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1a

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

July 19, 2018
ACO-097

No. 18-2366

Thomas Rogers; Association of New Jersey Rifle
and Pistol Clubs, Inc.;
Appellants

v.

Attorney General New Jersey; Patrick J. Callahan,
in his official capacity as Acting Superintendent of
the New Jersey Division of State Police; Kenneth J.
Brown, in his official capacity as Chief of the Wall
Township Police Department; Joseph W. Oxley, in
his official capacity as Judge of the Superior court
of New Jersey, Law Division, Monmouth County;
N. Peter Conforti, in his official capacity as Judge
of the Superior Court of New Jersey; Law Division,
Sussex County

(D.N.J. No. 3-18-cv-01544)

Present: MCKEE, VANASKIE and SCIRICA, *Circuit
Judges*

1. Unopposed Motion by Appellants for Sum-
mary Action.

Respectfully,
Clerk/clw

ORDER

The foregoing motion for summary action is granted.

2a

By the Court,
s/Anthony J. Scirica
Circuit Judge

Dated: September 21, 2018
CLW/cc: John D. Ohlendorf, Esq.
Peter A. Patterson, Esq.
Daniel L. Schmutter, Esq.
David H. Thompson, Esq.
Bryan E. Lucas, Esq.
Mitchell B. Jacobs, Esq.

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

THOMAS R. ROGERS :
and ASSOCIATION OF :
NEW JERSEY RIFLE & :
PISTOL CLUBS, INC., :
 :
Plaintiffs, :
 :
v. :
GURBIR GREWAL, :
PATRICK J. CALLAHAN, :
KENNETH J. BROWN, JR., :
JOSEPH W. OXLEY, and :
PETER CONFORTI :
 :
Defendants. :

Civil Action
No. 3:18-cv-01544-
BRM-DEA
OPINION

MARTINOTTI, DISTRICT JUDGE

Before this Court are: (1) Defendants Gurbir Grewal (“Attorney General Grewal”), Patrick I Callahan (“Callahan”), Joseph W. Oxley (“Judge Oxley”), and N. Peter Conforti’s (“Judge Conforti”) (collectively, the “State Defendants”) Motion to Dismiss (ECF No. 16); and (2) Defendant Kenneth J. Brown’s (“Brown”) (together with the State Defendants, the “Defendants”) Motion to Dismiss, in which he advises he will rely upon the State Defendants’ Motion (ECF No. 18). Pursuant to Federal Rule of Civil Procedure 78(b), the Court did not hear oral argument. For the reasons set

forth below, Defendants' motions to dismiss are **GRANTED**.

I. BACKGROUND

For the purposes of the motions to dismiss, the Court accepts the factual allegations in the Complaint as true and draws all inferences in the light most favorable to Plaintiff. *See Phillips v. Cty. of Allegheny*, 515 F.3d 224, 228 (3d Cir. 2008). The central dispute in this matter is whether New Jersey's "justifiable need" restriction in its handgun permit laws is unconstitutional.

A. New Jersey's Handgun Permit Laws

New Jersey generally forbids a person from possessing any handgun "without first obtaining a permit to carry the same." N.J.S.A. § 2C:39-5(b). The law provides for certain exceptions for

keeping or carrying about his place of business, residence, premises or other land owned or possessed by him, any firearm, or from carrying the same, in the manner specified in subsection g. of this section, from any place of purchase to his residence or place of business, between his dwelling and his place of business, between one place of business or residence and another when moving, or between his dwelling or place of business and place where the firearms are repaired, for the purpose of repair.

N.J.S.A. § 2C:39-6(e). These exceptions, however, do not permit the carrying of a handgun in public, either openly or concealed, without first obtaining a permit.

To seek a handgun permit one must first submit an application to the chief police officer of the municipality in which he or she resides. N.J.S.A. § 2C:58-4(c). If the chief officer determines the applicant meets all statutory requirements and approves the application, the application is then presented to the Superior Court of the county where he or she resides. N.J.S.A. § 2C:58-4(d).

The court shall issue the permit to the applicant if, but only if, it is satisfied that the applicant is a person of good character who is not subject to any of the disabilities set forth in section 2C:58-3x., that he is thoroughly familiar with the safe handling and use of handguns, and that he has a justifiable need to carry a handgun.

Id. For a “private citizen,” to satisfy the “justifiable need” requirement an applicant must demonstrate there is an “urgent necessity for self-protection, as evidenced by serious threats, specific threats, or previous attacks, which demonstrate a special danger to the applicant’s life that cannot be avoided by reasonable means other than by issuance of a permit to carry a handgun.” N.J.A.C. § 13:54-2.4(d)(1). However, if the application is denied, the applicant can also appeal the denial to the Superior Court. N.J.S.A. § 2C:58-4(e).

B. The Parties

Plaintiff Thomas R. Rogers (“Rogers”) is a New Jersey resident who requested, and was denied, a permit to carry a firearm in public. (Compl. (ECF No. 1) ¶¶ 10, 30-33.) Association of New Jersey Rifle & Pistol Clubs, Inc. (“ANJRPC”) (together with Rogers, “Plaintiffs”) is a not-for-profit membership corporation that “represents the interest of target shooters, hunters, competitors, outdoors people and other law abiding firearms owners,” and is bringing this complaint on behalf of its members. (*Id.* ¶ 11.) Defendants are Attorney General Grewal, the Attorney General of New Jersey; Callahan, the Acting Superintendent of the New Jersey State Police; Brown, the Chief of the Wall Township Police Department; Judge Oxley, a judge for the Superior Court of New Jersey, Law Division, Monmouth County, and Judge Conforti, a judge for the Superior Court of New Jersey, Law Division, Sussex County. (*Id.* ¶¶ 12-16.)

C. Plaintiffs’ Challenge

On January 11, 2017, Rogers filed an application for a handgun carry permit with the then-Chief of Police for Wall Township, where he resides. (*Id.* ¶ 30.) While Rogers alleges he “possess[es] all of the qualifications necessary to obtain a [h]andgun [c]arry [p]ermit that are enumerated in N.J.S.A. 2C:58-4; 2C:58-2(c),” he admittedly “does not face any special danger to his life.” (*Id.* ¶¶ 28-29.) On August 15, 2017, Brown, who replaced the former Chief of Police, denied

Roger’s application for a permit to carry a handgun in public because Rodgers “failed to show a ‘justifiable need’ to carry.” (*Id.* ¶ 31.) Rodgers appealed the denial to the Superior Court of New Jersey. (*Id.* ¶ 32.) On January 2, 2018, Judge Oxley also denied his application for the same reason. (*Id.* ¶ 33.)

ANJRPC “has at least one member who has had an application for [h]andgun [c]arry [p]ermit denied solely for failure to satisfy the ‘justifiable need’ requirement.” (*Id.* ¶ 35.) It also

has numerous members who wish to carry a handgun outside the home for self-defense but have not applied for a [h]andgun [c]arry [p]ermit because they know that, although they satisfy or can satisfy all other requirements of N.J.S.A. 2C:58-4, they are unable to satisfy the ‘justifiable need’ requirement.

(*Id.* ¶ 33.) ANJRPC states that, “[b]ut for Defendants’ continued enforcement of the New Jersey laws and regulations set forth above, those members would forthwith carry a handgun outside the home for self-defense but refrain from doing so for fear of arrest and prosecution.” (*Id.*)

D. Procedural History

On February 5, 2018, Plaintiffs filed a Complaint against Defendants alleging a violation of 42 U.S.C. § 1983 for deprivations of their Second and Fourteenth Amendment rights. (*Id.* ¶¶ 37-42.) On April 3, 2018,

Defendants Callahan, Judge Conforti, Attorney General Grewal, and Judge Oxley filed a Motion to Dismiss. (ECF No. 16.) On April 10, 2018, Brown joined in the Motion to Dismiss. (ECF No. 18.) Plaintiffs opposed the motions on April 23, 2018. (ECF No. 22.) The motions were returnable today, May 21, 2018.

II. LEGAL STANDARD

In deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), a district court is “required to accept as true all factual allegations in the complaint and draw all inferences in the facts alleged in the light most favorable to the [plaintiff].” *Phillips v. Cty. of Allegheny*, 515 F.3d 224, 228 (3d Cir. 2008). “[A] complaint attacked by a . . . motion to dismiss does not need detailed factual allegations.” *Bell Atl. v. Twombly*, 550 U.S. 544, 555 (2007). However, the Plaintiff’s “obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Id.* (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). A court is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Papasan*, 478 U.S. at 286. Instead, assuming the factual allegations in the complaint are true, those “[f]actual allegations must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555.

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to

‘state a claim for relief that is plausible on its face.’ *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for misconduct alleged.” *Id.* This “plausibility standard” requires the complaint allege “more than a sheer possibility that a defendant has acted unlawfully,” but it “is not akin to a ‘probability requirement.’” *Id.* (quoting *Twombly*, 550 U.S. at 556). “Detailed factual allegations” are not required, but “more than an unadorned, the defendant-harmed-me accusation” must be pled; it must include “factual enhancements” and not just conclusory statements or a recitation of the elements of a cause of action. *Id.* (citing *Twombly*, 550 U.S. at 555, 557).

“Determining whether a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Iqbal*, 556 U.S. at 679. “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—‘that the pleader is entitled to relief.’” *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

III. DECISION

Plaintiffs’ Complaint alleges New Jersey’s laws and regulations regarding the right to bear arms in public “violate the Second Amendment.” (ECF No. 1

¶ 42.) As such, they ask the Court to declare unconstitutional the “justifiable need” requirement. (*Id.* ¶ 43.) However, this Court has no authority to grant Plaintiffs’ requested relief, because the Third Circuit in *Drake v. Filko* explicitly and unequivocally upheld the constitutionality of New Jersey’s “justifiable need” requirement in its gun permit laws, rendering Plaintiffs’ claim meritless. 724 F.3d 426, 429 (3d Cir. 2013) (holding that the requirement that applicants demonstrate a “justifiable need” to publicly carry a handgun qualified as a “presumptively lawful,” “longstanding” regulation and therefore did not infringe on the Second Amendment’s guarantee), *cert. denied sub nom.*, 134 S. Ct. 2134 (2014).

