

The Supreme Court of the United States

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

v.

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

Respondent

Brief of the Respondent

QUESTION PRESENTED

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

Amber Ware
Daniella Nat-Davies

TABLE OF CONTENTS

Question Presented.....1
Table of
Authorities.....2
Statement of the Argument.....3
Argument.....4-8
Conclusion and Prayer.....8-9

TABLE OF AUTHORITIES

Cases

- McDonald v. City of Chicago*, 561 U.S. 742 (2010)
- United States v. Miller*, et al., 307 U.S. 174 (1939)
- Anderson v. Mulroy*, 186 A.D.2d. (4th Dep’t 1992)
- Babernitz v. Police Dep’t*, 65 A.D.2d 320 (1st Dep’t 1978)

Historical Sources

- English Bill of Rights (1689)
- Federalist No. 78 – Hamilton (1788)
- State v. Smith, 11 La. Ann. 633, 634 (1856)].
- New York’s Ratification of Constitution with Proposed Amendments (1788)].

Other Authorities

- New York Penal Law
- New York State Constitution
- U.S. Constitution

Statement of argument

We argue that the Second Amendment does allow the government to prohibit a law-abiding person from carrying handguns outside the home for self-defense because there needs to be probable and reasonable cause for carrying and bearing arms. Today we will work to further support the law put forth by New York stating that there must be a “special need for self-protection” through the means of carrying and bearing arms. In order to support our argument, we will be referencing the precedent of *McDonald v. City of Chicago*, *United States v. Miller*, *Anderson v. Mulroy*, and *Babernitz v. Police*. We are arguing that the second amendment makes the clear emphasis that “a well regulated Militia” has the right to bear and keep arms. This does not refer to the everyday citizen because militia refers to well-organized citizens with little military training. As the petitioner does not fit this criterion, the right does not extend. Our next point addresses strict scrutiny. We will argue that New York’s Penal Law section 400-409, specifying firearm law, was constitutional due to the compelling and substantial governmental interest of protecting its citizens.

Argument

- 1. The Court should dismiss the petitioner’s claim as moot because of the specific distinction in the clarification for the second amendment and who it extends to.**

In the United States constitution, the second amendment 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.” But with that being said the most important thing that needs to be addressed is what exactly the amendment means, the limits and circumstances that apply. The concealed carry laws for New York, N.Y. Penal Law §§ 265.01–04, 265.20(a)(3); N.Y Penal Law § 400.00 and N.Y. Penal Law § 400.00(2)(f), explains that in order to carry guns, a citizen must have probable cause or special need for self-protection.

1. Many previous cases have made a distinction and a clarification as to what the Second Amendment means and for who it extends to, it should be based on these previous rulings, that the court makes their decision. For example the case of *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Supreme Court acknowledged in a previous case *Heller* that an individual's right to bear arms has its limits. It doesn't necessarily give someone the right to keep and carry any weapon they choose for any purpose. It was easy for the majority to rationalize an individual owning a handgun for self-defense, but they conceded that certain individuals should not own firearms. States can also still limit where guns can be carried. Bans on weapons in schools and government buildings, for example, are allowed. So in terms of this case it is completely legal for the state of New York to limit the petitioner from carrying a firearm anywhere but they're home. Especially since the Supreme Court case just mentioned explained and ruled that there are limits to where guns can be carried.

2. According to the English Bill of Rights, 1 W. & M., c. 2, 7, in 3 Eng. Stat. at Large 441 (1689). It states that “[T]he subjects which are Protestants may have arms for their defense suitable to their conditions and as allowed by law.” This particularly applies to this case because the petitioner claims that, They did have proper reasoning and cause to get a concealed carry license but if you really analyze the reason as to why the petitioner wanted a concealed carry license it just doesn't make sense in this context. The petitioner states that they wanted a concealed carry license because there had been a recent uptick in robberies in his neighborhood and that he wanted to be able to defend himself with a concealed carry license. But if you look closely into the petitioners' reasoning for getting a concealed carry license it just isn't logical. Why would you need to carry a gun out of your home if you're trying to defend yourself from home robberies, you don't need to carry a weapon anywhere other than your home, when you claim the only reason you need protection is because of home robberies.

2.) Historically, America has followed the same restrictions for the second amendment, directly relating to the fact that New York is well within its strict scrutiny rights to set policies related to concealed carry of firearms in public laws.

According to the strict scrutiny standard of judicial review based on the Equal Protection Clause of the 14th Amendment, governments may only pass legislation and certain laws to their compelling government interest. This was a policy created by the U.S. Supreme Court with the intent of protecting rights given by the U.S. Constitution. As a result, the government that wants to generate and apply the law or policy has the burden of proving the policy is constitutional. If this policy was ever presumed unconstitutional, the courts

would have the responsibility to prove and rule this law unconstitutional. We approach the court today to further attest that the gun laws of New York State Law of Penal Law are constitutional and align with strict scrutiny requirements. The concealed carry laws for New York, N.Y. Penal Law §§ 265.01–04, 265.20(a)(3); N.Y. Penal Law § 400.00 and N.Y. Penal Law § 400.00(2)(f), explains that in order to carry guns, a citizen must have probable cause or special need for self-protection. In the case presented today, the citizen was denied this license due to the fact that they did not have a sufficient enough special need for protection. As they were trying to protect themselves against robberies in their area, it does not directly correlate to a need to carry the weapon with them.

