

# In 6-3 ruling, court strikes down New York's concealed-carry law



By Amy Howe  
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Security fencing around the Supreme Court. (Katie Barlow)

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The Supreme Court on Thursday struck down a New York handgun-licensing law that required New Yorkers who want to carry a handgun in public to show a special need to defend themselves.

The **6-3 ruling**, written by Justice Clarence Thomas, is the court's first significant decision on gun rights in over a decade. In a far-reaching ruling, the court made clear that the **Second Amendment's** guarantee of the right "to keep and bear arms" protects a broad right to carry a handgun outside the home for self-defense. Going forward, Thomas explained, courts should uphold gun restrictions only if there is a tradition of such regulation in U.S. history.

Thursday's landmark decision came less than six weeks after a gunman killed 10 Black people at a Buffalo supermarket, and less than a month after 21 people – 19 children and two teachers – were shot to death at an elementary school in Uvalde, Texas. In response to those shootings, the Senate this week reached an agreement on bipartisan gun-safety legislation that, if passed, would be the first federal gun-control legislation in nearly 30 years. The 80-page bill would (among other things) require tougher background checks for gun buyers under the age of 21 and provide more funding for mental-health resources.

The state law at the heart of **New York State Rifle & Pistol Association v. Bruen** required anyone who wants to carry a concealed handgun outside the home to show "proper cause" for the license. New York courts interpreted that phrase to require applicants to show more than a general desire to protect themselves or their property. Instead, applicants must demonstrate a special need for self-defense – for example, a pattern of physical threats. Several other states, including California, Hawaii, Maryland, Massachusetts, and New Jersey, impose similar restrictions, as do many cities.

The lower courts upheld the New York law against a challenge from two men whose applications for concealed-carry licenses were denied. But on Thursday, the Supreme Court tossed out the law in an ideologically divided 63-page opinion.

The court rejected a two-part test that many lower courts have used to review challenges to gun-control measures. That test looked first at whether a restriction regulates conduct protected by the original scope of the Second Amendment and then, if so, whether the restriction is fine-tuned to advance a significant public interest. Instead, Thomas wrote, if "the Second Amendment's plain text covers an individual's conduct," the government has the burden to show that the regulation is consistent with the historical understanding of the Second Amendment.

Applying that new and more stringent standard to the New York proper-cause requirement, Thomas found that the challengers' desire to carry a handgun in public for self-defense fell squarely within the conduct protected by the Second Amendment. The amendment's text does not distinguish between gun rights in the home and gun rights in public places, Thomas observed. Indeed, he suggested, the Second Amendment's reference to the right to "bear" arms most naturally refers to the right to carry a gun outside the home.

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"well-defined restrictions" on the right to carry firearms in public, there was no tradition of a broad prohibition on carrying commonly used guns in public for self-defense. And with rare exceptions, Thomas added, there was no historical requirement that law-abiding citizens show the kind of special need for self-defense required by the New York law to carry a gun in public. Indeed, Thomas concluded, there is "no other constitutional right that an individual may exercise only after demonstrating to government officers some special need."

Thomas rebuffed New York's effort to justify its proper-cause requirement as an effort to regulate guns in "sensitive places" – specifically, crowded urban areas, like Manhattan, where people are likely to gather. Thomas agreed that, as a historical matter, there have long been laws restricting guns in places like courthouses and polling places. Moreover, he continued, restrictions that apply to the modern versions of "sensitive places" may also pass constitutional muster. Although Thomas left open exactly what might qualify as a "sensitive place," he made clear that urban areas do not meet that definition. The state's "argument would in effect exempt cities from the Second Amendment and would eviscerate the general right to publicly carry arms for self-defense," Thomas concluded.

In a concurring opinion joined by Chief Justice John Roberts, Justice Brett Kavanaugh sought to portray the scope of Thursday's decision as limited. The ruling will not bar states from imposing any licensing requirements, Kavanaugh contended. There are 43 states, he noted, that use licensing schemes that include requirements such as background checks, firearms training, a check of mental health records, and fingerprinting. Such schemes are objective, Kavanaugh explained, rather than granting "open-ended discretion to licensing officials" and requiring "a showing of some special need apart from self-defense."

Indeed, he continued, the Second Amendment "allows a 'variety' of gun regulations." Kavanaugh quoted at length from the late Justice Antonin Scalia's opinion for the court in **District of Columbia v. Heller**, the 2008 opinion affirming the right to keep a handgun in the home for self-defense. "[N]othing in our opinion," Scalia wrote, "should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms."

Justice Stephen Breyer dissented, in an opinion joined by Justices Sonia Sotomayor and Elena Kagan. Noting that over 45,000 Americans were killed by guns in 2020, Breyer emphasized that states have tried to reduce the likelihood of gun violence "by passing laws that limit, in various ways, who may purchase, carry, or use firearms of different kinds." But Thursday's decision, Breyer argued, "severely burdens the States' efforts to do so."

Arguing that the question before the court was "the extent to which the Second Amendment restricts different States (and the Federal Government) from working out solutions to" gun violence "through democratic processes," Breyer faulted his colleagues for striking down the New York law without an evidentiary record that would allow it to determine how the New York scheme actually works in practice, "without considering the State's compelling interest in preventing gun violence and protecting the safety of its citizens, and without considering the potentially deadly consequences of its decision."

Breyer's dissent drew fire from Justice Samuel Alito, who filed a concurring opinion that was sharply critical of Breyer's description of the effects of guns on U.S. society. That discussion, Alito posited, is largely irrelevant to the court's actual holding – which, Alito stressed, "decides nothing about who may lawfully possess a firearm or the requirements that must be met to buy a gun. Nor does it decide anything about the kind of weapons that people may possess."

More broadly, Alito pushed back against the contention by Breyer and New York that "the ubiquity of guns and our country's high level of gun violence provide reasons for sustaining the New York law." In Alito's view, people want the right to carry a gun precisely because of those conditions. Just as he did at the **oral argument** in November, Alito suggested that "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," Alito concluded, "the Second Amendment guarantees their right to do so."

In a statement released by the White House, President Joe Biden said that he was "deeply disappointed" by Thursday's ruling, which he described as contrary to "both commonsense and the Constitution." Echoing Kavanaugh's concurring opinion, Biden invoked Scalia and stressed that the Second Amendment is not absolute. "For centuries," he said, "states have regulated who may purchase or possess weapons, the types of weapons they may use, and the places they may carry those weapons. And the courts have upheld these regulations."

As Biden released his statement, the Senate took a pivotal

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Cases: **New York State Rifle & Pistol Association Inc. v. Bruen**

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