# "A Crime to Possess a Firearm": Does the Second Amendment Apply in New York?

By Stephen P. Halbrook



"Under New York law, it is a crime to possess a firearm."[1] Those words from a 2004 decision of the U.S. Court of Appeals for the Second Circuit contrast sharply with the Second Amendment's language that "the right of the people to keep and bear arms, shall not be infringed."[2] The U.S. Supreme Court held in *District of Columbia v. Heller* (2008) that "the people" actually does mean the people and that they have a right to possess handguns, particularly in the home.[3] It seems odd that exercise of a constitutional right would be a crime.

The basis of the Second Circuit's decision was that the Penal Code prohibits possession of a firearm (defined as a pistol or revolver) and that having a license is an affirmative defense which the gun owner must prove at trial.[4] Thus, police officers who merely "see [a] gun" are "justified in seizing it because of its 'immediately apparent' incriminating character."[5] The prohibition did not offend the Second Amendment because "the right to possess a gun is clearly not a fundamental right."[6]

After the Supreme Court decided *Heller*, the Second Circuit acknowledged that the Second Amendment "confers an individual right on citizens to keep and bear arms."[7] However, "the Second Amendment applies only to limitations the federal government seeks to impose on this right."[8] Moreover, the law did "not interfere with fundamental rights" and could be upheld under the rational relation test.[9]

The above two Second Circuit opinions were *per curiam* panel decisions in which now Supreme Court Justice Sonia Sotomayor joined. These decisions reflected New York federal and state precedents according the Second Amendment little or no meaning or deference. However, as a circuit judge Sotomayor had questioned the more stringent sentencing of persons under federal law based on New York's more draconian firearm laws.[10]

Following the above decisions, the Supreme Court held in *McDonald v. City of Chicago* (2010) that the right to keep and bear arms is indeed a fundamental right applicable to the States through the Fourteenth Amendment.[11] To date, however, under New York law it remains a crime to possess a firearm.

The criminalization of mere possession of a firearm in New York was a legislative innovation of the twentieth century, and the judicial denial of any constitutional protection for a right to arms was an invention of the second half of that century. By contrast, when the New York constitutional convention ratified the federal Constitution in 1788 before it was amended to include the Bill of Rights, the convention declared that certain rights "cannot be abridged or violated," including that "the people" have a "right freely and peaceably to exercise their religion" and that "the people have a right to keep and bear arms; that a well regulated militia, including the body of the people *capable of bearing arms*, is the proper, natural, and safe defence of a free state."[12]

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The demand to recognize the right to arms stemmed from bitter experiences preceding the American Revolution. A century before, the Crown had "caus[ed] several good Subjects, being Protestants, to be disarmed," complained the English Declaration of Rights of 1689, which thus declared: "That the Subjects which are Protestants, may have Arms for their Defence suitable to their Condition, and as are allowed by Law."[13] William Blackstone explained that, to vindicate the rights to personal security, personal liberty, and private property, subjects were entitled to justice in the courts, the right to petition, and "the right of having and using arms for self-preservation and defense."[14]

After Boston was occupied by Redcoat troops in 1768, the *New York Journal* publicized throughout the colonies their transgressions on the rights of Englishmen,[15] including their denigration of the right to arms. Samuel Adams anonymously wrote that "it is certainly beyond human art and sophistry, to prove the British subjects, to whom the *privilege* of possessing arms is expressly recognized by the Bill of Rights,…are guilty of an *illegal act*, in calling upon one another to be provided with them…."[16] It was reported that in Boston "the inhabitants had been ordered to bring in their arms, which in general they had complied with; and that those in possession of any after the expiration of a notice given them, were to take the consequences."[17] The *Journal* retorted:

> It is a natural right which the people have reserved to themselves, confirmed by the Bill of Rights, to keep arms for their own

> defence; and as Mr. Blackstone observes, it is to be made use of when the sanctions of society and law are found insufficient to restrain the violence of oppression.[18]

