No. 20-843

IN THE

Supreme Court of the United States

New York State Rifle & Pistol Association, Inc., et al.
Petitioner,

v.

Kevin P. Bruen, in His Official Capacity as Superintendent of New York State Police, et al.
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF FOR PETITIONER

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QUESTIONS PRESENTED

1. Whether the Second Amendment allows the government to prohibit a law-abiding person from carrying handguns outside the home for self-defense.

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Historical Sources

-Articles of Confederation (1777)

-Massachusetts Declaration of Rights (1780)

-Federalist No. 46 – Madison (1788)

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

- English Bill of Rights

STATEMENT OF CASE

A New Yorker, Robert Nash, sought after and applied for a concealed carry license for his already legally owned firearm. His application was filed in September 2014, with the recent uptick in robberies in his neighborhood being a key determining factor. Not only had Nash not had any criminal record, but he had also recently completed a firearms training course. Despite this, his application was denied, according to a “lack of proper reasoning." This reasoning, according to the authorities, is that he failed to meet a standard of special need.

Another New Yorker, Brandon Koch, faced a similar struggle with law enforcement. He applied for a concealed carry license in September 2014. Similarly, Koch also had no previous criminal record, felt a need for self-defense outside the home, and had outside firearm training and experience. Coincidentally, the same way that Nash was denied, Koch had too and even more strangely, it was due to the same reason, not demonstrating a special need. Ultimately, not demonstrating a proper cause which according to NY Penal Law is required when applying for a concealed carry license.

The petitioners in this case Nash and Koch sued the superintendent of New York State policy, with the New York State Rifle and Pistol Association backing this cause as a gun rights advocacy group. Initially, the petitioner filed their lawsuit in the United States District Court for the Northern District of New York, dismissing their case. They argued that the petitioner still did not satisfy the proper cause requirement. Next, the petitioners appealed to the Supreme Court, which then granted certiorari on August 26th, 2021.

STATEMENT OF ARGUMENT

Addressing the first part of our argument, as held in Heller the constitutional right to bear arms is held through the specific textual and historical context of the Amendment. Through many framing era sources such as the Federalists papers, it can clearly be shown the framers' original intent and purpose of the law. As specified in Heller, the operative and prefatory clauses of the amendment announces and declares the purpose of the Amendment. It was also held that the right to bear arms existed prior to the codification of the Second Amendment, meaning that the scope in which the Second Amendment cannot only come through a textual analysis but also a historical one which we will address throughout our argument. If we look towards the historical sources the facts lie on the side of the petitioner.

Secondly, the requirement to present a special difference from others is overly restrictive as if many people had the problem of self-defense because their need for self-defense is not substantially different from others they would not be given the license. However, this goes directly against the original intents and purposes of the Second amendment. The law is not narrowly tailored enough to meet the strict scrutiny standard nor is it tailored in a way to not unnecessarily burden someone's rights, a requirement to meet the intermediate scrutiny standard most courts have looked to when deciding a case of a gun-rights restriction.

ARGUMENT

I. To discuss our first point, carrying a firearm outside the home is a fundamental constitutional, textually, and otherwise clarified right, as was upheld in District of Columbia v. Heller. The textual evidence of the constitution allows for guns to be held outside of the home for self-defense. As held in McDonald v. Chicago, the decision in Heller has been incorporated, and thus applies to the states. The Massachusetts Declaration of Rights (1780) said "The people have a right to keep and to bear arms for the common defense. And as in the time of peace armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature." The right to keep and bear arms for the purpose of self-defense is also guaranteed in the Constitution. And, because armies are detrimental to liberty during those times of peace, it wasn't maintained without the permission of the legislature; and military power should always be held in strict subjection to and directed by the civil authority. Another important point made in Heller is the individual rights view that opposes the collective rights view that was so commonly used throughout the lower courts. Under this people are allowed different restrictions on their rights dependent on their own circumstances. In this case, it is clear that the petitioners do meet the background criteria to be eligible for a concealed carry license. As said in the Articles of Confederation (1777):". . . but every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition, and camp equipage." The principal reason for the amendment was to eliminate the need for a standing army in the United States. The Second Amendment's single most significant purpose was to prevent the United States from forming a professional army. Citizens' rights to "bear arms," or own weapons like guns, are protected by this amendment. Even to look back to the Common Law era, in this case, the English Bill of Rights lays out the rights of the English citizens in regard to their government. Stating, "[T]he subjects which are Protestants may have arms for their defense suitable to their conditions and as allowed by law." It protects the individual's civil rights and liberties. More importantly, their right to have arms and use them in their defense. With all these historical contexts, just as the tests in Heller, we must ask how we can successfully contextualize this with our current developing society.

