

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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December 15, 2021

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

When Petitioners Robert Nash and Brandon Koch, two citizens residing in New York felt as though they “needed” to carry guns as a result to protect themselves, and attempted to apply for a conceal carry license, their requests to carry were ultimately denied because their reasons did not meet with the requirements in accordance with New York’s “Proper Cause Law”. The New York law essentially states that any person who feels the need to carry a concealed handgun, and desires a license to carry said handgun, is required to show a proper cause in order to obtain the license. The District of Columbia v Heller established that This law exceeds a person's desire to simply want to carry a gun for their own protection, and requires the person to reveal a special need to defend themselves. Robert and Brandon’s desire to conceal carry was precisely what the proper cause law protects against.

The law's creation essentially stands in the place of the protection of all people, and communities as a whole, rather than just for the protection of one person. For this reason, it is abundantly clear that the New York law and its policies are inherently constitutional. The creation of this law does not hinder, and does not infringe upon the petitioner's freedom. This law is constitutional, and does not threaten the lives or properties of the petitioners. It clearly upholds the limitations set in place upon the 2nd amendment, as the right to keep and bear arms is not an unlimited right. The constitution does not

support the right to conceal carry, so the law should be upheld.

ARGUMENT

I. Part I The Second Amendment protects the individual right to keep and bear arms, but it is also one that is heavily limited.

A. *The District of Columbia v. Heller* Supports the idea that the right to keep and bear arms is not a right to be used haphazardly, and the limits upon the Amendment are clear and longstanding.

Throughout *Heller*, limitations regarding who can carry, when they can carry, and why they are carrying a firearm in the first place are evidently implied.

The case clearly states:

“Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. [citation omitted] For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the

Second Amendment or state analogues. [citation omitted] Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms”

As revealed when it is stated in the case that: “Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms”

Here, the Second Amendment and its limits are clear. These limits apply to the person’s well-being and mental state as well as sensitive spaces and are rightfully enacted to ensure public safety. Despite there only being three limitations mentioned in this example, it can be implied according to the facts of the case of Heller that concealed carrying is included in this. The petitioner’s argument is not supported by the constitution, as in this case public safety is being threatened.

II. The Second Amendment's protections only apply to firearms within the home.

B. In Heller, the primary argument of the petitioners refers to the Second Amendment's protection to conceal carry, however the right to conceal carry is not a protected right.

The Heller case reveals that all citizens are entitled to their individual right to use their arms for "traditionally lawful purposes, such as self-defense within the home." This individual right and law does not expand to using arms outside of the home, as is not one that is unlimited. The Heller case as a whole supports the respondent's argument that conceal carry is not upheld or protected, and therefore the "right" to conceal carry is not constitutional. It is stated that, "At the "core" of the Second Amendment is the right of "law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 635, 128 S.Ct. 2783. Here, a clear support for the use of arms to protect oneself within the home is supported by Heller. Hearth and home regard ones right to own a gun within the safety of their own home, but not outside of the home.

III. In order for public safety to be protected, gun laws and regulations such as the New York Law must be enacted.

A. Not only is the New York law constitutional, it is a vital and necessary law that ensures the safety of people as a whole.

The notion that protects the safety of the public and its people is the core of the New York Law's purpose. The argument that the proper cause law is unconstitutional cannot be upheld, as it is undoubtedly necessary in order to protect the lives of people around. Within Heller is a clear statement making it exceedingly clear how and why the New York proper cause law was enacted, and why it is necessary. case states: "New York concealed-carry licenses "shall be issued" where applicants meet general eligibility requirements and have certain kinds of employment, including state and local judges, correctional facility employees, and bank messengers. Penal Law § 400.00(2)(c)-(e). For all other qualified applicants, concealed-carry licenses "shall be issued" if the applicant shows "proper cause." Id. § 400.00(2)(f). Additionally, the use of the proper cause requirement supports the longstanding and constitutional bans on concealed carrying. Not only this, but it protects the use of firearms in public and sensitive spaces.

IV. New York's proper cause law is constitutional, and should therefore be upheld.

The Heller case reveals that the New York law has not burdened the petitioners constitutional right. Because the petitioners are not prohibited from owning firearms within their own home, the New York Law remains constitutional. Within this, concealed carrying is included.

New York's proper cause law is directly in motion with the Second Amendment and concealed carrying, which has been continuously proven by the respondents to be unsupported by the constitution.

CONCLUSION

Respondents argue that it has been made abundantly clear that the New York law is constitutional, and the petitioner's rights have not been violated or infringed upon in this case. Therefore, The respondents plead that New York Law should be upheld.

Respectfully submitted,

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