IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN DOE, et al.,	:	CIVIL ACTION
	:	
Plaintiff,	:	No. 16-6039
	:	
v.	:	
	:	
THOMAS WOLF, et al.,	:	
	:	
Defendants.	:	

REPLY MEMORANDUM OF LAW IN SUPPORT OF COMMONWEALTH DEFENDANTS' MOTION TO DISMISS COMPLAINT

I. ARGUMENT

This lawsuit is expressly limited to a single cause of action asserting a facial[1] due process challenge to 18 Pa.C.S. § 6105(c)(4), which prohibits persons who have been "involuntarily committed to a mental institution" under section 302 from obtaining a firearm. Complaint, ¶ 5, "Cause of Action," p. 16 ("The Firearms Disqualification Statute (sic) Deprives Plaintiff of Fundamental Individual Rights without Due Process of Law in Violation of the Fourteenth Amendment"). There is no challenge under the Second Amendment or to section 302. Most importantly, in Plaintiffs' Opposition to Defendants' Motion to Dismiss ("Plaintiffs' Opp."), plaintiffs do not challenge the availability of 18 Pa. C.S. § 6105(f)(1), which allows a person who has been involuntarily committed and, therefore, legally disabled from obtaining a firearm, to petition the court of common pleas to restore his firearms rights. This procedure is available any time after he is discharged from the hospital and both before (pre-deprivation) and

[1]Plaintiffs face an uphill battle in this case. As defendants showed, courts disfavor facial challenges, and such a challenge succeeds only when there is "no set of circumstances" under which the statute at issue would be valid. Heffner v. Murphy, 745 F.3d 56, 65 (3d Cir. 2014).

after (post-deprivation)[2] the firearm purchase is denied. Under Pennsylvania law, contrary to Plaintiffs' Opp., p. 18, there is no permanent loss of firearms rights; plaintiffs are free to meaningfully challenge the proscription in three ways. Defendants' Memorandum, pp. 15-27. See U.S. Rehlander, 666 F. 3d 45, 47 (1st Cir. 2012) (ban on firearms purchase is not considered a permanent deprivation of the right to bear arms where there exists a meaningful way to recapture that right).

Nonetheless, plaintiffs cannot seem to decide if they are challenging the section 302 procedures that resulted in their involuntary commitment or if they are challenging section 6105(c)(4). On the one hand, the Complaint expressly avers that plaintiffs "do not seek to invalidate Pennsylvania's laws allowing involuntary Temporary Emergency Commitment, nor do they seek to stop the reporting of Temporary Emergency Commitments to the [PSP]. They seek only the narrow relief of preventing the automatic imposition of an indefinite loss of their Second Amendment rights—without due process of law—that arises out of their Temporary Emergency Commitments under Section 302." Complaint, ¶ 6. See Plaintiffs' Opp., p. 18 ("Plaintiffs are not alleging that a hearing is required before committing an individual under Section 302.").

On the other hand, Plaintiffs seem to repeatedly impugn the section 302 procedure itself. For example, plaintiffs complain that "Defendants permanently deprived Plaintiffs of their Second Amendment rights based solely on a physician's opinion that a person is committable under Section 302 without due process of law," Plaintiffs' Opp., p. 1--implying a due process challenge to section 302. Similarly, they complain that there are "no meaningful remedies for [challenging] Section 302 commitments," id., pp. 6-7, and then include a lengthy recitation of

[2] Plaintiffs actually fail to cite any firearms case in which the court held that due process requires a pre-deprivation hearing before barring a citizen from purchasing a firearm.

sections 303 and 304 procedures, Id., pp. 4-6, the express purpose of which is to contrast the processes provided for in these latter sections with the process provided in section 302. Id., p. 4 ("This lack of process contrasts sharply with the procedures for more extended commitments").

