Written by **Bob Adelmann** on October 28, 2021

Pro-gun Group Asks Appeals Court to Reject Texas Heartbeat Law

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Erik Jaffe, an attorney who once clerked for Supreme Court Justice Clarence Thomas, crafted a request on behalf of the Firearms Policy Coalition asking the Fifth Circuit Court of Appeals to consider and then rule against the Texas "heartbeat" law, SB 8. His strongly worded request — a writ of certiorari — explained that the issue at hand isn't abortion, but the way the Texas law has prevented its citizens from exercising a so-called constitutional right.

As long as the Supreme Court persists in claiming that abortion is a "right," then states are duty-bound to enforce those rights against infringement, says Jaffe.

The Texas law, warns Jaffe, if it is upheld, would serve as encouragement for other states to use the Texas example to infringe on other rights, such as those guaranteed by the Second Amendment.

He wrote:

> Texas's novel scheme for infringing upon and chilling the exercise of the right to abortion under the Court's *Roe* and *Casey* decisions while seeking to evade judicial review, if allowed to stand, could and would just as easily be applied to other constitutional rights.…
>
> If Texas's scheme … is successful here, it will undoubtedly serve as a model for deterring and suppressing the exercise of numerous [other] constitutional rights.

Indeed, the anti-gun state of New York has already begun:

> New York is already experimenting with private enforcement of anti-gun laws … and will gladly incorporate the lessons of this case … to suppress the right to keep and bear arms.
>
> Other states, targeting those and other rights, will not be far behind.

Anti-gun states would be quick to adopt the Texas model against the Second Amendment, wrote Jaffe:

> While New York has only started down the path of subcontracting enforcement of constitutionally suspect laws to private parties, Texas has aggressively expanded upon the model by deputizing virtually all private persons to legally threaten citizens exercising or assisting the exercise of what is, at least for now and unless the Court says otherwise, the rights it established in *Roe* and *Casey*.
>
> To the extent this tactic is effective at evading or outright blocking preenforcement review

> … it will easily become the model for suppression of other constitutional rights, with Second Amendment rights being the most likely targets of such suppression.

For those who believe that election fraud put Joe Biden into the White House, Jaffe said states could "declare that protests about elections are felonious threats to democracy and may [legitimately] be dispersed with deadly force (by private citizens only, of course)."

Jaffe's line of reasoning, and, by extension, the reasoning of the Firearms Policy Coalition, is faulty. Just because the Supreme Court, in a ruling that many today still consider highly controversial, says that a "right" to abortion exists in the U.S. Constitution, doesn't make it so. The Constitution does not give the federal government any authority over matters such as abortion. Such regulatory power, in this instance, belongs to the states. The right to keep and bear arms, however, is clearly protected by the Second Amendment to the Constitution.

Article VI of the Constitution states that laws made in pursuance of the Constitution are the supreme law of the land. Laws not made in pursuance of the Constitution are therefore null and void. The states properly have the authority to regulate abortion. The federal government does not. On the contrary, states to do not have the authority to enact gun-control laws.

States nullifying federal overreach are fully within their constitutional rights. States enacting legislation that violates the Constitution are not. Therefore, if New York or any other state decide to enact more gun control legislation, for any reason, such an action is unconstitutional and should be treated as such. It would be much like states refusing to implement federal immigration laws, as immigration and naturalization is something the federal government is given authority over.

If a right is conjured and not among those enumerated in the Bill of Rights, then states not only have no responsibility to resist infringements of it, but should do everything in their power to neuter its enforcement. Powers not specifically given to the federal government are instead reserved to the states, or to the people. Accordingly, states are the ones under the U.S. Constitution, to determine the validity of abortion versus the sanctity of life.

The solution, of course, is for the Supreme Court to declare that its previous decisions in *Roe v. Wade* and *Planned Parenthood v. Casey* were wrongly decided and place the issue back onto the states where it properly belongs. The high court will have that opportunity starting in December when it hears oral arguments in the Mississippi case *Dobbs v. Jackson Women's Health Organization*.