

**UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

**ZISA & HITSCHERICH**

77 HUDSON STREET  
HACKENSACK, NJ 07601  
(201) 342-1103

Attorneys for Defendant, City of Hackensack

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ASSOCIATION OF NEW JERSEY RIFLE  
AND PISTOL CLUBS, INC., a New Jersey  
Not for Profit Corporation;  
SCOTT L. BACH; KAARE A. JOHNSON;  
VINCENT FURIO, STEVEN YAGIELLO,  
and BOB'S LITTLE SPORT SHOP, INC.,  
a New Jersey Corporation,

NOTICE OF MOTION

Appellants,

vs.

CHRISTOPHER J. CHRISTIE, Governor  
of the State of New Jersey; PAULA T.  
DOW, Attorney General of the State of  
New Jersey; COLONEL RICK FUENTES,  
Superintendent, Division of New Jersey  
State Police; WASHINGTON TOWNSHIP  
(Morris County); CITY OF HACKENSACK;  
LITTLE EGG HARBOR TOWNSHIP and  
XYZ MUNICIPALITIES 1-535,

On Appeal from  
CIVIL ACTION No.: 3:10-cv-271 JAP-TJB  
Sat Below: Hon. Joel A. Pisano, U.S.D.J.

Appellees.

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**PLEASE TAKE NOTICE** that on a date and time fixed by the court, or as soon thereafter as counsel may be heard, Appellant, City of Hackensack (hereinafter "Hackensack"), a municipal corporation of the State of New Jersey, shall move at the United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106, for an Order permitting Appellee, Hackensack to file and serve a Supplemental Appendix and to file documents therein under seal, pursuant to Rules 27 and 30 of the Federal Rules of Appellate Procedure.

**PLEASE TAKE FURTHER NOTICE** that Appellee, City of Hackensack shall rely upon its letter brief and certification of counsel, in support of this motion.

**ZISA & HITSCHERICH, ESQS.**

Attorneys for Appellee, City of Hackensack

/s Craig M. Pogosky

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BY: CRAIG M. POGOSKY, ESQ. (5849)

Dated: July 19, 2012

**CERTIFICATE OF SERVICE**

On July 19, 2012, I filed foregoing Notice of Motion, along with a certification of counsel, and letter brief with the Clerk of the Third Circuit Court of Appeals and served a copy on all counsel of record, listed below, via the Third Circuit Court of Appeals' Case Management/Electronic Case Filing System.

Roshan Shaw, Esq.  
Office of the Attorney General of New Jersey  
Division of Law  
25 Market Street  
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Woodbridge, New Jersey 07095

**ZISA & HITSCHERICH, ESQS.**  
Attorneys for Appellee, City of Hackensack

/s Craig M. Pogosky

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BY: CRAIG M. POGOSKY, ESQ. (5849)

Date: July 19, 2012

*LAW OFFICES*  
***ZISA & HITSCHERICH***  
*77 HUDSON STREET*  
***HACKENSACK, NEW JERSEY 07601***

JOSEPH C. ZISA, JR. \*  
ROBERT J. HITSCHERICH \*\*

TEL: 201-342-1103  
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CRAIG M. POGOSKY

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\* Member of N.J. and Fla. Bar  
\*\* Member of N.J. and N.Y. Bar

July 19, 2012

Marcia M. Waldron, Clerk  
U.S. Court of Appeals  
for the Third Circuit  
21400 United States Courthouse  
601 Market Street  
Philadelphia, Pennsylvania 19106

Re: Association of New Jersey Rifle and Pistol Clubs, Inc. vs.  
Christopher J. Christie, Paula Dow, Colonel Fuentes and  
Washington Township, City of Hackensack, et al.  
Case No.: 12-1624

Dear Sir or Madam:

Enclosed herewith for filing, please find my Notice of Motion to file  
a Supplemental Appendix, Letter Brief, Certification of counsel, and  
certification of service.

Thank you for your consideration.

Respectfully Submitted,  
ZISA & HITSCHERICH, ESQS.

