

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. _____

* * * * *

**MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION
OR, IN THE ALTERNATIVE, DECLARATORY RELIEF**

Plaintiffs Jane Doe, Carol Doe, Emily Doe, Mary Doe, and John Doe, 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, hereby submit this Memorandum in Support of Motion for Preliminary Injunction or, in the Alternative, Declaratory Relief.

INTRODUCTION

Plaintiffs bring this action for injunctive relief or, in the alternative, declaratory relief, to address the policy, pattern, practice, or custom of Defendants Col. Marcus L. Brown, Secretary of the Department of State Police and Superintendent of the Maryland State Police, and Maryland State Police (collectively, “Defendants”) 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 Maryland State Police (“Secretary”), as mandated by statute. 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.

For the reasons stated herein, Plaintiffs hereby request that this Court issue a preliminary injunction, pursuant to Maryland Rule 15-502, 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, pursuant to Maryland Code, Courts and Judicial Proceedings Article, Sections 3-403 and 3-406, 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.

FACTS

Statutory Framework

Maryland Code, Public Safety Article, Sections 5-101, *et seq.*, govern regulated firearms. Section 5-117 provides that “[a] person must submit a firearm application in accordance with this subtitle before the person purchases, rents, or transfers a regulated firearm.” MD. CODE, CTS. & JUD. PROC. § 5-117. The contents of such application are set forth in Section 5-118.

Under Section 5-120, “[o]n receipt of a firearm application, a licensee . . . shall promptly forward one copy of it to the Secretary.” *Id.* at § 5-120. Once an application has been forwarded, “the Secretary shall conduct an investigation promptly to determine the truth or falsity of the information supplied and statements made in the firearm application.” *Id.* at § 5-121(a).

Of utmost importance to the present action, Section 5-122(b)(1) 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.” *Id.* at § 5-122(b)(1).

Defendants’ Failure to Issue Timely Notices Regarding Disapproval of Applications

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. In fact, 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. (See “Maryland House passes strict

gun-control measure crafted after Newtown massacre,” Washington Post, April 3, 2013, attached hereto as Exhibit 1 (“A surge in firearm sales in Maryland since December has turned the state’s mandatory seven-day waiting period to buy a gun into a 55-day wait, state police said during the debate.”).)

Impact on Plaintiffs Caused by Defendants’ Failure to Comply with Their Statutory Duty

Plaintiff Jane Doe

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. See Affidavit of Jane Doe, attached hereto as Exhibit 2, at ¶¶ 2-3.¹ On April 15, 2013, she purchased a 9mm Beretta PX4 Storm Compact firearm, the first firearm that she has purchased, primarily for purposes of self-defense in her home; as part of this purchase, she submitted a Form 77R application at the seller, which forwarded her application to Defendants. Id. at ¶¶ 4-5, 8. To date, Defendants have not rendered a decision regarding disapproval of her application. Id. at ¶ 7. 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. Id. at ¶ 6.

Plaintiff Carol Doe

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. See Affidavit of Carol Doe, attached hereto as Exhibit 3, at ¶¶ 2-3. On April 27, 2013, she purchased a .380 caliber Taurus

¹ In accordance with the relief requested in Plaintiffs’ Motion for Permission to Proceed Under Fictitious Names and Bar Public Identification of Plaintiffs’ Identities, filed concurrently herewith, the affidavits of named individual Plaintiffs and individual non-party affiants have been redacted to exclude the names of the respective affiants and substitute fictitious names for purposes of protecting those affiants’ privacy and safety. Although the names of the respective affiants have been redacted, the corresponding fictitious name for each respective affiant may be determined by reference to the exhibit numbers identified herein and in the attached exhibits. For example, the Affidavit of Jane Doe is referred to herein as Exhibit 2 and appears in the attached Exhibit 2, et cetera.

firearm, which would be her first firearm, primarily for purposes of self-defense in her home; as part of this purchase, she submitted a Form 77R application at the seller, which forwarded her application to Defendants. Id. at ¶¶ 4-5, 8. To date, Defendants have not rendered a decision regarding disapproval of her application. Id. at ¶ 7. 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. Id. at ¶ 6.

