No. 20-843

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 United States Court Of Appeals For The Second Circuit

BRIEF OF AMICI CURIAE BAY COLONY WEAPONS COLLECTORS, INC. IN SUPPORT OF PETITIONERS

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INTEREST OF THE AMICUS CURIAE [1]

Bay Colony Weapons Collectors, Inc., is a non-profit membership association incorporated under the laws of the Commonwealth of Massachusetts, located in Boston, Massachusetts. Bay Colony Weapons Collectors, Inc., was established in 1961 as an association of collectors of weapons including firearms, swords, knives, pole arms, armor, military collectables, and related books and art. They hold monthly meetings and twice a year hold educational sessions. Presently there are about 60 members. Some form of firearms license is required for membership. Most have licenses to carry.

In Massachusetts a person needs to have a firearms identification card (FID) to have a rifle or shotgun in the home. The FID card will let a person own a handgun, but it must be kept at a licensed range (a private club) and cannot be kept in the home. Mass. Gen. Laws Ch.140, § 129B (6).

To have a handgun in the home or on the street a person must have the license to carry a handgun. The statute requires that the applicant be a suitable person and must show a proper purpose. The licensing authority determines what is a proper purpose and what restrictions to put on the license

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[1] Rule 37.6 Notice: No counsel for a party authored the brief in whole or in part and no such counsel or a party made a monetary contribution intended to fund the preparation or submission of this brief. Petitioners in this case gave blanket consent to the filing of briefs amici curiae in support of petitioners, respondents, or neither party. Respondents gave written consent on June 3, 2021.

relative to possession, use, or carrying. Mass. Gen. Laws Ch. 140, § 131.[2]

As in New York, the issuance and renewal of a license to carry a handgun in Massachusetts is left to the discretion of the licensing authority. Massachusetts courts have held the "suitable person" standard gives the licensing authority considerable latitude or broad discretion in making a licensing decision. *Chardin v. Police Comm'r Boston*, 465 Mass. 314, 989 N.E.2d 392 (2013), cert. denied sub nom. *Chardin v. Davis*, 571 U.S. 990 (2013); *Nichols v. Chief of Police of Natick*, 94 Mass.App.Ct. 739, 119 N.E.3d 333 (2019). There is no recognized constitutional right to "bear arms" in Massachusetts outside the home. *Commonwealth v. Gouse,* 461 Mass. 787, 965 N.E.2d 774, 802 (2012) ("The case before us does not implicate this [Second Amendment] right: the defendant was charged with and convicted of possessing a firearm in an automobile, not his home…"). Thus, amicus curiae Bay Colony Weapons Collectors, Inc., has a personal stake in the outcome of the case before this Court.

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[2] Mass. Gen. Laws Ch. 140 § 121 defines "firearm" to include a pistol or revolver (handgun). The definition of rifle and definition of shotgun are separately found in Ch. 140 § 121.

SUMMARY OF ARGUMENT

Many inferior courts, including the U.S. Court of Appeals for the Second Circuit, have relied on English common law, English statutory law, colonial law, and American law predating *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. Chicago*, 561 U.S. 742 (2010), to justify reducing the constitutional and enumerated right to "bear arms" into a statutory privilege or even holding that there is no right to "bear arms" outside the home.

However, historical background serves as a reason why a constitutional guarantee was adopted in a more robust American version, and consequently such historical background may not be invoked to constrict or abrogate an enumerated constitutional right. A guarantee is placed in the Bill of Rights because a right is considered peculiarly important and uniquely vulnerable to infringement. The Bill of Rights is not a list of suggestions or guidelines for social balancing. The very purpose of a Bill of Rights is to enable the enjoyment of a fundamental right that does not depend on the outcome of an election or the reach of majorities and officials.[3] The law before *Heller* and *McDonald* was flawed by its failure to protect a constitutional right. That law is no longer controlling, just as the separate but equal holding no longer controls.

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[3] *W. Va. State Bd. of Education v. Barnette*, 319 U.S. 624 (1943).

There is a national consensus for carrying arms outside the home. The right to "bear arms" should not be treated as a second-class right. New York is an outlier. It reserves the enjoyment of an enumerated guarantee in the Bill of Rights only to persons who show a need to the satisfaction of a licensing official. A citizen's right should not be dependent on a zip code.