/S/ CRAIG M. POGOSKY, ESQ.  
BY: CRAIG M. POGOSKY, ESQ.

enclosures  
CMP/

**UNITED STATES COURT OF APPEALS  
THIRD CIRCUIT**

**ZISA & HITSCHERICH**

77 HUDSON STREET  
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(201) 342-1103

Attorneys for Movant/Appellee, City of Hackensack

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ASSOCIATION OF NEW JERSEY RIFLE  
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SCOTT L. BACH; KAARE A. JOHNSON;  
VINCENT FURIO, STEVEN YAGIELLO,  
and BOB'S LITTLE SPORT SHOP, INC.,  
a New Jersey Corporation

Case No. 12-1624

**CERIFICATION OF COUNSEL**

Plaintiffs,

vs.

CHRISTOPHER J. CHRISTIE, Governor  
of the State of New Jersey; PAULA T.  
DOW, Attorney General of the State of  
New Jersey; COLONEL RICK FUENTES,  
Superintendent, Division of New Jersey  
State Police; WASHINGTON TOWNSHIP  
(Morris County); CITY OF HACKENSACK;  
LITTLE EGG HARBOR TOWNSHIP and  
XYZ MUNICIPALITIES 1-535,

On Appeal from  
CIVIL ACTION No.: 3:10-cv-271  
Sat Below: Hon. Joseph A. Pisano

Defendants.

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I, CRAIG M. POGOSKY, ESQ., hereby certify as follows:

1. I am an attorney at the law firm of ZISA & HITSCHERICH, ESQS, for the Appellee/Movant, City of Hackensack (hereinafter "Hackensack), and as such, am fully familiar with the facts contained herein. I make this certification in support of motion to file an Appellee's appendix and to file documents therein under seal.

2. Appellant filed its appeal brief and appendix with this court on or about June 4, 2012. Prior thereto, all parties conferred regarding the contents of the Appendix. I requested inclusion of documents that had been submitted to the District Court by the undersigned as part of its papers in opposition to the Appellant's motion for summary judgment and in further support of our motion to dismiss the second amended complaint. *See* Docket Entry 81-1. Those documents were placed under seal by the Honorable Tonianne Bongiovanni as New Jersey regulatory law prevented disclosure of their contents. The documents include a certification of a police officer, Mart Kobin, (hereinafter "Kobin Certification), which referenced applications for handgun purchase permits of one of the appellants and attachments which were copies of said applications for same, and the results thereof.

3. Counsel for Appellant declined to include the sealed documents and indicated that if the undersigned wished to rely upon the Certification and attachments, in this appeal, the undersigned would need to file its own appendix containing the same and make the appropriate motion to do so.

4. The Appendix does not include the Kobin Certification with attached Exhibits, which Hackensack respectfully submits are essential for a thorough review of the proceedings below and the District Court's February 2, 2012 Order.

5. The Kobin Certification and the Exhibits thereto were presented to the District Court and were therefore part of the record considered by that Court in reaching its decision to dismiss the second Amended Complaint.

6. Although the Kobin Certification and the Exhibits thereto are automatically part of the record on appeal, Hackensack respectfully submits that these

documents should be included in a Supplemental Appendix because they refer to and include images of documents that will be easier for the Court to view in hard-copy form.

7. The Kobin Certification and the exhibits attached thereto, inter alia, were submitted in opposition to the allegations, contained in the second amended complaint and motion for summary judgment, that Hackensack is not complying with New Jersey regulations by accepting and issuing multiple permits to purchase firearms. The information contained therein is relevant to this Appellee's compliance with the law and the points raised in the Appeal brief and should be considered by the court in this appeal.

8. These materials are essential for the Court's review of the case below, and are referenced in Hackensack's Brief. Including them as part of the Appendix in this matter will provide the Court ready access to them without having to resort to the record below. As such, the Kobin Certification and attached exhibits are properly included as part of the Appendix. See Fed. R. App. P. Rule 30(a)(1)(D); and 3d Cir. L.A.R. 30.3(a).

9. Hackensack therefore respectfully requests that it be permitted to supplement the Appendix to include the Kobin Certification and Exhibits thereto, as the "Supplemental Appendix."

