
CONCISE SUMMARY OF THE CASE

Pursuant to 3rd Cir. LAR 33.3, counsel are required to file a concise summary of the case within **14** days of the date of docketing of the Notice of Appeal. Total statement is limited to no more than 2 pages, single-spaced. Counsel may utilize this form or attach a 2 page statement encompassing the information required by this form.

SHORT

CAPTION: Association of New Jersey Rifle and Pistol Clubs, Inc. et al. v. Christopher J. Christie, Governor of the State of New Jersey et al.

USCA NO.: 12-1624

LOWER COURT or AGENCY and DOCKET NUMBER:

District of New Jersey 10-cv-271

NAME OF

JUDGE: Honorable Joel Pisano, U.S.D.J.

Specify who is suing whom, for what, and the subject of this action. Identify (1) the nature of the action; (2) the parties to this appeal; (3) the amount in controversy or other relief involved; and (4) the judgment or other action in the lower court or agency from which this action is taken:

(1) The action is brought pursuant to 42 U.S.C. § 1983 for deprivation of civil rights, arising from (i) the direct preemption of New Jersey's handgun rationing law by 15 U.S.C. § 5001(g)(ii); and (ii) the illusory nature and administration of "exemptions" under that law. (2) Appellants are: four individuals who (after prequalifying and waiting months to obtain purchase permits) seek to purchase more than one handgun within a 30 day period, and/or seek to obtain statutory exemptions to New Jersey's one handgun per month restriction; (ii) one licensed retail firearms dealer that seeks to sell more than one handgun per month to prequalified individuals who have obtained permits; and one membership organization with representational standing. Appellees are the Governor and Attorney General of New Jersey, the Superintendent of New Jersey State Police, and a municipality unlawfully restricting the number of handgun purchase permits an applicant may obtain at one time in direct violation of law. (3) Appellants seek declaratory and injunctive relief, attorney's fees, and costs. Appellants do not seek money damages. (4) Appellants appeal from an Opinion and Order entered on 6/14/10 denying Plaintiffs' motion for a preliminary and permanent injunction and granting the motion of the State Defendants to dismiss Counts One and Two of the Amended Complaint; and an Opinion and Final Judgment entered on 2/2/12 granting Defendants' motions to dismiss Plaintiffs' federal claims denying Plaintiffs' summary judgment motion, and declining to exercise supplemental jurisdiction over Plaintiffs' state law claims.

LIST and ATTACH a copy of each order, judgment, decision or opinion which is involved in this appeal. If the order(s) or opinion(s) being appealed adopt, affirm, or otherwise refer to the report and recommendation of a magistrate judge or the decision of a bankruptcy judge, the report and recommendation or decision shall also be attached.

Order entered June 14, 2010 (Doc. No. 51)

Opinion dated June 14, 2010 (Doc. No. 50)

Final Judgment and Order entered February 2, 2010 (Doc. No. 104)

Opinion dated February 2, 2010 (Doc. No. 103)

Provide a short statement of the factual and procedural background which you consider important to this appeal:

New Jersey law unlawfully prohibits the sale of more than one handgun in a 30-day period, in violation of an explicit federal preemption contained in 15 U.S.C. § 5001(g)(ii) which prevents states from prohibiting the sale of certain firearms. Yet this is precisely what the law does, because under pre-existing, well-established, and unseverable New Jersey law, such firearms are defined as “handguns.” The law is thus preempted by federal law and cannot be saved by severance or a narrowing construction. The law also contains supposed “exemptions” for collectors and competitors. Yet those exemptions, and the forms promulgated by the State Police to implement them, render it impossible for the vast majority of collectors and competitors to actually qualify for the exemptions. This violates the Due Process clause of the Fourteenth Amendment because the law provides no genuine means or procedure to obtain the exemptions.

Identify the issues to be raised on appeal:

Whether, in light of the direct pre-emption by 15 U.S.C. § 5001(g)(ii) of the states' power to prohibit the sale of certain firearms, New Jersey's law prohibiting the sale of more than one “handgun” in a 30-day period is pre-empted.

Whether the State of New Jersey, consistent with the Due Process clause of the Fourteenth Amendment, may purport to provide a right to obtain exemptions to the prohibition on purchasing more than one handgun within a 30 day period without providing a fair means to vindicate that right.

Whether the statutory right to obtain exemptions to the prohibition on purchasing more than one handgun within a 30 day period is a liberty or property interest within the meaning of the Due Process clause of the Fourteenth Amendment.

Whether the District Court should take supplemental jurisdiction of the pleaded state law claims if one or more of the federal claims in this matter are reinstated on appeal.

This is to certify that this Concise Summary of the Case was electronically filed with the Clerk of the U.S. Court of Appeals for the Third Circuit and a copy hereof served to each party or their counsel of record this 26th day of March, 2012.

/s/ Daniel L. Schmutter

Signature of Counsel

Rev. 04/2010

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

ASSOCIATION OF NEW JERSEY RIFLE
AND PISTOL CLUBS, INC., et al.

Plaintiffs,

v.

CHRISTOPHER CHRISTIE, Governor
of the State of New Jersey, et al.

Defendants.

