

**In The
Supreme Court of the United States**

Libertarian Party of Erie County, Michael Kuzma,
Richard Cooper, Ginny Rober, Philip M. Mayor, Michael
Rebmann, Edward L. Garrett, David Mongiello, John
Murtari, William Cuthbert,

Petitioners,

v.

Andrew M. Cuomo, individually and as Governor of the
State of New York, Letitia James, individually and as
Attorney General of the State of New York, Joseph A.
D'Amico, individually and as Superintendent of the New
York State Police, et al.

Respondents.

On Petition for Writ of Certiorari
To the United States Court of Appeals
for the Second Circuit

REPLY BRIEF FOR PETITIONERS

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CITATIONS

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REPLY BRIEF

This reply brief will be short as we are anxious, after a marathon, five year, ten month battle, to finally have our arguments heard and don't want to waste this chance which we believe is our last as the case has lasted so long, our lead attorney is no longer engaged in litigation on a full-time basis.

We are acutely aware of the Court's calendar and note the irony of the Attorney's General Office, which has repeatedly dismissed our lawsuit as lacking any merit, needing not one, but *two* extensions to grapple with our alleged weak arguments.

We are certainly aware that the Court has already agreed to hear a similar case, *New York State Rifle & Pistol Association, Inc. v. Keith M. Corlett, et al.* (19-156) ("NYSRPA"), involving the same issue of proper cause to public carry a firearm. We believe the Court should also accept our case raising the same and other important issues for the following reasons:

1. "Equal justice under law" requires that litigants who lack financial resources be treated on the same footing as litigants represented by the wealthiest law firm in the world. True, grassroots, citizen activists should be treated the same in the courts as those affiliated with, sponsored by and probably recruited by large gun groups.

2. Our case makes more powerful arguments for the Second Amendment than were made in *NYSRPA*. Our broad-based challenge to gun laws emphasizing the government tyranny argument, provides a much firmer footing for striking down laws against public carry than the narrowly crafted challenges of the past that led to this Court's precedents being narrowly construed by many lower federal courts and completely ignored in New York State courts. Our case gives the Court an opportunity to clarify Second Amendment doctrine in such a way that will prevent the lower courts and courts of states like New York from ignoring this Court's precedents for yet another ten or fifteen years, resulting in irremediable suffering of citizens deprived of the natural right to bear arms in these perilous times.
3. We got in line first. And through no fault of our own and because of the vast difference in financial resources between us and the litigants in *NYSRPA*, we were not able to file our petition until February. We filed our case in the trial court on July 22, 2015!

We filed an amended complaint on December 23, 2015. The case was submitted for decision on June 24, 2016. The court issued a decision on January 10, 2018. No criticism of the District Judge is intended, however, that amounts to one year and 201 days for which we bear no responsibility.

The case was argued in the Second Circuit on February 20, 2019. However, the court held the case pending resolution of *New York State Rifle & Pistol Association, Inc., v. City of New York, New York*, (15-638) in this Court. A decision was issued by the Second Circuit on August 11, 2020, once again representing a lengthy period for which we bear no responsibility—one year and 174 days.

On this appeal, the respondents' attorneys, who have had an occasion to answer these or similar arguments seven prior times (see below) asked for and received extensions totaling 62 days. Thus, there were delays totaling three years and 72 days for which the petitioners bear no responsibility. Otherwise, our petition would have been filed well ahead of NYSRPA's.

If this Court grants our petition and consolidates our case with NYSRPA, no significant delays in scheduling would be required as we can assure the Court that we can meet any reasonable time frame as we know our case well and will have additional attorneys available to support our small legal team.

While the case was pending in the District Court, we decided to try our luck raising similar arguments in New York State courts. New York courts responded to those arguments with indifference or disdain.

In *Chomyn v. Boller*, 137 AD3d 1705 (4th Dept. 2016), the court stated:

“Finally, petitioner's contention that the revocation of his pistol permit violates his rights under the Second and Fourteenth Amendments of the United States Constitution is without merit (*see Cuda*, 107 AD3d at 1410; *Matter of Kelly v Klein*, 96 AD3d 846, 847-848; *see*

also Kachalsky v County of Westchester, 701 F3d 81, 93-101, *cert denied* ___ US ___, 133 S Ct 1806).”

The Court of Appeals then dismissed the appeal “*sua sponte*, upon the ground that no substantial constitutional question is directly involved.” *Chomyn v. Boller*, 27 NY3d 1119 (2016).

In *Gurnett v. Bargnesi*, 147 AD3d 1319 (4th Dept. 2017), the Appellate Division again casually dismissed the arguments:

“Finally, to the extent that the contention is properly before us, we conclude that petitioner's contention that the revocation of his pistol permit violates his rights under the Second and Fourteenth Amendments of the United States Constitution is without merit (*see Chomyn*, 137 AD3d at 1706-1707; *Cuda*, 107 AD3d at 1410; *see also Kachalsky v County of Westchester*, 701 F3d 81, 93-101 [2012], *cert denied* 569 US ___, 133 S Ct 1806 [2013]).”

The Court of Appeals then denied permission to appeal and, to add insult to injury, imposed costs of \$100. *Gurnett v. Bargnesi*, 2017 N.Y. Slip Op. 89292. We then filed a petition to this Court on January 16, 2018. The Attorney General waived the filing of a brief and the petition was denied on March 19, 2018.

To summarize, this is the eighth time we have made similar arguments in five different courts. On only two occasions was there an extended discussion of our arguments, however, as noted in our petition in this Court, numerous arguments we made were ignored.

