

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

JANE DOE, *et al.*,

*

Plaintiffs,

*

v.

* Civil Case No. 13-cv-02861-CCB

MARTIN O'MALLEY, *et al.*,

*

Defendants.

*

* * * * *

**MEMORANDUM IN OPPOSITION TO PLAINTIFFS'
MOTION FOR TEMPORARY RESTRAINING ORDER**

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Dated: September 30, 2013

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The defendants, Governor Martin O'Malley, Attorney General Douglas F. Gansler, Colonel Marcus L. Brown, all sued in their official capacities, and the Maryland State Police, oppose the plaintiffs' motion for a temporary restraining order. The plaintiffs¹ cannot satisfy any of the four factors that they are required to meet to obtain preliminary injunctive relief.

STATEMENT OF FACTS

The Maryland State Police ("MSP") is the agency responsible for administering the State's firearm licensing and registration programs, including, of principal relevance here, firearm applications pursuant to Md. Code Ann., Pub. Safety ("PS") § 5-117 *et seq.* Beginning on October 1, 2013, the MSP will also be responsible for administering the

¹ The plaintiffs are seeking to proceed under fictitious names. By using the fictitious designations here, the State does not waive its right to object at a more appropriate time in the proceedings.

new requirement that individuals purchasing or receiving a handgun have a Handgun Qualification License (“HQL”). At the outset, it is important to understand the difference between the new HQLs, which are the focus of this lawsuit, and applications for regulated firearms, a pre-existing requirement that has been the focus of two recent lawsuits filed in Maryland State court by a number of the same plaintiffs involved in this case. For a variety of reasons, the plaintiffs’ attempts to conflate the two are without merit.

A. Firearms Applications

Current law requires that “[a] person must submit a firearm application . . . before the person purchases, rents, or transfers a regulated firearm.” PS § 5-117. Under the existing law, the term “regulated firearm” is defined to include both “handguns” and “assault weapons.” PS § 5-101(p)(2).² The application is required to contain identifying information about the applicant, including “the firearm applicant’s name, address, Social Security number, place and date of birth, height, weight, race, eye and hair color, signature, driver’s or photographic identification soundex number, [and] occupation,” PS § 5-118(b)(1), as well as information about the firearm, *id.*, and sworn statements regarding the applicant’s legal capacity to possess the firearm, PS § 5-118(b)(3). These applications are known by the designation “Form 77R,” and must be submitted—and thus processed—in paper format. Ex. A, Declaration of Captain Dalaine M. Brady (“Brady Decl.”) ¶ 2. Based on information provided by firearm applicants, MSP conducts an

² Effective October 1, 2013, this definition will be at PS § 5-101(r)(2). After that date, assault long guns will still be considered regulated fire arms, but will also be banned.

investigation “to determine the truth or falsity of the information supplied and statements made in the firearm application.” PS § 5-121(a). This background investigation consists of querying 16 separate databases with the applicant’s identifying information. *Id.* Responses from these databases are not in the form of an “approve” or “disapprove” notification, but require significant interpretation by the MSP. *Id.* The MSP is required to notify the applicant within 7 days if it disapproves the firearms application. PS § 5-122(b)(1).

Over the last decade the number of firearm applications the MSP has received and processed has increased dramatically, reaching successive all-time highs of 46,339 in 2011 and 70,099 in 2012. Brady Decl. ¶ 3. As of September 20, 2013, more than 100,000 firearm applications had already been filed in less than 9 months of this calendar year—a nearly 50% increase over all 12 months of 2012 and more than double the annual total of any year before that. *Id.* This glut of applications has overwhelmed MSP’s ability to process them in a timely fashion. *Id.* Significant additional resources were added to the MSP licensing division from within the MSP and, during the last weeks, from elsewhere in State government. *Id.* As of September 20, the backlog was 49,745 firearms applications. *Id.*³

³ Many of the same plaintiffs in this lawsuit also sued the State in June alleging that the MSP’s inability to complete the background checks in the requisite 7-day time period violated the law. Plaintiffs later withdrew that case, and then filed a separate case earlier this month in an attempt to halt MSP’s attempts to use State employees from other agencies to assist in processing the backlog of firearms applications. After their request for a temporary restraining order was denied, the plaintiffs voluntarily dismissed that case as well.

