08-5368-CV

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

M. PETER KUCK, individually,
and on behalf of others similarly situated,
Plaintiff-Appellant,

v.

JOHN A. DANAHER III, I/O Comm CT Dept of Public Safety,
ALBERT J. MASEK, JR., I/O Commanding Ofcr CT Dept of Public Safety,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT (NEW HAVEN)

REPLY BRIEF FOR PLAINTIFF-APPELLANT
M. PETER KUCK

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A. The Statutory Burden of Proof for Finding Kuck an Illegal Alien

The plain language of Connecticut General Statutes ("General Statutes"), § 29-28(b) provides that "[n]o state or temporary state permit to carry a pistol or revolver shall be issued under this subsection if the applicant … (9) is an alien illegally or unlawfully in the United States … ." The Connecticut State Board of Firearms Permit Examiners ("Board") must order the renewal of a state permit to carry a pistol or revolver ("state permit") unless there is "just and proper cause" for the Connecticut State Department of Public Safety ("CT DPS"), as the issuing authority for state permits, to deny renewal. Conn. Gen. Stat. § 29-32b(c). The burden rests on the CT DPS to present just and proper cause for non-renewal when the denial of the renewal application is determined by the applicant's status as an illegal and unlawful alien. Conn. Gen. Stat. §§ 29-28(b), 28-32b(c).

The allocation of the burden of proof in a proceeding may determine the result. Findings of fact result in different orders and decisions dependent upon the tribunal's allocation of the burden of proof. Cobb v. Pozzi, 363 F.3d 89, 114 (2d Cir. 2004) ("We have recognized that a difference in the burdens of proof in two proceedings can make the application of collateral estoppel improper."). While

holding an administrative agency to its allocated burden of proof under state statute may be "a matter of principle," it is also an issue of law. Defs.' Brief at 2 ("He [Kuck] refused as a matter of principle … ."). Federal circuit courts address significant issues of law in appeals filed to clarify or challenge the allocation of proof applied in the trial court or by an administrative agency. See Matadin v. Mukasey, 546 F.3d 85, 87 (2d Cir. 2008) ("Because the agency allocated the burden of proof incorrectly, we remand to the agency for further proceedings."); In re Salomon Analyst Metromedia Litigation, 544 F.3d 474, 480 (2d Cir. 2008) (" … to the extent the ruling involves an issue of law, such as the allocation of the burden of proof, our review is de novo; … ."); Davis v. Rodriguez, 364 F.3d 424, 435 (2d Cir. 2004) ("The parties here have not adequately addressed whether state or federal law should determine the allocation of the burden of proof in cases such as this, nor have they addressed the proper burden to be applied if federal law trumps state law.").

B. The Defendants Knew That Kuck Was Not an Illegal Alien

The Defendants offer these four points in their Brief:

First, Kuck refused when "asked to provide proof of citizenship or legal residency" upon his submission of the state permit application.[1] Defs.' Br. at 2.

[1] The Complaint and proposed Amended Complaint do not allege that the Defendants asked Kuck for proof of citizenship or legal residency. Kuck alleges that the Defendants asked for a birth certificate or United States passport. Compl. ¶ 27; Am. Compl. ¶ 32.

Second, "[u]nless a permit is revoked or has revocation pending, the permit remains valid for a period of ninety days after the expiration date." Defs.' Br. at 5 (citing Conn. Gen. Stat. § 29-30(f)).

Third, "[t]he Commissioner of Public Safety is responsible for processing firearm permits. As his designee, SLFU investigates all applications, conducting background checks, including the national criminal history records." Defs.' Br. at 4; see Conn. Gen. Stat. § 29-29(d).

Fourth, "[t]he state has a compelling interest in not issuing gun permits to inappropriate persons." Defs.' Br at 24.

Kuck's state permit remained valid until July 16, 2007, ninety days after the expiration of his state permit on April 17, 2008. (A11 Compl. ¶ 26); (A36 Proposed Am. Compl. ¶ 36). Defs.' Br. at 5 (citing Conn. Gen. Stat. § 29-30(f)). The CT DPS did not deny Kuck's renewal application for any reason other than its finding that there was just and proper cause, because Kuck refused to "provide proof of citizenship or legal residency," that Kuck was an alien illegally or unlawfully in the United States. Def.'s Br. at 2, 31; Defs.' Br. at AD-1 through AD-1; see Conn. Gen. Stat. § 29-28(b)(9).