10. Granting such leave will permit the Court to fully address the issues and to assist the Court in the ultimate resolution of this matter on appeal. Hackensack's request is reasonable, will not unduly delay this action or prejudice the parties.

I certify that the foregoing information is true and if willfully false, I am subject to punishment.

**ZISA & HITSCHERICH, ESQS.**

Attorneys for Appellee, City of Hackensack

/s Craig M. Pogosky

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BY: CRAIG M. POGOSKY, ESQ. (5849)

Dated: July 19, 2012



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XYZ MUNICIPALITIES 1-535,

On Appeal from

Civil Action No.: 3:10-cv-271(JAP)

Sat Below: Honorable Joel A. Picaro, USDJ

Appellee.

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**LETTER BRIEF IN SUPPORT OF MOTION TO FILE SUPPLEMENTAL  
APPENDIX UNDER SEAL**

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On the Brief:

Craig M. Pogosky, Esq.

Statement of Facts & Procedural History

Appellants, Association of New Jersey Rifle and Pistol Clubs, Inc., Scott L. Bach, Kaare A. Johnson and Bob's Little Sport Shop's, filed an amended complaint on or about January 17, 2010. The complaint did not originally name the City of Hackensack (hereinafter "Hackensack") as a party. On February 3, 2010, the Appellant filed a Motion for a Preliminary Injunction seeking to enjoin the restricting of permits issued for the purchase, sale or transfer of handguns within a thirty day period, the number of permits that may be applied for and received at one time.

Additional Appellants were added to the case, including Vincent Furio, a Hackensack resident. A Second Amended Complaint was filed which named Hackensack as a Defendant. The Amended Complaint alleged violations by Hackensack of N.J.A.C. 13:54-1.4(h) and sought a preliminary and permanent injunction enjoining it from restricting the number of handgun purchase permits an applicant may apply for at one time and the number of handgun purchase permits a licensing authority may issue at one time and declaratory relief, declaring Hackensack's actions were violative of N.J.A.C. 13:54-1.4(h). Appellants asked the court to enjoin Appellees from restricting the number of permits an applicant may apply for and restricting the number of permits a licensing authority will issue at one time, and award reasonable

attorneys fees and costs. Appellants alleged that a certain applicant applied for multiple handgun purchase permits at the Hackensack Police Department and was informed that the Department had conflicting information from the State Police regarding the issuance of more than one permit per month and that it would not issue more than one permit per month and that it would not issue more than one permit per month until it received direction from that State Police.

Appellants filed a motion for summary judgment wherein it alleged that one of the applicants was subsequently deterred from applying for multiple permits. Hackensack filed its brief and certification in opposition to Appellants' motion for summary judgment and in further support of its motion to dismiss the second amended complaint on or about April 12, 2011. (Docket Entry 81). The certification filed therewith in support of Hackensack's papers described applications for handgun purchase permits of the allegedly aggrieved applicant and annexed copies of the same. When filed electronically with the court, a request was made to maintain said documents under seal. A motion to seal the same was then filed with this court [Docket Entry 82]. Magistrate Bongiovanni issued a temporary seal order, considered all papers and issued an order sealing the documents. (Docket Entry 94).

In preparing the Appendix for this appeal, counsel for Appellant indicated that if the undersigned wished to rely upon the affidavit and attachments that were the subject of the order, in this appeal, the undersigned would need to file its own appendix containing the same and make the appropriate motion to do so.

The affidavit speaks directly to the subject of the motion for summary judgment of the Appellant and should be considered by this court in the pending appeal. Because the document was placed under seal by the District Court, the undersigned seeks to submit same in its Supplemental Appendix in the same manner.