Plaintiff Emily Doe

Plaintiff Emily Doe resides in Prince George's County, Maryland, and is an active duty member of the United States Army, serving her country as a military police officer with the rank of Major. See Affidavit of Emily Doe, attached hereto as Exhibit 4, at ¶¶ 2-3. On April 3, 2013, she purchased an AR-15 firearm, primarily for purposes of self-defense in her home, 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. Id. at ¶¶ 4-5, 11. On April 9, 2013, she was advised by the Virginia seller that the firearm she purchased had been transferred to a federal firearms licensed dealer located in Montgomery County, Maryland. Id. at ¶ 6. That same day, she submitted a Form 77R application regarding purchase of the AR-15 firearm as well as a Browning 1911 .22 caliber firearm at the Maryland seller, which forwarded her application to Defendants. Id. at ¶¶ 7-8. To date, Defendants have not rendered a decision regarding disapproval of her application. Id. at ¶ 10. 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. Id. at ¶ 9.

Plaintiff Mary Doe

Plaintiff Mary Doe resides in Carroll County, Maryland, and is a physical therapist and the office director of a physical therapy practice. See Affidavit of Mary Doe, attached hereto as Exhibit 5, at ¶¶ 2-3. On March 19, 2013, she purchased 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; as part of this purchase, she submitted a Form 77R application at the seller, which forwarded her application to Defendants. Id. at ¶¶ 4-5, 8. To date, Defendants have not rendered a decision regarding disapproval of her application. Id. at ¶ 7. 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. Id. at ¶ 6.

Plaintiff John Doe

Plaintiff John Doe resides in Baltimore County, Maryland and is an IT professional for an international insurance company with an office in Maryland. See Affidavit of John Doe, attached hereto as Exhibit 6, at ¶¶ 2-3. On March 27, 2013, he purchased a regulated firearm; as part of this purchase, he submitted a Form 77R application at the seller, which forwarded his application to Defendants. Id. at ¶¶ 4-5. To date, Defendants have not rendered a decision regarding disapproval of his application. Id. at ¶ 7. 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. Id. at ¶ 6.

Plaintiff MLFDA

Plaintiff MLFDA 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. See Affidavit of Stephen Schneider, attached hereto as Exhibit 7, at ¶ 3. MLFDA advocates on behalf of its individual members. Id. Stephen Schneider, the owner and operator of Atlantic Guns, a family business founded in 1950 and federal firearm licensed dealer with locations in Silver Spring and Rockville, Maryland, serves as the President of MLFDA. Id. at ¶¶ 2, 4.

As part of engaging in transactions involving regulated firearms, MLFDA's individual members, including Atlantic Guns, forward the Form 77R applications completed by purchasers to the Secretary of the Maryland State Police, as required by statute, prior to effecting the transfer of any such regulated firearms to the respective purchasers. Id. at ¶ 6. These entities have observed delays approaching or exceeding two months between the date such Form 77R applications completed by purchasers are forwarded to the Secretary and the date Defendants issue notices regarding disapproval of such applications. Id. at ¶ 7.

MLFDA's individual members have been advised of Defendants' position that, should they transfer firearms to purchasers beyond the statutory waiting period of 7 days after the date the Form 77R applications associated with such purchases are forwarded to the Secretary, but before Defendants issue notices regarding disapproval of such applications, those entities will be subject potentially to civil and criminal penalties or sanctions if such applications later are disapproved by Defendants. Id. at ¶ 8. But for Defendants' position, MLFDA's individual members would transfer firearms to purchasers beyond the statutory waiting period of 7 days but before the Maryland State Police 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. Id. at ¶ 9. If MLFDA's individual members choose to complete transfers of firearms to purchasers under the circumstances outlined above, however, those entities run the risk, which is exacerbated considerably by Defendants' actions in failing to issue notices regarding disapproval of applications in a timely fashion, of incurring civil and criminal penalties or sanctions if such applications later are disapproved by the Maryland State Police. Id. at ¶ 10.

Furthermore, Defendants' actions cause MLFDA's individual members significant economic injury, insofar as these entities 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. Id. at ¶ 12. Similarly, these entities 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, has led many purchasers to cancel orders resulting in lost sales and revenue. Id. at ¶ 13.