A hearing before the Board was held on October 9, 2008. Defs.' Br. at AD-1 through AD-3. For the time period between April 17, 2007, and July 16, 2007, the CT DPS allowed Kuck, whom it represented was an alien illegally or

unlawfully in the United States, to hold a valid state permit. Kuck, who, according to the CT DPS, was a known alien illegally or unlawfully in the United States, such that it had denied his state permit renewal and allowed the matter to proceed to the burdened Board appeal docket as a viable case, lawfully carried a pistol or revolver, in public, for three months after the expiration of his state permit and the CT DPS took no action to revoke Kuck's state permit during this time. This ninety day extension period is not automatic as it does not apply to any state permit "which has been revoked or for which revocation is pending, … ." Conn. Gen. Stat. § 29-30(f). The CT DPS must revoke a state permit if it has just and proper cause to find that the individual is an alien illegally or unlawfully in the United States. Conn. Gen. Stat. § 29-28(b)(9). The CT DPS never sought revocation of Kuck's state permit during the ninety day extension period between April 17, 2007, and July 16, 2007.

This sequence leaves two alternatives: The CT DPS knew that Kuck was not an alien illegally or unlawfully in the United States so it did not move to revoke his state permit between April 17, 2007, and July 16, 2007, or, the compelling state interest in preventing aliens illegally or unlawfully in the United States from carrying pistols or revolvers is not that compelling to the CT DPS.

C. Relinquishment of Nationality are Matters of Government Record

A citizen of the United States may lose his or her nationality by relinquishment. The Immigration and Nationality Act of 1952 ("Nationality Act"), 8 U.S.C. § 1481, defines seven categories of conduct constituting the voluntary relinquishment of United States citizenship. Renunciation of nationality is one form of voluntary relinquishment. A United States citizen renunciates his or her nationality by appearing before a United States consular or diplomatic officer in a foreign country to sign an oath of renunciation. 8 U.S.C. § 1481(a)(5). Relinquishment of U.S. nationality occurs if one or more potentially expatriating acts are voluntarily performed with the intent of giving up U.S. nationality. 8 U.S.C. § 1481. In cases of renunciation, expatriation does not occur until the United States Department of State issues a Certificate of Loss of Nationality signifying that the department has accepted the recommendation of the consulate or embassy to accept the renunciation. In cases of relinquishment, a proceeding must be filed in the United States district court where "the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence." 8 U.S.C. § 1481(b); see also Vance v. Terrazas, 444 U.S. 252, 257, 100 S.Ct. 540, 543, 62 L.Ed.2d 461 (1980).

"Citizenship is no light trifle … ." Afroyim v. Rusk, 387 U.S. 253, 267-268,

87 S.Ct. 1660, 1668, 18 L.Ed.2d 757 (1967). In Rusk, the Supreme Court, after considering the constitutionality of an involuntary expatriation statute, stated:

> We hold that the Fourteenth Amendment was designed to, and does, protect every citizen of this Nation against a congressional forcible destruction of his citizenship, whatever his creed, color, or race. Our holding does no more than to give to this citizen that which is his own, a constitutional right to remain a citizen in a free country unless he voluntarily relinquishes that citizenship.

Id. General Statutes § 29-29 contemplates that the CT DPS will conduct investigations. Relinquishment of United States nationality is a matter of public record. A compelling state interest toward ensuring that expatriates illegally or unlawfully in the United States would not continue to hold state permits requires more than a check every five years of an individual's birth certificate, United States passport, or voter registration card. A check every five years would not prevent a citizen from renewing his or her state permit on April 16, 2007, relinquishing citizenship on May 16, 2007, and then holding the renewed state permit for five years less one month, until April 15, 2012, when the CT DPS, upon renewal, would ask for a birth certificate (which presumably the person relinquishing citizenship would still possess), a United States passport (which the person may still possess if not relinquished properly at the time of expatriation or perhaps was never possessed as it is not a requirement of citizenship to possess a

United States passport), or a voter registration card (which, in Connecticut municipalities, requires no proof of citizenship to obtain).

