No. 20-843

In the

Supreme Court of the United States

NEW YORK RIFLE & PISTOL ASSOCIATION, INC., ROBERT NASH, BRANDON KOCH,

Petitioners,

v.

KEVIN P. BRUEN, in His Official Capacity as Superintendent of the New York State Police, RICHARD J. MCNALLY, JR., in His Official Capacity as Justice of the New York Supreme Court, Third Judicial District, and Licensing Officer for Rensselaer County,

Respondents.

On Writ of Certiorari to the U.S. Court of Appeals for the Second Circuit

BRIEF FOR PETITIONERS/RESPONDENTS

DANNA REGALADO
Judge Barefoot Sanders Law Magnet
1201 East Eight Avenue
Dallas, Texas 75203

LIZBETH OJEDA
Judge Barefoot Sanders Law Magnet
1201 East Eight Avenue
Dallas, Texas 75203

[December 15,2021]

QUESTIONS PRESENTED

Whether the State's denial of petitioners' applications for concealed-carry licenses for self-defense violated the Second Amendment.

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SUMMARY OF ARGUMENT

This court should reverse the decision of the lower courts since petitioners Robert Nash and Brendan Koch were violated of their Second Amendment right to bear a concealed handgun outside of the home. It has always been our right to carry arms. The amendment itself states, "the right of the people to keep and bear Arms, shall not be infringed." This means that the people are given the right to keep an arm within the home, but it also allows them to carry one outside of the home since to "bear" means to possess and carry. Additionally, our fathers carried guns themselves and where greatly influenced by English law, which intended their "subjects" to carry for self-defense as well. New York's proper cause regiment also violates the second amendment since it fails the strict scrutiny test, and it would be considered too broad. The law, which tries to take away the people's right to bear arms, doesn't use the least restrictive means, which is a requirement. The New York law is too broad and has no guidance in what the criteria must be for someone to meet that "proper cause" requirement. This can lead to officers taking advantage of this law to stipe people of their right to bear arms.

ARGUMENT

I. We Have Always Had The Right To Carry Arms

It has always been our right to carry arms. The amendment itself states, "the right of the people to keep and bear Arms, shall not be infringed." This means that the people are given the right to keep an arm within the home, but it also allows them to carry one outside of the home since to "bear" means to possess and carry. Additionally, our fathers carried guns themselves and where greatly influenced by English law, which intended their "subjects" to carry for self-defense as well.

A. The Second Amendment Protects The Right To Keep and Bear Arms, Not Just To Keep Them

We've always had the right to bear arms. The second amendment protects our right to carry arms, not just keep them. The second amendment 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." The amendment guarantees the right to possess a weapon once in a well regulated militia. It was then found in District of Columbia v. Heller, 554 U.S. (2008) that the first part of the amendment, is only one purpose to which the amendment serves. It was also established in District of Columbia v Heller that the people have the right to

not just keep arms, but also to bear them for self defense. A militia is not needed for the people to bear arms, and to keep that right. Whether that right extends outside of the home is the issue for this court to decide.

The text of the Amendment says that the people have the right to keep and bear arms. There is a right to bear them both inside and outside of the home, since to "bear" is to carry. It was ruled in District of Columbia v Heller that, "the Second Amendment protects an individual right to keep and bear arms," but they limited it to the homes. As a result, lower courts continued to rule in that way. Although it never specified within the amendment itself that it could only apply to the homes, some courts continued to rule in favor of limiting it to the homes. By doing so, the courts have denied the people their rights to exercise their Second Amendment right because it has been limited to the home. There is more need for self-defense outside the home than what is being used within the home. The action of keeping the gun isn't what will keep the people safe, carrying the gun is what ensures the safety of the people. It does the person with the gun no good if they aren't allowed to carry it. A gun that is kept away can't protect someone out in the streets.