Indeed, this is not the first time an individual has attempted to circumvent the Third Circuit decision and has been denied. *Purpura v. Christie*, No. 15-3534, 2016 WL 1262578, at *4 (D.N.J. Mar. 31, 2016) (finding “the Court is concerned that Plaintiff may not have asserted a federally protected right in his Complaint, to the extent his claim is based on the alleged unconstitutional nature of N.J.S.A. 2C:58-4, because the Third Circuit held that this provision is constitutional”), *aff’d*, 687 F. App’x 208 (3d Cir. 2017), *cert. denied*, 138 S. Ct. 389 (2017); *Stephens v. Jerejian*, No. 14-6688, 2015 WL 4749005, at *2 (D.N.J. Aug. 6, 2015) (“Here, though Plaintiff applied for the proper documents to purchase handguns, as opposed to carry handguns, the Third Circuit’s jurisprudence indicates that the herein challenged firearm regulations, which are central to New Jersey’s aggregate firearm regulatory scheme, are

constitutional under *Heller*. Therefore, the law provides no remedy for Plaintiff, and his facial challenges are dismissed with prejudice.”) (internal citations omitted); *Mirayes v. O’Connor*, No. 13-0934, 2013 WL 6501741, at *8 (D.N.J. Dec. 11, 2013 (finding plaintiff’s claim to be meritless because “the Third Circuit has upheld the constitutionality of New Jersey’s ‘justifiable need’ requirement under N.J.S.A. 2C:58-4(c)”)).

“Decisions of the Court of Appeal for a given circuit are binding on the district courts within the circuit, but are not binding on courts in other circuits.” *Villines v. Harris*, 487 F. Supp. 1278, 1279 n.1 (D.N.J. 1980). This Court “does not have the discretion to disregard controlling precedent simply because it disagrees with the reasoning behind such precedent.” *Vujosevic v. Rafferty*, 844 F.2d 1023, 1030 n.4 (3d Cir. 1988). This Court may only set aside Third Circuit precedent “[w]hen subsequent Supreme Court decisions implicate Third Circuit precedent” and “the Supreme Court has effectively overruled that precedent or has rendered a decision that is necessarily inconsistent with Third Circuit authority.” *Fenza’s Auto, Inc. v. Montagnaro’s, Inc.*, No. 10-3336, 2011 WL 1098993, at *7 (D.N.J. Mar. 21, 2011). Plaintiffs cite to no subsequent Supreme Court decisions, and the Court finds none, that implicate the precedent set forth in *Drake*. Instead, Plaintiffs argue this Court should follow *Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017), a case that is neither binding on nor precedential to this Court and cannot serve to overturn Third Circuit precedent. *See Villines*, 487 F. Supp. at 1279 n.1.

More telling, Plaintiffs concede both in their Complaint and Opposition Brief “that the result they seek is contrary to *Drake*,” but argue *Drake* was wrongly decided and should be overturned. (ECF Nos. 1 ¶ 6 and ECF No. 22 at 2.) As explained, this Court does not have the authority or power to grant such a request and therefore, deems this Complaint meritless on its face.

In light of the clear mandate from the Third Circuit that the “justifiable need” requirement in New Jersey’s gun permit laws is constitutional and the Supreme Court’s refusal to address the issue by denying certiorari, and for the reasons set forth above, Defendants’ motions to dismiss are **GRANTED**.¹

IV. CONCLUSION

For the reasons set forth above, Defendants’ motions to dismiss are **GRANTED**.

Date: May 21, 2018 /s/ *Brian R. Martinotti*
HON. BRIAN R. MARTINOTTI
UNITED STATES DISTRICT JUDGE

¹ For the reasons set forth in this opinion, the Court will not engage in a merits analysis of the remainder of Plaintiffs’ arguments. In addition, Defendants’ motions to dismiss further argue Plaintiffs’ claims against Judge Oxley and Judge Conforti are barred by the doctrine of judicial immunity. (ECF No. 16-3 at 17-20.) Because the Court has dismissed Plaintiffs’ Complaint in its entirety, it need not and will not address this issue.

**CONSTITUTIONAL PROVISIONS,
STATUTES, AND REGULATIONS INVOLVED**

U.S. Const. amend. II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

U.S. Const. amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

N.J. Stat. Ann. § 2C:39-5

Unlawful possession of weapons

* * *

b. Handguns. (1) Any person who knowingly has in his possession any handgun, including any antique handgun, without first having obtained a permit to carry the same as provided in N.J.S.2C:58-4, is guilty of a crime of the second degree. (2) If the handgun is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide,

compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person it is a crime of the third degree.

* * *

N.J. Stat. Ann. § 2C:39-6
Exemptions

a. Provided a person complies with the requirements of subsection j. of this section, N.J.S.2C:39-5 does not apply to:

- (1) Members of the Armed Forces of the United States or of the National Guard while actually on duty, or while traveling between places of duty and carrying authorized weapons in the manner prescribed by the appropriate military authorities;
- (2) Federal law enforcement officers, and any other federal officers and employees required to carry firearms in the performance of their official duties;
- (3) Members of the State Police and, under conditions prescribed by the superintendent, members of the Marine Law Enforcement Bureau of the Division of State Police;
- (4) A sheriff, undersheriff, sheriff's officer, county prosecutor, assistant prosecutor, prosecutor's detective or investigator, deputy attorney general or State investigator employed by the Division of Criminal Justice of the Department of Law and Public Safety, investigator employed by the State

Commission of Investigation, inspector of the Alcoholic Beverage Control Enforcement Bureau of the Division of State Police in the Department of Law and Public Safety authorized to carry weapons by the Superintendent of State Police, State park police officer, or State conservation officer;

(5) Except as hereinafter provided, a State correctional police officer, or a prison or jail warden of any penal institution in this State or his deputies, or an employee of the Department of Corrections engaged in the interstate transportation of convicted offenders, while in the performance of his duties, and when required to possess the weapon by his superior officer, or a corrections officer or keeper of a penal institution in this State at all times while in the State of New Jersey, provided he annually passes an examination approved by the superintendent testing his proficiency in the handling of firearms;

(6) A civilian employee of the United States Government under the supervision of the commanding officer of any post, camp, station, base or other military or naval installation located in this State who is required, in the performance of his official duties, to carry firearms, and who is authorized to carry firearms by the commanding officer, while in the actual performance of his official duties;

(7)(a) A regularly employed member, including a detective, of the police department of any county or municipality, or of any State, interstate, municipal or county park police force or boulevard police force, at all times while in the State of New Jersey;

16a

(b) A special law enforcement officer authorized to carry a weapon as provided in subsection b. of section 7 of P.L. 1985, c. 439;

(c) An airport security officer or a special law enforcement officer appointed by the governing body of any county or municipality, except as provided in subsection (b) of this section, or by the commission, board or other body having control of a county park or airport or boulevard police force, while engaged in the actual performance of his official duties and when specifically authorized by the governing body to carry weapons;

(8) A full-time, paid member of a paid or part-paid fire department or force of any municipality who is assigned full-time or part-time to an arson investigation unit created pursuant to section 1 of P.L.1981, c. 409 or to the county arson investigation unit in the county prosecutor's office, while either engaged in the actual performance of arson investigation duties or while actually on call to perform arson investigation duties and when specifically authorized by the governing body or the county prosecutor, as the case may be, to carry weapons. Prior to being permitted to carry a firearm, a member shall take and successfully complete a firearms training course administered by the Police Training Commission pursuant to P.L.1961, c. 56, and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm;

(9) A juvenile corrections officer in the employment of the Juvenile Justice Commission established

pursuant to section 2 of P.L.1995, c. 284 subject to the regulations promulgated by the commission;

(10) A designated employee or designated licensed agent for a nuclear power plant under license of the Nuclear Regulatory Commission, while in the actual performance of his official duties, if the federal licensee certifies that the designated employee or designated licensed agent is assigned to perform site protection, guard, armed response or armed escort duties and is appropriately trained and qualified, as prescribed by federal regulation, to perform those duties. Any firearm utilized by an employee or agent for a nuclear power plant pursuant to this paragraph shall be returned each day at the end of the employee's or agent's authorized official duties to the employee's or agent's supervisor. All firearms returned each day pursuant to this paragraph shall be stored in locked containers located in a secure area;

(11) A county corrections officer at all times while in the State of New Jersey, provided he annually passes an examination approved by the superintendent testing his proficiency in the handling of firearms.

b. Subsections a., b. and c. of N.J.S.2C:39-5 do not apply to:

(1) A law enforcement officer employed by a governmental agency outside of the State of New Jersey while actually engaged in his official duties, provided, however, that he has first notified the superintendent or the chief law enforcement officer of the municipality or the prosecutor of the county in which he is engaged; or

(2) A licensed dealer in firearms and his registered employees during the course of their normal business while traveling to and from their place of business and other places for the purpose of demonstration, exhibition or delivery in connection with a sale, provided, however, that the weapon is carried in the manner specified in subsection g. of this section.

c. Provided a person complies with the requirements of subsection j. of this section, subsections b. and c. of N.J.S.2C:39-5 do not apply to:

(1) A special agent of the Division of Taxation who has passed an examination in an approved police training program testing proficiency in the handling of any firearm which he may be required to carry, while in the actual performance of his official duties and while going to or from his place of duty, or any other police officer, while in the actual performance of his official duties;

(2) A State deputy conservation officer or a full-time employee of the Division of Parks and Forestry having the power of arrest and authorized to carry weapons, while in the actual performance of his official duties;

(3) (Deleted by amendment, P.L.1986, c. 150.)

(4) A court attendant appointed by the sheriff of the county or by the judge of any municipal court or other court of this State, while in the actual performance of his official duties;

(5) A guard employed by any railway express company, banking or building and loan or savings

and loan institution of this State, while in the actual performance of his official duties;

(6) A member of a legally recognized military organization while actually under orders or while going to or from the prescribed place of meeting and carrying the weapons prescribed for drill, exercise or parade;

(7) A municipal humane law enforcement officer, authorized pursuant to subsection d. of section 25 of P.L.2017, c. 331, or humane law enforcement officer of a county society for the prevention of cruelty to animals authorized pursuant to subsection c. of section 29 of P.L.2017, c. 331, while in the actual performance of the officer's duties;

(8) An employee of a public utilities corporation actually engaged in the transportation of explosives;

(9) A railway policeman, except a transit police officer of the New Jersey Transit Police Department, at all times while in the State of New Jersey, provided that he has passed an approved police academy training program consisting of at least 280 hours. The training program shall include, but need not be limited to, the handling of firearms, community relations, and juvenile relations;

(10) A campus police officer appointed under P.L.1970, c. 211 at all times. Prior to being permitted to carry a firearm, a campus police officer shall take and successfully complete a firearms training course administered by the Police Training Commission, pursuant to P.L.1961, c. 56, and shall annually qualify in the use of a revolver or similar

weapon prior to being permitted to carry a firearm;

(11) (Deleted by amendment, P.L.2003, c. 168).

