

No. _____

**In The
Supreme Court of the United States**

MICHAEL A. GURNETT,

Petitioner,

v.

JAMES F. BARGNESI, an Acting Niagara County Court
Judge, in his capacity as licensing officer for pistol permits
in Niagara County and individually,

Respondent.

On Petition For Writ Of Certiorari
To The New York Court of Appeals

PETITION FOR WRIT OF CERTIORARI

JAMES OSTROWSKI
63 Newport Ave.
Buffalo, New York 14216
(716) 435-8918
jameso@apollo3.com

MICHAEL KUZMA
Counsel of Record
1893 Clinton St.
Buffalo, New York 14206
(716) 822-7645
michaelkuzmaesq@gmail.com

Counsel for Petitioners

I. QUESTIONS PRESENTED FOR REVIEW

Does the New York Pistol Permit Law, on its face and as it was applied to the Petitioner Michael Gurnett; which forces citizens to seek the permission of neighbors, police officers and licensing officials to exercise a fundamental right and which vests in licensing officials virtually unlimited discretion to deny, suspend or revoke handgun permits while ignoring due process and which forces citizens to endure a lengthy and complex permit application process, violate the Second Amendment right to bear arms as understood and elucidated by this Court as a fundamental right in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

II. LIST OF PARTIES

The petitioner, Michael A. Gurnett, was the petitioner-appellant in the courts below.

The Respondent James F. Bargnesi, was the respondent in the court below.

Neither of the parties is a corporation.

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IV. JURISDICTION

The New York Court of Appeals denied petitioner's motion for leave to appeal on October 17, 2017. This Court has jurisdiction under 28 U.S.C. § 1257(a). The New York Attorney General represented the Respondent in the courts below and is being served with this Petition as indicated in the proof of service filed herewith.

V. CONSTITUTIONAL AND STATUTORY PROVISIONS

The Second Amendment to the United States Constitution provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

The Fourteenth Amendment to the United States Constitution provides, in pertinent part: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Penal Law Section 265.00(3): As used in this article and in article four hundred, the following terms shall mean and include:

... 3. "Firearm" means (a) any pistol or revolver ... "

Penal Law Section 400.00 is reprinted at App. 29.

VI. STATEMENT OF THE CASE

Petitioner was granted an unrestricted pistol permit in Erie County on or about 1992. His file was transferred to Niagara County when he moved to that county in or around 1996. On or about November 5, 2009, with no prior notice to the petitioner and no opportunity to be heard, and based on ex parte communications not disclosed to the petitioner, petitioner's pistol permit was suspended by Judge Matthew J. Murphy, III. The basis of the suspension was that petitioner "was allegedly involved in an incident concerning and/or was allegedly arrested for: harassment....."

On November 29, 2010, petitioner received a letter from the Niagara County Pistol Permit Office. The letter stated that "we are in the process of reviewing your Pistol Permit due to an arrest for harassment 2nd on June 9, 2009. Forward your written response giving details of the incident's (sic) in question within 10 days." Petitioner responded by letter of December 7, 2010.

The letter denied the allegation, such as it was, and stated that his estranged wife came to his house smelling of alcohol and acting obnoxiously. He further stated, "I believe this accusation of harassment is do (sic) to pictures of her and her boyfriend coming out in the local paper exposing there (sic) affair, and me being blamed for it. I even called the sheriff warning him that I feared retaliation from them."

A letter to Judge Matthew J. Murphy, III, from a court assistant named Corinne F. Cleri, dated, January 3, 2011, states the disposition of the charge (PL 240.26-01, a violation) as "1 yr. ACD expired 11/4/10." There is correspondence regarding petitioner's ex-spouse. The court asked petitioner to complete a form in that regard which he did. On the form, he stated that "it was a nasty divorce. Don't expect her to say nice things." The court then wrote to petitioner's ex-wife asking about "any concerns you may have with your ex-husband."

She wrote back, providing her unqualified opinion about petitioner's psychological state. (This from a woman who attacked petitioner and grabbed his camera!) This letter was never provided to the petitioner and he was obviously never allowed to respond to it.

Instead, it became a basis for the respondent to question petitioner, with no prior notice, about mental health treatment at a hearing held on January 19, 2016.

One of the grounds for revocation was respondent's opinion that "the permit holder was not forthcoming regarding the extent of his medical treatment and issues." However, the petitioner was not put on notice that his medical treatment would even be an issue in the case. A police report that is in the pistol permit file shows conclusively that the petitioner did not commit harassment as alleged.

That report clearly shows that the ex-spouse went to petitioner's house and attacked him and grabbed his camera out of his hands. The petitioner obviously had the right to defend himself against assault and also had a lawful privilege to use force to prevent a robbery of his property. This report is not even mentioned in the respondent's decision. Petitioner's letter to the Court adds even further clarifying detail.

He states that the ex-spouse showed up at his house with her boyfriend at 2:00 a.m. and attacked him. He defended himself and she destroyed the camera, a misdemeanor. He refused to let her have "her" car (which was actually his car as he was the registered owner) because she may have been intoxicated. Petitioner's sons witnessed the unfortunate incident.

Petitioner also states his belief that the harassment charge was in retaliation for publicity in the local papers the origin of which was blamed on him. It is apparent that the pistol permit was revoked and the petitioner's right to bear arms was infringed based on unsubstantiated hearsay allegations and based on issues about which petitioner had no prior notice or opportunity to present relevant evidence.

The Pistol Permit Hearing Notice does not provide any notice to the petitioner about the issues to be determined at the hearing. The Court's ruling that petitioner was being treated for depression is without basis in the record as the word "depression" does not appear in the hearing transcript.

Likewise, the Court's finding that the petitioner "testified about his history of mental illness" is unsupported by the record. That term does not appear in the hearing transcript. In any event, petitioner is not qualified to opine about mental illness, including his owned alleged mental illness.

The Court's decision also states that the "permit holder was arrested for Criminal Contempt. . ." and was asked to explain that arrest by letter. Petitioner does not recall receiving such a letter and, that being the case, had no prior notice that the second arrest would be an issue before the Court. In fact, there is no such letter in the Record. His recollection is that he was charged because he made a call for his son who wished to speak to his mother.

Petitioner has never been adjudicated to be mentally incompetent.

Petitioner filed an original proceeding in the New York Appellate Division, Fourth Department to challenge the revocation of his pistol permit on May 18, 2016. Respondent filed answer to the petition and the Court issued a briefing schedule. The petition sought relief pursuant to Article 78 of the CPLR and 42 U. S. C. 1983. Petitioner was 54 years old and, until 2009, possessed an unrestricted license to possess a handgun in New York State. Petitioner has never been convicted of a crime or accused of misconduct with respect to a firearm.

Petition raised explicit Second Amendment challenges in his petition, pp. 5-9, 11-15 and in his brief in the Appellate Division at Point III:

**“NEW YORK’S PISTOL PERMIT STATUTE IS
UNCONSTITUTIONAL UNDER THE SECOND
AMENDMENT AS INTERPRETED IN HELLER**

AND MCDONALD.

