

No. 16-7165

IN THE

**SUPREME COURT OF THE UNITED STATES**

MARC A. STEPHENS,

Petitioner,

v.

THE HON. EDWARD A. JEREJIAN,  
CHIEF ARTHUR O'KEEFE, AND JOHN JAY HOFFMAN

Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

**PETITION FOR REHEARING**

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Petitioner, pro se

## PETITION FOR REHEARING

Pursuant to **Rule 44** of this Court, Petitioner Marc Stephens, hereby respectfully petitions for rehearing of this case before a **full nine-Member Court**. This case involves the petitioners facial challenge of New Jersey's Firearm Licensing Law. Petition 1-22.

On March 6, 2014, Petitioner received an Order from Judge Jerejian which denied his application for firearm based on NJSA 2C:58-3(c)(5) – public health, safety and welfare, **see Petition, APPENDIX G, pg 18a**. Petitioner filed an independent claim with the District Court.

On August 4, 2015, the court denied Petitioners civil complaint stating Drake vs Filko is the controlling law in New Jersey, **see petition, APPENDIX E, pg 15a-16a**.

On June 16, 2016, despite petitioner filing the appeal on time, the Third Circuit denied the petitioner's Appeal, and entered its judgment. On July 13, 2016, the Third Circuit denied the petition for rehearing and rehearing en banc. **APPENDIX A, 5a-6a**.

On October 11, 2016, Marc Stephens filed a petition, which was docketed on December 13, 2016. The petitioner raised the following questions regarding Federal Law: (1) Whether New Jersey's Firearm Laws requiring the people to first obtain a firearm identification card, permit, or license in order to keep and bear arms at home and in public is in violation of the second and fourteenth amendment? (2) Whether New Jersey's legislature historical background and administrative records suggests intent to deprive African Americans from the right to keep and bear arms in violation of the second and fourteenth amendment? (3) Whether New Jersey can enforce gun control laws and interfere with the citizen's right to keep and bear arms due to public safety concerns?

On February 21, 2017, this court denied petitioners writ of certiorari without giving an opinion.

The Questions Presented in this case are of profound nationwide importance. Millions of lawful gun owners in the United States of America are looking for this court to finally make a definitive ruling on the right to keep and bear arms at home and in public. The Questions Presented are guaranteed to recur in the absence of a definitive ruling from this Court. In fact, the States continue to intentionally make rulings which conflicts with relevant decisions of this Court.

## THE REASON WHY REHEARING SHOULD BE GRANTED

1. **This case has Merit and the court can make a quick decision without expending any of the courts resources.**

The Bill of Rights is expressed in what we call **Truism** – meaning the sentence is verbatim, no explanation is necessary. “Our conclusion is unaffected by the Tenth Amendment which provides: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” The amendment states but a **truism** that all is retained which has not been surrendered. **United States v. Darby, 312 US 100 - Supreme Court 1941 at 124.** The second amendment states but a **truism** that “the right of the people to keep and bear arms shall not be infringed”. The fourteenth amendment also states but a **truism** that, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States”. “It is emphatically the province and duty of the judicial department to say what the law is”. **Marbury v. Madison, 5 U.S. 137 (1803) at 177.**

Pursuant to **Rule 10**, the following indicate the character of the reasons the Court considers:

- (a) The Court will Hear Cases to Resolve a Conflict of Law: this court has already resolve the conflict of law via rulings from Heller (2008) and McDonald (2010).
- (b) A petition for a writ of certiorari will be granted only for compelling reasons: New Jersey is infringing 2<sup>nd</sup> amendment rights and throwing people in jail for being in lawful possession of firearms. **APPENDIX K, pg 26a.**
- (c) A state court or a United States court of appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court.

The State, District, and 3<sup>rd</sup> Circuit courts of New Jersey have decided an important question of federal law that conflicts with relevant decisions of this court. New Jersey **admits** that they are enacting gun control laws, “Permits to carry handguns are “the most closely regulated aspect” of New Jersey's gun control laws. In re Preis, 118 N.J. 564, 573 A.2d 148, 150 (1990).

Individuals who wish to carry a handgun in public for self-defense must first obtain a license. N.J.S.A. § 2C:39-5(b)", see **Drake v. Filko**, 724 F. 3d 426 - Court of Appeals, 3rd Circuit 2013 at 428-429.

