



GURA &  
POSSESSKY

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December 2, 2012

The Hon. Gino Agnello  
Clerk, United States Court of Appeals  
for the Seventh Circuit  
219 S. Dearborn Street, Room 2722  
Chicago, IL 60604

Re: *Moore v. Madigan*  
U.S. Court of Appeals for the Seventh Circuit No. 12-1269  
Argued June 8, 2012

Response to Defendants-Appellees' Rule 28(j) Letter

Dear Mr. Agnello:

We endorse *Shepard* Appellants' response to Appellees' citation of *Kachalsky v. County of Westchester*, No. 11-3642 (2d Cir. Nov. 27, 2012).

Additionally, *Kachalsky* erred in holding that the prior restraint doctrine secures only First Amendment rights. The doctrine secures "freedoms which the Constitution guarantees." *Staub v. City of Baxley*, 355 U.S. 313, 322 (1958); *see, e.g. Kent v. Dulles*, 357 U.S. 116, 129 (1958) (Fifth Amendment international travel right: government lacks "unbridled discretion to grant or withhold [a passport]"). Courts have invoked it to secure the right to bear arms. *See, e.g. People v. Zerillo*, 219 Mich. 635, 639 (1922) ("The exercise of a right guaranteed by the Constitution cannot be made subject to the will of the sheriff"); *State ex rel. City of Princeton v. Buckner*, 377 S.E.2d 139, 144 (1988); *cf. Mosby v. Devine*, 851 A.2d 1031, 1050 (R.I. 2004) (rejecting "any system of [firearms] permitting... committed to the unfettered discretion of an executive agency"). Indiana's police cannot

subjectively evaluate an assignment of "self-defense" as a reason for desiring a license and the ability to grant or deny the license

Mr. Agnello  
Page Two

upon the basis of whether the applicant “needed” to defend himself. Such an approach contravenes the essential nature of the constitutional guarantee. It would supplant a right with a mere administrative privilege.

*Schubert v. De Bard*, 398 N.E.2d 1339, 1341 (Ind. App. 1980). “Proper cause” is an illusory restraint on police discretion.

*Kachalsky* misplaced reliance on Reconstruction Era laws prohibiting the carrying of *some* handguns. Cottrol & Diamond, “*Never Intended to be Applied to the White Population*,” 70 Chi.-Kent L. Rev. 1307, 1333 (1995); *Wilson v. State*, 33 Ark. 557, 560 (1878). Moreover, the Supreme Court has interpreted “bear arms.” Appellants’ Br. 25-40.

*Kachalsky*’s assertion that “there is no right to engage in self-defense with a firearm until the objective circumstances justify the use of deadly force,” Slip Op. 46 (citation and footnote omitted), is irrelevant. See *District of Columbia v. Heller*, 554 U.S. 570, 584 (2008) (right to be “armed and ready for offensive or defensive action in a case of conflict with another person”) (citation omitted).

Sincerely,

/s/ Alan Gura

Alan Gura

The body of this letter contains 350 words.



**CERTIFICATE OF SERVICE**

**Certificate of Service When All Case Participants Are CM/ECF Participants**

I hereby certify that on December 2, 2012, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Alan Gura



**CERTIFICATE OF SERVICE**

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s/ \_\_\_\_\_