

No. _____

In The
Supreme Court of the United States

—◆—
P.Z.,

Petitioner,

v.

STATE OF NEW JERSEY,

Respondent.

—◆—
**On Petition For Writ Of Certiorari To The
Superior Court Of New Jersey – Appellate Division**

—◆—
PETITION FOR WRIT OF CERTIORARI
—◆—

LOUIS P. NAPPEN, ESQ.
EVAN F. NAPPEN ATTORNEY AT LAW PC
21 Throckmorton Avenue
Eatontown, NJ 07724
(721) 389-8888
louis@evannappen.com

EVAN F. NAPPEN, ESQ.
Counsel of Record
EVAN F. NAPPEN ATTORNEY AT LAW PC
21 Throckmorton Avenue
Eatontown, NJ 07724
(721) 389-8888
evan@evannappen.com

Counsel for Petitioner

August 4, 2021

QUESTIONS PRESENTED

In *McDonald v. City of Chicago*, the Court held that the Second Amendment right recognized in *District of Columbia v. Heller*, 554 U.S. 570 (2008), is applicable to the states and protects “the right to possess a handgun in the home for purpose of self-defense.” 130 S.Ct. 3020, 3050 (2010).

The Court has yet to provide the scrutiny level that applies to the Second Amendment, yet has confirmed that mere rational basis review is not enough to deny this fundamental, individual constitutional right. *Heller* at 628-629 (FN27).

Pursuant to an “interest of public health, safety or welfare” test, the state of New Jersey denies people permits to purchase firearms for home possession. *N.J.S.A.* § 2C:58-3c(5). New Jersey also denies people the acquisition and possession of firearms if they have ever had a firearm seized pursuant to domestic violence that was not returned to them. *N.J.S.A.* § 2C:58-3c(8); *N.J.S.A.* § 2C:39-7b(3).

The Questions Presented are:

1. What is the scrutiny level afforded the Second Amendment right to possess firearms in the home?
2. Does a state’s denial of a person’s Second Amendment rights “in the interest of public health, safety or welfare” constitute:
 - a. an unconstitutionally overbroad or vague standard, and/or

QUESTIONS PRESENTED – Continued

- b. an unlawful balancing test in offense to *Heller*, and/or
 - c. a wrongful denial of Due Process notice?
3. May government deny a person's Second Amendment rights in perpetuity merely because a firearm was seized from him "for safekeeping" and not returned?
 4. Is a warrant issued to search and seize firearms from a home "for safekeeping" valid probable cause under the Fourth Amendment?

PARTIES TO THE PROCEEDING

Petitioner P.Z. was the defendant before the New Jersey Superior Court Family Part, the New Jersey Superior Court – Appellate Division, and the New Jersey Supreme Court in a weapon forfeiture motion filed by respondent concerning weapons and firearm permit(s) seized from petitioner for safekeeping pursuant to a warrant section of a dismissed domestic violence temporary restraining order.

Respondent State of New Jersey was the plaintiff before the New Jersey Superior Court, the New Jersey Superior Court – Appellate Division, and the New Jersey Supreme Court.

RELATED CASES

[J.S.] v. [P.Z.], No. FV-03-001864-18, Superior Court of New Jersey. Judgments entered May 25, 2018, June 1, 2018, and June 5, 2018.

State of New Jersey v. [P.Z.], Nos. FO-03-90-19 and W18-00106, Superior Court of New Jersey. Judgment entered August 7, 2019.

State of New Jersey v. P.Z., No. A-5083-18T2, Superior Court of New Jersey – Appellate Division. Judgment entered on October 22, 2020.

State of New Jersey v. P.Z., No. 085143, Supreme Court of New Jersey. Judgment entered March 12, 2021.

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PETITION FOR WRIT OF CERTIORARI

P.Z. respectfully petitions for a writ of certiorari to review the Opinion of the New Jersey Superior Court – Appellate Division, which was denied certification by the New Jersey Supreme Court.

**INTRODUCTION**

At issue in the present case is a citizen’s right to possess firearms in his home. This strikes at the very heart of the Second Amendment.

In *McDonald v. City of Chicago*, the Court held that the Second Amendment right recognized in *District of Columbia v. Heller*, 554 U.S. 570 (2008), is applicable to the states and protects “the right to possess a handgun in the home for purpose of self-defense.” 130 S.Ct. 3020, 3050 (2010).

In *Heller*, this Court held that the government lacks “the power to decide on a case-by-case basis whether the right is *really worth* insisting upon.” 554 U.S. at 634.

Left unchecked, states such as New Jersey and New York have enacted restrictions based on “good cause,” “good moral character,” “good repute in the community,” and “interest of public health, safety or welfare” to curtail citizens from exercising their right to keep arms for home possession. *N.Y. Penal Law* § 400.00(1); *N.J.S.A.* § 2C:58-3c.

In the case at hand, New Jersey seized petitioner’s firearms “for safekeeping” pursuant to the Prevention of Domestic Violence Act. App. 1. Although the temporary restraining order that contained the warrant was dismissed, New Jersey refused to return said firearms “in the interest of public health, safety or welfare.” App. 29; App. 11-12. Because petitioner’s firearms were seized and not returned to him, New Jersey forever bars him from again possessing firearms. *N.J.S.A.* § 2C:58-3c(8); *N.J.S.A.* § 2C:39-7b(3). This is how New Jersey’s firearm permit/forfeiture scheme systematically deprives people of their right to possess firearms in their homes.

If states are going to have firearm licensing and firearm forfeiture statutes, then each provision within such statutes must pass constitutional muster. Petitioner argues that New Jersey’s gun control statutes do not pass constitutional muster since they are vague and/or overbroad balancing tests that do not provide sufficient Due Process or forms of redress, and that the situation requires this Court’s review for relief.