After Lexington and Concord, the New York General Committee resolved "that it be Recommended to every Inhabitant, to perfect himself in Military Discipline, and be provided with Arms, Accoutrements, and Ammunition, as by Law directed."[19] In 1776, after independence was declared, the pro-British New York Governor William Tryon decreed: "That all offensive arms, indiscriminately, be forthwith collected,… to deliver them up at head-quarters, to the Commander-in-chief of the King's troops."[20]

Given these experiences, it was understandable that after the Constitution was proposed in 1787 without a bill of rights, Antifederalists objected that "a citizen may be deprived of the privilege of keeping arms for his own defence, he may have his property taken without a trial by jury…. These things are entirely contrary to our constitution…."[21] New Yorker John De Witt warned that Congress "at their pleasure may arm or disarm all or any part of the freeman of the United States."[22]

But James Madison had addressed this issue in the New York-published *Federalist Papers*, referring to "the advantage of being armed, which the Americans possess over the people of almost every other nation," in contrast to the kingdoms of Europe, where "the governments are afraid to trust the people with arms."[23] Pursuant to the great compromise that a declaration of rights would be considered after the Constitution was adopted, Madison introduced what would become the Bill of Rights in the first Federal Congress in 1789, including: "The right of the people to keep and bear arms shall not be infringed…."[24] Federalist Tench Coxe explained:

> As civil rulers, not having their duty to the people duly before them, may attempt to tyrannize, and as the military forces which must be occasionally raised to defend our country, might pervert their power to the injury of their fellow-citizens, the people are confirmed…in their right to keep and bear their private arms.[25]

When the New York convention ratifying the Constitution in 1788 demanded recognition of what would become the Second Amendment and other guarantees, the New York Constitution itself had no bill of rights. Nor did that of 1822. Delegates at the constitutional convention who drafted the latter argued that "a bill of rights is the mere repetition of the fundamental rights of this people, which have never been violated," that rights omitted "might be considered to be yielded," and that—stated future U.S. President Martin Van Buren—such a bill was historically "a concession extorted from the king, in favor of popular liberty," unbefitting a republic.[26]

Nevertheless, in 1828 New York enacted a statutory declaration "Of the Rights of the Citizens and Inhabitants of this State" which still states: "A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms cannot be infringed."[27] As late as 1907, statutory revisors traced this to the English Declaration of Rights and the Second Amendment.[28]

After the Civil War, the Southern States reenacted the Slave Codes as the Black Codes, which prohibited African Americans from possessing firearms without a license. The archetypical Mississippi law, for instance, provided that "no freedman, free negro or mulatto, not in the military service of the United States government, and not licensed so to do by the board of police of his or her county, shall keep or carry fire-arms of any kind…."[29] The Supreme Court in *McDonald* cited this prohibition as illustrative of what the Fourteenth Amendment was designed to preclude,[30] and the Court was speaking to the deprivation, not just to its race-based, equal protection violation.[31]

In the debates of the Reconstruction Congress leading to its proposal of the Fourteenth Amendment, Rep. Henry Raymond of New York, the editor of the *New York Times*, explained that making the African American a citizen meant that "he has every right which you or I have as citizens," including a right to defend himself and his wife and children; a right to bear arms…."[32] Rep. Roswell Hart of New York asserted that the United States had a duty to secure to the people of the Southern States a republican form of government, meaning "[a] government…where 'the right of the people to keep and bear arms shall not be infringed'…."[33] In introducing the Fourteenth Amendment, Senator Jacob Howard's explanation that it would protect "the personal rights guaranteed by the first eight amendments of the United States Constitution such as… the right to keep and bear arms" appeared on the front page of the *New York Times* and *New York Herald*.[34]

The *New York Evening Post* opined that the civil rights of African Americans should preclude laws preventing "their holding public assemblies" and "keeping fire-arms."[35] The page facing that editorial supporting enforcement of First and Second Amendment rights had an advertisement for rifles, muskets, and "pocket and belt revolvers," with the admonition: "In these days of housebreaking and robbery every house, store, bank and office should have one of Remington's revolvers."[36] Later issues of the *Post* depicted the New York police as being "employed in the service of the wealthy and prosperous corporations" while crime was rampant.[37]

