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

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QUESTIONS PRESENTED

May it please the court, my name is daniel b. and this is my co counselor selma a and we are arguing for the respondents

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

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FACTS OF THE CASE

In New York, a person seeking to conceal carry a firearm must acquire a license from the state. In order to get the license, one must show a special need for self-protection and the state will determine whether or not to grant the person that license. Robert Nash and Brandon Koch, two law abiding citizens with no criminal history, applied for the license in the state of New York for self-defense purposes and were denied because they did not demonstrate a special need. The two sued Kevin P. Bruen and Justice Richard Mcnally with the help of the New York State Rifle and Pistol Association, stating that there was no "proper cause" to deny them the licenses.

SUMMARY OF ARGUMENT

Due to the court's previous decisions, the "*N.Y. Penal Law §§ 265.01–04, 265.20(a)(3); N.Y Penal Law § 400.00*" violates an individual's right to bear arms for self defense. As established by *District of Columbia v Heller,* 554 U.S. 570 (2008), the second amendment establishes two spheres of influence. The first is the overseeing of a well regulated militia established by *United States v. Miller*, et al., 307 U.S. 174 (1939), which establishes militia and interstate commerce. The other sphere is the use of firearms to protect oneself, which establishes that "the Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home"(District of Columbia v. Heller, 554 U.S. 570 (2008)). The court ruled that the handgun ban was unconstitutional, as

the ban severely limited the capacity in which a law-abiding citizen could protect themselves in their own home. This right was expanded due to the interpretation that "bearing arms" included carrying firearms outside the home. This ties back to one of the core values of the second amendment, self defense, and shows that the need for intense scrutiny while viewing the law is necessary. The court must move to eliminate this law and rule it unconstitutional.

ARGUMENT

I. Origins of the Second Amendment

A. The original definition of the word "militia" as used in the second amendment.

As determined in "*District of Columbia v. Heller (2008)*", one must look to the historical understanding of the Second

Amendment in order to determine whether or not the Second Amendment has been violated by a particular law. The Constitution 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," (U.S. Const. amend. II). In Federalist No. 46, written by James Madison in 1788, the term militia is described as, "*amounting to near half a million of citizens with arms in their hands, officered by men chosen from among themselves . . . and conducted by governments possessing their affections and confidence.*" This definition of the word was widely understood in its original context. Thomas Jefferson, decades later confirms this explanation of the term in 1811 in a letter to Destutt de Tracy stating that, "[T]he militia of the State, that is to say, of every man in it able to bear arms." This is how the term was commonly used in the founders' lifetimes and is how it is meant to be interpreted in the Constitution. In *District of*

Columbia v. Heller, 554 U.S. 570 (2008), the supreme court agreed that historically, militia was a term used to describe the citizens of the United States who utilized their right to bear arms. To ignore this definition of the word is to ignore the meaning of the Second Amendment as it was intended to be applied to the citizens of the United States under the Constitution. Furthermore, to use the modern interpretation of the word "militia" one must limit the protections of the Second Amendment to only those a part of an organized military force, directly contradicting the original reasoning behind this section of the constitution; the protection of the people.

B. The founders' intent behind the second amendment.

The Second Amendment was designed to safeguard the rights of the people to defend themselves and this intention dates back to before the conception of the United

States. It is essential to reflect upon common law ideologies in order to understand where the founding fathers established their thoughts on government and law. Many philosophers that the founders drew inspiration from for the writing of the Constitution believed that the right to bear arms for self defense was essential to the lives of free men. Cesare Beccaria wrote in *An Essay on Crimes and Punishment* (1764) that laws that forbid the right to bear arms ". . . serve rather to encourage than to prevent homicides, for an unarmed man may be attacked with greater confidence than an armed man." Beccaria makes the point that free men must be able to arm themselves for their own safety from crimes and violence. One conceal carrying a weapon in public is a clear example of where this thought would be applied today. Another important influence on the American government was William Blackstone, an English jurist. *Blackstone's Commentaries* provided the same beliefs as Cesare Beccaria

from an English perspective. He stated that the right to bear arms was "one of the fundamental rights of Englishmen." Blackstone's Commentaries were clear in their support of the right to keep and bear arms. One of the essential points made on the subject was that "…[when] the right of the people to keep and bear arms is, under any color or pretext whatsoever, prohibited, liberty, if not already annihilated, is on the brink of destruction." America was established on the idea of liberty and freedom for all men in the country as is stated throughout the Bill of Rights and the Constitution. *N.Y. Penal Law §§ 265.01–04, 265.20(a)(3); N.Y Penal Law § 400.00* is a prime example of governments attempting to limit the rights of the people when it comes to bearing arms. Founding fathers such as Alexander Hamilton were in support of this right and he states in Federalist No. 29 that the right to bear arms was "[T]he most natural defense of a free country," and that it would "...[appear] to [him] the only substitute that can

be devised for a standing army, and the best possible security against it, if it should exist." Not only was the second amendment designed to allow citizens to keep themselves safe from danger it was also designed to allow them to defend themselves from governmental tyranny. All of these beliefs were carried on into the creation of the Constitution and thus the Second Amendment. The right to bear arms in order to protect oneself is a core value of the amendment and these origins cannot be overlooked.

