

Gun Lawyer -- Episode 49 Transcript

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SPEAKERS

Evan Nappen, Speaker 3

Evan Nappen 00:19

I am Evan Nappen, and welcome to Gun Lawyer. I want to start off by giving you an update on the pistol brace regulatory proposals. As you may know, the Biden administration is trying to jam through a ban on pistol braces, etc. by doing it through the abuse of the regulatory system in the United States. For almost 10 years, as you know, pistol braces have been lawful and literally millions have been sold. They are particularly beneficial to those who have handicaps and need to be able to hold the handgun better than they can, given their disabilities. It helps even average shooters. It is essentially the war on accuracy by wanting to get rid of pistol braces, and it is really underhanded, of course, what Biden is trying to do here by re-interpretation. After giving three or 400,000, assault firearms to the Taliban, we better make sure Americans do not have pistol braces, right? I mean, it's just absurd.

Evan Nappen 01:51

But here is the interesting thing, I have learned that the number of comments received. Normally, when these agencies put a regulatory proposal up, they are lucky if they get any comments. They may get 20 or 30 or 100 comments. Oh, my God, I cannot believe that many people are interested in this particular reg. Well, the pistol brace comments total, for the period of time that allowed for comments, are you ready for this, folks? 211,000 comments to the agency. Two hundred eleven thousand. I pretty much bet that is probably a record for comments to a proposed regulation in the history of the United States. I would not be surprised if that is an absolute record. It is pretty rare to even hear about any of these proposals getting 100,000; no less over 200,000 comments. The agency is required to review these comments and to look them over.

Evan Nappen 03:05

So, being that they are in the middle of a lawsuit right away over this proposal, they have asked, and the agreement has been put forward, to give them an extra four months to do the review of the comments. That is fine with me. The longer they want to sit on it, the longer it goes without the rule being implemented, the better. I do not care. They could wait 400 years, as far as I'm concerned, because we do not need this rule. It is designed to create havoc on law-abiding gun owners. But I am really proud of our folks that went forward here, and we did over 200,000 comments. We have forced the agency to delay their determination by months. It should be very interesting to see what the outcome is when they realize that this many people have taken the time to comment on the regulation. I can just about assure you that the day you know, 99.9% of the comments are in opposition to this rule.

So, that is the update, and we will keep you updated on the pistol brace brouhaha and other actions by Biden and company.

Evan Nappen 04:33

But today, I was really looking forward to discussing with you some predictions and some proposed speculation on the impact of what might happen regarding the (United States) Supreme Court cases that are pending. It is not the normal predictions here. I want to get a little bit more into the weeds and show you why I believe there may be some really, really exciting developments from the Supreme Court case. Now, coming up on September 27, the Supreme Court is considering about five or so other challenges involving the application of the Second Amendment to invalidating firearm laws.

Evan Nappen 05:27

One of those cases is the Reb Russell case, which my firm is handling. In the Reb Russell case, we have challenged New Jersey's carry license requirements. Other cases are going forward as well, challenging open carry like out of Hawaii and other Second Amendment challenges. But what makes this very interesting is that the Supreme Court has already accepted and granted certiorari on the New York State Rifle and Pistol Association case. (United States Supreme Court Case 20-843) They call it the Corlette case or the Bruen case, depending on when you are looking at when it. Anyway, that case has been granted. This case is a challenge to New York State's carry license, which requires a similar type of good cause, justifiable need etc. to be able to get a permit to carry a handgun.

Evan Nappen 06:37

New Jersey has an egregious requirement like that, and it is designed to basically stop individuals from getting the license. It was devised originally by the courts and later put into statutory form by Governor Murphy to take that term "justifiable need" and make it virtually impossible for anyone to meet those criteria. This is the game that the government has played. As a matter of fact, given the state of New Jersey's size of almost 10 million people, there is a grand total of less than 600 carry licenses to civilians for the entire state of New Jersey. And you can rest assured that most of them are mobsters and politicians who get those carry licenses as civilians. The other thing that New Jersey does, which is really cute, is they make all that information confidential. Oh, of course, to protect the licensee. No, it is confidential because if we knew about it, you could see the elitism, the cronyism, and the authoritarianism, all built in. When you see the anti-gun judges that have carry licenses, the politicians, and the others that get it, it would cause problems. So, they want to keep that quiet, of course.

Evan Nappen 08:04

Anyway, we have this ridiculous carry license system in Jersey that requires this extreme requirement that is now up for grabs, constitutionally being challenged. The New York case raises their version of it, and the Reb Russell case is our version of it. The court is going to speak on this issue. With Reb Russell, they may hold the case, pending the decision in the New York case or maybe consolidate it, who knows. But no matter what, this New York case is going to come down. I am pretty cautiously optimistic that it is going to go our way, and the Court is going to find that these requirements in order to carry a handgun, these arbitrary and ridiculous standards of justifiable need, are going to be found unconstitutional and a violation of the Second Amendment. I really believe the odds do favor us to see this challenge be successful.