Civil Action No. 10-271 (JAP)

ORDER

Presently before the Court are (1) Plaintiffs' motion for a preliminary injunction; (2) the State of New Jersey's motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6); and (3) the City of Hackensack's motion to dismiss pursuant to Rules 12(B)(1), 12(b)(6), and 12(h)(3). For the reasons in the accompanying Opinion,

IT IS on this 14th day of June 2010

ORDERED that Plaintiff's motion for a preliminary injunction is DENIED; and it is further

ORDERED that the State's motion to dismiss is GRANTED as to Counts One and Two; and it is further

ORDERED that the parties are each directed to submit a supplemental brief within 21 days of the entry of this Order regarding the impact of recent developments as discussed in the accompanying Opinion on the outstanding motions.

/s/ JOEL A. PISANO
United States District Judge

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

ASSOCIATION OF NEW JERSEY RIFLE :
AND PISTOL CLUBS, INC., et al. :

Plaintiffs, :

v. :

Civil Action No. 10-271 (JAP)

CHRISTOPHER CHRISTIE, Governor :
of the State of New Jersey, et al. :

Defendants. :

OPINION

PISANO, District Judge.

Plaintiffs Association of New Jersey Rifle and Pistol Clubs, Inc., (“ANJRPC”), Scott Bach, Kaare Johnson, Vincent Furio, Steven Yagiello and Bob’s Little Sport Shop, Inc. (collectively, “Plaintiffs”) bring this action challenging recent amendments to N.J.S.A. 2C:58-2 and 2C:58-3, referred to as the “One Gun Law” or the “One Handgun a Month Law,” (hereinafter the “One Gun Law”) which restricts the sale of handguns to one per thirty day period. Presently before the Court are the following motions: (1) Plaintiffs’ motion for a preliminary injunction; (2) the State of New Jersey’s motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6); and (3) the City of Hackensack’s motion to dismiss pursuant to Rules 12(B)(1), 12(b)(6), and 12(h)(3). For the reasons below, Plaintiffs’ motion for a preliminary injunction is denied, and the State of New Jersey’s motion to dismiss is granted with respect to Counts One and Two. As to the remaining issues, the parties are

directed to submit supplemental briefing as set forth below.

I. Background

In or about August 2009, the One Gun Law was enacted. The law amended N.J.S.A. 2C:58-2(a) to provide that a “dealer” could not “deliver more than one handgun to any person within a 30-day period.” It also amended N.J.S.A. 2C:58-3 to provide that “no more than one handgun shall be purchased within any 30-day period.” N.J.S.A. 2C:58-3(i). These changes were effective as of January 1, 2010.

Also in or about January 2010, amendments were enacted that created certain exemptions to One Gun Law. Included were exemptions relating to inheritance or intestacy, collecting, and competitive shooting. N.J.S.A. 2C:58-3.4. In order to qualify for one of these exemptions, the statute provides that an applicant must certify, “on a form prescribed by the [S]uperintendent [of the State Police], the exemption sought along with documentation in support of the exemption.” N.J.S.A. 2C:58-3.4(b). These amendments became effective January 3, 2010 and January 12, 2010, respectively. Plaintiffs filed this lawsuit shortly thereafter, on January 17, 2010.

Counts One and Two of the amended complaint (hereinafter “complaint”) allege that the One Gun Law is void because it is preempted by 15 U.S.C. § 5001(g)(ii), which provides that “[n]o State shall ... prohibit the sale ... of traditional B-B, paint ball, or pellet-firing air guns that expel a projectile through the force of air pressure.” Count Three, Four and Five allege that the lack of a procedure¹ to obtain one of the enumerated exemptions to the One

¹As noted previously, the statute requires applications for an exemption to complete a “form prescribed by the [S]uperintendent [of the State Police]” At the time of the filing of this

Gun Law violates Plaintiffs' due process rights under the United States and New Jersey Constitutions. Counts Seven and Eight allege that certain individual plaintiffs were unlawfully denied the right to apply for multiple handgun purchase permits at one time by the defendant municipalities.² The motions presently before the Court center on the claims raised in Counts 1, 2, 7 and 8. *See* Transcript of Proceedings, May 25, 2010 ("Tr.") at 9 (counsel explaining that due to recent developments Court does not have full record before it as to Counts 3 through 6).

II. Analysis

A. Motion for Preliminary Injunction

Plaintiffs seek a preliminary injunction enjoining enforcement of the One Gun Law and an injunction enjoining municipal defendants from restricting the number of handgun purchase permits an individual may apply for at one time. In evaluating a motion for preliminary injunctive relief, a court must consider whether: "(1) the plaintiff is likely to succeed on the merits; (2) denial will result in irreparable harm to the plaintiff; (3) granting the injunction will not result in irreparable harm to the defendant; and (4) granting the injunction is in the public interest." *NutraSweet Co. v. Vit-Mar Enterprises, Inc.*, 176 F.3d 151, 153 (3d Cir.1999) (quoting *Maldonado v. Houstoun*, 157 F.3d 179, 184 (3d Cir.1998)).

action, no such "form" had been promulgated by the superintendent. Since that time, the State has advised the Court that exemption forms have issued. *See* Docket Entry # 32. Plaintiffs have advised the Court that they may seek to amend their complaint to allege that the forms are inadequate and, therefore, the exemption procedure violates their due process rights.

