



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

BRIDGEVILLE RIFLE & PISTOL CLUB,
LTD.; MARK HESTER; JOHN R.
SYLVESTER; MARSHALL KENNETH
WATKINS; BARBARA BOYCE, DHSc
RDN; ROGER T. BOYCE, SR.; and the
DELAWARE STATE SPORTSMEN'S
ASSOCIATION,

Plaintiffs,

v.

DAVID SMALL, SECRETARY OF THE
DELAWARE DEPARTMENT OF
NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL;
DEPARTMENT OF NATURAL
RESOURCES AND ENVIRONMENTAL
CONTROL; ED KEE, SECRETARY OF
DELAWARE DEPARTMENT OF
AGRICULTURE; and DELAWARE
DEPARTMENT OF AGRICULTURE,

Defendants.

C.A. No. 11832-VCG

MOTION FOR EXPEDITED PROCEEDINGS

Plaintiffs Bridgeville Rifle & Pistol Club, Ltd.; Mark Hester; John R. Sylvester; Marshall Kenneth Watkins; Barbara Boyce, DHSc RDN; Roger T. Boyce, Sr.; and the Delaware State Sportsmen's Association ("Plaintiffs"), by and through their undersigned attorneys, hereby move this Court for an Order in the form

attached hereto granting leave for expedited proceedings, and in support thereof state as follows:

Overview of the Exigency

1. Plaintiffs' complaint seeks declaratory and injunctive relief preventing Defendants from continuing to breach fundamental constitutional rights recognized by the Delaware Supreme Court in *Doe v. Wilmington Housing Authority*, 88 A.3d 654 (Del. 2014), and enshrined in Article I, Section 20 of the Delaware Constitution by prohibiting them, and others similarly situated, from carrying firearms in State Parks and State Forests.

2. On December 28, 2015, Plaintiffs sought a preliminary injunction that would prevent Defendants David Small, Secretary of the Delaware Department of Natural Resources and Environmental Control, the Delaware Department of Natural Resources and Environmental Control ("DNREC"), Ed Kee, Secretary of the Delaware Department of Agriculture, and the Delaware Department of Agriculture ("Department of Agriculture") (collectively referred to herein as "Defendants") from enforcing certain regulations that prevent the exercise of Plaintiffs' constitutional rights.

3. DNREC regulation 9201.24.3 prohibits the possession of firearms upon any lands or waters administered by the Division of Parks and Recreation of the

Department of Natural Resources and Environmental Control. 3 Del. Admin. Code 8.8, adopted by the Department of Agriculture, prohibits firearms on State Forest Lands, with a narrow exception for legal hunting.

4. Through this motion, Plaintiffs seek expedited treatment of their Motion for Preliminary Injunction. Because counsel for the Defendants has not yet been identified, Plaintiffs submit a proposed order granting leave for expedited proceedings, but will submit a revised proposed order for the Court's approval once Defendants' counsel has been consulted.

Background

5. The individual Plaintiffs are licensed to carry a concealed deadly weapon and/or travel from out of state for rifle shooting competitions. But for Defendants' regulations, these plaintiffs would avail themselves of Delaware State Parks and State Forests while exercising their rights to carry firearms.

Both regulations prohibiting the lawful possession of firearms within Delaware State Parks and State Forest Lands, respectively, conflict with, modify and extend existing laws of the State of Delaware. Specifically, the regulations conflict with Article I, § 20 of the Constitution of the State of Delaware, and 11 *Del. C.* §§ 1441, 1441A, and 1441B. Article I, § 20 provides, “[a] person has the right to keep and bear arms for the defense of self, family, home and State, and for hunting and recreational use.”