Individual Members of Plaintiffs AGC and MSI

Numerous individual members of Plaintiffs AGC and MSI currently are in the process of purchasing, and will in the future purchase, regulated firearms, primarily for 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. See Affidavit of John H. Josselyn, attached hereto as Exhibit 8, at ¶ 4; Affidavit of Patrick Shomo, attached hereto as Exhibit 9, at ¶ 4. On information and belief, Defendants have not rendered decisions regarding disapproval of their individual members' applications within 7 days after the date such applications were forwarded to the Secretary. See Ex. 7, at ¶ 5; Ex. 8, at ¶ 5. On information and belief, the sellers of such firearms to the individual members of AGC and MSI have advised them that the sellers are unable to release to them the firearms they purchased in the absence of their receipt of notices regarding disapproval of their applications from Defendants. See Ex. 7, at ¶ 6; Ex. 8, at ¶ 6.

ARGUMENT

I. DEFENDANTS' FAILURE TO COMPLY WITH THEIR STATUTORY DUTY TO ISSUE ALL NOTICES REGARDING DISAPPROVAL OF FIREARM APPLICATIONS WITHIN 7 DAYS WARRANTS A PRELIMINARY INJUNCTION.

Pursuant to Maryland Rule 15-502, this Court is possessed with the power to issue a mandatory injunction ordering a party to perform a specific act, including a preliminary injunction after an opportunity for a full adversarial hearing but before determination of the merits of the case. See Md. Rule 15-502. Whether to grant such an injunction lies within the sound discretion of this Court. B & P Enters. v. Overland Equip. Co., 133 Md. App. 583, 631 (2000). To secure issuance of injunctive relief, such as a preliminary mandatory injunction, a proponent must allege and demonstrate that: (1) they are likely to succeed on the merits; (2) the balance of equities is in their favor; (3) they will suffer irreparable harm to an existing right if the injunction is not granted; and (4) the injunction is in the public interest. Schade v. Md. State Bd. of Elections, 401 Md. 1, 36 (2007); Eastside Vend Dist., Inc. v. Pepsi Bottling Group, Inc., 396 Md. 219, 240 (2006); Ehrlich v. Perez, 394 Md. 691, 707-08 (2006). Much like a writ of mandamus, one common function of a mandatory injunction is to compel the performance of a

ministerial duty by a public officer. O'Brien v. Bd. of License Comm'rs, 199 Md. App. 563, 578-79 (2011).

As explained below, this Court should issue a preliminary 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 accordance with their statutory duty under Section 5-122(b)(1) of the Public Safety Article.

A. Plaintiffs Are Likely to Succeed on the Merits.

In light of Defendants' abject failure to comply with applicable statutory requirements, Plaintiffs are very likely to succeed on the merits of their claim. Defendants' duty to comply with the requirement imposed by Section 5-122(b)(1) of the Public Safety Article to issue notices regarding disapproval of firearm applications within 7 days after the date such applications are forwarded to the Secretary is not in dispute, nor is their failure to comply with such duty. In fact, Defendants and their representatives have admitted that the delay in issuing notice regarding disapproval of firearm applications now exceeds 55 days. See Ex. 1. Such delay is confirmed by the significant period of time that Plaintiffs Jane Doe, Carol Doe, Emily Doe, Mary Doe, John Doe, and the individual members of Plaintiffs AGC and MSI each have been waiting for Defendants to issue notices regarding disapproval of their applications so that those Plaintiffs may obtain the firearms they have purchased. See Ex. 2, at ¶¶ 4-5, 7 (since April 15, 2013); Ex. 3, at ¶ 5-6, 8 (since March 3, 2013); Ex. 4, at ¶¶ 6-8, 10 (since April 9, 2013); Ex. 5, at ¶¶ 4-5, 7 (since March 19, 2013); Ex. 6, at ¶¶ 4-5, 7 (since March 27, 2013); see also Affidavit of Sarah

Doe, attached hereto as Exhibit 10, at ¶¶ 4-5, 7 (application submitted on March 2, 2013, and marked not disapproved on May 2, 2013); Affidavit of Michael Doe, attached hereto as Exhibit 11, at ¶¶ 3-5 (application submitted on February 17, 2013, and marked not disapproved on April 25, 2013); Affidavit of Jennifer Doe, attached hereto as Exhibit 12, at ¶¶ 5-6, 8 (application submitted on March 3, 2013, and marked not disapproved on May 3, 2013). Thus, as Plaintiffs contend that Defendants have failed to meet the requirements imposed upon them by statute to issue all notices regarding disapproval of firearm applications within 7 days, Plaintiffs are likely to succeed on the merits of their claims.