²The parties advised the Court that since the filing of the complaint the Division of the State Police has issued guidance for municipalities advising that the One Gun Law does not restrict individuals from obtaining more than one permit in a 30-day period. Tr. at 10, 18.

A preliminary injunction “should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” *Masurek v. Armstrong*, 520 U.S. 968, 972 (1997).

Preliminary injunctive relief is an “extraordinary and drastic remedy”, *id.*, which “should issue only if the plaintiff produces evidence sufficient to convince the district court that all four factors favor preliminary relief.” *American Tel. and Tel. Co. v. Winback and Conserve Program, Inc.*, 42 F.3d 1421, 1427 (3d Cir.1994). “The burden lies with the plaintiff to establish every element in its favor, or the grant of a preliminary injunction is inappropriate.” *P.C. Yonkers, Inc. v. Celebrations the Party and Seasonal Superstore, LLC*, 428 F.3d 504, 508 (3d Cir. 2005).

Turning to the first element of the preliminary injunction analysis, likelihood of success on the merits, Plaintiffs first argue that the One Gun Law should be enjoined because it is preempted by the Federal Toy gun Law and is, therefore void. Federal preemption of state law finds its basis in Supremacy Clause of the United States Constitution, which states that “the Laws of the United States ... shall be the supreme Law of the Land ... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2. However, despite the broad language of this clause, courts do not readily assume preemption. *Madeira v. Affordable Housing Foundation, Inc.*, 469 F.3d 219, 238 (2d Cir. 2006). Rather, “in the absence of compelling congressional direction,” courts will not infer that “Congress ha[s] deprived the States of the power to act.” *Id.* (quoting *New York Tel. Co. v. New York State Dep’t of Labor*, 440 U.S. 519, 540 (1979)). When, as in this case, the state law at issue involves the historic police power of the States, “courts start with the assumption

that these powers are not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.” *Id.* (internal quotations omitted) (citing *Jones*, 430 U.S. at 525).

The Supreme Court has noted that “[t]he criterion for determining whether state and federal laws are so inconsistent that the state law must give way is firmly established...” *Jones v. Rath Packing Co.*, 430 U.S. 519, 526 (1977). The task of a court is to “to determine whether under the circumstances of [a] particular case, (the State’s) law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Id.* Furthermore, in determining whether a conflict exists, a court must “consider the relationship between state and federal laws as they are interpreted and applied, not merely as they are written.” *Id.*; *State v. Rackis*, 333 N.J. Super 332, 340 (App. Div. 2000). Importantly, “the purpose of Congress is the ultimate touchstone in every pre-emption case.” *Wyeth v. Levine*, -- U.S. --, 129 S.Ct. 1187, 1194 (2009).

As noted earlier, Section 5001(g) provides that “no State shall ... (ii) prohibit (other than prohibiting the sale to minors) the sale of traditional B-B, paint-ball, or pellet-firing air guns that expel a projectile through the force of air pressure.” 15 U.S.C. § 5001(g)(ii). The key question here, therefore, is whether the One Gun Law “prohibit[s]” the sale of “B-B, paint-ball, or pellet-firing air guns” that may fall within its scope (referred to herein as “air-powered handguns”).³ Plaintiffs argue that by limiting the purchase of air-powered handguns

³The State does not dispute that the One Gun Law governs the sale and purchase of certain B-B and pellet-firing air-powered guns that fall within the definition of “handgun” under New Jersey law.

to one every thirty days, the One Gun Law is a prohibition on the purchase of these firearms that conflicts with § 5001(g)(ii). The State, on the other hand, contends that the One Gun Law does not prohibit but merely regulates the purchase of these guns and, therefore, is not preempted.

The Court agrees that the One Gun Law permissibly regulates, rather than prohibits, the sale of air-powered handguns, and therefore is not in conflict with the Federal Toy Gun Act. As the State points out, the One Gun Law does not ban the sale of such guns -- a person is not prohibited from buying an air-powered handgun today so long as they have a permit to do so. While the One Gun Law does regulate the timing of an individual's ability to purchase air-powered handguns, it neither prohibits their sale nor limits the absolute number of air-powered handguns that an individual can purchase.

The Court finds Plaintiffs' reliance on the *New York State Motor Truck Assoc. v. City of New York*, 654 F. Supp. 1521 (S.D.N.Y. 1987) and *United States v. Florida*, 585 F. Supp. 807 (N.D. Fla. 1984) in support of their argument that the One Gun Law constitutes a prohibition on the sale of these weapons to be misplaced. In those cases, the courts found that state or local laws that placed time-of-day restrictions on the operation of certain kinds of trucks were preempted by federal statutes "prohibit[ing]" states from barring those trucks from operating on certain highways. Plaintiffs argue that such cases stand for the proposition that a restriction such as the One Gun Law, which Plaintiffs concede "is not a total prohibition[,]" ... is a prohibition nevertheless." Pl. Br. at 20.

