

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

DELAWARE STATE SPORTSMEN’S	:	
ASSOCIATION, INC; BRIDGEVILLE	:	
RIFLE & PISTOL CLUB, LTD.;	:	
DELAWARE RIFLE AND PISTOL CLUB;	:	Civil Action No.:
DELAWARE ASSOCIATION OF	:	1:22-cv-00951-RGA
FEDERAL FIREARMS LICENSEES;	:	
MADONNA M. NEDZA; CECIL CURTIS	:	
CLEMENTS; JAMES E. HOSFELT, JR;	:	
BRUCE C. SMITH; VICKIE LYNN	:	
PRICKETT; and FRANK M. NEDZA,	:	

Plaintiffs.

v.

DELAWARE DEPARTMENT OF	:	
SAFETY AND HOMELAND SECURITY;	:	
NATHANIAL MCQUEEN JR. in his	:	
official capacity as Cabinet Secretary,	:	
Delaware Department of Safety and	:	
Homeland Security; and COL. MELISSA	:	
ZEBLEY in her official capacity as	:	
superintendent of the Delaware State Police,	:	

Defendants.

**OPENING BRIEF IN SUPPORT OF PLAINTIFFS’ MOTION FOR PRELIMINARY  
INJUNCTION**

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## INTRODUCTION

The United States Supreme Court and a unanimous Delaware Supreme Court have recognized that the fundamental right to self-defense includes the right to keep and bear firearms both inside and outside the home. The Second Amendment to the United States Constitution guarantees “the right of the people to keep and bear Arms.” U.S. Const., amend. II. Article I, § 20 of the Delaware Constitution affords even broader protections than provided under the United States Constitution, recognizing that: “[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.” DEL. CONST., art. I, § 20; *see Doe v. Wilmington Housing Authority*, 88 A.3d 654, 665 (Del. 2014) (“[o]n its face, the Delaware provision is intentionally broader than the Second Amendment and protects the right to bear arms outside the home, including for hunting and recreation.”).

In defiance of this established and unassailable authority, the State of Delaware recently enacted into law House Bill 450 (“HB 450”<sup>1</sup>) and Senate Substitute 1 for Senate Bill 6 (“SS 1 for SB 6”<sup>2</sup>)(collectively “The Regulatory Scheme”<sup>3</sup>) which flout the fundamental civil rights of Delawareans and others visiting the First State, by making them criminals—felons—for exercising one of their most exalted rights enshrined in both the Delaware Constitution and the United States Constitution. When HB 450 and SS 1 for SB 6 were signed on June 30, 2022, the State of Delaware criminalized (1) possession, transportation and sale of common firearms used by law-abiding citizens for lawful purposes—mislabeling them as “assault weapons” (HB 450);

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<sup>1</sup> “HB 450” refers to 11 *Del. C.* §§ 1464-1467 as well as provisions in HB 450. HB 450 is attached hereto as Exhibit “A.”

<sup>2</sup> “SS 1 for SB 6” refers to 11 *Del. C.* §§ 1441, 1468-1469A as well as provisions in Senate Substitute 1 for Senate Bill 6. SS 1 for SB 6 is attached hereto as Exhibit “B.”

<sup>3</sup> The “Regulatory Scheme” collectively refers to 11 *Del. C.* §§ 1464-1467 as well as provisions in House Bill 450 (“HB 450”) and to 11 *Del. C.* §§ 1441, 1468-1469A as well as provisions in Senate Substitute 1 for Senate Bill 6 (“SS 1 for SB 6”).

and (2) transportation and sale of common “ammunition feeding devices” or “magazines” capable of holding more than seventeen rounds—mislabeling them as “large-capacity magazines.” (SS 1 for SB 6). *See* 11 *Del. C.* §§ 1457, 1464-1469 (2022). The State’s limited exceptions to these broad criminal statutes do not allow typical law-abiding citizens, including Plaintiffs, to keep and bear common firearms for lawful purposes. *See* 11 *Del. C.* §§ 1465(2), 1469(c).

Plaintiffs, Delaware State Sportsmen’s Association, Bridgeville Rifle and Pistol Club, Ltd., Delaware Rifle and Pistol Club, Delaware Association of Federal Firearms Licensees, Madonna M. Nedza; Cecil Curtis Clements; James E. Hosfelt, Jr.; Bruce C. Smith; Vickie Lynn Prickett; and Frank M. Nedza (collectively, “Plaintiffs”) seek injunctive relief on the basis that the Regulatory Scheme violates their rights under the Second and Fourteenth Amendments to the U.S. Constitution and their rights under Article I, § 20 of the Delaware Constitution.

Plaintiffs seek this relief on the eve of the State’s first ammunition magazine “buy-back” event<sup>4</sup>, created in conjunction with the Regulatory Scheme to coerce the law-abiding citizens of Delaware, including Plaintiffs, into surrendering their commonly used and owned ammunition magazines permanently, under threat of prosecution.

Plaintiffs also seek this relief in the wake of the U.S. Supreme Court’s landmark decision, that the State has ignored, in *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 213 L.Ed.2d 387 (2022), and its rapidly growing progeny. In *Bruen*, the Supreme Court held that “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.... Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the

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<sup>4</sup> *See*, <https://delaware.gov> State Announces High Capacity Magazine Buyback Events for Delaware Residents, attached hereto as Exhibit “C.”



Second Amendment’s ‘unqualified command.’” *Id.* at 2126 (citing *Kongsberg v. State Bar of Cal.* 366 U.S. 36, 50 n. 10 (1961)). The Supreme Court, thus, reinforced the approach to assessing a Second Amendment challenge it had established in *District of Columbia v. Heller*, 554 U.S. 570 (2008). That approach mandates (1) determining, through textual analysis, that the Second Amendment protected an individual right to armed self-defense; and (2) relying on the historical understanding of the Amendment to demark the limits on the exercise of that right. *Bruen*, 142 S. Ct. at 2131.

*Bruen*, like *Heller* before it, maintained that, “[m]uch like we use history to determine which modern “arms” are protected by the Second Amendment, so too does history guide our consideration of modern regulations that were unimaginable at the founding. When confronting such present-day firearm regulations, this historical inquiry that courts must conduct will often involve reasoning by analogy—a commonplace task for any lawyer or judge.” *Id.* at 2132. The *Bruen* court repudiated the “means-end” scrutiny to restrictions upon fundamental Second Amendment rights that had developed in Circuit Courts following *Heller*. HB 450 and SS 1 for SB 6 draw their inspiration from the same flawed, now repudiated restrictions in vacated Circuit Court decisions.

The Regulatory Scheme’s ban of common firearms and common ammunition magazines commonly used by law abiding citizens for lawful purposes is a self-evident violation of the Second Amendment and Article I, § 20 of the Delaware Constitution. This ban is not consistent with the United States’ historical tradition of protecting an individual right to self-defense, boldly violates that right, and is not saved by its limited, arbitrary exceptions.

Plaintiffs’ are likely to succeed on their claims, as many challengers to unconstitutional firearms restrictions have in the wake of *Bruen*. Denying an injunction would lead to irreparable

injury to Plaintiffs and other similarly situated Delawareans where, beginning November 16<sup>th</sup>, 2022 the State is initiating its ammunition magazine “buy-back” program and where Plaintiffs and similarly situated law-abiding Delawareans currently live under threat of prosecution for possessing common firearms and ammunition magazines banned and criminalized under the Regulatory Scheme. Granting an injunction also favors the public interest where the Regulatory Scheme poses such a grave threat to Plaintiffs and similarly situated Delawareans fundamental constitutional rights. It remains well-established that violation of a fundamental Constitutional right equates with irreparable harm.

### **JURISDICTION**

Plaintiffs challenge the validity of the Regulatory scheme under 42 U.S.C. §§ 1983 and 1988; U.S. Constitution Amendment II and Amendment XIV; and DEL. CONST., art. I, § 20. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343.

### **ARGUMENT**

A plaintiff seeking preliminary injunctive relief must demonstrate (1) a likelihood of success on the merits and (2) a prospect of irreparable injury if the injunction is not granted. *Reilly v. City of Harrisburg*, 858 F.3d 173, 176 (3d Cir. 2017). A loss of a constitutional right even for a minimal period of time is an irreparable injury. *Amalgamated Transit Union Loc. 85 v. Port Auth. of Allegheny Cnty.*, 39 F.4th 95, 108 (3d Cir. 2022) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

In addition, “the district court . . . should take into account, when they are relevant, (3) the possibility of harm to other interested persons from the grant or denial of the injunction, and (4) the public interest.” *Id.* These final two factors “merge when the Government is the opposing party.” *Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 332 (3d Cir. 2020) (quoting

*Nken v. Holder*, 556 U.S. 418, 435 (2009)). Further, where a claim claim is constitutional the public interest always supports upholding the constitution. *Amalgamated Transit Union Loc. 85 v. Port Auth. of Allegheny Cnty.*, 513 F. Supp. 3d 593, 622 (W.D. Pa. 2021), *aff'd*, 39 F.4th 95 (3d Cir. 2022) (collecting First Amendment authorities) Here, all factors favor preliminarily enjoining Defendants from enforcing the Regulatory Scheme.

