

Reproduced with permission from The United States Law Week, 86 U.S.L.W. 1128, 2/22/18. Copyright © 2018 by The Bureau of National Affairs, Inc. (800-372-1033) <http://www.bna.com>

Supreme Court

High Court Allows Second Amendment Challenge Despite Guilty Plea

A man who pleaded guilty to possessing a gun on U.S. Capitol grounds can bring a Second Amendment challenge to the criminal law under which he was convicted, a divided Supreme Court held Feb. 21.

The rule announced by Justice Stephen G. Breyer's majority opinion—that a guilty plea doesn't automatically bar a constitutional challenge on direct appeal—applies not just to gun rights challenges but also to other cases resulting in guilty pleas, which is how nearly 95 percent of criminal cases are resolved.

Justices Ruth Bader Ginsburg, Sonia Sotomayor, and Elena Kagan joined the majority in reversing a lower court, as did Chief Justice John G. Roberts. Also signing on was the newest justice, Neil M. Gorsuch, whose voting tendencies court watchers are learning in real-time as his first full term unfolds.

Justice Samuel A. Alito wrote a biting dissent, joined by Justices Clarence Thomas and Anthony M. Kennedy. Alito chastised what he viewed as the lack of clear reasoning from the majority.

"There is no justification for the muddle left by today's decision," he wrote.

It's a very good decision for criminal defendants who plead guilty, Daniel N. Lerman of Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP in Washington told Bloomberg Law.

Lerman was lead counsel on a brief supporting convict Rodney Class that was filed on behalf of the National Association of Criminal Defense Lawyers and the ACLU.

The opinion also amounts to a recognition that "in today's criminal justice system, plea bargaining is the criminal justice system," Lerman said.

So it's an important decision in light of the fact that so many cases are resolved by plea, he said.

The Justice Department didn't respond to a request for comment.

Guns on the Capitol Class pleaded guilty to gun possession in 2014 for having a weapon in his jeep that was parked on the Capitol grounds. Then he argued the law underpinning his conviction violated the Second Amendment. It also violated due process, Class argued, because he said it didn't give him fair notice that weapons were banned there.

Class couldn't bring these constitutional claims because he waived them by pleading guilty, the U.S. Court of Appeals for the D.C. Circuit held.

But the Supreme Court said Feb. 21, in reversing the D.C. Circuit, that a criminal defendant's guilty plea doesn't inherently waive the right to challenge the law's constitutionality.

Class didn't give up that right "simply by pleading guilty," Breyer wrote for the high court.

His constitutional claims don't contradict the terms of his indictment or written plea agreement, the majority said.

Rather, they call into question the government's power to "constitutionally prosecute" him, it said.

Majority Muddles, Dissent Says Alito worried in dissent. "I fear that today's decision will bedevil the lower courts," he wrote.

Given the high rate of cases resolved by guilty pleas, it's "critically important that defendants, prosecutors, and judges understand the consequences of these pleas," he wrote.

But the majority's decision doesn't provide that needed clarity, he argued.

"Perhaps sensing the incoherence of its effort, the majority seeks refuge in history, asserting that today's holding 'flows directly from this court's prior decisions,'" he wrote, quoting the majority and making clear he found that refuge unavailing.

Flood of Appeals? Not So Fast The decision shouldn't spark "a flood of cases because the number of non-frivolous, novel constitutional challenges to statutes is low," Corey Rayburn Yung, a professor at the University of Kansas School of Law in Lawrence, Kan., told Bloomberg Law.

"The opinion could allow recent and new statutes to be tested sooner, but genuine constitutional objections to criminal statutes are very rare," Yung said.

Lerman seemed to agree that the case won't necessarily open the floodgates.

It could certainly prompt some defendants who have pleaded guilty to attempt to use this latest decision on appeal, Lerman said.

But he cautioned that success might depend on the plea deal at issue in a given case.

In this case, the majority held that there was nothing that foreclosed Class's ability to raise a constitutional challenge, Lerman noted.

But that may not be true in other cases, he pointed out.

Gorsuch Joins 'Liberal' Colleagues The decision defined what are sometimes seen as partisan divides at the court, with Roberts and Gorsuch joining their Democrat-appointed colleagues to rule for the defendant.

This isn't Roberts's first time doing so. But what, if anything, this signals for Gorsuch, who joined the court less than a year ago, is tough to say.

"It is difficult to read too much into Gorsuch joining the liberal wing because he did not write separately to tell us why he voted the way he did," Yung said.

Perhaps suggesting that Breyer's vote for Class might actually be more telling than Gorsuch's, Yung noted that Breyer "has often ruled in favor of the government in criminal law and procedure cases" when conservative justices have ruled for defendants.

"We still don't know how Gorsuch will vote in most criminal cases relative to the other justices," Yung said.

Lerman wasn't surprised by Gorsuch's vote for Class, here.

At oral argument in the case, Gorsuch "asked the government hard questions," Lerman said.

Those questions indicated, to Lerman, that Gorsuch was sympathetic to Class's argument.

In fact, it was largely based on Gorsuch's questioning at the argument that made Lerman "optimistic," he said, that Class would ultimately prevail.

The case is *Class v. United States*, U.S., No. 16-424, reversed 2/21/18.

BY JORDAN S. RUBIN

To contact the reporter on this story: Jordan S. Rubin in Washington at jrubin@bloomberglaw.com

To contact the editor responsible for this story: C. Reilly Larson at rlarson@bloomberglaw.com