Further, they claim that "Defendants' argument presumes that Plaintiffs' Section 302 commitments were adequate to determine they were sufficiently mentally ill to divest Plaintiffs of a fundamental right and satisfied the requirements of due process. The latter issue, of course, is the heart of Plaintiffs' dispute …" Id., p. 12. See Id., p. 11 (referring to "the dramatic unfairness to Plaintiffs of Defendants' enforcement of the Pennsylvania Section 302 scheme and to further highlight the need for a pre-deprivation hearing"); Id., p. 13 (challenging defendants' alleged claim that "the allegedly exigent nature of a Section 302 commitment justifies the lack of process prior to the deprivation"). So completely do plaintiffs muddle and conflate the issues that is not even clear if the "deprivation" of "fundamental rights" that plaintiffs complain about is the temporary loss of their liberty pursuant to the involuntary commitments or the loss of firearms rights. This lack of clarity amounts to little more than a legal shell game of vague claims and conclusory allegations regarding the constitutionality of Pennsylvania law.[3]

[3] Similarly maddening is plaintiffs' failure to identify the nature of the alleged interest that was allegedly taken away. Plaintiffs' pleadings do not specify whether they claim a loss of a liberty or property interest, the possession of which is a prerequisite to a procedural due process claim. See Defendants' Memorandum, pp. 22-27. Plaintiffs' repeated conclusory claims that they were deprived of a "fundamental right," is relevant to a substantive due process claim, which is not asserted at bar. See Id., p. 23 n. 13. Moreover, plaintiffs' claim that "Defendants argue that Plaintiffs do not have a protected interest in their fundamental Second Amendment rights because Defendants took them away," Plaintiffs' Opp., p. 10, misconstrues due process analysis. As defendants show, plaintiffs lack a protected interest in possessing a firearm because neither federal nor state law creates a protected interest in obtaining a firearm where a person has been involuntarily committed and his firearms rights have not been restored. Plaintiffs obscure the exact interest that defendants allegedly deprived them of and when that interest was allegedly taken away. Nonetheless, a state defendants' "taking away" of the protected interest is a separate element of a due process claim. See Defendants' Memorandum, pp. 22-27. Only after finding a protected interest does the court look to whether state procedures for challenging the deprivation

In any event, any challenge to section 302 procedures would fail. The Third Circuit Court of Appeals and Pennsylvania Supreme Court have both held that section 302 procedures, which do not require a formal hearing before the person is involuntarily confined, comport with due process. Benn v. Universal Health System, Inc., 371 F.3d 165, 173–74 (3d Cir. 2004) (a short-term commitment under section 302 without a hearing does not violate procedural due process) (citations omitted); Doby v. DeCrescenzo, 171 F.3d 858, 870 (3d Cir.1999); Matter of Seegrist, 539 A.2d 799, 802 (Pa. 1988) (citations omitted). Plaintiffs received all of the process due at the time of their section 302 commitments, and any such challenge must fail. Moreover, to the extent plaintiffs challenge the MHPA, a necessary defendant, the Secretary of the Pennsylvania Department of Human Services, has been omitted.

To the extent that plaintiffs claim that a hearing was required either before or after they sought to purchase a firearm," id., p. 18, they essentially disregard available state procedures. See Defendants' Memorandum, pp. 15-27. Plaintiffs cite In re Keyes, 83 A.3d 1016, 1026-27 (Pa. Super. 2013), for the proposition that a successful § 6105(f)(1) petition does not restore one's federal firearms rights. Plaintiffs Opp., p. 7. This claim is misguided on many levels. The Keyes analysis that plaintiffs cite relates to Second Amendment and Equal Protection challenges to the federal firearms statutory scheme, the Gun Control Act, 18 U.S.C. § 922(g)(4), none of which are issues at bar. Id., 83 A.3d at 1026-27. The Superior Court held that the Third Circuit in U.S. v. Marzzarella, 614 F.3d 85 (3d Cir. 2010) "reached the correct conclusion that the possession of firearms by the mentally ill does not fall within the conduct that the Second Amendment was intended to protect"; "that the government has an important interest in keeping

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comport with due process; absent an interest founded in law, there is no entitlement to due process. Cleveland Board of Ed., v. Loudermill, 470 U.S. 532, 538 (1985).