The right to keep and bear arms seems to have been alive in New York for the next half century. General George W. Wingate, President of the New York Public Schools Athletic League and a founder of the National Rifle Association, wrote *Why Should Boys Be Taught to Shoot?* (1907).[38] President Teddy Roosevelt contributed an afterword congratulating the New York schoolboy who was

the best shot of the year, adding that, in time of war, "it is a prime necessity that the volunteer should already know how to shoot if he is to be of value as a soldier."[39]

That tradition was still alive when now-Justice Antonin Scalia was a schoolboy on the rifle team: "I grew up at a time when people were not afraid of people with firearms.... I used to travel on the subway from Queens to Manhattan with a rifle. Could you imagine doing that today in New York City?"[40] Indeed, such a schoolboy now might be shot on sight by a SWAT team.

No caselaw on the Second Amendment developed in New York until the turn of the century because regulations were so minimal. New York did not forbid carrying pistols concealed without a permit until 1881.[41] The courts began by distinguishing "criminal" type weapons such as the slung-shot from "those ordinary legitimate weapons of defense of protection which are contemplated by the [federal] Constitution and the [New York] Bill of Rights."[42] But in 1911 the Sullivan Law was passed, the first law in any State (other than Southern laws on African Americans) to require a permit for keeping a pistol or other concealable firearm in the home. Newly arrived Italians and other unruly immigrants were not to be trusted.[43]

Upholding the law, *People v. Warden of City Prison* (1913) held that the federal Bill of Rights did not apply to the States,[44] but "fully recogniz[ed] the proposition that the rights enumerated in the [New York] Bill of Rights were not created by such declaration. They are of such character as necessarily pertain to free men in a free state."[45] The court ruled the law to be valid because it regulated the right to keep arms by requiring a permit rather than prohibited the right. "If the Legislature had prohibited the keeping of arms, it would have been clearly beyond its power."[46]

Since the law referred only to firearms that could be concealed on the person, the dissent noted that it did not apply to "a blunderbuss or a horse pistol," which were too large to be concealed.[47] He suggested that "the professional criminal will generally violate the act and take his chances of discovery and punishment, while the law-abiding citizen will be obliged to disarm himself of his only effective protection against the predatory classes."[48]

Since "a rifle may be possessed in the home or carried openly upon the person on the street without violating any law,"[49] a 1958 decision held the law not to apply to a rifle carried wrapped in a newspaper, noting: "In enacting the 'concealed' weapon provision…[the Legislature] carefully avoided including rifles because of the Federal constitutional provision and the Civil Rights law provision."[50] Another decision denied forfeiture of a hunting rifle a person used to defend himself against a prejudiced mob based on "the constitutional guarantee of the right of the individual to bear arms. Amendments Art. II."[51]

Beginning at least as early as a decision rendered while World War II raged, New York courts deferred to issuing authorities on whether an applicant for a license to carry a concealed pistol stated a "proper cause." *Moore v. Gallup* (1943) began by finding that the New York statutory right to bear arms meant the same as the federal Second Amendment and then said that the Second Amendment does not apply to the States,[52] leaving one to wonder what the New York provision applied to if not to the State. While the legislature could modify that statutory right with the ban on carrying a pistol without a license, the court said that "the Second Amendment created no right to bear arms, a right which long ante-dated the adoption of the Federal Constitution…."[53] If that suggested a natural or common-law right of the individual, the court next added that the Second Amendment's purpose is "to enable the Federal Government to maintain the public security."[54] If that was not enough to discount any personal liberty, the court added that "the arms to which the Second Amendment refers include weapons of warfare to be used by the militia, such as swords, guns, rifles and muskets…but not pistols," which "are habitually carried by…gangsters."[55]

The dissent would have held that such construction of the law violated the right to keep and bear arms.[56] It noted the current perceived threat of a foreign invasion, which demonstrated the "need of the citizens to become proficient in the use of firearms…."[57]

The *Moore* case set the stage for how New York courts would, for decades to come, view the incredible shrinking "right" only of "the people" endorsed by the authorities to bear arms. It may well have been a test case, in that amici curiae briefs were filed by rifle clubs, a range association, and the National Rifle Association[58]—the first such NRA amicus brief nationwide of which this author is aware.