OPINIONS BELOW

On August 7, 2019, the New Jersey Superior Court Family Part granted Government’s petition for forfeiture of petitioner’s weapons and New Jersey Firearms Purchaser Identification Card (NJ FPIC) under *N.J.S.A.* § 2C:58-3c(5), contending that petitioner’s possession of the items that were seized for safekeeping pursuant

to a dismissed restraining order would be against “the interest of public health, safety or welfare.” App. 29. On October 22, 2020, the Superior Court of New Jersey – Appellate Division affirmed the Superior Court’s denial. App. 26. On March 9, 2021, the Supreme Court of New Jersey denied petitioner’s petition for certification. App. 33.



JURISDICTION

On March 9, 2021, the Supreme Court of New Jersey denied petitioner’s petition for certification. This Court has jurisdiction under 28 U.S.C. § 1257(a).



CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Amendment II:

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.

United States Constitution, Amendment IV:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the

place to be searched, and the persons or things to be seized.

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

N.J.S.A. § 2C:21-25d . . . seizure of weapons, etc.:

. . . d.(1) In addition to a law enforcement officer's authority to seize any weapon that is contraband, evidence or an instrumentality of crime, a law enforcement officer who has probable cause to believe that an act of domestic violence has been committed shall:

(a) question persons present to determine whether there are weapons on the premises; and

(b) upon observing or learning that a weapon is present on the premises, seize any weapon that the officer reasonably believes would expose the victim to a risk of serious bodily injury. If a law enforcement officer seizes any firearm pursuant to this paragraph, the officer shall also seize any firearm purchaser

identification card or permit to purchase a handgun issued to the person accused of the act of domestic violence.

(2) A law enforcement officer shall deliver all weapons, firearms purchaser identification cards and permits to purchase a handgun seized pursuant to this section to the county prosecutor and shall append an inventory of all seized items to the domestic violence report.

(3) Weapons seized in accordance with the "Prevention of Domestic Violence Act of 1991", P.L.1991, c.261 (C.2C:25-17 et seq.) shall be returned to the owner except upon order of the Superior Court. The prosecutor who has possession of the seized weapons may, upon notice to the owner, petition a judge of the Family Part of the Superior Court, Chancery Division, within 45 days of seizure, to obtain title to the seized weapons, or to revoke any and all permits, licenses and other authorizations for the use, possession, or ownership of such weapons pursuant to the law governing such use, possession, or ownership, or may object to the return of the weapons on such grounds as are provided for the initial rejection or later revocation of the authorizations, or on the grounds that the owner is unfit or that the owner poses a threat to the public in general or a person or persons in particular.

A hearing shall be held and a record made thereof within 45 days of the notice provided above. No formal pleading and no filing fee

shall be required as a preliminary to such hearing. The hearing shall be summary in nature. Appeals from the results of the hearing shall be to the Superior Court, Appellate Division, in accordance with the law.

If the prosecutor does not institute an action within 45 days of seizure, the seized weapons shall be returned to the owner.

After the hearing the court shall order the return of the firearms, weapons and any authorization papers relating to the seized weapons to the owner if the court determines the owner is not subject to any of the disabilities set forth in N.J.S. 2C:58-3c. and finds that the complaint has been dismissed at the request of the complainant and the prosecutor determines that there is insufficient probable cause to indict; or if the defendant is found not guilty of the charges; or if the court determines that the domestic violence situation no longer exists. Nothing in this act shall impair the right of the State to retain evidence pending a criminal prosecution. Nor shall any provision of this act be construed to limit the authority of the State or a law enforcement officer to seize, retain or forfeit property pursuant to chapter 64 of Title 2C of the New Jersey Statutes.

If, after the hearing, the court determines that the weapons are not to be returned to the owner, the court may:

(a) With respect to weapons other than firearms, order the prosecutor to dispose of the

weapons if the owner does not arrange for the transfer or sale of the weapons to an appropriate person within 60 days; or

(b) Order the revocation of the owner's firearms purchaser identification card or any permit, license or authorization, in which case the court shall order the owner to surrender any firearm seized and all other firearms possessed to the prosecutor and shall order the prosecutor to dispose of the firearms if the owner does not arrange for the sale of the firearms to a registered dealer of the firearms within 60 days; or

(c) Order such other relief as it may deem appropriate. When the court orders the weapons forfeited to the State or the prosecutor is required to dispose of the weapons, the prosecutor shall dispose of the property as provided in N.J.S. 2C:64-6.

(4) A civil suit may be brought to enjoin a wrongful failure to return a seized firearm where the prosecutor refuses to return the weapon after receiving a written request to do so and notice of the owner's intent to bring a civil action pursuant to this section. Failure of the prosecutor to comply with the provisions of this act shall entitle the prevailing party in the civil suit to reasonable costs, including attorney's fees, provided that the court finds that the prosecutor failed to act in good faith in retaining the seized weapon.

(5) No law enforcement officer or agency shall be held liable in any civil action brought

by any person for failing to learn of, locate or seize a weapon pursuant to this act, or for returning a seized weapon to its owner.

N.J.S.A. § 2C:58-3 Purchase of Firearms:

. . . c. Who may obtain. No person of good character and good repute in the community in which he lives, and who is not subject to any of the disabilities set forth in this section or other sections of this chapter, shall be denied a permit to purchase a handgun or a firearms purchaser identification card, except as hereinafter set forth. No handgun purchase permit or firearms purchaser identification card shall be issued:

. . . (5) To any person where the issuance would not be in the interest of the public health, safety or welfare;

. . . (8) To any person whose firearm is seized pursuant to the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et seq.) and whose firearm has not been returned.

N.J.S.A. § 2C:39-5 Unlawful possession of weapons:

b. Handguns. (1) Any person who knowingly has in his possession any handgun, including any antique handgun, without first having obtained a permit to carry the same as provided in N.J.S. 2C:58-4, is guilty of a crime of the second degree.

c. Rifles and shotguns. (1) Any person who knowingly has in his possession any rifle or shotgun without having first obtained a firearms purchaser identification card in accordance with the provisions of N.J.S. 2C:58-3, is guilty of a crime of the third degree.