Plaintiff's argument, however, overlooks one of the "cornerstones of ... pre-emption

jurisprudence,” namely, that “the purpose of Congress is the ultimate touchstone in every pre-emption case.” *Wyeth*, 129 S.Ct. at 1194. In both *New York State Motor Truck* court and *Florida*, the courts found the existence of congressional intent to promote a uniform system of national regulation so as “to relieve commercial trucking operators of the burden inherent in planning and operating a multistate haul . . . through states with conflicting regulations.” *New York State Motor Truck*, 654 F. Supp. at 1536; *see also Florida*, 585 F. Supp. at 810 (“potential disruption . . . would make planning by commercial trucking firms virtually impossible”). There is no evidence here that the purpose of § 5001 is to promote a uniform system of national regulation with respect B-B and other air powered weapons.

Additionally, unlike the statute at issue in *Coalition of New Jersey Sportsmen v. Florio*, 744 F. Supp. 602 (D.N.J. 1990), another case relied upon by Plaintiffs, the requirements of the One Gun Law are not so onerous that the law constitutes a *de facto* prohibition on the sale of B-B guns and air guns that fall within its scope. *Coalition* involved, among other things, a state gun control statute that regulated semi-automatic assault weapons. The court in *Coalition* found that certain B-B and pellet-firing guns fell within the scope of that statute’s definition of “assault firearms.” *Id.* at 605 (interpreting N.J.S.A. 2C:39-1(w)(3)). Because the *Coalition* court found that the statute’s extremely rigorous qualification process for persons wishing to purchase an assault firearm was so onerous, it held that the statute constituted a *de facto* prohibition on the sale of B-B guns and air guns that fell within its scope. That simply is not the case here.

The Court finds the reasoning of *State v. Rackis* to be more relevant. Although *Rackis*

was a possession case -- it addressed the question of whether state criminal laws that prohibited possession of a handgun without a permit and possession of a handgun by a convicted felon were preempted by § 5001 -- the principles relied upon by the court and the reasoning of that decision are instructive. The *Rackis* court found that New Jersey's requirements that a person obtain a permit to purchase as well as carry a handgun (including BB guns) do not "constitute[] a prohibition against the sale or possession of a BB gun." 333 N.J. Super at 341 ("[T]he classification of BB guns as a handgun does not bar acquisition of the weapon and the requirement that a person must obtain a permit to carry a BB gun is not onerous. A person of good character and good repute in the community in which he lives cannot be denied a permit to purchase a handgun or a firearms purchaser identification card."). After determining that the intent of Congress in enacting § 5001(g) was to "protect manufacturers and the rights of the public to buy and possess [BB and pellet guns]" and not to completely preempt state regulation of such weapons, the *Rackis* court further found that "the express language of § 5001(g) only precludes states from prohibiting the sale of such guns and is silent as to whether the state can in fact regulate who can obtain these guns." *Rackis*, 333 N.J. Super at 343.

Here, the One Gun Law regulates the sale of air-powered handguns in that it allows individuals who have not purchased a handgun in the previous thirty days to purchase such a weapon. It also exempts from its limitations individuals that qualify for one of the several exemptions enumerated in the statute. An individual (with the appropriate permit) who does not qualify for an exemption and who has purchased a handgun within a thirty-day period

need only wait until the expiration of the thirty-day period in order to purchase an air-powered handgun. Consequently, the One Gun Law does not prohibit the sale of air-powered handguns, nor is it a restriction that is so onerous that it constitutes a *de facto* prohibition on the sale or purchase of these weapons. As such, the One Gun Law is not at odds with the legislative intent of § 5001(g)(ii) to “protect manufacturers and the rights of the public to buy and possess [air-powered handguns],” and, therefore, the Court finds that the One Gun Law is not preempted by the Federal Toy Gun Act. Consequently, Plaintiffs have not shown a reasonable likelihood of success on the merits with respect to Counts One and Two, and their motion for an injunction enjoining the enforcement of the One Gun Law based upon those counts shall be denied. Additionally, in light of the foregoing, the Court shall grant the State’s motion to dismiss as to Counts One and Two of the complaint.

To the extent that Plaintiffs seek injunctive relief based upon Counts Seven and Eight enjoining municipal defendants from restricting the number of handgun purchase permits an individual may apply for at one time, that relief is also denied. Since the filing of the complaint in this case the Division of the State Police has issued guidance for municipalities advising that the One Gun Law does not restrict individuals from obtaining more than one permit in a 30-day period. Tr. at 10, 18. In fact, despite what appeared to be some initial confusion when the law was first enacted, all parties appear to be in accord that the One Gun Law does not restrict the number of handgun purchase permits an individual may obtain at any one time. As such, Plaintiffs cannot establish that they will be irreparably harmed absent the preliminary relief sought.

B. Motions to Dismiss

As is evident from correspondence on the docket and as was discussed at oral argument, numerous developments have occurred since the commencement of this action and the filing of the parties' motions that impacts both the factual and legal issues in this case. For example, at the time of the filing of this action, no exemption form had been had been promulgated by the superintendent. *See* N.J.S.A. 2C:58-3.4(b) (exemptions to the One Gun Law are to be made "on a form prescribed by the [S]uperintendent [of the State Police]). Since that time, exemption forms have issued. *See* Docket Entry # 32. Additionally, as noted above, the State Police has issued guidance regarding the One Gun Law's effect, or lack thereof, on the issuance of handgun purchase permits. Also, the statute received its official codification not long ago, which the State notes harmonized certain clashing statutory provisions. *See* Docket Entry #44.