As noted above, rifles have been more leniently restricted under New York law. In the 1960s, however, New York City required the registration of all firearms, including rifles and shotguns. Opponents who argued that such registration could lead to confiscation were derided as "right-wing kooks."[59] But in 1991, the City enacted a prohibition on certain rifles it derogatorily called "assault weapons," which it said were "generally recognized as particularly suitable for military and not sporting purposes"[60]—the very kind of arm *Moore* held to be protected. Persons with registered rifles who failed to inform the police by a deadline that they no longer possessed the rifles in the City could expect a knock on their door by police officers.

The ordinance was challenged by the Richmond Boro Gun Club, the NRA, the New York State Rifle and Pistol Association, and several John Does.[61] The federal Civilian Marksmanship Program sold or issued M-1 Garand rifles, which were militarily obsolete but training in which Con-

gress thought promoted national defense, to individuals and clubs. The U.S. Court of Appeals for the Second Circuit held that the local ban was not preempted by federal law because the rifles could be stored and used outside City limits.[62]

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The state of New York would later enact a prohibition on possession of what it called "assault weapons," mostly rifles, not lawfully possessed by 1994.[63] But New York law continues to focus mostly on criminalization of possession of a "firearm," which is defined as a pistol or revolver.[64] "A person is guilty of criminal possession of a weapon in the fourth degree," a class A misdemeanor, when "[h]e or she possesses any firearm…."[65] Possession of a loaded firearm outside of one's home or place of business constitutes criminal possession of a weapon in the second degree, a class C felony.[66] Licensees are exempt:

> A license for a pistol or revolver…shall be issued to (a) have and possess in his dwelling by a householder; (b) have and possess in his place of business by a merchant or storekeeper;…(f) have and carry concealed, without regard to employment or place of possession, by any person when proper cause exists for the issuance thereof….[67]

Under these provisions, a handgun may never be carried outside one's premises, except that it may be carried concealed (but not openly) under a license issued for "proper cause," which is limited to "a special need for self-protection distinguishable from that of the general community or of persons engaged in the same profession…."[68] Thus, no right to bear arms for self-defense exists unless the issuing authority grants it:

> [I]ssuance of a pistol license is not a right, but a privilege subject to reasonable regulation. The Police Commissioner has broad discretion to decide whether to issue a license…. Judicial review of a discretionary administrative determination is limited to deciding whether the agency's actions were arbitrary and capricious…. The agency's determination must be upheld if the record shows a rational basis for it….[69]

Moreover, New York restricts issuance of a license merely to possess a handgun only to New York residents, which the Second Circuit held does not violate the Second Amendment because it did not apply to the states.[70] While the Supreme Court in *McDonald* later held that it does so apply through the Fourteenth Amendment,[71] no court has applied that to issuance of a license to a non-resident. Indeed, despite a federal law providing that a person is "entitled" to transport a firearm through a State where otherwise unlawful if the person may possess firearms under federal law and is going from and to states where legal,[72] the Second Circuit held that the police may arrest such person anyway without probable cause to believe any element of the federal law is not met, and such person has no resultant civil rights action.[73] This often happens, as it did in that case, to travelers who seek to transport firearms pursuant to federal regulations at New York airports.

At least in recent decades, the Second Amendment has been given short shrift by both federal and state courts in New York. A U.S. district court held that the seizure and destruction of a person's firearm by New York police could not give rise to a Second Amendment claim, because "the 'right to bear arms' is not a right to hold some particular gun," and it did not "prevent him from acquiring another weapon."[74] It seems strange to suggest that the right to keep and bear arms does not refer to the arms owned by specific persons.

