

Wabash College Moot Court Competition:
2019 Participant's Guide

Preliminary rounds of the Competition will be held on Saturday, October 19. Participants should report to Baxter Hall at 8:30 A.M.; room assignments will be available outside of Baxter 101. The First Round will begin at 9:00 A.M., and the Second Round will begin at 11:00 A.M. Each team, consisting of two (2) members, will argue in two rounds, once as Petitioners and once as Respondents.

Party	<i>Name before Trial Court</i>	<i>Name in the Court of Appeals</i>	Result in the Court of Appeals	<i>Name in the Supreme Court</i>	
Dog Paw State Rifle & Pistol Association, C. William Chow, Doberman T. Pincher, and Jack Russell (J.R.) Terrier	Plaintiffs	Lost	Plaintiffs-Appellants	Lost	Petitioners
City of Dog Paw and the Dog Paw City Police Department – License Division	Defendants	Won	Defendants-Appellees (collectively “the City”)	Won	Respondents

I. THE PROBLEM:

- A. The Dog Paw State Rifle & Pistol Association, C. William Chow, Doberman T. Pinscher, and J.R. Terrier (collectively “the Plaintiffs”) sued Defendants City of Dog Paw and the Dog Paw Police Department-License Division (collectively “the City”), seeking to have Title 38, Chapter Five, Section 23 of the Rules of the City of Dog Paw (“Rule 5-23” or “the Rule”) declared unconstitutional under the Second Amendment to the United States Constitution because the “premises licenses” issued under the Rule do not allow the individual Plaintiffs to transport their handguns to shooting ranges and competitions outside of the City of Dog Paw (“Dog Paw City”).

Dog Paw State law prohibits possession of handguns without a license. A State statute, The Dog Paw Penal Law, establishes the statutory mechanism for issuing those licenses and identifies local licensing officers throughout the state.

To obtain a handgun license, an individual must apply to his or her local licensing officer. The licensing process is rigorous. Local licensing officers investigate every applicant’s “mental health history, criminal history, [and] moral character.” The licensing officers “are vested with considerable discretion in deciding whether to grant a license application, particularly in determining whether proper cause exists for the issuance of a carry license.”

Dog Paw City is the largest city in Dog Paw State. The Dog Paw Penal Law identifies the Dog Paw City Police Commissioner as the licensing officer for Dog Paw City. According to the Rules of the City of Dog Paw (“RCDP”), the License Division exercises the Commissioner's authority to review license applications and issue licenses.

The Dog Paw Penal Law establishes two primary types of handgun licenses: “carry” licenses and “premises” licenses. A carry license allows an individual to “have and carry [a] concealed” handgun “without regard to employment or place of possession . . . when proper cause exists” for the license to be issued. The Penal Law does not define “proper cause,” but Dog Paw state courts have defined the term to include carrying a handgun for target practice, hunting, or self-defense. When an applicant demonstrates proper cause to carry a handgun for target practice or hunting, the licensing officer may

restrict a carry license “to the purposes that justified the issuance.” Generally, a carry license is valid throughout the state except it is not valid within Dog Paw City “unless a special permit granting validity is issued by the police commissioner” of Dog Paw City

Under the Dog Paw Penal Law, a “premises license” must be specific to the premises – a residence or a business – for which it is issued.

Under Rule 5-23 of the Rules of the City of Dog Paw, a “premises license-residence” issued to a Dog Paw City resident is specific to a particular residential address, and “[t]he handguns listed on th[e] license may not be removed from the address specified on the license except” for very limited purposes including training at an “authorized small arms range/shooting club” and hunting in a State-authorized hunting area within the state’s borders. In both situations, the licensee must transport the gun “directly” from the residence to the venue unloaded, in a locked container, and separate from ammunition.

Under Rule 5-23(a)(3), an “authorized small arms range/shooting club” is one that, among other requirements, is located in Dog Paw City. There are seven such facilities in Dog Paw City, including at least one in each of the City’s five boroughs.