(2) Unless otherwise permitted by law, any person who knowingly has in his possession any loaded rifle or shotgun is guilty of a crime of the third degree.

d. Other weapons. Any person who knowingly has in his possession any other weapon under circumstances not manifestly appropriate for such lawful uses as it may have is guilty of a crime of the fourth degree.

N.J.S.A. § 2C:39-6 Exemptions:

e. Nothing in subsections b., c. and d. of N.J.S. 2C:39-5 shall be construed to prevent a person keeping or carrying about his place of business, residence, premises or other land owned or possessed by him, any firearm, or from carrying the same, in the manner specified in subsection g. of this section, from any place of purchase to his residence or place of business, between his dwelling and his place of business, between one place of business or residence and another when moving, or between his dwelling or place of business and place where such firearms are repaired, for the purpose of repair. For the purposes of this section, a place of business shall be deemed to be a fixed location.

***N.J.S.A. § 2C:39-7b* Certain persons not to have weapons or ammunition:**

... (3) A person whose firearm is seized pursuant to the “Prevention of Domestic Violence Act of 1991,” P.L.1991, c.261 (C.2C:25-17 et seq.) and whose firearm has not been returned ... who purchases, owns, possesses or controls a firearm is guilty of a crime of the third degree, except that the provisions of this paragraph shall not apply to any law enforcement officer while actually on duty, or to any member of the Armed Forces of the United States or member of the National Guard while actually on duty or traveling to or from an authorized place of duty.

***N.J.S.A. § 2C:43-6* Sentence of imprisonment for crime; ordinary terms; mandatory terms:**

...

c. A person who has been convicted under ... paragraph (2) or (3) of subsection b. of section 6 of P.L.1979, c.179 (C.2C:39-7), ... who, while in the course of committing or attempting to commit the crime, including the immediate flight therefrom, used or was in possession of a firearm as defined in 2C:39-1f, shall be sentenced to a term of imprisonment by the court. The term of imprisonment shall include the imposition of a minimum term. The minimum term shall be fixed at, or between, one-third and one-half of the sentence imposed by the court or three years, whichever is greater, or 18 months in the case of a

fourth degree crime, during which the defendant shall be ineligible for parole.

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STATEMENT OF THE CASE

As a result of a warrant issued “for safekeeping” in conjunction with an *ex parte* temporary restraining order, petitioner’s firearms and New Jersey Firearms Purchaser Identification Card (NJ FPIC) were seized. App. 1, 6-10. Although the New Jersey Superior Court Family Part denied a final restraining order against petitioner, Government nonetheless filed a motion pursuant to *N.J.S.A.* § 2C:25-21d(3) to forfeit petitioner’s weapons and FPIC. App. 2.

Pursuant to *N.J.S.A.* § 2C:25-21d(3):

. . . the court shall order the return of the firearms, weapons and any authorization papers relating to the seized weapons to the owner if the court determines the owner is not subject to any of the disabilities set forth in *N.J.S.* 2C:58-3c. . . .

Thereby, New Jersey’s 2C:58-3c restrictions to receiving firearm purchase permits are incorporated under New Jersey’s domestic weapon forfeiture statute.

At issue in the present petition, *N.J.S.A.* § 2C:58-3c states that “No handgun purchase permit or firearms purchaser identification card shall be issued:

(5) To any person where the issuance would not be in the interest of the public health, safety or welfare.”

New Jersey does not define “public health, safety or welfare,” and courts are free to interpret what constitutes a reason to deny Second Amendment rights in the name of “public health, safety or welfare.” Persons are given no notice as to what a judge may find is a reason to deny Second Amendment rights in the name of “public health, safety or welfare.”

Petitioner has no conviction for unlawful possession or use of a firearm or for any other criminal disqualifier to firearm possession, yet the family court below granted Government’s forfeiture motion in “the interest of public health, safety or welfare,” finding:

Pursuant to N.J.S.A. 2C:58-3c(5), it would be contrary to the interest of public health safety or welfare for Defendant to possess firearms as one of the weapons seized in this matter, specifically the Century Arms semi-automatic firearm (s/n 29nC12685), is a prohibited assault firearm, pursuant to N.J.S.A. 2C:39-1w(2), and defendant knowingly possessed same. App. 28.

Approximately twenty-five firearms were seized for safekeeping from the petitioner. App. 29-31. One firearm, however, was found to be a prohibited “assault firearm” under New Jersey law due to the Court finding that it was “substantially identical” to a prohibited firearm. App. 15-20, 28.

At the same hearing where petitioner was put on notice that the Government considered the firearm (that the Government seized “for safekeeping”) to be unlawful, petitioner was denied the return of all other seized firearms and barred from any firearm possession in perpetuity because he possessed one firearm that could not be returned. App. 28.



REASONS FOR GRANTING THE WRIT

I. Review is needed to restrict states with vague, overbroad disqualifiers that lack Due Process and, thereby, unconstitutionally deprive citizens of their Second Amendment right to keep arms.

This Court’s review is necessary to ensure that a fair, consistent standard applies to all people wishing to exercise their Second Amendment right to keep arms, and to align states that resist the *Heller* and *McDonald* decisions.

Presently at issue is the Due Process provided to thousands of New Jersey firearm purchase permit applicants and weapon forfeiture defendants each year. Second, Fourth, Fifth, and Fourteenth Amendment issues are cognizable in this case, and the matter is of public interest.

