UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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JAMES M. MALONEY, CV-03-0786 (ADS) (MLO)

Plaintiff,

- against -

ELIOT SPITZER, in his official capacity as Attorney General of the State of New York, GEORGE PATAKI, in his official capacity as Governor of the State of New York and his successors, DENIS DILLON, in his official capacity as District Attorney of the County of Nassau and their successors,

Defendants.
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REPLY MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT DILLONS' MOTION FOR A JUDGMENT ON THE PLEADINGS PURSUANT TO FRCP 12(c)

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Preliminary Statement

Plaintiff, an attorney acting *Pro Se*, brought the within action to challenge the constitutionality of New York State Penal Law §§ 265.00(14), 265.01 and 265.02 as they pertain to the possession of chuka sticks within one's home.

It is respectfully submitted that the government has an legitimate and rationally-based interest in regulating the possession of weapons.

POINT I

GOVERNMENT HAS A LEGITIMATE INTEREST IN REGULATING WEAPONS

The New York State restriction against possession of chuka sticks furthers the government's legitimate and non-discriminatory interest in protecting the public and limiting production, distribution and possession of an unlawful weapon. See United States v. O'Brien, 391 U.S. 367 (1968). "[T]he first amendment is not inviolate, and a state may justify a limitation on . . . liberty upon a showing that this limitation is essential to accomplish an overriding interest . . . ." In Re: Grand Jury Subpoena for Banking Records, 1986 U.S. Dist. LEXIS 23219 at *4 (S.D.N.Y., July 7, 1986) (citing to United States v. Lee, 455 U.S. 252 (1982)).

There are three separate standards of review to test the Constitutional muster of a statute. (1) whether the restriction or classification of a fundamental right is necessary to promote a compelling or overriding governmental interest, (2) whether the restriction or classification is substantially related to achievement of important governmental objectives, or (3) whether the restriction or classification rests on grounds wholly irrelevant to the achievement of the State's objective. Savino v. The County of Suffolk, 774 F.Supp 756, 758-759 (E.D.N.Y. October 17, 1991).

In the case at bar, it is urged that the third standard, the "rational basis" standard, applies. Savino, id. This is because plaintiff has no fundamental right to possess chuka sticks (see Bach v. Pataki,289 F.Supp.2d 217, aff'd, 408 F.3d 75 (2d Cir. 2005), cert. den., 126 S.Ct. 1341 (2006)), nor has plaintiff alleged that he is a member of a suspect class or that a suspect class is being discriminated against.

New York State Penal Law sections 265.00 through 265.02, as they pertain to chuka sticks, were enacted for a legitimate state interest – to regulate the possession of weapons. Plaintiff cannot show that the State of New York lacks an objective towards public safety in this type of regulation. Indeed, by plaintiff's own admission, chuka sticks are a *weapon*.

Plaintiff alleges that he intends to utilize his chuka sticks for personal defense in addition to furthering his martial arts training. As to the first issue, self-defense in the home, plaintiff acknowledges that chuka sticks are a valuable defensive tool. However, just as the Supreme Court refused to carve out an exception for Amish employers and employees who objected to contributing to the Social Security system on religious grounds, (see United States v. Lee, supra), this Court should not carve out an exception for plaintiff to possess chuka sticks in his home. By definition, chuka sticks are two sticks attached by a rope or thong. Thus they are easily made, transportable and can be concealed. Were this Court to believe that plaintiff Maloney would possess his set of chuka sticks only in the home, there is no guarantee that other citizens would so abide. As the Court held in Lee, not all restrictions on personal liberty are unconstitutional.

With respect to plaintiff's claim that New York State's prohibition against possession of chuka sticks interferes with his martial arts training, plaintiff appears to the be the first party in the statute's thirty-four year history to challenge Penal Law §§ 265.00 through 265.02 for that

reason. Plaintiff's citation to a District of Columbia case and his own opinion that chuka sticks have an important use in martial arts and dexterity training are belied by the fact that no mainstream martial arts entities operating in New York State or elsewhere have joined in this action or submitted amicus briefs to substantiate plaintiff's claim. Apparently, the abundant and various martial arts disciplines operating in New York State have been successfully able to forego the use of chuka sticks. Certainly none of those entities have come forward in this litigation to complain that the subject regulation has negatively impacted their methodology.

New York State Penal Law §§ 265.00 through 265.02, as they pertain to the prohibition against possession of chuka sticks, have a rational relationship to maintaining the welfare and public safety of citizens in New York.

CONCLUSION

For the reasons set forth herein above, and in defendant's initial moving papers, it is respectfully submitted that the subject statutes are Constitutional and that plaintiff's complaint be dismissed in its entirety, with prejudice, and for such other and further relief as this Court deems just and proper.

Dated: Mineola, New York
August 4, 2006

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