B. Handgun Qualification Licenses

Chapter 427 of the 2013 Laws of Maryland, the Firearm Safety Act of 2013 (“Chapter 427”) will become effective on October 1, 2013. One of the centerpieces of this comprehensive revision of Maryland’s firearms laws is the requirement to possess a valid HQL to be eligible to purchase, rent, or receive the transfer of a handgun. PS § 5-117.1. The HQL application process will require (1) submission of fingerprints; (2) completion of a firearm safety training course, unless exempt; and (3) a background investigation similar to that required for a firearm application. *Id.* Once a person receives an HQL, it is valid for 10 years. *Id.* The requirement for an HQL is in addition to, not a replacement for, the firearm application process described above.

MSP has been planning for implementation of the HQL requirement since before Chapter 427 was introduced. As is reflected by the Fiscal and Policy Note prepared by the Department of Legislative Services for Senate Bill 281 (which became Chapter 427), MSP estimated that it would need \$4.2 million in the FY 2014 budget to implement the HQL program. Brady Decl. ¶ 4. That appropriation was approved in the FY 2014 State budget and became available to MSP on July 1, 2013. MSP will treat the processing of HQLs separately from its continued processing of firearms applications. Brady Decl. ¶ 5. It has hired and trained new staff to process HQLs beginning on October 1, procured new workspace and equipment for that purpose.⁴ Brady Decl. ¶ 4. MSP has also worked with the Maryland State Department of Information Technology (“DoIT”) to create a new,

⁴ These employees will be dedicated to processing HQLs only and will not be used to process firearms applications (except if overtime is authorized).

Internet-based application process for HQLs—as distinguished from the paper-based firearm applications—which will roll-out by October 1, 2013. *Id.*; Ex. B, Declaration of Christine Weimer, Sept. 30, 2013 (“Weimer Decl.”). Although it is a new program, the MSP has confidence in the new HQL system based on the dedicated resources allocated and technical improvements in the new system as compared to the existing system for processing Form 77Rs. Brady Decl. ¶ 6.

On September 24, 2013, the MSP announced that it would not enforce the requirement that an individual possess an HQL to purchase, rent, or receive transfer of a handgun if that individual had a firearm application pending on October 1. MSP News Release, *Firearm Purchase Applicants With Applications Pending On October 1 Will Not Need To Obtain A Handgun Qualification License* (Sept. 24, 2013), available at <https://www.mdsp.org/Home/tabid/40/ctl/Detail/mid/1226/xmid/21998/xmfid/4/Default.aspx> (“MSP Press Release”).

ARGUMENT

I. THE PLAINTIFFS CANNOT SATISFY THE STANDARD FOR GRANTING A TEMPORARY RESTRAINING ORDER.

To obtain a temporary restraining order, a plaintiff must establish: (1) a likelihood of success on the merits; (2) that “he is likely to suffer irreparable harm in the absence of preliminary relief”; (3) that “the balance of equities tips in his favor”; and (4) that “an injunction is in the public interest.” *Winter v. Natural Res. Defense Council, Inc.*, 555 U.S. 7, 20 (2008); *Real Truth About Obama, Inc. v. FEC*, 575 F.3d 342, 346 (4th Cir. 2009), *vacated on other grounds*, *Citizens United v. Federal Election Commission*, 558

U.S. 310 (2010). Before a preliminary injunction may issue, all four of these requirements “must be satisfied as articulated” in *Winters*. *Real Truth*, 575 F.3d at 347.

