

Gun Lawyer -- Episode 86 Transcript

SUMMARY KEYWORDS

judges, court, rights, guarantee, law, gun, government, lawyer, threats, preamble, unconstitutional, constitution, declaratory, bill, even, second amendment, protect, firearm, case, states

SPEAKERS

Evan Nappen, Speaker 3

Evan Nappen 00:00

Hi. I'm Evan Nappen, and welcome to Gun Lawyer. So, we're very excited, as I'm sure you are as well, we're about 10 days, a maximum of 10 days, away from the Supreme Court ruling in the New York State Rifle & Pistol v. Bruen case. This is a case that I've waited basically 40 years to finally have the court decide on the constitutionality of these restrictive carry permits, such as New York, New Jersey, etc. And even more now, the expansion of the Second Amendment to what we all know, applies to outside the home. This false phony distinction that the antis have made. So, it's very exciting.

Evan Nappen 01:14

But you know, I was thinking about this, and I've seen all kinds of commentary. I've seen all kinds of speculation, which is all fun. Which way it could in terms of, depending on what the opinion says, impact, and I've had media contact me, newspapers, asking what's the impact of this case? I've seen all kinds of that, and it's very interesting and very exciting. We won't know until we get the opinion, all that's true. But here's something that I was thinking about, and I don't think anybody else has even talked about this. And that is, what if the decision doesn't go our way? Now, I want to say that I am very confident that it will go our way. I honestly believe in my gut that this is going to be a success. This case is going to be a win. It's hard to imagine the court, as it's made up now, not going our way. But it's not outside the realm of possibilities.

Evan Nappen 02:24

And what has me concerned is what's been going on now that we've really never seen the likes of before. I'm talking about threats, actual threats, to kill the justices. The fellow they caught, who literally went to Kavanaugh's, Justice Kavanaugh's, house to murder him and/or his family. The protesters who are protesting at the judge's homes in absolute violation of the federal law. Yet the Attorney General of the United States is not enforcing that law, specifically on point saying that protesting at judge's homes is not allowed. Do you see enforcement? No, not at all. Then you see politicians like Schumer egging these people on, to be inspired to action, that would be violations of the law and endanger the justices. He is encouraging these things, by way of his speeches that he gives, and you see them delaying the bill to protect judges and provide security. They finally got that passed but look at all the delay. They're not eager to protect these judges. They're stirring the pot and getting people worked up, including the crazies on the left, particularly to become violent.

Evan Nappen 04:24

There are Talking Heads talking about how the Court's decisions are going to cause civil war and basically gearing up the folks for violence, for violence, that the left always loves. Violence that they tolerate and cheer because they're the ones that do. Not the right. It's the left that does it. Then they find anything on the right they could possibly make an accusation about and then just point at that when they themselves are unbelievably being a participant in this violence and threats. Then you see the political threats as well to pack the Court, to change the entire makeup and demeanor of the Supreme Court. Packing - where they would raise the number of judges, arguably, from nine to 16 judges. So that the senile mannequin, the blamer-in-chief, would then be able to appoint these new justices to completely turn the Court around. So, we have all these threats out there, designed to intimidate, and get these justices scared to do their job, honestly, openly, properly and without fear or favor. And it's the opposite.

Evan Nappen 06:06

Let's look at the makeup of the court. If we look at the makeup, we have three judges that are essentially, we'll just call them left or anti-gun. You don't expect them to vote in favor of Second Amendment rights, even though it's so obvious that it should be something that they would fight to protect and preserve the Constitution. But you know, politics and what have you, this is their side of it. All right. So, we know that we have three. Then we have Judge Roberts, even though appointed by a Republican, he's squishy. He's just squishy, unreliable. This is why it wasn't until President Trump was able to get three solid conservative judges on the Court, that we were able to get a solid five-judge majority to even agree to hear the very issues that we are concerned with.