- A. THE PISTOL PERMIT LAW, ON ITS FACE AND AS APPLIED, VIOLATES THE PETITIONER'S RIGHT TO POSSESS FIREARMS IN HIS HOME.
- B. THE PISTOL PERMIT LAW, ON ITS FACE, VIOLATES THE PETITIONER'S RIGHT TO POSSESS FIREARMS IN PUBLIC.”

The respondent JAMES F. BARGNESI is an Acting County Court Judge and is the licensing officer for pistol permits in Niagara County. At all times herein, Judge Bargnesi was not acting in his capacity as a judge but rather in the capacity of a licensing officer.

This proceeding sought review of Judge Bargnesi's order, served on the petitioner by mail on January 21, 2016, that revoked petitioner's pistol permit. See App. 20.

The Appellate Division summarily denied all of petitioner's federal constitutional claims. See, App. 22. The Petitioner filed a notice of appeal as of right to the New York Court of Appeals based on review of constitutional issues. However, the Court of Appeals dismissed the appeal for want of a “substantial” constitutional question, a criteria not specified in the New York Constitution or any state statute.

Permission to appeal was then denied on October 17, 2017.

In the Appellate Division, the petitioner spelled out federal constitutional arguments in great detail as follows:

The petitioner noted his desire to exercise his natural right to keep and bears arms, a right the existence of which is acknowledged by and protected by the Second Amendment to the United States Constitution, applicable to the States pursuant to the Fourteenth Amendment to the United States Constitution. *District of Columbia v.*

Heller, 554 U.S. 570 (2008), *McDonald v. Chicago*, 561 U. S. 742 (2010).

This right is threatened by New York State laws and their enforcement by the respondent herein.

The Supreme Court has held that the right to bear arms is a “fundamental right.” *McDonald v. Chicago*, 561 U.S. 742, 778 (2010).

The right to bear arms is entitled to at least the same amount of respect, protection and enforcement that is provided to the other fundamental rights such as free speech, petition, assembly and due process.

If there is to be any disparate treatment of the right to bear arms due to its unique nature, it should be given even greater respect, protection and enforcement than the other rights because, logically, historically and empirically, *it is the most important right enumerated in the Bill of Rights; it is the right that protects and guarantees all the others.*

Unlike the rights to free speech, religion, assembly and petition, being deprived of the right to bear arms can result in immediate death at the hands of a criminal or a tyrannical government (see, e.g., Kent State, Wounded Knee), such death rendering the entire remainder of the Bill of Rights moot and meaningless at that point.

Presently, in the State of New York, the petitioner cannot lawfully purchase, possess, carry, keep or bear a “firearm” in their home as that term is defined in the New York without the permission of local officials. N.Y. PEN. LAW § 265.00(3).

Petitioner can only keep and bear a pistol or revolver or handgun in their home with the prior permission of the state—a license--after meeting, in the subjective opinion of a state licensing officer, a number of different criteria the imposition of which violates the Second Amendment.

The United States Court of Appeals described the latitude provided state judges in denying licenses as being “vested with considerable discretion.” *Kachalsky v. County of Westchester*, 701 F.3d 81, 87 (2d Cir. 2012).

Such unlicensed possession would constitute a crime under the Penal Law and subject the petitioner to the risk of prosecution and imprisonment merely for exercising his natural and constitutional right to bear arms in his own home for noble purposes.

Thus, New York State explicitly treats the right to bear arms as a “privilege,” not a right, and *boasts of this unconstitutional policy* in numerous court decisions. E.g., *Guddemi v. Rozzi*, 210 AD2d 479 (2nd Dept. 1994); *Shapiro v. New York City Police Dept.*, 201 AD2d 333 (1st Dept. 1994).

For example, applicants must prove they have “good moral character.”

The state may not condition the exercise of a fundamental right on prior proof of “good moral character.”

The term “good moral character” is undefined in the statute and is not susceptible of any precise definition or any rational definition whatsoever.

In our society, there is no general agreement of what “good moral character” means.

Some behavior that years ago would have been considered proof of the lack of good moral character is no longer considered to be such.

The statute also conditions the issuing of a permit on the absence of “good cause . . . for the denial of the license,” yet, provides no definition of “good cause,” thus placing the recognition of constitutional rights in the hands of bureaucrats and their arbitrary and subjective judgments. Penal Law 400(1)(g).

The imposition of such conditions that are impossible to define violates both the Second Amendment right to bear arms and the due process clauses of the Fifth and Fourteenth Amendments.

In most counties in the state, it can take a year or more to obtain a permit. If the permit is denied, judicial intervention can take an additional year and a half including one appeal as of right to the Appellate Division and cost as much as \$5000 for legal fees and costs.

The permit process involves a massive invasion of privacy, forcing the applicant to identify his or her closest friends who are then subjected to a criminal record check themselves. The permit process can be expensive, thus preventing many low-income persons from applying for a permit. The permit process can also be time-consuming, constituting a burden not imposed for the exercise of numerous other fundamental constitutional rights.

In the case of an application for a carrier permit, the applicant must prove “proper cause” in order to exercise a fundamental right. While this requirement has been ruled constitutional by the United States Court of Appeal’s for the Second Circuit, that ruling was not binding on New York Courts. See, *Kachalsky v. County of Westchester*, 701 F.3d 81. (2d Cir. 2012).

A right that can only be exercised by seeking prior permission of the government, which permission can be withheld at the government’s subjective discretion, is a right that has ceased to exist. Because of the administration and enforcement of the above provisions of the pistol permit law by the respondent, the petitioner has, and will continue to be, subjected to irreparable harm.

At all times herein, the respondent was acting under color of state law. All of the statutes, regulations, court actions, customs and practices referenced herein constitute state action within the meaning of the Constitution. At all times herein, the actions of the respondent have been intentional or in reckless disregard of the clearly established rights of the petitioner.

On account of the respondent’s actions and violations of his rights as set forth above, the petitioner suffered actual damages, including loss of liberty, pain, suffering, humiliation and emotional distress, loss of reputation and was forced to expend funds for attorneys’ fees and related expenses. Petitioner sought to recover damages, attorney’s fees and costs. Petitioner demands prejudgment interest on all elements of out-of-pocket loss including attorneys’ fees.

In the Appellate Division, petitioner argued that Judge Bargnesi's determination was not based on substantial evidence. The petitioner's license was suspended based on an unsubstantiated allegation of harassment which turned out to be completely bogus. The harassment allegedly occurred on June 9, 2009. The reference in the suspension order to October 9, 2009 appears to be a typo as there is no other reference in the record to that date. At the hearing, no evidence was introduced in support of the bogus allegation. As noted in the statement of facts, the police report shows conclusively that the complainant attacked the petitioner that day, not the other way around.

There is a reference in the record to a contempt charge, however, no evidence was introduced at the hearing to support that charge. No police reports are in the record that support that charge. The petitioner was given no notice of that issue and this issue was not discussed at the hearing.

The court stated that petitioner was asked to respond to the charge of criminal contempt, however, the Record shows that this never occurred. As noted below, the court based its decision on the totality of circumstances. Thus, this was clear error.

