

No. 19-292

**In the Supreme Court of the
United States**

NEW YORK STATE RIFLE & PISTOL ASSOCIATION, INC., ET AL.,
PETITIONERS,

v.

KEVIN P. BRUEN, IN HIS OFFICIAL CAPACITY AS
SUPERINTENDENT OF NEW YORK STATE POLICE, ET AL.,
RESPONDENTS.

**On Writ of Certiorari to the
U.S. Court of Appeals for the Tenth Circuit**

BRIEF FOR RESPONDENTS

KATY DONCER
Counsel of Record
Centennial High School
6901 Coit Rd
Frisco, TX 75035
214-708-3500
katy.doncer@gmail.com

ADHITHI RAMPRAKASH
Centennial High School
6901 Coit Rd.
Frisco, TX 75035
469-400-1158
adiramprakash@gmail.co
m

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QUESTION PRESENTED

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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SUMMARY OF ARGUMENT

The Second Amendment has been retained by this Government with the contention that a “well-regulated Militia” be maintained in the sense of thorough regulation on behalf of each state with its sale and licensing of firearms with federal regulation. *District of Columbia v. Heller*, 552 U.S. 1229 (2008). States have the discretion to regulate gun licenses. The Amendment is dynamic and changes based on the needs of the time, by which Blackstone prescribes that in times of violence, regulation is of the utmost importance, as demonstrated in New York’s strict law preventing the licensing of firearm carry to those without the occupational need or special needs for self-defense. *N.Y. PENAL LAW §§ 265.01–265.04, 265.20(A)(3)*.

ARGUMENT

I. The intent of the Second Amendment has changed with differing interests in domestic and foreign threats over time, making it a dynamic law.

The original intent of the Second Amendment was for it to be used as means by which to allow the young country to protect itself from external threats on behalf of the Framers' Intent, in keeping a "well-regulated Militia". Over time, the concepts in standing with this amendment such as "arms" and other precedents have been established.

The term "arms" has been defined by the Court as all firearms and "instruments that constitute bearable arms" that were formed at and past the time of the country's founding. *Caetano v. Massachusetts*, 136 S. Ct. 1027 (2016). According to this case, the use of stun guns has not been clearly established to be an instrument that constitutes a bearable arm.

Furthermore, the "Militia" has delegated its power to Congress in the "discipline prescribed" by the needs of the time. *Article I, clause 8, § 16*. In this sense, Congress maintains its power to organize Militias, as seen in this case today. The power this Court holds to keep consistency in defining the discipline needed to regulate firearm

control as the concept evolves from past times to today.

The Founders' intent at the time was to prevent the need for a standing army in a weak and small nation. This was for the purposes of defense against tyrannical powers or potential tyrannical powers of the time. However, The United States now has readily available armed forces to protect the country from external threats, and police forces and other bureaucratic agencies that promote domestic welfare.

The Respondent upholds the standard of a "Proper Cause" to further promote peace and domestic welfare. If a license is obtained for a high standard of self-defense, then that constitutes a "proper cause."

In the case of Robert Nash and Brendan Koch, neither has met the need for self-defense that exceeds the needs of those in their community and in the district court and on appeal, both courts decided their respective decisions on this Court's precedent, *see KACHALSKY v. CTY. OF WESTCHESTER*, 701 F (2012),

A. In order to keep a "well regulated militia", limiting access to dangerous firearms is necessary.

Firearms need to be kept "under due restrictions" particularly when violence cannot be controlled by society or

law, *see Blackstone's Commentaries*. There has recently been an insurgency in cases of violence of civilians against other civilians involving the use of firearms, often licensed and brandished by themselves.

A standing army, or other force utilizing firearms, unwatched by the government, has “ravish[ed], plunder[ed], and inextricably [e]nslave[d] the People” of its Nation as seen in history. *See* “ESSAY ON MAN’S LUST FOR POWER” (AUGUST 29, 1763). This notion further stresses the importance for strict regulation on the issuance of firearms in terms of the safety of people using them as well as being acted upon by them.

This Court has ruled that federal regulation of firearms is permissible and necessary in terms of possession and acquisition of such. More specifically, this Court decided that the imposition of conditions on commercial sale of firearms was, in fact, constitutional. *District of Columbia v. Heller, 552 U.S. 1229 (2008)*. In the case of New York, this is no different. New York has chosen a specific, outlined set of conditions under which to issue firearms and/or firearm licenses.

