

## Second Amendment challenges to NY Penal Law 265.01(1).

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By Steven Getman

The Center for Appellate Litigation (CAL) has released an article on legal challenges to prosecutions under NY Penal Law 265.01(1) (fourth-degree criminal possession of a weapon) on sufficiency and constitutional grounds.

The article looks at the United States Supreme Court decisions in *District of Columbia v Heller* and *Caetano v Massachusetts* and presents ideas for making Second Amendment challenges to the per se nature of the statute, including:

- Move pretrial (in writing) to dismiss charges of fourth-degree criminal possession of a weapon under Penal Law § 265.01(1), on Second Amendment grounds (citing *District of Columbia v Heller* and *Caetano v Massachusetts*).
- [F]ocus your arguments on the lawful, protected purposes of the weapon (including, but not limited to, self-defense). It can be argued that some of the more obscure items in PL § 265.01(1) are collectible items, or used for recreation.
- Also consider sufficiency challenges based on the statutory and/or common law definitions of certain per se weapons. Argue that the weapon doesn't fit the definition.

The CAL newsletter offers litigation strategies to challenge the use of such evidence and preserve the record in a way that may lead to a resolution that protects the Constitutional Rights of gun owner defendants.

For more information, click here: <http://tinyurl.com/hpr6f98>

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