As to the first requirement, the plaintiff “bears a heavy burden in showing its likelihood of success,” and “[a]ny relaxation of its burden, for example to require that [plaintiff] show only a possibility that it will eventually prevail, would be inadequate.” *Real Truth*, 575 F.3d at 349 (citing *Winter*, 129 S. Ct. at 375-76). Under *Winter*, the “likelihood of success” requirement is “far stricter” than the *Blackwelder*⁵ standard, which formerly permitted a plaintiff to obtain preliminary relief upon demonstrating “only a grave or serious question for litigation.” *Real Truth*, 575 F.3d at 347 (emphasis in original). Similarly, under *Winter* the moving party must make a “clear showing” that it will suffer harm that is irreparable; it is no longer sufficient, as it might have been under *Blackwelder*, for a plaintiff to point to a “possibility” of harm or merely show that the plaintiff’s injury will outweigh the defendant’s. *Real Truth*, 575 F.3d at 347.

Whereas the public interest requirement sometimes received little more than pro forma consideration under *Blackwelder*, see *Real Truth*, 575 F.3d at 347, *Winter* emphasizes the public interest and insists that a court of equity should “pay particular regard for the public consequences in employing the extraordinary remedy of injunction.” *Winter*, 129 S. Ct. at 376-77 (quoting *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)). As further explained in *Romero-Barcelo*, if the requested preliminary injunction “will adversely affect a public interest . . . the court may in the

⁵ *Blackwelder Furniture Co. of Statesville v. Selig Mfg. Co.*, 550 F.2d 189 (4th Cir. 1977).

public interest withhold relief until a final determination of the rights of the parties, though the postponement may be burdensome to the plaintiff.” 456 U.S. at 312 (quoting *Yakus v. United States*, 321 U.S. 414, 440 (1944)).

II. THE PLAINTIFFS CANNOT ESTABLISH THAT THEY ARE LIKELY TO SUCCEED ON THE MERITS.

To be eligible for a temporary restraining order, the plaintiffs must carry “a heavy burden” to demonstrate a “likelihood of success,” not merely the possibility of success, on the merits of their claims. *Real Truth*, 575 F.3d at 349 (citing *Winter*, 129 S. Ct. at 375-76). The plaintiffs cannot carry that burden as to either of their claims.

A. The Plaintiffs Are Not Likely to Succeed on the Merits of the Claim that Chapter 427 Will Create a *De Facto* Ban on the Transfer of Handguns in the State of Maryland.

The plaintiffs are not likely to succeed on the merits of their claim that the implementation of the HQL requirement will result in a *de facto* ban on the transfer of handguns in Maryland because there is no reason to believe it will. There is a significant backlog in processing firearm applications, which the MSP has been working diligently to address. Brady Decl. ¶ 3. However, as described above, the HQL and firearm application are two separate programs within the MSP and the MSP has been working diligently for months to prepare for the processing of HQL applications through a new, Internet-based application system. Brady Decl. ¶¶ 4-6.

The plaintiffs do not argue in this lawsuit that the HQL requirement is unconstitutional. Instead, in contending that the immediate implementation of the HQL requirement may result in what they believe to be an unacceptable delay in receipt of

handguns, they appear to make two arguments. First, they argue that because HQL applications are not being made available until October 1, 2013, this effectively precludes the transfer of handguns for the indefinite future. That argument is entirely without merit, as HQL applications are not required to purchase or receive handguns until October 1, 2013. The MSP is making the HQL applications available by October 1, 2013, and any interested purchaser can complete and submit an application on that date. The MSP is then charged with processing that application within 30 days. There is no difference between that system as it will exist on October 1, 2013, when it becomes effective, and that system as it will be in place thereafter. As a result, the unavailability of HQL applications before October 1 does not support the plaintiffs' claim that the requirement to obtain an HQL must be delayed.

Second, the plaintiffs argue that the delays in the MSP's recent processing of firearm applications indicate that the MSP's processing of forthcoming HQL applications will be subject to similar delays, leading to indefinite processing delays effectively precluding the purchase of handguns in Maryland. This argument fails for several reasons. As an initial matter, it is based purely on speculation. As described above, and in Captain Brady's Declaration, the processes for investigating firearm applications and for processing HQLs are separate, and the MSP has been working on establishing an efficient process for processing HQLs for months. The plaintiffs' speculation is unwarranted and entirely insufficient to support their claim for emergency injunctive relief.