II. Interpretation of Scrutiny

A. Establishing What Scrutiny is

Before we establish what level of scrutiny must be applied in "*New York State Rifle & Pistol Association INC. v. Bruen*", we must review what scrutiny is. The court has always upheld the belief that scrutiny shall be applied on differing levels based upon the interpretation of the relationship between the

law being challenged and the Constitution. Typically, intense scrutiny is applied when a law in place interferes with a core right of an amendment. In order for this law to be ruled constitutional, it must be the “least restrictive” way to enforce the law. One of the earlier rulings that applied this scrutiny was “*United States v. Miller, et al., 307 U.S. 174 (1939)*”, which upheld a law designed to specifically target the regulation of sawed-off shotguns through interstate commerce. Intense scrutiny was used since part of the ruling mentioned how a sawed-off shotgun is not utilized by a militia, which is a core value, and the fact that the law was the least restrictive way to enforce the law. Another level of scrutiny that is applied at a lesser level is intermediate scrutiny, which is defined as “the government need not establish a close fit between the statute's means and its end, but it must at least

establish a *reasonable* fit" (*United States v. Chester*, 628 F.3d, 673 (4th Cir. 2010)). This allows for a statute that is partially related to a core value to be scrutinized, but at a lesser level to where the restrictions set in place are less in value than those enforced by intense scrutiny. The final level of scrutiny is rational-basis review, which is used to prove if a law is related to a government issue and is only used if fundamental rights are not being violated. An example of this is *Gallinger v. Bacerra, 898 F.3d 1012 (9th Cir. 2018)*, which upheld a law that allowed peace officers to carry firearms on school campuses because it was relevant to a government issue and didn't violate a fundamental right such as the second amendment.

B. Intense Scrutiny must be applied to this case

With reviewing the different standards for which each level of scrutiny is applied, it is safe to assume that the case of "*New York State Rifle & Pistol Association INC. v. Bruen*" should have intense scrutiny applied to it. This is due to two different subjects, the question at hand and precedent. To address the first issue, the standards of intense scrutiny must be reviewed and applied to the case. It is established that this level of scrutiny is deemed appropriate if the law being questioned violates a core right of an amendment. In this case involving the second amendment, some core values would include being involved with a militia and carrying for self defense in the home or outside of it. The second part of intense scrutiny is that the law in question has to be the least restrictive measure in place. With this establishment out of the way, the next step is to

determine whether a case of similar nature has had intense scrutiny applied to it, and its outcome. Two of the most glaring cases that embody this ideal are *District of Columbia v. Heller,* 554 U.S. 570 (2008), and *United States v. Miller, et al.,* 307 U.S. 174 (1939). Both cases offer differing rulings when it comes to intense scrutiny, but allow for important insights to be determined after viewing both of them. In the case of *District of Columbia v. Heller*, 554 U.S. 570 (2008), intense scrutiny was used to determine whether a law in the District of Columbia involving handguns was constitutional. The law was written as a total ban on handguns, and the only way to legally own one was to receive a one year license from a police chief. On top of this, the handgun had to be unloaded, disassembled and locked up in a safe. The court ruled that the law was unconstitutional because

it violated a core right of the second amendment, the right to self-defense. It also went against the least restrictive measure, as it seemed that the law restricted a vast majority of citizens from receiving a handgun license. Another case, *United States v. Miller*, et. al., 307 U.S. 174 (1939), upheld that the law banning sawed-off shotguns was constitutional. This is due to two primary reasons, being the least restrictive and pertaining to a militia. The law at hand bans sawed-off shotguns, a modified firearm that as determined by the court is not regularly regulated by a militia. Because of this, the law doesn't infringe a core value of an amendment since the firearm in question isn't related to a militia. The other reason this law was ruled is because it is the least restrictive way to enforce the law. Since a sawed-off shotgun is modified, it isn't sold to the regular public and is instead modified by

the owner or by another distributed after the initial purchasing. Because of this, a vast majority of firearm owners will never own such a weapon, and since the original weapon wasn't produced in this manner the law is the least restrictive way around this issue.

