SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

Montgomery Blair Sibley,

Index No.: 2019-1132cv

Petitioner,

MOTION TO REARGUE

vs.

Steuben County Pistol Permit Clerk, Steuben County Sheriff's Office, Licencing Officer Chauncey J. Watches, and Joseph J. Hauryski, Chairman Steuben County Legislature,

Respondents.
_____/

Petitioner Montgomery Blair Sibley ("Sibley"), pursuant to CPLR §2221, moves to reargue the Decision & Judgment entered **November 22, 2019**, as to matters of fact and law overlooked or misapprehended by the Court and for grounds in support thereof, states as follows:

1. In the Decision & Judgment, this Court held: "As to Petitioner's argument that the statute is unconstitutional as an infringement on his Second Amendment rights, the Constitutionality of the statute has been repeatedly upheld." (Decision, p. 2, citations omitted).

2. Sibley did <u>not</u> argue that the limitations on release of Pistol Permit applications violated the Second Amendment. Rather, as Sibley made clear in his Pre-Hearing Memorandum of Issues and Law, it was the First, <u>not</u> the Second, Amendment which Sibley raised as mandating access to the Pistol Permit Applications. In particular Sibley argued:

In *New York Civ. Liberties Union v. New York City Transit Auth*., 684 F.3d 286, 298 (2nd Cir. 2011) the Court stated:

> This recognition of the right to attend civil trials derives from the fact that the First Amendment, unlike the Sixth, does not distinguish between criminal and civil proceedings; nor does it distinguish among branches of government. Rather, it protects the public against the government's "arbitrary interference with access to important information." *Richmond Newspapers*, 448 U.S. at 583 (Stevens, J., concurring). As the district court below aptly noted, "[o]nce unmoored from the Sixth Amendment, there is no principle that limits the First Amendment right of access to any one particular type of government process." *NYCLU*, 675 F. Supp. 2d at 431 (internal quotation marks omitted).

Moreover, this First Amendment right to access government information has been consistently applied to administrative proceedings like those involved here. The Court in *New York Civ. Liberties Union* went on to clearly apply this right of access to administrative hearings. *Id.* at 302, f/n #12. *A priori* then, Sibley's Requests must be Ordered by this Court to be produced as on their face and as applied, N.Y. Penal Law §400.00 and N.Y. Public Officers Law §87(2)(b) are Unconstitutional.

> We are inclined to think that treating TAB hearings not as substitutes for Criminal Court hearings but as administrative proceedings in their own right might well yield the same result. The tradition of openness in formal administrative adjudicatory proceedings generally has amply demonstrated the "favorable judgment of experience." *Richmond Newspapers*, 448 U.S. at 589 (Brennan, J., concurring). As *amici* New York Times et al. point out, administrative hearings at which individual rights are adjudicated have traditionally been open. . . . The Supreme Court sounded a similar note when it required a few years later "That the inexorable safeguard of a fair and open hearing be maintained" in administrative adjudication. *Ohio Bell Telephone Co. v. Public Utilities Comm'n*, 301 U.S. 292, 304 (1937)(internal quotation marks and citations omitted). Contemporaneously, the Court described "a fair and open hearing" as one of "the rudimentary requirements of fair play," and found it "essential alike to the legal validity of . . . administrative regulation and to the maintenance of public confidence." M*organ v. United States*, 304 U.S. 1, 15 (1938).

Likewise, in the Reply to Answer of Respondents, Sibley raised the Constitutional issue.[1]

Finally, Respondent admitted in its letter answer to Sibley's FOIL requests that he was entitled to certain information, but that finding it would present a "needle in a haystack" problem [2]. Notably, though in this Court's Order of **October 22, 2019**, Respondents were directed to present sworn evidence to support this assertion, Respondent simply ignored − apparently with impunity − the Court's "aspirational-only" Order.

WHEREFORE, before this Court puts Sibley to the time and expense of seeking an appeal of the Decision & Judgment entered **November 22, 2019**, Sibley respectfully requests that this Court allow reargument of the Respondent's Motion to Dismiss.

By: _____

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[1] On their Face and as Applied, N.Y. Penal Law §400.00 and N.Y. Public Officers Law §87(2)(b) relied upon by Respondents in their refusal to produce the requested documents violate the New York and/or Federal Constitutions.

[2] First Amended Petition, Exhibit "C", page 2: "Therefore, the only way to determine which pistol permit holders names and addresses would be releasable from the database in compliance with Penal Law $400.00 5 would be to go through each and every paper application on file and, pursuant to Public Officers Law $89(3), we are not required to engage in that degree of effort."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was mailed this 11th day of December, 2019, by U.S. First Class Mail to Craig Patrick, Senior Assistant Steuben County Attorney, 3 East Pulteney Square, Bath, NY 14810.

By: _____
MONTGOMERY BLAIR SIBLEY