ARGUMENT

I. CONSTITUTION GUARANTEES BROADER RIGHTS THAN ENGLISH LAW, COLONIAL LAW, AND PRE-*HELLER* AND PRE-*McDONALD* LAW

The stakes involved in constitutional interpretation are much higher than in other fields of legal interpretation because the constitution is the supreme law of the land, commanding even the legislature. Despite these well-known principles of law, some courts greatly constricted the plain word "bear" in the Second Amendment or even judicially repealed the word "bear."

Many courts use English law, colonial law, and pre-*Heller* and pre-*McDonald* law to justify the reduction of the right to "bear arms" into a statutory discretionary privilege. In one recent case "bear arms" was completely restricted to the home. Three recent cases will be discussed as examples to support this argument.

Kachalsky v. County of Westchester, 701 F.3d 81 (2d Cir. 2012), reviewed a 1785 law on use of firearms and storage of gun powder, North Carolina's early

version of the Statute of Northampton,[4] and early twentieth century New York law requiring a license to possess and carry a handgun. The court agreed that history and tradition do not speak with one voice on the scope of the right to bear arms. It also agreed that the right to bear arms was not limited to the home. It acknowledged that applicants for a license to carry a handgun underwent a rigorous background investigation that included the submission of fingerprints. Nonetheless, the court applied intermediate scrutiny and upheld the requirement that an applicant demonstrate need for self-protection distinguishable from that of the general community or of persons engaged in the same profession. It concluded that such a required demonstration of proper cause is not a complete ban on possession of handguns in public.

Gould v. Morgan, 907 F.3d 659 (1st Cir. 2018), held that the Second Amendment core right is restricted to the home. However, it agreed that the right is not limited to the home. The court admitted that an historical inquiry does not dictate an answer of the scope of the right to bear arms outside the home. It noted that demonstrating good cause to obtain a handgun carrying license goes back to an 1836 law in Massachusetts that required showing of reasonable cause to justify carrying a handgun outside the home. However, the 1836 law was a

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[4] 2 Edw. 3, Ch. 3 (1328). That statute is an affirmance of the common law. Carrying a gun, *per se*, constitutes no offense. The wicked purpose to terrify and alarm constitute the crime. *State v. Huntley*, 25 N.C. 418 (1843).

peace bond law and not a licensing law.[5] *Gould* noted that a diligent search revealed there is no national consensus rooted in history concerning the right to public carriage of firearms. After admitting considerable hesitancy to extend the right beyond the home, the court employed intermediate scrutiny, and upheld the good cause requirement in Massachusetts law to obtain a handgun carrying license.

Young v. Hawaii, 992 F.3d 765 (9th Cir. 2021) (en banc), cert. pet. filed May 11, 2021, No. 20-1639, involved a challenge to a Hawaii statute requiring an applicant to demonstrate urgency or need in order to obtain a license to carry a handgun openly.

The court reviewed history going back to Hawaii's pre-territorial law, English royal decree of 1299, English tradition, Statute of Northampton, English Bill of Rights,[6] colonial era restrictions, post Second Amendment restrictions, nineteenth century restrictions, and twentieth century restrictions. The majority concluded that the Second Amendment guarantees no right whatsoever to bear arms for self-defense outside the home, neither openly nor concealed. Judge O'Scannlain, joined by three other

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[5] Failure to show "reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property" exposed the person under that law to the posting of a peace bond for up to six months. Stephen P. Halbrook, THE RIGHT TO BEAR ARMS: A CONSTITUTIONAL RIGHT OF THE PEOPLE OR A PRIVILEGE OF THE RULING CLASS? 226 (2021).

[6] 1 Wm. & Mary Ch. 2, § 7, 3 Eng. Stat. at Large 441 (1689).

judges, dissented. Hawaii's restriction is so severe as to extinguish the *core* right in armed self-defense.

These courts overlooked case law holding that the U.S. Constitution guarantees broader rights than English common law, statutory law, or tradition. The guarantee to keep and bear arms in the Second Amendment is broader than what is found in the English Bill of Rights, which narrowly stated that Protestants may have arms for their defence suitable to their conditions and as allowed by law.

Since the plain meaning of "bear arms" and history require a finding that carrying is not limited to the home, some federal courts have held that the Second Amendment right to bear arms extends beyond the home, and that laws preventing the exercise of this right are unconstitutional. *Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017); *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012). Both decisions discussed relevant history. These decisions are faithful to this Court's decisions in *Heller* and *McDonald*. They also demonstrate that the right to "bear arms" applies to urban centers like Washington, D.C., and Chicago, Illinois.