Evan Nappen 07:10

So, figuring Roberts is not very reliable and we have the three lefties, all it will take is one of the five to buckle. One of the five, to fear all of this threat that is out there. Political, physical, to not want to end up like Justice Scalia. Right? They have their concerns, and this is out there as a factor. What if that happens and five judges, because that's all it takes, go against us instead of the five that we're banking on being with us? We will then have the Court upholding this absolute infringement of our true Second Amendment right. It'll stop its extension to possession outside the home. It'll allow these licenses like New Jersey, New York, and others that have this arbitrary, completely subjective, impossible to reach standard that denies your average law-abiding citizen from being able to defend themselves so that they don't have to be victims, but rather defenders.

Evan Nappen 08:52

You'll see an explosion of encouragement to the anti-gunners to pass more laws and become more restrictive. Now, granted, we already have half of the country, 25 states, and I think about 60 plus percent of the actual landmass of United States is Constitutional Carry by state law. So, you can carry without any permit or license, carry concealed, loaded, and protect yourself. And here we are fighting in these rotten states to even be able to get a bona fide shall-issue permit. To be able to do what in half of America you don't even need a permission slip from the government to do. But if this case were to go against us, these things could become in jeopardy. Because it could even mean that a federal law

could arguably be passed, restricting even Constitutional Carry in the States. It could mean that other states would impose more restrictive measures than they already have.

Evan Nappen 10:01

The hesitation that exists at all over any concern of Second Amendment violation would be removed, and the antis would become empowered. They will think that wow, the Court shot this one down. We can get away with anything we want, basically, short of possession in one's home under Heller. That's the bright line. You'll see more and more gun laws. You'll see more encouraged laws to violate what we know to be our Second Amendment rights. The whole thing could be a dramatic backfire and a horrible thing if the court doesn't go our way. Let me put it this way. We have put it all on the line. We have gone all in on this bet. I think it's a wise bet. Like I said, I believe it is going to be a success. I would make this bet. Absolutely, I'd make it. But it doesn't mean we shouldn't recognize the downside. If that downside hits, if we lose the bet, if the antis are successful in their outrageous intimidation tactics and we see a buckling, it's going to be a nightmare.

Evan Nappen 11:25

Keep in mind, this game has been played before. Not so much with the violence and threats, but with a political threat. Back under (President) Franklin Roosevelt (FDR), when he was pushing this whole New Deal, all his what they call the alphabet soup of programs, the CCC (Civilian Conservation Core), the TVA (Tennessee Valley Authority), and all this stuff, to try to pump prime the economy and was doing all kinds of things. Well, the Supreme Court at the time was nullifying the National Recovery Act (NRA) and other things. Nullifying these things. It was very troubling to FDR that his little pet programs were being eviscerated as unconstitutional. So, he proposed to have the court packed to 16. Just like they've threatened to do now. That threat was out there, and he controlled enough of the Congress and Senate to actually make it happen. But there was a major outcry of not to do it. There was a major push and all.

Evan Nappen 12:40

But what happened was, the reason it didn't happen really, was because one of the judges, because it was five to four majorities that were burning Roosevelt's programs as unconstitutional. One of the judges switched and joined with the other side, and his program started to be upheld as Constitutional because of the one judge switching. And that historically is known as "the switch in time that saved nine". That's actually what it's called. That switch in time saved nine, meaning saved the court to be nine judges. Now you bring yourself right up to modern day, and you see that same game being played, only being played harder and more ruthlessly, with a threat of physical violence being woven into their pressure game. And that's why this is not outside the realm of possibility.

Evan Nappen 13:49

Let's hope, when this decision comes down, it's as great and glorious, as I expect it to be. It'll happen most likely on the 27th at the latest that Monday. Although it could happen tomorrow, Monday the 20th. That's usually when they release opinions. Now they have started to release opinions on Wednesday as well. It could happen on the Wednesday in between. But the absolute latest will be June 30, the end of the session, the very last day. So, by June 30 we will know. We will have our answer, and I'm hopeful that it will be a great decision. The one that we bet on getting. We put our entire pot down to bet on this being what we are eagerly anticipating. And when that happens and it's as good as I hope it to

be and not this bleak possibility that I've outlined for you today, we can have one hell of a great Fourth of July celebration, my friends. One hell of a great celebration. When I come back, I have some excellent letters from listeners.