Moreover, it is at least possible, if not likely, that a delay in the implementation of the HQL requirement will actually make *worse* the current delay in processing firearm applications. It appears likely that a substantial reason for the backlog that has developed with respect to the processing of firearms applications is attributable to individuals seeking to purchase handguns before the HQL requirement goes into effect on October 1, 2013. If plaintiffs were to prevail in forcing the delay of implementation of the HQL requirement, that could, in turn, lead to a continuation of the increased volume of firearms applications received so far in 2013, which would create even more pressure on the MSP's processing of the backlog of firearm applications. At the very least, it would be premature for this Court to issue a temporary restraining order and stop the HQL program now, on the eve of its implementation, because of speculative fears that MSP will not be able to issue HQLs in a timely manner 30 days from now.

There is no ban in Maryland, formal or *de facto*, on the transfer of handguns. At most, the plaintiffs have identified temporary processing delays that the MSP is working diligently to resolve, and that would likely only worsen if the plaintiffs receive the relief they seek. The defendants are unaware of any case holding that the Second Amendment guarantees a right to immediate gun ownership or possession, or any case that has found temporal restrictions on gun purchases—such as waiting periods and monthly purchase restrictions—to be unconstitutional. *See generally Association of New Jersey Rifle and Pistol Clubs, Inc., v. Christie*, 850 F. Supp. 2d 455 (D. N.J. 2012) *aff'd sub nom. Association of New Jersey Rifle and Pistol Clubs, Inc., v. Governor of New Jersey*, 707 F.3d 238 (3d Cir. 2013).

The plaintiffs have not demonstrated that they are likely to succeed on the merits of their claim that implementation of the HQL requirement on October 1, 2013 constitutes a *de facto* ban on the purchase of handguns in Maryland.

B. The Plaintiffs Are Not Likely to Succeed on the Merits of the Claim that the MSP's Decision not to Require HQLs from Firearm Purchase Applicants with Applications Pending on October 1, 2013 Will Deprive Them of the Due Process of Law.

Count II of the plaintiffs' complaint fails to identify any legal theory or legitimate cause of action to support a claim based on the allegation that the plaintiffs and others may feel compelled to abide by the requirements of a law that the MSP has stated it will temporarily refrain from enforcing. The Office of the Attorney General has interpreted Chapter 427 to require that any person seeking to obtain a handgun after October 1, 2013 must have an HQL, regardless of whether such person submitted a firearm application before that date.⁶ The plaintiffs do not dispute this interpretation of the statute. The MSP, in the exercise of its law enforcement discretion, has announced that it "will not enforce the requirements of the new law with respect to applicants whose applications are pending as of October 1." MSP Press Release. There is no actual conflict between the two statements. The MSP's statement cannot and does not purport to suspend the

⁶ The statute, effective October 1, 2013, provides: "A dealer or any other person may not sell, rent, or transfer a handgun to a purchaser, lessee, or transferee unless the purchaser, lessee, or transferee presents to the dealer or other person a valid handgun qualification license issued to the purchaser, lessee, or transferee by the Secretary under this Section," PS § 5-117.1(b), and further prohibits any person from purchasing, renting, or receiving a handgun unless the person "possesses a valid handgun qualification license," possesses valid law enforcement credentials, is an active or retired member of the armed forces, or is purchasing, renting, or receiving an antique firearm, PS § 5-117.1(c).

operation of Chapter 427, nor does it purport to bind other federal, state, or local law enforcement agencies. All the MSP has done is decided not to prosecute individuals who purchase handguns after October 1, 2013 without an HQL if they had applications pending on October 1, 2013.