In light of the recent developments, there appears to be the possibility that some of Plaintiffs' claims may be moot, and certain relief sought by way of parties' motions as well as certain legal arguments raised may no longer be relevant. Consequently, the parties are each to submit to the Court a supplemental brief addressing the impact of these developments and any others on the issues raised in the pending motions to dismiss.

III. Conclusion

For the reasons above, Plaintiffs motion for a preliminary injunction is denied. The State's motion to dismiss is granted as to Counts One and Two of the complaint. The parties

are directed to submit supplemental briefing regarding developments since the filing of the motions to dismiss. An appropriate Order accompanies this Opinion.

/s/ JOEL A. PISANO
United States District Judge

Dated: June 14, 2010

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

ASSOCIATION OF NEW JERSEY RIFLE :
AND PISTOL CLUBS, INC., et al. :

Plaintiffs,

V.

Civil Action No. 10-271 (JAP)

CHRISTOPHER CHRISTIE, Governor
of the State of New Jersey, et al.

Defendants.

ORDER

Presently before the Court are motions by the State of New Jersey defendants and the City of Hackensack to dismiss the complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Also before the Court is Plaintiffs' motion for summary judgment. For the reasons in the accompanying Opinion,

IT IS on this 2nd day of February 2012

ORDERED that Defendants' motions to dismiss [#64, 65] are GRANTED insofar as the motions relate to Plaintiffs' federal causes of action; and it is further

ORDERED that Plaintiffs' motion for summary judgment [#72] is DENIED; and it is further

ORDERED that the Court declines to exercise supplemental jurisdiction over Plaintiffs' remaining state law claims.

Accordingly, this case is CLOSED.

/s/ Joel A. Pisano
JOEL A. PISANO, U.S.D.J.

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

ASSOCIATION OF NEW JERSEY RIFLE :
AND PISTOL CLUBS, INC., et al. :

Plaintiffs,

V.

Civil Action No. 10-271 (JAP)

CHRISTOPHER CHRISTIE, Governor
of the State of New Jersey, et al.

Defendants.

OPINION

PISANO, District Judge.

In this action, Plaintiffs Association of New Jersey Rifle and Pistol Clubs, Inc., Scott Bach, Kaare Johnson, Vincent Furio, Steven Yagiello and Bob's Little Sport Shop, Inc. (collectively, "Plaintiffs") have challenged certain amendments to N.J.S.A. 2C:58-2 and 2C:58-3, referred to as the "One Gun Law" or the "One Handgun Per Month Law" (hereinafter, the "One Gun Law"). The One Gun Law provides, subject to certain exceptions, that no person may purchase more than one handgun in any thirty day period. Presently before the Court are motions by the State of New Jersey defendants¹ (the "State") and the City of Hackensack ("Hackensack") to dismiss the complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Plaintiffs have opposed the motions and have moved for summary judgment. For the reasons below, the Court denies Plaintiffs' motion for summary

¹ The named state defendants are Chris Christie, Governor of the State of New Jersey, Paula T. Dow, Attorney General of the State of New Jersey, and Colonel Rick Fuentes, Superintendent, Division of New Jersey State Police.

judgment, grants Defendants' motions as to the Plaintiffs' federal claims, and declines to exercise supplemental jurisdiction over the remaining state law claims.

I. Background

The One Gun Law, effective as of January 1, 2010, amended New Jersey's law regarding the purchase of firearms to provide that "no more than one handgun shall be purchased within any 30-day period." N.J.S.A. 2C:58-3(i). This one-gun-per-month limitation, however, is subject to certain exceptions, which are enumerated in the statute. For example, the limitation does not apply to law enforcement officers purchasing firearms for use in their duties or to transfers among licensed dealers. *See* N.J.S.A. 2C:58-3(i)(1) and (3). As relevant to this case, the statute contains an exception for "any transaction where the superintendent [of the State Police] issues an exemption from the prohibition in this subsection pursuant to the provisions [N.J.S.A. 2C:58-3.4]. N.J.S.A. 2C:58-3(i)(6).

As codified in N.J.S.A. 2C:58-3.4, New Jersey's legislature provided a mechanism for the Superintendent of the State Police to grant a purchaser an exemption to the One Gun Law in limited circumstances. Under section 2C:58-3.4,

"[t]he superintendent may grant an exemption from the restriction on the purchase of handguns set forth in subsection i. of N.J.S.2C:58-3 if the applicant demonstrates to the satisfaction of the superintendent that the applicant's request meets one of the following conditions:

- (1) The application is to purchase multiple handguns from a person who obtained the handguns through inheritance or intestacy;
- (2) The applicant is a collector of handguns and has a need to purchase or otherwise receive multiple handguns in the same transaction or within a 30-day period in furtherance of the applicant's collecting activities. ...;² or

² That statute notes that

as used in this paragraph, "need" shall include, but not be limited to, situations where there is a reasonable likelihood that the additional handguns sought to be purchased would not be readily available after the 30-day period, that it would not be feasible or practical to purchase the

(3) The applicant participates in sanctioned handgun shooting competitions and needs to purchase or otherwise receive multiple handguns in a single transaction or within a 30-day period, and the need is related to the applicant's competitive shooting activities, including use in or training for sanctioned competitions.

