

DAVID JENSEN PLLC

17 January 2013

VIA ELECTRONIC CASE FILING (ECF)

Katherine O'Hagan Wolfe
Clerk of the Court
United States Court of Appeals for the Second Circuit
40 Foley Square
New York, New York 10007

Re: *Kwong v. Bloomberg*, no. 12-1578
Notice of supplemental authority under FRAP 28(j)

Dear Ms. Wolfe:

Plaintiffs-Appellees write to supplement the authorities previously provided (Appellants' Brief pp. 14-20) with this Court's recent decision in *Kachalsky v. Cacace*, 701 F.3d 81, 2012 U.S. App. LEXIS 24363 (2d Cir. 2012). *Kachalsky* concerned burdens on the carry of concealed handguns in public, and hence, it concerned a different "scope" of Second Amendment activity than does the present case. However, the decision is still instructive on two points.

First, *Kachalsky* teaches that the framework of intermediate and strict scrutiny applies when a law substantially burdens the ability of law-abiding citizens to possess and use firearms for self-protection. *See id.* at __, 2012 U.S. App. LEXIS 24363 at *30-31. The burden in *Kachalsky* was "substantial" because it "place[d] substantial limits on the ability of law-abiding citizens to possess firearms for self-defense in public," and because "there are no alternative options for obtaining a license to carry a handgun." *Id.* at __, 2012 U.S. App. LEXIS 24363 at *30.

Second, *Kachalsky* indicates that a higher level of scrutiny should apply to laws that burden "the 'core' protection of self-defense in the home." *Id.* at __, 2012 U.S. App. LEXIS 24363 at *31. This Court reasoned that there was "a critical difference" between laws that burden the ability to keep guns at home and laws that burden the ability to carry them in public. *See id.* at __, 2012 U.S. App. LEXIS 24363 at *33. This Court applied intermediate scrutiny because the burden concerned "the carrying of firearms in public." *Id.* at __, 2012 U.S. App. LEXIS 24363 at *41.

Respectfully submitted,



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The body of the foregoing letter is 257 words.