The plaintiffs do not explain how the Attorney General's legal advice and the MSP's statement could possibly violate their due process rights. They complain that it would still violate federal law for them to purchase a handgun without an HQL, but even if they believed a federal authority would enforce a requirement originating in Maryland law under these circumstances, they do not have a due process right to violate federal law. Nor do plaintiffs have a due process right to take possession of a purchased firearm at whatever time they choose, or to take possession of a firearm without complying with the requirement to obtain an HQL.⁷ See *District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008) ("nothing in our opinion should be taken to cast doubt on . . . laws imposing conditions and qualifications on the commercial sale of arms"); see also *Texas v. Johnson*, 491 U.S. 397, 430 (1989) (the First Amendment "right of free speech is not absolute at all times and under all circumstances") (internal quotations and citation omitted).

Procedural due process claims are analyzed under the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), which instructs courts to weigh, first, the private interest affected by official action, second, the risk of an erroneous deprivation of

⁷ It cannot be discerned from the complaint whether any of the plaintiffs owns any non-handgun firearms; they all may currently own firearms.

such interest through the procedures at issue and the probable value, if any, of additional or substitute procedural safeguards and, third, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. 424 U.S. at 335; *see also Mallette v. Arlington County Emples. Supplemental Retirement Sys. II*, 91 F.3d 630, 640 (4th Cir. 1996). The private interest here is not the Second Amendment right to keep and bear arms, as plaintiffs erroneously contend, but the alleged right to keep and bear a particular firearm without having to comply with a law during a limited period in which a State law enforcement agency has declared it will not enforce that law. There is no such right or cognizable interest, which should be the end of the analysis.

The government interest here is in ensuring that handguns are not provided to persons with criminal records, a history of mental illness, or a propensity for violence. That the unique circumstances caused by the unprecedented increase in firearms applications has caused the MSP to decide not to enforce the HQL requirement for applications submitted before October 1, 2013 does not give rise to a constitutional deficiency in the HQL requirement itself that would allow the Court to order extraordinary preliminary injunctive relief to enjoin the operation of an otherwise-constitutional requirement of State law.

To the extent the plaintiffs' complaints are focused on speculative claims of delays attendant to the soon-to-begin process of issuing HQLs, "[b]roadly speaking, a delay amounts to a due process violation only where it renders the prescribed procedures meaningless in relation to the private interest at stake." *Kuck v. Danaher*, 600 F.3d 159,

163 (2d Cir. 2010). Therefore, delays that are actionable as due process violations must be severe. In *Kuck*, the court remanded for further consideration a plaintiff's claim that delays in the state's appeal process for denial of handgun carry permits violated procedural due process, but only because the delays frequently lasted well over a year. 600 F.3d at 166-67. In other cases, particularly ones where the delay stems from "the thoroughness of the procedures" used by the government, delays are not in and of themselves violative of the Due Process Clause. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 547 (1985); *see id.* ("A 9-month adjudication is not, of course, unconstitutionally lengthy *per se.*")

At base, it appears that the essence of the plaintiffs' claim is that, because the MSP has decided not to enforce the HQL requirement in cases in which firearm applications were pending before October 1, 2013, it would only be fair to put the law on hold as a mechanism to preclude other law enforcement agencies from enforcing that requirement until the backlog of applications has been processed. However, the relief the plaintiffs seek is much broader, as it would not only suspend the HQL requirement with respect to backlogged applications, but completely. More importantly, the plaintiffs have cited no legal authority to support their claim that one law enforcement agency's decision to refrain temporarily from enforcing a legal requirement allows a Court to suspend the law simply because other law enforcement agencies might not take the same approach.

The plaintiffs have not demonstrated that they are likely to succeed on the merits of their claim, and their request for preliminary injunctive relief must therefore be denied.