(12) A transit police officer of the New Jersey Transit Police Department, at all times while in the State of New Jersey, provided the officer has satisfied the training requirements of the Police Training Commission, pursuant to subsection c. of section 2 of P.L.1989, c. 291;

(13) A parole officer employed by the State Parole Board at all times. Prior to being permitted to carry a firearm, a parole officer shall take and successfully complete a basic course for regular police officer training administered by the Police Training Commission, pursuant to P.L.1961, c. 56, and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm;

(14) A Human Services police officer at all times while in the State of New Jersey, as authorized by the Commissioner of Human Services;

(15) A person or employee of any person who, pursuant to and as required by a contract with a governmental entity, supervises or transports persons charged with or convicted of an offense;

(16) A housing authority police officer appointed under P.L.1997, c. 210 at all times while in the State of New Jersey; or

(17) A probation officer assigned to the "Probation Officer Community Safety Unit" created by section 2 of P.L.2001, c. 362 while in the actual

performance of the probation officer's official duties. Prior to being permitted to carry a firearm, a probation officer shall take and successfully complete a basic course for regular police officer training administered by the Police Training Commission, pursuant to P.L.1961, c. 56, and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm.

* * *

e. Nothing in subsections b., c., and d. of N.J.S.2C:39-5 shall be construed to prevent a person keeping or carrying about his place of business, residence, premises or other land owned or possessed by him, any firearm, or from carrying the same, in the manner specified in subsection g. of this section, from any place of purchase to his residence or place of business, between his dwelling and his place of business, between one place of business or residence and another when moving, or between his dwelling or place of business and place where the firearms are repaired, for the purpose of repair. For the purposes of this section, a place of business shall be deemed to be a fixed location.

f. Nothing in subsections b., c., and d. of N.J.S.2C:39-5 shall be construed to prevent:

(1) A member of any rifle or pistol club organized in accordance with the rules prescribed by the National Board for the Promotion of Rifle Practice, in going to or from a place of target practice, carrying firearms necessary for target practice, provided that the club has filed a copy of its charter with

the superintendent and annually submits a list of its members to the superintendent and provided further that the firearms are carried in the manner specified in subsection g. of this section;

(2) A person carrying a firearm or knife in the woods or fields or upon the waters of this State for the purpose of hunting, target practice or fishing, provided that the firearm or knife is legal and appropriate for hunting or fishing purposes in this State and he has in his possession a valid hunting license, or, with respect to fresh water fishing, a valid fishing license;

(3) A person transporting any firearm or knife while traveling:

(a) Directly to or from any place for the purpose of hunting or fishing, provided the person has in his possession a valid hunting or fishing license; or

(b) Directly to or from any target range, or other authorized place for the purpose of practice, match, target, trap or skeet shooting exhibitions, provided in all cases that during the course of the travel all firearms are carried in the manner specified in subsection g. of this section and the person has complied with all the provisions and requirements of Title 23 of the Revised Statutes and any amendments thereto and all rules and regulations promulgated thereunder; or

(c) In the case of a firearm, directly to or from any exhibition or display of firearms which is sponsored by any law enforcement

agency, any rifle or pistol club, or any firearms collectors club, for the purpose of displaying the firearms to the public or to the members of the organization or club, provided, however, that not less than 30 days prior to the exhibition or display, notice of the exhibition or display shall be given to the Superintendent of the State Police by the sponsoring organization or club, and the sponsor has complied with any reasonable safety regulations the superintendent may promulgate. Any firearms transported pursuant to this section shall be transported in the manner specified in subsection g. of this section;

(4) A person from keeping or carrying about a private or commercial aircraft or any boat, or from transporting to or from the aircraft or boat for the purpose of installation or repair of a visual distress signaling device approved by the United States Coast Guard.

g. Any weapon being transported under paragraph (2) of subsection b., subsection e., or paragraph (1) or (3) of subsection f. of this section shall be carried unloaded and contained in a closed and fastened case, gunbox, securely tied package, or locked in the trunk of the automobile in which it is being transported, and in the course of travel shall include only deviations as are reasonably necessary under the circumstances.

* * *

i. (1) Nothing in N.J.S.2C:39-5 shall be construed to prevent any person who is 18 years of age or older and who has not been convicted of a crime, from possession

for the purpose of personal self-defense of one pocket-sized device which contains and releases not more than three-quarters of an ounce of chemical substance not ordinarily capable of lethal use or of inflicting serious bodily injury, but rather, is intended to produce temporary physical discomfort or disability through being vaporized or otherwise dispensed in the air. Any person in possession of any device in violation of this subsection shall be deemed and adjudged to be a disorderly person, and upon conviction thereof, shall be punished by a fine of not less than \$100.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, nothing in N.J.S.2C:39-5 shall be construed to prevent a health inspector or investigator operating pursuant to the provisions of section 7 of P.L.1977, c. 443 or a building inspector from possessing a device which is capable of releasing more than three-quarters of an ounce of a chemical substance, as described in paragraph (1), while in the actual performance of the inspector's or investigator's duties, provided that the device does not exceed the size of those used by law enforcement.

j. A person shall qualify for an exemption from the provisions of N.J.S.2C:39-5, as specified under subsections a. and c. of this section, if the person has satisfactorily completed a firearms training course approved by the Police Training Commission.

The exempt person shall not possess or carry a firearm until the person has satisfactorily completed a firearms training course and shall annually qualify in the

use of a revolver or similar weapon. For purposes of this subsection, a "firearms training course" means a course of instruction in the safe use, maintenance and storage of firearms which is approved by the Police Training Commission. The commission shall approve a firearms training course if the requirements of the course are substantially equivalent to the requirements for firearms training provided by police training courses which are certified under section 6 of P.L.1961, c. 56 (C.52:17B-71). A person who is specified in paragraph (1), (2), (3), or (6) of subsection a. of this section shall be exempt from the requirements of this subsection.

* * *

l. Nothing in subsection b. of N.J.S.2C:39-5 shall be construed to prevent a law enforcement officer who retired in good standing, including a retirement because of a disability pursuant to section 6 of P.L.1944, c. 255, section 7 of P.L.1944, c. 255, section 1 of P.L.1989, c. 103, or any substantially similar statute governing the disability retirement of federal law enforcement officers, provided the officer was a regularly employed, full-time law enforcement officer for an aggregate of four or more years prior to his disability retirement and further provided that the disability which constituted the basis for the officer's retirement did not involve a certification that the officer was mentally incapacitated for the performance of his usual law enforcement duties and any other available duty in the department which his employer was willing to assign to him or does not subject that retired officer to any of

the disabilities set forth in subsection c. of N.J.S.2C:58-3 which would disqualify the retired officer from possessing or carrying a firearm, who semi-annually qualifies in the use of the handgun he is permitted to carry in accordance with the requirements and procedures established by the Attorney General pursuant to subsection j. of this section and pays the actual costs associated with those semi-annual qualifications, who is 75 years of age or younger, and who was regularly employed as a full-time member of the State Police; a full-time member of an interstate police force; a full-time member of a county or municipal police department in this State; a full-time member of a State law enforcement agency; a full-time sheriff, undersheriff or sheriff's officer of a county of this State; a full-time State correctional police officer or county corrections officer; a full-time State or county park police officer; a full-time special agent of the Division of Taxation; a full-time Human Services police officer; a full-time transit police officer of the New Jersey Transit Police Department; a full-time campus police officer exempted pursuant to paragraph (10) of subsection c. of this section; a full-time State conservation officer exempted pursuant to paragraph (4) of subsection a. of this section; a full-time Palisades Interstate Park officer appointed pursuant to R.S.32:14-21; a full-time Burlington County Bridge police officer appointed pursuant to section 1 of P.L.1960, c. 168; a full-time housing authority police officer exempted pursuant to paragraph (16) of subsection c. of this section; a full-time juvenile corrections officer exempted pursuant to paragraph (9) of subsection a. of this section; a full-time parole officer

exempted pursuant to paragraph (13) of subsection c. of this section; a full-time railway policeman exempted pursuant to paragraph (9) of subsection c. of this section; a full-time county prosecutor's detective or investigator; a full-time federal law enforcement officer; or is a qualified retired law enforcement officer, as used in the federal "Law Enforcement Officers Safety Act of 2004," Pub.L. 108-277, domiciled in this State from carrying a handgun in the same manner as law enforcement officers exempted under paragraph (7) of subsection a. of this section under the conditions provided herein:

(1) The retired law enforcement officer shall make application in writing to the Superintendent of State Police for approval to carry a handgun for one year. An application for annual renewal shall be submitted in the same manner.

(2) Upon receipt of the written application of the retired law enforcement officer, the superintendent shall request a verification of service from the chief law enforcement officer of the organization in which the retired officer was last regularly employed as a full-time law enforcement officer prior to retiring. The verification of service shall include:

- (a) The name and address of the retired officer;
- (b) The date that the retired officer was hired and the date that the officer retired;
- (c) A list of all handguns known to be registered to that officer;

(d) A statement that, to the reasonable knowledge of the chief law enforcement officer, the retired officer is not subject to any of the restrictions set forth in subsection c. of N.J.S.2C:58-3; and

(e) A statement that the officer retired in good standing.

(3) If the superintendent approves a retired officer's application or reapplication to carry a handgun pursuant to the provisions of this subsection, the superintendent shall notify in writing the chief law enforcement officer of the municipality wherein that retired officer resides. In the event the retired officer resides in a municipality which has no chief law enforcement officer or law enforcement agency, the superintendent shall maintain a record of the approval.

(4) The superintendent shall issue to an approved retired officer an identification card permitting the retired officer to carry a handgun pursuant to this subsection. This identification card shall be valid for one year from the date of issuance and shall be valid throughout the State. The identification card shall not be transferable to any other person. The identification card shall be carried at all times on the person of the retired officer while the retired officer is carrying a handgun. The retired officer shall produce the identification card for review on the demand of any law enforcement officer or authority.

