

ADMITTED TO PRACTICE IN:
NEW YORK; NEW JERSEY;
UNITED STATES SUPREME
COURT; UNITED STATES
COURTS OF APPEALS FOR THE
SECOND AND THIRD CIRCUITS;
UNITED STATES DISTRICT
COURTS FOR THE SOUTHERN
AND EASTERN DISTRICTS OF
NEW YORK; DISTRICT OF NEW
JERSEY; DISTRICT OF
CONNECTICUT; NORTHERN
DISTRICT OF ILLINOIS;
UNITED STATES COURT OF
INTERNATIONAL TRADE;
COURT OF FEDERAL CLAIMS.

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The Honorable Arthur D. Spatt
United States District Court Judge
United States District Court for the
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

Re: *Maloney v. Spitzer* (CV- 03-786) (ADS) (MLO)

Honorable Sir:

I am the *pro se* Plaintiff in the above-captioned case, in which I have sought declaratory judgment on the question of the constitutionality of certain provisions of the New York Penal Law to the extent that those statutes define as a crime the simple possession of nunchaku (a martial-arts weapon) in one's own home.

As is my duty, I am writing to inform the Court of a recent Second Circuit decision that is dispositive as to one of the arguments that I made in support of my pending motion for summary judgment. Specifically, on May 6, 2005, in *Bach v. Pataki* (Docket No. 03-9123), the Second Circuit held that the Second Amendment of the United States Constitution has no application as against the states. This holding, unless reversed by the United States Supreme Court, disposes of my argument that the state statutes prohibiting simple possession of nunchaku in the home are violative of the guarantees of the Second Amendment.

Accordingly, I urge the Court to consider the unenumerated-rights-based arguments that I have proffered as an alternative to the Second Amendment argument. Given that a substantial portion of my briefing focused on the Second Amendment, I would also welcome the opportunity

to brief the unenumerated-rights-based arguments more fully, and stand ready to do so should the Court wish to receive additional briefing.

Respectfully,

A handwritten signature in black ink, appearing to read "James M. Maloney". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

James M. Maloney

cc.: The Honorable Michael L. Orenstein
Chief Magistrate Judge
United States District Court for the
Eastern District of New York
100 Federal Plaza
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