**Drake v Filko** is the controlling law in New Jersey, which was used to deny petitioners rights to keep and bear arms. This court ruled: "The state **cannot** "enact any gun control law" that they deem to be reasonable. Time and again, however, those pleas failed. Unless we turn back the clock or adopt a special incorporation test applicable only to the Second Amendment, municipal respondents' argument must be rejected", **McDonald v. City of Chicago, Ill.**, 130 S. Ct. 3020 - Supreme Court 2010 at 3046. "The State cannot interfere with the right of the citizen to keep and bear arms. The right to keep and bear arms is included in the fourteenth amendment, under "privileges and immunities." **McDonald v. City of Chicago, Ill.**, 130 S. Ct. 3020, at 3077-3083.

The State, District, and the 3<sup>rd</sup> Circuit Courts disregarded and overlooked the Petitioners constitutional argument. State judges, as well as federal, have the responsibility to respect and protect persons from violation of federal constitutional rights, **Goss v. State of Illinois**, 312 F. 2d 257 - Court of Appeals, 7th Circuit 1963 at 259. "Federal judges must apply the Constitution and the precedents of the Supreme Court regardless of what each judge might believe as a matter of policy or principle". See **Texas v. Johnson**, 491 U.S. 397, 420-21 (1989) (Kennedy, J., concurring) ("The hard fact is that sometimes we must make decisions we do not like. We make them because they are right, right in the sense that the law and the Constitution, as we see them, compel the result.").

"Where **rights** secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." **Miranda v. Arizona**, 384 US 436 - Supreme Court 1966 at 491. See also, **Ex parte Hull**, 312 U.S. 546 (1941), **Johnson v. Avery**, 383 U.S. 483 (1969), and **Bounds v. Smith**, 430 U.S. 817 (1977). "The Constitution of the United States is the supreme law of the land, anything in the Constitution or statutes of the States to the contrary notwithstanding, a statute of a State, even when avowedly enacted in the exercise of its police powers, must yield to that law.

No right granted or secured by the Constitution of the United States can be impaired or destroyed by a

state enactment". **Connolly v. Union Sewer Pipe Co., 184 US 540 - Supreme Court 1902 at 558.** "The Government may not prohibit or control the conduct of a person for reasons that infringe upon constitutionally guaranteed freedoms", **Smith v. United States, 502 F. 2d 512 - Court of Appeals, 5th Circuit 1974 at 516.**

This court can hear this case and quickly issue a ruling to strike down New Jersey's Gun Control Laws. As a matter of law, New Jersey Firearm Laws are facially unconstitutional.

**2. This Court has Original Jurisdiction Under Article III of the United States Constitution to hear the case because "the State of New Jersey is a party".**

Despite the 3<sup>rd</sup> Circuit erroneously denying Petitioner case based on a technicality, this court can hear this case by exercising its judicial powers under **Article III, Section 2** which reads: "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact". **Marbury v. Madison, 5 US 137 - Supreme Court 1803 at 173.**

**3. Petitioner has Standing in this court**

The First Amendment reads, "Congress shall make **no law** respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and **to petition the government for a redress of grievances**". Under **Article III** of the United States Constitution, The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to controversies..."**between a state, or the citizens thereof**", and foreign states, citizens or subjects.

The requirements of Article III standing are familiar: "**First**, the plaintiff must have suffered an **'injury in fact'** — an invasion of a legally protected

interest which is (a) concrete and particularized, and (b) `actual or imminent, not "conjectural or hypothetical.'" **Second**, there must be a causal connection between the injury and the conduct complained of — the injury has to be `fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court.' **Third**, it must be `likely,' as opposed to merely `speculative,' that the injury will be `redressed by a favorable decision.'" Lujan, supra, at 560-561, 112 S.Ct. 2130 (footnote and citations omitted). **US v. Windsor, 133 S. Ct. 2675 - Supreme Court 2013 at 2686.**

There is a "causal connection" between the "injury in fact" and the conduct complained of because the State of New Jersey, who is "before this court", denied petitioners right to keep and bear arms which is a "legally protected interest" under the second amendment of the United States Constitution, **See Petition, APPENDIX A, C, D, E, F, G.**

Plaintiff is "likely to be injured", and will "imminently" be harmed by the current unconstitutional New Jersey Firearm law. **See Flast v. Cohen, 392 U.S. 83 (1968); United States v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669 (1973),** "had standing and likely to be injured"; **and Sierra Club v Morton (1972),** "had standing and likely to suffer an aesthetic injury".