Plaintiffs Chow, Terrier, and Pinscher hold License-Division-issued premises licenses-residence that allow them to possess handguns in their residences in Dog Paw City. They seek to transport their handguns outside the premises to shooting ranges and competitions outside Dog Paw City. These individuals, along with the Dog Paw State Rifle & Pistol Association, sued in the U.S. District Court for the Southern District of Dog Paw, asking the Court to declare Rule 5-23’s restrictions unconstitutional.

The Plaintiffs and the City filed cross motions for summary judgment. The district court granted the City’s motion and dismissed the complaint. The district court held the Rule did not violate the Plaintiffs’ Second Amendment rights. The 14th Circuit affirmed the district court’s ruling.

B. The Second Amendment to the United States Constitution states:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

C. The case is to be decided on the merits. The issue is:

Whether Dog Paw City’s ban on transporting a licensed, locked, and unloaded handgun to a shooting range or competition outside city limits is consistent with the Second Amendment to the United States Constitution.

II. DIVISION OF THE ARGUMENT:

A. Petitioner (Plaintiffs): We agree with the dissenting opinion.

First Petitioner’s counsel: The U.S. Supreme Court in *District of Columbia v. Heller* affirmed that “both text and history” leave “no doubt” “that the Second Amendment confer[s] an individual right to keep *and bear* arms,” 554 U.S. 570, 595 (2008) (emphasis added). Under Rule 5-23, a premises license is strictly limited to the premises, and licensees can remove their handguns from their homes only under the “limited circumstances” the City deems appropriate. The City’s regime thus rests on the premise that the right the Second Amendment protects is a homebound right. That view is incompatible with the text of the Second Amendment and with the history and traditions that inform the scope of the right it protects. This Court must find that the Rule substantially burdens Plaintiffs’ Second Amendment right and is unconstitutional.

Second Petitioner’s counsel: The obvious incompatibility of the City’s regime with text of the Second Amendment and the complete absence of any historical analog suffice to resolve this case.

The transport ban has zero grounding in text, history, and tradition. For that reason alone, it is inconsistent with the Second Amendment individual right and cannot stand. The Court would, however, reach the same result if it subjected the ban to any level of meaningful means-end scrutiny. The proper form of means-end analysis should be strict – not intermediate – scrutiny because the right the Second Amendment protects is fundamental. But even if this Court applied intermediate scrutiny, Rule 5-23 would still fail to meet Constitutional muster. This Court should reverse the Court of Appeals.

B. Respondent (City): The majority opinion is right.

First Respondent’s counsel: Rule 5-23 does not burden Plaintiffs’ Second Amendment right. In *Heller*, the Supreme Court explained the right to “keep arms” is the right to “have weapons,” and the right to “bear arms” is the right to “carry[] arms for a particular purpose—confrontation.” 554 U.S. at 583-84. Neither phrase describes a right to train. To be sure, the right to “keep and bear arms” may, as Plaintiffs suggest, imply the right to learn how to handle arms. But it does not follow that the Second Amendment therefore protects a standalone right to train where one wishes. Instead, training plays a supportive role with respect to express Second Amendment rights by enabling gun owners to use firearms effectively. Text, history, and tradition show it is not significant to the Second Amendment where firearm training occurs, so long as the location readily allows gun owners sufficient opportunities to train. The Rule satisfies that standard: it makes express provision for training, and Plaintiffs have not come forward with any basis to conclude they were unable to train sufficiently or effectively.

Second Respondent’s counsel: If this Court finds that Rule 5-23 places some burden on Plaintiff’s Second Amendment right, any such a burden is certainly not substantial, and it does not reach the core Second Amendment right *Heller* identified: to keep and bear arms for the purpose of defending one’s self in one’s home. The dissent is wrong to say that all regulation of fundamental Constitutional rights must be subjected to strict scrutiny in all circumstances. Indeed, the Rule’s impact on handgun ownership and use is most closely analogous to the time, place, and manner restrictions on content-neutral, First Amendment-protected speech. Accordingly, this Court, like all of the U.S. Circuit Courts of Appeal addressing similar restrictions after *Heller*, should apply intermediate scrutiny. The City has proved the Rule is a reasonable means of safeguarding the integrity of the unchallenged, public-safety-based Dog Paw State firearms licensing scheme. Accordingly, Rule 5-23 survives intermediate scrutiny. This Court should affirm the Court of Appeals.

