Written by **Bob Adelmann** on April 27, 2021

Supreme Court Finally Agrees to Review Lower-court Ruling Against Second Amendment

The National Rifle Association (NRA) was delighted to hear that the U.S. Supreme Court, after more than a decade of silence on continuing infringements by various states on citizens' abilities to exercise their Second Amendment–protected right to keep and bear arms, agreed to hear *New York State Rifle & Pistol Association v. Corlett* (New York State's superintendent of police) and other cases on Monday.

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The pro-gun group exuded:

> Today the U.S. Supreme Court decided to hear an NRA-backed case challenging New York's restrictive concealed-carry-licensing regime.
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> This sets the stage for the Supreme Court to affirm what most states already hold as true, that there is an individual right to self-defense outside of the home.

The NRA-ILA's Executive Director Jason Ouimet expanded:

> The Court rarely takes Second Amendment cases. Now it's decided to hear one of the most critical Second Amendment issues.
>
> We're confident that the Court will tell New York and the other states that our Second Amendment right to defend ourselves is fundamental and doesn't vanish when we leave our homes.

That may be true under the Second Amendment but that isn't what the Court has agreed to consider. In granting "certiorari" (a writ seeking review of a lower court's ruling) the High Court is limiting its focus to this:

> The petition for a writ of certiorari is granted, limited to the following question: Whether [New York] State's denial of petitioners' applications for concealed-carry licenses for self-defense violated the Second Amendment.

That is a far cry from what the NRA, and millions of CCW (carrying concealed weapon) permit holders and Second Amendment supporters, were hoping from the court: a declaration that our Second

Amendment-protected right means exactly what it says, 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."

The Court is likely to do no such thing as declare that those states permitting "constitutional carry" are well within their rights to do so under the Second Amendment. Instead, with luck, it will declare that New York's egregious requirement that a citizen must "demonstrate a special need for self-protection distinguishable from that of the general community" before being granted official permission to keep and bear a firearm violates the Second Amendment.

If such a ruling actually happens — one won't know until a year from now — the First, Second, Third, and Fourth Circuit Courts of Appeal, which have consistently upheld such infringements as allowable under the Constitution, might still hold that the 14 states under their purview may continue to infringe. After all, they have ignored Supreme Court rulings in cases such as *Heller* (gun ownership is an individual and not a collective right) and *McDonald* (the ruling applies to all states) for the past ten years with nary a peep from the Court.

Paul Clement, a former solicitor general under President George W. Bush, will be presenting the plaintiffs' case to the Court, just as he successfully did back in 2010 in *McDonald v. Chicago*. Clement was among President Donald Trump's select list of candidates for appointment to the Supreme Court.

New York citizens Robert Nash and Brandon Koch each applied for a license to carry a firearm for self-defense purposes. Each showed why they needed to be granted a special dispensation. Nash cited a number of recent robberies in his neighborhood, and that he had successfully completed an advanced firearms safety course. Koch offered the same reason for an exemption, having also successfully completed various gun-safety courses.

The licensing officer denied both applications, ruling that neither had shown sufficient "proper cause" to allow them to be granted permission.

Nash and Koch filed suit in federal court, claiming that the official's denial violated their Second Amendment rights. The district court dismissed their claim. They appealed to the Second Circuit Court, which affirmed the lower court's ruling. They filed the writ to the Supreme Court, which was granted (after two years being caught in the judicial bureaucratic blender) on Monday.

The plaintiffs requested the court to rule on the question of the free carry of firearms outside the home. From their petition:

> The question presented is:
>
> Whether the Second Amendment allows the government to prohibit ordinary law-abiding citizens from carrying handguns outside the home for self-defense.

Nash and Koch made their position abundantly clear:

> Because the Second Amendment protects a fundamental, individual right to bear arms outside the home for self-defense, regimes like New York's "proper cause" regime—which only serve to curtail such rights—are categorically unconstitutional.
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> Such laws flatly deny to ordinary law-abiding citizens like petitioners Nash and Koch the rights that the Second Amendment protects.

> By requiring a permit applicant to submit evidence differentiating him or herself from the body of "the people" guaranteed rights under the Second Amendment, the New York regime is not merely an infringement; the regime is antithetical to the constitutional freedom itself.
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> Just as with D.C.'s handgun ban in *Heller*, these regimes fail under any mode of constitutional scrutiny.
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> Because no government authority may ration to some what the Constitution guarantees to all, this Court must intervene and right this wrong.

The High Court deliberately ignored that question and instead declared it would limit its consideration to whether New York's licensing law is constitutional, or not.

Even if the Court finds for the plaintiffs, by limiting its attention to whether New York's licensing law is constitutional or not, it leaves the Second Amendment where it has been for years: in a second tier among primary enumerated rights in the Bill of Rights.

Supreme Court Justice Clarence Thomas called out his peers over their lame (or nonexistent) defense of the Second Amendment. He wrote that the Court has engaged in a "general failure to afford the 2nd Amendment the respect due an enumerated constitutional right. If a lower court treated another right so cavalierly, I have little doubt that this court would intervene … The 2nd Amendment is a disfavored right in this court."

Even a favorable ruling in this case in June 2022 would fail to elevate the Second Amendment to its rightful place as first among its peers.