

MEMO ENDORSED

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October 28, 2010

By Facsimile Transmission - (914) 390-4278

Application granted. Plaintiffs are permitted to file a similarly-sized brief if they feel it is necessary.

Hon. Cathy Seibel
United States District Court Judge
United States Courthouse
300 Quarropas Street
White Plains, NY 10601-4150

SO ORDERED.
Cathy Seibel
Cathy Seibel, U.S.D.J.

Re: Alan Kachalsky, et al. v. , Susan Cacace, et al.
10 CV 5413 (CS)

Dated: 10/28/10

Dear Judge Seibel:

This office represents defendants the Hon. Susan Cacace and Hon. Jeffrey A. Cohen, judges of the County Court, Westchester County ("State Defendants"). This letter is submitted pursuant to your Individual Practices 1 (A) and 2 (B)(i) to request permission to exceed the 25 page limit for State Defendants' legal memorandum of in support of their motion dismiss which will be served Friday, November 5, 2010, to a total not to exceed 50 pages. Plaintiffs' counsel advises they would consent to an enlargement to 35 pages. State Defendants do not believe that 35 pages will allow the State to adequately brief the significant jurisdictional issues as well as the substantial constitutional question of first impression presented by this case.

Plaintiffs Alan Kachalsky, Christina Nikolov and the Second Amendment Foundation bring this action pursuant to 42 U.S.C. §1983 seeking injunctive and declaratory relief against New York Penal Law § 400.00(2)(f), which requires an applicant for a license to carry a concealed handgun in public to demonstrate "proper cause". Plaintiffs assert that this "proper cause" requirement both facially, and as applied, violates their "fundamental right . . . to keep and bear arms" under the Second Amendment of the U.S. Constitution, Complaint ¶¶ 10, 27-29, and violates their "Fourteenth Amendment right to equal protection of the law". Complaint ¶31.

Page 2

This case presents complex questions regarding the applicability and scope of the Second Amendment right recognized by the Supreme Court in two recent cases, District of Columbia v. Heller, ___ U.S. ___, 128 S.Ct. 2783 (2008), which held for the first time that the Second Amendment protects some individual right to possess firearms, and McDonald v. City of Chicago, ___ U.S. ___, 130 S.Ct. 3020 (2010), which held for the first time that the Second Amendment right recognized in Heller applies to the states. Whether, and how these cases affect New York's handgun licensing statute is of critical importance to the State, and has implications beyond New York. The impact of Heller / McDonald is just beginning to work its way through the federal and state judiciary and there are numerous on-going cases across the country raising Second Amendment challenges to state handgun statutes. Collectively, these cases will define the scope of rights conferred by the Second Amendment. Moreover, given the interests at stake, it is a certainty that there will be appeals, and a reasonable prospect that these issues will again be presented to the Supreme Court. Thus, State Defendants request that they be allowed sufficient opportunity to present a careful and thorough examination of the law that the issues require.

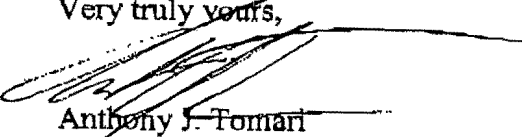
In addition to the important Second Amendment issues presented by this case, the State Defendants contend that there are substantial threshold jurisdictional issues which must be presented in our initial papers, including:

- Plaintiffs' constitutional claims are not ripe;
- Plaintiffs lack standing to pursue the claims set forth in the complaint;
- Jurisdictional abstention is appropriate under Younger v. Harris;
- Jurisdictional abstention is appropriate pursuant to the Pullman and Burford doctrines; and
- Subject matter jurisdiction does not exist pursuant to the Rooker-Feldman doctrine.

New York State considers that it is of vital importance that its papers in this case allow for a full and fair development of the issues presented. In working on our initial papers we have endeavored to present the issues as succinctly as possible, but find that this cannot be accomplished within the 25 page limit provided in Your Honor's individual practices or the 35 pages suggested by Plaintiffs. In order to allow the State to fairly present its position we respectfully request that the Court enlarge the page limit for the memorandum of law in support of the State Defendants motion to dismiss to up to 50 pages.

Thank you for your attention to this matter. All parties will receive a copy of this letter simultaneously by facsimile transmission.

Very truly yours,



Anthony J. Tomari
Assistant Attorney General

Page 3

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