While each case ruled differently by using intense scrutiny, the same basic principle applies. If a core right of an amendment is violated, such as the right to keep arms inside and outside the home, then the law in question is unconstitutional. The other is if the law is the least restrictive, which in this case is the most restrictive since a vast majority of citizens are unable to receive a handgun license.

III. Constitutional Power

A. This case violated the fourteenth amendment

The Constitution of the United States is the Supreme Law of the land, making the power of the Second

Amendment triumph over the power of the New York penal law that is being questioned in this case. According to McDonald v. Chicago, 561 U.S. 742 (2010), the right to bear arms specifically for self defense under the second amendment is relevant to the states because of the fourteenth amendment. The first section of the fourteenth amendment makes clear that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States…" (U.s. Const. amend. one of these privileges being the second amendment's right to bear arms. The amendment also describes citizens' rights to due process, which was violated in this case because states may not deny a person any legal right that a citizen of the country possesses. *N.Y. Penal Law §§ 265.01–04, 265.20(a)(3); N.Y Penal Law § 400.00* infringes upon two constitutional amendments and to

keep this law is to allow states to overrule the fundamental liberties of the people of America as stated in the Constitution.

IV. Specifics of the second amendment

A. Future Technologies must be included in the interpretation of the second amendment as was intended by the founders

One of many arguments that the Respondents will argue is that the need for a handgun was never envisioned by the founding fathers, and therefore a handgun shouldn't be allowed to be distributed. This idea couldn't be farther from the truth, as ruled by *Caetano v. Massachusetts,* 136 S.Ct. 1027 (2016) (per curiam), which states that stun guns cannot be banned under the second amendment. This is due the court finding that even though the technology wasn't around during the time of writing the Constitution, that the founders left room for "bearable" arms created in the future. With this in

mind, we can relate the technology and innovation to handguns since it is considered a "bearable" arm. With this in mind, it is easily assertable that handguns are covered under the second amendment even if they were not around during the creation of the Constitution.

B. The Issue of to "Bear" and "Keep" arms

The wording of the second amendment is kept very brief and non-descriptive which is what allows for it to remain up to an individual's interpretation. The interpretation of certain words such as "bear" and "keep" are extremely close in definition, but are extremely debated over. According to Webster's dictionary, bear means to "to be equipped or furnished with (something)" while keep means to "to retain in one's possession or power". While the wording may be different, they both boil down to being a two step procedure in having an object in one's possession. To

keep arms means to be in possession of such a weapon, and to bear it means to use it if a situation requires it. This idea is asserted by *District of Columbia v. Heller*, 554 U.S. 570 (2008), which ruled that possessing a firearm outside is necessary since "the need to defend oneself may suddenly arise in a host of locations outside the home"(*District of Columbia v. Heller*). This in combination with the word "keep" and "bear" used constantly in the same sentence provokes the thought that these two words compliment each other in a two part definition of what it means to own a firearm.

CONCLUSION

"*N.Y. Penal Law §§ 265.01–04, 265.20(a)(3); N.Y Penal Law § 400.00*" violates both the second and fourteenth

amendments. The state of New York infringed upon the guaranteed rights of Brandon Koch and Robert Nash when they denied them licenses to conceal carry a handgun. As stated in the second amendment of the constitution of the United 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,” (U.S. Const. amend. II) yet it was in this case, dishonoring the original meaning of the second amendment and the beliefs of the founders. The other part of the second amendment is the right to defend oneself inside and outside the home. This right allows an individual to “keep” and “bear” arms, which is a two pronged definition to allow someone to possess and use a firearm. The right to defend oneself with technology that the founders didn’t imagine is also protected due to *Caetano v. Massachusetts,* 136 S.Ct. 1027 (2016) (per curiam), which cited that a “stun gun” and any other “bearable” arm that is reasonable is

allowed under the constitution. Another aspect that must be addressed is the level of scrutiny that must be applied, which after reviewing the different standards and requirements is intense scrutiny. This establishes that a law must not violate a core amendment, and be the least restrictive way to enforce it. With this in mind, "*N.Y. Penal Law §§ 265.01–04, 265.20(a)(3); N.Y Penal Law § 400.00*" is unconstitutional because it violates the second amendment right to "keep" and "bear" arms inside and outside the home, the possession of firearms to a militia according to historical precedent, and from intense scrutiny. To conclude, the supreme court must determine that *N.Y. Penal Law §§ 265.01–04, 265.20(a)(3); N.Y Penal Law § 400.00* is unconstitutional because of the violations of both the second and fourteenth amendments and previous decisions made by the court.

Respectfully submitted,

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