When the Supreme Court in *Heller* held that the Second Amendment guarantees the right to possess a handgun for self defense,[75] the handwriting of incorporation through the Fourteenth Amendment on the wall could clearly be anticipated. A court decided that even if the Second Amendment is "extended to the individual states as a fundamental right," New York's prohibition on bearing arms without a license in which the police decide whether the person has "proper cause" remained intact.[76]

Another court upheld a conviction for criminal possession of a weapon in the second degree, stating that "Penal Law article 265 does not effect a complete ban on handguns" and that "New York's licensing requirement remains an acceptable means of regulating the possession of firearms…."[77] In noting that the "defendant was not in his home at the time of the crime and did not have a valid pistol permit,"[78] the court failed to mention that carry permits are unavailable to the average citizen or to discuss how this virtually complete ban on bearing arms is consistent with the right to bear arms.

Little seems to have changed so far after the Supreme Court in *McDonald* held in 2010 that the Second Amendment applies to the states through the Fourteenth Amendment. The requirement of a premises license from the police merely to possess a firearm was upheld in part because "a significant percentage of premises license applications resulted in premises residence licenses in New York City."[79] That could not be said for the license to have and carry concealed—the right to bear arms is banned for the people at large.

When the severe, discretionary restrictions on obtaining a license to carry concealed were challenged, a U.S. district court held those restrictions or prohibitions do not even implicate the Second Amendment, because they are outside its scope.[80] This lengthy opinion seems to ignore the simple words of the Second Amendment that "the right of the people to…bear arms, shall not be infringed."

At this Nation's founding, New York was at the forefront demanding what became the Second Amendment. While the U.S. Supreme Court was AWOL on the meaning of the Amendment until its recent *Heller* and *McDonald* decisions, perhaps the New York legislature and courts will rethink the proposition: "Under New York law, it is a crime to possess a firearm."[81]