Nor is there substantial evidence in support of the court's finding that petitioner was not forthcoming about his medical history. First, he was not notified that this would be an issue. Second, his records were not before the court to provide any basis for such a finding. Third, it is apparent from the record that petitioner's medical history is complex. He may not have initially understood the question but the record shows he ultimately responded to the best of his ability under the circumstances.

Finally, while the court explicitly noted in its decision that the petitioner was being treated for "depression," there is no evidence in the record for that finding of fact other than a hearsay letter from his ex-spouse.

Thus, there was zero credible or reliable evidence to support the allegations that were before the court at the hearing.

The Petition further argued that the determination violated due process. Granted that there was a complete lack of evidence to support the allegation that was the basis for the suspension and presumably the hearing before the court. That being the case, the court actually based its decision on issues about which the petitioner was given zero notice in advance. Thus, there was no possible way for a pro se petitioner to be prepared to discuss those issues. “Parties whose rights are to be affected” are entitled to “notice and an opportunity to be heard at a meaningful time and in a meaningful manner.” *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (internal quotation marks omitted); NY Constitution, Article I, Section 6, US Constitution, 5th and 14th Amendments. Thus, the court’s revocation of petitioner’s license based on a lack of candor about his complex medical history was a clear violation of due process requirements. The Court should order a rehearing with proper notice in advance of which issues will be before the Court.

It is also apparent from the court’s language that the contempt charge was a factor in the decision. The court based its decision on “the totality of the circumstances” and “a review of the permit holders file.” Here is yet another instance of where the petitioner was not put on notice of the need to address an issue before the court.

Finally, it is obvious that the court’s decision was based in large part on an ex parte letter to the court, never provided to the petitioner and which, obviously, he was never allowed to rebut. This is the extreme, reductio ad absurdum case of a due process violation. It is beyond dispute that the court relied on this letter as it is the only reference anywhere in the record of the case to “depression,” a critical finding of the court in its revocation decision.

Because of the administration and enforcement of the above provisions of the pistol permit law by the respondents, the petitioner has, and will continue to be, subjected to irreparable harm.

The New York pistol permit law (Penal Law Sections 400.00 and 265.00), on its face and as it was applied by state and local officials herein, violates the Second Amendment and Fourteenth Amendment rights of the petitioner to possess firearms in their homes for the following reasons:

- a. A state may not license or impose a prior restraint on a fundamental right. See, e.g., the 1st, 3rd, 4th, 5th, 6th, 7th, 8th and 14th Amendments; *Murdock v. Pennsylvania*, 319 U.S. 105 (1943).
- b. The requirements of proving “good moral character,” integrity and the absence of “good cause” to deny a license violate the Second Amendment. See, *Schneider v. New Jersey*, 308 U.S. 147 (1939).
- c. The apparently unrestrained grant of authority to licensing officials to revoke licenses “at any time” violates the petitioner’s right to bear arms.
- d. The costs of obtaining a permit are unduly burdensome for poor persons and persons of modest means.
- e. The amount of time permit applicants are required to wait for approval is unduly burdensome, particularly for people who are elderly, terminally ill and who have an urgent need for firearms for self-defense because they live in a high crime area or have been threatened.
- f. In the case of the terminally ill or the elderly, the waiting period could exceed their actual lifespan or a large portion of their lifespan.

- g. The statute's requirement that an applicant prove he has not been convicted of a "serious offense" is unconstitutionally overbroad.
- h. The mandatory disclosure of close friends for references, together with the imposition on them of a criminal background check and the imposition upon the applicant of the burden of confessing to one's close friends all of one's sins and shortcomings that a licensing official might conceivably deem significant (see, *Novick v. Hillery*, 183 AD2d 1007 (3rd Dept. 1992)), violates the privacy of all concerned, is unduly burdensome and invites retaliation against political activists and their closest friends.
- i. The mandate to provide references in the county where the application is processed violates the rights of those who recently moved into an area.
- j. Applicants bear the burden of proof of their entitlement to the "right" to bear arms; receive no hearing before their entitlement to this right is initially determined, and receive post-deprivation judicial review that presumes the licensing officer's decision is correct and applies a deferential standard of review and imposes the burden of proving error upon the alleged "right"-holder.

The New York pistol permit law (Penal Law Section 400.00 and 265.00), on its face, violates the Second Amendment and Fourteenth Amendment rights of the petitioner to carry firearms in public for the following reasons:

- a. The requirement of an applicant for a carrier permit to show "proper cause," a determination ultimately based on the virtually unfettered discretion of licensing

officials and review judges, violates the Second Amendment.

- b. A state may not license or impose a prior restraint on a fundamental right. See, e.g., the 1st, 3rd, 4th, 5th, 6th, 7th, 8th and 14th Amendments; *Murdock v. Pennsylvania*, 319 U.S. 105 (1943).
- c. The requirements of proving “good moral character,” integrity and the absence of “good cause” to deny a license violate the Second Amendment. See, *Schneider v. New Jersey*, 308 U.S. 147 (1939).
- d. The apparently unrestrained grant of authority to licensing officials to revoke licenses “at any time” violates the petitioner’s right to bear arms.
- e. The costs of obtaining a permit are unduly burdensome for poor persons and persons of modest means.
- f. The amount of time permit applicants are required to wait for approval is unduly burdensome, particularly for people who are elderly, terminally ill and who have an urgent need for firearms for self-defense because they live in a high crime area or have been threatened.
- g. In the case of the terminally ill or the elderly, the waiting period could exceed their actual lifespan or a large portion of their lifespan.
- h. The statute’s requirement that an applicant prove he has not been convicted of a “serious offense” is unconstitutionally overbroad.
- i. The mandatory disclosure of close friends for references, together with the imposition on them of a criminal background check and the imposition upon the applicant of the burden of confessing to one’s close friends all of one’s sins and shortcomings that a licensing official

might conceivably deem significant (see, *Novick v. Hillery*, 183 AD2d 1007 (3rd Dept. 1992)), violates the privacy of all concerned, is unduly burdensome and invites retaliation against political activists and their closest friends.

- j. The mandate to provide references in the county where the application is processed violates the rights of those who recently moved into an area.
- k. Applicants bear the burden of proof of their entitlement to the “right” to bear arms; receive no hearing before their entitlement to this right is initially determined, and receive post-deprivation judicial review that presumes the licensing officer’s decision is correct and applies a deferential standard of review and imposes the burden of proving error upon the alleged “right”-holder.
- l. Because the requirement of “good moral character” and absence of a “serious offense” are essential parts of the statutory scheme, the entire statute should be vacated.
- m. Applicants bear the burden of proof of their entitlement to the “right” to bear arms; receive no hearing before their entitlement to this right is initially determined, and receive post-deprivation judicial review that presumes the licensing officer’s decision is correct and applies a deferential standard of review and imposes the burden of proving error upon the alleged “right”-holder.

The record fails to provide a rational basis for any of the findings that led to the revocation of petitioner’s license. Thus, the court’s decision was arbitrary and capricious and an abuse of discretion as a matter of law.