The mere possession of one or more of these documents should not satisfy an issuing authority that a individual is not "an alien illegally or unlawfully in the United States" if such a compelling state interest in ensuring that aliens illegally or unlawfully in the United States do not have state permits does, in fact, exist. By demanding documents that carry no conclusive proof of citizenship on the date of renewal; by failing to check the public records to confirm that a natural-born United States citizen or naturalized citizen has not relinquished citizenship as of the date of renewal; and by allowing Kuck to retain his state permit ninety days after its expiration date subsequent to naming Kuck as an illegal alien; the CT DPS conduct shocks the conscious of any citizen who is concerned about illegal aliens holding state permits or natural-born and naturalized citizens being denied the same state permits. In naming Kuck as an illegal alien, the CT DPS accused Kuck of one or more of these voluntary acts:

(1) obtaining naturalization in a foreign state upon his own application or upon an application filed by a duly authorized agent; or
(2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof, after having attained the age of eighteen years; or
(3) entering, or serving in, the armed forces of a foreign state if (A) such armed forces are engaged in hostilities against the United States, or (B) such persons serve as a commissioned or non-commissioned officer; or

(4) (A) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, after attaining the age of eighteen years if he has or acquires the nationality of such foreign state; or
(B) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, after attaining the age of eighteen years for which office, post, or employment an oath, affirmation, or declaration of allegiance is required; or

(5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or

(6) making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense; or

(7) committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States, violating or conspiring to violate any of the provisions of section 2383 of Title 18, or willfully performing any act in violation of section 2385 of Title 18, or violating section 2384 of Title 18 by engaging in a conspiracy to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, if and when he is convicted thereof by a court martial or by a court of competent jurisdiction.

8 U.S.C. § 1481. In naming Kuck an illegal alien, the CT DPS accused Kuck of one of these shocking acts simply for not presenting papers to the authorities which the authorities had no authority under state or federal law to demand. The denial of Kuck's rights by naming him an illegal alien for not presenting papers implicates, and diminishes, the ties that bind individuals to United States nationality:

> Citizenship is no light trifle … . In some instances, loss of citizenship can mean that a man is left without the protection of citizenship in any country in the world-as a man without a country. Citizenship in this Nation is a part of a cooperative affair. Its citizenry is the country and the country is its citizenry.

Afroyim v. Rusk, 387 U.S. at 87. Kuck was left without the right to carry a pistol or revolver as a result of being accused of one of the acts described in 8 U.S.C. § 1481. The CT DPS conduct raises the specter of individual citizens deprived of their natural-born or naturalized United States nationality for refusing to present identification papers to the authorities on demand without meaningful and timely opportunity for review.

II. THE DEFENDANTS ARE NOT ENTITLED TO IMMUNITY

The Defendants offer these two points in their brief:

First, "[t]he Commissioner of Public Safety is responsible for processing firearm permits. As his designee, SLFU investigates all applications, conducting background checks, including the national criminal history records." Defs.' Br. at 4.

Second, "Commissioner Danaher and the SLFU staff serve as prosecutors for the state with respect to firearms permits." Defs.' Br. at 36.

The Complaint and proposed Amended Complaint do not allege any conduct related to the administrative hearing process before the Board nor is it alleged in the Complaint that Commissioner Danaher or any of the named

Defendants ever acted as an advocate or attorney before the Board. The Complaint and proposed Amended Complaint allege conduct related to the processing of firearms permits and the investigation of state permit applications. By definition these are investigatory and administrative functions.

"[P]rosecutors are absolutely immune from liability under § 1983 for their conduct in 'initiating a prosecution and in presenting the State's case' insofar as that conduct is 'intimately associated with the judicial phase of the criminal process.'" Burns v. Reed, 500 U.S. 478, 486, 111 S.Ct. 1934, 1939, 114 L.Ed.2d 547 (1991) (quoting Imbler v. Pachtman, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 928 (1976)) (internal citations omitted). "By contrast, a government attorney is entitled only to qualified immunity when functioning in an administrative or investigative capacity." Mangiafico v. Blumenthal, 471 F.3d 391, 396 (2d. Cir. 2006) (citations omitted). The Complaint and proposed Amended Complaint address the administrative and investigatory functions of the CT DPS, not proceedings before the Board. The members of the SLFU are no more entitled to absolute immunity than law enforcement officers performing their investigatory and administration functions outside of the courtroom.