B. The Balance of Equities Weighs Heavily in Plaintiffs' Favor.

There can be no doubt that the benefits that would be provided to Plaintiffs Jane Doe, Carol Doe, Emily Doe, Mary Doe, John Doe, and the individual members of Plaintiffs AGC and MSI by way of the requested preliminary mandatory injunction are profound. Specifically, such an injunction 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. To the contrary, there exists little, if any, potential harm to Defendants resulting from such an injunction, which merely would compel Defendants to comply with their existing statutory duties, imposing no additional burden on Defendants. See Hess v. Hughes, 500 F. Supp. 1054, 1061 (D. Md. 1980) (finding that the balance of hardships favored plaintiffs because “[t]he defendants are being asked to simply comply with the law and regulations as they should have done initially”); Maryland Trust Co. v. Tulip Realty Co., 220 Md. 399, 413 (1959) (observing that, “in weighing the propriety of issuing [a mandatory or affirmative injunction], a court should consider the relative convenience and inconvenience which will result to the parties from granting or refusing this form of injunctive

relief”). Whereas any budgetary impact on Defendants can be absorbed by the State, Plaintiffs suffer greatly due to Defendants’ unlawful actions. Thus, the balance of equities tips heavily in favor of Plaintiffs and issuance of the requested injunction.

C. Plaintiffs Will Suffer Irreparable Harm to Their Rights If the Injunction Is Not Granted.

It is axiomatic that Plaintiffs Jane Doe, Carol Doe, Emily Doe, Mary Doe, John Doe, and the individual members of Plaintiffs AGC and MSI possess a 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. See generally McDonald v. City of Chicago, 130 S. Ct. 3020 (2010); District of Columbia v. Heller, 554 U.S. 570 (2008). In the absence of the requested preliminary mandatory injunction, 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 Plaintiffs’ exercise of that fundamental constitutional right, insofar as those Plaintiffs are unable to complete their firearm purchases until Defendants issue notices regarding disapproval. See Ehrlich, 394 Md. at 732-33 (preliminary injunction upheld where State actions in denying payment of medical benefits threatened to cripple plaintiffs’ access to necessary affordable health care and subsequent payment of money damages would not suffice to rectify such immediate injuries); Tulip Realty Co., 220 Md. at 412-13 (noting that a mandatory injunction is particularly appropriate “where adequate redress at law is not afforded, or where the injury is not compensable in damages”). Absent an injunction, Defendants’ actions will continue to prevent those Plaintiffs from exercising their fundamental constitutional rights, threatening to undermine those Plaintiffs’ ability to protect themselves, their families, and their homes from criminals and others who might seek to cause them harm.

D. The Injunction Is in the Public Interest.

Finally, because Plaintiffs seek merely to enforce existing State law, they satisfy the requirement that the injunction sought be in the public interest. It is in the public's interest that Defendants (like any other State agency or officials) comply with the law and issue notices regarding disapproval of firearm applications in a timely fashion, particularly because the public's fundamental constitutional rights to keep and bear arms as guaranteed by the Second Amendment to the United States Constitution are threatened by Defendants' actions. Thus, the public interest would be served best by granting the requested preliminary mandatory injunction; such 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.

E. Bond Should Be Waived.

Maryland courts must expressly consider bond in each case in which they grant restraining orders or preliminary injunctions. Md. Rule 15-503(a). Rule 15-503(c), however, allows for waiver of the bond if: (a) the person is unable to provide surety or other security for the bond; (2) substantial injustice would result if an injunction did not issue; and (3) the case is one of extraordinary hardship. Here, Plaintiffs seek merely to protect their fundamental constitutional rights to purchase and keep arms for self-protection in their homes as guaranteed by the Second Amendment to the United States Constitution (of which they currently are being denied as a result of Defendants' actions), and no financial harm will be inflicted on Defendants by way of this injunction beyond simply being forced to comply with existing statutory mandates regarding the time within which they must issue notices regarding disapproval of firearm applications. Simply put, Plaintiffs should not be discouraged from preventing Defendants from

violating State law by way of being forced to post a bond in this matter. Thus, this Court should waive any requirement regarding a bond.

