

Stamboulieh Law, PLLC

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June 28, 2022

Sheriff Richard C. Giardino
County Complex
P.O. Box 20
Johnstown, NY 12095
Fax: (518) 736-2126

via certified mail and facsimile

Re: *Fulton County, New York Carry Permits*

Dear Sheriff Giardino:

I represent Gun Owners of America, Inc. and Gun Owners Foundation, together with their members and supporters in Fulton County, New York. As you are aware, on June 23, 2022, the United States Supreme Court handed down its opinion in *N.Y. State Rifle Pistol Ass'n v. Bruen*, 597 U.S. ____ (2022), 2022 U.S. LEXIS 3055 (June 23, 2022) (“*NYSRPA*”), holding that New York’s requirement that a person demonstrate “proper cause” as a condition of receiving a permit to carry a firearm outside the home violates the Fourteenth Amendment to the United States Constitution by denying ordinary persons their Second Amendment rights to “bear arms” for self-defense.

The day after that opinion was handed down, your office released a statement on Facebook, acknowledging the opinion and acknowledging that New York law PL § 400.00(2)(f)’s requirement of “proper cause” is no longer effective. In fact, not only is it no longer “effective,” proper cause was found to be **unconstitutional**. Yet your Facebook post, attached hereto as Exhibit “1,” erroneously claims that “automatic fully carry,” which you admit to be the result of the Court’s decision, “is not automatic starting today.” Instead, your post ignores binding Supreme Court precedent and alleges that the Supreme Court’s “[d]ecision can’t take effect until the Circuit Court rewrites their decision.” Finally, *you claim that nothing has changed* as a result of the Supreme Court’s decision, and that “people should comply with their ... restricted ... status which was in place on Wednesday.”

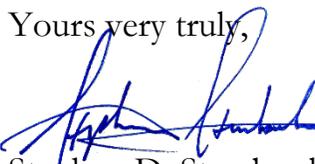
That is not the law. Supreme Court opinions bind all lower courts **immediately**, and there is no secondary requirement for the Second Circuit to

“rewrite their decision.” Since the Supreme Court binds the circuit court, the Second Circuit cannot diverge from the Supreme Court’s opinion that New York’s “proper cause” requirement is illegitimate and unenforceable.

Indeed, in stark contrast with your stated intent to continue to enforce an unconstitutional law that has been struck down by the Supreme Court, other jurisdictions have announced¹ that they will not enforce similar state laws that require heightened showings for issuance of concealed carry permits.

Additionally, your refusal to conform your conduct with binding Supreme Court precedent, directly on point, has significant legal ramifications for you and your office, including potential § 1983 claims for your continuation of an unlawful and unconstitutional “policy or custom,” which could potentially cause you even to lose qualified immunity. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 98 S. Ct. 2018 (1978). *See also Ashcroft v. al-Kidd*, 563 U.S. 731, 735, 131 S. Ct. 2074, 2080 (2011) (“Qualified immunity shields federal and state officials from money damages unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was ‘clearly established’ at the time of the challenged conduct.”) (citation omitted). Because the Supreme Court has now “clearly established” that “restricted” carry is not the law in New York, there is no legal justification which would serve to shield your conduct, in defiance of the Court’s opinion, from a § 1983 action.

You are hereby on notice to conform your conduct to binding Supreme Court precedent, including withdrawal of your erroneous demands that Fulton County residents continue to comply with an unconstitutional permitting system that has been struck down by this nation’s highest court. You have five days in which to do so. I have been authorized to file suit immediately should you fail to follow the law. Additionally, should you fail to follow binding Supreme Court precedent within these five days, please accept this letter as a litigation hold for all records, documents, correspondence, and other tangible things which will become necessary when litigation commences.

Yours very truly,

Stephen D. Stamboulieh

¹ https://www.nj.gov/oag/dcj/agguide/directives/ag-Directive-2022-07_Directive%20Clarifying%20Requirements%20For%20Carrying%20F%20Firearms%20In%20Public.pdf.

cc: Governor Kathy Hochul
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Gun Owners of America, Inc. (*via electronic mail*)
Gun Owners Foundation (*via electronic mail*)



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Fulton County Sheriff's Office

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We are being inundated with questions and calls about yesterday's US Supreme Court Ruling.

The Court held that basically once you qualify and are issued a pistol permit it can no longer be restricted to premise, work, hunting, fishing, hiking, target and competition. Once issued it can't be limited, it is automatically full carry. The State can place restrictions on where it can be carried and who can qualify for a permit in the first instance.

This is not automatic starting today. The US S.Ct. sent the case back down to the 2d Circuit Federal Court to render a decision consistent with the Supreme Court's Ruling. The 2d Circuit can decide or send back to Federal District Court.

People should comply with their status which was in place on Wednesday: Carry Concealed or restricted to Hunting, Fishing, Camping, Work, Premises or Competition until the Lower Court Reissues their decision based on Supreme Court.

The Decision can't take effect until the Circuit Court rewrites their decision.

Figure probably 45 to 60 days.

New York State Rifle and Pistol Association v. Bruen, https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf.

In this case, a pair of individuals sued the Superintendent of State Police, Kevin Bruen, as well as a Rensselaer County Court Judge in his capacity as a licensing officer, after having their applications for a concealed-carry pistol permit denied. Both the District Court where the case was originally brought, and the Second Circuit Court of Appeals, ruled in favor of the defendants, stating that New York's pistol permit statute, Penal Law § 400.00, permissibly grants licensing officers the discretion to deny such applications in cases where individuals cannot demonstrate "proper cause" for the need for such a permit.

Today, the Supreme Court overruled those lower court decisions and declared the "proper-cause" requirement for obtaining a concealed-carry permit to be unconstitutional, in violation of both the Second and Fourteenth Amendments.

In coming to this conclusion, the court created a new legal test for determining whether a law or regulation runs afoul of the Second Amendment. Justice Thomas, writing for the majority, states: "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command'."

Consistent with this new test, the Court engaged in a lengthy review of the history of firearm regulation in the US, ultimately determining that "respondents have not met their burden to identify an American tradition justifying the State's proper-cause requirement."

What then is the impact of this ruling on New York State, and when will that impact be felt? Clearly, the "proper-cause" language found in PL § 400.00(2)(f) will no longer be effective. What this will mean is that licensing officers will no longer have the discretion to deny an application for a concealed carry permit for failing to provide a satisfactory justification for why such a permit is needed by the applicant. As Justice Kavanaugh states in his concurring opinion: "New York...may continue to require licenses for carrying handguns for self-defense so long as [it] employ[s] objective licensing requirements..." As for when this change will take place, it will likely be some months before this case will be conclusively resolved. This is because the case must now be sent back down to the Court of Appeals for the Second Circuit, so that the judges there can issue a ruling consistent with today's Supreme Court decision. The second Circuit may resolve the case, or send it down to the district Court for a determination not inconsistent with the Supreme Court ruling. This process may take some time. Until then, existing licenses maintain their given scope—home possession licenses are not now automatically concealed-carry licenses—until the decision is finalized. Even at that point, we are not certain that all existing licenses will automatically convert to conceal-carry. Pistol permit holders who do not currently have concealed-carry may never have sought that privilege in the first place, and our own State Legislature may add new, objective criteria to our statute that must be met in order to obtain a conceal-carry permit. What we are certain of is that after the decision is finalized, new applications for concealed-carry permits will have to be evaluated based on the objective criteria enumerated in the statute at that time.

Exhibit "1"

