

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

Brief of the Petitioner

QUESTION

Does the Second Amendment allow the government to prohibit a law-abiding person from
carrying handguns outside the home for self-defense?

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Caetano v. Massachusetts, 136 S.Ct. 1027 (2016)

Kachalsky v. County of Westchester,

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Statement of the Case

In New York, the law states that law-abiding individuals must request licenses to legally obtain guns and keep them in their households. The resident applying must convince a “licensing officer” for a concealed carry license. This is through displaying good moral character, including, but not exclusive to, the lack of a criminal or mental-illness record, and that “no good cause exists for the denial of the license” under N.Y. Penal Law § 400.00(1)(a)–(n). Furthermore, N.Y. Penal Law § 400.00(1)(a)–(n) institutes the additional requirement for law-abiding persons to display proper cause before obtaining a secondary concealed carry license (specific towards carrying concealed guns outside households). According to *Kachalsky v. County of Westchester*, to fit this requirement, applicants must exude reasoning that precedes needs distinguishable from that of the general community or of persons engaged in the same profession.

Robert Nash, a New York resident, applied for a concealed carry license due to the increasing violence in his neighborhood. He was law-abiding, had a good moral standing, and had a clean criminal record. Likewise, Brandon Koch, another law-abiding resident with good moral character, requested a concealed carry license because of self-defense and his “extensive firearm experience.” Both men, however, were denied their requests because they did not satisfy the proper cause requirement.

The two contended that this law was inappropriate as there was proper cause that validated their need to have concealed carry licenses. Initially, the United States District Court for the Northern District of New York dismissed the case because they lacked a distinguishing need. They appealed the decision to the Second Circuit, which agreed with this judgment. Then they went on to appeal to the Supreme Court.

Statement of Argument

We argue that the Second Amendment does not grant states the authority to take away a law-abiding citizen's constitutional right to have a license that allows the keeping and bearing of weapons. Today, the plaintiff will address two main points, the first stating that the government does not meet the strict scrutiny requirements to convert the right of gun ownership and that it does not satisfy the *McDonald v. City of Chicago*'s declaration that the Second Amendment is not a second class right. The 14th Amendment, which prohibits the government from making laws and policies that infringe on the rights, liberties, properties, and wellbeing of Americans, is trampled upon when New York imposes stringent restrictions on people's Second Amendment rights that have requirements that are almost impossible to attain. The next point we will address is the lack of concentration towards the second amendment—insinuating that the Second Amendment is a second-class right. This directly opposes the affirmations established by *McDonald v. City of Chicago*. The US Constitution elaborates that Americans have the natural right to keep and bear arms. However, New York pushes for its citizens to limit these rights and furthermore display excessive reliance on specific government officials. Though there needs to be a matter of trust between the government and its people, the primary foundation of this country was the strength of its courageous militia, who pursued their right to freedom and protection. Subsequently, today we have two law-abiding citizens who desire to safely bear arms (as said in the Constitution) due to apparent dangers in their communities, and due to having a strong understanding of weapons (similar to militia), rights defended in the Constitution that New York is trying to take away.

Argument

I. The government does not meet the strict scrutiny requirements to convert the right of gun ownership and carriage into a privilege that only very few can experience.

The Fourteenth Amendment is one of the most pivotal rights in American history. It states that “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” Although it originated to emancipate enslaved African Americans, it now serves as the support for all men—regardless of race, gender, and other differences—whose rights have been infringed upon. From upholding women’s rights to preserving gun ownership, the Fourteenth Amendment has been and will continue to be significant. The Fourteenth Amendment has been a foundational document in America’s beginning, and the fact that it champions the Second Amendment shows the importance of this right. This amendment didn’t always apply to gun rights until *McDonald v. City of Chicago*. In this Supreme Court case, the plaintiff argued that the Second Amendment should also apply to the states because, like other freedoms granted in the Bill of Rights, it was a liberty that he and other Americans possessed. The court ruled in the plaintiff’s favor, making the Second Amendment applicable to states. With this knowledge in mind, the wrongfulness of New York’s current gate-keeping of an American right is evident.

According to the Fourteenth Amendment, states are not allowed to make laws or policies that infringe on the privileges, life, and liberty of American citizens. When New York institutes gun-ownership policies that are so stringent that state residents have no hope of ever conceal

carrying a gun, then the tell-tale signs of a state impinging on its residents' rights emerge. New York may argue that it is compliant with the Fourteenth Amendment stipulations because it permits residents to buy and keep guns in their homes. However, this limit to keeping a gun, instead of bearing it, shows that New York is not considering all facets of the Second Amendment. If it were, it would create a flexible system that allowed residents to obtain concealed carry licenses for their protection and peace of mind. Limiting the full expression of a citizen's Second and Fourteenth Amendment rights to only being able to keep their gun at home or hunt is wrong and stifling on the part of the government.

New York may claim to have a compelling governmental interest in this case, but this could not be further from the truth, showing it does not satisfy strict scrutiny. Intermediate scrutiny (which involves an important governmental interest) and rational-basis review (which involves a legitimate purpose) are not applicable to this case either. If New York were truly looking out for the good of its citizens, it would give them the right to protect themselves outside the home, granted that they meet the reasonable requirements. Forcing residents to display some unique or atypical need is simply not a *reasonable* requirement. Purporting to have the interest of protecting New Yorkers from gun violence is simply ludicrous in the face of preventing said New Yorkers from carrying their weapons of self-defense outside the home. In light of this observation, it is no wonder why Cesare Beccaria, in *An Essay on Crimes and Punishments* (1764), stated that "Laws that forbid the carrying of arms ... disarm only those who are neither inclined nor determined to commit crimes. Such laws make things worse for the assaulted and better for the assailants; they serve rather to encourage than prevent homicides, for an unarmed man may be attacked with greater confidence than an armed one." When New York forces residents to forgo concealed carry because of its implacable requirements, it is putting innocent