II. IN THE ALTERNATIVE, THIS COURT SHOULD ISSUE A DECLARATORY JUDGMENT CLARIFYING PLAINTIFFS' RIGHTS AND OBLIGATIONS WITH REGARD TO THE TRANSFER OF FIREARMS IN THE ABSENCE OF NOTICE REGARDING DISAPPROVAL OF APPLICATIONS FROM DEFENDANTS.

Pursuant to Section 3-406 of the Courts and Judicial Proceedings Article of the Maryland Code, a plaintiff whose rights, status, or other legal relations are affected by a statute, rule, or regulation may have determined any question of construction or validity arising under such statute, rule, or ordinance and obtain a declaration of rights, status, or other legal relations under it. MD. CODE, CTS. & JUD. PROC. § 3-406.

In this case, the rights of Plaintiff MLFDA and its individual members to complete legal transactions involving firearms in a timely fashion without fear of imposition of subsequent civil or criminal penalties plainly 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. Specifically, MLFDA maintains that, pursuant to the plain language of Section 5-122(b)(1), 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. See Ex. 7, at ¶ 9. To the contrary, 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. Id. at ¶ 8. But for the position taken by Defendants, under the language of the applicable statute, MLFDA's individual members 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. Id. at ¶ 9. Thus, 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.

As explained above, the duty imposed on Defendants by Section 5-122(b)(1) of the Public Safety Article to issue notices regarding disapproval of firearm applications within 7 days after the date such applications are forwarded to the Secretary is not in dispute, nor is Defendants' failure to abide by this statutory mandate. This situation places Plaintiff MLFDA's individual members in an untenable position – if those entities choose to complete transfers of firearms to purchasers under the circumstances, those entities run the risk, exacerbated considerably by Defendants' actions, of incurring civil and criminal penalties or sanctions if applications later are disapproved by Defendants, whereas delaying such transfers until Defendants have marked applications as not disapproved will result in significant economic hardship, in the form of thousands of dollars of inventory placed in limbo and lost sales and

revenue. Id. at ¶¶ 10, 12-13. Thus, this Court should issue a declaratory judgment establishing that Defendants' failure to issue notices regarding disapproval of firearm applications within 7 days relieves MLFDA's individual members from imposition of any potential civil or criminal penalties or sanctions should they transfer such firearms after the 7-day notification period, even if an application later is disapproved by Defendants. Such clarification will enable Plaintiff MLFDA's individual members to complete transactions involving firearms in a timely fashion, preventing the significant economic hardship described herein and making possible their customers' exercise of their fundamental constitutional rights to keep and bear arms for self-protection in their homes as guaranteed by the Second Amendment to the United States Constitution.

CONCLUSION

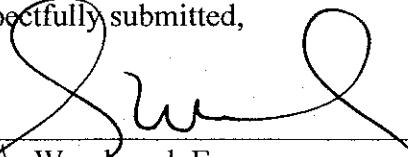
Based on the foregoing, Plaintiffs request respectfully that this Court grant a preliminary mandatory injunction ordering Defendants (a) to issue all notices regarding disapproval of firearm applications within 7 days after the date such applications are forwarded to the Secretary and (b) to issue immediately 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 accordance with Defendants' statutory duty under Section 5-122(b)(1) of the Public Safety Article.

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.

Plaintiffs request respectfully that the Court hear oral argument on their Motion.

