

[LEOSA](#)

Federal Third Circuit Court affirms New Jersey laws violate federal LEOSA laws

Law enforcement officers in New Jersey no longer need to fear archaic laws

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By Donald J. Mihalek

New Jersey law enforcement officers are now free from the state’s archaic laws that impeded Law Enforcement Officer Safety Act (LEOSA) carry in New Jersey.

The federal [Third Circuit Court of Appeals](#) in a stinging rebuke, affirmed and sided with the NJ District Court ruling that essentially made every New Jersey law and regulation that barred lawful LEOSA carry by qualified law enforcement officers unconstitutional.

The [Law Enforcement Safety Officers Act \(LEOSA\)](#) codified as 18 U.S.C §926C was first passed in 2004 and allows two classes of people — the “qualified Law Enforcement officer” and the “qualified retired or separated Law Enforcement officer” (QRLEO) — to carry a concealed firearm in any jurisdiction in the United States or United States Territories, regardless of state or local laws with a few exceptions on state and private property.

Congress amended the law in 2010 and 2013 and, in both cases, expanded LEOSA authority and jurisdiction. LEOSA's intent was to supersede state law. Congress went as far as to declare LEOSA's purpose was to implement "national measures of uniformity and consistency" and allow officers to carry a concealed firearm "anywhere within the United States," yet for decades the state of New Jersey ignored that preemption and created its own regulatory scheme.

A lawsuit, brought by FLEOA and the NJ FOP based on federal preemption, would force the state of New Jersey to abide by 18usc926c, which would mean that all of New Jersey's gun laws and their Retired Police Officer statue would be unenforceable.

While the state fought against the lawsuit, the logic for fighting fell apart along the way. In April 2021, under pressure from the LEOSA lawsuit, the New Jersey Attorney General's office amended its [FAQ's CONCERNING RETIRED LAW ENFORCEMENT OFFICER PERMITS TO CARRY FIREARMS AND THE FEDERAL LAW ENFORCEMENT OFFICER SAFETY ACT OF 2004 \(LEOSA\)](#). There was a sudden and shocking administrative change on question 8: "May RLEOs who are considered QRLEOs under LEOSA, who reside in New Jersey, and who separated from an out-of-state or federal law enforcement agency, carry a firearm without applying for an RPO permit under State law?" The memo answered with, "Yes, provided that the RLEO meets all of the requirements of LEOSA. The RLEO must be a QRLEO as defined by LEOSA, discussed above in the answer to Question 4, see 18 U.S.C. 926C(c), and possess the identification required by LEOSA, discussed above in the answer to Question 5. See 18 U.S.C. 926C (d)(1) to (2)" which includes the carry of hollow point ammunition.

This change was a step in the right direction but was inconsistent and discriminated between federal and out-of-state officers and their own in-state officers.

Then in 2022, the federal district judge in New Jersey affirmed the lawsuit's points and issued an order on June 21, 2022, that said: "that N.J.S.A.2C:39-5, N.J.S.A. 2C:39-6(1), and N.J.S.A. 2C:39-3(f) are preempted by LEOSA, as applied, to any retired law enforcement officer who is qualified under 18 U.S.C. § 926C(c) ("QRLEO") and has identification required by J 8 U.S.C. § 926C(d), regardless of their residence; and it is further.....that any QRLEO who has identification required by 18 U.S.C. § 926C (d) may carry a concealed firearm in the State of New Jersey, including hollow point ammunition, without obtaining a Retired Police Officer permit under New Jersey law regardless of their residence or the agency from which they retired. ORDERED that the State of New Jersey is

enjoined from arresting and/or prosecuting any QRLEO who has identification required by 18 U.S.C. § 926C (cl) regardless of their residence or the agency from which they retired.”

New Jersey decided to appeal that ruling, which brought it before the Third Circuit Court of Appeals. Last summer, the Circuit Court heard oral arguments from the attorneys on the Plaintiff’s side, Nick Harbist and Mike Darbee from the law firm of BlankRome and the New Jersey’s Attorney General’s office.

Today, the Third Circuit Court issued its ruling, which supports the previous District Court ruling on each point and tells the state of New Jersey to once again comply with the federal preemption in 18usc926c.

Of course, the state could appeal to the Supreme Court but what would that say about how far they will go to impede the carry rights of qualified active and retired law enforcement officers living in their state?

About the author

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