Sections 1441, 1441A, and 1441B, of Title 11 of the Delaware Code, govern the lawful possession of firearms in the State of Delaware. Neither Article I, § 20, nor Title 11 restrict the lawful possession of firearms to geographical area outside of Delaware State Parks or State Forest Lands.¹ Importantly, the Delaware Supreme Court recently established that, by its express terms, Article I, § 20 recognizes a right to bear arms outside of the home. *Doe v. Wilmington Housing Authority*, 88 A.3d 654, 665 (Del. 2014). Specifically, the Court explained, “the Delaware provision is intentionally broader than the Second Amendment and protects the right to bear arms outside of the home, including for hunting and recreation. Section 20 specifically

¹ The only geographical limitation on the lawful possession of firearms set forth by the Delaware General Assembly in Title 11 of the Delaware Code are discussed in 11 *Del. C.* § 1457 – Possession of a Weapon in a Safe School Zone. That statute does not apply here. The General Assembly, at 22 *Del. C.* § 111, recently gave municipal governments, effective August 17, 2015, the limited and narrowly circumscribed power to adopt ordinances regulating the possession of firearms, ammunition, components of firearms, or explosives in police stations and municipal buildings. Section 111, however, specifically states that “[a]n ordinance adopted by a municipal government shall not prevent the following in municipal buildings or police stations: “... (6) carrying firearms and ammunition by persons who hold a valid license pursuant to either § 1441 or § 1441A of Title 11 of this Code so long as the firearm remains concealed except for inadvertent display or for self-defense or defense of others ...” Because the General Assembly specifically excluded from the allowable limitations in § 111 those persons properly authorized to carry concealed firearms pursuant to 11 *Del. C.* §§ 1441 or 1441A, § 111 has no bearing on the arguments made herein.

provides for the defense of self and family *in addition to* the home.” *Id.* (emphasis in original).

6. Furthermore, the adoption of such regulations is outside of the scope and powers conferred upon each State agency by the Delaware General Assembly. Neither Defendant has the authority to deprive Delaware residents of firearms for lawful protection contrary to the State statutory scheme or the Delaware Constitution. Defendant DNREC, under 7 *Del. C.* § 6001, has the power and authority to adopt regulations which best serve the interests of the public, consistent with reasonable and beneficial use of the State’s resources, and the adequate supplies of such resources for the domestic, industrial, power, agricultural, recreational and other beneficial use. *See also* 7 *Del. C.* § 4701(a)(4). Defendant Department of Agriculture has the power to, *inter alia*, “...devise and promulgate rules and regulations for the enforcement of state forestry laws and for the protection of forest lands” 29 *Del. C.* § 8101. The power to regulate the possession of firearms was never conferred upon Defendants by the Delaware General Assembly. But for the aforementioned regulations adopted by Defendants, Plaintiffs would exercise their state constitutional rights to keep and bear firearms within Delaware State Parks and State Forest Lands.

Authority for Expedited Relief

6. This Court has broad discretion to order expedited proceedings. *See Corporate Prop. Assocs. 8, L.P. v. AmerSig Graphics, Inc.*, 1993 Del. Ch. LEXIS 449, at *2 (Nov. 17, 1993). “The burden on a plaintiff in seeking an expedited proceeding is not high.” *Renco Group, Inc. v. Macandrews AMG Holdings LLC*, 2013 Del. Ch. LEXIS 7, at *3 (Jan. 18, 2013) (citing *In re Ness Technologies, Inc.*, 2011 Del. Ch. LEXIS 107, 2011 WL 3444573, at *2 (Aug. 3, 2011)). “[T]his Court acts with a certain solicitude for plaintiffs and motions for expedited proceedings are routinely granted. . .” *In re GM (Hughes) S’holders Litig.*, 2003 Del. Ch. LEXIS 148, at *3 (Oct. 2, 2003) (internal quotations and citations omitted).

7. In order to warrant expedited treatment, a plaintiff need only show a sufficiently colorable claim and a sufficient possibility of a threatened irreparable injury. *Id.* (citing *Giammargo v. Snapple Beverage Corp.*, 1994 Del. Ch. LEXIS 199, at *6 (Nov. 15, 1994)).

