

No. 20-843

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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**

Shreya Venkatachalam

SHREYA ENJETI

*COUNSEL OF RECORD*

Lebanon Trail High School Lebanon Trail High School

5151 Ohio Drive

5151 Ohio Drive

Frisco, TX

Frisco, TX

75035

75035

12/10/21

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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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## SUMMARY OF ARGUMENT

The Second Amendment in the United States Bill of Rights speaks for one of the founding fathers' most valued rights to undo the wrongings they faced. It also stands for the safety and protection of the people- the very people that the government is made of, by, and for.

It protects the right to "keep," which dictionaries define as retaining position of, as well as "bear arms," which is defined as the wearing or displaying of carried firearms.

The framers of the constitution, the very foundation to our nation today, wrote a highly passionate and daring Declaration of Independence containing 27 grievances, each carefully and purposefully phrased to get the sheer injustice of their situation across. A few years later, James Madison wrote the Bill of Rights, inspired by documents such as the Declaration of Independence, Magna Carta, and English Bill of Rights, to establish the basic rights they were denied at the time of the founding fathers. Placing the right to bear arms as the very second amendment demonstrated its high value, and it established the right for Americans to be able to actively defend themselves and even just possess firearms.

Under the English, after facing much abuse and injustice, the amendments were written intentionally to constitutionalize the carrying of firearms.

20th and 21st century sources as well as case law

support the right, not privilege, right of citizens to carry guns for protection.

## ARGUMENT

### **I. The text of the Second Amendment as well as the Fourteenth Amendment protects the right to have and carry firearms.**

#### **A. Defining “keep” and “bear” in the second amendment:**

The Second Amendment mentions the “right of the people,” the word “right” being specifically used. Oxford Languages defines this term as a “moral or legal entitlement,” a fundamentally, basic protection that in terms of the Second Amendment, the people of America need, deserve, and should have. Furthermore, the Second Amendment mentions the right to “keep and bear” firearms. Modern dictionaries help define these words and give more clarity despite there having been minimal to no change in the definition over the years, but they define “keep” the ability to have something in control and in one’s possession while “bear” refers to carrying or wearing, and in terms of this amendment, the “possession” of arms. As a whole, the second half of the Second Amendment protects the right to have a firearm, and carry it if needed for self-defense.



### **B. Supreme Court interpretation of “free state” and “militia”:**

Literal text of documents such as the Constitution are highly useful in the interpretation of words written hundreds of years ago by America’s founding fathers. Part of the confusion on the Second Amendment is derived from the first half of it where it mentions “regulated militia” and “security of a free State.” *D.C v. Heller* acted as the Supreme Court Case that finally gave insight on the interpretation of these words. The court rulings by Justice Scalia declared that a “militia” is not restricted to just members in the military. At the drafting of the Bill of Rights, people who were eligible for serving in the military were mostly able-bodied men and when the colonists faced their abuse and took up their guns to retaliate for freedom, nuances such as them having to be men in the military weren’t important. Any person in need of protection or self-defense is guaranteed to be able to have and carry a gun. Moreover, “free state” in human geography and political terms refers to the nation as a whole, in this case, the security of America. However, it is much more than that. When the colonists took their chances and threw up an entire Revolutionary War, it was because the grievances they suffered were too much and the wellbeing and safety of their family, friends, community, and society were at risk. Taking up what the framers must have meant by the term “free state,” it can be concluded that the right to bear arms isn’t restricted to issues when the entire nation is at risk.

**II. The act of publicly carrying arms became constitutionalized in many states during the historical era.**

**C. The Massachusetts Declaration of Rights established the right to bear arms during the revolutionary era.**

Under Article XVII, The Massachusetts Declaration of Rights states that the people have the “right to bear and keep arms for the common defense” as it is essential to preserve the rights of every individual, including life, liberty, and the pursuit of happiness. By passing this law, the United States Armory and Arsenal at Springfield, Massachusetts, was able to manufacture and distribute firearms during the revolutionary time periods, leading to better protection for protestors at the time.

**D. New York’s ratification of the Constitution supports the rights to bear arms in the modern era.**

Under Articles II and IV, The New York Civil Rights law establishes that “ [a] well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms cannot be infringed”.

Because of this regulation, there are past instances of the National Rifle Association, a New York association, supporting the right to bear arms. More specifically, the National Rifle Association worked with the federal government to support the ownership of state-level permits for concealed weapons when handguns became a necessary factor in the right to bear arms. Therefore, it is reasonable that the New York state law emphasized the need to regulate firearms in order to protect the safety of the public. The framers of the constitutions promoted public safety a reasonable effort to regulate the usage of firearms. As proved by past historical documents, the court must allow the regulation and ownership of firearms for the safety of the public.

### **III. Examples of modern court cases supporting the right to bear arms.**

#### ***Wrenn vs. District Of Columbia***

The District of Columbia allowed citizens to carry firearms for legal recreational purposes within their homes and businesses. To receive a license, owners must provide a special need for protection with the evidence of specific threats that occurred ab initio. With this regulation set forth, the court established that the Second Amendment protected a citizen's right to bear arms for the purpose of self-defense. In addition to that, the court ruled in favor of the second amendment by permitting individuals, without special needs, to carry a license, even in highly populated areas.

#### ***Peruta vs. County of San Diego***

Under California law, individuals need to provide a good cause for the right to carry a license. The *Peruta vs. County of San Diego* case establishes that Peruta applied for a license to bear firearms. The district court rejected his application in that the county's policies of needing a special cause were not followed. Hence, the district

ruled in opposition to Peruta, claiming that the county's policies did not violate the Second Amendment. However, the Second Amendment defines that "states permit *some form* of carry for self-defense outside the home", meaning that owners do not require a specific cause for carrying a license, with exception to the need for self-defense. As a result, a three-judge panel opposed the district's decision and supported the evidence claiming that San Diego's policies violated the Second Amendment.