A. American Constitution Guarantees Broader Rights Than Rights Found in the English System

It is well-settled that, unlike the nation against which we revolted, it is our constitution that is

supreme, not the enactments of a legislative body.[7] Our constitution is interpreted in the context of our American constitutional scheme of government rather than English parliamentary system. *United States v. Brewster,* 408 U.S. 501, 508 (1972). Unlike the United Kingdom, we cannot, for example, legislatively repeal the protection against double jeopardy and against *ex post facto* laws. The United Kingdom repealed double jeopardy in 2003 for serious offenses and essentially repealed the *ex post facto* principle when it provided, "This part applies whether acquittal was before or after the passing of this Act." Criminal Justice Act 2003, pt. 10, § 75 (Eng.). In the United States, the Fifth Amendment protects an individual against double jeopardy. Unlike the United Kingdom, the United States Constitution explicitly prohibits both federal and state legislatures from passing any *ex post facto* law. U.S. Const. Art. I, § 9, cl. 3; U.S. Const. Art. I, § 10, cl. 1.

This Court has held that the common law serves only as an historical background and may not be invoked to abrogate constitutional rights. "At the Revolution we separated ourselves from the mother country, and we have established a republican form of government, securing to the citizens of this country *other and greater personal rights, than those*

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[7] *Vanhorne's Lessee v. Dorrance*, 2 U.S. (2 Dall.) 304, 308, 28 F.Cas. 1012 (C.C.D. Pa. 1795) (No. 16,857). Justice William Paterson of New Jersey, a signer of the U.S. Constitution, authored the *Vanhorne* opinion. *Simpson v. State*, 13 Tenn. (5 Yer.) 356, 359-60 (1833), held that state right to bear arms abrogates English law.

enjoyed under the British monarchy." *Bridges v. California,* 314 U.S. 252, 264 n.7 (1941) (emphasis added). Construction of a constitutional provision phrased in terms of the common law is not determined by rules of the common law which have been rejected in this country as unsuited to local civil or political conditions. *Grosjean v. American Press Co.,* 297 U.S. 233, 248-49 (1936). The English Bill of Rights contained no provision for freedom of the press. The British press was subject to licensing. *4* W. Blackstone, Commentaries *152 (1769). Consequently, an interpretation of the constitution is not rigidly bound by the common law as it existed in 1791. *Parkland Hosiery Company, Inc. v. Shore*, 439 U.S. 322 (1979).

Although the legal history of the English right is important background to the Second Amendment, it does not set the limits of the American right. Similar issues arise in regard to the First Amendment. Justice Douglas wrote: "[T]o assume that English common law in this field became ours is to deny the generally accepted historical belief that 'one of the objects of the Revolution was to get rid of the English common law on liberty of speech and of the press.'" *A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of Com. of Mass*., 383 U.S. 413, 429 (1966) (Douglas, J., concurring).

Freedom of religion is another example of why the Framers departed from the English system and adopted a broad freedom of religion. The Toleration Act 1688 (1 Wm. & Mary Ch.18), also referred to as the Act of Toleration, was an Act of Parliament

passed in the aftermath of the Glorious Revolution. It received royal assent on May 24, 1689.

The Act allowed for freedom of worship to nonconformists who had pledged to the oaths of Allegiance and Supremacy and rejected transubstantiation, *i.e.,* to Protestants who dissented from the Church of England such as Baptists, Congregationalists or English Presbyterians, but not to Roman Catholics. Nonconformists were allowed their own places of worship and their own schoolteachers, so long as they accepted certain oaths of allegiance. The Act intentionally did not apply to Roman Catholics, nontrinitarians, and atheists. It continued the existing social and political disabilities for dissenters, including their exclusion from holding political offices. Dissenters were required to register their meeting houses and were forbidden from meeting in private homes. Any preachers who dissented had to be licensed.