**I. Plaintiffs Are Likely to Succeed on the Merits**

**A. The Regulatory Scheme Violates the Second Amendment Under *Bruen***

It cannot be seriously disputed that the Regulatory Scheme burdens Second Amendment rights. The only remaining question, under *Bruen*, is whether the State can prove that the burdens imposed by the Regulatory Scheme upon Plaintiffs’ and similarly situated Delawareans’ right to own common firearms and common ammunition magazines are consistent with “this Nation’s historical tradition” so as to fall outside of the Second Amendment’s “unqualified command.” *Bruen*, 142 S. Ct. at 2126 (citing *Kongsberg v. State Bar of Cal.* 366 U.S. 36, 50 n. 10 (1961)). The answer is no. Drawing from historical tradition, the Supreme Court has made explicit that the Second Amendment protects the carrying of weapons “in common use at the time,” *Id.* at 2143; *see also District of Columbia v. Heller*, 554 U.S. 570, 573 (2008) The Supreme Court means the Second Amendment protects the right to own weapons that are in common use today. *Id.* at 2143. Indeed, for this reason, “[j]ust as the First Amendment protects modern forms of communications, and the Fourth Amendment applies to modern forms of search, the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.” *Heller*, 554 U.S. 570 at 582 (citations omitted).

The firearms and ammunition magazines banned by the Regulatory Scheme are in common use today and there is no historical tradition or analogue under which the State can justify the outright ban it has enacted.

**i. HB 450 Unconstitutionally Bans Firearms in “Common Use”**

HB 450 bans as “assault weapons” common handguns given the misnomer of “assault pistols,” common semiautomatic long guns mislabeled as “assault long guns,” and any “copycat weapon.” 11 *Del. C.* § 1465. These broad categories of firearms are each in common use today. Handguns are “indisputably in ‘common use’ for self-defense today. They are, in fact, ‘the quintessential self-defense weapon.’” *Bruen*, 142 S. Ct. at 2119 (citing *District of Columbia v. Heller*, 554 U.S. 570, 629 (2008)); *see also*, *Heller v. District of Columbia* (“*Heller II*”), 670 F.3d 1244, 1269 (D.C. Cir. 2011)(Kavanaugh, J., dissenting)(“[H]andguns—the vast majority of which today are semi-automatic—... have not traditionally been banned and are in common use by law-abiding citizens.”).

The rifles banned as so-called “assault long guns” are also in common use today. “Nationally, modern rifles are ubiquitous . . . In 2018, 909, 330 Ford F-150s were sold. Twice as many modern rifles were sold the same year.” *Miller v. Bonta*, 542 F. Supp. 3d 1009, 1022 (S.D. Cal. 2021). Semiautomatic rifles accounted for 40 percent of rifles sold in 2010; with two million AR-15s, America’s most popular rifle, manufactured between 1986 and 2010. *Heller II* at 1287; *see also* *Friedman v. City of Highland Park, Ill.*, 577 U.S. 1039, 1042 (2015)(Thomas, J., dissenting from denial of cert)(“Roughly five million Americans own AR-styled semiautomatic rifles...The overwhelming majority of citizens who own and use such rifles do so for lawful purposes including self-defense and target shooting.”) Semiautomatic long guns “traditionally have been widely accepted as lawful possessions...” *See Staples v. United States*, 511 U.S. 600,

612 (1994)(so categorizing an AR-15 semiautomatic rifle). Counting just “modern sporting rifles” (a category that includes semiautomatic AR-style rifles), the number in circulation today approaches twenty million. According to industry sources, more than one out of every five firearms sold in certain recent years were semiautomatic modern sporting rifles.

So-called “copycat weapons” and their specific features are defined in an inherently vague manner and are also in common use. *Springfield Armory, Inc. v. City of Columbus*, 29 F.3d 250, 252 (6th Cir. 1994). Many, perhaps the majority of AR-15 platform firearms in circulation are technically “copycats” under HB 450. Further, the definition of “copycat weapons” in HB 450 require law-abiding citizens to know the technical details of firearm design history. *See*, Stephen P. Halbrook, *America’s Rifle: The Case for the AR-15*, 284 (2022)(“And even to try to decide whether a firearm is a copy or duplicate of a verboten firearm, one must have a verboten firearm for comparison.”)

Features of so called “copycat weapons” also aid in home self-defense. A flash suppressor, for example, not only reduces the chance that a home-invader will mark his victim’s position; it also protects a homeowner against momentary blindness when firing in self-defense. David B. Kopel, *Rational Basis Analysis of “Assault Weapon” Prohibition*, 20 J. Contemp. L. 381, 397 (1994). Similarly, folding stocks, whether on rifles or shotguns, support maneuverability in tight home spaces as well as safe storage of defense instruments. Kopel at 398-99.

The banned semiautomatic firearms deemed “assault weapons” under HB 450, whether handgun, rifle or so called “copycat weapon,” like all other semiautomatic firearms, largely fire

only one round for each pull of the trigger. They are not machine guns.<sup>5</sup> See *Staples*, 511 U.S. at 602 n.1. What is more, the designation “assault weapons” is a complete misnomer, “developed by anti-gun publicists” in their crusade against lawful firearm ownership. See *Stenberg v. Carhart*, 530 U.S. 914, 1001 n.16 (2000) (Thomas, J., dissenting). HB 450 unconstitutionally infringes upon the Second Amendment rights of Plaintiffs and similarly situated Delawareans by banning firearms that are undeniably in common use today. There is no historic tradition or analogue to the Regulatory Scheme’s ban upon which the State can rely—and for which they have the burden of proof.

The State of Delaware also purports to create an “exception” to the assault ban of HB 450 whereupon ordinary law-abiding citizens may possess and transport an “assault weapon” only if they lawfully possessed it prior to June 30, 2022, and then only:

“[a]t that person’s residence, place of business, or other property owned by that person, or on property owned by another person with the owner’s express permission; [w]hile on the premises of a shooting range; [w]hile attending any exhibition, display, or educational project that is about firearms and that is sponsored by, conducted under the auspices of, or approved by a law-enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms;” or while transporting between the aforementioned places or “to any licensed firearms dealer for servicing or repair.”

11 *Del. C.* § 1466 (c)(3)(a)-(d).

This “grandfather clause” does nothing to save HB 450 from being an unconstitutional violation of the Second Amendment. It still prohibits law-abiding Delawareans, including Plaintiffs, from exercising their fundamental right to purchase new and/or additional banned firearms. It also unconstitutionally and severely restricts the locations where Delawareans may

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<sup>5</sup> The State of Delaware was corrected by the Delaware Superior Court for mistakenly conflating this distinction in a firearms case the State lost and did not appeal. *Del. State Sportsmen’s Ass’n v. Garvin*, 2020 Del. Super. LEXIS 2927, \*1, \*13 (Del. Super. 2020).

possess the banned firearms. There are no historical analogues for limiting the right to bear commonly owned firearms with or without HB 450's "grandfather clause."