(5) Any person aggrieved by the denial of the superintendent of approval for a permit to carry a handgun pursuant to this subsection may request

a hearing in the Superior Court of New Jersey in the county in which he resides by filing a written request for a hearing within 30 days of the denial. Copies of the request shall be served upon the superintendent and the county prosecutor. The hearing shall be held within 30 days of the filing of the request, and no formal pleading or filing fee shall be required. Appeals from the determination of the hearing shall be in accordance with law and the rules governing the courts of this State.

(6) A judge of the Superior Court may revoke a retired officer's privilege to carry a handgun pursuant to this subsection for good cause shown on the application of any interested person. A person who becomes subject to any of the disabilities set forth in subsection c. of N.J.S.2C:58-3 shall surrender, as prescribed by the superintendent, his identification card issued under paragraph (4) of this subsection to the chief law enforcement officer of the municipality wherein he resides or the superintendent, and shall be permanently disqualified to carry a handgun under this subsection.

(7) The superintendent may charge a reasonable application fee to retired officers to offset any costs associated with administering the application process set forth in this subsection.

* * *

n. Nothing in subsection b., c., d. or e. of N.J.S.2C:39-5 shall be construed to prevent duly authorized personnel of the New Jersey Division of Fish and Wildlife, while in the actual performance of duties, from possessing, transporting or using hand held pistol-like

devices, rifles or shotguns that launch pyrotechnic missiles for the sole purpose of frightening, hazing or aversive conditioning of nuisance or depredating wildlife; from possessing, transporting or using rifles, pistols or similar devices for the sole purpose of chemically immobilizing wild or non-domestic animals; or, provided the duly authorized person complies with the requirements of subsection j. of this section, from possessing, transporting or using rifles or shotguns, upon completion of a Police Training Commission approved training course, in order to dispatch injured or dangerous animals or for non-lethal use for the purpose of frightening, hazing or aversive conditioning of nuisance or depredating wildlife.

N.J. Stat. Ann. § 2C:58-3
Purchase of firearms

* * *

c. Who may obtain. No person of good character and good repute in the community in which he lives, and who is not subject to any of the disabilities set forth in this section or other sections of this chapter, shall be denied a permit to purchase a handgun or a firearms purchaser identification card, except as hereinafter set forth. No handgun purchase permit or firearms purchaser identification card shall be issued:

- (1) To any person who has been convicted of any crime, or a disorderly persons offense involving an act of domestic violence as defined in section 3 of

P.L.1991, c. 261, whether or not armed with or possessing a weapon at the time of the offense;

(2) To any drug dependent person as defined in section 2 of P.L.1970, to any person who is confined for a mental disorder to a hospital, mental institution or sanitarium, or to any person who is presently an habitual drunkard;

(3) To any person who suffers from a physical defect or disease which would make it unsafe for him to handle firearms, to any person who has ever been confined for a mental disorder, or to any alcoholic unless any of the foregoing persons produces a certificate of a medical doctor or psychiatrist licensed in New Jersey, or other satisfactory proof, that he is no longer suffering from that particular disability in a manner that would interfere with or handicap him in the handling of firearms; to any person who knowingly falsifies any information on the application form for a handgun purchase permit or firearms purchaser identification card;

(4) To any person under the age of 18 years for a firearms purchaser identification card and to any person under the age of 21 years for a permit to purchase a handgun;

(5) To any person where the issuance would not be in the interest of the public health, safety or welfare;

(6) To any person who is subject to a restraining order issued pursuant to the "Prevention of Domestic Violence Act of 1991," P.L.1991, c. 261 prohibiting the person from possessing any firearm;

(7) To any person who as a juvenile was adjudicated delinquent for an offense which, if committed by an adult, would constitute a crime and the offense involved the unlawful use or possession of a weapon, explosive or destructive device or is enumerated in subsection d. of section 2 of P.L.1997, c. 117;

(8) To any person whose firearm is seized pursuant to the "Prevention of Domestic Violence Act of 1991," P.L.1991, c. 261 and whose firearm has not been returned; or

(9) To any person named on the consolidated Terrorist Watchlist maintained by the Terrorist Screening Center administered by the Federal Bureau of Investigation.

* * *

N.J. Stat. Ann. § 2C:58-4
Permits to carry handguns

a. Scope and duration of authority. Any person who holds a valid permit to carry a handgun issued pursuant to this section shall be authorized to carry a handgun in all parts of this State, except as prohibited by subsection e. of N.J.S.2C:39-5. One permit shall be sufficient for all handguns owned by the holder thereof, but the permit shall apply only to a handgun carried by the actual and legal holder of the permit.

All permits to carry handguns shall expire two years from the date of issuance or, in the case of an employee of an armored car company, upon termination of his employment by the company occurring prior thereto

whichever is earlier in time, and they may thereafter be renewed every two years in the same manner and subject to the same conditions as in the case of original applications.

b. Application forms. All applications for permits to carry handguns, and all applications for renewal of permits, shall be made on the forms prescribed by the superintendent. Each application shall set forth the full name, date of birth, sex, residence, occupation, place of business or employment, and physical description of the applicant, and any other information the superintendent may prescribe for the determination of the applicant's eligibility for a permit and for the proper enforcement of this chapter. The application shall be signed by the applicant under oath, and shall be indorsed by three reputable persons who have known the applicant for at least three years preceding the date of application, and who shall certify thereon that the applicant is a person of good moral character and behavior.

c. Investigation and approval. Each application shall in the first instance be submitted to the chief police officer of the municipality in which the applicant resides, or to the superintendent, (1) if the applicant is an employee of an armored car company, or (2) if there is no chief police officer in the municipality where the applicant resides, or (3) if the applicant does not reside in this State. The chief police officer, or the superintendent, as the case may be, shall cause the fingerprints of the applicant to be taken and compared with any and all records maintained by the municipality, the

county in which it is located, the State Bureau of Identification and the Federal Bureau of Identification. He shall also determine and record a complete description of each handgun the applicant intends to carry.

No application shall be approved by the chief police officer or the superintendent unless the applicant demonstrates that he is not subject to any of the disabilities set forth in subsection c. of N.J.S.2C:58-3, that he is thoroughly familiar with the safe handling and use of handguns, and that he has a justifiable need to carry a handgun.

Each application form shall be accompanied by a written certification of justifiable need to carry a handgun, which shall be under oath and, in the case of a private citizen, shall specify in detail the urgent necessity for self-protection, as evidenced by specific threats or previous attacks which demonstrate a special danger to the applicant's life that cannot be avoided by means other than by issuance of a permit to carry a handgun. Where possible, the applicant shall corroborate the existence of any specific threats or previous attacks by reference to reports of the incidents to the appropriate law enforcement agencies.

If the application is not approved by the chief police officer or the superintendent within 60 days of filing, it shall be deemed to have been approved, unless the applicant agrees to an extension of time in writing.

d. Issuance by Superior Court; fee. If the application has been approved by the chief police officer or the superintendent, as the case may be, the applicant shall

forthwith present it to the Superior Court of the county in which the applicant resides, or to the Superior Court in any county where he intends to carry a handgun, in the case of a nonresident or employee of an armored car company. The court shall issue the permit to the applicant if, but only if, it is satisfied that the applicant is a person of good character who is not subject to any of the disabilities set forth in subsection c. of N.J.S.2C:58-3, that he is thoroughly familiar with the safe handling and use of handguns, and that he has a justifiable need to carry a handgun in accordance with the provisions of subsection c. of this section. The court may at its discretion issue a limited-type permit which would restrict the applicant as to the types of handguns he may carry and where and for what purposes the handguns may be carried. At the time of issuance, the applicant shall pay to the county clerk of the county where the permit was issued a permit fee of \$20.

e. Appeals from denial of applications. Any person aggrieved by the denial by the chief police officer or the superintendent of approval for a permit to carry a handgun may request a hearing in the Superior Court of the county in which he resides or in any county in which he intends to carry a handgun, in the case of a nonresident, by filing a written request for a hearing within 30 days of the denial. Copies of the request shall be served upon the superintendent, the county prosecutor, and the chief police officer of the municipality where the applicant resides, if he is a resident of this State. The hearing shall be held within 30 days of the

filing of the request, and no formal pleading or filing fee shall be required. Appeals from the determination at the hearing shall be in accordance with law and the rules governing the courts of this State.

If the superintendent or chief police officer approves an application and the Superior Court denies the application and refuses to issue a permit, the applicant may appeal the denial in accordance with law and the rules governing the courts of this State.

f. Revocation of permits. Any permit issued under this section shall be void at the time the holder thereof becomes subject to any of the disabilities set forth in subsection c. of N.J.S.2C:58-3, and the holder of a void permit shall immediately surrender the permit to the superintendent who shall give notice to the licensing authority.

Any permit may be revoked by the Superior Court, after hearing upon notice to the holder, if the court finds that the holder is no longer qualified for the issuance of a permit. The county prosecutor of any county, the chief police officer of any municipality, the superintendent, or any citizen may apply to the court at any time for the revocation of any permit issued pursuant to this section.

N.J. Admin. Code § 13:54-2.2
Permit required

No person, except as provided in N.J.S.A. 2C:39-6, shall carry, hold or possess a handgun without first having

obtained a permit to carry the same in accordance with the provisions of this chapter.

**N.J. Admin. Code § 13:54-2.3
Criteria for the issuance of
a permit to carry a handgun**

(a) No application for a permit to carry a handgun shall be approved by a chief police officer of a municipality, the Superintendent or the Superior Court, unless the applicant:

1. Is a person of good character who is not subject to any of the disabilities which would prevent him or her from obtaining a permit to purchase a handgun or a firearms purchaser identification card as provided in this chapter;
2. Has demonstrated that at the time of the application for the permit he or she is thoroughly familiar with the safe handling and use of handguns; and
3. Has demonstrated a justifiable need to carry a handgun.

**N.J. Admin. Code § 13:54-2.4
Application for a permit to carry a handgun**

(a) Every person applying for a permit to carry a handgun shall furnish such information and particulars as set forth in the application form designated SP 642. The application shall be signed by the applicant under oath and shall be endorsed by three reputable persons who have known the applicant for at least

three years preceding the date of application, and who shall also certify thereon that the applicant is a person of good moral character and behavior. Applications can be obtained at police departments and State Police stations.

