Written by **Bob Adelmann** on November 6, 2021

The Second Amendment Had a Very Good Day on Wednesday

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The Supreme Court heard opening arguments on Wednesday in *New York State Rifle & Pistol Association v. Bruen* and, based on the questioning by a number of the justices, supporters of the Second Amendment are likely to claim a victory.

The question to be resolved is "Whether [New York] State's denial of petitioners' applications for concealed-carry licenses for self-defense violated the Second Amendment."

Robert Nash and Brandon Koch brought the case after they were denied such licenses. The New York law reads that they must "demonstrate a special need for self-protection [which is] distinguishable from that of the general community or of persons engaged in the same profession." The bureaucrats said they didn't, and denied their applications.

This was despite the fact that Nash, for example, proved himself to be a person of exemplary character who had taken some gun-safety classes and had proved himself confident and capable in the handling of a firearm; and despite that fact that there had recently been a string of robberies in his neighborhood. The state officials denied their applications, ruling that there was no "special" proof that Nash and Koch were endangered more than any others in the general population.

When they sued, the lower court ruled that the denials were proper since the applicants "did not face unique or special danger to their lives." On appeal to the Supreme Court, Nash and Koch declared that "The Second Amendment makes the right to carry arms for self-defense the rule, not the exception, and fundamental rights cannot be left to the whim of local government officials."

The high court justices were tough on the defendants in the initial round of oral argument. Chief Justice John Roberts, probably the weakest link in the chain, was surprisingly supportive of the plaintiffs. He told the lawyers defending New York's law, "The idea that you need a license to exercise the right [to bear arms], I think, is unusual in the context of the Bill of Rights."

That should be heartening to those who have long claimed that "one doesn't need permission to exercise a right."

Justice Alito tripped up the defense over twisting history. Here's the exchange:

> Justice Alito: I'm going to give you an example, which is … troubling. I can see how it would slip through. I'm not accusing you personally of anything.

> But, on page 23, you say that in founding-era America, legal reference guides advised local officials to "arrest all such persons as in your sight shall ride or go armed"….
>
> So I looked at this manual, and what it actually says is "You shall arrest all such persons as in your sight shall ride or go armed offensively."
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> And somehow that word "offensively" got dropped –
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> Ms. Underwood [defense attorney]: Well, our –
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> Alito: – from your brief.
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> Ms. Underwood: I will –
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> Alito: Do you think that's an irrelevant word?

Alito went on to explain that by leaving out that word it changed the entire meaning, showing that that quote doesn't support gun control at all.

Justice Brett Kavanaugh heard the state's argument and told them, "That's just not how we do constitutional rights, where we allow basic blanket discretion [to government bureaucrats] to grant or deny something."

John Lott, president of the Crime Prevention Research Center, weighed in on the case in an op-ed published in *Newsweek* on Wednesday. He said that if you think Nash and Koch had it tough in New York, try getting a concealed-carry license "in California and six-other 'may-issue' states where officials can turn down requests for a carry permit for any reason, or for no reason at all."

Lott pointed out that rarely are permits granted to ordinary citizens in those states but "when permit decisions rest solely with judges and bureaucrats, the few people who [do] get permits … often have special connections…. Those without connections, more often women and minorities, get the short end of the stick."

In San Francisco, for example, Lott told of a woman with a court protective order who wasn't able to get a permit, but the local sheriff's personal lawyer did. In New Jersey, a man was denied a permit even though he was threatened and robbed at gunpoint in the past, and currently carries a lot of cash in his job servicing ATM machines.

Lott pointed out that "may carry" laws in those states "stop almost everyone [from getting a permit]. Only about 1 percent of adults in may-issue states have a permit to carry. In the other 42 states, 10.8 percent of adults have a concealed handgun permit."

And those who do carry concealed are among the lowest risk individuals as they "are convicted of firearms-related violations at one-twelfth the rate at which police officers are convicted."

Even Ian Millhiser, writing for the anti-gun Vox, said that "the NRA had a very good day in the Supreme Court" on Wednesday. After reviewing the oral arguments and the justices' questions, he concluded that "the case is likely to end with the curtailment of states' ability to regulate where people can carry guns."

Tom Knighton, writing for BearingArms.com, said:

> It was clear from the questioning that, while it's unlikely we'll see all rules restricting the carrying of a firearm overturned, we will probably see something like "shall-issue" becoming

> the law of the land….
>
> More importantly … people in states like New Jersey and California are going to score wins … when we get the ruling on this next year, I expect they'll be able to get a permit.

He added:

> I also expect to see crime begin to drop as criminals start hearing about more and more people carrying firearms.

The war against guns will continue. As long as permission is still needed in some form or fashion to exercise the right to keep and bear arms, the Second Amendment will remain a second-class right.