N.J.S.A. 2C:58-3.4(a).

To apply for the inheritance, collector or competitive shooting exemption (hereinafter, an “Exemption” or the “Exemptions”) to the One Gun Law, a prospective purchaser must submit an application to the Superintendent, certifying

on a form prescribed by the superintendent, the specific exemption sought and the particular handguns to be purchased. This form shall be submitted to the superintendent at the same time as the permit to purchase a handgun, along with any pertinent documentation supporting the need for an exemption. If the information concerning the particular handguns to be purchased is not available when the form is submitted, that information shall be provided to the superintendent as soon as practicable thereafter.

N.J.S.A. 2C:58-3.4(b). The Superintendent of the State Police promulgated forms (“Exemption Forms”) for applicants to use to apply for an Exemption on April 6, 2010, approximately 4 months after the law took effect.

Plaintiff originally filed their complaint on January 17, 2010 and filed an amended complaint on March 10, 2010. Among other things, Plaintiffs alleged in their original complaint that that the One Gun Law was void as being preempted by federal law. Specifically, Plaintiffs alleged that the One Gun Law was void because it was preempted by

handguns separately, or that prohibiting the purchase of more than one handgun within a 30-day period would have a materially adverse impact on the applicant's ability to enhance his collection.

N.J.S.A. 2C:58-3.4. Further, the statute provides that a

“collector” shall include any person who devotes time and attention to acquiring firearms for the enhancement of the person's collection: as curios; for inheritance; for historical, investment, training and competitive, recreational, educational, scientific, or defensive purposes; or any or other lawful related purpose. *Id.*

15 U.S.C. § 5001(g)(ii), which provides that “[n]o State shall ... prohibit the sale ... of traditional B-B, paint-ball, or pellet-firing air guns that expel a projectile through the force of air pressure.” Plaintiffs moved for a preliminary injunction enjoining enforcement of the One Gun Law, and various defendants moved to dismiss the complaint. On June 14, 2010, this Court, finding the One Gun Law not to be preempted, entered an Opinion and Order denying Plaintiffs’ motion for an injunction. The Court also granted in part defendants’ motions to dismiss and dismissed those counts alleging federal preemption. *See* docket entry nos. 50 and 51.

Plaintiffs filed a Second Amended Complaint (“SAC”) on October 1, 2010. In light of the Court’s earlier Opinion and Order, the only claims in the SAC that remain in this case are contained in Counts Three through Six. Counts Three and Four are claims under 42 U.S.C. § 1983 that challenge the requirements for obtaining an Exemption. Plaintiffs contend that “the Legislature intended that there be specific exemptions to the restrictions of the One Gun a Month Law for collectors, competitors and inheritance ...[, but] the manner in which the Exemptions have been implemented render them illusory and therefore they [violate the due process clause of the 14th Amendment].” Pl. Reply at 3. Plaintiffs specifically take issue with the requirement that, in order to obtain the Exemption, an applicant must identify by serial number the specific handguns he wishes to purchase. As a result of this requirement, an applicant must wait until he finds handguns he wishes to purchase before he can obtain an Exemption. Plaintiffs contend that, consequently, an applicant, upon finding a set of handguns he wishes to purchase, must seek the cooperation of a vendor to hold the weapons off of the market while the applicant seeks approval for the purchase, which he may or may not obtain. According to Plaintiffs, such a scenario is “unworkable and unreasonable” and

“[w]hile sometimes this process may work,” in other instances it will “render it impossible for otherwise qualified applicants to take advantage of the Exemptions as the Legislature intended,” because the vendor will not wait while a potential customer applies for an Exemption. Pl. Reply at 4.

According to the SAC, this was the experience of Plaintiff Bach. The SAC alleges Bach contacted “multiple sellers to purchase more than one handgun pursuant to the Collector Exemption.” SAC ¶ 80. Bach requested these sellers “hold such multiple handguns for him” to allow him to obtain the necessary exemption. *Id.* at ¶ 81. Bach was unable to advise the sellers whether he would qualify for the exemption or how long it would take to obtain it, and the sellers were unwilling to reserve the desired handguns. *Id.* ¶¶ 82-83.

In Counts Five and Six, Plaintiffs allege that defendant City of Hackensack is violating state regulations (specifically, N.J.A.C. 13:54-1.4(h))³ by refusing to process multiple applications for handgun purchase permits in a 30-day period. The Complaint alleges that Plaintiff Vincent Furio was denied the right by Hackensack to apply for three handgun purchase permits simultaneously. SAC ¶¶ 103-104.

Apparently to clear up any confusion by municipalities as to the effect that the One Gun Law had on a their ability to issue multiple handgun purchase permits within a 30-day period, the New Jersey State Police issued guidance after the One Gun Law was enacted advising municipalities that the One Gun Law does not restrict individuals from obtaining more than one permit in a 30-day period. Despite this guidance, Plaintiffs allege that Hackensack continues a “practice of ... playing fast and loose with the New Jersey State

³ N.J.A.C. 13:54-1.4(h) provides as follows: “Applicants for a permit to purchase a handgun may apply for more than one permit per application. The number of permits requested, and each permit number shall be entered in the spaces provided on the application.”

permit law,” and “cannot be trusted to comply with State regulations” regarding the issuances of multiple permits within a 30-day window. Pl. Reply at 8.