In *Heller*, this Court recognized that the Second Amendment right is not unlimited yet chose not to undertake an exhaustive analysis of its limits. *Heller* at 626-627. The *Heller* Court only explicitly acknowledged

the legitimacy of certain “longstanding prohibitions on the possession of firearms by felons and the mentally ill” “or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings.” *Id.*

This Court has never forwarded that arbitrary, vague, or overbroad firearm licensing laws or gun control schemes that lack Due Process would be found constitutional. Rather, this Court has recognized that absolute or irrational bans will not stand, and that mere rational basis review is not enough to deny this fundamental, individual constitutional right:

Rational-basis scrutiny . . . cannot be used to evaluate the extent to which a legislature may regulate a specific, enumerated right, be it the freedom of speech, the guarantee against double jeopardy, the right to counsel, or the right to keep and bear arms. If all that was required to overcome the right to keep and bear arms was a rational basis, the Second Amendment would be redundant with the separate constitutional prohibitions on irrational laws, and would have no effect. *D.C. v. Heller*, 554 U.S. 570, 628-629 (2008).

In the decade since *McDonald*, New Jersey has not repealed a single purchase permit restriction.¹ When

¹ Rather, New Jersey has kept adding restrictions upon the right, including but not limited to: criminal consequences for purchasing two handguns within 30 days (*N.J.S.A.* § 2C:58-3i); criminal consequences for possessing magazines that hold more than ten rounds (*N.J.S.A.* § 2C:39-3j); further restrictions to receiving purchase permits “To any person named on the consolidated

petitioner raised below that *N.J.S.A.* § 2C:58-3c(5)'s "interest of public health, safety or welfare" and c(8)'s "firearms seized and not returned" restrictions are not narrowly tailored nor limited in time, and that the statute should be found unconstitutionally broad and vague, the New Jersey Appellate Division answered that New Jersey's standards are fine because the New Jersey higher courts have upheld them:

The [New Jersey] Supreme Court recently addressed this argument and summarily rejected it. *F.M.*, 225 N.J. at 507-08 (noting that *N.J.S.A.* 2C:58-3(c)(5) and (c)(8) have been upheld against Second Amendment challenges); see *In re Dubov*, 410 N.J. Super. 190, 197 (App. Div. 2009) (expressly finding that *N.J.S.A.* 2C:58-3(c)(5) is not unconstitutionally vague); see also *Crespo v. Crespo*, 201 N.J. 207, 210 (2010) (holding PDVA constitutional because "the right to possess firearms clearly may be subject to reasonable limitations"); *In re Winston*, 438 N.J. Super. 1, 10 (2014) (holding that *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), do not render *N.J.S.A.* 2C:58-3(c)(5) unconstitutional). App. 26.

Terrorist Watchlist maintained by the Terrorist Screening Center administered by the Federal Bureau of Investigation," *N.J.S.A.* § 2C:58-3c(9), and "To any person who is subject to a court order prohibiting the custody, control, ownership, purchase, possession, or receipt of a firearm or ammunition issued pursuant to the 'Extreme Risk Protective Order Act of 2018,' P.L.2018, c.35 (C.2C:58-20 et al.)," *N.J.S.A.* § 2C:58-3c(10); *etc.*

The New Jersey Supreme Court then summarily rejected petitioner's petition for certification.

New Jersians' hope lies with this Court to clarify that nebulous disqualifiers such as "public health, safety or welfare" and Due Process-challenged prohibitors (such as once having a firearm taken and not returned) do not constitute "reasonable limitations" upon the Second Amendment right to possess arms at one's home.

N.J.S.A. § 2C:58-3c's restrictions upon individual exercise of the right to keep firearms date back to 1966 and are wildly, wrongfully discretionary. *N.J.S.A.* § 2C:58-3c begins by allowing New Jersey Government authorities to deny Second Amendment rights if a person is not a "person of good character and good repute in the community in which he lives" (whatever that subjective and undefined standard means).

N.J.S.A. § 2C:58-3c was enacted when individuals' right to keep arms was a mere privilege in New Jersey. When challenged, in 1968's *Burton v. Sills*, 53 N.J. 86, the New Jersey Supreme Court found:

As the language of the Second Amendment itself indicates it was not framed with individual rights in mind. Thus it refers to the collective right "of the people" to keep and bear arms in connection with "a well-regulated militia." *Id.* at 97.

Burton's foundational underpinnings expressed above were reversed by this Court in *Heller* and *McDonald*, yet New Jersey continues to cite *Burton*

(and its progeny) as controlling. (See, *e.g.*, State’s appellate brief 21, 51, 55.)

While most states have firearm restrictions similar to the federal standards expressed under 18 U.S.C. § 922, some states continue to restrict upon additional nebulous standards the right to possess firearms at home. For example, New York requires that an applicant for a license to possess a firearm “is of good moral character” and presents “no good cause for the denial of the license” *N.Y. Penal Law* § 400.00(1).

Meanwhile in New Jersey, “good character and good repute in the community” and “interest of public health, safety or welfare” disqualifiers remain on the books and, under these nebulous standards, New Jersey police chiefs and courts freely and routinely deny people – such as the current petitioner – their right to keep firearms in their homes.

A. New Jersey’s restriction upon firearm acquisition “in the interest of public health, safety or welfare” should be found unreasonable and unconstitutional in offense to *D.C. v. Heller* and *McDonald v. City of Chicago*.

In New Jersey, “No handgun purchase permit or firearms purchaser identification card shall be issued:

... (5) To any person where the issuance would not be in the interest of the public health, safety or welfare;

and

. . . (8) To any person whose firearm is seized pursuant to the ‘Prevention of Domestic Violence Act of 1991,’ P.L.1991, c.261 (C.2C:25-17 et seq.) and whose firearm has not been returned.”

The above restrictions are used by police chiefs and courts to deny firearm purchase permits, as well as to determine whether firearms may be returned after domestic violence weapon forfeiture seizures (at issue in the present case). See *N.J.S.A.* § 2C:25-21d(3).

Disqualification under *N.J.S.A.* § 2C:58-3c(5) and c(8) continue in perpetuity – even after a person has matured, circumstances have changed, or other events have rendered the findings inappropriate. The nebulous and overbroad scope of c(5) and c(8) should prevent them from passing constitutional muster, yet New Jersey continues to find them constitutional. App. 26. A proper ruling by this Court would serve as a guide as to what types of unjust restrictions will not be abided.