C. Special Note for 2019: While the subheadings in this problem divide the text into four sections, every section – and each of the four arguments outlined above – goes to the sole question of constitutionality under the Second Amendment. Therefore, **EACH speaker on BOTH sides should very carefully study the entire problem and craft his arguments using information in both the majority and dissenting opinions. Specifically, each speaker on both sides should be able to address and discuss text, history, tradition, and the level of scrutiny the Court should apply.** Saying only that “my partner will address that” is not going to impress (or satisfy) judges when the various portions of the case so closely intertwine.

III. OUTSIDE RESEARCH:

A. Outside research is NOT required. It is entirely optional. Time is much better spent on understanding and refining the arguments presented than on doing outside research. Suppress, if you can, the desire to find the “gotcha” or killer authority, statistic, or quotation. There’s plenty of “ammunition” for the arguments in the two opinions you have.

B. The problem is based on *New York State Rifle & Pistol Ass’n et. al. v. City of New York*, a Second Circuit case. It also draws heavily from *United States v. Chovan*, a Ninth Circuit case. The United States Supreme Court has granted certiorari in *New York State Rifle & Pistol Ass’n*, but it has not yet set the case for oral argument. In the meantime, New York State and New York City have changed their legislation in certain respects and have asked the Supreme Court to declare the case moot. Please DO NOT use *New York State Rifle & Pistol Ass’n* as authority in your argument. It is not worth being derailed into exploring how this case is different from the New York case.

IV. ORAL ARGUMENT PROCEDURE:

- You will argue before a panel of three judges, usually made up of a mixture of practicing attorneys, professors, and judges who have had moot court, trial, and appellate experience.
- Your argument should be stapled into a manila folder. It is NOT a crutch, and DO NOT READ FROM IT VERBATIM. Use it for reference and to keep your place in your argument. Your folder should contain relevant facts, summaries of legal authorities or concepts, and other pertinent information.
- When you enter the room, put your name and the side you will be arguing on the blackboard. If you are in a “courtroom” without a blackboard, the judges will ask your name and the respective side you are arguing and will write it on their evaluation sheets.
- The Petitioners (here the Dog Paw State Rifle & Pistol Ass’n, Chow, Doberman, and Terrier) always argue first. When the judges ask if you are ready to proceed, respond “Yes, Your Honor.”
- The introduction both sides should use is “May it please the Court. My name is _____, and I represent _____, the [Petitioner or Respondent] in this appeal.” The Petitioner is allowed rebuttal and MUST reserve rebuttal time. You ask for rebuttal immediately after your introduction. “At this time, I would like to reserve (1 to 3) minutes of my time for rebuttal.”
- You will be timed by one of the three (3) judges. The timer will remind you how much time you have left. EACH person gets ten minutes. This may sound like an eternity, but it will go by quickly once you get into your argument. You will get a “5 minutes” left signal card, and “2 minutes” left signal card, and “1 minute” left signal card and a STOP card. You won’t believe how quickly the 5-minute card will be flashed at you.
- When the STOP card is flashed, it means STOP regardless of where you are in your argument, but don’t stop mid-sentence. The best way to handle this is to say, “I see my time has expired. May I have a moment to conclude?” The judge will then grant you additional time quickly to finish your thought and cut to your prayer. More about the prayer later.
- Pay respect to the Court. Be deferential, but assert your client’s position. Never interrupt a judge – let him/her get the question out before you start to answer it. Listen carefully to the question to ensure you are really answering it. Never get mad at a judge or be argumentative – be respectful and assertive (have a conversation with the judges – don’t run over them with a truck and call it advocacy!).
- Refer to each of the judges – regardless of gender, profession in the non-moot-court world, or age – as “your Honor” or “Justice (fill in the individual’s last name).”
- DON’T talk too fast. Speak clearly and in a moderate tone of voice. Don’t dance behind the lectern. It is distracting, unprofessional and makes you appear nervous and tentative. Appear confident and collected (even if you don’t feel it). Be calm and alert – you’ll be amazed with how much it will enhance your argument. Dress appropriately. Conservative, dark suit and tie.