Respondent Bargnesi raised the defense of judicial immunity. Obviously judges are immune from suit for

money damages for judicial acts. The mere fact that a statute confers upon a judge a licensing function does not convert that function into a judicial act. That argument obviously begs the question. Licensing is an administrative function generally performed by non-judges. The respondent has failed to demonstrate that licensing is a judicial function. If it was, the courts would also have to immunize from suit hundreds of other officials who issue licenses and permits.

In conclusion, petitioner asked the Appellate Division to vacate the revocation of petitioner's pistol permit and enter a declaratory judgment that the provisions of the Penal Law specified herein infringe on the right of the people to keep and bear arms and the right to due process, in violation of the Second and Fourteenth Amendments to the United States Constitution and are void. The petition asked the Appellate Division to issue a permanent injunction enjoining respondent and their officers, agents, and employees from administration and enforcement of the provisions alleged herein to violate the United States Constitution and to issue an appropriate order allowing petitioner to pursue his claims under 42 USC 1983.

The federal issues were raised in the Appellate Division as indicated in the relevant portions of the state court petition which appear in the Appendix and were rejected on the merits by the Appellate Division in its decision of February 3, 2017. Petitioner's motion for permission to appeal to the New York Court of Appeals once again raised those issues. The motion was denied by the New York Court of Appeals on the merits. See Appendix, App. 27. The issues are preserved for review by the Court.

VII. ARGUMENT

The casual manner in which the Appellate Division and Court of Appeals tossed aside a very serious constitutional challenge of the New York Pistol Permit Law evidences a more general and pervasive attitude of utter hostility to the fundamental individual right to bear arms recognized in the Second Amendment and by this Court's landmark decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008). The legislature has enacted and the executive gleefully enforces statutes that treat the right to bear arms as a privilege, in open revolt against this Court's jurisprudence. All three levels of New York's courts likewise refuse to protect the right to bear arms and consistently reject any and all well-founded challenges to New York laws on that ground. In fact, counsel is not aware of a single court case in New York that struck down any law, regulation or administrative determination based on *Heller* and *McDonald*.

Out of all the states, New York has exhibited the most hostility and open defiance of this Court's decisions. It will continue to do so until this Court acts. See *Peruta v. California*, 137 S. Ct. 1995, 1997, 1999 (2017) (Thomas, J., dissenting from denial of cert.) ("The Court's decision to deny certiorari in this case reflects a distressing trend: the treatment of the Second Amendment as a disfavored right."); *Voisine v. United States*, 136 S. Ct. 2272, 2291 (2016) (Thomas, J., dissenting) ("We treat no other constitutional right so cavalierly"); *Friedman v. Highland Park*, 136 S. Ct. 447 (2015) (Thomas, J., dissenting from denial of certiorari) ("Because noncompliance with our Second Amendment precedents warrants this Court's attention as much as any of our precedents, I would grant certiorari in this case.").

The Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), held that the right to bear arms is an individual right binding on the states. This was contrary to

the prior treatment of bearing arms in New York as a privilege granted by the State at its whim. Under that prior understanding, a loose set of practice and procedures developed with judges acting as licensing officials operating in a cavalier and informal fashion in granting or denying permits for handguns.

In recent litigation such judges, when sued for money damages, have asserted judicial immunity. Plaintiffs' lawyers have argued to the contrary, that they are not immune as they not acting in a judicial capacity. If the courts hold that they are immune, that raises even more questions. Are judges allowed to have ex parte communications? This is standard procedure in pistol permit cases.

Are judges allowed to act as prosecutor and judge in the same case? This is a fair description of many pistol permit cases. As noted, before *Heller* and *McDonald*, possessing a handgun was a privilege in New York State. The problem is this: New York officials and lower courts are continuing to treat it as such, essentially ignoring the revolution in the law these cases unleashed. Before these cases, it was the consensus of legal scholars that there was no right to bear arms now that militias are obsolete.

A number of practical problems ensue from the widespread attitude of officials that *Heller* and *McDonald* do not apply in New York. First, the loose practices described above will continue, causing consternation among millions of citizens who believe, as the Supreme Court believes, that the right to bear arms applies in New York State. Second, the widespread practice in pistol permit offices and among the police of ignoring the Second Amendment is opening New York up to tremendous potential civil liability under 42 U.S.C. 1983. Liability in such cases, if a wave of them hits the federal courts, could reach hundreds of millions of dollars in damages.

Third, a house divided against itself cannot stand. New York courts cannot long continue to have a separate but unequal legal system, at odds with the rest of the

states, without a serious risk of a loss of public confidence in New York courts and their willingness to abide by the laws of the land.

The casual attitude of the lower courts toward the Second Amendment is exemplified **in this case** where the Fourth Department summarily rejected petitioner's contentions without any discussion, citing cases which themselves did not address the issues raised in this case or that give them only a cursory review. *Matter of Cuda v Dwyer*, 107 AD3d 1409 (4th Dept. 2013). Incredibly, *Cuda* cites a 1985 case decided before *Heller* and *McDonald*. This perfectly exemplifies the casual attitude toward a fundamental right mentioned above. *Matter of Demyan v Monroe*, 108 AD2d 1004, 1005 [1985]). The third case cited by the court below, was decided by the Second Circuit and is therefore not binding on any New York court. *Kachalsky v County of Westchester*, 701 F3d 81, 93-101, cert denied ___ US ___, 133 S Ct 1806. *Kachalsky* only involves one of the issues raised in this case, the proper cause for a carry permit.

CONCLUSION

For the foregoing reasons, the Petition should be granted.

Respectfully submitted,

MICHAEL KUZMA
Counsel of Record
1893 Clinton St.
Buffalo, New York 14206
(716) 822-7645
michaelkuzmaesq@gmail.com

JAMES OSTROWSKI
63 Newport Ave.
Buffalo, New York 14216
(716) 435-8918
jameso@apollo3.com

Counsel for Petitioner

AD2d 479 [2nd Dept. 1991]. This Court has a substantial and legitimate interest, indeed a grave responsibility, in insuring the safety of the general public from individuals who by their conduct have shown themselves to be lacking the essential temperament, character or judgment which should be present in one entrusted with a dangerous weapon (*Lipton v. Ward*, 116 AD2d 474 [1st Dept 1986] and *Pelose v. County Court of Westchester County*, 53 AD2d 645 [2nd Dept 1976]).

Due process has been afforded Mr. Gurnett. Based upon the totality of the circumstances, a review of the permit holders file and the applicant testimony and credibility at the hearing, his current treatment for depression, it is hereby

ORDERED, that the Pistol Permit license application of MICHAEL A. GURNETT is revoked.

Dated: January 19, 2016

/s/ Hon. James F. Bargnesi
Hon. James F. Bargnesi
Acting Niagara County
Court Judge

GRANTED
JAN 20, 2016
BY: /S/ J. VACANTI
JUDY A. VACANTI
COURT CLERK

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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OP 16-00837

PRESENT: SMITH, J.P., DEJOSEPH, NEMOYER,
TROUTMAN, AND SCUDDER, JJ.

IN THE MATTER OF MICHAEL A. GURNETT,
PETITIONER,

V

MEMORANDUM AND
ORDER

JAMES F. BARGNESI, ACTING NIAGARA COUNTY
COURT JUDGE, IN HIS CAPACITY AS LICENSING
OFFICER FOR PISTOL PERMITS IN NIAGARA COUNTY
AND INDIVIDUALLY,

RESPONDENT.