III. THE PLAINTIFFS CANNOT IDENTIFY IRREPARABLE HARM LIKELY TO RESULT FROM THE DENIAL OF A TEMPORARY RESTRAINING ORDER.

To be eligible for the extraordinary equitable relief of a temporary restraining order, the plaintiffs are required to demonstrate that they are “likely to suffer irreparable harm in the absence of preliminary relief.” *Winter*, 555 U.S. at 20. This requires a “clear showing” the plaintiffs will suffer harm that is irreparable, not the mere possibility of irreparable harm. *Real Truth*, 575 F.3d at 347. The plaintiffs do not begin to meet that burden. At most, the plaintiffs have identified that they will feel the need to comply with a provision of Maryland law in circumstances in which the law enforcement agency primarily charged with enforcing the law has decided not to do so. Feeling compelled to comply with the law does not constitute irreparable harm.

Moreover, to the extent the plaintiffs seek an order that “Defendants are hereby restrained from enforcing” the HQL requirement, ECF No. 2-10, at 2, the MSP has already declared that it will not enforce that requirement as to individuals with applications pending as of October 1, 2013, and the plaintiffs have not sued any other law enforcement agency with the power to enforce that requirement. Thus, the plaintiffs have not demonstrated that there is any risk of irreparable harm from enforcement by the MSP, and they have not joined any other law enforcement entity as a party the Court might be able to enjoin. For that reason as well they cannot demonstrate any irreparable harm from a denial of the relief they have requested.

IV. THE PUBLIC INTEREST DOES NOT SUPPORT TEMPORARY INJUNCTIVE RELIEF.

By adopting Chapter 427, the Maryland General Assembly declared the public interest in creating an HQL process to help make sure that handguns were restricted to those qualified to possess them. That enactment was based on significant scientific evidence demonstrating the relationship between firearms licensing—particularly fingerprint licensing as required by Chapter 427—and crime prevention. Daniel W. Webster, *et al.*, *Preventing the Diversion of Guns to Criminals through Effective Firearms Sales Laws*, in *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis* (2013) (describing the substantial increase in “crime guns originating in Missouri as a result of Missouri’s repeal of “permit to purchase” licensing and that such laws were associated with significantly lower rates of diverting guns to criminals across state lines); Daniel W. Webster, *et al.*, *Effects of State-Level Firearm Seller Accountability Policies on Firearms Trafficking*, 86 *J. Urban Health* 525 (2009); Garen J. Wintemute, *et al.*, *Risk Factors among Handgun Retailers for Frequent and Disproportionate Sales of Guns Used in Violent and Firearm Related Crimes*, 11 *Injury Prevention* 357 (2005); Daniel W. Webster, *et al.*, *Relationship Between Licensing, Registration, and other Gun Sales Laws and the Source State of Crime Guns*, 7 *Injury Prevention* 184 (2001); U.S. General Accounting Office, *Firearms Purchased from Federal Firearm Licensees Using Bogus Identification* (2001).

The MSP stated in its press release that, notwithstanding the statutory language, it “was widely understood that the new requirements would not be enforced as to

applications that were pending before October 1,” and that in light of the backlog in processing those applications, suspending enforcement as to those applications pending as of that date “is a fair, reasoned, and appropriate result.” MSP Press Release. Thus, for a limited universe of applicants and for a limited time, the MSP was willing to not enforce the HQL requirement. Notably, there is an additional—and quite significant—public safety benefit from the MSP’s decision. Under PS § 5-123, a firearms dealer may transfer a regulated firearm after 7 days even if the MSP has not completed the background check required for a firearm application. During the current backlog, however, many dealers have acted responsibly by declining to transfer regulated firearms before the MSP completes the required background check. As the October 1, 2013 effective date for the HQLs drew nearer, there was an increased risk that more dealers might release regulated firearms before the MSP had completed its background check so that transfers could be completed before the HQL requirement became effective. The MSP logically could have chosen to accept, for this limited universe of applicants, the less-stringent background check in connection with the pending firearms applications to avoid the risk that 35,000 or 40,000 firearms would be released before October 1, 2013 with no background check at all.

In sum, the plaintiffs have not identified any consideration that might outweigh the General Assembly’s very recent determination that requiring an HQL license for every transfer of handguns on or after October 1, 2013 is the public interest. Thus, the plaintiffs have not demonstrated that the public interest weighs in favor of an injunction.