In this case protection in the streets and outside the home is especially important because New York is known to have dangerous places. Mr. Nash and Mr. Koch were not just violated of their constitutional right to bear arms for self defense, which the second amendment states itself, but also

their right to feel safe by denying them the gun they took their ability to protect themselves. Allowing people to carry a gun and not just keep them would enforce the right of the people to self defense and feel secure.

B. History Protects Our Right To Carry Arms Outside of the Home For Self Defense

It has also been recognized that the second amendment protects the right to carry arms since tradition and history has followed these principles. Hamilton states in Federalist No.29 that guns are "the most natural defense of a free country." This would imply that even our fathers intended for the people to have the right to carry arms for self defense, which is usually outside the home. Blackstone also stated that the right to keep and bear arms is "one of the fundamental rights of Englishmen" and "the right of self defense is the first law of nature". If to keep and bear arms, which would mean to keep and carry, was the purpose for the Englishmen, then it would be our founding fathers as well, since our founding fathers were greatly influenced by English law. This would include them being influenced by their English Bill of Rights, 1 W. & M., c. 2, 7, in 3 Eng. Stat. at Large 441 (1689), regarding the right to arms that states, "[T]he subjects which are Protestants may have arms for their defense suitable to their conditions and as allowed by law." To simply keep the gun at home would not serve and protect the right our fathers greatly intended and cherished.

Since the beginning of time the people have had the right to self-defense outside of their homes.

George Washington himself openly carried. Because of the fact that he openly carried we can interpret this as him intending for future generations to open carry for self defense. Not only were they allowed to open carry they were also allowed to open carry in sacred places like churches because they had such a strong belief in a person's right to self defense. By them open carrying in places like churches and places outside they acknowledged that there are dangers outside of the home.

Throughout history we have learned that we need weapons for self defense whether it be for a militia or protecting ourselves from hazardous situations. Limiting that right by only allowing the possession of guns inside the home would be unreasonable. It is more likely to be in danger outside of the home rather than inside the home. Not allowing law abiding citizens to carry an arm puts citizens at a disadvantage that could potentially put their life in danger.

II. New York's Restrictive Carry Law Violates the Second Amendment

New York's proper cause regiment violates the second amendment since it fails the strict scrutiny test, and it would be considered too broad. The law, which tries to take away the people's right to bear arms, doesn't use the least restrictive means, which is a requirement. The New York law is too broad and has no guidance in what the criteria must be for someone to meet that "proper cause" requirement. This can lead to officers taking advantage of this law to stipe people of their right to bear arms.

A. New York's Proper Cause Law Fails the Strict Scrutiny Test

Robert Nash and Brendan Koch, were not allowed to carry concealed weapons for self defense because of New York's highly restrictive law. The law states "[n]o license shall be issued or renewed" unless the officer finds the applicant exhibits good moral character, lacks a criminal or mental-illness record, and "no good cause exists for the denial of the license." This means that a law-abiding New York citizen does not have the right to bear an arm for self defense, yet they allow them to own a gun for hunting purposes. This law strips the New York citizens of their constitutional right to carry a gun for self defense, but even so the law itself does not pass the "Strict Scrutiny" test.

The Strict Scrutiny test is a form of review that can be used to determine the constitutionality of certain laws. It shows that if the government wants to interfere with constitutional rights it must pass a two part test. The first requirement is that the law is in the compelling states interest. It can be argued that the law can be in the people's interest since New York has a bad history with guns, so they would try to avoid those problems by trying to take peoples guns, but by doing so they also take away their right to self defense, especially outside the home. It was stated in District of Columbia v. Heller,v554 U.S. 570 (2008), "the reality that the need to defend oneself may suddenly arise in a host of locations outside the home." This especially applies to New York where it

is known to be quite unsafe. This would make it quite reasonable to make it believe that most citizens would want to protect themselves outside of the home, maybe even with a concealed handgun, or even a stun gun where it was found in Caetano v. Massachusetts, 136 S.Ct. 1027 (2016) (per curiam) where the second amendment protects such guns.