Evan Nappen 09:17

Just looking at how the Court finally accepted one of these cases when we finally had five judges that were solidly in the corner of the Second Amendment because of the nomination of the three judges by President Trump. This really changed the whole dynamic of the Court. Now, let's just think for a moment and assume that the Court does find that it is unconstitutional to require justifiable need or variations thereof. In New Jersey, the justifiable need requirement is pretty extreme. In order to show justifiable need, here is what it says. In the case of a private citizen, you have to specify in detail the urgent necessity for self-defense, as evidenced by specific threats or previous attacks, which demonstrate a special danger to the applicant's life that cannot be avoided by means other than an issuance of a permit to carry a handgun. See that that insanely difficult standard that needs to be reached? That is what I believe will be tossed as unconstitutional.

Evan Nappen 11:03

When it gets tossed as unconstitutional, it is not just going to mean that, finally, citizens in New Jersey will be able to get permits to carry because they will. because that is the bar. The rest of the current requirements are not objective requirements. You know, the normal. Don't be a felon and all that stuff and that you have the required training, which is reasonable, at least at the moment, to get. It does not just mean that the carry licenses will now be opened up for New Jerseyans. I think the potential here is for something much, much more substantial. Something that I believe may be able to take down the majority of New Jersey's gun laws, and I want to explain to you the impact of that, if New Jersey's carry license law is, in fact, declared unconstitutional.

Evan Nappen 12:17

I am going to get into the details of that impact. By the way, it may apply in other states, depending on how the other states structure their gun laws. But you see, New Jersey, in their zest to create God awful gun laws, thought that they owned and ruled the table, which at the time, they basically did because the Second Amendment did not apply to New Jersey. I mean, legally, did not apply under a case called *Burton v. Sills*. 394 U.S. 812 (1969) So, they thought they could get away with everything and anything. They wrote their laws in a really foolish way. When we come back from the break, I am going to show you why I think that takedown of New Jersey's gun laws may be in the cards.

Speaker 3 13:12

For over 30 years, Attorney Evan Nappen has seen what rotten laws do to good people. That's why he's dedicated his life to fighting for the rights of America's gun owners. A fearsome courtroom litigator fighting for rights, justice, and freedom. An unrelenting gun rights spokesman tearing away at anti-gun propaganda to expose the truth. Author of six best-selling books on gun rights, including *Nappen on Gun Law*, a bright orange gun law Bible that sits atop the desk of virtually every lawyer, police chief, firearms dealer, and savvy gun owner. That's what made Evan Nappen America's Gun Lawyer. Gun laws are designed to make you a criminal. Don't become the innocent victim of a vicious anti-gun legal system. This is the guy you want on your side. Keep his name and number in your wallet and hope you never have to use it. But if you live, work, or travel with a firearm, that deck is already stacked against you. You can find him on the web at EvanNappen.com or follow the link on the Gun Lawyer resource page. Evan Nappen - America's Gun Lawyer.

Speaker 3 14:27

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Evan Nappen 14:43

Okay, welcome back. Let me tell you why I think this could be incredibly, incredibly serious and an absolute broadside against New Jersey's gun laws. New Jersey does not make the carry license a stand-alone exemption in its laws. First of all, in order to get a carry license in New Jersey, you have to show that justifiable need, as I explained at the beginning of the show and how that is defined. New Jersey's carry license law to get the license itself says no application shall be approved by the Chief police officer or the superintendent, unless the applicant demonstrates that he is not subject to any of the disabilities set forth in (N.J.S. 2C:) 58-3c., that he is thoroughly familiar with the safe handling and use of firearms, and that he has a justifiable need to carry a handgun. You see, those are all worked specifically into the statute. The statute does not have anything that says, hey, if any part of this is found unconstitutional, the rest of it will still stand.

Evan Nappen 16:12

As you can see, the requirements are all three of those elements, and if justifiable need is found to be unconstitutional, as we discussed how ridiculous the standard actually is, then that really guts the carry permit section. So, even if New Jersey says, okay, well, you know what, from now on, we are just going to keep everything else in place, but you do not have to show justifiable need because that is unconstitutional. Let's just say they do that. Well, that does not end it, folks. It may mean that we can now get carry licenses, and I think it will mean that average citizens can get carry licenses. But actually, there is a far deeper impact that is not being discussed, and you are going to learn about it right here and right now on Gun Lawyer.