Moreover, the plaintiffs do not even limit the relief they request to the limited universe of applicants covered by the MSP's enforcement decision, but instead seek a broader injunction against the enforcement of the HQL requirement in its entirety, including to applications filed after October 1, 2013. To that extent, the public interest weighs heavily against preliminary injunctive relief.

V. THE BALANCE OF THE EQUITIES WEIGHS HEAVILY AGAINST TEMPORARY INJUNCTIVE RELIEF.

The fourth factor the plaintiffs are required to establish to obtain preliminary injunctive relief—that “the balance of equities tips in [their] favor,” *Winter*, 555 U.S. at 20—also weighs against issuance of a temporary restraining order. As discussed above, plaintiffs seek to avoid having to comply with a law that they do not like, but the constitutionality of which—but for the effect of temporary processing delays—they do not challenge. As a result, they have not identified any cognizable harm to be balanced against the extraordinary request that this Court halt the effective date of a statute duly enacted by the General Assembly for the purpose of protecting public safety.

CONCLUSION

For these reasons, the Court should deny the plaintiffs' motion for a temporary restraining order.

Respectfully submitted,

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Dated: September 30, 2013

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Defendants.

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DECLARATION OF CAPTAIN DALAINE M. BRADY

I, Captain Dalaine M. Brady, being competent to testify, hereby affirm on my personal knowledge as follows:

1. I am a Captain in the Maryland State Police. My current posting is as Licensing Division Commander. I oversee all aspects of the Licensing Division's operations including the existing Firearm Registration Section ("FRS"), which processes firearms applications.

2. Firearm applications are known by the designation "Form 77R" and must be submitted in paper format. Once submitted, the information provided on the Form 77R is entered into a database maintained by the MSP, in order to investigate the truth or falsity of the information supplied and statements made in the firearm application, MSP checks 16 different State and federal databases. Those databases are:

- a. National Crime Information Center (NCIC) Interstate Identification Index;
- b. NCIC protective order file;

- c. NCIC warrant check;
- d. NCIC stolen firearm check;
- e. National Instant Check System;
- f. Maryland Interagency Law Enforcement System civil warrant/order file;
- g. Maryland Criminal Justice Information System - Identification Index System;
- h. Maryland Computerized Criminal History;
- i. Maryland Motor Vehicle Administration;
- j. Maryland Automated Firearms Services System;
- k. Judicial Information System District Court of MD civil system inquiry and update menu;
- l. Judicial Information System District Court of MD criminal system inquiry;
- m. Judicial Information System District Court of MD warrant system menu;
- n. Maryland Division of Parole and Probation;
- o. Maryland Department of Juvenile Services; and
- p. Maryland Department of Health and Mental Hygiene.

Responses from these databases are not in the form of an “approve” or “disapprove” notification but require significant interpretation by the MSP.

3. Over the last decade, the number of firearms applications processed by the MSP has increased significantly, reaching successive all-time highs of 46,339 in 2011 and 70,099 in 2012. As of September 20, 2013 more than 100,000 firearm applications had already been filed in less than 9 months of calendar year 2013—a nearly 50% increase over all 12 months of 2012 and more than double the annual total of any year

before that. This glut of applications has overwhelmed MSP's ability to process them in a timely fashion. Significant additional resources were added to the MSP licensing division from within the MSP and, during the last weeks, from elsewhere in State government. As of September 20, the backlog was 49,745 firearms applications.

4. I am also responsible for overseeing implementation of the new HQL program. I have approached this oversight by using the facts and figures developed by the MSP, which estimated that implementation of the HQL program will cost \$4.2 million dollars in new staff and equipment. Since that money was appropriated in the FY 2014 budget and became available as of the July 1, 2013 beginning of FY 2014, I have led MSP's preparations for implementation, including hiring and training new staff, procuring space and computer equipment, and identifying and helping to reconfigure existing resources owned by MSP to develop an Internet-based HQL application system. This system will be used until a full automation of the entire firearms licensing system can be procured by DoIT.