JAMES OSTROWSKI, BUFFALO, FOR PETITIONER.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL,
ALBANY (JONATHAN D. HITSOUS OF
COUNSEL), FOR RESPONDENT.

Proceeding pursuant to CPLR article 78 (initiated in the Appellate Division of the Supreme Court in the Fourth Judicial Department pursuant to CPLR 506 [b] [1]) to annul a determination of respondent. The determination revoked the pistol permit of petitioner.

It is hereby ORDERED that the determination is unanimously confirmed without costs and the petition is dismissed.

Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking, inter alia, to annul the determination revoking his pistol permit. We reject the contention of petitioner that he was denied his right to due process of law. "It is well settled that a formal hearing is not required prior to the revocation of a pistol permit [where, as here,] the licensee is given notice of the charges and has an adequate opportunity to submit proof in response" (*Matter of Chomyn v Boller*, 137 AD3d 1705, 1706, *appeal dismissed* 27 NY3d 1119, *lv denied* 28 NY3d 908 [internal quotation marks omitted] *i see Matter of Cuda v Dwyer*, 107 AD3D 1409, 1409-1410; *Matter of Strom v Erie County Pistol Permit Dept.*, 6 AD3d 1110, 1111). Contrary to petitioner's further contention, we conclude that the determination is neither arbitrary and capricious nor an abuse of discretion (*see Chomyn*, 137 AD3d at 1706). "It is well established that' [a licensing officer] is vested with broad discretion *in* determining whether to revoke a pistol permit and may do so for any good causer' including 'a finding that the petitioner lack[s] the essential temperament or character which should be present in one entrusted with a dangerous [weapon] . . . , or that he or she does not possess the maturity, prudence, carefulness, good character, temperament, demeanor and judgment necessary to have a pistol permit' "*(Matter of Peters v Randall*, 111 AD3d 13911 1392; *see Chomyn*, 137 AD3d at 1706). Here, the record before the licensing officer demonstrated that petitioner had been involved in several verbal or physical altercations with his then wife, that the second of such altercations had resulted in petitioner's being charged with harassment in the second degree and the issuance of a temporary order of protection, and that the third had occurred in violation of that temporary order of protection, giving rise to a charge of criminal contempt. Further, the transcript of petitioner's appearance before the licensing officer supports the determination that the petitioner lacked credibility and was not forthcoming about

his history of mental health treatment and his apparently ongoing treatment for depression. Finally, to the extent that the contention is properly before us, we conclude that petitioner's contention that the revocation of his pistol permit violates his rights under the Second and Fourteenth Amendments of the United States Constitution is without merit (*see Chomyn*, 137 AD3d at 1706-1707; *Cuda*, 107 AD3d at 1410; *see also Kachalsky v County of Westchester*, 701 F3d 81, 93-101, cert *denied* US ,133 S Ct 1806).

Entered: February 3, 2017

Frances E. Cafarell
Clerk of the Court

SUPREME COURT
APPELLATE DIVISION .
Fourth Judicial Department
Clerk's Office, Rochester, N.Y.: J

I, FRANCES E. CAFARELL, Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that this is a true copy of the original order; now on file in this office.

[SEAL OF COURT]

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of Rochester, New York this FEB 03, 2017

/s/ Frances E. Cafarell
Clerk

***State of New York
Court of Appeals***

*Decided and Entered on the
first day of June, 2017*

Present, Hon. Janet Difiore, Chief Judge, presiding.

SSD 25

In the Matter of Michael A. Gurnett,

Appellant,

v.

James F. Bargnesi &c.,

Respondent.

Appellant having appealed to the Court of Appeals in the above title;

Upon the papers filed and due deliberation, it is ORDERED, that the appeal is dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

/s/John P. Asiello
John P. Asiello
Clerk of the Court

State of New York
Court of Appeals

John P. Asiello
Chief Clerk and
Legal Counsel

Clerk's Office
20 Eagle Street
Albany, New York 12207-1095

Decided June 1, 2017

SSD 25

In the Matter of Michael A. Gurnett,
Appellant,

v.

James F. Bargnesi &c.,
Respondent.

Appeal dismissed without costs, by the Court sua sponte,
upon the ground that no substantial constitutional question
is directly involved.

***State of New York
Court of Appeals***

***Decided and Entered on the
seventeenth day of October,
2017***

Present, Hon. Janet DiFiore, *Chief Judge, presiding.*

Mo. No. 2017-753

In the Matter of Michael A. Gurnett,

Appellant,

v.

James F. Bargnesi, &c.,

Respondent.

Appellant having moved for leave to appeal to the Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is ORDERED, that the motion is denied with one hundred dollars costs and necessary reproduction disbursements.

/s/John P. Asiello
John P. Asiello
Clerk of the Court

State of New York
Court of Appeals

John P. Asiello
Chief Clerk and
Legal Counsel

Clerk's Office
20 Eagle Street
Albany, New York 12207-1095

Decided October 17, 2017

Mo. No. 2017-753

In the Matter of Michael A. Gurnett,
Appellant,

v.

James F. Bargnesi &c.,
Respondent.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

Penal Law Section 400.00 Licenses to carry, possess, repair and dispose of firearms.

1. Eligibility. No license shall be issued or renewed pursuant to this section except by the licensing officer, and then only after investigation and finding that all statements in a proper application for a license are true. No license shall be issued or renewed except for an applicant (a) twenty-one years of age or older, provided, however, that where such applicant has been honorably discharged from the
2. United States army, navy, marine corps, air force or coast guard, or the national guard of the state of New York, no such age restriction shall apply; (b) of good moral character; (c) who has not been convicted anywhere of a felony or a serious offense; (d) who is not a fugitive from justice; (e) who is not an unlawful user of or addicted to any controlled substance as defined in section 21 U.S.C. 802; (f) who being an alien (i) is not illegally or unlawfully in the United States or (ii) has not been admitted to the United States under a nonimmigrant visa subject to the exception in 18 U.S.C. 922(y)(2); (g) who has not been discharged from the Armed Forces under dishonorable conditions; (h) who, having been a citizen of the United States, has not renounced his or her citizenship; (i) who has stated whether he or she has ever suffered any mental illness; (j) who has not been involuntarily committed to a facility under the jurisdiction of an office of the department of mental hygiene pursuant to article nine or fifteen of the mental hygiene law, article seven hundred thirty or section 330.20 of the criminal procedure law, section four hundred two or five hundred eight of the correction law, section 322.2 or 353.4 of the family court act, or has not been civilly confined in a secure treatment facility pursuant to article ten of the mental hygiene law; (k) who has not had a license revoked or who is not under a suspension or