Evan Nappen 17:15

Because in New Jersey, the prohibition against the carry of a handgun is not found in the law. You may find that shocking. What do you mean? New Jersey does not have a law that says, no person shall carry a handgun unless blah, blah, blah. No, not at all. Not at all. You see, New Jersey's handgun prohibition comes under N.J.S. 2C:39-5b. Let me read you what that says because this is how New Jersey arrogantly structured their laws. Handguns. Any person who knowingly has in his possession, any handgun, including antique handgun, without having first obtained a permit to carry as provided under N.J.S. 2C:58-4 is guilty of a crime, blah, blah, blah. Now, what is so important there? What's so important is that the offense, the criminal offense, that individuals get charged with if they do not have a carry permit in New Jersey, is this. They are charged with unlawful possession of a handgun because New Jersey has made an element of the offense, getting the permit to carry. It is not put forward here as a ban on possession and then some exemption somewhere. But if you have the license, the following persons are exempt, licensees that have a carry license, those that possess in their home. No, New Jersey did not structure it that way.

Evan Nappen 19:14

New Jersey made their ban on gun possession, having an element of the offense, that the state actually has to prove by the way, without having first obtained a permit to carry the handgun. So, if you are prosecuted here, the state will supply in discovery from the state police that they have searched their records and there is no record of this individual having a permit to carry a handgun. Why do they do that? Because it is an element of the offense that they have to prove. It is actually part and parcel to the criminal charge. Now, this criminal charge is a Second-Degree charge. It's draconian and insane. It carries up to 10 years in State Prison. It has a minimum mandatory, three and a half years in States Prison under what's called the Graves Act. If you are convicted of simple, unlawful possession of a handgun, you are going to get a minimum three and a half years, no chance of parole.

Evan Nappen 20:18

And it occurs by the most minor of mistakes. If you do not have a permit to carry and you are going to the range, but then you go and visit your friend as well. Well, you can be charged with unlawful possession, and the state will put forward in their case that you did not have a permit to carry. Now, think about this. If the carry license statute under 58 that we read to get the license, if that license is unconstitutional, unconstitutional because of the requirement of justifiable need, then the element of the offense for unlawful possession of a handgun makes that unconstitutional. The requirement in the law itself to have the permit to carry a handgun, an element of the offense, mind you, is itself unconstitutional. See what I'm saying, folks?

Evan Nappen 21:28

This case has the potential to eviscerate New Jersey's handgun possession ban. By eviscerating it and making that possession law null and void because the element of the offense built into it, is a permit that is unconstitutional in its requirements, will mean that basically every criminal charge of unlawful possession of a handgun will have to be tossed out. All of them. The law itself will be unconstitutional and cannot be enforced. It will mean that carry in essence in New Jersey becomes constitutional carry. Because oh, yeah, you could still get a license, but the law that prohibited it by requiring a license is unconstitutionally dependent on that section c. So, it really could very well have the impact of creating constitutional carry, meaning carry with no permit required, in New Jersey, because it guts the possessory offense. Believe me, you have heard no one else talk about this. That is why we are talking about it on Gun Lawyer. But let me tell you what else, it does not just stop with New Jersey's permit to carry a handgun. Because New Jersey also requires a permit to possess and carry a machine gun. That's right, a machine gun, folks.

Evan Nappen 23:28

If you look at N.J.S. 2C:39-5a., the subsection above handguns that we just discussed, it says machine guns. Any person who knowingly has in his possession a machine gun or other instrument or device capable for use as a machine gun without being licensed to do so as provided in 58-5, is guilty of a crime of the Second Degree. Oh my gosh, another license, made to the element of the offense, and put into the machine gun statute. What does that mean? Well, if you go to 58-5, and you look at the requirement for a machine gun license, right that license, look what it says. No license shall be issued to any person who would not qualify for a permit to carry a handgun under 58-4. You mean the unconstitutional 58-4 is now put into the licensing statute, which makes the machine gun license

unconstitutional as well. You betcha. And that's an element of the machine gun possession and carry law? Yep. So, New Jersey could end up with constitutional carry for machine guns. Yes. Absolutely.

Evan Nappen 24:59

Because this is how New Jersey arrogantly structured their laws, and this is all potential. It gets worse with machine guns because not only do you first have to have the permit to carry under 58-4 for a handgun, which has the unconstitutional justifiable need requirement, but also the additional requirement to get a machine gun license is even more outrageous because it says you first need to qualify for the permit to carry a handgun and no license shall be issued unless the court finds that the public safety and welfare so require. Oh my God, that is so out of bounds for constitutionality. The only way you can have a "machine gun" is if public safety requires you to have this. Good luck with that being upheld after the court comes down.

Evan Nappen 26:02

So, the potential here is a broadside to New Jersey's handgun and machine gun laws. Eviscerating the possessory offenses because Jersey so arrogantly tied possession and permits to carry into the elements of the offenses themselves. I am greatly looking forward to the Supreme Court's decision as I am sure all of you are. This is Evan Nappen, reminding you that gun laws do not protect honest citizens from criminals. They protect criminals from honest citizens.

Speaker 3 26:49

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