Speaker 3 15:09

For over 30 years Attorney Evan Nappen has seen what rotten laws due 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, the 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 16:23

You're listening to Gun Lawyer with Attorney Evan Nappen. Available wherever you get your favorite podcasts.

Evan Nappen 16:38

Hey, everyone, welcome back to Gun Lawyer. All right. I really love my listeners, and I'm so happy that you folks are dedicated listeners. Because this is a chance for me to tell you things that you don't hear other places, to be able to express these opinions. Otherwise, unfortunately, in the times that we live, they're trying to silence us and stop these words from reaching your ears. So that you can think about what I say and if you agree with it, great. If you have your own concerns or challenges, fine. There used to be this thing in America of discourse, where you could actually have ideas and not be shut down. But luckily, this podcast helps to still fight for that. That's what we believe in. So, tell your friends to listen to Gun Lawyer. I really appreciate getting the feedback.

Evan Nappen 17:35

We've gotten some interesting letters here that I want to share with you that some fans have sent in. Here's one. This is from James. James said, addressed it to Gun Lawyer. I think that's pretty good, Gun Lawyer. Preamble to the Bill of Rights on the government website, and then it gives a website for the Constitution. The preamble to the Bill of Rights is missing. Now, let me just say that's very interesting, because there is a preamble to the Constitution. That is there. But he's talking about the preamble to the Bill of Rights. He said, But, the National Archives has it, and he gives you the website for the National Archives. You can find the preamble to the Bill of Rights in the National Archives. But he quoted in the letter, and it's very interesting.

Evan Nappen 18:39

Here's the preamble of the Bill of Rights. It says: "THE Conventions of a number of the states, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or

abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the grounds of public confidence in the Government, will best ensure the beneficent ends of its institution." That's the preamble to the Bill of Rights. Isn't that interesting? James goes on to say, "what bearing does this have in your gun cases?" He says, "This to me, it only took me 40 years to understand it, seems to be the most important part of the Constitution. As, it spells out why we have a Constitution. And those words, misconstruction, abuse, declaratory and restrictive, should have great weight in future amendments being proposed and more important, rescinding those amendments that take power and freedom from the People." Big fan. Jimmy.

Evan Nappen 19:58

Well, Jimmy, I thank you for your letter, and it's interesting to highlight the Preamble to the Bill of Rights. The Bill of Rights is a listing of the, as we discussed in prior shows, a guarantee by the Government of rights and in effect were preexisting rights. The Government does not give us rights. But the idea is to protect our rights. And what this preamble expresses are that guarantee in language of the day, "to prevent misconstruction or abuse of its powers. . ." Boy, have we seen any misconstruction or abuse of the Government's powers? Hmm, seems to never end. The Bill of Rights is a beautiful document. But without it getting enforced, without teeth being put in it, without a Court where its judgments find in favor of the guarantee and then enforce it, the Government will get away with anything that it can. These declaratory and restrictive clauses are the rights themselves. They declare the rights and restrict the government from violating them. And that's the idea. That's the idea of a guarantee to do that very thing.

Evan Nappen 21:38

That's why when we argue that a law is unconstitutional, we even as lawyers are even in our discussions, or even when you and I talk about it, we're talking about alleging that the Government has violated its sacred guarantee to us of these rights that it agreed were to be guaranteed. When that guarantee is not followed, then we have an unconstitutional law, which is void, as in violation of the declaratory and restrictions that were placed on the Government, in order for the actual Constitution itself, to be ratified. Remember, the ratification of our Constitution had an agreement that there would be this Bill of Rights put together by (James) Madison later. And that's what he did. It was understood that it was only being agreed upon if our rights were stated in a Bill of Rights.

Evan Nappen 22:58

At the time, some of our Founding Fathers were actually against a Bill of Rights. You might say, well, why would they be against a Bill of Rights? It seems like it's something we would all want. First of all, they believed that the rights are our rights, and we don't need a statement saying that it's guaranteed because they damn well better be guaranteed. And if not, we'll have another revolution. That was their view. But also, they were afraid that if we made a list of rights that were guaranteed, there would be an argument that these are your only rights. And if it's not on the list, well, too bad. Therefore, they did put one of the amendments in that essentially says, just because we didn't put it on the list here, it doesn't mean you don't still have it as a guaranteed right. So, there were concerns.