## Endnotes

1. *United States v. Sanchez-Villar*, 99 F. App'x 256, 258 (2d Cir. 2004) (per curiam), *vacated*, 544 U.S. 1029 (2005) (for further consideration in light of *United States v. Booker*, 543 U.S. 220 (2005)).
2. U.S. CONST. amend. II.
3. *District of Columbia v. Heller*, 554 U.S. 570 (2008).
4. *Sanchez-Villar*, 99 F. App'x at 258 (citing N.Y. Penal Law §§ 265.01(1) (PL) (crime), 265.20(3) (exception for license)); *People v. Washington*, 209 A.D.2d 162, 163, 618 N.Y.S.2d 32 (1st Dep't 1994) (affirmative defense).
5. *Sanchez-Villar*, 99 F. App'x at 258 (citation omitted).
6. *Id.* at 258 n.1 (quoting *United States v. Toner*, 728 F.2d 115, 128 (2d Cir. 1984)).
7. *Maloney v. Cuomo*, 554 F.3d 56, 58 (2d Cir. 2009) (per curiam) (upholding New York's ban on nunchaku, i.e., two sticks connected by cord), *cert. granted*, 130 S. Ct. 3541 (2010), *vacated*, 390 F. App'x 29 (2d Cir. 2010).
8. *Id.* at 58-59 (citing, *inter alia*, *Bach v. Pataki*, 408 F.3d 75, 84, 86 (2d Cir. 2005)) (upholding law excluding non-resident of New York to be eligible to obtain a license to possess a firearm), *cert. denied*, 546 U.S. 1174 (2006).
9. *Id.* at 59.
10. *United States v. Cavera*, 550 F.3d 180 (2d Cir. 2008) (*en banc*). The Second Circuit upheld more prison time under the federal Gun Control Act of an army veteran over 70 years old for selling guns across state lines into New York City based on the theory that its strict gun laws created a large black market that required more severe penalties for deterrence. Judge Sotomayor dissented on the basis that sentencing should not be based on "arbitrary and subjective considerations, such as a judge's feelings about a particular type of crime," using "questionable empirical data or by invoking a 'common sense' at odds with reality." *Id.* at 220 (Sotomayor, J., dissenting).
11. *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010).
12. 18 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 298 (Merrill Jensen ed., 1995).
13. An Act Declaring the Rights and Liberties of the Subject, and Settling Succession of the Crown, 1689, 1 W. & M., c.2 (Eng.).
14. 1 WILLIAM BLACKSTONE, COMMENTARIES *143–44.
15. Boston Under Military Rule 1768-1769: As Revealed in a Journal of the Times xiii–ix (Oliver Morton Dickerson, ed. 1971).
16. 1 THE WRITINGS OF SAMUEL ADAMS 299 (Harry Alonzo Cushing ed., 1904); *see* N.Y. JOURNAL, Supplement, Apr. 6, 1769, No. 1363, at 2, col. 1.
17. N.Y. JOURNAL, Feb. 2, 1769, at 2, col. 2.
18. N.Y. JOURNAL, Supplement, Apr. 13, 1769, at 1, col. 3.
19. N.Y. JOURNAL or GEN. ADVERTISER, May 4, 1775, at 2, col. 3.
20. HENRY ONDERDONK, JR., REVOLUTIONARY INCIDENTS OF SUFFOLK AND KINGS COUNTIES 59 (1849).
21. N.Y. JOURNAL & DAILY PATRIOTIC REG., Apr. 21, 1788, at 2, col. 2.
22. THE ANTIFEDERALIST PAPERS 75 (Morton Borden ed., 1965).
23. THE FEDERALIST NO. 46 (James Madison), *in* 15 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 492-93 (1984).
24. 4 The Documentary History of the First Federal Congress of the United States of America, March 4, 1789–March 3, 1791 10 (Charlene Bands Bickford & Helen E. Veit eds., 1986).
25. A Pennsylvanian, *Remarks on the First Part of the Amendments to the Federal Constitution*, N.Y. Packet, June 23, 1789 at 2, cols. 1–2.
26. Nathaniel H Carter et al. Reports of the Proceedings and Debates of the Convention of 1821, Assembled for the Purpose of Amending the Constitution of the State of New York 163, 171–72 (1821).
27. N.Y. Civil Rights Law § 4 (2011) (original version at R.S., pt. 1, c. 4, § 3 (1828)).
28. "This provision appears in the Declaration of Rights of William and Mary (1689, ¶ 7), in the United States Constitution (2d amendment) and in the Revised Statutes of 1828 (Pt. 1, Ch. 4, § 3)." Report of Board of Statutory Consolidation 440 (1907).
29. *McDonald v. City of Chicago*, 130 S.Ct. 3020, 3038 (2010) (quoting Certain Offenses of Freedmen, 1865 Miss. Laws p. 165, § 1).
30. *Id.*
31. *Id.* at 3040–41.
32. CONG. GLOBE, 39th Cong., 1st Sess. 1266 (1866).
33. *Id.* at 1629.
34. N.Y. HERALD, May 24, 1866, at 1, col 3; N.Y. TIMES, May 24, 1866, at 1, col. 6.
35. *The Civil Rights Bill in the Senate*, N.Y. EVENING POST, Apr. 7, 1866, at 2, col. 1.
36. *Id.* at 3, col. 10.
37. N.Y. EVENING POST, Apr. 16, 1866, at 2, col. 2; N.Y. EVENING POST, May 10, 1866, at 2, col. 4.
38. Gen. George W. Wingate, Why Should Boys Be Taught to Shoot? (1907).
39. *Id.* at 13.
40. Justice Antonin Scalia, Speech at National Wild Turkey Federation Annual Convention (Feb. 25, 2006), *available at* <http://www.freerepublic.com/focus/f-news/1586586/posts>.
41. 1881 N.Y. Laws 103.
42. *People v. Persce*, 204 N.Y. 397, 97 N.E. 877, 879 (1912).
43. Lee Kennett & James LaVerne Anderson, The Gun in America 177–78 (1975).
44. *People v. Warden of City Prison*, 154 A.D. 413, 419, 139 N.Y.S. 277 (1st Dep't 1913).
45. *Id.* at 421.
46. *Id.*
47. *Id.* at 426 (Scott, J., dissenting).
48. *Id.* at 427.

