

and

Office of the Attorney General
Mark H. Bowen
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COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

NOW COME Plaintiffs Jane Doe, Carol Doe, Emily Doe, Mary Doe, and John Doe,¹ Maryland Licensed Firearm Dealers Association (“MLFDA”), Associated Gun Clubs of Baltimore, Inc. (“AGC”), and Maryland Shall Issue, Inc. (“MSI”) (collectively, “Plaintiffs”), by and through undersigned counsel, and sue Defendants Col. Marcus L. Brown, in his official capacity as Secretary of the Department of State Police and Superintendent of the Maryland State Police, and Maryland State Police (collectively, “Defendants”) as follows:

INTRODUCTION

1. This is an action for mandatory injunction or, in the alternative, for declaratory relief, brought by Plaintiffs pursuant to Maryland Rule 15-502 and Maryland Code, Courts and Judicial Proceedings Article, Sections 3-403 and 3-406 to address Defendants’ policy, pattern, practice, or custom of failing to issue all notices regarding disapproval of firearm applications to prospective sellers, lessors, or transferors within 7 days after such applications are forwarded to the Secretary of the Department of State Police (“Secretary”), as mandated by statute.

¹ Concurrent with the filing of this Complaint, Plaintiffs have filed a Motion for Permission to Proceed Under Fictitious Names, wherein Plaintiffs Jane Doe, Carol Doe, Emily Doe, Mary Doe, and John Doe request that, for purposes of securing their fundamental constitutional rights to privacy and to secure their personal safety, this Court permit them to prosecute this action by way of fictitious names and submit redacted versions of supporting affidavits, bar Defendants from publicly identifying those Plaintiffs, and prevent public access to the record of this case to the extent necessary to preclude disclosure of those Plaintiffs’ identities or facts that would reveal those Plaintiffs’ identities.

Defendants' failure to comply with their statutory duty, which has led to delays exceeding 55 days between the date firearm applications are forwarded to the Secretary and Defendants' issuance of notices regarding disapproval, has burdened impermissibly the fundamental constitutional rights of Plaintiffs Jane Doe, Carol Doe, Emily Doe, Mary Doe, John Doe, and the individual members of Plaintiffs AGC and MSI to purchase and keep firearms for purposes of self-defense in their homes as guaranteed by the Second Amendment to the United States Constitution, and has caused significant economic harm to the individual members of Plaintiff MLFDA, insofar as they have been unable to complete transactions involving firearms in a timely fashion pending receipt of notices regarding disapproval from Defendants.

2. Plaintiffs request that this Court issue a mandatory injunction ordering Defendants (a) to issue all notices regarding disapproval of firearm applications within 7 days after the date such applications are forwarded to the Secretary and (b) to issue immediately notices regarding disapproval of all firearm applications that have been pending for more than 7 days, including the applications submitted by Plaintiffs Jane Doe, Carol Doe, Emily Doe, Mary Doe, John Doe, and the individual members of Plaintiffs AGC and MSI. In the alternative, Plaintiffs request that this Court issue a declaratory judgment establishing as a matter of law that sellers, lessors, and transferors lawfully may complete transactions involving firearms more than 7 days after the firearm applications associated with such transfers have been forwarded to the Secretary, but prior to Defendants' issuance of notice regarding disapproval of such applications, without imposition of civil or criminal sanctions or other legal consequences upon such sellers, lessors, and transferors, even if such applications later are disapproved by Defendants.

JURISDICTION

3. This Court has jurisdiction to hear this action pursuant to Maryland Code, Courts and Judicial Proceedings Article, Sections 1-501 and 3-403.

PARTIES

4. Plaintiff Jane Doe resides in Queen Anne's County, Maryland and is employed by the Maryland General Assembly, on staff to a member of the House of Delegates. On April 15, 2013, she submitted an application to purchase a 9mm Beretta PX4 Storm Compact firearm, the first firearm she has purchased, primarily for purposes of self-defense in her home. To date, Defendants have not rendered a decision regarding disapproval of her application. A representative from the seller told her that the seller is unable to release to her the firearm she purchased in the absence of its receipt of notice regarding disapproval of her application from Defendants. For privacy and safety purposes, Plaintiff Jane Doe requests that her identity not be revealed.