**ii. SS 1 for SB 6 Unconstitutionally Bans Ammunition Magazines in Common Use**

SS 1 for SB 6 bans common ammunition magazines using the hyperbolic label "large-capacity magazines," defining them as "any ammunition feeding device capable of accepting, or that can readily be converted to hold, more than 17 rounds of ammunition." 11 *Del. C.* § 1468(2)(a). Firearms with ammunition magazines capable of holding more than seventeen rounds, which include many commonly used arms tendentiously called "assault weapons" under HB 450, are indisputably in common use today by law-abiding citizens for lawful purposes, including self-defense. There are currently tens of millions of rifle magazines that are lawfully-possessed in the United States with capacities of more than seventeen rounds. The most popular rifle in American history, and to this day, is the AR-15 platform, a semiautomatic rifle with standard magazines of 20 or 30 rounds. Springfield Armory also introduced the M1A semi-automatic rifle in 1974, with a 20-round detachable box magazine. The next year, the Ruger Mini-14 was introduced, with manufacturer-supplied standard 5-, 10-, or 20-round detachable magazines. *2014 Standard Catalog of Firearms*, 1102 (2014). Both the M1A and the Mini-14 are very popular to this day.<sup>6</sup>

Further, SS 1 for SB 6 bans ammunition magazines capable of accepting, or that can readily be converted to hold, more than 17 rounds of ammunition. However, ammunition magazines can often be used for multiple calibers and the number of rounds they can hold

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<sup>6</sup> Ammunition magazines capable of holding more than seventeen rounds are not only in common use today, they have been for centuries. At the time that the Second Amendment was being ratified, the state of the art for multi-shot guns was the Girandoni air rifle, with a 20 or 22-shot magazine capacity. For example, Merriweather Lewis carried one on the Lewis & Clark expedition. Jim Garry, *Weapons of the Lewis & Clark Expedition* 91-103 (2012).

depends on the caliber. For example, a certain magazine often affiliated with the AR-15 will hold 30 rounds of 5.56 mm ammunition but only 10 rounds of the larger .458 SOCOM ammunition. Many popular magazines have similarly variable capacities. The existence of this variability means that common arms that come equipped with standard-capacity magazines of 17 rounds of ammunition or below are still banned under SS 1 for SB 6. Matthew Larosiere, *CATO Institute Legal Bulletin: Losing Count: The Empty Case for “High-Capacity” Magazine Restrictions* <https://www.cato.org/legal-policy-bulletin/losing-count-empty-case-high-capacity-magazine-restrictions> (July 17, 2018). SS 1 for SB 6 unconstitutionally infringes upon the Second Amendment rights of Plaintiffs and similarly situated Delawareans by banning ammunition magazines that are undeniably in common use today.

SS 1 for SB 6 purports to create an exception to the “large-capacity magazine” ban. The ban does not apply to “[a]n individual who holds a valid concealed carry permit issued with the approval of the Superior Court under § 1441....” 11 *Del. C.* § 1469(c)(5). The carry license exception to SS 1 for SB 6 is arbitrary. It is open to, “[a] person of full age and good moral character desiring to be licensed to carry a concealed deadly weapon for personal protection or the protection of the person’s property.” 11 *Del. C.* § 1441. It further requires prospective permit holders, among other things, to (1) publicly apply for the license, stating their residence and occupation; (2) file a certificate of 5 “respectable citizens” of the county in which the applicant resides that state that the applicant bears a “good reputation for peace and good order in the community in which the applicant resides,”; (3) complete various firearms training courses; and (4) submit to having notice of their application published in a newspaper of general circulation published in the county where they reside. *Id.* Even after satisfying these, and other requirements, the grant of a license, and thus the grant of an exception to the ban on owning



commonly used ammunition magazines is left to the arbitrary discretion of the Delaware Superior Court, which “may or may not, in its discretion, approve any application....” *Id.*

SS 1 for SB 6 applies the concealed-carry licensing requirements of dubious constitutionality for mere ownership of ammunition magazines in common use. In so doing, SS 1 for SB 6 conditions the grant of what is a fundamental right of all citizens upon vague, arbitrary, and discretionary requirements such as proof of “good moral character.” *Bruen*, 142 S. Ct. 2111 at 2135 n.1 (noting with disapproval states with licensing schemes that give officials discretion to deny licenses based on a perceived lack of suitability). The requirements effectively prohibit the issuance of a license, and thus, the right to own ammunition magazines in common use, unless the applicant *persuades* the Court that the applicant is of “good moral character.” These requirements are akin to shouldering an applicant with the burden of showing that she needs to satisfy criteria distinguishable from that of the general community—the exact burden that *Bruen* ruled unconstitutional in the context of concealed carry. There is no historical analogue or historical tradition of burdening law-abiding citizens with the obligation to persuade the State why they should be able to exercise their basic and fundamental right to bear common arms or common ammunition magazines. Nor is there a historical analogue or historical tradition of requiring a law-abiding citizen to provide character references in order to be permitted to bear common arms.

Further, the training mandate imposed by the licensing requirements heavily discriminates against and acts as a complete barrier to the acquisition of commonly used ammunition magazines by the poor or economically disadvantaged citizens of the State of Delaware, who live in urban areas, where access to a public shooting range is effectively non-existent and where the licensing process is costly. The underlying intent and practical effect of

these requirements is the disenfranchisement of Second Amendment rights for the poor and disadvantaged. These and the other requirements imposed by the licensing process for concealed carry now applied to mere ownership of ammunition magazines in common use, form undue and effective practical barriers to the exercise of fundamental constitutional rights preserved by the Second Amendment.<sup>7</sup>

There is no denying that the firearms and the ammunition magazines banned by the Regulatory Scheme are in common use, and thus fall within the protection and “unqualified command” of the Second Amendment. There is also no denying that the State will be incapable of citing any historical tradition or historical analogue justifying the Regulatory Scheme’s bans or the respective purported exceptions to HB 450 or SS 1 for SB 6. The Regulatory Scheme therefore violates the Second Amendment and is unconstitutional. Plaintiffs will succeed on the merits of their claims that their Second Amendment rights are violated by the Regulatory Scheme.

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<sup>7</sup> Regarding the overtly racist history of gun licensing and registration, see, e.g., Virginia’s 1723 statute forbidding any “negro, mulatto, or Indian . . . to keep, or carry any gun,” unless they were “a house-keeper, or listed in the militia.” William Waller Hening, *The Statutes at Large; Being a Collection of All the Laws of Virginia*, 131 (1823). An exception was provided, however, for “negroes, mullattos, or Indians, bond or free, living at any frontier plantation,” who could “keep and use guns” if they “first obtained a license for the same, from some justice of the peace.” *Id.* Delaware also used laws to restrict the use of firearms as a means of racial discrimination. *Laws of the State of Delaware*, Chapter 94, Vol. 12, March 6, 1861, at Section 7 (prohibiting free blacks from possessing guns); Stephen P. Halbrook, *The Right to Bear Arms: A Constitutional Right of the People or a Privilege of the Ruling Class?* at 233 (2021); Stephen B. Tahmassebi, *Gun Control and Racism*, 2 *Civil Rights Law Journal* 67 (1991) (describing history of gun control coinciding with oppression of blacks). *See also*, *First Conviction under Weapon Law; Judge Foster gives Marino Rossi One Year for Arming himself...* N.Y. Times (Sept. 28, 1911) at 5 (describing Sullivan Law targeting Italian immigrants to restrict their Second Amendment rights.)

## **B. The Regulatory Scheme Violates Article I, § 20 of the Delaware Constitution**

Article I, § 20 of the Delaware Constitution states that “[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.” DEL. CONST., art. I, § 20 The right to bear arms, including the right of self-defense, “has existed since [Delaware’s] founding and has always been regarded as an inalienable right.” *Bridgeville Rifle & Pistol Club, Ltd. v. Small*, 176 A.3d 632, 644 (Del. 2017). *Bridgeville* undertook an extensive review of Delaware’s legislative history regarding the right to bear arms, noting that:

Article 25 of Delaware's first constitution (enacted on September 20, 1776) provided that, unless otherwise altered by the State's legislature, the common law of England "shall remain in force. By definition, this included Article VII of the 1689 English Bill of Rights — described by the United States Supreme Court as "the predecessor to our Second Amendment" — which provided: "That the Subjects which are Protestants, may have Arms for their Defence suitable to their Conditions, and as allowed by Law."

*Id.* at 645-646.

Article I, § 20 was codified, by supermajorities of two successive Delaware General Assemblies, became effective in 1987, and is much broader than the more limited scope of the right to bear arms contained in the Second Amendment. *See Doe v. Wilmington Housing Authority*, at 665 (“our interpretation of Section 20 is not constrained by federal precedent,” and emphasizing that the scope of § 20 is much broader than the scope of the Second Amendment.); *see also Del. State Sportsmen’s Ass’n v. Garvin*, 196 A.3d 1254, 1269 (Del. Super. 2018).<sup>8</sup> (“[T]he enumeration of ‘self and family’ *in addition to* the home provides an independent right to bear arms outside the home (and not just in it.)” *Id.* at 643.

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<sup>8</sup> This *Garvin* decision was not appealed by the State. Undersigned lead counsel successfully argued the *Doe*, *Bridgeville* and *Garvin* decisions, which are the only decisions that directly address the scope of Article I, Section 20 of the Delaware Constitution outside the home.

Even prior to *Bruen*, *Bridgeville* recognized that *Heller* held that “‘complete prohibition[s]’ of Second Amendment rights are automatically invalid and need not be subjected to any tier of scrutiny.” *Id.* at 653. *Bridgeville* further endorsed the Seventh Circuit’s ruling in *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011), that “[b]oth *Heller* and *McDonald* suggest that broadly prohibitory laws restricting the core Second Amendment right . . . are categorically unconstitutional.” *Bridgeville Rifle & Pistol Club, Ltd.*, 176 A.3d at 654. (quoting *Ezell*, 651 F.3d at 703). The Regulatory Scheme is one such categorically unconstitutional outright ban.