A. Historically, the government has verified that courts have the ability to set their own laws, thus attesting to the idea that New York’s concealed carry firearms laws are not an outlier.

The New York law that sets restrictions on carrying concealed firearms has been confirmed to be within its constitutional right from the set of laws determined in America’s history. This Court has previously made the establishment that public carry laws are significant in the pre-existing right of the second amendment. It is very important to acknowledge the longstanding history associated with gun laws and the idea that states can set their own policies on them. These laws were developed from historical periods that the Court identified as “pre-existing rights”. Dating back to medieval England times, the court used these ideals when constructing the 14th amendment, particularly the equal protection clause. [Heller, 554 U.S., McDonald, 561 U.S.] This can verify the fact that New York is not the first state

to create its own interpretation of the Constitution. In fact, they followed a well-developed and respected pattern in United States History.

- B. Historically, the government has confirmed the state's ability to infringe on concealed carry laws and, as a whole, the government has upheld restrictions on public carry laws.

Throughout the country's history, carrying concealed firearms in public space has always come with extra restrictions. There has not been a time in history where states were not given the ability to infringe upon laws and create their own stipulations surrounding gun laws. [State v. Smith, 11 La. Ann. 633, 634 (1856)].

Petitioners attest to disrupt laws and longstanding policies that result from time periods evolving from the founding era, to the reasonable-cause laws of the nineteenth century, to analogous good cause regimes in the twentieth century.

Dating back to the creation of the Constitution, Framers involved laws about the second amendment to protect their militia's right to defense. As a result, personal self-protection is a right given in the privacy of one's own property and shouldn't be extended to public spaces. The Court can attest that these are not new laws, yet longstanding. Throughout the country's history, public concealed firearm laws were created by state's to give their own restriction, and these laws have been long

ilstanding over since before the development of the Constitution. New York's firearm laws were not just created and restricted with Penal laws. However, they date back to the 18th century where they created their own policies to set restrictions on gun laws to protect Civil Power. These laws attest to the fact that

the people have the right to keep arms, but they cannot become a danger to society by taking defense into their own hands. [New York's Ratification of Constitution with Proposed Amendments (1788)]. Nonetheless, history has proven that the government has continuously taken measures to protect state's ability to set their own restrictions for concealed carrying firearm laws.

- C. New York has created these policies and laws with the intent of protecting its citizens, general population, while also allowing a citizen to protect themselves as long as they are well within their rights.

We approached the court today to attest to the fact that New York's concealed carry laws were constitutional. We also attest to the fact that they are aligned with strict scrutiny laws because they were developed with New York's compelling government interest to protect their citizens. Throughout history stipulations to protect the people have continuously been made for firearm laws, specifically concealed carry firearm laws. Petitioners approach the court to argue their Second Amendment right of self-defense has been infringed upon, yet their rights have not been violated. New York is well within its right to protect its citizens by creating restrictions that are supported by the common law of self-defense. An individual may appeal to the need to protect themselves only "when intermediate a certain and immediate suffering would be the consequence of waiting for the assistance of the law." 4 William Blackstone, Commentaries on the Laws of England 184 (1769). Common law contemplated the implications of this law in relation to an individual's location. Eventually it was ruled that not populated areas are more like homes, where people need self-defense if attacked. However,

places where individuals may get assistance to help, are not extended the same gracious protection. [People v. Tomlins, 213 N.Y. 240, 243 (1914) (quoting 1 Sir Matthew Hale, Pleas of the Crown 486 (1736))] Petitioners emphasize a time period where the need to protect themselves had higher importance because they did not have law enforcement to protect them. Self-defense has changed since that interpretation because there are easier means to find assistance when in trouble, such as calling your local law enforcement. This does not undermine the argument for self-defense, but there are stipulations to the territory in which you can take self-defense into your own hands. In New York, this right is restricted to your home. The state does not also have the responsibility of ensuring your right is protected, but they have to protect the lives of their entire population. As a result, a balance is needed in laws to protect everyone.

Conclusion

For the reasons explained, the Respondent respectfully asks the Court to dismiss the Petitioner's request and reinstate the district and appellate court's resolution. The second amendment extends to the Petitioner within certain boundaries. The contextualization and true definition of the word choice further attests to this claim. New York has been proven to be within its constraints of strict scrutiny to in place laws and policies directly relating to the Second Amendment. Not outlying and straying away from the history of concealed carry laws, but instead aligning with it in actuality.

Prayer

It is for the reasons previously stated, that we pray this court keeps the decision of the New York State Rifle & Pistol Association, recognizes that the Second Amendment does allow the government to prohibit a law-abiding person from carrying handguns outside the home for self-defense and rules in favor of the respondent.