//;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 RESPONDENTS

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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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Ch.172 S1,50 Tenn. 165,53 N.Y.2d 685(1981)).

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Ch.9,The Office and Authority of a Justice of the Peace 13(1774).

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SUMMARY OF ARGUMENT

It is constitutional for states to deny concealed carry licenses to its citizens. There is history that shows New York's licensing scheme is constitutional. There have been many precedents in the past that have allowed states to make limitations on the second amendment. There is evidence that shows more gun regulation in the states leads to less gun related deaths in the states. The CDC and APA have both released information on the correlation between states gun restriction laws and the gun related deaths within the states. Also New York's licensing scheme does not give a blanket prohibition on firearms. There are many precedents of "blanket prohibitions" and they are not the same as New York's.

ARGUMENT

I. History of New York's licensing scheme shows that the limitations on the right given by the second amendment is constitutional.

New York's "proper cause" licensing scheme is allowed by the second amendment as it is rooted in centuries long laws from England, American colonies and early states in the United States of America and precedent cases show acceptance of limitations on second amendment rights.

Public carry laws have their origin in the Statue of Northampton in 1328 and the English Bill of Rights in 1689. The New Jersey colony was the first American colony to codify Northampton style law and limit the rights to carry arms by stating that no person "shall not presume privately to wear any pocket pistol or….other unusual or unlawful weapons." Ch.9, 1686 N.J Laws 289,290. Many other colonies enacted similar laws after. E.g. No.6 , 1692 Mass. Laws 10; 1699 N.H. Laws ; Ch. 21, 1786 Va Acts 33; Ch 3, 1792 N.C. Law 60; Ch.2, 1795 Mass. Law 436; Ch. 22s 6, 1801 Tenn Laws 259, 260-261. Under these laws, "Constables, magistrates, or justices of the peace had the authority to arrest anyone who traveled armed." Eric M. Ruben & Sail Cornell, Firearm Regionalism & Public carry. S. Antebellum Case Law in context, 125 Yale L.J. Forum 121, 129(2015).

In contrast to the petitioner's claim that the early Americans had the unrestrained right to carry firearms in any public place and that contemporary New York laws over public firearm carry are harsh, second amendment right regulation has loosened after the colonial and early American era laws that arrested people for carrying firearms in public even if the arrestee "did not threaten any person" or engage in "any particular violence," James Ewing, A Treatise on the

Office & Duty of a Justice of the Peace 546 (1805), and did not allow a person to evade arrest by “alleging that such a one threatened him, and wears it for safety,” William Hawkins, A Treatise of the Pleas of the Crown 136 (1762).

Although early Americans in the rural areas commonly carried firearms to fend off dangerous strangers, animals, or “foreign enemies,” Leonard W. Levy Origins of the Bill of Rights 139 (1999) "when traveling on unprotected highways or through the unsettled frontier," Patrick J.Charles, TheFaces of the Second Amendment Outside the Home. Take Two, 64 Clev. St. L. Rev. 373, 401(2016), not all regions in early America enjoyed the unrestricted right to carry firearms, for in the areas with -"any great Concourse of the People "-local authorities retained the jurisdiction to restrict or even ban the carrying of firearms. James Davis, The Office and Authority of a Justice of the Peace 13(1774).

In 1836, Massachusetts enacted a law restricting the public carrying of firearms except for the ones who had a "reasonable cause to fear an assault or other injury, or violence of his person, or to his family or property,” followed by Supreme Court holdings to uphold such restrictions as constitutional e.g. Andrew V. State, 50 Tenn. 165, 190-91(1871)(States could limit the public carry of handguns to circumstances when the weapon is "worn bona fide to ward off or meet imminent and threatened danger." English V. State, 35 Tex, 473, 477(1871)(states could regulate "the place, the time and the manner in which certain deadly weapons may be carried as means of violence of his person, or to his family or property.") Massachusetts in 1906 transformed its good cause law into a licensing scheme that allowed applicants to obtain an unrestricted public carry license if they demonstrated a “good reason to fear an injury to people or property,” Ch.172 S1, 1906 Mass Acts 150. 7 years later, New York enacted a similar analogous "proper cause" law . Ch.608, S 1, 1913 N.Y. Laws, 1627, 1627-1630. Under this law any magistrates were

allowed to issue a license for home possession if the magistrate was "Satisfied of the good moral character of the applicant" and " no other good cause exist[s] to deny the license," and to issue an unrestricted license for concealed carrying in public upon proof "of good moral character, and that proper cause exists for the issuance thereof." Id.at 1629.

The current law that requires individuals to obtain a license to possess or carry a concealable "firearm" is substantially the same as the law enacted in 1913. N.Y. Penal Law S265.00(3). Currently, the applicants seeking license to carry a concealable handgun in public without restriction must show "an actual and articulable-rather than merely speculative or specious need for self defense."Kachalsky, 701 F 3d at 98(citing Klenosky v. N.Y. City Police Dep't, 75 A.D.2d 793, 793(1st Dep't 1980), aff'd on op. below, 53 N.Y.2d 685(1981)).

Applications for handguns are adjudicated by firearms licensing officers, who in most countries are state court judges, and in New York City and certain other countries are local police commissioners. N.Y. Penal Law S265.00(10). Licensing officers determine the existence of the "proper cause" by considering an open universe of person and locality specific factors bearing on the applicant's need for self defense. E.g. Application of O'Connor, 585 N.Y.2d 1000, 1003(C0, Ct. 1992). Such regulation on rights to carry firearms is constitutional for it is "protected by our federal system" Graham v. Florida 560 U.S. 48, 87 (2010) and it allows "local policies more sensitive to the diverse needs of heterogeneous society, permits innovation and experimentation, enables greater citizen involvement in democratic processes." Bond v. United States, 564 U.S. 211, 221(2011).