The Defendants are not entitled to qualified immunity. "'Qualified immunity protects officials from liability for civil damages as long as their conduct does not violate clearly established statutory or constitutional rights of which a

reasonable person would have known.'" In re County of Erie, 546 F.3d 222, 229 (2d Cir. 2008) (quoting Gilles v. Repicky, 511 F.3d 239, 243 (2d Cir. 2007)). The CT DPS Defendants violated clearly established law when they determined that Kuck was an alien illegally or unlawfully in the United States and accused him of any one or more of the acts set forth in 8 U.S.C. § 1481. They allocated the burden to Kuck of proving that he was not an alien illegally or unlawfully in the United States. This allocation of proof was no less a violation of clearly established statutory and constitutional rights than a police officer who finds probable cause based not on evidence supporting probable cause but on the suspect's lack of evidence showing innocence.

The demand for a United States passport and birth certificate were not reasonably related to any compelling state interest and any reasonable person would have known that the submission of such documents could not confirm whether a natural born or naturalized United States citizen had committed one of the acts described under 8 U.S.C. § 1451 or whether such act had resulted in expatriation by the United States Department of State. The clear establishment of the law is found in the plain language of General Statutes §§ 29-28(b)(9), 29-32b(b) and clarified by the CT DPS unsuccessful attempt to amend General Statutes § 29-28a to require the submission of a valid United States passport, birth certificate, or naturalization certificate when applying for a temporary state

permit.[2] Defs.' Br. at AD-4. The amendment did not pass. Defs.' Br. at AD12 through AD-13. See Proposed Am. Compl. ¶ 39 ("In the February, 2006, session of the state General Assembly, language in Raised Bill No. 307 that would have imposed a requirement that a birth certificate, naturalization certificate or valid United States passport be required for citizens of the United States making application for a temporary state permit under General Statutes §§ 29-28 was rejected.") (A36). If the state legislature rejected an amendment proposed by the CT DPS to require a valid United States passport, birth certificate, or naturalization certification when an individual makes initial application for a state permit, then the point is made that an individual who holds a state permit and only seeks renewal, who, by his or her possession of a valid state permit, must not be an alien illegally or unlawfully in the United States unless the United States Department of State has as a record of expatriation, is not required to submit any of these documents with a renewal application.

III. KUCK DID NOT PREVAIL AT THE ADMINISTRATIVE HEARING

The hearing on Kuck's appeal before the Board on October 9, 2007, addressed, according to the Board, whether "[t]he appellant was denied renewal of his state permit by the Commissioner of Public Safety (hereafter, the "issuing authority") on April 16, 2007 for failure to provide proof that he was not an illegal

[2] CT DPS did not ask the state legislature to amend General Statutes 29-28a to require the submission of a voter registration card as proof of citizenship. Defs.' Br. at AD-4.

alien resident of the United States." Defs.' Br. at AD-1. First, the Board's miscomprehension of the allocation of the burden of proof demonstrates the inadequacy of the administrative state remedy provided those seeking redress from a revocation or denial of issuance or renewal of a state permit. Second, the Board found in favor of Kuck based on a representation that Kuck's name appeared on the voter registration list of the Town of West Hartford where Kuck resides. Defs.' Br. at AD-1. In Connecticut, proof of citizenship is not required to register to vote. Office of Legislative Research Report, 2000-R-1003, http://search.cga.ct.gov/dtsearch.asp?cmd=getdoc&DocId=16755&Index=I%3A\zindex\2000&HitCount=0&hits=&hc=0&req=&Item=933AD-1 through AD-3; Conn. Gen. Stat. 9-20a. The registrant must provide his or her place of birth and swear under oath and penalty of perjury that he or she is a United States citizen. If a registrant is a naturalized citizen then conclusive proof of citizenship is defined under state statute which the registrar may require, or not, for registration. Id.

Kuck's request for injunctive relief is not rendered moot by the Board's decision of October 10, 2008. Defs.' Br. at AD-1. Kuck and other applicants for state permit renewal have are subject to a repetition of the CT DPS conduct in demanding a United States passport or birth certificate as a condition of renewing a state permit. The Board relied upon a document, a voter registration card, that is not recognized by statutes as conclusive proof of citizenship to find that Kuck is a

citizen. General Statutes § 9-20a lists five records demonstrating conclusive proof of citizenship for naturalized citizens registering to vote in a Connecticut municipality.[3]

> [A] written statement signed by a town clerk or registrar of voters of a town of this state or by an election official of another state in the United States or a town or political subdivision of such state that the records of such state, town or political subdivision show that such applicant has previously been admitted as an elector therein, … .