5. Plaintiff Carol Doe resides in Somerset County, Maryland, and is a college student at Salisbury University who works part time at a local golf course. On April 27, 2013, she submitted an application to purchase a .380 caliber Taurus firearm, which would be her first firearm, primarily for purposes of self-defense in her home. To date, Defendants have not rendered a decision regarding disapproval of her application. A representative from the seller told her that the seller is unable to release to her the firearm she purchased in the absence of its receipt of notice regarding disapproval of her application from Defendants. For privacy and safety purposes, Plaintiff Carol Doe requests that her identity not be revealed.

6. Plaintiff Emily Doe resides in Prince George's County, Maryland, and is an active duty member of the United States Army. On April 3, 2013, she purchased an AR-15 firearm

from a seller in Virginia, which was required to transfer the firearm to a federal firearms licensed dealer in Maryland before she could obtain the firearm. On April 9, 2013, she submitted an application regarding purchase of this firearm and a Browning 1911 .22 caliber firearm primarily for purposes of self-defense in her home and target shooting. To date, Defendants have not rendered a decision regarding disapproval of her application. A representative from the seller told her that the seller is unable to release to her the firearms she purchased in the absence of its receipt of a notice regarding disapproval of her application from Defendants. For privacy and safety purposes, Plaintiff Emily Doe requests that her identity not be revealed.

7. Plaintiff Mary Doe resides in Carroll County, Maryland, and is a physical therapist. On March 19, 2013, she submitted an application to purchase a lower receiver (an integral part of a firearm that houses the operating parts and holds the magazine) for an AR-15 firearm, which qualifies as a regulated firearm under Maryland law, primarily for purposes of self-defense in her home and target shooting. To date, Defendants have not rendered a decision regarding disapproval of her application. A representative from the seller told her that the seller is unable to release to her the firearm she purchased in the absence of its receipt of a notice regarding disapproval of her application from Defendants. For privacy and safety purposes, Plaintiff Mary Doe requests that her identity not be revealed.

8. Plaintiff John Doe resides in Baltimore County, Maryland and is an IT professional. On March 27, 2013, he submitted an application to purchase a regulated firearm. To date, Defendants have not rendered a decision regarding disapproval of his application. A representative from the seller told him that the seller is unable to release to him the firearm he purchased in the absence of its receipt of a notice regarding disapproval of his application from

Defendants. For privacy and safety purposes, Plaintiff John Doe requests that his identity not be revealed.

9. Plaintiff MLFDA is a Maryland corporation that represents the constitutional and economic interests of its numerous firearm dealer members in the State of Maryland as well as those of its members' customers and potential customers. MLFDA advocates on behalf of its individual members. Its individual members engage in commercial transactions involving firearms with residents of the State of Maryland and, as part of such transactions, forward firearm applications to Defendants on behalf of purchasers, as required by statute, prior to effecting the transfer of any such regulated firearms to the respective purchasers.

10. Plaintiff AGC is a Maryland corporation formed on July 1, 1944 when a number of World War II veterans in the Baltimore, Maryland area began looking for a place for recreational and competitive shooting. In addition to operating a target shooting range facility, providing hunting and target shooting instruction courses that promote general firearm safety, and offering programs and events that encourage adult and youth participation in the shooting sports, AGC supports, encourages, and actively promotes the private ownership of firearms for all law abiding citizens. AGC consists of 15 charter member clubs as well as 14 associate member clubs, each of which has numerous individual members who currently are in the process of purchasing, and will in the future purchase, regulated firearms, primarily for the purpose of self-defense in their homes. Such purchases require the submission of applications to Defendants, and Defendants' issuance of notices regarding disapproval of such applications, prior to transfer of these firearms.

11. Plaintiff MSI is an all volunteer, non-partisan organization dedicated to the preservation and advancement of gun owners' rights in Maryland. MSI seeks to educate the community about the right of self-protection, the safe handling of firearms, and the responsibility that goes with carrying a firearm in public. MSI has numerous individual members who currently are in the process of purchasing, and will in the future purchase, regulated firearms, primarily for the purpose of self-defense in their homes. Such purchases require the submission of applications to Defendants, and Defendants' issuance of notices regarding disapproval of such applications, prior to transfer of these firearms.

12. Defendant Col. Marcus L. Brown is the Secretary of the Department of State Police and Superintendent of the Maryland State Police. Col. Brown is responsible for the operation of the Maryland State Police, including the Maryland State Police's Licensing Division. The Licensing Division administers the law and conducts investigations concerning the sale and transfer of regulated firearms, the licensing and regulation of Maryland Registered Firearms Dealers, and the certification of regulated firearm collectors.