ineligibility order issued pursuant to the provisions of section 530.14 of the criminal procedure law or section eight hundred forty-two-a of the family court act; (l) in the county of Westchester, who has successfully completed a firearms safety course and test as evidenced by a certificate of completion issued in his or her name and endorsed and affirmed under the penalties of perjury by a duly authorized instructor, except that: (i) persons who are honorably discharged from the United States army, navy, marine corps or coast guard, or of the national guard of the state of New York, and produce evidence of official qualification in firearms during the term of service are not required to have completed those hours of a firearms safety course pertaining to the safe use, carrying, possession, maintenance and storage of a firearm; and (ii) persons who were licensed to possess a pistol or revolver prior to the effective date of this paragraph are not required to have completed a firearms safety course and test; (m) who has not had a guardian appointed for him or her pursuant to any provision of state law, based on a determination that as a result of marked subnormal intelligence, mental illness, incapacity, condition or disease, he or she lacks the mental capacity to contract or manage his or her own affairs; and (n) concerning whom no good cause exists for the denial of the license. No person shall engage in the business of gunsmith or dealer in firearms unless licensed pursuant to this section. An applicant to engage in such business shall also be a citizen of the United States, more than twenty-one years of age and maintain a place of business in the city or county where the license is issued. For such business, if the applicant is a firm or partnership, each member thereof shall comply with all of the requirements set forth in this subdivision and if the applicant is a corporation, each officer thereof shall so comply.

2. Types of licenses. A license for gunsmith or dealer in firearms shall be issued to engage in such business. A license for a pistol or revolver, other than an assault weapon or a disguised gun, shall be issued to (a) have and possess in his dwelling by a householder; (b) have and possess in his place of business by a merchant or storekeeper; (c) have and carry concealed while so employed by a messenger employed by a banking institution or express company; (d) have and carry concealed by a justice of the supreme court in the first or second judicial departments, or by a judge of the New York city civil court or the New York city criminal court; (e) have and carry concealed while so employed by a regular employee of an institution of the state, or of any county, city, town or village, under control of a commissioner of correction of the city or any warden, superintendent or head keeper of any state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases, provided that application is made therefor by such commissioner, warden, superintendent or head keeper; (f) have and carry concealed, without regard to employment or place of possession, by any person when proper cause exists for the issuance thereof; and (g) have, possess, collect and carry antique pistols which are defined as follows: (i) any single shot, muzzle loading pistol with a matchlock, flintlock, percussion cap, or similar type of ignition system manufactured in or before 1898, which is not designed for using rimfire or conventional centerfire fixed ammunition; and (ii) any replica of any pistol described in clause (i) hereof if such replica--(1) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or (2) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

3. Applications. (a) Applications shall be made and renewed, in the case of a license to carry or possess a pistol or revolver, to the licensing officer in the city or county, as the case may be, where the applicant resides, is principally employed or has his or her principal place of business as merchant or storekeeper; and, in the case of a license as gunsmith or dealer in firearms, to the licensing officer where such place of business is located. Blank applications shall, except in the city of New York, be approved as to form by the superintendent of state police. An application shall state the full name, date of birth, residence, present occupation of each person or individual signing the same, whether or not he or she is a citizen of the United States, whether or not he or she complies with each requirement for eligibility specified in subdivision one of this section and such other facts as may be required to show the good character, competency and integrity of each person or individual signing the application. An application shall be signed and verified by the applicant. Each individual signing an application shall submit one photograph of himself or herself and a duplicate for each required copy of the application. Such photographs shall have been taken within thirty days prior to filing the application. In case of a license as gunsmith or dealer in firearms, the photographs submitted shall be two inches square, and the application shall also state the previous occupation of each individual signing the same and the location of the place of such business, or of the bureau, agency, subagency, office or branch office for which the license is sought, specifying the name of the city, town or village, indicating the street and number and otherwise giving such apt description as to point out reasonably the location thereof. In such case, if the applicant is a firm, partnership or corporation, its name, date and place of formation, and principal place of business shall be stated. For such firm or partnership, the application shall be signed and verified by each individual

composing or intending to compose the same, and for such corporation, by each officer thereof.

(b) Application for an exemption under paragraph seven-b of subdivision a of section 265.20 of this chapter. Each applicant desiring to obtain the exemption set forth in paragraph seven-b of subdivision a of section 265.20 of this chapter shall make such request in writing of the licensing officer with whom his application for a license is filed, at the time of filing such application. Such request shall include a signed and verified statement by the person authorized to instruct and supervise the applicant, that has met with the applicant and that he has determined that, in his judgment, said applicant does not appear to be or poses a threat to be, a danger to himself or to others. He shall include a copy of his certificate as an instructor in small arms, if he is required to be certified, and state his address and telephone number. He shall specify the exact location by name, address and telephone number where such instruction will take place. Such licensing officer shall, no later than ten business days after such filing, request the duly constituted police authorities of the locality where such application is made to investigate and ascertain any previous criminal record of the applicant pursuant to subdivision four of this section.

Upon completion of this investigation, the police authority shall report the results to the licensing officer without unnecessary delay. The licensing officer shall no later than ten business days after the receipt of such investigation, determine if the applicant has been previously denied a license, been convicted of a felony, or been convicted of a serious offense, and either approve or disapprove the applicant for exemption purposes based upon such determinations. If the applicant is approved for the exemption, the licensing officer shall notify the appropriate duly constituted police authorities and the applicant. Such exemption shall terminate if the application for the license is denied, or at any earlier time based upon any information obtained by the licensing

officer or the appropriate police authorities which would cause the license to be denied. The applicant and appropriate police authorities shall be notified of any such terminations.

4. Investigation. Before a license is issued or renewed, there shall be an investigation of all statements required in the application by the duly constituted police authorities of the locality where such application is made, including but not limited to such records as may be accessible to the division of state police or division of criminal justice services pursuant to section 400.02 of this article. For that purpose, the records of the appropriate office of the department of mental hygiene concerning previous or present mental illness of the applicant shall be available for inspection by the investigating officer of the police authority. In order to ascertain any previous criminal record, the investigating officer shall take the fingerprints and physical descriptive data in quadruplicate of each individual by whom the application is signed and verified. Two copies of such fingerprints shall be taken on standard fingerprint cards eight inches square, and one copy may be taken on a card supplied for that purpose by the federal bureau of investigation; provided, however, that in the case of a corporate applicant that has already been issued a dealer in firearms license and seeks to operate a firearm dealership at a second or subsequent location, the original fingerprints on file may be used to ascertain any criminal record in the second or subsequent application unless any of the corporate officers have changed since the prior application, in which case the new corporate officer shall comply with procedures governing an initial application for such license. When completed, one standard card shall be forwarded to and retained by the division of criminal justice services in the executive department, at Albany. A search of the files of such division and written notification of the results of the search to the investigating officer shall be made without unnecessary delay. Thereafter, such division shall notify

the licensing officer and the executive department, division of state police, Albany, of any criminal record of the applicant filed therein subsequent to the search of its files. A second standard card, or the one supplied by the federal bureau of investigation, as the case may be, shall be forwarded to that bureau at Washington with a request that the files of the bureau be searched and notification of the results of the search be made to the investigating police authority. Of the remaining two fingerprint cards, one shall be filed with the executive department, division of state police, Albany, within ten days after issuance of the license, and the other remain on file with the investigating police authority. No such fingerprints may be inspected by any person other than a peace officer, who is acting pursuant to his special duties, or a police officer, except on order of a judge or justice of a court of record either upon notice to the licensee or without notice, as the judge or justice may deem appropriate. Upon completion of the investigation, the police authority shall report the results to the licensing officer without unnecessary delay.