It can be argued that there is an established need for firearm use and licensing on behalf of self defense needs,

however, in the context of when law or circumstance is insufficient. In the case of *McDonald v. City of Chicago*, the Second Amendment was incorporated into every state government in the United States, additionally allowing each state to regulate the sale and possession of commercial firearms in their respective territories. The Prosecutor, McDonald, established the need for a firearm for the purposes of self defense where extremely restrictive firearm laws prevented the acquisition of a firearm for the purpose of self defense. Although the case effectively expanded rights to own and brandish firearms, the decision ultimately utilized the incorporation doctrine to allow individual states to regulate the sale of and licensing to use firearms in their respective states. In this fact, McDonald established proper cause for the need of a firearm in the form of self defense in a dangerous neighborhood. *See McDONALD V. CITY OF CHICAGO*, 561 U.S. 742 (2010).

II. Established Regulations

A. Federal Law

United States v. Miller established that the federal government has reasonable cause for regulating the sale and licensing of commercial firearms for civilian use. This established that the Second Amendment may not protect the right “to

keep and bear such an instrument”, in reference to firearms that do not have relation to “preserving the efficiency of a well regulated Militia”, see *UNITED STATES V. MILLER, ET AL.*, 307 U.S. 174 (1939). This decision effectively reinforces the Court’s interest in maintaining and regulating the use and ownership of firearms.

B. New York Law

New York first intended to base its firearm laws on the basis that the “well-regulated Militia” be maintained by “People capable of bearing arms”, see *New York’s Ratification of Constitution with Proposed Amendments* (1788). This notion is best understood in the fact that New York allows open carry firearm licenses for occupational purposes, or for demonstrated need in terms of special self defense See *N.Y. Penal Law §§ 265.01–265.04, 265.20(a)(3)*. New York now, however, is able to regulate its own sale and regulation of commercial firearms and licenses to use such.

New York maintains its prohibition of open carry of firearms without occupational need or “proper cause”. See *N.Y. Penal Law §§ 265.01–265.04, 265.20(a)(3)*. Although “proper cause” is not defined by the penal code itself, it has been defined in the confines of compliance with establishing such. Four out of the five plaintiffs in *Kachalsky v. The County of Westchester* made no effort to establish “proper cause” and were, therefore, denied their requests

for full carry licenses. The lack of action on behalf of the plaintiffs resulted in the ultimate denial of their requests for full carry licenses. This Court upheld this decision to deny licenses to these people, citing their lack of need for open carry licenses for the purpose of special self-defense. It must be noted that the citizens of New York still have the ability to obtain firearms for self defense purposes, however, this must be met with demonstrated proper cause as defined above.

In maintaining a “well-regulated Militia”, the Framers intended for this concept to be protected by safeguards that protect the people from themselves, ultimately, *see WAS THE RIGHT TO KEEP AND BEAR ARMS CONDITIONED ON SERVICE IN AN ORGANIZED MILITIA?* (2004).

As it can be seen, no law-abiding person is exempt from the protection of others for the best interest of the state in maintaining regulation and order. The protection of each citizen of the country from harm’s way in the form of firearms is of the utmost importance and best interest of this Court and Nation.

John Adams, in his response letter to General William H. Sumner called for the constitution to be “impose[d]... by every prudent means” in reference to laws regarding Militias. JOHN ADAMS, *RESPONSE LETTER TO GEN. WILLIAM H. SUMNER* (JUNE 3, 1823). The regulation on behalf of the states is to maintain the safety of each citizen of the United States America.

III. Petitioner's Arguments Rebuttal

A. The Second Amendment Protects the Right to Carry Arms.

The Petitioner asserts that citizens have the right to keep arms for self-defense. The petitioner also establishes that the Second Amendment provides citizens the right to bear arms on their person. The idea behind this assertion is that the Petitioner expects confrontation. The Second Amendment right is not unlimited and is “not infringed by regulations on concealed carry licenses.” *Robertson v. Baldwin*, 165 U.S. 275, 281-82 (1897)

B. History and Tradition Uphold The Right to Carry Outside the Home for Self-Defense.

The petitioner cites history and traditions to carry outside the home whenever and wherever in order to protect oneself. However, history and tradition only account majorly for public carry and not concealed carry. Common Law restricts self-defense and in the words of William Blackstone, deadly force is only permissible “when certain and immediate suffering would be the consequence of waiting for the assistance of the law.” *William Blackstone, Commentaries on the Laws of England 184 (1769)*.

CONCLUSION

This Court should uphold the decision made by the United States District Court for the Northern District of New York. Federalist No. 78 calls for the consistent decisions of the Court in order to “define and point out... every case that comes before” the Court. *Hamilton* (1788). This country has relied on the consistency of this Court to make decisions about the future of the people’s well-being in the context of the times. We are calling for the Court to continue to maintain consistency in regulating firearm use for the safety of the People of the United States of America.

Respectfully submitted,

KATY DONCER
Counsel of Record
Centennial High School
6901 Coit Rd
Frisco, TX 75035
214-708-3500
Katy.Doncer@gmail.com

ADHITHI RAMPRAKASH
Centennial High School
6901 Coit Rd.
Frisco, TX 75035
469-400-1158
adiramprakash@gmail.com

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