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

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QUESTIONS PRESENTED

Does the Second Amendment allow the government to prohibit a law-abiding person from carrying handguns outside the home for self-defense?

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SUMMARY OF ARGUMENT

In past proceedings such as *District of Columbia v, Heller*, it is established that outlawing firearm ownership is a violation of the Second Amendment right to "keep and bear" arms. "Keep" simply refers to having a firearm in the home, whilst "bear" is the allowance of carrying a firearm outside the home. *District of Columbia v. Heller* recognizes that the Second Amendment rights may be restricted if the person(s) owning said firearm(s) are dangerous or wielding them in sensitive areas such as school campuses and government buildings. Previously decided cases have set the precedent of recognizing the Second Amendment protections as individual rights. Furthermore, the courts have interpreted the Second Amendment as guaranteeing protection of both the right to keep, and the right to bear arms. In the New York statute requiring a "special need" to carry a concealed handgun outside the home, no matter the applicants' criminal history, or lack thereof, is a violation of the Second Amendment. The Petitioners applying for these concealed carry permits are citing self-defense as reasoning to obtain a conceal carry license. The Petitioners have taken the proper gun safety classes, or have extensive experience handling firearms safely, no criminal history, and a valid reason to possess a concealed carry license. It is well within their rights to conceal carry a handgun outside the home, with constitutional restrictions in place, such as requiring a permit, and the State of New York is violating those fundamental rights by having that unconstitutional requirement in place.

ARGUMENT

I. This court has recognized the right to bear arms

The right to bear arms has been established as an individual right. This right has been broadly applied to the people, regardless of their military status, and has not been limited to members of the militia. Instead, the court shall find that the right to bear arms is defined as one retained by the people, which limits government control over firearms.

A. In *District of Columbia v. Heller*, the right to keep and bear arms being protected under the Second Amendment was recognized by this court, for individuals and for self-defense

This court previously recognized the right to bear arms as belonging to individuals. In its ruling on *District of Columbia v. Heller* 554 U.S. 570 (2008). The court states that the textual elements of the Second Amendment, "guarantee the individual right to possess and carry weapons in case of confrontation." In this same case, the court cited *United States v. Miller, et al.* 307 U.S. 174 (1939), holding that, "The traditional militia [mentioned in the Second Amendment] was formed from a pool of men bringing arms 'in common use at the time' for lawful purposes like self-defense." In other words, the peremptory clause of the amendment does not preclude someone from lawfully holding a common firearm. The rights to keep and bear arms do apply to individuals seeking self-defense. This also means that

the Second Amendment applies commonly used weapons, such as the handguns and affects a concealed-carry permit. By recognizing these facts in an earlier case, the court has set precedent by which this case must be decided should a fair and equitable law be understandable to the common person. Furthermore, it has made it abundantly clear that a law-abiding individual retains the right to carry a firearm regardless of whether or not the individual or firearm maintains a military status. As Thomas Jefferson described in a letter to Destutt de Tracy, "[T]he militia of the State, that is to say, of every man in it able to bear arms." This broad interpretation of the Second Amendment is one that is consistent with the ideals and decisions of this court, and it is a precedent that must be followed.

B. In *McDonald v. Chicago*, the right to keep and bear arms is maintained as a right applying to states as well as to the Federal government

In *McDonald v. Chicago* 561 U.S. 742 (2010), this court made further precedent by noting that the States had to comply with the ruling in *District of Columbia v. Heller*, arguing that the Second Amendment was not to be interpreted as a, "second-class right, subject to an entirely different body of rules that the other Bill of Rights guarantees that we have [the court has held] to be incorporated into the Due Process Clause." As such, New York is beyond its power in its denial of concealed-carry permits to the petitioners, as the strict and selective processes by which citizens must demonstrate a "special need" for a permit is in fact the treatment of the Second

Amendment as a second-class right.