firearms out of the hands of those … who have ever been committed to a mental institution (to reflect the language of section 922(g)(4)). The dangers inherent in the possession of firearms by the mentally ill are manifest. This is even more vital in cases such as appellant, who was involuntarily committed and thus failed to recognize and act upon his own illness"; and that "the exclusion of the mentally ill from the protection of the Second Amendment" equally applies when someone claims "he is no longer mentally ill." Id. See Defendants' Memorandum, pp. 23-32. Further, the Keyes challenge was to provisions in a federal statute, 18 U.S.C. §§ 922(g)(4), 925(a)(1), over which the Pennsylvania legislature and Commonwealth defendants have no control or authority. See Id., 83 A.3d at 1026-27. Should plaintiffs wish to challenge a federal firearms disability, they should sue the present United States Attorney General.[4]

Plaintiffs claim that defendants mischaracterize the expungement proceedings under 18 Pa. C.S. § 6111.1(g)(2) and rely on In re: Nancy White Vencil, 90 MAP 2015, 2017 WL 227792 (Pa. 2017).[5] Vencil is irrelevant to a federal due process claim. Vencil is a single issue case limited to determining the court's proper standard of review of a proceeding to expunge the section 302 records under state law, id., 2017 WL 227792 at *5, and is merely a statutory interpretation of the statute's text and legislative history. Id., at * 5-9. Plaintiffs seem to claim that, based on Vencil, the section 302 procedure is inadequate because section 303 and 304

[4] Contrary to plaintiffs' conclusions, there is also no permanent loss of firearms rights under federal law either. In re Keyes observes that 18 U.S.C. § 925(c) of the Gun Control Act, as amended, permits those suffering from a firearms disability under § 922(g)(4) to petition for relief, and that § 925(c) satisfies the Due Process Clause of the Fifth Amendment and "clearly passes constitutional muster because it does provide for a procedure to remove the disability." Keyes, 83 A.3d at 1028. Moreover, expungement of an involuntary commitment, under 18 Pa.C.S. § 6111.1(g), lifts any federal ban against possessing a firearm under the federal Gun control Act. See Keyes, 83 A.3d at 1020.

[5] The Westlaw version of the case notes: "This Opinion has not been released for publication in the permanent law reports. Until released, it is subject to revision or withdrawal." Id.

procedures provide more "process" prior to those longer commitments. Plaintiffs' Opp., pp. 4, 32. This is irrelevant to the present lawsuit, which claims to not challenge the section 302 procedures.

Vencil is not even a due process case. Plaintiff did not challenge "the due process protections provided by section 302 of the MHPA," and did not raise "a due process argument in connection with her right to bear arms under the United States and/or Pennsylvania Constitutions." Vencil, 2017 WL 227792, at * 9. Nonetheless, the Court observed "that even if the record of her 302 commitment is not expunged, section 6105(f)(1) of the Uniform Firearms Act provides another mechanism for her to obtain reinstatement of her firearms rights, requiring only that the trial court find she can possess a firearm without risk of harm to herself or another." Id., 2017 WL 227792 at *8, n.10 Thus, Vencil affirms two Pennsylvania UFA procedures for restoring firearms rights subsequent to a section 302 commitment: section 6105(f)(1) (restoration) and § 6111.1(g)(2) (expungement). Under any theory, Pennsylvania provides the required due process for persons who have been involuntarily committed under section 302 to restore their right to bear arms. That state procedures are not the same or do not provide all the procedures or remedies available in a federal lawsuit is irrelevant and does not make the process constitutionally inadequate. See Hudson v. Palmer, 468 U.S. 517, 535 (1984).

II. CONCLUSION

For the reasons stated above and in their Motion to Dismiss, Defendants request that the Motion to Dismiss be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Barry N. Kramer, hereby certify that on February 21, 2017, Reply Memo was filed electronically and is available for viewing and downloading from the Court's Electronic Case Filing System. The ECF System's electronic service of the Notice of Electronic Case Filing constitutes service on all parties who have consented to electronic service.

BY: /s/ Barry N. Kramer
Barry N. Kramer