V. PREPARING A SUCCESSFUL ARGUMENT:

- An oral argument has three basic parts – the introduction, the body of the argument, and the prayer.
- The Petitioner must briefly state the RELEVANT facts of the case which should only last about one to two minutes. They must be fair, but they can be slanted toward your theory of the case. Don’t give facts not contained in the record. DO NOT BE SURPRISED IF A JUDGE ASKS A QUESTION BEFORE YOU GET THROUGH YOUR FACTS. IF IT HAPPENS, ANSWER AND MOVE ON WITH

THE ARGUMENT. Your focus should, however, be on the APPLICATION OF THE LAW TO THE FACTS.

- The Respondent should do one of the following: (1) accept the Petitioner's statement of the facts; (2) make corrections in the Petitioner's statement of facts; (3) clarify or point out any ambiguity in the Petitioner's statement of the facts; or (4) make any necessary additions to the Petitioner's statement of the facts. Take issue with the facts to suit your theory of the case. Be brief! DON'T ARGUE THE FACTS: ARGUE THE LAW!
- Road map your argument. State the issues for the court to consider in clear, concise terms. For example: "There are three reasons our client should prevail. First, . . ." BE PERSUASIVE. That is the whole object of an appellate argument. Tell the Court why you should win. "The trial court erred in finding for the Respondent because..." or "the ruling of the trial court should be upheld because..." (The word "erred" is pronounced so that it rhymes with "bird").
- After you have "road mapped" your issues for argument, go back to point one and begin your analysis of each point/reason why you should win.
- The Prayer: Tell the Court in one sentence what you want them to do for your client. "We respectfully request that this Court reverse/affirm the Court of Appeal's decision." After your prayer, close your folder and sit down.
- For rebuttal, do not be verbose. Only one of Petitioner's attorneys gives a rebuttal. Your rebuttal should include one or two strong points. Listen to the Respondent's argument closely to pick up on what the judges are questioning him about. If it favors your side, hit it hard in your rebuttal. An example might be the correction of a case that the Respondent did not analyze or apply correctly. Rebuttal is very important because it is a great way to win points, and a lawyer's favorite thing to do is to have the last word.
- EYE CONTACT IS VERY IMPORTANT! Look directly at the judges as much as possible. This will also help you appear confident in your argument and enhance your overall advocacy style.
- The most important thing to keep in mind is that you are very familiar with your case, and you know what you are talking about. The best way to avoid feeling nervous is to prepare your argument well, think clearly, and HAVE FUN!
- The judges will give you feedback after the entire argument, including rebuttal, is complete. These helpful hints and comments will be invaluable in the next round.

VI. WHY SO MANY QUESTIONS?

- The judges will ask EVERYONE questions about the case. The purpose is not to humiliate or confuse you. To the contrary, the judges need your help in figuring out how to decide this case. That is why they ask questions. Also, in a moot court competition, they want to determine how well you know your material, how well you can think on your feet, and how well you respond and return to the flow of your argument.
- Anticipate what questions might be and prepare to respond to them. BUT don't try to write out answers and read them back. Answer the question briefly, and then get back into your argument. Remember, YOU control the flow of your argument as much as possible, so don't open yourself up to distractions and interruptions by silently fumbling around trying to figure out what to say next.
- Remember to listen to EACH question before you answer it. It may not be as difficult as you think. If you do not hear or do not understand what a judge is asking, it is acceptable to ask him/her to repeat the question so long as you do so politely and on a limited basis.