Conn. Gen. Stat. § 9-20a. A voter registration list or voter registration card is not sufficient. In the case of a naturalized citizen, a voter registration card or copy of the voter registration list is not conclusive proof of citizenship. Kuck's name on the voter registration list in the Town of West Hartford is not conclusive proof of his citizenship to register in another Connecticut municipality to vote. And since

[3] Section 9-20a provides: "If the applicant is a naturalized citizen, or if the applicant has acquired citizenship by reason of being born abroad to a United States citizen parent or has derived citizenship through the naturalization of a parent or spouse, the certificate of his naturalization, under the seal of the court issuing the same, or a copy thereof issued by the United States Immigration and Naturalization Service in lieu of the original certificate, or a certificate of citizenship issued by the United States Immigration and Naturalization Service, or a passport issued by the state department of the United States on or after January 1, 1948, or a written statement signed by a town clerk or registrar of voters of a town of this state or by an election official of another state in the United States or a town or political subdivision of such state that the records of such state, town or political subdivision show that such applicant has previously been admitted as an elector therein, shall be conclusive proof of citizenship. Any applicant submitting documentary evidence of citizenship shall make oath that he is the person named therein."

the whole point of the CT DPS not renewing Kuck's state permit was the finding that Kuck was an alien illegally or unlawfully in the United States then the CT DPS and the Board should not have found that a voter registration listing was conclusive proof of citizenship when, if Kuck was a natural-born citizen, he would not even have been required to present any documents to register to voter, and if Kuck was a naturalized citizen then he may have been asked to obtain one of the five conclusive proofs of citizenship listed in General Statutes § 9-20a, which do not include a voter registration card. Finally, if, as the Defendants argue in their brief, Kuck did provide proof of citizenship on the eve of his hearing then a hearing before the Board would not have been held.[4]

Kuck did not submit the voter registration list as evidence in the case and neither did the issuing authority. Defs.' Br. at AD1 through AD3. The issuing authority failed to renew Kuck's state permit despite the provision of such a list prior to the Board hearing on October 8, 2008. Therefore, the issuing authority did not renew Kuck's state permit based on the list. Rather the issuing authority demanded an order from the Board as a condition of renewal. However the Board never reviewed the "evidence" on which it relied to order the renewal. Defs.' Br. at AD1 through AD3. The voter registration list cannot justify the Board's renewal

[4] See Defs.' Br. at 9 ("The Board found that before commencement of the administrative hearing on October 9, 2008, plaintiff provided DPS with proof of U.S. citizenship via thee voter registration list.")

order. Kuck did not prevail but was foreclosed from seeking judicial review of the decision because the Board and the CT DPS, surreptitiously and contrary to state law, found a way to rule in Kuck's favor without deciding the issue that resulted in the appeal. Conn. Gen. Stat. § 9-20a.

IV. THE PROPOSED AMENDED COMPLAINT

The proposed Amended Complaint elaborates on the allegations in the Complaint by detailing the Defendants' manipulation of the investigation process and administrative process to deny Kuck his procedural and substantive due process rights. The Defendants argue that "[h]ere, the delays are not caused by the agency-rather it is a result of case load of the adjudicatory body." Defs.' Br. at 27. Yet the case load is caused by the CT DPS unlawful processing of state permits.

The CT DPS Defendants do control the stream of appeals heard by the Board. If a police department arrested substantial numbers of individuals with no probable cause, arguable or otherwise, and such arrests deprived those individuals of certain rights, or if a motor vehicle licensing agency suspended licenses without statutory justification, and the matters were not brought for review to the court or administrative hearing officer, respectively, until fourteen to twenty-two months after the deprivation, and the court or administrative hearing officer did not rule on the lawfulness of the government conduct but just erased the arrest or returned the

license when the matters were finally heard, then the police and the licensing agency would have no reason to cease the violations.

The abdication of authority by a tribunal results in a meaningless opportunity to be heard and allows the authority appearing before it to gain greater authority and control over the process. The threat to individuals who do not comply with any and all unlawful demands made by the police or the licensing agency is that rights will be forfeited with no means of redress except that within a fourteen to twenty-two month period, if the matter is an appeal before the Board, the Board will return the state permit with no comment on the authority's actions.

