`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

GABRIELLA FIGUEIREDO
Dublin Christian Academy
106 Page Road
Dublin, NH 03444

December 15, 2021

QUESTIONS PRESENTED

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Webster, Noah *American Dictionary of the English Language* (1828)

FACTS

Robberies were recently occurring in Robert Nash's neighborhood. He had recently taken part in a gun- training course. Mr. Nash had a clean criminal record; therefore, he applied for a concealed carry licence from New York in September, 2014. His application was denied by the government because of the lack of a specific need for a concealed carry licence.

Brendan Koch, also from New York, applied for a concealed carry license. Similar to Mr. Nash, Mr. Koch's application was also denied by the government because of the lack of a specific need for a concealed carry licence.

Mr. Nash and Mr. Koch sued the Superintendent of New York State Policy. They challenged the requisite proper cause of N.Y. Penal Law § 400.00(2) (f). This law overall states that openly carrying handguns is banned in New York. Although, if someone desires to carry a handgun outside of the home and isn't in the employment categories, then that person has to prove and show they have a specific need for concealed carrying outside of the home.

SUMMARY OF ARGUMENT

The Second Amendment is for a well regulated militia and for the right to self defense in the home. Therefore, New York's 'proper cause' requirement for concealed carry license does not violate the Second Amendment. New York's requirement does not infringe on the right to keep and bear arms.

The Second Amendment helps Congress to make sure the militia is properly equipped. The limits of the Second Amendment protect the right for self defense in the home and for a well equipped militia. The term "arms" includes weapons ranging from a musket to a stun gun. The Court should use intermediate scrutiny. The Court should consider public safety by regulating firearms. The court should look at early American history and early modern history. There is a difference between openly-carrying a firearm, and conceal carrying a firearm.

ARGUMENT

The Second Amendment protects the right to self defence in the home and the right to keep and bear arms for the sake of the Militia.

The Second Amendment states that, "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." This clearly shows that the Second Amendment protects the right to keep and bear arms for the sake of the Militia as stated by this court in United States v Miller. In Miller it says, "The sentiment of the time strongly disfavored standing armies; the common view was that adequate defense of the country and laws could be secured through the Militia—civilians primarily, soldiers on occasion" [United States v. Miller, et al., 307 U.S. 174, 179 (1939)].

The Second Amendment helps Congress to make sure the militia is properly equipped.

Article 1 Section 8, explains how Congress provides for the defence of the nation by regulating the militia; "To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions; To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed

in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress" United States Constitution Article 1 Section 8. This Court explained in United States vs Miller; "With obvious purpose to assure the continuation and render possible the effectiveness of such forces the declaration and guarantee of the Second Amendment were made. It must be interpreted and applied with that end in view."

The Founding Fathers were afraid of standing armies. An example of this is found in John Adams's "Essay on Man's Lust for Power" (August 29, 1763): "Power is a Thing of infinite Danger and Delicacy, and was never yet confided to any Man or any Body of Men without turning their Heads.—Was there ever, in any Nation or Country, since the fall, a standing Army that was not carefully watched and controlled by the State so as to keep them impotent, that did not, ravish, plunder, Massacre and ruin, and at last inextricably enslave the People." Adams's statement explains why the Founding Fathers wanted the Militia to be well equipped. Another example of this concern is in New York's Ratification of the Constitution with Proposed Amendments (1788): "That standing Armies in time of peace are dangerous to Liberty, and ought not to be kept up, except in Cases of necessity; and that at all times the Military should be under strict subordination to the

civil Power." This is an example of why the Founding Fathers wanted Congress to regulate the militia.

The limits of the Second Amendment protect the right for self defense in the home and for a well equipped militia.

The Second Amendment protects the right of a well regulated Militia, an official group of civil men. This court explained in United States v Miller that the Founding Fathers put the Second Amendment into the Constitution so Congress could regulate the militia."[w]ith obvious purpose to assure the continuation and render possible the effectiveness of such forces, the declaration and guarantee of the Second Amendment were made. It must be interpreted and applied with that end in view" [United States v. Miller, et al., 307 U.S. 174, 178 (1939)].

The Second Amendment also protects the right for self-defense in the home [District of Columbia v. Heller, 554 U.S. 570 (2008)]. Heller also explained that there's a need to look back to the history of gun regulations. On page 2, the brief of Professors of History and Law for the Respondents explains how in the Statue of Northampton there were restrictions for arms in 1328: "no Man … [shall] come before the King's Justices … with force and arms … nor to go nor ride armed by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere." According to this quote, it clearly states that there was a regulation of arms depending on where someone

went, specifically in public areas. This supports New York regulating arms in certain locations. In the late 1600's, New Hampshire, New York and Massachusetts prohibited people from carrying arms "offensively" in public areas. In this tradition, New York's law is constitutional because it follows historical precedents.