49. *People v. Raso*, 9 Misc.2d 739, 741, 170 N.Y.S.2d 245 (County Ct. 1958).

50. *Id.* at 742.

51. *Hutchinson v. Rosetti* , 24 Misc. 949, 951, 205 N.Y.S.2d 526 (1960). The prohibition was later held not to apply to a short-barreled shotgun at home because "this weapon a more nearly approximates the ancient blunderbuss or horse pistol than the modern revolver or pistol. The sawed-off shotgun before the Court is not any more readily concealable upon the person than is a rifle, carbine or unaltered shotgun." *People v. Roberts*, 73 Misc. 2d 500, 502, 342 N.Y.S.2d 757, 758 (1973).

52. *Moore v. Gallup*, 267 A.D. 64, 67, 45 N.Y.S.2d 63 (3d Dep't 1943), *aff'd*., 293 N.Y. 846, 59 N.E.2d 439, *motion granted*, 294 N.Y. 699, 60 N.E.2d 847.

53. *Id.* at 67-68.

54. *Id.* at 68.

55. *Id.*

56. *Id.* at 71.

57. *Id.*

58. *Id.* at 65. NRA counsel was Karl T. Frederick, a former NRA president.

59. Related to author by David I. Caplan, a New York attorney who litigated pistol license cases. *E.g*., *Savitch v. Lange*, 114 A.D.2d 372, 493 N.Y.S.2d 889 (2nd Dep't 1985).

60. N.Y. City Local Law No. 78, § 1 (1991).

61. *Richmond Boro Gun Club, Inc. v. City of New York*, 896 F. Supp. 276 (E.D.N.Y. 1995), *aff'd*, 97 F.3d 681 (2d Cir. 1996). This author argued the case.

62. 97 F.3d at 687.

63. N.Y. Penal Law § 265.22 (PL).

64. § 265.00(3).

65. § 265.01(1).

66. § 265.03(3).

67. § 400.00(2). The issuing authority has up to six months, which period may be delayed by giving "reasons," to act on an application for a license. § 400.00(4-a).

68. *Kaplan v. Bratton*, 249 A.D.2d 199, 201, 673 N.Y.S.2d 66 (1st Dep't 1998). New York City regulations further require a showing of "extraordinary personal danger, documented by proof of recurrent threats to life or safety," adding that "the mere fact that an applicant…resides or is employed in a 'high crime area,' does not establish 'proper cause'…." *Id*., quoting 38 RCNY 5-03(b). "Proper cause" does not include the wish to exercise rights under the Second Amendment.

69. *Id*.

70. *Bach v. Pataki*, 408 F.3d 75 (2d Cir. 2005).

71. *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010).

72. 18 U.S.C. § 926A. "This is intended to prevent local laws, which may ban or restrict firearm ownership, possession or transportation, from being used to harass interstate commerce and travelers." Report 98-583, Senate Judiciary Committee, 98th Cong., 2d Sess., 27–28 (1984).

73. *Torraco v. Port Authority of N.Y. & N.J.*, 615 F.3d 129 (2d Cir. 2010). This author argued the case.

74. *Garcha v. City of Beacon*, 351 F. Supp. 2d 213, 217 (S.D.N.Y. 2005).

75. *District of Columbia v. Heller*, 554 U.S. 570 (2008).

76. *In re Bastiani*, 23 Misc.3d 235, 237-38, 881 N.Y.S.2d 591 (2008) (affirming denial of license).

77. *People v Perkins*, 62 A.D.3d 1160, 1161, 880 N.Y.S.2d 209 (3d Dept. 2009).

78. *Id*.

79. *People v. Foster*, 30 Misc.3d 596, 600, 915 N.Y.S.2d 449 (2010).

80. *Kachalsky v. Cacace*, No. 10-cv-5413, 2011 WL 3962550, *20-23 (S.D.N.Y. 2011).

81. *United States v. Sanchez-Villar*, 99 Fed. Appx. 256, 258, 2004 WL 962938 (2d Cir. 2004) (*per curiam*).

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