



# CAN YOU BRING A GUN ON THE SUBWAY NOW?

“Today, unfortunately, many Americans have good reason to fear that they will be victimized if they are unable to protect themselves. And today, no less than in 1791, the Second Amendment guarantees their right to do so.”

—US Supreme Court Justice Samuel Alito, in a concurrence with the majority decision released last week in *New York State Rifle & Pistol Assn., Inc. v. Bruen*.

“The Court’s insistence that judges and lawyers rely nearly exclusively on history to interpret the Second Amendment thus raises a host of troubling questions... Will the meaning of the Second Amendment change if or when new historical evidence becomes available? And, most importantly, will the Court’s approach permit judges to reach the outcomes they prefer and then cloak those outcomes in the language of history?”

—US Supreme Court Justice Stephen Breyer, in his dissent.



On any list of the most hot-button topics in American life these days, the question of gun control will be toward the top. One of the core arguments that the partisans on both sides of the issue have is

whether more legal guns make things safer or more dangerous. It’s possible New Yorkers are about to find out.

That’s because the US Supreme Court, in a 6-3 decision, ruled that New York State’s Sullivan Law about concealed-carry permits—put in place in

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1911—violated the Second Amendment of the Constitution and struck it down. That should allow more people to carry guns in New York State regularly.

The lawsuit that eventually reached the Supreme Court was brought by a pair of men from upstate New York, along with the New York State Rifle and Pistol Association. The two men—Robert Nash and Brandon Koch—had applied for permits to carry concealed weapons but had been turned down. Nash had applied for the permit after a string of robberies occurred in his neighborhood, but he was still turned down.

But what does the Supreme Court ruling permit? Will New Yorkers start seeing people carrying guns on the subway, in the streets of Manhattan and Brooklyn, in playgrounds and parks?

Also, what other laws might this ruling affect? Over the weekend, Congress

passed a bipartisan gun safety bill, which was signed into law by President Biden. It enhanced background checks, stopped all domestic abusers from getting guns, created monetary incentives for states to put in place red-flag laws, and increased funding for school safety and mental health treatment. Could the Supreme Court ruling affect provisions of that new bill?

## The Basic Question

**W**hy were the two men in the case denied permits for concealed weapons? Because New York State's Sullivan Law, like similar laws in a handful of other states, required that they show that

they have a special reason for needing a gun.

That is, anyone who wanted to carry a gun in public (concealed, because New York doesn't allow open carry) needs to show the licensing authorities that they are specifically being threatened in some way, so they need the protection having a gun provides. The law was originally enacted after an increase in street violence in New York City.

But Justice Clarence Thomas, writing for the majority, argued that such laws were not in keeping with the historical record of how American gun laws worked, dating back to the founding of the country. Thus, it was unconstitutional.

As Prof. Josh Blackman of South Texas College of Law Houston explained in an interview with *Ami Magazine*, the bottom line of the ruling was a simple one: "In order to get a concealed-carry license, the state cannot require that you demonstrate a special need for it."

## Guns on the Subway?

**T**he same day that the Supreme Court made its announcement, New York Governor Kathy Hochul called for an emergency meeting of the legislature in order to put in place new regulations to respond to the ruling.

What are they likely to pass? The main proposal that has been made so far would be to expand the list of "sensitive locations" in which guns would not be



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allowed to be carried, even by those with concealed-carry permits. The Supreme Court, in its ruling, explicitly noted that there have long been rules barring guns from such locations—for example, from court rooms. (Don't bring your gun to the Supreme Court.)

New York has long barred guns from schools and medical facilities, and the legislature will likely extend that to many other locations, such as parks, mass transit systems, houses of worship and legislative bodies.

In the oral arguments for this case, Justice Alito argued that people commuting on the New York City subway late at night should have the right to carry guns. But it seems likely that his suggestion will not be happening, at least not any time soon.

Prof. Blackman commented: "New York City is going to make it virtually impossible to have concealed carry. They're going to have a lot of steps for you to jump through, and almost no place in the City of New York will be eligible for concealed carry, so I think it will have minimal real-world impact there."

On the other hand, it will likely be much easier to carry a weapon in upstate New York, where there is more open space that won't be included in any of these sensitive location categories.

It's possible that the Supreme Court would view extending these sensitive locations so much as a violation, as well.

"It will be challenged," Prof. Blackman said, "but that won't be for five or six years, and for the foreseeable future nothing will change."

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## Further Ramifications?

The Supreme Court ruling will likely affect the other states that have similar laws to New York, known as "may carry" laws, in which people need to show a special reason in order to carry a gun. Those include California, Hawaii, Maryland, Massachusetts and New Jersey. (A number of these states have said that they will be passing new laws in response.)

But it may go further than that. That's because Justice Thomas introduced a new way of evaluating gun laws. Since the 2008 *Heller* ruling that stated explicitly that people have the right to own guns at home, gun laws have been evaluated under a two-step process. First, judges examine how the law fits in with the history of gun laws in America, and then they examine the govern-

ment's reasons for putting in place that law and whether they were reasonable, even if they restricted Second Amendment rights.

But Justice Thomas made what might be the ultimate constitutional originalist argument: The only test allowed is how the law fits in with the historical record. If it conforms with traditional American ways of restricting guns, then it's fine. If not, it is unconstitutional.

That might mean that many new laws restricting guns in many ways—for example, red-flag laws—would be found unconstitutional by the court, if they were challenged.

Prof. Blackman said that was possibly the case.

"The court didn't state that there are other laws that are unconstitutional," he said, "but I think if you take this historical approach, I do think that there are some other laws that are now in jeopardy. If something lacks a historical tradition, it's probably now in jeopardy."

For the moment, people looking to get concealed-carry licenses in New York, especially in New York City, may want to wait until the legislature writes new laws to see how those will affect their ability to carry weapons. The authorities who issue licenses—which vary by where the applicant lives—may not yet be entirely up to speed with the new laws, either, though New York official websites have been changed to reflect the ruling. People still need to go through the licensing process, however, and carrying a gun without a license will still land a person in prison, so New York State residents need to make sure they understand the laws before taking up arms. ●

**We're staying safe this summer, you should too!**

Don't forget the sunscreen, bug spray, hat and drinks when planning outdoor summer activities.



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