The broader right to bear arms recognized by Article I, § 20, the *Bridgeville* court’s holding that broadly prohibitory laws restricting the core Second Amendment right are categorically unconstitutional, and the Delaware Supreme Court’s endorsement of the U.S. Supreme Court’s guidance in analyzing restrictions on the right to bear arms under the Second Amendment and Article I § 20, all demonstrate that the Regulatory Scheme violates Article I, § 20. HB 450’s broad ban on firearms in common use and SS 1 for SB 6’s broad ban on ammunition magazines in common use cannot survive under *Bruen* and thus not only violate the Second Amendment, but also the broader and inalienable rights of all Delawareans under Article I, § 20. Plaintiffs will succeed on the merits of their claims that their Article I, § 20 rights are violated by the Regulatory Scheme.

### **C. Numerous Orders Enjoining or Reversing and Remanding Similar Unconstitutional Firearms Restrictions Have Been Entered Across the Country in the Wake of *Bruen***

Following *Bruen* there has been a swell of decisions in state and federal courts striking down unconstitutional firearms restrictions on Second Amendment grounds. Some of these decisions have come in this very court and circuit. Others have struck down restrictions far less broad, oppressive and egregious than the restrictions of the Regulatory Scheme. And some have been struck down that bear striking similarities to the Regulatory Scheme. In fact, the very

Fourth Circuit decision upon which HB 450 was based has been reversed and remanded. As laid out more fully below, the near unanimous message post-*Bruen* is clear: the inalienable rights protected by the Second Amendment’s “unqualified command” will not be subject to means-end scrutiny, and will not stand absent the State meeting the heavy burden of demonstrating the restriction is consistent with the Nation’s “historic tradition.”

The legislative history of HB 450, as signed into law, includes a prior iteration of HB 450 known previously as Senate Bill 68 (“SB 68”). SB 68 describes in its synopsis that it relies upon a Maryland statute that bans commonly-used firearms as so-called “assault rifles.” SB 68, and thus HB 450, further both rely upon a now-repudiated decision of the U.S. Court of Appeals for the Fourth Circuit, en banc, wrongly upholding that similarly flawed Maryland ban. In light of its decision in *Bruen*, the U.S. Supreme Court vacated and remanded a Fourth Circuit decision that solely relied on the decision HB 450 is based on. *See Bianchi v. Frosh*, U.S. Supr. Ct. No. 21-902, Order (June 30, 2022) (vacating *Bianchi* which solely relied on *Kolbe v. Hogan*, 849 F. 3d 114 (4<sup>th</sup> Cir. 2017)(en banc), abrogated by *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. (2022), to reject a challenge to the Maryland statute that HB 450 is based on.).

In *Rigby v. Jennings*, 2022 U.S. Dist. LEXIS 172375 (D. Del. September 22, 2022), this Court granted a preliminary injunction enjoining enforcement of 11 *Del. C.* §§ 1459A(b), 1463(a) and 1463(c)(1) as well as portions of § 1463(b), which had been signed into law in Delaware on October 20, 2021, based on their violation of the Second Amendment. Known as HB 125, that regulatory scheme criminalized the possession, manufacture, and distribution of unserialized firearms and unfinished firearm components. Under a *Bruen* analysis, this Court held that the challenged statutes’ prohibition of the possession and manufacture of unfinished firearm frames and receivers and untraceable firearms burdened the Second Amendment. This Court

granted plaintiffs' requested injunction, in part, because the State failed to provide evidence to support its burden that unfinished frames, receivers and untraceable firearms were not in "common use." *Id.* at \*16. On the Regulatory Scheme's broader and more wide-ranging ban of commonly used firearms and ammunition magazines under HB 450 and SS 1 for SB 6, the State will also not be able to satisfy its burden.

In the Third Circuit, on August 30<sup>th</sup> of this year, relying largely on *Bruen*, the Court of Appeals reversed a District Court dismissal of a claim brought pursuant to the Second Amendment and the Fifth Amendment's Takings Clause on a Second Amendment issue. In *Frein v. Pa State Police*, 47 F. 4<sup>th</sup> 247 (3<sup>rd</sup> Cir., August 30, 2022), the Court of Appeals held that the seizing of the firearms of the parents of a convicted criminal constituted a violation of the Fifth Amendment's Takings Clause, where the warrant's justification, under which they were seized, had run out, the firearms were not contraband and/or proceeds of a crime, and the Plaintiff-parents did not forfeit the guns. *Id.* at 253. Citing to *Bruen*, the Court also held that the Plaintiff-parents' Second Amendment rights had been violated where "this Nation's historical tradition" did not permit seizing and holding onto the firearms. *Id.* at 254-256 ("...the Second Amendment prevents the government from hindering citizens' ability to "keep" their guns.") The Regulatory Scheme similarly attempts to seize and hold firearms and ammunition magazines in common use.

In light of *Bruen*, the U.S. Supreme Court vacated and remanded bot Third Circuit and Ninth Circuit Court of Appeals decisions upholding bans of "large-capacity magazines" similar to those banned in SS 1 for SB 6. *See Assn. of NJ Rifle, v. Bruck*, U.S. Supr. Ct. No. 20-1507, Order (June 30, 2022); *Duncan v. Becerra*, U.S. Supr. Ct. No. 21-1194, Order (June 30, 2022). The United States District Court for the District of Colorado also granted temporary restraining

orders preventing flawed bans on common arms, including common ammunition magazines similar to those banned by SS 1 for SB 6, from being enacted following *Bruen*. See *Rocky Mountain Gun Owners v. The Town of Superior*, Civ. Action No. 22-cv-01685-RM (D. Colo. July 22, 2022); see also *Rocky Mt. Gun Owners, N.A. v. Bd. of Cnty. Comm'rs*, 2022 U.S. Dist. LEXIS 156308 (D. Colo. August 30, 2022). In *Antonyuk v. Hochul*, 2022 U.S. Dist. LEXIS 182965 (N.D.N.Y. October 6, 2022), the Court issued a temporary restraining order enjoining a New York state licensing scheme that purported to require applicants, like the Regulatory Scheme does for possession of commonly used ammunition magazines, to show “good moral character” before being granted a concealed carry license. The Court held that the “good moral character” requirement was fatally flawed because it entrenched New York as a “shall-not-issue jurisdiction,” and, by doing so “further reduced a first-class constitutional right to bear arms in public for self-defense.” On November 7<sup>th</sup>, 2022, the same court issued a preliminary injunction, again ruling that the “good moral character” requirement, among others, was unconstitutional. *Antonyuk v. Hochul*, 2022 U.S. Dist. LEXIS 201944, at \*244 (N.D.N.Y. Nov. 7, 2022) The Regulatory Scheme’s licensing exception, with its own “good moral character” clause, does the same to Delawareans’ basic fundamental right to own commonly used ammunition magazines.

The foregoing decisions are only the first waves in the post-*Bruen* swell to hit the shore. An order granting a preliminary injunction to enjoin the Regulatory Scheme from violating Delawareans fundamental Second Amendment and Article I, § 20 should be next. Like the post-*Bruen* decisions highlighted above, Plaintiffs will succeed on the merits of their claims that their Second Amendment and Article I, § 20 rights are violated by the Regulatory Scheme.

## II. Plaintiffs Will Suffer Irreparable Injury Without an Injunction

“[T]o show irreparable harm a plaintiff must demonstrate potential harm which cannot be redressed by a legal or an equitable remedy following a trial.” *Acierno v. New Castle County*, 40 F.3d 645, 653 (3d Cir. 1994) (internal quotation marks and citation omitted). It is well accepted that the deprivation of a constitutional right constitutes irreparable harm. *See, e.g., K.A. ex rel. Ayers v. Pocono Mountain Sch. Dist.*, 710 F.3d 99, 113 (3d Cir. 2013); *Lewis v. Kugler*, 446 F.2d 1343, 1350 (3d Cir. 1971); *see also Ezell*, 651 F.3d at 699 (“Infringements of this [Second Amendment] right cannot be compensated by damages.”); 11A Charles Alan Wright, Arthur R. Miller, Mary Kay Kane, *FEDERAL PRACTICE AND PROCEDURE* § 2948.1 (3d ed. 2022).