8. Where deprivations of constitutional rights are at issue, irreparable harm exists. *See Norfolk Southern Corp. v. Oberly*, 594 F.Supp. 514, 522 (D. Del. 1984) (citing *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 2689 (1976); *Lewis v. Kugler*, 446 F.2d 1343, 1350 (3d Cir. 1971)). In this instance, Defendants are depriving Plaintiffs of their constitutional rights to keep and bear firearms. Without

an injunction, Plaintiffs have suffered, and will continue to suffer, adverse effects including the deprivation of their constitutional rights, increased vulnerability, and penalties, including monetary penalties, imprisonment, or both. *See* Del. Admin. Code 9201.28.1; 3 Del. Admin. Code 10.2.

9. Expedited treatment is warranted here where “the plaintiff has stated a colorable liability claim, together with the possibility of a threatened irreparable injury.” *TCW Tech. Ltd. P’ship v. Intermedia Commc’ns, Inc.*, 2000 WL 1478537, at *2 (Del. Ch. Oct. 2, 2000). First, Plaintiffs have more than set forth colorable claims.² As set forth herein and in their Verified Complaint, they are being prevented by Defendants’ regulations from exercising the rights guaranteed to them by Article 1, Section 20 of the Delaware constitution. Plaintiffs have asserted in their Complaint, and can establish that, the regulations adopted by Defendants prohibiting the lawful possession of firearms within Delaware State Parks and State Forest Lands violate Article I, § 20 of the Delaware Constitution; are preempted by existing Delaware law; and/or exceed the statutory scope of authority granted to Defendants.

10. In making its determination to expedite, the Court need not reach the

² “Establishing a colorable claim is not necessarily a burdensome task and falls short of demonstrating a reasonable probability of success on the merits.” *Am. Messaging Servs., LLC v. DocHalo, LLC*, 2015 Del. Ch. LEXIS 105, at *5 (Apr. 9, 2015).

merits of the allegations or asserted claims in the Complaint, but rather the Court must accept the allegations and claims in the Complaint as true for purposes of granting the requested relief. *See Morton v. Am. Mktg. Indus. Holdings, Inc.*, 1995 WL 1791090, at *2 (Del. Ch. Oct. 5, 1995). There can be no doubt that Plaintiffs satisfy the Court's standard for expedited proceedings.

11. The Defendants' regulations present a real threat of monetary penalties and/or imprisonment if violated. Those running afoul of the rules and regulations promulgated by the "Department of Natural Resources and Environmental Control, Division of Parks and Recreation, shall be fined not less than \$25.00 nor more than \$250.00 and costs for each offense, or imprisoned not more than thirty (30) days, or both. For each subsequent like offense, he/she shall be fined not less than \$50.00 nor more than \$500.00." 7 Del. Admin. Code. 9201.28.1. Similarly, violations of the State Forest Regulations adopted by the Department of Agriculture are unclassified misdemeanors and are punishable by fines ranging from \$25 to \$500. *See* 3 Del. Admin. Code 10.2. In light of this threat, a real and present controversy exists between the parties that is ripe for adjudication. *See, e.g., PAMI-LEMB I Inc. v. EMB-NHC, L.L.C.*, 857 A.2d 998, 1013 (Del. Ch. 2004).

12. For the foregoing reasons, Plaintiffs respectfully request that the Court expedite these proceedings in the form of Order attached hereto.

Respectfully,

ECKERT SEAMANS CHERIN
& MELLOTT, LLC

/s/ Francis G.X. Pileggi

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Club, Ltd., Mark Hester, John R.
Sylvester, Kenneth Watkins, Barbara
Boyce, DHSc, RDN, Roger T. Boyce, Sr.,
and the Delaware State Sportsmen's
Association*

December 29, 2015



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MEDI-LYNX MONITORING, INC.
AND ANDREW J. BOGDAN,

Plaintiffs,

v.

AMI MONITORING, INC. AND
JOSEPH H. BOGDAN,

Defendants.

C.A. No. 11832-VCG

[PROPOSED] ORDER
GOVERNING CASE SCHEDULE

IT IS HEREBY STIPULATED AND AGREED, by the parties hereto, through their undersigned counsel, subject to the approval of the Court, as follows:

1. The following schedule shall govern the proceedings in this matter:
 - (a) Defendants shall file a response to the Complaint by January 15, 2016.
 - (b) The parties shall serve substantially all discovery requests on or before February 1, 2016.
 - (c) All discovery requests served on or before February 1, 2016 shall be answered by the parties on or before February 15, 2016.
 - (d) The parties shall substantially complete document production on or before March 1, 2016.