Respectfully submitted,



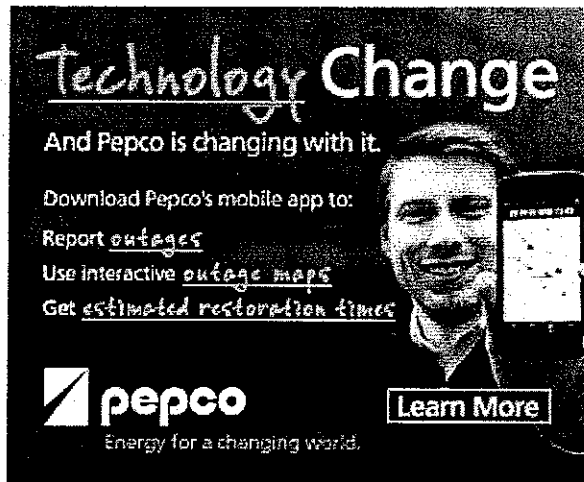
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EXHIBIT 1

The Washington Post

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Maryland House passes strict gun-control measure crafted after Newtown massacre

By [Aaron C. Davis](#), Published: April 3

The Maryland House of Delegates passed what would be among the nation's most restrictive gun-control measures Wednesday, voting to ratchet up the state's already tough rules by requiring fingerprinting of gun buyers, new limits on firearm purchases by the mentally ill, and bans on assault weapons and on magazines that hold more than 10 bullets.

The 78 to 61 vote handed Gov. Martin O'Malley (D) a major policy victory as Maryland joins the ranks of Democratic-leaning states passing broad gun-control restrictions in response to the December school shootings in Connecticut — a state where lawmakers Wednesday also passed tough new gun legislation.

The bill now returns to the state Senate, which passed a substantially similar version of the legislation last month. Key senators and staffers said they expect the chamber to sign off on changes made by the House and send the measure to O'Malley, who proposed the legislation.

Amid the wave of legislative efforts nationally, Maryland's is the only package whose new requirements would force gun buyers to provide fingerprints and undergo classroom training, target practice and background checks to obtain a license to buy a firearm.

No state had sought to impose a licensing requirement in nearly 20 years, a period when the National Rifle Association grew increasingly powerful in American politics. The NRA criticized the Maryland House vote, continuing months of complaints that licensing and fingerprinting amount to a fundamental

infringement of a constitutional right.

The vote on one of O'Malley's top priorities of the legislative session, which ends Monday, came as federal gun-control legislation is stalled in Congress: An assault-weapons ban is no longer part of a bill, and universal background checks have bogged down.

Maryland would join five states — Connecticut, Hawaii, Massachusetts, New York and New Jersey — in requiring fingerprinting of gun buyers. It also would join seven states and the District in banning a wide array of assault weapons.

Under the Maryland bill, any resident wanting to buy a gun would have to pass the new training and testing requirements before receiving an ID card issued by the Maryland State Police. State officials said the ID card would be similar to a driver's license, probably with a photo. It would have to be renewed every 10 years.

Marylanders would not need to get a license to buy hunting rifles and shotguns.

With scores of gun rights advocates and gun-control activists in the balconies of the marbled House chamber, Republicans and conservative Democrats on Tuesday made a last stand on the House floor. They forced dozens of votes on amendments designed to weaken or halt the bill, including a move to strip out the licensing requirement.

Among other arguments, opponents of the bill said the state lacks enough firing ranges, firearms instructors and state police to process the licenses in a timely manner.

A surge in firearm sales in Maryland since December has turned the state's mandatory seven-day waiting period to buy a gun into a 55-day wait, state police said during the debate.

Del. Michael A. McDermott (R-Worcester) said the licensing requirement would add even more delay, amounting to a "defacto ban" on gun sales in Maryland.

As he left the State House, House Minority Leader Anthony J. O'Donnell (R-Calvert), called the measure a "Mickey Mouse" gun ban designed only to help O'Malley "punch his ticket" for a run at higher office.

"It was passed to further the national political ambitions of this governor, and I think it will be challenged in court," O'Donnell said.

Shannon Alford, who led the NRA's efforts against the bill, said the vote that would matter more would come next year, when every seat in the legislature is up for reelection. "They're going to have to listen to us in 2014," she said. "That's the only poll that counts."

But O'Malley hailed the vote as a historic victory that would make the Maryland safer.

"Our state shouldn't settle for being in the top 10 most violent states in America, there are a lot of lives that can be saved," he said in a brief interview. "The tragedy in Newtown [Conn.] gave us the inflection point, the ability to forge a consensus that prior to that awful tragedy might not have been possible. Hopefully, we can wrest some good out of that."