The Courts below denied petitioner the return of his firearms that were seized for safekeeping “in the interest of public health, safety or welfare.” App. 28.

Since petitioner’s firearms were not returned to him, he is now forever barred from firearm possession in New Jersey due to *N.J.S.A.* § 2C:58-3c(8).

It is time to address the standard of review that applies to the exercise of Second Amendment rights.

This is particularly true regarding statutes regulating the possession of arms in one's home, which this Court has specifically found to be a fundamental, individual right. *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 130 S.Ct. 3020, 3050 (2010).

1. “In the interest of public health, safety or welfare” is unconstitutionally vague.

Statutes and ordinances may be found unconstitutionally vague and offensive to Due Process if they do not provide fair notice of the conduct they prohibit or demand, or if they are so indefinite that they confer unstructured and unlimited discretion on a fact-finder to decide whether the law has been violated. *Chicago v. Morales*, 527 U.S. 41 (1999); *et al.*

“The objection of vagueness is twofold: inadequate guidance to the individual whose conduct is regulated, and inadequate guidance to the triers of fact. The former objection could not be cured retrospectively by a ruling either of the trial court or the appellate court[.]” Freund, *The Supreme Court and Civil Liberties*, 4 VAND. L. REV. 533, 541 (1951).

N.J.S.A. § 2C:58-3c(5)'s “interest of the public health, safety or welfare” provision is appallingly vague. It provides no set boundaries into which citizens are informed to constrain their behavior(s). Such a provision confers unstructured and unlimited discretion on a fact-finder to decide what behavior(s) endangered the

public (with no requirement to justify such a conclusion).

For instance, in *Personal Weapons & Firearms Identification Card Belonging to F.M.*, 225 N.J. 487 (2016), which mirrors petitioner’s matter, the New Jersey Supreme Court found that firearms and a firearms purchaser identification card seized *ex parte* pursuant to the Prevention of Domestic Violence Act may be forfeited after a finding that possession of weapons by the defendant was “not in the interest of public health, safety or welfare” even though a final restraining order was not issued.

“Interest of the public health, safety or welfare” has no definite limit and openly invites judges to, “under the pretense of regulating,” destroy a constitutional right by deciding, on a case-by-case basis, through a single or series of successive findings, that various behavior(s), not previously proscribed, present a threat to the public.

This Court would be hard pressed to find a better example of a law used to deny a fundamental right that is more unconstitutionally vague than “in the interest of public health, safety or welfare.”

2. “In the interest of public health, safety or welfare” is unconstitutionally overbroad.

To be constitutional, an overbroad law must be incapable of narrower construction. *Brockett v. Spokane*

Arcades, Inc., 472 U.S. 491 (1985). Overbreadth Doctrine holds that if a statute is so broadly written that it deters free actions, then it can be struck down on its face because of its chilling effect – even if it also prohibits acts that may legitimately be forbidden. *Black’s Law Dictionary*, 2nd POCKET ED. 507 (2001).

“In the interest of public health, safety or welfare” is not narrowly tailored at all. Nor is it limited in time to that which is necessary to serve a particular purpose. People concerned with running afoul of “the public health, safety or welfare” are broadly restrained in fear that any action could be found to constitute a reason to disqualify them.

For instance, under *In re Z.L.*, 440 N.J. Super. 351 (App. Div.), certif. den. 223 N.J. 280 (2015), a denial of a New Jersey purchase permit may be denied pursuant to *N.J.S.A.* § 2C:58-3c(5) upon a history of domestic disputes despite an applicant never being convicted of an offense, despite an applicant never being subject to a restraining order, and despite the alleged victim not contesting issuance of a firearm purchase permit to the applicant.

In New Jersey, hearsay, police reports, and allegations surrounding criminal charges that were dismissed may be (and are) presented to deny firearm purchase permits and to deny the return of firearms seized for safekeeping. *In re Osworth*, 365 N.J. Super. 72, 77-79 (2003); *In re Dubov*, 410 N.J. Super. 190 (App. Div. 2009). Although permit applications and return of firearms may not be denied “entirely upon hearsay,”

applicants and defendants are expected to testify at permit appeal and weapon forfeiture hearings about incidents alleged by the Government, and a negative inference may be drawn against applicants and defendants who refuse to testify. *Weston v. State*, 60 N.J. 36 (1972); *Dubov* at 202-203; *Mahne v. Mahne*, 66 N.J. 53 (1974); *Levin v. Levin*, 129 N.J. Super. 142 (App. Div. 1974).

N.J.S.A. § 2C:58-3c(5) should, therefore, be found unconstitutionally overbroad.

3. “In the interest of public health, safety or welfare” is a balancing test in offense to *Heller*.

Per *Heller*, an individual’s right to keep arms may not be balanced-tested against a nebulous or speculative concern. *Heller* at 634-635. Yet, the very concept of “interest of the public health, safety or welfare” is an “interest-balancing” approach that weighs an individual’s actions against Government’s alleged interests.

N.J.S.A. § 2C:58-3c(5) invites courts to balance a generalized public interest of “health, safety or welfare” against an individual’s right to keep arms at his or her home, and allows for the destruction of that right without any criminal conviction or notice that a certain behavior may result in the loss of the right.

N.J.S.A. § 2C:58-3c(5) should be struck as a balancing test in offense to *Heller*.

4. “In the interest of public health, safety or welfare” wrongfully denies Due Process notice.

Notice and opportunity to be heard are fundamental requisites of Due Process of law. *Grannis v. Ordean*, 234 U.S. 385, 394 (1914); *et al.* Due Process particularly should be provided when Constitutional rights are at issue, such as Amendments II, IV, V, and XIV presented here.