II. Analysis

A. Legal Standards

1. Federal Rule of Civil Procedure 12(b)(6)

Under Federal Rule of Civil Procedure 12(b)(6), a court may grant a motion to dismiss if the complaint fails to state a claim upon which relief can be granted. The Supreme Court set forth the standard for addressing a motion to dismiss under Rule 12(b)(6) in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 562, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). The *Twombly* Court stated that, “[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, ... a 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.* at 555 (internal citations omitted); *see also Baraka v. McGreevey*, 481 F.3d 187, 195 (3d Cir. 2007) (stating that standard of review for motion to dismiss does not require courts to accept as true “unsupported conclusions and unwarranted inferences” or “legal conclusion[s] couched as factual allegation[s].” (internal quotation marks omitted)). Therefore, for a complaint to withstand a motion to dismiss under Rule 12(b)(6), the “[f]actual allegations must be enough to raise a right to relief above the speculative level, ... on the assumption that all the allegations in the complaint are true (even if doubtful in fact) ...” *Twombly*, 550 U.S. at 555 (internal citations and footnote omitted).

2. Summary Judgment Standard

A court shall grant summary judgment under Rule 56 of the Federal Rules of Civil Procedure “if the movant shows that there is no genuine dispute as to any material fact and the

movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The substantive law identifies which facts are critical or “material.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A material fact raises a “genuine” issue “if the evidence is such that a reasonable jury could return a verdict” for the non-moving party. *Healy v. N.Y. Life Ins. Co.*, 860 F.2d 1209, 1219 n.3 (3d Cir. 1988).

On a summary judgment motion, the moving party must show, first, that no genuine issue of material fact exists. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party makes this showing, the burden shifts to the non-moving party to present evidence that a genuine fact issue compels a trial. *Id.* at 324. The non-moving party must then offer admissible evidence that establishes a genuine issue of material fact, *id.*, not just “some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

The Court must consider all facts and their logical inferences in the light most favorable to the non-moving party. *Pollock v. American Tel. & Tel. Long Lines*, 794 F.2d 860, 864 (3d Cir. 1986). The Court shall not “weigh the evidence and determine the truth of the matter,” but need determine only whether a genuine issue necessitates a trial. *Anderson*, 477 U.S. at 249. If the non-moving party fails to demonstrate proof beyond a “mere scintilla” of evidence that a genuine issue of material fact exists, then the Court must grant summary judgment. *Big Apple BMW v. BMW of North America*, 974 F.2d 1358, 1363 (3d Cir. 1992).

B. Counts Three and Four

As noted above, Counts Three and Four of the SAC allege that the Exemptions promulgated pursuant to the One Gun Law and implemented via the Exemption Forms violate Plaintiff’s procedural due process rights “because they result in illusory Exemptions contrary

to the express intent of the Legislature.” Pl. Brf. at 25. As stated in their brief, “Plaintiffs argue that the Legislature and the Superintendent may not, consistent with Due Process, provide a statutory right without a means to obtain the right.” *Id.* at 26.

The Due Process Clause of the Fourteenth Amendment holds that no state shall “deprive any person of life, liberty or property, without due process of law.” U.S. Const. amend. XIV, § 1. To state a claim for a violation of procedural due process rights, “a plaintiff must allege that (1) he was deprived of an individual interest that is encompassed within the Fourteenth Amendment's protection of ‘life, liberty, or property,’ and (2) the procedures available to him did not provide ‘due process of law.’” *Hill v. Borough of Kutztown*, 455 F.3d 225, 234 (3d Cir. 2006). Thus, the threshold issue with respect to Plaintiffs’ procedural due process claim is whether there exists here a “cognizable liberty or property interest” protected by the Due Process Clause. *Mudric v. Attorney General*, 469 F.3d 94, 98 (3d Cir. 1995) (noting that “[i]t is axiomatic that a cognizable liberty or property interest must exist in the first instance for a procedural due process claim to lie”).

Property interests are not created by the Constitution, but rather are “created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.” *Board of Regents of State Coll. v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972). Plaintiffs here assert that the constitutionally-protected interest at issue in this case is “a right” to an Exemption “expressly provided them in the One Gun Law.” Pl. Brf. at 31. Thus, the Court must look to New Jersey state law to determine whether Plaintiffs have a legitimate claim of entitlement to an Exemption.

A factor for the Court to consider in determining whether an applicant has a “legitimate claim of entitlement” to an Exemption is the discretion invested in state official overseeing the exemption decision. *See Hain v. DeLeo*, 2010 WL 4514315, *6 (M.D. Pa. 2010) (*quoting Midnight Sessions, Ltd. v. City of Philadelphia*, 945 F.2d 667, 679 (3d Cir. 1991)). In *Hain*, for example, because a state’s firearm licensing statute invested the licensing official with discretion in granting or denying a license to carry a firearm, the court found that such a license was not a protected property interest for the purposes of procedural due process. *Id.*