Del. Kathleen M. Dumais (D-Montgomery), who led Democrats' 11-hour defense of the bill, called the

fingerprinting and licensing requirement one of the most important parts of the legislation.

“This is not just about responding to tragedies” Dumais said. “This bill is to address, specifically, what Maryland needs, and the problem Maryland has is with handguns.”

Police and prosecutors lauded the licensing provision, which they predicted would be even more important in curbing crime than the assault-weapons ban.

Although assault-type weapons were used in recent mass shootings such as occurred in Newtown and Aurora, Colo., they have been used in less than 1 percent of Maryland homicides since 2004, when a federal assault-weapons ban lapsed.

The licensing requirements would help reduce everyday gun crime by slowing the flow of firearms through “straw purchases,” advocates said. In a straw purchase, someone buys a gun for a person not allowed to make the purchase. Prosecutors say the practice is widespread in Prince George’s County and in Baltimore.

“What Governor O’Malley is doing here is going to change the national dialogue,” said Vincent DeMarco, a longtime gun-control advocate. “Every state will be looking at what Maryland did and asking if that can be done here.”

Under the bill, Maryland would impose blanket restrictions on people involuntarily committed for mental health treatment. The change is similar to one Virginia made after the 2007 mass shooting at Virginia Tech.

Residents committed against their will for any length of time would be banned permanently from buying weapons. They would need to petition the state to have their gun rights reinstated. Currently, a patient must be institutionalized for at least 30 consecutive days to lose gun rights — a threshold not met by more than 50,000 Marylanders who have been committed to state facilities but who are allowed to own firearms.

The House pulled back from imposing such prohibitions on patients who voluntarily seek admission for psychiatric treatment. The Senate voted to ban some patients who are institutionalized after visiting emergency rooms for mental health reasons.

The final House vote also followed a protest by Republicans after Democrats engaged in last-minute maneuvers to strip out changes that had been agreed to last week by majorities of two House committees — changes opposed by O’Malley’s office.

One would have exempted hundreds of volunteers in the Maryland Defense Force from many provisions of the bill. The head of the state’s National Guard objected to that measure this week, saying most volunteers functioned as support staff with no firearm training or need for special status. Another aborted change would have reduced the minimum age for handgun ownership, now 21, for military veterans and service members.

The vote on the bill broke down most starkly along geographical lines, with every lawmaker present from Montgomery, Prince George’s and Baltimore voting for it; almost every delegate from the western, eastern and southern parts of Maryland opposed it.

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EXHIBIT 7

AFFIDAVIT OF STEPHEN SCHNEIDER

I, Stephen Schneider, under penalty of perjury, declare and state, to the best of my knowledge, information, and belief, as follows:

1. I am over the age of 18, suffer from no disabilities, and have knowledge, information, and belief regarding the facts and events referred to in this Affidavit. I can and will testify truthfully to those facts if called upon as a witness under oath.

2. I am the President of the Maryland Licensed Firearm Dealers Association, Inc. ("MLFDA").

3. MLFDA 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.

4. I also am the owner and operator of Atlantic Guns, a federal firearm licensed dealer and Maryland regulated firearms dealer with locations in Silver Spring and Rockville, Maryland. Atlantic Guns is a family business that was founded by George Schneider in 1950.

5. In addition to offering gunsmithing and appraisal services, Atlantic Guns engages in the sale of firearms, including regulated firearms, firearm parts and equipment, and ammunition.

6. As part of engaging in transactions involving regulated firearms, MLFDA's individual members, including Atlantic Guns, forward the Form 77R applications completed by purchasers to the Secretary of the Maryland State Police, as required by statute, prior to effecting the transfer of any such regulated firearms to the respective purchasers.

7. MLFDA's individual members, including Atlantic Guns, have observed delays approaching or exceeding two months between the date such Form 77R applications completed

by purchasers are forwarded to the Secretary and the date the Maryland State Police issue notices regarding disapproval of such applications.

8. It is my understanding that the Maryland State Police has taken the position that, if MLFDA's individual members, including Atlantic Guns, transfer firearms to purchasers beyond the statutory waiting period of 7 days after the date the Form 77R applications associated with such purchases are forwarded to the Secretary, but before the Maryland State Police issue notices regarding disapproval of such applications, those individual members, including Atlantic Guns, will be subject potentially to civil and criminal penalties or sanctions if such applications later are disapproved by the Maryland State Police.