Under *N.J.S.A.* § 2C:58-3c(5), individuals have no opportunity to conform their actions to the law because they never know what a court may deem “not in the interest of the public health, safety or welfare” until after it rules. Courts are free to liberally add any behavior(s) they deem inappropriate to strip citizens of their rights to keep arms.

For instance, when people change residences, they must apply for duplicate New Jersey firearms purchaser identification cards (FPICs) representing their new addresses. See *N.J.A.C.* § 13:54-1.11(a); *In re Application of Boyadjian*, 362 N.J. Super. 463 (App. Div.), *certif. den.* 178 N.J. 250, 466 (2003). In reviewing firearm permit applications, *N.J.S.A.* § 2C:58-3c(5) requires police chiefs to consider the interests of their communities. *Id.* at 475. Thus, even though nothing in applicants’ records have changed since the granting of their permits by their former police chiefs, FPICs are often denied under new chiefs’ different “interest of public health, safety or welfare” criterion. *Id.* at 478.

New Jersey’s “public health, safety or welfare” provision provides no Due Process notice as to what specific behavior(s) may be proscribed. This ambiguous situation permits a court to decide, after-the-fact, that a certain behavior “endangers the public” (without having to justify how such a behavior cause a danger or who it endangers). *N.J.S.A.* § 2C:58-3c(5) is and remains ripe for abuse.

N.J.S.A. § 2C:58-3c(5) should be struck as offensive to Due Process.

B. New Jersey’s disqualifiers to firearm acquisition and possession because a person once had a firearm seized and not returned should be declared unconstitutional restrictions upon Second Amendment rights and Due Process.

1. New Jersey’s “seized but not returned” provisions explained.

Under *N.J.S.A.* § 2C:58-3c(8), if a person has ever had a firearm seized pursuant to the Prevention of Domestic Violence Act and the firearm not returned, then he or she is barred from receiving firearm permits. This mandate is mirrored under New Jersey Criminal Code *N.J.S.A.* § 2C:39-7b(3), making such a person “a certain person not to possess firearms.” If thereafter found guilty of mere possession of a firearm, the court *must* impose a mandatory minimum term of at least five (5) years in state prison. *N.J.S.A.* § 2C:43-6c.

These laws were enacted in 2004, and by no means constitute “longstanding prohibitions”² to firearm possession.

Under *N.J.S.A.* § 2C:58-3c(8), a person loses an entire fundamental right in perpetuity due to one error in possession or action. Would the Court accept if a state prohibited people who once published a libelous comment from ever again exercising any First Amendment rights?

Based on the above, *N.J.S.A.* § 2C:58-3c(8) and *N.J.S.A.* § 2C:39-7b(3) should be found unconstitutional.

2. New Jersey’s *C.L.H.* opinion, relied upon by the Courts below, fails to respect *Heller/McDonald* and is not on all fours with petitioner’s matter.

The Courts below relied upon *State in the Interest of C.L.H.’s Weapons*, 443 N.J. Super. 48 (App. Div. 2015), as justification for forfeiting petitioner’s weapons:

The record establishes that defendant knowingly possessed an illegal firearm. However, even if the judge did err in holding that defendant knowingly possessed an illegal rifle – which is not the case – the error would be harmless, as it has been established that the weapon was an illegal assault rifle, and therefore it was not necessary for the State to prove

² *D.C. v. Heller*, 554 U.S. 570, 605 (2008).

that defendant knowingly possessed the firearm. See, *C.L.H.*, 443 N.J. Super. at 60; see also *R. 2:10-2*. App. 20.

C.L.H. was never presented to Your Honors for certification, and the *C.L.H.* holding begs review and reversal. The *C.L.H.* opinion is plainly destructive of Due Process and other Constitutional rights. The *C.L.H.* Court decided that, since some firearm(s) seized for safekeeping could not be returned, C.L.H. was barred by *N.J.S.A.* § 2C:58-3c(8) from regaining possession of his seventy-one other lawfully possessed firearms – even though C.L.H. himself “had nothing whatsoever to do with the incident or the TRO,” and even though C.L.H. was not found to be a danger for any other reason than possession of a firearm.

C.L.H. is also distinguishable from the present petitioner. C.L.H. possessed an “Avtomat Kalishnikov type semi-automatic firearm” that is a specifically named firearm under the *N.J.S.A.* § 2C:39-1w(1) list of banned firearms. Whereas, the petitioner’s “Century Arms” rifle is *not* on the list of banned firearms and concerned an application of w(2)’s vague “substantially identical” provision. App. 17, 18, 21, 29.

In any event, should a person forever lose his or her Second Amendment rights at the same hearing where he or she is first given notice that a firearm that was seized “for safekeeping” is questionable and cannot be returned? No, that is bootstrapping.

Even a felon convicted of unlawful firearm possession may eventually receive an expungement and

again possess firearms, but there is no such relief provided under 2C:58-3c(8).

A fair and equitable disposition of a weapon forfeiture would be for any contraband firearms to be transferred to a licensed FFL firearms dealer (who may receive and possess such firearms) for disposition in accordance with the law, and a simultaneously determination as to whether the petitioner is otherwise disqualified from firearm possession. The *C.L.H.* Opinion relied upon by the Courts below does not afford the equitable disposition anticipated in a Family Part matter, and deserves improvement regarding *mens rea* and Due Process procedures.

C. The Appellate Division’s maneuvering regarding defendant’s PTSD further exemplifies how “public health, safety or welfare” is vague, overbroad, and lacks Due Process.

New Jersey’s firearm permit law addresses physical health, mental health, and alcoholism concerns under *N.J.S.A.* § 2C:58-3c(3). Under this subsection, “No handgun purchase permit or firearms purchaser identification card shall be issued:

- (3) To any person who suffers from a *physical* defect or disease which would make it unsafe for him to handle firearms, to any person who has ever been *confined* for a mental disorder, or to any *alcoholic* unless any of the foregoing persons produces a certificate of a medical doctor or psychiatrist licensed in New

Jersey, or other satisfactory proof, that he is no longer suffering from that particular disability in such a manner that would interfere with or handicap him in the handling of firearms[.]” (Emphasis added.)