Here, New Jersey’s law vests the Superintendent with similar discretion regarding the Exemptions. This is underscored by the language of the statute which indicates that the superintendent “may” grant the exemption if the applicant meets one of the only three conditions for exemption. N.J.S.A. 2C:58-3.4 (a). To determine whether an applicant meets the first condition, the superintendent must evaluate whether the applicant plans to purchase multiple handguns from a person who obtained the handguns through inheritance or intestacy. N.J.S.A. 2C:58-3.4 (a)(1). To determine whether an applicant meets the second condition, the superintendent must evaluate whether the applicant is “collector” of handguns who has the “need” to purchase or receive multiple handguns within a 30-day period. N.J.S.A. 2C:58-3.4 (a)(2). To determine whether the applicant meets the third exemption, the superintendent must evaluate whether the applicant “participates in sanctioned handgun shooting competitions” and, as relating to such competitive shooting activity, “needs” to purchase or receive multiple handguns within a 30-day period. N.J.S.A. 2C:58-3.4 (a)(3). However, even if the superintendent finds that an applicant meets one of the three enumerated exemption criteria, the superintendent is nevertheless vested with the discretion to deny the application if

“if he finds a reasonable likelihood that the public safety would be endangered by granting the exemption.” This broad discretion precludes a finding that an applicant has a “legitimate claim of interest” in an Exemption for procedural due process purposes. *See Midnight Sessions, Ltd. v. City of Philadelphia*, 945 F.2d 667, 679 (3d Cir. 1991) (finding plaintiffs did not have a cognizable property interest in receiving a potential license to operate a dance hall where statute prohibited issuance of licenses pending review to determine that “the facility complies with ‘all laws, ordinances, health and fire regulations, applicable thereto, and is a safe and proper place for the purpose for which it shall be used;” implicit discretion in the “safe and proper place” language precluded legitimate claim of entitlement to issuance of the license.) (*overruled on other grounds by United Artists Theatre Circuit, Inc. v. Township of Warrington*, 316 F.3d 392, 400 (3d Cir. 2003)).

Moreover, to satisfy the procedural due process analysis, Plaintiffs must not only establish the existence of a protected interest, but also that they have been deprived of that interest. As discussed above, the purported deprivation here allegedly arises out of the requirement that applicants identify the handguns they wish to purchase. Plaintiffs claim that this requirement, as found on the Exemption Forms promulgated by the Superintendent (which require identification of by serial number the specific handguns to be purchased), make it “impossible” for “most qualified applicants” to obtain the Exemptions “intended” by the Legislature. Pl. Brf. at 31. However, Plaintiffs overlook that the plain language of the statute makes clear that the Legislature intended that the Exemptions be available only to those applicants who are able to identify “the particular handguns to be purchased.” N.J.S.A. 2C:58-3.4(b) (requiring that “[t]he applicant shall certify, on a form prescribed by the superintendent, the specific exemption sought *and the particular handguns to be*

purchased.)(emphasis added). The forms promulgated by the Superintendent, therefore, are not inconsistent with the Legislature's intent.

In sum, the Court finds that Counts Three and Four fail to state a claim upon which relief can be granted, and these claims shall be dismissed. While Plaintiffs are clearly unhappy with New Jersey's procedure for obtaining an Exemption to the one-handgun-per-month purchase limitation, the procedural due process protections of the 14th Amendment do not provide Plaintiffs with a remedy. If, as Plaintiffs allege, New Jersey's statutory/regulatory scheme for obtaining an Exemption is "unreasonable and unworkable" because it does not allow as many individuals to take advantage of the Exceptions as Plaintiffs would like, Plaintiffs' remedy lies with New Jersey's Legislature, not the federal courts.

B. Counts Five and Six

Counts Five and Six of the SAC contain only state law claims. In these counts, Plaintiffs contend that Hackensack has violated and continues to violate N.J.A.C. 13:54-1.4(h) because the municipality allegedly has refused to process multiple applications for handgun purchase permits in a 30-day period. N.J.A.C. 13:54-1.4(h) expressly permits applicants for a permit to purchase a handgun to apply for more than one permit per application.

Under 28 U.S.C. § 1367(c)(3), a district court has discretion to decline to exercise supplemental jurisdiction over state law claims if it has dismissed all claims over which it had original jurisdiction. Where the claims over which the district court had original jurisdiction are dismissed before trial, "the district court must decline to decide the pendent state claims unless considerations of judicial economy, convenience, and fairness to the parties provide an affirmative justification for doing so." *Borough of West Mifflin v. Lancaster*, 45 F.3d 780, 788

(3d Cir.1995); *see also United Mine Workers v. Gibbs*, 383 U.S. 715, 726, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966).

Here, the Court concludes that no affirmative justification is present for retaining jurisdiction over Plaintiffs' state law claims. The dispute with Hackensack is a local one, well outside of the jurisdiction of this Court, and of the kind that is best resolved in a state forum. Because the Court is granting Defendants' motions to dismiss as to the federal claims in this action, the Court declines to exercise supplemental jurisdiction over the remaining state law claims.

III. Conclusion

For the reasons above, the Court denies Plaintiffs motion for summary judgment, grants Defendants' motions as to the federal claims contained in Plaintiff's third and fourth causes of action, and declines to exercise supplemental jurisdiction over the remaining state law claims. An appropriate Order accompanies this Opinion.

/s/ Joel A. Pisano
JOEL A. PISANO, U.S.D.J.

Dated: February 2, 2012