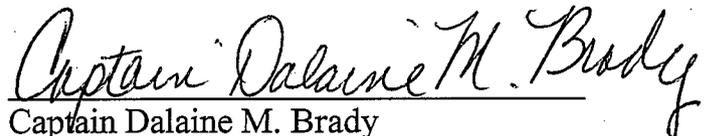
5. The MSP will operate the existing Firearm Registration System ("FRS") completely separately from the new HQL system. Resources from one will not be used for the other during ordinary business hours.

6. There are several reasons to be confident in the new HQL system:

- The HQL section will begin operations with staff dedicated to processing HQL applications.
- We anticipate that the HQL application rate will be lower than firearm applications because they are issued on a per-applicant, rather than per-firearm, basis and are valid for a 10-year period.

- To the extent that the current spike in firearm applications is driven by an effort by some applicants to avoid HQL requirements, that incentive will disappear after October 1.
- The new Internet-based application system will improve MSP efficiency in many ways over the system currently used by FRS for processing Form 77Rs. Applicants will enter their own information directly, rather than requiring MSP to enter the data into the MSP database. This will save in both typing time and error correction.
- The new Internet-based application system has security features that reduce duplicate and incomplete applications.
- Because fingerprint and firearm safety training requirements for an HQL are not required for a firearm application, we expect HQL applications at the beginning to be staggered.

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING
IS TRUE AND CORRECT.



Captain Dalaine M. Brady
Maryland State Police

Executed this 30th day of September, 2013.

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

JANE DOE, <i>et al.</i> ,	*
<i>Plaintiffs,</i>	*
v.	* Civil Case No. 13-cv-02861-CCB
MARTIN O'MALLEY, <i>et al.</i> ,	*
<i>Defendants.</i>	*
* * * * *	

DECLARATION OF CHRISTINE WEIMER

I, Christine Weimer, being competent to testify, hereby affirm on my personal knowledge as follows:

1. I am an Oversight Project Manager with the Maryland Department of Information Technology (“DoIT”). In my role, I provide project management mentoring, oversight, and guidance on best practices to the Maryland State Police (“MSP”).

2. I oversaw the design and programming of the online HQL application that will become operational on or before October 1, 2013. The online HQL application, as designed, requires first that a user create a user id and password combination in order to enter the HQL application site. After the citizen creates his/her user id and clicks the “Submit” button, the user’s interaction with the site becomes encrypted using the Secure Socket Layer (“SSL”) security protocol. All personally identifying information entered as part of the online application process is then secured via that SSL encryption.

3. The data entry fields of the online HQL application have data validation enabled. These validations ensure two things: (1) that the data entered meets the formatting requirements for the specific field, e.g., date of birth entered as MM/DD/YYYY, and (2) that malicious code cannot be submitted in a data entry field in lieu of the requested and expected information.

4. If a citizen begins an application but does not finish and provide all required components in the same sitting, the system allows the citizen to save his or her progress, log off, and come back later to continue. Upon return to the HQL application site, the citizen is again required to log on with his or her user id and password.

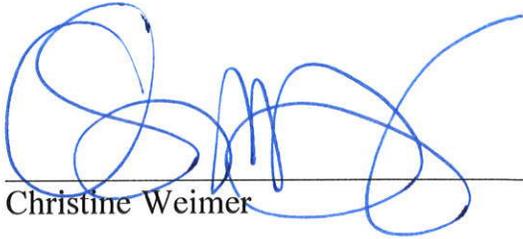
5. During the application process, before the application is complete with all required components provided, only the citizen-owner of the application, MSP, and its employees have the ability to access the application and its associated components.

6. Once all the required fields/questions have been answered, and all the required components provided and attached to the HQL application, only the MSP and its employees have the ability to access the application.

7. The system, as designed, only allows one HQL application submission from each user id created.

8. The database storing HQL application data resides on the internal MSP secured network, behind an Intrusion Detection and Prevention System (IDPS).

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.



Christine Weimer

Executed this 30 day of September, 2013.