Petitioner suffers from no *physical* defect or disease.

Petitioner has never been *confined* for a mental disorder.

Petitioner is not an alcoholic.

Therefore, this subsection of the law does not apply to petitioner.

Nonetheless, the Family Court below denied petitioner the return of his Firearms Purchaser Identification Card:

Pursuant to N.J.S.A. 2C:58-3c(3), Defendant is disqualified from possessing a Firearm’s [*sic*] Purchaser Identification Card as he admittedly has post-traumatic stress disorder (“PTSD”). The Court find that PTSD would make it unsafe for Defendant to handle firearms and Defendant has failed to produce certificate of a medical doctor or psychiatrist licensed in New Jersey, or other satisfactory proof, that he is no longer suffering from that particular disability in a manner that would interfere with or handicap him in the handling of firearms. App. 28.

The Family Court’s reliance upon N.J.S.A. § 2C:58-3c(3) should have been found to constitute plain error.

Instead, The New Jersey Appellate Division found that petitioner's PTSD (acquired while serving in our country's military in Iraq) is a further reason to deny him under New Jersey's nebulous 58-3c(5) "interest of public health, safety or welfare." App. 13-15. Thus, the Appellate Division further exemplified for this Court how New Jersey freely interprets what constitutes a reason to deny Second Amendment rights in the name of "public health, safety or welfare" even when what is supposed to rise to the level of a reason to deny in that arena (*i.e.*, mental health) is addressed under another subsection.

Defendants are provided little or no notice as to what a court may find is a reason to deny Second Amendment rights in the name of "public health, safety or welfare," and no Due Process opportunity was provided to address the Court's alleged concern with a professional's certification that the defendant does not suffer from any mental health issue that makes him a danger to the public health, safety or welfare. App. 13-15.

Of course, merely having PTSD (or any other mental health issue) does not mechanically make a person a threat to the public health, safety or welfare.³ Thousands of law enforcement officers, military personnel, retirees, veterans, and victims of violence suffer from PTSD (and other mental health conditions), yet

³ See, Gianni Pirelli, Hayley Wechsler, and Robert J. Cramer, Oxford University Press, *The Behavioral Science of Firearms: A Mental Health Perspective on Guns, Suicide, and Violence* (2019).

continue to lawfully possess firearms in their homes (and carry firearms in public).

The Courts below wrongly placed their medical opinions absent that of any medical professional's opinion, and this Court should find that the fundamental right at issue may not be denied upon such mere speculation and dearth of Due Process.

II. Review is needed because New Jersey wrongfully issues search warrants to seize firearms from homes merely “for safekeeping.”

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. United States Constitution, Amendment IV.

In *In re Skywalkers, Inc.*, 49 F.3d 546, 548 n.4 (1995), the Ninth Circuit found that an appellate court may consider an issue not raised below “because of a change in the intervening law that brought the issue into focus.”

In May 2021, Your Honors unanimously held that police officers' community caretaking duties do not justify warrantless searches and seizures of firearms in the home. *Caniglia v. Strom*, 141 S.Ct. 1596 (2021).

In *State v. Scriven*, 226 N.J. 20, 38 (2016), citing *State v. Diloreto*, 180 N.J. 264, 276 (2004), the New Jersey Supreme Court found:

In their community-caretaker role, police officers, who act in an objectively reasonable manner, may check on the welfare or safety of a citizen who appears in need of help on the roadway without securing a warrant or offending the Constitution.

“Community caretaking” is thus synonymous with “safety,” “welfare,” and “safekeeping.”

Petitioner’s firearms were seized from his home “for safekeeping.” He was then denied the return of this property “in the interest of public health, safety or welfare.” App. 28. This one-two punch is the means by which New Jersey systematically disarms its citizenry and chills the exercise of Second Amendment rights.

New Jersey Court Rules do not permit a Fourth Amendment challenge on civil matters, much less in Family Part Chancery Division where New Jersey has jurisdictioned these weapon forfeiture cases and where the court may consider hearsay to deny a return of firearms. *R. 3:5-7; N.J.S.A. § 2C:25-21d(3); Weston v. State*, 60 N.J. 36, 51 (1972). In New Jersey, a party has no standing to move to suppress where he has not been arrested or charged and no penal proceedings against him are contemplated. *State v. Casale*, 106 N.J. Super. 157 (App. Div. 1969).

Petitioner’s case, however, concerns a search conducted by Government agents to seize properties from

his home to deprive him of his constitutional rights, and this Court may find that the Fourth Amendment does apply to such actions. In *Caniglia*'s concurring opinion, Justice Alito noted: "Provisions of red flag laws may be challenged under the Fourth Amendment and those cases may come before us." *Id.* at 1601. Moreover, the Justice acknowledged, "Searches and seizures may arise and may present their own Fourth Amendment issues." *Id.* at 1602. In other words, petitioner's case presents a search in a "non-criminal-law-enforcement context" anticipated by Justice Alito and deserves the Court's attention. *Id.* at 1600.

III. Review is needed to align States that resist this Court's decisions in *Heller* and *McDonald*.

New Jersey is so divergent from the Second Amendment's guarantee of the right to keep arms that it mandates, *ab initio*, that exercising the right is a criminal offense. Under *N.J.S.A.* § 2C:39-5 entitled "Unlawful Possession of Weapons":

- b. Handguns. (1) Any person who knowingly has in his possession any handgun, including any antique handgun, without first having obtained a permit to carry the same as provided in *N.J.S.* 2C:58-4, is guilty of a crime of the second degree.
- c. Rifles and shotguns. (1) Any person who knowingly has in his possession any rifle or shotgun without having first obtained a firearms purchaser identification card in

accordance with the provisions of N.J.S. 2C:58-3, is guilty of a crime of the third degree.