4-a. Processing of license applications. Applications for licenses shall be accepted for processing by the licensing officer at the time of presentment. Except upon written notice to the applicant specifically stating the reasons for any delay, in each case the licensing officer shall act upon any application for a license pursuant to this section within six months of the date of presentment of such an application to the appropriate authority. Such delay may only be for good cause and with respect to the applicant. In acting upon an application, the licensing officer shall either deny the application for reasons specifically and concisely stated in writing or grant the application and issue the license applied for.

4-b. [Omitted.]

5. Filing of approved applications. (a) The application for any license, if granted, shall be filed by the licensing officer with the clerk of the county of issuance, except that in the city of New York and, in the counties of Nassau

and Suffolk, the licensing officer shall designate the place of filing in the appropriate division, bureau or unit of the police department thereof, and in the county of Suffolk the county clerk is hereby authorized to transfer all records or applications relating to firearms to the licensing authority of that county. Except as provided in paragraphs (b) through (f) of this subdivision, the name and address of any person to whom an application for any license has been granted shall be a public record. Upon application by a licensee who has changed his place of residence such records or applications shall be transferred to the appropriate officer at the licensee's new place of residence. A duplicate copy of such application shall be filed by the licensing officer in the executive department, division of state police, Albany, within ten days after issuance of the license. The superintendent of state police may designate that such application shall be transmitted to the division of state police electronically. In the event the superintendent of the division of state police determines that it lacks any of the records required to be filed with the division, it may request that such records be provided to it by the appropriate clerk, department or authority and such clerk, department or authority shall provide the division with such records. In the event such clerk, department or authority lacks such records, the division may request the license holder provide information sufficient to constitute such record and such license holder shall provide the division with such information. Such information shall be limited to the license holder's name, date of birth, gender, race, residential address, social security number and firearms possessed by said license holder. Nothing in this subdivision shall be construed to change the expiration date or term of such licenses if otherwise provided for in law. Records assembled or collected for purposes of inclusion in the database established by this section shall be released pursuant to a court order. Records assembled or collected for purposes of inclusion in the database created pursuant to section 400.02 of this chapter

shall not be subject to disclosure pursuant to article six of the public officers law.

(b-g) [Omitted.]

6. License: validity. Any license issued pursuant to this section shall be valid notwithstanding the provisions of any local law or ordinance. No license shall be transferable to any other person or premises. A license to carry or possess a pistol or revolver, not otherwise limited as to place or time of possession, shall be effective throughout the state, except that the same shall not be valid within the city of New York unless a special permit granting validity is issued by the police commissioner of that city. Such license to carry or possess shall be valid within the city of New York in the absence of a permit issued by the police commissioner of that city, provided that (a) the firearms covered by such license have been purchased from a licensed dealer within the city of New York and are being transported out of said city forthwith and immediately from said dealer by the licensee in a locked container during a continuous and uninterrupted trip; or provided that (b) the firearms covered by such license are being transported by the licensee in a locked container and the trip through the city of New York is continuous and uninterrupted; or provided that (c) the firearms covered by such license are carried by armored car security guards transporting money or other valuables, in, to, or from motor vehicles commonly known as armored cars, during the course of their employment; or provided that (d) the licensee is a retired police officer as police officer is defined pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law or a retired federal law enforcement officer, as defined in section 2.15 of the criminal procedure law, who has been issued a license by an authorized licensing officer as defined in subdivision ten of section 265.00 of this chapter; provided, further, however, that if such license was not issued in the city of New York it must be marked "Retired Police Officer" or "Retired Federal Law Enforcement Officer", as the case

may be, and, in the case of a retired officer the license shall be deemed to permit only police or federal law enforcement regulations weapons; or provided that (e) the licensee is a peace officer described in subdivision four of section 2.10 of the criminal procedure law and the license, if issued by other than the city of New York, is marked "New York State Tax Department Peace Officer" and in such case the exemption shall apply only to the firearm issued to such licensee by the department of taxation and finance. A license as gunsmith or dealer in firearms shall not be valid outside the city or county, as the case may be, where issued.

7. License: form. Any license issued pursuant to this section shall, except in the city of New York, be approved as to form by the superintendent of state police. A license to carry or possess a pistol or revolver shall have attached the licensee's photograph, and a coupon which shall be removed and retained by any person disposing of a firearm to the licensee. Such license shall specify the weapon covered by calibre, make, model, manufacturer's name and serial number, or if none, by any other distinguishing number or identification mark, and shall indicate whether issued to carry on the person or possess on the premises, and if on the premises shall also specify the place where the licensee shall possess the same. If such license is issued to an alien, or to a person not a citizen of and usually a resident in the state, the licensing officer shall state in the license the particular reason for the issuance and the names of the persons certifying to the good character of the applicant. Any license as gunsmith or dealer in firearms shall mention and describe the premises for which it is issued and shall be valid only for such premises.

8. License: exhibition and display. Every licensee while carrying a pistol or revolver shall have on his or her person a license to carry the same. Every person licensed to possess a pistol or revolver on particular premises shall have the license for the same on such premises. Upon

demand, the license shall be exhibited for inspection to any peace officer, who is acting pursuant to his or her special duties, or police officer. A license as gunsmith or dealer in firearms shall be prominently displayed on the licensed premises. A gunsmith or dealer of firearms may conduct business temporarily at a location other than the location specified on the license if such temporary location is the location for a gun show or event sponsored by any national, state, or local organization, or any affiliate of any such organization devoted to the collection, competitive use or other sporting use of firearms. Any sale or transfer at a gun show must also comply with the provisions of article thirty-nine-DD of the general business law. Records of receipt and disposition of firearms transactions conducted at such temporary location shall include the location of the sale or other disposition and shall be entered in the permanent records of the gunsmith or dealer of firearms and retained on the location specified on the license. Nothing in this section shall authorize any licensee to conduct business from any motorized or towed vehicle. A separate fee shall not be required of a licensee with respect to business conducted under this subdivision.

Any inspection or examination of inventory or records under this section at such temporary location shall be limited to inventory consisting of, or records related to, firearms held or disposed at such temporary locations. Failure of any licensee to so exhibit or display his or her license, as the case may be, shall be presumptive evidence that he or she is not duly licensed.

9. License: amendment. Elsewhere than in the city of New York, a person licensed to carry or possess a pistol or revolver may apply at any time to his or her licensing officer for amendment of his or her license to include one or more such weapons or to cancel weapons held under license. If granted, a record of the amendment describing the weapons involved shall be filed by the licensing officer in the executive department, division of state police, Albany. The superintendent of state police may

authorize that such amendment be completed and transmitted to the state police in electronic form.

Notification of any change of residence shall be made in writing by any licensee within ten days after such change occurs, and a record of such change shall be inscribed by such licensee on the reverse side of his or her license. Elsewhere than in the city of New York, and in the counties of Nassau and Suffolk, such notification shall be made to the executive department, division of state police, Albany, and in the city of New York to the police commissioner of that city, and in the county of Nassau to the police commissioner of that county, and in the county of Suffolk to the licensing officer of that county, who shall, within ten days after such notification shall be received by him or her, give notice in writing of such change to the executive department, division of state police, at Albany.