### ***United States v. Miller***

Under the National Firearms Act of 1934, taxes were imposed on the transfer and people involved in the importing/exporting of firearms and transportation of them were meant to be restricted. The general facts of the case *United States v. Miller*, are Jack Miller and Frank Layton being charged by Arkansas federal district court for violating the National Firearms Act of 1934 because they engaged in interstate commerce with a sawed off- double barrel 12-gauge shotgun. The district court agreed with Miller and Layton's argument of the NFA violating their Second Amendment as they believed Miller and Layton's actions were protected under Congress' interstate commerce power as well as the Second Amendment. When brought to the Supreme Court; however, it was a unanimous decision, written by Justice McReynolds, that the Second Amendment did not protect the possession of any firearm, giving the public at least some definition and restraint to the "arms" part of the Second Amendment.

***District of Columbia v. Heller***

Under the District of Columbia Code, it was illegal to carry unregistered firearms, and any registered firearms were meant to be kept unloaded or bound so they are nonfunctional unless in certain locations. D.C police officer, Dick Heller, was allowed to carry a handgun during duty, but when he applied for a 1 year license to keep a handgun home, he was denied. He argued for an injunction against certain parts of the Codes that violated his Second Amendment rights. The district court dismissed it and the U.S Court of Appeals for the District of Columbia reversed it, stating that the purpose of the Second Amendment was for self-defense. The Supreme court agreed with the Court of Appeals stating the term “militia” isn’t reserved to just people part of the military, and that the entire meaning the Second Amendment should be read in is saying it’s for protection.

***McDonald v. City of Chicago***

After the Supreme Court ruling in *District of Columbia v. Heller*, suits were filed against Chicago and plaintiffs argued that the protections and rights the Second Amendment guaranteed should be applicable to the states too. The district court dismissed it and the Court of Appeals for the Seventh Circuit accepted the appeal. Justice Alito gave the majority opinion on *McDonald v. City of Chicago*, incorporating the Second Amendment through the incorporation doctrine of the 14th

amendment, specifically the Due Process Clause, as a fundamental right even to the states.

***Caetano v. Massachusetts***

Convicted for possessing a stun gun, Jamie Caetano appealed and argued that her possession of the gun in public was for protection, mainly from her abusive ex. In a per curiam decision, the Supreme Court ruled in favor of Caetano and stated that while the framers may not have had stun guns in mind while writing the amendment, the Second Amendment does protect an individual carrying a firearm because of the utmost value of self-defense both *D.C v. Heller* and *McDonald v. City of Chicago* set as precedents.

***Moore vs. Madigan***

Under Illinois law, individuals are prohibited from carrying firearms outside the home, unless provided a greater justification for one's right to bear arms. Plaintiff Michael Moore filed a lawsuit, claiming that Illinois law violated the Second Amendment. The district courts dismissed the case for the invalid claim stated. As a result, the plaintiff sought an appeal from the higher court. The district court's decision was reversed as the appellate court claims that the right to bear arms implies the right to carry a gun outside the owner's home. Illinois failed to justify the reasons for confining the right to be

armed, resulting in a ruling that Illinois law violated the Second Amendment.

***Bliss vs. Commonwealth***

In *Bliss*, the defendant was charged for the violation of the Kentucky statute through the act of carrying a concealed weapon. Under the Kentucky constitution, “the right of the citizens to bear arms in defense of themselves and the State, shall not be questioned. The right is defined with no limits of carrying handguns. The *Bliss* court proves that the State of Kentucky restricts the right to bear a concealed gun, resulting in a violation of the Second Amendment.

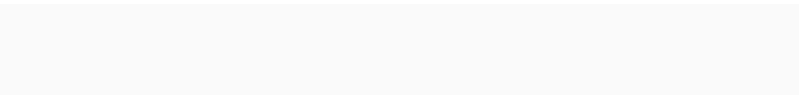
***Nunn vs. Georgia***

The State of Georgia passed a law, confining the right to bear specific types of guns, including pistols. By carrying a pistol, it was assumed that Nunn violated the law. The legislature only prohibits the concealed carry of weapons while the open carry of weapons is not prohibited by the legislature. Nunn appealed the ruling, claiming that there is no proof indicating that Nunn carried a concealed weapon. As a result, the conviction became overruled as it violates Nunn’s right to bear arms, under the Second Amendment.

***Andrews vs. State***



Under the Tennessee State Constitution, Article 1, Section 26, claims that the citizens of Tennessee have a “ right to bear arms for their common defense; but the legislature shall have power, by law, to regulate the wearing of arms with a view to prevent crime.” In *Andrews*, the defendant was charged with the crime of possessing a revolver. However, bearing arms for common defense is a political right that is not a violation of the law. In addition, the court concluded that military type weapons are permitted without specific connection to militia. It was ruled that citizens have the right to bear arms, subject to legislative regulation only for the purpose of preventing crimes.



## CONCLUSION

The Second Amendment's text protects the right to bear arms as history and common law confirms this meaning. Therefore, New York's denial of the petitioners' application for a concealed-carry license for self-defense violated the Second Amendment.

Respectfully submitted,

**Shreya Venkatachalam**

*COUNSEL OF RECORD*

Lebanon Trail High School  
5151 Ohio Drive  
Frisco, TX  
75035

SHREYA ENJETI

Lebanon Trail High  
School  
5151 Ohio Drive  
Frisco, TX  
75035

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