(b) Each applicant shall demonstrate a thorough familiarity with the safe handling and use of handguns by indicating in the space provided therefor on the application form, and on any sworn attachments thereto, any relevant information. Thorough familiarity with the safe handling and use of handguns shall be evidenced by:

1. Completion of a firearms training course substantially equivalent to the firearms training approved by the Police Training Commission as described by N.J.S.A. 2C:39-6j;
2. Submission of an applicant's most recent handgun qualification scores utilizing the handgun(s) he or she intends to carry as evidenced by test firings administered by a certified firearms instructor of a police academy, a certified firearms instructor of the National Rifle Association, or any other recognized certified firearms instructor; or
3. Passage of any test in this State's laws governing the use of force administered by a certified instructor of a police academy, a certified instructor of the National Rifle Association, or any other recognized certified instructor.

(c) The information in (b) above shall be accompanied and validated by certifications of the appropriate instructor(s).

(d) Each application form shall also be accompanied by a written certification of justifiable need to carry a handgun, which shall be under oath and which:

1. In the case of a private citizen, shall specify in detail the urgent necessity for self-protection, as evidenced by specific threats or previous attacks, which demonstrate a special danger to the applicant's life that cannot be avoided by means other than by issuance of a permit to carry a handgun. Where possible, the applicant shall corroborate the existence of any specific threats or previous attacks by reference to reports of such incidents to the appropriate law enforcement agencies; or

2. In the case of employees of private detective agencies, armored car companies and private security companies, that:

i. In the course of performing statutorily authorized duties, the applicant is subject to a substantial threat of serious bodily harm; and

ii. That carrying a handgun by the applicant is necessary to reduce the threat of unjustifiable serious bodily harm to any person.

(e) The completed application together with two sets of the applicant's fingerprints and fees as established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.5 et seq., four photographs (1 ½ x 1 ½ square), a consent for mental health records search form designated S.P. 66, and a permit fee of \$20.00 payable to the County Clerk where the permit is to be issued shall be submitted

to the chief police officer of the municipality in which the applicant resides, or the Superintendent:

1. If there is no chief police officer in the municipality where the applicant resides; or
2. If the applicant is a non-resident of this State or if the applicant is an employee of an armored car company.

(f) An application for a permit to carry a handgun shall be prioritized and be investigated on an expedited basis and approved or disapproved without undue delay, within 14 days if possible, under the following circumstances:

1. The applicant is a private citizen who applies for a permit to purchase a handgun and/or a firearm purchaser identification card contemporaneously with the application for a permit to carry a handgun or who has previously obtained a handgun purchase permit from the same licensing authority; and
 - i. Has been the victim of an act of violence that resulted in the infliction of serious or significant bodily injury, or was credibly threatened with an act of violence that if carried out would result in the infliction of serious or significant bodily injury, or subjected to an incident in which the actor was armed with and used a deadly weapon or threatened by word or gesture to use a deadly weapon as defined in N.J.S.A. 2C:11-1.c against the applicant, and there is a substantial likelihood, based on the information presented in the applicant's

State of New Jersey Request for Expedited Firearms Application form (S.P. 398), and any other information revealed in the investigation of the application, that the applicant will in the foreseeable future be subjected to another such incident; or

ii. Is protected by a court order or under a condition imposed by the court restraining another person from contact with the applicant, and there is a substantial likelihood, based on the information presented in the applicant's State of New Jersey Request for Expedited Firearms Application form and any other information revealed in the investigation of the application, that the applicant will in the foreseeable future be subjected to an act of violence that if carried out would result in the infliction of serious or significant bodily injury, or be subjected to an incident in which the actor is armed with and would use a deadly weapon or threaten by word or gesture to use a deadly weapon as defined in N.J.S.A. 2C:11-1.c against the applicant;

2. An applicant who meets the criteria in (f)1i or ii above shall be deemed to have demonstrated justifiable need (as set forth in N.J.A.C. 13:54-2.3(a)3); and

3. Approval of an expedited firearms application request does not automatically denote approval for a permit to carry a handgun. All applicants are subject to the provisions set forth in this chapter for final approval and issuance of cards and permits.

N.J. Admin. Code § 13:54-2.5**Approval of application**

The chief of police or the Superintendent, as the case may be, shall cause the applicant to be thoroughly investigated. The investigation shall include, but not be limited to, ascertaining that the applicant satisfies all of the requirements contained in this chapter for obtaining a permit to purchase a handgun or a firearms purchaser identification card, that the applicant has or has not demonstrated a thorough familiarity with the safe handling and use of handguns as evidenced by the application and accompanying materials, and that the applicant has or has not factually demonstrated a justifiable need to carry a handgun. The chief of police or the Superintendent shall approve or disapprove the application after completion of the investigation. If the application is approved, by the chief of police or the Superintendent, as the case may be, it shall be forwarded to the Superior Court of the county where the applicant resides, or if a nonresident or an employee of an armored car company, to a county where he or she intends to carry the handgun, for presentation to a judge of the Superior Court.

N.J. Admin. Code § 13:54-2.7**Issuance of a permit to carry a handgun**

(a) Upon being satisfied of the sufficiency of the application and the fulfillment of the provisions of P.L. 1979, c. 58, the judge shall issue a permit. The issuing Superior Court judge shall return the original permit to carry a handgun along with the application

endorsed by the issuing Superior Court judge, to the jurisdiction of origin.

(b) The court may, at its discretion, issue a limited type permit which would restrict the applicant as to the types of handguns he or she may carry and where and for what purposes such handguns may be carried.

(c) The Superintendent shall be provided with copies of all permits to carry handguns issued or re-issued by the Superior Court.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

THOMAS R. ROGERS, <i>and</i>)	
ASSOCIATION OF NEW JERSEY)	
RIFLE & PISTOL CLUBS, INC.,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	
)	
GURBIR GREWAL, in his official)	
capacity as Attorney General of)	
New Jersey,)	
)	
PATRICK J. CALLAHAN, in his)	
official capacity as Acting)	
Superintendent of the New Jersey)	
Division of State Police,)	Civil Action
)	No. 18-1544
KENNETH J. BROWN, JR., in his)	
official capacity as Chief of the Wall)	
Township Police Department,)	
)	
JOSEPH W. OXLEY, in his official)	
capacity as Judge of the Superior)	
Court of New Jersey, Law Division,)	
Monmouth County, <i>and</i>)	
)	
N. PETER CONFORTI, in his official)	
capacity as Judge of the Superior)	
Court of New Jersey, Law Division,)	
Sussex County,)	
)	
<i>Defendants.</i>)	

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

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Attorneys for Plaintiffs

LOCAL CIVIL RULE 10.1 STATEMENT

The mailing addresses of the parties to this action are:

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N. Peter Conforti, J.S.C.
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INTRODUCTION

Plaintiffs Thomas R. Rogers and the Association of New Jersey Rifle & Pistol Clubs, Inc. (collectively “Plaintiffs”), by and through the undersigned attorneys, file this Complaint against the above-captioned Defendants, in their official capacities as the Attorney General of New Jersey and state and local officials responsible under New Jersey law for administering and enforcing the State’s laws and regulations governing the carrying of firearms outside the home. Plaintiffs seek declaratory and injunctive relief: a declaration that New Jersey’s limitation of the right to carry

firearms to those who can satisfy licensing officials that they have a “justifiable need” to exercise that right is unconstitutional under the Second and Fourteenth Amendments to the United States Constitution, and an injunction compelling Defendants to refrain from enforcing that invalid limit and to issue handgun carry permits to Plaintiffs or to otherwise allow Plaintiffs to exercise their right to carry firearms outside the home. In support of their Complaint against Defendants, Plaintiffs hereby allege as follows:

1. The Second Amendment to the United States Constitution guarantees “the right of the people to keep and bear Arms.” U.S. CONST. amend. II. When the People, by enacting that amendment, enshrined in their fundamental charter the right to “carry weapons in case of confrontation” for the “core lawful purpose of self-defense,” *District of Columbia v. Heller*, 554 U.S. 570, 592, 630 (2008), they did not mean to leave the freedom to exercise that right at the mercy of the very government officials whose hands they sought to bind. No, “[t]he very enumeration of the right takes out of the hands of government . . . the power to decide on a case-by-case basis whether the right is *really worth* insisting upon.” *Id.*

2. In defiance of that constitutional guarantee, New Jersey has seized precisely the power forbidden it by the Second Amendment: the power to decide, on a case-by-case basis, whether an applicant for a permit to “carry weapons in case of confrontation,” *id.* at 592, has, in their estimation, shown a sufficiently

“justifiable need” that a permit should issue, N.J.S.A. 2C:58-4(c).

3. Worse still, New Jersey has made clear that a general desire to carry a handgun for the purpose of self-defense—“the *central component*” of the Second Amendment, *Heller*, 554 U.S. at 599 (emphasis added)—is not a sufficiently good reason to exercise the right. Instead, according to New Jersey, an ordinary citizen must establish *specific or serious threats or previous attacks* which put him in *special and unavoidable danger* to obtain a permit from the State to carry a firearm in public. That restriction is akin to a state law concluding that the general desire to advocate for lawful political change is not a sufficiently “justifiable need” to exercise the right to free speech, and it cuts to the very core of the Second Amendment, no less than such a restriction would gut the First.

4. Indeed, the practical effect of New Jersey’s “justifiable need” requirement is to make it wholly illegal for *typical* law-abiding citizens to carry handguns in public—for by definition, these ordinary citizens cannot show that they face a serious or specific, unavoidable threat that poses a *special* danger to their safety.

5. Plaintiff Rogers is an ordinary, law-abiding citizen of New Jersey who wishes to carry firearms outside the home for the purpose of self-defense. He has passed all required background checks, completed all required firearm training courses, and met every other qualification imposed by New Jersey on the eligibility

for a permit to carry firearms in public—except that, like the vast majority of ordinary, law-abiding New Jersey residents, he cannot establish a unique clear and present threat to his safety. Accordingly, Defendants Brown and Oxley determined that Mr. Rogers has not shown a “justifiable need” to exercise his Second Amendment rights, and they denied his permit application. That result simply cannot be squared with the rights guaranteed by the Second Amendment.