13. Defendant Maryland State Police is a principal department of State government of the State of Maryland, established and operated pursuant to Maryland Code, Public Safety Article, Sections 2-101, *et seq.*

VENUE

14. Venue is appropriate in this Court under Maryland Code, Courts and Judicial Proceedings Article, Section 6-201.

STATUTORY FRAMEWORK

15. Maryland Code, Public Safety Article, Sections 5-101, *et seq.*, govern regulated firearms.

16. Section 5-117 of the Public Safety Article provides that “[a] person must submit a firearm application in accordance with this subtitle before the person purchases, rents, or transfers a regulated firearm.” The contents of such application are set forth in Section 5-118 of the Public Safety Article.

17. Section 5-120 of the Public Safety Article provides that, “[o]n receipt of a firearm application, a licensee . . . shall promptly forward one copy of it to the Secretary.” Pursuant to Section 5-121(a) of the Public Safety Article, “[o]n receipt of a firearm application, the Secretary shall conduct an investigation promptly to determine the truth or falsity of the information supplied and statements made in the firearm application.”

18. Section 5-122(b)(1) of the Public Safety Article provides that, “[i]f the Secretary disapproves a firearm application, the Secretary shall notify the prospective seller, lessor, or transferor in writing of the disapproval within 7 days after the date that the executed firearm application is forwarded to the Secretary by certified mail or facsimile machine.”

FACTS

19. Defendants have engaged in a policy, practice, pattern, or custom of failing to comply with their statutory duty to issue all notices regarding disapproval of firearm applications within 7 days after the date the applications are forwarded to the Secretary.

20. On information and belief, Defendants’ representatives testified before the Maryland General Assembly that the current delay between the date that firearm applications are forwarded to the Secretary and the date decisions regarding disapproval of such applications are issued exceeds 55 days.

21. Defendants’ failure to comply with their statutory duty has resulted in the impermissible burdening of the fundamental constitutional rights of Plaintiffs Jane Doe, Carol

Doe, Emily Doe, Mary Doe, John Doe, and the individual members of Plaintiffs AGC and MSI to purchase and keep firearms for purposes of self-defense in their homes as guaranteed by the Second Amendment to the United States Constitution. Specifically, the sellers of firearms purchased by Plaintiffs Jane Doe, Carol Doe, Emily Doe, Mary Doe, John Doe, and the individual members of Plaintiffs AGC and MSI are unable to release such firearms to them in the absence of their receipt of notices regarding disapproval of those Plaintiffs' applications from Defendants, such that those Plaintiffs are unable to possess the firearms purchased, which primarily are intended for purposes of self-defense in those Plaintiffs' homes, between the date of purchase and the date Defendants issue notices regarding disapproval of those Plaintiffs' applications.

22. Likewise, such failure by Defendants has caused Plaintiff MLFDA significant economic harm, insofar as its individual members are required to own or purchase the regulated firearms at the time that applications are submitted but may not complete transfers of such firearms (and therefore receive payment in full for such firearms) until Defendants issue notices regarding disapproval of such applications, resulting in these entities having many thousands of dollars in inventory tied up for months at a time while awaiting receipt of notices regarding disapproval from Defendants. Furthermore, MLFDA's individual members have observed that the delay between the date their purchasers submit applications and the date Defendants issue notices regarding disapproval of such applications, at which time these entities may transfer the firearms to the purchasers without fear of civil or criminal penalties or sanctions should they complete transactions involving firearms beyond the 7-day notification period with individuals whose firearm applications later are disapproved by Defendants, has led many purchasers to

cancel orders and/or engage in purchases in other jurisdictions, resulting in lost sales and revenues for these entities.

23. Because Plaintiffs Jane Doe, Carol Doe, Emily Doe, Mary Doe, John Doe, and the individual members of Plaintiffs AGC and MSI intend to purchase firearms and submit firearm applications in the future and Plaintiff MLFDA's individual members intend to sell firearms but delay transfer until receipt of notices regarding disapproval of applications from Defendants, and because Defendants generally will issue notices regarding disapproval of firearm applications prior to final adjudication on the merits of a challenge to Defendants' failure to comply with their statutory duty, Defendants' failure constitutes conduct capable of repetition yet evading review, such that Plaintiffs' claims will not become moot upon Defendants' issuance of notices regarding disapproval of Plaintiffs' firearm applications.

