

Concord Resident Petitions Supreme Court

CONCORD, MASSACHUSETTS (June 27, 2002) — Two hundred twenty-seven years ago, British troops advanced on Concord to confiscate their arms. As we know, at the North Bridge, the embattled farmers stood to defend their freedoms and drove the British aggressors back to their fort in Boston.

More than three years ago, Concord Police Officers illegally searched the home of Concord resident Alec S. Costerus and unlawfully seized his firearms. Costerus has battled the injustice ever since. Costerus filed a petition today to the nation's highest court in his bid to have Massachusetts' discretionary gun law declared unconstitutional.

Massachusetts enacted its current gun control law in 1998. Among others, the new law requires firearms owners to obtain a license to carry – even to possess a firearm in the home, where a non-discretionary firearms identification card was formerly required. “Under the current law,” Costerus says, “that requires a license in order to exercise constitutionally protected rights, one should not be subject to the standardless discretion of 351 local licensing authorities throughout the state.” Ten other states also have similar so-called “may issue” statutes. “Discretionary statutes are subject to the arbitrary interpretation or the capricious abuse of discretion of licensing authorities. “and worse, they are ripe for discrimination.”

The *Costerus v. Swift* petition asks the Court to determine whether the Second Amendment guarantees an individual right to keep and bear arms, and whether the Second Amendment embodies a fundamental right made applicable to the

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States by the Fourteenth Amendment. Costerus also challenges the state's statute as violating both the 'Due Process' and 'Equal Protection' clauses of the Fourteenth Amendment.

Costerus acknowledges the longshot. "Only 1% of the 7,000+ cases brought to the Supreme Court are ever accepted for review." "But," he adds, "we will all lose our rights if, in the face of this aggression, whether in the form of British guns or a legislative pen, we fail to defend our rights."

If the Court grants certiorari in Costerus' case, it will mark the first time that the Supreme Court will take a case based on direct review of the Second Amendment. "There have been other cases that discussed the 'Right to Keep and Bear Arms,' but those cases were brought to the Court primarily on other grounds."

The most recent case involved a Texas case, *United States v. Emerson*, in which the Fifth Circuit ruled that the Second Amendment confers an individual right. The Supreme Court denied certiorari in the *Emerson* case allowing the Fifth Circuit ruling to stand. "The First Circuit in my case ruled directly opposite to *Emerson*, so we have a circuit conflict," Costerus says. "The time is ripe for review."

Representing himself, the former two-time state shooting champion and certified firearms instructor filed a 46-count civil rights suit in October, 2000, in federal court against Concord officers for their illegal search of his home without a warrant and the seizure of his lawfully possessed firearms, in violation of his Fourth Amendment rights. His suit also seeks prospective injunctive relief against the state for enacting a statute that violates the Second, Fifth, and Fourteenth Amendments.

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