civilians, people like Nash and Koch, at the mercy and whims of violent killers, rapists, and thieves that roam the cities' streets. However, this does not enable unauthorized officials without plausible reasons to carry their guns in sensitive places (such as government buildings, studios, and schools) in which the lives of many innocent individuals could be put at risk. The right to keep arms is not complete without the ability to take those same arms outside the home for personal protection. It is important to note that this same state, during the framing era, proposed amendments to its constitution that would bolster its denizens' Second Amendment rights. New York's Ratification of Constitution with Proposed Amendments (1788) states that "the People have the right to keep and bear arms; that a well-regulated Militia, including the body of the People capable of bearing arms, is the proper, natural and safe defense of a Free State." New York emphasized both the keeping and bearing of arms. It must have seen, then at least, the value of affording its residents the protection they needed. Its current desire to despotically decide who gets to own a gun or not, despite the Second and Fourteenth Amendments granting citizens the inalienable right to do so, is a dilemma that should be set to rights immediately, for the upholding of justice, safety, and protection.

II. New York's law goes in against McDonald v. The City of Chicago's affirmation that the Second Amendment is not a second-class right.

The Second Amendment declares 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." Under the word-for-word text, citizens have the right not only to keep arms but bear them. The opposing view may argue the definition of bearable arms— debating that bearing items involves

having them in possession at home. However, the constitution distinctively distinguishes between keeping and bearing arms. Furthermore, under this very court, specifically *District of Columbia v. Heller*, there is already an established meaning of bearable arms. *District of Columbia v. Heller*, 554 U.S. 570 (2008) states that any "weapon of offence" or "thing that a man wears for his defence, or takes into his hands," that is "carried for the purpose of offensive or defensive action" is considered to be a bearable arm. The text never states that arms stay strictly in homes but instead carry in their persons, including self-defense that is not exclusive in the household. The court case acknowledges the individual right to possess and carry weapons in confrontation. An individual has a constitutional right to defend themselves if they feel threatened. Suppose this freedom to protect themselves becomes strict scrutiny that heavily restricts well-natured citizens; their safety is entirely out of their hands and forced upon the palms of soldiers lacking these restrictions. This enforcement would only violate the core reason for creating the Second Amendment in the first place.

America's foundation builds on righteous groups of citizens who left their homes to defend themselves and their loved ones for this land, in other words, a militia. English proved a reason for a government's prone usage of soldiers as a means of oppression. Groups of militia and well-trained citizens respectfully used weapons to exude their natural right of self-defense. Today, we are stripping away a law-abiding citizen's right to self-defense and forcing utmost reliance on governments that fail to save and protect every individual. Such was the case in *Caetano v. Massachusetts*. Caetano was only able to protect herself from her oppressor because she bore arms. When Massachusetts found that Caetano carried arms, Massachusetts tried her; however, our Supreme Court found Caetano to be in favor. Caetano used her right to self-defense that protected her from harm, with a government that desired to seize this right away.

Furthermore, if Caetano did not have the stun gun, she wouldn't have scared her predator. Justice Alito wrote: "if the fundamental right of self-defense does not protect Caetano, then the safety of all Americans is left to the mercy of state authorities who may be more concerned about disarming people than about keeping them safe."

Nash, Koch, and various New York citizens are just like Caetano. Nash's environment is evidently becoming more crime-infested. However, New York law denies his gun license because there is no apparent "special need." According to the constitution, if there is a need for self-defense, a natural-born citizen can use their right to self-defense. New York is transparently not working to decrease these increasing robberies, and citizens can not protect themselves because everyone is getting robbed according to the "special need" criteria.

Koch exudes the meaning of a militia, with his background with firearms similar to the same citizens we hail as heroes in founding our country. The core framework of the United States, the Articles of Confederation, states “. . . 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 filed pieces and tents, and a proper quantity of arms, ammunition and camp equipage.” These militias were seen as heroes, as evidenced in this founding document, however people like Koch are now rejected. Both citizens have proven to be law-abiding citizens and have filled strict requirements proving that they have the conditions to keep and bear arms safely. Yet through a licensing office's general and ambiguous judgment, they are deprived of their rights.

Both Nash and Koch understand and respect their rights, thus asking for a concealed carry license rather than an open carry license which would inappropriately incite unnecessary panic and discomfort in their communities. Furthermore, a concealed carry license would work

primarily for self-defense. Yet, New York is denying their right to self-defense, thereby devaluing the Constitution.

Conclusion

Everyone, no matter their walk of life, wants to feel safe and protected. They want to feel valued and important—they want to know that they have rights. For some, this feeling of protection comes from knowing that they have their guns with them should anything pose a threat to their lives or the well-being of their loved ones. However, when states like New York impose strict regulations on how people can express their rights and desire to protect themselves, it is imperative to call them to order by invoking the authority of freedoms and liberties instituted during this nation's conception.

New York runs the risk of subjecting its citizens to danger and harm because they cannot carry their firearms with them for protection. By infringing on the liberty afforded by the Second and Fourteenth Amendments, New York is telling its citizens that it doesn't care about their safety or protection. With all these facets in mind, from the Fourteenth Amendment to *District of Columbia v. Heller* to the sagacious words of Cesare Beccaria, it is apparent that ruling in favor of Koch and Nash—of every New Yorker who seeks protection—is the best line of action now and for the future of New York and its citizens.

Prayer

It is for the reasons previously stated, that we pray this court recognizes the Second Amendment's support of allowing law-abiding persons to carry handguns outside the home for self-defense and rules in favor of the petitioner.