



Written by [Jack Kenny](#) on May 6, 2014

## High Court Leaves Second Amendment in Limbo

The U.S. Supreme Court's refusal to hear the appeal of a New Jersey gun owner in *Drake v. Jerejian*, means the state may continue to deny most residents permits to carry a handgun outside their homes. The high court's decision to deny a hearing, issued without comment Monday, apparently allows other states to also require, as New Jersey law does, the demonstration of a "justifiable need" to carry a firearm outside the home before a permit is issued. Critics say the law grants officials virtually unlimited discretion over a citizen's right to bear arms. New Jersey state Senator Jeff Van Drew, who wants to amend the law, says the permits are rarely granted.



"You have to fear for your life, that you're going to be killed, in essence," said Van Drew. "It's virtually never done."

The rejection of the appeal came despite the fact that, as reported at [TheNewAmerican.com](#), 19 states and 34 members of Congress joined the petition for the Supreme Court to review the ruling of the Third Circuit Court of Appeals upholding the New Jersey statute. Absent the confirmation of a broader application of the Second Amendment right to bear arms, the right could be threatened by federal as well as state statutes, observed Wyoming Governor Matt Mead. "If the current [Third Circuit] decision stands, states providing greater protections than New Jersey under the Second Amendment may be preempted by future federal action," Mead warned when his state joined the suit in February.

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While most states have a "shall issue" law, requiring the issuance of a permit if the applicant passes a background check and meets other standard requirements, New Jersey's "justifiable need" statute makes the decision a judgment call by officials. New Jersey resident John Drake's application was turned down despite the fact that his job of restocking ATM machines at night requires him to carry large quantities of cash, making him a potential target for robbery and assault. Drake became the lead plaintiff in the case after Jeffrey Muller, who originally filed the suit, had his permit granted. Muller's application had been initially turned down, despite his having been kidnapped and beaten.

Drake's appeal sought to build upon precedents set by the Supreme Court in *District of Columbia v. Heller* (2008) and *McDonald v. Chicago* (2010). In *Heller*, the Supreme Court for the first time decided the question of whether the right affirmed in the Second Amendment applies to individuals or only to state militias. The amendment in its entirety says: "A well regulated Militia being necessary to the security of a free state, the right of the people to keep and bear Arms shall not be infringed." In overruling a District of Columbia ban on handguns, the divided (5-4) court ruled the "prefatory language" of the introductory clause does not negate the inclusive language declaring "right of the people" to their arms. In *McDonald*, the court struck down handgun bans in Chicago and Oak Park,



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Illinois, ruling that the Second Amendment applies to states and localities as well as to the federal government.

But the rulings upheld the right of people to keep guns in their home while leaving open questions of how and to what extent governments may regulate the carrying of firearms in public. Justice Antonin Scalia's opinion of the court in *Heller* followed a lengthy history of the right to bear arms with the following caveat:

Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.... Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.

The New Jersey law, however, appears to go beyond even the broad exceptions Scalia described. According to the [Star-Ledger](#), Newark, New Jersey, with a population of 8.7 million, has issued just 1,595 new and renewed handgun carry permits since 2007, not including permits for armored car employees and retired police officers. Pennsylvania, with a population of 12.6 million, issued 165,857 permits in the last year alone. Even when New Jersey authorities grant permits, the conditions that are included render them virtually useless. A gun in a vehicle must be placed, unloaded, in a fastened case and stored in the trunk. In a vehicle that has no trunk or separate compartment, the unloaded handgun must be kept in a locked box out of reach of passengers. A permit is good for only two years, and an applicant must go through a background check for each renewal.

An Illinois law that effectively banned carrying concealed weapons in nearly all circumstances was struck down as too restrictive by a 7th Circuit Court of Appeals panel. The state amended the law rather than appeal to the Supreme Court. In February, a three-judge panel of the 9th Circuit Court in San Francisco, often called the most liberal of federal tribunals, struck down San Diego County's restrictions as violations of the Second Amendment. "States may not destroy the right to bear arms in public under the guise of regulating it," the panel said. The court's rejection of the *Drake* appeal leaves the amendment in a kind of legal limbo, noted Damon Root at [reason.com](#).

"The Supreme Court should have tackled that circuit split head on," wrote Root. "Because it failed to do so, the Second Amendment now means one thing for responsible gun owners living in New Jersey and another thing for those living in Illinois."

New Jersey law-enforcement groups defended the "justifiable need" provision, claiming in their brief it "does not burden conduct within the scope of the Second Amendment's guarantee." The National Rifle Association and Gun Owners Foundation were seeking a broader application of the *Heller* finding of an individual's right to possess a handgun. "The Second Amendment guarantees the right to carry weapons for the purpose of self-defense — not just for self-defense within the home, but for self-defense, period," the NRA argued in its brief to the Supreme Court.

In Trenton, Senator Van Drew is hoping to persuade his fellow legislators to change the law. His bill would allow the carrying of handguns, subject to a background check, the completion of courses in firearms safety, and the lawful use of force, the passing of a test and payment of a \$500 fee. While that



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would be less arbitrary than an official's judgment of "justifiable need," Scott Bach, president of the Association of New Jersey Rifle and Pistol Clubs, said it nonetheless imposes significant burdens on the exercise of a constitutional right.

"The \$500 fee is outrageous," Bach told the *Star-Ledger*. "The proficiency requirements are excessive. The idea that a hefty price tag should be attached to a constitutional right is outrageous."



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