10. License: expiration, certification and renewal. (a) Any license for gunsmith or dealer in firearms and, in the city of New York, any license to carry or possess a pistol or revolver, issued at any time pursuant to this section or prior to the first day of July, nineteen hundred sixty-three and not limited to expire on an earlier date fixed in the license, shall expire not more than three years after the date of issuance. In the counties of Nassau, Suffolk and Westchester, any license to carry or possess a pistol or revolver, issued at any time pursuant to this section or prior to the first day of July, nineteen hundred sixty-three and not limited to expire on an earlier date fixed in the license, shall expire not more than five years after the date of issuance; however, in the county of Westchester, any such license shall be certified prior to the first day of April, two thousand, in accordance with a schedule to be contained in regulations promulgated by the commissioner of the division of criminal justice services, and every such license shall be recertified every five years thereafter. For purposes of this section certification shall mean that the licensee shall provide to the

licensing officer the following information only: current name, date of birth, current address, and the make, model, caliber and serial number of all firearms currently possessed. Such certification information shall be filed by the licensing officer in the same manner as an amendment. Elsewhere than in the city of New York and the counties of Nassau, Suffolk and Westchester, any license to carry or possess a pistol or revolver, issued at any time pursuant to this section or prior to the first day of July, nineteen hundred sixty-three and not previously revoked or cancelled, shall be in force and effect until revoked as herein provided. Any license not previously cancelled or revoked shall remain in full force and effect for thirty days beyond the stated expiration date on such license. Any application to renew a license that has not previously expired, been revoked or cancelled shall thereby extend the term of the license until disposition of the application by the licensing officer. In the case of a license for gunsmith or dealer in firearms, in counties having a population of less than two hundred thousand inhabitants, photographs and fingerprints shall be submitted on original applications and upon renewal thereafter only at six year intervals. Upon satisfactory proof that a currently valid original license has been despoiled, lost or otherwise removed from the possession of the licensee and upon application containing an additional photograph of the licensee, the licensing officer shall issue a duplicate license.

(b) All licensees shall be recertified to the division of state police every five years thereafter. Any license issued before the effective date of the chapter of the laws of two thousand thirteen which added this paragraph shall be recertified by the licensee on or before January thirty-first, two thousand eighteen, and not less than one year prior to such date, the state police shall send a notice to all license holders who have not recertified by such time. Such recertification shall be in a form as approved by the superintendent of state police, which shall request the

license holder's name, date of birth, gender, race, residential address, social security number, firearms possessed by such license holder, email address at the option of the license holder and an affirmation that such license holder is not prohibited from possessing firearms. The form may be in an electronic form if so designated by the superintendent of state police. Failure to recertify shall act as a revocation of such license. If the New York state police discover as a result of the recertification process that a licensee failed to provide a change of address, the New York state police shall not require the licensing officer to revoke such license.

11. License: revocation and suspension. (a) The conviction of a licensee anywhere of a felony or serious offense or a licensee at any time becoming ineligible to obtain a license under this section shall operate as a revocation of the license. A license may be revoked or suspended as provided for in section 530.14 of the criminal procedure law or section eight hundred forty-two-a of the family court act. Except for a license issued pursuant to section 400.01 of this article, a license may be revoked and cancelled at any time in the city of New York, and in the counties of Nassau and Suffolk, by the licensing officer, and elsewhere than in the city of New York by any judge or justice of a court of record; a license issued pursuant to section 400.01 of this article may be revoked and cancelled at any time by the licensing officer or any judge or justice of a court of record. The official revoking a license shall give written notice thereof without unnecessary delay to the executive department, division of state police, Albany, and shall also notify immediately the duly constituted police authorities of the locality.

(b) Whenever the director of community services or his or her designee makes a report pursuant to section 9.46 of the mental hygiene law, the division of criminal justice services shall convey such information, whenever it determines that the person named in the report possesses a license issued pursuant to this section, to the

appropriate licensing official, who shall issue an order suspending or revoking such license.

(c) In any instance in which a person's license is suspended or revoked under paragraph (a) or (b) of this subdivision, such person shall surrender such license to the appropriate licensing official and any and all firearms, rifles, or shotguns owned or possessed by such person shall be surrendered to an appropriate law enforcement agency as provided in subparagraph (f) of paragraph one of subdivision a of section 265.20 of this chapter. In the event such license, firearm, shotgun, or rifle is not surrendered, such items shall be removed and declared a nuisance and any police officer or peace officer acting pursuant to his or her special duties is authorized to remove any and all such weapons.

12, 12-a., 12-c., 13. [Omitted.]

14. Fees. In the city of New York and the county of Nassau, the annual license fee shall be twenty-five dollars for gunsmiths and fifty dollars for dealers in firearms. In such city, the city council and in the county of Nassau the Board of Supervisors shall fix the fee to be charged for a license to carry or possess a pistol or revolver and provide for the disposition of such fees. Elsewhere in the state, the licensing officer shall collect and pay into the county treasury the following fees: for each license to carry or possess a pistol or revolver, not less than three dollars nor more than ten dollars as may be determined by the legislative body of the county; for each amendment thereto, three dollars, and five dollars in the county of Suffolk; and for each license issued to a gunsmith or dealer in firearms, ten dollars. The fee for a duplicate license shall be five dollars. The fee for processing a license transfer between counties shall be five dollars. The fee for processing a license or renewal thereof for a qualified retired police officer as defined under subdivision thirty-four of section 1.20 of the criminal procedure law, or a qualified retired sheriff, undersheriff, or deputy sheriff of the city of New York as

defined under subdivision two of section 2.10 of the criminal procedure law, or a qualified retired bridge and tunnel officer, sergeant or lieutenant of the triborough bridge and tunnel authority as defined under subdivision twenty of section 2.10 of the criminal procedure law, or a qualified retired uniformed court officer in the unified court system, or a qualified retired court clerk in the unified court system in the first and second judicial departments, as defined in paragraphs a and b of subdivision twenty-one of section 2.10 of the criminal procedure law or a retired correction officer as defined in subdivision twenty-five of section 2.10 of the criminal procedure law shall be waived in all counties throughout the state.

15. Any violation by any person of any provision of this section is a class A misdemeanor.

16. [Omitted.]

16-a-c. [Omitted.]

17. Applicability of section. The provisions of article two hundred sixty-five of this chapter relating to illegal possession of a firearm, shall not apply to an offense which also constitutes a violation of this section by a person holding an otherwise valid license under the provisions of this section and such offense shall only be punishable as a class A misdemeanor pursuant to this section. In addition, the provisions of such article two hundred sixty-five of this chapter shall not apply to the possession of a firearm in a place not authorized by law, by a person who holds an otherwise valid license or possession of a firearm by a person within a one year period after the stated expiration date of an otherwise valid license which has not been previously cancelled or revoked shall only be punishable as a class A misdemeanor pursuant to this section.