



Testimony

New York State Rifle & Pistol Association, Inc.

Testimony

Patrick W. Brophy, Esq., General Counsel, NYSRPA

New York City Police Department
Notice and Comment Hearing

September 22, 2010
11:00 a.m.
One Police Plaza, 1st Floor Auditorium
New York City

I am pleased to testify today on behalf of the New York State Rifle & Pistol Association, Inc. (“Association”). The New York State Rifle & Pistol Association is the New York State affiliate of the National Rifle Association of America (“NRA”).

**Proposed amendments to the Rules of the New York City
Police Department pertaining to Handgun Licenses,
Rifle/Shotgun Permits and Organizations Possessing Rifles and Shotguns**

The Association generally opposes the proposed rules. While there are some improvements in the proposed rules, notably the authorization for applicants to affirm rather than indulge the inconvenient and archaic additional expense of obtaining notary seals and signatures, the balance of the proposed rule amendments are problematic in multiple respects, including being contrary to the fundamental individual right of the people to keep and bear arms as recently clarified by the United States Supreme Court, and contrary to elementary principles of accountable government as assumed and assured in the Constitution of the State of New York. Accordingly the Association opposes the proposed rule changes.

The right to keep and bear arms guaranteed by the Second Amendment is an individual right, District of Columbia v. Heller, 128 S.Ct. 2783, 2799 (2008) (there is “no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms.”), and it is, like the right to vote, “fundamental” such that the States and their political subdivisions like the City of New York are, by operation of the Due Process Clause of the Fourteenth Amendment, prohibited from infringing that right. McDonald v. City of Chicago, Ill., 130 S.Ct. 3020 (2010).

Various of the proposed rule changes would impose qualifications on the exercise of a constitutionally guaranteed fundamental individual right never before known in the history of the republic, under the general rubric of “lack of good moral character or other good cause.” Moreover they would impose those conditions not subject to recognized standards of due process (for example, trial by jury), but rather on effectively unaccountable standards such as the Police Department’s “reasonable belief”. We respectfully submit that no one would dream of imposing such qualifications on any of the other fundamental individual rights guaranteed in the Constitution, nor of requiring licenses for their exercise whose issuance would be conditioned in the first instance on an agency’s “reasonable belief” in the moral fitness of the citizen to worship, speak, publish, vote and/or live secure in his/her person from unwarranted search and seizure.

For example, § 4 of the proposed rule changes proposes to amend Section 3-03 of Chapter 3 of Title 38 of the Rules of the City of New York is amended to add that an “application for a rifle/shotgun permit may be denied [if] for lack of good moral character or other good cause, pursuant to section 10-303 of the Administrative Code, based on the following reasons:

...

(c) The applicant has or [has had any] is reasonably believed to have a disability or condition that may affect the ability to safely possess or use a rifle or shotgun, including but not limited to alcoholism, drug use or mental illness.

(d) The applicant [has received psychiatric treatment or been confined for alcoholism, mental illness or drug addiction] is or has been an unlawful user of, or addicted to, a controlled substance or marijuana.

...

(g) The applicant has a history of one or more incidents of domestic violence.

(h) The applicant has a poor driving history, has multiple driver license suspensions or has been declared a scofflaw by the New York State Department of Motor Vehicles.

(i) The applicant has failed to comply with federal, state or local law or with Police Department rules governing possession and use of handguns, rifles, shotguns or ammunition.

(j) The applicant has been terminated from employment under circumstances that demonstrate lack of good judgment or lack of good moral character.

(k) The applicant has demonstrated an inability to safely store firearms, such as through a history of lost/stolen firearms.

(l) The applicant has failed to pay legally required debts such as child support, taxes, fines or penalties imposed by governmental authorities.

(m) The applicant fails to cooperate with the License Division's investigation of her/his application or fails to provide information requested by the License Division or required by this chapter.

(n) Other information demonstrates an unwillingness to abide by the law, a lack of candor towards lawful authorities, a lack of concern for the safety of oneself and/or other persons and/or for public safety, and/or other good cause for the denial of the permit. In evaluating incidents or circumstances pursuant to this section, the License Division shall consider all relevant factors, including but not limited to the number, recency and severity of incidents and the outcome of any judicial or administrative proceedings.

There is simply no allowance in our constitutional law for conditioning a person's exercise of a fundamental individual right guaranteed in the Constitution upon such things as, without limitation, employment history, driving history; payment of child support, taxes or parking tickets; or submission to the unrestricted interrogation of a police agency, as a condition for lawful exercise of the right. Likewise, § 10 proposes the same rule changes for handgun permits, and is offensive to constitutional principles for the same reasons. Moreover, the particular condition of employment history could effectively delegate decision making regarding one's constitutional rights to a former supervisor with a personal axe to grind.

Finally, we respectfully submit that these proposed rule changes amount to an unauthorized exercise of state legislative power by the Police Department of the City of New York. "The legislative power of this state shall be vested in the senate and assembly." McKinney's Const. Art. 3, § 1. Elementary principles of political accountability require that the legislature set policy and that agencies, to the extent administrative power may have been lawfully delegated to them, only administer the policies set by the legislature within such reasonable discretion as may have been provided by the legislature, and not themselves make policy.

Accordingly the Association opposes the proposed rule changes.

###