II. The legislature does have a substantial interest but the law is not narrowly tailored to meet that interest thus not meeting the strict scrutiny standard. The state could place the same restrictions on sensitive place laws like had been done historically. While guns are inherently dangerous, the law in place is not narrowly tailored to protect the public at large. They do not meet strict scrutiny standards to restrict a

fundamental constitutional right. Carrying open can do more harm to the public good by instilling fear in the public. If they wanted to more narrowly tailor this law they could put a more definite standard in place for a special or unique need. The broadness of this provision prevents many other New Yorkers from ever being able to conceal carry a firearm even for their protection. This court has already previously made clear that in Heller, it was exhaustively analyzed that the states did previously with the implementation of the sensitive places doctrine and restrict certain people from carrying firearms in certain places for the substantial government purpose of limiting public safety implications. The challenge placed for ordinary law-abiding citizens to successfully acquire a concealed carry license is far too constrictive to even be seen as a narrowly tailored or the least restrictive means. There is no time in history where every public place was considered a sensitive place, only places where having a firearm would do more harm than good for yourself and the public, like polling places, schools, government buildings, etc. Just as Nunn vs Georgia states, “But admitting all this, does it follow that because the people refused to delegate to the general government the power to take from them the right to keep and bear arms, that they designed to rest it in the State governments? Is this a right reserved to the States or to themselves? Is it not an unalienable right, which lies at the bottom of every free government? We do not believe that, because the people withheld this arbitrary power of disfranchisement from Congress, they ever intended to confer it on the local legislatures. This right is too dear to be confided to a republican legislature. “The court in Heller also agrees with this court stating that “...perfectly captured the way in which the operative clause of the Second amendment furthered the purpose announced in the prefatory clause. ..." The court in Caetano v. Massachusetts specifically said that “‘[T]he Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.’ It is hard to imagine language-speaking more directly to the point.”. Under this if a person can bring a stun gun out of their home why should the states be able to infringe on another weapon if they both meet the definition of arms. In a letter written by Gen. William H. Sumner to John Adams (May 3, 1823) it is said that “An enemy would be always unwilling to invade such a territory; but notwithstanding, if its population, like that of Europe, chiefly consisted of an unarmed peasantry, and its whole reliance was on its regular army, one pitched battle would decide its fate. But a country of well-trained militia-men is not conquered when its army is beaten. . . . Here, every house is a castle, and every man is a soldier. Arms are in every hand, confidence in every mind, and courage in every heart. It depends upon its own will, and not upon the force of the enemy, whether such a country shall ever be conquered.” With this post-framing source, we can see that the power of Americans to defend themselves does not only rely on a militia. It lies in the hands of lay people, if states across the country continued restrictions similar to the ones posed by New York penal law the fundamental belief of framers that have since been analyzed would fail to be upheld.

CONCLUSION

In conclusion, though Heller does not fully examine and explain the extent to which the Second Amendment protects, we can still look at previous reasoning this court has used in order to decide whether or not the state of New York can go this far to infringe on the constitutional rights of their citizens. Post-Heller the federal courts have kept consistent with this rule by first asking if the restriction comes within the protections of the Second Amendment which we've argued that it does. Secondly, it must answer if the correct level of scrutiny was applied. In this case, we argued that no matter the level of scrutiny that should apply, it is still important, mainly due to the fact that it restricts a core sentiment of the Second Amendment which is to bear arms not only to keep them. As we've stated, we do not perpetuate Heller to fully answer the question presented in this case because if it could we wouldn't be arguing in court today. But the reasoning of the previous courts has no faults and similarly aligns itself with the original values held by the framers as well as their intents for the Second Amendment.

PRAYER

The framers and later courts have clearly shown which side takes precedent in cases of constitutional rights to duly keep and bear arms. It is for the reasons previously stated we pray that this court takes notice of the blatant diminishment of the original purpose of the Second Amendment through the continued allowance of this New York statute and rules in favor of the petitioner.