In adopting the Second Amendment, the narrow provision on arms in the English Bill of Rights was known but was rejected. James Madison himself wanted the Second Amendment to be stronger than its English predecessor. In 1789 in the First Congress, James Madison introduced a set of constitutional amendments that would become known as the Bill of Rights. Although speeches in the First Congress were not transcribed, Madison's notes for his speech introducing the amendments showed that he viewed the English Bill of Rights as a good start, but too weak. He wrote that his amendments "relate 1st. to private rights." A Bill of Rights was "useful — not essential." There was a

"fallacy on both sides — especy as to English Decln. of Rts." First, the English Bill of Rights was a "mere act of parlt." In other words, because it was a statute, it could be overridden, explicitly or implicitly, by any future Parliament. Thus, the English Bill of Rights constrained the king but not future Parliaments. Second, according to Madison, the scope of the English Bill of Rights was too small; it omitted certain rights and protected others too narrowly. In particular, there was "no freedom of press — Conscience." There was no prohibition on "Gl. Warrants" and no protection for "Habs. corpus." Nor was there a guarantee of "jury in Civil Causes" or a ban on "criml. attainders." Lastly, the Declaration protected only "arms to Protestts." James Madison, Notes for Speech in Congress Supporting Amendments, June 8,1789, in THE ORIGIN OF THE SECOND AMENDMENT: A DOCUMENTARY HISTORY OF THE BILL OF RIGHTS 1787-1792 645 (David E. Young ed., 2nd ed. 2001).

The Senate rejected a proposal to insert the phrase "for the common defence" after the words "bear arms," thereby emphasizing that the purpose of the Second Amendment was not merely to provide for the common defense but also to protect the individual's right to keep and bear arms for his own self-defense. *1* HISTORY OF THE SUPREME COURT OF THE UNITED STATES 450 *(*J. Goebel, Jr. ed. 1971*)*. See also 2 Bernard Schwartz, THE BILL OF RIGHTS: A DOCUMENTARY HISTORY *1153-54 (1971)*.

B. There is a National Consensus for Carrying Arms Outside the Home

There is a national consensus that there is a right to carry firearms outside the home based on the issuance of a permit or license according to an objective statutory paradigm. Only seven states are outliers. In the outlier states the right to bear arms outside the home has been reduced to a discretionary administrative privilege. New York is among the seven.[8] The other states are California,[9] Delaware,[10] Hawaii,[11] Maryland,[12] Massachusetts,[13] and New Jersey.[14]

Legislatures and courts have a sworn obligation to protect constitutional rights, including the right to bear arms. In *Heller* this Court held that bearing arms for self-defense is a protected right. Therefore, self-defense is constitutionally a good, justifiable, or

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[8] N.Y. Penal Law § 400.00 subd. 2 (f) ("proper cause exists").

[9] Cal. Penal Code §§ 26150, 26155 ("good cause" must be shown by an applicant).

[10] Del. Code Title 11, § 1441(d) ("may or may not, in its discretion, approve any application").

[11] Haw. Rev. Stat. § 134-9 (a) ("in an exceptional case … shows reason to fear injury … may grant a license").

[12] Md. Code Pub. Safety § 5-306 (a)(6)(ii) ("good and substantial reason").

[13] Mass. Gen. Laws Ch. 140, § 131 ("may issue if it appears that the applicant … has good reason").

[14] N.J. Stat. § 2C:58-4 ("justifiable need").

proper reason for obtaining a permit or license to carry a firearm in a manner best determined by the legislature.[15] "The settlers had the liberty to carry their privately-owned arms openly or concealed in a peaceful manner." Stephen P. Halbrook, THE RIGHT TO BEAR ARMS: A CONSTITUTIONAL RIGHT OF THE PEOPLE OR A PRIVILEGE OF THE RULING CLASS? 123 (2021).

N. Y. Penal Law § 400.00 subd. 2 (f) provides that a pistol license may be issued to "have and carry concealed, without regard to employment or place of possession, by any person when proper cause exists for the issuance thereof..." However, in New York the constitutional right to bear arms for self-defense does not constitute proper cause. Thus, the statute is an infringement of the Second Amendment guarantee to "bear arms" and should be struck down.

The legislature then has the option of rewriting the statute in conformity with such a ruling, or it may amend the statute by simply holding that self-defense is a constitutionally proper cause.