(2) Unless otherwise permitted by law, any person who knowingly has in his possession any loaded rifle or shotgun is guilty of a crime of the third degree.

d. Other weapons. Any person who knowingly has in his possession any other weapon under circumstances not manifestly appropriate for such lawful uses as it may have is guilty of a crime of the fourth degree.

The few exemptions to the above (such as for home possession under *N.J.S.A. § 2C:39-6*) are narrowly construed and constitute mere defenses under which defendants are required to show a “rational basis in the facts before [such] a defense will be charged to the jury.” *State v. Moultrie*, 357 N.J. Super. 547, 555-556 (2003); Cannel, *New Jersey Criminal Code Annotated*, comment 3 on *N.J.S.A. § 2C:1-13* (2002). Any finding of guilt for bearing a firearm outside of the minimal exemptions incurs a mandatory, minimum 3.5 years and potential 10 years in state prison. *N.J.S.A. § 2C:43-6*.

New Jersey has not recognized that any heightened scrutiny applies to the right to keep arms at one’s home and, therefore, has not struck or modified the above statutes in response to *Heller/McDonald*. New Jersey courts recognize “the right to possess a handgun

*in the home*⁴ for purpose of self-defense,” *IMO App. of Wheeler*, 433 N.J. Super. 560, 592-593 (App. Div. 2013) yet, absent any heightened scrutiny regarding the deprivation of the right, the recognition has had no effect upon 2C:58-3c firearm disqualifiers or the application of 58-3c disqualifiers at 2C:25-21d(3) weapon forfeiture hearings.

Respondents in *McDonald* argued that the Second Amendment right should be given “second class status” and that it differs from all other provisions of the Bill of Rights because it concerns the right to possess a deadly implement and thus has implications for public safety. *McDonald* at 35-36. This Court rejected these arguments, noting that the Second Amendment is not the only Constitutional right that has public safety implications – that all provisions restricting law enforcement and the prosecution of crimes also share this issue. *Id.* at 36. *Heller* also rejected an argument that, under the principal of federalism, state and local governments should be allowed to restrict firearms and enact provisions, including complete bans, that they deem “reasonable.” *Id.* at 37.

In *Binderup v. Holder* (D.C. Civil Action No. 5-13-cv-06750 September 2016), the Third Circuit Court of Appeals found that heightened scrutiny applies to firearm permit matters and found that even citizens with

⁴ “*In the home*” emphasized in the *Wheeler* Court Opinion. See also, *State v. Montalvo*, 229 N.J. 300 (2017), regarding machete possession at one’s home.

per se disqualifying conviction(s) on their record are not *per se* barred from obtaining firearms:

Here the Government falls well short of satisfying its burden – even under intermediate scrutiny. The record before us consists of evidence about the Challengers’ backgrounds, including the time that has passed since they last broke the law. It contains no evidence explaining why banning people like them (i.e., people who decades ago committed similar misdemeanors) from possessing firearms promotes public safety. The Government claims that someone like Suarez is “particularly likely to misuse firearms” because he belongs to a category of “potentially irresponsible persons,” Gov’t Suarez Br. at 27-28, and that someone like Binderup is “particularly likely to commit additional crimes in the future,” Gov’t Binderup Br. at 35. But it must “present some meaningful evidence, not mere assertions, to justify its predictive [and here conclusory] judgments.” *Heller*, 670 F.3d at 1259. In these cases neither the evidence in the record nor common sense supports those assertions.

New Jersey, however, has thumbed the nose at the *McDonald* and *Binderup* findings, upholding limitations on Second Amendment conduct that would be unimaginable towards any other constitutional right. In the wake of *Binderup* and in response to this Court’s finding in *McDonald*, the New Jersey Legislature has repealed no firearm permit law, kept “interest of public health, safety or welfare” on the books, and actively

enacted additional laws to further restrict the exercise of Second Amendment rights. See footnote 1.

Since *McDonald*, the New Jersey Judiciary has summarily rejected all unconstitutionality arguments and has expressly found: that *N.J.S.A. § 2C:58-3(c)(5)* is not unconstitutionally vague, *In re Dubov*, 410 N.J. Super. 190, 197 (App. Div. 2009); that “the right to possess firearms clearly may be subject to reasonable limitations,” *Crespo v. Crespo*, 201 N.J. 207, 210 (2010); and that *Heller* and *McDonald* do not render *N.J.S.A. § 2C:58-3(c)(5)* unconstitutional, *In re Winston*, 438 N.J. Super. 1, 10 (2014); *et al.* App. 26.

It is respectfully requested that this Court find that the broad, nebulous, and speculative scope of *N.J.S.A. § 58-3c(5)*’s “interest of public health, safety or welfare” prevents it from passing constitutional muster.

Even under intermediate scrutiny, constitutional and civil rights, if prior-restrained at all, should only be denied for as short a period as possible and proven necessary. New Jersey’s “public health, safety or welfare” and “firearm seized but not returned” provisions, however, bar persons in perpetuity from exercising Second Amendment rights with no definitive means of redress under the statute.

New Jersey has made it clear that it will not change its procedures absent the Supreme Court of the United States striking down its licensing restrictions and/or declaring that a heightened scrutiny

level applies to the Second Amendment right to keep arms.



CONCLUSION

For the reasons set forth above, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

LOUIS P. NAPPEN, ESQ.
EVAN F. NAPPEN ATTORNEY AT LAW PC
21 Throckmorton Avenue
Eatontown, NJ 07724
(721) 389-8888
louis@evannappen.com

EVAN F. NAPPEN, ESQ.
Counsel of Record
EVAN F. NAPPEN ATTORNEY AT LAW PC
21 Throckmorton Avenue
Eatontown, NJ 07724
(721) 389-8888
evan@evannappen.com

Counsel for Petitioner

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