ARGUMENT

While our courts have recognized a right of access to judicial proceedings and records, the public's right of access to judicial records is "not absolute" and must be weighed against a litigant's interest in secrecy. Lecaudia, Inc. v. Applied Extrusion Technologies., Inc., 998 F.2d 157, 164, 165 (3d Cir. 1993); In re Cendant Corp., 260 F.3d 183, 192, 194 (3d Cir. 2001). A party seeking to restrict the right of access to records must demonstrate that the material contains the type of information that courts will protect and that there is good cause for continued application of an existing order. Publicker Industries, Inc. v. Cohen, 733 F.2d. 1059, 1070-71 (3d. Cir. 1984).

Local Civil Rule 5.3 "govern[s] any request by a party to seal, or otherwise restrict public access to, any materials filed with the Court." L. Civ. R. 5.3(a)(1). Before restricting public access to judicial documents, the court must look at:

(a) the nature of the materials or proceedings at issue, (b) the legitimate private or public interests which warrant the relief sought, (c) the clearly defined and serious injury that would result if the relief sought is not granted, and (d) why a less restrictive alternative to the relief sought is not available. L.Civ.R.5.3 (c)(2).

The materials sought to be kept confidential are applications for handgun purchase permits including their disposition, the certification to which they were attached in opposition to summary judgment which referenced the materials.

N.J.A.C. 13:54-1.15 provides in pertinent part as follows:

...Any application for a permit, firearms identification card, or license, and any document reflecting the issuance or denial of such permit, firearms identification card, or license, and any permit, firearms identification card, license, certification, certificate, form of register, or registration statement, maintained by any State or municipal governmental agency, is not a public record and shall not be disclosed to any person not authorized by law or this chapter to have access to such documentation, including the applicant, except on the request of persons acting in their governmental capacities for purposes of the administration of justice.

There is a legitimate public interest justifying the relief sought in the present application. Those interests include maintaining the confidentiality of personal information in an applicant's application. Additionally, as the Superintendent of the State Police indicated in his summary of the proposed amendments to N.J.A.C. 13:54-1.15, which includes handgun purchaser permits and firearms purchaser identification cards as documents to be maintained as confidential,

The proposed amendment will serve to protect the privacy of persons who obtain firearms by virtue of licenses, firearms identification cards, permits and registrations. Their names and addresses will not be subject to public disclosure absent legitimate need or legal requirement. More importantly, however, exempting permits, licenses, firearms identification cards and registrations from being

classified as public records will deny the criminal elements of our society the opportunity of obtaining "shopping lists" of names and addresses of persons who own firearms. As a result, these persons will not be targets for burglaries or thefts. In 1991 and 1992, the total number of firearms reported stolen in this State was approximately 2,800. Should the names and addresses of persons who obtain permits, licenses, firearms identification cards and registrations now be made public, that number could dramatically increase. The dangers inherent in such publication are not only applicable to those who may be victimized by burglaries and/or thefts, but are equally shared by the members of the public at large, who could also be victimized by persons who illegally obtain firearms from their rightful owners. [24 N.J.R. 3022]

The Superintendent further noted that "[t]his amendment reaffirms the long standing policy of the State Police and municipal police departments that such documents are not public records." Id.

The movant herein has a legitimate interest in having the documents sealed. The movant does not wish to run afoul of the regulations, which apply to it. Without a seal order, Hackensack, its officers, and the undersigned could be in violation of the law regarding the dissemination of such information as is regulated by the aforementioned provision of the code.

Less restrictive alternatives are not available to this party. The regulation does not permit the defendant to publish selected portions of the documents. The certification and

attachments relate solely or extensively to an individual applicant. Redaction would be impracticable.

No member of the public or news media, interested person, or party herein filed an objection to the motion to seal as permitted by L. Civ. R. 5.3 (c)(4) in the lower court. The motion was unopposed by the public in the lower court, so no public purpose or interest was advanced for access to the documents that were ultimately sealed.



CONCLUSION

Good cause exists to maintain the confidential documents under seal in the within matter. The documents are not public. Further there is no asserted public interest in the within matter to make the same public, and the Appellant would violate the administrative regulation by publishing the documents. For the foregoing reasons, the undersigned requests that the court accept the documents under seal and permit an appendix by Hackensack.

Respectfully submitted,

/s Craig M. Pogosky

CRAIG M. POGOSKY, ESQ. (5849)