In an amicus brief in New York State Rifle & Pistol Association Inc. v. City of New York, New York the State and Local Legal Center (SLLC) urges the Supreme Court to not apply strict scrutiny to regulations of guns carried in public.

In this case the Supreme Court agreed to decide whether New York City’s ban on transporting a handgun to a home or shooting range outside city limits violates the Second Amendment, the Commerce Clause, or the constitutional right to travel. The Second Circuit held the law is constitutional on all accounts.

A New York City administrative rule allowed residents to obtain a “carry” or “premises” handgun license. The “premises” license allowed a licensee to “have and possess in his dwelling” a pistol or revolver. Among other restrictions, a licensee was only allowed to take his or her gun to a shooting range located in the city. Challengers want to bring their handgun to their second home and to target practice outside the city.

As of July 2019, New York City and the State of New York allow premises licensees to transport handguns through the City to take them to shooting ranges or second homes located outside the City. New York City has filed a motion to the Supreme Court arguing the case is moot because “the new statute and regulation give [the challengers] everything they have sought in this lawsuit.” The Supreme Court hasn’t yet ruled on the mootness motion.

In 2008 in District of Columbia v. Heller, the Supreme Court held that the Second Amendment “guarantees the individual right to possess and carry weapons in case of confrontation.” In Heller the Supreme Court didn’t confront the scope of the right to carry firearms outside of the home.

If the Supreme Court rules on the constitutionality of New York’s old premises rule the case will most likely be decided based on what level of Second Amendment scrutiny the Supreme Court applies. If the Court applies “strict scrutiny” the rule will almost certainly be struck down. To pass strict scrutiny a challenged government regulation must be “narrowly tailored to advance a compelling interest.”

Applying intermediate scrutiny, the Second Circuit held the old rule was “substantially related to the achievement of an important governmental interest.” It sought to “protect public safety and prevent crime.” And the court agreed with the former Commander of the License Division that premises license holders “are just as susceptible as anyone else to stressful situations,” including driving situations that can lead to road rage, “crowd situations, demonstrations, family disputes,” and other situations “where it would be better to not have the presence of a firearm.”

The SLLC amicus brief urges the Supreme Court to consider the fact that “law enforcement personnel who encounter armed individuals in public will often be uncertain whether the firearms are being carried for a constitutionally protected purpose” when they rule in this case. The brief notes that “[i]nstead of endorsing rigid tiers of scrutiny, Heller focused on the character of the burden that the District’s ordinance imposed.” Finally, the brief argues that New York’s former (and current)
premises rule is constitutional because it only imposes a modest burden on those who wish to “bear” arms in public places.


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