(e) The parties shall exchange any privilege logs on or before March 8, 2016.

(f) The parties shall substantially complete fact discovery on or before March 26, 2016.

(g) The parties shall identify all trial witnesses (including adverse and third-party witnesses) on or before March 31, 2016.

(h) Plaintiffs shall serve their proposed Joint Pretrial Order on Defendants on _____, 2016.

(i) Defendants shall serve their proposed Joint Pretrial Order on Plaintiffs on _____, 2016.

(j) The parties shall file the Joint Pretrial Order, which shall incorporate any motions in limine and replies to such motions, on or before _____, 2016.

(k) The pretrial conference shall take place on _____, 2016, at ____:_____.m. via telephone, to be initiated by Plaintiffs.

(l) _____ full day(s) of trial shall be reserved for this action on March __, 2016, in New Castle County, Delaware, commencing at ____:____.m.

2. The parties agree to meet and confer promptly regarding arrangements for any discovery to be taken from the parties' agents and advisors.

3. All documents produced shall be produced in electronic form, in accordance with specifications agreed upon by the parties.

4. The parties shall not be required to list on their respective privilege logs documents evidencing communications only between or among counsel, including outside counsel and in-house counsel for the parties, that concerns this litigation.

5. Following the identification of trial witnesses, any party may designate additional party witnesses for trial only upon motion to the Court.

6. The parties may amend the dates set forth in subparagraphs 1(a)-(h) of this Order by written agreement, without Court approval. All other deadlines, the pretrial conference date, and the trial date may be amended only by order of the Court.

IT IS SO ORDERED this _____ day of _____, 201_.

Vice Chancellor Sam Glasscock III



CERTIFICATE OF SERVICE

I, Aimee M. Czachorowski, Esquire, hereby certify that on this 29th day of December, 2015, I caused a true and correct copy of Plaintiffs' Motion for Expedited Proceedings to be served upon the following counsel of record as follows:

Via First Class U.S. Mail, postage prepaid, and FedEx:

The Honorable David Small
Secretary of the Delaware Department
of Natural Resources and
Environmental Control
89 Kings Highway
Dover, DE 19901

Delaware Department of Natural
Resources and Environmental Control
c/o The Honorable David Small
89 Kings Highway
Dover, DE 19901

The Honorable Ed Kee
Secretary of the Delaware Department
of Agriculture
2320 S. DuPont Highway
Dover, DE 19901

Delaware Department of Agriculture
c/o The Honorable Ed Kee, Secretary
2320 S. DuPont Highway
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/s/ Aimee M. Czachorowski
Aimee M. Czachorowski (Bar ID 4670)



Aimee M. Czachorowski
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December 29, 2015

VIA eFILING AND FEDEX

The Honorable Sam Glasscock III
Vice Chancellor
Court of Chancery Courthouse
34 The Circle
Georgetown, DE 19947

Re: *Bridgeville Rifle & Pistol Club, Ltd. v. Small, et al.*,
Del. Ch., C.A. No. 11832-VCG

Dear Vice Chancellor Glasscock:

Enclosed are two courtesy copies of a motion for expedited proceedings that we are filing in connection with our previously filed motion for preliminary injunction. Although we have provided a proposed scheduling order, once counsel for the defendants are identified and consulted we plan to submit a revised scheduling order for approval by Your Honor.

Please do not hesitate to contact me should Your Honor require any further information.

Respectfully,

/s/ Aimee M. Czachorowski

Aimee M. Czachorowski (Del. Bar No. 4670)

AMC/mc
enclosures

cc: The Honorable David Small (on behalf of DNREC)
The Honorable Ed Kee (on behalf of Dept. of Agriculture)
Francis G.X. Pileggi, Esquire
Gary W. Lipkin, Esquire

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Richmond, VA Southpointe, PA Princeton, NJ Washington, DC White Plains, NY Wilmington, DE