The petitioners challenge such regulation, for in their views New York's licensing scheme violates the Second Amendment, as the District of Columbia v. Heller agreed that a critical aspect of the right to bear arms extends beyond the

home. Heller, 554 U.S. at 599; id. at 637 (Stevens, J., dissenting). However, the petitioners do not acknowledge that the right to keep and bear arms is "not unlimited" and does not allow a person to "keep and carry weapons whatsoever in any manner whatsoever and for whatever purpose." Heller 554 U.S. at 626. Also as many precedents show, "New York's proper cause requirement does not violate the second amendment." Kachalsky and Libertarian Party of Erie Cty b. Cuomo, 970 F.3d 106, 113(2nd Cir. 2020.) Furthermore, petitioners Nash and Koch assert that "they do not face any special or unique danger" to their lives, but they nonetheless wish to carry a handgun in public without restriction for the purpose of self defense, CA2 J.A. (Dkt.39) 13-15 therefore unreasonably disputing the constitutionally regulated Second Amendment right in the state in which they reside.

II. Restrictions on second amendment rights increases public safety.

States with more gun regulation tend to show a decrease in gun violence. Giffords Law Center made a scorecard of all 50 states comparing the strength of their gun laws compared to gun deaths. There is an undeniable correlation showing that stronger gun laws lead to less gun related deaths. California has the strongest gun laws in the country with the fourth least amount of gun deaths. Giffords Law Center grades each state on a letter grade scale with the lowest being F then D,C,B, and A for least to greatest. Since the 2018 Parkland shooting Virginia has made improvements to its background checks and child prevention laws and went from a D to a B in 2 years. The grading system is based on the most recent gun deaths released by the CDC.

The American Psychological Association released an article stating "Prevention efforts guided by research on developmental risk can reduce the likelihood that firearms will be introduced into community and family conflicts or criminal activity." They later say that prevention methods lead to less gun related death.

A 1911 New York Coroner's office report states that an increase in homicide and suicide appeared with concealable firearms. They stated that the New York legislature should seek to craft a licensing solution that would lead to a decrease in these deaths. People ex rel. Darling v. Warden of City prison, 154 A.D. 413, 423 (1st Dep't 1913); Revolver Killings Fast Increasing, N.Y, Times, Jan. 30, 1911 at 4(citing New York Coroner's Office Report)

"Statutes governing firearms and weapons are not desirable as ends in themselves. such legislation is valuable only as a means to the worthwhile end of preventing crimes of violences before they occur." State of N.Y., Report of the N.Y.

State Joint Legislative Comm. on Firearms & Ammunition 12 (1965) Governing firearms is a prevention to keep violence lower according to the N.Y. State Joint Legislative Comm.

III. New York's licensing scheme does not give a blanket prohibition on carrying of firearms.

In contrary to the petitioner's argument that New York's licensing scheme law gives a blanket prohibition on the right to carry firearms, for in their views only small subset of "the people" protected by the Second Amendment are permitted to carry firearms in public, many precedents demonstrate the actual examples of "blanket prohibition" that are distinguishable from New York's licensing schemes and show that New York's gun regulation is not considered to prohibit the right given by the constitution to majority of the people.

The court in Moore v. Madigan, 702 F.dc 933 (7th Cir. 2012) invalidated an Illinois that imposed "a flat ban on carrying ready to use guns outside the home," id.at 940, by prohibiting individuals from establishing that they had proper cause to carry a firearm in public. Furthermore, the court in Moore v. Madigan, in regards to New York's firearm regulation, noted that the New York's licensing scheme reflects a "recogni[tion] that the interest in self defense extends outside the home." and that New York acted constitutionally when the State "decided not to ban handgun possession, but to limit it to those individuals who have an actual reason to carry the weapon." Id.at 941(quoting Kachalsky, 701 F.3d at 98.)

The District of Columbia law under consideration in District of Columbia v. Heller banned handgun possession "by making it a crime to carry an unregistered firearm and prohibiting registration of handguns," and by requiring "lawfully owned firearms unloaded and disassembled or bound by a trigger lock or similar device." The court's holding stated that the "Second Amendment right is not unlimited" , therefore, upholding and justifying the constitutionality of New York's law.

The District of Columbia law under consideration in Wrenn v. District of Columbia, 864 F.3d 650 (D.C. cir. 2017) also was considered by the court as a blanket prohibition, for it permitted individuals to obtain a concealed carry license if they could show " a special need for self defense," id.at 655, that provides "serious threats of death or serious bodily harm any attacks on [their] person." id 655-6. This "total ban" was per se unconstitutional because it "destroy[ed] the ordinarily situated citizen's right to bear arms outside the home." id.at 666. In regards to New York's licensing scheme, the court in Wrenn v. District of Columbia also upheld New York's licensing scheme for it does not limit the types of certain circumstances the applicants may present in seeking to establish a need for self-defense and require an "actual and articulable rather than merely speculative or specious" need . Kachalsky, 701 F.3d at 98.

CONCLUSION

The state of New York's decision to deny the petitioners' applications for concealed-carry licenses did not violate the second amendment. The precedents of the past show that states have been allowed to make limitations on the second amendment. There is evidence that shows that states with more gun regulation have less gun related death and injury. And finally the licensing scheme does not give a "blanket prohibition" on firearms based on past "blanket prohibition" examples. For these reasons, this court should uphold the finding of the lower court.

Respectfully submitted,

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