9. It is my belief that, but for the position taken by the Maryland State Police outlined above, under the language of the applicable statute, MLFDA's individual members, including Atlantic Guns, may and would transfer firearms to purchasers beyond the statutory waiting period of 7 days but before the Maryland State Police issue notices regarding disapproval of applications without being subject to such penalties or sanctions if such applications later are disapproved by the Maryland State Police because the statute provides that the Maryland State Police shall issue notices regarding disapproval of applications within 7 days after the date the applications are forwarded to the Secretary.

10. Even if MLFDA's individual members choose to complete transfers of firearms to purchasers under the circumstances outline above, those entities run the risk, which is exacerbated considerably by the actions of the Maryland State Police in failing to issue notices regarding disapproval of applications in a timely fashion, of incurring civil and criminal penalties or sanctions if such applications later are disapproved by the Maryland State Police.

11. MLFDA's individual members, including Atlantic Guns, do not have access to the National Crime Information Center database for Maryland regulated firearms maintained by the Federal Bureau of Investigation, such that they are unable to determine whether the applications of purchasers likely are subject to disapproval by the Maryland State Police.

12. The actions taken by the Maryland State Police outlined above cause MLFDA's individual members, including Atlantic Guns, significant economic injury, insofar as these entities 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 the Maryland State Police issues 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 the Maryland State Police.

13. Furthermore, MLFDA's individual members, including Atlantic Guns, have observed that the delay between the date their purchasers submit applications and the date the Maryland State Police issue notices regarding disapproval of such applications, at which time these entities may transfer the firearms to the purchases without fear of civil or criminal penalties or sanctions, has led many purchasers to cancel orders resulting in lost sales and revenue for these entities.

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief.

Stephen Schneider
Stephen Schneider

5/10/13
Date

EXHIBIT 8

AFFIDAVIT OF JOHN H. JOSSELYN

I, John H. Josselyn, under penalty of perjury, declare and state, to the best of my knowledge, information, and belief, as follows:

1. I am over the age of 18, suffer from no disabilities, and have knowledge, information, and belief regarding the facts and events referred to in this Affidavit. I can and will testify truthfully to those facts if called upon as a witness under oath.

2. I am the Legislative Vice President of Associated Gun Clubs of Baltimore, Inc. ("AGC").

3. 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.

4. AGC's member clubs each have 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, requiring the submission of applications to the Maryland State Police, and the Maryland State Police's issuance of notices regarding disapproval of such applications, prior to transfer of these firearms.

5. It is my understanding that the Maryland State Police have not rendered decisions regarding disapproval of AGC's member clubs' individual members' applications within 7 days after the date such applications were forwarded to the Maryland State Police.

6. It is my understanding that the sellers of such firearms to AGC's member clubs' individual members have advised them that the sellers are unable to release to them the firearms they purchased in the absence of their receipt of notices regarding disapproval of their applications from the Maryland State Police.

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief.



John H. Josselyn

MAY 7, 2013

Date

EXHIBIT 9

AFFIDAVIT OF PATRICK SHOMO

I, Patrick Shomo, under penalty of perjury, declare and state, to the best of my knowledge, information, and belief, as follows:

1. I am over the age of 18, suffer from no disabilities, and have knowledge, information, and belief regarding the facts and events referred to in this Affidavit. I can and will testify truthfully to those facts if called upon as a witness under oath.

2. I am the President of Maryland Shall Issue, Inc. ("MSI").


3. 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.

4. 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, requiring the submission of applications to the Maryland State Police, and the Maryland State Police's issuance of notices regarding disapproval of such applications, prior to transfer of these firearms.

5. It is my understanding that the Maryland State Police have not rendered decisions regarding disapproval of MSI's individual members' applications within 7 days after the date such applications were forwarded to the Maryland State Police.

6. It is my understanding that the sellers of such firearms to MSI's individual members have advised them that the sellers are unable to release to them the firearms they purchased in the absence of their receipt of notices regarding disapproval of their applications from the Maryland State Police.

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief.



Patrick Shomo

8 May 2013
Date