6. Plaintiffs acknowledge that the result they seek is contrary to *Drake v. Filko*, 724 F.3d 426 (3d Cir. 2014), but, for the reasons explained in *Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017), that case was wrongly decided. They therefore institute this litigation to vindicate their Second Amendment rights and to seek to have *Drake* overruled.

JURISDICTION AND VENUE

7. This Court has subject-matter jurisdiction over Plaintiffs’ claim under 28 U.S.C. §§ 1331 and 1343.

8. Plaintiffs seek remedies under 28 U.S.C. §§ 1651, 2201, and 2202 and 42 U.S.C. §§ 1983 and 1988.

9. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) & (b)(2).

PARTIES

10. Plaintiff Thomas R. Rogers is a citizen of the United States and a resident and citizen of the State of New Jersey. He resides at 3005 Clayton Dr., Wall Township, NJ 07719.

11. Plaintiff Association of New Jersey Rifle & Pistol Clubs, Inc. (the “ANJRPC”) is a not for profit membership corporation, incorporated in the State of New Jersey in 1936 and represents its members. Its address is 5 Sicomac Road, Suite 292, North Haledon, New Jersey 07508. ANJRPC represents the interests of target shooters, hunters, competitors, outdoors people and other law abiding firearms owners. Among the ANJRPC’s purposes is aiding such persons in every way within its power and supporting and defending the people’s right to keep and bear arms, including the right of its members and the public to purchase, possess, and carry firearms. The New Jersey restrictions on the public carrying of firearms at issue in this case are thus a direct affront to ANJRPC’s central mission. ANJRPC has tens of thousands of members who reside in New Jersey. ANJRPC brings the claims herein on behalf of its members. Plaintiff Rogers is a member of ANJRPC.

12. Defendant Gurbir Grewal is the Attorney General of New Jersey. As Attorney General, he exercises, delegates, or supervises all the powers and duties of the New Jersey Department of Law and Public Safety, including the Division of State Police within that Department, which is responsible under N.J.S.A.

2C:58-4 for executing and enforcing New Jersey's laws and regulations governing the carrying of firearms in public. His official address is Office of The Attorney General, RJ Hughes Justice Complex, 25 Market Street, Box 080, Trenton, NJ 08625. He is being sued in his official capacity.

13. Defendant Patrick J. Callahan is the Acting Superintendent of the New Jersey Division of State Police. As Acting Superintendent, subject to the oversight and supervision of the Attorney General, he exercises, delegates, or supervises all the powers and duties of the New Jersey Division of State Police, which is responsible under N.J.S.A. 2C:58-4 for executing and enforcing New Jersey's laws and regulations governing the carrying of firearms in public. His official address is Office of the Superintendent, New Jersey State Police, P.O. Box 7068, West Trenton, NJ 08628. He is being sued in his official capacity.

14. Defendant Kenneth J. Brown, Jr. is the Chief Police Officer of Wall Township, New Jersey. Pursuant to N.J.S.A. 2C:58-4, he is responsible for receiving applications from residents of Wall Township for a permit to carry a handgun, investigating the applicant, and either approving or denying the application. His official address is Wall Township Police Department, 2700 Allaire Rd., Wall Township, NJ 07719. He is being sued in his official capacity.

15. Defendant Joseph W. Oxley is a Judge of the Superior Court of New Jersey, Law Division, Monmouth County. Pursuant to N.J.S.A. 2C:58-4, he is

responsible for reviewing applications from residents of Monmouth County for a permit to carry a handgun, once those applications have been approved or denied by the Chief Police Officer or Superintendent, and either issuing or denying a permit. His official address is Monmouth County Courthouse, 71 Monument Park, 2nd Floor, Freehold, NJ 07728. He is being sued in his official capacity, insofar as he performs the functions delegated him by N.J.S.A. 2C:58-4.

16. Defendant N. Peter Conforti is a Judge of the Superior Court of New Jersey, Law Division, Sussex County. Pursuant to N.J.S.A. 2C:58-4, he is responsible for reviewing applications from residents of Sussex County for a permit to carry a handgun, once those applications have been approved or denied by the Chief Police Officer or Superintendent, and either issuing or denying a permit. His official address is Sussex County Courthouse, 43-47 High Street, 2nd Floor, Newton, NJ 07860. He is being sued in his official capacity, insofar as he performs the functions delegated him by N.J.S.A. 2C:58-4.

FACTUAL ALLEGATIONS

New Jersey’s “Justifiable Need” Requirement

17. New Jersey law generally forbids any person to “ha[ve] in his possession any handgun . . . , without first obtaining a permit to carry the same.” N.J.S.A. 2C:39-5(b). While state law provides certain exceptions to this general ban—including one for “keeping or carrying [a firearm] about [one’s] place of business,

residence, premises or other land owned or possessed by him,” *id.* § 2C:39-6(e), these exceptions do not allow the carrying of a handgun in public, either openly or concealed, without first obtaining a permit. Violating this ban is a crime in the second degree, punishable by between five and ten years imprisonment and a fine of up to \$150,000. *Id.* §§ 2C:39-5(b), 2C:43-3(a)(2), 2C:43-6(a)(2).

18. New Jersey accordingly allows an individual to carry a handgun in public only if he first obtains a permit to do so (a “Handgun Carry Permit”). To be eligible for a Handgun Carry Permit, an applicant must satisfy numerous criteria. For example, he must not have been convicted of any crime or offense involving an act of domestic violence; must not be addicted to controlled substances, mentally infirm, or an alcoholic; must not be subject to certain restraining orders; and must not be listed on the FBI’s Terrorist Watchlist. *Id.* §§ 2C:58-4(c); 2C:58-3(c). An applicant must also pass criminal and mental health background checks, *id.* § 2C:58-4(c), must provide three reputable references who certify that he “is a person of good moral character,” *id.* § 2C:58-4(b), and must have satisfied extensive firearms safety training requirements, N.J.A.C. 13:54-2.4(b).

19. In addition to these rigorous screening and training requirements, a law-abiding citizen may only be granted a Handgun Carry Permit if he demonstrates “that he has a justifiable need to carry a handgun.” N.J.S.A. 2C:58-4(c).

20. The New Jersey Division of State Police has issued regulations further implementing the statutory requirements governing Handgun Carry Permits. See N.J.A.C. 13:54-2.1 *et seq.* Those regulations provide that “in the case of a private citizen,” the “justifiable need” requirement is satisfied only if the applicant can “specify in detail the urgent necessity for self-protection, as evidenced by serious threats, specific threats, or previous attacks, which demonstrate a special danger to the applicant’s life that cannot be avoided by reasonable means other than by issuance of a permit to carry a handgun.” *Id.* § 13:54-2.4(d)(1). Those regulations further provide that “[w]here possible the applicant shall corroborate the existence of any specific threats or previous attacks by reference to reports of such incidents to the appropriate law enforcement agencies. . . .” *Id.*

21. In further interpreting this “justifiable need” requirement, New Jersey’s Supreme Court has determined that “[g]eneralized fears for personal safety are inadequate, and a need to protect property alone does not suffice.” *In re Preis*, 573 A.2d 148, 152 (N.J. 1990).

22. Accordingly, typical law-abiding citizens of New Jersey—the vast majority of responsible citizens who cannot “demonstrate a special danger to [their] life” as “evidenced by serious threats, specific threats, or previous attacks,” N.J.A.C. 13:54-2.4(d)(1)—effectively remain subject to a flat ban on carrying handguns outside the home.

New Jersey's Handgun Carry Permitting Process

23. To obtain a Handgun Carry Permit, an individual must first apply to the Chief Police Officer of the municipality where he resides—or, if he resides out of State or in a municipality without a Chief Police Officer, to the Superintendent of State Police. N.J.S.A. 2C:58-4(c). Only if the officer (or the Superintendent) concludes, after investigation, that the applicant meets all statutory requirements—including the “justifiable need” standard—may he approve an application for a Handgun Carry Permit. *Id.*

24. If the application is approved by the Chief Police Officer or Superintendent, the applicant shall then present it to the Superior Court of the county where he resides. *Id.* § 2C:58-4(d). If the application is denied, the applicant may also appeal that denial to the Superior Court. *Id.* § 2C:58-4(e). In either case, the Superior Court must then independently determine whether the applicant has satisfied all statutory requirements and “has a justifiable need to carry a handgun.” *Id.* § 2C:58-4(d).

25. If the Superior Court concludes that these requirements are met, it may then issue a Handgun Carry Permit—or, it may “at its discretion issue a limited-type permit which would restrict the applicant as to the types of handguns he may carry and where and for what purposes such handguns may be carried.” *Id.* But the Superior Court is not bound by the decision of the Chief Police Officer and can also deny a permit that was approved by the Chief Police Officer.

26. In reviewing approved applications and issuing permits, the Superior Court acts as an “issuing authority” and performs “essentially an executive function” that is “clearly non-judicial in nature.” *In re Preis*, 573 A.2d at 151, 154.

**Defendants’ Refusal to Issue
Plaintiffs Handgun Carry Permits**

27. Plaintiff Rogers is an adult citizen and resident of New Jersey. He is not a law enforcement official or a member of the armed forces, and he does not fall within any of the other exceptions enumerated in N.J.S.A. 2C:39-6 to New Jersey’s ban on carrying handguns in public.

28. Plaintiff Rogers does, however, possess all of the qualifications necessary to obtain a Handgun Carry Permit that are enumerated in N.J.S.A. 2C:58-4; 2C:58-2(c). For example, he has not been convicted of any crime of domestic violence; he is not addicted to controlled substances, mentally infirm, or an alcoholic; he is not subject to any restraining orders; and he is not listed on the FBI’s Terrorist Watchlist. He has also passed all required background checks, has provide the three required references, and has satisfied the State’s firearms safety training requirements.

29. Plaintiff Rogers does not face any special danger to his life. He does, however, desire to carry a handgun in public for the purpose of self-defense. Many years ago, Plaintiff Rogers was robbed at gunpoint while working as the manager of a restaurant;

and he currently runs a large ATM business that causes him to frequently service ATM machines in high-crime areas. Accordingly, Plaintiff Rogers desires to carry a handgun for self-defense when he is in public, and he would do so now, were it not for Defendants' enforcement of New Jersey's ban on the public carrying of handguns.