Evan Nappen 23:50

Ultimately, of course, it has become critical, vital to our freedom and liberty. We depend every day on the Bill of Rights and what it says. Because without it, the Government would have taken our rights away long ago and not enforced our rights against themselves. They would have said, hey, you never got a guarantee. So, too bad. We'll do whatever the hell we want. Luckily, even though they still have that attitude on a lot of things, we have the guarantee to come back at them with. So, we need to thank the Founding Fathers for their foresight in having such a Bill of Rights there to protect us, and we're going to see this Bill of Rights come alive. I'm so hopeful we're going to see it, in action, becoming a reality, and empowering gun owners throughout America, to be able to protect themselves, carry a firearm, and no longer be turned into victims by the Government, but rather defenders. We're finally going to see that.

Evan Nappen 25:27

When that magical moment happens, when you hear that decision which I believe will be in our favor, and when you hear about that, give thanks to the foresight of our Founding Fathers, and what they did. So that this moment could come, where we could correct the abuses, the abuses, that these Governments have placed upon us in these states, and finally, see the redress. Oh, yeah, it took a long time. Stuff moves slow, I get it. But think back to the blessing of the country we live in. Where we are at least able to finally get the enforcement and get the change. You know that's not going to happen in too many other countries with any ability. But that guarantee that our Founding Fathers put there for us, is going to pay off. It's like when you get that extended warranty and they pay for that old transmission that would have cost you. Good grief. Well, this is it. It's going to pay off. We are going to see it. So, I appreciate that letter, and it's good stuff to think about.

Evan Nappen 26:53

I have another letter here. This one's from Bill who says, regarding Red Flag laws. Evan, do you expect a court to take up a red flag law case and find it unconstitutional? PS, your podcasts are great. I wish we could clone you so we could have an Evan Nappen in every state! Well, an Evan Nappen in every state would be very interesting. At least I would be able to have a network of like-minded people that would always be in agreement with me on every single thing. But anyway, the thing from Bill there is really true. There are challenges ongoing as we speak. Progressing on challenging Red Flag. The number one problem with Red Flag, which are laws that are simply based on a claim by one person, is that your firearms are seized. We have discussed this in podcasts.

Evan Nappen 27:55

New Jersey has so-called model legislation, according to the Blamer-in-Chief. We have this model legislation, which is void of due process, no due process. Someone makes a claim to the police, and you have no say. You don't even know it's taking place. The court issues an Order, and you have to surrender your guns and your licenses are revoked. You are prohibited from gun possession. A warrant issues with it so that your privacy is invaded, and you're essentially raped by the Government, as your house and belongings are searched for these guns. You've had no say No, nothing. Eventually down the road, you'll have a hearing. The due process element, I believe, is quite vulnerable to Constitutional attack and things are progressing on that. So much so that the (U.S.) Supreme Court in the unanimous decision in the Caniglia case (Caniglia v. Strom et. al. No. 20-157) said that seizing guns for

community caretaking is unconstitutional under the Fourth Amendment. And that was a unanimous decision. That's every judge saying it's no good.

Evan Nappen 29:13

So, how do they get away with these Red Flag laws where they are doing that very thing? They are unconstitutional and challenges are moving ahead. Particularly that the law is structured in such a way where the due process does not even exist upfront. I find it hard to believe that those (Red Flag laws) will survive constitutionally challenged when the Court finally can opine on these things. If you combine it with not only the Fourth Amendment arguments, but also the Second Amendment arguments that will be enhanced, I'm sure and confident, by the Court's upcoming decision where they are going to discuss the Second Amendment and what it means. This is the most significant Second Amendment decision since the Heller decision. This is the big one. So, all that's going to come into play, and the answer to Bill is yes. The constitutionality of these red flag laws is absolutely an issue, and an issue that is going to have to be fought as it currently is. Hopefully, these laws will be found to be as unconstitutional as you and I know they are.

Evan Nappen 30:42

This is Evan Nappen, reminding you that gun laws don't protect honest citizens from criminals. They protect criminals from honest citizens.

Speaker 3 30:54

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