The case of Krimstock v. Kelly, 306 F.3d 40 (2d Cir. 2002), is relevant to the Board's back-log of appeals. Kuck argues that the Board's denial of procedural due process is directly related to the CT DPS substantive due process violations. Similar to Krimstock, by denying Kuck a state permit renewal, the CT DPS Defendants seized Kuck's pistol or revolver each time he did not carry during this period between July 16, 2007, and when Kuck's state permit was returned subsequent to the October 9, 2008, hearing.

The proposed Amended Complaint alleges a series of interrelated events that describe the Board's abdication of its authority to the CT DPS and the CT DPS abuse of that authority in processing state permits in an unlawful manner creating a back-log of appeals before the Board.

V. DISTRICT OF COLUMBIA V. HELLER AND INCORPORATION

As Kuck argued to the district court in his motion for reconsideration and to this Court in his Brief, the issue of incorporation, left for another day in District of Columbia v. Heller, 554 U.S. __ , 128 S.Ct. 2783, (2008), is implicated in the necessary determination of what process was due when the DPS Defendants refused to renew Kuck's state permit. In Nordyke v. King, 563 F.3D 439, a decision rendered by the Court of Appeals for the Ninth Circuit on April 20, 2009, the court, invalidating prior circuit case law, held:

> We are therefore persuaded that the due process clause of the Fourteenth Amendment incorporates the Second Amendment and applies it against the states and local governments.

Nordyke, 563 F.3d at 457. The Second Circuit Court of Appeals has considered District of Columbia v. Heller, _ U.S. _, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008), in the context of the constitutionality of prohibiting felons from possessing firearms, United States v. Stuckey, 2009 WL 692116 (2d Cir. 2009), and its applicability to the states, Maloney v. Cuomo, 554 F.3d 56 (2d Cir. 2009). In Maloney, the court wrote: "It is settled law, however, that the Second Amendment applies only to limitations the federal government seeks to impose on this right." Maloney, 554 F.3d at 58. In a prior decision, the Second Circuit, relying on Nordyke v. King, 319 F.3d 1195 (9th Cir. 2003), held that "the Second Amendment's 'right to keep and bear arms' imposes a limitation on only federal,

not state, legislative efforts." Bach v. Pataki, 408 F.3d 75, 84 (2d Cir. 2005). The Second Circuit, in Bach, joined "five of our sister circuits[]" in so holding. Id. One of these sister circuits was the Ninth Circuit which held in Nordyke v. King, 319 F.3d 1195 (9th Cir. 2003), at that time, that the Second Amendment only imposed a limitation on federal legislative efforts. Since Heller and since Maloney, the Ninth Circuit has held: "[W]e conclude that the Due Process Clause of the Fourteenth Amendment applies the protections of the Second Amendment to state and local governments … ." Nordyke, 563 F.3d at 457. For the reasons argued in Kuck's Brief filed on March 5, 2009, in this Court, Kuck bases his substantive and procedural due process claims on, among other principles of law including the direct application of the Fourteenth Amendment, the Second Amendment as incorporated into the due process clause of the Fourteenth Amendment.

CONCLUSION

For the foregoing reasons and arguments submitted in sections I, II, and III, of the Appellant's Brief and this Reply Brief, Kuck respectfully requests that the Order dismissing his Complaint and denying his Request for Leave to Amend, Motion to Supplement the Complaint, and Motion for Joinder of Party Defendants be reversed, the judgment vacated, and the matter remanded to the district court for further proceedings.

_____

Rachel M. Baird
Attorney for Plaintiff-Appellant

Dated: June 1, 2009

CERTIFICATION OF COMPLIANCE WITH RULE 32(A)(7)

I HEREBY CERTIFY that this brief complies with the type-volume limitations of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure in that this brief contains 4,963 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), and complies with the Typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word software with Times New Roman 14-point font.

_____

Rachel M. Baird, Attorney

June 1, 2009

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that true and accurate copies of the foregoing Reply Brief were served by United States first class mail, postage prepaid, by Brescia's Printing Service in accordance with Rule 25 of the Federal Rules of Appellate Procedure on this 1st day of June, 2009, to the Clerk of this Court and the following counsel of record:

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and a PDF copy served upon the same counsel of record on this 1st day of June, 2009, at the listed email address.

_____
Rachel M. Baird, Attorney

ANTI-VIRUS CERTIFICATION FORM

See Second Circuit Interim Local Rule 25(a)6.

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