Here, Plaintiffs face ongoing deprivations of their Second Amendment rights. Each day the State’s unconstitutional Regulatory Scheme continues in force, Plaintiffs, their members, and other ordinary law-abiding citizens who reside in Delaware, risk felony prosecution, incarceration, and permanent loss of their Second Amendment rights because they possess and/or wish to obtain commonly used firearms and ammunition magazines. Plaintiffs and other similarly situated Delawareans will also suffer irreparable injury absent an injunction to bar the State’s imminent first of many ammunition magazine “buy-back” events. These “buy-back” events were created in conjunction with the Regulatory Scheme to coerce the law-abiding citizens of Delaware, including Plaintiffs, into surrendering their commonly used and owned ammunition magazines permanently, under threat of prosecution. If and when Plaintiffs are quasi-forced to surrender their commonly used ammunition magazines at a “buy-back” event, they will be irrevocably surrendered without possibility for return. These injuries cannot be compensated through monetary damages.



### **III. Public Interest and Balance of Hardships Strongly Favor Plaintiffs**

The remaining two factors also strongly favor injunctive relief. The public interest favors Plaintiffs as the “enforcement of an unconstitutional law vindicates no public interest.” *K.A. ex rel. Ayers*, 710 F.3d at 114 (citing *ACLU v. Ashcroft*, 322 F.3d 240, 251 n.11 (3d Cir. 2003) (“[N]either the Government nor the public generally can claim an interest in the enforcement of an unconstitutional law.”)).

The balance of hardships also strongly favors Plaintiffs. Plaintiffs have demonstrated that they are suffering a deprivation of their constitutionally protected rights, under threat of prosecution. Plaintiffs and similarly situated Delawareans further face the surrender of their commonly used firearms and ammunition magazines via the State’s “buy-back” program. As a result, they also face the likelihood of being deprived of their ability to protect themselves and their homes. For instance, according to a report by the U.S. Department of Justice, Bureau of Justice Statistics, household members are present for almost a third of all burglaries and become victims of violent crimes in more than a quarter of those cases. Studies on the frequency of defensive gun uses in the United States have determined that there are up to 2.5 million instances each year in which civilians use firearms to defend themselves or their property.

In turn, Defendants suffer no harm by granting the injunction where there is no basis to believe the Regulatory Scheme ensure or even contribute to public safety. . *See* Gary Kleck, *Targeting Guns: Firearms and Their Control* 112 (1997) (evidence indicates that “well under 1% of [crime guns] are ‘assault rifles.’”)

## CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' motion in its entirety and enter an order, substantially in the form submitted herewith, preliminarily and permanently enjoining Defendants enforcement of the Regulatory Scheme created by H.B. 450 and SS 1 for SB 6.

Respectfully Submitted,

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Dated: November 15, 2022.

# **EXHIBIT A**



SPONSOR: Rep. Longhurst & Sen. Poore & Rep. Schwartzkopf & Rep. Mitchell & Rep. Dorsey Walker & Rep. Baumbach & Rep. Bolden & Rep. Griffith & Rep. Lynn  
Reps. Bentz, Chukwuocha, Freel, Heffernan, K. Johnson, Kowalko, Lambert, Minor-Brown, Morrison, Osienski; Sens. Gay, Lockman, S. McBride, Paradee, Pinkney, Sokola, Sturgeon, Townsend

HOUSE OF REPRESENTATIVES  
151st GENERAL ASSEMBLY

HOUSE BILL NO. 450  
AS AMENDED BY  
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND THE DELAWARE CODE RELATING TO DEADLY WEAPONS.

1 WHEREAS, on May 24 an 18-year-old gunman entered Robb Elementary School in Uvalde, Texas and murdered  
2 19 children and 2 teachers with an AR-15-style semi-automatic rifle; and

3 WHEREAS, this tragedy came just 10 days after a shooting in Buffalo, New York where a gunman with an AR-15-  
4 style semi-automatic rifle murdered 10 people in a grocery store; and

5 WHEREAS, there have been dozens more mass shootings during the last decade, including in 2019 at a Walmart in  
6 El Paso, Texas, where a gunman using a WASR-10 semi-automatic rifle murdered 23 people and wounded 23 others; and

7 WHEREAS, in 2018 at Stoneman Douglas High School in Parkland, Florida, a gunman with an AR-15-style semi-  
8 automatic rifle murdered 14 students and 3 adults and injured 17 more people; and

9 WHEREAS, in 2017, a gunman barricaded himself in a Las Vegas hotel room and used multiple AR-15 and AR-  
10 10-type rifles to murder 60 people and injure hundreds more at an outdoor music festival; and

11 WHEREAS, in 2012, a shooter walked into Sandy Hook Elementary School in Newtown, Connecticut armed with  
12 a Bushmaster semi-automatic rifle with 30-round magazines enabling him to fire 154 rounds in less than 5 minutes, murdering  
13 20 first-grade children and 6 adults; and

14 WHEREAS, assault-style weapons have been used disproportionately to their ownership in mass shootings; and

15 WHEREAS, in 1994, Congress adopted the Violent Crime Control and Law Enforcement Act of 1994, which  
16 prohibited the possession and sale of assault-style weapons and large capacity ammunition magazines which limited  
17 magazines to 10 rounds; and

18 WHEREAS, between 1994 and 2004 when the Act was in effect, there were fewer than 20 mass shootings during  
19 that decade, substantially lower than the decades since, and since the law expired in 2004 there has been a proliferation of  
20 assault-style weapons in the United States; and

21 WHEREAS, since 2009, there have been 274 mass shootings in the United States resulting in 1,536 people shot and  
22 killed and 983 people shot and wounded, including 362 children and teens and 21 law enforcement officers; and

23 WHEREAS, between 2009 and 2020, there were at least 30 mass shootings that involved the use of an assault-style  
24 weapon, resulting in 347 deaths and 719 injuries, with mass shootings that involved an assault-style weapon accounting for  
25 25 percent of all mass shooting deaths and 76 percent of injuries; and

26 WHEREAS, assault-style weapons have immense killing power which amplifies the deadly will of a person seeking  
27 to kill others and the use of an assault weapon has led to six times as many people shot per mass shooting; and

28 WHEREAS, the AR-15, AK-47 and other similar firearm profiles now recognized as assault-style weapons were  
29 originally designed solely for military use, and these weapons, which have been modified over time to be marketed and sold  
30 to civilians, were not intended for sport or self-defense; and

31 WHEREAS, the Delaware General Assembly has a compelling interest to ensure the safety of Delawareans and  
32 finds that assault-style weapons are exceptionally lethal weapons of war that have no place in civilian life.

33 NOW, THEREFORE:

34 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

35 Section 1. Amend Subchapter VII, Chapter 5, Title 11 of the Delaware Code by making deletions as shown by strike  
36 through and insertions as shown by underline as follows:

37 ~~§§ 1464 – 1469. [Reserved.]~~

38 § 1464. Legislative findings.

39 The Legislature hereby finds and declares that the proliferation and use of assault weapons poses a threat to the  
40 health, safety, and security of all citizens of this state. The Legislature has restricted the assault weapons specified in § 1465  
41 of this title based upon finding that each firearm has such a high rate of fire and capacity for firepower that its potential  
42 function as a sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure  
43 human beings. It is the intent of the Legislature in enacting this chapter to place restrictions on the possession and use of  
44 assault weapons. It is not, however, the intent of the Legislature by this chapter to place restrictions on the use of those  
45 weapons which are primarily designed and intended for hunting, target practice, or other legitimate sports or recreational  
46 activities.

47 § 1465. Definitions related to assault weapons.

48 For purposes of this section and § 1466 and § 1467 of this title:

49 (1) “Ammunition feeding device” means any magazine, belt, drum, feed strip, or similar device that holds  
50 ammunition for a firearm.

51 (2) “Assault long gun” means any of the following or a copy, regardless of the producer or manufacturer:

52 a. American Arms Spectre da Semiautomatic carbine.

53 b. Avtomat Kalashnikov semiautomatic rifle in any format, including the AK-47 in all forms.

54 c. Algimec AGM-1 type semi-auto.

55 d. AR 100 type semi-auto.

56 e. AR 180 type semi-auto.

57 f. Argentine L.S.R. semi-auto.

58 g. Australian Automatic Arms SAR type semi-auto.

59 h. Auto-Ordnance Thompson M1 and 1927 semi-automatics.

60 i. Barrett light .50 cal. semi-auto.

61 j. Beretta AR70 type semi-auto.

62 k. Bushmaster semi-auto rifle.

63 l. Calico models M-100 and M-900.

64 m. CIS SR 88 type semi-auto.

65 n. Claridge HI TEC C-9 carbines.

66 o. Colt AR-15, CAR-15, and all imitations except Colt AR-15 Sporter H-BAR rifle.

67 p. Daewoo MAX 1 and MAX 2, aka AR 100, 110C, K-1, and K-2.

68 q. Dragunov Chinese made semi-auto.

69 r. Famas semi-auto (.223 caliber).

70 s. Feather AT-9 semi-auto.

71 t. FN LAR and FN FAL assault rifle.