I. THE RESPONDENTS MISSTATE THE RECORD WITH RESPECT TO PETITIONER MURTARI.

The respondents inadvertently stated in their brief, without citing the record, that petitioner Murtari only applied for and was denied a premises permit. Brief in Opposition, p. 2. This is incorrect. Indeed, the respondents stipulated in the trial court that he had standing to raise the proper cause argument. 1:15-cv-00654-FPG, Doc. 26, 04/29/16, Page 28. That stipulation obviated any need to provide documents at the pleading stage showing that he had applied for a concealed carry permit. Both courts below found that he had standing to raise this issue and the issue is properly before the Court.

II. THIS CASE DEMONSTRATES THE PERILS OF A PIECEMEAL ATTACK ON NEW YORK'S UNLAWFUL PISTOL PERMIT SCHEME.

The philosophy of this grassroots, home-grown attack on New York's onerous pistol permit regime has been to attack the regime as a whole and all of its parts and to do so because of the actual purpose of the Second Amendment, to deter government tyranny, as opposed to the purpose posited by those who oppose the right to bear arms—self-defense against street crime.

The Court has already accepted a case that seems to takes a narrow approach and does not emphasize the government tyranny argument. There are two major problems with the approach taken by the petitioners in NYSRPA. First, by not

leading with the government tyranny argument, they will be forced to battle “proper cause” on the poor battlefield of hundreds of confusing and tendentious cost-benefit studies about the risks and costs of public carry vis-à-vis street crime. In sharp contrast, if deterring tyranny is the prime value served by the right to bear arms, the right to carry follows as night follows day. You cannot deter government tyranny when you cannot leave your home with a weapon.

The second problem is illustrated by the case of petitioner Murtari. He sought a permit for home possession and public carry as stipulated by the respondents in the trial court. The licensing officer denied his application for “good cause,” thus effectively *also* denying his right to public carry without explicitly finding a lack of proper cause. Thus, even if NYSRPA’s challenge to the proper cause requirement is upheld by this Court, licensing officers who oppose the right to publicly bear arms could still thwart this Court’s ruling by denying permits entirely based on the other unconstitutional features of the regime which we attack and NYSRPA does not.

For these two separate reasons, this Court should also accept this case in conjunction with NYSRPA as the only practical way to end the unlawful pistol permit regime that has plagued New Yorkers for many decades. With violent crime and social turbulence on the rise and efforts to defund the police active in New York State, it is literally a matter of life and death that the Court hear our case and strike the entire regime down as soon as possible. As we argued in the lower courts, the right to bear arms is distinguished from virtually all other constitutional rights in that its loss can lead to immediate death at the hands of criminals or tyrannical governments.

III. THE RESPONDENTS CONTINUE TO IGNORE THE GOVERNMENT TYRANNY ARGUMENT.

As noted above, this grassroots effort has now raised the government tyranny argument eight times in five different courts and never received a viable counter-argument from our adversaries or one peep from any court! We believe this is because the argument is true and unrebuttable and courts hostile to the right to bear arms have simply ignored it as they also have no rebuttal to the argument.

The pattern continues with Respondents' brief that has only a cursory reference to it. In contrast to their dismissal of the argument in the trial court (1:15-cv-00654-FPG, Doc. 26, 04/29/16, Page 39), they now appear to at least grant the argument a theoretical plausibility, yet they failed to explain how the New York Pistol Permit regime was tailored to respect the right of the people to bear arms to preserve their sovereignty and liberty against tyranny, or cite any case upholding that regime that took account of the government tyranny argument in any way, shape or form.

IV. THE RESPONDENTS IGNORED OUR SUPPLEMENTAL BRIEF.

The necessary corollary to ignoring the government tyranny argument, pretending it doesn't exist or isn't true and hoping it goes away, is ignoring the

overwhelming evidence for it presented by the petitioners in this case. For example, we argue that the right to bear arms deters coups d'état. Sadly, yet another coup in a poorly armed nation occurred just before we filed our petition! The coup in Myanmar (Burma) was the subject of our supplemental brief filed on March 9, 2021.

Sadly and tragically, Myanmar illustrates many of the points we made in this case:

1. An unarmed populace encourages coups and political instability.
2. Coups often lead to mass murder and crackdowns on free speech and public assembly.
3. Democratic processes are not sufficient to deter tyranny as democracies often collapse.

The crisis in Myanmar continues and the death toll has risen to over 800. *Source:* Associated Press. The latest tactic of the regime is to grab people out of their cars in broad daylight precisely to intimidate the public. *Id.* One man was shot by the regime while riding his motorcycle and the ousted democratic leader, Aung San Suu Kyi, was in the dock recently, charged with illegally possessing a walkie-talkie!

It CAN happen here!

V. EQUAL JUSTICE UNDER LAW REQUIRES THAT THE PETITIONERS RECEIVE THE SAME TREATMENT AFFORDED TO THE NYSRPA PETITIONERS REGARDLESS OF THE VASTLY GREATER RESOURCES AVAILABLE TO THEM.

It is fitting that we close this eighth plea for our Second Amendment rights in five different courts over a period of 2136 days by reiterating our request for equal justice under law:

“Equal justice under law is not merely a caption on the facade of the Supreme Court building, it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists...it is fundamental that justice should be the same, in substance and availability, without regard to economic status.”

--Hon. Lewis F. Powell, Jr.

CONCLUSION

The Court should grant the petition, and upon hearing the matter, the order dismissing the amended complaint should be reversed in all respects, except for the dismissal of the Libertarian Party of Erie County and Ginny Rober (all claims) and William Cuthbert and Philp Mayor (regarding prospective injunctive relief and future money damages only), and the case remanded for further proceedings.

For the foregoing reasons, the Petition should be granted.

Respectfully submitted,

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