



Written by [Joe Wolverton, II, J.D.](#) on May 1, 2023

## Individual Right to Keep and Bear Arms Upheld by NY Appeals Court

“No freeman shall ever be debarred of the use of arms.” — Thomas Jefferson, 1776

A New York appellate court has upheld the right of each individual to keep and bear arms. While that opinion shouldn't be newsworthy, in the current political climate, it most definitely is.

Here's a little background on the case — *Matter of Cheryl A. DiPerna-Gillen v. Christina L. Ryba* — as reported by *Reason*:

The petitioner had argued that she needed a gun because she and her husband would often carry substantial sums of cash for business, but the New York licensing authorities responded that she “failed to explain why her stated self-defense needs were not already adequately and independently addressed by her husband's recent acquisition of an unrestricted concealed carry license.”



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In their opinion, Justices Stan Prizker, Elizabeth Garry, Michael Lynch, Molly Reynolds Fitzgerald, and Eddie McShan rejected the state's assertion, holding that:

To the extent that the Attorney General attempts, inexplicably, to justify the determination based upon petitioner's “fail[ure] to explain why her stated self-defense needs were not already adequately and independently addressed by her husband's recent acquisition of an unrestricted concealed carry license,” we note that this was not a basis for the denial of this application and “judicial review of an administrative determination is limited to the grounds invoked by” respondent.

More to the point, the statutory framework contains no such required showing and, suffice it to say that petitioner's Second Amendment rights are not dependent on her spouse's acquisition of an unrestricted concealed carry pistol permit.

In other words, the right to keep and bear arms is an individual right and not dependent on one's association with any other person, even one as close as a spouse.

Again, this should not be news, but much of what shouldn't be news becomes news through the actions of tyrants and the bureaucrats who enforce their decrees.



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While it wasn't exactly at issue in this case, the attempt by the New York attorney general to deny an individual's right to keep and bear arms based on the theoretical availability of weapons to that individual — a fact that was at issue in this case — it is foreseeable that such a theory could be applied to any one of us, pointing to the proximity of police as adequate access to weapons, sufficient to refuse to allow purchase of a firearm.

Of course, there will be those who scoff at such a scenario, insisting that it's just another fictional dystopian future.

It isn't. The fact that the number of gun regulations in this country is any number higher than zero is convincing evidence that the government will continue its quest to consolidate monopoly control over weapons of any sort.

Historically, not only was the individual right to keep and bear arms held sacrosanct, but being armed was a prevailing prerequisite to living in a town or other community.

Until the late 18th century, it was almost unknown in the United States for a town to have a permanent governmental police force. Prior to that, each man understood that among his other civic duties was the obligation to be armed, not only for protection of himself, his family, and his property; but for the enforcement of the law, as well.

In fact, men were often required by law to have weapons "at hand" and to be competent in the bearing of those weapons in defense of the law and the safety of the community generally. Men engaged in the enforcement of the law — including the apprehension of suspected lawbreakers — were absolved from being held legally accountable for any harm inflicted during such endeavors.

At the time of Alexis de Tocqueville's visit to the United States in the early 1830s, the young French aristocrat noted that "the means available to the authorities for the discovery of crimes and arrest of criminals [were] few," yet Tocqueville doubted "whether in any other country crime so seldom escapes punishment." Citizens handled most crimes informally, forming committees to catch criminals and hand them over to the courts.

This recitation of the history of the right to keep and bear arms not only as an individual's right, but his obligation as a member of society is necessary to remember when efforts such as that of the New York attorney general to link one person's right to own a weapon with the person's proximity to weapons owned and borne by others become more common.

Disarmament, under any pretense whatsoever, is a notorious and hostile attack on the natural right of self-defense, as well as an infringement on the concomitant right to defend one's life, liberty, and property with any weapon one has at hand.

Finally, the Second Amendment's prohibition on government's infringement of the right to keep and bear arms is not qualified at all. It is an absolute denial of any and all attempts to restrict a right that has been called "the palladium of liberty."

Regardless of the praiseworthy holding of the New York appellate court, there is no question that the choir of confiscators will crescendo. The tyrants will not stop infringing on the right to keep and bear arms until they are forced to stop.

And, as the Baron Montesquieu warned, "Constant experience shows us that every man given power is likely to abuse it, and to carry his authority as far as he can go until he comes up against limits."

As was the case in every formerly free society, the people of the United States must prove to be the



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ultimate limit on the abuse of power if we hope to remain free.



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