As mentioned in Miller, " [T]he Militia—civilians primarily, soldiers on occasion." A militia is not a group of sluggish people, but of civilians willing to serve their country. The preamble to the Second Amendment mentions service in a militia as a reason why citizens have the right to keep and bear arms: "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 term "arms" includes weapons ranging from a musket to a stun gun.

This Court in Miller explained that the Second Amendment refers to arms that were "and of the kind in common use at the time" [United States v. Miller, et al., 307 U.S. 174,179 (1939)]. This refers to the arms used in that specific time. In Caetano v Massachusetts, this Court also explained arms included weapons that are used currently, such as a stun gun.

The definition of the verb "keep" means, "To hold; to retain in one's power or possession; not to lose or part with; as, to keep a house or a farm; to keep

anything in the memory, mind or heart." [Webster's Dictionary 1828].

The definition of the verb "bear" means, "To carry; to convey; to support and remove from place to place; as, 'they bear him upon the shoulder; ', 'the eagle beareth them on her wings.'" [Webster's Dictionary 1828]. As written earlier, there have been restrictions on keeping and bearing arms in public (e.g., the Statue of Northampton, 1328) because of public safety.

The Court should use intermediate scrutiny.

Strict scrutiny is used when a court finds that a law infringes on a fundamental, constitutional right, such as the right to freedom of speech or equality under the law.

In this case the Court should use intermediate scrutiny. Intermediate scrutiny is used by the court when a law violates an important right. In order to pass intermediate scrutiny the government needs a good reason. In this case, New York has an important government interest - public safety. New York still allows certain people to carry a firearm under the circumstance that they have a good reason. Also, New York allows self-defence in the home.

The rational basis test is the normal standard of review that courts apply when considering laws that don't violate constitutional rights.

The Court should consider public safety by regulating firearms.

The court should consider that there already exists a license to carry a firearm for hunting, target places, nevertheless in the home for self-defence in the home. It is important to have public safety, it should be the government's job to protect the public and an example of this is regulating firearms. In the Declaration of Independence it declares that the government should protect "Life, Liberty and the pursuit of Happiness." The Preamble in the Constitution declares that people should be at ease. The government's job is to "insure domestic Tranquility." The government's job is to insure life and peace to the public; Restricting firearm laws is an example of ensuring life and safety to the public.

The Court should look at early American history and early modern history.

As mentioned in Heller, the Court should not change longstanding laws: criminals should not own firearms nor should mentally ill people be allowed to own a firearm. There are also laws prohibiting the right to carry a firearm in sensitive places, such as the airport [District of Columbia v. Heller, 554 U.S. 570 (2008)].

In the end, there is a longstanding tradition of states requiring that they should have a good reason to carry a firearm in public. In the 1930's, Pennsylvania, North Dakota, South Dakota, Washington, and Alabama passed the U.S.R.A. Model Act, which allowed an applicant to be able to have a concealed carry license because they were being

threatened [Professors of History and Law, 26]. New York's law also allows people to have concealed carry if they have a good reason, such as if they are in danger or being threatened.

There is a difference between openly-carrying a firearm, and conceal carrying a firearm.

The court shall consider that there is no difference between openly-carrying a firearm, and conceal carrying a firearm. Open carry allows gun owners to carry their firearm visible to other people, such as strapped to their belts. Concealed carry allows gun owners to conceal or hide their weapon well enough so that no one can see it, such as completely tucked into an article of clothing or kept in a backpack or purse. Ultimately, owners would still physically be carrying a firearm, as mentioned in Peruta v. County of San Diego, "[I]n principle, there is no difference between a law prohibiting the wearing concealed arms, and a law forbidding the wearing such as are exposed; and if the former be unconstitutional, the latter must be so likewise" [824 F.3d 919, 935 (9th Cir. 2016)]. The government's job is to ensure life and peace to the public; how is this able to happen if people are worrying if the person next to them with a firearm will use their firearm for the better or worse?

CONCLUSION

It is for these reasons that we pray that the court finds in favor of the respondent and holds that the State's denial of petitioners' applications for concealed-carry licenses for self-defense did not violate the Second Amendment.

Respectfully submitted,

GABRIELLA FIGUEIREDO
Dublin Christian
Academy
106 Page Rd.,
Dublin, NH, 03444

December 14, 2021