II. The Second Amendment protects the right to both "keep" and "bear" arms

This court will also find that the right to keep arms and the right to bear arms are separate entities that are both protected under the Second Amendment

A. There is a distinct difference between the keeping and bearing arms, both of which are protected under the Second Amendment

While the Second Amendments protects both the right to keep and bear arms, there must be a distinction between these two rights, else the Second Amendment would be ineffectual. Should one bear arms without the right to keep them, they would find themselves unable to obtain the weapons necessary to fulfil their right to bear them. Similarly, were one to keep arms without the right to bear them, they would find the right to keep them nothing more than the right to maintain decoration. This is not the intent of the amendment. Given the context of the American Revolution, it is clear that the framers were concerned with the ability of the populace to use their firearms. Indeed, a major grievance listed in the Declaration of Independence was King George IIIs' decision to, "[keep] among us, in times of peace, Sanding Armies without the Consent of our legislatures," thereby posing a threat to the colonists. After the Battle of Lexington and Concord, a battle in

which these standing armies did try to disarm the populace, the framers would have been acutely aware of the dangers of a populace without the ability to defend themselves. As such, the Second Amendment protects the rights to keep and bear arms as two separate and distinct, yet equally critical rights.

In *Wrenn v. District of Columbia* 864 F3.d 650 (D.C. Cir. 2017), the court makes reference to the definitions of "keep" and "bear" found in the decision in *District of Columbia v. Heller*, citing that, "the Court elaborates that to "bear" means to "'wear, bear, or carry…upon the person or in the clothing or in a pocket, for the purpose…of being armed and ready for offensive or defensive action in a case of conflict with another person.'" Meanwhile, we hold the definition of keep to be self-explanatory; to maintain in ones' possession. Given the aforementioned definitions, it can be reasonably surmised that bearing an arm extends beyond just maintaining it in one's home or on their property, which would instead fall under keeping an arm, unless being used in self-defense within the home. As the Second Amendment does not limit its protections to within one's home, it must therefore be interpreted broadly to include use beyond ones' own property or residence. The world of 1787 was much more rural than that of today, and as such, the framers would have expected their amendment to apply to remote areas, such as rural homesteads, undeveloped frontiers, and long roads between major cities and settlements. Travel being as slow as it was, the need to protect oneself during long travels or stays in remote areas would not have been an unusual presumption for the framers to have

made.

B. The refusal to allow the Petitioner a concealed carry permit was a violation of his Second Amendment right to bear arms and the Fourteenth Amendment right to equal protection under the law

The distinction being made between keeping and bearing arms, it is thus clear that both the right to keep arms and to bear arms are separately enforced. Though the Petitioners' right to keep an arm was not violated through the refusal to issue to him a concealed carry permit, his right to bear one was. Lower court decisions, such as *Wrenn v. District of Columbia* affirmed that it is, "natural to view the Amendments core as including a law-abiding citizen's right to carry common firearms for self-defense beyond the home." The Petitioners are law-abiding citizens. They had no criminal records, and were motivated by self-defense. Given the criteria already met by the Petitioners, it is highly that in practice, there would be a difference between the open-carrying of a firearm and the concealed-carry permit of a firearm beyond the fact that for a law abiding citizen, concealed-carry by nature is less confrontational, and thus, safer. The Petitioners were denied concealed-carry permits because they lacked "special need for self-protection distinguishable from that of the general community or of persons engaged in the same profession," the implication being that the common need for self-protection, the desire to protect oneself, is not enough. We remind the court that the pursuit of life is the first ideal listed in the

Declaration of Independence. Furthermore, the New York law refuses applicants the issuance of a concealed-carry permit should their reason for obtaining one be their proximity to a high-crime area. We remind the court of their decision in *McDonald v. Chicago*, wherein it was agreed that, "Petitioners and many others who live in high-crime areas dispute the proposition that the Second Amendment right does not protect minorities and those lacking political clout….the number of Chicago homicide victims during the current year equaled the number of American soldiers killed during that same period in Afghanistan and Iraq and that 80% if the Chicago victims were black. [Footnote 32] Amici supporting incorporation of the right to keep and bear arms contends that the right is especially important for women and members of groups that may be especially vulnerable to violent crime." As such, it is clear that the New York law is a clear violation of the Equal Protection Clause of the Fourteenth Amendment, which states that no state may create or enforce law which shall, "deny to any person within its jurisdiction the equal protection of the laws." Because of the disparate impact of the New York statute, this case must be examined under strict scrutiny, and must recognize that the decision not to allow the Petitioners concealed-carry permits was a violation of their Second and Fourteenth Amendment protections.

CONCLUSION

Given the clear constitutional violations that have ere been elucidated, we plea that the court hold the refusal to issue concealed-carry permits to the Petitioners are unconstitutional.

Respectfully submitted,

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