

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

ALFRED G. OSTERWEIL,

Plaintiff,

**1:09-cv-825
(GLS\DRH)**

v.

GEORGE R. BARTLETT III, in his official
capacity as Licensing Officer in the
County of Schoharie,

Defendant.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

Alfred G. Osterweil
Pro Se
197 Lawson Lane
Many, LA 71449

FOR THE DEFENDANTS:

HON. ERIC T. SCHNEIDERMAN
New York State Attorney General
The Capitol
Albany, NY 12224

ROGER W. KINSEY
Assistant Attorney General

Gary L. Sharpe
District Court Judge

MEMORANDUM-DECISION AND ORDER

Pro se plaintiff Alfred G. Osterweil brings this action pursuant to 42
U.S.C. § 1983 alleging that his constitutional rights, including his Second

Amendment right to bear arms, were violated when he was denied a handgun license pursuant to New York State law. (Dkt. No. 1.) On February 24, 2010, this court dismissed Osterweil's Second Amendment claims, explaining that the Second Amendment did not apply to the states. (See Feb. 24, 2010 Order at 6, Dkt. No. 15 (citing *Maloney v. Cuomo*, 554 F.3d 56, 58 (2d Cir. 2009), and *Bach v. Pataki*, 408 F.3d. 75, 84 (2d Cir. 2005)).) Osterweil now moves, unopposed, to reconsider that dismissal in light of the Supreme Court's recent decision in *McDonald v. City of Chicago*, --- U.S. ----, 130 S. Ct. 3020 (2010), which extends the Second Amendment to the states. (See Dkt. Nos. 22, 23.) Because *McDonald* clearly constitutes an "intervening change in controlling law," see *C-TC 9th Ave. P'ship v. Norton Co. (In re C-TC 9th Ave. P'ship)*, 182 B.R. 1, 2 (N.D.N.Y. 1995), the court grants Osterweil's motion, reverses its prior decision insofar as it dismissed Osterweil's first, second, and third causes of action, and therefore reinstates those causes of action.

WHEREFORE, for the foregoing reasons, it is hereby

ORDERED that Osterweil's motion for reconsideration (Dkt. No. 22) is **GRANTED**; and it is further

ORDERED that this court's February 24, 2010 Memorandum-

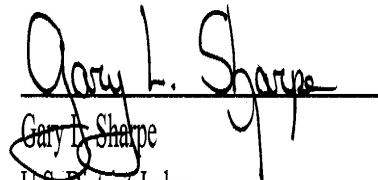
Decision and Order is **REVERSED** insofar as it dismissed Osterweil's first, second, and third causes of action; and it is further

ORDERED that Osterweil's first, second, and third causes of action are **REINSTATED**; and it is further

ORDERED that the Clerk provide a copy of this Memorandum-Decision and Order to the parties by regular.

IT IS SO ORDERED.

February 4, 2011
Albany, New York



Gary L. Sharpe
U.S. District Judge