30. On January 11th, 2017, Plaintiff Rogers applied to Robert Brice, the then-Chief of Police for Wall Township, the town where Mr. Rogers resides, for a permit to carry a handgun in public.

31. On August 15, 2017, after investigation, Defendant Kenneth Brown, Jr.—who by that point had replaced Mr. Brice as Chief of Police for Wall Township—denied Plaintiff Rogers's application. Letter from Kenneth Brown, Jr., Chief of Police, to Mr. Tom Rogers (Aug. 15, 2017) (attached as Exhibit 1). Defendant Brown did not determine that Mr. Rogers was ineligible for any of the reasons enumerated in N.J.S.A. 2C:58-3(c), nor did he dispute that Mr. Rogers is “thoroughly familiar with the safe handling and use of handguns,” *id.* § 2C:58-4(c), as that phrase is defined in N.J.A.C. 13:54-2.4(b). Instead, Chief Brown concluded that Mr. Rogers failed to show a “justifiable need” to carry a firearm in public, because he did not “demonstrate a special danger to the [his] life” on the basis of “serious threats, specific threats, or previous attacks.” N.J.S.A. 2C:58-4(c); N.J.A.C. 13:54-2.4(d)(1).

32. Plaintiff Rogers appealed Defendant Brown's denial of his application to the Superior Court of New Jersey, Law Division, Monmouth County.

33. On January 2, 2018, Defendant Joseph W. Oxley, a judge of the Superior Court, Law Division, Monmouth County, after a hearing on Plaintiff Rogers's appeal, also denied his application for a Handgun Carry Permit. Opinion and Order, *In the Matter of the Appeal of Denial of a Permit To Carry A Handgun For: Thomas Rogers*, G.P. No. 2017-024 (N.J. Sup. Ct. Monmouth Cty., Jan. 2, 2018) (attached as Exhibit 2). Like Defendant Brown, Defendant Oxley did not determine that Mr. Rogers was ineligible for a permit or that he had failed to satisfy the statutory and regulatory training requirements. Instead, Judge Oxley concluded that Mr. Rogers failed to show a "justifiable need" to carry a firearm in public because he did not "demonstrate a special danger to the [his] life" on the basis of "serious threats, specific threats, or previous attacks." N.J.S.A 2C:58-4(c); N.J.A.C 13:54-2.4(d)(1).

34. In light of Defendants' denial of his application, Plaintiff Rogers continues to refrain from carrying a handgun outside the home for self-defense in New Jersey for fear of arrest and prosecution. Plaintiff Rogers would carry a handgun in public for self-defense in New Jersey were it lawful for him to do so.

35. Plaintiff ANJRPC has at least one member who has had an application for a Handgun Carry Permit denied solely for failure to satisfy the "justifiable need" requirement. For example, Kenneth George

Warren is an adult citizen and resident of Sussex, New Jersey. Mr. Warren possesses all necessary qualifications to obtain a Handgun Carry Permit and has passed all required background checks and satisfied all other requirements. *See* N.J.S.A. 2C:58-4; 2C:58-2(c). Though he does not currently face any specific threats, Mr. Warren has been threatened several times in the past, in both 2004 and 2008, and he frequently travels in remote areas for his work. Accordingly, in 2017, Mr. Warren applied to the Superintendent of State Police for a permit to carry a handgun in public for the purpose of self-defense. (Sussex currently has no Chief of Police.) On or about October 11, 2017, Defendant Callahan approved Mr. Warren's application, contingent on a finding by a Superior Court judge of justifiable need. On January 31, 2018, however, Defendant Conforti denied Mr. Warren's application. Defendant Conforti found that Mr. Warren satisfied all necessary training and eligibility requirements, but he concluded that he had failed to show a "justifiable need" to carry a firearm in public because he did not "demonstrate a special danger to [his] life" on the basis of "serious threats, specific threats, or previous attacks." N.J.S.A. 2C:58-4(c); N.J.A.C. 13:54-2.4(d)(1). In light of the denial of his application, Mr. Warren continues to refrain from carrying a handgun outside the home for self-defense in New Jersey for fear of arrest and prosecution. Mr. Warren would carry a handgun in public for self-defense in New Jersey were it lawful for him to do so.

36. Plaintiff ANJRPC has numerous members who wish to carry a handgun outside the home for self-defense but have not applied for a Handgun Carry Permit because they know that, although they satisfy or can satisfy all other requirements of N.J.S.A. 2C:58-4, they are unable to satisfy the “justifiable need” requirement. But for Defendants’ continued enforcement of the New Jersey laws and regulations set forth above, those members would forthwith carry a handgun outside the home for self-defense but refrain from doing so for fear of arrest and prosecution.

COUNT ONE

42 U.S.C. § 1983 Action for Deprivation of Plaintiffs’ Rights under U.S. CONST. amends. II and XIV

37. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

38. The Second Amendment’s guarantee of “the right of the people to keep and bear Arms” secures to law-abiding, responsible, adult citizens the fundamental constitutional right to bear arms outside the home. U.S. CONST. amend. II.

39. This Second Amendment right to bear arms in public applies against the State of New Jersey under U.S. CONST. amend. XIV.

40. This Second Amendment right to bear arms in public cannot be subject to a government official’s

discretionary determination of whether a law-abiding citizen has a “justifiable need” to exercise that right.

41. A government restriction that limits the right to bear arms in public to only those few, favored citizens who can demonstrate that they face a special danger to their life effectively operates as a flat ban on the carrying of firearms by *typical* law-abiding citizens, who by definition cannot demonstrate this kind of *atypical* need to bear arms.

42. By infringing the Second Amendment right to bear arms in public in these ways, the New Jersey laws and regulations discussed in the foregoing allegations violate the Second Amendment, which applies to Defendants by operation of the Fourteenth Amendment, both facially and as applied to Plaintiffs Rogers and members of ANJRPC, and they are therefore invalid.

PRAYER FOR RELIEF

43. WHEREFORE, Plaintiffs pray for an order and judgment:

a. Declaring that New Jersey’s “justifiable need” requirement violates the Second and Fourteenth Amendments and is thus devoid of any legal force or effect;

b. Enjoining Defendants and their employees and agents from denying Handgun Carry Permits to applicants on the basis of New Jersey’s “justifiable need” requirement;

c. Enjoining Defendants and their employees and agents from enforcing the New Jersey laws and regulations establishing and defining the “justifiable need” requirement, including N.J.S.A 2C:58-4(c) and N.J.A.C. 13:54-2.4(d);

d. Ordering Defendants and their employees and agents to issue Handgun Carry Permits to Plaintiffs Rogers and members of Plaintiff ANJRPC;

e. Awarding Plaintiffs their reasonable costs, including attorneys’ fees, incurred in bringing this action, pursuant to 42 U.S.C. § 1988; and

f. Granting such other and further relief as this Court deems just and proper.

Dated: February 5, 2018	Respectfully submitted,
David H. Thompson*	<u>s/Daniel L. Schmutter</u>
Peter A. Patterson*	Daniel L. Schmutter
John D. Ohlendorf*	HARTMAN & WINNICKI, P.C.
COOPER & KIRK, PLLC	74 Passaic Street
1523 New Hampshire	Ridgewood, New Jersey
Avenue, N.W.	07450
Washington, D.C. 20036	(201) 967-8040
(202) 220-9600	(201) 967-0590 (fax)
(202) 220-9601 (fax)	dschmutter@
dthompson@	hartmanwinnicki.com
cooperkirk.com	

* *Pro hac vice* application forthcoming

Attorneys for Plaintiffs

**DECLARATION OF COUNSEL
PURSUANT TO LOCAL CIV. R. 11.2**

The undersigned hereby states that the matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

s/Daniel L. Schmutter
Daniel L. Schmutter
HARTMAN & WINNICKI, P.C.
74 Passaic Street
Ridgewood, New Jersey
07450
(201) 967-8040
(201) 967-0590 (fax)
dschmutter@
hartmanwinnicki.com
Attorneys for Plaintiffs

Dated: February 5, 2018

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EXHIBIT 1

[LOGO] **Wall Township** [SEAL]
Police Department Kenneth Brown, Jr.
Phone: 732.449.4500 ~ *Chief of Police*
Fax.732-449-1273
www.wallpolice.org

Tuesday, August 15, 2017

Mr. Tom Rogers
3005 Clayton Drive
Wall, NJ 07719

**RE: Application for a New Jersey Permit to
Carry a Handgun**

Dear Mr. Rogers:

This letter is to inform you that your application for a New Jersey permit to carry a handgun has been DENIED by failure to establish Justifiable Need.

You previously met with Chief Robert Brice (retired) for a pre-conference meeting on January 24, 2017. You have thirty (30) days to appeal the denial by writing to the Superior Court of New Jersey and request a hearing on the denial. At this juncture you will be given the opportunity to articulate your need for a permit to carry a handgun to a Superior Court Judge.

Your letter must be directed to the attention of the Criminal Case Manager at the following address:

65a

Criminal Case Manager
Superior Court of New Jersey
County of Monmouth
71 Monument Park
Freehold, New Jersey 07728

Sincerely,

/s/ Chief Kenneth Brown Jr.
Chief Kenneth Brown Jr.

c: Louis P. Nappen, Esquire

[SEAL] P.O. Box 1168 / 2700 Allaire Rd ~ [SEAL]
Wall Township NJ 07719

EXHIBIT 2

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF	71 MONUMENT PARK
JOSEPH W. OXLEY [SEAL]	POST OFFICE
JUDGE,	BOX 1266
SUPERIOR COURT	FREEHOLD, NEW
	JERSEY 07728-1252
	TELEPHONE:
	732-677-4119

PREPARED BY THE COURT

In the MATTER OF	SUPERIOR COURT
THE APPEAL FOR	OF NEW JERSEY LAW
THE DENIAL OF A	DIVISION: CRIMINAL
PERMIT TO CARRY	PART MONMOUTH
A HANDGUN OF:	COUNTY
THOMAS ROGERS	G.P. NO. 2017-024

ORDER

THIS MATTER having been brought before the Court by ALI HOMAYOUNI, ESQ., on behalf of Petitioner THOMAS ROGERS, on appeal from the denial of his application of a Permit to Carry a Handgun, which Appeal was filed on August 28, 2017;

And having heard arguments on December 19, 2017 from SEAN BRENNAN, ESQ., Monmouth County Assistant Prosecutor, appearing on behalf of the State, and ALI HOMAYOUNI, ESQ. appearing on behalf of THOMAS ROGERS;

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And this Court having reviewed the submissions by the parties and after hearing testimony from witnesses, and for good cause shown and the reasons and authorities set forth on the RECORD on December 19, 2017;

IT IS, on this 2nd day of January, 2018:

ORDERED that the appeal for the denial of the application of THOMAS ROGERS of a Permit to Carry a Handgun is **DENIED**.

