

anNo. 20-843

In the  
**Supreme Court of the United States**

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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.*

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

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**BRIEF FOR PETITIONERS/RESPONDENTS**

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12/15/21

**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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**TABLE OF AUTHORITIES**

District of Columbia v. Heller  
554 U.S. 570 (2008)

Caetano v. Massachusetts  
136 S.Ct. 1027 (2016)

McDonald v. City of Chicago  
561 U.S. 742 (2010)

*Other authorities:*

Gen. William H. Sumner, Letter to John Adams  
May 3, 1823

Massachusetts Declaration of Rights  
1780

Gen. William H. Sumner, Letter to John Adams  
May 3, 1823

Massachusetts Declaration of Rights  
1780

Federalist No. 46 – Madison  
1788

Anti-Federalist No. 28  
1788

Article I, clause 8, § 15 “Power to Call Forth the  
Militia”

## SUMMARY OF ARGUMENT

Robert Nach and Brandon Koch, both able-bodied citizens of New York, applied for a permit to conceal carry their firearms but were ultimately denied by New York's "Proper Cause Laws".

The NYSPRA's second amendment rights are being infringed on by New York's concealed carry laws. Self-defense is the core of the second amendment and is not and should not be limited by the presence, or lack thereof, of a militia, as proven by past precedents. Concealed weapons are a right under the second amendment for the individual's protection. According to the *Heller v. DC* case "to read the Amendment as limiting the right to bear arms only to those in a governed military force would be to create exactly the type of state-sponsored force against which the Amendment was meant to protect people.". Knowing that, we can now state that each individual has the right to carry a gun to protect oneself. New York law is preventing that. Secondly, concealed weapons are condoned by the court for self-defense measures, which is at the core of the self-amendment. For these reasons, strict scrutiny applies because the government does not have a valid, significant reason for discriminating and taking away the peoples' self

defense when lawmakers have other options. Thus, New York's law violates the second amendment.

## **ARGUMENT**

### **I. Violation of Second Amendment**

The NYSPRA's second amendment rights are being infringed on by New York's law. 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." A militia is not needed for the second clause of this amendment to remain valid as stated in the case of *DC v Heller*. A regulated militia is the consequence of the people's right to bear arms, but one does not directly limit the other. This is because "To read the Amendment as limiting the right to bear arms only to those in a governed military force would be to create exactly the type of state-sponsored force against which the Amendment was meant to protect people." - Justice Antonin Scalia. Therefore, an individual is granted access to and the right to carry arms in public areas. This definition also recognizes its limits such as government buildings, schools, and other sensitive areas but for the means presented in the case of *NYSRPA v. Bruen*, the amendment is valid and applicable. Both these people were law abiding citizens, of age and with no previous criminal record.

They also did not apply for these arms with the intent to cause harm, nor were they using them in restrictive areas. Therefore, their second amendment right is unbreachable.

As stated in the case of *DC v. Heller*, because the text of the Amendment should be read in the manner that gives greatest effect to the plain meaning it would have had at the time it was written, the operative clause should be read to “guarantee an individual right to possess and carry weapons in case of confrontation.” In this reading of the second amendment, the first clause does not limit the second by proving the right to bear arms is unaffected by the presence of a militia.

As proven by past precedents, concealed weapons are a right under the second amendment for the individual’s protection. According to the *Heller v. DC* case in which Heller argued for his right to carry a firearm, the court said that “to read the Amendment as limiting the right to bear arms only to those in a governed military force would be to create exactly the type of state-sponsored force against which the Amendment was meant to protect people.”. Knowing that, we can now state that each individual has the right to carry a gun to protect oneself and is not limited by a militia. Therefore the existence of a militia does not affect the right.

## **II. Self Defence**



Furthermore, concealed weapons are condoned by the court for self-defense measures. According to the *Caetano v. Massachusetts* case in 2016, a woman was possessing a stun gun in order to protect herself from her abusive ex-boyfriend. However, she was wrongly convicted for possessing a weapon until the supreme court ruled in favor of her. Stating that 1. Stun guns are valid firearms and that 2. concealed firearms are not against the law. Furthermore, Justice Samuel Alito agreed with the decision that self-defense and the rights under the Second Amendment are of utmost importance. This case is integral as it reinforces the access to self-defense that all individuals have when carrying a concealed weapon.

Self-defense is essential to every human being and this right must not be infringed. When a person is merely carrying a gun, not with the motive to harm anyone but to protect oneself, it is considered self-defense. When New York's state laws define a "special need for self-defense", it leaves the rights of self-defense up to a distant organization that does not understand the needs of that individual. In this case, a concealed weapon was to be carried for self-protection. At no point does it condone the harming of another. The reason why a firearm is necessary for self-protection is because it is the most effective deterrent in dangerous situations.

### ***III. Strict Scrutiny***

This case should be classified with strict scrutiny because it substantially inhibits the rights of citizens when there are better alternatives. There are other possible restrictions to protect the public from crime such as denying firearm access in sensitive places (i.e schools, government buildings, etc.). Not only is the New York law not regarding these sensitive locations, it is infringing upon the second amendment rights.

Strict scrutiny states that in order for a legislative law to be passed, the government must have to achieve government interest after mitigating the limitations as much as possible. In this case, New York has not achieved that because there are other solutions to protecting the public's safety as stated was the intention for this law. In order to protect public safety, requiring all concealed weapons to have a license is not necessary. Only in vulnerable locations such as schools or government buildings should restrictions apply. This is because the population there is potentially vulnerable but because students are not of age to carry a gun and government buildings have adequate security, self-defense mechanisms are not necessary. This completely changes in the public setting as stated in our first argument.

The alternative solutions are to restrict gun usage in schools or other sensitive locations. This is for the benefit of both public safety and the individual's right to self-defense.

## CONCLUSION

Because New York's restrictions were clearly in violation of the second amendment, this case should be considered strict scrutiny as this is a significant violation of the second amendment. For these reasons, consider the petitioner. As said from some of the earliest years of America, "The people have a right to keep and to bear arms for the common defense" (Massachusetts Declaration of Rights, 1780). Therefore it is imperative to uphold that. New York law should be tried under strict scrutiny because withholding an arm from a healthy, upstanding citizen is in violation of second amendment rights.

Respectfully submitted,

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