve this important question of constitutional law. New Jersey stands as a stark reminder of just what could happen to Americans' fundamental constitutional rights nationwide if Petitioners do not prevail before this Court.

II. The Third Circuit has Given New Jersey an Engraved Invitation to Disregard the Constitution.

Of course, New Jersey could not get away with its aggressive and egregious rights violations without an assist from the courts. Petitioners and other *amici curiae* have explained to this Court how many of the lower courts essentially look the other way when asked to enforce the Second Amendment. As Justice Thomas has explained:

many courts have resisted [this Court's] decisions in *Heller* and *McDonald*. Instead of following the guidance provided in *Heller*, these courts minimized that decision's framework.

Rogers, 140 S. Ct. at 1866 (Thomas, J., dissenting from denial of certiorari). *See also New York State Rifle & Pistol Association, Inc. v. City of New York*, 140 S. Ct. 1525, 1544 (2020) (Alito, J., dissenting) (“We are told that the mode of review in this case is representative of the way *Heller* has been treated in the lower courts. If that is true, there is cause for concern.”); *Id.* at 1527 (Kavanaugh, J., concurring) (“I share Justice Alito’s concern that some federal and state courts may not be properly applying *Heller* and *McDonald*.”); *Friedman v. City of Highland Park, Ill.*, 577 U.S. 1039, 136 S. Ct. 447, 450 (2015) (Thomas, J., dissenting from denial of certiorari) (“I

would grant certiorari to prevent the Seventh Circuit from relegating the Second Amendment to a second-class right.”)

Of all the courts to have relegated the Second Amendment to a second-class right, however, few have done it as thoroughly as the United States Court of Appeals for the Third Circuit. And New Jersey has taken the ball and run with it.

The Third Circuit addressed essentially the same issue that is now before this Court in *Drake v. Filko*, 724 F.3d 426 (3d. Cir. 2013). *Drake* was a challenge to New Jersey’s highly restrictive “justifiable need” requirement. In upholding the rule, the court engaged in two bits of judicial sleight of hand that illustrate just how unserious the Third Circuit seems about the Second Amendment and this Court’s rulings in *Heller* and *McDonald*.

First, the court found that the requirement is a “longstanding regulation that enjoys presumptive constitutionality” *Id.* at 434. The court accomplished this by stripping “longstanding” of any constitutionally significant meaning. The court discussed three possible dates of relevance: (1) 1966, the year New Jersey first imposed the highly restrictive requirement of “justifiable need” on all forms of handgun carry. *See also Siccardi v. State*, 284 A.2d 533 (1971); (2) 1924, the year New Jersey first created the permit requirement for concealed carry (no permit was required for open carry until

1966); and (3) 1911, the year New York imposed its permit requirement for handgun carry.

Missing from the court's analysis, however, was any tether to *Heller* or *McDonald* or any explanation of why any of those dates had constitutional significance in concluding that New Jersey's exceedingly harsh rule is "longstanding." Notably, none of those dates bear any relationship to the history of the Second Amendment or the right to keep and bear arms. Without even attempting to identify any actual historical record of laws prohibiting all forms of handgun carry without satisfying a nearly impossible standard of "need," the Third Circuit made the New Jersey handgun restriction constitutionally "longstanding" with a mere wave of its hand.

Second, applying intermediate scrutiny, the court thoroughly absolved New Jersey of any obligation to make a record supporting the "justifiable need" requirement. In his dissent, Judge Hardiman explained it as follows:

Although the State must show only a "reasonable" fit, New Jersey comes nowhere close to making the required showing. Indeed, New Jersey has presented no evidence as to how or why its interest in preventing misuse or accidental use of handguns is furthered by limiting possession to those who can

show a greater need for self-defense than the typical citizen.

Id. at 453 (Hardiman, J. dissenting). Importantly, under any version of heightened means/end scrutiny, the state bears the burden of proof. By finding that New Jersey need make no record at all in this regard, the Third Circuit simply gave New Jersey a full constitutional pass.

Unsurprisingly, New Jersey continues to thoroughly abuse the Second Amendment rights of New Jerseyans, and the Third Circuit continues to disregard *Heller* and *McDonald* by handing New Jersey a “get out of jail free” card. *See, e.g., Association of New Jersey Rifle and Pistol Clubs, Inc. v. Attorney General New Jersey*, 910 F.3d 106, 126 (3d Cir. 2018) (Bibas, J., dissenting) (“though the majority purports to use intermediate scrutiny, it actually recreates the rational-basis test forbidden by *Heller*. . . . The majority also guts heightened scrutiny’s requirement of tailoring”).

Such a combination of legislative aggression and judicial permissiveness has rent large holes in the fabric of the Constitution. This is what the fundamental constitutional rights of all Americans stand to look like if the judgment below is not reversed.

This Court has made it abundantly clear that “the Second Amendment protects the right to keep

and bear arms for the purpose of self-defense” *McDonald*, 561 U.S. at 749-50. Petitioners have already laid out for the Court how the history and tradition of the right of typical law-abiding individuals to engage in armed self-defense cannot be reconciled with rights-suppressive laws of the type of which New Jersey is so proud. Nor can the lower courts be allowed to continue their outright defiance of this Court’s prohibition on interest-balancing and rational basis review masquerading as heightened scrutiny, both of which have managed to gut the fundamental constitutional right to keep and bear arms.

To that end, this Court has the opportunity to ensure that no other State descends to the constitutional depths of New Jersey. The judgment below should be reversed.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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