CLAIM FOR RELIEF
(Violation of Law Requiring Issuance of Notices Regarding
Disapproval of Firearm Applications Within 7 Days of Receipt)

24. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the above paragraphs.

25. Plaintiffs Jane Doe, Carol Doe, Emily Doe, Mary Doe, John Doe, and the individual members of Plaintiffs AGC and MSI have a plain and clear right to have their firearm applications reviewed and notices regarding disapproval issued within 7 days after the date their applications were forwarded to the Secretary so that those Plaintiffs may exercise their fundamental constitutional right to purchase and keep firearms for purposes of self-defense in their homes as guaranteed by the Second Amendment to the United States Constitution.

26. Plaintiff MLFDA has a plain and clear right to have the firearm applications forwarded to the Secretary by their individual members reviewed and notices regarding

disapproval issued within 7 days after the date those applications are forward to the Secretary so that Plaintiff MLFDA's individual members may complete the underlying transactions giving rise to these applications without fear of incurring civil or criminal liability if such applications later are disapproved by Defendants.

27. Defendants have a clear statutory duty under Section 5-122(b)(1) of the Public Safety Article to issue all notices regarding disapproval of firearm applications within 7 days after the date the applications are forwarded to the Secretary.

28. Defendants' failure to comply with their statutory duty to issue notices regarding disapproval of firearm applications within 7 days from the date such applications are forwarded to the Secretary has, is, and will cause irreparable injury to the fundamental constitutional rights possessed by Plaintiffs Jane Doe, Carol Doe, Emily Doe, Mary Doe, John Doe, and the individual members of Plaintiffs AGC and MSI, insofar as those Plaintiffs are unable to complete their firearm purchases until Defendants issue notices regarding disapproval, unless this Court grants a mandatory injunction ordering Defendants (a) to issue all notices regarding disapproval of firearm applications within 7 days after the date the applications are forwarded to the Secretary and (b) to issue immediately notices regarding disapproval of all firearm applications that have been pending for more than 7 days, including the applications submitted by Plaintiffs Jane Doe, Carol Doe, Emily Doe, Mary Doe, John Doe, and the individual members of Plaintiffs AGC and MSI.

29. The benefits to Plaintiffs Jane Doe, Carol Doe, Emily Doe, Mary Doe, John Doe, and the individual members of Plaintiffs AGC and MSI in obtaining such mandatory injunction, which would enable those Plaintiffs to exercise their fundamental constitutional rights to purchase and keep firearms for purposes of self-defense in their homes as guaranteed by the

Second Amendment to the United States Constitution, greatly outweigh any potential harm to Defendants resulting from such mandatory injunction, which merely would compel Defendants to comply with their existing statutory duties.

30. The public interest would be served best by granting the requested mandatory injunction because such mandatory injunction would ensure that Defendants comply with their existing statutory duties and guarantee that the citizens of Maryland may exercise their fundamental constitutional rights without undue burden or delay.

31. Plaintiffs have no adequate remedy at law by which they may exercise their respective rights.

32. Defendants' policy, pattern, practice, or custom of failing to issue notices regarding disapproval of firearm applications within 7 days from the date such applications are forwarded to the Secretary, as required by statute, violates Plaintiffs' rights under Section 5-122(b) of the Public Safety Article, impermissibly burdens the fundamental constitutional rights of Plaintiffs Jane Doe, Carol Doe, Emily Doe, Mary Doe, John Doe, and the individual members of Plaintiffs AGC and MSI to purchase and keep firearms for purposes of self-defense in their homes as guaranteed by the Second Amendment to the United States Constitution, and unfairly causes significant economic harm to the individual members of Plaintiff MLFDA, as described herein.

33. Thus, Plaintiffs are entitled to a mandatory injunction ordering Defendants (a) to issue all notices regarding disapproval of firearm applications within 7 days after the date such applications are forwarded to the Secretary and (b) to issue immediately notices regarding disapproval of all firearm applications that have been pending for more than 7 days, including

the applications submitted by Plaintiffs Jane Doe, Carol Doe, Emily Doe, Mary Doe, John Doe, and the individual members of Plaintiffs AGC and MSI.

