

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
 Alan Kachalsky, Christina Nikolov, and :
 Second Amendment Foundation, :
 :
 Plaintiffs, :
 :
 -against- :
 :
 Susan Cacace, Jeffrey A. Cohen, :
 Albert Lorenzo, Robert K. Holdman :
 And County of Westchester, :
 :
 Defendants. :
 -----X

Civil Action Number:
10-cv-5413

(Hon. Cathy Seibel)

**DECLARATION ON BEHALF OF STATE DEFENDANTS
IN RESPONSE TO MOTION TO FILE *AMICUS* BRIEF**

ANTHONY J. TOMARI, under the penalties of perjury and in accordance with

28 U.S.C. 1746 declares as follows:

1. I am an Assistant Attorney General in the Office of ANDREW M. CUOMO, Attorney General of the State of New York, attorney for Defendants Susan Cacace, Jeffrey A. Cohen, Albert Lorenzo and Robert K. Holdman, all of whom are New York State court judges (hereinafter “State Defendants”), in the above-captioned action. I submit this affirmation in response to the motion by the Brady Center to Prevent Gun Violence (Brady Center) to submit an *amicus curiae* brief herein.

2. It is this office’s policy to consider *amicus* applications on a request-by-request basis. The application by the Brady Center to file an *amicus* brief was considered and the State Defendants consent to such application.

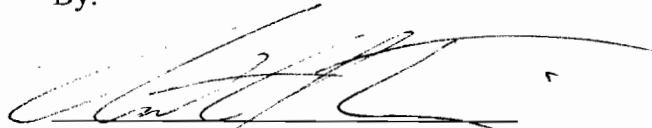
3. This position by State Defendants’ regarding *amicus* briefs was conveyed by undersigned to counsel for Plaintiffs by a November 1, 2010 e-mail exchange wherein this office

indicated it consented to a request for *amicus* status by the Brady Center and would consider further *amicus* applications as they were presented. A copy of the e-mail exchange is annexed hereto as Exhibit "A".

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 22, 2010

ANDREW M. CUOMO
Attorney General of the
State of New York
Attorney for Defendants
By:

A handwritten signature in black ink, appearing to read 'Anthony J. Tomari', is written over a horizontal line. The signature is fluid and cursive.

Anthony J. Tomari (AT-0186)
Assistant Attorney General
120 Broadway - 24th Floor
New York, New York 10271
(212) 416 - 8553

EXHIBIT A

From: Anthony Tomari
To: Connell, Monica; Gura, Alan; 'Hresko, Tracy L.'; Rotini, Melissa
CC: 'Levin, Adam K.'; vg@vincentgelardi.com
Date: 11/1/2010 12:25 PM
Subject: RE: Brady Center Amicus Brief

We consent to Brady and will consider further particular amicus applications as they are presented.

>>> "Rotini, Melissa" <mjr1@westchestergov.com> 11/1/2010 10:05 AM >>>
At this time, the County is not taking a position on amicus status for any party.

Thank you,
~Melissa

Melissa-Jean Rotini, Esq.
Assistant County Attorney, Of Counsel
Westchester County Attorney's Office
Michaelian Office Building
148 Martine Avenue, 6th Floor
White Plains, New York 10601
T: 914-995-3630
F: 914-995-3132
E: MJR1@westchestergov.com<<mailto:MJR1@westchestergov.com>>

P Please consider the environment before printing this e-mail.

Notice: This e-mail, its content, and any and all attachments to it, contain privileged and confidential information intended for the sole and exclusive use of the intended recipient(s). If you are not the intended recipient, or an agent thereof responsible for delivering e-mail to the intended recipient, you are hereby notified that reading, copying, saving, distributing, and/or any other usage of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately return it to the sender, delete it from your system, and destroy any copies in your possession. If you have any questions about this notice, please contact the sender at 914-995-3630. Thank you.

From: Alan Gura [<mailto:alan@gurapossessky.com>]
Sent: Friday, October 29, 2010 3:53 PM
To: 'Hresko, Tracy L.'; Monica.CConnell@oag.state.ny.us; anthony.tomari@oag.state.ny.us; Rotini, Melissa
Cc: 'Levin, Adam K.'; vg@vincentgelardi.com
Subject: RE: Brady Center Amicus Brief

We'll consent on the condition that the Defendants reciprocate and agree to the filing of amici briefs supporting our forthcoming motion for summary judgment.

From: Hresko, Tracy L. [<mailto:tracy.hresko@hoqanlovells.com>]
Sent: Friday, October 29, 2010 3:20 PM
To: Monica.CConnell@oag.state.ny.us; anthony.tomari@oag.state.ny.us; mjr1@westchestergov.com; alan@gurapossessky.com
Cc: Levin, Adam K.
Subject: Brady Center Amicus Brief

Dear Counsel,

We are counsel to the Brady Center to Prevent Gun Violence. We are writing to advise you that the Brady Center intends to file a motion for leave to submit an amicus curiae brief in *Kachalsky v. Cacace* on or about November 5. Please let us know if your clients will consent to this motion. If you would like to discuss the brief or any of these matters, please let us know.

Best,
Tracy

Under applicable U.S. Treasury Regulations we are required to inform you that any advice contained in this email or any attachment hereto is not intended or written to be used, and cannot be used, either (i) to avoid penalties imposed under

the Internal Revenue Code, or (ii) for promoting, marketing, or recommending to another party any tax-related matter addressed herein.

Tracy Hresko
Attorney at Law
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004

Tel:

+1 202 637 5600

Direct:

+1 202 637 6653

Fax:

+1 202 637 5910

Email:

tracy.hresko@hoganlovells.com <<mailto:tracy.hresko@hoganlovells.com>>

www.hoganlovells.com <<http://www.hoganlovells.com/>>

Please consider the environment before printing this e-mail.

Hogan Lovells refers to the international legal practice comprising Hogan Lovells International LLP, Hogan Lovells US LLP, Hogan Lovells Worldwide Group (a Swiss Verein), and their affiliated businesses. Hogan Lovells International LLP is a limited liability partnership registered in England and Wales with registered number OC323639. Registered office and principal place of business: Atlantic House, Holborn Viaduct, London EC1A 2FG. Hogan Lovells US LLP is a limited liability partnership registered in the District of Columbia.

The word "partner" is used to refer to a member of Hogan Lovells International LLP or a partner of Hogan Lovells US LLP, or an employee or consultant with equivalent standing and qualifications, and to a partner, member, employee or consultant in any of their affiliated businesses who has equivalent standing. A list of the members of Hogan Lovells International LLP and of the non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at the above address. Further important information about Hogan Lovells can be found on www.hoganlovells.com <<http://www.hoganlovells.com/>>.

CONFIDENTIALITY. This email and any attachments are confidential, except where the email states it can be disclosed; it may also be privileged. If received in error, please do not disclose the contents to anyone, but notify the sender by return email and delete this email (and any attachments) from your system.