There is a helpful case on point. In *Schubert v. DeBard*, 398 N.E.2d 1339 (Ind. App. 1980), the applicant was denied a license to carry a handgun

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[15] Florida law leaves no discretion to the licensing authority, provided the applicant meets objective, statutory criteria. Hence open carrying may be limited because under "the breadth of Florida's 'shall issue' licensing scheme, the right of Floridians to bear arms for self-defense outside of the home is not illusory...." *Norman v. State*, 215 So.3d 18, 21-22 (Fla. 2017).

because the Superintendent of State Police decided that the statutory reference to "proper reason" vested in him the power to subjectively decide what was a proper reason. The court noted that Indiana's constitution guarantees simply and plainly that "The people shall have a right to bear arms, for the defense of themselves and the State." The court held that the superintendent's approach contravenes the essential nature of the constitutional guarantee. It would supplant a right with a mere administrative privilege which might be withheld simply on the basis that such matters as the use of firearms are better left to the organized military and police forces even where defense of the individual citizen is involved. The court held that Schubert's assigned reason of self-defense was constitutionally a "proper reason." Subsequently in *Kellogg v. City of Gary*, 562 N.E.2d 685, 694 (Ind. 1990), the Indiana Supreme Court upheld *Schubert*: "We agree with the Court of Appeals' analysis in *Schubert*, and now find that this right of Indiana citizens to bear arms for their own self-defense and for the defense of the state is an interest in both liberty and property which is protected by the Fourteenth Amendment…." The court noted that the Second Amendment did not apply to the states. That principle of law is outdated because this Court in *McDonald* held that the Second Amendment applies to the states.

The approach in *Kellogg* satisfies the public safety needs of the state by requiring a background

investigation, and it also protects the civil right to bear arms.[16]

II. RIGHT TO BEAR ARMS SHOULD NOT BE TREATED AS A SECOND-CLASS RIGHT

Past and present history on the right to bear arms reveals that this is not a second-class right. It is a component of personal autonomy. It is valued to this day.

Pennsylvania was the first state to include a right to bear arms for self-defense in its Declaration of Rights of 1776: "That the people have a right to bear arms for the defense of themselves, and the state

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[16] *National Fed. Of Indep. Business v. Sebelius*, 567 U.S. 519, 132 S.Ct. 2566, 2600 (2012) ("protected civil rights, such as the right to bear arms or vote in elections"); *Johnson v. Dept. of State Police*, 443 Ill. Dec. 37, 46, 161 N.E.3d 161, 170 (Ill. 2020) ("right to keep and bear arms is a 'civil right'…."); *Dupont v. Nashua Police Dep't*, 113 A.3d 239, 247 (N.H. 2015), cert. denied, *McDonough v. Dupont*, 136 S.Ct. 533 (2015) ("Second Amendment right to keep and bear arms is a civil right"); *Ferguson v. Perry*, 292 Ga. 666, 740 S.E.2d 598, 604 (2013) ("this Court and other courts have said that the right to possess firearms is indeed a 'civil right'"); *Florida Carry, Inc. v. Univ. N. Florida*, 133 So.3d 966, 983 (Fla. App. 2013) (en banc) (Makar, J., concurring) ("It [right to keep and bear arms] is a personal, individual liberty, entitled to protection like other constitutional rights. Like any civil right established in the state or federal constitutions, the legislative branch may choose to pass laws designed to facilitate its exercise or protect against its infringement"). See also Anders Walker, *From Ballots to Bullets: District of Columbia v. Heller and the New Civil Rights*, 69 La. L. Rev. 509, 510 (2009).

…."[17] Subsequently the right to bear arms for self-defense found its way into a proposal by the Antifederalists in the Pennsylvania ratification convention: "That the people have a right to bear arms for the defense of themselves and their own state, or the United States, or for the purpose of killing game …."[18] Initially the Antifederalists were unsuccessful, but their demand for a Bill of Rights succeeded in the end. This history supports this Court's holding in *Heller* that the operative clause in what became the Second Amendment includes the right to bear arms for self-defense and hunting. These purposes are now guaranteed in several state guarantees to bear arms.

Presently the constitutions of forty-four states guarantee a right to bear arms. Alice Marie Beard, *Gay Rights Strengthen Gun Rights*, 57 So. Tex. L. Rev. 215, 240-47 (2016). From the nineteenth to the twenty-first century, state courts have not confined the right to bear arms to the home. This occurred in the pre-*Heller* era as well as post *Heller*. There are numerous examples.

The guarantee to bear arms in Arkansas is for the common defense, a restriction that was rejected by the Framers of the Second Amendment. *Wilson v. State*, 33 Ark. 557, 560 (1878), held that to prohibit the citizen from wearing or carrying a war arm, except upon his own premises or when on a journey

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[17] Stephen P. Halbrook, THE RIGHT TO BEAR ARMS: A CONSTITUTIONAL RIGHT OF THE PEOPLE OR A PRIVILEGE OF THE RULING CLASS? 169 (2021).

