*New York State Rifle & Pistol Association, Inc. v. Bruen*

Background

The **Second Amendment** protects “the right to keep and bear arms,” but like most provisions of the Bill of Rights, it does not define these terms. As a result, there has been an ongoing national debate about exactly what this phrase means. Advocates of gun rights argue that it is intended to protect an individual right to possess and carry firearms for self-defense, whereas some opponents argue that it protects keeping and bearing arms only for a military purpose.

This debate intensified after the U.S. Supreme Court ruled that the Second Amendment protects an individual right to keep arms in one’s home for self-defense in *District of Columbia v. Heller* (2008). The Court struck down a District of Columbia handgun ban as violating that right, but it noted that its decision did not mean that all firearm regulations are unconstitutional. Rather, the Court indicated that certain long-standing gun restrictions—such as a ban on felons owning guns or on carrying guns on school property—would likely still be constitutional under its decision.

The *Heller* decision applied only to the federal government, until *McDonald v. City of Chicago* (2010), which decided that the Second Amendment is incorporated against the states. Incorporation means that the Due Process Clause of the 14th Amendment made a Bill of Rights protection applicable to the states. To decide whether a right is incorporated, the Court asks whether it “is fundamental to our scheme of ordered liberty and system of justice.” Relying on a variety of historical records, the Court determined that the right to keep and bear arms was among the fundamental rights “necessary to our system of ordered liberty.”

After *Heller* and *McDonald*, lower courts have ruled that many types of gun regulations are allowed under the Second Amendment. But courts have disagreed with each other on whether the Second Amendment protects a right to carry a firearm outside the home for self-defense. This case addresses a claim made by gun rights supporters that a New York law regarding the process of obtaining concealed-carry permits deprived them of their Second Amendment rights.

Facts

In 1911, New York passed a handgun-licensing law. The law, sometimes called the Sullivan Act, makes it a crime to possess any firearm without a license, whether loaded or unloaded, and whether inside or outside the home. If a person succeeds in getting a license to own a handgun, laws still limit where they can take the gun. A person cannot carry a loaded handgun outside the home unless they obtain a concealed-carry permit. To obtain a permit to carry a concealed handgun, an applicant must show “proper cause,” which requires them to “demonstrate a special need for self-protection distinguishable from that of the general community or of persons engaged in the same profession.” Whether an applicant has shown “proper cause” is largely left up to the discretion of the licensing officer reviewing the application. Carrying a handgun without a license may either be a class E felony, punishable by up to four years in prison or a fine of up to $5,000, or a class A misdemeanor, punishable by up to one year in prison or a fine of up to $1,000.

The plaintiffs in this case are the New York State Rifle & Pistol Association (NYSRPA) and two individuals, Robert Nash and Brandon Koch. Nash and Koch applied for licenses to carry concealed handguns for self-defense. Nash cited robberies in his neighborhood and the fact that he had recently completed an advanced firearm safety training course as support for his application. Koch noted his experience and safety courses completed in his application. However, the state licensing officers denied their requests, stating that they “failed to show ‘proper cause’ to carry a firearm in public for the purpose of self-defense, because he did not demonstrate a special need for self-defense that distinguished him from the general public.” Both Nash and Koch were granted restricted licenses to carry concealed handguns outside the home for hunting and target practice, but not for self-defense. Koch’s license also allows him to carry a concealed handgun while commuting to and from work. Other members of the NYSRPA would like to exercise their right to carry handguns for self-defense, but they have also been denied the licenses necessary to do so.

Nash and Koch sued the superintendent of the New York State Police and a justice of the New York Supreme Court, but the District Court dismissed their case. The U.S. Court of Appeals for the Second Circuit agreed with the District Court’s dismissal. Nash, Koch, and the NYSRPA petitioned the U.S. Supreme Court to hear the case, and the Court granted their petition. The respondent in this case is Kevin Bruen, who is being named in his official capacity as superintendent of the New York State Police.

***Issue***
Does New York's law requiring that applicants for concealed-carry licenses demonstrate a special need for self-defense (the Sullivan Act) violate the Second Amendment?

Constitutional Provision and Supreme Court Precedents

* **Second Amendment to the U.S. Constitution**

“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.”

* *District of Columbia v. Heller* (2008)

In 1976, the District of Columbia enacted strict gun control laws, including a ban on all handguns and a requirement that all other guns in homes be kept unloaded and disassembled or locked. In a 5-4 decision, the U.S. Supreme Court struck down the District of Columbia’s ban on handguns, holding that the Second Amendment guarantees an individual right to own a firearm for self-defense. The majority, in an opinion written by Justice Scalia, determined that the Second Amendment’s reference to the militia was intended to explain *why* the Framers thought that the right to keep and bear arms was important. Its purpose was not to limit this right to those in the military. According to the Court, the Framers recognized that the right of individuals to keep and bear arms was a fundamental right existing even before the Bill of Rights.

* *McDonald v. City of Chicago* (2010)

In 1982, Chicago adopted handgun regulations to combat crime and minimize handgun related deaths and injuries. Like the District of Columbia’s law in *Heller*, Chicago’s law prohibited the possession of handguns. In a 5-4 decision, the Supreme Court decided that the Second Amendment was incorporated against the states, which made Chicago’s ban invalid.

Arguments for New York State Rifle & Pistol Association, Inc. (petitioner)

* The New York law’s “proper cause” requirement makes it effectively impossible for an ordinary, law-abiding citizen to obtain a license to carry a handgun for self-defense outside the home in public places where confrontations are most likely to occur.
* The Second Amendment guarantees the right to bear arms for self-defense to all law-abiding people, not only to people with “proper cause.” This fundamental right cannot be left to the whim of government officials like the state police.
* History shows that carrying arms was commonplace in early America and was regarded as an exercise of the fundamental right of every individual to self-defense (as found in *Heller*). That is how the Framers would have understood the word “bear.”
* New York’s law is unconstitutional because it deprives law-abiding New Yorkers of the right to bear arms unless they can satisfy a government official that they have an especially great need to exercise that right.
* At least 43 states protect the right of alllaw-abiding citizens to carry handguns for self-defense in most public places. Petitioners just want the same rights in New York that other citizens have throughout the country.

Bruen (respondent)

* New York granted licenses allowing Nash and Koch to carry handguns for hunting and target practice, which enables them to carry handguns in “back country” areas where law enforcement officials are not readily available, and the public-safety risks created by handguns are reduced. Koch is also permitted to carry while commuting. Therefore, they are able to bear arms.
* New York has a compelling interest in reducing violent crime and gun violence. The New York law furthers those goals in a tailored manner, by allowing individuals to carry handguns in times and places for which they have established a specific need for self-defense, hunting, or target shooting.
* *Heller* recognized that individuals have the right to keep and bear arms for self-defense but stressed that like most rights the Second Amendment right is not unlimited. It is not an entitlement to carry “any weapon whatsoever in any manner whatsoever and for whatever purpose.”
* Historically, many cities and states restricted where, how, and by whom firearms could be carried. New York’s law is entirely consistent with that historical tradition.
* Many of the most populous states and cities do not permitwhat the petitioners are asking for—the right to carry a handgun virtually everywhere including crowded areas—based on the mere possibility that a confrontation warranting the use of deadly force for self-defense might suddenly arise. A state like New York should not be bound to follow the same rules as a much less populous state like Wyoming.