The second part of the Strict Scrutiny test is that the law must show that it is using the least restrictive means possible. This is where New York's proper clause law would not pass the requirement. This law is, in a way, getting rid of as many guns as possible and leaving the public defenseless. In an essay on Crimes and Punishments by Cesare Beccaria(1764) it stated that, "laws that only disarm those who are neither inclined nor determined to commit crimes…make things worse for the assaulted…for an unarmed man may be attacked with greater confidence than an armed one." Instead of getting rid of the guns of those who would be a danger, which would be a much smaller portion, and keeping the arms of those who fill the requirement and would like to own for self defense, New York is doing the opposite. By the law getting rid of the majority, which isn't the problem, rather than the minority, the law doesn't meet the second requirement since it is not using the least restrictive means possible.

B. New York's Proper Cause Law is Too Broad

Our petitioners, Nash and Koch, were not allowed to own guns for self defense as a result of

New York's highly restrictive as well as too broad of a law. The law allows n]o license to be "issued or renewed" unless the officer finds the applicant shows good moral character, has no criminal or mental-illness record, and finds "no good cause for the denial of the license ." The "proper cause" determination is left to the broad discretion of a licensing officer, which can be expressed or interpreted in a negative way and could be considered too extensive. As James Madison said in 1788 (Federalist No. 37), "All new laws… are considered as more or less obscure and equivocal, until their meaning be liquidated and ascertained by a series of particular discussions and adjudications." This law hasn't set any guidance over what criteria must be met in order to meet that "proper cause." As a result, officials are able to constantly change those requirements and even change them to use them in discriminatory ways, even though the term "proper cause" isn't in the law itself. They can deny someone the right to bear an arm based on their skin color, race, religion, etc and they can blame it on them not showing proper cause. The person can also state that they need a gun for self-defense since they live in a dangerous neighborhood or may feel threatened, yet they can still deny them the right. This takes away their right to self defense, which is the core purpose of the second amendment. It is stated in District of Columbia v. Heller,v554 U.S. 570 (2008) that, "we find that they guarantee the individual right to possess and carry weapons in case of confrontation," in other words, to defend oneself or for self defense. This was then applied

to the states when McDonald v. City of Chicago, 561 U.S. 742 (2010) ruled that, "the Second Amendment also applies to state government through the Fourteenth Amendments incorporation doctrine." New York's proper cause law is saying that to protect oneself is not proper cause. Due to the fact that the law is too broad, they can use reasons like these to prevent someone from bearing an arm.

Additionally, the licensing officers may feel free to accept a license by "affirming them so long as they are "rational[]," and setting them aside only if they are "arbitrary and capricious," Baldea, 2021 WL 2148769, since there are no reasonable requirements that would need to be met to obtain the license. This could result in the wrong person obtaining their hands on a weapon. Furthermore, those who have less of a reason to obtain one, like someone who wants to carry a gun for pure enjoyment, may be able to obtain a license instead of those who want one for self defense simply because the licensing officer was in a good mood with one more than the other. This would defeat the whole purpose of the law. The purpose would be to make sure New York's citizens would be safe by making sure those who shouldn't keep their hands on a gun don't get a hold of one, and they do this by getting rid of the majorities right to one. Yet, if they randomly hand out licenses based on their mood simply because there are no limitations to the law, then what's the purpose of the law?

CONCLUSION

We pray that this court reverses the decision of the lower courts that petitioners should be allowed to carry guns outside the home under the second amendment as long as they are a law-abiding person because we have always had the right to bear arms and New York's proper clause law isn't constitutional

Respectfully submitted,

DANNA REGALADO
COUNSEL OF RECORD
JUDGE BAREFOOT
SANDERS LAW MAGNET
1201 EAST EIGHT AVENUE
DALLAS, TEXAS 75203

LIZBETH OJEDA
Judge Barefoot
Sanders Law Magnet
1201 East Eight Avenue
Dallas, Texas 75203

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