72 u. FNC semi-auto type carbine.

73 v. F.I.E./Franchi LAW 12 and SPAS 12 assault shotgun.

74 w. Steyr-AUG-SA semi-auto.

75 x. Galil models AR and ARM semi-auto.

76 y. Heckler and Koch HK-91 A3, HK-93 A2, HK-94 A2 and A3.

77 z. Holmes model 88 shotgun.

- 78                    aa. Manchester Arms "Commando" MK-45, MK-9.
- 79                    bb. Mandell TAC-1 semi-auto carbine.
- 80                    cc. Mossberg model 500 Bullpup assault shotgun.
- 81                    dd. Sterling Mark 6.
- 82                    ee. P.A.W.S. carbine.
- 83                    ff. Ruger mini-14 folding stock model (.223 caliber).
- 84                    gg. SIG 550/551 assault rifle (.223 caliber).
- 85                    hh. SKS with detachable magazine.
- 86                    ii. AP-74 Commando type semi-auto.
- 87                    jj. Springfield Armory BM-59, SAR-48, G3, SAR-3, M-21 sniper rifle, and M1A, excluding the M1
- 88                    Garand.
- 89                    kk. Street sweeper assault type shotgun.
- 90                    ll. Striker 12 assault shotgun in all formats.
- 91                    mm. Unique F11 semi-auto type.
- 92                    nn. Daewoo USAS 12 semi-auto shotgun.
- 93                    oo. UZI 9mm carbine or rifle.
- 94                    pp. Valmet M-76 and M-78 semi-auto.
- 95                    qq. Weaver Arms "Nighthawk" semi-auto carbine.
- 96                    rr. Wilkinson Arms 9mm semi-auto "Terry".
- 97                    (2) "Assault pistol" means any of the following or a copy, regardless of the producer or manufacturer:
- 98                    a. AA Arms AP-9 pistol.
- 99                    b. Beretta 93R pistol.
- 100                    c. Bushmaster pistol.
- 101                    d. Claridge HI-TEC pistol.
- 102                    e. D Max Industries pistol.
- 103                    f. EKO Cobra pistol.
- 104                    g. Encom MK-IV, MP-9, or MP-45 pistol.
- 105                    h. Heckler and Koch MP5K, MP7, SP-89, or VP70 pistol.
- 106                    i. Holmes MP-83 pistol.
- 107                    j. Ingram MAC 10/11 pistol and variations, including the Partisan Avenger and the SWD Cobray.

108 k. Intratec TEC-9/DC-9 pistol in any centerfire variation.

109 l. P.A.W.S. type pistol.

110 m. Skorpion pistol.

111 n. Spectre double action pistol (Sile, F.I.E., Mitchell).

112 o. Stechkin automatic pistol.

113 p. Steyer tactical pistol.

114 q. UZI pistol.

115 r. Weaver Arms Nighthawk pistol.

116 s. Wilkinson "Linda" pistol.

117 (3) "Assault weapon" means any of the following:

118 a. An assault long gun.

119 b. An assault pistol.

120 c. A copycat weapon.

121 (4) "Completed a purchase" means that the purchaser completed an application, passed a background check,

122 and has a receipt or purchase order for the assault weapon, without regard to whether the purchaser has actual physical  
123 possession of the assault weapon. If receipt of the assault weapon will not occur until more than 1 year after [the effective  
124 date of this Act], it is not a completed purchase.

125 (5) "Copycat weapon" means any of the following:

126 a. A semiautomatic, centerfire rifle that can accept a detachable magazine and has at least 1 of the following:

127 1. A folding or telescoping stock.

128 2. Any grip of the weapon, including a pistol grip, a thumbhole stock, or any other stock, the use of which  
129 would allow an individual to grip the weapon, resulting in any finger on the trigger hand in addition to the trigger finger  
130 being directly below any portion of the action of the weapon when firing.

131 3. A forward pistol grip.

132 4. A flash suppressor.

133 5. A grenade launcher or flare launcher.

134 b. A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.

135 c. A semiautomatic pistol that can accept a detachable magazine and has at least 1 of the following:

136 1. An ability to accept a detachable ammunition magazine that attaches at some location outside of the pistol  
137 grip.



- 138           2. A threaded barrel capable of accepting a flash suppressor, forward pistol grip or silencer.
- 139           3. A shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to  
140 fire the firearm without being burned, except a slide that encloses the barrel.
- 141           4. A second hand grip.
- 142           d. A semiautomatic shotgun that has both of the following:
- 143               1. A folding or telescoping stock.
- 144               2. Any grip of the weapon, including a pistol grip, a thumbhole stock, or any other stock, the use of which  
145 would allow an individual to grip the weapon, resulting in any finger on the trigger hand in addition to the trigger finger  
146 being directly below any portion of the action of the weapon when firing.
- 147           e. A semiautomatic shotgun that has the ability to accept a detachable magazine.
- 148           f. A shotgun with a revolving cylinder.
- 149           g. A semiautomatic pistol with a fixed magazine that can accept more than 17 rounds.
- 150           h. A semiautomatic, centerfire rifle that has a fixed magazine that can accept more than 17 rounds.
- 151           (6) "Detachable magazine" means an ammunition feeding device that can be removed readily from a firearm  
152 without requiring disassembly of the firearm action or without the use of a tool, including a bullet or cartridge.
- 153           (7) "Family" means as defined in § 901 of Title 10.
- 154           (8) "Flash suppressor" means a device that functions, or is intended to function, to perceptibly reduce or redirect  
155 muzzle flash from the shooter's field of vision.
- 156           (9) "Qualified retired law-enforcement officer" means as defined in § 1441B(c) of this title.
- 157           (10) "Shooting range" means any land or structure used and operated in accordance with all applicable laws and  
158 ordinances for the shooting of targets for training, education, practice, recreation, or competition.
- 159           (11) "Grenade launcher" means a device designed to fire, launch, or propel a grenade.
- 160           (12) "Secure storage" means a firearm that is stored in a locked container or equipped with a tamper resistant  
161 mechanical lock or other safety device that is properly engaged so as to render the firearm inoperable by a person other  
162 than the owner or other lawfully authorized user.
- 163           § 1466. Manufacture, sale, transport, transfer, purchase, receipt, and possession of assault weapons; class E or F  
164 felony.
- 165           (a) Prohibitions. - Except as provided in subsection (b) or (c) of this section, it is unlawful for a person to do any of  
166 the following:
- 167               (1) Transport an assault weapon into this State.

168           (2) Manufacture, sell, offer to sell, transfer, purchase, receive, or possess an assault weapon.

169           (b) Applicability - This section does not apply to any of the following:

170           (1) The following individuals, if acting within the scope of official business:

171           a. Personnel of the United States government or a unit of that government.

172           b. Members of the armed forces of the United States or of the National Guard.

173           c. A law-enforcement officer.

174           (2) An assault weapon modified to render it permanently inoperative.

175           (3) Possession, importation, manufacture, receipt for manufacture, shipment for manufacture, storage,  
176 purchases, sales, and transport to or by a licensed firearms dealer or manufacturer who does any of the following:

177           a. Provides or services an assault weapon for a law-enforcement agency of this State or for personnel  
178 exempted under paragraph (b)(1) of this section.

179           b. Acts to sell or transfer an assault weapon to a licensed firearm dealer in another state or to an individual  
180 purchaser in another state through a licensed firearms dealer.

181           c. Acts to return to a customer in another state an assault weapon transferred to the licensed firearms dealer  
182 or manufacturer under the terms of a warranty or for repair.

183           (4) Organizations that are required or authorized by federal law governing their specific business or activity to  
184 maintain assault weapons.

185           (5) The receipt of an assault weapon by inheritance, and possession of the inherited assault weapon, if the  
186 decendent lawfully possessed the assault weapon and the person inheriting the assault weapon is not otherwise a person  
187 prohibited under § 1448 of this title.

188           (6) The receipt of an assault weapon by a personal representative of an estate for purposes of exercising the  
189 powers and duties of a personal representative of an estate, including transferring the assault weapon according to will  
190 or probate proceedings.

191           (7) Possession by a qualified retired law-enforcement officer who is not otherwise prohibited from receiving an  
192 assault weapon if either of the following applies:

193           a. The assault weapon is sold or transferred to the qualified retired law-enforcement officer by the law-  
194 enforcement agency on retirement.

195           b. The assault weapon was purchased or obtained by the qualified retired law-enforcement officer for  
196 official use with the law-enforcement agency before retirement.

197           (8) Possession or transport by an armored car guard, as defined in § 1302 of Title 24, if the armored car guard  
198           is acting within the scope of employment with an armored car agency, as defined under § 1302 of Title 24, and is licensed  
199           under Chapter 13 of Title 24.