34. The rights of Plaintiff MLFDA and its individual members to complete transactions involving firearms in a timely fashion without fear of imposition of subsequent civil or criminal penalties are affected by Section 5-122(b)(1) of the Public Safety Article and Defendants' failure to comply with their statutory duty under that provision.

35. Plaintiff MLFDA maintains that, pursuant to the plain language of Section 5-122(b)(1) of the Public Safety Article, its individual members may complete transactions involving firearms more than 7 days after the firearm applications associated with such transfers have been forwarded to the Secretary, but prior to Defendants' issuance of notice regarding disapproval of such applications, without imposition of civil or criminal sanctions or other legal consequences upon them, even if such applications later are disapproved by Defendants.

36. Defendants and their representatives have advised Plaintiff MLFDA's individual members that they may complete transactions involving firearms more than 7 days after the firearm applications associated with such transfers have been forwarded to the Secretary of the Maryland State Police, but prior to Defendants' issuance of notice regarding disapproval of such application, so long as those applications are not later disapproved by Defendants, in which case Plaintiff MLFDA's individual members may be subject to civil and criminal penalties. But for the position taken by Defendants outlined above, under the language of the applicable statute, MLFDA's individual members may and would transfer firearms to purchasers beyond the statutory waiting period of 7 days but before Defendants issue notices regarding disapproval of applications because the statute provides that Defendants shall issue notices regarding

disapproval of applications within 7 days after the date the applications are forwarded to the Secretary.

37. As described in the foregoing paragraphs, there exists an actual controversy of a practicable issue between Plaintiff MLFDA and Defendants within the jurisdiction of this Court involving interpretation of Section 5-122(b)(1) of the Public Safety Act and the rights and obligations of Plaintiff MLFDA's individual members in completing transactions involving firearms prior to Defendants' issuance of notices regarding disapproval of firearm applications associated with such transactions, which controversy may be determined by a judgment of this Court.

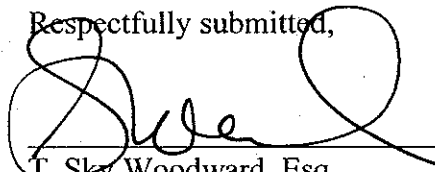
38. Thus, Plaintiff MLFDA is entitled to a declaratory judgment establishing as a matter of law that its individual members may complete transactions involving firearms more than 7 days after the firearm applications associated with such transfers have been forwarded to the Secretary, but prior to Defendants' issuance of notice regarding disapproval of such applications, without imposition of civil or criminal sanctions or other legal consequences upon them, even if such applications later are disapproved by Defendants.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request that this Court issue a mandatory injunction ordering Defendants (a) to issue all notices regarding disapproval of firearm applications within 7 days after the date such applications are forwarded to the Secretary and (b) to issue immediately notices regarding disapproval of all firearm applications that have been pending for more than 7 days, including the applications submitted by Plaintiffs Jane Doe, Carol Doe, Emily Doe, Mary Doe, John Doe, and the individual members of Plaintiffs AGC and MSI.

In the alternative, Plaintiffs request that this Court issue a declaratory judgment establishing as a matter of law that sellers, lessors, and transferors lawfully may complete transactions involving firearms more than 7 days after the firearm applications associated with such transfers have been forwarded to the Secretary, but prior to Defendants' issuance of notice regarding disapproval of such applications, without imposition of civil or criminal sanctions or other legal consequences upon such sellers, lessors, and transferors, even if such applications later are disapproved by Defendants.

Respectfully submitted,



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Association, Inc., Associated Gun Clubs of Baltimore, Inc.,
and Maryland Shall Issue, Inc.*

JANE DOE, et al.,

Plaintiffs,

v.

COL. MARCUS L. BROWN, in his official
capacity as Secretary of the Department of
State Police and Superintendent of the
Maryland State Police, et al.,

Defendants.

* IN THE
* CIRCUIT COURT FOR
* BALTIMORE COUNTY

* Case No. _____

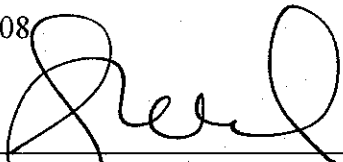
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of May, 2013, copies of this Complaint for Injunctive and Declaratory Relief and Civil Case Information Report were served, by hand-delivery, on the following:

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