"One can challenge a licensing statute which endangers freedom of expression whether or not his conduct could be prohibited by a properly drawn statute and whether or not he applied for a license", **Freedman v. Maryland, 380 U.S. 51 (1965).** "At its core, the right to due process reflects a fundamental value in our American constitutional system", **Boddie v. Connecticut, 401 US 371 - Supreme Court 1971 at 374.**

"The right to sue and defend in the courts is one of the highest and most essential privileges of citizenship and must be allowed by each State to the citizens of all other States to the same extent that it is allowed to its own citizens, **Chambers v. Baltimore & O.R.R., 207 U.S. 142, 148 (1907); McKnett v. St. Louis & S.F. Ry., 292 U.S. 230, 233 (1934).** "[T]here is no legislative interest in barring meritorious claims brought in good faith[.]" **Ferreira, supra, 178 N.J. at 150-51, 836 A.2d 779 (quoting Galik v. Clara Maass Med. Ctr., 167 N.J. 341, 359, 771 A.2d 1141 (2001)).** Indeed, the Legislature did not intend "to `create a minefield of hyper-technicalities in order to doom

innocent litigants possessing meritorious claims." **Ryan, supra, 203 N.J. at 51, 999 A.2d 427** (quotation omitted).

Within limits of practicability, a state must afford to all individuals a meaningful opportunity to be heard. . .Whenever one is assailed in his person or his property, there he may defend. . .The right to meaningful opportunity to be heard within limits of practicality must be protected **against denial by particular laws** that operate to jeopardize it for particular individuals. **BODDIE V. CONNECTICUT, 92, S.Ct. 780, 401 U.S. 371. 28 L.Ed.2d 113 conformed to 329 F. Supp. 844 (1971).** "Government immunity violates the common law maxim that everyone shall have remedy for an injury done to his person or property." **FIREMAN'S INS/ CO. OF NEWARK, N.J. V. WASHBURN COUNTY, 2 Wis.2d 214, 85 N.W.2d 840 (1957).**

**4. The petition of writ of certiorari has been reviewed and decided by an eight-member bench due to the death of Justice Antonin Scalia and should be reviewed by a full court.**

Four of the nine justices are needed to grant a writ of certiorari. Four current Justices which includes Roberts, Kennedy, Thomas, Alito ruled in favor of the majority opinion in Heller and McDonald. "The 'rule of four' **is not** a command of Congress. It is a working rule devised by the Court as a practical mode of determining that a case is deserving of review, the theory being that if four Justices find that a legal question of general importance is raised, that is ample proof that the question has such importance." **Rogers v. Missouri Pac. R. Co., 352 U.S. 521, 529 (1957)** (Frankfurter, J., dissenting). **New York v. Uplinger, 467 U.S. 246, 249 (1984).**

Pursuant to **Rule 44**, "a petition for rehearing is not subject to oral argument and will not be granted except by a majority of the Court". Ordinarily, it is exceedingly rare for this Court to grant rehearing. But "[R]ehearing petitions have been granted in the past where the prior decision was by an equally divided Court and it appeared likely that upon reargument a majority one way or the other might be mustered." **Stephen M. Shapiro et al., Supreme Court Practice § 15.6(a), at 838 (10th ed. 2013).**

The Court has granted rehearing in cases with even splits when it believed that it could find a majority

with a new member on the Court who had not participated in the original judgment. **Brown v. Mathias Aspden's Adm'rs**, 55 U.S. (14 How.) 25 (1852). For example, the government petitioned for rehearing in **United States v. One 1936 Model Ford V-8 De Luxe Coach**, 305 U.S. 666 (1938), after this Court divided equally in a case when there was a vacancy due to Justice Cardozo's death, but before the vacancy was filled. This Court granted the petition, *ibid.*, then heard the case after Justice Frankfurter was confirmed. 307 U.S. 219 (1939). Typically, the Court will grant rehearing in expectation of a new Justice being seated, rather than awaiting confirmation. For example, after Justice McReynolds retired on January 31, 1941, the Court affirmed several cases by an equally divided Court. The Court then granted rehearing petitions in all of these cases on April 28, 1941—before Justice Byrnes was confirmed to fill the vacancy. **Kepner**, 313 U.S. 597; **Frank**, 313 U.S. 596; **Commercial Molasses**, 313 U.S. 596; **Toucey**, 313 U.S. 596; **Gray**, 313 U.S. 596. This Court similarly granted petitions for rehearing before a full Bench after a leave of absence by Justice Jackson caused a temporary vacancy in 1945; and after Justice Jackson's death caused a vacancy in 1954. See **MacGregor v. Westinghouse Elec. & Mfg. Co.**, 327 U.S. 812 (1946); **Bruce's Juices, Inc. v. American Can Co.**, 327 U.S. 812 (1946).

By denying certiorari, the Court undermines the public's confidence in the Court's ability to properly consider the important questions of the cases that it hears.

## CONCLUSION

This case is straightforward and has merit. The petition for rehearing should be granted.

Respectfully Submitted,

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