200           (9) Possession, receipt, and testing by, or shipping to or from any of the following:

201                 a. An ISO 17025 accredited, National Institute of Justice-approved ballistics testing laboratory.

202                 b. A facility or entity that manufactures or provides research and development testing, analysis, or  
203                 engineering for personal protective equipment or vehicle protection systems.

204           (c) Exceptions. -

205                 (1) A licensed firearms dealer may continue to do all of the following with an assault weapon that the licensed  
206                 firearms dealer lawfully possessed on or before [the effective date of this Act]:

207                         a. Possess the assault weapon.

208                         b. Sell the assault weapon or offer the assault weapon for sale. But, the licensed firearms dealer may only  
209                         sell the assault weapon or offer the assault weapon for sale as permitted under paragraph (b)(3)b. of this section.

210                         c. Transfer the assault weapon. But, the licensed firearms dealer may only transfer the assault weapon as  
211                         permitted by paragraph (b)(3)b. or (b)(3)c. of this section.

212                 (2)a. A licensed firearms dealer may take possession of an assault weapon from a person who lawfully possessed  
213                 the assault weapon before [the effective date of this Act] for the purposes of servicing or repairing the assault weapon.

214                         b. A licensed firearms dealer may transfer possession of an assault weapon received under paragraph  
215                         (c)(2)a. of this section for purposes of accomplishing service or repair of the assault weapon.

216                 (3) A person who lawfully possessed, or completed a purchase of an assault weapon prior to [the effective date  
217                 of this Act], may possess and transport the assault weapon on or after [the effective date of this Act] only under the  
218                 following circumstances:

219                         a. At that person's residence, place of business, or other property owned by that person, or on property  
220                         owned by another person with the owner's express permission.

221                         b. While on the premises of a shooting range.

222                         c. While attending any exhibition, display, or educational project that is about firearms and that is sponsored  
223                         by, conducted under the auspices of, or approved by a law-enforcement agency or a nationally or state recognized  
224                         entity that fosters proficiency in, or promotes education about, firearms.

225 d. While transporting the assault weapon between any of the places set forth in this this paragraph (c)(3) of  
226 this section, or to any licensed firearms dealer for servicing or repair under paragraph (c)(2) of this section, if the  
227 person places the assault weapon in secure storage.

228 (4) A person may transport an assault weapon to or from any of the following if the person places the assault  
229 weapon in secure storage:

230 a. An ISO 17025 accredited, National Institute of Justice-approved ballistics testing laboratory.

231 b. A facility or entity that manufactures or provides research and development testing, analysis, or  
232 engineering for personal protective equipment or vehicle protection systems.

233 (5) Ownership of an assault weapon may be transferred from the person owning the assault weapon to a member  
234 of that person's family, and it is lawful for the family member to possess the transferred assault weapon under paragraph  
235 (c)(3) of this section, if the transferor lawfully possessed the assault weapon and the family member to whom the assault  
236 weapon is transferred is otherwise lawfully permitted to possess it.

237 (d) Penalty. – A violation of this section is a class D felony.

238 (e) Disposal. – A law-enforcement agency in possession of a person's assault weapon as a result of an arrest under  
239 this section shall dispose of the assault weapon under the process established for deadly weapons and ammunition under §  
240 2311 of this title following the person's adjudication of delinquency or conviction under this section or by the person's  
241 agreement to forfeit the assault weapon under an agreement to plead delinquent or guilty to another offense.

242 § 1467. Voluntary certificate of possession.

243 (a) A person who is exempt from § 1466(a) of this title under § 1466(c)(3) of this title may, no later than 1 year from  
244 the [effective date of this Act], apply to the Secretary of the Department of Safety and Homeland Security for a certificate of  
245 possession.

246 (b) In a prosecution under § 1466 of this title, it is an affirmative defense that the defendant was lawfully in  
247 possession or had completed a purchase of the assault weapon prior to [the effective date of this Act]. A certificate of  
248 possession is conclusive evidence that a person lawfully possessed or had completed a purchase of an assault weapon before  
249 [the effective date of this Act] and is entitled to continue to possess and transport the assault weapon on or after [the effective  
250 date of this Act] under § 1466(c)(3) of this title.

251 (c) The Secretary of the Department of Safety and Homeland Security shall establish procedures with respect to the  
252 application for and issuance of certificates of possession for assault weapons that are lawfully owned and possessed before  
253 [the effective date of this Act]. Rules and procedures under this subsection must include all of the following:

254 (1) That the application contain proof that the person lawfully possessed or had completed a purchase of an  
255 assault weapon before [the effective date of this Act].

256 (2) That the certificate of possession must contain a description of the assault weapon, including the make,  
257 model, and serial number. For an assault weapon manufactured before 1968, identifying marks may be substituted for  
258 the serial number.

259 (3) That the certificate of possession must contain the full name, address, date of birth, and thumbprint of the  
260 person who owns the assault weapon, and any other information the Secretary deems appropriate.

261 (4) That the Department will not retain copies of the certificate or other identifying information relating to any  
262 individual who applies for a voluntary certificate of possession.

263 (d) A person who inherits or receives a weapon from a family member that is lawfully possessed under §  
264 1466(c)(3) of this title and lawfully transferred may apply for a certificate of possession within 60 days of taking  
265 possession of the weapon. To receive a certificate, the person must show that the transferor was lawfully in possession  
266 and that he/she is the lawful recipient of the transfer.

267 §§ 1468 – 1469. [Reserved.]

268 Section 2. Amend § 1457, Title 11 of the Delaware Code by making deletions as shown by strike through and  
269 insertions as shown by underline as follows:

270 § 1457. Possession of a weapon in a Safe School and Recreation Zone; class D, E, or F felony; class A or B  
271 misdemeanor.

272 (a) Any person who commits any of the offenses described in subsection (b) of this section, or any juvenile who  
273 possesses a firearm or other deadly weapon, and does so while in or on a "Safe School and Recreation Zone" shall be guilty  
274 of the crime of possession of a weapon in a Safe School and Recreation Zone.

275 (b) The underlying offenses in Title 11 shall be:

276 (1) Section 1442. — Carrying a concealed deadly weapon; class G felony; class D felony.

277 (2) Section 1444. — Possessing a destructive weapon; class E felony.

278 (3) Section 1446. — Unlawfully dealing with a switchblade knife; unclassified misdemeanor.

279 (4) Section 1448. — Possession and purchase of deadly weapons by persons prohibited; class F felony.

280 (5) Section 1452. — Unlawfully dealing with knuckles-combination knife; class B misdemeanor.

281 (6) Section 1453. — Unlawfully dealing with martial arts throwing star; class B misdemeanor.

282 (7) Section 14XX. — Manufacture, sale, transport, transfer, purchase, receipt, or possession of assault weapons;  
283 class E or F felony.

284           Section 3. If any provision of this Act or the application of this Act to any person or circumstance is held invalid,  
285 the provisions of this Act are severable if the invalidity does not affect the other provisions or applications of the Act which  
286 can be given effect without the invalid provision or application.

287           Section 4. This Act is to be known as the “Delaware Lethal Firearms Safety Act of 2022.”

# EXHIBIT B





SPONSOR: Sen. Sokola & Sen. Sturgeon & Sen. Townsend & Rep. Mitchell  
Sens. Gay, Hansen, S. McBride, Pinkney, Poore; Reps. Baumbach, Bentz, Chukwuocha, Griffith, Heffernan, Kowalko, Lynn, Minor-Brown, Morrison

DELAWARE STATE SENATE  
151st GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1  
FOR  
SENATE BILL NO. 6  
AS AMENDED BY  
SENATE AMENDMENT NO. 1, HOUSE AMENDMENT NO. 1,  
AND HOUSE AMENDMENT NO. 2  
AS AMENDED BY HOUSE AMENDMENT NO. 3.

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO DEADLY WEAPONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subchapter VII, Chapter 5, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§§ 1464-1469. [Reserved.]~~

§ 1465. Definitions related to large-capacity magazines.

For purposes of this section and §§ 1466 and 1467 of this title:

(1) “Ammunition feeding device” means any magazine, belt, drum, feed strip, or similar device that holds ammunition for a firearm.

(2)a. “Large-capacity magazine” means any ammunition feeding device capable of accepting, or that can readily be converted to hold, more than 17 rounds of ammunition.

b. “Large-capacity magazine” does not include an attached tubular device designed to accept, and only capable of operating with, .22 caliber rimfire ammunition.

c. For purposes of this subsection, the presence of a removable floor plate in an ammunition feeding device that is not capable of accepting more than 17 rounds of ammunition shall not, without more, be sufficient evidence that the ammunition feeding device can readily be converted to hold more than 17 rounds of ammunition.