Dated this 2nd day of January, 2018
/s/ Joseph W. Oxley

JOSEPH W. OXLEY, J.S.C.

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS
SUPERIOR COURT OF NEW JERSEY
COUNTY OF MONMOUTH
LAW DIVISION-CRIMINAL PART
GP No. 2017-024

Decided January 2, 2018

IN THE MATTER OF THE
APPEAL OF DENIAL OF
A PERMIT TO CARRY A
HANDGUN FOR:
THOMAS RODGERS

SEAN BRENNAN, ESQ., on behalf of the State
Monmouth County Prosecutor's Office

ALI HOMAYOUNI, ESQ., on behalf of Petitioner
THOMAS ROGERS

JOSEPH W. OXLEY, J.S.C.

The following submissions have been made by the parties and reviewed by this Court:

- 1) Petitioner's Notice of Appeal filed on August 28, 2017;
- 2) State's brief in opposition to Petitioner's Appeal to a Permit to Carry a Firearm filed on November 18, 2017, accompanied by:
 - a. Exhibit A: Petitioner's Application for a Permit to Carry a Handgun;
 - b. Exhibit B: Petitioner's letters to Wall Township Chief of Police Robert Brice

dated January 4, 2017 and February 13, 2017;

- c. Exhibit C: Denial Letter of Petitioner's Permit to Carry a Handgun by Chief Brice dated August 15, 2017;
 - d. Unpublished Cases:
 - i. In re Racanelli, 2015 WL 3843562 (2015).
 - ii. In re Atkins, 2011 WL 93811 (2011).
 - iii. In re Almeida, 2015 WL 6473282 (2015).
 - iv. In re Dubinsky, 2016 WL 805998 (2016).
- 3) Petitioner's brief in support of his Appeal for his Permit to Carry a Firearm, filed on December 8, 2017, accompanied by:
- a. Exhibit A: Denial Letter of Petitioner's Permit to Carry a Handgun by Chief Brice dated August 15, 2017;
 - b. Exhibit B: Petitioner's Application for a Permit to Carry a Handgun;
 - c. Exhibit C: Petitioner's letters to Wall Township Chief of Police Robert Brice dated January 4, 2017 and February 13, 2017;
 - d. Exhibit D: Petitioner's Consent for Mental Health Records Search;

- e. Exhibit E: Wall Township's Request for a Criminal History Record Information for a Noncriminal Justice Purpose and the NCIC 2000 Response;
- f. Exhibit F: Petitioner's Certification of Firearms Qualification from Short Shot Pistol Range dated February 13, 2017;
- g. Exhibit G: Petitioner's Certification of Completion for SAFTD Defensive Handgun 1 and SAFTD Defensive Handgun 2 from the Second Amendment Foundation;
- h. Exhibit H: Petitioner's NJ Firearms Purchaser Identification Card and Petitioner's NJ Division of Fish and Wildlife Hunting License;
- i. Exhibit I: Letter from Kearny Bank about money withdrawals;
- j. Exhibit J: Petitioner's business card for Speed of Service ATM;
- k. Exhibit K: Petitioner's four passport sized photos;
- l. Exhibit L: Petitioner's Notice of Appeal filed on August 28, 2017;
- m. Exhibit M: Press Release from the New Jersey Governor's Office Entitled "Governor Christie Protects Individuals' Rights to Firearms for Self Defense and Protection with Commonsense Reforms;
- n. Exhibit N: Rule Proposals from the Law and Public Safety Division of State Police

for the Application for a Permit to Carry a Handgun; and

- o. Exhibit O: Report to Governor J. Christie from the New Jersey Firearm Purchase and Permitting Study Commission Established Pursuant to Executive Order 180.

I. PROCEDURAL HISTORY

This matter is before the court on appeal by Thomas Rogers (hereinafter the “Petitioner”) from the denial of his application for a Permit to Carry a Handgun. Petitioner met with Chief Brice for a pre-conference meeting on January 24, 2017 to discuss the Petitioner’s application. In a letter dated August 15, 2017, Wall Township Police Chief Robert L. Brice, informed Petitioner that his application was denied for failure to demonstrate a justifiable need. Petitioner filed the instant appeal on August 29, 2017. On December 19, 2017, this Court took testimony from Petitioner and Chief Kenneth Brown for the Wall Township Police Department. Chief Brown became Chief of Police on August 1, 2017 after Chief Brice retired. This Court also heard oral argument from defense counsel and the State.

II. FACTS

This Court had the opportunity to observe and assess the demeanor of Petitioner, and was in a unique position to judge his credibility. Petitioner’s testimony

was clear, and he was honest and very straightforward throughout his testimony. This Court also heard testimony from Chief Brown of the Wall Township Police Department. This Court had the opportunity to observe and assess his demeanor and was in a unique position to judge his credibility. Chief Brown's testimony was clear, candid, and convincing. He was honest and very straightforward throughout his testimony. Based on the testimony of the witnesses, and a review of the record, this Court makes the following findings of fact and conclusions of law. R. 1:7-4.

Petitioner is a life-long resident of Monmouth County, and has lived in Wall Township for 40 years. For the last decade, Petitioner has owned and operated automatic teller machines (hereinafter "ATM") businesses. His companies presently manage over 100 ATMs throughout New Jersey, including but not limited to, Asbury Park, Neptune, Long Branch, Red Bank, Wall, Point Pleasant, and Brick. The ATMs' yearly cash fill is approximately 6.8 million dollars per year. Petitioner additionally owns two restaurants. Petitioner possesses a valid New Jersey Firearms Purchaser Identification Card and a New Jersey Firearm Hunting License. Petitioner has also passed two defensive handgun trainings demonstrating his knowledge of gun safety.

Petitioner argues that he has a "justifiable need" for a Permit to Carry a Handgun because he carries large sums of money, and is therefore a potential robbery target. Petitioner also argues that his work is dangerous and he is subject to harm.

III. RELEVANT LAW

N.J.S.A. 2C:58-4(c) sets forth the requirements that must be met in order to issue a Permit to carry a Handgun. Specifically,

No application shall be approved by the chief police officer or the superintendent unless the applicant demonstrates that he is not subject to any of the disabilities set forth in 2C:58-3c., that he is thoroughly familiar with the safe handling and use of handguns, and that he has a justifiable need to carry a handgun.

N.J.S.A. 2C:58-4(c). The burden of demonstrating a justifiable need lies with the applicant. See In re Pantano, 429 N.J. Super. 478, 483 (App. Div. 2013) (citing In re Preis, 118 N.J. 564, 571 (1990)) (stating that Pantano, the applicant, “must show an urgent necessity to carry a handgun for self-protection.”).

Pursuant to N.J.S.A. 2C:58-4d “justifiable need” can be demonstrated by proving:

[U]rgent necessity for self-protection, as evidenced by serious threats, specific threats or previous attacks which demonstrate a special danger to the applicant’s life that cannot be avoided by reasonable means other than by issuance of a permit to carry a handgun. Where possible the applicant shall corroborate the existence of any specific threats or previous attacks by reference to reports of such incident to the appropriate law enforcement agencies . . . ” N.J.A.C. 13:54-2.4(d)(1) (2017).

The term “serious threats” is a recent addition to the statute that was amended in 2016. Justifiable need is not established where an applicant asserts only generalized fears or wishes to protect property only. In re Preis, supra, 118 N.J. 564. The Applicant must show the existence of serious threats, specific threats or previous attacks that demonstrate a danger to the applicant’s life that cannot be avoided by other means. Preis, supra, 118 N.J. at 571; N.J.A.C. 13:54-2.4(d)(1) (2017).

IV. LEGAL ANALYSIS

In this case, the Petitioner’s argument for justifiable need to carry a handgun is that Petitioner runs an ATM business with a yearly cash flow of approximately 6.8 million dollars. Petitioner argues that several of his ATMs are in high and moderate crime areas such as Asbury Park, Neptune, Long Branch, Red Bank, Wall, Point Pleasant, and Brick.

The only example Petitioner provides in order to prove “justifiable need” is a general scenario in which Petitioner has had to leave machines because he felt as though there were “suspicious activities around the machine.” This one example is not enough to establish a “serious threat.” Where an applicant asserts only generalized fears or wishes to protect property, “justifiable need” is not established. In re Preis, supra, 118 N.J. 564.

Here, the Petitioner points to no examples where he, or other ATM operators, have been a target of

crime. Petitioner merely states that there has been “suspicious activity” surrounding his ATMs. This is simply not enough to establish justifiable need. A generalized statement such as this is not the type of “serious threat” under the statute. Furthermore, Petitioner offers no examples of robberies or crime in the areas in which his ATMs are located. Petitioner simply states that his ATMs are in areas with high or moderate crime rates. The blanket statement provided by the Petitioner is not enough.

During his testimony, Petitioner produced a newspaper article from over 30 years ago detailing an incident where he was robbed at gunpoint while the manager of a Roy Rogers. This information is irrelevant to the present case. This previous attack does not demonstrate a special danger to the applicant’s life to justify ordering a permit to carry.

Additionally, Petitioner points to N.J.S.A. 2C:58-4.1, which allows an employee of an armored car company a permit to carry a firearm. Petitioner attempts to draw similarities to his ATM business. However, the New Jersey Supreme Court stated that “[o]nly employees of armored-car companies are singled out for special treatment.” In re Preis, 118 N.J. 564, 569 (1990) Therefore, Petitioner’s argument is not persuasive. The statute specifically gives employees of armored car companies’ permission to carry firearms and fails to mention anything about ATM employees.

V. CONCLUSION

Petitioner has failed to meet his burden of showing a justifiable need to carry a handgun. Accordingly, for the reasons and authorities cited above, Petitioner's application for a Permit to Carry a Handgun is **DE-NIED**.