[18] Id. at 182-83.

traveling through the country with baggage, or when acting as or in aid of an officer, is an unwarranted restriction upon his constitutional right to keep and bear arms. Chancy Wilson was carrying a large revolving six-shooter to kill wild hogs. The court concluded: "If cowardly and dishonorable men sometimes shoot unarmed men with army pistols or guns, the evil must be prevented by the penitentiary and gallows, and not by a general deprivation of a constitutional privilege."

North Carolina's guarantee to bear arms tracks the wording of the Second Amendment. *State v. Kerner*, 181 N.C. 574, 107 S.E. 222 (1921), struck down as an infringement of the right to bear arms a local law that prohibited the carrying of a pistol unconcealed off one's own premises without a permit for which a fee of $5 and a bond in the sum of $500 was required.

In the twentieth century state courts held the right to bear arms extends beyond the home. A West Virginia law requiring a license and posting a bond to carry a handgun was struck down as an encroachment of the state guarantee to bear arms. *State ex rel. City of Princeton v. Buckner*, 180 W.Va. 457, 377 S.E.2d 139 (1988). A law banning the carrying of a club was voided as being violative of the state guarantee to bear arms. *State v. Blocker*, 291 Or. 255, 630 P.2d 824 (1981). A local law on carrying a firearm was struck down as too broad and thus an infringement of the state guarantee to bear arms. *City of Lakewood v. Pillow*, 180 Colo. 20, 501 P.2d 744 (1972) (en banc). A local law banning carrying a firearm was struck down as violative of

state guarantee to bear arms. *City of Las Vegas v. Moberg*, 82 N.M. 626, 485 P.2d 737 (Ct. App. 1971). A city ordinance made it unlawful to carry a pistol on or about the person, that is, any sort of pistol in any sort of manner. The provision of this ordinance as to the carry of a pistol was held to be invalid under the state guarantee to bear arms for the common defense. *Glasscock v. City of Chattanooga*, 157 Tenn. 518, 11 S.W.2d 678 (1928). A Rutland ordinance forbade the carrying of a pistol without the written permission of the mayor or chief of police. The court held so far as the ordinance relates to the carrying of pistol it is repugnant to the state guarantee to bear arms and the laws of the state, and it is therefore void. *State v. Rosenthal*, 75 Vt. 295, 55 A. 610 (1903). An 1889 territorial law prohibited carrying a deadly weapon within limits or confines of any city, town, or village. The court held this law contravenes the guarantees of the Second Amendment and Idaho's right to bear arms. *In re Brickey*, 8 Ida. 597, 70 P. 609 (1902).

In the twenty-first century, state courts held the right to bear arms extends beyond the home. A statute forbidding carrying or possession of a firearm within 1,000 feet of a public park abridges the Second Amendment right to bear arms. The law is subject to elevated intermediate scrutiny. *People v. Chairez*, 423 Ill.Dec. 69, 104 N.E.3d 1158 (Ill. 2018). Delaware's guarantee to keep and bear arms "protects the right to bear arms outside the home." *Bridgeville Rifle & Pistol Club v. Small*, 176 A.3d 632 (Del. 2017). A ban on carrying firearms outside home violates the Second Amendment. *People v. Aguilar*, 377 Ill.Dec. 405, 2 N.E.3d 321 (Ill. 2013).

These decisions demonstrate that New York's discretionary licensing statute infringes upon the Second Amendment right to "bear arms" as made applicable to the states through the Fourteenth Amendment. Self-defense is a constitutionally "proper cause" for obtaining a license.

CONCLUSION

This Court has held that whether something is convenient or not to modern government does not affect the constitutionality of a law.[19] The right to "bear arms" is an enumerated essential right.[20] It was placed in the Bill of Rights to prevent encroachment by majorities and the perceived needs of the moment.[21] The judgment below should be reversed.

Respectfully submitted,

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[19] *INS v. Chadha*, 462 U.S. 919 (1983).

[20] One federal court boldly proclaimed that "there is no constitutional right to be protected by the state against being murdered by criminals or madmen." *Bowers v. DeVito*, 686 F.2d 616, 618 (7th Cir. 1982).

[21] Constitution is binding at all times and under all circumstances. *Ex parte Milligan*, 71 U.S. 2 (1866).