(3) “Licensed firearms dealer” means a person licensed under Chapter 9 of Title 24 or 18 U.S.C. § 921 et seq.

(4) “Qualified retired law-enforcement officer” means as defined under § 1441B(c) of this title.



§ 1466. Large-capacity magazines prohibited; class E felony; class B misdemeanor; or civil violation.

(a) Except as otherwise provided in subsections (c) and (d) of this section, it is unlawful for a person to manufacture, sell, offer for sale, purchase, receive, transfer, or possess a large-capacity magazine.

(b)(1) A violation of this section which is a first offense which only involves possession of a large capacity magazine is a civil penalty of \$100.

(2) A second violation of this section which only involves possession of a large capacity magazine is a class B misdemeanor.

(3) All other violations of this section, including a subsequent offense involving only possession of a large capacity magazine are a class E felony.

(4) A large-capacity magazine is subject to forfeiture for a violation of this section.

(5) The Superior Court has exclusive jurisdiction over violations under subsections (b)(2) and (b)(3) of this section.

(c) This section does not apply to any of the following:

(1) Personnel of the United States government or a unit of that government who are acting within the scope of official business.

(2) Members of the armed forces of the United States or of the National Guard who are acting within the scope of official business.

(3) A law-enforcement officer.

(4) A qualified retired law-enforcement officer.

(5) An individual who holds a valid concealed carry permit issued by the Superior Court under § 1441 of this title.

(6) A licensed firearms dealer that sells a large-capacity magazine to another licensed firearms dealer or to an individual exempt under paragraphs (c)(1) through (5) of this section.

(7) A large-capacity magazine that a person has rendered permanently inoperable or has permanently modified to accept 17 rounds of ammunition or less.

(d)(1) The Secretary of the Department of Safety and Homeland Security (“Secretary”) shall establish and administer a compensation program for residents of this State to allow a resident in possession of a large-capacity magazine on [the effective date of this Act] to relinquish the large-capacity magazine to the Department of Safety and Homeland Security (“Department”) or a participating local law-enforcement agency in exchange for a monetary payment established under this subsection.

(2) The Secretary shall adopt rules to implement the compensation program, including the following:

a. That the compensation program be implemented between [the effective date of this Act] and June 30, 2023, at locations throughout this State. The Department shall coordinate with local law-enforcement agencies in implementing the program.

b. That the compensation program allows a resident to relinquish a large-capacity magazine to the Department, or a local law-enforcement agency participating in the program, in exchange for a compensation in the amount of the market rate for each large-capacity magazine.

c. That establishes the method for providing the monetary payment and reimbursing a participating law-enforcement agency for payments made to residents under the compensation program.

d. That the compensation program is subject to the availability of funds appropriated for this specific purpose by the General Assembly. This subsection does not create a right or entitlement in a resident to receive a monetary payment under the compensation program.

(3) The Secretary shall submit a report to the General Assembly by December 29, 2023, providing the results of the compensation program, including the number of large-capacity magazines relinquished to law-enforcement agencies, by county, and the total amount expended under the program.

§ 1467. Possession of a large-capacity magazine during the commission of a felony; class B felony.

(a) It is unlawful for a person to possess a large-capacity magazine during the commission of a felony.

(b) Possession of a large-capacity magazine during the commission of a felony is a class B felony.

(c) A person may be found guilty of violating this section notwithstanding that the felony for which the person is convicted and during which the person possessed the large-capacity magazine is a lesser included felony of the one originally charged.

§§ 1468-1469. [RESERVED].

Section 2. The sum of \$45,000 is appropriated from the General Fund in Fiscal Year 2023 for the purpose of providing compensation for the purchase of large-capacity magazines by the Department of Safety and Homeland Security under Section 1 of this Act.

Section 3. If any provision of this Act or the application of this Act to any person or circumstance is held invalid, the provisions of this Act are severable if the invalidity does not affect the other provisions or applications of the Act which can be given effect without the invalid provision or application.

Section 4. This Act is to be known as the “Delaware Large-Capacity Magazine Prohibition Act of 2022.”

Section 5. This Act takes effect 60 days after its enactment into law.

Section 6. Section § 1466(d) of Title 11, as contained in Section 1 of this Act, expires on January 1, 2024.

**EXHIBIT C**

## Delaware News Menu

(<https://delaware.gov>)

# Delaware News

## State Announces High Capacity Magazine Buyback Events for Delaware Residents

Department of Safety and Homeland Security (<https://news.delaware.gov/category/safety-and-homeland-security/>) | Kent County (<https://news.delaware.gov/category/kent-county/>) | New Castle County (<https://news.delaware.gov/category/new-castle-county/>) | News (<https://news.delaware.gov/category/news/>) | Sussex County (<https://news.delaware.gov/category/sussex-county/>) | Date Posted: Wednesday, October 26, 2022



In June 2022, Gov. Carney signed into law the Delaware Large Capacity Magazine Prohibition Act of 2022 making the possession of high capacity magazines illegal in the State. In addition, the law authorizes the Department of Safety and Homeland Security (DSHS) to conduct a limited buyback program. Delaware residents are eligible to receive fair market compensation for any magazine with the capacity to hold more than 17 rounds of ammunition when relinquished to law enforcement.

This buyback program is for Delaware residents only. The program is only intended for individuals and does not apply to wholesale, retail, manufacturers, and distributor business entities. Anonymous relinquishments will be permitted. However, no compensation will be provided.

DSHS is hosting the following buyback events in each county:

**Wednesday, November 16 from 4:00 PM – 8:00 PM.**

**Locations:**

Delaware State Police Troop 4  
23652 Shortly Road  
Georgetown, DE 19947

Delaware State Police Troop 3  
3759 South State Street  
Camden, DE 19934

Delaware State Police Troop 2  
100 Lagrange Avenue  
Newark, DE 19702

**Saturday, November 19 from 10:00 AM to 2:00 PM**

**Locations:**

Delaware State Police Troop 4  
23652 Shortly Road  
Georgetown, DE 19947

Delaware State Police Troop 3  
3759 South State Street  
Camden, DE 19934

Delaware State Police Troop 2  
100 Lagrange Avenue  
Newark, DE 19702

Delawareans providing valid identification for proof of residency may receive:

- LCM 18 to 30 Rounds – \$15
- LCM 31 or greater round – \$25
- LCM Drums – \$80

If you plan to redeem a device and have questions, call (302) 744-2680.

Residents are encouraged to review 11 Del. C. § 1469(c) as certain exemptions apply.

(<https://news.delaware.gov/2022/10/26/state-announces-high-capacity-magazine-buyback-events-for-delaware-residents/?print=pdf>)



Print (<https://news.delaware.gov/2022/10/26/state-announces-high-capacity-magazine-buyback-events-for-delaware-residents/?print=print>)

**Related Topics:** Buyback (<https://news.delaware.gov/tag/buyback/>), delaware state police (<https://news.delaware.gov/tag/delaware-state-police/>), High Capacity Magazine (<https://news.delaware.gov/tag/high-capacity-magazine/>)



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## Delaware's Government

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

DELAWARE STATE SPORTSMEN’S ASSOCIATION, INC; BRIDGEVILLE RIFLE & PISTOL CLUB, LTD.;	:	
DELAWARE RIFLE AND PISTOL CLUB;	:	
DELAWARE ASSOCIATION OF	:	Civil Action No.:
FEDERAL FIREARMS LICENSEES;	:	1:22-cv-00951-RGA
MADONNA M. NEDZA; CECIL CURTIS	:	
CLEMENTS; JAMES E. HOSFELT, JR;	:	
BRUCE C. SMITH; VICKIE LYNN	:	
PRICKETT; and FRANK M. NEDZA,	:	
	:	
Plaintiffs.	:	
	:	
v.	:	
	:	
DELAWARE DEPARTMENT OF	:	
SAFETY AND HOMELAND SECURITY;	:	
NATHANIAL MCQUEEN JR. in his	:	
official capacity as Cabinet Secretary,	:	
Delaware Department of Safety and	:	
Homeland Security; and COL. MELISSA	:	
ZEBLEY in her official capacity as	:	
superintendent of the Delaware State Police,	:	
	:	
Defendants.	:	

**STATEMENT PURSUANT TO D. DEL. L.R. 7.1.1**

In accordance with District of Delaware Local Rule 7.1.1, undersigned counsel for Plaintiffs certifies he has made a reasonable effort to reach agreement with counsel for Defendants on the relief sought by Plaintiffs in their motion for preliminary injunction.

LEWIS BRISBOIS  
BISGAARD & SMITH LLP

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*Attorneys for Plaintiffs*

Dated: November 15, 2022.